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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Parts 1901, 1951, 1955, and 1965

### Property Management and Security Servicing

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** Farmers Home Administration (FmHA) amends its regulations on property management and security servicing for single family housing (SFH) loans. This action is taken to clarify the intent of the regulations, implement changes required by recent law and to change internal agency management provisions. The intended effect is to broaden, strengthen and clarify FmHA's regulations on disposal of inventory property and security servicing.

**EFFECTIVE DATE:** August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This final action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially effect budget outlay or effect more than one agency or to be controversial. The net result is to provide better service to rural communities.

#### Background/Discussion

On April 2, 1987 (52 FR 10577), FmHA published a proposed rule on property management and security servicing for SFH loans. FmHA now publishes these proposed revisions for final rule. In addition, FmHA published a proposed rule on September 1, 1987, (52 FR 32935) on security servicing for SFH loans. This final rule addresses and incorporates those revisions proposed on September 1, 1987. FmHA publishes in final these two proposed rules at the same time since they affect the same CFR Parts and publication concomitantly will minimize the burden on FmHA field personnel and the general public.

On May 23, 1988 (Part II) (53 FR 18392), FmHA published a proposed rule pursuant to the Agricultural Credit Act of 1987 which includes proposed changes to 7 CFR Parts 1955 and 1965. That rulemaking action primarily affects farmer program (CONACT) portions of the aforementioned Parts. This rulemaking action primarily affects housing borrowers/properties and has no impact on the intent or changes in 7 CFR Parts 1955 and 1965 being proposed as a result of the Agricultural Credit Act of 1987.

#### Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.427 Rural Rental Assistance Payments

#### Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials: 10.404-Emergency Loans, 10.406-Farm Operating Loans, 10.407-Farm Ownership Loans, 10.410-Low Income Housing Loans, 10.416-Soil and Water Loans, and 10.417-Very Low Income Housing Repair Loans and Grants. The following programs are subject to intergovernmental consultation with State and local officials: 10.405-Farm Labor Housing Loans and Grants, 10.411-Rural Housing Site Loans, 10.414-Resource Conservation and Development Loans, 10.415-Rural Rental Housing Loans, 10.416-Water and Waste Disposal Systems for Rural Communities, 10.419-Watershed Protection and Flood Prevention Loans, 10.421-Indian Tribes and Tribal Corporation Loans, 10.422-Business and Industrial Loans, 10.423-Community Facility Loans, and 10.427-Rural Rental Assistance Payments.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–90, an Environmental Impact Statement is not required.

#### Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does

it add/remove any authorities which would effect small entities.

**Discussion of Comments—April 2, 1987, Proposed Rule**

The proposed rule published in the **Federal Register** (52 FR 10577) on April 2, 1987, provided for a 60-day comment period. Five comments were received during the comment period. Three comments were received late, but nevertheless were considered in the scope of this review. Of the eight comments, three were from FmHA field employees, and five were from sources outside FmHA. Generally, the comments were favorable with two comments (from outside FmHA) strongly supporting the proposed rule. Several comments were outside the scope of the proposed rule, and three commentors strongly opposed certain sections of the proposed rule. The major concerns appeared in the areas of suitability determinations, downpayment requirements and property which does not meet the Agency's definition of "Decent, Safe and Sanitary" (DSS). The area of suitability determinations was not addressed in the proposed rule. Downpayment requirements will be discussed below, and there appeared to be confusion over properties that do not meet DSS standards. The commentor is under the misconception that all "unsuitable" properties do not meet DSS standards. Generally, unsuitable properties do meet DSS standards. The terms, "unsuitable" and "non DSS", are not interchangeable. For example, an inventory property with an inground swimming pool would be considered unsuitable for retention in the program due to an above modest feature (the pool), however this property may be decent, safe and sanitary. To clarify this area of potential confusion, FmHA has changed the terms "suitable" and "unsuitable" to "program" and "nonprogram" respectively. We believe these changes more accurately describe the property and will prevent such confusion in the future.

A summary of the comments relating to the April 2nd proposed rule by section area and changes to the proposed regulation which are being incorporated into the final rule are as follows:

*Section 1955.113*

One commentor suggested that the period of time suitable (program) property is available for sale to anyone after the 45-day retention period be set by the State Director consistent with market conditions in the State. We concur this suggestion has merit, however, we believe consistency within FmHA sales methods throughout the country is more valuable. A uniform policy also makes it easier to establish listing notices, exclusive broker contracts, open listing agreements, etc. Another commentor suggested that three administrative price reductions be authorized with the State Director having authority to authorize additional price reductions instead of the two administrative price reductions as proposed. FmHA considered this when developing the proposed rule, however felt that the two larger administrative price reductions should sell the property within a reasonable period of time. If not, FmHA needs to review the situation to determine why the property is not selling. A new appraisal may be necessary or additional marketing efforts may promote a timely sale. The regulation has been revised to require that a higher level office review the case file, including documentation of marketing efforts, after the two price reductions and provide guidance on future sales efforts. Should FmHA later determine that additional administrative price reductions should be authorized, regulations will be published to that effect.

An additional change has been incorporated into the final rule that will make the date administrative price reductions take effect easier to compute. For computation purposes, each month will be considered to have thirty days.

*Section 1955.114*

Most commentors were in favor of the longer retention period during which suitable (program) property is offered exclusively for sale to eligible (program) applicants, and suggested even longer periods. One commentor suggested the retention period be left at 30 days with the State Director having the authority to establish a longer period of time if necessary. Again, we believe that such a retention time is best left uniform throughout the country for consistency. FmHA policy is to sell suitable (program) property to eligible (program) applicants. This policy was established internally by the Agency to further the objectives of our Housing program. The retention period has been increased 300 percent since 1985. FmHA, however, also has an obligation to dispose of inventory property as quickly as possible to relieve the Government of the tremendously high costs of retaining property in inventory. We believe the 45-day retention period is more than sufficient time for an eligible (program) applicant to make a prudent decision regarding homeownership. It is quite apparent to FmHA, and to any other seller, that if property remains unsold after a month and one-half of active marketing, additional marketing efforts are needed. It should also be noted that although sales are then opened up to any purchaser, an eligible (program) applicant always has preference on suitable (program) property sales.

*Section 1955.116*

One commentor recommended that FmHA include the estimated cost of repairs in advertisements of properties that do not meet "Decent, Safe and Sanitary" (DSS) standards. We do not concur with this recommendation. First, FmHA does not always estimate the cost of repairs when determining the suitability of a house for retention in the program. Second, when FmHA does estimate such a cost, it is an estimate of how much it will cost FmHA to contract for such repairs/renovations. This may be significantly different from the costs for an individual purchaser to make such repairs/renovations. We believe that listing the repairs that are necessary to make the house meet DSS standards is sufficient information for a potential purchaser to make a prudent decision.

One commentor strongly opposed the proposed modification in the DSS language that would eliminate the "standard all encompassing" language currently being used. The commentor states that after a purchaser has made repairs/renovations as required by the sales agreement/quitclaim deed and FmHA has inspected same, the Agency has further responsibilities to ensure that the structure meets DSS standards. FmHA disagrees with this comment. FmHA has no legal or statutory basis by which to require that the purchaser of non DSS inventory property make repairs/renovations beyond those required to remove the DSS occupancy restrictions in the deed to the property. Such a policy, in addition to being unenforceable, would effectively make non DSS properties unsalable.

The commentor further suggests that regulations be expanded to include the requirement that the property be reinspected before the deed restriction is removed. We concur that the regulation is silent in this regard, however, believe it is implied in the instruction and is being accomplished nationwide. Regardless, we have incorporated this requirement in the regulation.

The same commentor suggested that FmHA demolish any property which has been determined unsuitable (nonprogram) due to location or design. We believe such a policy is too harsh and hasty. A property which has been determined to be unsuitable

(nonprogram) due to location may be a structure that is remotely located. A farmer, business or other concern may have interest or use for such a property. Similarly, a property which is unsuitable (nonprogram) due to design may have uses beyond a housing-unit for very-low and low-income FmHA borrowers. We have however, expanded our regulations on sale of property independently as chattel and vacant land.

*Section 1955.118*

Comments were extremely favorable regarding our proposal to reduce downpayment requirements on sales to ineligible (nonprogram) applicants, with two exceptions. One commentor, however, strongly opposed the proposal stating that FmHA had no justification for such action. Section 510(e) of the Housing Act of 1949, as amended, provides the Secretary with broad authority by which to sell acquired property. A downpayment is not required by statute. FmHA reduces downpayment requirements to assist the Agency in selling inventory property. FmHA continues to acquire property into inventory at a steady rate. The costs of retaining these properties in inventory are staggering and present a problem with which the Agency and other Departments are very concerned. We believe the commentor's concern is that ineligible (nonprogram) applicants will be purchasing suitable (program) inventory property. There is nothing to preclude such an action now, yet FmHA sells very few suitable (program) inventory houses to ineligible (nonprogram) applicants. Eligible (program) purchasers always have preference in suitable (program) property sales. They are provided a minimum of 3 exclusive 45-day retention periods in which to purchase a suitable (program) inventory property. The Agency has provided very prudent means by which to sell suitable (program) property to eligible (program) applicants.

The other comment opposing the reduction in downpayment requirements suggested that the reductions only be provided to eligible (program) applicants. There are no downpayment requirements from eligible (program) applicants for the purchase of suitable (program) inventory property. One commentor strongly supported the reduction in the downpayment requirements and suggested FmHA go further by eliminating the downpayment requirement for owner/occupant ineligible (nonprogram) terms financing. FmHA does not concur with this suggestion. Generally, applicants who will qualify for this type of credit will have incomes in excess of FmHA program income levels. We feel a two percent downpayment, together with payment of closing costs from personal funds, is reasonable for this type of debtor to be able to purchase a home.

*Section 1955.130*

Comments on this section were generally favorable with one exception. The commentor does not believe FmHA should pay a real estate commission to a real estate broker who purchases the property for his/her own use. As mentioned in the proposed rule, FmHA policy in not paying commissions in these instances is inconsistent with the Department of Housing and Urban Development (HUD) and the Veterans Administration (VA). The policy is also inconsistent with private sector sales. FmHA has no reason not to pay a commission in these instances. The commentor suggests a real estate broker will not submit an offer from an eligible (program) purchaser but will wait to submit their own offer to purchase the property. Real estate brokers are professionals who are licensed to sell real estate and are guided by professional ethics as well as State laws. It would be unconscionable and possibly unlawful for a real estate broker not to submit a valid offer to the seller. This comment was not incorporated into the final rule.

*Sections 1955.147 and 1955.148*

No comments were received on these sections. However, further changes have been made in the regulation to clarify how suitable (program) property is to be sold by sealed bid or auction. The changes require the bid deposits from eligible (program) purchasers to be the same as an earnest money deposit and not the full ten percent currently required.

*Section 1965.126*

Three comments were received on this section. One recommended the downpayment on ineligible (nonprogram) transfers be based upon the market value of the property, or the unpaid debt, whichever is lower. We concur with this recommendation. In some areas, the FmHA debt exceeds the market value. To not make the downpayment requirement prohibitive, we agree that same be based upon the market value or unpaid debt, whichever is lower.

Another commentor opposed the revision. They believe allowing an ineligible (nonprogram) purchaser to assume the debt of an eligible (program) borrower is an inappropriate use of loan funds. Our existing regulations, which already permit the assumption of an FmHA loan on ineligible (nonprogram) terms, require a 10 percent downpayment to consummate the transaction. FmHA has only proposed to reduce the downpayment. This is an assumption of an existing debt, therefore no new loan funds are involved. Further, when the debt is assumed, it is assumed on ineligible (nonprogram) terms. The interest rate is generally increased, a downpayment is required, and the term of the loan is reduced. We believe the proposed rule will assist borrowers in selling their property should the borrower so desire. The choice of who purchases the property is strictly their own.

*Section 1965.128*

One comment was received relating to this section. The commentor suggested the authority to assign security instruments be expanded to include accounts that have been accelerated after all appeals have been exhausted. We concur this authority should be granted as was done in the predecessor regulation to Subpart C of Part 1965 and have incorporated this suggestion into this final rule.

A minor change affecting the wording in the proposed rule is incorporated into this final rule. In the proposed rule, an assignment of security instruments is authorized when "A junior lienholder has foreclosed its lien and is paying FmHA in full." This should have read if "A junior lienholder is foreclosing and is paying FmHA in full." There would be no reason to provide an assignment of security instruments to a junior lienholder if they have already foreclosed, have title to the property, and wish to pay off FmHA in full.

*Other Sections*

One commentor suggested that FmHA revise its regulations on suitability determinations since they relate closely to the proposed rule. The commentor also stated the proposed regulations did not contain a definition of "suitable" (program) and "unsuitable" (nonprogram) property. 7 CFR Part 1955, Subpart C, does contain the definition of suitable (program) and unsuitable (nonprogram) property. The commentor should refer to § 1955.103. Suitability determinations are made pursuant to Subpart B of Part 1955, which contains guidance on same. FmHA recognizes that clarification of how suitability determinations are made may be necessary and will be publishing proposed revisions to Subpart B of Part 1955 either concomitantly or shortly after this final rulemaking action.

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Another commentor suggested that FmHA regulations be expanded to permit the reclassification of property from suitable (program) to unsuitable (nonprogram), and vice versa. Further, if FmHA sells a property as unsuitable (nonprogram), the Agency should permit the designation to be changed to suitable (program) should the property later be repaired/renovated to meet such standards. FmHA concurs with the first comment and will be proposing language that would permit changes in suitability determinations in another rulemaking action, however, it should be noted that generally, an "unsuitable" (nonprogram) property will remain an unsuitable (nonprogram) property. The second half of the comment is a moot issue. If a FmHA property is sold from inventory to a nonprogram purchaser, it loses its label of suitable (program) or unsuitable (nonprogram). Should an FmHA applicant desire to purchase the property at a later date, the property would be considered for financing under the applicable program regulation regardless of its previous suitability designation.

**Discussion of Comments—September 1, 1987 Proposed Rule**

The proposed rule published in the **Federal Register** (52 FR 32935) on September 1, 1987, provided for a 60-day comment period. Three comments were received from the general public. Five written comments were received from FmHA field personnel which dealt primarily with minor clarifications and internal agency management. Of the eight comments, two (from outside the Agency) were received late, however, they have been considered in the development of this rulemaking action.

Of the eight comments received, seven strongly supported the proposed rule. Only one commentor opposed the proposed regulation changes. However, it appears from the content of this letter, the commentor did not fully understand the proposed rule. The commentor believes the proposed regulation is an attempt to preclude FmHA program applicants from purchasing properties which are involved in the "debt exceeds value" situation. This is completely adverse to the intent of the regulation. Current FmHA regulations permit the Agency to receive an amount less than the market value of the property when the sale is to a purchaser financing the property from a source other than FmHA. Since there is cash at the closing, FmHA will accept payment in full for less than market value so necessary and authorized closing expenses can be paid to complete the sale. The problem arises, however, when an FmHA borrower desires to sell to an FmHA applicant and the applicant will be assuming all or a portion of the existing FmHA debt (at market value). Since there is no money at the loan closing, the selling expenses cannot be paid, thus precluding the sale from an FmHA borrower to an FmHA applicant. The proposed regulations would allow FmHA to pay for such expenses (by voucher) thus permitting program transfers. The true beneficiaries of this action are FmHA applicants. We believe this document and review of the proposed rule should clear up any confusion of the commentor.

A different commentor strongly supported the proposed regulation, however, felt that FmHA should only authorize payment of authorized selling expenses when the sale is to an FmHA program applicant. We do not concur with this comment. The intent of this rulemaking action is to assist borrowers whose FmHA debt and authorized selling expenses exceed the market value of the property. For these parties, there is no alternative beyond voluntary conveyance of foreclosure. Who purchases the property is strictly a matter between the FmHA borrower/seller and a potential purchaser. FmHA does not believe it should prescribe or interfere in who can purchase these properties.

Another commentor opposed the requirement that a financial statement be taken from the borrower to ascertain whether they have adequate funds to pay any or all of the authorized selling expenses. The commentor reaffirmed the Agency's intent to assist the borrower in selling their property and avoiding a voluntary conveyance. The proposed policy of taking a financial statement for a voluntary sale was questioned as being counterproductive to the intent of the proposed rule. Further, the proposed rule only affects situations where the debt and authorized selling expenses exceed the market value of the property. In such economically depressed areas, it is extremely unlikely that an FmHA borrower will have funds to pay towards closing. The commentor believes the policy is counterproductive and overly burdensome on the public. We partially concur with this comment, however, for apparent reasons, FmHA does need to know if the borrower has funds available to pay their own closing expense. The regulations have been expanded however, to include that if a current financial statement is on file, a new statement will not have to be taken.

Another commentor recommended that the County Committee action required for certain release from liability actions be amended. County Committees are generally used in the Farmer Program area only and are unfamiliar with housing issues. We concur with this comment. In the past, FmHA was limited by statute for certain of our release from liability actions. Recent changes in the Housing Act of 1949, as amended, now provide us with broader release from liability authorities and we have revised our regulations accordingly.

**Summary of Other Revisions**

The following revisions are included in this final rule and were not published for proposed rule as they clarify the intent of the existing regulation, make changes required by law, make necessary reference changes to other FmHA regulations as the result of changes in Part 1955 and changes determined to be within the scope of internal agency management. A summary of the more significant changes by section number are as follows:

*Subpart A of Part 1955*

1. Section 1955.4 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority granted to said position in this subpart to a State Director. Also, the section is revised to correct the titles of employees under the jurisdiction of the Hawaii State Director.

2. Section 1955.10(a) is expanded to provide County Supervisors with the authority to accept a voluntary conveyance of a single family housing (SFH) property regardless of the amount of the indebtedness.

3. Section 1955.10(d)(3) is expanded to provide an exception to the requirement that a financial statement be taken for SFH voluntary conveyances since it is Agency policy to accept such voluntary conveyances with release from liability if the borrower has cooperated in good faith, satisfactorily maintained the property, and otherwise fulfilled the covenants of the loan agreements to the best of the borrower's ability.

4. Section 1955.10(e) is revised to give the State Director the authority to procure appraisals from a source outside FmHA for SFH voluntary conveyances.

5. Section 1955.10(h) is revised to provide guidance to FmHA personnel on how to handle unsatisfied accounts after a voluntary conveyance.

6. Section 1955.11(b) is expanded to permit FmHA to pay necessary and proper fees, approved by the bankruptcy court, to secure the conveyance of property from a trustee in bankruptcy

7. Section 1955.15(a)(2) is expanded to give District Directors the authority to accelerate Multiple Family Housing (MFH) loans which are within their loan approval authority.

8. Section 1955.15(b) is expanded to provide guidance on initiating steps to meet the requirements of the National Historic Preservation Act. This affects properties which are over fifty years old and which the Government will likely acquire at the time of the foreclosure sale. Since this is generally a lengthy process, FmHA plans to initiate such steps prior to foreclosure instead of after acquisition to prevent delays in selling the property.

9. Section 1955.15(f) is expanded to provide the State Director with the authority to obtain appraisals by contract from a source outside FmHA when necessary for FmHA to bid at a foreclosure sale.

10. Section 1955.20(d) is expanded to give the State Director the authority to obtain chattel appraisals by contract from a source outside FmHA when necessary.

*Subpart B of Part 1955*

1. Section 1955.53 is expanded to amend the definition of "Contracting Officer" consistent with Federal Acquisition Regulations.

2. As mentioned in the discussion of the comments on the April 2, 1987, proposed rule, FmHA has revised its terminology of "suitable" and "unsuitable" property as they relate solely to SFH and MFH loans. To better fit the intent of the property classification, "suitable" property is renamed "program" property, and "unsuitable" property is renamed "nonprogram (NP)" property. This new terminology better describes the property, and will remove the negative stigma the term "unsuitable" connotes. Similarly, in Subpart C of Part 1955, the terms "eligible" and "ineligible" terms financing, are changed to "program" and "nonprogram" terms financing. This will provide consistency in terminology throughout property management. Therefore the definitions of "suitable" and "unsuitable" property contained in paragraph 1955.53 and throughout Subparts B and C of Part 1955, have been revised. The term "suitable" property is still retained, however, for property other than SFH or MFH (generally FP property).

3. Section 1955.54 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority of said position in this subpart to a State Director. This paragraph is also revised to correct the titles of employees under the jurisdiction of the Hawaii State Director.

4. Section 1955.55 is expanded to include a new paragraph on emergency advances when liquidation is pending.

5. Section 1955.57 is added to provide guidance on inventory property containing underground storage tanks.

*Subpart C of Part 1955*

1. Section 1955.103 is expanded to include in the definition of "Decent, Safe and Sanitary" that properties must also be safe.

2. As mentioned in the summary of changes in Subpart B, the terms "suitable" and "unsuitable" as they relate to the housing inventory property have been changed to "program" and "nonprogram" (NP). Similarly, references to credit on "eligible" and "ineligible" terms, as they relate to housing property, have been changed to "program" and "nonprogram" (NP). The definitions in § 1955.103 have been revised and alphabetized accordingly, and references to the aforementioned terms have been revised throughout Subpart C.

3. Section 1955.104 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority of said position in this subpart to a State D ector. The paragraph is revised to correct the titles of employees under the jurisdiction of the Hawaii State Director; and clarify that servicing officials have the authority to offer for sale, and accept and/or reject bids or offers for inventory property regardless of amount.

4. Section 1955.111 is removed as it contained information regarding the repair policy on inventory property. Inventory property is repaired under Subpart B of this Part. Section 1955.110 is renumbered to § 1955.111 and § 1955.111 is reserved for future use.

5. Section 1955.112(a) is expanded to clarify that earnest money deposits will not be taken in connection with sales by FmHA personnel.

6. Section 1955.112(b) is revised to: 1. Give the County Supervisor the authority to utilize the services of real estate brokers under an open listing agreement (previously, the authority was granted to the State Director); 2. strongly encourage the use of exclusive brokers; 3. and clarify that earnest money deposits are exclusive of any required credit report fee.

7. Section 1955.112(c) is revised to encourage the use of sealed bids and auctions for SFH property when diligent sales efforts and adequate market exposure fail to sell the property.

8. Section 1955.113(a) is revised as provided in the proposed rule with the following changes: 1. For ease in computing dates between administrative price reductions, each month is assumed to have 30 days; and 2. to provide further guidance of sales steps after the two administrative price reductions have been utilized and the property remains unsold.

9. Section 1955.114(a), which outlines the sales steps for program property, is completely revised for clarity. Paragraph (a) was lengthy and cumbersome and has been broken down into smaller segments. The paragraph has been expanded and clarified to: 1. Establish the new 45 day retention period for program applicants to purchase program properties; 2. clarify that an acceptable offer must be for at least the sale price; 3. clarify that an offer to purchase property is considered independently of any credit request; 4. require that offers be date stamped when received and be numbered sequentially when being drawn by lot; 5. establish a five-day waiting period during which offers can be received when the property is listed for sale under an exclusive broker contract (this will allow all real estate brokers an equal chance of selling the property); 6. clarify the priority of offers process; 7. provide for back-up offers; 8. clarify that if an offer subject to FmHA financing is accepted, and the offeror's credit request is later denied, the contract is considered null and void and the sale will continue to others regardless of whether the offeror decides to appeal the adverse decision as to their credit request; and 9. include a subparagraph on sales steps for unsold property.

10. Section 1955.114(b) is expanded to provide further guidance on the handling of offers to purchase Multiple-family housing inventory property. In particular, language is added on establishing a time/date/place for the drawing when multiple offers are received and how to handle offers when the offeror's FmHA credit request is denied.

11. Section 1955.115(a) is expanded to provide additional guidance on: 1. Submitting requests to the State Director to sell nonprogram (NP) property by sealed bid or auction when the property remains unsold after two administrative price reductions; 2. additional guidance on sale on NP property as chattel; 3. additional guidance on sale of vacant land; and 4. provide guidance on steps to take when NP property remains unsold after five months of active marketing.

12. Section 1955.116 is revised as outlined in the proposed rule with the following minor changes: 1. "Decent,

Safe and Sanitary (DSS)" clauses used in advertising do not have to list the items which make the property not meet DSS standards, the advertisement will adivse any interested party to contact the local office for the list, and 2. require that FmHA inspect the property prior to releasing a restrictive covenant.

13. Section 1955.118 is expanded and revised to: 1. Provide additional guidance on accepting, processing and approving offers to purchase inventory property on NP terms; 2. provide additional guidance on modification of security instruments on loans to NP borrowers when certain covenants of standard FmHA security instruments do not apply; and 3. reduce the downpayment requirements as discussed in the proposed rule.

14. Section 1955.130(a) is expanded to: 1. Encourage the use of exclusive real estate brokers; 2. remove the reference to setting a commission rate in exclusive broker contracts since this rate will be part of the evaluation criteria; and 3. remind field personnel that when utilizing the services of real estate brokers under an open listing agreement, the field office is responsible for advertising.

15. Section 1955.130(f) is revised and expanded to provide guidance that: 1. FmHA may not set the commission rate in an exclusive broker contract; the commission will be one of the evaluation criteria; 2. when a real estate broker submits a bid on an exclusive broker contract and the proposed commission rate is lower than the typical rate for such services, they must supply documentation that they have successfully sold property at the lower rate with no compromise in services; 3. commissions paid under an open listing agreement will be the typical rate for such services in the area and will be established by t..e servicing official (the State Director previously established the rate); 4. incorporate the revision from our proposed rule that a commission will be paid when the sale is to the broker and they are not receiving FmHA credit for the purchase of the property. In these cases where an exclusive broker is involved, if a sale is to a cooperating broker and they are receiving FmHA credit for the purchase, one-half the respective commission will be paid to the exclusive broker.

16. Section 1955.131(b) is revised for consistency. As with other FmHA contracts for sale services, FmHA may not set the commission rate in an auctioneer contract. The rate of commission will be one of the evaluation criteria in the contract. However, any bidder that submits a bid with a commission rate lower than the typical rate for such services in the area, must supply documentation that they have successfully sold properties at the lower commission rate with no compromise in services.

17. Section 1955.135 is expanded and revised to clarify how FmHA will adjust and pay taxes when inventory property is sold.

18. Section 1955.137 is expanded to include two new subparagraphs on advising potential purchasers of FmHA inventory properties with reportable underground storage tanks and how to handle property (exclusive of buildings) which is considered unsafe.

19. Section 1955.141 is expanded to provide District Directors in Puerto Rico with the authority to execute nonwarranty deeds for the sale of inventory property. This authority currently lies with State Directors. In Puerto Rico, the party executing the deed must be present at the time title to the property is transferred. It is too burdensome and costly for the State Director in Puerto Rico to attend the closing of every inventory property sale, therefore, this authority is delegated to a more local level.

20. Section 1955.143 is expanded to provide additional guidance to field personnel on reporting inventory property that has not sold within a reasonable period of time to a higher level office for review and guidance.

21. Section 1955.146 is expanded to provide more emphasis and guidance on advertising inventory property for sale.

22. Section 1955.147 is expanded to: 1. Provide guidance in determining a minimum sale price for a sealed bid sale; and 2. provide that when program or suitable property is sold by sealed bid that credit on program terms will be offered and that bid deposits will be comparable to an earnest money deposit instead of the ten percent bid deposit required from other purchasers.

23. Section 1955.147(b) is revised as discussed in the proposed rule and to clarify that any FmHA credit extended may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Also the paragraph provides guidance that if a bid is received which requests FmHA credit in excess of market value, that the bidder will be given the opportunity to reduce their credit request with no accompanying change in the offered price.

24. Section 1955.148 is expanded and clarified to: 1. Provide guidance on how to establish a minimum sale price; 2. clarify that any FmHA credit extended may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security; and 3. provide that, as addressed in the proposed rule, program applicants receive no preference in auction sales.

*Subpart E of Part 1901*

1. Revised to correct references to exclusive broker contracts and establish when Affirmative Fair Housing Marketing Plans are required.

*Subpart G of Part 1951*

1. Revised references to "suitable" property.

*Subpart M of Part 1951*

1. Revised to correct a procedure reference and add a reference to the SFH NP interest rate.

*Subpart C of Part 1965*

1. Revised references from "eligible" and "ineligible" rates/terms/applicants to "program" and "nonprogram (NP)" rates, terms/applicants. Similarly, references to "suitable" and "unsuitable" properties are revised to "program" and "nonprogram (NP)" properties.

2. Section 1965.104(c) has been partially revised to authorize the State Director to approve protective advances for house maintenance when continuing with the borrower. Previously, National Office review and consent was required, which could cause unnecessary delays in making a protective advance.

3. Section 1965.106 has been expanded to: 1. Clarify that subordination granted to enable a borrower to graduate also includes refinancing without Agency request; and 2. provide the State Director with the authority to approve subordinations regardless of the amount of indebtedness.

4. Section 1965.125(a) has been partially revised to require County Supervisors to inform borrowers of apparent equity in voluntary liquidation actions. Previously, this section required County Supervisors to inform borrowers of the amount of equity in the property. Without doing a full appraisal, and computing interest credit recapture based upon estimates of allowable sale expenses, which would be impractical, it is not possible for a County Supervisor to provide a borrower with an accurate estimate of equity.

5. Section 1965.126(b)(4)(ii) has been clarified. This paragraph provides guidance of determining the suitability of properties for retention in the program when an assumption of the existing FmHA debt is being considered.

6. Section 1965.126(b)(5) is expanded to clarify that "as is" market values will be considered in assumption cases.

7. Section 1965.126(b)(13) is expanded to clarify that FmHA will not suggest, encourage or require a transferor to make repairs as a condition for approving a transfer with assumption.

8. Section 1965.126(c)(2) is expanded to clarify that in those specific cases where a same terms assumption is authorized, if the current interest rates/terms are more favorable to the assuming party, an assumption on new terms may be accomplished provided the assuming party meets program eligibility requirements. Although the current regulation does not preclude such an action, wording is being added to clarify this point.

9. Paragraph 1965.126(d) is revised to exclude the requirement that to assume an existing FmHA loan on NP owner/occupant terms, the applicant must be unable to secure other financing. Assumptions on NP terms are authorized to assist borrowers with the sale of their property. Since this credit is extended at a higher interest rate and on shorter terms than those authorized for program applicants, there is no reason to carry over the program requirement of inability to secure other financing to NP applicants.

10. Section 1965.127 is revised to remove: 1. The requirement for County Committee certification in NP transfers; 2. the restriction that borrowers cannot be released from liability on NP transfers with a term in excess of five years; 3. the restriction that a jointly liable borrower cannot be released from liability unless the value of the property is at least equal to the debt; and 4. the requirement that repayment ability be considered in sale for less than the debt cases.

11. Section 1965.137 is expanded to require that the borrower's case file and/or all related files or pertinent information be submitted to the National Office when requesting an exception under the exception authority.

**List of Subjects**

*7 CFR Part 1901*

Civil rights, Compliance reviews, Fair housing, Minority groups.

*7 CFR Part 1951*

Account servicing, Low and moderate income housing loans—Servicing, Reporting requirements, subsidies.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

*7 CFR Part 1965*

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

## PART 1901—PROGRAM RELATED INSTRUCTIONS

1. The authority citation for Part 1901 continues to read as follows:

**Authority:** U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart E—Civil Rights Compliance Requirements *C*

2. In § 1901.203, paragraphs (c)(4)(iv) and (c)(5)(iv) are revised to read as follows:

**§ 1901.203 Title VIII of the Civil Rights Act of 1968.**

* * * * *

(c) * * *

(4) * * *

(iv) For real estate brokers listing housing properties on an exclusive basis, at any time more than 5 properties are listed for sale by FmHA in the same subdivision.

* * * * *

(5) * * *

(iv) For real estate brokers who list acquired rural housing properties under an exclusive listing contract, one year or until all properties covered under the plan have been sold, whichever is later.

* * * * *

## PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 continues to read as follows:

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

4. In § 1951.315, the first sentence is revised to read as follows:

**§ 1951.315 Refinancing.**

Refinancing of Section 502 loans is authorized when the property meets program standards and either interest credit would not be available because the loan was approved prior to August 1, 1968, or the loan was made as an above-moderate income or NP loan and the borrower would now be eligible for a loan with interest credit and, through circumstances beyond the borrower's control, the borrower is in danger of losing his/her home. * * *

### Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

5. In § 1951.612, paragraph (a)(1)(iii) is revised to read as follows:

**§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.**

* * * * *

(a) * * *

(1) * * *

(iii) If the recipient was not eligible for a loan, or if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604 of this Subpart, the recipient may be allowed to enter into an accelerated repayment agreement according to § 1965.125(a)(3) of Subpart C of Part 1965 of this chapter, if an SFH loan, except that the above-moderate or nonprogram (NP) interest rate which was in effect on the date the loan was approved will be used according to Exhibit C of this Subpart (Available in any FmHA office). This provision should be used only where repayment can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be classified as a NP loan.

* * * * *

## PART 1955—PROPERTY MANAGMENT

6. The authority citation for Part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. In § 1955.1, the following sentences are added between the fourth and fifth sentences:

**§ 1955.1 Purpose.**

* * * For Community Programs and insured B&I actions involving loans secured by other than real estate or chattel property, such loans will be handled in accordance with the provisions of this subpart which do not deal specifically with real or chattel property. Prior to liquidation, these cases will be submitted to the National Office for prior review and guidance.

* * *

8. In § 1955.2, the period at the end of the text is changed to a comma, and the following words are added:

**§ 1955.2 Policy.**

* * * unless specifically referenced in this subpart.

**§ 1955.3 [Amended]**

9. Section 1955.3 is amended by removing all paragraph designations.

10. Section 1955.4 is revised to read as follows:

**§ 1955.4 Redelegation of authority.**

Authorities will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director is authorized to redelegate, in writing, any authority in this subpart to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(2) of this subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(c) The District Director is authorized to redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist determined by the District Director to be qualified; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(1) of this subpart may not be redelegated. However, a duly designated Acting District Director may approve or disapprove foreclosure. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor is authorized to redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7, or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska and Area Supervisors in the Western Pacific Territories and American Samoa.

(e) The monetary limitations on acceptance of voluntary conveyance as provided in § 1955.10(a) of this subpart may *not* be redelegated from a higher-level official to a lower level official.

11. In § 1955.5, paragraph (d) is revised to read as follows:

**§ 1955.5 General actions.**

* * * * *

(d) *Payment of costs.* Costs related to liquidation of a loan or acquisition of property will be paid by preparation of Standard Form 1034, "Public Voucher For Purchases and Services Other Than Personal," Standard Form 1143, "Advertising Order," or Form AD 838, "Purchase Order," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," or Form FmHA 838B, "Invoice—Receipt Certification," as appropriate, according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI) as either a recoverable or nonrecoverable cost as defined in § 1955.53 of this subpart.

12. In § 1955.10, paragraphs (a)(1), (a)(2)(iii), (d)(3), (d)(7), (e), the introductory text of paragraph (f)(1), the first sentence after the indented text in the introductory text of paragraph (f)(2), paragraph (h)(1) are revised, paragraphs (h)(5) and (h)(6) are renumbered as paragraphs (h)(6) and (h)(7) respectively and a new paragraph (h)(5) is added to read as follows:

**§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.**

* * * * *

(a) * * *

(1) *Loans to individuals.*

(i) *SFH loans.* The County Supervisor is authorized to accept voluntary conveyances regardless of amount of indebtedness.

(ii) *FP loans.* The County Supervisor is authorized to accept voluntary conveyance of property secured by Farmer Program loans if the total indebtedness against the property including prior and junior liens, does not exceed his/her approval authority for the type of loan (or combination of types) involved. Loan approval authorities are outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office). The State Director is authorized to approve voluntary conveyances regardless of amount of indebtedness.

* * * * *

(2) * * *

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2)(i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance offer. Submissions will include the case file; OGC's opinion on settling any other liens involved; a statement of essential facts; and recommendations of the State Director and Program Chief. Submissions are to be addressed to the Administrator, ATTN: (appropriate program division.)

* * * * *

(d) * * *

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410–1, "Application for FmHA Services;" or FmHA 1930–1 or FmHA 442–3, "Balance Sheet," and information on present income and potential earning ability. Exception: A financial statement is not required from a borrower who is indebted for an SFH loan(s) only and will be released from liability.

* * * * *

(7) The borrower may be required to provide a title insurance policy or a final title opinion from a designated attorney when the State Director determines it is necessary to protect the Government's interest. Such title insurance policy or final title opinion will show title vested to the Government subject only to exceptions and liens approved by the County Supervisor.

* * * * *

(e) *Appraisal of property.* As soon as practicable after an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made to establish the market value of the property in its existing condition if an appraisal reflecting current market value is not part of the file. If a qualified FmHA appraiser is not available to appraise property securing a loan other than MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office.) For property securing MFH, prior authorization must be obtained by the Assistant Administrator, Housing, to secure an appraisal from a source outside FmHA.

(f) * * *

(1) *SFH loans.* The policy is to accept an offer of voluntary conveyance of property securing SFH loans in full satisfaction of the debt regardless of market value of the property if the County Supervisor determines the borrower has cooperated in good faith, satisfactorily maintained the property and otherwise fulfilled the covenants of the loan to the best of the borrower's ability. If the County Supervisor cannot make these determinations affirmatively, the offer for full satisfaction of the debt will not be accepted unless the value of the property is at least equal to the debt.

However, the borrower may make a new offer for a credit equal to the value of the property as determined by FmHA, less prior liens, if any. The conveyance will be processed as follows:

* * * * *

(2) * * *

If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value, less prior liens (if any), and the borrower will determine if he/she wishes to make a new offer on that basis. * * *

* * * * *

(h) * * *

(1) When the FmHA account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability," and the statement must be signed by the servicing official.

* * * * *

(5) When the FmHA account is not satisfied and the borrower not released from liability, the account balance, after deducting the "asis" market value and prior liens, if any, will be accelerated utilizing Exhibit F of this subpart (available in any FmHA office.)

* * * * *

13. In § 1955.11, the first sentence of paragraph (b)(1) is revised to read as follows:

**§ 1955.11 Conveyance of property to FmHA by trustee in bankruptcy.**

(b) * * *

(1) FmHA may pay any necessary and proper fees approved by the bankruptcy court in connection with the conveyance. * * *

* * * * *

14. In § 1955.15, paragraph (a)(2)(i) is revised, (b)(3) is added, (d)(4) is revised, the fourth sentence of (e)(2) is revised, (f)(3) is revised, and the following two sentences are added to (f)(5) to read as follows:

**§ 1955.15 Foreclosure by the Government of loans secured by real estate.**

(a) *Authority.*

(2) * * *

(i) The State Director or District Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA secured debt does not exceed their respective loan approval authority. The State Director is authorized to approve or disapprove foreclosure of I&D, Shift-In-Land-Use (Grazing Association), loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

* * * * *

(b) * * *

(3) *Historic preservation.* If it is likely that FmHA will acquire title to the property as a result of the foreclosure, and the structure(s) on the property will be in excess of 50 years old at the time of acquisition or meet any of the other criteria contained in § 1955.137(b) of Subpart C of Part 1955 of this chapter, steps should be initiated to meet the requirements of the National Historic Preservation Act as outlined in § 1955.137(b). Formal steps should not be initiated until the conclusion of all appeals, however, any such documentation required may be completed when the problem case report is prepared. This action should eliminate delays in selling the property after acquisition.

* * * * *

(d) * * *

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be processed in accordance with the FMI. When an official statement of account is not required, account balances and recapture information may be obtained from the field office terminal.

* * * * *

(e) * * *

(2) * * * At the time indicated by OGC in the foreclosure instructions, Form FmHA 1951–6, "Borrower Account Description Flag," will be processed in accordance with the FMI.

(f) * * *

(3) *Notice of judgment.* In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA 1962–20, "Notice of Judgment," will be processed in accordance with the FMI. This will establish a judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

* * * * *

(5) * * * Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

* * * * *

15. In § 1955.18, the first sentence of paragraph (a) is revised, the introductory text of paragraph (b) and paragraph (c), and paragraph (d) are revised as follows:

**§ 1955.18 Actions required after acquisition of property.**

(a) *Reporting acquisition.* When real or chattel property is acquired by the Government, the servicing official will process Form FmHA 1955–3, "Advice of Property Acquired," and Form FmHA 1955–3A, "Acquired Property-Maintenance," or Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired," and Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," (if the project has had rental assistance units) according to the FMI immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. * * *

* * * * *

(b) *Existing lease.* If property acquired by FmHA is under an existing written lease, a copy of the lease will be placed in the case file. Any oral lease will be reduced to writing on Form FmHA 1955–20, "Lease of Real Property." A lease account will be established in the Finance Office records. If an existing lease is terminated by foreclosure, a new lease may be considered pursuant to § 1955.66 of Subpart B of Part 1955 of this chapter, except for MFH property for which leasing as a project is generally not authorized.

* * * * *

(c) *Existing management agreement.* For MFH and C&BP, if a property is being managed on behalf of the borrower prior to acquisition, the State Director will request the assistance of the National Office in determining if the agreement should be canceled or extended. In any event, management services should be obtained as soon as possible in accordance with § 1955.65 of Subpart B of Part 1955 of this chapter.

* * * * *

(d) *Inventory account.* The Finance Office will establish an inventory account under the Property ID Number assigned. The value of the property entered into the inventory account will be the market value as of the date acquired (less outstanding liens if the property was acquired subject to any liens).

* * * * *

16. In § 1955.20, paragraph (d) is revised to read as follows:

**§ 1955.20 Acquisition of chattel property.**

* * * * *

(d) *Appraising chattel property.* Prior to the sale, the servicing official will appraise chattel property using Form FmHA 440–21, "Appraisal of Chattel Property." If a qualified appraiser is not available to appraise chattel property, the State Director may obtain an appraisal from a qualified source outside FmHA by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office.)

* * * * *

## Subpart B—Management of Property

17. Section 1955.53 is revised by removing all paragraph designations, revising the definitions of "Contracting Officer," "Suitable property" and "Surplus property," removing the definition of "Unsuitable property" and adding in alphabetical order definitions of "Nonprogram (NP) property" and "Program property" to read as follows:

**§ 1955.53 Definitions.**

* * * * *

*Contracting Officer (CO).* CO means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized representatives of the CO acting within the limits of their authority as delegated by the CO.

* * * * *

*Nonprogram (NP) property.* SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards, however, is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

* * * * *

*Program property.* SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

* * * * *

*Suitable property.* Property, other than SFH or MFH, that could be used to carry out the objectives of an FmHA loan program with financing provided through that program.

*Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as contained in the definition of "CONACT or CONACT PROPERTY" of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

* * * * *

18. Section 1955.54 is revised to read as follows:

**§ 1955.54 Redelegation of authority.**

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

19. In § 1955.55, paragraph (b)(2)(iii) is revised, paragraph (d) is revised and redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

**§ 1955.55 Taking abandoned real or chattel property into custody and related actions.**

* * * * *

(b) * * *

(2) * * *

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

(d) *Emergency advances where liquidation is pending.* Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs.* Income received from the property will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Expenditures will be charged to the borrower's account as a recoverable cost. Costs will be paid by preparing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and processing Form FmHA 2024–1, "Miscellaneous Payment System," or Form AD 838, "Purchase Order" and processing Form FmHA 838B, "Invoice-Payment Certification," as appropriate, according to FmHA Instruction 2024–A (available in any FmHA office) and the respective FMI's.

20. Section 1955.57 is added to read as follows:

**§ 1955.57 Real property containing underground storage tanks.**

Within 30 days of acquisition of real property into inventory, FmHA must report certain underground storage tanks to the State agency identified by the Environmental Protection Agency (EPA) to receive such reports. Notification will be accomplished by completing an appropriate EPA or alternate State form, if approved by EPA. A State Supplement will be issued providing the appropriate forms required by EPA and instructions on processing same.

(a) Underground storage tanks which meet the following criteria must be reported:

(1) It is a tank, or combination of tanks (including pipes which are

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connected thereto) the volume of which is ten percent or more beneath the surface of the ground, including the volume of the underground pipes; and

(2) It is not exempt from the reporting requirements as outlined in paragraph (b) of this section; and

(3) The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance; or

(4) The tank contained a regulated substance, was taken out of operation by FmHA since January 1, 1974, and remains in the ground. Extensive research of records of inventory property sold before the effective date of this section is not required.

(b) The following underground storage tanks are *exempt* from the EPA reporting requirements:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) Pipeline facilities (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968;

(ii) The Hazardous Liquid Pipeline Safety Act of 1979; or

(iii) For an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in paragraph (b)(4) (i) or (ii) of this section;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

(c) A copy of each report filed with the designated State agency will be forwarded to and maintained in the State Office by program area.

(d) Prospective purchasers of FmHA inventory property with a reportable underground storage tank will be informed of the reporting requirement and provided with a copy of the form filed by FmHA.

(e) In a State which has promulgated additional underground storage tank reporting requirements, FmHA will comply with such requirements and a State Supplement will be issued to provide necessary guidance.

(f) Regardless of whether an underground storage tank must be reported under the requirements of this section, if FmHA personnel detect or believe there has been a release of petroleum or other regulated substance from an underground storage tank on an inventory property, the incident will be reported to the appropriate State Agency, the State Environmental Coordinator and appropriate program chief. These parties will collectively inform the servicing official of the appropriate response action.

**§ 1955.63 [Amended]**

21. In § 1955.63, paragraph (c) is amended by changing the terms "suitable" and "unsuitable" to "program" and "nonprogram," respectively, wherever mentioned in the paragraph.

**§ 1955.64 [Amended]**

22. In § 1955.64, paragraph (a)(1) is amended by changing the term "Unsuitable" to "Nonprogram" in the fourth sentence.

23. In § 1955.65, paragraph (c)(4) is revised as follows:

**§ 1955.65 Management of inventory and/or custodial real property.**

* * * * *

(c) * * *

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form AD 838 or SF 1034 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate, in accordance with the respective FMI's. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager by use of SF 1034 or AD 838 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate, according to the respective FMI's.

* * * * *

24. In § 1955.66, paragraph (b) is revised to read as follows:

**§ 1955.66 Lease of real property.**

* * * * *

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as a program applicant for purchase of the property (if the property is suited for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

* * * * *

25. In § 1955.68, paragraphs (a) and (c) are revised to read as follows:

**§ 1955.68 Payment of taxes.**

* * * * *

(a) *Suitable or program property.* When property is suited for program purposes, the servicing official will prepare SF 1034 and process Form FmHA 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

* * * * *

(c) *Nonprogram (NP) housing property.* When property is classified as NP and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

**Subpart C—Disposal of Inventory Property**

26. Section 1955.102 is revised to read as follows:

**§ 1955.102 Policy.**

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that it will enable a qualified applicant for one of Farmers Home Administration's (FmHA's) loan programs to meet the objectives of the loan program, preference will be given to program applicants. Sales are authorized for

program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: A dwelling which secured an Emergency loan may be sold as a Single-Family Housing (SFH) unit if suited for that program; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

27. Section 1955.103 is revised by removing all paragraph designations, revising the definitions of "Decent, safe and sanitary housing (DSS)," "Eligible terms," "Ineligible terms," "Regular FmHA sale," "Suitable property," and "Surplus property," removing the definition of "Unsuitable property," and adding in alphabetical order definitions of "Nonprogram (NP) property," "Nonprogram (NP) terms," "Program property," "Program terms," and "Servicing official," to read as follows:

**§ 1955.103 Definitions.**

* * * * *

*Decent, safe and sanitary (DSS) housing.* Standards required for the sale of Government acquired SFH, MFH and LH structures acquired pursuant to the Housing Act of 1949, as amended. "DSS" housing unit(s) are structures which meet the requirements of FmHA as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements:

(1) Are structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems,

(4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this chapter, and

(5) Are safe; that is, a hazard does not exist that would endanger the safety of dwelling occupants.

*Eligible terms.* Credit terms, for other than SFH or MFH property sales, prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For SFH and MFH properties, see the definition of "Program terms."

*Ineligible terms.* Credit terms, for other than SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as surplus. Loans made on ineligible terms are classified as Nonprogram (NP) loans and are serviced accordingly. For SFH and MFH properties, see the definition of "Nonprogram (NP) terms."

* * * * *

*Nonprogram (NP) property.* SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards, however is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

*Nonprogram (NP) terms.* Credit terms for SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as nonprogram (NP). Loans made on NP terms are classified as NP loans and are serviced accordingly. For property other than SFH and MFH, see the definition of "Ineligible terms."

* * * * *

*Program property.* SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

*Program terms.* Credit terms for SFH or MFH property sales, prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For property sales other than SFH and MFH, see the definition of "Eligible terms."

*Regular sale.* Sale by FmHA employees or real estate brokers other than by sealed bid, auction or negotiation.

* * * * *

*Servicing official.* For loans to individuals, as defined in § 1955.53 of Subpart B of Part 1955 of this chapter, the servicing official is the County Supervisor. For all other loans, excluding insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

*Suitable property.* Property, other than SFH or MFH, that can be used to carry out the objectives of an FmHA loan program with financing provided through that program.

*Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as contained in the definition of "CONACT or CONACT PROPERTY" of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

* * * * *

28. Section 1955.104 is revised to read as follows:

**§ 1955.104 Authorities and responsibilities.**

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible, consistent with program objectives and available resources.

(1) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(2) Except as provided in paragraph (a)(1) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(3) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(4) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is

determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

(b) *Responsibility.* (1) National Office program directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and insuring compliance with FmHA regulations.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State Supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The servicing official has the authority to offer for sale, accept and/or reject bids or offers for inventory property regardless of amount. Any credit request, however, must be approved by an approval official within his/her respective loan approval authority as outlined in the applicable Exhibits of FmHA Instruction 1901–A (available in any FmHA office).

**§ 1955.111 [Removed]**

**§ 1955.110 [Redesignated as § 1955.111 and Reserved]**

29. Section 1955.111 is removed, § 1955.110 is redesignated as § 1955.111, § 1955.110 is reserved for future use, and §§ 1955.111, 1955.112, 1955.113, 1955.114, 1955.115, 1955.116, 1955.117, 1955.118, and 1955.119 are revised to read as follows:

**§ 1955.111 Sale of real estate that secured RH loans (housing).**

Section 1955.112 through 1955.119 of this subpart pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

**§ 1955.112 Method of sale (housing).**

(a) *Sales by FmHA.* Sales customarily will be made by FmHA personnel in accordance with §§ 1955.114 and 1955.115 of this subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method is used. No earnest money will be collected in connection with sales by FmHA. For MFH, this method will always be used unless another method is authorized by the Assistant Administrator, Housing.

(b) *Real estate brokers.* The County Office will utilize the services of real estate brokers for regular sales when there are five or more properties in inventory at any one time during the calendar year. When real estate brokers are used, first consideration will be given to utilizing such services under an exclusive broker contract as provided for in § 1955.130 of this subpart. Only when it is determined that an exclusive broker contract is not practicable, will the services of real estate brokers under an open listing agreement be utilized. The use of real estate brokers in offices having less than five properties in inventory at any one time during the calendar year is optional provided staffing and workload permit diligent and timely sales by FmHA. When broker services for SFH are utilized, the FmHA office will not conduct direct sales, but will refer inquiries to the broker or list of participating brokers. However, if FmHA has been approached by a potential buyer desiring to purchase a specific property and a sales contract has been accepted, the property will not be listed for sale with real estate brokers. Earnest money held by real estate brokers will be used to pay the purchaser's closing costs with any balance of the costs to be paid by the purchaser. Any required earnest money deposit is exclusive of any required credit report fee. Brokers may only be used for MFH with authorization of the Assistant Administrator, Housing.

(c) *Sealed bid or auction.* The use of sealed bids or auctions is an effective method by which to sell inventory property. If the State Director determines that NP SFH property has been given adequate market exposure and that diligent sales efforts have not produced buyers, or under unusual circumstances as outlined in § 1955.115(a)(1) of this subpart, he/she will authorize sale by sealed bid or auction unless additional sales methods appear more prudent. Program SFH property will be sold by regular sale *only*, unless the Assistant Administrator, Housing, authorizes sale by sealed bid or auction. The State Director will request such authorization when all reasonable marketing efforts fail to produce buyers and the conditions of § 1955.114(a)(6) of this subpart have been met. The case file, including documentation of all marketing efforts, will be forwarded to the Assistant Administrator, Housing, ATTN: Single Family Housing Servicing and Property Management (SFH/SPM) Division, to request authority to sell program property by sealed bid or auction. The decision to utilize a sealed bid or auction must be carefully weighed when the property is located in a subdivision, since the resultant sale may have an adverse effect on surrounding property values. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

**§ 1955.113 Price (housing).**

Real property will be offered or listed for its present market value, as adjusted by any administrative price reductions provided for in this section. Market value will be based upon the condition of the property at the time it is made available for sale. However, when a section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or market value, less administrative price reductions, if any.

(a) *SFH price reduction.* SFH property will be appraised at any time additional market data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. For ease in computing dates for administrative price reductions, each month is assumed to have thirty days. The following schedule of administrative price reductions will be followed:

(1) *Program property.* If program property has not sold after being actively marketed at the current appraised value for at least 45 days during which time program applicants have exclusive rights to purchase the property, plus an additional 30 days to any offeror, the price will be administratively reduced by 10 percent of the appraised value. During the first 45 days after the price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If at the end of this 75-day period the property remains unsold, a second price reduction of 10 percent of the appraised

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value will be made. During the first 45 days after the second price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If the property does not sell within 75 days of the second price reduction, further guidance is provided in § 1955.114(a)(6) and Exhibit D (available in any FmHA office) of this subpart.

(2) *Nonprogram (NP) property.* If NP property has not been sold after being actively marketed for 45 days, the price will be administratively reduced by 10 percent of the appraised value. If the property remains unsold after an additional 45-day period of active marketing, one further price reduction of 10 percent of the appraised value will be made. If the property does not sell within 45 days of the second price reduction, further guidance is provided in § 1955.115(a)(1) and Exhibit D (available in any FmHA office) of this subpart.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions in price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

**§ 1955.114 Sales steps for program property (housing).**

Program property will be sold by regular sale unless the Assistant Administrator, Housing, authorizes another method. If the State Director determines that program property has been given adequate market exposure and that diligent sales efforts including the use of real estate brokers has not produced purchasers, the State Director may request the Assistant Administrator, Housing, to authorize sale by sealed bid or public auction as specified in § 1955.112(c) of this subpart.

(a) *Single family housing (SFH).* Sale prices will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property or list it with real estate brokers for regular sale under the provisions of § 1955.112 of this subpart. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for program property

(1) The following provisions apply to all offers to purchase SFH inventory property:

(i) Program property will be available for purchase only by program applicants for the first 45 days from the date of the initial offering or listing, and for the first 45 days following the date of any reduction in price. During these 45-day period(s), offers from others may be received and held until the first business day following the 45-day period (the 46th day) when any such offer(s) will be considered as received on the 46th day along with offers received on that same (46th) day. After the expiration of each 45-day exclusive period for program applicants, program property may be purchased by offerors requesting credit on program terms, nonprogram (NP) terms or for cash in the order of priority set forth in paragraph (a)(3) of this section.

(ii) In regular sales, an acceptable offer *must* be for at least the sale price. No offer for less than the sale price will be considered, accepted or held. Offers will be considered as acceptable or unacceptable independent of any accompanying credit request (on program or NP terms).

(iii) All offers will be date-stamped when received. Selection of equally acceptable offers, considering offers in the category order outlined in paragraph (a)(3) of this section, received on the same business day will be made by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as back-up offers pending sale to the successful offeror, unless the offeror has specifically noted on the offer that it may not be held as a back-up offer.

(iv) Offers may be *received* and *accepted* at any time after the effective date the property is available for sale unless listed with real estate brokers under an exclusive broker contract. For properties listed under an exclusive broker contract, offers may be *received* at any time after the effective date the property is listed for sale, however, will *not* be *considered* or *accepted* until five business days after the effective date the property is available for sale or any reduction in price. Offers received during the five-business-day period will be considered to be received at the same time on the 6th day along with offers received on the same (6th) day.

(v) If an offer subject to FmHA financing is accepted, and the offeror's credit request is later denied, the next offer (if any) will be accepted regardless of whether the rejected applicant appeals the adverse decision (NP applicants do not receive appeal rights). In cases involving program property, if no back-up offers are on hand, the property will be reoffered/relisted for sale utilizing the balance of any outstanding retention period. Property will not be held off the market pending the outcome of an appeal.

(2) *Effective date and method of offering.* When ready for sale, each property will be offered for sale by use of Form FmHA 1955–43 unless FmHA has on hand a signed offer from a program applicant to purchase a specific program property or an offer from any offeror to purchase a specific NP property. The date the form is posted or mailed to real estate brokers is the effective date the offer for sale has begun.

Listings will provide for sales on program and NP terms, as appropriate.

(3) *Priority of offers.* For program properties, acceptable offers received after the 45-day retention period specified in paragraph (a)(1)(i) of this section have priority in the order given in paragraphs (a)(3) (i), (ii), (iii) and (iv) of this section. For NP properties, acceptable offers have priority in the order given in paragraphs (a)(3) (ii), (iii) and (iv) of this section. Program applicants may purchase NP property, however, credit may only be extended on NP terms.

(i) Offers with requests for credit on program terms. An offer from an applicant requesting credit on program terms in excess of the sale price will be considered as equally acceptable with other acceptable offers from program applicants and will be sold for the sale price.

(ii) Cash offers, in descending order from highest to lowest, provided the cash offer is higher than any other offer which falls into the parameters of paragraph (a)(3)(iii) of this section multiplied times the current cash preference percentage listed in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iii) Offers with requests for credit on NP terms in descending order from highest to lowest, for *more* than the sale price. An offer with a request for credit in excess of the market value of the property will not be accepted. If an offer of this type is received, the offeror will be given the opportunity to reduce the credit request to the market value (or lower) with no change to be made in the offered price.

(iv) Offers with requests for credit on NP terms for the sale price.

(4) *Back-up offers and notification to offerors.* Back-up offers will be taken in accordance with paragraph (a)(1)(iii) of

this section. County offices utilizing the services of real estate brokers will advise the brokers of changes in the status of the property. County offices not utilizing real estate brokers will advise offerors of changes in the status of the property utilizing Exhibit E of this subpart (available in any FmHA office) or similar format. Use of Exhibit E is optional in offices utilizing real estate brokers.

(5) *Finalizing sales.* Credit sales on program terms will be made in accordance with § 1955.117 of this subpart and Subpart A of Part 1944 of this chapter. Cash sales or credit sales on NP terms will be made in accordance with § 1955.118 of this subpart.

(6) *Unsold property.* If program property remains unsold after eight months of active marketing, the case file, with documentation of all marketing efforts, will be forwarded to the State Office for review with a recommendation of future sales efforts. The State Director will determine whether a request should be made to the Assistant Administrator, Housing, to sell the property by sealed bid or auction, or whether additional guidance such as, but not limited to advertising, reappraisal, offering a special effort sales bonus, or 20-year amortization factor (with balloon after 10 years) on NP financing may facilitate a sale.

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director, or designee. The sale date/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official, and for program applicants, given appeal rights in accordance with Subpart B of Part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other FmHA employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as a back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer, the selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA 1955–40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization of the Assistant Administrator, Housing.

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations or public bodies will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner on units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD–622, "Notice of Preapplication Review Action." A preapplication with the information outlined in Exhibit A–6 of Subpart E of Part 1944 of this chapter, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator, Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of Subpart E of Part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of "project" set forth in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suited for the SFH program, it may be offered for sale as a SHF unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to a program RH applicant on *program terms only*—not for cash or on NP terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or through real estate brokers) must state this restriction.

**§ 1955.115 Sales steps for nonprogram (NP) property (housing).**

The appropriate FmHA office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect changes in market conditions, repairs and improvements, if any. Form FmHA 1955–43 for SFH and 1955–40 for MFH will be completed to offer the property for sale. The advertising requirements and deed restrictions in § 1955.116 of this subpart apply if the property does not meet FmHA DSS standards.

(a) *Single family housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash or on NP terms as provided in § 1955.118 of this subpart. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for NP properties.

(1) *Sale by sealed bid or auction.* If a NP property has not sold within 150 days after being offered for sale, the inventory case file with documentation of marketing efforts will be submitted to the State Director. The State Director will authorize sale by sealed bid or auction in accordance with §1955.112(c) of this subpart unless additional sales methods appear more prudent. Use of the sealed bid or auction method may be considered as an initial sales effort

under special or unusual circumstances such as, but not limited to, structures which have been substantially destroyed by fire or other causes.

(2) *Sale as chattel.* If efforts to sell NP property by sealed bid or auction prove unsuccessful, the structure(s) may be sold as chattel (for chattel or salvage value, as appropriate) when authorized by the State Director. When the structure is to be sold as chattel (exclusive of land) further guidance is provided in §§ 1955.121, 1955.122 and 1955.141(b) of this subpart. If no offer is received, the structure(s) may be demolished and removed from the site and then the site offered for sale. If this method is utilized, FmHA will attempt to have the structure removed in exchange for the salvageable materials by contract, otherwise, will solicit for contracts to have the structure removed in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(3) *Sale of vacant land.* When FmHA has vacant land in inventory which was security for an SFH loan, the land will be sold in accordance with this subparagraph. When the lot meets the requirements of Subpart A of Part 1944 of this chapter, and a program applicant desires to purchase the lot and construct a dwelling, a credit sale will not be made. Instead, one section 502 loan will be made which will include funds for the purchase of the lot and construction of a dwelling. Otherwise, the lot will be sold for cash or on NP terms with a loan not to exceed ten years in term and amortization.

(b) *Multiple family housing.* Sales steps will be the same as for program MFH property as provided in § 1955.114(b) of this subpart except that sales must be for cash or on NP terms as set forth in § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell NP MFH property, authority to use that method of sale must be requested from the Assistant Administrator, Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review.

**§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).**

For real property (exclusive of improvements) which is unsafe, refer to § 1955.137(e) of this subpart for further guidance. For all other housing inventory property which does not meet decent, safe and sanitary (DSS) standards, the provisions of this section apply.

(a) *Notices and advertising.* If the inventory property has a single family dwelling or MFH unit thereon which does not meet DSS standards as defined in § 1955.103 of this subpart, but which could meet such standards through the repair or renovation activities of the future owner, any "Notice of Real Property For Sale," "Notice of Sale," or other advertisement used in conjunction with advertising the property for sale must include the following language which is contained in Form FmHA 1955–44, "Notice of Residential Occupancy Restriction":

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which this property will be conveyed will contain a covenant restricting the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is repaired, renovated or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480. The property must be repaired and/or renovated as follows:*.

* For advertisements, the sentence preceding the asterisk may be deleted and replaced with the following, or similar sentence: "Contact FmHA (or any real estate broker/name of exclusive broker) for a list of items which must be repaired/renovated." For notices other than advertising, insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

—Replace flooring and floor joists in kitchen and bathroom.

—Drill new well to provide for an adequate and potable water supply.

—Hook-up to community water and sewage system now being installed.

—Provide a functionally adequate, safe and operable * system. * Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.

—Install *. * Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.

—Install R-* insulation in basement walls or ceiling, R-* insulation in attic, and storm windows/doors throughout. * Insert appropriate R-Values to meet Thermal Performance Standards.

(b) *Sale agreements.* If a housing structure in inventory does not meet DSS standards, Form FmHA 1955–44 must be attached to Forms FmHA 1955–45 or FmHA 1955–46, as appropriate, to provide notification of the deed restriction and required repairs/renovations before the dwelling can be used for residential purposes.

(c) *Quitclaim Deed.* The following, the original of Form FmHA 1955–44, or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the Quitclaim Deed for properties which do not meet DSS standards at the time of sale but which could through the repair/renovation activities of the future owner:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to the Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated as follows: *."

* Insert the same items referenced in the listing notice(s) and sale agreement which are necessary to make the dwelling unit(s) meet DSS standards.

(d) *Release of restrictive covenant.* Upon request of the property owner for a release of the restrictive covenant, FmHA will inspect the property to ensure that the repairs/renovations outlined in the restrictive covenant have been properly completed or the structure(s) razed. A State Supplement outlining the procedure for releasing the restrictive covenant will be issued with the advice of OGC.

**§ 1955.117 Processing credit sales on program terms (housing).**

The following provisions apply to all credit sales on program terms:

(a) *Offers.* Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales. The contract is accepted prior to processing Form FmHA 410–4, "Application for Rural Housing Assistance (Non-Farm Tract)," for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA regulations pertaining to the type of credit being

extended will be followed in making credit sales on program terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security, less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 3 percent of the purchase price as a cash downpayment. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and use restrictions specified by the respective program requirements.

(c) *Approval.* Forms FmHA 1940–1 or FmHA 1944–51, as appropriate, will be used to approve a credit sale even though no obligation of funds is required.

(d) *Downpayment.* When a downpayment is made, it will be collected at closing, identified by property identification number, purchaser's name and case number (and project number for MFH sales) and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH credit sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

### § 1955.118 Processing cash sales or credit sales on NP terms (housing).

Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser. Proceeds will be remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office). The following provisions apply to credit sales on NP terms:

(a) *Offers.* Form FmHA 1955–45 or FmHA 1955–46, as appropriate, will be used to document the offer and acceptance. Contract acceptance is made prior to processing a request for credit on NP terms.

(b) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability and creditworthiness. Standards forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type involved.

(c) *Approval.* Forms FmHA 1940–1 or FmHA 1944–51, as appropriate, will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(d) *Downpayment.* For credit sales, a downpayment will be collected at closing and will be remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office). For SFH properties, purchasers who fall into the category specified in § 1955.118(f)(1)(i) of this subpart (owner/occupants), a downpayment of not less than 2 percent is required. For purchasers who fall into the category specified in § 1955.118(f)(1)(ii) of this subpart (nonoccupant/investors), a down payment of not less than 5 percent is required. For MFH properties, a downpayment of not less than 10 percent is required.

(e) *Interest rate.* The NP SFH interest rate will be charged on all credit sales of SFH property on NP terms. The Section 515 RRH interest rate plus ½ percent will be charged on all other types of housing credit sales. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(f) *Term of note.* The balance of the purchase price will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *SFH.* (i) When a purchaser does not own an adequate home and intends to occupy the house, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (f)(1)(i) of this section, the note amount will be amortized for not more than 10 years. However, if the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(2) *MFH.* No more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale in which case the note amount may be amortized using up to a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(g) *Modification of security instruments.* If applicable to the type property being sold, modification of security instruments may be made. On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted. Special care should be taken to ensure that only the aforementioned covenants are deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and FmHA initialing the changes.

(h) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) The purchaser will pay his/her own closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser. Any closing costs which are legally or customarily paid by the seller will be paid by FmHA from the downpayment.

(3) The County Supervisor or District Director will provide the closing agent

with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(i) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(j) *Classification.* Credit sales on NP terms will be classified as NP loans and serviced accordingly.

**§ 1955.119 Payment of points (housing).**

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a non-FmHA loan, the County Supervisor may authorize the payment by FmHA of not more than three points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will *not* be paid to reduce the purchaser's interest rate. The payment will be deducted from the funds to be received by FmHA at closing.

30. Section 1955.127 is revised to read as follows:

**§ 1955.127 Selection and use of contractors to dispose of inventory property.**

Sections 1955.128 through 1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instruction 2024–A (available in any FmHA office) is applicable for procurement of nonpersonal services.

31. Section 1955.130 is revised to read as follows:

**§ 1955.130 Real estate brokers.**

Contracting authority for the use of real estate brokers is prescribed in Exhibit D of FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they do business.

(a) *Type of listings.* The State Director may authorize use of exclusive listings during any calendar year. Since the Agency receives many more marketing services for its commission dollar and saves time listing the property with only one broker, it is strongly recommended that all County Offices be authorized the use of exclusive brokers.

(1) *Exclusive broker contract.* An exclusive broker contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for specific property or type of property. Criteria will be specified in the solicitation together with a numerical weighting system to be used (usually 1—100). Responses will be calculated on the basis of the criteria such as personal qualifications, membership in Multiple Listing Service (MLS), previous experience with FmHA sales, advertising plans, proposed innovative promotion methods, and financial capability. The responsibilities of the broker under an exclusive broker contract exceed those of the open listing agreement and therefore, an exclusive broker contract is the preferred method of listing properties.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed under the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, or a notice sent to all real estate brokers in the counties served by the FmHA office, informing brokers that sales services are being requested. The advertising will be substantially similar to the example given in Exhibit B of this subpart (available in any FmHA office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property. When this method is used, the FmHA office is responsible for ensuring that adequate advertising is performed to effectively market the property.

(b) *Listing notices.* Forms FmHA 1955–40 or FmHA 1955–43, as appropriate, will be used to provide brokers with notice of initial listing, withdrawal, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* All offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Priority rules for specific categories of property are:

(1) *Program SFH.* See § 1955.114(a) of this subpart.

(2) *Program MFH.* Offers will be considered from program applicants only.

(3) *NP SFH.* See § 1955.115(a) of this subpart.

(4) *NP MFH.* See § 1955.115(b) of this subpart.

(5) *Suitable CONACT.* See § 1955.106 of this subpart.

(6) *Surplus CONACT.* See § 1955.107 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale.

(e) *Earnest money.* The broker will collect earnest money in the amount specified in paragraph (e)(1) of this section when a sale contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA. When a contract is cancelled because FmHA rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single family properties or MFH projects of 2 to 5 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA as full liquidated damages and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office) for application to the General Fund.

(f) *Commission*—(1) *Amount*—(i) *Exclusive broker contract.* FmHA may not set the commission rate in an exclusive broker solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any broker who submits an offer with a commission rate lower than the typical rate for such services in the area must provide documentation that thay have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy.

(ii) *Open listing agreement.* A uniform fee or commission schedule, by property type, will be established by the servicing official within a given sales area. The commission rate to be paid will be the typical rate for such services in the sales area and will not exceed or be lower than commissions paid for similar types

of services provided by the broker to other sellers of similar property.

(2) *Special effort sales bonuses.* The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property.

(3) *Payment of commission.* Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving FmHA credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving FmHA credit, one-half the respective commission will be paid to the exclusive broker. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA official by completing Form AD–838 and processing Form FmHA 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Form FmHA 1955–42. In addition, all brokers participating in the sale of property shall sign the nondiscrimination certification on Form FmHA 1955–45.

**§ 1955.131 [Amended]**

32. In § 1955.131, paragraph (b) is revised to read as follows:

* * * * *

(b) *Commission.* FmHA may not set the commission rate in an auctioneer solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any offeror that submits an offer with a commission rate lower than the typical rate for such services in the area must include documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA official completing Form AD–838 and processing Form FmHA 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

* * * * *

**§ 1955.134 [Amended]**

33. In § 1955.134, paragraph (b) is revised to read as follows:

* * * * *

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made, in accordance with applicable loan making regulations for the respective loan program, to correct defects.

34. Section 1955.135 is revised to read as follows:

**§ 1955.135 Taxes on inventory property.**

Where FmHA owned property is subject to taxation, taxes and assessment installments will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Forms FmHA 1955–45 or FmHA 1955–46. The purchaser will be responsible for paying all taxes and assessment installments accrued after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only assessment installments for property improvements (water, sewer, curb and gutter, etc.) accrued as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, payment of taxes and assessment installments due to be paid by FmHA will be accomplished in the following order:

(a) Deducted from any cash proceeds FmHA is to receive as a result of the sale;

(b) Paid by voucher to the local taxing authority if they will accept payment at that time;

(c) Deducted from the sale price (which may result in a promissory note less than the sale price), if acceptable to the purchaser; or

(d) Paid by voucher to the purchaser. If appropriate, for program purchasers, this money may be placed in a Supervised Bank Account until the taxes can be paid.

35. In § 1955.137, paragraph (a)(2)(ii)(A) is revised, the second sentence of paragraph (3)(i) is revised, and new paragraphs (d) and (e) are added to read as follows:

**§ 1955.137 Real property located in special areas or having special characteristics.**

(a) * * *

(2) * * *

(ii) * * *

(A) When sending Forms FmHA 1955–40, FmHA 1955–43, or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A of this subpart (available in any FmHA office) may be used for this purpose.

* * * * *

(3) * * *

(i) * * * Flood insurance must be provided at closing of loans on program/eligible and nonprogram (NP)/ineligible terms. * * *

* * * * *

(d) *Notification to purchasers of inventory property with reportable underground storage tanks.* If FmHA is selling inventory property containing a storage tank(s) which was reported to the Environmental Protection Agency (EPA) pursuant to the provisions of § 1955.57 of Subpart B of Part 1955 of this chapter, the potential purchaser(s) will be informed of the reporting requirement and provided a copy of the report filed by FmHA.

(e) *Real property that is unsafe.* If FmHA has in inventory, real property, exclusive of any improvements, that is unsafe, that is it does not meet the definition of "safe" as contained in § 1955.103 of this subpart and which cannot be feasibly made safe, the State Director will submit the case file, together with documentation of the hazard and a recommended course of action to the National Office, ATTN: appropriate Assistant Administrator, for review and guidance.

36. In § 1955.138, the introductory text and paragraph (a) are revised to read as follows:

**§ 1955.138 Property subject to redemption rights.**

If, under State law, FmHA's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) A credit sale of a program or suitable property subject to redemption rights may be made to a program applicant when the property meets the standards for the respective loan program. In areas where State law does

not provide for full recovery of the cost of repairs during the redemption period, a program sale is generally precluded unless the property already meets program standards.

* * * * *

37. In § 1955.139, paragraph (a)(2), and the first sentence of (a)(3)(iv) are revised to read as follows:

**§ 1955.139 Disposition of real property rights.**

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not change the classification from program/suitable to NP or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) * * *

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not change program/suitable property to NP or surplus. * * *

* * * * *

38. Sections 1955.140, 1955.141, 1955.142 and 1955.143 are revised to read as follows:

**§ 1955.140 Sale in parcels.**

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is classified surplus because it is larger than a family-size farm, the State Director will subdivide the property into one or more suitable farm tracts and sell the suitable tracts to program applicants in accordance with § 1955.106 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of property must not change its character from program/suitable to NP or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land.

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block if it is determined this will facilitate the sale.

**§ 1955.141 Transferring title.**

(a) *Real property.* Real property will be conveyed by Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director or duly designated Acting State Director. This authority may not be redelegated except in Puerto Rico, where the State Director may delegate this authority to a District Director. A District Director in Puerto Rico may not redelegate this authority except to a duly designated Acting District Director. FmHA or an approved closing agent may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by use of Standard Form 1034 and Form FmHA 2024–1 and charged to the inventory account or may be paid from any down payment where funds are being disbursed by the closing agent.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, executed by the Country supervisor, District Director, or State Director.

(c) *Additional real property documentation.* For MFH property, documentation will be in accordance with appropriate program procedure. For SFH program real property sold to program applicants or whenever required, the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and/or sewage systems are functional and adequate for property not being served by public water and/or sewer systems.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase, the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to program applicants purchasing MFH properties in accordance with the provisions of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this chapter respectively.

**§ 1955.142 Reporting sale.**

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will process Form FmHA 1955–50, "Advice of Inventory Property Sold," or for MFH, Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner.

**§ 1955.143 Report of inventory not sold.**

Properties which are subject to a sale moratorium are excluded from this requirement. Applicable property reports due in the National Office will be grouped together and submitted simultaneously by the State Director to the appropriate Assistant Administrator each March 31st and September 30th unless the servicing official determines that earlier guidance is appropriate.

(a) *SFH properties*—(1) *Program property.* After the requirements of § 1955.114(a)(6) of this subpart are met, and the property has been in inventory for one year, a report will be submitted to the Assistant Administrator, Housing The submission will include the case file, documentation of marketing efforts and a request to sell the property by sealed bid or auction in accordance with § 1955.112(c) of this subpart and/or provide a recommendation for future sales efforts.

(2) *NP property.* After the requirements of § 1955.115(a)(1) of this subpart are met, and the property has been in inventory for nine months, a report will be submitted to the Assistant Administrator, Housing. The submission will include the case file, documentation of marketing efforts, and a recommendation for future sales efforts.

(b) *Properties other than housing.* For any real or chattel property not sold within 18 months after acquisition (6 months for chattel), the County Supervisor or District Director, as appropriate, will send the case file, documentation of marketing efforts ar d a recommendation for future sales

efforts to the State Director for review. The State Director or appropriate program official will review the submission and provide any additional recommendations. If the property is not sold within an additional 6 months (3 months for chattels), the State Director will forward the case file, documentation of marketing efforts, and a recommendation for future sales efforts to the appropriate Assistant Administrator for guidance.

39. In § 1955.144, the title is revised and the first sentence of (a) is revised to read as follows:

**§ 1955.144 Disposal of NP or surplus property to, through, or acquisition from other Agencies.**

(a) * * * If NP or surplus real or chattel property cannot be sold (or only token offers are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). * * *

40. Section 1955.145 is revised to read as follows:

**§ 1955.145 Land acquisition to effect sale.**

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be NP due to location and where it is economically feasible to relocate the structure thereby making it a program property, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining NP parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined NP for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make NP property a program property, if economically feasible.

41. In § 1955.146, paragraph (a) is revised to read as follows:

**§ 1955.146 Advertising.**

(a) *General.* When property is being sold by FmHA or through real estate brokers, it is the servicing official's responsibility to ensure adequate advertising of property to achieve a timely sale. The primary means of advertisements are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notice using Form FmHA 1955–41, "Notice of Sale," and notification of known interested parties. Other innovative means are encouraged, such as the use of a bulletin board to display photographs of inventory properties for sale with a brief synopsis of the property attached; posting Forms FmHA 1955–40 or FmHA 1955–43, as appropriate, in the reception area to attract applicant and broker interest; posting notices of sale at employment centers; door-to-door distribution of sales notices at apartment complexes; radio and/or television spots; group meetings with potential applicants/investors/real estate brokers; and advertisements in magazines and other periodicals. If FmHA personnel are not available to perform these services, FmHA may contract for such services in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

42. In § 1955.147, the introductory text and paragraph (b) are revised, and the word "Form" in the first sentence of paragraph (e) is replaced with the word "Instruction" as follows:

**§ 1955.147 Sealed bid sales.**

This section provides guidance on the sale of all FmHA inventory property, except suitable FP real property which will not be sold by sealed bid. Before a sealed bid sale, the State Director will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP or surplus property, credit may be extended to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955–46 with any accompanying deposit in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. For program and suitable property, the minimum deposit will be the same as outlined in § 1955.130(e)(1) of this subpart. For NP or surplus property, the minimum deposit will be ten percent (10%). The bid will be considered delivered when actually received at the FmHA office. All bids will be date and time stamped. Advertisements and notices will request bidders to submit their bid in a sealed envelope marked as follows: "SEALED BID OFFER _____*_____." (*Insert "PROPERTY IDENTIFICATION NUMBER _____").

* * * * *

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. For SFH and FP (surplus property) sales, preference will be given to a cash officer on NP or surplus property sales which is at least ____*____ percent of the highest offer requiring credit [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] Otherwise, equal bids will be accepted by public lot drawing. For program or suitable property sales, no preference will be given to program purchasers unless two identical high bids are received, in which case the bid from the program purchaser will receive preference. If a bid is received from any purchaser with a request for credit that (considering any deposit) exceeds the market value of the property or requests a term which exceeds the period for which the property will serve as adequate security, the bidder will be given the opportunity to reduce the credit request and/or term with *no* accompanying change in the offered price.

* * * * *

43. Section 1955.148 is revised to read as follows:

**§ 1955.148 Auction sales.**

This section provides guidance on the sale of all FmHA inventory property by auction, except suitable FP real property which will not be sold by auction. Before an auction, the State Director, with the advice of the National Office for organizational property, will determine and document the minimum

sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP and surplus property, credit may be offered to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. For program and suitable property sales, no preference will be given to program purchasers. The State Director will also consider whether an FmHA employee will conduct an auction or whether the services of a professional auctioneer are necessary due to the complexity of the sale. When the services of a professional auctioneer are advisable, the services will be procured by contract in accordance with FmHA Instruction 2024–A (available in any FmHA Office). Chattel property may be sold at public auction that is widely advertised and held on a regularly scheduled basis without solicitation. Form FmHA 1955–46 will be used for auction sales. At the auction, successful bidders will be required to make a bid deposit. For program and suitable property, the bid deposit will be the same as outlined in § 1955.130(e)(1) of this subpart. For NP or surplus property sales, a bid deposit of ten percent (10%) is required. Deposits will be in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. Cash and/or personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. Where credit sales are authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept a bid which requests credit in excess of the market value. When the highest bid is lower than the minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or in turn, the next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default, the approval official will remit the bid deposit as a Miscellaneous Collection according to FmHA Instruction 1951–B (available in any FmHA office). The bid deposit will be remitted *only* when the bidder defaults; otherwise it will be used at closing towards a downpayment or closing costs, as applicable. The closing will be conducted in accordance with the procedures prescribed in this subpart for the type property and program involved.

## PART 1965—REAL PROPERTY

44. The authority citation for Part 1965 continues to read as follows:

Authority: U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart C—Security Servicing for Single Family Rural Housing Loans

45. In § 1965.104, paragraph (b)(3) is revised to read as follows:

**§ 1965.104 Preservation of security and protection of liens.**

* * * * *

(b) * * *

(3) *Maintenance.* When the borrower continues to occupy the security property but is not maintaining it, prior authorization from the State Director must be obtained before funds are advanced for essential repairs. In no case will this authority be used if a subsequent loan can be made. The protective advance should be amortized over a period consistent with the borrower's repayment ability, however, in no case may it exceed 96 months. The County Supervisor will submit to the State Director, through the District Director and Rural Housing Chief, the case file together with the following information and any additional information as prescribed in a State Supplement:

(i) An estimate of market value "as-is" and "as improved" based upon a current appraisal;

(ii) Description of the essential repairs and estimate of the cost;

(iii) Documentation, in the running case record, citing the reasons: Why it is in the Government's best interest to advance funds for repairs; whether the property is suited for retention in the program; why the loan should not be liquidated; and why a subsequent loan cannot be made; and

(iv) If there is a prior lien, written documentation that the prior lienholder refuses to make repairs.

* * * * *

46. In § 1965.106, the title of paragraph (a) is revised, and paragraphs (b) and (c) are revised to read as follows:

**§ 1965.106 Subordination of FmHA lien.**

(a) *Subordination of lien for purposes other than graduation/refinancing.*

* * *

* * * * *

(b) *Subordination of lien for recapture to enable a borrower to graduate or refinance.* When a borrower can graduate to other credit pursuant to Subpart F of Part 1951 of this chapter or is refinancing the FmHA debt(s), and elects not to pay recapture at that time, the FmHA lien may be subordinated to secure the recapture receivable only. The amount of the subordination will not exceed the amount required to pay the FmHA debt (exclusive of recapture) plus reasonable closing costs and an amount not to exceed one percent for loan servicing costs if required by the lender. Further subordination of a lien securing a recapture receivable only is not authorized.

(c) *Approval authority.* An approval official, other than the State Director, may approve a subordination when the total indebtedness against the security including prior-lien debt(s) does not exceed his/her respective loan approval authority. The State Director may approve a subordination regardless of amount.

* * * * *

47. In § 1965.125, the third sentence of paragraph (a)(1) is revised, paragraph (a)(3) is removed, paragraph (a)(4) is redesignated as paragraph (a)(3), and paragraph (a)(2) is revised to read as follows:

**§ 1965.125 Liquidation.**

(a) *Voluntary liquidation.*

(1) * * * The County Supervisor will advise the borrower if there appears to be any equity in the property. * * *

* * * * *

(2) *Consent to sale when the FmHA debt and authorized selling expenses exceed market value.* If a borrower proposes to sell the property for an amount which will be insufficient to pay the FmHA debt, prior lien(s), if any, and authorized selling expenses, an appraisal will be completed and the County Supervisor may consent to the sale if the proposed sale price is not less than the market value. If a current financial statement is not in the case file, a financial statement on Form FmHA 1944–3, "Budget and/or Financial Statement" will be taken to determine if the borrower has the ability to pay all or a substantial portion of the authorized selling expenses taking into account the borrower's moving/relocation expenses and the Government's prospects of acquisition of the property by voluntary conveyance or foreclosure.

(i) *Authorized selling expenses.* Authorized selling expenses are those which the seller customarily or legally must pay to convey title and include but are not limited to: a real estate broker's

commission which does not exceed the most typical rate for the sale of similar property in the area, no more than three points to enable the buyer to obtain credit from another lender provided they are not being paid to reduce the purchaser's interest rate, real estate taxes, preparation of the deed, abstract and/or title fees, termite and/or other related inspections, title insurance, surveys, and deed or other revenue stamps. Junior liens may also be settled in the same manner as outlined in § 1955.10(c)(2) of Subpart A of Part 1955 of this chapter, however, the State Director must approve settlement of the junior lien regardless of the amount.

(ii) *Closing the transaction.* In no case will the borrower (seller) receive any cash proceeds from the sale. Distribution of funds will be handled as follows:

(A) Where there are sufficient cash proceeds at closing, the entire sale proceeds, minus prior liens, if any, and authorized selling expenses, must be applied to the FmHA debt.

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Expenses Other Than Personal," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses will only be vouchered when the County Supervisor has determined that it is in FmHA's financial interest to pay such selling expenses instead of the prospects of accepting a voluntary conveyance or foreclosure, taking into account the estimated additional costs which would arise were the property to be acquired and sold from inventory. Any real estate taxes due from the transferee for which there are insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing as a recoverable cost item. All other authorized selling expenses will be charged to the Rural Housing Insurance Fund (RHIF) as a related program expense prior to loan closing. A subsequent loan will be processed for any equity (market value "as-is" minus FmHA indebtedness) in the property and/or the amount of any needed repairs (amount of repairs *or* the difference between the market value "as-improved" and market value "as-is", whichever is lower). Amounts for the seller's equity and/or repairs will *not* be vouchered and charged to the borrower's account. Authorized selling expenses will not be considered or included in the amount assumed. See Exhibit C of this subpart (available in any FmHA office) for examples on how to determine amounts for vouchers, subsequent loans, and/or assumption agreements.

(iii) *Release from liability.* When consent under this paragraph is given, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with a State Law, a State Supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full. Release of the borrower from liability for the deficiency is covered in § 1965.127(a)(3) and (b) of this subpart. In cases where the borrower is released from liability, and the loan is not being assumed, the note(s) will be stamped "Satisfied For Less Than Indebtedness—Borrower Released From Liability."

* * * * *

48. In § 1965.126, the first sentence of the introductory text, paragraphs (a) and (b)(1) introductory text, the second and last sentences of (b)(3), paragraphs (b)(4)(i), (b)(4)(ii), (b)(5), (b)(13), the introductory text of (c) and (c)(2), (d), and (e)(4)(ii) are revised to read as follows:

**§ 1965.126 Transfer of property with assumption of indebtedness.**

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on program or nonprogram (NP) terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. * * *

(a) *Authority.* Subject to prior concurrence of the State Director required by paragraph (b)(8) of this section, the County Supervisor may approve transfer and assumption on program or NP terms and release borrowers and cosigners from liability, when applicable, when the indebtedness involved does not exceed his/her loan approval authority. If the indebtedness exceeds the County Supervisor's loan approval authority, approval must be by an official with appropriate approval authority.

(b) * * *

(1) *Loan classification and/or changes.* A loan may be assumed as outlined in this subparagraph, after which the loan will be classified according to the terms on which it was assumed. Assumption on program terms is authorized ONLY when both the assuming party meets eligibility requirements *AND* the property is suited for the housing program. The following loans may be assumed on program or NP terms under paragraph (c) or (d) of this section:

* * * * *

(3) * * * It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. * * * When the balance of the transferor's debt is paid or when only a portion of the security property was transferred which adequately secures the debt assumed by the transferee, and it is necessary to release the remaining portion of the security property, OGC will be requested to prepare the release document.

(4) * * *

(i) A single-family dwelling presently financed by FmHA may be transferred to a program applicant on program terms provided it meets FmHA program requirements and policies. These properties are not being brought into the RH program in the same sense as existing properties not already financed by FmHA. They are properties in which FmHA already has a long-term lending commitment and security interest. Therefore, such properties may be retained in the program although they contain more square feet of living area and/or design features which would not be permitted when making an initial loan for an existing dwelling according to Subpart A of Part 1944 of this chapter. It must, however, be typical of modest homes in the area.

(ii) In some instances, a property presently financed under the section 502 RH program may not be suited for retention in the program. In those instances, assumption may be on NP terms only, according to paragraph (d) of this section. Situations of this type include, but are not limited to:

(A) A dwelling which has been enlarged or improved to the point where it is clearly above modest in size, design and/or cost.

(B) When a determination is made that the property should not have been financed originally.

(C) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by FmHA but which does not conform to current policies. This includes older and/or larger houses of a type that have been proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(D) A dwelling which is obsolete due to location, design, construction or age.

(5) *Amount of assumption.* Except for transfers covered in paragraphs (b)(12) and (c)(2) of this section, the transferee will assume the entire FmHA indebtedness unless the indebtedness plus prior liens exceeds the "as-is" market value of the property, in which case the transferee will assume an amount equal to the "as-is" market value of the property, less the amount of prior liens, if any. In the situations outlined in paragraphs (b)(12) and (c)(2) of this section, the amount of the debt will not be changed. When the buyer and seller have agreed upon transfer for "amount of debt," recapture of subsidy due based on "as-is" market value of the security property must be calculated and included as part of the total indebtedness.

* * * * *

(13) *Repairs.* When a loan is to be assumed on program terms, repairs necessary to bring the property to program standards will be accomplished with a subsequent loan in accordance with Subpart A of Part 1944 of this chapter, unless the transferee has sufficient funds to make the repairs with his/her own resources. In no case will FmHA suggest, encourage, or require that the transferor make necessary repairs as a condition for approving a transfer with assumption.

(c) *Assumption on program terms.* A loan may be assumed on program terms when the transferee meets eligibility requirements in the loan making regulation for the type loan involved, except that a section 504 transferee may have only an ownership interest in the property and must occupy the dwelling as his/her residence after the assumption is closed. Interest rates and amortization periods are as follows:

* * * * *

(2) In the situations outlined in paragraphs (b)(12) and (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this section *only*, the assuming party will execute Form FmHA 460–9, "Assumption Agreement (Same Terms)," unless, due to more favorable terms available at the time, the assuming party desires to assume the loan on new terms. If the assuming party desires to assume the loan on new terms, they must meet all eligibility requirements of Subpart A of Part 1944 of this chapter. If a same terms assumption is consummated, the Finance Office will be involved only by submission of Form 450–10 to change the name and case number on the account being assumed. Same terms assumptions under this paragraph are authorized without considering the assuming party's eligibility for program assistance. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule) will not be changed by virtue of the assumption. After assumption, compliance with loan conditions is required. If a same terms transfer is consummated and the account is delinquent, it may be reamortized in accordance with § 1951.314(a)(7) of Subpart G of Part 1951 of this chapter. Eligibility for interest credit will be considered or re-evaluated at the time of assumption. Situations where these terms are authorized are:

* * * * *

(d) *Assumption on NP terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suited for retention in the housing program, the debt may be assumed on NP terms if the assuming party has repayment ability, is creditworthy, and it is advantageous to the Government to allow the assumption. If the purchaser does not assume the debt, the loan must be liquidated. After assumption on NP terms, the loan will be classified as a NP loan. The assumption agreement will bear interest at the SFH–NP rate in effect on the date the assumption is approved. The term of the assumption may not exceed the period for which the property will serve as adequate security for the debt. Other terms are as follows:

(1) When the purchaser does not own an adequate home and intends to occupy the house, the terms may be for a period not to exceed 30 years. A payment of two percent of the debt (including any subsidy due) or the current "as-is" market value of the property, whichever is lower, must be made at closing to reduce the amount assumed.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will not be for more than 10 years unless the State Director determines that more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. A payment of five percent of the debt (including any subsidy due) or the current "as-is" market value of the property, whichever is lower, must be made at closing to reduce the amount assumed.

(e) * * *

(4) * * *

(ii) Flood insurance is required on any house located in an identified flood or mudslide hazard area where flood insurance is available. If the house was built prior to implementation of the flood insurance program and flood insurance has never been available or is no longer available, assumption on program or NP terms may be approved without flood insurance provided the house is determined by the County Supervisor to be made (that is, any hazard that exists would not likely endanger the safety of dwelling occupants.) If not safe, or if water rises inside the living space of the house frequently, the property will be classified as NP and therefore subject to assumption on NP terms only. If the house is located in an identified flood or mudslide hazard area and flood insurance is not available when the assumption is approved, the County Supervisor will note in the appropriate space on Form FmHA 1940–1 that approval is subject to the requirement for having flood insurance if it becomes available in the future.

* * * * *

49. In § 1965.127, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and (b)(1) are revised to read as follows:

**§ 1965.127 Release from liability.**

(a) *Circumstances when release from liability is authorized.* Release from liability will be accomplished by preparing and distributing Form FmHA 1965–8, "Release From Personal Liability," according to the FMI as follows:

(1) When the total debt is assumed, the borrower and co-signer, if any, will be released from liability by the County Supervisor.

(2) A person who is jointly liable for a loan may be released from liability by the County Supervisor provided:

(i) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(ii) The withdrawing party's interest in the security party is conveyed to the person with whom the loan will be continued; and

(iii) The person with whom the loan will be continued has adequate repayment ability.

(3) When the value of the security property is less than the total debt and an amount equal to the market value of the security is assumed under § 1965.126(b)(5) of this subpart, or sale outside the program for an amount not less than the market value is approved under § 1965.125(a)(2) of this subpart, the transferor (and cosigner, if any) may be released from liability when the determination is made that the

transferor (and cosigner, if any) has acted in good faith, adequately maintained the security property and otherwise fulfilled the loan covenants to the best of their ability. If a cosigner is involved, the transferor will not be released unless the co-signer is also released. The County Supervisor will determine if a release will be granted, will document such facts in the case file, and is authorized to release the transferor (and co-signer, if any) from liability.

* * * * *

(b) * * *

(1) When the transferor (and co-signer, if any) is released from liability, the account will be satisfied in the records of the Finance Office when one of the following is processed:

(i) In the case of sale outside the FmHA program, a memorandum from the County Supervisor requesting satisfaction of the transferor's account balance, with copy of Form FmHA 1965–8 attached, indicating release from liability is transmitted to the Finance Office. The note will be marked "Satisfied and Borrower Released From Liability" and returned to the borrower.

(ii) Form FmHA 1965–22 indicating the transferor is released from liability.

* * * * *

50. Section 1965.128 is revised to read as follows:

**§ 1965.128 Assignment of promissory notes and security instruments.**

With the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis as outlined in this section. For loans subject to recapture of subsidy, recapture must be calculated based upon current market value and any recaputure due must be considered as part of the indebtedness at the time of assignment. The assignment will be made using a form approved by OGC on an individual case basis or on a State form approved by OGC and prescribed in a State Supplement. The State Director is authorized to execute the assignment, and this authority may not be redelegated. Assignment is authorized in the following instances:

(a) A borrower has requested it in writing when FmHA is being paid in full.

(b) An insurance company is paying FmHA in full following a property loss.

(c) A junior lienholder is foreclosing its lien and is paying FmHA in full.

(d) An account has been accelerated, all appeals have been exhausted, the case has been accepted by OGC for foreclosure, and FmHA is being paid in full.

51. In § 1965.129, the introductory text is revised to read as follows:

**§ 1965.129 Co-signers.**

Although a co-signer is personally liable for repayment of the FmHA debt, he/she is not entitled to any interest in the security or the rights of the borrower under the loan or security instruments. If the security is transferred to the co-signer, he/she may assume the FmHA indebtedness or program or NP terms, as applicable.

* * * * *

52. Section 1965.137 is revised to read as follows:

**§ 1965.137 Exception authority.**

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision, or failure to take an action in the case of an omission, would adversely affect the Government's interest and/or have an inequitable effect on a borrower. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Request for exception must be made in writing and contain the borrower's case file and/or related files and pertinent information to support and/or explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

Dated: June 23, 1988.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 88–16416 Filed 7–22–88; 8:45 am]

BILLING CODE 3410-07-M

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## Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 88–074]**

## Brucellosis in Cattle; State and Area Classifications

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arizona from a split status of Class Free-Class A to all Class Free. We have determined that Arizona now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Arizona.

**DATES:** Interim rule effective July 20, 1988. Consideration will be given only to comments postmarked or received on or before September 23, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket Number 88–074. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA , Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5965.

**SUPPLEMENTARY INFORMATION:**

### Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

The standards for the different classifications of states or areas entail maintaining (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and

slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Arizona—except those portions of Mohave and Coconino Counties north of the Grand Canyon—was classified as a Class A state because of its herd infection rate and its MCI reactor prevalence rate. Those portions of Mohave and Coconino Counties north of the Grand Canyon were classified as Class Free. However, after reviewing its brucellosis program records, we have concluded that the entire state of Arizona meets the standards for Class Free status.

To attain and maintain Class Free status, a state or area must (1) remain free from field strain Brucella abortus infection for 12 consecutive months or longer, (2) maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. The entire state of Arizona now meets the standards for classification as Class Free.

Therefore, we are removing an area of Arizona from the list of Class A states in § 78.41(b) and adding it to the list of Class Free states in § 78.41(a). This action changes the status of Arizona from Class Free and Class A to all Class Free, and relieves certain restrictions on moving cattle interstate from Arizona.

**Emergency Action**

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists warranting publication of this rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Arizona.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Arizona from Class Free/Class A to all Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Arizona. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be certain herd owners in Arizona, as well as buyers and importers of Arizona cattle. Approximately 60,826 cattle are tested for brucellosis in Arizona each year, at an average cost to the seller of $7 per test. Therefore, Class Free status could result in a potential savings of $425,782 for Arizona's livestock industry. Since Arizona has 3,700 herds, the annual savings to each herd owner will be approximately $115 per herd. We have therefore determined that changing Arizona's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 78**

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

**PART 78—BRUCELLOSIS**

1. The authority citation for Part 78 continues to read as follows:

**Authority:** 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 78.41 [Amended]**

2. Section 78.41, paragraph (a) is amended by removing "(those portions of Mohave and Coconino Counties north of the Grand Canyon)" immediately after "Arizona".

3. Section 78.41, paragraph (b) is amended by removing "Arizona (except those portions of Mohave and Coconino Counties north of the Grand Canyon),".

Done in Washington, DC, this 20th day of July, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16682 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

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**9 CFR Part 78**

**[Docket No. 88–119]**

## Brucellosis in Cattle; State and Area Classifications

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Virginia

from a split status of Class Free/Class A to all Class Free. We have determined that Virginia now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Virginia.

**DATES:** Interim rule effective July 20, 1988. Consideration will be given only to comments postmarked or received on or before September 23, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket Number 88–119. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5965.

**SUPPLEMENTARY INFORMATION:**

**Background**

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

The standards for the different classifications of states or areas entail maintaining (1) A cattle herd infection rate not to exceed a stated level during 12 consective months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Virginia—except Clarke County—was classified as a Class Free state because of its herd infection rate and its MCI reactor prevalence rate. Clarke County, Virginia, was classified as Class A. However, after reviewing its brucellosis program records, we have concluded that the entire state of Virginia meets the standards for Class Free status.

To attain and maintain Class Free status, a state or area must (1) remain free from field strain Brucella abortus infection for 12 consective months or longer, (2) maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. The entire state of Virginia now meets the standards for classification as Class Free.

Therefore, we are removing an area of Virginia from the list of Class A states in § 78.41(b) and adding it to the list of Class Free states in § 78.41(a). This action changes the status of Virginia from Class Free and Class A to all Class Free, and relieves certain restrictions on moving cattle interstate from Virginia.

**Immediate Action**

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, had determined that there is good cause to publish this rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Virginia.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Virginia from Class Free/Class A to all Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Virginia. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be certain herd owners in Virginia, as well as buyers and importers of Virginia cattle. Approximately 8,454 cattle are tested for brucellosis in Virginia each year, at an average cost to the seller of $7 per test. We estimate that approximately 105 of these tests are conducted on cattle in Clarke County, Virginia. Therefore, Class Free status could result in a potential savings of approximately $735 for Clarke County's livestock industry. Since Clarke County, Virginia, has approximately 251 cattle herds, the annual savings to each herd owner will be approximately $2.93 per herd. We have therefore determined that changing Virginia's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 78**

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

**PART 78—BRUCELLOSIS**

1. The authority citation for Part 78 continues to read as follows:

**Authority:** 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 78.41 [Amended]**

2. Section 78.41, paragraph (a) is amended by removing "(except Clarke County)" immediately after "Virginia".

3. Section 78.41, paragraph (b) is amended by removing "Virginia (Clarke County)".

Done in Washington, DC, this 20th day of July, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16683 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

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**9 CFR Part 92**

**[Docket No. 88–107]**

## Importation of Animals Through the Harry S Truman Animal Import Center; Special Use by the Agricultural Research Service During 1989

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are granting to the Agricultural Research Service of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation during calendar year 1989. We are taking this emergency action because the Agricultural Research Service has a singular opportunity to import swine from the People's Republic of China. This project should improve the germplasm of breeding animals in the United States, eventually improving the productivity and international competitiveness of U.S. swine. Negotiations cannot proceed until we authorize the Agricultural Research Service to schedule an importation through HSTAIC. Our failure to act immediately would jeopardize those negotiations. Because of the many unforeseeable contingencies involved in any HSTAIC importation, we are granting the Agricultural Research Service the exclusive right to use HSTAIC for an importation to be scheduled during calendar year 1989.

**DATES:** Interim rule effective July 25, 1988. Consideration will be given only to comments postmarked or received on or before September 23, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Specifically refer to Docket No. 88–107. You may review comments in Room 1141 of the South Building, 14th St. at Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Veterinary Services, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8695.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR Part 92, § 92.41 (referred to below as the regulations) set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida.

An important mission of the Agricultural Research Service, which is an agency of the United States Department of Agriculture, is to develop means of increasing the productivity of animals. This involves improving the germplasm available for breeding. The Agricultural Research Service advises us that it has, at this time, an unprecedented opportunity to effect a swine importation of potential benefit to breeders in the public sector. Capitalizing on this opportunity requires that these swine from the People's Republic of China undergo an extended quarantine at HSTAIC. The presence of foot-and-mouth disease and certain other diseases in China means that importation of these animals into the United States is possible only through HSTAIC.

The Secretary of Agriculture has determined that U.S. agricultural interests, both short- and long-term, will be well-served by this decision to grant the Agricultural Research Service this special request for use of HSTAIC.

For the Agricultural Research Service to take advantage of its singular opportunity to import animals through HSTAIC during 1989, this authorizing action must be effective immediately. Without this official confirmation of HSTAIC's availability during 1989, the Agricultural Research Service cannot conclude negotiations with Chinese veterinary officials. Negotiations cannot proceed until we authorize the Agricultural Research Service to schedule an importation through HSTAIC. Nothing conclusive can transpire until scheduling specifics are confirmed. Because of the delays and other unforeseeable problems inevitable during the complicated HSTAIC-importation process, it is a matter of urgency that we authorize the Agricultural Research Service to schedule its importation of swine from China at the earliest possible moment. Protocols governing the procedures for this importation will be published for comment prior to the importation.

Private-sector importations through HSTAIC will resume following this use by the Agricultural Research Service.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its

review process required by Executive Order 12291.

If the Agricultural Research Service's HSTAIC-importation proceeds according to plan, breeders in the public sector should eventually benefit.

However, the Administrator of the Animal and Plant Health Inspection Service is unable at this time to determine whether this action will have a significant economic impact on a substantial number of small entities.

The emergency, discussed below, makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Impact Statement, if necessary, will address the issues required in section 604 of Pub. L. 96-354, the Regulatory Flexibility Act.

**Immediate Action**

Dr. James Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this rule without prior opportunity for public comment. Immediate action is necessary to enable the Agricultural Research Service to proceed with its swine-importation project. By granting the Agricultural Research Service the exclusive right to use HSTAIC during calendar year 1989 only, we provide the Agricultural Research Service with the flexibility necessary to ensure that this special project may succeed. At the same time, we ensure that private-sector importations through HSTAIC will resume following use by the Agricultural Research Service. The action we are taking at this time resolves uncertainty about the viability of negotiations between the Agricultural Research Service and its foreign counterpart, so that an agreement can be signed and the importation can proceed in 1989.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication of this document in the **Federal Register**. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 92**

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

**PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON**

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.41 is revised by adding paragraph (g) to read as follows:

**§ 92.41 [Amended]**

* * * * *

(g) The Agricultural Research Service may, in calendar year 1989, import swine from the People's Republic of China into the United States through the Harry S Truman Animal Import Center in accordance with procedures determined by the Secretary of Agriculture.

Done in Washington, DC, this 19th day of July.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88-16681 Filed 7-22-88; 8:45 am]

BILLING CODE 3410-34-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88-NM-19-AD; Amdt. 39-5984]**

**Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which currently requires isolation of the Number 1 (Captain's side) Attitude and Heading Reference System (AHRS) from the Avionics Standard Communications Bus (ASCB). That action was prompted by reports of dual, simultaneous and unannunciated failures of the Model ATR-42's primary attitude and heading displays. This condition, if not corrected, could result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. This amendment provides terminating action for the requirements of the existing AD by replacing the inservice AHRS with a modified AHRS, and reconnecting Number 1 AHRS to the ASCB.

**DATE:** Effective September 3, 1988.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations, by revising AD 87-11-08, Amendment 39-5628 (52 FR 19305; May 22, 1987), applicable to Aerospatiale Model ATR-42 series airplanes, to provide terminating action for the requirements of the existing AD by replacing the inservice AHRS with a modified AHRS and reconnecting the Number 1 AHRS to the ASCB, was published in the **Federal Register** on April 29, 1988 (53 FR 15403).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received, which supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Should an operator choose to install the optional modification, it will take approximately 5 manhours per airplane to accomplish, and the average labor cost will be $40 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $200 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 87-11-08, Amendment 39-5628 (52 FR 19305; May 22, 1987), as follows:

**Aerospatiale:** Applies to ATR-42 series airplanes, certificated in any category, unless the equivalent of Production Modification 1397 was installed prior to delivery. Compliance is required as indicated, unless previously accomplished.

To prevent simultaneous loss of both pilots' primary attitude and heading information generated by Attitude and Heading Reference Systems (AHRS), accomplish the following:

A. Within 15 days after June 8, 1987 (the effective date of Amendment 39-5628, AD 87-11-08), accomplish the following:

1. Isolate the pilots' AHRS (AHRS Number 1) from the System Avionics Standard Communications Bus (ASCB) in accordance with Aerospatiale Service Bulletin ATR-42-34A-0016, dated March 23, 1987, and ensure that Electronic Flight Instrument System (EFIS) Symbol Generators having part number 700544-411, Mod-level U or subsequent, have been installed.

2. Insert the following into the Airplane Flight Manual (AFM) Limitations Section 2. This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual (FCOM), if used.

a. "Disconnect autopilot at or above 200 feet above ground level (AGL)."

b. "Approach operations are limited to Category I or higher weather minima."

B. Replacement of the Attitude and Heading Reference Systems (AHRS) with a modified AHRS, and connection of four (4) wires between terminal blade 67VT1 and connector 1FP1-AA, in accordance with Aerospatiale Service Bulletin ATR42-34-340018, Revision 1, dated September 22, 1987, constitutes terminating action for the requirements of paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment amends AD 87-11-08, Amendment 39-5628.

This Amendment becomes effective September 3, 1988.

Issued in Washington, DC, on July 20, 1988.

**Thomas E. McSweeney,**

*Acting Director, Office of Airworthiness.*

[FR Doc. 88-16692 Filed 7-22-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 88-AGL-13]**

## Control Zone Establishment; Waukegan, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to establish the Waukegan, IL, airport control zone to serve Waukegan Regional Airport, Waukegan, IL. This results from the establishment of an Air Traffic Control Tower (ATCT) at Waukegan, IL, which is expected to be commissioned in October, 1988. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:**

**History**

On Tuesday, June 7, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone near Waukegan, IL (53 FR 20864).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone area near Waukegan, IL.

The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a five statute mile radius of the geographic center of Waukegan Regional Airport, Waukegan, IL. The control zone would be effective during

the specific dates and times established in advance by a Notice to Airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory.

In addition, aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Waukegan, IL [New]**

Within a five (5) mile radius of the Waukegan Regional Airport, Waukegan, IL, (Lat. 42°25'20" N., Long. 087°52'04" W.). The control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Des Plaines, Illinois, on July 15, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88–16694 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 71**

**[Airspace Docket No. 88–AGL–16]**

## Alteration of Various Control Zones and Transition Areas Within the Great Lakes Region

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the published descriptions for the Milwaukee Timmerman Airport, WI, and Bloomington, IL, control zones and Bloomington, IL, and Marion, IN, transition areas by changing the acronyms VOR to VOR/DME. Due to the addition of a DME capability to existing VOR facilities; and, because the existing VOR facilities are identified in the existing descriptions, the published descriptions require modification.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations modifies the published descriptions for Milwaukee Timmerman Airport, WI, Bloomington, IL, and Marion, IN, by changing the acronyms VOR to VOR/DME. There wil be no changes to the existing designated airspace area or designated altitudes for the associated control zones and/or transition areas.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Transition area.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations 14 CFR Part 71 is amended as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

In all instances where the acronym VOR appears; remove and replace with VOR/DME for the control zones listed below.

**Milwaukee Timmerman Airport, WI [Amended]**

**Bloomington, IL [Amended]**

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

In all instances where the acronym VOR appears; remove and replace with VOR/DME for the transition areas listed below.

**Bloomington, IL [Amended]**

**Marion, IN [Amended]**

Issued in Des Plaines, Illinois, on July 11, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88–16699 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 71**

**[Airspace Docket No. 88–AGL–8]**

## Transition Area Revocation; Petersburg, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to revoke the transition area airspace currently designated for Petersburg, MI, by returning the airspace to a non-

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controlled status for use by the aviation flying public. The VOR–A SIAP was cancelled effective June 2, 1988. Notification of this cancellation was made to the public under separate docket action. The Federal Aviation Administration believes that since the SIAP is cancelled the transition area is no longer necessary or warranted.

**EFFECTIVE DATE:** 0901 U.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

**History**

On Friday, May 27, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Petersburg, MI, transition area airspace (53 FR 19311).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations revokes the designated transition area for Petersburg, MI.

The Petersburg, MI, transition area airspace was established to accommodate a VOR–A Standard Instrument Approach Procedure (SIAP) to Lada Airport. Petersburg, MI. The transition area was necessary to ensure the segregation of aircraft utilizing the SIAP from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace.

The VOR–A SIAP was cancelled effective June 2, 1988. Notification of this cancellation was made to the public under separate docket action. The Federal Aviation Administration believes that since the SIAP is cancelled the transition area is no longer necessary or warranted.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Petersburg, MI [Removed]**

Issued in Des Plaines, Illinois, on July 11, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88–16698 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 520, 522, 524, 526, 529, and 540

### Animal Drugs, Feeds, and Related Products; Change of Sponsor, Fort Dodge Laboratories

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) from Bristol-Myers Animal Health to Fort Dodge Laboratories. Fort Dodge Laboratories requested the sponsor change.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** John W. Borders, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

**SUPPLEMENTARY INFORMATION:** Fort Dodge Laboratories, Fort Dodge, IA 50501, has informed FDA that it is now sponsor of several NADA's formerly held by Bristol-Myers Animal Health, Evansville, IN 47721, formerly Bristol Laboratories, Syracuse, NY 13221–4755. Bristol-Myers also informed FDA of the sponsor change. The NADA's affected are:

| NADA | Product | Ingredient |
|---|---|---|
| 41-836 | Kantrim® Injection | Kanamycin sulfate. |
| 42-548 | Amforol® Suspension | Kanamycin sulfate, aminopentamide hydrogen sulfate. |
| 42-661 | Kantrim® Ophthalmic Ointment | Kanamycin sulfate. |
| 42-841 | Amforol® Tablets | Kanamycin sulfate, aminopentamide hydrogen sulfate. |
| 42-883 | Kantrim® Ophthalmic Solution | Kanamycin sulfate. |
| 43-078 | Centrine® Tablets | Aminopentamide hydrogen sulfate. |
| 43-079 | Centrine® Injection | Aminopentamide hydrogen sulfate. |
| 43-304 | Ketaset® Injection | Ketamine hydrochloride. |
| 43-784 | Kanfosone® Ointment | Kanamycin sulfate, calcium amphomycin, hydrocortisone acetate. |
| 47-997 | Amphoderm® Ointment | Kanamycin sulfate, calcium amphomycin, hydrocortisone acetate. |
| 55-021 | Hetacin-K® Capsules | Hetacillin potassium. |
| 55-022 | Hetacin-K® Tablets | Hetacillin potassium. |
| 55-030 | Polyflex® Injection | Ampicillin trihydrate. |
| 55-032 | Dicloxin® Capsules | Dicloxacillin sodium. |
| 55-048 | Hetacin-K® Oral Liquid | Hetacillin potassium. |

| NADA | Product | Ingredient |
|---|---|---|
| 55-054 | Hetacin-K® Intramammary Infusion | Hetacillin potassium. |
| 55-058 | Dry-Clox® Intramammary Infusion | Cloxacillin benzathine. |
| 65-169 | Flo-Cillin® Injection | Benzathine penicillin G, procaine penicillin G. |
| 92-116 | Ketaset® Plus Injection | Ketamine hydrochloride, promazine hydrochloride, and aminopentamide hydrogen sulfate. |
| 97-222 | Cefa-Lak® Intramammary Infusion | Cephapirin sodium. |
| 102-990 | Torbutrol® Injection | Butorphanol tartrate. |
| 103-390 | Torbutrol® Tablets | Butorphanol tartrate. |
| 108-114 | Cefa-Dri® Intramammary Infusion | Cephapirin benzathine. |
| 119-688 | Cefa®-Tablets | Cefadroxil. |
| 127-892 | Amiglyde® Solution | Amikacin sulfate. |
| 135-780 | Torbugesic® Injection | Butorphanol tartrate. |

This sponsor change does not involve any changes in facilities, equipment, procedures, or production personnel to manufacture the above stated products.

FDA is amending 21 CFR 520.62, 520.246, 520.314, 520.1204, 522.56, 522.62, 522.246, 522.1204, 522.1222a, 522.1222b, 524.1200a, 524.1200b, 524.1204, 526.363, 529.50, 529.365, 540.119, 540.129a, 540.129c, 540.207b, 540.255c, 540.814, and 540.829 to reflect the change of sponsor.

**List of Subjects**

*21 CFR Parts 520, 522, 524, 526, and 529*

Animal drugs.

*21 CFR Part 540*

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520, 522, 524, 526, 529, and 540 are amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 520.62 [Amended]**

2. Section 520.62 *Aminopentamide hydrogen sulphate tablets* is amended in paragraph (c) by removing No. "000015" and adding in its place No. "000856."

**§ 520.246 [Amended]**

3. Section 520.246 *Butorphanol tartrate tablets* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 520.314 [Amended]**

4. Section 520.314 *Cefadroxil tablets* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 520.1204 [Amended]**

5. Section 520.1204 is amended by revising the section heading to read as follows and in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 520.1204 Kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, activated attapulgite oral**

* * * * *

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

6. The authority citation for 21 CFR Part 522 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 522.56 [Amended]**

7. Section 522.56 *Amikacin sulfate injection* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 522.62 [Amended]**

8. Section 522.62 *Aminopentamide hydrogen sulfate injection* is amended in paragraph (c) by removing No. "000015" and adding in its place No. "000856."

**§ 522.246 [Amended]**

9. Section 522.246 *Butorphanol tartrate injection* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 522.1204 [Amended]**

10. Section 522.1204 *Kanamycin sulfate injection* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 522.1222a [Amended]**

11. Section 522.1222a *Ketamine hydrochloride injection* is amended in paragraph (c)(1) by removing No. "000015" and adding in its place No. "000856."

**§ 522.1222b [Amended]**

12. Section 522.1222b *Ketamine hydrochloride with promazine hydrochloride and aminopentamide hydrogen sulfate injection* is amended in paragraph (c) by removing "000015" and adding in its place No. "000856."

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

13. The authority citation for 21 CFR Part 524 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 524.1200a [Amended]**

14. Section 524.1200a *Kanamycin ophthalmic ointment* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 524.1200b [Amended]**

15. Section 524.1200b *Kanamycin ophthalmic aqueous solution* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 524.1204 [Amended]**

16. Section 524.1204 *Kanamycin sulfate, calcium amphomycin, and hydrocortisone acetate* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

## PART 526—INTRAMAMMARY DOSAGE FORMS NOT SUBJECT TO CERTIFICATION

17. The authority citation for 21 CFR Part 526 is revised to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 526.363 [Amended]**

18. Section 526.363 *Cephapirin benzathine* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

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## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

19. The authority citation for 21 CFR Part 529 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 529.50 [Amended]**

20. Section 529.50 *Amikacin sulfate intrauterine solution* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 529.365 [Amended]**

21. Section 529.365 *Cephapirin sodium for intramammary infusion* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

## PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

22. The authority citation for 21 CFR Part 540 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 540.119 [Amended]**

23. Section 540.119 *Sodium dicloxacillin monohydrate capsules* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.129a [Amended]**

24. Section 540.129a *Potassium hetacillin tablets* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.129c [Amended]**

25. Section 540.129c *Potassium hetacillin oral suspension* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.207b [Amended]**

26. Section 540.207b *Sterile ampicillin trihydrate for suspension* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.255c. [Amended]**

27. Section 540.255c *Sterile benzathine penicillin G and procaine penicillin G suspension* is amended in paragraph (c)(2)(i) by removing No. "000015" and in paragraph (c)(2)(ii) by removing No. "000015" and numerically adding No. "000856."

**§ 540.814 [Amended]**

28. Section 540.814 *Benzathine cloxacillin for intramammary infusion* is amended in paragraph (c)(2)(i) by removing No. "000015" and adding its place No. "000856."

**§ 540.829 [Amended]**

29. Section 540.829 *Potassium hetacillin for intramammary infusion* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

Dated: July 18, 1988.

**Richard A. Carnevale,**

*Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.*

[FR Doc. 88–16624 Filed 7–22–88; 8:45 am]

BILLING CODE 4160-01-M

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## 21 CFR Part 558

## New Animal Drugs for Use in Animal Feeds; Virginiamycin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by SmithKline Animal Health Products. The application provides for the use of several concentrations of virginiamycin Type A medicated articles to make Type C medicated feeds to be used for increased rate of weight gain and improved feed efficiency in growing turkeys.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

**SUPPLEMENTARY INFORMATION:** SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed supplemental NADA 91–467 providing for use of the firm's currently approved (in swine and broiler chickens) virginiamycin Type A medicated articles to make Type C medicated turkey feeds containing 10 to 20 grams of virginiamycin per ton. The resulting medicated feeds are indicated for increased rate of weight gain and improved feed efficiency in growing turkeys. The supplemental NADA is approved and 21 CFR 558.635 is amended by adding paragraph (f)(2)(iv) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83

2. Section 558.635 is amended by adding paragraph (f)(2)(iv) to read as follows:

**§ 558.635 Virginiamycin.**

* * * * *

(f) * * *

(2) * * *

(iv) 10 to 20 grams per ton for increased rate of weight gain and improved feed efficiency in growing turkeys.

* * * * *

Dated: July 19, 1988.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 88–16625 Filed 7–22–88; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 250**

**Oil and Gas and Sulphur Operations in the Outer Continental Shelf**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This action amends the final rule issued by Minerals Management Service (MMS) on April 1, 1988, and effective May 31, 1988, by extending until May 31, 1990, the period of time for the compliance of certain operating personnel with the provision of § 250.212(a) of the rule which requires personnel engaged in offshore operations to successfully complete a training program identified in API RP T–2, Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices every 4 years.

**EFFECTIVE DATE:** May 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Telephone (703) 648–7816 (FTS 959–7816).

**SUPPLEMENTARY INFORMATION:** The final rule issued by MMS on April 1, 1988, consolidated and restructured various existing rules contained in regulations, OCS Orders, and Notices to Lessees and Operators. The final rule contains a subpart on training (Subpart O) which includes a requirement in § 250.212(a) that "Lessee and contract personnel installing, inspecting, testing, and maintaining antipollution safety devices and systems and personnel operating offshore production platforms shall be qualified under a program identified in API RP T–2, Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices. The aforementioned personnel shall repeat the basic API RP T–2 course every 4 years." The requirement that lessee and contract personnel be qualified under API RP T–2 is not new as it is contained in existing training requirements. However, the requirement to repeat the training every 4 years is new.

The new requirement for repetition of the training course was effective on May 31, 1988, and lessee and contract personnel who last completed the required API RP T–2 training prior to May 31, 1984, are not, absent this amendment, in compliance with the training requirements of § 250.212(a). The MMS recognizes the probability that there may be a significant number of offshore operating pesonnel in this status. The difficulty of obtaining the required repeat training for a large number of personnel on such short notice is an unintended and unwarranted hardship which should not be borne by lessee and contract personnel. Therefore, it has been determined that this requirement should be modified effective immediately to provide a grace period of 2 years for compliance with the new requirement for repeating the API RP T–2 training course every 4 years.

Section 250.212(a) is therefore being amended to provide that lessee and contract personnel who previously qualified by successful completion of a basic API RP T–2 course prior to May 31, 1988, will be considered to be in compliance with the provisions of § 250.212(a) provided that such personnel complete a repeat of the basic API RP T–2 course by May 31, 1990.

For the reasons cited above, MMS finds that there is good cause to forego the customary notice of proposed rulemaking and opportunity for public comment. Such notice and procedures are impracticable, unnecessary, and not in the public interest for the reasons described. The MMS is therefore issuing this amendment as a final rule effective immediately under the authority of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)).

Similarly, because this amendment relieves a restriction, publication of the rule not less than 30 days before its effective date is not required in accordance with the APA (5 U.S.C. 553(d)(1)).

This amendment is not a major rule for the purposes of Executive Order 12291; therefore, a regulatory impact analysis is not required. The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by big enterprises that are not considered small entities.

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

This rule does not contain any information collection which requires approval by the Office of Management and Budget in 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by Mary McDonald, Offshore Rules and Operations Division, Minerals Management Service.

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Minerals Management Service, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Date: June 3, 1988.

**William D. Bettenberg,**

*Director, Minerals Management Service.*

For reasons set forth in the preamble, 30 CFR Part 250 is to be amended as follows:

**PART 250—[AMENDED]**

1. The authority citation for Part 250 continues to read as follows:

**Authority:** Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.212(a) is revised to read as follows:

**§ 250.212 Safety device training.**

(a) Lessee and contract personnel installing, inspecting, testing, and maintaining antipollution safety devices and systems and personnel operating offshore production platforms shall be qualified under a program identified in API RP T–2, Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices. The aforementioned personnel shall repeat the basic API RP T–2 course every 4 years. Personnel who have previously qualified by completion of a basic API RP T–2 course prior to May 31, 1988, shall be considered to be in compliance with the provisions of this section provided that such personnel complete a repeat of the basic API RP T–2 course prior to May 31, 1990.

[FR Doc. 88–16641 Filed 7–22–88; 8:45 am]

BILLING CODE 4310–MR–M

**POSTAL SERVICE**

**39 CFR Part 111**

**Regulations for Penalty Business Reply Mail Accounting Fees**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rulemaking is to make postal regulations

concerning business reply mail used by the Federal government (penalty BRM) follow more closely the procedures and requirements of business reply regulations that apply to commercial mailers. In addition, the changes in this rulemaking are intended to help integrate penalty BRM with the Official Mail Accounting System (OMAS), which is an automated accounting system for official mail revenue.

**EFFECTIVE DATE:** September 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** James S. Stanford, (202) 268–3250.

**SUPPLEMENTARY INFORMATION:** On December 21, 1987 (52 FR 48281), the Postal Service published proposed regulations for penalty BRM to: 1) Adapt the BRM fee structure and payment options used by our commercial customers for Federal agencies; 2) centralize the assignment of penalty BRM permit numbers at Postal Service Headquarters; and, 3) require Federal agencies to apply for a BRM permit at each post office where they wish to have BRM returned

The fee structure for BRM, as proposed in connection with item (1), above, was subsequently changed when new postage rates, fees, and classifications became effective on April 3, 1988 (53 FR 9888). These changes involved combining the annual BRM permit fee with the annual BRM accounting fee into a single annual fee (called the annual BRM permit and accounting fee, a $260 fee) which is to be charged at each post office where a business reply account is desired, and changing the payment schedule for annual fees from once each calendar year to once each 12-month period, effective from the month and day of payment. This new fee structure is incorporated in these final regulations.

The Postal Service received two written comments on the proposed rule. One commenter objected to the annual BRM permit fee, and also requested that an agency have the option of electing to pay all costs associated with its permit by using penalty mail postage meters or stamps at each post office to which the BRM is returned. The commenter believes the requested procedure will help agencies budget and track postage costs at the user level, thereby encouraging better mail management.

The annual BRM permit fee and the terms under which it is charged are part of the Domestic Mail Classification Schedule, and cannot be eliminated or modified as part of this rulemaking. The option requested by this commenter to pay all costs using penalty mail postage meters or stamps is available under the "payment upon delivery" option, with the following limitations:

Since some agencies may have BRM returned under the "payment upon delivery" option at more than one post office under a single permit number, the only feasible method for collecting the single $60 annual permit and renewal fee required is central billing. In addition, use of the "payment upon delivery" option requires a higher surcharge per piece than the BRM account option, but does not require the higher annual BRM permit and accounting fee.

Under the current fee structure, the cost at any location receiving more than 800 BRM pieces per year will be higher using the "payment upon delivery" option than using the BRM account option. Thus, agencies probably would not want to use this option at higher volume locations. The higher surcharge per piece for "payment upon delivery" reflects the additional carrier costs associated with this option.

It should also be noted that agencies will be able to identify BRM charges which are centrally billed to individual locations or cost centers in the same way that they identify meter charges to those locations—by using data from the Official Mail Accounting System. Thus, the commenter's objectives are fully met.

The second commenter made three points. The first point was that both BRM payment methods—the BRM account option and the "payment upon delivery" option—should be available for Federal agency use without regard to volume. Discussion in the proposed regulation regarding a 1,000-piece break-even volume was advisory and suggested only one criterion that agencies might use in making a selection. (It should also be noted that the rates implemented on April 3, 1988, actually changed the break-even volume discussed in the proposed regulations to about 800 pieces per location.) The intent of these regulations was, and remains, that agencies may choose either of the payment options at each post office where mail will be returned

The second point was that any changes made by Postal Service Headquarters to existing BRM permit numbers be coordinated with the affected agency. The Postal Service intends to use the BRM permit numbers currently assigned to agencies, except where changes are necessary to eliminate duplication or unused permits. In any case, the Postal Service will coordinate necessary changes with the affected agency.

The third point expressed the commenter's desire that the changes in this regulation will not adversely affect the close working relationships that have developed between agency offices and their servicing post offices. We believe these new procedures will actually promote better working relationships at the local level by eliminating much of the confusion and misunderstandings that have existed in the past concerning Federal government business reply mail.

**List of Subjects in 39 CFR Part 111**

Postal Service.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

**PART 111—[AMENDED]**

1. The authority citation in 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 137—OFFICIAL MAIL

2. In 137.276, revise g to read as follows:

*137.276 Penalty Reply Mail*

* * * * *

*g. Penalty Business Reply*

(1) *General.* An agency may pay for penalty business reply mail (BRM) by setting up a BRM account to be billed through the Official Mail Accounting System (OMAS), or by paying for BRM upon delivery of the mail. Under a BRM account, the agency will be billed an annual permit and accounting fee by each post office ZIP Code where its mail will be returned, the appropriate postage, and a per piece charge. Under the "payment upon delivery" option, the agency pays the appropriate postage and a per piece charge. Under this option, the agency will be billed an annual BRM permit and renewal fee for each assigned permit number. The postage, fees, and charges are the same as in 917.3.

*(2) Applying for a BRM Permit.* An agency must apply for an authorization to use a business reply permit at each post office where its business reply mail will be returned. An agency must complete and submit to each post office a copy of Form 3614, *Application for a BRM Permit* (Exhibit 137.276g(2)), which must include the following:

*(a)* BRM permit number (use BRM permit numbers from the list in 137.252)

*(b)* Agency code

*(c)* Agency subcode (if desired)

*(d)* Whether the agency desires to set up a BRM account.

If an agency uses the "payment upon delivery" option at any post office where its mail will be returned, it will be assessed an annual BRM *permit and renewal fee* for each permit number. This fee will be assessed each year by the Official & International Mail Accounting Division at Postal Service Headquarters. At each post office where an agency wishes to use the BRM account option, the post office that handles the account will assess an annual BRM *permit and accounting fee* by completing Form 3636–G, *Fee Assessment for Official Mail,* and returning the original copy to the agency. (An agency cannot pay in cash for any official mail transaction.) A contractor may submit an application on behalf of the agency if it is signed by an authorized agency representative.

*(3) Formatting BRM.* Penalty business reply mail envelopes must bear the address of one of the authorized agencies listed in 137.252, or one of their component units. Envelopes must be printed in the format required by 917.5, with the following exceptions:

*(a)* The address may be printed, typewritten, or handstamped directly on the mailpiece, or a printed gummed label may be affixed in the address area. The address must not be handwritten. All other preparation requirements for the address side in 917.5 must be met.

*(b)* The legend required by 917.524 must read *Postage Will Be Paid By* (name of authorized agency). *Exception:* The legend must not appear on Postal Service business reply mail.

*(c)* The space for the permit holder's use described in 917.525e must include the statement, *Official Business, Penalty for Private Use $300.* Space above this statement may be used for return address, logos, distribution codes, etc.

*(d)* Exhibit 137.276g(3)(d) illustrates the penalty business reply mail format.

*(4) Renewing a BRM Permit and BRM Permit and Accounting Fees.*

BILLING CODE 7710-12-M

# Application for a BRM Permit

*This permit allows the holder to distribute business reply cards, envelopes, self-mailers,cartons, and labels prepared and mailed for return without prepayment of postage under Section 917, Domestic Mail Manual (DMM). First-Class rates and the additional per piece charge for business reply mail will be paid on all pieces returned under this privilege. The permit holder must prepare mailing pieces in accordance with DMM 917, and understands that failure to conform with these requirements may be considered basis for revocation of this permit. The annual business reply permit fee or the annual BRM permit and accounting fee, if payment is from a BRM account, must accompany this form. The permit is valid for 12 months from the date of issue. If it is not renewed prior to the expiration date, BRM will not be delivered.*

Permit Holder's Name, Street Address, City & State, ZIP + 4 code

| Telephone Number | Federal Agency Code - Subcode |
|---|---|

Post Office to which application is submitted (include City & State, ZIP Code):

| Signature & Title of Applicant | Date |
|---|---|

**The Postmaster must complete and return bottom portion to applicant.**

| Permit Number | Date Issued | BRM Account yes ☐ no ☐ |
|---|---|---|

*You are authorized to distribute business reply cards, envelopes, self-mailers, cartons, and labels under the provisions of Domestic Mail Manual (DMM) 917. Your permit number must appear on each item and you must notify this office of any name or address change or permit cancellation. Only mail prepared in accordance with DMM 917 will be accepted as business reply mail. Your permit is valid for 12 months fromthe date of issue. You must renew your permit prior to the expiration date or BRM will not be delivered.*

| Permit Number | BRM Annual Permit & Renewal Fee Receipt No. |
|---|---|
| BRM Account yes ☐ no ☐ | BRM Annual Permit & Accounting Fee Receipt No. |
| Date Issued | Postmaster's Signature |

Permit Holder's Name, Street Address, City & State, ZIP + 4 code

Exhibit 137.276g(2) - *Application for a BRM Permit*

PS Form **3614**, July1988

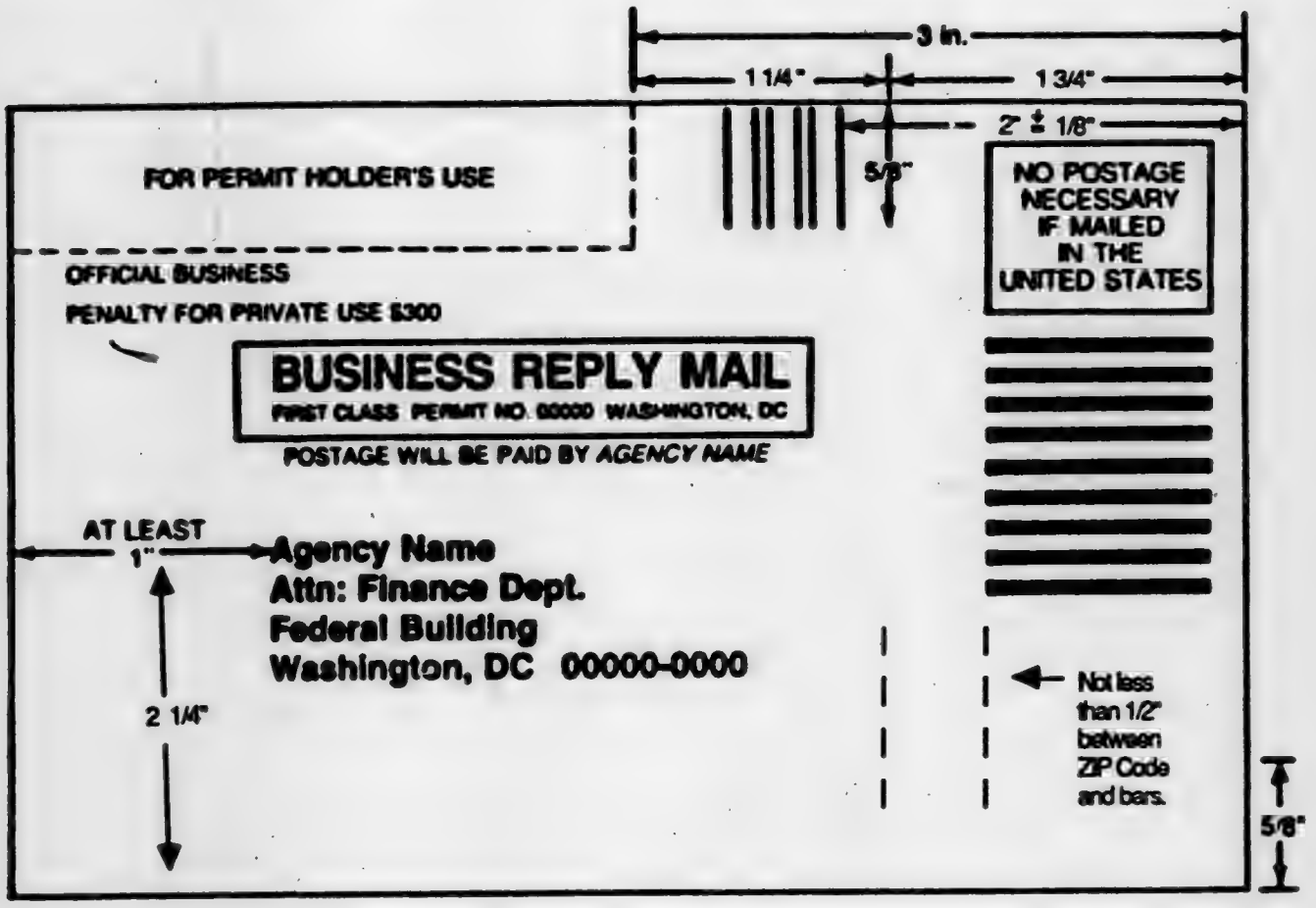


Exhibit 137.276g((3)(d) - Penalty Business Reply Mail Format

BILLING CODE 7710-12-C

*(a)* If an agency uses the "payment upon delivery" option at any post office where its mail will be returned, the agency will be automatically billed by Postal Service Headquarters an annual fee for each authorized BRM permit. Under this option, no action is necessary for renewal. See 917.33a.

*(b)* If an agency elects the BRM account option at a post office, it will receive a Form 3636–G from that office every 12 months to assess its annual BRM permit and accounting fee. If an agency wishes to cancel a BRM account, the agency must notify the post office that handles the account. In this case, the account will be closed and postage for the BRM mail will be collected under the "payment upon delivery" option.

*(5) Paying BRM Postage and Fees.*

*(a)* BRM Account Option. Each post office will record all BRM returned to it each day. They will prepare for each agency a Form 3582–A, *Postage Due Bill,* as a daily record of mail charged to the agency's BRM account, and will submit the form to the agency with its mail. Each accounting period, post offices with BRM accounts will report summary BRM activity through OMAS. Postal Service Headquarters will distribute this information to agencies in a quarterly OMAS report.

*(b)* Payment Upon Delivery Option. Under this option, an agency must use penalty mail postage meter strips or penalty mail stamps to pay for BRM when the mail is delivered. The meter strip must be in the exact amount of the postage due, and bear the current date. Postage collected under this option will be included in a quarterly OMAS report under meter or stamp postage, but will not appear under BRM postage.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88–16627 Filed 7–22–88; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR PART 52

**[FRL–3414–7]**

## Approval and Promulgation of State Implementation Plans; Colorado; Particulate Matter—Diesel Vehicle Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Colorado Total Suspended Particulate (TSP) State Implementation Plan (SIP) which adds Regulation 12. Regulation 12 was submitted by the Governor of Colorado in a letter dated December 21, 1987. The regulation requires a self-certification program for opacity for heavy-duty diesel fleets consisting of nine or more vehicles over 7,500 pounds empty weight. Approval of the regulation, which is expected to help reduce emissions of particulate matter, provides for Federal enforcement.

**DATES:** This action will be effective on September 23, 1988, unless notice is received by August 24, 1988, that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460

**FOR FURTHER INFORMATION CONTACT:** Dale M. Wells, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 293–1773, (FTS) 564–1773.

**SUPPLEMENTARY INFORMATION:** The Colorado Air Quality Control Commission adopted Regulation 12, "The Reduction of Diesel Vehicle Emissions", on December 18, 1986. This regulation establishes a heavy-duty diesel fleet self-inspection and maintenance program requiring opacity inspections and adherence to prescribed maintenance procedures. The regulation would ensure that vehicles are in compliance with the State diesel opacity standards. The regulation requires bi-annual opacity compliance testing at approximately six month intervals for fleets located in the Colorado light-duty vehicle emission inspection area (Boulder, Colorado Springs, Denver, Fort Collins and Greeley). Penalties for non-compliance subject the fleet to fines ranging from $25 to $300 per vehicle. The regulation was effective on January 30, 1987. The State has estimated that the regulation will reduce particulate matter by about 58 tons per year, all of which being particles less than 10 micrometers in size.

The EPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standards. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less ($PM_{10}$). However, at the State's option, EPA will continue to process TSP SIP revisions which were in process at the time the new $PM_{10}$ standard was promulgated. (In the policy published on July 1, 1987, p. 24679, column 2, EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period proceding the approval of State plans specifically aimed at $PM_{10}$.) If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of publication in the **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 23, 1988.

### Final Action

EPA hereby approves the revisions to Regulation 12 as part of the Colorado Particulate SIP.

EPA finds good cause exists for making the action taken in this notice immediately effective because the

implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Particulate matter, Incorporation by reference.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the **Federal Register** on July 1, 1982.

Date: July 11, 1988.

**Lee M. Thomas,**

*Administrator.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart G—Colorado**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401—7642.

2. Section 52.320 is amended by adding paragraph (c)(39) to read as follows:

**§ 52.320 Identification of plan.**

* * * * *

(c) * * *

(39) Regulation 12, to control emissions from diesel fleets with nine or more vehicles over 7,500 pounds empty weight, registered in the AIR Program area (the Colorado I/M program), was submitted by the Governor on December 21, 1987.

(i) Incorporation by reference

(A) Colorado Air Quality Control Commission, Regulation No. 12, adopted December 18, 1986, and effective January 30, 1987.

[FR Doc. 88-15928 Filed 7-22-88; 8:45 am]

BILLING CODE 6560-50-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 51d and Part 51f**

**Removal of Obsolete Regulations on Hemophilia Treatment Centers and Genetic Disease Testing and Counseling Programs**

**AGENCY:** Health Resources and Services Administration, PHS, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule removes obsolete regulations governing grants for hemophilia treatment centers and grants for genetic disease testing and counseling programs. These regulations have been replaced by unified regulations governing the maternal and child health project grant program including the hemophilia and genetic programs. This action will eliminate duplicative regulations applicable to the maternal and child health project grant program.

**EFFECTIVE DATE:** Because this action simply removes obsolete regulations, we have found that notice of proposed rulemaking and public comment thereon are unnecessary and not in the public interest. Accordingly, the rescission is effective on July 25, 1988.

**ADDRESS:** Bureau of Maternal and Child Health and Resources Development, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roger McClung, (303) 443-4273.

**SUPPLEMENTARY INFORMATION:** The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) revised Title V of the Social Security Act (SSA) to establish the Maternal and Child Health Services Block Grant. Section 502(a) of the SSA, as amended (42 U.S.C. 702(a)), authorizes grants and contracts for special projects of regional and national significance, for research and training projects related to maternal and child health or children with special health care needs, for genetic testing, counseling and information projects, and for comprehensive hemophilia diagnostic and treatment centers.

Regulations governing the hemophilia and genetic disease grant programs are currently found at 42 CFR Parts 51d and 51f respectively. Publication on March 5, 1986 (51 FR 7727), of final regulations for the maternal and child health program grants, codified at 42 CFR Part 51a, effectively rendered Parts 51d and 51f obsolete.

**List of Subjects in 42 CFR 51d and 51f**

Colleges and universities, Federal support programs—Health, Infants and children, Maternal and child health, Blood diseases, Genetic diseases, Health care, Health facilities.

For the reasons set out in the preamble, Title 42 of the Code of Federal Regulations is amended as follows:

**PART 51d [REMOVED]**

1. Part 51d is removed.

**PART 51f [REMOVED]**

2. Part 51f is removed.

Date: June 16, 1988.

Approved:

**Robert E. Windom,**

*Assistant Secretary for Health.*

**Otis R. Bowen,**

*Secretary.*

July 12, 1988.

[FR Doc. 88-16629 Filed 7-22-88; 8:45 am]

BILLING CODE 4160-15-M

**FEDERAL MARITIME COMMISSION**

**46 CFR Part 502**

**[Docket No. 88-10]**

**Amendment To Rules of Practice and Procedure**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission is amending § 502.92 of its Rules of Practice and Procedure which govern the filing of special docket applications by repealing the requirement for the joinder of conferences in special docket applications filed by their member lines, clarifying language regarding designation of the appropriate tariff for notice purposes, and making other changes to conform to the Shipping Act of 1984.

**EFFECTIVE DATE:** August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Room 11101, Washington, DC 20573-0001, (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** By publication in the **Federal Register** on April 14, 1988 (53 FR 12440) the Federal Maritime Commission ("FMC" or "Commission") invited comments on a "Notice of Proposed Rulemaking" ("Notice") which proposed to amend § 502.92 of Title 46 CFR by deleting the requirement for the joinder of

conferences in special docket applications filed by their members. The amendment also proposed to clarify language regarding designation of the appropriate tariff for notice purposes and to make other changes to conform to the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701–1721.

Two comments were received in response to the Notice. The Asia North America Eastbound Rate Agreement, Mediterranean North Pacific Coast Freight Conference and South Europe/U.S.A. Freight Conference filed a joint comment supporting the proposed rule without change. A joint comment was also filed by the U.S. Atlantic-North Europe Conference, North Europe-U.S. Atlantic Conference, Gulf-European Freight Assocation and North Europe-U.S. Gulf Freight Association ("hereinafter NEC").

While generally supporting the proposed rule, NEC suggests certain changes and comments. These are discussed, in turn, below:

A. NEC suggests deletion of the reference to "common carriers by water in foreign commerce" and substituting therefor, "common carriers" to encompass within the scope of the rule non-vessel operating common carriers. This suggestion has merit and will be adopted since section 8(e) of the 1984 Act, 46 U.S.C. app. 1707(e), references "common carriers" and was intended to include non-vessel operating common carriers.

B. NEC asserts that the Commission's intent to allow conferences to file on behalf of its members should be expressly set forth in the rule itself rather than only mentioned in the Supplementary Information. We see no reason to provide a specific reference for conference filings. Our intent is to place conferences in the same posture as other entities, such as tariff publishing services, practitioners, or attorneys, which also file special docket applications for their carrier clients. Specific inclusion of conferences in the rule would require an itemization of all entities which might file on behalf of carriers.

C. NEC suggests that service should be made by the filing carrier on the shipper for whose benefit the application is filed; that all pleadings, documents, etc. filed by any person in a special docket proceeding should be served on all other parties to the proceeding; that any person required to be served in a special docket proceeding, shall be a party to said proceeding and entitled to be heard pursuant to the applicable provisions of the Commission's Rules of Practice and Procedure, and be served with copies of all notices, rulings, decisions, etc., issued by the Administrative Law Judge and the Commission; and that service requirements shall also apply to a conference filing on behalf of a member.

Generally, while NEC's concerns about procedural safeguards in connection with service requirements are appropriate for adversary type proceedings, special docket applications are, by their nature, non-adversarial. In almost every instance the carrier, or its agent, files the application for the benefit of the shipper and there is full accord among the parties as to the relevant facts in the application. The fact that the 1984 Act allows shippers to file special docket applications on their own behalf, may lead to an occasional adversary proceeding where the carrier disputes the facts in the application. Indeed, this was the situation in Special Docket No. 1496, *Application of Leslie Enterprises, Inc. for the Benefit of International Trade Operations, Inc.* ("Leslie"), 24 SRR 146 (1987). In that proceeding, the presiding administrative Law Judge established procedures in order to afford each party an opportunity to meet the evidence presented by the other.

Shipper-filed special docket applications are a rarity, and the fact that a shipper files an application does not necessarily mean that the carrier will contest the facts. Given the non-adversarial nature of the great majority of special docket proceedings, there does not appear to be any necessity to expand the procedural safeguards as suggested by NEC. The basic requirement regarding service of the application is already contemplated by the existing rule and we have expanded on this by specifically requiring that the conference be served when a conference rate is involved. Similarly, the necessity of service on the carrier when the application is filed by the shipper, has been reaffirmed in the rule.

Further, special docket proceedings are relatively informal; section 502.92(c) acknowledges this by stating that "[f]ormal proceedings as described in other rules of this part need not be conducted." Imposing additional procedural requirements as NEC proposes would tend to unnecessarily formalize this type of proceeding. Where a situation arises as in *Leslie*, the presiding Administrative Law Judge can fashion appropriate procedures to ensure that each party is fully protected and a proper record developed.

D. Finally, NEC suggests that the proposed requirement regarding content and designation of the tariff notice be made applicable in situations where the Commission, upon review, issues its own decision. While it was our intention that any Commission decision requiring a new or revised tariff notice would follow the guidelines set down for the initial decision, specific language to this effect in the rule would be appropriate. We will accordingly incorporate NEC's suggested language in the final rule.

The Commission has determined that this final rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this final rule because the amendments to Part 502 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

**List of Subjects in 46 CFR Part 502**

Administrative practice and procedure.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act of 1984, 46 U.S.C. app. section 1716(a), Part 502 of Title 46, Code of Federal Regulations, is amended as follows:

**PART 502—[AMENDED]**

1. The Authority Citation for Part 502 continues to read as follows:

**Authority:** 5 U.S.C. 504, 551, 552, 553, 559; 12a U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.92 is amended by revising paragraphs (a) (1), (2), (3)(i), and (c) to read as follows:

**§ 502.92 Special docket applications and fee.**

(a)(1) A common carrier or a shipper, may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in the tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(2) When the application is filed by a carrier, the Commission must have received prior to the filing of the application a new tariff which sets forth the rate on which refund or waiver would be based.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to Subpart H of this part. When a rate published in a conference tariff is involved, the carrier or shipper must serve a copy of the application on the conference and so certify in accordance with Rule 117 (46 CFR 502.117) to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

* * * * *

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and three (3) copies to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573–0001. Each application shall be acknowledged with a reference to the assigned docket number and referred to the Office of Administrative Law Judges. The presiding Administrative Law Judge may, in his or her discretion, require the submission of additional information or oral testimony. Formal proceedings as described in other rules of this part need not be conducted. The presiding Administrative Law Judge shall issue an initial decision to which the provisions of § 502.227 shall be applicable. If the application is granted, the initial decision or, as may otherwise be applicable, the final decision of the Commission shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. [Rule 92].

*Exhibit No. 1 to Subpart F—[Amended]*

3. Exhibit No. 1 to Subpart F is amended to delete the reference to "conference" in the introductory paragraph.

4. The requirement for an "Affidavit of Carrier(s) and/or Conference" is amended by removing "and/or Conference" and the language in brackets is amended by removing everything after the word "rate."

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88–16615 Filed 7–22–88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

### Amendment of Part 0 of the Commission's Rules; Private Printing of FCC Forms

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action establishes § 0.409 of the Commission's Rules, Commission Policy on Private Printing of FCC Forms.

This action is taken by the Commission in an effort to avoid further public misinterpretation of the origin and cost liability of FCC forms printed by private companies at their own expense as a convenience to their clients or consumers.

There have been instances in which a form originally procured through the U.S. Government Printing Office (GPO), containing the GPO indicia, was privately reproduced with a marginal notation added indicating the name of a foreign country in which it was printed. This has unfortunately resulted in appearing as though the Commission, through GPO, procured these forms from a foreign source.

This section will provide the public with guidelines most preferable to the Commission for the private reproduction of FCC forms.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Terry Johnson, Office of Managing Director, (202) 634–1535.

**Federal Communications Commission**

*Order*

Adopted: June 21, 1988.

Released: July 19, 1988.

In the Matter of Amendment of Part 0 of the Commission's Rules.

1. The Commission has established a policy on private printing of blank FCC forms. This was done to provide guidelines to companies which elect to print the forms at their own expense as a convenience to their clients or consumers.

2. The Commission is creating a new rule section to codify this policy. Section 0.409 will specify the requirements and restrictions necessary to conform to the policy.

3. Authority for this action is contained in section 4(i) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is procedural in nature, the notice and comment procedure and effective date provisions of 5 U.S.C. 553 do not apply.

4. Accordingly, IT IS ORDERED, THAT Part 0 of the Rules is AMENDED in accordance with the attached appendix, effective on the date of publication in the **Federal Register.**

5. For further information on this matter contact Terry Johnson at (202) 634–1535.

Federal Communications Commission.

**Edward J. Minkel,**

*Managing Director.*

**List of Subjects in 47 CFR Part 0**

Printed publications.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement: 5 U.S.C. 552, unless otherwise noted.

**PART 0—[AMENDED]**

2. A new § 0.409 is added to read as follows:

**§ 0.409 Commission policy on private printing of FCC forms.**

The Commission has established a policy regarding the printing of blank FCC forms by private companies if they elect to do so as a matter of expediency and convenience to their clients or consumers. The policy is as follows:

(a) Blank FCC forms may be reproduced by private companies at their own expense provided the following conditions are met:

(1) Use a printing process resulting in a product that is at least comparable in quality to the original document, without

change to the page size, image size, configuration of pages, folds or perforations, and matching as closely as possible the paper weight, paper color and ink color.

(2) Delete in its entirety any and all U.S. Government Printing Office (GPO) indicia that may appear in the margin(s).

(3) If the printer wishes to identify a foreign country in which the forms are printed, a marginal notation must be added stating "No U.S. Government funds were used to print this document."

(4) Do not add to the form any other symbol, word or phrase that might be construed as personalizing the form or advertising on it.

(5) Except as specified above, do not delete from or add to any part of the form, or attach anything thereto.

(6) Assure that the form being reproduced is an edition currently acceptable by the Commission, which will endeavor to keep the public advised of revisions to its forms, but cannot assume responsibility to the extent of eliminating any element of risk against the use of obsolete forms.

(b) These guidelines do not apply to forms which respondents may wish to reproduce as completed facsimiles on automated equipment to satisfy application or report requirements. Requests for permission to submit such forms to the Commission should be addressed to the Office of Managing Director.

[FR Doc. 88-16657 Filed 7-22-88; 8:45 am]
BILLING CODE 6712-01-M

VOL 53 ISS 142 JL 25 1988 UMI

# Proposed Rules

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1079

**[Docket No. AO-295-A38; DA-88-111]**

### Milk in the Iowa Marketing Area; Rescheduling of Hearing on Proposed Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Rescheduling of public hearing on proposed rulemaking.

**SUMMARY:** The hearing on proposals to amend the Iowa milk marketing order, originally scheduled to begin on July 26, 1988, has been rescheduled to begin August 9, 1988.

**DATE:** The rescheduled hearing will convene at 9:00 a.m., local time, on August 9, 1988.

**ADDRESS:** The rescheduled hearing will be held at Jumers Castle Lodge, I–74 at Sprucehill Drive, Bettendorf, Iowa 52722 (319) 359–7141.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

A notice was issued on July 11, 1988 (53 FR 26446), giving notice of a public hearing to be held at Jumers Castle Lodge, I–74 at Sprucehill Drive, Bettendorf, Iowa 52722, beginning at 9:00 a.m., local time, on July 26, 1988, with respect to proposed amendments to the marketing agreement and order regulating the handling of milk in the Iowa marketing area.

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that the said hearing is rescheduled to be held on August 9, 1988, at the same place and time as originally scheduled (Jumers Castle Lodge, Bettendorf, Iowa, beginning at 9:00 a.m., local time).

Prior documents in the proceeding:

Notice of hearing: Issued July 11, 1988; published July 13, 1988 (53 FR 26446).

Correction to Notice of Hearing: published July 20, 1988 (53 FR 27450).

**List of Subjects in 7 CFR Part 1079**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: July 21, 1988.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 88–16836 Filed 7–22–88; 9:28 am]

BILLING CODE 3410-02-M

## Farmers Home Administration

### 7 CFR Parts 1944 and 1955

### Single Family Housing (SFH) Loan Making and Management of Inventory Property

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** Farmers Home Administration (FmHA) proposes to amend its regulations on the making of single family housing (SFH) subsequent loans and the management of SFH inventory property. This action is taken to expand and clarify the intent of the regulations. The intended effect is to make FmHA's regulations on loan making and the management of SFH inventory property clearer and responsive to the needs of the Agency and the public.

**DATE:** Comments must be submitted on or before September 23, 1988.

**ADDRESSES:** Submit written comments in *duplicate* to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written commends made pursuant to this publication will be available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This proposed rulemaking action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or effect more than one agency or to be controversial. The net result is to provide better service to rural communities.

**Background/Discussion**

On April 2, 1987 [52 FR 10577], FmHA published a proposed rule on property management and security servicing for SFH loans. Although that rulemaking action primarily addressed SFH security servicing and the disposal of inventory property, comments were received regarding the management of inventory property and in particular, suitability determinations. A suitability determination is made when FmHA acquires property into inventory and a decision must be made as to whether the property should be retained in the housing program or sold off the program. Properties suitable for retention in the program are classified as "program" (suitable) houses, and properties not suited for retention in the program are classified as nonprogram (unsuitable)

property. Program (suitable) property meets or can realistically be made to meet FmHA housing standards of decent, safe and sanitary housing which is adequate but modest in size, design and cost and can provide a very-low or low income borrower with housing.

Commentors to the aforementioned proposed rule suggested that FmHA revise and/or clarify its regulations on suitability determinations. Based upon these comments, FmHA proposes to revise the appropriate sections of Subpart B of Part 1955 to clarify the suitability determination process and repair policy. We are also proposing other minor changes to Subpart B of Part 1955. A brief summary of the proposed changes to Subpart B of Part 1955 are as follows:

1. Section 1955.55 is expanded to include a new paragraph on off-site procurements. Off-site improvements, such as roads, sewer systems, etc., are often necessary for the Agency to procure to adequately maintain and/or sell inventory property.

2. Section 1955.60 is revised to authorize repairs on inventory property subject to redemption rights of the former borrower if State law permits full recovery of the costs of improvements. This will permit the Agency to make repairs during the redemption period so that inventory properties can be sold more readily and expediently.

3. Section 1955.63 is expanded and clarified concerning how the Agency determines the suitability of housing properties. The language is clarified to provide that the costs of repairs will generally not be obtained until after a determination of suitability is made and the cost of repairs is generally not considered when making a suitability determination. Examples are also provided on properties that are classified "nonprogram."

4. Section 1955.64 is expanded to clarify the basic repair policy of SFH properties and to distinguish between the policy as it relates to program and nonprogram property. Also, where vandalism is a problem, the requirement to repair program properties before offering same for sale may be waived by the State Director.

5. Section 1955.72 is expanded to include language regarding the availability of SFH inventory property for rental by community-based organizations to shelter the homeless.

In addition, FmHA is proposing a minor revision to Subpart A of Part 1944. The revision would permit the Agency to make a subsequent loan for essential repairs when it is necessary to protect the security interests in the property and the subsequent loan would cause the total FmHA indebtedness to exceed the market value of the property. In certain cases, such as where economic conditions have caused market values to decline, a subsequent loan for essential repairs cannot be made because the debt would exceed the market value. Although the FmHA debt may not be fully secured, we believe it is prudent for FmHA to provide financial assistance to its borrowers to make essential repairs which if not made could adversely affect the security, safety and habitability of the property.

On May 23, 1988 [Part II] [53 FR 18392], FmHA published a proposed rule pursuant to the Agriculture Credit Act of 1987 which includes proposed changes to 7 CFR Part 1955. That rulemaking action primarily affects farmer program (CONACT) portions of the aforementioned Parts. This rulemaking action primarily affects housing properties and has no impact on the intent or changes in 7 CFR Part 1955 being proposed as a result of the Agricultural Credit Act of 1987.

### Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.427 Rural Rental Assistance Payments

### Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, 10.410 and 10.417 are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials. The remaining programs are subject to intergovernmental consultation with State and local officials.

### Environmental Impact Statement

This proposed rule has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-90, an Environmental Impact Statement is not required.

### Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add/remove any authorities which effect small entities.

### List of Subjects

*7 CFR Part 1944*

Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural Housing, Subsidies.

*7 CFR Part 1955*

Government acquired property, Government property management.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

## PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows;

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. In § 1944.17, paragraph (f) is added to read as follows:

**§ 1944.17 Maximum loan amounts.**

* * * * *

(f) When a subsequent loan is needed for repairs essential to protecting the Government's security interests, the total FmHA indebtedness may exceed the market value of the security by no more than the amount of the subsequent lans plus a reasonable amount for closing costs.

## PART 1955—PROPERTY MANAGEMENT

3. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart B—Management of Property

4. In § 1955.55, paragraph (e) is added to read as follows:

**§ 1955.55 Taking abandoned real or chattel property into custody and related actions.**

* * * * *

(e) *Off-site procurements.* Circumstances may require off-site

procurement action(s) to be taken by FmHA to protect custodial, security or inventory real property from damage or destruction and/or to protect the Government's investment in the property. Such procurements may include, but are not limited to construction or reconstruction of roads, sewers, drainage work or utility lines. This type work may be accomplished either through FmHA procurement or cooperative agreement. However, if FmHA is obtaining a service or product for itself only, it must be a procurement and any such actions will be in accordance with FmHA Instruction 2024–A (available in any FmHA office). Funding will come from the appropriate insurance fund.

(1) *Conditions for procurement.* Such expenditures may be made *only* when *all* of the following conditions are met:

(i) A determination is made that failure to procure work would likely result in a property loss greater than the expenditure;

(ii) There are no other feasible means (including cooperative agreements) to accomplish the same result;

(iii) The recovery of such advance(s) is not authorized by security instruments in the case of security or custodial property (no such limitation exists for inventory property);

(iv) Written documentation supporting subparagraphs (i) (ii) and (iii) has been obtained from the authorized program official;

(v) Approval has been obtained from the appropriate Assistant Administrator.

(2) *Direct procurement action.* Where direct procurement action is contemplated, an opinion must be obtained from the Regional Attorney that:

(i) FmHA has the authority to enter the off-site property to accomplish the contemplated work, or

(ii) A specific legal entity has authority to grant an easement (right-of-way) to FmHA for the contemplated work and such an easement, in a form acceptable to the Regional Attorney, has been obtained.

(3) *Cooperative agreements.* Cooperative agreements between FmHA and other entities may be made to accomplish the requirement where the principal purpose is to provide money, property, services or items of value to state or local governments or other recipients to accomplish a public purpose. Exhibit A of this subpart (available in any FmHA office) is an example of a typical cooperative agreement. A USDA handbook providing detailed guidance for all parties is available from the USDA—Office of Operations and Finance. Although cooperative agreements are not a contracting action, the authority, responsibility and administration of these agreements will be handled consistent with contracting actions.

(4) *Consideration of maintenance requirements.* Maintenance requirements must be considered in evaluating the economic benefits of off-site procurements. Where feasible, arrangements or agreements should be made with state, local government or other entities to ensure continued maintenance by dedication or acceptance, letter agreements, or other applicable device.

5. Sections 1955.60 and 1955.61 are revised to read as follows:

**§ 1955.60 Inventory property subject to redemption by the borrower.**

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. Routine care and maintenance will be provided according to § 1955.64 of this subpart to preserve and protect the property. Repairs are limited to those essential to prevent further deterioration of the property or remove a health or safety hazard to the community in accordance with § 1955.64(a) of this subpart unless State law permits full recovery of costs of repairs in which case usual policy on repairs is applicable.

**§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.**

Advice and assistance will be obtained from OGC where eviction from realty or dispossession of chattel property is necessary. Where State law permits and *OGC has given written authorization,* eviction may be effected through State courts rather than Federal courts when the former borrower is involved or through local courts instead of Federal courts when the party occupying/possessing the FmHA property is not the former borrower. In those cases, a State Supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice form OGC.

6. In § 1955.63, paragraph (c) is revised to read as follows:

**§ 1955.63 Suitability determination.**

* * * * *

(c) *Housing property.* Property which secured housing loans will be classified as "program" or "nonprogram (NP)." After a determination of whether the property is suited for retention in the respective program, the repair policy outlined in § 1955.64(a) of this subpart will be followed. In determining whether a property is suited for retention in the program, items such as size, design, possible health and/or safety hazards and obsolescence due to functional, economic, or locational conditions must be carefully considered. Generally, program property will meet, or can be realistically repaired to meet, the standards for existing housing outlined in Subpart A of Part 1944 of this chapter except the requirements relating to size and/or design features will not be considered provided the property is typical of modest homes in the area. The cost of repairs will generally not be considered in determining suitability. Since houses, sites and location vary widely throughout the country, discretion and sound judgment must be used in determining suitability. The majority of houses FmHA acquires will be suited for retention and classified as "program" property. In some instances, property will not be suited for retention in the program and will be classified as "nonprogram (NP)" property. Situations of this type include, but are not limited to:

(1) A dwelling which has been enlarged or improved to the point where it is clearly above modest in size, design and/or cost.

(2) When a determination is made that the property should not have been financed originally.

(3) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by FmHA but which does not conform to current policies. This includes older and/or larger houses of a type which have been proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(4) A dwelling which is obsolete due to location, design, construction or age.

(5) A dwelling which requires major redesign/renovation to be brought to program standards.

* * * * *

7. In § 1955.64, the introductory text and paragraphs (a) introductory text and (a)(1) are revised, paragraphs (b) and (c) are combined and revised as paragraph (b) to read as follows:

**§ 1955.64 Securing, maintaining, and repairing inventory property.**

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE" (with Equal Housing Opportunity logo and telephone number of the appropriate contact person) or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of the inventory property is preserved. If real property (exclusive of improvements) is unsafe, refer to § 1955.137(e) of Subpart C of this Part for further guidance. Substantial improvement or repair to property located in a flood or mudslide hazard area is subject to the limitation outlined in Exhibit C, Paragraph 3b(1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policy.* After a determination of suitability is made, repairs will be accomplished in accordance with the following provisions. Properties that are listed or are eligible for listing on the National Historic Register of Historic Places, in whole or in part, will be repaired as necessary to protect their historic integrity after consultation with the State Historic Preservation Officer and the advisory Council on Historic Preservation regarding any repairs. Also, if any property presents a health or safety hazard, except SFH or MFH properties sold with "Decent, Safe and Sanitary" (DSS) clauses, necessary steps will be taken to remove the hazard, and if necessary, after seeking advice from appropriate agencies having related expertise or jurisdiction.

(1) *SFH.*—(i) *Program property.* Program property will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest time possible. Attention should be given to the interior and exterior of the structure(s), landscaping, driveways, walks, and other site improvements which will enhance marketability. Exceptions to this policy are only authorized when a prospective program purchaser has indicated a willingness to purchase a specific program property "as-is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale. In areas where severe vandalism is prevalent, the State Director is authorized to waive the repair policy in specific locations when the County Supervisor requests a waiver based upon documentation to support the request. In these cases a subsequent loan for the cost of repairs may be made in conjunction with the credit sale. A "Neighborhood Watch" program or similar effort should be considered to reduce vandalism.

(ii) *Nonprogram (NP) property.* NP property should be cleaned, free of trash (dwelling and lot), and made presentable to enhance marketability. Repairs will generally not be made unless they increase the "as-is" market value by at least the cost of repairs. NP property which does not meet "Decent, Safe and Sanitary" (DSS) standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter will be repaired to meet these standards when economically feasible.

* * * * *

(b) *Authority.* Program and contracting authority are contained in FmHA Instruction 2024–A (available in any FmHA office.)

8. In § 1955.66, paragraphs (a)(2)(i) and (d)(2) are revised, the title of paragraph (e) is revised, and an additional sentence is added to the end of paragraph (e) to read as follows:

**§ 1955.66 Lease of real property.**

* * * * *

(a) * * *

(2) * * *

(i) *SFH.* SFH inventory will generally *not* be leased; however, if unusual circumstances indicate leasing may be prudent, the County Supervisor is authorized to approve the lease.

* * * * *

(d) * * *

(2) *SFH property.* The lease amount will be the market rent unless the lessee is a potential program applicant, in which case the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of the price of the house and income of the lessee, plus ½ of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

* * * * *

(e) *Property containing wetlands or located in a flood or mudslide area.* * * * Property containing floodplains and wetlands will be leased subject to the same use restrictions as contained in § 1955.137(a)(1) of Subpart C of Part 1955 of this chapter.

* * * * *

9. § 1955.72 is revised to read as follows:

**§ 1955.72 Utilization of inventory housing by Federal Emergency Management Agency (FEMA) or under a Memorandum of Understanding Between FmHA and the Department of Health and Human Services (HHS) for the Homeless.**

(a) *FEMA.* By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit B of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

(b) *HHS.* By a Memorandum of Understanding between FmHA and HHS, inventory housing property not under lease or sales agreement may be made available by lease to community based organizations to shelter the homeless. See Exhibit C of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

Copies of all executed leases and/or questions regarding this program should be referred by State Offices to the Single Family Housing Servicing and Property Management Division in the National Office.

Dated: June 23, 1988.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 88–16417 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–07–M

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## Food Safety and Inspection Service

**9 CFR Part 327**

**[Docket No. 88–006P]**

## Restoration of Mexico to the List of Countries Eligible To Import Meat Products Into the United States

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** On February 8, 1988, the Food Safety and Inspection Service (FSIS) published a "confirmation of interim rules" (51 FR 4585). This regulation

confirmed the removal of Mexico from the list of countries eligible to import meat products into the United States. Such action was necessary because Mexico had failed to implement satisfactory residue testing and species verification programs, resulting in its no longer meeting the provisions of the Federal Meat Inspection Act. The country of Mexico has now corrected the deficiencies in its inspection system and FSIS is, therefore, proposing to relist it as eligible to import cattle, sheep, swine, and goat products into the United States.

**DATE:** Comments must be received on or before September 20, 1988.

**ADDRESS:** Written comments to Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7610.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposal would restore Mexico as a country from which meat products are eligible to be imported into the United States. It is estimated that approximately 2.5 million pounds of meat products will be imported annually. This amount represents only about .03 percent of domestic production, based on fiscal year 1987 data.

**Effect on Small Entities**

The Administrator has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354, because the amount of product estimated to be imported represents only .03 percent of domestic production (based on fiscal year 1987 data). Because the demand for boneless beef for domestic use exceeds the domestic supply, no affect on those domestic producers of boneless beef is anticipated.

**Comments**

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office. Please include the docket number which appears in the heading of this document. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

**Background**

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service (FSIS) the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat products appear in Part 327 of the Federal meat inspection regulations (9 CFR Part 327). In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat products into the United States may become eligible to do so.

The Agriculture and Food Act of 1981 (Farm Bill) amended Section 20 of the FMIA (21 U.S.C. 620) to clarify that imported meat products must meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. It directed the Secretary to enforce the Farm Bill through random inspections of imported product at ports of entry for residues and species verification and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses for residues at points of slaughter in accordance with methods approved by the Secretary. Regulations implementing the Farm Bill requirements were published in the **Federal Register** on February 10, 1983 (48 FR 6091). All countries eligible to import product into the United States were notified of these regulations.

Residue testing information is collected from exporting countries on an annual basis by the Department. Using this and additional information collected during regular reviews of the meat inspection systems of exporting countries, notice was given in July 1983 as to specific deficiencies in residue and species verification programs in each exporting country, informing them that all corrections must be made by January 1, 1984. A review of laboratory facilities, equipment, and methodology was made during December 1983 to determine the compliance of exporting countries with the residue and species verification requirements.

For a country's inspection system to be considered "at least equal to" that of the United States, that country had to have provided for testing of appropriate tissues (fat, kidney, muscle and/or liver) for chlorinated hydrocarbons, organophosphates, polychlorinated biphenyls (PCB's), trace metals, antibiotics, and hormones, if applicable, using a method approved by the Secretary. In addition, countries had to conduct an approved species verification program. Since that time, additional testing requirements have been added for sulfa drugs and chloramphenicol.

The Administrator has authority to withdraw the eligibility for a foreign country to import meat products into the United States, under § 327.2(a)(4) (9 CFR 327.2(a)(4)), whenever the Administrator determines that the system of meat inspection maintained by such foreign country does not assure compliance with requirements "at least equal to" all the inspection, building construction standards, and other requirements of the FMIA and the regulations as applied to official establishments in the United States.

Amendments to § 327.2 (b) and (c) of the Federal meat inspection regulations (9 CFR 327.2 (b) and (c)) were published in the **Federal Register** on February 15, 1984, withdrawing the eligibility of Mexico to export meat products to the United States. Mexico lost its eligibility because no testing was being performed for chlorinated hydrocarbons, organophosphates, PCB's, or trace metals, hormones and antibiotics; and no approved species verification program was being conducted. At that time, it was stated that when the Administrator of FSIS is satisfied that the meat inspection officials of Mexico have corrected the deficiencies in their residue testing and species verification programs, and that the inspection system meets all of the provisions of the FMIA and the regulations promulgated thereunder, Mexico may again be added to the list of countries eligible for

importation of cattle, sheep, swine, and goat products into the United States.

Because a considerable amount of time transpired before Mexico corrected the deficiencies in its residue testing and species verification programs, it was necessary for Mexico to provide current information that its inspection system meets all of the provisions of the FMIA and, therefore, could be considered as eligible to import meat products into the United States.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by FSIS personnel. This evaluation consists of two processes—a document review and on-site reviews of the inspection system operations. The eligibility process begins when the foreign country provides FSIS with complete information about its inspection system. FSIS assists the country in organizing this material by providing questionnaires in five risk areas: contamination, disease, processing, residues, and compliance/economic fraud. FSIS then evaluates the information to assure that the critical points in each of the risk areas are being addressed satisfactorily with respect to standards, activities, resources and enforcement. This process usually involves several exchanges of information. In many cases, the country seeking recognition must revise its regulations, or publish special directives to achieve equivalency with U.S. requirements.

If the document review proves to be satisfactory, on-site reviews are scheduled using a multidisciplinary team to evaluate all aspects of the country's program. When all requirements of the FMIA are satisfied, the country is considered eligible to import meat products into the United States.

**Document Review**

As part of the document review process, a country's laws are evaluated to assure, among other things, that they provide for inspection and certification of the wholesomeness of product intended for export to the United States; that there are adequate controls over ineligible product to prevent its export; and that the country has adequate controls to prevent persons convicted of wrongdoing (i.e., (1) more than one conviction of any law, other than a felony, based upon the acquiring, handling or distributing of unwholesome, mislabeled or deceptively packaged food or upon fraud in connection with transactions in food, or (2) any felony) from being connected with a firm exporting product to the United States.

A country's legal authority and the regulations thereunder must impose requirements "at least equal to" those of the United States with respect to, among other things, the following areas: (1) Ante-mortem inspection of animals and post-mortem inspection of animal carcasses; (2) official control by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities and product preparation by competent, qualified inspection personnel employed, supervised and paid by the country's central government; (4) separation of operations in certified plants from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified plants; (6) official controls over condemned product; (7) reinspection of boneless meat; and (8) control over chemical and drug residues in meat and/or poultry products prepared for export to the United States.

**On-site Reviews**

The second process in assessing a country's equal to status, performed after the document review has provided to be satisfactory, is on-site reviews of aspects of the system including laboratories and individual plants within the country. On-site reviews are designed to further explore areas determined to require more detailed evaluation and are also undertaken to allow the FSIS review team to observe the system in its daily operations.

**Mexico—Review Results**

At the request of Mexico, FSIS personnel recently completed a review of Mexico's meat inspection system. Through the interchange of questions, answers and documentation over a period of several months, FSIS personnel have determined that the laws and regulations concerning the meat inspection system of Mexico can be judged to be equivalent to those of the United States. The document review phase also revealed that the following areas needed more detailed evaluation and would be scrutinized during the on-site reviews. These areas included methods for compliance and prevention of economic fraud, and the adequacy of programs designed to test for residues.

During May 1987, an FSIS review team visited five meat plants and Mexico's residue-testing laboratory. After observing the facilities and holding discussions with various plant, laboratory and inspection personnel, the FSIS review team concluded that the Mexican meat inspection program meets the basic minimum requirements for an "at least equal to" determination. However, the team did note two areas where improvements were needed. These areas were (1) control programs comprising the compliance/economic fraud risk area, and (2) some aspects of the residue control programs. FSIS has since received confirmation and documentation from the Mexican Ministry of Agriculture that the necessary improvements in these areas have been made.

After reviewing all of the documents submitted by Mexico and evaluating the findings of the on-site reviews and the subsequent written assurances of government officials, FSIS believes that the meat inspection system of Mexico is adequate to assure, with respect to establishments within Mexico preparing product for export to the United States, compliance with requirements "at least equal to" those applicable to official establishments within the United States which prepare meat products, and that reliance can be placed upon certificates required under the FMIA from authorities of Mexico.

Accordingly, FSIS is proposing to amend § 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) to restore Mexico to the list of countries from which meat products may be eligible for importation into the United States.

Although a foreign country may be listed as approved for importation of meat products, the meat products of such foreign country must also comply with other Federal laws including restrictions under Title 9 of the Code of Federal Regulations, Part 94, the Animal and Plant Health Inspection Services' regulations (9 CFR Part 94), relating to the importation of meat products from foreign countries into the United States.

**List of Subjects in 9 CFR Part 327**

Imported products, Meat inspection.

**The Proposal**

**PART 327—[AMENDED]**

1. The authority citation for Part 327 would continue to read as follows:

**Authority:** 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

**§ 327.2 [Amended]**

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) would be amended by adding alphabetically "Mexico" to the list of countries eligible to import cattle, sheep, swine and goat products into the United States.

Done at Washington, DC, on July 6, 1988.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 88-16633 Filed 7-22-88; 8:45 am]

BILLING CODE 3410-DM-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 88-NM-83-AD]**

## Airworthiness Directives: Airbus Industrie Model A300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which currently requires inspection of the shims at the flap track/beam No. 2 attachment, for damage and replacement of the bolts. That action was prompted by reports of loose bolts found in this structure which could result in bolt failure. This action would require repetitive visual inspections of bolts in the aft attachment of flap track beams 2 to 6 until installation of new steel bolts, washers, and wirelocked nuts. This action is prompted by reports of damaged nut and bolt threads being found on routine inspection of the flap beam aft attachments. This condition, if not corrected, could lead to possible rupture of the bolts located at the aft attachment of the flap beams and the wings.

**DATES:** Comments must be received no later than September 18, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-83-AD, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Regiona, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-83-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### *Discussion*

On May 25, 1985, FAA issued AD 85-09-06, Amendment 39-5052 (50 FR 18856; May 3, 1985), applicable to Model A-300 series airplanes, that requires inspection of the shims at the flap track/beams No. 2 rear attachment for damage, and replacement of the four titanium bolts with steel bolts. That action was prompted by reports of loose bolts found in this structure which could result in bolt failure. This condition, if not corrected, could result in flap asymmetray and create a hazardous flight condition.

Since the issuance of that AD, the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Airbus Industrie A300 series airplanes. There have been numerous reports of damaged nut and bolt threads found during routine inspection of the flap beam aft attachments. The damaged parts have resulted in the loss of tension in the aft attachment of flap beams 2, 3, 4, 5, and 6. This condition, if not corrected, could lead to damage to the flat track beams, its associted drive components, and the aileron.

In light of this, the FAA has determined that the requirements of the existing AD are apparently inadequate in detecting and correcting damage to the flap track/beam attachment.

Airbus Industrie has issued Service Bulletin A300-57-150, Revision 1, dated September 10, 1987, which describes procedures for close visual inspection of flap beams 2, 3, 4, 5, and 6 aft attachments. Airbus Industrie has also issued Service Bulletin A300-57-145, Revision 3, dated February 10, 1988, which describes modification of the aft attachment of the flap track by installation of new steel bolts with a sealant. Inspection of this modification, would terminate the need for the repetitive visual inspection described above. The DGAC has classified both service bulletins as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of the model registered in the United States, and AD is proposed that would supersede AD 85-09-06 to require repetitive inspections of flap track beams 2 to 6, and installation of new parts, in accordance with the service bulletins previously mentioned.

It is estimated that 52 airplanes of U.S. registry would be affected by this AD. It would take approximately 26 manhours per airplane to accomplish the visual inspection, and 52 manhours to accomplish the modification. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $54,080 for the visual inspections and $108,160 for the modification.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the

preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 85–09–06, Amendment 39–5052 (50 FR 18856; May 3, 1985), with the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 series airplanes, as listed in Airbus Service Bulletins A300–57–150, Revision 1, dated September 18, 1987, and A300–57–145, Revision 3, dated February 10, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of tension in the aft attachment of flap beams 2 to 6, accomplish the following:

A. Within the next 350 landings after the effective date of this AD, perform a detailed visual inspection of flap beams Nos. 2, 3, 4, 5, and 6 aft attachment on both wings for damage. Repeat this inspection within the next 700 landings after the effective date of this AD. If damaged parts are found, replace in accordance with Service Bulletin A300–57–150, Revision 1, dated Spetember 18, 1987, or in accordance with Service Bulletin A300–57–145 Revision 3, dated February 10, 1988.

B. Within 700 landings after the effective date of this AD, replace bolts on flap beam No. 2 with ⅜-inch diameter bolts (Pre-mod 3553), in accordance with Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

C. Within 1,000 landings from the effective date of this AD, replace bolts on flap beams Nos. 2, 3, 4, 5, and 6 with 7/16-inch diameter bolts (Post-mod 3553), in accordance with Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

D. Replacement of the flap beam bolts in accordance with Airbus Service Bulletin A300–57–145, Revision 3, dated February 10, 1988, constitutes terminating action for the inspections required by paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC., on July 20, 1988.

**Thomas E. McSweeny,**

*Acting Director, Office of Airworthiness.*

[FR Doc. 88–16691 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 88–AGL–12]**

## Proposed Control Zone Establishment and Transition Area Alteration; Wilmington, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a control zone area and alter the existing transition area airspace near Wilmington, OH. Airborne Express has requested the control zone due to increasing numbers of Visual Flight Rule (VFR) flights in the vicinity of Airborne Airpark Airport, during marginal and below VFR weather and while their air traffic operations are at peak activity. The Wilmington, OH, transition area is being altered to accommodate existing Standard Instrument Approach Procedures (STAPs) at Airborne Airpark Airport, Wilmington, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**DATES:** Comments must be received on or before August 26, 1988.

**ADDRESS:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 88–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AGL–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed

in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

**The Proposal**

The FAA is considering amendments to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone area and modify the existing transition area airspace near Wilmington, OH, respectively.

Airborne Express has requested this control zone due to the increasing number of VFR flights in the vicinity of Airborne Airpark Airport, Wilmington, OH, during marginal and below VFR weather and while their air traffic operations are at peak activity. The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a five statute mile radius of the geographic center of Airborne Airpark Airport and with a 4.25 statute miles each side of the 040 Midwest VOR radial, extending from the five mile radius to 8.5 statute miles northeast of the airport; and within 4.25 statute miles each side of the 214 Midwest VOR radial, extending from the five mile radius to 8.5 statute miles southwest of the airport. The control zone would be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory.

The present transition area is being modified to accommodate existing SIAPs to Airborne Airpark Airport. The modification consists of reducing the 10 mile radius to an 8.5 mile radius and adding an extension from the radius to 13 miles northeast of the airport. The width of the extension includes 5.25 miles each side of the Midwest VOR 040 radial.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the areas in order to comply with applicable visual flight rule requirements.

Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were published in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Wilmington, OH [New]**

Within a 5 mile radius of Airborne Airpark Airport, Wilmington, OH, (lat. 39°25'46" N., long. 83°47'58" W.); and within 4.25 miles each side of the 040 Midwest VOR radial, extending from the 5 mile radius area to 8.5 miles northeast of the Airborne Airpark Airport; and within 4.25 miles each side of the 214 Midwest VOR radial, extending from the 5 mile radius area to 8.5 miles southwest of the Airborne Airpark Airport. This control zone is effective during specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

**Wilmington, OH [Revised]**

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Airborne Airpark Airport, Wilmington, OH, (lat. 39°25'46" N., long. 83°47'58" W.); and within 5.25 miles each side of the 040 Midwest VOR radial, extending from the 8.5 mile radius to 13 miles northeast of Airborne Airpark Airport.

Issued in Des Plaines, Illinois, on July 8, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88–16696 Filed 7–22–88; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[Docket No. 9040]**

### The Kroger Co.; Prohibited Trade Practices

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of period for public comment on petition to reopen and set aside the order.

**SUMMARY:** The Kroger Company, respondent in the order in Docket No. 9040, has petitioned the Federal Trade Commission to set aside a 1977 consent order concerning the unavailability of advertised grocery products.

**DATE:** Deadline for filing comments in this matter is August 12, 1988.

**ADDRESS:** Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to the Public Reference Branch, Room 130.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. McDonald, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2971.

**SUPPLEMENTARY INFORMATION:** The order against The Kroger Company in Docket No. 9040 was published at 42 FR 62912 on December 14, 1977. The

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petitioner, the Kroger Company, operates a chain of retail food stores. The order prohibits the Kroger Company from failing to have each advertised sale item readily available for sale; from failing to price each advertised sale time at or below the advertised price; and from failing to sell each advertised sale item at or below the advertised price. The petition to set aside was placed on the public record on July 1, 1988.

**List of Subjects in 16 CFR Part 13**

Food stores, Trade practices.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-16626 Filed 7-22-88; 8:45 am]

BILLING CODE 6750-01-M

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Parts 239 and 274**

**[Rel. Nos. 33-6787; IC-16482; File No. S7-13-88]**

## Consolidated Disclosure of Variable Annuity Separate Account Expenses

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposal of form amendments.

**SUMMARY:** The Commission is proposing for comment revisions to the registration forms used by insurance company separate accounts issuing variable annuity contracts under the Investment Company Act of 1940 and the Securities Act of 1933. The proposed amendments would consolidate the expense data in a tabular presentation near the front of the prospectus. The Commission is proposing these amendments to improve the quality of expense disclosure in variable annuity prospectuses.

**DATE:** Comments on the proposed amendments should be received on or before September 22, 1988.

**ADDRESSES:** Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-13-88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Plaze, Special Counsel, or John McGuire, Attorney, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today is publishing for comment proposed revisions to Forms N-3 and N-4 (17 CFR 274.11b and 274.11c), the registration forms under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "1940 Act") and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "1933 Act"( for insurance company separate accounts that issue variable annuity contracts. Under the proposal ("Proposal"), a tabular presentation of expenses ("fee table") would be set out as part of the synopsis at the beginning of the prospectus. In addition, the Commission is proposing amendments to Form N-1A (17 CFR 274.11A) that would eliminate the fee table requirement for management investment companies offering shares exclusively to separate accounts.

**Discussion**

*1. Background*

On January 28, 1988, the Commission adopted revisions to Form N-1A, the registration form for open-end management investment companies ("mutual funds"), to require inclusion of a fee table in the front part of the prospectus.[1] In the adopting release ("Release 16244") the Commission announced that it would propose amendments to Forms N-3 and N-4 to provide for a similar fee table in variable annuity prospectuses.[2] The Commission is now proposing form amendments that would require inclusion of a fee table in variable annuity prospectuses to improve the quality of expense disclosure in variable annuity prospectuses and permit investors to compare the expense levels among different separate accounts.

*2. The Fee Table*

Insurance company separate accounts that offer variable annuity contracts are organized as either management investment companies, which file registration statements on Form N-3 ("management accounts"), or unit investment trusts, which are funded by management companies ("portfolio companies") and file registration statements on Form N-4 ("trust accounts").[3] Under the Proposal these separate accounts would present a fee table in their prospectuses that would not differ significantly from the table used by mutual funds ("N-1A fee table").

a. Form N-3 Fee Table

The proposed fee table for management account prospectuses ("N-3 fee table") would consist of four parts. The first part would list the contractowner transaction expenses such as sales loads and exchange fees. The second part would list any recurring contractowner account or contract fees. The third part would set out the separate account's management fees, risk fees, and operating expenses. The fourth part (the "Example") would provide an example of the cumulative amount of these fees and expenses over various investment periods.

The proposed N-3 fee table differs from the N-1A fee table in five substantive respects. First, the caption "Rule 12b-1 Expenses" is replaced by the caption "Mortality and Expense Risk Fees" to reflect a fee commonly charged by separate accounts issuing variable annuities.[4] Second, unlike the N-1A fee table, the N-3 fee table would permit disclosure of variations in sales load deducted from payments ("front-end load"). Release 16244 explained that scheduled variations of front-end load were not permitted to be listed in the N-1A fee table because, since the variations generally only apply to very large purchases of shares, inclusion of the schedule would tend to complicate the table with information of limited value to most investors (and already contained in the text of the prospectus).[5] However, the Commission has not drawn such a conclusion with respect to variable annuity contracts because of differences in the market for these contracts,[6] the greater freedom of

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[1] Investment Company Act Rel. No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)). The fee table was proposed in Investment Company Act Rel. No. 14230 (Nov. 9, 1984) (49 FR 45171 (Nov. 15, 1984)) and reproposed in Investment Company Act Rel. No. 15932 (Aug. 18, 1987) (52 FR 32018 (Aug. 25, 1987)).

[2] *Id.* at note 23.

[3] The term "separate account" is defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37)). The term "variable annuity contract" is defined in rule 0-1(e)(1) under the 1940 Act (17 CFR 270.0-1(e)(1)).

[4] For a discussion of mortality and expense risk charges, *see* Investment Company Act Rel. Nos. 14190 (Oct. 11, 1984) (49 FR 48079 (Oct. 18, 1984) at note 8 (proposing rule 26a-3), and 15586 (Feb. 28, 1987) (52 FR 7166 (Mar. 9, 1987)) (reproposing rule 26a-3). If the amounts of these expenses are identified separately in the prospectus, the instructions to the fee table permit them to be listed separately. *See* proposed instruction 14 to Item 3 (a) of Form N-3 and instruction 13 to Item 3(a) of Form N-4. If distribution expenses are deducted pursuant to a plan adopted under rule 12b-1 (17 CFR 270.012b-1), they would be reflected in "Other Expenses" under the proposed amendments. *But see* Investment Company Act Rel. No. 15586.

[5] Release 16244 at note 8 and accompanying text.

[6] Annuity contracts are often made available in connection with tax-advantaged pension plans by employers able to negotiate reduced loads for their employees.

separate accounts to negotiate sales loads,[7] and the greater frequency of large purchases qualifying for reduced loads (especially in connection with single premium deferred annuities). Third, the instructions to the Example have been modified to permit a separate account (or a sub-account) that is amortizing organizational expenses to adjust the expense figures shown in the table to reflect the completion of amortization.[8]

Fourth, the Commission is proposing a new method of presenting contract or account fees in the table. Under the proposed method a Registrant would simply state the amount of the fee in a separate section of the table entitled "Annual Contract Fee."[9]

To reflect the contract fee in the Example, the Commission is proposing an instruction which would require the account to multiply the annual fee by the total number of contractowners who have allocated amounts to the sub-account during the year.[10] The resulting amount would then be divided by the average net assets of the sub-account and added to "Annual Expenses." This method assumes that each investor in a sub-account pays a full account fee, a portion of which is deducted on a daily basis.[11] Comment is requested on this method and the assumptions that underlie the method.[12] The Commission invites comment on alternative methods of reflecting and allocating account fees.

Finally, the Commission requests comment on whether the Example in the fee table should include a line of information illustrating the annual return the separate account must obtain to preserve the value of a contractowner's initial investment. While the N–1A fee table Example effectively illustrates the amount of expenses an investor might expect to incur, it does not illustrate these expenses in the context of fund performance. Therefore, the Commission is considering adding another line to the Example in variable annuity prospectuses that will demonstrate the amount of return necessary to overcome separate account expenses and that these expenses will reduce the return of the portfolio.[13] The Commission is considering proposing a similar amendment to Form N–1A for mutual funds. Comment is requested whether such an amendment is likewise advisable.[14]

Comment is requested as to whether any further differences from the N–1A table are warranted due to the unique characteristics of variable annuity separate accounts. For example, the Example assumes that the annuity contract is held only during the accumulation period and that redemption is effected by surrender of the contract. Comment is invited on whether a third line should be added to the Example assuming annuitization at the end of the one, three, five, and ten year periods that would be applicable to separate accounts charging fees upon annuitization that are different from those charged upon surrender.

b. *Form N–4 Fee Table*

The fee table proposed to be included in trust account prospectuses ("N–4 fee table") is similar to the N–3 fee table. The section captioned "Annual Expenses," however, is divided into two parts, one listing annual expenses deducted from separate account assets and another listing annual portfolio company expenses. This approach has the advantage of permitting the separate account to segregate its expenses from those of the portfolio company, but the disadvantage of creating a fee table that is somewhat different in appearance from that of mutual funds and management accounts, which may result in reduced comparability. Comment is invited on whether the "Annual Expenses" portion of the N–4 fee table should be bifurcated as proposed.

As described above, expenses of the portfolio company are required to be reflected in the trust account fee table to provide a complete, unfragmented depiction of expenses likely to be incurred by the contractowner. While consistent with the Commission's approach of generally treating trust accounts and management accounts on the same basis,[15] this approach would require the trust account to disclose expense information and, in some cases, make estimates about portfolio company expenses. Accordingly, the trust account would assume prospectus liability with respect to such information. Comment is requested as to whether this will raise significant concerns for trust accounts and whether, alternatively, separate fee tables should be required in both trust account prospectuses and portfolio company prospectuses.[16]

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[7] *Compare* rule 22d–2 under the 1940 Act (17 CFR 270.22d–2) with rule 22d–1 (17 CFR 270.22d–1).

[8] The instructions to the example require that the percentage amount listed under "Total Annual Expenses" be extrapolated into the future in computing the Example. *See* proposed instruction 19(a) to Item 3(a) of Form N–3 and proposed instruction 21(a) to Form N–4. This adjustment exception would permit the amount extrapolated to be reduced to the extent the completion of amortization would be expected to reduce the percentage amount listed under "Total Annual Expenses" in the year amortization has ended. The Commission would not object if mutual funds, filing on Form N–1A, similarly adjusted the Example included in their prospectuses.

[9] The N–1A fee table requires that an annual account fee be expressed as a percentage of average account value and disclosed under the "Other Expenses" portion of the Annual Fund Operating Expenses. Only contract, account, or similar fees deducted from all contractowners accounts on some recurring basis must be reflected on this line in the table. *See* proposed instruction 12 to Item 3(a) of Form N–3 and instruction 7 to Item 3(a) of Form N–4. Under this instruction, the fee must be freely avoidable by all contractowners for the fee to be excluded, that is, the inapplicability of the fee to some contractowners, *e.g.*, insurance company employees, is insufficient to exclude the fee. *See* Investment Company Act Rel. No. 15932. Contract fees payable in connection with a transaction should be included in the first section of the table entitled "Contractowners Transaction Expenses." *See* proposed instruction 11 to Item 3(a) of Form N–3 and Instruction 12 to Item 3(a) of Form N–4.

[10] *See* proposed instruction 19(e) to Item 3 of Form N–3 and instruction 21(e) to Item 3 of Form N–4.

[11] The method uses the total number of contractowners who have allocated amounts to the sub-account during the year because ordinarily a full contract fee would be deducted regardless of the length of the period a contractowner owned a variable annuity contract. The assumption that each investor in a sub-account pays a contract fee has been proposed instead of allocating the total amount of contract fees collected among the sub-accounts because the latter method assumes that all contractowners allocated their contract value among all sub-accounts. This would tend to understate the amount of contract fees, especially for separate accounts having a large number of sub-accounts. Finally, the daily deduction assumption reflects the common practice of deducting the fee on the anniversary date of a contractowner's investment. Since a large pool of contractowners would likely have anniversary dates on each day, this assumption appears warranted. Staff Guidelines 32 to Form N–3 and 6 to Form N–4 currently recommend a different approach for reflecting account fees in performance data. If the Commission adopts the proposed method for purposes of the fee table, these staff guidelines would be withdrawn, and the Commission would consider adopting an identical methodology for purposes of calculating performance. Comment is requested on the utility of the proposed method of reflecting account fees in performance.

[12] In a informal question and answer piece for a conference, the staff of the Division of Investment Management suggested a method for allocating an account fee on mutual funds among several series. The Division is withdrawing this informal advice because it believes the method proposed today by the Commission is the better approach.

[13] If the separate account charges a deferred sales load a fourth line, assuming no surrender, would also be required.

[14] The Commission is publishing a proposed staff guideline on preparing the Example. Comments received on the guideline will be considered in developing the final guideline.

[15] Investment Company Act Rel. No. 15651 (Mar. 30, 1987) (52 FR 11187 (April 8, 1987)) at Section A. 4 (adopting rule 6e–3 (T) (17 CFR 270.6e–3(T)) on a temporary basis).

[16] One possible approach a trust account might take to limit its exposure to liability is to provide for

Continued

*3. Portfolio Companies*

The portfolio companies underlying variable annuity trust accounts have separate registration obligations under the 1940 and 1933 Acts and register on Form N–1A. Item 2 (a)(ii) of Form N–1A permits such a company to omit the fee table from its prospectus if the variable annuity trust account prospectus contains a table of expenses similar to the table required by Form N–1A. Since all variable annuity trust account prospectuses will contain a fee table if these amendments to Form N–4 are adopted, the Commission proposes to amend Item 2(a)(ii) to eliminate any requirement that a portfolio company prospectus contain a fee table.

Item 2(a)(ii) of Form N–1A also permits portfolio companies of variable life insurance separate accounts to omit the fee table from their prospectuses. In adopting this provision the Commission explained that variable life insurance separate account prospectuses contain tables of hypothetical account values that serve similar purposes as the fee table.[17] These tables illustrate contract cash values and death benefits over time assuming various growth rates and different characteristics of contractowners relevant to the cost of insurance coverage. They do not, however, illustrate the effects of different portfolio company expenses, because the expenses illustrated are the average of expenses among the portfolio companies. The differences among the expenses of the portfolio companies may be small relative to the insurance-related expenses reflected in the contract value tables and therefore may not be material to the investment decision between contracts offered by different insurance companies. However, they may be material as to the selection of investment alternatives within a single contract. This suggests the desirability of a portfolio company fee table, in which case prominent disclosure would be made that the portfolio company fee table does not reflect separate account expenses. On the other hand, the inclusion of a fee table in the prospectus of a portfolio company offering shares to both variable life insurance and variable annuity separate accounts may confuse variable annuity contractowners because the portfolio company's fees are set out twice, once in each prospectus. Comment is invited as to whether underlying fund prospectuses of variable life insurance separate accounts should contain a fee table, and whether appropriate disclosure could reduce any confusion.

*4. Narrative Prospectus Disclosure*

The Commission is also proposing to amend Item 7 of Form N–3 and Item 6 of Form N–4, which describe the required disclosure of separate accounts expenses, to eliminate disclosure that would be repetitive of information contained in the fee table. In addition, the Commission is proposing amendments to the General Instructions to Forms N–3 and N–4 to omit the requirement that all of the information required by Items 7 and 6 be located in one place in the prospectus.[18]

*5. Cost/Benefit Analysis*

The Commission believes that the changes proposed today would significantly improve the quality of prospectus disclosure without adding appreciably to the cost or burden of the disclosure. Investors would be able to determine quickly and easily the costs associated with an investment and thus would be able to make more informed investment decisions. Separate accounts would only be required to disclose information that is already available to them and, in some cases, already in the prospectus. To minimize burdens, the Commission proposes to permit separate accounts to delay amending their registration statements until they file their next post-effective amendments. The Commission invites comments on its assessment of the costs and benefits associated with the proposed amendments.

**Regulatory Flexibility Act Certification**

Pursuant to section 604(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the amendments proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

**List of Subjects in 17 CFR Parts 239 and 274**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Form Changes**

The Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

**PART 239—[AMENDED]**

**PART 274—[AMENDED]**

1. The authority citation for Part 239 continues to read, in part, as follows:

**Authority:** The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The authority for Part 274 continues to read, in part, as follows:

**Authority:** The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, * * *

3. By amending Item 2 of Form N–1A by revising paragraph (a)(ii) to read as follows:

**§ 274.11A Form N–1A, registration statement of open-end management investment companies.**

* * * * *

Item 2.

(a) * * *

(ii) A Registrant that offers its shares exclusively to one or more insurance company separate accounts may omit the table.

* * * * *

4. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a) of General Instruction I to Form N–3, described in §§ 239.17A and 274.11b, to read as follows:

**§ 274.11b Form N–3, registration statement of separate accounts organized as management investment companies.**

* * * * *

**I. Preparation of the Registration Statement or Amendment**

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*General Instructions for Parts A and B*

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4(a) and (b) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception

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indemnification in its participation agreement (or other agreement) with the portfolio company with respect to information provided by the portfolio company. The Commission does not believe that under these circumstances indemnification for liabilities under the 1933 Act would be inconsistent with the purpose of the 1933 Act, nor would the undertaking required by rule 484 of Regulation C (17 CFR 230.484) be applicable if such indemnification were limited to instances where the trust account is not deemed to be a "controlling person." *See* section 15 of the 1933 Act (15 U.S.C. 77*o*). In circumstances where the separate account is a controlling person, there should be no question about the account's ability to satisfy itself as to the accuracy of the portfolio company expense data.

[17] Release 16244 at note 22 and accompanying text.

[18] A similar requirement was proposed for Form N–1A, *see* Release 14230, *supra* note 1, but withdrawn because the fee table would effect an adequate consolidation of this expense information. *See* Release 15932 at note 6, *supra* note 1.

of the fee table and the table of contents (required by Rule 481(c) (17 CFR 230.481(c)) under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Items 4 (a) and (b).

* * * * *

5. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–3 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

* * * * *

Item 3. *Synopsis*

(a) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

| | Percent |
|---|---|
| Contractowner transaction expenses: | |
| Sales Load Imposed on Purchases (as a percentage of purchase payments) | —— |
| Deferred Sales Load (as a percentage of purchase payments or amount surrendered, as applicable) | —— |
| Surrender Fees (as a percentage of amount surrendered, if applicable | —— |
| Exchange Fee | —— |
| [Annual] contract fee | —— |
| Annual Expenses (as a percentage of average net assets) | |
| Management Fees | —— |
| Mortality and Expense Risk Fees | —— |
| Other expenses | —— |
| ———— | —— |
| ———— | —— |
| ———— | —— |
| Total annual expenses | —— |

*Example*

If you redeem your shares at the end of the applicable time period:

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| 1 You would pay the following expenses on a 1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| 2. The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| If you do *not* redeem your shares: | | | | |
| 1. You would pay the following expenses on a 1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| 2. The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |

Instructions:

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicable.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the date for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees.

*Contractowner Transaction Expenses*

7. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

8. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of purchase payments or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

9. "Surrender fee" includes any fee charged for any surrender or partial surrender but does not include any sales load charged upon surrender or partial surrender.

10. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of account value from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

11. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

*[Annual] Contract Fee*

12. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

*Annual Expenses*

13. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

14. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

15. "Other Expenses" include all expenses (except brokerage commissions and other capital items, sales loads, or mortality and expense risk fees) that are deducted from separate account assets.

(a) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Registrant's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but most also include a total of all "Other Expenses."

16. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year.

(a) A New Registrant should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction and Instructions 17(b) and 18(e) is a Registrant (or series of the Registrant) the prospectus of

which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual expenses.

17. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a separate account whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

18. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses incurred, *i.e.*, net of the amount reimbursed or waived; and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate of "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

*Example*

19. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Annual Expenses" remain the same in each year of the one, three, five, and ten year periods, except that an appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made.

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted.

(c) For the purpose of any breakpoint in any fee, assume that the amount of the Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchanges or other transactions;

(e) Reflect any [annual] contract fee by multiplying the amount of the [annual] contract fee by the total number of contractowners who allocated amounts to the series at any time during the year, and then dividing by the average net asset value of the sub-account during the year. Add the resulting percentage amount to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten year periods.

(f) A New Registrant should complete only the one and three year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the second section of the Example only if a sales load or other fee is charged upon complete surrender; and

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown.

(b) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

* * * * *

5. By amending Item 7 of Form N–3 by removing instruction 3 to paragraph (a), removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), and revising redesignated paragraph (f) to read as follows:

* * * * *

Item 7. * * *

* * * * *

(f) Describe the types of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

6. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a), of General Instruction I of Form N–4, described in §§ 239.17b and 274.11c, to read as follows:

**§ 274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.**

* * * * *

**I. Preparation of the Registration Statement or Amendment**

* * * * *

*General Instructions for Parts A and B*

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4(a) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4(a). A Registration Statement of this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) (17 CFR 230.481(c)) under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Items 4(a).

* * * * *

7. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–4 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

* * * * *

Item 3. *Synopsis.*

* * * * *

(a) Include a table furnishing the following information, using the caption provided, in the format illustrated below:

| | |
|---|---|
| Contractowner transaction expenses: | |
| Sales load imposed on purchases (as a percentage of purchase payments) | ____ |
| Deferred sales load (as a percentage of purchase payment or amount surrendered, as applicable) | ____ |
| Surrender fees (as a percentage of amount surrendered, if applicable) | ____ |
| Exchange fee | ____ |
| [Annual] contract fee | ____ |
| Separate account annual expenses (as a percentage of average account value): | |
| Mortality and Expense Risk Fees | ____ |
| Account Fees and Expenses | ____ |
| Total Separate Account Annual Expenses | ____ |
| [Portfolio Co.] annual expenses (as a percentage of [portfolio company] assets): | |
| Management fees | ____ |
| Other expenses | ____ |
| _____ | ____ |
| _____ | ____ |
| _____ | ____ |
| Total [Portfolio Co.] annual expenses | ____ |

*Example*

If you redeem your shares at the end of the applicable time period:

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| 1. You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| 2. The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |
| If you do *not* redeem your shares: | | | | |
| 1. You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |

*Instructions:*

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly, and that the table reflects expenses of the separate account as well as the portfolio company. Include, where appropriate, cross-references to the relevant sections of the prospectus and a cross-reference to the portfolio company prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicabe.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the data for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the propsectus that has different fees.

*[Annual] Contract Fee*

7. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

*Contractowner Transaction Expenses*

8. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and many include a tabular presentation, within the larger table, of the range of such sales loads.

9. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of the original purchase price or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

10. "Surrender fee" includes any fee charged for any surrender or partial surrender, but does not include any sales load charged upon surrender or partial surrender.

11. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portio of the prospectus discussing the exchange fee.

12. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

*Separate Account Annual Expenses*

13. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

14. Registrant may substitute the term used in the prospectus to refer to the portfolio companies for the bracketed portion of the caption provided.

15. "Account Fees and Expenses" include all fees and expenses (except sales loads and mortality and expense risk fees) that are deducted from separate account assets or charged to all contractowner accounts. The Registrant may subdivide the caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Account Fees."

*Portfolio Company Annual Expenses*

16. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the portfolio company), any other management fees payable by the portfolio company to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

17. "Other Expenses" include all expenses (except brokerage commissions and other capital items, and management fees) that are deducted from portfolio company assets.

(a) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the portfolio company's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

18. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year. If the portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company.

(a) A New Registrant (or a Registrant on behalf of a new portfolio company) should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction, and Instructions 19(b) and 20(e), is a Registrant (or sub-account of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant or the portfolio company has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual fund operating expenses.

19. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or

that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account or portfolio company so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a portfolio company whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

20. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses incurred, *i.e.*, net of the amount reimbursed or waived; and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate of "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

*Example*

21. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Separate Account Annual Expenses" and "Portfolio Company Annual Expenses" remain the same in each year of the one, three, five, and ten year periods, except that appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made.

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted.

(c) For the purpose of any breakpoint in any fee, assume that the amount of the Registrant's (and the portfolio company's) assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchanges or other transactions;

(e) Reflect any [annual] contract fee by multiplying the amount of the [annual] contract fee by the total number of contractowners who allocated amounts to the series at any time during the year, and then dividing by the average net asset value of the sub-account during the year. Add the resulting percentage amount to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten year periods.

(f) A New Registrant should complete only the one and three year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the second section of the Example only if a sales load or other fee is charged upon a complete surrender; and

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown.

(b) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

8. By amending Item 6 of Form N–4 by removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f) and revising redesignated paragraph (f) to read as follows:

* * * * *

Item 6. * * *

* * * * *

(f) Describe the type of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

*Guidelines to Forms N–3 and N–4*

The Division of Investment Management proposes to add a guideline to Forme N–3 and N–4 providing guidance to funds preparing the fee table and, in particular, the Example. The Division invites comment on these guidelines. The guide for each form is proposed to read as follows:

Guide ——. Fee Table

Item —— requires inclusion of a fee table in the front of the prospectus. The amounts listed in the Example should represent cumulative expenses. Therefore, the registrant should aggregate any sales load or other fee deducted from payments, together with cumulative annual expenses, and any sales load or other fee deducted upon surrender. The registrant may compute annual expenses by multiplying average annual assets of the hypothetical $1,000 account for each year by total annual expenses (a percentage taken from the second part of the table). Compute the account's average annual assets by adding the beginning account value to the ending account value and dividing by two. Determine the ending account value by multiplying the beginning account value by the assumed growth rate less total annual expenses (5%–X%) and adding the result to the beginning account value. Determine the beginning account value in the first year by subtracting the maximum amount of any sales load deducted from payments from the hypothetical $1,000 payment; in each subsequent year the beginning account value is the previous year's ending account value.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

July 15, 1988.

**Regulatory Flexibility Act Certification**

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Forms N–3 and N–4 under the Securities Act of 1933 and Investment Company Act of 1940 requiring a fee table in variable annuity prospectuses, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that there are few, if any, separate accounts that qualify as "small entities" as that term has been defined in the Commission's rules. Moreover, the information called for by these amendments is readily available to separate accounts and therefore the preparation of the fee table will not have a significant economic impact on any separate accounts.

Dated: June 1, 1988.

David S. Ruder,

*Chairman.*

[FR Doc. 88–16688 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 868**

**[Docket No. 87N–0113]**

## Cutaneous Carbon Dioxide ($PcCO_2$) Monitor; Panel Recommendation for Reclassification

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of proposed reclassification.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel (the Panel) that FDA reclassify the marketed cutaneous carbon dioxide ($PcCO_2$) monitor from

class III (premarket approval) into class II (performance standards). The Panel made this recommendation based on valid scientific evidence that demonstrates that class II controls and the general controls are adequate to assure the safe and effective use of the device. FDA is also issuing for public comment its tentative findings on the recommendation. After reviewing any public comments on the recommendation and FDA's tentative findings, FDA will issue an order reclassifying the device or will withdraw its proposed reclassification. FDA's decision on the proposed reclassification will be announced in the **Federal Register.**

**DATE:** Comments by September 23, 1988.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** George C. Murray, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7226.

**SUPPLEMENTARY INFORMATION:** The cutaneous carbon dioxide ($PcCO_2$) monitor is automatically classified into class III under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) because it is neither substantially equivalent to any preamendments device (i.e., a device that was in commercial distribution before May 28, 1976, the enactment date of the Medical Device Amendments of 1976), nor is it substantially equivalent to any postamendments device that has been reclassified (i.e., a device that was not in commercial distribution before that date but that has been reclassified into class I or II).

Section 513(f)(2) of the act permits the reclassification of devices that were classified into class III under section 513(f)(1). The act provides for initiation of the reclassification process by manufacturers or importers who petition the agency to alter the automatic classification into class III of "new" devices under section 513(f)(1). This means of initiating the reclassification of "new," or not substantially equivalent devices, is not the exclusive method of undertaking the reclassification of "new" devices.

FDA believes that when publicly available valid scientific evidence demonstrates that a generic type of device is incorrectly classified, the agency or any interested person may attempt to reclassify the generic type of device under the authority of section 513(f)(2). To conclude otherwise, would permit marketers of class III devices to hold a competitive advantage not intended by Congress.

Congress, in promulgating the 1976 Medical Device Amendments, sought to protect competitor's property rights in research data and trade secret information by prohibiting their use in reclassification proceedings (see section 520(c) of the act (21 U.S.C. 360j(c))), and premarket approval applications (PMAs) (see section 520(h)), without the consent of the persons who own the data. Congress made no other provision to limit the reclassification of medical devices.

Since limiting the persons who may initiate a reclassification proceeding under section 513(f)(2) would unduly interfere with a major purpose of the 1976 Medical Device Amendments, i.e., regulating devices at the least burdensome level of control, FDA has initiated, in this instance, a reclassification proceeding to determine the appropriateness of the combination of class II and class I controls to reasonably assure the safe and effective use of the cutaneous carbon dioxide ($PcCO_2$) monitor.

For the purposes of reclassification, the valid scientific evidence upon which the agency relies is required to be publicly available, i.e., may not be based on trade secret or confidential commercial information in PMAs, or on the detailed summaries of information respecting the safety and effectiveness of devices for which there are approved PMA's. For purposes of reclassification from class III to class II, it is necessary to show that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device.

## I. Identification of Device

This proposed reclassification applies to a generic device identified as the cutaneous carbon dioxide ($PcCO_2$) monitor. The device, through use of a noninvasive heated sensor and a pH-sensitive glass electrode placed on a patient's skin, is intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunct to determine arterial carbon dioxide tension.

## II. Panel Review and Recommendation

FDA conducted an extensive literature review on cutaneous carbon dioxide ($PcCO_2$) monitors and sent this information to the Panel, on January 17, 1986, requesting their comments on FDA's initiated reclassification of the cutaneous carbon dioxide ($PcCO_2$) monitor from class III to class II. The Panel members supported FDA's reclassificatioin proposal. FDA, therefore, announced in the May 16, 1986 **Federal Register** (51 FR 18042) the Panel meeting to be held on June 6, 1986 to discuss and obtain a Panel recommendation on the proposed reclassification. During the open public hearing on June 6, 1986, the Panel considered FDA's reclassification proposal and its analysis of the data supporting the reclassification. The Panel recommended that the cutaenous carbon dioxide ($PcCO_2$) monitor be reclassified from class III (premarket approval) to class II (performance standards). A copy of the supporting documentation and the transcript of the meeting is on file in the Dockets Management Branch (address above) and is available for review by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

## III. Summary of Reasons for the Panel Recommendatioin

The Panel recommended reclassification of the cutaneous carbon dioxide ($PcCO_2$) monitor, intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunctive method to determine arterial carbon dioxide tension, from class III to class II for the following reasons:

1. General controls by themselves are insufficient to provide reasonable assurance of the device's safety and effectiveness.

2. Premarket approval is unnecessary because performance standards are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Panel's recommendation is based on review of the information and data contained in the administrative record. A summary of that data is presented below under the heading "V. Summary of Data on Which the Proposed Reclassification is Based." The administrative record demonstrates that the risks to health have been characterized for the cutaneous carbon dioxide ($PcCO_2$) monitor and that valid scientific evidence identifies the relationships between the device's risks and its performance characteristics. Furthermore, there is sufficient publicly available information to establish a standard to control the device's performance characteristics.

## IV. Risks to Health

The immediate risk associated with use of the device, when it is used according to its labeling, is possible blister formation that may occur at

elevated electrode temperatures. This risk was associated with earlier versions of the device. The currently marketed devices contain site timers and other safeguards incorporated into the device to avoid electrode overheating. Use of the currently marketed devices, with labeling that indicates when to change electrode location, has resulted in minimal risk to the patient (Refs. 7 through 12 and 25). A more remote device-related risk is possible misdiagnosis of the patient. Labeling minimizes this risk through disclosure that the device is intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunctive method to determine arterial carbon dioxide tension, and arterial blood gas sampling is required to confirm patient status (Refs. 3, 12, 13, 19, and 26 through 28).

**V. Summary of Data on Which the Proposed Reclassification Is Based**

Review of the preclinical and clinical data establishes the relationship between the cutaneous carbon dioxide ($PcCO_2$) monitor's risks and its performance characteristics, and demonstrates that a performance standard can be written to control the device's safety and effectiveness.

A. Preclinical Data—1. Introduction. The measurement of blood gas tensions is an integral part of monitoring the critically ill patient (Ref. 1). The most commonly used method to obtain blood gas tension measurements has been intermitten arterial-blood sampling (Ref. 2). Indwelling catheters and intermittent arterial punctures introduce risks and complications (Refs. 1 and 2). Cutaneous gas monitors allows for noninvasive and continuous measurement of gas tensions. In 1793, John Abernethy first demonstrated that carbon dioxide passes through the skin surface (Ref. 3). The measurement of carbon dioxide gas tension on human skin surface ($PcCO_2$) was first described by Severinghaus in 1960 (Ref. 4).

The ($PcCO_2$) electrode is based on the Stow-Severinghaus principle and is composed of a pH-sensitive glass electrode and a reference electrode surrounded by a solution of sodium bicarbonate and covered by a membrane permeable to $CO_2$ (Refs. 5 and 6). According to the Stow-Severinghaus principle, changes in pH result from the reaction of $CO_2$ diffusing through the skin and across the membrane (Refs. 5 and 6). As $CO_2$ diffuses across the membrane and reaches the electrolyte, it reacts with $H_2O$ to form $H_2CO_3$, which dissociates to $H_3^+$ and $HCO_3^-$ (Refs. 5 and 6). As the pH changes in response to $CO_2$, the electrical potential of the pH-sensitive glass electrode measured against the reference electrode changes in accordance with the Nernst and Henderson-Hasselbalch equations, so that the net result is an electrical output that is linearly related to the logarithm of $PCO_2$ (Refs. 5 and 6). The $PcCO_2$ sensor, in most cases, is heated to 42 to 44 °C for skin surface $CO_2$ monitoring. The heated sensor allows for a faster response time; the response time of the sensor varies inversely with sensor temperature (Ref. 7).

The preclinical data extracted from studies in the literature, as discussed below, inidcate that each of the investigators utilized pH-sensitive glass electrodes based on the same principle of operation, i.e., the Stow-Severinghaus principle, although the electrodes differed somewhat in mechanical construction. The performance characteristics of pH-sensitive glass electrodes, i.e., accuracy, electrode drift and interference due to anesthetic gases, are not adversely affected by construction differences. Specifically, the preclinical data show that: the pH-sensitive glass electrode responds lineraly to the logarithm of the $CO_2$ concentration; the electrode displays minimal drift over time, i.e., the degree of variation from the expected value; and the electrode is not influenced by anesthetic gases, i.e., nitrous oxide, halothane or enflurane.

2. *Accuracy.* The following data demonstrate that the pH-sensitive glass electrode of the devices subject to reclassification responds lineraly to the logarithm of the $CO_2$ concentration. Hebrank and Mentelos conducted an in vitro linearity test for the Novametrix Medical Systems sensor using six different $CO_2$ concentration gases ranging from 3 to 12 percent $CO_2$ (Ref. 13). The 3 to 12 percent $CO_2$ concentrations correspond to a range of $PcCO_2$ levels from 22.8 to 91.2 millimeters of mercury (mm Hg). The range of 22.8 to 91.2 mm Hg overlaps the range of $PcCO_2$ values normally expected in the clinical setting. The results of the in vitro testing showed a maximum nonlinearity of a mm Hg for the $PcCO_2$ sensor. Rafferty, et al., also using a Novametrix Medical System sensor demonstrated a linear relationship using six different concentrations of preanalyzed $CO_2$ (Ref. 15). Huch, et al., using an electrode of their own design, analyzed six different concentrations of preanalyzed $CO_2$ and found a linear relationship of the electrode output in millivolts as a function of log $PCO_2$ (Ref. 14). Mindt, et al., using a Hoffmann-La Roche electrode, reported a linear relationship between the output voltage signal and the logarithm of the $CO_2$ concentration between 1 and 100 percent $CO_2$ (Ref. 16). Parker, et al., using an electrode of their own design, demonstrated a linear relationship for nine different concentrations of $CO_2$ (Ref. 17).

3. *Electrode drift.* The following data demonstrate that the electrode of the devices to be reclassified displayed minimal drift over time. Beran, et al., using an electrode of their own design, reported an in vitro electrode drift of less than 2 mm Hg for 24 hours at 37 °C (Ref. 18). Brunstler, et al., using a Roche skin surface $PCO_2$ monitor, reported an in situ electrode drift of 0.06 mm Hg per hour at 41 °C and 0.09 mm Hg per hour at 44 °C (Ref. 19). Cohen, et al., using a Radiometer sensor, reported an in situ drift of less than 1 mm Hg overf an average monitoring period of 4 hours (44 °C) (Ref. 9). Hebrank and Mentelos, using a Novametrix Medical Systems sensor, reported a drift for an unheated electrode of less than 0.6 mm Hg per hour over a 5-hour period and a drift of less than 0.5 mm Hg per hour over a 24-hour period (Ref. 13). Severinghaus, using an electrode of his own design, reported a drift of less than 1 mm Hg for 4 days in 5 percent $CO_2$ to 95 percent $CO_2$ for an electrode temperature of 43 °C (Ref. 20). Hansen and Tooley, using a sensor of their own design, reported a drift of less than 1 mm Hg per hour when the electrode was in a carbonated water bath at 37 °C (Ref. 21).

4. *Interference due to anesthetic gases.* The following data demonstrate that the electrode of the devices subject to reclassification is not influenced by anesthetic gases. Hebrank (Novametrix Medical Systems sensor), Rafferty (Novametrix Medical Systems sensor), and Eberhard (Hoffmann-La Roche sensor) have shown that there is not any measurable interference by nitrous oxide, halothane, or enflurane on $PcCO_2$ readings (Ref. 13, 15, and 22).

*B. Clinical Data*

The clinical studies renewed by the panel demonstrate that the device is safe and effective for use in monitoring relative changes in the cutaneous carbon dioxide tension of hemodynamically stable patients. A total of 1,767 paired measurements from 257 neonates, 99 paired measurements from 18 children, 740 paired measurements from 85 adults, and 48 paired measurements from a mixed population of 22 patients ranging in age from 1 day to 84 years at 7 different sensor temperatures has been reported and demonstrates the utility of the

$PcCO_2$ sensor as a useful trend indicator of $PaCO_2$. The in vitro and clinical studies demonstrate that the pH-ser sitive glass electrode, whether supplied by various manufacturers or constructed by various investigators, can accurately quantitate the concentration of $PcCO_2$. Although $PcCO_2$ values are consistently higher than $PaCO_2$ values, as a trend monitor, the pH-sensitive glass electrode accurately reflects changes in $PaCO_2$ thus indicating when arterial blood gases need to be drawn.

Paired measurements indicates that a cutaneous $CO_2$ ($PcCO_2$) measurement was taken at the time as an arterial blood sample was collected. The reference to correlation, indicated by the correlation coefficient (r), refers to a straight line regression between changes in $PcCO_2$ and $PaCO_2$. The value r=1.0 indicates perfect correlation, whereas the value r=0.0 indicates no correlation (Ref. 30).

Monaco and McQuitty obtained 106 paired measurements on 15 sick newborns (Ref. 25). They reported a correlation coefficient of 0.91 at a sensor temperature of 44 °C. The $PcCO_2$ was higher than the $PaCO_2$ in all paired measurements. Despite this difference between the $PaCO_2$ and the $PcCO_2$, the authors found the monitoring of $PcCO_2$ very useful in the care of sick newborns as it consistently followed changes in the neonates' $PaCO_2$. The authors reported that no cutaneous burns were observed but areas of erythema (reddening of the skin) persisted for several hours in most infants.

In an additional study, Monaco, et al., reported on 18 hemodynamically stable pediatric intensive care unit patients (Ref. 26). A correlation coefficient of 0.84 was obtained for 99 paired measurements at a sensor temperature of 44 °C. The $PcCO_2$ was always greater than the $PaCO_2$. The authors noted that this was due to a number of cumulative effects: (1) the heating of capillary blood increases the $PCO_2$ (anaerobic temperature coefficient); (2) the sensor measures $CO_2$ from epidermal cells which have a higher $PCO_2$ than arterial blood; (3) the heated $CO_2$ sensor increases cellular metabolism and $CO_2$ production; (4) the rising limb of the dermal capillary parallels the descending venous limb which sets up a counter current exchange mechanism, i.e., a diffusion gradient of the higher $CO_2$ in the venous limb to the arterial limb, resulting in the highest $CO_2$ being at the tip of the capillary loop beneath the sensor; and (5) the skin acts to cool the tip of the pH-sensitive glass within the sensor which causes an apparent decrease of pH and an increase of $PCO_2$. The authors concluded that $PcCO_2$ provides an accurate and noninvasive method to trend arterial $CO_2$ in hemodynamically stable pediatric patients.

Other authors have conducted studies utilizing $PcCO_2$ monitors (Refs. 2, 7, 9 through 11, 16, 19, through 21, 23 and 24, 27 through 29, 31 and 33). These studies confirm the use of the device and showed that the device can be safe and effective when used as a trend monitor as an adjunct to arterial blood gas sampling.

A number of these studies make reference to hemodynamically stable patients (Refs 2, 19, 25 and 26, 28, 31, and 33). As tissue perfusion decreases in conditions of hemodynamic compromise, tissue $CO_2$ accumulates. The increased tissue $CO_2$ diffuses to the skin resulting in a rise in $PcCO_2$ readings. Arterial blood gases will not reflect this decrease in peripheral circulation, resulting in $PcCO_2$ reading that do not trend $PaCO_2$ readings (Ref 2). FDA makes note of this fact and has incorporated it into the identificaiton of the device. This limitation of the use of the device may be controlled by disclosures in labeling.

## VI. FDA's Tenatitive Findings

FDA tentatively agrees with the Panel and believes that the cutaneous carbon dioxide ($PcCO_2$) monitor and substantially equivalent ($PcCO_2$) monitors should be reclassified from class III into class II when indicated for use in monitoring relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunctive method to determine arterial carbon dioxide tension. Publicly available valid scientific evidence shows that currently marketed devices are safe and effective for their intended use.

Premarket approval of the cutaneous carbon dioxide ($PcCO_2$) monitor is not necessary because the valid scientific evidence in the administrative record shows that a performance standard is sufficient to provide reasonable assurance of the safety and effectiveness of the device. Also, FDA recognizes that the general controls provisions of the act apply to the device.

Of particular importance to assuring the safe and effective use of the device is the premarket notification (21 CFR Part 807), which enables FDA to determine substantial equivalence and the comparable safety and effectiveness between marketed devices and devices proposed for commerical distribution. To establish that a new $PcCO_2$ monitor is substantially equivalent to a marketed and reclassified $PcCO_2$ monitor, manufacturers will be required to demonstrate substantial equivalence by demonstrating, among other things, the principle on which the device measures the concentration of $CO_2$; the accuracy, sensitivity, specificity, and lack of hysteresis of the device; the device's electrode response time; the device's electrode temperature range; and the safeguards incorporated into the device for sensor overheating protection.

FDA believes that newly marketed devices of the same generic type will be safe and effective through application of general controls, particularly the Good Manufacturing Practices (GMP) and premarket notification provisions, pending the development of a performance standard, consistent with FDA's standards development priorities.

FDA notes that, while there is sufficient information to write a performance standard for the $PcCO_2$ monitor, the development of such a standard should be a low priority at this time because the publicly available valid scientific evidence upon which the proposal is based demonstrates that the proposed reclassified devices are safe and effective and all marketed devices have undergone premarket approval. In addition, this device is intended for use as a trend monitor, and arterial blood gas sampling and measurement by other means is required to confirm patient status.

## VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.


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17. Parker D., D.T. Delpy, and E.O.R. Reynolds, "Single Electrochemical Sensor for Transcutaneous Measurement of $PO_2$ and $PCO_2$, Birth Defects: Original Article Series," XV, No. 4, "Continuous Transcutaneous Blood Gas Monitoring," edited by A. Huch, R. Huch, and J. Lucey, New York, Alan R. Liss, 1979:109–116.

18. Beran, A.V., et al., "Investigation of Transcutaneous $O_2$-$CO_2$ Sensors and Their Application of Human Adults and Newborns, Birth Defects: Original Article Series," XV, No. 4, "Continuous Transcutaneous Blood Gas Monitoring," edited by A. Huch, R. Huch, and J. Lucey, New York, Alan R. Liss, 1979:421–430.

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### VIII. Environmetnal Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### IX. Economic Impact

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Reclassification of this generic type of device would not have a significant economic impact on a substantial number of small entities. All manufacturers of cutaneous carbon dioxide ($PcCO_2$) monitors would be relieved of the cost of complying with the premarket approval requirements in section 515 of the act. The costs of complying with any performance standard developed as a result of reclassification into class II would have to be determined at the time the standard is developed. The magnitude of the economic savings as a result of being relieved of the premarket approval requirement depends on the extent of premarket approval studies applicants would have conducted and the number of future manufacturers satisfying the same requirements. Neither of these parameters can be reliably calculated to permit quantification of the economic savings.

### X. Comments

Interested persons may, on or before September 23, 1988, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 1, 1988.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88–16666 Filed 7–22–88; 2:26 pm]

BILLING CODE 4160–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 131**

**[FRL–OW–3389–5]**

## Water Quality Standards for the Surface Waters of the State of Idaho

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** EPA is withdrawing the remaining portions of a proposed rule which would have established certain water quality standards for the State of Idaho. The Agency is withdrawing its proposal for a statewide ammonia criterion and a site-specific ammonia criterion applicable to lower Indian Creek. In both cases, the State adopted

provisions that meet the requirements of the Clean Water Act, thus making the EPA proposal unnecessary.

**DATE:** This withdrawal is effective July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Fletcher Shives, United States Environmental Protection Agency, Water Management Division, 1200 Sixth Avenue, Seattle, Washington 98101, (206–442–8293).

**SUPPLEMENTARY INFORMATION:** On August 20, 1985 (50 FR 33672) EPA proposed water quality standards for the State of Idaho relating to: (1) A criterion for dissolved oxygen for water discharged from dams, (2) a statewide ammonia criterion, (3) an ammonia criterion for Indian Creek, and (4) elimination of the exemption for dams contained in the State's antidegradation policy.

On May 27, 1988, EPA approved changes to the State's standards that enabled the Agency to withdraw its proposals with regard to dissolved oxygen and antidegradation with respect to dams. Those two proposals were then withdrawn on July 14, 1986 (51 FR 25372).

On June 3, 1987, the State submitted additional revisions to its standards which eliminated the site-specific criterion for lower Indian Creek and revised the statewise ammonia criterion to meet EPA's concerns. These revisions satisfy the requirements of the Clean Water Act and were approved by EPA on March 9, 1988.

This action by the State in adopting approvable standards makes it unnecessary for EPA to continue with these portions of the proposed rule. All of the proposals made by EPA in the August 20, 1985 notice are withdrawn.

Date: July 18, 1988.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 88–16640 Filed 7–22–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 22

**[CC Docket No. 88–35; RM–5555; FCC 88–118]**

### Public Land Mobile Radio Service (PLMRS); Height and Power Increases

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Proposed rule; Extension of reply comment period.

**SUMMARY:** In response to motions for extension of time filed by the National Association of Business and Educational Radio, Inc. (NABER) and by CUE Paging Corporation (CUE), the Commission, by its Mobile Services Division, is extending the reply comment period for the proposed rule in this proceeding concerning height and power increases in the public land mobile radio service.

**DATE:** Replies are due July 25, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John O'Connor, Mobile Services Division, Common Carrier Bureau, (202) 653–5560.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the **Federal Register** on May 24, 1988, 53 FR 18586.

### Order

Adopted July 7, 1988.
Released July 11, 1988.

By the Chief, Mobile Services Division

1. On July 6, 1988, the National Association of Business and Educational Radio, Inc. (NABER) filed a "Motion for Extension of Time" in the captioned proceeding. NABER requests a sixty-day extension up to and including September 5, 1988, in which to file reply comments. On July 7, 1988, CUE Paging Corporation (CUE), in support of NABER's motion, also filed a request for a sixty-day extension until September 5, 1988. Telocator Network of America (Telocator), on July 7, 1988, filed an opposition to NABER's motion. The deadline for replies in this proceeding is July 8, 1988.

2. In support of its request, NABER argues that an extension of the reply comment deadline will enable it to prepare a full and complete response to the comments filed by Telocator. Specifically, NABER states that Telocator's comments include detailed technical information that requires extensive consideration and analysis. Similarly, CUE argues that Telocator's comments include a detailed technical proposal requiring careful analysis, and an extension will enable it to submit a thorough technical analysis in its reply comments.

3. In its opposition, Telocator argues that NABER's motion should be denied because it is both untimely and unjustified. First, Telocator states that NABER's request was filed only two days prior to the July 8 reply comment deadline, and thus does not comply with the Commission Rules, which require motions for extensions of time to be filed at least seven days before the filing deadline. According to Telocator, NABER does not give an excuse for its failure to conform with the seven-day requirement. Moreover, Telocator argues that NABER has not provided a credible showing to justify a sixty-day extension, and that the long extension requested indicates NABER's desire to delay the resolution of this proceeding.

4. NABER and CUE have failed to demonstrate good cause to warrant a grant of a sixty-day extension of time in which to file replies. Furthermore, we agree with Telocator that NABER's motion was untimely filed, and that no reason for this non-compliance was given. *See* § 1.46(b) of the Commission's Rules. However, in the interest of encouraging a complete record in this proceeding, we will grant an extension until July 25, 1988.

5. Accordingly, NABER's and CUE's requests for an extension to file replies in the captioned proceeding are granted to the extent indicated herein, and Telocator's opposition is denied to the extent indicated herein. Effective on the release of this *Order,* the reply comment date in CC Docket No. 88–135 is extended from July 8, 1988 to and including July 25, 1988.

Federal Communications Commission.

**Kevin J. Kelley,**

*Chief, Mobile Services Division, Common Carrier Bureau.*

[FR Doc. 88–16656 Filed 7–22–88; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 80

**[PR Docket No. 88–350, FCC 88–214]**

### Amendment of the Maritime Services Rules To Permit Noncommercial Communications on VHF Channels 79 and 80

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rules would relieve congestion on VHF maritime frequencies now assigned for noncommercial use by permitting noncommercial vessels to share the use of channels 79 and 80 with commercial vessels.

**DATES:** Comments must be received on or before September 1, 1988, and reply comments must be received on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. For information contact: Robert P. DeYoung, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making* (*NPRM*) adopted June 27, 1988 and released July 11, 1988.

1. The full text of this Commission document and the amended rules are available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the *NPRM* and the proposed amendments may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Notice of Proposed Rule Making**

2. These proposed rule amendments are in response to a request from the Michigan Steelhead and Salmon Fisherman's Association to provide additional VHF frequencies for use by noncommercial or recreational vessels on the Great Lakes. It appears, however, that the congestion on VHF noncommercial channels is nationwide.

3. The *Notice* proposes to relieve congestion of VHF frequencies currently assigned for use by noncommercial or recreational vessels. Congestion on those frequencies would be alleviated by permitting noncommercial vessels to share use of VHF channels 79 and 80 with commercial vessels. The time of week, seasonal or other factors should permit this sharing to work well but the *Notice* invites comments on methods to lessen any adverse effects.

4. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 605(b)), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule allows noncommercial vessels to use these frequencies voluntarily. The effect on existing users would not be substantial because the frequencies are already assigned on a shared basis for commercial communications and the peak usage times do not appear to overlap.

5. The rule amendments proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

6. The authority for this action is contained in 47 U.S.C. 154(i) and 303 (l) and (r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments on or before September 1, 1988, and reply comments on or before September 16, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

7. A copy of this *Notice* will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 80**

Maritime radio services.

**Rule Changes**

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 308 48 Stat. 1066, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; UST 3450, 3 UST 4626, 12 UST 2377, unless otherwise noted.

2. In § 80.373, entries 79 and 80 are added to the end of the entries under Noncommercial in the table in paragraph (f) the preceding entries are republished.

**§ 80.373 Private communications frequencies.**

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NONCOMMERCIAL

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|---|---|---|---|
| 68 | 156.425 | 156.425 | |
| 09 | 156.450 | 156.450 | |
| 69 | 156.475 | 156.475 | |
| 71 | 156.575 | 156.575 | |
| 72 | 156.625 | ..... | Intership only. |
| 78 | 156.925 | 156.925 | |
| 79 | 156.975 | 156.975 | |
| 80 | 157.025 | 157.025 | |

* * * * *

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88–16183 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Speckled Pocketbook Mussel (Lampsilis Streckeri)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine the speckled pocketbook (*Lampsilis streckeri*) to be an endangered species under the Endangered Species Act of 1973, as amended. This freshwater mussel is restricted to the Middle Fork Little Red River with a range of not more than 6 river miles in Van Buren and Stone Counties, Arkansas. The speckled pocketbook has been impacted by reservoir construction, water pollution, and channel modification. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for this freshwater mollusk. The Service seeks relevant data and comments from the public.

**DATES:** Comments from all interested parties must be received by September 23, 1988. Public hearing requests must be received by September 8, 1988.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Jackson, Mississippi Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** James H. Stewart at the above address (601/965–4900 or FTS 490–4900).

**SUPPLEMENTARY INFORMATION:**

**Background**

The speckled pocketbook (*Lampsilis streckeri*) was described by Frierson in 1927 with the type locality given as an unspecified site on the Little Red River, Arkansas. The mussel has been reported from Onion Creek, Travis County, and

Salado Creek, Bell County, Texas; from the Arkansas River drainage, and from Archey Fork of the Little Red River, Van Buren County, Arkansas (Clarke 1987). The speckled pocketbook was collected from the South Fork of the Little Red River near Clinton, Arkansas in 1984 and 1985 (John Harris, per. comm.). Dr. Arthur Clarke collected the speckled pocketbook from the Middle Fork of the Little Red River in 1986.

The record of *L. streckeri* from the Arkansas River drainage, reported as *Actinonaias streckeri*, was determined by Johnson (1980) to be the result of misidentification with the specimens actually being *A. rafinesqueana*. The Texas record of *L. streckeri* either cannot be confirmed or are misidentification of *L. bracteata* (Clark 1987). The Texas streams are low-gradient and do not provide the required habitat. Numerous recent collections in these streams have contained *L. bracteata* but not *L. streckeri*. The only confirmed sites are in the watershed of the Little Red River.

The speckled pocketbook is a thin mussel about 80 mm long. The shells are ellipitical, dark yellow or brown with chevron-like spots, and rays that are chain-like (Frierson 1927). The shells exhibit sexual dimorphism with the females becoming broader and more evenly rounded posteriorly. It can be confused with species of similar shell morphology unless an individual is knowledgeable of mussels and is very observant.

*Villosa vibex* occurs in streams to the south and east of the State of Arkansas, and is very similar to *L. streckeri* based upon only shell morphology. However, characters of the mantle flap differ. Members of the genus *Lampsilis* have a very distinctive mantle flap in the soft parts. In *Lampsilis streckeri*, the mantle flap resembles a small minnow with a small pigment spot and about 5 triangular processes providing a flaring appearance. This unique mantle is apparently used to entice fish close enough for the mussel's larvae or glochidia to attach.

Other similar species are *L. reeveiana*, *L. radiata siliquoidea*, and *L. bracteata*. In all three of these similar species, the shell lacks the chevron-like spots and the rays are continuous rather than ribbon-like. *Lampsilis bracteata* is only reported from Texas. In *L. r. siliquoidea*, the rays are limited to the posterior slope of the shell or become faded before reaching the ventral margin (Burch 1975). *Lampsilis reeveiana* further differs by having a large pigment spot and up to twice the triangular processes on the mantle flap (Clarke 1987).

The current known range of *L. streckeri* is limited to about 6 miles of the Middle Fork of the Little Red River in Stone and Van Buren Counties, Arkansas. Adjacent land in this area is privately owned. The species is found in course to muddy sand in depths up to 0.4 meters (1.3 feet) with a constant flow of water. This constant flow of water suggests a requirement for well oxygenated conditions and supports Clarke's (1987) conclusion that it cannot survive in pool conditions. Within the Middle Fork, the known range is between the confluences of Meadow Creek upstream and Tick Creek downstream. Above Meadow Creek, the Middle Fork is reduced to intermittent flows during dry periods. From the confluence of Tick Creek downstream to the influence of Greers Ferry Reservoir, the habitat appears suitable for *L. streckeri* but is devoid of live mussels. The species has apparently been extirpated from the remainder of the Little Red River system. The impoundment of Greers Ferry Reservoir and the resulting cold (hypolimnetic) discharges altered virtually all of the mainstem. Channel modifications in Archey and South Forks have modified much of the habitat and likely caused increased water velocities that altered the remaining habitat in these streams.

The species is listed as a candidate (Category 2) in the Notice of Review published on May 22, 1984, in the **Federal Register** (49 FR 21664). Category-2 species are those taxa for which the Service needs additional information before proposing to list the species.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the speckled pocketbook (*Lampsilis streckeri*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The speckled pocketbook once occurred in the Little Red River and three tributaries, Archey, South and Middle Forks. The scarcity of collecting records prevents the delineation of the historic range within or beyond this system. From what we know of the mussel's preferred habitat and of the Little Red River, the speckled pocketbook very likely occurred in the stretch of the river now impounded by Greers Ferry Reservoir, and in the downstream area now altered by the reservoir's cold (hypolimnetic) discharges. The lentic conditions imposed by the reservoir and the hypolimnetic discharges undoubtedly eliminated any speckled pocketbook population in this stretch of river. Archey and South Forks have been modified for flood control. The modification of these channels are the likely cause of the species' apparent disappearance from these tributaries. The small population of speckled pocketbooks in the South Fork, below the confluence with Archey Fork, apparently has been extirpated by floods scouring the mussel's habitat (Clarke 1987). This scouring likely results from increased water velocity due to channel modification upstream. The only remaining population of the speckled pocketbook is in the Middle Fork Little Red River, Van Buren and Stone Counties, Arkansas (Clarke 1987). Threats to the Middle Fork population appear to be some unidentified and intermittent water pollution from the vicinity of Tick Creek's confluence. The presence of mussel shells in the Middle Fork downstream of Tick Creek and the lack of live mussels of any species indicates a pollution event that eliminated all mussel fauna in this stretch. This river reach down to the influence of Greers Ferry Reservoir still provides suitable habitat for the speckled pocketbook, and the species could probably be reestablished if high water quality is maintained.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* The only known population is restricted to a short reach of one river and consists of only a few hundred individuals (Clarke 1987). Any collection of live individuals from this area would further reduce a population that is already limited and possibly declining. This species has not been known to have been subjected to any previous commercial purpose.

C. *Disease and predation.* Disease is not an apparent threat. The preferred habitat is in shallow water and this makes the species more vulnerable to predation by raccoons and muskrats.

D. *The inadequacy of existing regulatory mechanisms.* The species is not protected by any existing Federal or State regulation. Arkansas requires a scientific collecting permit for anyone to collect any species of mollusc. This permit requirement is very difficult to enforce and generally receives a low

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priority from law enforcement personnel.

*E. Other natural or manmade factors affecting its continued existence.* The fish host for the juvenile stage of the speckled pocketbook is unknown; therefore, impacts on this aspect of the mussel's life cycle cannot be evaluated. The Middle Fork population range is limited upstream by low or non-existent water flows during the dry months of the year. Much of Archey and South Forks have intermittent water flows during dry seasons, which may be partially due to flood control work discussed under Factor A. The population is so limited that isolated gene pools that are vulnerable to loss of genetic variability are a distinct possibility. This mussel depends upon water currents to transport gametes from one individual to another. The reduced density of the population decreases the likelihood of successful reproduction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the speckled pocketbook as endangered. Endangered status is proposed because of the very limited range in one stream, small population size and vulnerability to a single catastrophic event. Threatened status is not appropriate because the species is restricted to a short stretch of a single river. Critical habitat is not proposed for this species for reasons given in the next section.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time owing to lack of benefit from such designation. No additional benefits would accrue from a critical habitat designation that do not already accrue from the listing. Precise locality data are available to appropriate agencies through the Service office described in the **ADDRESSES** section. All involved parties and land owners will be notified of the location and importance of protecting this species' habitat.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include U.S. Army Corps of Engineers channel maintenance activities and Environmental Protection Agency pollution control and pesticide use programs. The Corps of Engineers conducts channel maintenance for flood control on Archey and South Forks, both of which could be important to the survival and recovery of this species. The Environmental Protection Agency would be involved with efforts to prevent water quality degradation and to approve the use of pesticides within the known range of this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, delivery, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since this mussel is not known to be involved in any commercial activity, no requests for relief under such a permit are expected.

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect to this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any addition information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Supervisor (see **ADDRESSES** section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


Burch, J.B. 1975. Freshwater Unionacean Clams (Mollusca: Pelecypoda) of North America. Malacological Publ. 204 pp.

Clarke, A.E. 1987. Status Survey of *Lampsilis streckeri* Frierson (1927) and *Arcidens wheeleri* (Ortman and Walker 1912). A report to the U.S. Fish and Wildlife Service. 24 pp. + field notes.

Frierson, L.S. 1927. A Classified and Annotated Check List of the North American Naiades. Baylor University Press, Waco, Texas. 111 pp.

Johnson, R.I. 1980. Zoogeography of North American Unionacea (Mollusca: Bivalvia) North of the Maximum Pleistocene Glaciation. Bull. Mus. Comp. Zool. 149(2):77–189.


### Author

The primary author of this proposed rule is James Stewart (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Proposed Regulation Promulgation

### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population with endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| CLAMS | | | | | | | |
| Pocketbook, speckled | *Lampsilis streckeri* | U.S.A.(AR) | NA | E | | NA | NA |

Dated: June 27, 1988.

**Susan Recce,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88–16604 Filed 7–22–88; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 611

**[Docket No. 71143–7243]**

### Foreign Fishing; Minimum Health and Safety Standards

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.


**SUMMARY:** This proposed rule would establish minimum health and safety standards aboard foreign fishing vessels to which United States observers are deployed. The Secretary of Commerce is required by the Magnuson Fishery Conservation and Management Act (Magnuson Act), to prescribe, by regulation, minimum health and safety standards that must be maintained aboard each foreign fishing vessel to which a United States observer is deployed. These health and safety standards apply to the facilities for the quartering of observers and the carrying out of observer functions.


**DATE:** Comments on the proposed rule must be submitted on or before September 8, 1988.

**ADDRESS:** Send comments to Special Agent Gary A. Wood, National Marine Fisheries Service, F/EN13, Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Wood, 202–673–5299.

**SUPPLEMENTARY INFORMATION:** Section 201(i) of the Magnuson Act requires that a United States observer be stationed aboard each foreign fishing vessel while it is engaged in fishing in the exclusive economic zone. Section 201(i)(1)(B) requires that the Secretary of Commerce (Secretary) establish, by regulation, minimum health and safety standards with respect to the facilities provided aboard the vessel for the quartering of observers and carrying out of observer functions.

Prior to the amendment that requires publication of health and safety standards, section 201(i)(2)(B)(ii) of the Magnuson Act (now superseded) provided that foreign fishing vessels could be exempted from observer coverage if the facilities aboard were such that the health or safety of the observer would be jeopardized. However, a vessel exempted from observer coverage because of substandard health or safety conditions could continue to fish. The alternatives than were to deploy observers to vessels where their health or safety might be jeopardized, or allow a vessel to fish without observers coverage. Neither alternative was considered tenable, since one subjected observers to undue risks, while the other eliminated any reliable means available to NOAA to collect necessary management, compliance and scientific data from the exempted vessels. By amending section 201(i) of the Magnuson Act to delete the exemption provision, observer coverage can be withheld from vessels which fail to meet minimum health or safety standards, and fishing activity can be prohibited by such vessels because no observer is aboard.

The proposed rule requires that foreign fishing vessels to which observers are deployed maintain working radar and required navigation lights, station qualified personnel on the bridge while the vessel is underway, have readily available and in good repair sufficient lifeboats and lifejackets

to accommodate all persons aboard in the event of an emergency, have aboard and in good repair ring life buoys with water lights, have aboard appropriate distress and other signaling devices, and maintain aboard the vessel clean and sanitary conditions in living, food service and work spaces. The cost incurred by the owners and operators of foreign fishing vessels to meet the health and safety standards established by these regulations is deemed to be minimal, and should not prohibit access to U.S.-managed fisheries by otherwise eligible vessels.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, because it will not result in (1) a major increase in costs or prices to consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities because it applies only to the owners or operators of foreign fishing vessels. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

**List of Subjects in 50 CFR Part 611**

Fish, Fisheries, Foreign relations.

Dated: July 18, 1988.

**James W. Brennan,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR 611 is proposed to be amended as follows:

## PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.8 is amended by redesignating paragraphs (d) through (j) as paragraphs (e) through (k), and by adding a new paragraph (d) to read as follows:

**§ 611.8 Observers.**

* * * * *

(d) *Health and safety standards.* All foreign fishing vessels to which an observer is deployed must maintain, at all times that the vessel is in the EEZ of the United States, the following:

(1) At least one working radar;

(2) Functioning navigation lights as required by international law;

(3) A watch on the bridge by appropriately trained and experienced personnel while the vessel is underway;

(4) Lifeboats and/or inflatable life rafts with a total carrying capacity equal to or greater than the number of people aboard the vessel. Lifeboats and inflatable life rafts must be maintained in good working order and be readily available;

(5) Life jackets equal or greater in number to the total number of persons aboard the vessel. Life jackets must be stowed in readily accessible and plainly marked positions throughout the vessel, and maintained in a state of good repair;

(6) Ring life buoys, equipped with automatic water lights, positioned at intervals of 25 feet along the length of the vessel. Ring life buoys must be 30 inches in diameter, maintained in a state of good repair and secured in such a way that they can be easily cast loose in the event of an emergency;

(7) At least one VHF-FM radio with a functioning channel 16 (156.8 $MH_z$), International Distress, Safety and Calling Frequency, and one functioning AM radio (SSB-Single Side Band) capable of operating at 2182 $KH_z$. Radios will be maintained in a radio room, chartroom or other suitable location;

(8) At least one Emergency Position Indicating Radio beacon (EPIRB), stowed in a location so as to make it readily available in the event of an emergency;

(9) At least 6 hand-held rocket-propelled, parachute, red-flare distress signals, and 3 orange-smoke distress signals stowed in the pilothouse or navigation bridge in portable watertight containers.

(10) All lights, shapes, whistles, foghorns, fog bells and gongs required by and maintained in accordance with the International Regulations for Preventing Collisions at Sea.

(11) Clean and sanitary conditions in all living spaces, food service and preparation areas and work spaces aboard the vessel.

* * * * *

3. In § 611.8, newly redesignated paragraph (f) is amended by changing the reference "(h)" to read "(i)"; newly redesignated paragraph (h)(1) is amended by changing the reference "(g)(4)" to read "(h)(4)"; newly redesignated paragraph (h)(2)(ii) is amended by changing the reference "(i)(2)" to read "(j)(2)" and newly redesignated paragraph (k)(1)(i) is amended by changing the reference "(g)(2)" to read "(h)(2)".

[FR Doc. 88–16462 Filed 7–22–88; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 88-087]

### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Disease-Resistant Tobacco Plants, Agrigenetics Advanced Science Co.

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Agrigenetics Advanced Science Company to allow the field testing in the State of Wisconsin of genetically engineered tobacco plants, designed to be resistant to alfalfa mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environemental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattesville, MD 20782, (301) 436-8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 88-028-01.

**SUPPLEMENTARY INFORMATION:**

**Background:**

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Agrigenetics Advanced Science Company of Madison, Wisconsin, (Agrigenetics) has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be resistant to alfalfa mosaic virus (AMV). In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Agrigenetics application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which are based on data submitted by Agrigenetics, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the AMV coat (capsid) protein has been inserted into a tobacco chromosome. In nature, the genetic material contained in a plant chromosome can only be transferred to another sexually compatible plant via cross-pollination. In this field test, the inserted gene would not spread to any other plant by cross-pollination, because the flowering parts of each plant will be cut off.

2. AMV is a plant pathogen; however, neither the AMV coat (capsid) protein gene itself, nor the derived gene product confer on tobacco any plant pathogenic characteristic.

3 The plasmid vector used to transfer the AMV coat (capsid) protein gene into a tobacco chromosome has been evaluated for its use in this experiment. The plasmid vector, although derived from an original wild-type Ti plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the plasmid vector. The plasmid vector has been tested and shown to be not pathogenic to any susceptible plant.

4. The vector agent, the phytopathogenic bacterium that was used to deliver the plasmid vector encoding the AMV coat (capsid) protein gene into a tobacco plant cell, has been demonstrated by *in virtro* and *in vivo* assays to be eliminated and no longer associated with any transformed tobacco plant or seed.

5. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences to another organism is not known to be

possible. The plasmid vector acts by delivering the gene to the tobacco genome where it is stably inserted into the tobacco chromosomal DNA. The plasmid vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

6. The size of the field test plot will be approximately 0.1 acre and will be located on a private farm away from any major road or town.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508; (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 fR 51272–51274).

Done at Washington, DC, this 20th day of July 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16678 Filed 7–22–88; 8:45 am]

BILLING CODE 3410-34-M

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**[Docket No. 88–106]**

## Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Herbicide Tolerant Tomato Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the E. I. Du Pont de Nemours & Company, Inc. to allow the field testing in the State of Delaware of genetically engineered tomato plants, designed to be tolerant to sulfonylurea herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7750, or write her at this same address. The environmental assessment should be requested under accession number 88–092–01.

**SUPPLEMENTARY INFORMATION:**

**Background:**

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

E. I. Du Pont de Nemours & Company, Inc. of Wilmington, Delaware, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to sulfonylurea herbicides. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Du Pont application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the E. I. Du Pont de Nemours & Company, Inc., as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene which has the effect of making a tomato plant tolerant to the effect of sulfonylurea herbicides has been inserted into a tomato chromosome. In nature, the genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination. In this field test trial, the introduced gene cannot spread to any other sexually compatible plant by cross-pollination because the test plot is located at a sufficient distance from any sexually compatible plant with which these experimental tomato plants could successfully cross-pollinate.

2. Neither the acetolactate synthase (ALS) gene itself, nor its derived gene product confers on tomato any plant characteristic. Traits such as weediness are polygenic and cannot be conferred by adding a single herbicide tolerance gene. The experimental tomato plants will remain sensitive to a wide range of other herbicides which could be used to kill these plants.

3. The tobacco variety from which the ALS gene was obtained is not a plant pest.

4. The ALS gene does not provide the genetically engineered tomato plants with any measurable selective advantage over nongenetically engineered tomato plants in its ability to be disseminated or to become established in the environment.

5. The vector used to transfer the ALS gene into a tomato chromosome has been evaluated for its use in this experiment. The vector, although

derived from an original wild-type Ti plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, the phytopathogenic bacterium which was used to deliver the vector encoding the ALS gene into a tomato plant cell, has been demonstrated by *in vitro* and *in vivo* assays to be eliminated and no longer associated with any genetically engineered tomato plant, plant part, or seed.

7. Horizontal movement by infectious transfer or transposition of any introduced gene or DNA sequence is not known to be possible. The vector acts by delivering the gene to the tomato genome where it is stably inserted into the tomato chromosomal DNA. The vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to any other organism.

8. Sulfonylurea herbicides are a new class of herbicide noted for their high herbicidal activity at very low use rates, excellent crop selectivity, and low mamalian toxicity.

9. The size of the enclosed field test trial plot is amll (35 feet by 110 feet). Physical isolation of the test site will be provided by a 12-foot-high, chain-link fence surrounding the entire research farm.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, this 20th day of July 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16679 Filed 7–22–88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88–103]

## Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants; Iowa State University

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Iowa State University to allow the field testing in the State of Iowa of genetically engineered tobacco plants, modified to express a chimeric proteinase inhibitor II promoter-chloramphenicol acetyl transferase gene. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7472, or write her at this same address. The environmental assessment should be requested under accession number 88–027–03.

**SUPPLEMENTARY INFORMATION:**

**Background:**

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Iowa State University (Iowa State) has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are modified to express a chimeric proteinase inhibitor II promoter-chloramphenical acetyl transferase gene. Expression of the gene will enable researchers to evaluate changes in the physiology of the plant brought about by insect damage. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Iowa State application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Iowa State, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A chimeric gene which has the effect of making tobacco plants express a bacterial chloramphenicol acetyl transferase gene has been inserted into a tobacco chromosome. In nature, the genetic material contained in a chromosome can only be transferred to

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another sexually compatible plant by cross-pollination. In this field test trial, the inserted chimeric gene cannot spread to any other sexually compatible plant by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible plant with which these experimental tobacco plants could successfully cross-pollinate.

2. Neither the proteinase inhibitor II promoter or terminator signal sequences, the chloramphenicol acetyl transferase gene itself, nor the chlorampenicol acetyl transferase gene derived product confers on tobacco any plant pest characteristic.

3. The potato variety, from which the proteinase inhibitor II promoter and terminator signal sequences were obtained, is not a plant pest.

4. The chimeric proteinase inhibitor II promoter-chloramphenicol acetyl transferase gene does not provide the genetically engineered tobacco plants with any measurable selective advantage over nongenetically engineered tobacco plants in its ability to be disseminated or to become established in the environment.

5. The vector used to transfer the chimeric proteinase inhibitor II promoter-chloramphenicol acetyl transferase gene into a tobacco chromosome has been evaluated for its use in this experiment. The vector, although derived from DNA with known plant pathogenic potential, has been disarmed; that is, genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, the bacterium which was used to deliver the vector encoding the chimeric gene into a tobacco plant cell, has been demonstrated to be eliminated and no longer associated with any genetically engineered tobacco plant or seed.

7. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences is not known to be possible. The vector acts by delivering the gene to the tobacco genome where it is stably inserted into the tobacco chromosomal DNA. The vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to any other organism.

8. The size of the field test trial plot is small (50 feet by 120 feet). Site monitoring and management practices that create an unfavorable environment for the dissemination of any genetically engineered tobacco plant or plant genetic material are expected to provide the necessary degree of both biological and physical containment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 20th day of July 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16680 Filed 7–22–88; 8:45 am]

BILLING CODE 3410-34-M

## Office of International Cooperation and Development

### Cooperative Agreement; University of Maryland

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

**ACTIVITY:** OICD intends to enter into a Cooperative Agreement with the University of Maryland to provide funding for collaborative international integrated pest management.

**Authority:** Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, a amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with the University of Maryland to collaborate in the area of international integrated pest management, with specific emphasis on Northern Africa and the Middle East. The University will be strengthened in the integration of its personnel in A.I.D. and OICD efforts to support bilateral projects, design and implementation of a possible regional project, if needed, participation in international integrated pest management programs, institution building, and research and training. For OICD and A.I.D., access to University personnel with a broad depth and breadth of experience and management of regional locust control efforts can be expected to improve appropriateness of suggested methodologies in this area.

Assistance will be provided only to the University of Maryland, which is contributing resources and experience. Funds provided by OICD will be used to supplement costs of supplies, communications, and a pest management specialist.

Based on the above, this is not a formal request for application. Funds estimated at $52,274 will be available in FY1988 to support this work. No extension of this project is currently envisioned.

Information on proposed Agreement #58–319R–8–038 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: July 20, 1988.

**Nancy J. Croft,**

*Contracting Officer.*

[FR Doc. 88–16648 Filed 7–22–88; 8:45 am]

BILLING CODE 3410-DF-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### Western Pacific Fishery Management Council; Amended Meeting Notice

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The agenda as originally published (53 FR 26630, July 14, 1988) for the public meeting on August 10–11, 1988, of the Western Pacific Fishery Management Council has been amended. An additional Council agenda item will be approval of a revised Statement of Organization, Practices and Procedures. All other information previously published remains unchanged.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

July 20, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–16685 Filed 7–22–88; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 20, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** July 27, 1988.

**Authority:** Executive Order 11651 of March 3, 1972, as amended: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** The current limits for certain cotton and man-made fiber textile products in Group I are being increased for carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 20, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 27, 1988, the directive of December 24, 1987 is hereby amended to increase the current limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Singapore.

| Category | Adjusted twelve-month limit |
|---|---|
| 239 | 804,750 pounds. |
| 331 | 354,040 dozen pairs. |
| 334 | 58,490 dozen. |
| 335 | 171,420 dozen. |
| 337 | 69,634 dozen. |
| 341 | 156,142 dozen. |
| 604 | 1,672,191 pounds. |
| 631 | 367,133 dozen pairs. |
| 634 | 229,231 dozen. |
| 635 | 235,320 dozen. |
| 640 | 134,884 dozen. |
| 641 | 220,011 dozen. |
| 645/646 | 124,372 dozen. |
| 647 | 445,139 dozen. |
| 648 | 1,410,555 dozen. |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–16654 Filed 7–22–88; 8:45 am]

BILLING CODE 3510–DR–M

## CONSUMER PRODUCT SAFETY COMMISSION

### Development of Voluntary Standard for All-Terrain Vehicles; Meeting

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The major members of the all-terrain vehicle ("ATV") industry have scheduled a meeting on July 28, 1988, for further development of a voluntary safety standard for ATVs. Interested members of the public are invited to attend the meeting and observe or participate in the development of the standard. Persons wishing to attend the meeting or to be notified of future meetings of the committee should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K–107, Costa Mesa, California 92626, phone (714) 241–9256.

**DATE:** The meeting is scheduled for 9:30 a.m. on July 28, 1988.

**ADDRESS:** The meeting will be held at The DC Dulles Marriott Hotel, 333 West Service Road, Chantilly, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Carl Blechschmidt, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, phone (301) 492–6554.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Commission for some time has been concerned with safety issues associated with the operation of all-terrain vehicles, which are three- and four-wheeled motorized vehicles, generally characterized by large, low pressure tires, a seat designed to be straddled by the operator, and handlebars for steering and which are intended for off-road use by an individual rider on various types of unpaved terrain.

On May 31, 1985, the Commission published an advance notice of proposed rulemaking (ANPR) in the **Federal Register**. 50 FR 23139. In the ANPR, the Commission announced that it was considering a wide range of possible regulatory alternatives to address the safety concerns about ATVs and solicited comments on a number of issues.

On December 30, 1987, the Commission and the major members of the ATV industry filed preliminary consent decrees in *United States v. American Honda Motor Co., Inc. et al.*, Civil Action No. 87–3525, in the United States District Court for the District of Columbia. The preliminary consent decrees contained provisions intended to satisfy the Commission's concerns about ATVs and provided that the parties would file proposed final consent decrees, which were filed on March 14, 1988. Both the preliminary consent decrees and the final consent decrees, which were approved by the Court on April 28, 1988, provide that the industry members will attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission, within four months of the Court's approval of the final consent decrees.

Plenary standard development meetings pursuant to the consent decree were held on May 4, June 2, and June 30, 1988, and technical working group meetings were held on May 19–20 and June 15–16, and are scheduled for July 20–21. The results of the July 20–21 working group meetings will be reported to the July 28 plenary meeting of the industry representatives, who will make

the decisions on the content of proposals for inclusion in the standard.

Commission policy requires that all voluntary standards meetings attended by CPSC staff be open to the public and that interested members of the public have an opportunity to contribute to the development of the standard. Thus, the meeting is open to all members of the public who wish to attend or participate. In order to ensure that the meeting facilities are adequate to accommodate all attendees, persons wishing to attend the meeting should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K–107, Costa Mesa, California 92626, phone (714) 241–9256. In addition, persons who wish to participate in the development of the standard should notify Mr. Golde of the fact, so they can receive notice of additional meetings, etc., as they are scheduled.

The goal of the four-month period provided in the consent decrees for the development of a standard by the industry is to develop at least a general consensus on a standard within that time. Work on some aspects of a standard may continue after that period. Because of the need for the industry to develop the standard within four months, it may not be practical to announce all subsequent meetings of the voluntary standard development committee in the **Federal Register**. However, all persons who indicate a desire to participate in the development of the standard will be notified of such meetings, and other parties may contact the Commission's Office of the Secretary, at (301) 492–6800, to determine when standards development meetings are placed on the Commission's Public Calendar.

The Commission expects that most of the subsequent plenary meetings will be in the Washington, DC metropolitan area. However, some meetings may be in California for the convenience of participants who are located on the west coast or in Japan.

In order to ensure that the meeting proceeds on schedule, it may be necessary for the Chairperson to limit the time and manner allowed for the presentation of comments by each participant and to restrict duplicative comments.

Dated: July 19, 1988.

**Sadye E. Dunn,**

*Secretary of the Commission.*

[FR Doc. 88–16644 Filed 7–22–88; 8:45 am]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 9:00 a.m., Wednesday, 3 August and 8:00 a.m., Thursday, 4 August 1988.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

*L.M. Bynum,*

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 19, 1988.

[FR Doc. 88–16632 Filed 7–22–88; 8:45 am]

BILLING CODE 3810–01–M

### Privacy Act of 1974; Amendment of Record System Notice

**AGENCY:** Office of the Secretary of Defense (OSD).

**ACTION:** Notice of an amendment of a record system.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records subject to the Privacy Act of 1974. The specific changes to the amended system are set forth below followed by the amended notice published in its entirety as changed.

**DATE:** This proposed action shall be effective without further notice (August 24, 1988), unless comments are received which would result in a contrary determination.

**ADDRESS:** Any comments may be submitted to the System Manager identified in the record system notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, D.C. 20301–1155. Telephone: (202) 695–0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

50 FR 22090, 29 May 1985 (Compilation published)
50 FR 47087, 14 Nov 1985
51 FR 11807, 7 Apr 1986
51 FR 11803, 7 Apr 1986
51 FR 17508, 13 May 1986
51 FR 23573, 30 Jun 1986
51 FR 44668, 11 Dec 1986
51 FR 44672, 11 Dec 1986
51 FR 44670, 11 Dec 1986
51 FR 44665, 11 Dec 1986
52 FR 4645, 13 Feb 1987
52 FR 11849, 13 Apr 1987
52 FR 23334, 19 Jun 1987
52 FR 16431, 5 May 1987
52 FR 22837, 16 Jun 1987
53 FR 15868, 4 May 1988.

This proposed amendment is not within the purview of subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 19, 1988.

**Amendments**

**DMRA&L 09.0**

*System name:*

Defense Equal Opportunity Management Institute (DEOMI) Student File (50 FR 22295, May 29, 1985).

Changes:

*System location:*

(first paragraph)
After "backup", insert: "Mainframe".
Delete "systems" after "computer"
(second paragraph)

Delete "microfiche", insert: "microform".
After "files", insert: "for former students".
Delete "are located in the Chief, Evaluation Division", insert: "location: Information Systems Division".
Delete "Building 561", insert: "Building 559".
At end of paragraph, insert: "Temporary files and backups for current students are maintained on hard copy and microcomputers located in the Training Directorate, Defense Equal Opportunity Management Institute, Building 560, Patrick AFB, FL 32925–6685."
Add an additional paragraph: "Temporary microcomputer files and backups are also located in the Information Systems Division, Building 559, Patrick AFB, FL 32925–6685."

*Categories of Individuals Covered By the System:*

Delete "or", insert: "and".
Delete "at", insert: "of".

*Categories of Records in the System:*

After "name," insert: "social security number,"
After "age," insert: "religious preference,"
After "ratings," insert: "and".

*Authority for Maintenance of the System:*

After "10 U.S.C. 136", insert: "; E.O. 9397."

*Purpose(s):*

Delete "The data is and", insert: "Files are used by".
Delete "in evaluating the progress of student", insert: "to evaluate student progress".
Delete "Also used by advisors in counseling students to verify attendance and grades to colleges and universities; to select instructors; to make decision to release students from the program."
Delete the following paragraph: "Students use the data to evaluate their program, any individual records in the system may be transferred to any component of the Department of Defense having the need to know in the performance of official business."
After "academic accomplishment", insert: "Advisors use the files for counseling of students. Academic Boards and the Commandant use files to make decisions on releasing students from the program. The Registrar uses the files to verify attendance and grades. The Commandant, faculty and other staff use the student records to select instructors. Students use the data in evaluating their progress."
Insert the following paragraph: "The use of personal identifiers in this record system is solely for positive identification purposes."

*Routine uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:*

Delete "To law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order."
Insert the following two paragraphs: "Colleges and universities use transcript records to verify attendance and grades.
See Office of the Secretary of Defense (OSD) blanket routine uses at the head of OSD's published system notices which are also applicable to this record system."

*Policies and Practices For Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:*

*Storage:*

Delete "file is by" and insert: "files are".
Delete "microfiche", insert: "microform,".
Insert: "Temporary files are on microcomputer disks backed up by magnetic tapes, diskettes, and paper records."

*Retrievability:*

Delete "are sequenced alphabetically by last name and by class.", insert: "may be accessed by any of the following: name, social security number, student number or class."

*Safeguards:*

Delete "location is a controlled access area."
Insert: "locations for both permanent and temporary files are controlled access areas."
Delete "Backup files –" Insert: "Backup files".

*Retention and Disposal:*

Insert "Mainframe" as first word in paragaph ahead of "computer".
Delete "microfiche" and insert "microform".
Delete "four year," and insert "four years and then destroyed."
Insert additional sentence: "Microcomputer records are transferred to the mainframe at the end of the current class."

*System Manager(s) and Address:*

After "32925", insert: "–6685".

*Notification Procedure:*

Delete "Commandant", insert: "Director of Support".
After "32925", insert: "–6685".
Delete "305–494–6976" and insert: "407–494–6017".

*Record Access Procedures:*

Delete "Request from individuals should be addressed".
Insert: "Address requests".
Delete "Commandant", insert: "Director of Support".
After "32925", insert: "–6685".
Delete "Written requests for information should contain the full name, ", Insert: "Requests must be in writing and contain the full name, social security number,". After "class of the individual", add: ", and signature."
Delete "such as military ID cards or driver's license,",
Insert: "such as a military ID card or a driver's license."

*Record Source Categories:*

Delete "examination,", insert: "examinations."

*Systems Exempted From Certain Provisions of the Act:*

Delete this heading. Substitute the following:
Exemptions Claimed For This System:

**DMRA&L 09.0**

**SYSTEM NAME:**

Defense Equal Opportunity Management Institute Student File.

**SYSTEM LOCATION:**

Primary and backup mainframe computer location: Building 989, Patrick AFB, FL 32925–6685.
Hard copy and microform backup files for former students location: Information Systems Division, Defense Equal Opportunity Management Institute, Building 559, Patrick AFB, FL 32925–6685.
Temporary files and backups for current students are maintained on hard copy and microcomputers located in the Training Directorate, Defense Equal Opportunity Management Institute, Building 560, Patrick AFB, FL 32925–6685.
Temporary microcomputer files and backups are also located in the Information Systems Division, Building 559, Patrick AFB, FL 32925–6685.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All current and former students of the Defense Equal Opportunity Management Institute.

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**CATEGORIES OF RECORDS IN THE SYSTEM:**

Life history summary, name, social security number, race, age, religious preference, military organization, test and examination scores and forms, peer group and instructor ratings and advisor progress reports.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 136; E.O. 9397.

**PURPOSE(S):**

Files are used by the Defense Equal Opportunity Management Institute to evaluate student progress and to create a permanent record of academic accomplishment. Advisors use the files for counseling of students. Academic Boards and the Commandant use files to make decisions on releasing students from the program. The Registrar uses the files to verify attendance and grades. The Commandant, faculty and other staff use the student records to select instructors. Students use the data in evaluating their progress.

The use of personal identifiers in this record system is solely for positive identification purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Colleges and universities use transcript records to verify attendance and grades.

See Office of the Secretary of Defense (OSD) blanket routine uses at the head of OSD's published system notices which are also applicable to this record system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Primary files are computer disk files. Backup files are magnetic computer tapes, microform, and paper records. Temporary files are on microcomputer disks backed up by magnetic tapes, diskettes, and paper records.

**RETRIEVABILITY:**

Files may be accessed by any of the following: name, social security number, student number or class.

**SAFEGUARDS:**

Primary locations for both permanent and temporary files are controlled access areas. Backup files storage is in locked file cabinets. Only authorized personnel have access to files.

**RETENTION AND DISPOSAL:**

Mainframe computer and microform records are kept permanently; paper backup records are kept for four years and then destroyed. Microcomputer records are transferred to the mainframe at the end of the current class.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commandant, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: Director of Support, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685. Telephone: 407–494–6017.

**RECORD ACCESS PROCEDURES:**

Address requests to the Director of Support, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685. Requests must be in writing and contain the full name, social security number, current address and telephone number, class of the individual, and signature.

For personal visits, the individual should be able to provide some acceptable identification, such as a military ID card or a driver's license.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Information is provided by the individual, student peers, instructors, counselors, and examinations.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

None.

[FR Doc. 88–16631 Filed 7–22–88; 8:45 am]
BILLING CODE 3810-01-M

## Department of the Navy

### Postponement of Public Hearing for Proposed Conveyance of U.S. Navy Land to Philadelphia Municipal Authority for Establishment of Steam Generating Facility That Produces Steam for Purchase by U.S. Navy, Philadelphia Naval Shipyard, Philadelphia, PA

The U.S. Navy hereby gives notice that the Public Hearing that had been scheduled for 27 July 1988 to receive comments on the Draft Environmental Impact Statement (DEIS) prepared for the subject action has been POSTPONED. The project has been placed "on hold" pending further review by the City of Philadelphia and the Department of the Navy.

Should the project be reactivated, the public hearing will be rescheduled and the hearing date, place, and time will be announced by separate notice. As a result of this delay, the public review and comment period for the DEIS has been extended indefinitely.

Questions concerning this notice may be directed to Ken Petrone at (215) 897–6432 or Bob Ostermueller at (215) 897–6262.

Date: July 21, 1988.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 88–16732 Filed 7–21–88; 12:13 pm]
BILLING CODE 3810-AE-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award; Intent To Renew Grant with Florida Solar Energy Center

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of restricted eligibility for grant renewal.

**SUMMARY:** The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a renewal award under Grant Number DE-FG01–84CE22122 to Florida Solar Energy Center (FSEC) under DOE's Building and Community System's Windows and Daylighting Program for daylight availability research.

Scope: This grant will provide additional research on daylighting, particularly for daylight availability in the areas of characterizing sky luminance distributions, developing a standard practice for fenestration photometry measurements, developing and using analysis procedures for evaluating measured daylight availability data and for using these evaluations to develop improved design tools for saving energy while providing for human comfort and quality lighting. FSEC will assist Lawrence Berkeley Laboratory in their development with industry of residential fenestration design tools. Significant energy savings can result from the development and appropriate use of advanced fenestration systems. Building fenestration (windows, skylights, etc.) greatly influences energy use since such systems provide both a barrier to heat loss and a collector of energy in the form of heat and daylight.

Eligibility: Eligibility for this renewal award is being limited to FSEC, an institute of higher education, because of their high qualifications in the fields of optical physics and fenestration system design and evaluation. The term of this renewal shall be from June 1, 1988 through December 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B" Office of Procurement Operations.*

[FR Doc. 88–16672 Filed 7–22–88; 8:45 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

**[ERA Docket No. 88–25–NG]**

### Czar Gas Corp.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Order Granting Blanket Authorization to Import Natural Gas from and Export Natural Gas to Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Czar Gas Corporation Inc. (Czar) blanket authorization to import natural gas from and export natural gas to Canada. The order issued in ERA Docket No. 88–25–NG authorizes Czar to import up to 146 Bcf of Canadian natural gas and to export to Canada up to 146 Bcf of domestic natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–16671 Filed 7–22–88; 8:45 am]

BILLING CODE 6450–01–M

**[ERA Docket No. 88–35–NG]**

### Northern Natural Gas Co.; Application To Amend Authorization To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of application to amend authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on June 8, 1988, of the application of Northern Natural Gas Company (Northern) to amend its existing authority to import Canadian gas from its Canadian supplier, Consolidated Natural Gas Limited (Consolidated), at Emerson, Manitoba, to increase its currently authorized import volume from 135 MMcf up to 200 MMcf per day from September 18, 1988 through October 31, 1989.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene or notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are due to be filed no later than August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586–8162

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, Washington, DC 20585 (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Northern is currently authorized under DOE/ERA Opinion and Order No. 76 (Order 76), issued March 29, 1985, to import up to 135,000 Mcf per day of Canadian natural gas at Emerson through October 31, 1989, minus the volumes it elects to import up to a daily maximum of 67,500 Mcf, at Monchy, Saskatchewan, through the Alaska Natural Gas Transportation System (ANGTS) in accordance with the terms, conditions and prices of its gas sales agreement with Consolidated dated February 24, 1979, as amended. Order 76 granted Northern authorization to import Canadian natural gas pursuant to its amended gas purchase contract with Consolidated that provided a 1984–85 contract year gas price of $3.50 (U.S.) per MMBtu for imported volumes up to 27.375 Bcf and $2.70 (U.S.) per MMBtu for all volumes above that level provided Northern takes its minimum annual take-or-pay obligation of 40.15 Bcf. For subsequent years the price of the gas and the take-and-pay volumes were to be subjected to annual renegotiation. Between February 1985 and November 1986, Northern and Consolidated amended their contract five times. Northern furnished copies of these amendments with its application. These amendments include such items as recognition of changes in Canadian regulatory requirements for exports, new conditions for shifts in the authorized daily takes, price adjustments, a take-or-pay settlement for the 1981–82 contract year, two-part rate schedule change, additional procedures to expedite annual negotiations and provisions for arbitration in the event of disputes. On June 1, 1988, Northern and Consolidated entered into a precedent agreement to amend their contract. Northern's new contract amendment would provide for an increase in the daily contract quantity Consolidated would sell and deliver to Northern from up to 135 MMcf per day to up to 200 MMcf per day for the period from September 18, 1988, through October 31, 1989. In accordance with the June 1 agreement, Northern requests the ERA to increase its existing import authorization at Emerson to up to 200 MMcf per day and up to 73,000 MMcf per year minus whatever volumes up to 100 MMcf per day Northern elects to import through the ANGTS at Monchy.

Northern states that the contract amendments and related authorization necessary for the transportation of the additional volumes are proceeding between Consolidated and TransCanada and the Canadian National Energy Board while other transportation contracts with Foothills Pipe Lines (Yukon) Ltd. and with Northern Border Pipeline Company are in place to accept the proposed volume increase at their respective facilities during the above stated period.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the proposed additional volumes are needed for system supply

and that its import arrangement is competitive. Parties opposing the amended arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of interventions, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., August 24, 1988.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Northern's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 19, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-16669 Filed 7-22-88; 8:45 am]

BILLING CODE 6450-01-M

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**[ERA Docket No. 87-28-NG]**

## Tennessee Gas Pipeline Co.; Order Amending a Conditional Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Order Amending A Conditional Authorization to Import Natural Gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order amending a conditional authorization to Tennessee Gas Pipeline Company (Tennessee) to import natural gas. The order, DOE/ERA Opinion and Order No. 195-A, issued in ERA Docket No. 87-28-NG increases the amount of gas Tennessee may import through existing facilities from 5,000 Mcf per day up to 29,900 Mcf per day beginning November 1, 1988. Importation of the remaining 95,100 Mcf per day of gas authorized in DOE/ERA Opinion and Order No. 195 is still conditioned upon DOE's completion of its environmental review in compliance with the National Environmental Policy Act.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Adminsitration.*

[FR Doc. 88-16670 Filed 7-22-88; 8:45 am]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

**[Docket No. ST85-354-002]**

## SNG Intrastate Pipeline, Inc.; Extension Reports

July 20, 1988.

The company listed below has filed an extension report pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and address of the company selling pursuant to Part 284; the party receiving the gas; the date the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

**Lois D. Cashell,**

*Acting Secretary.*

[1] Notice of this extension report does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST, JULY 1988

| Docket No. | Seller | Recipient | Date filed | Part 284 subpart | Effective date | Expiration date [1] |
|---|---|---|---|---|---|---|
| ST85-354-002 | SNG Interstate Pipeline, Inc., P.O. Box 2563, Birmingham, AL 35202 2563. | Southern Natural Gas Co. | 07-06-88 | D | 10-04-88 | |

[1] The pipeline has sought Commission approval of trhe extension of this transaction. The 90-day Commission roview period expires on the date indicated.

[FR Doc. 88-16575 Filed 7-22-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00268; FRL 3419-5]

## FIFRA Scientific Advisory Panel; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 1-day meeting of the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the Special Review of aldicarb and a set of scientific issues being considered by the Agency in connection with the peer review classification of atrazine as a Class C oncogen, isoxaben as a Class C oncogen, prochloraz as a Class C oncogen, and rotenone as a Class D oncogen.

**DATES:** The meeting will be held on Wednesday, September 7, 1988 from 8:30 a.m. to 4 p.m.

**ADDRESS:** The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA, (703-557-7695).

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting is:

1. Review of a set of scientific issues in connection with the Agency's preliminary determination to cancel registrations of pesticide products containing aldicarb. The Agency has made a preliminary determination that, on a national basis, the risks posed by aldicarb contaimination of ground water exceed the benefits derived from aldicarb's continued use. The Agency believes that vulnerable areas are likely to have leaching of aldicarb into ground water at levels greater than the Health Advisory. However, the Agency believes it is possible to reduce the risks significantly by imposing certain regulatory restrictions short of cancellation of all uses. Accordingly, the Agency evaluated three options to prevent the contamination of the nation's ground water by aldicarb above an unacceptable level. These options are: (1) Risk reduction measures/user determines applicability, (2) labeling/monitoring/state management plans determined by Health Regions, and (3) labeling/monitoring/state management plans determined by county. This proposed approach for aldicarb implements the Agency's recently proposed long-term strategy addressing concern for pesticides in ground water.

2. Review of a set of scientific issues in connection with the Agency's classification of the peer review of atrazine as a Class C oncogen (possible human carcinogen). The classification of atrazine was based on an increased incidence of mammary tumors in females in Sprague-Dawley rats, a possible mutagenicity concern and a structure activity relationship with agents demonstrated to produce mammary tumors.

3. Review of a set of scientific issues in connection with the Agency's classification of the peer review of isoxaben as a Class C oncogen (possible human carcinogen). The classification of isoxaben as a Class C oncogen was based on significant increases in liver adenomas in both sexes of B6C3F1 mice.

4. Review of a set of scientific issues in connection with the Agency's classification of the peer review of prochloraz as a Class C oncogen (possible human carcinogen). The classification of prochloraz as a Class C oncogen was based on significant increases in benign and malignant liver tumors in male and female mice.

5. Review of scientific issues in connection with the Agency's peer review of rotenone as a Class D Oncogen based on increased incidence of parathyroid adenoma in male rats at 75 ppm, in the National Toxicology Program study, which was not statistically significantly increased; occurred in only one sex and one species; at only one dose; and were benign only. Since the Hazleton study did not reproduce these results, the data could not be interpreted as showing either the presence or absence of a carcinogenic effect; thus, the weight of evidence is "inadequate".

6. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1-5 may be obtained by contacting: By mail:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA., (703-557-2805).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit ten copies of a summary no later than August 17, 1988, in order to ensure appropriate consideration by the Panel.

Dated: July 19, 1988

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 88-16620 Filed 7-22-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearings; Archon Broadcasting Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and | File No. | MM Docket No. |
|---|---|---|
| A. Archon Broadcasting Limited Partnership; Waterloo, NY. | BPH-870429MC | 88-336 |
| B. Robert William Martin et. al., d/b/a Lake Country Broadcasting; Waterloo, NY. | BPH-870430OH | |

2. Pursusnt to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading, and Applicants*

1. Air Hazard, B
2. Comparative, A,B
3. Ultimate, A,B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 957-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88-16659 Filed 7-22-88; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Culpepper, Richard L. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. Richard L. Culpepper; Muskegon, MI. | BPH-870612MB | 88-339 |
| B. Golbar Broadcasting Co. Limited Partnership; Muskegon, MI. | BPH-870615MN | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues have been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading, and Applicants*

1. Air Hazard, A, B
2. Comparative, A,B,
3. Ultimate, A,B

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88-16660 Filed 7-22-88; 8:45 am]

BILLING CODE 6710-01-M

### Applications for Consolidated Hearing; Rem Malloy Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. Henry R. Malloy d/b/a Rem Malloy Broadcasting; Raleigh, NC. | BPH-860627MH | 88-305 |
| B. Peebles Broadcasting Company; Raleigh, NC. | BPH-860703ME | |
| C. James S. Lee and Donald L. Baker d/b/a Interactive Media; Raleigh, NC. | BPH-860707MS | |
| D. Raleigh FM Limited Partnership; Raleigh, NC. | BPH-860707MV | |
| E. FM Carolina, Inc.; Raleigh, NC. | BPH-860707MX | |
| F. Free Air Corporation; Raleigh, NC. | BPH-860707NH | |
| G. Brian C. Blount, Evelyn V. Garner, Clyde Austin & Charles Harrison d/b/a BCB Enterprises; Raleigh, NC. | BPH-860707NJ | |
| H. Clear Channel Communications, Inc.; Raleigh, NC. | BPH-860707NV | |
| I. Bernard Dawson; Raleigh, NC. | BPH-860707NW | |
| J. Holy Spirit FM Limited Partnership; Raleigh, NC. | BPH-860707NX | |
| K. LPNC, Inc.; Raleigh, NC. | BPH-860702MC (Previously dismissed). | |
| L. Special Markets, Inc.; Raleigh, NC. | BPH-860703MH (Previously dismissed). | |
| M. Cofield Broadcasting Company, Inc.; Raleigh, NC. | BPH-860703MM (Previously dismissed). | |
| N. FM Raleigh Limited Partnership; Raleigh, NC. | BPH-860707MY (Previously dismissed). | |
| O. Willowbrook Broadcasting Limited Partnership; Raleigh, NC. | BPH-860707NM (Previously dismissed). | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR. 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading, and Applicants*

1. Financial qualifications, G,I
2. Comparative, A-J
3. Ultimate, A-J

3. If there is any non-standardized issue in this proceeding, the full text of

the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16661 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; WCND, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. WCND, Inc.; Shelbyville, KY. | BPH–870514MJ | 88–337 |
| B. CSW, Ltd.; Shelbyville, KY. | BPH–870515MS | |
| C. Wayne Louis Wilson; Shelbyville, KY. | BPH–870515NO | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

*Issue Heading, and applicants*

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. This complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 957–3800).

**W. Jay Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16662 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; WYAL Radio, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. WYAL Radio, Inc.; Scotland Neck, NC. | BPH–870331MP | 88–338 |
| B. Michael Ronald Bland; Scotland Neck, NC. | BPH–870331NX | |
| C. Ervin L. Hester et al. d/b/a Holly Spirit FM Partnership; Scotland Neck, NC. | BPH–87042MF | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR: 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, C
2. Comparative, A,B,C,
3. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. This complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16663 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Revocations

Notice is hereby given that ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

*License Number:* 1925
*Name:* Ebrin International, Inc.
*Address:* 162 Village Path, Lakewood, NJ 08701
*Date Revoked:* June 9, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2565
*Name:* Air Marine International Cargo Services, Inc. dba M.A.C. Cargo Services
*Address:* 6856 N.W., 77 Court, Miami, FL 33166
*Date Revoked:* June 25, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 1629R
*Name:* Transnational Shipping Corporation
*Address:* 17 Battery Place, New York, NY 10004
*Date Revoked:* June 26, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2774
*Name:* JBM & Sons International Freight Forwarders, Inc.
*Address:* 2151 NW. 72nd Ave. Miami, FL 33122
*Date Revoked:* June 30, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2404
*Name:* Transworld Freight Systems, Corp.
*Address:* 2400 N.W. 93rd Ave., Miami, FL 33172
*Date Revoked:* July 1, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 3073
*Name:* Edward O. Himley, Jr., dba Cap Air/Ocean

*Address:* 3115 Will Clayton Parkway, Houston, TX 77032
*Date Revoked:* July 12, 1988
*Reason:* Failed to maintain a valid surety bond

**Robert G. Drew,**
*Director, Bureau of Domestic Regulation.*
[FR Doc. 88-16616 Filed 7-22-88; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Commerce Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1988.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Commerce Bancorp, Inc.,* Cherry Hill, New Jersey; to acquire 100 percent of the voting shares of Citizens State Bank of New Jersey, Forked River, New Jersey. Comments on this application must be received by August 17, 1988.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company,* Charleston, West Virginia; to acquire 100 percent of the voting shares of Bank of Ripley, Ripley, West Virginia.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Athens Bancorp, Inc.,* Athens, Wisconsin; to acquire 100 percent of the voting shares of Junction State Bank, Junction City, Wisconsin.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Investment Corporation,* Cuba, Missouri; to acquire 100 percent of the voting shares of Peoples Bank of Steelville, Steelville, Missouri, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 19, 1988.

**James McAfee,**
*Associate Secretary of the Board.*
[FR Doc. 88-16618 Filed 7-22-88; 8:45 am]
BILLING CODE 6210-01-M

### First NH Banks, Inc.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 5, 1988.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.,* Manchester, New Hampshire; to acquire EG & G Financial Services, Inc., Wellesley, Massachusetts, and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by August 9, 1988.

**C. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PennBancorp,* Titusville, Pennsylvania; to alter the current exempt activities of United Data Services, Inc., by providing data processing services to an unaffiliated third party pursuant to § 225.25(b)(7) of the Board's Regulation Y.

**D. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *MNC Financial, Inc.,* Baltimore, Maryland; to acquire Landmark Financial Services, Inc., Silver Spring, and thereby engage in making, acquiring and servicing loans pursuant to section 225.25(b)(1); acting as agent for credit life and disability insurance; and acting as agent for credit and collateral insurance directly related to extensions of credit by the company or its subsidiaries pursuant to section 225.25(b)(8) of the Board's Regulation Y. Comments on this application must be received by August 17, 1988.

**E. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to acquire Underwriting Specialists, Norfolk, Nebraska, and thereby indirectly acquire engage in general insurance agency activities pursuant to § 225.25(b)(8) of the Board's Regulation Y. Comments on this application must be received by August 9, 1988.

Board of Governors of the Federal Reserve System, July 19, 1988.

**James McAfee,**
*Associate Secretary of the Board.*
[FR Doc. 88-16619 Filed 7-22-88; 8:45 am]
BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### Federal Telecommunications Privacy Advisory Committee; Meeting

Notice is hereby given that the General Services Administration's Federal Telecommunications Privacy Advisory Committee will meet on August 1, 1988, from 9:00 a.m. to Noon in room 119 of the Veterans Administration Building, 810 Vermont Avenue, NW., Washington, DC 20420. The agenda will include (1) Background on the issues, (2) discussion of the issues and the materials furnished before the meeting, and (3) information needed for resolving the issues.

The meeting will be open to the public.

Less than fifteen days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers (202) 523–5308.

Dated: July 14, 1988.

**John J. Landers,**

*Director, Office of Administration, Information Resources Management Service.*

[FR Doc. 88–16617 Filed 7–22–88; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Chronic Disease Burden and Prevention Models; Program Announcement and Availability of Funds for Fiscal Year 1988

#### Introduction

The Centers for Disease Control (CDC), announces the availability of funds for Fiscal Year 1988 for a cooperative agreement to participate in a project known as Chronic Disease Burden and Prevention Models.

#### Authority

This program is authorized under section 317 (247 b) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

#### Purpose

*A. Purpose*

To assist State Health Departments to plan chronic disease prevention and intervention control programs for the greatest measurable health improvement per resources expended by enhancing their capacity to direct resources toward effective prevention and control efforts.

*B. Objectives*

1. To develop a "Disease Burden Model" for at least twelve specific chronic diseases.

2. To develop a "Disease Prevention Model," adaptable to accommodate multiple chronic disease categories, for at least twelve specific chronic diseases.

3. To test developed models in different populations and for different chronic diseases.

#### Eligible Applicants

Eligible applicants are the official health departments of any State, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

#### Cooperative Activities

*A. Recipient Activities*

1. Assume the leadership role in the preparation of Software Packages for Disease Burden and Disease Prevention Models:

a. Using State data, prepare a menu-driven software package (Disease Burden Model (DBM)) for use with IBM-compatible personal computers which can be used to quantify the burden of specific chronic diseases. Examples of indices which might be used to develop the DBM include: Mortality rates, Morbidity/Hospitalization Rates, Years of Potential Life Lost. Examples of data sources that might be used to develop the model include: Vital Records, Hospital Discharge abstracts, Specific Disease Registries, Outpatient Visit Records, Nursing Home Records, Worker's Compensation Claims, Insurance Claims.

The DBM should be developed during the first year of this project using at least 12 major chronic diseases which have significant impact on health care cost.

b. Using State data, prepare a second menu-driven software package (Disease Prevention Model (DPM))—for IBM compatible personal computers—which can be used to quantify the effectiveness of various prevention, intervention or control programs to reduce morbidity and mortality developed in the DBM. The DPM should be developed utilizing at least 12 major chronic diseases for which there exists significant potential to reduce overall morbidity and mortality.

Some of the indices in the DPM should be quite similar to those in the DBM, as the ultimate goal is to reduce the quantified burden. The DPM should quantify the extent to which the burden can be lessened with the application of various prevention and intervention/control strategies. Therefore, the "units" will be quite similar. This model will be developed in year 2 of the project.

2. Utilizing State data, test both the DBM and DPM developed above on two completely different chronic diseases in specific populations of at least 500,000 people. This will be done in years 2 and 3 respectively.

*B. Centers for Disease Control (CDC) Activities*

1. Provide technical assistance in the development of all phases of both models, including model components, methodology, diseases of interest, and techniques for testing both models.

2. Identify specific diseases and populations for testing both Disease Burden and Prevention Models.

3. Apply both Disease Burden and Disease Prevention Models to specific populations using ten priority chronic diseases.

4. Disseminate the Disease Burden and Prevention Models to all State and selected local health departments for further use, testing, and evaluation.

5. Determine the usefulness of the Disease Burden and Prevention Models in various other prevention/intervention programs.

#### Availability of Funds

It is expected that the approximately $80,000 will be available in Fiscal Year 1988 to fund one award. The award will be funded with a 12-month budget period and 3-year project period. It is planned that at least $80,000 will be available each year. The project period is expected to be 3 years with Year 1 devoted to developing the Disease Burden Model and Year 2 devoted to developing the Disease Prevention Model. Testing both models in a state health department will take place during the third year. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and availability of funds. The funding estimate outlined above is subject to change.

#### Reporting Requirements

The recipient of this assistance award will submit quarterly and annual summary progress reports providing details of accomplishments toward the development of Disease Burden and Disease Prevention Models. Financial status reports must be filed no later than 90 days after the end of each budget period. Final financial status and progress reports are required no later than 90 days after the end of each project period.

**Review Criteria**

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

A. The adequacy and completeness of the project plan and methodology, including a proposed specific time schedule for accomplishing the objectives and activities.

B. Qualifications and time allocation of the applicant's technical and administrative staff and the type and quality of facilities and equipment for the project.

C. The extent to which the objectives of the applications fit the objective for which applications were invited. More specifically, the selection of award sites will be based in the potential for developing viable, flexible, and efficient software packages that directly address Disease Burden and Disease Prevention. The elements which should be incorporated in the models include, but should not be limited to, mortality rates, morbidity or hospitalization rates (including length of stay, cost of procedure), years of potential life lost, outpatient visits ( number of visits, cost of procedures) worker's compensation or disability costs and lost-productivity.

D. The adequacy of the DBM and DPM software packages in quantifying chronic disease burden and the effect of its prevention.

E. The adequacy of these models in enhancing the capacity of State and local health department to direct resources toward effective prevention and control efforts, i.e. ability to test the models in populations of at least 500,000 people and the ability to interpret the parameters of the models.

F. Knowledge of quantitative techniques commonly used in descriptive epidemiology, cost-benefit analysis, cost-effectiveness analysis, decision analysis, and cost-analysis.

G. Familiarity with Statistical Analysis System (SAS) or comparable software including: Basic commands, statistical analysis, creation of SAS datasets, and use of SAS datasets.

**Application Submission**

The original and two unbound copies of the application (PHS 5161–1, revised 3/86) should be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, GA 30305 on or before July 30, 1988.

*A. Deadlines*

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*B. Late Application*

Applications which do not meet the criteria in either paragraph 1 or 2 immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

**Other Requirements**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where to Obtain Additional Information**

Information on application procedures, copies of application forms, and other material may be obtained from: Terry C. Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, (404) 842–6575 or FTS 236–6575. Technical assistance may be obtained from the Division of Chronic Disease Control: John Howard Hill, Deputy Chief, ESB, Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia 30333, (404) 488–4363 or FTS 236–4363 or FTS 236–4363 or Gary F. Stein, M.D., M.O.H., Medical Epidemiologist, Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia 30333, (404) 488–4370 or FTS 236–4370.

Dated: July 20, 1988.

**Glenda S. Cowart,**

*Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 88–16708 Filed 7–22–88; 8:45 am]

BILLING CODE 4160–18–M

## Family Support Administration

## Office of Community Services

### Availability of Funds and Requests for Applications; Correction

**AGENCY:** Office of Energy Assistance, Office of Community Services, Family Support Administration, Department of Health and Human Services.

**ACTION:** The purpose of this notice is to correct the address given in Program Announcement No. OCS–OEA–88–1, Availability of Funds and Requests for Applications Under the Office of Community Services, Office of Energy Assistance, Technical Assistance and Training Discretionary Authority, published in the **Federal Register**, Vol. 53, No. 136, Friday, July 15, 1988.

**SUMMARY:** Applications for Program Announcement No. OCS–OEA–88–1, should be mailed to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand delivered applications should be brought to: Family Support Administration, Office of Grants Management, 901 D Street, SW., 6th Floor, Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Susan Peters, Telephone: (202) 245–1303 or 252–5319, Office of Community Services, 370 L'Enfant Promenade, SW., 5th Floor, Washington, DC 20447.

**Mary M. Evert,**

*Director, Office of Community Services.*

[FR Doc. 88–16673 Filed 7–22–88; 8:45 am]

BILLING CODE 4150–04–M

## Indian Health Service

### Health Promotion and Disease Prevention Demonstration Projects: Grants Application Announcement

**AGENCY:** Indian Health Service.

**ACTION:** Notice of Competitive Grant Applications for Health Promotion and Disease Prevention Demonstration Projects.

**SUMMARY:** The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for Health Promotion and Disease Prevention (HP/DP) Demonstration Projects established by the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, Pub. L. 99–570, section 4228(c)(1). The Catalog of Federal Domestic Assistance number is 13.166. Projects will be administered in accordance with OMB Circular A–110, Uniform Requirements

for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Federal Regulations at 45 CFR Part 74, Administration of Grants. There will be only one funding cycle during Fiscal Year 1988.

**DATE:** An original and two (2) copies of the completed grant application must be submitted by close of business on August 31, 1988, to the Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857. Close of business means 4:00 P.M. Eastern Daylight Time.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will not be considered for funding.

**FOR FURTHER INFORMATION CONTACT:** For grants information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5204. For program information, contact Dr. Craig Vanderwagen, Director, Division of Clinical and Preventive Services, Indian Health Service, Room 6A–55, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4644. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** This announcement provides information on the general program purpose, programmatic priorities, eligibility requirements, funding availability, and application procedures for the Health Promotion and Disease Prevention (HP/DP) Demonstration Projects for Fiscal Year 1988.

**A. General Program Purpose**

To establish health promotion and disease prevention demonstration projects that will implement the intent of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, Pub. L. 99–570, section 4228(c)(1).

**B. Programmatic Priority**

Only one programmatic priority has been established for funding during this fiscal year. In accordance with the intent of section 4228(c)(1), Pub. L. 99–570, Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, the priority will be demonstration projects which relate to determining the most effective and cost-efficient means of:

"(A) Providing health promotion and disease prevention services,

(B) Encouraging Indians to adopt good health habits,

(C) Reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, depression, and lifestyle related accidents,

(D) Reducing medical expenses of Indians through health promotion and disease prevention activities,

(E) Establishing a program—

(i) Which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

(ii) Under which such Indians are available on a contract basis to provide such services to other tribes, and

(F) Providing training and continuing education to employees of the service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services."

An applicant under this program must address all of the above objectives A–F. Failure of an applicant to include all of these objectives will make the application unresponsive and, thus, ineligible for consideration. As part of the work plan, the demonstration project must include an analysis of the cost effectiveness of the organizational structures and of the social and educational programs useful in achieving objectives A–F.

Projects will be funded for a one-year project period.

**C. Eligibility Requirements**

Under section 4228(c)(3) (B) and (C), the Secretary is authorized to award grants under this program to any "school of medicine" or "school of osteopathy" as those terms are defined by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)). Section 701(4) provides, in pertinent part, as follows:

"The terms 'school of medicine', * * * 'school of osteopathy', * * * mean an accredited public or nonprofit private school in a State that provides training leading, respectively, to a degree of doctor of medicine, * * * a degree of doctor of osteopathy * * *."

The statute at section 4228(c)(3)(A) requires that a demonstration project under this program shall be conducted in association with at least one of the following:

(i) Health profession school,

(ii) Allied health profession or nurse training institution, or

(iii) Public or private entity that provides health care.

The IHS interprets (i) above, health professions school, as meaning a health profession school other than the applying entity. In addition to this statutory association provision, the IHS has determined that because of the nature of the demonstration program, which is geared toward demonstrating health promotion and disease prevention with regard to Indians and Indian tribes, the grantee will additionally be required to conduct the project in association with an Indian tribe, a tribal organization, or a group of tribes or tribal organizations. Therefore, the applicant organization must show that it has met the above two associational requirements by submitting letters of agreement or support or other such evidence (i.e., resolution) showing that the required linkages are in place.

**D. Fund Availability**

Approximately $500,000 is available for award of HP/DP demonstration project grants during this competitive funding cycle. It is anticipated that one to two projects will be funded.

**E. Application Process**

1. A *Grant Application Kit for Health Promotion and Disease Prevention Demonstration Projects,* including Standard Form 424 Page 1 (Rev. 4–84) and General Information and Instructions for Grant Application Form PHS 5161–1 (Rev. 3–86), may be obtained from the Grants Management Officer at the address and telephone number previously cited in this announcement.

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. Each application will be reviewed for completeness, eligibility and conformance with the established programmatic priorities. All acceptable applications will be subject to a competitive review and evaluated in accordance with established objective review procedures. This program is not subject to E.O. 12372.

4. All applicants will be notified regarding the status of their applications (approved, approved unfunded, disapproved or deferred) by September

15, 1988. Projects will start no later than September 29, 1988.

*Criteria for Review and Evaluation:* All applications will be evaluated in accordance with the following weighted criteria:

*Criterion and Weight*

#1. *Statement of Problems:* Does the project address the established priority? Does the applicant provide data and supporting documentation that identify the extent of the problems and the need for effective and cost-efficient means of resolving these problems within the tribes/tribal organizations?—*15*

#2: *Identification of Prescribed Associations:* Does the applicant clearly identify the groups with which it will be associated for carrying out the project and the role of the groups in the project? Do the groups fall within those specified by program requirements? Has the applicant included adequate documentation (tribal resolution, letters of support, etc.) of the involvement of the groups in the project?—*15*

#3: *Scope of Work and Work Plan:* Are the goals and objectives of the project clearly stated in measurable terms with realistic timeframes? Does the work plan specifically address each objective A–F? Does the scope of work and work plan reflect realistic methods for addressing the objectives? Will the proposed methodology lead to determination of an effective and cost-efficient means of dealing with the stated problems? Does the methodology provide for an analysis of the cost effectivenes of the organizational structures and of the social and educationjal programs useful in achieving the projelct objectives? Can the project be accomplished within a 1-year period?—*30*

#4: *Qualification of Personnel/Adequacy of Management Controls and Budget:* Does the proposal contain a staffing plan? Is proposed staffing adquate to carry out the work plan? Do the resumes of the staff indicate that their qualifications are appropriate to the proposed scope of work? Is there adequate administrative staff for proper project management? Are the organizational structure and resources adequate for conduct of the project? Does the proposal reflect adequate supervision of both the technical and business aspects of the project? Does the budget clearly identify and justify costs? Is the budget adequate and realistic in relation to the proposed scope of work? Are the proposed facilities and equipment adequate? Are proposed equipment purchases necessary for conduct of the project?—*20*

#5: *Internal Project Evaluation:* Does the applicant include an evaluation process and does this process clearly identify who will perform the evaluation, when evaluations will be performed, and what documentation will be provided? Are the evaluation criteria clear and measurable? Do the criteria use baseline data against which to evaluate whether objectives were met? Will the evaluation process determine whether the project outcome was successful?–*20*

Total Value—*100*

Date: June 24, 1988.

**Everett R. Rhoades,**

*Assistant Surgeon General, Director.*

[FR Doc. 88–16847 Filed 7–22–88; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID–010–08–4212–13; IDI–23782]

### Realty Actions; Sales, Leases, etc.; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—IDI–23782, exchange of public and private lands in Owyhee and Twin Falls Counties, Idaho.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716):

**Boise Meridian, Idaho**

T. 10 S., R. 12 E.,
- Sec. 7, lots 3, 4, E½SE¼, W½E½SW¼;
- Sec. 8, S½;
- Sec. 9, S½;
- Sec. 17, All;
- Sec. 18, lots 1, 2, 3, NE¼, E½NW¼, NE¼ SW¼, E½SE¼SW¼, SE¼;
- Sec. 19, lot 2, NE¼, E½NE¼NW¼, SE¼ NW¼;
- Sec. 20, N½.

Comprising 2,624.34 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from General Tews:

**Boise Meridian, Idaho**

T. 14 S., R. 13 E.,
- Sec. 13, SW¼SW¼ (above high water line);
- Sec. 14, NE¼SE¼, S½SE¼ (all above high water line);
- Sec. 23, NE¼NE¼, NE¼SW¼; S½NW¼, N½NW¼SW¼, N½S½NW¼SW¼ (all south and east above high water line);
- Sec. 24, NW¼NW¼.

Comprising 272.16 acres of private land.

The purpose of this exchange is to acquire the non-Federal lands, which have high public values for recreation use. These lands are used heavily by the public for fishing and boating access. The acquisition of these lands has received significant support by the public, and some of the state and local government agencies. The public interest will be well served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Gerald Tews of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. Ditches and Canals.

**DATES AND ADDRESSES:** On or before September 8, 1988, interested parties may submit comments to the District Manager, Bureau of land Management, 3948 Development Avenue, Boise, Idaho 83705. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning the exchange, contact Delores Hilde at (208) 334–1582. The Environmental Assessment/Land Report is also available for review at the Boise District Office, 3948 Development Avenue, Boise, Idaho.

**SUPPLEMENTARY INFORMATION:** Publication of this notice segregates the previously described public lands from appropriation under the public land laws including the mining and mineral leasing laws for a period of 2 years from the date of publication or until patent is issued, whichever comes first.

Dated: July 15, 1988.

**J. David Brunner,**

*District Manager.*

[FR Doc. 88–16443 Filed 7–22–88; 8:45 am]

BILLING CODE 4310–66–M

### Minerals Management Service

### Arctic Oil Spill Response Technology; Request for Information

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Request for Information on Arctic Oil Spill Response Technology for the Alaskan Outer Continental Shelf (OCS).

**SUMMARY:** This Notice requests comments and recommendations on questions and issues relating to research and development to improve or advance arctic oil spill response capabilities. The Minerals Management Service (MMS) plans to conduct a workshop on arctic oil spill response technology in late November or early December 1988. The MMS is soliciting information on arctic

oil spill response technology research needs to facilitate planning for the workshop. The workshop will be a public forum to identify future research and development needs to improve and advance arctic oil spill response capability and to present discussions of the state of the art and existing research activities. The workshop will focus on existing and developing technology and will not be directed at fate and effect issues.

**DATES:** Written comments and recommendations should be submitted no later than August 22, 1988.

**ADDRESS:** Comments and recommendations should be submitted to Chief, Technology Assessment and Research Branch, Minerals management Service, 12203 Sunrise Valley Drive, Mail Stop 647, Reston, Virginia 22091, with a copy to Regional Supervisor, Field Operations, Minerals Management Service, 949 E. 36th Avenue, Room 110, Anchorage, AK 99508–4302.

**FOR FURTHER INFORMATION CONTACT:** John Gregory, Chief, Technology Assessment and Research Branch, FTS 950–7752 or (703) 648–7752, or Rodney Smith, Regional Supervisor, Field Operations, Alaska OCS Region, (907) 261–4188.

**SUPPLEMENTARY INFORMATION:** Oil spill response technology for arctic conditions, as found in the Alaskan Beaufort and Chukchi Seas, has been the subject of research and development for over a decade. Much of the research conducted at the Oil and Hazardous Materials Simulated Environmental Test Tank and offshore, through a joint MMS-Environment Canada Research Program and through the State of Alaska's Tier II Broken Ice Oil Spill Research and Development Program, has been directed at unstable ice conditions in the Alaskan Beaufort. Additional research conducted by foreign governments (most notably, Canada), universities, private organizations, and the oil and gas industry, also had direct relevance and applicability to the Alaskan Beaufort.

Since exploratory drilling started in the Alaskan Beaufort OCS and State submerged lands, there have been several advances in arctic spill response technology and an improved understanding of oil behavior in arctic conditions. The MMS has been encouraged by the rate at which previous and ongoing efforts have improved and advanced arctic oil spill response technology through its own and other research efforts. The MMS wants to maintain this momentum and continuity in advancing and improving arctic oil spill response technology. Continued research and development could further advance oil spill response technology for more active-ice and deeper-water areas.

**Questions and Issues**

Respondents are requested to address the specific questions and issues listed below and are encouraged to provide any information which would be useful in identifying future research and development activities to improve and advance arctic oil spill response capabilities.

(a) Are there existing or new response techniques, equipment, or products, including chemical additives, which have the potential for arctic application but have not been tested or evaluated and which should be considered for future testing and evaluation?

(b) Are there new techniques or processes available which can be used to better test and evaluate equipment efficiency and effectiveness and which have not been used previously?

(c) Are there areas where continued research is unnecessary?

(d) What should the research priorities be in each category of detection, containment, recovery, and disposal for open water, solid-ice, and unstable ice conditions?

Dated: July 19, 1988.

**Richard B. Krah,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 88–16642 Filed 7–22–88; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31295]**

### Exemption; Centralia and Webster Springs Railroad Co. et al., and SCS Transportation, Inc.—Merger Exemption

The Centralia and Webster Springs Railroad Company; Cheat Haven and Bruceton Railroad Company; Fairmont Morgantown and Pittsburg Railroad Company; and Western Maryland Railway Company (the subsidiaries), CSX Transportation, Inc. (CSXT), and CSX Corportation, Inc. (CSX) have filed a notice of exemption for the merger of the subsidiaries into CSXT, with CSXT as the surviving corporation. The merger was expected to be consummated on June 30, 1988.

Each of the subsidiaries is a nonoperating company whose properties are being operated by, in the name of, and for the account of CSXT, a Class I rail common carrier; all of the carriers are subject to Commission jurisdiction. The subsidiaries and CSXT are controlled by CSX pursuant to authority granted by the Commission.

This is a transaction within a corporation family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201, and Peter J. Shudtz, CSX Corporation, 901 East Cary Street, P.O. Box C–3222, Richmond, VA 23219.

Decided: July 6, 1988.

By Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–16277 Filed 7–22–88; 8:45 am]

BILLING CODE 7035-01-M

**[Finance Docket No. 31296]**

### Exemption; Chicago West Pullman Transportation Corp. Continuance in Control Exemption—Georgia Woodlands Railroad Co.

Chicago West Pullman Transportation Corporation (CWPT), a non-carrier, has filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding its continuance in control of the Georgia Woodlands Railroad Company (GWR) while controlling the Chicago West Pullman & Southern Railway Company (CWPS), Manfacturer's Junction Railway Company (MJ), Newburgh & South Shore Railroad Company (NSR), and The Wisconsin & Calumet Railroad Company (WICT).

CWPT presently controls CWPS, MJ, NSR and WICT, all class III carriers. The transaction by which GWR commenced operations between Barnett and Washington, GA was the subject of a notice of exemption in Finance Docket No. 31258. CWPT inadvertently failed to file a notice of exemption to control

GWR's commencement of operations on June 7, 1988.

CWPT indicates that: (1) GWR will not connect with any other railroads within the CWPT corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect GWR with any railroad in the corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employee affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 6, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16278 Filed 7-22-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Ex Parte No. 476]**

## Railroad Revenue Adequacy; 1987 Determination

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of 1987 determination of rail revenue adequacy.

**SUMMARY:** In Ex Parte No. 393, *Standards for Railroad* Revenue Adequacy, 364 I.C.C. 803 (1981), as modified in Ex Parte No. 393 (Sub. No. 1), *Standards for Railroad Revenue Adequacy*, 3 I.C.C. 2d 261 (1986), the Commission determined that a railroad would be considered revenue adequate under 49 U.S.C. 10704(a) if it achieved a rate of return at least equal to the current cost of capital. This decision applies the rate of return standard to data for the year 1987. Using these data, the Commission has now determined that none of the 18 Class I freight carriers are revenue adequate.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr., (202) 275-7489 (TDD for hearing impaired: (202) 275-1721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call (202) 289-4357/4359 (D.C. Metropolitan area). (Assistance for the hearing impaired is available through TDD services (202) 275-1721, or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16634 Filed 7-22-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Finance Docket No. 31290]**

## Burlington Northern Railroad Co.; Trackage Rights; Union Pacific Railroad Co.

Union Pacific Railroad Company has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between Sand Creek, (milepost 4.93) in Adams County, CO and Speer, (milepost 97.63) in Laramie County, WY, a distance of 92.70 miles. The trackage rights will be effective upon the operation of BN's first train over the joint trackage, subject to the grant of an exemption in Finance Docket No. 31290 (Sub-No. 1) [1] and the construction of the necessary connector tracks. The transaction is not likely to be consummated prior to September 1, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16635 Filed 7-22-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB-3 (Sub-76)]**

## Missouri Pacific Railroad Co.; Abandonment—In Taylor and Runnels Counties, TX; Notice of Findings

The Commission has issued a Decision and Certificate authorizing Missouri Pacific Railroad Company to abandon its 31.2-mile rail line between (milepost 7.0) near Abilene and (milepost 38.2) near Winters, TX. The Decision and Certificate will become effective 30 days after publication in the **Federal Register** unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the railroad within 10 days after publication.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: July 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16634 Filed 7-22-88; 9:14 am]

BILLING CODE 7035-01-M

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## DEPARTMENT OF JUSTICE

## Lodging of Supplemental Consent Order Pursuant to Clean Water Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Supplemental

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[1] BN filed concurrent with this notice, under 49 U.S.C. 10505, to exempt from section 10901 the construction of connector tracks between BN and Up lines at Sand Creek and at Speer.

[2] The Great Western Railway Company (GWR) filed a petition requesting the Commission to require BN to grant GWR trackage rights from Greely to Windsor, including all stations except Greely proper. That request will be considered along with the exemption request in finance Docket No. 31290 (Sub-No. 1) in a subsequent decision. The communities of Greeley, Fort Lupton, Brighton, Pierce, Nunn, Eaton, Evans, LaSalle and Ault (Communities) express concern about the increase in traffic in their communites which may result from this trackage rights agreement. There is no indication that their pleading was served on the applicants. After we have received an appropriate certificate of service, the pleading will also be considered in the subsequent decision.

Consent Order in *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, Civil Action Nos. 78–0038(CC) and 83–0105(CC), was lodged with the United States District Court for the District of Puerto Rico on July 19, 1988. The Supplemental Consent Oder settles violations by the Puerto Rico Aqueduct and Sewer Authority ("PRASA") of a February 22, 1985 consent decree resolving litigation brought in 1978 under the Clean Water Act. In motions to enforce the consent decree, the United States alleged that PRASA violated capital improvements, operations and maintenance and other provisions of the 1985 decree.

The Order requires PRASA to pay $2 million to the U.S. Treasury and to set aside $7.9 million for corrective actions to improve the Commonwealth's wastewater treatment system. The Order also contains revisions to the 1985 consent decree, providing for major capital improvements, pretreatment programs for more than 50 plants, and a revised system of enforcement and noncompliance sums. The 1985 decree will remain in effect, except as specifically modified.

The Department of Justice will receive comments relating to the proposed Supplemental Consent Order for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, D.J. Reference No. 90–5–1–1–1793.

The proposed Supplemental Consent Order may be examined at the office of the United States Attorney, Federal Office Building, Room 101, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918; at the Caribbean Field Office of the United States Environmental Protection Agency, Podiatry Center Building, Office 2A, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909; and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. A copy of the proposed Supplemental Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please provide a check in the amount of $8.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–16668 Filed 7–22–88; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

*Background*: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

*List of Recordkeeping/Reporting Requirements Under Review:* As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

*Comments and Questions*: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**New Collection**

Bureau of Labor Statistics
Consumer Expenditure Surveys
Vacation Property Supplement
Quarterly Interview Period during October, 1988 through March, 1989
Individuals or households
500 respondents; 25 total hours; 3 minutes per response; 1 form

The Vacation Property Supplement is needed to test a more comprehensive set of questions about vacation property than currently appears on the Quarterly Interview Survey. The data will be analyzed to determine the suitability of a conceptual change in the treatment of vacation property in the Consumer Price Index.

**Revision**

Employment and Training Administration.
Petition for Adjustment Assistance/Solicitud De Asistencia Para Ajuste
1205–0192; ETA 8560 & ETA 8559.
On occasion:

| Form No. and affected public | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|
| ETA 8560 Individuals or households | 1,400 | (1) | 15 |
| ETA 8559 Individuals or households | 1,400 | (1) | 15 |

(1) On occasion.

Petition used by American workers applying to U.S. Department of Labor for eligibility to receive worker trade adjustment assistance in accordance with provisions of the Trade Act of 1974 as amended. The petition iniates action on part of the Department to determine if workers are eligible.

**Revision**

Employment Standards Administration
FECA Medical Report Forms 1215–0103;
CA–16B; CA–17B; CA–20; CA–20A; CA–1090; CA–1302; CA–1303; CA–

1305; CA–1306; CA–1314; CA–1316; CA–1331; CA–1332; OWCP–5
As needed
Businesses or other for-profit; Federal agencies or employees; small businesses or organizations 466,950 respondents; 182,397 total hours; 14 forms

| Form No. | Average time per response (min.) |
|---|---|
| CA–16B | 30 |
| CA–17B | 8 |
| CA–20 | 30 |
| CA–20A | 30 |
| CA–1090 | 30 |
| CA–1302 | 30 |
| CA–1303 | 45 |
| CA–1305 | 20 |
| CA–1306 | 10 |
| CA–1314 | 20 |
| CA–1316 | 10 |
| CA–1331 | 5 |
| CA–1332 | 30 |
| OWCP–5 | 30 |

Information obtained through the use of FECA medical forms is necessary to determine whether or not a Federal employee who has filed a claim under the Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101 *et. seq.*, is entitled to compensation.

**Revision**

Employment and Training Administration
Job Corps Health Questionnaire
1205–0033, ETA 6–53
On occasion
Individuals or households
103,000 respondents; 20,600 total hours; 20 hrs. per response; 1 form

The Health Questionnaire is used to obtain the health history of applicants to the program to determine medical eligibility. The applicant must not have a health condition which represents a potentially serious hazard to the youth or others, results in a significant interference in the normal performance of duties, or requires frequent, expensive or prolonged treatment.

**Revision**

Employment and Training Administration
Job Training Quarterly Survey
1205–0231; JTQS–1, 2, 20, 21, 21(T)
Quarterly
State or local governments; Non-profit institutions

| Form No. and affected public | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|
| JTQS–1, 2, 20 State/Local govt. non-profit instit | 142 | (1) | 20 |
| JTQS 21 State/local govt. non-profit instit | 142 | (1) | 10 |
| JTQS 21T State/local govt. non-profit instit | 30 | (1) | 10 |

[1] Quarterly.

172 burden hours

The Employment and Training Administration will use the data to evaluate programs and services funded under Titles IIA & III of the Job Training Partnership Act. Each quarter, the Census Bureau will collect data on 3,000 enrollees and 3,000 terminees from the files of Service Delivery Area offices and state offices.

**Revision**

Employment and Training Administration
Unemployment Compensation for Former Federal Employees Handbook No. 391 (UCFE)
1205–0179; ES–931, ES–931A, ES–935, ES–934, ES–936, ES–939, ETA 8–32, ES–933

| Form No. | Affected public | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|---|
| ES–931 | State/Local Govt. | 123,786 | On occasion | 3 |
| ES–931A | State/Local Govt. | 29,393 | On occasion | 3 |
| ES–935 | Individuals, State/Local Govt. | 123,786 | On occasion | 5 |
| ES–933 | Federal Agencies | 2,360 | On occasion | 3 |
| ES–934 | State/Local Govt. | 11,554 | On occasion | 3 |
| ES–936 | State/Local Govt. | 6,258 | On occasion | |
| ES–939 | State/Local Govt. | 55 | On occasion | 105 |
| ETA 8–32 | Federal agencies | 53 | Ev. other 6 months | 5 |

18,676 total burden hours

Federal law (5 U.S.C. 8501–8509) provides unemployment insurance protection to former (or partially unemployed) Federal civilian employees. It is referred to in abbreviated form as "UCFE." The forms contained throughout Handbook No. 391 are used in connection with the provision of this benefit assistance.

Signed at Washington, DC this 19th day of July, 1988.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 88–16613 Filed 7–22–88; 8:45 am]

BILLING CODE 4510–30–M

## Employment and Training Administration

### Job Training Partnership Act Advisory Committee; Appointment of Members

This is to announce the appointment of members to the Job Training Partnership Act Advisory Committee established by Notice dated June 16, 1988, and published June 28, 1988, 53 FR 24379.

Following is the membership of the Committee:

**Chair**

Mrs. Marion Pines, Senior Fellow, Institute for Policy Studies, The Johns Hopkins University, Baltimore, Maryland

**Members (By Group)**

*Private Industry Council Chairs*

Robert Bell, President, Robert Bell & Associates, St. Louis Missouri

Jack Klepinger, General Manager, Wells Cargo, Inc., Ogden, Utah

Frank W. Krauser, Regional General Manager, DISTRON—Division of Burger King Corporation, Miami, Florida

Carl W. Struever, President, Struever Brothers, Eccles and Rouse, Baltimore Maryland

*Service Delivery Area Directors*

Ms Anne Abel, Director, Danville Area Community College, Danville, Illinois
Ms Lillian Barrios-Paoli, Commissioner, City of New York Department of Employment, New York, New York
Charles G. Tetro, President, Training and Development Corporation, Bangor, Maine
Mrs. Linda Woloshansky, Executive Director, Kankakee Valley Jobs Training Program, Inc., La Porte, Indiana

*State JTPA Officials*

Jose Gabriel Loyola, State JTPA Program Administrator, Department of Economic Security, Phoenix, Arizona
Ms. June Suhling, Division Administrator, Employment & Training Policy Division, Department of Industry, Labor and Human Relations, Madison, Wisconsin
Ms. Barbara Weinberg, Executive Director, State Job Training Office, Carson City, Nevada
Hank Weisman, Assistant Commissioner, Georgia Department of Labor, Atlanta, Georgia

*State Job Training Coordinating Council Chairs*

Perry Gains, Director of Customer Support, Milliken and Company, Spartanburg, South Carolina
Philip Power, Chairman, Suburban Communications Corporation, Ann Arbor, Michigan

*Academia*

Dr. Judith M. Gueron, President, Manpower Development Research, Corporation, New York, New York
Gary Walker, Executive Vice President, Public/Private Ventures, Philadelphia, Pennsylvania

*Education*

Dr. Gordon M. Ambach, Executive Director, Council of Chief State School Officers, Washington, DC
Mrs. Jean Merritt Commissioner Indiana Department of Human Services Indianapolis, Indiana
Dr. Geneva Titsworth, Associate Superintendent, Wayne County Intermediate School District, Wayne, Michigan

*General Public*

Nathaniel Semple, Vice President and, Secretary of Research and Policy Committee, Committee for Economic Development, Washington, DC
William Spring, Vice President, Community Affairs, Federal Reserve Bank of Boston, Boston, Massachusetts

*Labor*

Mike McMillan, Executive Director, Human Resources Development Institute, AFL–CIO, Washington, DC
Arthur Shy, Director of Education Department, United Auto Workers, Detroit, Michigan
Ms. Twila Young, Independent Consultant, Ames, Iowa

*Public Interest Groups*

Mrs. Joan Crigger, Director of Employment and Training, U.S. Conference of Mayors, Washington, DC
Richard G. Freeman, President-Elect, Interstate Conference of Employment Security Agencies, Des Moines, Iowa
Mrs. Evelyn Ganzglass, Research Associate for Education and Labor, National Governors' Association, Washington, DC
Martin Jensen, Executive Director, National Job Training Partnership, Inc., Washington, DC
Robert Knight, President, National Association of Private Industry Councils, Washington, DC
William Kolberg, President, National Alliance of Business, Washington, DC
Jerry McNeil, Director, Training and Employment Programs, National Association of Counties, Washington, DC
Ms. Janet Quist, Legislative Counsel, National League of Cities, Washington, DC

*Community Organizations*

Vincent Austin, Director of Employment and Training, The National Urban League, New York, New York
Elton Jolly, President and CEO, OICs of America, Philadelphia, Pennsylvania
Ms. Cynthia Marano, Executive Director, Wider Opportunities for Women, Washington, DC
Pedro Viera, Acting Vice President, SER-Jobs For Progress, Inc., Dallas, Texas

*Veterans*

Ronald Drach, National Employment Director, Disabled American Veterans, Washington, DC

The members were selected on the basis of their expertise in the training and employment field and will serve until July 12, 1989. The Committee's first meeting, announced by Notice dated June 30, 1988, and published July 12, 1988, 53 FR 26329, will be held on July 27 and 28 in Washington, DC, at the Mayflower Hotel.

Signed at Washington, DC, this 19th day of July, 1988.

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 88–16628 Filed 7–22–88; 8:45 am]
BILLING CODE 4510-30-M

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## Federal-State Unemployment Compensation Program; Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on July 9, 1988.

### Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on January 24, 1988, and has now triggered off.

BEST COPY AVAILABLE

**Determination of An "Off" Indicator**

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 18, 1988, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending July 9, 1988.

**Information for Claimants**

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on July 18, 1988.

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 88-16612 Filed 7-22-88; 8:45 am]

BILLING CODE 4510-30-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-369 and 50-370]**

### Duke Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by the licensee for amendments to Facility Operating License Nos. NPF-9 and NPF-17 issued to Duke Power Company (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, (the facility), located in Mecklenburg County, North Carolina.

The denied portion of the proposed amendments would have revised the schedule for submittal of a report on the results of inspection of F-star steam generator tubes. The requirement for submittal prior to the restart of the unit following inspection would have been changed to require submittal within 15 days following the completion of the inspection. Notice of consideration of issuance of the amendments was published in the **Federal Register** on June 15, 1988 (53 FR 22400). The licensee's application for the amendments was dated May 6, 1988.

The request was found unacceptable since the NRC staff wishes to be informed in a timely manner in the event that an unfavorable result or trend associated with F-star tubes should be observed.

The licensee was notified of the Commission's denial of this request by letter dated July 19, 1988.

By August 24, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated May 6, 1988, and (2) the Commission's letter to Duke Power Company dated July 19, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

**Darl Hood,**

*Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II.*

[FR Doc. 88-16653 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 50-219]**

### GPU Nuclear Corp. and Jersey Central Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 124 to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation, et al., which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specification Sections 3.2.6, 4.2.E and 6.9.3 to reflect the use of an enriched sodium pentoborate solution in the standby Liquid Control System (SLCS).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 3, 1988 (53 FR 20396). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated May 10, 1988, (2) Amendment No. 124 to License No. DPR-16, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 14th day of July 1988.

For the Nuclear Regulatory Commission

**Alexander W. Dromerick,**

*Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-16651 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344A]

**Pacific Power and Light Co.; Request for Public Comment on Antitrust Concerns Pursuant to the Proposed Merger Between Pacific Power and Light Co. and Utah Power and Light Co.**

On May 9, 1988, the Nuclear Regulatory Commission (Commission) received an application from Pacific Power and Light Company (PP&L), co-owner of the Trojan Nuclear Plant, to transfer Facility Operating License No. NPF-1 from PP&L to a newly formed corporate entity, PC/UP&L Merging Corporation. The application was submitted as a result of the proposed merger of PP&L and the Utah Power and Light Company (UP&L) and pursuant to Part 50 of the Commission's Regulations. Upon consummation of the proposed merger, PC/UP&L Merging Corporation will change its name to PacificCorp but will continue to do business as an electric utility under the assumed business name of Pacific Power and Light Company.

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's Regulations, the staff is publishing receipt of Licensee's request to transfer the Trojan operating license in the **Federal Register** and requesting public comment. A copy of the application to transfer has been forwarded to the Attorney General for his review and comment. Moreover, copies of the application will be available for public inspection in the local Public Document Room, Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207 and at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555.

Any person who wishes to express views pursuant to the antitrust issues raised in this transfer request should submit said views within 30 days of the initial publication of this Notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

**George W. Knighton,**

*Director, Project Directorate III-V, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88-16650 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

**Rochester Gas and Electric Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-18, issued to the Rochester Gas and Electric Corporation (the licensee), for operation of the R.E. Ginna Nuclear Power plant, located in Wayne County, New York.

The proposed amendment would modify the Technical Specifications to reflect replacement of steam generator snubbers with rigid structural supports. The licensee's application is dated May 13, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 24, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harry Voigt LeBoeuf, Leiby and McRae, Suite 1100, 1133 New Hampshire

Avenue, NW., Washington, DC 20036 attorney for the licensee.

Nontimely fillings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 19th day of July, 1988.

**Richard Wessman,**

*Director, Project Directorate I-3, Division of Reactor Projects I/II.*

[FR Doc. 88-16652 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-271-OLA-2 (Testing Requirements for ECCS and SLC Systems); (ASLBP No. 87-567-04-OLA)]**

## Vermont Yankee Nuclear Power Corp.; Vermont Yankee Nuclear Power Station Hearing

Before Administrative Judges; Charles Bechhoefer, Chairman, Glenn O. Bright, James H. Carpenter.

July 18, 1988.

On January 26, 1988, the Nuclear Regulatory Commission published in the **Federal Register** a notice of opportunity for hearing with respect to a proposed operating-license amendment which would change the Technical Specifications applicable to the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont, approximately five miles south of Brattleboro, Vermont, to eliminate the present requirements to test the remaining train(s) of the ECCS and SLC Systems when one train has a component out of service (53 F.R. 2114). Two requests for a hearing and petitions for leave to intervene were received. On March 9, 1988, an Atomic Safety and Licensing Board was established to rule upon these requests/petitions and to preside over the proceeding in the event that a hearing were ordered.

After holding a prehearing conference on June 28, 1988, the Atomic Safety and Licensing Board granted the requests for a hearing and petitions for leave to intervene of the State of Vermont and of James M. Shannon, Attorney General of the Commonwealth of Massachusetts. This ruling was memorialized by a Prehearing Conference Order dated July 18, 1988 (unpublished).

Please take notice that a hearing will be conducted in this proceeding. The Atomic Safety and Licensing Board designated to preside over this proceeding consists of Glenn O. Bright, Dr. James H. Carpenter, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Licensing Board may hold one or more additional prehearing conferences pursuant to 10 CFR 2.752. The public is invited to attend all prehearing conferences and any evidentiary hearing which may be held. The Board will establish the schedules for any such sessions at a later date, through notices to be published in the Federal Register and/or made available to the public at the Public Document Rooms.

Supplementing the opportunity afforded at the initial prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to make a limited appearance statement either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may assist the Board and/or parties in the definition of issues being considered. The number of persons making oral statements and the time allotted for each statement may be limited depending upon the time available at various sessions. Written statements may be submitted at any time. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11155 Rockville Pike, Rockville, Maryland 20852. A copy of such statement or request should also be served on the Chairman of the Licensing Board, U.S. Nuclear Regulatory Commission (EMW-439), Washington, DC 20555.

Document relating to this application are on file at the Local Public Document Room, located at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301, as well as at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 18th day of July, 1988.

For the Atomic Safety and Licensing Board.

**Charles Bechhoefer,**

*Administrative Judge.*

[FR Doc. 88-16649 Filed 7-22-88; 8:45 a.m.]

BILLING CODE 7590-01-M

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## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

**Revision**

SEC File No. 270-2, Regulation S-K
SEC File No. 270-48, Form 10-K
SEC File No. 270-56, Regulation 14A
SEC File No. 270-57, Regulation 14C
SEC File No. 270-21, Rule 30D-1
SEC File No. 270-292, Form -SAR.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval proposed amendments to require that registrants include a report by management in Forms 10-K and N-SAR and annual reports to shareholders.

Information collected and records prepared pursuant to the proposed rules would focus on management's responsibilities for the financial statements and internal control, discuss how these responsibilities were fulfilled and provide management's assessment of the effectiveness of the registrant's internal controls. This information will be used by the public and/or the Commission to review the status of the registrant's internal controls.

There will generally be a response to the information and record collection request once each year.

The potential respondents include all entities that file annual reports with the Commission on Form 10-K or N-SAR or furnish annual reports to shareholders pursuant to Regulation 14A or 14C pursuant to the Securities Exchange Act of 1934, or Rule 30d-1 under the Investment Company Act of 1940. It has been estimated that the average increase in burden hours will be 2 hours per report, or a total increase of approximately 24,600 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the

costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004 and to Robert Neal at the address listed below.

Submit general comments to OMB Desk Officer: Robert Neal (202) 395–7430, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

July 19, 1988.

[FR Doc. 88–16686 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 34–25922; File No. SR–NSCC–88–05]**

## Self-Regulatory Organizations; National Securities Clearing Corp.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change

On June 22, 1988, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–88–05) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change clarifies certain NSCC rules and the extent to which the clearing fund may be applied to a loss or liability of NSCC. On May 20, 1988, the Commission published a notice of filing and immediate effectiveness of an identical proposed rule change (File No. SR–NSCC–88–03).[1] One comment letter was received.[2] This order approves the proposal on an accelerated basis.

### I. Description

The purpose of the proposed rule change is to clarify, through an interpretation, the application of the clearing fund and to designate, in writing, the services for which NSCC guarantees the completion of member payment or delivery obligations arising from processed transactions. The interpretation specifies that certain transactions processed through NSCC's continuous-net-settlement ("CNS") and balance order systems are guaranteed by NSCC,[3] and that certain member payment obligations arising from envelope deliveries[4] also are guaranteed by NSCC. The interpretation also designates these services as "systems" for the purposes of NSCC Rule 4. By designating certain services as systems, the interpretation clarifies that NSCC assumes responsibility for the completion of transactions in those systems.

The interpretation clarifies NSCC's position with regard to a loss or liability resulting from a particular system. If there is a loss or liability associated with a particular system, only the amount of money allocated within the clearing fund to that particular system may be used to satisfy that obligation.[5] Once that pool of funds is exhausted, NSCC's Board may assess, on a pro rata basis, members participating in that system to cover such loss and to replenish the fund.

The interpretation clarifies that NSCC may assess member clearing fund contributions for losses or liabilities that arise outside particular systems. The interpretation provides that, pursuant to NSCC Rule 4, losses or liabilities arising outside a system may be satisfied from the entire clearing fund, including portions of the fund allocated for various system losses. The interpretation specifically provides that the entire clearing fund may be available to satisfy losses if NSCC's Board of Directors specifically determines to guarantee the losses of a wholly-owned subsidiary of NSCC.

The proposed rule change would effectuate a decision by NSCC's Board of Directors to guarantee to the International Stock Exchange of The United Kingdom And The Republic Of Ireland, Limited ("ISE") losses or liabilities arising from transactions processed by the International Securities Clearing Corporation ("ISCC"), a wholly-owned subsidiary of NSCC. NSCC formed ISCC to provide international clearance and settlement facilities and to limit exposure to losses by NSCC members that do not participate in ISCC. The proposed rule change contemplates that NSCC members who do not participate in ISCC are shielded from exposure to ISCC losses as long as ISCC continues to have active members. If ISCC incurs a liability to ISE in a service which is subject to the NSCC–ISE guarantee and ISCC does not have the funds to meet the liability, NSCC's entire clearing fund would be available to satisfy such a loss.[6]

Under the terms of the NSCC–ISE guarantee agreement, any liability to ISE arising from ISCC's obligations or activities are first to be satisfied out of ISCC's clearing fund. NSCC would be liable only for any remaining loss that ISCC was unable to satisfy and the loss was an obligation of NSCC. Such a loss (*i.e.*, arising from ISCC's clearance and settlement activity related to ISE trades) would be considered a loss arising outside of an NSCC system and may be satisfied from the entire clearing fund pursuant to section 2(b) of NSCC Rule 4 as a loss incidental to the clearance and settlement business of NSCC.

The Interpretation also clarifies that the entire clearing fund may be available to satisfy a loss arising out of a non-guaranteed system. A loss arising out of a non-guaranteed system, such as the Mutual Fund, Settlement Entry and Registration Verification Services ("Fund/SERV"), may be satisified out of the entire clearing fund once all funds allocated to Fund/SERV were exhausted. NSCC, non-Fund/SERV members are shielded from exposure to Fund/SERV losses as long as NSCC continues to have active Fund/SERV participants.[7]

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[1] Securities Exchange Act Release No. 25699 (May 10, 1988), 53 FR 18188.

[2] Letter from Marc L. Weinberg, Publisher and Editor, Back Office Publications, Inc., to Jonathan Katz, Secretary, Securities and Exchange Commission (March 31, 1988).

[3] Prior to April 1987, NSCC guaranteed trades generally on the fourth business day after the trade date. Under NSCC's revised policy, as in effect during and after October 1987, trades are guaranteed as of midnight of the day they are reported as compared (generally the day after the trade date ("T+1") or T+2) but a mark-to-the-market assessment is not made until settlement date, T+5. *See* Securities Exchange Act Release No. 24301 (April 3, 1987), 52 FR 11892; NSCC Notice to Members No. A–2753 (April 23, 1987. Because there is the risk that the market price of a trade will move away from the contract price before settlement date (T+5), NSCC is at risk for that market movement if the participant fails to settle the transaction. Therefore, NSCC's CNS clearing and fund formula consist of three components, including a component that is based on the difference between the contract price and current market price for all compared trades that have not reached settlement. This is the mark-to-the market component of the formula. The other two components of the clearing fund formula cover allocation risk and liquidation risk.

[4] *See* NSCC Rule 9.

[5] For purposes of administering the clearing fund, NSCC allocates a certain portion of each member's clearing fund deposit among the services in which the members participates and for which NSCC assumes responsibility for completion of those transactions. The remainder of each member's clearing fund deposit is allocated to various services that NSCC does not guarantee and to other losses arising outside of a specific system. Administrative allocations of member clearing fund contributions to particular services, however, do not limit a member's potential liability to NSCC in the event of a *pro rata* assessment. A member can limit its liability to its current required contribution only if the member gives NSCC timely notice of its intention to withdraw from NSCC. *See* NSCC Rule 4.

[6] NSCC would only be liable for ISCC losses that are specific obligations of NSCC. Only after all funds at ISCC (*i.e.*, ISCC's retained earnings and the ISCC's clearing fund) are exhausted would NSCC be liable for such obligations.

[7] Once the portion of the clearing fund for Fund/SERV, or any designated fund for a particular service, has been used to cover a loss, NSCC would

Continued

## II. NSCC's Rationale

NSCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act. NSCC states in its filing that the proposed rule change clarifies the use of the clearing fund, enabling NSCC to better protect itself against losses and ultimately provide better protection of investors and the public interest.

NSCC is requesting accelerated effectiveness pursuant to section 19(b)(2) of the Act because it is necessary that NSCC's guarantee to ISE regarding ISCC's clearing and settlement activities of ISE trades be effective in order for ISCC to be able to enter into its contract with ISE. NSCC also notes that the same proposed rule change previously was filed as SR-NSCC-88-3 and was published in the Federal Register on May 20, 1988.

## III. Discussion

The Commission believes that the proposal is consistent with the Act. Specifically, the Commission believes that the proposal is consistent with NSCC's obligation to assure safeguarding of funds and securities, maintain appropriate financial responsibility standards and protect investors and the public interest under section 17A of the Act.

The Commission believes that the rule change provides needed clarity regarding NSCC's guarantee of member obligations and losses that NSCC considers incidental to its clearance and settlement activities (*i.e.*, which losses may be satisfied from the clearing fund). For example, the proposed rule change specifically designates certain CNS and balance order transactions and certain envelope deliveries as "systems" in which NSCC guarantees member transaction obligation. Thus, the proposed rule change clarifies a long-standing understanding between NSCC and its members.[8]

The Commission agrees with NSCC that the Board of Directors may designate certain losses or liabilities of a wholly-owned subsidiary as losses of NSCC, provided those losses are incidental to the clearance and settlement of securities. A key factor in determining whether it is proper for NSCC to designate certain losses of its wholly-owned subsidiary as losses incidental to NSCC's clearance and settlement business is whether NSCC could perform those clearance and settlement functions itself.

Under the proposed rule change, NSCC would guarantee the losses of ISCC regarding certain clearance and settlement activities with ISE. If NSCC provided those services directly to a class of its members, NSCC's clearing fund would be available to satisfy any potential ISCC to conduct cross-border clearance and settlement activities, because NSCC serves as ISCC's facilities manager, a sufficient nexus appears to exists between NSCC and ISE to support NSCC's decision to guarantee ISCC's obligations of ISE.[9] In addition, ISCC's current obligations to ISE are limited to payment for securities ISE allocates to an ISCC member in ISE's Talisman system. Failure by an ISCC member to meet such a payment obligation would allow ISCC to invoke a variety of protective measures, including the sale of delivered securities and appropriation of the defaulting member's clearing fund. Moreover, the guarantee would result in an actual payout of NSCC's clearing fund only when ISCC has exhausted all of its assets, including its clearing fund.

As noted earlier, the Commission received one comment letter urging that NSCC should assess the clearing fund deposits of NSCC members who also are ISCC members, but should not subject non-ISCC members to any potential assessment for ISCC activities. The Commission, however, believes that the decision to guarantee ISCC's obligations and to make the NSCC clearing fund available is an appropriate business decision for NSCC's Board of Directors and is consistent with the Act, given NSCC's nexus with ISE and ISCC as ISCC's facilities manager. First, NSCC's Board of Directors represents a broad spectrum of NSCC users, including a majority of directors who are not ISCC members. Second, the guarantee would only be exercised when ISCC has exhausted every protection in its comprehensive scheme of financial protections and only if outstanding liabilities remained. Because that scheme includes assessing all ISCC members *pro rata* for any loss, ISCC members would bear initial and substantial responsibility for those losses. Moreover, non-ISCC, NSCC members would be subject to assessment only if all ISCC members would contribute again because of their membership in NSCC.

The commentator also noted that SR-NSCC-88-3 was filed under section 19(b)(3) of the Act and, therefore, because effective on filing. The commentator believes that the filing should be filed under section 19(b)(2) of the Act to allow for appropriate comments and review. Subsequently, NSCC refiled SR-NSCC-88-3 under section 19(b)(2)(SR-NSCC-88-5).

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the Federal Register. As noted above, the terms of the proposed rule change were noticed in the Federal Register on May 20, 1988. Moreover, delaying the effectiveness of the filing for further comment might impede implementation of the international clearance and settlement link with ISE.[10]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register.[11] Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-NSCC-88-5.

Copies of the submission, all subsequent amendments, all written

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assess each member, *pro rata*, to bring the fund up to its appropriate level. At that point, each Fund/SERV participant would then decide if it wanted to continue in Fund/SERV by putting up its share in the fund or withdraw its participation. Only if all members withdrew from Fund/SERV and an outstanding liability remained would the entire clearing fund become available to cover that liability.

[8] *See* Division of Market Regulation, U.S. Securities and Exchange Commission, *The October 1987 Market Break* (February, 1988), Chapter 10 at 13-27.

[9] ISCC is negotiating an agreement with ISE, whereby ISE will obtain, through ISCC, access to NSCC's and Depository Trust Company's ("DTC") services. NSCC's guarantee would extend to this proposed arrangement and contemplates that NSCC generally would guarantee that in the event ISCC was unable to continue to provide access to NSCC or DTC services, NSCC would provide such access to ISE under the terms of the proposed ISCC-ISE agreement. Those services are similar in kind to the services currently provided to ISE by the Midwest Clearing Corporation ("MCC") and Midwest Securities Trust Company ("MTSC") in those clearing agencies. *See* no-action letter from Jonathan Kallman, Assistant Director, Divison of Market Regulation, Securities and Exchange Commission, to Michael Wise, Associate Counsel, MCC/MSTC, regarding their link with ISE (June 25, 1986). Unlike ISCC, MCC and MSTC currently provide services to ISE directly.

[10] NSCC has requested that SR-NSCC-88-3 be withdrawn effective on approval of SR-NSCC-88-5. The Commission is granting that request.

[11] The Commission encourages interested persons to submit written views concerning the proposed rule change, notwithstanding the Commission's approval of the proposed rule change today. The Commission will consider any comments it receives in connection with its review of the proposed ISCC-ISE agreement and its ongoing oversight of ISCC and NSCC operations.

statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of NSCC.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR–NSCC–88–5) be, and hereby, approved on an accelerated basis.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: July 18, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–16669 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–16484; 812–6953]**

## New England Mutual Life Insurance Co. et al.; Application for Exemption

July 18, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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*Applicants:* New England Mutual Life Insurance Company ("The New England"); The New England Variable Account (the "Account") and New England Securities Corporation (the "Distributor") (collectively, the "Applicants").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

*Summary of Application:* Applicants seek an order to the extent necessary to permit The New England to deduct from the assets of the Account the mortality and expense risk charges imposed under certain variable annuity contracts (the "Contracts").

**FILING DATE:** The application was filed on January 6, 1988, and amended on June 2, 1988, June 9, 1988, and July 12, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 12, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC, 20549. Applicants, 501 Boylston Street, Boston, Massachusetts 02117.

**FOR FURTHER INFORMATION CONTACT:** Heidi Stam, Staff Attorney (202) 272–3017 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

### Applicants' Representations

1. The New England was organized in 1835 under the laws of the Commonwealth of Massachusetts. The Account was established, pursuant to the provisions of Massachusetts law, to fund the Contracts. The Account currently consists of five sub-accounts.

2. The assets of the Account will be invested in shares of New England Zenith Fund (the "Fund"), an open-end, series, management investment company registered under the Act and organized as a Massachusetts business trust. The Contracts are individual flexible and single purchase payment variable annuity contracts.

3. No sales charge will be deducted from Contract purchase payments at the time of purchase. A contingent deferred sales charge will be imposed, however, in the event of certain partial surrenders, full surrenders and maturity transactions. The contingent deferred sales charges may not cover sales expenses over the lives of the Contracts. To the extent such expenses are not covered by the contingent deferred sales charges, they will be recovered from The New England's general account, which may include income derived from charges such as the mortality and expense risk charge described below. In no event will the total contingent deferred sales charge exceed 8% of the first $50,000 of purchase payments made under the Contract and 6.5% of the amount of purchase payments in excess of $50,000. The contingent deferred sales charge may be waived under certain circumstances.

4. The New England is responsible for the administration of the Contracts and the Account. To cover the cost of its administrative services to the Account, The New England will receive administration charges equal, on an annual basis, to $30 per Contract plus .40% of the daily net assets of each sub-account of the Account. The administration charges have been established at a level designed to cover the costs of administering the Contracts (including overhead) and The New England does not expect to realize a profit from such administration charges.

5. The New England also proposes to deduct a mortality and expense risk charge from the Account on a daily basis as compensation for assuming the mortality and expense risks under the Contracts. On an annualized basis, the charge will equal .95% of the daily net assets of each sub-account, of which .60% represents a mortality risk charge and .35% represents an expense risk charge. The mortality and expense risk charge, as a percentage of net assets, will not increase over the life of a Contract.

6. The Applicants submit that The New England is entitled to reasonable compensation for its assumption of mortality and expense risks. The Applicants represent that the charge of .95% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. This amount compensates The New England for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting annuity rates guaranteed in the Contracts; for the risk that an annuitant's death benefit could exceed the value of his or her account; and for the risk that The New England's expenses may be higher than the maximum deductions for such expenses permitted under the Contracts.

7. The Applicants represent that the charge of .95% for mortality and expense risks assumed by The New England is within the range of industry practice with respect to comparable annuity products. This representation is based upon The New England's analysis of publicly available information about similar products, taking into consideration such factors as the size and financial rating of the insurers and the types of annuity contracts they issue. The New England will maintain at its administrative offices, available for

review by the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

8. The New England has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the owners of the Contracts. The basis for such conclusion is set forth in a memorandum which will be maintained by The New England at its administrative offices and will be available for review by the Commission. The New England represents that the Account will invest only in management investment companies that undertake, in the event a plan is adopted by the company pursuant to Rule 12b–1 under the Act to finance distribution expenses, to have a board of trustees or directors a majority of whom are not interested persons of the company approve any such distribution plan.

For the Commission, the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–16687 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 15, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

**Docket No. 45697**

*Date Filed:* July 12, 1988.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 9, 1988.

*Description:* Application of Lineas Aereas La-Tur, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests authority to provide charter foreign air transportation of persons and accompanying baggage between points in the United States and points in Mexico and, subject to the applicable Regulations of the Department.

**Docket No. 45704**

*Date Filed:* July 14, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 11, 1988.

*Description:* Application of Swissair, Swiss Air Transport Company, Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for an amendment of its foreign air carrier permit so as to authorize it to engage in: (1) Foreign air transporation of persons, property and mail between a point or points in Switzerland and Atlanta, Georgia and (2) foreign air transportation of persons between Anchorage, Alaska and Tokyo, Japan.

**Docket No. 45706**

*Date Filed:* July 15, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 12, 1988.

*Description:* Application of Minerve Canada, Compagnie de transport aeriens Inc., d/b/a Minerve Canada, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit authorizing foreign charter air transportation of persons and their accompanied baggage, and property and mail between points in the United States and points in Canada, and between points in the United States and any point not in Canada or the United States.

**Phyllis T. Kaylor,**

*Chief, Documentary Service Division.*

[FR Doc. 88–16645 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–62–M

## Federal Aviation Administration

### Flight Service Station at Jackson County-Reynolds Airport, Jackson, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Closing.

**SUMMARY:** Notice is hereby given that on or about July 19, 1988, the present Flight Service Station at Jackson County-Reynolds Airport, Jackson, Michigan has been closed. Services to the aviation public of Jackson, Michigan Flight Plan Area, formerly provided by this office, will be provided by the new automated Flight Service Station in Lansing, Michigan. This information wil be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Des Plains, Illinois on April 8, 1988.

**William H. Pollard,**

*Director, Great Lakes Region.*

[FR Doc. 88–16695 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

### Flight Service Station at Wausau Municipal Airport, Wausau, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Closing.

**SUMMARY:** Notice is hereby given that on or about July 19, 1988, the present Flight Service Station at Wausau Municipal Airport, Wausau, Wisconsin has been closed. Services to the general public, formerly provided by this office, will be provided by the New Automated Flight Service Station in Green Bay, Wisconsin. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Des Plaines, Illinois, on July 12, 1988.

**Monte R. Belger,**

*Acting Regional Administrator, AGL–1.*

[FR Doc. 88–16693 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

### National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on August 30 and 31, 1988, in Richmond, Virginia. The meeting will be he held at the Division of Motor Vehicles, 2300 West Broad Street, from 9:00 a.m. to 4:30 p.m. on August 30, and from 8:30 a.m. to noon on August 31 in room 702. Issues to be discussed are: NDR status, the Report to Congress, the Commercial Driver License Information System (CDLIS), and the AAMVA network (AAMVANET).

The meeting is open to the interested public, but may be limited in attendance to space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the

National Driver Register, Room 5119, 400 Seventh Street SW., Washington, DC 20590, telephone 202/366-4800.

Issued in Washington, DC, on July 18, 1988.

**Clayton E. Hatch,**

*Chief, National Driver Register.*

[FR Doc. 88-16646 Filed 7-22-88; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: July 18, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number*: 1545-1063
*Form Number*: 6789
*Type of Review*: Extension
*Title*: Performance Appraisal (For Non-IRS Candidates Only)
*Description*: A performance appraisal is required to consider status applicants and/or reinstatement eligibles employed by other Treasury bureaus, other agencies, or by private industry. Both FPM 335 (Federal Promotion Regulations), and IRM 0335 (IRS Promotion Regulations) require systematic ranking procedures with performance appraisals as a mandatory component.
*Respondents*: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees
*Estimated Number of Respondents*: 80
*Estimated Burden Hours Per Response*: 1 hour
*Frequency of Response*: On Occasion
*Estimated Total Reporting Burden*: 60,000 hours
*Clearance Officer*: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer*: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Department Reports, Management Officer.*

[FR Doc. 88-16621 Filed 7-22-88; 8:45 am]

BILLING CODE 4810-59-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: July 19, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0238
*Form Number:* W-2G
*Type of Review:* Extension
*Title:* Statement for Recipients of Certain Gambling Winnings
*Description:* Internal Revenue Code section 6041 requires payers of certain gambling winnings to report them to the IRS. If applicable, section 3402(q) and section 3406 require tax withholding on these winnings. We use the information to ensure taxpayer income reporting compliance.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 2,401
*Estimated Burden Hours Per Response:* 59 minutes
*Frequency of Response:* On Occasion
*Estimated Total Reporting Burden:* 285,632 hours
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhuf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 88-16622 Filed 7-22-88; 8:45 am]

BILLING CODE 4810-25-M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Holly Image, Holly Space: Byzantine Icons from Greece" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Walters Art Gallery in Baltimore, Maryland, beginning on or about August 21, 1988, to on or about October 16, 1988, at the Center for the Fine Arts in Miami, Florida, beginning on or about November 14, 1988, to on or about January 8, 1989, at the Kimbell Art Museum in Fort Worth, Texas, beginning on or about February 11, 1989, to on or about April 2, 1989, at the Fine Arts Museum in San Francisco, California, beginning on or about April 22, 1989, to on or about July 16, 1989, at the Cleveland, Ohio, beginning on or about September 6, 1989, to on or about October 22, 1989, and at the Detroit Institute of Art in Detroit, Michigan, beginning on or about November 19, 1989, to on or about January 28, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

**R. Wallace Stuart,**

*Acting General Counsel.*

Date: July 20, 1988.

[FR Doc. 88-16876 Filed 7-22-88; 10:45 am]

BILLING CODE 8230-01-M

## VETERANS' ADMINISTRATION

### Intent To Prepare Environmental Impact Statements; Establishment of New National Cemeteries

**AGENCY:** Veterans' Administration.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

**ACTION:** Notice of intent.

**SUMMARY:** The Veterans' Administration (VA) intends to prepare Environmental Impact Statements (EIS) on the proposed establishment of four potential new national cemeteries. These proposed cemeteries would serve the areas of Chicago, IL; Cleveland, OH; Seattle/Tacoma, WA; and Albany, NY.

**ADDRESS:** Individuals are invited to submit comments on this Notice to: Susan Livingstone, Director of Environmental Affairs (088B4), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

**FOR FURTHER INFORMATION CONTACT:** Jon E. Baer, Director, Landscape Architectural Service (088B4), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2922.

**SUPPLEMENTARY INFORMATION:** EISs are required because the scope of each proposed project could exceed the VA threshold for EISs established in 38 CFR Part 26. Therefore, in accordance with section 102(2)(C) of the National Environmental Policy Act, the VA is publishing this Notice of Intent pursuant to 40 CFR 1501.7.

Each proposed cemetery, if ultimately approved as a project by the VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

Possible alternatives for each proposed cemetery have not been firmly identified but will depend upon demographic requirements, available sites, and acquisition methods.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Participation in the scoping process is invited by individuals, private organizations and local, State and Federal Agencies. Comments received will be used by the VA in its efforts to further identify and clarify significant environmental issues. Scoping meetings will be announced in local area newspapers for each project.

Dated: July 13, 1988.

**Thomas K. Turnage,**

*Administrator.*

[FR Doc. 88–16630 Filed 7–22–88; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 27, 1988.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:**

**MATTERS TO BE CONSIDERED:**

**Open to the Public**

*1. Voluntary Standards Policy Regulation*

The Commission will consider the proposed amendments to the Commission's regulations 16 CFR 1031 and 1032 concerning staff participation in voluntary standards activities.

*2. Preliminary 1990 Budget*

The Commission will consider issues related to the Preliminary Budget for Fiscal Year 1990.

**Closed to the Public**

*3. Compliance Status Report*

The staff will brief the Commission on the status of various compliance matters.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 88-16750 Filed 7-21-88; 2:40 pm]

BILLING CODE 6355-01-M

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 27103, Monday, July 18, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Tuesday, July 26, 1988.

**CHANGE IN THE MEETING:**

*Open Session*

The items listed below have been added to the agenda:

- *Proposed Recordkeeping Modifications to 29 CFR Part 1602, "Reports and Records," and 29 CFR Part 1627, "Records to be Made or Kept Relating to Age"*
- *Report on Pre-Complaint Counseling and Complaint Processing by Federal Agencies for Fiscal Year 1987*

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: July 20, 1988.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

This Notice Issued July 20, 1988.

[FR Doc. 88-16729 Filed 7-21-88; 2:40 pm]

BILLING CODE 6750-01-M

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 26367, Tuesday, July 12, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9:30 a.m. (eastern time) Tuesday, July 19, 1988.

**CHANGE IN THE MEETING:** The meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: July 19, 1988.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

This Notice Issued July 19, 1988.

[FR Doc. 88-16812 Filed 7-21-88; 3:59 pm]

BILLING CODE 6750-06-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Notice forwarded to Federal Register on July 20, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, July 27, 1988.

**CHANGES IN THE MEETING:** The open meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: July 21, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-16734 Filed 7-21-88; 2:40 pm]

BILLING CODE 6210-01-M

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**POSTAL RATE COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, August 11, 1988.

**PLACE:** Commission Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268-0001.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Postal Rate Commission Budget for Fiscal Year 1989
2. Election of Vice Chairman
3. Revision of the Commission's Personnel Awards Program

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 88-16719 Filed 7-21-88; 2:40 pm]

BILLING CODE 7715-01-M

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**POSTAL SERVICE BOARD OF GOVERNORS**

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, August 2, 1988, at the Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, August 1, 1988, but it will consist entirely of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

August 2, 1988—8:00 a.m. (Open)

1. Minutes of the Previous Meeting, July 7-8, 1988.
2. Remarks of the Postmaster General.

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3. Quarterly Report on Financial Performance. (Mr. Coppie)
4. Quarterly Report on Service Performance. (Mr. Coughlin)
5. Review of Technology Resource Management Department. (Mr. Hunter)
6. Capital Investments. (Mr. Smith)
   a. Worcester, Massachusetts, Mail Processing Center.
   b. Minneapolis, Minnesota, General Mail Facility.
   c. Oxnard, California, Mail Handling Annex.
7. Tentative Agenda for September 12–13, 1988, meeting in Washington, DC.

**David F. Harris,**

*Secretary.*

[FR Doc. 88–16730 Filed 7–21–88; 2:40 pm]

BILLING CODE 7710-12-M

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# Corrections

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Occupational Exposure to Formaldehyde; Resubmission of Hazard Communication Provisions for Clearance Under the Paperwork Reduction Act

*Correction*

In notice document 88-15535 beginning on page 26329 in the issue of Tuesday, July 12, 1988, make the following corrections:

1. On page 26332, in the first column, in the first complete paragraph, the 13th through 20th lines should read "Moreover, in regard to areas in which employees are exposed to toxic substances or harmful physical agents, the OSH Act provides that the Secretary of Labor shall issue regulations requiring employers to keep records of employee exposures (29 U.S.C. 657(c))."

2. On the same page, in the second column, in the second complete paragraph, in the third line, "Formaldehyde" was misspelled.

3. On page 26334, in the first column, under "B. Method Used to Estimate Cost of Burden to Respondents", in the sixth line, "estimated" should read "estimates".

4. On page 26336, in the second column, in the last paragraph, in the fourth line, "no" should read "on".

5. On page 26337, in the second column, in the 14th line, "is" should read "in".

6. On the same page, in the same column, in the first complete paragraph, in the first line, "Standard" should read "Standard's".

7. On the same page, in the same column, in the last paragraph, in the last line, between "define" and "a" insert "when".

8. On the same page, in the same column, in footnote 4, in the eighth line, "relevant" was misspelled.

9. On the same page, in the third column, in the last paragraph, in the fourth line, "resolve" should read "resolved".

10. On page 26338, in the first column, in the 15th line, "and" should read "an".

11. On the same page, in the same column, in the second complete paragraph, the last sentence should read "Therefore it would not have been possible to submit the Paperwork Clearance package until this review was complete."

12. On the same page, in the second column, in the third line, between "pressure" and "to" insert "to promulgate the standard, should not be allowed in essence".

13. On the same page, in the same column, under "*Hazard Communication*", in the ninth line, "CF" should read "CFR".

BILLING CODE 1505-01-D

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Implementation of Amendments to Specialty Steel Import Relief

*Correction*

In notice document 88-26951 beginning on page 44666 in the issue of Friday, November 20, 1987, make the following corrections:

1. On page 44667, in the first column, in the second complete paragraph, in the fourth line from the bottom remove the text beginning with "and not less than 0.20 percent nor more than 0.030 percent sulphur;".

2. On the same page, in the third column, in the first complete paragraph, in the sixth line, "terms" should read "items".

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Part II

# Department of Labor

**Employment and Training Administration**

**20 CFR Part 615**

**Federal-State Unemployment Compensation Program; Revision of Extended Benefit Program Regulations; Final Rule**

VOL 53 ISS 142 JL 25 1988 UMI

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 615**

## Federal-State Unemployment Compensation Program; Revision of Extended Benefit Program Regulations

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Extended Benefit Program is a part of the Federal-State Unemployment Compensation Program, and takes effect during periods of high unemployment to furnish up to 13 weeks of additional benefits to individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The final regulations add new text and revise the regulations for the Extended Benefit Program to reflect changes in the law regarding eligibility for Extended Benefits and reimbursement of the Federal share of Extended Benefits. The final regulations clarify some of those requirements and the timing of them, and correct obsolete language in several places. Last, the final regulations extend the present "freeze" on the indicator rates for insured unemployment to cover all determinations of insured unemployment rates, and specify a time period for correcting errors in the determination of "on," "off," or "no change" indicator rates of insured unemployment. The final regulations include changes and improvements set forth in the published proposal in addition to changes made in response to comments from the States. The proposal was published in the **Federal Register** on October 24, 1986. A notice of extending the closing date for comments to April 20, 1987, was published in the **Federal Register** on April 3, 1987.

**EFFECTIVE DATE:** August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0600 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Part 615, Chapter V, Title 20 of the Code of Federal Regulations implements the Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91-373) (the "EUCA"), 26 U.S.C. 3304 note. That Act prescribes provisions required to be included in State unemployment compensation laws. It is made a requirement for State laws by section 3304(a)(11) of the Internal Revenue Code of 1986. The Act was amended in 1980, 1981, 1982, and 1983 to change the requirements for State laws in a number of ways.

### 1980 Amendments to EUCA

Section 416 of Pub. L. 96-364 added section 202(c) to the EUCA, and bars more than 2 weeks of Extended Benefit payments to individuals under the Interstate Benefit Payment Plan if they file claims in a State where an Extended Benefit Period is not in effect. This amendment was effective on June 1, 1981, in most States.

Section 1022 of Pub. L. 96-499 amended section 204(a)(2) of the EUCA to add a new subparagraph (B) which limits Federal reimbursement of benefits to a State which does not require a waiting period for regular benefits. Section 615.14(c)(3) establishes the effective dates under varying State circumstances. This amendment affects a State's entitlement to Federal sharing in the costs of regular compensation and Extended Benefits, but is not a requirement for State laws.

Section 1024 of Pub. L. 96-499 added sections 202(a) (3), (4) and (5) of the EUCA. Paragraph (3) requires amendment of State laws to include specific provisions defining suitable work as any work which is within an individual's capabilities, except that if the individual's prospects of obtaining work in his/her customary occupation in a reasonably short period are determined to be good, then suitable work is determined under the provisions in State law applicable to claimants for regular benefits; and includes a specific disqualification for failure to accept suitable work, or to apply for suitable work when referred by a State employment office, or to actively search for work. Paragraph (4) requires that disqualifications for voluntarily leaving employment, discharge for misconduct and refusal of suitable work shall not be considered terminated for the purpose of qualifying for Extended Benefits except by employment subsequent to the disqualifications. Paragraph (5) (redesignated as (6) in the 1981 amendments, which added a new paragraph (5)) prohibits Federal sharing in regular benefit costs if the State does not apply the rules of paragraphs (3) and (4) in paying such benefits. Paragraphs (3) and (4) are requirements for State laws; paragraph (5), like section 204(a)(2), is not a requirement for State laws. The requirements of paragraph 4 took effect in all States for weeks of unemployment beginning after March 31, 1981. The requirements in paragraph 3 took effect in the States for weeks of unemployment beginning after October 31, 1981, except for any State in which the State legislature did not meet in 1981, section 202(a)(3) shall apply to weeks of unemployment beginning after October 1, 1982.

### 1981 Amendments to EUCA

Sections 2401 through 2404 and sections 2505 and 2506 of Pub. L. 97-35 made several changes in the conditions under which Extended Benefits trigger on or off by eliminating the National trigger, changing the standard State trigger from 4.0 percent to 5.0 percent, the optional State trigger from 5.0 percent to 6.0 percent, and changing the definition of the "rate of insured unemployment" by eliminating claims for Extended Benefits and additional compensation. Other amendments prohibit paying benefits to individuals with little qualifying employment, and make changes to tie into the amendments to the Trade Act of 1974. Changes in §§ 615.2, 615.4, 615.7, 615.8, 615.12, 615.13, and 615.14 reflect those amendments.

### 1982 Amendment to EUCA

Section 191 of Pub. L. 97-248 amended section 204(a)(2) to add a new subparagraph (D), which provides that States which do not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount shall not be entitled to be reimbursed for the Federal 50 percent share on the amount by which sharable regular and sharable extended compensation paid exceed the lower dollar amount. This amendment became effective for benefits paid for eligibility periods beginning on or after October 1, 1983, with a grace period for States that require legislation to provide for rounding down.

### 1983 Amendment to EUCA

Section 522 of Pub. L. 98-21 amended section 202(a)(3)(A)(ii) to provide exemptions to the requirement that claimants actively engage in seeking work: (1) if the individual is serving on jury duty under specified circumstances, and (2) if the individual is hospitalized for an emergency or life-threatening condition. A State may apply these exemptions to claimants for Extended Benefits only if the exemptions also apply to claimants for regular benefits. Sections 615.2(o) (11) and (12) define the terms "jury duty" and "hospitalized for treatment of an emergency or life-threatening condition." The amendment

to section 202(a)(3)(A)(ii) became effective on enactment, April 20, 1983.

**1987 Amendment to EUCA**

Section 9151 of Pub. L. 100–203 amended the date in section 202(a)(6) for purposes of determining the Federal share of weeks of unemployment beginnning after March 31, 1981. Section 9151 of Pub. L. 100–203 changed the original effective date of section 202(a)(3) to weeks of unemployment beginning after October 31, 1981. If a State's legislature did not meet in 1981, section 202(a)(3), EUCA would apply to weeks of unemployment beginning after October 31, 1982.

*Invitation for Comments*

The proposal to revise the Extended Benefits (EB) regulations was published in the **Federal Register** on October 24, 1986 (51 FR 37741). Comments on the proposed revision of Part 615 were originally solicited through November 24, 1986. On April 3, 1987 (52 FR 10774) a notice was published in the **Federal Register** extending the closing date for comments to April 20, 1987.

The Department of Labor received timely written responses to the proposal from 15 State Employment Security Agencies (SESAs) and the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations. The SESAs that commented on the proposal were: The Arizona Department of Economic Security, the California Employment Development Department, the Illinois Department of Employment Security, the Michigan Employment Security Commission, the Nevada Employment Security Department, the New Jersey Department of Labor, the New York Department of Labor, the Ohio Bureau of Employment Services, the Oregon Employment Division of the Department of Human Resources, the Pennsylvania Department of Labor and Industry, Office of Employment Security, the Tennessee Department of Employment Security, the Texas Employment Commission, the Vermont Department for Employment and Training, the West Virginia Department of Employment Security, and the Wisconsin Department of Industry, Labor and Human Relations.

The Department gave careful consideration to all comments and suggested changes received before drafting the final regulations. This document contains the final revised regulations for Part 615. Following is a summary of the comments received and the Department's responses in order of section.

**Section-by-Section Analysis and Response to Comments Received**

*General*

A SESA commented that it believed the regulations were of sufficient importance to warrant a public hearing. The Secretary agrees on the importance of these regulations. However, the Assistant Secretary has determined that the process of publishing the proposed rule in the **Federal Register**, in accordance with 5 U.S.C. 553, was sufficient to satisfy the statutory requirement for public participation in this rulemaking. The notice in the **Federal Register** gave interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments, allowed more than 30 days for such comments, and was followed by the Department's careful consideration of the written comments received. A public hearing for these regulations is not required by statute. For these reasons, the Department will schedule no public hearing.

A SESA commented that some States are currently pursuing administrative relief from findings of the Inspector General, which, it believes, involve issues of interpretation of State and Federal law at the same time that State program decisions were made. It stated that to now deny payment of the Federal share of Extended Benefits, under the circumstances set forth in § 615.14(b) of these regulations, would be impermissably retroactive rulemaking.

These regulations are not retroactive in application but rather implement the provisions of the EUCA amendments as of their effective dates. Accordingly, each of the amendments addressed in these revised regulations, including the changes in § 615.14(b), is treated as having become effective on the effective dates specified in the amending acts. The Department has been carrying out the law as amended. The regulations affirm this and now furnish a regulatory basis for the positions that have been taken in implementing the statutory amendments.

The SESA further commented that five years is too lengthy a period between statutory enactment and rulemaking and after five years of "ever-changing directives," the proposed rules no longer provide timely clarification.

These comments on the timing of the publication of the proposed rules are understandable; however, the EUCA was amended in 1980, 1981, 1982 and 1983 and each amendment required revisions and additions to the proposed rules. Part of the delay in the publication of these regulations is inherent in the regulatory process. This process is governed by the Administrative Procedure Act, the Regulatory Flexibility Act, Executive Orders 12067 and 12291, and the Paperwork Reduction Act. These directives also require the Office of Management and Budget to review regulatory proposals. Although these processes concededly do not explain away all of the delays encountered, and there have been changes in guidance furnished to the States, the last substantive changes were reflected in the Notice of Proposed Rulemaking published on October 24, 1986. The States were, therefore, timely notified of each amendment and each change in guidance.

The SESA listed several examples of "ever-changing directives" from ETA which, it stated, placed SESAs in the position of constantly modifying administrative policies. It noted that Unemployment Insurance Program Letter (UIPL) 14–81, issued February 2, 1981, stated that if a claimant was unavailable for work in any week because of illness, disability, death in the family, or jury duty, the claimant would not be excused from meeting the actively seeking work requirement of EUCA section 202(a)(3). The SESA believed that this was inconsistent with the explanation for the definition of "weeks of unemployment" in § 615.2(n)(2) of the regulations, which stated Congress must not have intended EUCA section 202(a)(3) to disqualify a claimant who was not claiming benefits for a given week due to illness.

The statements in the UIPL and the regulations are not inconsistent. It is still true that, except as modified by the 1983 amendments, no excuse will suffice for failing to meet the actively seeking work requirement of section 202(a)(3)(A), EUCA. It also remains true that the requirement applies only to weeks for which a claim is filed for benefits. This interpretation avoids the extreme result of requiring the disqualification to apply to every week of unemployment regardless of whether a claim is filed. The 1983 amendment to EUCA section 202(a)(3)(A) softens the actively seeking work requirement, but does not change the basic approach the Department takes of applying the disqualification only with respect to weeks for which a claim is filed. The Department's guidance to the States on these points has remained unchanged, except as required by the 1983 amendments. No change is made in the regulations.

The SESA further commented that UIPL 14–81, Change 2, issued September 8, 1981, stated that a maximum of 4 weeks for a claimant to obtain work

within the individual's customary occupation would constitute "a reasonably short period" under EUCA section 202(a)(3)(C). The commenter noted that under the proposed regulations, § 615.8(d)(1), the determination of the length of this "reasonably shortperiod" is now left to the applicable State law.

This change represents a deferral to the States; the States were timely notified when this change was made. The Department prefers to leave matters to the States where it can do so under the law. In this instance the Department decided, after reconsidering the matter, that this was a matter better left to the States. No change is made in the regulation.

This SESA also commented that § 615.2(o)(7) of the proposed regulations, defining the phrase "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii) of the Act, changes the UIPL instructions. The SESA states that this change "would substantively amend [the] statutory interpretation after years of denial of claims based on [the] more restrictive UIPL instructions."

The change made by the proposed regulations defining the phrase, "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii) of the Act defers to the States. The Department acknowledges that it has changed its interpretation of the phrase, "Provisions of applicable State law," because the Department, as explained above, prefers to leave matters to the States where it can do so under the law. Upon reconsideration, the Department has decided that it was proper to defer to the States here. No change is made in the regulation.

The SESA also commented that misleading legal conclusions are drawn in the "**SUMMARY**," "**SUPPLEMENTARY INFORMATION**," and "1980 Amendments to EUCA" sections. With respect to the "**SUMMARY**", it stated that there had been no regulations on the new paragraphs added to section 202(a), EUCA, enacted by Pub. L. 96–499; therefore, there are no regulations on these new paragraphs to be revised by the Proposed Rules.

The proposed rule added new text in addition to amending existing text; both kinds of changes come under the definition of a "revision" of the regulations. This omission of a reference to the added text was not an attempt to mislead, but is noted in the final regulations. The changes proposed were carefully noted in the preamble and fully set forth in the regulatory text of the Notice of Proposed Rulemaking.

The SESA also commented that the "Supplementary Information" and the "1980 Amendments to EUCA" section are misleading because the amendments in Pub. L. 96–499 that added new paragraphs (3), (4), and (5) to EUCA section 202(a) did not require States to change State law. The SESA commented that Congress clearly intended that State law be changed at section 1022(a) of Pub. L. 96–499, which concerns the waiting week and that no such language is found in the statute concerning suitable work.

The Department used the word "required" in the Supplementary Information with respect to the amendments in Pub. L. 96–499 that added new paragraphs to section 202(a) of EUCA, because it is bound by the use of the word "required" in section 3304(c) of the Internal Revenue Code of 1986 as follows:

> On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as provided under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

Paragraphs (3) and (4) were correctly stated to be new requirements for Extended Benefits, as are other provisions of EUCA sections 202 and 203 relating to eligibility requirements for Extended Benefits. Paragraph (5) was correctly noted as not being a requirement for State laws, but solely a requirement for Federal sharing in the costs of regular benefits. The absence of identical language in the suitable work provisions is not determinative. Therefore, "required" is not deleted from the **SUPPLEMENTARY INFORMATION** in the final regulations, and no change is made in the final regulations.

The SESA also commented that the Proposed Rules should be classified as major rules and a regulatory impact analysis must be prepared.

The Secretary of Labor has determined, with the concurrence of the Office of Management and Budget, that the proposed rules are not major rules, for the reasons stated in the document.

*Section 615.2(o)(1) "Employed"*

The proposed rule at § 615.2(o)(1) defines "employed" for purposes of section 202(a)(3) of EUCA. A SESA, that did not suggest alternate language, commented that this definition does not meet the expressed goal of excluding "such neighborly exchanges as babysitting."

The Department's definition of "employed" was written to prevent the purging of a disqualification by activity that is not bona fide employment or by services not customarily performed under a contract of hire for wages. The definition at § 615.2(o)(1) thus provides that the definition of employment in State law applies. Therefore, a SESA should refer to State law for purposes of determining what "employed" means in applying the 4x4 disqualification and in determining what "employment" suffices under the EUCA section 202(a)(4) requirement. For these reasons, the definition of "employed" at § 615.2(o)(1) will remain unchanged in the final regulations.

*Section 615.2(o)(4) "Reasonably short period"*

The proposed rule at § 615.2(o)(4) defines a "reasonably short period", for purposes of section 202(a)(3)(C) of the Act, as the number of weeks specified by State law. A SESA commented that the regulation should explain whether a State's policy regarding a reasonably short period may be followed in the absence a State law provision which defines a reasonably short period.

This is a matter of interpretation of State law for State authorities to decide. This definition could be read, however, as requiring specificity in the State law, and this is not what is intended. In the final regulation, therefore, the word "specified" is deleted and the word "provided" is inserted in place thereof.

*Section 615.2(o)(6) "And" as used in section 202(a)(3)(D)(ii), shall be interpreted to mean "or"*

The proposed rule at 615.2(o)(6) defines "and" to mean "or" with respect to the provision that "Extended compensation shall not be denied * * * for failing to accept an offer of, or apply for, suitable work * * * if the position was not offered to such individual in writing and was not listed with the State employment service * * *." Three SESAs commented on the interpretation of "and" to mean "or" with one SESA asserting that this interpretation goes beyond the law and that a regulation cannot contradict the statute it implements. Another SESA suggested application of the more stringent suitable work definition in State laws for regular benefits to Extended Benefits claims and removal of the limitation on denials of Extended Benefits when an individual refuses to accept an offer of suitable work if the offer of work is not

made in writing and is not listed with the State employment service.

The Department originally construed "and" in section 202(a)(3)(D)(ii) of the Act in the conjunctive as requiring that both conditions be satisfied before imposing the disqualification. That is, an individual who refused an offer of otherwise suitable work could be denied extended benefits only if the offered work was both listed with the State employment service *and* offered in writing. However, early in 1981 the Department concluded that "and" must be construed as "or" in this instance, so that either an offer in writing or the listing with the employment service would suffice. This view is supported both by the explanation in Conference Report No. 96–1479: "(b)(1) Deny extended benefits to any individual who fails to accept any work that is offered in writing or is listed with the State employment service * * *," and the Senate Finance Committee Print 96–36.

It is apparent that the word "and" so construed provides for a more reasonable and rational requirement. In practice an offer of a job is rarely made in writing and it is unheard of to make an offer of a job prior to a referral. Therefore, it is unreasonable to expect or require an advance offer in writing, especially in the case of a referral. It is also obvious that requiring that the offer be in writing *and* listed with the employment service makes it more difficult to impose the disqualification under the EB "work test" than is the case under State law applicable to regular benefits. Congressional intent was to impose a more stringent requirement than provided under current State law disqualifications. Clearly that intent is not realized by construing the word "and" in the conjunctive and thereby requiring both of the conditions contained in subparagraph (D)(ii) be satisfied to justify imposition of the special disqualification.

In light of these considerations and to determine what action could legally be taken to achieve congressional intent, the Department examined the legislative history of this provision and pertinent court decisions to resolve the apparent conflict between the language in the report and the language of the statute. The Department determined that there is sufficient legal precedent in court decisions that the word "and" in a statute may indeed be construed as "or" (and vice versa) where that is necessary to carry out the legislative intent. Accordingly, based on the holdings in those court decisions, the thrust of the legislation, and the expressed legislative intent, the Department concluded that the word "and" must be construed as "or". Therefore a State law will be considered consistent with the requirements of subparagraph (D)(ii) only if it provides that a disqualification for failing to accept an offer of or apply for suitable work will be imposed if the job is either offered in writing or is listed with the State employment service, and, conversely, that the disqualification will not apply if the job is neither offered in writing nor listed with the State employment service.

The suggestion to apply the more stringent suitable work definitions in State laws for regular benefits to Extended Benefit claims and to "remove" the (D)(ii) provision from the regulations, is not acceptable because it would be contrary to sections 202(a) (2) and (3) of EUCA. Paragraph (2) of section 202(a) of EUCA provides:

> Except where inconsistent with the provisions of this title, the terms and conditions of State law which apply to claims for regular compensation * * * shall apply to claims for extended compensation * * *

Paragraph (3)(A) of section 202(a) of EUCA provides:

> Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period—
> (i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c)) * * *.

The applicability of the suitable work provisions of the EUCA is indicated by the phrase, "Notwithstanding the provisions of paragraph (2)", in paragraph (3)(A) of section 202(a) of the ACT. Thus paragraph (3)(A) specifically provides that, without prevention by or obstruction from paragraph (2), the suitable work and active search for work provisions in the EUCA shall apply to claims for extended compensation. For these reasons, no change is made in the final regulations.

*Section 615.2(o)(8) Systematic and Sustained Effort (to obtain work)*

The proposed rule at § 615.2(o)(8) defines the term "systematic and sustained effort" set forth in section 202(a)(3)(E) of the EUCA to describe when an individual shall be treated as actively engaged in seeking work during any week. Five SESAs commented on the active search for work requirements. Two SESAs' comments suggested that the required work search be consistent with economic conditions in the labor market, prospective job openings, seasonal nature of the work being sought and the normal practices for obtaining the type of work the individual is seeking. One of the SESAs commented that the active search for work requirement should be waived (as it is in State law for regular unemployment compensation) for individuals the State determines to have "good" job prospects; that is, individuals who have a promise of a job which will begin in a reasonably short period. One of the SESAs suggested that a State administrator be allowed to make an exception to the active search for work requirement for a community or area which has been so adversely affected by the economy that there is virtually no work available. Comments from two of the SESAs questioned if the phrase "throughout the given week" (which defines the term "sustained effort" to obtain work) included weekends and holidays and questioned the absence of specifics in the definition regarding job search contacts (number of employer contacts required throughout the week). This conflicts with the State's more quantifiable active search for work requirements. A SESA suggested that the definition of the work search requirements at § 615.2(o)(8) be used in conjunction with the criteria for the active search for work as defined in State law and policy. One of the SESA's commented that the requirement that a claimant's search for work include a plan which results in contact with persons who have "the authority to hire" is impractical and impossible to administer.

The Department has not adopted the changes proposed by the commenter for the reasons which follow. The Congress added the active search for work provisions to the EUCA with the knowledge that Extended Benefits are payable only during periods of high unemployment when new hires and job openings are at a low level in the States. Therefore, it would be contrary to congressional intent and the specific language in sections 202(a)(3) (A) and (E), EUCA, to authorize by regulation limiting the enforcement of the active search for work provisions to periods when an area is not adversely affected by economic conditions as suggested.

A State's policy for regular compensation, at the discretion of the State Administrator, may require an individual to seek any work that exists in the labor market for which he/she is suited by training and experience if his/her customary work does not exist in the labor market. Similarly, a State's policy for regular benefits may consider the seasonal nature of the individual's customary occupation in determining if the claimant is conducting an active

search for work or waive the active search for work requirement for individuals who are on temporary layoffs or who have early return to work dates.

On the other hand, based on examination of the Congressional Record S8917, June 30, 1980, and the language in section 202(a)(3) (C) and (E), EUCA, "suitable work" for an individual whose prospects of obtaining work in a customary occupation in a reasonably short period are determined by the SESA to be "not good" is any work which is within such individual's capabilities. The EUCA makes no exception to this definition of suitable work because the unemployed person's customary employment is seasonal. This means an individual whose job prospects have been determined to be "not good" may not limit the search for work solely because of the seasonal nature of his/her customary employment. An individual whose job prospects are "not good" because of the seasonal nature of the industry or occupation must seek any work that exists in the labor market which is within the claimant's capabilities, which also includes work for which the individual may have had no previous training or experience.

The proposed regulations, § 615.8, paragraphs (d), (f) and (g), relate the definition of suitable work, based on the SESA's determination of the individual's prospects of obtaining work in a customary occupation in a reasonably short period, to the requirement of a "systematic and sustained" search for work as provided in section 202(a)(3)(A)(ii) and (E) of EUCA. For these reasons, no change is made to § 615.2(o)(8) in the final regulations to authorize waiving or limiting the active search for work requirement because of the seasonal nature of the individual's customary employment, prospective job openings, adverse economic conditions or normal practices in obtaining work the claimant may be seeking.

The phrase "throughout the given week" defines "sustained effort to obtain work during such week". "Throughout the given week" means a search for work maintained throughout the work week prevailing or customary in the labor market area for the particular type of work being sought. This is based on the plain meaning of the words "systematic and sustained". Section 615.2(o)(8) derives from section 202(a)(3) (A) and (E) of the EUCA and provides for implementation of these provisions consistent with congressional intent as expressed in the Congressional Record (S8935–6, June 30, 1980); that is, "* * * to limit access to the extended benefit program * * * to individuals * * * who have made every effort to return to work * * *."

It is the Department of Labor's position that to administer the systematic and sustained effort to obtain work provision set forth in section 202(a)(3)(E) of EUCA means that each State employment security agency (SESA) must develop criteria for a systematic and sustained search for work for the various labor market areas within the State. These criteria must be based on labor market information (LMI), in particular, the number of employers in a labor market area, and whenever possible developed in consultation with LMI specialists. These criteria must be expressed in the number of days "throughout the given week" the individuals are required to search for "suitable work" as well as the number of contacts with prospective employers individuals shall be required to make during a week to maintain their eligibility for extended benefits. The development of guidelines and criteria for a systematic and sustained search are necessary to assure the even-handed application of the active search for work requirement to all similarly situated claimants (same labor market area and job prospects classifications) subject to this requirement. The guidelines are also necessary for each State's monitoring of claimants' active search for work for the purpose of detecting noncompliance as part of the processing of weeks claimed for payments.

It is the responsibility of the SESAs to administer the active search for work provisions in State law as required by the EUCA. Each State is best qualified to assess the characteristics of its local labor markets based on LMI specific to the local areas within the State and to establish guidelines for the required active search for work. Therefore, it would be inappropriate for the Department to take over the States' responsibility for administering the EB active search for work and impose by regulation specific, quantifiable, nationwide work search requirements based on the characteristics of local labor markets. The States' methods of administering the active search for work requirements are best expressed in the number of days during the given week an individual shall search for work and the number of employer contacts ("more quantifiable") an individual must make during such week. Such criteria are essential for monitoring claimants' active search for work and for enforcing the EB active search for work requirements in State law. The States' criteria for a systematic and sustained search for work are consistent with § 615.2(o)(8) of these regulations if the criteria provide for a high level of job search activity sustained throughout the given week based on the number of employers in the particular labor market area. The Department agrees, however, that it is not consistent with the section 202(a)(3) work test, regardless whether the claimants' job prospects are classified as "good" or "not good", to require claimants to search for types of work which they may not be required to accept. The final rule is clarified to reflect this.

Regarding "contacts with persons who have the authority to hire" in § 615.2(o)(8)(ii), the Department acknowledges that it is possible for a person to make a planned, systematic effort to obtain work and yet not make contact with the person who has the authority to hire. Accordingly, the phrase "contacts with persons who have the authority to hire" in the regulation is modified to also include applying for work by "whatever hiring procedure is required by a prospective employer."

The Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations commented on:

Section 615.2(o)(8)(iii) "systematic and sustained effort" (to obtain work), and

Sections 615.8(e) (5) and (6), suitable work related to the individual's prospects of obtaining work in his/her customary occupation in a reasonably short period.

Section 615.2(o)(8)(iii) of the proposed rule provides that a "systematic and sustained effort" (to obtain work) includes:

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, except the individual while classified by the State as provided in section 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable) in the same manner that such work is found by people in the community.

The Building and Construction Trades Department objected to this section of the proposed rules because some State unemployment compensation laws require a member of a building and construction trades union to seek or accept a job (to maintain his/her eligibility for unemployment compensation) which might jeopardize

the individual's union membership. It contends that such State laws violate the Supremacy Clause of the Federal Constitution by improperly interfering with national policy embodied in the National Labor Relations Act of the right of full freedom of association through union membership. In addition, the labor organization contends that the Department's deference to State law and policy with regard to this issue, as embodied in the proposed rules, is also inconsistent with the union members' freedom of association guaranteed by the National Labor Relations Act. Accordingly, the Building and Construction Trades Department recommended that proposed § 615.2(o)(8) be modified to provide expressly that a "systematic and sustained effort" to look for suitable work, as required by section 202(a)(3)(E) of EUCA, is satisfied if the individual falls within the category of workers who secure employment through the efforts of a union hiring hall established pursuant to a collective bargaining agreement. The Building and Construction Trades Department objected to § 615.8(e) of the proposed rule because it does not list nonunion work as work that is not suitable when an individual's job prospects have been determined to be "not good."

The Congress amended (Pub. L. 96–499) the Federal-State Extended Unemployment Compensation Act of 1970 to require that:

> * * * as a condition of eligibility for extended unemployment benefits, the unemployed individual must be willing at that point to accept any job which meets minimum standards of acceptability (such as basic health and safety standards, compliance with Federal minimum wage and other existing Federal standards) * * *.

Congressional Record S8917, June 30, 1980.

Under the amended Act, "suitable work" for any individual claiming extended benefits whose prospects of obtaining work in his/her customary occupation in a reasonably short period are not good, is any work that does not exceed the individual's physical and mental abilities.

The amendments to the Act also provide in subparagraph (A) that payment of extended compensation shall not be made to any individual for any week of unemployment—

"(ii) during which he fails to actively engage in seeking work."

As provided in subparagraph (E) the individual shall be treated as actively engaged in seeking work during any week if—

(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

The broadening of the definition of "suitable work" to include work in addition to that at the individual's higher skills or customary work is designed to increase the range of jobs individuals must seek and accept and to increase the prospects of reemployment of individuals who had been unemployed for extended periods of time. The intent of Congress in amending the Act was "to limit access to the extended benefit program * * * to individuals who have demonstrated a reasonable attachment to the work force, lost their jobs involuntarily, and made every effort to return to work." Congressional Record S8935, June 30, 1980.

The Department's position on a "systematic and sustained effort" to obtain work as expressed in § 615.2(o)(8) of the proposed rules is based on the language in section 202(a)(3)(E), EUCA, and examination of the Congressional Record S8917, S8935, June 30, 1980. The active search for work and the suitable work provisions added to EUCA by the Omnibus Reconciliation Act of 1980 were designed to reduce benefit costs by targeting the payment of Extended Benefits to those individuals who are willing to apply for and accept suitable work which does not fully match the individual's higher skills and earnings levels and who increase their efforts to find any work within their capabilities.

Therefore, based on the plain meaning of the words, a "systematic and sustained effort" to obtain work, the proposed rules define this requirement as a planned, methodical search conducted throughout each week claimed. It is a search for work not limited to a single method of finding work such as reporting to a union hiring hall or the State job service office. It is a search for work not limited to classes of work or rates of pay which represent the individual's higher skills or customary work except where the State classifies the individual as having good prospects of finding work in his/her customary occupation in a reasonably short period. Under the proposed rules registering for work at a union hiring hall is considered to be the same as any other single effort to obtain work, such as answering a help wanted advertisement in a newspaper, and of itself is not evidence of a systematic and sustained search for work.

Instructions to an individual to increase his/her efforts to find work and to engage in a "sustained" search for work solely through a union hiring hall serve no purpose when union members are dispatched to jobs according to seniority or length of unemployment. Under this referral system, those union members who have the earliest registration for work or the greater seniority will be the first dispatched to jobs regardless of daily reporting to the union hiring hall or requests from union members with less seniority for referrals to work outside the usual order.

The language in § 615.2(o)(8) of the proposed rule implements the plain meaning of the words in section 202(a)(3)(E); i.e., "the individual has engaged in a systematic and sustained effort to obtain work". This language defines the requirement that individuals actively engage in a search for work as is specifically required by section 202(a)(3)(A)(ii). This means that the individual must do more than be passively available for work or that the individual only stands ready to work if work is offered as would be the case if the individual limited the search for work to registering for work with the union or the State job service office.

Therefore, neither registration at a union hiring hall nor registration for work with the State job service office of itself fulfills the requirement of section 202(a)(3)(E); i.e., "engaged in a systematic and sustained effort to obtain work during such week * * *." The exception to this rule with respect to the union hiring hall is while the individual has been classified by the State as having "good" prospects of obtaining work in her/his customary occupation in a reasonably short period. This exception means the individual's registration at a union hiring hall may be considered to fulfill the requirement for a systematic and sustained effort to obtain work during such week provided such individual normally obtains customary work through the hiring hall and only if under the State's law applicable to regular compensation such individuals are permitted to limit their search for work to registering for work at the union hiring hall. Subclauses (I) and (II) of section 202(a)(3)(ii) of the EUCA convey the only other limitations to the requirement of a "systematic and sustained effort" to obtain work during each week for which sharable compensation is claimed.

The Department believes that the question of supremacy of Federal law is without relevance to the proposed rules for the Extended Benefits Program because Congress has made State laws

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the vehicle for implementing Federal policies. This is the case with respect to the Federal-State Extended Unemployment Compensation Act of 1970 because the States are required to include the provisions of EUCA in State laws.

The proposed rules for Extended Benefits do not prevent or curtail union members' right of freedom of association. The labor standards in section 3304(a)(5), IRC, are applicable to the suitable work provisions in section 202(a)(3) of EUCA. The Department has never taken the position that requiring unemployed union workers to accept offers of nonunion work in their customary occupations would, in itself, violate the labor standards even where acceptance of the nonunion work in their customary occupations would violate the bylaws and constitution of the labor organization. This is an area that has been left to the States to determine under their laws. Thus, it is a matter of State law whether members of labor organizations are subject to denial of Extended Benefits for failing to apply for or accept nonunion work in their customary occupations. This is a continuation of the position taken by the Social Security Board early in the Federal-State unemployment compensation program and followed by its successors, including the Department of Labor. The labor standards are applicable to the work test in section 202(a)(3), EUCA by virtue of section 202 (a)(3)(D)(iii). Therefore, this position, regarding members of labor organizations and the labor standards in State law, applies without exception to section 202(a)(3) regardless of whether an individual's job prospects are classified or determined to be "good" or "not good."

The preamble of the proposed rule noted that the proposed rule contained some provisions on the EB work test that differed from guidance previously furnished to the States. The comments received reveal that there is a lack of understanding of the Department's position on some matters left to the States under the labor standards and section 202(a)(3), EUCA. Therefore, the regulations are changed in this final rule to make it clearer that whether union members must seek and accept nonunion work in their customary occupations is a matter left to each State to determine under its law. In addition, each State must determine under its law whether a union member, who (1) the State has determined to have "good" job prospects and (2) who normally obtains work in his/her customary occupation through a hiring hall, must seek and accept work other than through the union hiring hall. On these two matters regarding the work search the applicable State law applies, as is required by section 202(a)(2), and within the intendment of section 202(a)(3)(D)(iii), EUCA. Such State law provisions with respect to the labor standards that pertain to nonunion work and members of labor unions "are not inconsistent with the provisions of subparagraphs (C) and (E)". In this connection, as noted above, the final rule is also clarified to convey that section 202(a)(3), EUCA does not require or permit claimants for sharable compensation to be required to seek work which is an exception to section 202(a)(3)(A)(i) as specified in section 202(a)(3)(D). That is, section 202(a)(3) does not require claimants for sharable compensation (or permit to be required) to seek work which if refused could not justifiably result in the imposition of the 4×4 disqualification for failing to accept any offer of suitable work.

*Section 615.2(o)(9) "Tangible evidence" of an active search for work*

The proposed regulation at § 615.2(o)(9) defines "tangible evidence" of an active search for work for the purposes of section 202(a)(3)(E) of EUCA. Comments were received from two SESAs on this definition. One SESA questioned the necessity of including the type of work being sought and the listing of every contact with an employer in the documentation of "tangible evidence" of an active search for work. The other SESA suggested that the "tangible evidence" include the method used to seek work to enable a State to determine if an individual's search for work was "systematic".

The definition of "tangible evidence" does not require listing of every employer contact an individual makes during a given week. However, the State must require claimants to list, at a minimum, the number of employer contacts the State has determined to be evidence of a sustained search for work during such week. The number of contacts with prospective employers a SESA requires individuals to make during a week to demonstrate a "systematic and sustained" search for work will vary according to the characteristics of the labor market areas within the State. Therefore, States must design the form used to obtain "tangible evidence", as set forth in § 615.2(o)(9), of an active search for work during a week with space for a sufficient number of entries of work search (employer) contacts to accommodate the variations in the number of employers and characteristics of the various local labor market areas within the State. The States that use one form statewide for individuals to report "tangible evidence" of a systematic and sustained search for work should design this form, the report of work-seeking activities, with space sufficient for claimants to enter the number of employer contacts required to demonstrate a systematic and sustained search for work during a week(s) in the labor market area in the State with the largest number of employers.

The listing of the type of work sought as an element of information in the "tangible evidence" of the individual's efforts to obtain work is necessary for monitoring of claimants' continuing eligibility for Extended Benefits. "Suitable work" for individuals whose prospects of obtaining work in their customary occupations in a reasonably short period are determined to be "not good" is any work that the individual has the physical and mental capacity to perform. A SESA that does not require claimants to report the type of work being sought will be unable to determine if an individual's search for work is systematic. The SESA will be unable to determine if an individual whose job prospects are "not good" is limiting the search for work to a customary occupation or is conducting the required search for any work that the claimant has the physical or mental ability to perform and which meets the criteria of section 202(a)(3)(D), EUCA.

Similarly, the method used to seek work is a necessary element in the "tangible evidence" because it enables the States to determine if an individual's search for work was "systematic". That is, a method of applying for employment is "systematic" when it is the appropriate method for the particular job being sought because it is the method by which most individuals in the particular job were hired. For example, applying for work by telephone is not a systematic method of seeking work if an individual makes a telephone call to an employer who hires only through in-person job applications. Although "actions taken" could be construed to include the method of applying for employment, the Department has added "method of applying for work" to the information required for tangible evidence of an active search for work to make the definition in § 615.12(o)(9) clearer. The type of work being sought will be retained in the definition of "tangible evidence" because it is necessary for monitoring the active search to determine if an individual's search for work is systematic.

*Section 615.2(o)(12) "Hospitalized for treatment of an emergency or life-threatening condition"*

Pub. L. 98–21 amended EUCA section 202(a)(3) to provide exceptions to the disqualification for failing to actively search for work which could be purged only if the individual returned to work for at least 4 weeks and earned at least 4 times the weekly benefit amount. Section 202(a)(3)(A)(ii) of EUCA permits the States to determine weekly eligibility for claimants of extended benefits who are hospitalized for treatment of an emergency or a life-threatening condition based on the availability for work provisions if the same provisions in State law are applicable to claimants for regular benefits which are not sharable.

A SESA commented that the definition of the term "hospitalized for treatment of an emergency or life threatening condition" was an unduly complex definition and that this term could be left for the States to interpret.

The Department issued Unemployment Insurance Program Letter (UIPL) No. 41–83 to implement the amendment to the EUCA required by Pub. L. 98–21. In this program letter, the Department stated that it would incorporate the definition of this term as set forth in the UIPL in a future amendment to the Extended Benefit regulations. Therefore, § 615.2(o)(12) repeats the words in the definition of the term, "hospitalized for treatment of an emergency or life threatening condition" that were in UIPL 41–83. The Department defined the term because the EUCA specifically provides for the definition of the term "as such term may be defined by" the Secretary of Labor. The definition may be considered complex because it includes more than one part; however, it is not a definition that is difficult to understand. Significantly, the definition conveys precise meaning. Therefore, the definition at § 615.2(o)(12) is not changed or deleted because deleting the definition would ignore a duty imposed by law and create the possibility of inconsistencies in the application of this provision.

*Section 615.2(p)(1) (ii) and (iii) The "first two weeks" as used in section 202(c), EUCA*

The proposed rule at § 615.2(p)(1) (ii) and (iii) defines visiting and transient claims as claims not filed under the interstate benefit (IB) payment plan and therefore not subject to the two-week limitation which applies to IB claims filed in an agent State not in an EB period.

A SESA suggested that § 615.2(p)(1) clarify if the two-week limitation on Extended Benefit payments of section 202(c), EUCA, applies to an individual who resides in a State that is not in an Extended Benefit Period but who reports and files intrastate claims in a bordering State that is in an Extended Benefit Period. Another SESA questioned if excluding visiting and transient claims from the "two-week" IB provision would result in an uneven application of this restriction because practices of accepting transient and visiting claims vary from locality to locality.

This last comment is interpreted to mean that some visiting claimants are erroneously required to file IB initial claims; therefore, all transient and visiting claims should be processed as IB initial claims. Such claims processing would only increase the number of errors. The language of section 202(c)(1), EUCA, specifically limits the application of the denial after two weeks to claims filed under the IB plan. Transient claims and visiting claims which are not filed under the interstate plan are intrastate claims and therefore are not subject to the two-week IB denial provision. Similarly, intrastate claims filed by an individual who resides in a State that is not in an Extended Benefit Period is not a claim filed under the IB plan and therefore not subject to the two-week denial provision of section 202(c) of the Act. The final regulations include language to clarify that section 202(c) of the Act does not apply to intrastate Extended Benefit claims filed by individuals who reside in a State that is not in an Extended Benefit Period. Sections 615.2(p)(1) (ii) and (iii) will not be changed to apply the two-week denial to visiting or transient claims in the final regulations because such a change would be contrary to the law, EUCA, section 202(c).

*Section 615.7(c)(3) Changes in accounts*

The proposed rule at § 615.7(c)(3) provides for adjustments to extended benefit accounts made necessary by a redetermination or an appeal which awards an individual more or less regular unemployment compensation. A SESA identified an omission in § 615.7(c)(3); that is, "If such decision reduces the duration of regular compensation payable to the individual, the claim for extended benefits shall be backdated to the earliest date, subsequent to the date when the redetermined regular compensation was exhausted and within the individual's eligibility period, that the individual was eligible to file a claim for Extended Benefits." The final sentence of the present regulation also was omitted.

This language omitted in § 615.7(c)(3) of the proposed rule is restored in the final regulation, and other unintended errors in paragraphs (c)(2) and (c)(3) are corrected. It is the Department's position that the "work test" may not be applied retroactively. Therefore, when there is a backdating of an individual's claim prior to the date of the individual's original claim for Extended Benefits, no retroactive disqualification may be imposed for failing to meet the eligibility requirements of section 202(a)(3)(A), EUCA, except a disqualification beginning as provided in § 615.8(h)(4) of the final regulation.

*Section 615.8(c) Terminating disqualifications*

The proposed rule at § 615.8(c) provides that for certain disqualifications an individual must have employment required by State law subsequent to the disqualification to terminate the disqualifications for purposes of eligibility for Extended Benefits. A SESA requested that the regulations explain if Extended Benefits would be denied under § 615.8(c) of the proposed rule when a State law ("Robert Fabric" decision) provides that an individual shall be disqualified from the receipt of subsequent regular or Extended Benefits to the extent that such benefits would have decreased by virtue of earnings from part-time employment that the individual quit, was discharged from or refused to accept.

Under section 202(a)(4) of the EUCA, no provision of State law or interpretation of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct or refusing an offer of suitable employment shall apply for purposes of payment of Extended Benefits, unless such termination is based upon employment, as required by State law, subsequent to the date of such disqualification. Thus, in the example given, an individual whose eligibility for (reduced) regular benefit payments continues after a disqualification and where the State law does not require subsequent employment to purge the disqualification would not be eligible to receive or continue to receive extended compensation. The language in § 615.8(c)(2) of the proposed rule,

* * * shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds * * *,

is adequate to prohibit payment of Extended Benefits in the example given and similar situations when a disqualification is served or purged by penalties other than subsequent employment. Section 202(a)(4) is an eligibility requirement, and it is a requirement for State laws. For this reason no change will be made in the final regulations at § 615.8(c).

*Section 615.8(d) Determinations of job prospects*

The proposed rule at § 615.8(d) provides that the SESAs shall classify each individual's prospects of obtaining employment in his/her customary occupation in a reasonably short period as "good" or "not good". The SESA's classification of the individual's prospects of obtaining employment in his/her customary occupation in a reasonably short period as "good" or "not good" is made at the filing of an initial claim. A SESA recommended that this section be eliminated. The SESA contends that this procedure is administratively cumbersome and costly and because the individual's job prospects only affect whether the suitable work provisions in State law (for regular benefit claimants) or the suitable work provisions in State law corresponding to sections 202(a)(3) (C) and (D), EUCA, shall apply. Another SESA objected to § 615.8(d)(3) because of the problem of funding (cost of administering) the job prospects classification because classifying an individual's job prospects was not a separately reportable workload item for funding purposes.

The classification of an individual's job prospects as "good" or "not good", as provided under § 615.8(d), is necessary to determine what constitutes "suitable work" under EUCA section 202(a)(3)(C). The individual's job prospects classification will establish the type of work the individual must seek and accept to maintain eligibility for Extended Benefits. To enable claimants to preserve this eligibility it is mandatory that the State classify and inform claimants of their job prospects and the kind of jobs they must accept and actively seek each week. This information is essential to enable claimants to protect their rights and understand what they must do to meet the eligibility requirements in State law for Extended Benefits. The States' duty to inform claimants of their responsibilities is explained in *Information to claimants* at § 615.8(h) of these regulations.

With respect to the comment that the job prospects classifications cause a funding problem, the minutes per unit (MPU) for Extended Benefit initial claims were increased on the Department's initiative to simplify administrative financing (Administrative Financing Initiative). The increased MPU for Extended Benefit initial claims includes the time for classifying an individual's job prospects. The job prospects classification is not a separately appealable nonmonetary determination. The determination with respect to job prospects is part of the fact finding in any suitable work or active search for work determination that is made when an issue arises and a determination must be made. Therefore, the requirement of classification of an individual's job prospects at § 615.8(d) is retained in the final regulations.

*Section 615.8(f) Refusal of work and § 615.8(g) Actively seeking work*

Sections 615.8 (f) and (g) provide for the conditions for disqualifying an individual for failing to conduct the required search for work and for failing to apply for or accept an offer of suitable work. These sections also explain the disqualification which applies for such failures and relate suitable work to a determination of the individual's job prospects. A SESA commented that in previous issuances the disqualification for failing to apply for or accept an offer of suitable work if job prospects were determined to be "good" was the disqualification provision in State law applicable to claims for regular compensation for refusing an offer of suitable work. The SESA also commented that the EB work test (sections 202(a)(3)(A) (i) and (ii)) of EUCA should not be applied to weeks of Extended Benefits paid retroactively.

It is Department's position that the work test may not be applied retroactively, as explained in our response to the comment regarding § 615.7(c)(3) of the proposed rule. We concur with this comment and the final regulation is consistent with this view.

The final rule provides, as did the proposed rule, that an individual shall be ineligible for Extended Benefits for the week the individual fails to conduct the required search for work or fails to accept or apply for an offer of suitable work. The individual's ineligibility shall continue thereafter until he/she is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount (4X4 disqualification), regardless of the individual's job prospects. This is based on a closer reading of sections 202(a)(3) (A) and (B) of the Act, and is a change from guidance previously furnished to the States. Subparagraph (B) relates the 4X4 disqualification to sections 202(a)(3)(A) (i) and (ii) without regard to the individual's job prospects. As provided in EUCA section 202(a)(3)(C), suitable work for an individual whose job prospects are "good" is determined in accordance with State law applicable to regular compensation. Section 202(a)(3)(C) makes no reference to the disqualification in applicable State law for refusing an offer of suitable work. On the other hand, section 202(a)(3)(B) specifically applies to any failure described in clause (i) or (ii) of subparagraph (A). Therefore, whether the failure is of a clause (i) or clause (ii) type, the 4X4 disqualification applies, and it is irrelevant for these purposes whether the claimant's job prospects are classified or determined to be "good" or "not good". For these reasons, no change is made to the final regulations.

*Section 615.12 Determination of "on" and "off" Indicators*

The proposed rule at § 615.12 provides for the computation by the State agency of the rate of insured unemployment statewide for purposes of triggering "on" or "off" the payment of extended benefits in the State. Only one SESA commented on the method of determining "on" and "off" indicators for the purpose of paying Extended Benefits.

The SESA commented that the formula for triggering "on" Extended Benefits does not work for it because of the State's huge land area. The unemployed workers in areas of high unemployment within the State are not eligible for Extended Benefits, in spite of their great need, because the trigger for Extended Benefits is based on the statewide rate of insured unemployment. The SESA suggested that different triggers be developed which would bring about more equitable treatment of the unemployed workers in a State large in land area comparable to benefits provided to unemployed workers in smaller States. The SESA further commented on the apparent widening of the gap between the total unemployment rate (TUR) in the State and the insured unemployment rate (IUR) and the possibility of establishing new indicators for Extended Benefits by combining the IUR and the TUR. The State also commented that it has never triggered "on" Extended Benefits based on the State IUR and that the State is ill-served by the current triggers for the Extended Benefit Program that respond only to the statewide rate of insured unemployment.

On June 18, 1987, the Department of Labor published for competitive bidding

a request for proposals (RFP) to conduct a study of the feasibility of substate area triggers for the payment of unemployment benefits. The purpose of this study is to design substate area benefit policy options under which Extended Benefits could be paid for durations beyond the regular UI program in depressed labor market areas while avoiding the payment of Extended Benefits in labor market areas that are not depressed. The study will be conducted from 10/1/87 to 3/31/89. The Department of Labor does not have the legal authority to establish triggering mechanisms for the payment of Extended Benefits based on unemployment in substate areas, or to alter the trigger criteria, because the EUCA specifically provides for triggers based solely on the statewide rate of insured unemployment. The interests of the State in changing the triggers would have to be addressed by legislation, not through the regulatory process. The study is designed to provide the Department and the Congress with the information and analysis necessary to make a responsible decision about this matter. Therefore, no change is made to the final regulations at § 615.12.

*Section 615.12(d)(1) Amendment of State indicator rates*

The proposed rule at § 615.12(d)(1) establishes a time limit for making retroactive corrections to State "on" or "off" or "no change" indicators. It also provides that any changes to the indicators within the time limit shall be subject to the concurrence of the Department. A SESA commented that this regulation could result in a State not receiving funds for the cost of taking initial Extended Benefits claims when an "on" indicator is amended during the third week following the indicator week. The SESA also commented that the phrase "concurrence of the Department" needed clarification.

Any State that processes Extended Benefits initial claims workload prior to amending an "on" indicator shall receive funds only for the administrative cost by activity by reporting the EB initial claims on the ETA 5159 report and in the EB section of the Quarterly Financial Report (UI 3). The State should explain in a footnote on the UI 3 why there is Extended Benefit initial claims activity when the State was not in an Extended Benefit Period.

The first comment appears to argue for reducing the time allowed to the States for amending an indicator to less than three weeks after the indicator week. This regulation allows the States only eight calendar days from the due date of the States' initial notice to the Secretary to discover errors in counts or computations and to amend their indicator rates. As provided in § 615.12(e), a State must notify the Secretary within 10 days after the end of any week if there is an "on" or "off" or "no change" indicator in the State. A reduction in the time to amend State indicators from three weeks to two weeks would in fact allow a State only four days to make such corrections and recomputations. The Department believes that eight days is a reasonable and suitable amount of time to allow States to discover errors and to make recomputations necessary for amending their indicators. For these reasons, the time limit for amending a State indicator will not be changed in the final regulations. Further, the commenter is correct that a State is not entitled to Federal sharing in any benefits paid outside an Extended Benefit Period or otherwise not in accordance with the terms and conditions of the Federal-State Extended Unemployment Compensation Act of 1970.

The concurrence of the Department means that the amendment of a State indicator shall not become final until the notice of amendment to a State indicator is accepted by the Department as provided in § 615.12(e). Paragraph (e) of § 615.12 provides that an indicator notice shall not become final until it is accepted by the Department. An amended indicator notice must also be acceptable to the Department. Accordingly, a reference to paragraph (e) of this section is included in paragraph (d) to define the "concurrence of the Department" in the final regulation.

*Section 615.14 Payments to States*

The proposed regulation at § 615.14(d) provides that the Department of Labor may withhold reimbursement of the Federal share to a State or require repayment of the Federal share of payments previously reimbursed for any payments that were not Extended Benefits because they were not paid under the terms and conditions that are consistent with the EUCA or the regulations. Seven SESAs (New York, Nevada, Tennessee, Illinois, West Virginia, Vermont and Ohio) questioned the legal authority of the Secretary to mandate withholding or recovering reimbursement of the Federal share for "Any payment made to a claimant for any week with respect to which the claimant was either ineligible for or not entitled to the payment." Three of the SESAs' comments included requests for clarification of this section. One of the SESAs contended that the proposed rules are contrary to the conformity procedures set forth in sections 3304 and 3310 of the Federal Unemployment Tax Act (notice, fair hearing and judicial review) and undermine the traditional sharing of Extended Benefit costs between the States and the Federal Government. One SESA commented that § 615.14(d) was inconsistent with Region V SESA Letter No. 57–85, and objected only if the proposed rules at §§ 615.14 (c) and (d) are retroactively applied.

Two SESAs commented that the proposed rules at §§ 615.14 (c) and (d) would require States to bear the full cost of any Extended Benefits paid which are subsequently determined to have been overpaid. A SESA commented that this runs counter to other federally-mandated benefit programs (UCFE, UCX, and FSC) which provide that the Federal account is only credited when overpaid benefits are recouped. One of the SESAs contends that in withholding reimbursement or requiring repayment based on a State's misinterpretation of Federal law or regulation, § 615.14(d) does not distinguish between a misinterpretation which is a blatant disregard of Federal law requirements, errors caused by honest misunderstanding or errors caused by conflicting or incorrect Federal directives. Several SESAs recommend that this section be rewritten so as to provide for the usual State procedures for overpayment determinations and recovery of EB overpayments with the Federal share credited to the Extended Unemployment Compensation Account upon recovery. Two SESAs commented that § 615.14(c)(9) means that the States will be responsible for the entire cost of any overpayment made under the Extended Benefit program. One SESA commented that only sharable regular benefits were subject to nonreimbursement after March 31, 1981 with respect to the unpaid waiting week provision in section 204(a)(2)(B) of the EUCA. Therefore, the proposed rule erroneously indicates that extended compensation was subject to nonreimbursement after March 31, 1981 rather than after September 25, 1982.

No changes were made in response to the foregoing comments on § 615.14 for the reasons which follow. The procedural requirements and substantive rules for reimbursing States for the Federal share of sharable extended compensation and sharable regular compensation are set forth in section 204, EUCA. Section 204(a)(1) provides that—

(1) There shall be paid to each State an amount equal to one half of the sum of—

(A) the sharable extended compensation, and

(B) the sharable regular compensation, paid to individuals under the State law.

The term "sharable extended compensation" is defined in section 204(b) of the Act as Extended Benefits paid to an individual in the individual's eligibility period, up to the maximum limit prescribed in EUCA section 202(b)(1). Extended compensation is itself separately defined in section 205(3) as:

* * * compensation * * * payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

Thus, sharable extended compensation is only those Extended Benefits paid "under those provisions of the State law which satisfy the requirements of this title with respect to the payment of" Extended Benefits. Sections 201–203 of the Act prescribe these requirements. Any benefit payment made under a State law that is not in accordance with those terms and conditions is not sharable extended compensation as defined in section 204(b) of the Act, since it is not extended compensation as defined in section 205(3) of the Act. Similarly, any payment to an individual for any week the individual was, for any reason, either ineligible for, or not entitled to, the payment is not sharable extended compensation because the payment is not in accord with the terms and conditions of sections 201–203 of the Act. This also means that any overpayment of extended compensation, whether or not the State waives recovery of such overpayment, is not sharable extended compensation because the payment did not satisfy the requirements of the Act with respect to the payment of Extended Benefits.

This conclusion is supported by section 204(d) of the Act, which reguires the Secretary to estimate the monthly payment each State "is entitled to receive" under the Act. No State is entitled to receive more than payment for the benefits described above, that is, its sharable benefits as defined in the Act. Therefore, section 204 of the Act precludes a payment to any State with respect to any benefit payment that was not paid under provisions of a State law that accord with all the terms and conditions for the payment of Extended Benefits specified in sections 201–203 of the Act. Where there is no authority to make a payment under section 204, there is no right in a State to receive a payment or obligation on the Secretary to make a payment. Section 204(d) of the Act states:

(d) There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Section 204(d) provides the sole basis upon which the Secretary shall determine the amount which each State is to be paid each month. No hearing procedure is provided for or required under section 204. The financial assistance provisions of section 204 are not a part of the requirements encompassed by section 3304(a)(11) of the FUTA, and therefore, the procedural requirements of sections 3304 (c) and (d) of the FUTA are inapplicable to EUCA section 204. Paragraph (d) of § 615.14, however, sets forth a procedure for informal resolution of differences that may arise, which includes opportunities for the State to present its views and arguments. In addition to the procedures set forth in § 615.14, the Department may, in the exercise of its authority to assure that Federal funds are properly spent, alternatively recoup overpayments through the audit process.

The comparison of the overpayment recovery procedures for Federal benefit overpayments with the Federal share of Extended Benefit overpayments and the application of the *Lopez Rule* to Extended Benefits are not apt. The States have entered into agreements with the Secretary to administer the Federal unemployment benefit programs (UCFE, UCX, TAA, DUA, FSC). The States act as agents for the Secretary to pay Federal unemployment benefits. On the other hand, Extended Benefits are State benefits for which the States receive 50 percent reimbursement as the Federal share. The conditions for reimbursing the States for sharable extended compensation are set forth in section 204 of the Act. Under these provisions and § 615.14, a State is entitled to be reimbursed for its cost of paying sharable benefits, which is to say benefits paid to eligible claimants in accordance with State law corresponding in all respects with the terms and conditions of sections 201–203 of the Act, except as such sharing is precluded by the provisions of sections 202(a)(6) and 204.

The sequence of audit reports and the intervals between the draft audit and the final determination for UI audit resolution in SESA Letter No. 57–85 are not consistent with § 615.14(d) of the proposed rule because they are separate and distinct processes. Section 615.14(d) provides an informal procedure for the adjustment of payments to a State under the authority in section 204(d) of the Act, whereas the SESA letter concerns audit resolutions. They are therefore different processes. For the reasons above, no change will be made to the final regulations at § 615.14. However, the final rule is clarified by adding a new paragraph (3) to the definition of "sharable compensation" in § 615.2(i) to assure consistency with § 615.14.

When the proposal to revise the EB regulations was published in the **Federal Register** in 1986, it was the Department's position that for a State to receive Federal sharing for extended and sharable regular compensation, the State was required to apply provisons of its law conforming to section 202(a)(3), EUCA to weeks of unemployment beginning after March 31, 1981. This was the date set forth in section 1024(b) of Pub. L. 96–499 and this date was the effective date for both extended and sharable regular compensation. However, for purposes of determining the Federal share of weeks of unemployment beginnning after March 31,1981, section 9151 of the Budget Reconciliation Act of 1987 (Pub. L. 100–203) changed the original effective date of section 202(a)(3) (March 31, 1981 as specified in section 1024(b) of Pub. L. 96–499) to weeks of unemployment beginning after October 31, 1981. This change makes extended and sharable regular compensation sharable for weeks of unemployment beginning after March 31, 1981 to October 31, 1981. If a State's legislature did not meet in 1981, section 202(a)(3), EUCA would apply to weeks of unemployment beginning after October 31, 1982. Therefore, the March 31, 1981, effective date for section 202(a)(3), EUCA in the proposed rule will be changed to weeks beginning after October 31, 1981 in the final regulation.

Pub. L. 96–499 amended the EUCA by adding paragraphs (3) to (5) to section 202(a). Section 202(a)(3) provides for active search for work and "suitable work" requirements for the payment of Extended Benefits; section 202(a)(4) relates to eligibility after certain disqualifications. The amendments to the EUCA in Pub. L. 96–499 appear under the heading "Limitation on Extended Unemployment Compensation Program". In addition, the language in 202(a)(3)(A) of the Act specifically refers only to "payment of extended compensation * * *." Therefore, Congress included old section 202(a)(5):

No payment shall be made under this Act to any State in respect to any sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3) and (4), extended compensation would not have been payable to such individual for such week.

The addition of this section 202(a)(5) meant that the active search for work and suitable work provisions in section 202(a)(3) of the Act (and section 202(a)(4)) would apply to regular compensation not as a requirement per se, but only as a condition of a State's entitlement to Federal sharing of regular compensation. With this purpose there was no need for the Congress to refer to the issue of Federal sharing for extended compensation in section 202(a)(5) of the Act, because sections 202(a)(3) and (4) are eligibility requirements for payment of Extended Benefits. Congress included section 202(a)(5), cited above, so that States which pay beyond 26 weeks of regular unemployment compensation and which did not choose to comply with sections 202(a) (3) and (4) would not be entitled to Federal sharing for regular compensation that would be otherwise sharable.

However, the fact that section 202(a)(5) did not refer to extended compensation led to misunderstanding. Therefore, in 1981, Congress amended old section 202(a)(5) by adding the words "extended compensation or." When Pub. L. 97–35 amended the EUCA to insert "extended compensation or" before "sharable regular compensation" in section 202(a)(6) (formerly (5)) of the Act, it created no new authority in regard to the requirements in sections 202(a) (3) and (4) of the Act. It simply clarified authority that already existed. Therefore, no change is made in the final regulations.

*Section 615.14(c)(8) Payments not to be reimbursed*

The proposed regulation at § 615.14(c)(8) provides that the Department shall not reimburse States for the 50 percent Federal share of the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar. A SESA commented that for the benefit of its claimants it rounds up the maximum benefit amount to the next higher dollar amount. The SESA expressed a preference for full reimbursement for the 50 percent Federal share when benefits are rounded up.

Section 204(a)(2)(D), EUCA, is specific. It limits reimbursement to the States of the Federal share of Extended Benefits paid if the States' benefit structure does not provide for rounding down to the next lower dollar amount in all circumstances. The regulations may not be written to contradict or change this provision of the Act and to authorize reimbursing States for the Federal share of Extended Benefits Paid when the State's benefit structure does not provide for rounding down to the next lower dollar amount. As in other matters of cost sharing, it is the State's choice to comply with the Federal law and obtain the benefits of such compliance; the Department is not authorized to permit the State to evade compliance and yet obtain the benefit. Therefore, § 615.14(c)(8) will be published in the final regulations without change.

*Section 615.15(c) Weekly record of Extended Benefit data*

The proposed regulation at § 615.15(c) prescribes the frequency and contents of the ETA 539 report. A SESA commented that the proposed rule identified this report as the ETA 5–39 and that in other issuances this report is identified as the ETA 539 report. The hyphen in 539 in the proposed rule was included through inadvertance. The hyphen is deleted in the final regulations.

**Other Changes**

Other technical and clarifying changes are made throughout the regulations, including correcting errors of inclusion and exclusion in the Notice of proposed Rulemaking published on October 24, 1986 (most notably in §§ 615.7(c)(3) and 615.8(e)(6)). Also as noted in the preamble of the Notice of Proposed Rulemaking, particularly as it relates to the requirements of section 202(a)(3), EUCA, these regulations differ from guidance previously furnished to the States in other issuances prior to the publication of the Notice of Proposed Rulemaking.

**Drafting Information**

This document was prepared under the direction and control of the Director of the Unemployment. Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 535–0600 (this is not a toll free number).

**Classification—Executive Order 12291**

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Some provisions may entail additional costs, for example, the active search for work and suitable work provisions, but the costs will be offset by savings in benefit expenditures by the tightened eligibility requirements. Accordingly, no regulatory impact analysis is required.

**Paperwork Reduction Act**

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 1205–0028 which applies to § 615.15.

**Regulatory Flexibility Act**

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements amendments to an individual entitlement program and has no economic impact on any small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

**List of Subjects in 20 CFR Part 615**

Employment and Training Administration, Labor, Unemployment compensation.

**Words of Issuance**

For the reasons set out in the preamble, Part 615 of Title 20 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, DC, on July 18, 1988.

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

## PART 615—EXTENDED BENEFITS IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

Sec.

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**Authority:** 26 U.S.C. 7805; 42 U.S.C. 1102; Secretary's Order No. 4–75 (40 FR 18515).

**§ 615.1 Purpose.**

The regulations in this Part are issued to implement the "Federal-State Extended Unemployment Compensation Act of 1970" as it has been amended, which requires, as a condition of tax offset under the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*), that a State unemployment compensation law provide for the payment of extended unemployment compensation during periods of high unemployment to eligible individuals as prescribed in the Act. The benefits provided under State law, in accordance with the Act and this Part, are hereafter referred to as Extended Benefits, and the program is referred to as the Extended Benefit Program.

**§ 615.2 Definitions.**

For the purposes of the Act and this part—

(a) "Act" means the "Federal-State Extended Unemployment Compensation Act of 1970" (Title II of Pub. L. 91–373; 84 Stat. 695, 708), approved August 10, 1970, as amended from time to time, including the 1980 amendments in section 416 of Pub. L. 96–364 (94 Stat. 1208, 1310), approved September 26, 1980, and in sections 1022 and 1024 of Pub. L. 96–499 (94 Stat. 2599, 2656, 2658) approved December 5, 1980, and the 1981 amendments in sections 2401 through 2404 and section 2505(b) of Pub. L. 97–35 (95 Stat. 357, 874–875, 884) approved August 13, 1981, and the 1982 amendment in section 191 of Pub. L. 97–248 (96 Stat. 324, 407) approved September 3, 1982, and the 1983 amendment in section 522 of Pub. L. 98–21 (97 Stat. 65, 148) approved April 20, 1983.

(b) "Base period" means, with respect to an individual, the base period as determined under the applicable State law for the individual's applicable benefit year.

(c)(1) "Benefit year" means, with respect to an individual, the benefit year as defined in the applicable State law.

(2) "Applicable benefit year" means, with respect to an individual, the current benefit year if, at the time an initial claim for Extended Benefits is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual's most recent benefit year. For this purpose, the most recent benefit year for an individual who has unexpired benefit years in more than one State when an initial claim for Extended Benefits is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed. The individual's most recent benefit year which expires in an Extended Benefit Period is the applicable benefit year if the individual cannot establish a second benefit year or is precluded from receiving regular compensation in a second benefit year solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)).

(d) "Compensation" and "unemployment compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

(e) "Regular compensation" means compensation payable to an individual under a State law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.

(f) "Additional compensation" means compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85.

(g) "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefit Period, under those provisions of a State law which satisfy the requirements of the Act and this Part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to in this Part as Extended Benefits.

(h) "Eligibility period" means, with respect to an individual, the period consisting of—

(1) The weeks in the individual's applicable benefit year which begin in an Extended Benefit Period, or with respect to a single benefit year, the weeks in the benefit year which begin in more than one Extended Benefit Period, and

(2) If the applicable benefit year ends within an Extended Benefit Period, any weeks thereafter which begin in such Extended Benefit Period, but an individual may not have more than one eligibility period with respect to any one exhaustion of regular benefits, or carry over from one eligibility period to another any entitlement to Extended Benefits.

(i) "Sharable compensation" means:

(1) Extended Benefits paid to an eligible individual under those provisions of a State law which are consistent with the Act and this Part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in (ii), reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year; and

(2) Regular compensation paid to an eligible individual with respect to weeks of unemployment in the individual's eligibility period, but only to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to the individual with respect to prior weeks of unemployment in the applicable benefit year, exceeds 26 times and does not exceed 39 times the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law in such benefit year: *Provided*, that such regular compensation is paid under provisions of a State law which are consistent with the Act and this Part.

(3) Notwithstanding the preceding provisions of this paragraph, sharable compensation shall not include any regular or extended compensation with respect to which a State is not entitled to a payment under section 202(a)(6) or 204 of the Act or § 615.14 of this Part.

(j)(1) "Secretary" means the Secretary of Labor of the United States.

(2) "Department" means the United States Department of Labor, and shall include the Employment and Training

Administration, the agency of the United States Department of Labor headed by the Assistant Secretary of Labor for Employment and Training to whom has been delegated the Secretary's authority under the Act in Secretary's Order No. 4–75 (40 FR 18515) and Secretary's Order No. 14–75.

(k)(1) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

(2) "Applicable State" means, with respect to an individual, the State with respect to which the individual is an "exhaustee" as defined in § 615.5, and in the case of a combined wage claim for regular compensation, the term means the "paying State" as defined in § 616.6(e) of this chapter.

(3) "State agency" means the State Employment Security Agency of a State which administers the State law.

(l)(1) "State law" means the unemployment compensation law of a State, approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

(2) "Applicable State law" means the law of the State which is the applicable State for an individual.

(m)(1) "Week" means, for purposes of eligibility for and payment of Extended Benefits, a week as defined in the applicable State law.

(2) "Week" means, for purposes of computation of Extended Benefit "on" and "off" and "no change" indicators and insured unemployment rates and the beginning and ending of Extended Benefit Periods, a calendar week.

(n)(1) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the Extended Benefit Program as if the individual filing a claim for Extended Benefits were filing a claim for regular compensation, except as provided in paragraph (n)(2) of this section.

(2) "Week of unemployment" in section 202(a)(3)(A) of the Act means a week of unemployment, as defined in paragraph (n)(1) of this section, for which the individual claims Extended Benefits or sharable regular benefits.

(o) For the purposes of section 202(a)(3) of the Act—

(1) "Employed," for the purposes of section 202(a)(3)(B)(ii) of the Act, and "employment," for the purposes of section 202(a)(4) of the Act, means service performed in an employer-employee relationship as defined in the State law; and that law also shall govern whether that service must be covered by it, must consist of consecutive weeks, and must consist of more weeks of work than are required under section 202(a)(3)(B) of the Act;

(2) "Individual's capabilities," for the purposes of section 202(a)(3)(C), means work which the individual has the physical and mental capacity to perform and which meets the minimum requirements of section 202(a)(3)(D);

(3) "Reasonably short period," for the purposes of section 202(a)(3)(C), means the number of weeks provided by the applicable State law;

(4) "Average weekly benefit amount," for the purposes of section 202(a)(3)(D)(i), means the weekly benefit amount (including dependents' allowances payable for a week of total unemployment and before any reduction because of earnings, pensions or other requirements) applicable to the week in which the individual failed to take an action which results in a disqualification as required by section 202(a)(3)(B) of the Act;

(5) "Gross average weekly remuneration," for the purposes of section 202(a)(3)(D)(i), means the remuneration offered for a week of work before any deductions for taxes or other purposes and, in case the offered pay may vary from week to week, it shall be determined on the basis of recent experience of workers performing work similar to the offered work for the employer who offered the work;

(6) "And," as used in section 202(a)(3)(D)(ii), shall be interpreted to mean "or";

(7) "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii), include statutory provisions and decisions based on statutory provisions, such as not requiring an individual to take a job which requires traveling an unreasonable distance to work, or which involves an unreasonable risk to the individual's health, safety or morals; and such provisions shall also include labor standards and training provisions required under sections 3304(a)(5) and 3304(a)(8) of the Internal Revenue Code of 1986 and section 236(e) of the Trade Act of 1974;

(8) A "systematic and sustained effort," for the purposes of section 202(a)(3)(E), means—

(i) A high level of job search activity throughout the given week, compatible with the number of employers and employment opportunities in the labor market reasonably applicable to the individual,

(ii) A plan of search for work involving independent efforts on the part of each individual which results in contacts with persons who have the authority to hire or which follows whatever hiring procedure is required by a prospective employer in addition to any search offered by organized public and private agencies such as the State employment service or union or private placement offices or hiring halls,

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, in the same manner that such work is found by people in the community,

(iv) A search not limited to classes of work or rates of pay to which the individual is accustomed or which represent the individual's higher skills, and which includes all types of work within the individual's physical and mental capabilities, except that the individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable),

(v) A search by every claimant, without exception for individuals or classes of individuals other than those in approved training, as required under section 3304(a)(8) of the Internal Revenue Code of 1986 or section 236(e) of the Trade Act of 1974,

(vi) A search suspended only when severe weather conditions or other calamity forces suspension of such activities by most members of the community, except that

(vii) The individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, if such individual normally obtains customary work through a hiring hall, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable);

(9) "Tangible evidence" of an active search for work, for the purposes of section 202(a)(3)(E), means a written record which can be verified, and which includes the actions taken, methods of applying for work, types of work sought, dates and places where work was sought, the name of the employer or person who was contacted and the outcome of the contact;

(10) "Date" of a disqualification, as used in section 202(a)(4), means the date the disqualification begins, as determined under the applicable State law;

(11) "Jury duty," for purposes of section 202(a)(3)(A)(ii), means the performance of service as a juror, during all periods of time an individual is engaged in such service, in any court of a State or the United States pursuant to the law of the State or the United States and the rules of the court in which the individual is engaged in the performance of such service; and

(12) "Hospitalized for treatment of an emergency or life-threatening condition," as used in section 202(a)(3)(A)(ii), has the following meaning: "Hospitalized for treatment" means an individual was admitted to a hospital as an inpatient for medical treatment. Treatment is for an "emergency or life threatening condition" if determined to be such by the hospital officials or attending physician that provide the treatment for a medical condition existing upon or arising after hospitalization. For purposes of this definition, the term "medical treatment" refers to the application of any remedies which have the objective of effecting a cure of the emergency or life-threatening condition. Once an "emergency condition" or a "life-threatening condition" has been determined to exist by the hospital officials or attending physician, the status of the individual as so determined shall remain unchanged until release from the hospital.

(P)(1) "Claim filed in any State under the interstate benefit payment plan," as used in section 202(c), means any interstate claim for a week of unemployment filed pursuant to the Interstate Benefit Payment Plan, but does not include—

(i) A claim filed in Canada,

(ii) A visiting claim filed by an individual who has received permission from his/her regular reporting office to report temporarily to a local office in another State and who has been furnished intrastate claim forms on which to file claims, or

(iii) A transient claim filed by an individual who is moving from place to place searching for work, or an intrastate claim for Extended Benefits filed by an individual who does not reside in a State that is in an Extended Benefit Period.

(2) "The first 2 weeks," as used in section 202(c), means the first two weeks for which the individual files compensable claims for Extended Benefits under the Interstate Benefit Payment Plan in an agent State in which an Extended Benefit Period is not in effect during such weeks, and

(q) "Benefit structure" as used in section 204(a)(2)(D), for the requirement to round down to the "nearest lower full dollar amount" for Federal reimbursement of sharable regular and sharable extended compensation means all of the following:

(1) Amounts of regular weekly benefit payments,

(2) Amounts of additional and extended weekly benefit payments,

(3) The State maximum or minimum weekly benefit,

(4) Partial and part-total benefit payments,

(5) Amounts payable after deduction for pensions, and

(6) Amounts payable after any other deduction required by State law.

### § 615.3 Effective period of the program.

An Extended Benefit Program conforming with the Act and this Part shall be a requirement for a State law effective on and after January 1, 1972, pursuant to section 3304(a)(11) of the Internal Revenue Code of 1986, (26 U.S.C. 3304(a)(11)). Continuation of the program by a State in conformity and substantial compliance with the Act and this Part, throughout any 12-month period ending on October 31 of a year subsequent to 1972, shall be a condition of the certification of the State with respect to such 12-month period under section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)). Conformity with the Act and this Part in the payment of regular compensation and Extended Benefits to any individual shall be a continuing requirement, applicable to every week as a condition of a State's entitlement to payment for any compensation as provided in the Act and this Part.

### § 615.4 Eligibility requirements for Extended Benefits.

(a) *General.* An individual is entitled to Extended Benefits for a week of unemployment which begins in the individual's eligibility period if, with respect to such week, the individual is an exhaustee as defined in § 615.5, files a timely claim for Extended Benefits, and satisfies the pertinent requirements of the applicable State law which are consistent with the Act and this Part.

(b) *Qualifying for Extended Benefits.* The State law shall specify whether an individual qualifies for Extended Benefits by earnings and employment in the base period for the individual's applicable benefit year as required by section 202(a)(5) of the Act, (and if it does not also apply this requirement to the payment of sharable regular benefits, the State will not be entitled to a payment under § 615.14), as follows:

(1) One and one-half times the high quarter wages; or

(2) Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reduction because of earnings, pensions or other requirements) which applied to the most recent week of regular benefits; or

(3) Twenty weeks of full-time insured employment, and if this alternative is adopted, the term "full-time" shall have the meaning provided by the State law.

### § 615.5 Definition of "exhaustee."

(a)(1) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(i) Has received, prior to such week, all of the regular compensation that was payable under the applicable State law or any other State law (including regular compensation payable to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) for the applicable benefit year that includes such week; or

(ii) Has received, prior to such week, all of the regular compensation that was available under the applicable State law or any other State law (including regular compensation available to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) in the benefit year that includes such week, after the cancellation of some or all of the individual's wage credits or the total or partial reduction of the individual's right to regular compensation; or

(iii) The applicable benefit year having expired prior to such week and the individual is precluded from establishing a second (new) benefit year, or the individual established a second benefit year but is suspended indefinitely from receiving regular compensation, solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(7)): *Provided,* that, an individual shall not be entitled to Extended Benefits based on regular compensation in a second benefit year during which the individual is precluded from receiving regular compensation solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)); or

(iv) The applicable benefit year having expired prior to such week, the individual has insufficient wages or employment, or both, on the basis of which a new benefit year could be

established in any State that would include such week; and

(v) Has no right to unemployment compensation for such week under the Railroad Unemployment Insurance Act or such other Federal laws as are specified by the Department pursuant to this paragraph; and

(vi) Has not received and is not seeking for such week unemployment compensation under the unemployment compensation law of Canada, unless the Canadian agency finally determines that the individual is not entitled to unemployment compensation under the Canadian law for such week.

(2) An individual who becomes an exhaustee as defined above shall cease to be an exhaustee commencing with the first week that the individual becomes eligible for regular compensation under any State law or 5 U.S.C. Chapter 85, or has any right to unemployment compensation as provided in paragraph (a)(1)(v) of this section, or has received or is seeking unemployment compensation as provided in paragraph (a)(1)(vi) of this section. The individual's Extended Benefit Account shall be terminated upon the occurrence of any such week, and the individual shall have no further right to any balance in that Extended Benefit Account.

(b) *Special Rules.* For the purposes of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, an individual shall be deemed to have received in the applicable benefit year all of the regular compensation payable according to the monetary determination, or available to the individual, as the case may be, even though—

(1) As a result of a pending appeal with respect to wages or employment or both that were not included in the original monetary determination with respect to such benefit year, the individual may subsequently be determined to be entitled to more or less regular compensation, or

(2) By reason of a provision in the State law that establishes the weeks of the year in which regular compensation may be paid to the individual on the basis of wages in seasonal employment—

(i) The individual may be entitled to regular compensation with respect to future weeks of unemployment in the next season or off season, as the case may be, but such compensation is not payable with respect to the week of unemployment for which Extended Benefits are claimed, and

(ii) The individual is otherwise an exhaustee within the meaning of this section with respect to rights to regular compensation during the season or off season in which that week of unemployment occurs, or

(3) Having established a benefit year, no regular compensation is payable during such year because wage credits were cancelled or the right to regular compensation was totally reduced as the result of the application of a disqualification.

(c) *Adjustment of week.* If it is subsequently determined as the result of a redetermination or appeal that an individual is an exhaustee as of a different week than was previously determined, the individual's rights to Extended Benefits shall be adjusted so as to accord with such redetermination or decision.

**§ 615.6 Extended Benefits; weekly amount.**

(a) *Total unemployment.* (1) The weekly amount of Extended Benefits payable to an individual for a week of total unemployment in the individual's eligibility period shall be the amount of regular compensation payable to the individual for a week of total unemployment during the applicable benefit year. If the individual had more than one weekly amount of regular compensation for total unemployment during such benefit year, the weekly amount of extended compensation for total unemployment shall be one of the following which applies as specified in the applicable State law:

(i) The average of such weekly amounts of regular compensation,

(ii) The last weekly benefit amount of regular compensation in such benefit year, or

(iii) An amount that is reasonably representative of the weekly amounts of regular compensation payable during such benefit year.

(2) If the method in paragraph (a)(1)(iii) of this section is adopted by a State, the State law shall specify how such amount is to be computed. If the method in paragraph (a)(1)(i) of this section is adopted by a State, and the amount computed is not an even dollar amount, the amount shall be raised or lowered to an even dollar amount as provided by the applicable State law for regular compensation.

(b) *Partial and part-total unemployment.* The weekly amount of Extended Benefits payable for a week of partial or part-total unemployment shall be determined under the provisions of the applicable State law which apply to regular compensation, computed on the basis of the weekly amount of Extended Benefits payable for a week of total unemployment as determined pursuant to paragraph (a) of this section.

**§ 615.7 Extended Benefits; maximum amount.**

(a) *Individual account.* An Extended Benefit Account shall be established for each individual determined to be eligible for Extended Benefits, in the sum of the maximum amount potentially payable to the individual as computed in accordance with paragraph (b) of this section.

(b) *Computation of amount in individual account.* (1) The amount established in the Extended Benefit Account of an individual, as the maximum amount potentially payable to the individual during the individual's eligibility period, shall be equal to the lesser of—

(i) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's applicable benefit year; or

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount referred to in (ii), reduced by the regular compensation paid (or deemed paid) to the individual during the individual's applicable benefit year.

(2) If the State law so provides, the amount in the individual's Extended Benefit Account shall be reduced by the aggregate amount of additional compensation paid (or deemed paid) to the individual under such law for prior weeks of unemployment in such benefit year which did not begin in an Extended Benefit Period.

(c) *Changes in accounts.* (1) If an individual is entitled to more or less Extended Benefits as a result of a redetermination or an appeal which awarded more or less regular compensation or Extended Benefits, an appropriate change shall be made in the individual's Extended Benefit Account pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(2) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to more regular compensation with respect to such week as the result of a redetermination or an appeal, the Extended Benefits paid shall be treated as if they were regular compensation up to the greater amount to which the individual has been determined to be entitled, and the State agency shall make appropriate adjustments between the regular and extended accounts. If the individual is entitled to more Extended Benefits as a result of being

entitled to more regular compensation, an amended determination shall be made of the individual's entitlement to Extended Benefits. If the greater amount of regular compensation results in an increased duration of regular compensation, the individual's status as an exhaustee shall be redetermined as of the new date of exhaustion of regular compensation.

(3) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to less regular compensation as the result of a redetermination or an appeal, and as a consequence is entitled to less Extended Benefits, any Extended Benefits paid in excess of the amount to which the individual is determined to be entitled after the redetermination or decision on appeal shall be considered an overpayment which the individual shall have to repay on the same basis and in the same manner that excess payments of regular compensation are required to be repaid under the applicable State law. If such decision reduces the duration of regular compensation payable to the individual, the claim for Extended Benefits shall be backdated to the earliest date, subsequent to the date when the redetermined regular compensation was exhausted and within the individual's eligibility period, that the individual was eligible to file a claim for Extended Benefits. Any such changes shall be made pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(d) *Reduction because of trade readjustment allowances.* Section 233(d) of the Trade Act of 1974 (and section 204(a)(2)(C) of the Act), requiring a reduction of Extended Benefits because of the receipt of trade readjustment allowances, shall be applied as follows:

(1) The reduction of Extended Benefits shall apply only to an individual who has not exhausted his/her Extended Benefits at the end of the benefit year;

(2) The amount to be deducted is the product of the weekly benefit amount for Extended Benefits multiplied by the number of weeks for which trade readjustment allowances were paid (regardless of the amount paid for any such week) up to the close of the last week that begins in the benefit year; and

(3) The amount to be deducted shall be deducted from the balance of Extended Benefits not used as of the close of the last week which begins in the benefit year.

**§ 615.8 Provisions of State law applicable to claims.**

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part, the terms and conditions of the applicable State law which apply to claims for, and the payment of, regular compensation shall apply to claims for, and the payment of, Extended Benefits. The provisions of the applicable State law which shall apply to claims for, and the payment of, Extended Benefits include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals and employers, as appropriate;

(4) Determinations, redeterminations, and appeal and review;

(5) Ability to work and availability for work, except as provided otherwise in this section;

(6) Disqualifications, including disqualifying income provisions, except as provided by paragraph (c) of this section;

(7) Overpayments, and the recovery thereof;

(8) Administrative and criminal penalties;

(9) The Interstate Benefit Payment Plan;

(10) The Interstate Arrangement for Combining Employment and Wages, in accordance with Part 616 of this chapter.

(b) *Provisions not to be applicable.* The State law and regulations shall specify those of its terms and conditions which shall not be applicable to claims for, or payment of, Extended Benefits. Among such terms and conditions shall be at least those relating to—

(1) Any waiting period;

(2) Monetary or other qualifying requirements, except as provided in § 615.4(b); and

(3) Computation of weekly and total regular compensation.

(c) *Terminating disqualifications.* A disqualification in a State law, as to any individual who voluntarily left work, was suspended or discharged for misconduct, gross misconduct or the commission or conviction of a crime, or refused an offer of or a referral to work, as provided in sections 202(a) (4) and (6) of the Act—

(1) As applied to regular benefits which are not sharable, is not subject to any limitation in sections 202(a) (4) and (6);

(2) As applied to eligibility for Extended Benefits, shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds for regular benefits which are not sharable; and if the State law does not also apply this provision to the payment of what would otherwise be sharable regular benefits, the State will not be entitled to a payment under the Act and § 615.14 in regard to such regular compensation; and

(3) Will not apply in regard to eligibility for Extended Benefits in a subsequent eligibility period.

(d) *Classification and determination of job prospects.* (1) As to each individual who files an initial claim for Extended Benefits (or sharable regular compensation), the State agency shall classify the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period, as "good" or "not good," and shall promptly (not later than the end of the week in which the initial claim is filed) notify the individual in writing of such classification and of the requirements applicable to the individual under the provisions of the applicable State law corresponding to section 202(a)(3) of the Act and this Part. Such requirements shall be applicable beginning with the week following the week in which the individual is furnished such written notice.

(2) If an individual is thus classified as having good prospects, but those prospects are not realized by the close of the period the State law specifies as a reasonably short period, the individual's prospects will be automatically reclassified as "not good" or classified as "good" or "not good" depending on the individual's job prospects as of that date.

(3) Whenever, as part of a determination of an individual's eligibility for benefits, an issue arises concerning the individual's failure to apply for or accept an offer of work (sections 202(a)(3)(A)(i) and (F) of the Act and paragraphs (e) and (f) of this section), or to actively engage in seeking work (sections 202(a)(3)(A)(ii) and (E) of the Act and paragraph (g) of this section), a written appealable determination shall be made which includes a finding as to the individual's job prospects at the time the issue arose. The reasons for allowing or denying benefits in the written notice of determination shall explain how the individual's job prospects relate to the decision to allow or deny benefits.

(4) If an individual's job prospects are determined in accordance with the preceding paragraph (3) to be "good," the suitability of work will be determined under the standard State law provisions applicable to claimants for regular compensation which is not sharable; and if determined to be "not good," the suitability of work will be

determined under the definition of suitable work in the State law provisions corresponding to sections 202(a)(3) (C) and (D) of the Act and this Part. Any determination or classification of an individual's job prospects is mutually exclusive, and only one suitable work definition shall be applied to a claimant as to any failure to accept or apply for work or seek work with respect to any week.

(e) *Requirement of referral to work.* (1) The State law shall provide, as required by section 202(a)(3)(F) of the Act and this Part, that the State agency shall refer every claimant for Extended Benefits to work which is "suitable work" as provided in paragraph (d)(4) of this section, beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section.

(2) To make such referrals, the State agency shall assure that each Extended Benefit claimant is registered for work and continues to be considered for referral to job openings as long as he/she continues to claim benefits.

(3) In referring claimants to available job openings, the State agency shall apply to Extended Benefit claimants the same priorities, policies, and judgments as it does to other applicants, except that it shall not restrict referrals only to work at higher skill levels, prior rates of pay, customary work, or preferences as to work or pay for individuals whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good."

(4) For referral purposes, any work which does not exceed the individual's capabilities shall be considered suitable work for an Extended Benefit claimant whose job prospects have been classified as or determined to be "not good", except as modified by this paragraph (e).

(5) For Extended Benefit claimants whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good", work shall not be suitable, and referral to a job shall not be made, if—

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual's weekly benefit amount plus any supplemental unemployment benefits (SUB) (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

(ii) The work is not offered in writing or is not listed with the State employment service,

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or any applicable State or local minimum wage, or

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(6) In addition, if the State agency classifies or determines that an individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are "good," referral shall not be made to a job if such referral would not be made under the State law provisions applicable to claimants for regular benefits which are not sharable, and such referrals shall be limited to work which the individual is required to make a "systematic and sustained effort" to search for as defined in § 615.2(o)(8).

(7) For the purposes of the foregoing paragraphs of this paragraph (e), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(8) If the State law does not also apply this paragraph (e) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(f) *Refusal of work.* (1) The State law shall provide, as required by section 202(a)(3)(A)(i) of the Act and this Part, that if an individual who claims Extended Benefits fails to accept an offer of work or fails to apply for work to which he/she was referred by the State agency—

(i) If the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are determined to be "good," the State agency shall determine whether the work is suitable under the standard State law provisions which apply to claimants for regular compensation which is not sharable, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law; or

(ii) If the individual's prospects for obtaining work in his/her customary occupation are determined to be "not good," the State agency shall determine whether the work is suitable under the applicable State law provisions corresponding to sections 202(a)(3) (C) and (D) of the Act and paragraphs (e)(5) and (f)(2) of this section, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law.

(2) For an individual whose prospects of obtaining work in his/her customary occupation within the period specified by State law are classified or determined to be "not good," the term "suitable work" shall mean any work which is within the individual's capabilities, except that work shall not be suitable if—

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual's weekly benefit amount plus any supplemental unemployment benefits (SUB) (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

(ii) The work is not offered in writing or is not listed with the State employment service, or

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or any applicable State or local minimum wage,

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(3) For the purposes of the foregoing paragraphs of this paragraph (f), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(4) If the State law does not also apply this paragraph (f) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(g) *Actively seeking work.* (1) The State law shall provide, as required by sections 202(a)(3) (A)(ii) and (E) of the Act and this Part, that an individual who claims Extended Benefits shall be required to make a systematic and sustained effort (as defined in § 615.2(o)(8)) to search for work which is

"suitable work" as provided in paragraph (d)(4) of this section, throughout each week beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section, and to furnish to the State agency with each claim tangible evidence of such efforts.

(2) If the individual fails to thus search for work, or to furnish tangible evidence of such efforts, he/she shall be ineligible for Extended Benefits for the week in which the failure occurred and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law.

(3)(i) A State law may provide that eligibility for Extended Benefits be determined under the applicable provisions of State law for regular compensation which is not sharable, without regard to the active search provisions otherwise applicable in paragraph (g)(1) of this section, for any individual who fails to engage in a systematic and sustained search for work throughout any week because such individual is—

(A) Serving on jury duty, or

(B) Hospitalized for treatment of an emergency or life-threatening condition.

(ii) The conditions in (i) (A) and (B) must be applied to individuals filing claims for Extended Benefits in the same manner as applied to individuals filing claims for regular compensation which is not sharable compensation.

(4) For the purposes of the foregoing paragraphs of this paragraph (g), State law applies regarding whether members of labor organizations shall be required to seek nonunion work in their customary occupations.

(5) If the State law does not also apply this paragraph (g) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(h) *Information to claimants.* The State agency shall assure that each Extended Benefit claimant (and claimant for sharable regular compensation) is informed in writing—

(1) Of the State agency's classification of his/her prospects for finding work in his/her customary occupation within the time set out in paragraph (d) as "good" or "not good,"

(2) What kind of jobs he/she may be referred to, depending on the classification of his/her job prospects,

(3) What kind of jobs he/she must be actively engaged in seeking each week depending on the classification of his/her job prospects, and what tangible evidence of such search must be furnished to the State agency with each claim for benefits, and

(4) The resulting disqualification if he/she fails to apply for work to which referred, or fails to accept work offered, or fails to actively engage in seeking work or to furnish tangible evidence of such search for each week for which Extended Benefits or sharable regular benefits are claimed, beginning with the week following the week in which such information is furnished in writing to the individual.

### § 615.9 Restrictions on entitlement.

(a) *Disqualifications.* If the week of unemployment for which an individual claims Extended Benefits is a week to which a disqualification for regular compensation applies, including a reduction because of the receipt of disqualifying income, or would apply but for the fact that the individual has exhausted all rights to such compensation, the individual shall be disqualified in the same degree from receipt of Extended Benefits for that week.

(b) *Additional compensation.* No individual shall be paid additional compensation and Extended Benefits with respect to the same week. If both are payable by a State with respect to the same week, the State law may provide for the payment of Extended Benefits instead of additional compensation with respect to the week. If Extended Benefits are payable to an individual by one State and additional compensation is payable to the individual for the same week by another State, the individual may elect which of the two types of compensation to claim.

(c) *Interstate claims.* An individual who files claims for Extended Benefits under the Interstate Benefit Payment Plan, in a State which is not in an Extended Benefit Period for the week(s) for which Extended Benefits are claimed, shall not be paid more than the first two weeks for which he/she files such claims.

(d) *Other restrictions.* The restrictions on entitlement specified in this section are in addition to other restrictions in the Act and this Part on eligibility for and entitlement to Extended Benefits.

### § 615.10 Special provisions for employers.

(a) *Charging contributing employers.* (1) Section 3303(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(a)(1)) does not require that Extended Benefits paid to an individual be charged to the experience rating accounts of employers.

(2) A State law may, however, consistently with section 3303(a)(1), require the charging of Extended Benefits paid to an individual; and if it does, it may provide for charging all or any portion of such compensation paid.

(3) Sharable regular compensation must be charged as all other regular compensation is charged under the State law.

(b) *Payments by reimbursing employers.* If an employer is reimbursing the State unemployment fund in lieu of paying contributions pursuant to the requirements of State law conforming with sections 3304(a)(6)(B) and 3309(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(6)(B) and 3309(a)(2)), the State law shall require the employer to reimburse the State unemployment fund for not less than 50 percent of any sharable compensation that is attributable under the State law to service with such employer; and as to any compensation which is not sharable compensation under § 615.14, the State law shall require the employer to reimburse the State unemployment fund for 100 percent, instead of 50 percent, of any such compensation paid.

### § 615.11 Extended Benefit Periods.

(a) *Beginning date.* Except as provided in paragraph (d) of this section, an Extended Benefit Period shall begin in a State on the first day of the third calendar week after a week for which there is a State "on" indicator in that State.

(b) *Ending date.* Except as provided in paragraph (c) of this section, an Extended Benefit Period in a State shall end on the last day of the third week after the first week for which there is a State "off" indicator in that State.

(c) *Duration.* An Extended Benefit Period which becomes effective in any State shall continue in effect for not less than 13 consecutive weeks.

(d) *Limitation.* No Extended Benefit Period may begin in any State by reason of a State "on" indicator before the 14th week after the ending of a Prior Extended Benefit Period with respect to such State.

### § 615.12 Determination of "on" and "off" indicators.

(a) *Standard State indicators.* (1) There is a State "on" indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the

rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Equalled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years, and

(ii) Equalled or exceeded 5.0 percent.

(2) There is a State "off" indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Was less than 120 percent of the average of such rates for the corresponding 13 week periods ending in each of the preceding two calendar years, or

(ii) Was less than 5.0 percent.

(3) The standard State indicators in this paragraph (a) shall apply to weeks beginning after September 25, 1982.

(b) *Optional State indicators.* (1)(i) A State may, in addition to the State indicators in paragraph (a) of this section, provide by its law that there shall be a State "on" indicator in the State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law equalled or exceeded 6.0 percent even though it did not meet the 120 percent factor required under paragraph (a).

(ii) A State which adopts the optional State indicator must also provide that, when it is in an Extended Benefit Period, there will not be an "off" indicator until (A) the State rate of insured unemployment is less than 6.0 percent, and (B) either its rate of insured unemployment is less than 5.0 percent or is less than 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years.

(2) The optional State indicators in this paragraph (b) shall apply to weeks beginning after September 25, 1982.

(c) *Computation of rate of insured unemployment.*—(1) *Equation.* Each week the State agency head shall calculate the rate of insured unemployment under the State law (not seasonally adjusted) for purposes of determining the State "on" and "off" and "no change" indicators. In making such calculations the State agency head shall use a fraction, the numerator of which shall be the weekly average number of weeks claimed in claims filed (not seasonally adjusted) in the State in the 13-week period ending with the week for which the determination is made, and the denominator of which shall be the average monthly employment covered by the State law for the first four of the last six calendar quarters ending before the close of the 13-week period. The quotient obtained is to be computed to four decimal places, and is not otherwise rounded, and is to be expressed as a percentage by multiplying the resultant decimal fraction by 100.

(2) *Counting weeks claimed.* To determine the average number of weeks claimed in claims filed to serve as the numerator under paragraph (c)(1), the State agency shall include claims for all weeks for regular compensation, including claims taken as agent State under the Interstate Benefit Payment Plan. It shall exclude claims—

(i) For Extended Benefits under any State law,

(ii) For additional compensation under any State law, and

(iii) Under any Federal law except joint claims which combine regular compensation and compensation payable under 5 U.S.C. Chapter 85.

(3) *Method of computing the State 120 percent factor.* The rate of insured unemployment for a current 13-week period shall be divided by the average of the rates of insured unemployment for the corresponding 13-week periods in each of the two preceding calendar years to determine whether the rate is equal to 120 percent of the average rate for the two years. The quotient obtained shall be computed to four decimal places and not otherwise rounded, and shall be expressed as a percentage by multiplying the resultant decimal fraction by 100. The average of the rates for the corresponding 13-week periods in each of the two preceding calendar years shall be one-half the sum of such rates computed to four decimal places and not otherwise rounded. To determine which are the corresponding weeks in the preceding years—

(i) The weeks shall be numbered starting with week number 1 as the first week ending in each calendar year.

(ii) The 13-week period ending with any numbered week in the current year shall correspond to the period ending with that same numbered week in each preceding year.

(iii) When that period in the current year ends with week number 53, the corresponding period in preceding years shall end with week number 52 if there is no week number 53.

(d) *Amendment of State indicator rates.* (1) Because figures used for determinations under this section may contain errors and because it is not practical to apply any correction in a State "on" or "off" or "no change" indicator retroactively either to recover amounts paid or to adjudicate claims for past periods in which claimants failed to make the required active search for work, any determination by the head of a State agency of an "on" or "off" or "no change" indicator shall not be corrected more than three weeks after the close of the week to which it applies. If any figure used in the computation of a rate of insured unemployment is later found to be wrong, the correct figure shall be used to redetermine the rate of insured unemployment and of the 120 percent factor for that week and all subsequent weeks, but no determination of previous "on" or "off" or "no change" indicator shall be affected unless the redetermination is made within the time the indicator may be corrected under the first sentence of this paragraph (d)(1). Any change hereunder shall be subject to the concurrence of the Department as provided in paragraph (e) of this section.

(2) Any determination of the rate of insured unemployment and its effect on an "on" or "off" or "no change" indicator may be challenged by appeal or by other proceedings, as shall be provided by State law, but the implementation of any change in the indicator from one week to another shall not be stayed or postponed. In a hearing on any such challenge the issue may be limited to the accuracy of the determination of the rate of insured unemployment. If an error in that rate affecting the "on" or "off" or "no change" indicator is discovered in such a hearing or other proceeding, its retroactive effect shall be limited as provided in paragraph (d)(1).

(e) *Notice to Secretary.* Within 10 calendar days after the end of any week with respect to which the head of a State agency has determined that there is an "on," or "off," or "no change" indicator in the State, the head of the State agency shall notify the Department of the determination. The notice shall state clearly the State agency head's determination of the specific week for which there is a State "on" or "off" or "no change" indicator. The notice shall include also the State agency head's findings supporting the determination, with a certification that the findings are made in accordance with the requirements of this § 615.15. Determinations and findings made as provided in this section shall be accepted by the Department, but the head of the State agency shall comply with such provisions as the Department may find necessary to assure the

correctness and verification of notices given under this paragraph. A notice shall not become final for purposes of the Act and this part until such notice is accepted by the Department.

**§ 615.13 Announcement of the beginning and ending of Extended Benefit Periods.**

(a) *State indicators.* Upon receipt of the notice required by § 615.12(e) which is acceptable to the Department, the Department shall publish in the Federal Register a notice of the State agency head's determination that there is an "on" or an "off" indicator in the State, as the case may be, the name of the State and the beginning or ending of the Extended Benefit Period, whichever is appropriate. The Department shall also notify appropriate news media, the heads of all other State agencies, and the Regional Administrators of the Employment and Training Administration of the State agency head's determination of such State "on" or "off" indicator and of its effect.

(b) *Publicity by State.* Whenever a State agency head determines that there is an "on" indicator in the State by reason of which an Extended Benefit Period will begin in the State, or an "off" indicator by reason of which an Extended Benefit Period in the State will end, the head of the State agency shall promptly announce the determination through appropriate news media in the State and notify the Department in accordance with § 615.12(e). Such announcement shall include the beginning or ending date of the Extended Benefit Period, whichever is appropriate. In the case of an Extended Benefit Period that is about to begin, the announcement shall describe clearly the unemployed individuals who may be eligible for Extended Benefits during the period, and in the case of an Extended Benefit Period that is about to end, the announcement shall also describe clearly the individuals whose entitlement to Extended Benefits will be terminated.

(c) *Notices to individuals.* (1) Whenever there has been a determination that an Extended Benefit Period will begin in a State, the State agency shall provide prompt written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not end prior to the beginning of the Extended Benefit Period, and who exhausted all rights under the State law to regular compensation before the beginning of the Extended Benefit Period.

(2) The State agency shall provide such notice promptly to each individual who begins to claim sharable regular benefits or who exhausts all rights under the State law to regular compensation during an Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

(3) The notices required by paragraphs (c) (1) and (2) of this section shall describe those actions required of claimants for sharable regular compensation and Extended Benefits and those disqualifications which apply to such benefits which are different from those applicable to other claimants for regular compensation which is not sharable.

(4) Whenever there has been a determination that an Extended Benefit Period will end in a State, the State agency shall provide prompt written notice to each individual who is currently filing claims for Extended Benefits of the forthcoming end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits.

**§ 615.14 Payments to States.**

(a) *Sharable compensation.* (1) The Department shall promptly upon receipt of a State's report of its expenditures for a calendar month reimburse the State in the amount of the sharable compensation the State is entitled to receive under the Act and this Part.

(2) The Department may instead advance to a State for any period not greater than one day the amount the Department estimates the State will be entitled to be paid under the Act and this Part for that period.

(3) Any payment to a State under this section shall be based upon the Department's determination of the amount the State is entitled to be paid under the Act and this Part, and such amount shall be reduced or increased, as the case may be, by any amount by which the Department finds that a previous payment was greater or less than the amount that should have been paid to the State.

(4) Any payment to a State pursuant to this paragraph (a) shall be made by a transfer from the extended unemployment compensation account in the Unemployment Trust Fund to the account of the State in such Fund, in accordance with section 204(e) of the Act.

(b) *Payments not to be made to States.* Because a State law must contain provisions fully consistent with sections 202 and 203 of the Act, the Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986—

(1) In respect of any regular or extended compensation paid to any individual for any week if the State does not apply—

(i) The provisions of the State law required by section 202(a)(3) and this Part, relating to failure to accept work offered or to apply for work or to actively engage in seeking work, as to weeks beginning after October 31, 1981, except for any State which the State legislature did not meet in 1981 as to weeks beginning after October 1, 1982 or the provisions of State law required by section 202(a)(4) and this Part, relating to terminating a disqualification, as to weeks beginning after March 31, 1981;

(ii) The provisions of the State law required by section 202(a)(5) and this Part, relating to qualifying employment, as to weeks beginning after September 25, 1982; or

(2) In respect of any regular or extended compensation paid to any individual for any week which was not payable by reason of the provision of the State law required by section 202(c) and this Part, as to weeks which begin after May 31, 1981, or May 31, 1982, as determined by the Department with regard to each State.

(c) *Payments not to be reimbursed.* The Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986, in respect of any regular or extended compensation paid under a State law—

(1) As provided in section 204(a)(1) of the Act and this Part, if the payment made was not sharable extended compensation or sharable regular compensation;

(2) As provided in section 204(a)(2)(A) of the Act, if the State is entitled to reimbursement for the payment under the provisions of any Federal law other than the Act;

(3) As provided in section 204(a)(2)(B) of the Act, if for the first week in an individual's eligibility period with respect to which Extended Benefits or sharable regular benefits are paid to the individual, that first week begins after December 5, 1980, and the State law provides for the payment (at any time or under any circumstances) of regular compensation to any individual for the first week of unemployment in any such individual's benefit year; except that—

(i) In the case of a State with respect to which the Department finds that legislation is required in order to end the payment (at any time or under any circumstances) of regular compensation for any such first week of unemployment, this paragraph (c)(3)

shall not apply to the first week in an individual's eligibility period which began before the end of the first regularly scheduled session of the State legislature that ends after January 4, 1981, as determined by the Department; and

(ii) In the case of a State law which is changed so that regular compensation is not paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall not apply to any week which begins after the effective date of such change in the State law; and

(iii) In the case of a State law which is changed so that regular compensation is paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall apply to all weeks which begin after the effective date of such change in the State law;

(4) As provided in section 204(a)(2)(C) of the Act and this Part, for any week with respect to which Extended Benefits are not payable because of the payment of trade readjustment allowances, as provided in section 233(d) of the Trade Act of 1974, and § 615.7(d). This paragraph (c)(4) applies to any week which begins after October 31, 1982, or 1983, as determined by the Department in regard to each State;

(5) As provided in section 204(a)(2)(D) of the Act and this Part, if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount, for the 50 percent Federal share of the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount. This paragraph (c)(5) shall apply to any sharable regular compensation or Extended Benefits paid to individuals whose eligibility periods begin on or after October 1, 1983, unless a later date, as determined by the Department, applies in a particular State under the grace period of section 191(b)(2) of Pub. L. 97–248;

(6) As provided in section 204(a)(3) of the Act, to the extent that such compensation is based upon employment and wages in service performed for governmental entities or instrumentalities to which section 3306(c)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(c)(7)) applies, in the proportion that wages for such service in the base period bear to the total base period wages;

(7) If the payment made was not sharable extended compensation or sharable regular compensation because the payment was not consistent with the requirements of—

(i) Section 202(a)(3) of the Act, and § 615.8 (e), (f), or (g);

(ii) Section 202(a)(4) of the Act, and § 615.8(c); or

(iii) Section 202(a)(5) of the Act, and § 615.4(b);

(8) If the payment made was not sharable extended compensation or sharable regular compensation because there was not in effect in the State an Extended Benefit Period in accord with the Act and this Part; or

(9) For any week with respect to which the claimant was either ineligible for or not entitled to the payment.

(d) *Effectuating authorization for reimbursement.* (1) If the Department believes that reimbursement should not be authorized with respect to any payments made by a State that are claimed to be sharable compensation paid by the State, because the State law does not contain provisions required by the Act and this Part, or because such law is not interpreted or applied in rules, regulations, determinations or decisions in a manner that is consistent with those requirements, the Department may at any time notify the State agency in writing of the Department's view. The State agency shall be given an opportunity to present its views and arguments if desired.

(2) The Department shall thereupon decide whether the State law fails to include the required provisions or is not interpreted and applied so as to satisfy the requirements of the Act and this Part. If the Department finds that such requirements are not met, the Department shall notify the State agency of its decision and the effect thereof on the State's entitlement to reimbursement under this section and the provisions of section 204 of the Act.

(3) Thereafter, the Department shall not authorize any payment under paragraph (a) of this section in respect of any sharable regular or extended compensation if the State law does not contain all of the provisions required by sections 202 and 203 of the Act and this Part, or if the State law, rules, regulations, determinations or decisions are not consistent with such requirements, or which would not have been payable if the State law contained the provisions required by the Act and this Part or if the State law, rules, regulations, determinations or decisions had been consistent with such requirements. Loss of reimbursement for such compensation shall begin with the date the State law was required to contain such provisions, and shall continue until such time as the Department finds that such law, rules and regulations have been revised or the interpretations followed pursuant to such determinations and decisions have been overruled and payments are made or denied so as to accord with the Federal law requirements of the Act and this Part, but no reimbursement shall be authorized with respect to any payment that did not fully accord with the Act and this Part.

(4) A State agency may request reconsideration of a decision issued pursuant to paragraph (d)(2) above, within 10 calendar days of the date of such decision, and shall be given an opportunity to present views and arguments if desired.

(5) Concurrence of the Department in any State law provision, rule, regulation, determination or decision shall not be presumed from the absence of notice issued pursuant to this section or from a certification of the State issued pursuant to section 3304(c) of the Internal Revenue Code of 1986.

(6) Upon finding that a State has made payments for which it claims reimbursement that are not consistent with the Act or this Part, such claim shall be denied; and if the State has already been paid such claim in advance or by reimbursement, it shall be required to repay the full amount to the Department. Such repayment may be made by transfer of funds from the State's account in the Unemployment Trust Fund to the Extended Unemployment Compensation Account in the Fund, or by offset against any current advances or reimbursements to which the State is otherwise entitled, or the amount repayable may be recovered for the Extended Unemployment Compensation Account by other means and from any other sources that may be available to the United States or the Department.

(e) *Compensation under Federal unemployment compensation programs.* The Department shall promptly reimburse each State which has paid sharable compensation based on service covered by the UCFE and UCX Programs (Parts 609 and 614 of this chapter, respectively) pursuant to 5 U.S.C. Chapter 85, an amount which represents the full amount of such sharable compensation paid under the State law, or may make advances to the State. Such amounts shall be paid from the Federal Employees Compensation Account established for those programs, rather than from the Extended Unemployment Compensation Account.

(f) *Combined-wage claims.* If an individual was paid benefits under the Interstate Arrangement for Combining Employment and Wages (Part 616 of this

chapter) any payment required by paragraph (a) of this section shall be made to the States which contributed the wage credits.

(g) *Interstate claims.* Where sharable compensation is paid to an individual under the provisions of the Interstate Benefit Payment Plan, any payment required by paragraph (a) of this section shall be made only to the liable State.

**§ 615.15 Records and reports.**

(a) *General.* State agencies shall furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the Act and this Part.

(b) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the Extended Benefit Program as the Department requires, and will make all such records available for inspection, examination and audit by such Federal officials or employees as the Secretary or the Department may designate or as may be required by law.

(c) *Weekly report of Extended Benefit data.* Each State shall file with the Department within 10 calendar days after the end of each calendar week a weekly report entitled ETA 539, Extended Benefit Data. The report shall include:

(1) The data reported on the form ETA 539 for the week ending (date). Week-ending dates shall always be the Saturday ending date of the calendar week beginning at 12:01 a.m. Sunday and ending 12:00 p.m. Saturday.

(2)(i) The number of continued weeks claimed for regular compensation in claims filed during the week ending (date). The report shall include intrastate continued weeks claimed and interstate continued weeks claimed (taken as agent State) but shall exclude interstate continued weeks claimed (received as liable State) and continued weeks claimed for regular compensation filed solely under 5 U.S.C. Chapter 85; and

(ii) The report of the number of continued weeks claimed filed in the State for regular compensation shall not be adjusted for seasonality.

(3) The average weekly number of weeks claimed in claims filed in the most recent calendar week and the immediately preceding 12 calendar weeks.

(4) The rate of insured unemployment for the current 13-week period.

(5) The average of the rates of insured unemployment in corresponding 13-week periods in the preceding two years.

(6) The current rate of insured unemployment as a percentage of the average of the rates in the corresponding 13-week periods in the preceding two years.

(7) The 12 month average monthly employment covered by the State law for the first 4 of the last 6 complete calendar quarters ending prior to the end of the last week of the current 13-week period to which the insured unemployment data relate. Such covered employment shall exclude Federal civilian and military employment covered by 5 U.S.C. Chapter 85.

(8) The date that a State Extended Benefit Period begins or ends, or a report that there is no change in the existing Extended Benefit Period status.

(d) *Methodology.* The State agency head shall submit to the Department, for approval, the method used to identify and select the weeks claimed which are used in the determination of an "on" or "off" or "no change" indicator. Any change proposed in the method of identification and selection of such weeks claimed constitutes a new plan which must be submitted to and approved by the Department prior to implementing the new plan.

(Approved by the Office of Management and Budget under Control Number 1205–0028).

[FR Doc. 88–16518 Filed 7–22–88; 8:45 am]

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Part III

# Department of Health and Human Services

**Public Health Service**

**42 CFR Part 60**

**Health Education Assistance Loan Program; Notice of Proposed Rulemaking**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 60**

**Health Education Assistance Loan Program**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend existing regulations governing the Health Education Assistant Loan (HEAL) program to clarify the litigation requirement for all lenders and holders and to clarify the applicability of various sections of the HEAL regulations to the Student Loan Marketing Association (Sallie Mae). Since it was the Department's intent that all lenders and holders be subject to this requirement, this proposed rule would amend the language of the litigation provision to assure that all lenders and holders must litigate as part of their due diligence procedures.

**DATE:** Comments on this proposed rule are invited. To be considered, comments must be received by August 24, 1988.

**ADDRESSES:** Respondents should address written comments to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

**SUPPLEMENTARY INFORMATION:** On January 8, 1987, the Department published final regulations (52 FR 730) to improve the procedures at schools and lending institutions for making, servicing, and collecting HEAL loans and to clarify the rights and responsibilities of lenders, holders, schools, borrowers, and the Federal Government. Since publication of these regulations, there has been confusion regarding the applicability of the litigation requirement contained in § 60.35(c)(3) to HEAL lenders and holders. Some lenders and holders have attempted to interpret this requirement as not applying to them because of the wording of the provision. Since it was the Department's intent that all lenders and holders be subject to this requirement, this proposed rule would amend the language of the litigation provision to assure that all lenders and holders must litigate as part of their due diligence procedures. The litigation provision would also be amended to include criteria for lenders and holders to follow in determining when litigation is required.

There has also been confusion regarding the applicability to Sallie Mae of certain regulatory provisions. This confusion has arisen as a result of Sallie Mae's unique position in the HEAL program. Under the HEAL statute, Sallie Mae is not included in the definition of an eligible HEAL lender, but is authorized to purchase, service, and sell loans insured by the Secretary under the HEAL program. This makes Sallie Mae the only organization included under sections 727–739 of the Public Health Service (PHS) Act which is not authorized to originate HEAL loans but is authorized to buy and hold them. We note that a HEAL loan, by statute, can only be sold to an eligible HEAL lender or to Sallie Mae.

Sallie Mae's exclusion from the definition of eligible lenders in the HEAL statute has caused misunderstandings regarding whether certain regulatory provisions addressed to lenders apply to Sallie Mae as well. Therefore, these proposed regulatory amendments are designed to clarify the applicability to Sallie Mae of the sections of the HEAL regulations discussed below. The Department notes that Sallie Mae has been cooperating in efforts to resolve the applicability of the existing litigation provision.

*Section 60.31 The application to be a HEAL lender*

The Department is proposing to amend paragraph (a) of this section to state that, to be a lender or a holder of HEAL loans, an organization must submit an application to the Secretary annually. This change would extend the existing requirement for an annual application to include holders, such as Sallie Mae, as well as lenders

*Section 60.32 The HEAL lender insurance contract*

The Department is proposing to amend paragraph (a) of this section to clarify that a holder of HEAL loans must be approved by and sign a contract with the Secretary. This requirement already exists for lenders, and is being extended to include holders.

The Department is also proposing to add a new paragraph (d) to this section to state that any holder that is not also a lender must enter into a contract with the Secretary annually to hold HEAL loans. Annual contracts are already required for HEAL lenders.

*Section 60.35 HEAL loan collection*

The Department is proposing to amend paragraph (c)(3) of this section to clarify that all lenders and holders are required to use litigation in the collection of HEAL loans, and to clarify when litigation must be used. The existing regulatory language, which requires litigation in accordance with the procedures a lender uses in the collection of its other loans of comparable dollar value, has caused confusion because lenders consider HEAL loans unique and have asserted that it is difficult to identify other loans that are of "comparable dollar value." This provision has also had the unintended effect of excluding one HEAL loan holder from the litigation requirement since that holder has informed the Department that it never utilizes litigation in the collection of any of its other loans.

The Department did not intend to exclude any lender or holder from this important step of the due diligence process, and is proposing to revise this section to clarify that a lender's or holder's collection practices for HEAL loans must include the use of litigation, after collection attempts have failed, except in the following situations:

(1) The lender or holder, despite the use of skip-tracing procedures, is unable to locate a defaulted borrower and is therefore unable to effect service upon the borrower;

(2) The total HEAL debt, including interest and late charges, is less than $1,500, unless the lender or holder has a policy or practice of litigating loan amounts of less than $1,500, in which case the Secretary may require the lender or holder to follow the same policy or practice regarding HEAL loans; or

(3) The lender or holder reasonably determines, and the Secretary concurs, that the probable expense to it of suing a defaulted borrower will be equal to or greater than the probable recovery of the debt during the period of a judgment. In this case, the lender or holder would be required to note the basis for its determination of the probable expense and recovery in the documentation submitted with the claim, and compare it to the normal commerical standards regarding expenses of litigation and probable recovery.

The Department is proposing to exclude loans with a value of less than $1,500 from the litigation requirement since it believes that the costs of litigating in these cases would be overly burdensome to the lender or holder compared with the expected return. The proposal to require a lender or holder to compare the probable expense of litigation with the probable recovery during the period of a judgment is designed to assure that a borrower's future earning potential is evaluated in determining whether to litigate. This provision should allow exceptions to the litigation requirement when it is unlikely that the borrower's financial situation will improve in the future, while requiring litigation in those cases where a borrower's ability to repay can be expected to improve over time.

These proposed exceptions do not mean that the Department itself will not pursue these debts after paying the claims. Indeed, the Department's policy is to pursue recovery on *all* debts which it receives through assignment. Accordingly, it is important to emphasize that payment by the Department of a claim to the lender or holder does not alter the student's obligation to repay the full amount owed under the HEAL program.

The Department is also proposing to clarify in this section that a lender or holder may satisfy its obligation to litigate by obtaining a judgment against a defaulted borrower and recording that judgment. Upon obtaining and recording such a judgment, the lender or holder must either pursue collection of the judgment or assign the judgment to the Secretary. This provision recognizes that, since the lender or holder will bear the costs of litigation if it is not able to collect from the borrower, the lender or holder may want to minimize these costs by assigning the judgment to the Department immediately. The Department believes that, even without further effort on the part of lenders or holders, the obtaining of a judgment prior to the filing of a default claim will serve to reduce defaults and will thus benefit the HEAL program. However, the Department also does not want to prohibit lenders or holders from pursuing collection of a judgment where they believe that payment will be forthcoming as a result of the legal proceedings. Therefore, this provision is designed to give a lender or holder flexibility in determining whether to continue its collection efforts after obtaining a judgment or to immediately assign the judgment to the Department.

It has been the Department's intent, in developing the litigation provision, that the use of litigation by all lenders and holders would be an effective deterrent to default and would reduce unnecessary expenditures from the Student Loan Insurance Fund (SLIF). Should the Department find, after additional experience with this provision, that the litigation requirement needs further restructuring to be most effective in preventing default or reducing SLIF expenditures, this provision may be reexamined.

*Section 60.40 Procedures for filing claims*

The Department is proposing to add a new paragraph (c)(1)(ii) to this section to clarify the time frames for filing a claim when the lender or holder has sued a defaulted borrower. This paragraph would explain that the lender or holder must file its claim with the Department within 30 days of obtaining the judgment if it does not pursue collection of the judgment. If the lender or holder does pursue collection of the judgment, and the debtor fails to make payment pursuant to the judgment, the lender or holder must file its claim within 120 days after the debtor's failure to make payment. These time frames are consistent with those applicable to the filing of default claims for which litigation is not required.

The Department is also proposing to clarify in this section that when a lender or holder files a default claim for which litigation was required, the lender or holder must assign the judgment to the Secretary as part of the default claim. Although this is already required for the Department to be able to pursue collection of a judgment after a default claim is paid, it is not specifically stated in the existing regulations.

*Section 60.41 Determination of amount of loss on claims*

The Department is proposing to add a new paragraph (d) to this section to clarify how claims will be paid when litigation has been required. Subparagraph (1) addresses the amount of the payment on a claim when the lender or holder has agreed to accept less than the unpaid balance of principal and interest on a HEAL loan through entering into a stipulated or consent judgment. In any such case, the amount payable on the default claim will be limited to the judgment amount. This will ensure that the Department will not be obligated to pay more on a default claim than it legally will be able to collect from the borrower, in cases where the lender or holder voluntarily agreed to the lesser amount.

Subparagraph (2) deals with situations where the lender or holder does not prevail in court or is awarded a judgment in an amount which is less than the unpaid balance of principal and interest on a HEAL loan, due to circumstances not within the control of the lender or holder (or a prior holder of the loan) and not due to negligence on the part of the lender or holder (or a prior holder of the loan). In these cases, the Department will pay the lender or holder the unpaid balance of principal and interest on the HEAL loan, provided that the claim would otherwise qualify for payment and that the lender or holder has filed by the due date a notice of appeal. In this instance, the lender or holder must file the claim with the Secretary within 10 days of receiving the adverse decision. This provision is designed to protect the lender or holder from having to absorb the loss of principal and interest that would otherwise be paid to it had the court ruled in the lender's or holder's favor, and that was not lost due to any fault on the part of the lender or holder.

**Regulatory Flexibility Act and Executive Order 12291**

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal in comparison to the overall resources of lenders and holders. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders or holders.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

**Paperwork Reduction Act of 1980**

These proposed regulations do not affect the recordkeeping, reporting, or disclosure/notification requirements for the HEAL program.

**List of Subjects in 42 CFR Part 60**

Educational study programs, Medical and dental schools, Health professions, Reporting requirements, Loan programs-education, Student aid, Loan programs-health.

Accordingly, the Department of Health and Human Services proposes to amend 42 CFR Part 60 as follows:

BEST COPY AVAILABLE

Dated: March 25, 1988.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: May 20, 1988.

**Otis R. Bowen,**

*Secretary.*

(*Catalog of Federal Domestic Assistance*, No. 13.108, Health Education Assistance Loan Program)

## PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for Part 60 continues to read as follows:

**Authority:** Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sections 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 90 Stat. 529–532 (42 U.S.C. 294–1941).

2. Section 60.31 is amended by revising the heading of the section and paragraph (a) to read as follows:

### § 60.31 The application to be a HEAL lender or holder.

(a) In order to be a HEAL lender or holder, an eligible organization must submit an application to the Secretary annually.

* * * * *

3. Section 60.32 is amended by revising the heading of the section and paragraph (a) and adding a new paragraph (d) to read as follows:

### § 60.32 The HEAL lender or holder insurance contract.

(a) (1) If the Secretary approves an application to be a HEAL lender or holder, the Secretary and the lender or holder must sign an insurance contract. Under this contract, the lender or holder agrees to comply with all the laws, regulations, and other requirements applicable to its participation in the HEAL program and the Secretary agrees to insure each eligible HEAL loan held by the lender or holder against the borrower's default, death, total and permanent disability, or bankruptcy. The Secretary's insurance covers 100 percent of the lender's or holder's losses on both unpaid principal and interest, except to the extent that a borrower may have a defense on the loan other than infancy.

(2) HEAL insurance, however, is not unconditional. The Secretary issues HEAL insurance on the implied representations of the lender or holder that all the requirements for the initial insurability of the loan have been met. HEAL insurance is further conditioned upon compliance by the lender and any subsequent holder of the loan with the HEAL statute and regulations, the insurance contract, and its own loan management procedures set forth in writing pursuant to § 60.31(c). The contract may contain a limit on the duration of the contract and the number or amount of HEAL loans a lender may make or a lender or holder may hold. Each HEAL lender or holder has either a standard insurance contract, a comprehensive insurance contract, or an insurance contract to hold HEAL loans with the Secretary, as described below.

* * * * *

(d) *Contract to hold HEAL loans.* An eligible holder of HEAL loans which is not also a lender must enter into an annual contract with the Secretary to hold HEAL loans. This contract will specify the holder's authority and responsibilities under the HEAL statute and regulations.

4. Section 60.35 is amended by revising paragraph (c)(3) to read as follows:

### § 60.35 HEAL loan collection.

* * * * *

(c) * * *

(3) The use of litigation, after collection attempts have failed, except in the following situations:

(i) The lender or holder, despite the use of skip-tracing procedures, as required in paragraph (a)(2) of this section, is unable to locate a defaulted borrower and is therefore unable to effect service upon the borrower;

(ii) The total HEAL debt owed to the lender or holder by a defaulted borrower, including interest and late charges, is less than $1,500, unless the lender or holder has a policy or practice of litigating loan amounts of less than $1,500, in which case the Secretary may require the lender or holder to follow the same policy or practice regarding HEAL loans; or

(iii) The lender or holder determines, and the Secretary concurs, that the probable expense to it of suing a defaulted borrower will be equal to or greater than the probable recovery of the debt during the period of a judgment. In this case, the lender or holder shall note the basis for its determination of the probable expense and recovery in the documentation submitted with the claim, and compare its determination to normal commercial experience with litigation expense and probable recovery.

A lender or holder will be deemed to have satisfied its duty to litigate, if it obtains a judgment from a court of competent jurisdiction against the defaulted borrower and records that judgment with the appropriate State or local governmental entity. Upon obtaining and recording such a judgment, the lender or holder must either pursue collection of the judgment or, within 30 days of obtaining the judgment, assign the judgment to the Secretary.

* * * * *

5. Section 60.40 is amended by redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as (c)(1)(iii), and (c)(1)(iv) respectively, and adding new paragraph (c)(1)(ii) to read as follows:

### § 60.40 Procedures for filing claims.

* * * * *

(c) * * *

(1) * * *

(ii) If a lender or holder files suit against a defaulted borrower pursuant to § 60.35(c)(3), and pursues collection of the judgment obtained as a result of the suit, it may retain the account. However, if the debtor fails to make payment pursuant to the judgment, the lender or holder must file a default claim with the Secretary within 120 days after the debtor's failure to make payment. Except as provided for in § 60.41(d)(2), if a lender or holder files suit against a defaulted borrower pursuant to § 60.35(c)(3), and obtains a judgment against that borrower, but does not pursue collection of that judgment, then it must file a default claim with the Secretary within 30 days of obtaining the judgment. In either of these cases, the lender or holder must assign the judgment to the Secretary as part of the default claim.

* * * * *

6. Section 60.41 is amended by redesignating paragraphs (d) and (e) as (e) and (f) respectively and adding new paragraph (d) to read as follows:

### § 60.41 Determination of amount of loss on claims.

* * * * *

(d) *Special rules for loans which have been subject to litigation.*

(1) In the course of discharging its collection and litigation duties under these rules, a lender or holder may settle or otherwise compromise a claim against a defaulted borrower for an amount less than the unpaid balance of the principal and interest on a HEAL loan. In such instances, the amount due under the settlement agreement must be incorporated into a stipulated judgment and the amount payable to the lender or holder from the Secretary on the default claim will be limited to the unliquidated portion of that stipulated judgment. In no event, however, will the amount payable to the lender or holder from the Secretary exceed the amount of the stipulated judgment.

(2) If a lender or holder should not prevail in any litigation undertaken

pursuant to § 60.35(c)(3) or should be awarded a judgment at an amount less than the unpaid balance of principal and interest on a HEAL loan, due to circumstances not within the control of the lender or holder (or a prior holder of the loan) and not due to negligence on the part of the lender or holder (or a prior holder of the loan), the lender or holder may file a default claim with the Secretary and such claim shall be paid, provided that the claim would otherwise qualify for payment and that the lender or holder has filed by the due date a notice of appeal. In this instance, the lender or holder must file the claim with the Secretary within 10 days of receiving the adverse decision.

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[FR Doc. 88-16674 Filed 7-22-88; 8:45 am]
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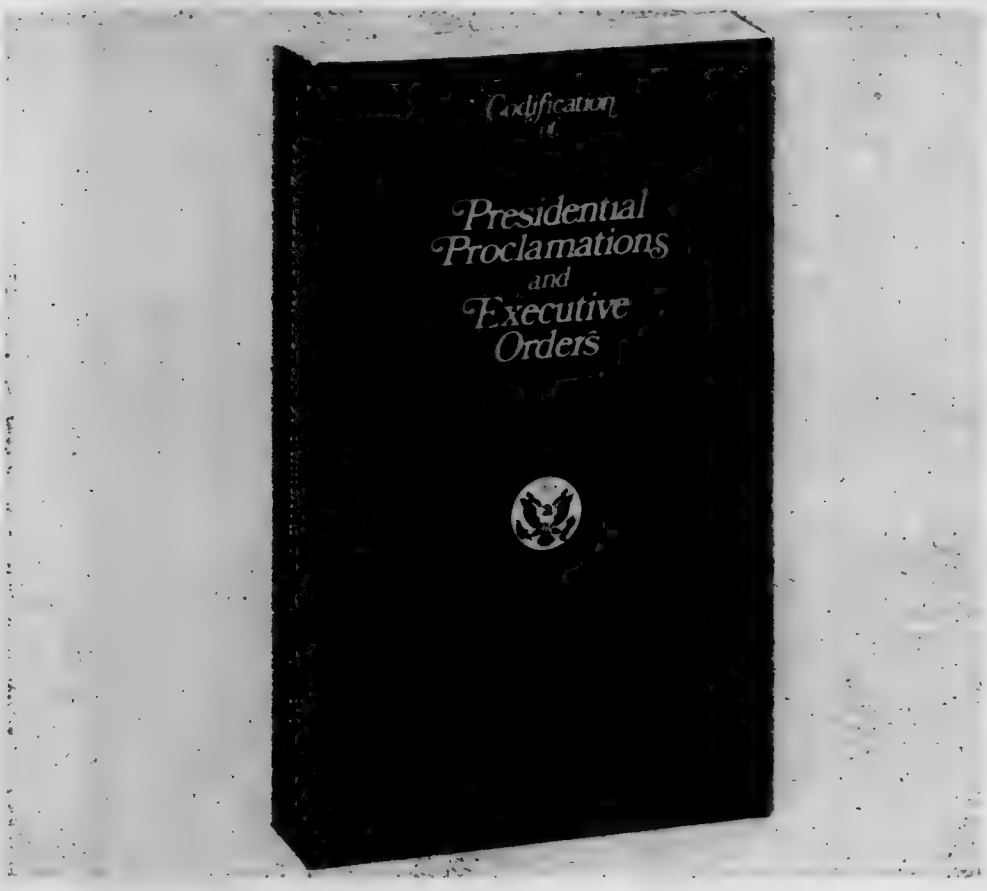


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# Rules and Regulations

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 319**

**[Docket No. 88-102]**

## Importation of Apples, Peaches, and Citrus from Sonora

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the Fruits and Vegetables regulations by removing Guaymas from the list of definite areas in Sonora, Mexico determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches and tangerines may be imported without treatment for these pests. This action is necessary to prevent the introduction into the United States of injurious insects.

**DATES:** Interim rule effective July 20, 1988. Consideration will be given only to comments postmarked or received on or before September 26, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090-6464. Please state that your comments refer to Docket Nunber 88-102. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

**SUPPLEMENTARY INFORMATION:**

### Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Section 319.56-2(h) of the regulations allows apples, grapefruit, oranges, peaches and tangerines to be imported from certain municipalities in Sonora, Mexico (Altar, Atil, Coborca, Carbo, Empalme, Guaymas, Hermosillo, Pitiquito, Puerto Penasco, and San Miguel), without treatment for five fruit flies known to occur in Mexico (*Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua, and A. fraterculus*).

Section 319.56-2(f) allows a municipality to be listed in § 319.56-2(h) only if surveys show it to be free from infestations of these insect pests. We have received reports from Animal and Plant Health Inspection Service inspectors confirming that, as of May 6, 1988, an infestation of *Anastrepha ludens* exists in the municipality of Guaymas. Therefore, we are removing Guaymas, Sonora, Mexico from the list of municipalities in § 319.56 2(h).

### Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of injurious insects into the United States.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action will prevent the importation of apples, grapefruit, oranges, peaches, and tangerines from Guaymas into the United States, unless they are treated for the five listed fruit flies. This change should have no effect on small entities since no commercial shipments of such fruit have been moving from Guaymas to the United States, and there are no planned commercial shipments of such fruit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 7 CFR Part 319**

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

**PART 319—FOREIGN QUARANTINE NOTICES**

Accordingly, 7 CFR Part 319 is amended as follows:

1. The authority citation for Part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff; 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 319.56–2 [Amended]**

2. In § 319.56–2 paragraph (h) is amended by removing "Guaymas,".

Done at Washington, DC, this 20th day of July, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16821 Filed 7–25–88; 8:45 am]

BILLING CODE 3410-34-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88–NM–86–AD; Amdt. 39–5985]**

**Airworthiness Directives: Boeing Model 747 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection of trailing edge flap tracks for cracking, and repair, if necessary. This amendment is being issued to include additional inspection requirements for flap tracks Numbers 1 through 8. This amendment is prompted by a recent flap track failure which occurred shortly after the track was inspected visually in accordance with the existing AD. Cracking could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

**EFFECTIVE DATE:** August 15, 1988.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** On April 17, 1987, the FAA issued AD 84–19–02–R4, Amendment 39–5612 (52 FR 13632; April 24, 1987), which requires visual inspection for cracking of the flap tracks Numbers 1 through 8, and repair of cracked parts, if necessary. Recently, at 145 landings since the last visual inspection, a Number 3 flap track on a Boeing Model 747 series airplane failed at the forward most fastener hole common to the fail-safe bar. This indicates that the currently required visual inspection apparently is not adequate to detect a crack before it becomes critical. Cracks, if allowed to progress undetected, could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2229, Revision 5, dated June 2, 1988, which describes a procedure for ultrasonic inspection of the area adjacent to the first four fastener holes from the forward end of flap tracks Number 1 through 8, and repair, as necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, this action supersedes AD 84–19–02–R4 with a new AD to require visual and ultrasonic inspections of the trailing edge flap tracks for cracks, and repair, if necessary, in accordance with the Boeing Alert Service Bulletin described above.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By superseding AD 84–19–02, Amendment 39–4917 (49 FR 36819; September 20, 1984), as amended by Amendments 39–5314 (51 FR 18308; May 19, 1986), 39–5466 (51 FR 40969; November 12, 1986), 39–5587 (52 FR 5531; February 25, 1987), and 39–5612 (52 FR 13632; April 24, 1987), with the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747–57A2229, Revision 5, dated June 2, 1988, certificated in any category, that have reworked or interim production flap tracks (part numbers identified in the service bulletin). Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flap tracks, accomplish the following:

A.1. Within the next 50 landings after the effective date of this AD, unless accomplished within the last 250 landings, and at intervals thereafter not to exceed 300 landings, visually and ultrasonically inspect the lower flanges and vertical webs at the front end of the Numbers 1 through 8 flap tracks for cracks adjacent to bolts Numbers 1 through 4, in accordance with the procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 5, dated June 2, 1988.

2. Replace cracked flap tracks prior to further flight in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986.

B. Within the next 50 landings after the effective date of this AD, unless accomplished within the past 950 landings, and at intervals thereafter not to exceed 1,000 landings, visually inspect the Numbers 1 through 8 flap track webs for cracks extending from all fastener holes not inspected under paragraph A.1., above, in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986. Cracked parts must be replaced prior to further flight.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This supersedes AD 84–19–02, Amendment 39–417, as amended by Amendments 39–5314, 39–5466, 39–5567, and 39–5612.

This amendment becomes effective August 15, 1988.

Issued in Washington, DC, on July 20, 1988.

**Thomas E. McSweeny,**

*Acting Director, Office of Airworthiness.*

[FR Doc. 88–16813 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 88–ASO–7]**

## Cancellation of Transition Area, Winchester, KY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment cancels the existing transition area, Winchester, Kentucky. This action will lessen the burden on the public by raising the floor of controlled airspace from 700' to 1200' above the surface in this particular area. The transition area was established to afford airspace protection for a special instrument approach procedure to the Codell Airport. The special instrument approach procedure was for the exclusive use of the airport owner/operator. The airport owner/operator has requested the instrument approach procedure be cancelled. Therefore, a need no longer exists for the transition area.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

### The Rule

This amendment to Part 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to cancel the Winchester, Kentucky, transition area and raise the floor of controlled airspace from 700' to 1200' above the surface in the vicinity of the Codell Airport.

Because this change reduces the burden on the public and is so minor, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

### §71.181 [Amended]

2. Section 71.181 is amended as follows:

Winchester, KY [Removed].

Issued in East Point, Georgia, on June 24, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 88–16807 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 520 and 556

## Animal Drugs, Feeds, and Related Products; Ivermectin Drench

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories, providing for safe and effective oral use of Ivomec® (ivermectin) 0.08 percent sheep drench for treatment and control of certain species of gastrointestinal roundworms, lungworms, and bots. The regulations are also amended to establish a tolerance and safe concentrations for drug residues in edible sheep tissue.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

**SUPPLEMENTARY INFORMATION:** Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, has filed NADA 131–392 providing for oral use of

Ivomec® (ivermectin) 0.08 percent drench for treatment and control of certain species of gastrointestinal roundworms, lungworms, and nasal bots. The NADA is approved. The regulations are amended to reflect the approval and to establish a tolerance for the marker residue and safe concentrations for total residues of ivermectin in edible sheep tissue. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

**List of Subjects**

*21 CFR Part 520*

Animal drugs.

*21 CFR Part 556*

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520 and 556 are amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding new § 520.1194 to read as follows:

**§ 520.1194 Ivermectin drench.**

(a) *Specifications.* Each milliliter of 0.08 percent (weight per volume) micellar solution contains 0.08 milligram of ivermectin.

(b) *Sponsor.* See No. 000006 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.344 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 3.0 milliliters (2.4 milligrams of ivermectin) per 26 pounds of body weight (or 200 micrograms per kilogram of body weight).

(2) *Indications for use.* It is used in sheep for treatment and control of the adult and fourth-stage larvae of the following parasites of sheep: gastrointestinal roundworms (*Haemonchus contortus, H. placei* (adults only), *Ostertagia circumcincta, Trichostrongylus axei, T. Colubriformis, Cooperia oncophora* (adults only), *C. curticei, Oesophagostomum columbianum, O. venulosum* (adults only), *Nematodirus battus, N. spathiger, Strongyloides papillosus* (adults only), *Chabertia ovina* (adults only), *Trichuris ovis* (adults only)), lungworms (*Dictyocaulus filaria*); and all larval stages of the nasal bot *Oestrus ovis.*

(3) *Limitations.* It is used as a drench in sheep only. Do not treat sheep within 11 days of slaughter. Do not use in other animal species as severe adverse reactions, including fatalities in dogs, may result. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

## PART 555—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. Section 556.344 is being amended by adding new paragraph (c) to read as follows:

**§ 556.344 Ivermectin.**

* * * * *

(c) *Sheep.* The marker residue used to monitor the total residues of ivermectin in sheep is 22,23-dihydro-avermectin $B_{1a}$ ($H_2B_{1a}$). The target tissues selected is liver. A tolerance is established for $H_2B_{1a}$ in sheep of 30 parts per billion in liver. A marker residue concentration of 30 parts per billion in liver corresponds to a concentration for total residues of ivermectin of 125 parts per billion in liver. The safe concentrations for total residues of ivermectin in uncooked edible tissues of sheep are 25 parts per billion in muscle and 125 parts per billion in liver, kidney, and fat.

Dated: July 19, 1988.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 88–16775 Filed 7–25–88; 8:45 am]

BILLING CODE 4160–01–M

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**21 CFR Part 558**

## New Animal Drugs For Use In Animal Feeds; Melengestrol Acetate With Lasalocid

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by the Upjohn Co., providing for use of a combination melengestrol acetate with lasalocid Type B feed to make a Type C medicated feed for feedlot heifers. The Type C feed is used for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat) in heifers fed in confinement for slaughter.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

**SUPPLEMENTARY INFORMATION:** The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA's 139–876 and 140–288 to provide for use of a combination drug Type B feed containing melengestrol acetate with lasalocid sodium to make Type C feeds for feedlot heifers. Use of single drug Type B feeds to make Type C feeds was previously approved in NADA 139–876 (using drug feeds) and NADA 140–288 (using liquid feeds) (see 52 FR 33803; September 8, 1987). The Type C feed contains 10 to 30 grams of lasalocid sodium activity per ton and 0.25 to 2.0 grams of melengestrol acetate per ton. The drug combination is for increased rate of weight gain, improved feed efficiency, and suppression of estrus in heifers being fed in confinement for slaughter.

The supplemental NADA's are approved and the regulation in § 558.342(c)(3)(ii) is amended to reflect the approvals.

Approval for the use of a combination drug Type B feed instead of previously approved single drug Type B feeds to make approved combination drug Type C feeds does not require added safety and effectiveness data. Therefore, a freedom of information (FOI) summary is not required.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.342 is being amended by revising paragraph (c)(3)(ii) to read as follows:

**§ 558.342 Melengestrol acetate.**

* * * * *

(c) * * *

(3) * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter. Withdraw melengestrol acetate 48 hours prior to slaughter. Lasalocid sodium as provided by No. 000004 in § 510.600(c) of this chapter.

Dated: July 19, 1988.

**Richard A. Carnevale,**

*Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 88-16774 Filed 7-25-88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

### Occupational Exposure to Ethylene Oxide; Approval of Information Collection Requirements; Effective Date

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of approval of information collection requirements; amendment of effective date of information collection requirements.

**SUMMARY:** On April 6, 1988, the Occupational Safety and Health Administration (OSHA) published an amendment (53 FR 11414) to the standard for ethylene oxide (EtO) (29 CFR 1910.1047), adding an excursion limit. The information collection requirements contained in the amendment were transmitted to the Office of Management and Budget (OMB) for review and clearance, in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and 5 CFR Part 1320. At the same time, extension of clearance for information collection requirements found in the existing EtO standard was also requested.

All information requirements contained in § 1910.1047 including the new requirements in paragraphs (a)(2), (d), (f)(2), (g)(3), and (j), have now received OMB paperwork clearance under OMB clearance number 1218–0108. The OMB clearance expires May 31, 1991. This rule announces the effective and compliance dates for those requirements.

**EFFECTIVE DATES:** Paragraphs (a)(2), (d), (f)(2), (g)(3), and (j) of § 1910.1047 which contain information collection requirements pertinent to the excursion limit are effective August 25, 1988. Start-up dates for compliance with these requirements are extended from September 6, 1988 to October 6, 1988. The amendment to § 1910.1047(m) is effective July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N–3649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

**SUPPLEMENTARY INFORMATION:** OSHA published a proposed amendment to the rule on EtO on January 21, 1988 (53 FR 1724) and adopted the final amendment on April 6, 1988 (53 FR 11414). The final amendment, which added an excursion limit and related provisions to the standard, contained the following paragraphs which were determined by OMB to constitute additional information collection requirements, related to the new excursion limit, under the Paperwork Reduction Act: (a)(2), Objective data exclusion; (d) Exposure monitoring; (f)(2), Compliance program; (g)(3) Respirator program; and (j), Communication of EtO hazards to employees.

Paragraph (m)(1)(ii) of the final amendment provided for an effective date of June 6, 1988. Paragraph (m)(2)(iii) established a start-up date for compliance with all new excursion limit requirements, except engineering controls, by September 6, 1988. The start-up date for implementation of engineering controls was established by paragraph (m)(2)(iii) to be December 6, 1988.

However, as noted in the final rule at 53 FR 11414, the information collection provisions associated with adoption of the excursion limit had not been cleared by OMB at that time. Accordingly, the effective dates for those requirements in the final EtO amendment have remained in abeyance pending OMB paperwork clearance. OMB has now cleared the new information collection requirements contained in § 1910.1047 under clearance number 1218–0108, through May 31, 1991. Clearance number 1218–0108, which covered the EtO standard prior to the excursion limit rulemaking, now covers the amended standard as well. A reference to that clearance already is included at the end of § 1910.1047 in the Code of Federal Regulations and no change in that reference is necessary.

In accordance with that clearance, OSHA is hereby amending paragraph (m)(1)(ii) of the final EtO standard to establish a new effective date of August 25, 1988, for the excursion limit provisions of paragraphs (a)(2), (d), (f)(2), (g)(3), and (j).

Because of the delay in the effective date of the above noted excursion limit-related provisions, OSHA is also amending paragraph (m)(2)(iii) to provide an additional month delay in the start-up dates of those provisions. That is, the start-up date for paragraphs (a)(2), (d), (f)(2), (g)(3), and (j), as they apply to the excursion limit, is being extended from September 6, 1988, to October 6, 1988. Paragraphs not requiring OMB clearance went into effect on June 6, 1988 and, with the exception of implementation of engineering controls required by paragraph (f)(1), have a start-up date of September 6, 1988. These paragraphs include compliance with the 5 ppm excursion limit (paragraph (c)), institution of work practice controls (paragraph (f)(1)), and provision for and selection of respirators (paragraphs (g)(1) and (g)(2)). The start-up date for implementation of engineering controls specified in paragraph (f)(1) is December 6, 1988.

**Authority**

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of

1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 3576) and 29 CFR Part 1911.

**List of Subjects in 29 CFR Part 1910**

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC, this 19th day of July 1988.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

**PART 1910—[AMENDED]**

1. The authority citation for Subpart Z of 29 CFR Part 1910 continues, in pertinent part, to read as follows:

**Authority:** Secs. 6 and 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

* * * * *

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

2. By revising paragraphs (m)(1)(ii) and (m)(2)(iii) of § 1910.1047 to read as follows:

**§ 1910.1047 Ethylene oxide.**

(m) * * *

(l) * * *

(ii) The requirements in this section which pertain only to or are triggered by the excursion limit shall become effective June 6, 1988, except for the excursion limit provisions in paragraphs (a)(2), (d), (f)(2), (g)(3) and (j) of this section which shall become effective August 25, 1988.

(2) * * *

(iii) Compliance with the requirements in this section which pertain only to or are triggered by the excursion limit shall be by September 6, 1988, except for compliance with the excursion limit provisions of paragraphs (a)(2), (d), (f)(2), (g)(3), and (j) of this section, which shall be by October 6, 1988, and implementation of engineering controls specified for compliance with the excursion limit, which shall be by December 6, 1988.

[FR Doc. 88–16667 Filed 7–25–88; 8:45 am]

BILLING CODE 4510–26–M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

**[DoD 6010.8–R, Amdt. No. 11]**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); The Military-Civilian Health Services Partnership Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises DoD 6010.8–R (32 CFR Part 199), to incorporate revisions resulting from section 1096, Chapter 55, title 10, United States Code, which establishes a Military-Civilian Health Services Partnership Program. Under this program, CHAMPUS beneficiaries can receive inpatient and outpatient care from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. Combining military and civilian health care resources is expected to best utilize available facilities and staff, to provide increased access to health care and to reduce individual incident cost for the CHAMPUS beneficiary and program cost fo the Government.

**EFFECTIVE DATE:** This rule is retroactively effective to February 1, 1988.

**ADDRESS:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Sabo, Office of Program Development, OCHAMPUS, telephone (303) 361–4014.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

**I. Background**

On January 25, 1988 (53 FR 1927), we published a proposed rule announcing the Military-Civilian Health Services Partnership Program. The Department of Defense Authorization Act for Fiscal Year 1987 contains a provision that permits the sharing of staff, equipment, and resources between the civilian and military health care systems in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. The sharing agreements authorized under section 1096, Chapter 55, Title 10, United States Code, provide for the sharing of personnel, including support personnel, equipment, supplies, and any other item or facility necessary for the provision of health care services. The provider must be otherwise authorized under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The authorized provider must bill for the services rendered by any support personnel and related supplies, equipment, and other resources. Such charges represent an overhead expense incurred by the provider in his or her professional practice. The services rendered by support personnel must be otherwise covered under CHAMPUS and not of a type usually performed only by a physician or other authorized provider, e.g., minor surgery performed by a physician assistant would be excluded even if performed under the direct supervision of a physician.

For care rendered by a civilian health care provider in a military treatment facility, the beneficiary's cost-share is the same as that for military treatment facility patients under the care of a military health care provider. Care received in a civilian facility will continue to be cost-shared under the normal CHAMPUS cost-sharing provisions.

The Secretary of Defense has issued implementing instructions for the Partnership Program specifically designating individual commanders of military treatment facilities, through their respective Surgeons General of the military departments, as responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical to the Government than referring the need for health care services to the civilian community under the normal operation of CHAMPUS.

There are two types of partnership agreements—the external and internal. The external agreement is between a military treatment facility and a CHAMPUS authorized institution, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be paid through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under

the basic CHAMPUS. Savings will be realized under this type agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

The internal agreement permits the use of authorized CHAMPUS civilian health care providers and other resources under their supervision to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS. Beneficiary cost-share under internal agreements is the same as charges prescribed for care in military treatment facilities. Currently, there are no charges for outpatient care provided in military treatment facilities, and there are no charges for inpatient care provided to retired enlisted members of the uniformed services. All other CHAMPUS beneficiaries are charged a nominal daily rate for inpatient care as prescribed by the Secretary of Defense.

## II. Discussion of Comments

We received one public (external) comment, and that comment was supporting the program and the sharing of staff, equipment and resources between civilian and military health care systems. We also received a few internal comments (coordination with Government agencies). One commenter nonconcurred on the basis that the proposed rule would allow for reimbursement for professional charges in excess of the 80th percentile, conflicting with section 8020 of the Appropriation Act. Because of this conflict, we have revised the rule to limit reimbursement to the 80th percentile of billed charges, consistent with the law and with reimbursement for other CHAMPUS providers. The remaining comment was of an editorial nature, requesting deletion of a misleading sentence in the supplementary information. That sentence does not appear in the final rule.

## III. Regulatory Impact

We feel that the final rule will not have a significant economic impact on a substantial number of small entities. Its impact will be limited to catchment areas, which is the geographic area of approximately 40 miles in radius surrounding U.S. medical treatment facilities. The impact within the catchment area will be further limited to specifically identified categories of care determined to be necessary to ensure optimal utilization of government resources in the most effective, efficient and economical manner. The impact of the program is primarily that of increasing availability of health care services to CHAMPUS beneficiaries. Beneficiaries will be encouraged, but not required, to use the services available under the partnership agreements. No additional requirements for approval as an authorized provider will be imposed. The Partnership Program provides an equal opportunity for any authorized provider to enter into a voluntary agreement, taking into account the needs of, and staffing shortages at, the particular military treatment facility. It does not restrict access to any provider by any beneficiary. Accordingly, the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

## List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Part 199, is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 10 U.S.C. 1079, 1086, 1096, 5 U.S.C. 301.

2. Section 199.1(p) is redesignated as § 199.1(q).

3. Add a new paragraph (p) to § 199.1 to read as follows:

### § 199.1 General provisions.

* * * * *

(p) *Military-Civilian Health Services Partnership Program.* The Secretary of Defense, or designee, may enter into an agreement (external or internal) providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers if the Secretary determines that such an agreement would result in the delivery of health care in a more effective, efficient or economical manner. This partnership allows CHAMPUS beneficiaries to receive inpatient and outpatient services through CHAMPUS from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. The policies and procedures by which partnership agreements may be executed are set forth in Department of Defense Instruction (DoDI) 6010.12, "Military-Civilian Health Services Partnership Program." The Director, OCHAMPUS, or a designee, shall issue policies, instructions, procedures, guidelines, standards, or criteria as may be necessary to provide support for implementation of DoDI 6010.12, to promulgate and manage benefit and financial policy issues, and to develop a program evaluation process to ensure the Partnership Program accomplishes the purpose for which it was developed.

(1) *Partnership agreements.* Military treatment facility commanders, based upon the authority provided by their representative Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. All such agreements are subject to the review and approval of the Director, OCHAMPUS, or designee, and the appropriate Surgeon General.

(i) *External Partnership Agreements.* The external Partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-auhorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS. Savings will be realized under this type of agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

(ii) *Internal Partnership Agreements.* The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-authorized civilian health care provider which enables the use of civilian health

care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS.

(2) *Beneficiary Cost-Sharing.* Beneficiary cost-sharing under the Partnership Program is outlined in § 199.4(f)(5) of this part.

(3) *Reimbursement.* Reimbursement under the Partnership Program is outlined in § 199.14(f) of this part.

(4) *Beneficiary Eligibility and Authorized Providers.* Existing requirements of this Regulation remain in effect as concerns beneficiary eligibility and authorized providers.

(5) *Range of Benefits.* Health care services provided CHAMPUS beneficiaries under the terms of the Partnership Program must be consistent with the CHAMPUS range of benefits outlined in this Regulation. The services rendered must be otherwise covered. Charges allowed for professional services provided under the Partnership Program may include costs of support personnel, equipment, and supplies when specifically outlined in the partnership agreement, However, all CHAMPUS coverage and provider requirements must be met.

4. Section 199.2(b) is amended by adding, in alphabetical order, definitions for the internal and external partnership agreements to read as follows:

**§ 199.2 Definitions.**

* * * * *

(b) *Specific definitions.*

* * * * *

*External partnership agreement.* The external partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-authorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility under the Military-Civilian Health Services Partnership Program. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS.

* * * * *

*Internal partnership agreement.* The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-authorized civilian health care provider which enables the use of civilian health care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility under the Military-Civilian Health Services Partnership Program. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources.

* * * * *

5. Section 199.4, paragraphs (f) (5) and (6) are redesignated as § 199.4 (f) (6) and (7).

6. Add a new paragraph (f)(5) to § 199.4 to read as follows:

**§ 199.4 Basic program benefits.**

* * * * *

(f) *Beneficiary or Sponsor Liability.*

* * *

(5) *Cost-Sharing under the Military-Civilian Health Services Partnership Program.* Cost-sharing is dependent upon the type of partnership program entered into, whether external or internal. (See paragraph (p) of § 199.1, for general requirements of the Military-Civilian Health Services Partnership Program.)

(i) *External Partnership Agreement.* Authorized costs associated with the use of the civilian facility will be financed through CHAMPUS under the normal cost-sharing and reimbursement procedures applicable under CHAMPUS.

(ii) *Internal Partnership Agreement.* Beneficiary cost-sharing under internal agreements will be the same as charges prescribed for care in military treatment facilities.

* * * * *

7. Section 199.14, paragraphs (f) and (g) are redesignated as § 199.14, paragraphs (g) and (h).

8. Add a new paragraph (f) to § 199.14, to read as follows:

**§ 199.14 Provider reimbursement methods.**

* * * * *

(f) *Reimbursement under the Military-Civilian Health Services Partnership Program.* The Military-Civilian Health Services Partnership Program, as authorized by section 1086, Chapter 55, Title 10, provides for the sharing of staff, equipment, and resources between the civilian and military health care system in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. Military treatment facility commanders, based upon the authority provided by their respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. (See paragraph (p) of § 199.1 for general requirements of the Partnership Program.)

(1) *Reimbursement of institutional health care providers.* Reimbursement of institutional health care providers under the Partnership Program shall be on the same basis as non-Partnership providers.

(2) *Reimbursement of individual health-care professionals and other non-institutional health care providers.* Reimbursement of individual health care professional and other non-institutional health care providers shall be on the same basis as non-Partnership providers as detailed in paragraph (e) of this section.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 20, 1988.

[FR Doc. 88-16755 Filed 7-25-88; 8:45 am]

BILLING CODE 3810-01-M

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## Defense Logistics Agency

## 32 CFR Part 1285

**[DLAR 5400.14]**

## Freedom of Information Act Program

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Defense Logistics Agency Freedom of Information Act Program which implements the Freedom of Information Act of 1974, as amended [5 U.S.C. 552) within the Agency. This revision supersedes a final rule (51 FR 35634) published on October 7, 1986 and [51 FR 37336) published on October 22, 1986, 32 CFR Part 1285—"Defense Logistics Agency Freedom of Information Act Program." This rule is published pursuant to the Freedom of Information Reform Act of 1986, sections 1801–1804

(Pub. L. 99–570); and section 954 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99–661).

**EFFECTIVE DATE:** July 26, 1988.

**ADDRESS:** Headquarters, Defense Logistics Agency, ATTN: DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6130.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dave Henshall, (202) 274–6234.

**SUPPLEMENTARY INFORMATION:** This rule implements the provisions of DoD Regulation 5400.7, DoD Freedom of Information Act Program as published (52 FR 25976) on July 10, 1987, 32 CFR Part 286—DoD Freedom of Information Act Program.

**List of Subjects in 32 CFR Part 1285**

Freedom of Information.

Accordingly Title 32 is amended by revising Part 1285 to read as follows:

## PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.

1285.1 References.
1285.2 Purpose and scope.
1285.3 Policy.
1285.4 Definitions.
1285.5 Background.
1285.6 Significant changes.
1285.7 Responsibilities.
1285.8 Procedures.
1285.9 Forms and reports.
Appendix A—Fee schedule.
Appendix B—For Official Use Only.
Appendix C—Judicial actions.
Appendix D—Annual FOIA Report.
Appendix E—Addressing FOIA Requests.
Appendix F—Forms.
Appendix G—Index.

**Authority:** Title 5, U.S.C. 552, as amended by Pub. L. 93–502.

### § 1285.1 References.

(a) Title 5 U.S.C. 551, The Administrative Procedures Act.

(b) Title 5 U.S.C. 552, The Freedom of Information Act.

(c) Title 35 U.S.C. 181–188, Patent Secrecy.

(d) DoD 5400.7–R, DoD Freedom of Information Act Program.

(e) DoD Federal Aquisition Regulation Supplement (DFARS), Subpart 27.4, Technical Data, Other Data, Computer Software and Copyrights.

(f) DLAR 4185.9, Distribution Statements on Technical Documents.

(g) DLAR 4185.17, Dissemination of DoD Technical Information.

(h) DLAR 5200.12, DLA Information Security Program.

(i) DLAR 5400.12, Administration of Congressional Matters.

(j) DLAR 5400.13, Clearance of Information for Public Release.

(k) DLAR 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records.

(l) DLAR 7230.1 User Charges.

**Note:** (a) DLA publications may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XPD, Cameron Station, Alexandria, VA 22304–6100.

(b) DoD publications may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Taber Avenue, Philadelphia, PA 19120.

(c) Allied Communication Publications may be obtained, if needed, from the Army Publications and Forms Center, 2800 Eastern Boulevard, Baltimore, MD 21220–2896.

### § 1285.2 Purpose and scope.

This rule implements DoD Directive 5400.7, DoD Freedom of Information Act Program, and provides policy and procedures for the DLA implementation of the Freedom of Information Act. It applies to HQ DLA and all DLA field activities. A list of mailing addresses for DLA activities is provided at enclosure 5.

### § 1285.3 Policy.

(a) *General.* The public has the right of access to information concerning the activities of the Federal Government. DLA policy is to conduct its operations in an open manner and to provide the public with accurate and timely information concerning its activities. Individuals complying with the procedural requirements of this rule shall be provided prompt access to DLA records which are not exempt from disclosure. DLA activities and personnel will comply with the letter and the spirit of the Freedom of Information Act, hereafter referred to as "the FOIA," and this rule will ensure that procedural requirements do not unnecessarily impede public access. DLA activities will also provide assistance to individuals, as required, to help them understand and comply with the requirements of this rule, and to reduce governmental costs and assessable fees.

(b) *Administrative Requirements and Determinations.* A record must be in the possession and control of DLA to be subject to the provisions of this rule. In submitting requests, the requester must provide a reasonable description of the record(s) sought; furthermore, the requester must provide either a declaration of the willingness to pay assessable fees associated with filling the request or a justification for the waiver of fees. Determinations that requests are deficient in these respects are not denials of access; and, except as provided below, such determinations are not subject to administrative appeals:

(1) DLA activities have no obligation to create or compile a record to satisfy a FOIA request. They may do so, however, when it would either result in a more useful response for the requester, or be less burdensome to DLA than providing the records sought, and the requester does not object. When an activity compiles a record to satisfy a request, the fees assessed will not exceed those which would have been charged for the original request.

(2) Records, which originated in or which are based on information obtained from other Federal agencies subject to the FOIA are generally referred to that agency even though the record(s) may be in the possession of DLA. In processing FOIA requests for such records, DLA activities, after coordinating with the originating agency, will refer the request with a copy of the responsive records in its possession, to the agency for direct response. The requester will be notified of the referral. When records and documents are created specifically for the use of another agency, the agency for which the record was created may have an equally valid interest in withholding the record as the agency that created the record. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. FOIA requests will be referred to the appropriate contracting officer.

(3) When the fact of the existence of records itself is classified, DLA activities will confirm classification with the agency or activity exercising control over the record(s), and will provide the requester a response which neither confirms nor denies the existence of the records requested. The request will not be referred to the controlling agency.

(4) When an activity has no records responsive to a request, the requester will be notified promptly. In cases where the request has been misdirected and the activity is aware of the appropriate FOIA respondent, the activity shall refer the request to the appropriate activity or agency and notify the requester of the referral.

(5) Requesters must provide a description of the record(s) sought with sufficient specificity to permit DLA activities to locate it with a reasonable effort. DLA activities receiving requests which do not reasonably describe the record sought will advise the requester of this deficiency and provide the requester an opportunity to correct it.

Generally, a record is not reasonably described unless the requester provides information permitting an organized, nonrandom search of DLA files and information systems. Such information may specifically describe the record, e.g., document type, title, index citation, subject matter, date, and originator, or the events which led to its creation. In providing descriptions based on events, the requester must provide information which permits DLA activities to infer the specific record sought. Notwithstanding the above, any description permitting DLA activities to locate a record with reasonable effort is sufficient.

(6) Requesters must also provide either an adequate declaration of their willingness to pay fees associated with the request or substantiate a claim that a waiver of assessable fees is in the public interest. (See Appendix A of this regulation regarding the schedule of fees.) A fee declaration is adequate when the requester's statements indicate a willingness to pay the fees equal to, or greater than, those assessable under the schedule of fees. When provided, statements in requests regarding the willingness to pay for specific services, such as search, duplication, and review, must encompass those appropriately assessable for the requester category described in Appendix A of this regulation. DLA activities will notify requesters of deficiencies in fee declarations and will provide them opportunities to amend initial declarations. Determinations on the adequacy of requester fee declarations are not subject to appeal unless the DLA activity has denied a specific request for the assessment of fees under one of the categories established in Appendix A of this regulation or has denied a request for the waiver or reduction of fees in the public interest.

(c) *Prompt Response to Requests.* DLA activities will respond promptly to requesters complying with the procedural requirements of this regulation. A determination on access to records will be made within 10 working days after receipt of the request by the activity having possession and control of the record sought unless an extension is authorized under § 1285.8(b)(3) of this rule. Activities with ten or more requests pending access determinations will process the requests in the order of receipt. However, activities are not precluded from completing action on requests, which can be answered promptly, regardless of the order of receipt.

(d) *Privacy Act and Other Procedures.* Requests by individuals for records about themselves will be processed under the statute or regulation (Freedom of Information Act or Privacy Act) cited in the request. If the request cites both Acts, or neither Act, the request will be processed under time limitations of the FOIA and the fee provisions of DLAR 5400.21. No record or information will be withheld from an individual under this regulation which would be available to the individual under the Privacy Act and DLAR 5400.21.

(e) *Exemptions*—(1) *General Provisions.* Records that meet the exemption criteria in § 1285.3(e)(4) may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to an FOIA request.

(2) *Public Domain.* Nonexempt records released under the authority of this regulation are generally considered to be in the public domain. Exempt records released pursuant to this regulation or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when a disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. While authority may exist to disclose records to individuals in their official capacity, the provisions of this regulation apply if the same individual seeks the records in a private or personal capacity.

(3) *Jeopardy of Government Interest.* An exempted record, other than those being withheld pursuant to exemptions 1, 3, or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DLA activity or higher authority, release would not jeopardize a Government interest. It is appropriate for DLA activities to use their discretionary authority on a case-by-case basis in the release of given records. If a DLA activity determines that a record requested under the FOIA meets the exemption 4 withholding criteria set forth in this regulation, the DLA activity shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found at § 1285.3(e)(4)(iv) and § 1285.8(d).

(4) *FOIA Exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(i) *Exemption 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by an Executive Order and implemented by regulations, such as DoD 5200.1–R, Information Security Program Regulation. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. If such a review is undertaken, the procedures in DoD 5200.1–R, section 2–204f, apply.

(ii) *Exemption 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DLA activity if their release to the public would substantially hinder the effective performance of a significant function of the activity and they do not impose requirements directly on the general public. Examples include:

(A) Operating rules, guidelines, and manuals for DLA investigators, inspectors, auditors, or examiners that must remain undisclosed in order for the DLA activity to fulfill a legal requirement.

(B) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) *Exemption 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issues, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of such statutes include:

(A) Pub. L. No. 86–36 (1959), National Security Agency Information Exemption.

(B) Title 35 U.S.C., 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(C) Title 42 U.S.C. 2162, Restricted Data and Formerly Restricted Data.

(D) Title 18 U.S.C. 798, Communication Intelligence.

(E) Title 10 U.S.C. 130, Authority to Withhold From Public Disclosure Certain Technical Data. (See also DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.)

(F) Title 10 U.S.C. 1102, Confidentiality of Medical Quality Records: Qualified Immunity Participants.

(iv) *Exemption 4.* Those containing trade secrets or commercial or financial information that a DLA activity receives from a person or organization, outside the Government, with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records falling within this exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; would impair the Government's ability to obtain necessary information in the future; or would impair some other legitimate Government interest. Examples include records that contain:

(A) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(B) Statistical data and commercial or financial information concerning contract performance, income, profit, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(C) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commerical or financial information normally considered confidential or privileged.

(D) Financial data provided in confidence by private employers in connections with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within DLA.

(E) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(F) Technical or scientific data developed by a scientific or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and, in part, at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320, Rights in Technical Data; 10 U.S.C. 2321, Validation of Proprietary Data Restrictions; and DFARS, Subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under *Exemption* 3 if it meets the criteria of 10 U.S.C. 130, Authority to Withhold from Public Disclosure Certain Technical Data and DoD Directive 5230.25. (See § 1285.3(e)(4)(iii).

(v) *Exemption 5.* Except as provided in § 1285.3(e)(4)(v)(B) through (E), of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decisionmaking process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) or within or among DLA activities.

(A) *Examples include:*

(*1*) The nonfactual portions of staff papers, to include afteraction reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(*2*) Advice, suggestions, or evaluations prepared on behalf of DLA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(*3*) Those nonfactual portions of evaluations by DLA personnel of contractors and their products.

(*4*) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information either would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(*5*) Trade secret or other confidential research development, or commercial information owned by the Government, when premature release is likely to affect the Government's negotiating position or other commercial interests.

(*6*) Records that are exchanged among agency personnel and within and among DLA activities or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal or State court, as well as records that qualify for the attorney/client privilege.

(*7*) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one of more DLA activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(B) If any such intra or interagency record or reasonably segregable portion of such a record, hypothetically, would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information, hypothetically, would only be made available through the discovery process by special order of a court based on the particular needs of a litigant, balanced against agency interests in maintaining its confidentiality, then the record or document need not be made available under this rule.

(C) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(D) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decisionmaking process.

(E) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(vi) *Exemption 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy.

(A) Examples of files containing personal information similar to that contained in personnel and medical files include:

(*1*) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, and contractor employees) for either security clearances or for access to particularly sensitive classified information.

(*2*) Files containing reports, records, and other material pertaining to

personnel matters in which administrative action, including disciplinary action, may be taken.

(B) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DLA personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person; but, it may be used to protect the privacy of the deceased person's family.

(C) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DLAR 5400.21.

(D) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical, or similar record, other than the subject of the record, may constitute a basis for deleting those reasonably segregable portions of that record when providing it to the subject of the record.

(vii) *Exemption 7.* Records or information for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or rules issued pursuant to law.

(A) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(*1*) Could reasonably be expected to interfere with enforcement proceedings.

(*2*) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(*3*) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(*4*) Could reasonably be expected to disclose the identity of a confidential source, including a source within the DoD, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(*5*) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by any agency conducting a lawful national security intelligence investigation.

(*6*) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(*7*) Could reasonably be expected to endanger the life or physical safety of any individual.

(B) Examples include:

(*1*) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

(*2*) The identity of firms or individuals being investigated for alleged irregularities involving contracting with DLA when neither an indictment has been obtained nor any civil action filed against them by the United States.

(*3*) Information obtained in confidence, expressed or implied in the coarse of a criminal investigation by a criminal law enforcement agency or office within a DoD agency or a lawful national security intelligence investigation conducted by an authorized agency or office within a DLA activity. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(C) The right of individual litigants to investigative records currently available by law (such as 18 U.S.C. 3500, The Jencks Act), is not diminished.

(D) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DLAR 5400.21.

(E) Exclusions. Excluded from the above exemption are the following:

(*1*) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the records or information during only such times as that circumstance continues, may be treated as not subject to *Exemption 7.* In such situation, the response to the requester will state that no records were found.

(*2*) Whenever information records maintained by a criminal law enforcement organization under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the records may be treated as not subject to *Exemption 7,* unless the informant's status as an informant has been officially confirmed. It is determined that the records are not subject to *Exemption 7,* the response to the requester will state that no records were found.

(viii) *Exemption 8.* Those contained in or related to examination, operation, or condition reports prepared by, on behalf, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(ix) *Exemption 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

**§ 1285.4 Definitions.**

As used in this regulation, the following terms and meanings shall be applicable.

(a) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority to reverse an Initial Denial Authority decision to withhold all or part of a requested record, to deny a request for waiver or reduction of fees, or to impose fees under a standard for individual requester and use categories.

(b) *Agency Record.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by a DLA activity in connection with the transaction of public business and preserved by a DLA activity primarily as evidence of the organization, policies, functions, decisions, or procedures of the DLA activity.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material, made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value or value as evidence.

(iii) Commercially exploitable resources, including but not limited to:

(A) Maps and charts, map compilation manuscripts and map research materials, and data if not created or used as primary sources of information about organization, policies, functions, decisions, or procedures of a DLA activity.

(B) Computer software and related software documentation if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DLA activity. (This does not include the underlying data which is processed and produced by such software and which may, in some instances, be stored with the software.)

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(vi) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(vii) Information stored within a computer for which there is no existing computer program or printout.

(3) A record must exist and be controlled by DLA at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(c) *Appellate Authority.* The Director, DLA, or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Staff Director, Office of Administration, HQ DLA. (See § 1285.7(a)(1)(vi).)

(d) *Commercial Use Request.* A request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(e) *DLA Activity.* An activity of the Defense Logistics Agency, as defined in paragraph II, which is authorized to receive and act on FOIA requests.

(f) *Duplication.* The process of making a copy of a document necessary to respond to a request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation, such as magnetic tape or disc.

(g) *Educational Institution.* A preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of professional education, and an institution of vocational education which operates a program of scholarly research.

(h) *FOIA Request.* A written request for DLA records made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, DLAR 5400.14, or DLA activity supplements to DLAR 5400.14.

(i) *Initial Denial Authority.* An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. This includes the Director of HQ DLA PSEs and Heads of PLFAs.

(j) *Noncommercial Scientific Institution.* An institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research which is not intended to promote any particular product or industry.

(k) *Other Use.* A request which does not fit into any other category.

(l) *Representative of the News Media.* Any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(m) *Review.* The process of examining documents located in response to an FOIA request to determine whether one or more of the FOIA exemptions permit withholding any portion of any documents may be withheld. It also refers to the processing of documents for disclosure, e.g., doing all that is necessary to prepare them for release. Review does not include time spent resolving general, legal, or policy issues regarding the application of exemptions.

(n) *Search.* All time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents.

**§ 1285.5 Background.**

The FOIA describes the kinds of official records and information that are to be made available to and withheld from the public, requires facilities be made available to the public for the examination and copying of records, and provides procedures for the review of denials to the release of records and information to the public.

**§ 1285.6 Significant changes.**

This revision incorporates the Freedom of Information Reform Act of 1986, Pub. L. No. 99–570 (1986); National Defense Authorization Act, for fiscal year 1987, Pub. L. No. 99–661, section 954 (1986) and DoD 5400.7–R, DoD Freedom of Information Act Program. The text includes a total revision of FOIA fee provisions, which provides for new requester categories, a revised fee schedule, and charges for technical data. The scope of *Exemption 7* § 1285.3(e)(4)(vii) has been expanded to include all law enforcement records. The annual FOIA report has also been revised. Other text modifications are either based on recent court decisions or are made to clarify existing policies and procedures.

**§ 1285.7 Responsibilities.**

(a) *HQ DLA*—(1) *The Staff Director, Administration, DLA (DLA–X)* will:

(i) Serve as the point of contact for referring members of the public desiring to examine and copy records to the appropriate staff element, within either HQ DLA or the DLA Administrative Support Center (DASC), having custody of the records.

(ii) Maintain copies of certain final decisions in the adjudication of cases, staff manuals, and materials referred to in § 1285.7(b)(3) for public inspection and copying with related indices as required.

(iii) Process requests for records received under provisions of paragraph VIIIA of this regulation.

(iv) Review DLA publications to assure that those meeting the criteria for publication in the **Federal Register** are prepared in proper form and transmitted for publication in the **Federal Register**, as required by DLAR 5025.19, Publication of Material in the **Federal Register**.

(v) Maintain a file of copies of all responses provided by PSEs and denials provided by PLFAs.

(vi) Serve as the appellate authority on fee waivers and category determinations.

(2) *The Staff Director, Office of Public Affairs, DLA (DLA–B)* will serve as a coordinating office for the release of information to the news media.

(3) *The General Counsel, DLA (DLA–G)* will:

(i) Provide advice and assistance to HQ DLA PSEs in determining releasability of records.

(ii) Process appeals to the Director, DLA, of denials to provide records.

(iii) Coordinate denials of releases with Office of the General Counsel, DoD, and the Department of Justice, as appropriate.

(4) *The Heads of DLA Principal Staff Elements (PSEs)* will:

(i) Review all instructions for which they are the proponent to ensure that such instructions are consistent with the provisions of this regulation.

(ii) Ensure that the provisions of this regulation are followed in processing

requests for records from members of the public.

(iii) Forward to the Chief, Resources Management Division, Office of Administration (DLA–XA), any FOIA request received by the PSEs that the request may be administratively controlled.

(iv) Coordinate requests from the public for information with other HQ DLA staff elements, to the extent considered necessary.

(v) Furnish DLA–XA a copy of all responses to provide a record of action taken pursuant to the provisions of § 1285.8(c). Copies will be identified using the control number furnished by DLA–XA. Furnish DLA–XA a completed DLA Form 1786, Freedom of Information Case Summary, for every FOIA request to which the PSE responds.

(vi) Make initial determination to deny release after coordination with DLA–G.

(b) *The Heads of DLA Primary Level Field Activities (PLFAs)* will:

(1) Ensure that the provisions of this regulation are followed in processing requests for records from members of the public.

(2) Provide convenient facilities where members of the public may examine and copy documents which may be released to them.

(3) Maintain a copy of the following for examination and copying by the public:

(i) DLAH 5805.1, DLA Organization Directory, which reflects the mailing addresses of all DLA activities of DLA.

(ii) DLAH 5025.1, Defense Logistics Agency Index of Publications, which contains a topical index of the publications issued by HQ DLA.

(iii) DLAM 5015.1, Files Maintenance and Disposition, which contains a functional description of all records and files generated by DLA. This manual also contains a topical index.

(iv) A copy of such local indexes of opinions, orders, statements of policy, and publications that may exist, or that may be prepared in the future.

(4) For each FOIA request processed, prepare and retain a DLA Form 1786 to ensure that all costs related to the request are properly documented.

(5) Arrange for the collection of fees associated with locating and providing of copies of documentary material (Appendix A).

(6) Furnish DLA–XA a copy of all denials to provide a record made under the provisions of §1285.8(c).

(7) Prepare and submit reports in accordance with § 1285.9.

(8) Establish safeguards to ensure that the official records of the activity are properly safeguarded during the time they are made available for examination by a member of the public.

(9) Establish a control system to ensure that operating procedures provide for prompt response to all requests for records.

(10) Establish a training program for those personnel who may be involved in responding to requests from the public for records.

(11) Refer cases of significance to DLA–G for review and evaluation when the issues raised are unusual, precedent setting, matters of disagreement among activities, or otherwise requiring special attention or guidance.

(12) Maintain a record of all FOIA requests for logistical data (data on magnetic tape extracted from any of the DLA Automated Data Processing (ADP) systems). The record will contain the requester's identification, the date of the request, what information was requested, and what information was furnished. This record will be kept on file for 5 years.

**§ 1285.8 Procedures.**

(a) *Requests for the Examination or Copies of Records.* (1) Members of the public may make written requests for copies of DLA records or for permission to examine such records during the normal business hours of DLA activities. Such requests should be submitted directly to the appropriate activities listed in Appendix E of this regulation. If the appropriate activity is either unknown or cannot be ascertained, and the record is likely to be in the possession and control of DLA, the request may be submitted to HQ DLA, ATTN: DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6100.

(2) In submitting requests, requesters should:

(i) Identify each record sought with sufficient detail to permit the location of the record with a reasonable amount of effort. Information as to where the record originated, its subject, date, number, or other identifying particulars should be provided whenever possible.

(ii) Identify all other Federal agencies subject to the provisions of the Freedom of Information Act to which the request has been sent. This will reduce processing and coordination time between agencies and redundant referrals.

(iii) Provide a statement of their willingness to pay assessible charges under the schedule of fees in Appendix A of this rule. A statement must include a specific monetary amount if the assessible fees are likely to exceed $15 or a specific justification for any waiver or reduction of fees sought based on public interest in release or disclosure. Requesters should also substantiate any claim for the assessment of fees under a specific fee category as explained in Appendix A of this rule.

(3) DLA activities will promptly forward misdirected requests to the proper agency or activity through FOIA channels and notify the requester of the referral. The 10-working-day period allowed for responding to requests will not begin until the activity having the responsive records receives a request complying with procedural requirements of this regulation, including statements on the payment of fees.

(4) The provisions of the FOIA are intended for parties with private interests. Officials seeking documents or information on behalf of foreign governments, other Federal agencies, and state and local agencies are encouraged to employ official channels. The release of records to individuals under the FOIA is a public release of information. DLA activities will consider FOIA requests from such officials as made in a private, rather than official, capacity and will make disclosure and fee determinations accordingly.

(b) *Control System and Time Limits.* (1) Each DLA activity will maintain a control system designed to ensure compliance with the FOIA. The system shall provide controls to maintain responsiveness in handling requests made under the FOIA and methods to assure accurate cost accounting for the assessment of fees and reporting.

(2) On receipt of a properly submitted FOIA request, DLA activities will locate and assemble responsive records, determine whether they are releasable under the provisions of this regulation, determine the fees appropriately charged, and advise the requester accordingly. Initial determinations on either the release or denial of records, and notice to requesters, should be provided within 10 working days following receipt of the request by the activity maintaining the records.

(3) In certain cases, DLA activities may exercise an extension to the normal 10-working-day period outlined above. Such extensions must be approved by the FOIA Officer for the activity and may not exceed 10 additional workdays. The requester will be notified of approved extensions within the initial 10-working-day period described in paragraph (b)(2) of this section; and, the requester will be advised of the circumstances necessitating the extension and the anticipated date of a determination and response to the request. The circumstances where such extensions may be approved include:

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(i) The record(s) sought are located at places other than the activity processing the request, such as Federal Archives and Records Center or geographically separated elements of the activity.

(ii) The request requires the collection and review of a substantial number of records.

(iii) The disclosure determination requires consultation with another activity or agency with a substantial interest.

(4) As an alternative to the extensions described above, DLA activities may seek informal agreements with requesters for extensions in unusual circumstances when time limits become an issue in the activity's response to the request.

(c) *Initial Disclosure Determinations.* (1) Initial determinations to make records available may be made by any official designated by the activity. When a decision is made to release records in response to a FOIA request, the records will be made available promptly to the requester. When the request is for the examination of releasable records, the official will advise the requester when and where he may appear for the purpose. Examinations will be held during normal business hours except in unusual circumstances.

(2) DLA officials with the authority to release information under this regulation should consult public affairs officers when releasing records on matters considered newsworthy or when releasing records to media representatives.

(3) There are seven reasons for not providing a record in response to a FOIA request:

(i) The information or item requested is not a record within the meaning of the FOIA and this regulation.

(ii) The record has not been described with sufficient specificity to enable DLA to locate it by conducting a reasonable search.

(iii) The requester has failed to comply with procedural requirements, including agreements to pay assessable fees, imposed by this regulation.

(iv) DLA determines through knowledge of its files and reasonable searches that it neither controls nor otherwise processes the requested record or that the requested record does not exist.

(v) The request is withdrawn by the requester.

(vi) The request is transferred to another activity or agency.

(vii) The request is denied in accordance with the provisions of this regulation.

(4) Determinations to withhold either records or information within records may be made only by the Heads of DLA PLFAs or the Heads of HQ DLA PSEs. This authority may not be redelegated.

(d) *Consultation on Confidential Commercial Information.* (1) When a request is received for a record containing information provided by a source outside the Federal Government, which is subject to disclosure and, if disclosed, could reasonably be expected to cause substantial competitive harm to the source, the activity will notify the source of the pending disclosure determination and provide the source or its designee with an opportunity to object to the disclosure of any specified portion of the information and to state all grounds on which disclosure is opposed. Notice and consultation with the source of such information is not required, however, when the activity determines:

(i) The information should not be disclosed.

(ii) The information or record has been published or officially made available to the public.

(iii) Disclosure of the information is required by a law other than the FOIA.

(2) In consulting sources under this procedure, DLA activities shall provide sources a reasonable period of time to present objections to disclosure. The requester shall be provided a concurrent notification on the activity's use of this consultation procedure with an estimated date for the activity's disclosure determination.

(3) DLA activities shall give careful consideration to all specified grounds for nondisclosure presented by the source. Initial denial authorities will make disclosure determinations. When a substantial issue has been raised, the activity may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination.

(i) When the initial denial authority determines the information appropriately withheld, the activity shall issue a denial to the requester under the procedures outlined in § 1285.8(c) and shall provide a copy of the determination to the source.

(ii) In those instances when the source has objected to disclosure, and the initial denial authority determines the information will be disclosed, the activity shall provide the source with a written statement which briefly explains the reasons for disclosure and a scheduled date for release to requester. The statement shall be provided to the source by certified mail with return receipt reasonably prior to the specified disclosure date. A copy of this statement will also be provided to the requester. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the activity will notify the requester of the proposed action.

(4) Likewise, whenever a DLA activity is informed that a FOIA requester has brought suit in court seeking to compel disclosure of Confidential commercial information, the source will be notified promptly of the suit.

(e) *Denials.* (1) A record in the possession and control of DLA may be withheld only when the record falls within one or more of the nine categories of records exempt from mandatory disclosure under the FOIA, and the use of discretionary authority to release the record is determined to be unwarranted. Staff consultation and coordination with the servicing Office of Counsel are mandatory for all denials.

(2) Although exempt portions of records may be denied, nonexempt portions must be released to the requester when the meaning of these portions is not distorted by the deletion of denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole based on distortion or reconstruction potential, the response advising the requester of the determination will specifically state that it is not possible to reasonably segregate meaningful portions for release.

(3) When a request for a record is denied in whole or in part, the Head of the PLFA or the Head of the PSE will inform the requester in writing of the specific exemption(s) on which the denial is based and explain the determination in sufficient detail to permit the requester to make a decision concerning appeal. The determination will also inform the requester of his/her rights of appeal to the Director, DLA. Such appeals must be made within 60 calendar days of the determination, contain the reasons for the requester's disagreement with the determination, and be addressed to HQ DLA (ATTN: DLA–G), Cameron Station, Alexandria, VA 22304–6100.

(i) When the initial denial is based on security classification, the explanation will include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how the criteria apply to the particular records in question. (See DLAR 5200.12, DLA Information Security Program, setting forth the criteria or rationale for classification.) The

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determination will also advise the requester of the availability of declassification review of records more than 10 years old under DoD 5200.1–R, when appropriate.

(ii) DLA activities will provide an informational copy of each denial to DLA–XAM. No supporting documents such as requests or withheld documents need be forwarded.

(f) *Appeals.* (1) Requesters denied access to records under the provisions of subparagraph E, may appeal such determinations to the Director, DLA. However, a "no record" finding may not be appealed, although a requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files. The procedures in this section concern appeals regarding disclosure matters and the appropriate use of exemption procedures for appeals of fee determinations are outlined in Appendix A of this rule. Records which are denied should be retained during the time submitted for appeal.

(2) The requester shall be advised that an appeal should be filed so that it reaches the appellate authority within 60 calender days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester has been provided a series of determinations for a single request, the time for appeal will begin on the date of the last determination of the series. When filing an appeal, a copy of the letter denying the initial request should be included.

(3) Final determinations normally shall be made within 20 working days of receipt of an appropriately submitted appeal. When additional time is required to respond to the appeal for the reasons outlined in § 1285.8(b)(3), the final determination may be delayed for the number of working days (not to exceed 10 days) not used as additional time for responding to the initial request. DLA–G will advise the requester of the circumstances in the use of such extensions and the anticipated date of a substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 1285.8(b)(3), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DLA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing a complaint shall be forwarded to the Department of Justice.

(4) When the Director, DLA, makes a determination to release all or a portion of the records sought on appeal, the records shall be made available promptly to the requester after compliance with procedural requirements, such as payment of fees. A final denial to provide records sought will be made in writing, explain the exemptions invoked, advise that the material being denied does not contain meaningful portions that are reasonably segregable, and advise the requester of the right of judicial review. When the final denial is based in whole or in part on a security classification, the explanation will include a determination that the record meets the criteria and rationale of the governing Executive Order, that the determination is based on declassification review, and explain how the review confirmed the validity of continuing classification.

(g) *Privileged Release.* (1) Subject to the limitations in DoD 5200.1–R and DLAR 5400.21, records exempt from mandatory disclosure under this regulation, may be authenticated and released to officials requesting them on behalf of local, state, and Federal Government authorities (including executive, administrative, legislative, and judicial authorities) as follows:

(i) To Congress, in accordance with DoD Directive 5400.4, Provision of information to Congress, and DLAR 5400.12.

(ii) To the Federal courts as ordered by the officers of the court for the administration of justice.

(iii) To executive and administrative agencies of the Federal Government and state and local officials as determined by the Director, DLA, the Heads of HQ DLA PSEs, Commanders of PLFAs, and other authorized officials.

(2) Technical information and data exempt from mandatory disclosure may also be disseminated or released to qualified contractors and registered users under the specific limitations and requirements. (See DoD Instruction 5200.21, Dissemination of DoD Technical Information, and DoD Directive 5230.25.)

(3) Privileged release is not considered public release for the purposes of FOIA and this regulation. DLA activities will inform parties receiving records under this section that such records are exempt from public release under the FOIA and are privileged. They will also provide special handling instructions, where appropriate.

### § 1285.9 Forms and Reports.

Each PLFA shall prepare statistics and accumulate paperwork for the preceding calender year on those items prescribed for the annual FOIA Report (Appendix D), and submit this material to DLA–XAM on or before 15 January each year. This reporting requirement is assigned RCS DD–PA(A)1365.

## Appendix A—Fee Schedule

*(a) General Provisions*

(1) Application

(i) The fees described in this enclosure apply to FOIA requests and other inquiries which solicit DLA records, including those containing technical data. They reflect direct costs in processing of public requests under the FOIA, and direct and indirect costs in processing requests for technical data. The fees identified are subject to limitations on the nature of assessable fees based on the category of the requester, statutory and automatic waivers based on the category determination and cost of routine collection, and either the waiver or reduction of fees when disclosure serves the public interest.

(ii) The specific provisions on assessable fees, restrictions, and waivers are provided in outline from below for easy reference. The chart identifies four classes of requesters and the types of charges which may be assessed each class. The chart lists the waiver of charges which are required by law and the automatic waiver of $15 based on DLA fee collection expenses.

| Requester class | Assessable fees | Statutory waiver | Automatic waiver |
|---|---|---|---|
| Commercial Use | Search, Duplication, and Review | None | $15 |
| Media | Duplication | First 100 pages | 15 |
| Educational and Noncommercial Scientific Institution. | ....do | ....do | 15 |
| Other | Search and Duplication | First 100 pages, First 2 hours of Search | 15 |

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**Example:** For an "other" request that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of 10 minutes of search time and only five pages of duplication. If this processing was equal to, or less than, the cost for billing the requester and processing the fee collected ($15 or less), no charges would result.

(2) Fee Assessment

(i) DLA activities will evaluate each request to determine the requester category and adequacy of any fee declaration. An adequate declaration requires a willingness by the requester to pay fees in an amount equal to, or greater than, the assessable charges for the request. When provided, statements in requests regarding the willingness to pay for specific services, such as search, duplication, and review, must encompass those appropriately assessable for the requester category described above. DLA activities will provide requesters an opportunity to amend inadequate fee declarations and provide estimates of prospective charges when required. When a requester fails to provide an adequate declaration within 30 days after notification of a deficiency, the request for information will be considered withdrawn.

(ii) A requester's claims for assessment of fees under a specific category will be carefully considered. A DLA activity may require a requester to substantiate a claim for assessment under a claimed category. In the absence of requester claims, an activity will determine the category into which a requester falls, basing its determination on all available information and evidence.

(iii) When an activity disagrees with a requester claim for fee assessment under a specific category, the initial denial authority for the activity concerned will provide a written determination advising the requester:

(A) The category into which the requester was placed for the assessment of fees and on the rationale for this determination.

(B) That additional information to justify the category claimed should be forwarded.

(C) Absent further information, the activity will render, within 30 calendar days, a final category determination.

(D) That the determination may be appealed to the Staff Director, Administration, HQ DLA, within 60 calendar days of the date of the determination.

(E) Notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable fees.

(iv) When an activity estimates or determines that allowable charges are likely to exceed $250, the activity may require a provisional payment in an amount up to the full estimated charges. Provisional payments may not be required for requests with estimated fees of $250 or less.

(v) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of billing), activities may require the requester to pay the full amount due from previous requests, plus any applicable interest, or demonstrate satisfaction of the debt and to make an advance payment of an amount up to the amount of estimated fees, before the activity begins to process a new or pending request from the requester.

(vi) The administrative time limits for response on access will begin only after the activity has received from the requester an adequate declaration on a willingness to pay fees and satisfaction of outstanding debts for prior requests.

(3) Aggregating Requests

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely to avoid payment of fees. When an activity reasonably believes that a requester is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the activity may aggregate such requests and charge accordingly. One element to be considered in such situation is the time period in which the requests occur. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, such a presumption becomes harder to sustain. In no case may activities aggregate multiple requests on unrelated subjects from one requester.

(4) Fee Waivers

(i) Documents will be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the activity determines that a waiver or reduction of fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of DLA and is not primarily in the commercial interest of the requester. In applying this waiver, DLA activities should consider the following:

(A) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government. Factors to consider include:

(*1*) *The subject of the request:*

(*i*) Activities should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of DLA. Requests for records in the possession of DLA which were originated by non-Government organizations and are sought for their intrinsic content, rather than information value, will likely not contribute to public understanding of the operations or activities of DLA. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DLA activity.

(*ii*) Similarly, disclosures or records of considerable age may not bear directly on the current activities of DLA; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envision an informative issue concerning the current activities of DLA, based upon historical documentation. Requests of this nature must be closely reviewed in light of the requester's stated purpose for desiring the records and the potential for public understanding of the operation and activities of DLA.

(*2*) *The informative value of the materials requested to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and will inform the public on the operations or activities of DLA. While the subject of a request may contain information which concerns operations or activities of DLA, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. Whether release of such a record in this situation will contribute to the public understanding of the operations or activities of DLA must be weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain, may add no meaningful new information concerning the operations and activities of DLA.

(*3*) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to evaluate whether the requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, research a particular subject, research doctoral dissertation work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(*4*) *The significance of the contribution to public understanding:*

(*i*) In applying this factor, activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge or understanding which exists prior to the disclosure. In other words: Will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgement, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Activities shall not make value judgements as to whether the information is important enough to be made public.

(*ii*) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.*

(1) If the request is determined to be of a commercial interest, activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or noncommercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records.

(2) Where it is difficult to determine whether the request is of a commercial nature, activities may draw inference from the requester's identity and circumstances of the request. Activities are remained that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or nonprofit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly or indirectly (through the institution they represent); however, such pursuits normally are undertaken primarily for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile Government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(ii) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(A) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(B) A previous denial of access to records is reversed in total, or in part, and the assessable costs do not exceed $30.

(iii) Activities are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of whether to charge or waive the fee cannot be clearly resolved, activities should rule in favor of the requester.

*(b) Collection of Fees and Fee Rates*

(1) Collection of Fees

(i) No fee may be charged by DLA activities if the costs of processing the request are equal to or less than $15. The automatic waiver does not apply, however, when the cost of processing exceeds this amount.

(ii) Fees should be assessed only after applicable statutory waivers have been applied and subtracted from the cost of processing the request and the balance exceeds the automatic waiver threshold.

(2) Fee Rates

(i) Manual Search.

| Type | Grade | Hourly rate |
|---|---|---|
| Clerical | E9/GS-8 and below | $12 |
| Professional | 01-06/GS-9-GS/GM-15 | 25 |
| Executive | 07/GS-GM-16/ES1 and above. | 45 |

(ii) Computer Search.

(A) Computer search will be based on the direct cost of the central processing unit, input/output devices, and memory capacity of the actual computer configuration. The salary scale for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search costs.

(B) For the purposes of statutory waivers, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search.

(iii) *Duplication.*

| Type | Cost per page (cents |
|---|---|
| Pre-printed material | 02 |
| Office copy | 15 |
| Microfiche | 25 |
| Computer copies (tapes or printouts) | (1) |

[1] Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

(iv) *Review Time.*

| Type | Grade | Hourly rate |
|---|---|---|
| Clerical | E9/GS-8 and below | $12 |
| Professional | 01-06/GS-9-GS/GM-15 | 25 |
| Executive | 07/GS/GM-16/ES1 and above. | 45 |

(v) *Audiovisual Documentary Materials.* Search costs are computed as for any record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(vi) *Other Records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(vii) *Costs for Special Services.* Complying with requests for special services is at the discretion of the activity. Neither the FOIA nor its fee structure cover these kinds of services. Activities will, therefore, recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(A) Certifying that records are true copies.

(B) Sending records by special methods such as express mail, etc.

*(c) Computation of Fees and Fee Rates for Technical Data*

(1) *Fees for Technical Data*

Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA shall be released provided the person requesting such information agrees to pay all reasonable costs attributed to search and duplication and review of the records to be released. Technical data, as used in this paragraph, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DLA activities shall retain the amounts received by such a release, and it shall be merged with, and available for, the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search, review, and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under Appendix A, paragraph (b), for other types of information released under the FOIA.

(2) *Waiver*

Activities shall waive the payment of costs required in subparagraph (i) above, which are greater than the costs that would be required for release of this same information under Appendix A, paragraph (b), if;

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical

data relates to the United States or a contractor with the United States. However, activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation.

(ii) The release of technical data is requested in order to comply with the terms of an international agreement.

(iii) The activity determines in accordance with Appendix A, paragraph (a)(4)(1) that such a waiver is in the interest of the United States.

(3) Fee Rates

(i) *Search Time.*

(A) Manual Search.

| Type | Grade | Hourly rate |
|---|---|---|
| Clerical | E9/GS-8 and below | $13.35 |
| (Minimum charge) | | 8.30 |

Note.—Professional (To be established at actual hourly rate prior to search. A minimum charge will be established at one-half hourly rates.)

(B) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in (1), above) for the computer operator/programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(ii) *Duplication.*

| Type | Cost |
|---|---|
| Aerial Photograph Maps, Specifications, Permits Charts, Blueprints, and other technical documents Engineering data (microfilm) | $2.50 |
| (A) Aperture cards: | |
| (1) Silver duplicate negative, per card | .75 |
| When Key punched and verified, per card | .55 |
| (2) Diazo duplicate negative, per card | .65 |
| When key punched and verified, per card | .75 |
| (B) 35mm roll film, per frame | .50 |
| (C) 16mm roll film, per frame | .45 |
| (D) Paper prints (engineering drawings), each | 1.50 |
| (E) Paper reprints of microfilm indices, each | .10 |

(iii) *Review Time.*

| Type | Grade | Hourly rate |
|---|---|---|
| Clerical | E9/GS-8 and below | $13.25 |
| (Minimum charge) | | 8.30 |

Note.—Professional (To be established at actual hourly rate prior to review. A minimum charge will be established at one-half hourly rates.)

(iv) *Other Technical Data Records.* Charges for any additional services not specifically provided above, consistent with DLAR 7230.1, will be made by activities at the following rates:

| | |
|---|---|
| (A) Minimum charge for office copy (up to six images) | $3.50 |
| (B) Each additional image | .10 |
| (C) Each typewritten page | 3.50 |
| (D) Certification and validation with seal, each | 5.20 |
| (E) Hand-drawn plots and sketches, each hour or fraction thereof | 12.00 |

*(d) Billing and Collection*

DLA activities will routinely bill requesters for services provided in the response providing the records requested, access determination on the request, or in cases of individual examination, after the provision of services. The Debt Collection Act of 1982, Pub. L. 97-365 (1982) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Finance Officers may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester on the amount owed.

(1) Billing/responses to requests should take the form of demand notices and ask that payments be sent directly to Finance and Accounting Offices. The requirement can be accommodated by adding standard language or paragraph to responses such as: "Freedom of Information Act processing fees in the amount of $——— have been assessed for this request. This fee is currently due and payable. Please send a copy of this letter with a check or money order payable to the Defense Logistics Agency (provide the mailing address of appropriate Finance and Accounting Office). If not received within 30 days after this billing, interest will accrue to the amount until receipt of payment in full at the rates set by the Secretary of the Treasury as provided under the Debt Collection Act of 1982."

(2) All fees collected for services provided under the FOIA, other than fees collected in providing technical data, will be credited to miscellaneous receipts of the Treasury. Fees collected for providing technical data will be treated as an appropriations refund and credited to the Operations and Maintenance (O&M) or Research, Development, Test, and Evaluation (RDT&E) funds of the activity.

(3) DLA activities should provide the requester the original and one copy of the response, and also provide a copy to the appropriate finance and accounting office with a notation regarding the proper crediting of the funds. To the extent required, finance and accounting officers should pursue collections under DLAM 7000.1, Accounting and Finance Manual, and advise FOIA officers on instances where the requester has failed to pay and subsequent requester settlements for the purposes of suspending requester privileges and reporting.

(4) In those instances where payments are required as a precondition of processing the request (those with estimated charges exceeding $250), activities should have such payments sent to the Freedom of Information Act Officer for subsequent surrender to finance officers under DD Form 1131, Cash Collection Voucher, cash collection procedures. Finance officers should suspend collection on such payments until completed processing and billing on the request.

*(e) Fee Appeals*

(e) A requester may appeal an initial determination regarding placement in a certain fee assessment category and the waiver or reduction of fees when disclosure serves the public interest to the Staff Director, Office of Administration, HQ DLA. When the Staff Director, Office of Administration is the official making the initial determination, the Chief of Staff, HQ DLA shall act as the appellate authority.

(1) Fee appeals must be submitted in writing to the Staff Director, Office of Administration (ATTN: DLA-XAM) or Chief of Staff, as appropriate, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100 within 60 calendar days of the date of the initial determination on fees and include:

(i) A copy of the request and all other documentation made available by the requester in the initial determination.

(ii) A copy of the initial determination on fees.

(iii) The rational supporting the requester's claim.

(2) Final determinations shall be made in writing within 20 working days of an appropriately submitted appeal.

(3) When the appellate authority upholds the decision of the Initial Denial Authority, the requester will be provided the rationale for the determination and advised of their right to judicial review.

## Appendix B—For Official Use Only

*(a) General Provisions.*

(1) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA *Exemptions* 2 through 9, shall be considered as being For Official Use Only (FOUO). No other material shall be considered or marked (FOUO), and a FOUO designation is not authorized for use as a form of classification to protect national security interests.

(2) *Prior FOUO Application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply. Even if exemptions apply, information may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(3) *Historical Papers.* Records such as notes, working papers, and drafts retained as historical evidence of DLA activity actions enjoy no special status apart from the exemptions under the FOIA.

(4) *Time to Mark Records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA, that do not bear such markings, should not be assumed to be releasable without

examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(5) *Distribution Statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24, Distribution Statements on Technical Documents shall bear that statement and shall not be marked FOUO.

*(b) Markings.*

(1) *Location of Markings*

(i) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(ii) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(iii) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(iv) Other records, such as photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(v) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * apply.

*(c) Dissemination and Transmission.*

(1) *Release and Transmission Procedures.* Until FOUO status is terminated, the following release and transmission instructions apply:

(i) FOUO information may be disseminated within DLA activities and between officials of DLA activities and DLA contractors, consultants, and grantees to conduct official business for DLA. Recipients shall be made aware of the status of such information; and, transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(ii) DLA holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches so to fulfill a Government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only"; and, the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(iii) Release of FOUO information to Members of Congress is governed by DLAR 5400.12. Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1, General Accounting Office Access to Records. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(2) *Transporting FOUO Information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO regulations or testing materials that otherwise qualify under postal regulations, may be sent by fourth-class mail.

(3) *Electronically Transmitted Messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in (U.S. Supp 1), Allied Communication Publication, ACP-121 for FOUO information.

*(d) Safeguarding FOUO Information*

(1) *During Duty Hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-Governmental personnel. The use of DLA Label 22, FOR OFFICIAL USE ONLY Cover Sheet, is optional. (See Appendix F).

(2) *During Nonduty Hours.* At the close of business, FOUO records shall be stored so to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86-36, National Security Information Exemption, shall meet the safeguards outlined in any system notice for that group of records.

*(e) Termination, Disposal, and Unauthorized Disclosures*

(1) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "for Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(2) *Disposal.* (i) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicate that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(ii) 2. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C., CH 33, Disposal of Records, as implemented by DLAM 5015.1.

(3) *Unauthorized Disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DLA information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DLA activity that originated the FOUO information shall be informed of its unauthorized disclosure.

## Appendix C—Judicial Actions

*(a) General Provisions*

(1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules neither create rights or remedies not otherwise available nor bind DLA to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the Director, DLA or an appellate designee or when the DLA activity has failed to respond within the time limits prescribed by the FOIA as set forth in this regulation.

*(b) Jurisdiction*

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

*(c) Burden of Proof*

The burden of proof is on DLA to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

*(d) Actions by the Court*

(1) When a DLA activity has failed to make a determination within the statutory time

limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the activity additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DLA personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. DLA will be guided by the recommendations of the special counsel.

(4) The court may hold the responsible official in contempt for failure to comply with a court order to produce records that it determines have been withheld improperly.

*(e) Non-United States Government Source Information*

A requester may bring suit in a U.S. District Court to compel the release or records obtained form a non-Government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the activity shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

*(f) Litigation Status Sheet*

The Freedom of Information manager at DLA shall be made aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Agency personnel. The Litigation Status Sheet provides a standard format for recording information concerning FOIA litigation. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DLA activity named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to HQ DLA, ATTN: DLA–XAM, with an informational copy to DLA–G. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

**Litigation Status Sheet**

1. Case Number [1]
2. Requester
3. Document Title of Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

## Appendix D—Annual FOIA Report

*Annual Report Content:* The following instructions and attached format will be used in preparing the annual report. DLA Form 1788, Freedom of Information Case Summary, and DLA Form 1776, Freedom of Information Act Annual Report Worksheet, should be used to record and summarize reporting data (see Appendix F).

*1. Item 1*

a. *Completed Public Requests.* Enter the total number of FOIA requests received and responded to during the reporting period.

b. *Completed Reportable Requests.* Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in the actions taken section of DLA Form 1776 for each request processed. (Note: This figure will be equal to, or greater than, Item a, above.)

c. *Number of Requests Denied.* Enter the number of FOIA requests which were denied in whole, or in part, based on one or more of the nine FOIA exemptions.

d. *Other Reason Responses.* Enter the number of FOIA requests in which you were unable to provide the requested information based on an "Other Reason" response. (See Item 2c, below for an explanation of "other reason" responses.)

e. *Total.* Enter the sum of Item c and d, above.

*2. Item 2*

a. *Exemptions Invoked on Initial Determinations.* Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal or greater than that of item 1c, above.

b. *"(b)(3)" Statutes Invoked on Initial Determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking either the Atomic Energy Act of 1954 or the National Security Act of 1947.

c. *Initial Request "Other Reason" Responses.* Identify the "other reason" response cited when responding to a FOIA request and enter the number of times each was claimed.

(1) *Transferred Requests.* Enter the number of times a request was transferred to another DoD Component or Federal agency for action. (NOTE: A referral to another DLA activity is not considered a transfer for the purposes of this report.) This category applies when the responsibility for making a determination or a decision on categories 2, 3, or 4, below, is shifted either to another Component or another Federal agency.

(2) *Lack of Records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record. This category covers those situations wherein, the requester is advised that the DLA activity has no record or has no statutory obligation to create a record.

(3) *Failure of Requester to Reasonably Describe Record.* Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably describe the record(s) being sought.

(4) *Other Failures by Requester to Comply with Published Rules and/or Directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(5) *Request/Appeal Withdrawn by Requester.* Enter the number of times a requester withdrew a request/appeal.

(6) *Not an Agency Record.* Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

*TOTAL.* Enter the sum of columns 1 through 6.

The total will be equal to, or greater than, Item 1d, since more than one "other reason" may be claimed.

*3. Item 3*

(To be completed by DLA–X.)

**Initial Denial Authorities (IDAs) by Participation**

a. *Total IDAs Authorized.* Enter one. Only one IDA is authorized per PSE/PLFA.

b. *Individuals Involved in Adverse Determinations.* Enter the name, grade, activity, and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

*4. Item 4*

(To be completed by DLA–G.)

**Number of Appeals and Results**

*Number of Appeals.* Enter the disposition of appeals under the appropriate category and then the total.

*5. Item 5*

(To be completed by DLA–G.)

a. *Exemptions Invoked on appeal Determinations.* Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to, or greater than, the total listed in Item 4, above.

b. *Statutes Invoked on Appeal Determinations.* Identify the statute(s) cited when a "(b)(3)" exemption is used.

c. *Other Reasons Cited or Appeal Determination.* Identify the "other reason" response when responding to an appeal. Enter the number of times each was claimed and the total.

*6. Item 6*

(To be completed by DLA–G.)

*Participation of Appellate Authorities (Those Responsible for Denials in Whole or in Part).* Enter the name, grade, activity, and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances or participation.

[1] Number used by activity for reference purposes.

*7. Item 7*

(To be completed by DLA–G.)

a. *Court Opinions and Action Taken.* Briefly describe the results of each FOIA suit the General Counsel participated in during the calender year. Provide a copy of each final court opinion or order.

*For Example:*

b. *J. Q. Public v. Department of the Army.* Civil No. 87–2600 (S. D. Cal.)

On January 1, 1988, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army Judge Advocate General attorney. Final order, May 1988, ordered release of majority of CID report of investigation.

*8. Item 8*

(To be completed by DLA–X.)

*FOIA Implementation Rules or Regulations.* List all changes or revisions of rules or regulations affecting the implementation of the FOIA Program, followed by the Federal Register reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

*9. Item 9*

*FOIA Instructional and Educational Efforts.* Report what training/seminars your activity has given or attended during this reporting period.

*10. Item 10*

a. *Cost of Routine Request.* Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, however, care must be exercised so that costs are comprehensive so as to include a 25 percent overhead, yet are not duplicated elsewhere in the report.

b. *Sample Computation.* Number of Reportable Requests x Cost factor per request.

c. *Personnel Costs.* (Civilian and Military)

(1) *Direct costs of personnel assigned FOIA duties based upon estimated payroll man-years by grade.* Personnel cost are reported in two ways. This section uses a man-year/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management, and/or administrative handling of FOIA requests. To identify salaries, use DoD 7220.9–M, Department of Defense Accounting Manual, for military personnel and the Office of Personnel Management salary table for civilian personnel.

SAMPLE COMPUTATION

| Grade | No. of persons | Salary | Percentage of time | Costs |
|---|---|---|---|---|
| 0–5 | 1 | $50,000 | 10 | $5,000 |
| 0–1 | 1 | 21,000 | 30 | 6,000 |
| GS–12 | 1 | 35,000 | 50 | 17,500 |
| GS–5 | 1 | 18,000 | 50 | 9,000 |

To determine the man-year computation. Add the total percentages of time and divide the percentage by 100.

*Sample Computation.* Man-years = 140 percent divided by 100 = 1.4 man-years.

(2) *Direct costs for other personnel involved in processing request not included about upon accumulation of total hourly data.* This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (see enclosure 1).

(a) *Search Time Cost*—This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searchers may be done manually or by computer, using existing programming.

(b) *Classification Review Costs*—This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Coordination and Approval/Denial Decision Costs*—This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(d) *Correspondence and Form Preparation Costs*—This includes all cost involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(e) *Other Activity Costs*—This includes all other processing costs not covered above, such as processing time by the mail room.

Total Man-hour Costs. Enter the sum of 2(a) through 2(e).

(3) *Application of Overhead*—The overhead rate is 25 percent and includes the cost of supervision, space, and administrative support. Add items 1 and 2, then multiply the sum of 25 percent.

d. *Other Case Related Costs.* Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

e. *Other Operating Cost.* Report all other costs which are easily identifiable, such as: per diem, operation of courier vehicles, training courses; printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

f. *Summary.* The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

*11. Item 11*

a. *Formal Time Extensions.* Enter the total number of instances in which it was necessary to seek a formal 10-working-day time extension, because of:

(1) *Location.* The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(2) *Volume.* The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(3) *Consultation.* The need for consultation with another agency having substantial interest in the material requested.

(4) *Court Involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the activity was unable to comply with the request within the applicable time limits, and in which a court ge allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

b. *Total.* Enter the sum of Items 1 through 4.

BILLING CODE 3620-01-M

ANNUAL FOIA REPORT ACTIVITY:_____ CY 19___

## ITEM 1

| A Completed Public Requests | B Completed Reportable Requests | C Number of Requests Denied (Partial & Total) | D Number of "Other Reason" Responses Made | E Total (C + D) |
|---|---|---|---|---|
| | | | | |

## ITEM 2

A. EXEMPTIONS CLAIMED IN DENIAL LETTERS:

| (b)(1) | (b)(2) | (b)(3) | (b)(4) | (b)(5) | (b)(6) | (b)(7) | (b)(8) | (b)(9) | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

| B. LIST "(b)(3)" STATUTES CLAIMED IN DENIAL LETTERS: | NUMBER OF TIMES CITED |
|---|---|
| | |

C. "OTHER REASONS" CITED IN RESPONSE TO FOIA REQUESTS:

| 1 | 2 | 3 | 4 | 5 | 6 | TOTAL |
|---|---|---|---|---|---|---|
| | | | | | | |

## ITEM 3

DENIALS AND "OTHER REASON" RESPONSES

| A. TOTAL NUMBER OF IDA's AUTHORIZED TO SIGN DENIAL LETTERS: (DLA-X ONLY) | |
|---|---|

B. LIST ALL INDIVIDUALS WHO SIGNED DENIAL LETTERS OR "OTHER REASON" RESPONSES:

| Name | Rank | Title | Number of Instances of Participation | |
|---|---|---|---|---|
| | | | Exemption | Other |
| (Add'l space available after item 11) | | | | |

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## ITEM 4

NUMBER OF APPEALS RECEIVED AND ACTION TAKEN: (DLA-G ONLY)

| 1 Granted in Full | 2 Granted in Part | 3 Denied in Full | 4 TOTAL |
|---|---|---|---|
| | | | |

## ITEM 5

A. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS: (DLA-G ONLY)

| (b)(1) | (b)(2) | (b)(3) | (b)(4) | (b)(5) | (b)(6) | (b)(7) | (b)(8) | (b)(9) | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

B. LIST OF "(b)(3)" STATUTES INVOKED ON APPEAL DETERMINATIONS: (DLA-G ONLY) | NUMBER OF TIMES CITED

C. "OTHER REASONS" CITED ON APPEAL DETERMINAION: (DLA-G ONLY)

| 1 | 2 | 3 | 4 | 5 | 6 | TOTAL |
|---|---|---|---|---|---|---|
| | | | | | | |

## ITEM 6

LIST ALL INDIVIDUALS WHO SIGNED APPEAL DETERMINATIONS OR "OTHER REASON" RESPONSES: (DLA-G ONLY)

| Name | Rank | Title | Number of Instances of Participation | |
|---|---|---|---|---|
| | | | Exemption | Other |
| (Add'l space available after Item 11) | | | | |

## ITEM 7

COURT OPINION AND ACTIONS TAKEN: (DLA-G ONLY)

## ITEM 8

FOIA IMPLEMENTATION RULES OR REGULATIONS PUBLISHED DURING THE REPORTING PERIOD: (DLA-X ONLY)

| Document Identification | Federal Register Reference | | |
|---|---|---|---|
| | Number | Date | Page |
| | | | |

## ITEM 9

FOIA INSTRUCTIONAL AND EDUCATIONAL EFFORTS:

| Course | Sponsor | Date | Hours |
|---|---|---|---|
| | | | |

| ITEM 10 | | | | |
|---|---|---|---|---|
| A. COST OF ROUTINE REQUESTS PROCESSED: | | | $ | |
| B. PERSONNEL COSTS (CIVILIAN AND MILITARY): | | | | |
| 1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade. TOTAL MANYEARS: ——— | | $ | | |
| 2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total data. | | | | |
| a. Search Time Costs | $ | | | |
| b. Classification Review and Excising Action Costs | $ | | | |
| c. Coordination/Approval/Denial Decision Costs | $ | | | |
| d. Correspondence and Form Preparation Costs | $ | | | |
| e. Other Activity Costs | $ | | | |
| TOTAL MANYEARS COSTS (a + b + c + d + e) | | $ | | |
| 3. Application of Overhead (Subtotal of 1 + 2) x 25% overhead: | | $ | | |
| TOTAL OF PERSONNEL COSTS | | | $ | |
| C. OTHER CASE RELATED COSTS: | | | | |
| 1. Computer | $ | | | |
| 2. Office Copy Reproduction | $ | | | |
| 3. Microfiche Reproduction | $ | | | |
| 4. Costs of Printed Records | $ | | | |
| TOTAL OTHER COSTS (1 + 2 + 3 + 4) | | | $ | |
| D. OTHER OPERATING COSTS: | | | | |
| 1. Reporting Costs | | | | |
| a. Operational | $ | | | |
| b. User | $ | | | |
| c. Overhead: (a + b + c) x 25% | $ | | | |
| TOTAL REPORTING COSTS (a + b + c) | | $ | | |
| 2. Other costs as directed or which can be reasonably ascertained. | | $ | | |
| TOTAL OTHER OPERATING COSTS (1 + 2) | | | $ | |
| E. SUMMARY: | | | | |
| 1. TOTAL COSTS OF SECTION 10A THRU 10D | | | | $ |
| 2. Amount Collected from Requesters During this Reporting Period: | | | | |
| a. Search | $ | | | |
| b. Copy | $ | | | |
| c. Review | $ | | | |
| d. TOTAL COLLECTED (a + b + c) | | | | $ |

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## ITEM 11

A. FORMAL TIME LIMIT EXTENSION TAKEN:

| 1<br>Location | 2<br>Volume | 3<br>Consultation | 4<br>Court Involvement |
|---|---|---|---|
| | | | |

| B. TOTAL (1 + 2 + 3 + 4) | |
|---|---|

FOR ADD'L REMARKS:

BILLING CODE 3520-01-C

## Appendix E—Addressing FOIA Requests

*(a) Description of DLA's Central and Field Organization*

(1) Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304–6100

(i) Established pursuant to authority vested in the Secretary of Defense, DLA is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense (Acquisition and Logistics) and subject to the DoD policies, directives, and instructions.

(ii) DLA consists of a Director, a Deputy Director, a Deputy Director for Acquisition Management, a Headquarters establishment, and 26 primary level field activities and their subordinate activities. Some of the subordinate activities of the Defense Fuel Supply Center, the Defense Reutilization and Marketing Service, and the Defense Personnel Support Center operate in overseas areas. There also are a number of Headquarters management support offices that are controlled by Headquarters staff elements.

(iii) The mission of DLA is to provide effective and economical support to the Military Services, other DoD Components, Federal civil agencies, foreign governments, and others, as authorized, for assigned materiel commodities and items of supply, including weapons systems, logistics services directly associated with the supply management function, contract administration services, and other support services as directed by the Secretary of Defense. Furthermore, DLA administers the operation of DoD programs, as assigned.

(iv) Under the direction and operational control of its Director, DLA is responsible for the performance of the following major functions:

(A) Materiel management encompassing items management classification, requirements and supply control, procurement, quality and reliability assurance, industrial mobilization planning, storage, inventory, and distribution, transportation, maintenance and manufacture, provisioning, technical logistics data and information, value engineering and standardization.

(B) Contract administration services provided in support of the Military Departments and other DoD Components, the National Aeronautics and Space Administration, other designated Federal and State agencies, and foreign governments.

(C) Administering assigned DoD programs, including the DoD Coordinated Procurement Program, Federal Catalog System, DoD Retail Interservice Support Program (DRIS), Defense Materiel Utilization Program, DoD Industrial Plant Equipment Program, Foreign Military Sales, operating Military Parts Control Advisory Groups (MPCAG) for standardization of parts at the system equipment design stage, DoD-wide program for redistribution/reutilization of excess Government-owned and rented automation equipment, Defense Automatic Addressing System, Defense Previous Metals, Recovery Program, Executive Agent for Materiel Redistribution via the Defense European and Pacific Redistribution Activity (DEPRA), assigned logistics, operations contingent to the Federal Emergency Management Program, assigned aspects of the DoD Food Service Management Program, DoD-wide Interchangeable/Substitutable Program, Military Standard Logistics Systems, Logistics Data Element Standardization and Management Program, Defense Procurement Management Review, providing manpower data support to DoD and other Government agencies assigned, the DoD Hazardous Materiel Data System, and the Program Manager for the Defense Energy Information System.

(D) Monitoring DoD supply relationships with the General Services Administration.

(E) Serving as the operating agency for the DoD Automated Placement Programs, and providing administrative support to the Centralized Referral Activity whose functions are under Assistant Secretary of Defense (Acquisition and Logistics) supervision. These programs are the Centralized Referral System that provides for the placement of displaced DoD employees and returning overseas career employees, the Overseas Employment Referral Program, and the Automated Career Management System (ACMS) for placement of employees registered in the DoD-wide career program for Acquisition/Contracting and Quality Assurance personnel.

(F) Systems analysis and design, procedural development, and maintenance for supply and service systems, as assigned by the Secretary of Defense.

(2) Primary level Field Activities

(i) Supply Centers—The six supply centers, Defense Construction Supply Center, Defense Electronics Supply Center, Defense Fuel Supply Center, Defense General Supply Center, Defense Industrial Supply Center, and the Defense Personnel Support Center, are responsible for materiel management of assigned commodities and items of supply relating to food, clothing, textiles, medical, chemical, petroleum, industrial, construction, electronics, and general items of supply. The Defense Fuel Supply Center is also responsible for contracting for commercial petroleum services and coal, as well as for crude oil and petroleum products for the Strategic Petroleum Reserve. Two of the supply centers also perform depot operations functions for assigned commodities.

(ii) Service Centers—The seven service centers furnish varied support services as follows:

(A) The Defense Logistics Services Center (DLSC) is responsible for maintenance of the Federal Cataloging System records, including the development and dissemination of cataloging and item intelligence data to the Military Departments, and other authorized customers.

(B) The Defense Industrial Plant Equipment Center (DIPEC) is responsible for the DoD General Reserve of industrial plant equipment. DIPEC maintains visibility records of all DoD equipment in use by Government facilities and contractors and provides specified supply support of industrial plant equipment to the Military Departments.

(C) The Defense Technical Information Center (DTIC) is responsible for the development, maintenance, and operation of the management information system in the field of scientific and technical information, acquisition, storage, announcement, retrieval, provision of secondary distribution of scientific and technical reports, and primary distribution of foreign technical reports, records and services are provided to DoD, and authorized users.

(D) The DLA Administrative Support Center (DASC) provides administrative support and common service functions to DLA activities within the Washington, D.C. metropolitan area.

(E) The Defense Reutilization and Marketing Service (DRMS) is responsible for the integrated management of world wide personal property disposal operations, including reutilization serviceable assets, in support of the Military Department, and other authorized customers.

(F) The DLA Systems Automation Center (DSAC) is responsible for the operational execution of the DLA ADP Program and the DLA Telecommunications Program.

(G) The Defense National Stockpile Center (DNSC) is responsible for the acquisition, sale, and management of the National Defense Stockpile of strategic and critical materials.

(iii) Depots—These activities, Defense Depot Mechanicsburg (DDMP), Defense Depot Memphis (DDMT), Defense Depot Ogden (DDOU), Defense Depot Tracy (DDTC), are responsible for depot operations functions for assigned commodities.

(iv) Contract Administration Services Regions (DCASRs)—The nine Defense Contract Administration Services Regions are located in Atlanta, Boston, Chicago, Cleveland, Dallas, Los Angeles, New York, Philadelphia, and St. Louis. They provide contract administration services including the performance of contract administration, production, quality assurance, data and financial management activities, and small business/labor surplus programs within the United States and such external areas as specifically authorized.

### DLA Freedom of Information Act

### Points of Contact

DCSC—Defense Construction Supply Center, ATTN: FOIA Officer, P.O. Box 3990, Columbus, OH 43216–5000

DESC—Defense Electronics Supply Center, ATTN: FOIA Officer, 1507 Wilmington Pike, Dayton, OH 45444–5252

DFSC—Defense Fuel Supply Center, ATTN: FOIA Officer, Cameron Station, Alexandria, VA 22304–6160

DGSC—Defense General Supply Center, ATTN: FOIA Officer, Richmond, VA 23297–5000

DISC—Defense Industrial Supply Center, ATTN: FOIA Officer, 700 Robbins Avenue, Philadelphia, PA 19111–5096

DNSC—Defense National Stockpile Center, ATTN: FOIA Officer, 18th and F Streets, N.W., Washington, DC 20405

DPSC—Defense Personnel Support Center, ATTN: FOIA Officer, 2800 South 20th Street, Philadelphia, PA 19101–8419
DTIC—Defense Technical Information Center, ATTN: FOIA Officer, Cameron Station, Alexandria, VA 22304–6145
DDMP—Defense Depot Mechanicsburg, ATTN: FOIA Officer, 5450 Carlisle Pike, P.O. Box 2030, Mechanicsburg, PA 17055–0789
DDMT—Defense Depot Memphis, ATTN: FOIA Officer, 2163 Airways Blvd., Memphis, TN 38114–5297
DDOU—Defense Depot Ogden, ATTN: FOIA Officer, Ogden, UT 84407–5000
DDTC—Defense Depot Tracy, ATTN: FOIA Officer, Tracy, CA 95376–5000
DASC HQ DLA—Defense Logistics Agency, Administrative Support Center, ATTN: FOIA Officer, Cameron Station, Alexandria, VA 22304–6130
DIPEC—Defense Industrial Plant Equipment Center, ATTN: FOIA Officer, 2163 Airways Blvd., Memphis, TN 38114–5297
*DLSC *DRMS—Defense Logistics Services Center, ATTN: FOIA Officer, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084
DSAC—DLA Systems Automation Center, ATTN: FOIA Officer, P.O. Box 1605, 3990 East Broad Street, Columbus, OH 43216–5002
DCASR ATL—Defense Contract Administration, Services Region, Atlanta, ATTN: FOIA Officer, 805 Walker Street, Marietta, GA 30060–2789
DCASR BOS—Defense Contract Administration, Services Region, Boston, ATTN: FOIA Officer, 495 Summer Street, Boston, MA 02110–2184
DCASR CHI—Defense Contract Administration, Services Region, Chicago, ATTN: FOIA Officer, O'Hare International Airport, P.O. Box 66475, Chicago, IL 60666–0475
DCASR CLE—Defense Contract Administration, Services Region, Cleveland, ATTN: FOIA Officer, AJC Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199–2064
DCASR DAL—Defense Contract Administration, Services Region, Dallas, ATTN: FOIA Officer, 1200 Main Street, 6th Floor, Dallas, TX 75202–4399,
DCASR LA—Defense Contract Administration, Services Region, Los Angeles, ATTN: FOIA Officer, 222 N. Sepulveda Blvd., El Segundo, CA 90245–4320
DCASR NY—Defense Contract Administration, Services Region, New York, ATTN: FOIA Officer, 201 Varick Street, New York, NY 10014–4811
DCASR PHI—Defense Contract Administration, Services Region, Philadelphia, ATTN: FOIA Officer, P.O. Box 7478, Philadelphia, PA 19101–7478
DCASR STL—Defense Contract Administration, Services Region, St. Louis, ATTN: FOIA Officer, 1136 Washington Avenue, St. Louis, MO 63101–1194

DLAH 5025.1, Defense Logistics Agency Index of Publications, is published quarterly and is available from the Defense Logistics Agency, ATTN: DLA–XPD, Cameron Station, Alexandria, VA 22304–6100, (202) 274–6011.

*The Defense Logistics Services Center (DLSC) services the Defense Reutilization and Marketing Service (DRMS).

**Note.**—The envelope used for Freedom of Information Act requests should plainly display the words FREEDOM OF INFORMATION ACT REQUEST on the lower left-hand corner.

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## FREEDOM OF INFORMATION CASE SUMMARY

1. REQUEST NUMBER

2. TYPE OF REQUEST
☐ INITIAL
☐ APPEAL

3. TYPE OF REQUESTER
☐ COMMERCIAL ☐ NEWS MEDIA ☐ OTHER
☐ SCIENTIFIC/EDUCATIONAL INSTITUTION

4. ACTIONS TAKEN
☐ GRANTED IN FULL ☐ GRANTED IN PART ☐ DENIED ☐ LACK OF RECORDS ☐ NOT AN AGENCY RECORD
☐ RECORDS NOT DESCRIBED ☐ REQUESTER NONCOMPLIANCE ☐ REQUEST WITHDRAWN ☐ TRANSFERRED TO: _____

5. EXEMPTIONS INVOKED
☐ B1 ☐ B2 ☐ B3 AND STATUTE _____ ☐ B4 ☐ B5 ☐ B6 ☐ B7 ☐ B8 ☐ B9 IDA _____

6. EXTENSIONS
☐ LOCATION ☐ VOLUME ☐ CONSULTATION ☐ COURT INVOLVEMENT

### 7. PROCESSING COST

Grade levels for each type of direct cost listed below will be as follows: Clerical (E–9/GS–8 and below), Professional (0–1 – 0–6/GS–9 – GS–15) and Executive (0–7/GS–16 and above).

| TYPE OF PROCESS (A) | TYPE OF DIRECT COST (B) | HOURLY RATE (C) | NUMBER OF HOURS (D) | COST (C X D) (E) | TOTAL COST (ADD FIGURES IN COLUMN E FOR EACH PROCESS) (F) |
|---|---|---|---|---|---|
| Search | Clerical | $12.00 | | | * |
| | Professional | $25.00 | | | |
| Review/Excising | Clerical | $12.00 | | | ** |
| | Professional | $25.00 | | | |
| | Executive | $45.00 | | | |
| Coordination/ Approval/ Denial | Professional | $25.00 | | | |
| | Executive | $45.00 | | | |
| Correspondence Preparation | Clerical | $12.00 | | | |
| Computer Search | Machine | | | | * |
| Other Activity | Clerical | $12.00 | | | |
| | Professional | $25.00 | | | |

### 8. OTHER CASE COSTS

| TYPE OF COST (A) | COST PER COPY (B) | TOTAL PAGES (C) | TOTAL COST (B X C) (D) |
|---|---|---|---|
| Office Copy Reproduction | .15 | | * |
| Microfiche Reproduction | .25 | | * |
| Printed Records | .02 | | * |

9. REMARKS

### 10. FOR FOI OFFICE USE ONLY

| TOTAL COLLECTABLE COSTS | TOTAL PROCESSING COSTS | TOTAL CHARGED | FEES WAIVED/REDUCED |
|---|---|---|---|
| SEARCH FEES PAID | REVIEW FEES PAID | COPY FEES PAID | ☐ TWO FREE HOURS OF SEARCH TIME<br>☐ 100 FREE PAGES OF REPRODUCTION<br>☐ PUBLIC/GOVERNMENT INTEREST<br>☐ LESS THAN $15.00 THRESHOLD<br>☐ OTHER: _____ |

DLA FORM SEP 87 1786

*Chargeable to the requester
**Chargeable to commercial requesters

INSTRUCTIONS FOR COMPLETING DLA FORM 1786:

1. **REQUEST NUMBER** - First two digits will express Calendar Year followed by dash(-) and activity request number, i.e., 87-001.

2. **TYPE OF REQUEST** - Mark the appropriate block to indicate initial request or appeal of a denial.

3. **TYPE OF REQUESTER** - Mark the appropriate block to indicate category of requester.

4. **ACTIONS TAKEN** - Mark the block(s) which summarizes actions taken on the request. If the action was transferred, enter the name(s) of the other DoD Component or Federal Agency to which it was sent. Referrals to other DLA Activities should not be counted for reporting purposes. See DLAR 5400.14, Encl 4, for more information on each action taken.

5. **EXEMPTIONS INVOKED** - Mark the appropriate exemption(s) invoked to withhold records from the public. In the case of exemption B3, the actual statute should also be entered (e.g., 5 USC 1917).

**IDA** - Initial Denial Authority - Enter the name of the IDA. This will always be the Commander/Administrator for a Primary Level Field Activity and the Staff Director for a Headquarters, DLA, Principle Staff Element.

6. **EXTENSIONS** - Mark the appropriate block to indicate the reason for invoking a 10 day extension.

7. **PROCESSING COST** - For each applicable activity category, enter time expended to the nearest 15 minutes in the number of hours column (D).

**SEARCH** - Time spent locating from the files the requested information.

**REVIEW/EXCISING** - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviewing for other than classification, FOI exemptions 2 through 9 should be considered.

**COORDINATION/APPROVAL/DENIAL** - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

**CORRESPONDENCE PREPARATION** - Time spent in preparing the necessary correspondence and forms to answer the request.

**COMPUTER SEARCH** - Enter exact computer processing value in the total hours column. The salary scale for the programmer/operator executing the search will be recorded as part of the computer search cost.

-Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer and configuration used.

**OTHER ACTIVITY** - Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

8. **OTHER CASE COSTS**

**OFFICE COPY REPRODUCTION** - Enter the number of pages reproduced.

-Multiply by the rate per copy and enter cost figures.

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Forms (include any type of printed forms)

Publications (include any type of bound document, such as directives, regulations, studies, etc.)

Reports (include any type of memorandum, staff action paper, etc.)

-Multiply the total number of pages in each category by the rate per page and enter cost figures.

9. **REMARKS** - Self explanatory.

10. **FOR FOI OFFICE USE ONLY**

**TOTAL COLLECTABLE COSTS** - Add the blocks in the total cost column marked with an asterisk and enter total in the total collectable cost block.

**TOTAL PROCESSING COSTS** - Add all blocks in the total cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

**TOTAL CHARGED** - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

**SEARCH FEES PAID** - Enter total clerical and professional search and/or computer search fees paid by the requester.

**REVIEW FEES PAID** - Enter total review fees paid by the requester.

**COPY FEES PAID** - Enter the total amount paid by the requester for Office Copy reproduction/Microfiche reproduction and Printed records (e.g., Forms, Publications and/or Reports).

**FEES WAIVED/REDUCED** - Mark the appropriate block as applicable. Enter reason for the fee waiver/reduction (e.g., Public interest).

**FREEDOM OF INFORMATION ACT ANNUAL REPORT WORKSHEET**

PAGE ___ OF ___ PAGES

| | DIRECT COSTS | | |

# FREEDOM OF INFORMATION ACT REQUEST

## PRIORITY ACTION

NOTE: RESPONSE TO REQUESTER MUST BE ACCOMPLISHED WITHIN 10 WORKING DAYS AFTER RECEIPT.

(PUBLIC LAW 93-502)

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**Dave Henshall,**

*Acting Chief, Administrative Management Branch.*

[FR Doc. 88-14837 Filed 7-25-88; 8:45 am]

BILLING CODE 3820-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 61**

### National Flood Insurance Program; Elevated Building Coverage

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** This final rule will amend the Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) by providing that the limitation in flood insurance coverage in the SFIP currently applicable to all elevated buildings having enclosures, contents, machinery, building components, equipment, or fixtures below the elevated floor, will be applicable only to elevated Post-FIRM buildings and not to elevated Pre-FIRM buildings. This amendment will correct an unintended disparity in flood insurance coverage between elevated Pre-FIRM buildings with enclosures and nonelevated Pre-FIRM buildings. Post-FIRM buildings are buildings for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located or occurred after December 31, 1974, if that is later. The term Post-FIRM buildings also includes buildings substantially improved (i.e. improved or repaired where the cost is 50% of the market value of the building or greater), as well as new construction. Pre-FIRM buildings are those for which the start of construction or any substantial improvement occurred prior to such dates and which were not subject to the local building restrictions which apply to Post-FIRM buildings. This final rule adds a definition of "Post-FIRM building" to the SFIP.

**EFFECTIVE DATE:** October 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646-3422.

**SUPPLEMENTARY INFORMATION:** On April 1, 1988, FEMA published for comment in the **Federal Register** (Vol. 53, page 10347) a proposed rule with respect to flood insurance coverage for certain Pre-FIRM elevated buildings. The proposal related to a limitation of flood insurance coverage under the SFIP which was effective October 1, 1983 (see Vol. 48, **Federal Register**, at page 39066 *et seq.*, August 29, 1983) and which applied to all buildings elevated above grade by means of posts, pilings, piers and other foundation walls. The coverage limitation excluded flood insurance coverage under the SFIP for the contents in enclosed areas below the elevated floors of such buildings, and the enclosed areas themselves, retaining coverage only for essential foundation and other elements in such enclosed areas.

The 1983 limitation was made applicable to both elevated Pre-FIRM buildings, whose enclosure is not prohibited under the NFIP flood plain management rules, and to elevated Post-FIRM buildings, which under local ordinances required to be adopted by communities to conform to NFIP flood plain management rules as a condition of the communities' participation in the

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NFIP, are not permitted to be enclosed, and as to which the community is required to keep building records showing to what elevation the building was required to be built.

Program experience since 1983 has disclosed an unintended disparity in treatment as a result of the fact that, while the 1983 limitation excluded coverage for areas of enclosures at grade level, and the contents therein, for elevated pre-FIRM buildings, the coverage afforded under the SFIP to the owners of neighboring nonelevated Pre-FIRM buildings for the areas and contents of such buildings at their grade level floors was not limited, even though the exposure of the contents and buildings elements at grade level of both elevated and nonelevated buildings was basically the same, and even though both types of buildings were constructed in compliance with building ordinances in effect at the time of construction.

The proposed rule sought to correct that disparity by removing the limitation for Pre-FIRM elevated and enclosed buildings, thereby causing the 1983 limitation to apply only to Post-FIRM elevated buildings, which are subject to local building restrictions as to elevation and the prohibiting of enclosures, and as to which the base flood elevation is readily indicated on the FIRM.

Four comments were received on the proposed rule, all of which supported eliminatng the disparity in coverage, but expressing various concerns regarding the manner in which the proposed rule would do this.

Two commenters thought that the coverage limitation should not be removed for all Pre-FIRM buildings because this would encourage owners of Pre-FIRM elevated buildings without enclosures to enclose, knowing they would get flood insurance coverage for the new enclosure. These two commenters suggested removing the coverage limitation only if the enclosure itself was made prior to the issuance of a FIRM. However, another commenter, the Association of State Floodplain Managers, commented that the proposed rule was consistent with the current rule allowing improvements of other sorts, at the existing grade, to Pre-FIRM buildings. This principle of the NFIP, known as the substantial improvement rule, is a well-established and a long-standing one. It allows improvements to Pre-FIRM buildings without requiring that the improvement be elevated above the flood hazard, so long as the cost of the improvement is less than 50% of the market value of the building and without imposing a limitation on coverage.

Another comment referred to the fact that a higher rate is charged for Pre-FIRM elevated buildings with enclosures than for Pre-FIRM nonelevated buildings built at grade and noted that this rate difference would remain under the proposed rule. FEMA believes this difference is justified because Pre-FIRM buildings that are elevated reflect the builders' awareness of a flood hazard by the fact that the buildings were elevated and were mostly in coastal areas. This is in contrast to Pre-FIRM buildings built at grade, which reflects the builders' general belief that the site is relatively safe from flooding, although in some cases the builders may have been ignorant of the nature of the flood risk.

Several comments indicated a misunderstanding of the effect of the proposed change on the premium rates for the buildings to which the change would apply. The proposed rule would only change the coverage provided by the SFIP; it would not change the rates or rating classification of these buildings at all. As indicated in the Supplementary Information for the proposed rule, there may be a future increase in the premium rate differential between the rates for Pre-FIRM elevated buildings without enclosure and the higher premium rates for Pre-FIRM elevated buildings with enclosures, based on claims experience. In that regard, one of the two commenters who objected to removing the coverage limitation for Pre-FIRM buildings with Post-FIRM enclosures (see above) also objected to any premium rate increase being applied to all Pre-FIRM buildings with enclosures, implying that Pre-FIRM buildings with Pre-FIRM enclosures should not be subject to any premium rate increase FEMA believes, as discussed above, that providing the same coverage to all Pre-FIRM elevated buildings with enclosures, without regard to the date of the enclosure, is compelled by and consistent with the NFIP's long-standing and well-established substantial improvement rule. This commenter also envisioned the cost to all NFIP policyholders and to the taxpaying public increasing as a result of the proposed change. However, the premium rates for Pre-FIRM buildings will take into account the loss experience of these buildings, thereby minimizing the chance that any increased claims costs due to the proposed change would be passed on to all NFIP policyholders or to the taxpaying public. Further, FEMA is taking other steps to reduce the taxpayer subsidy. Its annual rate and coverage revision programs are designed to accomplish that objective.

One comment anticipated a problem with revising the policy forms to reflect the proposed change in time for an October 1, 1988 effective date. FEMA believes any such problem would be minimal.

There was a comment inquiring about flood losses suffered before the change would become effective. The answer, of course, is that losses before the effective date of the change would be adjusted on the basis of current policy provisions.

A final comment suggested that a similar change to the one being proposed for elevated buildings be made for buildings with basements, i.e., that the basement coverage limitation that became effective in 1983 at the same time as the elevated building coverage limitation also be removed for Pre-FIRM buildings. FEMA believes that this suggestion raises issues which require further study and will take this recommendation under advisement.

FEMA continues to believe that, in the interest of providing equal coverage to the owners of both kinds of Pre-FIRM buildings (i.e., a building initially built at grade and a building initially elevated above grade and subsequently enclosed), it is necessary and desirable to amend the 1983 coverage limitation so that it will not apply to enclosures and contents below the elevated floors of elevated Pre-FIRM buildings. Therefore, this final rule makes the changes set forth in the proposed rule.

FEMA has determined, based upon an Environmental Assessment, that this final rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This final rule will not have a significant economic impact on a substantial number of small entities and therefore has not undergone regulatory flexibility analysis.

This final rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

The collection of information requirement referred to in the Supplementary Information for this rule has been approved by the Office of Management and Budget under control no. 3067–0020.

**List of Subjects in 44 CFR Part 61**

Flood insurance.

Accordingly, 44 CFR Chapter 1, Subchapter B, is amended as follows:

## PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 61.5 is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph (f)(9) the word "Post-FIRM" and by adding to the end of paragraph (f)(9) the following sentence:

**§ 61.5 [Amended]**

* * * * *

(f) * * *

(9) * * * "Post-FIRM building" means, as used in this paragraph (f)(9), a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

**Appendix A(1) of Part 61—[Amended]**

3. Appendix A(1) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. Article II—Definitions is amended by adding, alphabetically, a definition of "Post-FIRM building" to read as follows:

* * * * *

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

b. Article V—Property Not Covered is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph F the word "Post-FIRM".

* * * * *

**Appendix A(2) of Part 61—[Amended]**

4. Appendix A(2) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. The DEFINITIONS section is amended by adding, alphabetically, a definition of "Post-FIRM building" to read as follows:

* * * * *

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

b. The PROPERTY NOT COVERED section is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph F the word "Post-FIRM".

Dated: July 19, 1988.

**Harold T. Duryee,**

*Federal Insurance Administrator.*

[FR Doc. 88-16738 Filed 7-25-88; 8:45 am]

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## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 670

### Conservation of Antarctic Animals and Plants

**AGENCY:** National Science Foundation.

**ACTION:** Final rule.

**SUMMARY:** Because of recommendations adopted at consultative meetings, NSF is amending its regulations at 45 CFR Part 670 implementing the Antarctic Conservation Act of 1978 to designate additionally specially protected areas and sites of special scientific interest in Antarctica.

**DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this regulation should be addressed to Anton L. Inderbitzen, Polar Coordination and Information Section, Division of Polar Programs, National Science Foundation, Washington, DC 20550, or by telephone on 202-357-7817.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking was published on May 12, 1988 at 53 FR 16886-16887. One comment was received which expressed concern with limits on Alaskan lands which was not germane to this rule. Accordingly, the final rule is the same as set forth in the notice of proposed rule-making.

This is not a major rule as defined by Executive Order 12291. This regulation will not have a significant impact on a substantial number of small businesses. No new information collection requirements are imposed by the proposed amendment.

**List of Subjects in 45 CFR Part 670**

Antarctica, Conservation.

Therefore, 45 CFR Part 670 is amended as set forth below:

1. The authority citation for Part 670 continues to read as follows:

**Authority:** Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

2. Section 670.30 is amended by adding paragraphs (o), (p), and (q) as follows:

**§ 670.30 Designation of specially protected areas.**

* * * * *

(o) North Coronation Island, South Orkney Islands.

(p) Lagotellerie Island, Marguerite Bay.

(q) New College Valley, Caughley Beach, Cape Bird, Ross Island.

* * * * *

3. Section 670.34 is amended by revising paragraphs (a)(1) and (4) and by adding paragraphs (a)(5), (6), (7), (8), (9), (10), and (11) and (d) to read as follows:

**§ 670.34 Designation of sites of special scientific interest and management plans for those sites.**

* * * * *

(a) *Sites of Special Scientific Interest Requiring a Permit for Entry.*

(1)(i) Cape Royds on Ross Island, (ii) Cape Crozier on Ross Island, (iii) Haswell Island, (iv) Admiralty Bay, King George Island, (v) Caughley Beach, Cape Bird, Ross Island, and (vi) Cierva Point and offshore Islands, Danco Coast. Management Plan: Entry by foot only for scientific purposes will be authorized. Pedestrians may not move through areas populated by birds or mammals except as necessary in the course of scientific investigations. A compelling scientific purpose must be demonstrated before a permit will be issued to take a native bird or mammal from these sites.

* * * * *

(4)(i) Barwick Valley in Victoria Land and (ii) Harmony Point, West Coast of Nelson Island, South Shetland Island. Management Plan: Entry on foot only will be authorized. Overflight is not permitted. Permanent field camps, landfill disposal, and other activities which would introduce new materials or organisms, including microorganisms, into the Site are not permitted. All materials carried into the Site shall be removed.

(5)(i) Rothera Point, Adelaide Island, (ii) Biscoe Point, Anvers Island and (iii) part of Deception Island, South Shetland Islands. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrians will be allowed to enter the Site only in connection with approved monitoring or sampling activities.

(6) Tramway Ridge, Mt. Erebus, Ross Island. Management Plan: Entry by foot

only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrians should avoid walking on visible vegetation and areas of heated ground. Sterile protective overclothing should be worn and footwear sterilized before entering the Site. Human wastes must not be deposited within the Site.

(7) Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrian movement within the Site is restricted to designated paths and shortest routes consistent with scientific activity.

(8) Potter Peninsula, King George Island, South Shetland Islands. Management Plan: Access is restricted to the northern end in the vicinity of Mirounga Point. Pedestrians and vehicles must use established routes particularly during breeding season. No vehicles or helicopters are allowed near any breeding sites.

(9)(i) North-East Bailey Peninsula and (ii) Clarke Peninsula, Budd Coast, Wilkes Land. Management Plan: Vehicles and pedestrians are restricted to existing access routes which are clearly demarcated. No helicopter landings are permitted within the Site. Particular care should be taken to avoid damaging any vegetation, disrupting of soils or morphological features or changing water quality or drainage.

(10) North-West White Island, McMurdo Sound. Management Plan: Vehicles are not permitted closer than 50 m to the seal population and helicopters are prohibited within the Site. Overflights must be at altitudes of 250 m or more.

(11) Linnaeus Terrace, Asgaard Range, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Helicopters are allowed at the designated and marked landing site only. Rocks may not be moved from their natural position and great care should be exercised to avoid accidental breakage of fragile rock formations and disturbing periglacial features.

* * * * *

*(d) Expiration dates*—For purposes of these regulations the sites of special scientific interest and accompanying management plans shall remain in effect until deleted from the regulations.

**Erich Bloch,**

*Director.*

[FR Doc. 88-16832 Filed 7-25-88; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 1098 and 1007**

**[Docket Nos. AO-184-A52 and AO-366-A29; DA-88-104]**

## Milk in the Nashville and Georgia Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision recommends certain changes in the pooling provisions of the Nashville, Tennessee, and Georgia milk orders based on industry proposals considered at a public hearing held at Nashville, Tennessee, on November 3, 1987. A pool distributing plant physically located in the Nashville, Tennessee, marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk products distribution. Another change in the Nashville order would establish a plus location adjustment of 8.5 cents per hundredweight for milk received at plants located in 18 Tennessee counties south of Nashville. These changes are needed to reflect current marketing conditions and to insure orderly marketing.

**DATE:** Comments are due on or before August 10, 1988.

**ADDRESS:** Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612), requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendment would promote orderly marketing of milk by producers and regulated handlers.

This action would change the regulatory status that prevailed when the hearing was held of two pool distributing plants located in the Nashville marketing area. At that time, one of the plants was regulated by the Memphis milk order and the other plant was regulated by the Georgia milk order. Both plants would be regulated under the Nashville order under the provisions adopted herein. The cost of the raw milk supplies to the pool plants would be unchanged. There would be no economic impact of such action on the returns to dairy farmers under the Memphis order because milk is pooled under such order on an individual handler basis. Under the Georgia order, there should be little, if any, change in the returns to dairy farmers due to a shift in regulation because the utilization of milk at the Georgia plant differs little form the Class I utilization percentage of the Georgia market. The returns to dairy farmers under the Nashville order will be reduced slightly since the utilization of milk at the two pool plants that would be added is less than the Nashville market's Class I utilization percentage. The Nashville producers whose blend prices would be reduced are members of Dairymen, Inc. (DI), a cooperative association whose representative testified that the cooperative was not opposed to the "lock-in" proposal which would result in the pooling of additional pool plants under the Nashville order.

Prior document in this proceeding:

Notice of Hearing: Issued October 16, 1987; published October 21, 1987 (52 FR 39232).

### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Nashville, Tennessee, on November 3, 1987, pursuant to a notice of hearing issued October 16, 1987 (52 FR 39232).

The material issues on the record of hearing relate to:

1. Regulation of a distributing plant physically located in the Nashville marketing area.

2. Location adjustment for milk received at Tennessee plants located south of Nashville.

### Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Regulation of a distributing plant physically located in the Nashville marketing area.* The Nashville, Tennessee, order (Nashville order) should be amended to provide that a distributing plant which meets the pooling standards of the Nashville order and one or more other Federal orders and which is located in the Nashville order's marketing area shall be a pool plant under the Nashville order irrespective of the quantity of fluid milk products distributed in any other

Federal order market. However, such pool plant status should be accorded only as long as the Nashville order's Class I price at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition.

Presently, when a distributing plant qualifies for pooling under the Nashville order and another order, it is regulated in the market in which it has the greater route sales.

The "lock-in" provision adopted herein for the Nashville order cannot achieve its intended purpose without a corollary change in the pooling standards of the Georgia order. Thus, the Georgia order should provide that any plant with route sales in the Georgia marketing area shall be exempt from full regulation under that order, even though it has more sales in the Georgia market than in the other market, if the plant is subject to full regulation under the other order.

Malone & Hyde Dairy proposed (proposals 1 and 2 as listed in the Notice of Hearing) that a distributing plant that is physically located in the Nashville order's marketing area (Order 98) should be regulated by that order irrespective of the quantity of such plant's route disposition in any other Federal order marketing area. Proposal No. 1 would amend Order 98 by locking in such a plant under the order and proposal No. 2 is intended to amend the Georgia order (Order 7) by releasing from regulation such a plant even though the plant may have more fluid milk sales in the Order 7 area than in the Order 98 area.

A witness for Malone & Hyde stated that this action is necessary in order to minimize disruptive market conditions in the Kentucky and Tennessee supply areas. The witness indicated that the proposal would affect the Malone & Hyde distributing plant located in Nashville, Tennessee, but regulated by the Memphis order (Order 97). It would also affect Heritage Farms (Kroger) distributing plant located in Rutherford County, Tennessee (Order 98 marketing area), but currently regulated by the Georgia order (Order 7). He said that the milk procurement and sales patterns of the Malone & Hyde and Kroger plants establish a primary association of such plants with the Order 98 market.

The Malone & Hyde witness testified that the traditional method of pooling a distributing plant has been on the basis of the market in which the plant has the most sales. The justification for this method, he said, was to ensure that all handlers having the major portion of their sales in the same order area were subject to the same minimum order prices and other regulatory provisions. He said that this principle rested on an assumption that such competing plants would be located in the same geographic area.

Also, the witness for Malone & Hyde said that the traditional method of pooling fluid milk plants has become outdated because of large processing plants, such as chain store plants, that have sales over wide geographical areas. The proposal, he said, better serves the principle of trying to assure that all handlers competing for milk procurement and sales in an order area are subject to the same price as their competition. He indicated the proposal would regulate a distributing plant under the order for the marketing area where it is physically located even though its route distribution was greater in another Federal order's marketing area.

A representative of Southern Milk Sales (SMS), a cooperative association whose members supply about 40 percent of the fluid milk receipts of the Kroger plant at Murfreesboro, Tennessee, testified in support of the proposal to fully regulate under the Nashville order distributing plants physically located within the Nashville marketing area.

A representative for the National Farmers Organization (NFO), which had no member producers on the Nashville or Georgia markets at the time of the hearing, testified in opposition to the lock-in proposal and the proposed change in location adjustment under the Nashville order. It was NFO's position that pooling on the basis of a plant's physical location is "not good Federal order policy." The NFO representative testified that "the issues of producer blend price equity in the Southeast should be addressed by the merger of Federal orders, not by jerry-rigging the present orders to pool targeted plants on selected orders."

NFO contended that the proposed lock-in deviates from the well-established principles of pooling plants and producers in accordance with the sales areas served. The cooperative's representative contended that this pooling technique has fostered both producer and handler equity over the years and should not be abandoned.

At the time of the hearing, there were only three regulated handlers under the Nashville order: Purity Dairies in Nashville, a pool distributing plant; DI in its capacity as the operator of a cooperative balancing plant in Lewisburg, Tennessee; and DI in its capacity as the handler of its member milk. Purity Dairies has Class I distribution principally in the Nashville market with some distribution in Alabama. The Lewisburg plant operates as a manufacturing plant and reload center. During the months of flush production, the plant manufactures milk that is in excess of handlers' fluid milk needs and during the fall months, the plant transfers Class I milk to plant in other markets.

Marketing changes that have occurred since a hearing in 1983 on the issue of whether the Malone & Hyde plant should be pooled under the Nashville order on the basis of the plant's location or under the Memphis order on the basis of greater sales in the market warrant the pooling of the Malone & Hyde plant under the Nashville order. Malone & Hyde purchased its Nashville distributing plant from Kraft Diary Group in 1983. The company distributes milk through company-owned warehouses throughout the Southeast and south central states from Georgia to Arkansas.

Beginning in 1984, the Malone & Hyde plant became regulated under the Memphis order because it distributed the principal portion of its bottled milk to the Memphis market. In 1984, the plant's sales in Memphis represented more than 50 percent of its total distribution and the Nashville-area sales were less than half of the Memphis sales.

While the Malone & Hyde plant's distribution in Memphis has remained fairly constant since 1984, the plant's sales in Nashville and Alabama-West Florida have increased greatly. In Nashville, the fluid milk sales from the plant have doubled since 1984. The plant's sales in Alabama which were nonexistent when the plant first opened are now almost as great as its sales in the Nashville area. In some months, the plant's sales in Alabama have exceeded its sales in the Nashville area.

Recently, Malone & Hyde has acquired supermarkets in the Nashville marketing area which will provide new accounts for the plant in 1988. The plant operator expects its sales in Nashville in 1988 to equal or exceed its sales in the Memphis area.

Malone & Hyde procures its raw milk supply primarily from producers located in south-central Kentucky and central Tennessee. This milk production area provides regular and reserve milk supplies to handlers associated with the Nashville, Georgia and other Federal order markets.

Current marketing conditions warrant the pooling of the Malone & Hyde plant under the Nashville order. As previously noted, the plant's Class I sales in Nashville for 1988 are expected to equal

or exceed its Class I sales in the Memphis market. Furthermore, the pooling of the plant on the basis of its location rather than sales area will avoid the plant shifting regulation among the Memphis, Nashville and Alabama-West Florida milk orders. In that regard, the plant's Class I sales in the Nashville and Alabama markets each accounted for about 19 percent of the plant's distribution and a shift of 400,000 pounds in sales from Memphis to either the Nashville or Alabama market would shift regulation of the plant to such market. An additional reason for pooling the Malone & Hyde plant under the Nashville order by means of the lock-in provision is that the shifting of regulation among orders could impair the plant's ability to maintain its producer milk supply.

Under the Memphis order, an individual handler pool order, when the Malone & Hyde plant has a high Class I utilization percentage, it is able to return to its producers a favorable blend price. During the months of flush production, however, the plant's Class I utilization percentage is less and it must pay producers in excess of the Federal order's blend price to return a competitive pay price to its producers. The pooling of the Malone & Hyde plant under a marketwide pool order should better enable the plant operator to retain its milk supply on a year-round basis.

As previously noted, the provision that would result in the regulation of the Malone & Hyde plant would also fully regulate the Kroger plant at Murfreesboro, Tennessee, under the Nashville order. The Kroger plant is currently regulated under the Georgia order since a plurality of the plant's distribution is in the Georgia market. The milk supply for the plant comes for dairy farms located in the county where the plant is located and from south central Kentucky amd middle Tennessee. The Kentucky and Tennessee areas are the same areas from which Purity Dairies and Malone & Hyde obtain their producer milk supply.

In addition to sharing a common milkshed, Malone & Hyde and Kroger share a common distribution area in the Southeast. Both Malone & Hyde and Kroger have significant distribution in the Nashville market. Malone & Hyde distributes about 20 percent of its plant's Class I sales in the Nashville market. Kroger's distribution in the Nashville market is between 20 and 25 percent of the Murfreesboro plant's total Class I sales.

Regulation of the Kroger plant under the Nashville order is appropriate in this instance since it will result in a common set of regulations for three distributing plants located within 30 miles of each other. As previously noted, the three plants procure milk from a common production area and distribute fluid milk products in a common sales area. Furthermore, the shifting of the Kroger plant to the Nashville market will have no impact upon the Class I price paid for fluid milk products by the plant operator due to a new pricing zone which will retain the $2.605 Class I differential that applies as such plant's location under the Georgia order.

It also appears that the pay prices received by producers supplying the Kroger plant would not be reduced and may be slightly enhanced by the plant's regulation under the Nashville order. The representative of a cooperative association that supplies about 40 percent of the Kroger plant's fluid milk needs supported the pooling of the Kroger plant under the Nashville order. A representative of the Kroger Company who was present at the hearing expressed no position on the proposal to pool the Kroger plant under the Nashville order.

A further reason for pooling the three distributing plants under one order is to facilitate the shifting of milk supplies between the three plants. Such pooling arrangement will permit the milk of dairy farmers to be shipped directly from the farm to the plant where the milk is needed. Currently, Malone & Hyde must use plant transfers to ship milk to Purity Dairy and the Kroger plant. As proponent points out, it would be much more efficient for the milk to move directly from the farm to either Purity Dairy or the Kroger plant rather than being received at the Malone & Hyde plant and then transferred to such plants. However, the current regulations make it impractical for the milk to move directly from the farm to a plant under another order. If milk were shifted from Malone & Hyde, a Memphis order plant, to Purity Dairy, a Nashville order plant, during the months of March through July, the dairy darmer would hage no base under the Nashville order and would receive only the excess price for such milk shipments. If such a shift occurred during the months of September-January, the dairy farmer would lose the opportunity to build a full base under the order. In addition, such shifting of supplies would complicate the accounting and reporting obligations of the plants involved.

Counsel for NFO qustions in his brief the legality ot pooling a distributing plant on the basis of a plant's physical location. In his opinion the Act authorizes regulation by either production area or marketing area. He contends that the Act does not authorize regulation on the basis of plant location.

The proposal uder consideration is merely a means of identifying which order should regulate a plant when such plant qualifies as a pool plant under more than one order. The Malone & Hyde plant and the Kroger plant acquire regulatory status under the Nashville order because they meet the pool standards of the Nashville order. The physical location of the plant become relevant only if the plant also qualifies as a pool plant under an other Federal milk order.

The determination that a distributing plant which qualifies as a pool plant under the Nashville order and also qualifies as a pool plant under one or more other Federal orders should be regulated under the Nashville order if such plant is physically located in the Nashville marketing area is consistent with the authority set forth in section 608c(7)(D) of the Act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicity authorized by the Act if the incidental terms are found necessary to effectuate the other provisions of the order. The special pooling arrangement adopted herein is considered essential for the assurance of adequate supplies and the maintenance of orderly marketing.

Counsel for NFO next raises several points why a plant should not be pooled on the basis of its location if the Department concludes such regulation in permitted by the Act. Counsel suggests that the solution to producer blend price equity in the Southeast should be addressed by the merger of orders. Such suggestion is not a viable alternative at this time because it is beyond the scope of the hearing notice. Under the circumstances, there appears to be no reason to preclude some measure of producer blend price equity through the lock-in provision as an interim measure until there is a consensus among producers on the need to merge orders and the number of milk orders that should be merged.

Counsel also contends that the designated pooling of plants will not allow producers under the Alabama-West Florida, Georgia and possibly other orders to share in the pool proceeds of such plants. While it is true that producers under the Alabama-West Florida order would not be able to share in the pool proceeds attributable to the Malone & Hyde plant if the lock-in provision is adopted, it needs to be pointed out that this works to their advantage. A comparison of the Class I utilization percentage of the Malone &

Hyde plant and the Alabama-West Florida market's average Class I utilization percentage from January 1986 through September 1987 indicates that pooling the Malone & Hyde plant under the Alabama-West Florida order would have resulted in a lower blend price in 14 of the 21 months for producers regularly associated with the Alabama-West Florida market.

With regard to the gains or losses that producers under the Georgia order would incur by the Kroger plant being locked-in under the Nashville order, there is no way to estimate such gains or losses precisely since the month-to-month Class I utilization percentage of the Kroger plant was not placed in evidence. Two witnesses estimated that the Kroger plant's Class I utilization percentage does not vary significantly from the Georgia market's Class I utilization percentage. If that is the case, a "lock-in" of the Kroger plant under the Nashville order would have little impact on the blend price under the Georgia order.

The final objection by counsel for NFO to "locking-in" the Malone & Hyde plant and the Kroger plant under the Nashville order is that the blend price difference are not sufficient to justify the lock-in provision.

Malone & Hyde estimated on the basis of its uniform price under the Memphis order for the months of February through June 1987 that the Kroger plant enjoyed from 16 cents to 32 cents per hundredweight advantage in obtaining its milk supply. For January through September 1987, the cost advantage enjoyed by Kroger (or cost disadvantage of Malone & Hyde) was estimated by Malone & Hyde to amount to $258,000. Such costs are not inconsequential. When these costs are considered in conjunction with other reasons offered by proponents of the lock-in provision, adoption of the proposal is warranted.

2. *Establishment of a plus 8.5-cent location adjustment zone in counties south of Nashville.* A plus 8.5-cent location adjustment zone should be established in Tennessee in an area south and southeast of Nashville. The Tennessee counties that should be included in the plus 8.5-cent zone are Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White.

Malone & Hyde proposed that a plus 8.5-cent location adjustment apply on milk received at plants located in the Tennessee counties of Cannon, Coffee, DeKalb, Rutherford, Warren, and White. The 8.5-cent location adjustment zone would establish a Class I differential of $2.605 at the Murfreesboro plant, which is in Rutherford County. Such Class I differential would be the same as the Class I differential that applies at the Murfreesboro plant under the Georgia order.

At the hearing, Dairymen, Inc., urged a modification of this proposal. The cooperative proposed that milk that is physically received from producers or from a cooperative association acting as a bulk tank handler at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White, be subject to a plus location adjustment of 8.5 cents per hundredweight.

DI pointed out that under the Georgia order, the location adjustment applicable at both the Murfreesboro and the Lewisburg plants is a minus 47.5 cents per hundredweight—resulting in a Class I price at both locations 8.5 cents higher than a Nashville. DI also took the position that producer milk delivered to pool and nonpool plants in the same general geographic location should receive the same blend price. In this regard, the cooperative noted that the Kroger plant at Murfreesboro, Tennessee, could request that the milk that it receives from cooperative members be diverted to a nonpool plant at which no location adjustment applies while at the same time receiving the milk of independent producurs. Under such arrangement, independent producers would receive an 8.5-cent higher blend price than cooperative members whose milk is diverted to nearby plants.

A representative of Southern Milk Sales supported a plus 8.5-cent-per-hundredweight location adjustment for milk received at the plant at Lewisburg, Tennessee. SMS plans to divert milk to the Lewisburg plant in the coming months. The cooperative wanted its members to receive the 8.5-cent higher blend price whether the milk of such members was received at the Murfreesboro plant or was diverted to the Lewisburg plant.

SMS also suggested an alternative pricing method for milk diverted to the Lewisburg plant. The cooperative proposed that milk diverted to the Lewisburg plant be priced at the plant from which the milk was diverted. It opposed, on the other hand, an alternative suggested by counsel for Malone & Hyde, which would price the milk of producers on the basis of the location of the plant where the majority of the producers' milk is received during the month. SMS claimed that this would not solve the problem of pricing milk diverted to nonpool plants during the months of April, May and June. During such months, SMS would most likely divert its members' milk a greater percentage of the time than the milk of the nonmembers is diverted from the Kroger plant to nonpool plants. In that event, the milk diverted by the cooperative would be priced at the location of the Lewisburg plant while the milk of the nonmembers would be priced at the Murfreesboro location, an eight and one-half-cent higher priced zone.

Malone & Hyde opposed any plus location adjustment in those counties of south central Tennessee in which manufacturing plants are located. The handler noted that DI operates a balancing plant and a cheese plant located at Lewisburg in Marshall County, that Kraft operates a cheese plant at Fayetteville in Lincoln County, and that another cheese plant is located at Ardmore in Giles County. Malone & Hyde expressed concern that adoption of a plus location adjustment for manufacturing plant locations would tend to encourage the movement of milk to manufacturing in perference to delivering milk to fluid milk plants. In addition, such milk movements would reduce the level of the blend price at the central market location in Nashville.

NFO, in its brief, also opposed DI's suggestion that the Lewisburg, Tennessee, plant be in a "plus" location adjustment zone. The cooperative contended that it would be a gross deviation from location pricing practices to grant a plus location adjustment to the supply plant in a market. Opponent pointed out that there would be a lower price to producers if milk supplies were diverted from the Lewisburg plant to the fluid milk plants in Nashville. The cooperative contends that DI's objective is to obtain a competitive advantage for producers supplying the Lewisburg plant versus producers supplying the Malone & Hyde plant in Nashville.

An 8.5-cent location adjustment to the Class I price and the uniform price to producers should apply to milk received at plants in the eighteen-county area proposed by DI. The eighteen-county area forms a corridor between Nashville and Chattanooga and Nashville and the Alabama-West Florida marketing area. Such area with an 8.5-cent plus location adjustment provides a Class I pricing zone with a Class I differential of $2.605 for plants at Murfreesboro and Lewisburg. Such intermediate pricing zone will provide an appropriate alignment between the $2.52 Class I differential that applies in the Nashville area, the $2.77 Class I differential at

Chattanooga under the Tennessee Valley order, and the $2.85 Class I differential at plants located in the northern tier of counties in Alabama under the Alabama-West Florida orders.

The objections raised to providing a higher price to producers for milk delivered to nonpool manufacturing plants than to fluid milk plants are not without merit. However, there are compelling reasons for adopting the higher location adjustments for milk received at plants south of Nashville. The addition of 8.5 cents to the blend price on milk received at the Lewisburg plant will price the milk of producers that is diverted from the Kroger plant at Murfreesboro to the Lewisburg plant at the same level as milk recieved at the Murfreesboro plant. In this case, it is essential that the blend price on milk diverted to the Lewisburg plant be equivalent to the blend price on milk received at the Murfreesboro plant. Such pricing will provide equity between the two groups of producers who supply the Murfreesboro plant—one group of producers are members of a cooperative association while the other group of producers are not members of a cooperative. As long as the blend price for milk diverted to the Lewisburg plant is equal to the blend price for milk recieved at the Murfreesboro plant, the operator of the plant and the cooperative association should be indifferent as to which group of producers is diverted to the nonpool manufacturing plant.

Another factor to be considered in the pricing of milk diverted to Tennessee nonpool plants located south of Nashville is that the primary milk supplies for the Malone & Hyde plant, Purity Dairy at Nashville, and the Kroger plant at Murfreesboro and plants in other sutheastern markets are located in central Kentucky and Tennessee counties to the north of Nashville. In such instance, the 9.5-cent-higher price is not going to draw milk away from the fluid milk plants located in Nashville because the added cost of hauling milk beyond the Nashville area to plants further south will nullify the added returns from the 8.5-cent-higher blend price. Yet, the 8.5-cent higher price at plants south of Nashville is needed to reflect added transportation service provided by those producers in Kentucky and northern Tennessee that haul their milk past Nashville to the Kroger plant.

**Rulings on Proposed Findings and Conclusions**

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Nashville, Tennessee and Georgia orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as detemined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

**Recommended Marketing Agreements and Orders Amending the Orders**

The recommended marketing agreements for the Nashville, Tennessee, and Georgia marketing areas are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended regulating the handling of milk in such marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

**List of Subjects in 7 CFR Parts 1098 and 1007**

Milk marketing orders, Milk, Dairy products.

1. The authority citation for CFR Parts 1098 and 1007 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–647.

**PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA**

2. In § 1098.7, paragraph (d)(2) is revised to read as follows:

**§ 1098.7 Pool plant.**

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tennessee, marketing area, except:

(i) That such distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order;

(ii) On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions; and

(iii) A plant located in the marketing area that qualifies pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other

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order's Class I price applicable at this same location even though the plant may have greater route disposition in the order marketing area than in the Nashville marketing area.

3. In § 1098.52, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

**§ 1098.52 Plant location adjustment for handlers.**

* * * * *

(b) For such milk that is physically received from producers or from a handler described in § 1098.9(c) at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White, the price shall be adjusted by plus 8.5 cents per hundredweight.

**PART 1007—MILK IN THE GEORGIA MARKETING AREA**

4. In 1007.7, paragraph (e)(3) is revised and a new paragraph (e)(4) is added to read as follows:

**§ 1007.7 Pool plant.**

* * * * *

(e) * * *

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and, except as provided in paragraph (e)(4) of this section, a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(4) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity Class I milk, except filled milk, is disposed of during the month in the Georgia marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Georgia order.

Signed at Washington, DC, on: July 21, 1988.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 88-16764 Filed 7-25-88; 8:45 am]

BILLING CODE 3410-02-M

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## Food Safety and Inspection Service

## 9 CFR Parts 327 and 381

**[Docket No. 86-045P]**

## Requirements for Foreign Country Import Certification and Live Animal Importation

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations and the poultry products inspection regulations to include revised provisions regarding the residue control programs maintained by foreign inspection systems for products produced for exportation to the United States. The purpose of these provisions is to specify procedures which would better assure that, as implemented, the residue control programs of foreign inspection systems apply requirements at least equal to those applicable to the Federal system of inspection in the United States. The proposed provisions would further the implementation of 1981 and 1985 statutory amendments to the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). The proposed rule would require that foreign residue control programs incorporate random sampling procedures at the point of slaughter and testing procedures for potential contaminants pursuant to an annual residue control plan approved by the Administrator of FSIS. The Administrator's approval of such an annual plan would constitute a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues. In addition, FSIS is proposing to amend the Federal meat inspection regulations to include provisions regarding the issuance of orders prescribing the terms and conditions for the importation of cattle, sheep, swine, goats, horses, mules, and/or other equines for slaughter and human consumption based on the Secretary's determination that other actions taken by the foreign country are not adequate to protect consumers from exposure to an antibiotic or other drug banned for use in the production of such animals in the United States. These provisions include criteria and procedures for exercising authority added by the 1985 amendment to the FMIA.

**DATE:** Comments must be received on or before September 26, 1988.

**ADDRESSES:** Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Dr. Lawrence Skinner, (202) 447-6933. (See "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6933.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed requirements for the annual certification of foreign countries' residue control programs do not impose additional requirements on domestic livestock producers, official establishments, or importers. The proposed regulations for prescribing terms and conditions for the importation of slaughter livestock from eligible countries that permit the use of a drug or antibiotic banned for use in food animals in the United States would impose no regulatory burden on domestic livestock producers or official establishments. The proposed regulations would protect consumers from harmful drug and antibiotic residues in situations where the United States institutes actions to prohibit the use of a drug or antibiotic in food animals.

**Effect on Small Entities**

The Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). The certification requirements for residue control programs would affect foreign inspection systems. The proposal would require that a foreign country desiring to obtain or maintain eligibility to offer meat and/or poultry products for importation into the United States submit to FSIS an annual residue control plan and obtain a certification from the Administrator stating that the country maintains residue programs at least equal to those of the United States. Any terms and conditions prescribed by the Secretary for the importation of live animals administered a drug or antibiotic banned for use in the United States would impact only on those foreign countries desiring to export such live animals to the United States. Although issuance of an order by the Secretary would be rare, it is expected that the Secretary will require that such live animals be held in the foreign country for such period of time that would assure the depletion of any residues from a drug or antibiotic administered to such live animals. Therefore, issuance of an order by the Secretary is expected to have no impact on domestic live animal brokers or dealers.

**Comments**

Interested persons are invited to submit written comments concerning the proposal. Written comments should be sent to the Policy Office. Please include the docket number which appears in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Skinner so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**Background**

FSIS's duties in implementing the FMIA (21 U.S.C. 601 *et seq.*) and the PPIA (21 U.S.C. 451 *et seq.*) include preventing the importation into the United States of adulterated or misbranded livestock and poultry carcasses and parts and products thereof (21 U.S.C. 466 and 620). In executing this responsibility, FSIS has established a regulatory program in which the eligibility of product for importation into the United States is contingent upon the system of meat or poultry inspection maintained by the foreign country from which such product is to be exported (9 CFR 327.2, 327.4, 381.196, and 381.197).

The regulatory activities under this program involve the question of a country's eligibility for importation. A country desiring to establish eligibility must provide extensive information about the authority for an implementation of its inspection system (9 CFR 327.2(a)(2)(iii) and 381.196(a)(2)(iii)). FSIS studies the information presented, and if it finds adequate documentation, an initial on-site review of the system in operation is conducted by USDA representatives. If the Administrator then determines that the foreign inspection system ensures compliance of establishments preparing products for export to the United States with requirements at least equal to those applied to federally inspected establishments and their products in the United States, and that reliance can be placed upon the certificates required to be made by the foreign country's authorities, the public is notified and the name of the country is included in the list of those from which products covered by foreign inspection certificates are eligible for importation (9 CFR 327.2 and 381.196).

Inspection system officials in such countries certify to USDA that all establishments preparing products for export to the United Sates fully meet "at least equal to" requirements, as set forth in the regulations, and such certifications must be renewed annually (9 CFR 327.2(a)(3) and 381.196(a)(3)). In addition, all products consigned to the United States from foreign countries must be accompanied by their inspection system officials' certification that, among other things, such products comply with requirements "at least equal to" those in the FMIA or PPIA and the applicable regulations (9 CFR 327.4 and 381.197).

FSIS assures that countries continue to apply appropriate controls in inspecting the production of products for export to the United States by periodically reviewing foreign inspection systems in operation and by requiring the submission of information related to the conduct of such inspection systems (9 CFR 327.2 (a)(2)(iii) and 381.196(a)(2)(iii). This periodic review includes observation of the operation of the foreign inspection system in a representative number of establishments certified to export products to the United Sates by foreign inspection system officials (9 CFR 327.2(a)(3) and 381.196(a)(3)). A country's eligibility listing may be withdrawn whenever the Administrator determines that its inspection system does not assure compliance with "at least equal to" requirements, that reliance cannot be placed on the certificates required from its authorities, or that, due to lack of current information concerning the inspection system being maintained, it should be required to reestablish eligibility (9 CFR 327.2(a)(4) and 381.196(a)(4)).

In 1979, the Food Safety and Quality Service (the predecessor of FSIS) determined that by utilizing a risk-based approach, it could increase the effectiveness and efficiency of the regulatory program for foreign products. In developing this approach, the Agency identified risk areas which must be appropriately controlled by a foreign inspection system for it to be viewed as providing an adequate inspection service applying requirements at least equal to those of the Federal inspection system. Residue control was one of the risk areas so identified. Consequently, residue control was included in the questionnaires used to obtain baseline information about foreign inspection systems.

Over time, FSIS implementation of a risk-based approach to preventing the importation of adulterated product has resulted in further specification of the controls necessary in foreign inspection systems. The 1981 Farm Bill (the Agriculture and Food Act of 1981, Pub. L. 97–98) amended the FMIA to mandate, among other things, that meat articles offered for importation are subject to the same residue standards applied to meat products produced in the United States and certain features of an adequate residue control program (section 1122 of the bill, which added a new subsection (f) to section 20 of the FMIA (21 U.S.C. 620(f)). Thereafter, FSIS modified its activities to assure that foreign inspection systems maintain a program which provides for random sampling and testing of internal organs and fat at the point of slaughter, in accordance with Administrator-approved methods, to prevent the exportation to the United States of products-made from poultry as well as livestock—that do not comply with this country's residue standards. In addition, the Federal meat inspection regulations were amended to reflect the new FMIA provisions (9 CFR 317.2(a)(2)(i)(*f*) and (iv) (*c*)). After the 1988 Farm Bill (the Food Security Act of 1985, Pub. L. 99–198) made an analogous change in the

PPIA (section 1701 of the bill, which added a new subsection (d) to section 17 of the PPIA (21 U.S.C. 466 (d)), FSIS proposed comparable amendments to the poultry products inspection regulations (proposed 9 CFR 381.196(a)(2)(i)(*f*) and (iv)(*c*); 52 FR 15960, May 1, 1987).

The 1985 Farm Bill (section 1702(a)) also amended section 20(f) of the FMIA (21 U.S.C. 620(f)) by adding a set of procedural requirements for residue control to the substantive requirements established in 1981: Each foreign country from which livestock products are offered for importation into the United States must obtain a certification, issued by the Secretary, stating that it maintains a program using reliable analytical techniques to ensure compliance with the United States standards for residues therein as a condition of entry for articles from that country. Such certifications are to be reviewed periodically and revoked if the Secretary determines that a country is not maintaining a program which uses reliable analytical methods to ensure compliance with United States standards for residues in such articles. The Secretary's consideration and review of certification are to include the inspection of individual establishments to ensure foreign inspection programs are meeting such standards. Based on actions already taken to assure compliance with United States standards for residues, including the random sampling and testing required to be conducted when foreign establishments are producing livestock or poultry products for importation in the United States, FSIS has concluded that the countries in which establishments currently are certified—i.e., the only foreign establishments from which products may be imported into the United States (9 CFR 327.2(a)(3) and 381.196(a)(3))—qualify for certification that their inspection systems maintain such a program.

In annually reporting to Congress, the Secretary of Agriculture must, among other things, certify that foreign plants which export livestock products have complied with requirements at least equal to all provisions of the FMIA and regulations issued thereunder (21 U.S.C. 620(e)(1)). The report on the 1987 administration of section 20 (21 U.S.C. 620) states that this plant certification reflects the determination that the countries in which these establishments are located, maintain residue control programs that use approved sampling and analytical techniques as required by the 1985 amendment to section 20(f) (21 U.S.C. 620(f)).

This proposal would further the implementation of section 20 of the FMIA and section 17 of the PPIA (21 U.S.C. 620 and 466), as amended in 1981 and 1985, by revising the Federal meat and poultry products inspection regulations to address more specifically the requirements regarding residue control programs, including Agency review and certification thereof, that must be maintained by a foreign inspection system for products produced for exportation to the United States. Under the proposed rule, the annual residue control plan submitted by each eligible country would be evaluated for the plan's effectiveness in preventing residue violative product from being exported to the United States. Pertinent information would be obtained from each eligible country and evaluated in the following areas:

1. Agricultural statistics and practices.
2. The legal authority and organizational structure of the residue control program.
3. A listing of the drugs and agricultural chemicals used in each country including approved uses and controls over availability.
4. Drug and agricultural chemical approval procedures.
5. Design parameters of the residue control program including the decision process used to include drugs and chemicals in the program.
6. Tissue sampling and handling procedures.
7. Laboratory facilities, analytical methods, tolerance levels, and quality assurance methods.
8. Corrective actions such as traceback, quarentine and pre-testing.

Such plans would be approved by the Administrator after a review of all information considered pertinent by the Agency. Further, the Administrator's approval of an annual residue control plan would constitute a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues. The regulations would provide that submission and approval of an annual residue control plan in accordance with the amended provisions is a condition of a country's eligibility for importation (proposed amendments to 9 CFR 327.2(a)(1) and (2)(iv)(*c*) and 381.196(a)(1) and (2)(iv)(*c*).

This proposal also would amend the Federal meat inspection regulations to include criteria and procedures for excercising new authority to prescribe the terms and conditions for the importation of certain live animals that was added to the FMIA, as subsection (g) of section 20 (21 U.S.C. 620(g)), by the 1985 Farm Bill (section 1702(b)). Subsection (g) provides the Secretary with discretion to prescribe terms and conditions under which cattle, sheep, swine, goats, horses, mules, and other equines that have been administered a drug, including an antibiotic, banned for use in the United States, may be imported for slaughter and human consumption and prohibits persons from entering animals into the United States in violation of such an order. Under the proposed rule, such an order may be issued if the Secretary determines that: (1) Livestock intended for importation have been exposed to a drug banned for use in livestock production in the United States; (2) a human health hazard is presented by such exposure; and (3) there is no adequate method of testing to assure residues of such drug are not present (proposed 9 CFR 327.27).

**Proposed Rule**

For the reasons set forth in the preamble, FSIS is proposing the amendments to the Federal meat inspection regulations (9 CFR Part 327) and the poultry products inspection regulations (9 CFR Part 381) as set forth below.

**List of Subjects in 9 CFR Parts 327 and 381**

Meat inspection, Imported products, Poultry products inspection.

**PART 327—IMPORTED PRODUCTS**

1. The authority citation for Part 327 continues to read as follows:

**Authority:** 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. The last sentence of § 327.2(a)(1) would be revised to read as follows:

**§ 327.2 Eligibility of foreign countries for importation of products into the United States.**

(a)(1) * * * Thereafter, products prepared in establishments which are certified in accordance with paragraph (a)(3) of this section and from livestock which are subject to random sampling at the point of slaughter and testing for residues in accordance with paragraph (a)(2)(iv)(*c*) of this section are eligible for importation into the United States from such foreign country subject to compliance with the requirements of this subchapter.

* * * * *

3. Section 327.2(a)(2)(iii) and (iv)(*c*) would be revised to read as follows:

(a) * * *

* * * * *

(2) * * *

(iii) Countries desiring to establish eligibility for importation of meat products into the United States may request determination of eligibility by presenting copies of the laws and regulations on which the foreign meat inspection system is based, an annual residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and such other information as the Administrator may require with respect to matters enumerated in paragraphs (a)(2)(i) and (ii) of this section. Determination of eligibility is based on a study of the documents and other information presented and an initial review of the system in operation by a representative of the Department using the criteria listed in paragraphs (a)(2)(i) and (ii) of this section. Maintenance of eligibility of a country for importation of meat products into the United States depends on the results of periodic reviews of the foreign meat inspection system in operation by a representative of the Department, the annual submission of a residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and the annual submission of such documents and other information related to the conduct of the foreign inspection system, including information required by paragraphs (e) and (f) of section 20 of the Act, as the Administrator may find pertinent to and necessary for the determination required by this section of the regulations. If the Administrator determines that any foreign country certified under paragraph (a)(2)(iv)(*c*) is not maintaining a program that uses reliable analytic methods to ensure compliance with United States standards for residues in meat and meat products, the Administrator shall revoke the certification of that foreign country.

(iv) * * *

* * * * *

(*c*) A residue control program for products produced for exportation to the United States, pursuant to an annual residue control plan approved by the Administrator that incorporates, among other things, random sampling at the point of slaughter of tissues, including internal organs and fat, of carcasses which are intended for importation into the United States, or from which meat or meat food products intended for such importation are to be produced, and the testing thereof for potential contaminants: *Provided,* That an annual residue control plan is not required during any period when no establishment in a foreign country is engaged in producing products for exportation to the United States.

(*1*) Approval of such an annual plan depends on the submission of all pertinent information related to the conduct of a foreign country's residue control program, including current information on the following: Animal husbandry and marketing practices; the origin and distribution of drugs and other chemical compounds associated with animal health or other animal food production practices and the conditions under which such compounds are used; the legal authority for and the organization and operation of such components of the residue control program as sampling design and collection, analytical methods, laboratory facilities, establishment of residue limits, and enforcement actions against residue violations; and the results of testing conducted pursuant to the residue control plan for the previous year.

(*2*) Approval of such an annual plan constitutes a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues in meat and meat products: *Provided,* That such certification shall be revoked whenever the Administrator determines that the program, as implemented, is not maintaining a program using such techniques to ensure compliance with such United States standards.

* * * * *

4. The third sentence of § 327.2(a)(3) would be amended by adding ", and no such certification may be renewed unless the Administrator has made the certification described in paragraph (a)(2)(iv)(*c*)(*2*) of this section" at the end before the period.

5. Part 327 would be amended by adding a new § 327.27 to read as follows:

**§ 327.27 Order prescribing the terms and conditions for the importation of livestock for slaughter and human consumption.**

(a) The Secretary may issue an order prescribing the terms and conditions for the importation of cattle, sheep, swine, goats, horses, mules or other equines for slaughter and human consumption if such livestock have been administered a drug or antibiotic banned for such use in the United States.

(b) Any such order will state the basis for the Secretary's determination, including, but not necessarily limited to the following findings: (1) Cattle, sheep, swine, goats, horses, mules, and/or other equines being imported into the United States have been produced in a country or countries in which such a banned drug is used in the production of livestock for human food.

(2) The Commissioner of the Food and Drug Administration concurs that exposure to such a banned drug or any substance formed as a result of its use constitutes a hazard to human health.

(3) No practicable method is available for testing such livestock to assure that such a banned drug and any substance formed as a result of its use are not present.

(c) The provisions of any such order will specify the drug, species of livestock, and country or countries of production to which the findings described in paragraph (b) of this section apply, and will prescribe the terms and conditions of the importation of any such livestock which have been administered, directly or indirectly, the drug specified therein.

(1) Any order issued pursuant to this section will be published in the **Federal Register** at least 60 days before it is to become effective, unless the Secretary finds that an emergency exists which necessitates an earlier effective date and includes the basis for such finding in the order. Interested parties shall have the opportunity to submit written data, views and arguments regarding the findings and determination therein and the terms thereof up to 30 days after publication of the order. After consideration of the relevant material presented, the Secretary will publish a notice in the **Federal Register** indicating any modifications of such findings or determination and, if such order is not rescinded, any changes in its terms and/or effective date.

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

6. The authority citation for Part 381 continues to read as follows:

**Authority:** 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et. seq.*).

7. The last sentence of § 381.196(a)(1) would be revised to read as follows:

**§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.**

(a)(1) * * * Thereafter, poultry products processed in establishments which are certified in accordance with paragraph (a)(3) of this section and from poultry which are subject to random sampling at the point of slaughter and testing for residues in accordance with paragraph (a)(2)(iv)(*c*) of this section are eligible for importation into the United

States from such foreign country subject to compliance with this part.

* * * * *

8. Section 381.196(a)(2)(iii) and (iv)(*c*) would be revised to read as follows:

**§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.**

(a) * * *

* * * * *

(2) * * *

(iii) Countries desiring to establish eligibility for importation of poultry products into the United States may request determination of eligibility by presenting copies of the laws and regulations on which the foreign poultry inspection system is based, an annual residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and such other information as the Administrator may require with respect to matters enumberated in paragraphs (a)(2) (i) and (ii) of this section. Determination of eligibility is based on a study of the documents and other information presented and an initial review of the system in operation by a representative of the Department using the criteria listed in paragraphs (a)(2) (i) and (ii) of this section. Maintenance of eligibility of a country for importation of poultry products into the United States depends on the results of periodic reviews of the foreign poultry inspection system in operation by a respresentative of the Department, the annual submission of a residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and the annual submission of such documents and other information related to the conduct of the foreign inspection system as the Administrator may find pertinent to and necessary for the determinations required by this section of the regulations. If the Administrator determines that any foreign country certified under paragraph (a)(2)(iv)(*c*) is not maintaining a program that uses reliable analytic methods to ensure compliance with United States standards for residues in poultry and poultry products, the Administrator shall revoke the certification of that foreign country.

(iv) The Foreign inspection sytsem must maintain a program to assure that the requirements referred to in this section, at least equal to those applicable to the Federal system in the United States, are being met. The program as implemented must provide for the following:

* * * * *

(*c*) A residue control program for poultry products produced for exportation to the United States, pursuant to an annual residue control plan approved by the Administrator that incorporates, among other things, random sampling at the point of slaughter of tissues, including internal organs and fat, of carcasses which are intended for importation into the United States or from which poultry products intended for such importation are to be produced and the testing thereof for potential contaminants: *Provided,* That an annual residue control plan is not required during any period when no establishment in a foreign country is engaged in producing poultry products for exportation to the United States.

(*1*) Approval of such an annual plan depends on the submission of all pertinent information related to the conduct of a foreign country's residue control program, including current information on the following: Animal husbandry and marketing practices; the origin and distribution of drugs and other chemical compounds associated with animal health or other animal food production practices and the conditions under which such compounds are used; the legal authority for and the organization and operation of such components of the residue control program as sampling design and collection, analytical methods, laboratory facilities, establishment of residue limits, and enforcement actions against residue violations; and the results of testing conducted pursuant to the the residue control plan for the previous year.

(*2*) Approval of such an annual plan constitutes a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues in poultry and poultry products: *Provided,* That such certification shall be revoked whenever the Administrator determines that the program, as implemented, is not maintaining a program using such techniques to ensure compliance with such United States standards.

* * * * *

9. The third sentence of § 381.196(a)(3) would be amended by adding ", and no such certification may be renewed unless the Administrator has made the certification described in paragraph (a)(2)(iv)(*c*)(*2*) of this section" at the end before the period.

Done at Washington, DC, on: June 22, 1988.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 88-16765 Filed 7-25-88; 8:45 am]

BILLING CODE 3410-DM-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-CE-20-AD]**

### Airworthiness Directives; Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes, equipped with any manual electric pitch trim system and/or any autopilot other than Bendix. This proposed AD would require: (a) The standardization of the operation, location and color of the autopilot/manual electric pitch trim system disconnect/interrupt push button; (b) vertification that the system can be disconnected, interrupted, or shut off by at least three independent methods; and (c) a "one time" autopilot/manual electric pitch trim switch location and operational check on all MU-2B Series airplanes except those which have complied with AD 88-13-01, June 8, 1988. This proposal continues the effort of providing uniformity in method of autopilot/manual electric pitch trim disconnection in all Mitsubishi MU-2B airplanes which began as a request from the National Transportation Safety Board (NTSB). Based on a review of a series of fatal MU-2B accidents, the NTSB concluded pilots were confused in the operation of the disconnect/interrupt switches for the manual electric pitch trim and autopilot systems installed on individual airplanes. Compliance with this proposed AD would preclude pilot confusion and possible loss of airplane.

**DATE:** Comments must be received on or before August 25, 1988.

**ADDRESSES:** Bendix/King Certification Bulletin No. CB10, KPN 006-0712-00, or Mitsubishi Kit Installation Drawing, 035A-985007, no revision, applicable to this AD may be obtained from Beech

Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; Telephone (316) 681–7270, or may be examined in the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88–CE–20–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE–130W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4419.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88–CE–20–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**Discussion**

The NTSB, after reviewing fatal accidents involving sudden loss of control of Mitsubishi MU–2B Series airplanes resulting in uncontrolled collisions with the ground/water, requested the FAA conduct an investigation of the Bendix M–4 Series autopilot systems as installed on the MU–2B airplanes and take such appropriate action as deemed necessary to correct any deficiencies identified. The result of this investigation, with cooperation between Mitsubishi Heavy Industries (MHI), Mitsubishi Aircraft International (MAI), Beech Aircraft Corporation (licensee for MHI), Bendix Corporation, and the FAA, revealed that there are at least seven different configurations of the disconnect/interrupt switches for the autopilot and electric pitch trim systems. A pilot's familiarity with the autopilot disconnect/interrupt procedures in one MU–2B model airplane does not guarantee the same familiarity with another MU–2B model airplane even if owned by the same operator. This situation could lead to pilot confusion and affect his ability to safely operate an MU–2B Series airplane. The same possible confusion exists on MU–2B airplanes equipped with King KFC 300 AFCS with Sperry Electric Pitch Trim System or Sperry SPZ–200 AFCS with MAI Manual/Electric Pitch Trim or any other autopilot and/or manual electric pitch trim system. Bendix/King have issued Certification Bulletin No. CB10, KPN, 006–0712–00, no revision, and MHI has issued Kit Installation Drawing, 035A–985007, no revision, which cover those MU–2B–35 and –36 airplanes, respectively, equipped with FAA approved installation of the King KFC 300 AFCS with Sperry trim system or Sperry SPZ–200 AFCS with MAI Manual/Electric Pitch Trim System by providing one combination autopilot/electric pitch trim disconnect switch configuration. This disconnect switch is a red bi-level momentary push-button device with a partial depression disconnecting the autopilot. Continued further depressing of the switch will disarm or interrupt the electric pitch trim system. This switch is located below and outboard of the electric pitch trim switch on the outboard horn of the control yoke. This proposed airworthiness action provides standardization of switch location, color and operation in MU–2B Series airplanes equipped with King KFC 300 AFCS or Sperry SPZ–200 AFCS.

To reduce the possible misuse of the autopilot/manual electric pitch trim system, the FAA prepared an "Accident Prevention Program" flyer which explains the operation of the autopilot/electric pitch trim systems and the reasons the pilot should not assist the autopilot system perform its intended function. This flyer was made available to all MU–2B owner/operators through Beech Aircraft Corporation.

To verify that all MU–2B Model airplanes equipped with King KFC 300 or Sperry SPZ–200 systems or any other autopilot/manual electric pitch trim systems, are uniform in configuration and function, a "one time" visual check and functional ground test of the autopilot/manual electric pitch trim is also proposed, except on those MU–2B model airplanes which have complied with AD 88–13–01, June 8, 1988. This visual check will verify that the disconnect switch is red in color and that this switch is located on the outboard horn of the control yoke, and further verify that the autopilot circuit breaker is properly labeled. The proposed functional test is a ground test requiring manually overpowering the autopilot and verifying that the manual pitch trim wheel stops moving after each of the following actions: (1) The red bilevel interrupt/disconnect push button switch is depressed; (2) the autopilot circuit breaker is pulled; and (3) the autopilot master switch or airplane master switch or radio master switch (as appropriate) is positioned to "OFF."

The FAA has determined that the condition addressed by the service bulletin or kit drawing is an unsafe condition that may exist on products of this type design certificated for operation in the United States. Consequently an AD is proposed which would correct the unsafe condition and is applicable to Mitsubishi MU–2B model airplanes, and Models MU–2B–35 and –36, equipped with King KFC 300 AFCS with Sperry Trim System or Sperry SPZ–200 AFCS with MAI Manual/Electric Pitch Trim Systems. The proposed AD would require the incorporation of Bendix/King Certification Bulletin No. CB10, KPN 006–0712–00, no revision, or MHI Kit Installation Drawing 035A–985007, no revision, as appropriate to: (a) Standardize the location, functions and color of the disconnect switch; (b) verify that the system can be disconnected or shut off by at least three independent methods; and (c) on a "one time" basis, install and operationally check an autopilot/manual electric pitch trim installation on all MU–2B Series airplanes except those which have complied with AD 88–13–01, June 8, 1988. The FAA has determined there are approximately 204 airplanes affected by the proposed Ad. Five (5) of these airplanes will require modifications as described in this AD at an estimated cost of $400 per airplane. The remaining 199 airplanes will require only the inspection specified by this AD

estimated to be one (1) hour at a cost of $40 per hour. The cost of complying with this proposed AD is estimated to be $9,960 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulations Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L 97-449, January 12, 1983); and 14 CFR 11-89.

2. By adding the following new AD:

**Mitsubishi:** Applies to Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all serial numbers, with or without the SA suffix) airplanes certificated in any category, equipped with any manual electric pitch trim system and/or any autopilot other than Bendix.

**Note 1.**—The serial number of airplanes assembled in the United States by Mitsubishi Aircraft Industries (MAI) under Type Certificate (TC) A10SW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries (MHI) under TC A2PC have no suffix.

*Compliance*: Within the next 200 flight hours or five (5) calendar months, whichever occurs first, unless already accomplished.

To minimize the possibility of confusion in autopilot/manual electric pitch trim disconnect switch location and function, accomplish the following:

(a) Modify the control yoke in the affected model airplanes as follows:

(1) For MU-2B-35 model airplanes equipped with King KFC 300 AFCS and Sperry Manual/Electric Pitch Trim System in accordance with Bendix/King Certification Bulletin No. CB10, KPN 006-0712-00, no revision, or

(2) For MU-2B-36 model airplanes equipped with Sperry SPZ-200 AFCS and MAI Manual/Electric Pitch Trim System in accordance with MHI Kit Installation Drawing, 035A-985007, no revision.

(b) Prior to returning the airplane to service accomplish a visual configuration check and system functional ground test on all MU-2B, MU-2B-10, -12, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes, except those airplanes which have complied with AD 88-13-01, June 8, 1988, as follows:

(1) Visually verify that:

(i) The autopilot disconnect and trim disconnect/interrupt functions are combined on one button mounted on the outboard control wheel grip, and is so oriented that it is easily activated by the pilot/co-pilot.

(ii) The autopilot disconnect and trim disconnect/interrupt button is properly and legibly labeled to indicate functions.

(iii) The button is red in color.

(iv) There are no other red buttons nearby that could be mistaken for the autopilot disconnect.

(v) The autopilot circuit breaker is properly labeled.

(2) Perform an operational check of the autopilot disconnect and trim disconnect/interrupt button to confirm its correct functioning by disconnecting/interrupting the autopilot and trim systems, as follows.

(i) With the manual electric pitch trim system armed, press the trim button to cause the manual pitch trim wheel to rotate, then verify that after each of the following operations is performed the manual pitch trim wheel stops moving when:

(A) The disconnect/interrupt switch is fully depressed;

(B) The Master Electric Power Switch is positioned to "OFF;"

(C) The Radio Master switch is positioned to "OFF" (if installed and so configured),

(D) The electric trim circuit breaker is pulled. (On some MU-2B airplanes without an electric trim circuit breaker, the autopilot circuit breaker/switch is used to disconnect the system in lieu of the electric trim circuit breaker.)

**Note 2.**—It is very important to verify that the manual pitch trim wheel stops moving after each of the above operations of (b)(2)(i).

(ii) With the autopilot system engaged, verify:

(A) That the autopilot system can be overpowered by pushing or pulling on the control yoke; and,

(B) That, while overpowering the autopilot, the manual pitch trim wheel stops moving and autopilot disconnects when each of the following operations is performed:

(*1*) The disconnect/interrupt switch is depressed;

(*2*) The autopilot master switch is positioned to "OFF" (On some MU-2B airplanes not equipped with an autopilot master switch beside the controller, the radio master switch must be used to disconnect the system in lieu of the autopilot master switch);

(*3*) The autopilot circuit breaker is pulled.

**Note 3.**—It is very important that the manual pitch trim wheel stops moving after each of these operations.

(c) In addition to the maintenance record entry required by FAR 91.173 enter statement showing successful completion of paragraph (b) of this AD listing the autopilot and/or manual electric trim system installed.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or may examine the documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 19, 1988.

**M.C. Beard,**

*Director of Airworthiness.*

[FR Doc. 88-16818 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-CE-21-AD]**

## Airworthiness Directives; Cessna TU206, TP206, T207, T210 and P210 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to Cessna TU206, TP206, T207, T210 and P210 Series Airplanes, which would require installation of an acceptable fluid hose in place of all Aeroquip Corporation, Aerospace Division fluid carrying 601 type hose assemblies located forward of the firewall. The FAA has determined that certain Aeroquip manufactured hose assemblies are developing serious leaks within 100 hours of original

installation. The proposed AD will preclude engine power loss caused by rapid depletion of lubricating oil or fuel as a result of failure of the suspect Aeroquip 601 hose assemblies.

**DATE:** Comments must be received on or before August 25, 1988.

**ADDRESSES:** Cessna Single Engine Service Bulletin SEB 88-5, dated June 24, 1988, may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, P.O. 1521, Wichita, Kansas 67201, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-21-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone (316) 946-4427.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88-CE-21-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**Discussion**

Incident reports on Cessna Models T210L and T210L airplanes indicate that engine lubricating oil has been lost as a result of cracking from rapid heat aging of certain flexible hose assemblies.

The Aeroquip 601 hose assemblies manufactured and identified with Part Number FSCM 50556 have been determined to be unacceptable for continued use in aircraft engine compartment installations. Several suspect Aeroquip Model 601 hose assemblies have been reported to have developed leaks in less than 100 hours time-in-service. Hose failure has also been reported on unidentified hose assemblies that are thought to be manufactured from the suspect hose material. The cause of the hose leakage has been determined to be cracks induced by the high temperature environment in the engine compartment. Similar Aeroquip 601 hose assemblies manufactured and identified with Part Number FSCM 06827 have not been reported to have an aging problem.

Since the condition described is likely to exist or develop in other turbocharged Cessna 200 series airplanes of the same design, the AD would require the replacement of all unidentified and FSCM 50556 Aeroquip 601 type hose assemblies in the engine compartment of Cessna single engine turbocharged aircraft.

The FAA has determined that approximately 7000 turbocharged single engine airplanes have been manufactured by Cessna Aircraft Company. An estimated 50% (3500) of these airplanes are considered to be currently operational in the United States. The projected cost of replacing all of the Aeroquip Model 601 hoses in 180Q (half of the 3500) of these airplanes is $600 per airplane. The total cost is estimated to be $1,080,000 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

**Cessna:** Applies to all serial numbers of all Model TP206, TU206, T207, T210 and P210 (all serial numbers) airplanes certificated in any category. Compliance: Required within the next 75 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent power loss or fire due to failure of the (FSCM 50556 or 00624) Aeroquip 601 hose assemblies, accomplish the following:

(a) Visually inspect all the exterior metal braided flex hose assemblies, including firesleeve hose assemblies, in the engine compartment. If the Aeroquip part number AE701 appears on the identification tag with "50556" or "00624," or if "06827" appears on the tag, no further action is required other than routine maintenance and inspection. If any identification tag displays the sequence of numbers 50556 or 00624 without the part number AE701, or there is no Manufacturing Identification Code on the tag:

(1) Before further flight replace waste gate supply hose assembly, Aeroquip P/N 601000-4-0310 or hose identified as Cessna S1236-4-0310 supplied by sources other than Cessna, or as identified above, with Aeroquip P/N AE3663162E0310 hose or equivalent in accordance with Cessna Service Bulletin SEB 88-5, dated June 24, 1988, or with Aeroquip 601000-4-0310 hose assembly displaying identification code 06827.

(2) Within the next 12 calendar months replace all other nonidentified exterior metal braided hoses and FSCM 50556 or 00624 Aeroquip 601 type hose assemblies in the engine compartment.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used, if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the document(s) referred to herein upon request to: Cessna Aircraft Company Piston Aircraft Marketing Division, P.O. Box 1521, Wichita, Kansas 67201. These documents may also be examined at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 19, 1988.

**M.C. Beard,**

*Director of Airworthiness.*

[FR Doc. 88-16816 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-CE-19-AD]**

## Airworthiness Directives; Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40 and -60 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, 40 and -60 airplanes that would require inspection and, if necessary, replacement of the flap control torque tube joints. The proposed AD is a result of a field report indicating that a fatigue crack has been found in the torque tube joint of a MU-2B airplane. Failure of one of these joints can lead to flap control failure and possible asymmetric flap deployment resulting in loss of the airplane.

**DATE:** Comments must be received on or before August 25, 1988.

**ADDRESSES:** Mitsubishi Heavy Industries (MHI) Service Bulletin (S/B) No. 189A, dated June 16, 1987, or MHI S/B No. 067/27-008, dated November 16, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; telephone (316) 681-7279, or may be examined in the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rule Docket No. 88-CE-19-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** For Type Certificate (TC) A10SW registered airplanes: Brian Yanez, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-120W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, Telephone (316)946-4409. For MHI TC A2PC registered airplanes: James Brown, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-123L, FAA, 3229 E. Spring Street, Long Beach, California 90806-2425; Telephone (213) 988-5232.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-19-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

### Discussion

There has been a report that a fatigue crack was found in the torque tube joints of the flap control system on a Mitsubishi Model MU-2B aircraft that had been in service for more than 4,000 hours. Failure of the torque tube joints can lead to flap control failure and possible asymmetric flap deployment. As a result, MHI has issued 2 mandatory Service Bulletins, No. 067/27-008, dated November 16, 1987, and No. 189A, dated June 16, 1987, which cover inspection of the torque tube joints and procedures for replacement of cracked parts. The MHI Service Bulletin No. 189A, pertains to models listed on U.S. Type Certificate (TC) A2PC whereas the MHI Service Bulletin No. 067/27-008, pertains to models listed on U.S. TC A10SW. The proposed AD will require an inspection program in accordance with the applicable service bulletin. The inspection program required by this proposed AD is classified as mandatory by the manufacturer and requires that all affected aircraft with more than 4000 hours total time in service be inspected within the next 100 hours time in service. Repetitive inspections are to follow at 100 hour or 500 hour time in service intervals depending upon the part number joint installed in the aircraft. When cracks are found two (2) replacement alternatives are available:

(1) The cracked torque tube joints can be replaced by original part number (P/N) replacement parts in which case the repetitive inspection schedule mandated by the service bulletin will be required within 4100 hours total time in service time on the replacement joint; or

(2) The cracked joints can be replaced by new improved replacement joints and no further repetitive inspection is required for the replaced joints. Any joints not replaced, however, must continue to be inspected in accordance with the applicable service bulletin.

The Japan Civil Aviation Bureau (JCAB) has issued JCAB AD No. TCD-2252-1-87, dated October 29, 1987. The JCAB, which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan, has classified this S/B No. 189A and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under JCAB registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of JCAB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of

MHI MU-2B S/B No. 189A, dated June 16, 1987, and MHI S/B No. 067/27-008, dated November 16, 1987, and the mandatory classification of S/B No. 189A by the JCAB. Based on the foregoing, the FAA believes that the condition addressed by these service bulletins is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require repetitive inspection of the flap torque tube system and replacement of any cracked joints.

The FAA has determined there are approximately 477 airplanes affected by the proposed AD. The cost of the inspection, as required by the proposed AD is estimated to be $320 per airplane. The maximum total cost to the private sector is estimated to be ($320 × 477 =) $152,640.

The cost of compliance with the proposed AD is so small ($320 per airplane) that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this section (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Mitsubishi Heavy Industries, Ltd. (MHI):** Applies to Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40 and -60 (all serial numbers with or without the SA suffix) airplanes certificated in any category.

Compliance: As stated in the AD unless already accomplished.

To preclude flap control failure accomplish the following:

(a) On airplanes with more than 4000 hours Time-In-Service (TIS), within the next 100 hours TIS, and on airplanes with less than 4000 hours TIS, before reaching 4100 hours TIS:

(1) Inspect torque tube joint Part Number (P/N) 010A-61254, of torque tube assembly P/N 010A-61250 for cracks, and replace a cracked joint with a serviceable unit. If no crack is found, repeat the inspection at intervals not to exceed 100 hours TIS, as follows:

(i) For airplanes type certificated in accordance with U.S. Type Certificate (TC) A2PC (those without the serial number suffix SA) as described in MHI MU-2B Service Bulletin (S/B) No. 189A, dated June 16, 1987.

(ii) For airplanes type certificated in accordance with U.S. TC A10SW (those airplanes with the serial number suffix SA) as described in MHI MU-2B S/B No. 067/27-008, dated November 16, 1987.

(2) Inspect all other torque tube joints listed as "existing joints" in Figure 1 of the applicable S/B for cracks, and replace a cracked joint with a serviceable unit. If no crack is found, repeat the inspection at intervals not to exceed 500 hours TIS, as follows:

(i) For TC A2PC airplanes as described in MHI S/B 189A.

(ii) For TC A10SW airplanes as described in MHI S/B No. 067/27-008.

(b) Accomplish the inspections and replacement requirements of paragraph (a) of this AD, as applicable, prior to 4100 hours TIS on each replacement joint listed as an "existing joint", as follows:

(1) For TC A2PC airplanes (without S/N suffix SA) in Figure 1 of MHI S/B No. 189A.

(2) For TC A10SW airplanes (with S/N suffix SA) in Figure 1 of MHI S/B No. 067/27-008.

(c) Repetitive inspection of a torque tube joint is terminated upon installation of a joint listed as an "improved joint", as follows:

(1) For TC A2PC airplanes (without S/N suffix SA) in Figure 1 of MHI S/B No. 189A.

(2) For TC A10SW airplanes (with S/N suffix SA) in Figure 1 of MHI S/B No. 067/27-008.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used on the A2PC airplanes, if approved by the Manager, Los Angeles Aircraft Certification Office, ANM-120L, FAA, 3229 E. Spring Street, Long Beach, California 90806-2425, Telephone (213) 988-5232, and on the A10SW airplanes, if approved by the Manager, Wichita Aircraft Certification office, ACE-115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 19, 1988.

**M.C. Beard,**

*Director of Airworthiness.*

[FR Doc. 88-16817 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-ANM-15]**

## Proposed Amendment of Transition Area; Aspen, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the 700 foot transition area at Aspen, Colorado. Extensive changes in the local air traffic control system and improved aircraft flows require additional controlled airspace in the vicinity.

**DATE:** Comments must be received on or before August 26, 1988.

**ADDRESSES:** Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-15, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 88-ANM-15, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Adminstration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Communications must identify the notive number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the existing controlled airspace at Aspen, Colorado. The incresed transition area is required to encompass new instrument flight rules (IFR) procedures. This airspace is intended to segregate aircraft operating in visual flight rules (VFR) conditions from other aircraft operating in IFR conditions. The area will be depicted on appropriate aeronautical charts enabling VFR pilots to circumnavigate the area or otherwise comply with IFR procedures.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Aspen, Colorado [Revised]**

That airspace extending upward from 700 feet above the surface beginning at latitude 39°04'00"N., longitude 106°40'00"W.; latitude 39°04'00"N., longtitude 107°07'00"W.; to latitude 39°39'00"N., longitude 107°07'00"W.; to latitude 39°39'00"N., longitude 106°40'00"W. to the point of beginning; and that airspace extending upward from 1,200 feet above the surface beginning at latitude 39°47'45"N., longitude 107°09'00"W.; to latitude 39°47'45"N., longitude 106°43'30"W.; to latitude 39°16'30"N., longitude 106°43'30"W.; to latitude 39°16'30"N., longitude 107°09'00"W.; to the point of beginning, excluding other transition areas which overlap.

Issued in Seattle, Washington, on July 11, 1988.

**Francis E. Davis,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 88-16815 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-AGL-17]**

## Proposed Alteration of Transition Area; Rice Lake, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This notice proposes to alter the Rice Lake, WI, transition area to accommodate a new VOR RWY 18 Standard Instrument Approach Procedure (SIAP) to Rice Lake Municipal Airport, Rice Lake, WI. The intended effect of this section is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**DATE:** Comments must be received on or before September 2, 1988.

**ADDRESS:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Rice Lake, WI.

The present transition area is being modified to accommodate a new VOR RWY 18 SIAP. The modification will consist of an extension from the 5 mile radius to 8.5 miles northeast of the airport, with a 3-mile width each side of the Rice Lake VOR 015 radial.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Rice Lake, WI [Revised]**

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Rice Lake Municipal Airport (Lat. 45°28'45"N., Long. 91°43'20"W.) at Rice Lake, WI; and 3 miles each side of the 198° bearing from the Rice Lake NDB from the 5 mile radius to 8.5 miles southwest of the airport; and within 3 miles each side of the Rice Lake VOR 174 radial extending from the 5 mile radius to 8.5 miles south of the airport, and within 3 miles each side of the Rice Lake VOR 015 radial extending from the 5 mile radius to 8.5 miles northeast of the airport.

Issued in Des Plaines, Illinois, on July 15, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88-16814 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 229, 240, 249, 270, and 274

**[Release Nos. 33-6789; 34-25925; IC-16485; File No. S7-14-88]**

### Report of Management's Responsibilities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission is publishing for comment proposed rules to require that registants include a report of managmeent's responsibilites (management report) in Forms 10-K and N-SAR and annual reports to security holders. The management report would contain a description or statement of management's responsibilites for the preparation of the registrant's financial statements and other financial information, and for establishing and maintaining a system of internal control directly related to financial reporting. Such report would also include management's assessment of the effectiveness of the registrant's system of internal control and a statement as to how management has responded to any significant recommendations concerning such controls made by its internal auditors and independent accountants. The registrant's independent accountant, pursuant to its exisitng responsibilities under generally accepted auditing standards, would be required to read the disclosures included in the proposed management report and consider whether such information includes a material misstatement of fact. If the independent accountant concludes that such is the case, he is required to take certain actions that would result in appropriate disclosure.

**DATE:** Comments should be received by October 24, 1988.

**ADDRESS:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-14-88. All comment letters received will be

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available for public inspection and copying the Commission's Public Reference Room at the same address.

**FOR FURTHER INFORMATION CONTACT:** John W. Albert, Jeffrey C. Jones or Robert E. Burns, Ofice of the Chief Accountant, (202)272–2130, or Howard P. Hodges, Division of Corporation Finance, (202) 272–2553, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

## Background

Complete and accurate financial reporting by public companies is of paramount importance to the disclosure system underlaying the stability and efficient operation of our capital markets. Investors need reliable financial information when making investment decisions.

The Commission has long emphasized the importance of internal controls to the financial reporting process. On April 30, 1979, the Commission issued for public comment proposed rules that would have required inclusion of a statement of management on internal accounting control in Forms 10–K and in annual reports to security holders.[1] The proposed amendments also would have required that the statement of management on internal accounting control be examined and reported on by an independent accountant. These proposals were later withdrawn, based in part on a determination that private sector initiatives for public reporting on internal accounting control had been significant and should be allowed to continue.[2]

However, in announcing the withdrawal of the proposed rules, the Commission emphasized the importance of effective control systems and stated that some assurance concerning the existence of an effective system is important to investors. Without effective control systems, the Commission indicated, management and investors cannot be assured that unaudited financial statements and other data are reliable.[3]

Subsequent enforcement proceedings have reemphasized the importance of maintaining adequate internal control systems. For example, in an administrative proceeding pursuant to section 15(c)(4)[4] of the Exchange Act of 1934 (Exchange Act)[5] the Commission indicated that:

> Internal controls safeguard assets and assure the reliability of financial records, one of their main jobs being to prevent errors and irregularities that arise in the accounting systems of the company. Internal accounting controls are basic indicators of the reliability of financial statements and the accounting system and records from which financial statements are prepared.[6]

From October 1985 to September 1987, the National Commission on Fraudulent Financial Reporting (hereinafter referred to as the Treadway Commission) conducted a study of the factors contributing to fraudulent financial reporting.[7] In October 1987, the Treadway Commission issued its final report (hereinafter referred to as the Treadway Commission Report) containing recommendations to reduce the incidence of fraudulent financial reporting,[8] an objective endorsed by the Commission.

As the Treadway Commission Report illustrates, the process by which reliable financial statements are generated involves interrelated efforts by managements, independent accountants, and the Commission and other authorities. However, managements of public companies have responsibility for establishing corporate structures and systems capable of collecting and disseminating reliable financial data.

The Treadway Commission Report emphasizes that the prevention and detection of fraudulent financial reporting must start with the entity that prepares financial reports. Within the entity, the Treadway Commission indicated that the "tone at the top" set by management is of overridding importance in preventing fraudulent financial reporting because of its strong and direct influence on the corporate environment within which financial reporting occurs.[9]

To facilitate better communication of management's responsibilities for financial reporting, the Treadway Commission Report includes a recommendation that:

> All public companies should be required by SEC rule to include in their annual reports to stockholders management reports signed by the chief executive officer and the chief accounting officer and/or the chief financial officer. The management report should acknowledge management's responsibilities for the financial statements and internal control, discuss how these responsibilities were fulfilled, and provide management's assessment of the effectiveness of the company's internal controls.[10]

The Commission has preliminary concluded that the Treadway Commission recommendation has merit, and thus is proposing a new Item 703 of Regulation S-K [11] concerning the presentation of a management report that would be required in Forms 10-K [12] and annual reports to security holders.[13] Because such a report will evidence the attention of a registrant's most senior management to preparation of reliable financial information and to the internal control system, the report will reflect the "tone at the top" characterized in the Treadway Commission report as "the most important factor contributing to the integrity of the financial reporting process." [14] As described in the section of this release titled "Role of the Independent Accountant", the Commission believes that further benefits may accrue from the auditor's increased involvement with internal controls in accordance with recently adopted professional auditing standards, coupled with the existing responsibility of the auditor to read and consider other information, such as the proposed management report, included in a document containing audited financial statements.

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[1] Securities Act Release No. 15772 (April 30, 1979) (44 FR 26702).

[2] Accounting Series Release No. (ASR) 278 (June 6, 1980) (45 FR 40134).

[3] *Id.*

[4] 15 U.S.C. 78o(c)(4).

[5] 15 U.S.C. 78a *et seq.*

[6] *In the Matter of DeLaurentiis Entertainment Group, Inc.*, Accounting and Auditing Enforcement Release No. (AAER) 144 (August 10, 1987); *see SEC v. Hermotitie Corp., et al.* Civil Action No. 82–1223 (D.C.C. 1982); *SEC v. World Wide Coin Investments, Ltd.*, 567 F. Supp. 724, 746 (N.D.Ga. 1983); *SEC v. Data Access Systems, Inc. et al.*, Civil Action No. 81–3362 (D.N.J. 1981); *In the Matter of Tonka Corporation*, AAER 73 (September 24, 1985); and *In the Matter of Telex Corporation*, Securities Exchange Release Act Release No. 18694 (April 29, 1982).

[7] Sponsoring organizations were the American Institute of Certified Public Accountants (AICPA), the American Accounting Association, the Financial Executives Institute, the Institute of Internal Auditors and the National Association of Accountants. The Commission is commonly referred to as the Treadway Commission in recognition of its chairman, James C. Treadway, Jr.

[8] Report of the National Commission on Fraudulent Financial Reporting (October 1987). For purposes of its study and report, the Treadway Commission defined fraudulent financial reporting as "intentional or reckless conduct, whether act or omission, that results in materially misleading financial statements * * *. The (Treadway) Commission * * * distinguished frauduent financial reporting from other corporate improprieties, such as employee embezzlements, violations of environmental or product safety regulations, and tax fraud, which do not necessarily cause the financial statements to be materially inaccurate." Treadway Commission Report at 2. Copies of the Treadway Commission Report and related background materials are available from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036.

[9] Treadway Commission Report, at 11.

[10] *Id.*, at 44.

[11] 17 CFR 229.

[12] 17 CFR 249.310.

[13] 17 CFR 240.14a-3 and 240.14c-3.

[14] Treadway Commission Report, at 32.

**Content of Proposed Management Report**

*Financial Information*

Proposed Item 703(a) would require a description or statement of management's responsibilities for the preparation of the registrant's financial statements in accordance with generally accepted accounting principles, the determination of the estimates and judgments used therein, and the preparation of other financial information included in a document containing the registrant's financial statements.

Unlike the current proposal, the Commission's 1979 proposal was limited to a statement of management on internal accounting control. A number of commentators on the proposal supported the concept of a "comprehensive management report—such as that recommended by the Cohen Commission (Commission on Auditors' Responsibilities), the FEI (Financial Executives Institute), and the AICPA's Special Advisory Committee on Reports by Management—which includes but is not limited to, an assessment of the effectiveness of the system of internal accounting control * * *." The commentators suggested that a comprehensive management report "would contain more of the information needed by financial statement users than would the limited statement of management on internal accounting control proposed by the Commission," and that "an assessment of the effectiveness of internal accounting control would be more informative when discussed in this context." [15] Many of the management reports that currently are being disclosed voluntarily by registrants are of the broader type.

The proposal is designed to increase the investing public's awareness of management's current responsibilities for the registrant's financial statements and other financial information. The proposed requirements do not increase management's existing responsibilities for the preparation of financial data; they merely require that management acknowledge them. These communications should improve public understanding of the respective roles of management and the independent accountant. In addition, they may also heighten the awareness of senior management of its responsibilities. Commentators are requested to address whether the proposed disclosure will further these objectives, and whether alternative disclosure should be required.

*Internal Control System*

Proposed Item 703(b) would require a description or statement of management's responsibilities for establishing and maintaining a system of internal control directly related to, and designed to provide reasonable assurance as to the integrity and reliability of, financial reporting. It would also require an assessment, as of the registrant's most recent fiscal year end, of the effectiveness of the registrant's system of internal control that encompasses material matters. Finally, management would be required to state how it has responded to significant recommendations [16] concerning the system of internal control made by its internal auditors (or those performing an equivalent function) and independent accountants.

A key aspect of management's responsibilities for the preparation of financial information is the responsibility to establish and maintain an internal control system. The Commission believes that management's assessment of the registrant's system of internal control is important to investors. In addition, the Commission believes that inherent in maintaining a system is responding to significant recommendations and that disclosure regarding how management has responded to such recommendations may provide useful information to investors.

*Signatures*

Pursuant to proposed Item 703(c), the report would be signed on behalf of the registrant by its principal executive officer or officers, its principal financial officer, and its controller or principal accounting officer. These individuals are the corporate officials principally responsible for the financial reporting process, and the officers required to sign the Form 10-K annual report.[17] Commentators are requested to address the need for a separate signature requirement for the management report, as well as the scope of the proposed requirement. As an alternative, the Commission is considering requiring a representation that the principal executive officer or officers, principal financial officer, and controller or principal accounting officer have reviewed the report and caused such report to be filed. Comment is solicitied on this approach. Commentators also are requested to consider whether a separate signature requirement will alter the potential liability of those signing the report from that currently imposed on these officers by virtue of their signing the Form 10-K.

**Discussion of Proposed 703(b)**

*Scope of Controls*

The internal controls encompassed by proposed Item 703(b) are those that affect financial reporting directly and include internal accounting controls and other elements, such as audit committees and internal audit functions which, when taken together, comprise internal controls that can provide reasonable assurance as to the integrity and reliability of financial reporting.

The proposed scope of proposed Item 703(b) disclosure is consistent with the Treadway Commission's recommendations [18] and Statement on Auditing Standards (SAS) No. 55,[19] recently adopted by the Auditing Standards Board.[20] The Treadway Commission Report indicates that "controls that affect financial reporting directly include more than internal accounting controls. They also include elements not generally considered part of internal accounting controls, such as the internal audit function and the audit committee of the board of directors." [21] SAS No. 55 defines an entity's internal control structure to consist of three elements; the control environment, the accounting system, and control procedures.[22]

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[15] ASR 278, *supra* note 2.

[16] The phrase "significant recommendations" is further discussed *infra*, under the topic "Response to Significant Recommendations."

[17] *See* General Instruction D(2)(a) to Form 10-K, 17 CFR 249.310.

[18] In recommending a broad definition of internal controls, the Treadway Commission also suggests that its sponsoring organizations work together to integrate the various internal control concepts and definitions and to develop a common reference point. Treadway Commission Report, at 48. The Commission understands that the sponsoring organizations of the Treadway Commission have undertaken a project to publish a codification of existing guidance on internal control. While the effectiveness of a particular registrant's system of internal controls must ultimately be determined in the context of its own facts and circumstances, the Commission encourages this initiative by the sponsoring organizations.

[19] Statement on Auditing Standards No. 55, "Consideration of the Internal Control Structure in a Financial Statement Audit" (April 1988) is effective for audits of financial statements for periods beginning on or after January 1, 1990, with early application permissible.

[20] The Auditing Standards Board (ASB) is the senior technical body designated by the AICPA to promulgate auditing standards.

[21] Treadway Commission Repaort, at 34.

[22] Pursuant to SAS No. 55, paragraph 9, a control environment is defined as the collective effect of various factors—such as management's philosophy and operating style, the entity's organizational structure, the functioning of the board of directors

Continued

Examples of controls that generally would be outside the scope of the report would be controls on product quality; production and plant maintenance; and the effectiveness and efficiency of management's decision making processes (*e.g.*, determination of the price to charge for its products or whether to make certain research and development expenditures). Controls that would be within the scope of the report would be those that concern the corporation's ability to record, process, summarize and report financial data.[22] The scope of controls that directly affect financial reporting may vary from company to company depending on the nature of its business, its size, and other factors.

Public comment is specifically invited on the scope of internal controls encompassed in the proposed rule.

*Assessment of Effectiveness*

In order to assess adequately the effectiveness of the registrant's system of internal control, management must determine whether the internal control system provides reasonable assurance as to the integrity and reliability of financial reporting. The appropriate scope and nature of documentation, control systems and procedures must be determined in the context of the circumstances of each registrant. While large registrants may generally determine that relatively extensive documentation, control systems and procedures are necessary to provide reasonable assurance that the objectives of their control systems are being met, smaller registrants with close management supervision may determine that the objectives of their control systems are being met through less extensive documentation, control systems or evaluation procedures. Accordingly, the proposed rules do not specify minimum standards for documentation, control systems or evaluation procedures.

By incorporating a concept that a system of internal control must be designed to provide reasonable assurance as to the integrity and reliability of financial reporting, proposed Item 703(b) reflects the view that management need not compare its controls to some exact standard or express an opinion as to whether its internal controls are perfect. As previously stated by the Commission:

> The concept of reasonable, as opposed to absolute, assurance is incorporated in the . . . recognition that it is not in the interest of shareholders for the cost of internal accounting control to exceed the benefits thereof. Such benefits, and in many cases such cost, are not likely to be precisely quantifiable. Therefore, many decisions on reasonable assurance will necessarily depend in part on estimates and judgments by management which are reasonable under the circumstances.[24]

*Materiality*

Proposed Item 703(b) would require the management report to include an assessment of the effectiveness of a registrant's system of internal control that encompasses material matters.[25] This includes matters material to both investment and voting decisions. Public comment is specifically invited on the proposed inclusion of a materiality threshold.

*Point-in-time Reporting*

Proposed Item 703(b) would require that management's assessment of the effectiveness of its internal control system be *as of* the end of the registrant's most recent fiscal year. The concept of reporting as of a point in time (rather than for a period) has been previously addressed by the Commission. In the release that withdrew the Commission's 1979 proposal,[26] the Commission stated that, for disclosure purposes, there is value in providing management statements that address the effectiveness of internal accounting control systems only as of a recent date. The Commission's view was based in part on concerns expressed by commentators to the 1979 proposal that period reporting [27] would provide a disincentive for prompt correction of internal accounting control weaknesses because these weaknesses would still have to be reported. Commentators also raised questions about the value of disclosing weaknesses that already have been corrected.[28]

While the Treadway Commission recommended reporting as of a point in time, it suggested that such point in time need not necessarily coincide with a registrant's fiscal year end. Because of the direct correlation between a registrant's system of internal control and its ability to prepare reliable financial statements, the proposed rules would require that the assessment of control effectiveness be as of the registrant's fiscal year end. However, proposed Item 703 includes an instruction that indicates that in making its assessment, management must consider any information necessary to prevent its report from being misleading. This includes information coming to management's attention subsequent to year end, but prior to the date of the filing of the report with the Commission or distribution to security holders.

Commentators are encouraged to address whether it would be more appropriate to require management reporting for the period rather than as of a point in time. Comments are also invited as to whether it would be more appropriate to permit reporting at other than fiscal year end as recommended in the Treadway Commission Report.

*Response to Significant Recommendations*

Proposed Item 703(b) of Regulation S-K would require a statement [29] as to how management has responded to any significant recommendations concerning the system of internal control made by its internal auditors (or those performing an equivalent function) and independent accountants. The Commission believes that those matters considered by the independent auditor to be "reportable conditions" pursuant to SAS No. 60 should be considered significant recommendations.[29] In addition, management's statement would encompass its response to matters communicated by the internal auditor (or those performing an equivalent function) that, in the judgment of the internal auditor, meet the definition of reportable conditions in SAS No. 60.

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and audit committees, management's methods of assigning authority and responsibility, and of monitoring and following up on performance, including internal auditing, performance policy and practices, and various external influences such as examinations by bank regulatory agencies—on establishing, enhancing or mitigating the effectiveness of specific policies and procedures. The control procedures referred to by the ASB are those that concern the authorization of transactions, recording transactions, maintaining custody of assets, the design and use of adequate documents and records, and independent checks on performance and proper valuation of recorded amounts. SAS No. 55, paragraph 11. For a general discussion of the "accounting system", *see* SAS No. 55, paragraph 10.

[23] SAS No. 55, paragraph 6.

[24] Securities Exchange Act Release No. 15772 (April 30, 1979) [44 FR 20702].

[25] *See* the definition of "material" in Exchange Act Rule 12b-2, 17 CFR 240.12b-2; *see also Basic, Inc. v. Levinson*, 485 U.S. , 108 S. Ct. 978 (1988); *TSC Industries Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

[26] ASR 278, *supra* note 2.

[27] Period reporting would require a management statement to assess the effectiveness of the registrant's internal control system throughout the entire year.

[28] The Commission emphasizes that the correction of significant deficiencies in the design of operation of the registrant's internal control system entails making the necessary changes and following up to ensure that the changes have been implemented and are operating appropriately.

[29] Statement on Auditing Standards No. 60, "Communication of Internal Control Structure Related Matters Noted in an Audit," (April 1988) is effective for audits of financial statements for periods beginning on or after January 1, 1989, with early application permissible.

SAS No. 60 states that these matters "represent significant deficiencies in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statement."[30]

SAS NO. 60 indicates that, "[b]ecause timely communication may be important, the auditor may choose to communicate significant matters during the course of the audit rather than after the audit is concluded. The decision on whether an interim communication should be issued would be influenced by the relative significance of the matters noted and the urgency of corrective follow-up action." [31] The Commission strongly encourages timely communication so that management may consider such issues in assessing the effectiveness of its internal controls and planning and implementing necessary timely corrective actions.

Because the proposed rules are based on a criterion of reasonable assurance, the Commission recognizes that management may properly decide not to take action on all recommendations made either by its internal auditors or independent accountants. The Commission believes, however, that security holders may benefit from the disclosure of how management has responded to the recommendations, including whether there were significant recommendations that were not implemented. In disclosing how it has responded to significant recommendations, management may include a general statement as to the extent to which recommendations have been implemented or are intended to be implemented, or will not be implemented due to cost-benefit or other specified reasons. The report would not need to describe the recommendations, although management may believe it is appropriate to do so in describing how it has responded to them.

Commentators are invited to address whether any final rules should include disclosure of the nature of any significant recommendations either not implemented or not timely implemented for cost-benefit or other reasons, along with a discussion of any alternate or compensating procedures followed by management.

[30] SAS No. 60, paragraph 2. SAS No. 60 requires these matters to be communicated to the audit committee or a group equivalent to an audit committee that has been designated for oversight of the financial reporting process.

[31] SAS No. 60, paragraph 18.

**Other Disclosures in a Management Report**

Proposed Item 703 of Regulation S-K would afford flexibility to management and indicate that management may include other information it considers appropriate in addition to the matters specified. Specific comment is requested as to whether the Commission should specify any other items that should be addressed in a management report.

**Role of the Independent Accountant**

Although financial statements are the responsibility of management, the independent accountant plays a key role in the financial reporting process. Recently issued SAS Nos. 55 and 60 provide new responsibilities for independent accountants in their consideration of the internal control structure during an audit and in their obligation to report to the registrant significant matters concerning that structure. These SAS's do not require the auditor to test the effectiveness of, or otherwise examine or audit the control structure.[32] Thus, the auditor would not be in a position to opine on the overall effectiveness of the system. However, these responsibilities should provide a more meaningful basis for the auditor's performance of responsibilities under SAS No. 8, "Other Information in Documents Containing Audited Financial Statements," and AICPA Interpretation No. 1 to SAS No. 8,[33] as described more fully below.

SAS No. 55 requires that, in every audit, the auditor obtain a sufficient understanding of the internal control structure to plan the audit of the financial statements, regardless of whether the auditor intends to rely on the controls in conducting the audit.[34] SAS No. 55 indicates that this understanding should include knowledge about the design of relevant policies, procedures, and records, and whether they have been placed in operation. The auditor's assessment of the internal control structure is an ongoing process during an audit.[35]

[32] See, *e.g.*, SAS No. 55, paragraph 17.

[33] AICPA Professional Standards AU Sections 550 and 9550.

[34] SAS No. 55 is not effective until audits of financial statements for periods beginning on or after January 1, 1990. If the Commission determines to adopt a rule based on this proposal, it will consider the effective date of SAS No. 55 in connection with its determination of an effective date for the rule.

[35] SAS No. 55, paragraph 60, indicates that "information may come to the auditor's attention as a result of performing substantive tests or from other sources during the audit that differs significantly from the information on which his planned tests of controls for assessing control risk were based." Because of this, SAS No. 55, paragraph 60, indicates that "the auditor may need to reevaluate the planned substantive procedures, based on a revised consideration of the assessed level of control risk for all or some of the financial statement assertions."

SAS No. 8 requires the independent accountant to read other information, such as the proposed management report, in a document containing audited financial statements, and consider whether such information, or the manner of its presentation, is materially inconsistent with information appearing in the financial statements.[36] Further, this SAS requires that the independent accountant also consider whether such other information is a material misstatement of fact (even though not inconsistent with the financial statements). This responsibility extends to a material misstatement that results from management's failure to disclose a fact necessary to make the statements made regarding internal control not misleading.[37] However, SAS No. 8 indicates that the independent accountant has no obligation to perform any procedures to corroborate such "other information."

In the event the independent accountant discovers a material inconsistency, SAS No. 8 requires that the auditor determine whether the financial statements, his report, or both require revision. SAS No. 8 indicates that if the independent accountant concludes the financial statements and/or his report do not require revision, he should request the issuer to revise the other information. If the other information is not revised to eliminate the material inconsistency, SAS No. 8 indicates the independent auditor should consider other actions "such as revising his report to include an explanatory paragraph describing the material inconsistency, withholding the use of his report in the document, and withdrawing from the engagement." [38]

With respect to situations in which the independent accountant believes the other information is materially misstated (but not inconsistent with the financial statements), SAS No. 8

[36] The annual report on Form 10-K, including the management report, may be incorporated into registration statements under the Securities Act of 1933 (Securities Act) (15 U.S.C. 77a *et seq*). *See, e.g.*, Item 12(a)(1) of Form S-2 (17 CFR 239.12) and Item 12(a)(1) of Form S-3 (17 CFR 239.13). In these instances, however, the fact that the auditor has performed its SAS No. 8 responsibilities concerning the management report would not make the management report a part of a registration statement prepared or certified by an accountant, or a report prepared or certified by an accountant, within the meaning of sections 7 and 11 of the Securities Act (15 U.S.C. 77g, 77k).

[37] *See* AU Section 9550.04.

[38] AU Section 550.04.

indicates that the auditor should discuss the matter with the issuer and others (*e.g.*, the issuer's legal counsel) to determine whether he has a valid basis for his belief that a material misstatement exists. If the independent accountant concludes after such discussions that a material misstatement exists, SAS No. 8 indicates that he should consider steps such as notifying senior management and the board of directors or its audit committee in writing of his views concerning the information and consulting with his legal counsel as to further appropriate action in the circumstances.

Other information included in a document containing audited financial statements and the independent accountant's report does not always relate to matters about which the independent accountant is knowledgeable because of its audit procedures and expertise. However, as indicated in Interpretation No. 1 to SAS No. 8, AU Section 9550.03, "[t]he auditor would often be familiar with matters covered in a management statement on internal accounting control and may become aware of information that causes him to believe that management's statement concerning internal accounting control contains a material misstatement of fact * * *." Although the ability of the independent accountant to provide any assurance about the accuracy and completeness of management's statements in its report regarding internal controls may be limited, the Commission believes that compliance with SAS Nos. 55 and 60, coupled with the knowledge and information obtained during the conduct of other audit procedures, may make it more likely that the independent auditor will discover a material misstatement in management's statements in its report regarding internal controls.[39] Where the independent accountant is able to reach such a conclusion, the Commission believes that the auditor's responsibilities are the same as when the auditor discovers a material inconsistency with the financial statements.[40] Accordingly, in circumstances in which the independent account concludes there is a material misstatement of fact in the management report, he should request the issuer to revise the management report. If the report is not revised, the independent accountant should revise the accountant's report to include an explanatory paragraph describing the material misstatement, withhold the use of the accountant's report, or withdraw from the engagement. In the even the registrant refuses either to amend the management report to reflect the auditor's concerns or to accept a modified report form the auditor and the independent accountant withdraws from the engagement (or is dismissed), the circumstances surrounding the change in independent accountants would be reported as a disagreement on Form 8–K, or other document announcing the change in accounts.[41] Comment is requested on whether the Commission should, in proposed Item 703 of Regulation S–K, specify such responsibility of the auditor in the event of a noted misstatement in management report.

**Comparison With 1979 Proposal**

The Treadway Commission Report includes an analysis of the Commission's 1979 proposal to require a statement of management on internal accounting controls, discussed above in this release under "Background." The Treadway Commission Report points out that the Commisison's proposal was criticized because of the close correlation of management's opinion of internal accounting control with the internal accounting control provisions of the Foreign Corrupt Practices Act (FCPA).[42] Many commentators viewed the proposal as essentially a statement of compliance with the law and suggested that the proposal was intended primarily to establish the existence of FCPA violations for enforcement purposes.[43]

The current proposal for management reports avoids a direct correlation with the FCPA since it includes a materiality threshold not contained in the FCPA. Furthermore, the current proposal for management reporting will focus on the entire system of internal control, a broader concept than internal accounting controls to which the FCPA is restricted. In addition, the current proposal calls for an assessment of effectiveness as of a point-in-time, whereas the 1979 proposal would have required that the management opinion on controls extend to conditions that existed throughout the period (which parallels the requirement under the FCPA to "devise and maintain" an effective system). Also, the 1979 proposal was limited to a report on controls as opposed to the broader management report currently being proposed.[44]

The Commission's 1979 proposal would also have required that the management statement on internal accounting control be examined and reported on by an independent accountant. Such proposals would have required auditors to express an opinion on the registrant's system of internal accounting control.[45] This extent of auditor involvement was widely criticized by commentators who cited the cost burden associated with direct auditor involvement.

The current proposal should mitigate the concerns about the costs of auditor involvement associated with the 1979 proposal. As described more completely in the section of this release titled "Role of the Independent Accountant," auditor involvement would not entail the comprehensive evaluation necessary for the positive assurance type of opinion contemplated in the 1979 proposal. The proposal would not require the auditor to perform any procedures beyond its existing responsibilities under GASS.

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[39] The Commission recognizes that SAS No. 55 only requires the auditor to test controls to the extent he determines that it is cost-effective to rely on such controls in the conduct of the audit, and that this judgment will vary from company to company. While the auditor may not be able to detect all material misstatements in a management report, he should be in a position to recognize major design flaws and many situations where there are significant deficiencies in the operation of such controls.

[40] The Commission notes that the Treadway Commission Report recommended that the ASB provide explicit guidance to address the situation where, as a result of his knowledge of the company's internal accounting controls, the independent accountant disagrees with the management report. The Commission staff understands that the ASB is considering this issue as well as other issues related to auditor reporting on internal control.

[41] *See* Item 304 of Regulation S–K, 17 CFR 229.304, as amended in Financial Reporting Release No. 31 (April 12, 1988) (53 FR 12924). Item 304 (a)(1)(v)(A) of Regulation S–K also states that situations involving the accountant having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist is a "reportable event" even though there may have been no disagreement.

[42] Section 13(b)(2) of the Exchange Act, 15 U.S.C. 78m(b)(2). Both the FCPA and the criteria for management reports proposed in 1979 were based on a registrant's obligations to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that

(i) Transactions are executed in accordance with management's general or specific authorization;

(ii) Transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;

(iii) Access to assets is permitted only in accordance with management's general or specific authorization: and

(iv) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

[43] Treadway Commission Report, at 45.

[44] ASR 278, *supra*, note 2.

[45] Auditing standards for direct auditor reporting on internal accounting control are set forth in AU Section 642 of the AICPA Professional Standards.

**Scope of Proposed Rules**

*Form 10–K*

The Treadway Commission recommended that management reports be included in annual reports to security holders. The Commission, however, believes that the rationale for providing management reports applies to all Commission registrants annually reporting on Form 10–K, whether or not required to furnish an annual report to security holders.[46] The 10–K requirements is consistent with the Treadway Commission's view that smaller, newly public companies should comply with its recommendations, because "these [smaller] entities may have a disproportionately greater risk of fraudulent financial reporting and thus may reap proportionately greater benefits" [47] from such compliance.[48] Accordingly, the Commission is proposing to include the requirement for a management report in Forms 10–K as well as annual reports to security holders. Comment is solicited on whether the requirement should pertain only to Form 10–K rather than the annual report to security holders.

**Securities Act and Exchange Act Registration Statements.**

A management report may be beneficial to investors in the company's initial public offering or initial registration with the Commission. Accordingly, the Commission is also considering extending the requirement for a management report to Securities Act registration statements for initial public offerings. These would include all registration statements on Form S–18,[49] as well as those for initial public offerings on Forms S–1,[50] S–4,[51] and S–11.[52] Alternatively, the management report requirement could be extended to all Securities Act registration statements, not merely those used for initial public offerings.[53] Further, the Commission is considering requiring the management report in Form 10,[54] which is the initial Exchange Act registration statement filed by a registrant not subject to Exchange Act reporting registration with the Commission. The Commission invites comments on whether the proposed requirements should be so extended and, if so, whether the Commission should consider exempting any category of issuers from those requirements.

The Commission specifically requests comments on whether the application of these requirements to registration statements for initial public offerings would have any impact on the capital formation process. The Commission recognizes that SAS No. 8 is not applicable when the auditor's report appears in a registration statement filed under the Securities Act and requests comments on the impact of that distinction. If the requirement is extended to these registration statements, comment is requested on whether the Commission should explicitly require that the auditor perform SAS No. 8 procedures regarding such management reports.

**Class of Issuer**

*Foreign Private Issuers*

Specific public comment is invited on whether it is appropriate to extend the application of the proposed requirements to foreign private issuers. As proposed, the management report would be required for all registrants filing annual reports on Form 10–K. Accordingly, foreign private issuers [55] filing annual reports on Form 20–F [56] rather than Form 10–K (*i.e.*, all foreign private issuers except for Canadian issuers) would not be subject to the requirement. Comment, however, is solicited on whether foreign private issuers eligible to use Form 20–F also should have to comply with the management report requirement, or, alternatively, whether Canadian issuers filing on Form 10–K should be exempt from the requirement. Comment is solicited on whether, if initial public offering filings become subject to the management report requirement as discussed above, registration statements by foreign private issuers should be included.[57]

*Registered Investment Companies*

The Commission is proposing comparable changes to the reporting requirements for registered management investment companies. Specifically, the Commission proposes to amend Form N–SAR,[58] the periodic report required of registered investment companies, and Rule 30d–1,[59] the rule that requires all management investment companies to transmit annual reports to security holders, to require the management report called for by proposed Item 703.[60] While management investment companies are already required to furnish, in Form N–SAR only, a report of their independent public accountant on their systems of internal controls,[61] there is no requirement that such report be accompanied by a report of management. There is no internal controls report requirement for the report to security holders of registered investment companies.

Comment is also requested on whether these proposed requirements should be extended to Securities Act registration statements for initial public offerings by registered investment companies, *e.g.*, N–1A,[62] N–2,[63] and S–6.[64] While such a requirement would be largely irrelevant for those investment companies that did not exist until shortly before they made their initial public offering, such a requirement would affect "private" investment companies, *i.e.*, companies relying on section 3(c)(1) of the 1940 Act,[65] that subsequently make a public offering.

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[46] Section 14 of the Exchange Act, 15 U.S.C. 78n, requires that solicitations of proxies, consents or authorizations with respect to securities registered under section 12 of that Act, 15 U.S.C. 78*l*, (other than exempt securities) be made in compliance with the rules and regulations of the Commission. Rule 14a-3, 17 CFR 240.14a-3, requires that if this solicitation is made on behalf of management and relates to an annual or special meeting of security holders at which directors are to be elected, then the proxy statement shall be accompanied or preceded by an annual report to security holders containing specified information. If proxies are not solicited prior to such a meeting of holders of securities registered under section 12, an information statement must be provided to security holders that also must be accompanied or preceded by an annual report to security holders. *See* Rule 14c-3 under the Exchange Act, 17 CFR 240.14c-3. Securities must be registered under Section 12 if they are listed on a national securities exchange or if the issuer has total assets greater than $5 million and the securities are equity held of record by 500 or more persons. Exchange Act Sections 12(b), (g), 15 U.S.C. 78*l*(b), (g); Rule 12g-1, 17 CFR 240.12g-1.

[47] Treadway Commission Report, at 29.

[48] Entities not registered under Section 12 may still have to file annual reports on Form 10–K. Exchange Act section 15(d), 15 U.S.C. 78o(d).

[49] 17 CFR 239.28.

[50] 17 CFR 239.11.

[51] 17 CFR 239.25.

[52] 17 CFR 239.18.

[53] The information would be included in registration statements on Forms S–2 and S–3 by incorporation by reference. *See* note 36, *supra*.

[54] 17 CFR 249.210.

[55] *See* definition of "foreign private issuer" in Exchange Act Rule 3b–4, 17 CFR 240.3b–4.

[56] 17 CFR 249.220f.

[57] Such filings would include some Securities Act registration statements on Forms F–1 and F–4, 17 CFR 239.31 and 239.34, as well as Exchange Act registration statements on Form 20–F.

[58] 17 CFR 274.101.

[59] 17 CFR 270.30d–1.

[60] While Form N–SAR is used for periodic reporting by all registered investment companies, except for face amount certificate companies, the form is divided into different sections relevant to different types of investment companies. The proposed rules would require management reports to be included only in the periodic reports of management investment companies, other than small business investment companies. These are the entities presently required to furnish a report of their independent accountants on their internal control systems.

[61] *See* sub-item 77B, Form N–SAR.

[62] 17 CFR 274.11A.

[63] 17 CFR 274.11a;1.

[64] 17 CFR 239.16.

[65] 15 U.S.C. 80a–3(c)(1).

Specific comment is requested on the costs and benefits of these proposed changes to registered investment companies. Specific comment is also requested on whether investment company registrants should be treated differently from non-investment company registrants.

**Solicitation of Public Comment**

In addition to the various specific sections in this release where comments have been requested, the Commission requests overall comments as to the form and content of the proposed report. Commentators are specifically requested to indicate whether the Commission should be more or less prescriptive regarding the specific items to be addressed. For example, the Commission could indicate the types of responses that would be appropriate in assessing the effectiveness of internal control, or could require disclosure of the extent to which, due to the size of the company, top management involvement is a principal factor in the registrant's internal control system.

The Commission is also specifically seeking comment on alternatives to the proposed rule, particularly in the area of the role of the independent accountant. The commission is seeking comment on whether independent accountants should be required to report directly in the Form 10–K and annual report on either the internal control structure of the registrant or the proposed management report. Commentators who favor a direct report are asked to comment on whether the report should provide an opinion or discussion of work performed commensuate with the independent accountant's professional responsibilities under SAS Nos. 55 and 60, or whether the independent accountant should be required to perform necessary additional procedures, for example, to opine on the effectiveness of the registrant's internal control structure. Comments on other possible alternatives to the scope of the association by the independent accountant are also requested. The Commission is seeking comment on the incremental costs and benefits associated with direct reporting by the independent accountant on its assessment of the effectiveness of the registrant's internal control structure, or other direct reporting that commentators may believe is necessary.

In addition, the Commission invites comments on whether, and if so how, the proposed revisions may affect or alter the allocation of liability among auditors, board members, management, the registrant, and others.

**Cost/Benefits of the Proposed Action**

Registrants currently have an obligation under Section 13(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78m (b)(2), among other things, to maintain adequate internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to (i) permit the preparation of financial statements in accordance with generally accepted accounting principles, and (ii) to maintain accountability for assets. The proposals would not increase these responsibilities, but they would require that management acknowledge them and report on the effectiveness of these and other controls. Incremental burdens on registrants, therefore, should result only due to the reporting on the internal control systems, not from establishing, documenting or maintaining those systems.

The auditor's responsibilities for conducting an audit are presently established under GAAS. The management report would be one more item of disclosure that the auditor would have to read and consider. However, no additional audit work over and above GAAS would be required.

Regarding anticipated benefits, the proposed management report should improve communication to financial statement users about the processes that surround the preparation and presentation of financial information. The proposed rules would also provide a means for the auditor to make public significant concerns it may have about the reported status of the registrant's internal control system.

**Competitive Impact**

The Commission also requests comments on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[66]

**Summary of Initial Regulatory Flexibility Analysis**

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objectives of the proposed amendments are to require management reports that improve investors' understanding of management's responsibilities for the company's financial information and internal control system. The Analysis notes that the objectives of the proposed amendments are to require management reports that improve investors' understanding of management's responsibilities for the company's financial information and internal control system. The Analysis indicates that little additional burden should be imposed on registrants due to current statutory requirements [67] for companies to maintain internal accounting controls, and that auditors are presently required under GAAS to read and consider other information in a document containing audited financial statements, such as management's report, and take appropriate action in response to material misstatements of fact. The Analysis further notes that some registrants presently issue management reports on a voluntary basis.

Other appropriate cost-benefit information reflected in the section of this release titled "Costs/Benefits of the Proposed Action" are also reflected in the Analysis.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Robert E. Burns, Mail Stop 4–8, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**List of Subjects in 17 CFR Parts 229, 240, 249, 270 and 274**

Reporting and recordkeeping requirements, Securities and investment companies.

**Text of Proposed Amendments**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read, in part, as follows:

**Authority:** Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat.

[66] 15 U.S.C. 78w(a)(2).

[67] 15 U.S.C. 78m(b)(2).

1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 78o(d), 78w(a). * * *

2. By adding § 229.703 to read as follows:

**§ 229.703 (Item 703) Report on management's responsibilities.**

(a) *Financial information.* Furnish a description or statement of management's responsibilities for the preparation of the registrant's financial statements in accordance with generally accepted accounting principles, the determination of the estimates and judgments used therein, and the preparation of other financial information included in a document containing the registrant's financial statements.

(b) *Internal control system.* Furnish a description or statement of management's responsibilities for establishing and maintaining a system of internal control directly related to, and designed to provide reasonable assurance as to the integrity and reliability of, financial reporting. Include an assessment as of the registrant's most recent fiscal year end of the effectiveness of the registrant's system of internal control that encompasses material matters, and state how management has responded to any significant recommendations concerning the system of internal control made by its internal auditors (or those performing an equivalent function) and independent accountants.

(c) *Signatures.* The report required by paragraphs (a) and (b) of this section shall be signed on the behalf of the registrant by its principal executive officer or officers, its principal financial officer, and its controller or principal accounting officer.

*Instruction*

When furnishing its report, management may include other information it considers appropriate. In making its assessment of the effectiveness of the system of internal control, management must consider any information necessary to prevent its report from being misleading. This includes information coming to management's attention subsequent to year end but prior to the date of the filing of the report with the Commission or distribution to security holders.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * *

4. By amending § 240.14a–3 to redesignate paragraphs (b)(12) and (b)(13), as paragraphs (b)(13) and (b)(14), to add new paragraph (b)(12), and to revise newly redesignated (b)(13) as follows:

**§ 240.14a–3 Information to be furnished to security holders.**

* * * * *

(b) * * *

(12) The report shall contain the management report as required by Item 703 of Regulation S–K (§ 229.703 of this chapter).

(13) Paragraphs (b)(5) through (b)(12) of this section shall not apply to an investment company registered under the Investment Company Act of 1940.

* * * * *

5. By revising paragraph (a)(1) and the first sentence of (a)(2) of § 240.14c–3 to read as follows:

**§ 240.14c–3 Annual report to be furnished security holders.**

(a) * * *

(1) The annual report shall contain the information specified in paragraphs (b)(1) through (b)(12) of Rule 14a–3 (§ 240.14a–3 of this chapter).

(2) Paragraphs (b)(5) through (b)(12) of Rule 14a–3 shall not apply to an investment company registered under the Investment Company Act of 1940. * * *

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## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for Part 249 continues to read in part as follows:

**Authority:** The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

**§ 249.310 [Amended]**

7. By amending paragraphs 2, 3, and 4 of General Instruction G to Form 10–K (§ 249.310) by removing parenthetical references to "(Items 1 through 9)" and replacing them with parenthetical references to "(Items 1 through 10)" and by removing parenthetical references to "(Items 10, 11, 12, and 13)" and "(Items 10 through 13)" and replacing them with parenthetical references to "(Items 11 through 14)"; by amending General Instruction I to Form 10–K by removing "Item 11" and replacing it with "Item 12" and removing "Item 13" and replacing it with "Item 14"; by amending General Instruction J(2)(c) of Form 10–K by removing "Item 10", "Item 11", "Item 12", and "Item 13", and replacing them with "Item 11", "Item 12", "Item 13", and "Item 14", respectively; by amending Form 10–K to redesignate Items 10 through 14 as Items 11 through 15 and to add a new Item 10 to be included in Part II of that Form as follows: Note: Form 10–K does not appear in the Code of Federal Regulations.

*Form 10–K*

* * * * *

*Item 10. Management Report.*

Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter).

* * * * *

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

8. The authority for Part 270 continues to read, in part, as follows:

**Authority:** Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted.

* * * * *

9. By amending § 270.30d–1 to redesignate paragraphs (b) through (d) as paragraphs (c) through (e) and to add a new paragraph (b) as follows:

**§ 270.30d–1 Reports to stockholders of management companies.**

* * * * *

(b) The annual report shall contain the management report as required by Item 703 of Regulation S–K (§ 229.703 of this chapter).

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority for Part 274 continues to read, in part, as follows:

**Authority:** The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

* * * * *

**§ 274.101 [Amended]**

11. By amending Form N–SAR (17 CFR 274.101) to revise the caption to the instructions to sub-item 77B to read "Accountant's report on internal control and report of managment's responsibilities," to redesignate the current four paragraphs of sub-item 77B as part "(a)," and by adding a new paragraph "(b)" as follows:

**Form N–SAR**

* * * * *

Item 77B. *Accountant's report on internal control and report of management's responsibilities.*

(a) * * *

(b) Provide the information called for by Item 10 of Form 10–K under the Securities Exchange Act of 1934 (17 CFR 249.310). The

information required by this sub-item, both paragraph (a) and paragraph (b), need only be filed in the annual report, not the semi-annual report.

* * * * *

By the Commission.

July 19, 1988.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 88-16830 Filed 7-25-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[(LR-65-87)]**

### Public Hearing on Proposed Regulations; Treatment of Salvage and Reinsurance

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies.

**DATES:** The public hearing will be held on Wednesday, August 31, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by August 17, 1988.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-65-87), Room 4429, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Angela Wilburn or Carroll Field of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (202-566-3935), not a toll-free call.

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the treatment of salvage and reinsurance under section 832(b) of the Internal Revenue Code of 1986. The proposed regulations appeared in the Federal Register for Tuesday, January 5, 1988 (53 FR 153), (53 FR 117). The rules for § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, August 17, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

**Dale D. Goode,**

*Chief, Technical Section, Legislation and Regulations Division.*

[FR Doc. 88-16793 Filed 7-25-88; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 05-88-57]**

### Special Local Regulations for the Annual Power Boat Regatta, Susquehanna River, Havre De Grace, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal that would establish permanent special local regulations for the Susquehanna Optimist Club Power Boat Regatta, an annual event held on the Susquehanna River, west of Garrett Island, in August. Annual notice of the precise dates and times of the regatta would be published in the Fifth Coast Guard District Local Notice to Mariners and in a **Federal Register** Notice. The special local regulations are necessary to control vessel traffic within the immediate area of the races due to the confined nature of the waterway and the expected congestion at the time of the event. The effect will be to restrict general navigation in the regulated area for the safety of the spectators and the participants in the event.

**DATES:** Comments should be received on or before September 9, 1988.

**ADDRESSES:** Comments should be mailed or hand delivered to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of that address. Normal office hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-88-57) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

**Drafting Information**

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Proposed Regulation**

The area covered by this proposal is the same as that covered by special local regulations issued for years. The Optimist Club Power Boat Regatta is an annual weekend race consisting of 3 laps around an oval course. Three to twelve boats will race at one time with speeds up to 140 miles per hour. The races will continue for 3 to 4 hours. The special local regulations provide safety for the persons participating in races and control spectator craft during the event. If adopted, this proposal will

apply to the 1988 Optimist Club Power Boat Regatta scheduled as follows:

a. 11:00 a.m. to 7:00 p.m., August 27, 1988.

b. 11:00 a.m. to 7:00 p.m., August 28, 1988.

This proposal also will apply to future Power Boat Regattas, and annual notice of the precise dates and times of the regatta would be published in a Local Notice to Mariners and **Federal Register** Notice.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the entire waterway is not anticipated and because marine traffic will be allowed to proceed up the Susquehanna River using that portion of the waterway east of Garrett Island, commercial marine traffic will be inconvenienced only slightly. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulation**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.510 is added to read as follows:

**§ 100.510 Susquehanna River, Havre De Grace, Maryland.**

(a) *Definitions:*

(1) *Regulated Area:* The waters of the Susquehanna River west of Garrett Island, bounded on the south by the Conrail Railroad Bridge at latitude 39°33'34.0" North, and on the north by the B & O Railroad Bridge at latitude 39°33'57.0" North.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations:*

(1) Except for vessels operated by the Susquehanna Optimist Club and participants in the Optimist Club Power Boat Regatta, no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Spectator vessels may enter and anchor in the designated spectator anchorage areas without the permission of the Patrol Commander, if they proceed at a slow no wake speed.

(3) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective period:* This section is effective during the Optimist Club Power Boat Regatta, and for one hour before the races begin and one hour after the races end. The Commander, Fifth Coast Guard District, publishes a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates this section is in effect.

Dated: July 18, 1988.

**W.J. Ecker,**

*Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.*

[FR Doc. 88-16711 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 165**

**[COTP San Diego Reg 88-11]**

## Safety Zone Regulations; San Clemente Island, CA, Pacific Ocean

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard is considering a proposal to establish a permanent Safety Zone in the vicinity of Castle Rock, San Clemente Island, California, consisting of the water area bounded by the following coordinates and the shore line of San Clemente Island:

| | |
|---|---|
| Point A—33°01'38" N | 118°36'18" W |
| Point B—33°01'11" N | 118°37' 25" W |
| Point C—33°00'00" N | 118°36'51" W |
| Point D—33°00'05" N | 118°38'53" W |
| Point E—33°02'55" N | 118°39'05" W |
| Point F—33°04'25" N | 118°37'41" W |
| Point G—33°02'04" N | 118°35'53" W |

This action is being taken at the request of the United States Navy and is needed to protect persons, vessels and property from hazards associated with the establishment of a Naval small arms range in this area. Entry into this safety zone will be prohibited unless authorized by the Captain of the Port, San Diego, or the Eleventh Coast Guard District Commander, or their representatives.

**DATES:** Comments must be received on or before September 9, 1988.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 North Harbor Drive, San Diego, CA 92101-1064. The comments and other materials referenced in this notice will be available for inspection and copying at 2710 North Harbor Drive, San Diego, CA. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LT Tom Orzech, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 North Harbor Drive, San Diego, CA 92101-1064, telephone (619) 557-5860.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego Reg 88-11) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information:**

The drafters of this notice are LT Tom Orzech, Project Officer for the Captain of the Port, and CDR Samuel E. Burton, Project Attorney, Eleventh Coast Guard District Legal Office.

**Discussion of Proposed Regulations:**

The Commander, Western Division, Naval Facilities Engineering Command, has requested that the Captain of the Port, San Diego, California, establish a permanent safety zone at San Clemente Island, California. The U.S. Navy will be constructing a small arms range facility at the northwest corner of the island.

The range will be using weapons which have an open range danger area of 4100 meters. The request was made to improve safety at the location while protecting persons, vessels and property from the potential hazards of the small arms range. The Captain of the Port concurs with the need for the security zone. There will be no entry into the security zone at anytime except by authorized U.S. Naval craft or by obtaining authorization from the Captain of the Port, San Diego, or the Eleventh District Commander, or their representatives. The Captain of the Port has designated Commander, Naval Base San Diego and the Officer in Charge, Naval Auxiliary Landing Field San Clemente Island, as having concurrent authority to permit entry into this safety zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

The area within the zone is outside normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, and 160.5.

2. Section 165.1113 is added to read as follows:

**§ 165.1113 Safety Zone: San Clemente Island, California.**

(a) *Location:* The following area is a safety zone:

The water area adjacent to San Clemente Island, California, bounded by the following coordinates and San Clemente Island:

| | |
|---|---|
| Point A—33°01'38" N | 118°36'18" W |
| Point B—33°01'11" N | 118°37'25" W |
| Point C—33°00'00" N | 118°36'51" W |
| Point D—33°00'05" N | 118°38'53" W |
| Point E—33°02'55" N | 118°39'05" W |
| Point F—33°04'25" N | 118°37'41" W |
| Point G—33°02'04" N | 118°35'53" W |

(b) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, no entry is allowed into this safety zone unless authorized by the Captain of the Port, San Diego; (2) Section 165.23 also contains other general requirements.

Dated: June 20, 1988.

**J.W. Scarborough,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.*

[FR Doc. 88–15618 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–14–M

## VETERANS ADMINISTRATION

**38 CFR Parts 3 and 17**

**Automobile Allowance and Adaptive Equipment Eligibility; and, Devices To Overcome the Handicap of Deafness**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendments.

**SUMMARY:** The Veterans Administration (VA) is proposing to amend its adjudication and medical regulations concerning the automobile allowance and adaptive equipment program for certain severely disabled individuals. These amendments are necessary to implement provisions of law and to properly divide regulatory responsibility for these programs consistent with organizational and functional alignments. The effect of those amendments will be to extend automobile adaptive equipment eligibility for certain severely disabled persons, more clearly define program responsibility, and more accurately describe prerequisites for devices to overcome the handicap of deafness.

**DATES:** Comments must be received on or before August 19, 1988. Comments will be available for public inspection until September 2, 1988. These regulatory amendments are proposed to be made effective 30 days after publication of the final rule in the **Federal Register.**

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulatory amendments to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132 at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until September 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 233–3005, regarding amendments to 38 CFR Part 3, or Frederick Downs, Jr., Director, Prosthetics and Sensory Aids Service (1211) Department of Medicine and Surgery, (202) 233–2011, regarding amendments to 38 CFR Part 17.

**SUPPLEMENTARY INFORMATION:** The eligibility criteria for automotive adaptive equipment currently found in adjudication regulations include elements which are not within the control of the Department of Veterans Benefits but rather are within the jurisdiction of the Department of Medicine and Surgery. The following amendments to the adjudication and medical regulations clarify the program responsibilities of each Department and implement the legislative change to the adaptive equipment program made by Pub. L. 98–543 and Pub. L. 97–99. The medical regulations have also been amended to implement Pub. L. 98–528 which authorized furnishing devices to overcome the handicap of deafness.

**Adjudication Regulations (38 CFR Part 3)**

In order to eliminate the need for regulatory amendments each time there is a legislative change in the amount of financial assistance available to certain severely disabled persons for purchasing an automobile or other conveyance, the VA proposes to remove the monetary rate specified in § 3.808 and replace it with the appropriate statutory citation.

Section 3.808 is also being amended to implement provisions of Pub. L. 97–66 which made individuals suffering from service-connected ankylosis of the knees or hips eligible for adaptive equipment.

With regard to the adaptive equipment program, it is the responsibility of regional office adjudication divisions to certify that an

individual has the specific service-connected disability(ies) required by law for eligibility for the adaptive equipment benefit. General administration of the adaptive equipment program, and determinations regarding other eligibility requirements are within the jurisdiction of the Department of Medicine and Surgery (DM&S). To clarify the responsibilities of each Department, the VA proposes to amend § 3.808 to remove references to matters within the jurisdiction of DM&S. The removed material is being revised and transferred to the medical regulation (38 CFR Part 17). Section 3.808 will contain a cross-reference to the appropriate sections in the medical regulations.

Technical changes are also proposed for § 3.807 to make the language of that section gender neutral.

**Medical Regulations (38 CFR Part 17)**

The proposed change to 38 CFR 17.115d eliminates the current language pertaining to special automobile equipment which became inapplicable when Pub. L. 93–538 authorized van lifts and interior modifications under 38 U.S.C. Chapter 39. The language of § 17.115d is being changed to cite the authority of the Veterans' Health Care Act of 1984 (Pub. L. 98–528) to furnish devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) to any veteran who is profoundly deaf and is entitled to compensation on account of hearing impairment.

Three new paragraphs are being added to the regulations to replace the provisions of § 3.808 which are proposed for removal. These paragraphs will also implement Pub. L. 97–66, Veterans' Disability, Compensation, Housing, and Memorial Benefits Amendments of 1981, concerning the eligibility for adaptive equipment for veterans entitled to compensation for ankylosis of the knee or hip; and to state the limitations concerning vehicle replacement contained in Pub. L. 98–543, Veterans' Benefits Improvement Act of 1984. Finally, the proposed regulations will clarify the authority of the VA to impose cost limitations on adaptive equipment and repairs to such equipment.

The Administrator hereby certifies that these proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these proposed amendments would not directly affect small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these proposed amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Number is 64.100.

**List of Subjects**

*38 CFR Part 3*

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

*38 CFR Part 17*

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—Health, Health care, Health facilities, Health professions—Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: June 22, 1988.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 3, *Adjudication*, and 38 CFR Part 17, *Medical*, are proposed to be amended as follows:

**§ 3.807 [Amended]**

1. In the cross-references at the end of § 3.807, the words "Husband or widower. See § 3.51" are removed.

2. In § 3.807 the introductory text, paragraphs (a)(4), (b), (d)(2) and (d)(3) are revised to read as follows:

**§ 3.807 Dependents' educational assistance-certification.**

For the purposes of dependents' educational assistance under 38 U.S.C. Chapter 35 (see § 21.3020), the child, spouse or surviving spouse of a veteran or serviceperson will have basic eligibility if the following conditions are met:

(a) * * *

(4) Died as a result of a service-connected disability; or (if a serviceperson)

* * * * *

(b) *Service.* Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89–358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.8(b), (c), or (d) of this part.

(Authority: 38 U.S.C. 1765)

* * * * *

(d) * * *

(2) "Spouse" means a person whose marriage to the veteran meets the requirements of § 3.50(a) of this part.

(3) "Surviving spouse" means a person whose marriage to the veteran meets the requirements of § 3.50(b) or § 3.52 of this part.

3. In § 3.808, the introductory text, paragraph (c) and paragraph (d) are revised and paragraph (b)(1)(iv) is added to read as follows:

**§ 3.808 Automobile or other conveyances-certification.**

A certification of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 1902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be made where the claimant meets the requirements of paragraphs (a), (b) and (c) of this section.

* * * * *

(b) * * *

(1) * * *

(iv) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips.

(Authority: 38 U.S.C. 1902)

(c) *Claim for conveyance and certification for adaptive equipment.* A specific application for financial assistance in purchasing a conveyance is required which must contain a certification by the claimant that the conveyance will be operated only by persons properly licensed. The application will also be considered as an application for the adaptive equipment to insure that the claimant will be able to operate the conveyance in a manner consistent with safety and to satisfy the applicable standards of licensure of the proper licensing

authorities. Simultaneously with the certification provided pursuant to the introductory text of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment as may be appropriate to the claimant's losses unless the need for such equipment is contraindicated by a physical or legal inability to operate the vehicle. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with the VA on the date it is shown to have been placed in the hands of military authority for transmittal.

(Authority: 38 U.S.C. 1902)

(d) *Additional eligibility crtieria for adaptive equipment.* Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§ 17.119a through 17.119c of this chapter.

(Authority: 38 U.S.C. 1902)

4. Section 17.115d is revised to read as follows:

**§ 17.115d Devices to assist in overcoming the handicap of deafness.**

Devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) may be furnished to any veteran who is profoundly deaf (rated 80% or more disabled for hearing impairment by the Veterans' Administration) and is entitled to compensation on account of such hearing impairment.

(Authority: 38 U.S.C. 1902)

5. Section 17.119a is redesignated as § 17.119d and new §§ 17.119a, 17.119b and 17.119c are added to read as follows:

**§ 17.119a Eligibility for automobile adaptive equipment.**

Automobile adaptive equipment may be authorized if the Chief Medical Director or designee determines that such equipment is deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's safety and so as to satisfy the applicable standards of licensure established by the State of such person's residency or other proper licensing authority.

(a) Persons eligible for adaptive equipment are:

(1) Veterans who are entitled to receive compensation for the loss or permanent loss of use of one or both feet; or the loss or permanent loss of use of one or both hands; or ankylosis of one or both knees, or one or both hips if the disability is the result of injury incurred or disease contracted in or aggravated by active military, naval or air service.

(2) Members of the Armed Forces serving on active duty who are suffering from any disability described in paragraph (a)(1) of this section incurred or contracted during active military service are eligible to receive automobile adaptive equipment.

(b) Payment or reimbursement of reasonable costs for the repair, replacement, or reinstallation of adaptive equipment deemed necessary for the operation of the automobile may be authorized by the Chief Medical Director or designee.

(Authority: 38 U.S.C. 1902)

**§ 17.119b Definition-adaptive equipment.**

The term, adaptive equipment, means equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant, and enable that person to meet the applicable standards of licensure. Adaptive equipment includes any term specified by the Chief Medical Director or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in § 17.119a of this part, or as deemed necessary in an individual case. Adaptive equipment includes, but is not limited to, a basic automatic transmission, power steering, power brakes, power window lifts, power seats, air-conditioning equipment when necessary for the health and safety of the veteran, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(Authority: 38 U.S.C. 1901, 1902)

**§ 17.119c Limitations on assistance.**

(a) An eligible person shall not be entitled to adaptive equipment for more than two automobiles or other conveyances at any one time or during any four-year period except when due to circumstances beyond control of such person, one of the automobiles or conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person.

(1) Circumstances beyond the control of the eligible person are those where the vehicle was lost due to fire, theft, accident, court action, or when repairs are so costly as to be prohibitive or a different vehicle is required due to a change in the eligible person's physical condition.

(2) For purposes of paragraph (a)(1) of this section, an eligible person shall be deemed to have access to and use of an automobile or other conveyance for which the Veterans' Administration has provided adaptive equipment if that person has sold, given or transferred the vehicle to a spouse, family member or other person residing in the same household as the eligible person, or to a business owned by such person.

(Authority: 38 U.S.C. 1903)

(b) Eligible persons may be reimbursed for the actual cost of adaptive equipment subject to a dollar amount for specific items established from time to time by the Chief Medical Director.

(Authority: 38 U.S.C. 1902)

(c) Reimbursement for a repair to an item of adaptive equipment is limited to the current vehicles of record and only to the basic components authorized as automobile adaptive equipment. Reimbursable amounts for repairs are limited to the cost of parts and labor based on the amounts published in generally acceptable commercial estimating guides for domestic automobiles.

(Authority: 38 U.S.C. 1902)

**§ 17.119d Obtaining vehicles for special driver training courses.**

The Administrator may obtain by purchase, lease, gift or otherwise, any automobile, motor vehicle or other conveyance deemed necessary to conduct special driver training courses at Veterans' Administration health care facilities. The Administrator may sell, assign, transfer or convey any such automobile, vehicle or conveyance to which the Veterans' Administration holds title for such price or under such terms deemed appropriate by the Administrator. Any proceeds received from such disposition shall be credited to the applicable Veterans' Administration appropriation.

(Authority: 38 U.S.C. 1903(e)(3))

[FR Doc. 88-16735 Filed 7-25-88; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL-3420-1]**

## Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Good Engineering Practice-Stack Height Regulations

**AGENCY**: Environmental Protection Agency (EPA).

**ACTION**: Proposed rule.

**SUMMARY**: This **Federal Register** notice proposes approval of Good Engineering Practice-Stack Height (GEP–SH) and Dispersion Techniques revisions to sections 3 and 5 of the Regulations of the Arkansas Plan of Implementation (SIP) for Air Pollution Control. This proposed GEP–SH SIP revision is intended to implement section 123 of the Clean Air Act, as amended, and Federal regulations at 40 CFR Part 51. If approved, it will enable the State to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height which exceeds GEP–SH or by any other dispersion technique.

Through today's notice, EPA solicits public comments on its proposed approval of the Arkansas State GEP–SH regulations. The rationale for the proposed approval is contained in this notice and further documented in a *Technical Support Document* which is available for public review.

**DATE**: Comments must be received on or before August 25, 1988.

**ADDRESSES**: Written comments should be submitted to the address below: Mr. Thomas H. Diggs, Chief, SIP New Source Section (6T–AN), Air Programs Branch, Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State's submittal and EPA's *Technical Support Document*, along with other information, are available for inspection during normal business hours at the following locations. Interested persons wishing to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Environmental Protection Agency, Region 6 Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1445 Ross Avenue, Dalas, Texas 75202.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72219.

**FOR FURTHER INFORMATION CONTACT**: Mr. Thomas Diggs, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214 or FTS 255–7214.

**SUPPLEMENTARY INFORMATION**: Section 123 of the Clean Air Act, as amended August 1977, regulates the manner in which techniques for dispersion of pollutants from a source may be considered in setting emission limitations. Specifically, section 123 requires that the degree of emission limitation shall not be affected by the portion of a stack which exceeds GEP–SH or by "any other dispersion technique."

To fulfill this requirement of the Act, EPA initially promulgated GEP–SH regulations limiting stack height credits and otehr dispersion techniques at 47 FR 05864 (February 8, 1982). Portions of those regulations were successfully challenged in the U.S. Court of Appeals for the D.C. Circuit (see *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983), resulting in their revision at 50 FR 27892 (July 8, 1985). Since then, the regulations have been renumbered as part of a comprehensive restructuring and consolidation of EPA's SIP development regulations. See 51 FR 40656 (November 7, 1986). Today's **Federal Register** proposal uses are the current numbers for citation.

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, EPA has required that all States (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the EPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques and, if so, to prepare revised limitations consistent with their revised SIPs. Today's proposal concerns only the first of these requirements. Although the State of Arkansas has reviewed and evaluated emission limitations. of the existing sources by using the criteria provided in the **Federal Register** notice of July 8, 1985, EPA will publish the results of this review and revisions, if any, to emission limitations of the affected sources under a separate notice.

On July 1, 1987, the Governor of Arkansas submitted a copy of the Arkansas GEP–SH revisions to sections 3 and 5 of the Regulations of the Arkansas Plan of Implementation for Air Pollution Control as a proposed SIP revision. Supporting documents for the revision were also submitted. The Arkansas GEP–SH Regulations were developed by the Arkansas Department of Pollution Control and Ecology (ADPC&E) and were adopted by the Arkansas Commission on Pollution Control and Ecology on May 22, 1987. The Arkansas GEP–SH regulations are equivalent to the Federal regulations found at 40 CFR 51.100(z), 40 CFR 51.100(FF)–(kk), 40 CFR 51.118, 40 CFR 51.164, and are largely identical thereto except for minor changes to accommodate the State's regulatory format. EPA's preliminary determination indicates that the State's regulations and procedures are adequate and effective for implementation for the Federal stack height and dispersion technique regulations and section 123 of the Clean Air Act.

The primary substantive requirements for implementation of section 123 through SIPs are found at 40 CFR 51.118 and 40 CFR 51.164. When it promulgated them, EPA intended that 40 CFR 51.118 apply to a State's one-time review of existing sources and that 40 CFR 51.164 apply to its new source review program. 40 CFR 51.118 thus "grandfathers" certain existing sources and requires that modelling or field studies justifying an emission limitation based on GEP–SH in excess of formula height be made publicly avaiable prior to submission of the State's final decision on that existing source to EPA for review and approval as a SIP revision. 40 CFR 51.164, on the other hand, requires that modelling or field studies justifying a new source review permit limitation based on GEP–SH in excess of formula height be made publicly available prior to submission of issuance of the permit.

In adopting corresponding requirements, Arkansas replicated 40 CFR 51.118 in section 5(f) for application in its new source permitting program. As a result, Section 5(f) implicitly requires that permits containing emission limitations based on GEP–SH in excess of formula height be submitted to EPA for review and approval, presumably as SIP revisions. As adopted, the regulation also requires that the modelling or field studies supporting that stack height be made publicly available before the permit is provided to EPA for review. Together with the State's Federally approved permit regulation 4(d) (requiring that "the information submitted by the owner or operator and the Department's analysis of the effect of the proposed emissions on air quality" be made available for public

review prior to issuance of a permit), this is sufficient to satisfy the public participation requirements of 40 CFR 51.164. Although the requirement for EPA review of any such permits is more administratively cumbersome than the Act or EPA's regualtions require, it is found acceptable. However, to avoid future misunderstandings, the State may want to confirm EPA's interpretation of the regulation or amend the regulation to reflect its true intent prior to final approval.

In addition to the required implementing regulations, Arkansas has adopted definitions essential for their meaningful application. The State regulatory definitions for "emission limitation and emission standard" (Section 3(w)), "stack" (Section 3(x)), "a stack in existence" (Section 3(y)), "dispersion technique" (Section 3(r)), "good engineering practice stack height" (Section 3(s)), "nearby" (Section 3(t)), "excessive concentration" (Section 3(u)), and "Major modification" (Section 3(v)) replicate the Federal regulatory definitions at 40 CFR 51.100(z), 40 CFR 51.100(ff), 40 CFR 51.100(gg), 40 CFR 51.100(hh), 40 CFR 51.100(ii), 40 CFR 51.100(jj), 40 CFR 51.100(kk), and 40 CFR 51.165(a)(1)(v)(A) respectively.

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally proposes to approve Arkansas' stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that third action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, the EPA will notify the State of Arkansas that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Arkansas and source owners or operators.

**Proposed Action**

EPA is proposing to approve a revision to the Arkansas State Implementation Plan (SIP) which adds the Arkansas Good Engineering Practice Stack Height (GEP–SH) Regulations to the SIP. The state has added its GEP–SH Regulations to sections 3 and 5 of its Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant econmic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon Monoxide, Hydrocarbons, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

**Authority:** 42 U.S.C. 7401–7642.

Date: December 22, 1987.

**Editorial Note:** This document was received at the Office of the Federal Register on July 21, 1988.]

**Robert E. Layton, Jr.,**

*Regional Administrator.*

[FR Doc. 88–16753 Filed 7–25–88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Parts 4, 5, and 16

**[CGD 86–067]**

## Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Announcement of Public Hearings on Proposed Rulemaking

**AGENCY:** Coast Guard, DOT.

**ACTION:** Announcement of public hearings on notice of proposed rulemaking.

**SUMMARY:** On July 8, 1988, the Coast Guard published in the **Federal Register** a notice of proposed rulemaking entitled, "Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel" (CGD 86–067, 53 FR 25926). This proposed rule would mandate drug and alcohol testing for commercial vessel personnel. The Coast Guard will hold public hearings on this proposal on the dates and at the locations specified below. The hearings will permit the Coast Guard to gather information and views on the regulatory proposal.

**DATES:** See Supplementary Information

**ADDRESSES:** See Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean T. Connaughton, Project Manager, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection (G–MVP), Phone (202) 267–0229.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will hold hearings on the following dates and locations. Each hearing will begin at 9:30 a.m. (0930) and end at 5:00 p.m. (1700) or as soon as all the speakers have been heard.

The hearing schedule is as follows:

Houston, Texas; Wednesday, August 10, 1988. Holiday Inn Crowne Plaza, Galleria Area, 2222 West Loop South.

Chicago, Illinois; Friday, August 12, 1988, Holiday Inn O'Hare, 5440 North River Road, Rosemont.

Washington, DC; Friday, August 19, 1988. FAA Auditorium, FOB–10A, 800 Independence Ave., SW.

San Francisco, California; Monday, August 22, 1988. Officers Dining Facility (Wing C), Support Center Alameda, Coast Guard Island, Alameda.

Interested persons are invited to participate in these hearings. Those wishing to make an oral statement must register at least 2 days before the date of the particular hearing at which the statement is to be made. Oral statements by individuals without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations.

To register, call the following:

For the August 10, 1988 Houston, Texas Public Hearing: (713) 750–1912.

For the August 12, 1988 Chicago, Illinois Public Hearing: (312) 353–6820.

For the August 19, 1988 Washington, DC Public Hearing: (202) 267–0229.

For the August 22, 1988 San Francisco, California Public Hearing: (415) 437–3142.

Date: July 20, 1988.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.*

[FR Doc. 88–16838 Filed 7–25–88; 8:45 am]

BILLING CODE 4910-14-M

**Urban Mass Transportation Administration**

**49 CFR Part 653**

**[Docket 88–F]**

## Control of Drug Use in Mass Transit Operations

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Supplemental notice of public hearings.

**SUMMARY:** On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking in the **Federal Register** entitled "Control of Drug Use In Mass Transit Operations". In that notice, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times, and locations were not yet available. On July 12, 1988, UMTA announced the times and locations for all the hearings, except the hearing to be held in Los Angeles. This notice provides the date, time, and location for the hearing to be held in Los Angeles.

**DATE:** A public hearing is scheduled for Wednesday, August 31, 1988, at 10:30 a.m. (local time), in Los Angeles, California.

**ADDRESSES:** The public hearing will be held in the California State Office Building, Room 1138, 107 South Broadway, Los Angeles, California. Written comments on Docket No. 88–F should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88–F, 400 7th Street, SW., Room 9316, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Holly Vandervort, Office of the Chief Counsel, (202) 366–1936 to register to make a statement at a hearing or to inquire about the logistics.

**SUPPLEMENTARY INFORMATION:** On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) entitled "Control of Drug Use in Mass Transit Operations" (53 FR 25910). The proposed rule would require a recipient of Federal transit funding to certify that it has established a comprehensive anti-drug program. On July 12, 1988, UMTA announced that it would hold public hearings on the proposed rulemaking in Washington, DC, New York, NY, Chicago, IL, and Los Angeles, CA (53 FR 26289). The July 12 notice set out dates, times, and locations for all the hearings except the location of the Los Angeles hearing. This notice provides that information. The July 12 notice also set out the procedures for registering and making a statement at the hearings. Individuals interested in making a statement at the hearing or commenting on Docket No. 88–F, are directed to the July 12 notice at 53 FR 26289.

Issued on: July 21, 1988.

**Daniel Duff,**

*Assistant Chief Counsel for Legislation and Regulations.*

[FR Doc. 88–16768 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–57–M

# Notices

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Special Committee on Financial Services; Public Meeting

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with the Administrative Adjudication of Claims Against Savings Institution Receiverships, based upon a study by Professor Lawrence G. Baxter of Duke University School of Law. Copies of the Committee's report and draft recommendation may be obtained from the contact person named in this notice.

**DATE:** Wednesday, August 17, 1988, at 2:00 p.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

**FOR FURTHER INFORMATION CONTACT:** Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. Telephone (202) 254-7020.

**Jeffrey S. Lubbers,**
*Research Director.*
April 20, 1988.

[FR Doc. 88-16857 Filed 7-25-88; 8:45 am]
BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[CN-88-101]**

### Advisory Committee on Cotton Marketing; Meeting

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Advisory Committee on Cotton Marketing will meet on Wednesday, August 24, 1988, beginning at 8:00 a.m. at the Peabody Hotel, 149 Union Avenue, Memphis, Tennessee. The purpose of the meeting, the second held by the committee, will be to continue a review of prominent marketing system issues.

Tentative agenda items include: Recommendations from the subcommittee of the Advisory Committee on Cotton Marketing, which met on June 22, 1988, in Dallas, Texas, regarding High Volume Instrument classification quality factors which could be added to the Commodity Credit Corporation loan schedule, an update on changes in the establishment of spot quotations and on efforts to modify the Universal Cotton Standards Agreement; and a review of efforts currently underway to evaluate the differences between processing efficiency and product quality for Light Spotted and White cottons, and to identify causes behind the increase in production of Light Spotted cotton. This meeting is open to the public, and written comments may be submitted in advance or following the meeting to Jesse F. Moore, Director, Cotton Division. Time, however, will be inadequate to permit lengthy public comment on the day of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-3193.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee on Cotton Marketing was established by the U.S. Department of Agriculture to review the cotton marketing system and to recommend ways of improving its efficiency. Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

Dated: July 21, 1988.

**J. Patrick Boyle,**
*Administrator*

[FR Doc. 88-16763 Filed 7-25-88; 8:45 am]
BILLING CODE 3410-02-M

## Forest Service

### Southern Region; Fee Schedule for Communication Uses

**ACTION:** Notice of proposed policy; request for comments.

**SUMMARY:** The Regional Forester for the Southern Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and the Commonwealth of Puerto Rico. Comments from interested individuals and users are welcome.

**DATE:** Comments must be in writing and received by September 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Vince McCormack or George B. Hemingway, Lands Staff, Forest Service, 1720 Peachtree St. NW, Atlanta, Georgia 30367, (404) 347-2873 or 347-2595.

Current fees are calculated at two-tenths of one percent (0.2%) of the permit holders total investment in facilities and equipment plus 5 percent (5%) of rental income received from building tenants and/or equipment users served by the holder.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph and other electronic signals and other means

of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) that broadens the method of determining annual land use rental fees for communication uses states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Southern Region has determined that:

(1) A fee schedule would be an appropriate cost-effective method to use to assess fees for most communication sites and uses. This schedule is intended to cover the majority of the existing and proposed sites and uses in the Southern Region. However, fees for atypical sites (unique sites/uses or sites/uses servicing high populations) may not be covered by this Schedule. Examples of the types of sites/uses not covered by this Schedule are: Cellular Telephone Uses; the Mt. Pisgah Electronic Site in North Carolina; the East Peak Electronic Site in Puerto Rico; and the communication uses authorized by the Puerto Rico Telephone Company on the El Yunque Electronic Site in Puerto Rico.

(2) The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites/uses when market evidence such as leases for similar uses demonstrate the inapplicability of the schedule. Appraisals provided by the holder or other groups may be used to determine fees if the Review Appraisers establish that the appraisal meets Forest Service standards and the fee represents fair market value.

(3) Competitive bidding may be used to establish fees for new sites.

**SUPPLEMENTARY INFORMATION:** On June 18, 1987 the Southern Region of the Forest Service published a notice of a proposed fee schedule for communication uses (52 FR 23190). That schedule set forth proposed annual rental fees for communication uses by classes for the various states within the Region and the Commonwealth of Puerto Rico. Comments on the proposal were due by August 18, 1987.

*Analysis of Public Response:* The notice and individual permittee mailings generated 46 written and telephoned responses. A breakdown of the respondents is as follows:

| Respondent | No. | Percent |
|---|---|---|
| Federal Agencies | 3 | 6 |
| Utility Companies | 5 | 11 |
| Public, nonprofit, noncommercial Broadcasters | 4 | 9 |
| Commercial Broadcasters | 2 | 4 |
| Commercial multi-user systems | 11 | 24 |
| Amateur Radio Operators | 12 | 26 |
| Other minor uses systems | 4 | 9 |
| Others | 5 | 11 |
| Total | 46 | 100 |

*Included in the above were:* Three who challenged the category their use was classified for; five Federal, State and quasi-public agencies concerned over their status for exemptions of fees; one user who felt the proposed fee schedule is excellent; and one user who posted the Forest Service of his decision to terminate his use. The other 36 generally felt that the proposed fees are either too high or that the Government should not charge a fee for their type of uses. A number of commentators also felt that the fees were not reflective of fair market value and challenged the basis for determining the proposed fees.

In addition to the above, we have coordinated our efforts with our Washington Office Lands Staff and representatives for the other Regions of the Forest Service. We found that across the nation the permit holders concerns are fairly consistent and for the most part, centered on the topics of: fee exemptions and waivers; fee not fairly reflecting rates found in the private sector; phase-in of fee increases; and the consistency, or inconsistency, of proposed fees from one area to another.

Following is a summary of the comments for this Region together with a discussion of policy, and where applicable, a discussion of the resulting changes in the schedule.

*Phase-in of fee increases*

That portion of the new fee that exceeds the current fee by 100% but less than $2,000, will be phased-in over a 3 year period. That portion of the new fee that exceeds the current fee by 100%, and by more than $2,000, will be phased-in over a 5-year period.

*Fee schedule adjustments*

The fee rates listed in the fee schedule will be adjusted annually using the second quarter CPI-U for the proceeding year. For example, the second quarter CPI-U for 1989 will be used to adjust the fee schedule for use in determining fees for 1990.

In addition, market studies including analyses of private rentals will be made in 5 years to determine the need for updating the fee schedule. Changes and adjustments in the schedule will be made as warranted based on those studies and findings.

*Applicability of fees to public and non-profit entities*

Most of the comments were on this issue. Several Governmental agencies want assurances that they will not lose their fee exemptions. Others want exemptions for those uses that are established specifically for providing aid or education to the public by non-profit entities.

No rental fee will be charged when the holder is another Federal agency (36 CFR 251.57(C)). The payment of a fair share of the cost of operation and maintenance of privately owned structural and land improvements will, however, be required of all Federal agencies who jointly occupy such facilities (FSH 2709.11, Chapter 50, Section 53.9–15).

Under Pub. L. 98–300 and Forest Service Manual 2728.32, facilities and extensions from facilities financed pursuant to the Rural Electrification Act of 1936 are exempt from the payment of fees prescribed by this Schedule.

Fees to State or local governments may be waived (36 CFR 251.57(b)(1)); however, the fee will *not* be waived if the holder charges, or would charge, the United States for similar privileges. Reciprocal agreements between state or local governments and federal agencies will be honored.

For all others: As provided by the Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

*Fee for commercial communicator*

A number of commenters pointed out the inequity of charging a flat fee for those type uses. Some systems serve so few customers that the fee in the schedule exceeds the income derived from the use. Others are designed to serve hundreds of customers and generate high incomes.

Private rentals for these types of uses show an array of fees charged with no standard or particular method for setting

the fees used. While some landowners' charge flat fees, others charge flat fees plus fees per frequency, or unit, or slot; and still others charge a percentage of the income derived from the use.

This category of uses is dynamic and is rapidly changing. New systems and types of uses are being developed at a fairly rapid rate. And the potential growth over the next few years appears greater for these systems than for those in any of the other classes listed in the schedule.

The method selected is to charge a rate per frequency for two way radio systems (subject to a base rate) plus applicable rates for the holder's microwave systems.

*Consideration for site improvements and maintenance responsibilities*

Several commentators alluded to the principle that the fees should be for only the use of the land that the user occupies. They contend that adjustments should be made for such items as road maintenance, site maintenance and, where applicable, for the electrical power and other services that the permit holders are responsible for.

The data collected from the private sector was sifted and the rentals for sites and uses most similar to those on the National Forest lands were used. Differences among the sites, leases and lessee responsibilities were analyzed and adjusted as necessary. Numerous professional real estate appraisers were used to collect and analyze the data; and that, in turn, was reviewed by Forest Service staff real estate review appraisers. A check on that overall work indicates that proper procedures were followed and that no further adjustments are needed.

*Summary*: Future fees will be determined by individual appraisals, competitive bidding, or a fee schedule. Fees for some uses will continue to be based on individual appraisals and/or competitive bidding. But for most, fees will be established by reference to a fee schedule. That fee schedule is based on sound business management principles, and as far as practicable, is in accordance with comparable commercial practices for establishing fair market rental fees.

The schedule provides rental fee rates for communication uses based on types of uses for given states or areas. The fee rates will be adjusted annually using the second quarter CPI–U for the year preceding the billing year. Also, the schedule will be reviewed every 5 years and updated and adjusted as necessary based on market studies.

That portion of the new fees that exceed the current fees by 100% will be phased-in.

The fee schedule is effective January 1, 1989 and new fees will be reflected in the billing for CY 1989.

Existing policy and qualification for waiver of fees is set forth in 36 CFR 251.57. Pursuant to that the authorizing officer determines, upon application, whether a particular use qualifies for a full or partial waiver of fees.

*Proposed Fee Schedule*: This schedule is based on market analyses completed in CY 1988. Market studies were originally performed by Forest Service staff real estate appraisers for each of the states (and the commonwealth of Puerto Rico) identified in the schedule except for Arkansas, Georgia, North Carolina, Tennessee and Virginia. Separate studies were made for the Ozark and Ouachita National Forests in Arkansas and a joint study was made for the areas in Georgia, North Carolina, Tennessee and Virginia. Following the market studies, the appraisers from the mountain areas (AR, GA, KY, NC, TN, VA & PR) performed further studies and analysis to ensure consistency in procedures and in setting fee by use types.

To coordinate our efforts with our Washington Office and those for the other Forest Service Regions we have revised the schedule format and better defined the various types of communication uses covered. This schedule proposes rental fees by the type uses defined herein. Fees for atypical, unique and miscellaneous uses not herein defined (as determined by the authorizing officer) will be established based on appraisals, sound business management principles, and/or negotiations as described in the "revised policy" summarized in the "background" section of this notice.

COMMUNICATIONS USE FEE SCHEDULE, SOUTHERN REGION, FOREST SERVICE, USDA

| Use Category [1] | AL | AR | FL | GA | KY | LA | MS | NC | SC | TN | TX | VA | PR |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Common Carrier Microwave Relay & Industrial Microwave | 300 | 3,000 | ..... | 2,500 | 2,400 | ..... | 500 | 2,500 | ..... | 2,500 | 1,800 | 2,500 | 4,000 |
| 2. Radio Broadcast | ..... | 2,400 | ..... | 3,000 | 1,600 | ..... | ..... | 3,000 | ..... | 3,000 | ..... | 3,000 | 3,000 |
| 3. TV Broadcast | 300 | 3,000 | ..... | 3,000 | 3,000 | ..... | ..... | 3,000 | ..... | 3,000 | ..... | 3,000 | 3,000 |
| 4. Cable and Subscription TV | ..... | 2,500 | ..... | 2,500 | 3,000 | ..... | ..... | 2,500 | ..... | 2,500 | ..... | 2,500 | 1,300 |
| 5. Broadcast Translator [2] | ..... | 400 | ..... | 400 | 400 | ..... | ..... | 400 | ..... | 400 | ..... | 400 | 225 |
| 6. Passive Reflector | ..... | ..... | ..... | 400 | ..... | ..... | ..... | 400 | ..... | 400 | ..... | 400 | 225 |
| 7. Commercial [3] | ..... | 200 | ..... | 200 | 200 | ..... | ..... | 200 | ..... | 200 | ..... | 200 | 225 |
| 7A. Communicator | ..... | 400 | ..... | 400 | 400 | ..... | ..... | 400 | ..... | 400 | ..... | 400 | 450 |
| 8. Cellular Telephone [4] | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| 9. Internal Two-Way Radio | 300 | 400 | 2,000 | 400 | 400 | 300 | 360 | 400 | ..... | 400 | 500 | 400 | 1,300 |
| 10. Amateur Radio | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |
| 11. Personal/Private "Receive Only" | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |
| 12. Natural Resource & Eviron. Monitoring | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

[1] Appurtenant uses—Except for commercial communicators, appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do not quality for appurtenant use fee exemption.

[2] Translator sites operated by a single licensee are considered one use.

[3] The fee will be calculated on the basis of the applicable rate for each licensed radio transmitting frequency (channel) which is used by: (a) Single user, (b) shared or community repeater, (c) trunked system or specialized mobile radio system, (d) pager system, etc.; plus the applicable rate for each of the commercial communicator's licensed microwave systems on the site; subject, however, to the applicable minimum fee shown in the schedule. Applicable rates for licensed radio transmitting frequencies (channels) are shown above the solid lines in the schedule ($200 for AR, GA, KY, NC, TN, & VA and $225 for PR). Minimum fees for this type of use are shown below the solid line and in parenthesis ($400 for AR, GA, KY, NC, TN, & VA, and $450 for PR). Applicable rates for such microwave systems are those established in use category No. 1—Common Carrier Microwave Relay and Industrial Microwave.

[4] Currently there are no uses on National Forest System lands within the Southern Region; but applications are expected within the next few years. Fees will be based on appraisals until the first review period (1994). At that time fees may be incorporated into this schedule.

**Definitions**

*Common Carrier Microwave Relay Use:* This group typically includes longline carriers who relay intra and interstate transmissions using point to point microwave networks or systems. These users are regulated by state Public Utility Commissions and must provide service to any consumer with the ability to pay according to published rate schedule.

*Industrial Microwave Use:* This group includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms. The communication service is not sold and is limited to the user.

*Radio Broadcast Use:* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations that generate revenues from advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Television Broadcast Use:* This category includes FCC authorized facilities that broadcast VHF and UHF audio and video signals for general public reception. Users include commercial television stations (major and independent networks) whose revenues are generated from advertising, and public television stations whose revenues are supported by subscriptions, grants, and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Cable and Subscription Television Use:* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups that retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

*Broadcast Translator Use:* This category of use consists of receiving up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service.

*Passive Reflector Use:* Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

*Commercial Communicators Use:* An entity whose primary business is providing communications service to others. They may or may not be regulated by State Public Utility Commissions but are required to hold FCC licenses. Some entities also own and lease building, tower and related facility space as part of their business enterprise. Those that do are usually communications facility managers.

*Cellular Telephone Use:* This use is a specialized service of commercial communicators and involves a mobile UHF radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell to cell.

*Internal Two-Way Radio Repeater Use:* These are users who operate two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

*Amateur Radio Use:* Repeaters used by individuals or groups who are licensed by FCC as amateur radio operators.

*Personal/Private "Receive Only" Use:* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes and recreation residences. These facilities are personally owned and not operated for profit.

*Natural Resources and Environmental Monitoring:* This use includes the transmission of telemetry data from a remote site to a central receiving station.

**Fee Formula Options for Multiple Occupancies**

To improve administration of communication sites, Forest Service policy (50 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under the conditions of those authorizations, holdings rather than the Forest Service authorize the use of their facilities by others.

Collection of Forest Service fees and performing certain administrative duties required under this type of authorization are burdens of the holder. In large or complex situations the burdens may become so great as to become unacceptable to the holder without some remuneration by the Forest Service. Therefore, when a determination by the Forest Service is made that it is beneficial to do so (considering cost benefits to the Government, contributions to the Secretary's program, general public benefit, and costs incurred by the holder to administer the uses), the authorized officer may allow a fee based on: (1) 100% of the scheduled fee for the highest value use allowed under the holder's authorization; and (2) a percentage of the schedule fee for each additional use allowed under holder's permit (Note, the percentage of the fee retained by the holder is intended to cover the cost of administering the use within the terms of the holders authorization plus a reasonable profit). It will not apply to holders whose primary business is the rental of space to others (facility managers) and in some cases commercial communicators.

Consolidation of facilities on a site may meet the objectives of the Forest Service. In these cases, the authorized officer may negotiate a temporary discount in fees to encourage consolidation. Fee discounts cannot exceed the holders' cost of consolidation. In no case will fees be discounted for cost incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

**Fee Waivers**

No rental fee will be charged when the holder is another Federal agency [36 CFR 251.57 (C)]. The payment of a fair share of the cost of operation and maintenance of privately owned structural and land improvements will, however, be required of all Federal agencies who jointly occupy such facilities (FSH 2709.11, Chapter 50, section 53.9—15).

Under Pub. L. 98–300 and Forest Service Manual 2728.32, facilities and

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extensions from facilities financed pursuant to the Rural Electrification Act of 1936 are exempt from the payment of fees prescribed by this Schedule.

Fees to State and local governments may be waived [36 CFR 251.57(b)]; except that fees will *not* be waived if the holder charges, or would charge, the United States for similar privileges. Reciprocal agreements between State or local governments and Federal agencies will be honored. Fee waivers by the Forest Service have no effect on fees charged by the holder for the use of his facilities and/or equipment. For all others: As provided by the Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

**Annual Fee Schedule Adjustment**

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

**Periodic Review of Fee Schedule**

The Forest Service recognizes the need for granting reasonable security to its permit holders and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the holder clearly indicate that a fee change is justified. To insure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which might have a bearing on that review and fee adjustments, if appropriate, will be announced to the holder at least 90 days before becoming effective on January 1, 1995.

**Phase-in**

That portion of the new fee that exceeds the current fee by 100%, but less than $2,000, will be phased-in over a 3 year period. That portion of the new fee that exceeds the current fee by 100% and by more than $2,000 will be phased-in over a 5 year period. Fees phased-in will be subject to the CPI–U annual fee adjustment.

**Implementation**

The fee schedule would be effective January 1, 1989 and the new fees reflected in the billing for CY 1989.

Date: June 30, 1988.

**Marvin Maier,**

*Deputy Regional Forester.*

[FR Doc. 88–16762 Filed 7–25–88; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held August 17, 1988, at 9:00 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to Semiconductor equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information call Ruth D. Fitts at 202–377–2583.

Date: July 20, 1988.

**Betty A. Ferrell,**

*Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 88–16769 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DT–M

## Foreign-Trade Zones Board

[Docket No. 23–88]

### Proposed Foreign-Trade Zone—Victoria and Calhoun Counties, Texas; Subzones for CMC Steel Fabricators, Inc.; Extension of Comment Period

The period for comments regarding the proposed subzones for CMC Steel Fabricators, Inc., in Victoria County, Texas (53 FR 17739, 5/18/88), is extended to August 18, 1988, to allow interested parties additional time to comment on the subzones.

Comments in writing and invited during this period. Submissions should include 5 copies. The public record will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 20, 1988.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 88–16796 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 386]

### Resolution and Order Approving The Application of The Westport Economic Development Corp. For a Foreign-Trade Zone in El Paso, TX

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Westport Economic Development Corporation, a Texas non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on November 23, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in El Paso, Texas, within the El Paso Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to

carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant To Establish, Operate, and Maintain a Foreign-Trade Zone In El Paso, TX**

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Westport Economic Development Corporation (the Grantee), a Texas non-profit corporation, has made application (filed November 23, 1987, FTZ Docket 37–87, 52 FR 45981) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a second foreign-trade zone in El Paso, Texas, within the El Paso Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 150 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC this 13th day of July 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**C. William Verity, Jr.,**

*Chairman and Executive Officer.*

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 88–16798 Filed 7–25–88; 8:45 am]

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## International Trade Administration

**[A–588–801]**

## Postponement of Preliminary Antidumping Duty Determination; Certain All-Terrain Vehicles from Japan

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**SUMMARY:** This notice informs the public that we have received a second request from petitioner in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of certain all-terrain vehicles from Japan have occurred at less than fair value until not later than September 6, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gregory G. Borden or Louis Apple, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–3003 or (202) 377–1769.

**SUPPLEMENTARY INFORMATION:** On March 7, 1988 (52 FR 7222) we published a notice of initiation of an antidumping duty investigation to determine whether certain all-terrain vehicles from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by July 18, 1988.

As detailed in the notice, the petition alleged that imports of certain all-terrain vehicles from Japan are being, or are likely to be, sold in the United States at less than fair value.

On July 6, 1988, we published a notice postponing the preliminary determination of whether sales of certain all-terrain vehicles from Japan have occurred at less than fair value until not later than August 8, 1988.

On July 14, 1988, petitioner, Polaris Industries L.P., requested that the Department extend the period for the preliminary determination until not later than 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determination in this case is hereby extended. We intend to issue a preliminary determination not later than September 6, 1988.

This notice is published pursuant to section 733(c)(2) of the Act.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88–16794 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

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## Short-Supply Review on Certain Stainless Steel; Request For Comments

**AGENCY:** Import administration, International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with

respect to certain AISI grade 303 stainless steel wire.

**DATE:** Comments must be submitted on or before August 5, 1988.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

**SUPPLEMENTARY INFORMATION:** Paragraph 8 of the U.S.-Japan Arrangement on Certain Steel Products provides that if the U.S. determines that "* * * because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or subcategory (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or subcategory * * *".

We have received a short-supply request for certain AISI grade 303 stainless steel wire with diameters ranging from 2.403 mm to 2.430 mm or from 2.605 to 2.623 mm, in coils weighing between 50 and 55 kilograms each, with a tensile strength of 123,000 to 145,000 psi, and with a 12 RMS finish or better.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 5, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

July 13, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16797 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

## University of Medicine and Dentistry of New Jersey et al.; Consolidated Decision on Applications For Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 88-154. *Applicant:* University of Medicine and Dentistry of New Jersey, Piscataway, NJ 08854. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 17094, May 13, 1988. *Instrument Ordered:* February 9, 1988.

*Docket Number:* 88-157. *Applicant:* Dana-Farber Cancer Institute, Boston, MA 02115. *Instrument:* Electron Microscope, Model JEM-100CX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 17094, May 13, 1988. *Instrument Ordered:* January 25, 1988.

*Docket Number:* 88-162. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 17094, May 13, 1988. *Instrument Ordered:* January 14, 1988.

*Docket Number:* 88-166. *Applicant:* Harvard Medical School, Boston, MA 02115. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 18329, May 23, 1988. *Instrument Ordered:* January 27, 1988.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-16795 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Compnay Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00010." A summary of the application follows.

*Applicant:* Michigan Export Development Authority, State of

Michigan, P.O. Box 30017, Lansing, Michigan 48909. Contact: Randy Harmson, Executive Director, Telephone: (517) 373-1054.

*Application #: 88-00010.*

*Date Deemed Submitted:* July 14, 1988.

*Members (in addition to applicant):* None.

*Summary of the Application:*

Export Trade:

*Products*

All products.

*Export Trade Facilitation Services (as they relate to the export of products)*

Michigan Export Development Authority (MEDA) intends to provide or arrange for the provision of shipping (overseas freight transportation, inland freight to the terminal or port, terminal or port storage, packing and crating, freight forwarding, chartering of vessels, consolidation of shipments, documentation, wharfage and handling charges, and other services directly related to the movement of goods being exported or in the course of being exported), credit and banking terms, financing, insurance, legal, foreign exchange, product adaptation, taxation, and marketing services.

*Export Markets:*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation:*

MEDA seeks certification to:

1. Enter into joint discussion and negotiations with foreign buyers concerning:

(a) Standardized production specifications, quantities, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreign buyer, MEDA, and members;

(b) Standardized quality standards that meet foreign buyer specifications; and

(c) Standardized bidding procedures acceptable to foreign buyers.

2. Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, chartering of vessels for MEDA and members, and negotiations for inland transportation for goods in the course of being exported.

3. Enter into agreements among MEDA and members on the terms of each party's participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for goods to be exported.

4. Refuse to deal with an individual or company with respect to the export of any goods or service to a foreign buyer.

5. Refuse to deal with respect to the export of any goods or service to a foreign buyer with any member not complying with the standards, agreements, or other terms of export trade set by MEDA and/or its members.

6. Exchange information and make agreements concerning the extent of member participation in transactions which involve MEDA and/or members. The information to be exchanged includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the export market;

(c) Information on costs specific to the export market (such as ocean freight, inland freight to terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulation affecting sales to export markets;

(e) Information about the price, quality, quantity, source, and delivery dates of goods or services available from members for exports;

(f) Information about terms and conditions of contracts for sales in the export market to be considered and/or bid on by MEDA and its members; and

(g) Any other commercial, financial, or industrial information (such as production capacity or quality control procedures) strictly regarding exports that is not already generally available to the trade or public from members or suppliers to a transaction.

7. Enter into exclusive or nonexclusive agreements with export intermediaries of any type to appoint an export intermediary to act for or provide services to MEDA and members, whereby each export intermediary may agree not to represent MEDA and members' competitors in the sale of goods or services to any export market and not to buy any goods or services from any of MEDA or members' competitors for resale in any export market.

8. Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer may agree not to purchase goods or services from MEDA's or members' competitors.

9. Enter into exclusive or nonexclusive agreements with export intermediaries of any type to provide Export Trade Facilitation Services.

10. Limited membership in MEDA to businesses operating in Michigan and to Michigan residents.

11. Enter into joint ventures and other agreements between members and nonmembers (including nonmembers located outside Michigan) that specify or meet standards on quality, quantity, and price specifications for transactions. MEDA will engage in price, quality, quantity, and other negotiations directly with the foreign buyer when appropriate. Otherwise, such specifications will be set by agreement between MEDA and members and the customer.

Date: July 20, 1988.

**John E. Stiner,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 88-16748 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DR-M

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**[A-508-801]**

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Israel

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referrd to as industrial belts) from Israel are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury, to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

**United States Price and Foreign Market Value**

Petition considers the prices it must use to meet the competition as its best evidence of Israeli selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner based foreign market value on its own export prices which its representative in Israel advises are necessary for its belts to be competitive in Israel. Petitioner also adjusted for any difference in credit terms between the United States and the home market.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 3.8% to 252.5%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Israel.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Israel and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are iitiating an antidumping duty investigation to determine whether imports of industrial belts from Israel are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combusion engines, including trucks, tractors, buses, and lift trucks.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivilged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88–16800 Filed 7–25–88; 8:45 am]

BILLING CODE 3510-DS-M

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**[A–475–802]**

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts), from Italy are being,

or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

**United States Price and Foreign Market Value**

Petitioner considers the prices it must use to meet the competition as its best evidence of Italian selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 2.3% to 138.7%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Italy.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Italy and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Italy are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protection order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Italy materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88–16801 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

[A-588-807]

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

### United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of Japanese selling prices in the United States. United States price was based on the distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier determination by December 7, 1988.

### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, from Japan currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. The resulting price in local currency is then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 11.3% to 176.5%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Japan.

### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16802 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

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[A-559-802]

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Singapore are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

**United States Price and Foreign Market Value**

Petitioner considers the prices it must use to meet the competition as its best evidence of Singapore selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency is then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 0 to 42.2%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Singapore.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Singapore and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Singapore are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5110.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal

combustion engines, including trucks, tractors, buses, and lift trucks.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Singapore materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16803 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

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[A-580-801]

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from South Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from South Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from South Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

**United States Price and Foreign Market Value**

United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 0 to 145.7%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from South Korea.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from South Korea and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from South Korea are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional aproval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Sepcialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600,

657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.01.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

### Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from South Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16804 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-583-804]**

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

### United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of Taiwanese selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on comparison of United States price and foreign market value, petitioners alleged dumping margins ranging from 0 to 38.7%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Taiwan.

### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan. W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16805 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-05-M

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**[Docket No. A-412-802]**

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

**United States Price and Foreign Market Value**

Petitioner consider the prices it must use to meet the competition as its best evidence of the United Kingdom's selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 3.4% to 123.7%

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from the United Kingdom.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from the United Kingdom and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist

with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff *Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for 366 consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520, and currently classifiable under HS item numbers 5910.00.01, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These includes V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivilieged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written conent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from the United Kingdom materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16806 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-428-802]**

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

**United States Price and Foreign Market Value**

Petitioner considers the prices it must use to meet the competition as its best evidence of German selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 0 to 269.8%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial

belts from the Federal Republic of Germany.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from the Federal Republic of Germany and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520, and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts, and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not discuss such information either publicly or under administrative protective order without written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from the Federal Republic of Germany materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16799 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-25-M

**[C-508-802]**

## Initiation of Countervailing Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Israel materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 14, 1988, and we will make our preliminary determination on or before September 23, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0167 or 377-2438.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form from the Gates Rubber Company on behalf of the U.S. industry producing industrial belts. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of industrial belts receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry producing a like product. The petition also alleges that "critical

circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

**Initiation of Investigation**

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial belts from Israel and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial belts, as described in the "Scope of Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before September 23, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly or rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

**Allegations of Subsidies**

The petition lists a number of practices by the Government of Israel which allegedly confer subsidies on manufacturers, producers or exporters in Israel of industrial belts. We are initiating an investigation on the following alleged programs:

- *Benefits Under the Encouragement of Capital Investment Law (ECIL)*
  - —Investment Grants
  - —Long-term Industrial Development Loans
  - —Accelerated Depreciation
  - —Direct Reduction of Corporate Tax
  - —Interest Subsidy Payments
- *Special Export Marketing Financing*
- *Exchange Rate Risk Insurance*
- *Encouragement of Research and Development Law (ERDL) Grants*
- *Labor Training Grants from the Ministry of Labor.*

Although alleged by petitioner, we are not investigating the following programs:

- *Benefits Under the Encouragement of Industry Law (EIL) of 1969*

The Department has previously investigated accelerated depreciation and income tax deductions under the EIL and found that these programs are not limited to specific regions or to a specific enterprise or industry, or group of enterprises or industries. See *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, (52 FR 25447, July 7, 1987) (*Phosphoric Acid*). Because petitioner has presented no new evidence or alleged changed circumstances with repect to this program, we are not initiating an investigation on this program.

- *Export Financing from the Bank of Israel*

In *Phosphoric Acid* we found that the interest rate charged by the Bank of Israel on loans under the Export Production Fund, the Export Shipments Fund, and the Imports for Export Fund were no longer preferential as of July 1985. We requested updated information from petitioner, if available. Petitioner presented information published in 1988. However, close examination of that information indicates that it was compiled in June 1985, before the date of our verification of *Phosphoric Acid*. Because our determination in *Phosphoric Acid* was based upon verified information which is more current than that supplied by petitioner, and indicates that loans under this program are no longer preferential, we are not investigating this program.

**Allegation of Critical Circumstances**

Petitioner alleges that critical circumstances exist with respect to imports of industrial belts from Israel. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final detterminations.

**Notification of ITC**

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files,

provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination By ITC**

The ITC will determine by August 14, 1988, whether there is a reasonable indication that imports from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

July 20, 1988.

[FR Doc. 88-16807 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[C-580-802]**

## Initiation of Countervailing Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in the Republic of Korea (Korea) of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifiying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Korea materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended, (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 14, 1988, and we will make our preliminary determination on or before September 23, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0187 or 377-2438.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form from the Gates Rubber Company on behalf of the U.S. industry producing industrial belts. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Korea of industrial belts receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry producing a like product. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(c) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

**Initiation of Investigation**

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial belts from Korea and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Korea of industrial belts, as described in the "Scope of Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before September 23, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combusion engines, including trucks, tractors, buses, and lift trucks.

**Allegations of Subsidies**

The petition lists a number of practices by the government of Korea which allegedly confer subsidies to manufacturers, producers or exporters in Korea of industrial belts. We are initiating an investigation on the following alleged programs:

- Short-Term Export Financing under the Foreign Trade Financing Regulations;
- Loans to Promising Small- and Medium-Sized Enterprises;
- Export Tax Reserves under Articles 22, 23, and 24 of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Accelerated Depreciation under Article 25 of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Special Depreciation under Article 11 of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Tax Credits for Investment for Key Industries;
- Exemption from the Acquisition Tax under the Law for the Promotion of Income Sources in Rural Areas;
- Tax Incentives for Businesses Moving to a Provincial Area;
- Tax Incentives under the Free Export Zone Program;
- Unlimited Deduction of Overseas Entertainment Expenses under Article 18–2 of the Corporation Tax Act;
- Duty Drawback on Non-Physically Incorporated Items and Allowances for Excessive Loss and Wastage Rates;
- Tariff Reductions on Plant and Equipment under Article 28 of the Customs Law;
- Export Credit Financing from the Export-Import Bank of Korea (KXMB);
- Export Guarantees from the KXMB; and
- Loans for Expansion or Construction of Manufacturing Facilities.

**Allegation of Critical Circumstances**

Petitioner alleges that critical circumstances exist with respect to imports of industrial belts from Korea. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determination.

**Notification of ITC**

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 14, 1988, whether there is a reasonable indication that imports from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88–16808 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

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**[C–559–803]**

## Initiation of Countervailing Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Singapore of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 14, 1988, and we will make our preliminary determination on or before September 23, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, Room B–099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0187 or 377–2438.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On June 30, 1988, we received a petition filed in proper form from the Gates Rubber Company on behalf of the U.S. industry producing industrial belts. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Singapore of industrial belts receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. However, Singapore is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of this investigation [*i.e.*, those items classified under 358.0610, 358.069, 358.1400, 657.2520, 773.3510, and 773.3520 of the *Tariff Schedules of the United States Annotated* (TSUSA)] are nondutiable. Therefore, in accordance with section 303(a)(2), petitioner is required to allege that, and the ITC is required to determine whether, imports of these products from Singapore materially injure, or threaten material injury to, a U.S. industry.

The remaining TSUSA items, as described in the "Scope of Investigation" section of this notice, are dutiable. Therefore, in accordance with section 303(b) of the Act, petitioner is not required to allege that, and the ITC is not required to determine whether, imports of these products from Singapore materially injure, or theaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an

interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

**Initiation of Investigation**

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial belts from Singapore and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of industrial belts, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before September 23, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts, and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord of strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

**Allegations of Bounties or Grants**

Petitioner lists a number of practices by the Government of Singapore which allegedly confer bounties or grants on manufacturers, producers or exporters in Singapore of industrial belts. We are initiating an investigation on the following programs:

- *Economic Expansion of Incentives Act of 1985 (EEIA)*

1. Part II, Pioneer Enterprises.
2. Part IV, Expansion of Established Enterprises.
3. Part VI, Product For Export.
4. Part VII, International Trade Incentives.
5. Part VIII, Foreign Loans for Productive Equipment.
6. Part IX, Royalties, Fees and Development Contributions.
7. Part X, Research and Development Investment Allowances, and Amendments thereto.

- *Income Tax Act (ITA)*

1. Section 14(B) and 14(C), Double Deduction for Export Promotion Expenses.
2. Section 14E, Double Deduction for R&D Expenses.
3. Section 19B, Writing Down Allowance for Expenditures Relating to Patents and Know-How.

- *Monetary Authority of Singapore (MAS) Rediscount Facility*

- *Singapore Economic Development Board (EDB) Programs*

1. Capital Assistance Scheme.
2. Product Development Assistance Scheme.
3. Initiatives in New Technologies.
4. Research and Development Incentives.

- *Research and Development Assistance Scheme (RDAS) Under the Singapore Science Council*

Although alleged by petitioner, we are not investigating the following programs:

- *Skills Development Fund Under the EDB*

The Department has previously investigated the Skills Development Fund under the EDB and has found that these loans are not limited to a specific enterprise or industry, or group of enterprises or industries. [See *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Sinapore*, (50 FR 9840, March 12, 1985)]. Because petitioner has presented no new evidence or alleged changed circumstances with respect to the Skills Development Fund, we are not initiating an investigation on this program.

- *Location in Industrial Estates*

Petitioner alleges that the Jurong Town Corporation (JTC) controls most of the land and buildings used by international companies, and that the JTC provides prepared sites with infrastructural facilities at lower rents. Petitioner also alleges that the Singapore Science Park provides similar facilities for technology-oriented companies. We previously investigated location in industrial estates and determined that it was not limited to a specific enterprise or industry, or group of enterprises or industries. See *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (51 FR 3357, January 27, 1986). In that determination, we stated that "location in industrial estates and rental charges cannot be considered countervailable unless the government limits which industries can locate in the industrial estates . . ." Because petitioner has not submitted any new evidence or alleged changed circumstances, we are not initiating an investigation on this program. With respect to the Singapore Science Park, the petitioner provided no supporting documentation that benefits are being provided through location in the Science

Park, nor that the Singapore industrial belt companies are located in the Science Park.

• *Section 16 of the ITA, Initial and Annual Allowances*

The Department has previously found that the depreciation allowances available under this program are standard in Singapore for all types of industrial buildings. See *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (53 FR 16304, May 6, 1988) (*Wire Rod II*). Because petitioner has presented no new evidence or alleged changed circumstances with respect to this program, we are not initiating an investigation on this program.

• *Section 19A of the ITA, Accelerated Depreciation*

The Department has previously found that the accelerated depreciation available under this program applies to all capital expenditures except for automobiles and robotics, and that it is available to all enterprises in Singapore. See *Wire Rod II*. Because petitioner has presented no new evidence or alleged changed circumstances with respect to this program, we are not initiating an investigation on this program.

**Allegation of Critical Circumstances**

Petitioner alleges that critical circumstances exist within the meaning of section 703(e)(1) of the Act with respect to imports of industrial belts from Singapore. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application or Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the GATT Subsidies Code), and that imports have been massive over a relatively short period. Although not a signatory to the GATT Subsidies Code, Singapore is a member of the GATT. Insofar as certain items subject to this investigation are nondutiable, imports of those items will be investigated by the ITC to determine whether they materially injure, or threaten material injury to, a U.S. industry. For imports of those items that receive an injury test, we will determine whether critical circumstances exist in our preliminary and final determinations.

**Notification of ITC**

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 14, 1988, whether there is a reasonable indication that imports from Singapore of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, our investigation with respect to the products classified under TSUSA item numbers 358.0610, 358.0690, 358.1400, 657.2520, 773. 3510, and 773.3520 will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

July 20, 1988.

[FR Doc. 88-16809 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

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**Minority Business Development Agency**

**Business Development Center Applications; Columbus, OH**

**AGENCY**: Minority Business Development Agency, Commerce.

**ACTION**: Notice.

**SUMMARY**: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period January 1, 1989 to December 31, 1989. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Columbus, Ohio geographic service area. The award number of this MBDC will be 05-10-89001-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for the firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 2, 1988. Applications must be postmarked on or before September 2, 1988.

**ADDRESS**: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

**FOR FURTHER INFORMATION CONTACT**
David Vega, Regional Director, Chicago Regional Office.

**SUPPLEMENTARY INFORMATION:**
Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

**David Vega,**

*Regional Director, Chicago Regional Office.*

Date: July 20, 1988.

[FR Doc. 88-16709 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-21-M

## National Bureau of Standards

### Announcement of Workshops for Users and Implementors of Integrated Services Digital Network (ISDN)

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces another workshop of a continuing workshop series to discuss issues related to the use and implementation of Integrated Services Digital Network (ISDN) technology. These workshops are part of the North American ISDN Users' Forum (NIU-FORUM) which was formed recently under the auspices of NBS to create a strong user voice in the implementation of ISDN and ISDN applications and to ensure that the emerging ISDN meets users' application needs.

**DATES:** A Joint ISDN Users' and Implementors' Workshop will be held in St. Louis, Missouri on September 27, 28, and 29, 1988. The Users' Workshop will continue to identify, define and prioritize applications of ISDN and the Implementators' Workshop will define implementation agreements for ISDN and sponsor multivendor trials and demonstrations.

**ADDRESS:** To obtain registration forms for the North American ISDN Users' Forum, contact: ISDN Workshop Series, Attn: Trudy Johnson, National Bureau of Standards, Building 225, Room A224, Gaithersburg, MD 20899, Telephone: (301) 975-2985.

Upon receipt of the completed registration form, additional registration information for the appropriate workshop(s) will then be mailed to the registrant. An NBS representative will confirm workshop registration reservations by telephone.

**FOR FURTHER INFORMATION CONTACT:**
Steve Recicar (301) 975-2937.

**SUPPLEMENTARY INFORMATION:**
Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshops.

Date: July 21, 1988.

**Ernest Ambler,**

*Director.*

[FR Doc. 88-16792 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-CN-M

## Patent and Trademark Office

**[Docket No. 80743-8143]**

### Notice of Inquiry; Motion Pictures, Alteration; New Technologies

**AGENCY:** Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of inquiry and request for comments.

**SUMMARY:** The Patent and Trademark Office solicits written comments concerning the applicability of the Trademark Act of 1946, and in particular section 43(a) of the Act, to new technologies for the alteration of existing motion pictures, including colorization, time compression, and panning and scanning.

**DATE:** Written comments should be submitted to the Patent and Trademark Office by September 23, 1988.

**ADDRESS:** Comments should be sent to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

**FOR FURTHER INFORMATION CONTACT:**
Richard Owens, Office of Legislation and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Telephone: (703) 557-3065.

**SUPPLEMENTARY INFORMATION:** The Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary has asked the Patent and Trademark Office to study the extent to which the Trademark Act of 1946 (Lanham Act), 15 U.S.C. 1051 *et seq.*, may be utilized to address potential problems relating to the use of new technologies for the alteration of existing motion pictures, including colorization, time compression, and panning and scanning. In particular, the Subcommittee has asked the Patent and Trademark Office to examine the applicability of section 43(a) of the Lanham Act, 15 U.S.C. 1125(a), to such technologies.

The Subcommittee has asked the U.S. Copyright Office to prepare a related, more comprehensive study. In a Request for Information published at 53 FR 18937 (May 25, 1988), the Copyright Office announced that it would conduct an inquiry concerning the nature, extent and effect of the new technologies on the creators and users of audiovisual works, including motion pictures and television programming. The Copyright Office stated that it will also examine the impact of the new technologies on the integrity of our national film heritage and the creative freedom of filmmakers.

The scope of the Patent and Trademark Office's inquiry is narrower. The Office seeks specific, thorough comment on the extent to which the Lanham Act may be applied to address potential problems relating to the use of new technologies for the alteration of existing motion pictures. The Office solicits information on whether legal arguments have been or are likely to be made for the application of the Lanham Act, and particularly section 43(a), to such technologies. Discussion of relevant case law, including unreported cases, is requested. The Office also seeks comment on whether the Lanham Act should be amended to provide expanded protection against such alteration, and, if so, on the proper scope of such amendments. Recommendations for amending the Act should be precise and detailed.

(1) To what extent is it contemplated that the Lanham Act, 15 U.S.C. 1051 *et seq.*, and particularly section 43(a) of the Act, 15 U.S.C. 1125(a), may be used to address potential problems relating to the use of new technologies for the alteration of existing motion pictures, including but not limited to colorization, time compression, and panning and scanning?

(2) Should the Lanham Act be amended to provide more or different protection than is currently available? If so, what form should new legislation take? Who should be protected?

Copies of all comments received will be available for public inspection after September 26, 1988, in Suite 902, Crystal Park Building 2, 2121 Crystal Drive, Arlington, VA. 22202.

July 20, 1988.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 88-16767 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-16-M

## COMMISSION OF FINE ARTS

### Meeting

The Commission of Fine Arts' next scheduled meeting is Friday, 16 September 1988 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 16 July 1988.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 88-16761 Filed 7-25-88; 8:45 am]

BILLING CODE 6330-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Request for Bilateral Textile Consultations With the Government of the People's Republic of China To Review Trade in Categories 633, 643 and 870

July 21, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** July 28, 1988.

**Authority:** E.O 11651 of March 3, 1972, as amended; S. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; Bilateral Textile Agreement of February 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

**SUPPLEMENTARY INFORMATION:** On June 30, 1988, the Government of the United States requested consultations with the Government of the People's Republic of China regarding Categories 633, 643 and 870, produced or manufactured in the People's Republic of China.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 633, 643 and 870, under the agreement with the People's Republic of China, or in any other aspect thereof, or to comment on domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 633, 634 and 870. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

July 21, 1988.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

### Market Statement

Men's and Boys' Man-Made Fiber: Suit-Type Coats (Category 633) China, June 1988.

*Summary and Conclusions*

U.S. imports of men's and boys' man-made fiber suit-type coats (Category 633) from China reached 31,687 dozen during the year ending March 1988, 47 percent above the 21,547 dozen imported a year earlier. Men's and boys' man-made fiber suit-type coat imports from China were 27,932 dozen in 1987 and 22,644 dozen in 1986. During the first three months of 1988, imports of men's and boys' man-made fiber suit-type coats (Category 633) from China reached 9,713, a 63 percent increase above the 5,958 dozen imported during the same period of 1987.

The sharp and substantial increase in imports of Category 633 from China is a real risk of market disruption.

*U.S. Production and Market Share*

U.S. production of men's and boys' man-made fiber suit-type coats has been on the decline, dropping from 1,189 thousand dozen in 1983 to 951 thousand dozen in 1985, a decline of 20 percent. Production in 1986 recovered slightly, reaching 1,006 thousand dozen, but fell again in 1987 to a level of 907 thousand dozen, 10 percent below the 1986 level and 24 percent below the 1983 level. The domestic manufacturers' share of the market fell from 87 percent in 1983 to 71 percent in 1987, a drop of 16 percentage points.

*U.S. Imports and Import Penetration*

U.S. imports of men's and boys' man-made fiber suit-type coats (Category 633) more than doubled between 1983 and 1987, increasing from 175 thousand dozen in 1983 to 364 thousand dozen in 1987. During the first three months of 1988, imports of men's and boys' man-made fiber suit-type coats (Category 633) reached 103 thousand dozen, nine percent above the level imported during the same period of 1987. The ratio of imports to domestic production nearly tripled, increasing from 15 percent in 1983 to 40 percent in 1987.

BEST COPY AVAILABLE

*Duty-Paid Value and U.S. Producers' Price*

Approximately 70 percent of Category 633 imports from China during the first three months of 1988 entered under TSUSA number 381.9510—men's man-made fiber woven suit-type coats and jackets, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Men's and Boys' Man-Made Fiber: Suits (Category 643), China, June 1988.

*Summary and Conclusions*

U.S. imports of men's and boys' man-made fiber suits (Category 643) from China reached 360,390 units during the year ending March 1988, a 67 percent increase over the 215,916 units imported a year earlier. Men's and boys' man-made fiber suit imports from China were 258,036 units in 1987 and 205,896 units in 1986. During the first three months of 1988, imports of men's and boys' man-made fiber suits (Category 643) from China reached 171,486 units, two and one half times the 69,132 units imported during the same period of 1987.

The sharp and substantial increase in imports of Category 643 from China is a real risk of market disruption.

*U.S. Production and Market Share*

U.S. production of men's and boys' man-made fiber suits (Category 643) has been on the decline, dropping from 11,340 thousand units in 1982 to 6,168 thousand units in 1987, a 46 percent decrease. The domestic manufacturers' share of this market fell from 89 percent in 1982 to 72 percent in 1987, a drop of 17 percentage points.

*U.S. Imports and Import Penetration*

U.S. imports of men's and boys' man-made fiber suits (Category 643) reached 2,389 thousand units in 1987, 64 percent above the 1,452 thousand units imported in 1982. The ratio of imports to domestic production tripled, increasing from 13 percent in 1982 to 39 percent in 1987.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 78 percent of Cateogry 643 imports from China during the first three months of 1988 entered under TSUSA numbers 381.9504—men's and boys' man-made fiber woven suits, having a jacket with a single back panel, other than those with two pairs of pants, excluding leisure suits, not ornamented and 381.9568—men's and boys' man-made fiber woven suits, other than those having a jacket with a single back panel and those with two pairs of pants, excluding leisure suits, not ornamented. These suits entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable suits.

Category 870—Luggage of Silk-Blend and Vegetable Fiber Other than Cotton, China, June 1988.

*Summary and Conclusions*

U.S. imports of Category 870 luggage—silk blend and vegetable fiber other than cotton—from China reached 5.2 million pounds for the year ending March 1988, making China the second largest supplier of Category 870 imports accounting for 20 percent of total imports. Imports of Category 870 from China were 3.8 million pounds for the eight month period August 1987 through March 1988, nearly 7 times the 557 thousand pounds imported during the period August 1986 through March 1987.[1] During the latest eight months, August 1987 through March 1988, China's share of Category 870 imports reached 22 percent of total imports in this category.

Imports of silk-blend and vegetable fiber, other than cotton, luggage compete with domestically produced man-made fiber luggage—Category 670 part. The sharp and substantial increase of Category 870 imports from China is a real risk of market disruption.

*Import Penetration and market Share*

The ratio of imports to production in Category 670 part, luggage, increased to 336 percent in 1987. The share of this market held by domestic manufacturers dropped to 23 percent in 1987. When imports of the directly competitive Category 870 are included, the import to production ratio increases to 397 percent and the domestic manufacturers' share of the market declines to 20 percent.

U.S. imports of Category 870 for the year ending March 1988 reached 26,182 thousand pounds representing 16 percent of total man-made fiber, silk-blend and vegetable fiber, other than cotton, luggage.

*Duty-Paid Import Values and U.S. Producer's Prices*

Nearly all of Category 870 imports from China entered under TSUSA 706.3850—luggage of vegetable fiber excluding cotton. These imports from China entered at low duty-paid values, resulting in whosesale prices well below those of comparable U.S. produced luggage.

[1] Import data on silk-blend and vegetable fiber, other than cotton, luggage started to be collected in August 1986. Therefore, directly comparable Category 870 import data exist for the eight month periods August 1986 through March 1987 and August 1987 through March 1988.

**Committee for the Implementation of Textile Agreements**

July 21, 1988.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20029.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement on February 2, 1988, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 29, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the period which began on June 30, 1988 and extends through December 31, 1988, in excess of the following levels of restraint:

| Category: | Restraint limit |
|---|---|
| 633 | 18,500 dozen. |
| 643 | 210,345 numbers. |
| 870 | 3,040,660 pounds. |

Categories 633 and 643 shall remain subject to the Group II limt established in the directive of December 30, 1987.

Textile products in Categories 633, 643 and 870 which have been exported to the United States prior to June 30, 1988 shall not be subject to the limts established in this directive.

Textile products in Category 870 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementaion of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-16770 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Per Diem, Travel and Transportation Allowance Committee; Changes in Per Diem Rates

**AGENCY:** Per Diem, Travel and Transportation Allowance Committee.

**ACTION:** Publication of changes in per diem rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 144. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 144 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** June 1, 1988.

**SUPPLEMENTARY INFORMATION:** This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

### Civilian Personnel Per Diem Bulletin Number 144

To the Heads of the Executive Departments and Establishments.

*Subject:* Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 143 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

| Locality | Maximum rate |
|---|---|
| Alaska: | |
| Adak [1] | $25 |
| Anaktuvuk Pass | 140 |
| Anchorage | 125 |
| Atqasuk | 215 |
| Barrow | 146 |
| Bethel | 127 |
| Bettles | 110 |
| Cold Bay | 120 |
| Coldfoot | 122 |
| College | 114 |
| Cordova | 130 |
| Deadhorse | 113 |
| Dillingham | 114 |
| Dutch Harbor-Unalaska | 127 |
| Eielson AFB | 114 |
| Elmendorf | 125 |
| Fairbanks | 114 |
| Ft. Richardson | 125 |
| Ft. Wainwright | 114 |
| Homer | 115 |
| Juneau | 114 |
| Katmai National Park | 148 |
| Kenai | 119 |
| Ketchikan | 111 |
| King Salmon [3] | 134 |
| Kodiak | 118 |
| Kotzebue [3] | 143 |
| Kuparuk Oilfield | 127 |
| Murphy Dome [3] | 114 |
| Noatak | 143 |
| Nome | 129 |
| Noorvik | 143 |
| Petersburg | 111 |
| Point Hope | 160 |
| Point Lay | 179 |
| Prudhoe Bay | 113 |
| St. Paul Island | 115 |
| Sand Point | 103 |
| Seward | 122 |
| Shemya AFB [3] | 30 |
| Shungnak | 143 |
| Sitka-Mt. Edgecombe | 111 |
| Skagway | 111 |
| Spruce Cape | 118 |
| St. Mary's | 100 |
| Tanana | 129 |
| Tok | 109 |
| Umiat | 160 |
| Unakakleet | 105 |
| Valdez | 147 |
| Wainwright | 165 |
| Walker Lake | 136 |
| Wrangell | 111 |
| Yakutat | 110 |
| All Other Localities [3, 4] | 81 |
| American Samoa | 81 |
| *Guam M.I | 122 |
| *Hawaii: | |
| Hawaii, Island of: | |
| Hilo | 70 |
| Other | 91 |
| Kauai, Island of: | |
| 12-20—3-31 | 127 |
| 4-1—12-19 | 95 |
| Oahu, Island of | 116 |
| All Other Islands | 91 |
| Johnston Atoll [2] | 23 |
| Midway Islands [1] | 13 |
| Northern Mariana Islands: | |
| Rota | 76 |
| Saipan | 92 |
| Tinian | 68 |
| All Other Islands | 20 |
| Puerto Rico: | |
| Bayamon: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Carolina: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Fajardo (Including Luquillo): | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Ft. Buchanan (Incl GSA Service Center, Guaynabo): | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Roosevelt Roads: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Sabana Seca: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| San Juan (Including San Juan Coast Guard Units): | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| All Other Localities | 107 |
| Virgin Islands of U.S.: | |
| 12-1—4-30 | 180 |
| 5-1—11-30 | 144 |
| Wake Island [2] | 20 |
| All Other Localites | 20 |

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed

herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
July 20, 1988.
[FR Doc. 88-16756 Filed 7-25-88; 8:45 am]
BILLING CODE 3810-01-M

## Department of the Army

### Assistant Secretary of the Army (Civil Works); Request for Nominations to the Inland Waterways Users Board

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice in the **Federal Register**.

**SUMMARY:** Section 302 of Pub. L. 99-662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for five appointments or reappointments to two-year terms that will begin January 1, 1989.

**EFFECTIVE DATE:** July 15, 1988.

**ADDRESS:** Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20314-1000. Attention: Inland Waterways Users Board Nominations Committee.

**FOR FURTHER INFORMATION CONTACT:** Dr. G. Edward Dickey; 202-272-0126.

**SUPPLEMENTARY INFORMATION:** The selection, service, and appointment of board members are covered by provisions of section 302 of Pub. L. 99-662. The substance of those provisions is as follows: *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterway construction and rehabilitation priorities and spending levels for commercial navigation improvements, and reports its recommendations annually to the Secretary and to Congress. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92-463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows: *Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user. *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board Members, the waterways subjected to fuel taxes and described in Pub. L. 95-502 as amended have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) The Ohio River and its tributaries; (4) The Gulf Intracoastal Waterway in Louisiana and Texas; (5) The Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one board member, with that representation determined by the residence and principal place of business of the individual. *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in *Waterborne Commerce of the United States.* In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting the preceding selection criteria, the present representation by Board members is as follows:

Members whose terms expire December 31, 1988 include two shipper representatives representing the Ohio River and Upper Mississippi regions, and chemicals and petroleum, and grain, respectively; three carrier representatives representing the Columbia River, Ohio River, and West Gulf regions, and grain and other, coal and ores, and ores and chemicals respectively.

Members whose terms expire December 31, 1989, include three shipper representatives representing the Ohio River, Upper Mississippi and Lower Mississippi regions, and coal (2), and grain and coal, respectively; three carrier representatives representing the East Gulf and Ohio River (2) regions, and coal and ores, coal and chemicals, and coal and grain, respectively.

Nominations to fill the anticipated vacancy representing the West Gulf, or to replace other members whose terms will expire in 1988, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper that the nominee is associated with. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to the **Federal Register** notice published February 13, 1987, have been retained. Those nominees, including the individuals subsequently appointed to the Board and whose terms expire in 1988, will be given consideration for appointment or reappointment. Renomination is not required but may be desirable.

Deadline for Nominations: All nominations must be received at the address shown above no later than August 15, 1988.

Dated: July 15, 1988.

John O. Roach II,
*Army Liaison Officer with the Federal Register.*
[FR Doc. 88-16725 Filed 7-25-88; 8:45 am]
BILLING CODE 3710-02-M

DEPARTMENT OF ENERGY

**Federal Energy Regulatory Commission**

**[Docket Nos. ES88-47-000 et al.]**

**Glen Park Associates Limited Partnership et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

Take notice that the following filings have been made with the Commission:

**1. Glen Park Associates Limited Partnership**

[Docket No. ES88-47-000]

July 15, 1988.

Take notice that on July 11, 1988, Glen Park Associates Limited Partnership ("Glen Park"), filed an application seeking authority to assume obligations of up to $45.1 million under an installment sales agreement with the Industrial Development Agency of Jefferson County, New York, and two letter of credit agreements. The purpose of the financing is to obtain permanent financing for the 32.6 MW Glen Park hydro project which is now in operation.

In addition, Glen Park seeks short-term borrowing authority in an amount not to exceed $4.9 million.

*Comment date:* July 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

**2. Pacific Power & Light Company an Assumed Business Name of PacifiCorp**

[Docket No. EC88-25-000]

July 18, 1988.

Take notice that on July 8, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office in Portland, Oregon, tendered for filing an application with the Federal Energy Regulatory Commission, pursuant to section 33 of the Commission's Regulations seeking an order authorizing it to sell to Idaho Power Company, Pacific's Midpoint 500 kV Substation located in Jerome County, Idaho.

Pacific respectfully requests that pursuant to § 33.10 of the Commission's Regulations, the Commission accept this application for filing to be effective forty-five (45) days after the date of filing.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**3. Alabama Power Company**

[Docket No. ER88-450-000]

July 18, 1988.

Take notice that on July 5, 1988, Alabama Power Company tendered for filing an amended Exhibit A to replace the Exhibit A provided in the original filing dated May 26, 1988.

A copy of this filing has been served upon the City of Evergreen.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**4. MSU System Services, Inc.**

[Docket No. ER88-512-000]

July 18, 1988.

Take notice that on July 5, 1988, MSU System Services, Inc. (SSI), as agent for Mississippi Power & Light Company (MP&L), tendered for filing Service Schedule LF—Limited Firm Capacity and Energy between Alabama Electric Cooperative, Inc. (Alabama Electric and MP&L (Service Schedule), and a letter agreement for the sale of limited firm capacity to Alabama Electric from MP&L (Letter Agreement).

SSI requests an effectice date of May 31, 1988 for the Service Schedule and of June 1, 1988 for the Letter Agreement. SSI requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**5. MSU System Services, Inc.**

[Docket No. ER88-511-000]

July 18, 1988.

Take notice that on July 5, 1988, MSU System Services, Inc. (SSI), as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L) and New Orleans Public Service Inc. (NOPSI), tendered for filing a Contract for Purchases of Economic Energy by Oglethorpe Power Corporation from AP&L, LP&L, MP&L, and NOPSI (Contract), and a letter agreement for the purchase of reserve capacity and energy by Oglethorpe AP&L, LP&L, MP&L, and NOPSI (Letter Agreement).

SSI requests an effectice date of June 1, 1988 for the Contract and June 14, 1988 for the Letter Agreement. SSI requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**6. Central Vermont Public Service Corporation**

[Docket No. ER88-456-000]

July 18, 1988.

Take notice that on May 27, 1988, Central Vermont Public Service Corporation (Company) tendered for filing the 1987 Cost Report based on actual costs as required under Article 2.4 on First Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, in which the Company provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department
Allied Power and Light Company
Rochester Electric Light and Power Company

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**7. Arizona Public Service Company**

[Docket No. ER88-518-000]

July 18, 1988.

Take notice that on July 1, 1988, Arizona Public Service Company (APS) tendered for filing informational material related to the Supplemental Agreement No. 1 to the Wholesale Power Supply Agreement between APS and the Papago Tribal Utility Authority.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**8. Northeast Utilities Service Company**

[Docket No. ER88-517-000]

July 18, 1988.

Take notice that on July 11, 1988, Northeast Utilities Service Company as an agent for Connecticut Light and Power Company tendered for filing a Notice of Termination, effective the 31st day of July 1988 are Rate Schedules FERC 242, 356, 241, and 354, effective dates May 1, 1987, December 29, 1985, May 1, 1981, and December 15, 1985, respectively.

The rate schedules are to be terminated because they are no longer being utilized by the parties to the agreements. The Commission is requested to waive the notice requirements in order to allow the termination to take effect on July 31, 1988.

Notice of the proposed terminations has been served upon Northfield Electric

Department, Central Vermont Public Service Corporation, Taunton Municipal Lighting Plant, and Montaup Electric Company.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this document.

**9. Oklahoma Gas and Electric Company**

[Docket No. ER88-516-000]

July 18, 1988.

Take notice that on July 11, 1988, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Agreement intended to supersede OG&E's Rate Schedule FERC No. 123. This Agreement is the contract between OG&E and the Southwestern Power Administration (SWPA). The new rate is identical to the old rate, and provides for the sale of Replacement Energy and Emergency Service to SWPA.

OG&E requests an effective date of June 1, 1988, and therefore requests waiver of the Commission's notice requirements.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**10. Iowa Power and Light Company**

[Docket No. ER88-515-000]

July 18, 1988.

Take notice that on July 11, 1988, Iowa Power and Light Company (Iowa Power) tendered for filing a Notice of Cancellation of an Agreement between Iowa Power and Associated Electric Cooperative, Inc. (AEC), dated December 31, 1987.

Iowa Power states that the Agreement expired on its own terms on December 31, 1987; that the Notice of Cancellation was mailed to AEC, the only purchaser under the Agreement; and that the filing was mailed to the Iowa State Utilities Board.

Iowa Power requests an effective date of December 31, 1987, and therefore requests a waiver of the Commission's notice requirements.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**11. Arkansas Power and Light Company**

[Docket No. ER83-297-009]

July 18, 1988.

Take notice that on July 12, 1988, Arkansas Power & Light Company tendered for filing, pursuant to Commission order issued April 29, 1988, a revised Compliance Report showing the monthly billing determinants which were modified under this filing, revenue receipt dates, monthly refunds and the monthly interest computed for the total refund period from October 1985 through February 1988.

A copy of this filing has been served upon all parties affected by this proceeding.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**12. Empire District Electric Company**

July 18, 1988.

[Docket No. ER88-513-000]

Take notice that on July 8, 1988, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff), and the Empire District Electric Company (Empire), together with a revised rate schedule for municipal wholesale customers, and a revised Fuel Adjustment Clause was filed with the Commission. Under the Consent Settlement Agreement Empire would reduce its cost of service to its municipal wholesale customers by $91,308.00, and refund the sum of $68,056.00 to tis wholesale customers as a one-time refund to account for the time value of the monies already collected for estimated coal land reclamation costs. In addition, Empire has agreed to revise its Fuel Adjustment Clause to provide for estimated coal land reclamation costs and a final true-up of those costs to reflect actual charges. Empire will also adjust its books of account to reflect full federal income tax normalization.

The signatories request an effective date for the filed rate schedules of May 1, 1988.

Copies of this filing were served upon Arkansas Public Service Commission, Missouri Public Service Commission, State Corporation Commission of Kansas, Corporation Commission of Oklahoma, Sekan Electric Cooperative, Twin Valley Electric Cooperative, the City of Chetopa, Kansas, the City of Monett, Missouri, the City of Mount Vernon, Missouri, and the City of Lockwood, Missouri.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**13. Iowa Power and Light Company**

[Docket No. ER88-514-000]

July 18, 1988.

Take notice that on July 11, 1988, Iowa Power and Light Company (Iowa Power) tendered for filing a Notice of Cancellation of the Joint Dispatch Data Exchange Agreement (Agreement), and the three Amendments thereto, as entered into between Iowa Power, Iowa-Illinois Gas & Electric Company, Iowa Public Service Company, Iowa Southern Utilities Company, Interstate Power Company, and Iowa Electric Light and Power Company. The Agreement was dated March 29, 1978; Amendment No. 1 was dated August 1, 1979; Amendment No. 2 was dated December 23, 1980; and Amendment No. 3 was dated August 31, 1984.

The Agreement related to the implementation and operation of a central data exchange facility for the purpose of coordinating the parties' respective interests in operational control of jointly-owned electric power generating facilities. The Agreement expired by its own terms on March 28, 1988; the parties also filed a separate document memorializing their consent to termination of the Agreement.

Iowa Power requests that the Commission waive its prior notice requirements and accept the Notice of Cancellation for filing with a retroactive effective date of March 28, 1988.

Copies of this filing were mailed to each affected party and to the Iowa State Utilities Board.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

**14. Southwestern Power Administration**

[Docket No. EF88-4011-000]

July 18, 1988.

Take notice that on July 6, 1988, the Under Secretary, U.S. Department of Energy, tendered for filing the following Southwestern Power Administation System rates to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-108, as amended:

Rate Schedule P-87A, Peaking Power
Rate Schedule P-87B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority
Rate Schedule F-87B, Firm Power through Oklahoma Utility Companies
Rate Schedule TDC-87, Transmission Service
Rate Schedule EE-87, Excess Energy
Rate Schedule IC-87, Interruptible Capacity

The System rates were confirmed, approved and placed in effect on an interim basis by the Under Secretary of Energy in Rate Order No. SWPA-21 for the period July 1, 1988, through September 30, 1991. The Under Secretary of Energy has submitted the rates to the Commission for confirmation, approval and implementation on a final basis for the same period.

The System rate schedules would increase annual revenue by $2,814,800

from $87,971,100 to $90,785,900 to recover projected increases in annual operating expenses for the generation and transmission facilities. This would be accomplished primarily through an increase in the base energy charge for sales of Federal hydroelectric power and energy, although a slight decrease in the basic monthly demand charges and the combination of a decrease and an increase in the conditions of service charges for 69 kV, and load center or below 69kV deliveries respectively, contribute as well. Significantly increased charges for the use of SWPA's transmission system to delivery non-Federal power and energy are indicated and new alternate energy-based transmission rates have been designed for delivery of economy energy. Further, a credit, specifically designed for each customer, will apply against the purchased power adder component of the rate schedules to refund excess reveneus collected in the purchased power deferral account during recent years of favorable water conditions. This credit is intended to effectively equalize each customers average purchased power adder cost and should reduce the deferral account to a level needed to cover system purchases under one year of critical water conditions. The credit will offset the effects of the overall rate increase for the vast majority of customers, except those to which the purchased power adder does not apply, who will experience an increase of about one percent power adder does not apply, who will experience an increase of about one percent in their basic 1200 hour peaking service. The total rate increase is derived about 20 percent from the basic peaking and firm service, about 45 percent from non-firm energy sales, and about 35 percent from facilities and transmission service charges. The proposal also includes a provision for SWPA's Administrator, at his discretion, to adjust the purchased power adder annually up to $0.0005 per kilowatthour as necessary, with notification to the Commission.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this document.

**15. Southern California Edison Company**

[Docket No. ER88-519-000]

July 18, 1988.

Take notice that on July 3, 1988, Southern California Edison Company (Edison) tendered for filing pursuant to § 35.13 of the Federal Energy Regulatory Commission's Regulations and the Federal Power Act the following Letter Agreements (Agreements) which have been executed by Edison and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (BPA).

Letter Agreement Dated August 19, 1987 (Umbrella Agreement, Contract No. DE-MS79—87BP92410)

Letter Agreement Dated April 26, 1988 (Subsequent Agreement)

These Agreements supersede the Power Sales Contract executed by BPA and Edison as of July 31, 1967 (Power Sales Contract, Contract No. 14-03-54125). The Power Sales Contract, by its terms, terminated July 31, 1987. The Parties executed these Letter Agreements to facilitate additional sales and exchange arrangements.

The Umbrella Agreement provides a 20-year contractual mechanism for the purchase and sale or exchange of surplus energy and/or capacity and/or other services for short-term periods, not to exceed 24 months.

The Subsequent Agreement was executed pursuant to the Umbrella Agreement and provides for specific storage and exchange of capacity and energy from April 9, 1988, through February 1, 1989, except that as specified the Subsequent Agreement may be extended to March 1, 1989.

Edison respectfully requests waiver of the notice provisions of § 35.3 of the Commission's Regulations to permit the Agreements to become effective on July 31, 1987 to coincide with termination of the Power Sales Contract and to permit an effective termination date of July 31, 1987 for the Power Sales Contract to coincide with the termination date in the Power Sales Contract.

Copies of this filing were served upon the Public Utilities Commission of the State of California and BPA.

*Comment date:* August 1, 1988, in accordance with Standard Paragraph E at the end of this document.

**16. Allegheny Electric Cooperative, Inc.**

[Docket No. QF88-452-000]

July 19, 1988.

On July 6, 1988, Allegheny Electric Cooperative, Inc. (Applicant), of 212 Locust Street, P.O. Box 1266, Harrisburg, Pennsylvania 17108-1266 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed hydro electric facility will be located on the Raystown Branch of the Juniata River, in south central Pennsylvania, approximately four miles southeast of Huntington, Pennsylvania, on lands owned by the United States Government. Electric power production capacity of the facility will be approximately 21.747 MW.

The facility is owned by the Connecticut Bank and Trust Company, National Association, as Owner Trustee (Owner). The applicant will operate the facility pursuant to a lease with the owner.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comment on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 10 CFR Part 292. It does not relieve a facility of any other requirements of local State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**17. Calderon Energy Company**

[Docket No. QF88-434-001]

July 19, 1988.

On June 15, 1988, Calderon Energy Company (Applicant) of 419 Gould Street, Suite #3, P.O. Box 126, Boiling Green, Ohio 43402 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations (Docket No. QF88-434-000). On June 29, 1988, Applicant submitted for filing an amendment to the application for certification requesting certification of the facility as a qualifying small power production facility instead of as a qualifying cogeneration facility. No. determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 2500 South Dunbridge Road, Boiling Green, Wood County, Ohio. The facility will be constructed adjacent to a proposal coal gasification/methanol plant to be built by Applicant. The facility will consist of a combustion turbine generator unit, a heat recovery steam generator, and a condensing steam turbine generator. Applicant states that the primary energy source of the facility will be "waste" in the form of low Btu synthetic gas produced as a by-product of the operations at the proposed coal gasification/methanol plant. The net electric power production capacity of the facility will be 79 megawatts with approximately 72 megawatts available for sale.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**18. Stone Connecticut Paperboard Corp.**

[Docket No. QF88-453-000]

July 19, 1988.

On July 5, 1988 Stone Connecticut Paperboard Corp., of 125 Depot Road, P.O. Box 1500, Uncasville, Connecticut 06832, submitted for filing an application for certification of a facility as a qualifing cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Stone Container plant site in Uncasville, Connecticut. The facility will consist of an existing oil-fired steam generator, and a new back-pressure steam turbine generator (BPSTG). Steam to the BPSTG will be provided from two sources; (1) from the existing oil-fired steam generator; (2) from the adjacent cogeneration facility (AES Thames, Inc. (AES); 34 FERC ¶ 62,079 (1986)). Steam recovered from the facility and part of the steam from AES will be used in the paper production process. The maximum net electric power production capacity of the facility will be 2.2 MW. The primary source of energy will be coal (at AES) and No. 6 fuel oil. The installation of the facility will begin on about August 1988.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**19. AEM Corp.**

[Docket No. QF84-377-003]

July 19, 1988.

On June 30, 1988, AEM Corp. and Colstrip Energy Limited Partnership (collectively, the Applicant) of 3366 N. Torrey Pines Court, Suite #220, La Jolla, California 92037 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The application for recertification of the facility as a qualifying small power production facility requests changes in the ownership, description, and electric power production capacity of the facility. The proposed small power production facility was previously certified as a qualifying cogeneration facility on December 11, 1984, (Docket No. QF84-377-000, 29 FERC ¶ 62,254 (1984)) and as a qualifying small power production facility on October 9, 1987, (Docket No. QF84-377-002, 41 FERC ¶ 62,031 (1987)). On November 19, 1988, an application for recertification of the facility as a qualifying cogeneration facility was filed with the Commission and is currently under review (Docket No. QF84-377-001).

The proposed small power production facility was previously to be owned and operated by the AEM Corp. of 1445 Palisades Drive, Pacific Palisades, California 90272. The instant application requests changes in the ownership and operator of the facility to a limited partnership, Colstrip Energy Limited Partnership (Partnership). AEM Corp. will transfer all of its interests in the facility to the Rosebud Energy Corporation, the general partner of the Partnership. The limited partners of the Partnership are: Spruce Limited Partnership, a Delaware limited partnership, and Harrier Power Corporation, a subsidiary of an electric utility. Applicant states that the Harrier Power Corporation will not under the limited partnership agreement be entitled to more than a 50 percent equity interest in the facility.

The description of the facility will change to more accurately describe the circulating fluidized bed combustion boiler and the extraction/condensing steam turbine generator unit that will be utilized in the facility. The circulating fluidized bed combustion boiler will have a rated steam capacity of 350,000 lbs/hr @ 955 °F and 1300 psig. The extraction/condensing steam turbine generator unit will have a rated gross electric power production capacity of approximately 41.5 megawatts. The net electric power production capacity of the facility will increase from 30 megawatts to 35 megawatts. All other aspects of the facility remain unchanged.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc 88-16742 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP88-213-000]

## Colorado Interstate Gas Co.; Request for Waiver of Tariff To Allow Recovery of Certain Costs Through Purchased Gas Adjustment Provision

July 20, 1988.

Take notice that on July 7, 1988, Colorado Interstate Gas Company (CIG) filed a request for waiver of section 21 of its FERC Gas Tariff, Original Volume No. 1, and the related Commission Regulations in order that CIG may recover through its Purchased Gas Adjustment Tariff provision certain charges that it will incur when the Commission accepts tariff filings of Northwest Pipeline Corporation (Northwest) to implement its acceptance of the "Blanket Certificate" issued in Docket No. CP86-578. CIG states that pursuant to the terms of Northwest's acceptance of that certifcate, CIG has exercised a one-time right to convert to transportation 100 percent of its firm sales contract demand under NPC's Rate Schedule PL-1. CIG requests that the reservation charges that it incurs related to this converted sales contract demand be recovered through its PGA mechanism.

CIG requests waiver of its Volume No. 1 Tariff (section 21) such that it can continue to reflect and recover through its PGA tariff provisions the transportation reservation fees resulting from CIG's 100 percent conversion of sales entitlements to transportation entitlements pursuant to Northwest's acceptance of its blanket certifcate. CIG requests this waiver only so long as its presently effective service agreement (or any service agreement replacing this sales service agreement as a result of this conversion) continues in effect through its primary term ending October 31, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214,

385.211 (1987)). All such motions or protests should be filed on or before July 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16746 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-44-007]**

## El Paso Natural Gas Co.; Compliance Filing

July 20, 1988.

Take notice that on July 14, 1988, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") submitted certain tariff sheets to its FERC Gas Tariff to comply with the Commission's orders issued January 29, 1988 and June 30, 1988 and the letter orders dated March 31, 1988 and June 21, 1988 issued by the Director of the Office of Pipeline and Producer Regulations ("OPPR") in this proceeding.

El Paso states that by order issued January 29, 1988 at Docket Nos. RP88-44-000 and CP88-203-000, the Commission, among other things, conditionally accepted, to be effective July 1, 1988, subject to refund, certain tariff sheets tendered as part of El Paso's notice of change in rates for jurisdictional natural gas service filed December 31, 1987 pursuant to section 4 of the Natural Gas Act.

El Paso states that on February 26, 1988, it tendered certain tariff sheets reflecting its understanding of the Commission's directives in the January 29, 1986 order. By letter order dated March 31, 1988 issued by the OPPR, the Commission rejected El Paso's compliance filing for noncompliance with the January 29, 1988 order.

El Paso states that on May 6, 1988, it tendered a revised filing in compliance with the January 29, 1988 order and the directives contained in the March 31, 1988 letter order. By letter order dated June 21, 1988, the Commission rejected the May 6, 1988, revised compliance filing for noncompliance with the January 29, 1988 order.

El Paso states that on June 1, 1988, it filed at Docket No. RP88-44-000, primary and alternate tariff sheets to reflect certain modifications to those rates which were suspended until July 1, 1988 at Docket No. RP88-44-000. Such rates differ from the rates reflected in the revised compliance filing of May 6, 1988 in that the revised compliance rates were adjusted to reflect the removal of take-or-pay buyout and buydown costs, an increase in throughput quantity and certain other adjustments. By order issued on June 30, 1988 at Docket No. RP88-44-004, the Commission approved El Paso's primary tariff sheets, subject to refund and conditioned upon El Paso filing revised sheets within fifteen (15) days of the issuance of the order which comply wih the Commission's January 29, 1988 order and subsequent compliance orders in said proceeding.

El Paso states that, as a result of the foregoing, it is required to make two (2) compliance filings. In particular, one set of tariff sheets must be tendered to comply with the Commission's order dated January 29, 1988, and subsequent orders issued by the OPPR. El Paso is authorized to place such tariff sheets into effect on or after October 1, 1988 if settlement of this proceeding has not been achieved by that date. In addition, by order issued June 30, 1988, El Paso is authorized to place rates into effect on July 1, 1988 subject to the conditions that such tariff sheets comply with the Commission's January 29, 1988 order and subsequent OPPR letter orders.

El Paso states that in response to the requirements of the January 29, 1988 order and the subsequent OPPR letter orders, it has reformulated its firm transportation rates under Rate Schedule T-3 to comply with the directive in the OPPR's letter order of June 21, 1988 that El Paso eliminate any rate discrimination among customers. The reformulation of the T-3 rates consists of three (3) changes: (1) Redesign of the reservation charges to state separately the mainline charges and the field charges; (2) recalculation of the reservation charges based on the demand costs underlying the Rate Schedule T-1 rates; and (3) explicit incorporation of the production area charges (dehydration, purification, and products extraction). The sales demand costs have been allocated using the deliveries for the period February 25-27, 1987.

El Paso states that in compliance with the June 30, 1988 order, El Paso has refiled rates which are derived from the rates filed in compliance with the January 29, 1988, March 31, 1988 and June 21, 1988 orders.

With respect to the tariff sheets tendered in compliance with the January 29, 1988 order and the subsequent OPPR letter orders, EL Paso requests that the Statement of Rates tariff sheets be permitted to become effective not earlier than October 1, 1988, upon a thirty (30) day notice filing by El Paso, in the event El Paso has not achieved settlement, at least in principle, by October 1, 1988 and that the remaining tarriff sheets reflecting conforming changes become effective July 1, 1988.

With respect to the tariff sheets tendered in compliance with the June 30, 1988 order, El Paso requests that those Statement of Rates be accepted and permitted to become effective July 1, 1988 in accordance with the June 30, 1988 order.

El Paso further states that a copy of the compliance filing has been served upon all parties of record in Docket No. RP88-44-000 and, otherwise, upon all interstate pipeline system customers of El Paso and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16747 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP88-538-000, et al.]**

## K N Energy, Inc. et al.; Natural Gas Certificate Filings

July 20, 1988.

Take notice that the following filings have been made with the Commission:

**1. K N Energy, Inc.**

[Docket No. CP88-538-000]

Take notice that on July 1, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88-538-000 a request

pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to add two existing interconnection points as wholesale delivery points to Public Service Company of Colorado (PSCo) in Beaver and Texas Counties, Oklahoma, under the blanket authorization issued in Docket Nos. CP83–140–000 and CP83–140–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N states that under its currently authorized sale-for-resale arrangement with PSCo, K N transports natural gas volumes to Colorado Interstate Gas Company (CIG) for PSCo's account at an interconnection of K N's and CIG's facilities in Weld County, Colorado. CIG then transports the gas to PSCo. PSCo has now requested that K N add two existing interconnection points as delivery points to PSCo. K N states that it would deliver up to 20,110 Mcf of natural gas per day to CIG for PSCo's account at the proposed Baker delivery point in Texas County, Oklahoma, and cause up to 5,030 Mcf of natural gas per day that K N purchases from Sun Operating Limited Partnership (Sun) to be delivered to CIG for PSCo's account at the proposed Mocane-Laverne delivery point (an existing interconnection between CIG and Sun) in Beaver County, Oklahoma. CIG would then transport under section 311 of the Natural Gas Policy Act of 1978 authorization any gas that K N sells to PSCo at the proposed Baker and Mocane-Laverne delivery points to PSCo's system in Colorado. No new facilities would be required to implement the hereinbefore described proposal. K N states that PSCo would use any gas it purchases from K N at these two delivery points for its system supply.

K N states these two new wholesale delivery points to PSCo would have no impact on K N's peak day and annual deliveries. K N also states that it would have sufficient capacity to accomplish the hereinbefore proposed natural gas deliveries without detriment or disadvantage to K N's other existing customers.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

**2. ANR Pipeline Company**

[Docket No. CP88–543–000]

Take notice that on July 1, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88–543–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to add an existing interconnection between ANR and Northern Indiana Public Service Company (NIPSCO) in Adams County, Indiana, as a delivery point under the blanket authorization issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the proposed delivery point would enable NIPSCO to receive a maximum of 3,500 dekatherms of natural gas per day, which would be within NIPSCO's currently existing peak day and annual entitlements from ANR. ANR states that its natural gas sales to NIPSCO would be made pursuant to their existing service agreement.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

**3. Tennessee Gas Pipeline Company**

[Docket No. CP88–573–000]

Take notice that on July 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP88–573–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Citizens Gas Supply Corporation (Citizens). Tennessee explains that service commenced June 22, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4662. Tennessee further explains that the peak day quantity would be 160,000 dekatherms, the average daily quantity would be 1,200 dekatherms, and that the annual quantity would be 438,000 dekatherms. Tennessee explains that it would receive natural gas for Citizens' account from points of receipt located Offshore Louisiana and the states of Alabama, Louisiana, Texas, and Mississippi. Tennessee states that the points of delivery are located in the states of Alabama, Louisiana, New York and West Virginia. Tennesee further explains that locations of the ultimate delivery point of the gas are in the states of Ohio, Tennessee, West Virginia, New York, Alabama, Mississippi, Kentucky and Florida.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

**4. Northern Natural Gas Company Division of Enron Corp.**

[Docket No. CP88–562–000]

Take notice that on July 11, 1988, Northern Natural Gas Company Division of Enron Corp. (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–562–000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service to Cabot Energy Marketing Corp. (Cabot), a marketer, under Northern's blanket certificate issued December 22, 1986, in Docket No. CP86–435–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport for Cabot up to 1,500,000 MMBtu per day or approximately 547,500,000 MMBtu annually, pursuant to a transportation agreement dated April 20, 1988. Northern states that the transportation service for Cabot under the 120-day automatic authorization provisions of § 284.223(a) was filed with the Commission in Docket No. ST88–3128.

Also, pursuant to the transportation agreement Northern proposes to compress, on an interruptible basis, up to 40,000 MMBtu of gas for Cabot in Northern's Fort Buford Compressor Station, McKenzie County, North Dakota, for delivery to Northern Border Pipeline Company (NBPL) for subsequent transportation by NBPL.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

**5. Williams Natural Gas Company**

[Docket No. CP88–571–000]

Take notice that on July 12, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88–571–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon (1) by sale approximately 1.5 miles of 6-inch pipeline and appurtenant facilities in Wilson County, Kansas, and (2) the transportation of gas through said facilities, under the certificate authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

WNG states that U.S. Oil Management, Inc. (U.S. Oil) has requested that WNG sell this section of pipeline to them for use as a gathering line for wells which U.S. Oil proposes to drill in the vicinity of its Sutcliffe storage field. It is stated that there are three domestic customers (Howard Brant, Bernard Hardin, Jr., and Bill McMillen) on this pipeline served on a resale basis by KPL Gas Service (KPL), and that KPL agrees to the abandonment proposed by WNG. WNG explains that it has made arrangements to provide alternative service for those residential customers. WNG states that the reclaim cost of the facilities is estimated to be $7,650, the salvage value $3,115, and the sale price $10,000.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issurance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16827 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP88-544-000, et al.]**

## Natural Gas Pipeline Co. of America et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

### 1. Natural Gas Pipeline Company

[Docket No. CP88-544-000]

July 15, 1988.

Take notice that on July 5, 1988, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88-544-000 a request pursuant to the notice procedure in § 157.205 and 284.223(2)(b) of the Commission's Reglations for authorization to transport, on an interruptible basis, up to a maximum of 500,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Cabot Energy Marketing Corporation (Cabot), a marketer of natural gas. The receipt points are in Texas, Offshore Texas, Louisiana, Offshore Louisiana, Illinois, Oklahoma, New Mexico, Nebraska, Arkansas, Iowa and Kansas and delivery points are located in Texas, Oklahoma, Illinois, Iowa, Arkansas, Missouri, Nebraska and Kansas. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86-582 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for Cabot on May 4, 1988 at Docket No. ST88-4404 for a one hundred and twenty (120) day period ending September 1, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582. Natural proposes to continue this service in accordance with § 284.221 and 284.223(2)(b).

*Comment date:* August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

### 2. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88-540-000]

July 15, 1988.

Take notice that on July 1, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-540-000, a prior notice request pursuant to § 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Terra International, Inc. (Terra) and to construct a new sales tap to accommodate the redelivery of the transported gas to Terra, under the certificate issued in Docket Nos. CP86-435-000 and CP82-401-000, all as more fully set forth in the request which is on file with the Commisson and open to public inspection.

Northern proposes to transport up to 35,000 MMBtu of natural gas per day, pursuant to an April 18, 1988, agreement between Northern and Terra. Northern would provide the service to Terra under the provisions of its Rate Schedule IT-1, it is indicated. Northern further proposes to construct tap and measuring facilities with an estimated cost of $79,000.00 to accommodate the direct delivery of gas to Terra. Northern states that Terra would reimburse Northern for the cost of such facilities. Northern further states that the average and annual quantities would be 30,000 MMBtu and 11,000,000 MMBtu, respectively.

*Comment date:* August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

### 3. United Gas Pipe Line Company

[Docket No. CP88-544-000]

July 18, 1988.

Take notice that on July 7, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-554-000 a prior notice request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on an interruptible basis on behalf of Exxon Corporation (Exxon), a producer of natural gas, under the certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it proposes to transport on an interruptible basis pursuant to a gas transportation agreement dated March 24, 1988, a maximum daily quantity of 20,600 MMBtu of natural gas and that service commenced April 1, 1988, as reported in Docket No. ST88-4366, pursuant to § 284.224(a) of the Commission's Regulations. United further states that the average day and annual quantities would be 20,600 MMBtu and 7,519,000 MMBtu, respectively.

*Comment date:* September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

### 4. United Gas Pipe Line Company

[Docket No. CP88-552-000]

July 18, 1988.

Take notice that on July 7, 1988, United Gas Pipe Line Company, Post Office Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP88-552-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth set out in the request on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated April 25,

1988, it proposes to receive up to 120,000 dt equivalent of natural gas per day at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and redeliver the gas at the existing interconnection between the facilities of United and Florida Gas Transmission Company at Arnaudville, St. Landry Parish, Louisiana.

United states that the peak day, average day, and annual quantities would be 123,600, 123,600, and 45,114,000 dt equivalent of natural gas, respectively. It is indicated that a 120-day transportation service under Section 284.223 (a) commenced on June 2, 1988, as reported in Docket No. ST88-4365 on June 24, 1988.

United states that no facilities need be constructed to implement the service. United states that the primary term of the transportation agreement would expire one year from the date of initial transportation but would ocntinue on a month-to-month basis unless terminated by either party on thirty-days written notice. United proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

*Comment date*: September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

**5. United Gas Pipe Line Company**

[Docket No. CP88-556-000]

July 18, 1988.

Take notice that on July 8, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No., CP88-556-000 a request pursuant ot § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for The Resource Group (Resource Group). United explains that service commenced May 23, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4501. United explains that the peak day quantity would be 3,090 dekatherms, the average daily quantity would be 3,090 dekatherms, and that the annual quanitity would be 1,127,850 dekatherms. United explains that it would receive natural gas for Resource Group's account at points of receipt in Panola and Shelby Counties, Texas. United states that it would redeliver the gas for Resource's Group's account at an existing interconnection between United and Mississippi Chemical Corporation in Jackson County, Mississippi.

*Comment date*: September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

**6. Northern Natural Gas Company Division of Enron Corporation**

[Docket No. CP88-556-000]

July 18, 1988.

Take notice that on July 12, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-566-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco, Inc. (Texaco), under the authorization issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Texaco, a producer of natural gas, pursuant to an interruptible transportation agreement dated July 11. 1988. The term of the transportation agreement is for three years and month to month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Northern proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 37,500 MMBtu; and on an annual basis 6,000,000 MMBtu of natural gas for Texaco. Northern proposes to receive the subject gas from numerous points of receipt in New Mexico, Oklahoma, Kansas, and Texas. Northern would then transport and redeliver such volumes to five delievery points located in Texas, Kansas, and Iowa. Northern avers that construction of facilities would not be required to provide the proposed service.

Northern states that it would perform such transportation service for Texaco pursuant to its Rate Schedule IT-1, or any effective superseding rate schedule on file with the FERC or any successor thereof. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on June 1, 1988, as reported in Docket No. ST88-4535-000.

*Comment date:* September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

**7. National Fuel Gas Supply**

[Docket Nos. CP85-826-003 and CP86-96-003]

July 18, 1988.

Take notice that on July 5, 1988, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket Nos. CP85-826-003 and CP86-96-003 a petition to amend further the orders issued in Docket Nos. CP85-826-000, as amended, and CP86-96-000, as amended, pursuant to section 7(c) of the Natural Gas Act, so as to modify the existing transportation service performed by National Fuel on behalf of The Southern Connecticut Gas Company (SCGC), Elizabethtown Gas Company (EGC) and New Jersey Natural (NJN), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

In Docket No. CP85-826-003 National Fuel proposes to transport natural gas for an additional year for EGC and NJN beyond the current expiration date of August 11, 1988 and to designate additional existing interconnections between National Fuel and Tennessee Gas Pipeline Company in Pennsylvania and New York as receipt points for the gas to be transported. In Docket No. CP86-96-003 National Fuel proposes to transport gas for an additional year for SCGC beyond the current expiration date of June 30, 1988, and to increase the daily transportation volume from 1,500 Mcf to 4,000 Mcf. It is stated that in all other respects, the transportation services, as currently authorized, would remain the same.

*Comment date:* August 9, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**8. Southern Natural Gas Company**

[Docket No. CP88-545-000]

July 19, 1988.

Take notice that on July 6, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202 filed in Docket No. CP88-545-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of a 40 horsepower skid-mounted field compressor and appurtenances located at Southern's Spider Compressor Station located in DeSoto Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open for public inspection.

Southern avers that the compressor was installed in 1983 pursuant to a request for authorization filed by

Southern in Docket No. CP83-390-000 under its blanket certificate of public convenience and necessity issued in Docket No. CP82-406-000. Southern states that the compressor was installed to increase the pressure at the Spider Field Compressor Station to obtain a sufficient pressure to enable the Spider Field gas to enter Southern's 14-inch Logansport Line. Southern further states that the 46 horsepower skid-mounted compressor is not presently needed as a result of an increased suction pressure at said station caused by the reworking of certain wells in the Spider Field and Southern does not anticipate its need in the foreseeable future. In order to save maintenance expenses and to simplify the operation of the Spider Field Compressor Station, Southern proposes to abandon the 46 horsepower skid-mounted compressor. Southern also states that the proposed abandonment would not affect the capacity of Southern's pipeline system or require termination of any service to southern's customers.

Accordingly, Southern requests the Commission to issue an order authorizing the abandonment of the compressor and appurtenances as proposed herein. Upon receipt of such authorization, the compressor and appurtenances would be removed and held in inventory for use elsewhere and the facilities would be retired.

Southern further states that the cost of the proposed abandonment would be approximately $950 with an estimated salvage value of $20,900.

*Comment date:* August 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

**9. Granite State Gas Transmission, Inc.**

[Docket No. CP88-559-000]

July 19, 1988.

Take notice that on July 11, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed a request pursuant to § 157-205 of the Commission's Regulations for authorization to construct and operate a new delivery point for service to its affiliated distribution customer, Northern Utilities, Inc. (Northern Ulitities), under Granite State's blanket certificate issued in Docket No. CP82-515-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Granite State proposes to install a new delivery point on its system in Greenland, New Hampshire, in order to serve a new customer of Northern Utilities. It is estimated that the cost of the facility would be $14,820, and it is asserted that Granite State would be reimbursed for the cost by Northern Utilities, which would own the delivery point. It is explained that the deleivery point would be used for estimated annual deliveries of 1,190 Mcf of natural gas. It is stated that the delieveries through the proposed facility would not increase Northern Utilities' presently authorized contract demand from Granite State and that no existing customers of Granite State would be negatively impacted.

*Comment date:* September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

**10. Placid Oil Company**

[Docket No. CP88-463-000]

July 20, 1988.

Take notice that on June 13, 1988, Placid Oil Company (Placid), 3900 Thanksgiving Tower, 1601 Elm Street, Dallas, Texas 75201, filed in Docket No. CP88-463-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of the entire 51-mile Green Canyon-Ship Shoal Line and the construction of the remaining 8-mile segment of the line, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Placid states that the Green Canyon-Ship Shoal Line is a 51-mile, 16-inch line commencing at its floating production platform located on Green Canyon Block 29 and terminating at the interconnection with ANR Pipeline Company on Ship Shoal Block 207, all in offshore Louisiana. It is stated that the Green Canyon area is located in water depths of 1,500 to 3,800 feet or deeper and more than 80 miles offshore Louisiana. Placid indicates that natural gas and crude oil have been discovered in commercial quantities in Green Canyon Blocks 29 and 31, and Ewing Bank Block 999. It is also stated that the floating production platform on Green Canyon Block 29 will be located in a water depth of 1,540 feet. Placid states that the line's design capacity is 200 MMcf of natural gas per day. It is projected that the Green Canyon gas production will peak at 140 MMcf of natural gas per day.

Placid states that the floating production platform separation process would result in two streams—one, gas which still contains amounts of water, condensate and entrained liquefiables that will be accommodated through a 51-mile, 16-inch line extending from the floating production platform to Ship Shoal Block 207 platform. It is stated that the other stream would consist of oil, condensate, water and varying amounts of gas which will be accommodated through a 51-mile, 14-inch pipeline from the floating production platform to the Ship Shoal Block 207 platform. Placid states that the continuous operation of the field would necessitate the movement of gas, oil, condensate and water to the Ship Shoal Block 207 platform without interruption, explaining, that any time either pipeline has to be shut in for any reason, the remaining line, liquid or gas, would be operated as a two-phase flowline, that is, gas, oil, condensate and water would be transported through a single line in order to maintain production.

Placid states that 43 miles of the shallow water portion of the line has been installed and the remaining 8 miles was initially assembled at Matagorda Island, Texas and damaged enroute to the Green Canyon Block 29 area. Placid states that the segment is being salvaged, repaired and readied for installation at the Green Canyon Block 29 area. Placid states that the 43 miles of line was installed on the assumption that the Green Canyon-Ship Shoal Line was a gathering line, and therefore, exempt from Commission jurisdiction. However, the Commission issued a declaratory order on May 3, 1988, in Docket No. CP88-146-000, finding that the proposed pipeline would be used for the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction under section 7(c) of the Natural Gas Act. On July 8, 1988, in Docket No. CP88-146-001, the Commission issued an order denying a rehearing of the declaratory order.

*Comment date:* August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

**11. Tennessee Gas Pipeline Company**

[Docket No. CP88-529-000]

July 20, 1988.

Take notice that on June 28, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-399-000 an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

More specifically, Tennessee proposes to abandon a dual 24" aerial crossing of the Lake Tappan Reservoir in Bergen County, New Jersey, extending from M.P. 330-1 + 1.49 to M.P. 330-1 + 1.98

and consisting of two 24" pipelines supported by concrete piers. Tennessee states that during the last weeks of February, 1988, normal thermal expansion of the 24" Line No. 300–1 was not transferred to the expansion loops on each end of the aerial crossing. It is stated that the accumulation of stress in the pipelines resulted in a shifting of the pipe and piers by as much as three feet. In order to maintain the integrity of its 24" Station 313 to Greenwich line, Tennessee advises that, pursuant to § 2.55 of Part 1 of the Commission's Regulations [18 CFR 2.55(b)], it initiated the construction of a single underwater, buried 24" pipeline from M.P. 330–1 + 1.49 to M.P. 330–1 + 1.98, to replace the dual aerial crossing. It is stated that such line was placed in service on April 14, 1988.

Tennessee states that, assuming peak design day conditions, the pressure drop in the original dual 24" crossing has been calculated to be 0.7 psi, while the pressure drop in the single buried line is calculated to be 2.8 psi. Tennessee contends that this increased pressure drop would have an insignificant effect on the capacity of its 24" Station 313 to Greenwich line. Tennessee submits that the removal of the complete dual aerial crossing is in the public interest in that such abandonment would avoid the unnecessary expenses of maintaining and operating any part of the original dual aerial crossing. Finally, it is estimated that the cost to remove the dual aerial pipeline and piers, less salvage, would be $420,000.00.

*Comment date:* August 10, 1988, in accordance with Standard Paragraph F at the end of the notice.

**12. Great Lakes Gas Transmission Company**

[Docket No. CP88–541–000]

July 20, 1988.

Take notice that on July 1, 1988, Great Lakes Gas Transmission Company (Great Lakes) 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88–541–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to provide firm natural gas service for Southeastern Michigan Gas Company (Southeastern) and construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes proposes to transport on a firm basis up to 15,000 Mcf per day for Southeastern which Southeastern is purchasing from Western Gas Marketing Ltd. It is stated that Great Lakes would provide transportation of such volumes from a point on the International Boundary at Emerson, Manitoba, to (1) a proposed point of interconnection between the facilities of Great Lakes and Southeastern to be located near Muttonville, Michigan (Muttonville Delivery Point No. 1) and (2) an existing point of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR) near Muttonville. It is further stated that ANR would transport and deliver any Southeastern volumes it receives to an existing interconnection between the facilities of ANR and Southeastern located in Columbus Township, Michigan.

It is alleged that the volumes to be transported are expected to be imported by Southeastern pursuant to import authorization that would be requested from the Economic Regulatory Administration (ERA) by Southeastern, or other available valid import authorization by the ERA. To provide the proposed transportation service, Southeastern and Great Lakes entered into a transportation service agreement (agreement) dated May 12, 1988. It is asserted that this agreement provides for a 15 year term to commence when the facilities that Great Lakes must construct to provide the subject transportation have been placed in service. To provide such service for Southeastern, Great Lakes proposes to construct and/or install (1) one pipeline loop of 2.9 miles of 36 inch diameter pipe; (2) a meter station at the Muttonville Delivery Point No. 1; and (3) four aerodynamic assembles at various Great Lakes Compressor stations.

Great Lakes estimates the cost of the proposed facilities to be $4,032,000. It is alleged that the facilities would be financed with funds generated internally, together with borrowing from banks if required. It is further alleged that any bank borrowing would be retired with funds generated internally.

It is stated that the Southeastern Service Agreement provides for a monthly Demand–1 charge of $2.040 per Mcf of contract quantity, Demand–2 charge of $.06705 per Mcf multiplied by one-twelfth of the annual contract quantity, and commodity charge of $.23921 per Mcf for volumes received for transportation under the Agreement. It is further stated that these demand and commodity charges represent the transportation components of the Base Tariff Rates of Rate Schedule T–15 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the International Bounday near Emerson, Manitoba to points in Great Lakes' Eastern Zone.

*Comment date:* August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

**13. Great Lakes Gas Transmission Company**

[Docket No. CP88–542–000]

July 20, 1988.

Take notice that on July 1, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88–542–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation of natural gas, on a firm and interruptible basis, for Midland Cogeneration Venture (MCV), a Michigan Limited Partnership, and POCO Petroleum Ltd. (POCO), a Canadian supplier, and to construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that MCV and POCO have requested that Great Lakes transport up to 55,000 Mcf per day and 25,000 Mcf per day, respectively, from a point of the International Boundary at Emerson, Manitoba, to a point of interconnection between the facilities of Great Lakes and Michigan Gas Storage Company (Michigan Gas), to be located in Chippewa Township, Isabella County, Michigan (Chippewa Delivery Point). It is further stated that both the POCO and MCV volumes would be utilized as fuel gas in MCV's gas-fired cogeneration plant under construction in Midland, Michigan.

To implement the arrangements, Great Lakes states it has entered into Transportation Service Agreements (Agreements) with MCV and POCO respectively, each dated May 25, 1988. The Agreements provide for a 15-year term for firm service, to commence upon the later of May 1, 1990, and the date when the facilities that Great Lakes must construct to provide the subject transportation have been placed in service. To provide the service, Great Lakes proposes to construct and/or install: (1) Nine loops, totalling 83.2 miles of 36 inch diameter pipe, (2) a meter station to be located at the Chippewa Delivery Point, and (3) eight aerodynamic assemblies at various Great Lakes' compressor stations, at an estimated cost of $75,304,100.

Great Lakes states that the Agreements provide for rates for the firm service, of a monthly Demand–1

charge of $2.040 per Mcf contract quantity, Demand–2 charge of $0.6705 per Mcf multiplied by one-twenlfth of the annual contract quantity, and commodity charge of $.23921 per Mcf. Great Lakes further states that these demand and commodity charges represent the transportation components of existing Rate Schedule T–15 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the International boundary near Emerson Manitoba to points in Great Lakes' Eastern Zone.

In addition to the above-described form service, it is stated that the Agreements provide for interruptible transportation which is expected to commence March 1, 1989, and will terminate when the facilities required to provide the firm service have been placed in-service by Great Lakes. Great Lakes indicates that the rate for interruptible service is the 100 percent loan factor rate, as determined from the demand and commodity components utilized for the firm service.

*Comment date:* August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

**14. Panhandle Eastern Pipe Line Company**

[Docket No. CP88–548–000]

July 20, 1988.

Take notice that on July 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–548–000 an application pursuant to section 7(c) of the Natural Gas Act for permission and approval to abandon jurisdictional sales service provided to Michigan Consolidated Gas Company (MichCon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that MichCon is an existing jurisdictional gas sales customer of Panhandle and is served pursuant to Panhandle's Rate Schedule SS–1 and a Gas Sales Contract dated April 26, 1982 (Contract) which expires on October 31, 1988. It is further asserted that Panhandle's gas sales to MichCon were first authorized by order issued October 17, 1945, at Docket No. G–254, 4 FPC 1081. Panhandle states that it currently provides a quantity of 217,000 Mcf of natural gas per day of firm sales service to MichCon.

It is averred that by letter dated March 20, 1987, MichCon informed Panhandle that it no longer requires any sales service from Panhandle and gave notice of cancellation of the Contract effective October 31, 1988 (Termination Notice). It is further averred that MichCon has confirmed that at the present time it does not require any "replacement" service from Panhandle. It is indicated that there would be no abandonment of facilities. The facilities presently in place would be used to provide transportation service as may be required by MichCon and other shippers.

Panhandle states that the proposed abandonment authority reflects the fact that MichCon no longer wishes to utilize service from Panhandle and should be conditioned on the ultimate recovery by Panhandle of the appropriate residual costs associated with the service to MichCon in addition to any amounts due and payable pursuant to the Contract. It is asserted that concerning take-or-pay costs, contract reformation costs and similar items, it is noted that under Order No. 500, Panhandle has until December 31, 1988, to elect the procedure for recovery and resolution of its take-or-pay obligations.

*Comment date:* August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

**15. Equitrans, Inc.**

[Docket No. CP88–546–000]

July 20, 1988.

Take notice that on July 7, 1988, Equitrans, Inc. (Equitrans) 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP88–546–000 an application pursuant to section 7(c) of the Natural Gas Act for: (1) A blanket certificate authorizing the interruptible sale for resale of natural gas supplies, which are in excess of the current and projected needs of Equitrans' on system customers, to off system and on system customers, to off system and on system purchasers including interstate and Hinshaw pipelines, marketers and local distribution companies pursuant to a proposed new rate schedule, Interruptible Sales Service (ISS): And (2) blanket authorization to use Equitrans' transmission facilities to accomplish the interruptible direct sale of gas to end-users, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that it proposes to charge a negotiated rate for sales under the proposed Rate Schedule ISS ranging between a maximum rate equal to Equitrans' 100 percent load factor rate found in Rate Schedule PLS and a minimum rate equal to Equitrans' actual weighted average cost of gas as included in Equitrans' current PGA, plus fuel, variable delivery costs, and GRI and Annual Charge Adjustments (ACA) if appropriate. Equitrans indicates further that sales under Rate Schedule ISS would be with existing facilities and that third party transportation costs would be born by the gas purchaser.

*Comment date:* August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

**16. Trunkline Gas Company**

[Docket No. CP88–549–000]

July 20, 1988.

Take notice that on July 7, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–549–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service provided to Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that by Commission order dated August 21, 1985, in Docket No. CP84–98–000, Trunkline was authorized to transport, on a firm basis, up to 27,000 Mcf of natural gas per day and, on an interruptible basis, up to 13,000 Mcf of natural gas per day for Bridgeline, pursuant to a Transportation Agreement dated August 28, 1984 (Transportation Agreement). Trunkline states further that it receives gas from Bridgeline's account from Sabine Pipe Line Company in South Timbalier Block 200, Offshore Louisiana. Trunkline avers that it delivers this volume of gas for Bridgeline's account to Columbia Gulf Transmission Company and directly to Bridgeline in St. Mary Parish, Louisiana.

Trunkline proposes to abandon the firm portion of the Transportation Agreement. The abandonment, it is said, would become effective on the first day of the first month after abandonment authorization is received and accepted by Trunkline. Trunkline states that the interruptible portion of the Transportation Agreement would remain in place for Bridgeline's continuing use.

*Comment date:* August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of

the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16828 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. CP87-389-001, CP83-71-001, CP85-608-013, CP88-225-001]**

## National Fuel Gas Supply Corp.; Petition To Amend

July 20, 1988.

Take notice that on July 1, 1988,[1] National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87-389-001 a petition to amend its certificate of public convenience and necessity issued therein so as to extend the term of the existing interruptible transportation service for National Fuel Gas Distribution Corporation (Distribution) for a term of one year commencing September 25, 1988. In addition, National Fuel filed in Docket Nos. CP88-71-001, CP85-608-013 and CP88-225-001 to amend the certificates issued therein in order to increase previously authorized transportation volumes and/or modify receipt points with respect to certain end-users covered by National Fuel's authorization in Docket Nos. CP88-71-000, CP85-608-000 as amended, and CP88-225-000, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that National Fuel was authorized on September 25, 1987 in Docket Nos. CP87-389-000 to transport up to 20,985 Mcf/day of natural gas on behalf of its affiliate, Distribution, for the account of 69 existing end-user customers of Distribution and up to 1,000 Mcf/day for the account of Distribution for Rochester Gas and Electric Corporation (RG&E). It is further stated that on December 23, 1987 in Docket No. CP88-71-000, and on April 27, 1988 in Docket No. CP88-225-000, the Commission subsequently authorized National to transport additional volumes of gas and/or modify the receipt or delivery points of certain other end-user customers.

National Fuel hereby requests to amend the certificate issued in Docket No. C-87-389-000 so as to extend the term of the interruptible transportation of up to 19,430 Mcf of natural gas per day on behalf of Distribution for a period of one-year commencing September 25, 1988 for 55 of the original 69 customers, including RG&E. National Fuel also seeks authorization to transport up to 16,684 Mcf of natural gas per day on behalf of Distribution for 58 additional end-users.

In addition, National Fuel requests authorization to transport additional volumes and/or modify receipt points with respect to certain end-users covered by National Fuel's existing authorization in Docket Nos. CP88-71-000, CP85-608-000, as amended, and CP88-225-000. It is stated that the proposed changes would involve the transportation of 100 Mcf per day in excess of the volumes authorized in Docket No. CP88-225-000.

Appendix A hereto indicates the maximum daily volume for each of the 55 customers for which an extension of service is sought and Appendix B indicates the maximum daily volume for the additional 58 customers proposed to be served. Appendix C indicates the modifications in service for those end-users presently receiving transportation service under authorization granted in Docket Nos. CP88-71-000, CP85-608-000, as amended, and CP88-71-000. Details such as receipt points and sellers are available in National Fuel's application.

National Fuel states that it would receive the subject transportation volumes at existing receipt points on its system and would deliver the volumes to Distribution at existing points of delivery. National Fuel adds that it would charge Distribution pursuant to its T-1 Rate Schedule which currently provides for a rate of 31.28 cents per Mcf and 2 percent shrinkage.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 10, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

[1] The application was rendered for filing June 27, 1988, however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until July 1, 1988. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Acting Secretary.*

**Appendix A—End-Users Seeking an Extension of Transportation Service Authorized in Docket No. CP87-389-000**

| End user | Presently authorized maximum daily volume (MCF) | Proposed maximum daily volume (MCF) |
|---|---|---|
| 1. American Olean Tile, Olean, NY | 450 | 450 |
| 2. American Stone Mix: | | |
| Batavia, NY | 150 | 150 |
| Fredonia, PA | 185 | 185 |
| 3. Bison Brand Foods Scott St., Buffalo, NY | 112 | 112 |
| 4. Brockway Pressed Metals Brockway, NY | 350 | 350 |
| 5. Canisius College Buffalo, NY | 215 | 215 |
| 6. Catholic Diocese of Buffalo: | | |
| Cardinal O'Hara High Sch., Tonawanda, NY | 130 | 130 |
| Niagara Catholic High Sch., Niagara Falls, NY | 100 | 100 |
| St. Mary High Sch., Lancaster, NY | 80 | 80 |
| Turner-Carroll High Sch., Buffalo, NY | 65 | 65 |
| Catholic Center, Buffalo, NY | 60 | 60 |
| 7. Clarion Sintered Metals, Clarion, PA | 157 | 157 |
| 8. Dad's Dog Food, Meadville, PA | 185 | 500 |
| 9. Daemen College, Amherst, NY | 150 | 150 |
| 10. Dunbar Slag, Sharon, PA | 300 | 300 |
| 11. Dunkirk Ice Cream, Dunkirk, NY | 140 | 140 |
| 12. Exolon-Esk Co., Tonawanda, NY | 500 | 500 |
| 13. Frontier Foundries: | | |
| Titusville, PA, | 140 | 200 |
| Niagara Falls, NY | 110 | 200 |
| 14. GAF Corp., Erie, PA | 1,000 | 1,000 |
| 15. Gibralter Steel, Cheektowaga, NY | 210 | 210 |
| 16. Hilbert College, Hamburg, NY | 83 | 83 |
| HOSPITAL SHARED SERVICES | | |
| 17. Andrew Kaul Memorial Hosp., St. Marys, PA | 153 | 153 |
| 18. Bradford Hospital, Bradford, PA | 300 | 300 |
| 19. Brookville, Hospital, Brookville, PA | 50 | 50 |
| 20. Clarion Ost. Comm. Hosp., Clarion, PA | 46 | 46 |
| 21. Corry Memorial Hosp., Corry, PA | 51 | 51 |
| 22. DuBois Regional Med. Ctrs., DuBois, PA: | | |
| Maple Street, Hospital Avenue | 83 | 83 |
| Hospital Avenue | 106 | 106 |
| 23. Elk County Gen. Hosp., Ridway, PA | 53 | 53 |
| 24. Erie County Geriatric Ctr., Girard, PA | 150 | 150 |
| 25. Franklin Regional, Franklin, PA | 100 | 100 |
| 26. Greenville Regional Hosp., Greenville, PA | 130 | 130 |
| 27. Hamot Medical Center, Erie, PA | 50 | 50 |
| 28. Meadville Medical Ctr., Meadville, PA: | | |
| Liberty St. | 135 | 135 |
| Grove St. | 130 | 130 |
| 29. Metro Health Center, Erie, PA | 116 | 116 |
| 30. Millcreek Comm. Hosp., Erie, PA | 53 | 53 |
| 31. Oil City Area Health Ctr., Oil City, PA | 146 | 146 |
| 32. St. John Lutheran Care | 134 | 134 |
| 33. St George School, Erie, PA | 40 | 40 |
| 34. St. Vincent Health Ctr., Erie, PA | 500 | 500 |
| 35. Seton School, Meadville, PA | 80 | 80 |
| 36. Sharon General Hosp., Sharon, PA | 129 | 129 |
| 37. Titusville Hosp., Titusville, PA | 50 | 50 |
| 38. Wesbury United Meth. Com., Meadville, PA | 140 | 140 |
| 39. J.N. Adam Devel. Ctr., Perrysburg, NY | 200 | 200 |
| 40. Lenders Bagel Bakery, West Seneca, NY | 300 | 300 |
| 41. Marathon Petroleum, Tonawanda, NY | 275 | 275 |
| 42. Mt. St. Mary's Hospt., Lewiston, NY | 557 | 557 |
| 43. NYS Office of Gen. Svcs., General Donovan Bldg., Buffalo, NY | 55 | 70 |
| 44. Niagara Frontier Trans, Auth., Buffalo, NY: | | |
| Fuhrman Blvd., Buffalo, NY | 68 | 150 |
| 180 Ellicott, Buffalo, NY | 70 | 70 |
| 455 Cayuga, Buffalo, NY | 115 | 230 |
| East Terminal, Cheektowaga, NY | 80 | 150 |
| West Terminal, Cheektowaga, NY | 70 | 140 |
| Niagara Fall Airport, Niagara Fall, NY | 33 | 150 |
| South Park, Buffalo, NY | 35 | 150 |
| Broadway Ave., Buffalo, NY | 58 | 150 |
| Frontier, Buffalo, NY | 37 | 75 |
| Cold Spring, Buffalo, NY | 44 | 150 |
| 45. Rochester Gas & Elec. Co., Rochester, NY | 1,000 | 1,000 |
| 46. Rockwell Intn'l.,* DuBois, PA | 375 | 375 |
| 47. St Joseph's Inter-Comm.,* Hosp., Cheektowaga, NY | 189 | 189 |
| 48. Suny & Alfred, Alfred, NY | 843 | 843 |
| 49. Suny & Buffalo (Main St), Buffalo, NY | 486 | 775 |
| 50. Suny & Fredonia, Fredona, NY | 1,739 | 1,739 |
| 51. Senaca Steel, Buffalo, NY | 120 | 120 |
| 52. Upstate Milk, Producers: | | |
| Buffalo, NY | 100 | 100 |
| Jamestown, NY | 50 | 50 |
| 53. Villa Maria College, Cheektowaga, NY | 75 | 150 |
| 54. West Seneca Devel. Ctr., West Seneca, NY | 120 | 2,000 |
| 55. Wheatland Tube, Wheatland, PA | 1,100 | 1,100 |
| Total | | 19,430 |

**Appendix B—Additional End-Users Proposed To Be Served in Docket No. CP87-389-001**

| End user | Proposed maximum daily volume (MCF) |
|---|---|
| 1. Bakery Salvage, Buffalo, NY | 80 |
| 2. Brockway Area Schools, Brockway, PA | 175 |
| 3. Brookville Area Schools, Brokwille, PA | 350 |
| 4. Buffalo News, Buffalo, NY | 250 |
| 5 Cameron County Schools, Emporium, PA | 100 |
| 6. Columbus McKinnon, Tonawanda, NY | 250 |
| 7. Copes Vulcan, Lake City, PA | 100 |
| 8. Corry Contract, Corry, PA | 185 |
| 9. Con Agra (FNA International Multi-Foods), Buffalo, NY | 200 |
| 10. Cytemp Specialty Steel, Titusvile, PA | 1,000 |
| 11. DuBois Area Comm. Ctr., DuBois, PA | 100 |
| 12. DuBois Area Schools, DuBois, PA | 400 |
| 13. Empire Cheese Inc., Cuba, NY | 325 |
| 14. Erie Malleable Iron & Erie Wheel, Erie, PA | 475 |
| 15. Erie Sanitary Linens, Erie, PA | 150 |
| 16. Erie Wastewater, Erie, PA | 700 |
| 17. Falconer Metal Spec., Lakewood, NY | 175 |

| End user | Proposed maximum daily volume (MCF) |
|---|---|
| 18. Fedco Automotive Components Co., Buffalo, NY | 200 |
| 19. Franciscan Sisters of St. Joseph, Hamburg, NY | 110 |
| 20. Franklin Area Sch. Dist., Franklin, PA | 250 |
| 21. Friendship Foundry, Friendship, NY | 17 |
| 22. Saginaw Steering Gear, Buffalo, NY | 191 |
| 23. Harrison Radiator, Buffalo, NY | 201 |
| 24. New Departure Hyatt, Tonawanda, NY | 175 |
| 25. CPC Tonawanda Egnine, Tonawanda, NY | 400 |
| 26. George-White Dev. Co., Hermitage, PA | 40 |
| 27. Georgia Pacific, Buffalo, NY | 300 |
| 28. Harborcreek School Dist., Harborcreek, PA | 150 |
| 29. Hermitage School Dist., Hermitage, PA | 350 |
| 30. Humphrey Charcoal, Brookville, PA | 100 |
| 31. Inland Container, Erie, PA | 200 |
| 32. Joy Cone Co., Hermitage, PA | 350 |
| 33. Laurel Manufacturing, DuBois, PA | 125 |
| 34. L-Tec Welding/Cutting, Niagara Falls, NY | 200 |
| 35. Marlette National, Buffalo, NY | 400 |
| 36. McGraw-Edison, Olean, NY | 200 |
| 37. Meadow Brook Dairy, Cuba, NY | 190 |
| 38. Mercyhurst College, Erie, PA | 200 |
| 39. Nabisco Brands, Buffalo, NY, Niagara Falls, NY | 900 |
| 40. New York Wire Mills, Tonawanda, NY | 700 |
| 41. North Tonawanda Muncip., Housing Auth., North Tanawanda, NY | 175 |
| 42. Oil City School Dist., Oil City, PA | 250 |
| 43. Paris Cleaners, Erie, PA | 125 |
| 44. Powder Metal Products, St. Marys, PA | 300 |
| 45. Reserve Gas Corp., Alden, NY | 1,400 |
| 46. Rouse Warren County, Home, Youngsville, PA | 75 |
| 47. Russer Foods, Buffalo, NY | 400 |
| 48. St. Fidelis Seminary, Herman, PA | 85 |
| 49. Specialty Packaging, Erie, PA | 225 |
| 50. Seaway Aluminum, Erie, PA | 125 |
| 51. Sharon School Dist., Sharon, PA | 150 |
| 52. Stratcor, Niagara Falls, NY | 200 |
| 53. Stackple Carbon, Kane, PA | 500 |
| 54. Union City School Dist., Union City, PA | 145 |
| 55. Warren General Hosp., Warren, PA | 150 |
| 56. Wattsburgh Area Schools, Wattsburgh, PA | 90 |
| 57. W. Middlesex School Dist., West Middlesex, PA | 125 |
| 58. W & F Manufacturing, Buffalo, NY | 300 |
| Total | 16,684 |

**Appendix C—Modification to Authorization Granted in Docket Nos. CP88–71–000, CP85–608–000, as Amended, and CP88–225–000**

(1) End-users for which National Fuel seeks new receipt points:

*End user*

1. American Locker Group, Ellicottville, NY
2. American Malting, Buffalo, NY
3. Applied Design, Buffalo, NY
4. Better Baked Foods, Westfield, NY
5. Brockway Clay, Brockway, PA
6. Brooks Memorial Hosp., Dunkirk, NY
7. Buffalo Batt & Felt, Depew, NY
8. Buffalo Crushed Stone, Buffalo, NY (3 plants)
9. Buffalo Forge (2 plants)
10. Cliffstar, Durkirk, NY
12. Christ The King Manor, DuBois, PA
13. Electro Minerals (US), Niagara Falls, NY
14. Erie Plating, Erie, PA
15. Exotic Metals, Ridgeway, PA
16. Fisher Price Toys, East Aurora, NY
17. Fredonia Products, Fredonia, NY
18. Goldome, Buffalo, NY, Goldome Park, Goldome Center
19. Goodyear Tire & Rubber, Niagara Fall, NY
20. Great Lakes Carbon, Niagara Falls, NY
21. Greenville Metals, Greenville, PA
22. Growers Co-op Grape Juice Co., Westfield, NY
23. Houghton College, Houghton, NY
24. Kaiser Aluminum
25. Lord Corp., Cambridge Springs, PA, Saegertown, PA
26. Jack Hunt, Tonawanda, NY, Buffalo, NY
27. McDowell Intermediate, Erie, PA
28. McDowell Manufacturing, DuBois, PA
29. Millcreek School Dist., Erie, PA
30. Modern Industries, Erie, PA
31. Molded Fiber Glass, Linesville, PA
32. Motion Control Ind., Ridgeway, PA
33. National Forge Co., Irvine, PA, Erie, PA
34. Neville-Synthese, Pittsburg, PA
35. Pendrick Laundry, Buffalo, NY
36. Pennsylvania Pressed Metals, Emporium, PA
37. Pohlman Foundry, Buffalo, NY
38. PPG Industries, Pittsburg, PA
39. PVS Chemicals, Buffalo, NY
40. Ridgeway School Dist., Ridgeway, PA
41. Ridgeway Color Co., Ridgeway, PA
42. Rich Products, Buffalo, NY
43. Royal Bedding Co., Buffalo, NY
44. St. Marys Metal Finishing, St. Marys, PA
45. Sharon Tube, Sharon, PA
46. Spaulding Corp., Tonawanda, NY
47. Sphar Roses, Inc., Attica, NY
48. Summco Inc., Sykesville, PA
49. Thiel Collage, Greenville, PA
50. Triangle Auto Spring Co., DuBois, PA
51. True Temper, Lake City, PA
52. Tudor Gardens North, Buffalo, NY
53. Neber-Knapp, Jamestown, NY
54. J.S. Wilson School, Erie, PA
55. Witco, Bradford, PA
56. General Mills Inc., Buffalo, NY

(2) End-users seeking to increase daily volumes:

| End user | Presently authorized maximum daily volume (MCF) | Proposed maximum daily volume (MCF) |
|---|---|---|
| 1. St Marys Metal Finishing, St. Marys, PA | 100 | 200 |

[FR Doc. 88–16826 Filed 7–25–88; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 9718–001]

## Loree Nelson; Surrender of Exemption From Licensing

July 20, 1988.

Take notice that Loree Nelson, exemptee for the proposed South Fork Deep Creek Project No. 9718, requested by letter filed June 27, 1988, that the exemption be terminated. The exemptee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The exemption for Project No. 9718 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell,**
*Acting Secretary.*

[FR Doc. 88–16825 Filed 7–25–88; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP88–214–000]

## CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 20, 1988.

Take notice that CNG Transmission Corporation (CNG) on July 13, 1988 filed First Revised Sheet Nos. 54, 88 and 89 and Original Sheet No. 54A to its FERC Gas Tariff, Volume No. 1.

CNG states that the proposed effective date is January 1, 1989. The tariff sheets are being filed in connection with a certificate application

to allow Transmission's customers to adjust their levels of standby service and to clarify Transmission's service obligations thereafter.

Copies of the filing were served upon Transmission's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All motions of protests should be filed on or before July 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16743 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. RP88-125-002 and TQ88-1-22-002]**

## CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 20, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on July 13, 1988, filed the following revised tariff sheets to be effective June 1, 1988 all to Original Volume No. 1 of its tariff:

Second Substitute Original Sheet Nos. 31, 32, 150 through 161 and 163. Second Substitute Original Sheet No. 40.

CNG states that the purpose of the filing is to comply with the Commission's May 31, 1988 order in this proceeding. The effect of the filing is to decrease RQ and CD commodity rates by 1.11 cents per Dt from the original filing in this proceeding. The D-1 and D-2 demand rates have been reduced by 2.0 cents per Dt and 1.28 cents per Dt, respectively.

CNG states that the filing is based upon a quarterly gas supply and requirements estimate required by the Commission but reflects only those costs of gas used for operations (including lost and unaccounted for gas) allocable to sales for the quarter. CNG also made miscellaneous changes to its tariff in accordance with the Commission's May 31st order.

CNG will revise its take-or-pay passthrough proposals in another docket.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before July 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16744 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

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## FEDERAL COMMUNICATIONS COMMISSION

## Information Collection Requirement Approval by Office of Management and Budget

July 14, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

*OMB No.:* 3060-0066

*Title:* Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License

*Form No.:* FCC 330-R

The approval has been extended through 4/30/91. The July 1985 edition with a previous expiration date of 4/30/88 will remain in use until updated forms are available

*OMB No.:* 3060-0110

*Title:* Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Stations

*Form No.:* FCC 303-S

A revised form has been approved for use through 5/31/91. The October 1987 edition with an expiration date of 8/31/90 is obsolete.

*OMB No.:* 3060-0410

*Title:* Forecast of Investment Usage Report and Actual Usage of Investment Report

*Form Nos.:* FCC 495-A and 495-B

Two new reports have been approved for use through 3/31/91. The program was implemented effective May 31, 1988.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-16716 Filed 7-25-88; 8:45 am]

BILLING CODE 6712-01-M

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**[Report No. CF-11]**

## Window Notice for the Filing of FM Broadcast Applications

Released: July 18, 1988.

Notice is hereby given that applications for vacant FM Broadcast allotment listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending August 25, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

| Channel | City and State |
|---|---|
| 270C | Hill City, KS. |

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-16714 Filed 7-25-88; 8:45 am]

BILLING CODE 6712-01-M

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**[Report No. W-45]**

## Window Notice for the Filing of FM Broadcast Applications

Release: July 18, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning July 18, and ending August 25, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

**Channel—283A**

Glenwood.....AR
Lake Isabella.....CA
Carrier Mills.....IL
Saginaw.....MI
Washington.....MO
Mechanicville.....NY
Montpelier.....OH
Knoxville.....TN
Jefferson.....TX

| | |
|---|---|
| Plymouth [1] | WI |
| Whitewater | WI |
| **Channel—283C1** | |
| Pueblo | CO |
| **Channel—283C2** | |
| Lexington-Fayette | KY |

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[HR Doc. 88-16715 Filed 7-25-88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* New collection.

*Title:* Executive Fire Officer Program Application for Admission.

*Abstract:* Senior level (executive) fire officers will be required to complete the Executive Fire Officer Program Application for Admission to compete for acceptance into the program.

*Type of Respondents:* Individuals and State and local governments.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 300.

*Number of Respondents:* 300.

*Estimated Average Burden Hours Per Response:* 1 hour.

*Frequency of Response:* One time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 18, 1988.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 88-16739 Filed 7-25-88; 8:45 am]

BILLING CODE 6718-01-M

[1] The availability of channel 283A at Plymouth, WI is the subject of appeal in the DC Circuit Court. *James Reeden* vs. *the FCC* Case Number 86-1045.

## FEDERAL HOME LOAN BANK BOARD

### Senior Executive Service—Performance Review Board Updated Membership

July 19, 1988.

In accordance with Title IV of the Civil Service Reform Act of 1978, the Federal Home Loan Bank Board hereby gives notice of new memberships on the SES Performance Review Board. Current members are Gregory Rothwell (Chairman), Frank Haas, Karl Hoyle, Eugene Katz, Dennis Pittman and Rosemary Stewart.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Rendleman, Director of Personnel, Federal Home Loan Bank Board, (202) 377-6050.

**John Buckley, Jr.,**

*Secretary, Federal Home Loan Bank Board.*

[FR Doc. 88-16757 Filed 7-25-88; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200143.

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration (MPA) Puerto Rico Maritime Shipping Authority (PRMSA).

Synopsis: The proposed agreement provides for PRMSA's two (2) year lease of terminal space at MPA's Dundalk Marine Terminal for use in handing cargo in connection with common carriage by water.

By Order of the Federal Maritime Commission.

Dated: July 21, 1988.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88-16820 Filed 7-25-88; 8:45 am]

BILLING CODE 6730-01-M

## GENERAL SERVICES ADMINISTRATION

### Report to Congress; Report on the Costs of Operating Privately Owned Vehicles

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975) requires the periodic investigation of the operating costs of privately owned vehicles (automobiles, motorcycles, and airplanes) to Government employees while engaged on official business. Further, the Act requires that the results of these investigations be reported to the Congress and published in the "**Federal Register.**"

The following report is being published to comply with the requirements of the Act.

Dated: July 14, 1988.

**John Alderson,**

*Acting Administrator.*

**Report to Congress**

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975), 5 U.S.C. 5707(b), requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct a periodic investigation of the costs of operating privately owned vehicles to Government employees while engaged on official business and report the results to the Congress at least once a year. The Act further requires that a determination of the average, actual cost per mile be made based on the results of the investigation. Such figures must be reported to the Congress within 5 working days after the determinations have been made.

The General Services Administration (GSA) conducted a cost investigation based on calendar year 1987 data and consulted with representatives of employee ogranizations, the General Accounting Office, and the Departments of Defense and Transportation on the results. As required, GSA is reporting the results of that investigation and the cost per mile determinations.

GSA's investigation of the costs of operating privately owned vehicles revealed an average cost of 22.5 cents per mile for operating an automobile,

78.5 cents per mile for operating an airplane, and 21.5 cents per mile for operating a motorcycle. GSA is currently processing a revision to the Federal Travel Regulations increasing the automobile mileage reimbursement rate from the current level of 21 cents to 22.5 cents. GSA, however, is not making any changes in the airplane and motorcycle reimbursement rates of 45 cents per mile and 20 cents per mile, respectively, because those rates are currently set at the statutory ceilings.

This report on the costs of operating privately owned vehicles will be published in the "Federal Register."

[FR Doc. 88-16724 Filed 7-25-88; 8:45 am]
BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Vessel Sanitation Program (Cruise Ship Industry, etc.)

**ACTION:** Notice of public meeting between the Centers for Disease Control (CDC) and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9:00 a.m.—Wednesday, September 7, 1988.

Place: Miami Port Authority Passenger, Terminal No. 10, 1007 North American Way, Miami, Florida.

Status: Open to the public for participation, comment, and observation, limited only by space available.

**SUPPLEMENTARY INFORMATION:** As part of the revised Vessel Sanitation Program, CDC announced its intention to conduct quarterly public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is the fifth in a continuation of that series of public meetings.

Matters to be Considered: Experience to date with the operation of the Vessel Sanitation Program including a review of the results of vessel sanitation inspections. Information on the decision not to award a contract for the routine sanitation inspections and its impact on the program. Status of the proposed Vessel Sanitation Program Advisory Committee and other matters.

For a period of 15 days following the meeting, through September 22, 1988, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephone: FTS: 236-4111; Commerical: (404) 488-4111.

Dated: July 19, 1988.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 88-16710 Filed 7-25-88; 8:45 am]
BILLING CODE 4160-18-M

## Food and Drug Administration

**[Docket No. 88N-0247]**

### Reimportation of Prescription Drugs for Human Use; Import Alert; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of Import Alert 66-14 "Reimportation of all Prescription Drugs for Human Use" which provides guidance to FDA personnel regarding the reimportation of prescription drugs for human use. Import Alert 66-14 implements section 3 of the Prescription Drug Marketing Act of 1987 (Pub. L. 100-293) that amended the Federal Food, Drug, and Cosmetic Act.

**ADDRESS:** Written requests for single copies of Import Alert 66-14 to John Browne, Import Operations Branch (HFC-131), Food and Drug Administration, Rm. 12-16, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

**FOR FURTHER INFORMATION CONTACT:** Sally L. Maher, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

**SUPPLEMENTARY INFORMATION:** The Prescription Drug Marketing Act of 1987 (Pub. L. 100-293) was signed into law by the President on April 22, 1988. Section 3 of the new law amends section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by banning the reimportation of prescription drugs for human use produced in the United States, except when the drug is returned to the person who manufactured it or when the reimportation is authorized by the Secretary for emergency medical care. FDA has prepared Import Alert 66-14 to guide FDA's district offices in administering the new law.

Consistent with the mandate of the new law and under Import Alert 66-14, all reimported prescription human drugs for which the United States was the country of origin will be automatically detained and refused admission unless the importer was the manufacturer of the reimported drug or the importer has obtained appropriate authorization for use of the drug in a medical emergency. Import Alert 66-14 provides guidance on identifying those persons who may be considered the manufacturer of the drug for the purpose of being permitted to reenter it into the United States and on the information to be considered by FDA personnel in evaluating an application for reimportation based on alleged medical emergency.

Import Alert 66-14 is available for public examination at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9:00 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-16773 Filed 7-21-88; 3:59 pm]
BILLING CODE 4160-01-M

**[Docket No. 88F-0227]**

### N.L. Industries, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that N.L. Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of bentonite clay modified by reaction with benzyl dimethyl hydrogenated tallow alkyl ammonium chloride and sodium stearate, and for safe use of hectorite clay modified by reaction with a mixture of benzyl methyl bis(hydrogenated tallow alkyl) ammonium chloride and dimethyl bis(hydrogenated tallow alkyl) ammonium chloride, as pigments in resinous and polymeric coatings complying with 21 CFR 175.300 for use on repeated-use bulk food containers.

**FOR FURTHER INFORMATION CONTACT:** Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic

BEST COPY AVAILABLE

Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4082) has been filed by N.L. Industries, Inc., P.O. Box 1090, Hightstown, NJ 08520, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of bentonite clay modified by reaction with benzyl dimethyl hydrogenated tallow alkyl ammonium chloride and sodium stearate, and for safe use of hectorite clay modified by reaction with a mixture of benzyl methyl bis(hydrogenated tallow alkyl) ammonium chloride and dimethyl bis(hydrogenated tallow alkyl) ammonium chloride, as pigments in resinous and polymeric coatings for use on repeated-use bulk food containers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 18, 1988.

**Fred R. Shank,**

*Acting Deputy Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88-16772 Filed 7-25-88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY-930-08-4332-09]**

### Intent To Prepare and Environmental Impact Statement and Conduct Scoping Meetings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction.

This notice will correct the Notice of Inteant published in Vol. 53, No. 136, Friday, July 15, 1988 pages 26890—26891. The notice is corrected by changing the following addressess for scoping meetings to be conducted in Arizona:

*Arizona:* Scoping meetings will be conducted on August 2, 1988, from 7 to 9 p.m. at the following locations:

1. Phoenix District, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

2. Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85364.

July 19, 1988.

**Marlyn V. Jones,**

*Associate State Director, Wyoming.*

[FR Doc. 88-16741 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-22-M

**[OR-942-08-4520-12: GP8-192]**

### Filing of Plats of Survey: Oregon/ Washington

A **Federal Register** Notice published on Wednesday, June 29, 1988 (Vol. 53, No. 125, Pg. 24502), inadvertently indicated the township of two plats in column (2), lines 43 and 44 (from the top of the column), as being:

**Oregon**

T. 23 N., R. 9 E., accepted May 13, 1988,
T. 24 N., R. 9 E., accepted May 13, 1988.

It should have read:

**Oregon**

T. 23 S., R. 9 E., accepted May 13, 1988,
T. 24 S., R. 9 E., accepted May 13, 1988.

**B. LaVelle Black,**

*Chief, Branch of Lands and Minerals Operations.*

Dated: July 15, 1988.

[FR Doc. 88-16721 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-33-M

**[OR-942-08-4520-12: GP8-191]**

### Filing of Plats of Survey: Oregon/ Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

**Willamette Meridian**

*Oregon*

T. 10 S., R. 10 W., accepted July 1, 1988,
T. 8 S., R. 3 E., accepted July 1, 1988,
T. 8 S., R. 1 E., accepted July 8, 1988,
T. 3 S., R. 6 W., accepted July 8, 1988.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land management, 825 NE. Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the palt(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a portest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thrity (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 825 NE., Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

**B. LaVelle Black,**

*Chief, Branch of Lands and Minerals Operations.*

Dated: July 15, 1988.

[FR Doc. 88-16722 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-33-M

**[WY-930-08-4220-11; WYW 0105362, WYW 042188, WYW 49110]**

### Proposed Continuation of Forest Service Withdrawals; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service proposes to continue three withdrawals on 3,210 acres of national forest land in the Big Horn National Forest for an additional 20 years. All of the land will remain segregated from entry and location under the mining laws. The land in the Medicine Wheel Historic Area is additionally segregated from surface entry and mineral leasing. All of the other land remains open to mineral leasing.

**EFFECTIVE DATE:** Comments should be received by October 24, 1988.

**ADDRESS:** Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

**FOR FURTHER INFORMATION CONTACT:** Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

**SUPPLEMENTARY INFORMATION:** The Forest Service proposes that Public Land Order No. 3282, as modified by 3302, 1432, and 5600, dated December 3, 1963, January 13, 1964, June 6, 1957, and August 11, 1976, respectively, be continued for a period of 20 years to protect the natural areas and associated recreational and watershed values on two natural area sites, and to protect the archaeological values on the Medicine Wheel Historic Area. The continuation is pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**Sixth Principal Meridian**

*Big Horn National Forest*

*Bull Elk Park*

T. 57 N., R. 89 W.,
Sec. 19, SW¼SE¼NE¼, NW¼SW¼NE¼, S½SW¼NE¼, S½NE¼NW¼, E½SE¼NW¼, E½NE¼SW¼, W½NE¼SE¼, W½SE¼, NW¼SE¼SE¼, and S½SE¼SE¼;
Sec. 20, SW¼SW¼SW¼;
Sec. 29, S½SE¼NE¼, S½SW¼NE¼, W½NW¼NE¼, S½NW¼, N½SE¼, N½SE¼SE¼, SW¼SE¼, and SW¼;
Sec. 30, E½;
Sec. 31, NW¼NE¼NE¼, and NW¼NE¼.

*Medicine Wheel Historic Area*

T. 56 N., R. 92 W.,
Sec. 15, SW¼SW¼;
Sec. 16, SE¼SE¼.

*Story Mineral Entry*

T. 51 N., R. 84 W.,
Sec. 12, NE¼E½NW¼, and NE¼SE¼.
T. 52 N., R. 84 W.,
Sec. 23, S½NE¼, E½SW¼, and SE¼;
Sec. 26, NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼.
T. 53 N., R. 84 W.,
Sec. 14, all;
Sec. 15, NE¼NE¼;
Sec. 23, E½;
Sec. 26, NE¼.

The areas described aggregate 3,210 acres in Sheridan, Big Horn, and Johnson Counties.

The purpose of the withdrawals is protection of the watershed, wildlife, public recreation, historical, and scenic values of the two natural areas known as Bull Elk Park and Story Mineral Entry. The Medicine Wheel Historic Area withdrawal is needed to preserve and protect the historical and archaeological values of the Medicine Wheel, which is a registered national historic landmark. The Medicine Wheel Historic Area withdrawal segregates the land from surface entry, location and entry under mining laws, and from mineral leasing. The remainder of the land, located in the natural areas, is segregated only from location and entry under the mining laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations, may present their view in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Date: July 14, 1988.

**Hillary A. Oden,**

*State Director.*

[FR Doc. 88-16723 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-22-M

## Bureau of Indian Affairs

### Cancellation of a Notice of Intent To Prepare an Environmental Impact Statement; Santa Ana Pueblo Indian Reservation (Near Bernalillo, NM) for the Albuquerque International Raceway

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Cancellation of a Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** This Notice is to inform the public of the cancellation of an Environmental Impact Statement (EIS) for the proposal to lease approximately 525 acres of tribal lands on the Santa Ana Pueblo Indian Reservation (near Bernalillo, New Mexico) for a major international auto raceway in Sandoval County. The decision to cancel the EIS is based upon a Finding of No Significant Impact and an Environmental Assessment, which have been prepared for the project.

Availability: Copies of the Finding of No Significant Impact and the Environmental Assessment are available for public inspection or can be obtained at the following locations: Bureau of Indian Affairs, Albuquerque Area Office, Branch of Environmental Quality, 615 First Street, NW., P.O. Box 26567, Albuquerque, New Mexico 87125-6567 and Bureau of Indian Affairs, Southern Pueblos Agency, Branch of Real Property Management, 1000 Indian School Road, NW., P.O. Box 1667, Albuquerque, New Mexico 87103.

**DATES:** Interested persons may file written comments on the Finding of No Significant Impact within thirty (30) days of the date of this publication and should address them to the Bureau of Indian Affairs' official identified below:

**ADDRESS:** Written comments should be addressed to Mr. Sidney L. Mills, Area Director, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, New Mexico 87125-6567.

**FOR FURTHER INFORMATION CONTACT:** Marcus J. Sekayouma, Area Environmental Protection Specialist, or Bruce G. Harrill, Area Archeologist, Branch of Environmental Quality, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, New Mexico 87125-6567; telephone (505) 766-3374 or FTS 474-3374.

**SUPPLEMENTARY INFORMATION:** On February 10, 1988, the Bureau of Indian Affairs published in the Federal Register, 53 Fed. Reg. 27 3946 (1988) a Notice of Intent to Prepare an Environmental Impact Statement. Santa Ana Pueblo Indian Reservation (near Bernalillo, NM) for the Albuquerque International Auto Raceway. The notice invited the public to attend scoping meetings to provide input and questions concerning the proposal and the Environmental Impact Statement. Two scoping meetings were held on March 1, 1988, at the Governor's Office, Santa Ana Pueblo, New Mexico, and at the Amberly Suites Hotel, Albuquerque, New Mexico.

No oral or written comments were received at either scoping meeting nor were written comments submitted in response to the Notice of Intent, published in the **Federal Register** on February 10, 1988.

In preparing the Draft Environmental Impact Statement for the proposed Federal action to issue a lease to the applicant, Raceway Development Corporation, the Area Director, Albuquerque Area Office, Bureau of Indian Affairs, has determined that the proposed action is not a major Federal action requiring the preparation of an Environmental Impact Statement.

The Finding of No Significant Impact and the Environmental Assessment for this proposal have been prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et.*

*seq.*), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), Department of the Interior procedures (516 DM 1–6), and the Bureau of Indian Affairs Handbook (30 BIAM Supplement 1) for compliance with the procedures.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Date: July 18, 1988.

**W.P. Ragsdale,**

*Acting Assistant Secretary, Indian Affairs.*

[FR Doc. 88–16733 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–02–M

## Fish and Wildlife Service

### Annual Waterfowl Status Meeting and Meetings of the U.S. Fish and Wildlife Service Migratory Bird Regulations Committee

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** The U.S. Fish and Wildlife Service, Office of Migratory Bird Management will conduct an open meeting on July 25 to review the status of waterfowl populations and the 1988 fall flight forecast for ducks. The Service Regulations Committee will meet August 2 to develop 1988–89 waterfowl hunting regulations recommendations for presentation at the August 3 public hearing to be held in Washington, DC (as announced in the March 9, 1988, **Federal Register** at 53 FR 7702), and will meet immediately after the public hearing to review the public comments presented at the hearing and develop proposed 1988–89 waterfowl hunting regulations framework.

**DATES:** Waterfowl Status Meeting, July 25, 1988; Service Regulations Committee Meetings, August 2 and 3, 1988.

**ADDRESSES:** The Waterfowl Status Meeting will be held at the Stouffer Concourse Hotel, 3801 Quebec Street, in Denver, Colorado. The Service Regulations Committee Meeting on August 2, 1988, will be held in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW.), Washington, DC. The Service Regulations Committee Meeting on August 3, 1988, will be held in the North Penthouse, Room 8068, Department of the Interior Building, 18th & C Streets, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building—Room 536, Department of the Interior, Washington DC 20240, telephone (202) 254–3207.

**SUPPLEMENTARY INFORMATION:** On July 25 at 8:30 a.m. at the Stouffer Concourse Hotel in Denver, Colorado, the U.S. Fish and Wildlife Service, Office of Migratory Bird Management will review for State and Federal officials and any other interested parties or individuals results of the various field investigations and data analyses that are used annually to determine the status of waterfowl populations and the fall flight forecast for ducks. The information presented will have a bearing on regulations and the regulatory proposals; however, the meeting is not a regulations meeting. Public comment will be limited to that which supplements the status information presented.

The U.S. Fish and Wildlife Service, Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, DC on August 2 at 8:30 a.m., in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW), and on August 3 at 1 p.m. in the North Penthouse, Room 8068, Department of the Interior Building. The meeting on August 2 is to review discussions that occurred at the flyway council meetings and to discuss and develop recommendations for 1988–89 waterfowl hunting regulations to be presented at the public hearing to be held in Washington, DC on August 3 at 9 a.m. The August 3 meeting of the Service Regulations Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, the meetings of August 2 and 3 will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: July 20, 1988.

**Frank Dunkle,**

*Director.*

[FR Doc. 88–16771 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–55–M

## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

Approval for the collection of information listed below has been requested from the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting documentation may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the collection of information should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340; with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091.

*Title:* Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR Part 250.

*Abstract:* Rules governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS) were consolidated into the revised and updated 30 CFR Part 250 which became effective May 31, 1988. All subparts of the revised rule contain narrative information collection requirements which have been approved by OMB. After the information collection was approved by OMB, the information collection requirements contained in § 250.126(b)(1) and (2) of Subpart H, Production Safety Systems, were written. The Minerals Management Service determined that the additional information was necessary to allow lessees to continue to use pre-1980 uncertified valves from inventory. This action minimizes the economic impact of the revised regulations on lessees.

*Bureau Form Number.* None.

*Frequency:* On occasion.

*Description of Respondents:* Federal OCS oil, gas, and sulphur lessees.

Subpart H, Production Safety Systems

*Estimated Completion Time:* 11.8 hours.

*Annual Responses:* 146.

*Recordkeeping:* 1687 hours.

*Annual Burden Hours: 3,433.*

*Bureau Clearance Officer:* Dorothy Christopher, telephone (703) 435–6213.

Date: July 11, 1988.

**Richard B. Krahl,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 88–16720 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–MR–M

## Development Operations Coordination Document; CNG Producing Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8443, Block 75, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Houma, Louisiana.

**DATE:** The subject DOCD was deemed submitted July 15, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 18, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88–16759 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–MR–M

## Development Operations Coordination Document; Hall-Houston

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6203, Block A–173, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

**DATE:** The subject DOCD was deemed submitted on July 13, 1988.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Joseph; Minerals Management Service, Gulf fo Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 18, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88–16760 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

### National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 16, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 10, 1988.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**COLORADO**

**Eagle County**

Woods Lake Resort, 11 mi. N of Thomasville at Woods Lake, Thomasville vicinty, 88001225

**ILLINOIS**

**McLean County**

White Place Historic District, White Pl., Clinton Blvd., and E side of Fall Ave. betwen Empire and Emerson Sts., Bloomington, 88001230

**Rock Island County**

Connor House, 702 Twentieth St., Rock Island, 88001227

**Tazewell County**

Allentown Union Hall, 2 mi. E of IL 121, Allentown, 88001228

**Warren County**

Carr House, 416 E. Broadway, Monmouth, 88001229

INDIANA

Allen County

Blackstone Building, 112 W. Washington, Fort Wayne, 88001219
Fort Wayne Printing Company Building, 114 W. Washington St., Fort Wayne, 88001220
Kresge—Groth Building, 914 S. Calhoun St., Fort Wayne, 88001223
Mohr, Louis, Block, 119 W. Wayne St., Fort Wayne, 88001222
Schmitz Block, 926—930 S. Calhoun St., Fort Wayne, 88001224

Bartholomew County

McKinley School, Seventeenth St. and Home Ave., Columbus, 88001221

Delaware County

Wysor Heights Historic District, Roughly bounded by Highland Ave., White River, N. Elm St. and N. Walnut St., Muncie, 88001217

Grant County

Wilson, J. Woodrow, House, 723 W. Fourth St., Marion, 88001216

Marion County

Buschmann, William, Block, 968—972 Fort Wayne Ave., Indianapolis, 88001225

NEW YORK

Oswego County

Sloan, George B., Estate, 107 W. Van Buren St., Oswego, 88001237

OKLAHOMA

Sequoyah County

Ellison #2 Site (34SQ85), Address Restricted, Short vicinity, 88001234
Fears Site (34SQ76), Address Restricted, Nicut vicinity, 88001235

OREGON

Klamath County

Richardson—Ulrich House, 636 Conger Ave., Klamath Falls, 88001244

Marion County

Marion County Housing Committee Demonstration House, 140 Wilson St., S. Salem, 88001243

Multnomah County

Price, O.L., House, 2881 SW Buena Vista, Portland, 88001242
Hortman, H.C., House, 1111 SW Vista Ave., Portland, 88001245

PUERTO RICO

Mayaguez Municipality

Cementerio Municipal de Mayaguez (Cemeteries in Puerto Rico, 1804—1920 MPS), Southern end of Port St., Mayaguez, 88001247

Ponce Municipality

Cementerio Catolico San Vicente de Paul (Cementeries in Puerto Rico, 1804—1920 MPS) Off PR 10, Ponce, 88001249

San Juan Municipality

Cementerio Santa Maria Magdalena de Pazzis (Cemeteries in Puerto Rico, 1804—1920 MPS) Calle del Cementerio, San Juan, 88001246

*Correction:* Some of the properties within the Canyonlands MRA were erroneously listed as individual properties and should read as follows:

UTAH

Garfield County

Moab vicinity, *Kolb Brothers "Cat Camp" Inscription (Canyonlands National Park MRA)*, Big Drop #2 vicinity 88001250

San Juan County

Moab vicinity, *Cave Springs Cowboys Camp (Canyonlands National Park MRA)*, Cave Springs vicinity 88001233
Moab vicinity, *Julien Inscription (Canyonlands National Park MRA)*, Lower Red Lake vicinity 88001248
Moab vicinity, *Kirk's Cabin Complex (Canyonlands National Park MRA)*, Upper Salt Walsh 88001252
Moab vicinity, *Lost Canyon Cowby Camp (Canyonlands National Park MRA)*, Lost Canyon vicinity 88001232
Moab vicinity, *Murphy Trail and Bridge (Canyonlands National Park MRA)*, Murphy Point vicinity 88001236

Wayne County

Moab vicinity, *D.C.C. & P. Inscription "B" (Canyonlands National Park MRA)*, Confluence vicinity 88001251

[FR Doc. 88-16837 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### San Francisco Movers Tariff Bureau—Agreement

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision and request for comment.

**SUMMARY:** San Francisco Movers Tariff Bureau (San Francisco) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of San Francisco's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from San Francisco's representative: Ann M. Pougiales, 100 Bush Street, Suite 1333, San Francisco, CA 94104.

**DATE:** Comments from interested persons are due August 25, 1988. Replies are due 15 days thereafter.

**ADDRESS:** An original and 10 copies, if possible, of comments referring to section 5a Application No. 24 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Berry, (202) 275-7762.
or
Richard Felder, (202) 275-7691.
[TDD for hearing impaired: (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** We have provisionally approved San Francisco's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Implementation of P.L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (*Rate Bureau*), subject to certain conditions and modifications in the following areas: Identification and description of member carriers; open meetings; final disposition of cases; and general standards for carrier discussion and voting on collectively established rates. We also have offered comments and imposed requirements concerning the agreement generally. San Francisco has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to San Francisco's agreement.

A copy of any comments filed with the Commission also must be served on San Francisco, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that San Francisco must submit to the Commission as a condition to final approval of its agreement.

Additional information is contained in the Commission's decision. Copies may be obtained from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428 (assistance for the hearing impaired is available through TDD services (202) 275-1721).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Authority:** 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: July 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16745 Filed 7-25-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB-290; Sub-No. 32]**

## Southern Railway Co.; Abandonment Between Wabash Mine and Ledford in Wabash, Edwards, White, Gallatin and Saline Counties, IL; Notice of Findings

The Commission has issued a certificate authorizing Southern Railway Company to abandon its 58.4-mile rail line between Wabash Mine (milepost CB-132.0) and Ledford (milepost CB-190.4), in Wabash, Edwards, White, Gallatin, and Saline Counties, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16919 Filed 7-25-88; 8:45 am]

BILLING CODE 7035-01-M

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## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 18, 1988, a proposed consent decree in *United States v. City of Sarasota and the State of Florida,* Civil Action No. 87-210-CIV-T-15B, was lodged with the United States District Court for the Middle District of Florida. The Complaint filed by the United States alleged violations of the Clean Water Act for failure to comply with a construction schedule, effluent limitations, and operations and maintenance requirements under the terms of its National Pollutant Discharge Elimination System permit. The complaint sought injunctive relief to require the defendant to comply with the Clean Water Act and civil penalties for past violations. The decree requires defendants to achieve compliance with the Clean Water Act by ceasing all unpermitted discharges by not later than September 30, 1990. In addition, defendant must comply with interim discharge requirements and effluent limitations and must perform monitoring and reporting activities. Defendant must also pay a civil penalty for past violations of $500,000.00 and must contribute $100,000.00 into a trust fund for a study of Sarasota Bay.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States v. City of Sarasota and State of Florida,* D.J. Ref. 90-5-1-1-2788.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Florida, Robert Timberlake Building, 500 Zack Street, Tampa, Florida, and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW, Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy, please refer to *United States v. City of Sarasota and State of Florida,* D.J. Ref. 90-5-1-1-2788, and enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-16758 Filed 7-25-88; 8:45 am]

BILLING CODE 4410-01-M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

#### List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer,

Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**New Collection**

*Employment Standards Administration*

29 CFR Part 502; Reporting and Employing Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

29 CFR Part 502

Recordkeeping

Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; small businesses or organizations

52,000 recordkeepers; 52,000 total recordkeeping hours; 15 minutes per record per quarter

Section 210A of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) requires any employer to report information about the quantity of work performed by a special agricultural worker employed in seasonal agricultural services. This information is submitted in certificate form to the Federal government and to any individual replenishment agricultural worker.

*Employment Standards Administration*

Work-Day Report

ESA-92

Quarterly

Individuals or households; farms; businesses or other for-profit; Federal agencies or employees; small businesses or organizations 52,000 respondents; 35,534 total hours; 20 min. per response; 1 form section 210 A of the Immigration and Nationality Act (INA) and 29 CFR Part 502 requires employers of reportable workers in seasonal agricultural services during the period beginning October 1, 1988, through September 30, 1992, to certify such worker's employment to the Federal government.

**Revision**

*Employment Standards Administration*

Wage Statement

1215-0148; WH-501 and 501R(S)

Every pay day or every two weeks

Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; small businesses or organizations

52,000 respondents; total reporting hours 84,933; 1½ minutes per response; 52,000 recordkeepers; 80,666 total recordkeeping burden; 1 minute per form; total annual burden 145,599

The Immigration and Nationality Act requires employers of replenishment workers to provide a report to the worker certifying their employment with each wage payment. The Migrant and Seasonal Agricultural Worker Protection Act requires employers of agricultural workers to maintain specific weekly payroll information and provide written copies to each worker and the person furnished the worker.

**Revision**

*Occupational Safety and Health Administration*

Onsite Consultation Agreements

1218-0110

States participating in the OSHA 7(c)(1) Consultation Program are required to prepare an annual cooperative agreement. In addition, as part of the consultation services provided, State consultants are required to furnish written reports of their safety and health findings to the employer. Employers receiving the services are required to notify the consultation State office of the correction of serious hazards found during the consultation visit.

Regulatory Requirements

1. Notify OSHA Enforcement Authority * * * if employer fails to take correctdive action (29 CFR 1908.6(f)(4).
2. Prepare and transmit to the employer a written report of consultant's findings (29 CFR 1908.6(g).
3. Establish and maintain an organized consultant performance monitoring system (29 CFR 1908.9(b).
4. Compile and submit factual and statistical information (29 1908.9(c).
5. Prepare and submit Annual Cooperative Agreement (29 CFR 1908.10(c).
6. Notify the consultation project manager, by written confirmation, of the correction of the hazards unless correction of the serious hazards is verified by direct observation by the consultant (29 CFR 1908.6(f)(5).
7. Inform any OSHA or State Compliance Officer who arrives that a consultation visit is in progress (29 CFR 1908.7(b)(1).
8. Post a notice of participation (29 CFR 1908.7(b)(4).

| Req. No. | Affected public | Respondents | Frequency | Average time per response | Total hours |
|---|---|---|---|---|---|
| 1 | State Government | 5 | On occasion | 30 minutes | 3 |
| 2 | State Government | 24,600 | do | 5¾ hours | 133,086 |
| 3 | State Government | 479 | Annually | 6 hours | |
| | | 65 | Quarterly | 2.1 hours | 3,420 |
| 4 | State Government | 65 | On occasion | 30 hours | 2,002 |
| 5 | State Government | 48 | Annually | 2 hours | 96 |
| 6 | Businesses | 24,600 | On occasion | 5 minutes | 1,998 |
| 7 | Businesses | 1,355 | do | 10 minutes | 122 |
| 8 | Businesses No burden calculations are associated with this activity. | | | | |
| | Total hours | | | | 140,697 |

Signed at Washington, DC, this 21st day of July 1988.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 88-16824 Filed 7-25-88; 8:45 am]

BILLING CODE 4510-27-M

## Employment Standards Administration; Wage and Hour Division

### Child Labor Advisory Committee; Subcommittee on Hazardous Occupations Order No. 10; Cancellation of Meeting

The meeting of the Child Labor Advisory Committee, Sub-Committee on Hazardous Occupations Order No. 10, which was scheduled to be held on August 3 and 4, 1988, is cancelled.

Telephone inquiries concerning the cancellation of this meeting should be directed to Ms. Nila Stovall, Coordinator for the Child Labor Advisory Committee, at (202) 523-7640.

Signed at Washington, DC, this 20th day of July, 1988.

**Paula V. Smith,**

*Administrator.*

[FR Doc. 88-16822 Filed 7-25-88; 8:45 am]

BILLING CODE 4510-27-M

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Allen Automated Systems Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 18th day of July 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (Union/Workers/Firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Allen Automated Systems Co. (Company) | Saginaw, MI | 7/18/88 | 7/6/88 | 20,804 | Automated assembly and material handling systems. |
| Aris Isotoner (UAW) | Secausus, NJ | 7/18/88 | 7/7/88 | 20,805 | Distribution center gloves and other accessories. |
| Bates Shoe Co. (Workers) | Webster, MA | 7/18/88 | 7/8/88 | 20,806 | Shes and boots for military, police and civilian use. |
| C. Cosentino Fabrics (ACTWU) | Paterson, NJ | 7/18/88 | 7/7/88 | 20,807 | (Cotton and silk) upholstery fabric. |
| Crown Central Petroleum Corp. (Workers) | Bellaire, TX | 7/18/88 | 7/1/88 | 20,808 | Crude oil and natural gas. |
| Crown Central Petroleum Corp. (Workers) | Midland, TX | 7/18/88 | 7/1/88 | 20,809 | Crude oil and natural gas. |
| Crown Central Petroleum Corp. (Workers) | Oklahoma City, OK | 7/18/88 | 7/1/88 | 20,810 | Crude oil and natural gas. |
| DMS, Inc. (Company) | Whitman, MA | 7/18/88 | 7/5/88 | 20,811 | Women's sportswear. |
| Damon Creations (Workers) | North Bergen, NJ | 7/18/88 | 7/7/88 | 20,812 | Men's shirts, ties and sweaters. |
| Fashion Barn (UAW) | Saddlebrook, NJ | 7/18/88 | 7/7/88 | 20,813 | Distribtuion center for "ready to Wear" retail chain. |
| Fisher Stevens, Inc. Pharmaceutical Industry (UAW). | Totowa, NJ | 7/18/88 | 7/7/88 | 20,814 | Various services for pharmaceutical industry. |
| Head Sports, Inc. (Workers) | Boulder, CO | 7/18/88 | 6/27/88 | 20,815 | Tennis and squash rackets. |
| Lone Star Industries, Utah Div. (IBB) | Salt Lake City UT | 7/18/88 | 7/8/88 | 20,816 | Cement. |
| Rokeach (UAW) | Farmingdale, NJ | 7/18/88 | 7/7/88 | 20,817 | Kosher foods. |
| N.G. Toys Corp. (UAW) | New Brunswick, NJ | 7/18/88 | 7/7/88 | 20,818 | Plastic toy. |
| Queen Casuals, Inc. (ILGWU) | Philadelphia, PA | 7/11/88 | 6/30/88 | 20,819 | Ladies' knitwear. |
| Queen Casuals, Inc. (ILGWU) | ATCO, NJ | 7/11/88 | 6/30/88 | 20,820 | Ladies' knitwear. |
| Tultex (Workers) | Vesta, VA | 7/18/88 | 7/7/88 | 20,821 | Fleecewear. |

[FR Doc. 88-16823 Filed 7-25-88; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (88-56)]**

### Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearence (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB

Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

**Reports**

*Title:* Patent License Report.
*OMB Number:* 2700–0010.
*Type of Request:* Extension.
*Frequency of Report:* Annual.
*Type of Respondent:* Businesses or other for profit, small businesses or organizations.
*Number of Respondents:* 600.
*Hours per Response:* 0.5.
*Annual Responses:* 600.
*Annual Burden Hours:* 300.
*Abstract-Need/Uses:* NASA grants patent licenses to businesses for the commercial use of NASA-owned inventions. Each licensee is required to report its progress annually in commercializing our inventions and the amount of royalties due to NASA.

**John F. Duggan,**
*Director, General Management Division.*
July 13, 1988.
[FR Doc. 88–16702 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

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**[Notice (88–67)]**

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

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**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearence (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

**Reports**

*Title:* Tape Use Survey.
*OMB Number:* 2700–0012.
*Type of Request:* Reinstatement.
*Frequency of Report:* On occasion.
*Type of Respondent:* Businesses or other for profit, non-profit institutions, small businesses or organizations.
*Number of Respondents:* 580.
*Hours per Response:* 0.3.
*Annual Responses:* 580.
*Annual Burden Hours:* 174.
*Abstract-Need/Uses:* NASA produces audio tapes each month to report status on its programs and research underway. These tapes are mailed to TV and radio stations throughout the country for use as public service programming or as news features. This "post-card" report is used to measure the effectiveness of the tapes and provides the date and time they are aired.

**John F. Duggan,**
*Director, General Management Division.*
July 13, 1988.
[FR Doc. 88–16703 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

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**[Notice (88–68)]**

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

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**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

**Reports**

*Title:* Application for Patent License.
*OMB Number:* 2700–0039.
*Type of Request:* Extension.
*Frequency of Report:* As Required.
*Type of Respondent:* Individuals or households, businesses or other for profit, small businesses or organizations.
*Number of Respondents:* 25.
*Hours per Responses:* 6.
*Annual Responses:* 25.
*Annual Burden Hours:* 150.
*Abstract-Need/Uses:* Pursuant to 35 U.S.C. 209, applicants for patent license must submit specific information in support of their request for a patent license. The information submitted is used to determine whether the license should be granted.

**John F. Duggan,**
*Director, General Management Division.*
July 13, 1988.
[FR Doc. 88–16704 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

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**[Notice (88–69)]**

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

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**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection

requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

**Reports**

*Title:* Patent Waiver Report.
*OMB Number:* 2700–0050.
*Type of Request:* Extension.
*Frequency of Report:* Annually.
*Type of Respondent:* Businesses or other for profit.
*Number of Respondents:* 153.
*Hours per Responses:* 2.
*Annual Responses:* 306.
*Annual Burden Hours:* 326.
*Abstract-Need/Uses:* The NASA Patent Waiver form which is completed by NASA contractors is designed to elicit information that is deemed necessary for the NASA Inventions and Contributions Board to evaluate the progress of development and commercialization for waived inventions. The NASA Patent Waiver Regulations require the waiver recipient to report on the utilization of waived inventions.

**John F. Duggan,**
*Director, General Management Division.*
**July 15, 1988.**

[FR Doc. 88–16705 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

[Notice (88–70)]

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted ot OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

**Reports**

*Title:* NASA/Goddard Space Flight Center, Greenbelt, MD Application for Volunteer Program.
*OMB Number:* 2700–0057.
*Type of Request:* Reinstatement.
*Frequency of Report:* On occasion.
*Type of Respondent:* Individuals or households.
*Number of Respondents:* 50.
*Hours per Response:* 1.
*Annual Responses:* 50.
*Annual Burden Hours:* 50.
*Abstract-Need/Uses:* Goddard Space Flight Center has established a volunteer program for conducted tours for visitors. Respondents will furnish information to enable selection. An anticipated 50 to 100 applications from retirees, students, housewives and senior citizens are expected.

**John F. Duggan,**
*Director, General Management Division.*
**July 15, 1988.**

[FR Doc. 88–16706 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted by August 25, 1988.

**ADDRESSES:** Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania NW., Washington, DC 20506; (202 682–5401).

**FOR FURTHER INFORMATION CONTACT:** Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Museum Program Application Guidelines for FY 1990.
*Frequency of Collection:* One-time.

*Respondents:* Individuals or households; State or local governments; Non-profit institutions.

*Use:* Federal aid is provided in the form of grants for arts and educational oriented projects. Guideline instructions and applications elicit relevant information from individuals, non-profit organizations and state and local arts agencies that apply for funding under specific Museum program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

*Estimated Number of Respondents:* 787.

*Average Burden Hours per Response:* 18.24.

*Total Estimated Burden:* 22,377.

**Murray R. Welsh,**

*Director, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 88-16740 Filed 7-25-88; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

**AGENCY:** Nculear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: State Agreements Program.

3. The form number if applicable: N/A.

4. How often the collection is required: One time or as needed.

5. Who will be required or asked to report: The respondent universe are 29 States who have signed section 274(b) agreements with NRC.

6. An estimate of the number of responses: 1,000 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 10,000 annually, 10 hours per response.

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. Abstract: Agreement States are surveyed to obtain comprehensive information on the materials regulatory program in their States.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H. Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 21 day of July 1988.

For the Nuclear Regulatory Commission.

**William G. McDonald,**

*Director, Office of Administration and Resources Management.*

[FR Doc. 88-16781 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-341]**

### Detroit Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for operation of Fermi-2 located in Monroe County, Michigan.

**Environmental Assessment**

*Identification of Proposed Action*

The amendment would revise the Fermi-2 Technical Specifications (TSs) to correct an error in Table 3.3.7.12-1, "Radioactive Gaseous Effluent Monitoring Instrumentation," in response to the licensee's letter dated November 20, 1987 (NRC-87-0217).

*The Need for the Proposed Action*

The proposed change to the TSs is required to make Table 3.3.7.12-1 consistent with the surveillance requirements of Table 4.3.7.12-1.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed amendment would revise Table 3.3.7.12-1 by deleting Item 3.d, Effluent System Flow Monitor, for the Standby Gas Treatment System.

In the licensee's Radiological Effluent Technical Specifications, radioactive gaseous effluent monitoring operability and surveillance requirements are recorded for six different gaseous effluent systems. For all six systems, the surveillance requirements involve: a) Noble gas monitor, b) iodine sampler, c) particulate sampler, and d) sampler flow rate monitor. For the operability requirements, five of the systems include the same items a-d above, but for the sixth, Standby Gas Treatment System, a fifth entry, "Effluent System Flow Rate Monitor," appears. This is the item that the licensee proposes to remove, since it was inadvertently left in the Technical Specifications while reference to flow rate monitor was removed for the other systems.

A more conservative approach than using the actual flow rate has been taken in the calculations of set points for all six systems in the Offsite Dose Calculation Manual. This approach uses the maximum flow rate, and consequently, a flow rate monitor is not necessary. Therefore, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TSs involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no signficant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 25, 1988 (53 FR 9831). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternatives to the Proposed Action*

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributed to the facility.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in connection with the "Final

Environmental Statement Related to Operation of Fermi-2," dated August 1981.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated November 20, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 20th day of July 1988.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Director, Project Directorate III–1 Division of Reactor Projects–III, IV, V and Special Projects.*

[FR Doc. 88–16782 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–341]**

**Detroit Edison Co., Woverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for operation of Fermi-2 located in Monroe County, Michigan.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise provisions in the Fermi-2 Technical Specifications (TSs) relating to the Radioactive Gaseous and Liquid Effluent Monitoring Instrumentation.

*The Need for the Proposed Action*

The proposed changes to the TSs are required to allow continued use of release pathways for which effluent monitoring instrumentation may not be operable provided that grab samples and analyses and/or flow rate calculations are made at the specified frequencies. A plant shutdown may be avoided when the primary instrumentation is inoperable even though compensatory measures are available.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed revision would make the Fermi-2 TSs meet the intent of the Commission's model Radiological Effluent Technical Specifications for BWRs, NUREG–0473, Revision 2, February 1, 1980, by providing appropriate compensatory measures in the event of inoperable primary monitoring. The reporting requirements would also be made consistent with the TS changes. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact.

With regard to potential nonradiological impacts, the proposed amendment involves systems located within the restricted area as defined in 10 CFR Part 20. It does not effect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concudes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 13, 1988 (53 FR 17130). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternatives to the Proposed Action*

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This could result in unnecessary plant shutdowns.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated March 28, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 20th day of July, 1988.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88–16783 Filed 7–25–88; 8:45 a.m.]

BILLING CODE 7590–01–M

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**[Docket No. 50–346]**

**Toledo Edison Co., The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 locatd in Ottawa County, Ohio.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TS's) relating to incorporation of ASME Section III, 1971 Edition, code requirements for the Main Steam Safety Valves' (MSSV's) setpoints versus citing specific setpoints for each of the MSSV's in accordance

with Toledo Edison Company's application dated March 4, 1988 and supplemented by letter dated May 4, 1988. Specifically, the proposed amendment would:

(1) Delete Technical Specification Table 4.7-1, "Steam Line Safety Valves Per Steam Generator";

(2) Remove the reference to Table 4.7-1 from the Technical Specification Surveillance Requirement 4.7.1.1;

(3) Revise the Technical Specifications Basis 3/4.7.1.1 to reflect the ASME Section III, 1971 Edition code requirements and how they are met; and

(4) Revise Technical Specifications 3.7.1.1 to incorporate the ASME Setion III, 1971 Edition code requirements by specifying

(a) A minimum of two OPERABLE safety valves per steam generator, one with a setpoint not greater than 1050 psig (+/− 1%), and

(b) A maximum setpoint of 1100 psig (+/− 1%) for any OPERABLE safety valve.

*The Need for the Proposed Action*

The proposed changes are needed to support greater flexibility in the requirements for valve set pressure and in valve replacement, while maintaining required overpressure protection for the steam generators and main steam system consistent with the requirements of ASME Section III, 1971 Edition.

*Environmental Impacts of the Proposed Action*

The Davis-Besse MSSV's provide steam generator and main steam system overpressure protection following turbine trip from rated power coincident with a total loss of condenser heat sink. This overpressure protection is accomplished by assuring that the total relieving capacity of the MSSV's is at least as large as the steam produced during operation at rated thermal power, and that the valve lift settings are in accordance with the ASME Code. With the proper relieving capacity of the valves, the pressure will not exceed 110 percent of the design pressure for any system upset conditions. The proposed amendment would only change certain of the valve setpoints. The integrated steam mass released through the MSSV's to the atmosphere is independent of this change and, therefore, previously postulated off-site doses due to the mass release are unaffected by the MSSV setpoint change.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined and occupational radiation exposure is unaffected. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves a change to the Main Steam Safety Valve setpoints. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 24, 1988 (53 FR 18631). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternatives to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in the MSSV setpoints remaining as they are specifically cited presently in the Technical Specifications.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 4, 1988 and supplemental letter dated May 4, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 19th day of July, 1988.

For the Nuclear Regulatory Commission.

**Kenneth E. Perkins,**

*Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V & Special Projects.*

[FR Doc. 88-16784 Filed 7-25-88; 8:45 a.m.]

BILLING CODE 7590-01-M

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**[Docket No. 50-346]**

**Toledo Edison Co., The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TS's) relating to Steam and Feedwater Rupture Control System Instrumentation in accordance with Toledo Edison Company's application dated January 28, 1988. Specifically, the proposed amendment would delete references to 8 of 16 pressure switches used to initiate the Steam and Feedwater Rupture Control System on Low Steam Generator pressure.

*The Need for the Proposed Action*

The proposed changes are needed to reflect the configuration being implemented by the licensee wherein 8 of 16 currently used low pressure switches will no longer be in use. Currently, two pressure switches per steam line provide input to each logic channel. Actuation of either of these pressure switches will trip the logic channel. There are two redundant logic channels for each independent Steam and Feedwater Rupture Control System actuation channel. The proposed amendment would reduce the number of pressure switches so that only one

pressure switch per steam line would provide input to each logic channel. The total number of channels, channels to trip, minimum channels operable, and required action would remain unchanged. This reduction in the number of switches will decrease the probability of spurious actuations of the Steam and Feedwater Control System.

*Environmental Impacts of the Proposed Action*

The Davis-Besse Steam and Feedwater Rupture Control System is designed to mitigate the consequences of a main steam or main feedwater line break. The low pressure switches provide a means of detecting rupture of main steam or main feedwater piping. This reduction in the number of switches will not increase the likelihood or consequences of an accident since the switches being removed are redundant. Following the reduction in the number of pressure switches, there will be one pressure switch for each steam line in each logic channel. Since there are redundant logic channels, the single failure criteria is maintained. In addition, decreasing the number of pressure switches, will decrease the likelihood of a transient resulting from a spurious Steam and Feedwater Rupture Control System initiation.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves a change in Steam and Feedwater Rupture Control System actuation switches. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 24, 1988 (53 FR 18630). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternatives to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in increased potential for spurious Steam and Feedwater Rupture Control System actuations.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 28, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 19th day of July, 1988.

For the Nuclear Regulatory Commission.

**Kenneth E. Perkins, Jr.,**

*Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V & Special Projects.*

[FR Doc. 88–16785 Filed 7–25–88; 8:45 am]

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**[Docket No. 50–029]**

**Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–3 issued to Yankee Atomic Power Company, (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendemnt would modify the Technical Specifications (TS) by changing the shutdown margin switching temperature from 490°F to 470°F. In addition, a typographical error and the omission of a previously approved surveillance requirement is corrected.

The proposed action is in accordance with the licensee's application for amendment dated March 23, 1988.

*The Need for the Proposed Action*

The proposed change to the TS was submitted by the licensee to increase flexibility during Mode 3 operation and to correct two administrative errors.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit the licensee to go from Mode 1 to Mode 3 operation without making large boration changes. This change affects Mode 3 operation only. In Mode 3 the reactor is shutdown and is defined as "Hot Standby." During an unplanned shutdown, a situation arises where the transition from power operation (Mode 1) to Mode 3 occurs at temperatures below 490°F. This situation requires large borations of the coolant and subsequent deboration. The proposed T.S. change would preclude this unnecessary injection of Boric Acid into the primary coolant and ultimately reduce the quantity of undesirable activated solid waste products. The change would provide a beneficial impact on the environment. The Staff has reviewed the proposed amendment and has concluded that the change does not adversely affect safety of operation, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not

affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts assocated with the proposed amendment.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed to prior to the requirement for issuance of a Final Environmental Statement.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 23, 1988 which is available for pblic inspection at the Commission's Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 19th day of July, 1988.

For the Nuclear Regulatory Commission.

**Richard H. Wessman,**

*Director, Project Directorate I–3, Division of Reactor Projects I/II.*

[FR Doc. 88–16786 Filed 7/25/88;8:45am]

BILLING CODE 7590–01–M

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**Advisory Committee on Reactor Safeguards Subcommittee on Auxiliary Systems; Meeting**

The ACRS Subcommittee on Auxiliary Systems will hold a meeting on August 10, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, August 10, 1988—8:00 a.m. until 12:30 p.m.*

The Subcommittee will discuss the proposed resolution of USI A–17, "Systems Interactions in Nuclear Power Plants," and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statement will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date July 20, 1988.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 88–16777 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

**Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting**

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on August 9, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Tuesday, August 9, 1988—8:30 a.m. until the conclusion of business.*

The Subcommittee will review Chapters 3, 4, and 5 of the EPRI LWR Requirements Document. The NRC Staff will briefly discuss Chapter 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statments should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1413) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: July 18, 1988.
**Morton W. Kibarkin,**
*Assistant, Executive Director for Project Review.*

[FR Doc. 88-16778 Filed 7-25-88; 8:45 am]
BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published June 14, 1988 (53 FR 22241). Those meetings which are definitely scheduled have had, or will have, an indiviual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 A.M. and ACRS Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1988 ACNW and the August 1988 ACRS full Committee meetings can be otained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 7:30 A.M. and 4:15 P.M., Eastern Time.

### ACRS Subcommittee Meetings

*Decay Heat Removal Systems*, July 27, 1988, Washington, DC. The Subcommittee will continue its review of the NRC Staff's resolution position for USI A-45.

*Adanced Reactor Designs*, August 3, 1988, Washington, DC. The Subcommittee will continue its review of the draft SER of the Modular HTGR conceptual design.

*Safety Philosophy, Technology and Criteria*, August 4, 1988, Washington, DC. The Subcommittee will review the status of NUREG/1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to severe reactivity transients. NUREG-1251 discussion will include: (1) Human Factors and Operational Control and (2) Emergency Planning and Containment.

*TVA Organizational Issues*, August 5, 1988, Washington, DC. The Subcommittee will continue its review of the generic lessons learned from the Staff's review in regard to the restart of Sequoyah 2.

*Improved Light Water Reactors*, August 9, 1988, Washington, DC. The Subcommittee will review Chapters 2, 3, 4, and 5 of the EPRI LWR Requirements Document.

*Auxiliary Systems* August 10, 1988, Washington, DC. The Subcommittee will discuss the proposed resolution for USI A-17, "Systems Interactions in Nuclear Power Plants" and other related matters.

*Regulatory Policies and Practices*, August 10, 1988, Washington, DC. The Sucommittee will review the NRC Staff's response to the ACRS comments on USI A-47, "Safety Implications of Control Systems" and other related matters.

*Maintenance Practices and Procedures*, September 7, 1988, Bethesda, MD. The Subcommittee will disuss and review the maintenance rule and associated NUREG document.

*Pilgrim Restart*, September 28, 1988 (tentative), Plymouth, MA. The Subcommittee will review the proposed restart of the Pilgrim plant.

*Advanced Boiling Water Reactors*, November 15-16, 1988, Bethesda, MD. The Subcommittee will continue its FDA review of this standard plant. Detailed ACRS questions will be covered on review module 1. An overview of the second review module is planned.

*Advanced Pressurized Water Reactors*, Date to be determined (August/September), Bethesda, MD. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

*Safety Philosophy, Technology, and Criteria*, Date to be determend (August/September), Bethesda, MD. The Subcommittee will discuss the Staff's proposed implementation plan for the Safety Goal Policy Statement.

*Advanced Pressurized Water Reactors*, Date to be determined (August/September), Bethesda, MD. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

*Advanced Reactor Designs*, Date to be determined (August/September), Bethesda, MD. The Subcommittee will review the draft SERs for the liquid metal reactors (LMRs).

*Occupational and Environmental Protection Systems*, Date to be determined (September), Bethesda, MD. The Subcommittee will review: (1) the "hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters.

*Advanced Pressurized Water Reactors*, Date to be determined (September), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

*Containment Requirements*, Date to be determined (September/October), Bethesda, MD. The Subcommittee will review the NRC Staff's document on interim recommedations for containment performance and improvements (BWR Mark I only).

*Severe Accidents/Probabilistic Risk Assessment*, Date and location to be determined (September/October). The Subcommittee will review the methodology for the treatment of uncertainties in the final version of NUREG-1150. Also, the Subcommittee will review the results of the front-end reanalysis of the five plants studied.

*Joint Core Performance/Thermal Hydraulic Phenomena*, Date to be determined (October/November), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

*Decay Heat Removal System*, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of bleed and feed for decay heat removal in PWRs.

*Systematic Assessment of Experience*, Date and location to be determined. The Subcommittee will review the Diagnostic Evaluation Program and other related licensee performance review effort by the NRC Staff.

*Thermal Hydraulic Phenomena*, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

*Auxiliary System*, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water System Design, and (3) criteria being used by

the NRC Staff to review the Chilled Water Systems design.

*Decay Heat Removal Systems,* Date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolutions of Generic Issue 23, "RCP Seal Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

*Auxiliary Systems,* Date to be determined, Bethesda, MD. The Subcommittee will review the adequacy of the Staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

**ACRS Full Committee Meetings**

August 11–13, 1988—Items are tentatively scheduled.

*A. *Hierarchical Structure for Safety-Related Issues (Open)*—Discuss proposed hierarchical structure for important safety-related issues identified by the ACRS members.

*B. *Diagnostic Evaluation Program (Open)*—Briefing regarding diagnostic assessment of McGuire and Dresden Nuclear Power Stations.

*C. *Hydrogen Control Requirements (USI A–48) (Open)*—Briefing regarding proposed hydrogen control requirements for Mark III and ice condenser containment types.

*D. *MOV Testing (Open)*—Briefing regarding in-situ testing of motor operated valves.

*E. *Meeting with Executive Director for Operations (Open)*—Discuss topics of current interest including proposed NRC Staff plans for completion and implementation of NUREG–1150, Reactor Risk Reference Document.

*F. *Future ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

G. *New ACRS Members (Closed)*—Discuss qualifications of persons nominated for appointment as members of the ACRS.

*H. *International Symposium on the Operational Safety Experience from Nuclear Power Plants (Open/Closed)*—Report by ACRS member who attended this IAEA sponsored meeting.

*I. *Decay Heat Removal Systems (Open/Closed)*—Review and comment on the proposed resolution of USI A–45 and GI–99, "Loss of Shutdown Cooling."

*J. *Standardization of Nuclear Plants (Open)*—Briefing and discussion of EPRI proposed document (Chapters 2–5) on improved LWRs.

*K. *ACRS Subcommittee Activity (Open)*—Hear and discuss reports of designated ACRS subcommittee activities regarding assigned areas including thermal hydraulic phenomena.

*L. *System Interactions (USI A–17) (Open)*—Review and comment regarding proposed NRC Staff resolution of USI A–17.

*M. *Safety Implications of Control Systems (USI A–47) (Open)*—Review and comment regarding the adequacy of the assumptions and limitations to be used by ORNL in the Multiple Systems Response program for evaluating residual concerns associated with USI A–47.

*N. *Emergency Planning (Open)*—Briefing regarding full Federal emergency preparedness exercise at the Zion Nuclear Power Station.

*O. *TVA Organizational Issues (Open)*—Discuss lessons learned by the NRC from the review of TVA construction/management problems in regard to the shutdown/restart of their nuclear plants and recent TVA reorganization/staffing changes.

*P. *Equipment Qualification-Risk Scoping Study (Open)*—Discuss proposed ACRS report on the Equipment Qualification-Risk Scoping Study.

*Q. *Foreign Operating Experience (Open)*—Briefing and discussion regarding NUREG–1251, Implications of Chernobyl, review of the Staff's program at BNL to address severe reactivity transients, emergency planning, and containment.

*R. *Maintenance of Nuclear Facilities (Open)*—Briefing by NRC Staff representatives regarding status of action related to NRC rulemaking regarding maintenance of nuclear power plants.

*S. *Modular High Temperature Gas-Cooled Reactor (Open)*—Review and comment regarding the modular HTGR design being developed by the DOE.

September 8–10, 1988—Agenda to be announced.

October 6–8, 1988—Agenda to be announced.

**ACNW Full Committee Meetings**

*Advisory Committee on Nuclear Waste (ACNW)* will hold its third meeting on August 3–5, 1988. On August 3rd the meeting will start at 4:00 p.m. and on August 4th at 6:00 p.m. at the Holley Inn, 235 Richland Avenue and Laurens Street, Aiken, SC. On August 5th the meeting will start at 2:00 p.m. at the Fims Building, 2600 Bull Street, Room 405, Columbia, SC. Topics to be discussed by the Committee include the following:

*A. The Committee members will discuss their visits to the LLW disposal facility at Barnwell, SC, and the Chem-Nuclear operations center.

*B. The Committee members will discuss their visit to the waste handling and storage facilities at DOE's Savannah River Plant.

*C. The Committee members will discuss their visit to the facilities of LN Technologies and meet with representatives of the South Carolina Bureau of Radiological Health.

The meeting was previously announced in the **Federal Register** on July 15, 1988 (53 FR 26915).

September 13–14, 1988—Agenda to be announced.

November 3–4, 1988—Agenda to be announced.

Date: July 20, 1988.

**Samuel J. Chilk,**

*Acting Advisory Committee Management Officer.*

[FR Doc. 88–16779 Filed 7–25–88; 8:45 am]

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**Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Policies and Practices; Meeting**

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on August 10, 1988, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, August 10, 1988—2:00 p.m. until the conclusion of business.*

The Subcommittee will review the NRC Staff's May 20, 1988 response to the April 12, 1988 ACRS letter to the NRC Chairman on Safety Implications of Control Systems USI A–47.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hold discussions with past and present representatives of the NRC regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the

Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date July 20, 1988.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 88-16780 Filed 7-25-88; 8:45 am]

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**[Docket No. 50-293]**

## Boston Edison Co., Pilgrim Nuclear Power Station

### Exemption

*I.*

The Boston Edison Company (BECo), the licensee, is the holder of Operating License No. DPR-35 which authorizes operation of the Pilgrim Nuclear Power Station. The license provides, among other things, that the Pilgrim Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

*II.*

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45FR76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. The technical requirements of section III.G of Appendix R, is the subject of the licensee's exemption requests.

Section III.G.1 of Appendix R requires fire protection features to be provided for structures, systems, and components important to safe shutdown and capable of limiting fire damage so that:

a. One train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage; and

b. Systems necessary to achieve and maintain cold shutdown from either the control room or emergency control station(s) can be repaired within 72 hours.

Section III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

c. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If the above conditions are not met, section III.G.3 requires that there be alternative or dedicated shutdown capability independent of the fire area of concern. It also requires that fire detection and a fixed suppression system be installed in the fire area of concern. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configurations in which they are accepted.

Because it is not possible to predict the specific conditions under which fires may occur and propagate, design basis protective features rather than the design basis fire are specified in the rule. Plant-specific features may require protection different from the measures specified in section III.G. In such a case, the licensee must demonstrate, by means of a detailed fire hazard analysis, that existing protection or existing protection in conjunction with proposed modification will provide a level of safety equivalent to the technical requirements of section III.G of Appendix R.

In summary, section III.G is related to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. Fire protection configurations must meet the specific requirements of section III.G or an alternative fire protection configuration must be justified by a fire hazards analysis. Generally, the staff will accept an alternative fire protection configuration if the following criteria, to the extent applicable to the requested exemption, are satisified:

—The alternative ensures that one train of equipment necessary to achieve hot shutdown from either the control room or emergency control station(s) is free of fire damage,

—The alternative ensures that fire damage to at least one train of equipment necessary to achieve cold shutdown is limited so that it can be repaired within a reasonable time (minor repairs using components stored on the site),

—Fire-retardant coatings are not used as fire barriers, and

—Modification required to meet Section III.G would not significantly enhance fire protection safety levels above that provided by either existing or proposed alternatives, or modifications required to meet Section III.G would be detrimental to overall facility safety.

*III.*

By letter dated August 10, 1987 (BECo 87-135) the licensee, Boston Edison Company, requested three exemptions (Nos. 15, 18, and 22) from the technical provisions of Section III.G of Appendix R to 10 CFR Part 50.

Request No. 15 is for an exemption from the requirement to install full area fire detection and automatic suppression in the Radwaste and Control Building between Corridor #137 on elevation 23 feet and Corridor #49 on elevation (–) 1 foot containing, respectively, redundant Division A and Division B, safe shutdown cables. Request No. 15 also requests an exemption from the provisions of III. G.2.b to the extent that full area fire detection and automatic fire suppression would be required for the area between Corridor #137 (containing Division A safe shutdown circuits) on elevation 23 feet and Corridor #49 (containing redundant Division B safe shutdown circuits) on elevation (–) 1 foot.

Request No. 18 is for an exemption from the requirement that no intervening combustible be present between two redundant safe shutdown systems located in the same fire area. In this instance a single cable tray is located between redundant trains of the Reactor Building Closed Water System (RBCCW) and the Salt Service Water System (SSW) in the water treatment area of the Reactor Building.

Request No. 22 is for an exemption from the requirement for fire detection and automatic fire suppression for torus

water level indication instrumentation cable located in the Reactor Building.

The licensee has identified a condition where redundant safe shutdown conduits are not separated by a 3-hour fire rated barrier but are separated by more than 20 feet horizontally, but without area wide fire detection and automatic fire suppression provided. Another consideration, in addition to simple spatial separation, is that the redundant safe shutdown conduits are located on different levels in the Radwaste and Control Building.

Train A conduits are located in Corridor No. 137 on Elevation 23 feet. Redundant Train B conduits are located in Corridor No. 49 on Elevation (–) 1 foot. The floor on Elevation 23 feet, separating the two elevations and the redundant safe shutdown conduits, is of reinforced concrete construction that exceeds the 3-hour fire rating. However, an open stairway (Stairwell No. 6) communicates between Elevations (–) 1 foot and 23 feet. Thus the potential exists for a single fire on either elevation to damage the cables in both of these safe shutdown conduits. The licensee has evaluated the potential for fire to spread either way between Corridor Nos. 49 and 137 and has concluded that the risk is not sufficiently great to require the installation of automatic fire detection or suppression capability in this general area. In order for fire to spread from Corridor No. 49 on Elevation (–) 1 foot to Corridor No. 137 on Elevation 23 feet, it would have to travel by one or two paths. One path is up the open Stairwell No. 6 to Elevation 23 feet, across the Health Physics access area, which is protected by smoke detectors and full automatic sprinkler coverage, through Corridor No. 138 and into Corridor No. 137.

The second potential pathway for fire from Corridor No. 49 is up through the open Stairwell No. 6 past Elevation 23 feet into Elevation 51 feet. At Elevation 51 feet, the fire would have to traverse approximately 30 feet of open area into Fan Room No. 2 and then proceed down through the ventilation duct space into Elevation 23 feet to Corridor No. 137.

The reverse of these two pathways would be necessary for fire to travel from Corridor No. 137 on Elevation 23 feet to Corridor No. 49 on Elevation (–) 1 foot. Three mechanisms exist for fire growth and propagation to other combustible materials.

The first mechanism, conductive heat transfer (including direct flame impingement) is unlikely for either of the above pathways because their is no continuity of combustibles.

Radiant heat transfer (the second mechanism for fire growth) depends on direct, line-of-sight geometry which does not exist for either of the above described pathways. Therefore, this method of fire propagation is not of concern.

The third method, convection heat transfer, is theoretically possible but as a practical matter is of little concern. In the first pathway, the fire would have to heat up the air volume in Corridor No. 49 (Elevation (–) 1 foot), rise through open Stairwell No. 6, travel east across the health physics access area (Elevation 23 feet) which is protected by smoke detectors and automatic sprinklers, and travel south into Corridor No. 137. Similarly in the second pathway, the fire would have to heat up the air volume in Corridor No. 49 (Elevation (–) 1 foot), rise through open Stairwell No. 6 past Elevation 23 feet to Elevation 51 feet. From there, the heated air would have to travel across the 30 feet of open space, raise the temperature of the room volume sufficiently to be able to breach the ventilation duct in Fan Room No. 2, then travel back down to Elevation 23 feet and proceed south into Corridor No. 137 to damage the redundant train of safe shutdown conduits. Again, for fire to originate in Corridor No. 137 on Elevation 23 feet and travel to Corridor 49 on Elevation (–) 1 foot so as to damage redundant safe shutdown cables located in conduits in the two corridors it would have to travel the same routes described above but in the reverse directions. These two paths, considering the lack of continuity of combustibles and presence of automatic detection and suppression capability in the Health Physics access area on Elevation 23 feet, argue against convective heat transfer as a viable means of fire propagation between these two corridors.

Based on the above evaluation the staff concludes that the existing physical arrangement consisting of (1) redundant safe shutdown conduits located on two different levels (Elevation (-) 1 foot and 23 feet), (2) separated by more than 20 feet in horizontal distances, (3) lack of continuity of combustibles between the redundant safe shutdown conduits, and (4) the presence of automatic detection and suppression protection in the Health Physics access area on Elevation 23 feet, make unlikely a single fire damaging redundant safe shutdown cables contained in conduits located in Cooridor Nos. 49 and 137 located respectively on Elevations (–) 1 foot and 23 feet.

Therefore, it is unnecessary to install area while detection and automatic suppression between Corridor Nos. 49 and 137 and the licensee's request for an exemption from the provisions of III.G.2.b should be granted for this area.

Exemption Request No. 18 requests an exemption from the provisions of III.G.2.b to the extent that no combustibles or fire hazards are to be located between two redundant safe shutdown systems located in the same fire area. The subject of this exemption request is a single cable tray located 13 feet above the floor on Elevation 23 feet that is located between the Train A and Train B Reactor Building Closed Cooling Water (RBCCW) rooms.

The Train A RBCCW room is located in Fire Zone (FZ) 1.21 and the Train B RBCCW room is located in FZ 1.22. Both are located on Elevation 3 feet, are adjacent to each other, and are separated by a two-feet thick unrated wall running east-west between column lines 2.5 and 5 about midway between column lines L and M. The wall is full height between the floors on Elevations 3 feet and 23 feet and is constructed of solid concrete blocks. The other 10 feet of the wall is supported on a reinforced concrete beam and the blocks are fully grouted. The lower 10 feet of the wall is constructed without grout (the blocks are simply set in the wall) so as to be easily removable if open access is required into FZ 1.21 which is located south of the wall from FZ 1.2 which is located north of the wall. A rolling fire door, which is supported independently from the lower part of the wall is installed in the east end of the wall to provide normal access between the two fire zones. An equipment hatchway is located just north of the wall and provides access from FZ 1.29 on Elevation 23 feet into FZ 1.22. The redundant systems located in FZs 1.21 and 1.22 include the RBCCW, Salt Service Water (SSW) and the Diesel Generator Fuel Oil Transfer system.

The redundant trains of these systems are separated by (1) horizontal distances greater than 20 feet, (2) the above described 2-foot thick wall (which is unrated because the blocks in the lower 10 feet are not grouted) constructed of solid concrete blocks, and (3) the floor at Elevation 23 feet which is constructed of 12-inch concrete slab on metal deck.

Penetrations through this concrete floor from FZ 1.29 consist of a manhole access (equipped with steel cover) into the Acid Neutralizing Sump in FZ 1.21 and an equipment hatch (equipped with 12-inch thick concrete plug) into FZ 1.22. Fire protection in FZ 1.29 consists of area wide automatic detection and automatic sprinkler suppression. In addition, hand held extinguishers and manual hose stations are available for use by the plant fire brigade. The only

intervening combustibles between the two redundant trains that are separated as described above is a single cable tray running east to west, approximately 13 feet above the floor in FZ 1.29 (Elevation 23 feet).

There are three possible methods, as sequences, whereby a single fire can damage both redundant trains of safe shutdown equipment in FZs 1.21 and 1.22.

In the first sequence, a fire starts in FZ 1.29 (water treatment are Elevation 23 feet), in either the cable tray which is located 13 feet above the floor, or in the waste oil station located approximately eight feet west of the equipment hatch into FZ 1.22 and approximately 22 feet north of the manhole into FZ 1.21. The waste oil station tanks are enclosed in a 3-foot high dike capable of containing the entire contents of the tanks. The fire would have to go undetected by the automatic detection system and exceed the capability of the automatic sprinkler system, and then spread down through the openings in the Elevation 23 feet concreate floor into both FZs 1.21 and 1.22 with sufficient intensity to damage both redundant trains.

In the second sequence a fire starts in FZ 1.21 (the acid neutralizing sump in Elevation 13 feet), and forces up through the manhole access into and across FZ 1.29 and then down through the equipment hatchway into FZ 1.22. Such a fire is unlikely since no combustible materials are located in the sump except for safe shutdown cables in question, and these are all run in conduits. In addition, FZ 1.29 is protected by area wide detection and automatic sprinkler suppression, and the equipment hatchway into FZ 1.22 is closed with a removable concrete plug when not in actual use for moving equipment into or out of these rooms.

The third sequence is the opposite of the second one, i.e., fire starts in FZ 1.22 on Elevation 13 feet, forces up through the sealed equipment hatchway into and across FZ 1.29 on Elevation 23 feet and then down through the manhole access into the acid neutralizing sump to damage the safe shutdown cables that are located in conduits.

All three of these sequences are considered unlikely because: (1) there is no continuity of combustible fuels between FZs 1.21 and 1.22; (2) FZ 1.29 is protected with area wide detection and automatic sprinkler suppression and; (3) a concrete plug seals the equipment hatchway into FZ 1.22 except when equipment is actually being moved through it.

Based upon the above evaluation the staff concludes that a single fire capable of simultaneously damaging both redundant safe shutdown trains of RBCCW, SSW and emergency diesel fuel oil transfer pump systems located in FZs 1.21 and 1.22 is unlikely, and that removing the only intervening combustible (a single cable tray located 13 feet above the floor on Elevation 23 feet in FZ 1.29) would not enhance fire safety.

Therefore, it is unnecessary to remove this cable tray and the licensee's request for an exemption from the provisions of III.G.2.b should be granted for this cable tray.

Exemption Request No. 22 requests an exemption from the provisions of III.G.3 that requires fire detection and automatic suppression for redundant safe shutdown equipment (in this case the normal torus water level indication cables) located in the same fire area when alternative safe shutdown capability is provided.

All of the torus water level indication circuits leave the torus in fire zone 1.30A and all are run in metal conduits. Train A cables leave the torus in the southeast quadrant, Train B leaves the torus about 120° away in the northwest quadrant and the alternative cables leave the torus in the southwest quadrant about 85° from Train B and 155° from Train A. The Alternative train cables are fully protected by a 1 hour rated fire wrap (the torus instrumentation cables were the subject of Exemption Request No. 5, which was granted partly on the basis of separation with over 100 feet between Train A and Train B cables and the alternate instrumentation cables). After leaving the torus, the Train A water level cables rise directly into Fire Zone 1.9 (Elevation 23 feet). The Train B cables rise into Fire Zone 1.10 (Elevation 23 feet), turn east and cross into Fire Zone 1.9 then turn south to the vicinity of the Train A cables. From there on both Train A and Train B travel together through Fire Zone 1.9 into Fire Zone 1.11 (Elevation 51 feet), turn east through the fire wall at column line 17 across a small portion of Fire Zone 1.23 and through another fire wall at column line 18.5 into Fire Zone 3.4 still on Elevation 51 feet. From there these cables turn down through the floor into Fire Zone 3.11 on Elevation 37 feet and then turn south through the fire wall into the Control Room.

After leaving the southwest quadrant of the torus, the alternative train cables run north along the wall on column line 5 and then turn up through the ceiling into an alternative safe shutdown station located in Fire Zone 1.10 on Elevation 23 feet in the Reactor Building. Automatic detection and suppression is not provided in Fire Zones 1.23, 3.4 and 3.11 where both Train A and Train B cables are located. Although these zones are part of Fire Area 1.10, which also includes the alternative torus water level cables, they are located on the opposite side of the torus and separated by reinforced concrete floor (Elevation 51 feet) and walls. Because of the lack of continuous combustibles, spatial separation and the above mentioned reinforced concrete barriers between the redundant normal torus level indicator systems and the redundant systems, automatic fire detection and suppression in Fire Zones 1.23, 3.4 and 3.11 would not enhance safe shutdown of the plant.

Based upon the above evaluation, the staff concludes that it is not necessary to install area wide detection and automatic suppression capability in the vicinity of the redundant normal Torus Water Level Indication cables where they are located in Fire Zones 1.23, 3.4 and 3.11.

Therefore the licensee's request for an exemption from the provisions of III.G.3 for these cables should be granted.

*IV.*

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) the exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50 and literal compliance would not significantly enhance fire protection safety levels. Therefore, the Commission hereby grants the exemption from the requirements of Section III.G of Appendix R to 10 CFR Part 50 regarding:

(1) The lack of fire detection and automatic fire suppression in the area between Corridor Nos. 49 and 137 containing redundant safe shutdown circuits in fire zones 3.4, 3.7 and 3.9 (subsection III.G.2.b); 2) the presence of a single cable tray (combustible material) that is located between two redundant safe shutdown trains that are separated by a horizontal distance greater than 20 feet in fire zones 1.21, 1.22 and 1.29 (subsection 3.2.b) and 3) the lack of fire detection and automatic fire suppression in areas containing both redundant normal safe shutdown trains when an alternative safe shutdown train is provided in fire zones 1.23, 3.4 and 3.11 (subsection III.G.3).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result

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in any significant environmental impact. A copy of the licensee's request for exemption dated August 10, 1987 is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of July 1988.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-16787 Filed 7-25-88; 8:45 am]

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[Docket No. 50-289]

## GPU Nuclear Corp. et al., Issuance Of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 142 to Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

The amendment modified the Technical Specifications to support core reload for Cycle 7 of operation. The core design changes for Cycle 7 include a slight increase in core lifetime from approximately 425 effective full power days (EFPD) to approximately 445 EFPD. The fresh fuel has a slightly higher U-235 enrichment than previous fuel.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 25, 1988 (53 FR 13456). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 5, 1988 (2) Amendment No. 142 to License No. DPR-50 (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 18th day of July, 1988.

For the Nuclear Regulatory Commission.

**Ronald W. Hernan,**

*Senior Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-16789 Filed 7-25-88; 8:45am]

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[Docket No. 50-498]

## Houston Lighting & Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-76, issued to Houston Lighting & Power Company (the licensee), for the operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment would reflect an adjustment in ownership interests in the South Texas Project which results from the settlement of litigation between the licensee and the City of Austin, memorialized in a Settlement Agreement dated March 17, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). An example of an amendment which involves a no significant hazards consideration is example (viii) which states that "a change to a license to reflect a minor adjustment in owership shares among co-owners already shown on the license."

The licensee has concluded and the staff agrees, that the proposed amendment fits the guidance provided in example (viii) because it is administrative in nature and involves only the transfer of an ownership interest from one entity to another entity which is already an owner and licensee.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By August 25, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the

proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must safisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of the petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at Wharton Junior College Library, Wharton Texas 77488.

Dated at Rockville, Maryland, this 19th day of July, 1988.

For the Nuclear Regulatory Commission,

**George F. Dick, Jr.,**

*Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88–16788 Filed 7–25–88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50–133]**

## Pacific Gas and Electric Co.; Issuance of Amendment to Facility License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 23 to Facility License No. DPR–7 to Pacific Gas and Electric Company (the licensee) for the Humboldt Bay Power Plant, Unit No. 3. This amendment revises License No. DPR–7 to: (1) Delete certain license conditions related to seismic modifications required before the NRC would authorize a return to power operation; (2) revise the Technical Specifications to reflect the possess-but-not-operate status; (3) approve the decommissioning of Humboldt Bay Unit 3 in accordance with the licensee's Decommissioning Plan and (4) extend License No. DPR–7 for 15 additional years to November 9, 2015 to be consistent with the Decommissioning Plan. Also, Section D of License No. DPR–7 is deleted as it refers to 10 CFR Part 50.60 with respect allocation of fuel by the AEC to a licensee. That function by the AEC/NRC is no longer a part of the regulations and Section D is moot.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules ane regulations in 10

CFR Chapter I, which are set forth in the license amendment.

A Notice of Opportunity for Prior Hearing related to the requested action was published in the Federal Register on July 3, 1986 (51 FR 24458). Pursuant to that notice, members of the public petitioned for leave to intervene and requested a hearing. Their request was granted by the Atomic Safety and Licensing Board No. 86-536-07 LA (the Board).

On February 9, 1988 the Board issued an order which dismissed all contentions and terminated the proceeding following a resolution of all disputed issues.

The Commission issued a Final Environmental Statement (FES) on May 6, 1987 (NUREG-1166). Notice of availability of the FES was published in the Federal Register on may 12, 1987 (52 FR 17863). In the FES the staff concluded that: (1) A technical basis exists for decommissioning nuclear plants in a safe, efficient manner; (2) no significant environmental impacts will result from the storage of spent fuel in the spent-fuel pool; and (3) Humboldt Bay Unit 3 can be placed in SAFSTOR for a 30-year period with minimal environmental impact.

For further details with respect to this action, see (1) the application for amendment dated July 30, 1984 as revised by letters dated February 28, 1985 through May 23, 1988, (2) Amendment No. 23 to Facility License No. DPR-7, and (3) the Final Environmental Statement (NUREG-1166). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at Eureka-Humboldt County Library, 421 I Street (County Courthouse), Eureka, California 95501. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

**Lester S. Rubenstein,**

*Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-16780 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL, 50-444-OL (ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)]

## Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Prehearing Conference

July 20, 1988.

Before Administrative Judges: Ivan W. Smith, Chairman, Gustave A. Linenberger, Jr., and Dr. Jerry Harbour.

The Atomic Safety and Licensing Board will conduct a prehearing conference in this proceeding beginning at 9:00 AM August 3, and extending through August 4, 1988, in the Third Floor Courtroom, John W. McCormack Post Office and Courthouse, Post Office Square, Boston, Massachusetts 02109.

The conference will consider the contentions and issues to be adjudicated with respect to emergency planning for the Seabrook Nuclear Station and the Massachusetts communities lying within the Seabrook plume exposure pathway Emergency Planning Zone. The Board will confer with the parties and participants about simplification and clarification of issues, consolidation of parties, designation of lead intervenors, and the scheduling of prehearing activities.

The Board will also confer with the parties concerning the scheduling of any other aspect of the Seabrook offsite emergency planning proceeding properly before it.

All parties, petitioners to participate as intervening parties and petitioners to participate as interested Massachusetts municipalities, or their respective representatives, are required to attend and to participate.

Bethesda, Maryland, July 20, 1988.

For The Atomic Safety And Licensing Board.

**Ivan W. Smith,**

*Chairman, Administrative Law Judge.*

[FR Doc. 88-16776 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 30-20584, License No. 35-12120-02 EA 88-103]

## Radiology and Nuclear Medicine, Inc., Tulsa, OK; Order Revoking License (Effective Immediately)

I

Radiology and Nuclear Medicine, Inc. (the licensee) is the holder of a specific Byproduct Material License No. 35-12120-02, issued by the Nuclear Regulatory Commission (Commission/NRC) pursuant to 10 CFR Part 35. The license, which was issued November 30, 1983, and is due to expire on November 30, 1988, authorizes the licensee to (a) conduct specified diagnostic procedures, (b) use iodine 131 for the treatment of hyperthyroidism and cardiac dysfunction, and (c) use a dose calibrator reference standard.

II

On February 1, 1988, NRC received an allegation concerning improper activities being conducted by the licensee. On March 24, 1988, a NRC inspector inspected the licensee' facility. During the inspection, the following apparent violations and deviation were discovered: Failure to equip personnel (e.g., Dr. Forsythe) with dosimetry (a repeat violation); failure to maintain personnel dosimetry records; failure to conduct annual accuracy tests, quarterly linearity tests, and daily constancy checks on the dose calibrator (a repeat violation); failure to calibrate the survey meter (a repeat violation); failure to have certain documents posted (a repeat violation); failure to conduct leak testing on a sealed course (a repeat violation); failure to perform quarterly inventory for the calibration source (a repeat violation); failure to conduct surveys of unrestricted areas; failure to perform activity measurements of radioisotopes administered to patients; and failure to replace the dose calibrator during the period, April 14 through August 28, 1986 when it was inoperable. Several of the violations were discovered during an April 1986 inspection remained uncorrected. A Confirmation of Action Letter was issued on April 1, 1988, to confirm, among other things, the licensee's agreement to suspend nuclear medicine activities until NRC concurred in the resumption of the licensee's operations.

Following the issuance of the Confirmation Action Letter five attempts were made to reach Dr. Forsythe by telephone to discuss the status of licensed activities. Messages left with the licensee's secretary or message recorder were not returned. On April 24, 1988, a certified letter (receipt requested) was sent inviting the licensee to an enforcement conference scheduled for May 5, 1988. The licensee received that letter on May 2, 1988. The letter also requested the licensee to contact the Region IV office by 12:00 noon, May 4, 1988, to confirm its attendance at the enforcement conference or to arrange for a different mutual acceptable time. In addition, the letter informed the licensee that in the absence of attendance at the enforcement conference or contacting the NRC to arrange a different mutually acceptable time and date, NRC would proceed to issue the applicable enforcement action,

which might involve the formal suspension of the license. The licensee did not respond by the May 4, 1988, deadline. The NRC again attempted to contact Dr. Forsythe by telephone on May 5, 1988, to confirm the licensee's attendance at the enforcement conference. Dr. Forsythe neither responded to the telephone message to call the NRC nor attended the enforcement conference on May 5, 1988.

On May 10, 1988, the NRC issued an Order Suspending the License and an Order to Show Cause Why the License Should Not Be Revoked (Effective Immediately); in accordance with 10 CFR 2.202(b) the Order offered the licensee an opportunity to request a hearing. On June 2, 1988, the NRC received a letter dated May 27, 1988, from Mr. Leon Williams, Jr., a nuclear medicine technologist employed by Radiology and Nuclear Medicine, Inc. This letter was interpreted by NRC to be a request to terminate the license. On June 9, 1988, NRC contacted Dr. Forsythe by telephone and discussed Mr. Williams' letter concerning the termination of the license. Dr. Forsythe confirmed that the licensee possessed no byproduct materials, that all nuclear medicine activities had ceased, and that he sought termination of his license. No information to show cause why the license should not be revoked was provided. By letter dated June 10, 1988, the licensee forwarded an NRC Form 314 "Certificate of Disposition of Materials" indicating all materials had been transferred and a close-out survey indicating no removable contamination at the facility. No request for hearing, either in the letters dated May 27, 1988 and June 10, 1988, or during the June 9, 1988 call, was made by or in behalf of the licensee.

III

The licensee has failed to respond to the Order to Show Cause dated May 10, 1988, and has not requested a hearing as provided therein. Moreover, by letter dated May 27, 1988, and confirmed by subsequent telephone call the licensee is not objecting to termination of its license. The Order of May 10, 1988, provided the notice and opportunity for hearing required by 10 CFR 2.201 and 2.202.

IV

In view of the foregoing and pursuant to sections 81, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Part 35, *It Is Hereby Ordered, Effective Immediately, That:*

Byproduct Material License No. 35-12120-02 is revoked.

This Order is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Deputy Executive Director for Regional Operations.*

[FR Doc. 88-16791 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Lessa Martin, (202) 632-0728.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on June 28, 1988 (53 FR 23386). Individual authorities established or revoked under Schedule A, B, or C between June 1, 1988, and June 30, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

**Schedule A**

No Schedule A authorities were established or revoked during June.

**Schedule B**

No Schedule B authorities were established or revoked during June.

**Schedule C**

*Department of Agriculture*

One Confidential Assistant to the Administrator for Agricultural Stabilization and Conservation Service. Effective June 27, 1988.

*Department of the Air Force*

One Secretary (Stenography) to the Assistant to the Vice President for National Security Affairs. Effective June 22, 1988.

*Department of the Army*

One Secretary (Typing) to the Assistant Secretary of the Army for Financial Management. Effective June 29, 1988.

*Department of Commerce*

One Special Assistant to the Secretary of Commerce. Effective June 1, 1988.

One Confidential Assistant to the Deputy Secretary. Effective June 6, 1988.

One Special Assistant to the Assistant Secretary for Communications and Information. Effective June 8, 1988.

One Special Assistant to the Director for Office of Public Affairs. Effective June 16, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective June 16, 1988.

One Confidential Assistant to the Deputy Secretary. Effective June 24, 1988.

One Congressional Liaison Assistant to the Deputy Director for Congressional Affairs. Effective June 29, 1988.

*Department of Education*

One Special Assistant to the Assistant Secretary for Legislation. Effective June 6, 1988.

One Special Assistant to the General Counsel. Effective June 16, 1988.

One Confidential Assistant to the Commissioner for Rehabilitation Services Administration. Effective June 16, 1988.

One Special Assistant to the Director for Intergovernmental Affairs. Effective June 22, 1988.

One Director, Interagency Operations Staff to the Deputy Under Secretary for the Office of Intergovernmental and Interagency Affairs. Effective June 27, 1988.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective June 29, 1988.

*Department of Health and Human Services*

One Staff Assistant to the Associate Commissioner for Office of Governmental Affairs. Effective June 8, 1988.

One Special Assistant to the Commissioner of Social Security. Effective June 15, 1988.

One Confidential Assistant to the Administrator for Health Care Financing Administration. Effective June 15, 1988.

One Associate Administrator, Office of Communications to the Administrator for Family Support Administration. Effective June 27, 1988.

*Department of Housing and Urban Development*

One Associate Deputy Assistant Secretary for Program Policy Development and Evaluation to the General Deputy Assistant Secretary for Community Planning and Development. Effective June 6, 1988.

One Executive Assistant to the Assistant Secretary for Policy Development and Research. Effective June 24, 1988.

*Department of the Interior*

One Special Assistant to the Director for the Office of Surface Mining Reclamation and Enforcement. Effective June 6, 1988.

One Special Assistant to the Director for the Bureau of Land Management. Effective June 10, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Policy and Analysis. Effective June 24, 1988.

*Department of Justice*

One Special Assistant to the Director for the Office of Public Affairs. Effective June 6, 1988.

One Special Assistant to the Deputy Assistant Attorney General for the Office of Justice Programs. Effective June 16, 1988.

One Confidential Assistant to the Assistant Attorney General. Effective June 22, 1988.

One Public Affairs Specialist to the Director for the Office of Public Affairs. Effective June 24, 1988.

*Department of Labor*

One Special Assistant to the Assistant Secretary for Employment and Training. Effective June 24, 1988.

One Executive Assistant to the Assistant Secretary for Policy. Effective June 28, 1988.

One Secretary's Representative to the Associate Deputy Assistant Secretary for Public and Intergovernmental Affairs. Effective June 30, 1988.

*Department of the Navy*

One Staff Assistant to the Secretary of the Navy. Effective June 1, 1988.

*Department of State*

One Protocol Officer (Visits) to the Protocol Specialist (Ceremonials). Effective June 6, 1988.

One Foreign Affairs Officer to the Assistant Secretary for the Bureau of International Organization Affairs. Effective June 16, 1988.

*Department of Transportation*

One Special Assistant to the Assistant Secretary for Budget and Programs. Effective June 10, 1988.

One Congressional Liaison Officer to the Director of Congressional Affairs. Effective June 10, 1988.

One Special Assistant to the Director of External Affairs. Effective June 15, 1988.

One Special Assistant to the Administrator for the National Highway Traffic Safety Administration. Effective June 15, 1988.

One Deputy Director (Consumer Affairs) to the Director for the Office of Intergovernmental and Consumer Affairs. Effective June 22, 1988.

One Staff Assistant to the Deputy Administrator for Federal Aviation Administration. Effective June 27, 1988.

*Commission on Civil Rights*

One Special Assistant to the Commissioner. Effective June 1, 1988.

*Export-Import Bank of the United States*

One Administrative Assistant to the Director. Effective June 6, 1988.

*Federal Home Loan Bank Board*

One Deputy to the Executive Director of the Federal Savings and Loan Insurance Corporation for the Southwest Plan. Effective June 1, 1988.

*Federal Trade Commission*

One Associate Director for Media Relations to the Director of Public Affairs. Effective June 24, 1988.

*General Services Administration*

One Confidential Assistant to the Regional Administrator for National Capital Region. Effective June 22, 1988.

*International Trade Commission*

One Staff Assistant (Legal) to a Commissioner. Effective June 6, 1988.

*Interstate Commerce Commission*

One Staff Advisor (Management) to the Commissioner. Effective June 28, 1988.

*National Credit Union Administration*

One Staff Assistant to a Board Member. Effective June 16, 1988.

*National Labor Relations Board*

One Attorney-Advisor (Labor) to the Executive Assistant to the Chairman. Effective June 17, 1988.

*Office of Management and Budget*

One Confidential Assistant to the Executive Assistant to the Director. Effective June 21, 1988.

*President's Commission on Executive Exchange*

One Staff Assistant (Typing) to the Executive Director. Effective June 20, 1988.

One Information Receptionist to the Executive Director. Effective June 24, 1988.

*Small Business Administration*

One Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development. Effective June 7, 1988.

*United States Information Agency*

One Staff Assistant to the Director. Effective June 6, 1988.

*United States Tax Court*

One Secretary (Confidential Assistant) to a Judge. Effective June 7, 1988.

U.S. Office of Personnel Management.

**Authority:** 5 U.S.C. 3301, 3302: E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

**Constance Horner,**

*Director.*

[FR Doc. 88–16864 Filed 7–25–88; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–25923; File No. CSE–88–1)**

### Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Filing of Proposed Plan for Reporting Minor Disciplinary Rule Violations

Pursuant to section 19(d)(1), 15 U.S.C. 78s(d)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19d–1(c)(2) thereunder 17 CFR 240.19–1(c)(2), notice is hereby given that on March 7, 1988, the Cincinnatti Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("the Commission") a proposed rule change to establish a minor disciplinary rule violation plan.[1] For covered minor disciplinary rule violations, the proposed plan would relieve the Exchange from the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions. Amendment No. 1, submitted by the CSE on July 13, 1988, removes three violations from the

[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO Rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

original proposal and establishes a reporting system for minor disciplinary rule violations subject to the proposed plan. The CSE filed with the Commission the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

*I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change*

The Proposed Rule Change will authorize the Exchange, in lieu of commencing a disciplinary proceeding before a Hearing Panel, to impose a fine, not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member organization for any violation of an Exchange Rule which the Exchange determines to be minor in nature. Under the Proposed Rule Change, the Exchange will serve a written statement on the person against whom a fine is imposed, setting forth the Rule violated, the act or omission constituting the violation, the fine imposed, and the date that the determination becomes final and the fine must be paid or that such determination must be contested. If the person against whom a fine is imposed pursuant to the Rule chooses not to contest the matter and pays the fine, he waives his right to a disciplinary proceeding under Rules 8.1 through 8.13 and any review of the mater by an Exchange Committee or the CSE Board of Trustees.

Alternatively, under the Proposed Rule Change, any peson may choose to contest the fine by submitting a written answer, at which point the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. Under the Proposed Rule Change, in any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the Rule violation(s) charged, the Panel shall (1) be free to impose one or more disciplinary sanctions and (2) determine whether the Rule violation(s) is minor in nature. The Proposed Rule Change provides that the Exchange will not publicize any matter in which a fine is imposed under Rule 8.14 or where a person contests a fine imposed under the Rule and is found guilty of a minor violation by the Hearing Panel, except as required by Rule 19d–1 of the Act. If, in a contested case, however, it is determined by the Hearing Panel or the Board that the Rule violation was not minor in nature, there will be full public disclosure by the Exchange. The Exchange specifically provides in paragraph (e) of the Rule that imposition of a fine pursuant to the Rule is not mandatory; in addition, the Exchange has the option, whenever it determines that any violation is not minor is nature, to proceed under Rules 8.1 through 8.13 rather than Rule 8.14.

The Proposed Rule Change also designates certain specified Rule violations as minor Rule Violations which, if uncontested, would not be subject to the provisions of Rule 19d–1(c)(1) under the Act requiring that self-regulatory organization promptly file notice with the SEC of any final disciplinary action taken with respect to any person or organization. The CSA requests that it be relieved of the current reporting requirement regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The CSE will periodically prepare and announce to its members and member organizations a revised list of exchange Rules for violation of which the Exchange may impose fines pursuant to Rule 8.14, as well as the fines that may be imposed for such violation.

**II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change**

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the Proposed Rule Change is to adopt new Rule 8.14, which will improve the Exchange's ability to efficiently meet its statutory enforcement responsibilities by establishing a program for the imposition of fines for minor violations of Exchange Rules and by designating certain specified Rule violations as minor Rule violations.

Rule 8.14 is consistent with section 6(b)(1), 6(b)(6) and 19(g)(1)(A) of the Act. Section 6(b)(1) requires that an exchange have the capacity to enforce compliance by its members and associated persons with provisions of the Act, the Rules thereunder and the rules of the exchange. Section 6(b)(6) provides that appropriate disciplinary procedures be established to exact such compliance. Section 19(g)(1)(A) requires each SRO to enforce compliance by its members and associated persons with its rules, as well as Commission rules and regulations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the Proposed Rule Change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received any comments on the Proposed Rule Change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer preiod (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

July 18, 1988.

[FR Doc. 88-16737 Filed 7-25-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25929; File No. SR-DTC-88-10]**

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 5, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change. The proposal establishes new fees relating to the use of DTC's Receiver-Authorized Delivery ("RAD") function.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

DTC's RAD function is designed to give DTC's Same-Day Funds Settlement [2] ("SDFS") participants more control over their SDFS transactions. The RAD function permits SDFS participants receiving securities to review and authorize delivery and payment orders before items are posted to their accounts. The RAD function also enables receiving participants to set a money amount such that if any incoming book-entry delivery exceeds that set amount, the delivery must first be authorized by the participant before its SDFS settlement account is debited. The proposal establishes a new fee schedule (attached as Exhibit A) relating to the use of the RAD function.

DTC represents that the proposed fee schedule, effective June 1, 1988, is based on costs incurred by DTC in providing RAD services. DTC further represents that these fees are the same as fees charged for services similar to RAD. In addition, DTC believes that these fees are consistent with section 17A(b)(3)(D) of the Act in that they provide for the equitable allocation of reasonable dues, fees, and other charges among DTC participants.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.**

Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-88-10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC. Copies of the filing (SR-DTC-88-10) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1988.

**Shirley E. Hollis,**

*Assistant Secretary.*

EXHIBIT A

| DTC Service | Fee |
|---|---|
| Receiver-Authorized Deliveries (RAD) | |
| A. System-Established Controls: | |
| 1. Possible Substantially Overvalued Deliver Orders/Payment Orders: | |
| PTS message to deliverer. | $0.06 per message. |
| PTS message to Receiver. | $0.06 per message. |
| Receiver Authorization. | $0.06 per item. |
| Receiver Cancellation. | $4.00 per item chargeable to deliverer. |
| 2. All Delivery Orders/Payment Orders Between 2:00-2:30 PM (except free Deliver Orders and, between 2:00-2:15PM, reclamations not otherwise subject to receiver authorization): | |
| PTS message to deliverer. | $0.06 per message. |
| PTS message to Receiver. | $0.06 per message. |
| Receiver Authorization. | $0.06 per item. |
| Receiver Cancellation. | $4.00 per item chargeable to deliverer. |
| 3. Dropped Deliver Orders/Payment Orders due to Receiver's failure to authorize or cancel. | $4.00 per item dropped chargeable to receiver. |
| B. Receiver-Established Controls: | |
| 1. Maintenance of RAD Limits. | No charge. |
| 2. Deliver Orders/Payment Orders Subject to Receiver-Authorization: | |
| PTS message to deliverer. | $0.06 per message. |
| PTS message to Receiver. | $0.06 per message. |
| Receiver Authorization. | $0.06 per item. |
| Receiver Cancellation. | $4.00 per item chargeable to deliverer. |
| Dropped Deliver Orders/Payment Orders | |
| A. Deliverer-Caused: | |
| 1. Deliver Order drop due to insufficient securities position, unless DTC's system shows the drop was caused by notice of potential receive of a delivery from another Participant which subsequently dropped. | $4.00 per item dropped chargeable to deliverer. |
| 2. Deliver Order drop due to insufficient collateral. | $4.00 per item dropped chargeable to deliverer. |

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[1] For a more detailed discussion of the RAD function, *see* Securities Exchange Act Release No. 25886 (July 6, 1988), 53 FR 26096, in which the Commission published notice of filing and immediate effectiveness of DTC's proposal establishing RAD.

[2] The SDFS Service provides depository and transaction settlement services for securities that settle in same-day funds. On July 9, 1987, the Commission issued an Order approving implementation of an SDFS Service pilot program on a temporary basis until January 31, 1988. *See* Securities Exchange Act Release No. 24689, 52 FR 26613. On February 4, 1988, the Commission extended that pilot program to June 30, 1988. *See* Securities Exchange Act Release No. 25308, 53 FR 6900. On July 11, 1988, the Commission further extended the SDFS Service pilot until August 31, 1988. *See* Securities Exchange Act Release No. 25870, 53 FR 26124.

EXHIBIT A—Continued

| DTC Service | Fee |
|---|---|
| R. Receiver-Caused | |
| 1. Drop due to insufficient collateral. | $4.00 per item dropped chargeable to receiver. |
| 2. Drop due to insufficient fixed or adjustable net debit cap. | $4.00 per item dropped chargeable to receiver. |

[FR Doc. 88-16831 Filed 7-25-88; 8:45 am]
BILLING CODE 8010-01-M

[File No. 500-1]

## Cortex International, Ltd., Ram Industries, Inc.; Order of Suspension of Trading

July 21, 1988.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Cortez International, Ltd., with executive offices located in Vancouver, British Columbia, Canada; and RAM Industries, Inc., with executive offices located in Dallas, Texas, and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the financial statements of the companies, the financial condition of the companies, and the value of their assets. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Cortez International, Ltd. and RAM Industries, Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Exchange Act of 1934, that trading in the Securities of CORTEZ International, Ltd., and RAM Industries, Inc., over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (EDT) on July 21, 1988 through 11:59 p.m. (EDT) on July 30, 1988.

By the Commission.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 88-16736 Filed 7-25-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16487; 812-7035]

## Freedom Investment Trust and Freedom Investment Trust II; Application

July 20, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* Freedom Investment Trust ("Freedom") and Freedom Investment Trust II ("Freedom II").

*Relevant 1940 Act Sections:* Order requested under section 6(c) for an exemption from sections 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1 thereunder, and approval under section 11(a).

*Summary of Application:* Applicants seek an order, under sections 6(c) and 11(a) of the 1940 Act, to amend existing orders [Investment Company Act Release Nos. 15118 (May 28, 1986), 15455 (December 4, 1986) and 15745/15745A (May 19 and June 2, 1987) ("Existing Orders")]. The amended order would allow Applicants' existing series and any future series whose shares are sold on substantially the same basis as the existing series (collectively referred to as "Applicants"): (a) To impose a new schedule of contingent deferred sales loads ("CDSL") on certain redemptions of shares; (b) to waive the CDSL for an additional class of shares; and (c) to continue to permit certain offers of exchange and deferral of the CDSL thereon.

*Filing Date:* The application was filed on May 11, 1988, and amended on July 7, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 12, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Beacon Street, Third Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Curtis R. Hilliard, Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. Applicants, each registered under the 1940 Act as an open-end, management investment company, are "series companies" whose shares are offered for sale to the public through broker-dealers pursuant to distribution agreements with Tucker, Anthony & R. L. Day, Inc. and Freedom Distributors Corporation (the "Distributors"). Applicants' investment manager is Tucker Anthony Management Corporation. Each of the series of Freedom and Freedom II, except for the Freedom Money Market Fund series of Freedom, currently finances its own distribution expenses under a Plan of Distribution adopted in accordance with Rule 12b-1 under the 1940 Act. The Freedom Money Market Fund series is a no-load fund with no sales commission of any kind and no Rule 12b-1 distribution fee.

2. Under the Existing Orders, Freedom is permitted to impose a CDSL on certain redemptions of shares of its Gold & Government Trust, Regional Bank Fund, Government Plus Fund, Equity Value Fund and Managed Tax Exempt Fund series. Freedom II is permitted to impose a CDSL on certain redemptions of shares of its Global Fund and Global Income Plus Fund series. The Existing Orders also apply to any future series of Freedom and Freedom II which is sold on substantially the same basis as the series noted above. In determining the applicability of the CDSL to each redemption, shares of a series of Applicants are redeemed in a manner designed to result in the lowest possible charge. Accordingly, redemptions are effected from the following categories of shares on which no CDSL is imposed: (1) Shares of a series, if any, on which an investor previously paid a front-end sales charge; (2) shares representing the amount of the increase, if any, in the net asset value of the investor's shares above the amount of the total payments for the purchase of shares within the last three years and (3) shares representing the amount of the net asset value of the investor's shares, if any, purchased more than three years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions. Shares redeemed to satisfy any redemption request in an amount which exceeds the net asset value of the shares on which no CDSL is imposed are subject to the CDSL. The amount of the CDSL (if any)

is calculated by determining the date on which the purchase payment that is the source of the redemption was made and applying the appropriate percentage to the amount of the redemption subject to the charge.

3. Under the Existing Orders, the current CDSL imposed is three percent during the first year following the purchase and decreases one percent per year through the third year with no charge imposed in the fourth and subsequent years. For purposes of determining the number of years from time of any payment for the purchase of shares, all payments during a month are aggregated and deemed to have been made on the last day of the month. In determining the rate of any applicable CDSL, it is assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable three year period. This results in the CDSL being imposed at the lowest possible rate.

4. Applicants propose that a new CDSL be imposed on new shares purchased in any existing or future series of Applicants after Applicants receive the amended order requested herein, and after the Applicants' prospectuses are supplemented to describe the proposed CDSL. Shares of any series of the Applicants purchased prior to the date the proposed CDSL becomes effective will remain subject to the current CDSL, and Applicants' prospectuses will be supplemented clearly to indicate this. The calculation and application of the proposed CDSL will be identical to the current CDSL already approved by the Existing Orders except that the proposed CDSL will be calculated and will extend over five years (as compared with the current three year schedule) with an additional 1.0% redemption charge in years four and five. Applicants have extended the CDSL schedule in order to assure adequate recovery by the Distributors of the new, increased sales commissions they will pay to expand the distribution network of broker-dealers selling Applicants' shares. Except for the new five year schedule, the proposed CDSL to be imposed with respect to Applicants' shares will be identical to the current CDSL already approved by the Existing Orders.

5. Under the Existing Orders, Applicants are permitted to waive the CDSL on certain redemptions. Applicants propose that the CDSL also be waived in the case of a redemption by a bank or trust company acting as trustee that has purchased $1 million or more of any series of Applicants.

6. Under the Existing Orders, shares of any series of Applicants may be exchanged for shares of each other without the imposition of the current CDSL at the time of the exchange. Such shares, upon subsequent redemption, are subject to the CDSL of the series in which the shares are being redeemed, calculated by reference to the date of initial purchase of the first series' shares, unless such shares are of a class for which a waiver is permitted. In the case when a shareholder exchanges shares of any series of Applicants subject to the current CDSL into the Freedom Money Fund, the period of time during which the shareholder holds such Freedom Money Market Fund shares will not be included for purposes of calculating the series' current CDSL (i.e., the CDSL period is tolled). In the case when a shareholder initially purchases shares of the Freedom Money Market Fund, then exchanges such shares for shares of another series of Applicants, the shareholder is subject to the CDSL of such series and the CDSL is calculated from the date of such exchange. Prior to receiving the Existing Orders and implementing the current CDSL, certain series of shares of Applicants were distributed with a front-end sales load. The current CDSL is not imposed on redemptions of such shares, and the Existing Orders permit the shareholder to exchange such shares for any other sries of Applicants and redeem the shares without the imposition of the current CDSL. No exchange fee or other administrative fee is charged for any of the exchanges between the series of Applicants.

7. The application was filed to clarify that the Applicants may continue to offer the exchange privilege between their series of shares, as described above, after implementation of the proposed CDSL schedule. Since the implementation of the proposed CDSL will be prospective in operation (i.e., it will apply only to shares of Applicants purchased after Applicants receive an amended order from the SEC as requested herein), the Applicants' exchange privilege will continue to operate generally as described above and as follows:

(1) An investor who purchased shares of a series of Applicants subject to the current CDSL and thereafter exchanges such shares for another series after the effectiveness of the proposed CDSL and redeems such shares will remain subject to the current CDSL;

(2) An investor who purchased shares of a series of Applicants with a front-end sales load prior to the effectiveness of the current and proposed CDSL and thereafter exchanges such shares for another series after the effectiveness of the proposed CDSL and redeems such shares will not be subject to the current or proposed CDSL;

(3) An investor who purchased shares of Freedom Money Market Fund prior to the effectiveness of the proposed CDSL and thereafter exchanges such shares for another series after the effectiveness of the proposed CDSL and redeems such shares will be subject to the proposed CDSL; and

(4) In the case where an investor with shares subject either to the current CDSL or the proposed CDSL exchanges those shares for shares of the Freedom Money Market Fund, the period of time during which the investor holds shares in the Freedom Money Market Fund will not be included for purposes of calculating the appropriate CDSL (i.e., the CDSL period is tolled).

8. Applicants have been informed by their transfer agent that the transfer agency will be able to monitor, track and effectuate all aspects of the proposed CDSL schedule and the exchange privilege described above, including the requisite holding periods for the current and proposed CDSL. In connection with such exchanges, there will be no financial incentive for the Distributors or account executives or other sales persons designed specifically to encourage initiation of exchange transactions. Applicants will not specifically solicit or promote exchange offers (by telephone or otherwise) and will establish internal monitoring and review procedures with the Distributors to ensure that such exchanges are made at the request of the investor and not for the personal gain of the Distributors or any sales representative. Applicants further agree to comply with all applicable federal and state laws and rules, as well as the rules and regulations of all agencies having jurisdiction. Applicants will set forth clearly in their prospectuses and/or statements of additional information the different CDSL schedules, holding periods and exchange privileges. Also, the Board of Trustees of each Applicant in the periodic review of each Applicant's Plan of Distribution adopted in accordance with Rule 12b–1 under the 1940 Act will consider the effect on the Distributors of the current and proposed CDSL and the use thereof.

**Applicants' Legal Conclusions**

1. Applicants submit that the proposed CDSL, the proposed waiver thereof and the exchange privilege are appropriate and in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The proposed CDSL is fair,

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equitable and in the best interests of shareholders because they will have the advantage of greater investment dollars working for them from the time of their purchase of Applicants' shares than with the traditional front-end sales charge. With respect to the additional waiver of the CDSL, such waiver will comply with the requirements of Rule 22d–1 under the 1940 Act which permits scheduled variations in, or elimination of, front-end sales loads. Also, the new CDSL schedule and proposed waiver will not adversely impact Applicants and their existing shareholders. Applicants also believe that the tolling of the proposed CDSL period while an investment is made in the Freedom Money Market Fund is necessary and appropriate in the public interest and consistent with the protection of investors because the Freedom Money Market Fund has no CDSL or other sales load or Rule 12b–1 distribution fee.

2. The Applicants believe that the fact that their shares will be subject to two different CDSLs for a period of time does not raise concerns under section 18 of the 1940 Act regarding the creation of a "senior security." Shares of each of the series of Applicants will have identical voting rights, dividend, liquidation and other rights and will share pro rata in all income and expenses of the series. Each series of shares of the Applicants will continue to have only one net asset value per share. The implementation of the proposed CDSL will not dilute a series' assets and reserves. The only differences between shares of the Applicants subject to the current and the proposed CDSL schedule will relate to the redemption amount received by the shareholders due to the differing CDSL schedules, the holding periods for the CDSLs and the exchange privileges between series of the Applicants as described above and more fully in the application.

**Applicants' Conditions**

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 12b–1 under the 1940 Act both currently and as that Rule may be modified by the SEC in the future.

2. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

3. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted.

4. Any subsequent similar series of Applicants will undertake to limit any future offers of exchange to the terms and conditions described in the application, the Existing Orders, and in the applications thereto (unless subsequently superseded).

5. Shareholders of Applicants will be notified by means of the Applicants' prospectuses of the fact that Applicants reserve the right to modify or terminate the exchange privilege.

6. In connection with sales literature and advertising that refer to the Applicants' exchange privilege, the Applicants will consider the desirability of disclosing that they reserve the right to modify or terminate the exchange privilege.

7. Shareholders will be notified in writing at least 60 days prior to any modification or termination of the Applicants' exchange privilege; provided, however, that the temporary cessation of the sale of Applicants' shares under extraordinary circumstances such as when the Applicants are unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of Applicants' shares pursuant to section 22(e) of the 1940 Act and the rules and regulations thereunder shall not be considered a modification or termination of the Applicants' exchange privilege.

8. Applicants undertake to obtain an amended order from the SEC prior to any modification (i.e., manner, frequency, or basis) of the Applicants' exchange privilege in a manner not described in the application, the Existing Orders, and the applications thereto; provided, however, that an amended order is not required in order to terminate the Applicants' exchange privilege.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 88–16829 Filed 7–25–88; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice 1070]**

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** Department of State.

**ACTION:** The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

**SUMMARY:** The Department of State is responsible for determining that adequate educational opportunities exist at Foreign Service posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools demonstrate U.S. educational philosophy and practice. The information gathered enables the Department to advise on conditions and make judgments regarding assistance to schools for the improvement of educational opportunities. The following summarizes the information collection proposals submitted to OMB:

1. *Type of request*—Extension.
   *Originating office*—Office of Overseas Schools.
   *Title of information collection*—Overseas Schools Questionnaire.
   *Form number*—FS–573, A and B.
   *Frequency*—Annual.
   *Respondents*—American sponsored schools abroad.
   *Estimated number of respondents*—175.
   *Average hours per response*—1.
   *Total estimated burden hours*—175.
2. *Type of request*—Extension.
   *Originating office*—Office of Overseas Schools.
   *Title of information collection*—Request for Assistance.
   *Form number*—FS–574.
   *Frequency*—Annual.
   *Respondents*—American sponsored schools abroad.
   *Estimated number of respondents*—175.
   *Average hours per response*—.5.
   *Total estimated burden hours*—87.5.
3. *Type of request*—Extension.
   *Originating office*—Office of Overseas Schools.
   *Title of information collection*—Approval of Funding to Support Educational Projects.
   *Form number*—JF–45.
   *Frequency*—Annual.
   *Respondents*—American sponsored schools abroad.
   *Estimated number of respondents*—175.
   *Average hours per response*—.25.
   *Total estimated burden hours*—43.75.
4. *Type of request*—Extension.
   *Originating office*—Office of Overseas Schools.
   *Title of information collection*—Grant Status Report.
   *Form number*—JF–61.
   *Frequency*—Quarterly.
   *Respondents*—American sponsored schools abroad.
   *Estimated number of respondents*—175.
   *Average hours per response*—.25.

*Total estimated burden hours*—218.75.

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 674–3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7340.

Date: July 11, 1988.

**Richard C. Faulk,**

*Acting Assistant Secretary for Administration.*

[FR Doc. 88–16718 Filed 7–25–88; 8:45 am]

BILLING CODE 4710–24–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. 301–61]**

### Unfair Trade Practices; Brazil's Lack of Adequate Intellectual Property Protection for Pharmaceuticals and Fine Chemicals

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of public hearings and request for public comments on possible U.S. actions in response to certain Brazilian unfair trade practices.

**SUMMARY:** The Trade Policy Staff Committee (TPSC) will conduct a public hearing on possible U.S. actions following the President's determination that Brazil's denial of adequate intellectual property protection for pharamaceuticals and fine chemicals is unreasonble and a burden or restriction on U.S. commerce. The President's determination follows from a section 301 investigation.

**SUPPLEMENTARY INFORMATION:** On July 23, 1987, the U.S. Trade Representative initiated an investigation under section 302 of the Trade Act of 1974, as amended (the "Act"), concerning Brazil's lack of patent protection for pharmaceuticals and fine chemicals (52 FR 28223). Initiation of the investigation was in response to a petition filed by the Pharmaceutical Manufacturers Association (PMA) under section 302(a) of the "Act" on June 11, 1987. The petition was filed by PMA following unsuccessful consultations between the Government of the United States and the Government of Brazil concerning Brazil's lack of product and process patent protection for pharmaceuticals and fine chemicals.

Following the initiation of the investigation, the United States Government again held consultations with the Government of Brazil in an attempt to find a mutually satisfactory solution to our concerns. The Government of Brazil is not prepared to modify its law sufficiently to provide adequate intellectual property protection for pharmaceuticals and fine chemicals.

Therefore, on July 21, 1988, the President determined under section 301 of the "Act" that the Government of Brazil has engaged in acts, policies and practices with respect to the denial of patent protection for pharmaceuticals and fine chemicals that are unreasonable and burden or restrict U.S. commerce. The President also determined that he intends to take appropriate and feasible action in response to the Government of Brazil's policies and practices and is, therefore, considering increasing customs duties or otherwise restricting the importation of products from Brazil. In this regard, the President directed the U.S. Trade Representative to hold public hearings on a list of products accounting for about $200 million worth of exports to the United States from Brazil. From this list, appropriate products will be chosen for increased duties or other import restrictions.

### Legal Authority

Under section 301 of the "Act," the President is authorized to take all appropriate and feasible action within his power to obtain the elimination of an act, policy or practice of a foreign government or instrumentality that denies the U.S. benefits under, or is inconsistent with, a trade agreement, or is othewise unjustifiable, unreasonble or discriminatory and a burden or restriction on U.S. commerce. Section 301(b)(2) expressly authorizes the President to impose duties or other import restrictions on the goods of a foreign country or instrumentality for such time as he deems appropriate. Measures under section 301 may be taken on a discriminatory or nondiscriminatory basis, at the discretion of the President.

### Public Hearing

In response to the President's directive to the U.S. Trade Representative, the TPSC will hold public hearings on a list of products accounting for about $200 million worth of exports from Brazil to the United States. From this list, appropriate items will be chosen for increased duties or other import restrictions. With respect to increasing customs duties, the Administration is generally considering an increase to a rate of 100 percent *ad valorem*. The attached annex contains those products of Brazil that are being considered.

Public hearings will be held on September 8 (and 9 if necessary), 1988, at 9:30 a.m. regarding the products of Brazil listed in the attached annex that may be subject to increased U.S. customs duties or other import restrictions for the reasons explained above. The comments submitted will be considered in recommending any action under section 301 to the U.S. Trade Representative for his recommendation to the President.

Comments are sought on: (1) The appropriateness of the products being considered for possible retaliation; (2) the levels at which U.S. customs duties or other import restrictions should be set; and (3) the degree to which increased duties or other import restrictions might have an adverse effect on U.S. consumers of the products concerned.

The hearings will be held in Court Room A, Room 100, in the U.S. International Trade Commission, 500 E Street, SW., Washington, DC, 20436. Interested persons wishing to testify orally must provide written notice of their intention by noon on August 24, 1988, to Ms. Carolyn Frank, Secretary of the TPSC, Office of the U.S. Trade Representative, Room 523, 600 17th Street, NW., Washington, DC, 20506. In addition, they must provide the following information: (1) their names, addresses and telephone numbers; and, (2) a summary of their presentation, including the products, with Tariff Schedules of the United States (TSUS) item numbers, to be discussed.

In addition, persons presenting oral testimony must submit a complete written statement in 20 copies, in English, by noon, August 29, 1988, to Ms. Carolyn Frank at the address listed above. Remarks at the hearing will be limited to 5 minutes.

Persons not wishing to participate in the public hearing may submit written comments, in 20 copies, by noon, August 29, 1988, to Ms. Carolyn Frank at the address listed above. All written comments must be filed in accordance with 15 CFR 2006.8.

### The Harmonized System Tariff Nomenclature

A supplemental notice will be published as soon as possible which will list the items contained in the annex to this notice in terms of the Harmonized System tariff nomenclature (HS). The HS-based list will represent the best possible conversion of the current TSUS-based annex cited in this notice. However, because the conversion may

not be exact due to differences in tariff nomenclature, some differences in precise product coverage may occur. Therefore, comments will be sought on any product coverage discrepancies that may arise. Submission of comments and requests to appear at the public hearing on the HS-based supplemental notice is required on the same dates as listed above.

**FOR FURTHER INFORMATION CONTACT:** Questions about products under consideration for increased duties or other import restrictions should be directed to Mr. Patrick Hughes, International Economist, Office of Industrial Trade, U.S. Department of Commerce, (202) 377–3703. Questions concerning the legal status of this case should be referred to Ms. Catherine Field, Associate General Counsel, Office of the U.S. Trade Representative, (202) 395–3432. Questions concerning the policy issues involved in this case, as well as any other questions, should be referred to Mr. Jon Huenemann, Director of Brazil and Southern Cone Affairs, Office of the U.S. Trade Representative, (202) 395–5190.

**Sandra J. Kristoff,**

*Chairwoman, Trade Policy Staff Committee.*

BILLING CODE 3190-01-M

ANNEX

| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| | [The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.] |
| | Wood moldings, and wood carvings and ornaments suitable for architectural or furniture decoration, whether or not drilled or treated: |
| | Standard wood moldings, not drilled or treated: |
| 202.62 | Pine (Pinus spp.) |
| 202.64 | Other |
| 202.66 | Other |
| 206.30 | Wood doors with or without their hardware |
| | Wood pulp; rag pulp; and other pulps derived from cellulosic fibrous materials and suitable for paper making: |
| | Chemical wood pulp, except screenings: |
| | Sulphate or soda: |
| | Bleached: |
| | [Special alpha and dissolving grades] |
| | Other: |
| 250.0281 | Softwood |
| 251.05 thru 254.95 | Paper and paperboard, in rolls and sheets, not cut to size or shape, provided for in subpart B of part 4, schedule 2, of the TSUS |
| 256.05 thru 256.67 | Paper and paperboard cut to size or shape; articles of paper or paperboard; all the foregoing provided for in subpart C of part 4, schedule 2, of the TSUS |
| 256.70 thru 256.95 | Articles not specially provided for of pulp, of papier-mache, of paper, or of paperboard, provided for in subpart D of part 4, schedule 2, of the TSUS |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| | Products obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4, of the TSUS: |
| | Pesticides: |
| | Not artificially mixed: |
| | [Fungicides; herbicides (including plant growth regulators)] |
| | Insecticides: |
| | [Articles provided for in item 408.24]. |
| 408.27 | Other |
| | Other: |
| | [1,2-Benzisothiazolin-3-one] |
| 408.32 | Other |
| 408.37 | Other |
| | Plastics materials: |
| 408.44 | Concentrated dispersions of pigments in plastics materials |
| | Products suitable for medicinal use, and drugs: |
| | Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4, of the TSUS: |
| 410.68 thru 412.71 | Drugs |
| | Drugs, from whatever source obtained, produced, or manufactured: |
| 412.72 | Guaiacol and its derivatives |
| 417.10 thru 423.96 | Inorganic chemical compounds, provided for in subpart C of part 2, schedule 4, of the TSUS |
| | Nitrogenous compounds: |
| 425.30 | Monosodium glutamate |
| | Halogenated hydrocarbons: |
| 429.22 | Carbon tetrachloride |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| | Chemical mixtures not specially provided for: |
| | [Mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas] |
| | Other: |
| 432.15 | Pesticides |
| 437.00 thru 438.02 | Alkaloids, antibiotics, barbiturates, hormones, vitamins, and other drugs and related products, provided for in subpart B of part 3, schedule 4, of the TSUS |
| 439.10 thru 440.00 | Other drugs not provided for in subpart A or B but provided for in subpart C of part 3, schedule 4, of the TSUS |
| | Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity of air, and parts thereof: |
| | Window or wall-type air-conditioners: |
| 661.2003 | Under 10,000 BTU per hour |
| 661.2006 | 10,000 to 16,999 BTU per hour |
| 661.2009 | 17,000 BTU per hour and over |
| | Elevators, hoists, winches, cranes, jacks, pulley tackle, belt conveyors, and other lifting, handling, loading, or unloading machinery, and conveyors, all the foregoing and parts thereof not provided for in item 664.06, 664.07 or 664.08: |
| | [Industrial robots] |
| | Other: |
| 664.1059 | Winches |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| | Machine tools: |
| | Metal-working machine tools: |
| | [Machine tools for cutting or hobbing gears; boring, drilling, and milling machines, including vertical turret lathes] |
| | Other: |
| | Metal-forming machine tools: |
| | [Used or rebuilt; other, valued under $2,500 each] |
| | Other: |
| | [Shearing machines, punching machines, and combination shearing and punching machines; bending, folding, straightening or flattening machines] |
| | Other metal-forming machine tools: |
| | [With numerical controls or facings for numerical controls] |
| | Other: |
| | Other: |
| | Presses: |
| 674.3594 | Mechanical |
| | Electric instantaneous or storage water heaters and immersion heaters; electric soil heating apparatus, and electric space heating apparatus; electric hair dryers, hair curlers, and other electric hair dressing appliances; electric flatirons; electro-thermic kitchen and household appliances; electric heating resistors other than those of carbon; all the foregoing and parts thereof: |
| | [Flatirons] |
| 684.20 | Toasters, waffle irons, skillets, ovens, stoves, coffee makers and other portable electro-thermic kitchen and household appliances |
| | Other: |
| | Cooking stoves and ranges, and parts thereof: |
| 684.25 | Microwave ovens |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
-5-

| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| 684.70 | Microphones; loudspeakers; head phones; audio-frequency electric amplifiers; electric sound amplifier sets comprised of the foregoing components; and parts of the foregoing articles (including microphone stands) |
| | Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof: |
| 684.90 | Television cameras, and parts thereof |
| | Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof: |
| | Television apparatus, and parts thereof: |
| | Television receivers and parts thereof: |
| | Having a picture tube: |
| 684.92 | Complete television receivers |
| | Assemblies (including kits containing all parts necessary for assembly into complete receivers): |
| 684.94 | Monochrome |
| 684.96 | Color |
| | [Radio-phonograph combinations] |
| | Record players, phonographs, record changers, turntables, and tone arms, and parts of the foregoing: |
| | [Tone arms and parts thereof] |
| 685.38 | Other |
| 685.39 | Telephone answering machines, and parts thereof |
| 685.40 | Tape recorders and dictation recording and transcribing machines (other than telephone answering machines), and parts thereof |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
-6-

| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| | Radiotelegraphic and radiotelephonic, etc. (con.): |
| | Other: |
| 685.42 | Radio-television-phonograph combinations |
| | Other: |
| | [Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks] |
| 685.49 | Other |
| | Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof: |
| | Electrical switches and relays: |
| | Containing an automatic overload or tripping mechanism (circuit breakers): |
| 685.9002 | Molded case |
| | Other: |
| | Relays: |
| 685.9034 | With contacts rated at less than 10 A |
| 685.9036 | With contacts rated at 10 A and over |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
-7-

| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| | Chassis, bodies (including cabs), and parts of the foregoing motor vehicles provided for in items 692.02 thru 692.16: |
| | [Bodies (including cabs) and chassis] |
| | Other: |
| | [Cast-iron (except malleable cast-iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues, and risers or to permit location in finishing machinery] |
| | Other: |
| | [Automobile truck tractors, if imported without their trailers] |
| | Other: |
| | Brakes and parts thereof: |
| 692.3262 | Brake drums and rotors (discs) |
| | Footwear, of leather (except footwear with uppers of fibers): |
| | [Huaraches; McKay-sewed footwear; moccasins; turn or turned footwear; welt footwear; footwear with molded soles laced to uppers; slippers] |
| | Other: |
| | For men, youths and boys: |
| | Soled "moccasins": |
| 700.3530 | For men |
| 700.3535 | For youths and boys |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
-8-

| TSUS or TSUSA 1/ item no. | Article |
|---|---|
| | Furniture, and parts thereof, not specially provided for: |
| | Of wood: |
| | [Bent-wood furniture, and parts thereof] |
| | Other: |
| | Furniture other than chairs: |
| | [Convertible sofas, sofa beds, and similar dual-purpose furniture; desks and desk extensions; dining tables; other tables] |
| | Other: |
| | [Bedroom furniture] |
| | Other: |
| 727.3560 | Shelving |
| | Pistols, revolvers, rifles, shotguns, and combination shotguns and rifles, all the foregoing which are firearms designed to fire shot, pellets, or bullets (except firearms provided for in item 730.10): |
| | Pistols and revolvers: |
| 730.15 | Valued not over $4 each |
| 730.17 | Valued over $4 but not over $8 each |
| 730.19 | Valued over $8 each |
| | Jewelry and other objects of personal adornment, and small articles ordinarily carried in the pocket, in the handbag, or on the person for mere personal convenience, all the foregoing, and parts thereof, of precious metal (including rolled precious metal), of precious stones, of natural pearls, of precious metal (including rolled precious metal) set with semiprecious stones, cameos, intaglios, amber, or coral, or of any combination of the foregoing: |
| | [Of silver (including rolled silver) and valued not over $18 per dozen pieces or parts] |
| | Other: |
| | Of precious metals: |
| | Necklaces and neck chains, almost wholly of gold: |
| 740.11 | Rope |
| 740.12 | Mixed link |
| 740.13 | Other |
| 740.14 | Other |
| 740.15 | Other |

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

[FR Doc. 88-16919 Filed 7-22-88; 2:22 pm]
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**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

**List of Countries Requiring Cooperation With an International Boycott**

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Dated: July 20, 1988.

**O. Donaldson Chapoton,**

*Assistant Secretary for Tax Policy.*

[FR Doc. 88-16810 Filed 7-25-88; 8:45 am]

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# Sunshine Act Meetings

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ENERGY REGULATORY COMMISSION**

July 20, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

**TIME AND DATE:** July 27, 1988, 10:00 a.m.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 882nd Meeting—July 27, 1988, Regular Meeting (10:00 a.m.)**

CAP-1.
Project Nos. 8377-002 and 003, Central Hydroelectric Corporation
CAP-2.
Project No. 4376-003, High Country Resources
CAP-3.
Project No. 2785-005, Wolverine Power Corporation
CAP-4.
Docket No. EL86-001 and Project No. 553-011, The City of Seattle, Washington Department of Lighting
CAP-5.
Docket No. UL 88-27-001, Consolidated Hydro, Inc.
CAP-6.
Docket No. HB20-85-1-000, Public Service Company of Indiana, Louisville Gas and Electric Company, Ohio Power Company, City of Vanceburg/City of Hamilton, Kanawha Valley Company, Elkem Metals Company and Kentucky Utilities Company
CAP-7.
Project No. 9080-003, Orange and Rockland Utilities, Inc.
Project No. 9754-002, Rio Hydroelectric Associates, Inc.
CAP-8.
Project No. 5251-002, City of Fort Smith, Arkansas
CAP-9.
Project Nos. 6568-003, 006 and 008, Delmar Wagner
CAP-10.
Project No. 8203-001, Falls Hydro Associates
CAP-11.
Project No. 9711-000, Inghams Corporation
CAP-12.
Project No. 9712-000, Beardelee Corporation
CAP-13.
Docket No. ER88-123-000, Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Power Company
CAP-14.
Docket Nos. ER88-447-000 and ER88-57-001, Vermont Electric Power Company, Inc.
CAP-15.
Docket Nos. ER80-259-011, ER80-793-000, ER80-355-000, ER80-356-000 and ER80-357-000, Kansas Gas and Electric Company
CAP-16.
Docket No. EL87-11-003, North Carolina Municipal Power Agency No. 1 v. Duke Power Company
Docket No. EL87-18-003, Piedmont Municipal Power Agency v. Duke Power Company
Docket No. EL87-20-003, North Carolina Electric Membership Corporation v. Duke Power Company
CAP-17.
Docket No. EL83-24-008, Seminole Electric Cooperative, Inc.
Docket No. ER84-379-006, Florida Power and Light Company
CAP-18.
Docket No. QF88-158-002, Petrolia Power Company
CAP-19.
Docket Nos. ER78-338-004, ER79-478-005 and ER80-313-005, Public Service Company of New Mexico
CAP-20.
Docket Nos. ER84-571-001, ER85-486-001 and ER86-300-001, (Phase II), Utah Power & Light Company
CAP-21.
Docket No. ER86-704-001, Canal Electric Company

**Consent Miscellaneous Agenda**

CAM-1.
Docket No. RM88-25-000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-2.
Docket No. FA85-71-001, Central Illinois Public Service Company
CAM-3.
Docket No. RM87-5-001, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines
CAM-4.
Docket No. RM87-17-001, Natural Gas Data Collection System
CAM-5.
Docket No. GP88-14-000, Kentucky Public Service Commission
CAM-6.
Docket No. GP88-13-000, Oklahoma Corporation Commission
CAM-7.
Docket No. GP88-4-000, Barnhart Company
CAM-8.
Docket No. GP87-10-000, Union Texas Products Corporation
CAM-9.
Docket No. RO86-13-000, Merit Petroleum, Inc.
CAM-10.
Docket No. RO88-3-000, Intercoastal Operating Company, IOC Production, Inc., John c. O'Leary, W.R. Dean, J.H. Gilley, Jr., L.E. Lewis and Joe N. Pratt

**Consent Gas Agenda**

CAG-1.
Docket No. RP88-204-000, Transcontinental Gas Pipe Line Corporation
CAG-2.
Omitted
CAG-3.
Docket No. RP88-206-000, Tarpon Transmission Company
CAG-4.
Docket No. RP88-209-000, Natural Gas Pipeline Company of America
CAG-5.
Docket No. RP88-211-000, CNG Transmission Corporation
CAG-6.
Docket Nos. RP85-13-020 and CP86-578-015, Northwest Pipeline Corporation
CAG-7.
Docket No. RP88-201-000, East Tennessee Natural Gas Company
CAG-8.
Docket No. RP88-203-000, Panhandle Eastern Pipe Line Company
CAG-9.
Docket No. RP88-205-000, Alabama-Tennessee Natural Gas Company
CAG-10.
Docket Nos. RP88-207-000 and RP87-55-003, Columbia Gas Transmission Corporation
CAG-11.
Docket No. RP88-210-000, Southern Natural Gas Company
CAG-12.
Docket Nos. TA88-5-29-000 and 001, Transcontinental Gas Pipe Line Corporation
CAG-13.
Docket No. TA88-4-49-000, Williston Basin Interstate Pipeline Company
CAG-14.
Docket Nos. TQ88-2-17-000 and TM88-1-17-000, Texas Eastern Transmission Corporation
CAG-15.

Docket Nos. CP87-309-002 and RP88-208-000, Paiute Pipeline Company
CAG-16.
Omitted
CAG-17.
Docket No. RP85-165-000, Distrigas of Massachusetts Corporation
CAG-18.
Docket No. RP88-190-000, North Penn Gas Company
CAG-19.
Docket No. RP88-68-004, Transcontinental Gas Pipe Line Corporation
CAG-20.
Docket Nos. TA88-4-12-002 and RP88-194-000, Distrigas Corporation and Distrigas of Massachusetts Corporation
CAG-21.
Docket Nos. RP82-71-022, 023, CP85-636-005, CP85-775-000 and CP86-633-000, Northern Natural Gas Company
CAG-22.
Docket No. RP88-199-000, Northwest Pipeline Corporation
CAG-23.
Docket No. TA88-4-37-000, 001 and 002, Northwest Pipeline Corporation
CAG-24.
Docket Nos. RP88-125-001, TQ88-1-22-001 and TA87-3-22-004, CNG Transmission Corporation
CAG-25.
Docket Nos. RP88-151-001 and TQ88-1-27-001, North Penn Gas Company
CAG-26.
Docket No. RP88-65-001, Panhandle Eastern Pipe Line Company
CAG-27.
Docket No. RP88-106-001, Northern Natural Gas Company, Division of Enron Corp.
CAG-28.
Docket No. RP88-128-001, National Fuel Gas Supply Corporation
CAG-29.
Docket Nos. RP88-146-001 and TA88-3-25-001, Mississippi River Transmission Corporation
CAG-30.
Docket Nos. RP88-47-003 and RP88-47-005, Northwest Pipeline Corporation
CAG-31.
Docket Nos. RP88-96-002 and RP88-96-003, Southern Natural Gas Company
CAG-32.
Docket No. RP88-115-001, Texas Gas Transmission Corporation
CAG-33.
Docket Nos. RP88-129-001 and TQ88-1-16-001, National Fuel Gas Supply Corporation
CAG-34.
Docket Nos. RP88-119-001 and TQ88-1-21-001, Columbia Gas Transmission Corporation
CAG-35.
Docket No. RP88-17-012, Southern Natural Gas Company
CAG-36.
Docket Nos. ST86-2102-001, ST86-2307-001, ST86-2802-001, ST86-2803-001, ST87-6-001, ST87-1425-001, ST87-2279-001, ST87-2365-001, ST87-2366-001, ST87-2367-001, ST87-2663-001, ST87-3539-001, ST87-3973-001, ST87-3974-001 and ST88-1369-001, Enogex Inc. (formerly Mustang Fuel Corporation)
CAG-37.
Docket No. TA86-3-59-006, Northern Natural Gas Company, Division of Enron Corp.
CAG-38.
Docket Nos. TA88-1-27-002, RP88-57-001 and RP88-110-001, North Penn Gas Company
Docket No. RP88-109-000, Corning Natural Gas Corporation v. North Penn Gas Company
CAG-39.
Docket No. RP88-131-002, Carnegie Natural Gas Company
CAG-40.
Docket No. RP87-61-002, Eastern Shore Natural Gas Company
CAG-41.
Docket No. RP86-143-001, Columbia Gas Transmission Corporation
CAG-42.
Docket Nos. RP86-45-018 and 019, El Paso Natural Gas Company
CAG-43.
(A) Docket Nos. RP86-119-008, TA84-2-9-010 and TA85-1-9-007, Tennessee Gas Pipeline Company
(B) Docket Nos. RP86-119-007, TA84-2-9-009 and TA85-1-9-006, Tennessee Gas Pipeline Company
CAG-44.
Docket Nos. CP88-99-001, CP88-100-000 and CP88-143-000, Transwestern Pipeline Company
CAG-45.
Docket Nos. RP87-62-000 and RP86-148-000 (Phase II), Pacific Gas Transmission Company
CAG-46.
Docket Nos. RP88-1-000 and 001, Bayou Interstate Pipeline System
CAG-47.
Docket No. RP88-62-000, Equitable Gas Company
CAG-48.
Docket Nos. RP87-62-001 and RP86-148-003, Pacific Gas Transmission Company
CAG-49.
Docket Nos. RP87-7-020 and RP86-48-000 (Minimum Bill), Transcontinental Gas Pipe Line Corporation
CAG-50.
Docket No. ST88-2859-000, Sandy Hook Pipeline Inc.
CAG-51.
Docket No. ST88-2553-000, Wintershall Pipeline Corporation and Hogan Pipeline Corporation
CAG-52.
Docket No. ST88-2547-000, Red River Pipeline Corporation
CAG-53.
Docket Nos. ST88-2555-000, ST88-2905-000 and ST88-3337-000, Louisiana Intrastate Gas Corporation
CAG-54.
Docket No. TA82-1-21-027, Columbia Gas Transmission Corporation
Docket No. CI84-26-028, Chevron U.S.A. Inc.
CAG-55.
Docket No. GP84-55-002, CI88-119-001 and CI88-140-001, Sunterra Gas Gathering Company
CAG-56.
Docket No. CI87-290-001, El Paso Production Company
Docket No. CP87-553-001, El Paso Natural Gas Company
CAG-57.
Docket No. CI87-764-002, BHP Gas Marketing Company
CAG-58.
Docket No. CI88-313-000, El Paso Natural Gas Company
CAG-59.
Docket No. CP85-447-006, Colorado Interstate Gas Company
CAG-60.
Docket No. CP87-238-001, Ozark Gas Transmission System
CAG-61.
Docket No. CP88-202-001, Columbia Gas Transmission Corporation
CAG-62.
Docket No. CP88-106-002, Transcontinental Gas Pipe Line Corporation
CAG-63.
Docket Nos. CP84-441-028, CP80-65-062 and CP82-358-003, Tennessee Gas Pipeline Company
CAG-64.
Docket No. CP86-627-002, Tri-Energy Pipeline Company
CAG-65.
Omitted
CAG-66.
Docket No. CP87-309-001, Southwest Gas Corporation and Paiute Pipeline Company
CAG-67.
Docket No. CP85-437-007, Mojave Pipeline Company
Docket No. CP85-522-002, Kern River Gas Transmission Company
Docket No. CP85-625-001, Northwest Pipeline Corporation
Docket Nos. CP88-197-002 and CP86-197-003, El Paso Natural Gas Company
Docket No. CP86-212-001, Transwestern Pipeline Company
Docket Nos. CP87-479-001 and CP87-480-000, (Phase II), Wyoming-California Pipeline Company
CAG-68.
Docket No. CP88-570-000, Mobil Bay Pipeline Projects
CAG-69.
Docket No. CP86-215-000, Questar Pipeline Company
Docket No. CP86-245-000, Williams Natural Gas Company and Northwest Pipeline Corporation
Docket No. CP86-280-000, Northwest Pipeline Corporation
Docket No. CP86-286-000, Williams Natural Gas Company
Docket No. CP86-606-000, Pacific Gas Transmission Company
CAG-70.
Docket No. CP87-534-000, Bayou Interstate Pipeline System and Pelican Interstate Gas System
CAG-71.
Docket Nos. CP87-548-000, CP87-552-000 and CP88-65-000, United Gas Pipe Line Company
CAG-72.
Docket No. CP88-324-000, Greeley Gas Company and Commerical Pipeline Company, Inc.
CAG-73.

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Docket No. CP88–152–000, Southern Natural Gas Company

CAG–74.
Omitted

CAG–75.
Docket No. CP87–286–000, Williston Basin Interstate Pipeline Company

CAG–76.
Docket No. CP88–554–000, United Gas Pipe Line Company

CAG–77.
Omitted

CAG–78.
Docket No. CP88–464–000, Michigan Consolidated Gas Company

CAG–79.
Docket No. CP87–19–000, Pacific Gas Transmission Company

CAG–80.
Docket Nos. CP86–636–003, CP86–735–001, CP87–10–001, CP87–66–001, CP87–67–001, CP87–84–001 and CP87–21–002, Pacific Gas Transmission Company

CAG–81.
Docket No. CP88–532–000, ANR Pipeline Company

CAG–82.
Docket Nos. CP86–589–005, RP86–104–006 and RP87–30–012, Colorado Interstate Gas Company

CAG–83.
Docket No. GP88–21–000, Texas Utilities Fuel Company

*I. Licensed Project Matters*

P–1. Reserved

*II. Electric Rate Matters*

ER–1.
Docket No. ER88–478–000, Ocean State Power. Order concerning rate change amendments.

ER–2.
Docket No. ER83–726–000, Boston Edison Company. Opinion on initial decision determining just and reasonable rates for transmission services.

ER3.
Docket No. ER84–348–001, American Electric Power Service Corporation. Opinion on initial decision concerning equalization of extra-high voltage transmission costs.

**Miscellaneous Agenda**

M–1.
Docket No. RM88–17–000, Regulations Governing the Public Utility Regulatory Policies Act of 1978. Notice of proposed rulemaking.

M–2.
Reserved

*I. Pipeline Rate Matters*

RP–1.
Docket Nos. ST85–559–000, ST85–789–000, ST85–630–000, ST81–260–005, ST81–260–004 and ST81–260–003, Enogex, Inc. (formerly Mustang Fuel Corp.). Order concerning rate design for Enogex's Section 311 transportation rates.

RP–2.
Docket No. ST83–429–003, Lear Petroleum Corporation. Order concerning rate design for Lear's Section 311 transportation rates.

RP–3.
Docket Nos. CP88–291–000 and CP87–484–000, Natural Gas Pipeline Company of America. Order concerning gas inventory charge settlement.

RP–4.
Docket Nos. TA84–1–28–002 and TA84–2–28–002, Panhandle Eastern Pipe Line Company. Opinion on initial decision concerning purchasing practices.

RP–5.
Omitted

RP–6.
Docket Nos. TA85–1–16–004 and TA85–2–16–002, National Fuel Gas Supply Corporation. Opinion on initial decision concerning purchasing practices.

RP–7.
Docket Nos. TA84–2–43–001 and TA85–1–43–000, Northwest Central Pipeline Corporation. Opinion on initial decision concerning prudence of purchasing practices.

RP–8.
Docket Nos. GP84–56–007 and RP83–42–006, Midwest Gas Users Association. Order on remand.

*II. Producer Matters*

CI–1.
Reserved

*III. Pipeline Certificate Matters*

CP–1.
Docket No. CP87–451–006, Northeast U.S. Pipeline Projects. Order establishing guidelines and the format of environmental data.

CP–2.
Docket No. CP87–451–008, Northeast U.S. Pipeline Projects
Docket Nos. CP88–198–000 and CP86–524–000, Iroquois Gas Transmission System
Docket Nos. CP88–168–000 and CP88–169–000, Champlain Pipeline Company
Docket No. CP88–177–000, Transcontinental Gas Pipe Line Corporation
Docket No. CP88–194–000, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket No. CP88–174–000, Tennessee Gas Pipeline Company
Docket No. CP88–175–000, Northeastern Gas Transmission Company
Docket No. CP88–176–000, Tennessee Gas Pipeline Company
Docket No. CP88–173–000, Tennessee Gas Pipeline Corporation
Docket No. CP88–182–000, PennEast Gas Service Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket No. CP88–189–000, Algonquin Gas Transmission Company
Docket No. CP88–195–000, PennEast Gas Service Company, CNG Tranmsmission Corporation and Texas Eastern Transmission Corporation
Docket No. CP88–197–000, PennEast Gas Service Company
Docket No. CP88–186–000, Algonquin Gas Transmission Company
Docket No. CP88–187–000, Algonquin Gas Transmission Company
Docket No. CP88–188–000, Algonquin Gas Transmission Company
Docket No. CP87–312–000, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket Nos. CP87–92–000, CP87–92–001 and CP87–92–002, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket Nos. CP88–190–000 and CP88–191–000, Greater Northeast Pipeline Corporation
Docket No. CP88–192–000, Algonquin Gas Transmission Company
Docket No. CP88–180–000, Texas Eastern Transmission Corporation
Docket Nos. CP88–181–000, CP88–195–000 and CP88–197–000, PennEast Gas Service Company
Docket Nos. CP87–312–000, CP87–92–000, CP87–92–001 and CP87–92–002, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket No. CP88–183–000, PennEast Gas Service Company and CNG Transmission Corporation
Docket No. CP88–194–000, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket No. CP87–5–000, CNG Transmission Corporation
Docket No. CP87–312–000, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket No. CP87–313–000 and CP87–314–000, CNG Transmission Corporation
Docket No. CP87–554–000, Algonquin Gas Transmission Company
Docket No. CP87–380–000, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
Docket Nos. CP86–43–001 and CP88–179–000, Texas Eastern Transmission Corporation
Docket No. CP88–368–000, PennEast Gas Service Company
Docket No. CP88–185–000, Algonquin Gas Transmission Company
Docket No. CP88–193–000, Eastern American States Transmission Company. Order on consolidation of open-season projects.

CP–3.
Docket No. CP87–339–000, Columbia Gas Transmission Corporation. Application to abandon and construct replacement facilities in Orange and Rockland Counties, New York and increase sales entitlements.

CP–4.
Docket Nos. CP87–4–000, CP87–4–001 and CP87–4–002, PennEast Gas Services Company and Texas Eastern Transmission Corporation
Docket Nos. CP87—28–000 and CP87–28–002, Texas Eastern Transmission Corporation
Docket No. CP87–5–000, CNG Transmission Corporation (Formally Consolidated Gas Transmission Corporation). Application to provide long-term firm sales, transportation and storage to distributors in New York and New Jersey.

CP–5.
Docket No. CP86–344–000 and CP86–344–001, Consolidated Gas Transmission Corporation. Application to construct

and operate pipeline facilities to serve the increased requirements of Niagara Mohawk.

CP-6.

Docket No. CP87-447-000, CNG Transmission Corporation. Application to render firm storage service for Tennessee Gas Pipeline Company.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16903 Filed 7-22-88; 12:00 pm]

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of July 25, August 1, 8, and 15, 1988

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of July 25**

No Commission meetings scheduled for Week of July 25.

**Week of August 1—Tentative**

*Wednesday, August 3*

2:00 p.m.
Annual Briefing by NUMARC (Public Meeting).

*Thursday, August 4*

2:00 p.m.
Briefing on the Status of Sequoyah I (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, August 5

10:00 a.m.
Briefing on Status of Efforts to Enhance Safety of Users of BY-Product Materials (Public Meeting).

2:00 p.m.
Briefing on Individual Plant Examinations Generic Letter (Public Meeting) (postponed from July 21).

**Week of August 8—Tentative**

*Tuesday, August 9*

10:00 a.m.
Briefing on Status of Agreements with OSHA, EPA and FEMA Concerning Jurisdiction Over Non-Radiological Hazards (Public Meeting).

2:00 p.m.
Briefing on Key Licensing Issues Associated with DOE Sponsored Advanced Reactor Designs (Public Meeting).

*Wednesday, August 10*

10:00 a.m.
Briefing on Current Status on Nuclear Materials Transportation (Public Meeting).

*Thursday, August 11*

10:00 a.m.
Briefing on Status, Results, and Implementation of B&W Reassessment (Public Meeting).

2:00 p.m.
Follow on Birefing on Implementation of Severe Accident Policy (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

**Week of August 15—Tentative**

*Monday, August 15*

2:00 p.m.
Briefing on Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting).

*Tuesday, August 16*

2:00 p.m.
Briefing on Maintenance Workshop (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

**Note.**—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (301) 492-0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

**William M. Hill, Jr.**

*Office of the Secretary.*

July 21, 1988.

[FR Doc. 88-16921 Filed 7-22-88; 3:47 pm]

BILLING CODE 7590-01-M

# Corrections

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 8

**[Docket No. R-88-528; FR-770]**

### Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development

*Correction*

In rule document 88-12141 beginning on page 20216 in the issue of Thursday, June 2, 1988, make the following corrections:

1. On page 20216, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth and fifth lines, remove "Department of Housing and Equal Opportunity, Room 5230,".

2. On the same page, in the third column, in the first complete paragraph, in the ninth line, "41" should read "42".

3. On the same page, in the same column, in the second complete paragraph, in the 10th line, "other" should read "otherwise".

4. On page 20219, in the second column, in the fourth complete paragraph, in the third line, "Rehabilitation" was misspelled; also, in the fourth line, "708(8)" should read "706(8)".

5. On page 20220, in the second column, in the first complete paragraph, in the eighth line, "desparate" should read "disparate".

6. On the same page, in the third column, in the second complete paragraph, in the 26th line, "from" should read "for".

7. On page 20222, in the first column, in the first complete paragraph, in the 15th line, "§ 814" should read "§ 8.14".

8. On page 20224, in the first column, in the second complete paragraph, in the 9th line and in the 16th line, and in the third paragraph, in the 3rd line and in the 16th line, "25 units/75 percent" should read "25 unit/75 percent".

9. On the same page, in the second column, in the first line, make the same correction.

10. On the same page, in the third column, in the fifth line, make the same correction.

11. On the same page, in the same column, in the third line from the bottom, "necessary" should read "necessarily"; also, in the last line, "an" should read "and".

12. On page 20228, in the second column, in the first line, "511.10(1)" should read "511.10(l)".

**§ 8.4 [Corrected]**

13. On page 20236, in the first column, in § 8.4(b)(1)(v), in the sixth line, "and" should read "aid".

**§ 8.21 [Corrected]**

14. On page 20238, in the second column, in § 8.21(c)(1)(iii), in the third line, "of" should read "or".

**§ 8.24 [Corrected]**

15. On page 20239, in the second column, in § 8.24(b), in the 20th line, "requirements" was misspelled.

**§ 8.30 [Corrected]**

16. On page 20241, in the first column, in § 8.30, in the fourth line, "511.10(1)" should read "511.10(l)".

**§ 8.56 [Corrected]**

17. On page 20243, in the second column, in § 8.56(c)(6), in the first line "*Amendments*" was misspelled.

18. On the same page, in the third column, in § 8.56(g), in the ninth line, "receipt" was misspelled.

19. On the same page, in the same column, in § 8.56(g)(2), in the second line, "believed" was misspelled.

20. On page 20244, in the first column, in § 8.56(h)(1), in the third line, "officials" should read "official".

21. On the same page, in the same column, in § 8.56(j)(1), in the 11th line, "rights" was misspelled.

22. On the same page, in the same column, in § 8.56(j)(2), in the 11th line, "violation" was misspelled.

**§ 8.57 [Corrected]**

23. On the same page, in the second column, in § 8.57(a) introductory text, in the 11th line, after "but" insert "are".

**§ 8.67 [Corrected]**

24. On page 20249, in the second column, in § 8.67(o), in the 12th line, after "copy" insert "of".

**§ 8.70 [Corrected]**

25. On page 20250, in the second column, in § 8.70(c), in the 12th line "proceeding The" should read "proceeding. The".

BILLING CODE 1505-01-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

### 24 CFR Part 511

**[Docket No. R-88-1401; FR 2472]**

### Rental Rehabilitation Grants

*Correction*

In rule document 88-15146 beginning on page 25462 in the issue of Wednesday, July 6, 1988, make the following correction:

**§ 511.10 [Corrected]**

On page 25467, in the second column, in § 511.10(e)(2)(i)(D), in the first line, "$8,000" should read "$8,500".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Transfer of Administrative Jurisdiction; Lucky Peak Lake Project, ID

*Correction*

In notice document 88-14365 beginning on page 24112 in the issue of Monday, June 27, 1988, make the following correction:

On page 24113, in the first column, in the land description, T. 3 N., R. 4 E., in the first line, after "Meridian" insert ", Boise".

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federal register

Tuesday,
July 26, 1988

Part II

# Environmental Protection Agency

**40 CFR Parts 124, 144, 146, and 148**
**Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions and Requirements for Class I Wells; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 124, 144, 146, and 148**

**[FRL-3382-7]**

# Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to all Class I Wells

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final Rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today promulgating its approach to implementing the statutorily mandated prohibitions on the underground injection of hazardous waste. This action is being taken in response to amendments to the Resource Conservation And Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA). In addition, the Agency is promulgating amendments to the existing Underground Injection Control (UIC) Regulations as they pertain to hazardous waste injection.

Today's notice codifies at 40 CFR Part 148, for those hazardous wastes that are disposed in Class I hazardous waste injection wells, the directly applicable sections of Part 268, the Agency's regulatory framework for implementing the land disposal restrictions (51 *FR* 40572 *et seq.* November 7, 1986).

Part 148 also specifies the effective date of the restrictions on injection of specific hazardous wastes. Today's rule includes effective dates for the restrictions on injection of solvent wastes and of dioxin-containing wastes. A recent proposal has specified effective dates for "California list" wastes (as defined by section 3004(d) of RCRA and at 52 *FR* 25760, July 8, 1987) and for certain wastes prohibited under section 3004(g) of RCRA (53 *FR* 14892 *et seq.*, April 26, 1988). Further proposals will specify effective dates for the remaining section 3004(g) wastes. Finally, Part 148 defines the two circumstances under which a waste otherwise prohibited from injection may be injected: (1) when the waste has been treated in accordance with the requirements of Part 268 pursuant to section 3004(m) of RCRA; or (2) when an applicant has demonstrated to the satisfaction of the Administrator that there will be no migration of hazardous constituents from the injection zone for as long as the wastes remain hazardous. Under this rule, an applicant may submit a petition to the Administrator containing the demonstration. An applicant may make a demonstration of "no migration" based on either: (1) an absence of fluid movement out of the injection zone; or (2) an active process of waste reduction, transformation, or immobilization within the injection zone. Upon a successful demonstration, the applicant will be granted an exemption from the prohibition.

Today's promulgation also contains changes to 40 CFR Parts 124, 144 and 146, the Class I injection well regulations. These amendments apply to owners and operators of all Class I hazardous waste well, including: those injecting wastes not yet subject to a prohibition, those injecting wastes which meet the treatment standards promulgated pursuant to § 3004(m) of RCRA, and those whose wastes have been banned and who have received an exemption under Part 148. The changes to § 124.10 and § 146.13 pertain to all owners and operators of Class I wells.

**DATES:** New Part 148, is effective July 26, 1988. All other amendments are effective August 25, 1988.

**ADDRESSES:** The official record for this rulemaking is located in Room 1013C East Tower, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public must make an appointment to review docket materials by calling Eric Callisto at (202) 382-5508 for appointments.

**FOR FURTHER INFORMATION CONTACT:** John Atcheson, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5508.

**SUPPLEMENTARY INFORMATION:**

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B. Summary of the Land Disposal Restrictions Framework
C. Effect on State UIC Primacy

*II. Summary of Today's Rulemaking: Response to Comments; Part 148*

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2. Generic Petition Demonstrations
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4. Statutory and Regulatory Definition of Injection Zone
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*III. Summary of Today's Rulemaking: Response to Comments; Part 146, Subpart G*

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## I. Background

### *A. Statutory Authority*

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste.

The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA sections 3004 (d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents and the list of wastes specified in section 3004(d)(2), termed the California list, in injection wells.

Wastes that meet the treatment standards set by EPA under section 3004(m) of RCRA are no longer prohibited and may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable effective date. In addition, two 1-year case-by-case extensions of the effective date may be granted under certain circumstances (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the statute specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The legislation also sets forth a series of deadlines for Agency action. For a full explanation of the statutory framework the reader is referred to the preamble for the regulations that EPA has already proposed or promulgated under the statute, particularly 51 *FR* 1602 *et seq.*, January 14, 1986; 51 *FR* 19300 *et seq.*, May 28, 1986; 51 *FR* 40572 *et seq.*, November 7, 1986; 51 *FR* 44714, *et seq.*, December 11, 1986; 52 *FR* 21010 *et seq.*, June 4, 1987; 52 *FR* 22356 *et seq.*, June 11, 1987; 52 *FR* 25760 *et seq.*, July 8, 1987; 52 *FR* 32446 *et seq.*, August 27, 1987; 53 *FR* 11742 *et seq.*, April 8, 1988; 53 *FR* 14892 *et seq.*, April 26, 1988; and 53 *FR* 17578 *et seq.*, May 17, 1988. The following discussion describes more specifically the statutory framework for injection wells.

#### 1. Section 3004(f)

Section 3004(f)( addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remain hazardous * * *". If EPA does not determine those instances where disposal would meet this standard, the injection of these wastes is prohibited under section 3004(f)(3).

#### 2. Section 3004(g)

Section 3004(g) of RCRA applies the same standards and procedures to all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed or identified in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in sections 3004 (d) and (e). EPA submitted this schedule to Congress on May 28, 1986 (51 *FR* 19300 *et seq.*).

Section 3004(g)(5) provides that the regulation promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous * * *".

Further, the section provides that, except for wastes which comply with the standards promulgated pursuant to section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

RCRA section 3004(g)(6) provides that if EPA fails to take action under section 3004(g)(5) by the statutory deadlines for any hazardous waste according to the schedule, such hazardous waste may be disposed of in landfills or surface impoundments only if such disposal units are in compliance with the minimum technological requirements set forth in RCRA section 3004(o) for new facilities. In this situation, placement of such wastes in other types of land disposal units (e.g., deep injection wells) would not be precluded by section 3004(g)(6). See 130, Cong. Rec. S9192 (daily ed., July 25, 1984). If EPA fails to set treatment standards, grant a petition or grant a variance under section 3004(h) for any of the scheduled listed wastes by May 8, 1990, then the particular wastes involved will be prohibited from land disposal.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations (i.e., establish treatment standards) within 6 months of

the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or identified waste.

*B. Summary of the Land Disposal Restrictions Framework*

The Agency has promulgated in 40 CFR Part 268 the regulatory framework for implementing the land disposal restrictions. (51 *FR* 40572 *et seq.*, Nov. 7, 1986). Corrections to the November 7, 1986, final rule were included in a June 4, 1987, **Federal Register** notice (52 *FR* 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were also made in the July 8, 1987, rulemaking on the California list wastes (52 *FR* 25760). Part 148 codifies the sections of Part 268 that are directly applicable to injection wells. In addition, today's rule specifies effective dates for restrictions on certain injected hazardous wastes. Part 148 also provides the standard and procedures by which petitions to dispose of an otherwise prohibited waste by injection will be reviewed and exemptions pursuant to these petitions will be granted or denied.

Part 148 is similar in approach to Part 268. The Agency believes, however, that it is useful to the regulated community and to the State regulators to have requirements regarding injection wells located in the same portion of the Code of Federal Regulations as are other requirements pertaining to these wells. Hazardous waste injection wells are regulated under the authority of both the Safe Drinking Water Act (SDWA) and RCRA. These regulations have been codified along with other regulations under the SDWA in Parts 124, 144, 145, 146 and 147 of the Code of Federal Regulations.

We expect that eventually the Part 148 standards will be implemented by the same State agencies that currently have primacy for the UIC program.

The framework which the Agency has promulgated to implement the land disposal restrictions for surface disposal facilities is as follows: For each waste that the Agency prohibits from land disposal, the Agency intends to promulgate treatment standards under Part 268, Subpart D that meet the requirements of section 3004(m) of RCRA. Once the standards are effective, restricted wastes may be land disposed of in a RCRA Subtitle C facility (e.g., a UIC Class I hazardous waste well) if they meet the treatment standard.

Upon the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards, or are not subject to a national capacity variance, or that do not have a case-by-case extension under § 268.5 are prohibited from placement in land disposal units unless an exemption has been granted by the Administrator under § 268.6 pursuant to a petition demonstrating that such disposal units will not allow migration of hazardous constituents for as long as the wastes remain hazardous.

For injection wells, EPA has adopted the same treatment standards that have been promulgated in Part 268 Subpart D for injected wastes, as provided in Part 148 Subpart B. After the effective date of a prohibition in Part 148 Subpart B, untreated wastes can only be injected if an exemption has been granted by the Administrator pursuant to a petition under Part 148 Subpart C, or, on a case-by-case basis, an extension to the effective date has been granted according to the procedures outlined in § 268.5. An extension may not exceed one year, and the Administrator may not renew it more than once.

*C. Effect on State UIC Primacy*

The requirements being promulgated today could affect the status of States with primary enforcement authority for the UIC program. Specifically, a State will have to amend its program to conform with the new regulations at Parts 124, 144, and 146 by April 24, 1989 (section 1422(b)(1) of the SDWA). Of course, a State which now prohibits Class I wells in general or injection of hazardous waste would not be required to make such a demonstration, since such a program would be more stringent than either existing or new UIC requirements.

The Agency notes that the new requirements will remove the existing "shield" for hazardous waste well permits. That is, under the previous regulations, permits could not be modified, revoked, or reissued to require compliance with new regulations unless the permittee requested or agreed. Under today's amendment to Part 144, new regulations would be grounds for initiating permit modification. These changes to Parts 124 and 144—unlike the effect of the land disposal restrictions which are immediately effective—will not take effect in primacy states until EPA approves the modification of the State program.

The Agency expects that part of a State's demonstration that its program conforms with the amended regulations would be an amendment to the Memorandum of Agreement where the state would agree on a schedule to modify existing permits, if necessary, to incorporate the new regulations.

States need not seek authorization to administer Part 148 to maintain UIC primacy. However, the Agency also expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant exemptions from land disposal restrictions. However, before such authorization can be granted the State would have to demonstrate that it has authorization to implement §§ 3004 (f), (g), and (h) of RCRA. A thorough discussion of the conditions under which such authorization can take place can be found in 50 *FR* 28728 *et seq.*, July 15, 1985. In addition, where jurisdiction for UIC and RCRA do not reside in the same State Agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

## II. Summary of Today's Rulemaking: Response to Comments; Part 148

*A. Proposed Standard for Demonstrating Protection of Human Health and the Environment*

As noted in the proposal, sections 3004 (f) and (g) both require a demonstration that injection is protective of human health and the environment. Under section 3004(g) it is clear that such a demonstration must include a showing of "no migration" of hazardous constituents from the injection zone for as long as the wastes remains hazardous. EPA believes that the "no migration" standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. In the proposal, EPA noted that the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), and concluded that injection of either set of wastes should be subject to the same standard. Thus, the Agency proposed that the demonstration should be similar for all injection wells regardless of the type of injected waste and that the "no migration" standard should apply to all. For this reason, the Agency is using a petition process and standard that is the same for all prohibited hazardous wastes that are injected, whether they fall under subsection (f) or (g).

Several commenters supported this interpretation of the law. Other commenters stated that the "application and demonstration" clause of sections 3004 (d)(1) and (g)(5) of RCRA would not

necessarily require procedures as rigorous or time consuming as EPA's proposed petition process. Moreover, these latter commenters point out that section 3004(f) simply does not contain the application and demonstration clause and could, therefore, differ in procedural approach.

1. Alternative Procedures for Implementing Sections 3004 (f) and (g)

Several commenters suggested an alternative approach whereby the Agency could make a determination that injection of wastes in accordance with the substantive standards of § 148.20 will be protective of human health and the environment. The Agency could then promulgate rules prohibiting injection which is not in compliance with these standards. Such action, the commenters maintained, would satisfy the Agency's mandate under sections 3004 (f) and (g).

EPA believes that RCRA provides significant latitude in the procedural approaches to determinations under sections 3004(d), (e), (f), and (g) of RCRA. Under any of these approaches EPA would need to support determinations under section 3004(g)(5) that there is "no migration of hazardous constituents while the waste remains hazardous" with sufficient technical basis, whether part or all of that basis is generic to the practice of hazardous waste injection. Under section 3004(f), EPA would need to support the finding that hazardous waste injection is "protective of human health and the environment". As a matter of policy, and not statutory mandate, EPA is approaching the standards for injection wells under sections 3004 (f) and (g) identically and is choosing the petition process in this final rule to make appropriate findings under both sections. The suggested alternatives which rely on more generic findings that the method of underground injection meets the standard along with facility certifications would not be as reliable as determinations based on site-specific demonstrations. To the extent that geology varies areally, the difficulty of modeling and characterizing the geology increases; the degree of uncertainty associated with a demonstration increases also.

2. Generic Petition Demonstrations

In the proposal, the Agency requested comment on a number of alternate approaches for satisfying the requirements of section 3004(f) of RCRA. These approaches were proposed in light of the Agency's ability to process "no migration" petitions in the period between promulgation of this regulation and the "hard hammer" deadline of August 8, 1988, for § 3004(f) wastes. One proposed approach was the submittal of generic petitions. Under this scenario, operators injecting the same waste into a single formation could submit one petition seeking an exemption from the ban, provided that the sites shared similar regional and basic site-specific geologies. Similarly, it was proposed that a single State could petition for a waiver from the ban for injection facilities within that State. These approaches received extensive comment, both pro and con. Commenters who disagreed with these approaches did so on the basis of what they perceived as petitioners' inability to submit information on geologies and waste streams that would be general enough to describe more than one facility, yet specific enough to insure "no migration" at every site.

The Agency understands this position, and realizes that successful petitions of this nature will be difficult to develop. This option is certainly within the legal parameters of a RCRA "no migration" demonstration, however, and as such, it will be a permissible petitioning alternative for the regulated community. The Agency has no intention of lowering the standards being promulgated today in allowing the use of generic petitions. Such petitions will have to adequately meet all of the regulatory requirements of Part 148 that insure protection of human health and the environment.

3. Scope of the "No Migration" Petition Demonstrations

Several commenters contended that exemptions granted pursuant to a "no migration" demonstration were intended by Congress to be limited in number. They inferred from the Agency's proposal that a sizable portion of the injection facilities might pass the demonstration and stated that this somehow violated the statute.

The Agency would like to note that until petitions are received and processed, EPA has no clear idea of the number of demonstrations which might be successful. Some very preliminary worst-case modeling performed by EPA did indicate that the demonstration was achievable by some. The Agency believes that Congress was setting a very stringent performance standard, not creating an arbitrary quota. Moreover, there is evidence that Congress recognized that some UIC wells could meet this standard (see S. Rept. 284 98th Cong. 1st Sess. at 14 and Cong. Record S. 9153, July 25, 1984). The exact number or percent of petitions which are deemed successful must be determined by whether facilities have the hydrogeologic or geochemical characteristics capable of meeting the standard, not on some predetermined number of sites which ought to be allowed to meet the standard.

4. Statutory and Regulatory Definition of Injection Zone

Several commenters sought to limit the statutory and regulatory term "injection zone" in a manner which, in EPA's view, (1) is not mandated by RCRA or the SDWA, (2) is not consistent with current regulations, (3) is irrational for the purposes of RCRA sections 3004 (f) and (g), and (4) would provide no benefits to environmental protection. At the heart of their argument is the concept that an injection zone may not contain confining material. Fluid penetration into such material, they would argue, is necessarily migration from an injection zone. EPA rejects these arguments.

The term injection zone under RCRA sections 3004 (f) and (g) and in the UIC program must have a functional meaning as the unit which must contain the waste. Containment can only occur within the relatively less permeable confining material. The legislative history of the 1984 HSWA amendments states that "[i]n determining appropriate confinement from which migration shall not be allowed to occur the terms disposal unit or injection zone should be construed . . . in terms of overall integrity of the disposal practice, keeping in mind, in particular the potential for contamination of groundwater or surface water resources" (S. Rept. 284 98th Cong. 1st Sess. at 15). Essentially, the UIC program permits the use of certain geologic formations or parts of formations in the inaccessible subterranean environment for waste disposal so long as this disposal is sufficiently removed from groundwater or surface water resources. There is no provision in the legislative history or RCRA sections 3004 (f) and (g) which states or implies that confining material is a resource which must not be used for disposal or cannot be part of an injection zone.

The legislative history of the 1984 HSWA amendments further indicates that the statutory term "injection zone" should match the regulatory definition in 40 CFR 146.3. That provision defines an injection zone as "a geologic formation, group of formations, or part of a formation receiving fluids through a well". Clearly under this definition permit writers must use their expertise and knowledge of local hydrogeology to determine the size and characteristics of injection zones. The current regulations

place other limitations on permit writers' discretion. First, under 40 CFR 144.3 and 146.3, hazardous waste injection must only take place below the lowermost formation containing within one-quarter mile of a well bore an Underground Source of Drinking Water (USDW). There must also be a confining zone which is "capable of limiting fluid movement above an injection zone" (40 CFR 146.3). The function of a confining zone is to oppose the upward pressures of injection and prevent fracturing of the geologic system. Nothing in this definition, however, states that an injection zone may not contain confining material or even that a confining zone may not include part of an injection zone. Only the functional ability to oppose upward migration is necessary.

Apparently, these commenters believe that there is always a discrete boundary where permeable material meets impermeable material and injection fluid would seemingly bounce off this barrier, with no penetration of the impermeable material. However, this notion does not conform with physical reality. First, within a formation or group of formations, there is often not a line where a large permeable strata meets relatively less permeable strata. Geologic formations, such as the ones encountered in the Gulf Coast Basin, for example, are often several hundred feet thick (Refs. 1, 2, and 3). Over such thickness, variations in lithology such as the interfingering of sands and shales often occur. Accompanying the lithological changes are variations in permeability, porosity, and hydraulic conductivities (Refs. 4, 5, and 6). Second, confining material might not actually repel fluids; they oppose upward movement, and where adequate, stop it. Thus, some amount of penetration into confining material within the injection zone can occur, but should not be considered migration for the purposes of RCRA sections 3004 (f) and (g), provided the penetration occurs within the injection zone.

Prior to the 1984 HSWA amendments, permit writers did not fully consider the extent of fluid penetration of confining material since that penetration was always well below the formation containing a USDW. The Agency's proposal made clear that the injection zone itself must be appropriate to contain hazardous fluids. These commenters' statement that this approach is unlawful is not well founded. Moreover these commenters offer no credible alternative. Accordingly, EPA maintains in this final rule the interpretation outlined in the proposal.

5. Hazardous Levels at the Unit Boundary

In the proposal, a petition under RCRA §§ 3004 (f) and (g) would satisfy the statutory standard if it showed that before injected fluid crossed the top of an injection zone or a point of discharge, the fluid was no longer hazardous. In its proposal, EPA suggested using health-based limits which have undergone peer review by the Agency and are used in RCRA delisting decisions and for clean closure demonstrations. In the absence of such standards, EPA proposed that the Agency require petitioners to demonstrate that concentrations had been reduced to three orders of magnitude below detection levels.

Although commenters generally expressed support for the use of health-based values to define hazardous levels, some objected to any use of health-based levels. These commenters believe that the statutory phrase in RCRA sections 3004 (e), (d), and (g) that there be "no migration of hazardous constituents while the waste remains hazardous" means that EPA may not allow a single molecule of a constituent listed in 40 CFR Part 261 Appendix VIII to leave an injection zone. The Agency specifically interprets the statutory phrase as requiring consideration of the fate of Appendix VIII constituents which are either injected or derived from injected waste.

EPA, however, believes that Congress, in the use of the term "hazardous" and the phrase "while the waste remains hazardous", was concerned that injected fluid which leaves the injection zone not be hazardous and thereby not contain Appendix VIII constituents at hazardous levels.

This interpretation is consistent with the language in the 1984 amendments which expressly direct the Agency to "tak[e] into account" the "persistence, toxicity, mobility, and propensity to bioaccumulate of . . ." hazardous wastes and their hazardous constituents in making determination with respect to deep well injections. *See* RCRA sections 3004 (f)(2), (g)(5), and (d)(1)(C). To take toxicity and propensity to bioaccumulate into account the Agency must necessarily consider concentration levels. This interpretation is further consistent with the Senate Report which states that the "no migration of hazardous constituents . . ." for as long as the wastes remain hazardous standard can be satisfied if the Administrator finds "that migration of the wastes will not occur while the wastes still retain their hazardous characteristics in such a way that [sic] would present any threat to human health and the environment." (S. Rep. No. 98–284 at 15.)

The emphasis on concentration levels, as opposed to single molecules, is deeply established in EPA's regulations. Ordinarily the term "hazardous constituents" has no regulatory effect unless concentrations are also considered. Thus, the use of the term "hazardous constituents" under EPA's interpretation of RCRA sections 3004 (d), (e), and (g) is consistent with EPA's rules and policies for listing and delisting hazardous waste as well as cleanup standards. The listing procedures, in effect prior to 1984, state clearly that solid waste containing any of the constituents listed in 40 CFR Part 261 Appendix VIII might be termed hazardous considering, among other factors, the concentrations of the constituents in the waste (40 CFR 261.11). (See also the delisting rule at 40 CFR 260.22; the clean closure rule (52 *FR* 8704, March 19, 1987); and the groundwater cleanup rules at 40 CFR 264.94(a) (2) and (3).)

It should be noted that wastes can be rendered nonhazardous in the sense of concentration (see proposal at 52 *FR* 32453), but there is no chemical reaction that will completely eliminate all molecules of some Appendix VIII constituents. Thus a standard based on single molecules would not reflect the reality of chemical transformations. Moreover, wastes may be rendered nonhazardous by means of chemical transformation, adsorption of heavy metals or some organics, as well as by several other mechanisms. Immobilization of heavy metals in the injection zone is obviously a desired result. Accordingly, the Agency believes the most logical standard under RCRA sections 3004 (d), (e), (f), and (g) consistent with the environmental concern is whether hazardous fluids ever leave the disposal units and not whether hazardous levels of constituents remain in the unit. Thus, the phrase "while the waste remains hazardous" should not reflect wastes which stay in the unit.

For mobile constituents, the distinction between migrating fluids and fluids still in the injection zone would make little difference under the 10,000 year containment approach in § 148.20 discussed below. After 10,000 years of containment constituents would either be immobilized or otherwise be at nonhazardous levels throughout the injection zone.

The stringent reading that no molecules may leave an injection zone is inconsistent with EPA's regulatory approach to what is and is not

hazardous for regulatory concerns. Commenters have not shown that EPA's approach violates RCRA and have not offered any other credible approach. Accordingly, EPA maintains in this final rule the approach proposed.

A few commenters objected to the use of MCLs as health-based limits on the theory that MCLs factor in elements of cost, and are therefore not truly health-based limits.

The Agency, in a recent rulemaking, determined that MCLs are, in fact, protective of human health (see 52 *FR* 25700–25701, July 8, 1987). Basically, MCLs are conditioned by the feasibility of treatment. As the discussion in the preamble to the rule cited above indicates, MCLs have been found to be protective of health, not withstanding consideration of this factor.

Several commenters objected to the proposal which would have required the petitioner to demonstrate that concentrations had been reduced to three orders of magnitude below detection limits in the absence of established health-based levels. In objecting, some noted that there was no relationship between our ability to detect a constituent and its potential health effects. Others noted that there is no fixed level which represents the detection limit. They contended that the technology used to detect constituents is rapidly evolving, and varies from lab to lab. Finally, some maintained that three orders of magnitude below detection levels was excessively stringent and would establish levels far below any which might arise from known health-based levels. Many of these commenters suggested that the petitioner identify levels of concern in the absence of established limits and demonstrate to the Agency that the limits selected are protective.

The Agency, after consideration, remains convinced that there must be a surrogate for health-based limits in cases where no such limits have been or can be expeditiously established. Further, EPA believes that detection limits form an appropriate basis for this surrogate. However, EPA agrees that three orders of magnitude may be excessive. Only in very rare cases does a waste pose a health threat at such low levels. The Agency considered the option of having the petitioner demonstrate a level which would not have a potential to threaten health, but rejected it. While we are not allowing petitioners to define health-based levels, we will use data supplied by them to allow the Agency to specify a level of concern. Several mechanisms exist which allow the Agency to formulate interim levels of concern on a very rapid basis where data exists, and the Agency would use these when more formal levels had not been established. Only in cases where very little data exists would EPA rely on a surrogate.

The final approach being specified today uses detection limits as the appropriate level when no health-based limit exists or can be developed expeditiously by the Agency. This is generally consistent with the approach for listing, delisting, and clean closure described above. Three orders of magnitude below detection might cause inconsistent results since sampling of injected fluid in the injection zone would not even pick up constituents below detection levels.

*B. Applicability—Section 148.1*

As proposed, § 148.1 identifies the regulated community and broadly indicates the situations under which a facility may receive a variance, exemption, or extension from the RCRA Land Ban. One commenter believed that there should be no withdrawal required for wastes injected prior to final EPA approval or denial of actual petitions. The commenter was responding to the statement in the proposal that "the Agency has determined that the restrictions limit the injection of wastes after the restriction deadlines, but do not apply to wastes injected prior to the applicable dates." (52 FR 32449)

The commenter is in part correct. The prohibitions do not apply retroactively, and therefore wastes injected prior to the effective date do not have to be withdrawn. However, the commenter's contention that the effective date of the restriction is keyed to the time of the Agency's decision on a petition, is incorrect. The effective dates for a given waste are those specified by the statute in section 3004(f) or promulgated pursuant to section 3004(g). Thus, waste withdrawn from the formation after the effective date of an applicable ban is subject to the requirements of RCRA section 3004 except in the case where withdrawal is soil or debris resulting from a cleanup activity under CERCLA or RCRA, in which case the waste is not subject to the "land ban" provisions until November of 1988 (see section 3004(e)(3)).

There may be situations (e.g., salt domes) where an injection technology is not identical to the technology addressed in this rulemaking. In such cases, EPA will accept petitions under the statutory standards and apply the technical standards from Part 148 which are relevant and appropriate, along with other standards necessary to meet the statutory requirements of sections 3004 (f) and (g).

*C. Definitions—Section 148.2*

In the proposal the Agency defined two new terms at § 148.2: "injection interval" and "transmissive fault or fracture". Some commenters believed that the new definitions were both warranted and adequately explicit. Others felt the new terms were warranted, but indicated that some needed further clarification or modification. Still others felt that the Agency needed to define additional terms or redefine already established terms in addition to those proposed on August 27.

Most of the comments received pertained to injection interval. Some organizations felt that this new definition led to a liberal interpretation of the injection zone, and presumably a less protective injection scenario. Others felt that the well screen itself could be defined as the injection interval under this definition, thereby creating an artificially small receiving formation. The Agency believes that the injection interval is a necessary delineation in light of the § 148.20 "no migration" demonstration. An essential part of the § 148.20 modeling requirements is the modeled distance the waste travels within the injection zone. This distance must be measured from a defineable point or area that is distinguished as that place in the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced. That defineable point or area is the injection interval, and EPA today promulgates that definition as proposed.

The term "transmissive fault or fracture" received only positive comments, and is today promulgated as proposed.

Various commenters suggested the adoption of new or redefined terms. The Agency considered these suggestions and believes that, with the inclusion of today's two new definitions and those promulgated in Part 146, all terms required to define and regulate injection of hazardous wastes have been promulgated.

*D. Dilution Prohibition—Section 148.3*

In the proposal, the Agency adopted the prohibition on dilution by reference to § 268.3. This section prohibits dilution of restricted wastes as a substitute for treatment to achieve compliance with either a treatment standard or, in the case of the California List, to bring the waste below the applicable restriction level. The Agency received comments supporting this approach. Two commenters, however, requested

clarification on the point at which dilution would be established, with one suggesting the inclusion of preamble language from the July 8, 1987 (52 *FR* 25778) final rule which amended the Land Ban framework. The basis of the § 268.3 regulation was outlined in that final rule and applies to both injection wells and surface facilities. We are adopting the approach in that preamble.

Legitimate aggregation of waste streams to facilitate centralized treatment is not considered impermissible dilution. However, artificial aggregation of wastes to avoid a land disposal prohibition standard, or mixing substances that do not either themselves need to be treated or which do not aid in treatment, would be considered impermissible. Thus, § 148.3 is intended to prohibit dilution as a means of circumventing the requirements imposed by the land disposal prohibitions. The Agency does not intend to prohibit dilution which is necessary to facilitate treatment.

*E. Case-by-Case Extensions—Section 148.4*

In the proposal, the Agency incorporated by reference § 268.5 as § 148.4. Section 148.4 will permit the owner or operator of a hazasrdous waste injection well to submit an application to the Administrator demonstrating that a binding contract has been enetered into to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond that applicant's control. Two commenters felt that such an extension should be applicable to owners or operators who have submitted "no migration" petitions and are waiting approval.

Variances, extensions, and exemptions from the UIC Land Ban exist in five forms: (1) an exemption as a result of a successful "no migration" petition pursuant to the requirements of Subpart C of Part 148; (2) a statutory exemption until November 8, 1988, if the waste has been determined to be contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action required under RCRA; (3) a variance if the wastes cannot be treated to the level (or by the method) specified by the treatment standard established in section 268, pursuant to § 268.44; (4) a variance granted for lack of alternative capacity pursuant to section 3004(h)(2) or RCRA; and (5) a case-by-case extension pursuant to section 3004(h)(3). Unlike the variances and extensions noted above, there is no statutory authority to allow for a case-by-case extension of the ban date for owners or operators who have submitted "no migration" petitions and are awaiting approval. In the case of a treatment facility under construction, an applicant can assure with some confidence that at some time treatment will be available. No such assurance can be made on the outcome of a petition; it may be approved or denied.

The Agency believes, moreover, that it was Congress' intent, when setting the so-called "hard hammer", to move the Agency and industry towards a swift and effective national hazardous waste management program that is protective of human health and the environment. Reviewing and acting on "no migration" petitions in a timely fashion is part of this program. As a practical matter, the promulgated and proposed treatment capacity variances should in most cases provide the Agency time to process the "no migration" petitions before the regulatory hammer falls; the Agency's inability to process a petition is not and cannot be the basis of an extension granted under section 3004(h)(3), however.

Another commenter supported the adoption of the case-by-case provision, but believed that it should be interpreted to include extensions for facilities which have contracted for raw materials that will render their final product non-hazardous, but which are currently unavailable. Although other factors must be considered (see § 268.5), the Agency believes that this is an appropriate interpretation of the statute, to the extent that the addition of such raw materials constitutes alternative treatment or recovery, since section 3004(h)(3) allows the Administrator to grant such an extension for the purpose of constructing *or otherwise* providing such alternative capacity.

*F. Waste Specific Prohibitions—Sections 148.10 and 148.11*

1. F001 through F005 Solvent Wastes

Section 148.10 sets effective dates for the restriction of injected solvent wastes. In addition, this section outlines the situations under which such effective dates do not apply. Comments were received on various provisions and standards adopted or proposed at this section.

Many organizations commented on the Agency's adoption of § 268.41 treatment standards for injected solvents. Under the authority of section 3004(m) of RCRA, the Agency identified in the November 7, 1986, rule, treatment standards applicable to the following spent solvent wastes (including solvent mixtures) F001, F002, F003, F004, and F005 based on the levels of treatment that could be achieved by Best Demonstrated Available Technologies (BDAT) for these solvents (51 *FR* 40573 *et seq.*):

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols (and cresylic acid)
Cyclohexanone
1, 2-Dichlorobenzene
Ethyl Acetate
Ethylbenzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methylene chloride (from the pharmaceutical industry)
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1, 1, 1-Trichloroethane
1, 1, 2-Trichloro-1, 1, 2-trifluoroethane
Trichloroethylene
Trichlorofluoromethane
Xylene.

The Agency proposed applying those treatment standards for solvent wastes that are currently injected. Some commenters felt that the BDAT established in § 268.41 is inappropriate for the large-volume, low-grade wastes bring injected. Others supported the adoption. According to the best data available to the Agency at this time, solvent wastes that are surface disposed differ from those that are deep-well injected only by amount, not by type. Accordingly, the Agency is today adopting the standards in § 268.41 as BDAT for injected solvent wastes.

The Agency has recently completed the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey) (Ref. 7). This comprehensive database consists of the best information available to the Agency at this time. The TSDR Survey indicates that approximately 40 million gallons of low concentration (less than one percent), surface disposed sovlent wastes will require some form of alternative treatment. The TSDR Survey also shows approximately 317 million gallons of deep well injected solvent wastes. The Agency is attempting to determine the concentration of these injected solvents, but current information shows at least 260 million gallons to be below 1%. The appropriate

treatment for these dilute solvents is wastewater treatment (steam stripping, carbon adsorption, biological treatment and wet air oxidation) followed by solidification/stabilization and combustion. The TSDR Survey indicates that only 75 million gallons of such capacity exists.

In addition, and as noted in the proposal, the Agency expects that wastes resulting from both corrective action activities mandated by section 3004(u) of RCRA, and CERCLA removal and remedial actions, will place substantially increased demands on available treatment capacity. Preliminary studies indiate that approximately 2.8 to 5.6 *billion* gallons of ground water containing solvents may be extracted from such sites between 1988 and 1990 (Ref. 8). Again, the concentrations of these wastes have not been determined; the Agency expects the additional quantity of wastes resulting from these actions to occupy any increased treatment capacity that might become available as facilities meet the minimum technology requirements of section 3004(o) of RCRA, as well as tank or other on-site capacity which might be developed over the next few years. Based on these data, EPA is promulgating the variance proposed on August 27, granting a two-year national variance for injected spent solvent wastes containing less than one percent total F001–F005 solvent constituents at the point of initial generation (i.e., when the wastes first meet the listing description) which are disposed of by injection in Class I wells. Today's rule does not establish effective dates for the commercial chemical products, manufacturing chemical intermediates, and off-specification commercial chemical products (P and U wastes) listed at § 261.33 that correspond to the F001–F005 spent solvent wastes. These wastes will be addressed in a later rule. This rule also does not cover the four newly listed solvents in the F001–F005 listing which were added after the date of enactment of the 1984 amendments to RCRA: benzene, 2-ethoxyethanol, 2-nitropropane, and 1, 1, 2-trichloroethane (51 *FR* 6538). The Agency is currently gathering data to characterize and evaluate these wastes.

One commenter indicated that wastes which naturally meet treatment standards should not require treatment, nor be banned. This was explicitly proposed at § 148.10(c)(1) and § 148.11(b)(1), and remains a part of today's promulgation.

One commenter noted that the Agency had failed to include in the prohibitions at § 148.10 the provision for wastes receiving a variance from the treatment standard obtained under 40 CFR 268.44. Section 268.44 was promulgated on November 7, 1986. It applies to situations where a particular waste stream cannot be treated to the level (or by the method) specified as the treatment standard. The Agency envisions that wastes may be subject to a treatability variance in cases where the treatment standard for a particular stream cannot be met because the waste differs significantly from the type of wastes EPA considered when establishing treatment standards. A particular waste may be significantly different from the wastes considered in establishing treatability groups, for example, if the waste contains a more complex matrix which makes it more difficult to treat. For instance, complex mixtures may be formed when a restricted waste is mixed with other waste streams by spills or other forms of inadvertent mixing. As a result, the treatability of the restricted waste may be altered such that it cannot meet the applicable treatment standard. In such a case, generators or owners/operators may petition the Agency for an alternative treatment standard. While the Agency does not presently have any information indicating that promulgated treatment standards are not applicable to injected hazardous wastes, it is conceivable that such a situation may arise. Consequently the Agency is adding language to § 148.10 that adopts a procedure to evaluate petitions for a variance from the treatment standard as promulgated at § 268.44.

At this time, EPA has limited information indicating concentrations for the remaining solvent-containing wastes which are injected. Therefore, the Agency may reexamine whether a variance for these wastes is warranted when more data becomes available. At this time, however, the Agency is setting an effective date of August 8, 1988, for the restrictions on F001–F005 wastes in concentrations equal to or greater than 1% at the point of initial generation (i.e., when the wastes first meet the listing description).

2. Dioxins

Many of the comments on § 148.11, the section setting an effective date for the restriction of underground injection of dioxins, mirror those received on § 148.10. Several commenters did not believe that § 268.41 treatment standards were applicable, while others supported the proposed section. The Agency identified in the November 7, 1986, rule, treatment standards applicable to dioxin wastes identified by the hazardous waste codes F020, F021, F022, F023, F026, F027, and F028. The Agency has granted a two-year variance to the effective date of the restrictions for these wastes which are surface disposed, based on lack of capacity. Utilizing the same rationale as explained above for § 148.10, the Agency is adopting § 268.41 treatment standards for injected dioxin-containing wastes. Current data available to the Agency show that no dioxin-containing wastes are presently being injected. Restricting the injection of these wastes would have a negligible effect on availability of treatment capacity. Therefore, as proposed, EPA is not granting a national variance to the effective date of the ban for injection of these wastes. The effective date of the restrictions is August 8, 1988. The § 268.44 alternative treatment variance is being adopted for dioxin wastes as it was for solvents at § 148.10.

3. Other Proposed Prohibitions

Many commenters, in addition to supporting variances for both solvents and dioxins, also supported variances for injected "California list" wastes (as defined in RCRA section 3004(d) and the July 8, 1987, rule (52 *FR* 25760)) as well as wastes classified under section 3004(g) of RCRA. The April 26, 1988, notice (53 *FR* 14892 *et seq.*) contained effective dates for the California list wastes and a portion of the section 3004(g) wastes. Further notices will propose effective dates for the remaining section 3004(g) wastes.

*G. Petition Standards—Section 148.20*

This section outlined the specific standards the Agency proposed to apply to petition demonstrations. In summary, EPA proposed that the demonstration could be made on the basis of either waste transformation or fluid flow. Either demonstration would rely on the use of models as well as Agency-recommended health-based limits to define concentrations of waste constituents which would be considered hazardous. These levels, which have undergone peer review by the Agency, are used in delisting decisions and for clean closure demonstrations (See 52 *FR* 8704, March 19, 1987).

The Agency proposed that a demonstration based on fluid flow would have to show that the waste did not reach a point of discharge for a period of 10,000 years. In addition, EPA maintained that molecular diffusion was not a significant source of solute transport and therefore proposed that diffusion not be considered as part of a demonstration. A successful showing

would also have required the petitioner to comply with certain amended provisions of Part 146. As an additional safeguard, a petitioner would have to show that the confining zone was four times thicker than the vertical distance which the waste was expected to move in the injection zone, and that the injection zone was separated from the lowermost USDW by ten times that distance.

The Agency received extensive comment on this framework. In general, commenters were supportive of much of the proposal and indicated that it was consistent with statutory standards in sections 3004(f) and (g). A summary of the comments, the Agency's responses, and the final approach for each of these requirements follows.

1. Basing Determinations on 10,000 Years

The proposal specified that when modeling flow, the petitioner demonstrate that the waste would not reach a point of discharge, either vertically or horizontally, for a period of 10,000 years. As noted in the proposal, the Agency specified the 10,000 year time frame not because migration after that time was of no concern, but because it believed a site which could meet a 10,000 year time period would both provide containment for a substantially longer time frame, and allow time for geochemical transformations which would render the waste nonhazardous or immobile (Refs. 9, 10, 11, 12, 13, 14, and 15).

There was considerable comment on this provision. Some believed the time period to be far too long. Their suggested alternatives ranged from 100 to 1000 years. In support of these shorter time frames, these commenters pointed to language in House Report No. 198 (Pt. 1, 98th Cong., 1st Sess. at 33) which talks in terms of hundreds of years. Several also suggested that it is difficult to model accurately over such long time periods.

Others indicated that a 10,000 year time frame did not provide the "reasonable degree of certainty" required by the statute that hazardous waste would not migrate out of the injection zone.

The Agency has reviewed these comments and after careful consideration believes the 10,000 year demonstration stikes an appropriate balance between the need to demonstrate "no migration" with a reasonable degree of certainty and the limits of the technological means of making that demonstration. It should be noted, that EPA's standard does not imply that leakage will occur at some time after 10,000 years; rather, it is a showing that leakage will not occur in that time frame. As noted in the proposal, there is a considerable body of evidence suggesting that waste will either degrade to nonhazardous constituents or otherwise be attenuated well within a 10,000 year time frame.

One commenter cited one of the documents referenced in the proposal and noted that while organonitriles and nitrate were converted to $CO_2$ and $N_2$, sodium thiocyanate showed relatively less reduction in concentration (Ref. 14). The commenter concluded that this somehow invalidated EPA's selection of 10,000 years for the term of a demonstration. In this study, residence time of the waste in the injection zone was less than 70 *hours*. While observation of waste degradation in such a short time does affirm that waste will degrade in very long time frames, lack of total destruction in hours says nothing about the fate of waste in 10,000 years. Thus, EPA rejects the notion that the proposed standard is "* * * refuted by our own cited references."

Concerning those commenters who questioned the accuracy of modeling over a 10,000 year time frame, the EPA would like to note that many of these same commenters had correctly pointed out elsewhere in their comments that modeling need not locate the exact point where the waste would be at that time; determining where it would not be is sufficient. This level of precision is achievable.

2. Molecular Diffusion

In the proposal, the Agency suggested that movement of contaminants by molecular diffusion would not result in migration of hazardous constituents outside the injection zone at hazardous levels. As a result, EPA proposed that the petitioner need not consider diffusion in the demonstration required in § 148.20.

The Agency received extensive comment on this approach, with some expressing strong support, and others objecting to it. Some commenters offered technical information supporting the Agency's proposed approach. Of particular interest to all commenters was a study conducted by EPA (Ref. 16). Several commenters did not appear to understand that this study represented an extreme worst case anaylsis designed to determine the absolute upward limits of movement at hypothetical sites which could occur as a result of diffusion. Others noted the coefficients used were more representative of coarse sediments than those found in strata capable of confining fluids. One commenter stated that modeling movement due to diffusion was straightforward, and that sharply defined upward limits could be easily and accurately identified. As a result, this commenter contended that movement due to diffusion should not be subject to any additional safeguards if it is considered in a demonstration.

The Agency has reviewed the comments submitted, the new data provided, and refined its own analysis, and remains convinced that in most cases diffusion does not represent a significant source of solute transport that would result in vertical movement of hazardous levels of constituents (Ref. 17). However, the Agency does believe that this might not be true in all cases; thus, the determination of whether diffusion is a significant source of movement must be made on a case-by-case basis. Accordingly, EPA, in this rule, will require that any movement due to diffusion be accounted for in the demonstration. The Agency notes that diffusion is accounted for in most models used to simulate flow in deep, mineralized systems. Consequently, we do not believe there is any significant burden associated with requiring consideration of diffusion.

3. Use of Models

The proposed framework was based on predictions of waste location and fate over the very long term, and as such relied on modeling flow or waste degradation or attenuation. Commenters were generally supportive of this approach, but several expressed concern over the accuracy of modeling over time frames of up to 10,000 years. The concerns over modeling for very long time periods have already been discussed. Moreover, the issue of defining an appropriate maximum time frame for modeling has been addressed by the Science Advisory Board (SAB) and they endorsed periods up to 10,000 years (Ref. 18).

Some commenters, however, objected strenuously to the use of models in demonstrations and contended that there was neither a sound technical basis nor the legal authority to do so.

The Agency disagrees with both of these propositions. Nothing in sections 3004 (f) or (g) of RCRA or the legislative history forbids the use of models to form the basis for a "no migration" petition. The final approach relies upon conservative modeling techniques to evaluate the potential for migration of hazardous constituents from the injection zone. Fluid flow modeling is a well-developed and mature science and has been used for many years in the petroleum industry. More recently, fluid

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flow models have been further developed for the Department of Energy nuclear waste isolation program.

Specifically, a wide range of models exists that provide the capability to analyze pressure build up, lateral waste migration, vertical fluid permeation into overlying confining material, and leakage through defects in overlying aquitards (Refs. 15, 19, 20, 21, 22, and 23). Models make it possible to predict tendencies or trends of events that have not yet occurred or that may not be directly observable. Under the "no migration" standard, a demonstration need not show exactly what will occur, but rather what conditions will not occur. Conservative modeling can be used to "bound the problem" and can legitimately form the basis for the petition demonstrations.

Specific hydrogeologic data and operational data are necessary to make a demonstration, and EPA will carefully analyze modeling assumptions. Where some uncertainty exists about the data, the demonstrator may conduct sensitivity analyses to determine the range of error this uncertainty could introduce into a demonstration.

There will be, moreover, an opportunity for public comment on the appropriateness of the simulator selected, the data used, and the assumptions made in any demonstration.

Finally, the commenters who are contesting, as a general matter, the validity of modeling have offered no technical basis for their objections, nor have they provided specific suggestions to improve the data or analytic approaches.

General statements such as these do not provide useful or credible alternatives for EPA to implement sections 3004 (f) or (g). Therefore, since (1) nothing legally prohibits the use of models, (2) appropriate modeling has a sound technical basis, and (3) commenters have offered no indication that there are any specific pitfalls to this approach, EPA does not in this final rule prohibit the use of modeling to form the basis of a petition demonstration for underground injection wells.

4. Use of a Safety Factor

In the proposal, the Agency stated that demonstrations would be based on modeling and that direct verification of the absence of migration would be problematic due to the difficulty of effectively monitoring the location of a fluid front at depths ranging from 1500 to 5000 or more feet. In addition, during the regulatory negotiations which helped in the formation of the proposal for this rule, some representatives wanted to limit the permit writers' discretion by requiring that injection zones have vertical limitations. To deal with these concerns, EPA proposed that the confining zone be four times thicker than the total vertical distance that fluid was expected to move within the injection zone and that the injection zone be separated from the lowermost USDW by ten times that calculated distance (4x/10x).

As noted in the proposal, a further purpose of this provision was to deal with the uncertainties which some members of the regulatory negotiation committee felt were inherent in demonstrations based on modeling. In addition, this provision was seen as providing some additional protection against the likelihood that permeable faults or fractures might transect the confining zone.

The Agency received extensive comment on this requirement. Most stated that they believed the requirement to be excessive and unnecessary, and some believed it to be arbitrary. Several commenters noted that EPA had intentionally rejected the use of rigid numerical standards elsewhere in the proposal, noting that qualitative considerations were often important in making decisions regarding siting (52 *FR* 32458) and waste migration. One commenter objected to the proposal, but suggested it could be workable if an alternative to the "4x/10x" requirement was available.

A few expressed limited support for the concept, but indicated that if the Agency were to restrict the definition of injection zone, such a provision would be unnecessary.

One commenter wanted to reinstate a "containment zone," which is a concept introduced during the regulatory negotiation.

Finally, some requested clarification of how this distance should be measured. Commenters suggested that if the Agency were to adopt this approach, the appropriate point of measurement should not be the screened interval, but some larger area which is defined by the geology of the site.

After careful consideration, the Agency has determined that the requirement is unnecessary and may not be appropriate for several reasons. One of the key difficulties in implementing a "4x/10x" provision is the lack of proportionality between the initial fluid penetration into confining material and the additional safety provided by a multiple of that initial penetration. There is not necessarily a relationship between the quality of confining material in the injection zone and material some distance above. Thus, the requirement of further distance proportional to "x" is somewhat arbitrary.

Moreover, as mentioned above on the discussion of injection zones, there may be no discrete line to begin the measurement of "x" because of the interfingering of permeable and relatively less permeable material. Trying to determine with any consistency a point beyond the area of active emplacement into permeable material would be extremely difficult. This approach would also tend to encourage placement of well perforations nearer to confining material, which is not necessarily a desirable result in most geologic settings.

Further, the Agency's own analysis has shown that the "4x/10x" provision may not always afford the level of protection EPA was seeking. For example, modeling has shown that the "x" value may be quite small, in some geologic settings yielding values less than 10 feet (Ref. 15). Such low figures would not, under most circumstances, provide protection against transmissive faults or fractures.

Second, the Agency believes that any uncertainties resulting from the quality or extent of geologic data available are better addressed by assuring that conservative values are used, and that sensitivity analyses are conducted where appropriate, to enable the reviewer to assess the amount of variation in performance which might result from a given assumption.

Third, with regard to uncertainties associated with verification, the Agency would like to note that monitoring of pressure decay rates when the well is shut-in, provide effective means of determining whether the waste is behaving as a model predicted it would (Ref. 22).

Fourth, the Agency rejects the contention that modeling inherently introduces uncertainty into the demonstration; modeling has been used extensively in oil field exploration and enhancement with very good results (Ref. 23). Such applications involve the analysis of multiple points of injection and withdrawal and often involve two-phase flow—an application of considerably greater complexity than that required for "no migration" petitions submitted pursuant to § 148.20. Moreover, within the last few years, fluid flow models have been further developed for the Department of Energy nuclear waste isolation program (Refs. 24 and 25). Beyond this, EPA would like to note that models need not identify the precise point to which a plume may

move. Rather, the model can be used to bound the problem, showing a point to which the plume cannot move.

Finally, the Agency would like to point out that requirements currently in place and others being promulgated today in § 146.62 in Subpart G apply substantial safeguards to siting of injection wells. To the extent that such requirements apply to areas outside the injection zone, and address endangerment of USDWs and not prevention of migration, EPA believes that Part 146 is the appropriate regulation in which to promulgate these rules. Nevertheless, the requirements still serve to limit the regulatory agency's discretion, and provide additional safeguards addressing the concerns which the "4x/10x" requirement sought to address.

As a practical matter, the Agency believes that the petition reviewer will be sufficiently constrained by requirements in § 148.21 as it is being promulgated today. The final rule specifies more clearly that assumptions must be reasonably conservative, and that sensitivity analyses must accommodate any significant uncertainty in the geologic characterization or other aspects of the demonstration.

5. Requiring Compliance With Certain Part 146 Requirements

The Agency proposed that as part of the petition demonstration, the applicant certify compliance with the proposed Area of Review (AOR) and Corrective Action requirements from Part 146, as well as submit the results of a pressure test and a radioactive tracer survey (RTS) conducted within six months prior to a petition submission.

Commenters were generally supportive of the proposed approach, although some requested clarification on whether the UIC permit needed to be revised. Several commenters suggested that EPA's proposal to require that a well pass a mechanical integrity test within 6 months prior to petition submittal was too restrictive. They argued that such tests were unnecessary because they are currently required in the UIC permits, the six-month time period was counter-productive and could discourage submission of petitions in a timely manner, or that other tests could adequately serve to make the requested demonstration. Finally, some commenters contended that all or some expanded set of the amended UIC requirements should be met as a prerequisite to petitioning.

*a. Permit Modification.* The Agency did not envision requiring UIC permits to be modified as part of complying with amended Area of Review, Corrective Action or mechanical integrity requirements. It was the Agency's intent that the operator *certify* compliance with AOR and Corrective Action requirements, and that the operator submit results of a recent pressure test and RTS test. This is the approach being promulgated today in the final rule.

*b. Timing of Mechanical Integrity Tests.* EPA agrees that requiring operators to conduct a pressure and RTS test within 6 months prior to submitting a petition is too restrictive. As noted by some commenters, this requirement could have the effect of discouraging submission of petitions in a timely manner. The Agency's primary concern was that the well have a recent demonstration of integrity prior to approving or denying a petition. Since EPA can envision circumstances in which petition reviews may take considerably longer than 6 months, the final rule requires the owner or operator to submit the results of a pressure test and a RTS test with a petition. The tests must be conducted within one year prior to submittal of a petition. If the petition has not been approved or denied within one year after the MIT test was performed, the Director may require the owner or operator to perform another and submit the results.

*c. Requiring Compliance with Other Part 146 Standards.* One commenter suggested that at a minimum, the siting provisions in § 146.62 should be an integral part of the petition demonstration. Other commenters suggested that the Agency require compliance with all the provisions of proposed requirements in Subpart G of Part 146 prior to approving a petition.

First, the Agency would like to note that the siting requirements of § 146.62 with regards to injected waste are either subsumed in the standard set in § 148.20 or are rendered unnecessary by a successful demonstration. Moreover, the § 148.20 requirements are more stringent than the § 146.62 requirements. By definition, compliance with § 148.20 would demonstrate "no migration" whereas compliance with § 146.62 would demonstrate no endangerment, a considerably lesser requirement with regards to hazardous waste. Thus, imposing the requirements in § 146.62 as part of a petition demonstration would, at best, be redundant. The Agency believes the Part 146 requirements are necessary to effectively regulate hazardous waste injection which has not been banned and is therefore not subject to Part 148 requirements, and to assure that USDWs are not endangered from formation fluids.

Second, the 1984 HSWA amendments do not require a general overhaul of existing technical UIC regulations for hazardous waste injection and EPA does not believe there is an acute need for amendments to these regulations. The normal process of program review and the regulatory negotiation process did lead to the development of several useful proposals for clarifying, updating, or expanding existing regulatory requirements. Many of these standards are currently part of the UIC regulatory structure but are simply not stated in descriptive detail. EPA believes that adherence to current EPA technical permitting standards along with the new area of review and mechanical integrity requirements provides operational integrity of the delivery system to a reasonable degree of certainty. The Agency's additional findings under the petition process will fully satisfy the statutory standards under RCRA sections 3004 (f) and (g).

The commenter's proposal that new Part 146 standards must be in place before petition approval, is unworkable and unnecessary. Because sections 3004 (f) and (g) are HSWA requirements, that approach would essentially require EPA to run an entirely new UIC permitting scheme on top of those run by UIC primacy states. The petition review and permitting process are not identical under the statutes. This dual and redundant permitting and enforcement scheme would run until UIC primacy states had obtained HSWA authorization and would essentially require federal repermitting of every UIC facility. EPA does not believe Congress, in RCRA sections 3004 (f) and (g), mandated or envisioned such a sweeping and disruptive approach in permitting. While the Agency obviously favors today's revisions to the permitting program, and may in the future seek further changes, it does not believe such changes are intrinsically linked to decisions under RCRA sections 3004 (f) and (g). Moreover, commenters have not shown that any particular aspect of the UIC regulations are so critically inadequate that adherence to them in lieu of the new standards would necessarily fail the statutory mandates of RCRA.

*H. Information To Be Submitted in Support of Petitions—Section 148.21*

Section 148.21 of the proposal specified criteria which the information submitted in support of a petition must meet. In addition, §§ 148.21 (b) and (c) listed certain site-specific information that should be part of a petition. A few commenters noted that no single

modeling method or proprietary model should be required for all submitting sites. The Agency agrees with this position, and believes the proposed language at § 148.21(a)(3) allows flexibility in the choice of models, provided that the model has been validated, verified, and calibrated to assure that it is suited to the site to which it is applied.

Some commenters felt that the requirement for a sensitivity analysis in § 148.21(a)(6) was not clearly stated. The Agency's intent in proposing this section was to require the petitioner to: (1) Identify areas where the geologic characterization (or other phenomena) contained significant uncertainty; (2) determine a likely range over which values might vary; and (3) perform sensitivity analyses which would determine the magnitude of the fluctuations in performance which might result from these variations. The Agency agrees with those commenters who believed the rule was unclear and is promulgating more specific language in this section.

One commenter requested the inclusion of justification in § 148.21(a)(5) for the use of reasonably conservative values whenever values taken from the literature or estimated on the basis of known information are used instead of site-specific measurements. The commenter apparently believed that data from the literature is not always inferior to site-specific data. For example, in areas of extensive drilling and extensive, homogeneous sedimentation, data from off-site may provide a high degree of certainty in the characterization of local geology. The Agency agrees that information from the literature can provide certitude. Section 148.21(a)(5) should be viewed in the total context of § 148.21; when the geology can be accurately described and the bounds of uncertainty established, the sensitivity analyses may be more sharply defined; when there is some doubt concerning the geologic description, these analyses must be more broadly defined. Thus, the definition of what constitutes "reasonably conservative values" in § 148.21(a)(5) would be defined by the degree of certainty which results from the use of information from the literature or estimated values. The Agency believes that reasonably conservative values are those which result in models and subsequent operations that are protective of human health and the environment. It is difficult to codify such values, however, in light of the varied wastes, geologies, and operating circumstances that are covered under deepwell injection. The Agency believes that specific, suitably conservative values can be established by the reviewer during the course of petition evaluation.

One commenter believed that § 148.21(b)(2) should include the "layer of protection" required in 146.62(d)(1). As noted in Section (II)(G)(5)(c) of this preamble, the siting requirements of Part 148 are more stringent than those of Part 146, and would subsume such Part 146 requirements. Any petition that satisfies §§ 148.20 and 148.21 requirements automatically meets the requirements of § 146.62, with respect to injected wastes.

One commenter noted that, in regards to the geologic information requirements of § 148.21(b), "* * * Unless the proposed well is located in an area of dense drilling, the geologic data necessary for mapping [of the injection site] is likely unavailable." Most hazardous waste injection wells are sited in the Gulf Coast and Great Lakes regions, areas with long histories of drilling practices, and subsequent extensive geologic mapping. It is true that some facilities exist in areas where little or no previous drilling has occurred. Again, the amount and density of specific points needed to characterize geology is a function of the degree of isotropy and homogeneity exhibited by the sedimentary basin. The Agency believes that in many cases the owners or operators of sites may need to gather additional geologic data on their sites before a successful petition can be developed. The Agency believes that detailed geologic mapping is a reasonable request in the context of this regulation. A "no migration" demonstration cannot be established without it.

One commenter believed that existing and anticipated post-operational vertical fluid density gradients as well as vertical hydraulic gradients should be considered in evaluating the potential for vertical movement. The Agency agrees, but would like to note that a "no migration" demonstration under § 148.20 cannot be made without such factors being considered.

Several commenters objected to the requirement that, "All waste and environmental sampling, test and analysis data shall be accurate and reproducible and performed in accordance with quality assurance standards." They noted that in many cases, petitions will be based on information gathered during the drilling of the well—information which cannot be reproduced in accordance with procedures specified long after the drilling occurred. These commenters also noted that much of the data relied upon for characterizing the regional geology will be obtained from operations which are conducted by entities other than the petitioner. These commenters believed that the net effect of this requirement would be to prohibit the use of vast amounts of data. The geologic descriptions would therefore be less accurate, they contended.

The Agency agrees. Excluding historical data or information which might have been gathered off-site by methods not consistent with certain prescribed procedures may be counterproductive. The purpose of §§ 148.21(a) (5) and (6) should be to allow the use of such data, but assure that its limitations are accounted for in a petition review. Accordingly, EPA will require that only measurements pertaining to the waste or that result from testing performed to gather data for the petition demonstration comply with prescribed procedures. The Agency believes, however, that the concerns about the accuracy of geologic data are addressed more appropriately by requiring that the demonstration identify and account for limits on data quality rather than by excluding data from consideration. Again, § 148.21(b), as revised, requires precisely such consideration. Therefore, the demonstration in § 148.20 as promulgated, will allow the use of existing data.

*I. Procedures for Petition Submission, Review, and Approval or Denial—Section 148.22*

Some commenters stated that the petition review process in the proposal would not provide an adequate opportunity for public oversight. Commenters suggested a 45-day period for review, and an opportunity for public hearings due to the complex nature of the demonstrations. Other commenters believed that the proposed petition process is unworkable and would, due to the amount of time necessary to process petitions, result in sound hazardous waste management practices being outlawed by procedural difficulties. These commenters suggest a generic determination for injection wells and a minor modification approach to changes required in permits.

The Agency is doing everything it can to inform and coordinate with the regulated community on petitions, including several outreach meetings and close coordination with States and Regional offices. The "hammers" in the 1984 HSWA Amendments do create resource and timing problems, but as explained above, EPA favors the

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petition process as a way of examining the specific hydrogeologic setting for determinations under sections 3004 (f) and (g). We further agree that the petition information is complex and the procedures would benefit from a 45-day comment period and the opportunity for public hearings. We incorporate such provisions in the final rule. In addition, we clarify here that the more extensive public notice provisions in 40 CFR 124.10 which apply to RCRA permits will apply to the Part 148 petition process.

In order to minimize the duplication of administrative procedures, we are providing that the Director may make certain related permit modifications to the UIC permit contemporaneously with the petition process through the procedures in § 148.22. These modifications include identification of an injection zone or an injection interval, redetermination of a well's area of review under § 148.20(a)(2)(i), application of a protocol for location of abandoned wells under § 148.20(a)(2)(ii), submission of a corrective action plan under § 148.20(a)(2)(iii), and performance of a radioactive tracer survey under § 148.20(a)(2)(iv). These items will then be enforceable both as permit conditions and as conditions of the petition. This approach will streamline the process and focus Federal administrative resources in an efficient manner.

State primacy programs will, of course, follow their own permit modification procedures. We will try and coordinate as closely as possible with primacy states. As discussed above in Section (II)(G)(5) of this preamble, nothing in this final rule requires permit modifications to satisfy the conditions of § 148.20. However, we believe a coordinated approach would prevent needless duplication of procedures.

*J. Review and Termination of Exemptions—Sections 148.23 and 148.24*

The Agency proposed in § 148.23 that petition demonstrations be reviewed at the time of permit renewals. Under the proposal, the Director could require a new demonstration if new information showed that the basis of the demonstration were no longer valid. This section also provided the Director the authority to require a new demonstration at any time information indicated that the basis of the showing was not valid or was no longer valid. Section 148.24 listed reasons for which the Director could terminate exemptions, including, in § 148.24(b), mandatory causes for terminating exemptions. Section 148.24(b) did afford the Director some discretion regarding termination of exemptions when the source of a release was a faulty well in the area of review, or a mechanical problem in the injection well itself. Finally, § 148.24(c) specified procedures which the Director must follow when terminating exemptions granted under § 148.20.

One commenter, supported by several others, noted that if EPA were to adopt alternative procedures for approving petitions (see comments in Section (II)(A)(1) of this preamble) any violation of the demonstration would constitute violation of the regulations and would, therefore, be enforceable within the context of these regulations. The commenter concluded that this section was, under the suggested alternative approach, unnecessary.

The commenter went on to say that under any approach, § 148.24(b) is unnecessary and should not be promulgated. According to this commenter, releases from the well or from an abandoned borehole can be fixed by relatively simple remedial action, and therefore should not be grounds for closing a well. Other commenters contended that any failure of the system should be grounds for automatic termination of the exemption whether or not these failures represented simple transient events that did not permanently compromise the system. Finally, some commenters objected to the procedural requirements associated with withdrawing an exemption, contending that it takes too long.

The EPA agrees that if the suggested alternative approach for implementing sections 3004 (f) and (g) were to be adopted, the requirements in §§ 148.23 and 148.24 could be addressed through enforcement. For the reasons outlined in Section (II)(A)(1) of this preamble, however, the Agency is not adopting any of these alternative approaches.

With regards to the grounds for termination, EPA believes that both comemnts have merit. Specifically, there are undoubtably circumstances when a simple failure of a well plug in an abandoned well or a well component in an injection well should not initiate closure or a redemonstration under § 148.20. On the other hand, the Agency believes that the Director should have the authority to cancel an exemption due to well failure or an improperly abandoned well in the area of review, in some cases. For example, instances of repeated well failures, or numerous problems with wells in the area of review, could indicate that the corrective action for wells in the area of review has been inadequate, or that the well is not functioning adequately to assure delivery of the waste to the injection zone. Under such circumstances, the Director should have the authority to revoke exemptions. Accordingly, the Agency believes the Director should have the authority to revoke exemptions for the above reasons, but should not be required to do so in all situations. Of course, in cases where the injection zone itself has allowed a release, or where the petitioner has willfully withheld information, the exemption must be terminated. The proposed rule provided this level of flexibility, and EPA is therefore promulgating the rule as proposed.

Finally, the Agency rejects the contention that the procedural requirements of § 124.5 are too slow when revocation is considered. The issues should be fewer than for petition approval, but will nonetheless benefit from full opportunity for public review and comment.

**III. Summary of Today's Rulemaking: Response to Comments; Part 146, Subpart G**

As outlined in the proposed rule, the Agency is establishing a new Supbart G applicable to owners or operators of hazardous waste injection wells. This section applies to all wells injecting hazardous waste, including those injecting wastes which are not yet prohibited, those which meet treatment standards promulgated under section 3004(m) of RCRA, and those whose waste has been banned under section 3004 (f) or (g) of RCRA and who have obtained an exemption pursuant to Part 148.

In the proposal, the Agency established a discrete section, Subpart G, which contained all Part 146 requirements applicable to injectors of hazardous waste. As indicated, much of Subpart G is merely a reorganization of requirements which were originally promulgated in June of 1980 (45 *FR* 42473 *et seq.*). It was not EPA's intent to solicit comment on requirements which existed by virtue of earlier rulemaking; rather, the Agency intended to simply recodify these existing requirements and solicit comment on the new requirements being proposed. The Agency nevertheless received comments on both the new and existing regulations. To the extent that these commenters sought substantive changes to the existing rules, the Agency has evaluated them, but, as explained in the proposal, does not believe we are under any obligation to make any changes. In all cases, the Agency will retain them and evaluate them in the context of any changes which it may

contemplate in the future, but the Agency does not believe it is under any obligation to address comments on existing regulations concurrent with decisions on this rule.

*A. General Comments on Part 146*

1. Stringency of the Regulations

Several commenters expressed general support for the reorganization of Part 146 requirements and the establishment of Subpart G. Many of these same commenters, however, believed that the existing Part 146 requirements were generally adequate to protect USDWs, and were not in need of substantial changes. These commenters suggested that added specificity, clarifications, updates, and some expansions were all that was warranted. In support of this, they noted that contamination of USDWs by injection wells has been rare, and has not occurred in a facility which is in compliance with existing UIC regulations.

Other commenters were supportive of the changes to Part 146, but opined that the changes did not go far enough. One commenter submitted instances of alleged contamination from injection wells in support of his belief that more stringent regulation of injection wells was required (Ref. 1).

The Agency has examined this report, two other reports conducted by contractors (Refs. 2 and 3), and analyzed the Agency's own Report to Congress performed pursuant to section 701 of the Hazardous and Solid Waste Amendments of 1984 (Ref. 4). Based on this analysis, the Agency cannot point to a body of instances which suggest that the existing regulations, and particularly as amended today, are not sufficiently stringent to protect USDWs. On the other hand, the Agency's experience in implementing the UIC regulations, as well as experience and knowledge gained from overseeing State implemented programs, together with information gathered during the section 701 survey, has enabled EPA to identify several important ways to improve the protectiveness of the original regulations. Many of these amendments are being made to address specific problems identified in one or more of the studies cited above. With these amendments, EPA has attempted to develop a set of regulations which provides a level of protection appropriate to wells injecting hazardous waste, yet one which is not unnecessarily burdensome.

2. Application of Part 146 to § 3004(b)(1)

In the preamble to Part 148 the Agency proposed to apply the amended Part 146 regulations to satisfy the requirements of section 3004(b)(1). This section prohibits the disposal of noncontainerized or bulk liquid hazardous waste in any salt dome, salt bed formation, underground mine or cave until: (1) The Administrator has determined, after notice of opportunity for hearings in the record in the affected areas, that such placement is protective of human health and the environment (section 3004(b)(1)(A)); (2) The Administrator has promulgated performance and permitting standards for such facilities (section 3004(b)(1)(B)); and (3) a permit has been issued under section 3005(c).

The Agency proposed that the amended Part 146 requirements could constitute performance and permitting standards for such facilities. The Agency also stated that a UIC permit, which qualifies as a RCRA permit-by-rule under § 270.60, would satisfy the permit requirement. Finally, EPA suggested that the hearing on the petition conducted pursuant to an exemption request under Part 148, could be held jointly with the hearing required under section 3004(b)(1)(A).

One commenter expressed strong support for this approach, but noted that for certain types of injection the UIC regulations either may not be appropriate or may need to be applied in a flexible manner. Specifically, injection of non-liquid fluids could require rules specifically tailored to the problems inherent to such injection. This commenter proposed specific changes to the UIC regulations which would make them suitable for regulating non-liquid fluids injected into salt domes. Another commenter expressed strong opposition to such an approach, stating that liquids dissolve salts, and thus salt formations are unstable and unsuitable for containment of wastes.

The Agency has historically regulated fluid injection into salt domes and salt beds under the UIC program. Under this scheme, a UIC permit issued under 40 CFR Part 144, Subpart D, would constitute part of a RCRA permit-by-rule under 40 CFR 270.60(b). For injection of liquid hazardous wastes, the EPA believes the framework outlined in the proposal is appropriate, and will largely follow those procedures when permitting injection of liquid hazardous waste into salt domes and salt beds.

A recent final rule, Subpart X of RCRA (52 *FR* 49946 *et seq.*, December 10, 1987), addresses regulation of certain unconventional disposal practices, including, under some circumstances, injection of non-liquid hazardous fluids. This rule also outlines in detail the relationship between Subpart X requirements and the UIC permitting. Briefly, Subpart X provides the Agency a flexible permitting scheme that may be applied to hazardous waste disposal when existing standards are inapplicable. It is premature to discuss specific features which would make the application of Part 146 standards inappropriate. Such determinations will be made in the context of a facility's permit application.

On the technical point concerning the solubility of salt formations, it is common knowledge that salt dissolves in water. However, salt will not further dissolve once the water is saturated. In such situations hollowed out salt domes have an excellent combination of high plasticity and low permeability to seal against the migration of hazardous wastes. Thus, EPA believes such disposal technology to be promising. The acceptablity of a facility, of course, must be evaluated on a site-specific basis.

The Agency has decided that rather than amending the UIC requirements to suit non-conventional underground emplacement of waste as the one commenter suggested, it will rely on the authority in new Subpart X to develop an appropriate set of requirements in the permit. As noted in the preamble to Subpart X, the decision on whether to regulate unconventional injection operations under the UIC program and/or Subpart X is a case-by-case determination (52 *FR* 49953). A more complete discussion of the relationship between the UIC program and the Subpart X requirements is provided in that rulemaking.

*B. Applicability—Section 146.61*

Section 146.61 proposed, in part, new definitions applicable to Class I hazardous waste injection. A number of commenters addressed this section.

One Commenter favored codifying in Part 146 the term "injection interval", also codified today at § 148.2. The Agency believes that this term is most applicable to facilities petitioning for an exemption under Part 148, but believes that the term has utility in the context of certain Part 146 requirements. Consequently, EPA is today codifying the term "injection interval" at §§ 148.2 and 146.61(b).

A number of commenters were concerned with the new term "cone of influence". This definition, and its relationship to the new Area of Review

requirements, has been addressed in Section (III)(D) of this preamble.

Finally, there were many comments received on the redefinition of the term "existing well", as it applies to hazardous waste injection. It was the Agency's intention, in redefining this term, to insure that the owner or operator of an existing authorized well not be subject to those requirements at § 146.65 which are applicable only to new wells not yet constructed. Two commenters wanted this definition changed to include wells already authorized to receive non-hazardous fluids, noting that such non-hazardous fluids could eventually be classified as hazardous.

Provided that an already authorized, non-hazardous injection well can safely inject hazardous waste, the Agency agrees with the contention that such wells should not be classified as "new wells" in the context of this regulation merely because the definition of the waste they are injecting changes. EPA can foresee a situation where a permitted Class II or III well would become a hazardous waste injection well by virtue of changes in the definition of "hazardous". If such a well is able to meet all other applicable 146 and 148 requirements, it should be classified as an "existing well". Today's promulgation of the term "existing well" allows such a situation.

Another commenter wanted this term to include any Class I well "permitted, authorized, or constructed" prior to the effective date of this rule, whereas the proposed definition included only "authorized". Per §144.11, any well which is permitted is automatically authorized. Consequently, there is no reason to include the word "permitted" in today's redefinition of "existing well". Section 144.11 states that, "The construction of any well required to have a permit is prohibited until the permit has been issued." Class I hazardous waste injection is a permitted activity, consequently any proposed hazardous waste injection well must receive a permit before well construction begins. The situation indicated by the commenter above proposes to include constructed, but unauthorized, wells in the spectrum of "existing wells". The Agency's legal position is that such a well is illegal under the terms of the UIC regulations, § 144.11.

Two other commenters wanted "existing well" redefined to include wells not yet completed whose permit applications have been submitted and are under review, or existing wells whose permits are on appeal. Existing wells whose permits are under review automatically receive an authorization by rule, pursuant to §§ 144.21 or 144.22. Section 124.16 states that, for a new facility or new injection well, "* * * the applicant shall be without a permit for the proposed new facility * * * [or] * * * injection well . . . pending final Agency action." In this instance, the well will not have been constructed yet. Under these circumstances, EPA strongly urges the applicant and—in the case of primacy states where the amended requirements have not been adopted—the Director, to construct or require the well to be constructed according to the standards applicable to new wells.

*C. Siting Requirements—Section 146.62*

In the proposal, the Agency stated more explicitly requirements which had been stated very broadly in the existing regulations. In the proposal, criteria which had previously been framed as factors which the Director had to "consider", were expressed as specific requirements which the owner or operator had to meet. Several new, substantive requirements were also added.

In the proposal, the regulations at § 146.62(a) restated existing language which required that all Class I wells be sited beneath the lowermost USDW; § 146.62(b) restricted siting to areas that are geologically suitable, and defined criteria describing such areas; § 146.62(c) specified performance standards for the confining and injection zones; § 146.62(d) outlined additional requirements which would provide an additional degree of assurance that the waste would be adequately contained or that the site would not otherwise endanger USDWs.

1. Need for Additional Siting Requirements

Nearly all commenters supported the clarification of existing siting requirements, but several maintained there was no need to add more explicit siting requirements or standards. These commenters believed that absence of contamination incidences suggested no changes were necessary.

The Agency disagrees. The EPA identified several important criteria which it believes significantly improve the protectiveness of the siting requirements. The UIC program as mandated by the SDWA is preventative in nature, and to the degree that these improvements do not impose unnecessary new burdens on the owner or operator, EPA believes it appropriate to promulgate them.

2. Consideration of Seismicity in Local Geology

Two commenters suggested that § 146.62(b)(2), which lists parameters to be considered when evaluating local geology, include consideration of the seismic history of the site. The proposed rules, at § 146.62(b)(1), required consideration of seismicity on a *regional*, not local basis. The Agency intends to retain the requirement as proposed for several reasons. First, the United States Geologic Survey (USGS) at the request of EPA, recently completed a study on potential earthquake hazards associated with injection wells (Ref. 5). That report recommended *regional* evaluations of tectonic stress as a critical part of site evaluations. The Agency believes that concerns of a more local nature, if any, are better addressed by a monitoring program. A more comprehensive discussion of the USGS report and the role of seismicity in siting and operating injection wells is provided in Section (III)(I)(6) of this preamble.

3. Geologic Criteria

Several commenters objected to the requirement in § 146.62(b)(3) which required that the site be capable of being modeled accurately. These commenters noted that precise predictions of the location of a plume or a pressure front are not necessary; rather, the modeling must be capable of bounding the problem.

EPA agrees. The intent in this section was to be sure that the geology of the site was not so complex that modeling would not provide meaningful results. The Agency was concerned that the complexity of the site not outstrip the technology available to model it. Accordingly, the language is being revised to address this specific concern.

4. Standards Applicable to the Injection and Confining Zone

Section 146.62(c) of the proposal contained performance standards which the confining zone would have to meet. This section required that the confining zone be laterally extensive and free of transmissive transecting faults over an area sufficient to prevent movement of fluids into a USDW. In addition, this section would have required that the confining zone contain at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propogation of fractures.

There was extensive comment on this provision. Most objected to the requirements as stated, maintaining that the two provisions were redundant. On

the other hand, one commenter, supported by several others, contended that the presence of any fault should preclude siting an injection well, regardless of whether that fault had the capacity to transmit fluid to overlying zones. They suggested that such faults made accurate modeling impossible. These same commenters suggested that EPA should specify a minimum thickness and permeability which the confining zone must meet and further, that these parameters be measured only in the formation directly adjacent to the injection zone.

The Agency agrees that §§ 146.62(c)(2)(i) and (ii) address similar concerns, but does not believe this suggests that one or the other requirement be deleted, as the commenter maintains. It is a common practice in engineering to build safeguards into systems, particularly where uncertainty may exist, or where the consequences of error are significant. Thus, EPA does not believe that the logical consequence of finding that these requirements overlap is to delete one or the other of them. Rather, the Agency believes these requirements to be complementary; together providing a level of assurance consistent with the mandate of the SDWA and RCRA.

Pertaining to the commenter who suggested specific numerical requirements applicable to the confining zone, EPA would like to note that precisely that option was examined during the course of regulatory negotiations. As outlined in the preamble to the proposal (52 *FR* 32458), the factors which define an acceptable site are often qualitative. Specifying a set of quantitative values outside the context of the myriad other factors that must be considered in siting decisions would not be effective. To be workable in all cases, these values would have to be so restrictive that safe sites would be prohibited, or the rule would have to provide the option of allowing the Director the authority to waive them when not necessary or appropriate. The Agency believes that it is better to allow consideration of qualitative factors such as the plasticity of the rock, the type and amount of clay in the confining zone, the relative difference in permeability between the injection and confining zone, the seismicity of the area, the characteristics of the injected and formation fluids, the relative pore pressures, the depth of the injection zone, and a host of other factors as they relate to defining adequate siting in the first instance.

Finally, one commenter apparently believed the Agency was somehow trying to restrict the orientation of any fractures developed during well stimulation. This commenter pointed out that below certain depths fractures form on a vertical axis. In response, EPA would like to note that § 146.62(c)(2)(ii) pertains to the confining zone, not the injection zone. Moreover, this section is meant to deal with the vertical *propagation* of fractures, not their vertical orientation. The existing rules allow fracturing of the injection zone during well stimulation, and EPA recognizes that these fractures, below certain depths, will be oriented (but not propagated) vertically. Nothing in today's rule alters or attempts to alter the physical fact of a fracture's orientation, or the operator's right to stimulate the well. The purpose of § 146.62(c)(2)(ii) is to be sure that at least one formation has the right mix of thickness and plasticity to prevent a fracture from moving up (that is vertically propagating) through the stratigraphic column.

5. Additional Safeguards

Section 146.62(d) outlined four safeguards, one of which the owner or operator would have to demonstrate to the satisfaction of the Director that his site shared. They included (1) a showing that a "buffer" aquifer/aquiclude system was present between the confining zone and the base of the lowermost USDW or (2) a showing that within the area of review the piezometric surface of the fluid in the injection zone was lower than the piezometric surface of the lowermost USDW or (3) a demonstration that there was no USDW present or (4) that the geology, nature of the waste, or other considerations would not allow an undiscovered conduit to endanger a USDW.

As stated in the proposal, the goal of § 146.62(d) was to deal with the uncertainties which some members of the regulatory negotiation committee believed were inherent in characterizing geologic conditions in the subsurface. These requirements were intended to either eliminate the uncertainty involved in characterizing subsurface geology, or the consequences of failing to identify a breach in the confining zone, be it a man-made conduit or a natural transmissive fault or fracture.

Several commenters objected to the requirement for additional safeguards in general, and the need for a "buffer" aquifer/aquiclude system between the top of the confining zone and the base of the lowermost USDW in particular. They noted that the existing siting requirements, particularly when considered with those proposed in § 146.62(c), in conjunction with the Area of Review requirements and Corrective Action requirements in §§ 146.63 and 146.64 respectively, adequately addressed concerns about abandoned boreholes or improperly completed wells. One commenter suggested that since § 148.20 required the presence of an arresting layer within the injection zone, and § 146.62(c)(2) specified minimum standards for a confining zone, this provision effectively applied a third layer of redundant protection to the siting requirements. The commenter believed this level of regulation to be excessive.

The Agency agrees that the AOR and Corrective Action requirements being promulgated today address any conceivable set of concerns which might arise with respect to abandoned or improperly completed wells within the area of review. However, the EPA would like to note that the requirements in § 146.62(d) were meant to address more than just abandoned boreholes; they were also meant to address concerns relating to the geology of the site such as fractures or faults. While EPA does not believe that uncertainty is "inherent" in characterizing geology—given the improvements in remote sensing, techniques of stratigraphic correlations, and borehole logging—the Agency does believe that additional safeguards are appropriate. These safeguards address not only problems which might arise from an undiscovered fault, but also problems which could arise from improper operation. Finally, EPA would like to reiterate that overlapping safeguards are a sound and frequently applied principle of good engineering. The fact that one set of requirements addresses a particular concern does not and should not preclude application of other rules which also address the concern.

The commenter who thought that EPA was applying a "third layer of protection" beyond those required in Part 148 and § 146.62(c), apparently did not understand the relationship between Part 148 and Part 146. First, Subpart C of Part 148 does not apply to all hazardous waste injection wells. Wells which inject waste which meets, or has been treated to meet, levels specified in 40 CFR Part 268, are not subject to the "no migration" provisions in § 148.20.

Second, and more important, the two rules apply complementary, but different standards. Part 148 applies a "no migration" standard, while Part 146 is designed to assure no endangerment of USDWs. The standards in § 148.20 were developed to assure that no *injected waste could leave the injection zone.* Part 146 is meant to assure that there will be no endangerment of USDWs,

either from injected fluid *or formation fluids.* With respect to injected fluids, the standards in 148 are certainly more stringent since they prohibit migration of any injected waste at hazardous levels out of the injection zone. However, endangerment encompasses a broader set of concerns and therefore warrants a broader set of regulatory controls. For example, the area in which *formation fluid* could endanger USDWs is described by the pressure front induced by injection; the area in which *injected fluid* could move out of the injection zone, on the other hand, is described by the size of the waste plume. The pressure front is always larger—usually much more so—than the waste plume.

Accordingly, EPA believes it is a mistake to construe that the requirements of § 148.20 are equivalent to those being applied in § 146.62. They do not address the same universe of wells, nor do they address the same concerns. The Agency, therefore, rejects the notion that the two rules are redundant and result in an unnecessary third level of protection.

A number of commenters objected to the provision in § 146.62(d)(4) which provides the Director the authority to approve a site which lacked one of the specific safeguards outlined in section (d) (1), (2), or (3), but which otherwise could show a comparable level of safety. Most commenters, however, expressed strong support for the provision. In criticizing the safeguards outlined in the previous three paragraphs, commenters frequently pointed out scenarios in which the certainty of characterizing the site accurately was extremely high, and therefore the need for redundant safeguards low or non-existent. These commenters noted that in some areas, drilling or other exploration has been extensive enough to provide extremely accurate pictures of the geology of the area and regulatory controls have been in place and adequately assure that abandoned boreholes have been located and plugged. It was such circumstances the Agency sought to address when proposing § 146.62(d)(4).

Commenters who objected to this provision seemed to believe that EPA was subjecting operators to a lesser standard in § 146.62(d)(4) than in the other three sections. As one such commenter expressed it, "EPA has proposed a broad exception to the siting criteria * * *". These commenters are apparently confusing the need for a safeguard, where doubt exists, with the standard itself. This section is not an exception to the siting standard. It provides another means by which the standard may be met, another way in which uncertainty may be resolved.

At the heart of this comment appears to be the contention that any and all attempts to describe geology are inherently flawed. The Agency rejects this contention, and accordingly will promulgate this section as proposed.

Finally, some commenters were concerned that this latitude might be abused by those implementing the UIC program. The EPA notes that all permit decisions are subject to rigorous public participation requirements. If, in an individual case, a State Director exercises the discretion afforded him too broadly, the public will have ample opportunity to comment, and, if necessary, challenge his decision. If such an abuse is systematic, EPA will take appropriate action as part of the Agency's oversight responsibilities.

*D. Area of Review—Section 146.63*

One of the key changes proposed for the Class I regulations was the expansion of the area of review (AOR). The AOR pertains to the area within which the owner or operator must identify all wells penetrating the confining zone and the injection zone and determine whether they have been properly completed or plugged and abandoned. In existing UIC regulations it is defined either by a fixed radius of ¼-mile from the well bore or by a calculated "zone of endangering influence." As a result of the information gathered during the § 701 survey of hazardous waste injection wells, concerns raised by the regulatory negotiation committee, and information developed from recent research on well failures, EPA proposed to amend the area of review requirements for hazardous waste injection wells by extending the area to be examined for abandoned or improperly completed wells to an area with a radius of 2½ miles from the injection well bore or, in some circumstances, the calculated "cone of influence" of the well.

The "cone of influence" defines the area of review as the area described by the incremental increase in pressure caused by the injection well. The Agency believes that the pressure of concern should be the increment over background, static pressure conditions since that is the pressure resulting from the regulated activity.

1. Increase in the Size of the Area of Review

The Agency received many comments on the proposal to increase the size of the area of review.

Several commenters indicated that the 2½-mile area of review was unnecessarily large and would require the well operators to conduct lengthy record searches that are time-consuming and costly, possibly even precluding the drilling of Class I injection wells in the very cases where geologic data was most reliable. In addition, other commenters stated that the proposed area of review was totally arbitary with no technical basis and that using a calculated cone of influence for the well was adequate, especially if the calculated area was substantially less than the 2½-mile minimum requirement.

In reply, the Agency notes that recent studies on the consequences of well failures suggest that the single most significant potential source of contamination from injection wells would be an unplugged borehole within the area of review where there exists a pressure sufficient to drive fluids up the borehole (Refs. 6 and 7). EPA also notes that the State of Texas which specifies a 2½-mile AOR, and the State of Louisiana, which specifies a 2-mile AOR, currently regulate over 60 percent of the wells injecting hazardous waste. These States do not give exceptions to their area of review requirements, therefore enlarging the area of review does not significantly increase the burden for the majority of operators. Even where there is an increase in burden, the Agency believes that the special characteristics of hazardous waste injection warrant a margin of safety more stringent than for other wastes. The Agency believes that a larger fixed radius is not capricious or without some technical basis, as our research in abandoned well studies indicates (Ref. 6 and 7). Also, during the course of regulatory negotiation, State regulators noted that an area of review between 2 and 2½ miles represented an appropriate maximum radius based on their field observations of hundreds of injection wells. However, the Agency believes the intent of the enlarged area of review can be met adequately with a 2 mile minimum, rather than a 2½-mile area of review. The 2-mile area of review has the advantage of not disrupting existing state programs of substantial size. Under today's rule, the Director will have the authority to enlarge the area of review beyond two miles if he has reason to believe that a larger area of review is necessary.

2. Calculation of the Area of Review

Many comments were received concerning the calculation of the area of review. One commenter believed that the area of review should be fixed at the 2½-mile radius value for all wells and not calculated as there appears to be too

much confusion on how to calculate an area of review. In contrast, another proposed that the area of review should have a 10-mile fixed minimum radius from the injection well and expressed a lack of confidence in a well operator's ability to either model or calculate the cone of influence. Accordingly, they believed the 2½-mile minimum requirement was not restrictive enough.

The Agency has confidence in the mathematical calculations for the cone of influence. Pressure buildup is well understood, and the effects of injection can be accurately identified. There may very well be sites where a calculated area of review in excess of 2 miles is indicated. For such sites, today's rule would provide the Director with the authority to require an AOR in excess of 2 miles. However, a 10-mile radius minimum area of review is extremely large and to prescribe for every injection well such an AOR would place an unnecessary burden on both the well operator and the regulatory agencies conducting the review, without adding further protection to the environment.

One commenter suggested that the area of review should only be tied to waste plume migration rather than calculated from reservoir pressure.

EPA would like to note that the primary concern which § 146.63 addresses is the endangerment of USDWs, regardless of whether that endangerment would result from highly mineralized brines in the injection or intervening formations, or from the injected waste stream. In all cases, an area of review based on the waste plume would be significantly smaller than one based on the pressure increase during the operational life of the well, and would therefore not prevent endangerment. Moreover, the long term concerns associated with plume movement after the well is plugged, are addresed in the modeling performed under § 148.20. Accordingly, EPA will continue to base AOR on pressure buildup.

A few commenters indicated that the language proposed by the Agency for the determination of the area of review was unclear and suggested that the Agency provide one method of calculating the area of review to serve as a guidance for all affected states. Finally, some commenters were concerned that one interpretation of the regulation could require a calculated area of review which extends indefinitely in order to satisfy the reviewing regulatory agency. These commenters suggested that such a calculated infinite area of review should be spatially limited by the Agency to avoid this potential problem.

The Agency believes that a guidance may be necessary to clarify the methods appropriate for establishing area of review, but does not believe that a single calculation, or a set of calculations, describes the universe of acceptable methods for determining area of review. Moreover, prescribing by regulation the appropriate method could preclude permittees from using more sophisticated methods which might become available at some future point. Therefore, the Agency is not specifying particular methods of calculating an area of review in this rule.

The Agency also recognizes that calculations may result in an asymptote, or that in some physical settings the formation pressure will contribute to an AOR that extends over great distances. Under current State and Federally-implemented rules, the problem of infinite asymptotes has been addressed by setting cut-off points when the slope of the pressure curve flattens. It is not EPA's intent that operators "chase asymptotes" when no real potential endangerment resulting from the well exists. The physical settings which might result in calculated AORs in excess of 2 miles involve highly overpressurized formations. As noted in the proposal, overpressurization can be evidence that the formation is effectively a closed system. Where natural or man-made points of discharge exist, pressure will begin to equilibrate, and the excess pressure will tend to "bleed off". Absent such leaks, the system will retain excess pressure. Moreover, such systems are more likely to be static, resulting in very little or no flow over time. Accordingly, EPA still believes the appropriate AOR is described by the pressure from the well injection, and further believes that in the vast majority of cases, that this area is described by a 2-mile area of review.

Accordingly, the Agency is now specifying in today's rule, a fixed 2-mile minimum area of review. But in recognition that in some circumstances an area of review may be greater than 2 miles, the Director has the discretion to require a larger area of review. One such reason may be the cone of influence, which must still be calculated and provided by the owner or operator to the Director for his determination of whether corrective action would be required for abandoned or improperly completed wells.

*E. Corrective Action for Wells in the Area of Review—Section 146.64*

The Agency proposed additional corrective action requirements and proposed reorganization and consolidation of the current regulations as §§ 146.64 and 146.70 in Subpart G. In general, as proposed, § 146.64 states the requirements for corrective action and § 146.70 outlines the information required to show compliance with them. The following response concerns comments received for corrective action requirements in § 146.64.

1. Application of the Area of Review

Under existing regulations, the owner or operator must submit a plan concerning the steps taken to address improperly completed or abandoned wells within the area of review, but he is not required to submit a protocol for identifying all wells within the area of review. The Agency proposed to require that an owner or operator submit such a protocol to the Director outlining how he intends to identify all wells within the area of review, and how he intends to determine whether these wells have been adequately completed or plugged. The Director would be required to review the plan, determine whether it is adequate, and either approve it, modify it, or deny the application.

An approximately equal number of commenters supported and opposed this proposed amendment. Several commenters specifically indicated that corrective action should be limited to only the wells within the cone of influence, not the proposed 2½ mile radius area of review. Some commenters also cited the problems, both legal and logistic, associated with wells located on property not owned by the applicant as a reason to limit the scope of corrective action. The Agency will not, however, require corrective action on wells within the area of review if it can be effectively demonstrated that there is no potential to move fluids through a conduit. In response to the first concern, it is EPA's intent to assure that all wells within the area of review are identified and evaluated. EPA would like to note that in some cases, some wells outside of the cone of influence may have to be evaluated in a petition demonstration under part 148; for example, where the formations are naturally overpressured and where there is significant flow.

One commenter also contended that corrective action requirements were not feasible in many cases because the operators could not compel other owners of wells off their property to fix wells. The existing rules allow the applicant an alternative to fixing these off-property wells. If the cone of influence is very large or if the applicant cannot access improperly plugged or abandoned wells outside of his property, he may seek from the Director permission to reduce the area within

which wells must be fixed by reducing pressure and thereby satisfying corrective action requirements. This provision is merely a restatement of existing requirements. As such, the Agency is neither seeking comment, nor anticipating making any changes, such as allowing pressure limitations at the discretion of the operator, as one commenter seeks. EPA believes that the issue of when pressure limits may be used in order to satisfy corrective action should be at the Director's discretion. The Director may choose to limit its use, for example, in a case where the operator has violated pressure limitations in the past. Pressure limitations, however, are not the preferred means of meeting corrective action and EPA will limit its uses to cases where the Director deems it appropriate.

2. Abandoned Well Protocol

The greatest number of comments received concerning corrective action addressed the information and substance required in the protocol for identifying wells in the area of review. Several commenters were of the opinion that the Agency should indicate the necessary steps to establish such a protocol, the information to be contained in a protocol, and the specific requirements concerning the search methods for abandoned wells. Some commenters felt that the specific methods of abandoned well searches should be indicated while at least one commenter argued that, except in unusual cases, it was inappropriate for an applicant to use any methods other than a search of public records provided by local, state, and federal agencies. In any case, one commenter also felt that once wells were identified, the evaluation of wells merely penetrating into the confining zone was unnecessary and such evaluation for corrective action was unwarranted.

In general response to these comments, the Agency believes that a technical guidance may be necessary to further explain protocol requirements. However, the Agency also believes, particularly in cases where public well records are poor or non-existent, that just a cursory search of well records is inadequate where hazardous waste injection is concerned. Furthermore, EPA also believes that the time to evaluate well search methodology is prior to the initiation of the search and not after. The Agency plans to issue a UIC guidance on this protocol in the near future.

Finally, EPA believes that it is necessary to look at all wells penetrating the confining zone in order to determine if a problem could develop by the reduction of thickness of the confining material caused by such penetration. The evaluation of these wells does not compel corrective action unless the integrity of the confining zone is compromised. Therefore the review necessitated by this possibility is exactly what the Agency is requiring in the regulations and the regulations will be promulgated as initially proposed.

*F. Construction Requirements—Section 146.65*

The amendments for construction requirements reflect the Agency's attempt to achieve an appropriate balance between specific design standards and more general performance standards. Current regulations describe a very broadly structured performance standard and list specific factors that the Director must consider when evaluating the construction of a well. As a result of the Agency's consideration of historical well construction practices within states, the section 701 report to Congress, and the need for a more clearly defined set of standards, the Agency is increasing the specificity of the construction requirements and adding some new requirements.

The changes in construction requirements outlined in § 146.65 include: additional criteria in overall performance standards; more explicit compatibility requirements; and certain requirements for owners and operators injecting through a well equipped with fluid seals. In addition, § 146.65(c)(1), which addresses requirements for new wells, contains a more specific articulation of the performance standards outlined in § 146.65(a)(1).

1. General Construction Concerns

There appeared to be general support for the requirements outlined in § 146.65(a). One commenter indicated support for requiring wells to be constructed to allow the use of appropriate testing devices and workover tools. Another commenter indicated that in § 146.65(a)(3), injection "tube" should be changed to injection tubing. The Agency has made the correction.

One commenter, supported by several others, objected to the requirement that new wells be constructed in a manner that allowed the use of appropriate logging and testing devices. This commenter contended that the best means of preventing a future leak was to assure proper construction of the well in the first place. The commenter went on to suggest that allowing the design and construction to be dictated by testing requirements could be counterproductive.

The Agency rejects this argument. The commenter apparently assumes there are instances when the considerations pertaining to proper construction and those associated with the ability to adequately test the well are mutually exclusive. The Agency is stating that both goals, proper construction and the ability to adequately test the well, are legitimate and complementary aims that must be considered during the construction of a new well.

2. Well Materials and Compatibility Requirements

For the section concerning well compatibility requirements, a number of commenters indicated that a published standard for the materials used in well construction, and their compatibility with the wastes, may not exist. Also, they were of the opinion that a well operator should not be deemed in violation of a permit based on material standards since these standards are usually developed for new materials and generally do not apply once the material is placed in service in a well. The Agency has indicated in this regulation that in cases where an operator chooses to use an exotic well material for which no published or recognized standards exist, comparable standards acceptable to the Director would need to be developed. Therefore, the owner or operator does have this provision as an option to a bonafide American Petroleum Institute (API) or American Society of Testing Methods (ASTM) or other published standard. The Agency is also cognizant that well materials may deteriorate with use and time, but notes that published standards generally specify limits which are acceptable during the service life of the material, not merely upon installation.

3. Casing and Cementing

There were several comments pertaining to the casing and cementing of new wells. One commenter suggested deletion of the requirement that surface casing must extend below the lowest formation containing a USDW. EPA rejects this suggestion. The Agency has determined that having two strings of cemented casing, the surface and long string casing, affords significantly greater protection to USDWs than a single string of cemented casing.

Another commenter sought a specific prescribed depth of penetration by the surface casing into the confining bed below the lowest formation containing a USDW. This is a site-specific issue and should be established in the context of

permitting. One commenter also informed us that in the arctic, the section of the annulus through the permafrost must be filled with a non-freezing fluid to prevent collapse of the long string casing. Circulation of cement to the surface upon setting the casing is therefore precluded in these cases. The Agency acknowledges this problem and notes that § 144.16 allows the Director discretion in approving alternative cementing programs where no USDW exists, as is the case with the commenter's well. Moreover, § 146.65 allows the Director to approve alternatives even where a USDW is present.

The Agency also requested, in the proposed rule, comments pertaining to the 120% of calculated volume of cement required to be circulated to the surface when setting casing. In particular, EPA sought comment on whether more than 120% of the calculated volume should be required. Most of the commenters responding to our request for information replied that the 120% cement volume figure was sufficient, although some believed it to be inadequate, and others excessive. In consideration of this response, the Agency believes that this minimum amount of recirculation is adequate in most cases. However, EPA has incorporated new language in today's rule which would allow the Director to require more, not less, than 120% cement in excess of calculated hole volume if he determines that geologic and construction conditions warrant such an increase.

4. Mechanical Packers and Fluid Seals

The last section of § 146.65 concerns tubing, packer, and fluid seals. The greatest number of commenters in this section sought a change in the proposed language of the requirement that the packer be placed above the injection zone. The Agency agrees that in many cases it is indeed preferable to set the packer either at the top of, or within, an injection zone, and also that some flexibility in the placement of the packer during the life of the well is needed. Therefore, EPA has included new language in this section which will allow the packer to be located as approved by the Director.

A few commenters were of the opinion that the design standard which proposed that testing and monitoring requirements for fluid seals be as stringent as those for wells constructed with tubing and packer was excessive. The Agency disagrees and believes that these requirements are justified in light of the complexity of the application and maintenance of fluid seals in general. The Agency continues to be of the opinion that the simplicity of the mechanical packer is preferable in most cases. However, § 146.65(d)(3) would allow the owner or operator to install a fluid seal provided he demonstrates to the Director that the fluid seal will provide a level of protection equal to or exceeding that which a packer-equipped well would provide. Many commenters supported our allowance of fluid seals, and contended that such seals could provide protection superior to packers.

*G. Logging, Sampling, and Testing—Section 146.66*

The requirements pertaining to logging, testing, and sampling have been consolidated into § 146.66 in today's rule from existing §§ 146.12(d) and 146.14(b). In addition, the Agency is changing the requirements in several important ways. As indicated in the August 27, 1987, proposed rule, these requirements apply only to new hazardous waste wells.

The first change in the regulations defines the goals of this section. The establishment of baseline data prior to injecting against which future logging and testing can be reassessed is an important new use of data. The Agency believes this to be an important concept: the future utility of many logs is dependent on having base logs against which to compare. Therefore, the operator's ability to demonstrate compliance at some future time may depend on what logs he ran when the well was first constructed. EPA believes that detailed logging prior to injecting can be of benefit to both the regulator and the permittee.

Another change proposed involved the tests required both before the casting is set and after it is in place. The wording in existing § 146.12(d)(2) was unclear in regard to whether all of the tests outlined were mandatory or only one subset was needed. The language in today's § 146.66 clearly indicates that all of the listed tests must be conducted. This regulation also reflects the concern of some members of the regulatory negotiation committee that the technologies used to test wells were rapidly evolving and that by allowing the Director to approve an equivalent alternative, improved tests would not be eliminated from consideration. Thus the language in this regulation allows the Director to approve an alternative or additional test when he deems it appropriate. The Agency is also effectively changing the mechanical integrity requirements in § 146.68(d). Now an initial demonstration of mechanical integrity for new wells must be made as indicated in current § 146.66(a)(3). A more detailed discussion outlining the Agency's rationale for more stringent MIT requirements is found in the section of this preamble which addresses § 146.68, Testing and Monitoring Requirements.

Although pre-existing regulations in § 146.12(a)(15) require the Director to evaluate an operator's coring program prior to the granting of a permit, this provision did not place a burden on the Director to require coring, or on the operator to conduct it. Also, EPA wanted to provide the Director the authority to require coring of formations other than the injection and confining zones. The Agency maintains that the relatively inexpensive task of coring is justifiable in view of the information it provides. Today's rule states the coring requirement more prescriptively and affords the Director the authority to require cores from other formations. The Agency believes, however, that the situations in which the Director would want to require coring of formations other than the injection or confining zones should be relatively rare.

Another change now requires the owner or operator to conduct pump or injectivity tests to identify the hydrogeologic properties of the injection zone through an empirical method. These tests have the advantage of yielding an aggregate figure which represents an entire stratum or several strata. The original regulations required the Director to "consider" the owner or operator's formation testing program, therefore the Agency does not see this restated requirement as a substantive change.

In § 146.66(f), the Agency proposed language which would assure that the Director has the opportunity to witness logging or testing procedures by requiring the permittee to submit a schedule of testing activities at least 30 days prior to conducting the specified tests.

1. Coring

The greatest number of comments pertaining to the § 146.66 requirements concerned coring. Many commenters indicated that coring was prohibitively expensive to the owner or operator. Some were concerned that sidewall or continuous cores could not always be retrieved from certain formations in the well bore. Other commenters indicated that the information sought from cores could be obtained from adjacent well cores if it could be demonstrated that the zones of interest were correlative in each well. The remaining comments on coring challenged the Director's authority for requiring coring from formations other than the injection or

confining zones. As we have already stated, the Agency believes that the information obtained from coring justifies the expense. Also, EPA is not requiring coring in existing wells, only in newly drilled wells. The Agency agrees that continuous core retrieval is not always possible, but sidewall cores are usually recoverable and are acceptable.

As noted in the proposal, if EPA were to limit its ability to collect relevant data, the Agency might be placed in the position of having to turn down an otherwise approvable site simply because adequate data wasn't available. In particular, flexibility in siting requirements is dependent on the extent of data available. Today's rule will contain language which would allow the Director discretion in accepting core information from nearby wells in the few cases where core retrieval was impossible in a newly drilled well.

With regard to requiring cores and other logs from formations other than the injection and confining zone, EPA disagrees with commenters who maintain that it is unnecessary. Section 1422 of The Safe Drinking Water Act is preventative in nature. The UIC regulations are designed to prevent endangerment of USDWs regardless of whether that endangerment results from highly mineralized formation fluids, or from injected wastes. Thus, the Agency can envision circumstances when it will be necessary to obtain data on strata lying between the lowermost USDW and the confining zone to assure that such endangerment is not occurring.

2. Data Collection Requirements

There were numerous comments to the proposed rule pertaining to the requirements for individual logs and other data collection procedures. Several commenters believed that information collection requirements relating to this section of the regulations should not be arbitrarily applied to zones other than the injection and confining zone. As EPA indicated in the earlier proposal and mentioned in the comment response to coring operations, the Agency believes that it is not being arbitrary in requiring certain types of information from other formations penetrated by the well. EPA believes that the statute and regulations require that such information be considered. The regulations now contain a provision which would necessitate information gathering on the formation immediately below the lowermost USDW. For these reasons, EPA believes it necessary to have the authority to require information on the formations found in the wellbore, including logging, coring, testing, and formation fluid sampling, other than the injection and confining zones alone. Therefore, we are promulgating this requirement as proposed.

3. Logging Tool Concerns

One commenter indicated that the language in the proposed regulation concerning deviation checks should be rephrased to indicate that this type of procedure was performed during and not after the drilling of the well. The Agency agrees and an appropriate language changes has been made to eliminate any confusion on this procedure. Several commenters questioned the utility of the Fracture Finder Log and also indicated that the language in the proposed regulation could be interpreted as indicating that this log was to be run after and not before setting a casing string. The Agency believes that a Fracture Finder Log is very useful in determining the presence or absence of fractures in close proximity to the well bore and is an essential part of ensuring that all necessary data regarding fractures in the injection, confining, or other relevant formations has been collected. This log also helps establish strike and dip, which can be invaluable in characterizing stratigraphy. Therefore, the Agency will continue to require this log for all newly constructed wells. However, the Agency has rephrased § 146.66(a)(2)(ii)(B) to clearly indicate that this log should be run prior to setting casing. The language also allows the Director the discretion to waive this log requirement where he determines that other information would suffice, or where the application of this log, such as in unconsolidated sediments, has proven to be ineffective.

Several commenters pointed out that there could be some confusion by owners or operators in the terminology of "density log" as used in § 146.66(a)(2)(i)(B) and § 146.66(a)(2)(ii)(C). The Agency is aware that the required log is not an open-hole formation evaluation density log, but rather a variable density log run in conjunction with a cement bond log or other cement evalution log. The appropriate terminology has been inserted in today's rule.

One commenter indicated that the proposed rule in § 146.66(d) requires only a calculation of the fracture pressure of the injection and confining zones. The commenter maintained that such calculations were subject to uncertainties of 10% or even more. In view of this, they suggested that only a direct measurement should be accepted. The Agency's study pertaining to earthquake hazards and seismicity (Ref. 5) indicates that the most reliable method of making such measurements is by direct methods, such as hydraulic fracturing. However, the Agency believes that in some cases, the Director should have the discretion to accept equivalent methods or calculations, or to rely on existing data. For example, in many cases there exists a substantial body of historical information which will enable fracture pressures to be calculated with great precision. In such instances, EPA believes that the Director should have the discretion to accept such calculations, and is therefore promulgating the rule as proposed.

4. Witnessing of Logging and Testing Procedures

Finally, several comments were received concerning § 146.66(f), which gives the Director the opportunity to witness all required logging and testing. All of these comments stated that the 30-day notification by an operator to the Director prior to the first test or log was too long, and that a 24-hour, or at most a few-day prior notification period was adequate. They indicated that often last minute changes occur which could render the schedule meaningless. The Agency is simply requiring that the Director be provided with a schedule of planned logging, coring, or testing activities 30 days before these operations take place. Any changes in the anticipated time of logging, testing, or other activity can be communicated to the Director as agreed upon by the concerned parties. The schedule is needed in order for the Director to determine whether these activities need to be witnessed.

*H. Operating Requirements—Section 146.67*

Proposed § 146.67 outlined operating requirements applicable to hazardous waste well owners/operators. Extensive comments were received on this section.

1. Annulus Pressure Requirements

Many commenters addressed § 146.67(c), which requires, under most circumstances, the maintainance of an annulus pressure that exceeds the operating pressure. This amendment was included to insure that a leak in the tubing would result in annulus fluid moving into the tubing, not in waste moving into the annulus. Some commenters supported this amendment. The majority of commenters on this section felt that Director discretion was necessary in the application of this requirement when the mechanical integrity of the well might be adversely

affected by the pressure differential. Others said that in certain situations, leak detection can be more effectively carried out when injection pressures exceed annulus pressures. One commenter requested that this requirement be waived if no USDWs are within the Area of Review. The Agency believes that the proposed language, "* * * unless such a requirement might harm the integrity of the well * * *" provides Director discretion and adequate permitting flexibility for instances when a positive hydrostatic balance across the injection tubing could lead to loss of mechanical integrity. No examples of superior leak detection in situations where injection pressures exceed annulus pressures were provided by any commenter.

Generally, EPA does not believe that lack of a USDW within the Area of Review is an adequate reason to stay this requirement for wells injecting hazardous waste. However, the existing UIC regulations at § 144.16 do allow the Director the authority to waive certain construction and other permit requirements. The Agency intends that this authority be limited in application for wells injecting hazardous waste, but does recognize that specific circumstances may warrant application of this exemption. The Agency believes that § 146.67(c) contains considerable flexibility and is therefore promulgating it as proposed.

2. Continous Recording and Alarm Requirements

The Agency proposed, in § 146.67(f), to require an operator to continuously monitor the injected fluid. In addition, EPA proposed to require the owner or operator to install either automatic shutoff systems or, in cases where the owner would verify that an operator was on site at all times, automatic alarms. These systems would sound an alarm or shut-in the system whenever pressures or flow rates exceeded a range or gradient specified in the permit.

The Agency received extensive comment on this provision, much of it supporting the requirement, but objecting to the specific parameters outlined in the proposal. Most commenters suggested that the appropriate value to monitor was the injection pressure and/or the annulus pressure. A few commenters were concerned that requiring such devices could result in the facility being shut down by "false alarms". These commenters noted that operating parameters frequently vary within an acceptable range as a result of changes in temperature, density, or other physical changes. These changes, according to the commenters, frequently fall well within permit standards.

The Agency agrees with these comments. Effective automatic shutoff or alarm systems may be designed to react to a combination of several key parameters, including those specified in the proposal. Accordingly, the final rule will afford the Director more discretion in deciding which parameters to include in the permit. With regard to the commenters concerned about "false alarms", EPA notes that the range of values which can be acceptable (i.e. those which would not trigger an alarm or shutoff system) is defined in the permit, and can be designed so that the parameters may vary within specified limits which may be both protective and sufficiently flexible to avoid unnecessary shut-ins.

A few commenters questioned the need to monitor continuously for one or the other of the temperature, flow rate, volume or injection pressure. Others suggested that the list be expanded to include other parameters such as density.

The Agency is seeking to identify information in this section which helps characterize operational characteristics of the well. Changes in any of the parameters outlined could affect the way the well operates or obscure the interpretation of reported values (for example, increases in temperature result in increased annulus pressures). The very flexibility which these commenters sought in the application of this requirement can be allowed only when the Director has access to the parameters outlined.

Requiring additional parameters to be reported is not necessary. The Agency is not seeking to define the physical and chemical properties of the waste in this requirement. That is being required in § 146.68(a)(1).

3. Fault and Fracture Propagation

A few commenters addressed § 146.67(a), which concerns the initiation and propagation of undesired faults and fractures. One wanted this section changed to allow for a "bulb" around the well bore within which horizontal fracturing of the injection zone would be permitted. The Agency believes that the integrity of an injection zone is in part contingent upon the existence of few or no vertical fractures within the injection zone. In the context of well stimulation, both vertical and horizontal fracturing are permissible when they will assist in the creation of additional safe, disposal area within the injection interval, but will not allow fracturing of the confining zone. All other pressure-induced fracturing within the injection zone is impermissible.

Another commenter felt that § 146.67(a) was unspecific in its requirements concerning allowable injection pressure, allowable fracturing during stimulation, and margins of safety. The Agency has promulgated Part 146 as a regulatory framework for both Primacy and Federally implemented states. As such, Part 146 specifies broad minimum standards which define acceptable State programs. The additional precision which the commenter requested can be found in the individual State programs in primacy States, or in Part 147 for Federally-administered programs. Part 146 was never intended to detail to the letter permit requirements. Rather it sets broad parameters within which permits are to be issued. The Agency believes the operating requirements proposed at Part 146.67(a) are appropriate for minimum standards, since there is a great deal of disparity in fracture gradients from State to State and even within a single State.

*I. Testing and Monitoring Requirements—Section 146.68*

The requirements for testing and monitoring are addressed in § 146.68. The Agency indicated in the August 27, 1987, proposed regulation that this section restates existing requirements more explicitly, changes some substantively, and adds new requirements. This section also adds a requirement for a waste analysis plan, establishes more precise standards for hydrogeologic compatibility determinations, specifies the requirements for the compatibility of well materials and monitoring, revises and strengthens mechanical integrity testing, and establishes more specific ambient monitoring requirements.

1. Waste Analysis Plan

The written waste analysis plan requires a description of how the waste will be analyzed and sampled and how the analysis will assure that the samples will be representative. The approach adopted by the Agency follows § 264.13(b) of the RCRA regulations and the Agency believes this to be a sensible approach. Most hazardous waste injection well operators will have surface units subject to RCRA and will have a plan already developed. One comment received for the waste analysis plan suggested that a guidance was needed for specifying the detailed chemical and physical analysis needed for this requirement. The Agency believes that a guidance is necessary,

and will issue it as soon as possible. Indeed, this guidance is under development in response to similar concerns regarding § 264.13(b). It will be issued as expeditiously as possible.

2. Hydrogeologic Compatibility

The approach to addressing hydrogeologic compatibility requires the operator to submit a plan which identifies anticipated reaction products and demonstrates to the Director's satisfaction that neither the waste nor the reaction products would adversely affect the injection or confining zone. In other words, both the injection and confining zones must continue to satisfy siting requirements in § 146.62. This amendment clarifies and adds some specificity to existing regulations in §§ 146.12 and 146.14, but does not substantially alter them.

Several concerns were indicated regarding hydrogeologic compatibility requirements. One commenter maintained that this requirement was already addressed in the § 148.20 petition process. The petition process, however, does not cover all hazardous waste injection. Moreover, for the foreseeable future, EPA will be implementing the petition process, while in many cases, States are implementing Part 146 requirements. Thus, the data may not be available for States to determine compliance.

Another commenter expressed the opinion that compatibility should only be required for the arresting layers of the injection zone and not the confining zone. The Agency disagrees and believes that in order to meet the siting requirements in § 146.62, an assessment of hydrogeologic compatibility of the confining layer must be made.

One commenter sought a change in the language addressing cases in which the waste stream in an existing well changes. The commenter believed that such a change should require the Director to take into account what the formation is like at the time of the change for the assessment of hydrogeologic compatibility. The Agency believes that this concern is addressed in the existing requirement. The owner or operator must provide information acceptable to the Director that the relevant protection characteristics of the confining and injection zones are not compromised.

3. Compatibility with Well Materials

Section 146.68(c) requires that the owner or operator of the hazardous waste well provide assurance that the materials in the well are compatible with the injected fluid. Corrosion monitoring, generally accomplished by exposing well components or coupons to the waste stream, provide the necessary data for addressing well material compatibility. Several commenters contended that continuous corrosion monitoring was usually unnecessary particularly when a non-corrosive waste stream is injected. Others suggested that such monitoring should be required in all cases, regardless of whether the waste may be corrosive nor not.

The Agency believes that in many cases, the rates of corrosion can be accurately predicted, particularly in wells with a long operating history and with a waste stream of a consistent composition. The Agency has therefore afforded the Director some latitude in requiring monitoring, as indicated in § 146.68(c)(1); the owner or operator needs only to demonstrate to the Director that the waste stream will be compatible with well materials in contact with the wastes. However, the Agency will require continuous corrosion monitoring of the well construction materials used in the well for wells injecting corrosive wastes. The Director is given the discretion to require such monitoring for other wastes, but alternative methods may be approved by the Director.

4. Mechanical Integrity Testing

Current mechanical integrity tests (MITs) require the operator to check for fluid movement behind the casing (including movement of formation fluids through cement channels adjacent to the well bore) and for leaks in the tubing, casing, or packer. These tests are to be run at least once every five years. The frequency of testing was especially controversial when the UIC regulations were initially proposed and promulgated (see 45 *FR* 42500 *et seq.*, June 24, 1980), and for this reason, in part, EPA included § 146.15 which specified that the EPA would review the adequacy of certain requirements, including MIT tests. After analyzing annual and quarterly reports and reviewing the results of the section report, the Agency has concluded that the frequency of certain tests is inadequate and that certain other tests not specified in existing regulations should be added. In several instances, problems developed and evolved within a five-year time period. While these problems were detected by routine monitoring, it suggestes that the MIT testing frequency needs to be increased.

In view of these concerns, EPA is now requiring annual pressure tests and is also requiring the operator to conduct an annual radioactive tracer survey (RTS) for wells injecting hazardous waste. This test is required in many State programs and has been approved by EPA for use in federally-implemented programs. Moreover, RTS tests are effective for locating leaks in the bottom hole cement and they can be utilized for leak detection of a well's tubular goods, and in some instances fluid flow behind casing. In addition, the Agency is now requiring the use of a tool to evaluate the casing prior to operating the well for new wells, and at least once every five years thereafter for all wells. This tool, which uses electromagnetic flux to measure the thickness of the casing, has the advantage of being predictive. It not only indicates the presence of a leak in the well casing, but also shows developing weaknesses. The language affords the Director some discretion in using this tool since it is not effective with some casing materials.

The majority of comments pertaining to this section of the proposed regulations opposed the increase in stringency of mechanical integrity testing. Many commenters were of the opinion that the mechanical integrity testing requirements were excessive even in the current regulations. They objected particularly to the casing evaluation tool, maintaining either that it should not be required in addition to existing MIT requirements or that it should only be run if a well were worked over, but in no case every five years. As previously mentioned, the Agency has determined that the predictive ability of this tool warrants its use, and the propensity for problems to develop in a well within a five year time period justifies the frequency of use, particularly with wells injecting hazardous wastes. Such wastes are often corrosive. Numerous commenters objected strongly to the prospect of pulling the tubing and packer at specific intervals in order to assess mechanical integrity and suggested that such testing be limited to periods of well workovers. They contended that pulling tubing could damage the well. The Agency disagrees. Mechanical integrity tests such as the temperature log and the noise log are currently required to be run every five years by existing regulations. These test are most sensitive when run with the tubing pulled; thus, in most cases, the tubing is being pulled every five years anyway. The casing tool, which is run with the tubing pulled, is to be run every five years as well and should not significantly contribute to the "down time" of a well as some commenters argue. Moreover, a demonstration of mechanical integrity is already required after every workover and the regulations state that the Director may

schedule the required tests to coincide with workovers whenever possible.

Several commenters also questioned the need for annual RTS testing as they also believed it was excessive and that the bottom hole cement never degrades. The Agency believes that an annual RTS test is justified in that it assures the operator that the waste stream is being emplaced in the injection zone and that the bottom hole cement is intact. In addition, use of the RTS does not require tubing to be pulled for assessing bottom hole cement and, in some cases, potential leaks in casing, tubing, or packer. Finally, in response to one comment, the Agency does not believe that visual inspection of pulled tubing is a viable alternative for a pressure test or an accurate assessment of the tubing's mechanical integrity.

5. Ambient Monitoring

The ambient monitoring requirements are specified in § 146.13 and apply to owners and operators of all Class I wells, not just those who inject hazardous waste (see Section (IV) of today's preamble). Section 146.68(e) restates these requirements as applicable to Class I hazardous waste wells in order to facilitate easy reference for the regulated community. The Agency has been investigating methods of ambient monitoring which might be useful and will continue to do so. With one exception, there appears to be no single technique which could provide meaningful data at all sites. The question of what might prove effective at a given site depends on the hydrogeologic setting and the characteristics of the operation.

Many commenters urged the deletion of the one technique that the Agency believes has the broadest application; the monitoring of the pressure decay or pressure fall-off testing of the injection zone when the well is not injecting and assessing whether the pressure decay curve tracks predictions. Commenters believed that this was not always effective, and could be inaccurate. Predicted pressure decay curves are made for siting and area of review calculations and are based on hydrogeologic data and operating parameters such as injection pressure, fluid density, and volume injected. If the geology has been accurately portrayed, then the pressure decay should generally match predictions. If an unexpected fault or fracture is transmitting fluid it will decline at a faster rate, or conversely, if a boundary condition is present then the decay curve will be slower than anticipated. The Agency agrees that no ambient monitoring system is foolproof, and agrees that false readings could occur. Nevertheless, EPA has determined this to be the most universally applicable monitoring method and has evidence showing it to be accurate in most instances. Therefore, EPA is requiring pressure decay monitoring of the injection zone annually.

There were several commenters who requested a language change in this section that would allow the Director more discretion to conduct ambient monitoring. Other commenters sought to require monitoring in the injection zone, the first aquifer above the injection zone, and the lowermost USDW. Still other commenters indicated that ambient monitoring should be strictly a site-specific requirement. The Agency agrees that ambient monitoring requirements should be site-specific and has indicated this in the proposed rule (see 52 *FR* 32463 and 32464) and today's final rule, and gives the Director discretion in determining an acceptable program.

6. Seismic Monitoring

As noted in Section (III)(C)(2) of this preamble, the Agency believes that seismicity monitoring may be necessary under certain circumstances. A 1987 USGS report indicated several key factors in determining when an injection site might be the cause of increased seismic activity: (1) a large difference between the maximum and minimum compressive stress of an area, (2) the preexistence of faults or fractures of sufficient size and orientation to facilitate induced seismic activity, (3) relatively high injection pressures, (4) clusters of wells within a relatively small area, and (5) an injection zone of low permeability. As noted in the USGS report, such conditions and the resulting earthquakes are rare, and are associated almost exclusively with water-flooding operations for the purpose of secondary recovery of oil, a Class II injection activity. Such Class II activity is often characterized by large arrays of wells injecting at high pressures into small, confined reservoirs with low permeabilities. In contrast, waste disposal wells typically inject at lower pressures into large, porous aquifers of high permeability. Only one waste well has ever been conclusively linked with seismic activity of any significant amount.

EPA believes that the potential for Class I hazardous waste injection to induce tectonic activity is minimized by a number of requirements being promulgated today. Section 146.62(b)(1) prohibits the siting of a Class I well unless the director has considered regional seismicity in his evaluation of the geologic suitability of the proposed site. Section 146.62(c)(2)(i) requires a confining zone that is laterally continuous and free of transecting faults or fractures, a requirement which improves the confining zone's ability to prevent increased seismic activity.

The Agency can foresee, however, limited circumstances where local seismic monitoring may be necessary. Seismic stations are neither expensive nor burdensome in the time required for their installation and operation. Today's final rule at § 146.68(f) will provide the Director the authority to require seismic monitoring on a case-by-case basis. The results of any monitoring required under this section will be reported under § 146.69(a)(7).

*J. Reporting Requirements—Section 146.69*

Section 146.69 of the proposal detailed the minimum reporting requirements for owners and operators of Class I hazardous waste injection wells. A variety of comments were submitted concerning this section.

1. Injectivity Index

The Agency received several comments on § 146.69(a)(2), which required the owner or operator to report changes in the ratio between injection pressure and flow rate. In the proposal, the Agency tied this reporting requirement to the gradients established in § 146.67(f) which are used to trigger automatic alarms or shutoff devices.

As several commenters correctly pointed out, the ratio between injection pressure and flow rate—commonly termed the injectivity index—is best used to evaluate the long term performance of the injection formation. Thus, tying the requirement to the provisions in § 146.67(f) makes little sense, and the Agency is changing this requirement in the final rule to reflect the more appropriate application of this requirement.

Some commenters suggested that there was no legitimate need to require operators to report information on injectivity indexes. They contended that the primary purpose was to tell the operator when it may be necessary to stimulate the formation or conduct other routine maintenance. If the only result of such observations were to note an orderly increase in pressure while flow remained relatively stable, this commenter would be correct. The obvious conclusion to be made from this observation would be that the formation or well screen was becoming clogged—an operational inconvenience, but in most instances not an environmental

concern. However, other outcomes may be observed. For example, a decrease in pressure with flow remaining constant or increasing, could indicate that the formation is fracturing or that a point of discharge has been reached. Similarly, an increase in flow while pressure remained constant could provide evidence that there were problems with the formation or the geologic description. Accordingly, the Agency rejects the contention that reporting the injectivity index has no legitimate regulatory purpose, and retains the requirement with the change outlined above.

2. Shutdown Requirements

Section 146.69(a)(3), the new alarm, shutdown, and resulting response requirements, received many comments. Of particular concern to some was discrepancy between this section and § 146.67. In the preamble of the proposal, EPA addressed false alarms or shutdowns, stating that, "The Agency is not interested in receiving a report any time such an event occurs; nor would it want the operator to shut in the well under these circumstances." This position, while reflected in § 146.67, was not clearly stated in the reporting requirements at § 146.69(a)(3). The Agency believes that there is no immediate need to report false alarms or shutdowns. Such requirements place unnecessary burden on both operator and regulator. Today's final rule at § 146.69(a)(3) requires immediate Director notification only if a loss of mechanical integrity is expected. Other routine occurrences would be reported with quarterly reports.

3. Annular Fluid Loss or Gain

Two commenters believed that § 146.69(a)(5) should require the reporting of not only annular fluid lost, if any, but also annular fluid gained, if any. They noted that this would serve a dual purpose: 1) the indication of leaks in the well tubing; and 2) the indication of situations where, contrary to the new § 146.67(c) requirements, injection pressure exceeds annular pressure. The Agency believes that this comment has validity, and today's promulgation of § 146.69(a)(5) reflects this new requirement.

*K. Information to be Evaluated by the Director—Section 146.70*

Section 146.70 sets forth the information which must be evaluated by the Director in authorizing Class I hazardous waste wells. This section essentially restates the information required in § 146.14 of the existing regulations. As such, the Agency believes it is under no obligation to address comments which are targeted at the already promulgated standards of § 146.14 and simply recodified at § 146.70 for the benefit of the injection community. Substantive comments relevant to proposed additions or changes, however, are addressed below.

One commenter requested that the location of any penetrations of the additional confining zone required by § 146.62(d)(1) be submitted to the Director as a § 146.70 requirement. Another commenter believed that the time at which closure/post-closure plans are to be submitted should be included in § 146.70. The requirement for information in § 146.70 on wells which penetrate the confining or injection zone was duplicative, according to one commenter. One group believed that this section omitted the regional seismicity information required in § 146.62. Prior to the issuance of a permit, one commenter believed that the chemical and physical characteristics of the fluid to be injected should be evaluated by the Director. Finally, one commenter believed that the requirement for a program to reduce the volume or quantity and toxicity of the waste produced at a facility should be approved by the Director.

1. Confining Zone Penetrations

One commenter requested that the added second confining stratum provided by § 146.62(d)(1) be deleted, stating that "it will create far more problems than it is intended to solve . . .". This same commenter went on to suggest that EPA request the location of any penetrations of this stratum as well as an evaluation of the potential for further migration through this stratum. The Agency notes that the location of these wells will be required under § 146.70(a)(2). However, EPA believes that this stratum, while adding an additional measure of protection to an injection site, does not need to be part of the corrective action plan.

One commenter requested the inclusion, in § 146.70, of deadlines for the submission of post-closure plans. These plans are required as part of the permitting process. As the commenter noted, these plans must be submitted with the initial permit application. The Agency sees no need to further regulate this action, as similar plans for plugging and abandonment have been handled in a timely manner to this point.

Another commenter wanted to delete the phrase "injection zone" from §§ 146.70 (a)(3), (a)(4), and (a)(15) as well as other areas. He indicated that "The proposed regulations request information on wells which 'penetrate the injection zone or the confining zone' * * * All wells which penetrate the confining zone is sufficient. If a well penetrates the injection zone it will have penetrated the confining zone." In requiring the owner or operator to consider penetrations of the confining zone, the EPA was seeking to address partial penetrations of that zone, not to reopen the existing requirements relative to injection zones.

Therefore, today's promulgation remains unchanged from the proposal, in this regard.

2. Regional Seismicity

One group noted that the regional seismicity siting requirement of § 146.62(b)(1) was not included in § 146.70 as information to be evaluated by the Director. Pursuant to § 146.70(a)(2), the applicant must show the location of known or suspected faults. Section 146.70(a)(6) requires an analysis of the regional geologic structure, and § 146.70(a)(9) requires a formation testing program. Together, these information requirements provide the data which allows the owner or operator and the Director to assure that the requirements of §146.62(b)(1) have been met. The issue of seismicity monitoring is addressed in section (III)(I)(6) of the preamble.

3. Waste Stream Analysis

One commenter believed that the Director should evaluate chemical and physical characteristics of the fluid to be injected before issuing a permit. The Agency believes that the waste stream analysis required by § 146.68(a), combined with the compatibility requirements of §§ 146.68 (b) and (c), and § 146.70(b)(6) adequately address this issue. The same commenter requested that specific gravity be included as one of the waste stream analysis requirements. Specific gravity analysis is an implicit requirement of §146.68(a) and does not need to be codified at § 146.70.

One commenter felt that the Director should approve the § 146.70(d)(1) certification that the generator of hazardous wastes (at a site which disposes of its own hazardous waste) is implementing a waste minimization program that is protective of human health and the environment. The Agency notes that the regulatory language tracks the statutory language in § 3005(h), which merely requires a certification. Accordingly, the Agency believes that the proposed language is most consistent with the legislative mandate and today promulgates the language as proposed.

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*L. Closure—Section 146.71*

The Agency reorganized and consolidated existing requirements for closure in the proposed rule. To the extent that these represent a restatement of existing requirements, the Agency is neither seeking comment nor making any changes. However, EPA has addressed concerns regarding any new requirements proposed.

Three new requirements for closure include: (1) Requiring the owner or operator to observe and record pressure decay for a time specified by the Director, (2) requiring the demonstration of mechanical integrity prior to plugging, and (3) clarifying that both the owner or operator as well as a third party, if different, must certify that the facility was closed in accordance with the closure plan.

1. Pressure Decay Data

Most of the commenters objected to the proposed provision requiring the owner or operator to observe and record pressure decay over a time period specified by the Director. While there was some support for this part of the closure plan, several commenters indicated that it was either not essential or should not be an automatic requirement.

The Agency believes that pressure decay data helps define the appropriate period of regulatory concern. Specifically, when injection induced pressures in the formation decay, there is usually no force which will lift the fluid to overlaying strata, and thus there is no environmental threat. In overpressurized formations, this lifting force may remain but observation of plugged wells over a thirty year time period provides sufficient assurance that the wells are plugged in a satisfactory manner, and will continue to provide containment for the long term. Accordingly, this requirement will remain as proposed.

2. Cementing and MIT Requirements

Several commenters were of the opinion that tests to ensure mechanical integrity of the long string casing and cement left in the ground before plugging was not necessary and should not be an automatic requirement.

The Agency disagrees and further notes that the EPA presently requires this demonstration of mechanical integrity in permits in all federally-administered programs. Obviously, a well with casing leaks should not be plugged as it can eventually become a source of contamination during the post-closure period.

One commenter noted that just the placement of cement plugs in casing prior to closure will not prevent fluid movement into USDWs. EPA agrees, and it is for precisely this reason that EPA requires MIT tests prior to plugging. Moveover, the rule specifies that the plugging must be done in a manner that will not allow movement of fluids into or between USDWs, and requires certain actions such as perforating the casing where leaks may develop, or placing cement behind casing prior to setting a plug. The actions are designed to assure that the performance standards are met.

3. Authority to Temporarily Cease Injection

One commenter expressed the concern that the Agency's rewarding of the current § 144.28 language created some uncertainty as to when an operator must seek authorization to temporarily cease injection.

It is the intent of this rule that the owner or operator notify the Director immediately upon deciding to temporarily cease injection. The Agency did not intend, however, to require an owner or operator to report well shut-ins associated with routine maintenance or testing activities. Rather, the notification should be initiated by the decision to take the well out of service. In the proposed rule, the Agency intended that the owner or operator seek the permission of the Director in writing, outlining the technical steps being taken to assure continued non-endangerment of USDWs.

4. "Closure"

Another commenter questioned the use of "plugging and abandonment" in the proposed regulations whereas RCRA uses "closure" in referring to this procedure.

"Plugging and abandonment" has been a term used in injection well closure for years. It refers specifically to the closure of a well. The term "closure", which is used in RCRA, pertains to the technical procedures appropriate to shutting-in a surface impoundment, landfill, or other surface land disposal, treatment, or generator facility. In using "plugging and abandonment" versus "closure" there is no difference in the protectiveness of the standard being applied, there is merely a difference in the types of units that the term refers to.

One commenter has suggested that the time requirement for closure report submission is unreasonable as the submission of the report may be required in as little as 15 days if a quarterly report is also due.

The Agency promulgated this requirement on May 11, 1984. It was proposed on September 2, 1983 (see 49 FR 20185 and 48 FR 40098 *et seq.* respectively). This rule was litigated and a settlement was reached. The Agency was not intending to seek comment, nor was it reproposing the requirement; it was merely recodifying the requirement. Accordingly, EPA sees no reason to amend a requirement which has been in effect for nearly 5 years, and which apparently has caused no great hardship to the regulated community.

Finally, some commenters maintained that existing closure requirements were adequate and that these proposed requirements were excessive. The Agency would like to note that, in general, today's rule merely restates what has been existing practice, either as part of permitting (as in the case of required mechanical integrity tests) or as part of earlier rulemaking. In the few instances where the Agency has specified additional or more specific requirements, it has done so primarily to make the closure requirements for wells injecting hazardous waste comparable to closure requirements for other facilities managing hazardous waste.

Several commenters requested clarification on how closure and post closure requirements would be applied. This is outlined in the section which follows.

*M. Post-Closure Care and Financial Responsibility for Post-Closure Care—Sections 146.72 and 146.73*

The Agency is now applying post-closure care requirements and associated financial responsibility requirements to hazardous waste injection wells. The Agency believes that even though a properly chosen site should contain the waste indefinitely under natural conditions, future injection activities, oil and gas drilling activities, and other man-induced forces that may affect containment must be taken into account. The Agency believes that the special problems associated with hazardous waste warrant these new requirements.

1. Post-closure Care

Comments received by the Agency pertaining to post-closure care were generally supportive of the new requirements. However, several concerns were voiced by commenters on various issues.

The regulations, as proposed, stipulated the appropriate time-frames for groundwater monitoring, retention of well records, and notification to State and local agencies having authority over

drilling activities. The rule would also require the owner of the surface or subsurface property on or in which a hazardous waste well is located to record certain information on the deed or other property instrument that would, in perpetuity, provide notice to any subsequent purchaser of the property.

A few commenters were unclear as to when the post-closure period ends. As indicated in the proposal, the duration of the post-closure care period is defined by the length of time the increased pressure from the injection well would create the potential to "lift" fluids from the injection zone. As the injection pressure decreases to a point where the induced lift from the well is dissipated, post-closure requirements would become unnecessary.

In response to concerns about the clarity of the rule, the Agency is changing the manner in which it applies both closure and post-closure care requirements. As promulgated today, the owner or operator would have to submit a plan for the Director's approval which outlined the closure and post-closure care procedures. The requirements of this plan would survive permit termination. Any changes which might be required in the plan could be made using the procedures of § 124.5.

One commenter suggested that the notation on the deed required by § 146.72(c) pertain to any property located over the projected position of the waste plume. The Agency does not believe it is necessary, or legally possible to impose such a requirement. It is generally unnecessary because waste in deep formations moves at exceedingly slow rates; thus in many cases it is unlikely that the waste plume will move appreciably over very long time frames. Moreover, area of review and corrective action requirements will have addressed any concern associated with abandoned wells. As noted, these requirements are based on the pressure front from the well, which exceeds the plume by a considerable distance. Thus, there is built-in protection for plume travel in these requirements.

More importantly, the Agency derives its authority by imposing permit requirements on the regulated entity. No such vehicle exists for surrounding landowners. Therefore, the Agency sees neither the technical necessity nor the legal authority for such a request. Accordingly, EPA will retain the requirement as proposed.

Several commenters noted that required groundwater monitoring should only be conducted until pressure in the injection zone decays to the point that there is no longer any risk of vertical migration into USDWs. The Agency agrees and although preamble language in the proposed rule indicated that such monitoring must be conducted until pressure in the injection zone reaches background levels, language in § 146.72 stipulates that groundwater monitoring must take place until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Director may extend the period of post-closure monitoring if he determines that the well may still endanger a USDW.

One commenter believed that groundwater monitoring should be limited only to the lowermost USDW. As noted in the discussion of § 146.68 in this preamble, the Agency has determined that monitoring requirements must be applied in a flexible manner to address site specific concerns. Therefore, EPA continues to believe that the specific monitoring required by the permit is still essential and will continue to be applied if the pressure from the injection poses a threat to a USDW.

Another commenter indicated that the permittee, not the Director, should estimate the proposed cost of the post-closure plan. The Agency clearly stated in the proposal that the permittee is required to provide this cost estimate, and further believes that he is in the best position to accurately do so. The Director, in reviewing the estimate, will have the opportunity to reject it if he deems it unrealistic.

One commenter explained that the original formation pressure may not have been obtained for many existing wells and that it is not possible to meet the § 146.72(a)(3) requirement in these cases. The Agency agrees, but notes that regulations contain enough flexibility to allow existing wells which have not conducted tests verifying background pressures prior to injection to use reasonable estimates based on available data acceptable to the Director.

2. Financial Responsibility

The Agency proposed that the owner or operator should demonstrate and maintain financial responsibility for post-closure care. Only a few comments were received pertaining to this requirement.

Two commenters believed that financial responsibility should be limited only to the time period when induced pressures in the injection zone remain sufficiently elevated to pose a risk of vertical migration into USDWs, and not until injection zone pressures decay to background levels. Another commenter also felt that the financial responsibility for post-closure groundwater monitoring should be required only if the permit requires such monitoring.

The Agency agrees with these commenters and articulated this position in the proposed rule. Therefore, EPA is not revising this requirement and will retain it as proposed.

One commenter believed that permittees should be responsible for third party liability costs and that they should demonstrate up-front financial responsibility for cleanup in the event that the waste does contaminate a USDW. The Agency does not believe that in the context of injection wells, such requirements are warranted or justified. Generally, once the formation has stabilized, there is little or no possibility that waste will move vertically.

Finally, one commenter recommended that the Agency use the RCRA post-closure financial responsibility instruments.

The rule proposed to use the requirements of subpart F of Part 144. A careful analysis of this subpart will show that these requirements mirror exactly the requirements outlined in sections 265 and 264 of the RCRA regulations.

## IV. Summary of Today's Rulemaking: Response to Comments; Section 146.13, Ambient Monitoring for all Class I Wells

As proposed, § 146.13 addressed the requirements for owners or operators of *all* Class I wells to develop an ambient monitoring program. This part of the rule would also satisfy the mandate of section 1426 of the Safe Drinking Water Act. These requirements differ from other requirements made today in that they are not restricted solely to Class I hazardous waste wells, but rather they are applicable to all Class I wells.

At a minimum the proposed rules required a monitoring of the pressure buildup in the injection zone. This would require an annual shut down of the well for a period of time sufficient to conduct a valid observation of the pressure fall-off curve.

At the Director's discretion, it was proposed that one or more of the following site-specific monitoring techniques may also be required in order to prevent the contamination of USDWs:

1. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone;

2. The use of indirect, geophysical techniques to determine pertinent characteristics of the formation and injected fluids;

3. Periodic monitoring of the ground water quality in the lowermost USDW; or

4. Any other technique which the Director deems necessary to protect USDWs.

Further details concerning ambient monitoring and the response to several comments can be found in the preamble language in Testing and Monitoring, § 146.68(e) of today's rule.

As many commenters indicated, the question of what might prove effective at a given site depends on the hydrogeologic setting and the characteristics of the operation. Many commenters urged the deletion of the one technique that the Agency believes has the best application; the monitoring of a pressure decay or pressure fall-off testing of the injection zone when the well is not injecting, and assessing whether the decay curve tracks predictions. Commenters believed that this was not always effective, was too costly, and could be inaccurate. Although some of these concerns may be valid, EPA has determined that this is the most universally applicable monitoring technique and has evidence showing it to be accurate in most cases. Therefore, the Agency will require pressure decay monitoring of the injection zone annually.

Some commenters were of the opinion that ambient monitoring was too costly and should be optional. The Agency does not believe that this type of monitoring is particularly expensive when compared to the information received. Still other commenters believed that certain site-specific monitoring techniques that may also be required by the Director were either inappropriate or flawed in preventing the contamination of USDWs. In response, the Agency agrees that ambient monitoring requirements should be site-specific and has indicated this in the proposal and today's rule, and has therefore given the Director discretion in determining an acceptable ambient monitoring program.

## V. Summary of Today's Rulemaking: Response to Comments; Amendments to Parts 124 and 144

### *A. Part 124*

The Agency proposed to amend Part 124 to require that State and local agencies which regulate oil and gas activities, and state agencies that regulate mineral exploration be notified, by operators, of permit activities for all Class I wells. This practice could help agencies coordinate their programs and apply specific requirements when appropriate. One commenter supported this idea, but felt it should work both ways, i.e., that State and local agencies regulating oil, gas, or mineral exploration and recovery should give notice of their permit activities to the agency regulating Class I facilities. The EPA believes that such coordination would be beneficial to all involved parties, but also realizes that its authority to require such notification from State regulatory bodies is questionable. The EPA intends to take all necessary measures to insure that federal, State, and local regulatory bodies are notified of all federally implemented injection activities.

Two commenters believed that the new requirement to notify agencies of permit activities was burdensome. The Agency believes that such a requirement is not unreasonable in the context of other § 124.10 notification requirements. On the contrary, EPA believes that such notification is appropriate, given the special concerns associated with hazardous waste injection.

### *B. Part 144*

The proposal contained two amendments to Part 144. Section 144.31(h) was proposed to assure that plugging and abandonment, closure, and post-closure requirements are met. As outlined in Section (III)(M)(1) of this preamble, the Agency is changing the approach. Under the new approach, the plan will be submitted as part of a permit application or modification, but will survive the permit as a directly enforceable requirement until the end of the post closure period.

The Agency is also amending § 144.52(a) ("Establishing Permit Requirements") to ensure that all Subpart G requirements can be administered through a permit, consistent with the framework established for the UIC program.

Amendments to §§ 144.39 (a) and (b) would broaden the reasons for which permits may be modified or revoked and reissued. Specifically, this section would require permit modification either when regulations change, or when the waste is changed or reclassified. The intent of this change is to give the Director the discretion to revise or reissue a permit when the waste becomes or is determined to be hazardous as defined in Part 261.

Many commenters objected to the removal of the "shield" provision. This provision currently prevents the modification, revocation, or reissuance of a permit to require compliance with new regulations unless the permittee requests or agrees to such action. They argue that the Part 146 requirements have, to this point, proved protective of human health and the environment. The HSWA Amendments impose new, higher levels of concern on hazardous waste facilities. Recently proposed rules to amend the regulations governing the disposal of hazardous waste in surface facilities would broaden the Director's authority to revise permits when conditions warrant such revisions, and the Agency believes that rules applicable to injection of hazardous wastes should mirror this new approach.

A number of commenters believed that Part 144 should contain a section that would grant interim permit status to wells with approved petitions. It is their opinion that such approved petitions are similar in kind to a valid permit, and that administrative procedures associated with the repermitting process may delay the continued operation or startup of their facilities.

In response, EPA would like to note that an approved permit and an approved petition are similar in certain aspects, but they do not address identical concerns. The Part 148 petition process does not contain provisions pertaining to the movement of formation fluids. The SDWA, however, requires the Agency to regulate endangerment of USDWs, regardless of whether that endangerment were to occur from injected wastes or formation fluids. The movement of formation fluids is regulated through an approved permit.

Review and approval of both a permit and a petition are required to insure protection of human health and the environment, and non-endangerment of USDWs. It should be noted that the Agency will attempt to run concurrent petition and permit review processes whenever possible.

One commenter addressed § 144.36 and the duration of permits. No change was proposed to this section, and consequently we are not addressing it.

## VI. Regulatory Requirements

### *A. Regulatory Impact Analysis*

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any benefical or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation or international trade.

At the request of the Office of Management and Budget, the Agency has reexamined this final rule in light of the changes made since the proposal, and their effect on its status as a minor rule. This economic analysis indicates that the changes made will have no appreciable effect on the compliance costs estimated for the rule proposed on August 27, 1987. Total annualized compliance costs of the regulation are estimated to total $63 million. Total capital costs are estimated to total $15 million and one-time petition costs are estimated to be $3 million. These costs indicate that the rule does not constitute a major rule under Executive Order 12291 and EPA has not prepared a formal regulatory impact analysis of today's promulgation. The Agency has, however, prepared an assessment of the cost and potential economic effects of the rule.

*B. Regulatory Flexibility Analysis*

Pursuant to the Regulatory Flexibili'y Analysis Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be directly affected by this rule. Part 148.1(c)(3) of this rule exempts any small quantity generator, as defined in § 261.5, from the underground injection prohibitions outlined in this rule. The Administrator certifies that this rule will not have significant economic effects on a substantial number of small businesses. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

*C. Paperwork Reduction Act*

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Agency has amended the Information Collection Request document to address concerns raised by OMB. A copy of this document (ICR No. 0370) may be obtained from Eric Strassler, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2738.

*D. Administrative Procedures Act*

As a petition may grant a variance from a prohibition, EPA may make Part 148 immediately effective pursuant to the Administrative Procedures Act (see 5 U.S.C. 553(d)(1)). The Agency is choosing to do so as the statutory deadline establishing prohibitions is effective August 8, 1988. Except to the extent incorporated in Part 148, the amendments to Parts 124, 144 and 146 become effective 30 days after publication in the **Federal Register**.

## VII. References

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**List of Subjects**

*40 CFR Part 124*

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply.

*40 CFR Part 144*

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Confidential business information, Waste treatment and disposal, Water supply.

*40 CFR Part 146*

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

*40 CFR Part 148*

Administrative practice and procedures, Confidential business information, Hazardous materials, Intergovernmental relations, Waste treatment and disposal, Water pollution control, Water supply.

Date: July 15, 1988.

**Lee M. Thomas,**

*Administrator.*

Therefore Chapter I of Title 40 is amended as follows:

## PART 124—PROCEDURES FOR DECISION MAKING

1. The authority citation for Part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.10 is amended by redesignating paragraphs (c)(1)(viii) and (IX) as paragraphs (c)(1)(ix) and (x) and adding a new paragraph (c)(1)(viii) to read as follows:

**§ 124.10 Public notice of permit actions and public comment period.**

* * * * *

(c) * * *

(1) * * *

(viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;

* * * * *

## PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

**Authority:** Pub. L. 93–523, as amended by Pub. L. 95–190, Pub. L. 96–63, and Pub. L. 96–502, 42 U.S.C. 300f *et seq.* and 6901 *et seq.*

2. Section 144.1 is amended by adding new paragraph (f)(1)(vi) to read as follows:

**§ 144.1 Purpose and scope of Part 144.**

* * * * *

(f) * * *

(1) * * *

(vi) Subpart F sets forth the financial responsibility requirements for owners and operators of all existing and new Class I hazardous waste injection wells.

* * * * *

3. Section 144.39 is amended by revising the introductory texts of paragraphs (a) and (a)(3), and by adding a new paragraph (b)(3) to read as follows:

**§ 144.39 Modification or revocation and reissuance of permits.**

* * * * *

(a) *Causes for modification.* The following are causes for modification. For Class I hazardous waste injection wells, Class II, or Class III wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees.

* * * * *

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class I hazardous waste injection wells, Class II, or Class III wells may be modified during their terms for this cause only as follows:

* * * * *

(b) * * *

(3) A determination that the waste being injected is a hazardous waste as defined in § 261.3 either because the definition has been revised, or because a previous determination has been changed.

* * * * *

4. Section 144.51 is amended by revising paragraph (j)(2)(ii) to read as follows:

**§ 144.51 Conditions applicable to all permits.**

* * * * *

(j) * * *

(2) * * *

(ii) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(a)(6), or under Part 146 Subpart G as appropriate. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period. For EPA administered programs, the owner or operator shall continue to retain the records after the three year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

* * * * *

5. Section 144.52 is amended by revising paragraph (a) introductory text, to read as follows:

**§ 144.52 Establishing permit conditions.**

(a) In addition to conditions required in § 144.51, the Director shall establish conditions, as required on a case-by-case basis under § 144.36 (duration of permits), § 144.53(a) (schedules of compliance), §144.54 (monitoring), and for EPA permits only § 144.53(b) (alternate schedules of compliance), and § 144.4 (considerations under Federal law). Permits for owners or operators of hazardous waste injection wells shall

include conditions meeting the requirements of § 144.14 (requirements for wells injecting hazardous waste), §§ 144.52(a)(7) and (a)(9), and subpart G of Part 146. Permits for other wells shall contain the following requirements, when applicable.

* * * * *

## PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for Part 146 is revised to read as follows:

**Authority**: Pub. L. 93–523, as amended by Pub. L. 95–190, Pub. L. 96–63, and Pub. L. 96–502, 42 U.S.C. 300 f *et seq.*, as amended—Subpart G also issued under 52 U.S.C. 6901 *et seq.*, as amended.

2. Section 146.11 is revised to read as follows:

### § 146.11 Criteria and standards applicable to Class I nonhazardous wells.

This subpart establishes criteria and standards for underground injection control programs to regulate Class I nonhazardous wells.

3. Section 146.13 is amended by adding a new paragraph (d) to read as follows:

### § 146.13 Operating monitoring and reporting requirements.

* * * * *

(d) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

3. A new Subpart G is added to read as follows:

## Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

Sec.

146.61 Applicability.
146.62 Minimum criteria for siting.
146.63 Area of review.
146.64 Corrective action for wells in the area of review.
146.65 Construction requirements.
146.66 Logging, sampling, and testing prior to new well operation.
146.67 Operating requirements.
146.68 Testing and monitoring requirements.
146.69 Reporting requirements.
146.70 Information to be evaluated by the Director.
146.71 Closure.
146.72 Post-closure care.
146.73 Financial responsibility for post-closure care.

## Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

### § 146.61 Applicability.

(a) This subpart establishes criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted this Subpart supplements the requirements of Subpart A and applies instead of Subpart B to Class I hazardous waste injection wells.

(b) *Definitions.*

*Cone of influence* means that area around the well within which increased injection zone pressures caused by injection into the hazardous waste injection well would be sufficient to drive fluids into an underground source of drinking water (USDW).

*Existing well* means a Class I well which was authorized prior to August 25, 1988 by an approved State program, or an EPA-administered program or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under § 261.3 of this Part.

*Injection interval* means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

*New well* means any Class I hazardous waste injection well which is not an existing well.

*Transmissive fault or fracture* is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

### § 146.62 Minimum criteria for siting.

(a) All Class I hazardous waste injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore an underground source of drinking water.

(b) The siting of Class I hazardous waste injection wells shall be limited to areas that are geologically suitable. The Director shall determine geologic suitability based upon:

(1) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(2) An analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

(3) A determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models.

(c) Class I hazardous waste injection wells shall be sited such that:

(1) The injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs.

(2) The confining zone:

(i) Is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW; and

(ii) Contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

(d) The owner or operator shall demonstrate to the satisfaction of the Director that:

(1) The confining zone is separated from the base of the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW in the event of fluid movement in an unlocated borehole or transmissive fault; or

(2) Within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost USDW, considering density effects, injection pressures and any significant pumping in the overlying USDW; or

(3) There is no USDW present.

(4) The Director may approve a site which does not meet the requirements in paragraphs (d) (1), (2), or (3) of this section if the owner or operator can demonstrate to the Director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of USDWs.

**§ 146.63 Area of review.**

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 146.6. The area of review for Class I hazardous waste injection wells shall be a 2-mile radius around the well bore. The Director may specify a larger area of review based on the calculated cone of influence of the well.

**§ 146.64 Corrective action for wells in the area of review.**

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 144.55 and § 146.07.

(a) The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the Director outlining the protocol used to:

(1) Identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) Determine whether wells are adequately completed or plugged.

(b) The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in § 146.70(a):

(1) A tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) A description of each well or type of well and any records of its plugging or completion.

(c) For wells that the Director determines are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modification as are necessary to prevent movement of fluids into or between USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in paragraph (e) of this section), the Director shall:

(1) Require the applicant to revise the plan;

(2) Prescribe a plan for corrective action as a condition of the permit; or

(3) Deny the application.

(d) Requirements:

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (c) of this section. Any such compliance schedule shall provide for compliance no later than 2 years following issuance of the permit and shall require observance of appropriate pressure limitations under paragraph (d)(3) until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The Director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the Director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids into or between USDWs. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation may be made part of a compliance schedule and may be required to be maintained until all other required corrective actions have been implemented.

(e) In determining the adequacy of corrective action proposed by the applicant under paragraph (c) of this section and in determining the additional steps needed to prevent fluid movement into and between USDWs, the following criteria and factors shall be considered by the Director:

(1) Nature and volume of injected fluid;

(2) Nature of native fluids or byproducts of injection;

(3) Geology;

(4) Hydrology;

(5) History of the injection operation;

(6) Completion and plugging records;

(7) Closure procedures in effect at the time the well was closed;

(8) Hydraulic connections with USDWs;

(9) Reliability of the procedures used to identify abandoned wells; and

(10) Any other factors which might affect the movement of fluids into or between USDWs.

**§ 146.65 Construction requirements.**

(a) *General.* All existing and new Class I hazardous waste injection wells shall be constructed and completed to:

(1) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

(2) Permit the use of appropriate testing devices and workover tools; and

(3) Permit continuous monitoring of injection tubing and long string casing as required pursuant to §146.67(f).

(b) *Compatibility.* All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, The American Society for Testing Materials, or comparable standards acceptable to the Director.

(c) *Casing and Cementing of New Wells.* (1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to prevent the movement of fluids into or between USDWs, and to prevent potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the Director shall consider the following information as required by § 146.70:

(i) Depth to the injection zone;

(ii) Injection pressure, external pressure, internal pressure and axial loading;

(iii) Hole size;

(iv) Size and grade of all casing strings (well thickness, diameter, nominal weight, length, joint specification and construction material);

(v) Corrosiveness of injected fluid, formation fluids and temperature;

(vi) Lithology of injection and confining zones;

(vii) Type or grade of cement; and

(viii) Quantity and chemical composition of the injected fluid.

(2) One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains a USDW and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annual volume. The Director may require more than 120% when the geology or other circumstances warrant it.

(3) At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and

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shall be cemented by circulating cement to the surface in one or more stages:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) In a quantity no less than 120% of the calculated volume necessary to fill the annular space. The Director may require more than 120% when the geology or other circumstances warrant it.

(4) Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous and does not allow fluid movement behind the well bore.

(5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

(i) The maximum burst and collapse pressures which may be experienced during the construction, operation and closure of the well; and

(ii) The maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

(6) At a minimum, cement and cement additivies must be of sufficient quality and quantity to maintain integrity over the design life of the well.

(d) *Tubing and packer.* (1) All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set at a point specified by the Director.

(2) In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate (intermittent or continuous), temperature and volume of injected fluid;

(vi) Size of casing; and

(vii) Tubing tensile, burst, and collapse strengths.

(3) The Director may approve the use of a fluid seal if he determines that the following conditions are met:

(i) The operator demonstrates that the seal will provide a level of protection comparable to a packer;

(ii) The operator demonstrates that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

(iii) The permit contains specific limitations on variations in annular pressure and loss of annular fluid;

(iv) The design and construction of the well allows continuous monitoring of the annular pressure and mass balance of annular fluid; and

(v) A secondary system is used to monitor the interface between the annulus fluid and the injection fluid and the permit contains requirements for testing the system every three months and recording the results.

**§ 146.66 Logging, sampling, and testing prior to new well operation.**

(a) During the drilling and construction of a new Class I hazardous waste injection well, appropriate logs and tests shall be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all relevant geologic units to assure conformance with performance standards in § 146.65, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

(1) Deviation checks during drilling on all holes constructed by drilling a pilot hole which are enlarged by reaming or another method. Such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. At a minimum, the following logs shall be required in the following situations:

(i) Upon installation of the surface casing:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond and variable density log, and a temperature log after the casing is set and cemented.

(ii) Upon installation of the long string casing:

(A) Resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs before the casing is installed; and

(B) A cement bond and variable density log, and a temperature log after the casing is set and cemented.

(iii) The Director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information; and

(3) A mechanical integrity test consisting of:

(i) A pressure test with liquid or gas;

(ii) A radioactive tracer survey;

(iii) A temperature or noise log;

(iv) A casing inspection log, if required by the Director; and

(v) Any other test required by the Director.

(b) Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The Director may accept cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Director may require the owner or operator to core other formations in the borehole.

(c) The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

(d) At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste injection wells:

(1) Fracture pressure;

(2) Other physical and chemical characteristics of the injection and confining zones; and

(3) Physical and chemical characteristics of the formation fluids in the injection zone.

(e) Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

(1) A pump test; or

(2) Injectivity tests.

(f) The Director shall have the opportunity to witness all logging and testing by this Subpart. The owner or operator shall submit a schedule of such activities to the Director 30 days prior to conducting the first test.

**§ 146.67 Operating requirements.**

(a) Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. The owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone,

nor cause the movement of injection or formation fluids into a USDW.

(b) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(c) The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless the Director determines that such a requirement might harm the integrity of the well. The fluid in the annulus shall be noncorrosive, or shall contain a corrosion inhibitor.

(d) The owner or operator shall maintain mechanical integrity of the injection well at all times.

(e) Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) Conditions limiting the temperature, pH or acidity of the injected waste; and

(2) Procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

(f) The owner or operator shall install and use continuous recording devices to monitor: the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

(1) Automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the Director exceed a range and/or gradient specified in the permit; or

(2) Automatic alarms, designed to sound when the pressures and flow rates or other parameters approved by the Director exceed a rate and/or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

(g) If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under paragraph (f) of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(1) Cease injection of waste fluids unless authorized by the Director to continue or resume injection.

(2) Take all necessary steps to determine the presence or absence of a leak; and

(3) Notify the Director within 24 hours after the alarm or shutdown.

(h) If a loss of mechanical integrity is discovered pursuant to paragraph (g) of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) Immediately cease injection of waste fluids;

(2) Take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) Notify the Director within 24 hours after loss of mechanical integrity is discovered;

(4) Notify the Director when injection can be expected to resume; and

(5) Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection of waste fluids.

(i) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) The owner or operator shall immediately case injection of waste fluids, and:

(i) Notify the Director within 24 hours of obtaining such evidence;

(ii) Take all necessary steps to identify and characterize the extent of any release;

(iii) Comply with any remediation plan specified by the Director;

(iv) Implement any remediation plan approved by the Director; and

(v) Where such release is into a USDW currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The Director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs.

(j) The owner or operator shall notify the Director and obtain his approval prior to conducting any well workover.

**§ 146.68 Testing and monitoring requirements.**

Testing and monitoring requirements shall at a minimum include:

(a) Monitoring of the injected wastes. (1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(i) The paramenters for which the waste will be analyzed and the rationale for the selection of these parameters;

(ii) The test methods that will be used to test for these parameters; and

(iii) The sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the Director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

(b) Hydrogeologic compatibility determination. The owner or operator shall submit information demonstrating to the satisfaction of the Director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in § 146.62.

(c) Compatibility of well materials. (1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the Director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under § 146.65(b).

(2) The Director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(i) Placing coupons of the well construction materials in contact with the waste stream; or

(ii) Routing the waste stream through a loop constructed with the material used in the well; or

(iii) Using an alternative method approved by the Director.

(3) If a corrosion monitoring program is required:

(i) The test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well

head) and flow rates of the injection operation; and

(ii) The owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in § 146.65(b).

(d) *Periodic mechanical integrity testing.* In fulfilling the requirements of § 146.8, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) The long string casing, injection tube, and annular seal shall be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover;

(2) The bottom-hole cement shall be tested by means of an approved radioactive tracer survey annually;

(3) An approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole. The Director may require such tests whenever the well is worked over;

(4) Casing inspection logs shall be run at least once every five years unless the Director waives this requirement due to well construction or other factors which limit the test's reliability; and

(5) Any other test approved by the Director in accordance with the procedures in § 146.8(d) may also be used.

*(e) Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone, and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

(f) The Director may require seismicity monitoring when he has reason to believe that the injection activity may have the capacity to cause seismic distrubances.

**§ 146.69 Reporting requirements.**

Reporting requirements shall, at a minimum, include:

(a) Quarterly reports to the Director containing:

(1) The maximum injection pressure;

(2) A description of any event that exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(3) A description of any event which triggers an alarm or shutdown device required pursuant to § 146.67(f) and the response taken;

(4) The total volume of fluid injected;

(5) Any change in the annular fluid volume;

(6) The physical, chemical and other relevant characteristics of injected fluids; and

(7) The results of monitoring prescribed under § 146.68.

(b) Reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

(1) Periodic tests of mechanical integrity;

(2) Any other test of the injection well conducted by the permittee if required by the Director; and

(3) Any well workover.

**§ 146.70 Information to be evaluated by the Director.**

This section sets forth the information which must be evaluated by the Director in authorizing Class I hazardous waste injection wells. For a new Class I hazardous waste injection well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste injection well, the owner or operator shall submit all information listed below as part of the permit application except for those items of information which are current, accurate, and available in the existing permit file. For both existing and new Class I hazardous waste injection wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current and readily available to the Director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved. In cases where EPA issues the permit, all the information in this section must be submitted to the Administrator or his designee.

(a) Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the Director shall review the following to assure that the requirements of this Part and Part 144 are met:

(1) Information required in § 144.31;

(2) A map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads. The map should also show faults, if known or suspected;

(3) A tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion and any additional information the Director may require;

(4) The protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(5) Maps and cross-sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(6) Maps and cross-sections detailing the geologic structure of the local area;

(7) Maps and cross-sections illustrating the regional geologic setting;

(8) Proposed operating data;

(i) Average and maximum daily rate and volume of the fluid to be injected; and

(ii) Average and maximum injection pressure;

(9) Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information

on the injection formation and the confining zone;

(10) Proposed stimulation program;

(11) Proposed injection procedure;

(12) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(13) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;

(14) Plans (including maps) for meeting monitoring requirements of § 146.68;

(15) For wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under § 146.64;

(16) Construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

(17) A demonstration pursuant to Part 144, Subpart F, that the applicant has the resources necessary to close, plug or abandon the well and for post-closure care.

(b) Prior to the Director's granting approval for the operation of a Class I hazardous waste injection well, the owner or operator shall submit and the Director shall review the following information, which shall be included in the completion report:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.68;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate;

(4) The results of the injection zone and confining zone testing program as required in § 146.70(a)(9);

(5) The actual injection procedure;

(6) The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;

(7) The calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to the information submitted under § 146.70(a) (2) and (3).

(8) The status of corrective action on wells identified in § 146.70(a)(15).

(c) Prior to granting approval for the plugging and abandonment (i.e., closure) of a Class I hazardous waste injection well, the Director shall review the information required in §§ 146.71(a)(4) and 146.72(a).

(d) Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) The generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) Injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

### § 146.71 Closure

(a) *Closure Plan.* The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of paragraph (d) of this section and is acceptable to the Director. The obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the Director no later than the date on which notice of closure is required to be submitted to the Director under paragraph (b) of this section.

(3) The plan shall assure financial responsibility as required in § 144.52(a)(7).

(4) The plan shall include the following information:

(i) The type and number of plugs to be used;

(ii) The placement of each plug including the elevation of the top and bottom of each plug;

(iii) The type and grade and quantity of material to be used in plugging;

(iv) The method of placement of the plugs;

(v) Any proposed test or measure to be made;

(vi) The amount, size, and location (by depth) of casing and any other materials to be left in the well;

(vii) The method and location where casing is to be parted, if applicable;

(viii) The procedure to be used to meet the requirements of paragraph (d)(5) of this section;

(ix) The estimated cost of closure; and

(x) Any proposed test or measure to be made.

(5) The Director may modify a closure plan following the procedures of § 124.5.

(6) An owner or operator of a Class I hazardous waste injection well who ceases injection temporarily, may keep the well open provided he:

(i) Has received authorization from the Director; and

(ii) Has described actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary disuse. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.

(7) The owner or operator of a well that has ceased operations for more than two years shall notify the Director 30 days prior to resuming operation of the well.

(b) *Notice of intent to close.* The owner or operator shall notify the Director at least 60 days before closure of a well. At the discretion of the Director, a shorter notice period may be allowed.

(c) *Closure report.* Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the Director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure. The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either: (1) A statement that the well was closed in accordance with the closure plan previously submitted and approved by the Director; or

(2) Where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

(d) *Standards for well closure.* (1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the Director. The Director shall analyze the pressure decay and the transient pressure observations conducted pursuant to § 146.68(e)(1)(i) and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include:

(i) Pressure tests with liquid or gas;

(ii) Radioactive tracer surveys;

(iii) Noise, temperature, pipe evaluation, or cement bond logs; and

(iv) Any other test required by the Director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between USDWs.

(5) Placement of the cement plugs shall be accomplished by one of the following:

(i) The Balance Method;

(ii) The Dump Bailer Method;

(iii) The Two-Plug Method; or

(iv) An alternate method, approved by the Director, that will reliably provide a comparable level of protection.

(6) Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(7) The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

**§ 146.72 Post-closure care.**

(a) The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of paragraph (b) of this section and is acceptable to the Director. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under § 146.71(c).

(3) The plan shall assure financial responsibility as required in § 146.73.

(4) The plan shall include the following information:

(i) The pressure in the injection zone before injection began;

(ii) The anticipated pressure in the injection zone at the time of closure;

(iii) The predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW;

(iv) Predicted position of the waste front at closure;

(v) The status of any cleanups required under § 146.64; and

(vi) The estimated cost of proposed post-closure care.

(5) At the request of the owner or operator, or on his own initiative, the Director may modify the post-closure plan after submission of the closure report following the procedures in § 124.5.

(b) The owner or operator shall:

(1) Continue and complete any cleanup action required under § 146.64, if applicable;

(2) Continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Director may extend the period of post-closure monitoring if he determines that the well may endanger a USDW.

(3) Submit a survey plat to the local zoning authority designated by the Director. The plat shall indicate the location of the well relative to permanently surveyed benchmarks. A copy of the plat shall be submitted to the Regional Administrator of the appropriate EPA Regional Office.

(4) Provide appropriate notification and information to such State and local authorities as have cognizance over drilling activities to enable such State and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone.

(5) Retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids. The Director shall require the owner or operator to deliver the records to the Director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the Director for that purpose.

(c) Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(1) The fact that land has been used to manage hazardous waste;

(2) The name of the State agency or local authority with which the plat was filed, as well as the address of the Regional Environmental Protection Agency Office to which it was submitted;

(3) The type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

**§ 146.73 Financial responsibility for post-closure care.**

The owner or operator shall demonstrate and maintain financial responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate to cover closure and post-closure care in 40 CFR Part 144, Subpart F. The amount of the funds available shall be no less than the amount identified in § 146.72(a)(4)(vi). The obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection. The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

Part 148 is added to read as follows:

## PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

### Subpart A—General

Sec.

148.1 Purpose, scope and applicability.
148.2 Definitions.
148.3 Dilution prohibited as a substitute for treatment.
148.4 Procedures for case-by-case extensions to an effective date.
148.5 Waste analysis.

### Subpart B—Prohibitions on Injection

148.10 Waste specific prohibitions—solvent wastes.
148.11 Waste specific prohibitions—dioxin-containing wastes.

### Subpart C—Petition Standards and Procedures

148.20 Petitions to allow injection of a waste prohibited under Subpart B.
148.21 Information to be submitted in support of petitions.
148.22 Requirements for petition submission, review and approval or denial.
148.23 Review of exemptions granted pursuant to a petition.
148.24 Termination of approved petition.

**Authority:** Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

## Subpart A—General

### § 148.1 Purpose, scope and applicability.

(a) This part identifies hazardous wastes that are restricted from disposal into Class I hazardous waste injection wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

(b) The requirements of this part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste.

(c) Wastes otherwise prohibited from injection may continue to be injected:

(1) If an extension from the effective date of a prohibition has been granted pursuant to § 148.4 with respect to such wastes; or

(2) If an exemption from a prohibition has been granted in response to a petition filed under § 148.20 to allow injection of restricted wastes with respect to those wastes and wells covered by the exemption; or

(3) If the waste is generated by a conditionally exempt small quantity generator, as defined in § 261.5; or

(4) Until November 8, 1988, if the waste has been determined to be contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or a corrective action required under the Resource Conservation and Recovery Act.

### § 148.2 Definitions.

*Injection interval* means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

*Transmissive fault or fracture* is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

### § 148.3 Dilution prohibited as a substitute for treatment.

The prohibition of § 268.3 shall apply to owners or operators of Class I hazardous waste injection wells.

### § 148.4 Procedures for case-by-case extensions to an effective date.

The owner or operator of a Class I hazardous waste injection well may submit an application to the Administrator for an extension of the effective date of any applicable prohibition established under Subpart B of this Part according to the procedures of § 268.5.

### § 148.5 Waste analysis.

Generators of hazardous wastes that are disposed of into Class I injection wells must comply with the applicable requirements of § 268.7 (a) and (b). Owners or operators of Class I hazardous waste injection wells must comply with the applicable requirements of § 268.7(c).

## Subpart B—Prohibitions on Injection

### § 148.10 Waste specific prohibitions—solvent wastes.

(a) Effective August 8, 1988, the spent solvent wastes specified in § 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005 are prohibited from underground injection unless the solvent waste is a solvent-water mixture or solvent-containing sludge containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this section.

(b) Effective August 8, 1990, all spent F001–F005 solvent wastes containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this section are prohibited from injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date if an extension has been granted under § 148.4 of this Part; or

(4) During the period the waste has been granted a treatability variance under § 268.44.

**Table A**

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols and cresylic acid
Cyclohexanone
1,2-dichlorobenzene
Ethyl acetate
Ethyl benzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methylene chloride (from the pharmaceutical industry)
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1,1,1-Trichloroethane
1,2,2-Trichloro-1,2,2 trifluoroethane
Trichloroethylene
Trichlofluoromethane
Xylene

### § 148.11 Waste specific prohibitions—dioxin-containing wastes.

(a) Effective August 8, 1988, the dioxin-containing wastes specified in § 261.31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, and prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date of an extension has been granted under § 148.4 of this Part; or

(4) During the period the waste has been granted a treatability variance under § 268.44.

## Subpart C—Petition Standards and Procedures

### § 148.20 Petitions to allow injection of a waste prohibited under Subpart B.

(a) Any person seeking an exemption from a prohibition under Subpart B of this part for the injection of a restricted hazardous waste into an injection well or wells shall submit a petition to the Director demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration requires a showing that:

(1) The hydrogeological and geochemical conditions at the sites and the physiochemical nature of the waste stream(s) are such that reliable predictions can be made that:

(i) Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years:

(A) Vertically upward out of the injection zone; or

(B) Laterally within the injection zone to a point of discharge or interface with an Underground Source of Drinking Water (USDW) as defined in 40 CFR Part 146; or

(ii) Before the injected fluids migrate out of the injection zone or to a point of discharge or interface with USDW, the fluid will no longer be hazardous because of attenuation, transformation, or immobilization of hazardous constituents within the injection zone by hydrolysis, chemical interactions or other means; and

(2) For each well the petition has:

(i) Demonstrated that the injection well's area of review complies with the substantive requirements of § 146.63;

(ii) Located, identified, and ascertained the condition of all wells within the injection well's area of review (as specified in § 146.63) that penetrate the injection zone or the confining zone by use of a protocol acceptable to the Director that meets the substantive requirements of § 146.64;

(iii) Submitted a corrective action plan that meets the substantive requirements of § 146.64, the implementation of which shall become a condition of petition approval; and

(iv) Submitted the results of pressure and radioactive tracer tests performed within one year prior to submission of the petition demonstrating the mechanical integrity of the well's long string casing, injection tube, annular seal, and bottom hole cement. In cases where the petition has not been approved or denied within one year after the initial demonstration of mechanical integrity, the Director may require the owner or operator to perform the tests again and submit the results of the new tests.

Note.—The requirements of § 148.20(a)(2) need not be incorporated in a permit at the time of petition approval.

(b) A demonstration under § 148.20(a)(1)(i) shall identify the strata within the injection zone which will confine fluid movement above the injection interval and include a showing that this strata is free of known transmissive faults of fractures and that there is a confining zone above the injection zone.

(c) A demonstration under § 148.20(a)(1)(ii) shall identify the strata within the injection zone where waste transformation will be accomplished and include a showing that this strata is free of known transmissive faults or fractures and that there is a confining zone above the injection zone.

(d) A demonstration may include a showing that:

(1) Treatment methods, the implementation of which shall become a condition of petition approval, will be utilized that reduce the toxicity or mobility of the wastes; or

(2) A monitoring plan, the implementation of which shall become a condition of petition approval, will be utilized to enhance confidence in one or more aspects of the demonstration.

(e) Any person who has been granted an exemption pursuant to this section may submit a petition for reissuance of the exemption to include an additional restricted waste or wastes or to modify any conditions placed on the exemption by the Director. The Director shall reissue the petition if the petitioner complies with the requirements of paragraphs (a), (b) and (c) of this section.

(f) Any person who has been granted an exemption pursuant to this section may submit a petition to modify an exemption to include an additional (hazardous) waste or wastes. The Director may grant the modification if he determines, to a reasonable degree of certainty, that the additional waste or wastes will behave hydraulically and chemically in a manner similar to previously included wastes and that it will not interfere with the containment capability of the injection zone.

### § 148.21 Information to be submitted in support of petitions.

(a) Information submitted in support of § 148.20 must meet the following criteria:

(1) All waste analysis and any new testing performed by the petitioner shall be accurate and reproducible and performed in accordance with quality assurance standards;

(2) Estimation techniques shall be appropriate, and EPA-certified test protocols shall be used where available and appropriate;

(3) Predictive models shall have been verified and validated, shall be appropriate for the specific site, waste streams, and injection conditions of the operation, and shall be calibrated for existing sites where sufficient data are available;

(4) An approved quality assurance and quality control plan shall address all aspects of the demonstration;

(5) Reasonably conservative values shall be used whenever values taken from the literature or estimated on the basis of known information are used instead of site-specific measurements; and

(6) An analysis shall be performed to identify and assess aspects of the demonstration that contribute significantly to uncertainty. The petitioner shall conduct a sensitivity analysis to determine the effect that significant uncertainty may contribute to the demonstration. The demonstration shall then be based on conservative assumptions identified in the analysis.

(b) Any petitioner under § 148.20(a)(1)(i) shall provide sufficient site-specific information to support the demonstration, such as:

(1) Thickness, porosity, permeability and extent of the various strata in the injection zone;

(2) Thickness, porosity, permeability, extent, and continuity of the confining zone;

(3) Hydraulic gradient in the injection zone;

(4) Hydrostatic pressure in the injection zone; and

(5) Geochemical conditions of the site.

(c) In addition to the information in § 148.21(b), any petitioner under § 148.20(a)(1)(ii) shall provide sufficient waste-specific information to ensure reasonably reliant predictions about the waste transformation. The petitioner shall provide the information necessary to support the demonstration, such as:

(1) Description of the chemical processes or other means that will lead to waste transformation; and

(2) Results of laboratory experiments verifying the waste transformation.

### § 148.22 Requirements for petition submission, review and approval or denial.

(a) Any petition submitted to the Director pursuant to § 148.20(a) shall include the following components:

(1) An identification of the specific waste or wastes and the specific injection well or wells for which the demonstration will be made;

(2) A waste analysis to describe fully the chemical and physical characteristics of the subject wastes;

(3) Such additional information as is required by the Director to support the petition under §§148.20 and 148.21; and

(4) This statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) The Director shall provide public notice and an opportunity for public comment in accordance with the procedures in §124.10 of the intent to approve or deny a petition. The final decision on a petition will be published in the Federal Register.

(c) If an exemption is granted it will apply only to the underground injection of the specifice restricted waste or wastes identified in the petition into a Class I hazardous waste injection well or wells specifically identified in the petition (unless the exemption is modified or reissued pursuant to § 148.20(e) or (f).

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(d) Upon request by any petitioner who obtains an exemption for a well under this Subpart, the Director shall initiate and reasonably expedite the necessary procedures to issue or reissue a permit or permits for the hazardous waste well or wells covered by the exemption for a term not to exceed ten years.

**§ 148.23 Review of exemptions granted pursuant to a petition.**

(a) When considering whether to reissue a permit for the operation of a Class I hazardous waste injection well, the Director shall review any petition filed pursuant to § 148.20 and require a new demonstration if information shows that the basis for granting the exemption may no longer be valid.

(b) Whenever the Director determines that the basis for approval of a petition may no longer be valid, the Director shall require a new demonstration in accordance with § 148.20.

**§ 148.24 Termination of approved petition.**

(a) The Director may terminate an exemption granted under § 148.20 for the following causes:

(1) Noncompliance by the petitioner with any condition of the exemption;

(2) The petitioner's failure in the petition or during the review and approval to disclose fully all relevant facts, or the petitioner's misrepresentation of any relevant facts at any time; or

(3) A determination that new information shows that the basis for approval of the petition is no longer valid.

(b) The Director shall terminate an exemption granted under § 148.20 for the following causes:

(1) The petitioner's willful withholding during the review and approval of the petition of facts directly and materially relevant to the Director s decision on the petition;

(2) A determination that there has been migration from the injection zone or the well that is not in accordance with the terms of the exemption, except that the Director may at his discretion decide not to terminate where:

(i) The migration resulted from a mechanical failure of the well that can be corrected promptly through a repair to the injection well itself or from an undetected well or conduit that can be plugged promptly; and

(ii) The requirements of § 146.67(i) are satisfied.

(c) The Director shall follow the procedures in § 124.5 in terminating any exemption under this section.

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Part III

# Environmental Protection Agency

**40 CFR Parts 264 and 270**

**Ground-Water Monitoring at Hazardous Waste Facilities; Proposed Amendment to Rule**

VOL 53 ISS 143 JL 26 1988 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 264 and 270**

**[FRL-3277-2]**

## Ground-Water Monitoring at Hazardous Waste Facilities

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed amendment to rule.

**SUMMARY:** On July 26, 1982, EPA promulgated regulations for detecting contamination of ground water at permitted hazardous waste land disposal facilities under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA). Several technical aspects of the regulations require improvement; therefore, EPA is today proposing rulemaking to revise the regulations. The amendments proposed in today's rulemaking are designed to foster the early detection of leaks and to better tailor the current ground-water monitoring regulations to site-specific conditions.

**DATE:** Written comments should be submitted on or before September 26, 1988. The original and two copies of comments on this proposal should be mailed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. The docket number for this rule is F-88-AGWP-FFFFF. The public must make an appointment to review docket materials. Call (202) 475-9327 for appointments. The public may copy material from the regulatory docket at a cost of $.15/page.

**ADDRESS:** The official docket for this regulation including comments received by the Agency is located in Room MLG 100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, telephone (800) 424-9346, or (202) 382-3000. For technical information contact Joseph M. Abe, (202) 382-4654.

**SUPPLEMENTARY INFORMATION:**

**Proposed Outline**

I. Authority.
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## I. Authority

These regulations are issued under the authority of sections 1006, 2002(A), 3001, 3004, 3005, 3006, and 3007 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6705, 6712, 6924, 6925, 6926, and 6927.

## II. Background

Subtitle C of RCRA creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires EPA to promulgate regulations as "necessary to protect human health and the environment" that are applicable to owners or operators of hazardous waste treatment, storage and disposal facilities. Section 3005 provides for implementation of these regulations under permits issued to owners or operators of facilities by EPA or authorized States. Section 3005 also provides that certain owners or operators of existing facilities that apply for a permit and comply with applicable notice and certification requirements ("interim status" facilities) shall be treated as having been issued a permit for purposes of RCRA and its implementing regulations until a final permit determination is made.

Among the 3004 standards promulgated for permitted facilities in 1982 were standards under 40 CFR Part 264, Subpart F, which establish programs for protecting ground water from releases of hazardous wastes from treatment, storage, and disposal units (47 FR 32274, July 26, 1982). Under these standards, facility owners or operators are required to sample ground water at specified time intervals and determine whether or not hazardous wastes or constituents from the facility are contaminating ground water. If unacceptable contamination is found, the owner or operator must perform corrective action in accordance with § 264.100.

## III. Proposed Changes

### *A. Summary of Major Proposed Changes*

The following is a summary of the major changes proposed in today's package. These proposed amendments to the Subpart F regulations arise from several sources. Some are changes stemming from litigation on the July 26, 1982 land disposal regulations. Other changes have been developed in response to recommendations from the Agency's Hazardous Waste Ground Water Task Force (U.S. EPA, 1986) as well as from EPA Program and Regional staff.

(1) The Agency proposes to amend the § 264.90(b)(4) ground-water monitoring variance to require no migration demonstrations to be based upon either site-specific field measurement, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport or upon an adequate margin of safety using predictions that assume maximum contaminant migration and consider all human health and environmental impacts.

(2) The Agency proposes to allow alternate point(s) of compliance for existing units where monitoring well installation in locations specified by § 264.95(a) is extremely difficult due to existing physical obstacles as long as early detection is not compromised.

(3) The Agency is proposing regulatory changes regarding the establishment of waste management areas and clarification of the Regional Administrator's authority to require different ground-water programs (i.e., detection, compliance, or corrective action) for individual waste management areas within the same facility.

(4) The Agency proposes to allow the permittee to continue or resume detection or compliance monitoring, as

appropriate, any time that the permittee is able to demonstrate that concentrations of hazardous constituents no longer show statistically significant increases over background concentrations for a period of time based on site-specific conditions, provided that the Regional Administrator determines that the increase is due to an unregulated source or an error in sampling, analysis, or evaluation.

(5) The Agency is proposing to amend the regulations to allow a modification of the deadlines contained in §§ 264.98(h)(5) and 264.99(i)(2) where a substantive need for such a modification is shown.

(6) The Agency proposes to amend Subpart F to eliminate the requirement that the ground-water flow rate and direction be defined annually as part of the detection and compliance monitoring programs and to institute a requirement that the ground-water flow rate and direction be defined whenever any well exhibits a significant change in water level.

(7) The Agency is proposing to amend the regulations to give the Regional Administrator explicit authority to require the owner or operator to monitor the unsaturated zone as well as any and all zones of saturation in the uppermost aquifer in order to detect early migration of contaminants.

(8) The Agency is proposing to clarify the authority of the Regional Administrator to designate supplemental monitoring wells when complicated site conditions caused by hydrogeology or contaminant characteristics can allow contaminants to move past or away from the point of compliance as defined in § 264.95(a) without being detected.

(9) The Agency is proposing to add quality assurance and quality control requirements such as documentation, operation and maintenance, and procedures for devices and methods used in ground-water measurement, sampling, and analysis.

(10) The Agency is proposing to correct an inconsistency in § 264.99(f) which presently requires the annual monitoring of all constituents contained in Appendix IX even though some of these constituents may have been excluded from the list of hazardous substances specified in the facility permit by the Regional Administrator under § 264.93.

*B. Discussion of Specific Part 264 Subpart F Changes*

Subpart F contains the requirements for the ground-water monitoring and response programs for permitted hazardous waste units at RCRA treatment, storage and disposal facilities, excluding those units exempted by § 264.90(b). The requirements of this Subpart define a general set of responsibilities that the owner or operator must meet, yet allow considerable flexibility in how the monitoring and response programs may be designed. EPA's objective in today's proposed regulations is to develop an effective monitoring program that will provide reliable information about the effects of these land-based hazardous waste units on ground water in order to ensure protection of human health and the environment.

1. Applicability (§ 264.90).

The requirements of Subpart F apply to new and existing surface impoundments, landfills, waste piles, and land treatment units that manage hazardous waste. Section 264.90 uses the term "regulated unit" in defining that portion of the facility that is subject to the requirements of Subpart F. A regulated unit is any solid waste management unit of the above types that has received hazardous waste after July 26, 1982.

Section 264.90(b)(4) allows the Regional Administrator to issue a waiver from the ground-water protection requirements if the owner or operator can demonstrate that there is no potential for migration of liquid from the regulated unit to the uppermost aquifer during the active life of the regulated unit and, where applicable, during the post-closure care period as well.

The current rule requires that in order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base predictions on assumptions that would maximize the rate of liquid migration (e.g., assume the maximum possible hydraulic head of liquids in a regulated unit). This approach, based on conservative assumptions, did not discuss the submission of actual data (e.g., measurements of hydraulic head) by the owner or operator for use in making predictions.

The Agency proposes to amend § 264.90(b)(4) to require the ground-water monitoring variance to be based upon either: (1) Site-specific field measurement, sampling, and analysis of physical, chemical and biological processes affecting contaminant fate and transport; or (2) an adequate margin of safety in predicting contaminant fate and transport, by basing predictions on assumptions that maximize contaminant migration and consider all impacts to human health and environment.

The first approach is generally the preferred one from the perspective of the RCRA Permit Writer since the demonstration is based on actual site-specific collection and analysis of field data regarding contaminant fate and transport. Site assessment supporting the demonstration should include, at a minimum, the following:

(1) Definition and characterization of hydrogeologic boundaries;

(2) Assessment of the degree of hydraulic communication between the vadose zone, water-table aquifer and deeper aquifers;

(3) Estimation of the temporal and spatial variability of ground-water seepage velocities; and

(4) Collection and analysis of remaining field data that are necessary to assess site-specific physical, chemical, and biological processes affecting contaminant fate and transport.

In addition to these site assessment factors, the RCRA Permit Writer may require actual field demonstrations (i.e., pilot studies). Considering that many of the above requirements should already be fulfilled in obtaining the RCRA Permit, it is probably in the interest of the owner or operator to pursue this first approach.

Field data is often preferred to laboratory data since the latter may give misleading results due to differences between actual field conditions and laboratory conditions. For this reason, site-specific information should be based on field data rather than laboratory measurements. The test method used to obtain field data should be specified in the monitoring variance request.

The second approach is provided to give flexibility to the owner or operator regarding no migration demonstrations. However, demonstrations based on models not supported by proper site characterization may not be accepted by RCRA Permit Writers due to technical limitations and inaccuracies. On the other hand, models may be very useful tools for planning effective and efficient data collection. Considering the volume of data required for no migration demonstrations, an iterative procedure of data collection and modeling may often be the preferred approach (i.e., a combination of both approaches).

Owners or operators are cautioned that very few waivers from the ground-water monitoring requirements have been granted thus far due to insufficient data and analysis submittals and the scarcity of sites that could meet the requirements. In addition, although attempts are sometimes made to

circumvent the site assessment requirements with models, actual site characterization that includes obtaining geologic logs, using geophysical methods, and the sampling, measurement, and analysis of ground water is irreplaceable.

In addition to the above changes to § 264.90(b)(4), the Agency is proposing a minor change to § 264.90(b)(4) that clarifies the performance requirements of units regarding ground-water protection and parallels similar descriptions elsewhere in the regulations. The specific change revises: "The Regional Administrator finds that there is no potential for migration of liquids from a regulated unit to the uppermost aquifer" to read: "The Regional Administrator finds that there is no potential for migration of hazardous waste or hazardous constituents from a regulated unit to the uppermost aquifer." The reasons for this change are: (1) To provide consistency with other sections of this Subpart and elsewhere in Part 264 and (2) address situations where wastes or contaminants are conveyed by nonliquids (i.e., gases) into the surrounding soil and then contaminate ground water by interacting with percolating water.

2. Establishment of Programs

Under the requirements of Subpart F, the Regional Administrator establishes in the facility permit the elements of a monitoring and response program. The purpose of § 264.91 is to inform the owners or operators of regulated units subject to this Subpart that they must institute one of three types of monitoring or response programs set forth in Subpart F—a detection monitoring program, a compliance monitoring program, or a corrective action program, the specifics of which are either governed by other sections of Subpart F or by the facility permit itself. The permit may contain all three programs and specify the conditions under which each will be used at the waste management unit or units at a given facility.

Although the permit may contain all three programs, currently only one program may be instituted at any given time, even if the facility contained more than one regulated unit. This is because, under § 264.95(b)(2), the waste management area where a facility contains more than one unit is described by an imaginary line circumscribing the several regulated units. Because of today's proposal to allow multiple waste management areas in such situations, the Agency is also proposing to allow the Regional Administrator to require multiple programs, to be instituted simultaneously, in a single permit. The following will explain these changes in greater detail.

*a. Point of Compliance (§ 264.95)* The point of compliance, as described in § 264.95(a), is the point at which the ground-water protection standard must be met and at which monitoring must be conducted. This point is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated unit(s). The waste management area, as defined in § 264.95(b), is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of the regulated unit(s). This area will be specified in the facility permit. The edge of the waste management area is not the outer limit of the waste itself; rather, it includes any horizontal space taken up by liners, dikes, or other barriers designed to contain waste in a regulated unit (§ 264.95(b)(1)). The purpose of this provision is to avoid the implication that monitoring and corrective action wells should be drilled through the structures which are designed to control the waste, clearly a counterproductive effort.

The Agency is proposing and asking for specific comments on two options the Regional Administrator would have for determining the waste management area for facilities with more than one regulated unit. Presently, § 264.95(b)(2) of the regulations provides that if the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing several regulated units. This option would be retained in the proposed regulations. In addition, the Agency is proposing another option that would give the Regional Administrator the authority to require the waste management area be described by a line circumscribing individual units when a facility contains more than one regulated unit. According to this proposal, the Regional Administrator would decide on whether to delineate multi-unit or unit-specific waste management area(s) based on the number, spacing, and orientation of the units; the waste types handled; and the hydrogeologic setting.

This proposal is prompted by several important considerations. If a facility contains more than one regulated unit, and contamination is detected by a multi-unit monitoring system, it is often difficult and time consuming to identify which of the regulated units is responsible for the contamination. The Agency is concerned that the regulatory requirement that the waste management area be described by an imaginary line circumscribing all the regulated units may hinder in certain circumstances the early detection of leakage of hazardous constituents into the ground water. If contamination of ground water beneath a facility goes undetected for a substantial period of time, remediation of this contamination becomes more complex and extensive. Furthermore, in certain situations the cleanup of contaminated ground water may become so burdensome to the owner or operator that the facility can only be remediated with federal assistance (i.e., CERCLA cleanup action).

There are some situations where it may be appropriate to define the compliance point boundary around several regulated units and the Regional Administrator may choose to do so. Situations where there is a dike between two lagoons or a small strip of land separating two landfills are examples of where it may be appropriate to install monitoring systems around groups of units. Another possible situation where multi-unit monitoring may be appropriate is where, if a contaminant leak were to occur, it would be impossible to distinguish which unit is the source of the contamination due to the proximity of units and types of wastes handled.

*b. Multiple Programs (§ 264.91)* Proposed changes to § 264.95 allows creation of separate waste management areas at facilities that include more than one regulated unit. With this proposed change, the Regional Administrator could require more than one monitoring program to be conducted simultaneously at a single facility. Today's proposed amendment to § 264.91 will make it clear that the Regional Administrator has the authority to require different monitoring programs (i.e., detection, compliance, or corrective action) for the different waste management areas within the same facility. The appropriate monitoring program for each waste management area shall be selected on the basis of the concentration of contaminants detected and the monitoring requirements associated with the concentrations as specified in §§ 264.98, 264.99, and 264.100.

Monitoring requirements defined on the basis of individual waste management areas should promote a ground-water monitoring and corrective action strategy which corresponds to the extent, concentration, and distribution of contamination throughout the RCRA hazardous waste facility. This amendment also eliminates the potential

for one unit which triggers a particular monitoring program to unnecessarily cause all other units to adopt the same monitoring program, regardless of the source and extent of contamination.

3. Return to Detection Monitoring (§ 264.99)

A compliance monitoring program, as described in § 264.99, is required under § 264.91 whenever hazardous constituents exceed the concentration limits at the compliance point as specified in the ground-water protection standard. Currently, a mechanism for remaining in compliance monitoring (rather than entering corrective action) is provided under § 264.99(j). Within the timeframe necessary to establish a corrective action program (e.g., usually 90 days), the owner or operator can demonstrate under § 264.99(j) that entering corrective action is inappropriate. Such demonstrations must show that the exceedance of the ground-water protection standard at any monitoring well is due to either a source other than a regulated unit or an error in sampling, analysis, or evaluation.

However, § 264.99 does not currently provide a mechanism by which the owner or operator can return to detection monitoring from compliance monitoring when he or she has been inappropriately triggered into compliance monitoring due to a source other than a regulated unit or an error in samplying, analysis or evaluation. Adding such a mechanism would avoid unnecessary compliance monitoring for such instances. Today's rule proposes to allow an owner or operator who is required to carry out compliance monitoring as a result of exceeding background levels for the above reasons to return to a detection monitoring program under § 264.98. The owner or operator must demonstrate that concentrations of hazardous constituents no longer show statistically significant increases over background values for a period of time based on site-specific conditions.

We are also amending § 264.96 (Compliance Period) by proposing an alternative time period based upon site-specific data and analysis of contaminant migration potential in addition to the current three-year period. This provision provides flexibility in setting the compliance period and is also consistent with the above change to § 264.99. Key factors to consider in assessing these site-specific conditions are covered in the discussion on § 264.96 amendments.

4. Alternate Point of Compliance at Existing Facilities

For some existing facilities, physical obstacles (e.g., natural geologic features, buildings, highways, or railroads) may prevent the installation of downgradient monitoring wells at the currently defined point of compliance. In order to provide flexibility in specifying compliance point well locations, a provision is being proposed to § 264.95(a) which would allow the point of compliance to be located downgradient from such existing physical barriers as long as the performance standard of early detection is met. However, other drilling techniques (i.e., directional drilling) should be considered where physical barriers are present and the alternate point of compliance should be as close as practical to the downgradient limit of the waste management area while still avoiding any such physical obstacles. This provision would be limited to existing units with existing physical barriers. New units, lateral expansions and replacement units are among those units that would not be eligible for the provision. The presence of physical obstacles which prevent the installation of compliance point wells capable of detecting early leakage at those units, could provide grounds for denial of authorization for new, expansion, or replacement units.

5. Supplemental Monitoring Wells (§ 264.95(a)(2))

There may be certain situations in which monitoring wells installed at the currently defined point of compliance would be unable to detect contaminants due to complicated site conditions caused by hydrogeology or contaminant characteristics. Two examples of such contamination problems include lateral migration of contaminants in the vadose zone and contaminant transport strongly influenced by density gradients.

The first example involves a "stepwise" movement of contaminants caused by discrete low-permeability layers (e.g., perched water tables above clay lenses) that are encountered at various depths in the vadose zone. Under these conditions, contaminants may spread laterally along the top surface of the low-permeability layer, then move downward once they reach the layer's edge. The contaminants, by moving laterally above the water table in this fashion, could escape detection by moving past the point of compliance wells as defined by § 264.95 before entering the uppermost aquifer.

The second example is a dense contaminant plume that moves predominantly downward due to differences between the density of the plume and the surrounding ground water. Lateral movement of such plumes is generally controlled by subsurface structural features (e.g., an inclined bedrock surface), and may be contrary to the prevailing ground-water flow direction. Consequently, as in the previous example, monitoring wells placed only in locations as prescribed by § 264.95 may not detect the release of contaminants.

In the proposed regulatory amendments, the Regional Administrator may require the installation of supplemental wells in the vicinity of the waste management area as necessary for early detection of contaminants. These wells could be equivalent to the currently defined compliance point wells in that the ground-water monitoring requirements could be fully applied at these well locations. We are requesting comments regarding how such supplemental wells would be used for corrective action (e.g., should these wells be used as point of compliance wells for monitoring purposes only, or also for corrective action).

6. Compliance Period (§ 264.96)

The Agency is addressing two issues dealing with § 264.96. First, we propose to allow the compliance period to be based on site-specific conditions in addition to the current requirement that the ground-water protection standard not be exceeded for three years. Second, we propose to clarify that the compliance period will apply to individual waste management areas within the facility which may be regulated under different programs pursuant to today's amendment to § 264.91(b).

When setting the ground-water protection standard in a facility permit, the Regional Administrator must define the time period over which it will apply. In § 264.96, the regulations specify that the compliance period is the number of years equal to the active life of the waste management area, including any waste management activity prior to permitting, and the closure period. The regulations now require that once an owner or operator is engaged in corrective action, the compliance period may be extended beyond the active life of the waste management area until the owner or operator can demonstrate that the ground-water protection standard has not been exceeded for a period of three consecutive years. We are proposing to allow, in addition to the three-year requirement, a time period based upon a site-specific assessment of

contaminant migration potential. Assessment factors that the Agency is considering for compliance period extensions include hydrogeologic characteristics such as the spatial and temporal variations in ground-water seepage velocities and contaminant characteristics such as solubility, specific gravity, adsorptive potential and biodegradability. We are also requesting comments on how such an alternative time period can be determined based on these factors and any other factors that the Agency has not identified.

A compliance period based on such factors could relate the compliance period to site-specific conditions and thus more effectively protect human health and the environment than the three-year timeframe for the compliance period currently in effect. The three-year period may be protective at some sites while providing too little protection at other sites. Using site-specific criteria to define an appropriate compliance period would provide for better agreement between the nature and degree of contamination present at a waste management unit and the length of the compliance period.

As noted earlier, changes to § 264.91(b) would allow individual waste management areas within the same facility to be regulated under different monitoring programs (i.e., detection, compliance or corrective action). Today's proposed amendment to § 264.96 will allow the Regional Administrator to establish, when appropriate, individual compliance periods for each individual waste management area within the facility.

7. General Ground-Water Monitoring Requirements (§ 264.97)

In § 264.97, EPA has set forth a series of general requirements that address such topics as well design and placement, sampling and analysis procedures, analytical methods, measurement of water-level elevations, determination of background and statistical procedures.

*a. Monitoring the "Uppermost Aquifer."* The existing rules provide the Regional Administrator explicit authority to require monitoring the ground water in the uppermost aquifer. However, some owners and operators have argued that low permeability saturated zones within the uppermost aquifer are not part of the aquifer. They have also argued that perched aquifers and intermittent zones of saturation within the aquifer do not have to be monitored. The Agency believes that, in most cases, contamination reaching any ground water in these saturated zones of the uppermost aquifer will migrate to the principal water bearing zone in the aquifer. Monitoring data from perched aquifers or intermittent zones of saturation can be useful in indicating present or potential threats of contamination in the uppermost aquifer. The Agency believes that low yielding saturated zones in the aquifer (whether saturated permanently or intermittently) should, in many cases, be subject to monitoring requirements.

Accordingly, the Agency is proposing to amend § 264.97(a) to give the Regional Administrator explicit authority to monitor any and all zones of saturation in the uppermost aquifer. We are also requesting comments on the need to further clarify the Regional Administrator's authority to require monitoring of any saturated zone not part of the uppermost aquifer that can act as a contaminant transport pathway under the facility. We would replace the existing language "uppermost aquifer" with "ground water in any saturated zone below the facility that can act as a contaminant transport pathway," wherever this language appears in Subpart F and in § 270.14(c).

*b. Unsaturated Zone Monitoring.* The Agency is proposing to add a provision to § 264.97(a) that clarifies the Regional Administrator's authority to require the use of unsaturated zone monitoring for determining early migration of contaminants. We envision the use of unsaturated zone monitoring to be especially useful in situations where the facility is located above a hydrogeologic setting where depth to the water table is substantial or where such monitoring improves or assures early detection of released hazardous wastes or constituents. Monitoring options, which could be considered in site conditions prone to lateral contaminant migration through the vadose zone, or where depth to ground water is substantial, might include the following:

(1) Permanent geophysical monitoring stations,
(2) Soil gas measurements,
(3) Nested piezometers, and
(4) Lysimeters.

*c. Quality Assurance and Quality Control.* The Agency is proposing to add to § 264.97 (c) and (e) requirements for quality assurance and quality control (QA/QC) procedures. Under paragraph (c) the owners or operators would be responsible for: (1) Documenting the design, installation, development and decommission of monitoring wells, piezometers, and other measurement, sampling, and analytical devices; and (2) conducting operation and maintenance procedures for monitoring wells, piezometers, and other measurement, sampling, and analytical devices throughout the life of the monitoring program. These requirements would help to assure that reliable ground-water monitoring data is gathered and submitted to the Agency. Under paragraph (e), the Agency is proposing to add QA/QC requirements for measurement, sampling, and analytical methods.

Standard methods and a comprehensive quality assurance program are necessary for an effective ground-water monitoring program. In implementing the RCRA ground-water monitoring program, the Agency has observed problems with ground-water sampling procedures, well construction and installation, monitoring well network design, laboratory analyses, and data interpretation. A rigorously enforced, comprehensive quality assurance based on sound quality objectives and backed up with an appropriate set of reference methods and procedural guidance would remedy these problems. The owner or operator should refer to "Ground-Water Monitoring: Quality Assurance for RCRA," EPA/600/X-87/035, January 1987, and "Test Methods for Evaluating Solid Waste Physical Chemical Methods," SW-846, September 1986, regarding further information on QA/QC.

8. Detection Monitoring Program (§ 264.98)

The last three sections of Subpart F (i.e., §§ 264.98, 264.99, and 264.100) set forth the specific elements of each type of ground-water monitoring and response program: detection, compliance and corrective action. If hazardous constituents from a regulated unit have not reached ground water at the time of permit consideration, the owner or operator may receive a detection monitoring program permit.

*a. Determination of Ground-Water Flow Rate and Direction.* Determination of ground-water flow rate and direction is an explicit requirement of the detection and compliance monitoring programs, and implicitly required for the corrective action program. The existing regulations require that flow rate and direction be defined annually (§§ 264.98(e) and 264.99(e)). Today, the Agency is proposing to change this regulation to require that the flow rate and direction be defined whenever any well exhibits a significant change in water level.

The Agency is specifically requesting comments on what constitutes a significant change in water level. One option that the Agency is considering is

to base the determination of significant change on the measurement accuracy of common water level measurement devices (e.g., fiberglass and steel tapes). These measurement devices are currently accurate to 0.01 foot. The Agency is asking whether a numerical standard based on measurement accuracy is appropriate for requiring a determination on ground-water flow rate and direction.

The present requirement that the ground-water flow rate and direction be defined annually may be either too frequent or too infrequent, depending on site-specific conditions. The purpose of this proposed change is to provide flexibility in assessing the ground-water flow rate and direction so that such assessments are commensurate with the temporal variations in site conditions. Consideration of these variations is critical to both monitoring and response programs since neglecting their occurrence may lead to improperly designed and operated monitoring systems as well as to costly, ineffective remediation attempts. Examples of factors influencing the ground-water flow rate and direction include seasonal recharge patterns, tidal influences, river stage changes, and nearby pumping or injection wells. Permit writers should consider the above factors when specifying the time(s) of the year when ground-water monitoring data should be collected. The Agency must be made aware of such shifts so that appropriate modifications to monitoring systems can be made when necessary.

In all cases, ground-water flow rate and direction data should be presented in the form of a flow net. If ground-water surface elevation data indicate that the hydraulic gradient has not changed, the owner or operator can compare new data to the original determination to confirm that the flow rate and direction have not changed.

*b. Sampling for Appendix IX Constituents.* Section 264.98 (h)(2) currently requires owners or operators, after determining a statistically significant increase in monitoring parameter results, to immediately sample the ground water in all monitoring wells and determine the concentration of all Appendix IX constituents in Part 264 that are present in ground water.

The existing rules do not allow for any flexibility in selecting which compliance point (i.e., downgradient) monitoring wells should be subject to the analysis of all Appendix IX hazardous constituents. That is, regardless of the extent or configuration of the point of compliance, any well along the compliance point would be subject to the full Appendix IX constituent analytical requirements. We are requesting comments on whether to provide more flexibility in deciding which compliance point monitoring wells should be subject to the above requirements. Such flexibility could be based on plume configuration.

*c. Submission of Demonstrations Showing Statistical Increases Caused by Error/Other Source.* The current rules allow a facility to continue or resume detection or compliance monitoring, as appropriate, after statistically significant increases in monitoring parameters or the concentration of particular constituents have been detected, provided that the owner or operator successfully demonstrates that a source other than a unit within the facility has caused the increase or that an apparent increase resulted from error in sampling, analysis, or evaluation. The provisions described above require demonstrations to be submitted in addition to, or in lieu of, compliance monitoring and corrective action permit modifications, respectively.

Under the existing rules in §§ 264.98(i) and 264.99(j), showings that another source was responsible for an increase or that the increase was due to an error in sampling, analysis, or evaluation must be submitted within 90 days of the determination of the significant increase, to coincide with the time required to submit permit modification applications.

We have evaluated the 90-day requirement for §§ 264.98 (i) and 264.99 (j) and have reconsidered the need to submit the above demonstrations within the same time frame as permit modification applications. For example, errors resulting from seasonal variations in the ground water may not become apparent until well after the 90-day period has passed. A more reasonable approach would be to allow owners or operators to submit such demonstrations at any time during the required monitoring period. The Agency believes that this approach will not jeopardize human health or the environment, but will provide the owner or operator with enough flexibility to demonstrate that significant changes in ground-water quality were not caused by units at the facility. Therefore, §§264.98(i) and 264.99(j) have been amended and will require submission of demonstrations within 90 days or an alternate time period approved by the Regional Administrator. It must be emphasized that the 90-day period would usually apply to the permit modification process unless an alternate time period is approved. A permit modification would be required if a statistically significant increase over background levels or the ground-water protection standard were found.

9. Compliance Monitoring Program (§ 264.99)

Once the owner or operator determines that hazardous constituents from a regulated unit are present in the ground water, he must establish a compliance monitoring or corrective action program at the facility. Many of the requirements of the compliance monitoring program are analogous to those required under the detection monitoring program.

Section 264.99(f) requires the owner or operator to analyze samples from compliance point monitoring wells for all constituents contained in Appendix IX of Part 264 at least annually to determine whether additional hazardous constituents are present. However, § 264.93 (a) and (b) allow the Regional Administrator to exclude an Appendix IX constituent from the list of hazardous constituents specified in the facility permit if the constituent is not reasonably expected to be in or derived from waste contained in the regulated unit and is not likely to pose a substantial present or potential hazard to human health or the environment.

Changes to § 264.99(f) are being proposed to correct this inconsistency. This annual monitoring requirement should not include any constituents which have been excluded by the Regional Administrator under § 264.93(b) from the list of hazardous constituents.

*C. Discussion of Specific Part 270 Changes*

Part 270 contains requirements for Part B permit applications for hazardous waste treatment, storage, and disposal facilities. The Agency is proposing to change one of the Part B permit application requirements.

Section 270.14(c)(4) currently requires the applicant to provide a description of "any plume" of contamination that has entered the ground water from a waste management unit located within the facility boundary, at the time that the Part B permit application is submitted. Since contamination may not always take the form of a well-defined plume, the Agency proposes to clarify this requirement by deleting "any plume of contamination that has entered the ground-water" and inserting "all contamination that has entered ground water from a regulated unit * * *" The proposed change will require that owners or operators submit the

necessary monitoring data to characterize ground-water quality.

## IV. State Authority

### *A. Applicability of Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (see 40 CFR Part 271 for the standards and requirements for authorization). Following authorization, the Agency retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and the Agency could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g); new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. The Agency is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

### *B. Effects on State Authorization*

Today's rule would establish standards that are not effective in authorized States since the requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR Part 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt today's rule is one year (or two years if a State statutory amendment is required) of the date of final promulgation of this regulation. These deadlines can be extended in exceptional cases (40 CFR Part 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of the Agency until the State requirements are approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

## V. Regulatory Analysis

### *A. Executive Order 12291: Regulatory Impact Analysis*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, thus, subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because: the rule will not result in an effect on the economy of $100 million or more, will not likely result in net increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, innovation, and will not significantly disrupt domestic or export markets. The proposed amendment has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12291.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.*, whenever the Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comments a regulatory flexibility analysis which describes the impact of the rule on small businesses (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities.

This amendment will have no adverse economic impact on small entities since the rule will not cause a net change in the amount of information required for RCRA Part B permit applications. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. This regulation does not require a regulatory flexibility analysis.

### *C. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in Part 264 have previously been approved by OMB and were assigned OMB control number 2050–0007. The changes being proposed today have been submitted to OMB for review and approval. Comments on the information requirements should be sent to EPA and OMB c/o Desk Officer for RCRA, Office of Management and Budget, Room 3019, 726 Jackson Place NW., Washington, DC 20603.

## List of Subjects

### *40 CFR Part 264*

Hazardous waste, Reporting and recordkeeping, Hazardous materials, Ground-water monitoring, Environmental monitoring.

### *40 CFR Part 270*

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Waste pollution control, Water supply, Confidential business information.

Dated: July 18, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, Parts 264 and 270 of Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended as follows.

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act as amended, by the Resource Conservation and Recovery Act of 1976, as amended 42 U.S.C. 6705, 6912(a), 6724, and 6925.

2. In § 264.90 by revising paragraph (b)(4) to read as follows:

**§ 264.90 Applicability.**

* * * * *

(b) * * *

(4) The Regional Administrator finds that the owner or operator has demonstrated that there is no potential for migration of hazardous waste or hazardous constituents from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under § 264.117. This no migration demonstration must be certified by a qualified ground-water specialist and based upon:

(i) Site-specific field measurement, sampling, and analysis of physical, chemical and biological processes affecting contaminant fate and transport; or

(ii) An adequate margin of safety in predicting contaminant fate and transport, by basing predictions on assumptions that maximize contaminant migration and consider impacts on human health and the environment.

* * * * *

3. In § 264.91 by revising paragraph (b) to read as follows:

**§ 264.91 Required programs.**

* * * * *

(b) The Regional Administrator will specify in the facility permit the specific elements of the monitoring and response program. The Regional Administrator may require a combination of monitoring programs (i.e., detection, compliance, or corrective action) for a given waste management area within the facility. If a facility contains more than one waste management area, the Regional Administrator may require different monitoring and response programs or a different combination of programs at the separate waste management areas. The Regional Administrator will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to institute a particular program, the Regional Administrator will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

4. In § 264.95 by revising existing paragraph (a), adding paragraphs (a)(1), and (a)(2) (consequently, paragraph (a) is revised), revising paragraph (b)(2), and adding paragraph (b)(3) to read as follows:

**§ 264.95 Point of compliance.**

(a) The Regional Administrator will specify in the facility permit the points of compliance at which the ground-water protection standard of § 264.92 applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(1) For existing units, where existing physical obstacles prevent the installation of monitoring wells at the point(s) of compliance, as defined in paragraph (a), of this section, the Regional Administrator may specify an alternate point(s) of compliance that is as close to the waste management area as practical, as long as the performance standard of early detection of contamination is not compromised. Lateral expansion, new, or replacement units are among those units that are not eligible for an alternate point of compliance under this paragraph.

(2) Where complicated site conditions caused by hydrogeology or contaminant characteristics can allow contaminants to move past or away from the point of compliance as defined in § 264.95(a) without being detected, the Regional Administrator can designate supplemental monitoring wells to be used in conjunction with the point of compliance wells.

(b) * * *

(b)(2) If the facility contains more than one regulated unit, the waste management area(s) will be described by the Regional Administrator as either:

(i) An imaginary line circumscribing a number of units, or,

(ii) An imaginary line circumscribing each individual unit.

(b)(3) In determining whether paragraph (b)(2) (i) or (ii) of this section applies, the Regional Administrator will select the waste management area(s), that is protective of human health and the environment, based on the following factors:

(i) Number, spacing, and orientation of units;

(ii) Waste types handled; and

(iii) Hydrogeologic setting.

* * * * *

5. In § 264.96 by revising paragraphs (a) and (c).

**§ 264.96 Compliance period.**

(a) The Regional Administrator will specify in the facility permit the compliance period during which the ground-water protection standard of § 264.92 applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period). If a facility contains more than one waste management area as described by § 264.95(b)(2), the individual waste management area will have an individual compliance period.

* * * * *

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the ground-water protection standard of § 264.92 has not been exceeded for a period of three consecutive years or alternate time period based on site-specific conditions.

6. In § 264.97 by revising paragraphs (a)(2), (b), and (e) and by adding paragraphs (a)(3), (c)(1) and (c)(2) to read as follows:

**§ 264.97 Ground-water monitoring requirements.**

* * * * *

(a) * * *

(2) Represent the quality of ground-water passing the point of compliance. The Regional Administrator shall require ground-water monitoring in the uppermost aquifer, which may include, but is not limited to, low-yielding saturated zones such as perched water tables in order to detect early migration of contaminants.

(3) The Regional Administrator can require unsaturated zone monitoring where monitoring of the unsaturated zone would aid in detecting early migration of contaminants into ground water.

(b) If approved by the Regional Administrator, separate ground-water monitoring systems are not required for each regulated unit when the facility has several regulated units and meets one or both of the conditions under § 264.95(b)(2)(ii) concerning multi-unit monitoring.

(c) * * *

(1) The design, installation, development, and decommission of any

monitoring wells, piezometers and other measurement, sampling, and analytical devices must be documented in the operating record;

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

* * * * *

(e) The ground-water monitoring program must include measurement, sampling, and analytical methods that accurately assess ground-water quality and provide early detection of hazardous constitutents entering the uppermost aquifer. The methods must be documented in the operating record and include quality assurance and quality control procedures.

* * * * *

7. In § 264.98 by revising paragraphs (e), (h)(5) introductory text, (i)(2), and (i)(3) to read as follows:

**§ 264.98 Detection monitoring program.**

* * * * *

(e) The owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer if any well exhibits a significant change in water level.

* * * * *

(h) * * *

(5) Within 180 days, or within an alternate time period approved by the Regional Administrator, submit to the Regional Administrator:

* * * *

(i) * * *

(2) Submit, within 90 days or an alternate time period approved by the Regional Administrator, a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation;

(3) Within 90 days, or within an alternate time period approved by the Regional Administrator, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

* * * * *

8. In § 264.99 by revising paragraphs (e), and (f), revising paragraphs (j)(2) and (j)(3), and redesignating existing paragraphs (k) and (l) as (l) and (m), and adding new paragraph (k) as follows:

**§ 264.99 Compliance monitoring program.**

* * * * *

(e) The owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer if any well exhibits a significant change in water level.

(f) The owner or operator must analyze samples from all monitoring wells at the compliance point for constituents identified in Appendix IX of Part 264 of this chapter, unless the Regional Administrator has excluded them under paragraph (b) of § 264.93. Samples must be analyzed at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer. If the owner or operator finds Appendix IX constituents in the ground water that are not identified in the permit as hazardous constituents, the owner or operator must report the concentrations of these constituents to the Regional Administrator within seven days after completion of analysis.

* * * * *

(j) * * *

(2) Submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standard resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, or within an alternate time period approved by the Regional Administrator, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

* * * * *

(k) If at any time during the course of a compliance monitoring program, the owner or operator can demonstrate that concentrations of hazardous constituents no longer exceed background values, using the statistical procedure in § 264.97(h), for a period of time based on site-specific conditions, the Regional Administrator may determine that an unregulated source or an error in sampling, analysis, or evaluation made it appear that the applicable standard had been exceeded. Upon such a demonstration, the Regional Administrator may specify that the owner or operator may return to a detection monitoring program under § 264.98.

* * * * *

## PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

9. The authority citation for Part 270 continues to read as follows:

**Authority:** Sections 1006, 2002, 3005, 3007, and 7004 of the Solid Waste Disposal Act as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6974), unless otherwise noted.

10. In § 270.14 by revising paragraph (c)(4) to read as follows:

**§ 270.14 Contents of Part B: General requirements.**

* * * * *

(c) * * *

(4) A description of all contamination that has entered the ground water from a regulated unit at the time the application was submitted that:

(i) Delineates the extent of contamination on the topographic map required under paragraph (b)(19) of this section;

(ii) Identifies the concentration of each Appendix IX constituent, of Part 264 of this chapter, throughout the zone of contamination or identifies the maximum concentrations of each Appendix IX constituent within the zone of contamination.

* * * * *

[FR Doc. 88-16639 Filed 7-25-88; 8:45 am]
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federal register

Tuesday
July 26, 1988

Part IV

# Department of Education

**Office of Vocational and Adult Education**

## Cooperative Demonstration Program; Notice of Proposed Priority and Selection Criteria for Fiscal Years 1988 and 1989

BEST COPY AVAILABLE

VOL 53 ISS 143 JL 26 1988 UMI

**DEPARTMENT OF EDUCATION**

**Office of Vocational and Adult Education**

**Cooperative Demonstration Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Priority and Selection Criteria for Fiscal Years 1988 and 1989.

**SUMMARY:** The U.S. Secretary of Education (Secretary) proposes to establish an absolute priority for the fiscal years 1988 and 1989 grant competitions under the Cooperative Demonstration Program. Under the priority, funds would be reserved for exemplary dropout prevention and reentry projects in vocational education that would be coordinated with an in-depth Federal evaluation of this program. The Secretary also proposes to use new selection criteria in evaluating applications submitted for this competition.

**DATE:** Comments must be received on or before August 25, 1988.

**ADDRESS:** Comments should be addressed to Kate Holmberg, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education (Room 519, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5516. Telephone (202) 732–2363.

**SUPPLEMENTARY INFORMATION:**

**Program Information**

Although some statistics indicate that the overall dropout rate in this country may have leveled off or even decreased slightly in recent years, the dropout rate for some disadvantaged groups has become intolerably high. In addition, there are fewer career opportunities for those who drop out, as often they do not possess even the most basic skills required for most jobs.

The problem of high school dropouts is highlighted in the Senate Report No. 100–189 for Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988). In this report, the Congress directed the Department of Education to make available $4,787,000 to support exemplary dropout prevention and reentry programs within vocational education. In addition, the Department is to evaluate the effectiveness of these programs. It is clear that Congress recognizes the serious, negative effects that the dropout problem has on our society and intends that funds be used to ameliorate this problem through the use of vocational education.

Many education program administrators believe that participation in vocational education programs can in itself help to lower dropout rates. Moreover, certain components of vocational training such as job readiness training, work experience, and indivdualized instruction have been found to be very effective in working with potential or actual dropouts. This program will be able to test these theories in order to demonstrate vocational education's role in dropout prevention.

The Secretary, therefore, proposes to award grants under the Cooperative Demonstration Program for model exemplary projects that have proven to be effective in dealing with the problems of potential or actual dropouts. Applicants must be able to provide evidence of program success based on past performance.

In order to assess the effectiveness of the projects funded and to identify which of the exemplary projects have models most suitable for replication, the Department of Education will conduct an independent evaluation under this program.

*Priority*

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to establish an absolute priority by reserving funds under the Cooperative Demonstration Program in fiscal years 1988 and 1989 to support exemplary models of dropout and reentry projects within vocational education. Projects must exhibit exemplary approaches for encouraging vocational education students to remain in school or for encouraging dropouts to reenter school (or other alternative training programs) through vocational education programs. Exemplary approaches in past successful dropout projects have included such factors as small class size, individualized treatment, recruitment, and thorough assessment and feedback on student progress as a part of their comprehensive programs. In addition, projects should be located in communities with high dropout rates.

Applicants must provide evidence of the success of the approach the project will demonstrate. Results of past performance must include empirical data on the performance of project participants such as improved dropout rates, increased attendance rates, and successful grade progression.

All applicants must agree to participate, if selected, in a Federal evaluation. That evaluation would require the applicants to establish control groups through random assignment of participants to their projects or to establish comparison groups through matched pairs. Applicants that are prohibited by State law from engaging in random assignment will be excused from consideration for this approach but may still be required to participate in the Federal evaluation through a matched pairs design.

*Federal Evaluation*

The Secretary intends to conduct an independent evaluation of the effectiveness of as many as two-thirds of the dropout prevention and reentry demonstration projects funded under this program. This in-depth evaluation will require detailed collection of data on the project and participants, entailing some additional effort on the part of project staff in recordkeeping. The in-depth evaluation will involve the use of comparison groups developed through:

- Random assignment of potentially eligible participants to the program or the control group, or
- The use of matched pairs—a method that identifies non participants who have characteristics that are similar to those of the program participants.

The appropriate method of selecting a comparison group will be determined, based on program characteristics, by an independent evaluator under contract with the U.S. Department of Education. A project will need more potentially eligible participants than openings to qualify for random assignment. In order to match pairs, there must be a readily identifiable population from which selections can be made.

Random Assignment

Random assignment of potentially eligible participants is the most rigorous method of evaluating program effects. When participants are randomly assigned to a program or to a control group, all independent variables (i.e. ability, motivation, socioeconomic background) are controlled. Individuals in the control group will receive no services from the project funded under this program, but will be free to receive other available services. The use of the random assignment methodology is to test the impact of the program on participants versus the impact of other available services on individuals with similar characteristics.

Matched Pairs

An alternative evaluation design is the selection of a comparison group that is matched with the participant group on various characteristics. While this design is used more frequently than

random assignment, it is less rigorous. It is difficult to match participants, with non-participants on multiple characteristics. As a result, differences in outcome measures between program participants and persons in the matched comparison groups are sometimes not necessarily related to program effects, but rather to factors not matched. For instance, one of the most difficult factors to control for in a matched evaluation design is motivation. Program participants could be expected to be more motivated than non-participants unless program participants are randomly assigned.

The contractor will work closely with each project selected for in-depth evaluation in implementing the evaluation design procedures. In the Spring of 1989, the contractor will visit the selected project sites to observe program characteristics and practices such as problems and successes with program implementation, the employment of program strategies, and staff and participant interactions.

The in-depth evaluation will be implemented beginning in the Fall of 1989. Participants and controls will be assigned by the contractor through random assignment or matched pairing. Data will be collected from program participants and controls on factors such as demographic characteristics, family background, academic history, test scores, educational expectations, and attitudes toward education. Program participants who complete an open exit program or leave the program prior to completion will be followed up on an ongoing basis. Participants and controls will be followed up in the Spring of 1990 and Spring of 1991 to collect information on outcome measures such as attendance, program or school retention, academic progress, vocational training, educational expectations, program completion, and job placement. The evaluation of the effectiveness of dropout prevention and reentry programs in vocational education will be based on a comparison of program participants and controls on these outcome measures.

Applicants should plan and budget for their own independent evaluations in the event they are not selected to participate in the Federal evaluation. The contractor will be available to provide technical assistance to projects not selected for Federal evaluation, including assistance in refining the design of their evaluation, data collection procedures, and survey forms, to facilitate the collection of comparable data by all funded projects. The Secretary will consider that the evaluation requirements on 34 CFR 75.590 are met by a grantee's participation in the in-depth Federal evaluation.

*Criteria For Evaluating Applications*

The Secretry proposes to use the following selection criteria and to assign points as indicated, for this competition only.

(a) *Need* (15 points)

The Secretary reviews each application to determine the extent to which the project addresses the needs of the targeted population, including—

(1) A clear description of the needs of the proposed target population;

(2) Characteristics of that population, including numbers to be served directly;

(3) The definition of dropout used by the applicant's community and how the dropout rates in the application were computed;

(4) Specific evidence of how the proposed project will meet the needs of the target population;

(5) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship to the State Plan for Vocational Education;

(6) A clear statement of what the project seeks to demonstrate.

(b) *Plan of Operation* (20 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship of goals, objectives, and activities;

(3) The way the applicant plans to use he resources and personnel from the grant to achieve each objective; and

(4) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented. These groups may include—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(c) *Program Factors* (25 points)

The Secretary reviews each application to determine the extent to which there is—

(1) A clear description of the model to be used, including services to be provided, who will provide them, and how they will be provided;

(2) Evidence of past successful performance using this model to include empirical data such as lowered droupout rates, successful grade progression, improved attendance, and increased graduation of GED rates;

(3) A complete description of the methodology to be used including some or all of the following components—

(i) A thorough assessment of individual students;

(ii) Flexibility in the structure of the present delivery system, e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios;

(iii) Active recruitment activities;

(iv) Small class size;

(v) Thorough assessment and feedback of student progress;

(vi) Individualized treatment;

(vii) Coordination of vocational instruction, academic instruction, and counselling services;

(viii) Inclusion of some relevant work-related experience; and

(ix) Community and business involvement.

(d) *Quality of Key Personnel* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, the Secretary considers experience and training in fields particularly related to the objectives of the project, as well as other information that the applicant provides.

(e) *Evaluation Plan* (15 points)

The Secretary reviews each application to determine the quality of the project's independent evaluation plan for the project, including the extent to which—

(1) The plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations; and

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(2) The plan includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and followup of progress by all project participants throughout the project period, and outcome measures to be used for each objective.

(f) *Budget and Cost-Effectiveness* (5 points)

The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Adequacy of Resources* (5 points)

The Secretary reviews each application to determine the adequacy of the resources, other than those provided by this program, and that the applicant plans to devote to the project, including facilities, equipment, and supplies.

*Additional Consideration*

The Secretary further proposes that, in selecting applications for funding, the Secretary may consider whether funding a particular application would contribute to the funding of a variety of approaches.

*Invitation to Comment*

Interested persons are invited to submit comments and recommendations regarding (a) the proposed priority for dropout prevention and reentry projects including the proposed Federal evaluation and related requirements; and (b) the proposed criteria.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in Room 519, Reporters Building, 300 7th Street SW., Washington, DC, between the hours of 9:30 a.m. and 3:00 p.m., Monday through Friday of each week except Federal holidays.

(Authority: 20 U.S.C. 2411)

Dated: June 10, 1988.

William J. Bennett,

*Secretary of Education.*

[FR Doc. 88-16731 Filed 7-25-88; 8:45 am]

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Part V

# The President

## Proclamation 5841—Lyme Disease Awareness Week, 1988

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# Presidential Documents

Title 3—

## The President

**Proclamation 5841 of July 22, 1988**

## Lyme Disease Awareness Week, 1988

**By the President of the United States of America**

**A Proclamation**

Lyme disease affects a growing number of Americans each year. It has been identified in more than 30 States and has afflicted thousands of people since its first recognition in 1975.

At first a mystery, the cause of Lyme disease was discovered in 1982 by a scientist at the National Institute of Allergy and Infectious Diseases. It is now known that the bite of the tiny deer tick transmits the disease to humans by transferring the causative bacterium to the bloodstream. These ticks are found primarily in wooded areas of the northeastern and midwestern States, but they may also be carried on domestic animals, such as cats and dogs.

Early symptoms of the disease often include a slowly expanding red rash, fatigue, mild headache, pain and stiffness in muscles and joints, a slight fever, or swollen glands. The disease can be easily treated in its early stages with antibiotics, but if the initial symptoms go unnoticed or untreated, more serious manifestations can develop later, including complications affecting the heart, nervous system, and joints.

The best treatment for Lyme disease is prevention. People must know the dangers associated with ticks and take necessary precautions when hiking. They should check regularly for the presence of ticks, know how to remove them, and be alert for the symptoms of Lyme disease.

The National Institutes of Health conducts and supports research to help find better ways to prevent and treat Lyme disease and other tick-borne illnesses. We can be grateful for these and all efforts in the fight against these afflictions.

The Congress, by House Joint Resolution 569, has designated the week of July 24 through July 30, 1988, as "Lyme Disease Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of July 24 through July 30, 1988, as Lyme Disease Awareness Week. I call upon all government agencies, health organizations, communications media, and the people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of July, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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# Presidential Documents

Title 3—

The President

## Memorandum of July 21, 1988

## Determination Under Section 301 of the Trade Act

**Memorandum for the United States Trade Representative**

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the Government of Brazil's failure to provide process and product patent protection for pharmaceutical products is unreasonable and burdens or restricts U.S. commerce. I intend to take appropriate and feasible action in response to this policy and practice of the Brazilian Government. For this purpose I am directing you, as the United States Trade Representative, to hold public hearings on which products of Brazil, from a list of such products accounting for about $200 million in trade, are the most appropriate candidates for increased duties or other import restrictions.

*Reasons for Determination*

On June 11, 1987, the Pharmaceutical Manufacturers Association filed a petition under Section 301 of the Trade Act of 1974, as amended, complaining that the Government of Brazil denies process and product patent protection to pharmaceutical products. On July 23, 1987, the United States Trade Representative initiated an investigation in response to that petition (52 FR 28,223).

Although the United States sought a mutually satisfactory accommodation of our concerns through consultations, the Government of Brazil is not prepared to modify its laws sufficiently to provide adequate intellectual property protection for these important products. The resulting lack of adequate protection impairs the ability of U.S. firms to recoup the considerable investment necessary to discover and market pharmaceutical products. Moreover, lack of adequate patent protection reduces the incentive for future investment in research and development of new pharmaceuticals.

In response, I am determining that Brazil's policies and practices in this regard are unreasonable and burden or restrict U.S. commerce, and I intend to take appropriate and feasible action. I am directing the United States Trade Representative to hold public hearings on products of Brazil that are candidates for such action (through increased duties or other import restrictions).

I would strongly prefer that the Government of Brazil agree to provide adequate and effective process and product patent protection for pharmaceutical products. Our goal under Section 301 is to open foreign markets to U.S. trade and investment and to obtain adequate and effective enforcement of intellectual property rights; it is not to close our own market in response to unfair practices.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
*Washington, July 21, 1988.*

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# Rules and Regulations

Federal Register
Vol. 53, No. 144
Wednesday, July 27, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 734

### Public Financial Disclosure, Conflicts of Interest, and Standards of Conduct for Federal Employees

**AGENCY:** Office of Government Ethics, Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** This document makes final a procedural rule relating to administrative determinations with respect to revocations of trust certifications and trustee approvals for qualified blind trusts which have been certified by the Office of Government Ethics pursuant to Title II of the Ethics in Government Act of 1978. The rule provides that such certifications and approvals may be revoked subject to the procedure adopted, with the parties being apprised of the pendency of such action and the grounds upon which it is premised with an opportunity to present evidence and submit statements.

**EFFECTIVE DATE:** July 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Smith, 202–632–7642.

**SUPPLEMENTARY INFORMATION:** The Director of the Office of Government Ethics has found good cause for waiving the general notice of proposed rulemaking and the 30-day delay in effectiveness. This regulation is procedural in nature, exempt from 5 U.S.C. 553.

**E.O. 12291**

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(B) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only has an affect with respect to the qualified trusts of Federal employees.

**List of Subjects in 5 CFR Part 734**

Conflicts of interest, Government employees, Trusts and trustees.

Office of Government Ethics.

**Frank Q. Nebeker,**

*Director.*

Accordingly, 5 CFR Part 734 is amended as follows:

## PART 734—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

1. The authority citation for Part 734 continues to read as follows:

**Authority:** Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979) 5 U.S.C. Appendix 994; Pub. L. 98–150 (November 11, 1983).

2. The flush language following § 734.405(a)(2) is revised to read as follows:

**§ 734.405 Certification of trusts proposed for qualification; other matters.**

(a) *General rule.* * * *

* * * * *

only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that certification in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations. Certification shall be indicated by a letter from the Director to the interested parties or their representative. The certification of qualified trusts and the Office of Government Ethic's blind trust program are for the primary benefit of the public through ensuring the confidence of the public in the integrity of the Government's decisional processes and officials. The Office shall maintain a continuing assessment of the appropriateness of any certification which has been granted. Certification of a trust may be revoked pursuant to the rules of Subpart I of this part. The terms of a qualified trust are normally irrevocable. The terms may not be amended, except with the prior written approval of the Director upon a showing of necessity and appropriateness.

* * * * *

3. Section 734.406(a) is revised to read as follows:

**§ 734.406 Independent trustee, defined.**

(a) *General rule.* For purposes of this subpart, the term "independent trustee" shall include any person referred to in paragraph (b) of this section who, under all the facts and circumstances, is determined by the Director, Office of Government Ethics to be independent of any interested party with respect to a trust proposed for qualification under this subpart. Appropriate documentation to establish the independence of a proposed trustee or any other person to be designated in a trust instrument shall be submitted to the Office of Government Ethics in writing. Approval of a proposed trustee or any other person designated in a trust instrument to perform fiduciary duties shall be granted only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that approval in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations. The Director shall indicate approval of a proposed trustee, and of any other person designated in the trust instrument to perform fiduciary duties including those of an investment adviser, by personal signature on properly executed Certificates of Independence submitted to the Office of Government Ethics in the form prescribed by Appendix A of this part. Certification shall be indicated by a letter from the Director to the interested parties or their representative. The approval of proposed trustees and other persons designated in trust instruments and the Office of Government Ethic's blind trust program are for the primary benefit of the public through ensuring the confidence of the public in the integrity of the Government's decisional processes and officials. The Office shall maintain a continuing assessment of the appropriateness of any approval which has been granted. Approval of a trustee or any other designated person may be revoked pursuant to the rules of subpart I.

* * * * *

4. A new Subpart I is added to Part 734 to read as follows:

**Subpart I—Rules for Administrative Determinations With Respect to Revocations of Trust Certificates and Trustee Approvals**

734.901 Purpose and scope.
734.902 Definitions.
734.903 Determinations.

## Subpart I—Rules for Administrative Determinations With Respect to Revocations of Trust Certificates and Trustee Approvals

### § 734.901 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures of the Office of Government Ethics with respect to its enforcement of the qualified blind trust, qualified diversified trust, and independent trustee provisions of Title II of the Ethics in Government Act of 1978 and the regulations issued thereunder (Subpart D of this Part).

(b) *Scope.* This subpart applies to all trust certifications and trustee approvals pursuant to §§ 734.405(a) and 734.406(a), respectively.

### § 734.902 Definitions.

For purposes of this subpart (unless otherwise indicated)—

"Senior Attorney" means the Office of Government Ethics employee designated as the manager of the qualified trust program.

"Trust restrictions" mean the applicable provisions of Title II of the Ethics in Government Act of 1978, subpart D of this Part, and the trust instrument.

### § 734.903 Determinations.

(a) *Apparent violations of trust restrictions.* Whenever the Senior Attorney has reason to believe that—

(1) A violation of the trust restrictions,

(2) A transaction or occurrence which is incompatible with the statutory scheme for qualified trust administration or applicable trust instrument, or

(3) Facts and circumstances relating to the trust arrangement or the parties thereto which may bring the blind trust program into public disrepute through adversely affecting the confidence of the public in the integrity of the Government's decisional processes and officials,

May warrant the revocation of a trust certification or trustee approval previously granted pursuant to § 734.405(a) or § 734.406(a), respectively, he may, pursuant to the procedure specified by paragraph (b) of this section, review the matter and submit his findings to the Director with a recommendation concerning final action.

(b) *Review procedure.* In his review of the matter, the Senior Attorney shall—

(1) Undertake such examination and analysis of the matter in issue as he deems reasonably appropriate;

(2) Provide the trustee (and any other person designated in the trust instrument to perform fiduciary duties) and, if appropriate, the interested parties, with—

(i) Notice that (as applicable) revocation of the trust's certification or trustee approval is under consideration pursuant to the procedure provided for by this subpart,

(ii) A summary of the matter in issue which shall state the preliminary facts and circumstances of the transactions or occurrences involved with sufficient specificity to permit the recipients to determine the nature of the allegations, and

(iii) Notice that the recipients have an opportunity to present evidence and submit statements on such matter in issue,

Within ten business days of their actual receipt of such notices and summary or of the transmittal of such notices and summary by overnight postal delivery (or equivalent means) to their addresses of record within the United States; and

(3) Examine and analyze such evidence and statements on the matter in issue which have been timely submitted pursuant to paragraph (b)(2) of this section.

(c) *Determination.* In making his determination with respect to a matter under this section, the Director shall consider the findings and recommendations concerning final action of the Senior Attorney pursuant to paragraph (a) of this section, as well as the written record of the review of the matter pursuant to paragraph (b) of this section. The Director may, as he deems appropriate—(1) execute an order effectuating a revocation, (2) resolve the matter through such other remedial action as is within his authority, (3) order further examination and analysis of the matter in issue, or (4) set-aside the recommendation of the Senior Attorney. If an order effectuating a revocation is executed, the parties to the trust instrument shall be expeditiously notified in writing. The notice shall state the grounds upon which the revocation has been premised; and (as appropriate), that the trust may no longer be considered a qualified blind or qualified diversified trust, as the case may be, for any purpose under Federal law, or that the trustee (or any other person designated in the trust instrument to perform fiduciary duties) may no longer serve in any capacity with respect to the trust and must be replaced by a successor, subject to the prior written approval of the Director.

[FR Doc. 88-16633 Filed 7-26-88; 8:45 am]
BILLING CODE 6325-01-M

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 6

## Regulations Governing Allocations of Sugar Import Quotas; Other Specified Countries or Areas

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This rule modifies the allocation provisions governing sugar import quotas for these countries or areas which are designated as "Other Specified Countries and Areas" (more commonly known as the "basket category"). This rule modifies the maximum quota allocated to each country in the basket category to provide countries or areas in the basket category with reasonable access to the United States sugar market, in light of changed circumstances affecting such access. Each such country will receive an annual quota equal to its pro rata share of the percentage quota for the basket category, or 8,000 short tons, raw value, whichever is greater.

**EFFECTIVE DATE:** July 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-2916.

**SUPPLEMENTARY INFORMATION:** This rule involves a foreign affairs function of the United States. Accordingly, the provisions of 5 U.S.C. 553 do not apply and no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule has been reviewed under Department of Agriculture procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since the rule does not have any of the effects specified in those documents.

Presidential Proclamation No. 4941 of May 5, 1982 (47 FR 19661) established a country-by-country quota system for the importation of sugar into the United States. Under the import quota allocation provisions established under the Proclamation, each country was allocated a specific percentage of the quota if that percentage was .7 percent

or greater. A specified percentage of the total quota amount was allocated to a group of countries specified in the Proclamation and designated as "Other Specified Countries and Areas" (more commonly known as the "basket category"). The percentage allocation of the quota to the basket category was pooled and each country competed on a first-come-first-serve basis for the entire allocation.

Proclamation No. 4941 further provided that notwithstanding the allocation provisions set forth in the Proclamation, the Secretary may, after consultation with the U.S. Trade Representative, the Department of State, and the Department of the Treasury, issue regulations modifying the allocation provisions governing "Other Specified Countries and Areas" if the Secretary determines that such modifications are appropriate to provide such countries and areas reasonable access to the United States sugar market.

These allocation provisions were modified in an interim rule published in the **Federal Register** on August 11, 1982 (47 FR 34769) to provide that each country in the basket category would have a specific annual quota. Under that interim rule, each country received a quota allocation equal to its pro rata share of the quota allocation for the basket category, or 16,500 short tons, raw value, whichever was greater.

The interim rule (47 FR 34769) was adopted as a final rule with a modification and was published in the **Federal Register** on December 6, 1985 (50 FR 49919). The final rule modified the maximum level allocated to individual countries in the basket category. Each country received a quota allocation equal to its pro rata share of the quota allocation for the basket category, or 12,500 short tons, raw value, whichever is greater.

The final rule (50 FR 49919) was further modified by an interim rule published in the **Federal Register** on December 18, 1986 (51 FR 45295) which reduced the maximum quota allocated to each basket country to a level equal to its pro rata share of the percentage allocation for the basket category, or 7,500 short tons, raw value, whichever is greater. No comments were received with respect to the interim rule.

The interim rule (51 FR 45295) was adopted as a final rule with a modification and was published in the **Federal Register** on December 18, 1987 (52 FR 48079). The final rule modified the maximum level allocated to individual countries in the basket category. Each country received a quota allocation equal to its pro rata share of the quota allocation for the basket category, or 5,770 short tons, raw value, whichever is greater.

This interim rule modifies the final rule (52 FR 48079) by revising the quota amount each basket country will receive to a level equal to its pro rata share of the percentage allocation for the basket category, or 8,000 short tons, raw value, whichever is greater.

After consultation with the United States Trade Representative, the Department of State, and the Department of the Treasury, the Secretary of Agriculture has determined that the modification of the allocation provisions covering the basket category is appropriate to provide countries or areas in the basket category with reasonable access to the United States sugar market, in light of changed circumstances affecting such access. It has also been determined that these provisions are appropriate to carry out U.S. obligations under the General Agreement on Tariffs and Trade.

**List of Subjects in 7 CFR Part 6**

Agricultural commodities, Foreign trade, Imports, Quotas, Sugar.

Accordingly, 7 CFR Part 6, Subpart—Sugar Import Quotas is modified as follows:

**PART 6—[AMENDED]**

1. The authority citation for Subpart—Sugar Import Quotas (§§ 6.90–6.93) reads as follows:

**Authority:** Section 201, Trade Expansion Act of 1962 (19 U.S.C. 1821); Presidential Proclamation 4941, May 5, 1982 (47 FR 19661); Headnotes 2 and 3, Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202).

2. Section 6.91(a)(2) is revised to read as follows:

**§ 6.91 Allocation of individual import quotas.**

(a) * * *

(1) * * *

(2) 8,000 short tons, raw value.

* * * * *

Signed at Washington, DC on July 22, 1988.

**Richard E. Lyng,**

*Secretary of Agriculture.*

[FR Doc. 88-16935 Filed 7-25-88; 8:45 am]

BILLING CODE 3410-10-M

**Animal and Plant Health Inspection Service**

**7 CFR Part 300**

**[Docket No. 88-015]**

**Incorporation by Reference; Plant Protection and Quarantine Treatment Manual**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Plant Protection and Quarantine regulations to give notice that we are incorporating by reference at 7 CFR 300.1 a revision to the Plant Protection and Quarantine Treatment Manual. In an interim rule effective November 30, 1987, we added to the manual a hot water dip as an acceptable treatment procedure for the Carrot variety and certain other varieties of mangoes from Haiti. However, we inadvertently listed incorrect temperature requirements in the manual; the previously published temperature requirements are applicable for the hot water dip treatment. Therefore, we are correcting the manual to include the proper temperature requirements.

**EFFECTIVE DATE:** August 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** James Fons, Senior Staff Officer, Technology Development Staff, PPQ, APHIS, USDA, Room 626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8896.

**SUPPLEMENTARY INFORMATION:**

**Background**

Chapter III of Title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service. Section 300.1 of the regulations incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles so that these articles may move into or within the United States and not present a plant pest risk.

In an interim rule published in the **Federal Register** and effective November 30, 1987 (52 FR 45596, Docket 87-127), we amended § 300.1 of the regulations to show that the PPQ Treatment Manual, which is incorporated by reference and on file at the Office of the Federal Register, had been revised to include a hot water dip as an acceptable treatment for the

Carrot variety and certain other varieties of mangoes from Haiti.

Comments on the interim rule were required to be postmarked or received on or before December 30, 1987. We received one comment, which opposed the interim rule.

The State of California Department of Food and Agriculture commented that recent interceptions in California of live *Anastrepha obliqua* in Francis variety managoes, where the larvae found was third instar larvae taken from green, hard mangoes, raises some questions about the efficacy of the hot water treatment against *Anastrepha obliqua* in any variety of mango. The commenter believes our interim rule to be premature, and therefore recommends that we maintain the present ban on hot water treated Francis variety mangoes. We are not making any change based on this comment. The California Department of Food and Agriculture admits that its questions about the efficacy of the treatment are based on an assumption that the infected mangoes were treated properly. The fact that the intercepted mangoes were infested means that they could not have been treated properly. The hot water dip treatment we approved is effective in destroying *Anastrepha obliqua* when conducted in accordance with the prescribed procedures.

When we revised the PPQ Treatment Manual in November 1987 to add the Carrot variety to the hot water dip treatment, we inadvertently listed incorrect temperature requirements. We have revised the PPQ Treatment Manual to include the correct temperature requirements. These revisions are incorporated by reference in the regulations at 7 CFR 300.1. Plant Protection and Quarantine field personnel who supervise the treatment were instructed to follow the previously published accurate temperature requirements for the hot water dip treatment. All hot water dip treatments have been in accordance with accurate procedures.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Most mangoes consumed in the United States are imported. Historically, about 65 percent of the mangoes consumed annually have come from Mexico. Haiti provides about 11 percent, and 4 percent come from other countries. Domestic production is limited to 2,100 acres in Florida. In fiscal year 1988, this area produced about 20 million pounds of the fruit, approximately 20 percent of the mangoes consumed in the United States. Because of the growing conditions necessary for mangoes, we do not expect U.S. production to increase. Most of our supply will continue to come from foreign sources. We also do not anticipate that this rule will result in any decrease in the demand for Florida mangoes, which have a well-established market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 7 CFR Part 300**

Incorporation by reference, Plant diseases, Plant pests.

Accordingly, Title 7, Chapter III is amended as follows:

## PART 300—INCORPORATION BY REFERENCE

1. The authority citation for Part 300 continues to read as follows:

**Authority:** 7 U.S.C. 150ee, 161.

2. Section 300.1, paragraph (a) is revised to read as follows:

**§ 300.1 Materials incorporated by reference.**

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions issued through July 1988, has been approved for incorporation by reference in 7 CFR Chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

* * * * *

Done in Washington, DC, this 22nd day of July, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88-16939 Filed 7-26-88; 8:45 am]

BILLING CODE 3410-34-M

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## Agricultural Marketing Service

## 7 CFR Part 1230

**[No. LS-88-015]**

## Pork Promotion, Research, and Consumer Information Program; Procedures for Conduct of Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this action is to adopt as a final rule regulations for the conduct of a referendum which were proposed in the **Federal Register** on June 8, 1988. The Pork Promotion Research, and Consumer Information Act of 1985 authorizes the establishment of a national industry funded and operated pork promotion research and consumer information program. Pursuant to the Act, a referendum among pork producers and importers of porcine animals, pork, and pork products will be conducted to determine whether the Pork Promotion, Research, and Consumer Information Order which was implemented September 5, 1986, should be continued. The Act requires the Secretary to conduct such referendum between 24 months and 30 months after the issuance date of an Order to determine whether the Order should be continued. Accordingly, the referendum must be held on or after September 5, 1988, but not later than March 5, 1988. This final rule establishes the procedures for conducting the required referendum on September 7 and 8, 1988.

**DATE:** July 27, 1988.

**ADDRESS:** Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS),

USDA, Room 2610–So., P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447–2650.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified as a non-major rule under the criteria contained therein.

This action has also been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule establishes procedures for the conduct of a referendum to determine whether the Pork Promotion, Research, and Consumer Information Order should be continued. It permits all eligible pork producers and importers of porcine animals, pork, and pork products to register and to vote. Participation in the referendum is voluntary. Votes may be cast in person at county offices of the Extension Service or by absentee ballot. The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis was not prepared.

The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for pork and pork products. The program is financed by an assessment of 0.25 percent of the market value of domestic porcine animals and an equivalent amount on imported porcine animals and imported pork and pork products. Pursuant to the Act, an Order was made effective September 5, 1986, and the collection of assessments began on November 1, 1986.

The Act requires that a referendum be conducted during a period beginning not earlier than 24 months after the issuance of the Order and ending not later than 30 months after the issuance of the Order to determine whether the Order should be continued. Accordingly, registration for and voting in the referendum will occur on September 7 and 8, 1988. The referendum is to be conducted among person who were producers of porcine animals or importers of porcine animals, pork, or pork products during a representative period specified by the Secretary for the purpose of determining whether the Order should be continued. The representative period has been established as November 1, 1986, to September 6, 1988. The Order shall be continued only if it is approved by a majority of persons voting in the referendum. If continuation of the Order is not approved by a majority of those persons voting in the referendum, the Secretary shall terminate collection of assessments under the Order within 6 months after the Secretary determines that the continuance of the Order is not favored by a majority of those persons voting in the referendum and shall terminate the Order in an orderly manner as soon as practicable after such determination.

The Act specifies that the referendum shall be conducted in such manner as prescribed by the Secretary.

Voting and registration will take place at county offices of the U.S. Department of Agriculture's Extension Service. On June 8, 1988, the Agricultural Marketing Service (AMS) published in the **Federal Register** (53 FR 21456) a proposed rule which set forth procedures for conducting the referendum including provisions concerning definitions, supervision, registration, voting procedures, reporting referendum results, and disposition of ballots and records. It was proposed that the referendum be conducted at county Extension Service offices under the supervision of the county Extension Service agent and that the Agricultural Stabilization and Conservation Service (ASCS) of the Department assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

The rule also proposed that the representative period for the referendum be from November 1, 1986, to September 6, 1988; that registration for and voting in the referendum occur on September 7 and 8, 1988; and that absentee ballots be available from State ES offices during the period August 1, 1988, to August 26, 1988.

The proposed rule requested comments from interested persons by June 23, 1988. The Department received 38 written comments. Thirty-five commentors, including 10 individuals, the National Pork Board, 2 national pork producer organizations 19 State pork producer associations, 1 national importers association, 1 national farmers organization, and 1 State farmers organization supported the referendum procedures as proposed.

The remaining three commenters, including one individual, one State pork producer association, and one State farmers organization, generally supported the proposed referendum procedures with certain qualifications.. Five commentors pointed out grammatical errors in §§ 1230.630 and 1230.635. Those errors have been corrected in this final rule.

The substantive changes suggested by the commentors are discussed below. One State farmers organization which generally supported the proposed procedures was opposed to conducting the referendum over a 2-day period because of a concern that it required more of ES employees' time than necessary. The commentor pointed out that the recent beef referendum was accomplished in 1 day and speculated that based on voter response in the beef referendum (conducted May 10, 1988) and the number of absentee votes cast in California in that referendum in-person voting in the pork referendum could be as few as 26,500 persons nationwide. In the commentor's opinion, such a small number of in-person voters would not justify having county ES offices involved in voting and registration for 2 days. The commentor suggests that absentee voting should be urged to eliminate the need for a 2-day voting and registration period.

AMS believes that the commentor's justification for reducing the length of the 2-day referendum is speculative and is not a sufficient reason for changing the length of the proposed 2-day referendum. The conditions under which the beef referendum was conducted are sufficiently different from those under which the pork referendum will be conducted to preclude any accurate prediction on voter turnout. Beyond that, the National Pork Board and pork industry representatives recommended to the Secretary the 2-day referendum with in-person voting at county ES offices to provide sufficient opportunity for all eligible producers and importers to vote in person—the preferred method of casting ballots. The USDA's Extension Service agreed to make available its county offices and staff for the 2-day period, particularly since the referendum was being conducted during regular office hours on days the offices were normally open. While absentee balloting was provided for in the proposed rule, its purpose was not to serve as a procedure for balloting by mail or as a means of reducing the number of persons casting ballots in person at the ES county office. Rather, it was provided to assure that interested persons who are unable to vote in person would have an alternative method of casting a ballot.

Although an increase in absentee balloting might reduce the number of in-person voters, it also could increase the

administrative work load of both the State Extension Service offices and the county ES offices, which in turn could offset any time savings that might be realized by ES from a reduction in the length of the in-person voting and registration period. Additionally, a significant increase in absentee ballots would also increase the overall cost of the referendum by increasing postage costs. For these reasons, this suggestion is not adopted.

One commentor expressed concern about young children who own porcine animals being eligible to vote in the referendum but did not submit any alternatives. The definition of an eligible producer in § 1230.617 is based on the definition of a producer in the Act, which does not specify an age limit. Therefore, all persons who produce porcine animals in the United States for sale in commerce and who are subject to assessment would be considered eligible producers regardless of age. However, since producers must self-certify their eligibility pursuant to § 1230.631 and since proxy voting is not permitted except as stipulated in § 1230.627, parents and other persons are precluded from signing the registration and certification forms on behalf of their children except as provided for in § 1230.627.

One commentor believed that voters should be able to obtain absentee ballots from the State ES office in person as well as by mail and deliver the completed absentee ballots to the appropriate county ES office by mail or in person. The Department concurs with this suggestion and § 1230.631(b) has been revised accordingly. This same commentor also suggested that voters be allowed to deliver completed absentee ballots to the State ES office. Absentee ballots must be delivered to the designated county ES offices by September 1, 1988, in order to provide an effective and timely system for challenging the eligibility of voters. This requirement is necessary for the recording and posting of absentee voters' names for review during the challenge period in the county ES office and the county ASCS office as required in § 1230.632. Delivering absentee ballots to the State ES office could delay receipt of such ballots by the appropriate county ES office and prevent the required posting of all absentee voters' names by the specified dates. Accordingly, this suggestion is not being adopted.

The procedures for the conduct of a referendum to determine whether the Pork Promotion, Research Information Order should be continued are similar to the referendum procedures contained in a March 28, 1988, final rule (53 FR 9853) under the Beef Promotion and Research Program. In developing the rule, as with other rules, AMS considered recommendations from interested persons, including in this instance, the National Pork Board. Consequently, in proposing the rule; AMS believed that the industry was familiar with the procedures. In view of the September 7 and 8, 1988, dates to conduct the referendum, it is essential that all interested persons be made aware as soon as possible of the referendum procedures as adopted and that preparation for the conduct of the referendum may be completed in a timely manner. For example, this rule requires that the combined absentee registration form and absentee ballot will be available for distribution during the period August 1, 1988, to August 26, 1988. AMS believes that this period of absentee ballot availability is essential to afford absentee voters the opportunity to obtain and complete their ballots prior to the close of the absentee ballot acceptance period. Accordingly, pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register.

### List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Marketing agreements, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, Title 7 of the CFR, Part 1230 is amended as follows:

## PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

**Authority:** 7 U.S.C. 4801–4819.

2. Add new Subpart E to read as follows:

### Subpart E—Procedure for the Conduct of Referendum

#### Definitions

Sec.


1230.601 Act.
1230.602 Administrator.
1230.603 Agricultural Stabilization and Conservation County Committee.
1230.604 Agricultural Stabilization and Conservation Service.
1230.605 Agricultural Stabilization and Conservation Service County Executive Director.
1230.606 Department.
1230.607 Deputy Administrator.
1230.608 Extension Service.
1230.609 Extension Service Agent.
1230.610 Imported pork and pork products.
1230.611 Importer.
1230.612 Order.
1230.613 Person.
1230.614 Porcine animal.
1230.615 Pork.
1230.616 Pork product.
1230.617 Producer.
1230.618 Referendum.
1230.619 Registration period.
1230.620 Representative period.
1230.621 Secretary.
1230.622 State.
1230.623 United States.
1230.624 Voting period.
1230.625 General.
1230.626 Supervision of referendum.
1230.627 Eligibility.
1230.628 Time and place of registration and voting.
1230.629 Facilities for registering and voting.
1230.630 Registration form and ballot.
1230.631 Registration and voting procedure.
1230.632 List of registered producers and importers.
1230.633 Challenge of eligibility.
1230.634 Receiving ballots.
1230.635 Canvassing ballots.
1230.636 ASCS county office report.
1230.637 ASCS State office report.
1230.638 Results of the referendum.
1230.639 Disposition of ballots and records.
1230.640 Instructions and forms.


### Subpart E—Procedure for the Conduct of Referendum

#### Definitions

**§ 1230.601 Act.**

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

**§ 1230.602 Administrator.**

"Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated, the authority to act in the Administrator's stead.

**§ 1230.603 Agricultural Stabilization and Conservation County Committee.**

"Agricultural Stabilization and Conservation County Committee," also referred to as "ASC county commmittee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee.

**§ 1230.604 Agricultural Stabilization and Conservation Service.**

"Agricultural Stabilization and Conservation Service," also referred to as "ASCS" means the Agricultural

Stabilization and Conservation Service of the Department.

**§ 1230.605 Agricultural Stabilization and Conservation Service County Executive Director.**

"Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS County Executive Director" means the person employed by the ASC county committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office, or the person acting in such capacity.

**§ 1230.606 Department.**

"Department" means the United States Department of Agriculture.

**§ 1230.607 Deputy Administrator.**

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

**§ 1230.608 Extension Service.**

"Extension Service" also referred to as 'ES" means the Extension Service of the Department.

**§ 1230.609 Extension Service Agent.**

"Extension Service Agent" also referred to as "ES Agent" means an employee of the Extension Service of the Department.

**§ 1230.610 Imported pork and pork products.**

"Imported Pork and Pork Products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the tariff or customs numbers identified in regulations issued pursuant to the Order.

**§ 1230.611 Importer.**

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

**§ 1230.612 Order.**

"Order" means the Pork Promotion, Research, and Consumer Information Order.

**§ 1230.613 Person.**

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

**§ 1230.614 Porcine animal.**

"Porcine Animal" means a swine, that is raised—

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seed stock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

**§ 1230.615 Pork.**

"Pork" means the flesh of a porcine animal.

**§ 1230.616 Pork product.**

"Pork Product" means an edible product produced or processed in whole or in part from pork.

**§ 1230.617 Producer.**

"Producer" means a person who produces porcine animals in the United States for sale in commerce and who is subject to assessment.

**§ 1230.618 Referendum.**

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act during a period beginning not earlier than 24 months after issuance of the Order and ending not later than 30 months after the issuance of the Order whereby persons who have been producers and importers during a representative period shall be given the opportunity to vote to determine whether the continuance of the Order is favored by a majority of producers and importers voting.

**§ 1230.619 Registration period.**

"Registration period" means the 2-day period of September 7 and 8, 1988, for registration of producers and importers desiring to vote in a referendum. The registration period shall be the same days as the voting period.

**§ 1230.620 Representative period.**

"Representative period" means the period November 1, 1986, to September 6, 1988, which is established pursuant to section 1622(a) of the Act.

**§ 1230.621 Secretary.**

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Secretary's stead.

**§ 1230.622 State.**

"State" means each of the 50 States.

**§ 1230.623 United States.**

"United States" means the 50 States and the District of Columbia.

**§ 1230.624 Voting period.**

"Voting period" means the 2-day period of September 7 and 8, 1988, for voting in a referendum.

**Referendum**

**§ 1230.625 General.**

(a) A referendum to determine whether eligible producers and importers favor the continuance of the Order shall be conducted in accordance with this subpart.

(b) The Order shall continue only if the Secretary determines that the Order is approved or favored by a majority of the producers and importers casting valid ballots in a referendum.

(c) The referendum shall be conducted at the county offices of the Extension Service of the Department.

(d) The Agricultural Stabilization and Conservation Service of the Department shall assist in the conduct of the referendum.

**§ 1230.626 Supervision of referendum.**

The Administrator (AMS) shall be responsible for conducting the referendum in accordance with this subpart.

**§ 1230.627 Eligibility.**

(a) *Eligible producers.* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer shall be entitled to cast only one ballot in the referendum.

(b) *Eligible importers.* Each person who was an importer during the representative period is entitled to register and vote in the referendum. Each importer shall be entitled to cast only one ballot in the referendum.

(c) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer or corporate importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible entity (other than an individual producer or importer) such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer or importer corporation, partnership, or other eligible entity shall certify that he or she is authorized by such entity to take such action.

(d) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of porcine animals as a

producer or in the importation of porcine animals, pork or pork products into the U.S. as an importer shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer or importer if he or she is an eligible producer or importer separate from the group.

**§ 1230.628 Time and place of registration and voting.**

The referendum shall be held for 2 days beginning on September 7, 1988, and ending on September 8, 1988. Eligible persons shall register and vote following the procedures in § 1230.631. Except for absentee ballots, the registration and voting shall take place on September 7 and 8, 1988, at each county ES office during regular office hours.

**§ 1230.629 Facilities for registering and voting.**

Each county ES office shall provide:

(a) Adequate facilities and space to permit producers and importers to register and mark their ballots in secret; and,

(b) A sealed box or other suitable receptacle for registration forms and ballots which shall be kept under observation during registration and voting hours and secured at all times.

Copies of the Order shall be available for review.

**§ 1230.630 Registration form and ballot.**

A registration form/envelope marked "PORK REFERENDUM" (Form LS–43–1) and ballot (Form LS–43) shall be used for voting in person. The information required on the registration form, which is printed on an envelope, includes name, address, phone number, and voter status (producer or importer). The registration form/envelope also contains a certification statement, referenced in § 1230.631(a)(1). The ballot requires producers and importers to check a "yes" or a "no." A similar registration form and ballot (Form LS–42) shall be used for absentee voting.

**§ 1230.631 Registration and voting procedure.**

(a) *Registering and voting in person.* (1) Each producer and importer desiring to vote in the referendum shall register on the days of voting at the ES office for the county in which the producer's or importer's residence is located or at the ES office serving the county in which the producer's or importer's residence is located. Producers or importers other than individuals shall register at the ES office in the county in which their headquarters office or business is located or at the ES office serving the county in which the entities' headquarters office or business is located. Producers and importers will be required to list their names on the voter registration list (Form LS–43–2) prior to receiving a registration form and ballot. To register, each producer or importer shall complete the registration form/envelope and certify that:

(i) They or the entity they represent were producers or importers during the specified representative period; and,

(ii) If voting on behalf of an entity referred to in § 1230.627 they are authorized to do so.

(2) Each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1230.628. Eligible persons who enter their names on the voter registration list (Form LS–43–1) will receive a registration form/envelope (Form LS–43–1), an envelope marked "PORK BALLOT" (LS–42–2), and a ballot (Form LS–43). Voting shall be by secret ballot under the supervision of the local county ES agent or designee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in the envelope marked "PORK BALLOT", seal it and place it in the completed and signed registration form/envelope marked "PORK REFERENDUM", seal that envelope and personally place it in a box marked "Ballot Box" or other designated receptacle.

(b) *Absentee voting.* (1) Eligible producers or importers unable to vote in person may request and obtain a combined absentee registration form and absentee ballot (Form LS–42) and two envelopes—one marked "PORK BALLOT" (Form LS–42–2) and the other marked "PORK REFERENDUM" (Form LS–42–1) by mail or in person from the State ES office of the State in which they reside if individuals, or where their headquarters office or business is located, if a corporation or other entity. To facilitate mailing of absentee ballots the "PORK REFERENDUM" envelope will be preaddressed with the address of the appropriate county ES office if:

(i) The person or other entity referred to in § 1230.627 requesting the absentee ballot includes in the address his or her county of residence or county in which the headquarters office or business is located; or,

(ii) The county in which the residence, headquarters office, or business is located can be otherwise determined.

Only one absentee registration form and absentee ballot will be provided to each eligible producer or importer. Form LS–42 must be requested in writing and will be available for distribution from State ES offices from August 1, 1988, to August 26, 1988. The State ES office shall enter on the absentee voter request list (Form LS–42–3) the name and address of each person or entity requesting an absentee ballot and the date the Form LS–42 was mailed. A copy of the applicable absentee voter request list (Form LS–42–3) prepared by the State ES office shall be provided to the appropriate county ES agent who shall deliver it to each ASCS county office as provided for in § 1230.635 for absentee voter verification.

(2) To register, eligible producers or importers must complete and sign the registration form (Form LS–42), and certify that:

(i) They or the entity they represent were producers or importers during the specified representative period; and,

(ii) If voting on behalf of an entity referred to in § 1230.627, they are authorized to do so.

(3) A producer or importer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS–42 and seal the completed ballot in a separate envelope marked "PORK BALLOT" and place it in a second envelope marked "PORK REFERENDUM" along with the signed registration form. Producers and importers shall print and sign their names on the envelope marked "PORK REFERENDUM" and mail or deliver it to the ES office of the county in which they reside or the ES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed or delivered to the ES office in the county in which its headquarters office or business is located or the ES office serving the county in which its headquarters office or business is located.

(4) Absentee ballots must be received in the county ES office by the close of business, September 1, 1988. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "PORK REFERENDUM" envelope containing the registration form and ballot, the county ES agent or designee shall place it, unopened in a secure ballot box. The county ES agent or his designee shall enter the names of absentee voters on the voter registration list (Form LS–43–2).

(5) A person casting an absentee ballot which is not recorded as being received or which is received after the deadline specified in this section may vote in person at the appropriate county ES office on the days of the referendum.

**§ 1230.632 List of registered producers and importers.**

The voter registration list (Form LS–43–2) shall be available for inspection during the voting period on September 7 and 8, 1988, at the county ES office and on September 12, 1988, at the ASCS county office. At the ASCS county office it shall be posted during regular office hours in a conspicuous public location.

**§ 1230.633 Challenge of eligibility.**

(a) *Challenge period.* During the days of the referendum, the names of challenged voters may be reported to the ES county agent who will refer them to the ASCS county office. After that, the names of challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business on September 12, 1988.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person. Any such challenge must be in writing and signed by the person making the challenge.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer or importer who has been challenged and notify challenged producers and importers as soon as practicable, but not later than 5 business days after the ending date of the voting period. If the ASC county committee or its representative is unable to determine whether a person was a producer or importer during the representative period, it may require the person to submit records such as sales documents, purchase documents, or other similar documents to prove that the person was a producer or importer during the representative period.

(d) *Challenged ballot.* The registration form/envelopes (Form LS–43–1) containing the ballots cast by producers and importers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. Envelopes containing absentee voter registration forms and absentee ballots (Form LS–42) of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers and importers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after the appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county committee or its representative may file an appeal at the ASCS county office within 3 business days after notification of such decision. Such person may be required to provide documentation such as sales documents or purchase documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable, but in all cases not later than the 9th business day after the ending date of the referendum. The ASC county committee's determination on an appeal is final.

**§ 1230.634 Receiving ballots.**

A ballot shall be considered to have been received during the voting period if:

(a) It was cast in the county ES office prior to the close of business on September 8, 1988; or,

(b) An absentee ballot was received in the county ES office not later than close of business on September 1, 1988.

**§ 1230.635 Canvassing ballots.**

(a) *Counting the ballots.* The county ES agent or designee shall deliver: The sealed ballot box; the voter registration list (Form LS–43–2); and the absentee voter request list (Form LS–42–3) to the ASCS county office by the close of business on the first business day after the end of the voting period. ASCS county employees and the county ES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS–43–2) and the absentee voter request list (Form LS–42–3) to determine properly registered voters. The ballots of producers or importers voting in person whose names are not on the voter registration list (Form LS–43–2) shall be declared invalid. Likewise, the ballots of producers or importers voting absentee, whose names are not on the absentee voter request list (Form LS–42–3) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened. The valid ballots shall be counted on September 22, 1988. ASCS county office employees shall remove the sealed "PORK BALLOT" envelopes from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. When removing the "PORK BALLOT" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "PORK BALLOT" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows:

(1) Number of eligible producers and importers casting valid ballots,

(2) Number of producers and importers favoring the Order,

(3) Number of producers and importers not favoring the Order,

(4) The number of challenged ballots,

(5) The number of challenged ballots deemed ineligible,

(6) Number of invalid ballots, and

(7) The number of spoiled ballots.

(b) *Invalid ballots.* Ballots shall be declared invalid if a producer or importer voting in person has failed to sign the voter registration list (Form LS–43–2), or an absentee voter's name is not on the absentee voter request list (Form LS–42–3), or the registration form or ballot was incomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or a "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

**§ 1230.636 ASCS county office report.**

The ASCS county office shall notify promptly the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1230.635. The results of the referendum in each county may be made available to the public immediately after the ballots have been counted and any necessary verification of accuracy has been completed. A copy of a report of those results shall then be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

**§ 1230.637 ASCS State office report.**

Each ASCS State office shall promptly transmit to the Deputy Administrator a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information

on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

**§ 1230.638 Results of the referendum.**

(a) The Deputy Administrator shall promptly submit to the Administrator the results of the referendum. The Administrator shall promptly prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum shall be issued by the Department in an official press release and published in the **Federal Register**. State reports, and related papers shall be available for public inspection in the office of the Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

**§ 1230.639 Disposition of ballots and records.**

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

**§ 1230.640 Instructions and forms.**

The Administrator may prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Done at Washington, DC on July 22, 1988.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 88-16863 Filed 7-26-88; 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL RESERVE SYSTEM

**12 CFR Parts 207, 220, 221 and 224**

**Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; determination of applicability of regulations.

**SUMMARY:** The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective May 9, 1988 and will serve to give notice to the public about the changed status of certain stocks.

**EFFECTIVE DATE:** August 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. This supersedes the last List which was effective May 9, 1988. Additions and deletions for that List were published at 53 FR 15195, April 28, 1988. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks.

The List of Marginable OTC Stocks includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

In addition to the deletions listed below, Student Loan Marketing Association's (SLMA) common stock and warrants expiring 06-01-91 are being removed from the List because they are exempted securities (see 20 U.S.C. 1087.1). While these securities meet the requirements for inclusion on the List, their exempt status entitles lenders to extend good faith loan value on them whether or not they appear on the List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17(a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

**List of Subjects**

*12 CFR Part 207*

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 220*

Banks, Banking, Brokers credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 221*

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 224*

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

**Deletions From List**

*Stocks Removed For Failing Continued Listing Requirements*

ADMAC Inc.
$.01 par common
AEC, Incorporated
$1.00 par common
AERO Services International, Inc.
No par common
No par convertible preferred
Allison's Place, Inc.
$.01 par common
American Educational Computer, Inc.
$.01 par common
Antonovich, Inc.
Class A, $.01 par common
Asbestec Industries, Inc.
$.01 par common
AW Computer Systems, Inc.
Class A, $.01 par common
Base Ten Systems, Inc.
Class B, $1.00 par common
Begley Company
$1.66⅔ par common
Bird Incorporated
$1.00 par cumulative convertible preferred
Boys Markets, Inc.
$.01 par common
BSD Medical Corporation-Delaware
$.01 par common
CADE Industries, Inc.
Warrants (expire 09–24–88)
CB Financial Corporation
$7.50 par common
Centennial Savings Bank, F.S.B.
$1.00 par common
Centrafarm Group N.V.
No par common
Chatham Manufacturing Company
$1.00 par common
Clabir Corporation
Class B, $.10 par common
Comtrex Systems Corporation
No par common
Continuing Care Associates, Inc.
$.01 par common
Corestates Financial Corporation
No par cumulative preferred
Cramer Inc.
No par common
Cypress Savings Association
Class A, $.01 par common
Diagnostek, Inc.
Class B, warrants (expire 06–30–88)
Financial Industries Corp.
$1.00 par common
First Carolina Investors, Inc.
No par common
First Columbia Financial Corp.
No par common
First Federal Savings & Loan Association of Austin
$.01 par common
Fisher Transportation Services, Inc.
$.00001 par common
Hitachi Ltd.
5¾% convertible subordinated debentures
IBI Security Service, Inc.
Class A, $.10 par common
Inmed Corporation
$.01 par common
Interand Corporation
No par common
International King's Table, Inc.
No par common
Itel Corporation
Class B, Series A, $1.00 par convertible preferred
Kevex Corporation
$.01 par common
Linear Films, Inc.
$1.00 par common
Livingwell, Inc.
$.10 par common
Maverick Restaurant Corporation
$.01 par common
Moseley Holding Corporation
$.10 par common
Old Stone Corporation
Series C, converetible preferred
Optical Specialties, Inc.
No par common
OTF Equities, Inc.
$.01 par common
Overland Express, Inc.
No par common
Pacer Corporation
No par common
Perfectdata Corporation
No par common
Precision Resources, Inc.
$.10 par common
Premier Financial Services, Inc.
$5.00 par common
Provident American Corporation
$1.00 par common
Sage Drilling Company, Inc.
$.01 par common
Sahlen $ Associates, Inc.
Warrants (expire 07–18–89)
Schult Homes Corporation
Warrants (expire 03–01–91)
Scott Cable Communications, Inc.
No par common
Solitec Inc.
No par common
Sporting Life, Inc., The
$.01 par common
Stars To Go, Inc.
$.01 par common
Step-Saver Data Systems, Inc.
No par common
Warrants (expire 08–12–89)
Sutron Corporation
$.01 par common
Taco Viva, Inc.
$.01 par common
TM Communications, Inc.
Warrants (expire 12–01–88)
UNIFI, Inc.
Warrants (expire 07–01–88)
Visual Industries, Inc.
$.10 par common
Wespac Investors Trust
$1.00 par shares of beneficial interest
Wespac Investors Trust II
No par shares of beneficial interest
Worlds of Wonder, Inc.
No par common

*Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition*

American Network, Inc.
No par common
American Savings Bank, FSB
No par common
No par cumulative convertible preferred
American Shared Hosptial Services
No par common
ATI Medical, Inc.
No par common
Atlanta Gas Light Company
$5.00 par common
Austron, Inc.
$.0125 par common
Bank of New England Corporation
$5.00 par common
BFS Bancorp Inc. (Connecticut)
$.01 par common
Biotherapeutics Incorporated
$.002 par common
California Gold Mines Ltd.
No par common
Chi-Chi's, Inc.
$.01 par common
Citizens Financial Corporation
No par common
Citytrust Bancorp, Inc.
$2.50 par common
Coeur D'alene Mines Corp.
$1.00 par common
Columbia Federal Savings Bank (Washington)
$1.00 par common
Crown Auto, Inc.
$.25 par common
Datacopy Corporation
$.10 par common
Days Inns Corporation
$.02 par common
Diamond Crystal Salt Company
$1.25 par common
Dickey-John Corporation
No par common

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Dinner Bell Foods, Inc.
No par common
Dryclean U.S.A., Inc.
$.01 par common
Eagle Financial Corporation
$.01 par common
Energy Factors, Inc.
No par common
ENZO Biochem, Inc.
$.01 par common
Exposaic Industries, Inc.
No par common
Fiarhaven Savings Bank (Massachusetts)
$.10 par common
First Federal Bank, FSB (New Hampshire)
$1.00 par common
Florida Express Inc.
$.01 par common
Hadson Corporation
$.10 par common
Hamburger Hamlets, Inc.
$1.00 par common
Home Owners Federal Savings & Loan Association (Massachusetts)
$.01 par common
I.M.S. International, Inc.
$.01 par common
ICN Biomedicals, Inc.
$.01 par common
Ideal School Supply Corporation
$.01 par common
IGI Inc.
$.01 par common
International Clinical Laboratories, Inc.
$.33⅓ par common
Isoetec Communications, Inc.
$.01 par common
Keithley Instruments, Inc.
No par common
Lacana Mining Corporation
No par common
Lane Financial Inc.
$1.00 par common
Liquid Air Corporation of North America
No par common
Little, Arthur D., Inc.
$1.00 par common
Medchem Products, Inc.
$.01 par common
Merrimac Industries, Inc.
$.50 par common
Midway Airlines, Inc.
$.01 par common
Mt. Baker Bank, A Savings Bank (Washington)
$5.00 par common
MTECH Corporation
$.01 par common
MUSTO Exploration Limited
No par common
National Heritage, Inc.
$.01 par common
Omnibank of Connecticut, Inc.
$.01 par common
Organogenesis, Inc.
$.01 par common
Parisian, Inc.
$.01 par common
Pegasus Gold Inc.
No par common
Peters, J.M. Company, Inc.
$.10 par common
Preferred Health Care, Ltd.
$.01 par common
Price Pfister, Inc.
$.01 par common
Prudential Bancorporation
No par common
Scantron Corporation
$.01 par common
SCOR U.S. Corporation
$.30 par common
Seal Incorporated
$.10 par common
Standard Commercial Corporation
$.20 par common
Stanline, Inc.
$.01 par common
Tower Federal Savings Bank
$.01 par common
TRC Companies, Inc.
$.10 par common
U.S. Truck Lines Inc. of Delaware
$5.00 par common
Ungermann-Bass, Inc.
$.001 par common
6⅞% convertible subordinated debentures
Union Special Corporation
$1.00 par common
Universal Medical Buildings, L.P.
Depository Receipts for units of shares of beneficial interest
Units of preferred limited partnership
University Bank and Trust Company
$.30 par common
Valley Forge Corporation
$.50 par common
VORTEC Corporation
No par common
Wearever-Proctorsilex
$.01 par common
Western Auto Supply Company
$.01 par common

**Additions to the List**

Akorn, Inc.
No par common
America First Participating/Preferred Equity Mortgage L.P.
Exchangeable units of limited partnership
American Medical Electronics, Inc.
No par common
American Republic Bancorp (California)
No par common
American Rice, Inc.
$1.00 par common
American Savings & Loan Association of Florida
$.01 par preferred
American Vanguard Corporation
$.10 par common
APCO Argentina, Inc.
Ordinary shares, $.01 par value
BFS Bankorp, Inc. (New York)
$.01 par common
BMR Financial Group, Inc.
$.01 par common
Broad National Bancorporation
$10.00 par common
Cannon Express, Inc.
$.01 par common
Cascade International, Inc.
$.001 par common
Centurion Gold Ltd.
No par common
Citizens Bancorp (Maryland)
$10.00 par common
Cliffs Drilling Company
$.01 par common
Code-Alarm, Inc.
No par common
Comdata Holdings Corporation
$.01 par common
Community Banks, Inc. (Pennsylvania)
$5.00 par common
Comstock Resources, Inc.
$.50 par common
Concorde Career Colleges, Inc.
$.01 par common
Confertech International, Inc.
$.01 par common
Conner Peripherals, Inc.
No par common
Constitution Bancorp of New England, Inc.
$1.00 par common
Contel Cellular, Inc.
Class A, $1.00 par common
Country Lake Foods, Inc.
$.01 par common
CPAC, Inc.
$.01 par common
Dell Computer Corporation
$.01 par common
Drug Emporium, Inc.
$.10 par common
Egghead, Inc.
$.01 par common
Electronic Data Technologies
$.01 par common
Fairfield First Bank & Trust Company (Connecticut)
$5.00 par common
Falconbridge Limited
No par common
FB&T Corporation
$1.00 par common
First Federal Savings & Loan Association of Lenawee County
$1.00 par common
Firstmiss Gold, Inc.
$.01 par common
Flowmole Corporation
$.01 par common
Franklin Savings Association (Kansas)
$1.00 par common
Grandview Resources, Inc.
No par common
Greenwich Financial Corporation
$.01 par common
Harvard Knitwear, Inc.

$.001 par common
Hemodynamics Incorporated
$.01 par common
Home Federal Savings Bank (North Carolina)
$1.00 par common
Home National Corporation (Massachusetts)
$.50 par common
Hometown Bancorporation, Inc. (Connecticut)
$1.00 par common
Hughes Homes, Inc.
$.01 par common, Warrants (expire 06–08–93)
ICO, Inc.
No par common
Imperial Holly Corporation
No par common
Index Technology Corporation
$.10 par common
Jones Intercable, Inc.
7.25% convertible subordinated debentures
KCS Group, Inc.
$.01 par common
Kinetic Concepts, Inc.
$.001 par common
Medstone International, Inc.
$.004 par common
Metro Mobile CTS, Inc.
Class B, $.10 par common
Mindscape, Inc.
$.00001 par common
Moscom Corporation
$.10 par common
National Health Laboratories, Inc.
$.01 par common
Nova Pharnaceutical Corp.
Class C, warrants (expire 06–30–93)
Class D, warrants (expire 06–30–98)
Nowsco Well Service, Ltd.
No par common
Pacesetter Homes, Inc.
$.01 par common
People's Bank (Connecticut)
No par common
Personal Computer Products, Inc.
$.005 par common
Relational Technology, Inc.
$.001 par common
Respironics, Inc.
$.01 par common
Richfood Holdings, Inc.
Class A, no par common
SCI Systems, Inc.
5⅝% convertible subordinated debentures
Scripps, E.W., Company, The
Class A, $.01 par common
Senior Service Corporation
$.02 par common
Simmons First National Corporation (Arkansas)
Class A, $5.00 par common
SJNB Financial Corp.
No par common
Stolt Tankers & Terminals (Holdings) S.A.
No par common
Tele-Communications Inc.
7% convertible subordinated debentures
Thomaston Mills, Inc.
Class A, $1.00 par common
Class B, $1.00 par common
Triangle Industries, Inc.
$1.00 per cumulative convertible junior preferred
UNR Industries, Inc.
$2.50 par common

By order of the Board of Governors of the Federal Reserve System acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(8)), July 25, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88–16852 Filed 7–26–88; 8:45 am]

BILLING CODE 6210–01–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 201

**[Release No. 33–6790; 34–25933; 35–24683; 39–2176; IC–16488; IA–1130]**

### Receipt of Copies of Petitions for Review of Commission Orders

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to 28 U.S.C. 2112(a)(2), which requires that agencies designate an officer to receive copies of petitions for review of agency orders, the Commission amended its Rules of Practice to designate its Secretary to be that officer.

**EFFECTIVE DATE:** July 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Riesenberg, Senior Special Counsel, (202) 272–3088, or Anne H. Sullivan, Attorney, (202) 272–7525, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–6, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. It is effective upon publication in the **Federal Register**.

#### I. Introduction

Public Law 100–236, 101 Stat. 1731–32 (1988), codified as 28 U.S.C. 2112(a), requires in subsection (a)(2) that each government agency designate an office and officer to receive copies of petitions for review of agency orders from the persons instituting the review procedings in a court of appeals. The statute provides that, in the event that proceedings are instituted in two or more courts of appeal to review the same agency order, and that the agency receives copies of those filings within ten days of the agency order, the Judicial Panel on Multidistrict Litigation will determine, by random selection, the court of appeals in which to consolidate the petitions.

#### II. Commission Designation of Secretary and Office of the Secretary Pursuant to Public Law No. 100–236

The Commission hereby amends Rule 23 of its Rules of Practice to designate the Secretary, and the Office of the Secretary, of the Commission as the officer and office to receive, pursuant to 28 U.S.C. 2112(a)(1), copies of petitions to review Commission orders.

#### List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Claims, Confidential business information, Equal access to justice, Lawyers, Securities.

#### Text of Amendment

Title 17, Chapter II, Part 201 of the Code of Federal Regulations is hereby amended as follows:

### PART 201—[AMENDED]

1. The authority citation for Part 201, Subpart A is amended by adding the following citation:

**Authority:** Secs. 19, 23, 48 Stat. 85, as amended, 901 as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11 unless otherwise noted * * * § 201.23(e) also issued under 28 U.S.C. 2112(a).

2. A new paragraph (e) is added to § 201.23 to read as follows:

**§ 201.23 Service of pleadings, etc. other than moving papers.**

* * * * *

(e) *Commission receipt pursuant to 28 U.S.C. 2112(a)(1) of copies of petitions for judicial review of Commission orders where petitions for review are filed in two or more courts of appeals with respect to the same order.*

The Commission officer and office designated to receive, pursuant to 28 U.S.C. 2112(a)(1), copies of petitions for review of Commission orders, from the persons instituting the review proceedings in a court of appeals, are

the Secretary and the Office of the Secretary at the Commission's Office in Washington, DC. Ten copies of the petition shall be submitted pursuant to this paragraph. Each copy shall state on its face that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the persons or person who filed the petition in the court of appeals.

Note.—28 U.S.C. 2112(a) contains certain applicable requirements.

By the Commission.
July 21, 1988.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 88-16905 Filed 7-26-88; 8:45 am]
BILLING CODE 6010-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 272 and 274

[Docket No. RM88-10-000 Order No. 501]

# Revision of Definition for Natural Gas Produced From Devonian Shale

Issued July 21, 1988.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations defining Devonian shale for purposes of qualifying under section 107(c)(4) of the Natural Gas Policy Act of 1978 (NGPA) by expanding the definition to allow producers to measure Devonian shale from a selected interval within the Devonian age stratigraphic interval instead of measuring from the beginning of the Devonian age stratigraphic interval encountered by the wellbore, as currently provided in the regulations. The expanded definition will encourage the production of new quantities of natural gas.

**EFFECTIVE DATE:** September 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this final rule is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations defining Devonian shale for purposes of qualifying under section 107(c)(4) of the Natural Gas Policy Act of 1978 (NGPA).[1] The Commission is expanding the definition to allow producers to measure Devonian shale from a selected interval within the Devonian age stratigraphic interval instead of measuring from the beginning of the Devonian age stratigraphic interval encountered by the wellbore, as currently provided in the regulations. Price controls for gas qualifying under NGPA section 107(c)(4) were eliminated under NGPA section 121(b) on November 1, 1979.[2] Most of the gas qualifying as Devonian shale gas under this rule will also qualify as either NGPA sections 102 or 103 gas; price controls for this gas were also eliminated on either January 1, 1985 or July 1, 1987. Consequently, there will be minimal impact on the price paid for Devonian shale gas qualifying under this expanded definition.

## II. Background

NGPA section 107(c)(4) provides that natural gas produced from Devonian shale is high-cost natural gas eligible for incentive prices. In Order No. 78,[3] the Commission defined natural gas produced from Devonian shale as natural gas produced from the fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period.[4] The Commission's definition restricted the term to the gross Devonian age stratigraphic interval encountered by a wellbore, at least 95 percent of which has a gamma ray index of 0.7 or greater (five percent test).[5] The five percent test was designed to exclude excessive gas production from "stringers" [6] within the Devonian shale formation from qualifying as NGPA section 107(c)(4) high-cost gas.

The State of West Virginia filed a petition for reconsideration of the Commission's definition of natural gas produced from Devonian shale on September 25, 1987. West Virginia requested the Commission to allow a producer to qualify any single continuous shale interval within the Devonian age stratigraphic interval so long as the interval selected satisfies the five percent test.

The Commission granted West Virginia a waiver of the provision of § 272.103(e) of its regulations on January 22, 1988.[7] The waiver allows applicants for NGPA section 107(c)(4) well determinations in West Virginia to select one continuous interval from the Devonian interval described in § 272.103(e) of the Commission's regulations for qualification as gas produced from Devonian shale. However, if the interval selected is more than 200 feet thick, the bottom and top 100 foot portions must meet the five percent test independently, in addition to the entire selected interval meeting the requirements.

As discussed in a notice of proposed rulemaking (NOPR) issued April 7, 1988,[8] the Commission expressed its belief that the problems identified by West Virginia are generic to other Devonian production areas. Accordingly, the Commission proposed to expand the definition to allow producers to measure Devonian shale from a selected interval within the

[1] 15 U.S.C. 3317(c)(4) (1982).

[2] 15 U.S.C. 3331(b) (1982).

[3] Final Rule Defining and Deregulating Certain High-Cost Gas, 45 FR 28,092 (Apr. 28, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1982] ¶30,147 (Apr. 22, 1980); Order Denying Rehearing, 11 FERC ¶ 61,299 (June 20, 1980).

[4] 18 CFR 272.103(e) (1987).

[5] Id.

[6] "Stringers" are potentially gas bearing rock within the Devonian shale strata which because of their sand content do not quality as shale. Most Devonian age intervals are not 100 percent shale and contain, varying amounts of sand stringers. In order not to disqualify all Devonian shale intervals with sand stringers, the rule permits a Devonian shale interval to qualify as Devonian shale if the interval does not contain more than five percent nonshale rock.

[7] 42 FERC ¶ 61,052 (Jan. 22, 1988).

[8] 53 F.R. 12704 (Apr. 18, 1988), IV FERC Stats. & Regs. ¶ 32,458 (1988).

Devonian age stratigraphic interval instead of measuring from the beginning of the Devonian age stratigraphic interval encountered by the wellbore.

The Commission received four comments, all supporting the proposed change.[9] The Commission, therefore, is issuing the rule proposed in the NOPR as a final rule without any substantive changes.

## III. Discussion

### *A. Reporting Burden*

Public reporting burden for this collection of information is estimated to average 6 hours, 24 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis (202) 357–8173); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention Desk Officer for the Federal Energy Regulatory Commission).

### *B. Final Rule*

The Commission is revising § 272.103(e) of its regulations to provide an alternative from which to measure Devonian shale within the Devonian age stratigraphic interval. This alternative will permit producers to select a continuous Devonian shale interval for which the five percent test will be applied. If the Devonian shale interval selected under the alternative method of measurement is more than 200 feet thick, the bottom and top 100 foot portions must meet the five percentage test independently.

Additionally, the Commission is amending §§ 274.205(d)(3)(i) and 274.205 (d)(3)(ii) by replacing the phrase "stratigraphic section penetrated by the wellbore" with the phrase "stratigraphic section designated pursuant to § 272.103(e)" in each of the three places at which the former phrase appears. In any wells which produce both Devonian and non-Devonian shale gas and the gas is not separately metered, an allocation must be made between the producing intervals. Any reasonable method of allocation will be acceptable and does not need prior approval.

Commenters support the decision to grant the West Virginia waiver and believe that to the extent that the same geologic conditions exist in other states, the alternative method of measuring Devonian shale should also be available. Columbia Gas Transmission Corporation, however, requests the Commission to clarify that the expended definition may be applied only on a prospective basis. The Commission agrees. Generally, the Commission's rules are applied on a prospective basis. The provisions in this final rule will be applied on a prospective basis only, for producers filing well determinations pursuant to these regulations.[10]

## IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [11] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Moreover, since this revision will encourage the production of natural gas supplies and expand the categories of natural gas eligible for a tax credit,[12] any economic impact on small entities will be beneficial rather than negative.

## V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [13] and the Office of Management and Budget's (OMB) regulations [14] require the OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule are contained in FERC–121, Application for Maximum Lawful Price Under the Natural Gas Policy Act of 1978 (NGPA) and FERC–568, Well Category Determination. Natural gas producers must comply with the information collection provisions in these forms in order to collect higher lawful prices for gas produced from qualified wells. Under the NGPA, producers must obtain a jurisdictional agency determination that certain natural gas qualifies as high-cost gas eligible for incentive prices under sections 102, 103, 107 and 108 of the NGPA. Producers must then submit this jurisdictional agency determinations to the Commission for approval prior to collecting these prices. The amount of data to be reported is the minimum that jurisdictional agencies and the Commission require to determine the well category and price.

Devonian shale determinations represent less than 10 percent of the total determinations filed annually with the Commission. The expanded definition provided in this rule will increase the number of Devonian shale determination filings (estimated increase is 1,000 per year from approximately 1,200 to 2,200) but will not change the time requirements currently in the OMB inventory for each determination. The average time per response for FERC–121 is 15 minutes and for FERC–568 is 6 hours and 9 minutes.

The Commission estimates that the total annual reporting burden for FERC–121 will increase by 250 hours and for FERC–568 by 6,150 hours. This increase in total annual burden reflects the number of new applications anticipated because of the expanded definition for Devonian shale. Even with this increase, the total annual burden reported in this final rule continues to remain less than the total annual burden initially approved by OMB for these forms due to a decrease in the overall number of determinations for all categories received annually by the Commission.

## VI. Environmental Review

The Commission detailed in the NOPR the factors supporting the conclusion that this rulemaking action would not constitute a major Federal action significantly affecting the quality of the human environment. The Commission's determination was based on a supplemental environmental assessment prepared in 1981 which updated an earlier 1980 environmental assessment and reiterated the original findings. Since then, no new factors, additional evidence or comments have been brought to the Commission's attention which alter the Commission's conclusions.

The Commission continues to believe that Devonian shale is a specific type of low permeability formation. From an

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[9] Appalachian Energy Group, Columbia Gas Transmission Corporation, Kentucky Public Service Commission and Pennsylvania Department of Environmental Resources.

[10] Producers in West Virginia may continue to file for well determinations pursuant to the waiver granted to West Virginia on January 22, 1988. The provisions of the waiver will apply prospectively from the date of the waiver.

[11] 5 U.S.C. 601–612 (1982).

[12] The Commission recognizes that producers would be able to qualify for a tax credit through the Crude Oil Windfall Profit Tax Act of 1980 (as amended by the Economic Recovery Tax Act of 1981). Pub. L. 96–223, Title II, section 231(a), April 2, 1980, 94 Stat. 268, section 44D (subs. renum. as section 29), 1981, 95 Stat. 339. Subsequent tax legislation has preserved the tax credit for the production of fuel from nonconventional sources.

[13] 44 U.S.C. 3501–3520 (1982).

[14] 5 CFR 1320.13 (1987).

environmental standpoint, its development as a source of natural gas involves nearly identical measures as those required by any other tight formation, including the use of enhanced production techniques such as hydraulic fracturing. There is no evidence that the incentive price program for tight formations has resulted in any significant adverse environmental impact. The Commission concludes, therefore, that this rulemaking action will not constitute a major Federal action significantly affecting the quality of the human environment.

**VII. Effective Date**

This rule is effective September 26, 1988.

**List of Subjects**

*18 CFR Part 272*

Natural gas.

*18 CFR Part 274*

Natural gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 272 and 274, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

## PART 272—DEREGULATED NATURAL GAS

1. The authority citation for Part 272 continues to read as follows:

**Authority:** Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. In § 272.103, paragraph (e) is revised to read as follows:

**§ 272.103 Definitions.**

* * * * *

(e) "Natural gas produced from Devonian shale" means natural gas produced from fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period.

(1) "Shales deposited during the Paleozoic Devonian Period" can be defined as either:

(i) The gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater; or

(ii)(A) Except as provided in paragraph (e) (ii) (B) of this section, one continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater.

(B) If the interval selected is more than 200 feet thick, the bottom and top 100 foot portions must meet the five percent test independently.

(2) When measuring the Devonian age stratigraphic interval under paragraph (e)(1) of this section, the gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

## PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

3. The authority citation for Part 274 is revised to read as follows:

**Authority:** Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

4. In § 274.205, paragraphs (d)(3) and (d)(4)(ii) are revised to read as follows:

**§ 274.205 High-cost natural gas.**

* * * * *

(d) *Natural gas produced from Devonian shale.* * * *

(3)(i) For wells completed on or after November 1, 1979, a gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to § 272.103(e);

(ii) For wells completed before November 1, 1979:

(A) A gamma ray log, if reasonably available, with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to § 272.103(e); or

(B) If a gamma ray log is not reasonably available, a driller's log, or similar report, indicating the general characteristics of the strata penetrated and the corresponding depths at which they are encountered throughout the Devonian age stratigraphic section designated pursuant to § 272.103(e);

(4) * * *

(ii) Demonstrating that the percentage of potentially disqualifying nonshale footage for the stratigraphic section selected is equal to or less than 5 percent of the Devonian stratigraphic age interval designated pursuant to § 272.103(e);

* * * * *

[FR Doc. 88–16839 Filed 7–26–88; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF THE TREASURY

**Customs Service**

**19 CFR PART 162**

**[T.D. 88–43]**

## Customs Regulations Amendment Regarding the Forfeiture of Goods Seized Under 19 U.S.C. 1592

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations relating to the forfeiture of goods seized under the provisions of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), which deals with penalties for fraud, gross negligence and negligence. The amendment eliminates the provision for the summary forfeiture of goods seized thereunder and replaces it with a provision calling for the referral of the case to the Department of Justice for the institution of court proceedings. This action is taken in consideration of a decision of the U.S. Court of International Trade.

**EFFECTIVE DATE:** July 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** Edward T. Rosse, Penalties Branch, (202)–566–8317.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Customs Procedural Reform and Simplification Act of 1978 (Pub. L. 95–410), made numerous amendments to statutes administered by Customs which relate to fines, penalties, forfeitures, and liquidated damages for violation of Customs and navigation laws. Changes, as hereto relevant, were made to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), covering the entry of merchandise by fraud or negligence. Amendments to the Customs Regulations to establish new procedures and reflect these changes were contained in T.D. 79–160 which was published in the **Federal Register** on June 4, 1979 (44 FR 31950). Section 162.75(d)(3) regarding the forfeiture of goods seized under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), was added to the Customs Regulations in T.D. 79–160. It provided for referral of the case to the Department of Justice or summary forfeiture of the referenced seized goods depending on their value pursuant to section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607).

The U.S. Court of International Trade, in Slip. Op. 86–3 regarding *United States*

*v. One Red Lamborghini (VIN ZA 190000ELA12133) and One Black Lamborghini (VIN ZA 190000ELA12144)*, Court No. 85–10–01393, held that 19 U.S.C. 1592 does not provide a cause of action for forfeiture *in rem*. Based upon this, Customs has concluded that summary forfeiture may not be accomplished under such statutory provision regardless of the value of the seized merchandise. Accordingly, the Customs Regulations are being herein amended to reflect same. The amendment provides that, if neither a petition for relief is filed nor compliance is made with the penalty/seizure decision within the time provided by law, the case should be referred to the Department of Justice with a report of the facts for the institution of court proceedings. The amendment does not alter the regulations concerning the summary forfeiture of merchandise for violations of statutory provisions other than 19 U.S.C. 1592 or situations constituting violations under 19 U.S.C. 1592 and another statute. The amendment does not alter the regulatory provisions of § 162.75, Customs Regulations (19 CFR 162.75), regarding the seizure of merchandise for violation of 19 U.S.C. 1592 in prescribed circumstances.

**Inapplicability of Public Notice and Delayed Effective Date Provisions**

Inasmuch as the amendment merely conforms the Customs Regulations to the applicable statutory provision, as interpreted by the U.S. Court of International Trade, and, thereby, extends a benefit to owners of certain seized merchandise, it is in the public interest to make the regulatory change effective as soon as possible. Accordingly, notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B), and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

**Executive Order 12291**

Because this document will not result in a "major rule" as defined in E.O. 12291, Customs has not prepared a regulatory impact analysis.

**Regulatory Flexibility Act**

It is certified under section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(B)), that the regulation will not have a significant economic impact on a substantial number of small entities.

**Drafting Information**

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 162**

Administrative practice and procedure, Customs duties and inspection, Imports, Law enforcement, Penalties, Search warrants, Seizures and forfeitures, Reporting and recordkeeping requirements.

**Amendment to the Regulations**

Part 162, Customs Regulations (19 CFR Part 162), is amended as set forth below:

## PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for Part 162, as hereto pertinent, continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 1624.

2. Section 162.75 is amended by revising paragraph (d)(3) to read as follows:

**§ 162.75 Seizures limited under Section 592, Tariff Act of 1930, as amended.**

* * * * *

(d) *Release of seized merchandise—*

* * *

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with Part 171 of this chapter, nor compliance made with the decision within the time provided by law, the district director immediately shall report the facts and refer the case to the Department of Justice for the institution of court proceedings.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Approved: July 13, 1988.

**Salvatore R. Martoche,**

*Acting Assistant Secretary for Enforcement.*

[FR Doc. 88–16811 Filed 7–26–88; 8:45 am]

BILLING CODE 4820–02–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 799**

**[OPTS–42074A; FRL–3420–2]**

## Cumene; Final Test Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a final test rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of cumene (isopropyl benzene, CAS No. 98–82–8) to perform testing in the areas of health effects, environmental effects, and chemical fate. The health effects testing requirements include: Oral and inhalation comparative pharmacokinetics, subchronic inhalation toxicity, developmental toxicity, neurotoxicity, and, if triggered, two generation reproductive effects. The environmental effects and chemical fate testing requirements include: Acute toxicity to fish and invertebrates, biodegradation in an aquatic system, volatilization from an aquatic system, and, if triggered, chronic toxicity to fish and invertebrates.

**DATES:** In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern [daylight or standard as appropriate] time on August 10, 1988. This rule shall become effective on September 9, 1988. The incorporation by reference in the rule is approved by the Director of the Federal Register as of September 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** EPA is issuing a final test rule under section 4(a) of TSCA to require health effects, environmental effects, and chemical fate testing for cumene.

Public reporting burden for this collection of information is estimated to average 535 hours per response, inlcuding time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

1. Chief, Information Policy Branch (PM–223), EPA, 401 M St., SW., Washington, DC 20460.
2. Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

### I. Introduction

*A. Test Rule Development Under TSCA*

This final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require the development of data relevant to assessing the risk to health and environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop health effects, environmental effects, or chemical fate data if the Administrator makes certain findings as described in TSCA under section 4(a)(1) (A) or (B). Detailed discussions of the statutory section 4 findings are provided in the Agency's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

*B. Regulatory History*

The Interagency Testing Committee (ITC) designated cumene for priority testing consideration in its 15th Report, published in the **Federal Register** of November 29, 1984 (49 FR 46939). The ITC recommended that cumene be considered for health effects testing, including short-term genotoxicity, chronic toxicity including oncogenicity, teratogenicity, and reproductive effects; and environmental effects testing, including acute and chronic toxicity to saltwater and freshwater fish and invertebrates. The bases for these recommendations were: Annual production capacity of 4 to 5 billion pounds, potential for occupational and environmental exposure, and insufficient data to assess the risk of cumene exposure to human health and the environment.

EPA responded to the ITC's recommendations for cumene by issuing a proposed rule, published in the **Federal Register** of November 6, 1985 (50 FR 46104), which would require that cumene be tested for oral and inhalation comparative pharmacokinetics, oral and inhalation subchronic toxicity, mutagenicity, developmental toxicity, neurotoxicity, oncogenicity, acute and chronic toxicity to saltwater and freshwater fish and invertebrates, biodegradation in an aquatic system, volatilization from an aquatic system, and, if triggered, a two-generation reproductive effects study.

The proposed rule contained a chemical profile of cumene, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards.

**II. Response to Public Comments**

The Agency received written comments on the cumene proposed rule from the Chemical Manufacturers Association's (CMA) Cumene Program Panel (the Panel) on February 28, 1986 (Ref. 1). The Panel includes manufacturers and processors of cumene. Panel members are Texaco Chemical Company, Chevron Chemical Company, Dow Chemical Company, Champlin Petroleum Company, Koch Refining, Inc., Ashland Oil Company, US Steel Corporation, and Georgia Gulf Corporation.

Dow Chemical Company (Dow) also submitted written comments separately on an earlier date (February 13, 1986) that dealt specifically with the Agency's proposed guidelines for oral and inhalation pharmacokinetic studies (Ref. 2). The pharmacokinetic guidelines proposed by the Agency for cumene were subsequently referred to in the final Phase I test rule for 1,2-Dichloropropane published in the **Federal Register** of September 9, 1986 (51 FR 32107). Dow's comments on the proposed pharmacokinetic guidelines and the Agency's responses are summarized in the final test rule for 1,2-dichloropropane published in the **Federal Register** of October 5, 1987 (52 FR 37138). A detailed explanation of the Agency's position on Dow's comments on the proposed pharmacokinetic guidelines may be found in the support document (Ref. 3) prepared for EPA by Syracuse Research Corporation (SRC) and a memorandum written by EPA's Health and Environmental Review Division within the Office of Toxic Substances (Ref. 4). Dow's comments have resulted in modifications to the proposed pharmacokinetic guidelines and these modifications are described in the final test rule for 1,2-dichloropropane. A summary of the Panel's comments will be briefly stated in the following sections along with the Agency's responses to the comments.

*A. Comments on Oncogenicity and Mutagenicity Testing Requirements*

The Panel believes that the reported positive results of two short-term mutagenicity tests with cumene (cell transformation and unscheduled DNA synthesis (UDS) assays) conducted by the Gulf Life Sciences Center (Gulf, Ref. 5) do not justify the requirement for higher-tier mutagenicity and oncogenicity testing. The Panel's conclusion is based upon apparent technical difficulties with the assays, rendering the results equivocal at best. The Panel reported that it would repeat three of the four tests conducted by Gulf and also perform an Ames *Salmonella* assay and an *in vitro* cytogenetics assay on a voluntary basis.

EPA agrees that some doubt existed as to whether the Gulf results are positive or equivocal. Nevertheless, these data were suggestive of the possible genotoxicity of cumene and could not have been dismissed without additional evidence to the contrary. The results of five voluntary mutagenicity tests submitted to EPA by the Panel have provided the evidence needed to clarify the Gulf results (Ref. 6). Cumene was clearly negative in the cell transformation and UDS assays that were repeated by the Panel. The results were also negative for three other mutagenicity assays submitted by the Panel (*Salmonella* (Ames)), Chinese Hamster Ovary (CHO)/Hypoxanthine-Guanine Phosphoribosyl Transferase (HGPRT) mutation, and chromosome aberrations in CHO cells). Since all tier I tests proposed by the Agency or equivalent to those proposed by the Agency are already available and negative, including a micronucleus test of cumene from Gulf (Ref. 7) which the Panel did not repeat and which the Agency considers adequate, the Agency has reconsidered its proposed requirements for higher-tier mutagenicity and oncogenicity under both sections 4(a)(1) (A) and (B). The Agency has decided that no further testing in these areas is necessary at this time.

*B. Comments on the Exposure Finding*

The Panel commented that EPA has not properly justified its finding of significant or substantial exposure under section 4(a)(1)(B) of TSCA. The Panel believes that EPA has overstated cumene levels in the environment; that the contribution of manufacturing, processing, use, and distribution activities to cumene levels in the environment is negligible compared to cumene emissions from motor vehicle fuel exhaust, the quantities of cumene naturally present in the environment, and other cumene sources such as cigarette smoke and volatilization during the cooking of foods; and that exposure levels cited by EPA are, in any event, far too low to merit concern about cumene's potential risks to the general population.

1. *Estimation of air emissions from manufacturing and processing operations.* In the proposed rule for cumene, EPA estimated that approximately 3 million pounds of cumene is released annually to the environment from cumene manufacturing and processing facilities. This estimate was derived from emission rate data for devices such as vents, flanges, drains, valves, and pumps suspected of leaking cumene in the average cumene manufacturing and/or processing unit. Approximately 15 to 16 million people live in areas near cumene manufacturing and processing facilities. EPA is concerned about the increased levels of cumene to which this surrounding population is exposed. The Panel commented that EPA overstated the amount of cumene released from manufacturing and processing facilities.

The Panel presented a revised estimate of 843,750 pounds of cumene that is released annually as fugitive emissions from cumene manufacturing and processing. The Panel's figure is extrapolated from emissions data from 11 of 16 active cumene manufacturing and processing plants. These 11 plants account for just under 80 percent of the cumene produced, imported, and processed in 1984. Some 675,000 pounds of cumene was reported released from these 11 plants by the manufacturers and processors. The Panel assumed that the other 5 plants, which account for the remaining 20 percent of the cumene, released a proportional amount. This figure is 168,750 pounds, which yields a total fugitive emissions of 843,750 pounds of cumene annually.

EPA believes that the Panel's estimate does not include fugitive emissions of cumene from cumene processing facilities, especially from those which are located on the same site as the manufacturing facility. Since many of the cumene manufacturers also process cumene at the same site using a separate physical system, the fugitive emissions of cumene from processing, which are generally estimated to be twice those from manufacturing, should be included in the total emissions from a site. In addition, EPA believes that, in extrapolating a value for cumene emissions from plants for which emissions data are available to plants for which no data are available, the Panel has incorrectly assumed that cumene emissions are strictly proportional to the amount of cumene manipulated, regardless of whether the cumene was manufactured or processed. Furthermore, there was no consideration given to the age or size of the plant.

2. *Contribution of manufacturing and processing activities to overall cumene levels in the ambient air.* The Panel has stated that cumene emissions into the environment are primarily from gasoline and diesel fuel use and that industrial emission sources contribute a far smaller amount of this chemical to the environment on a national scale. In addition, the Panel pointed out there are many other sources of cumene, unrelated to cumene manufacturing and processing activities, such as cigarette smoke and volatization from cooking certain foods. The Panel believes that this confirms that emissions from cumene manufacturing and processing represent only an insignificant source of cumene in the environment.

EPA is aware of the many sources of cumene in the environment, and it also recognizes that distinguishing the contribution of one source from another is very difficult. EPA is also aware that, when the country is taken as a whole, land vehicle emissions are believed to contribute about five times as much cumene to the environment as cumene manufacturing and processing facilities. However, in communities close to cumene manufacturing and processing facilities, it appears that these facilities emit approximately 3.6 times the amount of cumene emitted by land vehicles exhaust and, hence, are the dominant source of atmospheric cumene (Ref. 8).

3. *The significance of air emission levels near cumene facilities.* The Panel has suggested that cumene concentrations in the atmosphere, resulting from cumene manufacturing and processing, even near manufacturing and processing facilities, are not significant. The Panel quotes the Test Rule Support Document worst case cumene concentrations calculated for a 1 and 5 km radius from the plant, which were 3.5 to 59.9 parts per billion (ppb) and from 0.6 to 3.1 ppb, respectively. The Panel points out that these levels may be seen during occasional excursions, but do not represent common air concentrations (Ref. 9). It goes on to say that the 1.4 ppb annual average 1 km from a plant and the 6 and 11 ppb cumene concentrations seen near a production facility in Deer Park, TX, both presented in the Test Rule Support Document, are more reasonable. In addition, these values are more in line with a modeling study done for Georgia Gulf's Bound Brook, NJ phenol facility, which also predicts a 1.4 ppb annual average at 1 km from the plant (Ref. 10). The worst case at this facility was calculated to be 34.8 ppb. The Panel also states that, considering the short half-life of cumene in the atmosphere, there is no reason to believe that, except for populations very close to the plant, there is any general population exposure. The Panel contends, finally, that the 15 to 16 million persons that EPA suggests are living in metropolitan areas near cumene manufacturing and use facilities is misleading. It suggests that, because of cumene's rapid atmospheric degradation kinetics, this value is too high, and only a small fraction of these people would be exposed to cumene concentrations above the ambient level.

The majority of monitoring data that are available for places without cumene manufacturing or processing facilities indicate cumene concentrations at or below 2 ppb in the air (Ref. 9). However, modeling and monitoring data developed for places that have cumene manufacturing and processing facilities indicate much higher concentrations of cumene in the air. Some of the highest monitored cumene concentrations (6 and 11 ppb) were near the Shell Oil Company manufacturing complex in Deer Park, TX, despite the fact that insufficient data are available to determine whether or not the facility was in operation at the time the sampling took place (Ref. 9). In addition, worst case cumene concentrations predicted via models, which are discussed above, for areas closest to cumene manufacturing and processing sites are significantly above the cumene levels detected in places without cumene manufacturing and processing facilities.

The more recent data on the half-life of cumene in the atmosphere, which the Agency referred to in the proposed test rule for cumene, appears to be on the order of one or two days. At this rate of removal, the cumene emissions from ongoing manufacturing and processing activities would be expected to be distributed over a large portion of the communities near the manufacturing and processing facilities depending on the prevailing atmospheric conditions.

The figure of 15 to 16 million persons estimated by EPA to be the total population living within a 50 km radius of all cumene manufacturing and processing facilities was derived using 1980 Census information (Ref. 11). The 1985 Census shows that approximately 13.5 million people live in areas near cumene manufacturing and processing facilities (Ref. 8). It should be noted that 97 percent of the cumene capacity and 66 percent of phenol capacity are concentrated in areas with a population of about 7 million people. Thus it appears that most exposure to cumene from cumene manufacturing and processing facilities occurs in a population of about 7 million people. Cumene manufacturing and processing facilities are predicted to emit some 2.58 million pounds of cumene per year into the atmosphere in these areas, based on the total cumene emissions predicted from all facilities. By comparison, automobiles in these areas are predicted to emit only 0.47 million pounds per year (Ref. 8). Also, since the half-life of cumene in the atmosphere is long enough to allow for some transport, the vast majority of atmospheric cumene in these areas must come from cumene manufacturing and processing facilities.

4. *Cumene levels in water.* The Panel has suggested that EPA, in presenting the data for wastewater, groundwater, and drinking water in the proposed test rule, has not given sufficient weight to the monitoring data which show that cumene is rarely detected in water and, even where found, is present in trace

amounts. The Panel concludes that: (1) When present, cumene concentrations are low; (2) for the most part, where present, cumene concentrations in water can be linked to a source of contamination that does not involve cumene manufacturing, processing, or transportation; and (3) cumene is not detected the majority of the time.

EPA finds the Panel's conclusions to be less than convincing, because monitoring data from waters near cumene manufacturing and processing facilities are not available for evaluation. Without this information, no conclusions can be made concerning the presence or absence of cumene or the levels of cumene that might be present in the waters near these facilities. EPA does know that a number of cumene-bearing waste streams are generated from industrial processes and that cumene is discharged to the aquatic environment (Ref. 12). Therefore, testing for the effects to aquatic populations near outfalls of cumene manufacturing and processing facilities is warranted.

5. *Potential for adverse effects at actual or expected cumene concentration levels in the environment.* The Panel believes that, even if EPA's estimates of environmental exposure resulting from cumene manufacturing and processing activities are correct, the existing data base for cumene allays any concern about cumene's potential risks to the general population.

EPA does not believe, as previously explained in the proposed rule, that the current health effects data base for cumene is adequate to allay the concern that cumene may present a threat of chronic adverse health effects at levels presently in the environment. The available acute and subchronic data are not sufficient to reasonably predict the dose-response curve for chronic human exposure.

6. *Significance of occupational exposure to cumene.* The Panel commented that worker exposure to cumene at manufacturing and processing facilities is neither "substantial" nor "significant" under section 4(a)(1)(B) of TSCA. To support this contention, the Panel presented a summary of its industrial hygiene survey which was submitted to EPA in April, 1985 (Ref. 13).

The Panel's survey presented information about a total of 739 employees who were reported as "having potential exposure" to cumene. Of these, 393 were routinely exposed and 346 were intermittently exposed. The personal exposure data, provided by manufacturers and processors of cumene, were from sampling done over the period 1973 to 1984. A total of 1,487 samples were reported. There were 6 samples in the range of 4.01 to 30 parts per million (ppm), 4 samples in the range of 3.01 to 4 ppm, 25 samples in the range of 1.01 to 2 ppm, and the remaining samples were below 1 ppm.

The Agency's review of the survey data identified several potential problems with the personal monitoring data submitted. It was reported in the Panel's survey that toluene, ethylbenzene, and water vapor were interferences for the National Institute of Occupational Safety and Health (NIOSH) charcoal tube method used for some of the personal sampling, and water vapor was an interference for the 3M 3500 OVM badge method used for the remainder of the sampling. Without some knowledge of the magnitude of these interferences, no assessment of the validity of these measurements can be made. If water vapor exerts substantial interference, then the entire set of data in the survey may be suspect. In addition, not all companies provided personal monitoring data for cumene. Nevertheless, the information provided by the survey is of concern to the Agency because of the potential for chronic adverse health effects to workers from exposure levels reported.

In conclusion, the Agency believes that occupational exposure to cumene, when considered along with the potential for general population exposure to cumene, meets the exposure criteria needed to make a section 4(a)(1)(B) finding under TSCA (i.e., the chemical is produced in substantial quantities and there is potential for substantial human exposure).

### *C. Comments on Scope of Health Effects Testing Requirements*

The Panel recommends that the testing program for cumene, if required, should be designed to address only the concerns relevant to occupational exposure conditions. Specifically, the Panel sees no need for testing by the oral or dermal routes of exposure and, therefore, no need for pharmacokinetic data to aid in route-to-route extrapolation for risk assessment. In addition, the Panel proposes modifications to the proposed developmental toxicity and reproductive effects testing and sees no need for a separate neurotoxicity test.

EPA has concluded that the general populations of areas in the vicinity of cumene manufacturing the processing facilities are potentially being exposed to elevated levels of cumene as a result of the releases of this chemical to the environment from these facilities. Therefore, the Panel's position that the testing program should be designed to focus only on workplace exposure to cumene appears unwarranted.

1. *Route of exposure.* The Panel believes that all testing should be conducted by inhalation, which it believes is the only relevant route of exposure.

EPA believes that inhalation is the most relevant route of human exposure, and, for this reason, it has required testing only with this route whenever that was adequate. Nevertheless, the potential for human exposure to cumene via the oral route is also of some concern to the Agency because monitoring data for ground and surface water near cumene manufacturing and processing facilities are not available. The water in these areas may have elevated concentrations of cumene due to releases of cumene-bearing effluents from the manufacturing and processing facilities. In addition, the use of the oral route is preferred by the Agency for reproductive toxicity testing, because the use of inhalation exposure for this testing presents numerous difficulties. For example, it has become routine to separate the postpartum dam from her neonates for 6 to 8 hours/day while she is exposed in an inhalation chamber. The separation of neonates from their mothers can have adverse effects on their growth and development. Therefore, it is difficult to interpret results of such studies when one does not know how much the study has been compromised by introducing a critical confounding factor. Furthermore, once the dams are returned to their cages, the offspring are eager to nurse since they have been deprived for 6 to 8 hours. This leads to the offspring licking the fur of the mothers and thereby being exposed directly to the test agent. The dose levels obtained this way may be too toxic for the neonates and could further complicate the findings of the study.

Pharmacokinetics testing with cumene is being required by both routes, oral and inhalation. EPA will use the pharmacokinetics data for extrapolating from one route to the other. Thus, the Agency's concern regarding the potential of exposure to cumene via the oral route will also be addressed without having to require the proposed 90-day oral subchronic study.

2. *Pharmacokinetics/metabolism testing.* The Panel recommends that only a very limited amount of pharmacokinetics testing with cumene (non-radiolabeled) be performed initially and further testing in this area be considered only if a significant toxic end-point is defined in the subchronic or chronic studies. In addition, the Panel believes that the availability of an

estimate for human absorption of inhaled cumene and metabolism data from earlier animal studies justifies dropping the bioavailability and metabolite identification testing requirements.

The Agency does not agree with the Panel's assumption that pharmacokinetic data are only useful for evaluating toxicity. Pharmacokinetics testing is being required to generate comparative, dose-dependent, oral and inhalation absorption, tissue distribution, bioaccumulation, metabolism, and excretion data. These data are needed for high to low dose, route-to-route, and species to species extrapolation. Furthermore, the Agency does not believe that the single report on human absorption and several animal studies conducted primarily in the 1950's satisfy the need for pharmacokinetics/metabolism data (Refs. 14, 15, and 16). An estimate of human absorption will not assist in the evaluation of toxicity studies conducted in the rat. Likewise, metabolism studies conducted without the benefit of a radiolabeled test compound or by state-of-the-art methods are of little value for risk assessment purposes. The elucidation of metabolic pathways and identification of metabolites would be more difficult using the Panel's recommendation that studies be performed with non-radiolabeled cumene.

3. *Developmental toxicity testing.* The Panel believes that EPA should require only a single species (rat), instead of a two-species, inhalation developmental toxicity study, because the purpose of this testing would be to confirm or refute an inadequate report in the eastern European literature (Ref. 17) which claims that cumene is teratogenic at relatively low doses in the rat.

EPA disagrees with the Panel. Experience has indicated that there may be considerable species variation in degree and sensitivity of response in evaluating the potential teratogenic effects to a chemical substance. Therefore, two species are generally required even if data indicate that one is positive. Concern remains that the second species may be more sensitive in terms of dose level needed to see adverse effects. This requirement is consistent with those of the EPA Office of Pesticide Programs and the Organization for Economic Cooperation and Development (OECD).

4. *Reproductive effects testing.* The Panel commented that EPA's proposed triggering criteria for the two-generation reproductive effects study are too inflexible and unscientific.

In response to the Panel's comments, EPA has revised the triggering criteria to increase their scientific reliability. In addition, if the results from the subchronic inhalation toxicity test indicate that the triggering criteria used for predicting reproductive effects are positive, EPA will hold a public program review before requiring the two-generation reproductive effects test. Public participation in this program review will be in the form of written public comments or a public hearing. Request for public comments or notification of a public meeting will be published in the **Federal Register**. Should the Agency determine, from the weight of evidence then available, that proceeding with the two-generation test is not warranted, the Agency would propose to repeal that test requirement and, after public comment, issue a final amendment to rescind the requirement.

5. *Neurotoxicity testing.* The Panel recommends that the separate neurotoxicity testing proposed for cumene not be required. Instead, the Panel contends that the requirement for neurotoxicity testing can be satisfied by modifying the protocol for the 90-day subchronic study.

It is the Agency's policy in implementing the TSCA section 4 to require the three proposed neurotoxicity tests, i.e., functional observation battery, motor activity, and neuropathology, in test rules based on a finding of substantial production and exposure. These tests are deemed necessary to adequately screen for neurotoxicity. The neurotoxicity tests may be combined with the subchronic toxicity test as long as the results of the various tests are not compromised.

### *D. Comments on Environmental Effects Testing*

The Panel believes that environmental concentration levels for cumene are not sufficient to justify a finding of "significant" environmental release. The Panel contends that, in light of cumene's limited solubility in fresh and saltwater, rapid biodegradability in freshwater, and propensity for volatilization from saltwater, the duration of exposure of aquatic organisms to cumene would be insignificant. In addition, the Panel contends that the data on cumene's acute toxicity to birds, fish, invertebrates, and microorganisms indicate an adequate margin of safety. Finally, the Panel has a number of testing recommendations which it wants EPA to consider if additional testing is to be required.

The Panel recommends that: (1) EPA should select test species which are readily available and for which there exists a good toxicology data base and; (2) EPA should tier chronic aquatic testing requirements.

EPA believes, as previously stated in response to comments on cumene levels in water, that cumene manufacturing and processing facilities discharge cumene-bearing wastewater to the environment. The detection of cumene in surface water also suggests that cumene has a long enough half-life to build up detectable concentrations in surface water systems (Refs. 8 and 9). The existing data on the acute toxicity of cumene to aquatic species show much variability, and the deficiencies and omission of adequate description in methodology prohibit the use of the available data in a comprehensive appraisal of the toxic potential of cumene in the aquatic environment (Ref. 9). Furthermore, the available aquatic toxicity data obtained using nominal concentrations and under static conditions are of limited value in the accurate estimation of the potential toxicity of volatile organic chemicals (i.e. cumene), because the toxicant in the solution has probably evaporated during the exposure. Therefore, in the absence of definitive acute toxicity data for aquatic organisms indicating the toxic potential of cumene, EPA finds it necessary to require environmental effects testing for cumene. EPA, however, agrees with the Panel's recommendations for test species, and the need for tiering chronic toxicity testing requirements. Therefore, EPA has modified the testing requirements accordingly (see Unit III. B.).

### *E. Comments on Chemical Fate Testing*

The Panel contends that EPA's proposed method of studying biodegradation of cumene in water, the Core-Chamber Method developed by Bourquin et al., is not a standard method for degradation as outlined in TSCA guidance and was not validated for application to TSCA, and that finding qualified laboratories for testing under Good Laboratory Practice (GLP) standards may be difficult. In addition, the Panel has suggested that the biodegradation and volatilization tests be run in the same test chambers, allowing for a more cost-effective experiment, since the Bourquin test apparatus can be modified to develop both types of data concurrently.

EPA believes that the Core-Chamber Method developed by Bourquin et al. (Ref. 18) is the best available method for evaluating the persistence of cumene in a combined sediment/water environment because: (1) It can be modified to minimize volatilization; (2) it provides reliable data on ultimate biodegradation; and (3) it is a cost-effective approach to simulating *in situ* biodegradation. In addition, since the test requires only readily available materials for the construction of the necessary aquaria, there should be no

difficulty in finding qualified laboratories to conduct the test, and GLP standards should be readily adaptable to the test. The final rule for tetrabromobisphenol A (TBBPA), published in the **Federal Register** of July 6, 1987 (52 FR 25219), also requires biodegradation testing using the Core-Chamber Method, and the test sponsor for TBBPA has found a qualified laboratory to conduct this test.

EPA does not believe combining the biodegradation and volatilization tests will allow for the development of the volatilization rate constant as discussed in Smith et al. (Ref. 19). This value is very important for aquatic environmental modeling efforts that the Agency may use for helping to elucidate the fate of cumene in different aquatic systems. However, these tests may be combined as long as the results of the two separate tests are not compromised.

## III. Final Test Rule for Cumene

### *A. Findings*

EPA is basing the final health effects, environmental effects, and chemical fate testing requirements for cumene on the authority of section 4(a)(1)(B) of TSCA.

EPA finds that cumene is produced in substantial quantities and that it enters the environment in substantial quantities, with the potential for resulting substantial human exposure to cumene, from its manufacture, processing, use, and disposal. The available data on cumene, discussed in Unit II. of this preamble and in Unit II. of the preamble to the proposed rule (50 FR 46104), shows that U.S. production of cumene in 1984 was reported to be 3.35 billion pounds, and an additional 339 million pounds was imported. Approximately 95 percent of the cumene manufactured and imported is used in the production of phenol and acetone. The remaining 5 percent is primarily exported and a small amount is also used in the production of alpha-methylstyrene and as a high-octane component in aviation fuel. The number of workers that are known to be exposed to cumene during its manufacturing and processing is between 700 and 800. The fugitive emissions of cumene to the atmosphere from manufacturing, processing, and use activities are estimated to be 3 million pounds per year. Although this amount is only approximately one-fifth the estimated atmospheric release of cumene from land transportation vehicles in the U.S., the industrial releases of cumene are concentrated in a few large metropolitan areas where the majority of cumene manfacturing and processing facilities are located and are predicted to be the more significant source of exposures to the general population living in the vicinity of these facilities. Approximately 13.5 million people live in the vicinity of cumene manufacturing and processing facilities. The releases of cumene to the aquatic environment are expected as a result of cumene-bearing wastewater discharged from cumene manufacturing and processing facilities.

EPA finds that there are insufficient data to reasonably determine or predict the pharmacokinetic, subchronic, developmental, neurotoxic and reproductive effects of human exposure to cumene resulting from the manufacture, processing, use, and disposal of the chemical. Furthermore, there are insufficient data to reasonably determine or predict the biodegradation and volatilization of cumene in aquatic systems and the acute and chronic toxicity of cumene to saltwater and freshwater fish and invertebrates resulting from the manufacture, processing, use, and disposal of the chemical substance. EPA finds that testing of cumene is necessary to develop such data. EPA believes that the data generated from this testing will be relevant to a determination as to whether the manufacture, processing, use, and disposal of cumene does or does not present an unreasonable risk of injury to human health or to the environment.

### *B. Required Testing and Test Standards*

On the basis of these findings, the Agency is requiring that health effects, environmental effects, and chemical fate testing be conducted for cumene in accordance with specific test guidelines set forth in 40 CFR Parts 795, 797, and 798, or other published test methods as specified in this test rule as enumerated in the following Table.

TABLE—REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR CUMENE

| Test | Test standard (40 CFR citation) | Reporting deadline for final report [1] | Number of interm (6-month) reports required |
|---|---|---|---|
| **HEALTH EFFECTS TESTS** | | | |
| 1. Oral and inhalation pharmacokinetics | 795.230 | 15 | 2 |
| 2. Subchronic inhalation toxicity | 798.2450 | 15 | 2 |
| 3. Inhalation developmental toxicity | 798.4350 | 15 | 2 |
| 4. Subchronic neurotoxicity: | | | |
| Functional observation battery | 798.6050 | 15 | 2 |
| Motor activity | 798.6200 | 15 | 2 |
| Neuropathology | 798.6400 | 15 | 2 |
| 5. Two-generation reproductive effects | 798.4700 | [2] 29 | 4 |
| **ENVIRONMENTAL EFFECTS TESTS** | | | |
| 1. Acute toxicity to *Daphnia magna* | 797.1300 | 12 | 1 |
| 2. Acute toxicity to *Mysidopsis bahia* | 797.1930 | 12 | 1 |
| 3. Acute toxicity to *Salmo gairdneri* | 797.1400 | 12 | 1 |
| 4. Acute toxicity to *Cyprinodon variegatus* | 797.1400 | 12 | 1 |
| 5. Chronic toxicity to *Daphnia magna* | 797.1330 | [2] 24 | 1 |
| 6. Chronic toxicity to *Mysidopsis bahia* | 797.1950 | [2] 24 | 1 |
| 7. Early life stage toxicity to *Salmo gairdneri* | 797.1600 | [2] 24 | 1 |
| 8. Early life stage toxicity to *Cyprinodon variegatus* | 797.1600 | [2] 24 | 1 |
| **CHEMICAL FATE TESTS** | | | |
| 1. Biodegradation in aquatic system | ([3]) | 12 | 1 |
| 2. Volatilization from aquatic system | ([4]) | 12 | 1 |

[1] Number of months after the effective date of the final rule except that the reporting deadline for the reproductive effects test is calculated from the date the test sponsor is notified.
[2] Triggered tests (Required only if the specified triggers are met).
[3] Bourquin, et al.
[4] Smith, et al.

Applicable revisions to these guidelines were proposed in the **Federal Register** of January 14, 1986 (51 FR 1522), and were promulgated in the **Federal Register** of May 20, 1987 (50 FR 19056).

1. The health effects tests to be conducted for cumene are: Oral and inhalation comparative pharmacokinetics, using the test guideline at 40 CFR 795.230 as specified in the final rule for 1,2-dichloropropane (52 FR 37138); subchronic inhalation toxicity using the test guideline at 40 CFR 798.2450, and as modified in 40 CFR 799.1285(c)(2)(i)(B); developmental toxicity, using the test guideline at 40 CFR 798.4350 and; neurotoxicity, using the test guidelines specified at 40 CFR 798.6050, 798.6200, and 798.6400. In addition, the Agency is requiring that a reproductive effects study be conducted if the results of the gross or histopathological evaluation of the reproductive tissues in male or female exposed animals from the subchronic exposure test show adverse effects or if significant alteration in reproductive organ weights occur. If the results from the subchronic study indicate adverse reproductive effects or altered organ weights, EPA will hold a public program review prior to requiring the initiation of the two-generation reproductive effects study.

2. Environmental effects tests to be conducted for cumene, in flow-through systems, are: Acute toxicity to the freshwater invertebrate, *Daphnia magna*, using the test guideline at 40 CFR 797.1300; acute toxicity to the saltwater invertebrate, *Mysidopsis bahia*, using the test guideline at 40 CFR 797.1930; acute toxicity to freshwater fish, *Salmo gairdneri*, using the test guideline at 40 CFR 797.1400; acute toxicity to saltwater fish, *Cyprinodon variegatus*, using the test guideline at 40 CFR 797.1400; chronic toxicity to *Daphnia magna* and *Mysidopsis bahia*, using the guidelines specified at 40 CFR 797.1330 and 797.1950, if the results of the acute toxicity tests required for these species show $EC_{50}$ or $LC_{50}$ of less than or equal to 1 mg/L; and early life stage toxicity to *Salmo gairdneri* and *Cyprinodon variegatus*, using the test guidelines at 40 CFR 797.1600, if the results of the acute toxicity tests required for these species show $LC_{50}$ of less than or equal to 1 mg/L.

3. Chemical fate tests to be conducted for cumene are: Biodegradation in an aquatic system, using the Core-Chamber Method described by Bourquin et al. (Ref. 18) and volatilization from an aquatic system, using the method described by Smith et al. (Ref. 19).

The Agency is requiring that the above-referenced TSCA Health Effects and Environmental Effects Test Guidelines and revisions and other cited methods be test standards for the purposes of the required tests for cumene. The TSCA test guidelines for health effects and aquatic toxicity testing specify generally accepted minimum conditions for determining health effects and aquatic organism toxicities for substances like cumene.

The required methods of Bourquin et al. (1977) for investigating the biodegradation rate of cumene in an aquatic system and Smith et al. for investigating the volatilization of cumene from an aquatic system specify generally accepted minimum conditions (Refs. 18 and 19). The Agency believes that these tests methods reflect the current state-of-the-science for testing the fate of chemicals such as cumene in the aquatic system.

*C. Test Substance*

EPA is requiring that cumene of at least 99 percent purity be used as the test substance. Commercial cumene is generally greater than 99 percent pure. In addition, radiolabeled $^{14}C$ cumene is required for the pharmacokinetics testing.

*D. Persons Required to Test*

Section 4(b)(3)(B) specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture and process the chemical are required to test if the exposures giving rise to the potential risk occur during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects resulting from manufacture, processing, use, and disposal of cumene, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process, cumene, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period are subject to the testing requirements contained in this final rule. While EPA has not identified any byproduct manufacturers of cumene, such persons are covered by the requirements of this test rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of

intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for cumene. As noted in Unit III.C., EPA is interested in evaluating the effects attributable to cumene and has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

*E. Reporting Requirements*

EPA requires that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days before initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Specific reporting requirements for each of the required tests are given in Table 1 and are as follows:

1. The oral and inhalation pharmacokinetics study, the subchronic inhalation study, the inhalation developmental toxicity study, and the neurotoxicity studies shall be completed and the final results submitted to EPA within 15 months of the effective date of the final test rule.

2. The two-generation reproductive effects study, if triggered, shall be completed and the final results submitted to EPA within 29 months following notification by EPA that testing has been triggered and is to be initiated.

3. The acute toxicity studies in saltwater and freshwater invertebrates and fish shall be completed and the final results submitted to EPA within 12 months of the effective date of the final test rule.

4. The chronic toxicity studies in saltwater and freshwater invertebrates and early life stage toxicity studies in saltwater and freshwater fish, if triggered, shall be completed and the final results submitted to EPA within 24 months of the effective date of the final test rule.

5. The biodegradation and volatilization studies in aquatic systems shall be completed and the final results submitted to EPA within 12 months of the effective date of the final test rule.

Interim progress reports for each of these studies shall be provided to the Agency at 6 month intervals after the effective date of this rule, or after a test is triggered, until the final report is submitted to EPA.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of cumene must report to EPA the first annual export or intended export of cumene to each country. EPA will notify the foreign country concerning the test rule for the chemical.

*F. Enforcement Provisions*

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA. Section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "* * * establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted. periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for cumene. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would apply primarily to manufacturers who fail to submit a letter of intent or an exemption request and continue manufacturing after the deadlines for such submissions. This provision would also apply to processors who fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator, as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement action. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

## IV. Economic Analysis of Final Rule

To assess the potential economic impact of the rule, EPA has prepared an economic analysis (Ref. 20) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates that costs of conducting the required testing and evaluates the potential four significant adverse economic impact as a result of these test costs by examining for market characteristics of cumene: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If there is no indication of adverse effect, no further economic analysis is to be performed; however, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the final rule for cumene are estimated to range from $822,148 to $1,157,214. In order to predict the financial decisionmaking practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 7 percent over a period of 15 years) range from $90,264 to $127,051. Based on the 1986 estimated production and import volume for cumene of 4.0 billion pounds, the unit test costs will range from about $0.002 to $0.003 cents per pound. In relation to the selling price of $0.18 per pound for cumene, these costs are equivalent to 0.01 to 0.02 percent of price.

Based on these costs and the uses of cumene, the economic analysis indicates that the potential for significant adverse economic impact as a result of this testing rule is low. This conclusion is based on the following observations:

1. The estimated unit test costs are very low, 0.02 percent of current price in the upper-bound case.
2. The overall demand for cumene appears relatively inelastic.
3. Five of ten manufacturers produce cumene at highly integrated plants where minor cost increases can be dispersed over cumene-derived chemicals.
4. The market expectations for cumene end use products appear favorable.

Refer to the economic analysis support document for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

## V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773) or the docket for this rule. On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 21) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP standards. However, the barriers faced by testing laboratories to gear up for these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the $C_9$ aromatic hydrocarbon fraction test rule at 40 CFR 799.2175. Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP standards.

## VI. Rulemaking Record

EPA has established a record for this rulemaking proceeding [docket number OPTS-42074A]. This includes:

*A. Supporting Documentation*

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of cumene to the priority list (49 FR 46931; November 29, 1984).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on cumene (49 FR 46739; November 28, 1984).

(c) Notice of EPA's proposed test rule on cumene (50 FR 46104; November 6, 1985).

(d) Notice of final rulemaking on data reimbursement (48 FR 31786; July 11, 1983).

(e) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(f) Notice of final rule on TSCA test guidelines (40 CFR Parts 796, 797, and 798; September 27, 1985).

(g) TSCA GLP standards (48 FR 53992; November 29, 1983).

(h) Notice of proposed rule on TSCA test guidelines revisions (51 FR 1522; January 14, 1986).

(i) Notice of final rule revising TSCA test guidelines (52 FR 19056; May 20, 1987).

(2) Communications consisting of:

(a) Written public comments.

(b) Transcript of public meeting.

(c) Summaries of phone conversations.

(3) Reports—published and unpublished factual materials including: Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

*B. References*

(1) CMA's Cumene Program Panel. Comments on EPA's Proposed Test Rule for Cumene submitted to Public Information Office, USEPA (February 28, 1986).

(2) Dow Chemical Company. Comments on EPA's proposed pharmacokinetics test submitted to Public Information Office, USEPA (February 13, 1986).

(3) Syracuse Research Corporation. "Response to General Comments on the Oral and Inhalation Pharmacokinetics Tests." Contract No. 68-02-4209 (January 22, 1987).

(4) U.S. Enviornmental Protection Agency. Response to Test Rules Development Branch (TRDB) request on review of SRC response to comments on pharmacokinetics tests. Interagency memorandum to Gary E. Timm, TRDB, from Health and Environmental Review Division (April 10, 1987).

(5) Gulf Oil Products Company. TSCA section 8(e) submission 8EHQ-1184-0536. Cell Transformation (Project No. 84-2131) and Unscheduled DNA Synthesis (Project No. 84-2130) tests of Cumene (November 21, 1984).

(6) CMA's Cumene Program Panel. Results from voluntary mutagenicity testing program submitted to TRDB (1987).

(7) Gulf Oil Products Company. "Micronucleus Test of Cumene," Project No. 84-2129 (May 14, 1985).

(8) Syracuse Research Corporation. "Technical Response to Public Comments: Cumene." Contract No. 68-02-4209 (September 18, 1986).

(9) Syracuse Research Corporation. "Test Rule Support Document: Cumene " Contract No. 68–02–4209 (June 13, 1985).

(10) CMA's Cumene Program Panel. Appendices to the comments on EPA's Proposed Test Rule for Cumene submitted to Public Information Office, USEPA (February 28, 1986).

(11) U.S. Environmental Protection Agency. Exposure to fugitive emissions of cumene. Interagency memorandum to Jennifer Orme, TRDB, from Design and Development Branch (March 29, 1985).

(12) Science Applications International Corporation. Letter from Martin Huppert to Beth Hesse of Dynamac Corporation concerning discharges of cumene to the environment (February 8, 1988).

(13) CMA's Cumene Program Panel. Industrial Hygiene Survey (April 1985).

(14) Senczuk, W. and Litewka, B. "Absorption of cumene through the respiratory tract and excretion of dimethylphenylcarbinol in urine." *British Journal of Industrial Medicine* 33: 100–105 (1976).

(15) Valette, G., and Cavier, R. "Absorption Percutanee et Constitution Chimique; Cas des hydrocarbures des alcools et des estes." *Archives of International Pharmacodynamics* 97: 232–240 (1954).

(16) Robinson, D., Smith, J.N., and Williams, R.T. "Studies in detoxication: the metabolism of alkylbenzenes, isopropylbenzene (cumene) and derivatives of hydrotropic acid." *Biochemical Journal.* 59: 153–159 (1955).

(17) Serebrennikov. O.A., and Ogleznev G.A. "Developmental anomalies in the mother-fetus system following exposure to petrochemical products." *Deposited Document.* 2867–78: 151–152 (1978).

(18) Bourquin, A.W., Hood, M.A., and Garnas, R.I., "An artificial microbial ecosystem for determining effects and fate of toxicants in a salt-marsh environment." *Developments in Industrial Microbiology* 18: 185–191 (1977).

(19) Smith, J.H., Bomberger, D.C., Haynes, D.L. "Prediction of the violatilization of high volatility chemicals from natural water bodies. *Environmental Science & Technology.* 14(11): 1332–1337 (1980).

(20) U.S. Environmental Protection Agency. Economic Impact Analysis of Final Test Rule for Cumene. Washington, DC, Office of Toxic Substances, USEPA (February 29, 1988).

(21) Mathtech, Inc. "Evaluation of TSCA guidelines for neurotoxicity testing: Impact of increased testing requirements." Prepared for Regulatory Impacts Branch, US EPA (April 14, 1987).

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

## VII. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96–511, December 11, 1980), and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

1. Chief, Information Policy Branch (PM–223), EPA, 401 M St., SW., Washington, DC 20460.
2. Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, (Attn: Desk Officer for EPA).

### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements, Incorporation by reference.

Dated: July 5, 1988.

**Victor J. Kimm,**

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR Part 799 is amended as follows:

## PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.1285 to read as follows:

### § 799.1285 Cumene.

(a) *Identification of test substance.* (1) Cumene (isopropylbenzene, CAS No. 98–82–8) shall be tested in accordance with this section.

(2) Cumene of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import or byproduct manufacture) or process or intend to manufacture or process cumene, other than as an impurity, after September 9, 1988, to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data, or submit exemption applications, as specified in this section, Subpart A of this part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects*—(1) *Oral and inhalation pharmacokinetic test*—(i) *Required testing.* Pharmacokinetic testing using the oral and inhalation routes shall be conducted with cumene in accordance with § 795.230 of this chapter.

(ii) *Reporting requirements.* (A) The pharmacokinetic testing shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(2) *Subchronic inhalation toxicity*—(i) *Required testing.* (A) A subchronic inhalation toxicity test shall be conducted with cumene in accordance with § 798.2450 of this chapter except for the provisions of paragraphs (d)(1)(iv), (5), (6), (9), (12)(iii), (13)(i), and (e)(3)(iv)(D) of § 798.2450.

(B) For the purpose of this section, the following provisions also apply.

(*1*) *Animal selection—Numbers.* At least 30 animals (15 males and 15

females) shall be used for each test group.

(2) *Exposure conditions.* The animals shall be exposed to the test substance 6 hours per day, 5 days per week for 13 weeks (65 days of exposure).

(3) *Observation of animals.* Animals shall be weighed weekly, and their food and water consumption shall also be measured weekly.

(4) *Gross pathology.* The following additional organs shall be preserved in a suitable medium for future histopathological examination: The vas deferens, the oviducts, and the vagina.

(5) *Histopathology.* The accessory genital organs (epididymis), prostate, seminal vesicles) and the vagina shall be examined histopathologically. In addition, preparations of testicular and associated reproductive organ samples for histology shall follow the recommendations of Lamb and Chapin (1985) under paragraph (f)(1) of this section, or an equivalent procedure, with particular attention directed toward achieving optimal quality in the fixation and embedding, and including an evaluation of the spermatogenic pattern. Spermatid counts shall be performed as described by Johnson et al. (1980) and Blazak et al. (1985) under paragraphs (d) (2) and (3) of this section or an equivalent procedure. Epididymal sperm count and sperm morphology shall also be done.

(6) *Test report—Individual animal data.* The specific test report information shall include "Food and water consumption data."

(ii) *Reporting requirements.* (A) The subchronic toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(3) *Inhalation developmental toxicity*—(i) *Required testing.* An inhalation developmental toxicity test shall be conducted with cumene in accordance with § 798.4350 of this chapter.

(ii) *Reporting requirements.* (A) The inhalation developmental toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(3) *Neurotoxicity*—(i) *Required testing.* (A) Neurotoxicity tests shall be conducted with cumene by inhalation in accordance with §§ 798.6050, 798.6200, and 798.6400 of this chapter. Each test shall be performed for a period of 90 days.

(ii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and the final reports submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports for each test shall be submitted to EPA at 6-month intervals beginning 6 months after the effective date of the final rule, until the applicable final report is submitted to EPA.

(5) *Two-generation reproductive effects*—(i) *Required testing.* A two-generation reproductive effects test shall be conducted with cumene in accordance with § 798.4700 of this chapter if either the gross or histopathological evaluation of the reproductive tissues in male or female exposed animals from the subchronic exposure test specified in paragraph (c)(2) of this section shows adverse effects or if significant alteration in reproductive organ weights occurs in the subchronic exposure test which can be related to exposure to cumene. EPA will hold a public program review, following submission of the subchronic toxicity test, to decide whether the two-generation reproductive effects test is to be required. If required, the test should be conducted using the oral route of exposure.

(ii) *Reporting requirements.* (A) The two-generation reproductive effects test shall be completed and the final report submitted to EPA within 29 months following EPA's notification to the test sponsor, through certified letter or **Federal Register** notice, that testing shall be initiated.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the date of EPA's notification to the test sponsor that testing shall be initiated, until the final report is submitted to EPA.

(d) *Environmental effects*—(1) *Aquatic acute toxicity*—(i) *Required testing.* Saltwater and freshwater invertebrate and vertebrate tests, in a flow-through system, shall be conducted with cumene on the following organisms: *Daphnia magna,* to be conducted in accordance with § 797.1300 of this chapter; *Mysidopsis bahia* to be conducted in accordance with § 797.1930 of this chapter; and *Salmo gairdneri* and *Cyprinodon variegatus* to be conducted in accordance with § 797.1400 of this chapter. The total and dissolved (e.g. filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test and in each test chamber at 0, 24, and 48 hours (*Daphnia magna*) and 0, 48, and 96 hours (*Mysidopsis bahia, Salmo gairdneri,* and *Cyprinodon variegatus*) to ascertain whether it is in solution.

(ii) *Reporting requirements.* (A) The acute toxicity tests shall be completed and the final reports submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report for each acute test shall be submitted to EPA 6 months after the effective date of the final rule.

(2) *Aquatic chronic toxicity*—(i) *Required testing.* Aquatic chronic toxicity tests, in a flow-through system, shall be conducted with cumene on *Daphnia magna,* in accordance with § 797.1330 of this chapter, and *Mysidopsis bahia,* in accordance with § 797.1950 of this chapter, if the results of the acute toxicity tests conducted for those species under paragraph (d)(1) of this section show $EC_{50}$ or $LC_{50}$ of less than or equal to 1 mg/L. The total and dissolved (e.g. filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test and in each test chamber and the delivery chamber at 0, 7, 14, and 21 days to ascertain whether it is in solution.

(ii) *Reporting requirements.* (A) The chronic toxicity tests, if required under paragraph (d)(2)(i) of this section, shall be completed and the final reports submitted to EPA within 24 months of the effective date of the final rule.

(B) An interim progress report for each chronic test shall be submitted to EPA 18 months after the effective date of the final rule.

(3) *Aquatic early life stage toxicity*—(i) *Required testing.* Aquatic early life stage toxicity tests, in a flow-through system, shall be conducted with cumene on *Salmo gairdneri* and *Cyprinodon variegatus,* in accordance with § 797.1600 of this chapter, if the results of the acute toxicity tests conducted for those species under paragraph (d)(1) of this section show $LC_{50}$ of less than or equal to 1 mg/L.

(ii) *Reporting requirements.* (A) The early life stage toxicity tests, if required under paragraph (d)(3) of this section, shall be completed and the final reports submitted to EPA within 24 months of the effective date of the final rule.

(B) An interim progress report for each test shall be submitted to EPA 18 months after the effective date of the final rule.

(e) *Chemical fate*—(1) *Biodegradation*—(i) *Required testing.* Biodegradation testing in an aquatic system shall be conducted with cumene

in accordance with the method described in an article by Bourquin et al. entitled "An Artificial Microbial Ecosystem for Determining Effects and Fate of Toxicants in a Salt-Marsh Environment," reprinted from Vol. 18 of the Society of Industrial Microbiology's *Developments in Industrial Microbiology*, Chapter 11, 1977, which is incorporated by reference. The method is available for public inspection at the Office of the Federal Register, Rm. 8301, 11th and L St., NW., Washington, DC 20408, and copies may be obtained from the EPA TSCA Public Docket Office (TS–793), Rm. G–004 Northeast Mall, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. The method is incorporated as it exists on the effective date of this rule and a notice of any change to the method will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) The biodegradation test in an aquatic system shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(2) *Volatilization*—(i) *Required testing.* A test for volatilization from aquatic system shall be conducted with cumene in accordance with the method described in an article by Smith et al. entitled "Prediction of the Volatilization Rates of High-Volatility Chemicals from Natural Water Bodies," published in Vol. 14, Number 11, of the American Chemical Society's *Environmental Science & Technology*, 1980, which is incorporated by reference. The method is available for public inspection at the Office of the Federal Register, Rm. 8301, 11th and L St., NW., Washington, DC 20408, and copies may be obtained from the EPA TSCA Public Docket Office (TS–793), Rm. G–004 Northeast Mall, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. The method is incorported as it exists on the effective date of this rule and a notice of any change to the method will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) The volatilization test in an aquatic system shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(f) *References.* For additional background information, the following references should be consulted:

(1) Lamb, J.C. and Chapin, R.E. "Experimental models of male reproductive toxicology," *Endocrine Toxicology*. Eds. J.A. Thomas, K.S. Korach, J.A. McLachlan. New York, NY: Raven Press, pp. 85–115 (1985).

(2) Johnson, L., Petty, C.S., and Neaves, W.B. "A comparative study of daily sperm production and testicular composition in humans and rats," *Biology of Reproduction*, 22:1233–1243. (1980).

(3) Blazak, W.F., Ernest, T.L., and Stewart, B.E. "Potential indicators of reproductive toxicity: Testicular sperm production and epididymal sperm number, transit time and motility in Fischer 344 rats," *Fundamental and Applied Toxicology*, 5:1097–1103 (1985).

(g) *Effective date.* (1) The effective date of this final rule for cumene is September 9, 1988.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on September 9, 1988.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 88–16752 Filed 7–26–88; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6685

[AK–932–08–4220–10; A–067673]

### Partial Revocation of Public Land Order No. 245 for Selection of Lands by the State of Alaska; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes a public land order (PLO) insofar as it affects 34.84 of public lands reserved for townsite purposes. The lands are no longer needed for the purpose for which they were withdrawn. This action will also classify the lands as suitable for selection by the State of Alaska, if such lands are otherwise available. If not selected by the State, the lands will become subject to the terms and conditions of PLO No. 5180, as amended, and will remain closed to location for metalliferous minerals until a further opening order is published.

**EFFECTIVE DATE:** July 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 245 is hereby revoked insofar as it affects the following described lands:

**Moose Pass Townsite**

U.S. Survey 2876, lot 9, Block 2; lot 1, Block 3 and Blocks 7 and 8.

The areas described aggregate 34.84 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above, for a period of ninety-one (91) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will be subject to the terms and conditions of PLO No. 5180, as amended, and any other individuals of record, and shall remain closed to location for metalliferous mining until a further opening order is published.

July 12, 1988.

**J. Steven Griles,**

*Assistant Secretary of the Interior.*

[FR Doc. 88–16910 Filed 7–26–88; 8:45 am]

BILLING CODE 4310–JA–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR PART 64

[Docket No. FEMA 6802]

### Suspension of Community Eligibility; California, et al.

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATE:** As shown in fifth column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472 (202) 646–2717.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

**PART 64—[AMENDED]**

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001, *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

**§ 64.6 List of eligible communities.**

| State | Community name | County | Community No. | Effective date |
|---|---|---|---|---|
| California | Atascadero, city of | San Louis Obispo | 060700 | Aug. 4, 1988. |
| Do | Avalon, city of | Los Angeles | 060096 | Do. |
| Do | Barstow, city of | San Bernardino | 060271 | Do. |
| Do | Cloverdale, city of | Sonoma | 060376 | Do. |
| Do | Corona, city of | Riverside | 060250 | Do. |
| Do | Crescent City, city of | Del Norte | 060039 | Do. |
| Do | Danville, city of | Contra Costa | 060707 | Do. |
| Do | Del Mar, city of | San Diego | 060288 | Do. |
| Do | Fort Jones, city of | Siskiyou | 060365 | Do. |
| Do | Fountain Valley, city of | Orange | 060218 | Do. |
| Do | Fremont, city of | Alameda | 065028 | Do. |
| Do | Fresno, city of | Fresno | 065029 | Do. |
| Do | Unincorporated areas | Humboldt | 060060 | Do. |
| Do | do | Imperial | 060065 | Do. |
| Do | Imperial Beach, city of | San Diego | 060291 | Do. |
| Do | Lafayette, city of | Contra Costa | 065037 | Do. |
| Do | Los Angeles, city of | Los Angeles | 060137 | Do. |
| Do | Lynnwood, city of | Los Angeles | 060635 | Do. |
| Do | Unincorporated areas | Nevada | 060210 | Do. |
| Do | Newark, city of | Alameda | 060009 | Do. |
| Do | Unincorporated areas | Placer | 060239 | Do. |
| Do | Unincorporated areas | Plumas | 060244 | Do. |
| Do | Portola Valley, city of | San Mateo | 065052 | Do. |

| State | Community name | County | Community No. | Effective date |
|---|---|---|---|---|
| Do. | Unincorporated areas | Sacramento | 060262 | Do. |
| Do. | San Dimas, city of | Los Angeles | 060154 | Do. |
| Do. | Santa Barbara, city of | Santa Barbara | 060335 | Do. |
| Do. | Unincorporated areas | Solano | 060631 | Do. |
| Do. | Sonoma, city of | Sonoma | 060383 | Do. |
| Do. | Tehachapi, city of | Kern | 060084 | Do. |
| Do. | Whittier, city of | Los Angeles | 060189 | Do. |
| Oklahoma | Alderson, town of | Pittsburg | 400257 | Do. |
| Do. | Allen, town of | Pontotoc | 400174 | Do. |
| Do. | Arkoma, town of | LaFlore | 400343 | Do. |
| Do. | Bennington, town of | Bryan | 400260 | Do |
| Do. | Billings, town of | Noble | 400347 | Do. |
| Do. | Bowlegs, town of | Seminole | 400468 | Do |
| Do. | Brooksville, city of | Pottawatomie | 400469 | Do. |
| Do. | Unincorporated areas | Bryan | 400482 | Do. |
| Do. | Cameron, town of | LaFlore | 400271 | Do. |
| Do. | Canton, town of | Blaine | 400012 | Do. |
| Do. | Cleo Springs, town of | Major | 400280 | Do. |
| Do. | Commerce, city of | Ottawa | 400156 | Do |
| Do. | Covington, town of | Garfield | 400362 | Do |
| Do. | Coyle, town of | Logan | 400097 | Do. |
| Do. | Crescent, town of | Logan | 400098 | Do. |
| Do. | Elmore City, town of | Garvin | 400374 | Do. |
| Do. | Forest Park, city of | Oklahoma | 400379 | Do |
| Do. | Freedom, town of | Woods | 400227 | Do |
| Do. | Hartshorne, city of | Pittsburg | 400387 | Do. |
| Do. | Hoffman, town of | Okmulgee | 400285 | Do. |
| Do. | Keota, town of | Haskell | 400391 | Do. |
| Do. | Langston, town of | Logan | 400297 | Do. |
| Do. | Lehigh, town of | Coal | 400299 | Do. |
| Do. | Lone Grove, town of | Carter | 400395 | Do. |
| Do. | Manitou, town of | Tillman | 400302 | Do. |
| Do. | McCurtain, city of | Haskell | 400397 | Do. |
| Do. | Milburn, town of | Johnston | 400306 | Do. |
| Do. | Moffett, town of | Sequoyah | 400196 | Do. |
| Do. | Oakland, town of | Marshall | 400313 | Do. |
| Do. | Picher, city of | Ottawa | 400159 | Do. |
| Do. | Pond Creek, city of | Grant | 400433 | Do. |
| Do. | Ralston, town of | Pawnee | 400164 | Do. |
| Do. | Randlett, town of | Cotton | 400318 | Do. |
| Do. | Red Bird, town of | Wagoner | 400321 | Do. |
| Do. | Reydon, town of | Roger Mills | 400322 | Do. |
| Do. | Roff, town of | Pontotoc | 400176 | Do. |
| Do. | Sasakwa, town of | Seminole | 400191 | Do. |
| Do. | Savanna, town of | Pittsburg | 400440 | Do. |
| Do. | Unicorporated areas | Seminole | 400497 | Do. |
| Do. | Shattuck, town of | Ellis | 400061 | Do. |
| Do. | Shidler, town of | Osage | 400401 | Do. |
| Do. | South Coffeyville, town of | Nowata | 400411 | Do. |
| Do. | Stringtown, town of | Atoka | 400239 | Do. |
| Do. | Watts, town of | Adair | 400002 | Do. |
| Do. | Wright City, city of | McCurtain | 400109 | Do. |
| Arkansas | Allport, town of | Lonoke | 050379 | Aug. 16, 1988. |
| Do. | Unincorporated areas | Baxter | 050010 | Do. |
| Do. | Buckner, city of | Lafayette | 050115 | Do. |
| Do. | Cotton Plant, city of | Woodruff | 050231 | Do. |
| Do. | Damascus, town of | Faulkner | 050404 | Do. |
| Do. | Fulton, town of | Hempstead | 050086 | Do. |
| Do. | Gassville, city of | Baxter | 050243 | Do. |
| Do. | Gillham, city of | Sevier | 050244 | Do. |
| Do. | Jasper, city of | Newton | 050160 | Do. |
| Do. | Knobel, town of | Clay | 050032 | Do. |
| Do. | London, town of | Pope | 050340 | Do. |
| Do. | Louann, town of | Quachita | 050262 | Do. |
| Do. | Lynn, town of | Lawrence | 050263 | Do. |
| Do. | Midland, town of | Sebastian | 050203 | Do. |
| Do. | Ola, city of | Yell | 050357 | Do. |
| Do. | Palestine, city of | St. Francis | 050359 | Do. |
| Do. | Parkin, city of | Cross | 050059 | Do. |
| Do. | Perryville, city of | Perry | 050362 | Do. |
| Do. | Pollard, city of | Clay | 050036 | Do. |
| Do. | Prattsville, town of | Grant | 050279 | Do. |
| Do. | Reed, town of | Desha | 050070 | Do. |
| Do. | Sherrill, town of | Jefferson | 050110 | Do. |
| Do. | Unincorporated areas | St. Francis | 050184 | Do. |
| Do. | Tupelo, city of | Jackson | 050106 | Do |
| Do. | Tyronza, city of | Poinsett | 050371 | Do. |
| California | Alturas, city of | Modoc | 060193 | Do. |
| Do. | Brisbane, city of | San Mateo | 060314 | Do. |
| Do. | Calexico, city of | Imperial | 060067 | Do |
| Do. | California City, city of | Kern | 060440 | Do. |

| State | Community name | County | Community No. | Effective date |
|---|---|---|---|---|
| Do | East Palo Alto, city of | San Mateo | 060706 | Do. |
| Do | Fairfax, city of | Marin | 060175 | Do. |
| Do | Fillmore, city of | Ventura | 060415 | Do. |
| Do | Hercules, city of | Contra Costa | 060434 | Do. |
| Do | Holtville, city of | Imperial | 060070 | Do. |
| Do | Laguna Beach, city of | Orange | 060223 | Do. |
| Do | Los Gatos, city of | Santa Clara | 060343 | Do. |
| Do | Millbrae, city of | San Mateo | 065045 | Do. |
| Do | Moorpark, city of | Ventura | 060712 | Do. |
| Do | Unincorporated areas | Napa | 060205 | Do. |
| Do | Newman, city of | Stanislaus | 060388 | Do. |
| Do | Oakdale, city of | Stanislaus | 060389 | Do. |
| Do | Pacifica, city of | San Mateo | 060323 | Do. |
| Do | Placerville, city of | El Dorado | 060041 | Do. |
| Do | Pleasanton, city of | Alameda | 060012 | Do. |
| Do | Redondo Beach, city of | Los Angeles | 060150 | Do. |
| Do | Redwood City, city of | San Mateo | 060325 | Do. |
| Do | St. Helena, city of | Napa | 060208 | Do. |
| Do | San Carlos, city of | San Mateo | 060327 | Do. |
| Do | Sanger, city of | Fresno | 060054 | Do. |
| Do | San Juan Bautista, city of | San Benito | 060269 | Do. |
| Do | San Leandro, city of | Alameda | 060013 | Do. |
| Do | San Marcos, city of | San Diego | 060296 | Do. |
| Do | Unincorporated areas | Santa Clara | 060337 | Do. |
| Do | Santa Maria, city of | Santa Barbara | 060336 | Do. |
| Do | Scotts Valley, city of | Santa Cruz | 060356 | Do. |
| Do | Seaside, city of | Monterey | 060203 | Do. |
| Do | Unincorporated areas | Shasta | 060358 | Do. |
| Do | Tiburon, city of | Marin | 060430 | Do. |
| Do | Walnut Creek, city of | Contra Costa | 065070 | Do. |
| Do | Unincorporated areas | Yolo | 060423 | Do. |
| Idaho | Malta, town of | Cassia Co | 160197 | Do. |
| Guam | Guam, territory of | | 660001 | Do. |
| Hawaii | Unincorporated areas | Hawaii | 155166 | Do. |
| Do | ....do | Maui | 150003 | Do. |
| Louisiana | ....do | *Beauregard | 220026 | Do. |
| Do | Benton, town of | *Bossier | 220032 | Do. |
| Do | Cankton, village of | *St. Landry | 220157 | Do. |
| Do | Elizabeth, town of | *Allen | 220324 | Do. |
| Do | Grand Cane, village of | *Desoto | 220291 | Do. |
| Do | Independence, town of | *Tangipahoa | 220209 | Do. |
| Do | Iota, town of | *Acadia | 220005 | Do. |
| Do | Jeanerette, city of | *Iberia | 220080 | Do. |
| Do | Mansura, town of | *Avoyelles | 220255 | Do. |
| Do | Merryville, town of | *Beauregard | 220028 | Do. |
| Do | Montpelier, village of | *St. Helena | 220300 | Do. |
| Do | Mound, village of | *Madison | 220124 | Do. |
| Do | Newellton, town of | *Tensas | 220215 | Do. |
| Do | Pine Prairie, village of | *Evangeline | 220068 | Do. |
| Do | Pollock, town of | *Grant | 220305 | Do. |
| Do | Tickfaw, city of | *Tangipahoa | 220214 | Do. |
| Do | Youngsville, village of | *Lafayette | 220358 | Do. |
| Do | Zwolle, town of | *Sabine | 220353 | Do. |
| New Mexico | Clayton, town of | Union | 350084 | Do. |
| Do | Espanola, city of | Santa Fe/Rio Arriba | 350052 | Do. |
| Do | Hurley, town of | Grant | 350021 | Do. |
| Do | Logan, village of | Quay | 350105 | Do. |
| Do | Lordsburg, city of | Hidalgo | 350026 | Do. |
| Do | Los Ranchos de Albuquerque | Bernalillo | 350123 | Do. |
| Texas | Alto, city of | Cherokee | 480740 | Do. |
| Do | Alvarado, city of | Johnson | 480397 | Do. |
| Do | Anton, city of | Hockley | 480353 | Do. |
| Do | Baird, town of | Callahan | 480722 | Do. |
| Do | Balmorhea, city of | Reeves | 480537 | Do. |
| Do | Bartlett, city of | Bell | 480707 | Do. |
| Do | Bayview, town of | Cameron | 480102 | Do. |
| Do | Unincorporated areas | Bowie | 481194 | Do. |
| Do | Brackettville, city of | Kinney | 480422 | Do. |
| Do | Unincorporated areas | Brooks | 481196 | Do. |
| Do | Browndell, town of | Jasper | 481542 | Do. |
| Do | Cameron, city of | Milam | 480476 | Do. |
| Do | Clifton, city of | Bosque | 480052 | Do. |
| Do | Unincorporated areas | Colorado | 480144 | Do. |
| Do | Daisetta, town of | Liberty | 481101 | Do. |
| Do | Dublin, city of | Erath | 480219 | Do. |
| Do | Unincorporated areas | Duval | 480202 | Do. |
| Do | Edcouch, city of | Hidalgo | 480337 | Do. |
| Do | Ferris, city of | Ellis | 481076 | Do. |
| Do | Franklin, town of | Robertson | 480990 | Do. |
| Do | Friona, city of | Parmer | 480523 | Do. |
| Do | Fruitvale, city of | Van Zandt | 481041 | Do. |

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| State | Community name | County | Community No. | Effective date |
|---|---|---|---|---|
| Do. | Unincorporated areas | Gregg | 480261 | Do. |
| Do. | Groveton, city of | Trinity | 481032 | Do. |
| Do. | Gruver, city of | Hansford | 481104 | Do. |
| Do. | Unincorporated areas | Haskell | 480851 | Do. |
| Do. | Hawley, town of | Jones | 480685 | Do. |
| Do. | Hebron, city of | Denton | 481495 | Do. |
| Do. | Hidalgo, town of | Hidalgo | 480334 | Do. |
| Do. | Holliday, city of | Archer | 480590 | Do. |
| Do. | Unincorporated areas | Hudspeth | 480361 | Do. |

*Parish.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-16884 Filed 7-26-88; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 64

**[Docket No. FEMA 6801]**

## Suspension of Community Eligibility; New Hampshire et al.

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The third date ("Susp.") listed in the third column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

### PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

**§ 64.6 List of eligible communities.**

| State | Location | Community No. | Effective dates of authorization/ cancellation of sale of Flood Insurance in community | Current Effective map date | Date certain Federal assistance no longer available in Special Flood Hazard Areas |
|---|---|---|---|---|---|
| **Region I—Minimal Conversion** | | | | | |
| New Hampshire | Middleton, town of, Stafford County. | 330022 | Oct. 30, 1984, Emerg.; Aug. 1, 1988, Reg.; Aug. 1, 1988, Susp. | 8-1-88 | Aug. 1, 1988. |
| **Region VI** | | | | | |
| Texas | San Augustine County, unincorporated areas. | 481183 | Dec. 21, 1978, Emerg.; Aug. 1, 1988, Reg.; Aug. 1, 1988, Susp. | 8-1-88 | Aug. 1, 1988. |
| **Region I—Regular Conversions** | | | | | |
| Maine | Madison, town of, Somerset County. | 230126 | July 3, 1975, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| **Region III** | | | | | |
| Pennsylvania | Glasgow, borough of, Beaver County. | 420112 | Mar. 9, 1977, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Do | Southampton, township of, Cumberland County. | 421587 | Feb. 1, 1977, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Do | South Newton, township of, Cumberland County. | 421586 | Apr. 25, 1977, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Do | Tulpehocken, township of, Berks County. | 421115 | Apr. 19, 1978, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Do | West Carroll, township of, Cambria County. | 421449 | June 15, 1976, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| West Virginia | Berkeley County, unincorporated areas. | 540282 | July 29, 1975, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| **Region IV** | | | | | |
| Florida | Union County, unincorporated areas. | 120422 | Aug. 22, 1979, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Georgia | Fayetteville, city of, Fayette County. | 130431 | May 25, 1976, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Mississippi | Copiah County, unincorporated areas. | 280221 | May 2, 1979, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Do | Georgetown, town of Copiah County. | 280045 | Oct. 16, 1979, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| **Region V** | | | | | |
| Illinois | Lemont, village of, Cook County. | 170117 | Mar. 3, 1978, Emerg.; June 30, 1976, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Minnesota | Wright County, unincorporated areas. | 270534 | Oct. 6, 1972, Emerg.; May 1, 1978, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Wisconsin | Cassville, village of, Grant County. | 555548 | Apr. 23, 1971, Emerg.; Feb. 19, 1972, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| **Region VIII** | | | | | |
| Colorado | Boulder, city of, Boulder County. | 080024 | Apr. 16, 1971, Emerg.; July 17, 1978, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| **Region IX** | | | | | |
| California | Kings County, unincorporated areas. | 060086 | July 8, 1975, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Do | National City, city of, San Diego County. | 060293 | Jan. 28, 1972, Emerg.; Feb. 15, 1979, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |

| State | Location | Community No. | Effective dates of authorization/ cancellation of sale of Flood Insurance in community | Current Effective map date | Date certain Federal assistance no longer available in Special Flood Hazard Areas |
|---|---|---|---|---|---|
| **Region X** | | | | | |
| Idaho | Teton County, unincorporated areas. | 160230 | Apr. 8, 1983, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Oregon | Pilot Rock, city of Umatilla County. | 410212 | July 5, 1974, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| Washington | Ritzville, city of, Adams County. | 530005 | Feb. 14, 1975, Emerg.; Aug. 4, 1988, Reg.; Aug. 4, 1988, Susp. | 8-4-88 | Aug. 4, 1988. |
| **Region I** | | | | | |
| Connecticut | Cornwall, town of, Litchfield County. | 090045 | July 25, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Sharon, town of, Litchfield County. | 090053 | Jan. 17, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region II** | | | | | |
| New York | Camden, village of, Oneida County. | 360993 | Dec. 19, 1974, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Spring Valley, village of, Rockland County. | 365344 | Oct. 29, 1971, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region III** | | | | | |
| Pennsylvania | Clay, township of, Huntingdon County. | 421687 | Apr. 25, 1977, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Delaware Water Gap, borough of, Monroe County. | 420690 | Mar. 3, 1980, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region IV** | | | | | |
| Florida | Gilchrist County, unincorporated areas. | 120094 | Sept. 3, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Mississippi | Clarke County, unincorporated areas. | 280220 | Apr. 26, 1979, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| North Carolina | Ashe County, unincorporated areas. | 370007 | Aug. 4, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Lenoir, city of, Caldwell County. | 370040 | Mar. 29, 1978, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | West Jefferson, town of, Ashe County. | 370009 | Aug. 21, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region V** | | | | | |
| Minnesota | Austin, city of, Mower County. | 275228 | Sept. 25, 1970, Emerg.; May 14, 1971, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Ohio | Darbyville, village of, Pickaway County. | 390712 | Aug. 25, 1981, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Wisconsin | Colfax, village of, Dunn County. | 550120 | June 21, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Oxford, village of, Marquette County. | 550268 | Oct. 22, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region VI** | | | | | |
| Louisiana | Port Vincent, village of, Livingston Parish. | 220119 | May 17, 1977, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region VII** | | | | | |
| Kansas | Atwood, city of, Rawlins County. | 200280 | June 18, 1970, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Barton County, unincorporated areas. | 200016 | Aug. 15, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Nebraska | Randolph, city of, Cedar County. | 310397 | Jan. 24, 1977, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp | 8-16-88 | Aug. 16, 1988. |

| State | Location | Community No. | Effective dates of authorization/cancellation of sale of Flood Insurance in community | Current Effective map date | Date certain Federal assistance no longer available in Special Flood Hazard Areas |
|---|---|---|---|---|---|
| **Region VIII** | | | | | |
| Colorado | Broomfield, city of, Boulder County. | 085073 | Feb. 18, 1972, Emerg.; Sept. 7, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Montana | Missoula County, unincorporated areas. | 300048 | Jan. 15, 1975, Emerg.; Aug. 16, 1983, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Missoula, city of, Missoula County. | 300049 | Mar. 14, 1975, Emerg.; Jan. 6, 1983, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region IX** | | | | | |
| California | Trinity County, unincorporated areas. | 060401 | Jan. 15, 1982, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region X** | | | | | |
| Oregon | Columbia County, unincorporated areas. | 410034 | Apr. 11, 1974, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Deschutes County | 410055 | Jan. 19, 1976, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Scappoose, city of, Columbia County. | 410039 | Dec. 17, 1987, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| Do | Vernonia, city of, Columbia County. | 410041 | Apr. 26, 1974, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region V—Minimal Conversions** | | | | | |
| Michigan | Barrien, town of, Berrien County. | 260733 | Nov. 4, 1982, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |
| **Region X** | | | | | |
| Oregon | Spray, city of, Wheeler County. | 410248 | May 22, 1975, Emerg.; Aug. 16, 1988, Reg.; Aug. 16, 1988, Susp. | 8-16-88 | Aug. 16, 1988. |

Code for reading fourth column: Emerg.—Emergency, Reg.—Regular, Susp—Suspension.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-16885 Filed 7-26-88; 8:45 am]

BILLING CODE 6718-03-M

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**44 CFR Part 64**

**[Docket No. FEMA 6800]**

## List of Communities Eligible for the Sale of Flood Insurance; Pennsylvania et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The date listed in the fourth column of the table.

**ADDRESS:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these commnities by publishing a Flood Hazard Boundary Map. The data of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effected dates would be contrary to the public interest. The Director also finds

that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

**PART 64—[AMENDED]**

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

**§ 64.6 List of eligible communities.**

| State | Location | Community No. | Effective dates of authorization/cancellation of sale of Flood Insurance in community | Current effective map date |
|---|---|---|---|---|
| Pennsylvania | Dyberry, township of, Wayne County | 422165 | May 2, 1975, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; June 6, 1988, Rein. | Sept. 30, 1987. |
| Do | Starrucca, borough of, Wayne County | 420867 | Nov. 26, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.; June 6, 1988, Rein. | Feb. 17, 1988. |
| Do | Tyrone, township of, Perry County | 421961 | Feb. 22, 1977, Emerg.; Mar. 4, 1988, Reg.; Mar. 4, 1988, Susp.; June 6, 1988, Rein. | Mar. 4, 1988. |
| New York | Ashford, town of, Cattaraugus County | 360062 | Sept. 30, 1975, Emerg.; May 25, 1984, Reg.; May 17, 1988, Susp.; June 6, 1988, Rein. | May 25, 1984. |
| Do | Forestville, village of, Chautauqua County | 361501 | Feb. 18, 1977, Emerg.; Mar. 18, 1983, Reg.; May 17, 1988, Susp.; June 6, 1988, Rein. | Mar. 18, 1983. |
| Do | Geneseo, town of, Livingston County | 360384 | Feb. 18, 1977, Emerg.; Mar. 18, 1983, Reg.; May 17, 1988, Susp.; June 8, 1988, Rein. | Aug. 1, 1978. |
| Do | Geddes, town of, Onondaga County | 360579 | May 19, 1975, Emerg.; Feb. 17, 1982, Reg.; May 17, 1988, Susp.; June 8, 1988, Rein. | Feb. 17, 1982. |
| New York | Elbridge, village of, Onondaga County | 360576 | Feb. 18, 1975, Emerg.; Aug. 16, 1982, Reg.; May 17, 1988, Susp.; June 8, 1988, Rein. | Aug. 16, 1982. |
| Arizona | Cave Creek, town of, Maricopa County | 040127—New | June 9, 1988, Emerg.; June 9, 1988, Reg | Apr. 15, 1988. |
| Tennessee | Viola, town of, Warren County | 470196 | June 6, 1983, Emerg.; Mar. 16, 1988, Reg.; Mar. 16, 1988 Susp.; June 15, 1988, Rein. | Mar. 16, 1988. |
| Texas | * Idalou, town of, Lubbock County | 480916 | May 19, 1978, Emerg.; June 1, 1988, Reg.; June 1, 1988 Susp.; June 16, 1988, Rein. | June 1, 1988. |
| New York | Clermont, town of, Columbia County | 361315 | Nov. 13, 1975, Emerg.; Sept. 5, 1984, Reg.; May 17, 1988, Susp.; June 22, 1988, Rein. | Sept. 5, 1984. |
| Do | * Gloversville, city of, Fulton County | 360275 | Dec. 10, 1974, Emerg.; Sept. 30, 1983, Reg.; May 17, 1988, Susp.; June 22, 1988, Rein. | Sept. 30, 1983. |
| Vermont | Mendon, town of, Rutland, County | 500095 | June 19, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.; June 22, 1988, Rein. | Sept. 18, 1985. |
| New York | Fenner, town of, Madison County | 360399 | Mar. 19, 1976, Emerg.; Feb. 5, 1986, Reg.; May 17, 1988, Susp.; June 22, 1988, Rein. | Feb. 5, 1986. |
| Tennessee | Arlington, town of, Shelby County | 470262 | Sept. 10, 1981, Emerg.; Sept. 10, 1981, Reg.; Feb. 4, 1988, Susp.; June 23, 1988, Rein. | Feb. 11, 1983. |
| West Virginia | Barboursville, village of, Cabell County | 540017 | May 13, 1975, Emerg.; June 3, 1988, Reg.; June 3, 1988, Susp.; June 23, 1988, Rein. | June 3, 1988. |
| Tennessee | Fayette County, unincorporated areas | 470352 | Aug. 19, 1975, Emerg.; July 5, 1983, Reg.; Feb. 17, 1988, Susp.; June 23, 1988, Rein. | July 5, 1983. |
| Iowa | Brayton, city of, Audubon County | 190920 | June 9, 1975, Emerg.; Aug. 19, 1985, Reg.; June 3, 1988, Susp.; June 27, 1988, Rein. | Aug. 19, 1985. |
| **Region II—Minimal Conversions** | | | | |
| New York | Durham, town of, Greene County | 360289 | June 1, 1988, Suspension Withdrawn | June 1, 1988. |
| Do | Livonia, village of, Livingston County | 361458 | do | Do. |
| Do | Windham, town of, Greene County | 361401 | do | Do. |
| **Region IV** | | | | |
| Tennessee | White House, city of, Sumner County | 470339 | do | Do. |
| **Region V** | | | | |
| Minnesota | Koochiching County, unincorporated areas | 270233 | do | Do. |
| **Region I—Regular Conversions** | | | | |
| Connecticut | Lebanon, town of, New London County | 090155 | June 3, 1988, Suspension Withdrawn | June 3, 1988. |
| Do | Voluntown, town of, New London County | 090143 | do | Do. |
| Do | Washington, town of, Litchfield County | 090057 | do | Do. |
| Maine | Norridgewock, town of, Somerset County | 230178 | do | Do. |
| Do | West Paris, town of, Oxford County | 230100 | do | Do. |
| Massachusetts | Concord, town of, Middlesex County | 250189 | do | Do. |

| State | Location | Community No. | Effective dates of authorization/cancellation of sale of Flood Insurance in community | Current effective map date |
|---|---|---|---|---|
| New Hampshire | Meredith, town of, Belknap County | 330006 | do | Do. |
| Vermont | Grand Isle, town of, Grand Isle County | 500223 | do | Do. |
| **Region III** | | | | |
| Pennsylvania | New Florence, borough of Westmoreland | 420890 | do | Do. |
| **Region IV** | | | | |
| Florida | Arcadia, city of, DeSoto County | 120073 | do | Do. |
| Do | DeSoto County, unincorporated areas | 120072 | do | Do. |
| **Region V** | | | | |
| Ohio | Muskingum County, unincorporated areas | 390425 | do | Do. |
| **Region X** | | | | |
| Oregon | Baker County, unincorporated areas | 410001 | do | Do. |
| Do | Baker, city of, Baker County | 410002 | do | Do. |
| Do | Sumpter, city of, Baker County | 410007 | do | Do. |
| **Region I—Regular Conversions** | | | | |
| Maine | Oakland, town of, Kennebec County | 230242 | June 15, 1988, Suspension Withdrawn | June 15, 1988. |
| Vermont | Norwich, town of, Windsor County | 500295 | do | Do. |
| Do | St. Albans, town of, Franklin County | 500219 | do | Do. |
| Do | Underhill, town of, Chittenden County | 500042 | do | Do. |
| Do | Weathersfield, town of, Windsor County | 500156 | do | Do. |
| Do | Wells, town of, Rutland County | 500271 | do | Do. |
| Do | Windsor, town of, Windsor County | 500159 | do | Do. |
| **Region V** | | | | |
| Ohio | Moreland Hills, village of, Cuyahoga County | 390118 | do | Do. |
| Wisconsin | Neosho, village of, Dodge County | 550104 | do | Do. |
| Do | Princeton, city of, Green Lake County | 550171 | do | Do. |
| **Region VI** | | | | |
| Louisiana | Many, town of, Sabine Parish | 220158 | do | Do. |
| **Region III—Minimal Conversions** | | | | |
| West Virginia | Romney, town of, Hampshire County | 422496 | do | Do. |
| **Region IV** | | | | |
| Georgia | Haralson County, unincorporated areas | 130495 | do | Do. |

* Minimal.
*Code for reading fourth column:* Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

**Harold T. Duryee,**
*Administrator, Federal Insurance Administration.*

[FR Doc. 88-16886 Filed 7-26-88; 8:45 am]
BILLING CODE 6718-03-M

**44 CFR Part 67**

## Final Flood Elevation Determinations; Connecticut et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This data may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

The final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days have been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation

determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

**List of Subjects in 44 CFR Part 67**

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O., 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **CONNECTICUT** | |
| **North Canaan (town), Litchfield County (FEMA Docket No. 6923)** | |
| *Housatonic River:* | |
| At downstream corporate limits | *645 |
| At State boundary | *655 |
| *Camp Brook:* | |
| At confluence with Blackberry River | *653 |
| At Pease Street | *672 |
| At U.S. Route 7 | *681 |
| *Konkapot River:* | |
| At downstream corporate limits | *682 |
| At upstream corporate limits | *695 |
| **Maps available for inspection** at the Town Clerk's Vault, Town Hall, Pease Street, North Canaan, Connecticut. | |
| **FLORIDA** | |
| **Unincorporated areas of Alachua County (FEMA Docket No. 6923)** | |
| *Santa Fe River:* | |
| At county boundary | *40 |
| At Little Santa Fe Lake | *144 |
| *Little Santa Fe Lake:* Along shoreline | *144 |
| *Santa Fe Lake:* Along shoreline | *144 |
| *Lake Altho:* Along shoreline | *144 |
| **Maps available for inspection** at the County Planning Office, County Administration Building, Gainesville, Florida. | |
| **Waldo (city) Alachua County (FEMA Docket No. 6923)** | |
| *Lake Altho:* Within community | *144 |
| **Maps available for inspection** at the City Hall, Waldo, Florida. | |
| **GEORGIA** | |
| **Americus (city), Sumter County (FEMA Docket No. 6926)** | |
| *Muckalee Creek:* | |
| At mouth | *321 |
| About 6,500 feet upstream of Meadowbrook Drive | *333 |
| *Town Creek:* | |
| At mouth | *330 |
| Just downstream of Mayo Street | *354 |
| Just upstream of Mayo Street | *361 |
| About 1,700 feet upstream of Mayo Street | *361 |
| *Mill Creek:* | |
| About 3,000 feet downstream of CXS railroad | *336 |
| Just downstream of U.S. Route 280 | *361 |
| *Mill Creek Tributary:* | |
| About 750 feet downstream of CSX railroad | *336 |
| Just downstream of Felder Street | *353 |
| Just upstream of Felder Street | *361 |
| **Maps available for inspection** at the Office of the Community Development Director, City Hall, Americus, Georgia. | |
| **Aragon (city), Polk County (FEMA Docket No. 6923)** | |
| *Euharlee Creek:* | |
| About 1,800 feet upstream of State Route 101 | *730 |
| About 1 mile upstream of State Route 101 | *731 |
| **Maps available for inspection** at the City Clerk's Office, City Hall, Aragon, Georgia. | |
| **Cedartown (city), Polk County (FEMA Docket No. 6926)** | |
| *Cedar Creek:* | |
| About 350 feet downstream of confluence of Skeeter Branch | *758 |
| About 3,550 feet upstream of Canal Street | *778 |
| *Skeeter Branch:* | |
| About 850 feet downstream of North Cave Spring Road | *768 |
| Just downstream of College Street | *772 |
| Just upstream of College Street | *778 |
| About 3,200 feet upstream of Norfolk Southern Railway | *797 |
| *South Prong Skeeter Branch:* | |
| At mouth | *784 |
| About 1,500 feet upstream of East Avenue | *797 |
| *Tanyard Branch:* | |
| At confluence with Cedar Creek | *776 |
| Just upstream of CSX railroad | *795 |
| **Maps available for inspection** at the Building Inspector's Office, City Hall, Cedartown Georgia. | |
| **Lakeland (city), Lanier County (FEMA Docket No. 6929)** | |
| *Big Creek:* | |
| About 1,700 feet downstream of Main Avenue | *160 |
| About 3,200 feet upstream of Brantley Street | *168 |
| *Mill Creek:* | |
| At mouth | *164 |
| Just downstream of North Lakeshore Drive | *167 |
| Just upstream of North Lakeshore Drive | *175 |
| About 4,000 feet upstream of Old Nashville Road | *177 |
| **Maps available for inspection** at the City Hall, 122 South Valdosta Road, Lakeland, Georgia. | |
| **Polk County (unincorporated areas) (FEMA Docket No. 6925)** | |
| *Mill Creek:* | |
| About 1.0 mile downstream of Prospect Road | *722 |
| Just downstream of Prospect Road | *729 |
| Just upstream of Prospect Road | *735 |
| Just downstream of Norfolk Southern Railway | *738 |
| *Pumpkin Pile Creek:* | |
| At mouth | *783 |
| Just downstream of Pine Bower Road | *823 |
| *McCurry Creek:* | |
| At mouth | *796 |
| Just downstream of confluence of Lime Branch | *806 |
| *Cedar Creek:* | |
| About 1,300 feet downstream of Kings Bridge Road | *728 |
| Just downstream of dam | *783 |
| Just upstream of dam | *791 |
| Just downstream of Huntington Road | *798 |
| *Skeeter Branch:* | |
| At mouth | *766 |
| Just downstream of CSX railroad | *786 |
| *South Prong Skeeter Branch:* | |
| About 1,200 feet downstream of U.S. Route 278 | *797 |
| Just downstream of Frank Lott Drive | *820 |
| About 500 feet upstream of Frank Lott Drive | *826 |
| *Fish Creek:* | |
| At mouth | *730 |
| Just downstream of Hendrix Road | *818 |
| *Thompson Creek:* | |
| About 1.3 miles downstream of Sycamore Street | *752 |
| Just downstream of County Route 221 | *805 |
| *Elm Street Slough:* | |
| About 1,100 feet downstream of Sherwood Drive | *765 |
| Just downstream of Morgan Road | *793 |
| *Simpson Creek:* | |
| At mouth | *764 |
| About 4,000 feet above mouth | *771 |
| *Euharlee Creek:* | |
| About 1.7 miles upstream of Taylorsville Road | *713 |
| Just downstream of Government Farm Road | *765 |
| *Tributary A:* | |
| About 1,050 feet downstream of Nathan Dean Bypass | *760 |
| Just downstream of Braswell Road | *816 |
| *White River Cave Creek:* | |
| At mouth | *741 |
| Just downstream of Marquette Road | *763 |
| **Maps available for inspection** at the Building Inspector's Office, Courthouse Annex, Room 203, Cedartown, Georgia. | |
| **ILLINOIS** | |
| **Clark County (unincorporated areas) (FEMA Docket No. 6923)** | |
| *Wabash River:* | |
| At downstream county boundary | *450 |
| About 1,600 feet upstream of confluence of Crooked Creek | *463 |
| **Maps available for inspection** at the County Clerk's Office, County Courthouse, Marshall, Illinois. | |
| **Wenona (city), Marshall County (FEMA Docket No. 6929)** | |
| *Sandy Creek Tributary:* | |
| Just upstream of Elm Street | *673 |
| About 1,075 feet upstream of Third South Street | *687 |
| **Maps available for inspection** at the Wenona State Bank, Wenona, Illinois. | |
| **KANSAS** | |
| **Abilene (city) Dickinson County (FEMA Docket No. 6920)** | |
| *Mud Creek:* | |
| About 600 feet downstream of Atchison Topeka and Santa Fe Railway | *1,152 |
| About 1,700 feet upstream of North 7th Street | *1,159 |
| *Mud Creek Tributary No. 1:* | |
| At mouth | *1,159 |
| Just upstream of Washington Street | *1,167 |
| *Smoky Hill River:* | |
| About 0.4 mile downstream of State Highway 15 (Buckeye Avenue) | *1,146 |
| About 1.7 miles upstream of State Highway 15 (Buckeye Avenue) | *1,151 |
| **Maps available for inspection** at the Office of the City Inspector, City Building, Abilene, Kansas. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Chapman (city), Dickinson County (FEMA Docket No. 6920)** | |
| *Smoky Hill River:* | |
| About 1,600 feet downstream of State Highway 206 (Marshall Street) | *1,111 |
| About 0.40 mile upstream of State Highway 206 (Marshall Street) | *1,114 |
| *Chapman Creek:* | |
| Just downstream of Union Pacific Railroad | *1,111 |
| About 2 miles upstream of Union Pacific Railroad | *1,115 |
| **Maps available for inspection** at the City Hall, 402 Marshall, Chapman, Kansas. | |
| **Dickinson County (unincorporated areas) (FEMA Docket No. 6920)** | |
| *Smoky Hill River:* | |
| About 1.44 miles downstream of State Highway 206 | *1,110 |
| About 2.6 miles upstream of County Highway 186 | *1,173 |
| *Chapman Creek:* | |
| At mouth | *1,110 |
| About 3.3 miles upstream of Union Pacific railroad | *1,116 |
| *Mud Creek:* | |
| At mouth | *1,148 |
| Just downstream of U.S. Highway 40 and interstate 70 | *1,167 |
| *Mud Creek Tributary No. 1:* | |
| At mouth | *1,159 |
| About 0.4 mile upstream of Atchison, Topeka and Santa Fe Railway | *1,176 |
| *Solomon River:* | |
| At mouth | *1,170 |
| About 700 feet upstream of confluence of Solomon River Tributary | *1,171 |
| *Solomon River Tributary:* | |
| At mouth | *1,171 |
| About 0.78 mile upstream of 7th Street | *1,189 |
| *Lyon Creek:* | |
| At county boundary | *1,147 |
| Just downstream of Lyon Creek Dam No. 6 | *1,306 |
| Just upstream of Lyon Creek Dam No. 6 | *1,344 |
| About 0.27 mile upstream of Oklahoma, Kansas, and Texas Railroad | *1,344 |
| *Carry Creek:* | |
| Just upstream of mouth | *1,148 |
| About 4.07 miles upstream of State Highway 209 | *1,293 |
| *West Branch Lyon Creek:* | |
| At mouth | *1,222 |
| About 11.06 miles upstream of State Highway 218 | *1,313 |
| *Lime Creek:* | |
| At mouth | *1,253 |
| About 1.15 miles upstream of U.S. Highway 77 and 56 | *1,363 |
| *Lime Creek Tributary No. 2:* | |
| At mouth | *1,315 |
| Just downstream of U.S. Highway 77 | *1,344 |
| Just upstream of U.S. Highway 77 | *1,351 |
| *Lime Creek Tributary No. 4:* | |
| At mouth | *1,325 |
| Just downstream of Oklahoma, Kansas, and Texas Railroad | *1,341 |
| *Turkey Creek:* | |
| At mouth | *1,143 |
| At confluence of East and West Turkey Creeks | *1,257 |
| *West Branch Turkey Creek:* | |
| At mouth | *1,180 |
| About 2.36 miles upstream of State Highway 15 | *1,253 |
| *Turkey Creek Tributary No. 1:* | |
| At mouth | *1,240 |
| At State Highway 4 | *1,282 |
| *Turkey Creek Tributary No. 2:* | |
| At mouth | *1,244 |
| About 0.45 mile upstream of Union Pacific railroad | *1,263 |
| *West Turkey Creek:* | |
| At mouth | *1,257 |
| About 1.97 miles upstream of confluence of Middle Branch Turkey Creek | *1,337 |
| *East Turkey Creek:* | |
| At mouth | *1,257 |
| About 2.0 miles upstream of confluence of East Turkey Creek Tributary No. 5 | *1,316 |
| *Middle Branch Turkey Creek:* | |
| At mouth | *1,318 |
| At county boundary | *1,324 |
| *East Turkey Creek Tributary No. 1:* | |
| At mouth | *1,276 |
| About 2.97 miles upstream of confluence of East Turkey Creek Tributary No. 2 | *1,324 |
| *East Turkey Creek Tributary No. 2:* | |
| At mouth | *1,286 |
| Just downstream of Turkey Creek Dam No. 8 | *1,297 |
| *East Turkey Reservoir No. 6:* Along Shoreline | *1,343 |
| *East Turkey Reservoir No. 5:* Along Shoreline | *1,339 |
| *East Turkey Reservoir No. 4:* Along Shoreline | *1,301 |
| *Turkey Reservoir No. 3.* Along Shoreline | *1,296 |
| *Turkey Reservoir No. 8:* Along Shoreline | *1,318 |
| *Turkey Reservoir No. 11:* Along Shoreline | *1,384 |
| *Turkey Reservoir No. 13:* Along Shoreline | *1,305 |
| *Turkey Reservoir No. 12:* Along Shoreline | *1,314 |
| *Turkey Reservoir No. 1:* Along Shoreline | *1,259 |
| *Turkey Reservoir No. 14:* Along Shoreline | *1,259 |
| *Turkey Reservoir No. 2:* Along Shoreline | *1,236 |
| *Lime Reservoir No. 3:* Along Shoreline | *1,401 |
| *Lyon Reservoir No. 6:* Along Shoreline | *1,344 |
| *Lyon Reservoir No. 12:* Along Shoreline | *1,300 |
| *Lyon Reservoir No. 13:* Along Shoreline | *1,282 |
| *Lime Reservoir No. 11:* Along Shoreline | *1,301 |
| *Lime Reservoir No. 10:* Along Shoreline | *1,308 |
| *Lyon Reservoir No. 7:* Along Shoreline | *1,314 |
| *Lyon Reservoir No. 14:* Along Shoreline | *1,285 |
| *Carry Reservoir No. 16:* Along Shoreline | *1,253 |
| *Lime Reservoir No. 4:* Along Shoreline | *1,346 |
| **Maps available for inspection** at the County Zoning Office, County Courthouse, Abilene, Kansas. | |
| **Enterprise (city), Dickinson County (FEMA Docket No. 6920)** | |
| *Smoky Hill River:* | |
| About 0.6 mile downstream of State Highway 43 (Bridge Street) | *1,130 |
| About 0.6 mile upstream of State Highway 43 (Bridge Street) | *1,133 |
| **Maps available for inspection** at the City Office, Enterprise, Kansas. | |
| **Louisville (city), Pottawatomie County (FEMA Docket No. 6923)** | |
| *Rock Creek:* | |
| Approximately 1,500 feet downstream of corporate limits | *1,002 |
| Downstream corporate limits | *1,003 |
| Downstream side of State Route 99 | *1,008 |
| Upstream corporate limits | *1,010 |
| **Maps available for inspection** at the City Hall, Louisville, Kansas. | |
| **Solomon (city), Dickinson County (FEMA Docket No. 6920)** | |
| *Solomon River Tributary:* | |
| Just downstream of Main Street | *1,171 |
| About 500 feet upstream of Seventh Street | *1,178 |
| *Smoky Hill River:* | |
| About 500 feet downstream of County Highway 186 | *1,169 |
| About 1.0 mile upstream of County Highway 186 | *1,171 |
| *Solomon River:* | |
| About 1.3 miles downstream of confluence of Solomon River Tributary | *1,170 |
| About 700 feet upstream of confluence of Solomon River Tributary | *1,171 |
| **Maps available for inspection** at the City Office Building, Solomon, Kansas. | |
| **KENTUCKY** | |
| **Elizabethtown (city) Hardin County (FEMA Docket No. 6923)** | |
| *Valley Creek:* | |
| About 1,500 feet downstream of Gaither Station Road | *680 |
| Just downstream of Old Nicholas Street | *686 |
| **Maps available for inspection** at the City Hall, Elizabethtown, Kentucky. | |
| **Hardin County (unincorporated areas) (FEMA Docket No. 6923)** | |
| *Valley Creek:* | |
| About 2,400 feet downstream of Western Kentucky Parkway | *668 |
| About 400 feet upstream of the CSX railroad | *684 |
| *Otter Creek:* | |
| About 950 feet downstream of State Route 144 | *630 |
| About 3,500 feet upstream of Private Road | *652 |
| *Brushy Fork:* | |
| At mouth | *632 |
| About 350 feet upstream of Unnamed Street | *645 |
| *Rolling Fork:* | |
| About 1,600 feet downstream of Colesburg Road | *452 |
| About 1,600 feet upstream of confluence of Clear Creek | *453 |
| *Ohio River:* Within community | *443 |
| *Billy Creek:* | |
| At mouth | *679 |
| About 0.7 mile upstream of Saint John Road | *707 |
| *Shaw Creek:* | |
| About 0.5 mile upstream of Saint John Road | *714 |
| About 700 feet upstream of Private Drive | *770 |
| **Maps available for inspection** at the County Planning Commission, 14 Public Square, Elizabethtown, Kentucky. | |
| **Vine Grove (city), Hardin County (FEMA Docket No. 6923)** | |
| *Brushy Fork:* | |
| About 150 feet downstream of Pitto Lane | *633 |
| About 370 feet upstream of Unnamed Street | *645 |
| *Otter Creek:* | |
| Just downstream of State Route 144 | *633 |
| About 3,500 feet upstream of Private Road | *652 |
| **Maps available for inspection** at the City Hall, 201 West Main Street, Vine Grove, Kentucky. | |
| **MAINE** | |
| **Bucksport (town), Hancock County (FEMA Docket No. 6923)** | |
| *Penobscot River:* Entire shoreline within corporate limits | *11 |
| *Long Pond:* Entire shoreline | *68 |
| *Hancock Pond:* Entire shoreline | *105 |
| **Maps available for inspection** at the Town Office, Main Street, Bucksport, Maine. | |
| **Ellsworth (city), Hancock County (FEMA Docket No. 6923)** | |
| *Union River:* | |
| At downstream corporate limits | *11 |
| Approximately 1,800 feet upstream of confluence of Branch Lake Stream | *74 |
| At confluence with Graham Lake | *107 |
| *Graham Lake:* Entire shoreline within corporate limits | *107 |
| *Green Lake:* Entire shoreline within corporate limits | *162 |
| *Branch Lake:* Entire shoreline within corporate limits | *240 |
| **Maps available for inspection** at the City Office, Church Street, Ellsworth, Maine. | |
| **Machias (town), Washington County (FEMA Docket No. 6923)** | |
| *Machias River:* | |
| Approximately 0.3 mile downstream of confluence of Libby Brook | *13 |
| Approximately 400 feet upstream of upstream corporate limits | *49 |
| **Maps available for inspection** at the Town Manager's Office, Town Hall, Machias, Maine. | |

| Source of flooding and location | #Depth in feet above ground. ^Elevation in feet (NGVD) |
|---|---|
| **MICHIGAN** | |
| **Putnam (township), Livingston County (FEMA Docket No. 6826)** | |
| *Honey Creek:* | |
| Just downstream of Darwin Road | *860 |
| Just downstream of Pinckney Road | *868 |
| *Portage River:* | |
| About 0.6 mile downstream of Hi-Land Lake Dam | *872 |
| Just downstream of Hi-Land Lake Dam | *874 |
| *Portage Lake:* Along shoreline | *852 |
| *Silver Lake:* Along shoreline | *876 |
| *Hi-Land Lake:* Along shoreline | *884 |
| *Halfmoon Lake:* Along shoreline | *885 |
| *Patterson Lake:* Along shoreline | *887 |
| **Maps available for inspection at the Putnam Township Hall, 131 South Howell, Pinckney, Michigan.** | |
| **Taymouth (township), Saginaw County (FEMA Docket No. 6826)** | |
| *Flint River:* | |
| Just upstream of Sheridan Road | *600 |
| About 1.8 miles upstream of East Burt Road | *619 |
| **Maps available for inspection at the Taymouth Township Hall, 4343 East Birch Run Road, Birch Run, Michigan.** | |
| **MISSOURI** | |
| **Marshall (city), Saline County (FEMA Docket No. 6823)** | |
| *North Fork Finney Creek:* | |
| About 700 feet downstream of Fairground Road | *702 |
| About 2,700 feet upstream of Arrow Street | *729 |
| *North Fork Finney Creek Tributary:* | |
| About 0.5 mile downstream of Lexington Avenue | *706 |
| Just downstream of Lexington Avenue | *721 |
| Just upstream of Lexington Avenue | *726 |
| Just downstream of Grant Avenue | *742 |
| **Maps available for inspection at the Inspection Department, City Office Building, 214 North Lafayette, Marshall, Missouri.** | |
| **NEW MEXICO** | |
| **Santa Fe County, unincorporated areas (FEMA Docket No. 6823)** | |
| *Santa Fe River:* | |
| At Agua Fria Road | *6,257 |
| Approximately 1.3 miles upstream of Agua Fria Road | *6,333 |
| Approximately 2.5 miles upstream of Agua Fria Road | *6,403 |
| Approximately 3.5 miles upstream of Agua Fria Road | *6,468 |
| Approximately 4.5 miles upstream of Agua Fria Road | *6,536 |
| Approximately 350 feet upstream of Access Road | *6,600 |
| Approximately 1.0 mile upstream of Access Road | *6,660 |
| Approximately 1.9 miles upstream of Access Road | *6,723 |
| *Arroyo Hondo:* | |
| Approximately 500 feet upstream of confluence with Arroyo de Los Chamisos | *6,117 |
| Approximately 1.2 miles downstream of West Frontage Road | *6,187 |
| Approximately 365 feet downstream of West Frontage Road | *6,250 |
| Approximately 0.6 mile upstream of State Route 14 | *6,310 |
| Approximately 1.7 miles upstream of State Route 14 | *6,380 |
| Approximately 2.4 miles upstream of State Route 14 | *6,440 |
| Approximately 3.2 miles upstream of State Route 14 | *6,505 |
| Approximately 4.0 miles upstream of State Route 14 | *6,575 |
| Approximately 1.6 miles downstream of Atchison, Topeka, and Santa Fe Railroad | *6,640 |
| Approximately 0.6 mile downstream of Atchison, Topeka, and Santa Fe Railroad | *6,715 |
| Approximately 0.3 mile upstream of Atchison, Topeka, and Santa Fe Railroad | *6,805 |
| *Arroyo de Los Chamisos:* | |
| Approximately 550 feet upstream of confluence with Arroyo Hondo | *6,116 |
| Approximately 1.2 miles upstream of County Road | *6,183 |
| Approximately 2.3 miles upstream of County Road | *6,240 |
| Approximately 3.4 miles upstream of County Road | *6,300 |
| Approximately 0.5 mile downstream of Interstate Route 85 | *6,364 |
| Approximately 0.6 mile upstream of Interstate Route 85 | *6,430 |
| Approximately 0.3 mile upstream of Auto Park Drive | *6,500 |
| At Rodeo Road | *6,562 |
| *Santa Cruz River:* | |
| Approximately 1,850 feet upstream of County boundary | *5,625 |
| Approximately 0.5 mile upstream of County Route 106 | *5,700 |
| Approximately 1.9 miles upstream of County Route 106 | *5,775 |
| Approximately 3.2 miles upstream of County Route 106 | *5,850 |
| Approximately 100 feet upstream of County boundary | *5,927 |
| **Maps available for inspection at the County Courthouse, 102 Grant Avenue, Santa Fe, New Mexico.** | |
| **NEW YORK** | |
| **New Hempstead (village), Rockland County (FEMA Docket No. 6826)** | |
| *North Branch Pascack Brook:* | |
| At downstream corporate limits | *497 |
| Approximately 100 feet upstream of Greenridge Way | *515 |
| *Willow Tree Brook:* | |
| Corporate limits at Grandview Avenue | *566 |
| Approximately 670 feet upstream of Grandview Avenue | *567 |
| **Maps available for inspection at the New Hempstead Village Hall, 8 Old Schoolhouse Road, New City, New York.** | |
| **NORTH CAROLINA** | |
| **East Laurinburg (town), Scotland County (FEMA Docket No. 6826)** | |
| *Leith Creek:* | |
| Just downstream of Laurinburg and Southern Railroad (downstream crossing) | *102 |
| About 550 feet upstream of McKay Street | *109 |
| **Maps available for inspection at the Town Hall, Fifth Street, East Laurinburg, North Caroline.** | |
| **Guilford County (unincorporated areas) (FEMA Docket No. 6826)** | |
| *Horsepen Creek Tributary No. 1:* | |
| At mouth | *757 |
| Just downstream of dam | *758 |
| Just upstream of dam | *770 |
| About 1,350 feet upstream of dam | *771 |
| *Horsepen Creek Tributary No. 2:* | |
| At mouth | *763 |
| About 600 feet upstream of New Garden Road | *782 |
| *Richland Creek:* | |
| At mouth | *720 |
| About 0.81 mile upstream of Bass Chapel Road | *755 |
| *North Buffalo Creek:* | |
| At mouth | *672 |
| About 3,100 feet upstream of confluence of Muddy Creek | *716 |
| *South Buffalo Creek:* | |
| At mouth | *672 |
| About 1,400 feet upstream of Interstate 85 | *724 |
| **Maps available for inspection at the County Courthouse, 301 West Market Street, Greensboro, North Caroline.** | |
| **Northampton County (unincorporated areas) (FEMA Docket No. 6823)** | |
| *Roanoke River:* | |
| At county boundary | *36 |
| Just downstream of Roanoke Rapids Dam | *67 |
| Just upstream of Roanoke Rapids Dam | *135 |
| Just downstream of Gaston Dam | *136 |
| At county boundary | *205 |
| **Maps available for inspection at the County Courthouse, Seaboard, North Caroline.** | |
| **Scotland County (unincorporated areas) (FEMA Docket No. 6826)** | |
| *Gum Swamp Creek:* | |
| About 800 feet downstream of State Road 79 | *187 |
| About 1,100 feet upstream of State Road 79 | *189 |
| *Leith Creek:* | |
| Just upstream of U.S. Route 74 Bypass | *179 |
| About 300 feet upstream of Laurinburg and Southern Railroad | *194 |
| *Little Creek:* | |
| At mouth | *160 |
| Just downstream of Highland Road | *188 |
| Just upstream of Highland Road | *196 |
| Just downstream of Wagram Road | *219 |
| *Lumber River:* | |
| About 1,700 feet downstream of Red Springs Road | *189 |
| About 3.0 miles upstream of McGirts Bridge Road | *206 |
| **Maps available for inspection at the County Complex, Laurinburg, North Caroline.** | |
| **OHIO** | |
| **Geauga County (unincorporated areas) (FEMA Docket No. 6823)** | |
| *Bridge Creek:* | |
| About 1,700 feet downstream of Washington Street | *1,149 |
| About 1,100 feet upstream of Stafford Road | *1,170 |
| *West Branch Bridge Creek:* | |
| At mouth | *1,161 |
| Just downstream of Stafford Road | *1,175 |
| *Unnamed Tributary to Aurora Branch Chagrin River:* | |
| At county boundary | *1,043 |
| Just downstream of Haskins Road | *1,064 |
| *East Branch Chagrin River:* | |
| Just upstream of Mitchell's Mill Road | *900 |
| At county boundary | *957 |
| *West Branch Cuyahoga River:* | |
| About 0.76 mile downstream of Mayfield Road | *1,131 |
| About 0.77 mile upstream of Mayfield Road | *1,136 |
| *Swine Creek:* | |
| At county boundary | *909 |
| Just downstream of CSX railroad | *1,045 |
| *Chagrin River:* | |
| About 2,400 feet downstream of Kinsman Road | *1,000 |
| About 1,400 feet upstream of Fairmount Road | *1,034 |
| About 1,000 feet downstream of Mayfield Road | *1,105 |
| At Auburn Road | *1,141 |
| *Silver Creek:* | |
| At mouth | *1,012 |
| Just downstream of Music Street | *1,092 |
| *West Branch Silver Creek:* | |
| At mouth | *1,043 |
| About 0.8 mile upstream of Music Street | *1,094 |
| **Maps available for inspection at the County Planning Commission, Courthouse Annex, 215 Main Street, Chardon, Ohio.** | |
| **Rittman (city), Wayne and Medina Counties (FEMA Docket No. 6823)** | |
| *Chippewa Creek:* | |
| About 0.4 mile downstream of State Route 57 | *957 |
| About 1,000 feet upstream of confluence of Tommy Run | *958 |
| *River Styx:* | |
| At mouth | *957 |
| About 0.6 mile upstream of East Sunset Drive | *962 |
| *Landis Ditch:* | |
| At mouth | *961 |
| About 0.37 mile upstream of North Main Street | *961 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Maps available for inspection at the City Manager's Office, City Hall, 30 North Main Street, Rittman, Ohio.** | |
| **OKLAHOMA** | |
| **Ottawa County (unincorporated areas) (FEMA Docket No. 6826)** | |
| *Little Elm Creek:* | |
| At confluence with Neosho River | *772 |
| At State Highway 10 | *772 |
| Approximately 18,300 feet above confluence with Neosho River | *789 |
| *Lost Creek (Lower Reach):* | |
| At Main Street | *757 |
| Approximately 13,700 feet above confluence with Lake of the Cherokees | *768 |
| *Lost Creek (Upper Reach):* | |
| Approximately 45,800 feet above confluence with Lake of the Cherokees | *829 |
| At Burlington Northern Railroad | *837 |
| At Ottawa County boundary | *847 |
| *Neosho River:* | |
| Approximately 49,000 feet above confluence with Spring River | *769 |
| At Interstate Highway 44 | *772 |
| At confluence of Tar Creek | *773 |
| Approximately 2,750 feet upstream of confluence of Tar Creek | *774 |
| *Tar Creek:* | |
| At confluence with Neosho River | *773 |
| At D Street | *789 |
| Approximately 6,550 feet upstream of D Street | *795 |
| *Warren Branch:* | |
| Approximately 19,600 feet above confluence with Spring River | *855 |
| Approximately 27,000 feet above confluence with Spring River | *895 |
| **Maps available for inspection at the Ottawa County Courthouse, Miami, Oklahoma.** | |
| **Ponca City (city), Kay County (FEMA Docket No. 6823)** | |
| *Arkansas River:* | |
| At intersection of 12th Street and Edwards Avenue | *926 |
| At intersection of Lake Road and Rosedale Drive | *932 |
| *Tributary D:* At confluence with Arkansas River | *930 |
| *Tributary H:* | |
| At confluence with Arkansas River | *926 |
| Approximately 450 feet downstream of Twelfth Street | *929 |
| *Tributary I:* | |
| At Eleventh Street | *926 |
| Approximately 500 feet downstream of Seventh Street | *933 |
| *Tributary W:* | |
| At downstream corporate limits | *939 |
| At upstream corporate limits | *990 |
| **Maps available for inspection at the City Hall, Ponca City, Oklahoma.** | |
| **Wagoner County (unincorporated areas) (FEMA Docket No. 6826)** | |
| *Verdigris River:* | |
| At State Route 16 | *516 |
| At upstream side of State Route 51 | *533 |
| At most upstream County boundary | *558 |
| *Verdigris River Divergence Channel:* | |
| At confluence with Verdigris River | *516 |
| At divergence from Verdigris River | *525 |
| *East Coal Creek:* | |
| At confluence with Verdigris River | *525 |
| Approximately .31 mile upstream of Pierce Avenue | *576 |
| *West Coal Creek:* | |
| At confluence with Verdigris River | *542 |
| Approximately 220 feet upstream of Lone Star Road | *547 |
| At upstream side of 305th East Avenue | *587 |
| At upstream side of 273rd East Avenue | *641 |
| Approximately .97 mile upstream of 91st Street South | *695 |
| *Adams Creek:* | |
| At confluence with Verdigris River | *546 |
| At upstream side of 273rd East Avenue | *577 |
| At upstream side of 225th East Avenue | *615 |
| At 193rd East Avenue | *663 |
| *Springtown Creek:* | |
| At confluence with Adams Creek | *567 |
| Approximately .58 mile upstream of confluence with Adams Creek | *581 |
| *Midway Creek:* | |
| At confluence with Adams Creek | *578 |
| Approximately 1.04 miles upstream of 257th East Avenue | *601 |
| *Timber Creek:* | |
| At confluence with Adams Creek | *598 |
| Approximately 50 feet upstream of 257th East Avenue | *629 |
| *Covington Creek:* | |
| At downstream side of 71st Street South | *608 |
| At upstream side of 91st Street South | *658 |
| Approximately 250 feet upstream of 101st Street South | *692 |
| *Covington Creek Tributary:* | |
| At confluence with Covington Creek | *612 |
| Approximately .81 mile upstream of Gafford Boulevard | *639 |
| *School Creek:* | |
| At confluence with Adams Creek | *604 |
| Approximately .77 mile upstream of 81st Street South | *657 |
| *Lone Star Creek:* | |
| At confluence with Adams Creek | *642 |
| Approximately .32 mile upstream of 61st Street South | *678 |
| *Salt Creek:* | |
| At confluence with Verdigris River | *557 |
| Approximately .51 mile upstream of confluence with Salt Creek Tributary 2 | *618 |
| *Salt Creek Tributary 1:* | |
| At confluence with Salt Creek | *579 |
| Approximately .52 mile upstream of confluence with Salt Creek | *590 |
| *Salt Creek Tributary 2:* | |
| At confluence with Salt Creek | *606 |
| Approximately .40 mile upstream of confluence with Salt Creek | *613 |
| *Spunky Creek:* | |
| At downstream County boundary | *599 |
| At upstream side of 21st Street South | *645 |
| Approximately .72 mile upstream of 193rd East Avenue | *668 |
| *Spunky Creek Tributary A:* | |
| At upstream side of State Route 33 | *617 |
| At downstream side of 193rd East Avenue | *632 |
| *Broken Arrow Creek:* | |
| At upstream side of 193rd East Avenue (first crossing) | *616 |
| At downstream side of 193rd East Avenue (second crossing) | *667 |
| *Broken Arrow Creek Tributary:* | |
| At confluence with Broken Arrow Creek | *626 |
| Approximately 1.81 miles upstream of 209th East Avenue | *663 |
| *Arkansas River:* | |
| At confluence of Verdigris River | *516 |
| Approximately .55 mile downstream of upstream County boundary | *578 |
| Approximately 1.48 miles upstream of upstream County boundary | *581 |
| *Neosho River:* | |
| Approximately 0.4 mile downstream of Missouri Pacific Railroad | *516 |
| Approximately 1.66 miles upstream of Missouri Pacific Railroad | *519 |
| *Coweta Creek:* | |
| At confluence with Arkansas River | *571 |
| At upstream side of 141st Street South | *620 |
| Approximately .98 mile upstream of confluence of Coweta Creek Tributary B | *668 |
| *Coweta Creek Tributary A:* | |
| At upstream side of 289th East Avenue | *638 |
| At 131st Street South | *641 |
| *Coweta Creek Tributary B:* | |
| At confluence with Coweta Creek | *654 |
| Approximately .63 mile upstream of confluence with Coweta Creek | *667 |
| *Middle Branch Tributary:* | |
| Approximately 1.0 mile upstream of confluence with Coweta Creek | *629 |
| Approximately 1.70 miles upstream of confluence with Coweta Creek | *652 |
| **Maps available for inspection at the Wagoner County Courthouse, 307 East Cherokee Street, Wagoner, Oklahoma.** | |
| **PENNSYLVANIA** | |
| **Amity (township), Erie County (FEMA Docket No. 6823)** | |
| *Union City Reservoir:* Entire shoreline within community | *1,278 |
| **Maps available for inspection at the Township Building, Cesler Road, Union City, Pennsylvania.** | |
| **Conway (borough), Beaver County (FEMA Docket No. 6823)** | |
| *Ohio River:* For its entire length within the community | *706 |
| **Maps available for inspection at the Borough Building, 1208 Third Avenue, Conway, Pennsylvania.** | |
| **Coolbaugh (township), Monroe County (FEMA Docket No. 6823)** | |
| *Tobyhanna Creek:* | |
| At Interstate 81 | *1,877 |
| Approximately 1,100 feet upstream of Leonard Lane | *1,923 |
| *Lehigh River:* | |
| Approximately .25 mile upstream of confluence of Choke Creek | *1,514 |
| Approximately .8 mile upstream of confluence of Wolf Run | *1,570 |
| **Maps available for inspection at the Township Building, 242 Laurel Drive, Tobyhanna, Pennsylvania.** | |
| **Findlay (township), Allegheny County (FEMA Docket No. 6823)** | |
| *McClarens Run:* | |
| Approximately 550 feet downstream of Cliff Mine Road | *887 |
| Approximately 0.3 mile upstream of Hilton Inn Drive | *920 |
| *Montour Run:* | |
| At downstream corporate limits | *887 |
| Approximately 400 feet downstream of first downstream crossing of Railroad Street | *940 |
| Approximately 0.6 mile upstream of School Road | *979 |
| *South Fork Montour Run:* | |
| At U.S. Route 30 | *979 |
| Approximately .3 mile upstream of Santiago Road | *1,026 |
| *North Fork Montour Run:* | |
| At confluence with Montour Run | *979 |
| Approximately .4 mile downstream of Point Park Road | *1,050 |
| Approximately 160 feet upstream of Point Park Road | *1,078 |
| **Maps available for inspection at the Township Community Center, U.S. Route 30, Clinton, Pennsylvania.** | |
| **Mead (township), Warren County (FEMA Docket No. 6823)** | |
| *Allegheny River:* | |
| Downstream corporate limits | *1,184 |
| Approximately 2.02 miles upstream of U.S. Route 6 | *1,194 |
| Downstream side of Kinzua Dam | *1,208 |
| **Maps available for inspection at the Municipal Building, U.S. Route 6, Stoneham, Pennsylvania.** | |
| **Middle Smithfield (township), Monroe County (FEMA Docket No. 6820)** | |
| *Bushkill Creek:* | |
| At T-523 | *433 |
| At Club House Drive | *477 |
| *Marshalls Creek:* | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 400 feet downstream of confluence of Newton Run | *520 |
| Approximately 0.4 mile upstream of confluence of Newton Run | *590 |
| Approximately 1.1 miles upstream of confluence of Newton Run | *630 |
| *Pond Creek:* | |
| At downstream corporate limits | *476 |
| Approximately 900 feet upstream of LR 45015 | *486 |
| *Shawnee Creek:* | |
| Approximately 0.4 mile downstream of T-517 | *467 |
| Approximately 0.4 mile upstream of T-517 | *471 |
| **Maps available for inspection at the Municipal Building, Municipal Drive, East Stroudsburg, Pennsylvania.** | |
| **Ohio (township), Allegheny County (FEMA Docket No. 6823)** | |
| *Lowries Run:* | |
| Approximately 870 feet downstream of Glenn Road | *783 |
| Approximately 0.4 mile upstream of the confluence of Bear Run | *856 |
| *Bear Run:* | |
| Approximately 200 feet downstream of Lowries Run Road | *844 |
| Approximately .3 mile downstream of second upstream crossing of Mount Nebo Road | *910 |
| Approximately 0.5 mile upstream of second upstream crossing of Mount Nebo Road | *950 |
| **Maps available for inspection at the Ohio Township Municipal Building, 1719 Roosevelt Road, Pittsburgh, Pennsylvania.** | |
| **Potter (township), Beaver County (FEMA Docket No. 6823)** | |
| *Ohio River:* | |
| At downstream corporate limits | *696 |
| At upstream corporate limits | *702 |
| **Maps available for inspection at the Potter Township Municipal Building, Monaca, Pennsylvania.** | |
| **Shippensburg (township), Cumberland County (FEMA Docket No. 6820)** | |
| *Middle Spring Creek:* | |
| Approximately 2,200 feet downstream of Bard Road (T-306) | *606 |
| At Hot Point Avenue (T-303) | *628 |
| Approximately 625 feet downstream of State Route 696 | *661 |
| *Burd Run:* | |
| Approximately 1,625 feet downstream of CONRAIL | *621 |
| Upstream side of U.S. Highway 11 | *651 |
| Approximately 400 feet upstream of State Route 174 | *667 |
| *Gum Run:* | |
| At CONRAIL | *670 |
| At LR 28018 | *676 |
| **Maps available for inspection at the Shippensburg Township Building, Route 174, Shippensburg, Pennsylvania.** | |
| **Tobyhanna (township), Monroe County (FEMA Docket No. 6825)** | |
| *Tobyhanna Creek:* | |
| At State Route 940 | *1,527 |
| Approximately .9 mile upstream of State Route 940 | *1,555 |
| Upstream side of State Route 115 | *1,567 |
| Approximately 2.3 miles upstream of State Route 940 | *1,580 |
| Approximately .7 mile downstream of the confluence with Deep Run | *1,583 |
| Downstream side of confluence of Deep Run | *1,603 |
| Upstream side of dam | *1,640 |
| *Upper Tunkhannock Creek:* | |
| Approximately .2 mile downstream of T-641 | *1,673 |
| Approximately 100 feet upstream of T-625 at Dam | *1,695 |
| At State Route 423 | *1,731 |
| Upstream side of Miller Drive | *1,760 |
| Approximately .4 mile downstream of Camp Minsi Road | *1,790 |
| Approximately 325 feet upstream of Camp Minsi Road | *1,809 |
| *Lehigh River:* | |
| Approximately .5 mile downstream of State Route 115 | *1,453 |
| Approximately 1.5 miles upstream of State Route 115 | *1,490 |
| Approximately 3.3 miles upstream of State Route 115 | *1,507 |
| **Maps available for inspection at the Tobyhanna Township Building, Pocono Pines, Pennsylvania.** | |
| **TENNESSEE** | |
| **Lawrenceburg (city) Lawrence County (FEMA Docket No. 6825)** | |
| *Shoal Creek:* | |
| About 0.7 mile upstream of Old Shoal Creek Dam | *799 |
| Just downstream of confluence of Tripp Town Branch | *845 |
| *Little Shoal Creek:* | |
| At mouth | *807 |
| Just downstream of Tripp Road | *864 |
| *Crowson Creek:* | |
| At mouth | *804 |
| About 1.5 miles upstream of Old Waynesboro Road | *820 |
| *Tripp Town Branch:* Within community | *846 |
| **Maps available for inspection at the Building Official's Office, City Hall, Lawrenceburg, Tennessee.** | |
| **Lawrence County (unincorporated areas) (FEMA Docket No. 6826)** | |
| *Shoal Creek:* | |
| At Old Shoal Creek Dam | *790 |
| Just upstream of Old Shoal Creek Dam | *795 |
| At confluence of Beeler Fork Shoal Creek | *846 |
| *Beeler Fork Shoal Creek:* | |
| At confluence of Shoal Creek | *846 |
| About 1.3 miles upstream of Quail Drive | *866 |
| *Little Shoal Creek:* | |
| At mouth | *807 |
| Just downstream of Mount Ararat Road | *866 |
| *Crowson Creek:* | |
| About 400 feet upstream of Old Waynesboro Road | *806 |
| About 1.5 miles upstream of Old Waynesboro Road | *820 |
| *Tripp Town Branch:* | |
| At mouth | *846 |
| About 1.35 miles upstream of mouth | *880 |
| *Big Dry Branch:* | |
| At confluence of Tripp Town Branch | *880 |
| Just downstream of Weakley Creek Road | *916 |
| **Maps available for inspection at the Building Official's Office, County Courthouse, Lawrenceburg, Tennessee.** | |
| **VIRGINIA** | |
| **Essex County (unincorporated areas) (FEMA Docket No. 6824)** | |
| *Rappahannock River:* Entire shoreline | *7 |
| **Maps available for inspection at the Department of Building and Zoning, Prince Street, Tappahannock, Virginia.** | |
| **York County (unincorporated areas) (FEMA Docket No. 6826)** | |
| *Chesapeake Bay:* | |
| At the intersection of State Routes 622 and 212 | *8 |
| Shoreline at York Point Drive extended | *12 |
| *Poquoson River:* | |
| Shoreline at Tide Mill Road extended | *8 |
| Shoreline at River Point Drive extended | *12 |
| *Back Creek:* | |
| At intersection of Back Creek Road and Clayton Creek Road | *8 |
| Shoreline at Back Creek Road extended | *12 |
| *Chisman Creek:* | |
| At intersection of Ship Point Road and Anchor Drive | *9 |
| Shoreline at Anchor Drive extended | *12 |
| *Lambs Creek:* | |
| On Lambs Creek Drive approximately 1,200 feet east of intersection of Lambs Creek Drive and Calthrop Neck Road | *8 |
| Shoreline 2,000 feet northeast of intersection of Calthrop Neck Road and Sheckleford Road | *12 |
| *York River:* | |
| Shoreline at Ferry Point | *7 |
| At intersection of U.S. Route 17 and State Route 238 | *9 |
| Shoreline at U.S. Route 17 bridge | *12 |
| *Brick Kiln Creek:* At State Route 134 bridge | *9 |
| **Maps available for inspection at the County Planning Department, County Administrative Office Building, Yorktown, Virginia.** | |
| **WEST VIRGINIA** | |
| **Friendly (town), Tyler County (FEMA Docket No. 6823)** | |
| *Ohio River:* For its entire length within community | *631 |
| **Maps available for inspection at the Town Hall, Friendly, West Virginia.** | |
| **Middlebourne (town), Tyler County (FEMA Docket No. 6823)** | |
| *Middle Island Creek:* | |
| Approximately .9 mile downstream of Hadok Street (extended) | *685 |
| Approximately .6 mile upstream of Hadok Street (extended) | *686 |
| **Maps available for inspection at the Town Hall, Main Street, Middlebourne, West Virginia.** | |
| **Sistersville (city), Tyler County (FEMA Docket No. 6823)** | |
| *Ohio River:* | |
| Approximately 0.4 mile downstream of the confluence of Tanyard Run | *632 |
| Approximately 0.7 mile upstream of the confluence of Tanyard Run | *633 |
| **Maps available for inspection at the City Building, 200 Diamond Street, Sistersville, West Virginia.** | |
| **Tyler County, unincorporated areas (FEMA Docket No. 6823)** | |
| *Ohio River:* | |
| Approximately 1.5 miles downstream of the confluence of Huffman Run | *629 |
| Approximately 1.9 miles upstream of the confluence of Owl Run | *634 |
| *Middle Island Creek:* | |
| Approximately 3.4 miles downstream of County Route 26 | *679 |
| Approximately 2.2 miles upstream of County Route 26 | *692 |
| **Maps available for inspection at the County Courthouse, Middlebourne, West Virginia.** | |
| **WISCONSIN** | |
| **Montreal (city), Iron County (FEMA Docket No. 6823)** | |
| *West Fork Montreal River:* | |
| About 0.96 mile downstream from Soo Line Railway | *1,434 |
| About 850 feet upstream from State Highway 77 | *1,459 |
| About 1,100 feet upstream from State Highway 77 | *1,471 |
| Just downstream of Gile Dam | *1,478 |
| *Gile Flowage:* Entire shoreline | *1,491 |
| **Maps available for inspection at the City Hall, 53 Wisconsin Avenue, Montreal, Wisconsin.** | |

The base (100-year) flood elevations are finalized in the communities listed

below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **FLORIDA** | |
| **St. Augustine (city), St. Johns County (FEMA Docket No. 6920)** | |
| *Atlantic Ocean:* | |
| At intersection of Ponce De Leon Boulevard and San Carlos Avenue | *9 |
| About 1,200 feet east of intersection of San Marco Avenue and Old Mission Avenue | *11 |
| **Maps available for inspection** at the Planning Department, City Hall, 75 King Street, Room 136, St. Augustine, Florida. | |
| **ILLINOIS** | |
| **Arthur (village), Moultrie and Douglas Counties (FEMA Docket No. 6923)** | |
| *West Fork Kaskaskia River:* | |
| Just downstream of Industrial Parkway | *653 |
| About 300 feet upstream of county road | *655 |
| *Kaskaskia River Tributary:* | |
| About 2,000 feet downstream of Vine Street | *654 |
| About 650 feet upstream of Conrail | *669 |
| **Maps available for inspection** at the Tourist Information Center, 106 East Progress, Arthur, Illinois. | |
| **KANSAS** | |
| **Great Bend (city), Barton County (FEMA Docket No. 6920)** | |
| *Dry Walnut Creek:* | |
| About 1,300 feet west of the intersection of Park Avenue and Kiowa Road | *1,842 |
| About 2,400 feet west of the intersection of Aspen Drive and Cherry Lane | *1,865 |
| **Maps available for inspection** at the City Hall, Great Bend, Kansas. | |
| **MASSACHUSETTS** | |
| **Walpole (town), Norfolk County (FEMA Docket No. 6906)** | |
| *Neponset River:* | |
| Upstream side of Plimpton Street | *123 |
| Upstream side of Main Stream (downstream crossing) | *127 |
| Upstream side of West Street and dam | *144 |
| Upstream side of Lewis Avenue | *148 |
| Upstream side of powerline Access Road | *185 |
| Downstream side of dam of Washington Street | *227 |
| Upstream corporate limits | *235 |
| *Stop River:* Upstream side of Winter Street | *151 |
| *Cobb's Brook:* | |
| Confluence with Neponset River | *124 |
| Upstream side of Gould Street | *147 |
| Downstream side of North Street | *151 |
| Approximately 75 feet upstream of North Street | *153 |
| *Diamond Brook:* | |
| Confluence with Neponset River | *135 |
| Upstream side of Memorial Pond Dam | *141 |
| Upstream side of Diamond Street | *154 |
| Upstream side of CONRAIL bridge | *159 |
| Upstream side of Stone Street | *177 |
| Downstream side of Washington Street | *181 |
| Approximately 40 feet upstream of Washington Street | *182 |
| *Mine Brook:* | |
| Confluence with Neponset River | *136 |
| Shallow flooding approximately 800 feet north along CONRAIL from downstream CONRAIL crossing | #3 |
| *Traphole Brook:* | |
| Upstream side of U.S. Route 1 | *139 |
| Shallow flooding south side of Union Street at corporate limits | #2 |
| *Pictoral Brook:* | |
| Confluence with Traphole Brook | *101 |
| Approximately 150 feet downstream of Union Street | *106 |
| Approximately 150 feet downstream of Wolcott Avenue | *119 |
| Upstream side of most upstream footbridge | *127 |
| Approximately 500 feet upstream of most upstream footbridge | *131 |
| *School Meadow Brook:* Upstream side of Washington Street | *188 |
| **Maps available for inspection** at the Town Engineer's Office, Town Hall, Walpole, Massachusetts. | |
| **Texas** | |
| **Fort Worth (city), Tarrant and Denton Counties (FEMA Docket No. 6905)** | |
| *Benbrook Lake:* Entire shoreline within community | *715 |
| *Eagle Mountain Lake:* Entire shoreline within community | *657 |
| *Lake Worth:* Entire shoreline within community | *600 |
| *Marine Creek Lake:* Entire shoreline within community | *698 |
| *Cement Creek Reservoir:* | |
| Downstream of Interstate 820 (Jim Wright Freeway) | *685 |
| Upstream of Interstate 820 (Jim Wright Freeway) | *691 |
| *Lake Arlington:* Entire shoreline within community | *564 |
| *Big Fossil Creek:* | |
| At confluence with West Fork Tributary River | *503 |
| Approximately 400 feet upstream of Midway Road | *505 |
| At confluence of Stream BFC-1 | *581 |
| Approximately 150 feet upstream of Watauga-Saginaw Road | *604 |
| Approximately 0.77 mile downstream of confluence of Stream BFC-3 | *621 |
| Approximately 1.15 miles upstream of confluence of Stream BFC-3 | *660 |
| Approximately 200 feet upstream of Walnut Lake Dam | *697 |
| Approximately 0.4 mile upstream of Channel Dam | *711 |
| Approximately 1.14 miles upstream of Channel Dam | *730 |
| *Stream BFC-1:* | |
| At confluence with Big Fossil Creek | *578 |
| Upstream side of Wautauga Road | *599 |
| Approximately 500 feet upstream of second corporate limits crossing | *600 |
| At upstream side of Basswood Boulevard | *617 |
| Approximately 0.42 mile upstream of Basswood Boulevard | *626 |
| *Stream BFC-2:* | |
| At confluence with Big Fossil Creek | *586 |
| Approximately 200 feet upstream of Watauga-Saginaw Road | *597 |
| Approximately 800 feet downstream of Old Denton Road | *610 |
| Approximately 100 feet downstream of Old Denton Road | *614 |
| Approximately 0.53 mile upstream of Interstate Route 35 | *650 |
| Approximately 700 feet upstream of U.S. Route 287 | *677 |
| *Stream BFC-2A:* | |
| At confluence with Stream BFC-2 | *633 |
| Approximately 300 feet upstream of upstream corporate limits | *658 |
| *Stream BFC-3:* | |
| At confluence with Big Fossil Creek | *636 |
| Approximately 1.0 mile upstream of confluence with Big Fossil Creek | *660 |
| Approximately 620 feet upstream of Harmon Road | *692 |
| *Stream BFC-4* | |
| At confluence with Big Fossil Creek | *667 |
| Approximately 260 feet upstream of Hicks Road | *733 |
| Approximately 400 feet upstream of Interstate Route 287 | *736 |
| *Stream BFC-4A:* | |
| At confluence with Stream BFC-4 | *685 |
| Upstream side of most upstream crossing of FM 156 | *703 |
| Approximately 400 feet downstream of Interstate 287 | *717 |
| Approximately 350 feet upstream of Interstate 287 | *726 |
| *Little Fossil Creek:* | |
| At confluence with Big Fossil Creek | *503 |
| At upstream side of Beach Street | *560 |
| Upstream side of Sylvania Avenue | *592 |
| Upstream side of North Frontage Road Interstate 820 | *629 |
| Approximately 1,850 feet upstream of Cantrell-Sansom Road | *652 |
| *Stream LFC-1:* | |
| At confluence with Little Fossil Creek | *578 |
| At downstream side of Riverside Drive | *596 |
| Approximately 0.4 mile upstream of Middleton Boulevard | *621 |
| *Stream LFC-2:* | |
| At confluence with Little Fossil Creek | *589 |
| Approximately 0.5 mile upstream of Loamside Drive | *611 |
| Approximately 75 feet downstream of Jim Wright Freeway | *620 |
| *Whites Branch:* | |
| At most downstream corporate limits | *583 |
| Approximately 1.2 miles upstream of Alta Vista Road | *667 |
| *Stream WB-1:* | |
| At confluence with Whites Branch | *649 |
| Approximately 50 feet upstream of upstream corporate limits | *666 |
| *Clear Fork Trinity River:* | |
| At confluence with West Fork Trinity River | *537 |
| At downstream side of Old Vickery Street | *550 |
| Approximately 200 feet upstream of Bryant-Irvin Road | *590 |
| At confluence of Stream CF-6 | *617 |
| Approximately 1.3 miles upstream of the confluence of Stream CF-6 | *621 |
| *Stream CF-2:* | |
| At confluence with Clear Fork Trinity River | *570 |
| At upstream side of second crossing of Southern Pacific Railroad | *580 |
| Approximately 0.8 mile upstream of Vickery Boulevard | *613 |
| *Stream CF-3:* | |
| Approximately 100 feet downstream of South Boulevard | *577 |
| At upstream side of Overton Park Drive East | *622 |
| Approximately 300 feet upstream of Trail Lake Drive | *667 |
| *Stream CF-3A:* | |
| At confluence with Stream CF-3 | *607 |
| Approximately 0.2 mile upstream of Overton Park West | *619 |
| Approximately 0.5 mile upstream of Overton Park West | *640 |
| *Stream CF-3B:* | |
| At confluence with Stream CF-3 | *617 |
| Approximately 80 feet upstream of Bilgrade Road | *666 |
| *Stream CF-5:* | |
| At confluence with Clear Fork Trinity River | *594 |
| At upstream side of Bryant-Irvin Road | *607 |
| At upstream side of second crossing of Interstate Route 20 | *643 |
| Approximately 1.8 miles upstream of second crossing of Interstate Route 20 | *705 |
| *Stream CF-6:* | |
| At confluence with Clear Fork Trinity River | *618 |
| Approximately 1.8 miles above confluence with Clear Fork Trinity River | *683 |
| *Howards Branch:* | |
| At confluence with Clear Fork Trinity River | *562 |
| At upstream side of Mockingbird Lane | *567 |
| Approximately 0.4 mile above Lynncrest Court | *569 |
| *Stream HB-1:* | |
| At confluence with Howards Branch | *564 |
| At upstream side of Colonial Parkway | *577 |
| Approximately 100 feet upstream of North Belaire Drive | *606 |
| *Marine Creek:* | |
| At confluence with West Fork Trinity River | *529 |
| At confluence of Cement Creek | *579 |
| At downstream face of Marine Creek Lake Dam | *642 |
| At upstream corporate limits | *698 |
| *Marine Creek Split Flow:* | |
| At confluence with Marine Creek | *533 |
| At origin of Split Flow into Commerce Street | *545 |
| *Stream MC-1:* | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| At confluence with Marine Creek | *530 |
| Upstream side of Northeast 29th Street | *585 |
| Approximately 1,800 feet upstream of Northeast 33rd Street | *625 |
| *Stream MC-2:* | |
| At confluence with Marine Creek Lake | *698 |
| Approximately 1.1 miles upstream of confluence with Marine Creek Lake | *705 |
| *Cement Creek:* | |
| At confluence with Marine Creek | *579 |
| Downstream side of Cement Creek Reservoir Dam | *645 |
| At upstream corporate limits | *691 |
| *Marys Creek:* | |
| At confluence with Clear Fork Trinity River | *607 |
| Upstream side of Old Benbook Road | *634 |
| At confluence of Stream MSC-2 | *679 |
| At confluence of South Marys Creek | *710 |
| Approximately 300 feet upstream of upstream corporate limits | *739 |
| *Stream MSC-1:* | |
| Upstream side of Interstate Highway 820 | *682 |
| Approximately 100 feet upstream of Almeda Street | *721 |
| *Stream MSC-2:* | |
| At confluence with Marys Creek | *679 |
| Approximately 1,100 feet upstream of Chapin School Road | *723 |
| *Stream MSC-3:* | |
| At confluence with Marys Creek | *725 |
| At upstream corporate limits | *738 |
| *South Marys Creek:* | |
| Approximately 100 feet downstream of downstream corporate limits | *739 |
| At upstream corporate limits | *773 |
| *Walnut Creek:* | |
| At confluence with Marys Creek | *634 |
| Upstream side of Aledo Road | *685 |
| Approximately 2.7 miles upstream of Aledo Road | *759 |
| *Sycamore Creek:* | |
| At confluence with West Fork Trinity River | *514 |
| At confluence of Stream SC-3 | *561 |
| Upstream side of Texas and Pacific Railroad | *620 |
| At confluence of Edgecliff Branch | *652 |
| Upstream side of Missouri Pacific Railroad | *716 |
| At most upstream corporate limits | *773 |
| *Stream SC-1:* | |
| At confluence with Sycamore Creek | *527 |
| Upstream side of Conner Road | *547 |
| Approximately 950 feet upstream of Collard Street | *603 |
| *Stream SC-2:* | |
| At confluence with Sycamore Creek | *528 |
| Approximately 1,000 feet downstream of Vickery Boulevard | *544 |
| Approximately 100 feet upstream of Texas and Pacific Railroad | *579 |
| *Stream SC-3:* | |
| At confluence with Sycamore Creek | *561 |
| Approximately 300 feet upstream of Glen Gardens Drive | *602 |
| *Stream SC-5:* | |
| At confluence with Sycamore Creek | *584 |
| Upstream side of Missouri Pacific Railroad | *616 |
| Approximately 1,350 feet upstream of Drew Street | *631 |
| *Stream SC-6:* | |
| At confluence with Sycamore Creek | *649 |
| Upstream side of Edgecliff Road | *666 |
| Approximately 130 feet upstream of Gravel Road | *692 |
| *Stream SC-7:* | |
| At confluence with Sycamore Creek | *690 |
| Approximately 1,000 feet upstream of Cunningham Avenue (South Worth Road) | *752 |
| Approximately 0.9 mile upstream of the most upstream corporate limits | *787 |
| *Edgecliff Branch:* | |
| At confluence with Sycamore Creek | *652 |
| Upstream side of Alta Mesa Boulevard | *730 |
| Approximately 0.4 mile upstream of Woodway Drive | *779 |
| *West Fork Trinity River:* | |
| At most downstream corporate limits | *454 |
| Approximately 1,350 feet upstream of State Route 380 | *462 |
| Approximately 7.5 miles upstream of State Route 380 | *476 |
| At Precinct Line Road | *483 |
| Approximately 500 feet upstream of Handley Ederville Road | *500 |
| Upstream side of East 1st Street | *511 |
| Approximately 600 feet downstream of St. Louis Southwestern Railroad | *539 |
| Approximately 300 feet upstream of Meandering Road | *561 |
| Approximately .8 mile upstream of State Route 199 | *600 |
| At downstream face of Eagle Mountain Dam | *657 |
| *Stream WF-1:* | |
| At confluence with West Fork Trinity River | *486 |
| At upstream side of most downstream crossing of Randol Mill Road | *508 |
| At confluence of Stream WF-1A | *538 |
| *Stream WF-1A:* | |
| At confluence with Stream WF-1 | *538 |
| Approximately 1,400 feet upstream of confluence with WF-1 | *543 |
| *Stream WF-1B:* | |
| At confluence with Stream WF-1 | *538 |
| Approximately 0.76 mile upstream of confluence with Stream WF-1 | *570 |
| *Stream WF-2:* | |
| At confluence with West Fork Trinity River | *504 |
| At downstream side of Interstate Route 30 | *521 |
| Approximately 1.4 miles upstream of Interstate 30 | *561 |
| *Stream WF-3:* | |
| At confluence with West Fork Trinity River | *506 |
| Approximately 120 feet downstream of Randol Mill Road | *518 |
| At upstream side of White Lake Dam | *557 |
| At upstream side of Interstate Route 30 | *578 |
| Approximately 1,000 feet upstream of Fossil Lake Dam | *601 |
| *Stream WF-4:* | |
| At confluence with West Fork Trinity River | *527 |
| At upstream side of Dewey Street | *565 |
| At upstream side of Long Avenue | *610 |
| At upstream side of Dandder Road | *657 |
| *Stream WF-5:* | |
| At confluence with West Fork Trinity River | *543 |
| At upstream side of Ohio Garden Road | *546 |
| Approximately 330 feet upstream of upstream corporate limits | *594 |
| *Stream WF-7:* | |
| At confluence with West Fork Trinity River | *602 |
| At upstream side of Shoreline Road | *603 |
| Approximately 1,900 feet upstream of Shoreline Road | *612 |
| Approximately 1,340 feet downstream of Nine Mile Azle Road | *624 |
| Approximately 500 feet upstream of Nine Mile Azle Road | *634 |
| *Stream WF-7A:* | |
| At confluence with Stream WF-7 | *603 |
| At upstream corporate limits | *629 |
| *Stream WF-8:* | |
| At confluence with West Fork Trinity River | *492 |
| At upstream side of Interstate Route 820 | *505 |
| Approximately 1,600 feet upstream of Interstate 820 | *514 |
| *Stream WF-10:* | |
| At confluence with West Fork Trinity River | *551 |
| Approximately 470 feet upstream of Burton Hill Road | *558 |
| At upstream side of Roaring Springs Road | *599 |
| *Boyd Branch:* | |
| At downstream corporate limits | *486 |
| At upstream side of Pipeline Road | *515 |
| *Calloway Branch:* | |
| At confluence with Walker Branch | *507 |
| Approximately 130 feet upstream of abandoned railroad | *512 |
| *Dry Branch:* | |
| At confluence with West Fork Trinity River | *509 |
| At upstream side of State Route 121 | *549 |
| At upstream side of Aster Avenue | *575 |
| Approximately 0.31 mile upstream of Hollis Street | *593 |
| *Farmers Branch:* | |
| At downstream corporate limits | *719 |
| At upstream side of Academy Boulevard | *751 |
| Approximately 0.31 mile upstream of Little Fox Lane | *789 |
| *Hurricane Creek:* | |
| At downstream corporate limits | *479 |
| Approximately 100 feet upstream of South Pipeline Road | *501 |
| *Kings Branch:* | |
| At downstream corporate limits | *595 |
| At upstream side of Green Oaks Road | *622 |
| Approximately 0.45 mile upstream of Ridgemar Meadow Road | *651 |
| *Live Oak Creek:* | |
| At confluence with Lake Worth | *600 |
| At downstream side of Silver Creek Road | *607 |
| Approximately 1.9 miles upstream of Silver Creek Road | *655 |
| *Lonian Branch:* | |
| At confluence with Walker Branch | *485 |
| Approximately 0.41 mile upstream of Trinity Boulevard | *503 |
| *Silver Creek:* | |
| At confluence with Lake Worth | *600 |
| Approximately 90 feet upstream of Silver Creek Road | *613 |
| *Sulphur Branch:* | |
| At confluence with Walker Branch | *478 |
| At upstream corporate limits | *482 |
| *Valley View Branch:* | |
| At confluence with Walker Branch | *483 |
| At upstream side of Trinity Boulevard | *490 |
| At upstream corporate limits | *502 |
| *Walker Branch:* | |
| At downstream corporate limits | *478 |
| At upstream side of downstream crossing of Trinity Boulevard | *479 |
| At upstream side of Norwood Drive | *487 |
| At upstream side of Precinct Line Road | *505 |
| At upstream corporate limits | *512 |
| *Village Creek:* | |
| At confluence with West Fork Trinity River | *479 |
| Approximately 500 feet upstream of Interstate Route 30 | *484 |
| Approximately 1,400 feet upstream of confluence of Rush Creek | *492 |
| At confluence of South Creek | *578 |
| Approximately 1.0 mile downstream of most upstream corporate limits | *658 |
| At approximately 0.2 mile upstream of the most upstream corporate limits | *670 |
| *Stream VC-1:* | |
| At confluence with Lake Arlington | *564 |
| Approximately 2,000 feet downstream of Carey Road | *582 |
| Approximately 70 feet upstream of Freshfield Road | *606 |
| *Stream VC-2:* | |
| At confluence with Lake Arlington | *564 |
| Approximately 120 feet upstream of Mansfield Highway | *643 |
| *Stream VC-5:* | |
| At downstream corporate limits | *655 |
| Approximately 1,100 feet upstream of Oak Grove Road | *689 |
| *Stream VC-6:* | |
| Approximately 860 feet downstream of Oak Grove East Road | *647 |
| Approximately 100 feet upstream of Stone Road | *689 |
| *Stream VC-7:* | |
| At downstream corporate limits | *649 |
| Approximately 150 feet upstream of most upstream dam | *660 |
| *Chambers Creek:* | |
| At confluence with Village Creek | *580 |
| Upstream side of Anglin Drive | *594 |
| Approximately 920 feet upstream of third upstream corporate limits crossing | *611 |
| Downstream side of Rendon Drive | *626 |
| *Cottonwood Creek:* | |
| At confluence with Village Creek | *479 |
| Upstream side of Bentley Village Parkway | *492 |
| Upstream side of Brentwood Stair Road | *518 |
| Upstream side of Sandy Lane | *569 |
| Approximately 870 feet upstream of Miam Street | *600 |
| *Deer Creek:* | |
| Approximately 1,740 feet downstream of Forest Hill-Everman Road | *637 |

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| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 0.5 mile upstream of Missouri, Kansas and Texas Railroad | *690 |
| *Elm Branch:* | |
| Approximately 100 feet downstream of Rendon-New Hope Road | *668 |
| Approximately 1,500 feet upstream of Rendon-New Hope Road | *671 |
| *North Fork Chambers Creek:* | |
| At downstream corporate limits | *655 |
| Approximately 70 feet upstream of Oak Grove Road | *683 |
| *South Creek:* | |
| At confluence with Village Creek | *578 |
| Approximately 0.7 mile upstream of confluence with Village Creek | *587 |
| *South Fork Chambers Creek:* | |
| Approximately 650 feet downstream of Christopher Street | *661 |
| Approximately 1,170 feet upstream of Oak Grove Road | *685 |
| *Wildcat Branch:* | |
| At confluence with Lake Arlington | *564 |
| Upstream side of Dillard Street | *598 |
| Approximately 0.5 mile upstream of Village Creek Road | *620 |
| *Stream WC-1:* | |
| At confluence with Wildcat Branch | *564 |
| Approximately 650 feet upstream of Ramey Avenue | *603 |
| *Bear Creek 1:* | |
| Approximately 1.2 miles downstream of Golden Triangle Boulevard | *697 |
| Approximately 710 feet downstream of Alta Vista Road | *722 |
| Approximately 250 feet upstream of Old Denton Road | *770 |
| Approximately 300 feet upstream of Golden Triangle Spur | *772 |
| **Maps available for inspection** at the City Hall, Development Activities Division, 1000 Throckmorton, Fort Worth, Texas. | |
| **Liberty (city), Liberty County (FEMA Docket No. 6906)** | |
| *Trinity River:* | |
| At downstream corporate limits | *25 |
| Downstream side of U.S. Route 90 | *28 |
| Approximately 4.0 miles upstream of upstream corporate limits | *33 |
| **Maps available for inspection** at the City Hall, 1829 Sam Houston Street, Liberty, Texas 77575. | |

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

Issued: July 20, 1988.

[FR Doc. 88-16882 Filed 7-26-88; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

**[Docket No. FEMA-6914]**

### Final Flood Elevation Determination; City of Nezperce, ID; Rescission

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule; rescission.

**SUMMARY:** The Federal Emergency Management Agency has published a Flood Insurance Study (FIS) and a Flood Insurance Rate Map (FIRM) for the City of Nezperce, Idaho, which included base flood elevations for Long Hollow Creek. Because the processing of the FIS and FIRM was not delayed until questions raised by the City were resolved, the Federal Emergency Management Agency has determined that the FIS and FIRM for the City should be rescinded. This notice will serve to rescind the FIS and FIRM.

**EFFECTIVE DATE:** July 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

**SUPPLEMENTARY INFORMATION:** Because the processing of the FIS and FIRM was not delayed until questions raised by the City were resolved, the Federal Emergency Management Agency has determined that the FIS and FIRM for the City of Nezperce, Idaho, effective April 15, 1988 (February 1, 1988; 53 FR 2743), should be rescinded. On July 22, 1988, the FIS and FIRM will be reissued in preliminary form, and a new notice of the proposed flood elevations will be issued, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

**List of Subjects in 44 CFR Part 57**

Flood insurance, Floodplains.

Issued: July 18, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-16883 Filed 7-26-88; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Human Development Services

## 45 CFR Part 1336

### Native American Programs; Assistance to Native Hawaiians and Native American Pacific Islanders

**AGENCY:** Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services.

**ACTION:** Interim final rule; correction.

**SUMMARY:** The Administration for Native Americans is adding an effective date to the interim final rule implementing a revolving loan fund demonstration project which appeared in the **Federal Register** on June 24, 1988 (53 FR 23964). The effective date for the interim final rule was inadvertently omitted. As required by statute, the effective date is 30 days after the date the rule is published..

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jan Phalen, ANA, (202) 245-7714, Administration for Native Americans.

**SUPPLEMENTARY INFORMATION:** On June 24, 1988, the Department published an interim final rule with a 60 day comment period. The rule implemented requirements in the Native American Programs Act of 1987 (the Act). The major provision of the rule was to establish the procedures and criteria by which the Administration for Native Americans (ANA) will make a five-year demonstration grant to one agency of the State of Hawaii or to one Native Hawaiian organization to manage a Revolving Loan Fund to promote economic development for Native Hawaiians. The effective date was inadvertently omitted in this publication.

Section 814(c)(2) of the Act states that no rule that applies exclusively to any program, project, or activity under this title may take effect until 30 days after the publication. Therefore, the effective date is July 25, 1988.

Commenters will have until August 23, 1988, to submit comments. All comments received will be considered and the rule will be revised if necessary.

(Catalog of Federal Domestic Assistance Number 13.612)

Approved July 20, 1988.

**James V. Oberthaler,**

*Deputy Assistant Secretary for Information and Resource Management.*

[FR Doc. 88-16902 Filed 7-26-88; 8:45 am]

BILLING CODE 4130-01-M

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 1 and 80

**[General Docket No. 79-144; FCC 88-206]**

### Amendment of the Commission's Rules Concerning Radiofrequency Radiation From Ship Earth Stations

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule.

**SUMMARY:** This item amends Parts 1 and 80 of the Commission's Rules and Regulations to minimize the potential for environmental impact from ship earth stations with regard to human exposure to radiofrequency (RF) radiation. This

item establishes a requirement that applications for ship earth stations will be subject to the specifications for RF radiation compliance identified in § 1.1307(b) of the Commission's Rules. In addition manufacturers of ship earth stations will be required to provide installation and operating instructions to assist users in complying with the guidelines. These amendments have been adopted as part of the Commission's fulfillment of its responsibilities under the National Environmental Policy Act of 1969 to minimize environmental impact from FCC-regulated facilities.

**EFFECTIVE DATE:** November 17, 1988.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Cleveland, Office of Engineering and Technology, FCC (202) 653–8169.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Third Report and Order*, General Docket 79–144, FCC 88–206 Adopted June 20, 1988, and Released July 11, 1988.

The Full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW.. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Sutie 140, Washington, DC 20037.

### Summary of Third Report and Order

1. Under the terms of the National Environmental Policy Act (NEPA), federal agencies are required to ensure appropriate environmental evaluation of actions taken by them that may significantly affect the human environment. In order to fulfill its responsibilities under NEPA, the Commission has previously adopted rules (47 CFR 1.1301 *et seq.*) to provide for environmental processing of applications for facilities that might have environmental impact.

2. One of the major categories of potential environmental impact from FCC-regulated services is possible human exposure to radiofrequency (RF) radiation from transmitting sources. Therefore, in 1985, the Commission adopted a *Report and Order* (50 FR 11151, 1985) to provide specifically for routine evaluation for environmental RF radiation from certain FCC-authorized facilities and services. This was followed by a *Second Report and Order* (52 FR 13240, 1987) further defining FCC policy and providing for categorical exclusion of certain facilities.

3. The present proceeding is a result of the Commission's *Third Notice of Proposed Rule Making* (NPRM, 52 FR 18409, 1987) in this docket regarding the potential of ship earth stations to produce significant environmental RF radiation. The Commission had proposed originally to require evaluation of ship earth stations under Part 80 of the FCC's Rules. However, the *Order* adopted today adds ship earth stations to the list of facilities that will be subject to § 1.1307(b) of the Rules. The rule part originally proposed, § 80.83, will serve as a cross-reference to environmental compliance under Part 1. This approach will be more consistent with existing Commission policy and rules regarding this issue.

4. Our *Third Notice* had also proposed applying the rule amendments to ship radar stations. However, we do not believe the present record supports this, and, as adopted, the rule amendments will only apply to ship earth stations. The other rule part originally proposed, § 80.227, is being adopted with only minor edits. It requires manufacturers of ship earth stations to provide installers and users of this equipment with instructions to help prevent human exposure in excess of the RF radiation guidelines.

5. With this item Docket 79–144 is hereby terminated. The Commission has now completed the establishment of its basic policy with respect to the issue of potentially hazardous RF radiation. However, in view of the likelihood of further developments affecting this topic, both in the area of basic research and with respect to the possible issuance of new health and safety standards, this issue may be the subject of other Commission proceedings in the future.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

7. This item has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. The Office of Management and Budget has approved the collection of information requirement contained in this rule. The OMB control number for this collection of information requirement is 3060–0388.

### Ordering Clauses

Accordingly, it is ordered that, effective November 17, 1988, Parts 1 and 80 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as set forth below and that this amendment will be applicable to applications filed on or after this effective date.

This action is taken pursuant to the provisions of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

### List of Subjects

*47 CFR Part 1*

Practice and procedure, National Environmental Policy Act, Radiofrequency radiation.

*47 CFR Part 80*

Maritime services, Ship earth stations, Radiofrequency radiation.

### Rule Changes

Part 1, Chapter I, of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552.

2. In § 1.1307, the note in paragraph (b) is revised as follows:

**§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.**

* * * * *

(b) * * *

Note.—Paragraph (b) of this section shall apply to facilities and operations licensed or authorized under Parts 5, 25, 73, 74 (Subparts A, G, and L only), and 80 (ship earth stations only). Facilities and operations licensed or authorized under all other Parts, Subparts, or Sections of the Commission's Rules shall be categorically excluded from consideration under paragraph (b) of this section, unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraphs (c) or (d) of this section.

* * * * *

Part 80, Chapter I, of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.83 is added as follows:

**Station Requirements—Ship Stations**

* * * * *

**§ 80.83 Protection from potentially hazardous RF radiation.**

Any license or renewal application for a ship earth station that will cause exposure to radiofrequency (RF) radiation in excess of the RF exposure guidelines specified in § 1.1307(b) of the Commission's Rules must comply with the environmental processing rules set forth in §§ 1.1301–1.1319 of this chapter.

3. Section 80.227 is added to Subpart E as follows:

**§ 80.227 Special requirements for protection from RF radiation.**

As part of the information provided with transmitters for ship earth stations, manufacturers of each such unit must include installation and operating instructions to help prevent human exposure to radiofrequency (RF) radiation in excess of the RF exposure guidelines specified in 1.1307(b) of the Commission's Rules.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88–16717 Filed 7–26–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 15**

**[Gen Docket 87–107; FCC 88–208]**

## Cable Input Selector Switches

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission revises its implementation plan for the marketing of input selector switches but retains the isolation standards for such switches that were adopted recently in Gen Docket 87–107. This action is taken in response to petitions for reconsideration filed by the Consumer Electronics Group of the Electronics Industries Association and the Electronics Industries Association of Japan. This will provide manufacturers and suppliers of input selector switches more time to bring its equipment into compliance with the new technical standards.

**EFFECTIVE DATE:** August 17, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Liliane Volcy, Office of Engineering & Technology, tel: (202) 653–7316 or 653–6288; or Scott Roberts, Mass Media Bureau, (202) 632–6302.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum, Opinion and Order, Gen Docket 87–107, FCC 88–208, adopted June 21, 1988, released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

### Summary of Memorandum Opinion and Order

1. By this Memoradum Opinion and Order, the Commission revises its implementation plan for the marketing of cable input selector switches. This action is taken in response to petitions for reconsideration of the *Report and Order* in Gen Docket No. 87–107 (*Report and Order*), FCC 87–357, adopted November 19, 1987, filed by the Consumer Electronics Group of Electronic Industries Association (EIA/CEG) and the Electronic Industries Association of Japan (EIAJ). The Commission also is denying a request by the EIAJ to reduce the switch isolation standard specified in the new rules. On January 27, 1988, the Commission stayed the effective date of the input selector switch standards pending resolution of these petitions for reconsideration. The Commision is further denying motions for stay, filed by Gill Industries, Inc., § 76.611—the Cumulative Leakage Index (CLI) requirements—and of § 76.66—the input selector switch offer and consumer education requirements—for cable systems.

2. Petitioners contend that the marketing implementation plan for the input selector switches imposes substantial, unnecessary, and unintended burdens on manufacturers of TV receivers and switching accessories. They argue that the date for beginning the implementation process comes too soon to allow manufacturers to redesign their product lines and to bring them into compliance with the new isolation standards. Petitioners request that the current marketing based plan under which non-complying equipment cannot be sold to final users, i.e. consumers, after a certain date to replaced with a more tranditional approach whereby newly manufactured equipment must comply with the rules in accordance with a schedule of fixed dates.

3. The Commission recognizes the difficulties the existing implementation plan may pose for equipment manufacturers. It also finds that modification of this plan to establish fixed dates for application of the switch standards to newly manufactured equipment will not result in increased interference. Therefore, in order to provide manufacturers and suppliers of input selector switches more time to bring its equipment into compliance with the new technical standards, the Commission has revised its implementation plan. The revised implementation plan provides that the new isolation standards will apply to the following:

—Stand-alone mechanical switches manufactured or imported on or after August 19, 1988;

—Stand-alone electronic switches manufactured or imported on or after October 28, 1988; or

—Switches built into a television receiver and manufactured or imported on or after April 28, 1989.

Cable input selector switches manufactured or imported prior to the dates listed above shall comply with the provisions of § 15.3 and Part 76 only.

4. EIAJ also requested that the Commission reconsider the isolation standard to set the level of required isolation over the frequency range from 54 to 216 MHz at 70 dB instead of the 80 dB standard that was adopted in the *Report and Order* in order the account for switch deterioration over time. The Commission indicated that it addressed the issue of equipment deterioration in this proceeding and considered it in the *Report and Order* in arriving at the 80 dB level of isolation. The Commission stated that in the 54 to 216 MHz frequency range the 80 dB standard provides an adequate margin of protection against the normal variability of isolation and deterioration that occurs in switches. It, therefore, denied that portion of EIJA's petition regarding a reduction of the isolation standard of input selector switches.

5. In dealing with Gill's motion for stay of the input selector switch offer and consumer education requirements (§ 76.66), the Commission stated that it intends to address this matter in a separate subsequent order and that Gill's concern that the provisions of § 76.66 would apply while the stay of the technical standards remained in effect is therefore premature and unfounded. Accordingly, Gill's motion for stay regarding § 76.66 is dismissed.

6. With regard to Gill's second petition, the Commission found no reason why cable systems can not comply with the CLI requirement contained in § 76.611 beginning July 1, 1990. By this instant Memorandum Opinion and Order, the Commission is revoking its stay of the technical requirements for input selector switches. The Commission indicated that this action would provide sufficient time to enable compliance by cable entitites. Accordingly, Gill's motion for stay for compliance with the CLI requirements is dismissed.

7. Pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, and § 1.106 of the Commission's Rules, it is ordered that the petitions for reconsideration of the *Report and Order* filed by parties named herein are granted to the extent indicated above, and are denied in all other respects. It is further ordered that the motions for stay filed by Gill Industries, Inc. are dismissed. In addition, it is ordered that Part 15 be amended, as shown below, effective August 17, 1988.

**List of Subjects in 47 CFR Part 15**

Communications equipment.

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 15—[AMENDED]**

1. The authority citation for Part 15 is revised to read as follows:

**Authority:** Secs. 4, 302, 303 and 307 of the Communications Act, as amended; 47 U.S.C. 154, 302, 303 and 307.

2. Section 15.4 is amended by adding a new paragraph (w) to read as follows:

**§ 15.4 Definitions.**

* * * * *

(w) *Cable input selector switch.* A transfer switch that is intended as a means to alternate between the reception of broadcast signals via connection to an antenna and the reception of cable television service.

3. Part 15 is amended by revising § 15.64 to read as follows:

**§ 15.64 Television receivers equipped with cable input selector switches.**

(a) The cable input selector switch shall provide in any of its set positions isolation between the antenna and cable input terminals of at least 80 dB from 54 to 216 MHz, and at least 60 dB from 216 to 550 MHz. The 80 dB limit shall apply at the boundary between the two frequency ranges.

(b) The cable input selector switch shall be verified pursuant to Subpart J of Part 2 of this chapter.

(c) The provisions of this section shall apply to cable input selector switches that are built into a television receiver and manufactured or imported on or after April 28, 1989.

4. Section 15.606 is amended by revising paragraph (d) to read as follows:

**§ 15.606 Transfer switches.**

* * * * *

(d) A cable input selector switch shall provide in any of its set positions isolation between the antenna and cable input terminals of at least 80 dB from 54 to 216 MHz, and at least 60 dB from 216 to 550 MHz. The 80 dB limit shall apply at the boundary between the two frequency ranges.

5. Section 15.616 is amended by revising the heading and paragraph (e) to read as follows:

**§ 15.616 Authorization requirements.**

* * * * *

(e) A table input selector switch shall be verified to show compliance with the technical specifications of § 15.606(d) pursuant to Subpart J of Part 2 of this chapter. To determine compliance, measurements shall be made in accordance with the applicable procedures set forth in the *FCC Procedure for Measuring Cable Television Switch Isolation*, MP–9 or equivalent procedures, provided the applicant can adequately demonstrate to the Commission that such procedures are, in fact, equivalent.

**Note:** MP–9 is available from the National Technical Information Service (NTIS) located at 5285 Port Royal Road, Springfield, VA 22161 and from the Commission's current duplicating contractor, whose name is available from the Commission's Consumer Assistance Office.

6. Paragraph (b) in § 15.622 is amended to read as follows:

**§ 15.622 Labelling requirements.**

* * * * *

(b) A stand-alone cable input selector switch shall be identified pursuant to the requirements of Subpart J of Part 2 of this chapter. In addition, name plate or label shall be permanently attached to the device, and include the following statement:

This device is verified to comply with FCC Rules Part 15 for use with cable television service.

7. A new § 15.628 is added to read as follows:

**§ 15.628 Compliance schedule for cable input selector switches.**

The provisions of this subpart shall apply to cable input selector switches that are:

(a) Stand-alone mechanical and manufactured or imported on or after August 19, 1988;

(b) Stand-alone electronic and manufactured or imported on or after October 28, 1988; or,

(c) Built into a television receiver and manufactured or imported on or after April 28, 1989.

Cable input selector switches manufactured or imported prior to the dates listed above need only to comply with the provisions of § 15.3 and Part 76.

Federal Communications Commission.

**H. Walker Feaster, III,**

*Acting Secretary.*

[FR Doc. 88–16713 Filed 7–26–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 19**

**[FCC 88–200]**

## Employee Responsibilities and Conduct; Acceptance of Gifts, Entertainment and Favors

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends the definition of prohibited source contained in § 19.735–202(a) of the Commission's rules to include any individual or organization who is offering anything of monetary value to a Commission employee because of the employee's official government position in conformance with the Office of Government Ethics' Memorandum on *Acceptance of Food and Refreshments by Executive Branch Employees*, issued October 23, 1987. This amendment will eliminate the exception to the prohibition against one-on-one meals for those persons who cannot directly benefit from the Commission's regulatory activities e.g., press or organizations not affiliated with FCC licensees.

**EFFECTIVE DATE:** August 19, 1988.

**ADDRESS:** 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Sharon B. Kelley, Office of General Counsel, (202) 632–6990.

**Memorandum Opinion and Order**

Adopted: June 14, 1988.

Released: July 5, 1988.

By the Commission.

In the matter of Employee Responsibilities and Conduct; Acceptance of Gifts, Entertainment and Favors.

1. On March 12, 1987, the Commission amended Part 19 of its rules governing Employee Responsibilities and Conduct, which generally prohibits Commissioners and employees from accepting gifts or anything of monetary value from a prohibited source, *e.g.*, a Commission regulatee or other interested person. *In the Matter of Amendment of section 19.735–202 of the Commission's Rules*, FCC 86–525, 52 F.R. 7577 (1987). The *Order* clarified that Commissioners and employees may not accept one-on-one meals from prohibited sources but may attend group functions and accept meals and/or refreshments, not lavish in kind, as long as the Office of General Counsel makes a prior determination that attendance is necessary to assist the employees in performing their official duties.[1]

2. The Commission's *Order* also specifically excluded from the prohibition against accepting gifts, one-on-one meals provided by those "persons who cannot directly benefit from the Commission's regulatory activities (*e.g.*, press organizations not affiliated with FCC licensees)." [2]

3. On October 23, 1987, the Office of Government Ethics issued a Memorandum on *Acceptance of Food and Refreshments by Executive Branch Employees (OGE Memorandum)*.[3] *Inter alia*, the OGE Memorandum directed executive branch employees not to accept one-on-one meals from any individual or organization who offers them "anything of monetary value * * * simply because of their official position."[4] By way of illustration, the OGE Memorandum cited the very exception that the Commission's *Order* had attempted to carve out—"a reporter seeking information from, or an interview or ongoing working relationship with, a government employee because of the employee's official position." [5]

4. In response to OGE's memorandum, the Commission is amending the definition of prohibited source contained in § 19.735–202(a) of its rules to include any person or organization who is offering anything of monetary value to a Commission employee because of the employee's official position. While the Commission is not part of the executive branch, we have historically looked to the Office of Personnel Management and OGE for guidance on and approval of our Part 19 rules. This amendment will eliminate the exception to the prohibition against one-on-one meals for those persons who cannot directly benefit from the Commission's regulatory activities, *e.g.*, press organizations not affiliated with FCC licensees.[6]

5. We find that prior notice and public comment procedures are unnecessary to implement these revisions of general rules of agency practice and procedure. 5 U.S.C. § 553(b)(3)(A).

6. In view of the foregoing and pursuant to sections 303(r), and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 154(i) and the Office of Government Ethics Memorandum on *Acceptance of Food and Refreshments by Executive Branch Employees*, issued October 23, 1987, it is hereby ordered that Part 19 of the Commission's rules is amended as set forth.

Federal Communications Commission.

**H. Walker Feaster, III,**

*Acting Secretary.*

**List of Subjects in 47 CFR Part 19**

Conflict of interest.

47 CFR Part 19 is amended as follows:

## PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for Part 19 continues to read:

**Authority:** E.O. 11222; 3 CFR, 1965 comp., 5 CFR 735.104, unless otherwise noted.

2. In 47 CFR Part 19, *Subpart B—Ethical and Other Conduct and Responsibilities of Employees*, § 19.735–202 is amended by adding new paragraph (a)(5), to read as follows:

**§ 19.735–202 Gifts, entertainment and favors.**

* * * * *

(a) * * *

(5) Is offering anything of monetary value to an employee because of the employee's official position.

* * * * *

3. In 47 CFR Part 19, *Subpart B—Ethical and Other Conduct and Responsibilities of Employees*, section 19.735–202 is further amended by revising the reference to 47 CFR 19.735–202(a)(1)–(3) in paragraph (b)(2) to read 47 CFR 19.735–202(a)(1)–(5), and a new note is added at the end of paragraph b, to read as follows:

* * * * *

(b) * * *

* * * * *

**Note:** These situations are elaborated upon in an October 23, 1987, Office of Government Ethics Memoradnum on *Acceptance of Food and Refreshments by Executive Branch Employees*.

* * * * *

[FR Doc. 88–16893 Filed 7–26–88; 8:45 am]

BILLING CODE 6712–01–M

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[1] 52 FR at 7578, ¶5.

[2] *Id.*

[3] The Office of Government Ethics was established as part of the Office of Personnel Management by the *Ethics in Government Act of 1978*, Pub. L. 95–521, Section 401, 92 Stat. 1824, 1862 (1978).

[4] *OGE Memorandum* at 3. In its memorandum, OGE explained that the term "one-on-one" meals "should not be read so literally as to cover only those situations where there is one host and one guest." It includes "any situation where one or more prohibited sources host one or a very small number of employees with or without their spouses at a restaurant or private club where the meal is purportedly the reason for the individuals to meet at that time." *Id.* at 1.

[5] *Id.*

[6] Immediately upon release of the October 23, 1987 Memorandum from OGE, Commission employees seeking clearance of invitations from the Office of General Counsel were advised that they are not permitted to accept one-on-one meals from the press.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 661**

**[Docket No. 80482–8082]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure and inseason adjustment.

**SUMMARY:** NOAA announces (1) The closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Klipsan Beach, Washington, to Cape Falcon, Oregon, to ensure that the coho quota is not exceded, and (2) an inseason adjustment to the recreational salmon fishery to establish a closed area in the EEZ from Leadbetter Point to Klipsan Beach, Washington, effective midnight, July 24, 1988. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council (Council), the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife (ODFW) that the recreational fishery quota of 30,000 coho salmon for the subarea from Klipsan Beach to Cape

Falcon will be reached by July 24, 1988. The closure is necessary to conform to the preseason announcement of 1988 management measures. The inseason adjustment to establish a closed area is necessary to prevent a shift in fishing effort into the adjacent (Queets River to Klipsan Beach) subarea which remains open to recreational fishing. This action results in an overall salmon recreational fishery closure from Leadbetter Point, Washington to Cape Falcon, Oregon. This action is needed to ensure conservation of coho salmon.

**EFFECTIVE DATE:** Closure of the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, to recreational salmon fishing, is effective at 2400 hours local time, July 24, 1988. Comments on this closure will be received through August 8, 1988.

**ADDRESS:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species in the subarea from Klipsan Beach, Washington, to Cape Falcon, Oregon, commenced on July 11, 1988 and was scheduled to continue through the earliest of September 5, 1988 or the attainment of either a subarea quota of 30,000 coho salmon or an overall quota of 29,800 chinook salmon north of Cape Falcon. Based on the best available information, the recreational fishery catch in the subarea is projected to reach the subarea quota of 30,000 coho salmon by midnight, July 24, 1988 and therefore should be closed to further fishing.

Regulations at 50 CFR 661.21(b)(v) provide authority to establish closed areas. The Council at its July 13–14, 1988, meeting recommended establishment of a closed area from Leadbetter Point to Klipsan Beach, Washington, upon attainment of the Klipsan Beach, Washington, to Cape Falcon, Oregon, subarea coho quota. This adjustment is intended to prevent a shift in fishing effort of vessels that normally operate in the subarea of Klipsan Beach to Cape Falcon into a portion (Queets River to Leadbetter Point) of the adjacent subarea (Queets River to Klipsan Beach) to the north that remains open to recreational salmon fishing. According to the best available information, this increase in fishing effort could likely result in earlier closure of the recreational fishery in the adjacent northern subarea of Queets River to Klipsan Beach if this action is not taken. The Regional Director concurs with the Council's recommendation.

Therefore, NOAA issues this notice to close the recreational salmon fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, (which includes a portion of the subarea from Queets River to Klipsan Beach and the entire subarea from Klipsan Beach to Cape Falcon) effective midnight, July 24, 1988. This notice does not apply to Treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Council, WDF, and ODFW regarding a closure of the recreational fishery between Leadbetter Point, Washington, and Cape Falcon, Oregon. The representatives of WDF and ODFW confirmed that Washington and Oregon will close the recreational fishery in state waters adjacent to this area of the EEZ effective midnight, July 24, 1988.

Because of the need for immediate action, the Secretary has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 8, 1988.

### Other Matters

The closure for Klipsan Beach to Cape Falcon is authorized by 50 CFR 661.21(a)(1). The action to establish a closed area from Leadbetter to Klipsan Beach is authorized by 50 CFR 661.21(b)(1)(v). Both actions are in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 22, 1988.

**Ann D. Terbush,**

*Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–16950 Filed 7–22–88; 5:05 am]

BILLING CODE 3510-22-M

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**50 CFR Part 661**

**[Docket No. 80482–8082]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of inseason adjustment.

**SUMMARY:** NOAA announces an inseason adjustment to the recreational ocean salmon management measures in the area from the U.S.-Canada border to Cape Falcon, Oregon. The adjustment modifies the daily bag limit in this area from 2 fish, only 1 of which may be a chinook, to 2 fish of any species. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife (ODFW), that the adjustment is necessary to provide additional opportunity to harvest chinook salmon and to prolong the recreational fishery. This action is intended to maximize the harvest of chinook salmon in this area without exceeding the ocean share of chinook and coho salmon allocated to the recreational fishery.

**EFFECTIVE DATE:** Modification of the recreational daily bag limit in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, is effective at 0001 hours July 24, 1988. Comments on this notice will be received through August 8, 1988.

**ADDRESS:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species north of Cape Falcon, Oregon, is managed not to exceed subarea recreational quotas for coho salmon or an overall recreational quota of 29,800 chinook salmon. This area currently is open to recreational fishing for all salmon species with some restrictions, including a daily bag limit of 2 fish only 1 of which may be a chinook.

According to the best available information through July 17, landings from the U.S.-Canada border to Cape Falcon, Oregon, indicate the likelihood that the recreational seasons in this area will be closed due to the attainment of subarea coho quotas with a substantial amount of the overall chinook quota remaining unharvested. A less restrictive recreational daily bag limit is expected to provide additional opportunity to harvest chinook salmon, to maximize the allowable harvest of chinook and coho salmon, and to prolong the recreational fishery.

Regulations at 50 CFR 661.21(b)(iii) authorize inseason changes in recreational bag limits. Therefore, NOAA issues this notice to adjust the recreational salmon fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, by modifying the daily bag limit from 2 fish only 1 of which may be a chinook, to 2 fish of any species, effective 0001 hours local time July 24, 1988.

This notice does not apply to Treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, WDF, and ODFW regarding an adjustment of the recreational fishery between the U.S.-Canada border and Cape Falcon, Oregon. The representatives of WDF and ODFW confirmed that Washington and Oregon will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective d· te, through August 8, 1988.

**Other Matters**

This action is authorized by 50 CFR 661.21 (b)(1)(ii) and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 22, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-16951 Filed 7-22-88; 5:05 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 675**

**[Docket No. 71147-8002]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of inseason adjustment.

**SUMMARY:** NOAA announces the apportionment of amounts of Pacific cod to joint venture processors (JVP) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intent of this action is to assure optimum use of "other flatfish" by allowing continued retention of Pacific cod by JVP fisheries.

**DATES:** Effective July 22, 1988. Comments will be accepted through August 8, 1988.

**ADDRESS:** Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Services, P.O. Box 21668, Juneau, AK 99802-1668, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

**SUPPLEMENTARY INFORMATION:** The FMP governs the groundfish fishery in the U.S. exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and is implemented by rules appearing at 50 CFR 611.93 and Part 675.

The total allowable catch (TAC) for various groundfish species is apportioned initially among domestic annual harvest (DAH), reserves, and the total allowable level of foreign fishing (TALFF). The reserve and DAH amounts, in turn, are to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(c) and 675.20(b). As soon as practicable after April 1, June 1, August 1, and on such other dates as are necessary, the Secretary of Commerce apportions to JVP the part of domestic annual processing (DAP) that he determines will not be harvested by U.S. vessels and delivered to U.S. processors during the remainder of the year, unless such apportionments would adversely affect the conservation of groundfish resources or prohibited species.

The initial specifications of DAP for 1988 were based on the projected needs of the U.S. processing industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in October 1987. After 15 percent of the Bering Sea and Aleutian Islands (BSAI) TAC was placed in the non-specific reserve, as required at 50 CFR 675.20(a)(3), the initial specifications for DAP were determined, and the remaining amounts were provided to JVP (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because DAH requirements exceeded TAC.

On January 14 (53 FR 894) JVP was supplemented by 804 mt of the non-specific reserve to provide necessary bycatch of Greenland turbot, Pacific ocean perch, rockfish, sablefish, and squid. On April 14 (53 FR 12772, April 19, 1988), JVP was supplemented by 24,000 mt of the non-specific reserve to provide additional amounts of yellowfin sole, "other flatfish," and Pacific cod in order to allow joint venture operations to continue without interruption. At its April meeting, the Council recommended that the Regional Director supplement the JVP for pollock in the Bering Sea by 100,000 mt. On May 5 (53 FR 16552, May 10, 1988), JVP was supplemented by 135,030 mt of the non-specific reserve to provide the recommended amount of pollock and necessary bycatch amounts of Greenland turbot, "other flatfish," Pacific cod, and "other species."

In early May, the Regional Director completed a second survey to determine DAP needs. On May 20 (53 FR 19303, May 25, 1988) JVP was supplemented by 96,000 mt of the non-specific reserve to provide additional amounts of pollock, arrowtooth flounder, and "other flatfish," and DAP was supplemented by 10,000 mt of the non-specific reserve to provide an additional amount of "other flatfish." On June 17 (63 FR 23402, June 22, 1988) JVP was supplemented by 6,770

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mt of the non-specific reserve to provide additional amounts of Aleutian Islands subarea pollock, and Greenland turbot.

On July 11 (53 FR 26599, July 14, 1988) JVP was supplemented by 1,200 mt from DAP to provide bycatch amounts of Aleutian Islands subarea Pacific ocean perch and "other rockfish."

**Reapportionment**

TABLE 1.—BERING SEA/ALEUTIAN ISLANDS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

| | | Current | This action | Revised |
|---|---|---|---|---|
| Pacific cod | DAP | 87,416 | −5,000 | 82,416 |
| (TAC=200,000; ABC=385,000) | JVP | 100,584 | +5,000 | 105,584 |
| Total (TAC=2,000,000) | DAP | 801,320 | −5,000 | 796,320 |
| | JVP | 1,171,284 | +5,000 | 1,176,284 |
| | Reserves | 27,396 | | 27,396 |

The following actions are taken by this notice to reapportion groundfish from DAP to JVP fisheries.

**To the BSIA JVP**

In the Bering Sea subarea, about 20 U.S. catcher boats delivering fish to a dozen foreign processors are conducting directed fisheries on "other flatfish" and have intermittently experienced high bycatch amounts to Pacific cod. At current catch rates, the current JVP of Pacific cod is in danger of being reached in the near future. Should its JVP be reached, Pacific cod would be required to be discarded, resulting in wastage and reduced income to U.S. fishermen who would otherwise be paid for retained and processed amounts.

The current DAP catch (34,542 mt) of Pacific cod is only 40 percent of the 87,416 mt DAP quota. The results of the NMPS May DAP survey indicated an expected catch of 38,015 mt by the end of the second quarter. For this reason, the Regional Director has determined that the current DAP amount for Pacific cod is excess to DAP needs in 1988. Therefore, 5,000 mt of the DAP amount for Pacific cod is transferred to JVP to provide bycatch in JVP fisheries.

This apportionment does not result in overfishing of Pacific cod stocks, as the resulting species TAC does not exceed its ABC.

**Classification**

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would have to discard substantial amounts of Pacific cod if non-retention was required as a result of achieving a previously specified JVP amount. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

**List of Subjects in 50 CFR Part 675**

Fish, Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 et seq.

Dated: July 22, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-16949 Filed 7-22-88; 5:13 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 144
Wednesday, July 27, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 208**

**[Order No. 1292-88]**

## Aliens and Nationality; Asylum and Withholding of Deportation Procedures

**AGENCY:** Executive Office For Immigration, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed amendment to 8 CFR 208.10 would make certain grounds for the mandatory denial of asylum claims, such as an alien's conviction of a particularly serious crime in the United States, directly applicable and binding on applications for asylum that are filed during deportation or exclusion proceedings. In addition, it would clarify the authority of immigration judges to deny an application for asylum or withholding of deportation for mandatory reasons without an unnecessary evidentiary hearing into other aspects of an alien's case. The clarification is necessary because of recent appellate decisions calling into question the pre-existing authority of the Board of Immigration Appeals (Board), and concomitantly the immigration judges, to pretermit evidentiary hearings on such applications and to deny them because of ineligibility. This proposed rule would also remove language that does not reflect the actual procedure before immigration judges considering asylum applications in deportation or exclusion proceedings.

**DATES:** Written comments must be received on or before August 26, 1988.

**ADDRESS:** Please submit written comments in triplicate to Gerald S. Hurwitz, Counsel to the Director, Executive Office For Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041. Telephone: (703) 756–6470

**FOR FURTHER INFORMATION CONTACT:**

*For General Information:* Gerald S. Hurwitz, Counsel to the Director, Executive Office For Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041. Telephone: (703) 756–6470.

*For Specific Information:* Gerald S. Hurwitz, Counsel to the Director, Executive Office For Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041. Telephone: (703) 756–6470; or

Ralph Thomas, Deputy Assistant Commissioner, Refugee, Asylum and Parole, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 633–5463; or Robert C. Hill, Deputy Director and Counsel, Asylum Policy and Review Unit, Department of Justice, 10th and Constitution Ave., NW., Room 6213, Washington, DC 20530. Telephone: (202) 633–2415; or

Donald A. Couvillon, Attorney, Office of Immigration Litigation, Civil Division, Department of Justice, Washington, DC 20530. Telephone: (202) 272–4397.

**SUPPLEMENTARY INFORMATION:** The Refugee Act of 1980 provides two potential avenues of relief for aliens in the United States who believe they would face persecution abroad. First, section 243(h) of the Immigration and Nationality Act, 8 U.S.C. 1253(h), provides for the withholding of deportation as to certain aliens by specifying that the Attorney General shall not deport an alien to a country if the alien's life or freedom would be threatened in that country on account of race, religion, nationality, membership in a particular social group, or political opinion. Second, section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158, requires the Attorney General to establish procedures for aliens who have managed to get to the United States to apply for asylum, and permits the Attorney General to grant asylum, in his discretion, to any such alien who qualifies as a refugee because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Section 243(h) withholding of deportation is mandatory for qualiftying aliens. However, section 243(h)(2) specifically excludes from protection certain aliens, regardless of whether their lives or freedom would be threatened upon return to the country of prospective deportation. The statute thus states that its benefits "shall not apply to any alien if the Attorney General determines that—(A) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person * * *; (B) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States; (C) there are serious reasons for consideration that the alien has committed a serious nonpolitical crime outside the United States prior to [his] arrival * * *; or (D) there are reasonable grounds for regarding the alien as a danger to the security of the United States."

Section 208, the discretionary asylum provision, contains no such mandatory denial grounds, except that an alien must be a "refugee" to qualify for ayslum, and aliens who have persecuted others cannot qualify as "refugees" under 8 U.S.C. 1101(a)(42). By regulation, however, the grounds for the mandatory denial of withholding of deportation were incorporated into the provisions requiring the denial of asylum applications presented to district directors of the Immigration and Naturalization Service. 8 CFR 208.8(f) (1987). The obvious intent of this regulation was to exercise the Attorney Gereral's discretion in such a fashion as to preclude a grant of asylum for an alien who Congress had barred from obtaining even the more limited, country specific relief of withholding of deportation.

The design of the regulation, however, was imperfect; it did not specifically extend to the adjudication of asylum applications by immigration judges and the Board of Immigration Appeals in exclusion and deportation proceedings. This proposal would eliminate any question in this respect. In addition, both immigration judges and the Board have long exercised authority to limit the scope of their inquiry, and thus the scope of the necessary factual hearing, on applications for various forms of relief from deportation, if it became obvious that relief ultimately would be denied either in the exercise of discretion or because of statutory ineligibility. This procedure has allowed the immigration judges and the Board to dispense with evidentiary hearings on issues relating to the application that

are unnecessary to the resolution of the particular case. Indeed, the Supreme Court has upheld the authority of the Board to avoid unnecessary inquiry into all aspects of an alien's claim for relief when a dispositive ground can be identified. *INS v. Bagamasbad,* 429 U.S. 24 (1976). *See INS v. Rios-Pineda,* 105 S.Ct. 2098 (1985); *INS v. Phinpathya,* 464 U.S. 183 (1984); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

Recently, however, the authority of the Board and immigration judges to pretermit unnecessary evidentiary hearings, specifically in connection with asylum applications, has been called into question in some circuits. *Arauz v. Rivkind,* 834 F.2d 979 (11th Cir. Dec. 31, 1987), *Petition for rehearing filed* (Feb. 19, 1988); *Castro-O'Ryan v. INS,* 821 F.2d 1415 (9th Cir. 1987), *Petition for rehearing filed* (Aug. 27, 1987); *Shahandeh/Pey v. INS,* 831 F.2d 1384 (7th Cir. 1987). In *Arauz v. Rivkind,* for example, the Eleventh Circuit concluded that an immigration judge had erred in refusing to take evidence on the likelihood of an alien's persecution abroad, despite the fact that the immigration judge found the alien not to merit a favorable exercise of discretion because he had been convicted of conspiracy to possess with intent to distribute marijuana. The Court in *Arauz* reached its decision by focusing largely on the precise wording of the regulations respecting asylum determinations, and particularly on those aspects of the regulations which, in 8 CFR 208.10(c), provide that an alien "may present evidence for the record," and which, in 8 CFR 208.10(f), limit the binding effect of a criminal conviction for an admittedly "particularly serious crime" to INS district director asylum decisions.

The purpose of the proposed rule is to overcome the line of decisions, represented by *Arauz,* which would require full evidentiary hearings on all aspects of asylum claims, and to correct the oversight in the regulations respecting the applicability of the mandatory grounds for denial of asylum applications to any such claims advanced in deportation and exclusion proceedings. The proposed rule would accomplish this by changing the regulations in two respects. First, with one exception, it would make the grounds for the mandatory denial of asylum that presently apply to such applications before district directors (i.e., those applications made outside of deportation and exclusion proceedings) also clearly apply to applications that are made in the context of exclusion and deportation proceedings before immigration judges. Second, it would make it clear that immigration judges have the authority to limit evidentiary hearings on asylum claims to only those matters they find to be dispositive of the application, and that no inquiry is necessary respecting questions beyond the issues controlling the outcome of the case.

This proposed rule would add new language to 8 CFR 208.10(c) to make it clear that a full hearing is not required with respect to issues that do not form the basis for the resolution of a case. There are presently 69 immigration judges sitting nationwide to hear cases. In Fiscal Year 1987, these judges received 86,873 new cases, including 8,659 asylum applications, and the Board received 8,204 new appeals. The effect of the *Arauz* decision, as well as the other similar cases, would be to require prolonged evidentiary hearings exploring issues that are irrelevant to the decision. If it is apparent at the outset, or early on in the process, that the alien is ineligible for asylum or withholding of deportation, the immigration judge should be able to forgo an evidentiary hearing on questions extraneous to the decision. By authorizing the pretermission of an evidentiary hearing, the immigration judge can dispense with unnecessary and time consuming factual hearings on nondispositive issues. The limited immigration judge resources will thus be better employed in addressing other cases, rather than in continuing to explore nondeterminative questions in asylum cases.

The immigration judge fact-finder can continue to have the flexibility to address the issues that are, in his discretion, appropriate to the adjudication of the application. He can, for example, hear evidence on only the claim of persecution, or on only a ground for the possible mandatory denial (e.g., a criminal record), or on both persecution and possible grounds for the mandatory or discretionary denial of the claim, depending on what appears warranted by the facts of each case. The immigration judge, however, would not be required to follow an inflexible approach respecting the scope of the hearing on the persecution aspects of the case.

A corresponding change is proposed to § 208.10(b), which deals with the adjournment of exclusion and deportation proceedings to obtain advisory opinions from the Bureau of Human Rights and Humanitarian Affairs of the Department of State. The new language would not require such an adjournment if an alien were barred from asylum by virtue of certain grounds set forth in § 208.8(f). This would merely reflect the current interpretation of this provision by the Board. *Matter of Carballe,* ___ I&N Dec. ___, Interim Decision 3007 (BIA 1986).

In additon, § 208.10(f) would be amended by extending to immigration judge and Board determinations the mandatory grounds for denial of asylum already found in § 208.8(f)(1) and applicable before district directors, with one exception. In keeping with the proposed regulations covering all aspects of asylum adjudications, which are published at 53 FR 11300 (April 6, 1988), evidence of criminal activity not subject to United States jurisdiction which would preclude withholding of deportation is not retained as a *mandatory* basis for denial of asylum, but will be considered in connection with the exercise of discretion.

An alien must show a greater chance of his being persecuted in order to be eligible for witholding of deportation than to be eligible for asylum. *Compare INS v Cardoze-Fonseca,* ___ U.S.___, 107 S.Ct. 1207 (1987), *with INS v. Stevic,* 467 U.S. 407 (1984). Notwithstanding both the required showing of a threat to life of freedom, and the higher probability of persecution necessary to obtain relief under section 243(h), Congress declared that certain conduct would be an absolute bar to a grant of withholding of deportation, such as an alien's conviction for a particularly serious crime. Although the asylum statue contains no similar absolute preclusion, conduct which is serious enough to preclude withholding of deportation would, in general, also appear serious enough to bar a grant of asylum, regardless of the other factors present in the case. This approach has long been reflected in the regulations governing district director adjudications. Except for the change, reference above, respecting foreign criminal activity, the proposed rule merely would bring the regulations governing immigration judge determinations into conformity with the rule that now governs the district directors.

The current language contained in § 208.10(f) would be deleted, because it does not reflect the actual procedure that is used for the consideraion of asylum and withholding of deportation applications before immigrantion judges. This revision would bring the section into conformity with the procedure outlined in §§ 236.3(a) and 242.17(c).

Finally, this minor set of revisions to the existing asylum regulations is being proposed at this time, notwithstanding the more comprehensive revision that is already under consideration. See 53 FR

11300 (April 6, 1988); 52 FR 32552 (Aug. 28, 1987); 52 FR 46776 (Dec. 10, 1987). That more comprehensive package of asylum regulations is likely to be subject to greater comment and debate than is this modest proposal, and the ultimate effective date of any comprehensive rulemaking will likely be delayed because of the implementation problems associated with the magnitude of the proposed changes to the system. No similar administrative difficulties should be connected with this minor correction. Moreover, there is need for an immediate correction, because of the potentional adverse impact of decisions such as *Arauz v. Rivkind* on the immigration judge hearing process. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of secton 1(b) of E.O. 12291.

**List of Subjects in 8 CFR Part 208**

Aliens, Asylum, Immigration.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

**PART 208—ASYLUM PROCEDURES**

1. The authority citation for Part 208 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1158, 1253.

2. The first sentence of § 208.10(b) is revised to read as follows:

**§ 208.10 Asylum requests in exclusion or deportation proceedings.**

* * * * *

(b) *BHRHA advisory opinion.* When the asylum request is filed, the hearing will be adjourned for the purpose of requesting an advisory opinion from BHRHA, unless the application is denied solely by virtue of the provisions of § 208.8(f)(1)(iii), (iv) or (vi). * * *

* * * * *

3. Section 208.10(c) is amended by inserting the following language between the first and second sentences:

* * * * *

(c) * * * An Immigration Judge may limit, in the exercise of discretion, the scope of any evidentiary hearing concerning asylum or withholding of deportation to those matters that are dispositive of the application. An evidentiary hearing extending beyond the basis for a mandatory denial is not required with respect to an asylum application if such a basis is found to exist, or with respect to a withholding of deportation application if any preclusion under section 243(h)(2) of the Act is found to exist. * * *

* * * * *

4. Section 208.10(f) is revised to read as follows:

* * * * *

(f) *Denial.* The provisions of § 208.8(f)(1), other than subparagraph (v), shall apply to the adjudication of asylum applications in deportation proceedings under section 242(b) of the Act and exclusion proceedings under section 236 of the Act.

Dated: July 20, 1988.

**Edwin Meese III,**

*Attorney General.*

[FR Doc. 88-16912 Filed 7-26-88; 8:45 am]

BILLING CODE 1531-26-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Part 210

### Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** There are four reasons for this revision of 31 CFR Part 210. First, to clarify the breadth of payments governed by these regulations. In addition to the benefit payments enumerated in the current text of 31 CFR 210.2(d), these regulations apply to nonbenefit payments, including but not limited to, vendor payments, Internal Revenue Service tax refunds, savings bonds, grants, and loans. This part, as its title suggests, generally applies to all Federal payments through financial institutions by the Automated Clearing House (ACH) method. Second, a section on prenotification is added to establish the framework for these messages. Third, provisions are added, expressly applying the ACH method of payment to discretionary allotments of Federal employees' wage and salary payments. Fourth, other minor changes are needed including the expansion of the definition of financial institution and the addition of a paragraph to cover instances of termination of enrollments due to the closing of a financial institution. This revision will address these needs.

**DATE:** Comments on this proposed rule must be received by September 26, 1988.

**ADDRESS:** Comments may be mailed to the Policy Research Branch, Financial Management Service, U.S. Department of the Treasury, Room 328, Liberty Center, 401 14th Street, SW., Washington, DC 20227.

**FOR FURTHER INFORMATION CONTACT:** Karen Pedone, (202) 287-0347.

**SUPPLEMENTARY INFORMATION:** Part 210 of Title 31 of the Code of Federal Regulations sets forth the rights and liabilities of the Federal Government, the financial institution and the recipient where a recipient of Federal Government payments authorizes Direct Deposit of the payments and the payments are made by the ACH method. The regulations in this part were promulgated in 1975 and revised in 1976, 1984, and 1987. Since that time, it has become apparent that the regulations need clarification and improvement in a number of respects. Notably, we propose to clarify that the coverage of the regulations includes all nonbenefit payments in response to a Financial Management Service (a bureau of the United States Department of the Treasury) objective to increase the utilization of the ACH method for Federal Government payments. Accordingly, Subpart A is expanded to clarify the breadth of payments governed by these regulations which generally apply to all Federal payments through financial institutions by the Automated Clearing House (ACH) method.

There are a number of new definitions found in these proposed regulations at § 210.2, including definitions of allotment, allottee, allotter, discretionary allotments, employee, and nonbenefit payment. The current definition of "Financial institution" has been expanded to cover the case where a financial institution maintains an account with a correspondent rather than with the Federal Reserve Bank and adds the following sentence, "Where a financial institution utilizes the services of a correspondent bank, the term fiancial institution shall include a designated correspondent." The current definition of "Payment" has been expanded to include nonbenefit payments. The current definition of "Payment institution" has been modified to change the phrase "similar writing" to read "similar document" to describe more accurately the medium on which a payment instruction may be contained. Finally, the current definition of "Recipient" has been expanded to mean a person, corporation, or other public or private entity which is authorized by a program agency to receive benefit or nonbenefit payments from the Federal Government. "Recipient" includes a natural person or entity authorized by a

program agency to receive benefit payments for a beneficiary.

A new paragraph designated § 210.4(c)(5) has been added to cover instances of termination of enrollments due to the closing of a financial institution.

Changes have been made to § 210.6(e) to reflect that the Federal Reserve Bank will now be required to make the amount specified in a nonbenefit payment available for withdrawal from a financial institution's books on the payment date. This is consistent with current usage in the commercial world and other Treasury programs such as TREASURY DIRECT and State and local Government payments. Treasury has made an exception to this rule by requiring that benefit and salary payments be made available to the recipient at the opening of business on payment date in the interest of promoting the use of Direct Deposit and will continue with this policy for these payments only.

Benefit and salary payments (and allotments therefrom) will continue to be made available for withdrawal by the opening of business on the payment date.

A parallel change has been made to § 210.7(d) which also requires financial institutions to make the amount specified in a nonbenefit payment instruction available for withdrawal or other use by the recipient on the payment date. Again, benefit and salary payments (and allotments therefrom) will continue to be made available for withdrawal not later than the opening of business on the payment date.

Section 210.8 has been added to establish the framework for sending prenotification messages to financial institutions prior to the first payment. Shortly before the initial payment is to occur, the Government may send the financial institution a prenotification message to alert it to the fact that a future ACH payment will be made. Prenotification also provides an opportunity for verification by the financial institution of the accuracy of the account information. All the information relating to the ACH payment, except the amount of the payment, will be provided so that the information can be verified by the financial institution. Policy determinations regarding the use of prenotification may be made from time to time by the Service with any class of ACH payments. Prenotification is an optional mechanism that typically will be used for non-benefit payment files. Prenotification procedures will be published as amendments to *The Green Book*.

A new Subpart C has been added to establish the framework by which Federal Government employees may make discretionary allotment payments directly from there wage and salary payments by ACH to a third party account.

The changes and new procedures will be published as amendments to *The Green Book* on Direct Deposit.

Treasury has determined that this is not a major rule as defined by Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

**List of Subjects in 31 CFR Part 210**

Banks, banking, Electronic funds transfer, Federal Reserve System.

Accordingly, 31 CFR Part 210 is amended as follows:

## PART 210—[AMENDED]

1. The table of contents is revised to read as follows:

**Subpart A—General**

Sec.
210.1 Scope of regulations.
210.2 Definitions.
210.3 Policy for payments by the Automated Clearing House method.
210.4 Recipients.
210.5 The Federal Government.
210.6 Federal Reserve Banks.
210.7 Financial institutions.
210.8 Prenotification.
210.9 Timeliness of action.
210.10 Liability of, and acquittance to, the United States.
210.11 Fraud.

**Subpart B—Repayment of Benefit Payments**

Sec.
210.12 Death or legal incapacity of recipients or death of beneficiaries.
210.13 Collection procedures.
210.14 Notice to Account Owners of collection action.
210.15 Erroneous death information.

**Subpart C—Discretionary Salary Allotments**

Sec.
210.16 General.
210.17 Criteria and standards.
210.18 Method of payment.

2. The authority citation for Part 210 is revised to read as follows:

**Authority:** 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321; and other provisions of law.

3. Section 210.1 is revised to read as follows:

**§ 210.1 Scope of regulations.**

This part governs Federal Government payments (benefit and nonbenefit) made by the automated clearing house (ACH) method through Federal Reserve Banks, and financial institutions to recipients maintaining accounts at financial institutions. It describes the procedures to be used, defines the obligations and responsibilities of the participants in ACH payments, and states terms of a contract between the Federal Government and those participants. It also prescribes the liabilities of financial institutions to the Federal Government arising from payments to deceased or incompetent recipients, and deceased beneficiaries of Federal benefit payments. Regulations promulgated by the Bureau of the Public Debt governing TREASURY DIRECT payments made by the ACH method for principal and interest on Government securities can be found at Part 357 of this title; regulations promulgated by the Bureau of the Public Debt governing State and local Government series payments made by the ACH for principal and interest on Government securities can be found at Part 344 of this title.

4. The paragraph designations for § 210.2 are removed. The definitions for "Financial institution", "Payment", "Payment instruction", and "Recipient" are revised. The definitions for "Allotment", "Allottee", "Business day", "Discretionary allotment", "Employee", "Nonbenefit payment", and "Prenotification" are added to read as follows:

**§ 210.2 Definitions.**

* * * * *

"Allotment" means a recurring specified deduction from pay for a legal purpose authorized by an employee to be paid to an allottee.

"Allottee" means the person or institution to whom an allotment is made payable.

"Allotter" means the employee from whose pay an allotment is made.

* * * * *

"Business day" means any day on which the Federal Reserve Bank of the district is open to the public.

"Discretionary allotment" means an amount that a Federal Government employee is permitted, by the employing Federal agency, to direct voluntarily to be deducted from his or her net salary amount and paid to another party. The aggregate amount of discretionary allotments may not exceed the net pay due the employee for each pay period after all deductions required by law are subtracted.

"Employee" means an employee of a Federal Government agency, unless otherwise provided.

* * * * *

"Financial institution" means any bank, savings bank, savings and loan association, credit union, or similar institution. Where a financial institution utilizes the services of a correspondent bank, the term financial institution shall include a designated correspondent.

"Nonbenefit Payment" means any Federal Government payment other than a benefit payment. A nonbenefit payment can be a one-time or a recurring payment, including but not limited to vendor payments, Internal Revenue Service tax refunds, Federal Government salary payments, grants, travel disbursements and reimbursements, loans and interests on series H and EE bonds.

* * * * *

"Payment" means a sum of money which is transferred to a recipient in satisfaction of an obligation. A payment includes any Federal Government benefit, annuity, nonbenefit payment, or other payment including any payment of salary, wages, or pay and allowances (or allotment thereform).

* * * * *

"Payment instruction" means an order issued by the Federal Government for the payment of money under this part. A payment instruction may be contained on:

(1) A letter, memorandum, telegram, bill, invoice, computer printout or similar document, or

(2) Any form of nonverbal communication, registered upon magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used to electronically communicate messages.

"Prenotification" means a zero dollar ACH payment instruction sent out by the Government. It is used to ensure that, before actual payment instructions are sent through a Federal Reserve Bank, the financial institution will be able to credit payments accurately to the designated account. A prenotification, if used, will precede the relevant first dollar payment instruction by at least ten (10) days and is constructed from a recipient's enrollment to receive ACH payment.

* * * * *

"Recipient" means a person, corporation, or other pubic or private entity which is authorized by a program agency to receive payments from the Federal Government. Recipient includes a natural person or entity authorized by a program agency to receive benefit payments from the Federal Government.

5. Section 210.4 is amended by adding paragraph (c)(5) to read as follows:

**§ 210.4 Recipients.**

* * * * *

(c) * * *
(1) * * *
(2) * * *
(3) * * *
(4) * * *

(5) The closing of a financial institution, whether voluntarily or involuntarily, without successor.

* * * * *

6. Section 210.6(e) is revised to read as follows:

**§ 210.6 Federal Reserve Banks.**

* * * * *

(e) A Federal Reserve Bank receiving a payment instruction from the Federal Government shall make the amount specified in the payment instruction available for withdrawal from the financial institution's account on its books, referred to in paragraph (d) of this section, on the payment date. In the case of a Federal Government benefit or salary payment (or allotment therefrom), the amount of the payment shall be made available for withdrawal by the opening of business on the payment date.

* * * * *

7. Section 210.7(d) is revised to read as follows:

**§ 210.7 Financial institutions.**

* * * * *

(d) A financial institution receiving a payment under this part shall credit the amount of the payment to the designated account of the recipient on its books, and it shall make the amount available for withdrawal or other use by the recipient on the payment date. In the case of a Federal Government salary or benefit payment (or allotment therefrom), the financial institution shall make the amount of the payment available for withdrawal not later than the opening of business on the payment date. "Available" in this paragraph means accessible through any means of access provided by a financial institution to its customers for the recipient's type of account, for example, automated teller machines, or automatic transfers from the recipient's account. If the payments or any related information received by the financial institution from a Federal Reserve Bank do not balance, are incomplete, are clearly erronenous on their face, or are incapable of being processed, the financial institution, after assuring itself that neither it nor any of its agents is responsible, shall immediately notify the Federal Reserve Bank in order that it may deliver corrected information to the financial institution.

* * * * *

**§ 210.9 [Redesignated from § 210.8]**

8. Section 210.8 is redesignated as § 210.9.

9. A new § 210.8 is added to Subpart A to read as follows:

**§ 210.8 Prenotification.**

(a) Regardless of whether or not it has participated in an enrollment, a financial institution's acceptance and handling of a prenotification or a payment issued pursuant to this part shall constitute its agreement to the provisions of this part.

(b) Any class of ACH payment may be prenoted at the discretion of the Service and/or the program agency.

(c) The financial institution shall reject the prenotification message by midnight of the banking day following the banking day of receipt of such prenotification if the information contained in the message does not agree with the corresponding record of the financial institution, or if for any reason the financial institution will not be able to credit the payment in accordance with this part. A banking day is defined as any day on which the Federal Reserve Bank of the district is open to the public.

(d) If a financial institution does not reject or otherwise respond to a prenotification message within the specified time period, the financial institution shall be deemed to have accepted the prenotification and to have warranted to the Federal Government that it shall post the payment on time to the account specified in the prenotification.

**§ 210.9 [Redesignated as § 210.10]**

10. Section 210.9 is redesignated as § 210.10.

11. Section 210.11 is amended by revising paragraph (b) to read as follows:

**§ 210.11 Fraud.**

* * * * *

(b) A financial institution shall verify the identity of any person who initiates and executes an enrollment through such financial institution. The Federal Government shall verify the identity of any person who presents an enrollment to the Federal Government without prior review or execution by a financial institution. A financial institution that executes an enrollment in which the recipient's or beneficiary signature is forged or other information is falsified shall be liable to the Federal

Government for all payments made in reliance thereon, except for the case where the beneficiary was deceased at the time the recipient executed the enrollment and if the financial institution had no knowledge of the beneficiary's death. However, once the financia' institution has provided written or electronic notice to the program agency that a payment certified by the program agency has not been received by the correct recipient or beneficiary, it shall not be liable for any payments based on the forged, false, or fraudulent information which are certified for payment after the date such written or electronic notice is received by the program agency.

11. Subpart C is added to read as follows:

**Subpart C—Discretionary Salary Allotments**

**§ 210.16 General.**

This Subpart applies only to discretionary allotments. The regulations in this subpart do not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive Orders or other executive branch regulations; for example, see Office of Personnel Management regulations at 5 CFR Part 550, Subpart C implementing 5 U.S.C. 5525. Savings allotments are governed under the regulations at 31 CFR Part 209.

**§ 210.17 Criteria and standards.**

(a) Discretionary allotments may be made for any purpose determined appropriate by the head of an agency and which are consistent with Subchapter III of Chapter 55 of Title 5, United States Code, and Part 550 Subpart C of Chapter 1 of Title 5, Code of Federal Regulations.

(b) Discretionary allotment payments shall be made in accordance with the schedule established by the program agency, provided such allotment payments are not issued until the related earnings have accrued.

**§ 210.18 Method of Payment.**

(a) Payment of discretionary allotments shall be made following the policy and procedures outlined in 31 CFR Part 210, Subpart A.

(b) Discretionary allotments shall be made available by the allotter to the allottee in accordance with § 210.7(d); that is, as of the opening of business on the payment date.

(c) Collection procedures and reclamation of allotment payments shall be the same as those for benefit payments under 31 CFR Part 210, Subpart B.

**W.E. Douglas,**

*Commissioner.*

Dated: July 18, 1988.

[FR Doc. 88-16707 filed 7-26-88; 8:45 am]

BILLING CODE 4810-35-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 405**

**[BERC-473-P]**

## Medicare Program; Protocol for the Reuse of Dialysis Bloodlines

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish standards for reuse of bloodlines during hemodialysis as a Medicare condition of coverage for suppliers of end-stage renal disease (ESRD) services. The rule would require that if a facility reuses bloodlines it must reuse only a bloodline for which the Food and Drug Administration (FDA) has accepted the manufacturer's protocol for reuse for that particular bloodline, and that the facility reuse the bloodlines only in accordance with that procotol. Effective July 1, 1988, bloodlines labeled "for single use only or its equivalent" may not be reused but items labeled, for example, "sterility guaranteed for first use only" could be reused if the facility follows a manufacturer's protocol for reprocessing accepted by the FDA.

Section 1881(f)(7)(C) of the Social Security Act, added by section 9335(k) of the Omnibus Budget Reconciliation Act of 1986, provides that failure of a facility to comply with these standards would be cause for us to terminate the facility from participation in the Medicare program and to deny payment for the dialysis treatment affected.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 26, 1988.

**ADDRESS:** Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-473-P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-473-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** John Powell, (301) 966-4654.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Program Description*

Under section 9335(k) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99-509, which established a new section 1881(f)(7) of the Social Security Act (the Act), dialysis facilities are prohibited from reusing bloodlines, transducer filters, dialyzer caps and other dialysis supplies on or after July 1, 1988, unless the Secretary has established protocols for their reuse and the facilities follow the protocols. (OBRA '86 prohibited reuse without established protocols on or after January 1, 1988. Section 4036(c) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100-203, changed that date to July 1, 1988 with respect to the reuse of bloodlines). The failiure of a dialysis facility to comply with this limitation would constitute grounds for denial of payment for the affected services or termination of the facility from the Medicare program. In the final rule, "Standards for Reuse of Hemodialyzer Filters and Other Dialysis Supplies," 52 FR 36926, we established a protocol for the reuse of hemodialyzers used to treat the same patient, and addressed reuse of transducer filters, dialyzer caps and other dialysis supplies. Reuse involves the cleaning, disinfecting, and preparation of disposable hemodialysis devices for subsequent use for the same patient.

*B. Experience with New and Reused Bloodlines*

Arterial and venous bloodlines are used to transfer a patient's blood through the filtering devices of a hemodialysis machine and to return it for the patient. Inasmuch as bloodlines are essential to the operation of the hemodialyzer they are considered

medical devices and thus are subject to Food and Drug Administration (FDA) regulation, under the authority of the Medical Device Amendments of 1976. Currently manufacturers of accepted bloodlines have labeled them "for single use only" since they guarantee product integrity only for that first use. Notwithstanding the labeling, approximately 14 percent of dialysis facilities in this country have developed procedures to cleanse and reuse (for the same patient) the bloodlines.

The Public Health Service (PHS) has reviewed available evidence concerning dialysis performed with new and reused bloodlines. It determined that where bloodlines were properly cleansed and processed for reuse, there is sufficient experience to indicate that the reuse of bloodlines does not represent an imminent public health hazard. The evidence available to PHS was information from an FDA study and the agency's reporting system for adverse device events, reports of limited clinical studies conducted by directors of dialysis facilities, and ongoing facility surveys by the Centers for Disease Control (CDC).

The PHS, working with HCFA, designed a survey instrument to obtain information about the nature and extent of problems connected specifically with reuse of bloodlines. Based on that survey, the PHS found that reuse of bloodlines was not associated with any increased risk of hepatitis B virus (HBV) infection in either patients or staff or with the incidence of pyrogenic reactions or septicemia. Additional data reviewed by PHS included a study conducted by National Medical Care (NMC), a major provider of dialysis therapy and reuser of bloodlines and a study by Dr. David Ogden, a nephrologist and dialysis center director. (See Dialysis and Transplantation, Vol. 13, Number 6, June 1984, p. 366ff)

Data obtained since 1985 by NMC and provided to PHS indicated that their arterial bloodline reuse program started with approximately 250 patients in early 1983 and grew to involve about 12,000 patients annually. This usage correlates to approximately 2 million treatments per year. Based on these data, NMC found there is no statistical difference in patient complication rates between ESRD centers that reuse bloodlines and those ESRD centers that do not. The NMC study also cited no adverse incidents among staff members who were associated with bloodline reuse.

The study of Dr. Ogden indicted that facilities in Arizona under his direction reused both arterial and venous bloodlines. Based on approximately 170,000 dialysis treatments, only one instance of a problem was reported, and that occurred not during the performance of the dialysis procedure itself but during part of the reprocessing procedure.

Neither Dr. Ogden's nor National Medical Care's studies detected any detrimental clinical consequences associated with reusing bloodlines.

A study conducted by the Centers for Disease Control, "National Surveillance of Dialysis—Associated Hepatitis and Other Diseases in the United States," during 1986 showed that 14 percent of centers approved by HCFA reported reusing arterial bloodlines. The study also showed that there was no association between the reuse of bloodlines and any increased risk of hepatitis B virus (HBV) infection in either patients or staff members and no association between the reuse of bloodlines and the occurrence of pyrogenic reactions or septicemia in patients.

## II. Developing Reuse Protocols

The FDA, under authority granted by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. *et seq*) and its prescription device regulations at 21 CFR 801.109 requires manufacturers to label their products with information necessary to ensure that medical practitioners are provided with adequate information to use or reuse a medical device safely. Bloodlines are considered medical devices and thus are subject to FDA regulation under authority of the Medical Device Amendments of 1976.

In December 1986 the Director of FDA's Center for Devices & Radiological Health sent a letter to all domestic and foreign manufacturers of dialyzers and bloodlines. The letter urged manufacturers to reassess the single use labeling and to consider providing product-specific information and precautionary statements relevant to reprocessing and reuse. This action was taken in the belief that the majority of manufacturers to whom the letter was directed are aware that their devices are being reused.

In response to this request the FDA received a request from a major bloodline manufacturer to substitute the statement "sterility guaranteed for the first use only" for the statement "for single use only". Because, FDA's prescription device regulation authorizes the agency to require manufacturers to label their products with information necessary to ensure their safe use, and in this case, reuse, FDA requested the manufacturer to submit a reuse protocol.

Upon receipt of a proposed protocol, the FDA will decide whether or not to accept the protocol and to find the device substantially equivalent, thereby allowing it to be lawfully marketed. To reach a decision to accept the labeling change and reuse protocol, FDA has decided to use the premarket notification procedures of section 510(k) of the Federal Food, Drug, and Cosmetic Act (FFDCA 21 U.S.C. 360(k)), which allows devices to be accepted for marketing based on a finding of "substantial equivalence" to a previously-marketed device. Under this procedure, the manufacturer must demonstrate comparable safety and effectiveness of the relabeled device, which may include the submission of clinical data, to substantiate that the relabeled bloodline can be used as safely and effectively as the device to which it is being compared, i.e., the single use bloodline.

## III. Effect of FDA Action

Under section 1862 of the Social Security Act (the Act), only items and services that are reasonable and necessary for the patient's treatment are covered. Under section 1881(f)(7)(B) of the Act, dialysis facilities are prohibited from reusing bloodlines on or after July 1, 1988, unless the Secretary has established protocols for their reuse and the facility abides by their protocols. We believe the prohibition reflects Congress concern that certain practices involved in furnishing hemodialysis services were not subject to the same degree of quality safeguards as are applied to other services under Medicare rules. (H. Rep. No. 1012, 99th Cong., 2d Sess. 337–341 (1986)). We believe that a substantial equivalence finding by the FDA regarding bloodlines, provided that accompanying protocols for reprocessing and reuse meet the requirements specified in the agency's prescription device regulation, will fully satisfy these Congressional concerns. Therefore, we intend to adopt for this proposed regulation the protocols FDA accepts via the 510(k) process. Thus, reuse of bloodlines without an accepted protocol, i.e., those presently labeled "for single use only" will be prohibited on or after July 1, 1988.

The FDA will review all relabeling applications and accompanying reuse protocols for acceptability. We are proposing that the manufacturers' reprocessing protocols, upon review and acceptance by FDA, be adopted and enforced where a facility has elected to reuse bloodlines. This reliance on an accepted reuse protocol is somewhat

comparable to our requirement regarding the reuse of hemodialyzers.

**IV. Provisions of the Proposed Regulations**

In 42 CFR Part 405, Subpart U, "Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services," we describe the health and safety requirements that facilities furnishing ESRD care to beneficiaries must meet.

In the final rule, "Standards for Reuse of Hemodialyzer Filters and Other Dialysis Supplies." 52 FR 36926, we amended Subpart U by adding a new § 405.2150, "Condition: Reuse of hemodialyzers and other dialysis supplies". In this section we established a protocol for the reuse of hemodialyzers and addressed reuse requirements for transducer filters, dialyzer cap, and other dialysis supplies.

We propose to amend § 405.2150 by adding a new paragraph (d) that contains a standard for reuse of bloodlines. This paragraph would require that, if a ESRD facility reuses bloodlines, it must reuse only appropriately labeled bloodlines, for which a manufacturer's protocol for reuse has been accepted by the FDA. It further states that the facility must follow the FDA-accepted manufacturer's prescribed protocol for reuse of the particular bloodline. Thus, if the FDA accepts the manufacturer's protocol for reuse, the manufacturer's protocol for reuse of the bloodline will become the Secretary's protocol for that particular bloodline under section 1881(f)(7). HCFA will announce through appropriate instructions acceptance of any protocols by FDA.

Section 1881(f)(7)(C) of the Act, added by section 9335(k) of OBRA' 86 provides that failure of a facility to comply with reuse protocols established by the Secretary is grounds for us to terminate the facility from participation in the Medicare program and to deny payment for the dialysis treatment affected. We believe it is important to clarify in regulations that a facility that improperly reuses any of the items listed in § 405.2150 is subject to these consequences. Therefore we are revising the introductory statement of § 405.2150 to incorporate the statute's requirements.

**V. Regulatory Impact Statement**

*A. Executive Order 12291 and Regulatory Flexibility Act*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ESRD facilities and manufacturers whose production is exclusively devoted to the manufacture of bloodlines and who meet the Small Business Administration guidelines for a small business as small entities.

Because of the potential controversial nature of this regulation, the number of comments expected on the subject, and an anticipated effect on small entities, we are providing the following voluntary regulatory impact and regulatory flexibility analyses.

Under the specific provisions of section 1881(f)(7) of the Act, reuse of dialysis bloodlines is prohibited, effective July 1, 1988, except when performed in accordance with protocols established by the Secretary. This regulation would make it possible for facilities to begin reusing bloodlines as soon as FDA accepts a protocol for bloodline reuse. Beginning July 1, 1988, facilities reusing bloodlines not covered by such a protocol may choose to switch to the covered bloodlines if a protocol has been approved, stop reuse, or face non-payment of services and termination from Medicare.

The decision to continue or discontinue bloodline reuse is an operational decision by the facility. We do not have data available to estimate the costs or savings to the facility or to determine the number of facilities that would be affected. Although it is possible that additional facilities may begin the practice of reusing bloodlines, we have no data to support a conclusion that there would be a significant increase in the number of facilities choosing to reuse bloodlines.

Because of the fact that Medicare payments for dialysis services are paid on the basis of a pre-established composite rate that does not vary among facilities based on specific costs of their supplies, we anticipate no short-term effects on Medicare reimbursement whether or not all or none of the facilities reuse bloodlines. Any long-term effects may occur only to the extent that overall costs of the supply component of all dialysis facilities either increase or decrease.

Available information obtained from the FDA indicates that reuse of bloodlines occurs with far less frequency than dialyzer reuse, and is practiced primarily by facilities associated with a large chain organization affiliated with a dialysis equipment manufacturer.

We are unaware of any small manufacturers whose business is devoted exclusively to dialysis bloodlines. Rather, we believe that bloodlines are manufactured by companies with diverse product lines related either to blood transport or to the dialysis procedure. We do not have data that indicate the relative market share of the major manufacturers of bloodlines or the extent to which their business would be affected if either all reuse ceases or if all facilities were to begin the practice.

We expect that some manufacturers will seek to develop reuse protocols and obtain FDA acceptance of them. These manufacturers will have concluded that the costs associated with obtaining FDA's acceptance will be recouped either through increased market share or through increased charges. They will have concluded that they will benefit more from marketing items that will be reused than from marketing items that will be discarded after a single use. At the present time, only one manufacturer has indicated its intention to secure FDA acceptance of its reuse protocol.

Since this proposed regulation would permit reuse of bloodlines with a manufacturer's acceptable protocol, any manufacturer whose reuse protocol is accepted may be advantaged for a short time. However, any advantage would disappear as soon as any other manufacturer's reuse protocol receives a similar acceptance by FDA or the Department revises the regulations concerning required protocols.

*B. Small Rural Hospitals*

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section

1102(b) of the Act. we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

We have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of rural hospitals.

*C. Paperwork Reduction Act of 1980*

This proposed change does not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

**VI. Response to Comments**

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule we will consider all comments and respond to them in the preamble of that rule.

**List of Subjects in 42 CFR Part 405**

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart U, would be amended as set forth below:

**PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED**

**Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services**

1. The authority citation for Part 405, Subpart U, continues to read as follows:

**Authority:** Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. Section 405.2150 is amended by revising the introductory paragraph and by adding a new paragraph (d) to read as follows:

**§ 405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies.**

An ESRD facility that reuses hemodialyzers and other dialysis supplies meets the requirements of this section. Failure to meet any of standards in paragraphs (a) through (d) of this section constitutes grounds for denial of payment for the dialysis treatment affected and termination from participation in the Medicare program.

* * * * *

(d) *Standard: Bloodlines.* If the ESRD facility reuses bloodlines, it must—

(1) Not use a bloodline labled "for single use only".

(2) Reuse only a bloodline for which the manufacturer's protocol for reuse has been accepted by the Food and Drug Administration (FDA); and

(3) Follow the FDA-accepted manufacturer's protocol for reuse of that bloodline.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; and Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: May 4, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: June 15, 1988.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 88-16924 Filed 7-26-88; 8:45 am

BILLING CODE 4120-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 88-199, RM-6306]**

**Radio Broadcasting Services; Fairbury, NE**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On May 25, 1988, the Commission released a Notice of Proposed Rule Making (published June 1, 1988, 53 FR 19965) proposing to substitute Channel 257C1 for Channel 257A at Fairbury, Nebraska and the modification of Siebert Communications, Inc.'s license for Station KUTT(FM) to specify the higher powered channel. However, the table in paragraph 3 (this material was not published in the **Federal Register**) inadvertently listed the new channel as a Class B1 instead of the correct Class C1. Therefore, the table in paragraph 3 has been corrected.

**DATES:** Comments must be filed on or before July 15, 1988, and reply comments on or before August 1, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Rick Siebert, President, Siebert Communications, 414 Fourth Street, Fairbury, Nebraska 68352 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Erratum to the Notice of Proposed Rule Making, MM Docket No. 88-199, adopted April 18, 1988, and released May 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73:**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16655 Filed 7-26-88; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

**Office of the Secretary**

**49 CFR Part 24**

**RIN 2125-AB85**

**Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs; Public Meetings**

**AGENCY:** Federally Highway Administration (FHWA), DOT.

**ACTION:** Notice of public meetings.

**SUMMARY:** The FHWA announces three public meetings to solicit comments from State and local governments and the public on its proposed rule (NPRM) to implement amendments to the Uniform Relocation Assistance and Real

Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (1987 Amendments). (See 53 FR 27598, July 21, 1988, Docket No. 87–22). The Uniform Act, as amended, applies to all Federal and federally-assisted activities that involve the acquisition of real property or the displacement of persons. Consequently, it affects a wide variety of Federal and federally funded projects. The FHWA's NPRM is the latest in a series of actions that have been taken to insure that Federal agencies administer the Uniform Act in as uniform and consistent a manner as possible while encouraging State and local discretion in implementing the Uniform Act's provisions.

**DATE:** See **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Robert J. Moore, Chief, Policy Development, Office of Right-of-Way, HRWD–11, (202) 366–0116; or Reid Alsop, Office of the Chief Counsel, HCC–40, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** A few provisions of the 1987 Amendments which are explicit, and for which a period of public notice and comment would have been impractical, were implemented in an interim final rule in 49 CFR Part 24 on December 17, 1987 (52 FR 47994) and referenced by all but one of the affected Federal agencies (52 FR 48015) on December 17, 1987. That one agency subsequently referenced Part 24 (53 FR 4964) on February 19, 1988. These agencies are as follows:

Department of Agriculture
7 CFR Part 21
Department of Commerce
15 CFR Part 11
Department of Defense
32 CFR Part 259
Department of Education
34 CFR Part 15
Department of Housing and Urban Development
24 CFR Part 42
Department of the Interior
41 CFR Part 114–50
Department of Justice
41 CFR Part 128–18
Department of Labor
29 CFR Part 12
Department of Energy
10 CFR Part 1039
Environmental Protection Agency
40 CFR Part 4
Federal Emergency Management Agency
44 CFR Part 25
General Services Administration
41 CFR Part 105–51
Department of Health and Human Services
45 CFR Part 15
National Aeronautics and Space Administration
14 CFR Part 1208
Pennsylvania Avenue Development Corporation
36 CFR Part 904
Tennessee Valley Authority
18 CFR Part 1306
Department of Transportation
49 CFR Part 24
Veterans Administration
38 CFR Part 25

In addition, the United States Postal Service issued a final rule in 39 CFR Part 777 on December 17, 1987 (52 FR 48029) to amend the Postal Service's regulations to make them consistent with the 1987 Amendments.

The NPRM, if promulgated, would implement all of the remaining provisions of the 1987 Amendments by amending the existing interim final rule.

The public meetings described below are intended to solicit the views and comments of interested persons on the changes proposed in the NPRM. For the easy reference of the reader, Part 24 as proposed to be revised is printed in its entirety at 53 FR 27598 issued on July 21, 1988 in order to present a full text regulation. All information received will be considered in developing the final rule.

The public meetings will be held from 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. local time on the following dates at the following locations:

—August 17, 1988—Philadelphia, Pennsylvania—Federal Reserve Bank Building (Auditorium), 6th and Arch Streets (use 6th Street Entrance);

—August 22, 1988—Portland, Oregon—Portland Building (Auditorium, 2nd floor), 1120 SW. 5th Avenue;

—August 24, 1988—Chicago, Illinois—Everett McKinley Dirksen Building, Room 204A, 219 South Dearborn Street.

Speakers are invited to make brief presentations of no more than 10 minutes and will be scheduled based on the order of pre-registration and registration at the door. Written comments may also be submitted. Persons wishing to reserve presentation time or seating should contact Ms. Barbara J. Satorius, Realty Specialist, Policy Development Branch, HRW–11, (202) 366–0116, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590, at least 10 days in advance of the meeting they wish to attend.

Issued on: July 22, 1988.

**Robert E. Farris,**

*Federal Highway Administrator.*

[FR Doc. 88–16933 Filed 7–26–88; 8:45 am]

BILLING CODE 4910–22–M

# Notices

Federal Register
Vol. 53, No. 144
Wednesday, July 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Amendment of Import Quotas on Sugar for 1988 Quota Period

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice increases the import quota on sugar for the period January 1, 1988 through December 31, 1988 from 708,280 short tons, raw value to 1,013,875 short tons, raw value.

**EFFECTIVE DATE:** July 27, 1988.

**FOR FURTHER INFORMATION CONTACT:** John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

**SUPPLEMENTARY INFORMATION:** Presidential Proclamation No. 4941 of May 5, 1982 (47 FR 19661) amended Headnote 3 of Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (TSUS) to establish a system of import quotas for foreign sugar coming into the United States. On December 15, 1987, under the terms of Headnote 3, the Secretary of Agriculture established a quota period of January 1, 1988-December 31, 1988 and a quota amount of 708,280 short tons, raw value (52 FR 48136).

Presidential Proclamation No. 4941 also permits the Secretary of Agriculture, after appropriate consultations with the U.S. Trade Representative and the Department of State, to amend the quantitative limitations established under Headnote 3 if he determines that such amendments are appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. This notice announces the Secretary of Agriculture's determination, after the appropriate consultations, that the sugar import quota for the quota period January 1, 1988 through December 31, 1988 is increased by 305,595 short tons, raw value, from 708,280 short tons, raw value to 1,013,875 short tons, raw value. It has also been determined that this increase gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

### Notice

Notice is hereby given that, in accordance with the requirements of Headnote 3, Subpart A, Part 10, Schedule 1 of the TSUS, I have determined that up to 1,013,875 short tons, raw value, of sugar described in items 155.20 and 155.30 of the TSUS may be entered or withdrawn from warehouse for consumption during the period January 1, 1988 through December 31, 1988. Of the 1,013,875 short tons, raw value, 2,000 short tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Headnote 3 and 36,875 short tons, raw value, are reserved as a quota adjustment amount allocated in accordance with paragraph (c)(v) of Headnote 3.

I have also determined that this quota amount (1,013,875 short tons, raw value) and quota period give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a)(i) of Headnote 3, Subpart A, Part 10, Schedule 1 of the TSUS is modified to read as follows:

3. (a)(i) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse for consumption, during the period January 1, 1988 through December 31, 1988 shall not exceed in the aggregate 1,013,875 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 975,000 short tons, raw value; 2,000 short tons, raw value, may only be used for the importation of "specialty sugars," as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote; and the remaining 36,875 short tons, raw value, may only be imported for the purposes specified in paragraph (c)(v) of this headnote (the quota adjustment amount).

Signed at Washington, DC, on July 22, 1988.

**Richard E. Lyng,**

*Secretary of Agriculture.*

[FR Doc. 88–16934 Filed 7–25–88: 8:45 am]

BILLING CODE 3410–10–M

## Commodity Credit Corporation

### Final Determinations Regarding Support Prices For Pulled Wool and Mohair For the 1988 Marketing Year

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of final determinations.

**SUMMARY:** This notice affirms the final determinations concerning the price support levels for wool and mohair for the 1988 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954 (the "Wool Act"), as amended.

**EFFECTIVE DATE:** May 13, 1988.

**ADDRESS:** Acting Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3760, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 475–4645. The Final Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these final determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary has determined that the prices of wool and mohair be supported for the 1986 to 1990 marketing years by means of payments to producers (51 FR 28852, August 12, 1986).

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1987 and marketing year 1990 shall be 77.5 percent and, for marketing years 1988 and 1989, 76.4 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

On February 29, 1988, a notice of proposed determinations was published at 53 FR 6018, requesting comments concerning the method of calculating the price support levels for pulled wool and for mohair for the 1988 marketing year. The notice also indicated that the 1988 shorn wool support price (grease basis) would be $1.78 per pound.

**Discussion of Comments**

A total of eighty-six comments were received. Three of the comments concerned pulled wool. Two endorsed the current formula and one recommended that the 80% adjustment factor be eliminated. This recommendation has not been adopted. Section 703(c) of the Wool Act provides that the support price for pulled wool shall be established at such a level in relationship to the support price for shorn wool as the Secretary determines will maintain normal marketing practices for pulled wool. It has been determined that the 80% adjustment provides equitable support for pulled wool relative to shorn wool and helps maintain normal marketing practices for pulled wool.

With regard to mohair, seventy-eight respondents recommended that mohair be supported at 100 percent of the percentage of parity at which shorn wool is supported. Five recommended that mohair be supported at 115 percent of the percentage of parity at which shorn wool is supported. These comments on the proposed determinations were not adopted. It has been determined that mohair should be supported at a level of 85 percent of the percent of parity at which shorn wool is supported. No additional incentives for the production of mohair are necessary. Even with mohair supported at 85 percent of the percent of parity at which wool is supported, the 1988 mohair support price would be the fourth highest since the program began. In addition, current estimates indicated that at this minimum level of support, producers would receive nearly 51 percent of their income from mohair in the form of Government payments. To support mohair at a higher level would be inconsistent with recent Government efforts to increase reliance by all agricultural sectors on the free market.

After taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the prices of wool and mohair for the 1986 through 1990 marketing years, the following determinations have been made with respect to the wool and mohair price support programs for the 1988 marketing year. The determinations affirm 1988 support prices of $1.78 per pound for wool and $4.69 per pound for mohair as announced by the Secretary of Agriculture in a press release issued on May 13, 1988. The pulled wool support rate will continue to be calculated as it has been in previous years.

**Final Determinations**

*A. Support Price—Shorn Wool*

The average parity index for the 3-year period 1984–1986 is 1,116.3. The average parity index for the 3-year base period of 1958–1960 is 297.3 The ratio of these indices is 3.7548. The result of multiplying 3.7548 by the 1965 support price of $0.62 per pound is $2.3280. Applying the formula indicated in section 703(b) of the Wool Act, 76.4 percent of $2.3280 is $1.78, when rounded to the nearest full cent.

*B. Support Price—Pulled Wool*

The support price for pulled wool for the 1988 marketing year cannot be determined until the 1988 average market price for shorn wool is determined, which should occur by April 1989. The method for calculating the support price for pulled wool shall be as follows:

Once the 1988 average market price for shorn wool is determined, the support price for pulled wool will be determined by taking 80 percent of the difference between the 1988 support price for shorn wool and the 1988 average market price for shorn wool multiplied by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb).

*C. Support Price—Mohair*

The support price for mohair for the 1988 marketing year shall be 85 percent of the percentage of parity at which shorn wool is supported, or $4.69 per pound. The calculation is as follows:

The October 1987 parity prices for shorn wool and for mohair are $2.67 and $8.28 per pound, respectively. The support price for shorn wool for the 1988 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.78 per pound or 66.7 percent of the October 1987 parity price for shorn wool. The price support level for mohair for the 1988 marketing year is equal to 85

percent of 66.7 percent (the percentage of parity at which shorn wool is supported), which is equal to 56.7 percent. Accordingly, 56.7 percent of the October 1967 parity for mohair of $8.28 per pound results in a support price for mohair for the 1988 marketing year of $4.69 per pound.

**Authority:** Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC, on July 20, 1988.

**Ralph D. Klopfenstein,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 88–16904 Filed 7–26–88; 8:45 am]

BILLING CODE 3410–05–M

## Cooperative State Research Service

Science and Education Competitive Research Grants Office Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Cooperative State Research Service announces the following meeting.

Name: Science and Education Competitive Research Grants Office, Advisory Committee, Research Grants Program

Date: September 30, 1988

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 104–A, Administration Building, 14th and independence Avenue, SW., Washington, DC 20250.

Type of meeting: Open to the public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose; To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

**CONTACT PERSON FOR AGENDA AND MORE INFORMATION:** Dr. William D. Carlson, Acting Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 324–A Administration Building, Washington, DC 20250, Telephone 202–475–5720.

Done at Washington, DC this 8th day of July, 1988.

**John Patrick Jordan,**

*Administrator, Cooperative State Research Service.*

[FR Doc. 88–16938 Filed 7–26–88; 8:45 am]

BILLING CODE 3410–22–M

## COMMISSION ON CIVIL RIGHTS

### Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 a.m., on August 20, 1988, at the Colonial Inn, 2301 Colonial Drive, Helena, Montana 59601. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty Babcock or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 20, 1988.

**Susan J. Prado,**

*Acting Staff Director.*

[FR Doc. 88–16909 Filed 7–26–88; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* Current Population Survey—November 1988 Voting and Registration Supplement
*Form Numbers:* Agency—CPS–1 and CPS–260; OMB—NA
*Type of Request:* New collection
*Burden:* 57,500 respondents; 986 reporting hours
*Average Time Perm Response:* 1 minute
*Needs and Uses:* This survey is a continuing biennial collection of data on voter and nonvoter characteristics and on current voter trends. For the first time it will collect data for Asian and Pacific Islander subgroups because the 1980 decennial census shows that there are significant differences among the subgroups. Current data on the size and socioeconomic characteristics of these subgroups will enable policymakers to plan and implement programs needed for specific subgroups. This information will be used by Federal, state, and local election officials, political party committees, and other private organizations to relate demographic characteristics to voting and nonvoting behavior.
*Affected Public:* Individuals or households
*Frequency:* Biennially
*Respondent's Obligation:* Voluntary
*OMB Desk Officer:* Francine Picoult, 395–7340

*Agency:* Bureau of the Census
*Title:* Annual Wholesale Trade Survey
*Form Numbers:* Agency—B–450 and B–451; OMB—0607–0195
*Type of Request:* Revision of a currently approved collection
*Burden:* 4,800 respondents; 1,440 reporting hours
*Average Time Perm Response:* 18 minutes
*Needs and Uses:* This survey collects data that is necessary for more accurate personal consumption estimates and inventory adjustments. The information is used by Census as a benchmark for the sales and inventory estimates in the monthly wholesale trade survey, by BEA in GNP calculations, and by other government agencies and businesses to gauge the current trends of the economy. Also, BLS is developing a price index of wholesale trade using these data.
*Affected Public:* Businesses or other for-profit institutions
*Frequency:* Annually
*Respondent's Obligation:* Mandatory
*OMB Desk Officer:* Francine Picoult, 395–7340

*Agency:* Bureau of the Census
*Title:* 1988 Annual Survey of Manufactures
*Form Numbers:* Agency—MA–1000(MU), MA–1000(B), and MA–1000(S); OMB—0607–0464
*Type of Request:* Reinstatement of a previously approved collection
*Burden:* 81,000 respondents; 205,900 reporting hours
*Average Time Perm Response:* 3.6 hours for long form; 2.1 hours for short form
*Needs and Uses:* This survey is used to provide key measures on manufacturing activity during intercensal periods. The results are used as a benchmark for other Federal Statistical programs, including the Federal Reserve Board's "Index of Industrial Production," the Bureau of

Economic Analysis estimates of the gross national product, and Commerce's annual publication, "Industrial Outlook."
*Affected Public:* Businesses or other for-profit institutions
*Frequency:* Annually
*Respondent's Obligation:* Mandatory
*OMB Desk Officer:* Francine Picoult, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20530.

Dated: July 21, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-16874 Filed 7-26-88; 8:45 am]

BILLING CODE 3510-07-M

## Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* 1987 Survey of Minority-Owned Business Enterprises; 1987 Survey of Women-Owned Business Enterprises
*Form Numbers:* Agency—MB-1 and MB-2; OMB—NA
*Type of Request:* New collection
*Burden:* 435,000 respondents; 72,500 reporting hours
*Average Time Perm Response:* 10 minutes
*Needs and Uses:* This survey is the only source of information on the number of minority- and women-owned businesses. The data are needed to evaluate the extent and growth of business ownership by minorities and women. MBDA, SBA, local governments, minority and women business associations, university researchers, and the media use the data to provide a framework for assessing their programs designed to promote the business activities of minorities and women.
*Affected Public:* Businesses or other for-profit institutions and small businesses or organizations
*Frequency:* Quinquennially
*Respondent's Obligation:* Mandatory
*OMB Desk Officer:* Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20530.

Dated: July 21, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-16875 Filed 7-26-88; 8:45 am]

BILLING CODE 3510-07-M

## Minority Business Development Agency

## Business Development Center Applications; Richmond, VA

July 20, 1988.

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of December 1, 1988 to November 30, 1989. The MBDC will operate in the Richmond, Virginia, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contributions and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is August 31, 1988. Applications must be postmarked on or before August 31, 1988.

**ADDRESS:** Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, 202/377-8275.

**FOR FURTHER INFORMATION CONTACT:** Willie J. Williams, Regional Director, Washington Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Date: July 20, 1988.

**Willie J. Williams,**

*Regional Director, Washington Regional Office.*

[FR Doc 88-16862, Filed 7-26-88; 8:45 am]

BILLING CODE 3510-21-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

July 22, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing a limit.

**EFFECTIVE DATE:** July 29, 1988.

**Authority.** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** The current limit for Categories 647/648 is being reduced for carryforward used during the previous agreement period.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 752, published on January 12, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee For The Implementation Of Textile Agreements**

July 22, 1988

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1988 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the period which began on February 1, 1988 and extends through January 31, 1989.

Effective on July 29, 1988, the directive of January 7, 1988 is hereby amended to reduce to 636,000 dozen [1] the current limit for Categories 647/648, as provided under the terms of the current bilateral agreement between the Governments of the United States and Bangladesh.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–16916 Filed 7–26–88; 8:45 am]

BILLING CODE 3510-DR-M

### Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 22, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** July 29, 1988.

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** At the request of the Government of the Republic of Singapore, the current designated consultation levels are being increased for categories 359 and 659–0.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

July 22, 1988

Commissioner of Customs,
*Department of the Treasury, Washington, D.C. 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 321, 1988.

Effective on July 29, 1988, the directive of December 24, 1987 is being amended to increase the limits for cotton and man-made fiber textile products in the following categories:

| Category | Amended 12-month limit [1] (pounds) |
|---|---|
| 359 | 470,000 |
| 659–0 [2] | 400,000 |

[1] The limits have not been adjusted to account for imports exported after December 31, 1987.

[2] In Category 659–0, all TSUSA numbers except 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659–S; and 381.2836, 381.3332, 381.9224, 381.9837, 384.2250, 384.2251, 384.2663, 384.2664, 384.8677, 384.9472 and 384.9473 in Category 659–V.

The Committee for the implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–16917 Filed 7–26–88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after January 31, 1988.

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange Proposed Option Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed community option contracts.

**SUMMARY:** The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in options on physical British pounds sterling. The CME also has applied for designation as a contract market in options on the CME's pending Nikkei Stock Average futures contract. For the proposed Nikkei Stock Average futures option, the application also contains a petition for an exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before August 26, 1988, for the Nikkei Stock Average futures option and September 12, 1988, for the option on physical British pounds sterling.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME Nikkei Stock Average futures option contract or to the CME option contract on physical British pounds sterling.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW. Washington, DC 20581 (202) 254–7303.

**SUPPLEMENTARY INFORMATION:** In addition to requesting comment on the terms and conditions of the proposed option contracts, the Division also is requesting comment on the merits of a petition filed by the CME pursuant to § 33.11 of the Commission's rules with respect to he Nikkei Stock Average futures option. That petition requests exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

* * * the volume of trading in all contracts months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application; * * *

The Division notes that the CME's Nikkei Stock Average futures contract which will underlie the proposed option contract currently is pending at the Commission for approval. Thus, since there has been no trading in that futures contract, the futures trading volume requirement for this proposed option contract has not been met.

As discussed in more detail in previous **Federal Register** notices (see, for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series which would be represenative of values of the commodity underlying the future.[1]

[1] The Division notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contract for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contracts rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

In requesting comment on the CME's proposed option on Nikkei Stock Average futures, the Division is seeking specific comment on whether it should grant the CME's request for an exemption from the requirements of § 33.4(a)(5)(iii) for the proposed contract. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for this proposed contract.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME is support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commisison's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested is submitting written data, views or arguments on the terms and conditions of the proposed option contracts, or the petition, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified dates.

Issued in Washington, DC, on July 22, 1988.

**Paula A. Tosini,**

*Director, Division of Economic Analysis.*

[FR Doc. 88-16873 Filed 7-26-88; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Contract Data Requirements List; Data Item Descriptions Reduction

**AGENCY:** Under Secretary of Defense (Acquisition), DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is firmly committed to reducing the amount of data acquired from contractors under defense contracts. These data requirements are imposed in contracts through the citing of Data Item Descriptions (DID's) in the Contract Data Requirements List (CDRL). We suspect that there are DID's which overspecify requirements, are duplications of other DID's, or otherwise result in an unnecessary paperwork burden upon the public. Internal efforts are being undertaken by DoD to reduce the number of these types of DID's. Your help in specifically identifying the DID's which could be eliminated or improved will be appreciated. The input resulting from this request will be used to reduce the number of DID's and thereby reduce the paperwork burden placed upon the public. At this time comments are requested on DID's that fall into the following categories (reference DoD 5010.12–L, Acquisition Management Systems and Data Requirements Control List (AMSDL): HFAC (Human Factors); ILSS (Integrated Logistics Support Standards); MNTY (Maintainability); PACK (Packing, Packaging, Preservation, and Transportability); RELI (Reliability); SAFT (Safety); TMSS (Technical Manual Specifications and Standards). Comments on other categories of DID's were requested in previous **Federal Register** Notices and will be requested in future **Federal Register** Notices.

**DATE:** Comments should be received by September 26, 1988.

**ADDRESS:** Comments should be forwarded to Mr. Carl Berry, Defense Data Management Office, OASD(P&L)DDMO, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041.

**FOR FURTHER INFORMATION CONTACT:** A list of the DIDs in the above categories, a copy of individual DID's, or a copy of each of the DID's may be obtained from Mr. Carl Berry, Defense Data Management Office, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041, telephone (703) 756–2554.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 20, 1988.

[FR Doc. 88–16754 Filed 7–26–88; 8:45 am]

BILLING CODE 3810–01–M

## Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 2, 1988; Tuesday, August 9, 1988; Tuesday, August 16, 1988; Tuesday, August 23, 1988; and Tuesday, August 30, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments will a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC. 20301.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 22, 1988.

[FR Doc. 88–16945 Filed 7–26–88; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Army

## Privacy Act of 1974; Amendments to Systems of Records

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of amendments to a system of records subject to the Privacy Act of 1974.

**SUMMARY:** The Department of the Army is amending one of its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

**DATE:** This proposed action will be effective without further notice on August 26, 1988, unless comments are received which result in a contrary determination.

**ADDRESS:** Send comments to Mr. Cliff Jones, AS–OPS–MR, Fort Huachuca, AZ 85613–5000, telephone: 602–538–6548, autovon: 879–6568.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987
FR Doc. 88–8671 (53 FR 12971) April 20, 1988
FR Doc. 88–10355 (53 FR 16575) May 10, 1988
FR Doc. 88–12861 (53 FR 21509) June 8, 1988

The specific changes to the records system being amended are set forth below, followed by the system notice, as amended, published in its entirety.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o), which require the submission of a new or altered system report.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 22, 1988.

### AMENDMENT

### A0607.01DAPE

*System name.* Accident and Incident Case Files; Army Safety Management Information System (50 FR 22165, May 29, 1985).

*Changes:*

*System name.* Delete the entire entry and substitute with the following: Army Safety Management Information System (ASMIS).

*System location.* Delete: Segments exist at Army Staff agencies, field operating agencies, major commands, and installations.

*Categories of individuals covered by the system.* Add: or accidents in which Army Personnel are injured.

*Categories of records in the system.* Delete the entire entry and substitute with the following: Automated data base containing pertinent and relevant information concerning Army mishaps/accidents. For aviation accidents, the records consist of those data elements listed on Preliminary Reports of Aircraft Mishaps but exclude data extracted from DA Forms 2397–R. For ground accidents, the records include data extracted from DA Form 285 and 285–1. Records do not include DA Forms 2397–R, 285 or 285–1 or their exhibits and attachments.

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses.* Delete entire entry and substitute with the following: Commanders and aviation staff officers in the Active Army, National Guard, and Reserve components who have an identified need to determine aviator or soldier accident/mishap experience for increased duty responsibility or training programs may also request a search of the PRAM files by name and SSN. National Guard units are provided the aircraft accident history of applicants to aviation positions in the Guard to help evaluate their suitability for appointment. It may also be used by safety officials within DOD to determine eligibility for safety awards. Access to these records may also be granted by System Manager to various Department of Defense agencies, the Department of Labor, Federal Aviation Agency, National Transportation Safety Board, other Federal, State, and local agencies, and applicable civilian organizations, such as the National Safety Council, for use in a combined effort of accident prevention. In those cases, access by non-DOD agencies will not be based on name or SSN. Data must also be disclosed under the provisions of 29 CFR 1960.29 in some cases to employee representatives. See "Blanket Routine Uses" set forth at the beginning of the Army's listing.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.* Delete entire entry and substitute with the following:

*Storage.* Delete "Paper records; * * *" and "* * * microfilm."

*Retrievability.* Delete entire entry and substitute with the following: U.S. Army Safety Center employees may retrieve data by reference to a person's name or social security number. Army Staff agencies, installation and command safety offices, major subordinate commands of the Army Materiel Command can access the records by remote terminal. Retrieval from remote terminals is limited to nonpersonal identifiers such as date, location, type of equipment or type of accident. Retrieval of records from which data is ASMIS is extracted (DA Forms 285, 285–1, and 2397–R) is by date and sequence number.

*Safeguards.* Delete entire entry and substitute with the following: Information is coded and accessed only by authorized personnel who have appropriate clearance. Paper/microfilm records which are the source of the data are maintained in locked file cabinets in a room secured by a manipulation-proof combination lock. Computer stored records are secured similarly behind security doors. Personnel who are granted access from remote sites are required to comply with restrictions on the use and release of the information. Remote terminal access is granted only on the bases of a need-to-know for accident prevention purposes. Authorized personnel are given a personal code word for access and must agree in writing to observe restrictions on the use and release of data.

*Retention and disposal.* Delete entire entry and substitute with the following: Computerized records are retained for 30 years. Computer printouts of accident reports containing names or SSNs are shredded or burned. Accident reports from which ASMIS data is extracted are maintained at the U.S. Army Safety Center on paper for 5 years, then transferred to microfilm. Paper records at installation and command safety offices are destroyed after 5 years.

*System Manager(s) and Address.* Delete entire entry and substitute with the following: Director of Army Safety, Headquarters, Department of the Army, Washington, DC 20310.

**A0607.01DAPE**

**SYSTEM NAME:**

Army Safety Management Information System (ASMIS).

**SYSTEM LOCATION:**

System exists at U.S. Army Safety Center, Fort Rucker, AL 36362–5363.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals involved in accidents incident to Army operations or accidents in which Army personnel are injured.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Automated data base containing pertinent and relevant information concerning Army mishaps/accidents. For aviation accidents, the records consist of those data elements listed on Preliminary Reports of Aircraft Mishaps but exclude data extracted from DA Forms 2397–R. For ground accidents, the records include data extracted from DA Form 285 and 285–1. Records do not include DA Forms 2397–R, 285 or 285–1 or their exhibits and attachments.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C., section 7902; Pub. L. 91–596, section 18, Occupational Safety and Health Act of 1970; section 2, Executive Order 11807; and Executive Order 9397, Occupational Safety and Health Programs for Federal Employees.

**PURPOSE(S):**

Information is maintained solely for accident prevention purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Commanders and aviation staff officers in the Active Army, National Guard, and Reserve components who have an identified need to determine aviator or soldier accident/mishap experience for increased duty responsibility or training programs may also request a search of the PRAM files by name and SSN. National Guard units are provided the aircraft accident history of applicants to aviation positions in the Guard to help evaluate their suitability for appointment. It may also be used by safety officials within DOD to determine eligibility for safety awards. Access to these records may also be granted by System Manager to various Department of Defense agencies, the Department of Labor, Federal Aviation Agency, National Transportation Safety Board, other Federal, State, and local agencies, and applicable civilian organizations, such as the National Safety Council, for use in a combined effort of accident prevention. In those cases, access by non-DOD agencies will not be based on name or SSN. Data must also be disclosed under the provisions of 29 CFR 1960.29 in some cases to employee representatives. See "Blanket Routine

Uses" set forth at the beginning of the Army's listing.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tapes/disks.

**RETRIEVABILITY:**

U.S. Army Safety Center employees may retrieve data by reference to a person's name or social security number. Army Staff agencies, installation and command safety offices, major subordinate commands of the Army Materiel Command can access the records by remote terminal. Retrieval from remote terminals is limited to nonpersonal identifiers such as date, location, type of equipment or type of accident. Retrieval of records from which data in ASMIS is extracted (DA Forms 285, 285–1, and 2397–R) is by date and sequence number.

**SAFEGUARDS:**

Information is coded and accessed only by authorized personnel who have appropriate clearance. Paper/microfilm records which are the source of the data are maintained in locked file cabinets in a room secured by a manipulation-proof combination lock. Computer stored records are secured similarly behind security doors. Personnel who are granted access from remote sites are required to comply with restrictions on the use and release of the information. Remote terminal access is granted only on the bases of a need-to-know for accident prevention purposes. Authorized personnel are given a personal code word for access and must agree in writing to observe restrictions on the use and release of data.

**RETENTION AND DISPOSAL:**

Computerized records are retained for 30 years. Computer printouts of accident reports containing names or SSNs are shredded or burned. Accident reports from which ASMIS data is extracted are maintained at the U.S. Army Safety Center on paper for 5 years, then transferred to microfilm. Paper records at installation and command safety offices are destroyed after 5 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Army Safety, Headquarters, Department of the Army. Washington, DC 20310.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not information on them exists in this system of records should write to the Commander, U.S. Army Safety Center. Fort Rucker, AL 36362–5363. ATTN: Judge Advocate. Individual must furnish his/her full name, SSN, current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals desiring access to information on themselves should inquire by writing to the Commander, U.S. Army Safety Center, providing information specified in "Notification procedure".

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Army records and reports containing information in reports of accident, injury, fire, morbidity, military police traffic accident investigations, casualty reports, individual sick slips, report of vehicle accidents, marine casualty reports, and military aviation records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 88–16946 Filed 7–26–88; 8:45 am]

BILLING CODE 3810–01–M

## Privacy Act of 1974; Amendments to Systems of Records

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of amendments to systems of records subject to the Privacy Act of 1974.

**SUMMARY:** The Department of the Army is amending nine of its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

**DATES:** This proposed action will be effective without further notice on August 26, 1988, unless comments are received which result in a contrary determination.

**ADDRESS:** Send comments to Mr. Cliff Jones, AS-OPS-MR, Fort Huachuca, AZ 85613–5000, telephone: 602–538–6568, autovon: 879–6568.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11047) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987
FR Doc. 88–8671 (53 FR 12971) April 20, 1988
FR Doc. 88–10355 (53 FR 16575) May 10, 1988
FR Doc. 88–12861 (53 FR 21509) June 8, 1988

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, published in their entirety.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o), which require the submission of a new or altered system report.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 21, 1988.

**Amendment**

**A0508.16a.DAPE**

*System name:*

Absentee Case Files (50 FR 22158, May 29, 1985).

*Changes:*

Change system number from A0508.16aDAPE to "A0508.16aDAMO"

*Authority for maintenance of the system:*

Add "E.O. 9397."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add "(3) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-ODL), Headquarters, Department of the Army, Washington, DC 20310–0440."

**A0508.16aDAMO**

**SYSTEM NAME:**

Absentee Case Files.

**SYSTEM LOCATION:**

Primary U.S. Army Deserter Information Point, U.S. Army Enlisted Records and Evaluation Center. Ft Benjamin Harrison, IN 46249. A copy of all or portions of this system is maintained at the installation initiating the report of absence and at respective law enforcement agencies.

BEST COPY AVAILABLE

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any active Army member absent without proper authority and administratively designated as a deserter pursuant to Army Regulation 630–10.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Reports and records which document the individual's absence; notice of unauthorized absence from U.S. Army which constitutes the warrant for arrest; notice of return to military control or continued absence in hands of civil authorities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012(g); E.O. 9397.

**PURPOSE(S):**

To enter data in the FBI National Crime Information Center "wanted persons" file; to ensure apprehension actions are initiated/terminated promptly and accurately; and to serve management purposes through examination causes of absenteeism and developing programs to deter unauthorized absences.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) Information is furnished to local, State, Federal, international, or foreign law enforcement authorities in efforts to apprehend, detain, and return offenders to military custody. In oversea areas, information may be disclosed to foreign governmental and civil authorities as required by local customs, law, treaties, and agreements with allied forces and foreign governments.

(2) Information may be disclosed to the Veterans Administration for assistance in determining whereabouts of Army deserters through the Veterans and Beneficiaries Identification and Records Locator Subsystem.

(3) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper documents and the record copy of the Arrest Warrant are maintained in the Official Military Personnel Files; vertified desertion data are stored on the Deserter Verification Information System at the U.S. Army Deserter Information Point.

**RETRIEVABILITY:**

Manually, by name; automated records are retrieved by name, plus any numeric identifier such as date of birth, SSN, or Army serial number.

**SAFEGUARDS:**

Access is limited to authorized individuals having a need-to-know. Records are stored in facilities manned 24 hours, 7 days a week. Additional controls which meet the administrative, physical, and technical safeguard requirements of Army Regulation 380–380 are in effect.

**RETENTION AND DISPOSAL:**

Automated records are erased when individual returns to military custody, is discharged, or dies. Paper or microform records remain a permanent part of the individual's Official Military Personnel File.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not this system contains information about them should contact the U.S. Deserter Information Point, U.S. Army Enlisted Records Center, Ft Benjamin Harrison, IN, furnishing full name, SSN and/or Army serial number, address, telephone number, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information concerning themselves should provide information in "Notification procedure" above.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Unit Commander, First Sergeants, subjects, witnesses, Military Police, U.S. Army Criminal Investigation Command personnel and special agents, informants, DOD, Federal, State, and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may furnish pertinent information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

**Amendment**

**A0508.17bDAPE**

*System name:*

Ration Control/Blackmarket Monitoring Files (50 FR 22188, May 29, 1985).

*Changes:*

Change system number from A0508.17bDAPE to "A0508.17bDAMO".

*Authority for maintenance of the system:*

Add "E.O. 9397."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440."

**A0508.17bDAMO**

**SYSTEM NAME:**

Ration Control/Blackmarket Monitoring Files.

**SYSTEM LOCATION:**

Office of the Provost Marshal, U.S. Army, Japan; U.S. Army, Europe and Seventh Army; U.S. Army; Southern Command; U.S. Forces Korea/Eighth Army.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All members of the U.S. Army at oversea locations, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army who make purchases of controlled items from authorized resale activities at oversea locations, those authorized duty-free privileges at Class VI stores, commissaries, and retail outlets located on U.S. facilities and installations overseas.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, SSN, passport number, citizenship, service component, dependency status, local address; sales slips and control sheets used in sale of controlled items by U.S. Forces; overspending/overpurchase printouts produced by central computer facilities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., Section 3012; 5 U.S.C., Section 301; Status of Forces Agreement between the United States of America and the host country in which U.S. Forces are located; E.O. 9397.

**PURPOSE(S):**

To assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items: to produce ration control plates for authorized users; to maintain record of selected controlled item purchases at retail facilities and suspected violators of the system; and to comply with Joint Service blackmarket monitoring control policy.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To provide information to the host country, required by the Status of Forces Agreement between the United States of America and the host country. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records, magnetic tapes, microfiche.

**RETRIEVABILITY:**

By name and/or SSN.

**SAFEGUARDS:**

Records are accessed only by authorized personnel having official need therefor. During off duty hours, the facility housing the records is secured by sound activated alarm.

**RETENTION AND DISPOSAL:**

Records are retained for 1 year; violations data are retained until the end of the individual's tour of duty employment; then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Information may be obtained from the Provost Marshal at the oversea Army installation which issued the ration control authorization.

**RECORD ACCESS PROCEDURES:**

Individuals desiring to access records pertaining to them should inquire as stated under "Notification procedure", furnishing full name, SSN, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From individual's application for ration control privileges; recorded sales at retail outlets and orders made through exchange catalog sales at U.S. military facilities in oversea loations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**Amendment**

**A0508.24aDAPE**

*System name:*

Serious Incident Reporting Files (50 FR 22159, May 29, 1985).

*Changes:*

Change system number from A0508.24aDAPE to "A0508.24aDAMO".

*System location:*

Delete the entire entry and substitute with the following: "Primary System is located at the Office of the Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL). Headquarters, Department of the Army, Washington, DC 20310–0508. Segments are maintained at the installation initiating reports and at respective major Army commands."

*Authority for maintenance of the system:*

Add "E.O. 9397."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440."

**A0508.24aDAMO**

**SYSTEM NAME:**

Serious Incident Reporting Files.

**SYSTEM LOCATION:**

Primary System is located at the Office of the Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0508. Segments are maintained at the installation initiating reports and at respective major Army commands.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any citizen identified as the subject or victim of a serious incident reportable to Department of the Army in accordance with Army Regulation 190–40. This includes in general any criminal act or other incident which, because of its sensitivity or nature, publicity or other considerations should be brought to the attention of Headquarters, Department of the Army.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include the initial report of the incident plus any supplemental reports, including reports of final adjudication.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012(g); E.O. 9397.

**PURPOSE(S):**

To provide the military chain of command with timely information regarding serious incidents to permit a valid early determination of possible implication; to provide an early indication of acts or conditions which may have widespread adverse publicity; to provide a means of analysis of crime and conditions conducive to crime on which to base crime prevention policies and programs; and to meet the general needs of Department of the Army Staff agencies for information regarding selected incidents which impact on their respective areas of responsibility.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By individual's name, SSN, installation number.

**SAFEGUARDS:**

Buildings employ security guards and control access. Distribution and access to files are based on strict need-to-know. Records are contained in locked safes when not under personal supervision of authorized personnel.

**RETENTION AND DISPOSAL:**

Destroyed 1 year after final report is completed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not information on them is contained in this system of records may write to the System Manager. Individual should furnish his/her full name, current address and telephone number, sufficient details to permit locating pertinent records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", furnishing information specified therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Subjects, witnesses, victims, Military Police and U.S. Army Criminal Investigation Command personnel and special agents, informants, various Department of Defense, Federal, State and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may supply pertinent information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 US.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4(G), (e)(4)(H), (e)(8), (f), and (g).

**Amendment**

**A0509.03DAPE**

*System name:*

Trophy Firearm Registration (50 FR 22160, May 29, 1985).

*Changes:*

Change system number from A0508.03DAPE to "A0509.03DAMO".

*System location:*

Delete the entire entry and substitute with the following: "Primary system is located at the Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-ODL), Headquarters, Department of the Army, Washington, DC 20310–0508. Copies of war trophy firearm registration records are maintained at respective provost marshall offices initiating the records."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add "See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-ODL), Headquarters, Department of the Army, Washington, DC 20310–0440."

*Notification procedure:*

Delete "ATTN: DAPE-HRE" and add in its place "ATTN: DAMO-ODL".

**A0509.03DAMO**

**SYSTEM NAME:**

Trophy Firearm Registration.

**SYSTEM LOCATION:**

Primary system is located at the Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0508. Copies of war trophy firearm registration records are maintained at respective provost marshall offices initiating the records.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the Armed Forces of the United States who acquire, during periods of hostilities, firearms approved for personal retention as war trophies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copy of DD Form 603, Registration of War Trophy Firearm; relevant supplementary correspondence of approvals.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012(g).

**PURPOSE(S):**

To assure maintenance of records of service members' acquisition of firearms retained as war trophies is authorized within the meaning of the National Firearms Act and 18 U.S.C., section 102.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information from this system may be furnished to the following agencies for investigation and prosecution for violations of the National Firearms Act: Federal Bureau of Investigation; Drug Enforcement Administration; U.S. Customs Service; Bureau of Alcohol, Tobacco and Firearms; U.S. District Courts; U.S. Magistrates; local law enforcement agencies; and, in oversea areas, most government law enforcement agencies as prescribed in Status of Forces Agreements. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file cabinets.

**RETRIEVABILITY:**

By owner's surname.

**SAFEGUARDS:**

Buildings employ security guards. Records are accessible only to authorized personnel having need therefor in the performance of their duties.

**RETENTION AND DISPOSAL:**

Records are created at the onset of hostilities and retained in Headquarters, Department of Army files until end of calendar year in which hostilities ceased; held 1 additional year or until arrangements are complete to transfer the records to Director, Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, Washington, DC 20226.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not information on them is contained in this system or records should write to the System Manager, ATTN: DAMO–ODL, furnishing full name, sufficient details to permit locating the records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", furnishing information specified therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual at time of registration.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**Amendment**

**A0509.08aDAPE**

*System name:*

Registration and Permit Files (50 FR 22161, May 29, 1985).

*Changes:*

Change system number from A0509.08aDAPE to "A0509.08aDAMO".

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add "See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440."

**A0509.08aDAMO**

**SYSTEM NAME:**

Registration and Permit Files.

**SYSTEM LOCATION:**

Army installations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any citizen registering restricted items of property on a military installation or desiring to engage in restricted activities on a military installation. Items/activities include but are not limited to privately owned firearms/weapons, pets and hunting and fishing.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Registration form for items of restricted property; permit application for restricted activities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012.

**PURPOSES(S):**

To assist the commander in carrying out effective law enforcement, troop safety, and crime prevention programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information is furnished to criminal justice elements outside the Department of Defense for investigation and prosecution when such cases fall within their jurisdiction or concurrent jurisdiction is applicable. These include: Federal Bureau of Investigation; U.S. Customs Services; Bureau of Alcohol, Tobacco and Firearms; U.S. District Courts; U.S. Magistrates; state and local law enforcement, wildlife conservation and public health agencies; and, in oversea areas, host government law enforcement agencies. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; magnetic disc/tapes; microfiches; computer printouts.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

Only authorized personnel have access to files. Physical security measures include locked containers/storage areas, controlled personnel access, and continuous presence of authorized personnel.

**RETENTION AND DISPOSAL:**

Destroyed upon removal of the restricted property from the military installation or upon expiration of the permit.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-ODL), headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not this system of records contains information on them may inquire of the System Manager. Individual must provide full name, present address, sufficient details to permit locating the records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves in this system should follow requirements in "Notification procedure".

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Any citizen desiring/required to register firearms/weapons, pets, etc. that will be maintained within or desiring to hunt/fish within the confines of and Army installation.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Portions of this system of records which fall within 5 U.S.C. section 552a(k)(2) are exempt from the following provision of Title 5 U.S.C., section 552a: (c)(3).

**Amendment**

**A0509.18bDAPE**

*System name:*

Expelled or Barred Person Files (50 FR 22163, May 29, 1985).

*Changes:*

Change system number from A0509.18bDAPE to "A0509.18bDAMO".

*Authority for maintenance of the system:*

Add "E.O. 9397."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-DDL), Headquarters, Department of the Army, Washington, DC 20310–0440."

*Notification procedure:*

Delete the entire entry and substitute with the following: "Individuals wishing to know whether or not information on them is contained in this system of records should write to the System Manager, ATTN: DAMO-DDL, furnishing their full name, SSN, address, details concerning the expulsion or debarment action, and signature."

**A0509.18bDAMO**

**SYSTEM NAME:**

Expelled or Barred Person Files.

**SYSTEM LOCATION:**

Records are maintained at the Army installation initiating the expulsion or debarment action.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any citizen who is expelled or barred from an Army installation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Names of individual, expulsion orders, investigative reports and supporting documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

18 U.S.C., section 1382, E.O. 9397.

**PURPOSE(S):**

To assist the commander in carrying out responsibilities required by 18 U.S.C., section 1382.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By individual's name.

**SAFEGUARDS:**

Distribution and access to files are based on strict need-to-know. Physical security measures include locked containers/storage areas, controlled personnel access, and continuous presence of authorized personnel.

**RETENTION AND DISPOSAL:**

Destroyed on revocation or upon discontinuance.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not information on them is contained in this system of records should write to the System Manager, ATTN: DAMO–ODL, furnishing their full name, SSN, address, details concerning the expulsion or debarment action, and signature.

**RECORD ACCESS PROCEDURE:**

Individuals desiring to access records on themselves should write as indicated in "Notification procedure", providing information specified therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Subjects, witnesses, victims, Military Policy and U.S. Army Criminal Investigations Command personnel and special agents, informants, various Department of Defense, Federal, State and local investigative and law enforcement agencies, departments or agencies of foreign governments; and any other individuals or organizations which may supply pertinent information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (d,) (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

Amendment

**A0509.19aDAPE**

*System name:*

Military Police Investigator Certification Files (50 FR 22163, May 29, 1985).

*Changes:*

Change system number from, A0509.19aDAPE to "A0509.19aDAMO".

*Authority for maintenance of the system:*

Add "E.O. 9397."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440."

*Notification procedure:*

Delete "ATTN: DAPE–HRE" and substitute in its place "ATTN: DAMO–ODL".

**A0509.19aDAMO**

**SYSTEM NAME:**

Military Police Investigator Certification Files.

**SYSTEM LOCATION:**

Primary records are maintained at the U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332. Segments exist at the installation initiating request and at respective major Army commands.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any individual who has been nominated by a commander for certification as a Military Police Investigator.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Files contain requests, name checks, background checks, approvals, disapprovals, appeals, rebuttals, and related documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012(g); E.O. 9397.

**PURPOSE(S):**

To establish eligibility and suitability of individuals to be certified as Military Police Investigators.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; card indices.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

Buildings employ security guards and control access. Information is not disclosed outside the agency; within the agency, access to records containing adverse suitability information is restricted by use of protective markings. Distribution and access are based on strict need-to-know.

**RETENTION AND DISPOSAL:**

Destroyed upon individual's release from active service or 3 years after involuntary withdrawal of certification.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Individuals desiring to know whether or not information on them is contained in this system of records should write to the System Manager, ATTN: DAMO–ODL, furnishing full name, SSN, current address, sufficient details to permit locating pertinent records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", supplying information specified therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Subjects, witnesses, victims, Military Police and U.S. Army Criminal Investigation Command personnel and

agents, informants, various Department of Defense, Federal, State and local investigative and law enforcement agencies, departments or agencies of foreign governments; and any other individuals or organizations which may supply pertinent information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

All portions of this system of records which fall within 5 U.S.C. 552a(k) (2), (5), or (7) are exempt from the following provisions of 5 U.S.C. 552a: (d), (e)(4)(G), (e)(4)(H), and (f).

**Amendment**

**A0509.21aDAPE**

*System name:*

Local Criminal Information Files (50 FR 22164, May 29, 1985)

Change system number from A0509.21aDAPE to "A0509.21aDAMO".

*System name:*

Delete "Information" and add in its place "Intelligence".

*Authority for maintenance of the system:*

Add "E.O. 9397."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Delete the entire entry and substitute the following: "Intelligence may be disclosed to the Federal Bureau of Investigation; Drug Enforcement Administration; U.S. Customs Service; Bureau of Alcohol, Tobacco and Firearms; other Federal, State, and local enforcement agencies; and, in oversea areas, host government law enforcement agencies when intelligence pertains to matters within the jurisdiction of those agencies. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

*System manager(s) and address:*

Delete the entire entry and substitute the following: "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440."

**A0509.21aDAMO**

**SYSTEM NAME:**

Local Criminal Intelligence Files.

**SYSTEM LOCATION:**

Records are maintained at the installation initiating or collecting the documents.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any citizen or group of citizens suspected or involved in criminal activity directed against or involving the United States Army.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Reports and supporting documents of criminal activity directed against or involving the U.S. Army.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012(g); E.O. 9397.

**PURPOSE(S):**

To identify individuals or groups of individuals in an effort to anticipate, prevent or monitor possible criminal activity directed against or involving the U.S. Army; to enable Army officials, commanders, or civil criminal justice agencies to meet their responsibilities regarding the maintenance of discipline, law and order through investigation and possible criminal prosecution, civil court action, or regulatory order. Users within the Army include commanders in exercising their authority under the provisions of Titles 10 and 18, U.S.C.; persons designated by the commander to assist in carrying out these responsibilities, i.e., staff judge advocate, investigating officers appointed in accordance with Army regulations, U.S. Army Criminal Investigation Command, military intelligence personnel in those incidents involving possible or actual sabotage or espionage.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Intelligence may be disclosed to the Federal Bureau of Investigation; Drug Enforcement Administration; U.S. Customs Service; Bureau of Alcohol, Tobacco and Firearms; other Federal, state, and local enforcement agencies; and, in oversea areas, host government law enforcement agencies when intelligence pertains to matters within the jurisdication of those agencies. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; magnetic tape/disc.

**RETRIEVABILITY:**

By individual's name, or by cross-index of other data maintained in the system.

**SAFEGUARDS:**

Only authorized personnel have access to files. Physical security measures include locked containers/storage areas, controlled personnel access, and continuous presence of authorized personnel.

**RETENTION AND DISPOSAL:**

Destroyed upon supersession, obsolescence, or deactivation of the related command.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Individuals desiring to know whether or not information on them is contained in this system of records should write to the System Manager, providing their full name, SSN, current address and telephone number, sufficient details to permit locating pertinent records, and signature.

**RECORD ACCESS PROCEDURE:**

Individuals desiring access to records pertaining to them should write as indicated in "Notification procedure", providing information specified therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Subjects, witnesses, victims, Military Police and U.S. Army Criminal Investigation Command personnel and special agents, informants, various Department of Defense, Federal, State and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may supply pertinent information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (C)(3), (C)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

**Amendment**

**A0720.04DAPE**

*System name:*

Army Correction System: Correctional Treatment Records (50 FR 22201, May 29, 1985).

*Changes:*

Change system number from A0720.04DAPE to "A0720.04DAMO".

*System name:*

Delete the entire entry and substitute with the following: "Correctional Reporting System (CRS)".

*System location:*

Delete entry (2) and substitute with the following: "(2) An automated extract of selected data from individual correctional treatment records at Army facilities is stored on computer media at five contractor-operated Regional Data Centers located near: Washington, DC; Fort McPherson, GA; Fort Knox; KY; Fort Hood, TX; and Fort Ord, CA."

*Authority for maintenance of the system:*

Add "E.O. 9397."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add "See Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

*System manager(s) and address:*

Delete the entire entry and substitute with the following: "The Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-ODL), Headquarters, Department of the Army, Washington, DC 20310-0440."

*Notification procedure:*

Delete the entire entry and substitute with the following: "Information may be sought by writing to the commander of the confinement/correctional facility, or to the Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-ODL), Headquarters, Department of the Army, Washington, DC 20310-0580."

**A0720.04DAMO**

**SYSTEM NAME:**

Correctional Reporting System (CRS).

**SYSTEM LOCATION:**

(1) Army installation detention facilities, U.S. Army Correctional Activity, Ft Riley, KS; U.S. Disciplinary Barracks, Ft Leavenworth, KS.

(2) An automated extract of selected data from individual correctional treatment records at Army facilities is stored on computer media at five contractor-operated Region Data Centers located near: Washington, DC; Fort McPherson, GA; Fort Knox, KY; Fort Hood, TX; and Fort Ord, CA.

(3) The Army Clemency Board, Office, Assistant Secretary of the Army, Manpower and Reserve Affairs, Washington, DC 20310 (for decisions on clemency recommendations, parole actions, and restoration to duty).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any military member confined at an Army confinement or correctional facility as a result of, or pending, trial by courts-martial.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Documents related to the adminsitration of individual military prisoners; courts-martial orders, release/confinement orders, medical examiner's reports, requests and receipts for health and comfort supplies, reports and recommendations relating to disciplinary actions, clothing and equipment issue records; forms authorizing correspondence by prisoner, mail records; personal history records; individual prisoner utilization records; requests for interview; fignerprint cards, military police reports; prisoner indentification records; parolee agreements; inspections; documents regarding custodianship of personal funds and property of prisoners; former commanding officers; report; parents' report; spouse's report; classification recommendations; request to transfer prisoner; social history; clemency actions; psychologist's report; psychiatric and sociologic reports; certificate of parole; certificate of release from parole; assignment progress reports; and similar relevant documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., sections 951-953; E.O. 9397.

**PURPOSE(S):**

Correctional treatment records are used to determine prisoner's custody classifications, work assignments, educational needs, adjustment to confinement, areas of particular concern, and, as the basis for clemency, parole and restoration to duty considerations. Automated records provide pertinent information required for proper management of confinement facility population, demographic studies, status of discipline and responsiveness of personnel procedures, as well as confinement utilization factors such as population turnover, recidivism, etc.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information may be disclosed (a) to local, state, and Federal law enforcement and investigation agencies for investigation and possible criminal prosecution, civil court actions or regulatory orders, (b) to confinement/correctional agencies for use in the administration of correctional programs including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment of records, and social histories. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices."

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders, punch cards, magnetic tape and disc.

**RETRIEVABILITY:**

By prisoner's surname and/or SSN/register number.

**SAFEGUARDS:**

(a) All records are maintained in areas accessible only to designated personnel having official need therefor. Automated data base and output are managed through comprehensive procedures and policies prescribed in system functional users manuals.

(b) Regional Data Centers are contractor-operated. Contractor personnel are security screened; employees receive a security briefing and participate in an on-going security education program under the Regional Data Security Officer. Regional Data Centers are connected through a communications network to 44 distributed data processing centers at Army installations. Technical, physical, and administrative safeguards required by Army Regulation 380-380 are met at installation data processing centers and information is secured in locked rooms with limited/controlled access. Data are available only to installation personnel responsible for system operation and maintenance. Terminals not in data processing centers are under the supervision of a terminal area security officer at each remote location protecting them from unauthorized use. Access to information is controlled further by a system of assigned passwords for authorized users of terminals.

**RETENTION AND DISPOSAL:**

(a) Individual correctional treatment records for prisoners in the U.S. Army Correctional Activity (USACA) or U.S. Disciplinary Barracks (USDB) are retained for 90 days following expiration of sentence/completion of parole/

maximum release date, following which they are retired to the National Personnel Records Center for 25 years; destruction is by shredding. Similar records for prisoners in local Army confinement and correctional facilities are destroyed 4 years following release of prisoner from confinement.

Note: Transfer of a prisoner from one facility to another is not construed as release from confinement. When a prisoner is transferred to another facility, his/her file is transferred with him/her.

Information on tape/disc is erased after 3 years.

(b) Army Clemency Board case files are returned on completion of Board action to USACA or USDB, as appropriate, where they are retained for 90 days after prisoner's release from confinement or return to duty, following which they are retired to the National Personnel Records Center and maintained for 25 years before being destroyed by shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0440.

**NOTIFICATION PROCEDURE:**

Information may be sought by writing to the commander of the confinement/correctional facility, or to the Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–ODL), Headquarters, Department of the Army, Washington, DC 20310–0580.

**RECORD ACCESS PROCEDURES:**

Individuals desiring access to their records may write to the Commander of the confinement/correctional facility where a prisoner, furnishing full name, SSN, present address, and dates of confinement. Request must bear signature of the individual whose record it is.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual witnesses; victims; Military Police/U.S. Army Criminal Investigation Command personnel and/or reports; informants; various Federal, state and local investigative and law enforcement agencies; foreign governments; any other individual or organization that may supply pertinent information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

All portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

[FR Doc. 88–16901 Filed 7–26–88; 8:45am]

BILLING CODE 3810–01–M

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 3, 1988 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location and is scheduled to include a Status Report on the Upper Delaware Ice Jam Project.

The subjects of the hearing will be as follows:

*Proposed Amendment to Comprehensive Plan and Basin Regulations—Water Supply Charges.* Notice was given in the June 16, 1988 **Federal Register**, Vol. 53, No. 116, pp. 22501–22502, that the Commission would hold a public hearing on August 3, 1988 to receive comments on a proposed amendment to its Comprehensive Plan and Basin Regulations-Water Supply Charges to include water charges for water use at hydroelectric power projects. The proposed amendment would establish annual base charges to owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission. In addition to the base charge, annual variable charges based on power generated at each facility would be assessed to owners of hydroelectric power plants that benefit from increased hydraulic head to the hydroelectric project as a result of investments by the Commission. Owners of hydroelectric power plants that derive additional benefit from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project would also be charged; however, no charges for increased flows would be required when charges for increased hydraulic head are in effect. Finally, charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way would be determined on a case-by-case basis. Under the proposal, the owner of any hydroelectric generating facility would receive a credit against the water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission. The proposal also includes provisions addressing payment of bills and exemptions from charges.

*Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:*

1. *Collegeville-Trappe Joint Water System D–79–59 CP.* An application for approval of a ground water withdrawal project to supply up to 3.6 million gallons (mg)/30 days from Well No. 10 to augment public water supplies in Trappe and Collegeville Boroughs. The well had been granted an emergency permit to operate at a pumpage rate of 0.110 million gallons per day (mgd) starting October 1979 and ending May 1, 1980. Well No. 10 had been operating without DRBC approval since May 1, 1980 and during that time (May 1985) the peak withdrawal rate reached 6.6 mg/30 days. The project is located approximately 1900 feet northeast of the intersection of Seventh Avenue and Route 422, in the Borough of Trappe, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Borough of Pennington D–84–33 CP.* A ground water withdrawal project supply approximately 0.216 mgd of water to the applicant's distribution system from existing Well No. 7. The proposed total withdrawal from all four wells will be 0.35 mgd. The project is located in Pennington Borough, Mercer County, New Jersey. Well No. 7 is the only Pennington Borough well located with the Delaware River Basin.

3. *City of Reading D–86–72 CP.* An application to construct a hydroelectric power generating project at the Ontelaunee Dam, a 56 foot high, concrete gravity structure, located in Maidencreek Township, Berks County, Pennsylvania. The 1,350 acre reservoir that supplies water to the applicant will not be expaned. The current storage capacity of the reservoir is approximately 11,600 acre-feet. The proposed hydropower project will operate in run-of-river mode on Maiden

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Creek, 3.0.-river miles upstream of its confluence with the Schuylkill River. The project facilities are designed to generate one MW of electricity.

4. *Tioga Leasing Company (Hereford Estates Mobile Home Park) D–87–80.* An application to expand a 0.07 mgd sewage treatment plant to process 0.125 mgd of flow from 940 residents in the applicant's mobile home park located off the intersection of Pennsylvania Highways 10 and 29, in Hereford Township, Berks County. The proposed expansion will continue to provide high quality secondary treatment of wastewater. Treatment plant effluent will continue to be discharged to Perkiomen Creek through the existing outfall.

5. *Manwalamink Water Company D–88–34.* An application to construct a more efficient sewage treatment plant with additional capacity to serve the Shawnee Development in Smithfield Township, Monroe County, Pennsylvania. The proposed 0.7 mgd plant will be constructed adjacent to Brodhead Creek near the existing 0.245 mgd facility which will be abandoned. The proposed plant is designed to provide high quality secondary treatment. via a sequenching batch reactor process. Treatment plant effluent will be discharged to Brodhead Creek near its confluence with the Delaware River, which currently serves as the receiving stream.

6. *Bedminster Municipal Authority D–88–37 CP.* An application to include a sewage treatment plant (STP) in the Comprehensive Plan and approve the project under Section 3.8 of the Compact. The ownership of the Stone Bridge Sewer Company STP has been transferred to Bedminster Municipal Authority. The 0.1 mgd secondary treatment plant was approved by Docket No. D–81–47 on October 6, 1981, and subsequently upgraded to include a chemical treatment process. The STP is designed to process the year 2000 flow from 1,060 persons in the Stone Bridge development and surrounding Bedminster Township, Bucks County, Pennsylvania residents. Treatment plant effluent will continue to be pumped about 5,000 feet prior to discharging into Deep Run, a Tohickon Creek tributary. No expansion of treatment plant capacity is currently proposed.

7. *ARCO Petroleum Products Company D–88–40.* An application for approval of a ground water withdrawal project to withdraw up to 0.39 mg/30 days of water from the applicant's hydrocarbon recovery system from new Well Nos. PN–1 and PN–2, and to increase the existing withdrawal limit of 9.72 mg/30 days from all wells to 10.11 mg/30 days. The project is located in the City of Philadelphia, Philadelphia County, Pennsylvania.

8. *Papen Farms, Inc. D–88–41.* A combined surface water and ground water withdrawal project to supply a maximum of 176 mg/30 days of water from five wells and three surface intakes for irrigation of the applicant's farm crops in Kent County, Delaware. The total withdrawal from all wells will be limited to 130 mg/30 days. The water is used to irrigate approximately 1,350 acres of vegetables. Surface waters are withdrawn from Isaac Branch and Tidbury Creek, tributaries to the St. Jones River.

9. *Chesterdale Waste Treatment Company, Inc. D–88–44.* An application to upgrade a sewage treatment plant that serves the Willistown Woods development in Willistown Township and the Chesterdale Farms apartment complex in Westtown Township, both in Chester County, Pennsylvania. The existing plant was designed to provide secondary treatment for an average flow of 0.12 mgd. The applicant plans to upgrade the plant by constructing a trickling filter, an equalization tank, and a sand filter. No expansion in capacity or service area is proposed. Treatment plant effluent will continue to be discharged to an unnamed tributary of Hunter's Run in the Ridley Creek Basin. The existing outfall, which is located in Willistown Township, will continue to be used.

10. *Roamingwood Sewer and Water Association, Inc. D–88–45 CP.* An application for approval of a ground water withdrawal project to supply up to 9.69 mg/30 days of water to the applicant's distribution system from new Well Nos. 4 and 5, transfer the operation of Well Nos. 1, 2 and 3 Roamingwood Sewer and Water Association, Inc., and to increase the existing withdrawal limit of 17 mg/30 days from all wells to 22.32 mg/30 days. The project is located in Lake Township, Wayne County, Pennsylvania.

11. *City of Dover D–88–49 CP.* An application for approval of a ground water withdrawal project to supply up to 24.84 mg/30 days of water to the applicant's McKee Run Generating Station from existing Wells E, F, G and H not previously approved by the DRBC. The project is located in the City of Dover, Kent County, Delaware.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

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**Public Information Notice**

*Water Quality Program*

The Commission is preparing its water quality program for the fiscal year ending September 30, 1989. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, use attainability assessment, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it is available for examination and review by interested individuals at the Commission's offices upon request. The public review and comment period will end August 8, 1988. Contact Seymour P. Gross for further information.

**Susan M. Weisman,**

*Secretary.*

July 19, 1988.

[FR Doc. 88–16867 Filed 7–26–88; 8:45 am]

BILLING CODE 6360–01–M

## DEPARTMENT OF EDUCATION

### Notice Inviting Application for New Awards for Fiscal Year 1988 Under the Graduate Assistance in Areas of National Need Program; Correction

**ACTION:** Correction notice.

A Notice Inviting Applications for New Awards for Fiscal Year 1988 under the Graduate Assistance in Areas of National Need Program was published in the **Federal Register** on July 6, 1988 in 53 FR 25470. The Office of Management and Budget (OMB) number was inadvertently omitted from that notice. The OMB control number is 1840–0604.

Dated: July 21, 1988.

(Catalog of Federal Domestic Assistance Number 84.202, Graduate Assistance in Areas of National Need Program.)

**Kenneth D. Whitehead,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 88–16931 Filed 7–26–88; 8:45 am]

BILLING CODE 4000–01–M

### Law-Related Education Program; Final Funding Priority

**AGENCY:** Department of Education.

**ACTION:** Notice of final funding priority under the Law-Related Education Program.

**SUMMARY:** The Secretary issues a final funding priority for the Law-Related Education Program.

**EFFECTIVE DATE:** This final funding priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, please call or write to the Secretary's Discretionary Fund.

**FOR FURTHER INFORMATION CONTACT:** Secretary's Discretionary Fund, 400 Maryland Avenue, SW., Room 4132, Washington, DC 20202. Telephone (202) 732–3566.

**SUPPLEMENTARY INFORMATION:** On May 18, 1988, the Secretary published a Notice of Proposed Funding Priority under the Law-Related Education Program in the **Federal Register** (53 FR 17885). During the 30 day comment period, the Secretary did not receive any comments on the proposed absolute priority. There are no differences between the proposed funding priority and the final priority.

FINAL ABSOLUTE PRIORITY FOR FISCAL YEAR 1988: In accordance with 34 CFR 75.105(b) and (c)(3), the Secretary has chosen as an absolute priority civics-related projects focusing on the bicentennial of the U.S. Constitution. Only applications proposing activities under this priority will be considered.

Within this absolute priority, the Secretary encourages applications that will lead to greater knowledge and understanding of "The Federalist Papers," an authoritative analysis of the U.S. Constitution written by Alexander Hamilton, James Madison and John Jay.

The Secretary is particularly interested in supporting projects that will:

- Implement alternative strategies to use "The Federalist Papers" in the national celebration activities of the U.S. Constitution.
- Involve creative use of community resources, including eminent scholars and professionals, to stimulate student interest in and understanding and appreciation of "The Federalist Papers."
- Improve teacher qualifications and skills fostering substantive knowledge about "The Federalist Papers."
- Demonstrate the importance of "The Federalist Papers" to students in a manner that reflects the fundamental principles underlying the U.S. Constitution.

The above examples of ways to implement the absolute priority are only suggestions. Applicants may propose activities other than these examples

Applicable Regulations: (a) The Law-Related Education Program regulations, 34 CFR Part 241; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78 and 79.

Dated: July 11, 1988.

**Program Authority:** 20 U.S.C. 3851.

(Catalog of Federal Domestic Assistance No. 84.123, Law-Related Education Program)

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 88–16930 Filed 7–26–88; 8:45 am]

BILLING CODE 4000–01–M

## Office of Postsecondary Education

### Availability of Amendments to the 1987–88 National Defense/Direct Student Loan Program/Directory of Designated Low-Income Schools for Teacher Cancellation Benefits

**AGENCY:** Department of Education.

**ACTION:** Notice of availability of amendments to the 1987–88 Directory of low-income schools for cancellation of loans for teaching service.

**SUMMARY:** Institutions and borrowers participating in the Perkins Loan Program and other interested persons are advised that they may obtain information regarding the amendments to the 1987–88 National Defense/Director Student Loan Program/Directory of Designated Low-Income Schools (Directory). The amendments identify changes in the schools that qualify for teacher cancellation benefits under each of the loan programs.

**DATE:** The amendments to the Director are available on or after July 1, 1988.

**ADDRESS:** Information concerning specific schools listed in the amendments to the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. [Room 4651, ROB–3], Washington, DC 20202, Telephone (202) 732–3730.

**FOR FURTHER INFORMATION CONTACT:** The amendments to the Directory are available in (1) each of the participating institutions of higher education, (2) each of the fifty-seven (57) State and Territory Departments of Education, and (3) each of the major billing services.

**SUPPLEMENTARY INFORMATION:** The Secretary of Education published a notice in the **Federal Register** on November 10, 1987 (51 FR 43291) that the 1987–88 National Defense/Direct Student Loan Program/Directory of Designed Low-Income Schools was available. The Secretary has revised the Directory due to the openings and closings of schools, name changes, and other corrections. The amendments to the Directory make these changes.

The procedures for selecting schools for cancellation benefits are described in the National Defense and Direct Student Loan program regulations (34 CFR 674.53, 674.54). The Secretary has determined that for the 1987–88 academic year full-time teaching in the schools set forth in the amendments to the Directory qualifies for cancellation.

The Secretary is providing the amendments to the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1987–88 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of past, current, and future amendments and the Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct Student Loan Cancellations.)

Dated: July 20, 1988.

**Kenneth D. Whitehead,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 88–16928 Filed 7–26–88; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Determination of Noncompetitive Financial Assistance

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to the Coalition of Northeast Governors (CONEG) to organize and carry out a Regional Biomass Program in the Northeast Area of the Northern Tier States.

The grant is being renewed for a 1-year period beginning August 9, 1988. The estimated amount is $645,000.

Procurement Request No.: 05–880R21389.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Northeast Area of the Northern Tier States. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in manner which will maximize the participation of the public and private sectors of each state. CONEG has the unique capability to equally represent all of the states in the Northeast subregion and involve the appropriate private and public interest groups in the states. CONEG is an existing, regionally organized consortium with background experience in management of similar activities. Eligiblity for this study is, therefore, restricted to CONEG.

**FOR FURTHER INFORMATION CONTACT:** Lynda H. McLaren, Energy Technology Branch, Energy Programs Division, U.S. Department of Energy, Oak Ridge, TN 37831–8611, (615–576–1763).

Issued in Oak Ridge, Tennessee, on July 20, 1988.

**Peter D. Dayton,**

*Director, Procurement and Contracts Division, Oak Ridge Operations.*

[FR Doc. 88–16940 Filed 7–25–88; 11:10 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

### Final Consent Order with Enron Corp.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Final action on proposed consent order.

**SUMMARY:** The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Enron Corporation (Enron) executed on May 12, 1988, and published for comment in 53 FR 22701 on June 17, 1988.

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this notice. Accordingly, ERA has determined that the Consent order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Economic Regulatory Administration, 1000 Independence Avenue, SW., RG–30, Washington, DC 20585, (202) 586–8900.

Copies of the Consent Order may be obtained free of charge by written request to "Enron Consent Order Request" at the above address or by calling 586–8900. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** On June 17, 1988, DOE published notice in the **Federal Register** Vol. 53 at page 22701 announcing the execution of a Proposed Consent Order between Enron and DOE. In compliance with the DOE regulations, that notice, and a Press Release issued on June 21, 1988, provided a detailed summary of the Proposed Consent Order and the relevant facts.

As a result of an audit of Enron's compliance with the Federal petroleum price and allocation regulations, disputes arose between the Economic Regulatory Administration (ERA) and Enron concerning Enron's resales of natural gas liquids (NGLs) and natural gas liquid products (NGLPs) during the period of August 19, 1973 through January 27, 1981.

The Consent Order resolves matters in dispute with Enron as detailed in the notice and all other civil and administrative claims or causes of action regarding Enron's compliance with and obligations under the Federal petroleum price and allocation regulations.

Pursuant to the Consent Order, Enron shall pay $48 million including interest within 30 days of the date the Consent Order is made final. ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute all amounts paid by Enron, pursuant to the Consent Order.

As noted, no comments were received in response to the notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this notice.

Issued in Washington, DC, on July 21, 1988.

**Milton C. Lorenz,**

*Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.*

[FR Doc. 88–16941 Filed 7–26–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–14–NG]

### Natural Gas Marketing Services Cooperative Association Inc.; Order Granting Blanket Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of order granting blanket authorization to import natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Natural Gas Marketing Services Cooperative Association, Inc. (NGMS) blanket authorization to import natural gas. The order issued in ERA Docket No. 88–14–NG authorizes NGMS to import up to 3.6 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 21, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–16942 Filed 7–26–88; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket No. RP88–215–000]

### CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 21, 1988.

Take notice that CNG Transmission Corporation (CNG) on July 14, 1988, filed First Revised Sheet Nos. 71, 72, 102, 103 and 104 of Volume 1.

The proposed effective date is August 15, 1988. CNG states that the tariff sheets amend Rate Schedule TF by allowing for the transportation of gas to third party storage facilities by CNG.

Copies of the filing were served upon CNG's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All motions of protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16840 Filed 7-26-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-217-000]**

## CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 21, 1988.

Take notice that CNG transmission Corporation (CNG) on July 15, 1988 filed the following revised tariff sheets all to Original Volume No. 1 of its tariff:

Original Sheet Nos. 40 through 45
Original Sheet Nos. 160A through 160E
First Revised Sheet Nos. 51, 52, 58, 60, 85 and 86
Alternate Original Sheet Nos. 45 and 160D

The proposed effective date is June 1, 1988.

CNG states that the tariff filing is being made to recover take-or-pay and contract reformation costs which its pipeline suppliers will bill to CNG. As a downstream supplier, CNG has proposed to recover 100% of such costs on an as-billed basis, pursuant to § 2.104 of the Commission General Policy and Interpretations. In allocating its pipeline suppliers' costs among its customers, CNG has utilized the same deficiency-based formula employed by the respective pipeline supplier in allocating its take-or-pay costs to CNG, except with regard to the allocation of take-or-pay costs incurred by CNG from Transcontinental Gas Pipe Line Corporation (Transco). The major portion of Transco's take-or-pay costs were allocated to Transco pursuant to an agreement between Transco and CNG regarding CNG's purchases under Transco's Rate Schedule ACQ. The alternate tariff sheets reflect the flowthrough of Transco's take-or-pay costs on an as-billed basis.

CNG states that if changes in allocation methodology are ordered in dockets pending before the Commission or the Court of Appeals, it will file to revise its allocation methodology.

Copies of this filing were served upon CNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214 and 385.211). All motions or protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16841 Filed 7-26-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-95-003]**

## Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

July 21, 1988.

Take notice that Canyon Creek Compression Company (Canyon) on July 15, 1988, filed proposed changes in its FERC Gas Tariff, Original Volume No. 1 to become effective May 1, 1988.

Canyon states that the intent of this filing is to comply with Paragraph (D) of the Commission's June 30, 1988, Order in Docket No. RP88-95-001.

A copy of this filing was mailed to Canyon's customers and all parties set out on the oficial service list at Docket No. RP88-95-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16842 Filed 7-26-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-219-000]**

## Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

July 22, 1988.

Take notice that Colorado Interstate Gas Company (CIG) on July 15, 1988, tendered for filing certain revisions to its FERC Gas Tariff, First Revised Volume No. 1-A. CIG states that the revisions proposed include specific information required from a Shipper for a valid request for transportation service, including certain items required in the transportation request log. CIG further states that such revisions are being proposed to comply with Order No. 497 (Docket No. RM87-5-000) issued June 1, 1988. An effective date of July 14, 1988, is requested for the revised tariff sheets which coincides with the effective date of Order No. 497. These tariff sheets are submitted by CIG without prejudice to any further submittal of tariff sheets following Commission action on CIG's Request for Rehearing of Order No. 497.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 or Rule 211 (18 CFR 385.214 or 385.211) of the Commissions's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16922 Filed 7-26-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-192-002]**

## National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

July 21, 1988.

Take notice that on July 15, 1988, National Fuel Gas Supply Corporation ("National") tendered for filing the following tariff sheets as part of its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 59
Fourth Revised Sheet No. 60
Fourth Revised Sheet No. 61
Third Revised Sheet No. 62
Fourth Revised Sheet No. 63

Fourth Revised Sheet No. 64
Fourth Revised Sheet No. 65
Fifth Revised Sheet No. 66
Fourth Revised Sheet No. 67
Fourth Revised Sheet No. 68

National states that the purpose of the filing is to further revise its FERC Gas Tariff, First Revised Volume No. 1 to comply with the Commission's order issued National in Docket No. RP88–120–000 on May 31, 1988, and to reflect the PGA tariff changes adopted by the Commission in Order Nos. 483 and 483–A.

National states that, specifically, it proposes to revise the general terms and conditions of its FERC Gas Tariff to provide for interim rate adjustments, consistent with § 154.306 of the Commission's Regulations. In addition, National proposes to revise the general terms and conditions of its FERC Gas Tariff to provide for the filing of reports with its annual PGA filing to permit the Commission to assess National's past performance. Further, National proposes reivsed tariff provisions permitting cash refunds or transfers to the deferred account of refund balances existing at the end of a deferral period, all as required under the Commission's Regulations.

National also states that its filing reflects minor changes to its tariff language suggested by the Commission's Staff at the technical conference previously ordered in this proceeding.

The proposed effective date of the revised tariff sheets is June 1, 1988.

National states that copies of this filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such motions or protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–16843 Filed 7–26–88; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TQ88–2–37–001]**

## Northwest Pipeline Corp.; Change in FERC Gas Tariff

July 21, 1988.

Take notice that on July 14, 1988, Northwest Pipeline Corporation ("Northwest") filed Sixth Amended Thirty-Ninth Revised Sheet No. 10 in compliance with the Federal Energy Regulatory Commission ("Commission") order issued June 30, 1988 in the above-captioned docket.

Northwest states that the tariff sheet mentioned above was filed to adjust the demand portion of its jurisdictional gas sales rates to be effective July 1, 1988. Such adjustment is the result of: (1) Revised demand billing determinants due to CD conversions by Northwest's customers; and (2) a revision of estimated annual Canadian toll credits. Northwest requests an effective date of July 1, 1988, for the aforementioned tariff sheet.

A copy of this filing been mailed to Northwest's jurisdictional customers and affected state commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in detemining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–16844 Filed 7–26–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–47–008]**

## Northwest Pipeline Corp.; Change in FERC Gas Tariff

July 22, 1988.

Take notice that on July 18, 1988, Northwest Pipeline Corporation ("Northwest"), in compliance with the order issued by the Federal Energy Regulatory Commission ("Commission") on May 18, 1988 in Docket No. RP88–47–000, submitted the following tariff sheets to be a part of its FERC Gas Tariff.

*First Revised Volume No. 1*

Forty-First Revised Sheet No. 10
Twenty-Third Revised Sheet No. 10–A
Third Revised Sheet No. 15
Second Revised Sheet No. 16–A
First Revised Sheet No. 16–B
First Revised Sheet No. 21–B
Fourth Revised Sheet No. 26
Third Revised Sheet No. 28
First Revised Sheet No. 28–A
Original Sheet No. 29
Original Sheet No. 30
First Revised Sheet No. 120
Second Revised Sheet No. 121
Original Sheet No. 121–A
Third Revised Sheet No. 300
Third Revised Sheet No. 301
Third Revised Sheet No. 302
Second Revised Sheet No. 303

*Original Volume No. 1–A*

First Revised Sheet No. 1
Substitute Fourteenth Revised Sheet No. 201
Substitute Fourth Revised Sheet No. 202
Substitute Second Revised Sheet No 313
First Revised Sheet No. 317
First Revised Sheet No. 318
Substitute Original Sheet No. 319
Original Sheet Nos. 320 through 399
First Revised Sheet No. 601
Substitute Original Sheet No. 602

*Original Volume No. 2*

Substitute Thirteenth Revised Sheet No. 2
Substitute Fifth Revised Sheet No. 2.1
Substitute Fifth Revised Sheet No. 2.2
Substitute Fifth Revised Sheet No. 2.3
Substitute Ninth Revised Sheet No. 2–A
Substitute Third Revised Sheet No. 2–A.1
Substitute Fourteenth Revised Sheet No. 2–B
Substitute Fourth Revised Sheet No. 3

Northwest states the purpose of this filing is to revise the above listed tariff sheets to comply with the Commission's order, to reflect customers CD conversions and resulting D–1 revisions and customer's nominations of D–2 service levels and tariff sheets establishing procedures for implementing D–2 nominations. These tariff sheets are proposed to be made effective as of July 3, 1988, the date the suspended rates became effective subject to refund in this proceeding.

A copy of this filing is being served on all affected customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214

and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16923 Filed 7-26-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-216-000]**

## Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

July 21, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 14, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 301
Original Sheet No. 305A
Second Revised Sheet No. 327
Second Revised Sheet No. 330
Original Sheet No. 330A
Third Revised Sheet No. 440
Third Revised Sheet Nos. 484-489
Third Revised Sheet Nos. 490-522
Third Revised Sheet Nos. 523-599

Texas Eastern states that by Order No. 497 issued June 1, 1988 the Commission revised its regulations to address possible abuses in the relationship between interstate pipelines and their marketing or brokering affiliates. Texas Eastern is making this instant filing pursuant to the rules under § 250.16 of the Commission's revised Regulations in order to set forth as part of Texas Eastern's FERC Gas Tariff as stated by Paragraph (b)(2) of § 250.16 the specific information and format required from a shipper for a valid request for transportation service, including the items of information in paragraph (b)(6) of § 250.16 for which Texas Eastern must maintain a log. Texas Eastern will make an additional filing before September 12, 1988, in order to set forth new tariff provisions that contain the information and procedures described in paragraphs (b)(1), (b)(3) and (b)(4) of § 250.16 of the Commission's revised Regulations.

Texas Eastern states that Sheet Nos. 305A and 330 through 330A have been revised to reflect additional supply information required from shippers requesting transportation under Rate Schedules FT-1 and IT-1 respectively. Sheet Nos. 490 through 522 set forth Texas Eastern's standardized request forms for transportation service under Rate Schedules FT-1 and IT-1 and request forms for amendments to effective Service Agreements under Rate Schedules FT-1 or IT-1 (Section 33 of the General Terms and Conditions). These forms must be completed by all shippers requesting transportation service under Rate Schedules FT-1 and IT-1. The standardized request forms are submitted in accordance with the requirements of paragraph (b)(2) of § 250.16 of the regulations promulgated by the Commission's Order No. 497. Sheet Nos. 301 and 327 were revised to include references to the request forms for transportation set forth in Section 33 of the General Terms and Conditions.

Texas Eastern states that the tariff sheets filed herewith are proposed to be effective July 14, 1988, the effective date of the Commission's revised Regulations.

Copies of this filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all current Rate Schedule IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16845 Filed 7-26-88; 8:45 am]

BILLING CODE 6716-01-M

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**[Docket No. RP88-115-003]**

## Texas Gas Transmission Corp.; Filing

July 21, 1988.

Take notice that on July 14, 1988, Texas Gas Transmission Corporation (Texas Gas) filed Substitute Original Sheet Nos. 10, 20 and 60 to its FERC Gas Tariff, Original Volume No. 2-A, proposed to be effective November 1, 1988.

Texas Gas states that on June 30, 1988, it made a compliance filing pursuant to the Commission's order of May 31, 1988 and that certain tariff sheets failed to include the removal of references to take-or-pay payment cost recovery and standby sales service. Texas Gas requests that Substitute Original Sheet Nos. 10, 20 and 60 be included as part of the June 30, 1988 compliance filing.

Texas Gas states that these sheets will be mailed to all its customers and all persons on the official service list for Docket No. RP88-115-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16846 Filed 7-26-88; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3417-9]**

## Leather Tanning and Finishing Industry Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice identifying a leather tanning company in the City of South Saint Paul, Minnesota, to which the sulfide pretreatment standards shall not apply as provided by 40 CFR 425.04 (47 FR 52848).

**SUMMARY:** The Metropolitan Waste Control Commission (MWCC) operates a publicly owned treatment works (POTW) which had in the past and will in the future accept wastewater from a tannery that is subject to pretreatment standards of 40 CFR Part 425. The MWCC was requested by the tannery to

waive the categorical sulfide pretreatment standard applicable to its wastewater discharge. The tannery to which the sulfide pretreatment standards shall not apply is: Twin City Tanning, Incorporated, 501 Malden Street, South Saint Paul, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** David Rankin, Region V Pretreatment Coordinator, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353–2105.

**SUPPLEMENTARY INFORMATION:** On November 23, 1982, the Environmental Protection Agency promulgated Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Leather Tanning and Finishing Industry Point Source Category (47 FR 52848). These regulations established categorical pretreatment standards for the discharge of sulfides by tanneries to publicly owned treatment works (POTW). The regulations also established a procedure in § 425.04(c) to waive the applicability of the sulfide pretreatment standard to the affected tanneries by the POTW.

These regulations became effective on January 6, 1983, except § 425.04 (b) and (c) which contained information collection requirements that had to be reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511). On June 30, 1983, a notice was published in the **Federal Register** that OMB had approved the information collection requirements. Applicable reporting dates previously specified in § 425.04 (b) and (c) were subsequently revised with final corrections published on August 5, 1983 (48 FR 35649). As previously stated, POTWs with tanneries tributary to their treatment works and regulated by the Leather Tanning regulations may optionally apply on tanneries' behalf for a waiver from the categorical sulfide pretreatment standard provided that the POTW can certify that the regulated tanneries' sulfide discharges do not interfere with the operation of the treatment works. This sulfide waiver request must comport with the requirements listed in § 425.04 (b) and (c), as well as satisfy the requirements contained in the National Sulfide Criteria Document. The applying POTW must first conduct a public notice of their intent to waive the sulfide standard, conduct a public hearing (if one is requested), and submit a certification statement to the Regional Water Division Director with documentation supporting the noninterference claim. The MWCC issued a public notice on March 7, 1983, in the *Minneapolis Star* and *Tribune* which presented the findings supporting MWCC's determination that the discharge of sulfides from the tannery does not interfere with the operation of the treatment works. Public comments were received from Citizens for a Better Environment and the Minnesota Pollution Control Agency (MPCA). A public meeting was held on May 5, 1983, at which the comments were addressed. No formal public hearing was requested or held. Subsequently, MWCC submitted to the Regional Water Division Director its written certification statement, as well as information and data which it considered relevant factors, including:

1. The presence and characteristics of other industrial wastewaters which can increase or decrease sulfide concentrations, pH, or both;

2. The characteristics of the sewer/interceptor collection system which either minimize or enhance opportunities for the release of hydrogen sulfide gas;

3. The characteristics of the receiving POTW's headworks, preliminary and primary treatment systems, and sludge holding and dewatering facilities which either minimize or enhance opportunities for the release of hydrogen sulfide gas; and

4. The occurrence of any prior sulfide related interference as defined in § 425.02(j).

The Region has carefully reviewed all supporting documentation and has determined that the MWCC has considered all the relevant factors, as required by 40 CFR 425.04 (b) and (c) and the National Sulfide Waiver Criteria Document. The following summarizes the steps taken by the Region regarding this request.

The Region reviewed the information the MWCC supplied on the point of discharge of the applying tannery to the treatment service area, as well as a description of its operations and characteristics of its discharge. Twin City Tanning intends to operate the tanning facility in a through-the-blue capacity. Through-the-blue is defined in 40 CFR 425.60. Thru-Blu Division of Fred Rueping Leather Company, which ceased operations in July 1985, formerly operated the tanning facility. Twin City Tanning intends to operate the former Thru-Blu facility in the same manner as when operations ceased. Twin City Tanning is the only tannery in the receiving treatment plant's service area. Additionally, the MWCC states that there are no other industries that are expected to contribute a significant amount of sulfide to the POTW, or cause a significant change in wastestream pH.

The tanning facility's wastewater discharges directly into a 54-inch sanitary Inver Grove Heights (IGH) interceptor which flows by gravity, with no known stagnant or anaerobic areas, approximately two-thirds of a mile to the South Saint Paul (SSP) Lift Station. The wastewater is then pumped through the 48-inch SSP force main to the Metro WWTP. On May 4, 1983, the IGH interceptor was inspected to assess sewer damage related to Thru-Blue, Inc. The inspection concluded that "severe acid corrosion due to hydrogen sulfide was noted * * *. Although this represents severe damage, sufficient structural capacity remains to preclude any structural failure at this time. However, any further acid corrosion due to hydrogen sulfide should be prevented in order to maintain remaining structural capacity." During subsequent inspections, however, it was discovered that the actual wall thickness of the pipe was not 5½ inches, as original design plans had called for, but 7½-9 inches and that the severity of the corrosion was grossly exaggerated in the May 4, 1983, inspection report. In addition, the MWCC feels that proper pH control and chromium recovery of the tanning facility's discharge, in conjunction with the amount of dilution, is adequate to prevent further corrosion damage due to hydrogen sulfide formation in the interceptor.

Odor problems are being controlled at the SSP Lift Station by a system which takes air from the influent channels and general Lift Station areas, passes this air through caustic-impregnated activated carbon, and exhausts the treated air to the outside. In addition, enclosed areas at the Metro WWTP are ventilated and odor control systems are in operation. The MWCC has adopted specific confined space entry procedures for all personnel entering sewers/interceptors. All personnel are trained in these procedures. There have been no reported health problems related to hydrogen sulfide exposure.

All industrial users in the Metropolitan area are required to comply with the MWCC Waste Discharge Rules (WDR) via MN Rules Sections 5900.1600–5900.7500, including obtaining an Industrial Discharge Permit from the MWCC. Twin City Tanning has been issued a permit for the proposed tanning facility's discharge and is required to meet all applicable limits.

The WDR contain specified Prohibited Wastes, and the permit contains local limitations and categorical standards.

This determination applies only to the sulfide pretreatment standard and will be contingent upon the MWCC's and the affected tannery's adherence to the following conditions. Failure to comply with the specified conditions can be considered grounds for the Region's withdrawal of this waiver after formal notice to the MWCC and the affected tannery:

1. Upon startup of the facility, Twin City Tanning shall be required to carry out a 2-year program to: (a) Investigate solids/sulfide reduction in the beamhouse wastestream; and (b) design an appropriate pretreatment system, based on the results of this investigation. The schedule is outlined in Industrial User Permit #0784 for Twin City Hide.

2. The MWCC shall inspect the sewer downstream of Twin City Tanning for sludge buildup, as well as any additional acid damage. These inspections are to be done semi-annually. Reports on these inspections shall be available for review by the Region upon request.

3. The MWCC shall operate and maintain the odor control system at the SSP Lift Station.

4. The MWCC will initially issue a waiver to Twin City Tanning for a period of 2 years. After this time, the MWCC shall submit for the Region's review the determination as to whether or not the waiver will remain in effect. Included with this submittal shall be all applicable information used to assess Twin City Tanning's impacts on the Metropolitan Disposal System.

All other pretreatment standards for existing sources contained in 40 CFR Part 425, will remain in effect for this tannery. These requirements do not replace any more stringent conditions required by the MWCC and MPCA.

Therefore, pursuant to § 425.04(c), and in consideration of the representations and information provided by the MWCC, I hereby grant this waiver of sulfide requirements set forth in the Leather Tanning and Finishing Pretreatment Standards for Twin City Tanning, Incorporated in South Saint Paul, Minnesota.

Dated: July 13, 1988.

**Valdas V. Adamkus,**

*Regional Administrator, Region V.*

[FR Doc. 88-16544 Filed 7-26-88; 8:45 am]

BILLING CODE 6560-50-M

**[PP 6F3446 AND FAP 6H5508; FRL-3420-6]**

## Ciba-Geigy Corp.; Withdrawal of Pesticide Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; withdrawal of petitions.

**SUMMARY:** This document announces that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, has withdrawn pesticide petition (PP) 6F3446, which proposed amending 40 CFR 180.404 by establishing a tolerance for the combined residues of the insecticide profenofos in or on the agricultural commodity soybeans at 1.0 part per million (ppm), and feed additive petition (FAP) 6H5508, which proposed amending 21 CFR 561.53 by establishing a regulation to permit the combined residues of profenofos in or on the animal feed commodities soybean hulls and soybean meal at 2.0 ppm.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

William H. Miller, Product Manager (PM) 16, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Rm. 211, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2600.

**Authority:** 21 U.S.C. 346a and 348.

Dated: July 18, 1988.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 88-16887 Filed 7-26-88; 8:45 am]

BILLING CODE 6560-50-M

**[PP 4G3047 and PP 5G3217/T566 FRL 3418-2]**

## Pyridate; Establishment of Temporary Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established temporary tolerances for residues of the herbicide pyridate in or on certain raw agricultural commodities. These temporary tolerances were requested by Gilmore Incorporation.

**DATE:** These temporary tolerances expire May 1, 1989.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1800.

**SUPPLEMENTARY INFORMATION:** John W. Kennedy Consultants, Inc., 9101 Cherry Lane, Suite 113, Laurel, MD 20708-1133, has requested in pesticide petitions (PP) 4G3047 and (PP) 5G3217 the establishment of temporary tolerances for residues of the herbicide pyridate [O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate] derived from its application in or on the raw agricultural commodities: Corn grain, corn forage, corn silage, corn fodder, peanut nutmeat, peanut hay, and peanut hulls at 0.03 part per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permits 42545-EUP-1 and 42545-EUP-2, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Gilmore Inc., must immediately notify the EPA of any findings from the experimental uses that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire May 1, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such

revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**Authority:** (21 U.S.C. 346a(j)).

Dated: July 12, 1988.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 88–16405 Filed 7–26–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**[MM Docket No. 88–335]**

### Applications For Consolidated Proceeding; Morris Courtright, Jr., and Phyllis J. Courtright et. al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Morris Courtright, Jr., & Phyllis J. Courtright, Sedona, AZ. | BPH–870501MA | 88–335 |
| B. Rap Broadcasting Corporation, Sedona, AZ. | BPH–870506MB | |
| C. Michael D. Mahaffey, Sedona, AZ. | BPH–870506MD | |
| D. Sinclair Telecable, Inc., Sedona, AZ. | BPH–870506KA | |
| E. Sedona FM Broadcast Limited Partnership, Sedona, AZ. | BPH–870506MC | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Environmental, A11
2. Air Hazard, A, C, E
3. Comparative, A11
4. Ultimate, A11

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16897 Filed 7–26–88; 8:45 am]

BILLING CODE 6712–01–M

**[MM Docket No. 88–309]**

### Applications For Consolidated Hearing; Monroe-Livingston Radio Associates et. al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Monroe-Livingston Radio Associates Honeoye Falls, NY. | BPH–870817MI | 88–309 |
| B. Sima Birach Honeoye Falls, NY. | BPH–870818MA | |
| C. Mary An Hurlburt, et al., d/b/a HFH Communications Associates Honeoye Falls, NY. | BPH–870819NG | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16896 Filed 7–26–88; 8:45 am]

BILLING CODE 6712–01–M

**[MM Docket No. 88–327]**

### Applications For Consolidated Hearing; Hector Nicolau et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Hector Nicolau, Fajardo, PR. | BPCT–871208KE. | 88–327 |
| B. East Coast Telecasters Co., L.P., Fajardo, PR. | BPCT–880209KF. | |
| C. Damarys De Jesus, Fajardo, PR. | BPCT–880209KH. | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Application(s)*

Air Hazard, A, B, C
Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying

during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 88-16898 Filed 7-26-88; 8:45 am]

BILLING CODE 6712-01-M

**[MM Docket No. 88-308]**

## Applications For Consolidated Hearing; Real Life Educational Foundation of Baton Rouge, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Real Life Educational Foundation of Baton Rouge, Inc., Baton Rouge, LA. | BPED-840322 CA. | 88-308 |
| B. Jimmy Swaggart Ministries, Baton Rouge, LA. | BPED-840822IF | |
| C. Radio for the Blind & Print Handicapped, Inc., Baton Rouge, LA. | BPED-840822IG | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative-Noncommercial Educational FM, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88-16899 Filed 7-26-88; 8:45 am]

BILLING CODE 6712-01-M

**[MM Docket No. 88-334]**

## Applications For Consolidated Hearing; Karl H. Stoll et al

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Karl H. Stoll, Greenville, NC. | BPCT-871112KF. | 88-334 |
| B. Coastal Plain Television, Inc., Greenville, NC. | BPCT-880114KJ | |
| C. Community Service Telecasters, Inc. WGTJ (TV), Greenville, NC. | BMPCT-880114KM. | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

Air Hazard, A, B
Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

**Roy J. Stewart, Chief,**

*Video Services Division, Mass Media Bureau.*

[FR Doc. 88-16900 Filed 7-26-88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-010636-044
*Title:* U.S. Atlantic-North Europe Conference
*Parties:* Atlantic Container Line, B.V., Orient Overseas Container Line (UK) Ltd., Hapag-Lloyd AG, Sea-Land Service, Inc., A.P. Moller-Maersk Line, Gulf Container Line (GCL), B.V., P&O Containers (TFL) Limited, Compagnie Generale Maritime (CGM), Nedlloyd Lijnen, B.V.
*Synopsis:* The proposed amendment would extend the implementation date of the loyalty contract provisions of Article 5.1(o) to December 1, 1988.

*Agreement No.:* 202-010637-032
*Title:* North Europe-U.S. Atlantic Conference
*Parties:* Atlantic Container Line, B.V., Hapag-Lloyd AG, Sea-Land Service, Inc., Nedlloyd Lijnen, B.V., Gulf Container Line (GCL), B.V., P&O Containers (TFL) Limited, Compagnie Generale Maritime (CGM)
*Synopsis:* The proposed amendment would extend the implementation date of the loyalty contract provisions of Article 5.1(o) to December 1, 1988.

*Agreement No.:* 203-011075-007
*Title:* Central America Discussion Agreement
*Parties:* United States/Central America Liner Association, Nordana Line, Inc., Marine Bulk Carrier, Inc., Nexos Line,

Gran Golfo Express, Thompson Shipping Co., Inc., Maritime Juno, S.A., Concorde Shipping Inc.

*Synopsis:* The proposed amendment would add Tropical Shipping and Construction Co., Ltd., as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 20, 1988.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88-16848 Filed 7-26-88; 8:45 am]

BILLING CODE 6730-01-M

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 1035. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224.200144

*Title:* Alabama State Docks Freight Handling Permit

*Parties:* Alabama State Docks Department (Department); Ceres Gulf, Inc. (Ceres)

*Synopsis:* The agreement grants Ceres a permit to perform or have performed cargo and freight handling services at the Department's facilities at the Port of Mobile pursuant to this agreement and the Department's Tariff No. 1–C.

*Agreement No.:* 224.200146

*Title:* Port of Portland Terminal Use Agreement

*Parties:* Port of Portland (Port); Nippon Yusen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd. (Lines)

*Synopsis:* The agreement provides that the Lines shall have preferential use of a one vessel berth, minimum of two cranes and container yard area (approx. 10 acres) at Terminal 6, Port of Portland. The Lines guarantee the Port a minimum of 15,000 containers per year. The Port agrees to a per-container wharfage and dockage rate of $42 and a reduced rate of $40 for volume over 17,250 containers per year.

*Agreement No.:* 224.200145

*Title:* Alabama State Docks Freight Handling Permit

*Parties:* Alabama State Docks Department (Department); Mosley's General Services, Inc. (MGS)

*Synopsis:* The proposed agreement permits MGS to perform cargo handling services at Alabama's Port of Mobile terminal facilities pursuant to this agreement and the Department's Tariff No. 1–C.

By Order of the Federal Maritime Commission.

**Tony P. Kominoth,**

*Assistant Secretary.*

Dated: July 22, 1988.

[FR Doc. 88-16936 Filed 7-26-88; 8:45 am]

BILLING CODE 6730-01-M

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-010636-045

*Title:* U.S. Atlantic-North Europe Conference

*Parties:* Atlantic Container Line, B.V.; Orient Overseas Container Line (UK) Ltd.; Hapag-Lloyd AG; Sea-Land Service, Inc.; A.P. Moller-Maersk Line; Gulf Container Line (GCL), B.V.; P&O Containers (TFL) Limited; Compagnie Generale Maritime (CGM); Nedlloyd Lijnen, B.V.

*Synopsis:* The proposed amendment would further clarify the parties' authority regarding open and closed rates.

*Agreement No.:* 202-010637-033.

*Title:* North Europe-U.S. Atlantic Conference.

*Parties:* Atlantic Container Line, B.V.; Hapag-Lloyd AG; Sea-Land Service, Inc.; Nedlloyd Lijnen, B.V.; Gulf Container Line (GCL), B.V.; P&O Containers (TFL) Limited; Compagnie Generale Maritime (CGM)

*Synopsis:* The proposed amendment would further clarify the parties' authority regarding open and closed rates.

By Order of the Federal Maritime Commission.

Dated: July 22, 1988.

**Tony P. Kominoth,**

*Assistant Secretary.*

[FR Doc. 88-16918 Filed 7-26-88; 8:45 am]

BILLING CODE 6730-01-M

**[Docket No. 88-18]**

## Votainer BV, et al. v. Atlantic Container Line et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Votainer BV, Votainer Consolidation Services (California) Inc., Votainer Consolidation Services (Chicago) Inc., Votainer Consolidation Services (New York) Inc., and Summar Agency Ltd. ("Complainants") against Atlantic Container Line, Dart Containerline, Hapag-Lloyd, Puerto Rico Maritime Shipping Authority, Sea-Land Service, Inc., Trans Freight Lines, New York Shipping Association, Council of North Atlantic Shipping Associations, West Gulf Maritime Association, Mobile Steamship Association, Inc., and Southeast Florida Employers Port Association ("Respondents") was served July 22, 1988. Complainants allege that Respondents have violated certain sections of the Shipping Act, 1916, 46 U.S.C. app. Section 801 *et seq.*, the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 *et seq.*, the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, through implementation of the "50-Mile Container Rules" at various East Coast and/or Gulf Coast ports.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this

proceeding shall be issued by July 24, 1988, and the final decision of the Commission shall be issued by November 24, 1989.

**Tony P. Kominoth,**

*Assistant Secretary.*

[FR Doc. 88-16937 Filed 7-26-88; 8:45 am]

BILLING CODE 6730-01-M

## Survey of Non-Vessel Operating Common Carriers

The Federal Maritime Commission recently sent surveys to NVOCCs seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one half years after enactment of the 1984 Act. This is the first survey sent to NVOCCs.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested NVOCCs who have *not* received a copy of the survey are urged to contact: Richard Speigel, Bureau of Economic Analysis, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, telephone (202) 523-5870.

July 21, 1988.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88-16847 Filed 7-26-88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

July 21, 1988.

### Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

*Proposal to approve under OMB delegated authority the implementation of the following report:*

*Report Title:* Report of Proceeds From Outstanding Sales to Nonexempt Entities of Short-Term Loans Made Under Long-Term Lending Commitments.

*Agency Form Number:* FR 2916.

*OMB Docket Number:* 7100-0087.

*Frequency:* Weekly.

*Reporters:* Depository institutions.

*Annual Reporting Hours:* 650.

*Estimated Average Hours Per Response:* ¼ hour.

Small businesses are not affected.

*General Description of Report:*

This information collection is mandatory (12 U.S.C. 248(a), 461 and 3105(b)(2)) and is given confidential treatment (5 U.S.C. 552b(4) and b(8)).

The FR 2916 report will collect information on the proceeds of sales to nonexempt entities of short-term loans made under long-term lending commitments that are included in the respondent's weekly FR 2900 report. The report will be collected weekly from those depository institutions that file the FR 2900 report weekly and that have more than $1 million of such sales outstanding any day of the week. The FR 2916 report will be used to determine the size of this activity in order to assess its effects on the demand for reserves and to make appropriate adjustments in the monetary aggregates.

Board of Governors of the Federal Reserve System, July 21, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88-16853 Filed 7-26-88; 8:45 am]

BILLING CODE 6210-01-M

### Agency Forms Under Review

July 20, 1988.

### Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nancy Steele—Divison of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

*Request for OMB approval to extend, without revision, the following report:*

*Report Title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks

*Agency Form Number:* FFIEC 002

*OMB Docket Number: 71-0032*

*Frequency:* Quarterly

*Reporters:* U.S. branches and agencies of foreign banks

*Estimated Number of Respondents:* 510

*Average Hours Per Response:* 18.44

*Annaul Reporting Hours:* 37,618

Small businesses are not affected.

*General Description of Report:*

This information collection is mandatory (12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), 3102(b)). Certain portions are given confidential treatment (5 U.S.C. 552(b)(8)).

This interagency report provides balance sheet information for all U.S. branches and agencies of foreign banks, to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal banking agencies.

Board of Governors of the Federal Reserve System, July 20, 1988.

**Willaim W. Wiles**

*Secretary of the Board.*

[FR Doc. 88-16850 Filed 7-26-88; 8:45 am]

BILLING CODE 6210-01-M

## Application To Engage de Novo in Permissible Nonbanking Activities; Security Pacific Corp.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-

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16209) published at page 27058 of the issue for July 17, 1987.

Under the Federal Reserve Bank of San Francisco, the entry for Security Pacific Corporation is revised to read as follows:

**A. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through its subsidiary, SP Investment Strategies Corp.; San Diego, California ("SPISCO"), in providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant or commodity trading advisor registered with the Commodity Futures Trading Commission on financial futures and options on futures to the extent permitted by § 225.25(b)(19) of the Board's Regulation Y (SPISCO will not, however, register as a commodity trading advisor with the CFTC nor serve as a futures commission merchant.); and providing portfolio investment advice pursuant to § 225.25(b)(4)(iii).

Comments on this application must be received by August 12, 1988.

Board of Governors of the Federal Reserve System, July 21, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-16851 Filed 7-26-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Cooperative Agreement for Risk Reduction Through Physical Activity Within Minority Populations; Program Announcement and Availability of Funds for Fiscal Year 1988

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for a Cooperative Agreement for the design, implementation, and evaluation of a program for risk reduction through physical activity within minority populations.

#### Authority

The program is authorized under section 301 of the Public Health Service Act (42 U.S.C. 241), as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

#### Background and Objectives

There is strong epidemiologic evidence suggesting that physical activity may have beneficial health effects. The Public Health Service has proposed 11 physical and exercise objectives for 1990 to help Americans achieve such benefits. Objective C, for example, calls for 60 percent of adults to engage in appropriate physical activity. Unfotrunately, data from several studies indicate that some of the objectives are unlikely to be met and that low socioeconomic status (SES) minority populations appear to be least responsive to community or clinical health promotion efforts.

Data from the 1985 National Health Information Statistics Survey suggest that the lifestyle of people of low SES minority populations places them at an increased risk for illness and disability. These populations are also less active than other groups of persons and appear to be least responsive to community or clinicial health promotion efforts. This problem has been addressed by researchers and often found to be associated with cultural patterns of beliefs and behaviors that interfere with program success. Also the health promotion activity is conducted with insufficient understanding of the community culture, organization, existing behavioral patterns, and their determinants. The activities are often carried out on a trial-and-error basis, or by applying what was said to work in very different communities.

Planning for effective community health promotion in low income miniority communities should include attempts to understand the way the population will perceive the message to be delivered. Community structure, including family patterns which may vary, should also be considered when designing interventions.

Programs should also attempt to blend intervention strategies designed to promote behavioral changes with usual patterns of activity in the community. In some cases, it may be more effective to promote behavioral changes for valued ends other then health.

This project requires the design and implementation of a program based on a knowledge of the target community's population. The ultimate objective is the reduction of "unnecessary" morbidity and mortality through enhanced physical activity, particularly among populations at greater risk. The development of intervention (physical activity) programs with established efficacy will foster the expansion of low cost, community-based health promotion/risk reduction and encourage attempts to reach high-risk populations that are currently overlooked.

Specific objectives include the following:

A. Develop a knowledge-base about modifiable behavioral, social, organizational, and cultural determinants or about causes of poor physical activity (or exercise) in a low SES minority community from:

1. Existing literature;
2. CDC'S previous and ongoing studies and programs;
3. Recipient institution's experience;
4. From recipient institution's inquiries (qualitative ethnography focus group studies and/or ongoing quantitative studies within the community) within the minority community or within one having similar minority groups.

B. Design an effective intervention (physical activity) program that makes use of the knowledge-base developed from a low SES minority community.

C. Implement the intervention program within a selected minority community.

D. Conduct an evaluation of the intervention program.

E. Report recommendations about how to carry out effective health promotion through physical activity in low socio-economic miniority populations based on knowledge gained from this project.

Recipient cooperative activities are:

A. Gather the appropriate information to build the knowledge base that will support the design of an effective program to promote physical activity in a low SES minority population.

B. Design a program to promote physical activity in a low SES minority population.

C. Implement the program.

D. Evaulate (process and impact) the intervention program.

E. Publish results and disseminate to States and other communities.

CDC cooperative activities are:

A. Provide technical assistance in the gathering of information.

B. Provide assistance in designing an intervention program to promote physical activity in a low SES minority population.

C. Provide technical assistance in developing the evaluation plan.

D. Provide assistance in the analysis of information in assessing the process and impact of the intervention.

E. Assist in dissemination of results to States and other communities.

#### OMB Clearance

In carrying out these activities, if new information is to be collected from 10 or more respondents, review and approval

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will be required from the Office of Management and Budget before the data gathering begins.

**Evaluation Criteria**

The initial application will be reviewed and evaluated for technical merit according to the following criteria:

A. *Understanding the Problem*
B. *Administrative Capabilities and Experience*
C. *Plan of Operation*
D. *Personnel*
E. *Budget*

**Eligible Applicants**

Eligible applicants are official health departments of any State or local government, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States; and also colleges and universities, and other non-profit and for-profit organizations.

**Availability of Funds**

Approximately $90,000 will be available in Fiscal Year 1988 to fund one (1) new cooperative agreement. The project is expected to begin on or about September 15, 1988 and will be funded for 12-month budget periods within a three-year project period. Continuation of the project will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. It is estimated that funds in the amount of $60,000 for FY 1989 and $90,000 for FY 1990 will be available.

**Application Submission**

A. Copies—Place of Submission—The original and two copies of the application (PHS 5161–1 Rev. 3/86) must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before August 29, 1988.

B. Deadline—Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications which do not meet the criteria in B1. or 2. above are considered late applicants. Late applications will not be considered in the current competition and will be returned to the applicant.

**Other Submission and Review Requirements**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where To Obtain Additional Information**

Information on application procedures, copies of application forms, and other material may be obtained from Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 Paces Ferry Road, NE., Room 300, Mailstop E–14, Atlanta, Georgia 20305, or by calling (404) 842–6575 or FTS 236–6575. Technical information may be obtained by contacting Dr. Kenneth E. Powell, Chief, Behavioral Epidemiology and Evaluation Branch, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop A–13, Atlanta, Georgia 30333, Telephone (404) 639–3158 or FTS 236–3158.

Dated: July 21, 1988.

**David K. Rowe,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 88–16866 Filed 7–26–88; 8:45 am]

BILLING CODE 4160–18–M

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## Cooperative Agreement To Enhance the Preparation of Public Health Veterinarians in the Areas of Disease Prevention and Health Promotion; Availability of Funds for Fiscal Year 1988

The Centers for Disease Control announces the availability of funds in Fiscal Year 1988 for a cooperative agreement with the Association of Teachers of Veterinary Public Health and Preventive Medicine (ATVPHPM) to improve the development and preparation of public health veterinarians in the areas of disease and prevention and health promotion and to enhance their contributions to public health practice. This is not a formal request for applications. Assistance will be provided only to ATVPHPM for the support of this project. No other applications are solicited or will be accepted. This request complies with the provisions of the PHS Grants Administration Manual Parts 142 and 144. The Catalog of Federal Domestic Assistance number is 13.283.

**Authorizing Legislation**

This Program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(A)), as amended.

**Background**

As a part of its overall mission, the Centers for Disease Control (CDC) is responsible for providing national leadership to increase the effectiveness of public health organizations. In carrying out that responsibility, the CDC works collaboratively with educational institutions, especially schools of public health and schools of medicine, and with the professional organizations that represent those two entities.

Schools of veterinary medicine and programs of preventive medicine/epidemiology within those schools train veterinarians to work in the field of human public health and emphasize teaching and research focused on epidemiology, biostatistics, immunology, infectious diseases, and environmental health. In addition to the specialized training for public health veterinarians, these departments provide all veterinary students with an appreciation of the principles of epidemiology and biostatistics as well as concepts of preventive medicine, enabling them to function as an effective force at the public health interface of zoonoses and human disease.

The Association of Teachers of Veterinary Public Health and Preventive Medicine is a professional organization of individuals and institutions that has a professional interest in veterinary preventive medicine and community health. Its membership includes teachers, researchers, practitioners, and administrators. Each of the 27 veterinary schools in the United States has a functional department or program of preventive medicine/epidemiology. The ATVPHPM is the only organization that has a comprehensive data base relating to teaching and other activities of these departments or programs of preventive medicine/epidemiology in the schools of veterinary medicine.

**Reasons for Proposing Single Source for This Cooperative Agreement**

The Association of Teachers of Veterinary Public Health and Preventive Medicine is a professional organization of individuals and institutions that teaches or has a professional interest in preventive medicine and community health. Its membership includes teachers, researchers, practitioners,

administrators, and students from schools of veterinary medicine. The diversity of its membership, and particularly its outreach beyond the traditional public health structure, places ATVPHPM in a unique position to assist these veterinary affiliated groups to become productively involved in the national disease prevention/health promotion effort. ATVPHPM is the only organization that has a comprehensive data base related to teaching and other activities of veterinary school departments of preventive medicine/epidemiology.

**Description of the Project**

To achieve the above objectives, the following activities will be performed during a 5-year period.

*1. ATVPHPM Activities*

a. Build a consensus among the veterinary preventive medicine community regarding essential skills and knowledge in disease prevention and health promotion which all graduates of veterinary schools should possess.

b. Make available to all veterinary school faculty and students information regarding the essential skills and knowledge required for effective disease prevention.

c. Assess the extent to which the current veterinary school curricula provide the desired skills and knowledge.

d. Develop and test new educational activities and instructional methods.

e. Identify and develop new approaches and opportunities for field experiences in which veterinary students and faculty can practice applying skills and knowledge learned in the classroom.

This will include the selection from the ATVPHPM membership of appropriate individuals to participate in a sabbatical program in which selected sabbatical faculty may spend approximately 9 months working with the Centers for Disease Control's Global Epidemic Intelligence Service in an overseas environment.

f. Conduct workshops and conferences to exchange current information in specific fields of veterinary public health, preventive medicine, and health promotion. Utilize results from these workshops and conferences to upgrade veterinary public health criteria.

*2. CDC Activities*

a. Collaborate with ATVPHPM in building a consensus among the veterinary community regarding essential skills and knowledge in preventive medicine which all veterinary graduates should possess.

b. Collaborate with ATVPHPM regarding methods to disseminate information about essential skills and knowledge in veterinary preventive medicine.

c. Collaborate with ATVPHPM in assessing the extent to which current veterinary curricula provide the requisite skills and knowledge in veterinary preventive medicine.

d. Collaborate with ATVPHPM in identifying and implementing new approaches and opportunities for field experience for veterinarians to apply preventive/epidemiology techniques to "real life" situations.

This will include assigning appropriate ATVPHPM members selected by the ATVPHPM and CDC, on sabbaticals, to work in overseas epidemiology programs in the Global EIS program for approximately 9 months.

**Availability of Funds**

It is expected that $40,000 will be available during Fiscal Year 1988 to support this project. It is anticipated that the cooperative agreement will be funded initially for a 12-month budget period.

Continuation awards within the 5-year project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate is subject to change.

**Other Requirements**

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Availability of Complete Program Description and Application Assistance**

A full description of the program, including criteria for review of application, application format, application procedures, copies of application forms PHS 5161–1, and other materials may be obtained from Terry C. Maricle, Grants Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30333, Telephone (404) 842–6511. Technical information may be obtained from Stanley I. Music, Director, Global EIS Division, International Health Program Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639–3115.

Dated: July 21, 1988.

**David K. Rowe,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 88–16865 Filed 7–26–88; 8:45 am]

BILLING CODE 4160–18–M

## Health Resources and Services Administration

### Health Education Assistance Loan Program; "Maximum Interest Rates for Quarter Ending September 30, 1988"

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1988, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 10 percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calcualted by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (6.44 percent), and rounding the result (9.94 percent) upward to the nearest ⅛ percent (10 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending September 30, 1988, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9⅞ percent for the quarter

ending December 31, 1987; 9¾ for the quarter ending March 31, 1988; and 9½ for the quarter ending June 30, 1988.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 10 percent. Using the regulatory formula (42 CFR 60.13(a)(3)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (6.44 percent); adding 3.50 percent (9.94 percent); and rounding that figure to the next higher one-eighth of 1 percent (10 percent).

3. For fixed rate loans executed during the period of July 1, 1988 through September 30, 1988, and for variable rate loans executed on or after October 22, 1985, the interest rate is 9½ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a) (2) and (3)) with the statutory change of 3 percent (42 CFR 60.13(a)(1)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (6.44 percent); adding 3.0 percent (9.44 percent) and rounding that figure to the next higher one-eighth of 1 percent (9½ percent).

Dated: July 21, 1988.

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

**David N. Sundwall,**

*Administrator, Assistant Surgeon General.*

[FR Doc. 88–16920 Filed 7–26–88; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–88–1835]**

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following Information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently imformation submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 20, 1988.

**David S. Cristy,**

*Deputy Director Information Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Nehemiah Housing Opportunity Program (FR–2478)
*Office:* Housing
*Description of the Need for the Information and its Proposed Use:* Under the Nehemiah Housing Opportunity Grants Program, HUD will select nonprofit corporations through a competitive process to administer loans to the applicable families. The families will use the loans to purchase homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program.
*Form Number:* None
*Respondents:* Individuals or Households, State or Local Governments, and Non-Profits Institutions
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burdens |
|---|---|---|---|---|---|---|---|
| Application | 150 | | 4 | | 8 | | 4,800 |
| Recordkeeping | 40 | | 1 | | 100 | | 4,000 |

*Total Estimated Burden Hours:* 8,800
*Status:* New
*Contact:* Stephen A. Martin, HUD, (202) 755–6720 John Allison, OMB, (202) 395–6880

*Date:* July 19, 1988.

*Proposal:* Collection of Multifamily Assisted Housing Address and Site Indentification Codes
*Office:* Housing
*Description of the Need for the Information and its Proposed Use:* Data collected will be needed to generate information descriptive of HUD's multifamily assisted programs. It will be used to more effectively monitor HUD's programs and target compliance reviews.
*Form Number:* HUD–951
*Respondents:* Businesses or Other For-Proft and Non-Profit Institutions
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burdens |
|---|---|---|---|---|---|---|---|
| HUD-951 | 21,000 | | 3 | | .33 | | 20,790 |

*Total Estimated Burden Hours:* 20,790
*Status:* Extension
*Contact:* John B. Carson, Jr., HUD, (202) 755-5574 John Allsion, OMB, (202) 395-6880

*Dated: July 20, 1988.*

[FR Doc. 88-16948 Filed 7-26-88; 8:45 am]
BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Snoqualmoo Tribe of Whidbey Island

July 13, 1988.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Snoqualmoo Tribe of Whidbey Island, c/o Mr. Lon J. Posenjak, 540 Linder Street, Friday Harbor, Washington 98250-8038, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on June 14, 1988, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627-MIB, 18th and C Streets, NW., Washington, DC 20240, Phone: (202) 343-3592.

**Hazel E. Elbert,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 88-16860 Filed 7-26-88; 8:45 am]
BILLING CODE 4310-02-M

### Bureau of Land Management

[CO-050-4830-12]

### Canon City District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-579 that the Canon City District Advisory Council (DAC) Meeting will be held Friday, August 12, 1988, 9:30 a.m. to 12 Noon at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Tour of wild horse facility for DAC members who are interested;

2. Role of the DAC during the public comment period for the Arkansas River Recreation Area Management Plan;

3. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m. or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

**ADDRESS:** Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212 by August 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ken Smith, (719) 275-0631.

**SUPPLEMENTARY INFORMATION:** Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

**Adrian W. Neisius,**

*Assistant District Manager, Lands and Renewable Resources.*

[FR Doc. 88-16859 Filed 7-26-88; 8:45 am]
BILLING CODE 4310-JB-M

### Minerals Management Service

### Development Operations Coordination Document; Mobil Exploration & Producing U.S. Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0478, Block 129, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on July 15, 1988.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to

affected States, executives of affected local governments, and other interested parties become effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 18, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-16858 Filed 7-26-88; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Intention to Extend Concession Contract; Oglala Sioux Tribe

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixth (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with the Oglala Sioux Tribe authorizing it to continue to provide lodging accommodations, food service facilities, and souvenirs for the public at Badlands National Park, South Dakota, one (1) year from November 1, 1988, through October 31, 1989.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satifaction of the Secretary under an existing contract which expires by limitation of time on October 31, 1988, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed permit.

Date: June 24, 1988.

**Richard A. Strait,**

*Regional Director, Rocky Mountain Region.*

[FR Doc. 88-16952 Filed 7-26-88; 8:45 am]

BILLING CODE 4310-70-M

### Commission Contract Negotiations; Signal Mountain Lodge

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Public notice is hereby given that the National Park Service proposes to negotiate concession contracts with Rex and Ruth G. Maughan d/b/a/ as Signal Mountain Lodge, authorizing them to continue to provide pack horse service for the public at Grand Teton National Park, Wyoming for a period of three (3) years from January 1, 1987, through December 31, 1989, and to continue to provide marine services at Leeks Lodge Marina at Grand Teton National Park, Wyoming for a period of one (1) year from October 1, 1988, through September 30, 1989.

**EFFECTIVE DATE:** September 26, 1988.

**ADDRESS:** Interested parties should contact the Regional Director, Rocky Mountain Region, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, Colorado 80225, for information as to the requirements of the proposed contracts.

**SUPPLEMENTARY INFORMATION:** These contracts have been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under existing contracts which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contracts and in the negotiation of two new contracts as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: June 7, 1988.

**Lorraine Mintzmyer,**

*Regional Director, Rocky Mountain Region.*

[FR Doc. 88-16953 Filed 7-26-88; 8:45 am]

BILLING CODE 4310-70-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

*Title:* 30 CFR Chapter VII, Subchapter B—Initial Program Regulations; Adoption of State Standards—Part 620.

*Abstract:* Information collected in § 720.13 is used to monitor State permitting and inspection activities and to provide OSMRE with necessary information for purposes of conducting Federal mine inspection and enforcement activities under the initial regulatory program.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Estimated Completion Time:* One hour.

*Description of Respondents:* State regulatory authorities.

*Annual Responses:* One.

*Annual Burden Hours:* One.

*Bureau Clearance Officer:* Nancy Ann Baka, (202) 343-5981.

Dated: July 12, 1988

**Richard O. Miller,**

*Chief, Regulatory Development and Issues Management.*

[FR Doc. 88-16911 Filed 7-26-88; 8:45 am]

BILLING CODE 4310-05-M

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone

number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

*Title:* Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan 30 CFR 784.

*Abstract:* Sections 507(b), 508(a) and 516(b) of Pub. L. 95–87 require applicants for underground mine permits to provide a description of each existing structure proposed to be used in the mining and reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operation. This information is used by the regulatory authority in determining if the applicant can comply with the applicable performance and environmental standards.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Description of Respondents:* Surface Coal Mining Operators.

*Annual Responses:* 850

*Annual Burden Hours:* 252,304.

*Bureau Clearance officer:* Nancy Ann Baka, (202) 343–5981.

Date: May 31, 1988.

**Richard O. Miller,**

*Chief, Regulatory Development and Issues Management.*

[FR Doc. 88–16856 Filed 7–26–88; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–406–408 (Preliminary)**

### Electrolytic Manganese Dioxide From Greece, Ireland, and Japan

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Greece, Ireland, and Japan of electrolytic manganese dioxide (EMD), provided for in item 419.44 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

### Background

On May 31, 1988, a petition was filed with the Commission and the Department of Commerce by Chemeials, Inc., Baltimore, MD, and Kerr-McGee Chemical Corp., Oklahoma City, OK, alleging that an industry in the United States is materially injured and is threatened with further material injury, by reason of LTFV imports of EMD from Greece, Ireland, and Japan. Accordingly, effective May 31, 1988, the Commission instituted preliminary antidumping investigations Nos. 731–TA–406 (Preliminary) (Greece), 731–TA–407 (Preliminary) (Ireland), and 731–TA–408 (Preliminary) (Japan).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 8, 1988 (53 FR 21530). The conference was held in Washington, DC, on June 20, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 15, 1988. The views of the Commission are contained in USITC Publication 2097 (July 1988), entitled "Electrolytic Manganese Dioxide from Greece, Ireland, and Japan: Determinations of the Commission in Investigations Nos. 731–TA–406 through 408 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: July 15, 1988.

[FR Doc. 88–16957 Filed 7–26–88; 8:45 am]

BILLING CODE 7020–02–M

**[Investigation No. 337–TA–276]**

### In the Matter of Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Hyundai Electronics America, Inc.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination in this matter was served upon the parties on July 18, 1988.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telepone 202–252–1805.

By order of the Commission.

Issued: July 19, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–16958 Filed 7–26–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731-TA-409-410 (Preliminary)]

## Light-Walled Rectangular Pipes and Tubes From Argentina and Taiwan

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Argentina and Taiwan of light-walled rectangular pipes and tubes,[2] provided for in item 610.49 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[3]

### Background

On June 6, 1988, a petition was filed with the Commission and the Department of Commerce by the mechanical tubing subcommittee of the Committee on Pipe and Tubes Imports and by the individual members of the subcommittee that produce the subject product, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of light-walled rectangular pipes and tubes from Argentina and Taiwan. Accordingly, effective June 6, 1988, the Commission instituted preliminary antidumping investigations Nos. 731-TA-409-410 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of June 14, 1988 (53 FR 22231). The conference was held in Washington, DC, on June 29, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on July 21, 1988. The views of the Commission are contained in USITC Publication 2098 (July 1988), entitled "Light-Walled Rectangular Pipes and Tubes from Argentina and Taiwan."

By Order of the Commission.

Issued: July 21, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88-16959 Filed 7-26-88; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of the investigations, the term "light-walled rectangular pipes and tubes" refers to welded carbon steel pipes and tubes of rectangular (including square) cross section having a wall thickness of less than 0.156 inch. Such products are currently reported for statistical purposes under item 610.4928 of the Tariff Schedules of the United States Annotated and are classifiable under subheading 7306.60.50 of the proposed Harmonized Tariff Schedule of the United States.

[3] Commissioner Cass determines that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports from Argentina and Taiwan.

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31264]

## KKR Associates; Control Exemption; Brockway Realty Corp.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by KKR Associates of Brockway Inc. (NY), and through Brockway Inc. (NY), its control of Brockway Realty Corporation, subject to the conditions for the protection of railroad employees in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

**DATES:** This exemption is effective August 26, 1988. Petitions to stay must be filed by August 8, 1988, and petitions for reconsideration must be filed by August 16, 1988.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31264 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter M. Shannon, Jr., 8300 Sears Tower, 233 South Wacker Drive, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4537/4539 (DC metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

Decided: July 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16879 Filed 7-26-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 242X)]

## CSX Transportation, Inc.; Abandonment and Discontinuance of Service Exemption; Dade County, FL

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, abandonment and discontinuance of service by CSX Transportation, Inc. of a total of 1.76 miles in Miami, Dade County, FL subject to standard labor protection.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 26, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 8, 1988, petitions to stay must be filed by August 12, 1988, and petitions for reconsideration must be filed by August 22, 1988. Requests for a public use condition must be filed by August 8, 1988.

**ADDRESSES:** Send pleadings referring to Docket No. AB-55 (Sub-No. 242X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: Lawrence H. Richmond, 100 N. Charles Street, Baltimore, MD 21201, and Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC metropolitan

[1] *See Exemp. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: August 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate in the disposition of this proceeding.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–16880 Filed 7–26–88; 8:45 am]

BILLING CODE 7035–01–M

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**[Docket No. AB–39 (Sub–No. 11X)]**

**St. Louis Southwestern Railway Co.; Discontinuance of Service In Collin And Dallas Counties, TX**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts St. Louis Southwestern Railway Company (SWRC) from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to discontinue service pursuant to trackage rights granted under its 1965 agreement with Southern Pacific Transportation Company over 18.89 miles of line in Collin and Dallas Counties, TX, subject to standard employee protective conditions. SWRC will continue to provide service over the line under its 1988 trackage rights agreement with the line's new owner, Dallas Area Rapid Transit.

**DATES:** The exemption will be effective on August 26, 1988. Petitions to stay must be filed by August 8, 1988, and petitions for reconsideration must be filed by August 16, 1988.

Send pleadings referring to Docket No. AB–39 (Sub–No. 11X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate in the disposition of this proceeding.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–16881 Filed 7–26–88; 8:45 am]

BILLING CODE 7035–01–M

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## DEPARTMENT OF JUSTICE

**Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Olin Corp.**

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on June 9, 1988, a proposed consent decree in *United States v. Olin Corporation*, Civil Action No. 88–0163–A, was lodged with the United States District Court for the Western District of Virginia.

The proposed consent decree requires the defendent to implement the interim remedial action selected by the Environmental Protection Agency (EPA) to address the imminent and substantial endangerment to human health and the environment posed by the release or threat of release of hazardous substances at Olin Corporation's former manufacturing facility in Smythe and Washington Counties, Virginia and to perform a Remedial Investigation and Feasibility Study for that site. The interim remedy, to be conducted by the defendant, will focus on building and maintaining structures to prevent surface water from running into a large pond containing mercury contaminated waste; building and operating a treatment system to reduce the level of mercury in the effluent flowing out of that pond into the North Fork of the Holston River; and performing groundwater monitoring. The decree also requires defendants to pay 80% of the past costs incurred by EPA in connection with the site. The parties to the consent decree are the United States and Olin Corporation.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Olin Corporation*, DJ Ref. 90–11–2–283.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Western District of Virginia, Room 456, Poff Federal Building, 210 Franklin Road, SW., Roanoke, Virginia 24011, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $5.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–16895 Filed 7–26–88; 8:45 am]

BILLING CODE 4410–01–M

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## Drug Enforcement Administration

**[Docket No. 88–4]**

**Norman Belfer, D.D.S.; Revocation of Registration**

This proceeding was initiated on February 1, 1988, when the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause proposing to revoke DEA Certificate of Registration AB1669110, previously issued to Norman Belfer, D.D.S. (Respondent) of Uniontown, Pennsylvania. The statutory basis for the proposed action was that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). Simultaneously, based on his preliminary finding that Respondent's continued possession of a DEA registration during the pendency of these proceedings would pose an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of Respondent's registration. The Order to Show Cause and Immediate Suspension of Registration were served upon the Respondent on February 4, 1988. At that time, Respondent's Certificate of Registration, all controlled substances possessed thereunder and all official

order forms issued thereunder were taken into custody of the DEA.

The Respondent requested a hearing on the issues raised by the Order and this matter was docketed before Administrative Law Judge Mary Ellen Bittner. By letter dated May 2, 1988, and before the date of the hearing set by Judge Bittner, Counsel for Respondent, with Respondent's written assent, withdrew his request for a hearing. Pursuant to Respondent's request, all proceedings pending before the Administrative Law Judge were terminated. Accordingly, the Respondent is deemed to have waived his opportunity for a hearing on all matters of law and fact involved herein. 21 CFR 1301.54(d) and 1301.54(e). Pursuant to 21 CFR 1301.57, the Administrator now issues his Final Order in this matter, based on the information contained in the investigative file and the record of this proceeding.

The Administrator finds that Respondent operates a dental practice on 39 E. South Street in Uniontown, Pennsylvania. Beginning in August of 1987, Respondent began issuing prescriptions for Percocet, a Schedule II controlled substance, to a patient for $20 per prescription. Respondent issued the prescriptions in the patient's name and in those of several aliases. Respondent issued these prescriptions for no legitimate purpose and outside the course of Respondent's dental practice. Subsequently, the patient agreed to cooperate with police and DEA investigators. On three occasions, November 2 and 9, and December 9, 1987, the patient made undercover visits to Respondent's office. Conversation between Respondent and the patient were recorded during each visit. On each occasion, Respondent issued a prescription for Percocet to the patient for $20. At no time was any dental work performed. On at least four other occasions, the patient made unsupervised visits to Respondent and on each occasion obtained a prescription for Percocet. The prescriptions were not issued in connection with any dental work performed by Respondent.

A second patient made three visits to Respondent and on each occasion obtained prescriptions for Percocet. On the first two visits, the second patient received the prescriptions without the benefit of a dental exam or any work performed by Respondent. On the last visit, Respondent told the second patient that a prescription would be given only in exchange for some dental work. This patient allowed Respondent to pull a tooth and subsequently received his prescription.

Patients appeared at Respondent's office without an appointment to obtain prescriptions for Percocet. These prescriptions were often written in the waiting room area with no notation in the patient's dental file. In May 1986, a complaint was made to the Pennsylvania State Police concerning Respondent's presribing practices. The Respondent was promptly warned to stop issuing prescriptions for Percocet that were not related to regular dental practice. Thereafter, approximately one-third of Respondent's patients continued to receive prescriptions for Percocet on a regular basis. Between two and six people came to Respondent's office each day to obtain Percocet without dental work being performed.

Respondent also defrauded the State Department of Public Assistance (DPA). Respondent falsified medical records by using fictitious names on DPA billing invoices. Respondent signed patient names on the DPA forms and then placed his own name on the top of the form.

Title 21 U.S.C. 823(f) and 824(a), permit revocation of a practitioner's certificate of registration when such registration is not in the public interest. One factor to be considered is whether the registrant's conduct could "threaten the public health and safety." 21, U.S.C. 823(f)(5).

In view of the gross conduct of Respondent in prescribing Percocet, it is undisputed that the continued registration of the Respondent would threaten the public health and safety and is therefore inconsistent with the public interest.

Accordingly, having concluded that there is lawful basis for the revocation of the Respondent's registration, and for the denial of any pending applications for renewal thereof, the Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 an 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AB1669110, previously issued to Norman Belfer, D.D.S. be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

This order shall be effective immediately.

Dated: July 18, 1988.

John C. Lawn,

*Administrator.*

[FR Doc. 88-16871 Filed 7-26-88; 8:45 am]

BILLING CODE 4410-09-M

**Fairbank T. Chua, M.D.; Denial of Application for Registration**

On March 24, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an order to Show Cause to Fairbank T. Chua, M.D., of the Memphis Medical Clinic, 35050 Helze Lane, Memphis, Michigan, proposing to deny his application for registration executed on June 29, 1987, on the ground that his registration would be inconsistent with the public interest.

A registered mail return-receipt indicates that the Order to Show Cause was received on April 1, 1988. Dr. Chua has not responded to the Order to Show Cause. Based upon his failure to respond to the Order to Show Cause, the Administrator concludes that Dr. Chua has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, in accordance with 21 CFR 1301.54(d) and 1301.54(e), enters this final order based upon the investigative file as it now appears.

On November 18, 1986, the Administrator of the Drug Enforcement Administration issued a final order revoking Dr. Chua's previous DEA Certificate of Registration. See *Fairbank T. Chua, M.D.*, 51 FR 41676 (1986). The Administrator based that revocation on Dr. Chua's felony conviction relating to controlled substances, his history of improper handling of controlled substances, and action taken by the Illinois Department of Registration and Education to suspend his state controlled substance and medical licenses.

The investigative file reveals that on November 12, 1985, in the Circuit Court for Cook County, Dr. Chua was convicted of six felony counts of unlawful delivery of controlled substances, in violation of Chapter 56½, Section 1401(f) of the Illinois Revised Statutes. Dr. Chua appealed the conviction and on May 15, 1987, the conviction was reversed by the Appellate Court of the State of Illinois, First Judicial Circuit, on the ground that the verdict was inconsistent with the evidence since the necessary elements of the crime were not proven beyond a reasonable doubt.

On February 10, 1988, the Illinois Department of Registration and Education ordered the indefinite suspension of Dr. Chua's medical and controlled substances licenses based upon his felony convictions relating to controlled substances. The order also allowed Dr. Chua to petition for restoration of his licenses if his convictions were reversed. Shortly after

his convictions were reversed, Dr. Chua petitioned for the restoration of his state medical and controlled substance licenses. On November 5, 1987, the Illinois Department of Registration and Education restored Dr. Chua's medical and controlled substance licenses on a probationary status, provided that he comply with certain terms and conditions outlined in the consent order.

The Administrator finds that although the Illinois Court of Appeals reversed Dr. Chua's convictions on the ground that the necessary elements of the crimes were not proven beyond a reasonable doubt during the criminal trial, the evidence contained in the DEA investigative file constitutes substantial evidence to conclude that Dr. Chua improperly prescribed controlled substances to undercover agents for other than a legitimate purpose and outside the scope of his professional practice.

In 1983, the Illinois Department of Law Enforcement received reliable information that Dr. Chua was issuing prescriptions for controlled subtances to individuals for other than legitimate medical purposes and was defrauding the Illinois Department of Public Aid by filing fraudulent claims for payment. Based on this information, on September 28, 1983, two Special Agents of the Illinois Department of Law Enforcement visited Dr. Chua's medical offices in an attempt to obtain controlled substance prescriptions for other than legitimate medical purposes. Both agents presented the receptionist with Illinois Medical Eligibility cards bearing the assumed names "Eli Jasmorky" and "Kevin Smith." When asked by Dr. Chua about his medical condition, one agent replied that he was "fine," but wanted some cough syrup, Valium and Darvocet. Dr. Chua handed the agent prescriptions issued in the name "Eli Jasmorky" for Darvocet, ampicillin, terpin hydrate, and Valium. Dr. Chua then examined the agent's throat with a tongue depressor and took his blood pressure. No other medical examination was conducted during that visit. The second agent was also seen by Dr. Chua on that date. During his visit, Dr. Chua inquired as to the agent's past medical history. The agent informed him that he needed Valium and Tussionex because he had a cold, was nervous and could not sleep. Dr. Chua examined the agent's throat and chest. After completing the examination, Dr. Chua informed the agent that a prescription for Tussionex would cost $5.00. The agent refused the prescription and asked Dr. Chua to prescribe another cough syrup. Dr. Chua complied and issued the agent one prescription for both ampicillin and terpin hydrate, and another prescription for Valium tablets.

On January 11, 1984, a female Illinois State Trooper visited Dr. Chua's medical offices in an undercover capacity. She presented the receptionist with an Illinois Medical Eligibility card bearing the assumed name "Elizabeth Daniels." She informed Dr. Chua that she had a cold and a sore throat. He asked her if she suffered from heart disease, high blood pressure or allergies, to which she responded that she could not tolerate Flagyl, a legend drug. The trooper then asked Dr. Chua for prescriptions for Tagamet, birth conrol pills, and Valium. He inquired as to whether she had any problems with her nerves; she stated that she did not. Dr. Chua then handed her prescriptions for Valium, Tagamet, throat lozenges, birth control pills, and penicillin. Dr. Chua did not perform any medical examination of this officer prior to issuing the prescriptions.

On April 18, 1984, a third Illinois Department of Law Enforcement Agent visited Dr. Chua's medical offices. The agent presented the receptionist with an Illinois Medical Eligibility card bearing the assumed name "James Jones." Dr. Chua asked the agent what was wrong with him. He replied that nothing was wrong. Dr. Chua then informed him that he needed some type of ailment to write in his medical records. At that point, the agent informed Dr. Chua that he was not "James Jones" as indicated on the Medical Eligibility card. Dr. Chua simply nodded and asked what type of ailment he should record in the medical record. The agent then told him to record "bad back" in the records since the condition appeared on the Medical Eligibility card. After the agent weighed himself, Dr. Chua wrote a prescription for Valium in the name "James Jones," even though Dr. Chua knew he was not the individual listed on the card.

On May 9, 1984, a fourth Illinois Department of Law Enforcement Agent visited Dr. Chua's medical offices and presented the receptionist with the Medical Eligibility card bearing the name "Kevin Smith." This card was previously presented to her by another agent on September 28, 1983. In their discussions, Dr. Chua stated that he had last seen the agent on September 28, 1983, the date he actually saw one of the other agents. Dr. Chua asked the agent what was wrong with him. The agent stated, "nothing wrong, I just would like to have a prescription for Valium." Dr. Chua then asked, "Valium for your nerves," but received no response from the agent. The agent also asked Dr. Chua to write a prescription for Doriden for him, and prescriptions for birth control pills and Valium for his wife. Dr. Chua informed him that he only wrote Doriden prescriptions for "paying customers," and that his wife would have to visit the clinic to obtain any prescriptions for herself. Dr. Chua then handed the agent a prescription for Valium in the name of "Kevin Smith" without performing any medical examination.

On May 14, 1984, only five days after the last visit, the same agent returned to Dr. Chua's medical offices. This time he gave the receptionist an Illinois Medical Eligibility card bearing the name "Willie A. Barnett." After the receptionist informed him that she did not have any record for "Willie Barnett." the agent told her that he left his identification at home and that he had seen Dr. Chua the previous week using the name "Alexander." Approximately five minutes later, Dr. Chua greeted the agent as "Willie Barnett." Dr. Chua asked him a series of questions regarding his medical history, but did not conduct any medical examination. The agent informed Dr. Chua that he felt fine, but wanted a prescription for Valium because it made him "feel good." Dr. Chua asked whether the agent had "bad nerves," to which he replied, "Doc, I got a lot of problems." As Dr. Chua began writing a prescription for Valium, the agent asked him also to write prescriptions for Doriden and cough syrup. Dr. Chua informed him that he could not write such prescriptions for public aid recipients. After the agent informed him that he had the money to pay for the prescriptions, Dr. Chua advised him to ask the receptionist for the cost of a "private visit." Dr. Chua issued him a prescription for Valium in the name "Willie Barnett" without performing any medical examination.

The Administrator finds that there is sufficient evidence to conclude that Dr. Chua prescribed controlled substances to the five undercover officers for other than legitimate medical purposes. Most of them claimed no medical condition which would require treatment with controlled substances. In one instance, an agent blatantly stated that he wanted the drugs simply because they made him "feel good." On at least two occasions, Dr. Chua falsified the medical records of the agents to justify the controlled substance prescriptions he wrote. In at least two instances, Dr. Chua knew, or should have known, that the agents were not the individuals they purported to be. In all of the instances, Dr. Chua failed to perform adequate medical examinations to warrant the controlled

substance prescriptions he issued to the agents. Also, comments made by Dr. Chua when he refused to write prescriptions for additional controlled substances revealed that his refusal to write certain prescriptions was not based upon the fact that he knew they would be used for other than legitimate medical purposes, but rather because he would only write such prescriptions for "paying customers."

The Administrator concludes that Dr. Chua's controlled substance handling activities fell far outside the bounds of legitimate practice. Registrants must handle controlled substances, and prescriptions therefor, in a careful and prudent manner so as to prevent their diversion and misuse. Dr. Chua was clearly a participant in the diversion of controlled substances he prescribed. Activities such as those in which Dr. Chua was involved cannot be tolerated. Dr. Chua's past experience in handling or prescribing controlled substances, without any evidence that the doctor's attitudes and procedures have changed, leads to the inescapable conclusion that his registration would be inconsistent with the public interest.

Having concluded that Dr. Chua's registration would be inconsistent with the public interest, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that the new application for registration executed by Fairbank T. Chua, M.D. on June 29, 1987, be, and it hereby is, denied.

This order is effective July 27, 1988.

Dated: July 18, 1988.

**John C. Lawn,**

*Administrator.*

[FR Doc. 88-16872 Filed 7-26-88; 8:45 am]

BILLING CODE 4410-09-M

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## Manufacturer of Controlled Substances; Registration; Cambridge Isotope Laboratories

By notice dated May 11, 1988, and published in the **Federal Register** on May 19, 1988; (53 FR 17988), Cambridge Isotope Laboratories, 20. Commerce Way, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| | |
|---|---|
| Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100) | II |
| Methamphetamine, its salts, isomes, and salts of its isomers (1105) | II |
| Phencyclidine (7471) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Morphine (9300) | II |

Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, filed an objection dated May 16, 1988, to the DEA **Federal Register** Representative, Office of Chief Counsel, in response to the application of Cambridge Isotope Laboratories. Arenol Chemical Corporation took exception to the application of Cambridge Isotope Laboratories for registration as a bulk manufacturer of amphetamine, its salts, optical isomers, and salts of its optical isomers and methamphetamine, its salts, isomers, and salts of its isomers. Arenol Chemical Corporation stated that it has historically been able to meet the medical, scientific, and industrial needs of the U.S. market for these products and is willing to work with Cambridge Isotope Laboratories to supply the quantities that it may require as Arenol has done with other organizations.

Cambridge Isotope Laboratories manufactures a maximum of 5 grams of each basic class of controlled substances for which it is registered and uses these substances to produce standards for research and analytical studies.

The Deputy Assistant Administrator therefore finds that the registration of Cambridge Isotope Laboratories as a bulk manufacturer of amphetamine, its salts, optical isomers, and salts of its optical isomers and methamphetamine, its salts, isomers, and salts of its isomers is consistent with the public interest because Cambridge Isotope Laboratories manufactures these controlled substances for research and analytical purposes in small quantities and this activity does not affect the commercial market of these controlled substances.

The Deputy Assistant Administrator hereby orders that the application submitted by Cambridge Isotope Laboratories for registration as a bulk manufacturer of the basic classes of controlled substances listed above be granted.

Dated: July 1, 1988.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.*

[FR Doc. 88-16870 Filed 7-26-88; 8:45 am]

BILLING CODE 4410-09-M

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## Manufacturer of Controlled Substances Registration; Radian Corp.

By notice dated May 11, 1988, and published in the **Federal Register** on May 19, 1988; (53 FR 17988), Radian Corporation, P.O. Box 201088, 8501 Mo-Pac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug: | *Schedule* |
|---|---|
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100) | II |
| Methamphetamine, its salts, isomers, and salts of its isomers (1105) | II |
| Phencyclidine (7471) | II |
| Fentanyl (9801) | II |

Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, filed an objection dated May 16, 1988, to the DEA Federal Register Representaive, Office of Chief Counsel, in response to the application of Radian Corporation. Arenol Chemical Corporation took exception to the application of Radian Corporation for registration as a bulk manufacturer of amphetamine, its salts, optical isomers, and salts of its optical isomers and methamphetamine, its salts, isomers, and salts of its isomers. Arenol Chemical Corporation stated that it has historically been able to meet the medical, scientific, and industrial needs of the U.S. market for these products and is willing to work with Radian Corporation to supply the quantities that

it may require as Arenol has done with other organizations.

Radian Corporation manufactures a maximum of 5 grams of each basic class of controlled substance for which it is registered and uses these substances to produce standards for research and analytical studies.

The Deputy Assistant Administrator therefore finds that the registration of Radian Corporation as a bulk manufacturer of amphetamine, its salts, optical isomers, and salts of its optical isomers and methamphetamine, its salts, isomers, and salts of its isomers is consistent with the public interest because Radian Corporation manufactures these controlled substances for research and analytical purposes in small quantities and this activity does not affect the commercial market of these controlled substances.

The Deputy Assistant Administrator hereby orders that the application submitted by Radian Corporation for registration as a bulk manufactuer of the basic classes of controlled listed above be granted.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: July 16, 1988.

[FR Doc. 88-16869 Filed 7-26-88; 8:45 am]

BILLING CODE 4410-09-M

## Importation of Controlled Substances; Registration; Sigma Chemical Co.

By notice dated April 25, 1988, and published in the **Federal Register** on April 29, 1988; (53 FR 15473), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| | |
|---|---|
| Methaqualone (2565) | I |
| Ibogaine (7260) | I |
| Lysergic acid diethylamide (7315) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3,4-Methylenedioxyamphetamine (7400) | I |
| 3,4-Methylenedioxyme thamphetamine (MDMA) (7405) | I |
| Bufotenine (7433) | I |
| Diethyltryptamine (7434) | I |
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| Heroin (9200) | I |
| Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100) | II |
| Methamphetamine, its salts, isomers, and salts of its isomers (1105) | II |
| Secobarbital (2315) | II |
| Phencyclidine (7471) | II |
| Anileridine (9020) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Benzoylecognine (9180) | II |
| Pethidine (meperidine) (9230) | II |
| Methadone (9250) | II |
| Morphine (9300) | II |
| Morphine-3-Glucuronide (9329) | II |

Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, filed an objection dated May 16, 1988, to the DEA Federal Register Representative, Office of Chief Counsel, in response to the application of Sigma Chemical Company. Arenol Chemical Corporation took exception to the application of Sigma Chemical Company for registration as an importer of amphetamine, its salts, optical isomers, and salts of its optical isomers and methamphetamine, its salts, isomers, and salts of its isomers. Arenol Chemical Corporation stated that it has historically been able to meet the medical, scientific, and industrial needs of the U.S. Market for these products and is willing to work with Sigma Chemical Company to supply the quantities that it may require as Arenol has done with other organizations.

Sigma Chemical Company imports a maximum of 25 grams of each basic class of controlled substance for which it is registered and uses these substances to produce standards for research an analytical studies. It has previously been registered as an importer of amphetamine, its sales, optical isomers, and salts of its optical isomers and methamphetamine, its sales isomers, and salts of its isomers. There has been no substantial increase in the quota because of this registration.

The Deputy Assistant Administrator therefore finds that the registration of Sigma Chemcial Company as an importer of amphetamine, its salts optical isomers, and salts of its optical isomers and methamphetamine, its salts, isomers, and salts of its isomers is consistent with the public interest because of Sigma Chemical Company imports these controlled substances for research and analytical purposes in small quantities and this activity does not affect the commercial market of these controlled substances.

The Deputy Assistant Administrator hereby orders that the application submitted by Sigma Chemical Company for registration as an importer of the basic classes of controlled substances listed above be granted.

Dated: July 16, 1988.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Adminstrator.*

[FR Doc. 88-16868 Filed 7-26-88; 8:45 am]

BILLING CODE 4410-09-M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 30, 1988 through July 15, 1988. The last biweekly notice was published on July 13, 1988 (53 FR 26517).

### NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 26, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of amendment request:* June 13, 1988

*Description of amendment request:* The proposed amendments would change the Technical Specifications (TS) as follows:

1. Modify the Units 1 and 2 TS requirement 6.2, "Organization," by incorporating the changes recommended in the NRC Generic Letter (GL) 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements," by:

a. deleting the organization charts of TS Figures 6.2-1, "Management Organization Chart - Calvert Cliffs Nuclear Power Plant - Baltimore Gas & Electric Company," and 6.2-2, "Organization Chart (Two Unit Operation) - Calvert Cliffs Nuclear Power Plant - Baltimore Gas & Electric Company," and replacing them with a TS 6.2.1.a requirement to establish onsite and offsite organizations with lines of authority, responsibility and communication defined and documented in Chapter 12 of the Updated Final Safety Analysis Report (UFSAR) as organization charts for all management levels, intermediate levels and operating organization positions;

b. defining the responsibilities of the Manager - Calvert Cliffs Nuclear Power Plant and the Vice President - Nuclear shall be defined in TS 6.2.1.b and c;

c. add TS 6.2.1.d to provide all training, health physics and quality assurance staff members with independence from but reportability to onsite management;

d. specifying in TS 6.2.2, "Unit Staff," the staffing positions required to hold operator licenses as was previously reflected in TS Figure 6.2-2;

e. adding a new TS 6.2.1.a requirement to establish and document the lines of authority, responsibility and communication in Chapter 12 of the UFSAR through functional descriptions of departmental responsibilities and relationships, and job descriptions for key personnel positions. Change 1.e would become effective 90 days following the effective date for changes 1.a through d.

2. Make changes to the Units 1 and 2 TS 6.1, "Responsibility," 6.5.1, "Plant Operations and Safety Review Committee (POSRC)," 6.8, "Procedures," 6.16, "Process Control Program," and 6.17, "Offsite Dose Calculation Manual (ODCM)," to reflect the changes in nomenclature of a) the title Manager - Nuclear Operations to the new title of Manager - Calvert Cliffs Nuclear Power Plant and, b) the title of General Supervisor - Operations to the new title of General Supervisor - Nuclear Operations.

*Basis for proposed no significant hazards consideration determination:* In accordance with the guidance provided in GL 88-06, changes 1.a through e propose the replacement of the Units 1 and 2 TS 6.2, "Organization," Figures 6.2-1 and 6.2-2 with the standardized GL 88-06 technical specifications which were found to be generically acceptable by the NRC staff for all power reactors. These changes would (1) result in more restrictive TS, which would require improved definition of functional positions and job descriptions, (2) maintain all current TS organizational requirements important to safety in the TS, such as the requirement for an organization with defined lines of authority, responsibility and communications and the specific operating organizations positions required to hold operating licenses, and (3) would provide greater flexibility for licensees to implement organizational changes, consistent with Commission policy, in a controlled process under the provisions of 10 CFR 50.59, "Changes, tests and experiments" rather than as a TS amendment.

In implementing these proposed changes, the licensee has requested that the additional restrictive requirement of proposed TS 6.2.1.a (change 1.e) for "functional descriptions of departmental responsibilities and relationships, and job descriptions for key personnel positions" be made effective 90 days after the effective date of changes 1.a through e. This request was made to permit the licensee's new management sufficient time to evaluate plant problems, goals and programs and to appropriately determine and delegate these functional responsibilities and duties related to key positions.

Change 2 was also a strictly administrative change in that it only modifies the titles of Manager - Nuclear Operations and General Supervisor - Operations to the new titles of Manager - Calvert Cliffs Nuclear Power Plant and General Supervisor - Nuclear Operations, respectively.

The licensee evaluated these proposed changes against the standards of 10 CFR 50.92 and has determined that these amendments would not:

(i) Involve a significant increase in an accident probability or consequences of an accident previously evaluated...

These changes are administrative in nature. No plant equipment or operations are affected. Future organizational changes will still be required to be fully defined with an adequately reviewed and approved safety evaluation performed in accordance with the provisions of 10 CFR 50.59. Furthermore, all future organizational changes will be required to be evaluated against the current level of commitment described in the licensee's Quality Assurance program and thus, must comply with the requirements of 10 CFR 50.54. As such, these proposed changes do not involve any increase in the probability or consequences of an accident previously evaluated.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated...

As this proposal does not alter any plant operability requirements, surveillance testing, maintenance, or system design or functions, no possibility of creating a new or different type of accident would result from the proposed changes.

(iii) Involve a significant reduction in margin of safety...

All plant operational requirements are unaffected by these proposed administrative changes. All organizational requirements potentially affecting plant safety (i.e., personnel required to hold operators licenses) remain unchanged. Therefore, these proposed changes will not involve any reduction in a margin of safety.

Finally, on March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration.

These changes are consistent with two of the examples provided: "(i) a purely administrative change to the Technical Specifications: for example,... a change in nomenclature and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications." Consequently, the NRC staff proposes to determine that these proposed changes to TS 6.1, 6.2, 6.5.1, 6.8, 6.16 and 6.17 involve no significant hazards consideration.

*Local Public Document Room location:* Calvert County Library, Prince Frederick Maryland.

*Attorney for licensee:* Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Robert A. Capra, Director

**Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of amendment request:* June 30, 1988

*Description of amendment request:* The amendment would change the degraded voltage trip and alarm setpoints (Tables 3.2.B, 3.2.B.1 and Limiting Condition for Operation 3.9.B)

based on a recent analysis of the electrical power distribution system for the Pilgrim Plant. The analysis indicated the trip setpoint should be set at 3868V ±0.5% in order that the safety related devices on the worst case motor control center have sufficient voltage for proper and safe operation. The alarm setpoint should be set at 3959 ±0.5% to allow for required operator action and permit load shedding when required during a LOCA. The installation of newer, more reliable, and higher quality solid state relays allows the revised setpoints and tolerances to be used. The remarks section of Table 3.2.B and 3.2.B.1 have also been reworded to provide the operators with a more detailed description of the load shedding logic associated with the degraded voltage protective relays.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

(1) Operation of the Pilgrim Nuclear Power Station (PNPS) in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Raising the degraded voltage setpoints does not affect the operation of equipment relied on in the accident analysis because the voltage at the safety-related devices continues to be maintained above the voltage where proper operation can be assured.

The proposed changes are being made to maintain the existing protection provided by the degraded voltage protection relays. Previously evaluated performances of safety systems will not be changed by raising the degraded voltage trip and alarm setpoints. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of PNPS in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

It is concluded from the system evaluations, discussed in Item 1, that the proposed degraded voltage setpoints do not change any accident analyses previously evaluated for the affected systems.

Safety-related equipment continues to be provided adequate voltage to perform their intended safety functions. Therefore, the proposed change will not create the possibility of a new or different kind of accident.

(3) Operation of PNPS in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

For the reasons stated in Items 1 and 2 above, it is concluded that the proposed changes do not alter or remove other existing technical specifications, do not change any accident analysis previously evaluated and, do not reduce the margin of safety for equipment relied on in the accident analysis. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on this review, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

*Attorney for licensee:* W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

*NRC Project Director:* R. H. Wessman, PDI-3

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* December 15, 1987, as supplemented April 15, 1988

*Description of amendment request:* The request proposes five changes to Technical Specification (TS) 3/4.7.8 for Catawba Nuclear Station, Units 1 and 2. They are: Change 1 would delete an optional sampling plan for snubber inspection (Surveillance Requirement 4.7.8e.3)—the "55" snubber plan) which has never been used at Catawba; Change 2 would allow deletion of the "reject" line from Figure 4.7-1 and in the "37" functional test plan (Surveillance Requirement 4.7.8e.2)); Change 3 proposes an alternate sampling plan, not yet approved by the American Society of Mechanical Engineers (ASME), involving grouping of snubber failure modes; Change 4 would allow deletion of the phrase "of a type" from Surveillance Requirement 4.7.8e.; and Change 5 would delete the requirement to inspect snubber attachment hardware (Surveillance Requirement 4.7.8c.—Visual Inspection Acceptance Criteria) because this inspection is already under the requirements of ASME Code, Section XI.

Only changes 2 and 5 are discussed below. However, changes 1, 3 and 4 remain under NRC staff's review and consideration although they are not covered by this notice.

Change 2 would revise the acceptability criteria for snubber testing by the "37" functional test plan in Surveillance Requirement 4.7.8e.2) by deleting the "reject" line from Figure 4.7-1, which could unnecessarily require the functional testing of all 1600 snubbers. A similar revision was approved in TS amendments 46 and 27, issued September 30, 1985, for McGuire Nuclear Station, Units 1 and 2, respectively.

Change 5 would revise Surveillance Requirement 4.7.8c. to delete the portion related to the inspection of the hardware by which a snubber is attached to its supporting structure. This hardware would instead be inspected in accordance with the less stringent requirements of ASME Code, Section XI.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its April 15, 1988 submittal, provided the following evaluation of Change 2:

This change would allow deletion of the reject line from Figure 4.7-1 and in the 37 functional test sample plan (Surveillance 4.7.8e.2)).

The justification for this has already been evaluated for the McGuire Technical Specification change issued September 30, 1985. This change has also been agreed upon by the OM-4 working group for Revision 2 of the OM-4 standard.

Deletion of the "REJECT" line will remove the possibility of rejecting a good population of snubbers which would require unnecessary testing of the total population of approximately 1600 snubbers.

The discussion of the statistical significance of deleting the reject line was presented as justification for the McGuire amendment. This discussion is applicable to Catawba.

With regard to the three 10 CFR 50.92 standards, the licensee's evaluation is as follows:

(1) Deletion of the "REJECT" line will not involve a significant increase in the probability or consequences of an accident. Deletion of the "REJECT" line will omit the possibility of rejecting a good population of snubbers without increasing the possibility of passing a bad population. The requirement to continue testing additional samples of snubbers if inoperable snubbers are found will remain in the specifications.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the amendment will not result in a change to the design or operation of the station.

All snubbers will still be required to be operable and appropriate snubber inspections will continue to be performed As such, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change will not result in a significant reduction in a margin of safety.

Deletion of the "REJECT" line will remove the possibility of unnecessarily having to test all of the snubbers at the station. The requirement to test additional samples of snubbers when inoperable snubbers are found will be retained. Therefore this change will not significantly reduce a margin of safety.

For Change 5 the licensee's April 15, 1988 submittal provides the following evaluation:

Surveillance 4.7.8c. Visual Inspection Acceptance Criteria goes beyond inspection of the snubber and its attachment to supporting structures. It also requires inspection of the attachment hardware. This inspection is already under the requirements of ASME Sect XI IWF, which the OM-4 working group has acknowledged. The inspection plan (ISI) required by the ASME Code, Section XI, IWF for hanger supports, including snubbers, is performed under procedure using a certified VT-3 inspector. For the snubber Technical Specification to require more stringent visual inspections for snubbers (which are needed to function during an earthquake) than on other piping supports (which are always needed to function) is an undue burden on the plant staff.

Approximately 1000 snubbers require removal and replacement of mirror insulation in order to perform this inspection. Because of the potential for the creation of airborne radioactivity as a result of removing the insulation, respirator protection is required for any jobs being performed in the area. It is estimated that the cost associated with work is in excess of $100,000 each year. This change is recommended so that unnecessary man-rem and man-hours can be saved.

The licensee provided the following evaluation with regard to the three 10 CFR 50.92 standards:

(1) Deletion of the requirement to inspect attachment hardware will remove an unnecessary burden from the snubber specification. This inspection is already required under Section XI of the ASME Code. The Section XI inspection will be performed as required, thus this change will not significantly increase the probability or consequences of any previously evaluated accident.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the amendment will not result in a change to the design or operation of the station.

All snubbers will still be required to be operable and appropriate snubber inspections will continue to be performed. As such, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Deletion of the requirement to inspect the snubber attachment hardware will eliminate an unnecessary amount of inspection. Since this inspection is required to be performed per Section XI of the ASME Code, deletion from the specifications will not result in a significant reduction in a margin of safety.

The staff has considered proposed changes 2 and 5, and agrees with the licensee's evaluation of each of these changes with respect to the three standards.

On this basis, the Commission has concluded that the requested changes meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* July 11, 1988

*Description of amendment request:* The proposed amendments would revise the Total Number of Channels in Table 3.3-10 titled "Accident Monitoring Instrumentation" for the: (1) Auxiliary Feedwater Flow Rate, (b) PORV Position Indicator, and (c) PORV Block Valve Position Indicator. The first two changes would reduce the total number of channels from 2 to 1 for Catawba Units 1 and 2, and the third change would reduce it from 2 to 1 for Unit 1 only. For Unit 2, the third change was approved in license amendments 46 and 39, issued on June 1, 1988, for Catawba Units 1 and 2, respectively.

The Auxiliary Feedwater Flow Rate and PORV Position Indicator channels are classified as Type D variables and fall under the Category 2 definition as presented in Regulatory Guide (RG) 1.97. Thus, a single channel would be adequate. However, the PORV Block Valve Position Indicator is not addressed in RG 1.97.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes reflect the intent of the system design and are in accordance with RG 1.97, Revision 2.

Also, the proposed amendments would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the instrumentation affected is used for post-accident monitoring and the proposed changes would not introduce unanalyzed conditions or new modes of operation for any safety-related systems. For the reasons stated in items (1) and (2) above, the proposed changes would not (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed amendments involve no significant hazards considerations.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duquesne Light Company, et. al., Docket No. 50-334 and 412, Beaver Valley Power Station, Units 1 and 2, Shippingport, Pennsylvania**

*Date of application for amendment:* June 11, 1988

*Description of amendment request:* The amendment would revise the administrative control requirements to reflect changes to the Nuclear Group organization, and incorporate general requirements to replace the organization charts in accordance with the guidance provided in the staff's Generic Letter 88-06.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility or a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee determined, and the NRC staff agrees, that:

(1) The proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated because the reorganization of the nuclear group and deletion of the organization charts from the Technical Specifications do not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the licensee's organizational structure was included in the Final Safety Analysis Report, and as required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR. In addition, Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) govern changes to organization described in the quality assurance program; some of these organizational changes require prior NRC approval. Also, it is the licensee's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from those previously evaluated because the proposed changes are administrative in nature, and do not involve any physical alterations of plant configuration, set points or operation procedures.

(3) The proposed amendment does not involve a reduction in a margin of safety because the proposed amendment only changes the administrative parts of the Technical Specifications from specific to generic, and does not relax any requirements. Operation of the units will continue to be governed by current regulations, current operating specifications and the licensee's commitments.

Accordingly, the staff proposes to determine that this change does not involve a significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensees:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* John F. Stolz

**GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of amendment request:* June 21, 1988

*Description of amendment request:* The June 21, 1988 request identified as TSCR172 by the licensee would delete the requirement for a daily exercise of the Main Steam Isolation Valves (MSIVs). The basis has also been changed to reflect deletion of this requirements. Specifically, these changes are as follows:

(a) Section 4.5.I.3.a of the Technical Specifications has been deleted and Section 4.5.I.3.b has been incorporated in Section 4.5.I.3.

(b) The basis for MSIV Testing has been revised to reflect the requirements of the ASME Boiler and Pressure Vessel Code, Section XI, 1974 edition with 1973 addendum.

*Basis for proposed no significant hazards consideration determination:* The licensee has evaluated its proposed changes against the standards in 10 CFR 50.92. The results are as follows:

*Section 4.5.I.3.a*

(1) The proposed change will not involve a significant increase in the probability or consequence of an accident previously evaluated. This change results in deletion of the daily exercise of the MSIVs. Quarterly valve operability testing will be maintained as presently required. Such testing is in accordance with the ASME Boiler and Pressure Vessel Code, Section XI, 1974 edition with winter 1973 addendum which is approved under 10 CFR 50.55a and provides sufficient indication of valve reliability. Daily cycling of the MSIVs results in accelerated wear of the upper rib and poppet pad which may result in degradation of the valve seat tightness which is counter productive in assuring valve reliability.

The daily test is accomplished by slow closure which is not representative of the valve response when performing its design function; therefore, the daily test is not indicative of valve response during an actual event. Elimination of this testing will not result in an increase of the probability of valve failure during accidents previously evaluated since the quarterly test verifies the capability of the valve to accomplish its design function.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change only eliminates the daily exercise and does not result in any change to the system configuration or function. Therefore, there is no change to the design function or actuating logic. Valve reliability will be demonstrated during the required quarterly testing which remains unchanged.

(3) The proposed change does not involve a significant reduction in the margin of safety. MSIV operability is assured by performance of the quarterly functional testing and is not enhanced by the daily exercise to the 95% open position. Such daily testing is accomplished by slow closure which does not represent the fast closure capability of the valves. Daily cycling in this manner is excessive and results in unnecessary wear on the MSIV internals. Since the quarterly functional testing assures valve operability, as in the past, the margin of safety is not reduced and unnecessary wear on valve internals is eliminated.

*Sections 4.5.I.3.b and 4.5.I.3*

Section 4.5.I.3.b has been incorporated into section 4.5.I.3. The technical requirement remains unchanged. Therefore, this change is purely administrative and does not involve any increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident, nor does it result in a decrease in the margin of safety.

The staff has reviewed the licensee's submittal and concurs with its no significant hazards determination.

*Local Public Document Room location:* Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of amendment request:* May 25, 1988 as supplemented July 6, 1988

*Description of amendment request:* The proposed amendment would revise License Condition 2.C(14), Emergency Response Capabilities, Attachment 5, Item 3. Item 3 of Attachment 5 to the license, requires that prior to startup from the second refueling outage, the licensee shall implement modifications (installation or upgrade) for neutron flux monitoring consistent with the guidance of Regulatory Guide 1.97, Revision 2 unless prior approval of an alternate design is granted by the NRC staff. The proposed change to Attachment 5, Item 3., would delay implementation until a refueling outage following the issuance of the NRC safety evaluation relating to the Boiling Water Reactor Owner's Group (BWROG) topical report, Position or NRC Regulatory Guide 1.97, Revision 3, Requirements for Post-Accident Neutron Monitoring System, NEDO-31558, March 1988. Specifically, the proposed change would state that Gulf States Utilities (GSU) shall implement modifications (installation or upgrade) for neutron flux monitoring consistent with the guidance of Regulatory Guide 1.97, Revision 2 or the NRC staff's Safety Evaluation Report (SER) of the BWROG topical report NEDO-31558. Modifications, if required, shall be completed before restart from the next refueling outage starting after 10 months from the date of receipt of the NRC staff SER on NEDO-31558.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

There is no change in system design or operation. The license condition currently requires upgrade of the neutron flux monitoring system (NMS) during the second refueling outage. This license condition proposed change will allow operation with the currently installed system which has been found to comply with all criteria proposed in the BWROG letter. This system is required to provide neutron flux indication and is not postulated to initiate any accidents. The neutron monitoring system is used to verify reactor shutdown as part of the Emergency Operating Procedures (EOPs). The use of neutron monitoring in the EOPs is conservative in that, if it is not available, actions are specified which will lead to safe shutdown without the system. The requirements of Regulatory Guide (RG) 1.97 concerning neutron monitoring are additions to the existing system abilities. Therefore, delay in upgrade to RG 1.97 requirements will not significantly increase the probability of an accident and would not lead to an increase in the consequences of an accident as defined in the safety analysis because of the conservative EOP actions.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The current system has been evaluated using alternate criteria proposed in NEDO-31558 and found acceptable for continued operation. This change does not involve any changes to design or operation. In addition, the neutron monitoring system is not postulated as the initiator of any accidents. Therefore, no new or different accidents are created.

3. This change would not involve a significant reduction in the margin of safety because:

Design, function, and operation of the existing neutron monitoring system remain the same. There is no specified "margin of safety" associated with this system as used in RG 1.97 other than to assure reactor shutdown following a transient or accident. EOP actions are conservative with respect to the use of neutron monitoring for verification that the reactor is shutdown. When not available during an accident or transient scenario, actions are specified which will lead to reactor shutdown. Because these actions lead to a safe plant condition (reactor shutdown), the margin of safety is not reduced. In addition, this request does not result in a reduction to the margin of safety as defined in the bases of the River Bend Station (RBS) Technical Specifications.

Because the present RBS design meets all criteria provided in the BWROG License Topical Report, NEDO-31558, which was submitted to the NRC April 1, 1988, as supported by the plant-specific evaluation in this amendment request, extension of the implementation date for a neutron monitoring system meeting RG 1.97 guidance is justified. This extension allows the NRC to complete their evaluation of the Licensing Topical Report, which provides an alternative design as allowed by the license condition to comply with the RG 1.97 requirements. In addition, GSU will be able to better plan its resource utilization to address the NMS pursuant RG 1.97 after the staff's SER is received.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

*Attorney for licensee:* Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

*NRC Project Director:* Jose A. Calvo

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of amendment request:* May 31, 1988

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TSs) to add action requirements in the event that the scram discharge volume (SDV) vent and drain valves become inoperable. These additions are being requested because currently there are surveillance requirements to demonstrate operability of these valves; however, there are no action statements if the valves are determined to be inoperable. The proposed amendment would modify the TSs as follows:

(1) TS 3.1.3.1d would be added and would require that with one SDV vent valve and/or one SDV drain valve inoperable and open, the inoperable valve(s) must be restored to operable status within 24 hours or be in at least hot shutdown within the next 12 hours;

(2) TS 3.1.3.1e would be added and would require that with two SDV vent valves and/or two SDV drain valves inoperable and open, one valve in the vent line and one valve drain line must be restored to operable status within 8 hours and all valves must be restored to operable status within the next 16 hours or at least one vent valve and one drain valve must be closed and be in at least hot shutdown within the next 12 hours; and

(3) TS 3.1.3.1f would be added and would require that with any SDV vent valve(s) and/or any SDV drain valve(s) inoperable and closed, except when required by TS 3.1.3.1e above, all valves must be restored to operable status

within 8 hours or be in at least hot shutdown within the next 12 hours.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The change proposed by this submittal does not involve a significant increase in the probability or the consequences of a previously evaluated accident because:

The proposed Action (d) provides "additional" action requirements to be met in the event of one SDV vent and/or one SDV drain valve is found inoperable and open. In this configuration, at least one vent and one drain valve are capable of automatically closing on a scram signal to provide the required isolation function. The 24 hours allowed by this proposed action requirement allows sufficient time to find and correct the problem without requiring the unit to shutdown unnecessarily when the isolation function is still capable of being performed.

The proposed Action (e) provides "additional" action requirements to be met in the event that two SDV vent and/or two SDV drain valves are found inoperable and open. In this configuration, the isolation function of the SDV cannot be performed. Therefore, a more restrictive 8 hours are proposed to allow time to find and correct the problem. In the event of a reactor scram while operating in this configuration, reactor coolant would be released to the containment equipment drain sumps. However, this effluent would still be contained within the primary containment. Adequate reactor vessel makeup would be available from either the condensate and feedwater systems or the high pressure core spray system. Therefore, the safe shutdown of the unit is not adversely affected. The proposed action requirements would further require the remaining SDV vent and drain valves be restored to operable status within the next 16 hours. This is consistent with proposed Action (d) since all vent and drain valves would be required to be made operable within 24 hours.

The proposed Action (f) provides "additional" action requirements to be met in the event that any SDV vent or SDV drain valves are found inoperable and closed. In this configuration, the isolation function of the SDV is being maintained by the closed inoperable valve(s). When there is no scram and the inoperable valves are closed, water will accumulate in the SDV. Although this condition may initiate a reactor scram, the valves are in their preferred closed position. The redundant and diverse SDV water level instrumentation and automatic reactor scram will ensure adequate SDV volume will remain to accept the water displaced during a scram while operating in this configuration. The proposed Action (f) is conservative by allowing only 8 hours for restoration of the SDV vent and drain valves to accumulate in the SDV. Therefore, the safe shutdown of the unit would not be adversely affected. The 8 hours allowed by this proposed action allows sufficient time to find and correct the problem without requiring the unit to be shutdown unnecessarily when the isolation function of the SDV is being performed.

If any of the actions are not met within the proposed time requirements, the unit will be required to be placed in at least hot shutdown within 12 hours. This requirement is consistent with the action requirements previously approved on other Mark III BWR/6 nuclear plant dockets for Perry, Clinton, and Grand Gulf.

Additionally, this change will not result in any design or hardware changes and is within the capabilities of the current equipment. Adequate makeup capability to the reactor vessel would be available from the condensate and feedwater systems or the high pressure core spray systems in the event of a failure to isolate the SDV during a scram. Additionally, any reactor coolant released through inoperable and open SDV vent and/or drain valves would be collected in the containment equipment drain sumps and would be contained within the primary containment. Therefore, the safe shutdown capability of the unit is not adversely affected.

The small break LOCA inside containment analyses provided in Chapters 6 and 15 of the River Bend Station updated safety analysis report (USAR) are still bounding. As stated in Chapter 6 of the USAR, the resulting drywell temperatures are significantly lower for this type of small break LOCA than one in which blowdown flow consists of reactor steam only.

2. The change proposed by this submittal does not create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed "additional" action requirements do not result in any design or hardware changes and are within the capabilities of the current equipment. In addition, the proposed change imposes more detailed action requirements on River Bend Station (RBS) than currently required by the Technical Specifications. Adequate makeup capability to the reactor vessel would be available from the condensate and feedwater systems or the high pressure core spray system in the event of a failure to isolate the SDV during a scram. Additionally, any reactor coolant released through inoperable and open SDV vent and/or drain valves would be collected in the containment equipment drain sumps and would be contained within the primary containment. Therefore, the safe shutdown of the unit is not adversely affected.

3. This proposal as submitted does not involve a significant reduction in the margin of safety because:

These proposed changes provide more definite action requirements for the conditions when either one or two vent and/or drain valves are inoperable.

The proposed "additional" action requirements are consistent with the provisions in other recently licensed BWR/6 plants with similar design features as River Bend. More specifically, the proposed action requirements would conform to those previously approved on the Grand Gulf docket. These additional requirements do not significantly reduce any margin of safety because the changes provide assurance that provisions are made to address the situation where one or two SDV vent and/or drain valves are inoperable without causing an immediate shutdown per the provisions of Technical Specification 3.0.3. Because these actions lead to a safe plant condition (reactor shutdown), the margin of safety is not reduced. In addition, this request does not result in a significant reduction to the margin of safety as defined in the bases of the RBS Technical Specifications.

The proposed amendment, as discussed above, has not changed the system design or function as discussed in the USAR. The proposed action requirements are consistent with other recently licensed BWR/6 plants with similar design features as River Bend. In the event of a reactor scram with the SDV incapable of performing its isolation function, adequate reactor coolant makeup would be available and the current small break LOCA analyses presented in the River Bend USAR would still bound this condition. Additionally, any reactor coolant released through inoperable and open SDV vent and/or drain valves would be collected in the containment equipment drain sumps and would be contained within the primary containment. Therefore, the proposed amendment will not increase the probability or the consequences of a previously evaluated accident and will not create a new or different accident. Since the proposed changes provide adequate action requirements to assure that provisions are made to address the situation where SDV vent and/or drain valves are inoperable without imposing an unnecessary operational transient associated with immediate shutdown in accordance with Technical Specification 3.0.3, the proposed change does not result in a significant reduction in the margin of safety. Therefore, GSU proposes that no significant hazards considerations are involved.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

*Attorney for licensee:* Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

BEST COPY AVAILABLE

*NRC Project Director:* Jose A. Calvo

**Gulf States Utilities Company, Docket No. 50-498, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of amendment request:* June 21, 1988

*Description of amendment request:* The amendment would delete Figure 6.2.1-1, River Bend Station Organization, and Figure 6.2.2-1, River Bend Station Organization, and replace them with a functional description of the offsite and onsite organizations in Section 6.2.1 of the Technical Specifications (TSs). Where qualifications for certain positions are currently designated by organization charts as requiring a Senior Reactor Operator or Reactor Operator license, they are included in Section 6.2.2 of the proposed TS. Guidance for the deletion of organization charts from the TSs was provided in the NRC's Generic Letter 88-06, Removal of Organization Charts from Technical Specification Administrative Control Requirements, March 22, 1988.

The amendment would also delete the address for correspondence concerning monthly operating reports in Section 6.9.1.6 of the TSs because it duplicates the address instructions for all routine reports in Section 6.9.1.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed deletion of organization charts from River Bend Station (RBS) Technical Specifications does not affect plant operations. Gulf States Utilities (GSU) believes that the current organization charts in the RBS TSs have been of little assistance in ensuring that the objectives of administrative control requirements are met. Organizational characteristics important to safety are defined and maintained in the Updated Safety Analysis Report (USAR) in accordance with the Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i). Detailed information on organizational structure, reporting responsibilities, qualifications, and purpose are maintained in the USAR and updated annually in accordance with 10 CFR 50.71(e). In addition, this proposed change does not impact previously evaluated safety analysis as identified in USAR sections 6 or 15. Therefore, GSU proposes that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. These proposed changes affect administrative controls in the RBS TSs and do not affect plant equipment, physical features, or the required technical qualifications of plant personnel. Specific operational requirements are required elsewhere in the TS that bear more directly on operational safety than organization charts.

Therefore, GSU proposes that the requested amendment does not create the possibility of a new or different kind of accident than previously evaluated.

3. No technical limits are changed or reduced by this proposed amendment. There is no reduction of authority, responsibility, or administrative reporting requirements of individuals in the RBS organization due to the deletion of organization charts. Many of the details shown on the organization charts are not essential to the safe operation of the facility. In addition, these proposed changes do not reduce the margin of safety as defined in the basis of the RBS TS. Therefore, CSU proposes that the requested amendment does not involve significant reduction in the margin of safety.

Since the proposed amendment does not change any safety analysis as described in the USAR nor does it create the possibility of a new or different type of accident or significantly reduce a margin of safety, GSU proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

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*NRC Project Director:* Jose A. Calvo

**Gulf States Utilities Company, Docket No. 50-498, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of amendment request:* June 21, 1988

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TSs) to bring the TSs in agreement with proposed changes to the Asiatic Clam Control Program (ACCP) that were submitted to the NRC for review and approval. The proposed changes to the ACCP were submitted by letter dated August 31, 1987 and revised by letter dated March 30, 1988. The proposed amendment would modify TS 6.8.4.d., Biofouling Prevention and Detection, as follows:

1. Delete the requirement for NRC staff approval of the ACCP prior to introduction of river water to plant systems. The NRC staff approved the current ACCP by letter dated September 27, 1985 and Mississippi River water was introduced into the plant cooling system in November 1985. Thus, this requirement was met.

2. Delete the requirement for monitoring to detect the presence of Corbicula in the Mississippi River and add the requirement for monitoring to detect Corbicula in the clarifier influent.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

(1) No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The proposed deletion from River Bend Station (RBS) TS does not affect plant operations. Gulf States Utilities (GSU) believes that the current river channel sampling has been of little assistance in ensuring that the objectives of the administrative control requirements are met.

Biofouling of safety-related components by *Corbicula* does not increase the probability of an accident previously evaluated. Therefore, accident initiating events involving equipment susceptible to biofouling are not addressed in the current safety analysis. Safety-related components served by service water only mitigate the consequences of an accident and are not initiators of analyzed accidents.

The prevention and detection elements of the ACCP, such as performance trending of safety-related components, visual inspection of components, and chlorination of the normal service water system, continue to provide redundant assurance that safety-related components will be available to perform their intended function following an incident. No changes to the prevention and

detection elements are being requested. This proposed change involves only the suspension of river channel monitoring.

(2) This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

This proposed change does not affect plant equipment, physical features, or the required staffing or qualifications of plant personnel as currently required in TS Section 6.0. Specific operational requirements are required elsewhere in the TS that bear more directly on operational safety than river channel sampling.

The implications of biofouling by bivalve organisms such as *Corbicula* have been identified in IE Bulletin 81-03 and as a generic safety issue (GSI ). The implications of *Corbicula* biofouling at RBS were evaluated and the ACCP was found acceptable in SER Supplement No. 5 Section 9.2.1. The proposed change does not create the possibility of an accident new or different from those evaluations mentioned above since the ACCP assumes that *Corbicula* will be introduced into plant systems. The element of the ACCP regarding the monitoring for *Corbicula* in the source water is not diminished by the deletion of monitoring in the Mississippi River channel since monitoring will continue for adult/large juvenile clams in the embayment makeup pump area and for larval/smaller juvenile clams in the clarifier influent. Therefore, the effectiveness of the ACCP will not be decreased by these proposed changes. Prevention and early detection of biofouling within these systems continues to assure that safety-related systems will not be prevented from performing their intended functions.

(3) This change would not involve a significant reduction in the margin of safety because:

The proposed change affects only Section 6.0, Administrative Controls, of the TS. No technical limits are changed or reduced by this proposed amendment. The monitoring for presence or relative abundance of *Corbicula* in the Mississippi River channel is not essential to the safe operation of the facility. Relevant monitoring for *Corbicula* detection and prevention in the source water will continue to be performed as part of the approved ACCP. Suspension of river channel sampling from TS Section 6.0 represents no reduction in safety requirements. In addition, this proposed change does not reduce the margin of safety as defined in the basis of the RBS TS. Therefore, GSU proposes that the requested amendment does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

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*NRC Project Director:* Jose A. Calvo

**Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of amendment request:* February 5, 1988

*Description of amendment request:* This proposed amendment would revise the trip setpoint, allowable value and instrument-zero point specified for the suppression pool water level instrument associated with Technical Specification Tables 3.3.3-2 and 3.3.5-2. The proposed change only electronically affects the instrument loop indication and does not change the design basis for the trip function. Therefore, the actual suppression pool level (in terms of elevation) at which the trip function should occur will remain unchanged.

Initial performance of the plant calibration procedure revealed that, due to an error in the installation design, the desired calibration range for the noted instrument loop did not properly correspond to the calibration range of the installed transmitters. The effect of this was that the values indicated in inches (water column) by the analog trip module (ATM) for the Trip Setpoint and Allowable Value did not match the values specified in inches (water column) in the Technical Specifications. The licensees decided that the problem could be remedied without relocating the sensor by redesignating the instrument-zero point and correspondingly respecifying the associated Trip Setpoint and Allowable Value. The instrument would still continue to operate satisfactorily for the minimum range of water level (elevation) required. The effect of redesignating the instrument-zero point is to shift the ATM-indicated water level values by 15 inches. The Technical Specification thus needs to be changed to reflect the ATM-indicated values. That is, under the revised Technical Specification, the ATM-indicated values for the Trip Setpoint and Allowable Value would match the values indicated by the Technical Specification Table.

*Basis for Proposed No Significant Hazards Consideration Determination:* The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin safety.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes do not change the actual level (in terms of elevation) at which the affected instrument is designed to trip. Thus, the analytical basis from which the Trip Setpoint and Allowable Value were determined remains unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because no changes to plant operation or changes to the design function of the instrument are proposed.

The proposed changes do not involve a significant reduction in a margin of safety because they do not alter the relationship between the Trip Setpoint, Allowable Value, instrument-zero point and analytical limit. The design basis of the Trip Setpoint is unchanged. The proposed change to the Technical Specification reflects a change to the instrument loop that will more closely match the sensor range to the range indicated by the trip unit thus enhancing satisfactory operation of the instrument loop and satisfactory performance of the instrument loop calibration.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

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*Attorney for licensee:* Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

*NRC Project Director:* Daniel R. Muller

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* July 30, 1987.

*Description of amendment request:* The proposed technical specification change provides restrictions on the reliance on one of the two available 115 KV incoming transmission lines to meet Technical Specification 3.12 until a new capacitor bank is made operational.

A study has shown that the 115 KV Mason line was capable of maintaining adequate voltage while supplying these worst case loads. Since Maine Yankee normally relies on the 115 KV Mason line, the reliance on the Surowiec line would only be of concern if the Mason line were to be out of service under these worst case loading conditions.

Following completion of this study, Maine Yankee established administrative controls to prevent the Surowiec line from being relied on to meet Technical Specification 3.12.A.1 or 3.12.B.1 without additional justification being provided. The proposed technical specification change serves to strengthen those administrative controls.

Maine Yankee plans to install a capacitor bank to improve the voltage of the Surowiec line. With capacitor bank operational, it is expected that the Surowiec line will be capable of maintaining adequate voltage while supplying peak auxiliary and safeguards loads under all expected conditions. Therefore, the proposed technical specification restriction on the use of the Surowiec line becomes void once the capacitor bank is operational.

*Basis for proposed no significant hazards consideration:* The licensee has presented the following basis for no significant hazards consideration:

The Proposed Change is administrative in nature and does not involve a significant hazards consideration for the reasons set forth below.

1. Does the change increase the probability or consequences of an accident previously evaluated in the FSAR?

The Proposed Change provides additional restrictions on one of the available 115 KV lines. It does not affect the probability or consequences of any accident evaluated in the FSAR.

2. Does the change create the possibility of a new type of accident not previously analyzed in the FSAR?

The Proposed Change is administrative in nature and does not create the possibility of a new type of accident.

3. Does the change decrease the margin of safety established in the basis of the Technical Specifications?

The Proposed Change places restrictions on one of the two available 115 KV transmission lines until a new capacitor bank is made operational. The Proposed Change provides additional assurance that the margin of safety of Technical Specification 3.12 is maintained until the adequacy of the Surowiec line is restored through the installation of the capacitor bank.

We have reviewed the licensee's analysis and have agreed with it. Accordingly, the Commission proposes to determine that this change does not involve a significant hazard.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

*Attorney for licensee:* J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

*NRC Project Director:* R. Wessman

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* February 24, 1988

*Description of amendment request:* The proposed amendment would change Technical Specification (TS) 3.3.3.9, "Radioactive Liquid Effluent Monitoring Instrumentation" and TS 3.3.3.10, "Radioactive Gaseous Monitoring Instrumentation." The proposed changes provide for the following: (1) allowance for planned inoperability of monitoring instrumentation for up to 12 hours for the purpose of maintenance and performance of required tests, checks, calibration or sampling, (2) a requirement to initiate auxiliary sampling within 12 hours after inoperability of certain gaseous effluent monitors, and (3) allowance for inoperability of certain liquid effluent monitoring instrumentation, during Mode 6 (refueling), when the effluent pathway is not being used.

*Basis for proposed no significant hazards consideration determination:* The Limiting Conditions for Operation and Surveillance Requirements for liquid and gaseous monitoring instruments are contained in TS 3.3.3.9 and 3.3.3.10, respectively. These instruments monitor effluents during actual or potential releases of effluents and are not credited for operability in any analyzed accident. In the event that these instruments become inoperable, the TS requires the licensee to exercise "best efforts" to repair the instruments. A reporting requirement is also associated with effluent monitor instrument unavailability. At the present time, gaseous and liquid effluent monitors must be operable at all times with the exception of the Warehouse 5 Vent which must be operable when the gross activity of the regenerated waste is greater than $1 \times 10^{-4}$ micro Curies/ml.

The licensee has proposed that TS 3.3.3.9 and 3.3.3.10 be modified to allow the gaseous and liquid effluent monitors to be made inoperable for up to "..... A maximum of 12 hours for the purpose of maintenance and performance of required tests, checks, calibrations and sampling." These activities are required to assure continued accurate performance of the subject instrumentation. The licensee has estimated that, based upon operating experience, instrument out-of-service time does not exceed 12 hours per calendar quarter which is less than 1% unavailability. The licensee has also proposed that certain secondary-coolant-side liquid effluent monitors, that do not represent a likely discharge path during refueling, not be required to be operable during refueling (Mode 6). The following instruments would not be required to be operable in Mode 6: (1) Waste Neutralization Sump-Condensate Polishing Facility, (2) Regenerate Evaporator Monitor-Condensate Polishing Facility and (3) Steam Generator Blowdown Monitor.

The licensee has proposed an additional change to TS 3.3.3.10 which presently requires that sampling of radioactive gaseous effluent pathways be undertaken if the minimum specified number of the associated monitoring channels become inoperable. No time limit, to begin monitoring, is presently incorporated in the TS. The licensee has proposed that such monitoring begin within 12 hours of time that the monitoring channels are determined to be inoperable.

With regard to the proposed changes to TS 3.3.3.9 and 3.3.3.10, these proposed changes to the TS would not involve a significant increase in the probability or consequences of an accident previously evaluated. Since the subject monitors were not credited in the present safety analysis, the slight increase in unavailability can not affect the probability or outcome of any analyzed accident. Since the subject monitors do not perform any function to ameliorate the consequences of accidents the misoperation or the failure of these monitors to be available during an accident will not create the possibility of a new or different kind of accident from any previously evaluated. Finally, since the subject monitors are not credited in any accident analysis, the proposed changes to the TS do not involve any reduction in safety margins. Based upon the above, the Commission proposes to determine that the proposed changes to TS 3.3.3.9 and 3.3.3.10 involve no significant hazards considerations.

*Local Public Docment Room Location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, One

Constitution Plaza, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* June 15, 1988

*Description of amendment request:* The amendment would revise Technical Specification Tables 2.2-1 and 3.3-4 to decrease the reactor trip setpoint and the engineered safety features actuation setpoints for auxiliary feedwater initiation identified as steam generator water level Low-Low from 23.5% to 18.10% of the narrow range instrument span. This change would increase the margin between the steam generator water level low-low trip setpoint and the normal operating band. This change reflects the results of a revised calculation of the errors associated with related instrumentation.

*Basis for proposed no significant hazards consideration determination:* NNECO has reviewed the proposed change in accordance with 10 CFR 50.92 and has concluded that it does not involve a significant hazards consideration in that the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The revised trip setpoint is consistent with the accident analyses assumption. As recommended in WCAP-10991, the revised calculated value accounts for the instrument uncertainty including the harsh environmental effects and drifts. The lower calculated value is mainly due to a more accurate calculation of the effect of the reference leg heat-up on the trip setpoint. It accounts for the effect of a harsh environment both on instruments and cables. The lower setpoint does not delay reactor trip or auxiliary feedwater initiation beyond what is assumed in the analysis. Therefore, the proposed changes have no impact on the consequences of the accidents previously evaluated. The proposed changes have no impact on the probability of failure of the reactor protection system and auxiliary feedwater system. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated. There are no changes in the way the plant is operated, therefore, the potential for an unanalyzed accident is not created, and there are no new failure modes associated with the proposed changes.

3. Involve a significant reduction in a margin of safety. The proposed changes do not affect the consequences of any accident previously analyzed. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the NNECO's no significant hazards consideration determination and agrees with the analyses. Based on this review, the NRC staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

*NRC Project Director:* John F. Stolz

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York**

*Date of amendment request:* May 27, 1988

*Description of amendment request:* The proposed amendment would revise those portions of Table 3.7-1 ("Process Pipeline Penetrating Primary Containment") of the Technical Specifications (TS) which pertain to the Reactor Water Cleanup (RWCU) system isolation valves. The proposed revisions, in part, reflect two modifications which will be completed during the 1988 refueling outage.

One modification involves the addition of an isolation signal (high drywell pressure) to three existing RWCU containment isolation valves. When this modification is complete, these valves will be actuated using diverse isolation signals as recommended in Section 6.2.4 of the Standard Review Plan (the criteria referenced in NUREG-0737).

The second modification adds a motor-operated containment isolation valve outside containment in the RWCU return line (12MOV-069). This modification will bring the RWCU system into compliance with General Design Criterion 55 of Appendix A to 10 CFR 50. This new valve will actuate on diverse isolation signals, including high drywell pressure.

Additionally, the proposed amendment would revise Table 3.7-1 to administratively add an isolation signal to one RWCU valve entry (12MOV-18) to make the TS consistent with the original plant design. Another revision would reduce the maximum allowable closure time for two RWCU supply line valves from thirty seconds to twenty seconds to reflect the assumptions made in the environmental qualification analysis.

*Basis for proposed no significant hazards consideration determination:* In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

No accident previously analyzed in the FSAR is adversely affected by any of the proposed changes. RWCU system isolation is not an accident or transient initiating event. In the event of an accident, RWCU serves no mitigating functions, and, as a nonessential system, it is isolated from the Reactor Coolant System. The modifications described above will improve the system's capability to reliably isolate in the event of an accident. Therefore, operation in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The intentional or unintentional isolation of the RWCU system cannot initiate an accident or transient. The new RWCU isolation valve duplicates the function of an existing valve. Addition of this new isolation valve and the addition of a new isolation signal to three existing valves will increase the reliability of a post-accident isolation. The remaining changes will assure consistency of the TS and do not entail any physical modifications or changes in operating procedures. Therefore, operation in accordance with the proposed amendment would not create the possibility of a new or different kind of accident.

The modifications described above are intended to improve containment isolation dependability and cannot adversely impact any margin of safety. The new isolation signal increases the redundancy and diversity of physical parameters sensed to isolate containment in the event of an accident. The new valve increases the likelihood that the line will be isolated in the event

of an accident. Spurious isolation of the RWCU System is inconsequential since the system has been classified as nonessential and is not required to mitigate the effects of an accident. The changes which are intended to assure consistency of the TS are administrative and also do not impact any margin of safety. Therefore, operation in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

*Local Public Document Room location:* State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Robert A. Capra, Director

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* May 3, 1988

*Description of amendment request:* The amendment request would revise Surveillance Requirement 4.8.2.5.2.e for both Salem Unit 1 and Salem Unit 2 to remove the requirement for performing two separate tests of the 28-volt batteries during certain plant shutdowns. The amendment would allow the satisfactory performance of the more stringent of the two tests to satisfy the surveillance requirements for both the 18 month and the 60 month tests on those occasions when the 60 month test is performed.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Public Service Electric and Gas Company reviewed the proposed change and determined and the NRC staff agrees that the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change in testing will not significantly impact the operability of the batteries. The performance of the battery discharge test will adequately determine whether the battery operates within acceptable limits relative to its original design capacity as well as the original requirements for the battery design. As such, a separate service test is not necessary at the interval when the discharge test is performed.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The change in testing in no way affects the operability of the batteries or their ability to function in an accident situation. There is no significant increase in the amounts, and no significant change in the types of effluents that may be released offsite as a result of the proposed change. Also, the proposed change involves no significant increase in individual or cumulative occupational radiation exposure.

(3) Involve a significant reduction in a margin of safety. The purpose of battery service test is to demonstrate the ability of the battery to satisfy the design requirement (battery duty cycle) of the DC system, that is, the ability to support the equipment important to safety for a specific time period. The battery is sized during the plant design stages to have the capacity to perform this function. The purpose of the capacity discharge test is to show that the battery remains within an acceptable percentage of its original design capacity, which was initially demonstrated in the battery acceptance test. Since the battery capacity discharge test demonstrates that the battery is still within acceptable limits relative to its original design, this test also demonstrates, unless a significant change to the DC system has been made during subsequent plant operation (such a change would have been evaluated pursuant to 10 CFR 50.59), that the battery can also satisfy the original design duty cycle. Thus, the capacity discharge test satisfies the intent of the service test and renders performance of the service test unnecessary when performance of the discharge test is required.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

*NRC Project Director:* Walter R. Butler

**Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of amendment request:* February 26, 1988. Amendment Application No. 147 (Proposed Change No. 174)

*Description of amendment request:* The amendment would revise Technical Specification 3.5.5, Containment Isolation Instrumentation; 3.5.8, Radioactive Liquid Effluent Instrumentation; 3.5.9, Radioactive Gaseous Process and Effluent Monitoring Instrumentation and 4.1.3, Radioactive Gaseous Process and Effluent Monitoring Instrumentation. The changes are specific to each of the technical specifications affected. They provide clarification and relief for plant operation.

Specification 3.5.5 would be revised to exempt the Containment Radioactivity-High from Specification 3.0.4 and to clarify that there is not a single manual actuation switch for all five purge and exhaust valves. Specification 3.5.8 would be revised in the action statement to allow for a 12 hour sample collection and a 24 hour analysis for inoperable Turbine Building and Yard Sump monitors. Specifications 3.5.9, 4.1.2 and 4.1.3 would be revised to provide clarification on the operational requirements of specific radiation monitors.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91, the licensee has provided its analysis as to whether or not the proposed amendment involves no significant hazards considerations which is presented below:

Proposed Change No. 174 is determined not to constitute a significant hazards consideration based on the following review questions and responses.

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* This proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated. Overall the proposed change provides clarification and relief within the technical specifications for plant operations. This proposed change does the following:

a. The provisions of 3.0.4 are not applicable to the Action Statement for the Containment Radioactivity-High instrumentation being inoperable. The Action Statement requires the purge and exhaust valves to be isolated during operations which is the normal configuration for these valves during operations. The condition of the plant remains the same and the probability or consequences of accidents are not changed. Therefore, removing the 3.0.4 applicability does not change the accident probability or consequences but allows the plant to continue into an operational mode.

b. The grab sample collection and analysis period for the Turbine Building Sump and Yard Sump effluents is changed from 12 hours for both collection and analysis to 12 hours for collection and 24 hours for the subsequent analysis. This change provides relief from performing the analysis within an unreasonably stringent time frame and has no affect on the probability or consequences of an accident. There are no potential sources of highly radioactive effluents which enter these sumps. The collection and analysis of grab samples from this pathway are primarily for documentation purposes. In the event of an accident which may result in radioactive liquid entering these sumps other means of detection would have occurred prior to the liquid entering the sumps.

c. The radiation monitors which can be utilized for the Sampler Flow Rate Measuring Device within the plant vent stack monitoring system are specifically identified consistent with the other items on Table 3.5.9.1. This change provides a clarification and has no effect on the accident probability or consequences.

d. The particular flow element in use in the liquid radwaste effluent line will be channel checked daily. This prevents checking both the element in use and the element not in use which would provide inaccurate information. This change is an operational clarification and has no affect on accident probability or consequences.

e. The notation indicating a specific radiation monitor does not perform an isolation function and does not have a control room alarm is deleted. The monitor does maintain these functions. This demonstrates an improvement in the monitor operation and has no affect on the accident probability or consequences.

f. Removing monitor R-1214 from the technical specifications has no effect on the probability or consequences of an accident. The function performed by R-1214 will still be provided by other monitors which are in the technical specifications.

Based on the above items discussed, it is clear that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident?

*Response:* The intent of this proposed change is to provide ease in the daily operations of the plant. The change does not create the possibility of a new or different kind of accident. The change provides:

a. Clarification by:

1. Listing those monitors which can be used for the Sampler Flow Rate Measuring Device,

2. Providing for a channel check of a single flow element which is in use,

3. Deleting a note which identifies the limitations of a radiation monitor, and

4. Removing a monitor which is difficult to maintain and calibrate.

These changes have no impact on the plant such that new or different accidents are created. The changes provide clarification to the technical specifications for a more accurate description and use of the plant equipment.

b. Relief by removing the 3.0.4 applicability on an Action Statement for a containment radiation monitor and increasing the time allowed to perform analyses of certain grab samples. Increasing the time to perform analysis of grab samples from the Turbine Building Sump or the Yard Sump has no affect on the plant configuration. Therefore, in both cases the plant has not been affected such that a new or different kind of accident has been created.

Based on the above, it is clear that operation of the facility in the accordance with the proposed change does not create the possibility of a new or different kind of accident.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

*Response:* The changes, as discussed, provide clarification within the technical specifications to improve the plant operation. The changes also provide relief in operations and radwaste sampling areas. These changes facilitate and clarify plant operations. The allowance of a longer grab sample analysis period is reasonable in that the subject pathway exhibits insignificant activity levels which do not necessitate analysis results within a short time frame. Removing monitor R-1214 from the T.S. is reasonable since there are other T.S. monitors which perform the designated function. Therefore, operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC Staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensee:* Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of amendment request:* May 26, 1988

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) to assure reactor operation is consistent with core design analysis. Control Group I would be precluded from insertion during power operation. This would lengthen the fuel cycle and diminish neutron leakage. The inclusion of this proposed amendment in the TS represents a formal restriction of plant operations in a manner that was previously administratively controlled.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91, the licensee has provided its analysis as to whether or not the proposed amendment involves a significant hazards consideration and has concluded that the proposed changes do not constitute a significant hazards consideration, based on the following.

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No, operation of the facility in accordance wth this proposed change is allowed by the current technical specifications. The change will only modify the rod position assumptions for future core reloads of the current spectrum of analyzed accidents. The proposed change serves to create a restriction that assures operation with Control Group 1 fully withdrawn. Accordingly, there are no changes to the probability or consequences of any previously analyzed accidents involving rod movement. The revision to the format and bases to allow action time to restore the control group to its insertion limit is consistent with STS requirements and does not involve a significant increase in any accident probability. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No, operation of the facility in accordance with the control group insertion limit described in this proposed change is allowed by the current specifications. The operation of the facility in accordance with this change is bounded by the existing accident analyses and future core reloads will be bounded by the same analyses. These analyses assume dropped rod worth consistent with the control group and shutdown group rod design and, since this design does not change, only the assumed position changes, there is not the creation of any new or different accidents. The remaining changes are administrative in nature and do not affect previously analyzed accidents or create any new accidents. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

*Response:* No, operation of the facility in accordance with this proposed change involves an additional operating restriction that will increase the current design margin of safety in the main steamline break and ejected rod analyses. The increase in safety margin will be seen in the calculated peaking factors for these two accident scenarios. It is planned that future core reloads may take advantage of the additional margin to extend cycle life, but at no time would the design safety margin, as described in the basis of 3.5.2, be exceeded. The remaining changes are administrative in nature and do not impact any margin of safety. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the request and the licensee's analysis and agrees that the criteria appear to be satisfied. The NRC staff, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, Post Office Box 19557, Irvine, California 92713.

*Attorney for licensee:* Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

*NRC Project Director:* George W. Knighton

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of amendments request:* May 24, 1988

*Description of amendments request:* Technical Specification Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Test of Instrumentation Channels," specifies the test frequency for instrument channels. The proposed amendments would change the test frequency from bi-weekly to monthly for: Item 1, "Nuclear Power Range" instrument channels; Item 4, "Reactor Coolant Temperature" instrument channels; and Item 18, "Reactor Containment Pressure" instrument channels.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed these criteria as follows:

The proposed changes would reduce the frequency of testing the channel logics from biweekly to monthly. These changes will make the nuclear power range, reactor coolant temperature, and containment pressure channel logic test frequencies consistent with the other channels which use similar components. Additionally, these changes will allow Point Beach Nuclear Plant, Units 1 and 2, to conform to industry standards as well as the Standard Technical Specifications for Westinghouse Pressurized Water Reactors. These channels have been very reliable. Based on the most severe drift rate experienced during biweekly testing, the channels should remain within Technical Specification setpoint limits between monthly testing. We, therefore, believe that these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated, and the first criterion is not violated. Because these changes only modify the frequency of testing for these three instrument channels and introduce no new testing, a new or different accident from any previously evaluated accident cannot be created and, therefore, the second criterion is not violated.

Lastly, these changes do not involve a significant reduction in a margin of safety for the same reasons discussed for criterion one. The amended test frequencies will be consistent with (1) other plant instrumentation using the same relays and bistables, (2) industry testing frequencies, and (3) the Standard Technical Specifications.

The staff has reviewed the licensee's evaluation of the proposed amendment, and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the requested amendments do not involve significant hazards considerations.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

*Attorney for licensees:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Kenneth E. Perkins.

## PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances.

They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois**

*Date of amendment request:* June 22, 1988

*Brief description of amendments:* The amendments would revise an action statement concerning the ultimate heat sink to state that the provisions to specification 3.0.4 do not apply in accordance with the licensee's application dated June 22, 1988.

*Date of publication of individual notice in* **Federal Register:** July 8, 1988 (53 FR 25710)

*Expiration date of individual notice:* August 7, 1988

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* May 2, 1988, as revised June 3, 1988

*Brief description of amendment request:* The amendment would change the Technical Specifications by replacing Figure 6.2.1-1, "Offsite Organization," and Figure 6.2.2-1, "Unit Organization," with requirements that capture the essential aspects of the organization structure that are defined by these figures.

*Date of publication of individual notice in* **Federal Register:** June 29, 1988 at 53 FR 24513

*Expiration date of individual notice:* July 29, 1988

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.**

*Date of application for amendments:* April 28, 1988

*Description of amendments:* The amendments delete Figure 6.2.1 (Offsite Organization for Facility Management and Technical Support), Figure 6.2.2 (Facility Organization), and references thereto from the Technical Specifications. To replace the charts, general requirements were added that capture essential aspects of the organizational structure that were defined by the organization charts. Equivalent information to that contained in the organization charts will be documented in the Updated Final Safety Analysis Report. This action conforms to the guidance of Generic Letter 88-06.

*Date of issuance:* July 8, 1988

*Effective date:* July 8, 1988

*Amendment Nos.:* 77, 69

*Facility Operating License Nos. NPF-2 and NPF-8.* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 6, 1988 (53 FR 20700) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

**Arizona Public Service Company, et al., Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona**

*Date of application for amendment:* April 7, 1988

*Brief description of amendment:* The amendment revises Figure 3.1-1 of the Technical Specifications to increase the negative Moderator Temperature Coefficient limit from -30 pcm/° F to -35 pcm/° F.

*Date of issuance:* July 11, 1988

*Effective date:* July 11, 1988

*Amendment No.:* 9

*Facility Operating License No. NPF-74:* Amendment changed the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 4, 1988 (53 FR 15906). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

**Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of application for amendment:* December 23, 1985 as supplemented on February 22, 1988

*Brief Description of amendment:* This amendment adds equipment allowable out of service times for calibration and testing of the Reactor Protection System (RPS) and Primary Containment Isolation System (PCIS). Note 1 to Table 3.1.1 and Note 1 to Table 3.2.A have been revised to add time limits for keeping RPS and PCIS equipment out of service during testing and calibration.

*Date of issuance:* July 8, 1988

*Effective date:* July 8, 1988 and implemented within 30 days
*Amendment No.:* 119
*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** February 12, 1986 (51 FR 5272) The supplemental information supplied by the licensee on February 22, 1988 did not affect the sustance of the proposed amendment as noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1988.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois**

*Date of application for amendments:* March 10, 1988, supplemented April 21, 1988
*Brief description of amendments:* These amendments revise the Technical Specifications to reduce the composition of the Onsite Nuclear Safety Group from four members to three members.
*Date of issuance:* July 1, 1988
*Effective date:* July 1, 1988
*Amendment Nos.:* 19, 19
*Facility Operating License Nos. NPF-37 and NPF-66.* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 1, 1988 (53 FR 20041) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1988
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* The Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

**Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois**

*Date of application for amendments:* December 22, 1987
*Brief description of amendments:* These amendments revised Technical Specifications 3.2.D.3—for the refueling floor radiation monitors trip setpoint, and 6.2.C.1—for authority to review and approve plant procedures.
*Date of issuance:* June 30, 1988
*Effective date:* June 30, 1988
*Amendment Nos.:* 110 and 106
*Facility Operating License Nos. DPR-29 and DPR-30.* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** January 13, 1988 (53 FR 822). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 30, 1988.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* February 19, 1988
*Brief description of amendment:* This amendment revises Technical Specification Table 3.11-1, "Containment Isolation Valves," by adding five new containment isolation valves (CIVs) and deleting two CIVs. These changes were a result of plant modifications made during the 1987 refueling outage. Also, the page number was revised for Table 3.11-2.
*Date of Issuance:* July 1, 1988
*Effective date:* July 1, 1988
*Amendment No.:* 105
*Facility Operating License No. DPR-61.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** May 18, 1988 (53 FR 17783) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 1, 1988
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos.1 and 2, Westchester County, New York**

*Date of application for amendment:* December 8, 1986 and March 3, 1988
*Brief description of amendment:* The amendments modified paragraph 3.D of Facility Operating License No. DPR-5 and paragraph 2.H of Facility Operating License No. DPR-26 to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.
*Date of issuance:* July 6, 1988
*Effective date:* July 6, 1988
*Amendment Nos.:* 39 and 133
*Facility Operating License Nos. DPR-5 and DPR-26:* Amendment revised the licenses.
*Date of initial notice in* **Federal Register:** May 18, 1988 (53 FR 17784).[1]
The Commission's related evaluation of the amendment is contained in a letter to Consolidated Edison dated July 6, 1988 and a Safeguards Evaluation Report dated July 6, 1988.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* January 11, 1988
*Brief description of amendments:* The amendments changed Technical Specifications Sections 3.0 and 4.0 to conform to Generic Letter 87-09.
*Date of issuance:* July 12, 1988
*Effective date:* July 12, 1988
*Amendment Nos.:* 48 and 41
*Facility Operating License Nos. NPF-35 and NPF-52:* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** April 20, 1988 (53 FR 13013) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1988.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* February 17, 1987, as revised June 3, 1988
*Brief description of amendments:* The amendments changed the Technical

[1] The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing that appeared in 53 FR 17784 contained an error in the License paragraphs to be revised for Facility Operating Licenses DPR-5 and DPR-26. The notice neglected to state that paragraphs 3.E and 3.F of DPR-5, as well as paragraphs 2.H and 2.I of License DPR-26, would be superseded by the revised license condition. The NRC has not found it necessary to revoke its Consideration of Issuance as the error correctly states the proposed change.

Specifications by updating the index and making other purely administrative changes.

*Date of issuance:* July 5, 1988

*Effective date:* July 5, 1988

*Amendment Nos.:* 88 and 69

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 25, 1987 (52 FR 9566) The supplemental letter did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 5, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application for amendments:* December 2, 1986, as supplemented November 5, 1987 and April 11, 1988

*Brief description of amendments:* The amendments modified paragraph 2.D of the licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

*Date of Issuance:* July 5, 1988

*Effective Date:* July 5, 1988

*Amendment Nos.:* 97 and 32

*Facility Operating License Nos. DPR-67 and NPF-16:* Amendments revised the Licenses.

*Date of initial notice in* **Federal Register:** June 1, 1988 (53 FR 20042) The Commission's related evaluation of the amendments is contained in a letter to Florida Power and Light Company dated July 5, 1988 and a Safeguards Evaluation Report dated July 5, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida 33450.

**Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida**

*Date of application for amendments:* December 2, 1986, as supplemented November 12, 1987 and April 13, 1988

*Brief description of amendments:* The amendments deleted paragraphs 3.F, 3.H and 3.J from the Turkey Point Unit 3 license, as well as paragraphs 3.E, 3.G and 3.I from the Turkey Point Unit 4 license, and added paragraph 3.L to both licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

*Date of issuance:* July 5, 1988

*Effective date:* July 5, 1988

*Amendment Nos.* 131 and 125

*Facility Operating Licenses Nos. DPR-31 and DPR-41:* Amendments revised the Licenses.

*Date of initial notice in* **Federal Register:** June 1, 1988 (53 FR 20042) The Commission's related evaluation of the amendments is contained in a letter to Florida Power and Light Company dated July 5, 1988 and a Safeguards Evaluation Report dated July 5, 1988. No significant hazards consideration comments received: No

*Local Public Document Room location:* Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of application for amendments:* May 6, 1988, as supplemented June 7, 1988

*Brief description of amendments:* The amendments modified the Technical Specifications by replacing the organization charts with more general organization requirements.

*Date of issuance:* July 12, 1988

*Effective date:* July 12, 1988

*Amendment Nos.:* 155 and 94

*Facility Operating License Nos. DPR-57 and NPF-5.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 3, 1988 (53 FR 20397). The supplemental information submitted by the licensee on June 7, 1988 was editorial is nature and did not affect the substance of the initial notice or the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia**

*Date of application for amendment:* May 6, 1988, supplemented June 1, 1988

*Brief description of amendment:* The amendment modified the Technical Specifications by replacing the organization charts with more general organization requirements.

*Date of issuance:* July 11, 1988

*Effective date:* July 11, 1988

*Amendment No.:* 6

*Facility Operating License No. NPF-68:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 3, 1988 (53 FR 20398) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of application for amendment:* February 26, 1987, as supplemented June 1, July 10, and November 13, 1987

*Brief description of amendment:* The amendment revised the Technical Specifications to reflect modifications made to comply with 10 CFR 50.62, the ATWS rule. These modifications consisted of the addition of an Alternate Rod Injection System, improvements to the Recirculation Pump Trip logic circuitry, and changes to the Standby Liquid Control System pump control circuitry.

*Date of issuance:* July 7, 1988

*Effective date:* July 7, 1988

*Amendment No.:* 151

*Facility Operating License No. DPR-49.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 21, 1987 (52 FR 39300) The licensee's November 13, 1987 submittal provided additional information which did not affect the description of the amendment requested on the staff's no significant hazards consideration analysis contained in the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of application for amendment:* December 2, 1986 and December 17, 1987

*Brief description of amendment:* The amendment modified paragraph 2.C(5) of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

*Date of issuance:* July 15, 1988
*Effective date:* July 15, 1988
*Amendment No.:* 152
*Facility Operating License No. DPR-49.* Amendment revised the license.

*Date of initial notice in* **Federal Register:** May 4, 1988 (53 FR 15913) The Commission's related evaluation of the amendment is contained in a letter to the Iowa Electric Light and Power Company dated July 15, 1988 and a Safeguards Evaluation Report dated July 15, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* April 29, 1988

*Brief description of amendment:* The amendment changed the Technical Specifications for the Standby Liquid Control System to reflect 10 CFR 50.62 Anticipated Transient Without Scram (ATWS) modifications.

*Date of issuance:* July 5, 1988
*Effective date:* July 5, 1988
*Amendment No.:* 123
*Facility Operating License No. DPR-46.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 1, 1988 (53 FR 20043) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1988

*No siginificant hazards consideration comments received:* No.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Niagara Mohawk Power Corporation, Docket Nos. 50-220 and 50-410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Scriba, New York**

*Date of application for amendment:* December 2, 1986, November 25, 1987 and December 29, 1987.

*Brief description of amendments:* The amendments modified paragraphs 2.D(4) and 2.D(5) of Facility Operating License No. DPR-63 and paragraph 2.D(5) of Facility Operating License No. NPF-69 to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

*Date of issuance:* July 5, 1988
*Effective date:* July 5, 1988
*Amendment Nos.:* 100 and 6
*Facility Operating License Nos. DPR-63 and NPF-69:* Amendments revised the licenses.

*Date of initial notice in* **Federal Register:** April 20, 1988 (53 FR 13017)[1]

The Commission's related evaluation of the amendments is contained in a letter to Niagara Mohawk Power Corporation dated July 5, 1988 and a Safeguards Evaluation Report dated July 5, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

[1] The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing that appeared in 53 FR 13017 contained an error in the License paragraphs to be revised for Facility Operating License DPR-63. The notice neglected to state that paragraph 2.D(5), as well as 2.D(4) would be superceded by the revised license condition. The NRC has not found it necessary to revoke its Consideration of Issuance as the error correctly states the proposed change.

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of application for amendment:* April 25, 1988

*Brief description of amendment:* The amendment revises Technical Specifications (TS) 3.4.4, "Pressurizer," for Millstone 2 requiring that the 130KW of operable pressurizer heaters be, "...capable of being supplied by emergency power."

*Date of issuance:* July 7, 1988
*Effective date:* July 7, 1988
*Amendment No.:* 130
*Facility Operating License No. DPR-65.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 18, 1988 (53 FR 17790) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

**Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon**

*Date of application for amendment:* March 18, 1988

*Brief description of amendment:* The amendment revises Technical Specification Section 6.3.1., "Facility Staff Qualifications" by retitling the position of Radiation Protection Supervisor to Radiation Protection Branch Manager.

*Date of issuance:* July 7, 1988
*Effective date:* July 7, 1988
*Amendment No.:* 146
*Facilities Operating License No. NPF-1:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 1, 1988 (53 FR 20044) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

*NRC Project Director:* George W. Knighton

**Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon**

*Date of application for amendment:* July 29, 1985

*Brief description of amendment:* The amendment revises the surveillance requirements for Trojan Technical Specification Section 3/4.6.1.1, "Containment Integrity."

*Date of issuance:* July 11, 1988

*Effective date:* July 11, 1988

*Amendment No.:* 147

*Facilities Operating License No. NPF-1:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 9, 1986 (51 FR 12236). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

*NRC Project Director:* George W. Knighton

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of application for amendments:* February 24, 1988 (TS 238)

*Brief description of amendments:* The amendments modify Technical Specification Surveillance Requirements 4.7.E.1, 4.7.E.3, 4.7.F.1, 4.9.A.2.c, and 4.11.A.5 by replacing the words "not to exceed" with the words "at least once every."

*Date of issuance:* July 5, 1988

*Effective date:* July 5, 1988, and shall be implemented within 60 days.

*Amendments Nos.:* 150, 146, 121

*Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 20, 1988 (53 FR 13018) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 5, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* April 17, 1987 and March 1, 1988 (TS 87-12 and 87-44).

*Brief description of amendments:* The amendments revise paragraphs of Section 6, Administrative Controls, of the Sequoyah Units l and 2 Technical Specifications (TS). The revisions are primarily 1) to reflect site organizational and title changes and (2) to revise the list of primary coolant sources outside containment in the section. The request to amend Section 6.2.2 and TS Figures 6.2-1 and 6.2.2 in TS 87-44 application dated March 1, 1988 were withdrawn in the licensee's letter dated June 13, 1988. The revision to the list of primary coolant sources outside containment applies only to the Unit 1 TS.

*Date of issuance:* June 30, 1988

*Effective date:* June 30, 1988

*Amendment Nos.:* 74, 66

*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 9, 1987 (52 FR 34019) and April 20, 1988 (53 FR 13024), respectively. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Tennessee Valley Authority, Docket No. 50-327 Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee**

*Date of application for amendments:* May 15, 1987

*Brief description of amendments:* The amendment to the Sequoyah Nuclear Plant (SQN) Unit 1 Operating License deletes the requirements of Section 2.C.(10), "Water Chemistry Control Program," of the SQN Unit 1 Facility Operating License.

*Date of issuance:* July 6, 1988

*Effective date:* July 6, 1988

*Amendment No.:* 75

*Facility Operating Licenses No. DPR-77:* Amendment revised the Operating License.

*Date of initial notice in* **Federal Register:** September 23, 1987 (52 FR 35808) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 6, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* February 3, 1987 (TS 79)

*Brief description of amendments:* The amendments modify Technical Specification Table 3.3-9, Remote Shutdown Monitoring Instrumentation, to reflect changes in the measurement range of the pressurizer level, the measurement range of the auxiliary feedwater flow rate, and the required number of minimum channels operable for the reactor coolant temperature-hot leg and the auxiliary feedwater flow rate.

*Date of issuance:* July 12, 1988

*Effective date:* July 12, 1988

*Amendment Nos.:* 76, 67

*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 12, 1987 (52 FR 7697) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1988

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the

area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By August 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of application for amendment:* July 12, 1988

*Brief description of amendment:* The amendment increased the limit for drywell average air temperature in Technical Specification 3.6.2.6 from 135° F to 145° F and revised the related Bases.

*Date of issuance:* July 14, 1988

*Effective date:* July 14, 1988

*Amendment No.* 14

*Facility Operating License No. NPF-58.* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Ohio, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 14, 1988.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

*NRC Project Director:* Kenneth E. Perkins.

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of application for amendments:* June 17, 1988 as supplemented June 23, and June 24, 1988 (TS 246)

*Brief description of amendments:* The amendments delete the organization charts from the administrative controls section of the technical specifications in accordance with Generic Letter 88-06. In addition, the title of the Manager of Nuclear Power is being changed to Senior Vice President, Nuclear Power.

*Date of issuance:* June 30, 1988

*Effective date:* June 30, 1988

*Amendments Nos.:* 149, 145, 120

*Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:* Amendments revised the Technical Specifications.

*Public comments requested regarding proposed no significant hazards consideration:* Yes. A Legal Notice requesting public comments by June 30, 1988 was published in the Decatur Daily and the Huntsville Times on June 24, 1988.

*Comments received:* No The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 30, 1988. The licensee's supplementary letters dated June 23 and June 24, 1988 clarified the licensee's application dated June 17, 1988 and did not affect the substance of the proposed amendments as noticed in the newspapers listed above or the proposed no significant hazards consideration determination.

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Assistant Director:* Suzanne Black

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* June 13, 1988 as supplemented by letters dated June 22 and 24, 1988 (TS 88-12)

*Brief description of amendments:* This amendment revises paragraphs and figures in Section 6, Administrative Controls, of the Sequoyah Units 1 and 2 Technical Specifications (TS). The revisions are (1) to delete Figures 6.2-1 and 6.2-2, the organization charts in the TS, and references to these figures in accordance with Generic Letter 88-06, (2) to change the title of Manager of Nuclear Power to Senior Vice President, Nuclear Power and (3) to add references to the "unit" organization in Section 6.2.2.

*Date of issuance:* June 30, 1988

*Effective date:* June 30, 1988

*Amendment Nos.:* 74, 66

*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Public Comments Requested Regarding Proposed No Significant Hazards Consideration:* Yes. On June 29, 1988, Mr. G. Richard Howard of Chattanooga, Tennessee requested a clarification on the proposed amendments as to where the licensee's organization charts would appear if they are deleted from Section 6 of the TS. Specification 6.2.1.a requires that the organization charts will be in the Sequoyah Units 1 and 2 Final Safety Analysis Report. This is discussed further in the staff's Safety Evaluation on these amendments. A legal notice requesting public comments by June 30, 1988 was published in the Chattanooga News-Free Press and the Chattanooga Times on June 24, 1988. The State of Tennessee was consulted on June 30, 1988 and had no comments. The Commission's related evaluation of the amendment and final no significant hazards consideration are contained in a Safety Evaluation dated: June 30, 1988. The licensee's supplementary letters dated June 22 and June 24, 1988 clarified the licensee's application dated June 13, 1988 and did not affect the substance of the proposed amendments as noticed in the Chattanooga newspapers listed above or the proposed no significant hazards consideration determination.

*Attorney for Licensee:* General Counsel, Tennessee Valley Authority, 400 Summit Hill Drive, E11 B33, Knoxville, Tennesee 37902

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 20th day of July, 1988.

For the Nuclear Regulatory Commission

**Lester S. Rubenstein,**

*Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation*

[Doc. 88-16766 Filed 7-26-88; 8:45 am]

BILLING CODE 7590-01-D

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Columbia River Basin Fish and Wildlife Program; Proposed Amendments

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of proposed amendments to the Columbia River Basin Fish and Wildlife Program, hearings and opportunity to comment (Umatilla Flow Enhancement).

**SUMMARY:** On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.)* the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been

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amended from time to time since then. Major revisions of the program were adopted in 1984 and 1987. In June 1988, the Council held consultations with interested parties concerning a Columbia Basin Fish and Wildlife Authority proposal for the Bonneville Power Administration (Bonneville) to fund the power cost of operating non-federal pumps for a five-year period, to augment flows in the Umatilla River in Oregon. The authority also proposes that Bonneville pay $23,000 for capital improvements to those non-federal pumps. On July 14, 1988, the Council voted to initiate rulemaking pursuant to section 4(d)(1) of the Northwest Power Act to consider this measure. This notice contains a brief description of the background of the issues, explains how to obtain a full copy of possible amendments, and how to participate in the amendment process.

Public Comment: The Council will establish a schedule for public comment on this proposed rule later this summer. Notice will be given in accordance with applicable law and the Council's usual notice procedures. All written comments must be received in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204 by the date to be established by the Council for the close of written comment. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address, and should be clearly marked "Umatilla flow Enhancement Comments."

After the close of written comment, the Council may hold consultations with interested parties to clarify points made in written comment. Consultations may be held up to the time of the Council's final action in this rulemaking.

Hearings: Public hearings will be held later this summer, in Idaho, Montana, Oregon, and Washington, on a schedule that will be announced through the Council's usual notice procedures. If you wish to obtain a schedule of the hearings, or more information about this process, contact the Council's Public Involvement Division, 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis in the Public Involvement Division. Requests to reserve a time period for oral comments must be received no later than two work days before the hearing.

Final Action: The Council expects to take final action on the proposed amendments at its November 1988 meeting. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

**SUPPLEMENTARY INFORMATION:**

Anadromous fish runs in the Umatilla Basin have declined sharply due primarily to large irrigation withdrawals from the Umatilla, and in part to mortalities at dams on the mainstem of the Columbia River. A group of local irrigators, Oregon fish and wildlife and water agencies, tribal representatives, and the Bureau of Reclamation have developed a plan for cooperative solutions to these problems.

At the request of these cooperating parties, the Council has incorporated a provision in its fish and wildlife program that calls on the Bonneville Power Administration to fund anadromous fish passage measures, habitat improvements, and hatcheries. To augment low flows in the Umatilla River, in 1985 and 1986 the Bureau of Reclamation provided funding to operate non-federal irrigation pumps to transfer water from the Columbia River to Umatilla Basin irrigators; in turn, the irrigators reduced their diversions from the Umatilla River so that more water would be available for anadromous fish. For the longer term, congressional funding was sought to install Bureau of Reclamation pumps.

In 1986, the Umatilla group sought the Council's approval for Bonneville to supply power or pay the cost of power for federally-funded Bureau of Reclamation pumps, and in 1987 the Council amended the Fish and Wildlife Program (section 703(a)(17)) accordingly.

Pending congressional approval of funds for the Bureau pumps, the Bureau of Reclamation (in 1985 and 1986) and Bonneville (in 1987 and spring 1988) provided funding for interim pumping by non-federal pumps.

Congress has not yet authorized funding for the Bureau pumps. The Columbia Basin Fish and Wildlife Authority has asked Bonneville to fund the power cost of operating non-federal pumps for a five-year period, and to pay for $23,000 in capital improvements to those pumps. There is disagreement over the advisability of Bonneville funding of this interim pumping proposal. In this amendment proceeding, the Council will consider the pumping proposal, and alternatives to it.

For a Full Copy of Possible Amendments, or Further Information: Contact Judy Allender at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 88–16867 Filed 7–26–88; 8:45 am]

BILLING CODE 0000–00–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–25926; File No. SR–NYSE–88–18]**

### Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Establishing Fees for Hardware Installation and Maintenance for its Super Dot PC Products

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 23, 1988, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange has established fees for hardware installation and maintenance for its Super DOT PC Products that will become effective immediately on filing with the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange has a service known as Super DOT PC Products which consists of four subsystems. These are: (i) "PC DOT Single Terminal"; (ii) "PC DOT

Fallback/PC Multi-Terminal"; (iii) "List Processing"; and (iv) "Electronic Mail". In addition, the Exchange provides a service known as Booth Support System.

Briefly, "PC DOT Single Terminal" permits a member to connect into Super DOT with its own PC terminal to send orders to, and receive execution reports from, the Trading Floor of the Exchange. When not used for this purpose, it can be used for other, internal uses. "PC DOT Fallback/PC Multi-Terminal" permits a member to connect up to eight terminals per PC Super DOT to send orders to, and receive execution reports from, the Trading Floor of the Exchange or use it as a back-up system in the event that their own, dedicated system should fail. "List Processing" enables firms to pre-load and maintain up to 200 lists of stocks of up to 500 market orders per list and direct them to the Trading Floor through Super DOT. "Electronic Mail" enables a firm to send service requests to the Exchange's Dot Service Desk via their PC rather than by telephone. The Super DOT order processing system can also be used to route orders to a member firm's booth to be handled by the firm's floor broker to report orders back to the firm.

The Exchange developed these subsystems and offered them to its membership as a "software" package only, charging what it deemed to be appropriate rates. These software charges are still in force. (*See* SR–NYSE–87–35). The Exchange's intent was, and still is, to provide the means whereby its members can connect to Super DOT using PC terminals which they already own or can purchase from independent vendors of such equipment.

Since that time, a number of the Exchange's member firm customers have asked the Exchange if it could expand its service by providing the necessary hardware, arranging for its installation, and then provide on-going maintenance of the hardware. Often, firms find that they must purchase the PC terminal from one vendor, its ancillary equipmernt from another, and arrange for the installation of private transmission lines from a third. Then, after the initial guarantee or warranty expires on the equipment, the firms must locate someone to maintain it for them. These problems can often lead to considerable start-up delays, and prolonged down-time when failures occur.

The Exchange proposes to offer the hardware and ancillary equipment necessary to permit firms to connect to the Super DOT system and utilize the Exchange's PC Products software. Of course, any member firm customer will still be able to purchase the software package to use with its own system without also purchasing a hardware system. Full-time maintenance will be available on an hourly charge basis. As part of the installation, the exchange will provide testing and training support.

The exchange intends to provide the equipment necessary for a member firm to subscribe to the Booth Support System.[1] The software which supports this system is not available as a separate package. The hardware package will be available as two options. The first, called Plan A, contains a one-time charge for equipment in the first year, with recurring annual software and hardware maintenance fees. The second option, called Plan B, spreads equipment charges over a three-year period with recurring annual software and hardware maintenance changes.

Finally, the Exchange has proposed charges for the "Electronic Mail" system. The charges are for hardware installation and hardware maintenance only—there is no software charge to customers who have already purchased the "PC DOT Single Terminal," the "PC DOT Fallback/PC Multiple-Terminal" or the "List Processing" system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission finds that the proposal establishing Super DOT PC Products hardware, hardware installations and maintenance fees is reasonable and consistent with section 6(b)(4) of the Act in that the new optional service should facilitate participation in NYSE's Super DOT PC subsystems as members subscribing to the service will be able to purchase both the software and hardware packages from the NYSE, rather than one or more independent vendors, and avoid the problems typically associated with acquiring hardware services from multiple providers.

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by August 17, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: July 20, 1988.

Jonathan Katz,

*Secretary.*

[FR Doc. 88–16906 Filed 7–26–88; 8:45 am]

BILLING CODE 8010–01–M

[1] The Booth Support system provides an alternative point of delivery for orders routed to the Exchange trading floor.

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**[Release No. 34–25927; File No. SR–PSE–88–11]**

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Changes in PSE Rates and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1988, the Pacific Stock Exchange Incorporated ("PSE" or

"Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange, pursuant to Rule 19b–4 of the Act, is submitting this rule filing for the purpose of changing the existing fee structure of the PSE.

Three member committees, chaired by PSE Governors, were established for the purpose of examining the cost and revenue structure of PSE operations in Options, Equities, and Data Processing. The proposed changes to the existing fee structure were recommended by these committees. Changes are designed to cover costs of PSE operations and to provide for technological needs of the future, including the modernization of the San Francisco equity trading floor. In general, changes in the fee structure are intended to better reflect the costs to the PSE of providing services to its members, and are designed to improve its competitiveness with other exchanges.

The proposed changes will be imposed on PSE members only, and will not impact the public.[1]

*Options Operations*

—Market Makers will be charged a $600 per month fee.
—Floor booth monthly fees will be increased from $150 to $250 for retail houses; $300 for clearing firms; and $400 for stock execution firms. In addition, a premium of $250 will be charged for aisle booths.
—Badge Fees will be increased from $10 to $25 for initial issuance. Maintenance monthly fees will be increased from $15 to $25 for booth clerks, and a charge of $50 per month will be imposed on stock firm clerks, hard badge managers and all others.
—Trade Comparison Charges will increase from $.25 to $.30 per trade. There will be a Data Entry Fee of $.02 per contract. Daily and monthly trade reports will be charged at $50 per month, plus $.005 per contract to a maximum of $500.
—Floor brokers will be charged $.02 per contract side.
—There will be a stock execution charge of $.001 (1/10 cent) per share. Block trades of 50,000 or more shares will be capped at $50. PSE trades are exempt.
—The following charges are also implemented: Market Maker Give-Up Charge of $.075 per contract; Use Extracts at $.005 per trade plus development and production costs; a Market Maker Ticket charge to clearing firms based on contract volume.
—The fee for General Access Phones will be $100 per month per firm.
—Charges for PSE Constitution & Rules (in paperback) will be $10 for members and $20 for non-members.

*Equities Operations*

—Membership Fees—The flat monthly fee of $250 is currently charged to specialists only. This fee will be replaced by a Floor Privilege Fee of $165 per month charged to registered floor members and registered clerks.
—Signature Guarantee Program—It is proposed that the annual maintenance fee be increased from $50 to $250; that the charge for the first addition or deletion be increased from $50 to $100; and that the charges for each subsequent change be increased from $25 to $50.
—Facsimile—A charge of $1,000 per facsimile stamp is proposed.
—There will also be a $500 monthly charge to specialists for Technology and equities development projects.

*Miscellaneous Member Services*

Member services fees would be increased as follows: Application Fee would increase from $250 to $350, Lease Fees would increase from $300 to $350, Joint Account Application Fee would increase from $250 to $350, Intra-firm and Inter-firm Transfer Fee would each be increased from $200 to $250, and a charge of $200 is proposed for the seller of a seat. Fees for the Study Package/Test Fee would be increased from $30 to $100, $50 of which would go towards the initial membership fee.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Changes*

In March, 1988, PSE established three committees to examine the cost and revenue structure of PSE operations.

Options Operations

The Options Committee was composed of three Options Governors, two Options members, and the Chief Financial Officer of the PSE. This Committee had extensive input from the floor members. The changes in fee structure proposed by this Committee are designed to provide revenues that would cover the fixed costs of operating the Options trading floor. The proposed changes in the fee schedule are:

Booth Fees—Currently, PSE charges $150 per month per booth. The proposal calls for monthly fees of $250 for retail houses, $300 for clearing firms, and $400 for stock execution firms. In addition to this base charge, a premium of $250 would be charged for prime location aisle booths.

Badge Fees—The current issuance fee is $10 per badge. The current monthly maintenance charge is $15 per badge for all member firm employees. The proposed badge fees are: issuance fee—$25; monthly maintenance charge for booth clerk—$25; stock firm employees, hard badge managers, and all others—$50.

General Access Phones—General access phones on the trading floor allow for expeditious reporting of execution and the initiation of stock orders, through a speed-dialing system. The proposed charge is $100 per month for access to the system.

Market Maker Ticket Charge—The proposed charge is a pass-through of market maker ticket costs to the clearing firms. PSE would pro-rate its costs based on volume.[2] The proposed ticket charge will allow PSE to recover actual ticket costs and discourage waste.

Trade Comparison Charge—A study of the Options trade comparison function concluded that the current pricing structure does not cover the cost of operations, nor the value of the on-line comparison services. The proposal

[1] The Exchange stated in its filing that the proposed fees will eliminate a previously approved interim monthly fee on members that the Exchange had adopted in order to meet its operational, technology, and facilities needs (File No. SR–PSE–88–6). *See* Securities Exchange Act Release No. 25617, April 28, 1988, 53 FR 15761.

[2] As an illustration of how this charge would be applied, for June 1988 the PSE was charged approximately $5500 for approximately 50,000 tickets used. This cost would be prorated among the 251 Options market makers based on the percent contribution of each market maker to the PSE's total monthly Options volume.

calls for an increase from $.25 to $.30 per trade.

Data Entry Fee—PSE is unique in that it provides an on-line data entry service as an integral part of its trade comparison system. The proposed data entry fee of $.02 per contract is comparable to what members at other exchanges pay to third party service organizations.

Floor Broker Fee—The PSE proposes to implement a $.02 per contract side charge on all floor broker executions, where the executing broker is not an employee or a member of the firm originating the order. Floor brokers are non-retail operations who execute transactions on behalf of others.

Market Maker Give-up Charge—A charge of $.075 per contract on market maker business that is not effected by the market maker in person is proposed.

Monthly Report Charge—PSE routinely produces intra-day, daily and monthly trade reports for member firms and individuals. Currently, only independent brokers are charged for reports ($100/month). It is proposed that all recipients of these reports be charged $50 per month, plus $.005 per contract to a maximum of $500.

Charge for User Extracts—Over the past few years, PSE has developed customized extracts for clearing member firms. Recipients of this service are given tapes or diskettes containing the day's trading information in a format which is compatible with their computers. PSE proposed to bill clearing member organizations for the data processing costs associated with the development of specialized extracts. In addition, the proposal calls for a monthly charge of $.005 per trade as it appears on the extract.

Stock Execution Fee—A charge on stock executions of $.001 (1/10 cent) per share is proposed. The charge for block trades of 50,000 or more shares would be capped at $50. Trades executed on the PSE will be exempt from this charge.

Market Maker Fee—A fee of $600 per month on all market makers is proposed to cover the costs of supporting the market maker trading system. New market makers without trading experience would be exempt from this fee for their first six months of membership. This fee would be reviewed on a periodic basis.

Equities Operations

The Equities Committee was composed of three Governors, eight specialists, five floor brokers, and one allied member. The increases proposed by this Committee are designed to reduce the current operating deficit of the equities floors, in part by allocating operating costs based on usage. Changes in the following are proposed:

Membership Fees—The flat monthly fee of $250 is currently charged to specialists only. This fee will be replaced by a Floor Privilege Fee of $165 per month charged to register floor members and registered clerks. This fee of $165 is intended to cover a variety of costs related to the ITS system, Quotron costs relating to the Autoquote system, and the cost of trading tickets and forms. This fee will be charged to those registered floor members and registered clerks physically present on the floor.

Signature Guarantee Program—Under this program, PSE circulates signatures of member firms' employees to transfer agents and guarantees that the signatures are genuine. The program had been administered by Pacific Clearing Corporation ("PCC") and the current rates appear in the PCC Fee Schedule. Since the PSE currently administers the program, the schedule of rates will now appear in the PSE Equities Fee Schedule. It is proposed that the annual maintenance fee be increased from $50 to $250; that the charge for the first addition or deletion be increased from $50 to $100, and that the charge for such subsequent change be increased from $25 to $50. The proposed increases are intended to cover the increased costs of administering the program.

Facsimile Stamps—Facsimile stamps are mechanically reproduced signatures. This service is provided by the PSE as a convenience to members. The service enables participants to use a PSE approved stamp on stock transfers instead of physically signing each tranfer. Currently, participants in the Signature Guarantee Program are permitted to participate in this service. The charge of $1,000 for each facsimile stamp is intended to cover the costs of approving the stamp and monitoring its use.

Technolgy Fee—A fee of $500 per month will be charged to specialists. This fee is to be applied to equities development projects. This fee will be reviewed annually.

Miscellaneous Member Charges

In order to cover the materials and processing costs it is proposed to change the member fees as follows:

—Application fee from $250 to $350
—Joint Account Application fee from $250 to $350
—Inter-Firm and Intra-Firm transfer fee from $200 to $250
—Seat Sale transfer fee $200
—New lease fees from $300 to $350
—Study Package-Test fee from $30 to $100 ($50 would be applied to membership fee)
—Charges for the paperback PSE Constitution and Rules would be $10 per member, and $20 per non-member.

PSE has adopted the proposed rule changes pursuant to Section 6(b)(4) of the Act, which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and Section 6(b)(5) that requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PSE does not believe that the proposed rule changes impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The proposed rule changes are the result of recommendations of member committees which were chaired by PSE Governors and members. These committees had extensive input from the membership community—no written comments were received.

**III. Commission Findings and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data views and arguments concerning the foregoing. Persons making written submissions. should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-11 and should be submitted by August 17, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-16907 Filed 7-26-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-24684]**

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

July 21, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 15, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**System Energy Resources, Inc. 70-7467**

System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225-3070, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application pursuant to Sections 9(a) and 10 of the Act.

By order of the Commission dated February 19, 1988 (HCAR No. 24583) ("February 1988 Order"), SERI was authorized to enter into a Restated and Amended Fuel Lease, dated as of February 29, 1988 ("Fuel Lease"), with Port Gibson Energy, Inc., a Delaware corporation, ("Port Gibson") under which SERI leases from Port Gibson the nuclear fuel, including facilities incident to its use, used to satisfy a portion of the fuel requirements of Unit No. 1 at SERI's Grand Gulf Nuclear Generating Station. The Fuel Lease is currently scheduled to terminate on August 31, 1988 ("Termination Date").

Pursuant to the terms of the February 1988 Order, SERI consented to Port Gibson entering into a Restated and Amended Credit Agreement, dated as of February 29, 1988 ("Credit Agreement") with Union Bank of Switzerland ("UBS"), certain other banks ("Banks"), and UBS, as agent ("Agent") for the Banks under which Port Gibson financed its obligations under the Fuel Lease. The Credit Agreement also is scheduled to terminate on August 31, 1988.

In order to extend the Termination Date, Port Gibson, UBS, the Banks and the Agent proposed to enter into Amendment No. 1 to Credit Agreement") ("American No. 1 to Credit Agreement") which would extend the Termination Date to February 28, 1989. SERI proposes to enter into Amendment No. 1 to Fuel Lease with Port Gibson in order to extend the term of the leasing arrangement with Port Gibson to February 28, 1989 and acknowledge notice and consent to Amendment No. 1 to Credit Agreement, which consent is required under the Fuel Lease.

**Middle South Utilities, Inc. (70-7468)**

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a post-effective amendment to its declaration pursuant to section 12(b) of the Act and rule 45 thereunder.

By order of the Commission dated February 19, 1988 (HCAR No. 24583), Middle South was authorized to execute a Restated and Amended Guaranty, dated as February 29, 1988, in favor of Port Gibson Energy, Inc., a Delaware Corporation ("Port Gibson") pursuant to which Middle South unconditionally guaranteed the performance of the obligations of its subsidiary, System Energy Resources, Inc. ("SERI"), with respect to a lease of nuclear fuel under the terms of a Restated and Amended Fuel Lease ("Fuel Lease") dated as of February 29, 1988, between SERI and Port Gibson.

Middle South has been advised that Port Gibson proposes to enter into a new Credit Agreement ("Amendment No. 1 to Credit Agreement"), with Union Bank of Switzerland, and certain other banks, and UBS as Agent for the Banks. Upon execution and delivery of the Amendment No. 1 to Credit Agreement, Port Gibson is willing to enter into Amendment No. 1 to Fuel Lease ("Amendment No. 1 to Fuel Lease") in order to extend the term of the leasing arrangement of Port Gibson to coincide with the expiration of the Amendment No. 1 of Credit Agreement which is February 28, 1989. Except for the change in the expiration date, Amendment No. 1 to Credit Agreement and Amendment No. 1 to Fuel Lease will not change the terms of the respective agreements.

Middle South, as guarantor of SERI's obligations under the Fuel Lease, proposes to acknowledge notice and consent to Amendment No. 1 of Credit Agreement and Amendment No. 1 of Fuel Lease.

**Arkansas Power & Light Company (70-7538)**

Arkansas Power & Light Company ("AP&L"), 425 West Capital, 40th Floor, Little Rock, Arkansas 72201, and electric-utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company has filed a declaration pursuant to sections 6(a)(2), 7 and 12(e) of the Act and Rules 62 and 65 thereunder.

AP&L requests authority to amend and restate the Agreement of Consolidation or Merger constituting its articles of incorporation ("Charter"). The proposed Amended and Restated Articles of Incorporation ("New Charter") will: (1) Consolidate numerous prior amendment to AP&L's Charter; (2) adopt the new Arkansas Business Corporation Act ("New Act") to govern the affairs of AP&L which includes provisions with respect to limitation of director liability, indemnification of officers and directors and director conflict of interest; (3) effect certain changes in the provisions with respect to voting rights of common and preferred stock; and (4) effect certain other changes and clarifications to the Charter.

In addition, AP&L seeks to create a new class of preferred stock with a par value of $0.01 per share ("Class A Preferred"), which will be *pari passu* with AP&L's outstanding $100 Preferred Stock and $25 Preferred Stock. In

conjunction with the creation of the Class A Preferred, the total number of authorized shares will be increased by 15 million shares.

The proposals to adopt the New Charter and to authorize a new class of preferred stock are not contingent on one another and will be voted on separately. AP&L proposes to solicit proxies for its October 19, 1988 Special Meeting of Shareholders in connection with these proposed amendments to its Charter.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR doc. 88-16908 Filed 7-26-88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[License No. 01/01-0326]**

### Surrender of License; Granite State Capital, Inc.

Notice is hereby given that Granite State Capital, Inc., 7 Islington Street, P.O. Box 6564, Portsmouth, New Hampshire 03801 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Granite State Capital, Inc. was licensed by the Small Business Administration on December 29, 1983

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on July 18, 1988 and accordingly, all rights, privileges, and franchises derived there from have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Company)

Dated: July 21, 1988.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 88-16947 Filed 7-26-88; 8:45 am]

BILLING CODE 8025-01-M

**[Application No. 02/02-5520]**

### Esquire Capital Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (§ 107.102 (1988)) by Esquire Capital Corporation, 17 Battery Place, Suite 1613, New York, New York 10004, for a license to operate a small business investment company (SBIC) under the Small Business Investment Act of 1958, (the Act), as amended, (15 U.S.C. *et. seq.*)

The proposed officers, directors and shareholders are:

| Name | Title | Percentage of Ownership |
|---|---|---|
| Wen-Chau Chiu, 17 Battery Place, Suite 1613, New York, NY 10004. | President | 9.8 |
| Chung-Chi Chou, 17 Battery Place, Suite 1613, New York, NY 10004. | Secretary/ Treasury. | 2.9 |
| Wu-Hsing Liao, 17 Battery Place, Suite 1613, New York, NY 10004. | Director | |
| Yi-Feng Chiang, 17 Battery Place, Suite 1613, New York, NY. | Director | 11.7 |
| Yen-Tse Lin, 17 Battery Place, Suite 1613, New York, NY. | Director | 6.8 |
| Marquis International, Inc., 103A Pidgeon Hill Road, Huntington, NY 11746. | Shareholder | 39.2 |
| Ching-Tse Lee, 17 Battery Place, Suite 1613, New York, NY 10004. | Shareholder | 9.8 |

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

As a section 301(d) Licensee it will provide assistance solely to Small Business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social and or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW, Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Date: July 21, 1988.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 88-16915 Filed 7-26-88; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

**[Public Notice 1071]**

### Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its January-July 1988 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article III (c) 5 of the guidelines published in the **Federal Register** on March 23, 1979.

Date: July 18, 1988.

**Frank R. Provyn,**

*Director, Office of International Conferences.*

**United States Delegation to the 20th Session of the Subcommittee on Standards of Training and Watchkeeping, International Maritime Organization (IMO); London, January 11-15, 1988**

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**United States Delegation to the Committee on Gas—34th Session, Economic Commission for Europe (ECE); Geneva, January 18–21, 1988**

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**United States Delegation to the Meeting on Mineral Resources, Antarctica; Wellington, January 18–29, 1988**

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**United States Delegation to the United Nations Commission on International Trade Law (UNCITRAL), Working Gruop on International Contract Practices on the Liability of Operators of Transport Terminals; New York, January 18–29, 1988**

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**United States Delegation to the 34th Session of the Subcommittee on Radiocommunications, International Maritime Organization (IMO); London, January 25–29, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVIII (Digital Networks, Including ISDN), Experts Meeting on Broadband Interface Aspects; Seoul, South Korea, January 25–February 5, 1988**

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**United States Delegation to the Ninth Session of the Commission for Basic Systems, World Meteorological Organization (WMO); Geneva, January 25–February 5, 1988**

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**United States Delegation to the 44th Session of the UN Human Rights Commission (UNHRC), Economic and Social Council (ECOSOC); Geneva, February 1–March 11, 1988**

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**United States Delegation to the International Telecommunication Union, International Telegraph and Telephone Consultative Committee Meeting of the World Plan Committee on the Development of Telecommunication Networks; Lisbon, Portugal, February 3–10, 1988**

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**United States Delegation to the 34th Session of the Subcommittee on Safety of Navigation, International Maritime Organization (IMO); London, February 8–12, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group VIII; Geneva, Switzerland, February 8–19, 1988**

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**United States Delegation to the International Conference on Air Law, International Civil Aviation Organization (ICAO); Montreal, Canada, February 9–24–1988**

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**United States Delegation to the Eighth ASEAN—United States Dialogue; Washington, February 10–11, 1988**

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**United States Delegation to the International Telecommunication Union, International Telegraph and Telephone Consultative Committee, Study Group II (Operation of Telephone Network and ISDN); Geneva, Switzerland, February 15–23, 1988**

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**United States Delegation to the 40th Session of the Subcommittee on the Carriage of Dangerous Goods, International Maritime Organization (IMO); London, February 22–26, 1988**

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**United States Delegation to the Meeting of the Chemicals Group and Management Committee, Organization for Economic Cooperation and Development (OECD); Paris, March 2–4, 1988**

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**United States Delegation to the 31st Session of the Subcommittee on Ship Design and Equipment, International Maritime Organization (IMO); London, March 7–11, 1988**

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**United States Delegation to the 21st Session of the Executive Council of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO/IOC); Paris, France, March 7–15, 1988**

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**United States Delegation to the Working Party on Facilitation of International Trade Procedures, Economic Commission for Europe (ECE); Geneva, March 14–18, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group VII, Data Communications Network; Geneva, Switzerland, March 21–31, 1988**

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**United States, Delegation to the Commission on Human Settlements, 11th Session Economic and Social Council (ECOSOC); New Delhi, April 6–12, 1988**

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**United States Delegation to the 55th Session of the Maritime Safety Committee, International Maritime Organization (IMO); London, April 11–22, 1988**

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**United States Delegation to the United Nations Commission on International Trade Law (UNCITRAL), 21st Plenary Session; New York, April 11–22, 1988**

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**United States Delegation to the International Telecommunication Union (ITU) International Radio Consultative Committee (CCIR), Study Group 5, Propagation in Non-Ionized Media; Geneva, Switzerland, April 11–26, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 7, Standard Frequencies and Times-Signals; Geneva, Switzerland, April 12–19, 1988**

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**United States Delegation to the 22nd Session of the Legal and Administrative Committee and the 37th Session of the Consultative Committee of the Union for the Protection of New Plant Varieties (UPOV); Geneva, Switzerland, April 18–22, 1988**

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**United States Delegation to the Executive Board, United Nations Children's Fund (UNICEF); New York, New York, April 18–29, 1988**

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**United States Delegation to the Steel Committee Working Party, Organization for Economic Cooperation and Development (OECD); Paris, April 19–20, 1988**

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**United States Delegation to the Preliminary Intergovernmental Talks on Liability and Compensation for the Maritime Carriage of Hazardous and Noxious Substances and the 59th Session of the Legal Committee of the International Maritime Organization (IMO); London, April 20–29, 1988**

*Preliminary Intergovernmental Talks (April 20–22, 1988)*

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*59th Session of the Legal Committee, (April 25–29, 1988)*

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**United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 8, Mobile, Radiodetermination and Amateur Signals; Geneva, Switzerland, April 20–May 6, 1988**

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**United States Delegation to the Council and Committee Meetings, International Natural Rubber Organization (INRO); Kuala Lumpur, April 20–28, 1988**

*Committee on Administration, April 20–22, 1988*

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Charles B. Pettit
Managing Director, Firestone Singapore Private Ltd., Singapore
James N. Walsh
Director of Natural Rubber Purchases, Goodyear Tire and Rubber Company, Akron, Ohio

**United States Delegation to the Committee on Buffer Stock Operations, Committee on Statistics, and Committee on Other Measures, International Natural Rubber Organization (INRO); Kuala Lumpur, April 21–24, 1988**

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**United States Delegation to the International Coffee Organization Council (ICO); London, April 24–30, 1988**

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**United States Delegation to the Maritime Transport Committee, Organization for Economic Cooperation and Development (OECD); Paris, April 25–27, 1988**

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**United States Delegation to the World Intellectual Property Organization (WIPO), Committee of Experts on Measures Against Counterfeiting and Piracy; Geneva, Switzerland, April 25–28, 1988**

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**United States Delegation to the Organization of American States (OAS), Inter-American Telecommunications Conference (CITEL), the First Special Meeting and the XXth Meeting of the Permanent Executive Committee (COM/CITEL); Lima, Peru, April 25–29, 1988**

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**United States Delegation to the International Telecommunications Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVII (Data Transmission Over the Telephone Network); Geneva, Switzerland, April 25–29, 1988**

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**United States Delegation to the Standing Group on Long-Term Cooperation (SLT), Organization for Economic Cooperation and Development/International Energy Agency (OECD/IEA); Paris, April 26–27, 1988**

*Representative*

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**United States Delegation to the International Telecommunications Union (ITU), International Radio Consultative Committee (CCIR), Study Group 6, Propagation in Ionized Media; Geneva, Switzerland, April 27–May 10, 1988**

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**United States Delegation to the Forty-First World Health Assembly of the World Health Organization (WHO), Geneva, May 2–13, 1988**

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Under Secretary of Health and Human Services
The Honorable Robert E. Windom, M.D. (Deputy Chief Delegate)
Assistant Secretary for Health, Public Health Service, Department of Health and Human Services
The Honorable Joseph C. Petrone
Ambassador, United States Permanent Representative to the European Office of the United Nations and Other International Organizations at Geneva

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**United States Delegation to the Fourth Meeting of the Future Air Navigation Systems (FANS) Committee, International Civil Aviation Organization (ICAO), Montreal, Canada, May 2–20, 1988**

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**United States Delegation to the Meeting on Antarctic Resources, Antarctica; Wellington, New Zealand, May 2–June 2, 1988**

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**United States Delegation to the 29th Session of the Subcommittee on Containers and Cargoes, International Maritime Organization (IMO); London, May 9–13, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group 1 (Definition Operation and Quality of Service Aspects of Telegraph, Data Transmission and Telematic Services); Geneva, Switzerland, May 10–18, 1988**

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**United States Delegation to the Fourth Session, Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages, International Maritime Organization (IMO), United Nations Conference on Trade and Development (UNCTAD); London, May 16–20, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT); Study Group XI (ISDN and Telephone Network Switching and Signaling); Geneva, Switzerland, May 16–27, 1988**

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**United States Delegation to the 18th Session of the Subcommittee on Bulk Chemicals, International Maritime Organization (IMO); London, May 23–27, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), 2d Session of the Regional Administrative Radio Conference To Establish a Plan for the Broadcasting Service in the Band 1 605–1 705 KHZ in Region 2; Rio De Janeiro, May 23–June 9, 1988**

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**United States Delegation to the 40th Annual Meeting and Associated Meetings, International Whaling Commission (IWC); Auckland, May 24–June 3, 1988**

*Representative*

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United States Commissioner (designate) and Under Secretary of Commerce for Oceans and Atmosphere, Department of Commerce

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**United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group III (Tariff Principles, Including Accounting); Geneva, Switzerland, May 30–June 7, 1988**

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**United States Delegation to the 40th Session of the Executive Council, World Meteorological Organization (WMO); Geneva, June 6–16, 1988**

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**United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVIII (Digital Networks, Including ISDN); Geneva, Switzerland, June 6–17, 1988**

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**United States Delegation to the Fifth Annual Meeting of the Council of the North Atlantic Salmon Conservation Organization (NASCO); Reykjavik Iceland, June 13–17, 1988**

*Commissioners*

The Honorable Allen E. Peterson, Jr.
Director, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmosphere Administration, Department of Commerce
The Honorable Richard A. Buck
Chairman, Restoration of Atlantic Salmon in America, Inc., Savannah, Georgia
The Honorable Frank E. Carlton
Vice President, National Coalition for Marine Conservation, Inc., Savannah, Georgia

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*Advisers*

Vaughn C. Anthony
Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Howard Larson
United States Fish and Wildlife Service, Department of the Interior
H. Stetson Tinkham
Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

*Private Sector Advisers*

William J. Brennan
Commissioner, Department of Marine Resources, Augusta, Maine
Davis F. Eagan
Chairman, Connecticut River Atlantic Salmon Commission, New Haven, Connecticut
Robert A. Jones
Chairman, Atlantic Salmon Management Plan Team, New England Fishery Management Council, Danvers, Massachusetts

**United States Delegation to the 20th Session of the Subcommittee on Lifesaving Search and Rescue (LSR), International Maritime Organization (IMO); London, June 13–17, 1988**

*Representative*

Robert L. Markle, Jr.
Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

*Alternate Representative*

Samuel E. Wehr
Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

*Advisers*

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Dan E. Lemon
Search and Rescue Division, Office of Operations, United States Coast Guard, Department of Transportation

*Private Sector Advisers*

Margaret M. McMillan
President, McMillan Offshore Survival Technology, Lafayette, Louisiana
James Karl Nelson, Jr.
Assistant Professor, Texas A&M University, College Station, Texas

**United States Delegation to the United Nations Educational, Scientific, and Cultural Organization (UNESCO)/World Intellectual Property Organization (WIPO), Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works; Geneva, Switzerland, June 27–July 1, 1988**

*Representative*

Ralph Oman
Register of Copyrights, Copyright Office, Library of Congress

*Alternate Representative*

Lewis Flacks
Policy Planning Adviser, Copyright Office, Library of Congress

*Adviser*

Richard Owen
Attorney-Adviser, Patent and

Trademark Office, Department of Commerce

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Vice-President, Motion Picture Export Association of America, New York, New York
John Baumgarten
Proskauer, Rose, Goetz, and Mendelsohn, Washington, DC
Morton David Goldberg
Schwab, Goldberg, Price, and Dannay, New York, New York
Eric Smith
Counsel, Intellectual Property Alliance, Washington, DC

**United States Delegation to the International Maritime Organization (IMO), 33d Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety; London, July 4–8, 1988**

*Representative*

John S. Spencer
Chief, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

*Alternate Representative*

H. P. Cojeen
Assistant Chief, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

*Advisers*

Glenn W. Anderson, Lieutenant Commander
Chief, Stability Section, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Randall Gilbert, Lieutenant
Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

*Private Sector Adviser*

Robert D. Tagg
Herbert Engineering Corporation, San Francisco, California

[FR Doc. 88–16855 Filed 7–26–88; 8:45 am]
BILLING CODE 4710–15–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Travis and Williamson Counties, TX

**AGENCY:** Federal Highway Administration (FHWA), DOT.
**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Travis and Williamson Counties, Texas.

**FOR FURTHER INFORMATION CONTACT:** Gamaliel E. Olvera, District Engineer, Federal Highway Administration, 826 Federal Office Building, Austin, Texas 78701, Telephone: (512) 482–5966.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (TSDHPT), intends to prepare an environmental impact statement (EIS) on a proposal to construct a multiple lane, controlled access highway on 300–400 feet of right-of-way in Travis and Williamson Counties. The proposed facility which is commonly referred to as Mokan and which has been designated as State Highway 130, would extend from US 183 east of Austin to IH 35 north of Georgetown. The proposed facility would generally parallel IH 35 to the east. Included in the proposal are interchanges as US 183, US 290, SH 45 (the Austin Outer Loop), US 79, and IH 35. The EIS will consider several build alternatives along with a no-build alternative.

The proposed project is an important linkage in the regional transportation system. It is needed to relieve the present and projected traffic demands on the existing area roadway network, particularly IH 35. In light of the stress being placed on the existing transportation system, it is clear that additional highway capacity is needed to adequately handle present traffic demands plus the additional demands generated by anticipated future growth.

There are currently no plans to hold a formal scoping meeting for the proposed project. A public meeting and a public hearing will be held. Public notices will be given of the date, time, and place of each. The environmental assessment is available for review by the public or any interested party. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identifed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on July 18, 1988.

**Gamaliel E. Olvera,**
*District Engineer.*

[FR Doc. 88–16854 Filed 7–26–88; 8:45 am]
BILLING CODE 4910–22–M

## National Highway Traffic Safety Administration

**[Docket No. EX88–2; Notice 1]**

### Officine Alfieri Maserati S.p.A.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Officine Alfieri Maserati S.p.A. (Maserati) of Modena, Italy, through Maserati Automobiles Incorporated (MAI) of Baltimore, MD, has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems*, which would cover vehicles manufactured from April 1, 1988, to September 1, 1989. The basis of the petition is that compliance would cause substantial economic hardship. If an exemption cannot be granted on that basis, petitioner requests that an exemption be granted on the basis that it would otherwise be prevented from selling a motor vehicle whose overall level of safety equals or exceeds that of a non-exempted motor vehicle.

This notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration (49 CFR Part 555), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)). During the 12-month period ending March 31, 1988, a total of 3,412 Maserati vehicles were produced, a portion of which were imported into the United States. However, two other motor vehicle manufacturers, Chrysler Corporation and G.B.M. S.p.A. (Benelli motorcycles), hold interests in Maserati. The threshhold of eligibility would be

exceeded if the world-wide production totals of these manufacturers were added to that of Maserati.

As discussed below, NHTSA has tentatively concluded that the threshhold of eligibility is not exceeded. The agency believes that there are two general issues concerning whether Maserati's eligibility is affected by its relationships with other manufacturers. The first issue is whether Maserati can be considered the manufacturer of any vehicles other than the 3,412 Maseratis cited aboved, with the possible result that the 10,000 limit is exceeded. This question can be answered in the negative since, based on information available to NHTSA, Maserati does not have any involvement in the manufacture of vehicles by another person.

The second and more difficult issue is whether persons other than Maserati can be considered to manufacture the 3,412 Maseratis. The National Traffic and Motor Vehicle Safety Act does not include any provision indicating that a person is a manufacturer of a vehicle by virtue of ownership or control of another person that is a manufacturer.

NHTSA has stated, however, that a person may be a manufacturer of a vehicle manufactured by another person if the first person has a sufficiently substantial role in the manufacturing process that it can be deemed to be a sponsor of the vehicle. The agency considers the statutory definition of "manufacturer" (15 U.S.C. 1391(5)) to be sufficiently broad to include sponsors, depending on the circumstances. See 50 FR 14596, April 12, 1985, and September 18, 1987 letter to General Motors. In the present instance, the vehicles for which exemption is sought were designed and engineered by Maserati without assistance from Chrysler or G.B.M., and they will be imported and sold by a distribution/dealer network which is independent of Chrysler and G.B.M. Accordingly, NHTSA concludes that neither Chrysler nor G.B.M. are manufacturers of Maserati passenger cars by virtue of being a sponsor.

Maserati/MAI argue that "notwithstanding a good faith effort to research and develop passive restraints over the last seven (7) years, significant financial hardships prevented the Company from developing a passive system in time to comply with the phase-in requirements." Through 1981, Maserati produced only 350 cars a year for all markets, but at the end of 1982 introduced the Biturbo series with the intent of providing vehicles of broader appeal. Present management took control of Maserati at the end of 1984, and "investments by minority shareholders during late 1986" allowed Maserati to begin a new round of product development in 1987. These investments were also required for its expenditure "of significant sums on Chrysler-oriented programs and programs to enhance fuel economy and improve emission control." No Maseratis were manufactured for the U.S. market between September 1987 and April 1988. However, before September 1, 1988, Maserati intends to import revised variations of its Biturbo series and a new larger sport coupe which will be manufactured between April 1, 1988, and September 1, 1988 ("the 1988 period"). The petitioner seeks exemption for these vehicles, as well as for those produced between September 1, 1988, and September 1, 1989 ("the 1989 period"). Maserati estimates that importation for the 1988 period will be 400 units excluding convertibles, and, for the 1989 period, 1,500 units excluding convertibles. To comply with the phase-in requirements of Standard No. 208 at these production levels, 25% of the 1988 period imports (or 100 vehicles) would have to be equipped with passive restraints, and 40% of cars imported in the 1989 period (or 600 vehicles). Maserati/MAI argue that Maserati is not capable of producing these cars, and that even if it were, the cost to conform "would impose an enormous financial hardship on the Company."

More specifically, Maserati states that a feasibility study of passive restraints was conducted in 1981, which was not pursued in the aftermath of the agency's rescission of the rule later that year. In 1984, when the current phase-in requirement was adopted, Maserati's limited resources did not allow the immediate devotion of money and manpower to a passive restraint program, especially in view of the "on again off again" history of the passive restraint requirement, and the possibility that mandatory seat belt laws might nullify the requirement. In the spring of 1985 the petitioner contacted a German consultant who developed a system which "was not well received at Maserati. The dissatisfaction focused on the system's unattractive and 'cheap' appearance which would not meet with customer acceptance* * * *" The same consultant subsequently developed a motorized belt system in 1986, but Maserati concluded that it "was quite complex and of questionable adaptability to Maserati vehicles." Maserati thereafter concluded it would have to develop an airbag system, which it could install in 100% of its production including convertibles, instead of a motorized system which it could install only in non-convertibles destined for the U.S. Under its current plans, production of driver side air bags will commence by May-June 1989, with passenger side airbag production beginning 6 to 8 months later. Thus, the company believes it has made a good faith effort to meet the standard.

With respect to economic hardship, during the period Maserati was investigating the feasibility of passive restraints, the company incurred severe losses, principally due to declining sales. In 1985, at 1988 exchange rates, it lost over $14,000,000, which increased to almost $26,000,000 in 1986 with even greater losses anticipated for 1987. Denial of the petition would result in the halting of U.S. Maserati sales (20–30% of its total), which it views as a "fatal blow", as well as closure of MAI. Maserati views an exemption as in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act because of the low safety impact of the small number of vehicles involved, and the fact that the exempted vehicles will have three-point restraint systems in the rear seat as well as the front. An exemption will allow development and introduction of air bags (rather than passive belts), first on the driver side, and within six months, on the passenger side too. Maserati also expresses a willingness "to undertake a reasonable seat belt use program during the 1988 and 1989 (exempted) periods through a direct mailing, an advertising campaign, or similar program."

Maserati has also petitioned for exemption on an alternate basis. Heretofore NHTSA has discouraged petitioners from so doing, on the grounds that an exemption can be provided only on one basis. However, the agency has concluded that there is no legal reason why a petitioner cannot petition on more than one basis, even though an exemption, if granted, will be based on only one petitioner's argument's. Maserati argues that an exemption would permit it to sell a vehicle whose overall level of safety equals or exceeds that of a non-exempted one. Such an exemption would cover the importation of up to 2,500 vehicles in any 12-month period that the exemption is in effect.

Maserati's planned importation for the 1988 and 1989 periods would be far less than this amount. MAI would import vehicles containing a safety belt interlock system "which would prevent the starting of the vehicle unless the driver's and, if occupied, the passenger's safety belts were attached." Such a system would be installed on all of the vehicles and not symply the percentages subject to the phase-in requirements, thus assuring "a greater level of motor vehicle safety than complicance with the passive restraint phase-in would achieve." Assembly-line installation of the interlock system would begin upon issuance of a grant, and to the extent feasible Maserati would retrofit cars already produced in the 1988 and 1989 periods.

Although 15 U.S.C. 1410b(b)(1) prohibits a Federal motor vehicle safety standard from requiring or permitting compliance with the standard by means of a safety belt interlock system, Maseraty argues that this prohibition is inapplicable to it. Because it is requesting an exemption from Standard No. 208, it would not be complying with Standard No. 208 on the basis of an interlock. NHTSA is interested in receiving comments on this aspect of Maserati's arguments.

Interested persons are invited to submit comments on the petition of Maserati described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 26, 1988.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on July 15, 1988.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 88-16835 Filed 7-22-88; 9:01 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: July 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0074
*Form Number:* 1040 and related Schedules A, B, C, D, E, F, R & SE
*Type of Review:* Revision
*Title:* U.S. Individual Income Tax Return
*Description:* This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.
*Respondents:* Individuals or households
*Estimated Number of Respondents:* 66,850,000
*Estimated Burden Hours Per Response:*
1040: 2 hours 51 minutes
Sch A: 44 minutes
Sch B: 23 minutes
Sch C: 1 hour 51 minutes
Sch D: 1 hour 32 minutes
Sch E: 1 hour 6 minutes
Sch F: 1 hour 36 minutes
Sch R: 28 minutes
Sch SE: 15 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 296,252,372 hours
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 88-16877 Filed 7-26-88; 8:45 am]

BILLING CODE 4810-25-M

## Office of the Secretary

[Department Circular; Public Debt Series No. 19-88]

### Treasury Notes of July 31, 1990, Series AD-1990

July 21, 1988.

**1. Invitation for Tenders**

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States Securities, designated Treasury Notes of July 31, 1990, Series AD-1990 (CUSIP No. 912827 WL 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated August 1, 1988, and will accrue interest from that date, payable on a semiannual basis on January 31, 1989, and each subsequent 6 months on July 31 and January 31 through the date that the principal becomes payable. They will mature July 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,0000, and $1,000,000, and in multiples of those amounts. They

will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, July 27, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 26, 1988, and received no later than Monday, August 1, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary markets in government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a pirmary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determination of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield or accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5 must be made or completed on or before Monday, August 1, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; the Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 28, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 1, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used

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to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

**6. General Provisions**

6.1 As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 88-16932 Filed 7-22-88; 3:57 pm]

BILLING CODE 4810-40-M

## Office of Tax Analysis

### Intent To Examine Depreciation of Assets Used by the Cable Television and Motor Vehicle Industries and Announcement of Public Meetings

The Depreciation Analysis Division of the Office of Tax Analysis, U.S. Department of the Treasury, intends to initiate studies of assets used in the cable television industry and assets to manufacture motor vehicles.

Pursuant to the mandates of the Tax Reform Act of 1986 (Pub. L. 99-514), the Depreciation Analysis Division will solicit information relating to the anticipated useful life and anticipated decline in economic value of the above noted assets from owners of these assets. This information, together with additional information such as the depreciation methods used in accounting for such assets in the taxpayer's financial reports, and the terms under which such assets are financed or leased, will be used to determine appropriate class lives for these assets.

The Depreciation Analysis Division will hold public meetings with all interested parties to discuss the precise definition of the assets to be included in these studies, the specific nature of the information sought and other related issues. The meetings are scheduled for:

Assets used in the manufacture of motor vehicles: Tuesday, August 23, from 10:00 a.m. to 12:00 noon.

Assets used in the cable television industry: Wednesday, August 24, from 1:30 p.m. to 3:30 p.m.

Both of these meetings will be held in Room 4125 of the Treasury Department, 15th Street and Pennsylvania Avenue, NW. Washington, DC.

Names of those wishing to attend the meeting, and any inquiries, comments, or other materials relating to this study should be sent to: Depreciation Analysis Division, Office of Tax Analysis, Room 4127, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220, Telephone Number: (202) 566-8563.

July 20, 1988.

**O. Donaldson Chapoton,**

*Assistant Secretary (Tax Policy).*

[FR Doc. 88-16925-Filed 7-26-88; 8:45 am]

BILLING CODE 4810-25-M

## UNITED STATES INSTITUTE OF PEACE

### Call for Applications; Solicited Grants, 1988

**The U.S. Institute of Peace**

The Institute of Peace is an independent nonprofit corporation, funded entirely by congressional appropriations. Established by Congress in 1984, the Institute has its origins in the tradition of American statesmanship which seeks to limit international violence and to achieve a just peace based upon freedom and human dignity.

**The Grants Program**

The Grants Program of the United States Institute of Peace promotes scholarship education, training, and the dissemination of information on international peace and conflict management by providing financial support to nonprofit organizations, official public institutions, and individuals. Institute funded projects have addressed such topics as the role of third-party negotiators in the resolution of regional conflicts; religious and ethical questions in war and peace; the use of nonviolent sanctions in confronting political violence; global security in the nuclear age; and the relationship between domestic political systems and the aggressive use of force.

**Solicited Grants**

In addition to its established practice of providing support for unsolicited grant proposals, the Institute is initiating a program of solicited grant projects which will serve to focus attention an topics of special interest. Topics selected for consideration in the current grant cycle are:

- *The Role of Deterrence in Avoiding War*

The principles of deterrence have been central to national policies throughout this century. The Institute will sponsor studies to (1) review the current status of theories related to deterrence; (2) examine the effectiveness of deterrence in past cases during the twentieth century, and any reasons for deterrence failures; and (3) review the possible future operation of deterrence for the U.S. and other countries, including its relevance in both nuclear and nonnuclear settings. The review of the future role of deterrence will take into account present and potential future arms control agreements and possible changes in relationships between the United States and the Soviet Union. All work will be based on a prior explanation and justification of how the particular project will relate to other work that has been carried out or is planned in this area of research.

- *Comparative Study of Armed Conflicts in the Third World*

Conflicts in the Third World currently account for most of the world's wars. The Institute will fund studies which examine such issues as (1) how to resolve such conflicts or, at a minimum, control them at a level short of the breakdown of regional order with possible global implications; (2) the role of external powers in such conflicts; (3) the role of third parties, whether they are international organizations, states, or individuals, in affecting the continuation or mediation of conflict; (4) the ability of regional actors to negotiate settlements and to advance regional cooperation; and (5) structural and systemic changes which may contribute to more stable relations, including regional arms-control agreements. The impact on such regions of the proliferation of nuclear arms and chemical weapons will also be examined.

- *Teaching Public Understanding of the Geneva Conventions*

The Geneva Conventions call for the full dissemination of the conventions in signatory countries. The Institute will fund a project to assist in educating the

public on the laws of war as called for by the conventions. The project would involve a survey of the current state of such education, identification of needs for additional dissemination, and the preparation of curriculum tools, handbooks, articles, films, and other material for distribution in the United States and other countries. The Institute may wish to explore this project in conjunction with the International Committee of the Red Cross.

• *The Relationship Between Different Types of Domestic Regimes and the Aggressive Use of Force Internationally*

Policymakers and analysts continue to debate the extent to which countries with different types of political structures and arrangements (both formal and informal) differ in their willingness to use force aggressively in international relations. The Institute will support studies which empirically examine the records of various types of regimes in this regard, including the relationship between willingness to commit aggression and domestic political cultures, legal systems, and human rights policy. The special strengths and shortcomings of democracies in dealing with questions of peace and war are of special interest to the Institute. Studies will be sponsored which examine the problems of continuity in policy making and policy implementation in democratic regimes, including the effects of the separation of powers and other aspects of the potential fractionalization of the policy process. These studies will consider the experience of democracies in managing international conflicts including the process of conducting negotiations, the preparation for adequate defense, overall conduct in deterring conflict, decisions to use force, termination of ongoing conflict, and the role of public opinion.

• *Religion, Peace and War*

In many parts of the world religion is playing an increasingly critical role in influencing the resolution of international conflicts. The Institute will support projects which examine the role of religion both historically and with regard to contemporary affairs. Topics for study may include (1) religious doctrine and its role as a source of political stability and precipitator of political change; (2) the nature of belief systems and causal links, if any, to patterns of violence or nonviolence; (3) religion as a means of reconciliation between groups and states; (4) the nature of religious forces and their interaction with secular elements in political systems; and (5) religion as a transnational phenomenon and as an alternative to formal or governmental institutions for conflict management and conflict resolution. These studies may focus on the regional aspects of these matters, including the role of religious institutions and doctrines in the Middle East, in Latin America, in Eastern Europe, and in the western democracies.

**How to Apply**

The Institute encourages applications from nonprofit organizations, official public institutions, and individuals. For further information or application material, please call or write: Solicited Grant Projects, U.S. Institute of Peace, 1550 M Street, NW., Suite 700, Washington, DC 20005–1708, 202/457–1706.

**Deadline For Applications**

The closing date for receipt of solicited grant applications in the current review cycle is September 1, 1988.

Contact: Hrach Gregorian, Director of Grants Program, (202) 457–1706.

Date: July 20, 1988.

**Samuel W. Lewis,**

*President, United States Institute of Peace.*

[FR Doc. 88–16913 Filed 7–26–88; 8:45 am]

BILLING CODE 3155–01–M

## VETERANS ADMINISTRATION

### Privacy Act of 1974; Report of New Matching Program

**AGENCY:** Veterans Administration.

**ACTION:** Notice of matching program—verification of Veterans Administration licensure and registration records.

**SUMMARY:** Notice is hereby given that the Veterans Administration (VA) will periodically conduct a series of computer matches of VA records of licensed health care providers with the records of license or registration issuing or monitoring entities. The goal of the matches is to verify that providers employed or utilized by the agency are holding current, unrestricted licenses/registrations to practice. This notice supersedes the notice by the VA Office of Inspector General of a similar match at 50 FR 30327 (July 25, 1985).

**DATE:** It is anticipated that the first match will commence in the Fall of 1988.

**ADDRESS:** Interested individuals may comment on the proposed matches by writing to the Assistant Chief Medical Director for Clinical Affairs (11F), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, 20420.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Brennan, Department of Medicine and Surgery, Office of Clinical Affairs (11F), Veterans Administration, 810 Vermont Avenue, NW; Washington, DC 20420, (202) 233–3118.

**SUPPLEMENTARY INFORMATION:** Further information regarding the matching program is provided below. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Program, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: July 18, 1988.

**Thomas K. Turnage,**

*Administrator.*

**Report of Matching Program: Veterans Administration Records of Licensed and/or Registered Health Care Providers with Records of License and/or Registration Issuing or Monitoring Entities**

a. *Authority:* 38 U.S.C. sections 4105, 4106 and 4108; and Pub. L. 99–166, section 204.

b. *Program Description:*

(1) *Purpose:* The Veterans Administration (VA), Department of Medicine and Surgery and Office of Personnel and Labor Relations, plans periodically to match lists of licensed/registered health care providers employed by or in training with the VA, as well as consultants, attendings and fee-basis providers utilized by the VA to provide health care, with the records of such license/registration issuing or monitoring entities as the Chief Medical Director may designate.

Title 38, United States Code, Section 4105, specifies that any person to be eligible for appointment in the Department of Medicine and Surgery must have applicable qualifications specified in the Section. In the case of physicians, dentists, nurses, podiatrists, optometrists, pharmacists, psychologists, dental hygienists, licensed practical or vocational nurses, and licensed physical therapists, these qualifications include licensure, registration or certification to practice the profession or occupation in a State. The matches will verify that these practitioners employed or utilized by the VA possess current, unrestricted licensure/registration in a State. For purposes of this computer matching program, "State" means any of the 50 States, any territory or Commonwealth

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of the United States, and the District of Columbia.

(2) *Procedures:* VA will perform the matches using extracts of three VA systems of records consisting of names, dates of birth and social security numbers, and records in a similar format provided by the license/registration issuing or monitoring entity (hereafter referred to as "entity"). In the event of a "hit," i.e., the determination through the matching program that a license/registration to practice has expired, or has been suspended, restricted, revoked, or otherwise limited, the identity of the individual will be confirmed. Before the information is considered for appropriate personnel action, "hits" will be screened to determine whether the reason for restriction of a license is significant to VA employment. When needed to confirm the identities of individuals who may be listed in the records of the entity, identifying data may be released in accordance with published routine uses. Where there are reasonable grounds to believe there has been a violation of criminal law, the matter will be referred for investigation and possible prosecution.

In conducting the matching program the VA will request that the entity provide computerized excerpts containing the names, dates of birth, social security numbers, and status of licenses/registrations of practitioners. If a law or rule prohibits and entity from furnishing a computerized extract of its records, the VA will submit computerized tapes or records containing only names, dates of birth and social security numbers of the VA records to be matched. The loan of any VA records to an entity for matching purposes will be in accordance with OMB Matching Guidelines which require the recipient to agree to the following: That the source matching file will remain the property of the VA and will be returned to the VA at the end of the matching program (or destroyed as appropriate); that the file will be used and accessed only to match the files previously agreed to; that the file will not be used to extract information concerning "non-hit" individuals for any purposes; and that the file will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the VA.

c. *Records to be Matched:* Lists extracted from the following systems of records will be matched with the license records of the license monitoring or issuing entities:

(1) Individuals Submitting Invoices/Vouchers for Payment-VA (13VA047) Privacy Act issuances, 1986, Comp., Vol. V. pp. 763–764.

(2) Patient Fee Basis Medical and Pharmacy Record-VA (23VA136) Privacy Act Issuances, 1986 Comp., Vol. V. pp. 770–771.

(3) Personnel and Accounting Pay System-VA (27VA047) Privacy Act Issuances, 1986 Comp., Vol. V. pp. 772–773.

The disclosure of information from these systems of records, for the purpose of the matching program, is permitted by published routine uses.

d. *Period of Match:* Intermittently from the Fall of 1988. The matching will be cyclical or may be repeated periodically.

e. *Safeguards:* Records used in the matches and data generated as a result will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the match or follow-up actions. All of the material will be stored in locked containers when not in use. The matching files to be used in this project will remain under the control of VA and will be returned to the appropriate file manager or destroyed upon completion of the match. The matching files will be used and accessed only to match files in accordance with this notice; will not be used to extract information concerning "non-hit" individuals for any purpose, and will not be disseminated outside the VA unless authorized by the appropriate agency official.

f. *Retention and Disposition:* Records not resulting in "hits" will be destroyed by burning, shredding or electronic erasing within two months of the completion of the individual match. Records resulting in "hits" will be retained by VA until completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

g. *Previous Notice:* The matches described in this notice will be similar to that conducted in 1985 by the VA Office of Inspector General as described in 50 FR 30327 (July 25, 1985).

[FR Doc. 88–16849 Filed 7–26–88; 8:45 am]

BILLING CODE 8320-01-M

VOL 53 ISS 144 JL 27 1988 UMI

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 144
Wednesday, July 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 27103, Monday, July 18, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time), Tuesday, July 26, 1988.

**CHANGE IN MEETING:** The Closed Portion of the Meeting has been Cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: July 21, 1988.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 88-16999 Filed 7-25-88; 11:18 am]

BILLING CODE 6750-06-M

**FARM CREDIT ADMINISTRATION**

Farm Credit Administration; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for August 2, 1988.

**DATE AND TIME:** The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 2, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

**FOR FURTHER INFORMATION CONTACT:** David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

**Open Session**

1. Summary Prior Approvals.

Dated: July 25, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-17022 Filed 7-25-88; 4:03 pm]

BILLING CODE 6705-01-M

**FARM CREDIT ADMINISTRATION**

Farm Credit Administration Board; Special Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 29, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

**FOR FURTHER INFORMATION CONTACT:** David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

**Open Session**

1. Final Regulations Establishing Minimum Permanent Capital Standards for Farm Credit System Institutions, 12 CFR Part 615.
2. Proposed Capital Adequacy Related Regulations, 12 CFR Part 615, Subparts I, J, K, L, M and N.
3. Final Rule Regarding Special Committee on Merger of Farm Credit Banks, 12 CFR Part 611.
4. Proposed Salary Range for the National Bank for Cooperatives.

***Closed Session**

5. Proposed CEO Compensation for the Jackson Bank for Cooperatives.
6. Examination and Enforcement Matters.

Dated: July 25, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-17023 Filed 7-25-88; 4:03 pm]

BILLING CODE 6705-01-M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8), and (9).

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, August 1, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Policy proposals regarding a drug testing program. (This item was originally announced for a closed meeting on July 27, 1988.).
2. Proposed amendment to the Federal Reserve System Life and Survivor Income Insurance Plan.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 22, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-16943 Filed 7-22-88; 5:03 pm]

BILLING CODE 6210-01-M

**FEDERAL TRADE COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, July 26, 1988.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:**

Consideration of general budget matters.

**CONTACT PERSON FOR MORE INFORMATION:** Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-16992 Filed 7-25-88; 1:22 pm]

BILLING CODE 6750-01-M

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**FEDERAL TRADE COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 27, 1988.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:**

Consideration of Commission Policy On the Duration and Termination of Commission Orders.

**CONTACT PERSON FOR MORE INFORMATION:** Susan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88–16993 Filed 7–25–88; 1:22 pm]

BILLING CODE 6750–01–M

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**FEDERAL TRADE COMMISSION**

**TIME AND DATE:** 2:00 p.m., Thursday, July 28, 1988.

**PLACE:** Room 532 (open); Room 540 (closed), Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Portions Open to Public

(1) Oral Argument in Boise Cascade, Docket 9133.

Portions Closed to the Public

(2) Executive Session to follow Oral Argument in Boise Cascade, Docket 9133.

**CONTACT PERSON FOR MORE INFORMATION:** Susan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88–16994 Filed 7–25–88; 1:22 pm]

BILLING CODE 6750–01–M

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**INTERNATIONAL TRADE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 26557—dated July 13, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Friday, July 22, 1988.

**CHANGE IN TIME OF THE MEETING:** 11:00 a.m., Friday, July 22, 1988.

Notice is given that the Commission meeting previously announced as beginning at 10:00 a.m., on July 22, 1988, will begin at 11:00 a.m. instead, in conformity with 19 CFR 201.37(b), Commissioners Brunsdale, Eckes, Liebeler, Lodwick, Rohr, and Cass determined that Commission business required the change in time of the meeting on July 22, 1988, and affirmed that no earlier announcement of the change to the time was possible, and directed the issuance of this notice at the earliest practicable time.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252–1000.

**Kenneth R. Mason,**

*Secretary.*

July 15, 1988.

[FR Doc. 88–16955 Filed 7–22–88; 5:06 pm]

BILLING CODE 7020–02–M

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**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Thursday, August 4, 1988 at 3:00 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 701–TA–289 (Final) and 731–TA–381 and 382 (Final) (Certain Granite from Italy and Spain)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252–1000.

**Kenneth R. Mason,**

*Secretary.*

July 18, 1988.

[FR Dc. 88–16956 Filed 7–22–88; 5:06 pm]

BILLING CODE 7020–02–M

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**NATIONAL TRANSPORTATION SAFETY BOARD**

**TIME AND DATE:** 9:30 a.m. Tuesday, August 2, 1988.

**PLACE:** Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Aircraft Accident Report: Fischer Bros. Aviation, Inc. d/b/a Northwest Airlink Flight 2268, Construcciones Aeronauticas, S.A. (CASA) C–212–CC, N160FB, Detroit Metropolitan Wayne County Airport, Romulus (Detroit), Michigan, March 4, 1987.
2. Aircraft Accident Report: Executive Air Charter, Inc., d/b/a American Eagle, Flight 5452, CASA C–212–CC, N432CA, Mayaguez, Puerto Rico, May 8, 1987.
3. Briefs of Aviation Accidents: 1987 Randomly Selected Field/ Limited/ Incident Investigations.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382–6525.

**Bea Hardesty,.**

*Federal Register Liaison Officer.*

July 22, 1988.

[FR Doc. 88–16944 Filed 7–22–88; 5:03 pm]

BILLING CODE 7533–01–M

federal register

Wednesday
July 27, 1988

Part II

# Department of Commerce

## International Trade Administration

## Export Trade Certificate of Review; Notice of Application

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Export Trade Certificate of Review**

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether the certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Rcom 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should reference the application number provided in the application summary. The following is a summary of the application.

**Summary of Application**

*Applicant:* National Tooling and Machining Association, 9300 Livingston Road, Ft. Washington, Maryland 20704, Contact: James R. Atwood, Telephone: 202/662–6000

*Application #:* 88–00012
*Date Deemed Submitted:* July 20, 1988
*Members:* (see Appendix)

*Export Trade*

1. Products

Products of the contract tooling and machining industry including special tools, dies, jigs and fixtures (SIC 3544), machine tool accessories (SIC 3545), metalworking machinery not elsewhere classified (SIC 3549), special industry machinery not elsewhere classified (SIC 3559), industrial patterns (SIC 3565), general industrial machinery not elsewhere classified (SIC 3569), precision machined parts, and machinery, except electrical, not elsewhere classified (SIC 3599).

2. Services and Technology

Engineering, design, and related services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; training with respect to the use of Products; technology licensing related to the manufacture and use of Products.

3. Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

1. National Tooling and Machining Association ("NTMA") and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products, Services, and/or Technology in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products, Services, and/or Technology by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products, Services, and/or Technology, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-member Suppliers to sell their Products, Services, and/or Technology or offer their Export Trade Facilitation Services through the certified activities of NTMA and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Technology rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NTMA or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services to Members.

2. NTMA and/or its Members may enter into agreements wherein NTMA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products, Services and/or Technology in that country or market. In such agreements, (i) NTMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through NTMA or the Member(s) acting as

exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary.

3. NTMA and/or its Members may exchange and discuss the following types of information:

a. Information that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to Product quantity, source, available capacity to produce Products, and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by NTMA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about NTMA's or its Members' export operations, including without limitation sales and distribution networks established by NTMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. NTMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by NTMA itself, or by agreement with Members or other parties.

5. NTMA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. NTMA and/or its Members may refuse to provide Export Trade Facilitation Services, or participation in the other activities described in paragraphs one through five above, to non-members.

7. NTMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

*Definitions*

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means those member companies of NTMA listed in Appendix A to this notice, which is incorporated herein by reference, and those member companies of NTMA subsequently incorporated in the certificate pursuant to the amendment procedures set forth below.

New NTMA members, and current NTMA members not listed in Appendix A, may be incorporated in the certificate through an abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Department of Commerce and the Department of Justice identifying the NTMA members that desire to become a Member under the certificate pursuant to the abbreviated amendment procedure, and certifying for each such NTMA member the number of its employees. Notice of the members so identified shall be published in the **Federal Register.** However, NTMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the certificate of review to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the certificate of review, such amendment must be sought through the non-abbreviated amendment procedure.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, Technology, and/or Export Trade Facilitation Services, whether a Member or non-member.

Date: July 20, 1988.

**John E. Stiner,**

*Director, Office of Export Trading Company Affairs.*

**APPENDIX**

*Members of Applicant*

A & A Grinding Service & Mfg. Co.; A & A Machine Shop, Inc.; A & B Industries, Inc.; A & B Machine; A & B Machine Shop; A & B Tool & Manufacturing Corp.; A & E Manufacturing Corp.; A & E Tool & Die Company; A & H Machine & Tool Company; A & J Enterprises, Inc.; A & K Screw Machine, Inc.; A & M Aircraft; A & M Tool & Die Company, Inc.; A & S Tool & Die Company, Inc.; A to Z Tool & Machine Company; A A A Tool & Die Company, Inc.; A A Engineering Corporation; A A Precisioneering, Inc.; A B & S Tool & Die Company, Inc.; A B A Industries; A B A Tool & Die Company, Inc.; A B C Manufacturing; A B C O Tool & Die, Inc.; A B R Enterprises; A C Engineering; A C Machine & Manufacturing; A C Machine, Inc.; A C S Tool Company, Inc.; A C Tool & Machine Company; A E Cole Die & Engraving; A E Machine Works, Inc.; A F & G Tool & Die Company; A F C Tool Company, Inc.; A G A Precision, Inc.; A Hardiman Machine Company, Inc.; A I Network Corporation; A I P, Inc.; A J & L Tool & Die Company; A L Industries, Inc.; A M & T A M C Precision, Inc.; A M I Industries, Inc.; A M Industries, Inc.; A M Machine Company, Inc.; A M Precision Machining, Inc.; A P Products Company; A R Industries, Inc.; A S C Corporation; A T G, Inc.; A W S Industries, Inc.; A. C. Welding Company; A. F. Roberts, Inc.; A–G Tool & Die; A-Line Tool & Die; A-Quality Machine Products; A-Tron Corporation; A–W Engineering Company, Inc.; A-1 Tool Division (Division of Lovejoy Industries, Inc.); Abbott Machine & Tool, Inc.; Abbott Tool, Inc.; Ability Tool Company; Able Fabricating & Company; Abrams Airborne Manufacturing, Inc.; Absolute Manufacturing; Absolute Precision;

Accon Inc.; Accraline, Inc.; Accro Tool Enterprises; Accu-Prompt Manufacturing; Accu-Roll, Inc.; Accu-Tech, Inc.; Accudynamics, Inc.; Accudyne Corporation; Accumet, Inc.; Accurate Grinding Corporation; Accurate Industrial Machining, Inc.; Accurate Machine & Tool Company; Accurate Machine Tool, Inc. (Division of G&S Machine Tool Co.); Accurate Machine, Inc.; Accurate Manufacturing Company; Accurate Tool Steel, Inc.; Accurite Precision, Inc.; Accutronics, Inc.; Ace Machine Company, Inc.; Ace Precision Industries, Inc.; Ace Precision, Inc.; Ace Specialty Company, Inc.; Ace Tool & Machine, Inc.; Ace Tool & Manufacturing Co., Inc.; Acme Grinding Service, Inc.; Acme Grinding, Inc.; Acra Machine and Engineering, Inc.; Acraloc Corporation; Acro Industries, Inc.; Acro Tool & Die Company, Inc.; Acrodie, Inc.; Actco Tool & Manufacturing Company; Action Die & Tool Inc.; Action Tool & Die; Action Tool & Die Engineering; Active Tool Company; Acu Cut/Pa, Inc.; Acucut, Inc.; Adams Engineering, Inc.; Adams Machine Shop; Adams Russell Electronics; Adams Tool & Engineering, Inc.; Adapto, Inc.—Arizona Division (Division of Adapto, Inc.); Adapto, Inc.; Adelmeyer Tool, Inc.; Adept Manufacturing, Inc.; Admar Mold & Engineering, Inc.; Admiral Engineering & Manufacturing; Adron Tool Corporation; Advance Gear & Machine Corp.; Advance Tool & Die Company; Advance Tool Company, Inc.; Advanced Machine Programming; Advanced Machine Service; Advanced Machine Works, Inc.; Advanced Machining Technology, Inc.; Advanced Mold & Tool; Advanced Mold Technology, Inc.; Advanced Products Company; Advanced Techniques Burring, Inc.; Advanced Technologies, Inc.; Advanced Tool & Design, Inc.; Advantage Mold & Design; Advent Tool & Mold Company; Aer-O-Dyne Manufacturing Company; Aerex Manufacturing, Inc.; Aero Components Company; Aero Gear, Inc.; Aero Manufacturers, Inc. (Division of Fleetwood Machine Products, Inc.); Aero Mechanical Engineering, Inc.; Aero Space Engineering, Inc.; Aero Spring & Manufacturing Co., Inc.; Aerodynamic Engineering, Inc.; Aerofab, Inc.; Aeromold Plastics, Inc.; Aerostar Aerospace Manufacturing; AeroSpace Metalmasters, Inc.; Aetna Machine Company; Aggressive Engineering Corp.; Agio Precision Industries, Inc.; Ahaus Tool Company, Inc.; Aide, Inc.; Aim Incorporated; Aimco Precision, Inc.; Aircraft Standards, Inc.; Aircraft Welding & Manufacturing; Airmis Manufacturing, Inc.; Ajax Tool, Inc.; Akromold, Inc.; Akron Steel Fabricators Company; Akron Tool & Die Company, Inc.; A1-Tech; Al's Tool & Die Enterprises; Alabama Tool Company, Inc.; Alart Tool & Die, Inc.; Albert Tool & Die Company, Inc.; Albertson & Hein, Inc.; Albion Machine & Tool Company; Albrecht Tool Die & Manufacturing; Alco Machine Corporation; Alco Manufacturing, Inc.; Aldan, Inc.; Alfa Foundry, Inc.; Alfa Machine & Tool Company, Inc.; Alfred Manufacturing Company; Alfro Custom Manufacturing; Alger Machine Company, Inc.; Alkron Manufacturing Corporation; All Five Tool Company, Inc.; All Mold, Inc.; All Tech Machine & Tool; All Tool Company; All Tools Company; All-Con Tool & Mold, Inc.; All-Pro Machine Company, Inc.; All-Tech Machine & Eng., Inc.; Allegheny Tool & Manufacturing Co.; Allen Aircraft Products, Inc.; Allen Precision Machining Company; Allen-Leonard Industries, Inc.; Alliance Carolina Tool & Mold (Division of Gleason Corporation); Allied Atlantic Industries, Inc.; Allied Mechanical Products; Allied Screw Products, Inc.; Allied Tool & Die Company; Allied Tool & Die, Inc.; Allied Tool & Machine Company; Allied Tools Of Texas; Allis Tool & Machine Corporation; Allmandinger, Inc.; Alloy Machine & Tool Company, Inc.; Alloy Metal Products; Alloy Tool & Machine, Inc.; Alloy Tool and Engineering; Allstate Tool & Die, Inc.; Almar Mfg. & Engineering, Inc.; Alpa Centerless Products; Alpa Precision Machine Works; Alpha Tool & Machine Company; Alpine Manufacturing, Inc.; Alpine Tool & Die; Alton Products, Inc.; Alton Tool Company, Inc.; Alumni Tool & Die, Inc.; Alves Precision Engineered Products; Amalar; Ambox, Inc.; Ambritt Corporation; American Dies, Inc.; American E D M & Tooling, Inc.; American Engraving, Inc.; American Gear & Supply Co., Inc.; American Heller Corporation; American Machine & Gun Drilling, Inc.; American Machine & Supply, Inc.; American Metric Engineering, Inc.; American Micro Products, Inc.; American Mold & Engineering Company; American Mold Corporation; American Precision Machining, Inc.; American Production & Grinding; American Tool & Die; American Tool & Die, Inc.; American Tool & Engineering Company; American Tool & Gage; American Tool Company; Ameritec Manufacturing Corporation; Ameritech Die & Mold, Inc.; Amherst Tool & Automation; Amity Mold Company; Amkay Machine Products; Amrein Machine Shop, Inc.; Anchor Tool & Die Company; Anco Tool & Die Company, Inc.; Ander Mel, Inc.; Anderson Automatics, Inc.; Anderson Machine; Anderson Machine & Tool; Anderson Precision, Inc.; Anderson Tool & Engineering Company; Andrews Machine Works; Angermeier Industries, Inc.; Animatics Corporation; Anoco Tool & Manufacturing Co., Inc.; Anoplate Corporation; Anro Metals Manufacturing; Anthony Machine; Apex Corporation; Apex Machine Tool Company, Inc.; Apex Tool & Manufacturing, Inc.; Apollo E.D.M. Company; Apollo Precision, Inc.; Apollo Tool Corporation; Aponte Tool & Manufacturing, Inc.; Applied Engineering, Inc.; Applied Machine Technologies, Inc.; Applied Mechanical Energy; Applied Tool & Die Company; Arco Industries, Inc.; Arco Metals Corporation; Aremco, Inc.; Argo Tool Corporation; Argus Manufacturing Company; Aries Industries; Aries Tool, Inc.; Arizona Carbide Tools, Inc.; Arizona Custom Manufacturing; Arizona Plasma Welding; Arkansas Tool & Die; Arlington Machine & Tool Company; Arma Tool & Die Company, Inc.; Armin Tool & Manufacturing Co. Inc.; Armstrong Pattern & Mold Corp.; Armstrong Technology, Inc.; Arnold Gauge Company; Arro Tool & Die, Inc.; Arrow Grinding, Inc.; Arrow Precision Manufacturing Corp.; Arrow Tool & Gage Company; Arrow Tool, Inc.; Arrowsmith Tool & Die; Art Precision Metal Products, Inc.; Artel Tool Company; Arthur J. Evers Corporation; Artisan Tool & Die Corporation; Artvic, Inc.; Ash Machine Corporation; Asheboro Mold & Design, Inc.; Ashlin Associates, Inc.; Asmat, Inc.; Associated Design & Manufacturing; Associated Electro-Mechanics, Inc.; Associated Machine Company, Inc.; Associated Machine Technology; Associated Machinecraft Corporation; Associated Tool Company, Inc.; Astra Tool & Instrument, Corp.; Astro Machine Works Inc.; Atec Tool & Engineering; Atec, Inc.; Athens Industries; Athens Tool & Die, Inc.; Atkins Tool Company; Atlantic Aircraft Tool Company; Atlantic Alloys, Inc.; Atlantic Tool & Die Company; Atlas Die & Manufacturing Company; Atlas Machine & Supply, Inc.; Atlas Machine Company, Inc.; Atlas Machine, Inc.; Atlas Tool, Inc.; Atols Tool & Mold Corporation; Attra Industries, Inc.; Atwood Tool & Die, Inc.; Aul in the Family Tool & Die, Inc.; Austin Continental Industries, Inc.; Austin Dies, Inc.; Austin Precision Tool Company; Austinburg Machine, Inc.; Austro Mold, Inc.; Autodie Corporation; Automate Associates, Inc.; Automated Tool & Manufacturing; Automatic Precision Welding and Fabricating, Inc.; Automation Tool & Die, Inc.; Automation Tool Company; Autrey

Steel & Machine; Avant Tool & Die, Inc.; Avion Tool Corporation; Avion Tool Manufacture; Axis Precision Industries; Ay Machine Tool & Die, Inc.; Ayers Gear & Machine; Azbill Tool & Die, Inc.; AM-Tec, Inc.; B & A Design; B & B Machine & Grinding Service; B & B Manufacturing Company; B & B Precision Tools, Inc.; B & B Precision, Inc.; B & B Tool & Die Company, Inc.; B & B Tool & Die, Inc.; B & B Tool Company; B & E Tool & Mfg. Co., Inc.; B & E Tool Company, Inc.; B & G Machine Company; B & G Machine Products; B & G Quality Machine & Tool; B & G Tool & Die Company, Inc.; B & H Machine, Inc.; B & H Tool & Machine Corporation; B & L Tool & Machine Company; B & R Gear Company; B & R Machine & Tool Corporation; B & T Tool & Die Company; B & W Tool & Die, Inc.; B & Z Manufacturing Company; B A K Precision Industries; B F Industries, Inc.; B G Instrument Corporation; B H Aircraft Company, Inc.; B H Instrument Company, Inc.; B I K Corporation; B J Williams Co.; B T & M; B Z Engineering; B. Radtke & Sons, Inc.; B. T. C. Production; B-W Grinding Service, Inc.; Babbitt Bearing, Inc.; Bachman Machine Company, Inc.; Bachmann Precision Machine; Badger Tool & Die; Bahrs Die & Stamping Company; Bailey Tool & Manufacturing Company; Bair Tool & Mold, Inc.; Baker Hill Industries, Inc.; Baker Machine & Tool; Ballard Machine Tool Service; Ballos Precision Machine; Banbury Precision; Banner Machine Company, Inc.; Banner Tool & Die, Inc.; Barco Manufacturing, Inc.; Barlag Tool; Barroncast, Inc.; Barton Tool Engineering; Basic Industries; Basic VI; Basil-Walker Tool Company, Inc.; Basilius Tool Co.; Bassett Tool & Machine; Bateman Manufacturing Co., Inc.; Baumann Engineering; Baumbach Machine, Inc.; Bawden Industries, Inc.; Bay Bar Products, Inc.; Bay City Boring & Machine; Bay Swiss Manufacturing Co., Inc.; Baytown Ace Machine Company, Inc.; Beacon Tool Company, Inc.; Beamco, Inc.; Beaulieu Tool & Die Co., Inc.; Beaver Tool & Machine Company; Bechdon Company, Inc.; Bechler Cams, Inc.; Becker, Inc.; Becksted Machine Shop; Beckwith Grinding, Inc.; Behrens Manufacturing, Inc.; Bel-Kur; Bel-Mar Products Corporation; Belgian Screw Machine Products, Inc.; Bell Engineering, Inc.; Bell Tool, Inc.; Ben-Mer Tool & Machine; Benda Tool & Model Works; Bender Machine, Inc.; Bendon Gear & Machine; Bennett Tool & Die Company; Berg Tool & Machine Company, Inc.; Berkshire Industries, Inc.; Berlin Manufacturing Co. Inc.; Bernal Rotary Systems, Inc.; Bernhard Knust Company, Inc.; Bertram Tool & Machine Co., Inc.; Beryllium Manufacturing Company; Bess TESTLAB INC.; Best Industries, Inc.; Best Tool & Manufacturing Co., Inc.; Beta Machine & Tool Company; Biggs Tool & Die; Bilar Tool & Die Corporation; Billet Tool; Birmingham Benders Company; Blackburn Instrument Company; Blackhawk Metal Products, Inc.; Blacklick Machine Company, Inc.; Blanchard Grinding Service, Inc.; Blanchard Metals Processing Company; Blanda, Incorporated; Blandford Machine & Tool Co., Inc.; Blitz Tool & Die; Blue Chip Mold; Bob's Tool & Cutter Grinding, Inc.; Bodine Tool & Machine Company; Bogden Company; Boice Industrial; Bollinger Tool & Die, Inc.; Boos Products; Bordo Mold & Machine, Inc.; Boring Machine Corp.; Boring, Inc.; Bosma Machine & Tool Corporation; Boss Tool & Mfg.; Boston Centerless, Inc.; Bowen & Company, Inc.; Bowers Machine Co.; Bowes Machine, Inc.; Boyd Machine Company; Boyle, Inc.; BoMar Machine; Bra-Vor Tool & Die Company, Inc.; Bradenton Tool & Machine; Bradhart Products, Inc.; Bradley Service Company; Breeze's Precision Boring Company; Brettrager Manufacturing Company; Bridean Machine & Tool Co., Inc.; Brighton N C Machine Corporation; Brimfield Precision, Inc.; Brinkman Tool & Die, Inc.; Bristol Instrument Gears, Inc.; Broadway Mold & Tool, Inc.; Brodbeck Tool & Machine Company; Brogdon Tool & Die, Inc.; Bronner Manufacturing & Tool Co.; Brookfield Industries, Inc.; Brooklyn Scraping & Re-Machining, Inc.; Brown Industries, Inc.; Brown Manufacturing Company, Inc.; Brown Production, Inc.; Brown-Covey, Inc.; Bruce Machine & Tool Co., Inc.; Buchanan Products, Inc.; Buckeye Die & Engineering; Budney Company, Inc.; Budney Industries; Buehrle Engineering Company; Buena Park Tool & Engineering; Buerk Tool & Machine Corporation; Buiter Tool & Die, Inc.; Bulgrin Mold & Machine; Burch Machine, Inc.; Burckhardt America, Inc.; Burco Precision Products; Burger Engineering, Inc.; Burgess Brothers, Inc.; Burke Industries; Burke Manufacturing, Inc.; Burrowes Research Machining, Inc.; Burton Industries; Busler's Machine Company; Busy-Bee Tooling; Bylsma Tool, Inc.; C & C Machining Company; C & C Manufacturing Company; C & C Manufacturing Corporation; C & D Engineering Company; C & G Machine & Tool; C & J Industries; C & M Machine Products, Inc.; C & R Manufacturing, Inc.; C & S Machine Products; C and L Custom Tooling; C A C Tool Corporation; C A D Enterprises; C A R Enterprises, Inc.; C A Spalding Company; C B Enterprises; C B Gear & Machine, Inc.; C B Kaupp & Sons, Inc.; C B S Boring & Machine Co., Inc.; C B S Manufacturing Company, Inc.; C D M Tool & Manufacturing Co. Inc.; C H W Precision Machining, Inc.; C J Grinding, Inc.; C J R Manufacturing Company, Inc.; C J Winter Machine Works; C L Precision Machine & Tool Co.; C M Grinding, Inc.; C M Smillie & Company; C N C Engineering; C N C Precision; C N C Precision Machining, Inc.; C P M Division (Division of Columbus Standard, Inc.); C R B Manufacturing, Inc.; C R E Enterprises; C T D Machines, Inc.; C T M, Inc.; C V Tool Company, Inc.; C. A. P. Tool & Mfg. Co., Inc.; C. C. Tool & Engineering; C. G. Tech, Inc.; C. M. I. Product Development; C. M. R. Engineering; Cain Machine Company; Cal-Disc Grinding Company; Cal-Matic, Inc.; Calcortec, Inc.; California Fineblanking Corporation; California Gundrilling, Inc.; California Reamer Company; Calx, Inc.; Cam Basic; Cambridge Special; Cambridge Tool & Die Corp.; Cambridge Tool & Manufacturing Co.; Camco Manufacturing, Inc.; Campbell Grinding & Machine, Inc.; Campbell Machinery, Inc.; Camtec, Inc.; Canan Mold, Inc.; Canto Tool Corporation; Capital Tool Company; Capitol Engineering Company; Capitol Technologies; Capitol Tool & Die Company; Capitol Tool & Die, Inc.; Car-Gor Tool & Die; Caran Precision Engineering & Manufacturing; Carbide Products Company; Cardinal Machine Company; Cardinal Machine Company, Inc.; Carius Tool Company, Inc.; Carl Machine Company, Inc.; Carl Rogers; Carl's Machine, Inc.; Carlin Machine Company, Inc.; Carlson Capital Manufacturing Co.; Carlson Tool & Manufacturing Corp.; Carlson-Rockford, Inc.; Carr Cylinder Company; Carr Lane Manufacturing Company; Carr Machine Company; Carr Tool & Machine Company, Inc.; Cascade Mold & Die, Inc.; Cass Screw Machine Products Company; Catalina Tool & Mold, Inc.; Caval Tool & Machine Company; Cedar CNC Machining, Inc.; Centaur Tool & Die, Inc.; Centennial Tool Manufacturing; Centennial Tool, Inc.; Center Line Machine Company; Center Line Tool; Centerline Precision Machining; Centerline Tool & Die Company; CenterLine Industries, Inc.; Centex Machining, Inc.; Central Machining Specialties, Inc.; Central States Machine Service; Central Tool Company, Inc.; Central Tool Works, Inc.; Centurion Manufacturing; Century Machine Company, Inc.; Century Mold Company, Inc.; Century Tool & Gage Company; Century Tool & Manufacturing Co.; Century Tool and

Design, Inc.; Certified Aerospace; Certified Grinding & Machine, Inc.; Certified Industries, Inc.; Champion Tool & Die Company; Chapman Engineering, Inc.; Charian Machine & Manufacturing; Charles Meisner, Inc.; Charlotte Cutting Tool; Charlotte Machine Company; Charlton Engineering Corporation; Chase Machine Company, Inc.; Check-Mate Industries; Checker Machine, Inc.; Chelar Tool & Die, Inc.; Chesco Products; Chicago Mold Engineering, Inc.; Chippewa Tool & Manufacturing Co.; Chris Papas Precision Company; Christon Grinding Company; Christopher Tool & Manufacturing; Circle-K-Industries; City Machine Tool & Die Co., Inc.; Clarich Mold Corporation; Clark Manufacturing Company; Clark Metal Products Company; Clark-Henry Company, Inc.; Classic Die, Inc.; Classic Mold Design; Cleveland Metal Products; Cleveland Mold & Die, Inc.; Cleveland Punch & Die Company; Cliffdale Manufacturing Company; Clifford H. Jones, Inc.; Clifford Manufacturing Company; Clifton Automatic Screw; Cling's Machine And Stamping; Cloud Company; Co-Op Machine & Tool; Coast Cutters Company; Cobak Tool & Manufacturing Company; Coffey Associates; Coleman Corporation; Collins Instrument Company; Collins Machine & Tool; Colmar Corporation; Colonial Machine Company; Colorado Surface Grinding; Columbia Research & Development (Division of Ludlow Industries, Inc.); Columbia Screw Co., Inc.; Com-Tal Southwest, Inc.; Com-Tal, Inc.; Combined Metals Company; Comet Tool, Inc.; Command Corporation International; Commerce Grinding, Inc.; Commercial Kellering, Inc.; Commercial Machine, Inc.; Commercial Manufacturing Corp.; Commercial Tool & Die Company; Commonwealth Machine Co., Inc.; Commonwealth Technology; Compacting Tooling, Inc.; Companion Industries, Inc.; Competition Tooling, Inc.; Complex Tooling, Inc.; Component Engineers, Inc.; Composidie, Inc.; Composite Machine & Tool; Composite Mold Corporation; Compu Die, Inc.; Computer Wire EDM Corporation; Computerized Machining Services, Inc.; Concept Tool & Die Company; Conco Systems, Inc.; Condor Tool & Die; Coney Tool and Cutter Grinding; Conn Dee Industrial; Connecticut Jig Grinding, Inc.; Connecticut Tool & Manufacturing; Connell Tool Company; Connolly Tool & Machine Company; Conover Machine & Design, Inc.; Consolidated Mold & Manufacturing, Inc.; Conti Tool & Die Company; Continental Microwave and Tool Co., Inc.; Continental Mold & Tool, Inc.; Continental Precision, Inc.; Continental Tool & Machine; Continental Tool & Manufacturing, Inc.; Contour Mold, Inc.; Contract Products; Controlled Turning, Inc.; Converse, Inc.; Convex Mold, Inc.; Cook Manufacturing; Cook Tool & Die Co.; Cooney Tool, Inc.; Copa Tool, Inc.; Cordell Machine Corporation; Coronado Machine, Inc.; Correa Machine & Tool Company, Inc.; Correll Manufacturing; Corrigan Manufacturing Co., Inc.; Country Machine & Tool, Inc.; Cox Machine Company, Inc.; Cox Tool Company, Inc.; Coy Machine Company; Craft Tool & Die Company, Inc.; Craftech E D M Company; Crafts Company, Inc.; Craftsman Tool & Mold Company; Cramers Precision Grinding, Inc.; Cranston Centerless Grinding; Crawford Tool & Die; Creative Machine Products; Creative Tool Company; Crest Manufacturing Company; Criterion Tool & Die; Cross Road Machine Shop; Crossland Machinery; Crown Mold & Machine, Inc.; Crown Tool & Die Company; Crownel Corporation; Crush Master Grinding Corporation; Crystal Die Mold, Inc.; Cumberland Tool & Die, Inc.; Curio Precision Tool & Machine; Cust-M-Thread Grinding; Custom Engineering, Inc.; Custom Etch Inc.; Custom Jig Grinding, Inc.; Custom Machine, Inc.; Custom Machining, Inc.; Custom Metal Products Corporation; Custom Mold & Design; Custom Tool & Design, Inc.; Custom Tool & Die, Inc.; Custom Tool & Manufacturing Company; Cyma Tool Corporation; Cypress Tool & Die Company, Inc.; D & B Industries, Inc.; D & H Manufacturing Company; D & J Precision Machining, Inc.; D & L Tool, Inc.; D & M Products; D & S Manufacturing Corporation; D A K Tool Company, Inc.; D C Design, Inc.; D C Machine Shop; D F M Corporation; D M C International, Inc.; D M Machine Company, Inc.; D S Greene Company, Inc.; D S Machine; D S Manufacturing, Inc.; D. M. M. Manufacturing; D–K Manufacturing Corporation; D–S Machine Tool & Development; D-Velco; D/A Machine Products; Dadeks Machine Works Corporation; Daily Industrial Tools; Daley Design & Mfg., Inc.; Damen Tool & Engineering Co., Inc.; Danco Precision, Inc.; Danly Die Set; Danly Die Set Division (Division of Avondale Industries); Dap Tool & Mold Inc.; Dar Machine & Manufacturing, Inc.; Darotek, Inc.; Darr Industries, Inc.; Dass Machine, Inc.; Dauntless Molds, Inc.; David Barnes Company; David Engineering & Manufacturing; Dayton Drill Bushing Company; Dayton Progress Corporation; Dayton Reliable Tool; Dayton Tool Company, Inc.; Dayton Wireburn, Inc.; De Hoff Tool & Die Co., Inc.; De Long Manufacturing; Deck Brothers, Inc.; Deck Machine & Tool; Deep South Automotive, Inc.; Deephole Machine Company; Deeter's Tool & Manufacturing, Inc.; Degele Manufacturing, Inc.; Dekalb Tool & Die, Inc.; Del Packaging Inc.; Delaware Machinery & Tool Co., Inc.; Dellacor Company, Inc.; Delltronics, Inc.; Delp Corporation; Delta Machine & Tool; Delta Machining, Inc.; Delta Precision Tool & Instruments; Delta Systems, Inc.; Delta Tool & Die Company; Delta X Corporation; Deltec, Inc.; Delto Tool Company; Demaich Industries, Inc.; Demark Industries, Inc.; Demmer Corporation; Demps Saw & Tool Company, Inc.; Denby Mold Company; Dependable Tool & Die; Dependable Tool & Manufacturing Co.; Desert Precision Mfg., Inc.; Design Tool & Machine Company; Designs For Tomorrow, Inc.; Deterling Company, Inc.; Detroit Tool Engineering Company; Detwiler Tool Company; Development Research & Tool; Dexter Tool Company; Diamond Lake Tool; Diamond Machine Works, Inc.; Diamond Mold & Die, Inc.; Diamond Tool & Die Co., Inc.; Diamond Tool Products; Dickey & Son Machine & Tool; Die Cast Die & Mold, Inc.; Die Cast Dies, Inc.; Die Matic Corporation; Die Products, Inc.; Die Supply Corp.; Die-Matic, Inc.; Die-Mension Corporation; Die-Tech Manufacturing, Inc.; Die-Tron-Die-Cam, Inc.; Diecraft Corporation; Dieline Corporation; Diemakers, Inc.; Diemaster Tool & Mold; Diematics, Inc.; Dietooling (Division of Diemolding); Dietronic Stampings, Inc.; Dillon Industries, Inc.; Dimac Manufacturing Co., Inc.; Discovery Tool & Manufacturing; Ditool (Division of Foundry Allied Industries); Diversified Engraving Stamp; Diversified Tool & Die; Diversified Tool Corporation; Diversified Tools, Inc.; Dixie Numerics, Inc.; Dixie Tool & Die, Inc.; Dixon Components, Inc.; Dollins Tool, Inc.; Donkra Manufacturing Company; Donlee Precision; Dot Machine & Tool Company; Double D Machine & Tool Company; Double Disc Grinding of Hauppauge, Inc.; Dowty's Machine Works, Inc.; Doyle Manufacturing, Inc.; Drake Engineering Co., Inc.; Drem Machine Company; Drilex Corporation; Du-Well Grinding Company, Inc.; Dugan Tool & Die Company; Duke Grinding, Inc.; Dulond Tool & Engineering, Inc.; Dun-Rite Industries, Inc.; Dura Metal Products Corporation; Durable Metal Products Company; Durivage Pattern Company; Duwest Tool & Die, Inc.; Dyko Tool Corporation; Dynacorp, Inc.; Dynamic Engineering, Inc.; Dynamic Enterprises, Inc.; Dynamic Machine & Fabricating; Dynamic Machine Works; Dynamic Metal Products; Dynamic Tool

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& Design, Inc.; Dynamic Tool & Die Company; Dynamic Tool and Die, Inc.; Dynasty Mold & Engineering, Inc.; Dysinger Tool & Die Company; E & C Manufacturing Company, Inc.; E & F Tool Company, Inc.; E A M, Inc.; E C M of Florida; E C M Specialties, Inc.; E D I High-Tech Tooling & Machining; E D M Services, Inc.; E D M Wire-Cut Northwest, Inc.; E F Precision; E F S Fabrication, Inc.; E J Codd Company, Baltimore City; E K Machine Tool, Inc.; E M I Precision; E R C Concepts Company; E R I Division (Division of Babcock & Wilcox Company); E S L Corporation; E W Johnson Company, Inc.; E.D.M. Exotics; E–B Manufacturing Company, Inc.; E–Z Machine Corporation; Eagle Metalcraft, Inc.; Eagle Tool & Machine Company, Inc.; Eason & Waller Grinding Company; Eastern Tool & Die, Inc.; Eastern Tool & Engineering Corp.; Eastford Tool & Die Co.; Ebway Corporation; Echo Precision Tooling Company; Eck & Eck Machine Company, Inc.; Eckel Manufacturing Company; Eckert Manufacturing Co., Inc.; Ecko Tool & Die, Inc.; Eclipse Mold, Inc.; Ed Fish Machine Company; Edco Tool & Die Company; Edel-Brown Tool & Die Company; Edgefield Fine Machining Company; Edgerton Machine & Gear, Inc.; Edinger Manufacturing, Inc.; Edmar Engineering Company; Edmunds Manufacturing Company; Edro Engineering, Inc.; Egli Machine Company, Inc.; Ehrhardt Tool & Machine Company; Elcom Corporation; Eighty-Six Tool Company; Eisen Gustav Tool & Die Works; Elbro Tool Company, Inc.; Elcam Tool & Die, Inc.; Elco Gear Corporation; Electra Form, Inc.; Electric Terminal Corporation; Electrical Discharge Machine; Electro Form Corporation; Electro Machine & Tool, Inc.; Electro Mold Company; Electro-Mechanical Products, Inc.; Electro-Methods, Inc.; Electrodie, Inc.; Electrol Manufacturing Company; Electronics Tool & Die; Electrotools, Inc.; Elger Tool and Machine Co., Inc.; Elgin Machine Corporation; Elite Tool Company, Inc.; Elizabeth Carbide Die Co., Inc.; Eljay Corporation; Elk Lake Tool Company; Elkhart Machine & Tool; Elliot Tool & Manufacturing Company; Elliott's Precision, Inc.; Ely Tool, Incorporated; Emblem Tool & Engineering Company; Emco Engineering; Emmert Welding & Manufacturing Inc.; Emory Machine & Tool Company; Empire Corporation; Empire Machine Shop, Inc.; Empire Manufacturing Corporation; Enbi Corporation; Engineered Metal Products Company; Enpro Systems, Inc.; Enterprise Tool & Die; Enterprise Tool & Die, Inc.; Ephrata Precision Parts, Inc.; Epic Manufacturing Company, Inc.; Erca Tool Die & Stamping Company; Erdle Manufacturing Company, Inc.; Erickson Tool & Machine Company; Ermco; Ernest Gaum, Inc.; Ervite Corporation; Esco, Inc.; Estee Mold & Die, Inc.; Esterle Mold & Machine Co.; Estul Tool & Manufacturing Co. Inc.; Etko Machine, Inc.; Euclid Diemakers, Inc.; Euclid Precision Grinding Co., Inc.; Evana Tool & Engineering, Inc.; Evans Tool & Die, Inc.; Evansville Tool & Die; Ever Fab, Inc.; Ever-Ready Tool, Inc.; Everett Pattern and Mfg., Inc.; Ewart-Ohlson Machine Company; Exact Cutting Service, Inc.; Exact Tool & Die, Inc.; Excel Foundry and Machine, Inc.; Excel Machine Company; Excel Machine Products, Inc.; Excel Manufacturing, Inc.; Excel Stamping & Manufacturing, Inc.; Excel Tech Machine Repair & Scraping, Inc.; Excel Tool & Mfg.; Executive Mold Corporation; Expertise Components, Inc.; Expo Tool Company, Inc.; Extrusion Services, Inc.; Ezell Precision Tool Company; F & G Multi-slide, Inc.; F & G Tool & Die Company; F & M Machine Corporation; F & S Tool & Gauge Company; F C Machine Tool Design, Inc.; F D Contours; F D T Precision Machine Co., Inc.; F H Peterson Machine Corporation; F K Instrument Company, Inc.; F M Machine Company; F M S Industries, Inc.; F P Pla Tool & Manufacturing Co.; Fabian Machine & Tool; Fabmaster Industries, Inc.; Fabritek Company, Inc.; Fabro Engineering, Inc.; Fair Tool & Die Company; Fairbanks Machine & Tool; Fairfield Tool Company, Inc.; Fairview Machine Company, Inc.; Fairway Molds, Inc.; Faith Tool & Manufacturing, Inc.; Falcon Precision Machine Co.; Falicon Performance Eng.; Falls City Machine Technology; Falls Mold & Die, Inc.; Fame Tool & Manufacturing Company; Fargo Machine Company, Inc.; Farris Machine & Tool Company; Faustson Tool; Fay Tool & Die Company; Felton Machine Co., Inc.; Femmer Machine Company; Ferange Industries, Inc.; Ferrex Corporation; Ferriot Inc.; Fibreform Electronics; Fidelity Tool & Machine Co., Inc.; Field Equipment & Service Company; Figgins Machine Company; Finest Tool Company; Finish Line Manufacturing; Finntech, Inc.; Fischer Tool & Die Corporation; Fitzwater Engineering Corporation; Five Star Tool Company, Inc.; Flagg Steel Company; Flametech Corporation; Fleck Machine Company; Florida Aero Precision, Inc.; Fluke Metal Products, Inc.; Fordees Engineering; Formac Corporation; Formative Products; Formtech; Formtech Enterprises, Inc.; Forrest Machine, Inc.; Forster Tool & Die; Forsyth Engineering & Machine Corp.; Fort Custer Tool & Die, Inc.; Foster Machine & Manufacturing Co.; Four Star Precision Products, Inc.; Four-D Tool Company; Fox Valley Tool & Die, Inc.; France Special Tool; Franchino Mold & Engineering; Frank J. Stolitzka & Son, Inc.; Fre-Mar Industries, Inc.; Frederick's Machine Shop; Fredon Corporation; Fredon Development Industries Inc.; Fremont Plastic Molds, Ltd.; Frenz & Kellogg Tool Corporation; Friemark, Inc.; Fulton Tool Company, Inc.; Furno Co.; Futaba Corporation of America; Future Fabricators; Future Tool & Die Company, Inc.; Future Tool & Die, Inc.; Fyco Tool & Die, Inc.; Fyne Instrument Corporation; G & G Machine Technology's Inc.; G & G Tool Company, Inc.; G & H Jig Grinding, Inc.; G & H Precision Machining; G & J Machine Shop, Inc.; G & K Machine & Tool Company; G & L Machine, Inc.; G & L Machining, Inc.; G & M Precision, Ltd.; G & R Enterprises; G & R Precision Grinding; G & W Industries, Inc.; G & W Tool & Die Company, Inc.; G & Z N/C Machining Company; G B F Enterprises, Inc.; G B Tool Company; G L B Precision, Inc.; G M A Tooling; G M Tool & Design, Inc.; G M Tool Corporation; G N R Plastic Co., Inc.; G P Precision Metal West; G P Tool Company; G S Precision, Inc.; G T G, Inc.; Gadsden Tool, Inc.; Gage-Line Sciences, Inc.; Galaxy Tool & Mold, Inc.; Galaxy Tool Corporation; Gales Manufacturing Corporation; Galger Engineering & Manufacturing Company; Galgon Industries, Inc.; Gambar Products Company, Inc.; Gar Incorporated; Garcia Associates; Garray Machine; Gasperak Mold & Engraving; Gatco, Inc.; Gauer Mold & Machine Company; Gem City Engineering Company; Gem Industries; Gemel Precision Tool Company, Inc.; Gemini Tool & Precision Machine; General Die & Engineering Corp.; General Engineering Company; General Machine & Tool; General Machine Products; General Machine Shop, Inc.; General Machine Works; General Tool & Die Company, Inc.; General Tool Company; Genesee Manufacturing Company, Inc.; Genesee Metal Stampings; Genesee Tool & Engineering, Inc.; Genuine Tool Company, Inc.; Geometric Manufacturing; George Welsch & Son Company; German Tool & Die, Inc.; Germantown Tool & Machine; Geyer Precision Machining Company; Gibbs Machine Company, Inc.; Gilbert Engineering Company; Gilbert Machine & Tool Company Inc.; Gilbert Tool & Die, Inc.; Gilkey Machine; Gill Tooling; Gillaspie Engineering & Mfg.; Gillette Machine & Tool Company; Girard Tool & Die; Glaze Tool & Engineering Company; Glebar Company, Inc.; Glendale Machine Company, Inc.;

Glidden Machine & Tool, Inc.; Goebel Machine Service, Inc.; Goffs Industrial Aid Machining Inc.; Goguen Industries; Goldenwest Manufacturing, Inc.; Goosen Enterprises; Gordon Industries; Gottschall Tool & Die; Gougler Industries; Grand Engineering; Grand Island Precision; Grand Rapids Diecraft, Inc.; Granger Machine & Tool, Inc.; Graphic Equipment Manufacturing Company, Inc.; Graybills Tool & Die, Inc.; Great American Tool & Mfg. Co.; Great Lakes Grinding, Inc.; Green Creek Tool & Gage, Inc.; Greenwell Machine & Tool, Inc.; Gregg Tool & Die Company, Inc.; Gremco Machine & Tool; Griffin Tool, Inc.; Grind All Precision Tool; Grind Company, Inc.; Grind-All, Inc.; Gros-Ite Industries; Groth Equipment Corporation; Guill Tool & Engineering Co., Inc.; Gulf South Machine; Gurr Enterprises Ltd.; H & H Machine Company; H & H Machine Company, Inc.; H & H Machine Shop Of Akron, Inc.; H & H Machined Products, Inc.; H & H Tool & Die Company; H & J Tool & Die Company; H & K Tool & Machine Company; H & M Screw Machine Products, Inc.; H & P Tool & Machine, Inc.; H & R Tool Works, Inc.; H & S Swansons' Tool Company; H & W Tool Company, Inc.; H B Machine, Inc.; H Brauning Company, Inc.; H Galow Company; H H Arnold Company, Inc.; H H H Machine Company; H H Mercer, Inc.; H M Dunn Company, Inc.; H M M Engineering Design Services; H P A S Inc.; H P Smith Spindle Corporation; H R Edgar Machining & Fabricating; H S & S Machine Tool Rebuilders; H S Die & Engineering, Inc.; H T B, Inc.; Haberman Machine; Hackett Precision Company; Haemer Tool & Die; Hahn & Clay; Haley Tool & Stamping, Inc.; Hallum Tooling, Inc.; Halpro, Inc.; Hamden Tool & Die Co., Inc.; Hamill Manufacturing Company; Hamilton Mold & Machine, Inc.; Hamilton Tool Company; Hamlin Steel Products, Inc.; Hammill Manufacturing Company; Hammond and Barrie; Hammond Tool, Inc.; Hancock Manufacturing Corporation; Handy Tool & Manufacturing Company, Inc.; Hans Rudolph, Inc.; Hansa Plastics, Inc.; Hansford Manufacturing Corporation; Hanson Mold; Hanson Precision Machine; Har-Les Tool, Inc.; Hardy-Reed Tool, Harig Manufacturing Corporation; Harmon Machine Products; Harmony Industrial Corporation; Harrington Machine & Tool, Inc.; Hartford Aircraft Products, Inc.; Hartford Cutter Grinding, Inc.; Haserodt Machine & Tool, Inc.; Haskell Machine & Tool, Inc.; Haumiller Engineering Company; Hauser Machine Company, Inc.; Hawkins Machine Company, Inc.; Hawkinson Mold Engineering Company; Hayden Corporation; Hayden Precision Industries; Heacock Metal and Machine, Inc.; Heatherington Machine Corporation; Hebert Machine Works; Hedalloy Die Corporation; Heilmann Tool & Manufacturing Co.; Helac Corporation; Helio, Inc.; Hellebusch Tool & Die, Inc.; Helm & Son Ltd.; Helmel Engineering Products, Inc.; Henes Stamping, Inc.; Henman Engineering & Machine, Inc.; Heritage Custom Fabricators, Inc.; Herr Precision Machining; Herrick & Cowell Company; Herzog Tool & Die Company, Inc.; Hess Die Mold, Inc.; Hess Engineering, Inc.; Hetrick Manufacturing, Inc.; Heyl Engraving, Inc.; Hi-Ridge Manufacturing, Inc.; Hi-Tech Industries, Inc.; Hi-Tech Manufacturing, Inc.; Hi-Tech Metal Cutting, Inc.; Hi-Tech Mold & Engineering, Inc.; Hi-Tech Mold & Tool, Inc.; Hiatt Metal Products Company; High Precision Machining Services; High-Tech Industries; Hill Aerospace & Defense; Hill Engineering, Inc.; Hilton Industries; Hilton Tool & Die Corporation; Hinshaw Tool & Die, Inc.; Hir-Trec Machine & Tool, Inc.; Hittle Machine & Tool Company; Hobson & Motzer, Inc.; Hodge Tool Company, Inc.; Hoercher Industries, Inc.; Hoffstetter Tool & Die; Hofmann Tool & Die Corporation; Holden Machine Company, Inc.; Holland Engineering Company; Hollis Industries, Inc.; Holmes Manufacturing Corporation; Holyoke Machine Company; Hondo Die Supply, Inc.; Hone Lap Company, Inc.; Hopco; Hopkins Machine & Tool Company; Hoppe Tool Works, Inc.; Hopwood Tool & Die; Horton Machine Company; Houston Company; Houston Cutting Tools, Inc.; Houston Metal Cutting Company; Hovis Precision Products; Howell Bros. Machine & Tool; Howell Precision, Inc.; Howland Industries; Howland Machine Corporation; Hubbell Machine Company, Inc.; Hudgins Precision Manufacturing, Inc.; Hudson Machine Works, Inc.; Hugh Mathews Machine Works, Inc.; Hughes Fabrication; Hughes Manufacturing, Inc.; Humbolt Instrument Company; Hunt & Hunt, Inc.; Hunt Machine & Manufacturing Co.; Huron Machine Products, Inc.; Huron Tool & Cutter Grinding; Huron Tool & Engineering Company; Husky Cutter Grinding, Inc.; Hutchins Tool & Engineering Co.; Hydraulic House, Inc.; Hydrodyne Division Of FPI, Inc.; Hygrade Machine & Tool, Inc.; Hygrade Tool & Manufacturing Co.; Hyland Machine Company; Hytrol Manufacturing, Inc.; Hytron Manufacturing Company, Inc.; I E M, Ltd.; I T C Automation, Inc.; I T M, Inc.; I-Corp, Inc.; Ideal Engineering Corporation; Ideal Engineering, Inc.; Ideal Tool Company; Ilion Machine Products, Inc.; Imco, Inc.; Imperial Carbide, Inc.; Imperial Die & Manufacturing Co.; Imperial Machine & Tool Company; Imperial Machine & Tool, Inc.; Imperial Tool & Die; Imperial Tool & Manufacturing Co., Inc.; Impression Die & Tool; Independent Die & Manufacturing; Independent Tool & Manufacturing; Indian Springs Manufacturing Co., Inc.; Indiana Tool & Die; Industrial Bearings & Supply, Inc.; Industrial Chrome Specialties, Inc.; Industrial Custom Automatic Machine; Industrial Engineering, Inc.; Industrial Engravers, Inc.; Industrial Equipment Repair Co.; Industrial Form Grinding; Industrial Grinding, Inc.; Industrial Machine Company; Industrial Molds, Inc.; Industrial Park Rebuild; Industrial Precision Products, Inc.; Industrial Recision Services; Industrial Tectonics, Inc.; Industrial Tool & Die Co., Inc.; Industrial Tool & Machine Company; Industrial Tool, Die & Engineering, Inc.; Industrial Tool, Inc.; Industrial Tooling, Inc.; IndTool, Inc.; Injection Mold & Machine Company; Innex Tool & Die, Inc.; Innovation Machining Corporation; Innovative Concept Engineering & Manufacturing, Inc.; Innovative Systems Machine & Tool, Inc.; Innovative Tool; Instrumental Machine Products, Inc.; Integrated Machine Systems, Inc.; Inter-City Manufacturing, Inc.; Intracoastal Plastics, Inc.; Investment Mold Sales & Design; Irotas Manufacturing Company; Isimac Machine Company, Inc.; Istrouma Foundry & Machine Works; J & A Tool Company; J & B Tool; J & D Tool & Die, Inc.; J & F Machine Company; J & F Machine Company; J & H Deburring Company; J & J Machining; J & L EDM; J & M Grinding, Inc.; J & M Machine Products, Inc.; J & M Machine, Inc.; J & N Engineering, Inc.; J & R Boring & Machine; J & R Machine Company; J & W Grinding, Inc.; J & W Jolly, Inc.; J B Tool Die & Engineering, Inc.; J B Tool, Inc.; J B's Precision Industries, Inc.; J C B Precision Tool & Mold, Inc.; J C Barton Company; J C Parry & Sons Co, Inc.; J C Wilson Engineering Corporation; J D Kauffman Machine Shop; J D Tool & Engineering, Inc.; J F Fredericks Tool Company, Inc.; J G R Manufacturing Corporation; J G Tool & Die Co., Inc.; J Hacker, Inc.; J I Machine Company, Inc.; J K Tool & Die Design, Inc.; J L Behmer Corporation; J M B Machine & Tool Company, Inc.; J M Mold, Inc.; J M S Mold & Engineering Co., Inc.; J Myles Machine Company; J O K A Industries; J Ross Miller & Sons, Inc.; J Ryall Machine Works; J S Die & Mold, Inc.; J S S Tool & Die; J T Engineering, Inc.; J T Machine Company; J T Tool Company; J W Harwood Company; J W Tool & Die

Company, Inc.; J. D. Morris Machine & Mfg., Inc.; J. E. S. Grinding, Inc.; J. P. Tool, Inc.; J.P. Tool Inc.; Jack Haines Company; Jack Stewart Kellering; Jackson & Heit Machine Company; Jackson Machine; Jaco Tool & Die, Inc.; Jaman Tool, Die & Machine Company; Jamar Tool, Inc.; James P. Chick Company; James Singh Precision Eng., Inc.; Jamestown Design & Machine; Jandi Machine & Tool; Janson Tool & Die Company; Jasco Tools, Inc.; Jaycraft Corporation; Jell Tool Company; Jemco, Inc.; Jenkins Machine, Inc.; Jenkins Precision Grinding Co.; Jennison Corporation; Jergens, Inc.; Jerpbak Bayless Company; Jerry Carroll Machining, Inc.; Jerry Tools, Inc.; Jet Die & Development Company; Jet Industries, Inc.; Jet Machine Works, Inc.; Jig Grinding Service Company; Jigmasters Tool & Gauge; Jim Cook Company; Jimco, Inc.; Jirgens Modern Tool Corporation; Joburn Tool, Inc.; Joeal Tool Company, Inc.; John V. Potero Company, Inc.; Johnson Controls, Inc.; Johnson Engineering Company; Johnson Precision Machine, Inc.; Johnson Precision Machining, Inc.; Johnson Precision Works, Inc.; Johnson Technology; Johnson Tool Company; Johnson's Machine & Tool, Inc.; Jomar Machining, Inc.; Jonaco Machine, Inc.; Jonco Tool Company; Jordan & Smith, Inc.; Jordan Machine Co, Inc.; Joss Tool & Manufacturing Co., Inc.; Joyce Engraving Company; Judd Industries, Inc.; Juell Machine Company, Inc.; Juklin Industries, Inc.; Jurman Metrics, Inc.; K & A Engineering Company; K & B Tool; K & E Instrument; K & E Mfg. Company; K & G Tool, Inc.; K & H Mold & Machine Division; K & K Grinding Company, Inc.; K & M Precision Machining, Inc.; K & R Machine Company, Inc.; K & S Tool & Die, Inc.; K & S Tool & Manufacturing Company, Inc.; K - N Mold, Inc.; K and M Machine Fabricating, Inc.; K A F - Tech Industries; K D Service Company, Inc.; K L C Enterprises, Inc.; K L Winter, Inc.; K Mold & Engineering, Inc.; K V, Inc.; K Y Industries, Inc.; K. Y. Rogers, Inc.; K–B–K Tool & Manufacturing, Inc.; Ka-Wood Gear & Machine Company; Kaan Engineering, Inc.; Kahre Brothers, Inc.; Kal Tool & Die Company, Inc.; Kamashian Engineering; Kamco Plastics, Inc.; Kapp Machine Company; Karg Corporation; Karman Tool & Plastic Manufacturing; Karsten Engineering; Kasco Metal Products Corporation; Kaufhold Machine Shop, Inc.; Kay's Precision Manufacturing Corp.; Kays Engineering; Kebco Mold & Design, Inc.; Keck-Schmidt Tool & Die; Keegan's Machine & Fabricating, Inc.; Keen Machine Company; Kelbros, Inc.; Kellems & Coe Tool Corporation; Keller Technology Corporation; Kelly Carbide Die Corporation; Kelm Manufacturing Company; Kelmar, Inc.; Ken Raz Tool Company, Inc.; Kendrick Tool & Engineering; Kenlee Precision Corporation; Kennedy & Bowden Machine Company; Kennedy Tool & Die Company; Kennick Mold & Die, Inc.; Kent Mold Engineering; Kentucky Machine & Tool Company; Kenwood Machine; Kenyon Specialties Co.; Kern Special Tools Company, Inc; Kerns Manufacturing Corporation; Kerstan Precision Company, Inc.; Key Products; Keyes Machine Works, Inc.; Keystone Machine, Inc.; Keyway, Inc.; Kilgore Machine Company, Inc.; Kimberly Gear & Spline, Inc.; Kindex, Inc.; Kinetic Tool Company; King Machine, Inc.; Kirsop Industries; Klix Tool Corporation; Knight Machine & Tool; Knight Tool Company; Knowlton Manufacturing Company; Koch's Machine & Tool Company; Kolar Machine, Inc.; Komo Machine, Inc.; Koning Machine & Tool Company; Konrad Corporation; Koral Tool & Die Industries, Inc.; Kordenbrock Tool & Die Company; Kovacs Machine & Tool Company, Inc.; Kreichbaum Machine & Tool; Kremin, Inc.; Krimminger Machine Company; Krisalis Machining; Krizman, Inc.; Kroesen Tool Co., Inc.; Kruse Tool & Die, Inc.; Kuester Tool & Die Co., Inc.; Kurz & Son, Inc.; KENLAB; L & H Tool & Die, Inc.; L & J Tool & N C Machine; L & L Machine, Inc.; L & L Tool & Die; L & M Mold Corporation; L & M Precision Grinding Corp.; L & P Machine, Inc.; L & S Corporation; L A B Quality Machining; L B Machine & Manufacturing Company; L H Carbide Tool & Die Corp.; L J Mroz Design Service; L P I Corporation; L T L Company, Inc.; L. A. Simpson Machine Company; L–B–L Corporation; L–K Tool & Manufacturing, Inc.; Lab Threads & Gear Works, Inc.; Labco Welding, Inc.; Ladapa Die & Tool, Inc.; Lagonda Tool Company; Lakeland Mold, Inc.; Lakeland Tool & Engineering, Inc.; Lakeview Tooling, Inc.; Lakewood Engineering, Inc.; Lamar Industrial Plastics II; Lamb Machine & Tool Company; Lamb Technicon Corporation; Lamina, Inc.; Lampin Corporation; Lamson Products Company; Lancaster Knives, Inc.; Lancaster Machine Shop; Lancaster Metal Products Company; Lancaster Mold, Inc.; Lancaster Tool & Machine, Inc.; Land Specialties Manufacturing Co.; Landry Specialty Welding, Inc.; Lane Punch Corporation; Laneko Engineering Company; Laneko Precision Corporation; Laneko Roll Form, Inc.; Lange Precision Company; Lanlyn Instrument Company; Lanum Metal Products Company, Inc.; Lark Manufacturing Company, Inc.; Laser Fare, Ltd.; Laser Tool Company; Laserform; Lathe Tool Works, Inc.; Layke Tool & Manufacturing, Inc.; LaGrange Machine, Inc.; Lebal Industries, Inc.; Lebanon Tool Co.; Leblanc Grinding Company; Leblond Makino Machine Tool Company; Ledford Engineering Company, Inc.; Leech Tool & Die Works, Inc.; Leech, Incorporated; Leemax Mfg. Corp.; Lees Enterprise; Leese & Company, Inc.; Leicester Die & Tool, Inc.; Leidel Corporation; Lempco Industries, Inc.; Lenit Machine Company; Lentros Engineering, Inc.; Leonardi Manufacturing Co., Inc.; Letsch Manufacturing, Inc.; Levic Plastics, Inc.; Levion Company, Inc.; Lewis Machine & Fabricating Company; Liberty Tool & Die Corporation; Libra Manufacturing Company; Ligi Tool & Engineering, Inc.; Limmco, Inc.; Linco Tool & Machine Company; Linco, Inc.; Link, Inc.; Linke Tool Die & Engineering Co., Inc.; Lloyd B. Cogswell Manufacturing Co.; Lloyd Company; Lloyd Tool & Manufacturing Corp.; Loadometer Corporation; Lobart Company; Logan Machinists, Inc.; Lombardo Tool & Machine Company; Lombness Tool & Die Company, Inc.; Long-Stanton Manufacturing Company; Lonner Industries, Inc.; Look Precision, Inc.; Lorenzen's Tool & Dies, Inc.; Louis J. Hansen Enterprises, Inc.; Louis Vigh Tool & Die; Louisiana Engine Rebuilding Co.; Louisville Machine Mfg. Corporation; Loyal Machine Company, Inc.; Lucas Machine Co.; Lucas Machine Division; Luick Quality Gage & Tool; Lunar Industries, Inc.; Lunar Tool & Machinery Company; Lunar Tool & Mold, Inc.; Lunquist Tool & Manufacturing Corp.; Lynn Welding; Lynx, Inc.; Lyons Tool & Die Company; M & D Loe Manufacturing, Inc.; M & H Engineering Company, Inc.; M & H Precision; M & H Tool & Die, Inc.; M & J Grinding & Tool, Inc.; M & M Machine Company, Inc.; M & S Machine & Manufacturing Co.; M & S Welding Company, Inc.; M C General, Inc.; M D E, Inc.; M D F Tool Corporation; M D Machine Co., Inc.; M E P P Tool Company, Inc.; M G M Tool & Die, Inc.; M G W Precision Small Parts; M S Willett, Inc.; M T E, Inc.; M W Industries, Inc.; M-C Fabrication, Inc.; M-Tron Manufacturing Company, Inc.; Mac Law Tool & Aircraft; Mac Machine Company, Inc.; Machine Products Corporation; Machine Service Consultants; Machine Specialties Company; Machine Tool Specialists, Inc.; Machine Tooling, Inc.; Machinecraft, Inc.; Machinery Spare Parts & Supplies; Mackenzie Machine & Marine Works; Macnab Manufacturing, Inc.; Macor, Inc.; Maddox Metal Works, Inc.; Maddox Tool & Die Shop; Madgett

Enterprises; Madison-Smith Machine and Tool Co.; Maeward, Inc.; Magdic Precision Tooling, Inc.; Maghielse Tool & Die Company; Magna Engineering; Magna Machine & Tool Company; Magna Standard Manufacturing, Inc.; Maho Machine Tool Corporation; Main Mold, Inc.; Maine Machine Products; Majer Precision Grinding, Inc.; Majestic Mold & Tool, Inc.; Majestic Tech; Majestic Tool & Engineering Co., Inc.; Major Tool & Die Division (Division of Means Stamping Industries, Inc.); Major Tool & Machine, Inc.; Mal Ber Manufacturing Company; Mallay Corporation; Mamco Manufacturing Company; Manchester Tool & Die; Manco, Inc.; Manda Machine Company, Inc.; Manetek, Inc.; Maney Aircraft; Manheim Special Machine Shop; Manufacturers Tool & Die; Manufacturing Appraisal Company; Manufacturing Machine Corporation; Manufacturing Service Company; Mar-Mac Precision Corporation; Mar-Tech Industries, Inc.; Marco Manufacturing Company; Marcy Machine, Inc.; Mardon Enterprises, Inc.; Mardon Industries, Inc.; Mardon Tool & Die Company, Inc.; Maric Precision; Marini Tool & Die Company, Inc.; Mark Concepts, Inc.; Marlton Pike Precision; Marquardt Engineering, Inc.; Marquette Tool & Die Company; Mars Manufacturing Company, Inc.; Martco, Inc.; Martin Machine Company, Inc.; Martin Machine, Inc.; Martinelli Machine; Marton Tool & Die Company, Inc.; Masco Machine, Inc.; Massey Grinding Service, Inc.; Master Cutting & Engineering; Master Manufacturing Co.; Master Metal Engineering, Inc.; Master Precision Machining, Inc.; Master Precision Tool Corporation; Master Tool & Die, Inc.; Master Tool & Die, Inc.; Master Tool & Mold, Inc.; Mastercraft Mold, Inc.; Matrix Machine, Inc.; Matrix Tool, Inc.; Matthews Gauge, Inc.; Maudlin & Son Manufacturing Company, Inc.; Maurer Metalcraft, Inc.; Maxwell Bailer Corporation; May Industries, Inc.; May Tool & Die, Inc.; May Tool & Mold Company, Inc.; Maya Jig Grinding & Gage Company; Mayday Manufacturing Company; Mayfair Molded Products; Mayfield Machine Shop, Inc.; McAfee Tool & Die, Inc.; McBee Engineering, Inc.; McCormick/Bates Manufacturing; McGill Manufacturing Company; McKenna Industries, Inc.; McLinden Machine, Inc.; McNeal Enterprises, Inc.; McNeill Manufacturing Company; McPherson Implement, Inc.; McSwain Manufacturing Company; Meadville Plating Company, Inc.; Meadville Tool Grinding; Mechanical Associates, Inc.; Mechanical Products Manufacturing; Mechanized Enterprises, Inc.; Medved Tool & Die Company; Mefco, Inc.; Megacity Tool & Manufacturing Corp.; Meko Industries, Inc.; Melvin Tool & Die, Inc.; Menegay Machine & Tool Company; Mercer Machine & Tool Co., Inc.; Mercer Machine Company, Inc.; Mercury Tool & Manufacturing Co.; Mercury Tool & Mfg., Inc.; Meriden Manufacturing; Meridian Products Corporation; Merit Machinery, Inc.; Merkler Machine Works; Merlone Metal Spinning, Inc.; Meta-Meg Tool Corporation; Metal Forming & Coining; Metal Hans, Inc.; Metal Processors Inc.; Metal Products Mfg., Inc.; Metal-Tech, Inc.; Metallon, Inc.; Metco Manufacturing Company, Inc.; Metform Tool Corporation; Methods & Machining Services Co.; Metri-Tech Engineering, Inc.; Metric, Inc.; Metrix Manufacturing Company; Metro Manufacturing, Inc.; Metro Metal Products, Inc.; Metro Mold & Design, Inc.; Meyer Tool & Machine Company; Miami Valley Punch, Inc.; Michiana Plastics, Inc.; Micka Manufacturing Company; Micro Chrome & Lapping, Inc.; Micro Cut; Micro Diameters Company; Micro Diameters, Inc.; Micro Instrument Corporation; Micro Machine Shop; Micro Machining, Inc.; Micro Manufacturing Corp.; Micro Precision Company; Micro Punch & Die Company; Micro Stamping Corporation; Micro Surface Engineering, Inc.; Micro Tool & Manufacturing Company; Micro Tool Engineering, Inc.; Micro-Tech Production Machine Co.; Micro/Belmont Engineering; Micromet, Inc.; Micron Tool & Manufacturing, Inc.; Microtome Precision, Inc.; Mid West Mold; Mid-Central Manufacturing, Inc.; Mid-South Industries, Inc.; Mid-State Manufacturing, Inc.; Midland Precision Machining, Inc.; Midtown Manufacturing; Midville Tool & Die Company; Midway Mold, Inc.; Midwest Machine & Manufacturing Co.; Midwest Tool & Die Corporation; Midwest Tool & Engineering Company; Mikim Industries, Inc.; Mil-Craft Manufacturing, Inc.; Mil-O-Matic; Mil-Tech Machine, Inc.; Millard's Tooling & Grinding, Inc.; Millat Industries Corp.; Miller Machine & Design, Inc.; Miller Mold Company; Miller Precision, Inc.; Milrose Industries; Miltronics, Inc.; Milwaukee Punch Corporation; Milwaukee Slide and Spindle; Minco Tool & Mold Corporation; Minnotte Cleveland Corporation; Mission Tool & Manufacturing Co., Inc.; Mitchell Machine & Fabricating; Mitchell Machine & Tool Company; Mitchell Machine Works; Mitchum Schaefer, Inc.; Mittler Brothers Machine & Tool; Mo-Tech Corporation; Mod-Tech, Inc.; Model Die & Mold, Inc.; Model Machine Company, Inc.; Model Pattern Company, Inc.; Modern Industries; Modern Machine Company; Modern Machine, Inc.; Modern Manufacturing, Inc.; Modern Metal Manufacturing, Inc.; Modern Metalsmiths, Inc.; Modern Molds, Inc.; Modern Tools Division (Division of Libbey, Owens, Ford); Moehrle, Inc.; Mohawk Mold & Machine; Mold Systems Corporation; Moldcraft E D M; Monarch Valve Corporation; Monitor Mold & Tool Company; Monks Manufacturing Co., Inc.; Monroe Tool & Die Company; Monterey Precision, Inc.; Montgomery Brothers Machine Company, Inc.; Montgomery Tippett Corporation; Moon Cutter Company, Inc.; Moore Quality Tooling, Inc.; Moore Special Tool Company, Inc.; Morris Machine Company, Inc.; Morris Precision; Morton & Company, Inc.; Motor Machine Co., Inc.; Moulding Specialists, Inc.; Mountain Machine Services; Mountain States Automation; Mt. Penn Tool & Machine Co., Inc.; Muck Engineering, Inc.; Mueller Machine & Tool Company; Muesco, Mallay, Inc.; Multi-Tool, Inc.; Mun Manufacturing Company; Munn Engineering Company, Inc.; Mushro Machine & Tool; Mutual Precision, Inc.; Mutual Tool & Die, Inc.; Myers Industries; MAC Tool & Die, Inc.; N B Enterprises; N C; N C S, Inc.; N E T & Die Company, Inc.; N K R Precision Manufacturing Co.; N L T Enterprises, Inc.; Namco Precision, Inc.; NanBil Wire Cut Company; Nardon Manufacturing Company, Inc.; Nash Machine Company, Inc.; Nashville Machine Company, Inc.; Natco Machine & Welding Co., Inc.; National Manufacturing Co., Inc.; National Molding Corporation; Nationwide Precision Products, Corp; Native Industries, Inc.; Neal Manufacturing, Inc.; Nefor Engineering & Mfg., Inc.; Nelms-Donham Machining, Inc.; Nelson Brothers & Strom Co., Inc.; Nelson Engineering; Nelson Engineering Company, Inc.; Nelson Precision Drilling Co., Inc.; Nelson Thread Grinding; Nerjan Development Company; New Age Manufacturing Co., Inc.; New Deal Tool & Machine (Division of NDT Industries, Inc.); New England Die Company, Inc.; New England Tool Company; New River Precision Machine Co.; New Stanton Machining & Tooling Inc.; New Ulm Precision Tool; New-Co Technologies; Newbrook Machine Corporation; Newington Manufacturing, Inc.; Newman Machine Company, Inc.; Newman Machine Works; Newman Stamping & Machine, Inc.; Newport Aeronautical Sales; Newport Controls, Inc.; Newport Tool & Die, Inc.; Niagara Punch & Die Corporation; Nicolson Cutter; Nieman Machine Company; Nifty Bar, Inc.; Nijon Tool Company, Inc.; Nitschke Tool & Die; Noble Tool

Corporation; Norco Tool Grinding, Inc.; Nordon Tool & Mold Company; Nores Precision, Inc.; Norfil Manufacturing; Norfolk Specialties, Inc.; Norman Noble, Inc.; Normandy Metals, Inc.; Normike Industries, Inc.; Norris Precision Manufacturing; North Central Tool and Die; North Coast Grinding, Inc.; North Coast Machining; North Coast Tool & Mold Corporation; North Easton Machine Company; North Florida Tool Engineering, Inc.; North Star Design, Inc.; Northeast Manufacturing Co., Inc.; Northeast Tool & Manufacturing Co.; Northern Machine Tool Company; Northern Manufacturing & Engineering, Inc.; Northridge Precision Machining; Northwest Machine Works, Inc.; Northwest Machine, Inc.; Northwest Precision Tool, Inc.; Northwest Swiss-Matic, Inc.; Northwest Tool & Die Company; Norvs Molds; Nova Tool & Mold, Inc.; Novi Precision Products, Inc.; Numeric Machine Products; Numeric Machining Co., Inc.; Numerical Precision, Inc.; Numerical Precision, Inc.; Numerical Productions, Inc.; Nutmeg Precision Company; NuTec Tooling Systems, Inc.; O & S Machine & Tool Co., Inc.; O-A, Inc.; O A R Tool & Die, Inc.; O E M Industries, Inc.; O J Hanratty Machine; O K Dies, Inc.; O'Keefe Ceramics; Oakley Die & Mold Company, Inc.; Obars Machine & Tool Company; Oette Tool & Die Company; Ohio Gasket & Shim Company; Ohio Machine & Mold Company; Ohio Transitional Machine & Tool, Inc.; Ohlemacher Mold & Die; Ohler Manufacturing Company, Inc.; Ohlinger Industries, Inc.; Olazaba Enterprises; Olin Tool & Machine, Inc.; Olmsted Engineering Company; Omark Industries; Omega Tool & Die, Inc.; Omega Tool, Inc.; Omni Tool, Inc.; Omnitec Precision; Omnitool, Inc.; Onondaga Machine Company, Inc.; Orange Tool Company, Inc.; Orbit Mold Corporation; Orbit Tool & Die Corporation; Osborn Fabricators, Inc.; Osborn Products, Inc.; Osley & Whitney, Inc.; Osuch Tool & Die; OTMI, Inc.; P & A Tool & Die, Inc.; P & D Machine Company; P & J Tool Company, Inc.; P & K Tool & Production Company; P & M Quality Machining Co.; P & M Screw Machine Products; P & N Machine Company, Inc.; P & P Mold & Die; P & R Industries, Inc.; P C S Company; P K Tool & Manufacturing Company; P R B Metal Products, Inc.; P R Machine Works, Inc.; P T L Manufacturing, Inc.; P. M. I. Motion Technologies; Pace Precision Products, Inc.; Pacific Machine Works; Pacific Sky Supply, Inc.; Pacific Tool & Die, Inc.; Pact Manufacturing Company; Pahl Tool Services; Pak Devices, Inc.; Pal-Vin Machine, Inc.; Palma Tool & Die Company, Inc.; Palmer Custom Machinery Corp.; Palmer Manufacturing Company; Palo Verde Machine Products; Pan-O-Grav, Inc.; Pan-Tec, Inc.; Paragon Die & Engineering Company; Paragon Machine & Tool; Paragon Machine, Inc.; Parallax, Inc.; Paramount Die Mold, Inc.; Paramount Machine & Tool Corp.; Park Hill Machine, Inc.; Parker Plastics Corporation; Parkview Metal Products; Parm Tool & Die Company; Parr-Green Mold and Machine Co.; Parris Tool & Die Company; Parrish Machine Company, Inc.; Pasco Tool & Die, Inc.; Patco Machine & Fab, Inc.; Patell Industrial Machine Co., Inc.; Path Technologies; Patterson Gear & Machine; Paumier Company, Inc.; Pe-Ce Design; Peachtree Tooling Corporation; Peerless Precision, Inc.; Peerless Tool & Die Corporation; Pegasus Company, Inc.; Pego Corporation; Peko Precision Products; Pell Engineering, Inc.; Pellegrin Machine & Tool; Penco Precision; Pendleton Tool Company, Inc.; Penn State Tool & Die; Penn United Tech, Inc.; Penn-Erie Manufacturing, Inc.; Pennco Tool & Die, Inc.; Pennoyer-Dodge Company; Pennsylvania Crusher; Pennsylvania Tool & Gages, Inc.; Pentagon Die & Manufacturing, Inc.; Peraza Tool and Mold, Inc.; Perfect Mold Company, Inc.; Perfect-A-Tec Corporation; Perfection Mold & Machine Company; Perfection Tool & Mold; Perfection Tool & Mold; Perfecto Tool & Engineering Company; Performance Plastics East; Performance Unlimited, Inc.; Perry Tool & Research Company; Pesco Company; Petersen Precision Engineering Co.; Phase, Inc.; Phelps Tool & Die Company; Phil-Coin Machine & Tool Co., Inc.; Phillips Bros. Tool & Die, Inc.; Phinney Tool & Die Company; Phoenix Grinding; Phoenix Machining Corporation; Phoenix Manufacturing, Inc.; Phoenix Tool & Gage, Inc.; Pickard Cutter Grinding, Inc.; Piece-Maker Company; Piedmont Tool & Mfg. Co., Inc.; Pier Tool & Die, Inc.; Pierce Products, Inc.; Pinehurst Tool & Die; Pinnacle Engineering Company; Pinnacle Manufacturing Co., Inc.; Pinnacle Precision, Inc.; Pioneer Broach Company; Pioneer Machine Products; Pioneer Precision Grinding, Inc.; Pioneer Tool & Die Company; Pioneer Tool & Die, Inc.; Pioneer Tool Die & Machine; Pivot Punch Corporation; Pivot Punch-Zip Industrial Products; Plainfield Tool & Engineering, Inc.; Plainville Manufacturing Co., Inc.; Plainville Products Corporation; Plant 7 Machine & Tool; Plas Tool Company; Plasma Technology Incorporated; Plasma-Tec, Inc.; Plastic & Metal Forming; PlasTech Mold Company; Plaza Tool & Die Corporation; Pleasant Precision; Plesh Enterprises, Inc.; Pleune Technology; Pohland Enterprises, Inc.; Pol-Tek Industries, Ltd.; Poly Pro, Inc.; Polyphase Machine Company, Inc.; Polytec Products Corporation; Pompano Precision Products; Poplar Machine Co., Inc.; Port City Machine & Tool Company; Porter Precision Products; Posa-Cut Corporation; Powder Metallurgy Company; Powill Manufacturing & Engineering, Inc.; Practical Machine, Inc.; Practical Mechanics Inc.; Prather Engineering, Inc.; Pre-Mec Corporation; Preac Tool Company, Inc.; Precise Engineering Company; Precise Jig Grinding, Inc.; Precise Machine & Etching, Inc.; Precise Mold & Die, Inc.; Precise Plastic Products, Inc.; Precise Products Company; Precise Products Corporation; Precise Punch Products; Precise Tool & Engineering Company; Precision Aerospace Components, Inc.; Precision Aerospace Manufacturing, Inc.; Precision Balancing & Analyzing Co.; Precision Boring Company; Precision Broach Corporation; Precision Carbide Products; Precision Deburring Enterprises, Inc.; Precision Die & Stamping; Precision Drilling & Tapping; Precision E D M; Precision Electronic Metal; Precision Engineering & Mfg. Co.; Precision Engraving & Machine Co.; Precision Fabricating, Inc.; Precision Fluid Power, Inc.; Precision Gage & Tool Company; Precision Gage, Inc.; Precision Grinding & Manufacturing; Precision Grinding, Inc.; Precision Grinding, Inc.; Precision Honing Corporation; Precision Identity Corporation; Precision Industries, Inc.; Precision Machine & Engineering, Inc.; Precision Machine & Tool Co., Inc.; Precision Machine & Welding; Precision Machine Company; Precision Machining Company; Precision Machining Company, Inc.; Precision Masters, Inc.; Precision Measuring Corp.; Precision Metal Works; Precision Metalcraft; Precision Mold & Engineering, Inc.; Precision Mold & Pattern; Precision Mold & Tool, Inc.; Precision Mold Base Corporation; Precision Mold Welding, Inc.; Precision Molds, Inc.; Precision Products of Tennessee; Precision Products, Inc.; Precision Small Parts, Inc.; Precision Specialties; Precision Spring & Stamping Corp.; Precision Stamping & Tool, Inc.; Precision Stampings, Inc.; Precision Technology Corp.; Precision Technology, Inc.; Precision Tool & Grinding, Inc.; Precision Tool & Manufacturing; Precision Tool & Mold; Precision Tool Company; Precision Tubedraw & Machining, Inc.; Preferred Die & Mold Corporation; Preferred Machine & Tool Products; Preferred Machining Corporation; Premium Plastic Machine,

Inc.; Prestige Precision Products, Inc.; PreMAT, Inc.; Prime Engineering; Primeway Tool & Engineering Company; Prince Tool & Die Laboratory, Inc.; Protype Industries, Inc.; Pro-Mold, Inc.; Pro-Tech Metal Specialties, Inc.; Pro-Tool Engineering; Process Equipment Company; Product Engineering Company; Production Metal Cutting, Inc.; Production Products; Production Tool & Die Company, Inc.; Producto Machine Company; Professional Instruments; Progage; Progress Design & Machine, Inc.; Progressive Die & Automation, Inc.; Progressive Die Company; Progressive Tool & Die; Progressive Tool & Die; Progressive Tool Company; Proper Cutter Sales & Service; Proper Mold & Engineering, Inc.; Prospect Mold & Die Company; Protista Company; Proto-Design, Inc.; Proto-Stamp Tool & Die, Inc.; Protonics Engineering Corp.; Prototype & Plastic Mold Co., Inc.; Prototype Model & Mold Corporation, Inc.; ProMold, Inc.; Pruden Tool & Die Company, Inc.; Punch Press Products, Inc.; Punchcraft Company (Division of Masco Industries, Inc.); Puritan Machine Company, Inc.; Putoma Corporation; Pylon Tool Corporation; Pyper Tool & Engineering; POFCO; Q M S Machining & Tool Corporation; Quabbin Industries, Inc.; Quality Circle Corporation; Quality Die & Machine Company; Quality Die & Mold Corporation; Quality Engineering Services, Inc.; Quality Grinding & Machining, Inc.; Quality Grinding Corporation; Quality Machine Company, Inc.; Quality Manufacturing Company; Quality Manufacturing, Inc.; Quality Mold & Die, Inc.; Quality Mold & Engineering, Inc.; Quality Plus, Inc.; Quality Precision Machine Works, Inc.; Quality Stamping Co., Inc.; Quality Tool & Die; Quality Tool & Die Company; Quality Tool & Die Inc.; Quality Tool Company; Quality Tool, Inc.; Qualontime Corporation; Qualtech Tool & Machine, Inc.; Quintile Industries, Inc.; R & C Mold Company, Inc.; R & D Custom Machine & Tool, Inc.; R & D Gage, Inc.; R & D Machine Company; R & D Machine Corporation; R & D Manufacturing; R & D Tool & Engineering; R & M Manufacturing Company; R & M Mold Manufacturing Co., Inc.; R & R Machine; R & R Tool & Die & Four Slide; R & R Tool & Machine, Inc.; R and R Machine Company; R A Industries; R A M Tool Company; R A Tool Company; R B S Tools, Inc.; R B Tool & Manufacturing Company; R Davis EDM, Inc.; R E A L Precision Grinding Company; R E A Precision Machine Co., Inc.; R F Cook Manufacturing Co.; R H Edrich Precision Corporation; R H Gibson Technologies; R H Harris Company; R I Carbide Tool Company; R J S Corporation; R J S Machine Products; R J S Manufacturing Corporation; R J Stuckel Company, Inc.; R M I; R Meschkat Precision Machining; R N D Limited; R O C Carbon Company; R S I Fabtec; R S Precision Industries, Inc.; R S Tool, Inc.; R Y Tool Company, Inc.; R. D. Hopkin Machine Corporation; R. K. Precision Company; R. L. Barry, Inc./Amic Division (Division of R.L. Barry, Inc.); R. W. Smith Company; R.E.F. Machine Company, Inc.; Radford Machine Works; Rae Tech; Rafferty Machine & Tool, Inc.; Rainbow Tool & Machine Co., Inc.; Ralee Engineering Company; Raloid Corporation; Ram Metal Products, Inc.; Rams Rockford Products, Inc.; Ramsay Welding Research Co., Inc.; Ran-Bro Tool Company; Randolph Machine Company; Ranger Tool & Die Company; Ranoda Electronics; Rapid Die & Engineering; Rapid Grinding & Machine; Rapidac Machine Corporation; Raschke Engraving, Inc.; Ratnik Industries, Inc.; Raven Machine & Tool, Inc.; Ray Lee Cams & Machining, Inc.; Ray Machine, Inc.; Raybon Manufacturing Co., Inc.; Rayco Machine Company; Rayco Manufacturing; Ready Machine Tool & Die Corp.; Realco Tool & Die, Inc.; Rearc Engineering, Inc.; Reardon Machine Co., Inc.; Reber Machine & Tool Company; Red Line Base, Inc.; Reed City Tool & Die; Reed Instrument Company; Reel Tool Company; Regal Mold & Die, Inc.; Regener & Company; Rehrig Pacific Company; Reiam Company, Inc.; Reichert Stamping Company; Reid Industries, Inc.; Reidville Tool & Manufacturing Co., Inc.; Reitz Tool & Die Company, Inc.; Reitz Tool, Inc.; Reliable E D M Company; Reliable Machine Works; Reliable Sharpening Service, Inc.; Reliable Tool & Die, Inc.; Reliance Mold & Tool, Inc.; Reliant Tool, Inc.; Remmele Engineering, Inc.; Remtex, Inc.; Rennco Industries, Inc.; Reno Machine Company, Inc.; Repairtech International, Inc.; Republic Diesel Truck; Republic Tool & Manufacturing Co.; Reserve Industries Corporation; Reuther Mold & Manufacturing Co.; Rhode Island Precision Co., Inc.; Ricci Machine Corporation; Richard Manufacturing Company, Inc.; Richard O. 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Parry Machine Company; Sandberg Machine & Engineering; Sanders Tool & Mould Company; Sanders Tool Company; Sanders' Tool & Machine Company; Sandor Tool Company, Inc.; Sandr, Inc.; Santa Clara Machining Company; Sargent Specialty & Machine Company; Satellite Aerospace, Inc.; Satellite Precision Company; Satellite Tool & Machine Co., Inc.; Sattler Machine Products, Inc.; Scan O Matic, Inc.; Schafer Gear Works, Inc.; Schaffer Grinding Company, Inc.; Schickling Tool & Engineering Co.; Schill Corporation; Schmiede Machine & Tool Corporation; Schneider & Marquard, Inc.; Schober's Machine & Engineering; Schroeder Tool & Die Corporation; Schucker-Deco Machine, Inc.; Schuetz Tool & Die, Inc.; Schulze Tool Company, Inc.; Schwab & Rieber; Schwartz

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Industries, Inc.; Schwerdtle Stamp Company; Scorpio Tool & Die, Inc.; Scott County Machine & Tool Co., Inc.; Screw Machine Tool Company; Sears Machine Company; Sebewaing Tool & Engineering Co.; Sectional Die Company; Seel Tool & Die, Inc.; Seico Precision Die, Inc.; Select Tool & Die Corporation; Service Tool & Die Company; Service Tool & Die, Inc.; Service Tool & Mfg. Co., Inc.; Servo Gear Engineering Co., Inc.; Sharp Grinding Company, Inc.; Shaw Industries, Inc.; Shear Tool, Inc.; Sheffield Progressive, Inc.; Shelby Engineering Company, Inc.; Shell Die Mold, Inc.; Shepherd Specialty Machine & Die; Sherman Corporation; Sherman Tool & Design; Shield Tool & Engineering Co., Inc.; Shubin Tool & Manufacturing Co., Inc.; Sibley Machine & Foundry Corp.; Sibo Tool & Die Company; Sidney Machine Service, Inc.; Sidney Tool & Die, Inc.; Sierra Mold & Engineering Company; Sifco Custom Machining Company; Signal Machine Company; Silverbrook Manufacturing Co., Inc.; Sintermet, Inc.; Sipco, Inc.; Skeeles Engineering, Inc.; Ski-Way Machine Products Company; Skill Tool & Die Corporation; Skillcraft Machine Tool Company; Skilltronics, Inc.; Skulsky, Inc.; Skyline Manufacturing Corporation; Skylock Industries, Inc.; Skylon Mold & Machining; Skyway Manufacturing Corporation; Skyway Precision Inc.; Slankers, Inc.; Slantco Machine & Tool; Smith Machine & Tool Company; Smith Tool & Die, Inc.; Smith-West; Smithfield Industries, Inc.; Snider Mold Company, Inc.; Solar Tool & Die, Inc.; Soma Engineering & Manufacturing, Inc.; Sonic Tool; South Bend Form Tool Company; South Eastern Machining, Inc.; South Shore Metal Products; South Shore Mold & Tooling Company; South Side Machine Works, Inc.; Southampton Manufacturing, Inc.; Southeast Tool & Machine Corp.; Southeastern Technology, Inc.; Southern Machine & Tool Company; Southern Numerics, Inc.; Southside Machine Company; Southwest Mold, Inc.; Space Craft Manufacturing Co., Inc.; Spaceonics Industries; Spark Technologies, Inc.; Sparro Machine Products, Inc.; Spartan Carbide, Inc.; Spartan Manufacturing Company; Spaulding Machine Co.; Spearhead Automated Systems, Inc.; Special Machine & Engineering, Inc.; Special Parts, Inc.; Special Tool & Engineering Corp.; Special Welding Services, Inc.; Specialty Machines, Inc.; Spectra Technology, Inc.; Spen-Tech Machine Engineering Corp.; Springdale Machine & Gear Company; Springfield Tool & Die, Inc.; 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Stettnisch Tool & Die; Stevens Manufacturing Company, Inc.; Stevenson Machine Shop; Stewart Industries, Inc.; Stewart Manufacturing Company; Stieg Grinding Corporation; Stillion Industries; Stillwater Technologies, Inc.; Stines Machine; Stinson Machine & Manufacturing Inc.; Stinson Manufacturing Company; Stolle Precision Tool Company; Stone Mountain Machine & Die, Inc.; Stonebridge Corporation; Stoney Crest Regrind Service, Inc.; Stott Tool & Machine Company; Straton Tool & Die Company; Stricker Engineering; Stuart Industries, Inc.; Studwell, Inc.; Stugart Industries, Inc.; Stuhr Manufacturing Company; Sturgis Tool & Die, Inc.; Suburban Manufacturing Company; Suburban Mold & Plastic, Inc.; Suburban Tool & Die Company; Suburban Tool & Manufacturing Co., Inc.; Sullivan Machine Products, Inc.; Summit Engineering Company, Inc.; Summitt Tool & Manufacturing; Sumner Machine & Tool Company; Sun Polishing Company; Sun Up Wireforms, Inc.; Sunbelt Machine, Inc.; Sunbelt Plastics, Inc.; Sunbelt Tool & Die; Sunport Engineering Company; Superior Die & Engineering Company (Division of Krummen Corp.); Superior Die Set Corporation; Superior Die Tool Machine Company; Superior Engineering Company, Inc.; Superior Gear Box Company; Superior Jig, Inc.; Superior Machine & Tool Inc.; Superior Machine Products; Superior Mold Company; Superior Mold, Inc.; Superior Roll Forming Company; Superior Thread Rolling Company; Superior Tool & Die Company; Superior Tool & Die Company, Inc.; Superior Tool, Inc.; Supreme Machine & Manufacturing Inc; Supreme Machine Division; Supreme Machine Products, Inc.; Supreme Tool & Die, Inc.; Surface Manufacturing; Sussex Instrument Corporation; Sutco Manufacturing Company; Swenton Tool & Die Company; Swiss EDM Wirecut, Inc.; Swiss Specialties, Inc.; Swiss Tech; Swiss Wire E D M; Swissco, Inc.; Syn-Tech Mold, Inc.; Syst-A-Matic Tool & Design; Systems Machining Company; Szpak Manufacturing, Inc.; T - K & Associates, Inc.; T C I Aluminum; T D M Corporation; T E T Manufacturing Company, Inc.; T K Industries; T M F Tool Company; T M Machine & Tool; T M Tool Company, Inc.; T R A Industries, Inc.; T-M Manufacturing Corporation; Tade Industries; Tait Design & Machine Company; Tait Grinding Service, Inc.; Talan Machine & Tool, Inc.; Talbar, Inc.; Tana Corporation; Tangent Tool & Die Company; Tangent Tool & Mfg., Inc.; Tapco; Targhee Jig Grinding Company; Taurus Machine, Inc.; Taurus Tool & Engineering, Inc.; Tausz Machine Repair; Tavolacci Manufacturing Company; Taylor Smith, Inc.; Taylor Tool & Die Company, Inc.; Taylor Tool & Machine Company; Team Machine Tool Rebuilders Corporation; Tech Machine & Tool Company; Tech Mold & Tool Company; Tech Mold, Inc.; Tech Ridge, Inc.; Tech Tool & Mold, Inc.; Tech Tool, Inc.; Tech-Etch, Inc.; Techni-Mold & Engineering, Inc.; Techni-Products, Inc.; Technics 2000 Inc.; Technitool, Inc.; Technitri Corporation; Tedco, Inc.; Teledyne Efficient Industries; Tell Tool, Inc.; Tempcraft, Inc.; Temple Screw Machine Products, Inc.; Tempress, Inc.; Tenk Machine & Tool Company; Tennessee Metal Works, Inc.; Tennessee Precision, Inc.; Terrell Sales Corporation; Terrill Motor Machine, Inc.; Teston Machine Corporation; Tetco, Inc.; Teter Tool & Die, Inc.; Tex-Tool Company; Thaler Machine Company; The Adroit Company; The Slaysman Company; The Ultimate Tool & Gage Company; The Will-Burt Company; Therm, Inc.; Thiel Tool & Engineering Co., Inc.; Thiemann Engineering & Manufacturing Company; Thomas Instrument & Machining Co.; Thomas Machine Works, Inc.; Thompson Gundrilling, Inc.; Thor Tool & Die Company; Three D Manufacturing Corporation; Three-Way Pattern, Inc.; Thurm-A-Matic; Tiburzi Machine & Tool Company; Tiger Enterprises, Inc.; Tiger Industries, Inc.; Tiller Tool & Die, Inc.; Tillman Tool Company, Inc.; Time Machine & Stamping, Inc.; Timna Manufacturing Company; Tinker Machining Company, Inc.; Tipco Punch, Inc.; Tipp Machine & Tool, Inc.; Tire Mold Services, Inc.; Tisza Industries,

Inc.; Titan Enterprises, Inc.; Titan Tool Company, Inc.; Titan Tool, Inc.; Todd Industries, Inc.; Toledo Machine & Die Company; Tomco Die & Kellering Company; Tomken Tool & Engineering, Inc.; Tool & Die Specialties, Inc.; Tool & Die Systems, Inc.; Tool Craft Company, Inc.; Tool Gauge & Machine Works, Inc.; Tool Mate Corporation; Tool North, Inc.; Tool Producers, Inc.; Tool Rite, Inc.; Tool Specialties Company; Tool Specialty Company; Tool Steel Products; Tool Technology, Inc.; Tool-Rite Industries; Toolcraft of Phoenix, Inc.; Toolcraft Products, Inc.; Toolcraft, Inc.; Toolex; Toolex Manufacturing Corporation; Toolex, Inc.; Toolmatic Company; Tools Renewal Company; Top Tool & Die, Inc.; Top Tool Company; Toresco; Tottser Tool & Die Shop; Tower Tool & Engineering, Inc.; Tower Tool & Manufacturing Company, Inc.; Tracey Gear, Inc.; Tramco Mold, Inc.; Tree City Mold & Machine Company; Treffers Precision, Inc.; Tremont Tool & Gage, Inc.; Tresco Tool, Inc.; Trew-Craft Corporation; Tri City Tool; Tri City Tool & Die Company; Tri Craft, Inc.; Tri Kris Company, Inc.; Tri-City Machine Products, Inc.; Tri-City Tool & Die, Inc.; Tri-M-Mold, Inc.; Tri-Mech Industries, Inc.; Tri-R-Tool Company; Tri-State Precision, Inc.; Tri-State Tool & Saw, Inc.; Tri-Versal Mold & Manufacturing Co.; Tri-Wire, Inc.; Triad Tool & Die Company; Triangle Tool Company; Triangle Tool Company, Inc.; Triangle Tool Corporation; Tricon Machine & Tool, Inc.; Trident Tool Company, Inc.; Trimac Manufacturing, Inc.; Trimatek; Trimetric Specialties, Inc.; Trinity Tools, Inc.; Trio Precisioneering, Inc.; Trio Tool & Die, Inc.; Triple Point Manufacturing; Triple Quality Tool & Die, Inc.; Triple Tool & Mfg. Co.; Triplex Industries; Trisan Manufacturing, Inc.; Trotwood Corporation; Trowbridge Machine; Tru Cut Die Corp.; Tru Point Corporation; Tru Tool, Inc.; Tru-Circle Corporation; Tru-Die, Inc.; True Machine Company; True Position, Inc.; True Precision, Inc.; Trueline Tool & Machine, Inc.; Trust Technologies Corp.; Tschida Machine Works; Tucker Machine Company; Tucker Technology, Inc.; Tucson Numerical Machine, Inc.; Tujays Machine Works; Tura Machine Company; Turbo Machine & Tool, Inc.; Turcotte Manufacturing Co., Inc.; Turley Industries; Turners Machine Shop; Twin City Honing Company; Twin City Manufacturing Company; Twinbrook Tool & Mold Company; Twinco Manufacturing Company, Inc.; Twoson Tool Mfg. Company, Inc.; Tymar Machining; TAPCO; U M C, Inc.; U P Machine & Engineering Company; U S Carbide Company; U S Die & Mold Company, Inc.; U. S. Axle, Inc.; Ullieco Machining, Inc.; Ultimate Precision, Inc.; Ultra Cut, Inc.; Ultra Engraving & Machining; Ultra Precision, Inc.; Ultra Tool & Die, Inc.; Ultra Tool & Manufacturing, Inc.; Ultra-Tech, Inc.; Ultramation, Inc.; Ultron Engineering; Unimach Manufacturing; Union Machine; Unique Instruments, Inc.; Unique Machine Company; Unique Tool & Die Company, Inc.; Unique Tool & Manufacturing; United Carbide Industries, Inc.; United Centerless Grinding; United Engineering Company; United Engineers, Inc.; United Industrial Technologies; United Machine & Tool Co., Inc.; United Skilled; United Tool & Die, Inc.; United Tool & Engineering Company; United Tool & Engineering, Inc.; Unittool Punch & Die Company; Universal Brixius; Universal Machine & Tool Works, Inc; Univèrsal Machine Products; Universal Machine Rebuilders, Inc.; Universal Precision Products Co.; Universal Tool Company; Universal Tools & Manufacturing Co.; Utility Tool & Die Works; Utility Tool & Machine Company; V & M Tool Company, Inc.; V & S Die & Mold, Inc.; V. I. C. Machine Company; Vallee Burring Company, Inc.; Valley Jig Grinding, Inc.; Valley Machine Products, Inc.; Valley Machine Works, Inc.; Valley Manufacturing & Engineering Company; Valley Precision, Inc.; Valley Tool & Die, Inc.; Vals Tool & Die Corp.; Van Engineering; Van Reenen Tool & Die; Van-Am Tool & Engineering, Inc.; Van-Kno Tool & Manufacturing, Inc.; Vanderveer Industrial Plastics, Inc.; Vanguard Technology Corporation; Vanpro, Inc.; Vantage Mold & Tool Company; Variety Stamping Corporation; Variety Tool & Die, Inc.; Varispace Division; Vaughn Manufacturing Company, Inc.; Veit & Young, Inc.; Veldon Manufacturing, Inc.; Venango Machine Products, Inc.; Ventura Industries, Inc.; Venture Precision Machining Co.; Versa-Mil, Inc.; Versa-Tool Manufacturing, Inc.; Versatile Machine Company, Inc; Versatile Tool & Die; Vescio Threading Company; Vi-Tec Manufacturing; Victor Plastics, Inc.; Victory Machine Tools; Viking Tool & Engineering; Viking Tool & Gage, Inc.; Village Tool & Machine Company; Vim Systems, Inc.; Vimco; Visger Precision, Inc.; Vitco Nuclear Products, Inc.; Vitron Manufacturing, Inc.; Vobeda Machine & Tool Company; Vogform Tool & Die Company; Volkert Precision Technologies, Inc.; Volumatic, Inc.; Von Donen Precision, Inc.; Voshage Machine, Inc.; Voss Manufacturing, Inc.; Vulcan Engineering & Manufacturing,; Vulcan Forge & Machine Company; Vulcan Tool Corporation; Vulcan Tool Of Iowa; W & H Stampings, Inc.; W B Tool & Die; W C Kirby & Son, Inc.; W D & J Machine & Engineering; W Derosier Mold & Machine; W G Strohwig Tool & Die, Inc.; W H Jones & Son, Inc.; W J Snyder Gear Corporation, Inc.; W S Demoss & Son, Inc.; W T X Industries, Inc.; W Westhall & Son, Inc.; W. Dempt Company; Wacker Development, Inc.; Waggoner Brighton, Inc.; Wagner Engineering, Inc.; Walbrun Tool, Inc.; Walco Tool & Engineering Corp.; Walerko Tool & Engineering Corp.; Walker Tool & Die, Inc.; Walker Tool & Machine Company; Waltco Engineering, Inc.; Walter Tool & Mfg. Inc.; Waltz Brothers, Inc.; Walz Deburring Specialists, Inc.; Ward Manufacturing Company, Inc.; Washington Scientific Industries, Inc.; Wayne Smith Company; Weatherby Tool & Die, Inc.; Weatherford Tool & Die; Weaver Diversified Mfg., Inc.; Weaver Machine & Tool Company, Inc.; Webb Design Service; Webster Tool & Die, Inc.; Weco Metal Products; Wejco Instruments; Weld Lab; Weldex Sales, Inc.; Weldments of Florida; Weldun International; Well Built Manufacturing Company; Wells Machine Company, Inc.; Wemco Precision Tool; Werkema Machine Company, Inc.; Wes-Mar, Inc.; Wesco Machine, Inc.; Wess Plastic, Inc.; West Coast Industries, Inc.; West Engineering Company, Inc.; West Georgia Tool & Die, Inc.; West Hartford Tool & Die Company; West Haven Buckle Company; West Milton Precision Machine; West Point Foundry and Machine; West Tool & Manufacturing, Inc.; West Warwick Machine Company, Inc.; Westbrook Industries, Inc.; Westbrook Manufacturing, Inc.; Westco Manufacturing Co., Inc.; Wester Tool & Machine Company; Western Machine & Manufacturing; Western Machining, Inc.; Westfield Gage Company, Inc.; Westfield Tool & Die, Inc.; Westhoff Tool & Die Company; Westlake Tool & Die Manufacturing; Westwood Precision, Inc.; Wesval, Inc.; Wetmore Cutting Tools; Whip's Tool & Cutter Grinding; White Machine; White Machine, Inc.; Whitehead Tool & Die, Inc.; Wichita Tool Company; Wiegel Tool Works, Inc.; Wikstrom Machines, Inc.; Wilco Die Tool Machine Company; Wilco Industries, Inc.; Wilderness Mold, Inc.; Wilhite Industries, Inc.; Will-Mor Engineering Company, Inc.; Willard Machine Corporation; William Kanes Manufacturing Corp.; William Sopko & Sons Company, Inc.; Williams Machine Company, Inc.; Wilsey Tool Company, Inc.; Wilson Products, Inc.; Windsor Tool & Die, Inc.; Wingard & Company, Inc.; Wire Cut Company, Inc.; Wire Tech; Wire Tech E D M, Inc.; Wirecut E D M, Inc.; Wirecut Technologies;

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Wisconsin Drill Head Company; Wisconsin Engraving Company; Wisconsin Machine Shop, Inc.; Wissota Enterprises; Witte Machine Products, Inc.; Woldring & Associates; Wolfe & Swickard Machine Co., Inc.; Wolverine Bronze Company; Wolverine Tool Company; Woodhaven Telesis Corporation; Woodruff Corporation; Woody's Precision Grinding; Wright & Company; Wright Industries, Inc.; Wright-K Technology, Inc.; Wythe Precision Machine Co., Inc.; X L Tool & Machine Corporation; Xolox Corporation; Y Tec Manufacturing, Inc.; Yeoman Engineering, Inc.; York Machine Tool & Die Company; Yorktown Tool & Die Corporation; Youngers and Sons Manufacturing; Youngwood Electric Metals West; Z-R Laboratory; Zarlenga Industries, Inc.; Zims Manufacturing Company; Zip Tool & Die Company, Inc.; Zircon Precision Products, Inc.; Zovamax, Inc.; Zuelzke Tool & Engineering.

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Part III

# Department of Education

**Office of Special Education and Rehabilitative Services**

**34 CFR Part 327**

**Handicapped Special Studies Program; Final Regulations**

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**DEPARTMENT OF EDUCATION**

**Office of Special Education and Rehabilitative Services**

**34 CFR Part 327**

**Handicapped Special Studies Program**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations for the Handicapped Special Studies Program authorized by section 618 of Part B of the Education of the Handicapped Act (EHA). These amendments are needed to implement revisions made to section 618 of the EHA by section 406 of the Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

**SUPPLEMENTARY INFORMATION:** The Handicapped Special Studies program provides support for the collection of data, as well as studies to evaluate State and local efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children, and youth with handicaps. Section 618 of the Act requires that this information be included in the annual report submitted to the Congress by the Department. The activities conducted under this program are designed to provide Congress with information relevant to policymaking and to provide Federal, State, and local agencies with information relevant to program management, administration, and effectiveness of special education and early intervention programs.

The amendments made it clear that infants and toddlers with handicaps are to be included within the scope of this program, and expand the eligible agencies for cooperative agreements under section 618(d)(1) to include other State agencies in addition to State educational agencies. In accordance with the legislative history of the Amendments, the regulations limit eligibility to those State agencies designated by the Governor in each State for the purpose of administering an early intervention program under Part H of the Education of the Handicapped Act.

On February 12, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** at 53 FR 4185. There is no difference between the NPRM and these final regulations.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. One party supported the regulations as proposed. An analysis of the other comment follows.

*Comment:* One commenter suggested that § 327.2(b) should be clarified to indicate whether all State agencies or only a certain number of State agencies are eligible to apply for cooperative agreements to carry out the projects described in § 327.10(c). Also, the commenter suggested that § 327.10(a) should "* * * be expanded to include the impact of specific components of Part H, different service delivery methods, and to specify whether this is to be long or short term evaluation."

*Discussion:* Section 618(d)(1) of the Education of the Handicapped Act (EHA), as amended by Pub. L. 99-457 (October 8, 1986), expands the eligible agencies for cooperative agreements to include other State agencies in addition to State educational agencies. In accordance with the legislative history of the 1986 amendments, the regulations limit the eligibility to those State agencies designated by the Governor in each State for the purpose of administering an early intervention program under Part H of the Act. Any eligible State agency may submit an application for a cooperative agreement, subject to the requirements contained in the application announcement published in the **Federal Register**. Awards are made based on a competitive ranking of all applications and the availability of funds.

Section 327.10 describes the types of activities that may be supported by the Handicapped Special Studies Program. The language of § 327.10(a), as written, covers the entire EHA, including Part H, and would not preclude studies, investigations, and evaluations of different service delivery methods. As written, § 327.10(a) allows for both long and short term evaluations and any priority announced under § 327.10(a) could specify whether or not it is intended to be long or short term.

*Changes:* None.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. These regulations are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The only small entities that would be affected by the regulations are small local educational agencies receiving Federal financial assistance under this program. However, the regulations would not have a significant economic impact on the small local educational agencies affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 327**

Education, Education of handicapped, Education—research, Grants program—education, Reporting and recordkeeping requirements, State educational agencies.

Dated: June 30, 1988.

**William J. Bennett,**

*Secretary of Education.*

**(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies Program)**

The Secretary amends Part 327 of the Code of Federal Regulations as follows:

**PART 327—HANDICAPPED SPECIAL STUDIES PROGRAM**

1. The authority citation for Part 327 is revised to read as follows:

**Authority:** 20 U.S.C. 1418, unless otherwise noted.

2. Section 327.2 is amended by revising paragraph (b) to read as follows:

**§ 327.2 Who is eligible to apply for an award under this program?**

* * * * *

(b) In order to carry out the projects described in § 327.10(c), the Secretary may enter into cooperative agreements with—

(1) State educational agencies; and

(2) Other State agencies designated by the Governor in each State for the purpose of administering an early intervention program under Part H of the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1418)

3. Section 327.10 is amended by revising paragraphs (a), (b), (c), (d), and (e) to read as follows:

**§ 327.10 What kinds of projects are authorized under this part?**

Projects authorized under this part include activities to—

(a) Collect data, and conduct studies, investigations, and evaluations to assess progress in the implementation of the Act, the impact of the Act, and the effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to all handicapped children and youth, and early intervention services to handicapped infants and toddlers;

(b) Obtain data, on at least an annual basis, about programs and projects assisted under the Act and under other Federal laws relating to the provision of services to handicapped infants, toddlers, children, and youth, as required under section 618(b) of the Act;

(c) Assess the impact and effectiveness of programs assisted under the Act, in accordance with sections 618(d)(1) and (2) of the Act, through cooperative agreements with State agencies;

(d) Provide technical assistance to participating State agencies in the implementation of the evaluation studies described under paragraph (c) of this section;

(e) Disseminate information from the studies assisted under paragraph (c) of this section to State agencies, regional resource centers, clearinghouses, and, as appropriate, others involved in or concerned with the education of and early intervention services for handicapped infants, toddlers, children, and youth;

* * * * *

**§327.31 [Amended]**

4. Section 327.31(g) is amended by removing "handicapped children and youth" each place it appears and adding, in its place, "handicapped infants, toddlers, children, and youth".

(Approved by the Office of Management and Budget under Control Number 1820-0028)

5. Section 327.40 is amended by revising the introductory text and paragraph (b) to read as follows:

**§ 327.40 What are the requirements for conducting projects?**

Each State educational agency or other State agency receiving an award for a State Agency/Federal Evaluation Studies project under § 327.10(c) shall—

* * * * *

(b) Develop the study in consultation with the State advisory panel established under the Act, local educational agencies, others involved in or concerned with the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

* * * * *

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Part IV

# Environmental Protection Agency

**40 CFR Part 721**

**Significant New Use Rules; Amendments to General Provisions; Final Rule**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR PART 721**

**[OPTS-50527A; FRL-3357-1]**

## Significant New Use Rules; Amendments to General Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating amendments to the general provisions of 40 CFR Part 721, under the authority of section 5(a)(2) of the Toxic Substances Control Act (TSCA). The amendments clarify when manufacturers, importers, or processors must submit a significant new use notice and establish a procedure for obtaining EPA approval of alternative measures for control of human exposure and release to the environment that are the equivalent to those specified in a significant new use rule (SNUR). The amendments also establish a procedure for submission and review of significant new use notices during the proposal period of significant new use rules.

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271) this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern time on August 10, 1988. This rule shall become effective on September 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** This rule amends the 40 CFR Part 721, Subpart A—General Provisions that apply to all SNURs. The provisions clarify when manufacturers, importers, or processors must submit a significant new use notice and establish a procedure for submission and review of significant new use notices during the proposal period of SNURs. The provisions also provide exemptions to the reporting requirements and establish a procedure under which the Agency may allow the use of alternative measures for control of human exposure and release to the environment that are equivalent to those specified in a SNUR.

The provisions in Part 721, Subpart A clarify existing general conditions under which recordkeeping and/or reporting may be required. The existing recordkeeping and reporting requirements are not significantly changed by the clarifications contained in this rule. Therefore, the Agency has determined that this clarifying rule does not impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)), authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines a use to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to a SNUR must comply with the same regulations and procedures as persons who must submit a premanufacture notice (PMN) under section 5(a)(1)(A) of TSCA. In particular, these include the information submission requirements of sections 5 (b) and (d)(1), the exemptions authorized by sections 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUN, the Agency may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the notice. If EPA does not take action, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

### II. Summary of This Rule

This rule amends 40 CFR Part 721, Subpart A—General Provisions. Subpart A contains the general provisions that apply to all SNURs. The provisions set forth the requirements under which a manufacturer, importer, or processor must submit a SNUN to EPA. The provisions clarify who is responsible for reporting a significant new use and provide exemptions to the reporting requirements. The provisions also provide a procedure under which EPA may allow the use of alternative measures to control worker exposure to or environmental release of chemical substances. The amendments to 40 CFR Part 721, Subpart A—General Provisions are listed below:

1. Certain sections are renumbered and applicable cross references are changed.

2. A manufacturer, importer, or processor is not required to submit a SNUN if such person can document one or more of the following for each recipient of a substance subject to a SNUR:

(a) The recipient has been provided with notice of the SNUR.

(b) The recipient knows of the SNUR.

(c) It is technically or otherwise not feasible for the recipient to engage in the significant new use.

3. A manufacturer, importer, or processor who intends to distribute a chemical substance subject to a SNUR to a recipient for nonexempt purposes, and has prior knowledge that the recipient intends to engage in a significant new use of that substance without submitting a SNUN, must submit a SNUN to EPA before distributing that chemical substance to that recipient.

4. A manufacturer, importer, or processor who is distributing a chemical substance subject to a SNUR to a recipient, and obtains knowledge that the recipient is engaging in a significant new use and has not submitted a SNUN to EPA, must immediately cease distribution of the chemical substance to that recipient and submit a SNUN, unless: (a) It can document that it has notified (within 15 working days of the time it develops knowledge that the recipient is engaging in a significant new use) the recipient and EPA in writing of the significant new use, and (b) the recipient has informed the manufacturer, importer, or processor, within 15 working days, in writing, that it will not engage in the significant new use. A copy of the recipient's reply must be sent to EPA enforcement authorities.

5. Provisions for the TSCA section 5(h)(3) research and development (R&D) exemption are added which mirror the R&D exemption in the PMN rule (40 CFR 720.36; April 22, 1986, 51 FR 15096).

6. A procedure is established whereby a person may obtain EPA approval to manufacture or process a chemical substance for a significant new use before the promulgation date of the final SNUR. Under this advanced compliance exemption, EPA will accept and review SNUNs during the proposal period.

7. A procedure is established under which EPA may allow use of alternative measures to control exposure to, or environmental release of, a chemical substance without submitting a SNUN, if EPA determines that the alternative measures provide substantially the same degree of protection as the control

methods specified in the SNUR for the chemical substance.

8. An exemption is established whereby persons operating under and abiding by the terms of a consent order issued under section 5(e) of the Act will be exempt from submitting a SNUN under provisions which are inconsistent.

## III. Background

On September 5, 1984 (49 FR 35001), the Agency promulgated at 40 CFR Part 721, Subpart A—General Provisions that apply to all SNURs. Subsequent to promulgation of these provisions, the Agency received comments on certain sections of the promulgated rule. On April 22, 1986 (51 FR 15104), EPA proposed amendments to the general provisions. EPA received comments from industry and environmental groups on the proposed amendments. After consideration of these comments, 40 CFR Part 721, the Subpart A—General Provisions are being published in final form. On April 22, 1986, amendments were proposed for the following sections: §§ 721.180, 721.290, 721.615, and 721.975. These amendments are not being promulgated at this time but will be amended as part of the overall review of SNURs. EPA also had proposed a new Subpart which would set forth hazard communication program for persons subject to SNURs. The hazard communication program will also be promulgated at a later date.

## IV. Amendments

### *A. Persons Who Must Report*

Section 721.5 describes who must submit a SNUN. The provisions promulgated on September 5, 1984, required each person who intended to manufacture, import, or process a chemical substance subject to a SNUR and intended to distribute the substance in commerce to submit a SNUN. However, persons subject to § 721.5 did not have to submit a SNUN if they: (1) Did not have a reasonable belief at the time of commercial distribution that a customer intended to engage in a signficant new use without submitting a notice to EPA, and (2) were able to document that the customer was notified in writing of the SNUR.

The Agency received comments requesting clarification of the responsibility of manufacturers, importers, and processors to submit SNUNs as specified under the provisions of section 5(a)(1)(B) of TSCA and § 721.5(a)(2). This final rule amends § 721.5 so that persons subject to paragraph (a)(2) do not have to submit a SNUN if they can document for each recipient of the substance one or more of the following:

(1) They have provided the recipient with notice of the SNUR.

(2) The recipient knows of the SNUR.

(3) It is technically or otherwise infeasible for the recipient to engage in the significant new use.

A comment received on the proposed amendment expressed concern that EPA should clarify the scope of the requirement to notify "recipients." At issue was whether the rule would require manufacturers, importers, or processors to notify persons who purchase the SNUR substance from their customers or competitors. The commenter argued that it would be extremely difficult to identify and contact all such "recipients." The commenter suggested the Agency either substitute the term "customer" for "recipient," or define the term "recipient." To address this comment, the term "recipient" has been specifically defined in the final rule in § 721.3. The Agency intends that the "recipient" is a person who obtains the substance directly from the manufacturer, importer, or processor. If the recipient is also a process of the substance, it would in turn have the same obligation with respect to recipients.

Another commenter suggested that the Agency delete § 721.5(d) under which manufacturers and processors must terminate sales to recipients and inform EPA if they learn that the recipients are engaging in a significant new use. The commenter argued that the requirements are not authorized by TSCA, that they have the potential to unnecessarily disrupt ongoing commercial activities and business relationships, and that the requirement to cease distribution to the recipient until after a SNUN has been submitted and reviewed is extremely harsh. The alternative suggested by the commenter was that manufacturers and processors would document all instances of noncompliance with SNUR provisions and work with customers to prevent a recurrence of significant new use violations. Where serious or repeated violations come to the manufacturer's, importer's, or processor's attention, they would have the option of either terminating sales or notifying EPA. In the latter event, the Agency would determine whether sales to the recipient should be suspended.

Under TSCA section 5, EPA has the responsibility to require compliance with SNUR provisions and cannot delegate that responsibility to private citizens. However, to avoid unnecessary commercial disruption, the Agency is amending § 721.5(d) to allow the manufacturer, importer, or processor an opportunity to work with its customer/recipient if the manufacturer, importer, or processor finds that that person is engaging in a significant new use without having submitted a SNUN. Under the revised § 721.5(d), the manufacturer, importer, or processor must notify (within 15 working days of the time he/she develops knowledge that the recipient is engaging in a significant new use) in writing the recipient and EPA that the recipient is engaging in a significant new use. If, within 15 working days, the recipient states in writing the he/she will not engage in the significant new use, commercial distribution to that person may continue uninterrupted. EPA enforcement authorities will check the recipient's actions to ensure that the significiant new use is not occurring. If upon inspection the Agency determines a significant new use is occurring, EPA will then determine whether a SNUN must be submitted. It may be that EPA can work with the recipient to bring him/her into compliance. If the recipient does not come into compliance quickly, EPA will notify the manufacturer, importer, or processor. Upon receipt of this notice, the manufacturer, importer, or processor will be required to cease distribution to that recipient and will not be able to resume such distribution until the manufacturer, importer, or processor submits a SNUN and the notice review period ends. Similarly, if, after receiving a written assurance from a recipient, the manufacturer, importer, or processor determines on its own that the recipient is engaging in a significant new use without submitting a SNUN, the manufacturer, importer, or processor is required to cease distribution to that recipient immediately and to notify EPA enforcement authorities. In that case also, such distribution could not resume until the manufacturer, importer, or processor has submitted a SNUN and the notice review period has ended. Independent of these provisions EPA reserves the right to take an enforcement action against any recipient which is a processor who has violated a SNUR.

Finally, a commenter argued that if EPA insists upon retaining rigid recipient termination requirements it should clarify when "knowledge" occurs. The commenter argued that such knowledge should be imputed to a company only if it comes to the attention of responsible officials capable of appreciating its significance and that it is unrealistic to expect salespersons and other non-regulatory employees to

identify and report deviations from SNUR requirements.

EPA intends to use discretion to enforce § 721.5. A company will be considered to have "knowledge" that a recipient is engaging in a significant new use when an employee of the company, who by the nature of position or responsibility within the company should have knowledge of the SNUR provisions, becomes aware that the recipient is engaging in the significant new use.

**B. Equivalency Determination**

Some SNURs designate manufacturing, processing, or use without specified control measures as a significant new use. The Agency received comments indicating that manufacturers, importers, and processors would like the flexibility to choose the type of protective controls to use for employee exposure and environmental release. The commenters argue that the Agency should either set permissible exposure limits or performance based standards, and should not require specific types of personal protective equipment. While the Agency is interested in developing permissible exposure levels, such limits have not yet been developed and are not within the scope of this rulemaking.

The Agency also received comments that its practice of specifying respirator requirements is in conflict with the Occupational Safety and Health Administration policy that requires engineering controls be used where feasible. To address this problem, the Agency is adding a procedure in new § 721.30 which will allow manufacturers, importers, and processors to propose alternative control measures for human exposure and environmental release. EPA will review the proposed alternative control measures and make a determination whether they provide substantially the same degree of protection as the measures specified in the SNUR. The procedure allows manufacturers, importers, and processors to use work practices or engineering controls rather than specific devices like respirators to control exposure.

Commenters favored the equivalency provision, but questioned whether too much substantiation was required for such a finding. EPA has made the equivalency determination procedures as simple as possible. Section 721.30 requires persons to demonstrate that their intended activities will provide substantially the same degree of protection to health and the environment as the measures identified in a SNUR. The Agency will review and make a determination upon such requests within 45 days. EPA view the requirements as reasonable and in the public interest. The alternative is for persons to submit a SNUN and wait 90 days for EPA review.

*C. Research and Development Exemption*

This rule specifies requirements for the R&D exemption from SNURs under section 5(h)(3) of TSCA. The R&D exemption requirements established by this rule are essentially the same as the R&D provisions in the PMN rule. Section 5(h)(3) of TSCA exempts from the PMN and significant new use notification requirements small quantities of a substance used solely for R&D, if the manufacturer, importer, or processor notifies persons engaged in the R&D of any health effects associated with the substance.

Section 721.47 was drawn without substantive changes from the R&D exemption provisions in the PMN rule. It is codified separately for SNURs rather than referenced in Part 721 to revise the exemption slightly to reflect SNUR requirements. Because of the similar nature of PMN and SNUR requirements, EPA believes it is important that the R&D exemption for PMNs and SNURs be consistent. Therefore, any substantive change in the SNUR exemption would require an equivalent change in the PMN rule. As part of the April 22, 1986 promulation, EPA determined through notice and comment rulemaking that the benefits of the provisions for the R&D exemption in the PMN rule outweight the potenital disadvantages. This conclusion is also valid for the R&D exemption requirements in § 721.47.

*D. Exemptions*

1. Applicability of Proposed Rule to Uses Occurring Before Promulation of Final Rule

In the preambles to previously proposed SNURs, the Agency has stated that section 5(a)(1)(b) of TSCA is best served by determining that a use is a significant new use as of the date of proposal. This interpretation of section 5 reflects the intent of Congress with regard to SNURs; if uses begun during the proposal period of the SNUR were not considered to be significant new uses, it would be difficult for the Agency to establish SNUN requirements because any person could defeat the SNUR by initiating a proposed significant new use before the rule became final.

A person may legally commence an activity designated as a significant new use in a proposed SNUR. If that person wishes to continue the activity after the SNUR is promulgated and becomes effective, they must stop, file a SNUN, and wait for EPA review of the notice before resuming the activity (assuming the Agency has not taken action under section 5(e) or 5(f) of TSCA). However, it is not the intent of the Agency to unnecessarily disrupt the commercial activities of these persons. EPA therefore proposed that such persons be allowed to comply with a SNUR before the rule is promulgated. If a company were to meet all of the conditions of advance compliance, as specified in the new § 721.45(h) (proposed as § 721.18(h)) the person will be exempt from the requirements of the final SNUR for those activities. It should be emphasized that EPA intends to use its full TSCA authority to control the company's activities, should the Agency determine that such activities will present an unreasonable risk of injury to human health or the environment.

The first requirement for advance compliance with a SNUR is to submit a complete SNUN to EPA. The notice must contain all requisite SNUR data, with limitations described in the applicable proposed SNUR. Any person who submits and advance SNUN for a subject chemical substance will be subject to the general notification requirements of § 721.25, except that the company will not have to submit the notice to the Agency at least 90 days before it begins manufacturing, importing, or processing. However, should the final SNUR be promulgated prior to completion of the Agency's review, the company will be required to cease manufacturing, importing, or processing for the remaining portion of the 90-day period.

A commenter was concerned that voluntary SNUN submitters (i.e., persons using the advance compliance exception) may have to cease manufacturing, importing, or processing for the significant new use if the effective date of the final SNUR occurs before the Agency's 90-day review of the voluntarily submitted notice is complete. The commenter suggested that EPA delay the effective date of all SNURs until 90 days after publication to allow EPA to complete its review of notices voluntarily submitted at any time prior to the promulation date without a disruption of the commercial activities of those notice submitters.

EPA is aware that, should the final SNUR be promulated and become effective prior to completion of the Agency's review, the person would be required to cease manufacturing,

importing, or processing for the remaining portion of the 90-day review period. While EPA wants to keep commercial disruption to a minimum and is aware of the fact that the events described by the commenter are possible, the Agency's primary responsibility under TSCA section 5(a)(2) is to develop SNURs quickly and ensure that no significant new uses occur until EPA has reviewed the uses and taken appropriate action. If the Agency were to routinely delay the effective date of all SNURs it would set up a situation where uses involving potentially significant levels of exposure or environmental release could go on even longer before they could be controlled under a SNUR. The Agency wishes to balance its concern for exposure and release with its concern for regulatory impact.

As a matter of policy, EPA favors and will continue to use a short time period between the promulgation and effective dates of minor rules such as SNURs. The Agency believes that the approach adopted in this final rule provides sufficient time for completion of the review period for voluntary SNUNs submitted in a timely manner (e.g., 90 days before the effective date). EPA will inform voluntary submitters of the possibility that the final SNUR will be promulagated and in effect before Agency review of their SNUN is completed. This will allow these persons adequate time to plan their activities accordingly. Agency review of voluntary SNUNs will be completed as quickly as possible (up to 90 days) to minimize potential disruption of the submitter's commercial activities.

2. Section 5(e) Consent Order Exemption

The Agency has added an exemption in § 721.45(i) for persons operating under the terms of a TSCA section 5(e) consent order. If a term of a section 5(e) order applicable to that person is inconsistent with a specific significant new use identified in Subpart E of the part, abiding by the terms of the section 5(e) consent order will exempt the person from submitting a SNUN for that significant new use.

## V. Economic Analysis

Promulgation of these amendments will result in costs to both EPA and industry. However, as will be addressed below, the costs are not expected to be more than without this final rule, and in some cases may be less. Where quantification is possible, the costs associated with each final amendment are discussed. In some cases, only a qualitative discussion is possible. The costs of the relevant sections of previously proposed SNURs (in the absence of the final amendments) are also discussed.

1. *Section 721.5 Persons who must report.* Companies involved in the manufacture, import, or processing of a SNUR substance will incur costs of compliance with this section. The costs can range from those costs associated with a letter notifying a recipient of the existence of the SNUR, up to the costs of submitting a SNUN ($1,400 to $8,000). Additional costs of filing a SNUN may be incurred (up to a 3.2 percent reduction in profits due to delays in manufacturing or processing for Agency review) and EPA costs of regulatory follow-up, if any.

The actual costs of notifying recipients of the existence of a SNUR are expected to be minimal, for example, the cost of sending a letter to each recipient. The Agency believes that most companies will choose to document that recipients know of the rule via a notification letter as it is the least costly alternative.

2. *Section 721.30 Equivalency determination.* Based on comments to proposed SNURs which would require reporting for failure to employ specific worker exposure or environmental release controls, the Agency believes that most companies seeking an equivalency determination will either possess or be able to covert to the alternative provisions or measures for which they are seeking an equivalency determination. In the absence of this amendment, such companies would either have to submit a SNUN ($1,400 to $8,000 per SNUN, plus up to 3.2 percent reduction in profits) and/or incur the cost of complying with the controls or measures as specified in the SNUR.

The costs to companies of this amendment will be the development costs of the data submitted to the Agency. This consists of a written justification that the alternative provisions provide at least the same degree of protection. The Agency cannot estimate the exact equivalency development costs at this time. Other costs associated with the equivalency determination involve filing the request for equivalency determination, and delay costs during Agency review. The Agency expects the costs of filing the equivalency notice to be equal to or less than the costs of filing a SNUN, since the information required in a request for equivalency determination is less than that required in a SNUN. In addition, any potential loss in profits due to delays associated with Agency review would be less. Delay costs are estimated to be a 3.2 percent reduction in profits due to delays in manufacturing and processing during the 90-day Agency review of SNUNs. Delay costs associated with an equivalency determination would be half of the delay costs for a SNUN, or a 1.6 percent reduction in profits due to delays during the 45-day Agency review.

Therefore, while the Agency cannot quantity the exact costs, the total costs are expected to be less for an equivalency determination than for submitting a SNUN.

3. *Section 721.45(h) Advance compliance exemption.* The procedures for advance compliance are generally the same as for any SNUN. The manufacturer, importer, or processor must submit a complete SNUN. The costs to the company for filing a SNUN are estimated to be between $1,400 and $8,000. However, this notice need not be submitted 90 days prior to commencing manufacture, import, or processing but can be submitted anytime between proposal and promulgation of the SNUR.

The major difference is that if the Agency negotiates with the company to control or limit the significant new use, or does not ban the chemical substance, the company can continue production of the chemical substance without interruption when the SNUR is promulgated, thereby avoiding any loss in profits usually attributed to delays in manufactuing or processing during Agency review. However, if the Agency's 90-day review of the SNUN is not completed by the effective date of the final SNUR, all significant new use activities must cease for the remaining portion of the review period.

## VI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50527A). The record includes basic information considered by the Agency in developing this final rule. EPA will supplement the record with additional information as necessary, and will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which Confidential Business Information (CBI) has been deleted is available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

The record includes the following:

1. The proposed rule.
2. Public comments.
3. Response to comment document.
4. This final rule.

5. The economic analysis of this final rule.

**VII. Regulatory Assessment Requirements**

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determinated that this final rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this final rule, for the reasons discussed in this preamble, EPA believes that the cost will be low.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this final rule will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this final rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this final rule will not be substantial even if all the potential new uses were developed by small companies.

*C. Paperwork Reduction Act*

The information collection requirements contained in Subpart A have been approved by OMB under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2070–0012).

The provisions in Part 721, Subpart A clarify existing general conditions under which recordkeeping and/or reporting may be required. The existing recordkeeping and reporting requirements are not significantly changed by the clarifications contained in this rule. Therefore, the Agency has determined that this clarifying rule does not impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

**List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 6, 1988.

**Lee M. Thomas,**

*Administrator.*

Therefore, 40 CFR Part 721 is amended as follows:

## PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604 and 2607.

2. Section 721.1 is revised to read as follows:

**§ 721.1 Scope and applicability.**

(a) This part identifies uses of chemical substances which EPA has determined are significant new uses under the authority of section 5(a)(2) of the Toxic Substances Control Act. In addition, it specifies procedures for manufacturers, importers, and processors to report on those significant new uses. This subpart A contains general provisions applicable to this part. Subpart B of this part identifies generic requirements for certain significant new uses cross referenced in specific provisions of Subpart E of this part. Subpart C of this part identifies generic reporting requirements for certain significant new uses cross referenced in specific provisions of Subpart E of this part. Subpart E of this part identifies chemical substances and their significant new uses.

(b) This Subpart A contains provisions governing submission and review of notices for the chemical substances and significant new uses identified in Subpart E of this part. The provisions of this Subpart A apply to the chemical substances and significant new uses identified in Subpart E of this part, except to the extent that they are specifically modified or supplanted by specific requirements in Subpart E of this part. In the event of a conflict between the provisions of this Subpart A and the provisions of Subpart E of this part, the provisions of Subpart E of this part shall govern.

(c) The provisions of Part 720 of this Chapter apply to this Part 721. For purposes of this Part 721, wherever the phrase "new chemical substance" appears in Part 720 of this chapter, it shall mean the chemical substance subject to this Part 721. In the event of a conflict between the provisions of Part 720 of this chapter and the provisions of this Part 721, the provisions of this Part 721 shall govern.

3. Section 721.3 is revised to read as follows:

**§ 721.3 Definitions.**

The definitions in section 3 of the Act, 15 U.S.C. 2602, and § 720.3 of this chapter apply to this part. In addition, the following definitions apply to this part:

"CAS Number" means Chemical Abstracts Service Registry Number assigned to a chemical substance on the Inventory.

"Customer" means any person to whom a manufacturer, importer, or processor distributes any quantity of a chemical substance, or of a mixture containing the chemical substance, whether or not a sale is involved.

"Metalworking fluid" means a liquid of any viscosity or color containing intentionally added water and used in metal machining operations for the purpose of cooling, lubricating, or rust inhibition.

"Powder or dry solid form" means a state where all or part of the substance would have the potential to become fine, loose, solid particles.

"Principal importer" means the first importer who, knowing that a chemical substance will be imported for a significant new use rather than manufactured in the United States, specifies the chemical substance and the amount to be imported. Only persons who are incorporated, licensed, or doing business in the United States may be principal importers.

"Process for commercial purposes" means the preparation of a chemical substance or mixture containing the chemical substance, after manufacture of the substance, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture containing the chemical substance is included in this definition. If a chemical substance or mixture containing impurities is processed for commercial purposes, the impurities also are processed for commercial purposes.

"Process solely for export" means to process for commercial purposes solely for export from the United States under the following restrictions on activity in the United States: Processing must be performed at sites under the control of the processor; distribution in commerce is limited to purposes of export; and the processor may not use the chemical substance except in small quantities solely for research and development.

"Recipient" means any person who purchases or otherwise obtains a

chemical substance directly from a person who manufacturers, imports, or processes the substance.

"Site" means a contiguous property unit. Property divided only by a public right-of-way is one site. There may be more than one manufacturing plant on a single site.

"Site-limited intermediate" means an intermediate manufactured, processed, and used only within a site and not distributed in commerce other than as an impurity or for disposal. Imported intermediates cannot be "site-limited."

"Spray application" means any method of projecting a jet of vapor of finely divided liquid onto a surface to be coated; whether by compressed air, hydraulic pressure, electrostatic forces, or other methods of generating a spray.

"Waters of the United States" has the meaning set forth in 40 CFR 122.2.

4. Section 721.5 is revised to read as follows:

**§ 721.5 Persons who must report.**

(a) The following persons must submit a significant new use notice as specified under the provisions of section 5(a)(1)(B) of the Act, Part 720 of this chapter, and § 721.25:

(1) A person who intends to manufacture, import, or process for commercial purposes a chemical substance identified in a specific section in Subpart E of this part, and intends to engage in a significant new use of the substance identified in that section.

(2) A person who intends to manufacture, import, or process for commercial purposes a chemical substance identified in a specific section in Subpart E of this part, and intends to distribute the substance in commerce A person described in this paragraph is not required to submit a significant new use notice if that person can document one or more of the following as to each recipient of the substance from that person:

(i) That the person has notified the recipient, in writing, of the specific section in Subpart E of this part which identifies the substance and its designated significant new uses.

(ii) That the recipient has knowledge of the specific section in Subpart E of this part which identifies the substance and its designated significant new uses.

(iii) That the recipient cannot undertake any significant new use described in the specific section in Subpart E of this part.

(b) A person described in paragraph (a)(2) of this section must submit a significant new use notice if that person has knowledge at the time of commercial distribution of the substance identified in the specific section in Subpart E of this part that a recipient intends to engage in a designated significant new use of that substance without submitting a notice under this part.

(c) A person who processes a chemical substance identified in a specific section in Subpart E of this part for a significant new use of that substance is not required to submit a significant new use notice if that person can document each of the following:

(1) That the person does not know the specific chemical identity of the chemical substance being processed.

(2) That the person is processing the chemical substance without knowledge that the substance is identified in Subpart E of this part.

(d)(1) If at any time after commencing distribution in commerce of a chemical substance identified in a specific section in Subpart E of this part a person described in paragraph (a)(2) of this section has knowledge that a recipient of the substance is engaging in a significant new use of that substance designated in that section without submitting a notice under this part, the person is required to cease supplying the chemical substance to that recipient and to submit a significant new use notice for that chemical substance and significant new use, unless the person is able to document each of the following:

(i) That the person has notified the recipient and EPA enforcement authorities (at the address in paragraph (d)(1)(iii) of this section), in writing within 15 working days of the time the person develops knowledge that the recipient is engaging in a significant new use, that the recipient is engaging in a significant new use without submitting a significant new use notice.

(ii) That, within 15 working days of notifying the recipient as described in paragraph (d)(1)(i) of this section, the person received from the recipient, in writing, a statement of assurance that the recipient is aware of the terms of the applicable section in Subpart E of this part and will not engage in the significant new use.

(iii) That the person has promptly provided EPA enforcement authorities with a copy of the recipient's statement of assurance described in paragraph (d)(1)(ii) of this section. The copy must be sent to the Director, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

(2) If EPA notifies the manufacturer, importer, or processor that the recipient is engaging in a significant new use after providing the statement of assurance described in paragraph (d)(1)(ii) of this section and without submitting a notice under this part, the manufacturer, importer, or processor shall immediately cease distribution to that recipient until the manufacturer, importer, or processor or the recipient has submitted a significant new use notice under this part and the notice review period has ended.

(3) If, after receiving a statement of assurance from a recipient under paragraph (d)(1)(ii) of this section, a manufacturer, importer, or processor has knowledge that the recipient is engaging in a significant new use without submitting a notice under this part, the manufacturer, importer, or processor must immediately cease distributing the substance to that recipient and notify EPA enforcement authorities at the address identified in paragraph (d)(1)(iii) of this section. The manufacturer, importer, or processor may not resume distribution to that recipient until any one of the following has occurred:

(i) The manufacturer, importer, or processor has submitted a significant new use notice under this part and the notice review period has ended.

(ii) The recipient has submitted a significant new use notice under this part and the notice review period has ended.

(iii) The manufacturer, importer, or processor has received notice from EPA enforcement authorities that it may resume distribution to that recipient.

(e) Any significant new use notice relating to import of a substance must be submitted by the principal importer.

**§ 721.6 [Redesignated as § 721.11]**

5. Section 721.6 is redesignated as § 721.11, and the entire section is revised to read as follows:

**§ 721.11 Applicability determination when the specific chemical identity is confidential.**

(a) A person who intends to manufacture, import, or process a chemical substance which is described by a generic chemical name is Subpart E of this part may ask EPA whether the substance is subject to the requirements of this part. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance for commercial purposes.

(b) To establish a *bona fide* intent to manufacture, import, or process a chemical substance, the person who intends to manufacture, import, or process the chemical substance must submit the following information in writing to the Office of Toxic Substances, Document Control Officer,

TS–790, 401 M St. SW., Washington, DC 20460: ATTN: SNUR *bona fide* submission.

(1) The specific chemical identity of the chemical substance that the person intends to manufacture, import, or process.

(2) A signed statement that the person intends to manufacture, import, or process the chemical substance for commercial purposes.

(3) A description of the research and development activities conducted to date, and the purpose for which the person will manufacture, import, or process the chemical substance.

(4) An elemental analysis.

(5) Either an X-ray diffraction pattern (for inorganic substances), a mass spectrum (for most other substances), or an infrared spectrum of the particular chemical substance, or, if such data do not resolve uncertainties with respect to the identity of the chemical substance, additional or alternative spectra or other data to identify the substance.

(c) If an importer or processor cannot provide all the information required in paragraph (b) of this section because it is claimed as confidential business information by the importer's or processor's manufacturer or supplier, the manufacturer or supplier may supply the information directly to EPA.

(d) EPA will review the information submitted by the manufacturer, importer, or processor under paragraph (b) of this section to determine whether than person has shown a *bona fide* intent to manufacture, import, or process the chemical substance. If necessary, EPA will compare this information either to the information requested for the confidential chemical substance under § 710.7(e)(2)(v) of this chapter or the information requested under § 720.85(b)(3)(iii) of this chapter.

(e) If the manufacturer, importer, or processor has shown a *bona fide* intent to manufacture, import, or process the substance and has provided sufficient unambiguous chemical identity information to enable EPA to make a conclusive determination as to the identity of the substance, EPA will inform the manufacturer, importer, or processor whether the chemical substance is subject to this part and, if so, which section in Subpart E of this part applies.

(f) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a particular chemical substance that the substance is subject to this part will not be considered public disclosure of confidential business information under section 14 of the Act.

(g) EPA will answer an inquiry on whether a particular chemical substance is subject to this part within 30 days after receipt of a complete submission under paragraph (b) of this section.

**§ 721.7 [Redesignated as § 721.20]**

6. Section 721.7 is redesignated as § 721.20, and the entire section is revised to read as follows:

**§ 721.20 Exports and imports.**

Persons who intend to export a chemical substance identified in Subpart E of this part, or in any proposed rule which would amend Subpart E of this part, are subject to the export notification provisions of section 12(b) of the Act. The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who import a substance identified in a specific section in Subpart E of this part are subject to the import certification requirements under section 13 of the Act, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

**§ 721.10 [Redesignated as § 721.25]**

7. Section 721.10 is redesignated as § 721.25, and the entire section is revised to read as follows:

**§ 721.25 Notice requirements and procedures.**

(a) Each person who is requuired to submit a significant new use notice under this part must submit the notice at least 90 calendar days before commencing manufacture, import, or processing of a chemical substance identified in Subpart E of this part for a significant new use. The submitter must comply with any applicable requirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1) of the Act. The notice must be submitted on the notice from in Appendix A to Part 720 of this chapter and must comply with the requirements of Part 720, except to the extent that they are inconsistent with this Part 721.

(b) If two or more persons are required to submit a significant new use notice for the same chemical substance and significant new use identified in Subpart E of this part, they may submit a joint notice to EPA. Persons submitting a joint notice must individually complete the certification section of Part I of the required notification form. Persons who are required to submit individually, but elect to submit jointly, remain individually liable for the failure to submit required information which is known to or reasonably ascertainable by them and test data in their possession or control.

(c) EPA will process the notice in accordance with the procedures of Part 720 of this chapter, expect to the extent they are inconsistent with this Part 721.

(d) Any person submitting a significant new use notice in response to the requirements of this Part 721 shall not manufacture, import, or process a chemical substance identified in Subpart E of this part for a significant new use until the notice review period, including all extensions and suspensions, has expired.

8. By adding a new § 721.30 to read as follows:

**§ 721.30 EPA approval of alternative control measures.**

(a) In certain sections of Subpart E of this part, significant new uses for the identified substances are described as the failure to establish and implement programs providing for the use of either: specific measures to control worker exposure to or release of substances which are identified in such sections, or alternative measures to control worker exposure or environmental release which EPA has determined provide substantially the same degree of protection as the specified control measures. Persons who manufacture, import, or process a chemical substance identified in such sections and who intend to employ alternative measures to control worker exposure or environmental release must submit a request to EPA for a determination of equivalency before commencing manufacture, import, or processing involving the alternative control measures.

(b) A request for a determination of equivalency must be submitted in writing to the Office of Toxic Substances, Document Control Officer, TS–790, 401 M St. SW., Washington, DC 20460: ATTN: SNUR Equivalency Determination, and must contain:

(1) The name of the submitter.

(2) The specific chemical identity of the substance.

(3) The citation for the specific section in Subpart E of this Part which pertains to the substance for which the request is being submitted.

(4) A detailed description of the activities involved.

(5) The specifications of the alternative worker exposure control measures or environmental release control measures.

(6) An analysis justifying why such alternative control measures provide substantially the same degree of protection as the specific control measures identified in the specific section in Subpart E of this part which

pertains to the substance for which the request is being submitted.

(7) The data and information described in §§ 720.50 (a) and (b) of this chapter unless such data and information have already been submitted to the Office of Toxic Substances, EPA.

(c) Requests for determinations of equivalency will be reviewed by EPA within 45 days. Determinations under this paragraph will be made by the Director, Office of Toxic Substances, or designee. Notice of the results of such determinations will be mailed to the submitter.

(d) If EPA notifies the submitter under paragraph (c) of this section that EPA has determined that the alternative control measures provide substantially the same degree of protection as the specified control measures identified in the specified section of Subpart E of this part which pertains to the substance for which the request is being submitted, the submitter may commence manufacture, import, or processing in accordance with the specifications for alternative worker exposure control measures or environmental release control measures identified in the submitter's request, and may alter any corresponding notification to workers to reflect such alternative controls. Deviations from the activities described in the EPA notification constitute a significant new use and are subject to the requirements of this part.

**§ 721.13 [Redesignated as § 721.35]**

9. Section 721.13 is redesignated as § 721.35, and the entire section is revised to read as follows:

**§ 721.35 Compliance and enforcement.**

(a) Failure to comply with any provision of this part is a violation of section 15(1) of the Act (15 U.S.C. 2614).

(b) Using for commercial purposes a chemical substance which a person knew or had reason to know was manufactured, imported, or processed in violation of this part is a violation of section 15(2) of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit access to or copying of records, as required by section 11 of the Act, is a violation of section 15(3) of the Act (15 U.S.C. 2614).

(d) Failure or refusal to permit entry or inspection, as required by section 11 of the Act, is a violation of section 15(4) of the Act.

(e) Violators of the Act or of this part may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. The submission of false or misleading information in connection with the requirement of any provision of this part may subject persons to penalties calculated as if they never filed a notice.

(f) Under the authority of sections 7 and 17 of the Act, EPA may:

(1) Seek to enjoin the manufacture, import, or processing of a chemical substance in violation of this part.

(2) Act to seize any chemical substance which is being manufactured, imported, or processed in violation of this part.

(3) Take any other appropriate action.

10. Section 721.17 is redesignated as § 721.40, and the entire section is revised to read as follows:

**§ 721.40 Recordkeeping.**

Any person subject to the requirements of this part must retain documentation of information contained in that person's significant new use notice. This documentation must be maintained for a period of 5 years from the date of the submission of the significant new use notice.

**§ 721.19 [Redesignated as § 721.45]**

11. Section 721.19 is redesignated as § 721.45, and the entire section is revised to read as follows:

**§ 721.45 Exemptions.**

The persons identified in § 721.5 are not subject to the notification requirements of § 721.25 for a chemical substance identified in Subpart E of this part, unless otherwise specified in a specific section in Subpart E, if:

(a) The person has applied for and has been granted an exemption for test marketing the substance for a significant new use identified in Subpart E of this part in accordance with section 5(h)(1) of the Act and § 720.38 of this chapter.

(b) The person manufactures, imports, or processes the substance for a significant new use identified in Subpart E of this part in small quantities solely for research and development in accordance with § 721.47.

(c) The person has applied for and been granted an exemption under section 5(h)(5) of the Act.

(d) The person manufactures, imports, or processes the substance only as an impurity.

(e) The person manufactures, imports, or processes the substance only as a byproduct which is used only by public or private organizations that (1) burn it as a fuel, (2) dispose of it as a waste, including in a landfill or for enriching soil, or (3) extract component chemical substances from it for commercial purposes.

(f) The person imports or processes the substance as part of an article.

(g) The person manufactures or processes the substance solely for export and, when distributing the substance in commerce, labels the substance in accordance with section 12(a)(1)(B) of the Act.

(h) The person submits a significant new use notice for the substance prior to the promulgation date of the section in Subpart E of this part which identifies the substance, and the person receives written notification of compliance from EPA prior to the effective date of such section. The notice submitter must comply with any applicable requirement of section 5(b) of the Act. The notice must include the information and test data specified in section 5(d)(1) of the Act and must be submitted on the notice form in Appendix A to Part 720 of this chapter. For purposes of this exemption, the specific section in Subpart E of this part which identifies the substance and §§ 721.1, 721.3, 721.11, 721.35, and 721.40 apply; after the effective date of the section in Subpart E of this part which identifies the substance, § 721.5 applies and § 721.20 continues to apply. EPA will provide the notice submitter with written notification of compliance only if one of the following occurs:

(1) EPA is unable to make the finding that the activities described in the significant new use notice will or may present an unreasonable risk of injury to health or the environment under reasonably foreseeable circumstances.

(2) EPA and the person negotiate a consent order under section 5(e) of the Act, such order to take effect on the effective date of the section in Subpart E of this part which identifies the substance.

(i) The person is operating under the terms of a consent order issued under section 5(e) of the Act applicable to that person. If a provision of such section 5(e) order is inconsistent with a specific significant new use identified in Subpart E of this part, abiding by the provision of the section 5(e) order exempts the person from submitting a significant new use notice for that specific significant new use.

12. By adding a new § 721.47 to read as follows:

**§ 721.47 Conditions for research and development exemption.**

(a) A person who manufactures, imports, or processes a chemical substance identifies in Subpart E of this part for a significant new use identified in Subpart E of this part is not subject to the notification requirements of § 721.25 if the following conditions are met:

(1) The person manufactures, imports, or processes the substance for the significant new use in small quantities solely for research and development.

(2) The manufacturer, importer, or processor notifies all persons in its employ or to whom it directly distributes the chemical substance, who are engaged in experimentation, research, or analysis on the chemical substance, including the manufacture, processing, use, transport, storage, and disposal of the substance associated with research and development activities, of any risk to health, identified under paragraph (b) of this section, which may be associated with the substance. The notification must be made in accordance with paragraph (c) of this section.

(3) The chemical substance is used by, or directly under the supervision of, a technically qualified individual.

(b)(1) To determine whether notification under paragraph (a)(2) of this section is required, the manufacturer, importer, or processor must review and evaluate the following information to determine whether there is reason to believe there is any risk to health which may be associated with the chemicals substance:

(i) Information in its possession or control concerning any significant adverse reaction by persons exposed to the chemical substance which may reasonably be associated with such exposure.

(ii) Information provided to the manufacturer, importer, or processor by a supplier or any other person concerning a health risk believed to be associated with the substance.

(iii) Health and environmental effects data in its possession or control concerning the substance.

(iv) Information on health effects which accompanies any EPA rule or order issued under section 4, 5, or 6 of the Act that applies to the substance and of which the manufacturer, importer, or processor has knowledge.

(2) When the research and development activity is conducted solely in a laboratory and exposure to the chemical substance is controlled through the implementation of prudent laboratory practices for handling chemical substances of unknown toxicity, and any distribution, except for purposes of disposal, is to other such laboratories for further research and development activity, the information specified in paragraph (b)(1) of this section need not be reviewed and evaluated. (For purposes of this paragraph (b)(2), a laboratory is defined as a contained research facility where relatively small quantities of chemical substances are used on a pro-production basis, and where activities involve the use of containers for reactions, transfers, and other handling of substances designed to be easily manipulated by a single individual).

(c)(1) The manufacturer, importer, or processor must notify the persons identified in paragraph (a)(2) of this section by means of a container labeling system, conspicuous placement of notices in areas where exposure may occur, written notification to each person potentially exposed, or any other method of notification which adequately informs persons of health risks which the manufacturer, importer, or processor has reason to believe may be associated with the substance, as determined under paragraph (b)(1) of this section.

(2) If the manufacturer, importer, or processor distributes a chemical substance manufactured, imported, or processed under this section to persons not in its employ, the manufacturer, importer, or processor must in written form:

(i) Notify those persons that the substance is to be used only for research and development purposes.

(ii) Provide the notice of health risks specified in paragraph (c)(1) of this section.

(3) The adequacy of any notification under this section is the responsibility of the manufacturer, importer, or processor.

(d) Quantities of the chemical substance, or of mixtures or articles containing the chemical substance, remaining after completion of research and development activities may be:

(i) Disposed of as a waste in accordance with applicable Federal, State, and local regulations, to the extent the disposal activity is not identified as a significant new use for the substance in Subpart E of this part, or

(2) Used for a commercial purpose, to the extent the use is not identified as a significant new use of the substance in Subpart E of this part.

(e)(1) Persons who manufacture, import, or process a chemical substance under this section must retain the following records:

(i) Copies of or citations to information reviewed and evaluated under paragraph (b)(1) of this section to determine the need to make any notification of risk.

(ii) Documentation of the nature and method of notification under paragraph (c)(1) of this section including copies of any labels or written notices used.

(iii) Documentation of prudent laboratory practices used instead of notification and evaluation under paragraph (b)(2) of this section.

(iv) The names and addresses of any persons other than the manufacturer, importer, or processor to whom the substance is distributed, the identity of the substance, the amount distributed, and copies of the notifications required under paragraph (c)(2) of this section.

(2) [Reserved.]

(Approved by the Office of Management and Budget under control number 2070–0012.)

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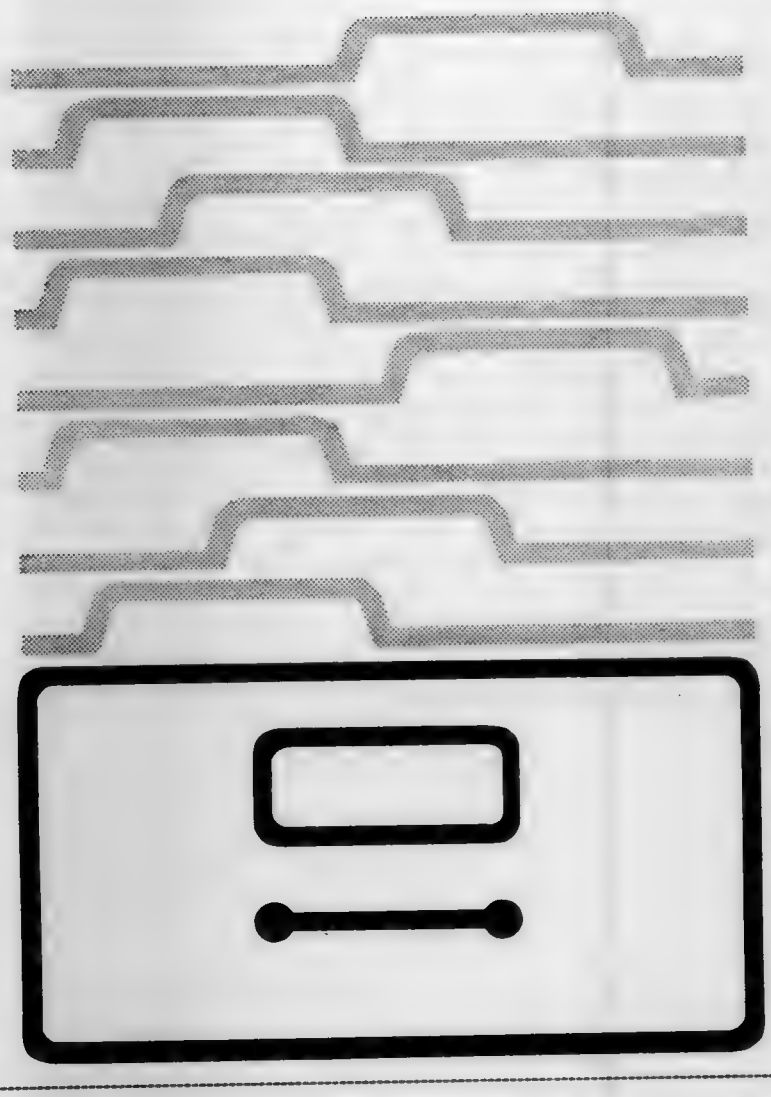

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# Rules and Regulations

Federal Register
Vol. 53, No. 145
Thursday, July 28, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 316, 330 and 332**

## Placement Programs for Displaced Federal Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations governing placement programs for employees displaced from their Federal positions through no fault of their own. These regulations set forth basic criteria for programs operated by OPM as well as Federal agencies.

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Cole, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:** Proposed regulations were published for comment on December 28, 1987 (54 FR 48824) to amend 5 CFR Parts 330 and 332 governing placement assistance for employees who will be displaced or have been separated from their Federal jobs as a result of agency work force reductions, compensable on-the-job injury, or discontinued services or disability retirement. The proposed regulations set forth criteria for two programs operated by OPM—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP)—as well as agency responsibilities for operating positive placement programs and providing placement assistance to displaced employees.

Written comments on the proposed regulations were received from seven Federal agencies, two employee organizations, and one individual. The comments dealt primarily with the OPM operated placement programs. Several agencies suggested clarifications which are not appropriate for inclusion in the regulation, but will be incorporated into instructional material issued through the Federal Personnel Manual System. Since the final regulations contain a variety of editorial changes, and one section was divided into two, the section numbers below are different than those in the proposed regulations. Key comments are summarized below.

One agency felt that OPM placement assistance should be limited to the commuting area only, rather than nationwide. We do not agree with this approach. When Federal employees are displaced, we should provide maximum possible placement assistance for them (unless they have demonstrated they are not mobile), especially if the availability of jobs may be limited in the local commuting area.

One agency did not agree with the current practice of permitting employees to transfer their DEP eligibility to a new commuting area if they were separated from employment because they declined reassignment outside the current commuting area. When these employees register for OPM placement assistance, we do limit the assistance to the current commuting area. They are not permitted to register for nationwide referral. We did not alter our current procedure because we think it is fair to permit the registrants to take their eligibility with them to their new local area, should they later relocate. Placement assistance would still be limited to one commuting area, rather than nationwide.

Most agencies supported our proposal to exclude from the IPAP and DEP those employees who have a performance rating of unacceptable. Two agencies further suggested that individuals with a rating below "Fully Successful" be disqualified or that agencies be permitted to pass over them without going through the formal objection procedures in effect for the DEP. We retained the rating requirement as proposed. Under reduction in force procedures, employees with unacceptable performance ratings are denied displacement rights and are the first employees to be released. We believe our regulation balances that requirement with our efforts to maximize placement assistance for displaced Federal employees. Because some employees, such as administrative law judges, are exempt from performance evaluations, we revised § 330.302 (now numbered § 330.303) to exclude them from the rating requirement. We have also excluded individuals separated due to on-the-job injury, because we feel it is inappropriate to require performance appraisals from employees who, in many cases, have been off agencies' rolls for a long period of time and cannot provide a meaningful appraisal.

One employee organization suggested that registration for the IPAP should be in 6-month increments, renewable by the employee, rather than the current practice of registration in 120-day increments, renewable by the agency. We did not adopt this suggestion. IPAP registrants are employees who have a job but are faced with possible separation because they have been identified as surplus. It is the agency, not the employee, that decides if a person is surplus. The 120-day registration period ensures there is a continuing need for OPM placement assistance and we permit renewals until the employee is no longer surplus or has been separated.

That same organization also suggested that OPM placement assistance under the DEP should continue indefinitely for career employees or be extended in 6-month increments up to four years. In addition, the individual commenter suggested that the periods of eligibility for placement assistance should be extended during hiring freezes in the Federal Government. We believe the current time periods for OPM assistance are appropriate. To find a new job is primarily the employee's responsibility and also an obligation of the agency in which the separation occurs. OPM's placement programs only supplement these efforts and are not intended to relieve the employee or the agency of its responsibility to seek alternative employment.

One agency requested that we clarify the nature of assistance given to IPAP candidates who have no competitive status and cannot be appointed noncompetitively. Clarifying language has been added to § 330.304 (now numbered § 330.305).

Another agency disagreed with the provision permitting DEP candidates to reopen competitive registers at grades higher than the last job occupied. This privilege has been in effect for many years and we see no need to take this

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benefit away. The candidates do not receive priority consideration on these registers. They are processed and certified as all other competitors are.

The final regulations contain two clarifications on the eligibility criteria for the IPAP. Since the program is designed to help employees under most types of appointments, including nonstatus employees, we have recorded § 330.302 (now numbered § 330.303) to indicate that any employee serving under an appointment not limited to one year or less is eligible for placement assistance. We have also updated the conditions under which IPAP eligibility will terminate. OPM placement assistance ceases not only under the conditions specified in the proposed regulations, but also when the registrants are placed in or decline an offer of continuing employment in State or local government, or in the private sector. This was inadvertently omitted from the proposed regulations.

After consideration of the comments received, we are adopting the proposed revisions to Parts 330 and 332 as final regulations, with modifications as discussed above and some editorial clarifications.

The final regulations for Part 330 no longer contain the provision that requires agencies to separate Tenure Group III employees when there are no suitable vacancies for DEP registrants. This provision is also cross referenced in Part 316, Subpart J. The subpart deals with the separation of temporary and term employees in response to specific displacement orders by OPM. Since this subpart contains outdated material, it has been removed.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only the procedures used to provide placement assistance to certain Federal employees.

**List of Subjects**

*5 CFR Part 316*

Government employees, Veterans.

*5 CFR Part 330*

Government employees, Intergovernmental relations.

*5 CFR Part 332*

Government employees, Examination for government employees.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is amending 5 CFR Parts 316, 330 and 332 as follows:

## PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for Part 316 continues to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, and E.O. 10577; § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371, E.O. 12137), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

**§ 316.80 (Subpart H) [Removed]**

2. In Part 316, Subpart H is removed.

## PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

3. The authority citation for Part 330 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577; § 330.102 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

4. Subpart C and its heading are revised to read as follows:

**Subpart C—Placement Assistance Programs for Displaced Employees**

Sec.

330.301 Coverage.
330.302 OPM programs.
330.303 Eligibility.
330.304 Period of eligibility.
330.305 Placement assistance.
330.306 Termination of eligibility.
330.307 Agency responsibilities.

**Subpart C—Placement Assistance Programs for Displaced Employees**

**§ 330.301 Coverage.**

This subpart covers placement programs for employees who will be displaced or have been separated from their Federal jobs as a result of agency work force reductions, compensable on-the-job injury, discontinued service retirement or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus or displaced employees, and for operating positive placement programs as set forth in § 330.307 of this subpart. OPM supplements these agency efforts by administering placement programs which give surplus or displaced employees priority referral to positions in other agencies.

**§ 330.302 OPM programs.**

(a) OPM operates two placement programs—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). In general, the IPAP provides placement assistance in advance of an impending work force reduction to employees who have been identified by their agencies as surplus. The DEP provides assistance to employees who have received a specific notice of separation or who have been separated.

(b) The IPAP is also used as a referral mechanism when OPM is required by statute to provide placement assistance to certain individuals.

**§ 330.303 Eligibility.**

(a) For the *IPAP,* the registrant must:

(1) Be serving under an appointment not limited to one year or less, in an agency whose personnel system is subject to competitive service requirements (except individuals entitled to placement assistance by law);

(2) Have a rating above "unacceptable" on his or her most recent performance rating of record as described in § 351.203 of this chapter (except employees in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(3) Have been identified as surplus under one of the following conditions:

(i) The employee is occupying a position scheduled to be abolished;

(ii) The employing agency, or one of its components, is scheduled to be abolished;

(iii) The activity in which the employee's position is located is undergoing an efficiency study under the provisions of OMB Circular A–76 and solicitation of bids has begun; or

(iv) The employee is otherwise targeted for involuntary separation; and

(4) Must register for the program within time limits specified by OPM.

(b) For the *DEP,* the registrant must:

(1) Be a present or former career or career-conditional employee, or excepted employee with competitive status and in tenure group I or II as defined in Part 351 of this chapter (except that an employee occupying a Schedule C position as defined in Part 213 of this chapter is not entitled to placement assistance);

(2) Be serving in or have been separated from a position in an agency whose personnel system is subject to competitive service requirements;

(3) Have a rating above "unacceptable" on his or her most recent performance rating of record as

described in § 351.203 of this chapter (except individuals qualifying under paragraphs (b)(4)(iii) and (b)(4)(v) of this section or those who are in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(4) Must be subject to one of the following:

(i) Has received a specific notice of separation through reduction in force;

(ii) Has declined a transfer of function to another commuting area or has declined reassignment to another commuting area (as defined in Part 351 of this chapter);

(iii) Has been separated or furloughed because of a compensable injury in accordance with the provisions of Subchapter I of Chapter 81 of Title 5, United States Code;

(iv) Has applied for an annuity or has retired under the discontinued service retirement provision in section 8336(d)(1) or 8414(b)(1)(A) of Title 5, United States Code; or

(v) Has retired due to disability under section 8337, 8451 or 8457 of Title 5, United States Code; and

(5) Must register for the program within time limits specified by OPM.

**§ 330.304 Period of eligibility.**

IPAP registrants receive placement assistance in 120-day increments renewable by the registering agencies. For the DEP, tenure group II employees receive 1 year of placement assistance and tenure group I employees receive 2 years of assistance.

**§ 330.305 Placement assistance.**

(a) IPAP and DEP registrants are referred ahead of other candidates when they are qualified and available for vacancies expected to last more than 1 year and that are filled through competitive registers held by OPM or by an agency with delegated examining authority. (IPAP registrants without noncompetitive appointment eligibility for competitive service positions will be referred separately for consideration for positions in the excepted service.) No individual may be selected for such a vacancy from an OPM or agency competitive register as long as a qualified DEP registrant is available. Referrals are based on the qualifications of registrants and on the duties of the positions.

(b) Placement assistance under both programs is nationwide except that registrants who decline transfer or reassignment outside the commuting area may register for placement assistance only within the commuting area of the position from which they will be or were separated. However, these registrants may transfer their eligibility to another commuting area if they later relocate.

(c) A registrant will be referred to vacancies that are at or below the grade level of and have no more promotion potential than the position from which separated. Eligible registrants separated from positions above GS–15 will receive assistance at the GS–15 level and below.

(d) When an agency selects an IPAP or DEP registrant, it employs him or her under appropriate appointments such as reinstatement, transfer, position change, or excepted appointment.

**§ 330.306 Termination of eligibility.**

(a) Eligibility for assistance under the *IPAP* will be terminated if one of the following occurs:

(1) The registrant's 120-day period of eligibility expires and is not renewed by the agency;

(2) The registrant requests, in writing, that placement assistance be terminated;

(3) The agency notifies OPM that the employee is no longer surplus;

(4) The registrant is placed in a nontemporary position in the competitive or excepted service, in State or local government, or in the private sector;

(5) The registrant is enrolled in the DEP; or

(6) The registrant declines an offer of continuing employment in the competitive or excepted service, in State or local government, or in the private sector, under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

(b) Eligibility for assistance under the *DEP* will be terminated if one of the following occurs:

(1) A tenure group I registrant's 2-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407 of this part);

(2) A tenure group II registrant's 1-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407 of this part);

(3) The registrant requests, in writing, that placement assistance be terminated;

(4) The registrant is placed in a nontemporary position in either the competitive or excepted service; or

(5) The registrant declines an offer of continuing employment in the competitive or excepted service under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

**§ 330.307 Agency responsibilities.**

(a) *Agency programs.* (1) Each agency has a primary obligation to assist, to the maximum extent practical and in keeping with the requirements set forth in paragraph (a)(2) of this section, in the placement of its surplus and displaced employees. OPM's placement programs only supplement these efforts and are not intended to relieve an agency of its responsibility to provide the maximum placement assistance possible.

(2) Each agency is required to operate a positive placement program for its own surplus and displaced employees. The program must, at a minimum, provide for the establishment and maintenance of a reemployment priority list for the commuting area for those employees who have received a specific notice of separation through reduction in force, as provided for in Subpart B of this part. Additionally, each agency is expected to supplement this basic requirement with other forms of appropriate assistance to be given to employees prior to actual separation. An agency's positive placement program should include the following elements:

(i) Criteria of eligibility for assistance;

(ii) The duration of eligibility;

(iii) The types of assistance provided, including counseling, job referral, and training;

(iv) Consideration of the appropriateness of placing restrictions on filling vacancies by any means when qualified surplus or displaced employees are available in the agency's positive placement program.

(b) *Registration of eligible employees.* Agencies are encouraged to participate in the IPAP and inform their employees about this program as soon as they are reasonably sure that separations will be necessary. In accordance with Subpart H of Part 351 of this chapter, agencies must inform affected employees about the Displaced Employee Program at the same time that specific reduction-in-force notices are distributed. Agencies are responsible for assisting employees with their registration forms, for completing the information requested on the forms, and for sending them to appropriate offices as instructed by OPM.

(c) *Consideration of individuals*

*referred.* Agencies will give full consideration to individuals referred through OPM's placement programs. Full consideration is a careful and open review of the qualifications of the registrant as described in the individual's application forms, contact to determine interest and availability, and an interview, if possible, to further assess the registrant's ability to perform the duties of the position within a reasonable period of time. An appointing officer may not pass over a DEP eligible to select a non-DEP eligible unless an objection to the DEP eligible is sustained by OMP or an agency with delegated examining authority. The objection procedure does not apply to IPAP registrants.

**§ 330.404 [Amended]**

5. In § 330.404(c), the words "as specified in OPM issuances" are removed and the word "are" is substituted for "is".

6. In § 330.701, paragraph (b) is revised to read as follows:

**§ 330.701 Coverage.**

* * * * *

(b) Has been retired under sections 8337 or 8451 of title 5, United States Code.

**PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION**

7. The authority citation following § 332.406 is removed. The authority citation for Part 332 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

8. Section 332.314 is revised to read as follows:

**§ 332.314 Displaced employees eligible for placement assistance.**

Subject to the time limits and other conditions published by OPM in Federal Personnel Manual Chapter 332, a person who is eligible for placement assistance through the Displaced Employee Program described in Subpart C of Part 330 of this chapter is entitled to file applications for competitive examinations after the closing date for receipt of applications when there is an existing register or a register is about to be established. Applications may be filed at any grade or level above the position from which the person is about to be or was displaced, for which such person is qualified.

[FR Doc. 88–17008 Filed 7–27–88; 8:45 am]

BILLING CODE 6325–01–M

**5 CFR Part 890**

## Federal Employees Health Benefits Program; Medically Underserved Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its Federal Employees Health Benefits (FEHB) Program regulations to specify (1) how it determines which states qualify as Medically Underserved Areas, and (2) how and when it will announce the results of this determination. This action is necessary to expedite notice of Medically Underserved Areas to the public.

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Barbara Myers, (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** On January 14, 1988, OPM published proposed regulations in the **Federal Register** (53 FR 898) that specified how it determines which states qualify as Medically Underserved Areas under the FEHB Program. The regulations proposed a change to the method by which OPM announces the results of this annual determination. This change would begin with OPM's determination for calendar year 1989, which would be announced before the beginning of the November 1988 open season.

OPM received two written comments on the proposed regulations: One from an association and one from an FEHB carrier. While both were generally in favor of the proposed change, the FEHB carrier expressed concern about the timing of the public notice. The carrier believes that the results of OPM's determination should be announced by September 1 to be sure that the states are included in the plan brochures for the next calendar year. We acknowledge the importance of including this information in the brochures, but do not think it is necessary to require a specific date by which the states must be published in the **Federal Register**. As soon as the necessary data becomes available to us, we will make every effort to determine which states qualify as Medically Underserved Areas for the next calendar year and share this information with the carriers.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is amending 5 CFR Part 890 as follows:

**PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM**

1. The authority citation for Part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.701, the following three sentences are inserted between the first and second sentences in the definition "Medically underserved area" to read as follows:

**§ 890.701 Definitions.**

* * * * *

"Medically underserved area" * * * OPM makes its annual determination by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population. The determination will be made prior to the annual FEHB open season and will be for the next calendar year. OPM will announce the results of this determination before each open season in a public notice in the **Federal Register**. * * *

* * * * *

[FR Doc. 88–17009 Filed 7–27–88; 8:45 am]

BILLING CODE 6325–01–M

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 11**

**[Docket No. 88–125]**

## Horse Protection Regulations; Interim Rule and Request for Comments

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Horse Protection Regulations to revise the list of devices and equipment prohibited for use on horses at any horse show, exhibition, sale, or auction. We are removing provisions established by an earlier interim rule that would have phased in a maximum pad height of 1 inch, and are substituting a prohibition on the use of pads that exceed 50 percent of the horse's natural foot length or that fail to comply with other specified requirements. We are also prohibiting packing materials between pad and hoof, except for certain approved materials, and are expanding restrictions on the use of weights on horses. Additionally, we are amending the regulations to allow the use of pliant plastic pads on horses. These amendments are necessary to better protect horses under the Horse Protection Act.

**DATE:** This interim rule is effective August 1, 1988. Consideration will be given only to comments postmarked or received on or before October 31, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket No. 88–125. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

**SUPPLEMENTARY INFORMATION:**

## Background Information

On April 26, 1988, we published an interim rule in the **Federal Register** (FR 53 14778–14782, Docket No. 88–052) that amended the Horse Protection regulations in 9 CFR Part 11 (referred to below as the regulations) to prohibit and restrict certain devices and practices to prevent the soring of horses. On May 2, 1988, we published another interim rule in the **Federal Register** (FR 53 15640–15641), Docket No. 88–079) that amended the regulations with regard to weight added to a horse's foot, including the weight of horseshoes and certain boots.

## Comments on Interim Rules

We invited written comments on our interim rules, stipulating that they had to be postmarked or received on or before June 27, 1988. The comment period was then reopened and extended, and closed July 15, 1988.

We received over 2,100 comments on the interim rules, and have carefully considered these comments in developing this new interim rule. Many of the comments we received dealt with matters outside the scope of the interim rules on which we requested comments. For example, some commenters requested amendments to the Horse Protection Act, or addressed enforcement of regulatory provisions not discussed in the interim rules. We are responding in this interim rule to comments on changes effected by the earlier interim rules.

The comments were from state agriculture officials, representatives of horse associations, representatives of animal protection associations, members of Congress, breeders, owners, exhibitors, veterinarians, farriers, and other interested persons. In terms of number of comments filed, the majority generally opposed one or more of the provisions of the interim rules, but a large minority either supported the interim rules or supported the intent of the interim rules but wanted stronger regulatory restrictions. All comments were carefully considered, and objections are discussed in this supplementary information section.

## Pads

Among the provisions established by the April 26 interim rule was a schedule for phasing down the allowable height of pads on horses. The interim rule provided for a maximum pad height of 3 inches through July 31, 1988, and of 2 inches from August 1, 1988, through October 31, 1988. After October 31, 1988, full pads were to be limited to ½ inch, with total pad height including rim pads, limited to 1 inch.

Among the comments we received was one that was jointly signed and submitted by the American Horse Council (AHC), on behalf of its member organizations, and by the American Horse Protection Association (AHPA). The AHC represents over 150 horse industry associations, councils, establishments, and suppliers. Its membership represents a large majority of the major horse organizations in the country. We understand that the joint comment was the result of intensive study and discussion among AHPA officials and officials and representatives of the AHC, and its constituent organizations affected by these rules. Among the issues addressed by the joint comment was the issue of pads used on horses. The joint commenters stated that pads serve the following legitimate needs: (1) To protect the hoof from abrasions or penetration on hard or uneven surfaces; (2) to provide a cushioning agent for the hoof and limb when working or showing surfaces are unduly hard or rough; (3) to maintain the natural angle of the foot and pastern; (4) to compensate for conformation abnormalities of the foot and limb; (5) to aid in keeping the shoes intact on those horses with thin-walled or brittle feet; (6) to permit the use of packing under the pad to maintain proper softness and flexibility of the hoof; (7) to protect the foot from the development of septic processes; (8) to facilitate the application of therapeutic medication to the hoof; (9) to increase or decrease support to the foot and limb as an aid in the treatment of lameness; and (10) to build up the proper matching length and angle of any foot that has been broken or damaged.

According to the joint commenters, pads used in these ways are applied in such a manner as to maintain or achieve normal hoof-pastern axis; therefore pads used in a protective/therapeutic manner are in the best interest of the horse's health and soundness. For these reasons, the joint commenters stated, the use of pads should not be prohibited or arbitrarily limited. The joint commenters additionally stated that the length of the natural hoof of a horse is an important consideration with regard to the use of pads, and that due to the varying sizes of different breeds, ages, and uses of horses, it is inappropriate to set an absolute limit on an acceptable or appropriate pad height to be used on all horses' feet. The joint commenters noted that pads are also used to facilitate certain gaits in show horses, stating that this is a legitimate use as long as the pad does not otherwise cause or result in a violation of the Horse Protection Act (Act). Through their intensive discussion, and in consultation with experienced veterinarians and farriers, the joint commenters developed and submitted guidelines that they believe would assure compliance with the Act while facilitating legitimate uses of pads.

According to the joint commenters, a pad that is no longer than 50 percent of the length of the horse's natural hoof at the toe cannot reasonably be expected to sore the horse, if the horse is properly shod. They stated that the proper use of pads depends on a variety of factors, including maintenance of the appropriate hoof-pastern axis, proper trimming of the hoof wall and the sole, and the avoidance of any practice that inflicts pressure or pain to the sensitive tissues of the foot. The joint commenters noted that the current prohibitions in

§ 11.2(b)(18), redesignated by this interim rule as § 11.2(b)(17), are important determinations in determining if a horse is properly shod with pads. For this reason, the joint commenters suggested that we amend the 1-inch maximum on pad height to permit the use of a pad that is no longer than one-half the length of the horse's natural hoof.

This recommendation, and all other recommendations made by the joint commenters regarding pads, as explained below, were supported in separate comments submitted by the Humane Society of the United States, representing 800,000 members and constituents, and by the Friends of the Show Horse Association, Inc. (Friends Association), a non-profit corporation of owners, trainers, and breeders of Tennessee Walking Horses that participate in approximately 480 horse shows annually. Additionally, we received a supplementary comment and supporting material regarding pads from the Tennessee Walking Horse Breeders' and Exhibitors' Association (TWHBEA, Inc.), a member organization of the AHC that represents a major segment of the industry. It is unclear from its comments what the ultimate position of the TWHBEA, Inc, is. Although the comment states that the TWHBEA, Inc., supports a 4-inch limit on pad height, it also states that the association supports the AHC/AHPA joint recommendation on pads, at least as far as it will facilitate the current show season. Because we are requesting comments on this interim rule, the TWHBEA, Inc., will have an opportunity to clarify its position before any action is taken to make this interim rule final.

We believe that the recommendation presented in the AHC/AHPA joint comment would serve to prevent soring due to excessive pad heights, while allowing the legitimate use of pads in excess of 1-inch. Therefore, we are amending the regulations to prohibit artificial extension of the toe length that exceeds 50 percent of the natural hoof length. Any artificial extension of the toe length must assume the slope of the dorsum (front) of the hoof wall. The natural hoof length is to be measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension is to be measured from the distal portion of the hoof wall at the tip of the toe to the proximal (foot/hoof) surface of the shoe at the toe.

In a separate supplementary comment, the AHPA indicated that it does not anticipate a problem with horses' feet being grown to excessive lengths merely to accommodate high pads. The AHPA stated that as a practical matter, those breeds of horses, including the Tennessee Walking Horse, that have historically used high pads, are not known for their ability to grow hoof and are not likely to be able to grow natural toe length in excess of 4 to 5 inches. AHPA maintained that beyond that length, the hoof wall will not support the weight of the pad assembly allowed by this interim rule, or the concussion of the horse's stride, without cracking or crumbling.

The AHPA further stated that the requirement that the pad assembly conform to the slope of the hoof wall at the toe will be a limiting factor on those breeds, including the Tennessee Walking Horse, that have historically used high pads. The AHPA stated that this "slope" requirement will, as a practical matter, increase the length of the foot (measured from tow to heel) as more pad is added—contrary to the current practice among the breeds that have used high pads, which is to trim the toe of the pad assembly more or less perpendicular to the ground. The longer the foot becomes as pads are added, the slower the horse will "break over" as it strides. In gaited horses such as the Walking Horses, a slow "breakover" is undesirable, because it allows the overstriding rear foot to interfere with the front foot as it leaves the ground. Therefore, according to the AHPA, the new regulations regarding pads will discourage the use of excessively high pads where a flat walk and running walk are being performed.

A large number of commenters, including, as noted, the TWHBEA, Inc., requested either a 3- or 4-inch maximum height on pads. Several requested a 2-inch maximum. Because we agree with the AHC/AHPA joint comment that the most appropriate way to govern pad height is to base that height on the natural hoof of the individual horse, we are not adopting the recommendations to establish a specific maximum pad height for all horses.

In their joint comment, the AHC and AHPA acknowledged that with a flexible limit on pads, based on the length of the natural hoof, it is possible that the pad height may exceed 1 inch. The joint commenters therefore stated that our existing provisions governing a horse's heel/toe ratio, which provides that tow length must exceed the height of the heel by 1 inch or more, be retained permanently with respect to the use of pads less than two inches in length at the toe. With respect to pads that may measure 2 inches or more in length, the joint commenters recommended that the height of such a pad at the heel be limited to no more than 1⅛ inches greater than the length of the pad at the toe. We agree with these recommendations and are adopting them in this interim rule. The tow length will be measured from the coronet band at the center of the front pastern along the front of the hoof wall to the ground. The heel will be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that are not more than ¾ of an inch in length. That portion of caulk at the rear of a horseshoe that is more than ¾ of an inch will be added to the height of the heel in determining the heel/toe ratio.

One commenter suggested that the angle of the pastern and the hoof should remain constant, with no deviation at the coronet band. In other words horses should not walk on their toes. Another commenter expressed concern that horses that wear high pads and heavy shoes often have foot angles that are too low for the horse's bone structure, even when overall angles of the pad and shoe package are normal or high. The commenter suggested that hoof angles be required to be between 48 degrees and 60 degrees. We agree that an unnatural hoof angle can be harmful to a horse. However, for purposes of measurement and inspection, it would be impracticable to establish requirements based on specific angles.

The joint commenters also recommended that to allow for corrective shoeing, the requirements described above not apply to a broken or damaged hoof, as long as its contralateral hoof meets the above requirements. We agree and are amending the regulations to include such a provision. One commenter suggested that any horse that has undergone corrective shoeing should be considered unsound and be prohibited from taking part in shows, exhibits, sales, or auctions. We do not believe such action is necessary. In many cases, corrective shoeing is done to remedy something as simple as a cracked hoof. In other cases horses, such as those with one leg shorter than the others, are more sound when shown with corrective shoeing than without. Another commenter stated that if a horse needs corrective shoeing in violation of the regulations, that horse should be considered unsound and not be allowed to compete in the show ring, or be exhibited or ridden at auction. We

agree and will enforce the regulations uniformly for all horses.

Several commenters stated that pads change a horse's center of balance and cause a greater percentage of a horse's weight to be shifted to its hind end. The commenters indicated that such a change in angulation can cause problems such as bone spavin and bog spavin. As we stated in our April 26 interim rule, we agree that excessive pad height can cause injurious changes in angulation. However, no scientific research has been conducted to determine precisely when a change in angulation becomes harmful. Based on the evidence available to us at this time, we believe that the regulations we are establishing that base permissible pad height on hoof length, and that control the buildup of the heel, will ensure that horses are not subjected to harmful changes in angulation.

A number of commenters stated that 4-inch pads should be allowed on all horses, because, historically, horses wearing pads of that height have been able to perform in the show ring, and therefore could not be sore. According to the commenters, a sore horse could not go, and therefore would be useless in the ring. We disagree that the test of whether a horse has been sored should be whether it can go or not. A horse will not go only if it is subjected to acute or chronic pain. The pain caused by soaring is often temporary, inflicted only for a particular show. Following the show, the horse is administered to. For evidence that sore horses will perform in the show ring, it is only necessary to look to the period before passage of the Horse Protection Act, when many horses were sored badly, yet still performed at shows.

In our April 26 interim rule, as one of the reasons for establishing a 1-inch maximum pad height, we stated that high pads make it difficult to detect pressure shoeing and the insertion of objects between the pad and the foot to cause soring. Several comments, including the joint comment from the AHC and the AHPA, suggested that the most appropriate way of dealing with pressure shoeing and the insertion of objects is through enhanced enforcement, rather than through establishment of a specific maximum pad height. In their joint comment, the AHC and AHPA stated that a thorough preshow inspection of a horse, including a visual inspection of the way a horse moves, is an effective means of detecting soreness in the horse. The joint commenters point out correctly that APHIS officials and Designated Qualified Persons (DQPs) have the authority to direct that pads and shoes be removed to permit visual inspection of the bottom of the hoof, when there is in their view a reasonable basis to suspect the presence of pressure shoeing or foreign objects other than acceptable packing material on a particular horse. We agree that a thorough inspection of a horse improves an inspector's ability to detect soreness. We also agree that the problem of pressure shoeing and like violations can be dealt with through enforcement rather than through the establishment of a particular maximum pad height. Department inspectors will continue to carry out through inspections and we will continue to emphasize that all individuals carrying out inspections under the DQP program follow similar procedures. Also, as recommended by the AHC/AHPA joint comment, we are adding provisions at new § 11.2(b)(12) to specify those materials, used for the well-being of the horse, that can be placed between the pad and the hoof. All other materials will be prohibited. Further, as noted by the AHPA in its supplementary comment, it is likely that the provisions of this interim rule regarding pad height will tend to limit pressure shoeing, by encouraging the growth of natural hoof as a condition of pad use.

Several commenters suggested that requiring a minimum hoof length would make pressure shoeing impossible. While we agree that hoof length can be a factor in protecting a horse from pressure shoeing, the length of hoof that would provide this protection will vary from breed to breed, and even from horse to horse within a breed. For this reason, it would be inappropriate for us to establish a minimum hoof length in order to minimize pressure shoeing. As noted above, it is likely that the regulations regarding pad height established by this interim rule will limit pressure shoeing by encouraging the growth of the natural hoof.

Two commenters expressed concern that our requirement that pads be made of leather or some similar material would lead to an increase in cases of thrush, a degenerative condition of the foot, due to leather pads soaking up and retaining moisture. One commenter stated that leather pads wear out faster than other pads and would therefore necessitate more frequent shoeing of horses than would pads of other materials. Another commenter stated that leather pads tend to soak up water and become heavy and warped. The AHC/AHPA joint comment stated that a requirement that leather or similar material be used for pads would prohibit the use of plastic, which is lighter and sometimes more flexible than leather. We believe that these are legitimate concerns and are therefore including plastic among the materials that may be used for pads, and are removing the requirement that pad materials be made of soft materials.

Several commenters suggested that we require that any pads used on a horse be rim pads, to allow for better detection of pressure shoeing. While there would be obvious inspection advantages to the use of rim pads, their exclusive use would eliminate the protection from stones and other objects the horse is provided by a sole pad. Additionally, the use of rim pads alone would reduce the stability of a horse that steps down on the pad heavily. We are therefore making no changes based on these comments.

Other commenters suggested that transparent pads would allow better detection of pressure shoeing and foreign objects. We agree, but we are unaware of any transparent material appropriate for pads that would not quickly become opaque when subjected to the scuffing and abrasion pads must endure. We are therefore making no changes based on these comments.

One commenter stated that full pads—those that cover the entire sole of a horse's foot—can cause pathological conditions in the horse if not replaced, and that therefore any padding used should be limited to rim pads. According to the commenter, the sole and frog of the foot may become soft and flaky and be eroded when full pads are worn. The commenter stated that a full pad supports an excessive growth of horn and sole that is soft and flaky dead tissue that makes the horse's foot longer and weaker than nature intended. We agree that pads, improperly maintained, can cause foot problems in a horse. However, a horse with pathological problems is not necessarily a sore horse. We strongly agree that horse caretakers should strictly follow a maintenance regimen that protects each horse from the problems described above, from thrush, and from other foot problems. If there is evidence that such pathological conditions have resulted in a horse being sored, we will take appropriate action under the regulations.

In discussing in our April 26 interim rule the relationship between excessively high pads on horses and soring, we referred to the Auburn University study's findings that altering the angulation of a horse's feet and legs can cause lameness, soreness, and inflammation. Several commenters stated that, following the study's release, its author indicated that "horses

with normal shoeing and padding, when examined by three evaluation procedures, did not provide any evidence of soreness or induced inflammation in response to normal use of the pad." Based on this statement, the commenters asked that we remove our restrictions on pad height.

We agree that the Auburn University study did not include the study of the effect of pad height, other than the effect of changes in angulation. However, the commenters who stated that the Auburn study did not address pad height did not address our additional evidence that pads can cause soring by altering the angulation of a horse. Therefore, while we are removing our prohibition of pads totalling more than one inch, we are continuing to regulate maximum pad height, through the 50 percent of natural foot length standard discussed above.

We received comments from a number of veterinarians who had conducted small-scale studies of horses that were given workouts while wearing 3-inch pads. Each of the veterinarians reported no evidence of soring in the horses tested. While we welcome all information regarding the effects of pads on horses, we are unable to accept these studies as scientifically sound. We cannot tell from the comments how the horses were selected for testing; nor do we know what level of sensitivity was used to gauge soreness. Further, certain types of soreness are difficult to detect by visual inspection or palpation alone, and are apparent only through the use of thermography. No indication is given of whether thermography was used in these studies.

**Chains**

Our April 26 interim rule restricted the maximum weight of chains and rollers to 6 ounces. The joint comment of the AHC and the AHPA did not address the issue of chains. Several commenters stated that we should prohibit the use of all chains because allowing any chains contributes to the practice of soring. These commenters, including the AHPA and other animal protection organizations, stated that the use of chains will not alter a horse's gait unless the horse's pastern area has already been sensitized to cause the horse pain when the chain is used. In a separate comment, the Humane Society of the United States (HSUS) stated that while 6-ounce chains and rollers may not, in and of themselves, cause soreness to horses, the constant rubbing of these devices against chemically sensitized skin will serve to keep horses sore. According to the AHPA, the HSUS, and other commenters, this sensitizing can be accomplished with a number of substances, ranging from commercial skin softeners to mustard oil, and can be masked by anesthetics, ointments, and other materials. Several commenters stated that a chain will not create a "show gait" in a horse, unless the horse has at some time been sored. They argued that a horse will soon grow accustomed to and ignore an action device on its pasterns, unless it reminds the animal of pain caused by such a device in the past.

A large number of commenters requested that chains weighing more than 6-ounces be permitted. Most of these commenters requested a 10-ounce chain; some requested an 8-ounce chain; four requested a 12-ounce chain; one asked for chains up to 14 ounces. The TWHBEA, Inc., stated that in their opinion scientific evidence indicates that 9-ounce action devices are unlikely to cause soring and should not be prohibited.

A comment submitted by the Friends Association supported the prohibition on chains and rollers weighing more than 6 ounces. In addition to referencing the Auburn University study referenced in our April 26 interim rule, the Friends Association cited the conclusions of a clinic conducted by the Department in Shelbyville, Tennessee in 1973, and Department inspection records, as evidence that chains weighing 6 ounces or less do not cause soring.

Although we agree that the use of any chain on a pastern that is already sensitive will cause a horse discomfort, the best evidence available to us, including the Auburn University study and a Department study conducted at the National Veterinary Services Laboratories in Ames, Iowa in 1975, shows that while chains and other action devices weighing more than 6 ounces can sore horses, those weighing 6 ounces or less are not themselves likely to cause soring. Therefore, we are retaining the provisions in the regulations that limit chains and rollers to 6 ounces or less. We believe that inspection procedures, properly conducted, should identify those horses whose pasterns are already sore before entering a show ring. However, we acknowledge and share the commenters' concern that substances and techniques may be used in some cases to mask soreness in a horse. We will carefully review the information made available to us regarding these practices, and once again we are requesting comments on when and where they are occurring, and how prevalent they are, to help determine what action, if any, we should take.

As noted, in formulating the provisions in our interim rule regarding chains, we relied in part on the findings of the Auburn University study. Several commenters stated that following publication of the study, its author indicated that the study had not shown 10-ounce chains can sore horses. Several commenters questioned the soundness of the Auburn University study, based on the number of horses tested. These commenters stated that the use of only three horses to test 10-ounce chains made the study scientifically unreliable. We are making no changes based on these comments. Although the use of more horses might have provided statistically more reliable results, the Auburn University Study clearly indicates that 10-ounce chains can cause soring. Further, as noted, a study conducted by the Department in 1975 also concluded that 10-ounce chains can cause soring.

Several commenters stated that 10-ounce chains will not cause soring if the horse's pasterns are adequately lubricated with grease or some other ointment. Commenters also stated that the Auburn University study of chains was flawed because the researchers used no lubrication on the horses. We are making no changes based on these comments. We agree that lubricating a horse's pasterns will in some cases protect it from abrasion from action devices. However, this lubrication does not lessen the damage caused by an action device striking a horse's pastern, rather than sliding along it. Additionally, the lubrication can contribute to abrasion if it retains sand or dirt picked up in a show ring.

A number of commenters stated that 10-ounce chains can not sore horses, basing their assertion on the fact that a man or woman can wear bracelets, watches, or wrist and ankle weights, without harm. The commenters reasoned that because a human weighs approximately 10 times less than a large horse, the horse should be able to wear chains that weigh as much as or more than the devices worn by humans. We disagree that chains used as action devices on horses are directly comparable to bracelets, watches, or wrist and ankle weights on humans, and believe it is inappropriate to compare the anatomy of a human to that of a horse. A human wearing jewelry on an arm or wrist does not subject that limb to the constant and forceful pounding that a horse's limb undergoes; weights worn on a human's ankle do not move in the same way as chains on a horse's limb.

Many commenters based their objections to restrictions on pad height and to a 6-ounce limit on action devices on the fact that many horses that have been trained with 10-ounce chains and 4-inch pads are being shown into their late teens and beyond. According to the commenters, this is evidence the horses have not been sored. We disagree. Soring often has no effect on the longevity of a horse. It is important to distinguish between soreness and lameness. Lameness is only one of the possible results of soring; others include physical distress and inflammation. Soring can be a temporary condition brought about for a particular show. A sored horse that is well cared for between shows may never become lame.

**Horseshoes and Other Weights**

The provisions of our April 26 interim rule limited the weight of horseshoes on all horses to 16 ounces. However, based on infomation we subsequently received that suggested that a 16-ounce limit might be inappropriate for some horses, we amended the regulations in our May 2 interim rule to remove the 16-ounce horseshoe weight limit for horses other than yearling horses. At that time we requested comments concerning necessary limits on the use of weights, including horseshoes, both to prevent soring and to accommodate the needs of different breeds and sizes of horses. Several commenters suggested that we regulate horseshoe size, not weight. Others suggested maximum horseshoe weights according to breed or size of horse. A number of comments, including the joint comment of the AHC and AHPA, recommended that we establish no specific size or weight limit on horseshoes. In their joint comment, the AHC and the AHPA based their opposition to a specific limit on the great variation of hoof size between different breeds and sizes (heights and weights) of horses. The joint commenters stated that farriers show horses with different shoes based upon the size of the horse, its foot, the width of the hoof wall, the use of the horse, and the condition of the hoof. The joint commenters stated further that horse shoeing manuals recommend that a shoe be twice the width of the hoof wall, and that the width of the shoe is related to the natural bearing surface of the foot and should cover the wall, white line and outer border of the sole, which varies according to the size of the horse. The joint commenters noted that many breed associations have adopted rules regarding shoe dimensions, which have proved helpful in regulating horseshoe weight. Because we agree with the reasoning and recommendations jointly submitted by the AHC and AHPA, we are establishing no restrictions on the weight or size of horseshoes used on horses other than yearlings.

Several commenters expressed concern that prohibiting 10-ounce chains and restricting pad height would encourage some trainers to attach excessive amounts of lead weights to a horse's foot to help the horse achieve a desired gait. The commenters suggested that we therefore prohibit the use of weights other than horseshoes on a horse. We agree that the use of weights on horses should be restricted, and have already established regulations restricting such use. We have not restricted the use of added weight between the bars of horseshoes, however, because such weight can be useful in corrective shoeing and, based on our inspections at horse shows, exhibits, sales and auctions, has not contributed to the soring of horses.

In their joint comment, the AHC and AHPA suggested that our regulations restricting the addition of weight were in part unclear and should be rewritten for clarity. We agree and therefore are amending those provisions, which appear in new § 11.2(b)(18), to make them clearer. As suggested by the joint comment, we are also specifying that pads may not be hollowed out for the purpose of inserting or affixing weights, and that hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

One commenter stated that most of the horses she has owned that have been heavy shod or padded have developed sheared heels as a result of these shoeing techniques. She stated that sheared heels cause an excessive proportion of support to be thrown onto one side of the heel, resulting in a tearing of the laminae of the hoof wall and bars on either side. She indicated that these problems are precipitated by too much sole pressure by the branch of a shoe, pads, objects placed between pads and the foot, and accumulation of debris under the pads. We agree that horses that are improperly shod or maintained can develop pathological conditions in the foot. However, there is no scientific evidence to indicate that heavy shoeing or pads themselves are a direct cause of the problems described above. If those problems should lead to a horse being sore, however, we will take appropriate action under the Act and the regulations.

**Bands**

Two commenters requested that we prohibit the use of bands on horses, based on the possibility that, improperly applied, they could cause soring. Although we agree that improper application of bands can cause soring by bringing the bands in contact with sensitive areas of a horse's foot, a provision already exists at newly redesignated § 11.2(b)(14) that prohibits metal hoof bands that are placed less than ½ inch below the coronet band. We believe that this provision is adequate to ensure that bands do not cause soring.

**Boots**

According to one commenter, rubber bell boots have sometimes been used to hide chains on certain breeds of show horses. Because of this, the commenter called for a prohibition of any devices that hide the pastern. We are making no changes based on this comment. Normal inspection procedures by DQPs or Department inspectors will include a check for any items that might be concealed by boots. The commenter also suggested that breeds that use hinged quarter boots and bell boots in the show ring be restricted to using quarter boots or heel boots that do not touch the horse's coronary band. The commenter further requested that Tennessee Walking Horses and Racking Horses not be permitted to be shown in bell boots, or in fixed boots such as quarter boots or heel boots, alleging that the Walking Horse industry has a history of abusing any equipment allowed by the regulations. We believe that the current regulations regarding boots are sufficient to prevent soring by such equipment, and are therefore making no changes based on this comment.

**Miscellaneous**

Many commenters addressed issues unrelated to the provisions of the interim rules. Among the topics discussed were suggested improvements to the DQP inspection program, and the practices of masking a horse's pain during inspection and stewarding a horse not to react to pain during inspection. We will carefully review the information we received and take whatever action is appropriate.

**Scar Rule**

In our April 26 interim rule, we amended § 11.3 of the regulations to make it clear that our intent was to apply the "scar rule" to all horses 3 years old or younger in 1979, 4 years old or younger in 1980, 5 years old or younger in 1981, and so forth. However, in making that clarification, we inadvertently added language that stated that the scar rule applies to all horses born "on or after October 1,

1976," rather than "on or after October 1, 1975," as we had intended. Therefore, in this interim rule, we are amending § 11.3 to read that the scar rule applies to all horses born on or after October 1, 1975.

**Request for Comments**

The comment period for this interim rule extends through October 31, 1988. During that period, we invite and will accept comments relating to the issues raised in this interim rule and the interim rules published in the **Federal Register** on April 26, 1988 (FR 53 14778–14782, Docket No. 88–052) and May 2, 1988 (FR 53 15640–15641, Docket No. 88–079).

**Emergency Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

On April 26, 1988, we published an interim rule in the **Federal Register** that restricted, after a phasedown period, the total allowable height of pads on horses to 1 inch. Under the phasedown, maximum pad height was restricted to 3 inches until July 31, 1988 and was to be restricted to 2 inches beginning August 1, 1988. However, information we have received since publication of that interim rule indicates that such a restriction is not the most appropriate method of restricting pad height. We are therefore establishing more appropriate provisions in this interim rule. These provisions would among other things, restrict artificial extension of a horse's toe length to no more than 50 percent of the horse's natural hoof length. Because it may be injurious to some horses to be reshod and subjected to varying pad heights over too short a period of time, it is necessary for the well-being of affected horses that the provisions of this interim rule become effective before the August 1 phasedown to 2 inches established by the April 26 interim rule.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective on August 1, 1988. We will consider comments postmarked or received on or before October 31, 1988.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes to the regulations made by this interim rule will affect all horses equally, and will allow continued equitable competition among show horses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act.**

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 11**

Animal welfare, Horses, Humane animal handling, Soring of horses.

## PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 continues to read as follows:

**Authority:** 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.1 is amended by removing the definitions of "full pad" and "rim pad".

3. Section 11.2 is amended by revising paragraphs (b) (10), (11) and (12); removing (b)(13) and (b)(19); redesignating paragraphs (b)(14) through (b)(18) as (b)(13) through (b)(17) respectively, and adding new paragraph (b)(18) to read as follows:

**§ 11.2 Prohibitions concerning exhibitors.**

* * * * *

(b) * * *

(10)(i) Artificial extension of the toe length, which must assume the slope of the dorsum (front) of the hoof wall, whether accomplished with pads, acrylics or any other material or combinations thereof, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension shall be measured from the distal portion of the hoof wall at the tip of the toe to the proximal (foot/hoof) surface of the shoe at the toe.

(ii)(A) If the artificial extension of the toe length is less than 2 inches, the toe length must exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band at the center of the front pastern along the front of the hoof wall to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that do not exceed ¾ of an inch in length. That portion of caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel/toe ratio.

(B) If the artificial extension of the toe length is 2 inches or more, the height of the artificial extension at the heel cannot exceed the length of the artificial extension at the toe by more than 1½ inches.

(iii) Nothing in paragraphs (b)(10) (i) and (ii) of this section shall limit the repair or reconstruction of a broken or damaged hoof as long as its contralateral hoof complies with paragraphs (b)(10) (i) and (ii) of this section.

(11) Pads that are not made of leather, plastic, or a similar pliant material.

(12) Any object or material inserted between the pad and the hoof other than acceptable hoof packing, which includes pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing or other substances used to maintain adequate frog pressure or sole consistency.

* * * * *

(18) Lead or other weights attached to the outside of the hoof wall, the outside surface of the horseshoe, or any portion of the pad except the bottom surface within the horseshoe. Pads may not be hollowed out for the purpose of inserting or affixing weights, and weights may not extend below the bearing surface of the shoe. Hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

* * * * *

4. Section 11.3 is amended by revising the first sentence in the introductory text to read as follows:

**§ 11.3 Scar rule.**

The scar rule applies to all horses born on or after October 1, 1975. * * * * * * * * * *

Done in Washington, DC, this 25th day of July, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88-17024 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-34-M

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**DEPARTMENT OF THE TREASURY**

**Comptroller of the Currency**

**12 CFR Part 35**

**[Docket No. 88-11]**

## Agricultural Loan Loss Amortization

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency ("OCC") is issuing this final rule to implement Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA"). CEBA permits national agricultural banks to amortize losses on qualified agricultural loans. This final rule describes the procedures and standards applicable to national banks desiring to amortize those losses. It also describes the manner in which amortizations are to be done.

This final rule is intended to benefit small, agricultural banks by providing a form of capital relief and, thereby, added time to work out problems brought about by the extended downturn in the agricultural industry.

This action is needed to make final the temporary rule issued on November 2, 1987. After consideration of comments received, the OCC is making one substantive change and several technical changes to its temporary rule. The substantive change allows eligible national banks to amortize losses on the reappraisal or sale of real or personal property acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or acquires prior to January 1, 1992, whether or not that property is "currently owned." Under the temporary rule, property had to be currently owned for the loss to qualify for deferral. The technical changes: (1) Amend the definition of "qualified agricultural loan" and "qualified agricultural bank" to clarify that the OCC intends to construe the phrases broadly; (2) add a definition of "agriculturally related other property"; (3) clarify the relationship between 12 CFR Part 35 and the alternative legal lending limit in 12 CFR 32.8; and (4) include various minor wording changes intended to enhance clarity.

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** James F.E. Gillespie, Jr., Senior Attorney, Legal Advisory Services Division (202) 447-1880; Jon A. Nagy, National Bank Examiner, Commercial Activities Division (202) 447-1164; or Lance Cantor, Analyst, Special Supervision Division (202) 447-1719.

**SUPPLEMENTARY INFORMATION:**

### Background

CEBA permits an agricultural bank to amortize: (1) Losses on qualified agricultural loans shown on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) losses suffered as the result of an appraisal or sale of agriculturally related other property (related to a qualified agricultural loan) owned on January 1, 1983, or acquired prior to January 1, 1992.

CEBA also required that the federal banking agencies issue implementing regulations no later than November 9, 1987. The OCC initially published this regulation as a temporary rule on November 2, 1987 (52 FR 41959), effective November 9, 1987, in order to comply with this statutory requirement. Interested parties had the opportunity to comment by January 4, 1988. The Board of Governors of the Federal Reserve System, on November 3, 1987 (52 FR 42087), and the Federal Deposit Insurance Corporation ("FDIC"), on November 2, 1987 (52 FR 41966), proposed substantially identical regulations containing only those variations necessary to accommodate their own regulatory and organizational systems.

The intent of CEBA was to provide agricultural banks with added time to work out problems brought about by the extended downturn in the agricultural industry.

### Discussion of Comments Received

Eight comments were received on the temporary rule. Comments were received from three banks, three banks trade associations (two national and one state-level), one law firm, and one Congressman. Comments were supportive of agricultural loan loss amortization, while suggesting that the OCC liberalize certain of the provisions in the temporary rule.

### Specific Comments

The OCC received comments regarding the following specific items:

#### Definition of "Agricultural Bank"

Section 35.2(a) of the rule defines an agricultural bank as any bank: (1) With FDIC insured deposits; (2) located in an area of the country with an economy dependent on agriculture; (3) with total assets of $100 million or less; and (4) with at least 25 per cent of its total loans in qualified agricultural loans and agriculturally related other property or with less than 25 per cent of its total loans in qualified agricultural loans and agriculturally related other property but which the OCC still recommends to the FDIC as eligible.

*Identification of Agricultural Areas*

Some commenters urged that the OCC list specific criteria to identify agricultural areas. The OCC believes that the normal means of identifying agricultural areas—income levels, revenue flows, acreage in production—are abnormally depressed due to the current state of the agricultural economy. Adopting a list of acceptable counties or geographic regions could leave the erroneous impression that a bank located outside such an area could not qualify even though it met the other requirements of an "agricultural bank". Additionally, the relatively low level of farm income compared to other income could artificially mask local areas that traditionally are dependent upon agriculture but currently have a depressed level of income from agriculture.

Consequently, each application should include a description of the bank's location, dominant lines of commerce in its service area, and any other information to support the bank's belief that it is located in an agricultural area. This information will be used to insure that no bank qualified for participation will be excluded due to arbitrary geographic demarcation.

*Bank Size*

The definition of an agricultural bank includes the statutory requirement that the bank have total assets of $100 million or less. Comments were received by the other federal regulators asking for clarification as to what happens if a bank is approved for loss deferral and subsequently exceeds the size limitation. Congress did not intend for banks larger than $100 million to defer loan losses. If size was unimportant, the law could have easily excluded it as a factor.

At the same time, it is of little value for a bank to defer a loss one year if it must reverse that deferral the next year because it grew to over $100 million in assets. Therefore, the OCC expects a

bank to meet the definition of an agricultural bank, including the size limitation, upon initial application and as of every quarter that new agricultural losses are to be deferred. Any loss that was properly deferred initially, will be allowed to be fully amortized according to the regulation, regardless of a subsequent increase in the bank's size. However, if a bank exceeds the size limitation, new losses experienced in each quarter that the bank exceeds the size limitation may not be amortized.

*Mergers*

The OCC does not intend to allow banks to bypass the application/review process via a merger with another bank which has already been approved. Such mergers are not expected to be frequent. Therefore, the permissibility of loss deferral subsequent to a merger will be determined on a case-by-case basis. This issue should be discussed with representatives of the appropriate supervisory office and a determination made before a merger transaction is consummated.

*Percentage of Agricultural Loans*

Two commenters urged that the OCC be liberal when determining whether a bank meets the 25 per cent test. Prudent banks may have charged off substantial amounts of such loans but, due to the depressed agricultural economy, may not have been able to replace such loans with new agricultural loans. A commenter suggested that a bank should satisfy the test if, at any time since December 31, 1983, it met the requirements.

The OCC does not believe such a change is necessary since the 25 per cent test is not an absolute requirement, as it may be waived in some instances. Factors such as depressed collateral value or lack of prudent agricultural lending opportunities will be considered when applications for loan loss amortization are reviewed.

**Definition of "Qualified Agricultural Loan"**

Under section 801 of Title VIII of the CEBA,

> the term "qualified agricultural loan" means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

Section 35.2(b) of the temporary rule defines a qualified agricultural loan to include any loan qualifiying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC–C of the FFIEC Consolidated Reports of Condition and Income ("Call Report"). The term also includes other loans and leases that the applying bank proves to be sufficiently related to agriculture to qualify in the opinion of the OCC. These Call Report definitions are virtually identical to those contained in Title VIII of the CEBA but are more comprehensive and permit the agencies to use the Call Reports as the predominant monitoring device for the amortization program. Several commenters suggested that the OCC specifically mention particular types of loans in this definition.

The OCC initially saw no reason to repeat the definition in the statute when the regulatory definition was of a more descriptive nature and referred to Call Report terms with which banks are familiar. Additionally, as suggested by Title VIII of the CEBA, the OCC retained discretion to deem other types of loans and leases to be "qualified" and to recommend them to the FDIC as eligible if the requesting bank demonstrates those assets to be sufficiently related to agriculture.

To clarify that the regulatory definition of "qualified agricultural loan" is as broad as the statutory definition and is not intended to limit the types of loans which a national bank may include in an application, the final rule includes farm machinery loans in the regulatory definition.

Bankers should refer to the "Line Item Instructions" for Schedule RC–C of the Call Report for an indication of the other types of loans that qualify for amortization. For example, qualified agricultural loans include loans reported under line item 1(b)—loans secured by farmland (land known to be used or usable for agricultural purposes, such as crop and stock production, grazing or pasture land whether tillable or not and whether wooded or not).

Similarly, loans reported under line item 3 qualify. These loans include loans to finance agricultural production (such as for growing or sorting crops, or breeding, raising, fattening, or marketing livestock), or for purchases of farm machinery, equipment, or implements.

The Call Report definitions are not exclusive descriptions of eligible loans. If a bank believes that a loan was made for an agricultural purpose, it may apply to amortize a loss on it even though the loan was not reported on the Call Report as an agricultural loan. The OCC will determine on a case-by-case basis whether a particular loan qualifies.

*Inclusion of Charge-offs in Loan Volume Tests*

A commenter suggested that banks be permitted to include charged-off agricultural loans and agriculturally related other property acquired through foreclosure for purposes of the loan volume tests. The temporary rule allowed the use of charged-off loans by virtue of including them in the definition of "qualified agricultural loans". These loans are still assets of the banks, even though off the books, and represent part of the banks' total credit commitment to agriculture. A similar argument applies to assets acquired through foreclosure on agricultural loans. Therefore, the OCC has included such assets in determining compliance with the loan volume tests in the rule.

**Amortization**

Section 35.3(b) of the rule provides that amortization of each qualified agricultural loan be computed over a period not to exceed seven years on a quarterly, straight-line basis commencing with the first quarter after the charge-off, so that each loan is fully amortized by December 31, 1998. Thus, loans written off in accounting periods ending prior to the adoption of the rule can be amortized *pro rata* beginning with the Call Report for December 31, 1987.

Several commenters suggested that the bank, rather than the OCC, decide whether to use the full seven-year amortization period. One commenter also believes that adopting the *pro rata* treatment of loans written down prior to adoption of the rule unfairly penalizes banks that were diligent in adjusting their assets.

Under the temporary and final rule, a bank that wishes to use an amortization schedule shorter than the maximum seven years can apply to do so. The OCC anticipates that a seven-year schedule will be the normal schedule, but has not required its use. The OCC's decision to permit the use of a shorter amortization period depends upon the applicant bank's financial position and is not likely to require consideration of any extraordinary issues.

With regard to adopting a *pro rata* treatment of loans written down prior to adoption of the rule, the OCC does not believe banks that were diligent in adjusting their assets are penalized. The technique prescribed reflects amortizations as though the program had been in effect from the first year deferral was allowed. Amortization in this manner does reduce the initial amount of deferred losses which can be

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established, but it also reduces the future amortizations which must be absorbed. The OCC does not view this as a penalty.

Furthermore, accepted banking practice and Call Report instructions require banks to record a loss in the period it becomes apparent. Banks which had losses, but declined to recognize them, would have been in contravention of proper procedures. Therefore, differences in the actual occurrence of an economic loss should be a much greater cause of different timing patterns in loan charge-offs than differences in how quickly management elects to take a loss.

**Losses Due to Agriculturally Related Real Estate Sales or Reappraisals**

Section 35.3(a)(2) of the temporary rule allows a bank to amortize any loss reflected in its financial statements resulting from a reappraisal or sale of real or personal property it acquired in connection with a qualified agricultural loan owned on January 1, 1983, and still held on November 9, 1987, and of any additional property acquired on or before December 31, 1991.

Several commenters objected to the requirement that such property had to be held on November 9, 1987, in order for any losses to be eligible for amortizing. Commenters pointed out that neither the statute nor its legislative history explicitly calls for ownership of such property on the effective date of the regulation. The commenters suggested that better reference dates might be the date the loss was actually recognized or the date the legislation was introduced, passed both houses of Congress, or signed. One commenter suggested that any loss on such property be treated in the same manner as a loss on the loan it secured, that is, amortization should be allowed at least beginning with the date the loss was recognized so long as the loss is otherwise an eligible loss.

The OCC agrees that losses attributable to property, acquired as the result of agricultural lending, are as much a part of the bank's agricultural problem as the original loan loss. The intent of the legislation is to mitigate the immediate effect of those losses. Therefore, the final rule provides that losses on holding or selling property will be treated in the same manner as losses on agricultural loans. This change is the only substantive change in the final rule.

Furthermore, CEBA allows amortization for agricultural loan losses that would be reflected on annual financial statements for 1984–1991. It also allows amortization for losses resulting from reappraisals on agriculturally related other property. To ensure that losses due to reappraisals are treated comparably to loan losses, the regulation requires that losses from reappraisals that the bank would be required to reflect on financial statements for 1983–1991 be amortized within seven years in the same manner as agricultural loan losses generally, *i.e.*, they must be fully amortized by 1998. For the same reason, the regulation provides that losses resulting from reappraisals after 1991 are not eligible for amortization.

**"In need of Capital Restoration"**

The language in the statute and legislative history of the provision indicate that Congress intended that only banks with capital in need of restoration be permitted to amortize losses. Further, it intended that only banks with reasonable prospects for survival be permitted to amortize losses. Section 35.5(b) provides that, (1) the current capital of a bank wishing to amortize qualifying losses must be in need of restoration, and (2) the bank must also be an economically viable, fundamentally sound institution. These are certainly not mutually exclusive conditions. A bank can have inadequate capital due to a variety of temporary problems or conditions yet also have enough underlying demand for banking services and earning capacity to restore capital if given sufficient time.

Several commenters suggested that this section is too restrictive and that any bank qualifying as an agricultural bank which has qualifying agricultural losses should be able to amortize those losses to restore capital to some higher level even if it is not "in need of" capital restoration for regulatory purposes.

The OCC believes most agricultural banks have strong capital positions and no need for loss deferral. The OCC further believes that Congress did not intend for these techniques to be used to artificially maintain unnecessarily high levels of capital. Congressional intent seems clear in that the statute required, as an essential condition of eligibility, the submission of "a plan to restore its capital * * * to a level" acceptable to the OCC. If capital is to be restored to an acceptable level it must, by definition, not already be at an acceptable level.

Nevertheless, whether a particular bank is "in need of" capital restoration depends on its particular circumstances. Thus, a bank might be deemed "in need of" capital restoration even though its capital ratio equals or exceeds the minimum capital levels prescribed by 12 CFR Part 3. Because the OCC will make the determination of need in each case, a bank applying to amortize agricultural loans should include a statement as to why it is "in need of" capital restoration.

*Economically Viable and Fundamentally Sound*

A commenter suggested that the requirement that a bank must be economically viable and fundamentally sound to be eligible is unnecessary. The OCC believes that no purpose would be served by allowing a non-viable and hopelessly unsound institution to temporarily avoid insolvency through the use of this accounting adjustment. The legislative history of the statute supports this interpretation.

A commenter also expressed concern over the conditions surrounding removal of a bank from the program once it has recovered financially. The OCC does not intend, as a matter of administrative practice, to remove a bank from the program so long as the bank continues to meet the Conditions on Acceptance prescribed in the regulation. Therefore, once a loss has been deferred a bank may continue to amortize it. However, once the bank has recovered sufficiently to no longer meet the eligibility requirements, because it is no longer "in need of" capital restoration, no new losses will be permitted to be deferred.

**Other Issues**

*Evidence of Fraud*

Several commenters suggested that the regulation clarify what constitutes evidence of fraud that would disqualify a loss from amortization.

The OCC decided not to list elements constituting fraud in the regulation. Some indicia might include criminal referral reports, for example, but the lack of such a report will not preclude excluding a loan if evidence of fraud exists. Normal sources of information used to determine whether fraud is present should include information collected in the examination process, as well. The OCC will use a case-by-case approach and will allow an applying bank an opportunity to explain ambiguous circumstances.

*CEO Certification*

The temporary rule required a certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse. One commenter expressed concern over this requirement, in that it is not generally possible to be absolutely certain of every circumstance surrounding every loan.

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The OCC understands this reluctance and therefore a specific form of certification was not dictated in the temporary or final regulation. A certification to the best of one's knowledge and belief was and is permissible.

*Reference to Enforcement Proceedings*

Several commenters suggested removing references to enforcement proceedings from the regulation. The presence of such references affirms that preexisting conditions or problems typically requiring correction by an enforcement action will be monitored and managed. Such references will not normally create information requirements or performance obligations not already existing. Accordingly, the references are retained in the final rule.

*Compensation Levels*

Several commenters also suggested removing references to compensation levels from the regulation. Compensation levels are typically an integral part of a capital plan. As with enforcement actions, the presence of such references in the rule only affirms that the program will be managed and monitored.

*Legal Lending Limit*

A commenter expressed concern over the interrelationship between 12 CFR 32.8 and the agricultural loan loss amortization program. Banks will be permitted to use the restated capital under this regulation for purposes of computing their regular legal lending limit under § 32.3. However, the OCC believes it would be inappropriate to permit a bank to include losses recapitalized under the amortization program is computing its substitute lending limit under § 32.8, because that would effectively give such losses double weight. In many cases, this would result in a legal lending limit far greater than the bank would have had if it had not suffered the agricultural losses. Accordingly, while a bank participating in the loan loss deferral program may calculate its lending limit under either section, the calculation of capital and surplus for purposes of the alternative lending limit under § 32.8 must be made without reference to the recapitalized unamortized losses permitted under this program.

**Regulatory Impact Analysis**

Pursuant to section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that this final rule does not constitute a "major rule" within the meaning of the executive order. Consequently, no regulatory impact analysis is necessary.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The collection of information requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1557–0186). The estimated average burden associated with the collection of information contained in this final rule is 15 hours per respondent. The burden per respondent may vary depending on individual circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to: Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza E., SW., Washington, DC 20219 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Treasury Desk Officer.

**List of Subjects in 12 CFR Part 35**

Banks, Banking, National banks, Agriculture, Amortization, Loans, Loss, Capital.

**Section-by-Section Analysis**

A number of clarifying technical changes and the following material amendments are made to Part 35:

*Section 35.1* "Office" is changed to "OCC" here and everywhere else it appears in the Part.

*Section 35.2* In paragraph (a), the word "national" is added.

In paragraphs (a)(4) (i) and (ii), the phrase "agriculturally related other property" is added.

In paragraph (b), a new paragraph (2) has been added. Old paragraphs (b) (2) and (3) become (b) (3) and (4). Also, a reference to paragraph (b)(3) is added to new paragraph (b)(4).

In paragraph (b)(4), the word "regulation" is removed and the word "part" is substituted.

A new paragraph (c) is added. Former paragraph (c) becomes paragraph (d).

*Section 35.3* Paragraphs (a) (1) and (2) are revised by removing the word "year" and substituting the word "period". Paragraph (a)(2) is also revised by removing "currently owned * * * prior to January 1, 1992" and substituting "agriculturally related other property."

*Section 35.4* The original text is revised and becomes paragraph (a). A new paragraph (b) is added.

*Section 35.5* The phrase "of this part" is removed. In paragraph (c) the term "related assets" is removed and the term "agriculturally related other property" is substituted.

*Section 35.6* In paragraph (d), the phrase "agriculturally related other property" is substituted.

*Section 35.7* In paragraph (a), the phrase "other related assets" is removed and the phrase "agriculturally related other property" is substituted. The phrase "reappraised property" is removed from paragraph (b)(6) and the term "agriculturally related other property" is substituted.

**Authority and Issuance**

For the reasons set out in the preamble, Part 35 of Chapter I of Title 12 of the Code of Federal Regulations is revised to read as follows:

## PART 35—AGRICULTURAL LOAN LOSS AMORTIZATION

Sec.

35.1 Authority and OMB control number.
35.2 Definitions.
35.3 Loss amortization and reappraisal.
35.4 Accounting for amortization.
35.5 Eligibility.
35.6 Conditions on acceptance.
35.7 Submission of proposals.
35.8 Revocation of eligibility.

**Authority:** 12 U.S.C. 1823(j) and 93a.

### § 35.1 Authority and OMB control number.

(a) *Authority.* This part is issued by the Office of the Comptroller of the Currency ("OCC") pursuant to 12 U.S.C. 1823(j) and 12 U.S.C. 93a.

(b) *OMB control number.* The collection of information requirements contained in this regulation were approved by the Office of Management and Budget under control number 1557–0186.

### §35.2 Definitions.

For purposes of this part:

(a) "Agricultural Bank" means a national bank—

(1) The deposits of which are insured by the Federal Deposit Insurance Corporation;

(2) Which is located in an area of the country the economy of which is dependent on agriculture;

(3) Which has total assets of $100,000,000 or less as of the most recent Report of Condition; and

(4) Which has—

(i) At least 25 percent of its total loans in qualified agricultural loans and

agriculturally related other property, as defined below; or

(ii) Less than 25 percent of its total loans in qualified agricultural loans and agriculturally related other property, but which bank the OCC has recommended to the Federal Deposit Insurance Corporation for eligibility under this part.

(b) "Qualified Agricultural Loans" means:

(1) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC–C of the FFIEC Consolidated Reports of Condition and Income or such other comparable schedule that may be in effect;

(2) Loans secured by farm machinery;

(3) Other loans or leases that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the OCC; and

(4) The remaining unpaid balance of any loans, as described in paragraphs (b) (1), (2) and (3) of this section, that have been charged off since January 1, 1984, and that qualify for deferral under this part.

(c) "Agriculturally related other property" means any property, real or personal, that a bank owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, in connection with a qualified agricultural loan. For purposes of §§ 35.2(a)(4)(i) and 35.6(d) the value of such property includes amounts previously charged-off.

(d) "Accepting Official" means the head of the appropriate supervisory office designated by the OCC for the applicant bank.

**§ 35.3 Loss amortization and reappraisal.**

(a) Provided that there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, its officers, directors, or principal shareholders, a bank that has been accepted under this part may, in the manner described below, amortize on its Reports of Condition and Income:

(1) Any loss on any qualified agricultural loan reflected in a bank's annual financial statements for any period between and including 1984 and 1991; and

(2) Any loss reflected in a bank's financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally related other property.

(b) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loss was or is charged-off so as to be fully amortized not later than December 31, 1998.

**§ 35.4 Accounting for amortization.**

(a) *General rule.* Any bank which is permitted to amortize losses in accordance with § 35.3, above, may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in primary capital under § 3.100 of this chapter.

(b) *Relationship with the substitute lending limit.* Unamortized losses on loans and other assets, which are capitalized under this rule for agricultural loan loss amortization, are not to be included in capital for the purpose of calculating the substitute lending limit under § 32.8 of this chapter.

**§ 35.5 Eligibility.**

A proposal submitted in accord with § 35.7 shall be accepted, subject to the conditions described in § 35.6, if the Accepting Official finds that:

(a) The proposing bank is an agricultural bank;

(b) The proposing bank's current capital is in need of restoration, but the bank remains an economically viable, fundamentally sound institution;

(c) There is no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans and agriculturally related other property; and

(d) The proposing bank has submitted a capital plan approved by the OCC or the Accepting Official that will restore its capital to an acceptable level.

**§ 35.6 Conditions on acceptance.**

All acceptances of proposals shall be subject to the following conditions:

(a) The bank shall fully adhere to the approved capital plan and shall obtain the prior approval of the Accepting Official for any modifications to the plan;

(b) With respect to each asset subject to loss deferral under the program, the bank shall maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations;

(c) The financial condition of the bank shall not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(d) The bank agrees to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally related other property, not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

(e) The bank agrees to provide the Accepting Official, upon request, with such information as the Accepting Official deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.

**§ 35.7 Submission of proposals.**

(a) A bank wishing to amortize losses on qualified agricultural loans or agriculturally related other property shall submit a proposal to the appropriate Accepting Official.

(b) The proposal shall contain the following information:

(1) Name and address of the bank;

(2) Information establishing that the bank is located in an area the economy of which is dependent on agriculture; such as a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in such area;

(3) A copy of the bank's most recent Reports of Condition and Income;

(4) If the Reports of Condition and Income fail to show that at least 25 percent of the bank's total loans are qualified agricultural loans, the basis upon which the bank believes that it should be declared eligible to amortize losses;

(5) A capital plan demonstrating that the bank will achieve an acceptable capital level not later than the end of the bank's amortization period. The plan should provide for a realistic improvement in the bank's capital over the course of the bank's amortization period from earnings retention, capital injections, or other sources. It should also include specific information regarding dividend levels, compensation to directors, executive officers and individuals who have a controlling interest and their related interests, and payments for services or products furnished by affiliated companies;

(6) A list of the loans and agriculturally related other property upon which the bank proposes to defer loss, including for each such loan or property the following information:

(i) The name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;

(ii) The date on which the loss was declared; and

(iii) The basis upon which the loss resulted from a qualified agricultural loan.

(7) A certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;

(8) A copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

(9) Such other information as the Accepting Official may require.

**§ 35.8 Revocation of eligibility.**

The failure to comply with any condition in an acceptance or the capital restoration plan is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). Additionally, acceptance of a bank for loss amortization will not foreclose any administrative action against the bank that the OCC may deem appropriate.

Date: July 19, 1988.

**Robert L. Clarke,**

*Comptroller of the Currency.*

[FR Doc. 88-16684 Filed 7-27-88; 8:45 pm]

BILLING CODE 4810-33-M

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**Customs Service**

**19 CFR Part 10**

**[T.D. 88-45]**

## Customs Regulations Amendment Concerning Reciprocal Privileges Extended To Aircraft of Japan

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft. The amendment indicates that aircraft of Japanese registry are no longer entitled to free withdrawal of ground support equipment.

Prior to 1986, Japan had been extending aircraft of U.S. registry exemption privileges in connection with international commercial operations which were substantially reciprocal to those exemption privileges the U.S. provided to aircraft of foreign registry by sections 309 and 317 of the Tariff Act of 1930, as amended. Accordingly, the Customs Regulations provided that aircraft of Japanese registry were entitled to free withdrawal privileges. However, the Department of Commerce has informed Customs that Japan is no longer extending the exemption privileges to ground support equipment of U.S. aircraft. Accordingly, the U.S. will no longer exempt aircraft of Japanese registry from the payment of duties and taxes when their ground support equipment is withdrawn from Customs or internal revenue custody.

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Entry Rulings Branch, (202) 566-6040.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

By virtue of the authority vested in the President by section 5 of the Act of May 28, 1908, 35 Stat. 425, as amended (46 U.S.C. 104), the President has delegated the authority to issue this list of nations to the Secretary of the Treasury by E.O. 10289, September 17, 1951. By Treasury Department Order 165-25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribed regulations relating to § 10.59(f) and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated authority to amend these sections to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Chief, Regulations and Disclosure Law Branch.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce previously found, and advised the Secretary of the Treasury that Japan allowed privileges substantially reciprocal to those provided for in 19 U.S.C. 1309 and 1317 to aircraft registered in the U.S. and engaged in foreign trade. Therefore, by T.D. 53550, Japan was listed in § 10.59(f), Customs Regulations and corresponding privileges were extended to aircraft registered in Japan engaged in foreign trade.

The Commerce Department has not determined, and conveyed to the Customs Service, that Japan no longer exempts ground support equipment of aircraft of U.S. registry from taxes and duties. The finding became effective on August 1, 1986. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on suppliers and equipment withdrawn from Customs or internal revenue custody for use by aircraft to indicate that Japan has discontinued its exemption regarding ground support equipment.

### Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

### Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulation Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is certified that the change set forth in this document will not have a significant economic impact on any substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

### Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the recision of a previously granted exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Japan has been found by the Department of Commerce to have discontinued its exemption privileges reagarding ground support equipment in 1986, a delayed effective date is not appropriate.

**Drafting Information**

The principal author of this document was Lee H. Kramer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

**List of Subjects in 19 CFR Part 10**

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

**Amendment To The Regulations**

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

**PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

* * * * *

2. Section 10.59 also issued under 19 U.S.C. 1309, 1317.

* * * * *

**§ 10.59 [Amended]**

2. In the list of countries in § 10.59(f), the listing for Japan is amended by adding ", 88–45" under the column marked "Treasury Decision(s)" and by adding "not applicable to ground support equipment as of August 1, 1986" in the column marked "Exceptions if any, as noted—".

Dated: July 22, 1988.

**Kathryn C. Peterson,**

*Chief, Regulations and Disclosure Law Branch.*

[FR Doc. 88–17000 Filed 7–27–88; 8:45 am]

BILLING CODE 4820-02-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 172**

**[Docket No. 82F–0295]**

## Food Additives Permitted For Direct Addition To Food For Human Consumption; Acesulfame Potassium

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acesulfame potassium as a nonnutritive sweetener. This action responds to a petition filed by American Hoechst Corp.

**DATES:** Effective July 28, 1988; objections and requests for hearing by August 29, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 172.800(b) effective July 28, 1988.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

**SUPPLEMENTARY INFORMATION:**

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### I. Summary of the Petition

In a notice published in the **Federal Register** of October 15, 1982 (47 FR 46139), FDA announced that a peitition (FAP 2A3659) has been filed by American Hoechst Corp. (now Hoechst Celanese Corp.), Route 202–206 North, Somerville, NJ 08876, proposing that the food additive regulations be amended to provide for the safe use of acesulfame potassium (potassium salt of 6-methyl–1,2,3–oxathiazine-4(3*H*)-one-2,2-dioxide) as a nonnutritive sweetener.

Acesulfame potassium has also been called "acesulfame K" or "acetosulfam," and is a derivative of acetoacetic acid. It can be manufactured by reacting *tert*-butyl acetoacetate with fluorosulfonyl isocyanate. The reaction product is converted to an amide which is then cyclized with concomitant removal of fluoride and formation of the potassium salt. The sweetener is water soluble and is stable at normal temperatures and moderate pH. It is approximately 200 times sweeter than sucrose based on comparison to a 3 percent aqueous solution of sucrose.

This petition has requested the use of acesulfame potassium as a table-top sweetener and as an ingredient in chewing gum, confections, hard candy, soft candy, and dry bases for beverages, instant coffee and tea, gelatins, puddings, pudding desserts, and dairy product analogs. In this final rule, the agency is listing all of the requested uses except confections, hard candy, and soft candy. Before acting on these uses, FDA must first consider further whether acesulfame potassium or other nonnutritive sweeteners can be listed for use in confectionary under section 402(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(d)(3)). Section 402(d)(3) bars the use of any nonnutritive substance in confectionary, unless the subtance is used for some practical functional purpose and does not promote deception of the consumer. In interpreting section 402(d)(3), the agency's position has been that the use of nonnutritive artificial sweeteners in confectionary for the purpose of caloric reduction is not a practical functional purpose. The agency is reexamining this interpretation.

The petitioner submitted a series of toxicity studies concerned with the safety of acesulfame potassium. These include studies on reproduction in rats and rabbits, teratology in rats, and mutagenicity. There are reports on metabolism, kinetics, distribution, and elimination studies using rats, pregnant rats, dogs, pigs, and humans. There are also various pharmacological investigations and a study in rats with artificially induced diabetes. There are reports from studies done concerning acute toxicity, subchronic toxicity, chronic toxicity, and potential carcinogenicity.

Data from four long-term studies were submitted. One is a 2-year toxicity study in beagle dogs in which groups of four male and four female dogs were fed 0, 90, 300, or 900 milligrams per kilogram of acesulfame potassium in their diet. Another is a carcinogenicity study in Swiss mice. Diets containing 0, 0.3, 1.0, or 3.0 percent of the test compound were fed to groups containing 100 male and 100 female mice. There are two long-term studies in rats; both are chronic toxicity and carcinogenicity studies with in utero exposure. In each case, 0, 0.3, 1.0, or 3.0 percent acesulfame potassium in the diet was fed to groups containing 60 females and 60 males. The first rat study was conducted with the CIVO-bred Wistar strain. The second rat study used CPB-WU Wistar rats. The agency discusses its evaluation of these studies below.

### II. Evaluation Of The Petition

#### *A. Estimated Daily Intake*

In determining whether the proposed use of an additive is safe, FDA considers whether an individual's estimated daily intake of the additive will be less than the acceptable daily intake established from safety data. The

agency determines the estimated daily intake for various age groups by making projections based on the amount of additive proposed for use in particular foods and on data about the consumption levels of each particular food. The use levels of acesulfame potassium considered by the agency to estimate consumer exposure are supported by analytical data and taste panel testing reported in the petition. The petitioner also submitted survey information on the consumption of the food types for which use of acesulfame potassium was requested (Ref. 1).

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure because that level of consumption is significantly above the intake of the average consumer, thus providing an added margin of safety with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. For the requested food uses of acesulfame potassium, the agency has determined the 90th percentile estimated daily intake to be 1.6 milligrams per kilogram of body weight (for further details on this estmate see Ref. 1).

*B. Safety Studies*

The metabolism studies of acesulfame potassium revealed no evidence that this substance is metabolized. The reproduction and teratology studies produced no evidence of compound-related teratogenic or adverse reproductive effects. The mutagenicity studies did not indicate any genotoxic effects from acesulfame potassium. None of the various short-term studies showed any untoward adverse effects from acesulfame potassium. The 2-year toxicity study in beagle dogs did not show any toxic effects associated with the consumption of acesulfame potassium.

For the carcinogenicity study in mice, the petitioner had a consulting pathologist, as well as the testing laboratory, review the data and microslides. The testing laboratory, the consulting pathologist, and the agency all concluded that the data did not reveal any association between neoplasms and use of the substance, or between any other adverse effects and use of the substance (Ref. 2). Lymphocytic leukemia was reported as increased in the high-dose female mice, but the incidences were within the range of spontaneous incidences with this strain in the laboratory. The control, low-, and mid-dose groups had incidences of 1 percent and the high-dose group had 4 percent incidence. The historical control groups from eight other studies at this testing laboratory had an overall incidence of 5.2 percent. In rodent studies, lymphocytic leukemia should more properly be considered within the context of the other lymphoreticular neoplasms such as lymphosarcoma and reticulum cell sarcoma (Ref. 3) instead of separately as was done here. The agency concludes that there was no increase in neoplastic disease of the lymphoreticular system in mice due to treatment with acesulfame potassium. FDA also finds that this study met the minimum standards of testing for length of treatment and degree of survival.

For the first of the two long-term rat studies submitted, the testing laboratory stated that the results showed a slightly higher incidence, and a somewhat earlier appearance, of lymphoreticular pulmonary neoplasms (reticulm cell sarcomas) in the mid- and high-dose groups of both male and female rats than in the concurrent control group. The laboratory discussed several reasons to support its conclusion that these effects were not caused by treatment.

The agency concludes that this study, is inadequate to demonstrate safety and does not establish a carcinogenic effect of acesulfame potassium (Refs. 2 and 4). A major deficiency in the study is the fact that only 20 of the 60 rats in the control and high dose groups were subject to a complete histopathological examination, thereby limiting the proper interpretation of the results of the study. Moreover, the presence of extensive, severe chronic respiratory disease in the lungs of rats of all groups confounded diagnosis and interpretation of lung lesions in these animals. Generally, reticulum cell sarcomas in most strains of rats arise from lymph nodes and disseminated to many organs (Ref. 5). However, in the CIVO-bred Wistar rats, the occurrence of reticulum cell sarcomas in the lung seems to be linked with the presence of chronic respiratory disease (Ref. 5). These neoplasms in the CIVO strain are generally localized in the lungs and do not disseminate to other organs or tissues. Reticulum cell sarcomas are known to occur spontaneously in this strain of rat; incidences as high as 32 percent had been reported in untreated CIVO-bred Wistar rats (Ref. 2). These findings on the lymphoreticular neoplasms observed in treated and control rats from this study reinforce the agency's judgment that these neoplasms were not caused by acesulfame potassium treatment and that, therefore, the study is inadequate and does not provide a basis for assessing the carcinogenicity of the compound.

Because the first study was not adequate for the safety evaluation of a prospective food additive, a second long-term rat study was conducted. In the original report by the testing laboratory on this study, submitted with the initial petition, tissues from some of the animals were reviewed by the study pathologist of the performing laboratory and the remainder were reviewed by a consulting pathologist. This division of labor resulted in inconsistencies in the diagnostic criteria applied to the observations reported in the study. Although the data appeared to show treatment-related differences in a few of the observations, these were subsequently found to be due to the different way categories of lesions were summarized. This was shown when the petitioner, in response to the agency's request for more detailed and explicit listings of the results of the study, had all the data and microscopic slides reviewed by a consulting pathologist, who prepared a new report.

After a comprehensive review of the data from this second study, the agency has concluded that it is adequate for the safety evaluation of a food additive and that there is no association between the occurrence of neoplasms and treatment with acesulfame potassium (Ref. 2). Moreover, these rats did not show lymphoreticular neoplasms in the lungs or lymphoreticular disease in any other organs that could be ascribed to treatment. The highest level fed, 3 percent of the diet, produced no adverse toxic effects.

Among the issues in the initial review that received attention were differences in incidence of mammary gland neoplasms in the female rats. Most of the mammary tumors were fibroadenomas; there incidences in the female rats were: Control group—17 of 56 rats examined (30.4 percent); 0.3 percent test compound—26 of 60 (43.3 percent); 1.0 percent test compound—28 of 59 (47.5 percent); 3.0 percent test compound—28 of 59 (47.5 percent) (Ref. 6). The mammary gland neoplasms other than fibroadenomas were few in number and were distributed randomly among the different groups. The incidences of mammary gland hyperplasia were similar and uniformly high in all groups of treated famales and in the control females. Thus, the occurrence of mammary gland hyperplasia was unrelated to treatment with acesulfame potassium.

The agency concludes that there was no association between the occurrence of mammary gland neoplasms and

treatment with acesulfame potassium. This conclusion is based on the following:

(1) Fibroadenomas are a common old age tumor in this strain of rats and their incidence is variable.

(2) The incidence of mammary fibroadenomas in female control rats from seven comparable studies, performed at this testing laboratory around the same time period as the acesulfame potassium study, is 250 of 452 or 55.3 percent (Ref. 6). This incidence is higher than the incidences for any of the treated groups in the acesulfame potassium study and is much higher than that for the concurrent control group. The concurrent control group had an unusually low incidence of these tumors.

(3) In the treated groups, the lack of a dose response in incidences of fibroadenomas, as well as of all mammary tumors and of hyperlasia, is evidence that there is not a treatment-related effect of the sweetener on the incidence of fibroadenomas.

(4) There was no evidence of progressive stages of mammary gland neoplasms (hyperplasia to malignant neoplasms) that would indicate a treatment-related induction of tumors.

The reproduction and teratology studies, and the long-term safety studies did not show any toxic effects due to treatment with acesulfame potassium. From the highest feeding level in the long-term rat study, 3 percent acesulfame potassium, the agency, using a 100-fold safety factor, finds that the acceptable daily intake in 15 milligrams per kilogram body weight. This acceptable daily intake level is well above the expected intake for the food uses requested.

### III. Comments

The Center for Science in the Public Interest (CSPI), a consumer advocacy group, wrote to the agency to express its concerns about the testing and safety of this sweetener, and included a copy of a newsletter article it had published on this subject. Several individuals also wrote to the agency echoing the concerns in the newsletter article. CSPI urged that FDA not approve the petition as submitted.

CSPI stated that some of the treated groups in the first long-term rat study showed higher mortality than the controls and this increase was associated with chronic respiratory disease and cancers of lung lymphoid tissue. CSPI also claimed that the occurrence of pulmonary lymphoreticular tumors was relatively high in mid- and high-dose groups of both sexes and was "statistically significant" in high-dose females. The group also mentioned an earlier appearance of these tumors in mid- and high-dose males than in control and low-dose males.

The agency has evaluated this study comprehensively and, as outlined in the proceding Section, finds that deficiencies in the study prevent anyone from drawing any conclusions concerning treatment-related effects. For the reasons described above, the agency found no evidence of a neoplastic effect that is casually associated with acesulfame potassium from this study. Moreover, as noted above, the agency believes that the deficiencies in this study render it inadequate for assessing the carcinogenic potential of the test compound or for any other purposes of a safety evaluation. The second rat study is adequate however, for such purposes and forms a basis for the agency's final conclusion of safety.

On the second long-term rat study, CSPI stated "Although excess pulmonary tumors were not observed in this study, excess mammary gland tumors were found. According to the petitioner, the 'total incidence of mammary gland tumors in each of the test groups was about twice as high as in the controls * * *. In addition, malignant mammary tumors * * * were found only in test animals * * *.'" (Omissions made by CSPI)

The agency disagrees with CSPI's conclusion that this study is not adequate to demonstrate safety. FDA made a detailed evaluation based on the comprehensive reexamination of all the histological slides by the consulting pathologist (see preceding Section). As stated in the previous Section, fibroadenomas are common old-age tumors in female rats of this strain. The quotation of the petitioner's statement omits the fact that no mammary gland tumors were found in any of the male rats of this study. Based on the lack of dose response, the unusually low incidence of tumors in the concurrent control group compared with other contemporary controls, and the other reasons given in the previous Section, the agency concludes that there is no basis to find a causal relationship between acesulfame potassium treatment and development of mammary gland tumors.

In its letter to FDA, CSPI maintained that a positive dose response is not needed to reach a conclusion of carcinogenicity. The group also stated its belief that comparison with historical controls does not excuse the high tumor rates in either rat study. In this regard, they quote the Environmental Protection Agency's "Guidelines for Carcinogen Risk Assessment" as saying, "To evaluate carcinogenicity, the primary comparison is tumor response in dosed animals as compared with that in contemporary matched control animals" (September 24, 1986; 51 FR 33992 at 33995).

FDA disagrees with CSPI's interpretation of these guidelines. CSPI omitted from its quotation the sentences that follow it in the guidelines with respect to consideration of historical controls. The Environmental Protection Agency goes on to state, "Historical control data are often valuable, however, and could be used along with concurrent control data in the evaluation of carcinogenic responses * * *. The review of tumor data at sites with high spontaneous background requires special consideration * * *. For instance, a response that is significant with respect to the experimental control group may become questionable if the historical control data indicate that the experimental control group had an unusually low background incidence" (citations omitted).

FDA has long followed the principles stated in these guidelines, and in the Office of Science and Technology Policy, in reviewing the safety of food and color additives (November 2, 1982; 47 FR 49628 at 49629). The Office of Science and Technology Policy (March 14, 1985; 50 FR 10372 at 10418) stated:

> * * * With such data, the toxicologist may conclude that a study yielding statistical significance is not biologically significant or conversely that an effect is real, even though there is no "significant" difference between test and concurrence controls. Of 27 bioassay study reports issued by the NCI (National Cancer Institute) from 1978–1980, historical controls were used in 14 studies to show that an apparent increase of a specific tumor was not related to treatment. In 13 studies, the use of historical controls showed that an increase in tumors was related to treatment. Historical control data can be valuable when used appropriately, especially when the differences in incidence rates between treated and concurrent negative controls are small and can be shown to be within the anticipated historical incidence.

The agency points out that a determination of whether a compound is carcinogenic should be based on the overall weight of the evidence. The evidence can reasonably include a dose response or a lack of a dose response, consideration of historical controls, associated pathological data, the time to induction tumors, and the multiplicity of tumors. In the second long-term rat study, none of these factors lends weight to a finding of carcinogenicity (Ref. 6).

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CSPI also questioned the results in a study the petitioners had volunteered which was conducted for 4 weeks with rats made diabetic by treatment with streptozotocin. CSPI stated that blood cholesterol levels were elevated 15 to 20 percent in groups of rats fed acesulfame potassium and suggested a relation to an increased risk of heart disease for diabetic humans who use this artificial sweetener.

FDA does not agree. The serum cholesterol levels were higher than the controls only in the low- and mid-dose groups but not in the high-dose group. These data do not show a dose-response relationship. In addition, differences in levels were relatively small and well within the normal cholesterol levels for rats (Ref. 7). FDA finds no relation between ingestion of the test compound and the levels of serum cholesterol in this study.

## IV. Conclusions

FDA has evaluated the data in the petition and other relevant material and concludes that acesulfame potassium is safe under the conditions of use in a new 21 CFR 172.800 and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)) the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment prepared under proposed 21 CFR 25.31(b) as published in the **Federal Register** of December 11, 1979 (44 FR 71742) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's current regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under § 25.31a(a).

## V. Objections

Any person who will be adversly affected by this regulation may at any time on or before August 29, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing on any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Kuznesof, P. M., Food and Color Additives Review Section, Memoranda of October 30, 1986, April 9, 1987, and August 5, 1987.

2. Cancer Assessment Committee, Memorandum of Conferences, November 21, 1983, February 21, 1985, December 12, 1985, and June 17, 1986.

3. Della Pora, G., L. Chieco-Bianchi, and N. Pennelli, "Tumors of the Haematopoietic System," *in* IARC Scientific Publications, No. 23, Vol. 2, "Tumors of the Mouse," p. 532, 1979.

4. Taylor, L. L., Additives Evaluation Branch, Memorandum of June 19, 1986.

5. Swaen, G. J. V., and P. Van Heerde, "Tumors of the Haematopoietic System," *in* IARC Scientific Publications, No. 5, Vol. 1, "Tumors of the Rat," Part 1, p. 187, 1973.

6. Hines, F. A., Diagnostic Pathology Branch, Memorandum of June 6, 1986.

7. Irausquin, H., Standards and Monitoring Branch, Memoranda of November 6, 1987, and October 20, 1982.

## List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61

2. A new § 172.800 is added to Subpart I to read as follows:

### § 172.800 Acesulfame potassium.

Acesulfame potassium (CAS Reg. No. 55589–62–3), also known as acesulfame K, may be safely used as a sweetening agent in food in accordance with the following prescribed conditions:

(a) Acesulfame potassium is the potassium salt of 6-methyl-1,2,3-oxathiazine-4(3*H*)-one-2,2-dioxide.

(b) The additive meets the following specifications:

(1) Purity is not less than 99 percent on a dry basis. The purity shall be determined by a method titled "Acesulfame Potassium Assay," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the **Federal Register**, 1100 L St. NW., Washington, DC 20408.

(2) Fluoride content is not more than 30 parts per million, as determined by method III of the Fluoride Limit Test of the Food Chemicals Codex, 3d Ed. (1981), p. 511, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) The additive may be used in the following foods when standards of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act do not preclude such use:

(1) Dry, free-flowing sugar substitutes in package units not to exceed the sweetening equivalent of 2 teaspoonsful of sugar.

(2) Sugar substitute tablets.

(3) Chewing gum.

(4) Dry bases for beverages, instant coffee, and instant tea.

(5) Dry bases for gelatins, puddings, and pudding desserts.

(6) Dry bases for dairy product analogs.

(d) If the food containing the additive is represented to be for special dietary uses, it shall be labeled in compliance with Part 105 of this chapter.

(e) The additive shall be used in accordance with current good manufacturing practice in an amount not to exceed that reasonably required to accomplish the intended effect.

Dated: July 19, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-16972 Filed 7-27-88; 8:45 am]

BILLING CODE 4160-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 185 and 186

**[OPP-00264; FRL-3422-1]**

### Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule that transferred former Parts 193 and 561 of Title 21 of the Code of Federal Regulations (CFR) regarding tolerances for pesticides in food and animal feeds into new Parts 185 and 186, respectively, of Title 40 of the CFR.

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** John A. Richards, Chief, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G009, 401 M St., SW., Washington, DC 20460, (202)-382-2253.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 88-14718, published in the **Federal Register** of June 29, 1988 (53 FR 24666), EPA transferred former 21 CFR Parts 193 and 561 into new 40 CFR Parts 185 and 186, respectively. The following corrections are made to the document:

1. On page 24666, in the third column under the "old section-new section" table, in the entry for old section 193.80 change the new section entry from 185.375 to 185.410.

2. On page 24667, ir the first column, under the "old section-new section" table, in the entry for old section 193.470 change the new section entry from 185.5500 to 185.5550.

3. On page 24667, in the first column under the "old section-new section" table in the entry for old section 561.51 change the new section entry from 186.400 to 186.375.

4. On page 24667, in the first column, under the "old section-new section" table in the entry for old section 561.53 change the new section entry from 186.5050 to 186.4975.

5. On page 24667, in the first column, under the "old section-new section" table in the entry for old section 561.92 change the new section entry from 186.425 to 186.400.

**PART 185—[CORRECTED]**

6. On page 24667, in the third column, in the table of contents entry for section 185.375 1,1-Bis(*p*-chlorophenyl)-2,2,2-trichloroethanol, change the section number to 185.410 and reinsert the entry in numeric sequence.

**PART 186—[CORRECTED]**

7. On page 24668, in the third column, in the table of contents entry for section 186.400 Bentazon, change the section number to 186.375.

8. On page 24668, in the third column, in the table of contents entry for section 186.425 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine, change the section number to 186.400.

9. On page 24668, in the third column, in the table of contents entry for section 186.950, insert a hyphen after the first number 1 so that the entry reads "2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate."

10. On page 24668, in the third column, in the table of contents entry for section 186.1850, remove the hyphen in the word "oxazolidine-dione" so that it reads "oxazolidinedione."

11. On page 26449, in the second column, in the table of contents entry for section 186.5050, change "Propenofos" to read "Profenofos" and change the section number to "186.4975" and reinsert the entry in numeric sequence.

(21 U.S.C. 348)

Dated: July 22, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 88-17105 Filed 7-27-88; 8:45 am]

BILLING CODE 4560-50-M

### 40 CFR Part 271

**[FRL-3420-9]**

### Georgia; Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revision for the hazardous components of radioactive mixed wastes and for the closure, post-closure and financial responsibility requirements satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revision for the hazardous components of radioactive mixed wastes and for the closure, post-closure, and financial responsibility requirements. Georgia's application for program revision is available for public review and comment.

**DATES:** Final authorization for Georgia shall be effective September 26, 1988 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business August 29, 1988.

**ADDRESSES:** Copies of Georgia's program revision application are available during 8:00 a.m.-4:00 p.m. at the following addresses for inspection and copying: Georgia Department of Natural Resources, Land Protection Branch, Room 1154, 205 Butler Street SE., Floyd Towers East, Atlanta, Georgia 30334, Phone: 404/656-2833; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-4216. Written comments on the application should be sent to Otis Johnson, at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Otis Johnson, Jr., Chief, Waste Planning Section, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Georgia received final authorization for HSWA provisions contained in the July 15, 1985 Codification Rule, 50 FR 28702 on September 18, 1986.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 124 and 270.

B. Georgia

Georgia initially received final authorization on August 21, 1984. Georgia received authorization for revisions to its program on September 18, 1986. On December 31, 1987, Georgia submitted a program revision application for additional program approval for the hazardous components of radioactive mixed wastes and for the closure, post-closure, and financial responsibility requirements. Today, Georgia is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application, and has made an immediate final decision that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until August 29, 1988. Copies of Georgia's application for program revisions are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice

Approval of Georgia's program revision shall be come effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Georgia is not seeking authorization to operate in Indian lands.

C. Decision

I conclude that Georgia's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised. Georgia now has reponsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Lee A. Debilns,

*Acting Regional Administrator.*

Dated: June 28, 1988.

[FR Doc. 88-17027 Filed 7-27-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 424

### [BERC-300-F]

## Medicare Program; Indirect Part B Payment Procedure

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: Section 1842(b)(6) of the Social Security Act, as amended by section 2339 of the Deficit Reduction Act of 1984, authorizes a Medicare carrier to pay Medicare Part B benefits under certain circumstances directly to an entity that provides a health benefits plan complementary to Medicare and that pays the physician or supplier in full for the service. This rule sets forth the requirements these entities must meet to receive payment directly from Medicare.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Roth, 301-966-4486.

SUPPLEMENTARY INFORMATION:

Background

Under Medicare's Supplementary Medical Insurance program (Part B), the payment for the services of a physician or supplier is generally 80 percent of reasonable charges in excess of an annual deductible amount. Upon submission of a properly executed claim, this payment is made to the beneficiary, or alternatively to the physician or supplier if he or she accepts assignment of the claim.

Some beneficiaries have complementary insurance coverage that pays the annual deductible, the 20 percent coinsurance, and any amount by which the approved charge of the insurer exceeds the Medicare reasonable charge. In 1969 we established a procedure that allows a complementary insurance plan meeting certain conditions to pay a physician or supplier an amount that the physician or

supplier accepts as full payment for his services and then bill the Medicare carrier for the Part B payment that would otherwise be made to the beneficiary (42 CFR 405.1685).

Until July 1985, we limited the actual use of this procedure, under Medicare Carriers Manual instructions, to employment-related group insurance plans, group practice prepayment plans and HMOs, and, in the case of the latter two types of organizations, we made the procedure available only for limited types of services. Moreover, between May 1979 and July 1985, we prohibited carriers from accepting new applications by employment-related group insurance plans to use the procedure. In July 1985, we issued revised Medicare Carrier Manual instructions removing many of these limitations.

On July 1, 1986 (51 FR 23792), we proposed to amend § 405.1685, as well as other rules that have an impact upon this payment procedure, to implement section 1842(b) of the Act, as amended by section 2339 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) commonly referred to as "DRA". Section 1842(b)(6) now provides the authority for carriers to pay Medicare Part B benefits, for services that are reimbursable on a reasonable charge or fee schedule basis, to entities that meet the conditions specified below, if the beneficiary has agreed in writing for payment to such an entity. The entity must be one that—

- Provides coverage of the services under a complementary health services plan as described above; and
- Has paid the physician or supplier an amount that includes the amount payable under Medicare and is accepted by the physician or supplier as full payment for the service.

Under the broad language of amended section 1842(b)(6) of the Act, any entity that meets the stated requirements can use the indirect payment procedure. This includes employers, unions, insurance companies, and retirement homes. It also includes prepayment organizations such as HMOs, competitive medical plans, and other prepaid plans, when they deal with a carrier rather than directly with HCFA.

The procedure is available only for services paid on a reasonable charge or fee schedule basis, and only when Medicare is primary payer. It is not available for services of providers or of other entitites that are paid under prospective payment or cost basis systems and is not available when Medicare is secondary payer.

The Act sets forth the indirect payment procedure as an alternative to Medicare payment to the beneficiary on the basis of an itemized bill or to the physician or supplier on the basis of an assignment. Indirect payment is available even for services furnished by a participating physician or supplier, that is, one that has agreed to accept assignments.

Section 1842(h)(1) of the Act, as amended by section 2306 of the DRA (and as further amended by section 9301(d)(2)(A)(ii) of Pub. L. 99–272), permits a participating physician or other supplier to accept payment under the indirect payment procedure in lieu of accepting Medicare assignment. Indirect payment is also available for clinicial diagnostic laboratory tests furnished by a physician or independent laboratory. Section 1833(h)(5)(C) of the Act, as amended by section 2303 of the DRA, permits a physician or independent laboratory to accept payment for clinical diagnostic laboratory tests under the indirect payment procedure in lieu of accepting Medicare assignment for those tests. Until December 22, 1987, when a physician or laboratory used this procedure for clinical diagnostic laboratory tests, Medicare payment for those tests was subject to deductible and coinsurance and was not 100 percent of the fee schedule amount or the actual charge (whichever is less) as it was when Medicare paid for the tests under assignment. This was changed by section 4085(i)(1) of the Omnibus Budget Reconciliation Act of 1987 Pub. L. 100–203), effective for services furnished on or after the date of enactment, December 22, 1987. Deductible and coinsurance no longer apply to clinical diagnostic laboratory tests for which payment is made under the indirect payment procedure.

**Provisions of the Proposed Regulations**

Since the amendments did not change the essential conditions for use of the procedure as set forth in the existing rules, we proposed primarily technical changes to conform the rules more closely to the language of the law, with minor revisions and clarifications. Specifically, we proposed to amend §§ 405.1672, 405.1679, 405.1685, and 405.1686, as discussed below.

*A. Section 405.1672, Individual's Request For Direct Payment—General Provisions*

A parenthetical statement at the end of § 405.1672(c) indicated that "for payment to organizations that pay bills on behalf of enrollees, see § 405.1685." In line with proposed changes in § 405.1685 discussed below, we proposed to change this statement to read: "For payment to entities that pay for services on behalf of entitled individuals, see § 405.1685."

*B. Section 405.1679, Execution of Claim For Payment*

This section made no reference to the indirect payment procedure. It discussed who could execute a claim for an individual. We proposed to add a new paragraph (e) to clarify that an entity that provides complementary health insurance and meets the requirements of the indirect payment procedure could execute a claim on behalf of the beneficiary under that procedure. The beneficiary would authorize the entity to receive his or her Part B payments. Section 1842(b)(3)(B) of the Act (following clause (ii)), requires that a Part B bill be submitted in such form as is provided by regulations. Section 1835(a)(1) of the Act requires (in the case of services furnished by certain "providers of services") that the beneficiary submit a written request for payment "except in cases in which the Secretary finds it impracticable for the beneficiary to do so". Since the main purpose of the indirect payment procedure is to simplify the billing process, for beneficiaries and for physicians and other suppliers, and since the beneficiary must give written authorization for the complementary coverage plan to receive the Part B payments, we believe that a request for payment signed by the beneficiary, or a written statement authorizing the plan to submit claims on his or her behalf, is unnecessary.

*C. Section 405.1685, Payment to Organizations That Pay Bills on Behalf of Enrollees.*

We proposed to change the title of this section to "The indirect payment procedure." All the proposed special requirements for payment under the indirect payment procedure would be set forth in the revised § 405.1685(a). We proposed that Medicare Part B payment for the services of a physician or supplier otherwise payable to a beneficiary or to his or her legal representative or representative payee could be made to an entity that provides coverage to the beneficiary under a complementary health benefits plan. (This was to make it clear that payment under the indirect payment procedure is an exception to the rule that benefits that are not assigned to the physician or supplier must be paid to the beneficiary or to his or her legal representative or representative payee.) Paragraphs (a)(1) through (a)(6) and (b), discussed below, would specify the requirements the entity must meet to receive the payment.

To improve technical accuracy, we also proposed to change references

throughout paragraphs (a) and (b) from "organization" to "entity," and from "bills" to "services."

Any entity using the indirect payment procedure would have to meet the general criterion set forth in a new § 405.1685(a)(1). This provision provided explanatory language to indicate that the plan would have to be complementary to Medicare, in line with current practice.

In paragraph (a)(2) of the proposed regulations we proposed to continue the current requirement that the entity must have made full payment to the person furnishing the service. Editorial changes were to be made to follow the language of the law more closely.

In paragraph (a)(3), we proposed to clarify the role of an "authorized representative" of a beneficiary in executing an agreement for Medicare Part B payment to the entity. (We proposed also to revise § 405.1672(c) to provide that any of the persons specified in § 405.1679 could execute a claim on behalf of the beneficiary.)

We proposed to redesignate current paragraph (a)(3) as paragraph (a)(4) and revise it editorially, and to combine the contents of the current paragraphs (a)(4) and (a)(5) in paragraph (a)(5), requiring that the entity submit any information the carrier needs to meet requirements of the Medicare program.

In paragraph (a)(6) we proposed to require an entity to have in place a process that would identify and exclude from its requests for payment all services for which Medicare is the secondary payer. This is called for by the provision that the entity may request payment only in cases in which it pays for the service under a plan complementary to Part B. Section 1862(b) of the Act and 42 CFR 405.316–405.329 indicate when Medicare is secondary payer.

Paragraph (b) of § 405.1685 indicated that the entity could choose not to pay and claim reimbursement for all Part B bills on behalf of a beneficiary; the entity could establish criteria to determine at its discretion which bills it would pay. We proposed to revise the paragraph to show that the entity has discretion to determine which services, rather than which bills, it will pay. In addition, to prevent possible double billing (when the entity and the beneficiary bill the carrier for the same service), we proposed to require that the entity undertake to cover, and to pay and claim reimbursement for, either one or more well defined general categories of services, or all Part B services.

*D. Section 405.1686, Organizations Qualified To Receive Payment on Behalf of Enrollee*

This section described the types of organizations that could qualify to receive payment under the indirect payment procedure. Since the availability of the indirect payment procedure no longer would be limited to the types of organizations specified in § 405.1686, we proposed to delete this section.

**Response to Comments**

We received timely comments from a Medicare carrier, a State Medicaid Agency, and a private health benefits plan on the proposed regulations. Because there were so few comments and because each commenter's comments are so distinct from the others, we discuss them individually.

The carrier raised a number of issues regarding the administration of the indirect payment provision. These questions and our responses are as follows:

*Question*: Will the carrier be required to make programming changes to make deductible and coinsurance applicable to the charges for clinical diagnostic laboratory tests furnished by independent laboratories?

*Response*: Carriers should not make these programming changes. Under section 4085(i)(1) of the Omnibus Budget Reconciliation Act of 1987, the Part B deductible and coinsurance no longer apply to charges for clinical diagnostic laboratory tests for which payment is made under the indirect payment procedure.

*Question*: Will there be carrier involvement to ascertain that an entity using the indirect payment procedure meets the requirements of the final regulations?

*Response*: Yes. The entity will submit its request to use the procedure to the carrier to which it expects to submit the most claims. The carrier will determine whether the entity meets the requirements and notify HCFA.

*Question*: What mechanism will be developed to inform the carrier of the status of the entity?

*Response*: HCFA will add the entity to a list of approved entities in the Medicare Carriers Manual and assign it a national identification number ("approval number") to show on its claim.

*Question*: How will the carrier determine whether or not a private insurance plan should receive Medicare reimbursement, since the plan might be obligated by its terms to pay for the service in full regardless of Medicare?

*Response:* In applying to use the indirect payment procedure, the entity must agree to claim payment for a service only when it covers the service under a plan complementary to Medicare Part B and meets the requirements for reimbursement for that service. Medicare beneficiaries who are members of the plan receive from the carrier an explanation of medical benefits detailing the services Medicare paid for and we anticipate that they would soon complain to the carrier or HCFA if Medicare payment is made to a plan for services for which the plan is obligated to pay in full regardless of Medicare.

The State Medicaid agency's comment on the regulations and our response are as follows:

*Comment:* The State Medicaid agency provides payment for medical services as a payer of benefits complementary to Medicare. In addition, the agency covers only the amount by which a Part B payment falls short of the charge approved for the service or the State's fee, whichever is less. Accordingly, the agency believes it should be considered an entity entitled to use the indirect payment procedure.

*Response:* While State Medicaid plans are similar in some respects to health benefits plans complementary to Medicare, we do not regard them as such plans for purposes of using the indirect payment procedure. Unlike private insurance plans, State Medicaid plans generally pay fees lower than the fees usually charged in the community. Under the indirect payment procedure, the amount the entity pays the physician or supplier for a service goes into his customary charge profile. If this amount is less than his usual charges, the physician's payment level may be penalized. The indirect payment procedure is designed for use by entities that pay physicians' and suppliers' usual charges.

Moreover, State agencies generally pay no more than (if as much as) the Medicare approved charge. There is no disadvantage, therefore, to a physician or supplier who participates in Medicaid in accepting Medicare assignments and submitting Medicare claims directly to the Medicare carrier. State agencies have procedures for obtaining Medicare claims information for purposes of making the supplementary Mediceid payment on these claims. Thus, it would merely create an administrative complication for the Medicare program to authorize the use of the indirect payment procedure by States.

The health benefits plan made a number of comments objecting to the

prohibition in the proposed regulations against the imposition of any copayment in connection with the indirect payment procedure. These comments and our responses to them are as follows:

*Comment:* There is no prohibition in the statute against imposing a copayment.

*Response:* While it is true that the prohibition is not stated explicitly in the statute, it is the most supportable interpretation of that part of section 1842(b)(6) of the Act that requires a physician (or supplier) to accept the plan payment as full payment. This part of the statutory language could mean either: (1) That the plan must be the entire ultimate source of payment for the service (exclusive of Medicare Part B); or (2) that the plan must merely be the entire immediate source of payment. The first interpretation would prohibit the billing of a copayment by either the plan or the physician; the second would merely prohibit the billing of a copayment by the physician. The first interpretation is more consistent with the objectives of the legislation that we stated in our recommendation that legislation in this area be initiated. In recommending the indirect payment provision to Congress, we stated that the provision should be designed to permit the physician to submit a single claim, relieve the beneficiary of any need to file a claim, and protect the beneficiary against any financial liability for the service, if Medicare and the plan together fully cover the services.

We believe that Congress fully agreed with out recommendation and did not contemplate the collection of a copayment by a plan under the indirect payment procedure. Congress did not provide guidance in the statute or in the legislative committee reports on determining the permissible amount of any copayment.

*Comment:* Prohibiting a copayment limits the availability of the indirect payment procedure and disadvantages carrier-dealing health benefits plans relative to HMOs that enter into contracts with HCFA and may impose copayments.

*Response:* In the case of a health benefits plan that uses the indirect payment procedure (unlike a health benefits plan that has a contract with HCFA as an HMO or competitive medical plan), we do not regulate the amount of premiums the plan may charge. For a plan that pays physicians on a fee-for-service basis, this makes the indirect payment procedure an attractive alternative to entering into a risk-capitation contract with HCFA (i.e., a contract under which HCFA pays the plan, as an HMO or competitive medical plan, a capitation rate with the plan assuming the financial risk of providing services covered under Part A or Part B of Medicare). Permitting the imposition of a copayment would make the indirect payment procedure an even more attractive alternative to a risk-capitation contract if the plan believes that a copayment would help it to reduce utilization and other costs. Making the indirect payment procedure this attractive, however, conflicts with our initiative encouraging plans to enter into risk-capitation contracts. We find little basis for permitting such a disincentive to risk capitation contracts without an explicit statutory requirement to do so.

*Comment:* This prohibition precludes use of a copayment as a utilization control mechanism.

*Reponse:* Copayments are certainly one form of utilization control. However, other control exist, such as careful review of claims, partial refund of premiums to plan members, etc. The indirect payment procedure was basically intended for Medigap plans that ordinarily do not charge a copayment and that assume full responsibility for the difference between the Medicare payment and the approved charge of the plan.

**Final Rule**

While the final rule was under development, HCFA undertook to redesignate all rules on conditions for Medicare payment (including Subpart P of Part 405) as a new Part 424. Accordingly, the section numbers of Part 424 are substituted in the final rule, as shown in the following discussion.

We are adopting the proposed rule as final without substantive changes. For clarity and precision we are making the following editorial revisions in § 405.1685, which is now § 424.60:

1. Provide a more descriptive heading;

2. Revise paragraph (a)(6) to require that the entity "identify and exclude from its requests for payment all services for which Medicare is secondary payer * * *." (The wording of the proposed rule appeared to emphasize the process leading to identification rather than exclusion as such.)

3. Clarify (in paragraph (b)) that an entity that does not pay and claim reimbursement for all Part B services must establish in advance precise criteria for determining the services for which it will pay.

Language in the proposed rule was misleading.

By referring to "cover" and "pay and claim reimbursement for" in the same sentence, we created the erroneous impression that the entity must pay and claim reimbursement for any service that it covers. Actually, an entity's health benefit plans might have copayment requirements or approved charge limitations that would prevent it from claiming reimbursement for some services. Also, an entity might choose to use the indirect payment procedure for some of its plans but not others.

By stating that an entity must determine which well-defined categories of services for which it would pay, we created the erroneous impression that there are HCFA-defined categories from which the entity can choose.

The paragraph (e) that we proposed to add to § 405.1679, redesignated as § 424.36, under which an entity authorized to use the indirect payment procedure could execute a claim on behalf of the beneficiary, appears in the final rule as paragraph (d).

Other proposed changes to § 405.1672 (paragraphs (c) and (d)) became inappropriate or unnecessary as we simplified our rules in a final rule published March 2, 1988 (53 FR 6629). The content of these paragraphs is found in new § 424.34(a) and § 424.54. In that regard, paragraph (a) of new § 424.66, which includes the content of former § 405.1686 is being removed, as we proposed and as it is inconsistent with current law.

**Regulatory Impact Statement**

*A. Executive Order 12291*

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While this rule may result in administrative savings because it will permit the physician or supplier to file a single claim and receive payment in a single check, the overall effect will be negligible. Coverage and payment amounts will not be affected. Therefore, because no threshold criteria under E.O. 12291 will be exceeded, this rule is not considered a major rule and an impact analysis is not required.

*B. Regulatory Flexibility Act*

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not small entites, but we treat all physicians or suppliers as small entities. While, in some cases, physicians or suppliers may benefit slightly because a single claim will be permitted for a given service, the overall impact on the physician or supplier will be minimal.

For these reasons, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

*C. Paperwork Reduction Act*

These changes will not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects**

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 424*

Administrative practice and procedure, Conditions for payment, Medicare claims, Physician certification, Plan of treatment, Request for payment.

42 CFR Part 424 is amended as set forth below:

**PART 424—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Secs. 216(j), 1102, 1814, 1815(c), 1935, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g, 1395n, 1395u, 1395x, 1395cc, 1395gg, 1395hh, and 1395ii).

2. Section 424.36 is amended to redesignate paragraph (d) as (e) and add a new paragraph (d) to read as follows:

**§ 424.36 Signature requirements.**

* * * * *

(d) *Claims by entities that provide coverage complementary to Medicare.* A claim by an entity that provides coverage complementary to Medicare Part B may be signed by the entity on the beneficiary's behalf.

(e) *Acceptance of other signatures for good cause.* * * *

3. Section 424.60 is amended by revising paragraph (a) to read as follows:

**§ 424.60 Scope.**

(a) This subpart sets forth provisions applicable to payment after the beneficiary's death and payment to entities that provide coverage complementary to Medicare Part B.

* * * * *

4. Section 424.66 is amended to revise the section heading, remove paragraphs (a) and (b), redesignate paragraph (c) as (a) and revise it, and add a new paragraph (b). As amended, § 424.66 reads as follows:

**§ 424.66 Payment to entities that provide coverage complementary to Medicare Part B.**

(a) *Conditions for payment.* Medicare may pay an entity for Part B services furnished by a physician or other supplier if the entity meets all of the following requirements:

(1) Provides coverage of the service under a complementary health benefit plan (this is, the coverage that the plan provides is complementary to Medicare benefits and covers only the amount by which the Part B payment falls short of the approved charge for the service under the plan).

(2) Has paid the person who provided the service an amount (including the amount payable under the Medicare program) that the person accepts as full payment.

(3) Has the written authorization of the beneficiary (or of a person authorized to sign claims on his behalf under § 405.1679) to receive the Part B payment for the services for which the entity pays.

(4) Relieves the beneficiary of liability for payment for the service and will not seek any reimbursement from the beneficiary, his or her survivors or estate.

(5) Submits any information HCFA or the carrier may request, including an itemized physician or supplier bill, in order to apply the requirements under the Medicare program.

(6) Identifies and excludes from its requests for payment all services for which Medicare is the secondary payer.

(b) *Services paid by the entity.* An entity is not required to pay and claim reimbursement for all Part B services furnished to members of its plans. However, if it does not pay and claim reimbursement for all those services, it must establish in advance precise criteria for identifying the services for which it will pay and claim reimbursement.

(Catalog of Fedral Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: August 18, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: June 10, 1988.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 88-16995 Filed 7-27-88 8:45 am]

BILLING CODE 4120-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 65**

**[Docket No. FEMA-6931]**

## Changes in Flood Elevation Determinations; Arkansas et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Interim rule.

**SUMMARY:** This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

**DATES:** These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination. From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance

Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains.

**PART 65—[AMENDED]**

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

**§ 65.4 [Amended]**

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

| State | County | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Arkansas | Crawford | City of Van Buren | Mar. 17, 1988, Mar. 24, 1988 *Press Argus Courier.* | The Honorable Robert E. Bell, Mayor of the city of Van Buren, P.O. Box 668, Van Buren, Arkansas 72956. | Mar. 4, 1988 | 060053 |
| Georgia | DeKalb | Unincorporated areas. | June 23, 1988, June 30, 1988, *Decatur-DeKalb News/ERA.* | The Honorable Manuel J. Maloof, Chief Executive Officer, DeKalb County, 556 North McDonough, Decatur, Georgia 30030. | June 14, 1988 | 130065 |
| Illinois | Cook | Village of Westchester. | July 21, 1988, July 28, 1988, *Westchester News.* | The Honorable John J. Sinde, Village President, village of Westchester, 10240 Roosevelt Road, Westchester, Illinois 60153. | Oct. 28, 1988 | 170170 |
| Massachusetts. | Essex | City of Methuen | June 24, 1988, July 1, 1988, *Lawrence Eagle-Tribune.* | Mr. William F. Gallagher, Manager of the city of Methuen, 90 Hampshire Street, Methuen, Massachusetts 01844. | June 14, 1988 | 250093C |
| Texas | Montgomery | Unincorporated areas. | June 29, 1988, July 6, 1988, *The Courier.* | The Honorable Alvin Stahl, Montgomery County Judge, 326½ N. Main, Conroe, Texas 77301. | June 17, 1988 | 480483 |
| Vermont | Windsor | Town of Royalton | June 16, 1988, June 23, 1988, *White River Valley Herald.* | The Honorable David I. Lyman, Chairman of the town of Royalton Board of Selectmen, P.O. Box 680, South Royalton, Vermont 05068. | June 6, 1988 | 500153B |

Issued: July 20, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88–16985 Filed 7–27–88; 8:45 am]

BILLING CODE 6718-03-M

**44 CFR Part 65**

**Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

**DATES:** The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains.

**PART 65—[AMENDED]**

The authority citation for Part 65 continues to read as folllows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

**§ 65.4 [Amended]**

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

| State and county | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Georgia: Fulton (Docket No. FEMA-6928). | Unincorporated areas .... | Nov. 12, 1987, Nov. 19, 1987, *Atlanta Journal Constitution.* | The Honorable Sam Brownlee, County Manager, Fulton County, 207 Administration Building, 165 Central Avenue, SW., Atlanta, GA 30335. | Nov. 2, 1987 .. | 135160 |
| Illinois: Cook (Docket No. FEMA–6928). | City of Prospect Heights. | Mar. 24, 1988, Mar. 31, 1988, *Daily Herald.* | The Honorable John E. Gilligan, Mayor, City of Prospect Heights, City Hall, 4 East Camp McDonald Road, Prospect Heights, IL 60070. | Mar. 15, 1988. | 170919 |
| Oklahoma: Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie (FEMA Docket No. 6928). | City of Oklahoma City .... | Apr. 18, 1988, Apr. 25, 1988, *The Daily Oklahoman.* | The Honorable Ronald J. Norick, Mayor of the City of Oklahoma City, 200 North Walker, Oklahoma City, OK 73102. | Apr. 6, 1988 .... | 405378 |
| South Carolina: Aiken (Docket No. FEMA-6928). | Unincorporated areas .... | Apr. 7, 1988, Apr. 14, 1988, *Aiken Standard.* | The Honorable W. Scott Barnes, County Administrator, Aiken County, 828 Richland Avenue, West, Aiken, SC 29801. | Mar. 31, 1988. | 450002 |
| Tennessee: Shelby (Docket No. FEMA-6928). | Unincorporated areas .... | May 13, 1988, May 20, 1988, *Memphis Daily News.* | The Honorable William N. Morris, Mayor, Shelby County, 160 North Mid-America Mall, 8th Floor, Memphis, TN 38103. | May 3, 1988 .... | 470214 |
| Tennessee: Shelby (Docket No. FEMA-6928). | Unincorporated areas of Shelby County. | Mar. 3, 1988, Mar. 10, 1988, *Memphis Daily News.* | The Honorable William N. Morris, Mayor, Shelby County, 160 N. Mid-America Mall, 8th Floor, Memphis, TN 38103. | Feb. 22, 1988. | 470214 |
| Texas: Fort Bend (FEMA Docket No. 6928). | Unincorporated areas .... | Apr. 11, 1988, Apr. 18, 1988, *The Herald Coaster.* | The Honorable Jodie Stavinoha, Fort Bend County Judge, P.O. Box 368, Richmond, TX 77469. | Mar. 25, 1988. | 480228 B |

| State and county | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Texas: Dallas, Denton, Collin, Rockwall, and Kaufman (FEMA Docket No. 6928). | City of Dallas | Apr. 22, 1988, Apr. 29, 1988, *The Dallas Morning News*. | The Honorable Annette Strauss, Mayor of the City of Dallas, City Hall, 5 E North, Dallas, TX 75201. | Apr. 1, 1988 | 480171 C |
| Texas: Tarrant (FEMA Docket No. 6928). | City of Hurst | Apr. 14, 1988, Apr. 21, 1988, *Mid-Cities Daily News*. | The Honorable Bill Souder, Mayor of the City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054. | Apr. 7, 1988 | 480601 |
| Texas: Tarrant (FEMA Docket No. 6928). | City of North Richland Hills. | Apr. 14, 1988, Apr. 21, 1988, *Mid-Cities Daily News*. | The Honorable Dan Echols, Mayor of the City of North Richland Hills, P.O. Box 18609, North Richland Hills, TX 76180. | Apr. 7, 1988 | 480607 |
| Texas: Dallas and Rockwall (FEMA Docket No. 6928). | City of Rowlett | Mar. 23, 1988, Mar. 30, 1988, *Dallas Times Herald*. | The Honorable H.C. Ruyle, Mayor of the City of Rowlett, P.O. Box 99, Rowlett, TX 75088. | Feb. 25, 1988. | 480185 B |

Issued: July 20, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-16987 Filed 7-27-88; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

## Final Flood Elevation Determinations; Colorado

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

**ADDRESSES:** See table below:

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

### List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

## PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD). Modified |
|---|---|
| **COLORADO** | |
| **Commerce City (city), Adams County (FEMA Docket No. 6929)** | |
| *Sand Creek:* | |
| Approximately 300 feet upstream of Brighton Boulevard | *5152 |
| Approximately 1,580 feet upstream of Brighton Boulevard | *5154 |
| Approximately 2,500 feet upstream of Brighton Boulevard | *5158 |
| Downstream of Vasquez Boulevard | *5163 |
| **Maps are available for inspection** at the City Hall—Community Development Department, 5291 East 60th Avenue, Commerce City, Colorado 80022. | |
| **FLORIDA** | |
| **Delray Beach (city), Palm Beach County (FEMA Docket No. 6928)** | |
| *Lake Delray:* Along entire shoreline | *12 |
| *Canal L-29:* Along entire canal | *13 |
| *Canal C-15:* Along entire canal | *12 |
| **Maps available for inspection** at the Public Works Complex, 434 South Swinton Avenue, Delray Beach, Florida 33444. | |
| **Polk County (Unincorporated areas) (FEMA Docket No. 6929)** | |
| *Lake Kissimmee:* Along entire shoreline | *55 |
| **Maps available for inspection** at the Planning Department, Graphics Section, Bartow, Florida | |
| **MASSACHUSETTS** | |
| **Wilmington, (town), Middlesex County (FEMA Docket No. 6918)** | |
| *Tributary to Martins Brook:* | |
| At confluence with Martins Brook | *82 |
| Upstream side of Ainsworth Road | *82 |
| Approximately 1,130 feet upstream of Andover Street | *82 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD). Modified |
|---|---|
| **Maps available for inspection at the Department of Engineering or Planning Department, Town Hall, 121 Glen Road, Wilmington, Massachusetts 01887** | |
| **MISSISSIPPI** | |
| **Ellisville (city), Jones County (FEMA Docket No. 6925)** | |
| *Ease Branch:* | |
| About 1760 feet downstream of State Highway 29 | *211 |
| About 880 feet upstream of State Highway 29 | *224 |
| *Little Rocky Creek:* | |
| About 0.9 mile downstream of Norfolk Southern Railway | *198 |
| About 0.9 mile upstream of U.S. Highway 11 | *213 |
| *Rocky Creek:* | |
| About 3800 feet downstream of Norfolk Southern Railway | *200 |
| About 3005 feet downstream of Norfolk Southern Railway | *200 |
| About 2400 feet upstream of U.S. Highway 11 | *207 |
| *Rocky Creek Tributary 2:* | |
| At mouth | *207 |
| Just downstream of Dubose Street | *208 |
| Just upstream of Pettis Street | *216 |
| **Maps available for inspection at the City Hall, 110 Court Street, Ellisville, Mississippi.** | |
| **MISSOURI** | |
| **Elsberry (city), Lincoln County (FEMA Docket No. 6925)** | |
| *Mississippi River:* Within community | *450 |
| **Maps available for inspection at the City Hall, 201 Broadway Avenue, Elsberry, Missouri.** | |
| **NEW JERSEY** | |
| **West Milford (township), Passaic County (FEMA Docket No. 6925)** | |
| *Pequannock River:* | |
| 1.9 miles downstream of CONRAIL Bridge just upstream of Charlotteburg Reservoir | *744 |
| Approximately 300 feet downstream of Oak Ridge Reservoir Dam | *902 |
| At Oak Ridge Reservoir Dam | *846 |
| **Maps available for inspection at the Engineering Department, 30 Marhill Road, West Milford, New Jersey.** | |
| **NEW MEXICO** | |
| **Gallup (city), McKinley County (FEMA Docket No. 6925)** | |
| *Puerco River:* | |
| Approximately 0.73 mile upstream of Second Street | *6,516 |
| Approximately 1.10 miles upstream of Second Street | *6,520 |
| **Maps available for inspection at the City Hall, 110 West Aztec, Gallup, New Mexico.** | |
| **NEW YORK** | |
| **Dover (town), Dutchess County (FEMA Docket No. 6925)** | |
| *Tenmile River:* | |
| Approximately 250 feet downstream of Reagan's Mill Road | *341 |
| Approximately 200 feet upstream of Reagan's Mill Road | *344 |
| Approximately 1,400 feet upstream of Reagan's Mill Road | *346 |
| **Maps available for inspection at the Town Hall, Dover Plains, New York.** | |
| **OREGON** | |
| **Clackamas County (unincorporated areas), (FEMA Docket No. 6925)** | |
| *Johnson Creek:* | |
| Immediately downstream of 282nd Avenue | *444 |
| Immediately upstream of 282nd Avenue | *447 |
| Approximately 655 feet downstream of Orient Drive | *494 |
| Approximately 300 feet upstream of Orient Drive | *504 |
| Approximately 900 feet downstream of Pleasant Home Drive | *528 |
| Approximately 50 feet downstream of Pleasant Home Drive | *538 |
| **Maps available for review at Clackamas County Department of Transportation and Development, 902 Abernethy Street, Oregon City, Oregon.** | |
| **TEXAS** | |
| **North Richland Hills (city), Tarrant County (FEMA Docket No. 6925)** | |
| *Stream CB-1:* | |
| Approximately 25 feet upstream of Fox Hollow Lane | *831 |
| Approximately 450 feet upstream of St. Louis Southwestern Railroad bridge | *834 |
| Approximately 50 feet downstream of Chapman Drive | *847 |
| Approximately 270 feet upstream of Chapman Drive | *851 |
| At downstream side of Brierdale Drive | *865 |
| **Maps available for inspection at the City Hall, 7301 N.E. Loop 820, North Richland Hills, Texas.** | |
| **San Antonio (city), Bexar County (FEMA Docket No. 6925)** | |
| *Huebner Creek:* | |
| At confluence with Leon Creek | *761 |
| Approximately 2,100 feet upstream of confluence of Leon Creek | *763 |
| Approximately 340 feet upstream of Whitby Road | *868 |
| Approximately 2,000 feet upstream of Whitby Road | *877 |
| *Huebner Creek Tributary A:* | |
| Approximately 600 feet downstream of Eckert Boulevard | *847 |
| Approximately 900 feet upstream of Eckert Boulevard | *862 |
| *Tributary B Huebner Creek:* | |
| Approximately 750 feet upstream of Oakland Road | *882 |
| Approximately 2,350 feet upstream of Oakland Road | *897 |
| *San Antonio River:* | |
| Approximately 200 feet upstream of South East Military Drive (Loop 13) | *549 |
| Approximately 1,000 feet upstream of East Pyron Road | *554 |
| *State Hospital Creek:* At confluence with San Antonio River | 550 |
| *Leon Creek:* | |
| Approximately 250 feet downstream of Babcock Road | *916 |
| At West Prue Road | *891 |
| *Southwest Research Creek:* At the corporate limit boundary, approximately 700 feet upstream of U.S. Route 410 | *758 |
| *Davis Creek:* | |
| Approximately .91 mile upstream of U.S. Route 410 | *724 |
| Approximately 3,800 feet upstream of U.S. Route 410 | *721 |
| **Maps available for inspection at the Department of Public Works, Drainage Engineering Section, 14 West Commerce Street, 7th Floor, San Antonio, Texas.** | |
| **Watauga (city), Tarrant County (FEMA Docket No. 6925)** | |
| *Singing Hills Creek:* | |
| Approximately 1,320 feet upstream of Mackneal Trail | *591 |
| Approximately 170 feet upstream of Watauga-Smithfield Road | *599 |
| **Maps available for inspection at 7101 Whitley Road, Watauga, Texas.** | |
| **VIRGINIA** | |
| **Staunton (city) (FEMA Docket No. 6925)** | |
| *Lewis Creek:* | |
| At downstream corporate limits | *1,257 |
| At upstream corporate limits | *1,468 |
| *Greenville Avenue Tributary:* | |
| Approximately 300 feet upstream of Bessie Weller School Drive | *1,418 |
| At upper limit of detailed study (approximately 2,640 feet upstream of Bessie Weller School Drive) | *1,470 |
| *Peyton Creek:* | |
| Approximately 680 feet downstream of Donaghe Street | *1,432 |
| Approximately 1,900 feet upstream of Surrey Road | *1,530 |
| *Buttermilk Spring Run:* | |
| Approximately 100 feet upstream of Haile Street | *1,416 |
| Approximately 170 feet upstream of Haile Street | *1,418 |
| Approximately 980 feet upstream of CSX Transport Railroad | *1,542 |
| *Springhill Branch:* | |
| At confluence with Peyton Creek | *1,444 |
| Approximately 4,000 feet upstream of confluence with Peyton Creek | *1,491 |
| *West Beverley Tributary:* | |
| Approximately 20 feet upstream of confluence with Peyton Creek | *1,444 |
| Approximately 2,900 feet upstream of confluence with Peyton Creek | *1,479 |
| **Maps are available for inspection at the Inspection Engineering Division, 113 East Beverley, Staunton, Virginia.** | |
| **WISCONSIN** | |
| **Sheboygan County (unincorporated areas) (FEMA Docket No. 6925)** | |
| *Fishermen's Creek:* | |
| At confluence with Black River | *584 |
| About 870 feet upstream of U.S. Highway 141 | *636 |
| **Maps available for inspection at the Planning Department, 615 North Sixth Street, Sheboygan, Wisconsin.** | |

Issued: July 20, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-16986 Filed 7-27-88; 8:45 am]

BILLING CODE 6718-03-M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

**[FCC 88-191]**

## Amendment of the Commission's Environmental Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending its rules to implement the Endangered Species Act, the National Historic Preservation Act and the American Indian Religious Freedom Act. The amended rules ensure that Commission actions subject to these Acts are evaluated to determine their effects on the environment, and that the views of appropriate entities are obtained before action is taken.

**EFFECTIVE DATE:** September 26, 1988.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** A. Holly Berland, Federal Communications Commission, Washington, DC 20554, (202) 632-6990.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, adopted June 8, 1988 and released July 19, 1988. The full text of this decision and the rule amendments may be purchased from the Commission's contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Summary of Memorandum Opinion and Order

1. In 1985, the Commission amended its environmental rules to conform to regulations issued by the Council on Environmental Quality (CEQ). CEQ is the agency responsible for overseeing federal efforts to comply with the National Environmental Policy Act.

2. Since 1985, the Commission has reviewed all other federal environmental rules to ensure that the agency is fully meeting its responsibilties. The Commission has determined that a further revision of its environmental rules is necessary to effectuate the Endangered Species Act, the National Historic Preservation Act, and the American Indian Religious Freedom Act. By this Order, the Commission is amending § 1.1307 of its rules to require the preparation of environmental assessments (EAs) for facilities that likely will affect: (1) Endangered and threatened species and their critical habitats; (2) historic engineering sites of national significance listed or eligible for listing in the National Register of Historic Places; and (3) Indian religious sites. Further, when considering actions subject to those Acts, the amended rules require the Commission to initiate consultation procedures with appropriate government authorities, as provided in the Endangered Species Act and the National Historic Preservation Act. Finally, the amended rules require the Commission to solicit the views of Indian tribes when considering actions that may affect Indian religious sites.

3. Because these rule amendments merely implement responsibilities and procedures required by law, the Commission finds for good cause that it is unnecessary to use the prior notice and comment procedures of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B).

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified public information collection requirements. Implementation of the rule amendments will therefore be subject to approval by the Office of Management and Budget.

5. The rule amendments will be effective September 26, 1988, in order to allow the Office of Management and Budget to review the rules pursuant to 44 U.S.C. 3507(b).

Federal Communications Commission.

**H. Walker Feaster, III,**

*Acting Secretary.*

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.1306 is amended by revising paragraphs (b)(1) and (b)(2) and Note 1 as follows:

**§ 1.1306 Actions which are categorically excluded from environmental processing.**

* * * * *

(b) * * *

(1) Involve a site location specified under § 1.1307(a) (1)-(7), or

(2) Involve high intensity lighting under § 1.1307(a)(8).

* * * * *

**Note 1.**—The provisions of § 1.1307(a) do not encompass the mounting of antennas on an existing building or antenna tower, unless the antenna(s) to be mounted is (are) subject to the provisions of § 1.1307(b) and would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b), or unless the provisions of 1.1307(a)(4) are applicable. Otherwise, the use of existing buildings and towers is an environmentally desirable alternative to the construction of new towers and is encouraged.

* * * * *

2. Section 1.1307 is amended by redesignating paragraphs (a)(3), including the note as (a) (4), (5), and (6), as (a) (4), (6), (7), and (8) respectively, revising newly redesignated paragraph (a)(4), adding new paragraphs (a) (3) and (5), and republishing newly redesignated paragraphs (a) (6) through (8) to read as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

* * * * *

(a)(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

**Note.**—The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and Part 226. To ascertain the status of proposed species and habitats, inquiries also may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (*See* 16 U.S.C. 470w(5); 36 CFR 60 and 800.)

**Note.**—The National Register is updated and re-published in the **Federal Register** each year in February. To ascertain whether a proposal affects a historical property of national significance, inquiries also may be made to the appropriate State Historic Preservation Officer, *see* 16 U.S.C. 470a(b); 36 CFR Parts 63 and 800.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in a flood Plain (*See* Executive Order 11988.)

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to

be located in residential neighborhoods, as defined by the applicable zoning law.

* * * * *

3. Section 1.1308 is amended by adding a Note at the end of paragraph (b) and revising paragraphs (c) and (d) as follows:

**§ 1.1308 Consideration of Environmental Assessments (EAs); findings of no significant impact.**

* * * * *

(b) * * *

Note.—With respect to actions specified under §§ 1.1307(a)(3) and 1.1307(a)(4), the Commission shall solicit and consider the comments of the Department of Interior, and the State Historic Preservation Officer and the Advisory Council on Historic Preservation, respectively, in accordance with their established procedures. *See* Interagency Cooperation—Endangered Species Act of 1973, as amended, 50 CFR Part 402; Protection of Historic and Cultural Properties, 36 CFR Part 800. In addition, when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe. *See* § 1.1307(a)(5).

(c) If the Bureau or the Commission determines, based on an independent review of the EA and any applicable mandatory consultation requirements imposed upon federal agencies (*see* note above), that the proposal will have a significant environmental impact upon the quality of the human environment, it will so inform the applicant. The applicant will then have an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems. *See* § 1.1309. If the environmental problem is not eliminated, the Bureau will publish in the **Federal Register** a Notice of Intent (*see* § 1.1314) that EISs will be prepared (*see* §§ 1.1315 and 1.1317), or

(d) If the Bureau or Commission determines, based on an independent review of the EA, and any mandatory consultation requirements imposed upon federal agencies (*see* the note to paragraph (b) of this section), that the proposal would not have a significant impact, it will make a finding of no significant impact. Thereafter, the application will be processed without further documentation of environmental effect. Pursuant to CEQ regulations, *see* 40 CFR 1501.4 and 1501.6, the applicant must provide the community notice of the Commission's finding of no significant impact.

4. Section 1.1311 is amended by adding paragraph (a)(6) as follows:

**§ 1.1311 Environmental information to be included in the environmental assessment.**

* * * * *

(a)(6) If endangered or threatened species or their critical habitats may be affected, the applicant's analysis must utilize the best scientific and commercial data available, *see* 50 CFR 402.14(c).

* * * * *

**§ 1.1314 [Amended]**

5. Section 1.1314 is amended to remove the note following paragraph (d).

[FR Doc. 88-16894 Filed 7-27-88; 8:45 am]

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**47 CFR Part 69**

**[CC Dockets Nos. 78-72, 80-286; FCC 88-228]**

## Access Charges

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Commission affirmed the fundamental decisions reached in the Commission's Order (MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, 2 FCC Rcd 2953 (1987)) in this proceeding, and denied most of the petitions seeking reconsideration of that Order. The Commission did, however, adopt several limited modifications to its Part 69 Rules in response to technical concerns raised by petitioners. The Commission also initiated a pleading cycle inviting comments on an appropriate schedule for terminating bifurcated carrier common line charges (§ 69.207).

**EFFECTIVE DATES:** August 29, 1988, except for §§ 69.116 and 69.117 which are effective August 1, 1988.

Comment dates: Comments on § 69.207 are due on or before August 29, 1988 and reply comments are due on or before September 28, 1988.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Diane Cornell, Policy and Program Planning Division, Common Carrier Bureau (202) 632-9342.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration and Order Inviting Comments (FCC 88-228), adopted July 8, 1988, and released July 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC, 20037.

### Summary of Memorandum Opinion and Order on Reconsideration

1. The Memorandum Opinion and Order on Reconsideration, adopted July 8, 1988, affirmed the fundamental decisions reached in the Commission's *Order* (MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of Joint Board, *Report and Order*, 2 FCC Rcd 2953 (1987)) in this proceeding, and denied most petitions seeking reconsideration of that *Order*. The Commission did, however, adopt several limited modifications to its Part 69 Rules in response to technical concerns raised by petitioners.

2. In its May 1987 *Order*, the Commission had adopted a comprehensive set of measures concerning the implementation of subscriber line charges (SLCs), the federal lifeline assistance programs, high cost assistance, and common line pooling that had been recommended by the Joint Board. On reconsideration, the Commission affirmed its fundamental decisions reached on the level and timing of SLC increases, the allocation of the decreases in the carrier common line (CCL) charge, and the structure of the non-traffic sensitive (NTS) pool, thus denying most reconsideration requests.

3. The Joint Board Recommended Decision had called for a phasing-in of the subscriber line charge increases in small increments over a period of time and implementation of a monitoring program that is specifically designed to detect any future changes in penetration levels for telephone service. The Commission adopted these recommendations in its May 1987 *Order*. In its reconsideration order, the Commission noted that the issues and concerns raised by the petitioners that challenged the scheduled increases were fully examined during the course of the extensive Joint Board and FCC proceedings. The Commission pointed out that petitioners failed to provide new arguments or information that warranted modifying carefully considered decisions of the Joint Board and the FCC.

4. The Commission declined to adopt MCI's proposal that the decrease in the CCL charges resulting from the July 1987 incremental SLC increase be applied equally to originating and terminating

minutes. The Commission noted, however, that the system of bifurcated carrier common line charges was intended as an interim measure (*See* 47 CFR 69.207 (1987)), and it requested comment on how long bifurcated charges should be continued prior to returning to equalized charges. The Commission extended the date for expiration of the system of bifurcated rates beyond November 30, 1988 (to March 31, 1989), to avoid unnecessary rate churn and to allow time to receive and analyze comment on an approprite schedule for terminating bifurcated CCL charges. Comments on this issue are to be filed with the Commission no later than August 25, 1988; Replies are due no later than September 23, 1988.

5. The Commission denied Contel's request to allow holding company LECs to withdraw from the common line pool on a company-by-company or study area-by-study area basis. The Commission noted that these issues were addressed in the underlying proceeding, and explained why it had decided not to change its approach on reconsideration. The Commission reaffirmed its conclusion that the relief Contel suggested could eliminate or reduce the potential benefits of the Joint Board's pooling modifications since a holding company's high-cost companies or study areas would likely stay in the pool, while the lower-cost companies or areas would opt to leave it.

6. The Commission did, however, make limited modifications to its rules in response to technical concerns raised by petitioners. The FCC modified rule language to clarify the definition of Level 1 companies as those that own or control more than 300,000 access lines and have more than $150 million in revenues. The Commission also adopted the National Exchange Carrier Association (NECA) proposal that a "resizing" mechanism be incorporated into the rules that would make the SLC waiver lifeline assistance funding mechanism more efficient and accurate, and would avoid any adverse impact on either exchange carriers or IXCs caused by an over- or under-projection of the revenue requirement.

7. In addition, the FCC adopted NECA's proposal to change the annual date for the submission of presubscribed lines data from January 2 to December 30 of each year to conform to the filing date for optional updates of Universal Service Fund data. Finally, the Commission set August 1, 1988, as the date for the initial submission of the presubscribed lines data. Because the new billing system will not be implemented until April 1, 1989, an August 1, 1988, commencement date for the submission of presubscribed lines data will afford NECA adequate time to develop an efficient billing system.

## Ordering Clauses

8. It is hereby ordered, that pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 403, 405, and 410 and 5 U.S.C. 553, the petitions for reconsideration filed in this proceeding are denied, except as provided herein.

9. It is further ordered, that the rule modifications contained in this rule are adopted, effective August 25, 1988, unless otherwise indicated.

10. It is further ordered, that the Petition for Rule Making filed by the Utility Consumer Counselor of Indiana on June 18, 1987, is denied.

11. It is further ordered, pursuant to the procedures set forth in § 1.415 of our Rules, that all interested parties may filed comments no later than August 26, 1988, relating to how long we should continue bifurcated carrier line charges prior to returning to equalized charges. Replies are to be filed no later than September 23, 1988. In accordance with the provisions of Section 1.419 of our Rules, an original and five copies of all statements, briefs, comments, or reply comments shall be filed with the Secretary, Federal Communications Commission 1919 M Street, NW., Washington, DC 20554. All such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC offices.

## List of Subjects in 47 CFR Part 69

Common carrier, Access charges, Common carrier, Resale, Wide Area Telephone Service (WATS)

Part 69 of Title 47 of the Code of the Federal Regulations is amended as follows:

## PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 is amended by revising paragraphs (hh), (ii), (jj), and (kk) to read as follows:

**§ 69.2 Definitions.**

* * * * *

(hh) *Level I Contributors*—Telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a lower than average Common Line revenue requirement per minute of use in 1988 and thus were net contributors (*i.e.*, had a negative net balance) to the association Common Line pool in 1988.

(ii) *Level I Receivers*—Telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a higher than average Common Line revenue requirement per minute of use in 1988 and thus were net receivers (*i.e.*, had a positive net balance) from the association Common Line Pool in 1988.

(jj) *Level II Contributors*—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines or less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a lower than average Common Line revenue requirement per minute of use in 1988 and thus was a net contributor (*i.e*, had a negative net balance) to the association Common Line pool in 1988.

(kk) *Level II Receivers*—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines or less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective Janaury 1, 1990, and that had a higher than average Common Line revenue requirement per minute of use in 1988 and thus was a net receiver (*i.e.*, had a positive net balance) from the association Common Line pool in 1988.

* * * * *

3. Section 69.104 is amended by revising paragraph (l) to read as follows:

**§ 69.104 End user common line.**

* * * * *

(l) In connection with the filing of access tariffs pursuant to § 69.3(a), telephone companies shall calculate for the association their projected revenue requirements attributable to the operation of § 69.104 (j) through (k). The projected amount will be adjusted by the association to reflect the actual lifeline assistance benefits paid in the previous period. If the actual benefits exceeded the projected amount for that period, the differential will be added to the projection for the ensuing period. If the actual benefits were less than the projected amount for that period, the differential will be subtracted from the projection for the ensuing period. The association shall so adjust amounts to the Lifeline Assistance revenue requirement, bill and collect such amounts from interexchange carriers pursuant to § 69.117 and distribute the

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funds to qualifying telephone companies pursuant to § 69.603(d).

* * * * *

4. Section 69.116 is revised to read as follows:

**§ 69.116 Universal service fund.**

Effective August 1, 1988:

(a) A charge that is expressed in dollars and cents per line per month shall be assessed beginning on April 1, 1989, upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least: (1) One percent of the total common lines presubscribed to interexchange carriers in all study areas; or (2) five percent of the presubscribed lines in any study area and a minimum of one thousand presubscribed lines in that study area.

(b) The charge shall be computed by the association on a semi-annual basis by dividing one-twelfth of the projected annual Universal Service Fund revenue requirement by the total number of common lines presubscribed to interexchange carriers defined in § 69.116(a). Beginning on April 1, 1989, the association shall bill and collect the charge, and disburse associated revenue, on a monthly basis pursuant to § 69.603(c).

(c) Telephone companies shall provide the association the data necessary to compute the charge. These data shall include the number of presubscribed common lines in each study area and the number of those lines associated with each interexchange carrier serving that study area. In a study area served by a single interexchange carrier, all common lines shall be considered as presubscribed to that interexchange carrier. Information concerning presubscribed common lines shall be filed with the association on June 30 and December 30 of each year, except for the first such submission, containing presubscribed common line data calculated as of December 31, 1987, which shall be filed on August 1, 1988. Presubscribed common line data filed on June 30 shall be calculated as of December 31 of the preceding year, and presubscribed common line data filed on December 30 shall be calculated as of June 30 of the same year.

5. Section 69.117 is revised to read as follows:

**§ 69.117 Lifeline assistance.**

Effective August 1, 1988:

(a) A charge that is expressed in dollars and cents per line per month shall be assessed beginning on April 1, 1989, upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least: (1) One percent of the total common lines presubscribed to interexchange carriers in all study areas; or (2) five percent of the presubscribed lines in any study area and a minimum of one thousand presubscribed lines in that study area.

(b) The charge shall be computed by the association on a semi-annual basis by dividing the sum of one-twelfth of the projected annual Lifeline Assistance revenue requirement and one-twelfth of the projected annual revenue requirement calculated by all telephone companies pursuant to § 69.104(1) by the number of common lines presubscribed to interexchange carriers defined in § 69.117(a). Beginning on April 1, 1989, the association shall bill and collect the charge, and disburse associated revenue, on a monthly basis pursuant to § 69.603(d).

(c) Telephone companies shall provide to the association the data necessary to compute the charge. These data shall include the number of presubscribed common lines in each study area and the number of those lines associated with each interexchange carrier serving that study area. In a study area served by a single interexchange carrier, all common lines shall be considered as presubscribed to that interexchange carrier. Information concerning presubscribed common lines shall be filed with the association on June 30 and December 30 of each year, except for the first such submission, containing presubscribed common line data calculated as of December 31, 1987, which shall be filed on August 1, 1988. Presubscribed common line data filed on June 30 shall be calculated as of December 31 of the preceding year, and presubscribed common line data filed on December 30 shall be calculated as of June 30 of the same year.

6. Section 69.207 is revised to read as follows:

**§ 69.207 Interim Carrier Common Line Charges.**

Notwithstanding §§ 69.203 and 69.205, the transitional premium charges for the Carrier Common Line element shall be computed in accordance with this section during the period commencing June 1, 1986, and concluding March 31, 1989. For purposes of this section, the term "open end" of a call refers to the origination or termination of a call that utilizes exchange carrier common line plant. (A call can have no, one, or two open ends). The transitional premium charges for the Carrier Common Line element shall be expressed in dollars and cents per access minute. The charge shall be 4.33 cents per premium minute for: All terminating premium minutes on calls with two open ends (*e.g.*, an MTS or OCC MTS-type call); and all open end premium minutes on calls with one open end (*e.g.*, a WATS, OCC WATS-type or FX call). For purposes of this section, the term "originating-II minutes" refers to originating minutes on calls with two open ends. The charge on premium originating-II minutes shall be computed by subtracting the sum of the projected revenues generated from the 4.33 cents per minute premium charge described above and the corresponding non-premium charge, from the carrier common line revenue requirement and dividing the remainder by the sum of the projected premium originating-II minutes and a number equal to .45 multiplied by the projected non-premium originating-II minutes. For purposes of this section, if the calculations described above result in a negative per minute charge on originating-II minutes, such charge shall be adjusted to equal .00 cents, and the charge of 4.33 cents on terminating minutes shall be lowered accordingly.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-16892 Filed 7-27-88; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 48 CFR Ch. 12

**[Docket No. 45256; Amdt. 3-2]**

### Acquisition Regulations

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, the Department's Transportation Acquisition Regulation (TAR) which was republished as an interim final rule in Part II of the **Federal Register** on November 19, 1987 (52 FR 44522). The interim final rule allowed for 60 days within which interested parties could submit comments on the interim final rule to the Department of Transportation. No formal comments were received; however, minor corrections and changes to the interim final rule are necessary as a result of changes in internal Departmental procedures and changes to the Federa' Acquisition Regulation (FAR) since publication of the interim final rule.

**DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Roger Martino at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366–4271.

**SUPPLEMENTARY INFORMATION:** The interim final rule amending 48 CFR Chapter 12, which was published at 52 FR 44522 on November 19, 1987, is adopted as a final rule with the minor changes indicated below. The interim final rule indicated that the TAR was updated and current through FAR change 84–30. Recently, FAR changes 84–31 through 84–33 were issued which included coverage on ratification of unauthorized commitments and Prompt Payment Act requirements. The new FAR coverage eliminated the need for TAR coverage, so we are deleting the TAR coverage on these subjects. This rule includes these changes and several minor editorial corrections, and several changes to internal administrative procedures and policy to preclude redundancy with the FAR and the Competition in Contracting Act. The TAR is now up to date and current through Federal Acquisition Circular 84–33. This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

**Executive Order 12291**

Under Bulletin No. 85–7, the Director of the Office of Management and Budget (OMB) withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This interim final rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

**Regulatory Flexibility Act**

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule modifies internal Departmental procurement procedures. To the extent changes are made to current regulations, they are designed to implement the required changes in the FAR.

**Paperwork Reduction Act**

The collection of information requirements contained in this interim final rule were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and were approved February 23, 1987. The OMB approval number for the TAR is 2105–0517.

**National Environmental Policy Act**

DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.* 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

**Administrative Procedure Act**

Section 553 of the Administration Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP letter 83–2, OFPP states than an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something that has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As described in the preamble to the interim final rule, changes made to the DOT Transportation Acquisition Regulation are principally in the areas of format and internal procedures. The internal procedural changes are necessary primarily to implement new policies established by the Competition in Contracting Act of 1984 and by the FAR amendments.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act. Although this is the general policy of the Department, we determined in this instance that it was unnecessary to delay the effectiveness of this largely procedural rule pending the receipt of public comments. Nevertheless, because of the possibility of public interest in portions of the rule, the Department published the TAR changes as an interim final rule and provided for a public comment period of 60 days. The Departmental Docket Clerk did not receive any comments within the allotted period for submission of comments.

**List of Subjects in 49 CFR Chapter 12**

Government procurement.

This rule is issued under delegated authority under 49 CFR Part 1.59(q).

Dated: July 21, 1988.

**Jon H. Seymour,**

*Assistant Secretary for Administration.*

Accordingly, the Department of Transportation amends 48 CFR Chapter 12 as follows:

1. The authority for 48 CFR Chapter 12 continues to read as follows:

**Authority:** Sec. 205(c) Federal Property and Administrative Services Act, as amended 40 U.S.C. 486(c); 41 U.S.C. 255 et seq., 10 U.S.C. 2301 et seq., 41 U.S.C. 403 et seq., as amended by Pub. L. 98–369; 48 CFR 1.301; 49 CFR 1.49.

## PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

**1201.403 [Amended]**

2. Section 1201.403 is amended by revising the first sentence to read: "Requests for individual deviations from the FAR and the TAR shall be submitted by the head of the contracting activity (HCA) to the agency head for approval; however, for the Office of the Secretary, the request shall be submitted by the HCA to the Senior Procurement Executive for approval. All such requests shall be coordinated with legal counsel."

**1201.602 [Amended]**

3. Section 1201.602 is amended by revising the title of the section from "Contracting officer" to read "Contracting officers."

**1201.670 [Removed]**

4. Section 1201.670 is removed in its entirety.

## PART 1202—DEFINITIONS OF WORDS AND TERMS

5. In section 1202.170 paragraph (d) is revised to read as follows:

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**1202.170 Definitions**

* * * * *

(d) "Head of the contracting activity" (HCA) means the following:

*In the Office of the Secretary:*

The Chief, Procurement Division, Washington, DC
In the Federal Aviation Administration
The Director, Acquisition and Materiel Service, Washington, DC
The Director, Alaskan Region, Anchorage, AL
The Director, Western Pacific Region, Los Angeles, CA
The Director, Southern Region, Atlanta, GA
The Director, Northwest Mountain Region, Seattle, WA
The Director, Central Region, Kansas City, MO
The Director, Eastern Region, Jamaica, NY
The Director, Southwest Region, Fort Worth, TX
The Director, Aeronautical Center, Oklahoma City, OK
The Director, FAA Technical Center, Atlantic City, NJ
The Director, New England Region, Burlington, MA
The Director, Great Lakes Region, Des Plaines, IL

*In the Coast Guard*

Chief, Contract Support Division, Commandant (G–ACS), Washington, DC, for Headquarters and Resident Inspection Offices.
Chief, Procurement Management Division, Commandant (G–FPM), Washington, DC, for other designated Headquarters Units and Commandant (G–CAS–4).
Commander, First Coast Guard District, Boston, MA
Commander, Second Coast Guard District, St. Louis, MO
Commander, Fifth Coast Guard District, Portsmouth, VA
Commander, Seventh Coast Guard District, Miami, FL
Commander, Eighth Coast Guard District, New Orleans, LA
Commander, Ninth Coast Guard District, Cleveland, OH
Commander, Eleventh Coast Guard District, Long Beach, CA
Commander, Thirteenth Coast Guard District, Seattle, WA
Commander, Fourteenth Coast Guard District, Honolulu, HI
Commander, Seventeenth Coast Guard District, Juneau, AL
Superintendent, U.S. Coast Guard Academy, New London, CT
Commander, Maintenance and Logistics Command, Atlantic
Commander, Maintenance and Logistics Command, Pacific

*In the Federal Highway Administration*

Associate Administrator for Administration, Washington, DC
Federal Lands Highway Program Administrator, Direct Federal Construction Program, Washington, DC

*In the Federal Railroad Administration*

Director, Office of Procurement, Washington, DC

*In the National Highway Traffic Safety Administration*

Director, Office of Contracts and Procurement, Washington, DC

*In the Urban Mass Transportation Administration*

Director, Office of Procurement and Third Party Contract Review, Washington, DC

*In the Research and Special Programs Administration*

Chief, Acquisition Division, Transportation Systems Center, Cambridge, MA

*In the Maritime Administration*

Associate Administrator for Administration, Washington, DC
Central Region Director, New Orleans, LA
Western Region Director, San Francisco, CA
Assistant Superintendent for Administration, U.S. Merchant Marine Academy

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## PART 1204—ADMINISTRATIVE MATTERS

**1204.602 [Amended]**

6. Section 1204.602 is amended by revising the third sentence of paragraph (c) to read: "Those administrations which use automation for reporting the information normally included on the DOTF.4220.11, shall ensure that this information is readily available in the contract office."

7. Section 1204.804–5 is revised to read as follows:

**1204.804–5 Detailed procedures for closing out contract files.**

(a) In addition to those procedures set forth in FAR 4.804–5, the contracting officer shall, before final payment is made under a cost-reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred shall be obtained in the form of a final audit certification, unless the contract is below $1,000,000, in which case the contracting officer may choose to waive the audit certification requirement (with respect to both direct costs and indirect costs) provided that she or he determines in writing that the use of quick-closeout procedures is appropriate in accordance with paragraph (b) of this section. Similar verification of actual costs must be made for fixed-price contracts when cost incentives or price redeterminations are involved.

(b) DOT contracting officers may utilize quick-closeout procedures on cost-type contracts not exceeding $1,000,000 provided the stipulations at FAR 42.708(a) (1) through (3) are met and:

(1) All terms and conditions of the contract have been met satisfactorily;

(2) Invoiced costs are consistent with original cost estimates;

(3) There is no suspected fraud or wrongdoing; and

(4) The Contracting Officer determines in writing, that the use of this procedure will be beneficial to the Government.

## PART 1205—PUBLICIZING CONTRACT ACTIONS

8. Subpart 1205.3 is added to read as follows:

### Subpart 1205.3—Synopses of Contract Awards

**1205.303 Announcement of contract awards.**

Contracts and modifications valued at $200,000, or more shall not be executed, distributed, nor any information released to any source outside of DOT that the contract has been approved until the Director, Office of Public Information, has advised the contract activity that the contract can be released. The contracting officer shall prepare and submit a public and Congressional notification form, entitled "Proposed Award of Contract or Grant," for the purpose of obtaining this release.

9. Section 1205.402–70 is revised to read:

**1205.402–70 Furnishing additional contract information to the general public.**

(a) In addition to publicizing proposed contracts and contract awards in the Commerce Business Daily, it is DOT policy to furnish the general public, upon request, the following information on proposed contracts and contract awards.

(1) The names of firms invited to submit bids or proposals;

(2) The names of firms which attended pre-proposal briefing conferences when held;

(3) After the award of contracts, names of firms which submitted proposals; and

(4) After the date established for receipt of bids, names of firms which submitted bids.

(b) Exceptions to this policy will be permitted only when the head of the contracting activity determines that the disclosure of such information would be prejudicial to the interests of DOT.

## PART 1206—COMPETITION REQUIREMENTS

### 1206.102 [Amended]

10. Section 1206.102 is amended by adding the following sentence at the end of paragraph (b): "See FAR 14.404–1 when contemplating cancellation of sealed bid solicitations after bid opening."

### 1206.302–1 [Amended]

11. Section 1206.302–1 is amended by revising the first sentence to read: "Unsolicited proposals with an estimated value in excess of $25,000, may be considered for award under FAR 6.302–1 only after they are reviewed and approved by the Senior Competition Advocate."

12. In section 1206.304, paragraphs (a)(1)(ii), (b) and (d) are revised to read as follows:

### 1206.304 Approval of the justification.

(a) * * *

(1) * * *

(ii) *For the Coast Guard:* The individuals cited at 1202.170(d) under the definition of "Head of Contracting Activity," excluding the District Commanders. The justifications for the units listed below shall be approved by the Commanding Officer or the Commander (redelegable to the individual of that unit with comptroller authority):

(A) Commanding Officer, U.S. Coast Guard Aircraft Repair and Supply Center, Elizabeth City, North Carolina.

(B) Commanding Officer, U.S. Coast Guard Supply Center, Brooklyn, New York.

(C) Commanding Officer, U.S. Coast Guard Training Center, Cape May, New Jersey.

(D) Commanding Officer, U.S. Coast Guard Training Center, Petaluma, California.

(E) Commanding Officer, U.S. Coast Guard Yard, Baltimore, Maryland.

(F) Commanding Officer, Electronics Engineering Center, Wildwood, New Jersey.

(G) Commander, Coast Guard Activities, Europe, London.

(H) Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, Virginia.

(I) [Reserved]

(J) [Reserved]

(K) Commanding Officer, U.S. Coast Guard Pay and Personnel Center, Topeka, Kansas.

(L) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Middletown, Rhode Island.

(M) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Bath, Maine.

(N) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Lockport, Louisiana.

(O) Commanding Officer, U.S. Coast Guard Resident Inspection Office, Seattle, Washington.

(P) Commanding Officer, U.S. Coast Guard, Aircraft Program Office, Grand Prairie, Texas.

(Q) Commanding Officer, U.S. Coast Guard Air Station, Washington National Airport, Washington, D.C.

(R) Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, Alabama.

(S) Commanding Officer, U.S. Coast Guard Station, Alexandria, Virginia.

(T) Commanding Officer, U.S. Coast Guard COMDAC Support Facility, Portsmouth, Virginia.

(U) Commanding Officer, U.S. Coast Guard Central Regional Recruiting Center, Hazelwood, Missouri.

(V) Commanding Officer, U.S. Coast Guard Eastern Regional Recruiting Center, Norfolk, Virginia.

(W) Commanding Officer, U.S. Coast Guard Western Regional Recruiting Center, Seattle, Washington.

* * * * *

(b) The approval authorities cited in 1206.304(a) may not be delegated. With respect to the approval authorities cited in 1206.304(a), individuals acting in the place of these approving officials must also meet the qualification requirements stipulated by the Competition in Contracting Act of 1984 and also, for the Coast Guard, the qualification requirements stipulated by Title 10 of the U.S. Code.

* * * * *

(d) In addition to the approvals stipulated in 1206.304(a), class justifications for other than full and open competition for requirements with an estimated value exceeding $25,000 must be reviewed and approved by the Senior Competition Advocate. A copy of the CBD synopsis, or a copy of the synopsis waiver, should be attached to the justification.

* * * * *

## PART 1207—ACQUISITION PLANNING

13. Paragraph (a) of section 1207.305, is revised to read as follows:

### 1207.305 Solicitation provision and contract clause.

(a)(1) The contracting officer shall insert the clause at 1252.207–70, Implementation of Right of First Refusal of Employment, in solicitations and contracts which include FAR clause 52.207–3, Right of First Refusal of Employment, and in contracts in which required contractor performance causes Federal employees to be adversely affected. This clause is required in solicitations and contracts as stipulated herein, until that time when the FAR specifies contractual provisions for the implementation of right of first refusal.

(2) At their own discretion, contracting officers may use the clause with its alternate in lieu of the basic clause.

* * * * *

## PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

14. Section 1213.203–1 is revised to read as follows:

### 1213.203–1 General.

Optional Form 347, Order for Supplies or Services, shall be used for BPAs unless an administration equivalent form has been authorized for use by the HCA.

### 1213.505–2 [Amended]

15. Section 1213.505–2 is amended by revising the first sentence to read: "Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an administration equivalent form has been authorized for use by the HCA."

## PART 1214—SEALED BIDDING

### 1214.406–3 [Amended]

16. Section 1214.406–3 is amended by inserting the word "senior" before the words "procurement executive" in the last sentence.

### 1214.470 [Amended]

17. Section 1214.470 is amended by revising the last sentence to read: "The revalidation must be accomplished immediately prior to award."

### Subpart 1214.5 [Removed]

18. Subpart 1214.5 is removed in its entirety.

## PART 1215—CONTRACTING BY NEGOTIATION

### 1215.612–70 [Removed]

19. Section 1215.612–70 is removed in its entirety.

20. Section 1215.807–70 is amended by revising paragraph (e) to read as follows:

### 1215.807–70 Content of prenegotiation memo.

* * * * *

(e) *Negotiation approval sought.* Indicate the negotiation approval sought.

**1215.905-70 [Amended]**

21. In section 1215.905-70, paragraphs (b)(5) (i) and (ii) are amended in the tables by revising the second entries reading "Cost-plus-fixed-fee" to read "Cost-plus-incentive-fee."

**1215.7000 [Amended]**

22. Section 1215.7000 is amended by revising the last sentence to read: "The revalidation should be accomplished prior to requesting best and final offers (BAFO's), or immediately prior to award when BAFO's are not requested."

## PART 1216—TYPES OF CONTRACTS

**1216.170 [Removed]**

23. Section 1216.170 is removed in its entirety.

**Subpart 1216.70 [Removed]**

24. Subpart 1216.70 is removed in its entirety.

## PART 1217—SPECIAL CONTRACTING METHODS

**1217.7001 [Amended]**

25. Section 1217.7001 is amended by removing the words "formally advertised" in the first sentence and replacing them with the words "sealed bid".

## PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

26. In the Table of Contents at 1219.201-70, the word "Officer" is changed to read "Office".

**1219.201 [Amended]**

27. In the second sentence of section 1219.201, the term "supporting head of the contracting activity" is replaced with "head of the contracting activity".

## PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

**1222.7002 [Amended]**

28. Paragraph (a) of section 1222.7002 is amended by adding the words "as amended" after the words "Service Contract Act of 1965," at both places where these words appear.

29. In section 1222.7002, paragraph (b) is revised to read as follows:

**1222.7002 Contract clauses.**

* * * * *

(b) Clauses for contracts over $2,500. The contracting officer shall insert the full text of the following clauses in solicitations and contracts when the contract is subject to the Service Contract Act of 1965, as amended:

(1) The clause at 1252.222-75, Service Contract Act of 1965, as amended, when the contract is (i) for over $2,500 or (ii) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period.

(2) The clause at 1252.222-77, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi-year and Option Contracts), when the contract is expected to be a fixed-price service contract and is a multi-year contract or is a fixed-price services contract with options to renew.

(3) The clause at 1252.222-78, Fair Labor Standards Act and Service Contract Act-Price Adjustment, when the contract is expected to be a fixed-price service contract and is not a multi-year contract and does not contain options to renew.

(4) The clause at 1252.222-79, Service Contract Act Requirements as to Vacation Pay.

## PART 1223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

**1223.7001 [Amended]**

30. In section 1223.7001, paragraph (b) is amended by changing the title of FAR clause 1252.223-72, from "Protection of Human Subjects Compliance" to read "Protection of Human Subjects".

## PART 1227—PATENTS, DATA, AND COPYRIGHTS

**1227.409 [Amended]**

31. Section 1227.409 is amended by changing the reference to "FAR 27.401" in paragraphs (a), (b), and (c), to read "FAR 27.402".

## PART 1228—BONDS AND INSURANCE

32. Part 1228 is amended by changing the number of section "1228.306-70-1", in the table of contents, to read "1228.306-7001".

**1228.306-70-1 [Amended]**

33. Section "1228.306-70-1 Clause", is correctly numbered "1228.306-7001".

## PART 1229—TAXES

34. Section 1229.7002 is revised to read:

**1229.7002 Responsibilities.**

(a) *Procurement Office.* Prior to award of small purchases, contracts, and lease agreements, the procurement office is responsible for: (1) Identifying the recipients subject to reporting, (2) obtaining the appropriate informational data i.e. the taxpayer identification number or social security number, and (3) providing this data to the accounting office.

(b) *Accounting Office.* The accounting office in each operating administration that processes the payments is responsible for preparing the related IRS information returns.

**1229.7003 [Removed]**

35. Section 1229.7003 is removed in its entirety.

## PART 1232—CONTRACT FINANCING

**Subpart 1232.70 [Removed]**

36. Subpart 1232.70 is removed in its entirety as this subject is now covered by the FAR.

## PART 1233—PROTESTS, DISPUTES, AND APPEALS

**1233.104 [Amended]**

37. Section 1233.104 is amended by changing the word "approval" in the second sentence of paragraph (c), to read "coordination".

## PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

**1236.603 [Amended]**

38. Section 1236.603 is amended by revising the words "Installations and Logistics" in the second sentence to read "Acquisition and Grant Management".

## PART 1242—CONTRACT ADMINISTRATION

39. Section 1242.705-2 is revised to read:

**1242.705-2 Auditor determination procedure.**

DOT contracting officers shall request final indirect cost rate determinations in accordance with DOT Order 8000.7, Audit Services for DOT Contracting Offices.

**1242.708 [Amended]**

40. Section 1242.708 is amended by revising the figure "$500,000" to read "$1,000,000".

41. Part 1243 is added to read as follows:

## PART 1243—CONTRACT MODIFICATIONS

**Authority:** Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c). 48 CFR 1.301; 49 CFR 1.59)

### Subpart 1243.70—Scope of Work

**1243.7001 Policy.**

The contracting officer shall review all delivery orders and contract modifications which order, add, define, or change work to be performed under an existing contract. For all such delivery orders and contract modifications, the contracting officer shall ensure that the items or services being ordered are within the scope of work set forth in the basic contract.

## PART 1245—GOVERNMENT PROPERTY

42 Section 1245.101 is revised to read as follows:

**1245.101 Definitions.**

"Capitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit cost of $5,000 or more.

"Noncapitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $50 or more but less than $5,000, and other items of personal property regardless of cost when so designated by the Government.

43. Section 1245.505–70 is revised to read as follows:

**1245.505–70 Solicitation provisions and contract clauses.**

Contracting officers shall insert the clause at 1252.245–70, Government Property Reports, in all solicitations and contracts which include either FAR clause 52.245–2, Government Property (Fixed Price Contracts) or 52.245–5, Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts).

## PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

44. Section 1252.207–70 is revised to read:

**1252.207–70 Implementation of Right of First Refusal of Employment.**

As prescribed in 1207.305, and for any contract when contractor performance causes Federal employees in the Government commercial activity to be adversely affected, insert the following clause in solicitations and contracts:

**Implementation of Right of First Refusal of Employment (Mar 1988)**

(a) *Policy.* The contractor shall give, and shall require each subcontractor to give, adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified. The contractor shall require the substance of this clause to be included in each subcontract at every tier under this contract, other than subcontracts for raw materials, commercial stock items and subcontracts that do not exceed $25,000.

(b) *Definitions:* (1) An "adversely affected Federal employee" is any Federal employee who is assigned to the Government commercial activity, who is a competing employee under Office of Personnel Management reduction-in-force regulations, and who is, as a result of the award of this contract, released from his or her competitive level, causing separation reassignment, or downgrade.

(2) The term "contractor" as used in this clause shall include the contractor and each subcontractor at every tier. The term "subcontractor" as used in this clause shall include any person or firm which has a legal obligation to perform all or part of the work under a subcontract at any tier under this contract, other than a subcontract primarily for the supply of raw materials or commercial stock items or a subcontract that does not exceed $25,000.

(3) The "contract award date" is the date the contract is signed by the contracting officer.

(4) "Employment opening" is a position vacancy in the contractor's organization, created by the award of this contract or any subcontract under this contract, which the contractor is unable to fill with personnel on the contractor's active payroll, as of the contract award date, including any position within the local commuting area of the commercial activity which arises in the contractor's organization as a result of the contractor's reassignment of an employee due to the award of this contract or of any subcontract under this contract.

(5) "Working day" means a day other than a Saturday, a Sunday or a day on which either the Government's or the Contractor's office administering this contract is officially closed for business.

(c) *Filling employment openings.* (1) For a period beginning with the contract award date and ending *[the contracting officer shall fill in this blank with a number between 90 and 180]* days after all adversely affected Federal employees have been separated, reassigned, or downgraded as a result of the award of this contract, no person other than an adversely affected Federal employee, shall be offered a job filling an employment opening until each qualified, adversely affected Federal employee identified in the most current list provided to the contractor under paragraph (e) of this clause has been offered the job and either has refused it or has waived their right of first refusal.

(2) For a period beginning with the contract award date and ending *[the contracting officer shall fill in this blank with a number between 90 and 180]* days after all adversely affected Federal employees have been separated, reassigned or downgraded as the result of the award of this contract, the contractor shall, in filling employment openings, communicate written offers of employment to adversely affected Federal employees identified in the most current list provided to the contractor under paragraph (e) of this clause. Such offers shall specify at a minimum the following:

(i) Title, description, and location of employment opening being offered;

(ii) Pay and benefits (i.e., paid leave, holidays, health and life insurance, retirement and any other benefits such as stock options that would contribute to the total monetary value of the position);

(iii) Hours of work and leave schedule; and

(iv) Final date employee may accept job offer.

(3) At a minimum, adversely affected Federal employees shall be given five working days, excluding mail time, after receipt of a job offer to accept or reject the offer. At the contractor's request, the contracting officer, after consulting with the agency personnel office, shall determine whether any adversely affected employee has waived his or her right of first refusal by not responding to a job offer in a timely manner.

(4) If there are no qualified, available, adversely affected Federal employees on the most current list provided by the contracting officer or designee, the contractor may select for an employment opening any person not disqualified by any provision of this contract.

(d) *Contractor reporting requirements.* (1) No later than five (5) working days after the contract award date, the contractor shall provide the contracting officer or designee with the following:

(i) A list of employment openings along with a brief description of duties and qualification requirements for each position; and

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) For the period beginning with the contract award date and ending [*the contracting officer shall fill in this blank with a number between 90 and 180*] days after all adversely affected Federal employees have been separated, reassigned or downgraded as the result of the award of this contract, the contractor shall inform the contracting officer or designee by telephone within one (1) working day after an employment offer is made to an adversely affected Federal employee. The contractor shall also notify the contracting officer or designee by certified mail no later than five (5) working days after each adversely affected Federal employee's acceptance or refusal of the employment offer. This notice shall contain the following information:

(i) The name and social security number of the adversely affected Federal employee offered an employment opening;

(ii) The date the offer was made;

(iii) The salary and benefits contained in the offer (benefits as defined in (c)(2)(ii) above);

(iv) A brief description of the position;

(v) Either the date of acceptance of the offer and the effective date of employment or the date of refusal of the offer; and

(vi) If not previously provided to the contracting officer or designee, the names and social security numbers of any adversely affected Federal employees who applied for, but were not offered, employment in the position, and the reason(s) for not making an offer to each of them.

(3) The contractor shall promptly inform the contracting officer or designee of the name and social security number of each adversely affected Federal employee hired by the contractor and any subcontractor during the [*the contracting officer shall fill in this blank with a number between 90 and 180*]-day period beginning with the day after the date of the separation from Federal employment of the last of the adversely affected Federal employees, and shall also inform the contracting officer or designee of the date or dates of such hiring or hirings.

(4) Upon receipt of the most current list of adversely affected Government employees from the contracting officer or designee pursuant to paragraph (e) of this clause, the contractor promptly shall provide, or cause to be provided, a copy of the list to each subcontractor under this contract.

(e) *Information provided to the contractor.* (1) On the contract award date or thereafter, but no later than ten (10) working days after the date of issuance of the initial reduction-in-force notices to adversely affected Federal employees, the contracting officer or designee shall provide the contractor with a current list of those adversely affected Federal employees who wish to exercise their right of first refusal.

(2) From time-to-time after issuance of the initial list pursuant to paragraph (e)(1) above, and until the last of the adversely affected Federal employees have been separated from Federal employment, the contracting officer or designee shall provide the contractor with an updated version of the current list of adversely affected Federal employees, reflecting those employees who have been recently released from their competitive level and reassigned, downgraded or separated and those who have indicated their unavailability for employment with the contractor.

(3) On the contract award date or as soon thereafter as feasible, the contracting officer or designee shall inform the contractor of the date on which all adversely affected federal employees will be separated, reassigned or downgraded as a result of the award of this contract.

(f) *Record of compliance.* Upon request of the contracting officer or designee, the contractor shall make available for examination by the Government, all pertinent books, documents, papers and records required to determine compliance with this clause.

(g) *Qualifications determination.* An adversely affected Federal employee who held a job in the Government commercial activity, that directly corresponds to or is not significantly different from an employment opening under this contract or a subcontract under this contract, shall be considered qualified to fill that employment opening, unless the contractor adequately documents the employee's lack of qualifications.

(h) *Relation to other statutes, regulations and employment policies.* (1) The provisions of this clause do not modify or alter any of the contractor's responsibilities and obligations under statutes, regulations or other contract clauses concerning non-discrimination, hiring and employment based on veteran's status, race, color, religion, sex, age, handicap or national origin.

(2) The contractor shall be aware of the post-employment restrictions prohibiting certain types of representations before, or communications to, the Federal Government by former employees (18 U.S.C. 207).

(i) *Penalty for noncompliance.* Failure of the Contractor to comply with any provision of this clause may be grounds for termination of the contract for default.

(End of clause)

Alternate I (April 1988). As prescribed in 1207.305, the following paragraph b(4) may be substituted for paragraph b(4) of the Clause:

(4) "Employment opening is a position vacancy in the contractor's organization, created by the award of this contract or any subcontract under this contract, which the contractor is unable to fill with personnel on the contractor's active payroll, as of the date of submission of initial bids or proposals, including any position within the local commuting area of the commerical activity which arises in the contractor's organization as a result of the contractor's reassignment of an employee due to the award of this contract or of any subcontract under this contract.

**1252.215-72 [Amended]**

45. Section 1252.215-72 is amended by revising the title of the first column in the table under Section 1, Direct Material, to read "Direct Material" instead of "Directed Material."

**1252.222-70 [Amended]**

46. In section 1252.222-70 is amended by adding the words "as amended" after the words "Service Contract Act of 1965", in the last sentence of the clause.

**1252.222-75 [Amended]**

47. In section 1252.222-75, paragraph (m) is amended by changing the word "be" in the second sentence to read "is".

48. In section 1252.222-75, paragraph (o) is amended as follows:

(a) The second heading of the chart in this paragraph is changed from "Monetary wage-fringe benefits" to read "Monetary wage".

(b) The heading of the subparagraph titled "Other Fringe Benefits" is changed to read "Fringe Benefits".

(c) The paragraph on "Annual Leave" under "Other Fringe Benefits" is revised to read: Annual Leave: Two hours per week for service of less than three years; three hours per week for service of three years but less than 15 years; and 4 hours per week for service of 15 years or more.

**1252.245-70 [Amended]**

49. Section 1252.245-70 is amended as follows:

(a) A date is added to the title of the clause, which changes the title to read: "Government Property Reports (Nov 1987)"

(b) Paragraph (b)(2) is revised to read: "(b)(2) Real property, as defined at FAR 45.101."

## PART 1253—FORMS

50. Part 1253 is amended as follows:

In the Table of Contents, "1253.246-70, Material inspection and receiving (FAA)" is revised to read "1253.246-70, Inspection report of material and/or services (FAA FORM 256)".

51. In section 1253.215-70 paragraph (a) is revised to read as follows:

**1253.215-70 Price negotiation (DOT F.4220.21; DOT F.4220.32; and DD 1861).**

(a) ADP equipment and services. As prescribed in 1215.407(c), the form DOT F.4220.21 may be included in RFPs and required to be completed by offerors in addition to SF 1411 and other supporting documents.

* * * * *

**1253.222-70 [Amended]**

52. The title of section 1253.222-70 is revised to read: "1253.222-70, Labor standards interview (DD Form 1567)".

**1253.227 [Redesignated as 1253.227-70]**

53. Section 1253.227 is redesignated as section 1253.227-70, and a new section 1253.227 is added to read: "1253.227 Patents, data and copyrights."

**1252.246-70 [Amended]**

54. The title of section 1253.246-70 is revised to read: "1253.246-70, Inspection report of materials and/or services."

[FR Doc. 88-16963 Filed 7-27-88; 8:45 am]
BILLING CODE 4910-62-M

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 35, 42, 45, 47, 52, and 53

## Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Correction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments and final rule; correction.

**SUMMARY:** This document corrects an effective date in a final rule in Federal Acquisition Circular (FAC) 84-38

published in the **Federal Register** on Wednesday, July 20, 1988 (53 FR 27460).

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 16289 beginning on page 27460 make the following correction in the dates caption on page 27460, first column, third paragraph, the effective date reading "Items XIII and IX" should read "Items VIII and IX"; and on page 27461, second column, third complete paragraph, the effective date reading "Items XIII and IX" should read "Items VIII and IX".

**List of Subjects in 48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 35, 42, 45, 47, 52, and 53**

Government procurement.

Dated: July 22, 1988

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

[FR Doc. 88–16865 Filed 7–27–88; 8:45 am]

BILLING CODE 6820–61–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 674

**[Docket No. 80630–8130]**

### High Seas Salmon Fishery Off Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** NOAA issues this notice, closing for 10 days the U.S. exclusive economic zone (EEZ) off Southeastern Alaska to commercial fishing for all salmon species. This action is necessary to stop the harvest of coho salmon by the troll fishery and is intended to ensure that the coho stocks are not overharvested.

**DATE:** This notice is effective at 0001 hours Alaska Daylight Time (ADT), Tuesday, July 26, 1988, and will expire at 0001 hours ADT, Friday, August 5, 1988. Public comments are invited until August 26, 1988.

**ADDRESS:** Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours ADT, Monday through Friday, at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Aven M. Andersen (Fishery Management Biologist, NMFS), 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Salmon fishing in the EEZ off Alaska is managed under the Fishery Managment Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude (FMP). The FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674. The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks to the treaty. The coho stocks being protected by this action are subject to the treaty (Article I(a) and 1988 amendment of Annex IV, Chapter 5).

To prevent the troll fishery from overharvesting the coho stocks, the Alaska Board of Fisheries (Board) requires that the commercial salmon troll fisheries in Alaskan waters be closed "for approximately 10 days" if either "the number of coho reaching inside areas may be inadequate to provide for spawning requirements * * * [or] the proportional share of coho harvest by the troll fishery is larger than that of inside gillnet and recreational fisheries compared to average 1971–80 levels * * *" (5 AAC 33.365.3)).

In 1980, the Council amended section 8.3.1.4. of the FMP to provide for an area-wide closure of the entire troll fishery for 10 days to stabilize or reduce coastal and offshore fishing effort on coho salmon unless an evaluation of the coho runs and harvests indicated a "well above average magnitude and good movement inshore." The Council took this action in cooperation with the Board so that the troll fishery in the EEZ and in State waters would be under consistent management. The Council intended that if the States issued a closure for coho, a similar closure should be instituted for the EEZ, under the procedures outlined in section 8.3.1.5 of the FMP and specified in § 674.23 of the regulations.

Regulations implementing the FMP (at § 674.23(a)) also provide that the Secretary of Commerce (Secretary) may modify the fishing time and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

As of July 21, 1988, analyses of the harvest of coho salmon by the commercial troll, gillnet, and sport fisheries in Southeastern Alaska indicate that the 1988 coho run is either considerably below average in numbers of fish or is quite late. The available information points to the number of coho being scarce. The harvest by the commercial troll fishery is only about 30 percent of the 1981–1985 average harvest at this time (138,000 coho in 1988 vs. 462,000 for the average). The commercial gillnet coho harvests are from 20 to 50 percent of the average, and the Juneau-area sport harvest is only about 20 percent of the average.

Having reviewed the evidence of the coho harvest in the EEZ off Alaska and in Alaskan waters, the Secretary has determined that the effect of overall fishing effort, the catch per unit of fishing effort, and the below average rate of harvest throughout the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of fishing times if coho stocks are to be conserved and managed adequately.

Thus, according to the Board's guidelines and the Council's FMP, the troll fishery should be closed for 10 days. Accordingly, on July 22, 1988, the Alaska Department of Fish and Game and NMFS issued a joint announcement that the commercial troll fishery would close for 10 days, beginning at 0001 hours ADT on July 26, 1988. Implementing this 10-day closure now provides some immediate protection for the apparently depressed coho stocks and allows the State flexibility to impose additional conservation measures, if required, later in the year.

The Secretary, therefore, is implementing the 10-day closure prescribed by this action. The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48

hours through procedures of the Alaska Department of Fish and Game.

**Other Matters**

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c). However, in accordance with § 674.23(b)(3), the Secretary will accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure is based are available for inspection (see **ADDRESS**). If comments are received, the Secretary will reconsider the necessity for this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR Part 674 and complies with E.O. 12291.

**List of Subjects in 50 CFR Part 674**

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

(16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*)

Dated: July 25, 1988.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-17025 Filed 7-25-88; 4:30 pm]

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VOL 53 ISS 145 JL 28 1988 UMI

# Proposed Rules

Federal Register
Vol. 53, No. 145
Thursday, July 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 989

[AMS–FV–88–106; Docket No. AO–198–A14]

### Raisins Produced From Grapes Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Further Amendment of Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for raisins produced from grapes grown in California. The proposed amendments would amend provisions of the order concerning the Raisin Diversion Program, expenses for alternate Raisin Administrative Committee (Committee) representatives, nomination procedures for independent producer representatives on the Committee, reserve pool procedures, producers' equity in reserve pools, handler compliance with the marketing order, limitations on Committee members' tenure, and add authority for continuance referenda. These changes would improve the operation of the raisin marketing order program.

**DATE:** Written exceptions must be filed by August 29, 1988.

**ADDRESS:** Written exceptions should be filed with the Hearing Clerk, Fruit and Vegetable Division, AMS USDA, Room 1077–S, P.O. Box 96456, Washington, DC 20090–6456. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued July 16, 1987, and published in the July 21, 1987, issue of the **Federal Register** (52 FR 27389). This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

At the conclusion of the hearing the Administrative Law Judge fixed September 25, 1987, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. The following persons submitted documents: Jerald Rebensdorf (Rebensdorf), Bob F. Hansen, Jr. (Hansen), Barry Kriebel (Kriebel), Richard Garabedian (Garabedian), Bill Feaver (Feaver), and Kalem Barsarian (Barsarian). In addition, six copies of the same letter in opposition to three of the proposals were received.

### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Marketing Order No. 989, regulating the handling of raisins produced from grapes grown in California, and of the opportunity to file writtten exceptions thereto. In addition to Patricia A. Petrella, whose address is listed above, copies of this decision also may be obtained from Richard Van Diest, Fresno Marketing Field Office, AMS, USDA, 1755 N. Gateway, Suite B, Fresno, California 93727.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed further amendment of Marketing Agreement and Order No. 989 is based on the record of a public hearing held in Fresno, California on August 5 and 6, 1987. Notice of this hearing was published in the **Federal Register** on July 21, 1987. The notice of hearing contained five proposals submitted by the Raisin Administrative Committee (Committee), which locally administers the order. Those proposals pertained to changing the Raisin Diversion Program (RDP), nomination procedures for independent producer representatives on the Committee, expenses for alternate Committee representatives, reserve pool procedures, and handler compliance with the marketing order. Mr. John D. Pakchoian, chairman of the Committee, submitted a proposal which would require that independent producer representatives not have an interest in handler operations. The notice also included three proposals by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), which would limit Committee tenure, add authority for continuance referenda, and provide authority to make any necessary conforming changes.

### Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which includes handlers under this proposed agreement and order, are defined as those with gross annual revenues of less than $3,500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informatioinal impact of the proposed rule on small businesses. The record indicates that most, if not all, handlers regulated under this program would meet the SBA definition of small agricultural service firms. Marketing orders and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 989 are predominantly small businesses, the order itself is tailored to the size and nature of these small busiensses. During the 1986–87 crop year, 23 handlers were regulated under M.O. 989. In addition, there are about 5,000 producers of raisins in the regulated area.

The proposed amendments to the marekting agreement and order include a provision pertaining to a production cap of 2.75 tons per acre for production units approved for participation in the Raisin Diversion Program (RDP). The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins while receiving the equivalent quantity of raisins, represented on diversion certificates, to sell to handlers as though the raisins were produced in the current crop year. The producer receives raisins from the previous year's reserve pool in an amount equal to the acreage removed or diverted under the RDP multiplied by the producer's previous year's production in tons per acre. This amount is represented on a diversion certificate. The production cap is designed to prevent producers applying to participate in the RDP from reporting greater than actual raisin production. Since the RDP is a voluntary program, no producer is required to participate. If a producer historically produces above the production cap, such producer may choose to produce a crop rather than participate in the RDP.

The proposed changes to allow reconditioned raisins in the reserve pools and establish an average maturity quality level that raisins must meet to be put in the reserve pools are intended to improve the quality of reserve pool raisins and also improve grower equity returns.

The proposed change that would require the Committee to reimburse alternate Committee members their necessary expenses for attending Committee meetings would have a positive effect on producers and handlers by increasing the level of expertise of Committee members. This additional expense would be offset by assessments on handlers. Program operations benefit all handlers and producers and it is thus appropriate to provide a minimum level of compensation to alternate members, who serve in the industry's general interest.

The proposed amendment to add a late payment and interest charge for handlers who default on reserve pool sales would encourage prompt payment by handlers. Handlers would be required to pay such charges only if they are late in paying the Committee for raisins released to them from the reserve pool. In addition, prompt payment by handlers will ensure more timely payments to producers who have equity in the reserve pools.

The proposed amendments pertaining to operations of the Committee (tenure and periodic referenda) would provide more frequent opportunity for producer voting and an opportunity for broader based representation on the Committee. The change proposing that nominations for independent producer positions on the Committee be held by mail would have a positive impact on small entities by increasing independent producer participation in the nomination process.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order and would have negligible, if any, economic impact on small businesses. Accordingly, it is determined that the proposed provisions of the order would not have a significant economic impact on handlers or producers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the proposed order will be submitted to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

**Material Issues**

The material issues of record addressed in this decision are: (1) Whether a mail balloting procedure to fill independent producer member positions on the Committee should be implemented; (2) whether a provision should be added for alternate Committee members to be reimbursed for their necessary expenses; (3) whether a production cap of 2.75 tons per acre for production units approved for participation in the RDP should be established; (4) whether to allow reconditioned raisins to be placed in the reserve pools and establish an average maturity quality level that raisins must meet to be put in the reserve pools; (5) whether to deny reserve pool sales to handlers who are not incompliance with the order and whether to establish an interest and late payment charge for handlers who default on reserve pool sales; (6) whether to provide that independent producer members of the Committee cannot be associated with a handler of raisins; (7) whether to add Committee tenure requirements to the order; (8) whether to provide for producer continuance referenda to be held every six years; and (9) whether any minor administrative and conforming changes should be made to the order if any of these proposals were to become effective.

**Findings and Conclusions**

The finding and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof are: (1) The California raisin marketing order should be amended to establish a mail balloting procedure to fill independent producer member positions on the Committee. The Committee currently consists of 47 members of which 35 represent producers, 10 represent handlers, one represents the cooperative bargaining association and one represents the public. To provide equitable representation throughout the production area, representation is apportioned among three districts. They are: District 1, all counties north of Fresno County; District 2, all counties south of Fresno County and; District 3, all of Fresno County. Independent producers currently have eight representatives on the Committee. One represents District 1, one represents District 2, and six represent District 3.

The order currently specifies a nomination procedure for independent producer members which entails holding nomination meetings in each district with nominations and voting for such members at such meetings. This proposal would establish the procedures for Committee independent producer members to be nominated by mail balloting. To effectuate such a change, § 989.29 of the order, "Initial members and nomination of successor members," would be revised.

Record evidence shows that independent producer nomination meetings, currently held as required by the order in the three districts, are poorly attended by independent producers. Thus, this mail balloting proposal was recommended to increase the opportunity for independent producers to participate in the nomination process. As proposed, the process would begin with the Committee notifying all independent producers of record of meetings to be held in each district. Producers present at those meetings would offer in nomination candidates who they wish to represent them on the Committee. Those producers whose names are offered would be requested to prepare a brief statement as to their qualifications and reasons why they wish to represent independent producers on the Committee. According to the evidence presented, these brief statements should

include the nominees' qualifications to represent independent producers and the nominees' own abilities and affiliations, rather than a comparison of their own qualifications to that of their competitors. These brief statements, along with a ballot, would be mailed to all independent producers on record with the Committee. Independent producers would vote only for representatives in their own districts, and return the ballots to the Committee office for tabulation. The vote count should be verified by an impartial person such as a field representative of the Department. Evidence presented at the hearing indicated that write-in candidates should also be acceptable.

Members and alternate members for each district would be determined by the numbers of votes received. The nominees receiving the highest number of votes would be designated as the member nominee, the second highest would be designated as the second member or alternate member nominee depending on the number of nominees needed to fill the vacant positions, as the case may be, until all positions are filled. These nominees would then be submitted to the Secretary for selection.

Currently, the order specifies that independent producers and producers affiliated with cooperative marketing association handling less than 10 percent of the total raisin acquisitions during the preceding crop year be nominated in the same manner. It is therefore appropriate for producers who are affiliated with such cooperative marketing organizations to be nominated by the same mail balloting procedure as proposed for independent producers. Accordingly, such a procedure for this category of producers should also be adopted.

In addition, evidence further indicates that the Committee should be permitted to recommend, and the Secretary to establish, implementing administrative rules for the conduct of such nominations. For example, the Committee may want to establish such rules and regulations in regard to specifying the dates when mail balloting would be held and to specify the items independent producer nominees should include in their brief statements.

(2) Section 989.39, "Compensation and expenses," should be amended to provide for reimbursement for alternate members for their actual expenses when attending Committee meetings. Currently, the provisions of the order provide for reimbursement of alternate members' expenses only when such alternates are acting as members or when attending not more than three Committee meetings per crop year at which the member that they serve as an alternate is in attendence.

Evidence at the hearing indicated that it is beneficial to the Committee and the industry it represents for alternate members to be well informed of all matters applicable to the operation of the marketing order. By attending more meetings, alternate members would become more knowledgeable, be better prepared to act in the absence of their members, and be better able to function as members in the future if selected to serve as such. Evidence indicated that the added costs for the payment of alternate members' expenses would be more than offset by the knowledge gained by alternate members and the resultant benefit to Committee deliberations.

(3) Section 989.56 (a) and (c) should be amended to add a production cap of 2.75 tons per acre for those producers who apply participation in the RDP. Also, authority should be included for the Committee to recommend and the Secretary to approve further changes in the production cap, subject to the 2.75 ton per acre limitation.

The RDP was established in 1985 to help the industry bring raisin supplies more in line with demand. The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins while receiving the equivalent quantity of raisins, represented on diversion certificates, to sell to handlers as though the raisins were produced in the current crop year. Producers wishing to participate in the RDP divert their grape crop from production. In return, producers receive raisins from the previous year's reserve pool in an amount equal to the acreage removed under the RDP multiplied by the producers' previous year's production in tons per acre. This amount is represented on a diversion certificate. Producers are paid, by handlers, the established field price minus the harvest costs determined for that year. The handlers redeem the certificates with the Committee and receive the quantity of reserve pool raisins represented by the certificate.

Record evidence shows that the Committee has had concerns in the past about program participants inflating their production units in the RDP. Inflating may occur when program participants report statistics allegedly showing higher than actual raisin production. Since diversion certificate tonnage is based on the tons delivered per acre during the prior year, producers could inflate their acreage by acquiring raisins from another source and adding them to deliveries from their production units, thereby receiving credit for a higher amount of raisins than actually produced on the acreage. By inflating yield figures, producers could receive diversion certificates equal to more raisins from the reserve pool than such producers actually produced from those production units in the previous year.

The record indicates that a production cap of 2.75 tons per acre would help prevent any alleged inflating of yields experienced by the Committee in the past. Program participants would receive 2.75 tons per acre if their records indicated that they produced that amount or more during the previous year. Those producers whose records indicated that they produced less than the 2.75 tons per acre level would receive raisins equivalent to their actual reported production as a basis for payment on their RDP certificates.

Raisin industry experts consider raisin production of 3 tons or more per acre to be very unusual. Production statistics released by the California Crop and Livestock Reporting Service revealed that the average production of raisins per acre for the 10-year period 1975 through 1985 was 2.01 tons. Those producers that may produce more than 2.75 tons per acre do not have to participate in the RDP, since the RDP is a voluntary program, and no producer is required to participate. Thus, producers who produce more than 2.75 tons per acre may choose to produce and deliver a crop rather than accept a lower tonnage figure. Thus a production cap of 2.75 tons per acre should be established for any production unit approved for participation in a diversion program.

Messrs. Rebensdorf and Hansen filed briefs in opposition to this proposal, along with several other producers who submitted form letters in opposition. These briefs asserted that producers should not be "penalized" by the Committee for increasing their yields per acre. Also, the briefs indicated that they were of the view that the proposed production cap would not solve the problem of inflating crop yields under the RDP. As indicated above the RDP is a voluntary program, and no producer is required to participate. If producers have developed methods to increase their yields per acre, those producers can choose to produce that crop rather than participate in the RDP.

The Committee also requested the authority to decrease the production cap below the 2.75 ton per acre level. In years when damaging frosts or rains occur, average production levels could be reduced. Such damage would occur in the year prior to the year in which producers apply for an RDP. The Committee believes that the production

cap should also reflect such a decrease, in recognition of the prior year's crop damage. The Department considers that changes in the tonnage level, reductions below the established 2.75 ton level or other adjustments, should be subject to approval by the Secretary. Therefore, the Committee should be authorized to recommend reductions in the 2.75 ton per acre cap, subject to informal rulemaking procedures and the approval of the Secretary. It is intended that the Committee would recommend any such reduction at the same time that the diversion tonnage for that season is announced. If there is not a recommendation for a reduction in the 2.75 ton per acre cap, the cap would remain at 2.75 tons for any diversion program that may be recommended by the Committee.

(4) Section 989.66 (b)(1), (b)(4) and (d) should be amended to permit handlers to set aside reconditioned raisins to satisfy their reserve pool obligations and also to require handlers to set aside raisins in the reserve pool that meet the average incoming maturity level of raisins acquired by each handler during the applicable crop year.

Raisins with certain defects are reconditioned by the handler to bring the raisins within acceptable quality standards. For example, raisins embedded with sand could be run through a hot water bath and then through a high pressure wash to remove the sand. The reconditioning process usually removes the "bloom" from the raisins. Bloom is a widely accepted term within the industry which describes the natural waxy coating on the surface of raisins which would generally be removed by washing, processing or reconditioning. The record indicates that experience has shown that raisins with bloom will store for longer periods without significant deterioration than raisins with the bloom removed. Non-reconditioned raisins with the bloom still visible are referred to as natural condition raisins.

Currently, the marketing order does not permit reconditioned raisins in the reserve pool. However, the order does authorize the reconditioning of raisins, if necessary, to bring them up to acceptable quality standards to be acquired by handlers. Evidence presented at the hearing showed that not allowing reconditioned raisins in the reserve pool may cause a burden on handlers. During certain times of the year, handlers may not have enough natural condition raisins on hand to satisfy their reserve obligations and may have to purchase natural condition raisins from other handlers in order to meet such obligations. Also, handlers could refuse to buy reconditioned raisins from producers if they cannot be set aside for reserve pool purposes. Evidence indicated that this proposal may benefit producers by providing additional markets (i.e., reserve pool outlets) for reconditioned raisins. Since reconditioned raisins may not have the same storage characteristics as natural condition raisins, handlers would be expected to process these raisins for reserve pool sales for their own use first by blending them with better quality raisins in order to bring the level of quality up to consumer standards. Generally, reconditioned raisins are darker than the desired color and are usually sold at a discounted price for this reason. Therefore, blending is usually done to ensure a better quality lot of raisins.

Pursuant to the raisin marketing order, the Committee could request handlers to deliver non-reconditioned reserve pool raisins (natural condition) to other handlers. The Committee would like this provision to remain unchanged in the marketing order to ensure the Committee and other handlers of the quality of the raisins they would be receiving and released for likely reserve pool sales. The Committee may request such delivery from handler to satisfy reserve pool sales to other handlers that have insufficient raisins on their premises for such sales. These sales could include school lunch, export incentive sales and other reserve pool sales.

In the event that handlers have only reconditioned raisins on their premises in the reserve pool, they could deliver packed raisins to the Committee. In addition, handlers could substitute free tonnage supply natural condition raisins for reconditioned raisins that are in the reserve pool, in order to satisfy a request from the Committee.

The record also indicated that there will be no additional reserve pool costs to producers by allowing reconditioned raisins in the reserve pools, since producers who deliver raisins in need of reconditioning usually pay for all reconditioning costs required on such producer's lot of raisins.

Evidence showed that the proposal to allow reconditioned raisins in the reserve pool would work in conjunction with the proposed requirement for reserve pool raisins to meet an aggregate maturity level. Maturity refers to the amount of well-matured raisins in a particular lot. To meet acceptable standards, a lot of raisins must contain at least 50 percent well-matured raisins. It was testified that a handler's overall average maturity level is usually between 58 and 62 percent. The proposed requirement would prevent handlers from setting aside the lowest quality raisins on their premises that meet acceptable grade standards to satisfy their reserve pool obligations. The record indicated that lower maturity raisins are difficult to recondition and heavy processing losses are often experienced. In addition, the resultant product is generally below average quality levels.

The record indicated that some handlers have experienced problems in the past when they have insufficient reserve pool raisins stored on their own premises to satisfy a Committee release of reserve pool raisins to their own ownership for their own sales. Such handlers then have to purchase additional reserve raisins from other handlers. Raisins purchased from other handlers have often been of low maturity. In some cases, the condition of the low maturity raisins has deteriorated and the acquiring handler has had to further process or blend the raisins to bring them up to acceptable standards before a reserve pool sale could be made.

Thus, the record indicates that each handler's reserve pool obligation raisins should meet such handler's own average for maturity for that crop year, with a 2 percent allowance (subject to the minimum 50 percent maturity level). This proposal would improve the overall quality of the reserve pools, since handlers would no longer be allowed to set aside their lower quality raisins for the reserve pool.

(5) The Notice of Hearing contained proposed amendments of § 989.67(g) which would authorize the Committee to: Charge handlers interest and late payment charges if handlers fail to pay for reserve pool raisins purchased from the Committee; refuse to sell to handlers reserve pool raisins for export, non-competitive uses, and free tonnage raisins pursuant to sales under § 989.54(g) and § 989.67(j), for not complying with provisions of the marketing order; and provide for handler appeals of these Committee actions pursuant to § 989.67(g).

The marketing order currently authorizes the Committee to refuse to sell reserve tonnage raisins for export purposes only to any handler who: (a) Is in default on any previous purchase of reserve tonnage raisins from the Committee; (b) is not in compliance with the provisions of a sales agreement covering reserve tonnage raisins; or (c) signifies an intention to sell reserve tonnage to or through any person who

has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer in an eligible export market. All of these reasons directly relate to failures in dealings with reserve tonnage raisins.

The Committee proposed to deny reserve pool sales to handlers when they are allegedly not complying with various provisions of the marketing order. This is not authorized under the provisions of the Act. The Act specifically provides remedies under Section 608 (a) and (c)(14) for handlers not complying with marketing order provisions. Accordingly, the Committee should handle such compliance actions by submitting them to the Department to be resolved under appropriate remedies specified in the Act. Therefore, this proposal is denied and not included in this recommended decision. The redesignated paragraph (g)(1) under § 989.67 would remain unchanged and the appeal procedure to review actions taken by the Committee under this section would be retained as paragraph (g)(3). The procedure would include notification to the handler, an informal hearing before an appeals subcommittee, and an appeal to the full Committee. The appeals subcommittee would consist of three to five members of the full Committee. The appeal to the full Committee would be a final action that would exhaust the informal appeals procedure.

Evidence adduced at the hearing did support an interest and late payment charge to be imposed on handlers who fail to pay for reserve pool raisins purchased from the Committee. For example, all handlers may purchase reserve pool raisins for free tonnage use each November under § 989.54(g) of the order. The purchase agreement between the Committee (the Committee administers the reserve pool for the producer/equity holders) and the handler specifies the terms and conditions of the specific sale which includes the date that payment is due for the raisins. Evidence showed that if the handler is late in making the required payment, the handler should be subject to late payment and interest charges. Equity holders in the reserve pools are paid according to the proceeds from reserve pool sales to handlers, thus, handlers who are late in paying for reserve pool raisins cause delays in payments to the equity holders of the pool. Funds received from interest and late payment charges should be distributed to the equity holders.

The hearing record showed that the interest rate to be incurred by handlers in default on reserve pool sales should be the prime rate at the bank where the Committee's funds are deposited, plus 2 percent. The provision in the Notice of Hearing reflected several different interest rates. The hearing record reflects that it was the Committee's intent, and record evidence supports, that the interest rate should be the prime rate at the bank where the majority of the Committee's administrative funds are deposited, plus 2 percent. The interest rate, as proposed, would accrue only on the principal amount owed and would be added to the handler's monthly bill until the handler's delinquent amount owed plus applicable interest charges have been paid.

The record indicated that the Committee should have the authority to recommend an increase in the interest rate from the prime rate plus 2 percent, to the prime rate plus a different percentage. The Committee requested that this alternate interest rate would apply on an individual handler basis depending on how severely the handler violated the purchase agreement. However, the Act requires that all handlers be treated equitably under marketing orders. Therefore, such a change in the rate of interest to be applied individually to handlers by the Committee is not authorized by the Act. The Committee, however, should be authorized to recommend changes in the interest rate applied uniformly to all handlers, subject to approval by the Secretary through informal rulemaking procedures.

(6) The proposed amendment to § 989.27 would have required that no owner, partner, or employee of a handler could be selected to represent independent producer members on the Committee, regardless of whether or not such individuals are also producers. A proponent of this proposed amendment testified that producers with an interest in handler operations cannot act as "true" Committee producer members because of an alleged conflict of interest.

Opponents, however, testified that producers who are also handlers are articulate and have developed good communication skills while conducting business within the raisin industry. Persons who fit this category believe that their experience as handlers can only benefit them in representing independent producers who are also on the Committee. Opponents to the proposal testified that producers who are also handlers are able to view both sides of issues that are raised at Committee meetings and are able to make sound decisions. Opponents testified that a possible solution would be to have independent growers actively solicit other independent growers to attend the nomination meetings and nominate only non-handler producers as representatives if independent producers are dissatisfied with producer/handler representatives.

Messrs. Hansen (Committee producer member) and Barsarian (representing Madera Packing Co.) filed briefs concerning this proposal. Both opposed the proposal on the basis that producers who are also handlers have more knowledge of the raisin industry and understand the operations of the marketing order. Therefore, it is beneficial to have producers who are also handlers on the Committee to represent independent producer interests.

Accordingly, the record evidence does not support the amendment to require Committee independent producer members to be solely producers and have no interest in handler operations. In addition, the proposal to authorize mail balloting procedures for the nomination of independent producer members will provide all independent producers additional opportunity to select those individuals they feel will best represent their interests. Therefore, this proposed amendment is not adopted.

(7) Section 989.28, "Term of Office," should be amended to provide for a six-year limit on Committee member's tenure.

It is the Department's view that a limit on tenure for Committee members improves representation on marketing order committees by allowing for different and more contemporary ideas, and that such a limit will be beneficial to the Committee's operations. The Department's goal is to encourage and foster to the maximum extent possible, broad-based participation by all members of the regulated community in the administration of the marketing order. This objective is best met by such a limitation. Proponents testified that the tenure limitation would improve representation and would be beneficial to the operation of the Committee.

This change is consistent with the Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders," which provides for limiting committee tenure of members and alternates. The Department's policy pursuant to the guidelines is that a committee member's consecutive service be limited to a total of six years.

Therefore, it is proposed that the order should be amended to limit the tenure of members to three full consecutive terms. Any member would become ineligible to serve on the

committee after having served three full consecutive terms. Such individuals could again become eligible to serve on the Committee by not serving on the Committee for one full term as either a member or alternate member.

Because of the large size of the Committee (47 members and an alternate member for each), the tenure limitation should apply only to Committee members. Alternate Committee members serve in the place of members in the event of the member's absence at a particular meeting. Generally, it takes several years for alternate members to become knowledgeable about the operations of the marketing order. Often, alternate members are nominated and selected to serve as members on the Committee only after they have gained experience in marketing order matters by serving first as alternates.

It is unlikely that the tenure requirements would cause all members, or even a majority of the members, to leave the Committee at any one time because of the natural turnover between members and alternate members. Therefore, it would serve no useful purpose to limit the tenure of alternate members. This change in tenure requirements should become effective beginning with the 1990 term of office. Members who have served on the Committee for six consecutive years would not be eligible for reelection for the term of office which begins May 1, 1990.

Briefs were filed by Messrs. Hansen and Kriebel, and numerous producers who filed the same letter, opposing this proposal. The briefs stated that Committee members need more time to become familiar with the operations of the order and the Committee would lose needed experience and continuity in members by imposing such a limitation. Opponents to the proposal at the hearing also testified that the Committee experiences a natural turnover of member representatives, and imposing an artificial turnover would cause the Committee to lose experience, continuity and expertise among its members. One opponent testified that it takes five to six years for a Committee member to really understand Committee operations. However, as discussed above, such expertise can be developed by serving as an alternate member. Also, it is unlikely that Committee members would be nominated to serve on the Committee by the industry unless such members had demonstrated to their constituents that they had the necessary qualifications, experience, and like, to adequately represent them on the Committee.

It is the Department's view that a limit on tenure for Committee members will improve representation on marketing order committees and will be beneficial to the Committee's operations. Thus, in conformance with this policy, such tenure limitations should be adopted.

(8) The order should be amended, as hereinafter set forth, to require referenda to be held every six years relative to the continuance of the order.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. Currently, the order and the Act provide that the Secretary shall terminate the marketing order program whenever, through the conduct of a referendum, it is indicated that a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market during a representative period. Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support or opposition for termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 989.91 to provide for continuance referenda. Current paragraph (d) should be redesignated as paragraph (e). Also, proponents at the hearing testified that consideration regarding continuance of the order should be based on two-thirds of the producers voting in the referendum or producers of two-thirds of the volume of raisins represented in the referendum.

Opponents to the proposal also favored the concept for the conduct of continuance referenda. However, they opposed the two-thirds vote requirement. They testified that a simple majority of the producers voting, who represent a simple majority of the tonnage voting, should be adequate to indicate producer sentiment. They also terminated that one-third of the industry should not be allowed to control decades of program planning and experience. They claimed that majority rule should determine its continuance. Also, one opponent suggested that continuance referenda be scheduled and completed not later than January 1 of any crop year in order to plan accordingly. The Committee plans many programs months in advance and will need to know the results of any such referendum as soon as possible after it is conducted.

The results of continuance referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to producer approval of the issuance of a marketing order. This requirement is considered adequate to measure producer support to continue the marketing order. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of raisins represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order, resulting from any referendum, should be announced on or before the last day of the then current crop year. The crop year ends July 31. This date precedes the beginning of the Committee's operation for a new crop year and is considered to be an appropriate time to gradually terminate the operations of the order.

As stated, the Secretary's "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to their producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

Section 989.91(d) has been revised in this recommended decision for clarity and to reflect language more common to marketing order provisions in other orders that provide for continuance referenda.

**Rulings on Briefs of Interested Persons**

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

**General Findings**

Upon the basis of the record it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determination which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determination may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determination are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of raisins grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of raisins grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

**List of Subjects in 7 CFR Part 989**

Marketing agreements and orders, Raisins, Grapes, California.

**Recommended Further Amendment of the Marketing Agreement and Order**

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

**PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR Part 989 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.28 is revised as follows:

**§ 989.28 Term of office.**

The term of office of all representatives serving on the committee shall be two years and shall end on April 30 of even numbered calendar years, but each such member and alternate member shall continue to serve until their successor is selected and has qualified. Beginning with the 1990 term of office, no member shall serve more than three full consecutive terms: *Provided,* That members serving three consecutive terms could again become eligible to serve on the committee by not serving for one full term as either a member or alternate member.

3. Section 989.29 is amended by revising paragraph (b)(2) and paragraph (b)(4) as follows:

**§ 989.29 Initial members and nomination of successor members.**

* * * * *

(b) * * *

* * * * *

(2)(i) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which they are nominated, to represent said district as a producer member or alternate producer member on the committee. In the event any such nominees are engaged as producers in more than one district they may be a nominee for only one district. One or more producers may be nominated for each such producer member or alternate member position.

(ii) Each such producer whose name is offered in nomination shall be given the opportunity to provide the committee a short statement outlining their qualifications and desire to represent on the committee independent producers or producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the committee in each district. The producer receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee or alternate member nominee, as the case may be, until nominees for all member and alternate member positions have been filled.

(iii) Each independent producer and producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) of this section, shall be the person to be certified to the Secretary as the nominee. The committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

(4) Each vote cast shall be on behalf of the person voting, the person's agent, subsidiaries, affiliates, and representatives. Voting at each handler meeting shall be in person. The results of each ballot at each handler meeting shall be announced at that meeting.

* * * * *

4. Section 989.39 is revised as follows:

**§ 989.39 Compensation and expenses.**

The members and alternate members of the committee shall serve without compensation, but shall be allowed their necessary expenses as approved by the committee.

5. Section 989.56 is amended by revising paragraphs (a) and (c) as follows:

**§ 989.56 Raisin diversion program.**

(a) *Announcement of program.* On or before November 30 of each crop year, the committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory and other

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matters relating to the quantity of raisins of all varietal types. When the committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it may announce the amount of such tonnage eligible for diversion during the subsequent crop year. As the same time, the committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. A production cap of 2.75 tons of raisins per acre shall be established for any production unit approved for participation in a diversion program. The committee, with the approval of the Secretary, may recommend at the same time that the diversion tonnage for that season is announced, a change in the production cap for that season's diversion program of less than 2.75 tons per acre for any production unit approved for the diversion program.

* * * * *

(c) *Issuance of diversion certificates.* After the committee announces a raisin diversion program, any producer may divert grapes of their own production and receive from the committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates may only be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the committee shall apply to a specific production unit and shall be equal to the creditable fruit weight, not to exceed the production cap established pursuant to paragraph (a) of this section, of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion: *Provided,* That in the case of a production unit, or partial production unit, removed from production through vine removal or other means established by the committee, it may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced therein or the production cap applicable.

* * * * *

6. Section 989.66 is amended by revising paragraphs (b)(1), (b)(4), and (d) as follows:

**§ 989.66 reserve tonnage generally.**

* * * * *

(b)(1) Each handler shall hold in storage all reserve tonnage raisins acquired by such handler and all reserve tonnage transferred to such handler by the committee until such handler has been relieved of such responsibility by the committee, either by delivery to the committee or otherwise. Such handler shall store such reserve tonnage raisins in such manner as will maintain the raisins in the same condition as when such handler acquired them, except for normal and natural deterioration and shrinkage, and except for loss through fire, acts of God or other conditions beyond the handler's control.

* * * * *

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to anyone designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage raisins held by such handler. Reserve tonnage raisins delivered by any handler to the committee, or to any person designated by it, in the form of natural condition raisins shall in the aggregate be not more than 2 percent less than the average maturity quality of all raisins such handler acquired during the applicable crop year. The committee may require that such delivery consist of natural condition raisins with the bloom still visible, or it may arrange for such delivery to consist of packed raisins.

* * * * *

(d) Reserve tonnage raisins delivered by any handler to the committee, or to any person designated by it, whether in the form of natural condition raisins with the bloom still visible or packed raisins shall meet the applicable minimum grade and condition standards, except for normal and natural deterioration. The committee shall have the authority to require, in its discretion and at its expense, such reinspection and certification of reserve pool tonnage raisins as it may deem necessary.

* * * * *

7. Section 989.67 is amended by revising paragraph (g) as follows:

**§ 989.67 Disposal of reserve raisins.**

* * * * *

(g)(1) The committee may, subject to review by the Secretary, refuse to sell reserve tonnage raisins for export:

(i) To any handler who is in default on any previous purchase of reserve tonnage raisins from the committee; (ii) to any handler currently not in compliance with the provisions of a sales agreement covering reserve tonnage raisins, executed by such handler with the committee; or

(iii) To any handler who signifies an intention to sell reserve tonnage to or through any person who has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in an eligible export market.

(2) Handlers who are in default of timely payment under any purchase agreement are subject to an interest and late payment charge(s) recommended by the committee and approved by the Secretary on the delinquent amount that is owed the committee. The interest charge shall be the current prime rate plus 2 percent established by the bank in which the committee has its administrative assessment funds deposited, on the day the amount owed becomes delinquent; and further, that such rate of interest be added to the bill monthly until the handler's delinquent amount owed plus applicable interest has been paid: *Provided,* That the committee, with the approval of the Secretary, may recommend changes in the rate of interest to another rate of interest. When the committee determines to change the rate of interest or a late payment charge is needed, and such change is approved by the Secretary, the committee shall announce the change in the rate of interest or the rate of late payment charge through a mailing by the committee to handlers.

(3) *Appeals.* If a determination is made by the committee that a handler has not complied with the provisions of this section and any actions allowed under this section are taken against the handler, such handler may request a hearing before an appeals subcommittee established by the committee. If the handler disagrees with the subcommittee's decisions, the handler may request the committee to review the subcommittee's decision. The committee may, subject to the approval of the Secretary, establish additional procedures concerning appeals procedures.

* * * * *

8. Section 989.91 is amended by redesignating and revising paragraph (d) as paragraph (e), and adding a new paragraph (d) as follows:

**§ 989.91 Suspension or termination.**

* * * * *

(d) The Secretary shall conduct a referendum in crop year 1993–94 and every six years thereafter to ascertain whether continuance of this amended subpart is favored by raisin producers. The Secretary may terminate the provisions of this amend subpart at the end of any crop year in which the Secretary has found that continuance of this subpart is not favored by producers, who during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins

in the State of California. Such termination shall be effective only if announced before July 31 of the then current crop year.

(e) The provisions of the amended subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Dated: July 21, 1988.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 88-16997 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 111

### Proposed Customs Regulations Amendment Regarding Requirements for Maintaining Customs Brokers Licenses

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations by requiring that all Customs brokers licenses issued after September 30, 1988, will be subject to a condition that the licensee must become qualified for the operational use of the Automated Broker Interface (ABI) portion of the Customs Automated Commercial System (ACS) within a reasonable time after receiving the license and that the licensee maintain such qualification. The document provides methods by which a licensee can demonstrate such ABI qualification. It also provides that all Customs brokers licensed after September 30, 1988, will be required to transmit the entry data elements on imported merchandise to Customs through the use of the Automated Broker Interface (ABI) portion of the Customs Automated Commercial System (ACS) prior to filing an entry/entry summary. The failure to meet these requirements would serve as a basis for revocation of such license. Conversion to this system would remain voluntary for brokers licensed before October 1, 1988, and all non-Customs broker entry filers. This change is necessary in order to better utilize ACS and to permit Customs to handle the anticipated increase in entry workload. It will allow entries to be processed quicker and merchandise released earlier. Customs will be able to more effectively and efficienctly process cargo, deploy staff and discharge other functions than is possible with the current manual system.

**DATE:** Comments must be received on or befors September 26, 1988.

**ADDRESS:** Comments (preferably in triplicate) may be addressed to and inspected at the Regulations & Disclosure Law Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Robert Stenstrom, Office of Automated Commercial Systems Operations (202-343-0780).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Automated Commercial System (ACS), inaugurated on February 1, 1984, is an integrated commercial system designed to handle a variety of needs for the importing community and Customs. It is a comprehensive tracking system which covers the various aspects of Customs commercial cargo activities. It permits a more efficient and effective processing of cargo, deployment of staff and the discharge of Customs functions than is possible with the current manual system. The selectivity part of ACS permits the targeting of high risk shipments and the examination of a lower percentage of freight with the resultant quicker release of cargo. The ACS line release system currently being deployed on both the northern and southern borders of the U.S. accelerates the release of low-risk repetitive shipments. ACS will also replace the current paper and labor intensive systems of tracking manifests with an Automated Manifest System (AMS). When fully integrated with the other modules of ACS, the AMS will eliminate the transmittal of paper manifests and it will automatically perform many of the clerical functions performed by Customs personnel.

The Automated Broker Interface (ABI) feature of ACS allows anyone who moves or releases cargo, makes entries, files protests, incurs penalties or has merchandise seized, pays or obtains refunds or duties, or conducts any other international business, to interface with ACS. Import trade processing requirements can be facilitated by using the interface to transmit entry data which can be pre-processed and returned to the entry filer.

There has been extensive participation in ABI by the trade. The number of Customs brokers qualified for operational use of the interface has significantly increased in the last two years. There are currently over 700 participants in the ABI program which are operationally qualified or are in the process of becoming operationally qualified.

In order to better utilize the system and to permit Customs to handle the anticipated significant increased volume of entries, it will be desirable for Customs to receive at least 90 percent of the entry volume data for pre-processing. The interface between the trade community and Customs will become even more critical with specialized situations, *e.g.*, quota processing, on-line tariff classification updating. We have thus concluded that the use of the ACS/ABI is very desirable to both the trade community and Customs.

#### Proposed Action

For the above reasons it is proposed to make the use of the ABI portion of the ACS mandatory for those brokers licensed after September 30, 1988. Customs brokers so licensed will be required to become qualified for the operational use of ABI within a reasonable time after the license is issued and to maintain such qualification. These brokers will be required to transmit the entry data elements on imported merchandise to Customs through the use of the Automated Broker Interface portion of the Automated Commercial System. The failure to meet these requirements would serve as a basis for revocation of the subject brokers licenses. Since Customs believes that commercial necessity will eventually dictate adoption of the ACS/ABI data handling procedures throughout the trade, brokers licensed before October 1, 1988, and all non-Customs broker entry filers would be permitted to voluntarily adopt the procedures as soon as they are prepared to do so.

#### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

#### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendment will not have a

significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact anlaysis has been prepared.

**Drafting Information**

The principal author of this document was Arnold L. Sarasky, Regulations & Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 111**

Administrative practice and procedures, Brokers, Customs duties and inspection, Imports.

**Proposed Amendment**

**PART 111—CUSTOMS BROKERS**

1. The authority citation for Part 111, Customs Regulations (19 CFR Part 111), would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Headnote 11), 1624, 1641.

2. It is proposed to amend Part 111 by adding a new § 111.20 to read as follows:

**§ 111.20 ABI qualification requirements**

Each Broker licensed after September 30, 1988, must establish, within a reasonable time after receiving a license, as determined by the district director, that he is qualified for the operational use of the Automated Broker Interface (ABI) portion of the Automated Commercial System (ACS) and he maintains that qualification. Being qualified means transmitting the entry data elements on imported merchandise to Customs through the interface in accord with ABI performance requirements and implementation procedures following Customs prescribed data element standards, data communications specifications and requisite hardware/software capabilities. However, brokers licensed after September 30, 1988, who work for another broker licensee or who file acceptable entries with Customs by utilizing a private service center, need not be individually ABI qualified.

3. It is proposed to amend § 111.53 by revising the introductory paragraph and adding a new paragraph (g) to read as follows:

**§ 111.53 Grounds for suspension or revocation of license or permit or monetary penalty in lieu thereof.**

The appropriate Customs official may suspend for a specific period of time, or revoke the license or permit of any broker or assess a montary penalty in lieu of suspension or revocation, for the following reasons:

* * * * *

(g) The broker was licensed after September 30, 1988, and fails either to-

(1) Become qualified for the operational use of the Automated Broker Interface (ABI) portion of the Customs Automated Commercial System (ACS) within a reasonable time after receiving his license, as determined by the district director, or

(2) Fails to maintain that qualification (see § 111.20).

**William von Raab**
*Commissioner of Customs.*

Approved: June 24, 1988.

**John P. Simpson,**
*Acting Assistant Secretary, (Enforcement).*

[FR Doc. 88-17001 Filed 7-27-88; 8:45 am]
BILLING CODE 4820-02-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 300**

**[FRL-3420-8]**

### Presque Isle Superfund Site; National Priorities List Deletion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to delete a site from the national priorities list (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL) and requests public comments. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

**DATE:** Comments concerning the site may be submitted on or before August 29, 1988.

**ADDRESSES:** Comments may be mailed to the Regional Docket. Comprehensive information on the site is maintained and availble through the EPA Regional Docket clerk.

The Regional Docket is located at the U.S. EPA Region III Office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Requests for copies of the information from the Regional public docket should be directed to the EPA headquarters Docket Office. A local docket is located at the Erie County Library—Presque Isle Branch.

Addresses for the Regional and Local Docket Offices are:

U.S. EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107;

Erie County Library, Presque Isle Branch, 902 W. Erie Place, Erie, PA 16505.

**FOR FURTHER INFORMATION CONTACT:** Patricia Tan, SARA Special Site Section, 3HW17, Region III, Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

**I. Introduction**

The Environmental Protection Agency (EPA) announces its intent to delete The Presque Isle Superfund Site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

EPA intends to delete The Presque Isle Site from the NPL. The EPA will accept comments on this site for thirty days after publication of this notice in the "**Federal Register.**"

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the site and explains how the site meets the deletion criteria.

**II. NPL Deletion Criteria**

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL, as published in the "**Federal Register**" on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) of the NCP provides that sites

* * * may be deleted from or recategorized in the NPL where no further response is appropriate.

In making this determination EPA will consider whether any of the following criteria has been met:

(I) EPA in consultation with the State has determined that responsible or other parties have implemented all appropriate response actions required.

(II) All appropriate Fund-financed response under CERCLA has been implemented and EPA in consultation with the State has determined that no further cleanup by responsible parties is appropriate; or

(III) Based on a remedial investigation, EPA in consultation with the State has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedical measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary is protective of public health, welfare, and the environment considering environmental requirements that are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

### III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in Section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA will solicit public comment on the proposed deletion of The Presque Isle Site for thirty days. The comments received during the notice and comment period will be evaluated before the final decision to delete is made.

A decision will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the "**Federal Register.**" The NPL will reflect any deletion in the next update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Office.

### IV. Basis for Intended Site Deletion

The Presque Isle Site is located on the Presque Isle State Park peninsula and within the City of Erie, Erie County, Pennsylvania. In the early 1970s, the Erie County Health Department noted a seep at the site discharging a noxious, hydrogen sulfide-bearing, black liquid. This discharge resulted in air, soil, and shallow groundwater contamination. The site was proposed for inclusion on the NPL on December 30, 1982, and appeared on the final NPL on September 8, 1983.

Investigation by the Pennsylvania Department of Environmental Resources (PADER) from 1979 to 1982 revealed that the source of the discharge was an unplugged, abandoned natural gas well that interecepted a geologic formation known as the Bass Island Formation. This gas well was buried at the time the discharge was first noticed and was orginally described as a "seep". A central issue of the investigations to date has been whether the fluid discharging from the Bass Island Formation is a natural brine or is related to the deep-well injection of wastes by the nearby Hammermill Paper Company.

Hammermil Paper Company operated three underground injection wells betwen 1964 and 1971 and injected 1.1 billion gallons of neutral sulfite pulping liquor waste into the Bass Island Formation. Based on initial information, PADER felt that there was a reasonable cause-and-effect relationship between Hammermill's injection program and the discharge at the Presque Isle Site.

PADER contacted the U.S. Environmental Protection Agency (EPA) Region III in 1982 for sampling assistance while the plugging of the Beach No. 7 well took place. The site was placed on the NPL in September 1983 because of the potential for similar releases from other improperly plugged oil and gas wells in the surrounding area.

EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that the discharge at the Presque Isle abandoned natural gas well was an unusual event and that the threat to public health was eliminated when the well was permanently plugged in 1982. Based on current information, no significant contamination is present at the site and, therefore, a no-action alternative has been selected. A no-action selected alternative is considered a completion of the remedial process.

Date: July 21, 1988

**Stanley L. Laskowski,**

*Acting Regional Administrator.*

[FR Doc. 88-17028 Filed 7-27-1988; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA-6930]**

### Proposed Flood Elevation Determinations; Georgia et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed modified base (10-year) flood elevations listed below for selected locations in the Nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

**DATES:** The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the Nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new

BEST COPY AVAILABLE

buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

**List of Subjects in 44 CFR Part 67**

Flood insurance, Floodplains

**PART 67—[AMENDED]**

The authority citation for Part 67 continues to read as folows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Georgia | Unincorporated areas of Fulton County. | Foe Killer Creek | Just downstream Old Roswell Road | None | *967 |
| | | | About 0.9 mile upstream of Old Roswell Road | None | *997 |
| Maps available for inspection at the Department of Public Works, 300 Administration Building, 165 Central Avenue, SW., Atlanta, Georgia. Send comments to The Honorable Sam Brownlee, County Manager, Fulton County, 207 Administration Building, 165 Central Avenue, SW., Atlanta, Georgia 30335. | | | | | |
| Georgia | City of Statesboro, Bulloch County. | Little Lotts Creek | About 2,800 feet downstream of the confluence of Little Lotts Creek Tributary A. | *187 | *187 |
| | | | About 600 feet downstream of Gentilly Road | *198 | *195 |
| | | | Just downstream of West Parrish Street | *235 | *235 |
| | | Little Lotts Creek Tributary A | At mouth | *191 | *189 |
| | | | About 800 feet upstream of Windsor Way | *191 | *191 |
| | | Little Lotts Creek Tributary B | At mouth | *193 | *190 |
| | | | About 1,500 feet upstream of mouth | *193 | *193 |
| | | Little Lotts Creek Tributary G | At mouth | *216 | *213 |
| | | | About 350 feet upstream of mouth | *219 | *219 |
| Maps available for inspection at the City Hall, Statesboro, Georgia. Send comments to The Honorable J. Thurman Lanier, Mayor, City of Statesboro, City Hall, P.O. Box 348, Statesboro, Georgia 30458. | | | | | |
| Kansas | City of Winfield, Cowley County. | Black Crook Creek | About 950 feet downstream of Nineteenth Avenue. | None | *1,123 |
| | | | Just upstream of Union Pacific Railroad | *1,132 | *1,132 |
| | | | About 1,400 feet upstream of Simpson Avenue | *1,159 | *1,159 |
| | | | About 1,900 feet upstream of Simpson Avenue | None | *1,162 |
| | | Walnut River | About 0.91 mile downstream of Main Street | None | *1,121 |
| | | | About 3,900 feet downstream of Main Street | *1,121 | *1,121 |
| Maps available for inspection at the Planning and Engineering Department, 200 East Ninth, Winfield, Kansas. Send comments to The Honorable Don Drennan, Mayor, City of Winfield, P.O. Box 646, Winfield, Kansas 67156. | | | | | |
| Louisiana | Patterson, town, St. Mary Parish. | Wax Lake East | Intersection of Lucia Drive and David Street | None | *3 |
| | | | Intersection of Pietro Drive and Bernard Drive | None | *3 |
| Maps available for inspection at the Town Hall, 203 Park Street, Patterson, Louisiana. Send comments to The Honorable Fred Allen Mensman, Mayor of the Town of Patterson, St. Mary Parish, Town Hall, 203 Park Street, Patterson, Louisiana 70392. | | | | | |
| Minnesota | City of Proctor, St. Louis County. | Kingsbury Creek | Just upstream of Boundary Avenue | *1,190 | *1,191 |
| | | | Just upstream of Second Street | *1,235 | *1,231 |
| | | | Just downstream of Ugstad Road | *1,242 | *1,244 |
| Maps available for inspection at the City Hall, 200 Second Street, Proctor, Minnesota. Send comments to The Honorable Jake Benson, Mayor, City of Proctor, City Hall, 200 Second Street, Proctor, Minnesota 55810. | | | | | |
| Minnesota | City of Windom, Cottonwood County. | Perkins Creek | Just downstream of Sixth Avenue | *1,354 | *1,354 |
| | | | Just downstream of U.S. Highway 71 | *1,359 | *1,359 |
| | | | Just upstream of U.S. Highway 71 | *1,360 | *1,364 |
| | | | About 2,100 feet upstream of U.S. Highway 71 | None | *1,367 |
| Maps available for inspection at the City Hall, 444 Ninth Street, Windom, Minnesota. Send comments to The Honorable John L. Galle, Sr., Mayor, City of Windom, City Hall, 444 Ninth Street, P.O. Box 38, Windom, Minnesota 56101. | | | | | |
| New York | Clay, town, Onondago County. | Mud Creek | At upstream side of Verplank Road | *372 | *370 |

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | At downstream side of downstream crossing of State Route 481. | *374 | *370 |
| | | | At corporate limits | None | *375 |
| Maps available for inspection at the Town Hall, 4483, Route 31, Clay, New York. | | | | | |
| Send comments to The Honorable Patrick DiDomenico, Supervisor of the Town of Clay, Onondago County, 4483, Route 31, Clay, New York 13041. | | | | | |
| North Carolina | Town of Farmville, Pitt County. | Little Contentnea Creek | About 2,200 feet downstream of SR 1221 | None | *58 |
| | | | About 4,200 feet upstream of U.S. Route 258 | *67 | *69 |
| Maps available for inspection at the Town Planners Office, 121 North Main Street, Farmville, North Carolina. | | | | | |
| Send comments to The Honorable Edna E. Baker, Mayor, Town of Farmville, 124 North Main Street, P.O. Box 86, Farmville, North Carolina 27828. | | | | | |
| Oregon | City of Albany, Linn and Benton Counties. | Cox Creek | Approximately 300 feet downstream of Southern Pacific Railroad. | **None | *199 |
| | | | Approximately 50 Feet downstream of Salem Avenue. | **None | *199 |
| | | | Approximately 100 feet upstream of Salem Avenue. | **None | *203 |
| | | | Approximately 100 feet upstream of Pacific Boulevard. | **None | *204 |
| | | | Approximately 400 feet upstream of Pacific Boulevard. | **None | *211 |
| | | | Approximately 50 feet downstream of Bain Street. | **None | *212 |
| | | | Approximately 50 feet upstream of Bain Street | **None | *214 |
| | | | Just upstream of Highway 5 | **None | *216 |
| **Approximate Zone A. | | | | | |
| Maps are available for review at City Hall, Planning Department, 127 Broadalbin, S.W., Albany, Oregon. | | | | | |
| Send comments to The Honorable Thomas Holman, City of Albany, City Hall, P.O. Box 490, Albany, Oregon 97321. | | | | | |
| Pennsylvania | Upper St. Clair, township, Allegheny County. | Chartiers Creek | Approximately 5,200 feet upstream of corporate limits. | *836 | *837 |
| | | | Approximately 6,400 feet upstream of corporate limits. | *837 | *838 |
| Maps available for inspection at the Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania. | | | | | |
| Send comments to The Honorable Douglas A. Watkins, Manager of the Township of Upper St. Clair, Allegheny County, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241. | | | | | |
| Texas | Bexar County, unincorporated areas. | Balcones Creek | At confluence with Cibolo Creek | None | *1,271 |
| | | | Approximately 1.6 miles upstream of confluence with Cibolo Creek. | None | *1,290 |
| | | Cibolo Creek | At Interstate Route 10/U.S. Route 90 | None | *621 |
| | | | Approximately 1.5 miles upstream of Schaeffer Road. | None | *690 |
| | | | Approximately 2,000 feet downstream of Missouri-Kansas-Texas Railroad. | None | *760 |
| | | | Approximately 3.4 miles upstream of Missouri Pacific Railroad. | None | *830 |
| | | | Approximately 8.8 miles upstream of Missouri Pacific Railroad. | None | *900 |
| | | | Approximately 4,150 feet upstream of FM 1863 | None | *970 |
| | | | Approximately 1.9 miles downstream of U.S. Route 281. | None | *1,040 |
| | | | Approximately 450 feet downstream of confluence of Kelley Creek. | None | *1,110 |
| | | | Approximately 1.0 mile upstream of confluence of Kelley Creek. | None | *1,127 |
| | | | Approximately 1.15 miles downstream of Ralph Fair Road. | None | *1,232 |
| | | | Approximately 1,200 feet upstream of confluence of Balcones Creek. | None | *1,272 |
| | | Huebner Creek | Approximately 200 feet upstream of corporate limits and Ingram Road. | *765 | *763 |
| | | Leon Creek | Approximately 850 feet upstream of Ingram Road. | *766 | *765 |
| | | | Approximately 1,275 feet upstream of Ingram Road. | *767 | *766 |
| | | | Approximately 5,500 feet downstream of Bandera Road. | *814 | *813 |
| | | | Approximately 75 feet upstream of Bandera Road. | *839 | *838 |
| | | | Approximately 700 feet upstream of West Prue Road. | *895 | *892 |

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 50 feet downstream of Babcock Road. | *918 | *917 |
| | | Medio Creek | Upstream face of U.S. Highway 90 (Limit of Detailed Study). | *696 | *703 |
| | | | Approximately 3.07 miles upstream of U.S. Highway 90. | *744 | *743 |
| | | Slick Ranch Creek | Approximately 6,500 feet downstream of Potranco Road (FM 1957). | *760 | *756 |
| | | | Approximately 1,000 feet downstream of Potranco Road (FM 1957). | *778 | *766 |
| | | | Approximately 3,000 feet upstream of Potranco Road (FM 1957). | *794 | *793 |
| | | Salado Creek | At the upstream corporate limits | *853 | *850 |
| | | | Approximately 1.8 miles (9,400 feet) downstream of Blanco Road. | *803 | *802 |
| | | West Fork Olmos Creek | Approximately 325 feet downstream of Red Maple Wood Lane. | *937 | *938 |
| | | | Approximately 2,330 feet upstream of Red Maple Wood Lane. | *963 | *962 |

Maps available for inspection at the Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas.
Send comments to The Honorable Tom Vickers, Bexar County Judge, Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas 78205.

| | | | | | |
|---|---|---|---|---|---|
| Texas | Corpus Christi, city, Nueces and Kelberg Counties. | Oso Bay Tributary No. 2 | Approximately 1,000 feet downstream of Rodd Field Road. | *10 | *11 |
| | | | Approximately 100 feet downstream of Wooldridge Road. | *14 | *15 |

Maps available for inspection at the City Hall, 1201 Leopard Street, Corpus Christi, Texas 78469.
Send comments to The Honorable Betty Turner, Mayor of the City of Corpus Christi, Nauces and Kleberg Counties, P.O. Box 9277, Corpus Christi, Texas.

| | | | | | |
|---|---|---|---|---|---|
| Texas | Raymondville, city, Willacy County. | Shallow flooding | Missouri-Pacific Railroad east to corporate limits. | *33 | *1 |

Maps available for inspection at the City Hall, 142 South 7th Street, Raymondville, Texas.
Send comments to The Honorable C. M. Crowell, Mayor of the City of Raymondville, Willacy County, 142 South 7th Street, Raymondville, Texas 78580–2591.

| | | | | | |
|---|---|---|---|---|---|
| Virginia | Marion, town, Smyth County. | Staley Creek | Approximately 190 feet upstream from Matson Drive. | *2,173 | *2,172 |
| | | | At corporate limits | *2,196 | *2,198 |

Maps available for inspection at the Municipal Building, 138 West Main Street, Marion, Virginia.
Send comments to The Honorable Wilson W. Scott, Jr., Mayor of the Town of Marion, Smyth County, P.O. Box 1005, Marion, Virginia 24354.

| | | | | | |
|---|---|---|---|---|---|
| Virginia | Norton, city, Independent City. | Powell River | At corporate limits | None | *2,015 |
| | | | Approximately .76 mile upstream of State Route 610. | None | *2,037 |

Maps available for inspection at the Municipal Building, 618 Virginia Avenue, Norton, Virginia.
Send comments to The Honorable Cliff Daniels, Mayor of the City of Norton, Municipal Building, P.O. Box 618, Norton, Virginia 24273–0618.

| | | | | | |
|---|---|---|---|---|---|
| Virginia | Smyth County | Staley Creek | At corporate limits | *2,196 | *2,196 |
| | | | Approximately 1,700 feet upstream from corporate limits. | *2,209 | *2,210 |

Maps available for inspection at the Building Inspection Department, Smyth County Courthouse, Main Street, Marion, Virginia.
Send comments to The Honorable Fred B. Frye, Chairman of the Smyth County Board of Supervisors, P.O. Box 188, Marion, Virginia 24354.

**Harold T. Duryee,**
*Administrator, Federal Insurance Administration.*
Issued: July 20, 1988.
[FR Doc. 88–16988 Filed 7–27–88; 8:45 am]
BILLING CODE 6718–03–M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1152**

**[Ex Parte No. 274 (Sub–No. 19)]**

## Increasing the Offer of Financial Assistance Purchase Price To Compensate for Tax Liability Incurred on the Sale of Personal Property

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commission is seeking public comment on whether a carrier-vendor should be compensated for the tax liability it will incur upon the sale of personal property in a forced sale under the financial assistance procedures of 49 U.S.C. 10905 if in the absence of the forced sale, the carrier would have used the personal property attributable to the abandonment elsewhere on its system.

**DATE:** Comments are due by August 29, 1988.

**ADDRESSES:** Send an original and 10 copies of pleadings referring to Ex Parte No. 274 (Sub–No. 19) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721].

**SUPPLEMENTARY INFORMATION:** Under the financial assistance provisions of 49 U.S.C. 10905 and 49 CFR 1152.27, the Commission may be requested to establish the price and other conditions for the purchase of a railroad line that has been authorized by the Commission to be abandoned. In doing so, the Commission may not set a purchase price that is below the fair market value of the line. 49 CFR 1152.27(h)(6). In *Chicago and North Western Transp. Co.—Abandonment*, 363 I.C.C. 956 (1981) (*Lake Geneva Line*), *aff'd sub nom. Chicago & North Western Transp. Co.* v. *ICC*, 678 F.2d 665 (7th Cir. 1982), we first addressed the issue of what constitutes fair market value. We determined and have since adhered to the view that, in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings under section 10905 is the net liquidation value (NLV) of the rail properties for their highest and best non-rail use. NLV is based on real estate value plus salvage value of track and materials less removal costs. *Lake Geneva Line, supra.*

In Docket No. AB–19 (Sub–No. 125X), *The Baltimore and O. R. Co.—Exemp.—Aband. in Harrison, Doddridge, Ritchie and Wood Counties, WV* (not printed), served February 5, 1988, CSX Transportation, Inc. (CSXT), the abandoning carrier, argued that, in a forced sale under the financial assistance procedures, a railroad should be compensated for the tax liability it would incur from the sale of personal property (*e.g.*, the tracks) that would not otherwise have been sold.[1] Specifically, CSXT argued that the purchase price, determined by NLV, should have included compensation for the extra income taxes it would incur as a result of selling track and material that it would have reused in its system. We did not resolve the issue because CSXT failed to submit the financial data necessary to permit the appropriate calculations.

We seek comment from interested persons on whether to initiate a rulemaking proceeding to consider including the tax consequences arising from a section 10905 sale in the purchase price of a rail line. Comments should include a discussion of the legal analysis appropriate to resolving the issues presented. Parties should address the relevance of general condemnation law precedent to this transaction. Relevant policy discussion is invited, and other approaches to resolving the issue may also be suggested. Parties may also wish to address whether it is possible to predict with reasonable accuracy the tax liability that would be incurred from a particular property sale, and if so how that might be done.

This action will not significantly affect either the quality of the human environment or energy conservation. However, comments regarding environmental and energy issues, if any, should be included in the statements filed with the Commission.

**List of Subjects in 49 CFR Part 1152**

Financial Assistance Procedures.

This notice is issued under the authority of 49 U.S.C. 10321, 10362, 10903, 10904, and 10905, and 5 U.S.C. 553.

Dated: July 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–16691 Filed 7–27–88; 8.45 am]

BILLING CODE 7035–01–M

[1] The issue was also raised in Docket No. AB–19 (Sub–No. 134X), *The Baltimore and Ohio Railroad Company—Abandonment in Ross County, OH (not printed), served November 6, 1986.*

# Notices

Federal Register
Vol. 53, No. 145
Thursday, July 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

July 22, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Revision**

- Farmers Home Administration
- 7 CFR 1946–A, Agriculture Loan Mediation Program
- On occasion; Annually
- State or local governments; 70 responses; 370 hours
- Jack Holston (202) 382–9736
- Rural Electrification Administration
- 7 CFR Part 1754, Advance and Disbursement of Funds—Telephone Loan Program
- REA Forms 481 and 675
- On occasion
- Small businesses or organizations; 1,570 responses; 2,154 hours
- John D. Soma (202) 382–8529
- National Agricultural Statistics Service
- Agriculture Labor Survey
- Quarterly
- Farms; Businesses or other for-profit; 55,960 responses; 16,828 hours
- Larry Gambrell (202) 447–7737

**Reinstatement**

- Farmers Home Administration
- Application for FmHA Services
- FmHA 410–1
- On occasion
- Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 80,000 responses; 80,000 hours
- Jack Holston (202) 382–9736

**New Collection**

- Farmers Home Administration
- 7 CFR Part 1942–G, Industrial Development Grants
- Recordkeeping; On occasion; Monthly; Quarterly
- State or local governments; Non-profit institutions; Small businesses or organizations; 1,130 responses; 2,410 hours
- Jack Holston (202) 382–9736
- Food and Nutrition Service
- Simplified Application/Standardized Benefit Projects
- On occasion; Annually
- Individuals or households; State or local governments; Federal agencies or employees; 20 responses; 980 hours
- Pat Hagen (703) 756–3387
- Forest Service
- Application for the Senior Community Service Employment Program
- FS–1800–21b
- On occasion; Annually
- Individuals or households; 6,500 responses, 1,083 hours
- Guanda Veney-Fitch (202) 447–8259
- Agricultural Marketing Service
- Decision and National Plan on Proposed Watermelon Research and Promotion Plan
- One-time Report
- Farms; Businesses or other for-profit; 7,000 responses; 1,750 hours
- Tom Tichenor (202) 475–3930

**Extension**

- Food and Nutrition Service
- Integrated Quality Control Review Schedule (Reporting and Recordkeeping)
- FNS 380–1
- Recordkeeping
- Individuals or households; State or local governments; 68,700 responses; 70,321 hours
- Thomas O'Connell (703) 756–3470
- Food and Nutrition Service
- Integrated Quality Control Review Worksheet (Reporting and Recordkeeping)
- FNS–380
- Recordkeeping; On occasion
- Individuals or households; State or local governments; 68,700 responses; 619,921 hours
- Thomas O'Connell (703) 756–3470
- National Agricultural Statistics Service
- Supplemental Qualification Statement
- With Application for Employment
- Individuals or households; 150 responses; 375 hours
- Larry Gambrell (202) 447–7737

**Larry K. Roberson**

*Acting Departmental Clearance Officer.*

[FR Doc. 88–16998 Filed 7–27–88; 8:45 am]

BILLING CODE 3410–01–M

## Forest Service

### Mono Basin National Forest Scenic Area; Minor Boundary Revision

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed boundary revisions.

**SUMMARY:** The Forest Service proposes two minor revisions in the boundary of the Mono Basin National Forest Scenic Area. To comply with direction contained in Sec. 301 of the California Wilderness Act of 1984 which established the Scenic Area, notice of proposed changes is being published in the **Federal Register.** In both proposed

revisions, additional land will be included in the Scenic Area. The effect is to add approximately 1457 acres of existing National Forest System land and approximately 60 acres of private land for a total addition of 1517 acres to the Scenic Area.

**DATE:** Comments must be received by August 29, 1988.

**ADDRESS:** Send written comments to John W. Ruopp (2370), Recreation Staff Officer, Inyo National Forest, 873 N. Main Street, Bishop, CA 93514. The public may inspect comments received on this proposed action in the office of the Recreation Planner, Recreation Staff at the above address, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Nancy Upham, Scenic Area Manager, Lee Vining, CA (619) 647–6525, or John Ruopp, Recreation Staff Officer, Inyo National Forest, Bishop, CA (619) 873–5841.

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of the California Wilderness Act of 1984 (98 Stat. 1632) establishing the Mono Basin National Forest Scenic Area, the Forest Service proposes two minor revisions in the boundary of the Scenic Area as it was originally shown on a map dated June, 1983, and as it has been revised. These revisions will include parcels that were in private ownership at the time of the enabling legislation. Since then, one parcel has been purchased by a land exchange proponent and the other parcel is now National Forest System land. In both cases it is desirable to include the land within the Scenic Area. Maps showing the proposed revisions are available at the office of the Forest Supervisor, 873 N. Main, Bishop, CA and at the office of the District Ranger, Mono Lake Ranger District, Lee Vining, CA

**Proposed Minor Boundary Revisions, Mono Basin National Forest Scenic Area**

*All Descriptions Are for the Mount Diablo Base Meridian*

**Revision 1**

*New Description*

T1N R25E,
Sec. 1—All;
Sec. 2—E½NE¼.
T2N R25E,
Sec. 36—All.

Reason for Revision—This revision would include patented mining claims and an unpatented claim identified by Mineral Survey 6052 (10/22/1931), all of which were excluded from the Scenic Area by the enabling Act in 1984. Since that time, the property has been sold. The new owner has offered this parcel to the Forest Service in a land exchange proposal. The revision would add 177 acres of adjacent National Forest System Land and 60 acres of private land which will be added to the National Forest System by exchange. The parcel is of like character to the adjacent Scenic Area and is contained within the Scenic Area viewshed. Commercial mining has not taken place for many years. This inclusion would add approximately 237 acres to the Scenic Area.

**Revision 2**

*New Description*

**T1N R27E,**

Sec. 35—All;
Sec. 36—All.

Reason for Revision—Both sections are National Forest System lands. Section 36 was recently purchased and is added to the Scenic Area for protection and interpretation of portions of an old railroad grade which has cultural importance. Section 35 is added to provide a logical boundary between Section 36 and the original Scenic Area. The inclusion would add approximately 1280 acres of existing National Forest System land to the Scenic Area.

Dated: July 20, 1988.

**Dennis W. Martin,**

*Forest Supervisor.*

[FR Doc. 88–17049 Filed 7–27–88: 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Commercial Space Advisory Committee; Partially Closed Meeting

**AGENCY:** Office of the Associate Deputy Secretary, Commerce.

**SUMMARY:** Pursuant to the **Federal Register** Notice of June 16, 1988, the Commercial Space Advisory Committee has been established to advise the Secretary of Commerce on matters of implementation and institutionalization of the National Space Policy and Commercial Space Initiative, as announced February 11, 1988, and to attempt to determine the most productive course to be taken by this country relating to its commercial space goals.

*Time and place:* August 12, 1988 from 9:00 a.m. to 4:00 p.m. The meeting will take place in the Secretary's Conference Room, U.S. Department of Commerce.

*Agenda for open session:* 9:00–11:30 a.m.

Members will receive and discuss briefing materials on the various sectors of the commercial space market and the President's National Space Policy and Commercial Space Initiative.

*Closed session:* 1:00–4:00 p.m.

**SUPPLEMENTARY INFORMATION:** The time and date of the Partially Closed Meeting for the Commercial Space Advisory Committee as announced in the **Federal Register** on July 20, 1988, is hereby changed to August 12, 1988 from 9:00–4:00, instead of July 29, 1988, from 9:30–4:00. There are no changes to the agenda or the meeting location.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Boyle, Program Director, Office of Commercial Space Programs, U.S. Department of Commerce, Room 7064, Washington, DC 20230. Telephone: 202/377–8125.

Date: July 26, 1988.

**Shellyn McCaffrey,**

*Associate Deputy Secretary*

[FR Doc. 88–17174 Filed 7–27–88: 8:45 am]

BILLING CODE 3510–CW–M

## Bureau of Export Administration

### Stefan L. Borbas, Individually and Doing Business as Austro Montan GmbH and Electronic Products GmbH; Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Stefan L. Borbas, individually and doing business as Austro Montan GmbH and Electronic Products GmbH (hereinafter collectively referred to as Borbas), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app 2401–2420 (1982 and Supp. III 1985)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1988)) (the Regulations);

The Department being prepared to allege that Borbas violated §§ 387.4, 387.5, and 387.6 of the Regulations, in that Borbas ordered a U.S.-origin semiconductor test system on or about October 31, 1979, indirectly filed a false statement of material fact with the Department in order to effect the system's export from the United States, and subsequently reexported the system from Austria to Rumania without obtaining from the Department the reexport authorization which Borbas knew or had reason to know was required by § 374.1 of the Regulations;

The Department and Borbas having entered into a Consent Agreement whereby the parties have agreed to settle this matter by the Department's denying Borbas' export privileges for a five-year period; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, Stefan L. Borbas, individually and doing business as Austro Montan GmbH and Electronic Products GmbH

(hereinafter collectively referred to as Borbas) shall be denied, for a period of five years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Borbas appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Borbas' privileges of participating, in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be applicable to any person, firm, corporation, or business organization with which Borbas is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Borbas or any related party, or whereby Borbas or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Borbas or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 388.16(c) of the Regulations, the denial period shall be suspended for a period of four years beginning one year from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Borbas has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, by order of July 11, 1985 (50 FR 29244, July 18, 1985), Stefan L. Borbas, individually and doing business as Austro-Montan Warenhandelsgesellschaft, also known as Austro-Montan GmbH, was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities and technical data. That temporary denial order was to remain in effect until the conclusion of the Department's investigation and final administrative disposition of the matter. This Order constitutes such final disposition relating to the matters which gave rise to the temporary denial order. Accordingly, the temporary denial order of July 11, 1985 will be superceded and revoked and the following entries shall be deleted from the Table of Denial Orders when this Order becomes effective:

Borbas, Stefan Ludwig, Individually and Doing Business as Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Electronic Products GmbH, Sankt Johangasse 1–5, A–1050, Vienna, Austria

From the effective date of this Order, this Order, and not the temporary denial order, will the basis for any entry concerning Stefan L. Borbas, Austro-Montan Warenhandelsgesellchaft, also known as Austro-Montan GmbH, and Electronic Products GmbH, on the Table of Denial Orders until modified (15 CFR Part 388 (Supp. No. 1, 1988).

This Order does not affect the status of the temporary denial order of July 11, 1985 (50 FR 29244, July 18, 1985) as it applies to and is effective against Sandor Ivady and Maria Ivady.

Third, that the proposed Charging Letter and the Consent Agreement shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

**G. Philip Hughes,**

*Assistant Secretary, for Export Enforcement.*

Entered this 21st day of July 1988.

[FR Doc. 88–17050 Filed 7–27–88; 8:45 am]

BILLING CODE 3510-DT-M

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## Friedrich Rodler, Individually and Doing Business as Austro Montan GmbH and Electronic Products GmbH; Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Friedrich Rodler, individaully and doing business as Austro Montan GmbH and Electronic Products GmbH (hereinafter collectively referred to as Rodler), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1988)) (the Regulations);

The Department being prepared to allege that Rodler violated § 387.4, 387.5, and 387.6 of the Regulations, in that Rodler ordered a U.S.-origin semiconductor test system on or about October 31, 1979, indirectly filed a false statement of material fact with the Department in order to effect the system's export from the United States, and subsequently reexported the system from Austria to Rumania without

obtaining from the Department the reexport authorization which Rodler knew or had reason to know was required by § 374.1 of the Regulations;

The Department and Rodler having entered into a Consent Agreement whereby the parties have agreed to settle this matter by the Department's denying Rodler's export privileges for a five-year period; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, Friedrich Rodler, individually and doing business as Austro Montan GmbH and Electronic Products GmbH (hereinafter collectively referred to as Rodler) shall be denied, for a period of five years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Rodler appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Rodler's privileges of participating, in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be applicable to any person, firm, corporation, or business organization with which Rodler is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Rodler or any related party, or whereby Rodler or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Rodler or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 388.16(c) of the Regulations, the denial period shall be suspended for a period of four years beginning one year from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Rodler has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, by order of July 11, 1985 (50 FR 29244, July 18, 1985), Friedrich Rodler, individually and doing business as Austro-Montan Warenhandelsgesellschaft, also known as Austro-Montan GmbH, was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities and technical data. That temporary denial order awas to remain in effect until the conclusion of the Department's investigation and final administrative disposition of the matter. This order constitutes such final disposition relating to the matters which gave rise to the temporary denial order. Accordingly, the temporary denial order of July 11, 1985 will be superceded and revoked and the following entries shall be deleted from the Table of Denial Orders when this Order becomes effective:

Rodler, Friedrich, Individually and doing business as Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Austro-Montan Warenhandelsgesellchaft, Trattnerhoff 1, A–1010, Vienna, Austria

and

Electronic Products GmbH, Sankt Johangasse 1–5, A–1050, Vienna, Austria.

From the effective date of this Order, this Order, and not the temporary denial order, will be the basis for any entry concerning Friedrich Rodler, Austro-Montan Warenhandelsgesellchaft, also known as Austro-Montan GmbH, and Electronic Products GmbH, on the Table of Denial Orders until modified (15 CFR Part 388 (Supp. No. 1, 1988).

This Order does not affect the status of the temporary denial order of July 11, 1985 (50 FR 29244, July 18, 1985) as it applies to and is effective against Sandor Ivady and Maria Ivady.

Third, that the proposed Charging Letter and the Consent Agreement shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

**G. Philip Hughes,**

*Assistant Secretary for Export Enforcement.*

Entered this 21st day of July 1988.

[FR Doc. 88–17051 Filed 7–27–88; 8:45 am]

BILLING CODE 3510–DT–M

## International Trade Administration

### Initiation of Antidumping Duty Administrative Reviews

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of initiation of antidumping duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** July 28, 1988.

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**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), and (a)(3) of the Commerce Regulations, for administrative reviews of various antidumping duty orders and findings.

**Initiation of Reviews**

In accordance with § 353.53a(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of these reviews no later than July 31, 1989.

| Antidumping duty proceedings and firms | Periods to be reviewed |
|---|---|
| *Canada: Oil Country Tubular Goods (A–122–506)* | 06/01/87–05/31/88 |
| Christianson Pipe | |
| Frank Pipe | |
| Cappco | |
| *Canada: Certain Red Raspberries (A–122–401)* | 06/01/87–05/31/88 |
| B.C. Blueberry | |
| Jesse Processing | |
| Clearbrook Packers | |
| Valley Berries | |
| Mukhtiar & Sons | |
| Landgrow Fruit Packers | |
| *Hungary: Tapered Roller Bearings and Parts (A–437–601)* | 02/06/87–05/31/88 |
| MGM | |
| *Japan: Fishnetting Of Man-Made Fibers (A–588–029)* | 06/01/87–05/31/88 |
| Hakodate/Mitsui | |
| Benny Toyama | |
| Amikan | |
| *PRC: Tapered Roller Bearings and Parts (A–570–601)* | 02/06/87–05/31/88 |
| Premier Bearing | |
| *Romania: Tapered Roller Bearings and Parts (A–485–602)* | 11/07/86–05/31/88 |
| Technoimportexport | |
| *Taiwan: Fireplace Mesh Panels (A–583–003)* | 06/01/87–05/31/88 |
| Yeh Sheng | |
| Tahchung | |
| Taipoly | |
| Dalvey | |

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c).

Dated: July 22, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88–17019 Filed 7–27–88; 8:45 am]

BILLING CODE 3510–DS–M

**[A–588–021]**

## Cell-Site Transceivers and Related Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Revocation in Part

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review and tentative revocation in part.

**SUMMARY:** In response to a request from one manufacturer/exporter the Department of Commerce has conducted an administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai Electric Co., Ltd. ("Kokusai"), and the period January 1, 1987 through December 31, 1987. There were no known shipments of this merchandise to the United States by Kokusai during the period and there are no known unliquidated entries.

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order in part.

Interested parties are invited to comment on these preliminary results and tentative revocation in part.

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4195/3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 15, 1988 the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1048) the final results of its last administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. Kokusai requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on March 2, 1988 (53 FR 6681). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act.")

**Scope of the Review**

Imports covered by the review are cell-site transceivers and related subassemblies which are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package (RF) equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base-

station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. These products are currently classifiable under *Tariff Schedules of the United States Annotated* items 685.2810 and 685.2820 and Harmonized System item numbers 8525.20.15, 8525.20.20, and 8525.20.30. The Review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai, and the period January 1, 1987 through December 31, 1987. There were no known shipments by Kokusai of this merchandise to the United States during the period and there are no known unliquidated entries.

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine that the following margin exists:

| Manufacturer/ exporter | Time period | Margin (percent) |
|---|---|---|
| Kokusai | 1/1/87–12/31/87 | [1] 0.06 |

[1] No shipments during the period; margin from last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication.

Further, as provided for by section 751(a)(1) of the Tariff Act, since the margin for Kokusai is 0.06% and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Kokusai. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1987 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of Japanese cell-site transceivers and related subassemblies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Kokusai requested partial revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement in the order under circumstances specified in the written agreement. Kokusai has had *de minimis* antidumping duty margins for two years and had no shipments for one year. Therefore, we tentative determine to partially revoke the order on Japanese cell-site transceivers and related subassemblies with respect to Kokusai. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentatively determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)), and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: July 21, 1988.

[FR Doc. 88–17020 Filed 7–27–88; 8:45 am]

BILLING CODE 3510-DS-M

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[A–122–401]

## Red Raspberries From Canada; Preliminary Results of Antidumping Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by respndents, the Department of Commerce has conducted an administrative review of the antidumping duty order on fresh and frozen red raspberries from Canada. The review covers four processors/exporters of this merchandise to the United States and the period June 1, 1986 through May 31, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dolores C. Ricci or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 24, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 26019) the antidumping duty order on certain red raspberries from Canada. Clearbrook Packers, Inc. ("Clearbrook"), Jesse Processing, Ltd. ("Jesse"), Mukhtiar & Sons, Ltd. ("M&S"), and Marco Estates Ltd./Landgrow ("Marco") requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on July 17, 1987 (52 FR 27036).

**Scope of the Review**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States* ("TSUS") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are currently classifiable under item nunmbers 146.5400 and 146.5600 of the Tariff Schedules of the United States

Annotated (TSUSA), and frozen raspberries under item 146.7400 of the TSUSA. These products are currently classifiable under HS item numbers 0810.20.90, 0810.20.10, 0811.20.20.

The review covers four procesors/exporters of fresh and frozen red raspberries to the United States: Jesse Processing, Ltd., Mukhtiar & Sons, Ltd., Clearbrook Packers, Inc., and Marco Estates Ltd./Landgrow for the period June 1, 1986 through May 31, 1987.

**United States Price**

As provided in section 772(b) of the Tariff Act of 1930 ("The Act"), we used purchase price for those sales where the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the c.i.f delivered to cold storage, packed price, except for purchase price sales made by M&S, which were sold ex-plant, unpacked. We made deductions, where applicable, for U.S. customs duties, brokerage and handling, and foreign inland freight.

As provided for in section 772(c) of the Act, we used the exporter's sales price for those sales where the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the f.o.b. cold storage, packed price for all companies except Marco, whose ESP sales were c.i.f. delivered to cold storage. We made deductions, where applicable, for brokerage and handling, U.S. and foreign inland freight, credit expenses, commissions to unrelated agents, and indirect selling expenses.

**Foreign Market Value**

In accordance with section 773(b) of the Act, we examined Jesse's home market sales to determine whether they were at prices below the cost of production. Jesse's cost of production consisted of the processor's materials and fabrication costs, plus actual general, selling and administrative ("GS&A") expenses. We offset Jesse's cost of production by the amount of income earned from the Farm Insurance Income Program. Since Jesse purchased some unprocessed berries from related as well as unrelated growers, Jesse's cost of materials (berries) was the weighted average of the related growers' cost of growing berries and the prices charged by unrelated growers. Jesse claimed a water gain/dockage (berries furnished free of charge) adjustment to account for the difference in the pounds of raspberries purchased and the pounds of raspberries processed and sold. We deducted an amount for water gain and dockage from the weighted-average per pound price of red raspberries. We disallowed Jesse's claim for an adjustment to the cost of production for differing puchase prices of juice and jam grade raspberries because the data supplied do not distinguish the related growers' prices and quantities, which we would need to make the claimed adjustment, from the prices and quantities of the unrelated growers.

Based on our analysis, we found that all home market sales were made at prices above the cost of production. Therefore, we based the foreign market value ("FMV") on home market prices.

M&S, Clearbrook and Marco had insufficient home market or third country sales for comparison with United States sales. Therefore, we based the FMV on constructed value.

We calculated constructed value by adding the cost of materials, labor, factory overhead, GS&A expenses, profit and packing. The statutory minimums of 10 percent of the total of cost of manufacture and 8 percent of the total of cost of manufacture and GS&A expenses were used for GS&A costs and profit, respectively, when actual GS&A expenses and profit were less than the statutory minimums. We weight averaged the prices of the unprocessed berries supplied by both the related and unrelated growers in calculating the cost of materials in constructed value because the related growers' prices reflected market values. M&S and Clearbrook claimed a water gain/dockage adjustment to account for differences in the pounds of raspberries purchased and the pounds of raspberries processed and sold. We deducted an amount for water gain and dockage from the weighted average price of the raw berries. We denied M&S's claim for a deduction from its constructed value for income earned from the Farm Insurance Income program because the income was earned by the grower not the processor. We offset Clearbrook's constructed value by the amount of interest income related to operations.

We adjusted home market prices and constructed value for differences in freight, credit, commissions and packing. When comparing FMV to ESP, we deducted indirect selling expenses from the FMV, limited to the amount deducted for United States indirect selling expenses plus (when no commission was paid in the home market) United States commissions. We denied Jesse's and Clearbrook's claims for adjustments concerning differences in labor processing costs because the differences were based on estimates without any documentation. No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 1, 1986 through May 31, 1987:

| Processor-exporter | Margin (percent) |
|---|---|
| Jesse Processing, Ltd | 7.83 |
| Mukhtiar & Sons Packers, Ltd | 4.45 |
| Clearbrook Packers, Inc | 8.33 |
| Marco Estates, Ltd./Landgrow | 9.92 |

Interested parties may request disclosure and/or an administrative protective order within 5 days of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provied by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the antidumping duty order (50 FR 26019, June 24, 1985) for each of those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1987 and who is unrelated to any reviewed firm or previously reviewed firm, a cash deposit of 9.92 percent shall be required.

These deposit requirements are effective for all shipments of Canadian

fresh or frozen red raspberries entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: July 25, 1988.

[FR Doc. 88-17018 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[C-469-004]**

## Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMAMRY:** On March 25, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain. We have now completed that review and determine the net subsidy to be 1.42 percent *ad valorem* during the period January 1, 1986 thorugh December 31, 1986.

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Terri Ann Benny or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone (202) 377-3337.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 9789) the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain (48 FR 52, January 3, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of Review

Imports covered by the review are shipments of Spanish stainless steel wire rod, which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered or treated, not partly manufactured, and valued over 4 cents per pound. Such merchandise is currently classifiable under item number 607.2300 of the Tariff Schedules of the United States Annotated and under item numbers 7221.00.00.20 and 7221.00.00.40 of the Harmonized System.

The review covers the period January 1, 1986 through December 31, 1986 and six programs: (1) Long-term loans under the Concerted Action Program, (2) Privileged Circuit Exporter Credit ("PCEC") program operating capital loans, (3) PCEC prefinancing of exports, (4) a grant from the Solidarity Fund for Employment, (5) capital grants, and (6) regional incentives. Roldan, S.A., was the only known Spanish exporter of stainless steel wire to the United States during the period of review.

### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Roldan, S.A.

*Comment 1:* Roldan points out that, in calculating the benefit from operating capital loans, the Department made a clerical error and allocated the benefit over total wire rod exports when in fact total exports should have been used.

*Department's Position:* We agree. We have revised our calculation accordingly and determine the benefit from this program to be 0.07 percent *ad valorem*.

*Comment 2:* Roldan claims that the Department's use of a national average benchmark rate for measuring the benefit from official prefinancing credits under the PCEC program is unjustified. While the program set a maximum for the percent of the invoice value that could be used to meet the bank's lending requirements under this program, Roldan points out that the interest rate the bank charged for these PCEC credits was no lower than the interest rate it charged for financing the remaining portion of the export invoice value. Therefore, because there is no interest rate differential between the PCEC rate and the commercial rate, there is no subsidy. Further, because of Roldan's "substantial commercial solvency" and the fact that the bank collects a substantial fee for the conversion of the foreign exchange involved in the export transactions, it is logical to expect Roldan's commercial rate to be substantially lower than the national average benchmark rate used by the Department.

*Department's Position:* The Department's practice is to use a national-average interest rate as the benchmark for measuring the benefit from government-directed short-term loans. Roldan, in arguing against this practice and for a company-specific benchmark, presented the Department with information on the commercial rate of only three *export* loans, all from the same bank. Roldan also had 25 other PCEC loans, from four other banks, to finance exports of the subject merchandise to the United States. With the exception of PCEC loans and the commercial loans to finance the remaining portion of the export transactions, Roldan had no other short-term loans.

In choosing a benchmark for measuring the benefit from government-directed short-term loans, we attempt to determine the rate firms would have paid absent the government program. This benchmark "should reflect the predominant alternative sources of short-term financing available to an average firm." (See, *e.g., Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Review* (52 FR 846, January 9, 1987).) The rate paid by a firm on some of its export loans is not a sufficient measure of these alternatives. In this case, especially, the existence of a government program that requires banks to set aside a specific percent of lendable funds for prefinancing exports may have a considerable impact on the rates charged for all export loans. Therefore, we have used as our benchmark published data from official government statistics on the average lending rate for all types of short-term loans, not just export loans.

While re-examining Roldan's claim, we discovered two errors in calculating the level of benefits under this program. The first was a translation error. In our preliminary results, we used as our benchmark for loans of up to three months a 13.61 percent interest rate published in the Boletin Estadistico. This rate is actually for mortgages from savings and loan institutions. The correct benchmark rate for this program is 14.31 percent, which is the general free rate for loans of one to ninety day duration published in the Boletin Estadistico.

The second error concerns the benefits from three loans that were erroneously excluded from our calculations in the preliminary results because the principal on the loans was repaid outside the review period. However, interest was paid on these loans during the review period. Since we consider benefits from preferential loans to occur when interest is paid, we have included these loans in our calculations.

By making these two corrections, we determine the benefit from this program to be 1.02 percent *ad valorem* during the period of review.

**Final Results of Review**

After considering all comments received, we determine the net subsidy to be 1.42 percent *ad valorem* for the period January 1, 1986 through December 31, 1986.

The Department will instruct the Customs Service to assess countervailing duties of 1.42 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

The termination of two programs, operating capital loans and prefinancing of exports under the Privileged Circuit Exporter Credit program, reduces the estimated net subsidy to 0.33 percent *ad valorem*, a rate the Department considers *de minimis*. Therefore, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: July 25, 1988.

**Jan W. Mares,**

*Assistant Secretary, Import Administration.*

[FR Doc. 88-17017 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DS-M

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[C-614-601]

## Steel Wire From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on steel wire from New Zealand. We preliminarily determine the total bounty or grant to be 6.22 percent *ad valorem* for the period June 16, 1986 through June 30, 1986 and 3.60 percent *ad valorem* for the period July 1, 1986 through June 30, 1987. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 2, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 31156) a countervailing duty order on steel wire from New Zealand. On September 30, 1987, New Zealand Wire Industries Limited requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on October 20, 1987 (52 FR 38952). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of New Zealand galvanized carbon steel wire, round carbon steel wire coated or plated with zinc, 0.06 inch or more in diameter. Such merchandise is currently classifiable under TSUSA item numbers 609.4135 and 609.4325. This product is currently classifiable under HS item numbers 7217.1250, 7217.2210 and 7217.3210. We invite comments from all interested parties on these HS classifications. The review covers the period June 16, 1986 through June 30, 1987 and 11 programs.

**Analysis of Programs**

*(1) EPTI*

Under the Export Performance Taxation Incentive ("EPTI"), exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under section 156A of the Income Tax Act of 1976. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives the difference in cash.

The rate of the tax credit depends on the predetermined value-added category into which the product falls. Steel wire falls under category B, for which the corresponding rate was 5.25 percent for the year ending June 30, 1986 and 2.625 percent for the year ending June 30, 1987. The amount of tax credit is calculated by multiplying that rate by the f.o.b. value of exports. Because this tax credit is limited to exporters, we preliminarily determine that it confers a bounty or grant. Two exporters claimed EPTI tax credits on steel wire exports to the United States in the review period.

EPTI tax benefits are earned on a sale-by-sale basis at uniform tax credit rates established for specific years. Because a firm can precisely calculate its EPTI benefit for each export sale at the moment the sale is made and because this credit is not subject to change depending on the firm's ultimate tax liability, we calculate the benefit from this program on a credit-as-earned basis. Using the EPTI rate applicable to galvanized steel wire exports made during the review period, we preliminarily determine the benefit from this program to be 5.25 percent *ad valorem* for the period June 16, 1986 through June 30, 1986, and 2.625 percent *ad valorem* for the period July 1, 1986 through June 30, 1987.

Because the Government of New Zealand reduced the EPTI tax credit rate to zero in the tax year ending March 31, 1988, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the benefit to be zero.

*(2) EMDTI*

Under the Export Market Development Taxation Incentive ("EMDTI"), established in the 1979 Amendment to the Income Tax Act of

1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets, and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because this credit is limited to exporters, we preliminarily determine that it confers a bounty or grant. The tax credit rate for this merchandise was 69 percent during the review period.

One exporter reported a claim under this program for the review period but did not state the amount of the credit. To determine the exporter's tax credit we used the best information available, the proportion of travel and accommodation expenses reported in the firm's financial statement corresponding to the percentage of the firm's exports of this merchandise to the United States during the review period.

To calculate the benefit, we compared the difference in the tax liability between claiming 69 percent of the expenditures as a tax credit and deducting those expenditures as ordinary business expenses. The normal corporate tax rate in New Zealand in the review period was 48 percent. Since exporters may claim a tax credit of 69 percent but may not deduct the expenditures in calculating taxable income, the net benefit to the exporters is 21 percent of the qualifying expenditures. Therefore, we took 21 percent of the exporter's qualifying expenditures relating to exports of steel wire to the United States and allocated that amount over the f.o.b. value of exports of this merchandise to the United States during the review period. Because we do not have separate information for fiscal year 1986, we have applied, as the best information available, the same rate to both the 1986 and 1987 fiscal years. On this basis, we preliminarily determine the benefit from this program to be 0.97 percent *ad valorem* for the periods June 16, 1986 through June 30, 1986 and July 1, 1986 through June 30, 1987.

The New Zealand government reduced the EMDTI tax credit rate to 64 percent for the tax year ending March 31, 1988. We preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the benefit to be 0.70 percent *ad valorem*.

*(3) Other Programs*

We also examined the following programs and preliminarily determine that exporters of steel wire did not use them during the review period:

a. Sales tax exemptions or refunds;
b. Export Suspensory Loan Scheme;
c. Export marketing assistance;
d. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS);
e. Preferential treatment to exporters in granting import licenses;
f. Research and development incentives;
g. Regional development investment incentives;
h. Special industrial development allowances;
i. Export and development financing from the Development Finance Corporation.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the total bounty or grant to be 6.22 percent *ad valorem* for the period June 16, 1986 through June 30, 1986 and 3.60 percent *ad valorem* for the period July 1, 1986 through June 30, 1987.

The Department intends to instruct the Customs Service to assess countervailing duties of 6.22 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 16, 1986 and exported on or before June 30, 1986, and 3.60 percent of the f.o.b. invoice price on all shipments exported on or after July 1, 1986 and on or before June 30, 1987.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.70 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: July 22, 1988.

**Jan W. Mares,**

*Assistant Secretary, Import Administration.*

[FR Doc 88-17021 Filed 7-27-88; 8:45 am]

BILLING CODE 3510-DS-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit and Sublimit for Certain Cotton Textile Products Produced or Manufactured in Peru

July 25, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

**EFFECTIVE DATE:** August 1, 1988.

**Authority:** Ex. O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:** The current limit and sublimit for Categories 338/339 and 338-S/339-S are being increased for special carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 15724, published on May 3, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 25, 1988.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 27, 1988 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the period which began on May 1, 1988 and extends through April 30, 1989.

Effective on August 1, 1988, the directive of April 27, 1988 is hereby amended to increase the following limit and sublimit, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Peru:

| Category | Adjusted 12-Mo. limit [1] May 1, 1988—April 30, 1989 |
|---|---|
| 338/339 | 550,438 dozen of which not more than 361,046 dozen shall be in Categories 338–S/339–S [2] |

[1] The limits have not been adjusted to account for any imports exported after April 30, 1988.
[2] In Categories 338–S/339–S, all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–17010 Filed 7–27–88; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; Amendments to System of Records

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of amendments to a system of records subject to the Privacy Act of 1974.

**SUMMARY:** The Department of the Army is amending one of its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

**DATE:** This proposed action will be effective without further notice on August 29, 1988, unless comments are received which result in a contrary determination.

**ADDRESS:** Send any comments to the record system manager indentified in the record system notice set forth below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cliff Jones, AS–OPS–MR, Fort Huachuca, AZ 85613–5000, telephone: 602–538–6568, autovon: 879–6568.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987
FR Doc. 88–8671 (53 FR 12971) April 20, 1988
FR Doc. 88–10355 (53 FR 16575) May 10, 1988
FR Doc. 88–12861 (53 FR 21509) June 8, 1988

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, published in its entirety.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o), which require the submission of a new or altered system report.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 25, 1988.

### AMENDMENT

**A0314.09DACA**

*System Name:* Nonappropriated Fund Accounts Receivable System (50 FR 22128, May 29, 1985).

*Changes:*

*Categories of Individuals Covered by the System:* Delete "past members of Officer or Noncommissioned Officer Club facilities". Add "former members of Nonappropriated Fund Instrumentalities (NAFI)".

*Authority for Maintenance of the System:* Delete "Pub. L. 216, section 401; Pub. L. 784, section 113". Add "E.O. 9397".

*System Manager(s) and Address:* Delete entire entry and add "Office of Deputy Finance and Accounting for Operations Management, ATTN: SAFM–FAP–N, Stop 66, Indianapolis, IN 46249–1056".

**A0314.09DACA**

**SYSTEM NAME:**

Nonappropriated Fund Accounts Receivable System.

**SYSTEM LOCATION:**

Nonappropriated fund activities at Army installations world-wide.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former members of Nonappropriated Fund Instrumentalities (NAFI) whose accounts show balances other than zero; persons using Post billeting facilities on a fee paid basis (bachelor officer quarters, visitor officer quarters and guesthouse facilities) and persons no longer using such facilities whose accounts have other than zero balances; any individual having a statement of account for the billing period, individuals occupying government housing at any military installation; individual class B telephone subscribers; members, customers or civilians having 30 day credit terms for "charge" sales and/or dues obligations to NAF activities; all persons whose accounts have been dishonored by banking institutions and their checks returned to NAF activities; individuals who have cash loans charged to their accounts.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, SSN, rank, amount of charges, billings of items or services furnished, subsidiary ledgers containing detail of services billed and paid by individual; work order forms, invoice listings, monthly receipt vouchers, date and method of payment, file of billings associated with returned/dishonored checks, and relevant similar documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

31 U.S.C. 66; 10 U.S.C. 2481 and 3012, 5 U.S.C. 5101; and E.O. 9397.

**PURPOSE(S):**

To maintain current rosters as subsidiary records for accounts receivable and cash accountability control; to provide monthly statements to customers; to provide ledger balances for activity financial statements; to prepare aged listing of accounts receivable, 30, 60, and 90 days; to answer inquiries of members on account status and specific transactions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:**

(1) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

(2) Disclosure pursuant to 5 U.S.C. 552a(b) (12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tapes and/or discs by account in numerical and alphabetical order; computer hard copy printouts filed in binders; copies of statements filed in folders.

**RETRIEVABILITY:**

By customer name and SSN.

**SAFEGUARDS:**

Records are maintained in lock-type cabinets within storage areas accessible only to authorized personnel.

**RETENTION AND DISPOSAL:**

Destroyed after 3 years following audit with no exceptions or irregularities disclosed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of Deputy Finance and Accounting for Operations Management, ATTN: SAFM-FAP-N, Stop 66, Indianapolis, IN 46249–1056.

**NOTIFICATION PROCEDURE:**

Individuals may submit written request to the custodian of nonappropriated funds activities at the installation where record is believed to exist.

**RECORD ACCESS PROCEDURES:**

Individuals desiring access to records pertaining to them in this system should write to appropriate nonappropriated fund activity custodian, furnishing full name, SSN, and account number.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR 505).

**RECORD SOURCE CATEGORIES:**

From daily transaction registers/ journals received from billeting officer, signal officer, and/or club officers.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 88–17036 Filed 7–27–88; 8:45 am]

BILLING CODE 3810–01–M

## Corps of Engineers, Department of the Army

[3710–KK]

## Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Pueblo de Cochiti Wetfields Project, Sandoval County, NM.

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** Foundation seepage form Cochiti Dam and Lake has contributed to the occurrence of high groundwater on downstream Cochiti Pueblo agricultural lands. This high groundwater has produced saturated soil and standing water on between 500 and 800 acres of farmland, which has rendered much of this acreage unproductive. The objective of this project is to restore the wetfield lands owned by the Cochiti Pueblo to original dry field conditions and allow these lands to be returned to their historical agricultural use. Structural alternatives are being considered to remove water form these fields.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS can be answered by: Mr. James A. White, Chief, Environmental Section, Albuquerque District, U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, New Mexico 87103–1580, (505) 766–3577.

**SUPPLEMENTARY INFORMATION:** This DEIS will be prepared in response to Pub. L. 100–202, FY 1988 Energy and Water Resources Development Appropriation Act which directed the Corps of Engineers to "implement studies concerning the seepage from Cochiti Dam onto lands of the Cochiti Indian Pueblo with a view to specifically identify the problem and formulate an adequate solution". Further information about the project follows:

1. *Proposed Action.* A DEIS will be prepared to assess potential environmental impacts that may be associated with reducing the high groundwater table on Cochiti Pueblo farmlands that have been rendered unproductive from seepage from Cochiti Dam. Significant resources which occur in the project area include man-made wetlands, riparian woodland and wintering bald eagles. Although the potential to locate significant archeological sites on these farmlands is low given the extent of prior disturbance, the Corp will assess the potential impacts to the traditional cultural values ascribed to these historic fields in accordance with the American Indian Religious Freedom Act (AIRFA).

2. *Reasonable Alternatives.* Structural alternatives under consideration to restore dry field conditions include:

a. Installation of relief wells;

b. Installation of open drainage ditches;

c. Installation of buried collector system;

d. Installation of combination of buried collector system and open drainage ditches.

3. *Scoping Process.* A notice will be circulated to agencies, organizations and interested individuals inviting views and comments on the types of studies and depth of analyses which should be conducted to address the elimination of wetfields on Cochiti Pueblo farmlands. The Final scope of Studies for the DEIS will then be determined in consideration of the views submited by the public and agencies. Significant issues to be analyzed in the DEIS include: potential impacts of structural alternatives on endangered species (i.e., bald eagle, American peregrine falcon, whooping crane), nearby riparian woodland and man-created wetlands on Pueblo farmlands. Necessary coordination with all appropriate environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species Act, and National Historic Preservation Act.

4. *Scoping Meetings.* Scoping meetings will be held with environmental agencies and the Cochiti Pueblo.

5. *Estimated Availability Date of DEIS.* The DEIS is expected to be available to the public in Summer 1989.

Date: July 13, 1988.

**Phillip L. Smith,**

*Major, Corps of Engineers, Deputy District Engineer.*

[FR Doc. 88–17052 Filed 7–27–88; 8:45 am]

BILLING CODE 3710–KK–M

## DEPARTMENT OF ENERGY

## Financial Assistance Award; Intent to Award Grant to Institute of Petroleum

**AGENCY:** Department of Energy.

**ACTION:** Notice of Restricted Eligibility for Grant.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for an award under Grant number DE–FG01–88FE61634 to the Institute of Petroleum in London, England, for the third International Conference on Stability and Handling of Liquid Fuels to be held on September 13 through 16, 1988, in London.

*Scope:* Since 1983, international cooperation and the exchange of technical and scientific data relevant to the stability and handling of liquid fuels have been enhanced by these conferences. The third conference will provide a forum for approximately 200 scientists and engineers from more than two dozen countries to exchange information and ideas on problems relating to the stability and handling of liquid fuels derived from petroleum, shale, and coal. The majority of the papers to be presented are on subjects directly related to the concerns of several Department of Energy program offices. The conference is considered critical to the effective maintenence of international cooperation on these issues.

Eligibility for the award is being limited to the Institute of Petroleum, a non-profit organization based in London. The U.K. Ministry of Defense, as co-sponsor and official host of the year's conference, selected the Institute based on its international reputation for sponsoring highly informative conferences.

The term of this grant shall be from September 13 through September 16, 1988.

The cost to the Department of Energy will be $7,500, which represents approximately 20 percent of the total estimated budget.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Jones, MA–452.1, 1000 Independence Avenue, SW., Washington, DC 20585.

**Edward T. Lovett,**

*Director, Contract Operations Division "A", Office of Procurement Operations.*

[FR Doc. 88–17035 Filed 7–27–88; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. CP88–129–002 and CP88–163–000]**

## Columbia Gas Transmission Corp.; Intent To Prepare an Environmental Assessment on the Proposed New Jersey/Providence Project and Request for Comments on Environment Issues

July 22, 1988.

### Proposed Action

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets. A total of 58.9 miles of 16-inch-diameter natural gas pipeline would be constructed in Northampton County, Pennsylvania, and Warren, Hunterdon, and Morris Counties, New Jersey.

In the Commission's *Order Finding Additional Projects To Be Discrete And Dismissing Applications*, issued on June 29, 1988, concerning pipeline projects in the Northeast, this project was determined to be "discrete" and was referred to as the New Jersey/Providence Project.[1] [2] Since these facilities are located in a common geographic area within Pennsylvania and New Jersey and form a continuous pipeline that would be constructed simultaneously, if authorized, the staff of the FERC will study these facilities in one environmental document.

On December 15, 1987, Columbia Gas Tranmission Corporation (Columbia) filed an application (Docket No. CP88–129–000) under section 7(c) of the Natural Gas Act to construct and operate 37.9 miles of 12-inch-diameter pipeline in Northampton County, Pennsylvania, and Warren, Hunterdon, and Morris Counties, New Jersey. Columbia also proposes to construct two meter stations in Warren and Morris Counties for delivery of natural gas to Elizabethtown Gas Company (Elizabethtown) and one meter station in Morris County for delivery of gas to New Jersey Natural Gas Company (NJ Natural). Columbia would use these facilities to provide firm transportation service of up to 20,000 dekatherms (Dth) per day of gas and an interruptible transportation service of up to 2,200,000 Dth of gas on an annual basis to Elizabethtown. Columbia would also provide up to 10,000 Dth per day of firm sales to NJ Natural.

NJ Natural and Elizabethtown have requested that this service commence on July 1, 1988, and November 1, 1988, respectively, or as soon thereafter as the proposed facilities have been constructed. On January 14, 1988, Columbia filed an amendment (Docket No. CP88–129–001) that modified the pipeline route, increasing its length to 38.1 miles, and changed the pipeline's diameter to 16 inches. On April 26, 1988, Columbia filed an amendment (Docket No. CP88–129–002) that modified the route for the project and would require the construction of approximately 39.8 miles of pipeline. Maps A–1 through A–14 show the location of these proposed facilities.[3] NJ Natural would construct about 5.3 miles of nonjurisdictional pipeline in Morris County, New Jersey, in order to interconnect Columbia's facilities with NJ Natural's distribution system. Elizabethtown's nonjurisdictional facility requirements, if any, are not known at this time.

On January 14, 1988, Columbia filed an application (Docket No. CP88–163–000) under section 7(c) of the Natural Gas Act to construct and operate 19.1 miles of 16-inch-diameter pipeline in Morris County, New Jersey. Columbia would also construct a meter station on the east end of this pipeline to deliver gas to Algonquin Gas Transmission Company (Algonquin) for delivery to Providence Gas Company (Providence) in Rhode Island. Maps B–1 through B–7 show the location of these facilities.[4] Columbia would use these facilities to provide firm transportation service of up to 40,000 Dth per day and firm sales service of up to 10,000 Dth per day for Providence. Providence requested that this service commence on November 1, 1988, or as soon thereafter as the proposed facilities have been constructed. Providence would not require any new nonjurisdictional facilities to implement this proposal. Algonquin's facility requirements, if any, are not known at this time.

A total of 58.9 miles of 16-inch-diameter pipeline would be constructed by Columbia requiring a 75-foot-wide construction right-of-way with 50 feet to

[1] A discrete project is one which can be processed independently and, if authorized, will not adversely impact the other pending competitive projects.

[2] The Commission also found Columbia Gas Transmission Corporation's application in Docket No. CP88–164–000 to be discrete. This filing is designed to replace corroded mainline pipe in Pennsylvania and will be analyzed independently in a separate EA.

[3] Maps A–1 through A–14 have not been printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357–8118.

[4] Maps B–1 through B–7 have not been printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357–8118.

be maintained as permanent right-of-way. The pipeline route includes crossings of the Delaware River (about 0.1 mile wide), Musconetcong River, South Branch Raritan River (three crossings), and Lamington River. The pipeline would begin about 1.5 miles northeast of Hellertown, Pennsylvania, and head northeast for about 6.5 miles to the Pennsylvania-New Jersey state line. The Delaware River would be crossed about 0.4 mile south of Carpentersville, New Jersey. The pipeline would continue heading east across open country for about 3.4 miles until it joins a New Jersey Central Power and Light Compnay (NJCPLC) powerline right-of-way near Warren Glen, New Jersey, on Musconetcong Mountain. The pipeline then follows the NJCPLC powerline right-of-way northeast for about 14.2 miles until it intersects an abandoned railroad north of High Bridge, New Jersey. The pipeline continues northeast either immediately adjacent to or near the railroad right-of-way for about 15.7 miles and ends at a proposed meter station about 1 mile northeast of Bartley, New Jersey. The 39.8-mile pipeline proposed in Docket No. CP88–129–002 would end at this location.

The pipeline proposed in Docket No. CP88–163–000 would begin at an interconnection near milepost 38.8 at Bartley, New Jersey, and follow a powerline right-of-way for its entire length (19.1 miles) to the interconnection with Algonguin west of the boundary of the Troy Meadows Natural Area in Morris County. Approximately 540 acres would be disturbed by the construction of Columbia's facilities and about 360 acres would be retained as permanent right-of-way. NJ Natural's nonjurisdictional pipeline would follow roads within Morris County for its entire length. Maps B–1 and B–2 show the route of these facilities.

*Environmental Issues*

The EA will address the environmental concerns that have been identified by the staff and by individuals in their letters to the FERC. The following issues have been identified to date:

Water Resources
- Impact on streams.
- Effect on public and private water wells.

Pipeline Safety
- Safety considerations.
- Blasting.

Cultural Resources
- Effect on Califon and German Valley Historic Districts.
- Delaware Canal.
- Other historic properties.

Vegetation
- Impact on wetlands.
- Removal and disposal of trees.

Land Use
- Eminent domain.
- Use of existing rights-of-way (ROWS) for facility routing.
- Nearness of the proposed pipelines to existing ROWS which are followed.
- Impact on homes and future development.
- Impact on septic systems.
- Proposed New Jersey Master Development Plan.
- Musconetcong Gorge Nature Preserve.
- Tower Hill Park.
- Voorhees State Park.
- Ken Lockwood Gorge Fish and Wildlife Management Area.
- Impact on nursery operations.

Aesthetics
- Effect of appearance of right-of-way.
- Impact on stone walls.
- Impact on wild and scenic rivers.

Soils and Geology
- Restoration of the right-of-way including removal of surface rock.
- Impact on limestone formations.
- Erosion control and revegetation.
- Effect on crops and farmland.
- Proximity of bedrock.

Wildlife
- Impact on fisheries.
- Affects on threatened and endangered species and other species.

Alternatives, route modifications, and specific mitigating measures will also be considered in the staff's analysis. The EA will also address the environmental impact resulting from the construction and operation of the nonjurisdictional facilities and any jurisdictional facilities that are related to Columbia's proposal.

**Comment Procedures**

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, to interested members of the public, and to those individuals that have sent letters to the Commission.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Comments from Federal, state, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments should be submitted on or before August 29, 1988, reference *Docket No. CP87–129–002*, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Kenneth Frye, Project Manager, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, Environmental Analysis Branch, Room 7312, 825 North Capitol Street NE., Washington, DC 20426.

Maps showing the location of the proposed pipeline facilities have been provided to those on the distribution list. Additional information on environmental matters concerning the proposal is available from Mr. Kenneth Frye, telephone (202) 357–8898.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17041 Filed 7–27–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 5833–001]**

## Pennsylvania Hydroelectric Development Corp.; Availability of Environmental Assessment

July 25, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the Easton/Raubsville Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices

at 825 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc 88-17040 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. G-3894-033, et al.]**

## ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificate, Abandonment of Service and Amendment of Certificates [1]

July 25, 1988.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or beforet August 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| G-3894-033, D, July 5, 1988 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221. | United Gas Pipe Line Company, Burnell and North Pettus Fields, Bee, Goliad and Karnes Counties, Texas. | (1) |
| G-4579-052, F, July 6, 1988 | OXY USA Inc., P.O. Box 300, Tulsa, OK 74102 | Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas. | (12) |
| G-8123-000, F, June 30, 1988 | Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210-4684. | El Paso Natural Gas Company, South Fullerton Plant, Andrews County, Texas. | (2) |
| G-12365-000, D, June 30, 1988 | Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150. | Columbia Gas Transmission Corporation, Valentine Field, Lafourche Parish, Louisiana. | (3) |
| CI63-342-000, D, July 5, 1988 | Mobil Exploration & Producing North America Inc., Nine Greenway Plaza—Suite 2700, Houston, TX 77046. | Trunkline Gas Company, Lakeside Field, Cameron Parish, Louisiana. | (4) |
| CI64-426-000, D, July 7, 1988 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | El Paso Natural Gas Company, Lancaster Hills Field, Crockett County, Texas. | (5) |
| CI64-516-000, B, Apr. 29, 1988 | Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252. | Panhandle Eastern Pipe Line Company, N.E. Trail Field, Dewey County, Oklahoma. | (5 11) |
| CI65-513-001, D, July 7, 1988 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Natural Gas Pipeline Company of America, Indian Basin Field, Eddy County, New Mexico. | (6) |
| CI80-240-001, D, July 5, 1988 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Natural Gas Pipeline Company of America, Burton Flat Area, Eddy County, New Mexico. | (6) |
| CI88-512-000, (CI70-736), B, June 29, 1988. | Tenneco Oil Company | Arkla Energy Resources, a division of Arkla, Inc. Hillsdale NE Field, Grant & Garfield Counties, Oklahoma. | (7) |
| CI88-515-000 (CI72-39), B, July 5, 1988. | Mobil Oil Exploration & Producing Southeast Inc. | Trunkline Gas Company, OCS-G-1043, Ship Shoal 293 Lease, Ship Shoal 274 Field, Offshore Louisiana. | (8) |
| CI88-516-000 (CI61-1766-000), B, July 1, 1988. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Panhandle Eastern Pipe Line Company, Camrick Gas Area, Texas County, Oklahoma. | (9) |
| CI88-517-000 (CI81-443-001), B, July 1, 1988. | do | Panhandle Eastern Pipe Line Company, Spooney (Lower Morrow) Field, Ochiltree County, Texas. | (10) |

NOTES:

*Filing Code:* A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] By Partial Assignment dated 2-10-86, ARCO assigned certain acreage to Kenneth B. Perkins.

[2] Effective 10-1-86, Union Texas Petroleum conveyed its interest in the South Fullerton Plant, Andrews County, Texas, to Shell Western E&P Inc.

[3] Effective 1-21-87, 5-6-87 and 9-23-87, Amoco Production Company assigned certain acreage to Presidio Energy, Inc., formerly known as Kaiser Energy, Inc.

[4] All wells under contract dated 7-21-48, have been plugged and abandoned since April, 1984.

[5] Additional information received 6-21-88.

[6] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

[7] Ashland Oil and Refining Company, the predecessor-in-interest to TEMA and Tenneco Oil Company sold the Pope #1 well before TEMA succeeded to the contract. Therefore, it is Tenneco's intent to seek complete cancellation of Docket No. CI70-736 and Rate Schedule No. 402 since there are no wells, or any acreage dedication, and the fact that Mesa, an interest owner in the Pope #1 well, sought and was granted complete abandonment in Docket No. CI86-402.

[8] By Assignment dated 10-5-87, MOEPSI assigned all its interest in certain acreage to Shell Offshore Inc.

[9] Effective 1-1-87, ARCO assigned all its interest subject to Rate Schedule No. 454 to Exxon Company USA.

[10] Effective 1-1-87, ARCO assigned all its interest subject to Rate Schedule No. 774 to Hondo Oil and Gas Company.

[11] The application was noticed in Docket No. CI88-432-000 on May 20, 1988 (53 FR 18128) as a complete abandonment. However on June 21, 1988, Applicant requested that the application be changed from a complete to a partial abandonment. Docket No. CI88-432-000 has been canceled. The A. L. Stephenson #1 well was plugged and abandoned. Effective 1-1-87, Tenneco assigned certain acreage to Unit Corporation.

[12] Effective 11-1-87, OXY acquired an additional 8.3% working interest in the Oberly "A" well, Greenwood Field, Morton County, Kansas, from CNG Producing Company. Effective 9-30-87, OXY acquired a 100% working interest in the Interstate A-1 Gas Unit (now called Interstate E-1), Greenwood Field, Morton County, Kansas, from Lee Banks and by U.S. Department of Interior leases.

[FR Doc. 88-17042 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-46-001]

## Kentucky West Virginia Gas Co.; Filing

July 22, 1988.

Take notice that on July 15, 1988, Kentucky West Virginia Gas Company (Kentucky West) filed Substitute Fourth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1988.

Kentucky West states that the purpose of this filing is to replace Fourth Revised Sheet No. 41 which contained typographical errors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc 88-17043 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP85-193-006]

## North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

July 22, 1988.

Take notice that North Penn Gas Company (North Penn) on July 15, 1988 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Third Substitute Eighty-Fifth Revised Sheet No. PGA-1
Second Substitute Eighty-Sixth Revised Sheet No. PGA-1
Substitute Eighty-Seventh Revised Sheet No. PGA-1
Second Substitute Eighty-Eighth Revised Sheet No. PGA-1

North Penn states that the tariff sheets are being filed in compliance with the Federal Energy Regulatory Commission's (Commission) June 30, 1988, Order in the above referenced docket. North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit these tariff sheets to become effective as proposed.

Copies of this filing are being mailed to each of North Penn's jurisdictional customers, including Corning Natural Gas Corporation, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 29, 1988. Protests will be considered by the Commission in detemining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17044 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CP88-428-000]

## NRM Operating Co. L.P., et al.; Petition for a Declaratory Order

July 25, 1988.

Take notice that on May 27, 1988, as supplemented on June 23, 1988, NRM Operating Company, L.P., *et al.* (Petitioners) [1] filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over certain natural gas facilities and related activities located in the federal domain, offshore Texas. Petitioners contend that the facilities are gathering facilities under section 1(b) of the Natural Gas Act (NGA) and are therefore exempt from the certificate requirements of section 7(c) of the NGA.

Petitioners state that natural gas is produced and gathered from High Island East Addition Lease Blocks A-14, A-171, A-172, A-173, A-178 and A-183 and delivered into the High Island Offshore System (HIOS) at a subsea interconnection in West Cameron Block 342. Hall-Houston Oil Company is the operator of all production except Block A-183, which is entirely owned and operated by Union Pacific Resources Company. Block A-183 gas qualifies under section 102(d) of the Natural Gas Policy Act of 1978; all other production is price deregulated.

Petitioners state that the facilities consist of four 4½ to 6-inch diameter flow lines that are very short in length and an 18.73-mile long 12¾-inch diameter delivery line. The flow lines tie-in gas produced from satellite wells, and the delivery line carries gas from the flow lines to the HIOS line. The facilities operate at a pressure of approximately 1050 psi. Basic compression, separation and dehydration is performed to the extent needed to qualify the gas for transmission in HIOS. However, Petitioners state that they do not treat or process the gas. Petitioners contend that the facilities perform a gathering function under the "primary function" test set forth in *Farmland Industries, Inc.*, 23 FERC. ¶ 61,063 (1983).

Alternatively, in the event the Commission concludes that the facilities and transactions involved are jurisdictional, NRM Operating Company, L.P. and EnerMark, Inc. request a certificate of public convenience and necessity authorizing the construction and operation of the 18.73-mile delivery line.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, within 30 days after publication of this notice in the **Federal Register.** All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17047 Filed 7-27-88; 8:45 am]

BILLING CODE 6717-01-M

[1] NRM Operating Company, L.P., EnerMark, Inc., Hall-Houston Oil Company and Union Pacific Resources Company.

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[Docket Nos. RP85-177-055 and RP85-176-012]

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 22, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas

BEST COPY AVAILABLE

Eastern) on July 19, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

First Revised Sheet No. 102
First Revised Sheet No. 132
Second Revised Sheet No. 133
First Revised Sheet No. 134
Second Revised Sheet No. 137
First Revised Sheet No. 415
First Revised Sheet No. 416
First Revised Sheet No. 423

Texas Eastern states that these tariff sheets eliminate the minimum commodity bills from Rate Schedules DCQ, ACQ, and WS as required by the Commission's April 19, 1988 "Order Affirming Initial Decisions", rehearing of which was denied by order dated June 20, 1988. Texas Eastern states that by filing these tariff sheets, it does not waive its rights to seek judicial review of the Commission's April 19 Order.

The above listed tariff sheets are proposed to become effective as of August 1, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties of record in Docket Nos. RP85–177 and RP85–176.

Any person desiring to heard or to be protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17045 Filed 7–27–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RE80–31–005]**

## Western Area Power Administration; Application for Exemption

July 25, 1988.

Take notice that Western Area Power Administration filed an application on July 14, 1988 for exemption from requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act, Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990 information on the cost of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Stephen A. Fausett, Assistant Administrator for Power Management and O&M, Western Area Power Administration, P.O. Box 3402, Golden, CO 80411.

**Lois A. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17046 Filed 7–27–88; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 3421–3]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Carla Levesque at EPA, (202) 382–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Administration Resources Management

*Title:* Ecological Information Initiative. (EPA ICR #1474).

*Abstract:* Respondents will be asked to identify databases containing ecological information. Much of this data is being collected by States and private foundations. The main product of this effort will be a clearinghouse identifying existing data resources.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 0.5 hours per year per respondent. This estimate includes the time for reviewing instructions, and completing a worksheet.

*Respondents:* States, private organizations, and businesses.

*Estimated No. of Respondents:* 200.

*Estimated Total Annual Burden on Respondents:* 100 hours.

*Frequency of Collection:* Annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque
U.S. Environmental Protection Agency
Information Policy Branch (PM–223)
401 M St., SW.
Washington, DC 20460
and
Nicolas Garcia
Office of Management and Budget
Office of Information and Regulatory Affairs
726 Jackson Place, NW.
Washington, DC 20503
(Telephone (202) 395–3084)

### OMB Responses to Agency PRA Clearance Requests

EPA ICR #1447; Land Disposal Restrictions: Information Requirements; was disapproved on 07/12/88.

Dated: July 22, 1988

**Odelia Funke,**

*Acting Director, Information and Regulatory Systems Division.*

[FR Doc. 88–17026 Filed 7–27–88; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

## Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection

package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* New collection
*Title:* National Flood Insurance Program—Community Rating System
*Abstract:* A plan to establish a system that grades a community's floodplain management for use in determining flood insurance rates for the community. Communities exercising floodplain management activities that exceed Federal Minimum standards qualify for lower insurance rates.
*Type of Respondents:* State or local governments
*Estimate of Total Annual Reporting and Recordkeeping Burden:* 640
*Number of Respondents:* 40
*Estimated Average Burden Hours Per Response:* 15 hours
*Frequency of Response:* One time

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 20, 1988

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 88–16984 Filed 7–27–88;8:45am]

BILLING CODE 6718–21–M

## Privacy Act of 1974; Proposed New Routine Use of Existing System of Records

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of proposed new routine use to existing system of records.

**SUMMARY:** Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Emergency Management Agency gives notice of a proposed new routine use to be added to anexisting system of records entitled, FEMA/FIA–2, National Flood Insurance Application and Related Documents Files.

**EFFECTIVE DATE:** The proposed routine use shall become effective August 29, 1988 without further notice, unless comments necessitate otherwise.

**ADDRESS:** Address comments to the Federal Emergency Management Agency, Attn: Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, DC 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

**FOR FURTHER INFORMATION CONTACT:** Linda M. Keener, FOIA/Privacy Specialist, at (202) 646–3840.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) last published its notice of systems of records on January 5, 1987 (52 FR 324); February 3, 1987 (52 FR 3344); and March 1987 (52 FR 6875).

The system identified as FEMA/FIA–2, National Flood Insurance Application and Related Documents Files was previously published on November 26, 1982, 47 FR 53492; amended on October 25, 1983, 48 FR 49376, February 17, 1984, 49 FR 6168; May 13, 1985, 50 FR 20007; and January 5, 1987, 52 FR 324. A new routine use is proposed to permit release of policy expiration information to insurance agents, brokers, adjusters, lending institutions and State and Federal agencies and financial instrumentalities which regulate the lending institutions, for carrying out the purposes of the National Flood Insurance Program. This use is compatible with the purpose for which the information is collected because section 102(b) of the Flood Disaster Protection Act of 1973 requires Federal instrumentalities to direct private lenders, who are subject to the regulatory authority of the Federal instrumentality, to require their borrowers to purchase flood insurance in an amount at least equal to the outstanding principal balance of the loan if the loan is scured by improved real property located in an area of special flood hazard in a community that is participating in the National Flood Insurance Program. A concern has been expressed that some lending institutions are allowing mortgagors of floodprone property to let their flood insurance lapse before the end of their mortgage. The proposed routine use would greatly enhance the enforcement of the mandatory flood insurance requirements for floodprone property if flood insurance policy expiration information could be available to the Federal regulatory agencies best equipped to monitor lending institutions.

For the convenience of the reader, the entire text of the system of records affected by this notice is being printed in its entirety.

Dated: July 22, 1988.

**George W. Watson,**

*Acting General Counsel, Office of General Counsel, Federal Emergency Management Agency.*

**FEMA/FIA–2**

**SYSTEM NAME:**

National Flood Insurance Application and Related Documents Files.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Various offices of a servicing agent under contract to the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472. Copies of some of the files are also provided to the FEMA Regional offices when additional information is requested from their respective offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Applicants for individual flood insurance and individuals insured.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Flood insurance, policy issuances and administration records and claims adjustment records and claims adjustment records, including HUD Form1650 and FEMA Form 81–16, applications for emergency and regular flood insurances; FEMA Form 81–18, endorsements; FEMA Form 81–23, renewal applications; FEMA Form 81–17, cancellation notices; policy questionnaries; FEMA Forms 81–40, 81–41, 81–41a, 81–42, and 81–43, notice of loss; FEMA Form 81–42, proof of loss; FEMA Form 81–44, Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy; FEMA Form 81–45, Adjuster's Short Form Report; FEMA Form 81–57, National Flood Insurance Program Preliminary Report; and FEMA Form 81–58, National Flood Insurance Program Final Report. This system contains the taxpayer's identification number (which may be the social security number).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001, et seq.; 5 U.S.C. 301, Reorganization Plan No. 3 of 1978, and E.O. 12127.

**PURPOSE(S):**

For the purpose of carrying out the National Flood Insurance Program and verifying nonduplication of benefits.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To property loss reporting bureaus, State insurance departments, and insurance companies investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA; to insurance agents, brokers, adjusters, and lending institutions for carrying out the purposes of the National Flood Insurance Program; to Small Business Administration, the American Red Cross, the Farmers Home Administration, State and local government individual and family grant and assistance agencies, including but not limited to the State of Ohio Disaster Services Agency and the Johnstown, Pennsylvania Redevelopment Authority for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster; to Write-Your-Own companies as authorized in 44 CFR 62.63 to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program; to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such as States and local government might reasonably expect to assume in the event of a flooding disaster, and to further the flood insurance marketing activities of the National Flood Insurance Program; to State and local government individual and family grant and assistance agencies which furnish to the Federal Insurance Administration the names and addresses of policyholders for purposes consistent with the relocation projects of the Federal Insurance Administration and acquisition projects under the National Flood Insurance Program carried out pursuant to section 1362 of the National Flood Insurance Act of 1968, as amended, and to State and local government agencies who provide the names and addresses of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties for review by the Federal Insurance Administrator to ensure that their State and/or local government agency is engaged in flood plain management improved real property acquisitions and relocation projects consistent with the National Flood Insurance Program; and, upon the approval by the Federal Insurance Administrator, that the use is in furtherance of the flood plain management and hazard mitigation goals of the Agency; to State and local government agencies and municipalities to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community; *to State governments, federal agencies, and federal financial instrumentalities responsible for the supervision, approval, regulation or insuring of banks, savings and loan associations or similar institutions, all for carrying out the purpose of the National Flood Insurance Program.*

Routine uses may include Nos. 1, 5, 6, and 8 of Appendix A.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:**

**STORAGE:**

Magnetic Tape/disc/drum and paper files.

**RETRIEVABILITY:**

By name of the policyholders and policy number.

**SAFEGUARDS:**

Personnel screening, hardware and software computer security measures; paper records are maintained in locked containers and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

**RETENTION AND DISPOSAL:**

Policy records are kept as long as insurance is desired and premiums paid, and for an appropriate time thereafter and claim records are kept for 6 years and 3 months after final action, unless litigation exists. Disposition of records shall be in accordance with FEMA Records Maintenance and Disposition System.

**SYSTEM MANAGER(S) AND ADDRESS:**

Federal Insurance Administrator, Federal Emergency Management Agency, Washington, DC 20472.

**NOTIFICATION PROCEDURES:**

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

**RECORD ACCESS PROCEDURES:**

Same as Notification procedures above.

**CONTESTING RECORD PROCEDURES:**

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR part 6.

**RECORD SOURCE CATEGORIES:**

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 88-16983 Filed 7-27-88; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

*Agreement No.:* 224–200147.

*Title:* Jacksonville Port Authority Terminal Agreement.

*Parties:*

Jacksonville Port Authority (JPA)
Sea-Land Service, Inc. (Sea-Land)

*Synopsis:* The proposed agreement provides for Sea-Land's lease of a 55 acre parcel of land and the buildings and structures located on that parcel in the Port of Jacksonville with an option to lease additional acreage upon written notice of not less than 30 days prior to occupancy. The Agreement also provides for Sea-Land's preferential use of 1700 linear feet of berth. The lease, which expires October 31, 1991, includes an option to extend the initial term of the agreement for up to three (3) consecutive five (5) year terms.

By order of the Federal Maritime Commission.

**Tony P. Kominoth,**

*Assistant Secretary.*

Dated: July 25, 1988.

[FR Doc. 88–17014 Filed 7–27–88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### BNB Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 19, 1988.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *BNB Holding Company, Inc.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Broadway National Bank, New York, New York.

**B. Federal Reserve Bank of Richmond** (Lloyd W., Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *1st Carolina Bancshares, Ltd.*, Charleston, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of 1st Carolina Bank, N.A. (in organization), Charleston, South Carolina.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers and Traders Bancshares, Inc.*, St. Louis, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Farmers and Traders Bank of California, Missouri, California, Missouri.

Board of Governors of the Federal Reserve System, July 22, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–16975 Filed 7–27–88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88N–0276]**

### Drug Export; VS101 Kit (For Loading With Indium IN–111 for Diagnostic Use)

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Vestar, Inc., has filed an application requesting approval for the export of the human drug VS101 Kit (for Loading with Indium IN–111 for Diagnostic Use) to The Netherlands.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendment Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Vestar, Inc., 650 Cliffside Dr., San Dimas, CA 91773, has filed an application requesting approval for the export of the human drug VS101 Kit (for Loading with Indium IN–111 for Diagnostic Use), to The Netherlands. This radiopharmaceutical is useful in diagnosis of various tumor types by intravenous injection followed by scanning of the patient, using suitable gamma camera equipment. The application was received and filed in the Center for Drug Evaluation and Research on July 12, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 8, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 20, 1988.

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 88-17015 Filed 7-27-88; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 88N-0275]

## Drug Export; Omnipaque® (iohexol) Injection

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Sterling Drug, Inc., has filed an application requesting approval for the export of the human drug Omnipaque® (iohexol) Injection to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the human drug Omnipaque® (iohexol) Injection, to Canada. This product is to be used as a water soluble radiographic contrast medium. The application was received and filed in the Center for Drug Evaluation and Research on July 12, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 8, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 20, 1988.

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 88-17016 Filed 7-27-88; 8:45 am]

BILLING CODE 4160-01-M

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## Advisory Committee Meeting; Cancellation

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is canceling the meeting of the Subcommittee of the Arthritis Advisory Committee scheduled for August 1, 1988. The meeting was announced by notice in the **Federal Register** of July 14, 1988 (53 FR 26672).

**FOR FURTHER INFORMATION CONTACT:** David F. Hersey, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695

Dated: July 25, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-17144 Filed 7-26-88; 3:45 pm]

BILLING CODE 4160-01-M

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## Health Care Financing Administration

## Privacy Act of 1974; Report of New System

**AGENCY:** Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "HCFA Medicare Heart Transplant Data File," HHS/HCFA/BDMS No. 09-70-0040. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

**DATES:** HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 25, 1988. The new system of records, including routine uses, will become effective September 26, 1988, unless HCFA receives comments which would necessitate alteration to the system.

**ADDRESS:** The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administation, Room C-M-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

**FOR FURTHER INFORMATION CONTACT:** Barton McCann, M.D., Bureau of Eligibility, Reimbursement and Coverage, Health Care Financing Administration, Room 401, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

**SUPPLEMENTARY INFORMATION:** HCFA proposes to initiate a new system of records and collect data for that system on heart transplants under the authority of section 1875 of the Social Security Act (42 U.S.C. 1395 ll), as amended, which authorizes studies "relating to health care of the aged and disabled." In

addition, section 1874(b) of the Social Security Act (42 U.S.C. 1395kk(b)) provides additional authority to obtain information needed to administer the Medicare program. HCFA has determined that in carefully selected patients, managed according to specific protocols by experienced medical teams at institutions with substantial commitment to and experience with the procedure, heart transplantation has resulted in major increments in life expectancy and quality of life. Data in the system will include clinical information, medical history, pre-tranplant laboratory data, and complications. These data will be used to evaluate the criteria for Medicare coverage of heart transplants, including patient selection, facility experience, and patient outcomes.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility critera, since the information is collected for the purpose of addressing the issues of assessing the adequacy of care and linking adverse outcomes with inadequate care. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: July 20, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

**09-70-0040**

**SYSTEM NAME:**

HCFA Medicare Heart Transplant Data File HHS/HCFA/BDMS.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207. (Contact system manager for location of magnetic computerized records.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Medicare and non-Medicare heart transplant recipients and donors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains individual's name, health insurance claim number or social security number (SSN), demographic and utilization information under the Medicare program, and clinical information such as the etiology of the heart disease, medical history and/or current findings, pre-transplant laboratory data, date of transplant, complications, immunosuppressive protocol, date and cause of death, and readmissions.

**AUTHORITY OF MAINTENANCE OF THE SYSTEM:**

Section 1875 of the Social Security Act (42 U.S.C. 1395 II), as amended.

**PURPOSE OF THE SYSTEM:**

To collect data on heart transplants of Medicare and non-Medicare recipients and donors in order to evaluate the Medicare criteria for facilities, on patient selection, heart transplant facility experience levels, and patient outcomes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Disclosure may be made to:

1. The Organ Procurement and Transplantation Network (OPTN), established in accordance with section 372 of the Public Health Service Act (42 U.S.C. 274);

2. A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system;

3. A Congressional office from the records of an individual in response to an inquiry from the Congressional office at the request of the individual;

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity (when the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee); or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components),

Is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. Organizations deemed qualified by the Health Care Financing Administration to carry out quality assessment, medical audits, or utilization review;

6. To a recipient for a research project, if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made: (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Requires the recipient to: (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and (3) makes no further use or disclosure of the record except: (a) In emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

d. Secure a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM**

**STORAGE:**

Paper and magnetic media.

**RETRIEVABILITY:**

Records are retrieved by the Health Insurance Claim Number or SSN

**SAFEGUARDS:**

a. Authorized Users: Agency employees and contractor personnel whose duties require the use of

information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' automated Data Processing Manual, Part 6, "ADP System Security."

**RETENTION AND DISPOSAL:**

Records are retained for 5 years after the last action on the record.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, BDMS, Health Care Financing Administration, 1–E–9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

**NOTIFICATION PROCEDURES:**

Inquires and requests for system records should be addressed to the system manager at the address above. The requestor must specify the health insurance claim number or SSN.

**RECORD ACCESS PROCEDURES:**

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

**CONTESTING RECORD PROCEDURES:**

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

**RECORDS SOURCE CATEGORIES:**

HCFA obtains the identifying information in this system from the hospital records or directly from the individuals. In addition to these hospital records, other information will be obtained from interviews with the patients and caregivers.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 88–16976 Filed 7–27–88; 8:45 am]

BILLING CODE 4120–03–M

## Office of Human Development Services

**[Program Announcement No. 13612–892]**

## Administration for Native Americans; Availability of Financial Assistance

**AGENCY:** Administration for Native Americans (ANA), Office of Human Development Services (OHDS), HHS.

**ACTION:** Announcement of availability of competitive financial assistance for Alaskan Native social and economic development projects.

**SUMMARY:** The Administration for Native Americans announces the availability of fiscal year 1989 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Alaskan Natives through the support of both social and economic development projects and the strengthening of local governance capabilities.

**DATES:** The closing dates for receipt of applications are December 9, 1988 and May 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ted George (206) 442–0992 or Robert Kreidler (206) 442–8113, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 2901 3rd Avenue, Mail Stop 411, Seattle, WA 98121.

**SUPPLEMENTARY INFORMATION:**

### A. Introduction and Program Purpose

The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Alaskan Natives through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803 of the native American Programs Act of 1974, as amended, Pub. L. 93–644, Stat. 2324, 42 U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders (American Samoan Natives and indigenous peoples of Guam and the Commonwealth of the Northern Mariana Islands).

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and Alaskan Native villages and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governmental responsibilities, economic progress, and improvement of social systems which project and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal and village governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at

achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. Expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

**B. Proposed Projects to be Funded**

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress.

ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

All projects funded by ANA must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of specific projects is not for those programs which operate indefinitely or have need for ANA funding on a recurring basis.

*Goal 1: Governance.* Effective governance is a necessary foundation and condition for social and economic development of Indian tribes, Alaskan Native villages and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal and village governments; (2) increasing the ability of tribes, villages and Native Americans groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and ecomonic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal and village councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes, Alaskan Native villages and Native American groups can better define and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

*Goal 2: Economic Development.* Effective economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

*Goal 3: Social Development.* Effective social development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA expects tribal and village governments and other Native American organizations to move toward coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (Federal and non-Federal toward locally determined priorities, and affect the community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing dependency on public funds.

*Alaska Initiative*

Based on the three ANA goals, in Fiscal Year 1984, ANA implemented a special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level or for village-specific projects aimed at improving a village's social and economic development. This program announcement continues to implement this initiative. ANA sees both the non-profit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantage of the opportunities afforded to Alaskan Natives under the Alaska Native Claims Settlement Act (ANCSA), Pub. L. 92-202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance:

- Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.
- Assist in developing land use capabilities and develop skills in the areas of land and natural resource management including resource assessment and development, as well as potential impacts upon the environment and the subsistence ecology.
- Assist village consortia in the development of tribal constitutions, codes, and court systems.
- Develop agreements between the State and villages that transfer programs, jurisdictions, and/or control to Native entities.
- Strengthen village government control of land management, including land protection.
- Develop tribal courts, adoption codes, and/or related comprehensive children's codes.
- Assist in status clarification for traditional councils.
- Initiate village level mergers between village council and village corporations.
- Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia, in order to maximize tribal government resources, i.e., to develop model codes, or tribal court systems.

Economic Development:

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• Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaskan Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.

• Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.

• Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars invillages, reducing dependency on State and Federal subsidies.

• Assist in new or expanded Native businesses.

• Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development:

• Assist villages in developing the service sector.

• Assist in developing training and education programs for those jobs in education, government, and health usually found in local communities and also to work with the various agencies to encourage job replacement of non-Natives by Natives.

• Coordinate land use planning with village corporations and city government.

• Develop local control of planning and delivery of social services.

• Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.

• Develop or coordinate activities with State-funded projects, in decreasing the incidences of child abuse and neglect, or fetal alcohol syndrome, or Native suicides.

• Assist in obtaining licenses to provide housing or related services for State or local governments.

• Assist in increasing the number of Native adoptions, or Native children returning home from foster care.

• Assist in respite care for family caretakers.

**C. Eligible Applicants**

The following are eligible to apply for a grant award under this program announcement:

• Alaskan Native villages as defined in the Alaska Native Claims Settlement Act and/or non-profit village consortia.

• Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects.

• Nonprofit Native organizations in Alaska with village specific projects.

• Current ANA grantees in Alaska funded under section 803 of the Native American Program Act with a project period ending in Fiscal Year 1989.

• Alaskan Native Indian communities as recognized by the Bureau of Indian Affairs.

Although for-profit Regional Corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in the project.

**D. Available Funds**

Approximately $1.5 million of financial assistance is available under this program announcement.

Funding Guidance: ANA plans to award approximately 15–18 grants. For individual village projects, the funding level will be up to $100,000; for regional nonprofit and village consortia, the funding level is up to $150,000, commensurate with approved multi-village objectives. For multi-year projects, the funding range for Fiscal Years 1990 and 1991 will be the same.

Each applicant is eligible to receive no more than one grant award under this announcment.

**E. Multi-Year Projects**

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake more complex and in-depth projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three year period. It should also be noted that funding after the first budget period of a multi-year project will be non-competitive.

The budget period for each multi-year project grant will be 12 months. The non-competitive funding for the second and third year will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, ANA's continued belief that the project is in the public interest, and compliance with applicable statutory, regulatory and grant requirements.

**F. Grantee Share of Project**

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in acordance with Section 1336.50(b)(3) of the Native American Program Regulations.

**G. Intergovernmental Review of Federal Programs**

This program is not covered by Executive Order 12372.

**H. The Application Process**

*Availability of Application Forms*

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980–0016. The application kits containing the necessary forms may be obtained from:

Administration for Native Americans, Office of Human Development Services, DHHS, 2901 3rd Avenue, Mail Stop 411, Seattle, WA 98121

Attention: No. 13612–892, (206) 442–0992

Attention: 13612–892.

*Application Submission*

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to:

Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, 290 3rd Avenue, Mail Stop 414, Seattle, WA 98121.

Attention: ANA 13612–892.

Do Not Submit the Application to Washington, DC

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant

award, including Native American Program statutory and regulatory requirements.

*Application Consideration*

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.
- The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grants awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA). The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share equipment.

**I. Review Process and Criteria**

Applications submitted in a timely manner under this program announcement will undergo a pre-review to determine:

- that the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;
- that the application proposes project objectives which are responsive to the Program Announcement; and
- that the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project and to determine its likelihood of success. A proposed project should reflect the purposes of ANA's SEDS philosophy and program goals (as described under *Introduction and Program Purpose* of this announcement) and increase the probability of greater self-sufficiency for a specific tribe or Native American community. The five programmatic and management criteria are closely related to each other and are considered in judging the overall quality of an application. Points will be given only applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application presents long-range goals, within the context of the community's comprehensive social and economic development goals, which are the proposed project addresses. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist and be coordinated with the project are described. These resources may be human, natural or financial in nature, including other Federal and non-Federal resources.

(2) *Capabilities and Qualifications.* (10 points)

Resumes or position descriptions of key personnel, including those of consultants, are included. Resumes indicate that the staff are qualified to carry out the project activities and that overall quality project management is assured.

(3) *Project Objectives and Activities.* (45 points)

The application proposes specific project objectives and activities and activities. The objective work plan is presented in annual increments for all project objectives and activities and demonstrates that these objectives and activities:

- Are measurable and quantifiable;
- Are based on a fully described and locally determined balanced strategy for governance and for social and economic development;
- clearly address the community's long range goals;
- can be accomplished with available or expected resources during the proposed project period;
- indicate when the objective and major activities under each objective will be accomplished; and
- specify who will accomplish the activities under each objective.

(4) *Results or Benefits Expected.* (20 points)

The proposed project will result in specific, measurable outcomes which will clearly contribute to the overall development of the community and its members. The specific information provided on expected outcomes is the basis upon which the outcomes can be evaluated at end of the project.

(5) *Budget.* (10 points)

The budget fully explains and justifies the line items in the budget categories in Part III, Section B of the Budget Information. Sufficient detail is included to facilitate determination of allowability, relevance to the project, and cost benefits for the entire length of the proposed project.

**J. Guidance to Applicants**

The following policies, pointers, and instructions are provided to assist applicants in developing a competitive application.

(1) *Program Guidance*

- Community Coordination: ANA supports the concept that the key to balanced socio-economic development is the local village. ANA encourages Native village governments to coordinate their local plans with other village entities, if any, and especially the city government and the village corporation. In addition, villages are encouraged to make maximum use of regional nonprofit resources, including village-to-regional corporation subcontracts.
- ANA reviewers of applications have indicated they are better able to judge the feasibility and practicality of a proposed economic development project when the applicant has utilized a business plan to discuss the project. ANA has included sample business plans in the application kit. It is strongly suggested that an applicant use these as a guide in the development of an application. The more information given a review panel on a proposed business project, the better able it is to evaluate the potential for success.
- ANA does not fund on the basis of need. ANA funds projects presenting the strongest prospects for fulfilling a community's governance, social or economic development.
- In discussing the problems or needs of the community being addressed in the application, sufficient background and/or history of the community should be included to ensure that the feasibility of

the proposed project will be understood by reviewers.

• The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community.

• In the Part IV, Section A of the application package, *Resources Available to the Proposed Project,* the applicant should address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions to those settlements, and explain the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.

• Supporting documentation or other testimonies from concerned interests other than the applicant may be used to provide support for the feasibility of the project.

(2) *Technical Guidance*

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• ANA will not fund essentially identical projects serving the same constituency.

• ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Federally recognized tribe must be from the governing body.

• The Cover Page (included in the Kit) should be the first page of an application.

• The Approach page (Section B, Part IV) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.

• If a profit making venture is being proposed, revenue must be reinvensted in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income and used in accordance as general program income and used in accordance with the deduction alternative. (See 45 CFR Part 74.42(c).)

• Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e. why the project needs multiple years to complete) and describe the results to be achieved by the end of each budget period of the projected period.

• The applicant should specify the entire project period length on the cover page of the Form 424, Block 16, not the length of the first budget period. In cases where the applicant's contents propose one length of project period and the Form 424 cover page specifies a conflicting length of project peirod, ANA will consider the project period specified on the Form 424 as the governing one.

• Village governments without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

**Note:** Subpart H, 45 CFR Part 74 describes those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in Subpart H require:

(1) Accurate, current and complete disclosure;

(2) Records which show source and application of funds;

(3) Effective control and accountability of funds and property;

(4) Comparison of actual and budgeted amounts;

(5) Procedures to minimize time lapsing between transfer and disbursement of funds;

(6) Procedures to determine allowability and allocating of funds;

(7) Accounting records with source documentation;

(8) Periodic audits; and

(9) A follow-up system.

(3) *Projects or Activities that generally will not meet the purposes of this Announcement.*

The following activities are inconsistent with the policies of ANA:

• Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA") are inconsistent with the policies of ANA. However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Proposed feasibility studies, business plans, marketing plans, or written materials such as manuals that are not an integral part of the applicant's long-range development plan would generally not be considered. ANA is not interested in funding "wish lists" of business possibilities. ANA expects evidence of solid investment of time and thought on the part of the applicant to any development of business or other plans.

• On-going social service delivery, expansion or continuation of existing social service delivery programs;

• Core administrative functions or other activities that essentially support the applicant's administrative functions;

• Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development);

• Project plans or strategies clearly not determined or developed at the local level;

• Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes;

• Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity;

• Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at the end of the project period;

• Lack of demonstrated coordination with non-ANA resources;

• Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project;

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch. 3, Section E.);

• Use of ANA grant funds for a monetary share of capital investment for a business.

ANA will critically evaluate applications within which the acquistion

of major capital equipment (whether oil rigs or computers/word processing equipment), franchises or management fees are major components of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

ANA will also critically evaluate projects reflecting heavy reliance on use of outside consultants, especially where consultants have prepared the application and have provided themselves a major role in the proposed project.

**K. Due Date for Receipt of Applications**

The closing dates for applications submitted in response to this program announcement are December 9, 1988 and May 5, 1989.

**L. Receipt of Applications**

Applications must either be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late applications.* Applications which do not meet the criteria in the above paragraph of this section are considered late applications. ANA shall notify each late applicant that its application will not be considered in the current competition.

*Extention of deadlines.* ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Date: July 11, 1988.

**William Lynn Engles,**

*Commissioner, Administration for Native Americans.*

Approved: July 21, 1988.

**Sydney Olson,**

*Assistant Secretary for Human Development Services.*

[FR Doc. 88-16998 Filed 7-27-88; 8:45 am]

BILLING CODE 4130-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV-930-08-4212-24; N-45098]**

### Airport Leases; Nevada

**ACTION:** Notice of Airport Lease Application N-45098 Amendment No. 2 To Legal Description, Double Four Corp.

**DATE:** July 21, 1988.

**FOR FURTHER INFORMATION CONTACT:** Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 East Fourth Street, Winnemucca, NV 89445, (702) 623-3676.

**SUMMARY:** Notice is hereby given that the Notice that appeared in the **Federal Register**, Vol. 52, No. 10, Thursday, January 15, 1987, amended by notice dated September 15, 1987, is further amended to include the following described public lands.

**Mount Diablo Meridian, Nevada**

T. 47 N., R. 30 E., sec. 16, NW¼SE¼NW¼NE¼, W½NE¼NW¼NE¼.

The area described, including original Notice and first amendment, contains 310.00 acres and is located in Humboldt County, Nevada.

**SUPPLEMENTARY INFORMATION:** Segregation of the Public Lands—The original application was filed on October 15, 1986, and on that date the above described public lands were segregated from all forms of appropriation under the public land laws.

**Robert J. Neary,**

*District Manager, Winnemucca.*

Dated: July 21, 1988.

[FR Doc. 88-16970 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-HC-M

**[NV-930-08-4220-11; Nev-048392]**

### Classification Termination and Opening Order; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates a March 3, 1960, classification, as amended, for disposal under the agricultural land laws other than the Pittman Underground Water Acts.

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ben Collins, District Manager, Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126, 702-388-6403.

**SUPPLEMENTARY INFORMATION:** Under the authority of section 7 of the Taylor Grazing Act (48 Stat. 1272) and pursuant to 43 CFR 2462.4(c)(2), the Bureau of Land Management hereby terminates Penoyer Valley Area Classification No. Nev-048392 which involves the following described lands:

**Mount Diablo Meridian**

T. 4 S., R. 54 E.,
Sec. 1, E½NE¼, NE¼SE¼.
T. 3 S., R. 55 E.,
Sec. 29, SW¼SW¼;
Sec. 30, E½NE¼;
Sec. 32, all;
Sec. 36, NW¼NE¼.
T. 4 S., R. 55 E.,
Sec. 6, NW¼NE¼, NW¼, N½SW¼;
Sec. 8, N½NE¼,SE¼NE¼.

The area described aggregates 1,320 acres located in Lincoln County.

A total of 7,202.41 acres was classified for disposal under the agricultural land laws other than the Pittman Underground Water Acts (41 Stat. 293; 42 Stat. 1012; 43 U.S.C. 351-355, 357-360). the 1,320 acres described above are the remaining public lands in the classification.

The existing State of Nevada water supply report on Penoyer Valley indicates, "* * * additional withdrawals and consumption of underground water for irrigation would * * * conflict with existing rights and threaten to prove detrimental to the public welfare." The classification serves no useful purpose without the availability of water to irrigate the lands.

The classification did not provide for segretation of the lands against any of the public land laws, incuding the mining and mineral leasing laws, except the Pittman Underground Water Acts. These Acts were repealed by Pub. L. 88-417 of August 11, 1964 (78 Stat. 389) and Pub. L. 94-579 of October 21, 1976 (90 Stat. 2789).

**Edward F. Spang,**

*State Director, Nevada.*

[FR Doc. 88-16961 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-08-4111-15; W-106741]

## Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-106741 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-106741 effective December 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88-16966 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-22-M

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[AZ-920-08-4212-12; A-22436]

## Arizona; Order Providing for Opening of Land in Graham and Cochise Counties

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Opening order.

**SUMMARY:** This notice will open 20,046.99 acres of reconveyed lands to surface entry. A total of 17,188.36 acres will be opened to mining and mineral leasing. The mineral estate in 2,858.63 acres was already in Federal ownership.

**FOR FURTHER INFORMATION CONTACT:** Angela Mogel, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

**SUPPLEMENTARY INFORMATION:** On April 11, 1988, as authorized under section 206 of the Federal Land Policy and Management Act of October 21, 1976, the United States accepted title to the following land:

Gila and Salt River Meridian, Arizona

*Parcel I*

T. 4 S., R. 23 E.,
Sec. 32, lots 1 to 6 incl., N½, NE¼SW¼, N½SE¼, SE¼SE¼.
T. 5 S., R. 22 E.,
Sec. 2, lots 1 to 4 incl., (lying within the survey of the former Camp Goodwin Military Reservation);
Sec. 24, lot 4;
Sec. 25, lots 1, 2 and 3, W½NE¼, E½NW¼, SW¼NW¼, NW¼SE¼;
Sec. 26, lots 4, 5 and 8;
Sec. 35, lot 1;
Sec. 36, lots 1 to 4 incl., W½E½, W½.
T. 5 S., R. 23 E.,
Sec. 9, S½SW¼, SW¼SE¼;
Sec. 16, E½, N½NW¼, E½SE¼NW¼, E½E½SW¼;
Sec. 17, NE¼NE¼, SW¼SE¼;
Sec. 19, lot 4, SE¼SW¼, SE¼;
Sec. 20, E½E½, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 29, N½NW¼, SW¼NW¼;
Sec. 30, lots 1, 2 and 3, SE¼NE¼, NE¼SW¼;
Sec. 32, all;
Sec. 33, all;
Sec. 34, S½;
Sec. 35, E½, SW¼;
Sec. 36, all.
T. 5 S., R. 26 E.,
Sec. 10, lots 4 and 5, SE¼;
Sec. 15, E½E½;
Sec. 25, N½, N½SE¼, N½S½SE¼.
T. 5 S., R. 27 E.,
Sec. 16, all.
T. 6 S., R. 22 E.,
Sec. 16, all, excluding San Carlos Indian Reservation;
Sec. 20, NE¼, E½SE¼;
Sec. 21, W½, W½SE¼;
Sec. 28, all;
Sec. 29, NE¼, NE¼SE¼.
T. 6 S., R. 23 E.,
Sec. 1, lots 1 and 2, S½NE¼, E½SW¼, W½SE¼;
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 3, lots 1 to 4 incl., S½N½;
Sec. 11, NE¼SE¼;
Sec. 12, NW¼, W½SW¼;
Sec. 29, S½NW¼, SW¼;
Sec. 32, lots 1 to 4 incl., N½S½, N½;
Sec. 35, lot 1.
T. 6 S., R. 24 E.,
Sec. 16, E½;
Sec. 32, W½E½, E½SE¼.
T. 6 S., R. 27 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 36, NE¼, N½NW¼.
T. 7 S., R. 23 E.,
Sec. 2, lots 1 to 4 incl., S½N½, SW¼, W½SE¼;
Sec. 6, lots 1 to 6 incl., SW¼NE¼, SE¼NW¼.
T. 24 S., R. 32 E.,
Sec. 2, lots 1 to 4 incl., W½E½, W½;
Sec. 3, all;
Sec. 10, N½, SW¼, W½SE¼, SE¼SE¼;
Sec. 14, lots 1 to 4 incl., SW¼NE¼, S½NW¼, S½SW¼, W½SE¼;
Sec. 15, SE¼NE¼, SE¼SW¼, S½SE¼;
Sec. 16, all;
Sec. 22, lots 1 and 2;
Sec. 23, lots 1, 2, 3.

*Parcel II*

T. 5 S., R. 27 E.,
Sec. 35, all.
T. 6 S., R. 23 E.,
Sec. 31, lots 1 to 7 incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 6 S., R. 24 E.,
Sec. 17, SW¼SW¼;
Sec. 19, E½W½, E½SE¼;
Sec. 20, W½W½;
Sec. 29, W½W½;
Sec. 30, lots 3 and 4, S½NE¼, E½SW¼, SE¼;
Sec. 31, lot 1, N½NE¼, NE¼NW¼.
T. 7 S., R. 23 E.,
Sec. 2, E½SE¼.
T. 7 S., R. 24 E.,
Sec. 5, SE¼SW¼, SW¼SE¼.
T. 24 S., R. 32 E.,
Sec. 11, lots 1 to 4, incl., W½E½, NW¼NW¼.

At 9:00 a.m., on August 29, 1988, the lands described as Parcels I and II will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

At 9:00 a.m., on August 29, 1988, the land described as Parcel I will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 9:00 a.m., on August 29, 1988, the lands described as Parcel I will be open to applications and offers under the mineral leasing laws.

All valid applications received at or prior to 9:00 a.m. on August 29, 1988, shall be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2-3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

The mineral estate in Parcel II was already in Federal ownership and has been and presently remains open to the

operation of the mining and mineral leasing laws.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 88-16971 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-32-M

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**[UT-050-08-4212-13; U-56998]**

## Realty Actions; Sales, Leases, etc.: Utah; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction notice—notice of Realty Action; U-56998; Exchange of Public and Private Lands in Juab and Washington Counties, Utah.

**SUMMARY:** In FR Doc. 88-14777 (published in the issue of Thursday, June 30, 1988, page 24805, column one), the legal description on lines 7, 8, 9, and 10 in the first paragraph is corrected to read: "T. 43 S., R. 16 W., SLM, Sec. 1, Lots 14 and 15, containing 57.65 acres; and T. 42 S., R. 16 W., SLM, Sec. 35, W½NW¼SE¼NW¼, S½SE¼NW¼, containing 25 acres."

Dated: July 21, 1988.

**Larry Oldroyd,**

*District Manager.*

[FR Doc. 88-16960 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-DQ-M

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**[AK-965-4213-15]**

## Publication F-14880-A; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14 (a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kikiktagruk Inupiat Corporation for approximately 26 acres. The lands involved are in vicinity of Kotzebue, Alaska.

A portion of Tract No. 1, U.S. Survey No. 2645, within Sec. 9, T. 17 N., R 18 W., Kateel River Meridian Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contracting the Alaska State Office of the Bureau of Land Magagement, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, and agency of the Federal Government or regional corporation, shall have until August 29, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days for the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements of filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived the rights.

**Elizabeth Bonnell**

*Acting Chief, Branch of Northwest Adjudication.*

[FR Doc. 88.1704 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-JA-M

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**[NV-930-08-4212-14; N-28229]**

## Realty Action; Battle Mountain District; Shoshone-Eureka Resource Area; Eureka County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Realty action; competitive sale of Federal land in Eureka County, Nevada.

**SUMMARY:** The following described lands have been examined and identified as suitable for disposal by sale through competitive bidding procedures under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

MOUNT DIABLO MERIDIAN

| | T. 19 N., R. 53 E., Sec. 11 | Acreage |
|---|---|---|
| Parcel No.: | | |
| 1 | NE¼NE¼ | 40 |
| 2 | E½NE¼NW¼NE¼ | 5 |
| 3 | E½SE¼NW¼NE¼ | 5 |
| 4 | E½NE¼SW¼NE¼ | 5 |
| 5 | W½NW¼SW¼NE¼ | 5 |
| 6 | S½SW¼NE¼ | 20 |

Note.—Six parcels for a total of 80 acres.

The sale is consistent with the Shoshone-Eureka Resource Management Plan. The lands are being offered for sale for community expansion of the Town of Eureka. The land is not needed for support of any Bureau resource program and is not suitable for management by another Federal department or agency. The lands will not be offered for sale for at least 60 days after the publication of this Notice in the **Federal Register.**

The lands are within the Shannon Station and Ruby Hill Grazing Allotments. The lessees have been sent the required two-year notification.

The patents, when issued will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

The sale will be subject to valid existing rights, including:

Nev-04979, 400' R/W for U.S. 50
N-5638, 25' electric powerline
N-37190, 10' telephone line
N-46712, 15' water pipeline
N-19823, 50' pipeline
Nev-067106, 20' telephone and telegraph line
Nev-065179, 40' pipeline
N-47187, Oil & Gas Lease

road and public utilities easements in accordance with Eureka County's transportation plan

### General Information

Publication of this Notice in the **Federal Register** segregates the public lands from all forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon pulbication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication of this notice, whichever comes first.

Information relative to the sale and bidding procedures, as well as the appraised fair market value of the parcels, will be made available to the public at a later date, not less than 30 days before the sale.

The lands are proposed to be offered for sale by sealed bid, utilizing competitive bidding procedures. Conveyance of the available mineral interests will occur simultaneously with the sale of the lands. A successful bid for the lands will constitute an application for conveyance of those mineral interests; therefore, all bids must be accompanied by a $50.00 filing fee for conveyance of the available mineral interests.

Unsold parcels will be offered competitively on a continuing basis for a period of six months after date of sale.

BLM may reject any and all offers, or withdraw the lands from sale up to the point of receiving the balance of the bid amount, if the authorized officer determines that the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may

submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be evaluated by the State Director, and this notice upheld, modified or vacated. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**Michael C. Mitchel,**

*Acting District Manager, Battle Mountain District.*

[FR Doc. 88-17061 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-HC-M

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[CO-010-08-4333-11]

## Temporary Closure of Certain Public Lands in the Little Snake Resource Area to Public Access; Sand Wash Basin, Moffat County, CO

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice.

**SUMMARY:** Certain public lands in the Sand Wash Basin, Moffat County, Colorado will be temporarily closed to public access from 4:00 a.m. to 10:00 p.m. September 10, 1988, on and adjacent to the Sand Wash Hare and Hound event ORV race course. These lands will be temporarily closed for reasons of public safety and resource protection. This temporary closure is made pursuant to 43 CFR 8364.

**SUPPLEMENTARY INFORMATION:** Access will be limited to race officials, entrants, support personnel, law enforcement personnel, BLM personnel and other authorized personnel as designated during the period of the closure. The lands to be temporarily closed are further described as encompassing all or portions of T. 8 N., R. 97 W.; T. 8 N., R. 98 W.; T. 8 N, R. 99 W.; T. 9 N., R. 97 W.; T. 9 N., R. 98 W.; T 9 N., R. 99 W.; T 9 N., R. 100 W.; T. 10., R. 97 W.; T. 10 N., R. 98 W.; T. 10 N., R. 99 W., T. 10 N., R. 100 W.; T. 11 N., R. 97 W.

A map describing the specific areas to be temporarily closed is available from the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado. 81625. (303) 824-4441. Any person who fails to comply with this closure order issued under 43 CFR 8364 may be subject to the penalties provided for in 43 CFR 8360.0-7.

**Jerry L. Kidd,**

*Associate District Manager.*

July 20, 1988.

[FR Doc. 88-17055 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-JB-M

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[ID-010-08-4341-02]

## Boise District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting—District Advisory Council.

**SUMMARY:** The Boise District Advisory Council will conduct a field tour of the Delamar Silver Mine and new recreation facilities in the district's Owyhee Resource Area. The next day, the Council will conduct a half-day business and briefing session in the district office.

**DATES:** The field tour will be held on Thursday, August 18, 1988 and the business and briefing session will be held Friday, August 19, 1988. A public comment opportunity will be held at 11:00 a.m., August 19.

**ADDRESSES:** The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Barry Rose, Boise BLM District, 208-334-9303.

**J. David Brunner,**

*District Manager.*

Date: July 19, 1988.

[FR Doc. 88-17056 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-GG-M

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## Advisory Council Meeting Cancellation

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting cancellation, Ukiah, California, District Advisory Council.

**SUMMARY:** The meeting of the Ukiah District Advisory Council scheduled for August 4 and 5, 1988, and announced in the Tuesday, June 30, 1988, **Federal Register** is cancelled.

The meeting is being rescheduled and an announcement will follow.

**FOR FURTHER INFORMATION CONTACT:** Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

Date: July 19, 1988.

**Edwin G. Katlan,**

*Acting District Manager.*

[FR Doc. 88-17057 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-84-M

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[Alaska AA-49660]

## Proposed Reinstatement of a Terminated Oil and Gas Lease; Kateel River, AK

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-49660 has been received covering the following lands:

**Kateel River Meridian, Alaska**

T. 16 S., R. 7 W.,
Sections 25, 26, 35, and 36.
(2,560 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-49660 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1985, subject to the terms and conditions cited above.

Dated: July 20, 1988.

**Kay F. Kletka,**

*Chief, Branch of Mineral Adjudication.*

[FR Doc. 88-17058 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-JA-M

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[Alaska AA-48904-0]

## Proposed Reinstatement of a Terminated Oil and Gas Lease; Fairbanks, AK

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48904-0 has been received covering the following lands:

**Fairbanks Meridian, Alaska**

T. 18 S., R. 10 E.,
Sec. 14, N½SW¼.
(80 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accuring from December 1,

1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48904–0 as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

**Kay F. Kletka,**

*Chief, Branch of Mineral Adjudication.*

Dated: July 20, 1988.

[FR Doc. 88–17059 Filed 7–27–88; 8:45 am]

BILLING CODE 4310–JA–M

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**[WY–920–08–4111–15; W–92051]**

## Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–92051 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–92051 effective July 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section*

[FR Doc. 88–17060 Filed 7–27–88; 8:45 am]

BILLING CODE 4310–22–M

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## Minerals Management Service

## Development Operations Coordination Document; TXO Production Corp.

**AGENCY:** Minerals Management Service; Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that TXO Production Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7194, Block 487, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Port O'Connor, Texas.

**DATE:** The subject DOCD was deemed submitted on July 19, 1988.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 20, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc.88–17062 Filed 7–27–88; 8:45 am]

BILLING CODE 4310–MR–M

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## Development Operations Coordination Document; Amerada Hess Corp.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Amerada Hess Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5612, 5613, and 5224, Blocks 205, 206, and 225, respectively, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fourchon, Louisiana.

**DATE:** The subject DOCD was deemed submitted on July 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 21, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-16967 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Gulfstar Operating Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Gulfstar Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5411, Block 107, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

**DATES:** The subject DOCD was deemed submitted on July 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the ssubject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 22, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-16969 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Sandefer Offshore Operating Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Sandefer Offshore Operating Co. has submitted a DOCD describing the activities it proposed to conduct on Leases OCS-5557 and 5558, Blocks 201 and 202, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

**DATES:** The subject DOCD was deemed submitted on July 21, 1988. Comments must be recieved within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 22, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-16968 Filed 7-27-88; 8:45 am]

BILLING CODE 4310-MR-M

# INTERNATIONAL BOUNDARY AND WATER COMMISSION

## International Agreement for Mexican Participation in the Expansion of the International Wastewater Treatment Plant at Nogales, AZ; Finding of No Significant Impact

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Based on an environmental assessment, the U.S. Section finds that the proposed action for the United States Government to enter into an agreement with the Government of Mexico to provide for their participation in the expansion of the Nogales International Wastewater Treatment Plant now under consideration by the U.S. Section and the City of Nogales, Arizona is not a major Federal action that would cause a significant local, regional, or national adverse impact on the environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500-1508); and the U.S. Section's operational procedures for implementing section 102 of NEPA, published in the **Federal Register**, September 2, 1981 (46 FR 44083–44094); the U.S. Section hereby gives notice that an environmental impact statement is not being prepared.

**FOR FURTHER INFORMATION CONTACT:** Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, United States Section, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

**SUPPLEMENTARY INFORMATION:**

## Proposed Action

The action proposed is that the United States Government enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission (Commission), to provide for Mexico's participation in the expansion of the Nogales International Wastewater Treatment Plant (NIWWTP) now under consideration by the U.S. Section of the Commission and the City of Nogales, Arizona. The agreement provides for the Mexican Government to participate in the construction cost of the expansion of the existing international plant with a contribution of $1 million payable over a 10–year period beginning with the start of expanded plant operation in 1990. The agreement also provides that Mexico construct within its territory adequate sewage collection facilities to enable efficient conveyance of Nogales, Sonora's sewage to the international plant. Assurances by Mexico are provided in the agreement to prevent the discharge of untreated sewage into the natural drains that flow from Mexico into the United States, and to prevent the discharge of untreated industrial wastewater into the international plant.

## Alternatives Considered

Three alternatives were considered:

The Proposed Action Alternative provides for an agreement recommending that Mexico join in the expansion of the NIWWTP by purchasing a capacity of about 4.95 million gallons per day (mgd) over and above the existing capacity of 4.95 mgd now assigned to Mexico at the international plant. Mexico would pay a total of $1 million for the additional capacity in increments of $100,000 a year over a 10-year period beginning in 1990. The division of operations and maintenance costs of the additional capacity would be in accordance with the procedures established in Commission Minute No. 206 of January 13, 1958 and consistent with authorization of the Acts of Congress of August 19, 1935 and July 27, 1953. Further, the proposed agreement would request Mexico to undertake plans for rehabilitation and expansion of the sewage collection system of the City of Nogales, Sonora. The proposed agreement also provides a number of measures to assure reliability and maintenance of the Mexican collection lines designed to prevent the pollution problems resulting from untreated wastewaters and from sewer line breaks and unsewered areas in Nogales, Sonora discharging into natural drains and crossing the boundary. Also, it provides assurance against the discharge of untreated industrial wastewaters to the international plant. Finally, the agreement also provides a cooperative program through the Commission for early response to failures in the Mexican sewer system.

The No Action Alternative will result in no immediate provision by Mexico for treatment of its collected wastewater in excess of that treated at the international plant now operating at capacity. Since the terrain slopes from Mexico to the United States, there would be increased fugitive sewage discharges of untreated sewage crossing the boundary through the various drainages. The present risk of a serious public health hazard due to Mexican sewage crossing the boundary on the surface would be greatly increased. The would be no assurance that Mexico would undertake a program for rehabilitation and expansion of its sewage collection system thus contributing to the public health risk. There would be no prevention of untreated industrial wastewater discharges to the international plant.

The Disposal in Mexico Alternative requires pumping the excess sewage load southward for future treatment. This alternative carries the risk of serious breakdowns occurring in the several pumping stations necessary for this alternative. There is the possibility that Mexico would not provide treatment for the additional load for many years.

## Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment for the proposed agreement on July 18, 1988.

## Finding of The Environmental Assessment

The Draft Environmental Assessment finds that the proposed action does not constitute a major Federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The agreement would assure, to the extent possible, the prevention of discharges of untreated sewage into the United States associated with an inadequate collection system in Nogales, Sonora. It would prevent the future problem of even larger amounts of untreated sewage crossing the boundary into the United States due to both inadequate collection facilities and little or no treatment applied to the increasing quantities of sewage generated by the Mexican city in the future. It would prevent introduction of untreated industrial wastewaters into the central collector in Mexico and thus prevent a loss in treatment efficiency in the international plant. The attendant health hazards and odors associated with the untreated seawage crossing the boundary would be eliminated.

2. Detrimental economic effects associated with drops in the tourism industry that could be associated with a health and public nuisance problems related to the sewage spills would be avoided.

3. The well-being of people living and traveling in the Nogales, Arizona-Nogales, Sonora area would be improved.

4. Adverse impacts as have occurred would be prevented so that the improved water quality would benefit all wildlife in the area.

5. The rehabilitation and expansion of the sewage collection system in Mexico would not affect archaeological or historical sites in United States territory now on, or proposed for nomination to, the National Register of Historic Places, nor would it affect the United States properties listed on the National Registry of Natural Landmarks.

On the basis of the Draft Environmental Assessment, the U.S.

Section determines that an environmental impact statement is not required for the United States Government to enter into an agreement with the Government of Mexico to provide for their participation in the expansion of the Nogales International Watewater Treatment Plant and hereby supplies notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30 days of the date of this Notice.

The Draft Finding of No Significant Impact (FONSI) and Draft Environmental Assessment (EA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the Draft FONSI and Draft EA are available to fill single copy requests at the above address.

July 18, 1988.

Suzette Zaboroski,

*Staff Counsel.*

[FR Doc. 88-17053 Filed 7-27-88; 8:45 am]

BILLING CODE 4710-03-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31247]

## CSX Corp. and American Commercial Lines, Inc., Control; SCNO Acquisition Corp.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision.

**SUMMARY:** The Commission is accepting for consideration the application filed June 28, 1988, for CSX Corporation and American Commercial Lines, Inc. to control SCNO Barge Lines, Inc.

**DATES:** Written comments must be filed by August 29, 1988. Written comments from the Secretary of Transportation and the Attorney General of the United States must be filed by September 12, 1988. Applicants' reply is due October 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

**ADDRESSES:** Unless otherwise indicated, an original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31247, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

G. Paul Moates, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006

Michael A. Khouri, American Commercial Lines, Inc., Box 610, Jeffersonville, IN 47130

Keith G. O'Brien, Wheeler & Wheeler, 1625 K. Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** CSX Corporation (CSX) is a non-carrier holding company that owns and controls several regulated carriers. These carriers include: CSX Transportation, Inc. (a rail carrier); CMX (a motor carrier); and through its wholly owned subsidiary, American Commercial Lines, Inc. (ACL), American Commercial Barge Line, Company (ACBL) (a water carrier).[1] SCNO Barge Lines, Inc. (SCNO) holds authority from the Commission to operate as a water common and contract carrier. CSX's rail operations are located east of the Mississippi River, ACBL has significant barge operations on the Ohio River, and SCNO originates and terminates the preponderance of its barge traffic on the Missouri River.[2] This proposal involves the consolidation of SCNO with ACBL.

Pursuant to an Asset Purchase Agreement, CSX/ACL acquired control of the assets of SCNO on June 23, 1988, through a newly created, whlly owned subsidiary of ACL, SCNO Acquisition Corp. (Acquisition). The sale of assets of a regulated water carrier to a company under common control with another regulated carrier requires approval under 49 U.S.C. 11343. In addition, since the proposal involves creation of a railroad "interest" in a competing water carrier, approval under 49 U.S.C. 11321 is required. In order to prevent any violation of these statutory provisions and to ensure SCNO's independence while the Commission considers the transaction, ACL deposited all of the outstanding common stock of Acquisition in an independent voting trust administered by American Security Bank, N.A. Also, Acquisition formally changed its name to SCNO Barge Lines, Inc.

By decision served May 25, 1988, we found that the railroad consolidation regulations, with modifications, are appropriate for use in considering an application under the circumstances presented here. We also determined that this proposal was a minor transaction under 49 CFR 1180.2(c) and granted applicants' requests for waiver and clarification of certain provisions of the Commission's railroad consolidation procedures. CSX, ACL and SCNO filed an application on June 28, 1988, containing the information required under 49 CFR 1180.6(a) and 1180.8(b) for minor transactions. Therefore, because the application complies with the applicable regulations and waivers, we are accepting it for consideration. The application and exhibit are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' represenatives named above.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than August 29, 1988. The Secretary of Transportation and Attorney General of the United States must file their comments no later than September 12, 1988. Applicants' reply is due no later than October 3, 1988. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list shortly after comments have been received. Any person who files timely written comments shall be considered a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Written comments shall include:

1. The docket number and title of the proceeding;

2. The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

3. The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

[1] CSX also owns and controls Sea-Land Corporation (Sea-Land). This firm operates an ocean container carrier (not subject to Commission regulation) as well as two motor carriers, Intermodal Systems, Inc. and Sea-Land Freight Service, Inc. Common control of these carriers was previously approved by the Commission. In addition, CSX also has a non-controlling interest (50 percent or less of the outstanding stock) in numerous other carriers. These carriers are operated independently, and maintain separate records, from CSX's wholly owned carriers.

[2] There is a small overlap in ACBL and SCNO operations on the Illinois River and the lower Mississippi River.

4. A statement on whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal; and

5. If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing.

Discovery should be undertaken immediately and the parties are encouraged and admonished to resolve these matters amicably.

The requirement that applicants present environmental and energy data was waived in the May 25, 1988 decision because the proceeding does not involve a change in carrier operations and the transaction does not fall within the classes of actions considered to be major regulatory actions under 49 CFR 1106.5.

This action will not significantly affect either the quality of the human environment or energy conservation.

*It is ordered:*

1. The application is Finance Docket No. 31247 is accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on the date served.

Decided: July 25, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, and Lamboley. Commissioner Simmons concurred. Commissioner Sterrett did not participate in the disposition of this proceeding. Commissioner Lamboley was absent and did not participate in the disposition of this proceeding.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17120 Filed 7-27-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Finance Docket No. 31081 [1]]**

## KKR Associates; Control Exemption

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** On reopening, pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission expands its retroactive exemption of KKR Associates from the requirements of prior approval under 49 U.S.C. 11343, *et seq.*, published September 24, 1987, to include its control of Fred Meyer, Inc., and through Fred Meyer, Inc., its control of Distribution Trucking, Inc. subject to the conditions for the protection of railroad employees in *New York Dock Ry.—Control Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

**DATES:** This exemption will be effective on August 27, 1988. Petitions to stay must be filed by August 8, 1988, and petitions for reconsideration must be filed by August 17, 1988.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31081 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter M. Shannon, Jr., 8300 Sears Tower, 233 South Wacker Drive, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-16990 Filed 7-27-88; 8:45 am]

BILLING CODE 7035-01-M

[1] This action is based on a petition formerly numbered Finance Docket No. 31263.

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## DEPARTMENT OF JUSTICE

### Information Collection(s) Under Review

July 25, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

**Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection**

(1) National Prisoner Statistics—Summary of Sentenced Population Movement.

(2) NPS-1, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(3) Annually.

(4) State or local governments, Federal agencies or employees. This questionnaire provides annual summary measures on persons confined in the Nation's correctional institutions. The data forms the basis for historical trend analysis. Respondents are personnel in the State Departments of Correction, the District of Columbia, and the Federal Bureau of Prisons.

(5) 55 respondents at 6 hours each.

(6) 330 estimated annual public burden hours.

(7) Not applicable under 3504(h).

**Reinstatement of a Previously Approved Collection for Which Approval has Expired**

(1) Aircraft/Vessel Report.

(2) I-92, Immigration and Naturalization Service, Department of Justice.

(3) On occasion.

(4) Businesses or other for-profit, Federal agencies or employees. This form is part of the manifest requirements of sections 231 and 251 of the I&N Act and is used by other agencies for data collection and statistical analysis.

(5) 600,000 respondents at .18 hours each.

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(6) 108,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Arrival and Departure Record.

(2) I–94, Immigration and Naturalization Service, Department of Justice.

(3) On occasion.

(4) Businesses or other for-profit. This form is part of the manifest requirements of sections 231 and 255 of the I&N Act and may be evidence when issued at alien registration required by section 264 of the Act.

(5) 13,720,000 respondents at .066 hours each.

(6) 905,520 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Freedom of Information/Privacy Act Request.

(2) G–639, Immigration and Naturalization Service, Department of Justice.

(3) On occasion.

(4) Individuals or households. Used by persons requesting a search of INS records under the Freedom of Information/Privacy Acts.

(5) 20,000 respondents at .25 hours each.

(6) 5,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

**New Collection**

(1) Data Sheet For Derivative Citizenship.

(2) N–642, Immigration and Naturalization Service.

(3) One time only.

(4) Individuals or households, Federal agencies or employees. Form is needed to fulfill statistical reporting requirements of the Immigration and Nationality Act and the Immigration Reform and Control Act, to determine the number and characteristics of aliens becoming US citizens annually. Form is filed by aliens naturalizing, having foreign born children under 18, and citizen parents requesting that adopted children derive US citizenship.

(5) 375,000 respondents at .18 hours each.

(6) 67,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Certificate of Satisfactory Pursuit.

(2) I–669, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations. The INS uses this form to verify that a certified course provider has supplied the required instruction to temporary resident aliens.

(5) 100,000 respondents, 9,000 responses at .166 hours each

(6) 149,400 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Application To Adjust Status From Temporary To Permanent Resident.

(2) I–698, Immigration and Naturalization Service.

(3) One-time only.

(4) Individuals or households. This form will collect the necessary information to adjudicate applications from temporary resident aliens to adjust their status to permenent residents and issue an Alien Registration Card (I–551).

(5) 1,800,000 respondents at 1 hour each.

(6) 1,800,000 estimated annual burden hours.

(7) An expedited clearance has been requested. This form will be published with the Notice of Proposed Rulemaking as specified.

**Larry E. Miesse,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 88–16899 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–10–M

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## Lodging of Consent Order Pursuant to the Clean Air Act; Adamo Wrecking Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 14, 1988 a proposed consent order in *United States v. Adamo Wrecking Company*, Civil Action No. 87 CV 73146, was lodged with the United States District Court for the Eastern District of Michigan. The proposed consent order concerns failure of the defendants to comply with regulations which require that timely, complete, adequate and accurate notice of asbestos demolition operations be given to the United States Environmental Protection Agency. The proposed consent order requires defendants to comply with the regulations and pay a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Adamo Wrecking Company*, D.J. Ref. 90–5–2–1–1077.

The proposed consent order may be examined at the office of the United States Attorney, Federal Building, 231 West Lafayette, Detroit, Michigan 48226 and the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17064 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

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## Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 15, 1988, a proposed consent decree in *United States v. CSX Transportation, Inc., et al.*, Civil Action No. 88–1308–CIV–Aronovitz, was lodged with the United States District Court for the Southern District of Florida. The complaint filed by the United States alleged that defendant CSX Transportation, Inc. is the owner of the Gold Coast Oil Corporation Site ("the facility") in Miami, Florida, and that twelve other named defendants generated and arranged for the transportation or disposal of hazardous substance at the facility; that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The complaint sought injunctive relief to require the defendant to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint further sought the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases.

The consent decree requires the defendants to implement fully the remedy selected by the Environmental Protection Agency as set forth in the Record of Decision, dated September 11, 1987.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States v. CSX Transportation, Inc., et al.* D.J. Ref. 90–11–2–262.

A copy of the proposed consent decree may be examined at the office of the United States Attorney, Southern District of Florida, 155 South Miami Avenue, Miami, Florida, 33130; at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the Department of Justice at the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States v. CSX Transportation, Inc., et al.*, D.J. Ref. 90–11–2–262, and enclose a check in the amount of $13.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17065 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

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### Lodging of Consent Decree Pursuant to the Clean Water Act In United States v. City of Denison

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 15, 1988, a proposed Consent Decree in *United States v. City of Dension and State of Texas,* Civil Action No. S–88–191CA was lodged with the United States District Court for the Eastern District of Texas, Sherman Division.

The Complaint in this enforcement action was filed on July 15, 1988, against the City of Dension ("the City") under sections 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d), seeking civil penalties and injunctive relief for the discharge of pollutants into the navigable waters of the United States in violation of National Pollution Discharge Elimination System ("NPDES") permits issued to the City. The Complaint also seeks injunctive relief against the City to require it to construct a new wastewater treatment facility to replace the Duck Creek facility. The proposed Consent Decree ("Decree") requires the City to adhere to interim limits for the discharge of pollutants from its wastewater treatment facilities and comply with a schedule for the construction of a new wastewater treatment facility. It further provides for stipulated penalties for failure to comply with the Decree and for payment of a $51,000 civil penalty for past violations of the Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Denison,* D.J. No. 90–5–1–1–2768.

The proposed Consent Decree may be examined at the office of the United States Attorney, One Grand Centre, Suite 504, 1 Grand Ave., Sherman, Texas 75090 and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Enviromental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.50 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Notural Resources Division.*

[FR Doc. 88–17066 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

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### Amendment To Final Judgment (On Consent) Under Clean Air Act To Enjoin The Discharge Of Air Pollutants

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that an Amendment to Final Judgment (On Consent) in *United States v. Virgin Islands Water and Power Authority,* Civil Action No. 83–85 (D.V.I.), was lodged with the United States District Court for the District of the Virgin Islands on July 18, 1988. The Amendment establishes compliance schedules for permit applications and fuel burning requirements to be imposed upon the Virgin Islands Water and Power Authority to bring the Authority's gas turbines into compliance with the Prevention of Significant Deterioration (PSD) regulations promulgated pursuant to Part C of the Clean Air Act, 42 U.S.C. 7470–7479.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Amendment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Virgins Islands Water and Power Authority,* D.J. Ref. No. 90–5–2–1–568A.

The Amendment may be examined at the office of the United States Attorney, District of the Virgin Islands, St. Thomas, United States Virgin Islands 00801; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resource Division, United States Department of Justice, Room 1651, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Amendment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, at the above address.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17067 Filed 7–27–88; 8:45 am]

BILLING CODE 4410–01–M

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### Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 19, 1988, a proposed consent decrees in *United States v. City of West Chicago,* Civil Action No. 88C–6158, was lodged with the United States District Court for the Northern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against the City of West Chicago for violations of the Clean Water Act.

The proposed consent decree requires the City of West Chicago to attain and, thereafter, maintain compliance with the

Clean Water Act and comply with its NPDES permit. To ensure compliance with the final effluent limits, the proposed consent decree requires West Chicago to complete construction of a chlorination facility and excess flow facilities by November 1, 1988. The proposed consent decree also requires West Chicago to take interim measures to ensure that the effluent for fecal coliform at its West Chicago Regional Wastewater Treatment Plant is as low as technically feasible until the completion of the chlorination facility. Finally, the consent decree requires West Chicago to pay a civil penalty of $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decreee. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. City of West Chicago*, D.J. Ref. 90-5-1-1-840A.

The proposed consent decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17066 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

### Controlled Substances; Establishment of 1988 Aggregate Production Quota for 2-amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex)

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of an Established 1988 Aggregate Production Quota.

**SUMMARY:** This notice establishes the 1988 aggregate production quota for 4-methylaminorex, a Schedule I controlled substance.

**DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act, (21 U.S. Code 826), requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On March 3, 1988, a notice proposing to establish a 1988 aggregate production quota for 4-methylaminorex was published in the Federal Register (53 FR 6883). All interested persons were invited to comment on or object to the proposal on or before April 4, 1988. No comments or objections were received.

Pursuant to section (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1988 aggregate production quota for 4-methylaminorex, expressed in grams of anhydrous base, be established as follows:

Basic Class, 1988 Aggregate production Quota (grams), Schedule I, 4-Methylaminorex—5.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

Dated: June 27, 1988.

[FR Doc. 88-17011 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

### Controlled Substances; Proposed Revised 1988 Aggregate Production Quotas

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of Proposed Revised 1988 Aggregate Production Quotas.

**SUMMARY:** This notice proposes revised 1988 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act. Since the establishment of the 1988 aggregate production quotas on October 22, 1987 (52 FR 39573), DEA has reviewed data submitted by the registered manufacturers concerning 1987 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

**DATE:** Comments or objections should be received on or before August 29, 1988.

**ADDRESS:** Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year.

This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On October 22, 1987, a notice of the 1988 aggregate production quotas was published in the Federal Register (52 FR 39573). The notice stipulated that the Administrator of the Drug Enforcement Administration would adjust the quotas in early 1988, as provided in Title 21,

Code of Federal Regulations, Part 1303.23(c). These aggregate production quotas represent those amounts of controlled subtances that may be produced in the United States in 1988 and do not include amounts which may be imported for use in industrial processes.

Based on a review of 1987 year-end inventories, 1987 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the Drug Enforcement Administration by the Food and Drug Administration and other information available to DEA, the Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1988 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base:

| | Previously established 1988 aggregate production quota | Proposed revised 1988 aggregate production quota |
|---|---|---|
| **Schedule I** | | |
| Lysergic acid diethylamide | 6 | 11 |
| **Schedule II** | | |
| Alfentanil | 3,500 | 0 |
| Amphetamine | 371,000 | 264,000 |
| Cocaine | 700,000 | 793,000 |
| Codeine (for sale) | 58,277,000 | 54,249,000 |
| Desoxyephedrine | 1,418,000 | 1,423,000 |
| Levodesoxyephedrine | 1,400,000 | 1,400,000 |
| Methamphetamine | 18,000 | 23,000 |
| Dextropropoxyphene | 74,075,000 | 96,986,000 |
| Dihydrocodeine | 582,000 | 278,000 |
| Fentanyl | 6,100 | 5,000 |
| Hydrocodone | 2,360,000 | 2,791,000 |
| Hydromorphone | 198,000 | 183,000 |
| Levorphanol | 16,800 | 10,700 |
| Methadone | 1,591,000 | 1,645,000 |
| Methadone Intermediate (4-cyano-2-dimethylamino-4,4-diphenylbutane) | 1, 989,000 | 2,057,000 |
| Methylphenidate | 2,317,000 | 2,172,000 |
| Mixed Alkaloids of Opium | 7,000 | 8,000 |
| Morphine (for sale) | 3,148,000 | 3,268,000 |
| Morphine (for conversion) | 62,845,000 | 59,807,000 |
| Oxycodone (for sale) | 2,122,000 | 2,406,000 |
| Pentobarbital | 11,737,000 | 14,407,000 |
| Phencyclidine | 31 | 36 |
| Phenylacetone | 1,020,000 | 413,000 |
| Secobarbital | 1,573,000 | 971,000 |
| Sufentanil | 450 | 500 |

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrants a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon shall entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: June 27, 1988.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 88–17012 Filed 7–27–88; 8:45 am]

BILLING CODE 4410-09-M

## Controlled Substances; Proposed 1988 Aggregate Production Quota for Ibogaine

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of a Proposed 1988 Aggregate production Quota.

**SUMMARY:** This notice proposes a 1988 aggregate production quota for ibogaine, a Schedule I controlled substance.

**DATE:** Comments or objections must be received on or before August 29, 1988.

**ADDRESS:** Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633–1366.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General Establish on an annual basis aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

Recently, the Drug Enforcement Administration received an application for a manufacturing quota for ibogaine, a Schedule I controlled substance. The ibogaine is to be used for research purposes.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.Code 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the 1988 aggregate production quota for ibogaine expressed in grams of anhydrous base.

| Basic Class | Proposed 1988 aggregate production quota (grams) |
|---|---|
| Ibogaine | 575 |

All interested persons are invited to submit comments or objections in writing regarding this proposal. Comments or objections should be submitted to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, and must be received by August 29, 1988. If a person raises one or more issues which that person believes would warrant a hearing, that individual should so state and summarize the reason for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be

heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual production quotas for Schedule I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: June 27, 1988.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 88-17013 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

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**[Docket No. 87-59]**

## Melvin Darryl Allen, D.D.S.; Revocation of Registration; Denial of Application

On June 19, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Melvin Darryl Allen, D.D.S. (Respondent) of 128 West Pine Street, Ponchatoula, Louisiana 70454, proposing to revoke Respondent's DEA Certificate of Registration AA7218488 and deny any pending applications for its renewal. The statutory predicate for the Order to Show Cause was Respondent's conviction on January 28, 1987, in the United States District Court for the Eastern District of Louisiana of distribution of hydromorphone (Dilaudid), in violation of 21 U.S.C. 841(a)(1).

By letter dated July 16, 1987, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young and the hearing was held in New Orleans, Louisiana on November 17, 1987.

On March 25, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on May 20, 1988, the Administrative Law Judge transmitted the record in this proceeding to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that several individuals were obtaining prescriptions for Dilaudid from Respondent for no legitimate medical purpose. Between 1979 and 1982, one individual obtained "hundreds and hundreds" of prescriptions for 20 dosage units of 4 mg. Dilaudid from Respondent in exchange for either sexual favors or money. This individual often paid Respondent $450.00 for a prescription of Dilaudid. Additionally, in or prior to 1985, another individual exchanged sexual favors or money with Respondent for prescriptions of Dilaudid. On several occasions, this individual went to see Respondent with her husband and they each paid $400.00 for a prescription for 20 Dilaudid 4 mg. tablets. None of the prescriptions were issued for a legitimate medical purpose.

Further, the Administrative Law Judge found that in or about 1984 or 1985, a commercial fisherman employed by Respondent received prescriptions for Dilaudid from Respondent in lieu of salary for services rendered, not for any legitimate medical purpose.

The Administrative Law Judge also found that an individual had purchased over a hundred prescriptions for Dilaudid from Respondent as of September 1985. Initially, the individual paid Respondent $350.00 for a prescription of 20 dilaudid 4 mg. tablets. Respondent subsequently increased the price to $400.00 when the street value of Dilaudid went up. This individual met Respondent at his office or on the Interstate 55 service road. During one of their meetings on the service road, Respondent showed the individual a handgun and told him if he ever told anyone about their arrangement that he would have him shot.

The individual began to cooperate with the Louisiana Department of Public Safety in the Fall 1985. While working with the state police, he purchased prescriptions for Dilaudid and V-Cillin from from Respondent on October 15, 1985, November 14, 1985, and December 5, 1985. None of the prescriptions had been written for a legitimate medical purpose. As a result, Respondent was indicted in the United States District Court for the Eastern District of Louisiana and charged with three counts of illegal distribution of Dilaudid in violation of 21 U.S.C. 841(a)(1). On January 28, 1987, Respondent entered a plea of *nolo contendere*. He was sentenced to three years imprisonment, execution of which ws suspended, was placed on active probation for three years and fined $150.00. Additionally, as a special condition of probation, Respondent was ordered by the Court not to issue prescriptions for Schedule II narcotic drugs in the course of his dental practice.

On December 5, 1987, a committee of the Louisiana State Board of dentistry held an administrative hearing. The committee found that Respondent engaged in conduct giving cause for the suspension, revocation, or restricting of his dental license. In a Proposed Final Decision, the committee recommended that Respondent's license to practice dentistry should be suspended for a period of two years and his dental license should be permanently restricted to prohibit him from engaging in the administration, dispensation or prescription of any narcotic drug. Additionally, it proposed that after the expiration of his two year suspension, Respondent should be put on a ten year probationary period. The committee also proposed that a fine of $3000.00 be imposed and that Respondent reimburse the Board $8,550.99 for expenses incurred by the proceedings.

The Administrative Law Judge concluded that there is a lawful basis for revocation of Respondent's DEA registration and recommended that Respondent's DEA registration be revoked. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. Respondent has been convicted of felony offenses relating to controlled substances. There is, therefore, a lawful or statutory basis for the revocation of his DEA registration and for the denial of his application for renewal thereof. 21 U.S.C. 824(a)(2). In light of all of the facts and circumstances in this case, the Administrator concludes that the registration must be revoked and his pending application denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA

Certificate of Registration AA7218488, previously issued to Melvin Darryl Allen, D.D.S., be, and it hereby is, revoked. The Administrator further orders that Respondent's application for renewal of his DEA Certificate of Registration, executed on May 21, 1987, be, and it hereby is, denied.

This order is effective August 29, 1988.

Dated: July 20, 1988.

**John C. Lawn,**

*Administrator.*

[FR Doc. 88-16979 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

## John D. Vincent, D.D.S.; Revocation of Registration

This proceeding was initiated on April 15, 1988, when the Deputy Assistant Administrator for Diversion Control issued an Order to Show Cause (Order) to John D. Vincent, D.D.S. of Rapid City, South Dakota (Respondent). The Order sought to revoke DEA Certificate of Registration BV03035917 previously issued to Respondent and to deny any pending applications. The statutory basis for the proposed action was that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order was sent via registered mail and was received on May 2, 1988. Title 21 of the Code of Federal Regulations § 1301.54(a) requires the respondent to file a request for a hearing within 30 days of the date of receipt of the Order. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver of the hearing. It has been more than 30 days since the receipt of the Order and Respondent has not filed a request for a hearing. The Respondent is therefore deemed to have waived his opportunity for a hearing before an Administrative Law Judge. Pursuant to 21 CFR 1301.57, the Administrator now issues his Final Order in this matter, based on the information contained in the investigative file.

On July 16, 1982, Respondent was convicted of Theft of an Automobile, a felony under the Illinois Revised Statutes, and Unlawful Use of Weapons, a misdeameanor under the Illinois Revised Statutes. On November 9, 1983, the Dental Examining Committee of the Illinois State Department of Regulation and Education recommended that Respondent's dental license be revoked on the basis of Respondent's two convictions. The Director of the Illinois Department of Regulation and Education adopted the committee's recommendation and on January 9, 1984, revoked Respondent's license to practice dentistry in the State of Illinios.

Between March 1986 and January 1987, Respondent was practicing dentistry in South Dakota. Respondent did not, however, hold a South Dakota controlled substance license and was without authority to possess, dispense or prescribe controlled substances in that State. While practicing in South Dakota, Respondent issued numerous prescriptions for controlled substances. In a hearing held on May 7, 1987, the South Dakota State Board of Dentistry found that Respondent had engaged in fraud or material deception in the course of professional services or activities in that he prescribed and obtained controlled substances without a South Dakota controlled substance license. On that same date, the South Dakota Board of Dentistry entered a final order suspending Respondent's license indefinitely. Revocation of Respondent's license to practice constitutes statutory grounds to revoke his certificate of registration under 21 U.S.C. 824(a)(3).

On or about December 28, 1985, and June 3, 1987, Respondent tendered renewal applications to the DEA for a Certificate of Registration. On each occasion, Respondent represented that he was licensed to handle controlled substances in the State of South Dakota. In fact, Respondent had never been so authorized and therefore, the Administrator finds that the two applications were materially falsified within the meaning of 21 U.S.C. 824(a)(1).

Accordingly, having concluded that there are lawful bases for the revocation of the Respondent's registration and for the denial of any pending applications for renewal thereof, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration BV0305917, previously issued to John D. Vincent D.D.S., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

The order is effective immediately.

July 20, 1988.

**John C. Lawn,**

*Administrator.*

[FR Doc. 88-16980 Filed 7-27-88; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA-W-20,550; TA-W-20,551; TA-W-20,560]**

### Dalton Industries, Inc.; Corporate Headquarters and Warehouse, Willoughby, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on May 19, 1988, applicable to all workers of Dalton Industries at the corporate headquarters and warehouse, Willoughby, Ohio and factory outlet stores in several locations including Willoughby, Ohio and Canton, Ohio. The Notice of Certification was published in the **Federal Register** on June 1, 1988 (53 FR 20027-8).

Based on new information received from the administering state agency in Ohio the Department is amending the subject certification.

Workers at Dalton Industries corporate headquarters, warehouse and factory outlet store in Willoughby, Ohio and workers at the factory outlet store in Canton, Ohio were eligible for trade adjustment assistance under the following earlier certifications (TA-W-16,442 and 16,444) respectively. These certification expired on March 3, 1988. Therefore, the March 11, 1987 impact date in the subject certification notice for workers at the subject locations is being changed to make it applicable to those workers whose separations from employment occurred on or after March 4, 1988.

The amended notice applicable to TA-W-20,550, TA-W-20,551, and TA-W-20,560 is hereby issued as follows:

All workers of the locations listed below of Dalton Industries, Incorporated who became totally or partially separated from employment on or after the indicated impact date and before May 31, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

| TA-W | Location | Impact date |
|---|---|---|
| 20,550 | Corporate Headquarters, Warehouse, Willoughby, OH. | Mar. 4, 1988. |
| | Factory Outlet Locations | |
| 20,551 | Willoughby, OH | Mar. 4, 1988. |
| 20,552 | Rochester, NY | Mar. 11, 1988. |
| 20,553 | Pittsburgh, PA | Do. |
| 20,554 | Pigeon Forge, TN | Do. |
| 20,555 | Mystic, CT | Do. |
| 20,556 | Lorain-Amherst, OH | Do. |

| TA-W | Location | Impact date |
|---|---|---|
| 20,557 | Hilton Head, SC | Do. |
| 20,558 | Erie, PA | Do. |
| 20,559 | Columbus, OH | Do. |
| 20,560 | Canton, OH | Mar. 4, 1988. |
| 20,561 | Buffalo, NY | Mar. 11, 1987. |
| 20,562 | Bedford, OH | Do. |
| 20,563 | Asheville, NC | Do. |

Signed at Washington, DC, this 20th day of July, 1988.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88-16981 Filed 7-27-88; 8:45 am]

BILLING CODE 4510-30-M

## Occupational Safety and Health Administration

### Agency Information Collection Activities Under OMB Review; Personal Protective Equipment, Survey

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** A survey to determine the effects of revising Subpart I—Personal Protective Equipment.

**SUMMARY:** The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35; 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is submitting this survey to the Office of Management and Budget (OMB) for that Agency's approval. OSHA's current PPE standards are outdated and design restrictive. The data collected in this survey will provide information on the interrelationships between process-related hazards, PPE use, safety training and programs, and injury experience for use in determining the technological and economic feasibility of proposed changes to the existing standards govening PPE. This will be a one time only telephone survey. OSHA estimates that there will be 3501 non-response or screening only respondents requiring 5 minutes per response and 5254 completed surveys from respondents requiring an average of 45 minutes per response for an average of 29 minutes per total responses.

**DATE:** OSHA has requested an expedited review of this submission under the Paperwork Reduction Act to be completed within 30 days of the date of publication in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Comments and questions about this survey or the reporting burden should be directed to Paul E. Larson, Department Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210 (telephone (202)523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202)395-6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**SUPPLEMENTARY INFORMATION:** OSHA is submitting the following clearance package to OMB in a request for approval of the survey contained in Appendix III.

Signed at Washington, DC this 20th day of July, 1988.

**Paul Larson,**

*Departmental Clearance Officer.*

BILLING CODE 4510-26-M

Standard Form 83
(Rev September 1983)

# Request for OMB Review

**Important**

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

**PART I.—Complete This Part for All Requests.**

1. Department/agency and Bureau/office originating request

Department of Labor/OSHA
Office of Regulatory Analysis

2. Agency code

1218

3. Name of person who can best answer questions regarding this request

Hugh Conway

Telephone number

(202) 523-9690

4. Title of information collection or rulemaking

A survey to determine the effects of revising the regulations governing PPE usage, welding, and pulp and paper and paperboard mills.

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

29 USC 655 et seq. or PL 91-596

6. Affected public *(check all that apply)*

1 ☐ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☒ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☒ Small businesses or organizations

**PART II.—Complete This Part Only If the Request Is for OMB Review Under Executive Order 12291**

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ __ ___ ___ ___ ___. or None assigned ☐

8. Type of submission *(check one in each category)*

| *Classification* | *Stage of development* | *Type of review requested* |
|---|---|---|
| 1 ☐ Major | 1 ☐ Proposed or draft | 1 ☐ Standard |
| 2 ☐ Nonmajor | 2 ☐ Final or interim final, with prior proposal | 2 ☐ Pending |
| | 3 ☐ Final or interim final, without prior proposal | 3 ☐ Emergency |
| | | 4 ☐ Statutory or judicial deadline |

9. CFR section affected

_____CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? . . . . . ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No

If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

**Certification for Regulatory Submissions**

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

| Signature of program official | Date |
|---|---|
| Signature of authorized regulatory contact | Date |

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

**PART III.—Complete This Part Only If the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.**

13. Abstract—Describe needs, uses and affected public in 50 words or less

The data collected in this survey will provide information on the interrelationships between process-related hazards, PPE use, safety training and programs, and injury experience for use in determining the technological and economic feasibility of proposed changes to the existing standards for PPE.

14. Type of information collection *(check only one)*

*Information collections not contained in rules*

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

*Information collections contained in rules*

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [ ] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*

7 Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

None

17. Annual reporting or disclosure burden

| | |
|---|---|
| 1 Number of respondents | 8755 |
| 2 Number of responses per respondent | 1 |
| 3 Total annual responses *(line 1 times line 2)* | 8755 |
| 4 Hours per response | .48 |
| 5 Total hours *(line 3 times line 4)* | 4233 |

18. Annual recordkeeping burden

| | |
|---|---|
| 1 Number of recordkeepers | |
| 2 Annual hours per recordkeeper | |
| 3 Total recordkeeping hours *(line 1 times line 2)* | |
| 4 Recordkeeping retention period | years |

19. Total annual burden

| | |
|---|---|
| 1 Requested *(line 17-5 plus line 18-3)* | 4233 |
| 2 In current OMB inventory | 0 |
| 3 Difference *(line 1 less line 2)* | + 4233 |
| *Explanation of difference* | |
| 4 Program change | + 4233 |
| 5 Adjustment | |

20. Current *(most recent)* OMB control number or comment number

None

21. Requested expiration date

3-31-89

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits
2 [ ] Program evaluation
3 [ ] General purpose statistics
4 [X] Regulatory or compliance
5 [X] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping

*Reporting*

2 [ ] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [X] Other *(describe)*: nonrecurring

24. Respondents obligation to comply *(check the strongest obligation that applies)*

1 [X] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [X] Yes [ ] No

27. Regulatory authority for the information collection

29 CFR 655 et seq. ; or _____ FR _____ . or, Other *(specify)*: PL 91-596

**Paperwork Certification**

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official — Date: July 12, 1988

Signature of agency head, the senior official or an authorized representative — Date: 20 JUL 88

BILLING CODE 4510-26-C

GPO : 1984 O - 453-776

**Supporting Statement for Survey and Related Data Gathering To Support OSHA Rulemaking on PPE—Justification**

*1. Necessity of Data Collection*

The Office of Regulatory Analysis of the Occupational Safety and Health Administration (OSHA) is collecting data to support an assessment of the technological and economic feasibility of revising its standard on the use of personal protective equipment (PPE). OSHA has selected a telephone survey as the most effective means of generating the data needed to support this regulatory effort. The same data collection effort will also be used to assess the methods of compliance required by future revisions to OSHA standards covering welding operations, the pulp and paper industry, and respirator usage. Finally, OSHA will create a data base on the engineering control methods that are used in lieu of personal protective equipment. This information can be used to influence OSHA's consideration of the personal protective equipment standard and several other rulemakings as may be appropriate. Thus, OSHA is creating a survey-based data set for use in three scheduled regulatory analyses and in other future regulatory efforts.

The existing personal protective equipment standards apply to all of general industry (29 CFR Part 1910). Many of these standards are outdated or design restrictive and must be supplemented by administrative actions to permit the use of more recently developed PPE. Such PPE, while technically not in compliance with the existing standard, provides equivalent or better protection than PPE of the type mandated by the existing standard.

The proposed standard would revise the PPE requirements to make them clearer, more comprehensive, and more consistent with current technology. The revised standard will update all incorporations by reference to national consensus standards so as to reference the most current American National Standards (ANSI) for the design of eye, face, foot, and head protection. Requirements for the selection, care, and use of PPE, and for training in use of PPE are to be included in the proposed standard. The revised standard will also provide a redrafting of key elements of the standard to clarify the compliance requirements for employers and to make these requirements apply to all workers.

The OSHA standards for welding include numerous requirements for personal protective equipment. OSHA will use this survey to generate information relevant to the effort to revise these standards. The focus and coverage of the PPE and welding standards are so similar that much of the information collected will serve both efforts. OSHA has also added several questions to generate hard-to-obtain data about the types of welding operations occurring and about current practices in several areas covered by the existing and revised versions of the standards.

OSHA is also contemplating revisions to its standard for pulp and paper operations. In this area, OSHA will be seeking information on selected aspects of pulp, paper, and paperboard mills as well as on PPE use. This information will be sought solely from the pulp and paper industry in conjunction with the larger survey effort.

OSHA's Congressional mandate stipulates that the agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSHA Act 2d U.S.C. 655 (b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for the purposes of conducting studies related to his responsibility under the Act." The courts have endorsed the view that technological and economic factors affect the feasibility of proposed regulations. Thus, OSHA is obligated to gather data on the technological feasibility, cost of compliance, and economic consequences of future standards.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final Regulatory Impact Analyses for each major rule. The Agency must analyze the potential benefits and costs of the rule and alternative approaches. The Regulatory Impact Analysis may be combined with the analysis required by the Regulatory Flexibility Act. This Act specifically requires an analysis that describes the "impact of the proposed rule on small entities" and significant regulatory alternatives that "take into account the resources available to small entities."

In order to fulfill the Congressional and Presidential mandates and to evaluate the economic and technological feasibility of the proposed OSHA standards, OSHA requires a data base that describes current industry practices and identifies situations where potential hazards exist. As discussed below, none of the available data sources are adequate for this purpose.

For developing a data base relevant to the PPE standard, OSHA will require data on the use of PPE and on the work environments in which PPE use is essential to safety or health. Engineering controls, work practices, and the nature of the manufacturing process determine, to a large extent, hazard levels. Job hazards are also influenced by the efficacy of a firm's safety program, including its policy on use of PPE. A sound policy requires an accurate assessment of the hazards faced by workers, the provision of training to workers in hazard awareness, the institution of safe work practices, and the enforcement of proper PPE use.

In meeting this objective, OSHA has designed the survey so that it will form the initial component of a major data base describing employee work conditions and job hazards. Because the survey instrument is organized around industrial processes, findings on job hazards can be placed within the context of specific industries and specific locations in the plant. The data base is also designed to allow numerous cross tabulations between rates of PPE use, and data on safety programs, injuries, and process hazards. This capability will be unique for data bases on industrial safety.

This data collection effort is designed, therefore, to produce quantitative estimates of (1) the number of workers who are exposed to hazards that dictate the use of PPE, (2) the number of the workers who wear PPE, and (3) the effectiveness of PPE use. These hazards will be identified and classified according to the type of manufacturing process and in recognition of the nature of the engineering controls in place. Specific data on the hazards, the presence of engineering controls, and the associated PPE use will permit a complete examination on the context of industrial decision-making on PPE use. These data will also be used to identify areas where firms are not adequately providing (or requiring) PPE and areas where safety training may be incomplete or missing.

Injury and illness data are the final part of the necessary information on work environments. OSHA will complete this survey of the work environment by requesting firms to submit copies of OSHA Forms 101 and 200 which summarize the establishment's injury and illness incidents. This data will be correlated with survey results in order to determine

the relationships between safety practices, engineering controls and use of PPE with success in preventing injuries and illnesses. The information source will also provide statistical data on the measures being used by firms that are successful in maintaining low injury rates.

In order to take full advantage of this data collection opportunity, the survey will collect additional information on welding operations and on the pulp and paper industry. These data will address hazards, work practices, and safety policies unique to these operations. For welding operations, information will be collected regarding specific protective clothing for welders; respirator use, training, and maintenance; PPE use by welders' helpers; health monitoring; and other items. Data collected specifically from the pulp and paper industry will address work practices for the handling and storage of pulpwood and pulp chips; hazard training and the appropriate use of protective eyewear, lifelines, respirators and other types of PPE in chemical pulpmaking operations; and training and safety procedures for the operation and maintenance of chlorine dioxide systems used in bleaching operations. Process-specific information regarding the presence of ventilation systems and other types of engineering controls will be used to assess the extent to which firms in the pulp and paper industry to rely on PPE rather than on engineering controls for hazard protection.

The data on engineering controls collected from all respondents will also be used as part of a continuing analysis of the appropriate methods of compliance with standards for welding, pulp and paper, and respirator use and with standards for other types of personal protective equipment.

A timetable for the survey and the associated Regulatory Impact Analysis is presented on the next page. The timetable indicates that OSHA is attempting to complete this project and survey within a short period of time. The schedule currently calls for completion of the bulk of the survey effort within a 10-week period. Therefore, we request that an expedited review be performed by OMB.

SCHEDULE FOR SURVEY DESIGN AND COMPLETION

| | |
|---|---|
| Complete design of survey instrument and submit information collection plan to OMB. | July 14, 1988. |
| Publish in **Federal Register** a notice of survey submission to OMB and the survey instrument. | July 14–21, 1988. |
| Obtain survey and mailing list from DOL, and other list suppliers. | July 15, 1988. |
| Receive OMB approval of survey and survey instrument. | Aug. 15, 1988. |
| Mail notification letters to survey targets. | Do. |
| Begin telephone interviewing. | Aug. 20, 1988. |
| Complete first half of telephone interviewing. | Sept. 20, 1988. |
| Submit Interim Report on secondary data base (covering industry data base, regulatory comparison, and preliminary benefit analysis). | Aug. 26, 1988. |
| Complete second half of telephone interviewing. | Oct. 21, 1988. |
| Perform any additional data tabulations and integrate survey results into report. | Nov. 4, 1988. |
| Submit draft final report | Nov. 15,1988. |
| Respond to comments and submit final report. | Dec. 16, 1988. |

*2. Use of the Information*

The data collected through this effort will be used by OSHA (and its contractors) to perform technological and economic analyses related to the required Regulatory Impact Analyses and Regulatory Flexibility Analyses for proposed regulations modifying the Subpart I standards covering Personal Protective Equipment as well as for future revisions to the Welding and Pulp and Paper standards. The data will also be used in the study of compliance methods appropriate for meeting the requirements of the welding, pulp and paper, and respirator standards.

The OSHA Office of Regulatory Analysis will also be sharing data collected in its research efforts with the Office of Safety Standards, which is drafting the regulations. In this case, the data may be used to develop revisions to any of the three regulatory proposals under consideration.

For the standard governing personal protective equipment, the survey will provide information on current compliance rates by industry. In addition, a database will be created that will permit analyses of the interrelationships among process-related hazards, PPE use, and safety training and programs. The additional information on injury and illnesses, as provided by companies who submit their OSHA Form 101s and 200s, will add another dimension to the possible analyses of these data.

For the welding study, the survey will yield difficult-to-obtain data on welding work practices, safety procedures, and training. This data will support estimates of compliance with existing and proposed OSHA standards and provide the database necessary for estimation of compliance costs.

For the pulp and paper industry, the survey will facilitate the analysis of safety procedures and work practices in several industry-specific processes. This information is not available from other sources.

In the absence of the data generated by this survey, OSHA could not accurately measure the impacts of the existing and proposed PPE standards. In particular, OSHA could only speculate about the extent to which PPE is effectively used in different industrial settings.

The discussion below describes the data uses for responses to each set of questions in the survey instrument.

A. Introduction and Collection of Identification Data

The first elements of the survey instrument describe the telephone survey in general and determine whether the respondent is in the SIC code anticipated by the survey design. If the respondent is not in the SIC code expected (as based on Dun and Bradstreet industry lists), the correct SIC will be gathered. If the SIC is one that is to be covered in the survey, the interviewer will continue the questioning.

B. Data Collection on Types of Activities and Employment

The next questions specify the type of activities (e.g., manufacturing, administrative, services, etc.) performed in the facility. Several purposes are served. First, establishments that perform solely administrative services are to be excluded from the remainder of the questionnaire. Second, the number of employees in production and other categories will be determined. This information will be used in later segments of the questionnaire. Finally, the data on total employment will be used in consistency checks made in the final statistical analyses.

C. Questions on Welding Practices

The interviewer will ask respondents if they perform welding operations in their facilities. If so, a series of questions are asked about the means for protecting welders and welders' helpers against the hazards posed by welding operations. The questions review both the use of PPE by welders and the use of engineering controls, such as curtains and screens and ventilation systems, as

protection systems. Additional questions determine whether the welding is performed in the context of production or maintenance and repair work. This information will be useful for the regulatory impact analysis.

D. Questions on Pulp and Paper Mill Operations

A separate set of questions is asked only of respondents in the pulp and paper industry (SIC 26). These questions will examine the use of lifelines, personal flotation devices, and other types of PPE in specific pulp and paper operations. Additional questions cover training and safety procedures in chemical pulpmaking and bleaching operations. This information will supplement data obtained from questions about process-specific PPE use and engineering controls as described below. These data will be directly relevant to the determination of the extent of compliance with the existing and proposed pulp and paper standard.

E. Identification of Processes Employed

The next section will identify the processes employed in the facility. The interviewer will prompt the respondent with 2 or 3 processes that are believed to be performed in the facility. The respondent will then be asked for other processes used in the facility. The interviewer will code in these additional responses by referring to a master list of processes. If the process does not appear on the list, it will be coded in manually.

F. Identification of Engineering Controls Used

For each process, a set of questions will determine the types of engineering controls that may be employed at the facility. The interviewer will refer to a master list that associates processes with its associated hazards. This master list will be prepared in advance of the telephone interviewing through an extensive review of process safety and health information. The hazards are categorized into seven categories: eye and face (flying particles and chips), head, feet, hands, respiratory, noise, and skin (chemical absorption, splash). Thus, for example, for process X, the interviewer will refer to the list to determine if hazards to the eye and face are associated with the process. He will code this information into the computer. The computer-based questionnaire (see Section A.3) will then skip to the appropriate engineering controls that might be employed to reduce or eliminate worker hazards from the process. For eye and face hazards, for example, the possible engineering controls include various screens, barriers or enclosures to separate the worker from any flying chips or particles emanating from machinery used in the process.

G. Identification of Personal Protective Equipment Used

After the engineering controls are identified, questions are asked about the types of PPE used by workers engaged in that process. Proceeding with the example given above, the respondent will be asked if workers wear eye and/or face protection while working at the process being discussed. If suitable engineering controls are not in place and items of PPE are not being used, then the firm will be considered to have hazards requiring PPE use for purpose of determining current industry practice in the analysis. This will not be communicated in any way to OSHA field compliance staff as explained later in the confidentiality section.

H. Questions on Establishment-wide Training and Use of PPE

The next section will solicit information on the establishment's policies regarding training of workers in PPE use and hazard identification. The training requirements are explicit in the draft standard. An additional question asks whether the company has assessed the hazards evident in its facility. Again, this step is required by the draft standard. Finally, the interviewer will ask how many persons in the entire facility wear each type of PPE. (OSHA expects that not all production employees will be included in the totals associated with the processes, or that, some double-counting of employees is possible. This question is the only means of developing an overall estimate of the number of employees wearing PPE).

I. Final Questions on Specific Policies for use and Handling of PPE

Several elements in the draft standard require policies regarding the use of employee-provided PPE, reissuing and cleaning of PPE, and replacement of damaged PPE. In order to determine compliance with these items, these questions are included at the end of the interview.

J. Request for Mail Submission of the OSHA Forms 101 and 200

Those respondents reporting recordable occupational injuries in the last two years will be asked to supply copies of their Form 101s and 200s. OSHA will correlate the facility PPE use and PPE policies with facility accident histories.

*3. Use of Technology to Reduce Burden*

Information for this survey will be collected using a Computer Assisted Telephone Interviewing (CATI) system. Such a procedure will improve the quality and efficiency of the survey in a number of ways and will also reduce respondent burden. First, since the survey is done via telephone, there is no need for scheduling on-site visits to gather the information. This is expected to both increase the reponse rate and reduce the cost and time of completing interviews. Respondents are also not being asked to fill out a long questionnaire form on their operations.

Further, CATI system responses are entered directly into the computer, eliminating the need for separate recording and coding operations. Also, the computer ensures that the proper sequence of questions is followed automatically. For example, if the response to one question suggests that a follow-up question can be skipped, the computer will automatically move on. The interviewer simply reads the questions as they appear on the screen. This system produces a smoothly flowing interview and eliminates any pauses or delays by the interviewer to enter responses by hand or to find the next question.

*4. Identification and Duplication of Information*

Significant effort has been expended in collecting and examining existing sources of information relating to the patterns of use of personal protective equipment in various industries. This has been used to determine processes and hazards by industry to reduce the number of questions asked of each respondent. In addition to checking for possible information duplication, the assembled body of research was useful in helping to formulate and refine the actual survey instrument.

The following databases were reviewed in the course of designing the survey. Acronyms or abbreviations for these databses are indicated and are used in the remainder of this document. A brief description of this information and its relevance to the present effort is provided. A discussion of the shortcomings of these information sources for the analysis of PPE usage required for this study is presented in section 5 below.

A. OSHA'S Integrated Management Information System (IMIS) Database

OSHA's Integrated Management Information System (IMIS) contains data related to OSHA inspections for safety and health violations and in response to accidents involving serious injuries and fatalities. This data source can be used, on an industry basis, to obtain the frequency with which firms are cited for PPE-related violations. As explained in Section 5, however, this citation rate is likely to understate the actual level of noncompliance. The data also do not allow any analysis of the number of workers in a given facility who were not wearing suitable PPE. Thus, there is no indication of the degree to which a company may be out of compliance.

The IMIS accident data provides information on the nature and the cause of the injury. This data will be used in assessing the benefits of the proposed revisions to the standard. Specifically, the accident narratives that are available for fatal incidents are helpful in determining the preventability of relevant accidents. The IMIS data base includes the OSHA Fatality/Catastrophe reports that have been prepared over the past four years. The OSHA Fatality/Catastrophe reports are based on investigations of fata accidents and of incidents in which five or more workers are seriously injured. Many of the injuries relevant to PPE, however, are not investigated by OSHA and, therefore, would not be included in the IMIS data base.

B. Bureau of Labor Statistics (BLS) Supplementary Data System (SDS)

The SDS is a Federal-State cooperative program which complies information from State workers' compensation records. Information is available concerning the major characteristics of injuries and illnesses in various industries and occupational groups. This data is being used to pinpoint industries and occupations that generate injuries most likely to be preventable through PPE usage. It is also potentially helpful in estimating the total national baseline of injuries and illnesses that may be influenced by compliance with regulations for use of PPE. The SDS data itself, however, contains no information on protective equipment worn by injured workers or on the potentially hazardous conditions which might have contributed to the accident. Furthermore, it can do no more than outline the national baseline injury total because of the absence of any narratives or other means to describe more clearly the accidents covered in the data.

C. National Occupational Exposure Survey (NOES)

This two-year effort directed by the National Institute for Occupational Safety and Health (NIOSH) involved visits to some 4,500 businesses representative of the establishments covered by the 1970 Occupational Safety and Health Act. Company officials were interviewed regarding the types of health and safety programs in effect, and a plant walk-through was conducted in order to document the numbers of workers exposed to various substances, and the control methods in use.

The focus of the NOES survey is almost entirely on health as opposed to safety standards. The survey provides data on respirators, hearing protection, protective clothing and eye and face protection in the context of observed exposure to hazardous chemicals and materials. Data on the use of welding helmets were also collected. The use of safety glasses, face shields, hard hats, safety shoes, and protective clothing (e.g. fire retardant clothing) when used for safety-related reasons (protection against accidential or traumatic situations) were not recorded. Furthermore, an exposure to hazardous materials of greater than 30 minutes per week was required in order for the exposure and associated PPE control to be recorded. The NOES survey also includes data on the presence of ventilation systems as a control for hazardous exposures, as well as other means of control such as isolation, enclosure, and various work practice techniques to limit or avoid exposure.

D. OSHA Survey on Permissible Exposure Levels (PEL)

This telephone survey of 5,000 establishments will support OSHA's generic rulemaking on the control of occupational exposure to hazardous substances. The survey is designed to collect information on the chemical exposure patterns or workers involved in a wide range of industrial processes. Data on the wearing of PPE was collected for those processes which involved chemicals.

Because of the great variety of potential chemical exposures in industry, the PEL survey is necessarily limited to data collection on health as opposed to safety hazards. The PEL survey will provide data regarding employee exposure to specific hazardous chemicals and the associated use of respirators and protective clothing, gloves, and eye and face protection. Information on ventilation systems is also being collected. For the PEL survey, exposure is viewed in terms of inhalation or absorption and is measured in terms of atmospheric concentrations. Acute hazards such as chemical splash are, therefore, not directly addressed.

The PEL survey covers most of the manufacturing sector and a number of non-manufacturing industries. The data are collected in the context of a set of predetermined industry-specific processes or operations. These processes are general in nature and are not technology or equipment-based. No information is collected about safety-related PPE use, nor is any information about training, safety policies, or injury experience generated.

E. Department of Labor (DOL) Studies at the University of West Virginia

A series of investigations conducted by researchers at the University of West Virginia examined current practices in the use of personal protective equipment among workers in several occupations and industries. These studies cover injuries and PPE needs and practices for specific occupations in foundries, chemical manufacturing facilities, and petroleum refineries. In addition, injuries and associated PPE practices for welders and workers facing risks of episodic releases of toxic chemicals were investigated. Despite their limited scope, these studies provide important insights into PPE practices and requirements for specific occupational situations. The number of establishments surveyed, however, was small, and no statistical validity can be attached to the results. The data was useful, however, in refining the questions included in the survey instrument.

F. OSHA's Survey on Respirator Use

In a 1984 study, OSHA conducted a telephone survey of approximately 2000 manufacturing establishments to obtain information on the patterns of routine, occasional, and emergency respirator use. This information included data on the types of respirators in use, the numbers of employees included in respirator programs, and other information regarding training, monitoring, and inspection. Specific information on the types of airborne contaminants encountered in the respondent's facilities was not collected.

This survey was based on a two-stage sampling procedure. An initial sample of about 7000 establishments was administered a screening survey to identify those which used respirators. Those establishments with respirator programs were then eligible for the main

in-depth survey. Thus, only information on employment size (collected in the screening survey) is available as a control to analyze differences between establishments with and without respirator programs. The OSHA survey was also restricted to the manufacturing sector. Thus, no information on respirator use was collected for non-manufacturing industries.

G. Bureau of Labor Statistics' Work Injury Reports

The Bureau of Labor Statistics has conducted a number of surveys of injured workers. These surveys cover several categories applicable to use of PPE including head, eye, face, and foot injuries, chemical burns, welding-related injuries, and others. The studies provide information on the extent to which injured workers wear appropriate protective equipment, the PPE policies of their employers, and the nature of any safety training they might have received. These data provide important insights into the relationships between injuries and PPE usage. Additional analysis of this information is planned, particularly 3–way tabulations to control for safety training and policies in evaluating rates of PPE use among injured workers.

The data in the Work Injury Reports, however, cannot be used to develop compliance rates because only injured workers are surveyed. Estimates of PPE general usage, for example, would be biased downward since workers not wearing PPE are more likely to be injured and thus included in the survey.

H. Occupational Hazards Magazine Readership surveys

Occupational Hazards, a magazine for safety professionals, conducts periodic "electronic" surveys in which respondents voluntarily telephone in their responses. Recent surveys have generated 400–600 responses. Among the relevant topics which have been covered are: Types of equipment used by employees; hazards against which PPE is used; employer contributions towards PPE purchase; and per employee spending on PPE. The results of the survey are interesting, but their statistical validity is limited by the significant influence of self-selection in the responses, i.e., only companies with safety managers and established safety programs are likely to be participating in the survey.

I. Current Industrial Reports

The Bureau of the Census collects and periodically publishes data on the value and quantities of shipments for a variety of industrial products. Such data from Current Industrial Reports on shipments of PPE might be used to estimate overall rates of use. The level of aggregation of this data, however, precludes identification of shipments totals for specific PPE types.

J. NIOSH's National Traumatic Occupational Fatality Data Base

The National Traumatic Occupational Fatality (NTOF) data base is being developed by NIOSH to provide a national census of traumatic occupational fatalities. NIOSH is collecting death certificate records from all 50 states and from the District of Columbia. These records are being used to estimate the total occupational fatalities resulting from "injury at work", as entered on the death certificates. Information in the NTOF data base include the age, sex, occupation and industry of employment of the victim, as well as a description of the injury and immediate cause of death. NIOSH has collected death certificates for the period 1980 through 1985 and plans to continue the collection through 1990.

NTOF data provide a valuable base line for determining occupational fatality rates. For the purposes of this project, however, the accident casuality information contained in the death certificates will not be sufficiently detailed or consistent to permit determinations of the extent to which PPE practices would have been relevant in preventing fatalities. The extent of the narrative description is quite variable, and often will not provide more than a brief phrase describing the incident. Also, information is not generally available on whether the individual was wearing personal protective equipment. Further, the lack of consistency in reporting precludes accurate identification of the industry in which the victim was employed below the major division level of industry classification (e.g. construction, manufacturing, etc.). In summary, the uneven reporting of the circumstances of accidents would preclude this data source from providing the information needed in this study.

*5. Inadequacy of Existing Data Sources*

The above databases provide valuable information on various aspects of PPE-related questions and were utilized in design of this survey. None of them, individually or in combination, provide the comprehensive body of information about PPE required by OSHA. The inadequacies of these data sources are described below.

A. Statistical Surveys (NOES, PEL, and Respirator Surveys)

All of these studies provide statistical estimates of various types of PPE use. These studies, however, have limited their focus to PPE used in controlling health hazards. Specifically, none of these surveys provide statistically valid estimates of the number of workers who wear hard hats, safety glasses, face shields, safety shoes, and other types of PPE for safety reasons. Both the PEL and NOES surveys collected data on the use of respirators and other PPE, primarily in response to exposure to airborne hazardous substances. Neither of these studies, however, provide information about the relationships between PPE use, training, safety programs, and industrial injuries. Similarly, the OSHA respirator survey does not provide statistically-significant data for each industry. This survey also does not address factors that might influence establishment-level policies on PPE usage and did not collect data on the number of employees who use most types of PPE.

B. IMIS Data

OSHA data on violations contained in IMIS indicate the frequency with which inspected firms are cited for PPE violations. The format of the regulations makes it impossible in many cases to identify the exact nature of the violation. There are also biases in that very small firms are not likely to be inspected by OSHA personnel, the most hazardous industries are targeted for inspections, and enforcement priorities may influence the pattern of citations in an unmeasurable fashion. Also, the citation statistics do not report who many employees failed to wear appropriate PPE. As noted above, accident data contained in the IMIS are biased because only fatalities or accidents with 5 or more serious injuries are typically investigated.

C. Injury Data (SDS, Work Injury Reports

Information from worker compensation files contained in the BLS SDS data will be useful in analyzing the causes of injuries potentially preventable by PPE use. Data on PPE use by injured workers, however, is not collected. Thus neither compliance rates nor the benefits of increased PPE use can be derived from these data. Also, since the sample is not comprehensive, the SDS data can not be used directly to establish injury rates on an occupational or industry basis. Data from the Work Injury Reports are useful for analysis of the conditions and characteristics of

injured workers. Since only injuries (i.e., not fatalities) are included in the sample, limited insight is provided regarding overall patterns of PPE use.

D. Summary

In summary, the available data do not provide adequate quantitative evidence regarding the extent of PPE usage for safety-related reasons. Those studies which have compiled statistically-valid data on the use of PPE have limited their focus to the PPE used in controlling health hazards. The studies that do address the safety-related uses of PPE are not designed for creating statistical measurements, are limited in scope, and do not provide sufficient data to develop reliable estimates of the patterns of hazard exposure and associated PPE requirements. None of the data reviewed for this submission can be used to produce estimates of the population of workers and establishments impacted by the current and proposed PPE standard, the extent of compliance, or the costs of compliance. Similarly, these data do not reflect the current industry practice information that is needed for the regulatory impact analyses for the revised welding and pulp and paper standards.

Furthermore, none of the available information sources provide, on an industry-specific basis, a comprehensive linkage between patterns of PPE use for both safety and health reasons and the presence of engineering controls, the nature of the manufacturing process and technology, and associated work practices. Also, the interrelationship between accident experience, the use of PPE, and the nature of safety training and other safety programs is not addressed in these data sources. It is the lack of a comprehensive data base to evaluate the full range of regulatory options needed to perform the Regulatory Impact Analysis that necessitates a field survey. The survey results will also assist OSHA in determining the need for these standards.

*6. Minimizing Burden on Small Businesses*

This data collection effort involves the collection of information from large and small firms. Every effort has been made to minimize respondent burden. The survey instrument has been designed to allow the respondents to provide estimates and approximations rather than detailed information of the type which would lengthen response time. Respondent burden will be limited by: (1) Limiting the length of the telephone interview to approximately 45 minutes, (2) avoiding requests which require record of file review, and (3) accommodating respondents in arranging the most convenient time to conduct the interview.

In addition, the questionnaire is organized so that the response times of small firms will be lower. The questionaire focuses on the specific processes employed in a facility. Many small firms will have only 1 or 2 processes and will therefore require only 20 to 35 minutes to complete the questionaire.

*7. Recurrent Survey Consequences*

This effort is a one-time, non-recurring survey. The consequences associated with less frequent collection are not applicable.

*8. Consistency with 5 CFR 1320.6*

There are no special circumstances that require the collection of information in any manner inconsiste ..th the guidelines in 5 CFR 1320.6.

*9. Expert Review of the Survey Questionnaire*

The survey design team has had numerous discussion with industry experts, including safety engineers and safety program managers, in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by contractor survey experts. OSHA personnel (both in ORA and Standards), and by expert safety consultants in industry.

A. The survey instrument has been reviewed by:

Dr. Hugh Conway, Office of Regulatory Analysis, OSHA;
Mr. Larry Braslow, Office of Regulatory Analysis, OSHA;
Ms. Marilyn Schuster, Office of Regulatory Analysis, OSHA;
Mr. Chester G. Fenton, Eastern Research Group, Inc.;
Mr. John Eyraud, Eastern Research Group, Inc.;
Dr. Arnold Greenland, Washington Consulting Group, Inc.;
Dr. Robert Hiett, KCA Research Inc.

B. No major problems arose during this review.

C. Public comment will be solicited through the **Federal Register** notice for the study.

*10. Confidentiality*

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from respondents confidential.

B. The data will be collected using a Computer Assisted Telephone Interviewing (CATI) system. This technology enables the survey responses to be automatically written to a computer data file. Neither the name of the company nor the respondent will appear in the data file. A listing of respondents will be kept separately in a locked file cabinet at the contractor's office, and will be destroyed when no longer needed. The respondent's names will be linked to the data base through a unique number assigned at the time of the interview.

C. OSHA Forms 101 and 200 will be assigned the respondent's record number when received and then coded and entered into the computer file and matched with the respondent's survey data record. The OSHA forms will then be destroyed. Strict confidentiality will be maintained during the coding procedure.

D. Diskettes containing completed survey data will be stored in locked file cabinets at the contractor's office.

E. Publication of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

*11. Sensitive Questions*

The proposed survey instrument contains no questions of a sensitive nature.

*12. Costs*

The total one-time cost to the government of the proposed data collection is $485,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses (including benefit and cost estimates, small entity impacts, economic impacts, etc.). The total one-time cost to industry is estimated to be $86,565 based on an administrative wage rate of $20.45 per hour including fringe benefits.

*13. Estimates of Burden*

This survey was not included in the agency's ICB as the potential scope of the changes to the PPE standard as necessitated by newer technologies and changes in current industry practices only became apparent as the project progressed.

Every effort will be made to minimize respondent burden. All survey instruments have been designed to

allow the respondent to provide estimates and approximations, rather than specific information for a specific time period. The effort will focus on collecting information that respondents have already compiled or measured for their own purposes. Respondents are not expected to perform new data compilation activities.

The completion time for each telephone survey will vary, depending upon how much of the survey topic is applicable. It is estimated that a fully completed survey will require 45 minutes on average. Those declining to participate at the onset and those completing only the screening portion of the survey will require 5 minutes on average.

The total respondent burden for the telephone survey will be approximately 4,233 hours. The following table summarizes the burden for each group of respondents:

RESPONDENT BURDEN ESTIMATES

| Type of respondent | Number of respondents | Average completion time (min.) | Total burden (hrs.) | Respondent cost [1] |
|---|---|---|---|---|
| Non-Response or screening only | 3501 | 5 | 293 | $5,992 |
| Complete | 5254 | 45 | 3940 | 80,573 |
| Total | 8755 | | 4233 | $86,565 |

[1] Based on an administrative wage rate of $20.45 per hour including fringes.

*14. Changes in Anticipated Burden*

This is a one-time data collection effort and thus it will not represent a recurring paperwork burden to respondents.

*15. Plans for Tabulation of the Data*

The survey data will be analyzed and used for the PPE, Welding, and Pulp and Paper standards to prepare Regulatory Impact Analyses (RIAs) and Regulatory Flexibility Analyses which will be published in the **Federal Register**. The data will also support efforts to draft the safety standards themselves, and efforts to develop more cost effective regulatory language. Tabulations of the primary data will be analyzed to develop estimates pertinent to the development of these RIAs. These will include estimates of the number of firms that will incur compliance costs, and the number of employees by firm and by industry who are wearing or should be wearing personal protective equipment. Additionally, estimates will be derived of the number of employees who are trained in the correct use of PPE and the number of companies who actively enforce the correct use of PPE. In addition to specific estimates of the levels of compliance with PPE requirements for welding and pulp and paper operations, tabulations of other data specific to welding or pulp and paper operations will be used to support compliance estimates for those standards.

The survey will also generate data on the use of PPE by process throughout manufacturing and in selected areas of non-manufacturing, and on the injuries and illnesses associated with these processes (through collection of respondents OSHA Form 101s and 200s). These data will help establish a data base on the distribution of worker hazards among industries, and within industrial facilities. The data will also be correlated with information gathered in the survey on the training and safety programs of respondents. OSHA expects to make numerous cross-tabulations to determine the relationships among these various components of worker safety conditions.

**Statistical Methods Employed**

*1. Description of the Respondent Universe and Sample Allocation*

The underlying universe for this survey design is all commercial establishments in the United States (excluding the construction industry) which are subject to OSHA regulations for the use of personal protective equipment (PPE). Since the need for PPE differs by industry sector, a careful review of Standard Industrial Classification (SIC) codes allowed OSHA to concentrate on only the SIC categories which are given in Table 1. Thus, the totality of all establishments defined in Table 1 is the Respondent Population for this survey. The subgroups shown in that exhibit are the key estimation cells for this study.

Estimates for the population establishment counts, which are shown in Table 2, were obtained from several sources. The population counts for the manufacturing sectors (SICs 20 through 39) were obtained from a Dun & Bradstreet listing of all such establishments. This file was purchased by OSHA in June of 1987. Population counts for some of the service sectors (SICs 40 and above) were derived from a Dun & Bradstreet listing dated December, 1987. This data base was purchased in support of the PEL survey recently done by the Office of Regulatory Analysis, and contained only those SIC sectors included in that survey. For any SIC which was not in this file, estimates in Table 2 were obtained from the Bureau of Labor Statistics (BLS) Bulletin 2297, dated December, 1987. Population statistics are tabulated by Estimation Cells and, within that, by size categories. Since the BLS Bulletin 2297 did not contain a breakdown by size, no estimates for size strata are shown for those cells in which D&B data was not available in Table 2.

It is OSHA's plan to obtain new versions of both the manufacturing and non-manufacturing sectors from Dun and Bradstreet just prior to commencement of the actual sample selection. At that time, the calculations done in this package will be modified to account for the most recent information. We do not expect substantial changes in estimates for popular counts in Table 2 or in sample size estimates which appear later in this document.

The size categories used are defined by the number of employees in establishments:

(i) 0–19 employees
(ii) 20–99 employees
(iii) 100–249 employees, and
(iv) 250 and above employees.

TABLE 1.—DEFINITION OF ESTIMATION CELLS

| Cell No. | SIC codes included | Description |
|---|---|---|
| 1 | 20 | Food and Kindred Products. |
| | 21 | Tobacco Products. |

TABLE 1.—DEFINITION OF ESTIMATION CELLS—Continued

| Cell No. | SIC codes included | Description |
|---|---|---|
| 2 | 22 | Textile Mill Products. |
| 3 | 23 | Apparel and Other Textile Products. |
| | 31 | Leather and Leather Products. |
| 4 | 26 | Paper and Allied Products. |
| 5 | 24 | Lumber and Wood Products. |
| 6 | 25 | Furniture and Fixtures. |
| 7 | 27 | Printing and Publishing. |
| 8 | 281 | Industrial Inorganic Chemicals. |
| | 282 | Plastics Materials and Synthetics. |
| | 286 | Industrial Organic Chemicals. |
| | 287 | Agricultural Chemicals. |
| 9 | 29 | Petroleum and Coal Products. |
| 10 | 283 | Drugs. |
| | 284 | Soap, Cleaners, and Toilet Goods. |
| | 285 | Paints and Allied Products. |
| | 289 | Miscellaneous Chemical Products. |
| 11 | 30 | Rubber and Misc. Plastics Products. |
| 12 | 32 | Stone, Clay, and Glass Products. |
| 13 | 33 | Primary Metal Industries. |
| 14 | 34 | Fabricated Metal Products. |
| 15 | 35 | Industrial Machinery and Equipment. |
| 16 | 36 | Electronic and Other Electric Equipment. |
| 17 | 37 | Transportation Equipment. |
| 18 | 38 | Instruments and Related Products. |
| | 39 | Miscellaneous Manufacturing Industries. |
| 19 | 40 | Railroad Transportation. |
| 20 | 41 | Local and Interurban Passenger Transit. |
| | 42 | Trucking and Warehousing. |
| | 44 | Water Transportation. |
| | 45 | Transportation by Air. |
| 21 | 481 | Telephone Communications. |
| | 482 | Telegraph & Other Communications. |
| | 484 | Cable and Other Pay TV Services. |
| | 489 | Communications Services, NEC. |
| 22 | 491 | Electric Services. |
| | 492 | Gas Production and Distribution. |
| | 493 | Combination Utility Services. |
| 23 | 494 | Water Supply. |
| | 495 | Sanitary Services. |
| | 496 | Steam and Air-Conditioning Supply. |
| | 497 | Irrigation Systems. |
| | 46 | Pipelines, Except Natural Gas. |
| 24 | 501 | Motor Vehicles, Parts, and Supplies. |
| | 55 | Automotive Dealers & Service Stations. |
| | 751 | Automotive Rentals, No Drivers. |
| | 753 | Automotive Repair Shops. |
| 25 | 503 | Lumber and Construction Materials. |
| | 521 | Lumber and Other Building Materials. |
| | 505 | Metals and Minerals, Except Petroleum. |
| | 5093 | Scrap and Waste Materials. |
| | 508 | Machinery, Equipment, and Supplies. |
| | 515 | Farm-Product Raw Materials. |
| | 516 | Chemicals and Allied Products. |
| | 517 | Petroleum and Petroleum Products. |
| 27 | 7692 | Welding Repair. |
| 28 | 13 | Oil and Gas Extraction. |

The employment size classes will give OSHA sufficient flexibility to tabulate separately the effects of the proposed rule on small businesses. For each of the cells defined above (estimation cell by size-class group) the total number of establishments, the total number of employees, the number of required responses and the number of establishments to be surveyed is shown in Appendix 1. Because of the complexity of the table given in Appendix 1, the sample allocation scheme aggregated to the Estimation Cell level is shown separately in Table 3.

*2. Stratification and Sample Selection*

Estimates will be produced for the 29 estimation cells defined in Table 1. For each estimation cell, a stratified systematic sample will be selected. Each cell will be stratified by four employment size classes. The size-class boundaries will be as follows: 0–19 employees, 20–99 employees. 100–249 employees, and 250 or more employees.

Within each estimation cell/size-class stratum, the establishments will be sorted by four digit SIC before selection.

A. Required Sample Size

Because of the complexity of the questionnaire for this survey and because of the requirement to produce estimates for many variables, no single survey item can be identified with which to set sample sizes. A common practice in such cases is to use two or more items from the survey which are different with respect to the form of the sample which would emerge if only that item was used to define the sample. Following this procedure, two variables were chosen: The mean employment and the fraction of establishments in compliance with respect to PPE regulations. In fact, these represent groups of estimates which will be produced. The first relates to variables which are proportional to employment, such as the number of employees exposed to a hazard requiring PPE. The latter relates to the class of estimates which are proportions of establishments that share some characteristic (for example, those that require hard hats be worn for a particular process).

In order to estimate sample sizes for the two types of variables defined in the previous paragraph, estimates of means and standard deviations for the variables of interest must be obtained. In the case of the employment variable, means and standard deviations were obtained from the Dun and Bradstreet frame. For the proportion variable, it was assumed that the proportion of interest is approximately 0.6. From this assumption, one can compute the required standard deviation for use in the sample size computation.

In each case, a separate estimate of the required sample was made and then allocated into the size-class strata using optimal allocation. Finally, the two estimates were averaged to produce the final estimate of sample size. This procedure will result in a sample which is concentrated in the smallest and the largest size strata. This is useful because of the need to adequately estimate the impact on small businesses and to also be efficient in the use of the sample.

Both sample size estimates shown in Appendix 1 (that for variables proportional to total employment and that for variables which are proportions of establishments having some characteristic) were produced assuming the following accuracy requirements: For manufacturing SICs (20–39), a target coefficient of variation of 5.5% was assumed and for the non-manufacturing SICs, a coefficient of variation of 7.5% was used. The coefficient of variation is the ratio of the standard error of the estimator to the mean of the estimator. Different accuracy requirements were set for the two groups because it was determined at the outset of the survey design that there was likely to be a greater degree of variability among processes and PPE use in the manufacturing sector.

*a. Allocation to Size-Class Strata.* For both of the variables used to set the sample sizes and for each estimation cell, the sample allocation to the employment size-class strata is based on the theory of optimal allocation (Neyman allocation). For the employment variable, this procedure will allocate the sample units based on the total number of population units in each stratum and the population standard deviation of total employment in each stratum. For the proportion of establishments having some characteristic, the sample is allocated in proportion to the number of establishments in each stratum within the estimation cell. This latter situation follows from the fact that the sample

size estimate for the proportion of interest (60%) and the associated standard deviation were used in all size classes.

*b. Frame Development and Sample Selection.* The sampling frame will be developed from the Dun and Bradstreet listing of establishments. This frame was used by the Office of Regulatory Analysis for prior surveys and has proved to useful for establishment surveys. There is some concern that the D&B listing overstates the non-manufacturing establishments in the universe. These and other possible problems with the frame can be remedied by using the results of the survey, for example to produce an estimate in total "in scope" establishments in the universe.

At the time of sample selection, the frame will be sorted by Estimation Cell by Size-class by four digit SIC by employment. Selection will be by systematic sampling from a random start within each cell and size stratum.

B. Estimation

Estimates will be produced for each estimation cell. All survey estimators will be self-weighting using weights attached to each respondent's record in the database. Estimates from the survey are expected to have a relative standard error in the range of .04 to .10 (see section B.2.3). Estimates of totals will take the following form:

$$\hat{Y} = \sum_{i,j,k} WGT_{ijk} * NRAF_{ijk} * y_{ijk},$$

where $y_{ijk}$ is the response of the kth unit in the jth stratum of estimation cell i, WGT is the stratum sampling weight, and NRAF is the stratum's unit non-response adjustment factor for the parameter in question (defined below).

Estimates of means will take the following form:

$$\bar{Y} = \sum_{i,j,k} WGT_{ijk} * NRAF_{ijk} * y_{ijk} \Big/ \sum_{i,j,k} WGT_{ijk} * NRAF_{ijk}$$

The Non-Response Adjustment Factor (NRAF) for the kth usable unit in stratum j of estimation cell i is calculated as follows:

$$NRAF_{ijk} = \frac{\sum \text{viable employment}_{ijk}}{\sum \text{usable employment}_{ijk}}$$

The Non-Response Adjustment Factor is calculated for each size-class stratum j in estimation cell i by summing the pre-coded employments for all viable sample units (all sample units less out the scope and out of business units) divided by the employment sum of all usable sample units.

Note that the non-response adjustment procedure is a mean imputation.

*a. Benchmarking Estimates.* To most efficiently use the D&B sampling frame, estimates of key variables will be "benchmarked" to other data sources. For example, the estimate of "total cost of coming into compliance" will be computed as follows:

$$\hat{C}_i = \frac{\sum_{j,k} c_{ijk} * WGT_{ijk} * NFAF_{ijk}}{\sum_{j,k} emp_{ijk} * WGT_{ijk} * NFAF_{ijk}} * (BLS\ Emp)_i$$

where the $emp_{ijk}$ is the number of employees obtained from the survey, $c_{ijk}$ is the cost amount associated with case k within cell i and size stratum j, and $(BLS\ Emp)_i$ is the number of employees obtained from sources at the Bureau of Labor Statistics.

*b. Item Nonresponse.* It is expected that some respondents who do participate in the survey will either refuse to answer some questions or not know the answer. In such cases it is common to impute responses. Imputation is done by using information obtained from the respondent on other questions and/or information from other like respondents to fill in the missing datum. There are many methods in common use for imputing for missing data including mean imputation, hot deck procedures and regression-based imputation.

OSHA plans to use a mean imputation approach for missing items in this survey. First items which require imputation will be identified (for example, by virtue of their use in algorithms requiring multiple variables from each record). Second, specifications for how to impute will be made. In some cases one can infer the answer to missing questions based upon answers to other questions. Failing that, a mean imputation will be done within the cell and size class for the record with missing datum. In such a case, the missing value is replaced by the arithmetic mean for those cases in the cell/size stratum which have an answer for that value. The final step is to carefully document which values were imputed and to retain both the original and imputed values in the database.

c. *Variance Estimation.* Since a survey is contemplated rather than a

census of the establishments of interest, estimates produced from the survey database will have errors due to sampling alone. It is customary to produce estimates of such errors, usually called standard errors of the estimate.

OSHA plans to use a replication technique to produce standard errors such as half-sample replication. Such methods are preferred because of the complexity of determining exact formulas for survey data which include nonresponse adjustment factors as is the case with the proposed survey. Computation of such standard errors is routine with the use of computers.

C. Accuracy

The survey is desinged to produce estimates having relative standard errors ranging from .04 to .10 depending on the variable being estimated and the industry sector in which it falls. A detailed tabulation of estimated standard errors for the two types of estimates mentioned in section B.2.1 above is given in Appendix 2.

It is emphasized, however, that estimates at the national level will be quite accurate (relative variances less than 1 percent). The approach to sample size selection outlined in this submission package is designed to meet several goals. First, estimates of all variables at the national level will be very accurate. Second, as mentioned above, estimates at the estimation cell level will be moderately accurate (relvariances in the 4 percent to 10 percent range). Moreover, the estimates at the estimation cell level will be consistent in their accuracy between cells. Finally, the sample will be very useful for estimation in the smallest size category (1 to 19 employees). This is important because of the requirement to analyze the impact of the proposed regulations on small businesses.

D. Special Sampling Procedures

None.

E. Use of Periodic Sampling

Not applicable.

*3. Response Rates*

The survy is voluntary and is expected to yield a response rate in excess of 75 percent of in scope cases. Experience on prior surveys indicates that the Dun and Bradstreet frame has over 80 percent in scope cases (in business, having working telephone numbers, etc.). The expected response rate of 75 percent mentioned above relates to the total of in scope cases on the frame. The CATI collection process should help to improve the overall response rate by allowing for direct telephone contact with the respondent and by scheduling and maintaining a detailed record of all necessary call-backs.

Five attempts to reach a particular company will be required. Efforts will be made to distinguish between those units that do not respond because they are "out of business" or otherwise "out of scope", and those that are "refusals".

*4. Tests of Procedures*

OSHA proposes to condut up to 100 site visits (roughly 3 per estimation cell) to test the quality and reliability of the data being collected by the telephone interviewing. A random selection of 2 respondents and 1 non-respondent per estimation cell will be used for this purpose.

**5. Expert Review**

The statistical aspects of the survey design have been reviewed by:

Dr. Hugh Conway, Office of Regulatory Analysis, Occupational Safety and Health Administration, (202) 523–9690

Dr. Arnold Greenland, Mr. Richard Gruberg, The Washington Consulting Group, Inc., 1625 Eye Street NW., Suite 214, Washington, DC 20006

Appendix I: Detailed Sample and Population Tabulation

Appendix II: Representative Percent Standards Errors

Appendix III: Survey Instrument

APPENDIX 1.—Detailed Sample and Population Tabulation

(Number of Firms and Sample Size For Industries To Be Surveyed)

| SIC group | Size [2] | Total plants [1] | Total employees | Sample size est. (employ-ment) | Sample size est. (propor.) | Target sample size | Total calls |
|---|---|---|---|---|---|---|---|
| 20, 21 | 1 | 16,377 | 108,515 | 10 | 131 | 71 | 118 |
| | 2 | 7,110 | 304,882 | 20 | 57 | 39 | 64 |
| | 3 | 2,310 | 339,706 | 13 | 19 | 16 | 26 |
| | 4 | 1,469 | 892,853 | 124 | 12 | 68 | 113 |
| | Total | 27,266 | 1,645,958 | 167 | 219 | 194 | 321 |
| 22 | 1 | 5,816 | 34,049 | 6 | 123 | 65 | 108 |
| | 2 | 2,513 | 109,412 | 13 | 53 | 33 | 55 |
| | 3 | 1,009 | 153,886 | 10 | 21 | 16 | 26 |
| | 4 | 821 | 483,978 | 92 | 17 | 54 | 91 |
| | Total | 10,159 | 781,325 | 121 | 216 | 168 | 280 |
| 23, 31 | 1 | 19,643 | 110,519 | 8 | 139 | 74 | 123 |
| | 2 | 7,753 | 334,950 | 15 | 55 | 35 | 58 |
| | 3 | 2,252 | 334,084 | 9 | 16 | 12 | 21 |
| | 4 | 1,182 | 530,483 | 15 | 8 | 12 | 19 |
| | Total | 30,830 | 1,310,036 | 47 | 219 | 133 | 221 |
| 261, 262, 263 | 1 | 871 | 6,559 | 3 | 85 | 44 | 73 |
| | 2 | 706 | 32,295 | 11 | 69 | 40 | 67 |
| | 3 | 327 | 47,390 | 9 | 32 | 21 | 34 |
| | 4 | 144 | 100,073 | 92 | 14 | 53 | 89 |
| | Total | 2,050 | 186,317 | 116 | 199 | 158 | 263 |
| 264, 265, 266, 267 | 1 | 2,614 | 19,678 | 5 | 90 | 48 | 79 |
| | 2 | 2,123 | 96,884 | 17 | 73 | 45 | 75 |
| | 3 | 980 | 142,169 | 14 | 34 | 24 | 40 |

APPENDIX 1.—Detailed Sample and Population Tabulation—Continued

(Number of Firms and Sample Size For Industries To Be Surveyed)

| SIC group | Size [2] | Total plants [1] | Total employees | Sample size est. (employment) | Sample size est. (propor.) | Target sample size | Total calls |
|---|---|---|---|---|---|---|---|
| | 4 | 432 | 300,219 | 141 | 15 | 78 | 130 |
| | Total | 6,149 | 558,950 | 177 | 213 | 195 | 324 |
| 24 | 1 | 27,972 | 151,443 | 28 | 174 | 101 | 168 |
| | 2 | 5,845 | 234,561 | 26 | 36 | 31 | 52 |
| | 3 | 1,070 | 152,667 | 10 | 7 | 8 | 14 |
| | 4 | 329 | 157,178 | 15 | 2 | 8 | 14 |
| | Total | 35,216 | 695,849 | 79 | 219 | 148 | 248 |
| 25 | 1 | 11,505 | 65,542 | 13 | 156 | 84 | 140 |
| | 2 | 3,254 | 136,638 | 17 | 44 | 30 | 50 |
| | 3 | 858 | 125,868 | 9 | 12 | 10 | 17 |
| | 4 | 448 | 233,767 | 25 | 6 | 16 | 26 |
| | Total | 16,065 | 561,835 | 63 | 217 | 140 | 233 |
| 27 | 1 | 64,922 | 353,151 | 30 | 182 | 106 | 177 |
| | 2 | 10,656 | 422,939 | 24 | 30 | 27 | 45 |
| | 3 | 1,850 | 267,627 | 8 | 5 | 7 | 11 |
| | 4 | 869 | 535,757 | 39 | 2 | 20 | 34 |
| | Total | 78,297 | 1,579,474 | 101 | 220 | 160 | 267 |
| 281, 282, 286, 287 | 1 | 4,587 | 31,014 | 7 | 131 | 69 | 115 |
| | 2 | 1,908 | 82,924 | 13 | 55 | 34 | 56 |
| | 3 | 525 | 79,268 | 7 | 15 | 11 | 19 |
| | 4 | 467 | 441,594 | 204 | 13 | 109 | 181 |
| | Total | 7,487 | 634,800 | 231 | 214 | 223 | 371 |
| 29 | 1 | 1,984 | 12,847 | 7 | 139 | 73 | 121 |
| | 2 | 650 | 26,647 | 10 | 45 | 28 | 46 |
| | 3 | 153 | 22,487 | 5 | 11 | 8 | 13 |
| | 4 | 144 | 116,221 | 75 | 10 | 43 | 71 |
| | Total | 2,931 | 178,202 | 97 | 205 | 152 | 251 |
| 283, 284, 285, 289 | 1 | 8,008 | 51,357 | 11 | 146 | 78 | 131 |
| | 2 | 2,771 | 113,021 | 16 | 50 | 33 | 56 |
| | 3 | 625 | 89,941 | 8 | 11 | 10 | 16 |
| | 4 | 490 | 381,080 | 99 | 9 | 54 | 90 |
| | Total | 11,894 | 635,399 | 134 | 216 | 175 | 293 |
| 30 | 1 | 10,044 | 68,191 | 11 | 128 | 70 | 116 |
| | 2 | 4,971 | 216,387 | 23 | 63 | 43 | 72 |
| | 3 | 1,401 | 203,925 | 13 | 18 | 15 | 25 |
| | 4 | 622 | 367,120 | 79 | 8 | 43 | 72 |
| | Total | 17,038 | 855,623 | 125 | 218 | 171 | 285 |
| 32 | 1 | 14,499 | 88,932 | 20 | 158 | 89 | 148 |
| | 2 | 4,207 | 165,910 | 25 | 46 | 35 | 59 |
| | 3 | 873 | 125,243 | 11 | 10 | 10 | 17 |
| | 4 | 448 | 287,208 | 90 | 5 | 47 | 79 |
| | Total | 20,027 | 667,293 | 146 | 218 | 181 | 303 |
| 33 | 1 | 4,983 | 35,305 | 6 | 113 | 60 | 99 |
| | 2 | 2,803 | 121,305 | 15 | 64 | 39 | 65 |
| | 3 | 1,006 | 148,235 | 10 | 23 | 17 | 28 |
| | 4 | 711 | 624,153 | 201 | 16 | 109 | 181 |
| | Total | 9,503 | 928,998 | 232 | 215 | 225 | 373 |
| 34 | 1 | 28,985 | 189,564 | 23 | 144 | 83 | 139 |
| | 2 | 11,804 | 482,529 | 38 | 58 | 48 | 81 |
| | 3 | 2,386 | 341,917 | 16 | 12 | 14 | 23 |
| | 4 | 1,079 | 863,642 | 773 | 5 | 389 | 649 |
| | Total | 44,254 | 1,877,652 | 849 | 219 | 534 | 892 |
| 35 | 1 | 56,226 | 333,182 | 37 | 167 | 102 | 170 |
| | 2 | 13,592 | 537,656 | 38 | 40 | 39 | 65 |
| | 3 | 2,537 | 371,119 | 15 | 8 | 11 | 19 |
| | 4 | 1,678 | 1,400,963 | 515 | 5 | 260 | 433 |

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APPENDIX 1.—Detailed Sample and Population Tabulation—Continued

(Number of Firms and Sample Size For Industries To Be Surveyed)

| SIC group | Size [2] | Total plants [1] | Total employees | Sample size est. (employ-ment) | Sample size est. (propor.) | Target sample size | Total calls |
|---|---|---|---|---|---|---|---|
| | Total | 74,033 | 2,642,920 | 504 | 220 | 412 | 687 |
| 36 | 1 | 15,765 | 99,666 | 9 | 130 | 69 | 116 |
| | 2 | 6,587 | 284,161 | 17 | 54 | 35 | 59 |
| | 3 | 2,238 | 335,327 | 11 | 18 | 15 | 25 |
| | 4 | 1,894 | 1,656,583 | 253 | 16 | 134 | 224 |
| | Total | 26,484 | 2,375,737 | 289 | 219 | 253 | 424 |
| 37 | 1 | 9,863 | 56,832 | 6 | 143 | 75 | 125 |
| | 2 | 2,997 | 125,699 | 9 | 44 | 26 | 44 |
| | 3 | 1,026 | 153,328 | 6 | 15 | 11 | 18 |
| | 4 | 1,072 | 1,682,451 | 396 | 16 | 206 | 343 |
| | Total | 14,958 | 2,018,310 | 418 | 217 | 318 | 530 |
| 38, 39 | 1 | 35,112 | 183,200 | 30 | 171 | 100 | 167 |
| | 2 | 7,503 | 302,126 | 29 | 36 | 33 | 55 |
| | 3 | 1,586 | 232,479 | 13 | 8 | 10 | 17 |
| | 4 | 953 | 680,153 | 212 | 5 | 108 | 181 |
| | Total | 45,154 | 1,397,958 | 284 | 219 | 251 | 420 |
| 40 | 1 | 1,424 | 7,523 | 3 | 75 | 39 | 65 |
| | 2 | 395 | 15,536 | 3 | 21 | 12 | 20 |
| | 3 | 143 | 22,212 | 3 | 7 | 5 | 8 |
| | 4 | 183 | 144,943 | 53 | 10 | 31 | 52 |
| | Total | 2,145 | 190,214 | 53 | 112 | 87 | 146 |
| 41, 42, 44, 45 | 1 | (1) | 401,574 | 25 | 30 | 28 | 46 |
| | 2 | (1) | 401,574 | 25 | 29 | 27 | 45 |
| | 3 | (1) | 401,574 | 25 | 29 | 27 | 45 |
| | 4 | (1) | 401,574 | 25 | 30 | 28 | 46 |
| | Total | 23,331 | 1,606,295 | 100 | 118 | 110 | 182 |
| 481, 482, 484, 489 | 1 | (1) | 14,413 | 25 | 20 | 23 | 38 |
| | 2 | (1) | 14,413 | 25 | 19 | 22 | 37 |
| | 3 | (1) | 14,413 | 25 | 19 | 22 | 37 |
| | 4 | (1) | 14,413 | 25 | 20 | 23 | 38 |
| | Total | 228 | 57,652 | 100 | 78 | 90 | 150 |
| 491, 492, 493 | 1 | 4,051 | 31,032 | 5 | 61 | 33 | 55 |
| | 2 | 2,513 | 107,768 | 12 | 38 | 25 | 41 |
| | 3 | 657 | 98,713 | 6 | 10 | 8 | 14 |
| | 4 | 490 | 370,260 | 110 | 7 | 59 | 96 |
| | Total | 7,711 | 607,773 | 132 | 117 | 125 | 208 |
| 494, 495, 496, 497, 46 | 1 | 9,370 | 51,527 | 17 | 97 | 57 | 95 |
| | 2 | 1,695 | 66,702 | 14 | 18 | 16 | 26 |
| | 3 | 205 | 29,126 | 3 | 2 | 3 | 5 |
| | 4 | 73 | 66,886 | 57 | 1 | 29 | 48 |
| | Total | 11,343 | 214,241 | 91 | 117 | 105 | 174 |
| 501, 55, 751, 753 | 1 | (1) | 176,974 | 25 | 30 | 27 | 45 |
| | 2 | (1) | 176,974 | 25 | 29 | 27 | 45 |
| | 3 | (1) | 176,974 | 25 | 29 | 27 | 45 |
| | 4 | (1) | 176,974 | 25 | 30 | 27 | 45 |
| | Total | 35,813 | 707,896 | 100 | 118 | 108 | 180 |
| 503, 521, 505 | 1 | (1) | 124,769 | 25 | 30 | 28 | 46 |
| | 2 | (1) | 124,769 | 25 | 29 | 27 | 45 |
| | 3 | (1) | 124,769 | 25 | 29 | 27 | 45 |
| | 4 | (1) | 124,769 | 25 | 29 | 27 | 45 |
| | Total | 10,039 | 499,076 | 100 | 117 | 109 | 181 |
| 5093, 508, 515, 516, 517 | 1 | (1) | 168,794 | 25 | 29 | 27 | 45 |
| | 2 | (1) | 168,794 | 25 | 29 | 27 | 45 |
| | 3 | (1) | 168,794 | 25 | 29 | 27 | 45 |
| | 4 | (1) | 168,794 | 25 | 29 | 27 | 45 |
| | Total | 6,729 | 675,177 | 100 | 116 | 108 | 180 |

APPENDIX 1.—Detailed Sample and Population Tabulation—Continued

(Number of Firms and Sample Size For Industries To Be Surveyed)

| SIC group | Size [2] | Total plants [1] | Total employees | Sample size est. (employment) | Sample size est. (propor.) | Target sample size | Total calls |
|---|---|---|---|---|---|---|---|
| 7692 | 1 | 8,413 | 27,045 | 97 | 114 | 105 | 161 |
| | 2 | 194 | 6,086 | 10 | 3 | 6 | 20 |
| | 3 | 9 | 1,267 | 1 | 0 | 1 | 5 |
| | 4 | 1 | 600 | 0 | 0 | 0 | 1 |
| | Total | 8,617 | 34,998 | 108 | 117 | 112 | 187 |
| 13 | 1 | (1) | 255,724 | 25 | 30 | 28 | 46 |
| | 2 | (1) | 255,724 | 25 | 29 | 27 | 45 |
| | 3 | (1) | 255,724 | 25 | 29 | 27 | 45 |
| | 4 | (1) | 255,724 | 25 | 29 | 27 | 45 |
| | Total | 12,243 | 1,022,895 | 100 | 117 | 109 | 181 |
| Total | | 591,845 | 26,589,903 | 5,275 | 5,230 | 5,254 | 8,755 |

[1] SOURCE: Dun and Bradstreet except for cells shown with a single asterisk in which total establishment and employment counts were obtained from BLS Bulletin 2297, dated December, 1987.
[2] Size categories are defined as follows: Size 1=(1–19 employees); Size 2=(20–99 employees); Size 3=(100–249 employees); Size 4=250 plus.

APPENDIX 2.—REPRESENTATIVE PRECENT STANDARD ERRORS

| Variable being estimated | Employment (percent) | Porportion (percent) |
|---|---|---|
| 1 | 7 | 6 |
| 2 | 7 | 6 |
| 3 | 5 | 7 |
| 4 | 7 | 6 |
| 5 | 7 | 6 |
| 6 | 5 | 7 |
| 7 | 5 | 7 |
| 8 | 6 | 5 |
| 9 | 8 | 5 |
| 10 | 7 | 6 |
| 11 | 7 | 6 |
| 12 | 6 | 5 |
| 13 | 7 | 6 |
| 14 | 8 | 5 |
| 15 | 10 | 4 |
| 15 | 8 | 4 |
| 17 | 7 | 5 |
| 18 | 8 | 5 |
| 19 | 7 | 5 |
| 20 | 10 | 9 |
| 21 | N/A | 8 |
| 22 | N/A | 7 |
| 23 | 10 | 7 |
| 24 | 10 | 8 |
| 25 | N/A | 8 |
| 26 | N/A | 8 |
| 27 | N/A | 8 |
| 28 | 7 | 8 |
| 29 | N/A | 8 |

**Appendix 3.—Survey Instrument**

OMB Approval # _____
July , 1988

Dear _____:

The Occupational Safety and Health Administration (OSHA) is studying potential changes to its regulations governing personal protective equipment (PPE) addressed in Subpart I of the General Industry Standards. Since these regulations were adopted in 1971 there have been a number of technology changes making many of these standards design restrictive and/or outdated.

Given the time elapsed since 1971, OSHA is conducting an Office of Management and Budget approced survey to determine what personal protection is in use and the processes for which it is needed. You firm has been selected to participate in this survey, and an interviewer will be calling you in a new weeks to ask some questions about your company's processes and practices with respect to personal protective equipment. Participation in the survey is voluntary and all responses, including any trade or technological secrets, will be kept strictly confidential.

Public reporting burden for this collection of information is estimated to average 45 minutes per complete response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301 200 Constitution Ave. N.W., Washington, DC 20210; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Will you help us expedite our survey process by deciding who at your facility is best qualified to answer question about work processes and apersonal protective equipment? Your firm's cooperation and information will help OSHA to develop the most feasible and cost effective stsandards.

We look forward to talking to your firm about these issues.

Sincerely,

John A. Pendergrass,

*Assistant Secretary.*

Personal Protective Equipment Questionnaire, OSHA, July 15, 1988.

[Interviewer Instructions: Record the Following Information.]

Interviewer Number

Call Record CASEID
Call Record SIC

Introduction

[Note to Reviewer: This section introduces the survey to the respondent, screens to insure that the respondent is in the correct SIC code, and collects basic information regarding types of business of activity and levels of employment.]

Hello. My name is _____ and I'm calling from KCA Research in Alexandria, Virginia. We are conducting a survey on behalf of the Occupational Safety and Health Administration of the U.S. Department of labor to assess the current practices in industry in the use of certain types of personal protective equipment. A letter was sent to you informing you of this survey.

As the letter indicted, we are interested in understanding the patterns of use of different types of personal protective equipment in industry. We would like to emphasize that all responses will be kept strictly confidential, and respondents will not be identified by name in any reports or data compilations.

Should I direct my questions to you, or is there someone else in the facility with whom you would prefer that I speak?

1. Our records show your firm to be in SIC code XXXX, which is _____. Is this correct?

Enter SIC GO TO Q.3
No GO TO Q.2
Don't know GO TO Q.3
Refused GO TO Q.4

2. What is your SIC Code?

Enter SIC Code
Don't know GO TO Q.3
Refused GO TO Q.4

3. How would you describe your line of business?

[Record Verbatim]

[If SIC Code/Line of business description is outside scope of survey, terminate.]

I'm going to read a list of activities which might be performed in firms like yours. I'd like you to tell me if each of these is performed at your present location. Do you _____ at your location?

4. manufacture
5. perform retail sales
6. perform wholesale sales
7. provide a business service
8. provide personal services
9. do administrative work

Yes
No
Don't know
Refused

10. Do you perform any other general types of activities at this location?

Yes
No GO TO Q.12
Don't know GO TO Q.12
Refused GO TO Q.12

11. What activity is that?

[Record Verbatim]

12. In total, how many employees are there at this location?

[Record Number] GO TO Q.14
More than 9,996 GO TO Q.13
Don't know GO TO Q.14
Refused GO TO Q.14

13. [Record Number of Employees Verbatim.]

How many of these are employed solely in providing the product or service of your firm (production workers), how may are employed solely in activities relatred to the maintenance and repair of your present facility, how many are engaged in such nonproduction activities in clerical, accounting, administration, management, or sales?

14. production employees
15. non-custodial maintenance and repair
16. nonproduction activities
17. some combination of employees performing in production and other areas

[RECORD NUMBER]
Don't know
Refused

[If number of employees in Q.14, 15 and Q.17 is none, terminate.]

[Note to Reviewer: This section collects information specifically about welding operations. Respondents are initially screened to determine whether any welding is conducted at their facility. Those who answer affirmatively are asked additional questions about employment of welders, PPE use, engineering controls, and other issues concerning welding safety.]

Do you perform _____ at your location?

18. gas welding or cutting
19. arc welding
20. resistance welding
21. brazing

Yes
No
Don't know
Refused

[If none performed, go to Q.57.]

22. How many employees perform one or more of these questions?

[Record Number]
Don't know
Refused

How many employees perform welding for _____?

23. production only
24. maintenance only
25. some combination of production and maintenance

[Record Number]
Don't know
Refused

26. Do gas or arc welders wear welding helmets or goggles or use hand shields?

Yes, all do
Some do
None GO TO Q.29
Don't know GO TO Q.29
Refused GO TO Q.29

27. Do the welders wear safety glasses or goggles under their helmets or faceshields?

Yes, all do
Some do
None
Don't know
Refused

28. Do welders' helpers or others in the vicinity of welding operations wear welding helmets, welding goggles or other tinted eyewear?

Yes, all do
Some do
None
Don't know
Refused

[If yes to Q.19, continue with Q.29; otherwise, go to Q.31.]

29. Are employees who operate and maintain arc welding equipment instructed in the OSHA safety regulations for welding operations?

Yes
No
Don't know
Refused

30. Are arc welders provided with gloves for use while welding?

Yes
No
Don't know
Refused

[If yes to Q.20, continue with Q.31; otherwise, go to Q.32.]

31. Do you provide guards for resistance welding equipment to prevent flying sparks?

Yes
No
Don't know
Refused

[If yes to either Q.20 or Q.21, continue with 32; otherwise, go to Q.33.]

32. Do operators of resistance welding or brazing equipment wear safety glasses or other protective eyewear?

Yes
No
Don't know
Refused

33. Are cautionary labels warning of welding hazards placed on containers of welding materials and major pieces of welding equipment?

Yes
No
Don't know
Refused

34. Firms like yours sometimes use special engineering features to reduce hazards to employees from welding operations. Do you use welding screens or cutrains for this purpose?

Yes
No
Don't know
Refused

35. Do you use ventilation systems for this purpose?

Yes
No GO TO Q.48
Don't know GO TO Q.48
Refused GO TO Q.48

36. Do you use any types of local ventilation methods such as canopy hoods to control for fumes or gases generated during welding operations?

Yes
No GO TO Q.44
Don't know GO TO Q.44
Refused GO TO Q.44

Do the local ventilation methods include any of the following? Do they include _____?

37. enclosures
38. canopy hoods
39. slotted ventilation hoods
40. flexible hose ventilation
41. tailpipe exhaust systems
42. downdraft hoods
43. side draft hoods

Yes
No

Don't know
Refused

Do you rely on any of the following other types of ventilation to control for welding fumes and gases?

44. roof or other exhaust fans
45. air supply fans
46. open doors and windows
47. air movements by thermal convection currents

Yes
No
Don't know
Refused

48. Are there any other engineering controls used to protect workers engaged in welding?

Yes
No GO TO Q.50
Don't know GO TO Q.50
Refused GO TO Q.50

49. What?

50. Do you perform air quality monitoring in conjunction with welding operations?

Yes
No
Don't know
Refused

51. In what percentage of your production welding work, must the welder wear a respirator?

[Record Number]
Don't know
Refused

52. In what percentage of your maintenance and repair welding work, must the welder wear a respirator?

[Record Number]
Don't know
Refused

53. Do noise levels associated with welding and cutting operations exceed 90 decibels?

Yes
No GO TO Q. 55
Don't know GO TO Q. 55
Refused GO TO Q. 55

54. Do welding operators wear hearing protection?

Yes
No
Don't know
Refused

55. Are welding operators required to manually handle materials or tools weighing 20 pounds or more as part of their normal job tasks?

Yes
No GO TO Q. 56
Don't know GO TO Q. 56
Refused GO TO Q. 56

56. Do welding operators wear safety shoes?

Yes
No
Don't know
Refused

[Note to Reviewer: The following questions pertain to the use of personal fall protection systems. ]

56a. Do employees at your facility ever work at heights exceeding four feet without the protection of a guard rail or similar barrier?

Yes
No
Don't know GO TO Q. 57
Refused

56b. Do employees at your facility ever use personal fall protection systems?

Yes
No
Don't know GO TO Q. 57
Refused

Do these systems ever include _____?

56c. body belts with lanyard and lifeline

56d. body harness with lanyard and lifeline

Yes
No
Don't know.
Refused

56e. Do these systems involve some type of personal fall protection system other than body belts or harnesses with lanyards and lifelines?

Yes
No
Don't know GO TO Q. 56g
Refused

56f. What type of system is that?

How many employees use personal fall protection systems for _____?

56g. production work only
56h. maintenance and repair work only
56i. some combination

[Note to Reviewer: The following questions are asked only of those firms in the pulp and paper industry (SIC 26XX). The questions are designed to collect information relevant to an analysis of compliance with the OSHA pulp and paper industry standard. This information will supplement that collected from pulp paper firms in the other sections of the questionnaire.]

[If SIC 26XX, continue; otherwise, go to Q. 75.]

57. Do belt conveyers in your facility have emergency stop buttons located at each employee work station?

No belt conveyers
Yes
No
Don't know
Refused

58. Are all mobile cranes used in your facility equipped with a device to prevent the boom from snapping back over the cab in the event of a cable failure?

No mobile cranes
Yes
No
Don't know
Refused

59. Do any of your operations require employees to work above water?

Yes
No GO TO Q. 61
Don't know GO TO Q. 61
Refused GO TO Q. 61

60. Are such employees provided with either personal flotation devices or protective barriers and safety belts and lifeline?

Yes
No
Don't know
Refused

61. Do you operate chippers at your facility?

Yes
No GO TO Q. 64
Don't know GO TO Q. 64
Refused GO TO Q. 64

62. Are chipper spouts enclosed by a barrier 42 inches or higher?

Yes
No
Don't know
Refused

63. Do chipper operators wear a safety belt or harness and life line?

Yes
No
Don't know
Refused

64. Does your facility engage in chemical pulpmaking utilizing liquid sulfur?

Yes
No GO TO Q. 70
Don't know GO TO Q. 70
Refused GO TO Q. 70

65. Does your facility have written procedures for handling and storing liquid sulfur?

Yes
No
Don't know
Refused

66. Are employees trained in the hazards associated with chemical spills of liquid sulfur?

Yes
No
Don't know
Refused

67. Are employees trained in appropriate first aid practices to be followed in the event of a spill?
Yes
No
Don't know
Refused

68. How many employees are assigned to sulfur tank cars for initial unloading operations?
[Record Number]
Don't know
Refused

69. Does your facility have a venting system used in unloading of sulfur tank cars?
Yes
No
Don't know
Refused

70. Does your facility engage in pulpmaking operations that utilize furnaces and/or boilers?
Yes
No GO TO Q. 72
Don't know GO TO Q. 72
Refused GO TO Q. 72

71. Are employees working in recovery furnace operations trained in normal and emergency shutdown procedures?
Yes
No
Don't know
Refused

72. Do you engage in a bleaching process as part of your operation that requires the generation of chlorine dioxide?
Yes
No GO TO Q. 75
Don't know GO TO Q. 75
Refused GO TO Q. 75

73. Does your facility have written safety procedures for the operation and maintenance of chlorine dioxide generating and other associated equipment?
Yes
No GO TO Q. 75
Don't know GO TO Q. 75
Refused GO TO Q. 75

74. Are personnel who work on this equipment trained in these procedures?
Yes
No
Don't know
Refused

[Note to Reviewer: In the following section respondents are screened for processes occurring at their facility. The interviewer will prompt the respondent with 2 or 3 processes commonly present in that industry. The respondent will then be asked to list other processes which are present. These will immediately be coded and entered by the interviewer from a master list of processes. Interviewers will also have a list of hazards associated with each process.]

I'm going to read a list of processes that many firms engaged in your type of business often perform, exclusive of welding, which we have just discussed. I'd like you to tell me which, if any, of these processes are performed at your location. Do you perform _____?

75. Process A
76. Process B
77. Process C
78. Process D
79. Process E
80. Process F
81. Process G
82. Process H
83. Process I
84. Process J
85. Process K
86. Process L

Are there any other processes performed that I did not mention?
[Enter Each Process Number]
No processes
Other process 1
Other process 2
Other process 3
Other process 4
Other process 5
Other process 6
No more processes

87. [Record Verbatim Other Process 1]
88. [Record Verbatim Other Process 2]
89. [Record Verbatim Other Process 3]
90. [Record Verbatim Other Process 4]
91. [Record Verbatim Other Process 5]
92. [Record Verbatim Other Process 6]

[If no processes listed, terminate interview.]

[Note to Interviewer: USE THE RANDOM SELECTION PROCESSES TO IDENTIFY THE SIX PROCESSES FOR QUESTIONING IN THE FOLLOWING SECTION.]

[Note to Reviewer: In this section the respondent is asked a series of questions about the presence of engineering controls and associated PPE use for each process coded in the process screener. Engineering controls and PPE use for hazards not associated with the process will not be included in the questions. The interviewer will be supplied with a master list identifying the engineering controls that are appropriate for each process. The completed list of possible questions on engineering controls in presented below.]

Now I'm going to review with you those processes which you previously indicated were performed at your facility. I have a series of questions to ask about each process. The first process is _____.

[Note to Interviewer: For each process, key in the Response from the process helps list for each of the following: Is _____ of concern in this process?]

A. hazards from airborne materials, including dust
B. noise
C. potential for falling objects or materials
D. potential for flying materials such as particles and chips
E. potential for dropping equipment or materials that might injure a worker
F. hazards from handling sharp objects or heated materials
G. hazards from chemicals

93. How many workers at this location directly participate in this process?
[Enter Number]
Yes
Don't know
Refused

94. Do you use ventilation systems to reduce the level of airborne contaminants?
Yes GO TO Q. 67
No
Don't know
Refused

95. Do you use any types of local ventilation methods?
Yes
No GO TO Q. 103
Don't know GO TO Q. 103
Refused GO TO Q. 103

Do the local ventilation methods include any of the following:

96. enclosures
97. canopy hoods
98. slotted ventilation hoods
99. flexible hose ventilation
100. tailpipe exhaust systems
101. downdraft hoods
102. side draft hoods
Yes
No
Don't know
Refused

Do you rely on any of the following other types of ventilation?

103. roof or other exhaust fans
104. air supply fans
105. open doors and windows
106. air movements by thermal convection currents
Yes
No
Don't know
Refused

107. Of those performing this process, how many use respirators when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

108. Do noise levels around this process exceed 90 decibels?

Yes
No GO TO Q. 119
Don't know GO TO Q. 119
Refused GO TO Q. 119

109. Have you installed noise control systems?

Yes
No GO TO Q. 116
Don't know GO TO Q. 116
Refused GO TO Q. 116

Do you use:

110. mufflers or baffles on or in equipment
111. acoustical surface treatment of equipment for noise control
112. acoustical treatment of process areas and rooms
113. noise control enclosures around equipment
114. noise control enclosures around workers
115. relocation of worker station relative to noise sources

Yes
No
Don't know
Refused

116. Do you use any other type of noise control?

Yes
No GO TO Q. 118
Don't know GO TO Q. 118
Refused GO TO Q. 118

117. What?

118. Of those performing this process, how many use noise protection when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

In this process do you use any of the following to prevent hazards of falling objects?

119. overhead grates or bars above workstations
120. overhead netting or screens
121. toeboards at edge of open-sided overhead walkways, platforms and floors.

Yes
No
Don't know
Refused

122. Do you use any other type of controls to guard against falling objects?

Yes
No GO TO Q.124
Don't know GO TO Q.124
Refused GO TO Q.124

123. What?

124. Of those performing this process. how many use hard hats when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

Do you use any of the following physical barriers to limit eye and face hazards from equipment or materials in this process?

125. equipment enclosures
126. operator booths or enclosures
127. equipment shields
128. equipment hoods
129. screens around equipment or production areas

Yes
No
Don't know
Refused

130. Do you use any other physical barriers to limit eye and face hazards from equipment or materials?

Yes
No GO TO Q. 132
Don't know GO TO Q. 132
Refused GO TO Q. 132

131. What?

132. Of those performing this process, how many use safety goggles or glasses when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

133. Of the safety glasses worn, how many are equipped with side shields?

[Enter Number]
Don't know
Refused

134. Of those performing this process, how many use face shields or welding helmets?

[Enter Number]
Don't know
Refused

135. Of those performing this process, how many use tinted eyeglasses or tinted face shields?

[Enter Number]
Don't know
Refused

136. In this process is there a need for employees to manually handle objects or tools weighing 20 pounds or more?

Yes
No GO TO Q.144
Don't know GO TO Q.144
Refused GO TO Q.144

In this process do you use any of the following automated material handling systems to reduce manual lifting and carrying of materials and equipment?

137. fork lifts
138. conveyers
139. motorized hand carts
140. manual hand carts
141. pallet jacks

Yes
No
Don't know
Refused

142. Of those performing this process, how many use safety shoes without metatarsal guards when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

143. Of those performing this process, how many use safety shoes with metatarsal guards when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

144. In this process are employees required to handle sharp, abrasive, or heated materials?

Yes
No GO TO Q.147
Don't know GO TO Q.147
Refused GO TO Q.147

145. Do you use equipment or technologies that facilitate worker handling of sharp, abrasive or heated materials?

Yes
No.
Don't know
Refused

146. Of those performing this process, how many use gloves when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

In this process do you use any of the following automated chemical handling equipment or physical barriers?

147. automated dispensing systems.
148. automated chemical mixing systems
149. automated hopper filing systems.
150. enclosed bulk-handling chemical delivery systems
151. chemical splash barriers

Yes
Do Don't know
Refused.

152. Do you use any other automated chemical handling equipment or physical barriers to protect workers?

Yes
No GO TO Q.154
Don't know GO TO Q.154
Refused GO TO Q.154

153. What?

154. Of these performing this process, how many employees wear chemical splash goggles when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

155. Of those performing this process, how many wear aprons when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

156. Of those performing this process, how many wear rubber or other boots other than safety shoes when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

157. Of those performing this process, how many wear protective suits or other types of protective clothing when engaged in their normal job tasks?

[Enter Number]
Don't know
Refused

GO to Q.93 and repeat for each process reported.

[Note to reviewer: This section covers basis safety policy issues relevant to PPE use.]

158. Does your company have rules about the use of personal protective equipment at this facility?

Yes
No
Don't know
Refused.

You've described to me already use of personal protective equipment in certain processes. I'd like to know, however, about overall use of the equipment throughout your establishment. You may have already given me some of this information but I need to confirm it with you. How many workers in all in your establishment wear:

159. Goggles
160. Safety glasses with side shields
161. Safety glasses without side shields
162. Faceshields or welding helmets
163. Tinted eyeglasses or faceshields
164. Hard hats
165. Safety shoes without metatarsal guards
166. Safety shoes with metatarsal guards
167. Chemical splash goggles
168. Respirators
169. Aprons
170. Protective suits or other porotective clothing
171. Rubber or other boots other than safety shoes
172. Noise protection ear inserts or earmuff
172a. Personal fall protection system with a body belt
172b. Personal fall protection system with a body harness

[Record Number]
Don't know
Refused

173. Have you ever performed an assessment of the hazards in your workplace to determine whether your PPE policies are adequate?

Yes
No
Don't know
Refused

174. Have employees been trained in the recognition of hazards specific to the process in which they are engaged?

Yes
No GO TO Q.176
Don't know GO TO Q.176
Refused GO TO Q.176

175. Does this training encompass use of personal protective equipment for hazards associated with each process?

Yes
No
Don't know
Refuse

176. What percentage of workers who wear personal protective equipment have not been trained in its use?

[Enter Percent]
Don't know
Refuse

176a. Do employees receive training in the use of personal fall protection systems?

Yes
No GO TO Q.179
Don't know GO TO Q.179
Refused GO TO Q.179

176b. Is the training program for the use of fall protection systems documented in written form?

Yes
No
Don't know
Refused

Does the training program for fall protection involve _____?

176c. formal classroom training
176d. on-the-job training

Yes
No
Don't know
Refused

176e. What percentage of employees who use fall protection systems have received training in its use?

Yes
No
Don't know
Refuse

177. Do employees who wear personal protective equipment receive refresher training in its use?

Yes, all employees
Some employees
Few employees
No GO TO Q.179
Don't Know GO TO Q.179
Refused GO TO Q.179

178. How often is such refresher training provided?

At least one per year
Less frequently than once per year
No formal schedule
Don't know
Refused

178a. Do employees receive refresher training in the use of fall protection systems?

Yes, all employees
Some employees
Few employees
No GO TO Q.179
Don't Know GO TO Q.179
Refused GO TO Q.179

178b. How often is such refresher training provided?

At least one per year
Less frequently than once per year
No formal schedule
Don't know
Refused

Are any of the following part of your regular company operations or policies?

179. safety incentive programs
180. safety inspections to evaluate employee use of PPE
181. safety records used in performance evaluations for supervisors or management
182. disciplinary actions taken for employee's failure to use personal protective equipment

Yes
No
Don't know
Refused

183. Is your company in the State Worker Compensation program, or are you self-insured?

State Worker's Compensation
Self-insured
Don't know
Refused

184. Has your company ever done any analysis of accidents beyond keeping the accident log (i.e. the Form 200) required by OSHA?

Yes
No
Don't know
Refused

185. Did the company reevaluate its personal protective equipment policies the last time there was a major process change made in the facility?

Yes
No
No process changes
Don't know
Refused

[Note to Reviewer: In this section respondents are asked about specific PPE procedures that are required for full compliance with the OSHA PPE standard.]

186. Do employees ever independently select and supply their own personal protective equipment, without guidance from the company?

Yes
No GO TO Q.188
Don't know GO TO Q.188
Refused GO TO Q.188

187. Is employee-provided personal protective equipment checked over and approved by a foreman or safety official before it is used on the job?

Yes
No
Don't know
Refused

188. Are employees ever issued previously-used hard hats?

Yes
No GO TO Q. 193
Don't know GO TO Q.193
Refused GO TO Q.193

189. Please estimate how many hard hats are reissued monthly?

[Enter Number]
Don't Know
Refused

Before hard hats are re-issued, are they:

190. inspected for damage and repaired
191. cleaned
192. disinfected
Yes
No
Don't know
Refused

193. Are employees ever issued previously-used eye and face protective equipment?

Yes
No GO TO Q. 198
Don't know GO TO Q.198
Refused GO TO Q.198

194. Please estimate how many protective eyeglasses, goggles, or face shields are reissued monthly?

[Enter Number]
Don't Know
Refused

Before protective eyewear or faceshields are re-issued, are they:

205. inspected for damage and repaired
206. cleaned
207. disinfected
Yes
No
Don't know
Refused

198. Does your firm provide eyeglass cleaning stations or other means to help employees keep their safety eyewear clean?

Yes
No
Don't know
Refused

199. Are employees ever issued previously-used respirators?

Yes
No GO TO Q. 204
Don't know GO TO Q.204
Refused GO TO Q.204

200. Please estimate how many respirators are reissued monthly?

[Enter Number]
Don't Know
Refused

Before respirators are re-issued, are they:

195. inspected for damage and repaired
196. cleaned
197. disinfected
Yes
No
Don't know
Refused

208. Does the company have any policies or procedures which ensure that damaged or defective personal protective equipment is not used?

Yes
No
Don't know
Refused

208a. Are lanyards, lifelines, body belts, harnesses, and other components of personal fall protection systems inspected for damage and repairs before issue?

Yes
No
Don't know
Refused

209. Do employees contribute to the purchase of any personal protective equipment?

Yes
No
Don't know
Refused

210. Have you had any occupational injuries or illnesses within the past two years?

Yes
No Terminate
Don't know Terminate
Refused Terminate

211. How many occupational injuries have occurred?

[If none, go to Q.213.]

212. Of the _____ occupational injuries, how many resulted in the loss of one or more workdays?

213. How many work related illnesses have occurred?

[If none, go to Q.215.]

214. Of the _____ occupational related illnesses, how many resulted in the loss of one or more workdays?

215. Would you please send us the OSHA Form 200 accident log and the OSHA Form 101 or any equivalent form you are using?

Yes Give Mailing Instructions
No

Thank the respondent for his assistance and terminate interview.

[FR Doc. 88-16878 Filed 7-27-88; 8:45 am]
BILLING CODE 4510-26-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted on or before August 29, 1988.

**ADDRESSES:** Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/786-0233 and Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, 202/395-6880.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/786-0233, from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of

the number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

*Category:* Extension.

*Title:* Division of State Programs; Guidelines for Biennial Proposals.

*Form Number:* 3136–0080.

*Frequency of Collection:* Biennially.

*Respondents:* State humanities councils applying for funding.

*Use:* Application for benefits by state humanities councils to be regranted to nonprofit groups and organizations in their states to make focused, coherent humanities education possible in places and by methods that are appropriate to adults. Information will be used by reviewers, panelists, and the Endowment's chairman to determine eligibility for funding.

*Estimated Number of Respondents:* 26–28.

*Frequency of Response:* Biennially.

*Estimated Hours for Respondents to Provide Information:* 116 hours per respondent or 3,016–3,248 total hours for all respondents.

*Estimated Total Annual Reporting and Recording Burden:* 8,104–8,336.

**Susan Metts,**

*Assistant Chairman for Administration.*

[FR Doc. 88–17006 Filed 7–27–88; 8:45 am]

BILLING CODE 7536-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### Request for Extension of Approval; Termination for Multiemployer Plans

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval of extension.

**SUMMARY:** The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212–0020) without any change in the substance or in the method of collection. The information collection is contained in PBGC's regulation on Notice of Termination for Multiemployer Plans, 29 CFR Part 2673. This notice advises the public of the PBGC's request for OMB approval of this extension.

**ADDRESSES:** All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Office of the General Counsel, (22500), 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The PBGC is requesting that the Office of Management and Budget extend for three years the approval of the information collection requirement contained in the PBGC's regulation on Notice of Termination for Multiemployer Plans, 29 CFR Part 2673. The regulation applies only to plan sponsors of terminated multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Section 4041A(f)(2) of ERISA gives the PBGC authority to prescribe reporting requirements for terminated plans. These reporting requirements are necessary to protect the interests of plan participants and beneficiaries and of the PBGC.

The regulation provides that a Notice of Termination shall be filed with the PBGC by a multiemployer plan when the plan has terminated either by plan amendment or by mass withdrawal. The regulation requires that such a plan must provide the PBGC with basic information, such as the plan identity, the date of termination, and the plan's most recent Form 5500. In addition, a plan that has terminated by mass withdrawal must supply certain financial information. This information enables the PBGC to assess the likelihood of benefit reductions or suspensions under a terminated plan and the need for PBGC financial assistance to the plan. More information is required with respect to mass withdrawal terminations because the risk of plan insolvency is greater in these cases.

Based on its experience since this regulation was promulgated, the PBGC estimates that it will receive 20 requests annually. The PBGC estimates that 16 of these notices will be from plans that have terminated by plan amendment, with each notice requiring two hours of preparation, and that four of these notices will be from plans that have terminated by mass withdrawal, with each notice requiring 14.5 hours of preparation. Thus, the total estimated annual burden on the public is 90 hours.

Issued in Washington, DC, on this 25th day of July 1988.

**Kathleen P. Utgoff,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 88–17069 Filed 7–27–88; 8:45 am]

BILLING CODE 7708-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–25936; File No. SR–CBOE–88–13]**

### Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change

On June 29, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2], a proposed rule change to permit stop and stop limit orders in all exchange traded options to be elected when the quoted bid or offer for the option reaches the stop or stop limit price, in addition to being elected when a transaction in the security occurs at the appropriate stop or stop limit price.

The proposed rule change amends CBOE Rule 6.53 which defines different types of Exchange orders. the Exchange proposes that stop and stop limit orders for all option contracts be activated when the market in the option series, as reflected in the quotation, reaches the investor's stop price. Current stop and stop limit orders for index option contracts, but not equity options, are handled in this manner. For example, a stop order to buy an index option becomes a market order when either the option contract is bid at or above the stop price or when the option contract trades at or above the stop order. For equity options however, a stop order to buy (or sell) only becomes a market order when the option contract trades at or above (or below) the stop price. The same is true for individual equity options stop limit orders. A stop limit order to buy an equity option becomes a limit order only when the option contract trades at or above the stop limit price.

The Exchange believes the rule change will minimize investor confusion arising from the disparate handling of index and equity option stop and stop

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1985).

limit orders. Additionally, the Exchange believes that this rule change will more accurately achieve the objectives of customers who use stop and stop limit orders. Currently, if no transaction occurs in a equity option at a customer's stop price or at a price that penetrates the stop price, then the stop order is never activated. This situation can be particular problematic in inactive equity option series, such as those series that are deep in-or out-of-the-money. More specifically, the options quotations in these series may move substantially, based upon changes in the value of the underlying security, without any options transaction occurring. In this case, the investor's order is never activated and his goal of protection against adverse price movements in the option is defeated.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder. The Commission notes that other Exchanges have adopted similar rules [4] and the Commission believes the proposed rule chnge will serve to reduce investor confusion by promoting uniformity within CBOE as well as among option exchanges. Additionally, the Commission believes the rule change enhances further the utility of stop and stop limit orders for investors that use options. The Commission believes also that the investor's interest, as well as the interest of a fair and orderly market, is protected through the separation of floor broker and market maker function of the Exchange. This division assures that market makers do not have knowledge of such stop or stop limit orders when establishing their bids and offers.

The CBOE has requested accelerated approval of the proposed rule change because the election of stop and stop limit orders on bids and offers is allowed at other exchanges, implementation will enable investors to enjoy a consistent practice in all CBOE traded options, and immediate implementation will protect current equity options stop and stop limit orders. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the Commission previously approved substantially identical proposals by other Exchanges and has not received any adverse comments on those rule changes,[5] and that implementation will reduce investor confusion.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 18, 1988.

*It is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: July 22, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17002 Filed 7-27-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25937; File No. SR-NASD-88-28]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Section 1(d), Part VI, Schedule D to the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) notice is hereby given that on July 1, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends section 1(d), Part VI, Schedule D to the NASD By-Laws to provide that a market maker in the National Association of Securities Dealers Automated Quotations ("NASDAQ") System may become registered in an issue included in the NASDAQ System immediately after the request to register in the system is entered by the market maker.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Commission recently approved amendments to the Rules of Practice and Procedures for the NASD's Small Order Execution System ("SOES") and to Schedule D to the NASD By-Laws (the "SOES amendments").[1] The SOES amendments significantly alter the obligation of NASDAQ market makers, and, in pertinent part, make participation in SOES mandatory for all market makers in NASDAQ National Market System ("NASDAQ/NMS") securities. The SOES amendments became effective on June 30, 1988.

Subsequent to filing the SOES amendments, the NASD Board of Governors reviewed a series of potential issues that may be of concern after the SOES amendments became effective. Because the SOES amendments not only make participation in SOES mandatory for all market makers trading NASDAQ/

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[3] U.S.C. 78f (1982).

[4] *See* American Stock Exchange Inc. Rule 950(f), New York Stock Exchange Inc. Rule 750(h), Philadelphia Stock Exchange Rule 1066(c)(3).

[5] *See* Securities Exchange Act Release No. 22240 (July 15, 1985) 50 FR 29776, Securities Exchange act Releases No. 22495 (October 2, 1985) 50 FR 41082 and Securities Exchange act Release No. 23473 (July 28, 1986) 51 FR 27621.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1986).

[1] *See* File No. SR-NASD-88-1, Securities Exchange Act Release No. 25791 (June 9, 1988).

NMS securities, but also impose severe penalties for unexcused withdrawals from the NASDAQ System, the Board determined that a situation may arise where trading in a NASDAQ/NMS security is disrupted. In such a situation, the Board concluded it may be necessary for the NASD to seek to register new market makers to trade on the NASDAQ System. Currently, registration as a NASDAQ market maker becomes effective on the second business day after the registration is entered. The proposed amendment permits the registration of market makers in the NASDAQ System to become effective on the day the registration request is entered into the NASDAQ terminal. By elminating the current two-day delay imposed on market makers that seek to become registered in an issue traded on the NASDAQ System, the proposed amendment facilitates the registration process, permits these market makers to immediately begin issuing quotes, and may ameliorate potential disruptions in the trading of NASDAQ/NMS securities.

The proposed rule amendment is consistent with section 15(A)(b)(6) under the Act which mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market because the proposed rule amendment will result in the elimination of the two-day delay currently in effect for market makers that seek to register in the NASDAQ System and the amelioration of potential trading disruptions in the NASDAQ System.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule amendment imposes any burden on competition not necessary or appropriate infurtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 18, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Jonathan G. Katz,**

*Secretary.*

Dated: July 22, 1988.

[FR Doc. 88-17003 Filed 7-27-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25861; File No. SR-NSCC-87-12]**

## Self-Regulatory Organizations, National Securities Clearing Corp. ("NSCC"); Order Extending Approval of Proposed Rule Change on a Temporary Basis

On October 15, 1987, NSCC filed a proposed rule change (File No. SR-NSCC-87-12) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change revises NSCC's rules to authorize and establish financial and operational standards for a new category of broker-dealer membership, whose activities would be restricted exclusively to the use of the Fund/SERV service. The proposal also revises NSCC's rules concerning Fund/SERV clearing fund contributions and allocating losses to that fund in the event of systems losses or member default. On January 26, 1988, the Commission approved the proposed rule change on a temporary basis for three months, through April 30, 1988. On May 2, 1988, the Commission extended the approval of the proposed rule change on a temporary basis, through June 30, 1988. As discussed below, the Commission is extending its approval of the proposed rule change on a temporary basis, through September 30, 1988.

The Commission, in its January 26, 1988, temporary approval order, asked NSCC to evaluate the benefits accruing from lower Fund/SERV clearing fund contributions and limited member assessments. The Commission also asked NSCC to monitor member Fund/SERV settlement activity, and report on the risk that Fund/SERV settlement debits and credits could not be reversed and fully-collected from other Fund/SERV system users. NSCC has asked for an extension of time to provide the Commission with information regarding the benefits and risks associated with the proposed rule change.

In its January 26, 1988 Order, the Commission stated it preliminarily believes that the proposed rule change is consistent with the Act and, accordingly, approved the proposed rule change on a temporary basis. The Commission, however, believes that, before granting final approval of the proposed rule change, the Commission needs to analyze fully the benefits and risks associated with lower Fund/SERV clearing fund contributions and limited member assessments. Therefore, the Commission believes that it is appropriate to extend the proposed rule change for three months.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the approval of proposed rule change (SR-NSCC-87-12) be, and hereby is, extended on a temporary basis through September 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1988.

**Jonathan Katz,**

*Secretary.*

[FR Doc. 88-17004 Filed 7-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25935; File No. SR-NYSE-88-20]

## Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Minimum Numerical Listing Standards and Continued Listing Criteria for Domestic Companies

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 14, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to the Exchange's minimum numerical listing standards and continued listing criteria for domestic companies, as set forth in Paragraphs 102.00 and 802.00 of the NYSE Listed Company Manual, are detailed in Exhibit A.[1] The proposed rule changes establish that if the unit of trading of an equity security is less than 100 shares (e.g., 10 shares), the requirements relating to the number of holders of 100 shares or more would be met by an equivalent number of holders of a "unit of trading if less than 100 shares" and the requirements relating to the number of publicly held shares shall be reduced proportionately. The Exchange does not expect that the proposed rule changes will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rules changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes*

(1) Purpose

Current listing standards governing the number of shareholders and the number of shares publicly held ("distribution standards") for domestic companies are as follows:

1. For listing on the NYSE.

—Number of holders of 100 shares or more, 2,000,
or
total stockholders, 2,200
together with average monthly trading volume, 100,000 shares
—Number of publicly held shares, 1,100,000 shares

2. For continued listing on the NYSE.

—Number of holders of 100 shares or more, 1,200
—Number of publicly held shares, 600,000

These distribution standards were adopted to facilitate the Exchange's ability to maintain fair and orderly markets and are based on the normal unit of trading, i.e., 100 shares. Exchange Rule 55 states: "The unit of trading in stocks shall be 100 shares, except that in the case of certain stocks designated by the Exchange the unit of trading shall be such lesser number of shares as may be determined by the Exchange, with respect to each stock so designated * * *." For example, the Exchange may determine that a stock with an unusually high price should be traded in a 10 share unit. Because the Exchange's distribution standards specifically refer to holders of "100 shares or more" and apply numerical criteria for shares publicly held based on the normal unit of trading, there is no distinct provision for listing a company where the Exchange determines to designate the unit of trading as less than 100 shares.

The modification to the Exchange's distribution standards would:

(1) Modify the present requirement as to the required minimum number of holders of 100 shares or more to allow, instead, a minimum number of holders of a "unit of trading" where such unit is less than 100 shares; and

(2) Modify the standards for the number of shares publicly held to that number which is proportionate to the unit of trading which is designated by the Exchange as less than 100 shares (e.g., if the unit of trading is 10 shares, the required number of publicly-held shares for listing would be 110,000 rather than 1,100,000).

(2) Statutory Basis

The proposed rule changes are consistent with section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act"). This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove inpediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange. Furthermore, the proposed rules amendments are consistent with section 11(A)(a)(1)(c)(ii) of the Act in that they will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rules changes will not impose any burden on competition that is not necessary or appropriate in futherance of the purpose of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rules Changes Received from Members, Participants, or Others*

The Exchange has neither solicited nor received written comments concerning its proposed rules changes.

### III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rules changes, or

(B) Institute proceedings to determine whether the proposed rules changes should be disapproved.

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[1] Exhibit A is available in the Public Reference Branch at the Commission's headquarters in Washington, DC.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of submission, subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communications relating to the proposed rules changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by August 18, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

July 2, 1988.

[FR Doc. 88-17005 Filed 7-27-88; 8:45 am]

BILLING CODE 8010-01-M

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## DEPARTMENT OF TRANSPORTATION

**[Docket 37554]**

### Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 88-5-64 set the currently effective two-month SFFL applicable through July 31, 1988.

In establishing the SFFL for the two-month period beginning August 1, 1988, we have projected nonfuel costs based on the year ended March 31, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 88-7-33 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic, 1.1593
Latin American, 1.1288
Pacific, 1.5352
Canada, 1.1634

**FOR FURTHER INFORMATION CONTACT:** Julien R. Schrenk (202) 366-2441.

By the Department of Transportation.

Date: July 21, 1988.

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 88-16962 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-62-M

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## Federal Aviation Administration

**[Proposed Advisory Circular 91-53A]**

### Noise Abatement Departure Profile

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of proposed Advisory Circular (AC) 91-53A, and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to noise abatement departure profiles. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATE:** Comments must be received on or before September 26, 1988.

**ADDRESS:** Send all comments on the proposed AC to: Federal Aviation Administration, Flight Technical Programs Branch, AFS-210, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Gough, AFS-210, at the address above, telephone (202) 267-3728.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 91-53A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Flight Technical Programs Branch before issuing the final AC.

**Background**

The AC provides a technical analysis and description of noise abatement departure profiles that are consistent with the FAA's safety responsibilities. It describes safe standard noise abatement departure profiles for turbojet-powered airplanes consistent with the performance and operating requirements of Parts 25 and 91 of the FAR. The profiles contained in this AC should be considered for inclusion in all air carrier training and flight operations manuals as well as airport noise abatement plans. Besides flight profile information, Part 25 certification criteria are also included in the event that special flight hardware is installed.

Issued in Washington, DC, on July 18, 1988.

**D.C. Beaudette,**

*Acting Director of Flight Standards.*

[FR Doc. 88-16973 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-13-M

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## Federal Highway Administration

### Environmental Impact Statement; Santa Clara County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Withdrawal of previous notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a previous decision to prepare an environmental impact statement (EIS) for a proposed highway project in Santa Clara County, California, has been withdrawn.

**FOR FURTHER INFORMATION CONTACT:** D.L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1314, or Paul H. Hughes, Senior Environmental Planner, State of California, Department of Transportation, P.O. 7310, San Francisco, California 94120. Telephone (415) 557-1318.

**SUPPLEMENTARY INFORMATION:** On Tuesday, May 7, 1985, on page 19254 (Vol. 50, No. 88) of the Federal Register, the FHWA, California Division, published a Notice of Intent for preparation of an Environmental Impact Statement for a project proposing to widen Route 101 to eight lanes from the routes 101/280/680 interchange to Guadalupe Parkway (Route 87) in Santa Clara County (a distance of five miles). As a consequence of the proposed freeway widening, a number of existing interchanges would require modifications.

Subsequent to the publication of the Notice of Intent, the Santa Clara County Traffic Authority has proposed a similar but more limited project in the same location without Federal Highway Administration involvement, and the California Department of Transportation, the project sponsor, is withdrawing its proposal for a Federally assisted project.

Accordingly, with this notice the Federal Highway Administration withdraws the former Notice of Intent.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: July 20, 1988.

**D.L. Eyres,**

*District Engineer, Sacramento, California.*

[FR Doc. 88-16964 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-22-M

## National Highway Traffic Safety Administration

### Announcing the First Meeting of the Biomechanics Subcommittee of the Motor Vehicle Safety Research Advisory Committee

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Meeting announcement.

**SUMMARY:** This notice announces the first meeting of the Biomechanics Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding injuries other than thoracic and abdominal injuries occurring in side impact crashes and injuries caused by steering assemblies.

**DATE AND TIME:** The meeting is scheduled for August 19, 1988, from 10:30 a.m. to 5:00 p.m.

**ADDRESS:** The meeting will be held in Room 3200 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Biomechanics Subcommittee will focus on head, neck, and child injuries. Discussions will cover: Available data on the nature, scope, and magnitude of the problem; test facilities and test procedures; analytical computer models; and the technical literature which is the basis of the above.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88-01—Biomechanics Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-2768.

**FOR FURTHER INFORMATION CONTACT:** Rolf Eppinger, Office of Research and Development, 400 Seventh Street SW., Room 6226, Washington, DC 20590, telephone: (202) 366-4875.

Issued on: July 22, 1988.

**Howard M. Smolkin,**

*Chairman, Motor Vehicle Safety Research Advisory Committee.*

[FR Doc. 88-16974 Filed 7-27-88; 8:45 am]

BILLING CODE 4910-59-M

## UNITED STATES INFORMATION AGENCY

### Reporting and Information Collection Requirement Under OMB Review

**AGENCY:** United States Information Agency.

**ACTION:** Notice of reporting requirement submitted to OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and record keeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is required to certify the eligibility of foreign people for J-1 visas, so that they may visit the United States under one of USIA's exchange-visitor programs. USIA is requesting approval of the extension of a program OMB 3116-0008, which provides J-1 visas for exchange-visitor programs. Respondents will be required to respond only one time.

**DATE:** Comments must be received by August 15, 1988.

Copies: Copies of this Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Robin Eschinger, United States Information Agency, M/AS, 301 Fourth Street, SW., Washington, DC 20547. Telephone (202) 485-7503, and OMB review: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone (202) 395-7340.

**SUPPLEMENTARY INFORMATION:** Title: "Certificate of Eligibility for Exchange Visitor (J-1) Status". ABSTRACT: This information collection is intended to facilitate the administration of an exchange-visitor sponsor, who in turn sends it to the individual abroad so that he or she may take it to the nearest American Consul to receive a J-1 visa.

**Proposed Frequency of Responses:**

*No. Of Respondents:* 90,000.
*Recordkeeping Hours:* 4,000.
*Total Annual Burden:* 15,500.
*Average Burden per Response:* 15 Minutes.

Date: July 25, 1988.

**Charles N. Canestro,**

*Federal Register Liaison*

[FR Doc. 88-16977 Filed 7-27-88; 8:45 am]

BILLING CODE 8230-01-M

### A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175

entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the Federal Register December 16, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following program are encouraged to so indicate:

**Cantonese-Speaking Asian Journalists Program**

*Summary*

The Office of Private Sector Programs of the United States Information Agency requests proposals for a three-week issues-oriented program for 10 Cantonese-speaking editors and reporters from local print organizations in Hong Kong; Guangzhou, the Peoples Republic of China; Singapore; and Malaysia. Selected by USIA representatives, this program is scheduled for the Fall of 1988 and will focus on multi-lateral trade issues and business/economic reporting.

*Background*

Trade and economic issues play an increasingly important role in the United States-Hong Kong-Peoples Republic of China relationship and are of critical importance in relations with Malaysia and Singapore. Although the level of economic development and degree of market protection varies widely among the four countries, each is concerned that protectionist sentiments in the United States will adversely affect the health of the general international economic system. While access to the U.S. market is critical to each of these countries, the extent that our economy expands or contracts is even more critical to their economic health. The existence of quotas, tariffs and other barriers to trade would be meaningless if the American market contracted as a result of a recession. An appreciation of the connection between the vitality of the U.S. economy and access for U.S. goods to global markets is essential. The development of a trans-Pacific economic system depends upon each country's willingness to make the trading system work in a competitive and non-protectionist atmosphere.

Since many important journalists who write on economic issues in Hong Kong and Guangzhou have limited English language capabilities, a program focusing on contemporary international economic issues conducted in Cantonese would have the potential for significantly improving the participants' understanding of U.S. concerns and views. The Chinese-language press in Kuala Lumpur, Singapore and Hong Kong plays a more influential role in establishing trade and economic policies than is generally understood. A significant number of decision-makers who do read and speak English still prefer to rely on Chinese-language media for much of their information.

Many of these journalists have relatively little understanding of American society and values. They are aware that the U.S. is indeed motivated by its own interests, but do not realize how broad those interests are and how they are defined within a democratic, pluralistic and decentralized society. They recognize American power, but are unaware of the checks and balances that restrain the American system of government. Many of them are only dimly aware of how differing "special interest" groups influence the Congress and the Executive.

Other stereotypes are also worth exploring. Some participants are aware that U.S. exports are generally concentrated at each end of the market spectrum; i.e. high tech (computers, planes, etc.) and *primary products* (grains, timber, etc.). But they typically believe that the United States has unlimited wealth and that exports play an insignificant role in our economy's health. Therefore, some argue that their country's formal or informal trade barriers cannot be of major concern. Consequently, it might prove useful for the participants to travel to both agricultural and high-tech regions to discover the tremendous significance of U.S. export-oriented products to these communities.

*Program Timing, Location and Participants*

The Chinese Economic Writers program will take place in the Fall of 1988. The proposed date is late September well before the U.S. Presidential election. USIA would prefer that the project take place in the midwest and Washington, DC and exit from the West Coast. If necessary to insure logistical coordination, the program may include co-sponsorship on a consultative basis with one or more other non-profit organizations.

Participants will be selected by USIA representatives in the participating countries. It is unlikely that members of the delegation will have English language skills. Through the Language Service Section of the Department of State, USIA will provide three or four seminar-quality escort/interpreters. While a majority of the participants will be younger economic and business journalists, at least two or three will be somewhat older, highly respected professionals.

The following suggestions should serve not as a blueprint but as a stimulus for the development of an original program. The program should allow adequate free time, limited sightseeing activities (for group cohesion, and an opportunity for participants to discuss their countries interests and journalistic traditions).

The selected institution should brief the participants upon their arrival. All Americans who meet with the delegations should receive in advance detailed information outlining the specific composition of the delegation, its interests, the program's objectives, and each speaker's role in helping achieve those objectives. The program coordinators should not be surprised if the participants request some changes in the proposed itinerary, and if they argue for at least one or two high-level meetings with American political leaders. These requests could be addressed by arranging meetings with members of the state Congressional delegation.

The three-week program might consist of one week in Washington, DC to introduce participants to the different organizations and segments of American society dealing with trade matters, and to improve their understanding of how trade and economic policy is established. The program should include a seminar on U.S. trade relations and trade policy, meetings with officials from the Department of Commerce, Department of Treasury, Department of State, the U.S. Trade Representative, the White House and the Congress. Since many of the participants will be reporting back to their respective news organizations, time should be set aside for interviews with some of the officials involved in establishing U.S. trade policy as well as meetings with representatives of different interest and lobbying groups. The second week would include a visit to the midwest and include briefings at the Chicago Board of Trade, the Chicago Mercantile Exchange, a major American grain trader, a U.S. multi-national corporation with interests in Asia, an American newspaper, and perhaps an introduction to a high-tech center. The final week would consist of a university program on the programs of researching and reporting on economic/trade issues. The university organizers might wish to include sessions with prominent local journalists who cover business/economic affairs on a daily basis as well as the more basic academic course work on researching, writing and editing. The university program should improve the participating journalists' ability to report

and cover economic/business developments. Time might also be set aside for additional visits to corporations, news outlets and trade groups. A seminar should be scheduled to explore the bi-lateral trade issues that exist between the U.S. and the participating countries within the overall context of the trans-Pacific trading system. The university program should be conducted by an institution with a strong graduate program in journalism and some background with Chinese programs.

Programmatic success will be further determined through detailed participant evaluations and through the development of additional programs not necessarily requiring USIA funding. The grantee institution should also provide all participants with their colleagues' addresses, contact numbers, etc., and might publish and distribute an after-activity newsletter.

The entire three-week project should conclude with a debriefing session with representatives of USIA present. Under the Fulbright-Hays Act, a USIA-sponsored delegation program must be non-partisan and representative of the diversity of American society.

*Funding*

The Office of Private Sector Programs estimates that the Chinese Language Economic Journalists project will cost under $100,000. The following budget outline is illustrative of cost categories and represents the Office's experience in supporting projects of this type.

| | |
|---|---|
| International Travel (10x$2200) | $22,000 |
| Domestic Travel (16x$500) | 8,000 |
| Local Transportation Expenses | 4,000 |
| Per Diem (16x23x$105) | 38,640 |
| Cultural Allowance (14x$150) | 2,100 |
| Total Participant Expenses* | 74,740 |

*Includes expenses for four interpreters and two program coordinators to travel with delegation.

Administrative expenses could include the following: Staff salaries, communication expenses, office supplies, modest honoraria (not to exceed $250 per person), indirect cost, and program materials.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a brief letter as soon as possible indicating their attention to submit a formal proposal. Upon receiving a letter indicating an institution's plan to submit a proposal, this office will forward additional *pro forma* application materials and proposal guidelines. Competing grantee institutions should forward *fifteen* copies of their final proposal to the same address. This proposal is due no later than one month from the date on this Federal Register announcement. Please refer specifically to this program, by name, in any correspondence.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN:—Asian Journalists Project), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: July 19, 1988.

**Robert Francis Smith,**

*Director, Office of Private Sector Programs.*

[FR Doc. 88-16978 Filed 7-27-88; 8:45 am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 145
Thursday, July 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** TUESDAY, JULY 26, 1988 at 2:00 p.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be open to the public.

Due to extraordinary circumstances, and in accordance with 11 CFR 2.7(b), the Commission will hold a special open meeting for the purpose of considering the National Republican Senatorial Committee's petition to deny certification of payments to Michael S. Dukakis and Lloyd M. Bentsen under the Presidential Election Campaign Fund Act.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, *Information Officer,* Telephone: 202–376–3155.

**Marjorie W. Emmons,**
*Secretary of the Commission.*
[FR Doc. 17072 Filed 7–26–88; 10:25 am]
BILLING CODE 6715–01–M

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**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, August 2, 1988, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITMES TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, section 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATE AND TIME:** Thursday, August 4, 1988, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Regulations: 11 CFR 110.1–110.6—Affiliation and Earmarking
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**
*Secretary of the Commission.*
[FR Doc. 88–17140 Filed 7–26–88; 3:25 pm]
BILLING CODE 6715–01–M

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**NEIGHBORHOOD REINVESTMENT CORPORATION**

Regular Board Meeting

**TIME AND PLACE:** 2:00 p.m., Thursday, August 4, 1988.

**PLACE:** Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800 Washington, DC 20005.

**STATUS** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Bonnie Nance Frazier, Director of Communications, 376–2623.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes, June 21, 1988.
2. Budget Committee Report.
3. Personnel Committee Report.
4. Executive Director's Report.
5. Treasure's Report.
6. Proposed Establishment of Executive Committee.

**Casrol J. McCabe,**
*Secretary.*
[FR Doc. 88–17048 Filed 7–26–88; 8:46 am]
BILLING CODE 7570–01–M

# Corrections

Federal Register
Vol. 53, No. 145
Thursday, July 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 5F3256/R967; FRL-3405-5]**

### Pesticide Tolerances for AC 222,293; Technical Amendment

*Correction*

In rule document 88-14382 appearing on page 24069 in the issue of Monday, June 27, 1988, make the following correction:

**§ 180.437 [Corrected]**

On page 24069, in the third column, the section heading should read as follows:

**§ 180.437 Methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-p-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-m-toluate; tolerances for residues.**

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

**[Reg. No. 4]**

### Federal Old-Age, Survivors, and Disability Insurance; Employment-Wages-Self-Employment-Self-Employment Income

*Correction*

In proposed rule document 88-14766 beginning on page 24727 in the issue of Thursday, June 30, 1988, make the following correction:

On page 24728, in the second column, in the seventh line from the bottom, "§ 404.1041A" should read "§ 404.1051A".

BILLING CODE 1505-01-D

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Part II

# Environmental Protection Agency

**40 CFR Part 61**

**National Emission Standards for Hazardous Air Pollutants; Proposed Rule and Notice of Public Hearing**

BEST COPY AVAILABLE

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 61**

**[AD–FRL 3409–9]**

# National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** On December 8, 1987, the D.C. Circuit Court granted the EPA's motion for a voluntary remand of the benzene equipment leak standard and the withdrawal of proposed standards for ethylbenzene/styrene (EB/S) and maleic anhydride process vents, and benzene storage vessels in light of the same court's recent decision on the vinyl chloride standard [*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987)] (hereafter referred to as *Vinyl Chloride*). The court ordered EPA to propose action on the above standards within 180 days and to promulgate them within 360 days. The order was subsequently modified to extend the time for proposal of actions by 45 days. This notice presents the Administrator's reexamination of the benzene withdrawals and the benzene equipment leak standard. The Agency's reassessment of the proposed coke by-product recovery plants standard is also presented. Also included is a response to public comments on the previously proposed coke by-product recovery plants standard.

This notice proposes four policy approaches that could be used in setting national emission standards for hazardous air pollutants (NESHAP) and would be consistent with the court's decision in *Vinyl Chloride*. The decisions that would result from application of each of the policy approaches to the five benzene source categories are described, and alternative standards are proposed.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning these proposed actions.

**DATES:** *Comments.* Comments must be received on or before October 3, 1988.

*Public Hearing.* A public hearing will be held on September 1, 1988, and, if additional time is needed, will continue on September 2, 1988. The hearing will begin at 9:00 a.m. and is scheduled to conclude at 5:00 p.m. on both days.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must notify EPA by August 25, 1988.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention (to the appropriate docket numbers), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The applicable dockets are: Docket No. OAQPS 79–3, Part I for comments on benzene health effects; Docket No. OAQPS 79–3, Part II for comments addressing maleic anhydride process vents; Docket No. A–79–49 for comments addressing regulation of EB/S process vents; Docket No. A–80–14 for comments addressing the regulation of benzene storage vessels; Docket No. A–79–27 for comments addressing benzene equipment leaks; or Docket No. A–79–16 for comments addressing coke by-product recovery plants.

*Public Hearing.* The hearing will be held at the U.S. Department of Agriculture Auditorium, 14th Street and Independence Avenue, Washington, DC 20250. Persons wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

*Background Information Documents.* A background document responding to comments on the coke by-product recovery plants standard originally proposed on June 6, 1984, may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to EPA–450/3–83–016b, "Benzene Emissions from Coke By-Product Recovery Plants—Background Information for Revised Proposed Standards."

*Dockets.* Docket No. OAQPS 79–3 (Part I) contains information considered in the health effects, listing, and regulation of benzene. Docket No. A–79–16 contains supporting information used in the development of the proposed standard for coke by-product recovery plants, Docket No. A–79–27 contains supporting information used in the development of the standard for benzene equipment leaks, and Docket Nos. OAQPS 79–3 (Part II), A–79–49, and A–80–14 contain supporting information on maleic anhydride process vents, EB/S process vents, and benzene storage vessels, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information specific to coke by-product recovery plants or benzene storage vessels, contact Ms. Gail Lacy at (919) 541–5261, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information specific to benzene equipment leaks, EB/S process vents, or maleic anhydride process vents, contact Dr. Janet Meyer, at the above address, telephone number (919) 541–5254. For information concerning the health effects of benzene and the risk assessment, contact Dr. Ila Cote at (919) 541–5342, Pollutant Assessment Branch, Emission Standards Division (MD–13), at the above address.

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

I. Overview of Proposed Alternative Actions
  Policy Approaches
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II. Background Documents and Notices
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IV. Characterization of Benzene Health Risks
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  Legal Framework Under *Vinyl Chloride*
  General NESHAP Policy Considerations
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Estimation Methods and Uncertainties
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XI. Summary of Major Comments and Responses on 1984 Proposed Standard for Coke by-Product Recovery Plants
XII. Summary of Alternative Proposed Standards
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## I. Overview of Proposed Alternative Actions

*Policy Approaches*

Under section 112 of the Clean Air Act (CAA), EPA is required to establish emission standards for hazardous air pollutants at a level which provides an ample margin of safety to protect public health. In *Vinyl Chloride*, the court set out a two-step decision process for EPA to follow in setting NESHAP under section 112. The two steps set out in *Vinyl Chloride* are: (1) Determine a "safe" or "acceptable risk" level, and (2) set the standard at the level—which may be lower but not higher than the "safe'" or "acceptable" level—that protects public health with an ample margin of safety. The court emphasized that judgments by EPA concerning scientific uncertainty are an important part of the process for establishing NESHAP.

As discussed in detail in Section V of this notice, the Agency is proposing four alternative policy approaches for making these two decisions for NESHAP. Commenters should assume that the final decision on the NESHAP approach could be one of the four described specifically in this notice or a variation. The final policy approach and the relative weight it gives to the various risk measures and uncertainties will become the framework for decisions on future NESHAP. Consequently, the Agency is interested in comments on general implications of the alternative policy approaches as well as in comment on the specific applications to the four benzene source categories.

The framework adopted for NESHAP will not apply to other Agency programs. The Court's interpretation of the process required for establishing NESHAP did not extend to regulatory decisions under any other statute administered by EPA; therefore, the Agency does not envision applying the process described below to regulatory judgments under other Acts. Regulatory decisions under other Acts will continue to be made using individual deliberative processes pursuant to those distinct statutory mandates.

The alternative Policy approaches being proposed differ in how the question of acceptable risk is addressed and in how uncertainty in risk measures is considered. The agency is using both the four proposed approaches and the applications of the approaches to the benzene source categories as a means to frame the public debate on these questions. The Administrator believes that the broad ramifications of any particular approach for establishing acceptable risk levels for all NESHAP should be subject to public debate, in order to elicit the fullest range of information on these important decisions.

Each of the four approaches treats the acceptable risk decision differently. The major characteristics of the four proposed approaches to acceptable risk and ample margin of safety decisions are described below.

Approach A. Case-by-Case Approach

This is the only approach in which all the health information, risk measures, and potential biases, underlying assumptions, and quality (i.e., uncertainties) of the information are considered together in the acceptable risk decision. The preferred range for the maximum individual lifetime risk in this approach is $10^{-4}$ or less; however, different decisions on acceptable risk for various pollutants and source categories may be made based on consideration of all the health information.

Approach B. Incidence-Based Approach

This approach only considers total incidence in the acceptable risk decision. All of the health information, the uncertainties, and individual risk are not considered until the ample margin decision. The incidence level being proposed as acceptable is 1 case/yr per source category.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

The only parameter considered in determining acceptable risk is maximum individual lifetime risk. The other health information, the uncertainties, and incidence are not considered until the ample margin decision. In this approach, a maximum risk of $1 \times 10^{-4}$ or lower is defined as acceptable.

Apporach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

This approach is similar to Approach C; however, acceptable risk is defined as a maximum individual lifetime risk of $1 \times 10^{-6}$ or lower.

Ample Margin of Safety Decisions

This decision is made the same way under the four alternative approaches. In each, all the health risk measures as well as technical feasibility, cost, estimation uncertainties, and economic impacts are considered. A question of particular concern in these decisions is whether to require all technically feasible controls for which costs are reasonable no matter how small the risk reduction.

*Application of Approaches to Benzene Source Categories*

In reexamining the previous benzene decisions, the Administrator used data and analyses available as of the publications in June 1984 and August 1985. The reassessment for coke by-product recovery plants used the estimated impacts which were revised after the June 6, 1984, proposal. The risk estimates for the benzene source categories and the acceptable risk determinations under the alternative approaches are summarized in Table I–1. Maleic anhydride process vents are not included in this summary because benzene is no longer used to produce maleic anhydride. The ample margin of safety risk levels and associated control levels determined under the alternative approaches are summarized in Table I–2. The standards under the alternatives include no additional control, application of all known technology that is available at a reasonable cost, and plantwide benzene emission limits, which are not expected to be generally achievable in several source categories using known technology. The bases for these decisions are discussed in Sections VII through X of this notice.

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TABLE I-1. SUMMARY OF ACCEPTABLE DECISIONS UNDER THE ALTERNATIVE POLICY APPROACHES

| Source Category | Baseline[a] Risk Estimates | | | | | | | | Is Baseline Risk Acceptable? | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Cumulative Population[d] | | | Noncumulative Incidence[e] | | | Approach | | | |
| | MIR[b] | Case/yr[c] | $\geq 10^{-4}$ | $\geq 10^{-5}$ | $\geq 10^{-6}$ | $10^{-4}$ | $10^{-5}$ | $10^{-6}$ | A | B | C | D |
| Ethylbenzene/Styrene Process Vents | $2 \times 10^{-5}$ | 0.004 | 0 | 700 | 40,000 | 0 | 0.0002 | 0.001 | Yes | Yes | Yes | No |
| Benzene Storage Vessels[f] | $4 \times 10^{-5}$ to $4 \times 10^{-6}$ | 0.05 to 0.1 | 10 | 20,000 | 900,000 | 0 | 0.004 | 0.02 | Yes | Yes | No | No |
| Equipment Leaks NESHAP | $6 \times 10^{-4}$ | 0.2 | 3,000 | 60,000 | 1,000,000 | 0.007 | 0.02 | 0.04 | Yes | Yes | No | No |
| Coke By-Product Recovery Plants | $6 \times 10^{-3}$ | 3 | 100,000 | 3,000,000 | 30,000,000 | 0.4 | 0.9 | 1 | Yes | No | No | No |

[a] The baseline level of control is described for each source category in Sections VII through X.

[b] Maximum individual lifetime risk (MIR) is the increased risk of cancer due to exposure for 70 years to the maximum modeled concentration.

[c] Case/yr is the annual incidence in the modeled population. This is a measure of population aggregate risk.

[d] The estimated number of people exposed to benzene concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative.

[e] This is the estimated annual number of leukemia cases for the population exposed to each risk level. It is not cumulative.

[f] The range of risks associated with storage vessels represents the range of emission estimates.

TABLE I-2. SUMMARY OF AMPLE MARGIN OF SAFETY DECISIONS UNDER THE ALTERNATIVE POLICY APPROACHES

| | Ethylbenzene/Styrene Process Vents | Benzene Storage Vessels | Equipment Leaks | Coke By-Product Plants |
|---|---|---|---|---|
| **Approach A: Case-by-Case** | | | | |
| Level of Control | No additional control. Existing control provides ample margin. | Cost effective equipment.[a] | 1984 NESHAP Provides ample margin. | Cost effective equipment and work practices.[b] |
| MIR[c]/ case/yr | $2 \times 10^{-5}$/0.004 | $3 \times 10^{-5}$/0.04 | $6 \times 10^{-4}$/0.2 | $4 \times 10^{-4}$/0.2 |
| Population at $>10^{-4}/10^{-6}$ | 0/40,000 | 0/80,000 | 3,000/1,000,000 | 2,000/2,000,000 |
| **Approach B: <1 case/yr** | | | | |
| Level of Control | Same as above. | Same as above. | Same as above. | Same as above. |
| MIR/ case/yr | | | | |
| Population at $>10^{-4}/10^{-6}$ | | | | |
| **Approach C: $\leq 1 \times 10^{-4}$** | | | | |
| Level of Control | Same as above. | Same as above. | 14 kg/day[d] and 1984 NESHAP. | 34 kg/day[d] and controls required in A. |
| MIR/ case/yr | | | $1 \times 10^{-4}$/0.07 | $1 \times 10^{-4}$/0.07 |
| Population at $>10^{-4}/10^{-6}$ | | | 0/unknown | 0/unknown |
| **Approach D: $\leq 1 \times 10^{-6}$** | | | | |
| Level of Control | 5.5 kg/day[d] | 0.47 kg/day[d] | 0.14 kg/day[d] | 0.34 kg/day[d] |
| MIR/ case/yr | $1 \times 10^{-6}$/0.0007 | $1 \times 10^{-6}$/0.002 | $1 \times 10^{-6}$/0.0007 | $1 \times 10^{-6}$/0.0004 |
| Population at $>10^{-4}/10^{-6}$ | 0/0 | 0/0 | 0/0 | 0/0 |

[a] Controls required are internal floating roofs on fixed roof vessels, effective primary seals and fittings on all vessels, and secondary seals on external floating roof vessels.

[b] Controls required are gas blanketing on all process vessels, tar-bottom final coolers at foundry plants, wash-oil final coolers at furnace plants, and leak detection and repair for equipment leaks.

[c] MIR = maximum individual lifetime risk.

[d] Limit on total benzene emissions from plant

Table I–3 summarizes estimates of major anticipated economic impacts of the ample margin decisions made under the approaches for the benzene source categories. The estimates of number of facilities shown under Approaches C and D to be permanently shut down (i.e., a closure) are based on limits of known control technologies. These particular estimates are rough estimates and are not based on economic analysis. The job loss estimates are also rough approximations which include only the regulated plants. Estimates of impacts on related industries and general communities are not included and cannot be quantified at this time.

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TABLE I-3. SUMMARY OF ESTIMATED ECONOMIC IMPACTS OF AMPLE MARGIN OF SAFETY DECISIONS UNDER THE ALTERNATIVE POLICY APPROACHES

| | Ethylbenzene/Styrene Process Vents | Benzene Storage Vessels | Equipment Leaks | Coke By-Product Plants |
|---|---|---|---|---|
| **Approach A: Case-by-Case** | | | | |
| Annual control cost, million $/yr | No additional cost. | 0.1 | No additional cost. | 16 |
| Closure/No. of facilities | 0/13 | 0/126 | 0/131 | 0/44 |
| Jobs lost | None | None | None | None |
| **Approach B: <1 case/yr** | | | | |
| Annual control cost, million $/yr | Same as above. | Same as above. | Same as above. | Same as above. |
| Closure/No. of facilities | | | | |
| Jobs lost | | | | |
| **Approach C: $\leq 1 \times 10^{-4}$** | | | | |
| Annual control cost, million $/yr | Same as above. | Same as above. | Unknown[a] but at least 52, if controls were applied. | Unknown[a] but at least 26. |
| Closure/No. of facilities | | | 100/131 | 4 closures and 8 with reduced production/44 40% loss of coke production capacity |
| Jobs lost | | | ~27,000[b] | ~3,000[b] |
| **Approach D: $\leq 1 \times 10^{-6}$** | | | | |
| Annual control cost, million $/yr | Unknown[a] | Unknown[a] | Unknown[a] | Unknown[a] but at least 29 if controls were applied |
| Closure/No. of facilities | 6-8/13[c,d] | Unknown/126[d] | 131/131 | 44/44 |
| Jobs lost | Unknown[d] | Unknown[d] | ~35,000[b] | ~7,000[b] |

[a] The cost of closure is not included and cannot be estimated at this time. Closure estimate is not based on economic feasibility
[b] Estimate represents only jobs that would be directly affected by closure of plants. No estimate can be made for job losses in associated industries
[c] This estimate is only a rough approximation of job losses
[d] Estimate derived from number of facilities with emissions exceeding 2 Mg/yr Range reflects variation in amount of additional reduction required
[d] These facilities are also affected by standard for equipment leaks. Thus, actual number of closures will be determined by the equipment leak standard

As shown in Table I–3, ample margin decisions under the alternative approaches are estimated to result in widely varying cost and economic impacts. These differences arise due to differences in technical feasibility of achieving the standards.

Although under the court's decision in *Vinyl Chloride*, EPA may not take cost or feasibility into account in setting an acceptable level of risk, those factors are relevant to the second, or ample margin of safety step. In any event, should widespread closure of facilities producing and using benzene result from any alternative standard, significant social as well as economic impacts would result. Benzene is a basic chemical used to manufacture a diverse number of chemicals and products; such as polystyrene, nylon, and synthetic rubber. These derivatives are used in consumer goods (toys, tires, packaging), household goods (refrigerators, carpeting), and transportation.

*Request for Comment*

Throughout this notice, comments and information are requested on specific areas. In addition, partly in response to the *Vinyl Chloride* decision, EPA is reexamining assumptions and decision methods it has relied upon in making section 112 hazardous air pollutant regulatory determinations. As part of that process, EPA is seeking to engage the public and all interested parties in discussion concerning both specific elements of alternative proposals for benzene standards and a broader reexamination of assumptions and decision methods.

In an effort to structure that discussion, EPA has formulated the four alternative approaches noted earlier for the control of hazardous air pollutant emissions under section 112 of the CAA. Today's **Federal Register** notice proposes these four approaches for the control of air emissions of benzene and thereby provides the opportunity for EPA to solicit comments from the public on a variety of issues associated with this reexamination of the Federal program for hazardous air pollutants. Determinations on many of these specific issues within the proposed benzene regulation are expected to set precedents for the approach to be used for the substantial number of forthcoming NESHAP decisions. Major areas on which the Administrator requests public comment include, among others:

(1) Should EPA consider all risk information in decisions on risk acceptability or rely on a single numerical risk criterion? If multiple risk measures are to be used as the basis for decisions on risk acceptability, how should EPA balance individual versus population risk reductions?

(2) What health risk is acceptable not considering cost and technical feasibility of achieving it? Moreover, what constitutes an ample margin of safety in cases where all exposures pose some risk?

(3) Should EPA require standards pursuant to the ample margin of safety decisions under section 112 that are "technology forcing"? What criteria should EPA use to define the "availability" and "feasibility" of technological controls?

(4) In the ample margin of safety determination, how should EPA balance the residual health risks versus the possibility of plant closures?

(5) How should uncertainty in risk estimates be considered in these decisions?

(6) How should EPA balance the various risk, technical, and economic considerations in ample margin of safety decisions? How should EPA consider the ramifications of potential errors and uncertainy of judgments on technology capability and costs?

(7) Should EPA allow site-by-site analyses by sources to comply with risk targets in lieu of reasonable worst-case emission limits?

## II. Background Documents and Notices

*Background Documents*

The following is a listing of background documents pertaining to the health effects of benzene and previous regulatory development efforts for each source category. The complete title, EPA publication number, publication date, and National Technical Information Service (NTIS) and document numbers are included. Where appropriate, an abbreviated descriptive title used to refer to the document throughout this notice is also listed.

*General Health and Policy Regarding Benzene (Docket No. OAQPS 79–3, Part I)*

(1) "Assessment of Human Exposures to Atmospheric Benzene," EPA–450/3–78–031. May 1978. (NTIS Number PB–284203). (Docket Item II–A–28).

(2) "Assessment of Health Effects of Benzene Germane to Low Level Exposures," EPA–600/1–78–61. September 1978. (NTIS Number PB–289789). (Docket Item II–A–30).

(3) "Carcinogen Assessment Group's Final Report on Population Risk to Ambient Benzene Exposures," EPA–450/5–80–004. January 1979. (NTIS Number PB82–227372). (Docket Item II–A–31 and 31A).

(4) "Response to Public Comments on EPA's Listing and Regulation of Benzene Under Section 112: Comments of a General Policy Nature," EPA–450/5–84–001. May 1984. (Docket Item VII–B–2).

(5) "Response to Public Comments on EPA's Listing of Benzene Under Section 112," EPA–450/5–82–003. May 1984. (Docket Item VII–B–1).

(6) "Interim Quantitative Cancer Unit Risk Estimates Due to Inhalation of Benzene." Internal Draft. EPA–600/X–85–22. February 1985. (Docket Item VIII–A–4).

*Maleic Anhydride Process Vents (Docket No. OAQPS 79–3, Part II)*

(1) "Benzene Emissions from Maleic Anhydride Plants—Background Information for Proposal to Withdraw Proposed Standard," EPA–450/3–84–002. March 1984. (NTIS Number PB84–170174). (Docket Item V–B–1). Referred to in maleic anhydride sections of this preamble as: Withdraw Background Information Document (BID).

*Ethylbenzene/Styrene Process Vents (Docket No. A–79–49)*

(1) "Benzene Emissions from the Ethylbenzene/Styrene Industry—Background Information for Proposal to Withdraw Proposed Standards," EPA–450/3–84–003. March 1984. (NTIS Number PB84–176874). (Docket Item V–B–1). Referred to in EB/S sections of this preamble as: Withdrawal BID).

*Benzene Storage Vessels (Docket No. A–80–14)*

(1) "Benzene Emissions from Benzene Storage Tanks—Background Information for Proposal to Withdraw Proposed Standards," EPA–450/3–84–004. March 1984. (NTIS Number PB84–167683). (Docket Item V–B–1). Referred to in storage vessel sections of this preamble as: Withdrawal BID.

*Benzene Equipment Leaks (Fugitive Emisions) (Docket No. A–79–27)*

(1) "Benzene Fugitive Emissions—Background Information for Proposed Standards," EPA–450/3–80–032a. November 1980. (NTIS Number PB81–151664). (Docket Item III–B–1). Referred to in equipment leak sections of this preamble as: Proposal BID.

(2) "Fugitive Emission Sources of Organic Compounds—Additional Information for Emissions, Emission Reduction, Costs," EPA–450/3–82–010. April 1982. (NTIS Number PB82–217126). (Docket Item IV–A–24). Referred to in equipment leak sections of this preamble as: Additional Information Document (AID).

(3) "Benzene Fugitive Emissions—Background Information for Promulgated Standards," EPA–450/3–80–032b. June 1982. (NTIS Number PB84–210301). (Docket Item V–B–1). Referred to in equipment leak sections of this preamble as: Promulgation BID.

"Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft," EPA Contract Number 68–02–4338. December 1987. (Docket Item VII–A–1).

*Coke By-Product Recovery Plants (Docket No. A–79–16)*

(1) "Benzene Emissions from Coke By-Product Recovery Plants—Background Information Document for Proposed Standards," EPA–450/3–83–016a. May 1984. (NTIS Number PB84–209477). (Docket Item III–B–1). Referred to in coke by-product sections of this preamble as: Proposal BID.

(2) "Benzene Emissions from Coke By-Product Recovery Plants—Background Information for Revised Proposed Standards," EPA–450/3–83–016b. June 1988. Referred to in coke by-product sections of this preamble as: Revised Proposal BID.

The background documents listed above can be found in the dockets or purchased from NTIS, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. The Revised Proposal BID for Coke By-Product Recovery Plants can be obtained from the U.S. EPA Library.

*Previous Federal Register Notices*

Previous **Federal Register** notices pertaining to standards development for the five source categories emitting benzene are listed below in chronological order. Since the complete **Federal Register** citation and dates are listed here, they will not be repeated throughout this notice.

(1) "National Emission Standards for Hazardous Air Pollutants: Addition of Benzene to List of Hazardous Air Pollutants," 42 FR 29332, June 8, 1977.

(2) "National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants; Proposed Rule and Notice of Public Hearing," 45 FR 26660, April 18, 1980.

(3) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Ethylbenzene/Styrene Plants; Proposed Rule and Notice of Public Hearing," 45 FR 83448, December 18, 1980.

(4) "Benzene Emissions from Benzene Storage Vessels; National Emission Standards for Hazardous Air Pollutants; Proposed Rule and Notice of Public Hearing," 45 FR 83952, December 19, 1980.

(5) "National Emission Standards for Hazardous Air Pollutants; Benzene Fugitive Emissions; Proposed Rule and Notice of Public Hearing," 46 FR 1165, January 5, 1981.

(6) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, and Benzene Storage Vessels; Proposed Withdrawal of Proposed Standards," 49 FR 8386, March 6, 1984.

(7) "National Emission Standards for Hazardous Air Pollutants; Regulation of Benzene; Response to Public Comments," 49 FR 23478, June 6, 1984.

(8) "National Emission Standards for Hazardous Air Pollutants; Benzene Equipment Leaks (Fugitive Emission Sources); Final Rule," 49 FR 23498, June 6, 1984.

(9) "National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Benzene Emissions from Coke By-Product Recovery Plants; Proposed Rule and Notice of Public Hearing," 49 FR 23522, June 6, 1984.

(10) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, and Benzene Storage Vessels; Withdrawal of Proposed Standards," 49 FR 23558, June 6, 1984.

(11) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, and Benzene Equipment Leaks; Denial of Petition for Reconsideration," 50 FR 34144, August 23, 1985.

## III. Background

Since the early 1900's, the scientific and medical communities have recognized benzene as a potentially toxic substance. Benzene was recognized as a potential human carcinogen (leukemia) in the mid-1970's based on occupational studies of synthetic rubber, chemical, and shoe workers. Other documented occupational effects include impairment of the blood-forming system, immunotoxicity, chromosome breakage, and neurotoxicity. Results of animal studies support the leukemogenic potential of benzene and show reproductive and developmental toxicity also.

Benzene is common in our indoor and outdoor air. Major sources of benzene include automobile exhaust, automobile refueling operations, consumer products, cigarette smoking, and industrial emissions.

In 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under section 112 of the CAA (42 FR 29332, June 8, 1977). Benzene was determined to be a hazardous air pollutant because of its carcinogenic properties. A hazardous air pollutant is defined as an

> * * * air pollutant to which no ambient air quality standard is applicable and which * * * may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

Section 112(b)(1)(B) of the CAA requires EPA to establish emission standards for a hazardous air pollutant "at the level which in [the Administrator's] judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant."

The listing of benzene as a hazardous air pollutant led to the development of proposed standards for benzene emissions from maleic anhydride process vents, EB/S process vents, benzene storage vessels, and benzene equipment leaks. These proposed standards were published respectively by EPA in the **Federal Register** in 1980 and 1981 (45 FR 26660, April 18, 1980; 45 FR 83448, December 18, 1980; 45 FR 83952, December 19, 1980; 46 FR 1165, January 5, 1981).

After receipt of comments from industry and members of the public, EPA published a final rule setting an emission standard for benzene equipment leaks on June 6, 1984 (49 FR 23498). On that date, EPA also withdrew its proposed standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels (49 FR 23558). The withdrawal was based on the conclusion that both the benzene health risks to the public from these three source categories, and the potential reductions in health risks achievable with available control techniques were too small to warrant Federal regulatory action under section 112 of the CAA. Also on that date, EPA published a proposed standard for benzene emissions from coke by-product recovery plants (49 FR 23522).

On August 3, 1984, the Natural Resources Defense Council (NRDC) filed a petition in the United States Court of Appeals for the District of Columbia Circuit, seeking review of the EPA's three withdrawals of proposed benzene emission standards, and the EPA's final standard for benzene equipment leaks (*Natural Resources Defense Council, Inc.* v. *Thomas*, No. 84–1387 (hereafter referred to as "*Benzene*")). On October 17, 1984, NRDC petitioned EPA under section 307(d)(7)(B) of the CAA to

reconsider its decisions to withdraw standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels, and to reconsider the promulgated standard for benzene equipment leaks. The EPA denied this petition on August 23, 1985 (50 FR 34144).

On July 28, 1987, the court handed down an *en banc* decision in *Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (hereafter referred to as "*Vinyl Chloride*") (Docket No. OAQPS 79–3, Part I, Docket Item X–I–4). The case concerns the emission standard under section 112 for vinyl chloride. The court concluded in *Vinyl Chloride* that EPA had acted improperly in withdrawing a proposed revision to the standard for vinyl chloride by considering costs and technological feasibility without first determining a "safe" or "acceptable" emissions level. In light of the *Vinyl Chloride* opinion, EPA requested a voluntary remand in *Benzene* to reconsider its June 6, 1984, rulemakings. In an order dated December 8, 1987, the court approved the EPA's voluntary remand and established a schedule under which EPA must propose its action on reconsideration within 180 days of the order and take final action within 360 days of the order. This order was subsequently modified under a joint motion to extend the time for proposal of actions by 45 days. The EPA also decided to reconsider the proposed standard for benzene emissions from coke by-product recovery plants in light of the *Vinyl Chloride* decision and to publish a supplemental proposal.

In reconsidering the previous decisions, the Administrator has used data on emissions and plants, and analyses available as of the publications in June 1984, and the denial of the petition for reconsideration in August 1985. The health information considered consists of the information available at the time of the 1984 decisions as well as the recent assessment provided by the Agency for the Toxic Substances and Disease Registry (ATSDR) that was released for public comment in December 1987 (Docket No. OAQPS 79–3, Part I, Docket Item X–1–2). For coke by-product recovery plants, the estimated impacts were revised based on comments received after the June 6, 1984, proposal. These revised impacts were used in the Administrator's reconsideration.

The EPA received in April 1988 from the American Petroleum Institute (API) a report entitled "Quantitative Re-evaluation of the Human Leukemia Risk Associated with Inhalation Exposure to Benzene." This report is in Docket No. OAQPS 79–3, Part I (Docket Item X–D–2) and is available for public comment. Due to the limited time available between submittal of this report and the court deadline, this information could not be evaluated before the reconsideration.

## IV. Characterization of Benzene Health Risks

The characterization of the potential adverse health effects of human exposure to benzene emitted from the subject source categories is presented in four parts: Hazard identification, dose/response assessment, exposure assessment, and risk characterization. Based upon the documented association between exposure to benzene and elevated leukemia incidence in occupational populations, the risk characterization section includes estimates of excess leukemia risk for the general population exposed to benzene emissions from the subject source categories. The attendant uncertainties in these estimates are also described.

### *Hazard Identification*

As a widely used organic chemical, the potential toxicity of benzene has been recognized since the erly 1900's. Initially identified as a causative agent in cases of bone marrow poisoning and blood abnormalities, the understanding of benzene's toxic properties has gradually expanded to include associations with aplastic anemia and cancer.

Although a tentative association between exposure to benzene and leukemia was first documented in 1928, benzene was not broadly recognized as a potential human carcinogen until the early 1970's with the publication of several epidemiological studies of benzene-exposed workers reported by the Occupational Safety and Health Administration (OSHA) (Docket No. OAQPS 79–3, Part I, Docket Item X–J–2). Based on this evidence, the Administrator, on June 8, 1977, announced a decision to list benzene as a hazardous air pollutant under section 112 of the CAA. Supplementary information on the listing may be obtained from the EPA document "Response to Public Comments on EPA's Listing of Benzene under Section 112" (Docket No. OAQPS 79–3, Part I, Docket Item VII–B–1).

Although acute nonlymphocytic leukemia (leukemia) is not the only adverse health effect attributed to benzene, the serious nature of this disease and the uncertainties regarding the existence of any risk-free levels of exposure combined to make it of central importance in hazard assessment. The EPA's health basis for listing rested primarily on retrospective studies in occupationally exposed human populations. Of these, three reports documenting an association received the greatest emphasis: Infante el al., published in 1977, Aksoy et al., published in 1976, and Ott et al., published in 1977 (Docket No. OAQPS 79–3, Part I, Docket Items II–I–86, IV–J–16, and II–I–71). In the interval since the listing decision, additional human data and animal data have become available which further support a casual relationship. Notable in this regard are studies published in 1981 by Rinsky et al. of the National Institute for Occupational Safety and Health (NIOSH) (Docket No. OAQPS 79–3, Part I, Docket Item IV–J–9) providing improved follow-up of the Infante cohorts, and a study by the Chemical Manufacturers Association (CMA) published by Wong et al. in 1983, of mortality among chemical workers exposed to benzene (Docket No. OAQPS 79–3, Part I, Docket Item X–I–I). The results of these studies are summarized below.

Infante et al. reported on a cohort of 748 white males occupationally exposed to benzene at any time between 1940 and 1949 at two facilities manufacturing rubber hydrochloride (pliofilm). The cohort mortality study revealed a significant excess of leukemia deaths (7 observed versus 1.38 expected) associted with benzene exposure. Aksoy and co-workers reported the incidence of leukemia between 1967 and 1973 among 28,500 Turkish shoe, slipper and handbag workers exposed to airborne benzene. The shoe workers had more than twice the rate of leukemia when compared to the annual leukemia incidence in the general population of Turkey. Ott et al. reported the long-term mortality patterns of 794 workers in chemical manufacturing facilities. Three deaths from leukemia were observed at a chemical plant among benzene-exposed employees when only 0.8 deaths from leukemia were expected, a 3.75-fold excess risk. Rinsky et al. (1981, 1987) provided a follow-up retrospective mortality study of the benzene exposed workers in the pliofilm industry (Docket No. OAQPS 79–3, Part I, Docket Items IV–J–9 and X–I–3). In the 1981 analysis in which the workers were followed through June 30, 1975, 7 leukemia cases were observed as compared to 1.25 expected cases. Rinsky also provided further detail on atmospheric benzene concentrations to which the workers were exposed. Rinsky et al. (1987) extended the follow-up of the cohort

members to 1982. At this time, 9 cases of leukemia were observed when 2.7 were expected.

Wong et al. examined the causes of death for 7,676 chemical workers employed for at least 6 months between 1946 and 1975 (Docket No. OAQPS 79–3, Part I, Docket Item X–I–1). Upon comparison of specific mortality rates between workers exposed and workers not exposed to benzene, the authors found significant increased risk for benzene exposed workers of over four-fold when compared to nonexposed workers. Seven leukemia deaths were observed in the exposed group, and none were observed in the nonexposed group.

The EPA reviewed the weight of evidence of carcinogenicity from the various occupational studies and concluded that there is sufficient evidence of a causal relationship between benzene exposure and leukemia. Based on this evaluation, the Agency has classified benzene as Group A, a known human carcinogen, following the procedures set forth in the EPA's Guidelines for Cancer Risk Assessment (51 FR 33992, September 24, 1986).

In addition to leukemia, several of the studies described above noted increases in other cancers, most notably lymphosarcoma and multiple myeloma, in benzene-exposed cohorts. In these cases, however, the data are currently considered insufficient to document an association.

Animal studies that have been extensively reviewed in the OSHA rulemaking, offer general confirmation of the carcinogenic potential of benzene. Maltoni and Scarnoto (1979) reported that benzene administered orally to rats was associated with increases in tumors of the Zymbal gland and mammary tumors, as well as leukemia. (Docket No. OAQPS 79–3, Part I, Docket Item IV–J–6). Maltoni et al. (1982) found subsequently that Zymbal gland tumors were induced in rats exposed by inhalation exposure to benzene. Snyder et al. (1978) published a preliminary finding of myelogenous leukemia in mice exposed by inhalation to benzene (Docket No. OAQPS 79–3, Part I, Docket Item II–I–92). Snyder et al. (1980) also reported increased leukemia and lymphomas in mice exposed by inhalation of 300 parts per million (ppm) benzene, 6 hours per day, 5 days per week over a lifetime (Docket No. OAQPS 79–3, Part I, Docket Item IV–J–7).

In 1983, the National Toxicology Program (NTP) completed a 2-year chronic study of mice and rats orally exposed to benzene (Docket No. OAQPS 79–3, Part I, Docket Item IV–H–5). The study found a significant incidence in cancers at multiple sites in both sexes and both species of rodent. In rats an increased incidence of Zymbal gland carcinomas, skin cancer, and cancer of the oral cavity was observed. Increases in six types of tumors including malignant lymphoma, preputial gland carcinoma, and lung cancer were observed in male mice, and seven tumor types including lymphoma, lung cancer, ovarian cancer, breast cancer, and liver cancer were found in female mice.

Toxic effects in humans, other than cancer, have been associated with benzene exposure in various epidemiologic studies of occupationally exposed populations. Effects on the human hematopoietic (blood-forming) system have been documented by OSHA (Docket No. OAQPS 79–3, Part I, Docket Item X–J–2). A common clinical finding in benzene hematotoxicity is a decrease in various cellular elements of the circulating blood, termed cytopenia. This decrease can proceed to aplastic anemia, which is a rare disorder characterized by a reduction in all cellular elements in the peripheral blood and bone marrow. The OSHA has observed a case fatality rate of 30 to 50 percent within the first year of diagnosis of aplastic anemia.

The OSHA also reviewed numerous occupational studies in a recent rulemaking associating chromosomal aberrations in bone marrow cells and peripheral lymphocytes in workers exposed to benzene. Generally the epidemiologic studies indicate that chromosomal breakage can occur at exposures at or below 10 ppm, 8 hours per day.

Through the ATSDR with the help of EPA, the U.S. Public Health Service has recently reviewed the scientific literature on noncancer effects observed in animal studies (Docket No. OAQPS 79–3, Part I, Docket Item X–I–2). This review found that animal inhalation studies are available showing adverse systemic effects such as bone marrow depression, injury to cells of the hematopoietic organs, and immunotoxicity. Numerous studies in whole animals have associated the induction of bone marrow depression with inhalation exposure to benzene (Toft et al., Snyder et al., 1984). This effect generally occurs during short-term exposure to about 10 ppm benzene or above. Cellular immune dysfunction in mice has been reported by Rosenthal and Snyder, and was associated with short-term inhalation exposures of about 30 ppm benzene.

A number of investigations cited in the ATSDR review have evaluated developmental and reproductive toxicity in animals following inhalation exposure to benzene. These studies have shown that benzene is toxic to the developing embryo and fetus. Ward et al. (1985) observed that mice exposed to benzene at 300 ppm for 13 weeks experienced changes in the ovaries and testes such as atrophy, degeneration, and decreased spermatozoa. Ungvary and Tatrai (1985) demonstrated dose-dependent fetotoxic effects in mice and rabbits exposed to benzene during gestation. Keller and Snyder (1985) demonstrated alterations in hematopoiesis in the fetuses and offspring of pregnant mice exposed by inhalation to 10 ppm benzene (Docket No. OAQPS 79–3, Part I, Docket Item X–J–2).

*Dose/Response Assessment*

The dose/response assessment addresses the relationship between the dose of benzene administered or received in the various human and animal studies, and the incidence of an adverse health effect in the exposed study population. Although human exposure to benzene in the workplace has been associated with leukemia, aplastic anemia, multiple myeloma, lymphomas, pancytopenia, chromosomal breakages, and depression of bone marrow, EPA believes that the leukemia incidence in epidemiologic studies provides the clearest association between human exposures and the induction of disease for dose/response estimation purposes. Toxicity of the hematopoietic system as well as cytogenetic effects in humans have been causally related to benzene exposure; however, the magnitude and duration of dose required to elicit these effects are not well known at this time. Thus, carcinogenicity, specifically leukemia, is currently the focus of greatest concern in estimating the potential risk to the general population exposed to benzene emitted from stationary industrial sources. The association between benzene exposure and human leukemia is strengthened by observations of increased leukemia mortality rates among independent cohorts in different occupational settings. In addition, individuals exposed to benzene were evaluated over a time period that spanned the latency of leukemia. Although a dose/response association between cancer and benzene exposure has been demonstrated in rodent bioassays, EPA believes that human data, when available, should be given greater weight in assessing the potential risk to the benzene-exposed human population.

Since a specific environmental carcinogen is likely to be responsible for, at most, a small fraction of a community's overall cancer incidence, and since the general population is exposed to a complex mixture of potential causative agents, attempts to directly link actual human cancers with ambient air exposure to chemicals such as benzene are easily confounded. Epidemiologic techniques are generally not sensitive enough to measure such an association directly. Therefore, EPA must rely upon mathematical modeling techniques to estimate human health risks. These techniques, collectively termed "quantitative risk assessment," provide a means of mathematically estimating the risk of adverse health effects from ambient exposure to benzene by extrapolating effects found at higher occupational exposure levels to lower concentrations characteristic of population exposure in the vicinity of industrial sources. A key element in this extrapolation is the unit risk estimate (URE). For benzene this estimate is derived from the dose/response relationship observed in the occupational studies and represents the estimated upperbound on the increased risk of contracting leukemia for an individual exposed for a lifetime (70 years) to a specific concentration of benzene (e.g., 1 ppm) in the air.

In deriving the URE for benzene, EPA has used the geometric mean of four URE (derived by maximum likelihood) based on two model types (additive risk and multiplicative risk) each with two measures of exposure (unweighted and weighted cumulative exposure). It is assumed that the leukemia response is linearly related to benzene dose, even at very low levels of exposure. The Office of Science and Technology Policy maintains that while there are biological data supporting this approach, and epidemiologists have frequently assumed a linear model for dose/response analysis of carcinogens, there are also data which suggest that, for some carcinogenic agents, the dose/response relationship is not linear, with the response decreasing faster than the dose at low levels of exposure (Docket No. OAQPS 79–3, Part I, Docket Item X–J–1). At such low levels the nonlinear model produces smaller risk factors than the linear model.

The possibility of a carcinogenic threshold for benzene, an exposure level below which there would be no risk of leukemia, has also been debated (Docket No. OAQPS 79–3, Part I, Docket Item VII–B–2). At present, the mechanisms involving the induction of leukemia following chronic benzene exposure remain largely unknown, and data are limited. In the absence of sound scientific evidence to the contrary, EPA has concluded that a nonthreshold presumption represents appropriate scientific policy.

The EPA has elected to use the linear nonthreshold assumption for the benzene dose/response assessment because it is generally considered to be conservative compared to the nonlinear alternatives, is consistent with some proposed mechanisms of carcinogenesis, and provides a good "fit" for the benzene data. This choice of models results in a plausible estimate of leukemia unit risk to the exposed population. If true linearity holds at low environmental exposures, then these numbers will overestimate risk 50 percent of the time and underestimate risk 50 percent of the time. If the true low-dose/response relationship is less than linear, then these estimates would err on the high end and in favor of the protection of the public health. The limited data from which the extrapolation is made are consistent with the linear model.

On October 17, 1984, NRDC petitioned the Administrator of EPA to, in part, evaluate the most current scientific literature on benzene carcinogenicity and revise the EPA's URE accordingly. This petition culminated in an update of the carcinogenic potency estimate for benzene summarized in a report entitled "Interim Quantitative Cancer Unit Risk Estimates Due to Inhalation of Benzene," (Docket No. OAQPS 79–3, Part I, Docket Item VIII–A–4). In response to the concerns of the petitioner, EPA evaluated the risk implications of the epidemiological findings of the 1981 Rinsky et al. study of rubber workers, the Wong et al. study of chemical workers, and the Ott et al. study of chemical workers, all of which were known to involve benzene exposure in the workplace (50 FR 34144, August 23, 1985) (Docket No. OAQPS 79–3, Part I, Docket Item IX–A–1). Although various animal bioassays were considered, EPA concluded that the URE for inhalation of benzene was appropriately based upon the epidemiologic studies since these studies were of recognized quality, and had the greatest relevance in the estimation of health risk to humans. In the reevaluation of the URE, EPA pooled the leukemia responses observed in the 1981 Rinsky et al. and Ott et al. cohorts, and computed a geometric mean of each maximum likelihood point risk estimate. The observations of Wong et al. were used as a comparison to the computed risk estimates of the pooled studies. The resulting ratio between these two sets of data was used to adjust the computed geometric mean estimate. Based on these calculations, the URE for benzene was revised in 1985 from an excess of 2.2 chances in 100 of contracting leukemia for a lifetime exposure to 1 ppm benzene in the air (0.022/ppm) to an excess of 2.6 chances in 100 (0.026/ppm) (50 FR 34146, August 23, 1985) (Docket No. OAQPS 79–3, Part I, Docket Item IX–A–1).

There are uncertainties inherent in the derivation of the URE for benzene that can only be addressed qualitatively at this time. These uncertainties may lead to either an overestimation or underestimation of the potential leukemia risk to the exposed population. The derivation of the URE considered only the incidence of myelogenous leukemia in epidemiological studies. The URE might be increased by considering other types of cancers manifested in the benzene exposed workers, e.g., multiple myeloma. In contrast, the assumption of low dose linearity in the risk modeling may tend to overestimate the dose/response function if the true shape of the relationship is curvilinear. A third major area of uncertainty is that EPA has extrapolated the leukemia risks identified for occupationally exposed populations (generally healthy white males) to the general population in which susceptibility to a carcinogenic effect could differ. Such susceptibility can differ with age, sex, genetic variability, and present state of health. The URE for benzene may underestimate the leukemia risk to more susceptible subgroups.

*Exposure Assessment*

Estimation of the potential leukemia risk associated with the emission of benzene from industrial sources requires estimation of the concentrations of benzene to which the population may be exposed, and determination of the magnitude of population exposure. In the absence of adequate monitored ambient air levels near the industrial sources, EPA used mathematical models to predict the dispersion of emissions and subsequent potential for human exposure.

Estimates of population exposure to benzene in the ambient air resulting from emissions from industrial sources were developed using the EPA's Human Exposure Model (HEM). The HEM accepts as inputs the locations and emission characteristics of the subject source categories of benzene. This information is combined with census and meteorological data contained in the model to estimate the magnitude and

distribution of population exposure. Emission and plant parameters often must be estimated rather than measured, particularly in determining the magnitude of fugitive emissions, and where there are large numbers of sources that individually emit small amounts of benzene. As discussed in more detail later in this notice, this can lead to overestimates or underestimates of exposure. Similarly, meteorological data are not available at specific plant sites, but are available only from the closest recording weather stations that may or may not be representative of the meteorology of the plant vicinity. The dispersion modeling of the emissions usually assumes that the terrain in the vicinity of the sources is flat. For sources located in complex terrain where the surrounding topography is at higher elevation than the emission point, this assumption would tend to underestimate the maximum annual concentration of benzene, although estimates of aggregated population exposure would be less affected.

The exposure modeling also assumes that the population density in the vicinity of the source remains unchanged for 70 years and that the population is exposed for 24 hours per day for a 70-year lifetime. The exposure estimates do not consider the dynamics of population growth, decline, or mobility. This may lead to over- or underestimates of population exposure, depending on the nature of population flux. The benzene exposure assessment also assumes the industrial sources under analysis will operate for 70 years to account for potential lifetime exposures. This assumption overestimates maximum and aggregate exposure. The degree of overstatement varies, however, among industries.

The current exposure analysis does not include an analysis of indirect exposure pathways of benzene such as dermal absorption or ingestion. Furthermore, the analysis did not include concomitant exposure that may result from pollutants co-emitted from the sources. Exclusion of such factors may underestimate total potential exposure from these sources. A final uncertainty in the exposure analysis is that the current version of HEM does not account for potential increased maximum exposures that may result from the co-location of facilities, although EPA believes this effect would, in most cases, be very small.

The mathematical exposure models predict population exposure based on the estimated rate of release of benzene from the industrial source categories. While no reliable benzene monitoring data exist in the vicinity of the subject industrial source categories, EPA has reviewed a limited number of measurements taken of benzene concentrations in urban and rural areas of the United States. Table IV–1 summarizes the range of measured benzene concentrations in urban and rural air. It must be emphasized that these data are the result of 24-hour measurements, and may not reflect annual average benzene concentrations in the atmosphere at those locations. Nevertheless, the data suggest that the average background benzene concentration in urban areas ranges from about 1.5 to 6 parts per billion (ppb), and the average background concentration of benzene in rural areas seems to be less than 1 ppb.

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TABLE IV-1. 24-HOUR MEASUREMENTS IN URBAN AND RURAL AREAS IN THE UNITED STATES

| Study | Benzene Concentration (ppb) Minimum | Average | Maximum |
|---|---|---|---|
| TEAM (1986)[1] | | | |
| Elizabeth-Bayonne | 0.4 | 3.0 | 28.25 |
| Los Angeles | 0.6 | N/A | 6.2 |
| HUNT (EPA 1985)[1*] | 2.0 | 3.0 | 5.0 |
| EPA (1986)[1**] | 1.5 | 3.26 | 5.0 |
| SINGH (1982)[2,3] | | | |
| Houston | 0.84 | 5.78 | 37.7 |
| St. Louis | 0.11 | 1.41 | 5.82 |
| Denver | 0.11 | 4.39 | 23.91 |
| Staten Island | 0.082 | 4.20 | 19.03 |
| Chicago | 0.588 | 2.56 | 8.77 |
| ROBERTS (1985)[2,3] | | | |
| 73 kilometers (km) from Denver rural area | 0.02 | N/A | 0.85 |
| HOLZER (1977)[2,3] | | | |
| Rural area - Talladega National Forest | 0.2 | 0.4 | 1.3 |

*Minimum = Philadelphia; Average = Baltimore, Los Angeles, N. New Jersey, Houston, Philadelphia; Maximum = Houston.

**Urban measurements in California.

[1]Docket No. OAQPS 79-3, Part I, Docket Items X-A-1, X-A-2, X-A-3.

[2]Quality assurance/quality control not available.

[3]Sources cited in Toxicological Profile for Benzene (1987), Draft Report, ATSDR, U. S. Public Health Service (Docket No. OAQPS 79-3, Part I, Docket Item X-I-2).



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The principal sources of the ambient background levels of benzene are not well understood. Benzene is both naturally occurring and has a fairly long atmospheric half-life. There is speculation that anthropogenic sources, especially tail-pipe emissions from mobile sources, may be largely responsible for these general background levels in the U.S.; however, EPA recognizes the possible influence on benzene levels in urban areas from petrochemical facilities, chemical manufacturing facilities, and other industrial sources of benzene located in these cities.

*Risk Characterization*

The exposure estimates obtained from the HEM are combined with the estimate of carcinogenic potency for benzene ("unit risk") to calculate the probability of the increased risk of cancer in the exposed population. In combining the estimates of population exposure with the URE for benzene, two measures of excess leukemia risks are calculated: the aggregate population risk, and the maximum individual lifetime cancer risk. Individual lifetime risks can also be expressed in terms of population risk distribution. The aggregate population risk, expressed as annual cancer incidence, is defined as the average number of excess cancer cases expected annually in the exposed population residing in the vicinity of the industrial sources of benzene. This measure is obtained by dividing the expected excess lifetime incidence by 70.

The maximum individual lifetime cancer risk is defined as the probability of contracting cancer following a lifetime exposure to benzene at the maximum modeled long-term ambient benzene concentration. Estimates of maximum individual lifetime cancer risk are usually expressed as a probability represented in scientific notation as a negative exponent of 10. A risk of contracting cancer of 1 chance in 10,000 is written as $1 \times 10^{-4}$, 1 chance in 1,000,000 as $1 \times 10^{-6}$, etc. These risks, because of the uncertainties and assumptions inherent in the dose/response assessment and exposure assessment, cannot be construed as absolute measures of the true risk burden to the benzene exposed population. The quantitative risk assessment is best viewed as a relative estimate of the likelihood of cancer associated with benzene emissions from the industrial source category, for comparision with estimates from alternative emission scenarios or other benzene source categories.

The estimated maximum individual lifetime cancer risk and annual cancer incidence resulting from inhalation exposure to predicted ambient concentrations of benzene emitted from the industrial source categories are summarized in Table IV–2.

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TABLE IV-2. SUMMARY OF THE MAXIMUM INDIVIDUAL CANCER RISK[a] AND ANNUAL CANCER INCIDENCE[b] ASSOCIATED WITH BASELINE BENZENE EMISSIONS FROM INDUSTRIAL SOURCES

| Industrial Source Category | Maximum Individual Lifetime Risk (MIR)[a,e] | Estimated Excess Annual Leukemia Incidence[b,e] |
|---|---|---|
| Maleic Anhydride | 0 | 0 |
| Ethylbenzene/Styrene | $2 \times 10^{-5}$ | 0.004 |
| Benzene Storage[c] | $4 \times 10^{-5}$ to $4 \times 10^{-4}$ | 0.05 to 0.1 |
| Equipment Leaks[d] | $6 \times 10^{-4}$ | 0.2 |
| Coke By-Product Recovery Plants | $6 \times 10^{-3}$ | 3 |

[a]Maximum individual lifetime risk is defined as the upperbound of the probability of contracting cancer following a lifetime exposure at the maximum modeled average annual ambient benzene concentration.

[b]Annual cancer incidence is defined as the average number of excess leukemia cases expected annually in the exposed population.

[c]Range of risks associated with benzene storage reflects the range for emission estimates.

[d]Risk estimates based on emissions remaining after application of 40 CFR Part 61, Subpart J.

[e]Based on the weight of evidence from epidemiological studies, EPA classifies benzene as Group A, a known human carcinogen.

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As was noted in the dose/response subsection, the estimated excess cancer risk estimates calculated from the URE are based on leukemia mortality in rubber and chemical workers exposed to benzene. One uncertainty in the quantative risk assessment involves the linear extrapolation from relatively high occupational benzene exposures to much lower predicted ambient exposures in the vicinity of the industrial source categories. The study by Ott eta al. demonstrates a four-fold increase in leukemia for workers who had been exposed to average benzene concentrations of about 5 ppm for an average of about 9 years. Furthermore, two out of the four individuals in the study who died from leukemia were characterized as having been exposed to average benzene levels below 2 ppm. Case 2, for example, had 1.5 ppm-years cumulative benzene exposure over 18 months. Daily exposures in the NIOSH cohort were more typically in the range of 20 to 40 ppm over an 8-hour shift (Docket No. OAQPS 79–3, Part I, Docket Item II–J–9).

By comparison, EPA has estimated maximum modeled annual ambient benzene concentrations near the industrial source categories of benzene emissions to range from 0.8 ppb (near an EB/S facility) up to 230 ppb (near a coke by-product recovery plant). Thus, the highest predicted ambient air exposures to benzene are at least roughly one order of magnitude lower than those associated with increased leukemia risk in the epidemiological studies. In addition, an elevated leukemia risk has not been detected in the vicinity of stationary sources emitting benzene; however, it is very unlikely that such an association could be detected, given the limited power of epidemiological studies.

The subsequent sections of this notice provide tables of the distribution of lifetime cancer risk and an estimate of the number of people that may fall within a particular risk interval. These risk distributions are specific to benzene emissions from the industrial sources identified in Table IV–2. Sources that are located within the HEM exposure modeling radius (e.g., 20 to 50 km) of each other would result in an overestimation of the number of people exposed to the long-term predicted benzene concentration. However, the estimates of aggregate population risk are not affected by this particular modeling approach. That is because with a linear dose/response model, two individuals exposed to a concentration of 1 ppm benzene represent the same population risk as one individual exposed to a concentration of 2 ppm benzene.

The maximum individual lifetime risk will almost never be significantly affected by proximity of sources unless the industrial sources are located very close together. This is because the predicted benzene concentrations within the modeling radius decline quickly with distance from the emission point. In the rare cases where sources are very close in proximity (within 200 to 300 meters), the maximum individual lifetime risk may be underestimated.

The estimated distribution of individual cancer risks, however, is affected by the proximity of sources. Correction for double counting of exposed individuals would somewhat increase the individual risk for the population who are exposed to more than one source. Elimination of double counting may shift some of the population at the lower risk levels (i.e., $10^{-6}$) to the next higher risk level. However, the principal effect of eliminating double counting would be a reduction in the number of people in the middle to lower risk categories.

Other factors of the quantitative risk assessment may tend to overestimate or underestimate the computed benzene risks. The relative uncertainty associated with the derivation of the cancer risk estimates can only be qualitatively discussed. The EPA currently cannot statistically describe the error range associated with each of the assumptions comprising the quantitative risk assessment. For example, the fact that the risk assessment focused only on leukemia and not other forms of cancer that have been causally linked with benzene exposure in epidemiological studies may lead to an underestimation of the overall potential cancer risk. In addition, the risk analysis excludes consideration of serious, noncancer effects associated with occupational exposure to benzene. Though it is not known whether such effects could occur at much lower ambient benzene exposures, there remains a possibility that the current analysis may underestimate the total potential population health risk.

Although benzene exposure has been associated with other cancer and noncancer effects (multiple myeloma, lymphomas, aplastic anemia, pancytopenia, depression of blood cells, and chromosomal aberrations), EPA has determined that leukemia incidence in workers provides the strongest basis for quantitative risk assessment. Departure from the assumption of nonthreshold, low dose linearity inherent in the derivation of the URE for benzene might result in lower estimates of benzene's carcinogenic potency. The Agency does not find, however, that there is sufficient scientific evidence given the current knowledge of the mechanisms of carcinogenesis, to warrant departure from the nonthreshold and low dose linearity assumptions.

The assumptions involving the exposure assessment may tend to overestimate or underestimate risk. The dispersion modeling normally assumes flat terrain in the vicinity of the source. For sources located in rolling or complex terrain, this assumption would tend to under-predict maximum benzene exposure and maximum individual lifetime risk. Other assumptions are likely to overestimate the exposure to the most exposed subset of the population. Maximum individual lifetime risk estimates are based on the assumption that the individual is exposed for 70 years to the estimated maximum annual average concentration and that the source continues to operate for 70 years. The degree of overestimation will vary among industries and as a function of individuals' movements.

A final factor of uncertainty in the risk assessment is the fact that the analysis did not account for individuals within the exposed population who may be uniquely susceptible to benzene carcinogenesis because of incompetent immunity, or chronic infirmity. For this subgroup within the exposed population the risks may be underestimated.

## V. Policy

### *Legal Framework Under Vinyl Chloride*

The EPA considers the *Vinyl Chloride* decision to further define the legal framework for setting NESHAP under section 112 of the CAA. The court set out a two-step process for EPA to follow in making these judgments: (1) Determine a "safe" or "acceptable" risk level, and (2) set the standard at the level—which may be lower but not higher than the "safe'" or "acceptable" level—that protects public health with an ample margin of safety.

In this case, the court emphasized that judgments by EPA concerning scientific uncertainty are an important part of the process for establishing NESHAP. As the court noted, Congress, in directing EPA to set NESHAP, recognized that uncertainties over the health effects of the pollutants greatly complicate the task. *Vinyl Chloride,* 824 F.2d at 1152. These same uncertainties, according to the court, mean that the Administrator's "decision in this area 'will depend to a greater extent upon policy judgments' to

which we must accord considerable deference." *Id.*, 824 F.2d at 1163 (citations omitted).

"Safe" or "Acceptable" Level

The first step is for the Administrator to determine what level of risk to health caused by emissions of a hazardous air pollutant is "safe" or "acceptable." (The court used these terms interchangeably). The court in *Vinyl Chloride* explicitly declined to determine what risk level is "acceptable" or to set out the method for determining the "acceptable risk" level. Instead, the court stated that these determinations are within the Administrator's discretion.

The court did, however, provide some guidance on the "safe" or "acceptable risk" determination. The court stated that the Administrator must base the "safe" decision on "an expert judgment" concerning "the level of emissions that will result in an 'acceptable' risk to health (*Vinyl Chloride*, 824 F.2d at 1164–65)." To exercise this judgment, "the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." *Id.* at 1165. However, the court emphasized that "safe" does not require elimination of all risk. To support these propositions, the court cited *Industrial Union Dep't, AFL–CIO* v. *American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (hereafter referred to as *OSHA Benzene Case*) and its statement that "There are many activities that we engage in every day—such as driving a car or even breathing city air—that entail some risk of accident or material health impairment; nevertheless, few people would consider those activities 'unsafe.' " *Vinyl Chloride*, 824 F.2d at 1165. As a final matter, the court said the Administrator cannot consider costs or technological feasibility in this step.

Ample Margin of Safety

Once an "acceptable risk" level is determined, the second step under *Vinyl Chloride* is to determine whether the emission levels accompanying that determination should be reduced further in setting an "ample margin of safety." Noting that the purpose of the ample margin of safety requirement is to protect against incompletely understood dangers, the court stated that EPA "may * * * decide to set the level below that previously determined to be safe." The court reiterated that because the assessment of risk is uncertain, "the Administrator must use his discretion to meet the statutory mandate." The court added that it is at this stage of the standard-setting process that EPA may consider costs and technological feasibility and other relevant factors: "Because consideration of these factors at this stage is clearly intended 'to protect the public health', it is fully consistent with the Administrator's mandate under Section 112." *Vinyl Chloride*, 824 F.2d at 1165.

Uniqueness of Decision

The effect of the *Vinyl Chloride* decision is to require a unique decisionmaking process for public health protection decisions, unlike any other regulatory decision faced by the Agency. This is the result of the court's prescription of two separate steps for decisionmaking, the first in which only health factors can be considered in setting an acceptable risk level, and the second in which additional factors including cost, technological feasibility, and other relevant factors may be considered in providing an ample margin of safety. This scheme is unlike any other under the CAA itself, or any of the other statutes administered by EPA because the acceptable risk that EPA adopts in the first step cannot be exceeded by the standard EPA adopts in the second step.

In contrast, other EPA statutes have very different structures and legal requirements for decisionmaking on public health standards. For example, while the Safe Drinking Water Act provides for two separate decisions, the first is a purely health-based goal toward which to work, but not necessarily meet; the second is an enforceable standard that is based on cost and feasibility considerations. Under both the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the balancing of health concerns and benefits of continued chemical use, and control costs are explicitly provided for in decisionmaking. The Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act both require statutory decisionmaking very different from the bifurcated process mandated by the court for section 112.

Although not reflected in the *Vinyl Chloride* decision reviewed by the D.C. Circuit, the EPA's recent judgments under section 112 were made in integrated approaches that considered a range of health and risk factors, as well as cost and feasibility in certain cases. These approaches were followed in NESHAP for the source categories of radionuclides, arsenic, and the prior decisions on benzene source categories (49 FR 23498, 49 FR 23522, 49 FR 23558, 50 FR 5190, 50 FR 7280, 51 FR 27958, 51 35056). However, the *Vinyl Chloride* decision eliminates those approaches to section 112, since the integrated approaches did not partition consideration of health factors into a first step separate from consideration of the other relevant factors.

Thus, the *Vinyl Chloride* decision forces EPA to consider whether a risk is acceptable *without* at the same time considering benefits of the activity causing risk, feasibility of control, or other factors that EPA (or anyone) would normally consider in deciding whether a risk was "acceptable." This problem is particularly acute in the case of many carcinogens, for which the Agency has stated that it is unable to identify a threshold no-effect level.

The very examples cited by the court bring home the unusual nature of the court's "acceptable risk" decision step. The court (quoting the Supreme Court's decision in the *OSHA Benzene Case*) cited "driving a car or even breathing city air" as activities that "few people would consider * * * 'unsafe.' " But driving a car entails risks that most people would consider high; the annual incidence approximates 50,000 fatal accidents, and the average individual risk (not the maximum, but the actuarial average risk) approximates a 1 in 100 chance of automobile-related death over a 70-year lifetime. Yet the court was correct to say that our society accepts (or tolerates) risk from driving cars. As a society we continue to try to reduce the level of risk, but we value the benefits in increased mobility that the automobile affords. The same is true of "breathing city air"—leaving aside the circularity (city air may contain some of the contaminants that EPA is considering regulating), individuals live in cities to be close to the workplace, for the recreational and cultural advantages associated with cities, and for a variety of reasons extrinsic to the risk itself.

If decisions on the acceptability of risks are inherently balancing judgments, how is EPA to make those judgments on acceptability? Later in this section, EPA sets forth four approaches that deal with this issue in differing ways.

The approaches cover a range of possible risk levels and they give prominence to different measures of risk, e.g., individual versus population risk. The purpose is to elicit comment that will contribute to the EPA's resolution of the decisionmaking problems presented by *Vinyl Chloride*.

*Survey of Societal Risk*

After assessing the health risks for emissions of a specific hazardous air

pollutant, the Administrator, in following the *Vinyl Chloride* decision, is next faced with the question of how to determine an acceptable risk for a particular source category emitting that pollutant. This question cannot be answered in a vacuum, but requires him to determine "what risks are acceptable *in the world in which we live.*" 824 F.2d at 1165 [Emphasis added]. Such a determination requires some context within which to evaluate and compare risks and other health factors bearing on that question.

In approaching the question of what level of risk is "acceptable or "safe," EPA surveyed a range of health risks that our society faces. The objective of this survey was to develop information to place the benzene risk estimates in perspective. Thus, the survey included risks encountered in everyday life, such as driving a car and breathing city air, which were cited in the *Vinyl Chloride* decision, as well as a range of regulatory judgments or risks. The EPA surveyed both the individual risk and the incidence in the population exposed to risk associated with the activities. Considering incidence comports with the purpose of section 112 to protect "public health" when incidence is viewed as a measure of health of the population as a whole.

The risks surveyed ranged from individual risks of 1 in 10 ($10^{-1}$) to less than 1 in 10,000,000 ($10^{-7}$). Everyday risks include risks from natural background radiation as well as risks from home accidents. Natural background radiation at sea level creates individual lifetime cancer risks in the range of 3 in 1,000 ($10^{-3}$) and an estimated 10,000 cancer cases per year. Naturally occurring radon in homes poses an additional source of radiation risk, and these risks can be as high as 1 in 100 to 1 in 10 ($10^{-2}$ to $10^{-1}$) and cause an estimated 5,000 to 20,000 cancer cases/yr. In the U.S., accidents, natural disasters, and rare diseases pose individual risks of death from 1 in 10,000 ($10^{-4}$) (e.g., tripping and falling which cause approximately 470 deaths per year) to 1 in 10,000,000 ($10^{-7}$) (e.g., rabies which causes an average of 1.5 deaths per year).

Judgments on risks have also spanned a broad range of risk levels. The National Council on Radiation Protection and Measurement (NCRP), following recommendations of the International Commission on Radiological Protection, has recommended that maximum individual exposures be limited to an amount corresponding to risks of 3 in 1,000 ($3\times10^{-3}$).

The Food and Drug Administration (FDA) establishes tolerances for poisonous or deleterious substances, such as polychlorinated biphenyls (PCB's), at a level found necessary to protect the public health, taking into account the extent to which the substance is required or unavoidable in the food supply and the other ways the consumer may be affected by the same substance. For example, FDA has established a tolerance level for PCB's in fish at an individual risk of $7\times10^{-5}$, which would result in 34 cancer cases each year among heavy fish consumers alone (44 FR 38333, June 29, 1979).

The EPA regulates pesticide uses under the FIFRA based on whether the pesticide creates unreasonable adverse effects, a statutory term defined as requiring balancing risks and benefits. The EPA has authorized some uses of the pesticide chlorobenzilate that would create individual risk of $1\times10^{-6}$ to $7\times10^{-6}$, and would result in 2 to 9 additional cancer cases per year (EPA banned other uses of this pesticide).

Regulatory judgments have also been made to require lower risks. For example, under the provisions of the Food, Drug, and Cosmetic Act (FDCA), which provides that "no residue" from carcinogenic additives to animal feed may remain in any edible portion of the animal, FDA has established a policy of not allowing the use of additives that create a risk to the animal higher than 1 in 1,000,000 ($1\times10^{-6}$). A more complete description of the risks EPA considered is presented in a document in the docket entitled, "Survey of Risks" (Docket No. OAQPS 79–3, Part I, Docket Item X–B–1).

No fixed risk level could be identified as acceptable in all cases and under all regulatory programs for two main reasons. First, as discussed above, in most cases the calculation of risks depends on different data, assumptions, and uncertainties. For example, the risk associated with motor vehicle and other common accidents can be calculated directly from accident records and therefore reflect actual risk; whereas environmental risks are based on estimating procedures and assumptions and therefore are more uncertain. Thus, actuarial and environmental risk estimates cannot be directly compared so as to draw precise judgments as to whether one risk is larger, or less acceptable, than another. Second, acceptability of risk is a relative concept and involves consideration of different factors. Considerations in these judgments may include: The certainty and severity of the risk; the reversibility of the health effect; the knowledge or familiarity of the risk; whether the risk is voluntarily accepted or involuntarily imposed; whether individuals are compensated for their exposure to the risk; the advantages of the activity; and the risks and advantages for any alternatives. Thus, different judgments on acceptability can be made for similar numerical risks. In addition, the uses of individual risk and incidence as comparative factors face limitations since the relative size of the risks associated with an activity are sensitive to how the activity is defined. For example, the individual risk and incidence associated with a single leaking pipe at a plant within a particular industry could be quite small, but the cumulative risks associated with all plants within the industry could be significant. This limitation can be ameliorated by careful selection of the appropriate category of sources.

In summary, EPA surveyed and considered this risk information to provide perspective on society's consideration and acceptance of risks. In its consideration, EPA is not judging whether each of the risks presented here is acceptable or unacceptable. They are presented, instead, to provide a context for evaluating the relative public health implications of a range of activities and the risks presented in activities being considered for regulation under section 112.

*General NESHAP Policy Considerations*

The purpose of this section is to discuss and solicit comments on the appropriate criteria for the two decisions the *Vinyl Chloride* opinion requires. In the two decisions EPA will both consider the information available to it relating to measures of health risk, and take into account the limitations and uncertainties of the risk estimation methods and basic data. In the discussion which follows, the risk estimates, methods, and their limitations and uncertainties will be discussed, and four approaches to making the two "acceptable risk" and "ample margin of safety" decisions will be proposed. Comments are solicited on all aspects of the discussion and the four approaches and potential combinations of approaches. Commenters should assume that the final decision on the approach to be used and the policies adopted about relative weight to be given to various parameters and related factors will apply not only to the decisions before the Agency in this proceeding, but also may become the policies for decisions on future NESHAP. The framework adopted will not, however

apply to other Agency programs or other sections of the CAA.

The main purpose of the discussion presented here is to provide a basis for comment on the major policy issues raised by the court's opinion, in particular, on the requirement that in regulating under CAA section 112 the Agency must decide what risk is acceptable in "the world in which we live." In the months since the court's decision, issues about acceptability of risk from air toxics have been the subject of discussion both within the Agency and in public debate. The four alternative policy approaches outlined address the acceptable risk decision in different ways. Each approach would answer the following questions in a different way. The basis questions are: What measure or measures of risk should be given weight in the acceptable risk decision? Are there specific levels of individual or population risk that are acceptable? How should EPA balance individual versus population risk reductions? Should the same levels be set and the same measures applied for all NESHAP? How should uncertainty in risk estimation be considered?

The approaches described include one in which all risk information and measures available as well as estimation limitations and uncertainties are considered in determining acceptable risk on a case-by-case basis. Other approaches simply apply one quantitative risk parameter, either risk to the maximally exposed individual or aggregate risk of increased cancer incidence in the population (population risk). The approaches also vary in the level of risk that would be acceptable. The details of the results of applying each of the approaches to benzene source categories are described in Sections VII through X of this preamble. A later part of this section describes the effects of single-criterion approaches on source categories for pollutants other than benzene.

Three of the approaches use either maximum individual risk or population risk as the criterion for acceptable risk. Some take the view that added cancer risk to the individual is the most, or only, important measure. Two of the approaches use this as the only criterion for acceptable risk. Others would consider the number of people at risk and the estimated added cancer incidence in the population to be most important. One of the approaches uses incidence as the only criterion for acceptable risk. Arguments in favor of the individual risk measure are that no individual should be at high risk, that considering the number of people at risk leads to acceptance of higher individual risk when few people are exposed, and that it is inequitable for acceptable risk to an individual to depend upon the number of people similarly exposed. Arguments favoring use of added incidence are that it is an appropriate measure of total public health impact and this total risk to the population is a good indicator of acceptable risk. On the other hand, incidence is only one of a number of possible health effects and thus may not accurately measure the total health impact nor total population risk. Comments on these issues and on using these parameters singly or in combination are requested.

Uncertainty of risk estimates is also dealt with differently by the alternative approaches. Under Approach A, the case-by-case approach, all risk factors including estimation uncertainties would be considered in the acceptable risk determination. Approaches B, C, and D use a single risk measure as the criterion for the acceptable risk decision and thus would leave consideration of other risk measures and specific judgments concerning much of the overall uncertainty until the second step, the ample margin of safety decision. How to weigh these uncertainties is a problem under any approach because while the Agency often has quantitative estimates of uncertainty to use on specific elements of the risk assessment, it can often only make a qualitative judgment about whether the overall uncertainty in the methods and assumptions has resulted in an over- or underestimated risk. Comment is solicited on the consideration of uncertainty in acceptable risk decisions.

Each alternative deals similarly with the ample margin of safety decison. In each, all the health information as well as cost, technical feasibility, estimation uncertainties, and other relevant factors would be considered. Comment is requested on five issues in particular. First, is the margin of safety step more suitable than the acceptable risk step to take into account (usually qualitatively) the direction and extent of estimation uncertainties? Second, should all technically feasible and affordable controls be required without regard to whether any significant risk reduction is associated with the control? Third, should the Agency adopt a policy of using the ample margin step to force technology to reduce risk? Fourth, how should EPA balance the various risk, technical, and economic considerations in ample margin of safety decisions? Fifth, what criteria should EPA use to define the "availability" and "feasibility" of technological controls?

The remainder of this section covers various risk measures, how they are derived, general questions regarding control technology and plant closure considerations, and the four alternative regulatory approaches. The approaches are considered from the perspective of application to the benzene source categories covered in today's notice and to the NESHAP program.

*Risk Measures Considered in NESHAP Policy Approaches*

In decisions on cancer risks from stationary sources of hazardous air pollutants, the Agency has estimated three measures of health risk. These are termed "maximum individual risk," "risk distribution," and "incidence". Each of these combines an estimate of the dose/response for a pollutant with estimates of exposure to the pollutant. The response estimated is the pollutant-related increase in the probability that an individual will develop cancer in his or her lifetime. The exposure estimated is the average daily exposure assuming continuous exposure for 70 years.

Maximum Individual Risk

Individual risk is expressed as an estimated probability, e.g., 1 in 100 ($10^{-2}$), 1 in 1,000 ($10^{-3}$), 1 in 10,000 ($10^{-4}$). Thus, a $1 \times 10^{-3}$ individual risk is an *added* "chance" of 1 in 1,000 of developing cancer sometime in the individual's lifetime.

In this discussion, the maximum individual lifetime risk is the addition to cancer risk of a person due to continuous exposure for 70-year lifetime at a point of maximum concentration of a pollutant emission. (The maximum individual risk is sometimes called the maximum exposed individual risk). This estimate is based on the fact that the concentration of an emission, and the consequent risk, diminishes with distance from its source. For NESHAP decisions, the practice has been to estimate this figure for the largest annual average pollutant concentration to which any member of the public may be subject according to census data on residence locations. It has also been estimated in other Agency decisions as the maximum at the source perimeter.

The maximum individual lifetime risk is different from average individual risk which is sometimes estimated for sources like public drinking water systems or food in which the concentration of a pollutant and other factors are assumed to be equal at all distribution locations. This distinction is particularly relevant when considering the maximum risk one might find acceptable from different sources.

In using the maximum individual risk in acceptable risk decisions for hazardous air pollutants, its limitations should be considered. Used alone, the measure does not tell how many people may be so affected; it relates only to the risk to the most exposed individual(s).

Risk Distribution

A risk distribution estimates how many persons within a certain distance (e.g., 20 to 80 km) of a source of pollutant emissions are at what level of individual risk (see, e.g., Table V–1A shown in the discussion of Approach A later in this section). Typically, the distribution is given for 10-fold increments of individual risk. Such a distribution provides the decisionmaker with information on both the individual risk level for those exposed and the number of persons exposed at each level. For NESHAP and other decisions, the Agency has examined risk distributions both as measures of risk and to compare the effects of various strategies for risk reductions across a source category.

In making an acceptable risk decision, one relevant consideration could be how many people are exposed at each risk level, e.g., a $10^{-3}$ risk might be acceptable if only one person were at that level, but not if 1,000 people were subject to it. Similarly, the numbers of persons exposed at various individual risk levels could be an important element in deciding on acceptable risk. The risk distribution could be used in a similar way to consider whether an ample margin of safety exists.

Incidence

Incidence is an estimate of population, rather than individual, risk. Incidence estimates the addition to population cancer incidence in the specified population. It is derived by multiplying individual risk by the estimate of the number of persons at that level of risk. This number which provides a lifetime population risk figure is then divided by 70 (years) to give an annual cancer incidence estimate. The incidence parameter can be used as an estimate of impact on the entire exposed population within a given area by totalling the incidences associated with each increment of individual risk. Incidence can also be portrayed along with individual risk and population numbers in a risk distribution (e.g., see Table V–1A shown in the discussion of Approach A later in this section). Typically, the Agency weighs incidence estimates in conjunction with maximum individual risk or average individual risk estimates. Estimated incidence generally is a particularly informative parameter when looking at aggregate risk from a category of like sources. One feature to take into account whenever it is used is its dependence on the size of the source category.

Uncertainties in Risk Measures

Each of the three risk parameters defined above has three elements. These are the estimated response per unit of pollutant concentration (e.g., ppm in air), the estimated exposure concentration, and the estimation of the population residing in the area of the sources (usually taken from census data).

Uncertainties exist in estimating each of these elements for a variety of reasons including the fact that the relevant data and our understanding of the biological events involved are not complete. Where data gaps exist, qualitative and quantitative assumptions are made and science policies are invoked which are based on our present understanding of biological mechanisms of cancer causation, estimates of air dispersion, engineering estimates, and other factors. Alternative plausible assumptions are often availabale for interpreting given data. Selection of certain assumptions to be used is a science policy choice. The Agency has published guidelines covering many of these for both cancer risk assessment and exposure assessment. They are "Final Guidelines for Carcinogen Risk Assessment," 51 FR 33992 (September 24, 1986) and "Final Guidelines for Estimating Exposures," 51 FR 34042 (September 24, 1986).

The following is a general outline of methods used to calculate these parameters, together with a few examples of some of the uncertainties.

Risk assessment under EPA guidelines takes into account the nature and amount of evidence that the agent will cause the effect of concern in humans as well as the uncertainties of interpretation of data and its quantification. When the toxicity data are from human studies, as they are for benzene which is a known human carcinogen, there are fewer uncertainties about the hazard of dose/response considerations than when they are solely from animal studies. Nevertheless, there are important uncertainties in using human data; these are explored in Sections IV and VII through X of this notice with regard to benzene. Examples include the fact that human epidemiological studies are often retrospective and measure effects of exposure that occurred many years in the past. The level of exposure to the agent at that time usually must be estimated and cannot be verified. Also, the human studies are often of workers exposed to the pollutant. Workers populations are not representative of the general population with respect to age, and usually not with respect to sex. Workers are also generally the healthier segment of the population. These factors of exposure and representation of human sensitivity to the agent can lead to over- or underestimation of risk. These are two of the important uncertainties; others exists.

When data from tests of a pollutant's carcinogenic activity in animals are used, uncertainties about exposure are experimentally controlled, but other uncertainties arise. Many of these concern the use of data from animal tests to estimate effects on humans. Many relationships have to be accounted for in doing this, for example, the equivalent dose for humans and laboratory animals given the size differential, and potential differences in metabolism and excretion of a chemical pollutant.

It is uncommon for there to be enough data to address all of the uncertainties. In addition to qualitative uncertainties of drawing conclusions about risk to the general populations from either human epidemiologic data or animal data, uncertainties arise in extrapolating the observed dose/response relationship from either workplace or animal test exposures to the usually lower dose levels of the general population.

In estimating exposure, the dispersion of a pollutant from a source is usually quantified by a predictive mathematical model using a known or model source emission rate, temperature, and velocity characteristics, and weather patterns at nearby stability array (STAR) stations; these are typically the nearest recording weather station. The model predicts the concentration of the dispersed pollutant at various distances from the source. Standard assumptions are that the population around the source resides there for a 70-year lifetime and is continuously exposed to the modeled concentrations for 24 hours a day. The amount of emissions can be derived from sampling and analysis of emissions at the source or from engineering estimates, with more or less uncertainty associated with each method according to the type of emission. There are varying degrees of accuracy and precision in sampling, analysis, estimates of emissions, or assumptions about the half-life of the pollutant in the air. Uncertainties in the method of estimating individual exposure and the number of individuals exposed are

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numerous. The method of estimating the resident population and its location according to the census does not account for the fact that residents may be outnumbered by the workers or students who reside elsewhere, but come into the area during the day for months or years. Future increases in population in the area are not considered. Thus the method may underestimate the population exposed for some part of a lifetime. On the other hand, the method overestimates exposure for those who reside in the area fewer than 70 years or who leave the area for substantial parts of the day.

By these few examples, it can be seen that one can generally discuss and judge over- or underestimation in particular estimates, but not usually collect enough data to quantify uncertainty. Questions relevant to two-step decisionmaking under the *Vinyl Chloride* opinion are: At which step or steps should uncertainty be accounted for? How should uncertainty be considered if it cannot be quantified?

### Graphical Method of Combining Maximum Individual Risk and Incidence

There are graphical ways to show individual risk and incidence concepts together, and one of these is explained here. Comment is requested on the use of such a method of considering these risk measures. Although specific maximum individual lifetime risks and incidences are shown on the figures, these are illustrative examples only.

Figure V–1 is a simple plot of individual risk on the y axis and the population size on the x axis. The plotted lines are $1 \times 10^{-4}$ and $1 \times 10^{-6}$ maximum individual lifetime risk. Figure V–2 shows the plot of the combinations of maximum individual lifetime risk and population size that correspond to an incidence of 1 cancer case per year. Figure V–3 shows the maximum individual lifetime risk and incidence lines together, and Figure V–4 adds shading in the area of the graph that contains all points meeting a hypothetical requirement that no person be at greater than $1 \times 10^{-4}$ maximum individual lifetime risk and that the entire population risk be at less than 1 added cancer case per year.

The graphical approach can be used to plot the data from a risk distribution (such as that in Table V–1A shown in the discussion of Approach A). On Figure V–5, distributions are plotted for risk from four hypothetical sources. By examining where parts of a line fall with respect to selected maximum individual lifetime risk and incidence parameters, one can see how many people are at risks lower than any maximum individual lifetime risk or interest or whether a particular incidence is exceeded. It is also possible to see whether a risk distribution is skirting the edge of being above any acceptable risk line or is well under it. This allows consideration of whether to try to narrow uncertainties in the risk assessment.

Graphs such as these could be used to make regulatory decisions and communicate about them. Comment is requested.

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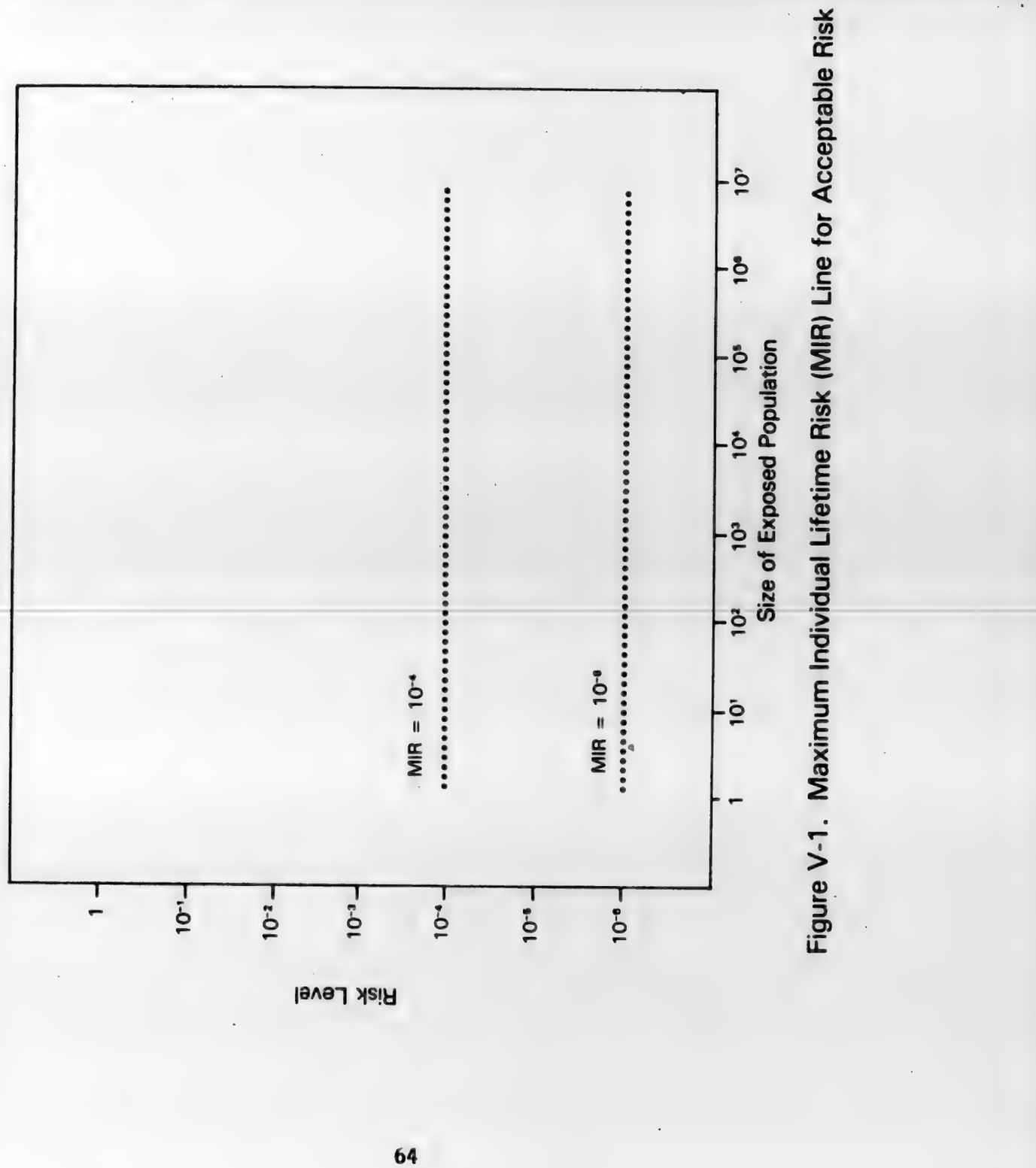


Figure V-1. Maximum Indi

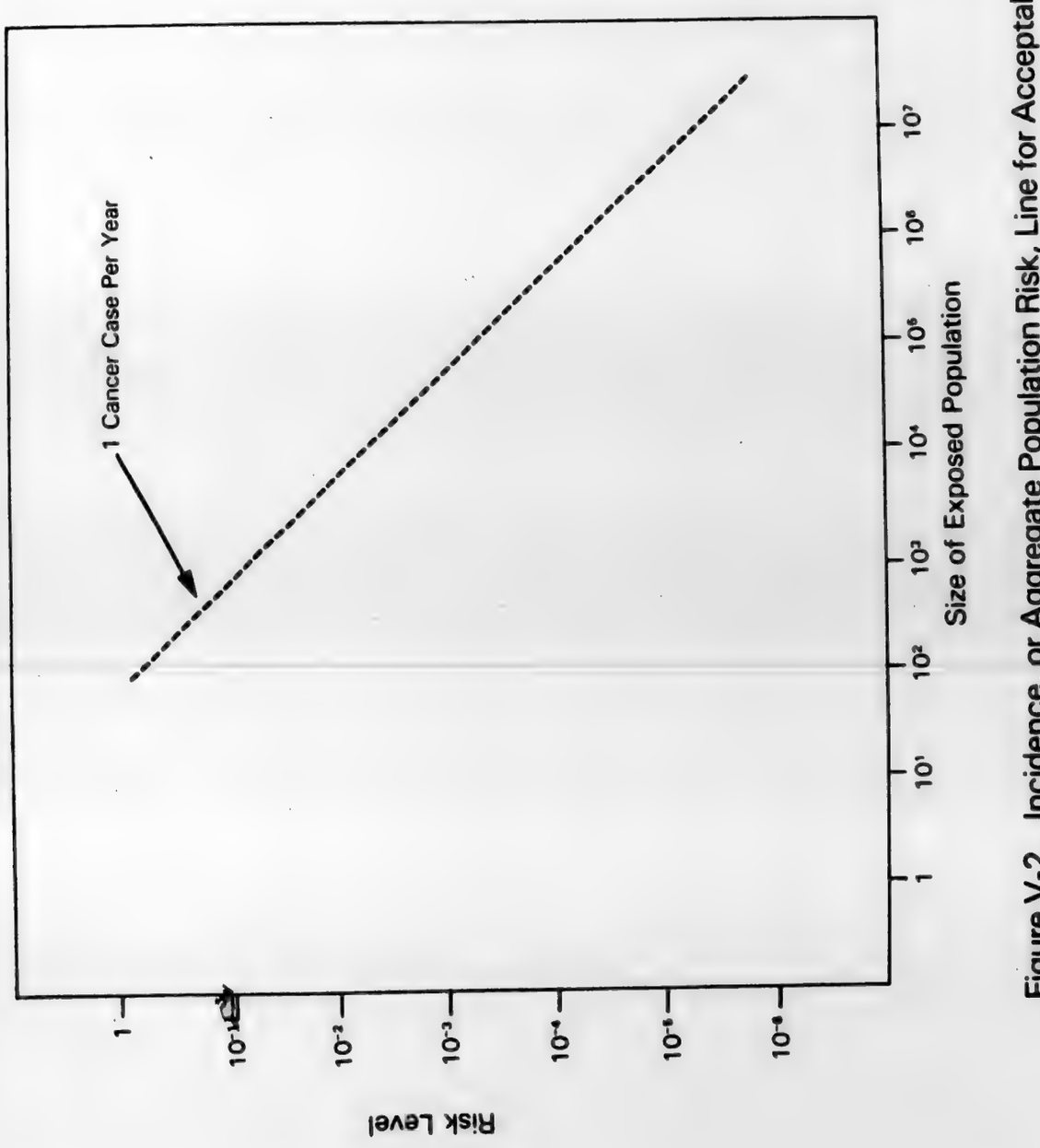


Figure V-2. Incidence, or Aggregate Population Risk, Line for Acceptable Risk

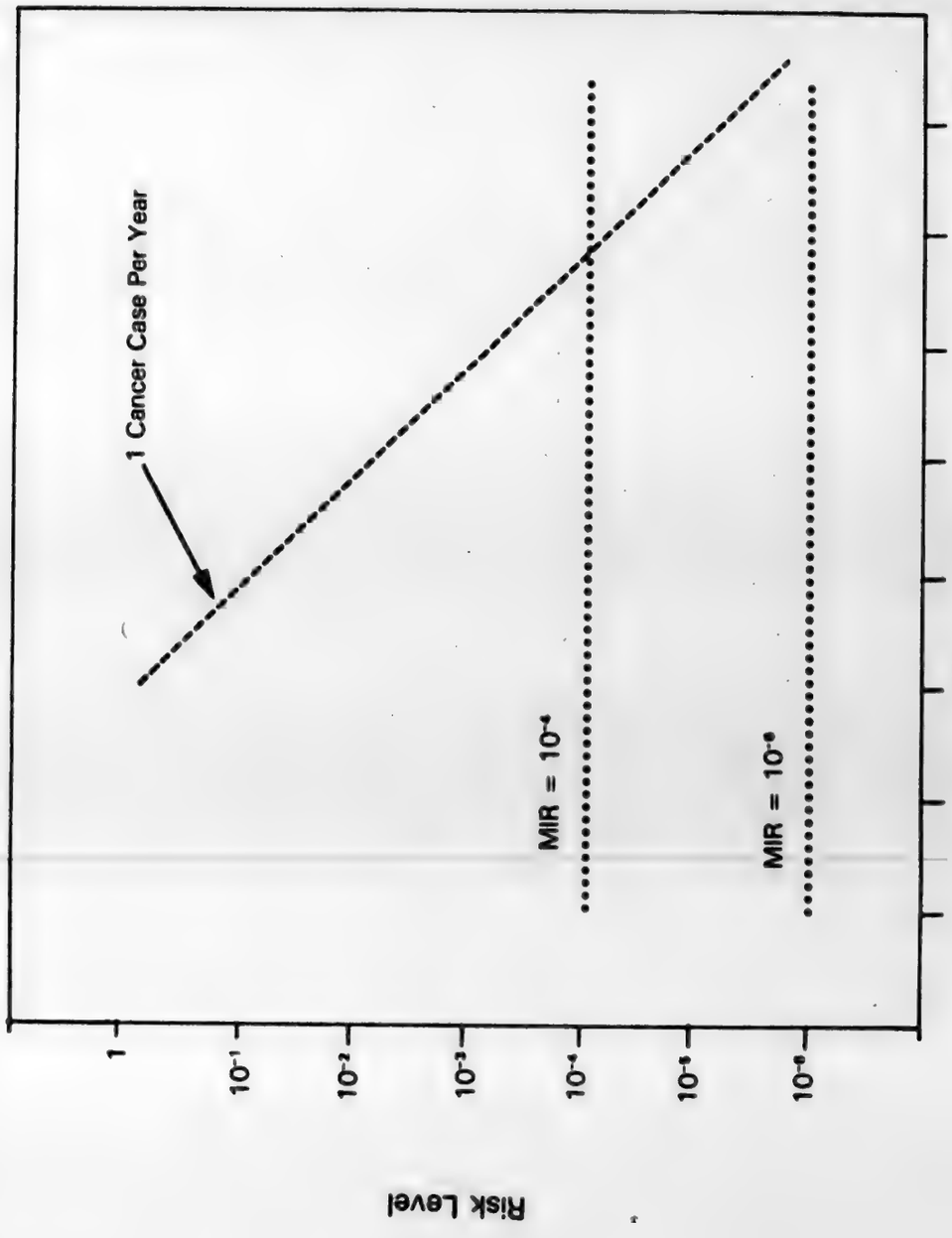


Figure V-3. Maximum Individual Lifetime Risk (MIR) and Incidence Line for Acceptable Risk

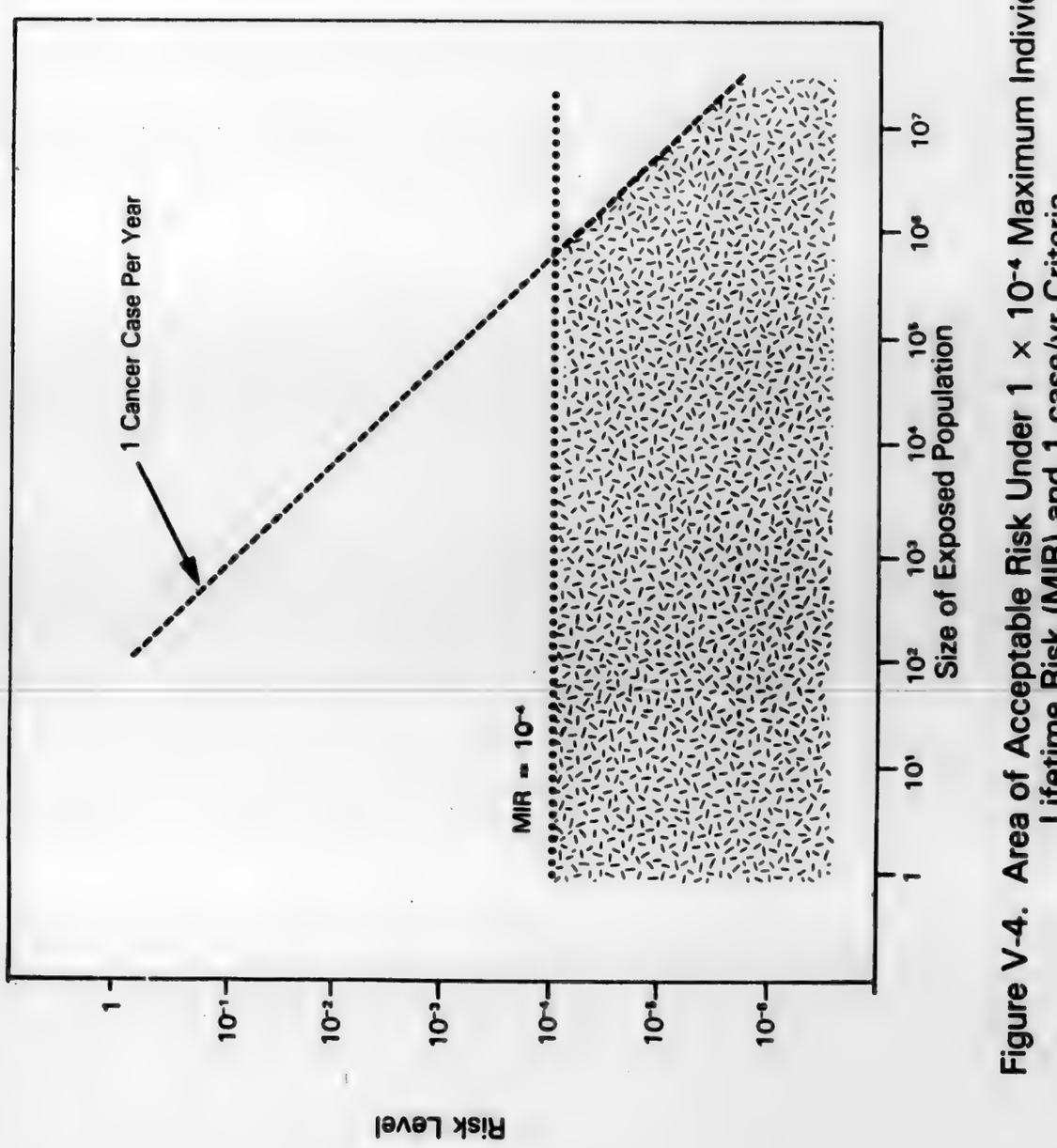


Figure V-4. Area of Acceptable Risk Under 1 × $10^{-4}$ Maximum Individual Lifetime Risk (MIR) and 1 case/yr Criteria

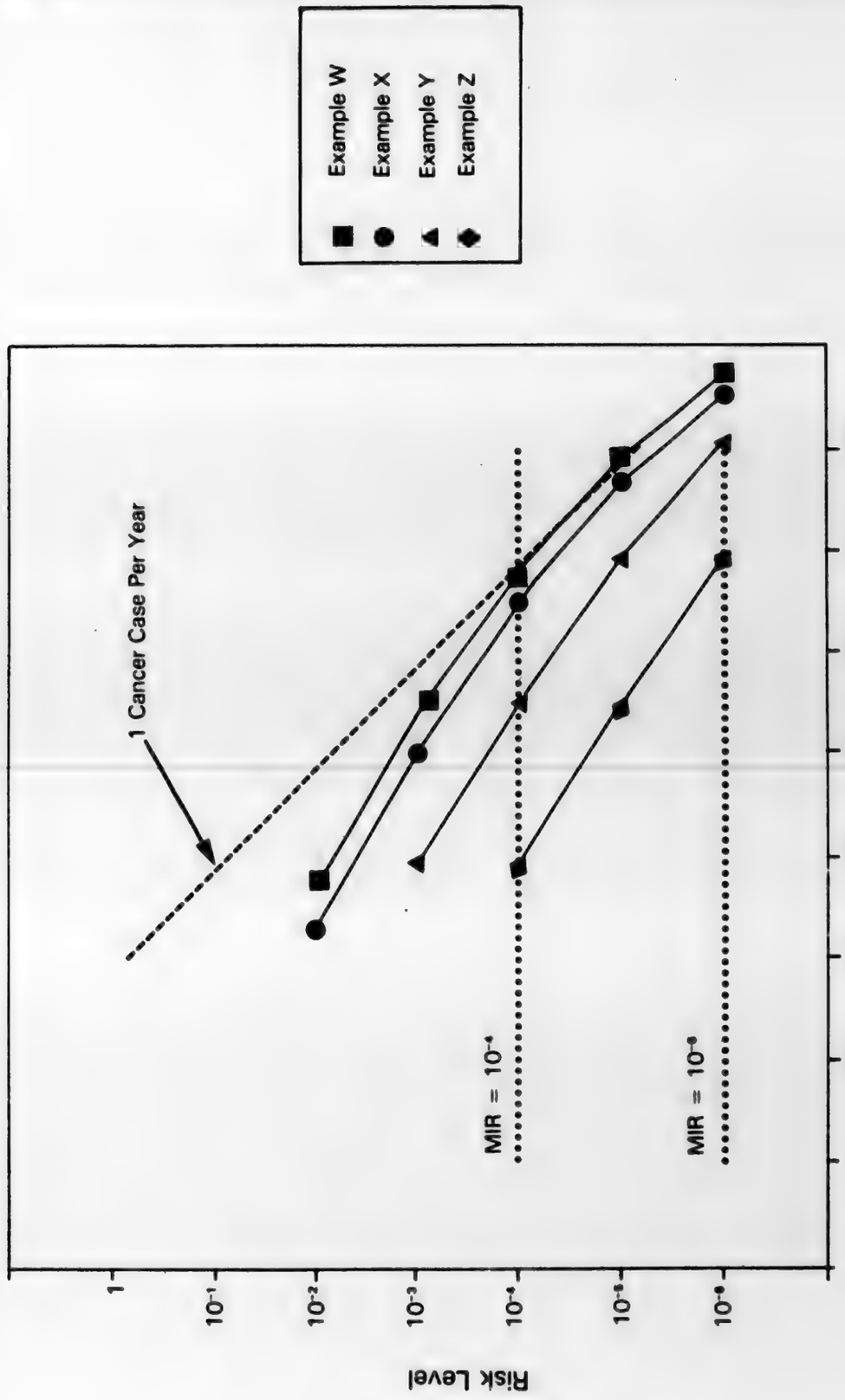


**Figure V-5. Comparison of Several Hypothetical Risk Distributions with the Maximum Individual Lifetime Risk (MIR) and Incidence Lines for Acceptable Risk**

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*Technology Availability and Plant Closure Considerations*

In previous NESHAP decisions, EPA has given primary consideration to the objective of reducing risks to public health. However, in evaluating alternative regulatory options, EPA has also considered the extent to which plants would be forced to: (a) Install control technologies which are not cost effective or fully demonstrated and/or (b) curtail or stop production. These considerations are reflected in today's proposal to the extent that they apply to affected benzene sources. However, these sources do not represent the full range of circumstances that exist among other source categories which will be affected by NESHAP decisions. For example, in other source categories control technology may be less effective, or costs may be greater; the financial strength of the industries may be greater or less; the ability to pass through control costs may be greater; and/or the ability to use nonhazardous materials to produce the same products may exist. The EPA is today soliciting public comment on several specific issues relating to technology availability and plant closure issues both in the context of today's proposal and in the broader context of future NESHAP decisions.

With regard to the availability of technology to control air pollutants, EPA has typically considered a technology available if it has been installed on a commercial scale in the U.S. and adequate data have been collected on plant and control equipment characteristics and performance. However, at various times in the past, and in the present proposal, EPA has considered emission standards which force plants to install technologies which do not meet these current "availability" criteria or curtail production or shutdown. For example, EPA has in the past considered a technology "available" if it has been commercially demonstrated in other countries, even if no units have been installed in the U.S. Also, EPA has considered bench- or pilot-scale demonstrations in order to judge reasonableness of expenditures for commercial demonstration of a given technology. Some have argued that potentially superior, costlier, but commercially undemonstrated technologies will not be installed in the absence of regulatory requirements to do so. Others have argued that EPA should not be concerned about the extent to which technologies are "available" since the standards should be solely based on public health considerations. Proponents of this latter view argue that the health-based standards will themselves provide adequate incentive for currently high risk industries to develop new control technologies. Still others argue that the compliance schedules in section 112 will cause sources to close rather than undertake the risk of installing costly technology that is uproven.

The EPA solicits public comment on the relative merits of alternative criteria for determining the availability of technology, and on the question of appropriate alternative methods for encouraging development of alternative technologies, processes, product substitutes, and/or lifestyle changes.

In regard to plant closure issues, EPA today solicits public comment on several specific issues relating to the procedures used to estimate plant closures:

1. *Compliance cost estimation.* It is reasonable to assume that plants would engage in cost mitigation strategies, such as production factor substitution, common ducting of emission streams, or exploitation of available control equipment capacity. In contrast, conditions such as age or type of equipment at other individual plants may result in above average control costs. How should EPA incorporate such plant-specific considerations in estimations of the cost of complying with new regulatory requirements?

2. *Price effect estimation.* In assessing economic impacts, EPA uses available data to assess the extent to which compliance costs may be passed through to consumers. Do the EPA's current approaches adequately consider the extent to which the use of substitute products, production inputs, or price effect mitigation strategies modifies the economic impact of new regulatory requirements? How should EPA consider uncertainties in these and other market factors which affect the impact of new regulations?

3. *Projection of demand effects and plant closures.* The EPA typically projects the proportion of existing domestic production plants which would close by examining the availability of technology the meet the standard. Where technology is available, EPA examines and projects changes in total demand for products or production inputs by considering supply cost functions of existing domestic plants, new domestic plants, and foreign sources. Are the EPA's current procedures for estimating plant closures resulting from predicted price and quantity effects reasonable?

4. *Employment effect estimation.* The Agency has presented information previously that predicts the direct employment effects of closures in the benzene source categories considered in this rule. Generally, these results have been derived from studies that assess the technological feasibility of control and, for Approach A, economic factors that may force closures. Further, the Agency has not calculated the secondary employment impacts from shutdowns (so called "multiplier effects") for any of the approaches and the employment effects of closures of plants using or producing benzene products.

In light of the above, the Agency is interested in whether there are methodologies that are available to calculate these secondary employment effects. In addition, what are the likely consequences of closures of plants using or producing benzene products?

5. *Balancing of costs and risk reduction benefits.* Generally, as air pollution control equipment becomes more efficient the cost of each additional increment of control becomes increasingly great. Thus, the incremental health benefits associated with each additional increment of control often become smaller while costs become greater. In determining an ample margin of safety, how should EPA determine at what point the cost of further control outweighs the additional health benefit?.

The EPA also solicits public comment on the appropriate treatment of plant closure risk in the post-*Vinyl Chloride* regulatory framework. For example, is it reasonable, as a general principle, to establish regulatory requirements which compel individual high-risk sources to either install less-than-fully demonstrated control technologies or curtail operations? For the particular benzene standards proposed in today's **Federal Register** notice, is it likely that plant closures or production cutbacks would be required to meet the standards? What are the potential consequences of domestic plant closures? Would foregone production from existing U.S. plants be made up through increased production from new U.S. plants which comply with the new regulatory requirements as opposed to increased imports?

*Description of Alternative Policy Approaches*

Each of the four approaches described here for comment approaches the "acceptable risk" decision differently. The first approach considers all risk factors in the acceptable decision and all risk factors plus cost and feasibility of emission controls in the ample margin of safety decision. The other three

approaches differ from the first in that they use a single parameter, maximum individual lifetime risk or incidence, as the sole deciding factor for acceptable risk, while considering other factors in the "ample margin" step.

The case-by-case and single parameter approaches differ in the degree to which they possess each of two desirable features. One feature is the ability of the Agency to consider the weight of evidence, or confidence, in the hazard data from which risk numbers are derived, and the confidence in the emission and exposure estimates. The second feature is the degree to which decisions are clear and understandable, and thus can be perceived by the public as consistent.

The case-by-case approach is designed to bring all of the evidence to bear in association with risk numbers at both decision steps. The Agency has adopted the policy of risk assessment contained in the 1983 study by the National Academy of Sciences entitled "Risk Assessment in the Federal Government: Managing the Process," National Academy Press. This study covers the various elements of cancer risk assessment and the assumptions and uncertainties it involves. One of the policies emphasized in the report and adopted by EPA is to give the risk manager a risk characterization which contains the information needed for a decision on how much confidence to place on numbers. For example, numbers for risk estimates for two different pollutants might look the same, but be based on data sets of quite different quality. A very large set of data from human and animal studies could be the foundation for a high degree of confidence in deriving a quantitative dose/response relationship. On the other hand, a quantitative dose/response estimate based on less evidence could be more uncertain. Moreover, emission estimates and exposure modeling may be based on site-specific information, assumptions, or combinations of the two. Depending on the data and assumptions, there can be large differences in the confidence of the exposure estimates. A risk manager would be justified in using the two kinds of estimates differently in decisionmaking, in spite of the fact that the numbers might be very similar. An advantage of the case-by-case approach is that it is designed to use the full range of evidence behind the risk numbers in determining acceptable risk and in deciding on an ample margin of safety. A disadvantage of this approach is that it is reliant on case-by-case interpretation and judgment of data, which makes the basis for decision difficult for the public to understand, and decisions may appear inconsistent when different numerical risks are judged to be acceptable in different cases.

The single measure approaches tend to take risk numbers at face value for the acceptable risk decision, with a fuller consideration of the weight of all evidence at the margin of safety step. The advantages of these approaches are their clarity and ease of administration, which are good bases for adoption of such an approach. Their disadvantage is that they do not consider all of the risk factors, risk characterization, and uncertainties in the initial step. The Agency would weigh all of the evidence in final decisions under any of the approaches.

### Approach A. Case-by-Case Approach

In this approach individual risk, risk distribution, and incidence and their estimation limitations and uncertainties are all considered in determining what is an acceptable risk. The acceptability of an individual risk level is judged as a function of the number of persons at that level and the associated incidence for the exposed population. Judgment on an acceptable total incidence includes consideration of how much of the incidence is associated with higher or lower individual risk.

In applying Approach A, the approach is to examine the risk distribution and to consider maximum individual risks around $10^{-4}$ or less to be the preferred range. The $10^{-4}$ level was selected for reasons analogous to its use in Approach C (see discussion of Approach C for further explanation). Under all Approach A decisions, however, the Agency will closely examine the aggravating and mitigating factors associated with the risk estimates. Included in this examination is recognition that there are considerable uncertainties in the risk characterization, emission estimates, and exposure assumptions; these uncertainties may vary widely among assessment. Acceptability of higher risks includes consideration of the number of people at that risk and the total incidence. Greater weight is given to the incidence associated with individual risks greater than $10^{-5}$; this is because risks lower than this are generally considered small. In addition, both the dose/response and exposure estimates increase in uncertainty at these lower levels, which generally represent large extrapolations from high to low doses and dispersion of the pollutant at greater distance from the source, respectively. Risks greater than the $10^{-4}$ or less preferred range may be judged acceptable in this approach when all factors are considered. Examples of circumstances that EPA believes appropriate to consider include: (1) the uncertainties of the analysis; (2) the degree of over or underestimation in the risk characterization; (3) the weight of evidence of the health effects and non-quantified health effects; (4) modeled versus measured exposures; and (5) the estimated population predicted at lifetime risk of around 1 in 10,000 or greater.

Table V–1A shows the risks proposed as acceptable under Approach A for two benzene source categories: Equipment leaks and coke by-product recovery plants. The findings are more completely discussed in later sections of this notice. In considering the risk parameters for the acceptable risk decision the fact that most of the incidence was associated with lower range individual risks was balanced against the fact that the maximum individual lifetime risks were higher than the preferred range of around $10^{-4}$ or less. The overall risk distributions shown in Table V–1A were considered acceptable when all factors and their estimation uncertainties were weighed.

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TABLE V-1A. ACCEPTABLE RISK LEVELS FOR TWO SOURCE CATEGORIES (APPROACH A)[a]

| Risk Distribution | Equipment Leaks | | Coke By-Product Recovery | |
|---|---|---|---|---|
| | Cumulative Population at Indicated Risk Level | Non-cumulative Incidence (case/yr) | Cumulative Population at Indicated Risk Level | Non-cumulative Incidence (case/yr) |
| $\geq 1 \times 10^{-2}$ | 0 | 0 | 0 | 0 |
| $\geq 1 \times 10^{-3}$ | 0 | 0 | 4,000 | 0.1 |
| $\geq 1 \times 10^{-4}$ | 3,000 | 0.007 | 100,000 | 0.4 |
| $\geq 1 \times 10^{-5}$ | 60,000 | 0.02 | 3,000,000 | 0.9 |
| $\geq 1 \times 10^{-6}$ | 1,000,000 | 0.04 | 30,000,000 | 1 |
| $< 1 \times 10^{-6}$ | - | 0.2 | - | 0.3 |
| | 200,000,000 | 0.2 | 90,000,000 | 3 |
| MAXIMUM INDIVIDUAL LIFETIME RISK: | $6 \times 10^{-4}$ | | $6 \times 10^{-3}$ | |

[a]All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

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The uncertainty of the risk estimation is considered at both the acceptable risk and ample margin of safety steps. For both source categories the uncertainty of the dose/response estimate for benzene was considered. In general, the data set on benzene is one of the better ones available on any chemical carcinogen. Benzene is classified as a human carcinogen and judgment that the quantitative dose/response estimate, derived from studies on humans, for leukemia might be on the high side, but still plausible, was balanced by consideration of the fact that other types of malignancy have been observed in human studies. Because these effects were not quantifiable from the available data, uncertainty existed about whether all of the cancer risk had been accounted for. On the exposure from both source categories, for several reasons described in later sections, the existing emission estimates were considered to be upperbound estimates.

For the proposed ample margin of safety decision the risk parameters were again considered along with the cost and feasibility of risk reduction. The costs and technical factors differ greatly among the categories and are discussed in detail in later sections. As shown in Table V–1B, these decisions result in similar after-regulation risk distributions for the two categories, equipment leaks and coke by-product recovery plants, with very low incidence associated with individual risks above $10^{-4}$ or $10^{-5}$. At both steps, uncertainty is given weight and the risk parameters are considered together.

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TABLE V-1B. AMPLE MARGIN OF SAFETY FOR TWO SOURCE CATEGORIES (APPROACH A)[a]

| Risk Distribution | Equipment Leaks | | Coke By-Product Recovery | |
|---|---|---|---|---|
| | Cumulative Population at Indicated Risk Level | Non-cumulative Incidence (case/yr) | Cumulative Population at Indicated Risk Level | Non-cumulative Incidence (case/yr) |
| $\geq 1 \times 10^{-2}$ | 0 | 0 | 0 | 0 |
| $\geq 1 \times 10^{-3}$ | 0 | 0 | 0 | 0 |
| $\geq 1 \times 10^{-4}$ | 3,000 | 0.007 | 2,000 | 0.005 |
| $\geq 1 \times 10^{-5}$ | 60,000 | 0.02 | 70,000 | 0.03 |
| $\geq 1 \times 10^{-6}$ | 1,000,000 | 0.04 | 2,000,000 | 0.05 |
| $< 1 \times 10^{-6}$ | - | 0.2 | - | 0.07 |
| | 200,000,000 | 0.2 | 90,000,000 | 0.2 |
| MAXIMUM INDIVIDUAL LIFETIME RISK: | $6 \times 10^{-4}$ | | $4 \times 10^{-4}$ | |

[a]All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

Approach B. Incidence-Based Approach

In this approach, incidence is proposed to be the only parameter used to decide acceptability of risk. At the ample margin of safety step, all of the risk parameters as well as estimation uncertainties, cost, and feasibility would be considered. The annual incidence proposed as acceptable would be 1 case/yr. Thus, under Approach B all NESHAP would be set to result in no greater than 1 case/yr for a source category, as a whole. The EPA is proposing an incidence number of 1 because it is small in relation to the millions of persons exposed to benzene, and in relation to the incidence associated with risks from numerous everyday activities. Comment is requested on the appropriateness of this criterion or another number.

Approach B would rely upon incidence for several reasons. First, incidence reflects the overall "public health" concerns toward which section 112 is directed. As noted above, most of the members of the public who are exposed to emissions, and therefore most of the incidence associated with those emissions, is associated with individuals exposed to levels lower than the individuals who receive the maximum exposure. Moreover, although both incidence and maximum individual lifetime risk are highly uncertain figures, in general incidence figures are more likely to be accurate than maximum individual lifetime risk figures. A maximum individual life time risk estimate is much more sensitive to errors in modeling assumptions in the exposure estimate. When those uncertainties are spread throughout the exposed population in an incidence estimate, they tend to average out, and thus to yield results closer to "true" risk. For example, the incidence would be the same as long as the residence is occupied during the 70-year period, regardless by which persons. That is, the incidence would be the same if the same person lived at the residence for 70 years as it would be if 10 different persons lived at the residence during this time.

Figure V–6 is a graph with the log of individual risk on the y axis and log of annual incidence on the x axis. The lines entered on the graph correspond to the 1 case per year incidence of Approach B and the $1\times10^{-4}$ and $1\times10^{-6}$ maximum individual risks of Approaches C and D. The points entered on the graph are the intersection points of maximum individual risk and incidence numbers estimated for risks from the source categories listed in the key. (*Note:* Numbers given in this discussion for radiation risk are for fatal tumors). The figure indicates that, of the baseline risks shown there for benzene source categories, those for benzene from coke by-product recovery plants would be at greater than 1 case/yr. The associated maximum individual risk would be $10^{-3}$. The acceptable risk decisions for coke by-product recovery plants differ significantly under policy Approaches A and B since the baseline risk would be acceptable under A, but not B. The ample margin of safety decision under Approach B would parallel that under Approach A in method. The annual incidence of less than 1 case/yr is, of course, the starting point for ample margin decisions in Approach B. The analysis would focus on additional reductions in incidence as well as for the other risk parameters, considering cost, feasibility, and other relevant factors. For the benzene source categories, the regulatory outcome would be the same under both approaches. These results are discussed in Sections VII through X.

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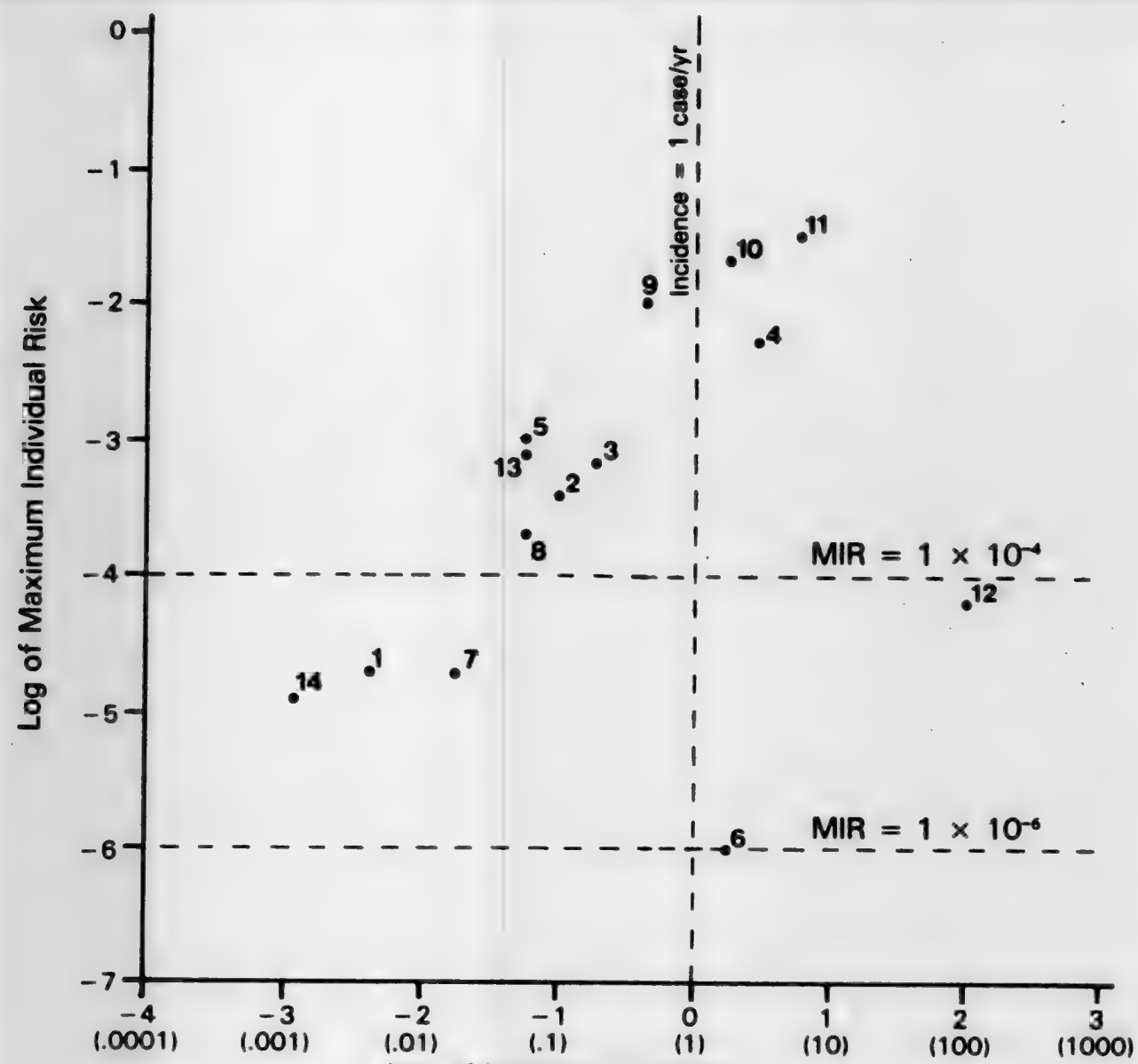


KEY

1 Ethylbenzene/Styrene (benzene)
2 Benzene storage vessels
3 Equipment leaks (benzene)
4 Coke by-product recovery plants (benzene)
5 Elemental phosphorus plants (radionuclides)
6 Coal-fired boilers (radionuclides)
7 NRC licensees (radionuclides)
8 DOE facilities (radionuclides)
9 Underground uranium mine (radon)
10 Active uranium mill tailings
11 Coke oven emissions
12 Chromium from comfort cooling towers
13 Vinylidene chloride
14 Hexachlorobenzene

Figure V-6. Maximum Individual Lifetime Risk (MIR) and Incidence for Selected NESHAP Categories



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Features to note about Approach B include the fact that since maximum individual risks plays no role in the acceptable risk decision, high maximum individual risk levels would be acceptable so long as the exposed population is sufficiently small that the incidence level is met (see Figure V–6). Another point to note is that the size of the incidence number may be due largely to exposure of a very large population to a small individual risk. For example, see Table V–1A. This makes the acceptable risk decision dependent to a great degree on estimates of exposure to the least exposed individual furthest from the source. As previously mentioned, the dose/response and exposure estimates increase in uncertainty at these low levels which generally represent large extrapolations from high to low dose and dispersion of the pollutant at greater distance from the source, respectively. Deficiencies of using only one risk measure in the first decision could be addressed in the "ample margin" decision. For example, when using only incidence gives slight attention to circumstances in which a small population may be at high individual risk, EPA could consider action to impart a margin of safety for the small population.

Approach C. $1\times10^{-4}$ or less Maximum Individual Risk Approach

This approach would use maximum individual risk as the sole parameter for deciding acceptable risk. At the ample margin of safety step the risk distribution and incidence would be added to the factors considered as well as uncertainty, cost and feasibility.

The acceptable risk level for maximum individual risk under this approach is $1\times10^{-4}$ or less. This level is analogous to the top of the target individual risk range used in some other EPA programs. This target range has evolved through a history of decisionmaking under the structure of other statutes. However, the decisionmaking structures under the statutes governing those programs are quite different, so comparison is imperfect. And, typically the target range there is for post-control risks, while here it would be the first step of the decisionmaking process. Additionally, the $10^{-4}$ risk level falls roughly into the middle of the risk range developed in the survey of risks, discussed earlier in this section.

For benzene, the regulatory outcome for the coke by-product and equipment leak source categories would be greater control than under either Approach A or B. Neither of the two categories would be at an acceptable risk level prior to regulation, and each would require control beyond the NESHAP proposed under previous approaches in order to be at $1\times10^{-4}$ maximum individual risk or less. The result for benzene storage vessels and EB/S process vents would be the same under all three approaches.

This approach and Approach D would put great weight on the estimation of the maximum concentration to which anyone could be exposed, which is the exposure element of the maximum individual risk. Without the additional perspective of the risk distribution and incidence estimates and all other risk information, many decisions would ride exclusively on the highly uncertain prediction of the concentration and location of the area of maximum exposure. The accuracy of emission factors, meteorological data, and census data for specific source locations are among the more uncertain estimates, but would be the most critical elements under this decision.

However, at the ample margin of safety step, the other risk measures could be examined to bring the needed perspective to the overall decision.

Approach D. $1\times10^{-4}$ or Less Maximum Individual Risk Approach

This approach is identical to Approach C except that it uses a more stringent criterion for individual risk. The acceptable risk is defined as $1\times10^{-6}$ maximum individual risk. One reason why this level might be selected is that the risk below this level have been generally regarded as negligible additions to an individual lifetime risk of cancer. Additionally, the $10^{-6}$ level falls at the lower end of the risk range in the survey of risks, discussed earlier in this section.

Each of the benzene source categories would require additional control to reduce risks to an acceptable level meeting the acceptable risks which is also an ample margin of safety level for these categories. Requirements would entail maximum control and cessation of operation for some or all facilities in each category as later described.

*Comparison of Effects of Policy Approaches on Pending NESHAP*

Costs and feasibility cannot be considered at the acceptable risk stage, under *Vinyl Chloride*. However, as in other programs, such as setting National Ambient Air Quality Standards under CAA section 109, EPA will provide information to the public about broader implications of Approaches B, C, and D. The EPA views such information to be similar to that provided in an analysis under Executive Order 12291, or an environmental impact statement, but which is not considered as part of the statutory basis for decisionmaking. This section outlines questions about the feasibility of meeting such requirements in future NESHAP. It is apparent from analyzing the impact of various measures of acceptability on benzene source categories that such questions arise.

Because Approach A uses balancing of the three risk parameters and all other relevent risk information, as well as risk estimation limitations and uncertainties, it requires a separate judgment in each case. As a result, it is not susceptible of simple comparisons of effects on source categories of various pollutants. In contrast, Approaches B, C, and D use a single risk parameter as the criterion for acceptable risk, and their effects can be more easily compared among the baseline risk for other pollutants.

For Approach B, Figure V–6 indicates that, of the baseline risks shown there for other than benzene categories, those for coke oven emissions, radionuclides from coal-fired boilers, chromium from comfort cooling towers, and active uranium mill tailings would be at greater than 1 case/yr. The associated maximum individual risks range from $10^{-6}$ to over $10^{-3}$. The highest individual risks that would be left (because associated incidence is less than 1 case/yr) would be between $10^{-3}$ and $10^{-2}$ for four source categories.

For the coke oven emissions category, current estimates indicate that in order to reduce annual incidence to less than 1 case/yr, all sources would have to meet the most stringent level of emission control being achieved by any currently operating coke oven, or otherwise comply with a maximum emissions cap. Some source closures and/or shutdowns of large proportions of some existing batteries would be likely. Overall, even applying present technology at all sources might not achieve the emission levels needed to meet the incidence criterion within the 2-year NESHAP compliance period. New technology for control of existing coke ovens, or alternative technologies for producing coke would likely be necessary, or, alternatively, imported coke would be used.

The incidence associated with emissions of radionuclides from coal-fired boilers comes from about 200,000,000 people being within 50 km of the 50,000 sources while exposed at individual risk below $1\times10^{-6}$. Whether it is feasible, considering costs, to achieve less than 1 annual incidence for this source category is presently unknown. Currently existing

requirements for disposal of uranium tailings will achieve an acceptable incidence level for emissions of radionuclides. With few exceptions, active mill tailings facilities could only achieve an annual incidence less than 1 by closing, and by going to disposal.

Chromium from comfort cooling towers is proposed to be regulated under the TSCA.

For Approach C, Figure V–6 shows that five of the source categories are within the acceptable range. The incidence associated with the categories above the line ranges from roughly 1 per 1,000 years to about 100 per year. Any category above the line would have to be controlled to achieve a level below the acceptable risk criterion.

Table V–2 shows the likelihood of several important source categories being able to meet this acceptable risk requirement. Table V–2 include rough estimates of the number of plants that would permanently shut down, and coke production cutbacks for coke by-product recovery plants. Although the underlying assumptions vary somewhat for the different categories, all of the estimates shown under Approaches C and D are based on the technological limits of the controls known to EPA. These estimates are not derived from economic analyses. More detail on the benzene source categories can be found in Sections VII through X.

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TABLE V-2. TECHNOLOGICAL FEASIBILITY OF COMPLIANCE WITH ACCEPTABLE RISK CRITERIA

| Category | Approach B 1 case/yr | | Approach C $1 \times 10^{-4}$ | | Approach D $1 \times 10^{-6}$ | |
|---|---|---|---|---|---|---|
| | Feasible Control[a] | Shutdown/ Total Sources[a] | Feasible Control[a] | Shutdown/ Total Sources[a] | Feasible Control[a] | Shutdown/ Total Sources[a] |
| Chemicals | | | | | | |
| Ethylbenzene/styrene | + | | + | - | +Some | Some |
| Benzene storage | + | - | + | - | Unknown | Unknown |
| Equipment leaks | + | - | +(30/131) | 100/131 | - | All |
| Coke by-product plants | + | - | +(40/44)[b] | 4/44 | - | All |
| Coke ovens | ±[c] | c | +(1-4/40) | 36 to 39/40 | - | All |
| Radionuclides/Radon | | | | | | |
| Active uranium mill tailings | + | NA[d] | + | NA | - | NA |
| Underground uranium mines | + | NA | - | NA | - | NA |
| Elemental phosphorus plants | + | NA | + | NA | ± | NA |
| DOE facilities | + | NA | + | NA | ± | NA |
| NRC licensees | + | NA | + | NA | ± | NA |
| Coal-fired boilers | + | NA | + | NA | + | NA |

[a] Achievability of control level is estimated using available analyses of risks and technical feasibility, not costs. Qualitative assessments represent: "+" = technology is available and should achieve risk target in all cases; "±" = available technology will not reduce risks to target at all sites; and "-" = available technology cannot achieve target.

[b] Of the 40, 8 are not expected to meet the $1 \times 10^{-4}$ risk with technologically feasible controls alone: production cutbacks would be necessary It is estimated that there would be a loss of 40 percent of the total coke production at $1 \times 10^{-4}$

[c] Theoretically, controls could achieve < 1 case/yr. However, it is not likely all sources can achieve this level of control

[d] NA = not assessed

Additional perspective on the question of what proportion of source categories would or would not be at or below $1 \times 10^{-4}$ maximum individual risk prior to regulation is gained from EPA preliminary risk assessment results on 1,878 sources of 19 carcinogens. About two-thirds of the sources were estimated to present risk at or below $1 \times 10^{-4}$, and would therefore meet this acceptable risk requirement. A 90 percent reduction in emissions is taken to correspond to a 10-fold reduction in maximum individual risk. Thus, a reduction from $1 \times 10^{-2}$ to $1 \times 10^{-4}$ would require a 99 percent reduction in emissions. If it is assumed that the greatest impact of this $10^{-4}$ acceptable risk level is on sources that would have to reduce emissions by 99 percent or more, then about 10 percent of the 1,878 sources would be in the group of greater impact.

Approach D would operate much like Approach C. However, the effect of having a $1 \times 10^{-6}$ maximum individual risk "ceiling" on all toxic risk would be to impose significant additional requirements beyond those of any previous approach. First, many decisions not to regulate, or not to enter source categories into the Agency's ongoing risk assessment program would have to be reexamined. The surveyed assessment results discussed above indicate that approximately 85 percent of the 1,878 sources covered would be above $1 \times 10^{-6}$ prior to regulation. About 40 percent would have to reduce emissions by 99 percent or more. Virtually every source of radionuclides or radon would require action. The specific impacts and costs cannot be projected accurately at this time, but would likely be measured in billions of dollars. A comparison with natural background radiation levels will give an idea of the extent of control that would be needed. A $1 \times 10^{-6}$ lifetime risk would compare with:

1. For radionuclides other than radon—0.03 percent of annual natural background does.

2. For radon—0.01 percent of annual natural background dose from outdoor air.

To achieve this level of control, underground uranium mines would likely have to be closed and sealed. Uranium tailings piles would have to be covered; however, the practice of using soil and rock as cover would not be sufficient for some of the largest piles since average soil contains enough radium so that the amount needed to keep radon from escaping the tailings would itself generate enough radon to exceed the $1 \times 10^{-6}$ maximum individual risk ceiling. Many processors and users of radioactive materials would have to control to virtually no emissions. The cost and feasibility of meeting the requirements can only be roughly estimated at this time, but may be assumed to impose significant burdens.

Table V–2 shows the effects of Approach D on the source categories on which effects were shown for other approaches. Because Approach D would require the most significant emission reductions, it would have the greatest impact. However, under each of the approaches there would be a potential of production curtailment or closure of some or many sources.

As noted earlier, the criteria and method of decisionmaking for the ample margin of safety step would be the same for all approaches. Because the decision involves a judgment based on concurrent consideration of numerous factors, the potential outcomes cannot be discussed simply here. The Agency requests comments on how the various risk, technical, cost, economic, and uncertainty considerations should be balanced in the decision process for the ample margin of safety.

*General Discussion on Format of Standards Which Have No Technology Basis*

For some source categories, the acceptable risk and/or ample margin of safety decisions can result in the necessity of risk and emission reductions beyond what is achievable with any known technology. This situation occurs under Approach C for equipment leaks and coke by-product plants and Approach D for all benzene source categories. Examples of potential formats for expressing such standards are emission limits that would apply to whole facilities, emission limits with risk-based waivers, or actual risk formats. The various formats are discussed under Approach D in Section VII of this notice. Selection of one of these formats requires the Agency to consider whether to allow sources to comply with risk targets using site-by-site analyses or whether to require compliance with a national emission limit standard. For today's benzene proposals the emission limit format was used. Comment is requested on this format as well as any alternative formats.

## VI Maleic Anhydride Process Vents

Since proposal of the standard for maleic anhydride plants in 1980, the industry has consistently and voluntarily switched to the more economical n-butane feed process. Since the publication of the denial of petition for reconsideration, the one facility using benzene feed in the production of maleic anhydride has ceased to produce maleic anhydride (Docket No. OAQPS 79–3, Part II, Docket Item VIII–A–9). All benzene exposure due to this industry, and therefore, all risk from benzene, has been eliminated. Thus, the questions of acceptable risk and ample margin of safety are moot, and no Federal action is warranted.

## VII. Ethylbenzene/Styrene Process Vents

*Source Category Overview*

In 1985, there were 13 plants manufacturing ethylbenzene, styrene, or both. These facilities emitted benzene from process vents, including emergency release vents. Benzene emissions from equipment leaks at these plants were regulated under the benzene equipment leak standard (40 CFR Part 61, Subpart J).

*Estimation Methods and Uncertainties*

In analysis of the EB/S source category, as with the other sources of benzene emissions, emission estimates were used in calculating leukemia risk. This section discusses how benzene emissions and the associated health risks were calculated for EB/S process vents and the uncertainties associated with these estimates.

Benzene emission estimates from EB/S process vents considered in today's notice were based on emissions from the 13 EB/S plants operating in 1985. Benzene emissions from the process vents at these facilities totaled an estimated 155 Mg/yr.

The EPA developed plant-specific estimates of emissions from EB/S process vents using data on emissions and control practices requested by the Agency under the authority of section 114 of the CAA and provided by the sources. These emission estimates were calculated using detailed vent-by-vent information that was based on measurements and site-specific engineering calculations (Docket No. A–79–49, Docket Items IV–D–13, IV–D–34, IV–D–35, and IV–D–36). At plants where control was already in place, the estimate relfects at least 98-percent control efficiency from boilers, flares and incinerators, and facility-specific efficiencies for product recovery. Using this methodology, EPA estimated total emissions to be 208Mg/yr. This estimate was used in calculating the risk estimates previously presented in the **Federal Register** notice on denial of the petition for reconsideration. However, the Agency also presented a revised

benzene emission estimate of 155 Mg/yr in the same notice. The revision was based on data supplied by CMA and reflected changes in emissions at 3 of the 13 plants (Docket No. A–79–49, Docket Item IV–F–2, VI–D–2). These changes included the addition of controls and process modifications. The fact that this total of 155 Mg/yr is based on site-specific measurements or engineering calculations at the 13 individual plants gives the Agency a high degree of confidence in this estimate of emissions from EB/S process vents in 1985.

To estimate leukemia risks attributable to benzene emissions from EB/S process vents nationwide, the EPA's Industrial Source Complex (ISC) dispersion model was used to predict ambient benzene concentrations, and the HEM was used to estimate population exposure to the concentrations and predict leukemia risk. Population exposure was modeled out to 20 km from each of the 13 sources. The ISC dispersion model was run using plant-specific data from the 13 plants for the case where total emissions were 208 Mg/yr. The risk estimates presented in today's notice were calculated by proportional adjustment of the risk estimates generated using ISC and HEM to account for changes in emissions at the three plants mentioned above.

The uncertainties associated with the ambient concentration estimates from the ISC and the exposure estimates from the HEM are typical of the general uncertainties associated with exposure modeling discussed in Section VI.

*Risk Characterization*

As discussed in Section V, the first step in making NESHAP decisions is determination of an acceptable risk level. In deciding what level of risk is acceptable for EB/S process vents under the four approaches, the Administrator considered the range of levels shown on Table VII–1. The levels represent example scenarios to show how different emission levels would result in different health risk profiles. Implicit in the range considered is the emission level of zero, not only for this source category, but also for the subsequent source categories discussed in this notice. The table presents the risk estimates at baseline in terms of estimated annual leukemia incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. All risk estimates for this and the subsequent source categories discussed in this notice have been presented to one significant figure. The baseline level represents the emissions as of 1985 with no Federal standard (i.e., the emission level of 155 Mg/yr). The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Emission Level A.

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TABLE VII-1. RISKS[a] FOR ETHYLBENZENE/STYRENE PROCESS VENTS AT DIFFERENT EMISSION LEVELS

| | | Emission Levels | |
|---|---|---|---|
| | | Baseline | A |
| Incidence (case/yr) | | 0.004 | 0.001 |
| Maximum Individual Lifetime Risk (MIR) | | $2 \times 10^{-5}$ | $1 \times 10^{-5}$ |
| Risk Distribution, cumulative (persons)[b,c] (modeled to 20 km) | $\geq 1 \times 10^{-2}$ | 0 | Not available |
| | $\geq 1 \times 10^{-3}$ | 0 | |
| | $\geq 1 \times 10^{-4}$ | 0 | |
| | $\geq 1 \times 10^{-5}$ | 700 | |
| | $\geq 1 \times 10^{-6}$ | 40,000 | |
| | Total Modeled | 400,000 | |
| Incidence for Each Risk Group, non-cumulative (case/yr)[d] | $\geq 1 \times 10^{-2}$ | 0 | Not available |
| | $\geq 1 \times 10^{-3}$ | 0 | |
| | $\geq 1 \times 10^{-4}$ | 0 | |
| | $\geq 1 \times 10^{-5}$ | 0.0002 | |
| | $\geq 1 \times 10^{-6}$ | 0.001 | |
| | $< 1 \times 10^{-6}$ | 0.003 | |

[a]All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b]The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 40,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c]Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section IV of this notice.

[d]This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 0.001 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000).

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*Application of Alternative Policy Approaches*

The decisions that would result from application on each of the four policy approaches, described in Section V, to the EB/S process vents source category are presented below.

Approach A. Case-by-Case Approach

*Decision on Acceptable Risk.* The estimated maximum individual lifetime risk of EB/S process vents is $2 \times 10^{-5}$ at baseline. (This is the increased risk of contracting cancer if an individual were exposed continuously to the maximum modeled annual average concentration of 0.8 ppb for 70 years). This estimate is within the range generally considered to be preferred under the case-by-case approach. The annual incidence at the baseline is estimated to be 0.004 leukemia case/yr, which is considered to be small. In addition, as the table shows, only 0.0002 case/yr is associated with lifetime risk levels of $1 \times 10^{-5}$ or higher. Most of the incidence is associated with the large population exposed to predicted lifetime risks in the $10^{-6}$ range or lower. As noted in Section V, incidence estimates at the $10^{-6}$ and lower risk levels are given less weight under this approach because they are generally considered to be small and the uncertainty in the risk estimates increases at these lower levels. The modeled maximum benzene concentration from EB/S emissions in 0.8 ppb, which is close to the estimated average rural background exposure, but most of the population is exposed to lower concentrations from EB/S emissions.

Based on consideration of the preceding factors, the health impacts at the baseline benzene emission level from EB/S process vents are considered acceptable under the case-by-case approach.

*Decision on Ample Margin of Safety.* In determining an ample margin of safety under all four policy approaches, and for any source category, factors such as model uncertainties, available controls and the risk reductions they would achieve, the cost effectiveness of emission and risk reductions, and other relevant factors are considered.

For EB/S process vents, the estimates of annual incidence and maximum individual lifetime risk at the baseline emission level are quite low. Moreover, the majority (75 percent) of the incidence is associated with lifetime risk levels of less than $1 \times 10^{-6}$. A very small additional reduction in risk achievable by control of the few remaining uncontrolled intermittent emission sources using 98-percent efficient combustion devices (e.g., boilers and flares). Control of these sources would further reduce benzene emissions by approximately 100 Mg/yr. Such additional control measures could reduce the estimated maximum individual lifetime risk from $2 \times 10^{-5}$ to $1 \times 10^{-5}$ and could reduce the annual incidence by 0.003 case/yr. The estimated cost of this additional control is relatively low, about $200,000/yr (1982$).

The baseline risks are considered under this approach to provide an ample margin of safety given that the majority of the low baseline risk is associated with exposure at lifetime risks of less than $1 \times 10^{-6}$. Additional control is not warranted because the costs are disproportionately high when compared to the small reductions in risk which would be achieved. Present controls in the EB/S industry are in the form of product recovery devices or by routing emissions to the process unit's boilers to conserve energy (less fuel would be required due to the energy content of the waste stream). Thus, there is no incentive for removal of existing controls. Additionally, there is no incentive for new sources to waste product or energy and major new sources would be subject to other EPA requirements (e.g., new source review, prevention of significant deterioration). Thus, less effective controls are not expected in the future. For these reasons, no standard mandating the present control level is proposed under Approach A.

Approach B. Incidence-Based Approach

*Decision on Acceptable Risk.* Total annual incidence from benzene emissions from EB/S process vents is estimated to be 0.004 case/yr, or 1 case every 250 years. Under the criteria of the incidence-based approach, the baseline level of risk for EB/S process vents would clearly be acceptable.

*Decision on Ample Margin of Safety.* For EB/S process vents, the estimates of annual incidence and maximum individual risk are low. The maximum modeled annual average benzene concentration is 0.8 ppb, which is comparable to rural background levels. Most of the population is exposed to much lower concentrations from EB/S process vents.

The baseline level of emissions reflects the fact that most EB/S process vents already have emission control equipment. Control of the remaining uncontrolled intermittent emission sources would further reduce benzene emissions by approximately 100 Mg/yr. Estimated annual incidence would be reduced by 0.003 case/yr, leaving a residual incidence of 0.001 case/yr. The majority of the baseline incidence is associated with the population at lifetime risk levels below $1 \times 10^{-6}$, and most of the incidence reduction is associated with the population exposed to these low risk levels. The estimated cost of this additional control is estimated to be about $200,000/yr (1982$).

Under the incidence-based approach, the baseline incidence is considered to provide an ample margin of safety. Factors considered in this determination include the fact that the population is exposed to very low risk levels at baseline and the disproportionate cost of control relative to the small risk reduction which could be achieved. Furthermore, for reasons stated in the discussion of Approach A, EPA would not propose a standard to mandate the present level of control under this approach.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

*Decision on Acceptable Risk.* As shown in Table VII–1, the maximum individual lifetime risk at baseline is estimated to be $2 \times 10^{-5}$. As previously discussed, this risk level is associated with exposures to an annual average concentration of 0.8 ppb continuously for a period of 70 years.

Under the criterion of this approach, which requires target maximum individuals risks in the range of $1 \times 10^{-4}$ or less, the baseline risks would be judged acceptable.

*Decision of Ample Margin of Safety.* For EB/S process vents, the estimates of annual incidence and maximum individual risks are low. The predicted baseline maximum individual risk of $2 \times 10^{-5}$ is within the target range for Approach C, and is well below the $1 \times 10^{-4}$ level. As described in the discussions of Approaches A and B, the majority of the population exposed to emissions from EB/S process vents are exposed to risk levels below $1 \times 10^{-6}$. Only a small reduction in risks would be achievable using known control techniques. Maximum individual risks would be reduced from a baseline level of $2 \times 10^{-5}$ to a level of $1 \times 10^{-5}$ by applying these controls, and incidence would be reduced by 0.003 case/yr.

Considering the above factors, the baseline emission level would be judged to provide an ample margin of safety under policy Approach C. Furthermore, for reasons discussed in the section on Approach A, EPA would not propose a standard to mandate the present level of control.

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**Approach D. $1\times10^{-6}$ or Less Maximum Individual Risk Approach**

*Decision on Acceptable Risk.* At baseline, the estimated maximum individual lifetime risk is $2\times10^{-5}$, and maximum risks for 6 of the 13 facilities exceed the Approach D target maximum risk level of $1\times10^{-6}$. Therefore, under Approach D, the baseline risks would be judged unacceptable, and EPA would propose standards to reduce maximum individual risks to at or below $1\times10^{-6}$.

*Decision on Ample Margin of Safety.* For the facilities with baseline maximum individual risks above $1\times10^{-6}$, EPA cannot identify control technologies that would achieve risk levels of $1\times10^{-6}$ or lower. As previously noted, application of the additional feasible control to uncontrolled intermittent emission sources would result in an estimated maximum risk of $1\times10^{-5}$, which exceeds the target level of Approach D of $1\times10^{-6}$. Thus, the only types of standards that could be proposed to reduce maximum individual risk to below $1\times10^{-6}$ for all facilities would be emission limits, emission limits with risk-based waiver provisions, or risk-based limits. These limits would apply to the total combined benzene emissions from all process vents at an EB/S facility.

Under an emission limit format, total emissions from all facilities would be required to be below a given level. The level would be computed to ensure that no facility would cause maximum risks above $1\times10^{-6}$. However, since risk estimates will vary even for facilities with the same emission rate depending on dispersion characteristics (e.g., stack height, exit velocity, and flue gas temperature), meteorology, and population patterns, some facilities complying with the emission limit could have maximum individual risks well below $1\times10^{-6}$.

Under an emission limit with a risk-based waiver, a facility would be permitted a waiver from the emission limit if it could demonstrate that because of emission source dispersion characteristics, meteorology, or population patterns (in the case in which maximum risk were determined with reference to actual residences), the generally applicable emission limits resulted in maximum individual risks lower than $1\times10^{-6}$.

If a risk-based limit were chosen, each facility would have to reduce emissions to achieve estimated maximum individual risks of $1\times10^{-6}$ or lower. Under this format, as well as the emission limit with risk-based waiver format, emission rates would be allowed to vary among facilities. The emission reduction required for each facility could be determined by facility-specific dispersion and exposure modeling. This alternative format could allow for land use planning in addition to emission reductions as means of achieving the target risk level.

To implement either a standard or a waiver to an emission limit that is risk-based, EPA would have to develop guidance on acceptable methodology for conducting the risk modeling. This would include guidance on acceptable (1) dispersion modeling assumptions such as, meteorology and atmospheric stability; (2) characterization of the emission rate, gas exit velocity and temperature, and release height of the emission sources; (3) estimation of the population and their location in the modeled area; and (4) the radial distances from the source for which concentrations are estimated. In addition, the Agency would have to decide whether maximum individual lifetime risk is to be determined at actual or potential sites of exposure. Even with the models used by EPA in risk assessments, many different assumptions can be used and these can significantly affect the estimates. Without such guidance it would be difficult for enforcement personnel to determine if the modeling analysis is appropriate for demonstrating compliance or to demonstrate that a modeling analysis is unacceptable. Although guidance can be developed from the existing models, it would require more time than is available under the court order to define precisely the range of acceptable assumptions for site-specific analyses.

For benzene, an ambient monitoring alternative to site-specific risk analysis also cannot be used for either $1\times10^{-6}$ or $1\times10^{-4}$ standards. A $1\times10^{-6}$, or lower, standard would require the benzene concentration from the source to be 0.04 ppb or lower; for a $1\times10^{-4}$ risk standard, the concentration would be 4 ppb, or lower. Since background concentrations of benzene are typically 1 to 6 ppb, it would not be feasible to differentiate between a source's contribution to ambient concentrations and variations in natural background levels or in analytical measurements. Thus, compliance with or violation of the standards could not be demonstrated by monitoring.

As with a risk-based standard or waiver, it will take considerable time both to develop procedures, and to review and approve demonstrations of compliance with an emission limit standard. Compliance with an emission limit is expected to require extension of available procedures to low concentrations or development of new test methods and acceptable engineering analyses. In addition, many facilities may elect, subject to EPA approval, to conduct site-specific analyses including testing. In such cases it would be resource intensive to industry and EPA to implement the standard. However, of the alternatives, the risk-based limit is considered to present somewhat greater difficulties because of the additional considerations involved.

Therefore, in today's notice, to illustrate the effects of applying policy Approach D ($1\times10^{-6}$ risk target), EPA has selected an emission limit alternative. It is anticipated that all the alternatives would be difficult and costly to implement. However, the Agency requests comments on all alternatives.

The emission limit that would ensure that no EB/S plant produces maximum individual risks exceeding $1\times10^{-6}$ is a total emission limit of 5.5 kg benzene/day (or 2 Mg/yr) from all process vents at any EB/S facility. This emission limit was calculated by determining the emission/risk ratios for EB/S facilities that control all process vent streams by combustion as seen in the risk modeling results and calculating the emission level that would correlate to a maximum risk of $1\times10^{-6}$ for facilities with the highest risk per unit of emissions. This calculation assumes that risk will be reduced in proportion to emissions.

With an emission limit of 5.5 kg benzene/day, annual emissions from the 13 facilities would be reduced to no more than 26 Mg/yr if all 13 facilities continued to operate. Annual incidence for EB/S process vents would be reduced to about 0.0007 case/yr. No individual would be exposed to a lifetime risk level above $1\times10^{-6}$, and the majority of the population would be exposed to much lower levels. Therefore, under Approach D, this emission limit would also be considered to provide an ample margin of safety.

Since EPA has not identified control techniques that would reduce benzene emissions to 5.5 kg/day, the owners or operators would have to determine appropriate means of demonstrating compliance with the standard. Furthermore, the benzene concentrations in the exhaust gas that would be required to meet this emission limit at some facilities are below detectable concentrations using the available EPA-approved test methods. Therefore, EPA requests comments on how compliance would be demonstrated under this approach. It is also unknown if plantwide emissions can be reduced to 5.5 kg/day at all facilities. Controlled

process vents emissions at 8 of 13 facilities operating in 1985 exceeded this limit. Because EPA does not know how the standard might be achieved at those facilities, EPA cannot at present estimate the costs or economic impacts of achieving this emission limit. However, it is thought that some closures might result due to technical difficulties of achieving the emission limit. The potential economic impacts of any closures could include increased unemployment and the associated community impacts, loss of tax revenues, and price increases. The EPA also invites comment on the economic impacts of closure.

## VIII. Benzene Storage Vessels

*Source Category Overview*

As of the June 6, 1984, withdrawal of the proposed standard for benzene storage vessels, 126 facilities with benzene storage vessels were identified. These facilities generally have multiple vessels. Benzene storage vessels are located in petroleum refineries, chemical plants, and bulk storage terminals.

*Estimation Methods and Uncertainties*

In analysis of the benzene storage vessel source category, as with other sources of benzene emissions, emission estimates were used in calculating leukemia risk. This section discusses how benzene emissions and the associated health risks were calculated for benzene storage vessels and the uncertainties associated with these estimates.

Benzene emission estimates presented in this notice are based on vessels at 126 plants, using model vessels as a basis for the estimates. The emission estimates have not been revised or updated since the analysis for the withdrawal of the proposed standard in 1984. When developing benzene emission estimates for storage vessels, EPA carefully considered data from four different testing programs conducted by Chicago Bridge and Iron for a storage vessel vendor, EPA, and API (two test programs). These tests spanned the range of equipment configurations typically used on benzene storage vessels such as various roof and seal types.

The emission estimates derived from the testing programs were applied to model units for large and small benzene producers, benzene consumers, and bulk storage terminals. The model units were assigned to each of 126 plants with benzene storage vessels in one or more of the above uses. Total emissions are estimated to be between 620 and 1,290 Mg benzene per year. The lower end of this range, 620 Mg/yr, reflects the assumption that all storage vessels have continuous seals. The upper end of the range, 1,290 Mg/yr, was based on the assumption that some vessels are equipped with shingled seals, which emit more benzene than continuous seals. The number of vessels estimated to have shingled seals is based on a 1978 survey of benzene storage vessels.

The Agency believes that the emission factor used to estimate emissions from vessels with shingled seals is likely higher than the true value. The emission tests on shingled seals involved some test procedure irregularities which EPA strongly believed caused emissions to be overestimated, although the Agency could not quantify this overestimation. More details on the development of emission estimates from test data can be found in the Withdrawal BID.

The risk of leukemia attributable to benzene emissions from benzene storage vessels was calculated based on the range of emission estimates that reflect the assumptions about the use of continuous seals and shingled seals. In developing the risk estimates, EPA ran the HEM based on the assumption that all model vessels had continuous seals. From these results, the estimates were proportioned to reflect the use of shingled seals. The HEM was run for 126 plants with exposure modeling to a 20-km radius around each plant.

Industry practice is to equip new benzene storage vessels with continuous seals rather than shingled seals. Thus, over the 70-year risk estimating period as existing shingled seal vessels are replaced with new continuous seal vessels, the estimated emissions and risks from storage vessels will likely lessen.

For a general discussion of risk assessment and modeling uncertainties, the reader is referred to Section IV of this preamble.

*Risk Characterization*

In deciding what level of risk is acceptable under the four approaches, the Administrator considered the range of levels presented in Table VIII–1, including, as noted previously, a zero emissions level.

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TABLE VIII-1. RISKS[a] FROM BENZENE STORAGE VESSELS AT DIFFERENT EMISSION LEVELS

| | | Emission Levels | |
|---|---|---|---|
| | | Baseline | A |
| Incidence (case/yr) | | 0.05 - 0.1 | 0.03 |
| Maximum Individual Lifetime Risk (MIR) | | $4 \times 10^{-5}$ to $4 \times 10^{-4}$ | $3 \times 10^{-5}$ |
| Risk Distribution cumulative (persons)[b,c] (modeled to 20 km) | $\geq 1 \times 10^{-2}$ | 0 | 0 |
| | $\geq 1 \times 10^{-3}$ | 0 | 0 |
| | $\geq 1 \times 10^{-4}$ | 10 | 0 |
| | $\geq 1 \times 10^{-5}$ | 20,000 | 700 |
| | $\geq 1 \times 10^{-6}$ | 900,000 | 80,000 |
| | Total Modeled | 70,000,000 | 70,000,000 |
| Incidence for Each Risk Group, non-cumulative (case/yr)[d] | $\geq 1 \times 10^{-2}$ | 0 | 0 |
| | $\geq 1 \times 10^{-3}$ | 0 | 0 |
| | $\geq 1 \times 10^{-4}$ | 0 | 0 |
| | $\geq 1 \times 10^{-5}$ | 0.004 | 0.0002 |
| | $\geq 1 \times 10^{-6}$ | 0.02 | 0.02 |
| | $< 1 \times 10^{-6}$ | 0.08 | 0.01 |

[a] All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b] The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 900,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c] Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section IV of this notice.

[d] This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 0.02 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000).

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The levels represent example scenarios to show how different emission levels would result in different health risk profiles. The table summarizes the risks (i.e., annual incidence, maximum individual lifetime risk, risk distribution, and incidence by risk group) that were estimated for the baseline emission level and a lower level shown as Emission Level A. The baseline represents the emissions as of 1984 with no Federal standard (i.e., the emission level ranging from 620 Mg/yr to 1,290 Mg/yr).

*Application of Alternative Policy Approaches*

The decisions that would result from application of each of the four policy approaches, described in Section V, to the benzene storage vessel source category are presented below.

Approach A. Case-by-Case Approach

*Decision on Acceptable Risk.* As shown in Table VIII–1, the estimated maximum individual lifetime risk at baseline ranges from $4 \times 10^{-5}$ to $4 \times 10^{-4}$. (This is the increased risk of contracting cancer if an individual were exposed continuously to the maximum extrapolated concentration of 1 to 15 ppb for 70 years). These estimates are within the range generally considered to be preferred under the case-by-case approach. The lower end of this range reflects the assumption that all storage vessels have continuous seals, while the upper end of the range is based on the assumption that all vessels at the maximum risk plant have shingled seals. The upper end of the range $4 \times 10^{-4}$) is a particularly conservative estimate for three reasons. First, the emission estimate for shingled seals is believed to be an overestimate. Second, the assumption that all storage vessels at the maximum risk plant have shingled seals is a worst-case assumption and probably overestimates the risk. Third, over the assumed 70-year exposure period, many of the existing vessels will be replaced and the new vessels will likely have continuous seals and, therefore, lower emissions.

The estimated annual incidence ranges from 0.05 to 0.1 case/yr. The range reflects the range of emission estimates discussed above (620 to 1,290 Mg/yr). These incidence levels are considered to be relatively small. Furthermore, 0.004 case/yr is associated with a lifetime risk level of $1 \times 10^{-5}$ or higher. Therefore, almost all of the incidence (0.1 case/yr) is associated with the large population exposed to lifetime risks in the $10^{-6}$ range or less. As previously noted, incidence estimates at the $10^{-6}$ risk level and lower are given less weight because they are generally considered to be small and the uncertainty in the risk estimates increases at these lower risk levels.

The annual average concentrations due to emissions from benzene storage vessels that result in the maximum risk range of $4 \times 10^{-5}$ to $4 \times 10^{-4}$ are around 1 to 15 ppb. Additionally, as mentioned above, essentially all of the incidence is associated with risks in the $10^{-5}$ range or less; these risks are from exposure to concentrations of less than 4 ppb. Average urban ambient (background) concentrations are around 3 to 6 ppb (see Section IV).

After consideration of the above factors, the baseline level of risk for benzene storage vessels is determined to be acceptable under the case-by-case approach.

*Decision on Ample Margin of Safety.* For further analysis, the Agency examined two control options that would require all vessels to have emission reduction equipment that many vessels already have. Option 2 would require the use of internal floating roofs on fixed roof tanks, more effective primary seals, improvements to fittings (e.g., gaskets), and secondary seals on external floating roof tanks. These are the same controls that are required for volatile organic liquid storage vessels (including benzene vessels) in 40 CFR Part 60, Subpart Kb, which affects vessels constructed or rebuilt after July 23, 1984. Option 1 would require the controls under Option 2 and additionally require secondary seals for internal floating roof tanks. The estimated impacts of the options are shown in Table VIII–2. These include the emission reduction, annual control cost, cost per Mg of emission reductions, the residual incidence, and the maximum individual lifetime risk.

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TABLE VIII-2. IMPACTS OF OPTIONS FOR BENZENE STORAGE VESSELS

| Option | Annual Cost ($MM/yr) 1982[a] | Emission Reduction (Mg/yr)[b] | Average[c] $/Mg | Incremental[c] $/Mg | Population Left at Risk >1 x $10^{-4}$ | Residual Incidence[d] | Maximum Individual Lifetime Risk[d] |
|---|---|---|---|---|---|---|---|
| 1 | 1.3 | 900 | 1,400 | 9,900 | 0 | 0.03 | $3 \times 10^{-5}$ |
| 2 | 0.1 | 780 | 140 | 140 | 0 | 0.04 | $3 \times 10^{-5}$ |
| Baseline | 0 | 0[e] | 0 | 0 | 0 to 10 | 0.05 to 0.1 | $4 \times 10^{-5}$ to $4 \times 10^{-4}$ |

[a] $MM is millions of dollars. The dollar year is 1982.

[b] Bz = benzene, VOC = volatile organic compounds.

[c] "Average" means compared to baseline. "Incremental" numbers compare each option with next less stringent option. They are not the same as the highest incremental value per source type.

[d] Risk estimates are rounded to one significant figure. Note that essentially all of the baseline incidence occurs in the large population with risk levels of $10^{-5}$ or less. These risks are associated with exposure to concentrations of less than 4 ppb. Average urban ambient (background) concentrations are around 3 ppb.

[e] Baseline emissions are between 620 and 1,290. The reductions are calculated from 1,290 Mg/yr, which is the more likely value of the two ends of the emissions range.

Option 2 would reduce the estimated maximum individual lifetime risk to $3\times10^{-5}$ from the baseline range of $4\times10^{-5}$ to $4\times10^{-4}$. (Under the control options, the risks are not expressed as ranges because all vessels would be required to have continuous seals. Thus, no facility could have vessels with shingled seals, which represent the upper end of the baseline range). The estimated annual incidence would be reduced by 0.01 to 0.06 case/yr. This option would also substantially reduce the population exposed to risk levels of greater than $1\times10^{-5}$ and $1\times10^{-6}$. The nationwide annual costs associated with Option 2 are $0.1 million/yr, which are considered to be relatively low.

The Agency also considered Option 1. However, it would result in no additional reduction in maximum individual lifetime risk beyond that achieved by Option 2. Furthermore, annual incidence would be reduced by only an additional 0.01 case/yr, at a cost of $1.3 million/yr. The additional incidence reduction is associated mainly with the population exposed to lifetime risk levels of below $1\times10^{-6}$.

Under Approach A, EPA would consider Option 2 to provide an ample margin of safety. Although the baseline risks are relatively low (considering the conservatism in the upper end of the range), they can be reduced further at a reasonable cost using available control technology. Additional controls beyond Option 2 are not warranted. The costs of additional controls are disproportionately high considering that no additional reduction in maximum individual lifetime risk and only a small reduction in annual incidence would be achieved.

The regulation proposed under this approach would consist of the equipment specifications and operating practices described in Section XII.

A question in all of the approaches for the ample margin of safety decisions is whether to require all technically feasible controls for which costs are in some sense reasonable no matter how small the health risk or whether there is some risk reduction which is too small to warrant the public cost of rulemaking. Public comment is requested on this area.

Approach B. Incidence-Based Approach

*Decision on Acceptable Risk.* Total annual incidence resulting from benzene emissions from storage vessels is estimated to range from 0.05 to 0.1 case/yr. As previously described, the range reflects the range in emission estimates. The lower end of the range is based on the assumption that all plants have continuous seals while the upper end is based on the assumption that some vessels are equipped with shingled seals, which emit more benzene than continuous seals. Under the criteria of the incidence-based approach, the baseline level of risk for benzene storage vessels would clearly be acceptable.

*Decision on Ample Margin of Safety.* For benzene storage vessels, the estimates of annual incidence and maximum individual risk at the baseline emission level are relatively low and the upper end of the estimated ranges are conservative. Essentially all of the annual incidence is associated with lifetime risks below $1\times10^{-5}$, and the great majority of incidence (about 80 percent, or 0.08 out of 0.1 case/yr) is associated with lifetime risk levels of below $1\times10^{-6}$. Risk levels of $1\times10^{-5}$ and below are associated with ambient concentrations of 0.4 ppb and lower, which is close to the average rural background exposure.

The baseline estimates reflect the assumption that most storage vessels are already fitted with equipment that reduces emissions. However, additional reduction in risk would occur by requiring that all vessels have emission reduction equipment. Table VIII–2 shows the impacts of two control options which are described under the discussion for Approach A. Option 2 would reduce the estimated maximum individual lifetime risk to $3\times10^{-5}$ and incidence by 0.01 to 0.06 case/yr (from baseline) at a reasonable cost. Option 1 would further reduce residual incidence by 0.01 case/yr and would not change the maximum individual lifetime risk compared to Option 2. This would cost $1.3 million/yr. For these reasons (which are described more fully under Approach A), Option 2 would be considered to provide an ample margin of safety under Approach B. Additional control beyond Option 2 would not be warranted. The details of the equipment specifications and operating practices that are proposed under this approach are described in Section XII.

As with Approach A, a question was whether to require in the ample margin of safety step all technically feasible controls for which costs are in some sense reasonable no matter how small the health risk or whether there is some risk reduction which is too small to warrant the public cost of rulemaking.

Approach C. $1\times10^{-4}$ or Less Maximum Individual Risk Approach

*Decision on Acceptable Risk.* As shown in Table VIII–1, the estimated maximum individual lifetime risk at baseline ranges form $4\times10^{-5}$ to $4\times10^{-4}$. The upper end of the range, which exceeds the target risk, reflects the assumption that all storage vessels at the maximum risk plant have shingled seals. Under the criteria of the approach requiring target maximum risks in the range of $1\times10^{-4}$ or less, the baseline risks would not be considered acceptable. Additional control would be necessary to reduce risks to an acceptable level at or below the $1\times10^{-4}$ target.

*Decision on Ample Margin of Safety.* Reduction in maximum individual lifetime risks to below the $1\times10^{-4}$ level can be achieved through application of available emission control equipment. Two options considered are shown in Table VIII–2. As previously noted, many benzene storage vessels are already fitted with emission reduction equipment at baseline. As noted in Approach A, Option 2 would require that all vessels have emission reduction equipment including the use of internal floating roofs on fixed roof tanks, more effective primary seals, improvements to fittings (e.g., gaskets) and secondary seals on external floating roofs. This option would reduce the estimated maximum individual lifetime risk to $3\times10^{-5}$, which is within the target range. Estimated annual incidence would be reduced by 0.01 to 0.06 case/yr. This would substantially reduce the population exposed to risk levels of greater than $1\times10^{-5}$. Control of the maximum individual risk to this level also reduces the population exposed to lifetime risks levels between $1\times10^{-6}$ and $1\times10^{-5}$. The costs associated with this option are about $0.1 million/yr, which are considered to be low.

Option 1 would result in no additional reduction in maximum individual risk beyond that achieved by Option 2 (i.e., maximum risk would remain at the $3\times10^{-5}$ level). Furthermore, annual incidence would be reduced by only an additional 0.01 case/yr, at a cost of $1.3 million/yr. The additional incidence reduction is associated mainly with the population exposed to lifetime risk levels of below $1\times10^{-6}$.

Under Approach C, EPA would consider Option 2 to provide an ample margin of safety. This option would reduce the maximum individual risk to within the target range and well below the $1\times10^{-4}$ level. As described above, the population exposed to lifetime risks in the $10^{-5}$ and $10^{-6}$ ranges would be significantly reduced. Additional controls beyond Option 2 are not warranted. The costs of additional controls are disproportionately high considering that no additional reduction in maximum individual risk and only a

very small reduction in annual incidence would be achieved.

The regulation proposed under this approach would consist of the equipment specifications and operating practices described in the summary of standards in Section XII of this preamble.

Approach D. $1\times10^{-6}$ or Less Maximum Individual Approach

*Decision on Acceptable Risk.* At baseline, the estimated maximum individual lifetime risk ranges from $4\times10^{-5}$ to $4\times10^{-4}$, as described in previous sections. Since this is clearly above the $1\times10^{-6}$ target risk level of Approach D, baseline risks would be judged unacceptable under this approach. Under this approach, EPA would propose standards to reduce the maximum individual risk to $1\times10^{-6}$ or less.

*Decision on Ample Margin of Safety.* The EPA cannot explicitly state at this time what control technologies would be capable of achieving maximum individual lifetime risk levels of $1\times10^{-6}$ or lower for all facilities with benzene storage vessels. As shown in Table VIII–2, application of the identified control techniques (Options 1 and 2), would result in an estimated maximum individual risk of $3\times10^{-5}$, which is still significantly above the target level of Approach D of $1\times10^{-6}$. Therefore, a facility emission limit (or risk limit) is currently the only means of reducing maximum individual risks to below $1\times10^{-6}$ at all sites. As previously discussed in the EB/S section (Section VII) under Approach D, an emission limit format has been selected for illustrative purposes, however comments on both formats are requested.

The emission limit that would ensure that no facility produces maximum individual risks exceeding $1\times10^{-6}$ is 0.47 kg/day (170 kg/yr). This emission limit would apply to the combined emissions from all benzene storage vessels located at a facility. The emission limit was calculated by proportional reduction of emissions from the storage facility with the highest maximum individual risk per unit of emissions.

With an emission level of 0.47 kg/day, annual emissions for the estimated 126 plants would be reduced to below 22 Mg/yr if all plants continued to store benzene. Annual incidence from benzene storage vessels would be reduced to about 0.002 case/yr, and no individual would be exposed to a lifetime risk level greater than $1\times10^{-6}$. Moreover, the majority of the population would be exposed to lifetime risk levels much lower than $1\times10^{-6}$. Therefore, under Approach D, this emission limit would be judged to provide an ample margin of safety.

Since EPA has not identified control techniques that would reduce emissions to 0.47 kg/day at all facilities, the owners or operators would have to determine the appropriate means of demonstrating compliance with the standard. One possibility that a plant may consider for complying with the emission limit is the venting of emissions from all storage vessels to a combustion device, such as a flare. However, EPA does not presently know if the emission limit could be achieved at all plants if this technique were applied to fixed roof vessels with no control equipment such as internal floating roofs. Moreover, EPA is not able to determine at this time whether the combination of emission reduction equipment (i.e., Options 1 and 2 in Table VIII–2) with a flare could achieve the emission limit at all plants. This is because EPA does not presently know if the emission reduction equipment specified in Options 1 and 2 will achieve as much control when used in combination with a flare as when used alone.

Because EPA does not know how the standard might be achieved, EPA cannot at present estimate the costs or economic impacts (including the potential for closures) of achieving this emission limit. However, it is expected that, at a mininum, the costs would be greater than those shown for the most stringent identified control technology (Option 1) in Table VIII–2. For example, the cost of retrofitting existing storage vessels with add-on control devices, such as flares, would vary with vessel design and the control device added. If a flare were used, an existing vessel may have to be replaced if it were unable to handle an inert gas blanket (which may be needed to avoid venting oxygen-containing streams to the flare). Also, the cost would vary depending on whether a flare were available onsite, and on the amount of supplemental fuel that was necessary for the flare.

## IX. Equipment Leaks

*Source Category Overview*

Typical stationary sources which handle benzene and, therefore, are likely to have fugitive benzene emissions from equipment leaks are petroleum refineries, chemical plants, and bulk storage terminals. As of publication of the final rules for benzene equipment leaks in 1984, there were 131 such facilities in the United States. These facilities are now required to be in compliance with the standard specified in 40 CFR Part 61, Subpart J, that was promulgated in 1984.

In these facilities, the fugitive emission sources of benzene are pieces of equipment handling process streams that contain benzene. These sources include pumps, pipeline valves, open-ended valves, flanges, compressors, safety/relief valves, sampling connections, process drains, and product accumulator vessels. The standard affects equipment that contacts process streams with at least 10 percent benzene (by weight).

*Estimation Methods and Uncertainties*

The evaluation of human health effects of benzene emissions from equipment leaks involved estimating emissions from the equipment sources described above and then using the HEM to predict concentrations, exposures, and leukemia risks from the estimated exposures. In addition to the uncertainties inherent in estimating risk described in Section IV of this preamble, considerable uncertainty is involved in estimating emissions from equipment leaks of benzene. This section describes the methods EPA used and highlights areas of uncertainty, so that the basis and limitations of the EPA's estimates can be better understood.

When Subpart J was promulgated in 1984, EPA estimated the NESHAP would reduce benzene emissions from equipment leaks by about 69 percent from the existing baseline. The standard was estimated to reduce benzene emissions from about 7,900 Mg/yr to 2,500 Mg/yr. The estimate of 2,500 Mg/yr is based on all 131 facilities existing in 1984 implementing the requirements of Subpart J. The Agency's current estimate of benzene emissions from equipment leaks remains as 2,500 Mg/yr. This estimate has not been revised to reflect changes in the number of facilities or changes in typical industry practices which might have occurred after promulgation of the standard and which might have affected the quantity of benzene emitted from equipment leaks. To be meaningful, such adjustments must be based on additional information and actual analysis of current industry practices. However, such analysis and revisions to the emission estimate based on a new analysis were not feasible in the time available for reconsideration of the standard.

A model unit methodology based on estimated average numbers of various equipment components was used to estimate benzene equipment leak emissions. Emissions for each model

unit were estimated using petroleum refinery VOC emission factors for each equipment component as explained in a memorandum to the docket (Docket No. A–79–27, Docket Item IV–B–22) and in the Promulgation BID. Average weight percentages of benzene assumed for each model unit's process stream were used to adjust the VOC emissions to total benzene emissions as described in the Proposal BID, pp. 7–6 to 7–7. The petroleum refinery VOC emission factors were developed statistically from field measurements. An explanation and analysis of emission factor development may be found in the AID. Emission estimates made using the emission factors and model units were aggregated on a process unit basis to develop nationwide estimates and on a facility basis to estimate population exposures and risks (Docket No. A–79–27, Docket Item IV–B–11).

As stated previously, the 2,500 Mg/yr was based on compliance by all facilities with the NESHAP. Control efficiencies reflected in this estimate were based on estimates of efficiencies of NESHAP controls as shown in Table IX–1 for each equipment type. Finally, the entire emission estimation procedure is described more completely in the Promulgation BID and the AID.

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TABLE IX-1. EFFICIENCIES OF CONTROLS FOR EQUIPMENT LEAKS

| Equipment Component | Control Technique | Percent Reduction in Benzene Emissions[a] |
|---|---|---|
| Pumps | Monthly leak detection and repair | 61 |
| Compressors | Degassing reservoir vents | 100 |
| Valves: | | |
| Gas | Monthly leak detection and repair | 73 |
| Liquid | Monthly leak detection and repair | 59 |
| Pressure relief devices | Control equipment (no detectable emissions) | 100 |
| Sampling connections | Closed-purge sampling | 100 |
| Open-ended lines | Caps on open ends | 100 |

[a]Percent reductions in benzene emissions based on data from the AID, Docket No. A-79-27, Docket Item IV-A-24. Benzene emissions were assumed to be reduced by the same percentage as VOC emissions.

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In evaluating uncertainties in the emission estimates, two issues should be mentioned. One involves the representativeness of petroleum refinery average emission factors used for estimating emissions of benzene. The benzene sources overall may have lower percentages of leaking equipment than were observed in the petroleum industry before implementation of leak controls. Recent studies indicate that the percentage of leaking components is probably lower than previously estimated due to changes over time and use of better controls for chemicals such as benzene with known human health risks. Specifically, limited surveys of sources subject to Subpart J show that the leak frequencies for valves are 2 percent or less (Docket No. A–79–27, Docket Items VII–I–2, VII–E–4, VII–D–2, VII–B–2). Evidence shows that improved maintenance does result in fewer leaking components and lower emission rates (Docket No. A–79–27, Docket Item VII–B–2). This lower percentage of leaking sources indicates that emission estimates may be overstated. The equipment leak estimates were calculated using factors estimating emissions for leaking and for nonleaking equipment, and these factors reflect average emission rates from facilities with higher percentages of leaking sources. For facilities with lower percentages of leaking sources, these factors will overestimate emissions for two reasons. First, the percentage of leaking sources, and hence the overall factor is overstated. Second, the average emission rates for leaking and nonleaking sources will not be characteristic of the distribution of sources at the facility. Therefore, the 2,500 Mg/yr estimate for equipment leak benzene emissions is likely to be overstated. However, the EPA believes that this level of control would not necessarily be found in the absence of a regulation.

The second uncertainty involved in the emission estimates concerns the assumed use of ordinary pumps and values in the model units. In actual practice, many facilities may use equipment with a lower potential to leak. Information has been submitted to the Agency showing that primary pumps in benzene service have been equipped with dual mechanical or packless seals in some facilities (Docket No. A–79–49, Docket Item II–D–13; Docket No. OAQPS 79–3, Part II, Docket Item II–D–008; Docket No. A–79–27, Docket Items II–D–65, II–D–70, II–D–77). The use of equipment with lower leak rates is not reflected in the emission estimates. Moreover, as mentioned previously, within the time allowed for reconsideration of the standard, it was impossible to revise the analysis of industry practice. Consequently, the emission estimates for the 131 facilities were viewed as upperbound estimates, and it is recognized that actual emissions today may be substantially lower.

The benzene equipment leak emission estimates for the 131 plants were input to the HEM and used to estimate population exposure and leukemia risks. Modeling revisions since 1984 included an extension of the modeling radius around each source from 20 to 50 km, and incorporation of the revised URE. For a general discussion of risk assessment and modeling uncertainties, the reader is referred to Section IV of this preamble.

In addition to the general modeling uncertainties discussed in Section IV, dispersion modeling of equipment leaks contains more uncertainty than modeling of emissions from stacks because equipment leaks are area sources. Only extremely limited verifications of area source modeling methodologies have been done to date. It is not possible to estimate the uncertainty because the uncertainty varies with the specific plant location and the meteorology used.

*Risk Characterization*

In deciding what level of risk is acceptable for equipment leaks under the four approaches, EPA considered the range of levels shown in Table IX–2. The levels represent example scenarios to show how different emission levels would result in different health risk profiles. Table IX–2 summarizes the risks (i.e., annual incidence, maximum individual lifetime risk, risk distribution, and incidence by risk group) that were estimated for the baseline emission level and two lower emission levels, shown as Emission Levels A and B. The baseline represents the emissions remaining after application of the NESHAP promulgated in 1984 (i.e., 2,500 Mg/yr).

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TABLE IX-2. RISKS[a] FROM EQUIPMENT LEAKS AT DIFFERENT EMISSION LEVELS

| | | Emission Levels | | |
|---|---|---|---|---|
| | | NESHAP (Current Baseline) | A | B |
| Incidence (case/yr) | | 0.2 | 0.1 | 0.04 |
| Maximum Individual Lifetime Risk | | $6 \times 10^{-4}$ | $2 \times 10^{-4}$ | $4 \times 10^{-5}$ |
| Risk Distribution, cumulative (persons)[b,c] (modeled to 50 km) | $\geq 1 \times 10^{-2}$ | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-3}$ | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-4}$ | 3,000 | 600 | 0 |
| | $\geq 1 \times 10^{-5}$ | 60,000 | 20,000 | 5,000 |
| | $\geq 1 \times 10^{-6}$ | 1,000,000 | 300,000 | 200,000 |
| | Total Modeled | 200,000,000 | 200,000,000 | 200,000,000 |
| Incidence for Each Risk Group, non-cumulative (case/yr)[d] | $\geq 1 \times 10^{-2}$ | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-3}$ | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-4}$ | 0.007 | 0.001 | 0 |
| | $\geq 1 \times 10^{-5}$ | 0.02 | 0.006 | 0.001 |
| | $\geq 1 \times 10^{-6}$ | 0.04 | 0.01 | 0.005 |
| | $< 1 \times 10^{-6}$ | 0.2 | 0.08 | 0.03 |

[a] All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b] The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 1,000,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c] Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section IV of the notice.

[d] This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 0.04 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000).

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*Application of Alternative Policy Approaches*

The decisions that would result from application of each of the four policy approaches, described in Section V, to the benzene equipment leaks category are presented below.

Approach A. Case-by-Case Approach

Decision on Acceptable Risk. As shown on Table IX–2, the estimated maximum individual lifetime risk of $6 \times 10^{-4}$ at the NESHAP emission level would fall within the range generally considered to be preferred under the case-by-case approach. (This is the increased risk of contracting cancer if an individual were exposed continuously to the maximum modeled annual average concentration of 35 ppb for 70 years). The estimated annual incidence at baseline is 0.2 case/yr, and nearly all of these cases occur in the large population exposed to predicted lifetime risks in the $10^{-6}$ range and lower. As noted in Section V, incidence estimates at the $10^{-6}$ and lower risk levels are given less weight under this approach because they are generally considered to be small and the uncertainty in the risk estimates increases at these lower risk levels.

In deciding an acceptable risk level under the case-by-case approach, EPA particularly examined the uncertainties discussed in Section IV and described earlier in this section. The assessment of these factors is summarized below. The overall weight of evidence for benzene carcinogenicity is strong (the URE is based on data from occupational exposure studies). Although the use of alternative dose/response models could produce different URE's for benzene (Docket Number OAQPS 79–3, Part I, Docket Item VIII–A–4), the linear non-threshold model used by EPA represents the best fit for the available data. The model is judged, however, to be conservative and therefore, the URE, as a measure of leukemogenic potency, could be considered to err in favor of the protection of public health. This URE, however, does not include nonleukemia cancer risks because statistical associations with other cancers have been found to date only in animal bioassays.

As previously noted, exposure modeling contains uncertainties and is based on emission estimates and other assumptions that, in this case, tend to overstate exposures. Specifically, the assumption that individuals are exposed continuously to the maximum modeled annual average concentration for 70 years may overestimate maximum individual lifetime risk. The assumption that the facilities will continue to operate at the same emission rate for 70 years particularly tends to overstate exposures because it ignores changes in design and operation of chemical plants and petroleum refineries. Furthermore, as discussed in the previous section, the annual emission estimates used in the analysis are considered to represent an upperbound estimate. If actual emissions and the expected decline in emissions over time could be considered in the exposure analysis, the risk estimates would be proportionally lower.

Even under these conservative emission assumptions, the estimated annual leukemia incidence is relatively low, 0.2 case/yr. Of this incidence, the majority is associated with lifetime risks of $10^{-6}$ and lower. Only 0.02 case/yr is associated with $10^{-5}$ risks and 0.007 caes/yr is associated with risks of $1 \times 10^{-4}$ and greater. It is estimated that no one would be exposed to lifetime risks of $1 \times 10^{-3}$ or higher, and the population at risk in the $10^{-4}$ range is estimated to be 3,000.

More than 90 percent of the predicted annual incidence is associated with the population exposed to benzene concentrations of less than 4 ppb, concentrations which are comparable with risks of less than $10^{-4}$. These concentrations are similar to average urban ambient (background) concentrations described in section IV.

Thus, after consideration of all of the above factors concerning the estimated maximum individual lifetime risk and annual incidence, the large proportion of the incidence associated with lifetime risks of less than $1 \times 10^{-6}$, and the likely overstatement of emissions, the Agency would propose that estimated baseline risks due to emissions of benzene from equipment leaks are acceptable under Approach A.

*Decision on Ample Margin of Safety.* As discussed above, the baseline risks would be acceptable under Approach A. Further analysis of equipment leaks was based on a review of the leak controls identified during the development of the NESHAP for this source category. For these sources, the estimated impacts of application of additional controls (Option 1) are shown in Table IX–3. The emission reduction, anticipated cocontrol of VOC, annual control costs, cost per Mg of emission reduction, residual incidence, and maximum individual lifetime risk were estimated. Table IX–3 shows the emission, risk, and cost impacts of the identified additional control techniques. The additional control of Option 1 reflects use of dual mechanical seals for pumps and sealed bellows valves. For the purposes of this analysis, this equipment is considered to be leakless (i.e., 100-percent control). It is not known if leakless valves/sealed bellows valves are available for all sizes and types of equipment in benzene service. Equipment or maintenance practices that would provide emission and risk reductions beyond Option 1 have not been explicitly identified by EPA.

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TABLE IX-3. IMPACTS OF OPTIONS FOR BENZENE EQUIPMENT LEAKS

| Option | Additional Annual Cost ($MM/yr) 1979[a] | Emission Reduction (Mg/yr) Bz/VOC[b] | $/Mg Bz/VOC | Population Left at Risk >1 x $10^{-4}$ | Residual Incidence[c] | Maximum Individual Lifetime Risk (MIR)[c] |
|---|---|---|---|---|---|---|
| Option 1 | 52.4 | 1,300/2,300 | 40,000/23,000 | 900 | 0.1 | $6 \times 10^{-4}$ |
| Baseline = Current NESHAP | 0 | 0/0[d] | 0 | 3,000 | 0.3 | $1 \times 10^{-3}$ |

[a] $MM is million of dollars. The dollar year is 1979.

[b] Bz = benzene; VOC = volatile organic compounds.

[c] Risk estimates are rounded to one significant figure. Note that essentially all of the incidence occurs in the population at the 1 in 100,000 risk level or less. These risks are associated with exposure to concentrations of less than 4 ppb. Average urban ambient (background) concentrations are around 3 ppb.

[d] Baseline emissions are 2,500 Mg/yr of benzene and 3,900 Mg/yr of VOC (including benzene). Emissions before implementation of the standard were 7,900 Mg/yr of benzene and 12,300 Mg/yr of VOC.

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Under Option 1, the estimated maximum lifetime risk would be reduced from $6\times10^{-4}$ to $2\times10^{-4}$, and the annual incidence would be reduced from 0.2 case/yr under the current NESHAP baseline to 0.1 case/yr. The majority of this incidence reduction occurs among the population exposed to lifetime risks less than $10^{-4}$ (i.e., exposed to concentrations of less than 4 ppb). As previously noted, these estimates are based on upperbound emission estimates. The actual emission reduction is expected to be less than indicated and the risk reduction would be proportionally lower. The additional annual cost to achieve Option 1 is estimated to be $52.4 million (Docket No. A–79–27, Docket Item V–A–1). The costs were computed using the annual cost per control component and the number of components used nationwide in existing units (Docket No. A–79–27, Docket Item IV–B–14). The majority of the estimated cost is from the cost of sealed bellows valves and would be incurred regardless of the magnitude of the actual emissions.

Although Option 1 shows some additional emission and risk reduction to be achievable, the control cost is disproportionately great when compared to the small reductions in risk which would be achieved. If the actual emission reduction were known and used, the option would likely be even less cost effective. Recognizing the conservatism in the emission estimates, the large proportion of the incidence associated with lifetime risks less than $1\times10^{-6}$, the questions regarding technical feasibility, and the costs of additional controls, under Approach A the Administrator would consider the emission levels associated with the existing NESHAP to protect public health with an ample margin of safety. Therefore, additional control beyond the existing NESHAP would not be warranted and thus would not be required under Approach A.

Approach B. Incidence-Based Approach

*Decision on Acceptable Risk.* Under the criterion of this approach, the incidence of 0.2 case/yr associated with the existing benzene equipment leaks standard would be acceptable.

*Decision on Ample Margin of Safety.* Since the predicted risk and incidence resulting from the current standard would be found acceptable under Approach B, the Agency would then consider other factors in determining an ample margin of safety. First uncertainties associated with the dose/response model were examined. As shown in Table IX–2, about 90 percent of the leukemia incidence is associated with risk levels less than $1\times10^{-5}$, which corresponds to exposure to benzene concentrations of less than 0.4 ppb. As noted in Section V, risk estimates in the $10^{-6}$ range and lower are given less weight because they are generally considered to be small and uncertainty in the risk estimates increases at these lower levels. Additionally, actual risks may be substantially lower due to actual leak frequencies in equipment subject to the NESHAP being lower than was assumed in the analysis. Other sources of uncertainty are discussed in Section IV and under Approach A in this section.

Next, EPA reviewed emission controls which were identified during development of the NESHAP for this source category. Table IX–3 shows the effects of an additional control level, Option 1, which reflects the use of dual mechanical seals for pumps and sealed bellows valves. For the purposes of this analysis, this equipment is considered to be leakless (i.e., 100 percent control). It is not known if leakless valves/sealed bellows valves are available for all sizes and types of equipment in benzene service. Equipment or maintenance practices that would provide emission and risk reductions beyond Option 1 have not been explicitly identified by EPA.

Risk reduction, cost, and cost effectiveness of controls were also examined in the evaluation of ample margin of safety. Under Option 1, the estimated maximum lifetime risk would be reduced from $6\times10^{-4}$ to $2\times10^{-4}$, and the annual incidence would be reduced from 0.2 case/yr under the current NESHAP baseline to 0.1 case/yr. The majority of this incidence reduction occurs among the population exposed to lifetime risks less than $10^{-4}$ (i.e., exposed to concentrations of less than 4 ppb). As previously noted, these estimates are based on upperbound emission estimates and the actual emission reduction is expected to be less than indicated. As discussed under Approach A for equipment leaks, the additional annual cost to achieve Option 1 is estimated to be $52.4 million. The majority of the estimated cost is from the cost of sealed bellows valves and would be incurred regardless of the magnitude of the actual emissions.

Although Option 1 shows some additional emission and risk reduction to be achievable, the control cost is disproportionately high when compared to the small reductions in risk which could be achieved. If the actual emissions, and thus emission reduction, could be quantified, the option would likely be even less cost effective.

Under the criteria of this approach, the existing NESHAP would be judged to protect public health with an ample margin of safety. Additional control would not be judged warranted considering the small emission and risk reduction that would be achieved, the questions regarding technical feasibility, and the large cost.

Approach C. $1\times10^{-4}$ or Less Maximum Individual Risk Approach

*Decision on Acceptable Risk.* Under the assumptions used in the analysis, the maximum lifetime risks under the existing benzene equipment leaks NESHAP is $6\times10^{-4}$. Under the criterion of the approach requiring target maximum risks of $1\times10^{-4}$ or less, the baseline risks would not be considered acceptable. Additional control would be necessary to reduce maximum lifetime risks to $1\times10^{-4}$ or below.

*Decision on Ample Margin of Safety.* To ensure that no facility has risks exceeding $1\times10^{-4}$, emission reductions beyond Option 1 would be required. Therefore, the only method of specifying the level of control necessary to achieve a maximum lifetime risk of $1\times10^{-4}$ or less at all facilities would be through either a standard limiting facility emissions or a risk level standard. As previously discussed in Section VII, Approach D, a facility emission limit format has been selected to illustrate this. Comments are requested on both formats, however.

The emission limit for benzene equipment leaks which ensures that no facility engenders risk exceeding $1\times10^{-4}$ would be 14 kg/day (5 Mg/yr). Thus, emissions from all 131 plant sites would, at the minimum, be reduced to less than 700 Mg/yr total. This 14 kg/day limit would apply to benzene emissions from all equipment contacting benzene at each and any plant site which contains equipment subject to the existing NESHAP. As discussed in Section VII, this limit was derived by proportional calculations of maximum risks and corresponding emissions.

In addition to ensuring that no one is exposed to lifetime risks greater than $1\times10^{-4}$, the 14 kg/day emission limit would also reduce risks to the total exposed population. Incidence would be reduced to roughly 0.07 case/yr total (if all 131 facilities continued to operate), and of this about 0.007 case/yr (or 7 cases in 1,000 years) would occur in the population exposed to lifetime risks greater than $1\times10^{-5}$. Many facilities would have maximum risks below $1\times10^{-6}$, and the additional emission reduction will primarily reduce the exposure levels of the populations

which are currently in the less than $10^{-6}$ lifetime risk category.

Based on available information, it is believed that the 14 kg/day emission limit will require control beyond Option 1 at all but the very smallest facilities. However, to ensure that no facility achieving less than 14 kg/day through a leak detection and repair program allows emissions to increase, the current NESHAP (40 CFR Part 61, Subpart J) would still be required. The majority of facilities would have to achieve an additional 50 percent emission reduction to comply with the 5 Mg/yr emission limit. Based on available information, it is unlikely that this can be easily done.

As previously noted, the Agency has not explicitly identified controls beyond Option 1. Thus, if the emission limit required by this approach were adopted, the plant owners or operators would have to determine the appropriate means of achieving essentially leakless operation throughout the plant. Consequently, EPA cannot at present quantify the costs and economic impacts of achieving this emission limit. However, it is suspected that the costs will exceed the control costs estimated for Option 1 in Table IX–3. Based on emission rates and technical feasibility for further emission reduction, the Agency expects that a substantial number of facilities (about 100 out of 131 plants) would permanently shut down under this approach. This estimate of permanent closures is not based on cost impacts or an economic analysis.

Of the approximately 150,000 people employed in the synthetic organic chemical industry, roughly 30,000 to 40,000 are estimated to be employed by facilities producing benzene and benzene derivatives. (To derive this estimate the ratio of benzene production and consumption capacity to total organic chemical production was applied to the total industry employment). If roughly 100 facilities were to close, roughly 27,000 jobs would be lost in the chemical and petroleum refining industries. In addition to these job losses, jobs would be lost in the affected communities and in related industries, such as manufacturers of rubber tires, lubricants, nylon fibers, and other plastics for consumer and military uses. The health risks associated with increased unemployment are an additional impact that has not been quantified. Indirect impacts of a substantial number of closures such as price increases and increased imports have not been quantified but are expected to be significant. Higher prices would be charged for imported goods made from benzene or for more expensive substitutes; thus, there would be a general inflationary impact. The balance of payments would be affected by an increase in imports of benzene-derived goods.

In summary, under the $1 \times 10^{-4}$ risk target approach for NESHAP, the proposed standard would: (1) Limit benzene emissions from equipment leaks to no more than 14 kg/day at all facilities with equipment contacting benzene; and (2) require compliance with the existing NESHAP (40 CFR Part 61, Subpart J), so as to ensure that no facility currently achieving less than 14 kg/day through a leak detection and repair program could allow its emissions to increase. These two requirements together would be judged to provide an ample margin of safety under Approach C. Further description of the provisions of these alternative standards are contained in Section XII.

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

*Decision on Acceptable Risk.* Under the assumptions used in this analysis, maximum lifetime risk under the existing NESHAP exceed the $1 \times 10^{-4}$ target risk and would not be considered acceptable. Additional control would be necessary to reduce the maximum individual risk to $1 \times 10^{-6}$ or less.

*Decision on Ample Margin of Safety.* As discussed under Approach C, the only method of specifying the level of control necessary to achieve a maximum lifetime risk of $1 \times 10^{-6}$ or less would be through either a risk limit standard or a standard limiting facility emissions. A facility emission limit standard has been selected to illustrate this approach, but comments are requested on both types of standards.

The emission limit for benzene equipment leaks which ensures that no facility causes risks exceeding $1 \times 10^{-6}$ would be 0.14 kg/day (50 kg/yr). Emissions from all 131 facilities would then be reduced to below 6.6 Mg/yr. The 0.14 kg/day limit would apply to all equipment contacting benzene, at any plant site that contains equipment subject to the existing NESHAP; even those facilities now exempted because they use or produce less than 1,000 Mg benzene/yr would be required to comply with the emission limit. As discussed previously, this limit was derived by proportional calculations of maximum risks and corresponding emissions.

In addition to ensuring that no one is exposed to lifetime risks greater than $1 \times 10^{-6}$, the 0.14 kg/day limit would also reduce the total leukemia incidence to 0.0007 case/yr in the modeled population of 200,000,000. Thus, under this approach, public health would be protected by an ample margin of safety with this emission limit.

However, the EPA has no knowledge of technology-based control measures that would acheive the 0.14 kg/day benzene emission rate. If this limit were adopted as the standard, the plant owners or operators themselves would have to determine how to achieve compliance with the standard. Consequently, the Agency cannot at present estimate the costs or economic impacts of such a standard. Qualitatively, based on known control measures, emission rates, and technical feasibility of further emission reduction, this emission limit would be expected to result in closures of essentially all operations producing or using benzene including chemical plants, petroleum refineries, and other facilities. If all 131 facilities were to close, roughly 30,000 to 40,000 jobs would be directly affected. As discussed under Approach C, other job losses in associated industries could also be expected. The health risks associated with inceased unemployment also have not been quantified. Indirect impacts associated with shutdown of the industry have not been quantified but are expected to be severe.

In summary, the proposed standard would: (1) Limit benzene emissions from equipment leaks to no more than 0.14 kg/day at all facilities with equipment in benzene service; and (2) eliminate the exemption existing in the current NESHAP for facilities producing or using less than 1,000 Mg/yr of benzene. These requirements would be judged to provide an ample margin of safety under Approach D.

## X. Coke By-Product Recovery Plants

*Source Category Overview*

In the Coke by-product recovery process, various components of the gases emitted from coke oven batteries are separated and recovered to obtain products such as crude tar, naphthalene, light oils, benzene mixtures, and refined benzene. Benzene emissions from 44 existing plants are largely uncontrolled and are released from a variety of sources such as process vessels, sumps, storage vessels, the cooling tower associated with the final cooler, and leaking equipment (e.g., pumps and valves).

*Estimation Methods and Uncertainties*

In the analysis of the coke by-product recovery plant source category, as with other benzene source categories, emission estimates were used in estimating leukemia risk. This section

discusses how benzene emissions and the associated health risks were calculated for coke by-product recovery plants and the uncertainties associated with these estimates.

The emission estimates presented in this notice were developed based on emission factors derived from source sampling surveys and emission tests, engineering judgment, and site-specific production rates and process information provided by the plants. Differences in methods of operation, operating parameters, and design factors were taken into account to the extent possible by averaging applicable measurements to obtain an emission factor representative of a typical source. The nationwide emission estimates were based on application of the emission factors (which were in terms of benzene emissions per Mg of coke production) to site-specific information on which processes exist in each plant and each plant's coke production capacity, rather than by extrapolation from model plants.

Since the 1984 proposal, revisions to the emission factors and the data base have been made based on public comments. As discussed further below in the "Response to Comments" section of this preamble, separate emission factors have been developed to distinguish furnace from foundry plants because foundry plants use less volatile coal and longer coking cycles. The data base also has been updated using information provided by the industry and major trade associations at the close of the comment period for the proposal. As of November 1984, a total of 44 furnace and foundry plants with a combined operating capacity of 50.9 million Mg/yr were identified that are either in active operation or on cold-idle status (i.e., temporarily closed but able to restart on demand). Plants on cold-idle are included in the data base because information is insufficient to determine whether these sites will be closed permanently. Nationwide baseline benzene emissions from the 44 plants assuming all operate at full capacity are estimated at 26,000 Mg/yr. More detail on the estimation of emissions can be found in the Proposal and Revised Proposal BID's.

At proposal, the health risks attributable to benzene emissions from coke by-product recovery plants were calculated using the HEM dispersion model to estimate the benzene concentrations to which people living within 20 km of the plants were exposed. After the 1984 proposals, the HEM was again employed for the health risk analysis using the revised benzene URE, updated data base and revised emission factors, and with exposure modeling carried out to 50 rather than 20 km. In the risk analyses, EPA assumed that all plants were operating at full capacity.

The Agency acknowledges that many uncertainties are present in the emissions and risk estimates. Uncertainties in the emission estimates include the emission factors and the application of the emission factors to various plants that employ different methods of operation, designs, and operating parameters; these may tend to over- or under-estimate emissions. In addition, the 44 existing plants are not all operating at full capacity and, in fact, some are on cold-idle. Thus, nationwide emissions are overestimated. Further, the declining domestic coke market makes it particularly likely that EPA has overestimated emissions for the 70-year lifetime assumed in the exposure analysis. Additional uncertainty also is present for the dispersion modeling of area sources, such as are found in coke by-product plants, than for modeling of stack point sources. Only extremely limited verifications of area source modeling procedures have been done to date. Further information on general uncertainties in the exposure and risk analysis for benzene are described in Section IV of this preamble.

*Risk Characterization*

As discussed in Section V, the first step in making NESHAP decisions is determination of an acceptable risk level. In deciding what level of risk is acceptable for coke by-product recovery plants under each of the four approaches, the Administrator considered the range of levels shown in Table X–1, as well as a zero emission level. The levels represent example scenarios to show how different emission levels would result in different health risk profiles. Table X–1 presents the risk estimates, calculated as described above, in terms of annual incidence, maximum individual lifetime risk, risk distribution, and incidence by risk group.

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TABLE X-1. RISKS[a] FROM COKE BY-PRODUCT RECOVERY PLANTS AT DIFFERENT EMISSION LEVELS

| | | Emission Levels | | | | |
|---|---|---|---|---|---|---|
| | | Baseline | A | B | C | D |
| Incidence (case/yr) | | 3 | 0.5 | 0.2 | 0.05 | 0.004 |
| Maximum Individual Lifetime Risk (MIR) | | $6 \times 10^{-3}$ | $1 \times 10^{-3}$ | $4 \times 10^{-4}$ | $2 \times 10^{-4}$ | $1 \times 10^{-5}$ |
| Risk Distribution, cumulative, (persons)[b,c] (modeled to 50 km) | $\geq 1 \times 10^{-2}$ | 0 | 0 | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-3}$ | 4,000 | 400 | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-4}$ | 100,000 | 10,000 | 2,000 | 200 | 0 |
| | $\geq 1 \times 10^{-5}$ | 3,000,000 | 300,000 | 70,000 | 20,000 | 1,000 |
| | $\geq 1 \times 10^{-6}$ | 30,000,000 | 6,000,000 | 2,000,000 | 400,000 | 30,000 |
| | Total Modeled | 90,000,000 | 90,000,000 | 90,000,000 | 90,000,000 | 90,000,000 |
| Incidence for Each Risk Group, non-cumulative (case/yr)[d] | $\geq 1 \times 10^{-2}$ | 0 | 0 | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-3}$ | 0.1 | 0.01 | 0 | 0 | 0 |
| | $\geq 1 \times 10^{-4}$ | 0.4 | 0.02 | 0.005 | 0 | 0 |
| | $\geq 1 \times 10^{-5}$ | 0.9 | 0.09 | 0.03 | 0.006 | 0.0004 |
| | $\geq 1 \times 10^{-6}$ | 1 | 0.2 | 0.05 | 0.01 | 0.001 |
| | $< 1 \times 10^{-6}$ | 0.3 | 0.2 | 0.07 | 0.03 | 0.002 |

[a] All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table for risk group incidence may not sum to the value given for total incidence.

[b] The estimated number of people exposed to ambient concentrations resulting in predicted individual risk levels above the level shown. Population is cumulative (e.g., at baseline 30,000,000 people are exposed to risks greater than or equal to 1 in 1,000,000).

[c] Risks were calculated on a plant-by-plant basis and summed. Persons exposed to emissions from more than one plant were counted for each plant's impact. The effects of double counting on individual and other risk estimates are discussed in Section V of this notice.

[d] This is the estimated annual number of cases of leukemia for the population exposed to each risk level. It is not cumulative (e.g., at baseline there would be 1 case/yr in the population exposed to risk levels greater than or equal to 1 in 1,000,000 but less than 1 in 100,000)

*Application of Alternative Policy Approaches*

The consideration of each of the alternative approaches to decisions on the coke by-product plant source category are summarized in this section. A summary of alternative proposed standards under each approach is included in Section XII.

Approach A. Case-by-Case Approach

*Decision on Acceptable Risks.* As shown on Table X–1, the estimated risk to an individual exposed to the maximum modeled annual average concentration of about 200 ppb for 70 years is $6 \times 10^{-3}$ at baseline. This risk is above the range generally considered under this approach to be preferred. The estimated annual incidence at baseline is 3 cases/yr; however, about one half of these cases occurs in the large population exposed to predicted lifetime risks in the $10^{-6}$ range or lower. As noted in Section V, under this approach, incidence estimates at the $10^{-6}$ and lower risk levels are given less weight because they are generally considered to be small and to have increased uncertainty. In addition, the majority of the estimated incidence (2 out of 3 cases/yr) occurs in the population exposed to risks in the $10^{-5}$ range and below. This group represents persons who would be exposed to concentrations of less than 4 ppb, which is comparable to average urban background concentrations of about 3 to 6 ppb (see Section IV).

In deciding an acceptable level for coke by-product plants under this approach, the Administrator particularly examined the uncertainties described in Section IV and earlier in this section. The assessment of these factors is summarized here. The overall weight of evidence for benzene carcinogenicity is strong (the URE being based on data from occupational exposure studies). Although the use of alternate dose/response models could produce different URE's for benzene (Docket No. OAQPS 79–3, Part I, Docket Item VIII–A–4), the linear nonthreshold model used by EPA represents the best fit for the available data. The model is judged, however, to be conservative, and, therefore, the URE, as a measure of leukemogenic potency, could be considered to err in favor of the protection of public health. This URE, however, does not include nonleukemia cancer risk because statistical associations with other cancers have been found to date only in animal bioassays.

The dispersion modeling of area sources, such as are found in coke by-product plants, is more uncertain than modeling of stack emission sources. The assumption in the exposure assessment that individuals are exposed continuously to the maximum modeled annual average concentration for 70 years will overestimate the maximum individual lifetime risk for those individuals exposed for significantly less than 70 years. As previously stated, the risk analysis assumes that all existing coke by-product plants operate at full capacity over the modeled 70-year exposure period. It is reasonable to include the cold-idle plants and to assume full capacity when estimating the emissions because they are presently potential sources of emissions; however, this assumption overestimates the actual current emissions. In addition, the decline in the domestic coke market makes it likely that the emission estimate overstates the long-term emissions.

Based on consideration of all the factors concerning exposure, the estimated maximum lifetime risk, and incidence, the Administrator decided under this approach that the estimated baseline benzene emission level from coke by-product recovery plants is acceptable.

*Decision on Ample Margin of Safety.* For further analysis, the Administrator considered several technical regulatory options. The controls analyzed to determine an ample margin of safety under this approach for each of the many emission points were the same as those analyzed for the June 1984 proposal. For each of these emission sources and controls, the emission reduction, estimated benefits of cocontrol of VOC's, control costs, and the risk reduction were estimated. The controls for individual emission points then were grouped into four regulatory options of varying stringencies for the Administrator's consideration. These options are shown on Table X–2.

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TABLE X-2. CONTROLS INCLUDED IN EACH OPTION

| Emission source | Control option/ efficiency (%) | | Option 1 furnace/foundry | | Option 2 furnace/foundry | | Option 3 furnace/foundry | | Option 4 furnace/foundry | |
|---|---|---|---|---|---|---|---|---|---|---|
| Final cooler, cooling tower; naphthalene processing/handling | Tar-bottom final cooler | (81) | | | | | | X | X | X |
| | Wash-oil final cooler | (100) | X | X | X | X | X | | | |
| Tar decanter, tar intercepting sump, and flushing-liquor circulation tank | Gas blanketing | (98[a]) | X | X | X | X | X | X | X | X |
| Tar storage and tar-dewatering tanks | Gas blanketing | (98) | X | X | X | X | X | X | | |
| Light-oil condenser, light-oil decanter, wash-oil decanter, and wash-oil circulation tanks | Wash-oil scrubber<br>Gas blanketing | (90)<br>(98) | X | X | X | X | X | X | X | |
| Excess ammonia-liquor storage tank | Wash-oil scrubber<br>Gas blanketing | (90)<br>(98) | X | X | X | | | | | |
| Light-oil and BTX storage tanks | Wash-oil scrubber<br>Gas blanketing | (90)<br>(98) | X | X | X | | | | | |
| Benzene storage tanks | Wash-oil scrubber<br>$N_2$ gas blanketing | (90)<br>(98) | X | X | X | | | | | |
| Light-oil sump | Cover | (98) | X | X | X | X | X | X | X | |
| Pumps | Quarterly inspections<br>Monthly inspections<br>Dual mechanical seals | (71)<br>(83)<br>(100) | X | X | X | X | X | X | X | X |
| Valves | Quarterly inspections<br>Monthly inspections<br>Sealed-bellows valves | (63)<br>(73)<br>(100) | X | X | X | X | X | X | X | X |
| Exhausters | Quarterly inspections<br>Monthly inspections<br>Degassing reservoir vents | (55)<br>(64)<br>(100) | X | X | X | X | X | X | X | X |
| Pressure-relief devices | Quarterly inspections<br>Monthly inspections<br>Rupture disc system | (44)<br>(52)<br>(100) | X | X | X | X | X | X | X | X |
| Sampling connection systems | Closed-purge sampling | (100) | X | X | X | X | X | X | X | X |
| Open-ended lines | Cap or plug | (100) | X | X | X | X | X | X | X | X |
| Napthalene processing/ handling[b] | Mixer-settler | (100) | X | X | X | X | X | X | X | X |

[a] 95-percent efficiency for tar decanter.

[b] The mixer-settler control option for naphthalene processing and handling is shown separately to address a comment on new indirect cooling technology that would not necessarily control naphthalene processing emissions.

Option 1 would require the most stringent controls available on all emission points that were analyzed at furnace and foundry plants. To achieve greater public health risk reduction than estimated for Option 1 may cause the closure of many plants. Options 2, 3, and 4 would require decreasingly stringent controls and would control fewer emission points than Option 1. Many factors were considered in grouping the controls into options. They included benzene emission and leukemia incidence reductions, costs, and, to a lesser extent, the emission reduction of total VOC. In general, the least cost-effective controls were deleted first when departing from Option 1 to develop Options 2 through 4. Also, in constructing Options 2 through 4, the Agency was consistent with the promulgated rules for equipment leaks of benzene and volatile hazardous air pollutants (40 CFR Part 61, Subparts J and V) in cases where the sources in coke by-product plants were similar and could be controlled for similar costs.

The estimated impacts of each of the four options are shown in Table X–3 below. These include the emission reduction, anticipated cocontrol of VOC, annual control cost, cost per Mg of emission reduction, the residual incidence, the population at individual risk of $1 \times 10^{-4}$ and greater, and the maximum individual lifetime risk. The EPA also anticipates that there may be unquantified reductions in coemitted pollutants with potentially adverse health effects.

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TABLE X-3. IMPACTS OF OPTIONS FOR COKE BY-PRODUCT RECOVERY PLANTS

| Option[a] | Annual Cost ($MM/yr) 1984[b] | Emission Reduction ($10^3$ Mg/yr) Bz/VOC[c] | Average[d] $/Mg Bz/VOC | Incremental[d] $/Mg Bz/VOC | Population Left at Risk $>1 \times 10^{-4}$ | Residual[e] Incidence (Percent Reduction) | Maximum Individual Lifetime Risk (MIR)[e] |
|---|---|---|---|---|---|---|---|
| Option 1 (30) | 29 | 25/169 | 1,100/200 | 36,000/25,000 | 200 | 0.05 (98) | $2 \times 10^{-4}$ |
| Option 2 (27,6LS) | 21 | 25/169 | 800/100 | 5,100/ 1,300 | 300 | 0 08 (97) | $2 \times 10^{-4}$ |
| Option 3 (24,7LS) | 16 | 24/165 | 700/100 | 4,300/ 200 | 2,000 | 0 2 (93) | $4 \times 10^{-4}$ |
| Option 4 (20,8LS) | 1 | 21/101 | 50/ 10 | 50/ 10 | 11,000 | 0 5 (81) | $1 \times 10^{-3}$ |
| Baseline | 0 | 0/0[f] | 0/ 0 | 0/ 0 | 141,000 | 3(0) | $6 \times 10^{-3}$ |

[a] The () shows (number of sources controlled, number of sources with less stringent control than Option 1).

[b] $MM is millions of dollars. The dollar year is 1984.

[c] Bz = benzene, VOC = volatile organic compounds.

[d] "Average" means compared to baseline. "Incremental" numbers compare each option with next less stringent option. They are not the same as the highest incremental value per source type.

[e] Risk estimates are rounded to one significant figure. Note that the total incidence is primarily affected by the large population that is at low risk. For example, at baseline, 2 out of 3 cases/yr occur among the population in the risk level of 1 in 100,000 or less. These risks are associated with exposure to concentrations of less than 4 ppb Average urban ambient (background) concentrations are around 3 ppb.

[f] Baseline emissions are 26,000 Mg/yr of benzene and 171,000 Mg/yr of VOC (including benzene)

After consideration of the risk characterization, the factors noted above, and the economic impacts, the Administrator decided that under Approach A, Option 3 provides an ample margin of safety. The Administrator's reasons are described below.

Option 3 controls 24 of the 30 emission points; 17 of the 24 emission points are controlled to the maximum feasible control level. It differs from the proposed rule (49 FR 23522, June 6, 1984) for only a few types of emission points. More stringent control would be required for final cooler emissions at furnace plants than proposed originally. The 1984 proposal would have required zero emissions from naphthalene processing for both furnace and foundry plants, based on the use of a tar-bottom final cooler. Under Option 3, a tar-bottom cooler is still the basis for naphthalene processing for foundry plants. For furnace plants, Option 3 would require zero emissions from the final cooler and cooling tower, as well as from naphthalene processing, based on the use of a wash-oil final cooler. No controls would be required for storage tanks for excess ammonia-liquor, benzene, light oil, or BTX mixtures at either furnace or foundry plants. These tanks represent only 3 percent of the baseline benzene emissions from coke by-product plants, and the health risks are comparably small. The originally proposed standard would have required 90-percent control of these storage tanks. With the revised cost estimates, the 90-percent control level generally was more costly for these storage tanks than the gas blanketing control level rejected at proposal. For all other sources, Option 3 is the same as the 1984 proposed standard.

Many factors were considered in selecting Option 3 as the ample margin of safety under this approach. With these controls, the estimated maximum individual lifetime risk is reduced to $4 \times 10^{-4}$ from the baseline level of $6 \times 10^{-3}$ (a 93 percent reduction). The population estimated to be exposed to risk in the $10^{-4}$ range is reduced from about 100,000 to about 2,000 after implementation of Option 3. This option also reduces the estimated incidence from about 3 cases/yr at baseline to about 0.2 case/yr, a reduction of 93 percent. Of the remaining 0.2 case/yr, only 0.03 case/yr is associated with the population exposed to risks of $10^{-5}$ and higher.

Under Option 3, estimated nationwide benzene emissions would be reduced to approximately 2,000 Mg/yr from the baseline level of 26,000 Mg/yr. Also, estimated VOC emissions from coke by-product plants would be reduced to about 6,000 Mg/yr—a substantial reduction from the baseline level of about 171,000 Mg/yr. Because 80 percent of the plants are in ozone nonattainment areas, this reduction is expected to have a favorable impact in helping affected States meet ozone standards in State implementation plans.

The nationwide annual costs of Option 3 (estimated at $16 million/yr in 1984 dollars) are considered reasonable, particularly when compared to both public health risk reductions and VOC emission reduction benefits. As discussed in Chapter 8 of the Revised Proposal BID, the increase incurred in the price of furnace and foundry coke as a result of this option is estimated to be small, less than 1 percent. The EPA's economic analysis indicates that at baseline, several plants may have marginal costs of operation greater than the price of coke. The analysis predicts that implementation of this option may add one more plant to this group. However, a company decision to actually close a plant would be based on a number of factors that the economic model does not consider, including: The premium a plant is willing to pay for a secure, captive coke supply; requirements for a particular coke quality; age of the batteries, foundry, or steel mill; continued access to profits from steel production; and management's perception regarding their future costs and revenues. The Agency recognizes that implementation of this option could be the factor that would trigger closure decisions at plants that are presently marginal or operating at a loss. The EPA's economic analysis also examined the revised capital costs of control, as discussed in Appendix C of the Revised Proposal BID. The Agency judges that the estimated capital costs are not unduly burdensome when compared with normal annual investment expenditures or cash flow for companies for which data are available.

The Administrator also considered a more stringent option for the ample margin of safety under Approach A. This option would have required both furnace and foundry coke plants to meet a zero emission limit for the final cooler, cooling tower, and naphthalene processing, based on the use of a wash-oil final cooler. Also, this option would have established a standard for storage tanks containing excess ammonia-liquor, light oil, BTX, or benzene at furnace plants, based on the 98-percent control afforded by gas-blanketing systems. This more stringent level of control would decrease emissions by only about 1,000 Mg/yr of benzene and 4,000 Mg/yr of VOC more than Option 3. The estimated maximum individual lifetime risk would be reduced from about $4 \times 10^{-4}$ to about $2 \times 10^{-4}$, and about 300 persons would be exposed to a risk of greater than $1 \times 10^{-4}$. The nationwide annual incidence would be reduced by an estimated 0.1 case/yr. However, most (about 80 percent) of this estimated reduction occurs in the population exposed to risks in the $10^{-6}$ range or lower. Annual costs would be increased by about $5 million/yr. The Administrator decided under this approach that this more restrictive option is not warranted considering the small risk reductions achieved, the small additional VOC reductions, and the greater control costs compared to Option 3.

A less stringent level of control also was considered. Under this option, both furnace and foundry producers would be required to meet a zero emission limit for naphthalene processing, but not for final coolers and final-cooler cooling towers; this would be based on the use of tar-bottom final coolers. No standard for storage of excess ammonia-liquor, light oil, BTX, or benzene would be included for furnace or foundry plants. Also, there would be no required control of tar storage (including dewatering) tanks at furnace or foundry plants. For foundry plants, there would be no standard for control of light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks and light-oil sumps. Selection of this option would have reduced benzene emissions by about 80 percent from the baseline level (a reduction of about 3,000 Mg/yr less than the selected control level), and VOC emissions would have been reduced only by about 60 percent. This VOC emission reduction would be about 64,000 Mg/yr less than would be achieved by the higher level of control. This is particularly significant because 80 percent of the plants are in nonattainment areas where further reductions are needed.

As a result of these greater emissions, the estimated annual incidence within the exposed population would have been about 0.3 case/year more than under the more stringent level of control. These emissions also would result in a shift in the distribution of the population towards more people at higher risks. For example, approximately 11,000 persons would have been exposed to a risk level in the $10^{-4}$ range or higher. This reflects an increase of about 9,000 more persons in the $10^{-4}$ range than under Option 3.

The estimated maximum individual lifetime risk remaining after implementation of a standard based on this less stringent option would have been $1 \times 10^{-3}$. The nationwide annual costs would be reasonable (about $1 million/yr). Considering the residual benzene and VOC emissions and risk associated with this option and the availability of more stringent controls at reasonable costs, the Agency decided under this approach that this option would not provide an ample margin of safety for the public health.

Approach B. Incidence-Based Approach

*Decision on Acceptable Risk.* As shown in Table X–1, the total leukemia incidence at baseline for the modeled population of 90,000,000 persons exposed to benzene emissions from coke by-product plants is about 3 cases/yr. Under the criterion of this approach (i.e., 1 case/yr), the Agency would decide that the baseline emission level is not acceptable, and EPA would propose standards to reduce the estimated incidence to 1 case/yr or less.

*Decision on Ample Margin of Safety.* The Administrator considered the technical regulatory options shown in Table X–2 for supplemental control to ensure protection of the public health with an ample margin of safety. As shown in Table X–3, the residual incidence under each of the options considered would be less than 1 case/yr. Therefore, all of the technical regulatory options would be considered acceptable. After consideration of the risk characterization, the information shown in Tables X–1 and X–3, and the economic impacts, the Administrator decided that under this approach, Option 3 would best protect the public health with an ample margin of safety. The basis for this conclusion is summarized below, and described more fully under Approach A.

As previously discussed, Option 3 differs from the 1984 proposal for only a few emission points (e.g., more stringent control for final cooler emissions at furnace plants and no control of benzene, excess amonia-liquor, BTX mixtures, or light-oil storage tanks). Option 3 would reduce the estimated maximum individual lifetime risk from $6 \times 10^{-3}$ at baseline to $4 \times 10^{-4}$, and the estimated incidence from about 3 cases/yr at baseline to about 0.2 case/yr. These represent 93-percent reductions from both risk measures. Of the remaining 0.2 case/yr, only 0.03 case/yr is associated with the population exposed to risks of $1 \times 10^{-6}$ and higher. As discussed earlier, these estimates of risk are based on emission estimates that are likely to be overestimated. Therefore, Option 3 would meet the criterion for acceptable risk of this approach (no more than 1 case/yr) and also would provide an ample margin of safety. Other emission, risk, cost, and economic considerations are discussed above under Approach A.

The Administrator considered a more stringent level of control which would reduce annual incidence by an additional 0.1 case/yr. However, as previously discussed, about 80 percent of this estimated reduction would occur in the population exposed to risks in the $10^{-6}$ range or lower. For the same reasons as discussed under Approach A, the Administrator concluded that controls more restrictive than Option 3 are not warranted considering the small risk reduction achieved, the small additional VOC reduction, and the greater control costs. The Administrator also considered a less restrictive control level which would allow about 0.3 case/yr more than Option 3. However, about 11,000 persons would have been exposed to a risk level in the $10^{-4}$ range or higher—an increase of about 9,000 more persons than under Option 3. The maximum individual lifetime risk after control would be reduced from $6 \times 10^{-3}$ to about $1 \times 10^{-3}$. Considering the residual incidence and risk associated with this option and the availability of controls at reasonable costs, the Administrator decided that under this approach, this option would not provide an ample margin of safety to protect the public health.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

*Decision on Acceptable Risk.* As shown on Table X–1, the maximum individual lifetime risk at baseline is $6 \times 10^{-3}$, which clearly exceeds $1 \times 10^{-4}$, and hence would not be considered acceptable under Approach C. Therefore, under this approach, EPA would propose standards to reduce the maximum individual lifetime risk to no more than $1 \times 10^{-4}$.

*Decision on Ample Margin of Safety.* To ensure that no facility has risks exceeding $1 \times 10^{-4}$, emission reductions beyond Option 1 would be required (see Table X–3). As previously discussed in Section VII under Approach D, an emission limit approach has been selected to specify this necessary control. Comments are requested on the emission limit approach to achieving the risk target as well as on the risk target approach itself.

Based on EPA's risk analysis, a plantwide benzene emission limit of 34 kg/day (or 12.5 Mg/yr) applicable to the total of all emission points identified in Table X–2 would ensure than no facility has risks exceeding $1 \times 10^{-4}$. This limit was derived by identifying the plant with the highest risk per unit of benzene emissions and then applying that ratio to determine the emissions that correspond to a risk of $10^{-4}$.

Different facilities would have to do different things to meet the emission limit of 34 kg/day. Some facilities would have to reduce emissions further than the most stringent technology option, but others would apply substantially less control, and in a few cases, no control. To ensure protection of the public health with an ample margin of safety, EPA also considered additional control requirements for plants able to comply with the emission limit with little or no control. The controls considered were those presented previously in Table X–2. For the same reasons discussed under Approach A, EPA selected Option 3 as the minimum control requirement for all facilities.

Implementation of this plantwide emission limit combined with the minimum control level of Option 3 would reduce nationwide benzene emissions from coke by-product plants from 26,000 Mg/yr at baseline to about 840 Mg/yr; nationwide VOC emissions would be reduced from about 171,000 Mg/yr to about 1,900 Mg/yr. Estimated annual incidence would be reduced from about 3 cases/yr to about 0.07 case/yr. The estimated maximum individual lifetime risk would not exceed $1 \times 10^{-4}$, and most of the exposed population would have much lower risk. Therefore, under the criterion of Approach C, the Administrator would consider that these combined requirements provide an ample margin of safety.

Based on the 1984 data and on the assumptions in the analyses, EPA estimates that 9 of the 44 plants would achieve the emission limit by applying Option 3, 5 plants could achieve it by applying Option 2, and 18 plants could achieve it by applying the maximum feasible controls in Option 1. In addition, the Agency estimates that 12 plants would not be able to meet the emission limit even with the most stringent technology option. Of these 12 plants, the Agency estimates that 8 plants may be able to comply by permanently reducing production by an amount that may not be large enough to trigger closure decisions (e.g., by roughly 40 percent or less). This is based on EPA's emission estimates, which are generally proportional to coke production. The cost of applying the technology to these 40 plants is estimated to be $26 million/yr. The cost of lost production could not be estimated at this time. The EPA

estimates that the remaining 4 plants would need to permanently reduce production by roughly 60 percent or more in order to comply. Although EPA has not conducted an economic analysis of this particular approach, the Agency believes that it is likely that this reduction would trigger closure decisions. These 4 plants account for 30 percent of the domestic cokemaking capacity. Including the 8 plants that may be able to comply by reducing production, the total cokemaking production loss under Approach C could be about 40 percent.

The potential economic impacts of closures could include increased unemployment in the affected geographic areas and the health risk associated with long-term unemployment. Based on information on the by-product cokemaking industry prepared after the 1984 proposal, about 7,000 people were employed. Of these 7,000 jobs, roughly 3,000 could be lost with a 40 percent production reduction (assuming employment is reduced in the same proportion as production capacity). In addition to these job losses, other job losses in industries supplying the cokemaking industry could be expected, such as in coal mining, transportation, and with equipment suppliers. The impacts could also include loss of tax revenue from the closed facilities, coke price increases, and substantially greater dependence on imported coke to replace the lost production.

There are two processes that may offer some long-term prospect of replacing conventional by-product cokemaking and, in doing so, eliminate the need for by-product recovery plants. These processes are the manufacture of formcoke (coke briquettes) and direct reduced ironmaking (DRI), which is an ironmaking process requiring no coke. Neither of these processes could be feasible alternatives in the maximum period of 2 years that a source has to comply with a NESHAP; they only may be potential alternatives over the long term.

Formcoking is the general name applied to a number of processes that convert coal into shaped coke pieces in closed process vessels. Formcoking is expected to create less air pollution than conventional by-product cokemaking; wastewater impacts are unknown. However, a complete assessment of any of the processes to confirm the anticipated environmental and health benefits has not been made.

The use of formcoke in a blast furnace as a complete replacement for furnace coke has never been demonstrated and the steel industry is concerned that the mechanical strength of the formcoke may not be adequate for this use. Yet, in order to generate enough fuel to conduct a valid blast-furnace trial, a large formcoke plant would have to be built and formcoke produced for an extensive period of time. Due to these uncertainties, steel firms are reluctant to invest in such a plant without financial assistance. Two steel industry proposals in the early 1980's requested the federal government to invest several hundred million dollars to assist in the design and construction (and assume some risk) of a large formcoke facility that would allow an adequate demonstration of the product coke suitability, and potential environmental and energy-saving benefits. This funding was not provided. Also, successful completion of full-scale blast furnace trials would not necessarily mean formcoke could replace all conventionally made coke. A similar experimental program might be necessary to confirm that foundry coke could likewise be replaced.

The direct reduction of iron ore is an alternative to the production of iron for steelmaking by blast furnaces that use coke for fuel. Since the product of direct reduction is solid iron, it is most suitable for use in combination with electric arc furnace steelmaking by replacing a portion of the scrap charge. None of the reductant processes involve the generation and recovery of benzene or benzene-containing by-products. The different types of reductant processes vary in whether or not polynuclear aromatic hydrocarbons (other potential air pollutants) are formed; afterburners and control devices could potentially limit their emissions. No complete environmental assessment of any reductant processes has been made, however, and it is unknown whether the risks of nonbenzene pollutants would be able to achieve the acceptable criterion of this approach.

There are many more full-scale DRI plants in operation worldwide than formcoke facilities. However, the extensive use of DRI in the U.S. would mean almost complete restructuring of the iron and steel industry away from basic oxygen furnaces to electric arc furnaces. This would necessitate the write-off of existing capital equipment (including blast furnaces and basic oxygen furnaces) and investment in new capital equipment. Substantial cost and economic impacts would result from this.

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

*Decision on Acceptable Risk.* As shown on Table X–1, the maximum individual lifetime risk at baseline is $6 \times 10^{-3}$, which clearly exceeds $1 \times 10^{-6}$, and would not be considered acceptable under this Approach D. Therefore, under this approach, EPA would propose standards to reduce the maximum individual lifetime risk to no more than $1 \times 10^{-6}$.

*Decision on Ample Margin of Safety.* To ensure that no facility has risks exceeding $1 \times 10^{-6}$, emission reductions beyond Option 1 would be required (see Table X–3). An emission limit was developed to specify the $1 \times 10^{-6}$ control level for the same reasons the emission limit format was selected under Approach C. At the $1 \times 10^{-6}$ level, the plantwide emission limit would be 0.34 kg/day (125 kg/yr) for the facility, including all the emission points identified in Table X–2. This limit was derived the same way as the limit was derived under Option C. Assuming that facilities might be able to achieve compliance without closing, this emission limit would reduce benzene and VOC emissions to approximately 5.5 Mg/yr and 12.7 Mg/yr, total leukemia incidence to 0.004 cases/yr, and maximum individual lifetime risk to $1 \times 10^{-6}$. Most of the exposed population would be at a much lower risk.

As discussed under Approach C, the potential for development of new technology within the next 2 years is doubtful. Achievement of the emission limit without substantial production reductions is unlikely. The EPA estimates that most plants would have to reduce production permanently by 95 percent or more (and all plants by 75 percent or more) as well as applying the controls of Options 1 in order to achieve the emission limit. As discussed in Approach C, these estimates were derived using EPA's emission estimates, which are generally proportional to coke production. The magnitude of these cutbacks would likely cause closure of all plants, thus reducing the emissions and risks from coke by-product recovery plants to zero. The EPA judges that this emission limit would protect the public health with an ample margin of safety.

The EPA can not at present estimate the cost or economic impacts associated with the 0.34 kg/day limit. However, the economic impacts would be severe. Adverse impacts could include increased unemployment in the affected geographical areas and the health risk impacts associated with long-term unemployment in a community, loss of tax revenue, price increases, total dependence on imported coke or a total change in the steelmaking process, and potential trade deficits. Based on employment information discussed under Approach C, closure of all

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facilities will result in about 7,000 job losses. In addition to these job losses, other job losses in industries supplying the cokemaking industry could be expected, such as in coal mining, transportation, and with equipment suppliers.

**XI. Summary of Major Comments and Responses on 1984 Proposed Standard for Coke By-Product Recovery Plants**

The EPA received 20 comment letters on the national emission standards for coke by-product recovery plants originally proposed on June 6, 1984. These comments are available for review in Docket A–79–16. The comments are grouped by topics that include: (1) Safety, operation, and demonstration of emission control technology; (2) impact analyses; and (3) general comments. The following is a summary of EPA's responses to these comments; detailed responses are included in the Revised Proposal BID (EPA–450/3–83–016b).

*Safety, Operation, and Demonstration of Emission Control Technology*

*Comment:* Six commenters recommended that gas-blanketing systems, although appropriate and cost effective for some plants, should not be required at all sites because of safety, design, and operational concerns. Some commenters stated that, without redesign of process operations and installation of new equipment, the safety of gas-blanketing systems is in question because leaks from older pieces of equipment present a potential fire or explosive hazard. One of these commenters submitted a qualitative comparative study of the safety of gas blanketing for one of their plants. The report concluded that gas blanketing would involve a significant increase in risk to operating personnel and the surrounding community. Other commenters argued that the presence of electrical equipment and vehicular traffic may present a hazard. Naphthalene clogging in cold climates if power for heated lines were lost also was cited. Four commenters claimed that gas-blanketing controls have not been well-demonstrated. In support, two of these commenters cited closure of one plant that had gas blanketing.

*Response:* The EPA disagrees with these commenters. Gas-blanketing systems have been demonstrated as safe and effective at a total of five plant sites over a combined operating period of more than 24 years. The closure of one plant has no effect on the successful use of gas blanketing at this site for the 4-year period prior to closure. As discussed in the Proposal BID and in the Revised Proposal BID, gas-blanketing systems currently are in use at four other plant sites.

The safety of recommended control systems should always be considered, and a system considered inherently unsafe would not be selected by EPA as the potential basis of a standard. In direct contradiction to the commenters' statements, EPA considers that well-designed, well-operated, and well-maintained gas-blanketing systems will improve the safety level now found in uncontrolled by-product plants. A detailed response to these concerns is provided in Chapter 5 of the Revised Proposal BID. The Agency's reasons for concluding that gas blanketing will actually improve current safety conditions are summarized below.

One commenter contends that "the low positive pressure of the proposed system is insufficient to alleviate explosive conditions if leaks occur." The standard that would be proposed under Approaches A, B, and C do not dictate an overall pressure level for system operation. The system installed may be positive or negative pressure or a combination of the two. The pressure maintained will vary by necessity according to the type of source and location of the connections to the system (i.e., at the main or the gas holder) and overall process design.

If leaks in the system occur or the positive pressure blanket fails, the possibility of an explosive atmosphere forming is no greater than the possibility under current plant conditions. At most uncontrolled plant sites, explosive conditions are present. Liquid organics float on the surface of open sumps and trenches, and they leak from equipment components and piping systems throughout the plant. Organic vapors also are released from "breathing" tanks as air enters venting systems or holes in the covers. In EPA's judgment, enclosing these sources and ducting the emissions back to the process via a closed positive pressure gas-blanketing system will reduce substantially the explosive hazard that now exists. The Agency does recognize that some sources at existing plants may be in poor condition and require upgrading to accept gas blanketing. The necessary modifications for typical plants, however, have been reflected in the cost estimates.

The EPA reviewed a commenter's submittal of a qualitative assessment of his plant to support the contention that gas blanketing would involve a significant increase in risk to operating personnel and the surrounding community. However, EPA does not believe that such a conclusion can be drawn from the assessment for several reasons. First, the assessment is qualitative; it does not draw quantitative conclusions as to the frequency of a major failure. In the hazard assessment, probability ratings were assigned to various hazards within the plant for present uncontrolled conditions and gas blanketing with various blanketing gases. For example, for explosion potential under current plant conditions, they assigned a probability rating of "D" which means "likely to occur 1 time every 10 years." With coke gas blanketing, the explosion potential was reduced to "C" which means "likely to occur every 100 years." However, with gas blanketing, higher ratings were assigned to the potential for explosion propagation, on-site safety, and financial loss. These types of ratings were assigned to various plant operations and to various control scenarios. The results were weighted and combined to provide a relative qualitative rating that may be used by the firm in evaluating options in terms of economic and safety. However, EPA does not believe the commenter's contention based on the report is warranted for the following reasons: (1) The report did not utilize a gas-blanketing design for the plant on which to base a quantitative comparison; without a specific design, it is not possible to evaluate safety features that could be engineered into the system, (2) the assessment was based on a review of the existing conditions in the plant, without consideration of the substantial upgrading of the process vessels that would be necessary to accommodate installation of a gas-blanketing system, and (3) the report did not provide any basis or criteria for assigning the probability ratings or consequence categories that are reported. After reviewing the assessment, EPA remains convinced that the upgrading of equipment needed to accommodate gas blanketing, together with the installation of the well-designed control system, will improve existing safety conditions at the sites.

The Agency's review of the safety aspects of gas blanketing does not support the contention of some commenters that the presence of electrical equipment and vehicular traffic in gas-blanketed areas aggravates the potential explosive danger. Hydrogen and methane are the major components of coke oven gas, accounting for 69 to 97 percent of the emission stream. According to National Fire Code (NFC) guidelines, these lighter-than-air gases seldom produce hazardous mixtures (i.e., presenting a

fire or explosive danger) in the zones where most electrical connections are made. If special equipment is required, it should already be in place at plants where the NFC or plant safety codes have required its installation. In addition, the NFC guidelines state that, in the experience of the code's authors, it generally has not been necessary to classify as hazardous "locations that are adequately ventilated where flammable substances are contained in suitable, well-maintained, closed piping systems which include only the pipes, valves, fittings, flanges, and meters."

Prior to proposal of the standard in 1984, EPA thoroughly evaluated the safety aspects of gas-blanketing systems. This review included visits to five plant sites where safety and operational problems were discussed with plant personnel. No safety or operational concerns were reported that routine minimal maintenance would not resolve. Since the 1984 proposal additional safety features such as water drains and overflow connections for tar tanks and liquid level sampling/gauging instrumentation with vapor-tight seals also have been added to the cost. Assuming each system is properly operated and maintained after installation, EPA considers that the positive pressure system is a safe and effective control technique and that leaks (if repaired as required) do not present the fire or explosive danger described by the commenters.

The EPA agrees that loss of power for heated lines could cause naphthalene clogging in cold climates. Unless a backup power supply is available for the entire plant, EPA assumes that such a power loss would affect most plant operations and probably would result in a shutdown until power was restored. The EPA is aware if no other reasonable approach for overcoming the effects of cold climates.

*Comment:* Five commenters believe that negative pressure gas-blanketing systems present a fire or explosive danger because of air infiltration from ineffective sealing of older vessels, operator error, or equipment failure. One commenter also stated that additional monitoring controls are necessary to monitor the explosive hazard, in addition to measures such as automatic nitrogen dilution or enrichment with natural gas to keep the coke oven gas mixture below the lower explosive limit or above the upper explosive limit.

*Response:* The standard that would be proposed under Approaches A, B, and C (and associated cost) is based on the use of a positive pressure system because comments made by the industry before the 1984 proposal questioned the safety of the negative pressure system recommended initially. Although the use of a negative pressure system is not precluded, EPA encourages companies to install safety and monitoring equipment as necessary in accordance with their historical safety policies and the system's characteristics. The EPA does recommend, however, that firms install the equipment included in the costs for the positive pressure system intended to alleviate many of the operating concerns cited by the commenters. Recommendations for specific equipment and their application are discussed further in the Revised Proposal BID. Regarding the potential danger from equipment failure, EPA considers that a failure of a negative pressure system under the scenario suggested by the commenters presents no more danger than similar situations encountered in the current uncontrolled plant environment.

*Comment:* Two commenters are concerned that overpressurization of a positive pressure system poses an explosive and occupational hazard because of the carbon monoxide (CO) released. One commenter stated that the presence of CO increases costs for additional monitoring and employee training because CO hazards do not exist currently. Similarly, another commenter believes that additional employees would be necessary for monitoring for explosive conditions or that hydrocarbon detection monitoring should be required on each piece of gas-blanketed equipment.

*Response:* Coke plant operators have stated that pressure control in the collecting main and gas holder is inherently reliable because large pressure fluctuations can cause serious operating and safety difficulties in battery and plant operation. Collecting-main pressure is controlled by an Askania valve at a few millimeters of water pressure, and the pressure is often watched and adjusted manually if necessary. Similarly, the pressure in the gas holder also is carefully controlled. Overpressurization is prevented by bleeder or pressure relief valves and water seals.

A CO hazard from coke oven gas would not be unique to blanketed vessels. The coke oven gas in handled is many parts of the coke and steel plants. If all of these locations are subject to the stated monitoring by the company, then consistent application of the policy would dictate monitoring of CO and explosive conditions for gas-blanketed vessels. Although the regulation includes costs for semiannual inspections for leaks, no costs are included for monitoring CO or explosive conditions because the existing systems did not have such provisions. Therefore, the monitoring questions on CO and explosive conditions appear to be those of company policy and site-specific conditions.

*Comment:* Two commenters believe that covering and sealing sumps create a fire or explosive hazard from concentrated fumes because no gas or steam can be used for purging.

*Response:* Steam purging strips organic compounds from the sump and can be especially efficient at removing volatile compounds such as benzene. Most sumps are installed below grade; consequently, workers and others in the plant can be exposed to high concentrations of these organic compounds at ground level, especially with a purge gas. The current practice of discharging tramp steam to an open sump already poses a hazard if concentrations are high enough to be explosive. Also, the steam purging may create the movement of explosive vapor from the sump to ground level if a surge or slug of organic material enters the sump during purging. An air-tight seal and a vent to the atmosphere are included in the sump cover costs for safety considerations. The operator also may choose other measures to increase safety, such as including a flame arrestor on the vent, installing explosive condition detectors, or replacing the sump with an above-grade closed tank. The solution to the commenters' question will depend on the site's specific conditions and the company's policy.

*Comment:* Several comments were received that related to the selection of controls for naphthalene processing and final coolers. Environmental groups and State agencies pointed to the significant emissions and risk reduction achievable with more stringent control of the final cooler. Comments from foundry coke producers on emission estimates and from the industry on costs, which are discussed in more detail in other sections of the preamble, influenced the analysis of the impacts of the controls for naphthalene processing and final coolers. Also, the industry commenters submitted plans for final coolers using indirect cooling technology that they believed to be more effective than tar-bottom final coolers and less expensive.

*Response:* In response to comments received on the 1984 proposal, EPA analyzed the impacts of control alternatives separately for furnace and foundry plants. Also, the costs for both tar-bottom and wash-oil final coolers were revised based on industry's comments. The revised costs for tar-

bottom final coolers were higher than proposed; those for wash-oil final coolers were lower. The revised cost analysis is discussed in Appendix B of the Revised Proposal BID responding to comments on the 1984 proposal.

One of the major reasons that wash-oil final coolers were not selected as the basis of the original proposed standard is that an analysis of the capital costs for a wash-oil final cooler compared to annual net income and investment indicated a potential for an unreasonably adverse economic impact on some firms. The EPA reanalyzed the economic impact of a regulatory option that is slightly more stringent than the revised standard proposed under Approaches A and B and that included wash-oil final coolers. The Agency concluded from the new analysis (Appendix C of the Revised Proposal BID) that the capital costs were not unreasonable when compared with normal annual investment expenditures or cash flow.

The Agency used the revised impacts of both wash-oil final coolers and tar-bottom final coolers when grouping the controls into the regulatory options considered by the Administrator. The selection of the regulatory option under Approaches A, B, and C that includes wash-oil final coolers at furnace plants is explained in Section X of this preamble.

Two industry commenters submitted plans for final coolers using indirect cooling technology that they believed to be more effective than tar-bottom final coolers and less expensive. In addition, an engineering firm that designs emission control systems for by-product plants provided information about certain alternative indirect cooling schemes. As discussed in Chapter 5 of the Revised Proposal BID, EPA based its reconsideration on evaluations of the tar-bottom and wash-oil final coolers because they are installed at several plants and EPA had more reliable design and cost information on them. However, the commenters' technologies could be used if they would achieve the zero emission limit included in the revised proposed standard for naphthalene processing, the final cooler, and associated final-cooler cooling tower at furnace plants or the zero emission limit for naphthalene processing at foundry plants.

One of the commenter's designs eliminated emissions from the final-cooler cooling tower, but provided only partial control of the naphthalene processing operations. Based on EPA's analysis of wash-oil final coolers at furnace plants, EPA concluded that complete control of both the final cooler and naphthalene processing is reasonable. In addition, EPA concluded that control of naphthalene processing alone, based on the use of a tar mixer-settler, is reasonable for foundry plants. Therefore, the design for indirect final cooling could be used to achieve the standard proposed for furnace or foundry plants under Approaches A, B, and C only if it included complete control of naphthalene processing emissions.

Implementation of a wash-oil final cooler, in which the naphthalene is absorbed in wash oil, eliminates the emissions that result from the practice of separating naphthalene from the hot well of a direct-water final cooler. Therefore, the zero emission limit for naphthalene processing that was proposed in 1984 still is appropriate for the revised standard proposed under Approaches A, B, and C for naphthalene processing at furnace and foundry plants. The wash-oil final cooler (or a similar indirect cooling scheme) also would eliminate emissions from the final cooler and associated cooling tower. Consequently, a zero emission limit for the final cooler and final-cooler cooling tower at furnace plants (as well as for naphthalene processing) was selected for the revised standard that would be proposed under Approaches A, B, and C. Wash-oil decanters and wash-oil circulation tanks are associated with wash-oil final-cooler designs. As described in the 1984 proposed standard and in today's proposal, these would be subject to the same gas-blanketing requirements as wash-oil decanters and wash-oil circulation tanks occurring in the light-oil recovery operation.

Under Approaches A, B, and C, if an owner or operator chose to meet the zero emission limit with an indirect cooling scheme in which the naphthalene is absorbed in tar or another medium (such as flushing liquor), then the vessel in which absorption takes place (e.g., the tar mixer-settler) must be gas blanketed. This is consistent with the standard proposed in 1984.

The use of wash-oil final coolers (or other indirect cooling systems) would reduce emissions of hydrogen cyanide (HCN) to the air, but could increase its concentration in the wastewater. The Agency estimates that about 200 grams (g) of HCN/Mg of coke produced could be added to the wastewaters of a medium-sized plant producing 4,000 Mg of coke/day. This increase is not anticipated to cause problems for compliance with effluent regulations.

No testing or monitoring provisions applicable to wash-oil final coolers are included in the revised proposed standard under Approaches A, B, and C because compliance would be achieved with installation of the appropriate equipment. However, any associated gas-blanketed vessels (e.g., wash-oil decanter and circulation tanks or tar mixer-settlers) would be subject to semiannual inspections for leaks using Method 21 in 40 CFR Part 60. These requirements for gas-blanketed vessels are described in this preamble in Section XII for coke by-product plants.

Compliance with the zero emission limit would be assessed through recordkeeping and reporting requirements. The owner or operator must record and keep in a readily available location a description of the control system used to achieve compliance (e.g., schematics), the installation date, and a description of any changes made after installation. In the initial compliance report required by 40 CFR 61.10, the owner or operator would be required to submit a statement notifying EPA that the provisions of the standard are being implemented. For gas-blanketed vessels associated with the final cooling system, the recordkeeping and reporting requirements for gas-blanketed vessels described in the 1984 proposed standard and in today's revised proposed standard under Approaches A, B, and C would be applied.

*Impact Analysis*

*Comment*: Two commenters noted the effect of plant closures and reduced battery capacities.

*Response*: The interim status of the estimated environmental impacts was acknowledged in the preamble to the proposed standard (49 FR 23524). As stated, the impacts were calculated initially from a data base of 55 plants. Data from the U.S. Department of Energy (DOE) received just before proposal indicated that 13 of the 55 plants had been closed. Information was not available, however, to determine whether all reported closures were permanent. Consequently, the preamble presented impacts based on 42 plants and stated that they would be revised after proposal.

After the June 6, 1984, proposal, the information regarding closures, changes in battery capacities, and changes or corrections in site-specific operating processes was updated to November 1984. These data were supplied by individual companies and by two major industry trade associations—the American Iron and Steel Institute (AISI) and the American Coke and Coal Chemicals Institute (ACCCI). As shown in Appendix A of the Revised Proposal

BID, 44 furnace and foundry plants with a combined operating capacity of 50.9 million Mg/yr of coke are included in the data base for the revised proposed standard. Plants on cold-idle in November 1984 are included in the data base because information is insufficient to determine whether these sites will be closed permanently. If these cold-idle plants were deleted from the data base, the operating capacity would be reduced by about 7 million Mg/yr of coke.

*Comment*: Five commenters stated that fewer emissions are generated from foundry plants compared to furnace plants because of the use of less volatile coal and longer coking cycles.

*Response*: In response to public comments received on the emission factors for foundry plants, EPA reviewed available information and data to determine whether separate factors were warranted for furnace and foundry plants. In general, EPA agrees with the commenters' assertions that benzene emissions from a foundry coke plant would be expected to be less than the emissions from a furnace coke plant of similar capacity. Foundry coke is produced from a coal mixture that contains less volatile matter than the mixtures used to produce furnace coke. Data supplied by DOE on light-oil yields show that, over a 4-year period, the light-oil yields at merchant plants (mainly foundry coke producers) averaged about 66 percent of those at furnace plants on a per-ton-of-coal-charged basis. These yields, displayed in Table A–11 of the Revised Proposed BID, represent the principal basis for the techniques used to adjust the emission factors for foundry coke plants.

The EPA also agrees with commenters who suggested that the lower coking temperatures associated with foundry coke production compared to furnace coke production (for the same coal) would lead to production of less by-product benzene. Although one merchant plant commenter indicated that the light-oil from coking contains 55 to 60 percent benzene (compared to the 70 percent assumed in the Proposal BID for furnace and foundry plants), the ACCCI provided an average estimate of 63.5 percent for foundry plants based on an informal poll of member companies. For furnace coke production, however, a light-oil content of 70 percent still is considered appropriate.

Separate emission factors for foundry plant sources were developed by applying correction factors to the emission rates initially proposed for furnace and foundry plants; computations of correction factors and the final emission factors are shown in Appendix A of the Revised Proposal BID.

*Comment:* The Agency received four comments that the risks were overestimated because of: (1) Inclusion of the epidemiologic study by Ott et al. in developing the URE, (2) use of a conservative, linear nonthreshold model for dose/response, and (3) application of conservative assumptions in the HEM, such as assuming exposure for 24 hours/day for 365 days/year over a 70-year lifetime. One commenter felt that the risks were underestimated because the analyses did not reflect updated epidemiological studies that would increase the URE. Also, if EPA had used the ISC model rather than the HEM, the estimated maximum individual lifetime risk would have been higher.

*Response:* The EPA has responded to comments on the benzene URE on several occasions (see "Response to Public Comments on EPA's Listing of Benzene under Section 112" (EPA–450/5–82–003) and EPA's response to an NRDC petition for reconsideration of the benzene URE based on the review of new scientific reports on benzene carcinogenicity (50 FR 34144, August 23, 1985)). In response to the NRDC petition, EPA reevaluated the benzene URE in light of current scientific literature. The URE was revised from 0.022 to 0.026/ppm, a 17-percent increase in the URE that was reflected in the estimates of risk that accompanied the 1984 proposal. Also since the time of proposal, EPA has revised the modeling radius from 20 km to 50 km around each plant. This reflects the Agency's judgment that the dispersion model yields reasonable estimates of concentrations out to 50 km. When advocating the ISC over the HEM, the commenter cites in support the estimated uncertainty factor of 2 or 3 discussed for the benzene fugitive emissions rulemaking. Comparisons of ISC and HEM do not always result in the ISC yielding higher concentrations. After comparing the two models for the 1984 benzene fugitive emissions rule, EPA concluded that the use of the ISC results would not change the Agency's decision on the standard. Because of this, the Agency decided this additional analysis for coke by-product plants was not warranted.

The EPA recognizes that the assumption of continuous exposure over a 70-year lifetime likely overestimates the cancer risk for individuals exposed for significantly less than 70 years. The uncertainties in the risk estimates are discussed further in Sections IV and X of this preamble.

*Comment:* Several commenters argue that the capital costs of the standard are significantly higher than estimated at proposal. Other commenters believe that the value for potential product recovery credits was overstated or that the cost for their particular plant would be higher than the model unit costs at proposal.

*Response:* The cost impact analysis has been revised since proposal to respond to many of the concerns cited by the commenters. The revised analysis, details of which are included in Chapter 7 and Appendix B of the Revised Proposal BID, indicates nationwide capital costs for Option 3 under Approaches A and B of about $84 million (1984 dollars) compared to $24 million (1982 dollars) estimated at proposal. This revised estimate under Approaches A and B includes the use of wash-oil final coolers at furnace coke plants, which were not included in the original proposal. Of the $84 million, approximately $46.5 million (or 58 percent) is for wash-oil final coolers at furnace plants.

In revising the analysis, EPA conducted a detailed review of the estimates and data supplied by commenters. The EPA also secured the assistance of a design and engineering firm/equipment vendor to assist in the development of revised unit costs. Included in the review was a site visit to a plant to resolve questions regarding equipment locations and source applicability, and to obtain examples of site-specific conditions pertinent to the development of the revised unit cost factors. Included in the revised analysis are higher unit costs for most materials based on data received from commenters in addition to the data developed by the design and engineering firm. Costs also have been added for sealing all sources, installing roofs on certain storage tanks, adding more pipe support, installing pressure/vacuum relief values for sealed sources, and making adjustment for work in hazardous areas requiring special safety precautions.

As stated above, costs for wash-oil final coolers also have been revised since proposal. Based on information supplied by industry, the annualized cost of a wash-oil final cooler is estimated at $872,400/yr for a medium-sized furnace plant producing 4,000 Mg of coke/day. The estimated capital cost for this size plant is $2.7 million. Further information on wash-oil final cooler costs appear in Appendix B of the Revised Proposal BID.

The Agency essentially agrees with the two commenters that the value of potential product recovery credits was overestimated at proposal. The

difference in production quantity (reflected in new emission factors for foundry plants) was taken into account in the computation of revised fuel value and light oil recovery credits. Also, the credit for light oil has been decreased from $0.33/kilogram (kg) to $0.27/kg based on DOE information (see Table A–11 of the Revised Proposal BID). The fuel value recovery credit for coke oven gas also was revised from $0.14/kg coke oven gas compared to $0.15/kg estimated at proposal. Credits for recovery of benzene and/or light oil were applied to all plants except those few specifically identified as not being able to benefit from recovery.

The EPA acknowledges that costs for particular plants may be higher or lower than EPA estimates, depending on the site-specific conditions. However, the revised cost analysis addresses the concerns cited by the commenters and the costs are reasonable estimates of the industry-wide cost of controls.

*Comment:* Commenters from both the furnace and foundry coke segments of the industry state that the economic analysis fails to consider the true condition of the industry at baseline and that the standard will have an adverse effect.

*Response:* At the time the original analysis for the proposed standard was conducted, the information from published and unpublished sources was current. A reanalysis has been performed since proposal (see Chapter 8 and Appendix C of the Revised Proposal BID) that utilizes data on plants and capacity in existence in November 1984. Financial data and production data used in baseline estimates are from the available published and unpublished sources as of 1984.

The reanalysis also examines the economic impacts of control options in terms of the effects on coke price and production, imports, and employment. These impacts have been examined separately for furnace and foundry producers. Two scenarios were used for foundry producers. Scenario A reflects a constant price in imported coke; Scenario B assumes the maximum effect of import substitution. In all cases, impacts appear to be small. For the standard for foundry plants, under Approach A or B, Scenario A would yield an increase of less than 0.6 percent over baseline for coke prices and production. Under Scenario B, no price impact is estimated; coke production could decrease by about 2 percent from 1984 levels. About a 0.6- and 2-percent decline in employment levels could occur at foundry plants under the Scenario A or B, respectively. For the revised proposed standard for furnace plants proposed under Approach A and B, coke prices could increase by about 0.33 percent from baseline levels, and coke production could decrease by less that 0.5 percent. The level of imported coke could increase by 0.64 percent. Employment levels at furnace coke plants could decrease by less than 0.5 percent as a result of Approach A or B.

The economic analysis also compared the capital costs of compliance to average annual net investment and to the annual cash flow for individual companies. As shown in Appendix C, the capital costs of compliance for the revised regulation proposed under Approaches A and B are up to 5 and 8 percent of the average annual net investments and annual cash flow, respectively, for companies for which data are available.

The revised economic analysis did not include an examination of the emission limits that would be required under Approaches C and D.

*General Comments*

*Comment:* One commenter requests that EPA reconsider lowering the definition of an equipment "leak" from 10,000 parts per million volume (ppmv) to 1,000 ppmv or to the highest level at which the EPA can demonstrate, with data, that directed maintenance does not result in net emission reductions.

*Response:* The Agency's rationale for selecting the 10,000-ppmv leak definition was discussed in the preamble for the original proposal of this rule, and in the rulemakings for equipment leaks of benzene and VOC in synthetic organic chemicals manufacturing plants and petroleum refineries. The issue also is discussed in EPA's response to NRDC's petition for reconsideration of the benzene rulemakings (50 FR 34144, August 23, 1985).

As discussed in Chapter 10 of the Revised Proposal BID, the key criterion for selecting a leak definition is the mass emission reduction demonstrated to be achievable. The EPA has not concluded that a lower leak definition is achievable. A net increase in mass emissions might result if higher concentration levels result from attempts to repair a source with a screening value between 1,000 and 10,000 ppmv. Although many leaks can be repaired successfully at concentrations less than 1,000 ppmv, even one repair failure would offset many successful repairs. Most data on leak repair effectiveness have applied 10,000 ppmv as the leak definition and, therefore, do not indicate the effectiveness of repair for leak definitions between 1,000 and 10,000 ppmv. Although data between these values are available, they are not sufficient to support a leak definition below 10,000 ppmv. Moreover, even though there is some evidence that directed maintenance is more effective, available data are insufficient to serve as a basis for requiring directed maintenance for all sources. In summary, EPA does not disagree with the commenter in that additional emission reductions potentially could be achieved by reducing the leak definition from 10,000 to 1,000 ppmv. However, although EPA has concluded that the 10,000-ppmv level is a demonstrated and effective leak definition (i.e., there are enough emissions that repair can be accomplished with reasonable costs), EPA has not concluded that 1,000 ppmv is a demonstrated definition. Until EPA has adequate data to support a lower level, EPA is selecting the clearly demonstrated leak definition of 10,000 ppmv as the basis of the equipment leak requirements.

*Comment:* One commenter recommends that the standard permits the use of a 90-percent efficient control device (e.g., a wash-oil scrubber) in lieu of gas blanketing on process vessels, tar storage tanks, and tar-intercepting sumps. The commenter suggests that the control efficiency of blanketing at an older plant may be lower than 98 percent because of leakage and downtime, and a wash-oil scrubber may achieve higher than 90-percent control.

*Response:* The control efficiency of gas blanketing theoretically is 100 percent. For conservative comparisons with other controls, this efficiency has been reduced to 98 percent to account for leakage. The 98-percent level or higher should be maintained continuously through proper leak detection and repair. Although a wash-oil scrubber may achieve an efficiency higher than 90 percent, the parameters were developed to ensure that all plants using this technique could achieve a 90-percent control continuously. Based on a 90-percent control efficiency, wash-oil scrubbers are less effective than gas blanketing and may be more costly from a nationwide perspective.

## XII. Summary of Alternative Proposed Standards

This section summarizes the format and provisions of the standards that are proposed under the four policy approaches described in Section V. The alternative policy approaches result in alternative standards. The rationales for selection of the standards for each source category under each policy approach are contained in Section VII through X of this preamble. In this

section, general provisions applicable to all standards are listed first, followed by a summary of the alternative proposed standards organized by source category.

*General Compliance Provisions*

Provisions Applicable to all Standards

All of the proposed regulations would require compliance within 90 days of promulgation for existing sources, and at startup for new sources. Methods for determination of compliance are described in each subpart. A waiver of compliance for an existing source could be approved by the Administrator for no more than 2 years from the date of promulgation, as provided in 40 CFR 61.11. The following reports are required by the General Provisions of Part 61:

1. An initial source, report;

2. Notification 30 days prior to any emission test to permit the Administrator to have an observer present; and

3. A written report regarding any emission test within 30 days following the test.

The following records would need to be maintained on site for at least 2 years, and be available for inspection by the Administrator:

1. Any emission test data and calculations used to demonstrate compliance;

2. Monitoring records;

3. A log of startups, shutdowns, and malfunctions; and

4. A log of maintenance and repair of control devices.

Records on control system design and specifications would be maintained as long as a piece of control equipment was in use.

Compliance Procedures for Emission Limit Standards

The following procedures apply to the alternative standards proposed under Approaches C and D for equipment leaks and coke by-product recovery plants, and the standards proposed under Approach D for benzene storage vessels and EB/S process vents.

Compliance with the emission limit would be determined by an emission test, calculation procedures that are described in the applicable subpart, or by an alternative method approved by the Administrator. A report of the results of the emission test shall be submitted within 30 days of the test. If a calculation procedure or alternative method is used to determine compliance, a compliance report shall be submitted with the source report required in § 61.10 or the notification of startup required in § 61.09 of 40 CFR Part 61, whichever is applicable.

An operating and maintenance plan would be required within 90 days of promulgation for existing sources, and within 90 days of startup for new sources. The plan would have to describe any control techniques used to achieve compliance, identify the parameter(s) to be monitored, explain the criteria used in deciding on the parameters, and establish the types and frequency of maintenance necessary. It would also include a schedule for reporting of excess emissions or reporting of other information demonstrating continued compliance with the emission limit. Excess emissions would be indicated by exceedences of the monitored parameter(s) specified in the operating plan. The reporting schedule should be consistent with the compliance, monitoring, and maintenance methods, and would be no more frequent than quarterly. The operating and maintenance plan would be subject to the Administrator's approval.

*Standards for EB/S Process Vents*

Approach A. Case-by-Case Approach

No standard is proposed for EB/S process vents.

Approach B. Incidence-Based Approach

No standard is proposed for EB/S process vents.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

No standard is proposed for EB/S process vents.

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

The proposed standard would limit total benzene emissions from all process vents at any EB/S plant to 5.5 kg/day.

*Standards for Benzene Storage Vessels*

Approach A. Case-by-Case Approach

The proposed standard would require control of all new and existing storage vessels greater than 38 $m^3$ (10,000 gallons) used to store benzene with a specific gravity within the range of specific gravities specified for industrial grade benzene in ASTM–D–836–80. It would not apply to storage vessels used for storing benzene at coke by-product recovery facilities because they are considered under the coke by-product plant NESHAP. The proposed standard would require use of certain kinds of equipment on each type of benzene storage vessel. Table XII–1 lists the requirements.

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TABLE XII-1. EQUIPMENT TO BE REQUIRED ON BENZENE STORAGE VESSELS IN STANDARD PROPOSED UNDER APPROACHES A, B, AND C

| | Tank size and time of construction | Requirements |
|---|---|---|
| 1. | Fixed roof internal floating roof tank | |
| a. | $\geq$ 38 $m^3$, commenced construction prior to date of proposal, and had no internal floating roof as of proposal | Internal floating roof with liquid-mounted primary seal and gasketed roof fittings<br>or<br>internal floating roof with liquid-mounted primary seal and a continuous secondary seal. |
| b | $\geq$ 38 $m^3$, commenced construction prior to date of proposal, and had an internal floating roof as of proposal. | Internal floating roof with any type of seal and gasketed roof fittings[1]<br>or<br>internal floating roof with liquid-mounted primary seal and a continuous secondary seal. |
| c. | $\geq$ 38 $m^3$, commenced construction after date of proposal. | Internal floating roof with liquid-mounted primary seal and gasketed roof fittings and pipe column with flexible frabic sleeve.<br>or<br>internal floating roof with liquid-mounted primary seal and a continuous secondary seal. |
| 2 | External floating roof tank | |
| a | $\geq$ 38 $m^3$, commenced construction prior to date of proposal. | Liquid-mounted primary seal and a continuous secondary seal.[2,3] |
| b | $\geq$ 38 $m^3$, commenced construction on or after date of proposal | Liquid-mounted primary seal and a continuous secondary seal[3] |

[1] Gasketing of roof fittings is required the first time tank is degassed

[2] If external floating roof is already equipped with liquid-mounted primary seal, the secondary seal is required to be added the first time the tank is degassed

[3] Mechanical-shoe primary seal is also allowed, provided that the tank is also equipped with a continuous secondary seal

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The proposed benzene storage vessel standard would require that fixed roof tanks include an internal floating roof. The proposed standard would also require that, when an internal floating roof is added to an existing fixed roof tank after the effective date of the standard, a liquid-mounted rather than a vapor-mounted seal be used with the roof and that fittings on the roof be gasketed. (A mechanical-shoe seal may also be used.) Existing fixed roof tanks that already have internal floating roofs on the effective date would not be required to have their vapor-mounted seals replaced with liquid-mounted seals, although they would be required to have their roof fittings gasketed when the tank is emptied and degassed for other purposes. New fixed roof storage tanks would be required to be constructed with the same controls as are required for existing tanks with no internal roof (i.e., with an internal floating roof, a liquid-mounted primary seal, and controlled roof fittings) and they would also be required to have pipe columns equipped with a flexible fabric sleeve seal. Note that if tanks were equipped with a secondary seal in accordance with the proposed standard, gasketed fittings would not be required; the two control techniques achieve the same emission reduction.

Owners of existing and new external floating roof tanks would have to install liquid-mounted primary seals (or mechanical-shoe seals) and continuous secondary seals meeting certain gap requirements. Existing external floating roof tanks already equipped with a liquid-mounted primary seal, however, would not be required to add the secondary seal until the first degassing of the tank.

The standard would require that each internal floating roof vessel be inspected from inside prior to the filling of the vessel (if it is emptied to install control equipment) and at least once every 10 years. An internal floating roof having defects or a seal having holes or tears would have to be repaired before filling the storage vessel with benzene. The proposed standard would also require that the internal floating roof and its seal be inspected through roof hatches on the fixed roof at least once annually. However, if an internal floating roof were equipped with a primary and secondary seal, the owner or operator could conduct an internal inspection every 5 years rather than perform the annual inspections. Any major defects such as roof sinking or primary seal detachment as viewed through the roof hatches would be required to be repaired within 30 days or the storage vessel would have to be emptied. If repair or emptying within 30 days is not possible, the owner or operator could request an extension of up to 30 additional days.

The proposed standard would also require that, for external floating roof tanks, the primary seal and secondary seal gaps be measured initially and at least once every 5 years for the primary seal and at least once annually for the secondary seal.

Approach B. Incidence-Based Approach

The proposed standard would be the same as that described under the preceding discussion of Approach A.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

The proposed standard would be the same as that described under the preceding discussion of Approach A.

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

The proposed standard would limit total combined emissions from all benzene storage vessels at a plant to 0.47 kg/day. To determine compliance, the owner or operator would calculate emissions from each vessel and add these to estimate total facility emissions. One calculation method EPA would approve is use of the equations and procedures in the EPA document "Compilation of Air Pollutant Emission Factors", Volume I, September 1985, EPA Publication No. AP–42. Other methods of demonstrating compliance could also be used after approval by EPA.

*Standards for Equipment Leaks*

Approach A. Case-by-Case Approach

No new standard is proposed for control of benzene equipment leaks. The standard in 40 CFR Part 61, Subpart J, which was promulgated on June 6, 1984, would remain in effect without revision. The standard applies to equipment components such as valves, pumps, compressors, pressure relief devices, open-ended valves or lines, sample connection systems, and product accumulator vessels. Equipment that contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene is required to follow specific control procedures. Generally, for each type of equipment, Subpart J includes equipment specifications and/or schedules and procedures for monitoring and repair of leaks.

Approach B. Incidence-Based Approach

No new standard is proposed for benzene equipment leaks. The current standard in 40 CFR Part 61, Subpart J, which is summarized in the discussion of Approach A, would remain in effect without revision.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

The proposed standard would require that each facility with equipment subject to Subpart J meet a total facility emission limit of 14 kg/day for the combined emissions from all equipment components located at the facility. In addition, the proposed standard would include the current requirements in Subpart J (i.e., those promulgated on June 6, 1984). Compliance with the emission limit could be determined through the procedures established in the "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft" or through design specifications (i.e., leakless equipment).

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

The proposed standard would limit emissions from all equipment components at any facility with equipment in benzene service to 0.14 kg/day. The proposed standard does not retain the exemption for facilities producing or using less than 1,000 Mg/yr that is currently in Subpart J (as promulgated on June 6, 1984). The exemption is not appropriate under this approach because uncontrolled emissions from many facilities using less than 1,000 Mg/yr would exceed the 0.14 kg/day emission limit. The current Subpart J provisions would not be required, because this would be unnecessary since plants would have to use even more stringent controls to comply with the emission limit.

*Standards for Coke By-Product Recovery Plants*

Approach A. Case-by-Case Approach

There are two major differences between the standard proposed under Approach A and the 1984 proposal. A design standard requiring a 90-percent emission reduction was proposed in 1984 for storage tanks containing light oil, benzene, excess ammonia-liquor, or BTX mixtures. The Approach A proposal would not require that these sources be controlled. Also, the standard proposed for naphthalene processing under this approach would differ from the 1984 proposal by requiring zero emissions from the final cooler and associated cooling tower at furnace plants, as well as from naphthalene processing. The proposed standard for naphthalene processing at

foundry plants is not different from the 1984 proposal.

Under Approach A, an equipment standard would be established for the control of emissions from each tar decanter, tar-intercepting sump, tar dewatering tank, light-oil condenser, light-oil decanter, wash-oil decanter, and wash-oil circulation tank. The rule that would be proposed under Approach A would be identical to that proposed for these sources in 1984. Each of these sources would be required to be totally enclosed with emissions ducted to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process. Unless otherwise specified, pressure relief devices, vacuum relief devices, access hatches, and sampling ports would be the only openings allowed on each source. Access hatches and sampling ports would have to be equipped with a gasketed cover.

The standard under Approach A could be achieved with a gas-blanketing system. A gas-blanketing system is a closed system operated at positive pressure and is generally composed of piping, connections, and flow-inducing devices (if necessary) that transport emissions from the enclosed source back to the coke-oven battery gas holder, the collecting main, or another point in the by-product recovery process. Dirty or clean coke oven gas, nitrogen, or natural gas are examples of gases that may be used as the gas blanket.

To ensure proper operation and maintenance of the control equipment, the proposed standard would require a semiannual inspection of the connections and seals on each gas-blanketing system for leaks, using EPA method 21 test for no detectable emissions (40 CFR Part 60, Appendix A). Monitoring also would be required at any other time after the control system is repressurized following removal of the cover or opening of the access hatch. An organic chemical concentration would indicate the presence of a leak. The standard also would require a semiannual visual inspection of each source and the piping of the control system for visible defects such as gaps or tears. A first attempt at repair of each leak or visible defect would be required within 5 days of detection, with repair within 15 days. The owner or operator would be required to record the results of the inspections for each source and to include the results in a semiannual report. The revised proposed regulation under Approach A also would require an annual maintenance inspection for abnormalities such as pluggages, sticking valves, and clogged or improperly operating condensate traps. A first attempt at repair would be required within 5 days, with any necessary repairs made within 15 days of the inspection.

An equipment standard would be proposed to require that the surface area of each light-oil sump be completely enclosed. This proposed standard would be based on the use of a tightly fitting permanent or removable cover, with a gasket on the rim of the cover. The standard would allow the use of an access hatch and a vent in the sump cover. However, any access hatch would need to be equipped with a gasket and with a cover or lid, and any vent would need to be equipped with a water leg seal, pressure relief device, or vacuum relief device. Semiannual inspections of the gaskets and seals for detectable emissions would be required; monitoring also would be required at any other time the seal system is disturbed by removal of the cover. The inspection and monitoring requirements would be the same as previously described for gas-blanketed sources. This revised proposed standard would not allow venting of steam or gases from other points in the coke by-product process to the light-oil sump.

The revised proposed standard also would apply to leaks (i.e., fugitive emissions) from new and existing pieces of equipment in benzene service, including pumps, valves, exhausters, pressure relief devices, sampling connections, and open-ended lines, all of which except exhausters comprise those components that contact or contain materials having a benzene concentration of at least 10 percent by weight. Exhausters that contact or contain materials having a benzene concentration of at least 1 percent benzene by weight also are in benzene service. The standard for equipment leaks would be identical to the 1984 proposed standard. Because this standard is the same as requirements in 40 CFR Part 61, Subpart V, for equipment except exhausters, the coke by-product rule would reference Subpart V where appropriate rather than repeating the provisions. Subpart V also would be amended where necessary for clarification of the cross referencing. The specific requirements for exhausters are summarized in detail below, because they are not in Subpart V.

The revised proposed standard would require that all exhausters in benzene service be monitored quarterly for the detection of leaks. If an organic chemical concentration at or above 10,000 ppm were detected, as measured by Method 21, the revised proposed standard would require a first attempt at repair within 5 days, with repair of the leak within 15 days from the date the leak was detected, except when repair would require a process unit shutdown. "Repair" means that the measured concentration is below 10,000 ppm. The standard proposed under Approach A provides three types of alternatives to the leak detection and repair requirements for exhausters. An owner or operator could (1) use "leakless" equipment to achieve a "no detectable emission" limit (i.e., 500 ppm above a background concentration, as measured by Method 21), (2) equip the exhauster with enclosed seal areas vented to a control device designed and operated to achieve a 95-percent benzene control efficiency, or (3) equip the exhausters with seals having a barrier fluid system. The proposed regulation includes specific requirements for each of these three alternatives to the leak detection and repair requirements.

For foundry coke by-product plants, the revised proposed standard under Approach A would allow no emissions from the processing of naphthalene separated from the final cooler water. A foundry coke by-product plant would be defined as a coke by-product recovery plant connected to the coke batteries whose annual coke production is at least 75 percent foundry coke. "Foundry coke" means coke that is produced from raw materials with less than 26 percent volatile material by weight and that is subject to a coking period of 24 hours or more. This emission limit could be achieved by a process modification involving the absorption of naphthalene in tar, wash oil, or an alternative medium (other than water). For example, a mixer-settler could be added to the final cooler, or a direct-water final cooler could be replaced by a tar-bottom or wash-oil final cooler system or another design that allows no emissions from naphthalene processing. If a mixer-settler were used to remove naphthalene from the final cooler water, the mixer-settler must be gas blanketed and would be subject to the same provisions as other gas-blanketed sources.

For furnace coke by-product plants, the revised proposed standard under Approach A for naphthalene-processing operations, final coolers, and the associated cooling towers would require zero emissions from the final cooler and cooling tower, as well as from naphthalene processing. It would be based on the use of a wash-oil final cooler; however, other final cooler designs that achieve zero emission limits could be used.

Compliance with the revised proposed standard under Approach A would be assessed through plant inspections and the review of records and reports that document implementation of the requirements. On a semiannual basis, the owner or operator would be required to report the number of leaks detected and the number of leaks not repaired during the 6-month period. The owner or operator also would be required to submit a signed statement in each semiannual report, indicating whether provisions of the standard have been met for the 6-month period.

Approach B. Incidence-Based Approach

The proposed standard would be the same as that described under the preceding discussion of Approach A.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

The proposed standard would require that total benzene emissions from all emission points listed in Table X–2 not exceed 34 kg/day. In addition, the owner or operator would be required to meet the standards discussed above for Approach A. To determine compliance with the emission limit, the plant owner or operator may calculate emissions from all affected sources based on the emission factors for each unit and submit these calculations with the initial source report. The benzene emission factors for furnace and foundry plants, as revised based on public comments from the 1984 proposal, are included in the regulation for this approach and in the Revised Proposal BID. Alternatively, the owner or operator could choose to perform emission tests to estimate emissions using methods and procedures subject to approval by the Administrator. However, because EPA has not developed and promulgated a test method for determining benzene emissions from process vessels and area sources, the owner or operator would need to provide an appropriate method for review and approval by EPA. For equipment leaks, established procedures can be found in "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft".

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

The proposed standard would require that total benzene emissions from all emission points listed in Table X-2 not exceed 0.34 kg/day. To demonstrate compliance with the emission limit, the plant owner or operator would use the methods described above for Approach C.

## XIII. Format of Alternative Standards

Section 112 of the CAA requires an emission standard whenever it is feasible. Section 112(e)(1) states that "if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *". The term "not feasible" is applicable if the emissions cannot be captured and vented through a vent or stack designed for that purpose, or if the application of a measurement methodology is not practicable because of technological or economic limitations. This section presents the rationale for the selected formats for the standards being proposed under the four alternative policy approaches.

*Ethylbenzene/Styrene Process Vents*

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

The proposed standard is expressed as a limit on the mass of benzene emitted per day to ensure that no faclity has risks exceeding $1 \times 10^{-6}$. Because EB/S process vents vary widely in concentration and flowrates, it is not possible to ensure that any specific concentration or emission reduction would achieve the target risk. Therefore, a limit was placed on the total mass emitted on a daily basis.

*Benzene Storage Vessels*

Approach A. Case-by-Case Approach

The standard being proposed under Approach A is based on design, equipment and operational requirements due to the infeasibility of measuring emissions in this case. Internal and external floating roof storage vessels, both before and after the identified controls are installed, do not typically have a conveyance system designed to capture the emissions or a stack or vent through which the emissions pass to the atmosphere.

Equipping each storage vessel with a capture and stack system would require that the vessel vents be sealed and that the emissions be transported to a measurement system. In most cases, the closure of the vessel vents would require the vessel to be blanketed with inert gas to prevent the creation of explosive or flammable mixtures in the vessel or measurement system. This would certainly be economically impracticable, especially considering that the sole purpose of the system would be for emission testing. For this reason the Administrator concluded that requiring emission testing to measure emissions and demonstrate compliance with an emission standard is not feasible for internal floating-roof storage vessels.

External floating-roof storage vessels are open to the atmosphere in that they have no fixed roof. Because of this, it is technologically impossible to equip these vessels with a closed vent system. It is possible to equip these vessels with fixed roofs, in which case they become internal floating-roof vessels. The argument against an emission standard for internal floating-roof vessels presented in the previous paragraph would then hold for them. Therefore, the Administrator has concluded that requiring emission testing to measure emissions and demonstrate compliance with an emission standard for external floating-roof vessels is infeasible.

The possibility of establishing a "design, equipment, work practice, or operational standard, or combination thereof" was then examined. Types of equipment available to limit emissions from fixed roof benzene storage vessels are an internal floating-roof with a liquid-mounted primary seal, or a secondary seal and controlled fittings. Equipment available for external floating roof tanks include continuous secondary seals. Equipment standards can be specified to require installation of these types of controls. Operational and work practice requirements, which consist of inspection and repair requirements, are necessary to ensure the continued integrity of the control equipment. Therefore, the Administrator concluded that the format of the standard for benzene storage vessels should include a combination of design, equipment, work practice, and operational standards.

Another control option allowed under the standards is a vapor control system consisting of two distinct parts: (1) A closed vent system and (2) a control device. The closed vent system collects benzene vapors that have been vented from the storage vessel and transfers them to a control device that then processes the benzene vapors by either recovering them as product, or disposing of them. After reviewing analyses of vapor control systems performed during the development of the previous NSPS for VOL storage vessels and the NESHAP for equipment leaks (40 CFR Part 61, Subpart V) which have provisions for closed vent systems and control devices, the Administrator concluded that the format of the standard for storage vessels equipped with closed vent systems and control devices should also include a

combination of design, equipment, work practice and operational standards.

Approach B. Incidence-Based Approach

The same standard is being proposed under Approach B as under Approach A. Therefore, the same format was selected for the reasons described under Approach A.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

The same standard is being proposed under Approach C as under Approach A. Therefore, the format was selected for the same reasons.

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

For the development of this standard, EPA considered establishing additional equipment and design requirements. Because the identified controls (in Option 1 of Table VIII–2) would not achieve $1 \times 10^{-6}$ at all facilities, it is not possible at this time to use this format to specify the required control level. Therefore, a limit was placed on the total benzene emissions from all storage vessels at a facility.

*Equipment Leaks*

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

For the development of this alternative standard, EPA considered establishing additional equipment and design requirements. (In selecting the format for the current Subpart J, EPA had previously determined that mass, concentration, or percent reduction formats were not feasible or practicable.) Because the additional controls available would not achieve $1 \times 10^{-4}$ at all facilities, it was not possible to use an equipment and design format to specify the required control. Therefore, the format selected was a daily mass emission limit that would not exceed $1 \times 10^{-4}$ risk. This emission limit may be achieved through design of the facility to minimize the number of components as well as through use of leakless equipment. Additionally, the standards retain requirements of Subpart J (as promulgated on June 6, 1984), which are expressed as equipment, design, and work practice standards because some small facilities may be able to reduce emissions to below the 14 kg/day emission limit by compliance with these provisions.

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

A limit on the mass of emissions per day was chosen for this standard for the same reasons described under Approach C.

*Coke By-Product Recovery Plants*

Approach A. Case-by-Case Approach

As described in detail for each emission source in the June 6, 1984, proposal, pollutants are not emitted through a conveyance or are not practicable to measure for many of the sources in coke by-product plants. Therefore, the proposed standard under Approach A is a combination of emission limits, equipment, work practice, and operational requirements, depending on the source to be controlled.

Approach B. Incidence-Based Approach

The same standard is being proposed under Approaches A and B. Therefore, the format was selected for the same reasons.

Approach C. $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach

The emission rate corresponding to the $1 \times 10^{-4}$ target is 34 kg/day from all emission points listed in Table X–2. Since EPA has not identified any control equipment or procedures that would achieve this emission level at all facilities, it was not possible to specify the standard solely in terms of emission standards for particular equipment, work practice, and operational requirements depending on the source to be controlled. Therefore, a limit was placed on total daily benzene emissions from all affected sources in coke by-product recovery plants. In addition, since some facilities could comply with the 34 kg/day standard using less than the provisions of the proposed standard under Approach A, the standard also specifies minimum control requirements (i.e., the requirement of Approach A) in terms of equipment, design, work practices, and emission limits on particular sources.

Approach D. $1 \times 10^{-6}$ or Less Maximum Individual Risk Approach

A limit on the mass of emissions released per day from the total of all emission points listed in Table X–2 was chosen for this standard for the same reasons described under Approach C.

## XIV. Paperwork Reduction Act

The information collection provisions associated with the proposed rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC, 20503, marked "Attention: Desk Officer for EPA", as well as to EPA. Please note on the comments that they apply to ICR Number 1080. The final rules will respond to any OMB or public comments on the information collection requirements.

During the first 3 years that the proposed standards would be in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be:

(1) 4,184 averaged annual hours with an average of 322 hours/yr per respondent for EB/S plants' process vents under Approach D;

(2) 2,134 averaged annual hours with an average of 17 hours/yr per respondent for plants with benzene storage vessels under Approaches A, B, and C;

(3) 126 averaged annual hours with an average of 1 hour/yr per respondent for plants with benzene storage vessels under Approach D;

(4) 1,383 averaged annual hours with an average of 11 hours/yr per respondent for plants with equipment in benzene service (equipment leaks) under Approach C;

(5) 129 averaged annual hours with an average of 1 hour/yr per respondent for plants with equipment in benzene service (equipment leaks) under Approach D;

(6) 7,112 averaged annual hours with an average of 161 hours/yr per respondent for coke by-product recovery plants under Approaches A, B, and C each; and

(7) 44 averaged annual hours with an average of 1 hour/yr per respondent for coke by-product recovery plants under Approach D. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

There are no recordkeeping and reporting requirements for EB/S process vents under Approaches A, B, and C. Also, for equipment leaks under Approaches A and B, the Agency proposes no change in the regulation, therefore, there would be no additional recordkeeping and reporting burden.

## XV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires EPA to consider potential impacts of proposed regulations on small "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present RFA guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and

(4) Regulatory requirements are likely to result in closures of small entities.

For EB/S process vents, no small business would be subject to any proposed EB/S standard. For benzene storage vessels and equipment leaks, very few businesses would be considered small businesses. According to Small Business Administration guidelines, a small business that manufacturers cyclic crudes and cyclic intermediates, pharmaceuticals, and many other chemicals is one that has 750 employees or fewer. Very few of the businesses in the existing industry employ fewer than 750 people. Even if benzene storage facilities owned by small businesses do become subject to a standard under Approaches A, B, or C, none will be adversely affected. In the economic analysis for this standard, the price increase and profitability impacts were estimated for small as well as for larger facilities. The impacts for the small benzene storage facilities were very small (about $800/year). For benzene storage vessels under Approach D and for benzene equipment leaks under Approaches C and D, small businesses will not be more adversely affected than larger businesses.

For coke by-product recovery plants, the EPA has determined under the Small Business Administration guidelines that any coke firm that employs fewer than 1,000 workers is a small business. Six foundry coke firms were identified as being small. For the standard proposed under Approaches A, B, and C, the economic analysis estimates that one plant may exceed criterion (2) above. However, these standards are not subject to the RFA because there is not a substantial number (i.e., 20 percent of the small businesses) that would be adversely affected. For standards proposed under Approach D, the impacts are not expected to be more adverse for small businesses than for large businesses.

## XVI. Public Hearing

A public hearing will be held to discuss the proposed actions, in accordance with sections 112(b)(1)(B) and 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 10 minutes each. Any member of the public may file a written statement before, during, or within 30 days of the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–79–16 for coke by-product recovery plants, Docket No. A–79–27 for benzene equipment leaks, Docket No. OAQPS 79–3 (Part II) for maleic anhydride process vents, Docket No. A–79–49 for EB/S process vents, and Docket No. A–80–14 for benzene storage vessels.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

## XVII. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

## XVIII. Miscellaneous

As prescribed by section 112 of the CAA, as amended, establishment of today's proposed national emissions standards was preceded by the Administrator's listing of benzene as a hazardous air pollutant on June 8, 1977 (42 FR 29332).

The final regulations will be reviewed 5 years from the dates of their promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and reporting requirements.

In accordance with section 117 of the Act, publication of these actions on benzene was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies to the maximum extent practical.

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that the regulations proposed for benzene storage vessels under Approaches A, B, and C and for coke by-product recovery plants under Approaches A and B will result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." These regulations are not major because: (1) Nationwide annual compliance costs are not as great as the threshold of $100 million; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant, adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

The regulations proposed under Approach C for benzene equipment leaks and coke by-product recovery plants and under Approach D for EB/S process vents, benzene storage vessels, equipment leaks and coke by-product plants may be determined to be a "major rule" under Executive Order 12291. The regulations could cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. As provided by section 8 of the Order, the Agency has not conducted a regulatory impact analysis (RIA) of these proposed regulations because of the time constraint of the judicially-ordered schedule.

All of the proposed regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the dockets listed at the beginning of today's notice under "Dockets". These dockets are available for public inspection at the EPA's Central Docket Section, which is listed in the **ADDRESSES** section of this preamble.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that all the rules proposed under Approaches A and B,

the rules for benzene storage vessels and coke by-product recovery plants proposed under Approach C, and the rules for EB/S process vents proposed under Approach D, if promulgated, will not have a significant economic impact on a substantial number of small entities. I also hereby certify that the rules proposed under Approach C for benzene equipment leaks and under Approach D for benzene storage vessels, equipment leaks, and coke by-product recovery plants will not have a more adverse economic impact on small entities than on large entities.

**List of Subjects in 40 CFR Part 61**

Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Inter-governmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Date: July 20, 1988.

**Lee M. Thomas,**

*Administrator.*

It is proposed to amend Title 40, Chapter I, Part 61 of the Code of Federal Regulations as follows:

## PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority for 40 CFR Part 61 continues to read as follows:

**Authority:** Sections 112, 114, 301(a) of the Clean Air Act (CAA), as amended (40 U.S.C. 7412, 7414, 7601(a)).

2. Under *Approach C* as described in the preamble, Subpart J would be revised to read as follows:

### Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

Sec.

61.110 Applicability and designation of sources.
61.111 Definitions.
61.112 Standards.
61.113 Monitoring and compliance.
61.114 Recordkeeping requirements.
61.115 Reporting requirements.
61.116 Delegation of authority.

### Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

#### § 61.110 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in benzene service: Pumps, compressors, pressure relief devices, sampling connections, systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by this subpart.

(b) The provisions of this subpart do not apply to sources located in coke by-product plants.

(c)(1) If an owner or operator applies for one of the exemptions in this paragraph, then the owner or operator shall maintain records as required in § 61.114.

(2) Any equipment in benzene service that is located at a plant site designed to produce or use less than 1,000 megagrams of benzene per year is exempt from the requirements of § 61.112.

(3) Any process unit (defined in § 61.241) that has no equipment in benzene service is exempt from the requirements of § 61.112.

(d) While the provisions of this subpart are effective, a source to which this subpart applies that is also subject to the provisions of 40 CFR Part 60 only will be required to comply with the provisions of this subpart.

#### § 61.111 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, or in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"In benzene service" means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight as determined according to the provisions of § 61.245(d). The provisions of § 61.245(d) also specify how to determine that a piece of equipment is not in benzene service.

"Plant" means any combination of process units and equipment used at one site in the production of benzene as an intermediate or final product or in the use of benzene.

"Semiannual" means a 6-month period: The first semiannual period concludes on the last day of the last month during the 180 days following initial startup of new sources; and the first semiannual period concludes on the last day of the last full month during the 180 days after June 6, 1984, for existing sources.

#### § 61.112 Standards.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of Subpart V of this part.

(b) An owner or operator may elect to comply with the requirements of § 61.243–1 and § 61.243–2.

(c) An owner or operator may apply to the Administrator for a determination of an alternative means of emission limitation that achieves a reduction in emissions of benzene at least equivalent to the reduction in emissions of benzene achieved by the controls required in paragraph (a) of this section. In doing so, the owner or operator shall comply with requirements of § 61.244.

(d) In addition to complying with paragraph (a) of this section, no owner or operator of a plant subject to the provisions of this subpart shall cause to be discharged to the atmosphere total benzene emissions from all leaking equipment in the plant exceeding 14 kg/day (5 Mg/yr). Leaking equipment shall include all equipment in benzene service.

#### § 61.113 Monitoring and compliance.

(a) Each owner or operator of a source subject to the provisions of § 61.242 shall comply with the test methods and procedures of § 61.245.

(b) Each owner or operator seeking to demonstrate compliance with the annual limit in § 61.112(d) shall measure or calculate emissions according to one of the procedures given in the document "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft;" December 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency of the control program on a component basis.

(c) In lieu of using the procedures referred to in paragraph (b) of this section, an owner or operator may apply to the Administrator for approval of an equivalent method of measuring or calculating emissions.

(d) Each owner or operator subject to the provisions of § 61.112(d) shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date for existing sources, or within 90 days of startup for new sources. The plan shall include the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.112(d). The

reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(e) Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

**§ 61.114 Recordkeeping requirements.**

(a) Each owner or operator of a source subject to the provisions of § 61.242 shall comply with the recordkeeping requirements of § 61.246.

(b) Each owner or operator subject to the provisions of § 61.112(d) shall maintain at the plant for a period of at least 2 years, and shall make available to the Administrator upon request, the following:

(1) Records of all data and calculations used to demonstrate compliance with § 61.112(d).

(2) Records of all leaks and repairs to equipment in benzene service.

(3) Records of all malfuctions of each air pollution control device used in controlling benzene emissions.

(4) Records of all maintenance and repairs to each air pollution control device used in controlling benzene emissions.

(5) For each air pollution control device used in the control of benzene emissions, detailed schematics and records of design specifications and instrumentation.

(6) Records of all relevant data and information for any additional methods used to achieve compliance with § 61.112(d) other than the use of air pollution control devices, or leak detection and repair.

(c) A list of identification numbers of all equipment in benzene service at the plant site shall be recorded in a log that is kept in a readily accessible location.

(d) The following information shall be recorded in a log that is kept in a readily accessible location for use in determining exemptions as provided in § 61.110(c)(2) of this subpart:

(1) An analysis demonstrating that the plant site is designed to produce or use less than 1,000 Mg of benzene per year.

(2) Any information and data used in the analysis described in paragraph (1) above.

(e) The following information for use in determining exemptions as provided in § 61.110(c)(3) of this subpart shall be recorded in a log that is kept in a readily accessible location:

(1) An analysis demonstrating that a piece of equipment is not in benzene service.

(2) Any information and data used in the analysis described in paragraph (e)(1).

**§ 61.115 Reporting requirements.**

(a) Each owner or operator subject to the provisions of § 61.112(d) shall:

(1) Comply with the reporting requirements of § 61.247.

(2) Provide the Administrator 30 days prior notice of any emission test required in § 61.13 to afford the Administrator the opportunity to have an observer present.

(3) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days of conducting the test.

(4) Submit to the Administrator a written report of excess emissions at the frequency established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered to be any exceedence of the monitoring parameters specified in the approved operating and maintenance plan required by § 61.113.

(5) If a calculational procedure is used to demonstrate compliance, a report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or the notification of startup required in § 61.09 for new sources.

(b) A report shall be submitted to the Administrator semiannully, starting 6 months after submittal of the intitial operating and maintenance plan required in § 61.113(d). All semiannual reports shall be postmarked by the 30th day following the end of the 6-month report period. This report includes the following information:

(1) Plant identification.

(2) For each month during the period, the number of equipment leaks which occurred, the number of equipment leaks for which repair was attempted, and the number of equipment leaks for which repair was completed.

**§ 61.116 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

3. Under *Approach D* as described in the preamble, Subpart J would be revised to read as follows:

**Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene**

Sec.

61.110 Applicability and designation of sources.
61.111 Definitions.
61.112 Standards.
61.113 Monitoring and compliance.
61.114 Recordkeeping requirements.
61.115 Reporting requirements.
61.116 Delegation of authority.

## Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

**§ 61.110 Applicability and designation of sources.**

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in benzene service: Pumps, compressors, pressure relief devices, sampling connections, systems, open-ended values or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by this subpart.

(b) The provisions of this subpart do not apply to sources located in coke by-product plants.

(c)(1) If an owner or operator applies for one of the exemptions in this paragraph, then the owner or operator shall maintain records as required in § 61.114.

(2) Any process unit (defined in § 61.241) that has no equipment in benzene service is exempt from the requirements of § 61.112.

(d) While the provisions of this subpart are effective, a source to which this subpart applies that is also subject to the provisions of 40 CFR Part 60 only will be required to comply with the provisions of this subpart.

**§ 61.111 Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, or in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"In benzene service" means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight as determined according to the provisions of § 61.245(d). The provisions of § 61.245(d) also specify how to determine that a piece of equipment is not in benzene service.

"Plant" means any combination of process units and equipment used at one site in the production of benzene as an

intermediate or final product or in the use of benzene.

"Semiannual" means a 6-month period: The first semiannual period concludes on the last day of the last month during the 180 days following initial startup of new sources; and the first semiannual period concludes on the last day of the last full month during the 180 days after June 6, 1984, for exisitng sources.

**§ 61.112 Standards.**

(a) No owner or operator of a plant subject to this subpart shall cause to be discharged to the atmosphere total benzene emissions from all leaking equipment in the plant exceeding 0.14 kg/day (50 kg/yr). Leaking equipment shall include all equipment in benzene service.

**§ 61.113 Monitoring and compliance.**

(a) Each owner or operator seeking to demonstrate compliance with the annual emission limit in § 61.112(a) shall measure or calculate emissions according to one of the producers given in the document "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP-Draft;" December 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency of the control program on a component basis.

(b) In lieu of using the procedures referred to in paragraph (a) of this section, an owner or operator may apply to the Administrator for approval of an equivalent method of measuring or calculating emissions.

(c) Each owner or operator subject to the provisions of § 61.112(a) shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date for existing sources, or within 90 days of startup for new sources. The plan shall include the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.112(d). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(d) Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

**§ 61.114 Recordkeeping requirements.**

(a) Each owner or operator subject to the provisions of § 61.112(a) shall maintain at the plant for a period of at least 2 years, and shall make available to the Administrator upon request, the following:

(1) Records of all data and calculations used to demonstrate compliance with § 61.112(a).

(2) Records of all leaks and repairs to equipment in benzene service.

(3) Records of all malfunctions of each air pollution control device used in controlling benzene emissions.

(4) Records of all maintenance and repairs to each air pollution control device used in controlling benzene emissions.

(5) For each air pollution control device used in the control of benzene emissions, detailed schematics and records of design specifications and instrumentation.

(6) Records of all relevant data and information for any additional methods used to achieve compliance with § 61.112(a) other than the use of air pollution control devices, or leak detection and repair.

(b) A list of identification numbers of all equipment in benzene service at the plant site shall be recorded in a log that is kept in a readily accessible location.

**§ 61.115 Reporting requirements.**

(a) Each owner or operator subject to the provisions of § 61.112(a) shall:

(1) Provide the Administrator 30 days prior notice of any emission test required in § 61.113 to afford the Administrator the opportunity to have an observer present; and

(2) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days after conducting the test.

(3) Submit to the Administrator a written report of excess emissions at the frequency established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered to be any exceedence of the monitoring parameters specified in the approved operating and maintenance plan required by § 61.113.

(4) If a calculational procedure is used to demonstrate compliance, a compliance report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or the notification of startup required in § 61.09 for new sources.

(b) A report shall be submitted to the Administrator semiannually starting 6 months after submittal of the initial operating and maintenance plan required in § 61.113(c), that includes the following information:

(1) Plant identification.

(2) For each month during the period, the number of equipment leaks which occurred, the number of equipment leaks for which repair was attempted, and the number of equipment leaks for which repair was completed.

(c) All semiannual reports shall be postmarked by the 30th day following the end of the 6-month report period.

**§ 61.116 Delegating of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

4. Under *Approaches A and B*, as described in the preamble, Subpart L would be added to Part 61 of Title 40 as follows:

**Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants**

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.
61.133 Standard: Light-oil sumps.
61.134 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.
61.135 Standard: Equipment leaks.
61.136 Compliance provisions and alternative means of emission limitation.
61.137 Test methods and procedures.
61.138 Recordkeeping and reporting amendments.
61.139 Delegation of authority.

## Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

**§ 61.130 Applicability and designation of sources.**

(a) The provisions of this subpart apply to each of the following sources at furnace and foundry coke by-product recovery plants: Tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil

sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, and the following equipment that are intended to operate in benzene service: Pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by § 61.135.

(b) The provisions of this subpart also apply to naphthalene processing at foundry coke by-product recovery plants and to naphthalene processing, final coolers, and final-cooler cooling towers at furnace coke by-product recovery plants.

**§ 61.131 Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"Annual coke production" means the coke produced in the batteries connected to the coke by-product recovery plant over a 12-month period. The first 12-month period concludes on the first December 31 that comes at least 12 months after the effective date or after the date of initial startup if initial startup is after the effective date.

"In benzene service" means a piece of equipment, other than an exhauster, that either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight or any exhauster that either contains or contacts a fluid (liquid or gas) at least 1 percent benzene by weight as determined by the provisions of § 61.137(b). The provisions of § 61.137(b) also specify how to determine that a piece of equipment is not in benzene service.

"Coke by-product recovery plant" means any plant designed and operated for the separation and recovery of coal tar derivatives (by-products) evolved from coal during the coking process of a coke oven battery.

"Equipment" means each pump, valve, exhauster, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in benzene service.

"Exhauster" means a fan located between the inlet gas flange and outlet gas flange of the coke oven gas line that provides motive power for coke oven gases.

"Foundary coke" means coke that is produced from raw materials with less than 26 percent volatile material by weight and that is subject to a coking period of 24 hours or more. Percent volatile material of the raw materials (by weight) is the weighted average percent volatile material of all raw materials (by weight) charged to the coke oven per coking cycle.

"Foundry coke by-product recovery plant" means a coke by-product recovery plant connected to coke batteries whose annual coke production is at least 75 percent foundry coke.

"Flushing-liquor circulation tank" means any vessel that functions to store or contain flushing liquor that is separated from the tar in the tar decanter and is recirculated as the cooled liquor to the gas collection system.

"Furnace coke" means coke produced in by-product ovens that is not foundry coke.

"Furnace coke by-product recovery plant" means a coke by-product recovery plant that is not a foundry coke by-product recovery plant.

"Light-oil condenser" means any unit in the light-oil recovery operation that functions to condense benzene-containing vapors.

"Light-oil decanter" means any vessel, tank, or other type of device in the light-oil recovery operation that functions to separate light oil from water downstream of the light-oil condenser. A light-oil decanter also may be known as a light-oil separator.

"Light-oil sump" means any tank, pit, enclosure, or slop tank in light-oil recovery operations that functions as a wastewater separation device for hydrocarbon liquids on the surface of the water.

"Mixer-settler" means a tank that is inserted into the final cooling process that serves to remove naphthalene from final cooler water by means of absorption into tar or another organic liquid.

"Naphthalene processing" means any operations required to recover naphthalene, including the separation, refining, and drying of crude or refined naphthalene.

"Process vessel" means each tar decanter, flushing-liquor circulation tank, light-oil condenser, light-oil decanter, wash-oil decanter, or wash-oil circulation tank.

"Semiannual" means a 6-month period; the first semiannual period concludes on the last day of the last full month during the 180 days following initial startup for new sources; the first semiannual period concludes on the last day of the last full month during the 180 days after the effective date of the regulation for existing sources.

"Tar decanter" means any vessel, tank, or other type of container that functions to separate heavy tar and sludge from flushing liquor by means of gravity, heat, or chemical emulsion breakers. A tar decanter also may be known as a flushing-liquor decanter.

"Tar storage tank" means any vessel, tank, reservoir, or other type of container used to collect or store crude tar or tar-entrained naphthalene, except for tar products obtained by distillation, such as coal tar pitch, creosotes, or carbolic oil. This definition also includes any vessel, tank, reservoir, or other type of container used to reduce the water content of the tar by means of heat, residence time, chemical emulsion breakers, or centrifugal separation. A tar storage tank also may be known as a tar-dewatering tank.

"Tar-intercepting sump" means any tank, pit, or enclosure that serves to separate light tars and aqueous condensate received from the primary cooler. A tar-intercepting sump also may be known as a primary-cooler decanter.

"Wash-oil circulation tank" means any vessel that functions to hold the wash oil used in light-oil recovery operations or the wash oil used in the wash-oil final cooler.

"Wash-oil decanter" means any vessel that functions to separate, by gravity, the condensed water from the wash oil received from a wash-oil final cooler or from a light-oil scrubber.

**§ 61.132 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.**

(a)(1) Each owner or operator shall enclose and seal all openings on each process vessel, tar storage tank, and tar-intercepting sump.

(2) The owner or operator shall duct gases from each process vessel, tar storage tank, and tar-intercepting sump to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process where the benzene in the gas will be recovered or destroyed. This control system shall be designed and operated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined by the methods specified in § 61.245(c). This system can be designed as a closed, positive pressure, gas-blanketing system.

(i) Except, the owner or operator may elect to install, operate, and maintain a pressure relief device, vacuum relief device, an access hatch, and a sampling port on each process vessel, tar storage tank, and tar-intercepting sump. Each access hatch and sampling port must be equipped with a gasket and a cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

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(ii) The owner or operator may elect to leave open to the atmosphere the portion of the liquid surface in each tar decanter necessary to permit operation of a sludge conveyor. If the owner or operator elects to maintain an opening on part of the liquid surface of the tar decanter, the owner or operator shall install, operate, and maintain a water leg seal on the tar decanter roof near the sludge discharge chute to ensure enclosure of the major portion of liquid surface not necessary for the operation of the sludge conveyor.

(b) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR Part 60 Appendix A) and procedures specified in § 61.245(c), and shall visually inspect each source (including sealing materials) and the ductwork of the control system for evidence of visible defects such as gaps or tears. This monitoring and inspection shall be conducted on a semi-annual basis and at any other time after the control system is repressurized with blanketing gas following removal of the cover or opening of the access hatch.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

(c) Following the installation of any control system used to meet the requirements of paragraph (a) of this section, the owner or operator shall conduct a maintenance inspection of the control system on an annual basis for evidence of system abnormalities, such as blocked or plugged lines, sticking valves, plugged condensate traps, and other maintenance defects that could result in abnormal system operation. The owner or operator shall make a first attempt at repair within 5 days, with repair within 15 days of detection.

**§ 61.133 Standard: Light-oil sumps.**

(a) Each owner or operator of a light-oil sump shall enclose and seal the liquid surface in the sump to form a closed system to contain the emissions.

(1) Except, the owner or operator may elect to install, operate, and maintain a vent on the light-oil sump cover. Each vent pipe must be equipped with a water leg seal, a pressure relief device, or vacuum relief device.

(2) Except, the owner or operator may elect to install, operate, and maintain a vent on the light-oil sump cover. Each access hatch must be equipped with a gasket and cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

(3) The light-oil sump cover may be removed for periodic maintenance but must be replaced (with seal) at completion of the maintenance operation.

(b) The venting of steam or other gases from the by-product process to the light-oil sump is not permitted.

(c) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR Part 60, Appendix A) and the procedures specified in § 61.245(c), and shall visually inspect each source (including sealing materials) for evidence of visible defects such as gaps or tears. This monitoring and inspection shall be conducted semiannually and at any other time the cover is removed.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

**§ 61.134 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.**

(a) No ("zero") emissions are allowed from naphthalene processing at furnace and foundry coke by-product recovery plants.

(b) The emission limit specified in paragraph (a) of this section is not applicable if a mixer-organic liquid.

(c) If a mixer-settler is used to separate naphthalene, the mixer-settler is subject to all requirements specified in § 61.132 for process vessels, including lead detection and repair provisions.

(d) No ("zero") emissions are allowed from final coolers and final-cooler cooling towers at furnace coke by-product recovery plants.

**§ 61.135 Standard: Equipment leaks.**

(a) Each owner or operator of equipment in benzene service shall comply with the requirements of 40 CFR Part 61, Subpart V, except as provided in this section.

(b) The provisions of §§ 61.242–3 and 61.242–9 of Subpart V do not apply to this subpart.

(c) Each piece of equipment in benzene service to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment in benzene service.

(d) Each exhauster shall be monitored quarterly to detect leaks by the methods specified in § 61.245(b) except as provided in § 61.136(d) and paragraphs (e) through (g) of this section.

(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in § 61.242–10 (a) and (b). A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) Each exhauster equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluids to the atmosphere is exempt from the requirements of paragraph (d) of this section provided the following requirements are met:

(1) Each exhauster seal system is:

(i) Operated with the barrier fluid at a pressure that is greater than the exhauster stuffing box pressure; or

(ii) Equipped with a barrier fluid system that is connected by a closed vent system to a control device that complies with the requirements of § 61.242–11; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with zero benzene emissions to the atmosphere.

(2) The barrier fluid is not in benzene service.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(4)(i) Each sensor as described in paragraph (e)(3) of this section shall be checked daily or shall be equipped with an audible alarm.

(ii) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(5) If the sensor indicates failure of the seal system, the barrier system, or both (based on the criterion determined under paragraph (e)(r)(ii) of this section), a leak is detected.

(6)(i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.242–10.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(f) An exhauster is exempt from the requirements of paragraph (d) of this section if it is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 61.242–11 except as provided in paragraph (g) of this section.

(g) Any exhauster that is designated, as described in § 61.246(3) for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (d) of this section if the exhauster:

(1) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 61.245(c); and

(2) Is tested for compliance with paragraph (g)(1) of this section initially upon designation, annually, and at other times requested by the Administrator.

(h) Any exhauster that is in vacuum service is excluded from the requirements of this subpart if it is identified as required in § 61.246(e)(5).

**§ 61.136 Compliance provisions and alternative means of emission limitation.**

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 61.132 through 61.135 for each new and existing source, except as provided under §§ 61.243–1 and 61.243.2.

(b) Compliance with this subpart shall be determined by a review of records, review of performance test results, inspections, or any combination thereof, using the methods and procedures specified in § 61.137.

(c) On the first January 1 after the first year that a plant's annual coke production is less than 75 percent foundry coke, the coke by-product recovery plant becomes a furnace coke by-product recovery plant and shall comply with § 61.134(d). Once a plant becomes a furnace coke by-product recovery plant, it will continue to be considered a furnace coke by-product recovery plant, regardless of the coke production in subsequent years.

(d)(1) An owner or operator may request permission to use an alternative means of emission limitation to meet the requirements in §§ 61.132, 61.133, and 61.135 of this subpart and §§ 61.242–2, –5, –6, –7, –8, and –11 of Subpart V. Permission to use an alternative means of emission limitation shall be requested as specified in § 61.12(d).

(2) When the Administrator evaluates requests for permission to use alternative means of emission limitation for sources subject to §§ 61.132, 61.133, (except tar decanters), the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 98 percent. For tar decanters, the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 95 percent.

(3) For any requests for permission to use an alternative to the work practices required under § 61.135, the provisions of § 61.244(c) shall apply.

**§ 61.137 Test methods and procedures.**

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements in § 61.245 of 40 CFR Part 61, Subpart V.

(b) To determine whether or not a piece of equipment is in benzene service, the methods in § 61.245(d) shall be used, except that, for exhausters, the percent benzene shall be 1 percent by weight (rather than the 10 percent by weight described in § 61.245(d)).

**§ 61.138 Recordkeeping and reporting requirements.**

(a) The following information pertaining to the design of control equipment installed to comply with §§ 61.132 through 61.134 shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(b) The following information pertaining to sources subject to § 61.132, sources subject to § 61.133, and mixer-settlers used to comply with § 61.134(b) shall be recorded and maintained for 2 years following each semiannual (and other) inspection and each annual maintenance inspection:

(1) The date of the inspection and the name of the inspector.

(2) A brief description of each visible defect in the source or control equipment and the method and date of repair of the defect.

(3) The presence of a leak, as measured using the method described in § 61.245(c). The record shall include the date of attempted and actual repair and method of repair of the leak.

(4) A brief description of any system abnormalities found during the annual maintenance inspection, the repairs made, the date of attempted repair, and the date of actual repair.

(c) Each owner or operator of a source subject to § 61.135 shall comply with § 61.246.

(d) For foundry coke by-product recovery plants, the annual coke production of both furnace and foundry coke shall be recorded and maintained for 2 years following each determination.

(e)(1) An owner or operator of any source to which this subpart applies shall submit a statement in writing notifying the Administrator that the requirements of this subpart and 40 CFR Part 61, Subpart V, have been implemented.

(2) In the case of an existing source or a new source that has an initial startup date preceding the effective date, the statement is to be submitted within 90 days of the effective date, unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of a new source that did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction, as described under § 61.07.

(4) The statement is to contain the following information for each source:

(i) Type of source (e.g., a light-oil sump or pump).

(ii) For equipment in benzene service, equipment identification number and process unit identification; percent by weight benzene in the fluid at the equipment; and process fluid state in the equipment (gas/vapor or liquid).

(iii) Method of compliance with the standard (e.g., "gas blanketing," "use of a tar-bottom final cooler," "monthly leak detection and repair," or "equipped with dual mechanical seals"). This includes whether the plant plans to be a furnace or foundry coke by-product recovery plant for the purposes of § 61.134.

(f) A report shall be submitted to the Administrator semiannually starting 6 months after the initial reports required in §§ 61.138(e) and 61.10, which includes the following information:

(1) For sources subject to § 61.132, sources subject to § 61.133, and mixer-settlers used to comply with § 61.134(c),

(i) A brief description of any visible defect in the source or ductwork,

(ii) The number of leaks detected and repaired, and

(iii) A brief description of any system abnormalities found during each annual maintenance inspection that occurred in the reporting period and the repairs made.

(2) For equipment in benzene service subject to § 61.135(a), information required by § 61.247(b).

(3) For each exhauster subject to § 61.135 for each quarter during the semiannual reporting period,

(i) The number of exhausters for which leaks were detected as described in § 61.135(d) and (e)(5),

(ii) The number of exhausters for which leaks were detected as repaired as required in § 61.135(d) and (e)(6),

(iii) The results of performance tests to determine compliance with § 61.135(g) conducted within the semiannual reporting period.

(4) A statement signed by the owner or operator stating whether all provisions of 40 CFR Part 61, Subpart L, have been fulfilled during the semiannual reporting period.

(5) For foundry coke by-product recovery plants, the annual coke production of both furnace and foundry coke, if determined during the reporting period.

(6) Revisions to items reported according to paragraph (e) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

**Note:** Compliance with the requirements of § 61.10(c) is not required for revisions documented under this paragraph.

(g) In the first report submitted as required in § 61.138(e), the report shall include a reporting schedule stating the months that semiannual reports shall be submitted. Subsequent reports shall be submitted according to that schedule unless a revised schedule has been submitted in a previous semiannual report.

(h) An owner or operator electing to comply with the provisions of §§ 61.243–1 and 61.243–2 shall notify the Administrator of the alternative standard selected 90 days before implementing either of the provisions.

(i) An application for approval of construction or modification, as required under §§ 61.05(a) and 61.07, will not be required for sources subject to § 61.135 if—

(1) The new source complies with § 61.135.

(2) In the next semiannual report required by § 61.138(f), the information described in § 61.138(e)(4) is reported.

(Approved by OMB under control number ————.)

### § 61.139 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States:

(1) Section 61.136(d).

5. Under *Approach C*, as described in the preamble, Subpart L would be added to Part 61 of Title 40 as follows:

## Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132 Emission limit.
61.133 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.
61.134 Standard: Light-oil sumps.
61.135 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.
61.136 Standard: Equipment leaks.
61.137 Compliance provisions and alternative means of emission limitation.
61.138 Test methods and procedures.
61.139 Recordkeeping and reporting requirements.
61.140 Delegation of authority.

## Subpart L—National Emission Standard for Benzene Emission From Coke By-Product Recovery Plants

### § 61.130 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources at coke by-product recovery plants: Tar decanters, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing at foundry coke by-product plants, naphthalene processing, final coolers, and final cooler cooling towers at furnace coke by-product plants, tar storage tanks, benzene-toluene-xylene (BTX) storage tanks, light-oil storage tanks, excess ammonia-liquor storage tanks, and the following equipment that are intended to operate in benzene service: Pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by § 61.136.

### § 61.131 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"Benzene storage tank" means any tank, reservoir, or other type container used to collect or store refined benzene.

"BTX storage tank" means any vessel, reservoir, or container used for the storage of benzene-toluene-xylene or other light-oil fractions.

"Excess ammonia-liquor storage tank" means tank, reservoir, or other type container used to collect or store a flushing liquor solution prior to ammonia or phenol recovery.

"Light-oil storage tank" means any vessel, tank, reservoir, or other type container used to collect or store crude or refined light-oil, used for the storage of crude or refined light-oil.

(Remaining definitions identical to § 61.131 of Approach A. Full text would be printed in final rule.)

### § 61.132 Emission limit.

(a) No owner or operator of a plant subject to this subpart shall cause to be discharged to the atmosphere total benzene emissions from all sources listed in § 61.130(a) exceeding 34 kg/day, and

(b) Each owner or operator of a plant subject to this subpart also shall comply with the standards specified in §§ 61.133–61.136.

### § 61.133 Standard: Process vessels, tar storage tanks, and tar-intercepting sumps.

(Identical to § 61.132 of Approach A. Full text would be printed in final rule.)

### § 61.134 Standard: Light-oil sumps.

(Identical to § 61.133 of Approach A. Full text would be printed in final rule.)

### § 61.135 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.

(Identical to § 61.134 of Approach A. Full text would be printed in final rule.)

### § 61.136 Standard: Equipment leaks.

(Identical to § 61.135 of Approach A. Full text would be printed in final rule.)

**§ 61.137 Compliance provisions and alternative means of emission limitation.**

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of § 61.132 and §§ 61.133–61.136 for each new and existing source, except as provided under §§ 61.243–1 and 61.243–2.

(b) Compliance with § 61.132(a) of this subpart shall be determined by the procedures specified in § 61.138; compliance with §§ 61.133–61.136 of this subpart shall be determined by a review of records, review of performance test results, inspections, or any combination thereof, using the methods and procedures specified in § 61.138.

(c)–(d) (Identical to § 61.136(c)–(d) of Approach A. Full text would be printed in final rule.)

(e) If the owner or operator of a plant subject to this subpart complies with § 61.132(a) with methods different than those required in § 61.132(b), the owner or operator shall submit an operating and maintenance plan to the Administrator in addition to the semiannual reports required by § 61.139. Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

**§ 61.138 Test methods and procedures.**

(a) Each owner or operator seeking to demonstrate compliance for sources with the emission limit in § 61.132(a) shall calculate total benzene emissions per year from all sources shown on Table 1 by multiplying, for each source, the plant annual production rate by the uncontrolled benzene emission factors from Table 1 and then applying the efficiency of the control system to obtain controlled emissions for each source. For equipment in benzene service, the owner or operator shall calculate emissions using one of the procedures given in the documents, *Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft*, November 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency for the control program. If the sum of total emissions from all affected sources divided by 365 is 34 kg/day or less, the plant is in compliance with § 61.132(a).

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Table 1. Uncontrolled Benzene Emission Factors
(g benzene/Mg of coke/day)

| Source | Furnace Plants | Foundry Plants |
|---|---|---|
| Cooling tower | | |
| Direct-water | 270 | 197 |
| Tar-bottom | 70 | 51 |
| Naphthalene separation and processing | 107 | 79 |
| Light-oil condenser vent | 89 | 48 |
| Tar intercepting sump | 90 | 45 |
| Tar dewatering | 21 | 9.9 |
| Tar decanter | 77 | 36 |
| Light-oil sump | 15 | 8.1 |
| Light-oil storage | 5.8 | 3.1 |
| BTX storage | 5.8 | 3.1 |
| Benzene storage | 5.8 | 3.1 |
| Flushing-liquor circulation tank | 6.6 | 9 |
| Excess ammonia-liquor storage | 9 | 6.6 |
| Wash-oil decanter | 3.8 | 6.6 |

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(b) Subject to approval by the Administrator, the owner or operator may determine compliance based on emission testing as described in § 61.13. To demonstrate compliance, the owner or operator shall submit supporting documentation as described in § 61.139.

(c)-(d) (Identical to § 61.137 (a)-(b)] of Approach A. Full text would be printed in final rule.)

**§ 61.139 Recordkeeping and reporting requirements.**

(a) The following information pertaining to compliance with the emission limit specified in § 61.132(a) shall be recorded and kept in a readily available location:

(1) If compliance is determined by § 61.138(a), all calculations based on annual production rate and benzene emission factors, including documentation of the basis of the efficiency of the control systems applied.

(2) If compliance is determined by § 61.138(b), results of emission tests used to demonstrate compliance and all supporting calculations, including documentation of the basis of the efficiency of the control systems applied.

(b)-(f) (iii) (Identical to §§ 61.138(a)–61.138(e) (iii) of Approach A. Full text would be printed in final rule.)

(g) If an owner or operator is required to submit an operating and maintenance plan as required in § 61.137(e), the plan shall be submitted to the Administrator for approval within 90 days of the effective date, along with the information required by § 61.10. For new sources, the owner or operator shall submit the plan within 90 days after initial startup. The plan shall include the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit in § 61.132(a) and the general standards in §§ 61.133–61.136.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria to be used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule reporting of other information demonstrating continued compliance with § 61.132(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(h) Each owner or operator subject to this subpart shall submit to the Administrator a written report of excess emissions established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered any exceedence of the monitoring parameters specified in the approved operating and maintenance plan.

(i) Each owner or operator subject to § 61.132(a) that demonstrates compliance using the procedures in § 61.138(b) shall:

(1) Provide the Administrator 30 days notice of any emission test required in § 61.13 to afford the Administrator the opportunity to have an observer present; and

(2) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days of conducting the test.

(j) Each owner or operator subject to § 61.132(a) that demonstrates compliance using the procedures in § 61.138(a) shall provide the Administrator a report demonstrating compliance and containing all supporting calculations, including documentation of the basis of the efficiency of the control systems applied. For existing sources, the report shall be submitted to the Administrator within 90 days of the effective date, along with the information required by § 651.10. For new sources, the report shall be submitted to the Administrator along with the notification of startup required by § 61.09.

(k)-(l) (Identical to §§ 61.138 (f)-(i) of Approach A. Full text would be printed in final rule.)

**§61.140 Delegation of authority.**

(Identical to §61.139 of Approach A. Full text would be printed in final rule.)

6. Under *Approach D*, as described in the preamble, Subpart L would be added to Part 61 of Title 40 as follows:

**Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants**

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132 Emission limit.
61.133 Compliance provisions.
61.134 Recordkeeping and reporting requirements.
61.135 Delegation of authority.

**Subpart L—National Emission Standard for Benzene Emission from Coke By-Product Recovery Plants.**

**§ 61.130 Applicability and designation of sources.**

(a) The provisions of this subpart apply to each of the following sources at coke by-product recovery plants: Tar decanters, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing at foundry coke by-product plants, naphthalene processing, final coolers, and final cooler cooling towers at furnace coke by-product plants, tar storage tanks, benzene-toluene-xylene (BTX) storage tanks, light-oil storage tanks, excess ammonia-liquor storage tanks, and the following equipment that are intended to operate in benzene service: Pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems for these equipment.

**§ 61.131 Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"Benzene storage tank" means any tank, reservoir, or other type container used to collect or store refined benzene.

"BTX storage tank" means any vessel, reservoir, or container used for the storage of benzene-toluene-xylene or other light-oil fractions.

"Excess ammonia-liquor storage tank" means tank, reservoir, or other type container used to collect or store a flushing liquor solution prior to ammonia or phenol recovery.

"Light-oil storage tank" means any vessel, tank, reservoir, or other type container used to collect or store crude or refined light-oil, used for the storage of crude or refined light-oil.

(Remaining definitions identical to § 61.131 of Approach A. Full text would be printed in final rule.)

**§ 61.132 Emission limit.**

(a) No owner or operator of a plant subject to this subpart shall cause to be discharged to the atmosphere total benzene emissions from all sources listed in § 61.130(a) exceeding 0.34 kg/day.

**§ 61.133 Compliance provisions.**

(a) Each owner or operator subject to the provisions of this subpart shall

demonstrate compliance with the requirements of § 61.132 for each new and existing source.

(b) Each owner or operator seeking to demonstrate compliance for sources with the emission limit in § 61.132 shall calculate total benzene emissions per year from all sources shown in Table 1 by multiplying, for each source, the plant annual production rate by the uncontrolled benzene emission factors from Table 1 and then applying the efficiency of the control system to obtain controlled emissions for each source. For equipment in benzene service, the owner or operator shall calculate emissions using one of the procedures given in the document, "Protocols for Generating Unit-Specific Estimates for Equipment Leaks of VOC and VHAP—Draft," December 1987; EPA Contract No. 68–02–4338, and apply the emission reduction efficiency for the control program. If the sum of total emissions from all affected sources divided by 365 is 0.34 kg/day or less, the plant is in compliance with § 61.132.

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Table 1. Uncontrolled Benzene Emission Factors
(g benzene/Mg of coke/day)

| Source | Furnace Plants | Foundry Plants |
|---|---|---|
| Cooling tower | | |
| Direct-water | 270 | 197 |
| Tar-bottom | 70 | 51 |
| Naphthalene separation and processing | 107 | 79 |
| Light-oil condenser vent | 89 | 48 |
| Tar intercepting sump | 90 | 45 |
| Tar dewatering | 21 | 9.9 |
| Tar decanter | 77 | 36 |
| Light-oil sump | 15 | 8.1 |
| Light-oil storage | 5.8 | 3.1 |
| BTX storage | 5.8 | 3.1 |
| Benzene storage | 5.8 | 3.1 |
| Flushing-liquor circulation tank | 6.6 | 9 |
| Excess ammonia-liquor storage | 9 | 6.6 |
| Wash-oil decanter | 3.8 | 6.6 |

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(c) Subject to approval by the Administrator, the owner or operator may determine compliance based on emission testing as described in § 61.13. To demonstrate compliance, the owner or operator shall submit supporting documentation as described in § 61.134.

**§ 61.134 Recordkeeping and reporting requirements.**

(a) The following information pertaining to compliance with the emission limit specified in § 61.132 shall be recorded and kept in a readily available location:

(1) If compliance is determined by § 61.133(b), all calculations based on annual production rate and benzene emission factors, including documentation of the basis of the efficiency of the control systems applied.

(2) If compliance is determined by § 61.133(c), results of emission tests used to demonstrate compliance and all supporting calculations, including documentation of the basis of the efficiency of the control systems applied.

(b) Each owner or operator subject to § 61.132 that demonstrates compliance using the procedures in § 61.133(b) shall provide the Administrator a report demonstrating compliance and containing all supporting calculations, including documentation of the basis of the efficiency of the control systems applied. For existing sources, the report shall be submitted to the Administrator within 90 days of the effective date, along with the information required by § 61.10. For new sources, the report shall be submitted to the Administrator along with the notification of startup required by § 61.09.

(c) Each owner or operator subject to § 61.132 that demonstrates compliance using the procedures in § 61.133(c) shall:

(1) Provide the Administrator 30 days notice of any emission test required in § 61.13 to afford the Administrator the opportunity to have an observer present; and

(2) Submit to the Administrator a written report of the results of the emission test and associated calculations, as applicable, within 30 days of conducting the test.

(d) Each owner or operator subject to this subpart shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date, along with the information required by § 61.10. For new sources, the owner or operator shall submit the plan within 90 days after initial startup. Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan. The plan shall contain the following:

(1) A description of the control techniques by which the owner or operator will comply with the emission limit in § 61.132.

(2) Identification of the parameter(s) to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria to be used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting of other information demonstrating continued compliance with § 61.132(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(e) Each owner or operator subject to this subpart shall submit to the Administrator a written report of excess emissions established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered any exceedence of the monitoring parameters specified in the approved operating and maintenance plan:

**§ 61.135 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

7. Under *Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.241 of 40 CFR Part 61, Subpart V, would be amended by revising the definition of "repaired" and by adding a definition of "stuffing box pressure" as follows:

**§ 61.241 Definitions.**

* * * * *

"Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak as indicated by one of the following: An instrument reading of 10,000 ppm or greater, detectable emissions as indicated by an instrument reading of 500 ppm or greater above a background concentration, indication of liquids dripping, or indication by a sensor that a seal system or barrier fluid system has failed.

"Stuffing box pressure" means the fluid (liquid or gas) pressure inside the casing or housing of a piece of equipment, on the process side of the inboard seal.

* * * * *

8. Under *Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.245 of 40 CFR Part 61, Subpart V, would be amended by revising introductory paragraph (b), introductory paragraph (c), and paragraph (d)(3) as follows:

**§ 61.245 Test methods and procedures.**

* * * * *

(b) Monitoring, as required in §§ 61.242, 61.243, 61.244, and 61.135, shall comply with the following requirements:

* * * * *

(c) When equipment is tested for compliance with no detectable emissions, the test shall comply with the following requirements:

* * * * *

(d) * * *

(3) Samples used in determining the percent VHAP content shall be representative, as determined by the Administrator, of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare.

9. Under *Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.246 of 40 CFR Part 61, Subpart V, would be amended by revising the introductions to paragraphs (b), (c), and (e) and by revising paragraphs (e)(2)(i), (e)(2)(ii), (e)(4)(i), and (h)(1) to read as follows:

**§ 61.246 Recordkeeping requirements.**

* * * * *

(b) When each leak is detected as specified in §§ 61.242–2, 61.242–3, 61.242–7, 61.242–8, and 61.135, the following requirements apply:

* * * * *

(c) When each leak is detected as specified in §§ 61.242–2, 61.242–3, 61.242–7, 61.242–8, and 61.135, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

* * * * *

(e) The following information pertaining to all equipment to which a standard applies shall be recorded in a log that is kept in a readily accessible location:

(1) * * *

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background.

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(ii) The designation of this equipment for no detectable emissions shall be signed by the owner or operator.

(3) * * *

(4)(i) The dates of each compliance test required in §§ 61.242–2(e), 61.242–3(i), 61.242–4, 61.242–7(f), and 61.135(g).

* * * * *

(h) * * *

(1) Design criterion required in §§ 61.242–2(d)(5), 61.242–3(e)(2), and 61.135(e)(4) and an explanation of the design criterion; and

* * * * *

10. *Under Approaches A, B, and C,* as described in the preamble for Coke By-Product Recovery Plants, § 61.247 of 40 CFR Part 61, Subpart V, would be amended by revising paragraph (b)(5) to read as follows:

**§ 61.247 Reporting requirements.**

* * * * *

(b) * * *

(5) The results of all performance tests to determine compliance with no detectable emissions and with §§ 61.243–1 and 61.243–2 conducted within the semiannual reporting period.

* * * * *

11. Under *Approaches A, B, and C* as described in the preamble, Subpart Y would be added to Part 61 of Title 40 as follows:

**Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels**

Sec.

61.270 Applicability and designation of sources.
61.271 Emission standard.
61.272 Compliance provisions.
61.273 Alternative means of emission limitation.
61.274 Initial report.
61.275 Periodic report.
61.276 Recordkeeping.
61.277 Delegation of authority.

## Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

### § 61.270 Applicability and designation of sources.

(a) The source to which this subpart applies is each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified for Industrial Grade Benzene in ASTM–D–836–80 (incorporated by reference as specified in § 61.18). This specification includes Industrial Grade Benzene, Nitration Grade Benzene, and Refined Benzene-535.

(b) Except for paragraph (b) in § 61.276, storage vessels with a design storage capacity less than 38 cubic meters (10,000 gallons) are exempt from the provisions of this subpart.

(c) This subpart does not apply to storage vessels used for storing benzene at coke by-product facilities.

(d) This subpart does not apply to vessels permanently attached to motor vehicles such as trucks, rail cars, barges, or ships.

(e) This subpart does not apply to pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere.

(f) A designated source subject to the provisions of this subpart that is also subject to applicable provisions of 40 CFR Part 60, Subparts K, K(a), and K(b) shall be required to comply only with the provisions of this subpart.

### § 61.271 Emission standard.

The owner or operator of a storage vessel with a design storage capacity greater than 38 cubic meters (10,000 gallons) to which this subpart applies shall reduce emissions to the atmosphere by meeting the equipment and procedural requirements in paragraphs (a), (b), or (c) of this section, or equivalent as provided in § 61.273, and paragraph (d) of this section.

(a) Requirements for a permanently affixed roof and internal floating roof.

(1) Each storage vessel shall be equipped with an internal floating roof. An internal floating roof means a cover that rests on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a permanently affixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(2) Each internal floating roof shall be equipped with one of the closure devices listed in paragraphs (a)(2), (i), (ii), or (iii) of this section between the wall of the storage vessel and the edge of the internal floating roof. This requirement does not apply to each existing storage vessel for which construction of an internal floating roof commenced on or before July 28, 1988.

(i) A foam- or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(ii) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous

(iii) A metallic shoe seal. A metallic shoe seal (also referred to as a mechanical shoe seal) is, but is not limited to, a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof

(3) Each opening in the internal floating roof, except for automatic bleeder vents, leg sleeves, ladder wells, sampled wells, rim space vents, and stub drains, shall be equipped with a cover which is in a closed position at all times (i.e., no visible gap), except when the device is in actual use. If an existing storage vessel had an internal floating roof as of July 28, 1988, this requirement does not have to be met until the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, whichever occurs first.

(4) Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports.

(5) Each internal floating roof shall meet the specifications listed below. If an existing storage vessel had an internal floating roof as of July 28, 1988, the requirements listed below do not have to be met until the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, whichever comes first,

(i) Each cover on an opening of an internal floating roof shall be gasketed.

(ii) Covers on each access hatch and each automatic gauge float well shall be bolted when they are not in use.

(iii) Each penetration of the internal floating roof for the purposes of sampling shall be a sample well. Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iv) Each automatic bleeder vent shall be gasketed.

(v) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(vi) Each penetration of the internal floating roof that allows for passage of a

ladder shall have a gasketed sliding cover.

(6) A storage vessel with a continuous secondary seal does not have to meet the specifications for internal floating roofs included in paragraph (a)(5) of this section. A continuous secondary seal means the upper of two seals forming a continuous closure except as provided in § 61.272(b)(4) between the wall of the storage vessel and the internal floating roof.

(7) For a storage vessel for which construction commenced after July 28, 1988, each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(8) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(b) Requirements for external floating roof tanks.

(1) Each storage vessel shall have an external floating roof. An external floating roof means a pontoon-type or double-deck-type cover that rests on the liquid surface in a vessel with no fixed roof.

(2) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. Except as provided in paragraph (b)(5) of this section, the closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(i) The primary seal shall be either a metallic shoe seal or a liquid-mounted seal. A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact except as provided in § 61.272(b)(4) with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank. A metallic shoe seal (which can also be referred to as a mechanical shoe seal) is, but is not limited to, a metal sheet held vertically against the wall of the storage vessel except as provided in § 61.272(b)(4) by springs or weighted levels and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof. Except as provided in § 61.272(b)(4) the primary seal shall completely cover the annular space between the edge of the floating roof and the tank wall.

(ii) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in § 61.272(b)(4)(ii).

(3) Except for automatic bleeder vents and rim space vents, each opening in the noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(4) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of emptying and refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(5) The requirement for a secondary seal does not apply to each existing storage vessel that was equipped with a liquid-mounted primary seal as of July 28, 1988, until after the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, whichever occurs first.

(c) Requirements for closed vent system/control device.

(1) The closed vent system shall be designed to collect all benzene vapors and gases discharged from the storage vessel and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in Part 61, Subpart V, § 61.242–11.

(2) The control device shall be designed and operated to reduce inlet benzene emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements of 40 CFR 60.18.

(3) The specifications and requirements listed in paragraphs (c)(1) and (c)(2) of this section for closed vent systems/control devices do not apply during periods of routine maintenance. During periods of routine maintenance, the benzene level in the storage vessel(s) serviced by the control device subject to the provisions of § 61.271(c) may be lowered but not raised. Periods of routine maintenance shall not exceed 72 hours as outlined in the maintenance plan required by § 61.272(c)(1)(iii) when approved by the Administrator.

(4) The specifications and requirements listed in paragraphs (c)(1) and (c)(2) of this section for closed vent/control devices do not apply during a control system malfunction. A control system malfunction means any sudden and unavoidable failure of air pollution control equipment. A failure caused entirely or in part by design deficiencies, poor maintenance, careless operation, or other preventable upset condition or equipment breakdown is not considered a malfunction.

(d) The owner or operator of each affected storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section, as follows:

(1) The owner or operator of each existing benzene storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section no later than 90 days after the effective date of this regulation with the exceptions noted in paragraphs (a)(3), (a)(5), and (b)(5) unless a waiver of compliance has been approved by the Administrator in accordance with § 61.11.

(2) The owner or operator of each benzene storage vessel upon which construction commenced after the date of promulgation shall meet the requirements of paragraph (a), (b), or (c) of this section prior to filling (i.e., roof is lifted off leg supports) the storage vessel with benzene.

(3) The owner or operator of each benzene storage vessel upon which construction commenced on or after July 28, 1988, and before the date of promulgation shall meet the requirements of paragraph (a), (b), or (c) of this section on the effective date of this regulation.

**§ 61.272 Compliance provisions.**

The owner or operator of each storage vessel to which this subpart applies shall meet the requirements of paragraphs (a), (b), (c), or (d) of this section for each storage vessel with a design capacity greater than 38 cubic meters (10,000 gallons). The applicable paragraph for a particular storage vessel depends on the control equipment installed to meet the requirements of § 61.271.

(a) After installing the control equipment required to comply with

§ 61.271(a) (permanently affixed roof and internal floating roof) each owner or operator shall:

(1) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), prior to filling the storage vessels with benzene. If there are holes, tears or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, the owner or operator shall repair the items before filling the storage vessel.

(2) Visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill, except as provided in paragraph (a)(4) of this section.

(i) If the internal floating roof is not resting on the surface of the benzene liquid inside the storage vessel, or there is liquid on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 30 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension of up to 30 additional days may be requested from the Administrator in the inspection report required in § 61.275(a). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(ii) If there are holes, tears, or other openings in the primary or secondary seal or seal fabric, the owner or operator shall repair the items the first time the vessel is emptied and degassed.

(3) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) each time the storage vessel is emptied and degassed. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of vessels conducting the annual visual inspections as specified in paragraph (a)(2) of this section and at intervals greater than 5 years in the case of vessels specified in paragraph (a)(4) of this section.

(i) For all the inspections required by paragraphs (a)(1) and (a)(3) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to the refilling of each storage vessel to afford the Administrator the opportunity to have an observer present. If the inspection required by paragraph (a)(3) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to refilling.

(ii) If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with benzene.

(4) For vessels equipped with a double-seal system as specified in § 61.271(a)(2)(ii):

(i) Visually inspect the vessel as specified in paragraph (a)(3) of this section at least every 5 years; or

(ii) Visually inspect the vessel annually as specified in paragraph (a)(2) of this section.

(b) After installing the control equipment required to comply with § 61.271(b) (external floating roof) the owner or operator shall:

(1) Determine the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel, and the secondary seal and the wall of the storage vessel according to the following frequency.

(i) For an external floating roof tank equipped with primary and secondary seals, measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the vessel or within 90 days of the initial fill with benzene or within 90 days of the date of promulgation whichever occurs last, and at least once every 5 years thereafter except as provided in paragraph (b)(1)(ii) of this section.

(ii) For an external floating roof tank equipped with only a liquid-mounted primary seal as provided for in § 61.271(b)(5), measurements of gaps between the tank wall and the primary seal (primary seal gaps) shall be performed within 90 days of initial fill with benzene or within 90 days of the date of promulgation whichever occurs last, and at least once per year thereafter. In the event a secondary seal is installed over the primary seal, measurement of primary seal gaps shall be performed within 90 days of installation and at least once every 5 years thereafter.

(iii) For an external floating roof tank equipped with primary and secondary seals, measurements of gaps between the tank wall and the secondary seal shall be performed within 90 days of the initial fill with benzene, within 90 days of installation of the secondary seal, or 90 days of the date of promulgation, whichever occurs last, and at least once per year thereafter.

(iv) If any source ceases to store benzene for a period of 1 year or more, subsequent introduction of benzene into the vessel shall be considered an initial fill for the purposes of paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.

(ii) Measure seal gaps around the entire circumference of the tank in each place where a 0.32 cm (⅛ in.) diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually. Divide the sum for each seal by the nominal distance of the tank and compare each ratio to the respective standards in § 61.272(b)(4) and § 61.272(b)(5).

(4) Repair conditions not meeting requirements listed in paragraphs (b)(2)(i) and (ii) of this section within 30 days of identification in any inspection or empty and remove the storage vessel from service within 30 days:

(i) The accumulated area of gaps between the tank wall and the metallic shoe seal or the liquid-mounted primary seal shall not exceed 212 $cm^2$ per meter of tank diameter (10.0 $in.^2$ per foot of tank diameter) and the width of any

portion of any gap shall not exceed 3.81 cm (1½ in.).

(A) One end of the metallic shoe is to extend into the stored liquid and the other end is to extend a minimum vertical distance of 61 cm (24 in.) above the stored liquid surface.

(B) There are no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(ii) The secondary seal is to meet the following requirements:

(A) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in the following paragraphs of this section.

(B) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 $cm^2$ per meter of tank diameter (1.0 $in.^2$ per foot of tank diameter) or the width of any portion of any gap shall exceed 1.27 cm (½ in.). These seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (b)(1)(i) of this section.

(C) There are to be no holes, tears, or other openings in the seal or seal fabric.

(iii) If a failure that is detected during inspections required in this paragraph cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension of up to 30 additional days may be requested from the Administrator in the inspection report required in § 61.275(d). Such extension request must include a demonstration of unavailibility of alternate storage capacity and a specification of a schedule that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) The owner or operator shall notify the Administrator 30 days in advance of any gap measurement required by paragraph (b)(1) of this section to afford the Administrator the opportunity to have an observer present.

(6) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with benzene.

(ii) For all the inspections required by paragraph (b)(6) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to filling or refilling of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel prior to refilling. If the inspection required by paragraph (b)(6) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to refilling.

(c) The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.271(c) (other than a flare) shall meet the following requirements.

(1) Within 90 days of initial fill or the date of promulgation, whichever comes last, submit for approval by the Administrator, an operating plan containing the information listed below.

(i) Documentation demonstrating that the control device being used achieves the required control efficiency during reasonably expected maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and benzene content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases or liquids, other than fuels, from sources that are not designated sources under this subpart, the efficiency demonstration is to include consideration of all vapors, gases and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816 °C is used to meet the 95 percent requirement, documentation that those conditions exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the parameter or parameters to be monitored to ensure that the control device is operated and maintained in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(iii) A maintenance plan for the system including the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods for those operations that would require the closed vent system or the control device to be out of compliance with § 61.271(c). The maintenance plan shall require that the system be out of compliance with § 61.271(c) for no more than 72 hours per year.

(2) Operate, monitor the parameters, and maintain the closed vent system and control device in accordance with the operating plan submitted to the Administrator in accordance with paragraph (c)(1) of this section, unless the plan was modified by the Administrator during the approval process. In this case, the modified plan applies.

(d) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in § 61.271(c) shall meet the requirements as specified in the general control device requirements in § 60.18 (e) and (f).

**§ 61.273 Alternative means of emission limitation.**

(a) Upon written application from any person, the Administrator may approve the use of alternative means of emission limitation which have been demonstrated to his satisfaction to achieve a reduction in benzene emissions at least equivalent to the reduction in emissions achieved by any requirement in § 61.271 (a), (b), or (c) of this subpart.

(b) Determination of equivalence to the reduction in emissions achieved by the requirements of § 61.271 (a), (b) or (c) will be evaluated using the following information to be included in the written application to the Administrator.

(1) Actual emissions tests that use full-size or scale-model storage vessels that accurately collect and measure all benzene emissions from a given control device, and which accurately simulate wind and account for other emission variables such as temperature and barometric pressure.

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(c) The Administrator may condition approval of equivalency on requirements that may be necessary to ensure operation and maintenance to achieve the same emission reduction as the requirements of § 61.271 (a), (b), or (c).

(d) If, in the Administrator's judgment, an application for equivalence may be approvable, the Administrator will publish a notice of preliminary

determination in the **Federal Register** and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of the alternative means of emission limitation and will publish the final determination in the **Federal Register**.

**§ 61.274 Initial report.**

(a) The owner or operator of each storage vessel to which this subpart applies and which has a design capacity greater than 38 cubic meters (10,000 gallons) shall submit an initial report describing the controls which will be applied to meet the equipment requirements in § 61.271. For an existing storage vessel or a new storage vessel for which construction and operation commenced prior to the promulgation date of this regulation, this report shall be submitted within 90 days of the effective date of this regulation, and can be combined with the report required by § 61.10. For a new storage vessel for which construction or operation commenced on or after the promulgation date, the report shall be combined with the report required by § 61.07. In the case where the owner or operator seeks to comply with § 61.271(c) with a control device other than a flare, this information may consist of the information required by § 61.272(c)(1).

(b) The owner or operator of each storage vessel seeking to comply with § 61.271 with a flare, shall submit a report containing the measurements required by § 60.18(f) (1), (2), (3), (4), (5), and (6). For the owner or operator of an existing storage vessel not seeking to obtain a waiver or a new storage vessel for which construction and operation commenced prior to the promulgation date, this report shall be combined with the report required by paragraph (a) of this section. For the owner or operator of an existing storage vessel seeking to obtain a waiver, the reporting date will be established in the response to the waiver request. For the owner or operator of a new storage vessel for which construction or operation commenced after the promulgation date, the report shall be submitted within 90 days of the date the vessel is initially filled (or partially filled) with benzene.

**§ 61.275 Periodic report.**

(a) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(a) (fixed roof and internal floating roof) shall submit a report describing the results of each inspection conducted in accordance with § 61.272(a). For vessels for which annual inspections are required under § 61.272(a)(2), the first report is to be submitted no more than 12 months after the initial report submitted in accordance with § 61.274.

(1) Each report shall include the date of the inspection of each storage vessel and identify each storage vessel in which:

(i) The internal floating roof is not resting on the surface of the benzene liquid inside the storage vessel, or there is liquid on the roof, or the seal is detached from the internal floating roof, or there are holes or tears in the seal fabric;

(ii) There are visible gaps between the seal and the wall of the storage vessel; or

(iii) There are holes, tears, or other openings in the seal or the seal fabric.

(2) Where an annual report identifies any condition in paragraph (a)(1)(i) of this section the subsequent annual report shall describe the measures used to correct the condition, the date the storage vessel was emptied, and the date the condition was repaired.

(b) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(a) (fixed roof and internal floating roof) shall submit a report describing the results of each inspection conducted in accordance with § 61.272(a) (3) or (4).

(1) The report is to be submitted within 60 days of conducting each inspection required by § 61.272(a) (3) or (4).

(2) Each report shall identify each storage vessel in which the owner or operator finds that the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area. The report shall also provide a description of the repairs made to these items.

(c) Any owner or operator of an existing storage vessel which had an internal floating roof as of July 28, 1988, and which seeks to comply with the requirements of §§ 61.271(a)(3) and 61.271(a)(5) during the first time after the date of promulgation when the vessel is emptied and degassed or 10 years from the date of promulgation, shall notify the Administrator 30 days prior to the completion of the installation of such controls, and of the date of refilling of the vessel so the Administrator has an opportunity to have an observer present to inspect the storage vessel before it is refilled. This report can be combined with the one required by § 61.275(b).

(d) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(b) (external floating roof) shall submit a report describing the results of each seal gap measurement made in accordance with § 61.272(b). The first report is to be submitted no more than 12 months after the initial report submitted in accordance with § 61.274(b). Each report shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 61.272(b) (2) and (3), and shall identify each storage vessel which does not meet the gap specification of § 61.271(b)(4). Where an annual report identifies any vessel not meeting the seal gap specifications of § 61.271(b) the report shall describe the measures used to correct the condition and the date the storage vessel was brought into compliance or the date the storage vessel was emptied.

(e) Excess emission report. (1) The owner or operator of each source seeking to comply with § 61.271(c) (vessels equipped with closed vent systems with control devices) shall submit a quarterly report informing the Administrator of each occurrence that results in excess emissions. Excess emissions are emissions that occur at any time when compliance with the specifications and requirements of § 61.271(c) are not achieved, as evidenced by the parameters being measured in accordance with § 61.272(c)(1)(ii) if a control device other than a flare is used, or by the measurements required in § 61.272(d) and the general control device requirements in § 60.18(f) (1) and (2) if a flare is used.

(2) The owner or operator shall submit the following information as a minimum in the report required by paragraph (e)(1) of this section:

(i) Identify the stack and other emission points where the excess emissions occurred;

(ii) A statement of whether or not the owner or operator believes a control system malfunction has occurred.

(3) If the owner or operator states that a control system malfunction has occurred, the following information as a minimum is also to be included in the report required under paragraph (e)(1) of this section:

(i) Time and duration of the control system malfunction as determined by

continuous monitoring data (if any), or the inspections or monitoring done in accordance with the operating plan required by § 61.272(c).

(ii) Cause of excess emissions.

**§ 61.276 Recordkeeping.**

(a) Each owner or operator with a storage vessel subject to this subpart shall keep copies of all reports and records required by this subpart for at least 2 years, except as specified in paragraphs (b) and (c)(1) of this section.

(b) Each owner or operator with a storage vessel, including any vessel which has a design storage capacity less than 38 cubic meters (10,000 gallons), shall keep readily accessible records showing the dimensions of the storage vessel and an analysis showing the capacity of the storage vessel. This record shall be kept as long as the source is in operation. Each storage vessel with a design capacity of less than 39 cubic meters (10,000 gallons) is subject to no provisions of this subpart other than those required by this paragraph.

(c) The following information pertaining to closed vent system and control devices shall be kept in a readily accessible location.

(1) A copy of the operating plan. This record shall be kept as long as the closed vent system and control device is in use.

(2) A record of the measured values of the parameters monitored in accordance with §§ 61.272(c)(1)(ii) and 61.272(c)(2).

(3) A record of the maintenance performed in accordance with § 61.272(c)(1)(iii) of the operating plan, including the following:

(i) The duration of each time the closed vent system and capture device does not meet the specification of § 61.271(c) due to maintenance, including the following:

(A) The first time of day and date the requirements of § 61.271(c) were not met at the beginning of maintenance.

(B) The first time of day and date the requirements of § 61.271(c) were met at the conclusion of maintenance.

(C) A continuous record of the liquid level in each tank that the closed vent system and control device receive vapors from during the interval between the times specified by paragraphs (c)(3)(i)(A) and (c)(3)(i)(B) of this section. Pumping records (simultaneous input and output) may be substituted for records of the liquid level.

**§ 61.277 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 61.273.

12. Under *Approach D* as described in the preamble, Subpart Y would be added to Part 61 of Title 40 as follows:

**Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels**

Sec.

61.270 Applicability and designation of sources.
61.271 Definitions.
61.272 Emission standard.
61.273 Demonstration of compliance.
61.274 Emission monitoring.
61.275 Recordkeeping.
61.276 Reporting requirements.
61.277 Delegation of authority.

## Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

**§ 61.270 Applicability and designation of sources.**

(a) The source to which this subpart applies is each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified for Industrial Grade Benzene in ASTM–D–836–80 (incorporated by reference as specified in § 61.18). This specification includes Industrial Grade Benzene, Nitration Grade Benzene, and Refined Benzene-535.

**§ 61.271 Definitions.**

"Plants" means any combination of process units, storage vessels and equipment used at one site in the production of benzene as an intermediate for final product or in the use of benzene.

**§ 61.272 Emission standard.**

(a) No owner or operator shall cause to be emitted to the atmosphere from all storage vessels subject to this subpart that are located at a plant total benzene emissions exceeding 0.47 kg/day.

**§ 61.273 Demonstration of compliance.**

(a) To demonstrate compliance with § 61.272, benzene emissions shall be determined using the following procedures:

(1) Calculate benzene emissions from each tank located at a plant using the equations and procedures given in Section 4.3 in the EPA document "Compilation of Air Pollutant Emission Factors"; Volume 1; September 1985; EPA Publication Number AP–42 (incorporated by reference as specified in § 61.18).

(2) Sum benzene emissions for all storage tanks subject to this subpart that are loacted at the plant.

(b) In lieu of using the procedures specified in paragraph (a) of this section, an owner or operator may apply to the Administrator for approval of an equivalent method of measuring or calculating emissions.

**§ 61.274 Emission monitoring.**

(a) Each owner or operator subject to the provisions of § 61.272(a) shall submit an operating and maintenance plan to the Administrator for approval within 90 days of the effective date for existing sources, or within 90 days of startup for new sources. The plan shall include the following:

(1) A description of each emission source and the control techniques by which the owner or operator will comply with the emission limit in § 61.272(a).

(2) Identification of the parameter or parameters to be monitored to ensure that each control device is operated in conformance with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.272(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(b) If control equipment that is the same as equipment specified in 40 CFR Part 60, Subpart Kb is used to comply with the provisions of § 61.272(a), the operating plan shall include the inspection, monitoring, operating and maintenance procedures specified in § 60.113b (a), (b) and (c).

(c) Each owner or operator shall conduct operations, monitor the parameters, and maintain equipment in accordance with the approved operating plan.

**§ 61.275 Recordkeeping.**

(a) Each owner or operator subject to the provisions of § 61.272(a) shall maintain at the plant for a period of at least 2 years, and make available to the Administrator upon request, the following:

(1) Records of any emission test data and all calculations used to demonstrate compliance with § 61.272(a).

(2) Records of all inspections and monitoring of parameters specified in the approved operating plan required under § 61.274.

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(3) Records of all periods where there were excess emissions as indicated by the parameters monitored under § 61.274.

(4) Records of all malfunctions of all air pollution control equipment used to comply with § 61.272(a).

(5) Records of all maintenance and repairs of each storage vessel subject to this subpart and associated air pollution control equipment.

**§ 61.276 Reporting requirements.**

Each owner or operator of a storage vessel to which this subpart applies shall:

(a) If a calculational procedure is used to demonstrate compliance, a compliance report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or the notification of startup required in § 61.09 for new sources.

(b) Submit the operating plan required in § 61.274 within 90 days of the effective date of the regulation for an existing source, or within 90 days of startup for a new source.

(c) Submit to the Administrator a written report of excess emissions at the frequency established in the operating and maintenance plant. For the purposes of this paragraph, excess emissions shall be considered to be any exceedence of monitored parameter(s) established under § 61.274. The report shall include:

(1) Time and duration of excess emissions,

(2) Identification of the emission point where the excess emission occurred,

(3) Description of any malfunction that is believed to have caused the excess emission,

(4) Descriptions of any repairs or actions taken to correct the cause of the excess emissions.

**§ 61.277 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: none.

13. Under *Approach D* as described in the preamble, Subpart Z would be added to Part 61 of Title 40 as follows:

**Subpart Z—National Emission Standard for Benzene Emission from Ethylbenzene/ Styrene Plants**

Sec.

61.280 Applicability and designation of sources.
61.281 Definitions.
61.282 Emission standard.
61.283 Compliance provision.
61.284 Emission monitoring.
61.285 Reporting.
61.296 Reporting requirements.
61.297 Delegation of authority.

**Subpart Z—National Emission Standard for Benzene Emissions from Ethylbenzene/ Styrene plants.**

**§ 61.280 Applicability and designation of sources.**

(a) The source to which this subpart applies is each integrated chemical process producing either ethylbenzene from benzene, or styrene from ethylbenzene, and containing any of the following equipment:

(1) Alkylation reactor section;

(2) Ethylbenzene hydroperoxidation reactor; or

(3) Hydrogen separation system.

**§ 61.281 Definitions.**

The terms used in this subpart are defined in the CAA, in § 61.102, or in this section as follows:

"Alkylation reactor section" means any equipment or combination of equipment in which benzene is reacted with ethylene to produce ethylbenzene, in which the reactor catalyst is neutralized or separated from reaction product or impurities, or in which diethylbenzene and polyethylbenzene are catalytically transformed to ethylbenzene and by-products.

"Atmospheric column" means each distillation unit that operates at atmospheric pressure.

"Boiler" means any enclosed combustion device that extracts useful energy in the form of steam or hot process fluids, including a boiler, process heater, superheater, or reboiler.

"Corrosive vent stream" means any vent stream determined to have a total concentration (by volume) of compounds containing chlorine or other halogens of 20 ppmv (by compound) or greater.

"Dehydrogenation reactor" means a reactor in which ethylbenzene is catalytically dehydrogenated in the presence of steam to produce styrene and by-products.

"Distillation operation" means a continuous or batch operation separating one or more feed stream(s) into two or more product streams, each product stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistrubution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

"Distillation unit" means a device or vessel (e.g., a column) in which distillation operations occur, including all associated internals (e.g., trays or packing) and accessories (e.g., reboiler, condenser), plus any associated recovery system.

"Ethylbenzene hyperoxidation reactor" means any equipment or combination of equipment in which ethylbenzene is oxidized with air or oxygen to produce ethylbenzene hydroperoxide.

"Hydrogen separation system" means the combination of equipment in which the crude styrene, unreacted ethylbenzene, and condensed steam are separated from the hydrogen-rich gas stream exiting the ethylbenzene dehydrogenation reactor.

"Incinerator" means an enclosed combustion device other than a boiler.

"Malfunction" means any sudden and unavoidable failure of process or air pollution control equipment. A failure of process or air pollution control equipment caused entirely or in part by design deficiencies, poor maintenance, careless operation, or other preventable equipment breakdown is not considered to be a malfunction.

"Plant" means any combination of process units and equipment used at one site in the production of ethylbenzene from benzene or stryrene from ethylbenzene.

"Pressure column" means each distillation unit that operates at greater than atmospheric pressure.

"Process vent stream" means each benzene-containing gas stream being released or having the potential of being released to the atmosphere from each of the following equipment:

(1) Alkylation reactor section;

(2) Atmospheric or pressure column;

(3) Hydrogen separation system; or

(4) Vacuum-producing device.

"Shutdown" means the cessation of operation and cooling to ambient temperature of the following:

(1) Entire sources as designated in § 61.280;

(2) Alkylation reactor section; or

(3) Dehydrogenation reactor.

"Startup" means the commencing of operation from ambient temperature of the following:

(1) Entire source as designated in § 61.280;

(2) Alkylation reactor section; or

(3) Dehydrogenation reactor.

"Vacuum-producing device" means each device that produces an absolute pressure less than atmospheric on any distillation unit.

**§ 61.282 Emission standard.**

No owner or operator of a source to which this subpart applies shall cause to be emitted to the atomosphere from all process vents at the plant total benzene emissions exceeding 5.5 kg/day.

**§ 61.283 Compliance provisions.**

The owner or operator of each source to which this subpart applies shall meet the requirement of paragraphs (a) and (b) of this section for each source.

(a) To demonstrate compliance with § 61.282, benzene emissions shall be determined and the data reduced using EPA-approved sampling and analysis procedures or using other procedures that EPA has determined to be acceptable.

(b) Unless a waiver of emission testing is obtained under § 61.13, the owner or operator shall demonstrate compliance with § 61.282:

(1) No later than 90 days after the effective date of this subpart for a source that has an initial startup date preceding the effective date; or

(2) No later than 90 days after startup for a source that has an initial startup date after the effective date.

(3) At such other times as may be required by the Administrator under section 114 of the Act.

(4) While the source is operating under such conditions as the Administrator may specify, based on representative performance of the source.

**§ 61.284 Emission monitoring.**

(a) Each owner or operator subject to the provisions of § 61.282 shall submit an operating and maintenance plan to the Administrator for approval:

(1) No later than 90 days after the effective date of this subpart for a source that has an initial startup date preceding the effective date; or

(2) No later than 90 days after startup for a source that has an initial startup date after the effective date.

(b) The operating and maintenance plan shall include the following:

(1) A description of each emission source and the control devices and techniques by which the owner or operator will comply with the emission limit in § 61.283. The description of any control system shall include its design specifications, performance certification, and maintenance procedures.

(2) Identification of the parameter or parameters to be monitored to ensure that each control device is operated in conformity with its design, and that the emission limit is not exceeded.

(3) An explanation of the criteria used in selecting the monitoring parameter(s).

(4) A description of the types and frequencies of maintenance necessary.

(5) A schedule for reporting excess emissions or reporting of other information demonstrating continued compliance with § 61.282(a). The reporting schedule shall be consistent with the compliance, monitoring, and maintenance methods, and shall be no more frequent than quarterly.

(c) Each owner or operator shall conduct operations, monitor the parameter(s), and maintain equipment in conformance with the approved operating and maintenance plan.

**§ 61.285 Recordkeeping.**

(a) Each owner or operator subject to the provisions of § 61.282 shall maintain at the plant for a period of at least 2 years, and shall make available to the Administrator upon request, the following:

(1) Records of all data and calculations used to demonstrate compliance with § 61.282.

(2) Records of all repairs to equipment subject to § 61.282.

(3) Records of all monitoring of parameter(s) specified in the approved operating plan required under § 61.284.

(4) Records of all malfunctions of any air pollution control device described in the operating and maintenance plan described in § 61.284.

(5) Records of all maintenance and repair to any air pollution control device described in the operating and maintenance plan described in § 61.284.

(6) Records of all relevant data and information for any additional methods used to achieve compliance with § 61.282.

(b) Detailed schematics and records of design specifications and instrumentation for any air pollution control device described in the operating and maintenance plan described in § 61.284 shall be kept for the life of the control device.

**§ 61.286 Reporting requirements.**

Each owner or operator of each source to which § 61.282 applies shall:

(a) Submit an initial report describing the control equipment which will be operated, monitored, and maintained in accordance with § 61.284. This report may be combined with the operating and maintenance plan required in § 61.284. This report shall be submitted either:

(1) No later than 90 days after the effective date of this subpart for a source that has an initial startup date preceding the effective date; or

(2) No later than 90 days after startup for a source that has an initial startup date after the effective date.

(b) Provide the Administrator 30 days prior notice of any emission test required in the operating and maintenance plan required in § 61.284, to afford the Administrator the opportunity to have an observer present;

(c) Submit a written report to the Administrator detailing the results of the emission test, and the associated calculations within 30 days after conducting the test.

(d) Submit a written report to the Administrator of any excess emissions at the frequency established in the approved operating and maintenance plan. For the purposes of this paragraph, excess emissions shall be considered to be any exceedences of the monitored parameter(s) established in the operating and maintenance plan required in § 61.284. The report shall include the following:

(1) The magnitude of each excess emission.

(2) Identification of each occurrence of excess emission that results from startups, shutdowns or malfunctions.

(e) If a calculational procedure is used to demonstrate compliance, a compliance report including the calculations shall be submitted with either the source report required in § 61.10 for existing sources, or with the notification of startup required in § 61.09 for new sources.

**§ 61.287 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: None.

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Part III

# Department of Transportation

**Federal Railroad Administration**

**49 CFR Parts 209, 213–236**

**Amendments to Railroad Safety Regulations To Increase the Maximum Civil Penalties and Make Civil Penalties Available Against Individuals; Interim Rule and Interim Statements of Policy**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236**

**[FRA Docket No. RSEP-3, Notice No. 1]**

## Amendments to Railroad Safety Regulations To Increase the Maximum Civil Penalties and Make Civil Penalties Available Against Individuals

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Interim rule and interim statements of policy.

**SUMMARY:** FRA issues an interim rule and interim statements of policy to conform its railroad safety regulations to certain provisions of the Rail Safety Improvement Act of 1988 within the 30-day time limit for such issuance set by that statute. Specifically, the interim rule amends the regulations to reflect two basic changes effected by the new statute: (1) Extension of the civil penalty provisions of the federal railroad safety statutes to individuals, which makes them liable for civil penalties for willful violations; and (2) increase of the maximum civil penalty for violation of the rail safety statutes and regulations from $2,500 to $10,000, and, under certain circumstances, up to $20,000. FRA also issues interim statements of policy amending the penalty schedules appended to its regulations to reflect the statutory changes and a general statement of policy explaining its interim policy on exercising its expanded enforcement authority. FRA will subsequently issue final statements of policy making itemized, line-by-line changes to its penalty schedules to reflect the higher maximum penalties now available. To the extent that amendments to the interim rule appear necessary, a final rule making those changes will also be issued at that time. Although notice and public participation are not necessary here, interested parties are welcome to submit comments for inclusion in the docket of this rulemaking. Comments received will be reviewed and considered prior to issuance of the final penalty schedules.

**DATES:** (1) The interim rule and interim policy statements will become effective August 1, 1988. (2) Written comments must be received no later than September 15, 1988. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

**ADDRESSES:** Written comments should be submitted to the Docket Clerk (RCC-30), Office of Chief Counsel, FRA, 400 Seventh Street, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date the comments were received and return the postcard to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Daniel C. Smith, Deputy Assistant Chief Counsel for Safety, FRA, Washington, DC 20590 (Telephone: 202-366-0628); or Edward English, Chief, Maintenance Programs Division, Office of Safety, FRA, Washington, DC 20590 (Telephone: 202-366-9186).

**SUPPLEMENTARY INFORMATION:**

### Changes Effected By The Rail Safety Improvement Act of 1988

The Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. No. 100-342), enacted on June 22, 1988, made many basic changes, two of which are pertinent here, to the federal railroad safety statutes. (Those statutes include the Federal Railroad Safety Act of 1970, 45 U.S.C. 421 *et seq.*, and a group of statutes enacted prior to 1970 referred to collectively herein as the "older laws": the Safety Appliance Acts, 45 U.S.C. 1-16; the Locomotive Inspection Act, 45 U.S.C. 22-34; the Accident Reports Act, 45 U.S.C. 38-43; the Hours of Service Act, 45 U.S.C. 61-64a; and the Signal Inspection Act, 49 App. U.S.C. 26.)

The first relevant change brought about by the RSIA was the amendment of the safety statutes to authorize the assessment of civil penalties against individuals who willfully violate the rail safety statutes or regulations, and to permit the Federal Railroad Administration to suspend or disqualify an individual whose violation of the safety laws is shown to make that individual unfit for performance of safety-sensitive functions in the rail industry. (Only the civil penalty aspects of this change are addressed here.)

Second, the RSIA raised the maximum civil penalty that FRA may access under the safety laws. Under the Hours of Service Act, the penalty was changed from a flat $500 to a penalty of "up to $1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to $20,000 per violation may now be assessed.

### The Need To Conform The Regulations To The Amended Statutes

Most of the federal railroad safety laws are not self-actuating; rather, they have been implemented through extensive rulemaking. The Hours of Service Act is the major exception; it includes substantive provisions that can be directly violated; accordingly, except for the few areas under that statute that authorize FRA to issue rules, FRA's enforcement of the Hours of Service Act entails assessment of penalties for violations to the statute itself. Thus, the amendments to nearly all the substantive provisions of the Hours of Service Act became enforceable on the date of the RSIA was enacted (i.e., June 22, 1988).

However, under the other safety statutes, which provide broad rulemaking authority, FRA has generally issued implementing regulations that bear the jurisdictional and maximum penalty limitations of the statutes as they existed at the time the regulations were issued. For example, the penalty and responsibility sections of the regulations do not address the liability of individuals. Also, most of the regulations include a schedule of civil penalties that indicates what specific penalty FRA will initially assess for the violation of a particular regulation. Those schedules reflect the $2,500 maximum in existence when they were issued and apply on their face only to railroads.

Arguably, the regulations automatically became applicable to individuals, and the increased maximum penalties immediately became available for use, on the date the RSIA was enacted. However, it is also arguable that, in order to provide adequate notice of duties and liabilities to those subject to the regulations, they should be revised to conform to the amended statutes. FRA believes it is important that the regulations match the new statutory authority before any attempt is made to apply the higher penalties or penalize individuals. Congress recognized the need to amend the regulations and schedules and required that the changes be made promptly. Section 3(b) of the RSIA provides:

Within 30 days after enactment of this Act the Secretary of Transportation * * * shall issue interim rules, regulations, orders, or standards containing penalty schedules applicable to railroads and individuals reflecting the changes made by the amendments in subsection (a). The Seretary shall issue final rules, regulations, orders, or standards with respect to such penalty schedules within six months after such date of enactment.

Thus, in order for FRA to effectively enforce the rail safety regulations and carry out the legislative mandate, it needs to make these technical amendments to the regulations and revise the penalty schedules to conform them to the recent amendments to the statutes under which they were issued. Because these amendments do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(a)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Given the obvious Congressional intent to require prompt implementation of the RSIA provisions authorizing higher penalties and sanctions against individuals, any delay necessitated by notice and comment procedures would be contrary to the public interest. Moreover, public comment is unnecessary because, in making these technical amendments to give effect to the new statute, FRA is not exercising discretion in a way that could be informed by public comment. That is, FRA's choices here are linguistic, not substantive. Accordingly, FRA proceeds directly to an interim rule. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the RSIA since its enactment on June 22, 1988, more than 30 days prior to the effective date of this rule (August 1, 1988).

There is, in addition to the reasons just stated, another reason why notice and comment procedures are also unnecessary with regard to the revisions to the penalty schedules and interim statement of policy issued by this notice. The schedules themselves are statements of agency policy that, like the general statement of policy, are excepted from notice and comment procedure by virtue of 5 U.S.C. 553(b)(3)(A). Moreover, in reporting out the bill that was enacted as the RSIA, the conference committee stated: "The conferees view these penalty schedules as a matter committed to agency discretion by law." H. Rep. No. 100-637, 100th Cong., 2d Sess. at 21 (1988).

**Effect of This Interim Rule and Policy Statement**

This Notice amends the text of the railroad safety regulations (eighteen separate parts are amended here) to conform them to the RSIA in terms of sanctions against individuals and increased maximum penalties. Currently, the regulations contain sections (variously labeled "Civil penalty," "Prohibited acts," "Application," "Responsibility," or "Definitions") that limit the reach of the regulatory parts in which they appear to railroads and restrict the penalties that may be assessed to the former maximum of $2,500. These regulatory changes are made in the form of an interim rule, as required by section 3(a) of the RSIA. Although notice and opportunity for comment are not required, FRA will review any comments received and, at the time it issues final penalty schedules (see below), issue any necessary changes to its interim rule. Except as modified in response to those comments, this interim rule will become final at that time.

This notice also amends the penalty schedules appended to most of the railroad safety regulations. Those schedules are statements of agency policy that specify the civil penalty that FRA will ordinarily assess for the violation of a particular regulation and reserve FRA's right to assess a penalty up to the statutory maximum where circumstances warrant. The rail safety statutes, of course, authorize FRA to compromise the penalty initially assessed after considering any defenses and a wide variety of mitigating factors. Accordingly, the penalty actually collected may range from the $250 minimum set by the safety statutes to the amount initially assessed (and, where a valid defense is shown to exist during negotiations, no amount at all would be collected). Nevertheless, the schedules provide members of the regulated community with some idea of the amount they are likely to be assessed for a given violation.

Given the complexity of amending the hundreds of individual entries in FRA's penalty schedules, combined with the desire to promptly give effect to the expanded authority granted by the RSIA, Congress required that the penalty schedules be amended in a two-stage process. Section 3(b) of the RSIA requires FRA to issue interim penalty schedules within 30 days of enactment and final penalty schedules within six months of enactment. The changes effected by this notice constitute the interim penalty schedules discussed in section 3(b). These interim schedules simply reserve FRA's right to assess a penalty up to $20,000 in appropriate circumstances, standardize terminology so that all schedules will contain entries for normal and willful violations under each regulation, and make clear that the penalties in the column headed "willful" may be assessed against all persons, including individuals. Thus, under this interim system, the initial penalty assessed for a willful violation would be the same regardless of whether the violator was a railroad or an individual.

Over the next several months, FRA will amend the schedules line by line and issue final schedules within six months of enactment. Notice and comment procedure is not required on such a statement of policy, but interested parties are welcome to submit their views; all comments received prior to publication will be considered. One issue commenters may want to address is whether separate penalty schedules for individuals are appropriate. Commenters should keep in mind that the schedules contain only initial assessment amounts. The final penalty ultimately collected will depend on the defenses or mitigating factors raised by the alleged violator during informal negotiations with FRA (or, if the alleged violator chooses to litigate, on what the court thinks of any defenses or mitigating factors).

Third, this notice issues as an appendix to Part 209 an Interim Statement of Policy that generically addresses what FRA's policy will be in exercising its new authority to collect penalties from individuals and in assessing the higher maximum penalties. This interim statement covers FRA's definition of "willful" and explains the informal procedures FRA will use to assess penalties and negotiate final penalty amounts with individuals. This statement also contains a useful summary of FRA's overall civil penalty enforcement process. All those interested in that process are urged to become familiar with the statement. When FRA issues its final penalty schedules, it will also issue a final statement of policy.

Finally, this notice makes certain editorial changes to the text of regulations that are being amended. For example, in 49 CFR 225.5, the definition of "railroad" is amended to comport with that in the Federal Railroad Safety Act of 1970, which makes clear that self-contained urban rapid transit systems are not included. In Part 228, interim rules on construction of employee sleeping quarters are eliminated; they were replaced by final rules (49 CFR Part 228, Subpart C) issued in 1978 but,

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inadvertently, were not removed at that time. These editorial changes have no effect on the substantive authority of the agency.

This notice does not amend the regulations to provide penalties for tampering with certain safety devices, a subject on which section 21 of the RSIA requires FRA to issue rules, as may be necessary, within 90 days of enactment. That subject will be dealt with in a separate proceeding. Nor does this notice issue procedural regulations for exercise of the authority, provided by section 3(a) of the RSIA, to suspend or disqualify an individual from safety-sensitive functions. In another proceeding, FRA will amend Part 209 of 49 CFR to include such procedures. Until final publication of those procedures, FRA will not act to suspend or disqualify an individual unless circumstances warrant use of its emergency order authority under 45 U.S.C. 432.

**Public Participation**

For the reasons discussed above, notice and public participation are not required here. However, the public is invited to submit comments by September 15, 1988. All comments received by that date will be considered in drafting FRA's final rule, penalty schedules, and general statement of policy. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

**Regulatory Impact**

*E.O. 12291 and DOT Regulatory Policies and Procedures*

This interim rule and policy statement have been evaluated in accordance with existing policies and procedures. They are considered to be non-major under Executive Order 12291. Because of the substantial public interest associated with issuance of this interim rule, it is considered significant under the DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it does not alter any existing substantive or procedural regulation in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. The rule merely contains a regulatory formulation of FRA's amended statutory authority and a statement of its enforcement policy in the event of noncompliance. Accordingly, preparation of a regulatory evaluation is not warranted.

*Regulatory Flexibility Act*

FRA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules but are not required to do so.

*Paperwork Reduction Act*

There are no information collection requirements contained in this interim rule and policy statement.

*Environmental Impact*

FRA has evaluated this interim rule and policy statement in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

*Federalism Implications*

This interim rule and statement of policy will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

**List of Subjects in 49 CFR Parts 209, 213–236**

Railroad safety, Penalties.

Therefore, in consideration of the foregoing, Parts 209 and 213 through 236, Title 49, Code of Federal Regulations are amended as follows:

**PART 209—[AMENDED]**

1. Part 209 is amended as follows:

A. The authority citation for Part 209 is revised to read as follows:

**Authority:** 45 U.S.C. 6 and 13, as amended; 45 U.S.C. 34, as amended; 45 U.S.C. 43, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, and 438, as amended; 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c), (d), (f), (g), and (m).

Subparts B and C also issued under 49 App. U.S.C. 1802, 1804, 1808 and 1809; and 49 CFR 1.49(s).

B. Appendix A is revised to read as follows:

**Appendix A—Interim Statement of Agency Policy Concerning Civil Penalties Assessed Under the Federal Railroad Safety Laws**

The Rail Safety Improvement Act of 1988 (Pub. L. No. 100–342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. Those statutes include the Federal Railroad Safety Act of 1970 ("Safety Act"), 45 U.S.C. 421 *et seq.*, and a group of statutes enacted prior to 1970 referred to collectively herein as the "older laws": The Safety Appliance Acts, 45 U.S.C. 1–16; the Locomotive Inspection Act, 45 U.S.C. 22–34; the Accident Reports Act, 45 U.S.C. 38–43; the Hours of Service Act, 45 U.S.C. 61–64a; and the Signal Inspection Act, 49 App. U.S.C. 26. Regulations implementing those statutes are found at 49 CFR Parts 213 through 236.

Especially because of the introduction of penalties against individuals, FRA's enforcement of the rail safety laws has entered a new era. The changes are so significant that FRA believes it is necessary to set forth the manner in which it intends to exercise the new authority.

**The Civil Penalty Process**

Understanding how FRA has exercised its civil penalty authority up to this point is helpful in understanding how it intends to implement its new authority. The front lines in the civil penalty process are the FRA safety inspectors: FRA employs 325 inspectors, and their work is supplemented by approximately 100 inspectors from states participating in enforcement of the federal rail safety laws. These inspectors routinely inspect the equipment, track, and signal systems and observe the operations of the nation's railroads. They also investigate hundreds of complaints filed annually by those alleging noncompliance with the laws. When inspection or complaint investigation reveals noncompliance with the laws, each noncomplying condition or action is listed on an inspection report. Where the inspector determines that the best method of promoting compliance is to assess a civil penalty, he or she prepares a violation report, which is essentially a recommendation to the FRA Office of Chief Counsel to assess a penalty based on the evidence provided in or with the report. In determining which instances of noncompliance merit penalty recommendations, the inspector looks at such factors as the inherent seriousness of the condition or action and the railroad's general history of compliance with the set of regulations involved, especially at the specific location or division of the railroad involved. The exercise of this discretion at the field level is a vital part of the enforcement process, ensuring that the exacting and time consuming civil penalty process is used to address those situations most in need of the deterrent effect of penalties. FRA intends to exercise that discretion with regard to individual violators in the same manner it has with respect to railroads.

The Office of Chief Counsel's Safety Division reviews each violation report for legal sufficiency and assesses penalties based on those allegations that survive that review. Historically, the Division has returned less than five percent of the reports submitted in a given year, often with a request for further work and resubmission.

Penalties are assessed by issuance of a penalty demand letter that summarizes the claims, encloses the violation report with a copy of all evidence on which FRA is relying in making its initial charge, and explains that the railroad may pay in full or submit, orally or in writing, information concerning any defenses or mitigating factors. The railroad safety statutes, in conjunction with the Federal Claims Collection Act, authorize FRA to compromise the initial penalty claims based on a wide variety of mitigating factors. This system permits the efficient collection of civil penalties in amounts that fit the actual offense without resort to time-consuming and expensive litigation. Over its history, FRA has had to request that the Attorney General bring suit to collect a penalty on only a very few occasions.

Once penalties have been assessed, the railroad is given a reasonble amount of time to investigate the charges. Larger railroads usually make their case before FRA in an informal settlement conference covering a number of case files that have been issued and investigated since the previous conference. Thus, in terms of the negotiating time of both sides, economies of scale are achieved that would be impossible if each case were negotiated separately. The settlement conferences, held either in Washington or another mutually agreed on location, include technical experts from both FRA and the railroad as well as lawyers for both parties. In addition to allowing the two sides to make their cases for the relative merits of the various claims, these conferences also provide a forum for addressing current compliance problems. Smaller railroads usually prefer to handle negotiations through the mail or over the phone, often on a single case at a time. Once the two sides have agreed to a compromise amount on each case, that agreement is put in writing and a check is submitted to FRA's accounting division covering the full amount agreed on.

Cases brought under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, are, due to certain statutory requirements, handled under more formal administrative procedures. *See* 49 CFR Part 209, Subpart B.

**Civil Penalties Against Individuals**

The RSIA amended the penalty provisions of the railroad safety statutes to make them applicable to any "person (including a railroad and any manager, supervisor, official, or agent of a railroad)" who fails to comply with the regulations or statutes. *E.g.*, section 3 of the RSIA, amending section 209 of the Safety Act. However, the RSIA also provided that civil penalties may be assessed against individuals "only for willful violations."

Thus, any individual meeting the statutory description of "person" is liable for a civil penalty for a willful violation of the safety statutes or regulations. As the regulations are generally written to impose requirements on railroads, they are being amended simultaneously with the issuance of this statement to make clear that any individual who willfully violates the regulatory requirements, or who willfully causes the violation of those requirements, may be held liable for a civil penalty. Of course, as has traditionally been the case with respect to acts of noncompliance by railroads, the FRA field inspector will exercise discretion in deciding which situations call for a civil penalty assessment as the best method of ensuring compliance. The inspector has a range of options, including an informal warning, a more formal warning letter issued by the Safety Division of the Office of Chief Counsel, recommendation of a civil penalty assessment, recommendation of disqualification or suspension from safety-sensitive service, or, under the most extreme circumstances, recommendation of emergency action.

The threshold question in any alleged violation by an individual will be whether that violation was "willful." (Note that section 3(a) of the RSIA, which authorizes suspension or disqualification of a person whose violation of the safety laws has shown him or her to be unfit for safety-sensitive service, does not require a showing of willfulness. Separate regulations implementing that provision will be issued by FRA). FRA proposed this standard of liability when, in 1987, it originally proposed a statutory revision authorizing civil penalties against individuals. FRA believed then and still believes that it would be too harsh a system to collect fines from individuals on a strict liability basis, as the safety statutes permit FRA to do with respect to railroads. FRA also believed that even a negligence standard (*e.g.*, the Hazardous Materials Transportation Act's standard for civil penalty liability, 49 U.S.C. 1809(a)) would subject individuals to civil penalties in more situations than the current record warrants. Instead, FRA wanted the authority to penalize those who violate the safety laws through a purposeful act of free will rather than a mere failure to exercise reasonable care.

Thus, FRA will consider a "willful" violation to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or reckless disregard for whether the act violated the requirements of the law. Accordingly, neither a showing of evil purpose (as is sometimes required in certain criminal cases) nor actual knowledge of the law is necessary to prove a willful violation, but a level of culpability higher than negligence must be demonstrated. *See Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111 (1985); *Brock* v. *Morello Bros. Constr., Inc.*, 809 F.2d 161 (1st Cir. 1987); and *Donovan* v. *Williams Enterprises, Inc.*, 744 F.2d 170 (D.C. Cir. 1984). A willful violation entails knowledge of the facts constituting the violation, but actual, subjective knowledge need not be demonstrated. It will suffice to show objectively what the alleged violator must have known of the facts based on reasonable inferences drawn from the circumstances. For example, a person shown to have been responsible for performing an initial terminal air brake test that was not in fact performed would not be able to defend against a charge of a willful violation simply by claiming subjective ignorance of the fact that the test was not performed. If the facts, taken as a whole, demonstrated that the person was responsible for doing the test and had no reason to believe it was performed by others, and if that person was shown to have acted with actual knowledge of or reckless disregard for the law requiring such a test, he or she would be subject to a cviil penalty.

This definition of "willful" fits squarely within the parameters for willful acts laid out by Congress in the RSIA and its legislative history. Section 3(a) of the RSIA amends the Safety Act to provide:

> For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest.

As FRA made clear when it recommended individual penalty authority, a railroad employee should not have to choose between liability for a civil penalty or insubordination charges by the railroad. Where an employee (or even a supervisor) violates the law under a direct order from a supervisor, he or she does not do so of his or her free will. Thus, the act is not a voluntary one and, therefore, not willful under FRA's definition of the word. Instead, the action of the person who has directly ordered the commission of the violation is itself a willful violation subjecting that person to a civil penalty. As one of the primary sponsors of the RSIA said on the Senate floor:

> This amendment also seeks to clarify that the purpose of imposing civil penalties against individuals is to deter those who, of their free will, decide to violate the safety laws. The purpose is not to penalize those who are ordered to commit violations by those above them in the railroad chain of command. Rather, in such cases, the railroad official or supervisor who orders the others to violate the law would be liable for any violations his order caused to occur. One example is the movement of railroad cars or locomotives that are actually known to contain certain defective conditions. A train crew member who was ordered to move such equipment would not be liable for a civil penalty, and his participation in such movements could not be used against him in any disqualification proceeding brought by FRA.

133 Cong. Rec. S.15899 (daily ed. Nov. 5, 1987) (remarks of Senator Exon).

It should be noted that FRA will apply the same definition of "willful" to corporate acts as is set out here with regard to individual violations. Although railroads are strictly liable for violations of the railroad safety laws and deemed to have knowledge of those laws, FRA's penalty schedules contain, for each regulation, a separate amount earmarked as the initial assessment for

willful violations. Where FRA seeks such an extraordinary penalty from a railroad, it will apply the definition of "willful" set forth above. In such cases—as in all civil penalty cases brought by FRA—the aggregate knowledge and actions of the railroad's managers, supervisors, employees, and other agents will be imputed to the railroad. Thus, in situations that FRA decides warrant a civil penalty based on a willful violation, FRA will have the option of citing the railroad and/or one or more of the individuals involved. In cases against railroads other than those in which FRA alleges willfulness, the principles of strict liability and presumed knowledge of the law will continue to apply.

The RSIA gives individuals the right to protest a direct order to violate the law and to document the protest. FRA will consider such protests and supporting documentation in deciding whether and against whom to cite civil penalties in a particular situation. Where such a protest is shown to have been communicated to the supervisor, the person or persons communicating it will have demonstrated their lack of willfulness.

However, the absence of such a protest will not be viewed as warranting a presumption of willfulness on the part of the employee who might have communicated it. The statute says that a person who communicates such a protest shall be deemed not to have acted willfully; it does not say that a person who does not communicate such a protest will be deemed to have acted willfully. FRA would have to prove from all the pertinent facts that the employee willfully violated the law. Moreover, the absence of a protest would not be dispositive with regard to the willfulness of a supervisor who issued a direct order to violate the law. That is, the supervisor who allegedly issued an order to violate will not be able to rely on the employee's failure to protest the order as a complete defense. Rather, the issue will be whether, in view of all pertinent facts, the supervisor intentionally and voluntarily ordered the employee to commit an act that the supervisor knew would violate the law or acted with reckless disregard for whether it violated the law.

FRA intends to exercise the civil penalty authority over individuals through informal procedures very similar to those used with respect to railroad violations. However, FRA will vary those procedures somewhat to account for differences that may exist between the railroad's ability to defend itself against a civil penalty charge and an individual's ability to do so. First, when the field inspector decides that an individual's actions warrant a civil penalty recommendation and drafts a violation report, the inspector will inform the individual in writing of his or her intention to seek assessment of a civil penalty and the fact that a violation report has been transmitted to the Office of Chief Counsel. This will ensure that the individual has the opportunity to seek counsel, preserve documents, or take any other necessary steps to aid his or her defense at the earliest possible time.

Second, if the Office of Chief Counsel concludes that the case is meritorious and issues a penalty demand letter, that letter will make clear that FRA encourages discussion, through the mail, over the phone or in person, of any defenses or mitigating factors the individual may wish to raise. That letter will also advise the individual that he or she may wish to obtain representation by an attorney and/or labor representative. During the negotiation stage, FRA will consider each case individually on its merits and give due weight to whatever information the alleged violater provides.

Finally, in the unlikely event that a compromise cannot be reached, FRA will send the individual a letter warning of its intention to request that the Attorney General sue for the initially proposed amount and giving the person a sufficient interval (e.g., 30 to 90 days) to decide if that is the only alternative.

FRA believes that the intent of Congress would be violated if individuals who agree to pay a civil penalty or are ordered to do so by a court are indemnified for that penalty by the railroad or another institution (such as a labor organization). Congress intended that the penalties have a deterrent effect on individual behavior that would be lessened, if not eliminated, by such indemnification.

Although informal, face-to-face meetings are encouraged during the negotiation of a civil penalty charge, the RSIA does not require that FRA give individuals or railroads the opportunity for a formal, trial-type administrative hearing as part of the civil penalty process. FRA does not intend to provide that opportunity because such administrative hearings would be likely to add significantly to the costs an individual would have to bear in defense of a safety claim (and also to FRA's enforcement expenses) without shedding any more light on what resolution of the matter is fair than would the informal procedures set forth here. Of course, should an individual or railroad decide to litigate FRA's charges, that person would be entitled to a trial *de novo* in the appropriate United States district court.

**Assessment of Maximum Penalties**

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the safety regulations. Under the Hours of Service Act, the penalty was changed from a flat $500 to a penalty of "up to $1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to $20,000 per violation may now be assessed.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation specific dollar amounts for initial penalty assessments. For each regulation, the schedule shows two amounts in separate columns, the first for ordinary violations and the second for intentional or hazardous violations. Under each of the schedules, however, FRA has reserved the right, usually in a footnote, to assess the statutory maximum penalty for any especially serious violation regardless of the fact that a lesser amount might be shown in both columns of the schedule. For example, the penalty schedule for the Track Safety Standards has, for many years, listed a penalty of $750 for an ordinary violation of § 213.53 (track gage), a penalty of $1,500 for a hazardous violation of that section, and reserved the right to assess the maximum penalty.

Thus, the schedule amounts are meant to provide guidance as to FRA's policy in ordinary situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. FRA will use this same principle in implementing the higher penalties provided for by the RSIA, as Congress intended. The Senate report on the bill that became the RSIA stated:

"It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of the violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances."

S. Rep. No. 100–153, 100th Cong., 2d Sess. 8 (1987).

FRA will amend its penalty schedules to list initial assessment amounts within the range of $250 to $10,000. In the meantime, however, FRA expressly reserves the right to assess a penalty of up to $10,000 for any particular violation where warranted by exceptional circumstances. Moreover, although FRA will not amend its schedules to show any penalty amount above $10,000, it also reserves the right to assess a penalty of up to $20,000 per violation where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury. This authority to assess a penalty for a single violation above $10,000 and up to $20,000 is expected to be used only in very exceptional cases to penalize egregious behavior.

Thus, although FRA is not amending the hundreds of line items in its penalty schedules at this time, it reserves the right to use the new maximum penalties provided for by the RSIA from the effective date of this policy statement (August 1, 1988). Where FRA avails itself of this right to use the higher penalties in place of the schedule amount it will so indicate in its penalty demand letter.

## PART 213—[AMENDED]

2. Part 213 is amended as follows:

A. The authority citation for Part 213 is revised to read as follows:

**Authority:** 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 213.15(a) is revised to read as follows:

**§ 213.15 Civil penalty.**

(a) Any person (including a railroad, any manager, supervisor, official, or

other employee or agent of a railroad, any owner of track on which a railroad operates, or any person held by the Federal Railroad Administrator to be responsible under § 213.5(d)) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

* * * * *

**Appendix B—[Amended]**

C. Appendix B is amended by (1) revising the title to read "Appendix B—Schedule of Civil Penalties [1]"; (2) removing the word "Hazardous" and the footnote reference "1" from the heading of the right-hand column and inserting in place of "Hazardous" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 215—[AMENDED]**

3. Part 215 is amended as follows:

A. The authority citation for Part 215 is revised to read as follows:

**Authority:** 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 215.7 is revised to read as follows:

**§ 215.7 Prohibited acts.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

**Appendix B—[Amended]**

C. Appendix B is amended by (1) removing the word "Intentional" and the footnote reference "2" from heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; (2) revising the "Note on multiple violations" by removing "$2,500" and inserting "$10,000" and by removing the second sentence; (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (4) by removing footnote 2 and renumbering footnotes 3 and 4 as footnotes 2 and 3, respectively.

**PART 216—[AMENDED]**

4. Part 216 is amended as follows:

A. The authority citation for Part 216 is revised to read as follows:

**Authority:** 45 U.S.C. 431, 432, and 438, as amended; 45 U.S.C. 21–34, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

B. Section 216.7 is revised to read as follows:

**§ 216.7 Penalties.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Part 209, Appendix A.

**PART 217—[AMENDED]**

5. Part 217 is amended as follows:

A. The authority citation for Part 217 is revised to read as follows:

**Authority:** 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 217.5 is revised to read as follows:

**§ 217.5 Penalty.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

**Appendix A—[Amended]**

C. Appendix A is amended by (1) revising the title to read "Appendix A—Schedule of Civil Penalties [1]"; (2) removing the word "Intentional" and the footnote reference "1" from the right-hand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 218—[AMENDED]**

6. Part 218 is amended as follows:

A. The authority citation for Part 218 is revised to read as follows:

**Authority:** 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 218.3(b)(2) is revised to read as follows:

**§ 218.3 Application.**

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 218.9 is revised to read as follows:

**§ 218.9 Civil penalty.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day

a violation continues shall constitute a separate offense.

**Appendix A—[Amended]**

D. Appendix A is amended by (1) adding the footnote reference "1" at the end of the title; (2) removing the word "Intentional" and the footnote reference "1" from the heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 219—[AMENDED]**

7. Part 219 is amended as follows:

A. The authority citation for Part 219 is revised to read as follows:

**Authority:** 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

**§ 219.3 [Amended]**

B. Section 219.3(a)(2) is amended by inserting a period after the parenthetical and removing the remainder of the sentence.

C. Section 219.9 is amended by adding a new paragraph (d) to read as follows:

**§ 219.9 Responsibility for compliance.**

* * * * *

(d) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved, as provided in paragraph (a) of this section. Each day a violation continues shall constitute a separate offense.

**Appendix A—[Amended]**

D. Appendix A is amended by (1) removing the word "Intentional" and the footnote reference "2" from the heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; (2) inserting after the word "Employee" in the schedule entry for § 219.101 the words "violates prohibition or is"; and (3) removing footnote 2 and revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 220—[AMENDED]**

8. Part 220 is amended as follows:

A. The authority citation for Part 220 is revised to read as follows:

**Authority:** 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 220.3(b)(2) is revised to read as follows:

**§ 220.3 Application.**

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 220.7 is revised to read as follows:

**§ 220.7 Penalty.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

**Appendix C—[Amended]**

D. Appendix C is amended by (1) removing the phrase "Intentional [2] or hazardous [3] " from the heading of the righthand column and inserting in its place the word "Willful"; (2) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (3) removing footnotes 2 and 3.

**PART 221—[AMENDED]**

9. Part 221 is amended as follows:

A. The authority citation for Part 221 is revised to read as follows:

**Authority:** 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 221.3(b)(3) is revised to read as follows:

**§ 221.3 Application.**

* * * * *

(b) * * *

(3) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

* * * * *

C. Section 221.7 is revised to read as follows:

**§ 221.7 Civil penalty.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

D. Appendix C is amended by (1) adding the footnote reference "1" at the end of the title; (2) striking the word "Intentional" and the footnote reference "1" from the heading of the right-hand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209 Appendix A.

**PART 223—[AMENDED]**

10. Part 223 is amended as follows:

A. The authority citation for Part 223 is revised to read as follows:

**Authority:** 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 223.3(b)(2) is revised to read as follows:

**§ 223.3 Application.**

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with

the general railroad system of transportation.

* * * * *

C. Section 223.7 is revised to read as follows:

**§ 223.7 Responsibility.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

**Appendix B—[Amended]**

D. Appendix B is amended by (1) amending the "Note on multiple violations" by removing "$2,500" and inserting in its place "$10,000"; (2) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (3) removing footnote 2.

**PART 225—[AMENDED]**

11. Part 225 is amended as follows:

A. The authority citation for Part 225 is revised to read as follows:

**Authority:** 45 U.S.C. 38, 42 and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

**§ 225.1 [Amended]**

B. Section 225.1 is amended by removing the fifth sentence.

C. Section 225.5(a) is revised to read as follows:

**§ 225.5 Definitions.**

* * * * *

(a) "Railroad" means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

* * * * *

D. Section 225.29 is revised to read as follows:

**§ 225.29 Penalties.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A railroad may also be subject to the criminal penalties prescribed in 45 U.S.C. 39.

**Appendix B—[Amended]**

E. Appendix B is amended by (1) inserting the footnote reference "1" at the end of the title; (2) removing the word "Intentional" and the number "1" from the heading of the righthand column and inserting in place of "Intentional" the word "Willful"; and (3) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 228—[AMENDED]**

12. Part 228 is amended as follows:

A. The authority citation for Part 228 is revised to read as follows:

**Authority:** 49 App. U.S.C. 12, 20 (now recodified at 49 App. U.S.C. 501(b)(2), 502(b)(3), 504 (b)(1)(a), (c)(2) (a), and (d)); 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 61–64b, as amended; 45 U.S.C. 437, as amended; Pub. L. 100–342; and 49 CFR 1.49 (d), (m) and (g).

**Construction or Reconstruction of Employee Sleeping Quarters: Interim Rules on Determination of "Immediate Vicinity" [Removed]**

B. The interim rules entitled "Construction or Reconstruction of Employee Sleeping Quarters: Interim Rules on Determination of 'Immediate Vicinity' " are removed.

**Appendix A—[Amended]**

C. Appendix A is amended as follows:

1. At the end of the second sentence, add: "and by the Rail Safety Improvement Act of 1988, Pub. L. 100–342".

2. In the third paragraph, remove the first sentence and insert in its place: "The act applies to any railroad, as that term is defined in 45 U.S.C. 431(e)."

3. Under the heading of "General Provisions," the two paragraphs beginning with the subheading of "Penalty" are revised to read as follows:

*Penalty.* As amended by the Rail Safety Improvement Act of 1988, the penalty provisions of the law apply to any "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)," except that a penalty may be assessed against an individual only for a willful violation. See 49 CFR Part 209, Appendix A. A person who violates the Act is liable for a penalty of up to $1,000 per violation, as the Secretary of Transportation deems reasonable.

Each employee who is required or permitted to be on duty for a longer period than prescribed by law or who does not receive a required period of rest represents a separate and distinct violation and subjects the railroad to a penalty of up to $1,000.

**PART 229—[AMENDED]**

13. Part 229 is amended as follows:

A. The authority citation for Part 229 is revised to read as follows:

**Authority:** 45 U.S.C. 22–34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 229.7(b) is revised to read as follows:

**§ 229.7 Prohibited acts.**

* * * * *

(b) Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or of the Locomotive Inspection Act or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

**Appendix B—[Amended]**

C. Appendix B is amended by (1) removing "Intentional [2]" from the heading of the right-hand column and

inserting in its place the word "Willful"; (2) revising footnote 1 to read as follows:

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

and (3) removing footnote 2 and renumbering footnotes 3 and 4 as footnotes 2 and 3, respectively.

**PART 230—[AMENDED]**

14. Part 230 is amended as follows:

A. The authority citation for Part 230 is revised to read as follows:

**Authority:** 45 U.S.C. 22–34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 230.0(a) is revised to read as follows:

**§ 230.0 Steam powered locomotives.**

(a) Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of 49 CFR Part 230, Subpart A (§§ 230.1 to 230.55) or Subpart B (§§ 230.101 to 230.162) as in effect on October 1, 1978, or of the Locomotive Inspection Act, or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

* * * * *

**PART 231—[AMENDED]**

15. Part 231 is amended as follows:

A. The authority citation for Part 231 is revised to read as follows:

**Authority:** 45 U.S.C. 2, 4, 6, 8, 10, and 11–16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. A new § 231.0 is added to read as follows:

**§ 231.0 Applicability and penalties.**

Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

C. A new Appendix A is added to Part 231 to read as follows:

**Appendix A—Schedule of Civil Penalties**

For violations of this part or related provisions of the Safety Appliance Acts, 45 U.S.C. 1–16, the Federal Railroad Administration will follow these guidelines:

(1) For ordinary violations, FRA will assess a penalty of $1,000.

(2) For willful violations, FRA will assess a penalty of $2,000.

A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 232—[AMENDED]**

16. Part 232 is amended as follows:

A. The authority citation for Part 232 is revised to read as follows:

**Authority:** 45 U.S.C. 1, 3, 5, 6, 8–12, 15, and 16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. A new § 232.0 is added to read as follows:

**§ 232.0 Applicability and penalties.**

Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

C. The current appendix is designated as Appendix B and a new Appendix A is added to read as follows:

**Appendix A—Schedule of Civil Penalties**

For violations of this part or related provisions of the Safety Appliance Acts, 45 U.S.C. 1–16, the Federal Railroad Administration will follow these guidelines:

(1) For ordinary violations, FRA will assess a penalty of $1,000.

(2) For willful violations, FRA will assess a penalty of $2,000.

(3) For failure to perform an initial terminal air brake test adequately and fully, FRA will assess a penalty of $2,500.

A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 233—[AMENDED]**

17. Part 233 is amended as follows:

A. The authority citation for Part 233 is revised to read as follows:

**Authority:** 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

B. Section 233.11 is revised to read as follows:

**§ 233.11 Civil penalty.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of $2,500 except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Part 209, Appendix A.

**PART 235—[AMENDED]**

18. Part 235 is amended as follows:

A. The authority citation for Part 235 is revised to read as follows:

**Authority:** 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

B. Section 235.9 is revised to read as follows:

**§ 235.9 Civil penalty.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of $2,500 except that: Penalties may be assessed against individuals only for willful violations, and where a grossly

negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Appendix A.

## PART 236—[AMENDED]

19. Part 236 is amended as follows:

A. The authority citation for part 236 is revised to read as follows:

**Authority:** 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

B. Appendix A is revised to read as follows:

### Appendix A—Civil Penalties

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of $1,000 except that: A penalty of $2,000 will be assessed for a willful violation; penalties may be assessed against individuals only for willful violations; and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See 49 CFR Part 209, Appendix A.

Issued in Washington, DC on July 22, 1988.

**John H. Riley,**

*Federal Railroad Administrator.*

[FR Doc. 88–16926 Filed 7–27–88; 8:45 am]

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Part IV

# Department of Agriculture

**Forest Service**

## Fee Schedule for Communication Uses; Notice and Request for Public Comment

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Northern Region; Fee Schedule for Communication Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed policy; request for comment.

**SUMMARY:** The Forest Service hereby gives notice that a rental fee schedule for communication uses on National Forest System (NFS) lands in the Northern Region previously proposed on September 18, 1987 (52 FR 35293) is withdrawn and a new schedule is proposed.

The new proposal is the result of further study and consideration of market information developed in conjunction with other Forest Service Regions and the application of appropriate administrative adjustments in recognition of populations serviced by communication uses situated on National Forest System (NFS) lands in the Northern Region. Annual fee adjustments are indexed according to the Consumer Price Index—Urban (CPI–U) rather than the Implicit Price Deflector (IPD) as formerly adopted. There are other minor changes designed to provide greater consistency with fee schedules proposed by other Forest Service Regions.

**DATE:** Comments must be received in writing by September 26, 1988.

**ADDRESSES:** Send written comments to John W. Mumma, Regional Forester, Northern Region, USDA Forest Service, Federal Building, P.O. Box 7669, Missoula, MT 59807.

The public may inspect the comments received on this proposed policy in the office of the Director of Recreation, Wilderness and Lands, East Wing of the third floor, Federal Building, 200 East Broadway, Missoula, MT betwen the hours of 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jim Schoenbaum (406–329–3601) or Jim Hathaway (406–329–3110) of the Lands Staff.

**SUPPLEMENTARY INFORMATION:**

#### Background

In response to National direction, the Regional Forester, Northern Region, conducted an analysis of market data of similar communication uses in Montana, North Dakota, North Idaho and adjoining states. The formerly proposed communication use fee schedule was developed and offered for public comment by publication in the **Federal Register** on Thursday, April 30, 1987 (52 FR 15740) and direct notice to Northern Region communication use permit holders and other interested parties.

The Northern Region received 228 written responses to the initially proposed fee schedule. The comments were analyzed, summarized, and considered in developing a final communication use fee schedule. A summary of the comments and final fee schedule was published in the **Federal Register** on Friday, September 18, 1987 (52 FR 35293). That final fee schedule is hereby withdrawn and set aside.

As other Regions continued work on communication use fee schedules it appeared that additional information was developing which could relate to communication use fees in the Northern Region. The Forest Service also recognized that permit holders and the public would benefit through a more uniform approach to terminology, definitions, annual adjustment index and similar matters among the Regions. In order to provide an opportunity to coordinate more closely, provide for greater consistency in communication use fee management, and afford existing permit holders an additional 1-year opportunity to adjust their operations and budgets to a new fee schedule, the Regional Forester for the Northern Region deferred implementation of the new communication use fee schedule until calendar year 1989. That deferral is also withdrawn and set aside.

#### Withdrawal of Existing Communication Use Fee Schedule and Proposal of Communication Use Fee Schedule

Several coordination meetings were held with Forest Service appraisers and administrators from other Regions and Bureau of Land Management (BLM) staff.

Market data and analyses developed by the other Forest Service Regions and several BLM state offices were reviewed in depth during the past several months. Some of the information was not available in completed form at the time the final Northern Region fee schedule was published.

Further review concludes that it is appropriate to withdraw the Northern Region communication use fee schedule, as published in the **Federal Register** on September 18, 1987 (52 FR 35293), and propose a new fee schedule for communciation uses. The proposed fee policy and fee schedule follows:

#### Definitions

Comparison of the Northern Region fee schedule and **Federal Register** Notice (52 FR 35293) with further information obtained from other Regions indicated some differences in communication use definitions. Although this did not appear serious, such differences tend to be confusing, especially to permit holders operating in more than one Forest Service Region.

In coordination with other Regions and the BLM, we adopt the following terminology to define the various types of communication use:

*Common Carrier Microwave Relay Use.* This group typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point-to-point microwave networks or systems. These users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

*Broadcast Translator Use.* This category of use consists of picking up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service.

*Internal Two-Way Radio Repeater Use.* These are users who operate two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

*Industrial Microwave Use.* This group includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms. The communication service is not sold and is limited to the user.

*Passive Reflector Use.* Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

*Amateur Radio Use.* Repeaters used by individuals or groups who are licensed by FCC as amateur radio operators.

*Cellular Telephones.* This use is a specialized service provided by commercial communicators which involves a mobile (vehicular) UHF radio telephone system.

A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

*Personal/Private "Receive Only" Use.* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, recreation residences. These facilities are personally owned and not operated for profit.

*Radio Broadcast Use.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include commercial radio stations which generate revenues from advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Television Broadcast Use.* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include commercial television stations (major and independent networks) who generate income through advertisement and public television stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Cable and Subscription Television Use.* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

*Commercial Communicator.* This use includes entities whose primary business is providing radio communications service to others. The commercial communicator holds an FCC license; may own the building or vault and lease space to others, or may lease the same from others (unregulated commercial communicators are not regulated by public utility commissions and therefore may choose their clients and charge whatever their clients will pay for the services offered). The commercial communicator may also be a facilities manager. Examples of commercial communicator services are: VHF, UHF and microwave radio communication systems leased and sold.

**Multiple Occupancies**

*Shared Space Provider*

(a) *Multiple Permits.* An entity whose business is rental of space to customers who must hold an FCC license and provide their own equipment. Typically the shared space provider holds an FCC license for the purpose of conducting his primary communications business. Each occupant is under a separate permit.

(b) *Single Permit.* Same as above except all occupants are under a single permit.

AMENDED FEE SCHEDULE—NORTHERN REGION

| Use category | Annual fair market rent |
|---|---|
| Radio or Television Broadcast | $3,000 |
| Commercial Communicators and shared space providers under single permit: | |
| When customer use is internal two-way radio: | |
| First licensed frequency, when this is the highest fee use | 700 |
| and/or per each additional licensed frequency, or for the first licensed frequency when this use is not the highest fee use in a shared space situation | 200 |
| When customer use is other than internal two-way radio: | |
| Fees and procedures in Fees for Shared Space Users will apply. | |
| Common Carrier Microwave Relay | 1,500 |
| Passive Reflector | 500 |
| TV or Radio Broadcast Translators, Service Area Population: | |
| 0 to 1,000 | [1] 75 |
| 1,001 to 2,000 | 150 |
| 2,001 to 3,000 | 225 |
| 3,001 to 4,000 | 300 |
| 4,001 to 5,000 | 375 |
| 5,001 to 6,000 | 450 |
| 6,001 to 14,000 | 700 |
| 14,001 to 50,000 | 900 |
| Over 50,000 | 1,200 |
| Cable and Subscription Television, Population Served: | |
| Under 10,000 | 250 |
| 10,000 to 60,000 | 1,200 |
| Over 60,000 | 2,150 |
| Industrial Microwave | 1,000 |
| Internal Two-Way Radio or Repeater | 500 |
| Miscellaneous Communication Uses | 75 |
| Examples: | |
| Personal/Private Receive Only | 75 |
| Amateur Radio Service | 75 |

AMENDED FEE SCHEDULE—NORTHERN REGION—Continued

| Use category | Annual fair market rent |
|---|---|
| Natural Resource and Environmental Monitoring | 75 |

[1] Translator facility fees are premised on the building and equipment owned by one holder. Market data for small community and private translator associations serving populations of fewer than 6,000 people was inconclusive; however, an interpolation of available data was extended to these use groups and fee increments of $75 per 1,000 people served resulted.

**Communication Uses Not Listed in the Fee Schedule**

The field of electronics is expanding rapidly. Some specific uses, such as cellular telephone, are not yet located in the Northern Region. Other communication uses are in developmental stages. The Northern Region fee schedule is not intended to include these new and developing uses. These fees will be established on the basis of appraisal, sound business management principles, and/or negotiation when such uses become operational in the Northern Region.

**Fees for Shared Space Users**

When shared facility occupancy is authorized under separate (single user) permits, the fee shall be 100 percent of the schedule fee for each use authorized.

To improve administration of communication sites, Forest Service policy, **Federal Register** Notice (50, FR 40574, October 4, 1985) provides for authorizing shared facility occupancies under a single (multiple user) authorization. By the terms and conditions of these authorizations holders, rather than the Forest Service, authorize and administer the use of their facilities by others. Collection of Forest Service fees and performing certain administrative duties required under this type of authorization are burdens of the holder.

Except for commercial communicator fees, the authorized officer may, when determined beneficial to do so, negotiate appropriate fee discounts for multiple user authorizations based on an objective estimate of the benefits received by the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. Negotiated fees will be based on 100 percent of the scheduled fee for the highest value use allowed under the multiple user authorization plus a percentage of the

scheduled fee for each additional authorized use.

Multiple user permit fees are subject to annual review and adjustment to reflect the current highest value use and total use situation.

Consolidating facilities and reducing encumbrances on a site may meet the objectives of the Forest Service. In these cases, the authorized officer may negotiate short-term fee discounts in recognition of holder costs and to encourage consolidation. Fee discounts cannot exceed each holder's cost attributable to the consolidation. In no case will fees be discounted for cost incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

We recognize those situations where individual holders have formed associations and converted from individual permits to multiple user authorizations. We acknowledge the benefits holder associations afford both the Forest Service and users. In recognition of existing communication site association permits, and to encourage continued implementation of multiple user authorizations to associations, authorized officers may make adjustments to association fees, subject to the Regional Forester's approval, on a case-by-case basis.

The shared space adjustment does not apply to holders occupying Forest Service facilities; for other than site managing associations full fees are charged for these situations. In addition to prescribed fees, authorized officers will require users occupying Forest Service facilities to perform or share in the costs of building or facility maintenance and repair, as provided by Section 7, Act of April 24, 1950 (Granger-Thye) and FSM 2711.7.

Under multiple user permits, except for those established by prospectus-bid processes, primary users (site managers or associations) will pay the Forest Service the appropriate shared space fee for each of their tenants/users and are free to negotiate a reasonable charge with their tenants.

**Appurtenant Use**

Except for commercial communicators, appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do not qualify for appurtenant use fee exemption.

**Fee Waivers and Exemptions**

Numerous comments on the earlier proposal urged the Chief or the Regional Forester to establish National or Regional waivers for certain categories of use. The decision to apply fee waivers is delegated to the Forest Officer who authorizes the use. We believe the determination of whether a fee waiver is equitable and in the public interest can be best made at the local level.

As provided by the Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

No rental fee will be charged to Federal agencies. Reciprocal agreements between state or local governments and Federal agencies will be honored. However, in situations of space rental, the building owner may charge Federal agencies for use of the facility.

Under Pub. L. 98–300 and current Forest Service policy, facilities and extensions from facilities financed pursuant to the Rural Electrification Act of 1936 are exempt from the payment of fees.

**Annual Fee Schedule Adjustment**

All categories of communication uses are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year, will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

**Periodic Review of Fee Schedule**

The Forest Service recognizes the need for granting reasonable security to its permit holders and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the holder clearly indicate that a fee change is justified. The ensure this mutual protection, the Northern Region shall, by August 1, 1993, review this schedule to determine whether market conditions and business practices have changed sufficiently to warrant a fee schedule revision. Holders will be given an opportunity to provide data which might have a bearing on that review. Any fee schedule adjustments will be announced to holders at least 90 days before becoming effective on January 1, 1994.

**Phase-in of Fee Increases**

So that holders may adjust their operations to the fee schedule, that portion of the new fee that exceeds a 100-percent increase with a fee increase of less than $2,000 will be phased in by equal increments, plus annual adjustment, over a 3-year period beginning with C.Y. 1989 fees. If the increase in annual rental exceeds 100 percent and the fee increase is more than $2,000, the amount of the new rental in excess of the 100 percent increase will be phased in by equal increments, plus annual adjustments, over a 5-year period.

**Other Methods of Establishing Fees**

A fee schedule is an appropriate cost-effective method to use to assess fees for most communication sites. This schedule is intended to cover the majority of the existing and proposed sites in the Northern Region. However, fees for unique sites or sites servicing high populations are not covered by this schedule but are to be determined on an individual case basis. At this time there are no such sites on National Forest System lands in the Northern Region.

The authorized officer may use site-specific appraisals, sound business management principles, and/or rental analysis as coordinated with the Regional Reviewing Appraiser to determine fees for individual sites when market evidence such as leases for similarly used sites demonstrate the inapplicability of the fees schedule.

Appraisals provided by the holder or other group may be used to determine fees if the Regional Reviewing Appraiser establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

Competitive bidding may be used to establish fees for new sites.

**Proposed Implementation**

After review of public comments and publication of a final notice in the **Federal Register**, a fee schedule would be implemented for all Northern Region Commmunication special-use authorizations effective January 1, 1989, and reflected in billings for calendar year 1989 fees.

**Applicability**

Fees proposed according to this schedule would apply to each electronic use on National Forest System lands in the Northern Region.

Under certain qualifying circumstances, as provided by Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, fees may be waived or reduced. Such waiver is discretionary rather than mandatory. These procedures are not affected by the proposed fee schedule.

Copies of this notice and the proposed fee schedule are being mailed to holders of existing communication site authorizations and will also be sent to

anyone requesting copies from the contacts listed in this notice. The rental fee study and schedule are also available for review at the Regional Office and Forest Supervisors' offices in Montana and north Idaho.

Dated: July 11, 1988.

**John M. Hughes,**

*Deputy Regional Forester.*

[FR Doc. 88-17031 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-11-M

## Rocky Mountain Region; Fee Schedule for Communication Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed policy; request for comments.

**SUMMARY:** The Regional Forester for the Rocky Mountain Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Colorado, Kansas, Nebraska, South Dakota and Wyoming. Comments from interested individuals and users are welcome.

**DATE:** Comments must be received in writing by September 26, 1988.

**ADDRESSES:** Send written comments to Gary E. Cargill, Regional Forester, Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, CO 80255.

The public may inspect comments received on this proposed policy in the Office of the Director of Lands and Recreation, 3rd Floor, 11177 W. 8th Ave., Lakewood, CO between the hours of 8:00 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Eugene F. Ecker, Recreation Lands Staff, (303) 236-9512.

**SUPPLEMENTARY INFORMATION:**

### Background

Forest Officers currently administer approximately 600 communication use authorizations on 150 sites within the Rocky Mountain Region.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) broadens the method of determining annual land use rental fees for communication uses and states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Rocky Mountain Region has determined that:

(1) A fee schedule would be an appropriate cost-effective method to use to assess fees for most communication uses. This schedule is intended to cover the majority of uses on existing and proposed sites in the Rocky Mountain Region; however, fees for unique uses or sites serving high population densities may not be adequately covered by this schedule. In developing this fee schedule, we did not consider data from any major front-range metropolitan areas.

(2) The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites when market evidence demonstrates the inapplicability of the fee schedule.

Appraisals provided by users or other groups may be used to determine fees if the Regional Review Appraiser affirms that the appraisal meets Forest Service standards and the fees represent fair market value.

(3) Competitive bidding may be used to establish fees for new sites/facilities.

### Proposed Fee Schedule

This proposal is based on a market analysis completed in CY 1988. The schedule proposes annual rental fees by defined use categories. Fees for miscellaneous and new uses not described, will be determined by appraisal, sound business management principles, and/or negotiation as described in the "revised policy" summarized in the "background" section of this Notice.

COMMUNICATION USE FEE SCHEDULE, JULY 1988, ROCKY MOUNTAIN REGION, FOREST SERVICE—USDA

| Use category | Annual fair market rent[1] |
|---|---|
| Television Broadcast | $2,000 |
| Radio Broadcast | 2,000 |
| Commercial Communicator: | |
| First Licensed Frequency | 700 |
| Each Additional Licensed Frequency | 200 |
| Common Carrier Microwave Relay | 1,500 |
| Passive Reflector | 500 |
| Broadcast Translator, Service Area Population: | |
| 0 to 1,000 | 75 |
| 1,001 to 2,000 | 150 |
| 2,001 to 3,000 | 225 |
| 3,001 to 4,000 | 300 |
| 4,001 to 5,000 | 375 |
| 5,001 to 6,000 | 450 |
| 6,001 to 14,000 | 700 |
| 14,001 to 50,000 | 900 |
| Over 50,000 | 1,200 |
| Cable and Subscription TV, Population Served: | |
| Under 10,000 | 250 |
| 10,000 to 60,000 | 1,200 |
| Over 60,000 | 2,150 |
| Internal Microwave | 1,000 |
| Internal Two-Way Radio or Repeater | 1,000 |
| Personal/Private Receive Only Antennas | 75 |
| Amateur Radio Service | 75 |
| Natural Resource and Environmental Monitoring | 75 |

[1] Except for the commercial communicator category, the annual fair market rent shall be assessed for each authorized use.

### Definitions

*Television Broadcast.* This category includes FCC authorized facilities that broadcast UHF and VHF audio/video signals for public reception. Uses include broadcast of network, independent and public telecommunication signals. User revenues are typically derived from subscriptions, grants and donations or from commercial advertising. Broadcast areas may overlap state boundaries. This use includes only primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized in conjunction with this use include microwave and/or two-way radio links from a permitted site to a studio or other fixed or mobile units directly related to the broadcast activity.

*Radio Broadcast.* This category includes FCC authorized facilities that broadcast AM and FM audio signals for public reception. Users include commercial radio stations which generate revenues from advertising and public telecommunication service stations whose revenues are derived from subscriptions, grants and donations. Broadcast areas often overlap state boundaries. The use

includes only primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized under this use include microwave and/or two-way radio links from a permitted site to a studio or other fixed or mobile units directly related to the broadcast activity.

*Commercial Communicator.* This category includes users whose primary business is providing communications service to others. The user typically holds an FCC license and may own a building or vault and lease space to others or may lease building and vault space from others. Typically the use is also a facility manager.

*Common Carrier Microwave Relay.* This use typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. The users are regulated by state Public Utility Commissions and must provide service to any consumer with the ability to pay according to a published rate schedule.

*Passive Reflector.* This use includes various types of nonpowered reflectors used to bend or ricochet electronic signals between active relay stations or between an active station and terminal. Passive reflectors require point-to-point line-of-sight linking with connecting network stations. Maintenance is minimal and reflector sites seldom require visitation.

*Broadcast Translator.* This use includes users who receive a TV or FM radio braodcast signal and retransmit it on a different channel or frequency for reception by another booster or translator or by the general public. This category includes public telecommunications service translators.

*Cable and Subscription Television.* This category includes TV and FM headend antenna or satellite dish receivers that receive programs and signals for redistribution, by cable or other means, to multiple subscribers within a community who pay to receive the signal.

*Internal Microwave.* This use includes users who are not primarily in the communications business but who maintain internal microwave systems or networks. The communication service is not sold. Users include pipeline and power companies, railroads, land and resource management agencies, etc.

*Internal Two-Way Radio or Repeater.* This use includes two-way radio repeaters used for internal communications in support of business, community or other organizational objectives. The communication service is not sold and is limited to the user.

*Personal/Private "Receive Only" Antennas.* This use includes radio and TV receiving antennas, satellite dishes and other equipment designed for the receiption of electronic signals serving private homes and recreation residences. The equipment is personally owned; not operated for profit.

*Amateur Radio Service.* Repeaters used by individuals or groups who are licensed by the FCC as amateur radio operators.

*Natural Resource and Environmental Monitoring.* This use includes the transmission of telemetry data from a remote site to a central receiving station.

**Appurtenant Use**

Except for commercial communicators, appurtenant uses will not be assessed an additional fee. Subsidiary firms are considered autonomous and do not qualify for appurtenant use fee exemption.

**Fee Formula Options for Multiple Occupancies**

To improve the administration of communication sites. Forest Service policy (50 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under these authorizations, holders, rather than the Forest Service, authorize the use of their facility by others and assume responsibility for the collection of schedule fees and the performance of certain administrative duties.

The Authorized Officer (AO) may, if it is in the public interest, discount multiple occupancy schedule fees at a rate based on an objective estimate of the benefits received by the Forest Service. This discount rate shall consider costs incurred by the holder to administer all authorized uses plus a reasonable profit. Multiple occupancy schedule fees shall in no case be less than 100% of the schedule fee for the highest use permitted under the holders authorization plus the discounted schedule fee for each additional use allowed under the holders authorization.

In no case will fees be discounted for costs incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

**Fee Waivers**

Numerous comments on earlier proposals urged the Chief of Regional Foresters to establish National or Regional waivers for certain categories of use. The decision to grant a fee waiver is delegated to the Forest Officer who authorizes the use. We believe the determination of whether a fee waiver is equitable and in the public interest can be best made at the local level.

As provided by the Secretary of Agriculture's Regulation 36 CFR 251.57b and current Forest Service policy, all or part of a fee may be waived to qualified holders. Fee waiver procedures are not affected by this proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

No rental fee will be charged to Federal agencies. Reciprocal agreements between state or local governments and Federal agencies will be honored; however, in situations of space rental the building owner may charge for use of the facility.

**Annual Fee Schedule Adjustment**

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplyer which will be used to annually update the Communication Use Fee Schedule.

**Periodic Review of Fee Schedule**

The Forest Service recognizes the need for granting reasonable security to its permit holders and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized of the operations of the holder clearly indicate that a fee change is justified. To insure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Permit holders will be given an opportunity to provide data which might have a bearing on that review. Fee adjustments, if appropriate, will be announced to permit holders at least 90 days before becoming effective on January 1, 1995.

**Phase-In of Fees**

That portion of the new fee that exceeds the current fee by 100%, but less than $2,000, will be phased-in over a three year period. That portion of the new fee that exceeds the current fee by 100% and by more than $2,000, will be phased-in over a five year period. Fees phased-in will be subject to the CPI-U annual fee adjustment.

**Implementation**

The fee schedule would be effective January 1, 1989 and include all existing authorizations.

Dated: July 12, 1988.

S.H. Hanks,

*Deputy Regional Forester.*

[FR Doc. 88-17032 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-11-M

## Southwestern Region; Fee Schedule for Communication Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed policy; request for comments.

**SUMMARY:** The Regional Forester for the Southwestern Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Arizona, New Mexico, and portions of Texas, and Oklahoma. Comments from interested individuals and users are welcome.

**DATE:** Comments must be in writing by September 26, 1988.

**ADDRESSES:** Send written comments to Sotero Muniz, Regional Forester, Southwestern Region, 517 Gold Avenue SW., Albuquerque, NM 87102. The public may inspect comments received on this proposed policy in the Office of the Director of Recreation, room 5315, Federal Building, 517 Gold Avenue SW., Albuquerque, NM between the hours of 7:30 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Arthur S. Maynard, Recreation Staff, telephone (505) 842-3444.

**SUPPLEMENTAL INFORMATION:**

### Background

Forest Officers currently administer approximately 725 communication use authorizations on 121 sites within the Southwestern Region.

Current fees are calculated at two-tenths of one percent (0.2%) of the permit holders total investment in facilities and equipment plus 5 percent of rental income received from building tenants and/or equipment users served by the holder. Fees for many holders currently range from $0 to $2,500 annually, while private communication use rentals range from $0 to $250,000 per year.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) that broadens the method of determining annual land use rental fees for communication uses states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Southwestern Region has determined that:

(1) A fee schedule would be an appropriate cost effective method to use to assess fees for most communication sites. This notification covers all sites within the Region, with the exception of value zone 1 in New Mexico (Sandia Crest and Peralta Ridge) and the Catalina Mountain zone in the Arizona market analysis.

(2) The authorized officer may use site specific appraisals, sound business management practices, and/or rental analysis to determine fees for individual sites when market evidence such as leases for similar uses demonstrate the inapplicability of the schedule.

Appraisals provided by the holder or other group may be used to determine fees if the Regional Valuation Officer establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

(3) Competitive bidding may be used to establish fees for new sites.

All communication site holders in the Southwestern Region were initially informed by mail that the Forest Service was conducting market studies to establish fee schedules for electronic site uses in late 1985.

In the Southwestern Region, separate market studies were completed by Forest Service appraisers for Arizona and New Mexico. Initial findings of the market analyses were documented in two reports accepted by the Regional Forester in August 1987, and subject to industry review and comment. In their market analyses, the appraisers used transaction data from Bureau of Land Management appraisal personnel, private fee appraisers, communication specialists, private communication transactions, courthouse records, National Forest communication site holders and other sources. The private sites referenced in the transaction data were examined for comparison with National Forest sites.

The market studies established initial leasehold fair market value estimates for nine categories of use for 121 communication sites on the National Forests in Arizona and New Mexico. The market studies summarize private leases and comparative National Forest sites by value zones. The value within zones reflects logical market classifications for various site features such as accessibility, physical characteristics, availability of commercial power, location, and coverage that affect pricing. There are five value zones in New Mexico and four in Arizona.

The proposed communication site fee schedules were introduced to the telecommunications industry through individual mailings in October and November of 1987. Open house meetings were held throughout the states of Arizona and New Mexico, during the week of November 16-20, 1987, to allow interested parties the opportunity to question the Forest Service officials responsible for developing and implementing the proposed fee schedules, and to comment on the proposed fee schedules and provide additional transaction data. Followup meetings were also held with ad hoc user groups and industry representatives during the months of December 1987 and January 1988 to provide additional forums to voice concerns. FM and TV broadcasters, and commercial communicator users in both states were provided this opportunity.

A Public Comment and Forest Service Response document which addresses all written or verbal comments received following the public comment period during the late fall of 1987 and early winter of 1988 is being provided to all Southwestern Region communication use authorization holders.

### Revised Fee Schedules and Summary of Changes

Adjustments in the proposed fees for many communication site use categories have been made after careful review of comments and additional information submitted by industry representatives. The revised fee schedules are responsive to industry concerns and fully supported by the market data that has been reviewed to date.

This section provides a brief explanation of the significant changes made in the proposed fees, and displays the revised fee schedules for Arizona and New Mexico.

*Arizona*

1. Annual rental fees for commercial communications are now primarily based on the number of transmitting frequencies in use. In all value zones, fees are based on a charge of $200 per transmitter, subject to a minimum which increases in increments from $500 in the Rural Zone to $1,200 in the Mt. Ord and Elden Zones. Industry comments overwhelmingly support using the number of transmitting frequencies as the basis for the fee and lowering the minimum fee for each value zone to avoid discriminating against the smaller operator. This approach requires the holder to pay an increasingly larger fee as the business expands and more transmitting frequencies are added.

2. Reductions have been made in the proposed fees for radio broadcast in the higher value zones based on new information provided by the New Mexico Public Broadcasting Association.

3. Reductions have been made in the proposed fees for all types of television broadcast in the Intermediate Zone based on updated information.

4. At the time the market analysis was prepared, there was insufficient data from within the State of Arizona on which to base a value conclusion for broadcast translators. The proposed fees in the initial fee schedule were based on a percentage of the fee for cable television, as indicated by a comparison of the two categories of use in New Mexico. New information provided by representatives of the television broadcast industry and use of sound business management practices has been used to develop fees for this category of use for all value zones.

The original fee schedule in the market analysis combined television and FM translators in the same category. Information provided by industry representatives indicates that these translators serve two different technical purposes and these differences are reflected in FCC licenses. Comparisons based on new transaction evidence suggest that rental rates for FM broadcast are about half of the rental rates for television broadcast sites.

5. The ninth category of communication site use has been expanded to specifically include amateur radio uses.

*New Mexico*

1. Based on additional information relating to the quality of the sites and the populations they serve, value zone adjustments have been made for the following National Forest communication sites in New Mexico.

| Number | National Forest | Site Name | Value Zone Change |
|---|---|---|---|
| 74 | Lincoln | Boy Scout Mountain | From Zone 3 to Zone 4. |
| 78 | Lincoln | Summit Peak | From Zone 3 to Zone 4. |
| 82 | Santa Fe | Coyote | From Zone 4 to Zone 5. |

2. Based on a review of the market data, downward adjustments have been made in the proposed fees for FM radio broadcast in all value zones.

3. Internal Communications—the original fee schedule was based on leases that indicated most users in this category had systems including both microwave and two-way radio communications on the same site. The Arizona private leases indicated the private rental rates were about the same for either two-way radio repeaters, base stations, or microwaves or any combination thereof. The schedule has been expanded to clarify this breakdown. If the two-way radios are located in or are moved into a commercial communicator facility under a separate permit, the fee will fall under the rate per frequency schedule.

4. Fees for television and FM translators have been substantially revised. The new fee schedule establishes fees for television translators based on the population served by the installation. Fees for FM translators are set at 50 percent of the television translator rate.

5. Like the Arizona communication site fee schedule, fees for commercial communications are based on the number of transmitting frequencies in use. In all value zones, fees are based on a charge of $200 per transmitted frequency, subject to a minimum which increases in increments from $400 in the low value zone to $1000 in the highest value zone. Holders of authorizations who are sublessees of commercial communicators must agree to forfeit their authorizations in order to qualify for a fee of $200/frequency. This fee would be collected by the commercial communicator permittee and paid to the Forest Service.

If the holder of an existing authorization does not agree to relinquish his authorization, the holders will be charged the full fee schedule established for the communication use authorized.

The market study indicates that some commercial communicators in New Mexico utilize microwave to link their communication system. Some of the systems operate under a common carrier designation and others that provide a somewhat similar service do not. The study shows that there is also some variation in the capacity of licensed microwave systems in use for this purpose. However, as a sound business management principle and in the interest of Regional consistency, the Regional Forester has decided to not implement the appraiser's recommendation to charge a separate fee for the use of microwave by commercial communicators.

6. Annual rental fees for small cable and subscription television systems serving less than 200 subscribers have been established based on the potential for similar systems to develop for the numerous isolated residential areas within the National Forests in New Mexico.

7. The original user category entitled "Antenna/Satellite Dish/Remote Sensing" has been replaced by Personal/Private "Receive Only" Use and Natural Resource Monitoring. Amateur radio use is also grouped under this category since the annual rental fee for all of these uses has been set at $75.

**Proposed Fee Schedule**

This proposal is based on a market analysis completed originally in 1987 and supplemented in calendar year 1988. The schedule proposes annual rental fees by type of use as defined herein. Fees for miscellaneous and new uses not herein described, will be determined by appraisal, sound business management principles, and/or negotiation as described in the "revised policy" summarized in the "background" section of this Notice. Fees for the use of Forest Service owned facilities will be in accordance with FSM 2711.7, I.D. No. 59 dated 7/17/87. Fees for the use of Value Zone 1 as displayed in the New Mexico market analysis and the fees for the Catalina Mountain Value Zone of the Arizona market analysis will be announced by the Regional Forester in a separate decision notice.

## COMMUNICATION USE FEE SCHEDULE, APRIL 1988, SOUTHWESTERN REGION, FOREST SERVICE—USDA

| Categories of Use | Value Zone 2 | Value Zone 3 | Value Zone 4 | Zone 5 |
|---|---|---|---|---|
| New Mexico: [1] | | | | |
| Television Broadcast: | | | | |
| Network | | | | |
| Independent | | | | |
| Low Power | $1,500 | $800 | | |
| Radio Broadcast: FM | 3,500 | 1,800 | 1,000 | |
| Common Carrier MW | 4,500 | 2,300 | 1,600 | $1,600 |
| Internal Communications (Two-way Radio, Industrial Microwave Or Any Combination) | 2,000 | 1,500 | 1,000 | 750 |
| Cellular (CTS) | 3,500 | | | |
| Commercial Communicator: Two-way Radio [2] | $200/freq | $200/freq | $200/freq | $200/freq |
| Minimum for CC Use | 1,000 | 800 | 600 | 400 |
| Passive MW Reflector | | | 475 | 475 |
| Personal/Private "Receive Only" Use, Natural Resource Monitoring, Amateur Radio | 75 | 75 | 75 | 75 |
| | 1,500 or More Subscribers (Franchise Area 5,000+pop.) | 1,500 or 500 Subscribers (Franchise Area 2,500 to 5,000 pop.) | 500 to 200 Subscribers (Franchise Area Less than 2,500 pop.) | Less than 200 Subscribers |
| Cable and subscription television | $2,000 | $1,350 | 750 | $400 |

[1] Zone maps may be found within the market analysis for each State. Copies of these market analyses may be viewed at any Ranger District or Forest Supervisor's office, or in the Lands and Minerals or Recreation Staff in the Southwestern Regional Office.

[2] The fee will be calculated on the basis of the applicable rate for each licensed radio transmitting frequency (channel) which is used: (a) By a single user, (b) shared or community repeater, (c) trunked system or specialized mobile radio system, (d) pager system, etc., subject however to the applicable minimum.

Note: Leaders indicates there are no known authorizations for the category in this Value Zone. If a new application is received or an existing authorization has been overlooked a fee will be established using authorized procedures.

| Population Served | Television | FM radio |
|---|---|---|
| **Broadcast translators [1]** | | |
| 0 to 1,000 | $75 | $75 |
| 1,001 to 2,000 | 150 | 75 |
| 2,001 to 3,000 | 225 | 110 |
| 3,001 to 4,000 | 300 | 150 |
| 4,001 to 5,000 | 375 | 185 |
| 5,001 to 6,000 | 450 | 225 |
| 6,001 to 14,000 | 525 | 260 |
| 14,001 to 50,000 | 600 | 300 |
| 50,001 to 200,000 | 900 | 450 |
| 200,001 to 600,000 | 1,500 | 750 |

[1] A translator site operated by a single FCC licensee is considered one use.

### Value Zones

| Categories of use | Rural | Intermediate | Ord & Elden |
|---|---|---|---|
| **Arizona [1]** | | | |
| Internal Communication: Two-Way Radio Repeater, Industrial Microwave or, any combination | $1,200 | $1,600 | $2,500 |
| Commercial communication: $200/trans. freq. in all value zones subject to following min. fees | $500 | $600 | $1,200 |
| Common Carrier Microwave | $2,000 | $2,400 | $4,500 |
| Radio Broadcast [2] | $2,000 | $2,500 | $3,500 |

### Value Zones—Continued

| Categories of use | Rural | Intermediate | Ord & Elden |
|---|---|---|---|
| Television Broadcast | N/A | $2,500 | N/A |
| Cable Television | $1,200 | $1,600 | $2,800 |
| Broadcast Translator [3] | | | |
| (a) Television | $300 | $450 | $600 |
| (b) FM Radio | $150 | $225 | $300 |
| Passive Reflector | $400 | $500 | $2,750 |
| Other: Personal/ Private "Receive Only", Amateur Radio, Natural Resource and Environ. Monitoring | $75 | $75 | $75 |

[1] Zone maps may be found within the market analysis for each State. Copies of these market analyses may be viewed at any Ranger District or Forest Supervisor's office, or in the Lands and Minerals or Recreation Staffs in the Southwestern Regional Office

[2] For AM broadcast, when permit area is larger than one acre, the minimum fee is shown above, or five percent of the land value, whichever is greater.

[3] When it is determined that a smaller fee is appropriate, fees for translators serving communities of 6,000 people or less in any value zone will be based on the population according to the most recent U.S. Census. Population up to 1,000–$75; 1 to 2,000–$150; 2 to 3,000–$225; 3 to 4,000–$300; 4 to 5,000–$375 and; 5 to 6,000–$450. A translator site operated by a single FCC licensee is considered one use.

### Definitions

*Common Carrier Microwave Relay:* This group typically includes long line carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to published rate schedules.

*Broadcast Translator:* This category of use consists of picking up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service.

*Internal Two-Way Radio Repeater:* These are users who operate two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

*Industrial Microwave:* This group includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline

and power companies, railroads and land resource management agencies or firms. The communication service is not sold and is limited to the user.

*Passive Reflector:* Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-site with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

*Amateur Radio:* Repeaters used by individuals or groups who are licensed by FCC as amateur radio operators.

*Cellular telephone:* This is a specialized service provided by commercial communicators which involves a mobile (vehiclar) UHF radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

*Personal/Private "Receive Only":* These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes, including recreation residences. These facilities are personally owned and not operated for profit.

*Radio Broadcast:* This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenue from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Television Broadcast:* This category includes FCC authorized facilities that broadcast UHF and VHF audio and video signals for general public reception. Users include television stations (major and independent networks) who generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not any rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or two-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Cable and Subscription Television:* This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

**Commercial Communicators**

An entity whose primary business is providing radio communications service to others. The commercial communicator holds an FCC license; may own the building or vault and lease space either to others, or may lease the same from others. (Unregulated commercial communicators are not regulated by public utility commissions and therefore may choose their clients and charge whatever their client will pay for the services offered). Typically, the commercial communicator is also a facilities manager. Examples of commercial communicator services are: VHF, UHF, and microwave radio communication systems leased and sold.

**Appurtenant Use**

Except for commercial communicators, appurtenant uses will be assessed additional fees. Subsidiary firms are considered autonomous and do not qualify for appurtenant use fee exemption.

**Fee Formula for Multiple Occupancies.**

To imporve administration of communication sites, Forest Service policy (59 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under the conditions of these authorizations, holders rather than the Forest Service authorize the use of facilities by others. Collection of Forest Service fees and performing certain administrative duties required under this type of authorization are burdens of the holder.

The Authorized Officer may, when determined beneficial to do so, negotiate a fee discount based on an objective estimate of the benefits received by the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. Negotiated fees will be based on 100% of the scheduled fee for the highest value use allowed under the holders authorizations plus a percentage of the scheduled fee for each additional use allowed under the holders authorization.

Consolidation of facilities on a site may meet the objectives of the Forest Service. In these cases, the Authorized Officer may negotiate a temporary discount in fees to encourage consolidation. Fee discounts cannot exceed the holders' cost to consolidate the facilities. In no case will fees be discounted for cost incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.)

When shared facility occupancy is authorized under separate permits, the fee shall be 100% of the schedule fee for each use authorized.

**Fee Waivers**

Numerous comments on the earlier proposal urged the Chief or the Regional Forester to establish National or Regional waivers for certain categories of use. The discision to apply fee waivers is delegated to the Forest Officer who authorizes the use. We believe the determination of whether a fee waiver is equitable and in the public interest can be best made at the local level.

As provided by the Secretary of Agriculture's Regulations 36 CFR 251.75b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

No rental fee will be charged to Federal agencies. Reciprocal agreements between State or local governments and Federal agencies will be honored. However, in situations of space rental, the building owned may charge for use of the facility.

**Annual Fee Schedule Adjustment**

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

**Periodic Review of Fee Schedule**

The Forest Service recognizes the need for granting reasonable security to its permittees and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the

holder clearly indicate that a fee change is justified. To insure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which might have a bearing on that review and fee adjustments, if appropriate, will be announced to holders at least 90 days before becoming effective on January 1, 1995.

**Phase-In**

For existing authorizations phase-in will only cover the portion of the increase exceeding 100% of the current fee as follows:

If the Schedule Fee *increase* is less than twice the Pre-schedule Fee, there will be no phase-in.

If the schedule fee increase is greater than twice the pre-schedule fee, phase-in will be allowed by the following methods:

A. If the schedule fee *increase* is less than Two Thousand Dollars ($2000), that portion of the schedule fee in excess of the 100% increase shall be phased in over a three (3) year period.

B. If the schedule fee *increase* is more than Two Thousand Dollars ($2000), that portion of the schedule fee in excess of the 100% increase shall be phased over a (5) year period.

Fees phased-in will be subject to the CPI–U annual fee adjustment.

**Implementation**

The fee schedule would be effective January 1, 1989, and include all existing authorizations.

**Sotero Muniz,**

*Regional Forester.*

July 14, 1988.

[FR Doc. 88–17033 Filed 7–27–88; 8:45 am]

BILLING CODE 3410–11–M

## Intermountain Region; Fee Schedule for Communication Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed fee schedule; request for public comment.

**SUMMARY:** The Regional Forester for the Intermountain Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming. Public review and comment on the proposal were previously solicited through a notice in the **Federal Register**, Vol. 52, No. 199, Thursday, October 15, 1987.

As a result of widespread interest and comment on the proposal, it has been modified and revised, particularly in the areas of: (1) Annual indexing to adjust for changes in the economy; (2) phasing in the larger fee increases to recognize the substantial impact of implementing the new system; (3) identifying and recognizing the role of amateur radio repeater systems; (4) further refining the fee schedule for TV and FM radio translators serving very small rural communities; and, (5) identifying that FCC licensees, not licenses or "boxes", will be the basis for TV translator fees.

The proposal is now being resubmitted for comment. Comments on the original publication will be further considered prior to any decision and need not be resubmitted.

This proposal is based on a market study conducted by the Region during the spring and summer of 1987. The market study is available for review and comment.

**DATE:** Comments must be received, in writing, by September 26, 1988.

**ADDRESS:** Send comments on the current proposal to J. S. Tixier, Regional Forester, Intermountain Region, 324 25th Street, Ogden, UT 84401. Comments received in response to this notice may be reviewed in the office of the Director of Recreation and Lands, Room 6025, Federal Building, 324 25th Street, Odgen, UT during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Frank Elder (801) 625–5150 or Lynn Bidlack (801) 625–5141, Recreation and Lands Staff.

**Background**

The Forest Service administers approximately 1,031 communication authorizations within the Intermountain Region. The existing policy for determining annual land use rental fees is a mixture of schedule and formula. Fees are based on 0.2 percent of the authorization holder's total investment value for communication facilities and equipment plus 5 percent of the rental income from building tenants and/or equipment user served by the holder.

Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Secretary of Agriculture Regulations 36 CFR 251.57 promulgated to implement FLPMA state that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." It has been determined that the fee system which has been in use does not satisfy this requirement. A new policy was developed on October 4, 1985 (50 FR 40574) which broadened the methods of determining annual land use rental fees for communication uses and allowed the Chief or Regional Foresters to determine which of three methods (site specific appraisal, competitive bidding, or Regional fee schedule) is appropriate for particular geographic areas.

In keeping with this direction the Regional Forester for the Intermountain Region has determined that:

1. A fee schedule would be an appropriate cost effective method to use to assess fees for most communication uses. This schedule is intended to cover the majority of uses on existing and proposed sites in the Intermountain Region.

2. Fees for atypical or unique sites/uses or sites/uses serving high population are not covered by this schedule. The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites/uses when market evidence, such as leases for similar uses, demonstrates the inapplicability of the schedule. Examples of sites which may fit these situations are Shafer Butte and Deer Point in Idaho and Slid Mountain in Nevada.

Appraisals provided by the holder or other users may be used to determine fees if the Regional Review Appraiser establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

3. Competitive bidding may be used to establish fees for new sites or undeveloped portions of existing sites.

**Summary of Comments on October 15, 1987, Proposal**

In addition to publication in the October 15, 1987, **Federal Register**, copies of the proposal were mailed to all holders, and other interested parties such as key state and Federal officials, and the news media. News releases were provided throughout the Intermountain Region. These contacts

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were for the purpose of inviting comments on the proposal.

There were 326 written responses received. The majority came from addresses in Utah (41 percent) and Idaho (39 percent). Respondents fit into three categories of use: amateur radio users comprised 37 percent of the responses; commercial communicators, their clients, and other 2-way radio repeater users comprised 33 percent of the responses; and TV translators comprised 26 percent of the responses.

While virtually all responses were opposed to the fee schedule proposal, many agreed that a change in the fee system was needed and that increases were inevitable. The primary reason for opposing the fee schedule was that respondents felt the market survey was biased which resulted in proposed fee levels which appeared higher than fair market value. As a result of the public comment, we reviewed the initial study data, and compared it with additional data provided by neighboring Forest Service Regions. We also investigated data provided by several users. Unfortunately, transaction information provided by users was often difficult to compare with an annual fee because it involved donations, purchases, and barter, rather than leases/rentals.

Numerous respondents, predominantly commercial communicators and those in the broadcast industry, questioned whether the data and resultant fee schedule proposal reflected investments by the lessees in site development, such as road access and electrical power. Our market survey analyzed factors such as investments by the lessee and concluded that they were not fee-determining in the private market. Reasons for this are not absolute, but perhaps other factors (elevation, topography, population served) influence the value of the site, and development costs are absorbed with other operations costs (buildings, equipment) as an initial capital expense.

We believe that the proposed fee schedule is proper, fair, and equitable. It is based on a comprehensive market survey utilizing the best data available. The fee schedule represents the market value for various uses today. However, we recognize that it would not be a sound business decision to immediately require full payment when a change in fee structure results in large increases. Therefore, we propose a phase-in under the following conditions: (1) Where the new fee schedule results in a fee increase of more than 100 percent, but less than $2,000, the increase in excess of 100 percent will be phased in over a 3-year period; or (2) Where the increase exceeds 100 percent and $2,000, the increase in excess of 100 percent will be phased in over a 5-year period.

There were some objections to the proposal to make annual adjustments by use of an index, and some objected to the Implicit Price Deflator (IPD) as the index of choice. Annual indexing is common in the private market as a means of staying current with the economy. We disagree with those who commented that indexing itself causes inflation and we continue to propose the annual indexing provision. However, we have changed the index to the Consumer Price Index-Urban (CPI-U) because our review indicates it is the most commonly used index for communication site leases in the private market.

Many respondents urged that the fees, if otherwise properly established and calculated, should not be imposed on certain types of use. The majority of respondents claimed that their type of use is in the public interest, provides a valuable public benefit, and therefore should be exempt from fees. These included amateur ("ham") radio operators and organizations; public radio and television broadcasters (PBS); Federal, state, county, and municipal government agencies; and a variety of non-profit organizations. The relationship of this fee schedule to the provisions for waiver of fees is discussed in the "Fee Waivers" section of this announcement.

Amateur radio operators also claimed it was unfair to include them in a broad category covering all 2-way radio use. We have reviewed our market survey, discussed license procedures with the Federal Communications Commission (FCC), and determined that amateur radio use is an independent category. The market survey indicates that this category of use is not refined and a fee cannot be determined using this procedure. Therefore, other sound business management principles indicate that an annual rental fee of $75 is appropriate when no other specific market data is available. This takes into consideration that there is some minimum benefit or value for the use of public land, and that such minimum value represents the cost to the Forest Service for authorizing and administering the use.

Input from viewers and broadcasters alike (26 percent of responses) opposed the proposed rate structure for TV translators. Most objected that TV service to isolated rural communities would be threatened. Broadcasters asserted that the limited viewing audiences served by most of these translators do not affect advertising rates and resultant revenues; therefore, it would not be economical to continue service if the proposed fee schedule were applied. Nonprofit community TV translator associations argued that some sparsely populated areas claimed they operate on such limited budgets that the proposed schedule would effectively double their costs and thus curtail the operation. County-operated translator groups and systems in Utah argued the need to continue providing TV reception as a necessary public service, and that the proposed fees, especially if applied to each translator in use, would severely threaten the continuation of this traditionally "free" use of the National Forest communication sites.

We have reviewed our data for TV translators and determined that there is no basis to charge a separate fee for each translator at a given site owned and operated by a single FCC licensee. Translators owned and operated by a single FCC licensee is an authorized facility will be assessed a single fee for the operations. Additionally, expanding on the principle that the value of this type of use is related to the population served by it, we have extended and interpolated the analysis of available data to the population category of 0–6000. This results in fee increments of $75 per 1000 people in the under-6000 population category.

In addition to the publication, mailing, and news releases concerning the proposal, and the 326 written responses that resulted, numerous meetings have been held with communication industry representatives and interests. Their input and recommendations have been considered.

In summary, based on the information and responses received during the public comment period, we have made significant changes and adjustments from our October 1987 proposal. These include: (1) Use of the Consumer Price Index-Urban (CPI–U) rather than the Implicit Price Deflator (IPD) as the index upon which to base annual adjustments; (2) use of a 3- or 5-year fee phase-in period, based on the amount of fee increase; (3) establishment of the fee for amateur radio repeaters at $75.00; (4) considering all TV translators at a given site operated by the same FCC licensee a single use; and (5) refining the fee for the low population bracket of TV translator operations into smaller increments, at $75 per 1,000 people.

Additionally, in response to questions and comments indicating confusion as to how the proposed fee schedule would be applied to certain situations, we have expanded the definitions and discussions of types of uses, and

otherwise attempted to clarify and explain the proposal.

**Proposed Rental Fee Schedule**

The proposed rental fee schedule has been prepared based on: (1) Analysis of market data of similar uses in Arizona, California, Colorado, Idaho, Montana, North Dakota, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, and (2) sound business management principles. The proposed rental fee schedule for the Intermountain Region appears at the end of this notice. The proposed schedule establishes annual rental fees by type of communication use (as listed in the "Discussion of Communication Use Types" section of this notice) and by population categories for the Intermountain Region.

**Shared space**

To improve administration of communication sites, Forest Service policy (50 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under the conditions of these authorizations, holders, rather than the Forest Service, authorize the use of their facilities by others. Payment of Forest Service fees and performance of certain administrative duties required under this type of authorization are responsibilities of the holder.

The Authorized Officer may, when determined beneficial to do so, negotiate a fee discount based on an objective estimate of the benefits received by the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. Negotiated fees will be based on 100 percent of the scheduled fee for the highest value use allowed under the holder's authorization, plus at least 50 percent of the scheduled fee for each additional use allowed under the holder's authorization. Consolidation of facilities on a site may meet the objectives of the Forest Service. In these cases, the Authorized Officer may negotiate a temporary discount in fees to encourage consolidation. Fee discounts cannot exceed the holder's cost to consolidate the facilities. In no case will fees be discounted for costs incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

**Miscellaneous Communication Uses**

A review of Forest Service records discloses a number of authorized communication uses for which the market analysis provided insufficient information on market rent. Many of these are for personal/private uses and involve "receive only" equipment, such as TV and radio receiving antennas, satellite dishes, and other equipment or structures designed solely for the reception of electromagnetic signals. Some uses may be "transmit only", such as natural resource or environmental monitoring telemetry. Some miscellaneous uses may invlove both transmitting and receiving equipment and structures.

There are comparatively few of these installations in the Intermountain Region. Fair market value can be established through sound business management principles as provided in Secretary of Agriculture's Regulation 36 CFR 251.57a. The Intermountain Region has reviewed available information and the market analysis for other communication uses as listed in the proposed rental fee schedule and concluded that an appropriate annual fee for the various miscellaneous communication uses not otherwise identified in the proposed fee schedule is $75 per year per unit. A unit is defined as one receiving antenna, one transmit/receive antenna combination serving one radio, one satellite dish, etc.

The field of communications is expanding rapidly. Many communication uses are in developmental stages. The Intermountain Region's proposed rental fee schedule is not intended to include these new and developing uses. Fees will be established on the basis of appraisal, sound business management principles, and/or negotiation when these new and developing uses become operational in the Intermountain Region.

**Fee Waivers**

Under certain qualifying circumstances, as provided by Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, fees may be fully or partially waived. These procedures are not affected by the proposed fee schedule.

Numerous comments on the earlier proposal urged the Chief or the Regional Forester to establish a "blanket" waiver throughout the Service or Region for certain categories of uses. The decision to authorize fee waivers is delegated to the Forest Officer who issues the special use authorization. We believe the determination of whether a fee waiver in a given situation is equitable and in the public interest can best be made at the local level.

In no case, except for a use by another Federal agency, or cases involving a reciprocal agreement with a State or local government agency, should a fee waiver result in less than $75 for a communication use.

**Annual Fee Schedule Adjustment**

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

**Periodic Review of Fee Schedule**

The Forest Service recognizes the need for granting reasonable security to its holders and for protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the holders clearly indicate that a fee change is justified. To ensure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which will be considered during the review. Fee adjustments, if appropriate, will be announced to holders at least 90 days before becoming effective on January 1, 1995.

**Proposed Implementation, With Phase-In**

Fees proposed according to this schedule will apply to each communication use on National Forest System lands in the Intermountain Region upon adoption of the final schedule and publication in the **Federal Register**. The new fees would be effective beginning January 1, 1989. Provisions for phase-in of fee increases follow:

1. If the increase in the annual rental is less than 100 percent, there will be no phase-in.

2. If the increase in the annual rental exceeds 100 percent, but the *fee increase is less than $2,000,* the amount of the new rental in excess of the 100 percent increase would be phased-in by equal increments, plus the annual adjustment, over a 3-year period.

3. If the increase in annual rental exceeds 100 percent and the *fee increase is more than $2,000,* the amount of the new rental in excess of the 100 percent increase would be phased-in by equal increments, plus the annual adjustment, over a 5-year period.

Copies of this notice and the proposed fee schedule are being mailed to holders of existing communication site authorizations and to anyone requesting copies from the contacts listed in this notice. The market study and proposed

rental fee schedule are also available for review at Forest Supervisor's Offices.

**Discussion of Communication Use Types**

*Appurtenant Uses.* Except for Commercial Communicators, appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do not qualify for an appurtenant use fee exemption.

*Passive Reflector.* This use includes various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active station and terminal. Passive reflectors require point-to-point, line-of-sight linking with connecting relay stations, but do not require electric power. Maintenance is minimal and reflector sites seldom require visitation. An annual rental fee rate of $600 is proposed.

*Broadcast Translator.* This use consists of receiving a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service. Market data for small community and individual translators was inconclusive for populations below 6,000; therefore, we extended and interpolated the analysis of available data to small populations, resulting in fee increments of $75 per 1,000 people served. Multiple translators operated by a single FCC licensee at a site are considered as one use. Nine population-dependent annual rental fee rates are proposed.

*Internal 2-Way Radio Repeater.* This use includes two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user. Fees for this category will be based on the nubmer of frequencies licensed by the Federal Communications Commission (FCC) or the number of installed transceivers, whichever is least. Three population-dependent annual rental rates are proposed.

*Industrial Microwave.* This use includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline and power companies, railroads, and land resource management agencies or firms. The communication service is not sold and is limited to the user. Fees for this category will be based on the number of frequencies licensed by the Federal Communications Commission (FCC) or the number of installed transceivers, whichever is least. Two population-dependent annual rental rates are proposed.

*Cable and Subscription Television.* This use includes cable TV head-end antenna or satellite dish receivers used for community television pickups which retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area. Three population-dependent annual rental fee rates are proposed.

*Common Carrier Microwave Relay.* This use typically includes longline carriers who relay intra- and interstate telephone, television, information, and data transmissions using point-to-point microwave networks or systems. The users are regulated by State Public Utility Commissions and must provide service to any consumer with the ability to pay according to a published rate schedule. Fees for this category will be based on the number of frequencies licensed by the Federal Communications Commission (FCC) or the number of installed transceivers, whichever is least. Two population-dependent annual rental rates are proposed.

*Commercial Communicator.* This category includes users whose primary business ir providing communications services to others. The user holds an FCC license and may own a building or vault and lease space to others or may lease building and vault space from others. Typically the user is also a facility manager. Examples of such use include 800-trunking and Special Mobile Radios (SMR's). Fees for this category will be based on transmit frequencies. A rate proposal of $700 for the first transmit frequency is proposed, plus $200 for each additional transmit frequency. Tenants of commercial communicators will be considered separately under other fee schedule categories.

*Radio Broadcast.* This use includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations which generate revenues from commercial advertising, and public radio stations whose revenues are supported by subscriptions, grants, donations, and appropriations. It relates only to primary transmitters and not any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mot ile units directly related to the broadcast activity. Four population-dependent rates are proposed.

*Television Broadcast.* This category includes FCC authorized facilities that broadcast VHF and UHF audio and video signals for general public reception. Users include television stations (major and independent networks) that generate revenues from commercial advertising, and public television stations whose revenues are supported by subscriptions, grants, donations, or appropriations. It relates only to primary transmitters and not any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity. Four population-dependent rates are proposed.

*Personal/Private "Receive Only."* This use includes radio and TV receiving antennas, satellite dishes, and other equipment/facilities designed for the reception of electromagnetic signals serving private homes and recreation residences. The equipment is personally owned; not operated for profit. As one of the miscellaneous electronic uses discussed earlier, a flat rate of $75 is established based on sound business management principles and is not subject to waiver.

*Amateur Radio Service.* This use includes repeaters used by individuals or groups who are licensed by the FCC as amateur radio operators. Private market leases are inconclusive. Therefore, a flat rate of $75 is established based on sound business management principles and is not subject to waiver.

*Natural Resource and Environmental Monitoring.* This use includes the trnasmission of telemetry data from a remote site to a central receiving station. As one of the miscellaneous electronic uses discussed earlier, a flat rate of $75 is established based on sound business management principles and is not subject to waiver.

Dated: July 6, 1988.

**T.A. Roederer,**

*Deputy Regional Forester Resources.*

INTERMOUNTAIN REGION PROPOSED RENTAL FEE SCHEDULE

| Population Category | Communication facility | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Passive Reflector (1) | Broadcast Translators (2) | Internal 2-Way Radio Repeater (3) | Industrial Microwave (4) | Cable Television (5) | Common Carrier Microwave (6) | Commercial Communicator [1] (7) | TV & Radio Broadcast (8) |
| 0 to 6,000 | 600 | [2] | 600 | 1,100 | 700 | 1,600 | 700 + 200/frequency | 2,700 |
| 6 to 14,000 | 600 | 700 | 800 | 1,100 | 1,400 | 1,600 | 700 + 200/frequency | 2,700 |
| 14 to 50,000 | 600 | 900 | 1,100 | 1,100 | 1,400 | 1,600 | 700 + 200/frequency | 3,000 |
| 50 to 100,000 | 600 | 1,200 | 1,100 | 1,500 | 2,400 | 2,000 | 700 + 200/frequency | 3,300 |
| 100,000+ [3] | 600 | 1,200 | 1,100 | 1,500 | 2,400 | 2,000 | 700 + 200/frequency | 4,000 |

[1] The $700 base fee includes the first transit frequency; additional transmit frequencies are $200 each.

[2] Broadcast Translator:

Service Area Population:

| | |
|---|---|
| 0 to 1,000 | $75 |
| 1,001 to 2,000 | 150 |
| 2,001 to 3,000 | 225 |
| 3,001 to 4,000 | 300 |
| 4,001 to 5,000 | 375 |
| 5,001 to 6,000 | 450 |

[3] Our market survey evaluated a population category of 250,000+, but with the leveling off effect, found no meaningful increase in fees over the 100,000-250,000 group.

[FR Doc. 88-17037 Filed 7-27-88; 8:45 am]
BILLING CODE 3410-11-M

## Pacific Southwest Region; Fee Schedule for Communication Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed policy: request for comments.

**SUMMARY:** The Regional Forester for the Pacific Southwest Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the State of California and a portion of the State of Nevada bordering on California. Comments from interested individuals and holders are welcome.

**DATE:** Comments must be received in writing by September 26, 1988.

**ADDRESSES:** Send written comments to Paul F. Barker, Regional Forester, Pacific Southwest Region, 630 Sansome St., San Francisco, CA 94111.

The public may inspect comments received on this proposed policy in the office of the Director of Lands, Rm 1016, 630 Sansome St., San Francisco, CA between the hours of 8:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Adele H. Goss (415) 556-3415, Land Uses Group Leader.

**SUPPLEMENTARY INFORMATION:**

### Background

Forest Officers currently administer approximately 1625 communication use authorizations on 200 sites within the Pacific Southwest Region.

Current fees are calculated at two-tenths of one percent (0.2%) of the holders total investment in facilities and equipment plus 5 percent of rental income received from building tenants and/or equipment users served by the holder.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) that broadens the method of determining annual land use rental fees for communication uses states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Pacific Southwest Region has determined that:

(1) A fee schedule would be an appropriate cost-effective method to assess fees for most communication sites and associated uses. This schedule is intended to cover the majority of the existing and proposed sites in the Pacific Southwest Region. However, fees for unique sites or sites servicing high populations, such as Mt. Wilson and Santa Anita Ridge which service the Los Angeles area, are not covered by this schedule.

(2) The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites when market evidence such as leases for similar uses demonstrate the inapplicability of the schedule.

Appraisals provided by the holder or other groups may be used to determine fees if the Regional Review Appraiser establishes that the appraisal meets Forest Service standards and the fee represents fair market value.

(3) Competitive bidding may be used to establish fees for new sites.

### Proposed Fee Schedule

This proposal is based on a market analysis completed by the Pacific Southwest Region in FY 1987. The schedule proposes annual rental fees according to category of use by zone. Fees for categories not described, will be determined by appraisal, sound business management principles, and/or negotiation.

COMMUNICATION USE FEE SCHEDULE, APRIL 1988, PACIFIC SOUTHWEST REGION, FOREST SERVICE—USDA

| Use category | Annual Fair Market Rent—Zone [1] | | |
|---|---|---|---|
| | South | Central | North |
| Television Broadcast | $9,600 | $6,000 | $2,000 |
| Radio Broadcast | 9,600 | 6,000 | 2,000 |
| Repeator: [2] | | | |
| Commercial Communicator | 5,000 | 4,000 | 1,000 |
| Internal Two Way | 1,200 | 800 | 500 |
| Microwave Relay: | | | |
| Common Carrier | 6,500 | 5,500 | 3,500 |
| Industrial | 3,600 | 4,000 | 1,500 |
| Passive Reflector | 500 | 500 | 500 |
| Broadcast Translator,* | | | |
| *Service Area Population:* [3] | | | |
| 0 to 1,000 | 75 | 75 | 75 |
| 1,001 to 2,000 | 150 | 150 | 150 |
| 2,001 to 3,000 | 225 | 225 | 225 |
| 3,001 to 4,000 | 300 | 300 | 300 |
| 4,001 to 5,000 | 375 | 375 | 375 |
| 5,001 to 6,000 | 450 | 450 | 450 |
| 6,001 to 14,000 | 700 | 700 | 700 |
| 14,001 to 50,000 | 900 | 900 | 900 |
| 50,001* | 1,200 | 1,200 | 1,200 |
| Cable and Subscription Television, Population Served: | | | |
| 0 to 10,000 | 600 | 600 | 600 |
| 10,001 to 50,000 | 1,500 | 1,500 | 1,500 |
| 50,001 to plus | 3,000 | 3,000 | 3,000 |
| Cellular Telephone | 6,000 | 6,000 | 6,000 |
| Personal/Private Receive Only | 75 | 75 | 75 |
| Amateur Radio Service | 75 | 75 | 75 |

[1] Three zones developed from the market analysis and the counties therein are as follows: *Northern Zone*—Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen (portion), Tehama, Plumas (portion), Mendocino, Butte, Glenn, Colusa, Lake, and Yuba (that portion of the Plumas NF). *Central Zone*—Sonoma, Nape, Sacramento, Sutter, Yuba (portion) Sierra, Nevada, Placer, Eldorado, Amador, Solano, Stanislaus, San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda, Contra Costa, San Joaquin, Calaveras, Alpine, Mono, Tuolumne, Monterey, San Benito, Merced, Mariposa, Madera, Inyo, Fresno, Tulare, Kings, Yolo, Marin, Kern (that portion of the Sequoia NF). Plumas (that portion of the Tahoe NF), and the Lassen (That portion of the Toiyabe, NF). *Southern Zone*—San Luis Obispo, Orange, Santa Barbara, Imperial, Ventura, San Diego, Kern (portion), Los Angeles, San Bernardino, and Riverside.

[2] The fee will be the zone fee indicated *or* twenty-five percent (25%) of Total Gross Income from *on-site* equipment, space, or frequency rentals, whichever is greater. For fee computation purposes, the holder shall annually provide the Forest Service, by March 1, a certified copy of their previous calendar year's gross income statement. There will be no Forest Service authorization or direct rental charge to third party users who lease equipment and service from commercial communications users.

[3] Market data for small community and private translator associations (less than 5,000 people served) was inconclusive. However, data collected by other Western Regions of the Forest Service was extended to these use groups and fee increments of $75 per 1000 people served resulted. Translator sites operated by a single licensee are considered one use.

*A translator site operated by a single FCC licensee is considered one use.

**Definitions**

*Television Broadcast Use*—This category includes FCC authorized facilities that broadcast VHF and UHF audio and video signals for general public reception. Users include (VHF and UHF transmission of) television stations (major and independent networks) that generate revenues from commercial (telecommunication services) whose revenues are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not to any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Radio Broadcast Use*—This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include AM and FM radio stations which generate revenues from commercial advertising, and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not to any rebroadcast systems such as translators. Appurtenant uses authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

*Commercial Communicator Use*—An entity whose primary business is providing communications service to others. The commercial communicator holds an FCC license, may own the building or vault, and lease space either to others, or may lease the same from others. Examples of such use include 800 trunking and Special Mobile Radios (SMR's).

*Common Carrier Microwave Relay Use*—This use typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. The users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay according to a published rate schedule.

*Passive Reflector Use*—This use includes various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active station and terminal. Passive reflectors require point-to-point line-of-site linking with connecting network stations, but does not require electric power. Maintenance is minimal and reflector sites seldom require visitation.

*Broadcast Translator Use*—This use consists of picking up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases, the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunication service.

*Cable and Subscription Television Use*—This use includes cable TV headend antenna or satellite dish receivers used for community television pickpus which retransmit by cable or any other means where subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

*Industrial Microwave Use*—This use includes entities who are not in the communications business, but have their own internal microwave communications system or network. Users in this group may include pipeline and power companies, railroads, and land and resource management agencies or firms. The communication service is not sold and is limited to the user.

*Cellular Telephone Use*—This category is a specialized service of commercial communicators which includes mobile (UHF) radio telephone systems. A cell is the area covered by one transmitting/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell area to cell area.

*Internal Two-Way Radio Repeater Use*—This use includes two-way repeaters used for internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

*Personal/Private "Receive Only" Use*—This use includes radio and TV receiving antennas, satellite dishes and other equipment designed for the reception of electronic signals serving private homes and recreation residences. The equipment is personnally owned and not operated for profit.

*Amateur Radio Use*—Equipment used by individuals or groups who are licensed by the FCC as amateur radio operators.

**Multiple Occupancies**

Multiple occupanices can occur in the following forms:

1. The holder owns the facility and the primary business is the rental of space to others. In this situation, the holder does not own or operate communication equipment. (He is referred to as a "site manager".) Fees may be set by competitive bid or other sound business management practice.

2. The holder owns the building and operates communication equipment, but has surplus space for use by others. In this situation, two alternatives exist:

a. Multiple authorizations—An entity whose incidental business is rental of surplus space to customers who must hold an FCC license and provide their own equipment. Typically the shared space provider holds an FCC license for the purpose of conducting a communications business. Each occupant is under a separate authorization. The fee shall be 100% of the schedule fee for each use authorized.

b. Single authorization—Same as above except all occupants are under a single authorization to the owner of the facility. The owner of the facility authorizes, collects fees, and administers all of the uses. For providing these services and as an incentive to encourage single authorizations, the authorized officer may negotiate a reduction of fees when it is to the benefit of the Forest Service. Benefits may consider costs incurred by the holder to administer the uses plus a reasonable profit. The fee shall equal 100% of the scheduled fee for the highest value use plus a percentage of the scheduled fee for each additional use allowed under the holder's authorization.

**Appurtenant Use**

Appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do *not* qualify for appurtenant use fee exemption.

**Fee Waivers**

The established special use rental fee waiver policy is not affected by this proposed fee schedule. Under certain circumstances, fees waivers may be granted. It is the responsibility of the holder to submit a request with justification for a fee waiver to the authorized officer.

Except for use by another Federal Agency, or cases involving a reciprocal agreement with the state or local government agency, fees will not be waived below $75 for a communication site.

**Annual Fee Schedule Adjustment**

All categories of use are subject to an annual fee schedule adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U for July of the previous year to yield a CPI–U multiplier (CPI–Um) to annually update the Communication Use Fee Schedule.

**Periodic Review of Fee Schedule**

The Forest Service recognizes the need for granting reasonable fee stability to its holders and of protecting the public's interest by providing for the adjustment of fees when the market value of the use authorized changes. To insure this, the Forest Service shall, by September 15, 1994, review the existing schedule to determine whether market conditions and/or business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which will be considered during the review, and fee adjustments, if appropriate, will be announced to holders.

**Implementation**

This fee schedule would apply to all new and existing authorizations beginning January 1, 1989.

Phase-in guidelines for existing authorizations:

1. If the scheduled fee increase is less than or equal to 100% of the existing fee, there will be no phase-in.

2. If the scheduled fee results in an increase greater than 100% of the existing fee, phase-in will be as follows:

a. If the fee increase is less than Two Thousand Dollars ($2000), the amount of the new fee in excess of the 100% increase shall be phased in three equal increments over a three (3) year period.[1]

b. If the scheduled fee increase is more than Two Thousand Dollars ($2000), the amount of the new fee in excess of the 100% increase shall be phased in five equal increments over a five (5) year period.[1]

Date: July 11, 1988.

**Norwood F. Robertshaw,**

*Assistant Regional Forester, Lands and Real Estate Management.*

[FR Doc. 88–17038 Filed 7–27–88; 8:45 am]

BILLING CODE 3410–11–M

[1] Fees will be subject to the CPI–U annual fee adjustment.

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Part V

# The President

**Proclamation 5842—National Week of Recognition and Remembrance for Those Who Served in the Korean War, 1988**

Federal Register
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# Presidential Documents

Title 3—

The President

**Proclamation 5842 of July 26, 1988**

## National Week of Recognition and Remembrance for Those Who Served in the Korean War, 1988

By the President of the United States of America

A Proclamation

Our Nation's beginning was signed with the blood of patriots, and in the more than 212 years that have followed our founding we have never forgotten to pause in honor of the gallant Americans who have suffered and died in the cause of freedom. As we approach the 35th anniversary of the cease-fire that marked the end of active combat in the Korean War, it is appropriate that we take time to remember and express our gratitude to those who served in that fierce conflict. We do so proudly, knowing that their spirit will define forever the words "courage" and "liberty."

In June 1950, when the Communist North Korean army invaded the Republic of Korea in a brazen attempt to extinguish the light of freedom there, American forces joined with those of many other nations to repel this unprovoked assault. Weary of war ourselves and ready to lead an era of peaceful recovery, we nonetheless came to Korea's defense because instinct and experience have taught us that freedom can have no borders, that an attack on free men anywhere is an attack on free men everywhere.

Standing shoulder to shoulder with the valiant South Korean armies and troops of 16 other countries operating under United Nations command, nearly six million of our service men and women—more than served in World War I—participated in the drive to preserve Korea's territorial integrity and political independence. At Inchon and the Chosin Reservoir, on Old Baldy and Pork Chop Hill, in battle and siege all across the Korean Peninsula, our forces endured unspeakable hardships for a fellow people struggling to keep free. Over 54,000 Americans died, more than 100,000 suffered wounds, and over 8,000 remain missing in action. Theirs has been called the "Forgotten War," but, as President Eisenhower told the Nation 35 years ago on the signing of the Korean Armistice, they proved "once again that only courage and sacrifice can keep freedom alive upon the earth." This is a message that must forever live on in the memories and in the hearts of all who cherish liberty.

The Congress, by Senate Joint Resolution 318, has designated the week of July 25 through July 31, 1988, as "National Week of Recognition and Remembrance for Those Who Served in the Korean War" and authorized and requested the President to issue a proclamation observing this week and urging the departments and agencies of the United States and interested organizations, groups, and individuals to fly the American flag at half-staff on July 27, 1988, in memory of those Americans who died as a result of their service in Korea.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of July 25 through July 31, 1988, as National Week of Recognition and Remembrance for Those Who Served in the Korean War. I call upon the people of the United States to observe such week with appropriate ceremonies and activities and call upon and authorize all departments and agencies of the United States and interested organizations, groups, and individuals to fly United States flags at half-staff on July 27, 1988, as a symbol of our gratitude to those who died as a result of their service

in Korea and of our steadfast commitment to preserving the values for which they fought.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-17214
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**H.R. 3893/Pub. L. 100–368**

To amend the provisions of the Toxic Substances Control Act relating to asbestos in the Nation's schools by providing adequate time for local educational agencies to submit asbestos management plans to State Governors and to begin implementation of those plans. (July 18, 1988; 102 Stat. 829; 6 pages) Price: $1.00

**H.R. 4639/Pub. L. 100–369**

To amend the Higher Education Act of 1965 to prevent abuses in the Supplemental Loans for Students program udner part B of title IV of the Higher Education Act of 1965, and for other purposes. (July 18, 1988; 102 Stat. 835; 5 pages) Price: $1.00

**H.R. 4229/Pub. L. 100–370**

To amend title 10, United States Code, to codify in that title certain defense-related permanent free-standing provisions of law. (July 19, 1988; 102 Stat. 840; 17 pages) Price: $1.00

**H.R. 4567/Pub. L. 100–371**

Energy and Water Development Appropriations Act, 1989. (July 19, 1988; 102 Stat. 857; 19 pages) Price: $1.00

**S. 623/Pub. L. 100–372**

Independent Safety Board Act Amendments of 1988. (July 19, 1988; 102 Stat. 876; 2 pages) Price: $1.00

**S. 2203/Pub. L. 100–373**

To extent the expiration date of title II of the Energy Policy and Conservation Act. (July 19, 1988; 102 Stat. 878; 1 page) Price: $1.00

**S. 2248/Pub. L. 100–374**

To designate the United States Courthouse located at 156 Federal Street in Portland, Maine, as the "Edward Thaxter Gignoux United States Courthouse." (July 19, 1988: 102 Stat. 879; 1 page) Price: $1.00

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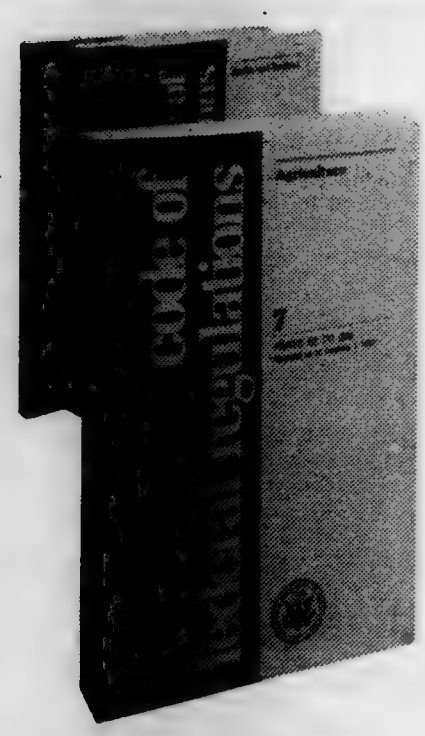


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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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# Rules and Regulations

Federal Register
Vol. 53, No. 146
Friday, July 29, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

**1 CFR Part 3**

### Price Changes in Federal Register Publications

**AGENCY:** Administrative Committee of the Federal Register.
**ACTION:** Final rule.

**SUMMARY:** The Administrative Committee of the Federal Register (ACFR) announces changes in the prices of certain publications. Certain prices are reduced to reflect lower costs, and othes are increased to fully recover production and distribution costs to the Government. The ACFR also adds to its regulations the prices of magnetic tapes for the **Federal Register** and CFR which were previously approved. The price changes are made to more accurately reflect the cost of producing and distributing these publications by the Government.

**EFFECTIVE DATES:** **Federal Register** and CFR magnetic tape prices, § 3.4(b) (3) and (4)—July 29, 1988

**Federal Register** microfiche price, § 3.4(b)(3)—October 1, 1988, Code of Federal Regulations prices, § 3.4(b)(4)—January 1, 1989, Weekly Compilation of Presidential Documents prices, § 3.4(b)(7)—October 1, 1988.

**Federal Register** Index price, § 3.4(b)(8)—October 1, 1988, List of CFR Sections Affected price, § 3.4(b)(9)—October 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Denise Normandin, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, 202–523–5240.

**SUPPLEMENTARY INFORMATION:** The ACFR which establishes prices for **Federal Register** publications has determined that adjustments must be made on the prices of certain **Federal Register** publications to reflect more accurately the production and distribution costs to the Government. Effective October 1, 1988 the prices for annual subscriptions for the **Federal Register** Index will be reduced from $22 to $19, for the List of CFR Sections Affected (LSA) will be reduced from $24 to $21, and for the **Federal Register** microfiche will be increased from $188 to $195. Also effective October 1, 1988 the annual subscription to the Weekly Compilation of Presidential Documents will be reduced from $64 to $55, and the price of a single copy of the Weekly Compilation of Presidential Documents will be increased from $1.75 to $2.00.

Effective January 1, 1989, the price of a subscription to the paper edition of the Code of Federal Regulations will be increased from $595 to $620, the price of an annual subscription of the microfiche edition will be increased from $185 to $188, and the price of a single copy of Code of Federal Regulations microfiche will be reduced from $3.75 to $2.00.

The ACFR is also including in its regulations the prices for the magnetic tapes of the **Federal Register** and Code of Federal Regulations which were previously approved by the ACFR and published as a notice in the **Federal Register** on August 6, 1987 at 52 FR 29236. For the daily **Federal Register** the prices of the magnetic tapes are $175 per daily tape, $18,750 per six-month subscription and $37,500 per annual subscription. The prices of the magnetic tapes of the Code of Federal Regulations are $125 per tape and $21,750 per annual subscription.

This is not a major rule under E.O. 12991. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to these changes because they do not constitute a rule as defined by the Act.

**List of Subjects in 1 CFR Part 3**

Government publications, **Federal Register** publications, Subscription rates.

For the reasons set out in the preamble Part 3 of Chapter I of Title 1 is amended as follows:

## PART 3—SERVICES TO THE PUBLIC

1. The authority citation for Part 3 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 3.4 is amended by revising paragraphs (b)(3), (4), (7), (8) and adding (b)(9) to read as follows:

**§ 3.4 Subscriptions and availability of Federal Register publications.**

* * * * *

(b) * * *

(3) **Federal Register.** Daily issues will be furnished by mail to subscribers for $340 per year or $170 for six months in paper form; $195 per year in microfiche form; or $37,500 per year or $18,750 for six months in magnetic tape. Subscription fees are payable in advance to the Superintendent of Documents, Government Printing Office. Limited quantities of current or recent copies may be obtained for $1.50 per copy in paper or microfiche form, or $175 per magnetic tape.

(4) *Code of Federal Regulations.* A complete set will be furnished by mail to subscribers for $620 per year for the bound, paper edition, $188 per year for the microfiche edition; or $21,750 per year for the magnetic tape. Subscription fees are payable in advance to the Superintendent of Documents. Individual copies of the bound, paper edition of the Code volumes are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual copy in microfiche form is $2.00 per copy, or $125 per magnetic tape.

* * * * *

(7) *Weekly Compilation of Presidential Documents*—(i) *Nonpriority mailing.* Issues will be furnished by mail to subscribers for $55 in advance to the Superintendent of Documents, Government Printing Office.

(ii) *First-class mailing.* Issues will be furnished to subscribers by first-class mail for $96 per year payable in advance to the Superintendent of Documents, Government Printing Office. Individual issues may be obtained for $2.00 per copy from the Superintendent of Documents, Government Printing Office.

(8) *Federal Register Index.* The annual subscription price for the **Federal Register** Index purchased separately is $19.

(9) *List of CFR Sections Affected (LSA).* The annual subscription price for

the List of CFR Sections Affected (LSA) purchased separately is $21.

**Don Wilson,**
*Chairman.*
**Ralph E. Kennickell, Jr.,**
*Member.*
**Carol Williams,**
*Member.*
Approved: July 22, 1988.
**Edwin Meese III,**
*Attorney General.*
**Don W. Wilson,**
*Archivist of the United States.*
[FR Doc. 88-17160 Filed 7-28-88; 8:45 am]
BILLING CODE 1505-02-M

## DEPARTMENT OF AGRICULTURE

### 7 CFR Part 1d

### Rural Labor; Immigration Reform and Control Act

**AGENCY:** Department of Agriculture.
**ACTION:** Final rule.

**SUMMARY:** This final rule amends 7 CFR Part 1d, which defines fruits, vegetables and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 (hereinafter referred to as "the Act"). This rule will assist the Immigration and Naturalization Service in determining the special agricultural workers to be admitted into the United States for temporary residence.

**EFFECTIVE DATE:** July 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447-4737.

**SUPPLEMENTARY INFORMATION:** Section 302(a) of the Act directed the Secretary of Agriculture to publish regulations defining the fruits, vegetables, and other perishable commodities in which field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services." On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule (52 FR 20372), including the determination that cotton was not a fruit, vegetable, or other perishable commodity within the meaning of the Act. This final rule redefines cotton as a result of the decision in *National Cotton Council of America, et al. v. Richard E. Lyng, et al.*, No. CA-5-87-0200 (N.D. Tex. February 8, 1988).

Section 1d.5 of the rule defined "fruits" to mean "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." Section 1d.7 of the rule defined "other perishable commodities" to mean "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." Section 1d.7 of the rule provided an exclusive list of those commodities which were deemed to be "other perishable commodities." Cotton was listed as an example of a commodity which was deemed not to be a perishable commodity. Thus, under the framework of definitions in Part 1d, USDA did not consider cotton to be a fruit.

On February 8, 1988, the United States District Court for the Northern District of Texas entered a summary judgment in the case of *National Cotton Council of America, et al. v. Richard E. Lyng, et al.* The judgment stated in pertinent part:

> The court has determined that cotton is a fruit and thus within the ambit of the term 'fruits and vegetables of every kind' as used in 8 U.S.C. 1160(h) and also within the ambit of the defendant's regulatory definition of the term 'fruits' as used in said statute, codified at 7 CFR Part 1.d.5.

In compliance with the judgment of the court, USDA is rescinding that portion of the rule published June 1, 1987, which in effect lists cotton as an example of a commodity which is not a fruit or vegetable within the ambit of the Act and the rule.

The judgment of the court that concludes that cotton is a fruit leaves no discretion on the part of the Secretary to heed any comments that might be forthcoming if opportunity for public comment on this rule was afforded. Hence, pursuant to 5 U.S.C. 553, good cause is found that notice and opportunity for public comment is unnecessary, and good cause is found to make this rule effective less than 30 days after publication in the **Federal Register**.

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order 12291 and has determined that it is not a major rule.

### List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, Part 1d, Title 7, Code of Federal Regulations is amended as follows:

### PART 1d—RURAL LABOR—IMMIGRATION REFORM AND CONTROL ACT OF 1986—DEFINITIONS

1. The authority citation for Part 1d continues to read as follows:

**Authority:** 8 U.S.C. 1160

2. Section 1d.7 is revised to read as follows:

**§ 1d.7 Other perishable commodities.**

"Other perishable commodities" mean those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties, spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, sod, sugar cane, wildlife, and wool.

Done at Washington, DC, this 25th day of July, 1988.

**Richard E. Lyng,**
*Secretary of Agriculture.*
[FR Doc. 88-17094 Filed 7-28-88; 8:45 am]
BILLING CODE 3410-01-M

## Agricultural Marketing Service

### 7 CFR Part 910

**[Lemon Reg. 624]**

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule with request for comments.

**SUMMARY:** Regulation 624 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period July 31 through August 6, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 624 (§ 910.924) is effective for the period July 31–August 6, 1988. Comments due August 29, 1988.

**ADDRESS:** Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular working hours.

**FOR FURTHER INFORMATION CONTACT:** R. Charles Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20250–6456. Telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

At the beginning of each marketing year, the Lemon Administrative Committee (committee) submits a marketing policy to the Department which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The Committee's 1988–89 season marketing policy contemplated the use of volume regulation this season. The U.S. Department of Agriculture has completed a preliminary review of that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

Lemons regulated under Marketing Order No. 910 are grown in California and Arizona. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the desert area of California. In recent seasons, District 1 has accounted for around 14 percent of total production, District 2 about 51 percent, and District 3 around 35 percent. The estimated production for the 1988–89 crop season is 44,760 cars (1 car equals 1,000 cartons, 1 carton equals 37½ pounds).

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic fresh market is fairly static, receiving around 14,500–16,000 cars per year unless unusual conditions occur. Quantities utilized in the export market have ranged from about 7,500–9,000 cars in the past four years. Exports vary depending on factors such as the amount of competitive supplies, foreign monetary exchange rates, quality, quantity, and trade practices. The processing market is basically a residual outlet. Estimated crop utilization for the 1988–89 season is 16,500 cars for domestic fresh markets, 9,000 cars export, with the remaining 19,260 to processed and other outlets.

The California-Arizona lemon industry is characterized by a large number of growers that cover a large geographical area. The number of growers is estimated to be in the range of 2,000 to 2,500. There are approximately 85 handlers of California-Arizona lemons in the regulated area.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three fiscal years of less than $500,000 and agricultural service firms, which includes handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona lemon producers and handlers may be characterized as small producers and handlers.

Volume regulations issued under the authority of the act and Marketing Order No. 910 are intended to provide benefits to both producers and consumers. Producers benefit in areas such as increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of lemons in the market throughout the marketing season.

Benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring their effects. Although the information currently available to the AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to the potential benefits of regulation.

The reporting and recordkeeping requirements under M.O. 910 are incurred by handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If volume regulations were not to be used for the 1988–89 season, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of lemons available for fresh shipment by handlers for any given week is based on information gathered over several previous weeks' time. Therefore, there is an incentive to keep and maintain records in anticipation of future implementation of regulation.

Based on consideration of the conditions that exist in the lemon industry at this time, the Administrator of the AMS has determined that the issuance of weekly volume regulations will not have a signficant economic impact on a substantial number of small entities. However, the submission of comments on economic impacts on small entities are encouraged from all interested parties. This matter will be further evaluated in view of the applicable comments received.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Act. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1988–89. The

committee met publicly on July 26, 1988, at Los Angeles, California to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market conditions are mixed.

Pursuant to 4 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation of an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR Part 910**

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

**PART 910—[AMENDED]**

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.924 is added to read as follows:

**Note:** This section will not be published in the annual Code of Federal Regulations.

**§ 910.924 Lemon Regulation 624.**

The quantity of lemons grown in California and Arizona which may be handled during the period July 31 through August 6, 1988, is established at 340,000 cartons.

Dated: July 27, 1988.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 88–17285 Filed 7–28–88; 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 981**

**[AMS–FV–88–112FR]**

## Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1987–88 Crop Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1987–88 crop year, which began July 1, 1987. The salable percentage is increased from 82 to 100 percent, and the reserve percentage is correspondingly decreased from 18 percent to 0 percent. This action is taken under the marketing order for California almonds to promote orderly marketing conditions.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525–S, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 981, as amended [7 CFR Part 981], regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of almonds subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action removes a requirement that all handlers of California almonds hold 18 percent of marketable almonds received during the 1987–88 crop year in reserve. Handlers may now ship 100 percent of their merchantable almonds received during the 1987–88 crop year to any markets they desire. Therefore, this action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

On October 26, 1987, a final rule was published in the **Federal Register** [52 FR 39903] establishing salable, reserve, and export percentages of 82 percent, 18 percent, and 0 percent, respectively, for the 1987–88 crop year. That action was based on a unanimous recommendation of the Almond Board of California (Board), which works with the U.S. Department of Agriculture (USDA) in administering the order. The recommendation was made pursuant to Sections 981.47 and 981.49 of the order, based on the then current estimates of marketable supply and combined domestic and export trade demand for the 1987–88 crop year. This recommendation was made at the Board's July 29, 1987, meeting.

On May 13, 1988, the Board met to review the salable and reserve percentages that had been established for the 1987–88 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to Section 981.48 of the order, the Board recommended an increase in the salable percentage from 82 percent to 100 percent of the 1987–88 marketable production, and a corresponding decrease in the reserve percentage from 18 percent to 0 percent. The Board recommended that this revision take place effective August 1, 1988.

The estimates used in reviewing the salable and reserve percentages are shown as follows: The Board's July 29, 1987, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1987 CROP

[Kernel weight basis in millions of pounds]

| | Initial estimates | Revised estimates |
|---|---|---|
| Estimated production: | | |
| 1. 1987 production | 600.0 | 655.1 |
| 2. Loss and exempt | 30.0 | 22.9 |
| 3. Marketable production | 570.0 | 632.2 |
| Estimated trade demand: | | |
| 4. Domestic | 160.0 | 160.0 |
| 5. Export | 320.0 | 320.0 |
| 6. Total | 480.0 | 480.0 |
| Inventory adjustment: | | |
| 7. Carryin 7/1/87 | 76.2 | 76.2 |
| 8. Desirable carryover 6/30/88 | 63.6 | 114.6 |
| 9. Desirable additional carryover 8/1/88 | 0 | 113.6 |
| 10. Adjustment | -12.6 | 152.2 |
| Salable and reserve percentages: | | |
| 11. Adjusted trade demand (item 6 plus item 10) | 467.4 | 632.2 |
| 12. Reserve (item 3 minus item 11) | 102.6 | 0 |
| 13. Salable % (item 11 ÷ item 3 × 100) | 82% | 100% |
| 14. Reserve % (100% minus item 13) | 18% | 0% |

Estimated 1987 crop production has increased from 600.0 million kernelweight pounds to 655.1 million kernelweight pounds. Estimated weight loss resulting from the removal of inedible kernels by handlers and losses during manufacturing has decreased from 30.0 million kernelweight pounds to 22.9 million kernelweight pounds. Therefore, marketable production is increased from 570.0 million kernelweight pounds to 632.2 million kernelweight pounds.

Estimated 1987–88 trade demand (shipments) remains unchanged at 480.0 million kernelweight pounds. Carryin on July 1, 1987, also remains unchanged at 76.2 million kernelweight pounds. Estimated salable carryover on June 30, 1988, based on the 82 percent salable percentage in effect at that time, is expected to increase from 63.6 million kernelweight pounds to 114.6 million kernelweight pounds due to the increase in marketable production.

The revised estimates include an additional desirable carryover of salable almonds on August 1, 1988, of 152.2 million kernelweight pounds. At its May 13, 1988, meeting, the Board indicated that additional almonds are needed to maintain sales momentum during the period from August 1, 1988, until mid-October when 1988 crop almonds are ready for shipment. As of April 30, 1988, 415.3 million kernelweight pounds of almonds have been shipped and an additional 174.9 million kernelweight pounds had been sold but not shipped. Based on these figures, it is expected that most handlers will attain a soldout position by August 1, 1988, under the current 82 percent salable percentage. Therefore, the release of an estimated additional 152.2 million kernelweight pounds of almonds through the increase of the salable percentage from 82 percent to 100 percent is warranted.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It has been determined that conditions warrant publication of this final rule without prior opportunity for public comment, because this action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets. This action must be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and to maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provision in 5 U.S.C. 553, it is found with good cause that notice of public rulemaking and other public procedure with respect to this final action are impracticable and contrary to the public interest.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553]. The marketing order for California almonds requires that the revised salable and reserve percentages established for a particular year apply to all marketable almonds received by handlers from the beginning of that year. The 1987–88 year began July 1, 1987.

### List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### Subpart—Salable, Reserve, and Export Percentages

2. Revise § 981.235 to read as follows:

**Note:** This section will not appear in the Annual Code of Federal Regulations.

**§ 981.235 Salable, reserve and export percentages for almonds during the crop year beginning July 1, 1988.**

The salable, reserve, and export percentages, during the crop year beginning July 1, 1987, shall be 100 percent, 0 percent, and 0 percent, respectively.

Dated: July 26, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88-17089 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 1076**

**[DA-88-112]**

## Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends for the months of August 1988 through February 1989 certain provisions of the Eastern South Dakota milk order. The provisions suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

**EFFECTIVE DATE:** July 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7183.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding: Notice of Proposed Suspension: Issued June 17, 1988; published June 22, 1988 (53 FR 23405).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 22, 1988 (53 FR 23405) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1988 through February 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3) delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL and its member producers, with no offsetting benefits to other market participants.

In comments filed in support of the proposed suspension, LOL stated that requiring the full 65 percent of its milk to be delivered to pool plants would serve no useful purpose other than demonstrating the availability of a reserve supply of milk for Class I use. The cooperative argued that because the reserve milk will not be needed for Class I use, the requirement should be suspended.

In view of these circumstances, it is concluded that the diversion limits in the Eastern South Dakota milk order should be suspended for the months of August 1988 through February 1989 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk, from producers who regularly supply the market, otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

**List of Subjects in 7 CFR Part 1076**

Milk marketing orders, Milk, Dairy products.

*It is therefore ordered,* That the aforesaid provisions of § 1076.13 of the Eastern South Dakota order are hereby suspended for the months of August 1988 through February 1989, as follows:

**Statement of Consideration**

This action removes for the months of August 1988 through February 1989 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that handles most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during this month) during the months of August through February.

The suspension is necessary to assure the continued participation in the marketwide pool of producers historically associated with the Eastern South Dakota market. Operation of the 35-percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 39 to 50 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit, the balance of LOL's members' milk would have to be

**PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA**

1. The authority citation for Part 1076 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1076.13 [Amended]**

2. In § 1076.13, paragraphs (c) (2) and (3) are suspended for the months of August 1988 through February 1989.

Signed at Washington, DC, on: July 25, 1988.

**Kenneth A. Gilles,**

*Assistant Secretary of Agriculture, Marketing and Inspection Services.*

[FR Doc. 88–17093 Filed 7–28–88; 8:45 am]

BILLING CODE 3410–02–M

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## Food Safety and Inspection Service

**9 CFR Parts 316 and 350**

**[Docket No. 85–014F]**

## Elimination of Sealing Requirement for Rendered Edible Animal Fat

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Federal meat inspection regulations to allow inspected and passed product, particularly rendered edible animal fat, transported in properly labeled tank cars or tank trucks, to move in commerce without an official seal. Formerly, establishments which processed and then transported such product to another establishment were required to have the means of conveyance sealed with an official seal by a Program employee. Establishments which received the officially sealed conveyance containing such product were required to have the seal broken by a Program employee. This rule removes an official sealing requirement that no longer appears to be necessary. The rule also deletes the requirement that a Program employee insert the "date of loading" on the label affixed to the tank car or tank truck and permits an establishment employee to insert the "date of loading."

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3840.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Administrator has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule allows rendered edible animal fat, shipped in tank cars or tank trucks, to be transported in commerce without an official seal provided the tank car or tank truck bears a label containing appropriate information about the product. This change could affect in a positive manner about 250 meat establishments as it removes an unnecessary official sealing requirement.

**Effect on Small Entities**

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

At present, there are approximately 250 establishments involved in either shipping or receiving rendered edible animal fats. These establishments range from small to very large operations. These establishments are presently prohibited from shipping product unless it is sealed by a Program employee. Those receiving such product must have the seal broken by a Program employee.

This rule allows establishments to ship and receive products without having to wait for an inspector to seal the tank car or tank truck or break the seal. This is particularly beneficial for all establishments that may have to hold the tank car or tank truck and pay demurrage until the inspector is available to seal the tank car or tank truck and/or to break the seal. (*Demurrage* is the detention of tank car(s) or tank truck(s), by the shipper or receiver mainly for loading and unloading, beyond the time agreed upon, and an extra fee is charged by the carrier for such detention.)

**Background**

On December 1, 1987, FSIS published a proposed rule (52 FR 45639) to amend the Federal meat inspection regulations to allow inspected and passed product, particularly rendered edible animal fat, transported in properly labeled tank cars or tank trucks, to move in commerce without an official seal. FSIS also proposed to delete the requirement that a Program employee insert the "date of loading" on the label affixed to the tank car or tank truck.

Tank cars or tank trucks carrying inspected and passed product (which appears to involve only rendered edible animal fats) are required to bear a label in accordance with § 316.14 of the Federal meat inspection regulations (9 CFR 316.14). The label must contain the name of the product, the official inspection legend, and the words "date of loading" followed by a space in which the inspector shall insert the date.

Formerly, rendered edible animal fat was shipped by tank car or tank truck, under official seal, to other federally inspected establishments for further processing. Before a refining establishment could unload the rendered edible animal fat, § 325.16 of the Federal meat inspection regulations (9 CFR 325.16) requires that the official seal be broken by a Program employee. When a sealed tank car or tank truck was not present, the establishment had to wait until a Program employee arrived at the establishment to break the seal. This prevented the inspector from completing inspection of the other establishments on his/her patrol assignment and did not effectively utilize inspection resources.

Formerly, the rationale for sealing a tank car or tank truck was to ensure that "inspected and passed" product did not become adulterated with inedible animal fat or other substances. The sealing requirement was reinstated in 1965 after the Department discovered that rendered edible animal fat was mixed with water and represented as pure edible animal fat. However, the majority of products regulated by FSIS are permitted to be transported under the official inspection legend with proper labeling and do not require official sealing. Products bearing proper labeling and the mark of inspection have an equal chance of becoming adulterated as does rendered edible animal fat. Since 1965, FSIS has not experienced problems with any particular product transported in tank cars or tank trucks. Also, since that time, approximately 88 billion pounds of rendered edible animal fat have been produced and shipped domestically.

This action amends the Federal meat inspection regulations by eliminating the official sealing provision in § 316.14(b) (9 CFR 316.14(b)) for product moved in tank cars or tank trucks. Such product is permitted to move in commerce provided the tank car or tank truck bears a label in accordance with § 316.14 of the Federal meat inspection regulations (9 CFR 316.14).

In addition, this action deletes the requirement under § 316.14 that the "date of loading," a required feature of the label, be inserted by an inspector. This change permits the "date of loading" to be inserted by an establishment employee. FSIS has determined that requiring a Program employee to insert the date is not conducive to effective utilization of inspection resources and has no effect on the wholesomeness of the product.

This rule also amends Part 350 of the voluntary inspection and certification regulations (9 CFR Part 350), promulgated under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622), by deleting the requirement that tank cars and tank trucks be equipped for sealing and be sealed by a Program employee before FSIS will furnish the identification service provided under § 350.3 (9 CFR 350.3).

**Summary of Comments**

FSIS received 8 comments in response to the proposed rule (52 FR 45639). Seven commenters expressed support for the proposal and recommended that FSIS implement the regulatory change in a final rule; one commenter opposed the proposed rule.

The opposing commenter believes that the current sealing requirement served to control some deceptive industry practices, but does not believe it eliminated the problem of converting inedible animal fats to edible animal fats or mixing edible animal fats with inedible animal fats or other substances. The commenter also believes that one cannot readily distinguish inedible animal fats from edible animal fats by color and/or odor, thus contributing to the potential for illegal diversion.

Other than an isolated incident in 1965 when an establishment misrepresented rendered edible animal fat mixed with water as pure rendered edible animal fat, no instances concerning the illegal diversion of inedible animal fats to edible animal fats or mixing with other substances have been documented. Current Agency requirements, such as the denaturing of inedible rendered animal fats (9 CFR 325.11) to give the rendered fat so distinctive a color, odor, or taste that it

cannot be confused with rendered edible animal fat (9 CFR 325.13); and when denaturing is not employed, requiring renderers, dealers, brokers, or others engaged in the transportation of inedible rendered animal fat to obtain a numbered permit from the FSIS Regional Director to engage in buying, selling, transporting and other related activities (9 CFR 325.11); and similar restrictions are considered to be adequate to prevent the diversion or misrepresentation of rendered inedible animal fat.

The commenter further suggests that if the Agency eliminates the exemption of "technical animal fat not intended for human food" from denaturing requirements and develops an enforceable denaturing standard for all inedible fats, the sealing requirement could be changed. As mentioned earlier, the safeguards to preclude adulteration during transportation (9 CFR 325.11) such as denaturing, use of numbered transportation permits, and similar restrictions full serve the Agency's needs.

Agency information indicates that FSIS has not experienced any problems with the rendering industry concerning rendered edible fat, other than the isolated incident mentioned earlier FSIS believes that the industry is operating within the provisions of the applicable regulations.

As discussed earlier, the majority of products regulated by FSIS are permitted to be transported under the official inspection legend with proper labeling and do not require official sealing. Products bearing proper labeling and the mark of inspection have an equal chance of becoming adulterated as does rendered edible animal fat. FSIS believes that the reinstatement of the sealing requirement in 1985 has served its purpose and that the official sealing/seal breaking requirements no longer are necessary. This flexibility allows FSIS to utilize its inspection resources more effectively and lessens the financial burden and inconvenience to the industry without compromising the effectiveness of the regulations.

**List of Subjects**

*9 CFR Part 316*

Meat inspection, Sealing, Edible products, Animal fat.

*9 CFR Part 350*

Meat inspection, Certification service.

**Final Rule**

For the reasons stated in the preamble, Parts 316 and 350 of the Federal meat inspection regulations are amended as follows:

**PART 316—MARKING PRODUCTS AND THEIR CONTAINERS**

1. The authority citation for Part 316 continues to read as follows:

Authority: 34 Stat. 1264, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254

2. Section 316.14 is revised to read as follows:

**§ 316.14 Marking tank cars and tank trucks used in transportation of edible products.**

Each tank car and each tank truck carrying inspected and passed product from an official establishment shall bear a label containing the name of the product in accordance with § 317.2 of this subchapter, the official inspection legend containing the number of the official establishment and the words "date of loading," followed by a suitable space in which the date the tank car or tank truck is loaded shall be inserted. The label shall be located conspicuously and shall be printed on material of such character and so affixed as to preclude detachment or effacement upon exposure to the weather. Before the car or truck is removed from the place where it is unloaded, the carrier shall remove or obliterate such label.

**PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS**

3. The authority citation for Part 350 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

4. Paragraph (a)(4) of § 350.3 is revised to read as follows:

**§ 350.3 Types and availability of service.**

(a) * * *

(4) The service will be available for products moved in tank cars and tank trucks from an official establishment or from a location operating under this service only if such tank cars or tank trucks bear a label before leaving such official establishment or such other location, in accordance with 9 CFR §§ 316.14 and 317.2.

* * * * *

Done at Washington, DC, on July 15, 1988.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 88-17090 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-DM-M

**9 CFR Parts 317 and 381**

**[Docket No. 85-029F]**

**Random Weight Packaging of Meat and Poultry Products**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends § 317.2(h)(5) of the Federal meat inspection regulations and § 381.121(c)(5) of the Federal poultry products inspection regulations. Currently, the net weight statements on random weight packages of meat and poultry products may be stated in pounds and decimal fractions of the pound, with the decimal fraction of the pound not to exceed two decimal places. The final rule allows these statements on random weight packages to be expressed to three or more decimal places. This regulation will facilitate the use of modern weighing equipment and permit the statement of net weight on packages to be expressed in accordance with the weighing equipment's capabilities.

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (202) 447-3840

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Administrator has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule, while allowing for some recapture of lost profit to businesses that use more accurate equipment, will not result in recapture in an amount exceeding $100 million. FSIS may incur some incidental costs in training, staff time, and development of verification procedures to enforce the regulations.

**Effects on Small Entities**

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has determined that this action will not have a

significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

The final rule treats all businesses alike. Businesses are not required to label to three or more decimal places and may choose not to use the weighing equipment described in this rule. Market pricing of meat and poultry products tends to minimize the economic impact resulting from the use of different weighing equipment.

**Background**

The National Conference on Weights and Measures (NCWM) has requested that both FDA and FSIS allow declarations in pounds on random weight packages to be stated in terms of three decimal places. FDA has responded to the request by informing NCWM that it cannot change its regulations without an enabling amendment to the Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.*, (FPLA). Products under FSIS jurisdiction are specifically exempted from those limitations under the FPLA, and FSIS responded to the NCWM's request by publishing a proposed rule on July 1, 1987 (52 FR 24475).

The proposed rule marked a departure from past practice, when USDA and FDA promulgated similar regulations concerning statements of net weight on random weight packages. However, since consumer products regulated by FDA are subject to the FPLA, net weight requirements on random weight packages of FDA-regulated products may not be carried out to more than two decimal places, 15 U.S.C. 1453 (a)(3)(A)(ii). Meat, meat products, poultry, and poultry products are specifically exempt from this provision of the FPLA, 15 U.S.C. 1459 (a)(1).

In a letter to FSIS dated July 5, 1985, Ezio F. Delfino, Chairman of NCWM stated, "It is the opinion of the NCWM that three decimal places will permit better inventory control for the scale user and better resolution of tare and less money value error for the consumer. For products with extremely high per pound prices, the precision is warranted."

These considerations were taken into account when the shift was made from analog (fractional pounds and ounces) to digital scales and measuring in hundredths of a pound. These justifications are still true in theory, and the final rule will not have as critical an impact on the marketplace as previous refinements.

In instances where state-of-the-science measuring equipment enables accurate net weight labeling to thousandths of pound, producers could gain some advantage because of better inventory control and because the amount of "giveaway" would be reduced. Giveaway occurs when the weight is rounded off. For example, rounding 1.099 pounds down to 1.09 pounds results in the producer/seller to lose nine thousandths of a pound of inventory in giveaway. Reading 1.0999 pounds down to 1.099 pounds results in a loss of only nine ten thousandths of a pound, or one tenth of the amount. These are very small amounts, and even in a very large scale operation, would probably not add up to a large amount of money. In any event, pricing generally accommodates the potential loss due to rounding down. The final rule allows large producers to recover some profits otherwise lost to a larger scale giveaway while costing little to individual consumers because of smaller amounts usually purchased.

Equipment intended to be used for weighing to more than two decimal places will first be reviewed by FSIS, which will determine the acceptability of the equipment and any necessary use conditions of a weighing device depending upon its intended use in a meat or poultry plant, e.g., on-line cured pork products or on-line poultry weighing (See 9 CFR 308.5 and 381.53). FSIS evaluations of these types of equipment have generally focused on sanitation issues, namely, cleaning, and other similar factors to a greater extent than evaluations of precision and accuracy. Precision and accuracy have usually been evaluated at the point of inspection. These certifications of weights and measures have generally been conducted by State and local officials.

**Summary of Comments**

FSIS received two comments in response to the proposed rule. Both commenters, the American Association of Meat Processors (AAMP), and the National Food Processors Association (NFPA), expressed unqualified support for the proposal and recommended that FSIS implement the regulatory change in a final rule.

**Final Rule**

For the reasons stated in the preamble, FSIS is amending § 317.2(h)(5) of the Federal meat inspection regulations and § 381.121(c)(5) of the Federal poultry products inspection regulations by eliminating the requirement that net weights on random weight packages be stated in terms of pounds and/or decimal fractions of the pound carried out to not more than two decimal places. This will permit statements of net weight on these packages to be declared in terms of three or more decimal places.

**List of Subjects**

*9 CFR Part 317*

Labeling, Marking devices, Containers.

*9 CFR Part 381*

Mandatory poultry products inspection, Labeling, Containers.

**PART 317—[AMENDED]**

1. The authority citation for Part 317 is revised to read as follows:

**Authority:** 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

**§ 317.2 [Amended]**

2. Section 317.2(h)(5) (9 CFR 317.2(h)(5)) is amended by deleting the words "carried out to not more than two decimal places."

**PART 381—[AMENDED]**

3. The authority citation for Part 381 continues to read as follows:

**Authority:** 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

**§ 381.121 [Amended]**

4. Section 381.121(c)(5) (9 CFR 381.121(c)(5)) is amended by deleting the words "carried out to not more than two decimal places."

Done at Washington, DC on July 15, 1988.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 88–17091 Filed 7–28–88; 8:45 am]

BILLING CODE 3410-DM-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 176**

**[Docket No. 87F–0338]**

## Indirect Food Additives; Paper and Paperboard Components

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of zeolite Na-A as a pigment extender in the manufacture of paper and paperboard for use in contact

with food. This action responds to a petition filed by the PQ Corp.

**DATES:** Effective July 29, 1988; objections and requests for hearing August 29, 1988.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of November 6, 1987 (52 FR 42728), FDA announced that a petition (FAP 7B4030) had been filed by the PQ Corp., P.O. Box 258, Lafayette Hill, PA 19444, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of zeolite A in the manufacture of paper and paperboard for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this review, the agency finds that a more appropriate and accurate name for the food additive is zeolite Na-A, CAS Reg. No. 68989–22–0. The agency concludes that the food additive is safe and effective for the requested use, and that the food additive regulations in § 176.170(a)(5) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before August 29, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 176**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended by revising the table in paragraph (a)(5) to alphabetically add a new entry in the list of substances to read as follows:

**§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.**

* * * * *

(a) * * *

(5) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | |
| Zeolite Na-A (CAS Reg. No. 68989–22–0). | For use as a pigment extender at levels not to exceed 5.4 percent by weight of the finished paper and paperboard. |

* * * * *

Dated: July 21, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88–17147 Filed 7–28–88; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 173

### Contractor Business Integrity and Ethics

**AGENCY:** Office of the Under Secretary of Defense (Acquisition), Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** The Under Secretary of Defense (Acquisition) issued a directive-type memorandum on July 15, 1988, to implement acquisition procedures pertaining to Contractor Business Integrity and Ethics. The memorandum establishes procedures for use with specific contractors to protect the DoD's interests in acquisitions that will exceed $100,000. Further, the memorandum includes a listing of contractors, entitled, "List of Contractors From Whom Certification is Required" that specifies the contractors to whom the DoD procedures apply.

**DATES:** Effective July 15, 1988. Comments must be received by August 29, 1988.

**ADDRESS:** Office of the Deputy Assistant Secretary of Defense (Procurement), Room 3C838, Pentagon, Washington, DC 20301–5000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alfred Volkman, Director, Contract Policy Administration, DASD(P)/CPA, (202) 697–0695.

**Determination to Issue an Interim Rule**

A determination has been made by the Under Secretary of Defense for Acquisition that urgent and compelling circumstances regarding Contractor Business Integrity and Ethics make compliance with requirements of

subsections 22 (a) and (b) of the Office of Federal Procurement Policy Act impracticable and the requirements are therefore waived.

**SUPPLEMENTARY INFORMATION:** It has been determined by the Under Secretary of Defense (Acquisition) that procedures are desirable to protect DoD's interests in contracts in excess of $100,000 with specific contractors.

**List of Subjects in 32 CFR Part 173**

Armed Forces; Government procurement.

Accordingly, Title 32, Chapter 1, Subchapter E, is amended by adding Part 173 as follows:

## PART 173—CONTRACTOR BUSINESS INTEGRITY AND ETHICS

Sec.
173.1 Scope.
173.2 Certificate of contractor business integrity and ethics.
173.3 Profit recapture for illegal or improper activity.
Appendix—List of Contractors From Whom Certification is Required

**Authority:** 10 U.S.C. 2202.

### § 173.1 Scope.

(a) A "Certificate of Contractor Business Integrity and Ethics" shall be required from offerors specified on the "List of Contractors From Whom Certification is Required" prior to the award of a contract that will exceed $100,000. Contracting officers shall not consent to subcontracts if the proposed subcontractor is on the "List of Contractors From Whom Certification is Required", unless the subcontractor has executed the certificate. If the offeror cannot certify as provided in paragraph (a)(1) of (a)(2) in the certificate and in lieu, thereof, provides the separate certifications described in paragraph (b) or (c), award to such offeror shall not be made until all circumstances have been reviewed and the Service Acquisition Executive determines that award to the offeror would be appropriate under the circumstances.

(b) The contract clause "Profit Recapture for Illegal or Improper Activity" will be included in all contracts that exceed $100,000 issued hereafter with contractors on the "List of Contractors From Whom Certification is Required".

### § 173.2 Certificate of contractor business integrity and ethics.

(a) The offeror certifies, to the best of its knowledge and belief, that

(1) It has not—

(i) Employed, contracted with, or otherwise retained, directly or indirectly, at any subcontract tier, any individual or company to obtain, or

(ii) Otherwise obtained from the Government, directly or indirectly, any source selection information concerning this acquisition, except for information that was officially made available by the contracting officer, or information that was generally available to the public. For purposes of this certification, source selection information is oral or written information pertaining to the following:

(A) Acquisition plans.

(B) Source selection plans.

(C) Technical evaluation plans.

(D) Source selection evaluation information (evaluations, audit reports, financial reports, recommendations, rankings, competitive range determinations, technical reports, cost and pricing information, competitors' proposals).

(E) Internal government program estimates; and

(2)(i) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to

(A) Those prices,

(B) The intention to submit an offer, or

(C) The methods or factors used to calculate the prices offered;

(ii) The prices in this offer have not been knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(iii) No attempt has been made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(3) In making the certifications required by paragraph (a)(1) of this section, the offeror shall describe the steps it took to determine that it had not retained any individual or company to obtain, or otherwise obtained, any source selection information. In making the certification required by paragraph (a)(2) of this section, the offeror shall describe the steps it took to determine that the prices in this offer have been arrived at independently, that the prices were not disclosed to any other offeror or competitor, and that no attempt was made to restrict competition.

(b) If the offeror cannot certify to paragraph (a)(1) of this section, the offeror must furnish separately a certified written statement setting forth in detail, the identities of the individuals employed or otherwise retained, the purposes for which they were retained, the corporate personnel with whom they worked, a summary of the work product or services that were provided, an accounting of all billings presented and/or paid, a description of what source selection information was obtained, and how, when, and from whom the source selection information was obtained.

(c) If the offeror cannot certify to paragraph (a)(2) of this section, the offeror must furnish separately a certified written statement setting forth in detail, the terms or substance of any agreement, disclosure, or attempt to restrict competition, the identities of the other offerors or competitors involved, and the names and titles of any involved corporate personnel.

(d) These certificates and accompanying statements required, must be executed by the offeror's corporate president or his designee at no more than one level below the president's level.

### § 173.3 Profit recapture for illegal or improper activity.

(a) The Government, at its election, may reduce the contract price by the amount of any anticipated profit determined as set forth in paragraph (b) of this section, or 10 percent of the contract price, whichever is greater; if

(1) A person or business entity is convicted for violating 18 U.S.C. 201–224 (bribery, graft, and conflicts of interest), 18 U.S.C. 371 (conspiracy), 18 U.S.C. 641 (theft of public money, property or records), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341 (fraud), 18 U.S.C. 1343 (fraud by wire) for any act in connection with or related to the obtaining of this contract; or

(2) The Secretary of Defense, or his designee, determines that any officer, employee, or agent of the contractor or any person or business entity operating on behalf of the contractor obtained from the Government, directly or indirectly, any source selection information concerning this contract prior to its award, except for information that was officially made available by the contracting officer, or information that was generally available to the public. For purposes of this clause, source selection information is oral or written information pertaining to the following:

(i) Acquisition plans.

(ii) Source selection plans.

(iii) Technical evaluation plans.

(iv) Source selection evaluation information (evaluation, audit reports, financial reports, recommendations, rankings, competitive range determinations, technical reports, cost

and pricing information, competitors' proposals).

(v) Internal government program estimates; or

(3) The Secretary of Defense, or his designee, determines that:

(i) The prices in this contract were not arrived at independently because, for the purpose of restricting competition, the contractor consulted, communicated, or agreed with any other offeror or competitor relating to

(A) Those prices,

(B) The intention to submit an offer, or

(C) The methods or factors used to calculate the prices offered;

(ii) The prices in this contract were knowingly disclosed by the contractor, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of negotiated solicitation) unless otherwise required by law; or

(iii) An attempt was made by the contractor to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

Prior to making a determination, the Secretary or his designee shall provide to the contractor a statement of the action being considered and the basis therefor. The contractor shall have 30 calendar days after receipt to submit any information that the contractor wants the Secretary to consider.

(b) The amount of anticipated profits referred to in paragraph (a) of this section, shall be determined by the contracting officer from records or documents in existence prior to the date of the award of the contract.

(c) The rights and remedies of the government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**Note:** Instructions for incentive contracts, paragraph (a) of this section, should be modified to eliminate target profit and reduce the ceiling price by an equal amount.

For cost type contracts, paragraph (a) of this section, should be modified to eliminate fee paid or to be paid.

**Appendix—List of Contractors From Whom Certification Is Required**

Armtec, Incorporated, 410 Highway 19 South, Palatka, FL 32077

Cubic Corporation, 9333 Balboa Avenue, San Diego, CA 92123: All divisions and subsidiaries.

Emhart Corporation, 426 Colt Highway, Hartford, CT 06101: All divisions and subsidiaries.

Executive Resource Associates, 2011 Crystal Drive, Suite 813, Arlington, VA 22202

Hazeltine Corporation, 500 Commack Road, Commack, NY 11725: All divisions and subsidiaries.

Kane Paper Corporation, 2365 Milburn Avenue, Baldwin, NY 11510

Litton Data Systems, Incorporated, 8000 Woodley Avenue, Van Nuys, CA 91408

Loral Aircraft Braking Systems, 1210 Massillon Road, Akron, OH 44315

Loral Defense Systems Akron, 1210 Massillon Road, Akron, OH 44315

Loral Electronic Systems, Ridge Hill Road, Yonkers, NY 10710

McDonnell Douglas Corporation, Banshee Road, P.O. Box 516, St. Louis, MO 63166: All divisions and subsidiaries.

Northrop Corporation, Ventura Division, 1515 Rancho Conejo Boulevard, Newbury Park, CA 91320

Teledyne Electronics, 649 Lawrence Drive, Newbury Park, CA 91320

Unisys Corporation, One Unisys Place, Detroit, MI 48232

Unisys Corporation, Defense Systems Division, 3333 Pilot Knob Road, Eagan, MN

Unisys Corporation, Defense Systems Division, Neil Armstrong Boulevard, Eagan, MN

Unisys Shipboard & Ground Systems Group, Marcus Avenue, Great Neck, NY 11020

United Technologies Corporation, UT Bldg, Hartford, CT 06101: All divisions and subsidiaries.

Varian Associates, Incorporated, 611 Hansen Way, Palo Alto, CA as to contracts originating in the following division: Continental Electronics Manufacturing Co.,[1] Dallas, TX

Whittaker Corporation (Lee Telecommunications Corporation (LTC), Route 1, Farmington, AR 72730)

Zubier Enterprises, 6201 Pine Street, Harrisburg, PA

July 25, 1988.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 88-17034 Filed 7-28-88; 8:45 am]

BILLING CODE 3810-01-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 201-1 and 201-41

[Firmr Interim Rule 1]

### Mandatory Federal Telecommunications System (FTS) 2000 Network

**AGENCY:** Information Resources Management Service, GSA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule provides for the mandatory use of FTS 2000 services when made available on that network. Temporary blanket exceptions to the use of the FTS 2000 network are provided to Federal agencies for all requirements other than switched voice services. Written exceptions to the application of this interim rule are required beginning October 1, 1988, for procurement planning purposes. Previous regulatory exclusions (see § 201-1.103(c)) are voided. GSA will review and update existing exclusionary agreements with concerned agencies at their request. The intent of this regulation is to implement the FTS 2000 network provisions contained in the Conference Report to Pub. L. 100-202 dated December 22, 1987.

**DATES:** Effective date: October 1, 1988.

Comments are due: August 29, 1988.

**ADDRESS:** Comments should be addressed to: General Services Administration (KMPR), Project KMP-88-44, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** William R. Loy, Regulations Branch (KMPR), Office of Information Resources Mangement Policy, telephone (202) 566-0194 or FTS, 566-0194.

**SUPPLEMENTARY INFORMATION:** (1) The Conference Report to Pub. L. 100-202 (H.R. Conf. Rep. No. 100-498, 100th Cong., 1st Sess. 1166, December 22, 1987) specifies that by July 1988 GSA publish regulations governing the use of the FTS 2000 network. These regulations must provide that: agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759) must use the FTS 2000 network; exceptions shall be granted by GSA for agencies' unique or special purpose network requirements; and that agencies may appeal a GSA denial of an exception request to the Office of Management and Budget (OMB).

(2) Therefore, consistent with the legislative intent of Pub. L. 100-202 and to ensure large scale economies, the use of FTS 2000 services is mandatory when made available on the FTS 2000 network. This applies to all Federal agencies unless otherwise provided for by law or excepted by GSA. Temporary blanket exceptions to the use of the FTS 2000 network are provided to Federal agencies for all requirements other than switched voice services. (These exceptions also cover the use of data offerings under switch voice provisions of the FTS 2000 contract.)

(3) Agencies may appeal a GSA denial of an exception to OMB under the procedures in 40 U.S.C. 759(e) and § 201-1.102-2(c).

(4) Previous regulatory exclusions (§ 201-1.103(c)) for the Department of Defense, National Aeronautics and Space Administration, Tennessee Valley Authority, Nuclear Regulatory Commission, Department of Energy,

[1] Firm suspended as of July 6, 1988.

Federal Aviation Administration, Veterans Administration, and the Bureau of Prisons are void as of October 1, 1988. GSA will review the underlying exclusionary agreements and current requirements with each of these agencies at their request.

(5) Agencies need not seek exceptions for requirements that have already been authorized under FIRMR provisions prior to October 1, 1988, until the end of the current contract life for these requirements.

(6) Changes made in 41 CFR Chapter 201 are explained in the following paragraphs.

(a) In Part 201–1, Federal Information Resources Management Regulations System, § 201–1.103, paragraphs (c)(3) and (c)(4) are removed to withdraw previous regulatory exclusions for certain agencies. Section 201–1.103(c)(5) is redesignated as § 201–1.103(c)(3).

(b) In Part 201–41, Routine changes and use of the Federal Telecommunications System (FTS), § 201–41.005 is revised by removing the word "[Reserved]" and inserting the new section caption "The mandatory FTS 2000 network" with the addition of text consistent with the legislative intent of the mandatory FTS 2000 provisions contained in the Conference Report to Pub. L. 100–202.

(7) Pursuant to 41 U.S.C. 418b(d), the publication of a proposed rule has been waived because urgent and compelling circumstances require the timely issuance of an interim rule consistent with the FTS 2000 provisions contained in the Conference Report to Pub. L. 100–202. The interim rule itself is a solicitation for public comments while additional rulemaking activity is in progress to implement this rule on a comprehensive basis.

(8) The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. This interim rule is not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.). This Governmentwide management regulation will have little or no net cost effect on society.

(9) All comments received during the interim rule comment period will be considered in a proposed codification amendment to permanently implement the new provisions.

**List of Subjects in 41 CFR Parts 201–1 and 201–41**

Government procurement, Government property management, Information resources activities, Telecommunications, and Federal Telecommunications System.

## PART 201–1—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM

**§ 201–1.103 [Amended]**

Section 201–1.103(c) is amended by removing paragraphs (3) and (4), and by redesignating existing paragraph (5) as paragraph (3).

## PART 201–41—ROUTINE CHANGES AND USE OF THE FEDERAL TELECOMMUNICATIONS SYSTEM (FTS)

1. The table of contents for Part 201–41 is amended by revising the entry for § 201–41.005; and the authority citation for Part 201–41 is revised to read as follows:

**Authority:** Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. Section 201–41.005 is added to read as follows:

**§ 201–41.005 The mandatory FTS 2000 network.**

(a) *Scope.* This section prescribes policies and procedures regarding mandatory agency use of the FTS 2000 network.

(b) *General.* The Conference Report to Pub. L. 100–202 (H.R. Conf. Rep. No. 100–498, 100th Cong., 1st Sess. 1166, December 22, 1987) specifies that: Agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), must use the FTS 2000 network; exceptions shall be granted by GSA for agencies' unique or special purpose network requirements; and that agencies may appeal a GSA denial for an exception to the Office of Management and Budget (OMB).

(c) *Policy.* (1) Federal agency activities subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), shall use the FTS 2000 network to satisfy telecommunications requirements which are within the scope of FTS 2000 network services unless:

(i) The agency requests and obtains an exception from GSA;

(ii) A blanket exception is provided in this § 201–45.005; or

(iii) An exception to the use of the FTS 2000 network for the agency is otherwise specifically provided by law.

(2) Exceptions to the use of the FTS 2000 network shall be considered by GSA for agencies' unique or special purpose network requirements.

(3) The use of FTS 2000 services is mandatory when made available on the FTS 2000 network. For all requirements other than switched voice services, temporary blanket exceptions to the use of the FTS 2000 network are hereby provided to Federal agencies. (These exceptions also cover the use of data offerings under switched voice provisions of the FTS 2000 contract.) The FTS 2000 Interagency Management Council is undertaking a comprehensive study of the Government's information network requirements, as directed in the Conference Report to Pub. L. 100–202 (H.R. Conf. Rep. No. 100–498, 100th Cong., 1st Sess. 1166, December 22, 1987). The blanket exceptions provided in this section will be reexamined in the period between completion of this study and completion of the transition to FTS 2000.

(d) *Procedures.* (1) Exceptions to the use of the FTS 2000 network are required beginning October 1, 1988, for procurement planning purposes. Federal agencies may continue to use intercity telecommunications services and facilities authorized under FIRMR provisions prior to October 1, 1988, until the end of the current contract life for these requirements without obtaining an exception to the use of the FTS 2000 network.

(2) If required, agency requests for an exception to the use of the FTS 2000 network shall be sent to General Services Administration, Information Resources Management Service (K), Washington, DC 20405. Agency requests must address the unique or special purpose network requirements which justify the basis for the requested exception.

(3) Federal agencies may conduct procurements for intercity telecommunications services and facilities without prior approval of GSA under Part 201–38 or 201–39 when:

(i) Requirements are within the scope of an exception to the use of the FTS 2000 network provided by GSA; and

(ii) The total dollar value of telecommunications resources required by the procurement (including evaluated optional features and renewals over the life of the contract) does not exceed $2.5 million ($250,000 for a specific make and model specification or for requirements available from only one responsible source).

"(4) Agencies may appeal a GSA denial to the Office of Management and Budget (OMB) under procedures in 40 U.S.C. 759(e) and § 201–1.102–2(c).

Dated: July 14, 1988.

**John Alderson,**

*Acting Administrator of General Services.*

[FR Doc. 88–17070 Filed 7–28–88; 8:45 am]

BILLING CODE 6820–25–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 22

**[CC Docket No. 85–388; RM 5167]**

### Amendment Rules Relating to Applications to Serve Rural Service Areas

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission is correcting the rules adopted in the Final Rule (Further Order on Reconsideration).

**EFFECTIVE DATE:** June 23, 1988.

**FOR FURTHER INFORMATION CONTACT:** Andy Nachby, David Siehl, Mobile Services Division, Common Carrier Bureau; tele: 632–6450.

In the Further Order on Reconsideration (FCC 88–155) in the above captioned matter, previously published in the **Federal Register**, 53 FR 18562, May 24, 1988, the Rules Section inadvertently deleted or omitted certain specific requirements for applications or Rural Service Areas (RSAs). The Rules Section is corrected as follows:

### PART 22—[AMENDED]

1. Former § 22.913(a)(1), relating to a major action under § 1.1305 of the rules, was inadvertently deleted in the amendment of § 22.913. Therefore, § 22.913(a) is corrected to include former § 22.913(a)(1) as newly designated § 22.913(a)(10) to read as follows: (§ 22.913(a)(10) is added):

**§ 22.913 Content and form of MSA and NECMA applications.**

(a) * * * (10) An exhibit indicating whether a grant of the application will be a major action under § 1.1305 of the Commission's rules.

* * * * *

2. Minor changes to § 22.913(b) (4) and (5) to reflect the amendment of § 22.913 (a) were inadverently omitted. Therefore, § 22.913(b)(4) pertaining to the second sentence and § 22.913(b)(5) are corrected to read as follows (§ 22.913(b)(4) second sentence and (b)(5) are revised):

**§ 22.913 Content and form of MSA and NECMA applications.**

(b) * * *

(4) * * * The exhibits specified in § 22.13 (1) and (2) and § 22.913(a) (1), (7), (9), and (10) shall immediately follow the initial Form 401 * * *.

(5) The exhibits required by § 22.913 (a) (3), (4), (6), and (8) shall not exceed three pages in length each.

* * * * *

3. Newly added § 22.923 inadvertently omitted the requirement for an exhibit addressing whether the grant of the application will be a major action under § 1.1305 of the Commission's Rules. Further, § 22.923(a)(1) inadvertently omitted specific information necessary to satisfy the map requirement under the section. Therefore, § 22.923 is corrected to read as follows (§ 22.923(a) (1) and (11) are revised):

**§ 22.923 Content and form of Rural Service Area (RSA) applications.**

(a) * * * (1) An exhibit including a map or maps of the cellular system's existing Cellular Geographic Service Area, if any, and the Cellular Geographic Service Area proposed in the application. This exhibit shall contain all the information specified in § 22.903(a)(1). In addition, this exhibit shall include an 8½ by 11 inch reduced copy of a 1:250,000 or 1:500,000 scale map, depicting the complete RSA and any CGSA(s) therein. Boundaries of the RSA, CGSA(s), and 39 dBu contours must be clearly indicated. The full-size map need not be included in the microfiche copies of the application from which the microfiche is made. For microfiching purposes, the reduced map is sufficient.

* * * * *

(11) An exhibit indicating whether a grant of the application will be a major action under § 1.1305 of the Commission's Rules.

* * * * *

4. In § 22.923(b)(5), the last sentence is revised to read as follows:

**§ 22.923 [Amended]**

* * * * *

(b) * * *

(5) * * * In addition, the information on the transmittal sheet and on the microfiche envelope must be identical.

Federal Communications Commission.

**H. Walker Feaster,**

*Secretary.*

[FR Doc. 16094 Filed 7–28–88; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 74

**[MM Docket No. 86–112]**

### Rules To Provide for Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators

**AGENCY:** Federal Communications Commission.

**ACTION:** Order extending time.

**SUMMARY:** Action taken herein extends the time for filing oppositions to petitions for reconsideration in the *Report and Order* in MM Docket No. 86–112, FCC 88–125, released April 15, 1988, 53 FR 14802 (April 26, 1988), for one week from July 8, 1988, until July 15, 1988. The *Report and Order* adopted changes to the rules to allow noncommercial educational FM translator stations assigned to reserved channels and owned and operated by their primary stations to receive signals for rebroadcast by any technical means the licensee deems suitable, including satellite and microwave transmission. The extension of time was reqested by National Public Radio.

**DATES:** Replies to Oppositions to Petitions for Reconsideration are due on July 15, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Tatsu Kondo, Mass Media Bureau, (202) 632–6302.

**SUPPLEMENTARY INFORMATION:**

### Order

By the Chief, Mass Media Bureau.

Adopted: July 11, 1988.

Released: July 13, 1988.

1. On June 30, 1988, National Public Radio (NPR) filed a request for a one week extension of time, from July 8, 1988, to July 15, 1988, in which to file its Reply to Oppositions to Petitions for Reconsideration in the above-docketed proceeding. NPR states that the extension of time is needed to accommodate the travel plans of co-counsel. In addition, NPR requests the one week extension due to proximity of filing deadlines in two other Commission proceedings, the *Further Notice* in this proceeding and the *Notice of Inquiry* in MM Docket No. 88–140,[1]

[1] *Further Notice of Proposal Rule Making* in MM Docket 86–112, FCC 88–125, released April 15, 1988; *Notice of Inquiry* in MM Docket No. 88–140, FCC 88–120, released June 2, 1988.

both of which have a bearing on the FM translator issues addressed in the Petitions for Reconsideration and the Oppositions. NPR adds that it has contacted counsel for each of the parties filing oppositions to its Petition for Reconsideration in this proceeding and that none objects to the requested extension of time.

2. In light of the factors indicated by NPR, we believe that an extension of time to file its Reply to Oppositions is warranted. We do not believe that a one week extension will adversely prejudice the opposing parties or unduly delay the resolution of this proceeding.

3. Accordingly, it is ordered, that NPR's request for a one week extension of time to file its Reply to Oppositions in the above-captioned docket is granted. The Reply to Oppositions will be due on July 15, 1988.

**List of Subjects in 47 CFR Part 74**

Noncommercial FM translators.

Federal Communications Commission.

**Alex D. Felker,**

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# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 933

**[Docket No. AO F&V 87-1]**

### Strawberries Grown in Florida; Decision and Referendum Order on Proposed Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes a Federal marketing agreement and order for strawberries grown in Florida. Strawberry producers will be given the opportunity to vote in a referendum on the proposed order. The proposed order would fund production, varietal and market research and promotion for stawberries grown in Florida. It would be financed by assessments levied on handlers of strawberries grown in Florida. The proposed order would establish a committee composed of 12 stawberry producers to administer the program. The assessment rate would be recommended by the committee and approved by the Secretary.

**DATE:** The referendum shall be conducted from August 17–31, 1988.

**FOR FURTHER INFORMATION CONTACT:** John Toth or William Pimental, Fruit and Vegetable Division, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone (813) 299–4770; or Tom Tichenor, Marketing Order Administration Branch, Room 2531–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3930.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding include the following. The Notice of Hearing was issued May 6, 1987 and published in the **Federal Register** (52 FR 17581) on May 11, 1987. An Extension of Time for Filing Briefs was issued July 13, 1987 and published in the **Federal Register** (52 FR 27369) on July 21, 1987. A Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order was issued March 1, 1988 and published in the **Federal Register** (53 FR 7194) on March 7, 1988.

The Recommended Decision provided an opportunity to file written exceptions to the Recommended Decision. Exceptions were received from the Florida Strawberry Growers Association (FSGA) of Plant City, Florida, the U.S. Small Business Administration (SBA), and John Stanaland, a strawberry producer in Wimauma, Florida.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291.

### Preliminary Statement

This decision is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders (7 CFR 900.1 through 900.18).

The proposed marketing agreement and order, hereinafter referred to collectively as the "order," were formulated on record of a public hearing held in Valrico, Florida, May 27–29, 1987.

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the RFA.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such action, in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and their rules and regulations are unique in that they are normally brought about through group action of essential small entities for their own benefit. Thus both the RFA and the Act are compatible with respect to small business entities.

The record indicates that most handlers regulated under this program would meet the Small Business Administration (SBA) definition of small agricultural service firms (13 CFR 121.2). Small agricultural service firms are defined as those having annual gross receipts for the last three years of less than $3,500,000. Approximately 20 handlers of Florida strawberries are subject to regulation under this marketing order. Small agricultural producers are defined by the SBA as having revenues for the last three years of less than $500,000. Approximately 160 strawberry producers would be affected by this proposed order. Testimony indicated that the production, harvesting and preparation for market of strawberries grown in Florida is relatively similar for all strawberry producers.

Florida is the second largest stawberry producing State, providing roughly one-sixth of the U.S. fresh strawberry production. California dominates the market with approximately 75 percent of the country's total fresh strawberry production. Commercial production of strawberries in Florida began about 100 years ago. The size of the industry has fluctuated during the last 25 years from between 1200 acres to its present size of around 5000 acres. The industry expanded in the last 1970's when producers began using plant varieties developed in California. Strawberries rank as Florida's fifth most important agricultural commodity in terms of cash receipts. Testimony indicates that annual sales have averaged $50 million over the last five years, and the total economic impact of the industry is estimated at $100 million annually. About eighty-five percent of the planted strawberry acreage in the State is in the two-county, west-central area outside Tampa.

At present, the average size of Florida strawberry farms is 21 acres. Approximately one-third of the farms are larger than 35 acres. Very few farms are less than five acres and less than 10 percent are over 75 acres.

Testimony indicates that there are approximately 20 handlers in the industry. At one time or another during the production season, a significant number of producers are also handlers of their own strawberry production. Only three of the major handlers act only as handlers and do not produce any strawberries.

The evidence indicates that Florida's strawberry industry is at a disadvantage in the marketplace. Production costs are higher, yields are lower, and quality of

the product is generally lower in Florida than in other States.

Florida producers use strawberry plant varieties developed in California research facilities for growing conditions in California. Seedlings must be purchased (assuming availability) and planted each year. The royalties paid per acre of seedlings are roughly equal to the assessments per acre that the record indicates might be collected under this proposed marketing order. While these varieties produce better than other available varieties, they do not produce up to standards found in California because of Florida's different growing conditions. The evidence indicates that yields can be as much as one third of yields in California.

Strawberry production is both capital and labor intensive. Because the varieties now used in Florida are not perfectly suited for the local growing conditions, the crop is more susceptible to diseases and insects found in the State. Production costs are high due to an increased need for insecticides and herbicides. In addition, harvesting costs tend to be high because laborers must sort through disease infected strawberries during the picking process.

Prices received for Florida stawberries vary from year to year and month to month within each marketing season. The evidence shows that Florida producers have an advantage early in the season when they are the only producers of stawberries in the country. Prices can be as much as 300 percent higher in December and January than in April and May when other producing regions harvest their production. However, early season production risks are higher due to occasional adverse weather conditions, and the production level is lower to varietal limitations. Consequently, less than 20 percent of Florida's production is harvested early in the season. The evidence indicates that if researchers in other regions are able to develop earlier harvesting varieties, the Florida industry could lose one marketing advantage it now has.

The proposed order would provide for varietal research and for market research and promotion activities. For about 20 years, the State of Florida has operated a production and varietal research facility dedicated to strawberry research. This facility has made some progress in adapting and developing different strawberry varieties to Florida growing conditions and earlier harvests. However, additional funds are needed to increase research efforts and reduce the time when a new strawberry plant variety, specifically developed for Florida conditions, could be developed, field tested and introduced. Research seeks to increase early plant productivity, improve disease resistance and develop a more hearty strawberry variety that would be less susceptible to changes in weather. Also, a variety that requires fewer fertilizer and pesticide applications would significantly reduce production costs and also would have a beneficial effect on the environment.

Some Florida producers and handlers believe that an improved quality strawberry would increase the demand for Florida strawberries and improve the industry's position in the marketplace. Funds generated under the proposed order could be used to supplement current research efforts. The evidence shows that the Florida strawberry industry has a great potential for an increase in market value and volume of production if a better quality strawberry variety could be developed.

Individual producers have worked from time to time with the existing State research program to develop an improved strawberry variety. However, the FSGA is the only organization that has provided supplemental funds to current research programs. While these contributions have been helpful in supporting research, more research funds are needed if the research efforts are to be increased and new varieties developed sooner.

In addition to supporting scientific research, marketing order funds would be used to promote Florida strawberries in the marketplace. The record indicates that FSGA is the only organization that funds promotional activities for the Florida strawberry industry. However, it is able to spend only a small amount of money during only a portion of the harvest season to promote the industry's product. These promotional efforts have included non-paid advertising such as hosting a local strawberry festival, developing point-of-purchase displays and distributing promotional literature to the news media sources.

FSGA is a voluntary organization that relies on voluntary contributions of its producer and handler members. Not all strawberry producers and handlers choose to be members of the association. However, all producers and handlers benefit from its research and promotional contributions. One of the objectives of the proposed order would be to give all industry members an opportunity to participate in determining the future direction of strawberry research and promotion, and to share in the costs of those efforts. Several witnesses testified at the hearing that an association based on voluntary membership will never have the support of the entire industry, and without such support a program of research and promotion will never be entirely successful.

If adopted by Florida strawberry producers, this program would authorize collection of an assessment fee from handlers who handle strawberries produced in Florida. The amount of assessment would be recommended by a committee of producers to the Secretary of Agriculture for approval. The record indicates that a total assessment in the range of three cents to five cents per flat would be an acceptable amount and would provide funds to finance the research and promotion programs and administer the marketing order. Such amounts would represent less than one percent of a handler's or producer's strawberry income, based on 1984–85 prices.

The evidence also shows that the assessment could be passed back to producers or shared by handlers and producers. However, the scope and extent of such passing back or sharing of assessments is not clear. Nonetheless, under the Act and the proposed order, it is the handler's responsibility to pay the assessment recommended by the committee and approved by the Secretary.

Certain recordkeeping and reporting requirements established under the proposed order would be imposed on strawberry handlers. Such recordkeeping and reporting requirements are minimal and should not impose an undue burden on handlers.

These requirements have been carefully evaluated against the potential benefits of the program. The added burden resulting from these requirements should not be significant when compared to the benefits which are expected to accrue to such businesses. All entities would be treated equally under the proposed order. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

The record supports the view that increased funding would increase the possibility and timeliness of research success and thereby improve the marketing of strawberries grown in Florida. Also, the industry would benefit from a unified organization that would direct the research and promotion efforts for the industry as a whole.

It has therefore been determined that the program should be submitted to producers for a referendum vote.

**Findings and Conclusions**

Discussions and rulings included in the discussions of the material issues, findings; and general findings of the Recommended Decision set forth in the March 7, 1988 issue of the **Federal Register** (53 FR 7194) are hereby approved and adopted subject to the following modifications and corrections:

The findings and conclusions in material issue number 2 of the recommended decision, concerning whether the economic and marketing conditions justify a need for the order, are amended by adding the following nine paragraphs after the 23rd paragraph of material issue number 2 to read as follows:

Frank Swain, Chief Counsel for Advocacy, writing for the Small Business Administration (SBA), contends that an orderly market presently exists because prices for strawberries react in a predictable supply and demand manner when California strawberries enter the market. However, according to testimony provided at the hearing, prices actually fall precipitously and fluctuate constantly during the period when California strawberries enter the market.

One reason for this fluctuation is that Florida strawberries lack the quality to compete with the higher quality strawberries from California. The proposed research and promotion order would tend to rectify this situation by increasing the research efforts to develop a better quality Florida strawberry to compete in the marketplace. Once a new, higher quality variety is developed, Florida producers would, for the first time, be able to compete on a more equal basis with their competition.

The SBA exception also assumes that adverse, early-season weather and Florida producers' reluctance to take added risks are the only factors involved in the light harvest during the months of December and January. Seedlings planted in August produce two harvests in their first year. The first harvest in December and January is light. The plants then set more abundant blossoms which lead to a larger harvest in April and May. The development of a plant variety that would produce a heavier first blossoming would increase yields in December and January. This is one of the goals of research efforts.

The SBA exception contends that there is no evidence that increased research would lead to the development of a new strawberry plant variety. However, according to evidence received at the hearing, current research funding provided by Florida's State government is at a minimum level. It is therefore reasonable to assume that additional funding would increase research efforts. For example, funding from the proposed order, if authorized, could increase the existing research budget by as much as 50 percent and could provide for additional, needed staff and an increase in variety trials. Testimony received at the hearing indicated that it is not a matter of whether research would be successful, but more a matter of when it would be successful. California research efforts took more than 20 years before a viable, improved variety was developed.

Regarding the fluctuation of the market for Florida strawberries, the record indicates that the impact of California strawberries is not only that more, higher quality strawberries enter the market, but also that the California strawberries demand a higher price in the same markets because of promotional efforts carried out by that State's own strawberry promotion program. Strawberries are not a staple in most American's diets. The demand for strawberries is not constant, but is very dependent on promotional campaigns and impulse buying.

The SBA exception also contends that any increase in Florida production would tend to drive prices down. This exception does not take into account increased promotional activities that would be carried out. The proposal would enable Florida producers to enjoy some of the same promotional opportunities now benefitting California producers. As noted above, increased promotional efforts directly affect demand and consumption. In addition, promotion programs can take many forms and do not have to include paid advertising, as indicated by the SBA exception. The purpose of the program is not to raise market prices of strawberries, as the SBA exception contends, but to increase returns to Florida producers, which this program is designed to do.

The SBA took exception to the Department's finding that the proposed marketing order would not have a significant economic impact on a substantial number of small businesses. The impact of the proposed order was analyzed in the Recommended Decision. It is estimated that an assessment fee in the range of three to five cents a flat, as tentatively proposed in testimony, would be less than 1 percent of the producer's selling price at the lowest prices in the production season. When prices are high, it is estimated that such assessment rates would be less than one third of 1 percent of market prices.

According to testimony of producers and handlers who currently pay similar fees voluntarily to the FSGA, the increased cost of the proposed order's assessment fee would not be burdensome. This testimony was not controverted at, or subsequent to, the hearing. A few producers testified that they have lost money for four of the last five production seasons and that any assessment, no matter how small, would force them into bankruptcy. However, the proposed order is intended to increase the sales of strawberries and thereby offset any assessment obligation.

The SBA exception did not consider the evidence in the Recommended Decision indicating production costs could be significantly less after improved varieties are developed. The record reflects that costs would be saved because fewer insecticides and pesticides would be needed. Harvesting costs could be reduced because of increased labor efficiency in picking healthier strawberries of a more consistent quality.

The SBA exception also contends that the Department did not consider State alternatives to a Federal marketing order program as required by Executive Order 12612. We have reviewed this proposed action in view of the provisions of the Executive Order and determined that the proposed order does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This proposed action is consistent with the principles and provisions of Executive Order 12612. Testimony was provided, and entered into the Recommended Decision [53 FR 7198], of the FSGA's previous consideration of a State marketing order program. According to testimony, State laws were changed in the 1970's diminishing the effectiveness of State marketing order programs. Proponents considered a State marketing order but decided against such action because (1) it required separate enabling legislation, (2) individual commodity industries do not have direct control of the funds they collect, and (3) an unacceptably high administrative fee is charged by the State. Evidence indicated that only three Florida agricultural commodities now have active State marketing order programs, and at least two others have allowed their programs to terminate through inactivity.

Thus, the exception submitted by the Small Business Administration is denied for the reasons set forth in this decision.

An exception was also submitted by John T. Stanaland, a strawberry producer in Wimauma, Florida. Mr. Stanaland believes there is no need for a Federal marketing order and thus opposes the proposed order because the economic and marketing conditions do not justify a need for the marketing order. However, based on evidence of the hearing, the Department has determined that there is a need for the proposed order. Therefore, this exception is denied.

An exception to the Recommended Decision was filed on behalf of the Board of Directors of the Florida Strawberry Growers Association. Based upon that exception, the findings and conclusions in material issue number 3(b) of the Recommended Decision concerning the duties of the committee are amended by adding the following new paragraph after the 21st paragraph of material issue number 3(b) to read as follows:

The executive director of FSGA, Charles F. Hinton, filed an exception stating that § 933.29(i) as it appeared in the Notice of Hearing (52 FR 17584) should be reinstated in the proposed order. This paragraph specified the duty of the committee to consult, cooperate and exchange information with other marketing order committees and other individuals or agencies in connection with all proper committee activities and objectives. This paragraph was not included in the Recommended Decision because the activities specified in § 933.29(i) do not need to be specifically included in the proposed order as duties of the committee. This the committee may, to the extent permitted by law, engage in such activities as is necessary and proper in carrying out its responsibilities under the Act and order.

Based also upon the FSGA exception, the findings and conclusions in material issue number 3(d) of the Recommended Decision concerning and intellectual property such as patents, plant materials, copyrights, inventions and publications are amended by adding the following new paragraph after the third paragraph of material issue 3(d) to read as follows:

In the FSGA exception, Mr. Hinton requested clarification of § 933.51 regarding intellectual property such as patents, plant materials, copyrights, inventions and publications. Section 933.51 provides that the U.S. government shall own intellectual property arising out of marketing order funds. However, on a case-by-case basis, the committee may, with the approval of the Secretary, grant shared rights to appropriate research instititions for any rents, royalties, residual payments, or income from rental sale, leasing, franchising, or other uses of such patents, plant materials, copyrights inventions or publications. Accordingly, no change in the language of § 933.51 is necessary.

**Rulings on Exceptions**

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

**Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents entitled, respectively, Marketing Agreement for Strawberries Grown in Florida, and Marketing Order for Strawberries Grown in Florida. These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision, except the annexed marketing agreement, be published in the **Federal Register**. The regulatory provisons of the marketing agreement are identical with those contained in the proposed order as hereby, annexed and published with this decision.

**Referendum Order**

It is hereby directed that a referendum be conducted for the marketing order in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et. seq.*) to determine whether the issuance of the annexed order providing for the production research and marketing promotion of strawberries grown in Florida is approved or favored by the producers, as defined under the terms of the order, who during the representative period were engaged in the State of Florida in the production of strawberries for market. The representative period for the conduct of such referendum is hereby determined to be September 1, 1987 to May 31, 1988. The referendum ballot shall provide only for the approval or disapproval of the order.

The agents for the Secretary to conduct such a referendum is hereby designated to be John Toth and William Pimental, Fruit and Vegetable Division, USDA/AMS, PO Box 2276, Winter Haven, Florida, 33883; and Tom Tichenor, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456. The referendum shall be conducted from August 17 through 31, 1988.

**List of Subjects in 7 CFR Part 933**

Marketing agreement and order, Strawberries, Florida.

Signed at Washington, DC on July 25, 1988.

**Kenneth A. Gilles,**

*Assistant Secretary of Agriculture, Marketing and Inspection Services.*

**Marketing Order for Strawberries Grown in Florida** [1]

*Findings and Determinations Upon the Basis of the Hearing Record*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder, (7 CFR Part 900), a public hearing was held in Valrico, Florida, on May 27–29, 1987, upon the proposed marketing agreement and order on strawberries grown in Florida.

Upon the basis of the record it is found that:

*General Findings*

(1) The proposed marketing agreement and order and all of its terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate handlers of strawberries grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of strawberries in the production area which make necessary different terms and provisions applicable to different parts of such area; and,

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(5) The handling of strawberries in Florida, as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

*Order Relative to Handling*

It is therefore ordered, that on and after the effective date hereof, the handling of strawberries grown in Florida shall be in conformity to and in compliance with the terms and conditions of the order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Acting Administrator on March 1, 1988, and published in the **Federal Register** on March 7, 1988 (53 FR 7194) shall be and are the terms and provisions of this order, and are set forth in full herein. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

## PART 933—STRAWBERRIES GROWN IN FLORIDA

### Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

### Subpart—Order Regulating Handling

#### Definitions

**§ 933.1 Secretary.**

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

**§ 933.2 Act.**

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*; 68 Stat. 906, 1047).

**§ 933.3 Person.**

"Person" means an individual, partnership, corporation, association, or any other business unit.

**§ 933.4 Production area.**

"Production area" means the State of Florida.

**§ 933.5 Strawberries.**

"Strawberries" means all varieties of the edible fruit belonging to the roseaceous genus "Fragaria" commonly known as strawberries and grown within the production area.

**§ 933.6 Fiscal period.**

"Fiscal period" means the period beginning December 1 and ending the following November 30, or such other period as the committee, with the approval of the Secretary, may prescribe.

**§ 933.7 Committee.**

"Committee" means the Florida Strawberry Committee, established pursuant to this order.

**§ 933.8 Producer.**

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of fresh strawberries for market.

**§ 933.9 Handler.**

"Handler" is synonymous with "shipper" and means any person who sells or handles fresh strawberries or causes fresh strawberries to be handled.

**§ 933.10 Handle.**

"Handle" or "ship" means to sell, consign, transport, deliver, or in any other way to place fresh strawberries within the production area or between the production area and any point outside thereof: *Provided*, That the term "handle" shall not include the transportation within the production area of strawberries from the field where grown to a handling facility located within such area for preparation for market.

#### Administrative Body

**§ 933.20 Establishment and membership.**

(a) The Florida Strawberry Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer.

(c) The composition of the committee, as much as is feasible, will represent the industry it serves. Handler representation through grower members on the committee will be a consideration for nomination.

**§ 933.21 Term of office.**

The term of office of committee members, and their respective alternates, shall be four (4) years, beginning on September 1 and ending on August 31 four years later: *Provided*, That (a) The term for one fourth of the initial members shall be for one (1) year; the term for the second fourth of the initial members shall be two (2) years; the term for the third fourth of the initial members shall be three (3) years; and the term for the final fourth of the initial members shall be four (4) years.

(b) Committee members and alternates shall serve during the term of

office for which they have qualified and are selected, or during that portion thereof beginning on the date on which they are selected during such term of office and continuing until the end thereof, and until their succesors have qualified and are selected.

(c) Any member serving on the Florida Strawberry Committee will not be eligible for renomination to the committee for a period of one (1) year. Alternate members are not limited in the number of consecutive terms they may serve.

(d) The term of office of the initial committee members shall be: The three nominees receiving the three highest number of votes would serve four-year terms; the three nominees receiving the next highest number of votes would serve three-year terms; the three nominees receiving the enxt highest number of votes would serve two-year terms; and the three nominees receiving the next highest number of votes would serve one-year terms.

**§ 933.22 Nomination.**

The Secretary shall select the members of the committee and alternates from nominations which shall be made in the following manner:

(a) A meeting or meetings of producers shall be held in the production area to nominate members and alternates for the committee. The committee shall hold such meetings or cause them to be held prior to July 15 of each year preceding the beginning of a new term of office or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each committee member and alternate whose term expires November 30 of the same year.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as may be recommended by the committee and approved by the Secretary, not later than August 1 of each year preceding the beginning of a new term of office, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(d) Only producers may participate in the nomination process.

(e) For the initial nomination process, the twelve individuals receiving the twelve largest number of votes would serve as committee members and the second twelve individuals receiving the twelve largest number of votes would be the respective alternates.

**§ 933.23 Selection.**

The Secretary shall select all members of the committee and their respective alternates, from nominations made pursuant to § 933.22, or from other qualified persons.

**§ 933.24 Failure to nominate.**

If nominations are not made within the time and in the manner specified in § 933.22, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in § 933.20.

**§ 933.25 Acceptance.**

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary in writing that such person agrees to serve in the position for which nominated for selection.

**§ 933.26 Vacancies.**

To fill any vacancy, occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in a manner specified in §§ 933.22 and 933.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 933.20.

**§ 933.27 Alternate members.**

(a) An alternate member of the committee shall act in the place and stead of the member for whom that individual is an alternate, during the member's absence. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act until a succesor of such member is selected.

(b) If both a member and a respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present to serve in place of the absent member.

**§ 933.28 Powers.**

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

**§ 933.29 Duties.**

It shall be, among other things, the duty of the committee:

(a) Prior to the beginning of each fiscal year, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available inforamtion as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to strawberries, and report to the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(g) Prior to the beginning of each fiscal period as determined by the Secretary, and as may be necessary thereafter, to prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The Committee shall submit such budget for approval to the Secretary with an accompanying report showing the basis for its calculations; and

(h) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report

shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers.

**§ 933.30 Procedure.**

(a) Seven members of the committee, including alternates acting for members, shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

(c) The committee shall give the Secretary the same notice of meetings as is given to the members thereof.

**§ 933.31 Expenses and compensation.**

Members of the Committee, their alternates, subcommittees including any special subcommittees, shall serve without compensation but shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

**Expenses and Assessments**

**§ 933.40 Expenses.**

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to excercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired as described in § 933.41, or from other sources approved by the Secretary.

**§ 933.41 Assessments.**

(a) The funds to cover the committee's expenses shall be acquired by levying assessments upon handlers as provided in this subpart. The means for collecting said assessments shall be as follows: Each handler who first handles strawberries shall pay to the committee the pro rata share, based on the volume of strawberries handled by such handler, of the expenses which the Secretary finds will be incurred by the committee.

(b) Assessments shall be levied at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all strawberries which are handled under this part during that fiscal year.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or otherwise become inoperative. If a handler does not pay said assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee subject to approval of the Secretary.

(e) In order to provide funds for the administration for the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance and may also borrow money for such purpose.

(f) The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 933.50. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use. The committee may not receive contributions from any person whose contributions would constitute a conflict of interest.

**§ 933.42 Accounting.**

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or an alternate, such person shall account to the successor member, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which such person is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, the committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

**§ 933.43 Excess funds.**

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in acordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, to the extent practicable it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used

(i) To defray any expenses authorized under this part,

(ii) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses,

(iii) To cover deficits incurred during any fiscal period when assessment income is less than expenses,

(iv) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and

(v) To cover necessary expenses of liquidation in the event of termination of this part.

Upon such termination, any funds not required to defray the necessary expenses of liquidation, shall be disposed of in such manner as the Secretary may determine to be appropriate, if after reasonable effort by the committee, it is found impracticable to return such funds on a pro rata basis to the persons from whom such funds were collected.

**§ 933.44 Special purpose exemptions.**

(a) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may exempt from any and all requirements under, or established pursuant to, §§ 933.41, 933.60, and 933.61, the handling of strawberries in such minimum quantities, or for such specified purposes as the committee, with approval of the Secretary, may prescribe.

(b) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent strawberries handled under the provisions of this section from entering the channels of trade for other than the specified purpose authorized by this section. Such rules, regulations and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle strawberries pursuant to this section.

**Research and Development**

**§ 933.50 Research and development.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects, including production research, varietal research, and marketing research to promote efficient production of strawberries, as well as development projects and marketing promotion, designed to assist, improve, or promote the marketing, distribution, and consumption of fresh strawberries. The expenses of such projects shall be paid from funds collected pursuant to this part. Upon conclusion of each program, but at least annually, the committee shall summarize and report on the program status and accomplishments to industry members and the Secretary. A similar report to the committee shall be required of any contracting party on any such project.

**§ 933.51 Patents, plant materials, copyrights, inventions, and publications.**

Any patents, plant materials, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this part shall be the property of the U.S. Government as represented by the committee, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, francising, or other uses of such patents, plant materials, copyrights, inventions, or publications, accrue to the benefit of the committee. Upon termination of this part, § 933.74 shall apply to determine disposition of all such property.

**Reports and Records**

**§ 933.60 Reports.**

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the quantities of strawberries received by a handler and the quantities sold or otherwise disposed of by such handler.

(b) All reports and records furnished or submitted by handlers to, or obtained by the employees of the committee, which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall, at all times, be kept in the custody and under the control of one or more employees of the committee who shall disclose such information to no person other than the Secretary.

**§ 933.61 Records.**

Each handler shall maintain for at least two succeeding years such records of the strawberries received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

**Miscellaneous Provisions**

**§ 933.70 Compliance.**

Except as provided in this part, no handler shall handle strawberries except in conformity to the provisions of this part.

**§ 933.71 Right of the Secretary.**

The members of the committee (including successors and alternates), and any agent or employe appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

**§ 933.72 Effective time.**

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

**§ 933.73 Termination.**

(a) The Secretary may at any time, terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever it is found that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of the growers of strawberries, who, during such fiscal period, have been engaged in the area in the production of strawberries for market: *Provided,* That such majority have produced for market during such period more than 50 percent of the volume of strawberries produced for market in the area; but such termination shall be effective only if announced on or before November 30 of that fiscal period.

(d) Ten years from the effective date of this subpart the Secretary shall conduct a referendum to ascertain whether continuance of this subpart is favored by growers. Subsequent referenda to ascertain whether continuance of this subpart is favaored by the growers shall be conducted every six yers after the date of the preceding referendum.

(e) The provisions of this subpart shall terminate, in any event, whenever the provisions of the act authorizing the same, cease to be in effect.

**§ 933.74 Proceedings after termination.**

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and

disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

**§ 933.75 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not—

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart, or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

**§ 933.76 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

**§ 933.77 Agents.**

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this subpart.

**§ 933.78 Derogation.**

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

**§ 933.79 Personal liability.**

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any grower, handler, or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

**§ 933.80 Separability.**

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

**§ 933.81 Amendments.**

Amendments to this subpart may be proposed, from time to time, by the commitee or by the Secretary.

**Marketing Agreement**

***§ 933.90 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 933.91 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 933.92 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of fresh Florida strawberries in the same manner as is provided for in this agreement.

Signed at Washington, DC, on July 25, 1988.

**Kenneth A. Gilles,**

*Assistant Secretary of Agriculture, Marketing and Inspection Services.*

[FR Doc. 88-17082 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 967**

**[FV-88-109PR]**

## Celery Grown in Florida; Proposed Handling Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes establishing the quantity of Florida celery which handlers may market fresh during the 1988–89 marketing season at 6,789,738 crates or 100 percent of producers' base quantities. This proposal would encourage Florida celery growers to assume the risks of planting celery by placing a ceiling on the amount of Florida celery which could be shipped to fresh markets. It is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. However, as in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This proposal was recommended by the Florida Celery Committee, the agency responsible for local administration of the order.

**DATE:** Comments must be received by August 29, 1988.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20250–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20250–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Order No. 967 [7 CFR Part 967], as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and

Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are seven handlers of celery who are subject to regulation under the marketing order for Florida celery during the course of the current season and 13 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Florida celery may be classified as small entities.

This proposal is based upon the recommendation and information submitted by the Florida Celery Committee (committee) and upon other available information. The committee met on June 9, 1988, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1988-89 marketing year beginning August 1, 1988. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1988-89 supplies and prospective market demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent of the 1987-88 total base quantities is authorized for new producers and for increases by existing producers for the 1988-89 season. However, there were no applications for new or additional base submitted for the 1988-89 season.

The proposal would limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh makets during the 1988-89 season to 6,789,738 crates. This marketable quantity is identical to the 1987-88 marketable quantity and is about 20 percent more than the average number of crates marketed fresh during the 1982-83 through 1986-87 seasons. It is expected that the 6,789,738 crate marketable quantity will be above actual shipments for the 1988-89 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship.

This proposal would encourage Florida celery growers to assume the risks of planting celery by placing a ceiling on the amount of Florida celery which could be shipped to fresh markets. It is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. However, as in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 967**

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 967 is proposed to be amended as follows:

1. The authority citation for 7 CFR Part 967 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Add a new § 967.324 under Subpart—Rules and Regulations to read as follows:

**§ 967.324 Handling regulation, marketable quantity, and uniform percentage for the 1988-89 season beginning August 1, 1988.**

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of 6 percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 26, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88-17156 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-02-M

## Rural Electrification Administration

## 7 CFR Part 1763

## Architectural and Engineering Services; Telephone Program

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Electrification Administration proposes to add Part 1763, Telephone Architectural and Engineering Services—Telephone Program, to 7 CFR Chapter XVII. This new part consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications including the following existing REA Bulletins:

340-1 Final Payments to Contractors, Engineers, and Architects—Telephone Program

341-1 Final Statement of Engineering Fee and Certificate of Engineer, Telephone Engineering Service Contract

341-3 Engineering Services for Telephone Borrowers

342-1 Architectural Services for Telephone Borrowers

380-3 Weekly Progress Report of Telephone Construction and Engineering Services

387-3 Final Documents Required to Close Out Construction of Buildings—Telephone Program

The Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR Parts. When that is accomplished, these Bulletins will be rescinded.

Part 1763 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures for the provision of architectural and engineering services for the planning and construction activities for telephone facilities and systems. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the burden on borrowers involved in planning and construction of telephone facilities; and

to decrease the processing time of related documents by REA.

All borrowers that are parties to the planning and construction of borrowers' telephone facilities and systems will be affected by this rule.

**DATE:** Public comments concerning this proposed rule must be received by REA no later than August 29, 1988.

**ADDRESS:** Comments may be mailed to William F. Albrecht, Deputy Assistant Administrator—Telephone, Telecommunications Staff Division, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments received may be inspected in Room 4056 between 8:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** William F. Albrecht, Deputy Assistant Administrator—Telephone, Telecommunications Staff Division, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9549. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.* (1976)] and, therefore, does not require an environmental impact statement or an environmental assessment.

Public reporting burden for this collection of information is estimated to average .9 of an hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

## Background

Currently, the policies and requirements for providing architectural and engineering services for planning and construction activities for borrowers' telephone facilities and systems are contained in numerous REA Bulletins and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the Federal Register.

The proposed rule clarifies REA policies and requirements pertaining to the provision of engineering services by the borrower's own staff. It sets forth the minimum requirements the borrower's employees must meet for REA approval for the borrower to provide such services.

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

7 CFR Part 1763 supersedes any sections of REA Bulletins with which it is in conflict.

## List of Subjects in 7 CFR Part 1763

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1763:

## PART 1763—ARCHITECTURAL AND ENGINEERING SERVICES—TELEPHONE PROGRAM

### Subpart A—General

Sec.

1763.1 General.
1763.2 Definitions.
1763.3 Availability of REA forms.
1763.4 List of architects and engineers.
1763.5 Insurance requirements.
1763.6 Payments.
1763.7–1763.19 [Reserved]

### Subpart B—Architectural Services

1763.20 Selection of architects.
1763.21 Architectural services contract.
1763.22 Closeout of architectural services contract.
1763.23–1763.39 [Reserved]

### Subpart C—Engineering Services

1763.40 Preloan engineering.
1763.41 Preloan engineering procedures.
1763.42 Postloan engineering by contract.
1763.43 Postloan engineering by force account.
1763.44 Loan funds for engineering services.
1763.45 Engineer's progress reports.
1763.46 Closeout of the postloan engineering contract.

**Authority:** 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

### Subpart A—General

#### § 1763.1 General.

(a) The standard REA Loan Documents (as defined in 7 CFR Part 1758) contain provisions regarding engineering and architectural services performed by or for REA telephone borrowers. This part implements certain of the provisions by setting forth the requirements and procedures to be followed by borrowers in selecting architects and engineers and obtaining architectural and engineering services by contract or by force account.

(b) Architects and engineers performing services for REA telephone borrowers must meet the applicable registration and licensing requirements of the state in which the facilities will be located.

(c) Contracting for the services of an architect is required on all building projects financed with loan funds. The selection of the architect does not require REA approval. REA approval of the architectural services contract is required, and REA Contract Form 165, Architectural Services Contract—Telephone, shall be used except for unattended central office buildings when architectural services may be furnished under REA Contract Form 217, Postloan Engineering Service Contract. Refer to §§ 1763.20, 1763.21 and 1763.22 for further direction.

(d) The form of contract used for preloan engineering services, the selection of the preloan engineer, and the preloan engineering contract are not subject to REA approval. Some borrowers may have employees on their staff qualified to perform preloan engineering services. Refer to §§ 1763.40 and 1763.41 for further direction.

(e) Postloan engineering for major construction shall be performed by contract, except where REA has approved force account engineering. The selection of the contract engineer does not require REA approval. Contract Form 217 shall be used and it is subject to REA approval. Refer to § 1763.42 for further direction.

(f) When the extent of the proposed major and minor construction is such that the engineering involved is within the capabilities of employees on the borrower's staff, it may request REA approval to provide such services. This method of providing engineering services is referred to as force account engineering. Refer to § 1763.43 for further direction.

(g) Engineering services associated with minor construction and not covered by Form 217 may be provided by REA Contract Form 245, Engineering Service Contract, Special Services—Telephone. REA approval of this contract is not required.

### § 1763.2 Definitions.

For the purpose of this Part 1763:

(a) *Contract.* The services contract between the borrower and its architect or engineer.

(b) *Force Account Engineering.* Any preloan or postloan engineering services performed by the borrower's staff.

(c) *GFR.* REA General Field Representative assigned to the Project.

(d) *Project.* The rural telephone system, or portion thereof, described in the Plans and Specifications.

(e) *Loan Design (LD).* Supporting data for a loan application. See § 1749.32 for further information.

(f) *Major Construction.* A telephone plant project, estimated to cost more than $100,000, including all labor and materials.

(g) *Minor Construction.* A telephone plant project, estimated to cost $100,000 or less, including all labor and materials.

(h) *Postloan Engineering Services.* The design, procurement, and inspection of construction to accomplish the objectives of a loan as stated in a LD approved by REA.

(i) *Preloan Engineering Services.* The planning and design work performed in preparing a LD. This consists of helping the borrower determine the objectives for a loan, selecting the most effective and efficient methods of meeting loan objectives, and preparing the LD which describes the objectives and discusses the method selected.

### § 1763.3 Availability of REA forms.

Single copies of REA forms and publications cited in this Part are available free from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. These forms and publications may be reproduced.

### § 1763.4 List of Architects and Engineers.

(a) Engineers interested in performing services for borrowers shall keep REA informed on the qualifications of the principals who would be responsible for the work. Completed copies of REA Form 179, Architects and Engineers Qualifications, shall be submitted to REA for this purpose.

(b) REA will, upon request, supply the names of engineers who are performing, have performed, or have expressed an interest in performing engineering services for borrowers and have submitted a current Form 179 to REA. REA neither approves nor recommends engineers, but does maintain a listing of engineers participating or interested in participating in the program.

(c) Borrowers select their own architects. REA does not maintain a list of architects interested in performing services for borrowers.

### § 1763.5 Insurance requirements.

(a) Architects and engineers performing work for borrowers shall obtain insurance coverage as required by 7 CFR Part 1788.

(b) Borrowers shall ensure that their architects and engineers comply with the insurance requirements of their contracts. See 7 CFR 1788.54.

### § 1763.6 Payments.

(a) Borrowers shall make prompt payments to architects and engineers as required by the contract.

(b) REA shall not make loan funds available for late payment interest charges.

### §§ 1763.7–1763.19 [Reserved]

## Subpart B—Architectural Services

### § 1763.20 Selection of Architects.

The borrower shall be responsible for selecting and paying an architect for performing the architectural services required in the design and construction of buildings.

### § 1763.21 Architectural services contract.

(a) The borrower shall contract for architectural services on Form 165. Except as noted in § 1763.21(d), the borrower shall incur no obligation for architectural services until REA has approved this agreement. A borrower shall not enter into the architectural services contract for major construction before REA has approved the borrower's LD.

(b) Reasonable modifications or additions to the terms and provisions in Form 165 may be made in order to obtain the detailed services needed for a specific undertaking. However, such changes shall not relieve the architect of any of the responsibilities required by the REA form. Borrowers should obtain assistance from their legal counsel to ensure that the contracts are properly prepared and executed.

(c) Three executed copies of Form 165 shall be forwarded to REA. If REA approves the contract, one copy will be sent to the architect and one to the borrower.

(d) The borrower may execute a written agreement with the architect to obtain the preliminary services set forth in Article II, Section 1 of Form 165, until such time as the contract is prepared, executed by all parties, and approved by REA.

(e) Loan funds will not be available to pay for the preliminary architectural services if a loan is not made for the project, or if the project is abandoned.

(f) Subpart B of 7 CFR Part 1765 sets forth the requirements and the procedures to be followed by borrowers in constructing central office, warehouse, and garage buildings with REA loan funds.

### § 1763.22 Closeout of architectural services contract.

(a) Upon completion of all services and obligations required under the architectural services contract, the architect shall prepare REA Form 284, Final Statement of Architect's Fees. All fees shown on the statement shall be supported by detailed information where appropriate. For example: out-of-pocket expense, cost plus, and per diem types of compensation should be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation.

(b) The architect shall forward two copies of Form 284 and supporting data to the borrower. If satisfactory, the borrower shall approve the statement, sign both copies, send one copy to the GFR and retain one copy.

(c) Upon approval of Form 284 by REA, the borrower shall promptly pay the architect.

§§ 1763.23–1763.39 [Reserved]

## Subpart C—Engineering Services

### § 1763.40 Preloan engineering.

(a) All engineering services required by a borrower to support its application for a loan shall be rendered by a qualified engineer selected by the borrower or by qualified employees on its staff. The selection of the preloan engineer and the form of preloan engineering service contract are not subject to REA approval. Borrowers, however, should discuss their proposed method of obtaining preloan engineering services with the GFR before proceeding with any arrangements.

(b) REA Contract Form 835, Preloan Engineering Service Contract, Telephone System Design, is a suggested form of preloan engineering service contract. While this form of contract is not required, it should be referred to when determining the services the engineer will perform. Any form of contract used should specify that preloan engineering services conform to REA requirements for preloan studies. See Subpart D of 7 CFR Part 1749.

### § 1763.41 Preloan Engineering Procedures.

(a) The borrower should select a preloan engineer to prepare the LD when REA requests the borrower to furnish the data required to support the loan application. The borrower may utilize the list of engineers referred to in § 1763.4 in selecting the engineering firms to interview.

(b) The borrower must use general or other non-loan funds to pay the engineer for services performed under the contract until loan funds are available from REA. If the project is abandoned or funds are not included in the loan for preloan engineering, the borrower must use general or other non-loan funds to pay the engineer.

(c) Upon completion of all services and obligations under the Preloan Engineering Service Contract and release of loan funds by REA, the borrower may request an advance of loan funds using an FRS to cover the cost of the preloan engineering services. The request for loan funds must be supported by a final invoice from the engineer itemizing the services performed. See 7 CFR Part 1754.

### § 1763.42 Postloan engineering by contract.

(a) *Major construction.* (1) Three copies of Form 217 executed by the borrower and the engineer shall be sent to the GFR to forward to REA for approval. The engineer's estimate of the engineering fees, on REA Form 505, shall be included for approval by REA.

(2) REA will review the contract terms and conditions in its approval process. REA may withhold approval of the contract if, in REA's judgment:

(i) The contract form has been modified.

(ii) The contract will not accomplish loan purposes.

(iii) The engineering service fees are unreasonable:

(iv) The contract presents unacceptable loan security risk to REA. (See 7 CFR Part 1758)

(b) *Minor construction.* (1) Where an engineering firm is to inspect and certify construction accounted for under the work order procedure or the Contract for Miscellaneous Construction Work and Maintenance Services, REA Contract Form 773 (See Subpart G of 7 CFR Part 1765), a letter shall be sent to REA giving the name of the firm and the name and license number of the engineer who will sign the certification.

### § 1763.43 Postloan Engineering by Force Account.

(a) Major construction. When the extent of the proposal construction is such that the engineering involved is within the capabilities of employees on the borrower's staff, borrowers may request REA approval to provide such services by submitting the following:

(1) A description of services to be performed.

(2) The name and qualifications of the employee to be in charge. REA requires this employee to meet the State experience requirements for registered engineers. In the absence of specific State experience requirements, the employee must have at least eight years experience in the design and construction of telecommunication facilities with a least two years of the work experience at a supervisory level. REA does not require professional registration of this employee.

(3) The names and qualifications and project responsibilities of other principal employees who will be associated with providing the engineering services.

(4) REA Form 179 may be used to submit the employee qualifications.

(5) A copy of the resolution of the board of directors or a letter signed by an authorized corporate official acknowledging the data prepared in paragraphs (a)(1) and (2) and authorizing the engineering services performed by force account subject to REA approval.

(6) REA shall notify the borrower by letter of approval or disapproval to perform force account engineering. The letter shall set forth any conditions associated with an approval or the reasons for disapproval.

(7) REA's approval of force account engineering for major construction shall be only for the specific projects named in the notice of approval.

(b) *Minor construction.* (1) Where the borrower proposes to perform the inspection and certification of minor construction, the following shall be submitted to the REA:

(i) A copy of the employee's qualifications and experience record on Form 179, unless previously submitted. In accordance with industry practice, REA requires a minimum of four years of construction and inspection experience. The employee cannot be engaged in the actual construction.

(ii) A copy of the board resolution authorizing the performance of these services by an employee, subject to REA approval.

(iii) REA shall notify the borrower by letter of approval or disapproval of the borrower's staff employee to perform the inspection and certification of construction.

### § 1763.44 Loan funds for engineering services.

(a) REA will consider making loan funds available for preloan and postloan engineering services, if requested by the borrower.

(b) Advance of telephone loan funds shall be requested on an FRS.

(c) Loan funds for engineering services for minor construction shall be advanced on the basic of approval Summary of Work Orders, REA Form 771. The engineering services include the inspection and certification of the construction performed by an engineering firm or by an engineer on the borrower's staff. See 7 CFR Part 1765, Subpart G.

(d) Loan funds shall not be used for engineering services in connection with operation and maintenance.

(e) Loan funds for engineering services performed under Form 245, if approval, shall be advanced on the basis of approval summary of work orders, Form 771.

### § 1763.45 Engineer's progress reports.

(a) The engineer shall make progress reports to the borrower once each month during the design and construction of the telephone facilities, unless the contract requires more frequent reporting. The report shall reflect, beginning with the start of staking, the progress of staking, and construction on new and modified construction until all the construction, including cleanup has been completed, and the final

documents accepted by the GFR. REA Form 521, Progress Report of Telephone Construction and Engineering Services, may be used by the engineer for submitting progress reports to the borrower, or the engineer may develop a more specific form for use in fulfilling this requirement. One copy of each progress report covering construction must be submitted to the GFR.

(b) The engineer shall make Status of Contract and Force Account Proposal (FAP) reports to the borrower once each month. The report shall show for each contract or FAP the approval contract or FAP amount, the date of approval, scheduled date construction was to begin and the actual date construction began, the scheduled completion date, the estimated or actual completion date, the estimated or actual date of submission of closeout documents, and an explanation of dalays or other pertinent data relative to progress of project. One copy of the report must be submitted to the GFR.

**§ 1763.45 Closeout of the Postloan Engineering Service Contract.**

(a) Upon completion of all services required under the engineering service contract Form 217, the borrower's engineer shall prepare and forward to the borrower four copies of the Final Statement of Engineering Fee, REA Form 506.

(b) If the statement is satisfactory, the borrower shall sign the four copies, retain one copy and send three copies to the GFR.

(c) Upon approval of Form 506 by REA, the borrower shall requisition funds for final payment and promptly pay the engineer.

Dated: June 13, 1988.

**Harold V. Hunter,**

*Administrator.*

[FR Doc. 88-17095 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-15-M

## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[File No. 842 3076]**

## Batesville Casket Co., Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Batesville, Ind. casket manufacturer from making future misrepresentations and unsubstantiated claims concerning casket durability and would prohibit false claims that the Commission or any other government agency has endorsed Batesville's products, warranty, or programs.

**DATE:** Comments must be received on or before September 27, 1988.

**ADDRESS:** Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Rachel Miller, FTC/H-578, Washington, DC 20580. (202) 326-2463.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

**List of Subjects in 16 CFR Part 13**

Caskets, Trade practices.

**Agreement Containing Order to Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Batesville Casket Company, Inc., a corporation, and it now appearing that Batesville Casket Company, Inc., a corporation, ("proposed respondent") is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Batesville Casket Company, Inc., a corporation, by its duly authorized officers and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Batesville Casket Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at Highway 46 East, Batesville, Indiana 47006.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event the Commission will take such action as it may consider appropriate, or the Commission may issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of

service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

*Order*

The following definitions shall apply to this order:

1. A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

2. "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

3. A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

4. "Funeral services" are any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

Part I

It is Ordered that respondent Batesville Casket Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, offering for sale, sale or distribution of any casket in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, the durability or expected life of any casket, including but not limited to any misrepresentation of the period of time after interment, whether stated as a specific number of years or generally, during which any casket is designed, or in the ordinary course of events can reasonably be expected, to prevent the entrance of air, water, or other gravesite substance; and

B. Making any representation, directly or by implication, about the durability or expected life of any casket, unless at the time of making the representation respondent possesses and relies upon a reasonable basis for such representation. For purposes of this order, a reasonable basis shall consist of competent and reliable scientific evidence which substantiates such representation. To the extent that such evidence consists of technical, engineering or other professional tests, experiments, analyses, research, studies, surveys, or expert opions, such evidence shall be "competent and reliable" for purposes of this paragraph only if those tests, experiments, analyses, research, studies, surveys, or opinions are conducted and evaluated in an objective manner by persons qualified to do so, using only procedures that are generally accepted in the profession or science as yielding accurate and reliable results, and making only inferences and extrapolations that are generally accepted in the profession or science as reasonable and reliable.

C. Misrepresenting, directly or by implication, that the Federal Trade Commission or any other government agency has endorsed or approved any product or product characteristic, or any warranty or service program.

For purposes of this order, any representation for which the applicable conditions of interment are not specifically disclosed will be construed as a representation of casket performance in the majority of interment conditions found in the United States.

Also for purposes of this order, whenever a written warranty offering a remedy for any casket failure for a specified period of time is issued, or the duration of such a warranty is advertised, this shall be construed as a representation that the casket is designed, and in the ordinary course of events can reasonably be expected, to perform without that failure for that specified time period, UNLESS that warranty or advertising clearly and prominently discloses that the above representation is not made. [An example of such a disclosure would be: "Batesville makes no claim that its caskets will ordinarily remain protective for the entire warranty period. However, if this casket does not, we will . . . ."] Nothing in this order requires that such a disclosure be made when issuing or advertising a written warranty if each representation made according to this paragraph is substantiated, and is not misrepresented, in compliance with this Part of this order.

Part II

It is further ordered that respondent and its successors and assigns shall maintain for three years after the date of the last dissemination of the representation, and upon request shall make available to the Federal Trade Commission for inspection and copying:

1. Copies of all materials relied upon for each representation covered by this order;

2. Copies of all materials relating to any test, experiment, analysis, research, study, survey, or expert opinion in the possession of the respondent that may contradict, qualify, or call into question any representation covered by this order.

Part III

It is further ordered that respondent shall forthwith distribute a copy of Attachment A to this order to each funeral provider and each casket showroom that purchased a casket from respondent during calendar year 1987, to each funeral provider and each casket showroom that received any marketing material from respondent during calendar year 1987, and to each journal, newspaper, magazine or other media outlet with which respondent has placed any advertisement concerning any casket during calendar year 1987, except that respondent need not send a copy of Attachment A to anyone to whom, prior to the date of service of this order, respondent has sent a copy of Attachment B together with a brochure incorporating the following language:

The Federal Trade Commission staff has informed Batesville of its belief that Batesville's pre-1988 warranties to replace caskets may have been understood to mean that the caskets would have remained protective throughout the warranty period under typical conditions of interment. Because of this concern, Batesville's New Progressive Warranty establishes warranty periods that more closely relate to the expected periods during which its caskets can be expected to remain protective.

Part IV

It is further ordered that respondent shall forthwith distribute a copy of this order, together with Attachment A to this order, to each of its operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

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Part V

It is further ordered that respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered that respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

*Attachment A to Order*

Notice About Batesville's Protective Claims

The Federal Trade Commission has indicated that it has reason to believe that Batesville's warranty language could be understood to mean that most Batesville caskets will remain protective throughout the warranty period under typical conditions of interment.

*Batesville's pre-1988 warranties should not have been understood to make any claims about normal or ordinary casket durability.* Pursuant to an agreement with the Federal Trade Commission, Batesville wishes to remind Funeral Directors that those warranties constituted no more than a promise to replace any of its metal caskets which are found to have failed to completely resist the entrance of air, water or any outside element during the stated warranty period.

Batesville has revised its product warranties so that, unless otherwise stated on the warranty, the replacement periods shall more closely relate to the average or typical period during which the products can be expected to remain protective under varying interment conditions.

How This Affects Funeral Directors

Although Funeral Directors are not covered by this agreement, Funeral Directors are prohibited from making any untrue protective claims for caskets, under the Commission's Funeral Rule.

Signed:

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Batesville Casket Company, Inc.

*Attachment B to Order*

Batesville Casket Company
Batesville, Indiana

Dear

Within the past few months we provided to you materials explaining our new warranty program. At the request of the Federal Trade Commission staff, we are replacing those materials with the enclosed materials, to remove any implication that the FTC has approved Batesville's products or warranty program. The FTC, of course, does not approve the products or programs of any company. We would appreciate your substituting the new materials for the old ones.

Please understand that the new warranties themselves remain in effect, and will be honored.

Sincerely,

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Batesville Casket Company.

Enclosures:

*Summary To Aid Analysis of Consent Order*

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from Batesville Casket Company (Batesville).

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns claims about the length of time Batesville's caskets can be expected to remain airtight and watertight, and thus protective, after interment.

The Commission's complaint charges Batesville with misrepresenting, through its warranties and advertising, that its caskets would ordinarily remain protective for the warranty period, when the reasonably expected protective period in most soil conditions was actually far shorter. The complaint also charges that Batesville made these long-term protective claims without a reasonable basis for them.

In addition, the complaint charges that Batesville misrepresented that the Commission had approved or endorsed the company's warranty program and product design.

The complaint alleges that the misrepresentations and the use of unsubstantiated claims are unfair and deceptive in violation of Section 5 of the Federal Trade Commission Act.

Part I of the proposed consent order would prohibit future misrepresentations and unsubstantiated claims concerning casket durability or Commission endorsement of the company's products or programs.

Part II of the order would require the company to keep records of its substantiation for durability claims, as well as any information it has that may tend to contradict the claims.

Part III of the order would require Batesville to notify its customers and the media in which it advertises that its caskets could not be expected to remain protective for the past warranty periods. Because Batesville has recently changed its warranty durations and product design, and has notified customers specifically as to which new warranty durations represent substantiated durabiltiy claims and which do not, the order would not require additional notification to those who were sent the recent notice.

Parts IV through VI of the proposed order are standard notice and reporting provisions to ensure compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-17116 Filed 7-28-88; 8:45 am]

BILLING CODE 6750-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Parts 1306 and 1500

### Lawn Darts; Notice of Proposed Rulemaking

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Lawn darts are devices intended to be used outdoors by being thrown upward and striking the ground point first. A regulation, issued in 1970 by the Food and Drug Administration under the Federal Hazardous Substances Act ("FHSA") and now administered by the Commission, currently bans lawn darts, except for those intended for adult use that (1) are labeled to warn against use by children, (2) include instructions for safe use, and (3) are not sold by toy stores or by store departments dealing predominantly in toys or other children's articles. Despite these restrictions, which are intended to

ensure that lawn darts are sold only for use as a game of skill by adults, children continue to suffer serious injuries and deaths while playing with lawn darts.

Accordingly, the Commission issued an advance notice of proposed rulemaking ("ANPR") on October 20, 1987, explaining a number of regulatory options available and asking for comment and data on the issues involved. 52 FR 38935. After considering the comments received on the ANPR and other available information, the Commission is proposing to prohibit the sale of lawn darts that have the potential for causing skull puncture injuries.[1]

**DATE:** Comments on this proposal should be received no later than August 29, 1988.

If requests are made to present oral comments on the proposal, an opportunity will be scheduled for 10:00 a.m. on August 9, 1988. Requests to make oral comments should be submitted to the Office of the Secretary by August 5, 1988.

**ADDRESSES:** Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6800, or delivered to the office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland. If an opportunity for the presentation of oral comments on the proposal is requested, it will be held at Room 556 at the Commission's offices at 5401 Westbard Avenue, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Elaine Tyrrell, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6554.

**SUPPLEMENTARY INFORMATION:**

## A. Background

The Consumer Product Safety Commission was created in May of 1973. Prior to that time, the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276, was administered by the Food and Drug Administration ("FDA"). Section 2(Q)(1)(A) of the FSHA, 15 U.S.C. 1261(Q)(1)(A), provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance." The Child Protection and Toy Safety Act of 1969 (83 Stat. 187–190) amended the FHSA to provide that any toy or other article intended for use by children may be classified as a hazardous substance if it is determined that the article presents an electrical, mechanical, or thermal hazard. 15 U.S.C 1261(F)(1)(D). Pursuant to this authority, the FDA, on November 17, 1970, proposed, among other things, to declare that lawn darts are banned toys because they present a mechanical hazard and an unreasonable risk of injury. 35 FR 17864.

The FDA received only one comment concerning the proposal to determine that lawn darts present a mechanical hazard. That comment stated that the large, outdoor-type darts are intended for use by adults as an outdoor sport or game. The comment contended that suitable labeling can be devised to inform parents or other adults of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

After considering this comment, the FDA determined in its final rule, published December 19, 1970, that "lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" presented a mechanical hazard within the meaning of the FHSA. 35 FR 19266. However, the final rule (as summarized below) also provided that the following types of lawn darts would not be included within the term "banned hazardous substance": Lawn darts and similar sharp-pointed articles not intended for toy use and marketed solely as a game of skill for adults, provided such articles: (i) Bear the following statement on the front of the panel of the carton and on any accompanying literature:

**Warning:** Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of the reach of children.

Such statement shall be printed in a sharply contrasting color within a borderline and in letters at [least] one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature. (ii) Include in the instructions and rules clear and adequate directions and warnings for safe use including a warning against use when any person or animal is in the vicinity of the intended play or target area. (iii). Are not sold by toy stores or store departments dealing predominantly in toys and other children's articles.

A petition for judicial review of this regulation was filed by a lawn dart manufacturer, and the regulation was upheld. *R.B. Jarts, Inc. v. Richardson*, 438 F.2d 846 (2d Cir. 1971).

Since May of 1973, when the responsibility for administering the FHSA was transferred to the Commission, the Commission has periodically inspected samples of lawn dart labeling and instructions and surveyed marketing practices for lawn darts to determine whether the manufacturers, importers, and sellers of lawn darts are complying with the Commission's regulations under the FHSA.

The ban of lawn darts is codified in section 1500.18(a)(4) of Title 16 of the Code of Federal Regulations ("CFR"). The exemption quoted above for those lawn darts that have the specified labeling and instructions and that are not marketed in toy stores or in store departments dealing predominantly in children's articles is codified at 16 CFR 1500.86(a)(3).

In 1984, the Commission received reports that lawn darts were being sold in certain toy stores. As a result, the Commission's staff inspected at least 77 retail stores and found seven stores that were selling lawn darts in violation of the ban and exemption. Of the seven violative retail stores, six were toy stores, and three of these were part of the same nationwide chain. Products of four lawn dart importers had labeling violations. The retail sales and labeling violations discovered by these inspections were corrected, and the Commission issued a consumer safety alert in July 1985 warning of the hazards of letting children play with lawn darts.

In June 1987, the Commission's staff examined the labeling on lawn darts marketed by 14 firms, and products from all 14 firms were found to have labeling violations. Products of eight of the firms were considered to have serious labeling violations, *i.e.*, no required warning statement on the front panel of the package. Other labeling violations included one or more of the following: the types size of the required warning statement was smaller than that specified in the exemption, the warning statement was absent from the instructions or was not printed with a borderline as required, and the instructions lacked clear and adequate directions and warning for safe use.

In addition, Commission field investigators visited 122 retail stores around the country. Included in the 122 stores were 38 toy stores, 60 variety or department stores, and 26 sporting goods stores. Fifty-three of the stores

[1] Chairman Terrence Scanlon and Commissioner Anne Graham approved the proposal. Commissioner Carol Dawson dissented from the decision to propose this rule. Statements of the Commissioners concerning this vote may be obtained from the Office of the Secretary.

were selling lawn darts, and 18 of these were displaying the product with or in close proximity to toys or sporting goods intended primarily for children.

As a result, the Commission's compliance staff met on July 17, 1987, with importers and manufacturers of lawn darts; a representative from the Sporting Goods Manufacturers Association also attended that meeting. At the meeting, the staff discussed five voluntary actions that could be taken by the firms to help assure compliance with the exemption from the ban and to increase consumer awareness of the hazards associated with lawn darts in the hands of children. These actions were:

1. The front panel warning label should be modified to make it more conspicuous and readable. The recommended front panel warning label reads as follows:

**Warning:** Not a toy for use by children. May cause serious or fatal head injury.
Keep out of reach of children. Read instructions carefully.

2. Place a warning label on one fin of each lawn dart in a color that contracts with the fin. (The industry attendees at the July 17, 1987, meeting indicated that they would achieve contrast by means other than color, such as by contrasting texture.) The recommended label would state:

**Warning:** Not a toy for use by children. Can cause serious or fatal head injury.
Keep children away from throwing area.

3. Change the design of lawn darts to prevent modification, or include a warning against modification with the instructions. The Commission recommended the following language for warning consumers against modifying lawn darts:

**Warning:** Do not modify or change the lawn darts in any way.
Modification or changes can make the dart more hazardous.

4. Include information on how to display lawn darts with each shipment of lawn darts to retailers. The Commission recommended the following statement:

**Important Safety Information:** It is **Illegal** to sell lawn darts in toy stores or in store departments which sell toys or other articles for children.
**Do Not** display lawn darts in sporting goods departments near sports equipment intended primarily for children.
Promote lawn darts for **Adult Use Only.**
Children have been injured and killed by lawn darts.

5. Stop packaging lawn darts in combination sets with other games.

After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known domestic manufacturer and the company that distributes its products. These letters went both to those who attended the meeting and to those who did not attend. The letters described the five voluntary actions and asked the firms to state in writing whether they were willing to take the actions requested. A total of 20 firms received letters, including additional importers of lawn darts that were identified between July and September.

Nineteen of the firms responded in writing or by telephone. Seven firms stated that they would carry out the five requests (except for the contrasting color on lawn dart fins); several of these firms requested additional slight modifications of the terms.

Two major firms stated in writing that they would carry out only the first four requests. One of these firms also stated that it was in favor of the Commission making mandatory all of the voluntary actions which were requested.

Two firms stated general support for the voluntary actions the compliance staff had requested, but did not address the specific requests. Eight firms stated that they intended to stop importing lawn darts.

On July 30, 1987, the Commission issued a news release about lawn dart injuries and deaths. In the release, the Commission provides details on the existing ban, the exemption, and the hazard and resulting injuries. The release urges consumers to keep lawn darts away from children and asks consumers to report violations of the ban or exemption to the Commission.

On October 1, 1987, the Commission met to consider what actions are appropriate to address the continuing injuries and deaths to children that occur when children play with lawn darts. By a unamimous vote, the Commission decided at its October 1, 1987, meeting to issue an ANPR indicating that the Commission might, among other actions, either require the five actions requested of industry at the July 17, 1987, meeting with the staff or ban all lawn dart and similar pointed objects usually intended for outdoor use and having the capacity for causing puncture wound injuries.

The Commission indicated that whatever action ultimately would be taken would take into account the results of a surveillance program to be conducted by the Commission's staff three months after publication of the ANPR; the object of the surveillance was to determine if the industry is in substantial compliance with the existing regulations and with the actions requested at the July 17, 1987, meeting described above. The Commission stated further that its final action would also depend upon an evaluation of whether such voluntary or mandatory standards, if enforced, could be expected to protect consumers from unreasonable risk of injuries.

The staff was further directed to vigorously enforce the current FHSA provisions on lawn darts and to issue a consumer alert annually. The Commission has recently brought two cases in U.S. District Courts against major retail chains for lawn dart violations. In one of these cases, the defendant signed a consent decree to settle the Commission's concerns about the distribution of noncomplying lawn darts. The other case is still pending.

In addition, the Commission requested the U.S. Customs Service to consider including lawn darts in the Operation Toyland program. This will enable CPSC and the Customs Service to examine incoming shipments of lawn darts.

The staff also was directed to begin immediately preparing an injury update, human factors analysis, economic cost/benefit report, possible medical evaluation of data, and other relevant data and analysis that would be needed to determine whether further regulatory action for lawn darts is appropriate.

In response to this direction, the Commission staff visited 112 retail stores to determine compliance with the current restrictions on the sale of lawn darts. Of these 112 stores, only 31 were selling lawn darts. Twenty-nine of the 31 were variety or department stores, one was a toy store, and one was a sporting goods store. Of the 31 stores selling lawn darts, 14 were in violation of lawn dart requirements. Violations consisted of displaying lawn darts for sale in a toy store or toy department (8 stores) or offering lawn darts for sale that violated labeling requirements (8 stores). Two stores were committing both types of violations.

The staff also identified 18 importers or manufacturers of lawn darts. Of these, 17 firms were distributing, or had recently distributed, lawn darts with labeling violations. Ten of these firm indicated that they do not intend to import, manufacture, or sell lawn darts in the future. Seven firms are known to intend to continue to import lawn darts.

With regard to whether the firms were willing to implement voluntarily the five actions requested at the July 17, 1987, meeting, one firm indicated that it will not comply voluntarily with the requests. Except for one firm that was undecided about whether it would sell lawn darts in combination sets with other games, the remainder or the

companies indicated that they would comply with the five requests on various, and sometimes indefinite, schedules.

The ANPR was published on October 20, 1987. 52 FR 38935 (October 20, 1987).

**B. The Product and the Scope of the Rule**

Lawn darts are devices that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground point first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The types of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft, about ¼ inch in diameter, which may or may not have a pointed tip. These darts have a shaft on the rear of the body to which plastic fins are attached. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown.

Recently, the Commission has become aware of two additional types of games using devices that could fall within the general understanding of the term lawn darts. One type uses a soft, usually plastic, body with an approximately hemispherical mushroom- or tulip-shaped head of relatively large diameter that is weighted so that the large end impacts the ground. This type of "dart" is not intended to stick in the ground on impact, and the Commission's staff concludes that this type does not present a significant risk of skull puncture injuries.

The other recent type of lawn dart resembles the shape of the older type of lawn dart, but is lighter and the tip is made of a relatively soft and flexible material of about the consistency of a pencil eraser. Furthermore, the tip is mounted in a flexible base so that the tip as a whole can also flex. This type of dart is not intended to stick, nor capable of sticking, in the ground, and the staff does not believe that this type of dart presents a significant risk of skull puncture injuries. These darts are designed to be used with a target that will entrap a dart that falls on the target.

The Commission does not believe that it is feasible to describe a set of physical characteristics for darts that are capable of causing skull puncture injuries, because of the large number of combinations of weight, materials, tip diameter, tip shape, etc., that could be used to perform the function of sticking in the ground. Nevertheless, there is a common thread that connects the darts that can cause skull puncture injuries to children; all these darts are intended to stick in the ground. Conversely, the known darts that are not intended to stick in the ground are believed to be incapable of causing skull puncture injuries under reasonably foreseeable circumstances.

The Commission therefore has decided to apply the proposed rule to "lawn darts that have a rigid elongated tip and that are intended to be used outdoors and thrown into the air so that they will stick in the ground, as well as similar products for outdoor use that are thrown in the same manner and are capable of sticking in the ground." The express inclusion of both darts intended to stick in the ground and darts capable of sticking in the ground is intended to preclude arguments about subjective or unexpressed intentions.

The definition given above is not intended to include such items as arrows, horseshoes, javelins, penknives, and the like, nor is the intended to apply to indoor dart games that use a vertically-placed target, such as "English darts" or "American darts." It does cover the type of current lawn darts that is intended to stick in the ground, and it does not cover the two types of lawn "darts" described above that are not intended to stick, nor capable of sticking, in the ground.

The proposed rule does not require the repurchase of prohibited lawns darts by manufacturers, marketers, or retailers who have sold the darts to the next entity in the chain of distribution or to consumers.

**C. Risk of Injury**

The risk that the Commission intends to address in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. As mentioned above, the potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enought to present an obvious danger of puncture. The combined factors of weight, the rigid shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact present the risk.

The Commission's staff has predicted the potential for skull puncture injury by applying a mathematical model originally developed for bullets to estimate the probability of penetration of the skull by lawn darts with metal tips. The model estimates these penetration probabilities for various lawn dart parameters, such as tip diameter, dart weight, drop height, and skull thickness. From this model, a typical lawn dart weighing approximately ¼ lb., with a metal tip with a diameter of 0.5 cm (0.2"), and dropping from a height of 12 feet was estimated to have a probability of penetration of 37 percent for the average skull thickness of male and female children 3 years of age. It is reasonable to expect that a lawn dart would reach a height of twelve feet above a child's head during normal use. The probability of penetration increased to 92 percent for the minimum skull thickness of a three-year-old.

As discussed in Section B of this notice, the Commission has concluded preliminarily that lawn darts that are intended to stick in the ground all have the potential for skull puncture during reasonably foreseeable use or misuse.

The elimination of lawn darts that can cause skull puncture injuries can be expected to also eliminate, or greatly reduce in severity, the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries, that have been associated with lawn darts in the past.

The Commission's staff estimates that about 6,700 injuries from lawn darts were treated in U.S. hospital emergency rooms between January 1978 and December 1987. This represents an average of 670 injuries per year treated in emergency rooms. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Approximately 4 percent of the injured victims were hospitalized (on the average, approximately 25 per year), including all of the injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old.

In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

**D. Statutory Authorities**

If lawn darts as a class are deemed to be articles intended for use by children, the darts would be regulated under the provisions of the FHSA for mechanical

hazards of children's products. Sec. 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D); Sec. 30(d) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2079(d). If at least some lawn darts were deemed to be children's products, while other lawn darts might not be children's products, a regulatory proceeding to address all lawn darts could be conducted either under both the CPSA and the FHSA or under the CPSA alone, after a finding that it is in the public interest to do so as provided in Section 30(d) of the CPSA.

An article intended for use by children which has been declared by rule to be a hazardous substance is banned under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), unless exempted. To effect a ban of lawn darts under the FHSA, the Commission would revoke the exemption at 16 C.F.R. 1500.86(a)(3) and make any necessary changes in the terms of the general ban at 16 C.F.R. 1500.18(a)(4).

The Commission is authorized, under section 7 of the CPSA, to promulgate a mandatory consumer product safety standard which sets forth certain performance requirements for a consumer product or which sets forth certain requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk or injury. In addition, if the Commission finds that no feasible consumer product standard under section 7 would adequately protect consumers from an unreasonable risk or injury associated with lawn darts, the Commission may promulgate a rule under section 8 of the CPSA declaring some or all lawn darts to be banned products. 15 U.S.C. 2057.

The procedures and requisite findings to accomplish any of the mandatory regulatory alternatives under consideration under either or both acts are essentially the same; both acts use a three-stage rulemaking procedure. At each stage of the rulemaking, the Commission is required to consider certain topics and make specified findings, particularly about the status of voluntary standards and about the costs and benefits of the contemplated rule.

The requirements for promulgating a mandatory rule are set out in section 9 of the CPSA, 15 U.S.C. 2058, and section 3(f) of the FHSA, 15 U.S.C. 1262(f). An advance notice of proposed rulemaking ("ANPR") is the first step of a regulatory proceeding that could lead to a safety rule. As described above, this step has already taken place. The second step of the rulemaking procedure, which is accomplished by the publication of this notice, is the issuance of a proposed rule, which is followed by public comment on the proposal. All comments and submissions should be provided to the Office of the Secretary, at the address given at the beginning of this notice, no later than August 29, 1988. The third step is the issuance of a final rule.

### E. Responses to the ANPR

The Commission received 11 comments on the ANPR that was published in the **Federal Register** on October 20, 1987. One was from a trade association representing lawn dart manufacturers, distributors, and retailers; one was from a major consumer organization; two were from state governments; three were from manufacturers of lawn darts; and four were from individuals. The major points raised by these comments, and the Commission's responses to those points, are discussed below.

The trade association stated its intention to develop a voluntary standard. However, for reasons discussed below in Section F of this notice, the Commission has preliminarily determined that there is no feasible standard that can adequately reduce the risk of skull puncture injuries associated with the lawn darts addressed by this proposed rule.

Two of the three manufacturers stated that the lead time given in the ANPR for the five actions that the Commission had requested of industry was not sufficient to allow for an orderly changeover. Since the Commission has preliminarily determined that these actions will not adequately reduce the risk of skull punctures, for the reasons stated in Section F of this notice, these comments are now moot.

The third manufacturer, and two of the individuals, believe that the current regulation is sufficient to address the hazard. They state that in many cases the accidents are attributable to consumer misuse and abuse. For the reasons stated in Section F of this notice, the Commission has determined that the current regulation is not sufficient to adequately reduce the risk of skull puncture injuries. The accidents that are occurring result from the type of play that youngsters predictably will engage in when playing with these types of lawn darts. While the most serious types of accidents are rare, they result from the characteristics of the product and from the known behavioral characteristics of the children who can be expected to play with them. The Commission does not agree that the deaths and serious injuries to children that are caused by the characteristics of the product itself when used in predictable ways by children can be properly dismissed as resulting from consumer abuse or misuse.

One state government Department of Consumer Protection supported making the five requested actions mandatory. However, as mentioned above, the Commission has determined that these actions will not adequately address the problem. This department also stated that the regulatory options should be coupled with ongoing enforcement of the current regulations. The Commission agrees with this comment and, as described above, has directed the staff to vigorously enforce the current regulations pending the completion of this rulemaking. This organization also urged that the Commission proceed with rulemaking under both the CPSA and FHSA, rather than under the CPSA alone. As explained below in Section F of this notice, the Commission is proposing this course in order to prohibit the sale of all lawn darts, and not only those lawn darts that the Commission can establish are intended for use by children.

The consumer organization, the second state government, and the other two individuals support a ban of lawn darts, which is the action the Commission has decided to propose.

### F. Preliminary Regulatory Analysis

*Introduction.* The Commission has preliminarily determined that even lawn darts that arguably are intended for the use of adults are likely to be used by children at various times. Accordingly, for the reasons explained in Section D of this notice, the Commission is preparing to take action under both the FHSA and the CPSA, so as to reach all lawn darts that present a risk of skull puncture injuries to children and to eliminate potential arguments about whether any lawn darts can be validly considered to be intended for use by adults.

Under section 3(h) of the Federal Hazardous Substances Act ("FHSA") and Section 9(c) of the Consumer Product Safety Act ("CPSA"), the Commission is required to prepare a preliminary regulatory analysis containing

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection [(f)(5) of the FHSA and (a)(5) of the CPSA] was not published by the Commission as the

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proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection [(f)(6) of the FHSA and (a)(6) of the CPSA] and assisted by the Commission as required by section 5(a)(3) of the Consumer Product Safety Act would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection [(f)(1) of the FHSA and (a)(1) of the CPSA]; and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

15 U.S.C. 1261(h), 2058(c).

While the requirements under the FHSA and the CPSA are similar, Section 9 of the CPSA also requires that, for rules issued under the CPSA, the Commission shall make economic findings with respect to:

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule on the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

15 U.S.C. 2058(f)(1).

The following discussion addresses requirements under both the FHSA and CPSA, except where noted.

*Potential benefits.* The potential benefits of the rule will accrue through a decrease in the deaths and injuries associated with lawn darts. While the rule is intended to address the risk of skull puncture injuries to children, the elimination of the rigid, heavy, and elongated-tipped lawn darts that can cause skull puncture injuries should also eliminate the punctures of other parts of the body and greatly reduce in severity the lacerations, fractures, and other injuries that have been associated with lawn darts in the past. Therefore, while there may be some injuries in the future from substitute products that may also be called lawn darts, for the purposes of this analysis the Commission is taking the benefits of the rule to be the complete elimination of lawn dart injuries that have been caused by the lawn darts that would be prohibited by the rule being proposed.

A recent analysis by the Commission's Directorate for Epidemiology indicates that about 670 lawn-dart-related injuries have occurred annually over the last ten years. Economic studies indicate that the average cost of these injuries was about $7,500 per occurrence. The estimated total yearly cost of injuries associated with lawn darts is about $5 million.

The Commission is aware of 3 deaths associated with lawn darts over the period 1970–1987. If it is assumed that other variables, such as exposure and use characteristics, have remained constant and that the Commission is aware of all such deaths, the games may present a 17 percent risk of one death in a given year. If a statistical valuation of $2 million for loss of life were assigned, lawn darts would have additional expected losses of about $300,000 per year.

Therefore, the estimated total yearly costs of death and injury associated with lawn darts are about $5.4 million. A reduction of these injuries and of the risk of death will make up the benefits accruing from the rule. Since the average useful life of a lawn dart is estimated to be ten years, and since it should take about 20 years to phase out the lawn darts that are currently in consumers' hands, a portion of the benefits of the proposed rule will phase in each year, until, after the 20 years, the full benefit of the rule will accrue each year and will continue as long as the rule is in effect.

The benefits derived would be further affected by the choice of substitute. For example, if consumers chose a risk-free lawn game as a substitute, the reduction in injury would be completely realized after the existing stocks of elongated-tipped lawn darts in consumers' hands have become worn out, been misplaced, or otherwise passed from use. However, if consumers choose a substitute with a similar or higher risk to death or injury, the expected benefits of this action would be offset.

The benefits would be to purchasing consumers and their families and friends, but would accrue disproportionately to those 15 years old or younger, since over 75 percent of injuries and 100 percent of the deaths have occurred to this age group. Both the costs and benefits associated with a prohibition on the sale of elongated-tipped lawn darts are expected to be relatively small.

*Potential costs.* The potential costs of the proposed rule to marketers of elongated-tipped lawn darts are the loss of future sales of a product with a demonstrated steady demand. Annual sales of these lawn darts are estimated at 1-1.5 million units, holding relatively stable in recent years. The typical retail price of a set of four lawn darts is about $5; thus, the total loss of sales will be about $5—7.5 million annually at the retail level. The intermediate and final markups of these products have been estimated at more than 50 percent of the retail price; thus, industry revenues from the sale of elongated-tipped lawn darts likely exceed $2.5 million annually. These revenues would be eliminated if those products are prohibited. However, the loss of these revenues could be largely recouped by sales of substitute products that will occupy the display and storage space previously allotted to lawn darts.

The vast majority of lawn darts sold in the U.S. are imported. However, the value of these imports is so small as to be negligible compared to total U.S. imports. There are no known U.S. exports of lawn darts. Thus, the proposed rule is expected to have no effect on U.S. trade.

The one known domestic manufacturer will bear costs associated with the disposal of molds and production processes associated with the manufacture of these lawn darts as well as foregone profit on future sales. The manufacturer could product lawn darts for export; this is considered unlikely since the firm does not now export lawn darts and is unlikely to develop overseas markets rapidly. If production machinery is adaptable to the manufacture of another product for which there is a demand, the cost effect may be minimized. If molds and machinery are scrapped, and no available substitute is produced to offset lost sales, the domestic manufacturer may incur significant economic costs.

The impact of lost sales of elongated tipped lawn darts would be the loss of net profit associated with production and marketing of these products, less any profits derived from other products marketed in their stead.

The distributional effect on marketers would depend on their share of the market and on what share they may take of the sale of substitute products. Importers and retailers will similarly be affected by the extent of the relative volumes they sell of these goods.

Costs borne by consumers will take two forms. Consumers would be unable to purchase a game which has a proven popularity, and would be induced to purchase alternate games to fill that demand. There are ready subtitutes available, at approximately the same price; however, it is not clear whether these substitutes provide a similar level of utility (enjoyment) as the products

they would replace. If consumers are compelled to purchase more costly games in order to receive the same utility as that provided by elongated-tipped lawn darts, the rule may result in increased costs to consumers. Further, there may be a loss in consumer surplus associated with the unavailability of lawn darts if consumers were willing to pay more than retail for the game in order to acquire it, thus indicating that they value the product in excess of the retail price. The extent of any lost consumer surplus is unknown, but is expected to be small.

The Commission has anecdotal information indicating that elderly persons may play lawn darts more than other typical adults do. The Commission has no information to indicate the extent to which handicapped persons may play lawn darts. Either of these groups, however, should be able to find suitable recreational substitutes for lawn darts.

The domestic manufacturer and certain marketers and retailers may be considered small businesses. The overall effect of the proposed rule on the domestic manufacturer is expected to be substantial, but other small businesses are not expected to experience significant adverse effects associated with the proposed rule. This issue is discussed further in Section G of this notice.

It is likely that the marketing firms (wholesalers and private labelers) will initially bear the costs associated with the rule. The costs, including those of retrieval and disposal of unsaleable inventories and foregone profits, would begin on the effective date, which, as discussed below, is being proposed to be 30 days after publication of the final rule and would apply to all products in the chain of distribution at that time.

The Commission expects that it will be able to consider the comments on the proposed rule and issue a final rule, if appropriate, in November or December of 1988. As described below, the Commission is proposing an effective date of 30 days after the publication of a final rule, and the rule would apply to all lawn darts in the chain of distribution on the effective date. This will minimize the potential for injuries from darts distributed before the effective date. Also, the Commission believes that at this time of year there will be fewer sets of lawn darts at the retail level or elsewhere in the chain of distribution. Furthermore, the industry will have had the opportunity not to enter into contracts for new goods pending a Commission decision, thus further reducing any inventory in the chain of distribution and other economic consequences of the rule. Therefore, the Commission believes that costs caused by inventory being held on the effective date of the rule will not be substantial.

The Commission also does not expect that the cost to retailers due to foregone profits from the sale of lawn darts subject to the rule would be substantial, since other products could be promoted in the retail space vacated by the prohibited products.

*Comparison of costs and benefits.* As explained above, the quantifiable benefits of the proposed rule are based on an estimated saving of the $5.4 million annual cost of deaths and injuries once lawn darts are no longer in use. This figure could be offset to the extent that consumers choose to engage in activities that involve risk during the time they would otherwise be playing lawn darts.

The quantifiable costs would consist basically of lost industry revenues, which are estimated at somewhat more than $2.5 million per year. However, the loss of these revenues can be largely recouped by the manufacture and sale of substitute items. Unquantifiable costs, discussed above, include consumers' loss of enjoyment of lawn darts.

After considering the costs and benefits of the proposed rule, the Commission preliminarily concludes that the benefits of the proposed rule will bear a reasonable relationship to its costs.

*Alternatives to the rule.* The Commission has determined that the proposed rule is needed because industry actions of the types discussed in Section A to address the potential hazard presented by lawn darts would not be adequate. The five actions previously under consideration are: modifications to package labels, labeling one fin of each lawn dart, inclusion of a consumer warning against modification of the lawn darts, notice to retailers on the proper display of the games, and elimination of lawn dart sales in combination sets. The cost of implementing the five steps has been estimated at $150,000 the first year, decreasing to about $100,000 thereafter. If the five voluntary steps were to be about 2 percent effective in reducing injuries, the benefits derived through injury reduction would exceed the costs associated with compliance. The Commission believes that these voluntary steps may not be adhered to by all marketers, and that this approach would not be effective in adequately reducing the risk of injury presented by these products.

In order to determine whether attempts to ensure that lawn darts will be marketed for adults, the Commission's staff analyzed information on consumer attitudes and behavior. The staff concluded that efforts to market lawn darts only for adult use may not prevent use by children, for the following reasons:

1. Selling lawn darts in stores other than toy stores, such as sporting goods departments, does not convey the message that lawn darts are for adult use only.

2. Consumers may recognize that lawn darts require motor and strategic skills similar to those required for other sports equipment designed for and/or used by children and, therefore, conclude that they are appropriate for children who have these skills.

3. Labeling lawn darts for adult use only may not convince parents that lawn darts are inappropriate for children. Parents may not consider the game particularly hazardous, especially in comparison to other products used by children.

4. It may be difficult for parents to prevent children from using lawn darts, as they are often used at large, casual gatherings with little or no supervision provided.

5. Parents sometimes have no knowledge that children are using lawn darts.

As a result of this analysis of consumer attitudes and behaviors, the staff concluded that efforts to market lawn darts for adult use only cannot be expected to completely preclude use by children. Specifically, the marketing and labeling provisions in the current regulations, either by themselves or supplemented by the five actions requested of industry by CPSC, cannot be expected to accomplish the intended purpose. Furthermore, lawn darts do not require complex skills which preclude use by children. Therefore, the Commission believes children will continue to be attracted to and play with lawn darts, even if the product is marketed only as a game of skill for adults. Accordingly, the Commission concludes that no effort to develop a voluntary standard based on these types of requirements will adequately reduce the risk associated with lawn darts.

The Commission could also promulgate the voluntary actions as a mandatory rule. The expected costs and benefits of a mandatory rule would be similar to the cost of voluntary action, assuming 100 percent compliance. This action would have the additional effect of ensuring compliance by existing marketers as well as any future entrants. However, the Commission's concerns over effectiveness, described in the preceding paragraph, would remain.

The Commission's staff also developed some performance criteria intended to help explore the potential for lawn darts to cause skull puncture injuries. These critiera involved dropping lawn darts onto a laminate constructed to approximate the puncture resistance of the skull. The Commission has not proposed these performance requirements because of the difficulty in establishing that the laminate will in fact function as an adequate indicator of the ability of a lawn dart to penetrate a child's skull. The Commission does not believe that it is feasible to develop sufficient evidence concerning the adequacy of this type of test in the near future. Also, the mathematical model originally developed for bullets has not been correlated to lawn darts to determine the accuracy of the model's predictions for this new application. Further, the model has not been tested to determine its applicability to lawn darts that have nonmetallic tips or tips that do not closely resemble the shape of bullets. Because of these difficulties, and because the Commission believes that action to eliminate the risk of skull puncture injuries is needed immediately, it concludes that performance requirements are not feasibile at this time. However, if the comments on the proposal or other information that may become available indicate that these or other performance requirements can adequately address this risk, the Commission wold reconsider this determination.

*Effective date.* The time allowed after promulgation for the final rule to go into effect, and the point in the chain of distribution to which the rule will be applied, will affect the extent to which the industry will experience adverse economic effects from the rule. These adverse effects could be minimized by setting an effective date that facilitates an orderly elimination of affected products from the marketplace. Such an effective date would allow for exhausting wholesale and retail inventories to reduce the number of products that would require shipment to an alternate market or which would have to be discarded. Absent sufficient lead times, manufacturers estimate the cost of compliance with the proposed rule may be substantial. However, as discussed in the next paragraph, the effect of lead time may depend on the time of the year the regulation goes into effect.

On the other hand, the longer the effective date, the more lawn darts could be sold and the greater the number of injuries or deaths which otherwise would have been prevented by an earlier effective date.

A final rule could be published as early as about October 30, 1988. The effective date could be as soon as 30 days after publication. Thus, a final rule may be effective as early as about December 1, 1988. However, if the rule were effective at this date, the firms could bear significantly increased costs because of contractual obligations to manufacturers, unless marketers took some anticipatory action. Winter and early spring historically are the periods of seasonal reorder and inventory buildup for seasonal sales of lawn darts.

As previously described, the Commission is proposing to have this rule become effective 30 days after the publication of a final rule; the rule would apply to all products in the chain of distribution on or after that date. However, the Commission has considered the potential effects of other effective dates on the industry and on possible future injuries.

If the rule were to affect only products manufactured (or imported) after the effective date, the most acute impact to marketers would occur if the effective date were during the winter and early spring period of reorder. However, in view of the probability that the Commission could take final action on the proposal in November of this year, it seems likely that marketers would delay placing such orders pending a Commission decision on the final rule. If the rule were based on first entry into commerce (first sale), marketers would be most adversely affected during the period of inventory buildup, which is early spring to midsummer. Again, marketers may curtail or delay inventory buildup in anticipation of the possibility that a final rule would apply to product in their inventory on the effective date.

### G. Regulatory Flexibility Analysis

*Introduction.* The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that agencies prepare and make available for public comment an initial regulatory flexibility analysis when a general notice of proposed rulemaking is published in the **Federal Register**. The analysis is required if the proposed rule may have a significant impact on a substantial number of small businesses, small organizations, and small government jurisdictions. The proposed mandatory rule for lawn darts applies to lawn darts capable of causing skull puncture injuries, and would affect all firms manufacturing, importing, or retailing these products, and may have a minor impact on some firms in the outdoor game industry that market lawn darts. Lawn darts represent about 5 percent of the total value of production of affected firms on the average, but individual firms indicate that these products represent as little as 1 percent and as much as 50 percent of gross revenue.

*Reasons for consideration of agency action.* Lawn darts intended for use by children are banned under the Federal Hazardous Substances Act, FHSA, at 16 CFR 1500.18(a)(4) and 1500.86(a)(3), but may continue to be sold under an exemption provision if certain warning labeling and retail display requirements are met. The Commission is concerned that, despite the existing regulation designed to discourage their use by children, lawn darts continue to be used by children. As a result, the products continue to present a risk of injury or death to children. Commission studies indicate that about 670 lawn dart-related injuries were treated in hospital emergency rooms yearly from 1978 forward; three deaths have been reported over a 17-year period.

*Objective of the rule.* The objective of the proposed rule is to eliminate the risk of injury or death to children posed by lawn darts. This would be accomplished by prohibiting the entry into commerce of those lawn darts which have the potential to cause skull puncture. The proposed rule would prohibit the sale of lawn darts, whether in sets of darts only or in combination with other outdoor lawn games.

*Legal basis of the proposed rule.* The legal basis for the proposed rule is described in Section D of this notice.

*Description of the requirements of the proposed rule.* The Commission is proposing to prohibit lawn darts with rigid elongated tips and that are intended to be thrown into the air so that they will stick into the ground. The proposed rule would not impose a specific design standard on these products but would eliminate current design, elongated-tipped lawn darts from the market, whether sold in combination sets or as separate games.

*Categories of consumer products to which the rule will apply.* The proposed rule would apply to lawn games using elongated-tipped devices commonly called "lawn darts." The rule would not apply to blunt-tipped mushroom-type (or "tulip") lawn darts, that are also currently offered for sale, but that are not considered to present a significant puncture risk to children.

*Entities to which the rule would apply.* In accordance with the Regulatory Flexibility Act, the Commission has considered the effect the proposed rule would have on small

entities. Of these, only small businesses would be affected; small organizations and government jurisdictions would not be affected. The proposed rule would affect importers, manufacturers, and retailers of lawn darts. Each of these business entities also markets other products which are not subject to the proposed rule.

*Potential economic effects of the proposed rule.* The manufacture of lawn darts is included in SIC industry classification 3949, "Sporting and Athletic Goods, not elsewhere classified," a grouping within the outdoor and athletic equipment sector. In 1982, there were 1,452 companies, operating 1,553 plants, in this grouping. The Commission has identified 20 marketers of lawn darts. One of these markets domestically-produced lawn darts; the remainder import these products from the Far East. Imports are estimated to account for the bulk of sales of these games. Five firms are considered to be the major suppliers of lawn darts. These firms account for an estimated 60 to 90 percent of total annual sales.

The Commission is aware of only one domestic producer of lawn darts; that firm's products are sold to retailers by a single domestic private labeler. The domestic manufacturer employs less than 50 workers, well within the size standard used by the Small Business Administration to describe small businesses. The firm accounts for a significant, though not the major, share of lawn dart sales. For the purpose of the RFA, the Commission is considering this company to be a small business.

The bulk of firms marketing lawn darts are importers, which at some times may distribute a diverse mix of products and at other times may concentrate on the marketing of sporting goods and games. The Commission is not aware of any importer that markets lawn darts exclusively. While several major retail chains import lawn darts directly for their retail operations, for the purpose of Regulatory Flexibility Act considerations, the Commission considers the bulk of importers to be small businesses.

*Effect of the proposed rule on small entities.* (1) *Producers.* The one identified domestic manufacturer of lawn darts, which produces the games under private label for use by a full-line marketer of outdoor games, reports that lawn darts account for 50 percent or more of its gross revenues. This manufacturer would experience a loss of up to 50 percent of its manufacturing revenues if it were unable to produce and market a substitute product that did not present a risk of skull puncture wounds, or if it were unable to export current design lawn darts in quantities similar to those now consumed in the U.S. market. The manufacturer reported that it also produces a "tulip" type lawn dart, but that the demand for this substitute has been relatively small. If sales of lawn darts that will not stick in the ground sufficiently offset the level of lost sales of the banned lawn darts, and if the cost and profit margin generated by the substitute were similar, there would not be a significant adverse effect on total revenues or the competitive position of the domestic manufacturer. While the Commission expects the demand for substitutes to rise, if sales of the substitute or of other items manufactured with the production capacity vacated by the lost production of lawn darts do not generate sufficient revenues, the domestic manufacturer would incur losses through foregone sales. The net loss may be greater than the proportionate loss in gross sales if the firm could not amortize overhead and other indirect costs of operation over the larger gross revenue base. It is unlikely that a foreign market for elongated-tipped lawn darts can be developed to replace all sales lost in the United States.

The proposed rule is considered likely to cause a significant adverse effect on this small business entity, but only in the short run.

(2) *Importers and distributors.* Lawn darts constitute an average of 5 percent or less of total revenues of affected importers and distributors. The proposed rule would have the effect of reducing gross revenues proportionate to the loss in sales of elongated-tipped lawn darts that is not recouped through the sale of a substitute product. Industry sources indicate that much of the demand for lawn darts is derived from a desire for an outdoor game rather than a specific demand for this product; if this perception is accurate, the Commission expects that the bulk of loss sales associated with the hazardous type of lawn game will be made up through the introduction of a substitute or the aggressive marketing of lawn darts that are not banned. A small adverse effect on importers and distributors is expected in the first year of the rule as a result of market mix adjustment. There likely would be no significant adverse effect on these entities thereafter.

The Commission concludes that the proposed rule would not significantly affect the operation or profitability of these firms.

(3) *Retailers.* Thousands of retailers sell lawn darts; many of these are small businesses. The proposed rule would eliminate one product to be offered for sale, with no measurable effect on overall sales or the profitability of retail establishments. The rule would not result in a competitive advantage, since lawn darts account for only a negligible proportion of any one retailer's sales. The Commission concludes that there will be no significant adverse effect on retailers.

*Alternatives to the proposed rule.* The Commission also could take other regulatory actions, including mandatory requirements for increased package labeling, a warning label on one fin of each lawn dart, notice to consumers warning against modification, informing retailers of their responsibilities under current law, and prohibiting the sale of lawn darts in combination sets. Such actions would notify adults of the danger presented by lawn darts if used by children, and would remove these games from combination sets since consumers otherwise may infer that all games in the sets are appropriate for general family use. This alternative would result in a minimal adverse effect in the year of introduction, with little cost effect thereafter. The Commission is concerned that this alternative will not be effective in reducing skull puncture injuries to children, given the easy access that children normally have to the game after it is purchased and the skill and judgment required to play the game safely. Similar effects would be expected if these actions were voluntarily adopted by the industry.

For the reasons discussed above, the Commission does not consider that a performance standard for lawn darts, whether a mathematical model or a drop-test onto a laminate, is feasible at this time.

The Commission could also use a different effective date. A Notice of Final Rulemaking could be published as early as about October 30, 1988. The effective date could be as soon as 30 days after publication of the final rule in the **Federal Register**. The effects of different effective dates are discussed in Section F of this notice.

The Commission has investigated ways of reducing the potential impact on small firms and preliminary concludes that no less burdensome alternative would adequately address the risk of injury to children.

### H. Environmental Impact

Pursuant to The National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has prepared a preliminary assessment of the

environmental impact associated with the proposed mandatory rule. The assessment addresses the potential environmental effects of the proposed prohibition of the sale of lawn darts.

The proposed rule would make preexisting packaging materials unusable for their intended purpose and, absent a residual use, would necessitate destruction of these materials. The Commission anticipates that less than 10 percent of preprinted packaging would remain after the imposition of the effective date; thus, less than about 150,000 boxes and printed instructions would be destroyed. The rule would also affect existing molds for fabricating lawn darts. There is one existing domestic manufacturer of lawn darts subject to the proposed rule; if the molds cannot be adapted to accommodate production of blunt-tipped lawn darts, the existing molds likely would be destroyed. The number of individual molds involved is not believed to be substantial.

An effective date sufficient to permit the exhaustion of existing inventories of noncomplying lawn darts is expected to result in no significant increase in discarded packaging material, other printed materials, or noncomplying sets.

In the industry, molds are periodically changed because of age or design modifications. Given the relatively small number of individual printing plates and molds affected, the Commission expects that the rule will cause no significant change in the disposal of used printing plate material or used molds.

The requirements of the rule are not expected to have a significant effect on the materials used in production of packaging of lawn darts, or on the amount of type of materials discarded after the rule. Therefore, the Commisson preliminary finds that the proposed mandatory rule on lawn darts will cause no siginficant environmental effects.

### I. Conclusion

For the reasons given above, the Commission preliminarily concludes that the lawn darts described in the rule proposed below present an unreasonable risk of skull puncture injuries to children from the mechanical characteristics of the darts. Further, it appears that there is no feasible consumer product safety standard that would adequately reduce this risk, and the rule proposed below is the least burdensome alternative that will adequately reduce the risk.

### List of Subjects in 16 CFR Parts 1306 and 1500

Consumer protection, recreation, voluntary standards.

Therefore, under the authority of the Federal Hazardous Substances Act and the Consumer Product Safety Act, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 1500 continues to read as follows:

**Authority:** 15 U.S.C. 1261–1276.

### § 1500.86 [Amended]

2. Section 1500.86(a)(3) is removed and reserved.

3. Section 1500.18(a)(4) is revised to read as follows: (Paragraph (a) introductory text is republished).

### § 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(4) Lawn darts that have a rigid elongated tip and that are intended to be used outdoors and thrown into the air so that they will stick in the ground, as well as similar products for outdoor use that are thrown in the same manner and are capable of sticking in the ground. The Commission has determined that the benefits expected from this regulation bear a reasonable relationship to its costs and that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of skull puncture injury to children.

4. A new part 1306 is added to read as follows:

## PART 1306—BAN OF HAZARDOUS LAWN DARTS.

Sec.

1306.1 Scope and application.
1306.2 Purpose.
1306.3 Banned hazardous products.
1306.4 Findings.
1306.5 Effective date.

**Authority:** 15 U.S.C. 2058–2060.

### § 1306.1 Scope and application.

(a) In this Part 1306, the Commission declares lawn darts and similar products, described in § 1306.3, that are intended to stick in the ground or capable of sticking into the ground, to be banned hazardous products.

(b) Lawn darts and similar products that are articles intended for use by children and that otherwise would be covered by this ban are not covered by this ban, but are banned under the Federal Hazardous Substances Act at 16 CFR 1500.18(a)(4).

### § 1306.2 Purpose.

The purpose of this rule is to prohibit the sale of lawn darts and similar products that present an unreasonable risk of skull puncture injuries to children.

### § 1306.3 Banned hazardous substances.

Any lawn dart that has a rigid elongated tip and that is intended to be used outdoors and thrown into the air so that it will stick in the ground, and any similar products for outdoor use that is thrown in the same manner and is capable of sticking in the ground, is a banned hazardous product.

### § 1306.4 Findings.

(a) The Commission has found that the products covered by this ban are being distributed in commerce and present an unreasonable risk of injury.

(b) *The degree and nature of the risk of injury.* (1) The risk that the Commission intends to address in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. The potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enough to present an obvious danger of puncture. The combined factors of weight, the rigid shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact present the risk. The Commission has concluded that lawn darts that are intended to stick in the ground all have the potential for skull puncture during reasonably foreseeable use or misuse.

(2) The elimination of lawn darts that can cause skull puncture injuries can be expected to also eliminate, or greatly reduce in severity, the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries that have been associated with lawn darts in the past. The Commission's staff estimates that about 670 injuries from lawn darts are treated in U.S. hospital emergency rooms per year. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Approximately 4 percent of the injured

victims were hospitalized (on the average, approximately 25 per year), including all of the injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old. In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

(c) *Products subject to this ban.* (1) Lawn darts are devices that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground point first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The types of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft, above ¼ inch in diameter, which may or may not have a pointed tip. These darts have a shaft on the rear of the body containing plastic fins. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown. Prior to this rule, annual sales of these lawn darts were estimated at 1–1.5 million units.

(2) The Commission has become aware of two additional general types of games using devices that could fall within the general understanding of the term lawn darts.

(i) One type uses a soft, usually plastic, body with an approximately hemispherical mushroom- or tulip-shaped head of relatively large diameter that is weighted so that the large end impacts the ground. This type of "dart" is not intended to stick in the ground on impact, and the Commission concludes that this type does not present a significant risk of skull puncture injuries.

(ii) The other type of lawn dart that the Commission does not believe presents a significant risk of skull puncture injuries resembles the shape of the older type of lawn dart, but is lighter and the tip is made of a relatively soft and flexible material of about the consistency of a pencil eraser. Furthermore, the tip is mounted in a flexible base so that the tip as a whole can also flex. This type of dart is not intended to stick, nor is it capable of sticking, in the ground. These darts are designed to be used with a target that will entrap a dart that falls on the target.

(3) The Commission does not believe that it is feasible to describe a set of physical characteristics for darts that are capable of causing skull puncture injuries, because of the large number of combinations of weight, materials, tip diameter, tip shape, etc., that could be used to perform the function of sticking in the ground. Nevertheless, there is a common thread that connects the darts that can cause skull puncture injuries to children; all these darts are intended to stick in the ground. Conversely, the known darts that are not intended to stick in the ground are believed to be incapable of causing skull puncture injuries under reasonably foreseeable circumstances.

(4) The definition for lawn darts in this rule is not intended to include arrows or horseshoes, nor is it intended to apply to indoor dart games that user a vertically-placed target, such as "English darts" or "American darts." It does not cover the two types of "darts" described above that are not intended to stick, nor capable of sticking, in the ground.

(d) *The need of the public for lawn darts, and the effects of the rule on their utility, cost, and availability.* The need of the public for lawn darts is for recreational enjoyment. Products similar to lawn darts but that are not intended to stick in the ground and are not capable of causing skull puncture injuries will continue to be available. Also, substitute recreational enjoyment can be obtained from other products. Lawn darts subject to the rule will not be available through commercial channels after the effective date of the ban.

(e) *Alternatives.* (1) The Commission considered various labeling requirements and limitations on the marketing of lawn darts that would be intended to discourage the marketing of the product to children and the use of the product by children. The Commission concluded, however, that these types of requirements would not preclude completely the use of the product by children and would not reduce adequately the risk of injury addressed by this rule.

(2) The Commission also considered the possibility of performance requirements for lawn darts to determine which lawn darts present an unreasonable risk of injury of skull penetration to children. The Commission concluded that this alternative is not feasible because of the difficulty, and length of time required, in determining whether performance requirement adequately identify the risk.

(f) *Conclusion.* The Commission finds:

(1) That this rule, including its effective date, is reasonably necessary to eliminate or adequately reduce the unreasonable risk of skull puncture wounds to children associated with lawn darts.

(2) That issuance of the rule is in the public interest.

(3) That no feasible consumer product safety standard would adequately protect the public from the unreasonable risk associated with lawn darts.

(4) That the benefits expected from this rule bear a reasonable relationship to its costs.

(5) That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

**§ 1306.5 Effective date.**

This rule is effective [insert date 30 days after publication of final rule] and applies to all lawn darts in the chain of distribution on or after that date.

Dated: July 19, 1988.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

**List of Relevant Documents**

[This list will not be published in the Code of Federal Regulations.]

Letter from David Snow to Sen. Albert Gore, May 21, 1987.

Letter from David Snow, June 4, 1987.

Letter from David Schmeltzer, AED/CAL, to various persons associated with the lawn dart industry to invite them to a meeting on July 17, 1987; July 2, 1987.

Memorandum from Schmeltzer, D., AED/CA, to Noble, D., Director, OPMB, "Lawn Darts," dated July 15, 1987, with attachments.

Attachment A—Proposed Ban of Lawn Darts, **Federal Register**, Vol. 35, No. 223, November 17, 1970.

Final rule on Lawn Dart Ban and Exemption, **Federal Register**, Vol. 35, No. 246, December 19, 1970.

Attachment B—Memorandum from Karels, T.R., ECSS, to Nelson, D., CARM, "Lawn Darts—PSA #2804", dated June 22, 1987.

Attachment C—Memorandum from Kennedy, J., EPHF, to Nelson, C., CARM, "PSA 2826; Lawn darts in Combination Game Sets," July 13, 1987.

Memorandum of July 17, 1987, meeting.

Letter from David Snow to Chairman Terrence Scanlon, July 18, 1987.

Memorandum to CPSC Regional Centers from Robert G. Poth, CARM, "Request to Notify Retail Stores of Noncomplying and Questionable Law Dart Sales Practices," July 22, 1987.

Letter from David Snow to K-Mart International Headquarters, July 26, 1987.

Letter from David Schmeltzer to AEDCA, to persons invited to the July 17, 1987, meeting who did not attend; July 27, 1987.
Letter from David Schmeltzer, AED/CAL, to persons who attended the July 17, 1987, meeting, July 26, 1987.
CPSC News Release: "Lawn Darts Can Cause Serious or Fatal Head Injuries and Death", Released July 30, 1987.
Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.
Letter to David Snow from David Schmeltzer, AED Compliance and Administrative Litigation, August 6, 1987.
Letter from Marcella V. Ridenour, Dept. of Physical Education, Temple University, to John Preston, CPSC, transmitting the following material on lawn darts:
1. Patent 2,976,042 (March 21, 1961).
2. *First National Bank of Dwight v. Regent Sports Corp.*, 7th Cir. No. 85–2834 (October 22, 1986).
3. *Trial*, "Lawn darts: a dangerous game," February 1985.

Memorandum from John Preston, ESMT, to Chris Nelson, CARM, "Response to PSA Request No. 2837", August 11, 1987.
Memorandum from Warren A. Mathers, EPHF, to Christine Nelson, CARM, "PSA 2846; Lawn Darts—Develop Labeling Criteria," August 13, 1987.
Letter from David Snow to David Schmeltzer, AED/CAL, August 18, 1987.
Memorandum from Koeser, R., to Tyrrell, E.A., OPMB, "Lawn Dart Options Package", August 19, 1987.
Materials for June-July Compliance Status Briefing, August 20, 1987.
Memorandum from Ulsamer, A.G., to Tyrrell, E.A., EX-PB, "HS Recommendations on Lawn Darts", August 20, 1987.
Memorandum from Tinsworth, D., and Crigler, W., EPHA, to Tyrrell, E., EX-PB, "Lawn Dart Injury Data", August 21, 1987.
Memorandum from John D. Preston, ESMT, to Elaine A. Tyrrell, EX-PB, "ES Comments on Options Package for Lawn Darts," August 21, 1987.
Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Option Package", August 27, 1987.
Memorandum from Dale R. Ray, ECPA, to Elaine Tyrrell, OPMB, "Lawn Darts," August 27, 1987.
Memorandum from Walton, W.W., ES, to Tyrrell, E., EXPM, "Lawn Darts Option Package", August 28, 1987.
Memorandum from Bob Poth, CARM, to Elaine Tyrrell, OPM, "Lawn Darts Option Package," September 1, 1987.
Briefing package from Elaine Tyrrell, Project Manager, to the Commission, September 10, 1987, with attachments:
Tab A—Memorandum from D. Schmeltzer, AED/CA, to Noble, D., OPMB, "Lawn Darts," with attachments, July 15, 1987.
Tab B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, E., EX–PB, "Lawn Dart Injury Data," August 21, 1987.
Tab C—Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs." August 4, 1987.
Tab D—CPSC News Release July 30, 1987.
Tab E—Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Law Darts Options Package," August 28, 1987.
Tab F—Memorandum from Ulsamer, A., to Tyrrell, E., EX–PB, HS Recommendations on "Lawn Darts," August 20, 1987.
—Memorandum from Koeser, R., to Tyrrell, E., OPMB, "Lawn Dart Options Package," August 19, 1987.
—Memorandum from Ray, D., ECPA, to Tyrrell, E., OPMB, "Lawn Darts," August 27, 1987.

Letter to John R. Fanone, Esq., from Robert G. Poth, CARM, September 11, 1987.
Commission vote sheet on lawn darts options, September 16, 1987.
CPSC staff memorandum from Douglas L. Noble, Acting AED for Compliance and Administrative Litigation, to the Commission, "Lawn Darts Options Package—Update of CPSC's Investigation and Industry's Response to Requested Voluntary Actions," with restricted attachment, September 16, 1987.
Memorandum from Paul H. Rubin, AED for Economic Analysis, to the Commission, "Lawn Darts Options Package," September 16, 1987.
Materials for lawn dart update briefing, September 17, 1987.
Transcript, Commission meeting of September 17, 1987 (43 pp.).
Petition from David A. Snow asking that the CPSC ban lawn darts (Petition HP 87–3), received in the Office of the Secretary September 23, 1987.
Memorandum from Robert G. Poth, CARM, to Elaine A.Tyrrell, Project Manager, "Enforcement Resources Associated with Options 1 & 2 of Lawn Darts Options Package of September 10, 1987," September 23, 1987.
Memorandum of Ross Koeser, Acting AEDFO, from Elizabeth Hendricks, FO, "Lawn Dart Surveillance by States," September 25, 1987.
Memorandum from OPMB, "Follow-Up Information Requested at the Briefing of September 17, 1987, dated September 28, 1987, with attachments.
Memorandum from Robert G. Poth, CARM, to Elaine Tyrrell, Project Manager, "Enforcement Resources Associated with Options 1 & 2 of Lawn Darts Options Package of September 10, 1987," September 23, 1987.
Memorandum from Dale R. Ray, ECPA, to Elaine Tyrrell, OPMB, "Project Resource Estimate," September 21, 1987.
Memorandum from Andrew G. Ulsamer, AED/HS, to Elaine Tyrrell, Project Manager, "Health Sciences Resources for Law Dart Options," September 21, 1987.
Minutes of Commission meeting, October 1, 1987.
Transcription of portion of October 1, 1987, Commission meeting (1 p.).
Statement of Commissioner Anne Graham on lawn dart decision, October 2, 1987.
Letter from James V. Lacy, General Counsel, to David Snow, October 6, 1987.
Log of telephone conversation between Douglas Noble, CPSC, and Milton Bush of the Sporting Goods Manufacturing Association, October 6, 1987.
Memo record from John Preston, ESMT, to Pat Fairall, ESMT, "Voluntary Standard for Lawn Darts," October 8, 1987.
Log of a conversation between Nick Marchica and Elaine Tyrrell, CPSC, and Milton Bush, SGMA, October 13, 1987.
Transcript of Commission meeting of October 15, 1987.
Federal Register notice, "Lawn Darts; Advance Notice of Proposed Rulemaking; Request for Comments and Data," 52 FR 38935 (October 20, 1987).
Letter from the Secretary of the Commission to David Snow, advising of the status of Petition HP 87–3, November 3, 1987.
Log of a telephone conversation between James V. Lacy, General Counsel, and Milton Bush of the Sporting Goods Manufacturers Association (SGMA), November 4, 1987.
Letter dated November 5, 1987, to James V. Lacy, General Counsel, from Milton Bush, SGMA.
Letter from James V. Lacy, General Counsel to Milton M. Bush, SGMA, November 13, 1987.
Memorandum from John Preston, ESMT, to Elaine Tyrrell, EX–PB, "ES Resources/ Tasks Concerning Rulemaking on Lawn Darts," undated.
Memorandum from D. Schmeltzer, AEDCA, to Elaine Tyrrell, OPMB, "Lawn Darts," February 5, 1988.
Briefing package from Elaine Tyrrell, OPMB, to the Commission, "Lawn Darts: Follow-Up to Advance Notice of Proposed Rulemaking (ANPR)," February 8, 1988, with attachments:
Tab A—Copy of ANPR.
Tab B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, EXPM, "Lawn Dart Injuries," January 20, 1988.
Tab C—Memorandum from Deppa, S.W., and White, S., EPHF, to Tyrrell, E.A., EX–PB, "Evaluation of Lawn Dart Provision Effectiveness," January 29, 1988.
Tab D—Memorandum from Karels, T.R., ECSS, to Tyrrell, E., EX–P, "Lawn Darts," January 20, 1988.
Tab E—Memorandum from Nelson, C., CARM, to Tyrrell, E., OPMB, "Lawn Dart Compliance Survey," January 20, 1988.
Tab F—Log of meeting held by the Sporting Goods Manufacturers Association (SGMA) with industry representatives on lawn darts, December 10, 1987.
Tab G—Public comments in response to the ANPR:
A. Letter from Bush, M., Esq., Sporting Goods Manufacturers Association, December 17, 1987.
B. Comments of Consumer Federation of America, submitted by M. Fise, December 21, 1987.
C. Letter to the Editor from C. Mesneck, September 29, 1987.
D. Letter from Heslin, M., Connecticut Department of Consumer Protection, December 8, 1987.
E. Letter from Vultaggio, S., Regent Sports Corp., to D. Schmeltzer, CPSC, November 10, 1987.
F. Letter from G. Hostetler, November 10, 1987.

G. Letter from S. Coberly, November 3, 1987.
H. Letter from R. Lamontagne, November 16, 1987.
I. Letter from P. Spaeth, New York State Department of Law, to Doug Noble, CPSC, October 8, 1987.
J. Letter from C. Bouris, December 1, 1987.
K. Letter from R. Archer, Kent Sporting Goods Co., Inc., to D. Schmeltzer, CPSC, November 9, 1987.
Tab H—Memorandum from D. Shifflet, OIPA, to Noble, D., OPMB, "Lawn Dart Consumer Alert," February 2, 1988.
Additional comments on lawn darts:

*Commenter* and *Date*

Carl Meseck, September 29, 1987
N. Mease, October 29, 1987
H. Hatch, October 5, 1987
Rochester City Council, January 20, 1988
Consumer Federation of America, March 7, 1988
New York Department of Law, March 24, 1988
Commission vote sheet on lawn darts options, February 9, 1988.
Minutes of Commission meeting of March 2, 1988.
CPSC news release, "CPSC to Continue Its Formal Rulemaking Process on Lawn Darts," March 2, 1988.
Anne Graham, Commissioner, "Statement on Lawn Dart Decision," March 2, 1988.
Memorandum from Jack Kramer, EPHA, to Elaine Tyrrell, EXPM, "Lawn Darts: Head and Eye Injuries," March 30, 1988.
News from CPSC, "CPSC sues Sears to halt improper sale of lawn darts; Sears agrees to stop all sales," March 30, 1988.
Letter from D. Schmeltzer, AEDCA, to , National Retail Merchants Association, April 19, 1988.
Commission ballot vote sheet, "Lawn Darts—Additional Option," April 21, 1988.
Memorandum from Douglas L. Noble, OPMB, to the Commission, "Lawn Darts," April 22, 1988, with attached memorandum from John Preston, ESMT, "A Test to Define the Scope of a Ban of Lawn Darts," April 21, 1988.
Report from Eric Allely, M.D., "An Approximation of the Probability of Penetration of the Human Skull by a Lawn Dart," with a cover letter, April 25, 1988.
Log of meeting of new ASTM task group for lawn darts on May 3, 1988, prepared by John Preston, ESMT.
Memorandum from Purohit, V., and Cohn, M., HSHE, "The probability of penetration of a child's skull by a lawn dart," May 16, 1988.
Letter from Jan Kinney, SGMA to Wendy Dyer, ASTM, May 16, 1988.
Minutes of Commission meeting of May 17, 1988.
Memorandum from Jack Kramer, EPHA, to Elaine Tyrrell, OPMB, "Lawn Dart Injuries," May 24, 1988.
Minutes of Commission meeting of May 25, 1988.
Statement by Commissioner Anne Graham on decision to ban lawn darts, May 25, 1988.
Statement of Chairman Terrence Scanlon on lawn darts, May 25, 1988.
Opinion of Commissioner Carole G. Dawson regarding Commission action to ban lawn darts, May 25, 1988.
Memo record from Jack Kramer, EPHA, to Elaine Tyrrell, EXPM, "Lawn Darts," May 26, 1988.
Karels, T., "Preliminary Regulatory Analyses, Economic and Environmental Assessments — Proposed Mandatory Rules on Lawn Darts," June 1988.
Karels, T., "Initial Regulatory Flexibility Analysis of a Mandatory Rule for Lawn Darts," June 1988.
Letter from David Snow to Commissioner Carol Dawson, June 9, 1988.
Memorandum from Christine Nelson, CARM to Carl Blechschmidt, OPMB, "Proposed Ban of Lawn Darts," June 28, 1988.
Vote sheet from Harleigh Ewell, OGC, to the Commission "Draft **Federal Register** Notice to Propose a Prohibition of The Sale of Lawn Darts," June 30, 1988.
Memorandum to the Commission from Carl Blechschmidt, Program Manager, "Notice of Proposed Rulemaking for Lawn Darts," June 30, 1988, with attachments:
Tab A—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Initial Regulatory Flexibility Analysis: Lawn Darts," June 28, 1988.
—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Preliminary Regulatory Analyses and Assessments — Lawn Darts," June 28, 1988.
Tab B—Draft Federal Register notice.
Minutes of Commission meeting, July 13, 1988.
News from CPSC, "CPSC obtains consent decree to halt improper sale of lawn darts," July 18, 1988.

*In-depth Investigation Reports:*

760603BEP7002
760615BEP7009
760727BEP7009
790709BEP0033
790709BEP0034
790712BEP0007
790716BEP0002
790726BEP0038
790801BEP0007
800809BEP0002
840716CBC3338
840719CBC1283
841107DAL5011
850304BEP0008
870415WES9054
870824CAA0177
870916CAA0145
871007CEN0008
871221CAA0061
871222CAA0082
880112CAA097
880318CAA0245
880321CEN0740
880330BEP0002
880401CAA0278
880406WES4004
880413CAA0288
880413CAA0289
880415CAA0302
A05476
A16275
A21284
A33558
A43934
A43935
A43936
A43938

*Reported Incident File:*

B880020A1
C1A0102A1
C320025A1
C4A5021A1
G4A0154A1
C835013A1
C7A0028
D450030A1
G001589
G860556A1
H190670A1
H847023
H847045
H885051A1
H891442A1
1058342
N0782792
X281330A1
X341002A1
X491009A1
X893311A1
X961003A1
X78479A1
H350192A1

Investigation of lawndart injury, June 25, 1974.

[FR Doc. 88-16643 Filed 7-28-88; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 301

[LR-133-86]

## Proposed Rulemaking; Returns Relating to Persons Receiving Contracts From Federal Executive Agencies

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 6050M of the Internal Revenue Code ("Code"), which was added to the Code by the Tax Reform Act of 1986, requires Federal executive agencies to make a return to the Internal Revenue Service reporting the name, address, and taxpayer identification number (TIN) of each person with which the agency enters into a contract, together with any other information required by Treasury regulations. This document contains proposed rules concerning compliance with the new reporting requirements imposed by section 6050M.

**DATES:**

**Proposed Effective Date**

The regulations are proposed to be effective on the date the Treasury Decision is published in the **Federal Register** and are proposed to apply to contracts of Federal executive agencies obligating more than $25,000 entered into on or after October 1, 1988, or for which the amount obligated is increased by more than $25,000 on or after that date.

**Dates For Comments And Requests For A Public Hearing**

Written comments and requests for a public hearing must be mailed by August 29, 1988.

**ADDRESS:** Send comments or requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-133-86], Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone (202) 566-3458 (not a toll-free number).

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**SUPPLEMENTARY INFORMATION:**

**Background**

This document proposes regulations to be added to the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under section 6050M of the Internal Revenue Code of 1986. These proposed rules provide the needed guidance for complying with the provisions of section 6050M, which was enacted by section 1522 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2085).

**Explanation of Provisions**

Section 6050M requires the head of every Federal executive agency to file an information return with the Internal Revenue Service setting forth the name, address and TIN of each person with which that agency enters into a contract, as well as any other information prescribed under Treasury regulations. The information returns filed under section 6050M will be used as a source of information to collect delinquent Federal tax liabilities of persons who enter into contracts with Federal executive agencies.

In addition to the information specifically required by section 6050M, the proposed rules require other information that will facilitate the collection of delinquent Federal tax liabilities to be reported to the Internal Revenue Service. Included in the category of additional items are the expected date of completion of the contract as determined under any reasonable method (such as the expected contract delivery date under the contract schedule) and the total amount obligated under the contract action.

The proposed rules define the term "contract" to mean an obligation of a Federal executive agency to make payment of money (or other property) to a person in return for the sale of property, the rendering of services, or other consideration. The term "contract", however, does not include a license granted by a Federal executive agency, an obligation of a contractor (other than a Federal executive agency) to subcontractor, a debt instrument of the United States Government or of a Federal agency, or an obligation of a Federal executive agency to lend money, lease propoerty to a lessee, or sell property.

Pursuant to the authority of section 6050M (d), it is proposed that contracts or contract actions for which the amount obligated is $25,000 or less do not have to be reported. Because the propose of section 6050M is to provide the Internal Revenue Service with a source of information for collection, certain categories of contracts that will be of minimal use for this purpose are proposed to be excluded from the reporting requirements. Contracts with another Federal governmental unit or with a foreign, state, or local government (or an agency or instrumentality thereof) would not have to be reported. Additionally, no reporting would be required for any contract the terms of which provide that all amounts payable under the contract by any Federal executive agency will be paid within the 120 days following the date of the contract action, and for which it is reasonable to expect that all amounts will be so paid.

For contracts entered into on or after October 1, 1988, (or with respect to which there are contract actions required to be reported on or after that date) it is proposed that the information required to be reported to the Internal Revenue Service under section 6050M must be reported on a quarterly basis (calendar quarters). Generally, it is proposed that the information with respect to contracts entered into during a calendar quarter must be submitted on magnetic media to the Service on or before the last day of the calendar month following the quarter. A special reporting rule permitting the use of paper reporting on Form 8596 is provided for those Federal executive agencies that reasonably expect to enter into fewer than 250 contracts to be reported for a calendar year. To the extent permitted in future guidance relating to section 6050M, those Federal executive agencies that would be required to use magnetic media would be permitted to submit more than one return per quarter where each separate submission covers all of the contracts and contract actions required to be reported for the quarter for one or more readily identifiable operating functions of the Federal executive agency.

If a Federal executive agency reports all the information that the Internal Revenue Service requires with respect to one or more contracts to the Federal Procurement Data System, it is proposed that the agency may elect to have the Director of the Federal Procurement Data Center make, on its behalf, the return required with respect to all such contracts.

These rules are proposed to apply to Federal executive agencies with respect to their contracts (and their contract actions treated as contracts under paragraph (e) of the regulations) entered into on or after October 1, 1988. The Internal Revenue Service proposes to reserve on the issue of reporting by Federal executive agencies regarding their contracts (and their contract actions treated as contracts under paragraph (e) of the regulations) entered into before October 1, 1988.

The reporting requirements proposed in this document are slightly different from those set forth in Notice 87–1, which was published in Internal Revenue Bulletin 1987–1, dated January 5, 1987. To the extent there is a difference, the rules proposed in this document, which are less burdensome than those in Notice 87–1, would be controlling, if adopted.

**Special Analyses**

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the rules provided herein are interpretative. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

**Comments and Requests For a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Thomas J. Kane of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both in matters of substance and style.

**List of Subjects**

*26 CFR Part 1.6001–1—1.6109–2*

Income taxes, Administration and procedures, Filing requirements.

*26 CFR Part 301*

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR Parts 1 and 301 are proposed to be amended as follows:

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

**Paragraph 1.** The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.6050M–1 also issued under 26 U.S.C. 6050M.

**Par. 2.** A new § 1.6050M–1 is added to read as follows:

**§ 1.6050M–1 Information returns relating to persons receiving contracts from certain Federal executive agencies.**

(a) *General rule.* Except as otherwise provided in paragraph (c) of this section, the head of every Federal executive agency or his or her delegate shall make an information return to the Internal Revenue Service reporting the following information with respect to each contract entered into by that Federal executive agency:

(1) Name and address of the person with whom the contract is made ("contractor");

(2) Contractor's TIN and, if the contractor is a member of an affiliated group of corporations that flies its Federal income tax returns on a consolidated basis, the name and TIN of the common parent of the affiliated group;

(3) The date of the contract action;

(4) The expected date of completion of the contract as determined under any reasonable method, such as the expected contract delivery date under the contract schedule;

(5) The total amount obligated under the contract action;

(6) Any other information required by Forms 8596 and 8596A and their instructions, or by any other administrative guidance issued by the Internal Revenue Service (such as a revenue procedure).

See paragraph (e) of this section relating to the manner in which to report increases in amounts obligated under existing contracts. See paragraph (d)(5) of this section for special rules for agencies that submit contract information to the Federal Procurement Data Center.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Federal executive agency.* The term "Federal executive agency" means—

(i) Any executive agency (as defined in 5 U.S.C. 105) other than the General Accounting Office;

(ii) Any military department (as defined in 5 U.S.C. 102); and

(iii) The United States Postal Service and the Postal Rate Commission.

(2) *Contract*—(i) *General rule.* The term "contract" means an obligation of a Federal executive agency to make payment of money (or other property) to a person in return for the sale of property, the rendering of services, or other consideration. The term "contract" includes, for example, such an obligation arising from a written agreement executed by the agency and the contractor, an award or notice of award, a job order or task letter issued under a basic ordering agreement, a letter contract, an order that becomes effective only upon written acceptance or performance, or a bilateral increase in amount obligated of a type described in paragraph (e) of this section.

(ii) *Exceptions.* For purposes of this section, the term "contract" does not include—

(A) A license granted by a Federal executive agency;

(B) An obligation of a contractor (other than a Federal executive agency) to a subcontractor;

(C) A debt instrument of the United States Government or a Federal agency, such as a treasury note, treasury bond, treasury bill, savings bond, or similar instrument; or

(D) An obligation of a Federal executive agency to lend money, lease property to a leasee, or sell property.

(iii) *Special rule for certain minority contracts administered by the Small Business Administration.* Any agreement entered into by the Small Business Administration ("SBA") as "prime contractor" on behalf of a procuring agency which is a Federal executive agency pursuant to the administration of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall not be treated as a contract of the procuring agency for purposes of this section.

(iv) *Certain schedule contracts.* For purposes of this section—

(A) A Federal Supply Schedule Contract entered into by the General Services Administration,

(B) An automated Data Processing Schedule Contract entered into by the General Services Administration, or

(C) A schedule contract entered into by the Veterans Administration on behalf of one or more Federal executive agencies is not a "contract" to be reported by the General Services Administration or the Veterans Administration at the time of execution. Instead, an order placed by a Federal executive agency, including the General Services Administration or the Veterans Administration, under such a schedule contract is a "contract" for purposes of this section.

(v) *Blanket purchase agreements.* For purposes of this section, the term "contract" does not include a blanket purchase agreement between one or more Federal executive agencies and a contractor. Instead, an order placed by a Federal executive agency under the terms of a blanket purchase agreement is a "contract" for purposes of this section.

(3) *Contractor.* The term "contractor" means any person who enters into a contract with a Federal executive agency.

(4) *Person and TIN.* The terms "person" and "TIN" are defined in sections 7701(a) (1) and (41), respectively.

(c) *Exceptions to information reporting requirements.* The following do not need to be reported pursuant to this section:

(1) Any contract or contract action for which the amount obligated is $25,000 or less;

(2) Any contract with a contractor who, in making the agreement, is acting in his or her capacity as an employee of a Federal executive agency (*e.g.*, any contract of employment under which the employee is paid wages subject to the withholding provisions contained in Chapter 24 of Subtitle C);

(3) Any contract between a Federal executive agency and another Federal governmental unit (or agency or instrumentality thereof);

(4) Any contract with a foreign government (or any agency or instrumentality thereof);

(5) Any contract with a state or local governmental unit (or any agency or instrumentality thereof);

(6) Any contract with a person who is not required to have a TIN (see, for example, § 301.6109–1(g));

(7) Any contract the terms of which provide that all amounts payable under the contract by any Federal executive agency will be paid on or before the 120th day following the date of the contract action, and for which it is

reasonable to expect that all amounts will be so paid.

(d) *Filing requirements*—(1) *Frequency and time for filing.* The information returns required by this section with respect to contracts of a Federal executive agency entered into or after October 1, 1988, must be filed on a quarterly basis for the calendar quarters ending on the last day of March, June, September and December. Except as provided in paragraph (d)(5) of this section, the returns for contracts entered into during a calender quarter must be filed on or before the last day of the month following that quarter.

(2) *Form of reporting*—(i) *General rule concerning magnetic media.* The information returns required by this section with respect to contracts of a Federal executive agency for each calendar quarter shall be made in one submission (or in multiple submissions if permitted by paragraph (d)(4) of this section). Except as provided in paragraph (d)(2)(ii) of this section, the required return shall be made on magnetic media (within the meaning of § 301.6011–2) in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service for the filing of such returns under section 6050M.

(ii) *Magnetic media exception for low-volume filers.* Any Federal executive agency that on any October 1 has a reasonable expectation of entering into, during the one year period beginning on that date, fewer than 250 contracts that are subject to the reporting requirements under this section may make the information returns required by this section for each quarter of that one year period on the prescribed paper Form 8596 under penalties of perjury in accordance with the instructions accompanying such form.

(3) *Place of filing*—(i) *Returns on magnetic media.* Information returns made under this section on magnetic media shall be filed with the Internal Revenue Service at the National Computer Center, Martinsburg, West Virginia 25401, in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service relating to the filing of returns under section 6050M.

(ii) *Form 8596.* Information returns made on Form 8596 shall be filed with the Internal Revenue Service at the location specified in the instructions for that form.

(4) *Special rule concerning multiple returns.* To the extent permitted in any revenue procedure or other guidance relating to the filing of information returns under this section, a Federal executive agency which files information returns under this section on magnetic media may make more than one magnetic media submission for any quarter, if each submission for that quarter contains all of the information required by paragraph (a) of this section for one or more departments, branches, bureaus, agencies, or other readily identifiable operating functions (such as a geographic region) of the Federal executive agency.

(5) *Special rules for agencies reporting to the Federal Procurement Data Center*—(i) *Election to have the Director of the Federal Procurement Data Center make return on behalf of agency.* If, in complying with the requirements of the Federal Procurement Data System (FPDS) (as established under the authority of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 401 *et seq.*), a Federal executive agency submits to the Federal Procurement Data Center (FPDC) all the information with respect to one or more contracts required to be reported by paragraph (a) of this section, that Federal executive agency may, in lieu of making a return directly to the Internal Revenue Service with respect to those contracts, elect to have the Director of the FPDC (or his or her delegate) make the required return with respect to all of those contracts on its behalf. In order to make this election for contracts entered into during a calendar quarter, the head of a Federal executive agency (or his or her delegate) shall attach to its submission to the FPDC for that quarter a signed statement to the effect that (A) the Director of the FPDC (or his or her delegate) is authorized on the agency's behalf to make the return required by 26 CFR 1.6050M–1 for that quarter, and (B) the information provided by the agency for use by the FPDC in making that return is declared, under the penalties of perjury, to be, to the best of his or her knowledge and belief, true, correct, and complete. If the election is made, the Director of the FPDC (or his or her delegate) shall, on the electing agency's behalf, make the return required by paragraph (a) of this section with respect to the contracts to which the election applies.

(ii) *Time, manner, and place of filing.* The Director of the FPDC (or his or her delegate) must—

(A) Make the return on or before the earlier of—

(*1*) 45 days following the date that the contract information is required to be submitted to the FPDC, or

(*2*) 90 days following the end of the calendar quarter for which the election is made, except that, if that calendar quarter ends September 30, 105 days following the end of that quarter, and

(B) Comply with paragraphs (d) (2)(i) and (3)(i) of this section, relating to form and place of filing.

(iii) *Contracts reported directly to the Internal Revenue Service.* Even if the election is made, all information with respect to any particular contract required to be reported under paragraph (a) of this section must be reported directly to the Internal Revenue Service by the electing agency if that information is not submitted to the FPDC. An electing agency shall not make a direct return to the Internal Revenue Service of the contract information subject to the election.

(e) *Special rules relating to increases in amount obligated.* If, through the exercise of an option contained in a basic or initial contract or under any other rule of contract law, express or implied, the amount of money or other property obligated under the contract is increased by more than $25,000, then that action shall be treated as the entering into of a new contract with respect to which the information required by paragraph (a) of this section is to be reported to the Internal Revenue Service for the calendar quarter in which the increase occurs.

(f) *Effective date*—(1) *Contracts entered into on or after October 1, 1988.* This section applies to each Federal executive agency with respect to (i) its contracts entered into on or after October 1, 1988, and (ii) its contract actions occurring on or after October 1, 1988, that are treated as new contracts under paragraph (e) of this section.

(2) *Contracts entered into before October 1, 1988.* [Reserved]

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 3.** The authority citation for Part 301 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805; * * *
§ 301.6050M–1 is also issued under 26 U.S.C. 6050M.

**Par. 4.** A new § 301.6050M–1 is added to read as follows:

### § 301.6050M–1 Information returns relating to persons receiving contracts from certain Federal executive agencies (temporary).

For provisions relating to the requirements of returns of information relating to persons receiving contracts from certain Federal executive agencies,

see § 1.6050M–1 of this chapter (Income Tax Regulations).

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 88–17134 Filed 7–27–88; 11:19 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Part 75

### Automatic Emergency-Parking Brakes for Rubber-Tired, Self-Propelled Electric Face Equipment; Extension of Comment Period

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule for automatic emergency-parking brakes for rubber-tired, self-propelled electric face equipment in 30 CFR Part 75.

**DATE:** Written comments on the proposed rule for automatic emergency-parking brakes must be received on or before August 29, 1988.

**ADDRESS:** Send comments to Office of Standards, Regulations and Variances; MSHA; Room 631, Baliston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

**SUPPLEMENTARY INFORMATION:** On March 1, 1988, MSHA published a proposed safety standard that would require automatic emergency-parking brakes on rubber-tired, self-propelled electric face equipment used underground coal mines (53 FR 6512). The automatic emergency/parking brakes described in the proposal engage when there is a loss of power to such equipment, and could be activated by the equipment operator in an emergency situation. The brakes also act automatically as a parking brake when the equipment is intentionally deenergized. The standard was proposed under section 101 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811).

On June 16, 1988, MSHA published in the **Federal Register** (53 FR 22502) a Notice of Public Hearings which stated that the record would remain open until July 29, 1988 for the submission of post hearing comments. Due to requests from the mining community, MSHA is extending the comment period to August 29, 1988. All interested parties are encouraged to submit comments prior to this date.

Dated: July 21, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards Regulations and Variances.*

[FR Doc. 88–17007 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–43–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 88–312, RM–6127 and RM–6135]**

### Radio Broadcasting Services; Pearl and Magee, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action requests comments on two petitions for rule making. The petitions are mutually exclusive. Colon Johnson requests the allotment of FM Channel 230A to Pearl, Mississippi. There is a site restriction 7.1 kilometers (4.4 miles) northeast of the community, at coordinates 32–15–07 and 90–03–41. Airwaves Company proposes the allotment of Channel 230A to Magee, Mississippi. The allotment of Channel 230A at Magee is contingent on the grant of a license to Station WXLT, Channel 231C2, McComb, Mississippi. Should Channel 230A be allotted to Magee, the opening of a window for the filing of applications will be delayed until the grant of a covering license for the Macomb Station's constuction permit. The coordinates for Channel 230A at Magee are 31–52–18 and 89–43–54.

**DATES:** Comments must be filed on or before Agust 26, 1988, and reply comments on or before September 12, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Colon Johnson, 20 Nelson Circle, Jackson, Mississippi 39212

Mr. Bob R. Kidd, Airwaves Company, P.O. Box 976, Rayvile, Louisiana 71269

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–312, adopted May 25, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory FlexibilityAct of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte contact.*

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17111 Filed 7–28–88; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 53, No. 146
Friday, July 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

## ENVIRONMENTAL PROTECTION AGENCY

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 88-110]

### Conference on Scientific Issues Related to Transgenic Plants

**AGENCIES:** Animal and Plant Health Inspection Service, USDA; Environmental Protection Agency; Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Animal and Plant Health Inspection Service (APHIS), the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) are jointly sponsoring a conference on scientific issues associated with the development of transgenic plants intended to be used for food and other commercial purposes. This conference will provide an opportunity for participants from governments, academia, industry, and consumer/environmental groups to discuss the current scientific issues regarding such plants.

**DATES:** The conference will be held September 7–9, 1988, in Annapolis, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, APHIS, USDA, 6505 Belcrest Road, Federal Building, Room 406, Hyattsville, Maryland 20782, Area Code (301) 436–7602; Office of Toxic Substances, TSCA Assistance Office, (TS–799), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Area Code (202) 554–1404; James Maryanski, Biotechnology Coordinator, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFF–334), 200 C Street, SW., Washington, DC 20204, Area Code (202) 426–8950.

**SUPPLEMENTARY INFORMATION:**

### Background

Plant scientists have a distinguished history of developing new agricultural crops through classical methods of plant breeding and selection. In addition to traditional methods, scientists are using recent advances such as recombinant DNA and cell fusion to develop new varieties of agricultural crops. Recently, field tests have been conducted on certain genetically modified (i.e., transgenic) plants that have been engineered to be insect or disease resistant or to be tolerant to herbicides. These field tests have been limited in size and scope and have been conducted for the purpose of obtaining efficacy data prior to large scale planting. In addition, agricultural research programs are under way to improve the nutritional quality of food crops and to develop commercial crops with other desirable characteristics.

Because of the rapid progress of science and the public focus on biotechnology, the United States Department of Agriculture via the Animal and Plant Health Inspection Service, the Environmental Protection Agency, and the Food and Drug Administration are jointly sponsoring a conferece on scientific issues associated with transgenic plants that are intended to be used for food and other commercial purposes. The conference will provide an opportunity for participants from government, academia, industry, consumer and environmental groups to discuss the current scientific issues regarding such plants.

The conference format will include presentations by scientific experts in the various fields related to research and development of transgenic plants. Small interactive work group sessions will provide an opportunity for participants to further discuss the scientific issues associated with these plants.

Attendance will be limited to available space. Notices of the meeting have been sent to prospective participants representing industry, academia, and consumer and environmental interest groups. However, a limited number of openings have been reserved for other interested persons with similar expertise. Interested persons should contact one of the persons listed under "FOR FURTHER INFORMATION CONTACT." Summaries of the proceedings from the conference will be available after the conference and may be obtained by contacting one of the persons listed under "FOR FURTHER INFORMATION CONTACT."

The following are examples of issues that will be addressed at the conference.

1. What kinds of transgenic plants are being developed, and what techniques are being used in their development?

2. What aspects of the techniques of molecular biology may raise issues such as the possibility of transfer of genetic material to unintended hosts?

3. What issues should be addressed in assessing possible effects on human health?

4. What genetic alterations in the plant might lead to the creation or introduction of new pests or to enhanced susceptibility to existing pests?

5. What isues should be addressed in assessing the effects on the environment of transgenic plants?

Dated: July 19, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

Dated: July 21, 1988.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency.*

Dated: July 26, 1988.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88–17232 Filed 7–28–88; 8:45 am]
BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration.

*Title:* Numerical Control Units, Numerically Controlled Machine Tools, Dimensional Inspection Machines, Direct Numerical Control Systems, Specially Designed Assemblies, and Specially Designed Software.

*Form Number:* Agency—EAR 376.11; OMB–0694–0024 (formerly 0625–0152).

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 132 respondents; 66 reporting hours. Average hours per response-one-half hour.

*Needs and Uses:* When a license application is received to export numerically controlled items to the People's Republic of China or Communist-bloc countries, certain technical information on the transaction must be provided. The licensing officer needs this information so that he/she can be certain that the item to be exported has no military or nuclear end-uses.

*Affected Public:* Businesses or other for-profit institutions; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 21, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17123 Filed 7–28–88; 8:45 am]

BILLING CODE 3510-CW-M

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## Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration.

*Title:* Foreign Buyer Program: Application, Exhibition Data, and Evaluation.

*Form Numbers:* Agency—ITA–4014P, 4015P, and 4102P, OMB—0625–0151.

*Type Of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 6,600 respondents; 1,382 reporting hours.

*Average Hours Per Response:* ITA–4014P—10 minutes; ITA–4015P—10 minutes; ITA–4102P—3 hours.

*Needs And Uses:* The International Trade Administration (ITA) runs the Foreign Buyer Program (FBP) to encourage foreign buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The application is the vehicle used by a potential show organizer to provide (1) his experience, (2) ability to meet the special conditions of the Foreign Buyer Program and (3) information about the domestic trade show such as number of U.S. exhibitors and percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in a FBP domestic trade show and used to list the firm and its product in an Export Interest Directory which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of foreign buyers to attend the show. The exhibitor evaluation is sent to U.S. exhibitors after the show to determine the results of ITA's efforts to bring together foreign buyers and U.S. firms.

*Affected Public:* Businesses or other for profit; small businesses or organizations.

*Frequency:* On occasion; annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 21, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17073 Filed 7–28–88; 8:45 am]

BILLING CODE 3510-CW-M

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## Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration.

*Title:* COMMERCIAL NEWS USA/ Export Product Promotion.

*Form Numbers:* Agency—ITA–4063P, OMB—0625–0061.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 2,200 respondents; 917 reporting hours.

*Average Hours Per Response:* 25 minutes.

*Needs And Uses:* The International Trade Administration (ITA) publishes the COMMERCIAL NEWS USA (CNUSA) which promotes U.S. firms' products in overseas markets. The application form is the vehicle used (1) by U.S. firms to provide information on the general new and/or industry-specific products which it wants promoted overseas; (2) to determine if the products meet program criteria, and (3), to request the results of each company's publicity in CNUSA one year after publication.

*Affected Public:* Businesses or other for profit; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

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Dated: July 21, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-17074 Filed 7-28-88; 8:45 am]

BILLING CODE 3510-CW-M

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## Export Administration

**[Docket No. 7108-01, 7108-02]**

## Actions Affecting Export Privileges; Anton Elzer, Individually and d/b/a Development and Consultant, Elzer ECO AB

### Summary

Pursuant to the June 23, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Anton Elzer, with an address at Avesgarde 15, S-417 Gothenburg, Sweden, is denied for a period of twenty (20) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368-369).

### Order

On June 23, 1988, the Administrative Law Judge entered his recommended Decision and Order in the above-referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: July 25, 1988.

**Paul Freedenberg,**

*Under Secretary for the Bureau of Export Administration.*

### Decision and Order

Appearance for Respondent: Anton Elzer (pro se), Avesgarde 15, S-417 44 Gothenburg Sweden.

Appearance for Agency: Joan L. MacKenzie, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, Washington, DC 20230.

### Preliminary Statement

On August 14, 1987, the Office of Export Enforcement (OEE), United States Department of Commerce (Agency), issued a charging letter to Respondent Anton Elzer individually and doing business as Development and Consultant Elzer ECO AB (hereinafter referred to as "Elzer"). The charging letter alleges that Respondent violated §§ 387.3, 387.4, 387.5, and 387.6 of the Export Administration Regulations (15 CFR Parts 368-399), (the Regulations), issued pursuant to the Export Administration Act of 1979 (50 U.S.C. 2401-2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act).

Respondent filed an answer to the initial charging letter which was received by this office on August 31, 1987. Pursuant to § 388.14 of the Regulations, this matter is adjudicated on the record without a hearing. Both Agency Counsel and Respondent made written submissions to the record, which closed on December 19, 1987.

### Background

The scheme to divert U.S. technology to the U.S.S.R. appears to have been directed by Goran Josberg, individually and doing business as Globe Metals, ("Josberg"), who has been a denied party since December 1983. His *modus operandi* has been to use other willing partners such as Respondent Elzer to obtain goods for his Soviet customers and to engage in coverup schemes to hide the transactions. A former employee of Josberg, Lennert Appelberg, told the Department of Commerce's Export Control Attaché in meetings on April 24, 1985 and about May 3, 1985 that he was a "front" man for Josberg. According to Appelberg, Josberg often traveled to the U.S.S.R. and negotiated with the Soviets for delivery of the desired U.S. technology. Appelberg's duties were to then the U.S. technology for Josberg and Globe Metals to divert to the East Bloc. Appelberg stated that Josberg bragged openly about the fact that he has been able to divert large quantities of U.S. technology through Sweden and other countries since 1982 or 1983, even though he was on the table of denied parties.

Another employee of Josberg, Rolf Carrick, provided a specific example of how Josberg operated. According to Carrick, Appelberg bought a computer for Josberg, for ulitimate sale to Josberg's Soviet customer. Josberg then paid a Swedish lawyer a fee to answer inquiries on the end-use of the computer, to the effect that he intended to use it for word-processing, when the lawyer had no intention to buy the computer at all. Thus, while Josberg directed which goods to buy for his Soviet customers, he remained behind the scene. The evidence shows that Elzer knowingly played the same kind of role as Appelberg and the lawyer in Sweden, to obtain the WAS 3000s for Josberg's Soviet customers in the two transactions involved in this case, while Josberg directed the operations from the shadows.

### Facts

The evidence shows that Elzer participated in a conspiracy to order a U.S.-origin WAS 3000 airstream modulator, attempted to conceal by a paper diversion through Singapore, and transshipped it through Sweden for reexport to the U.S.S.R.

In the first transaction, Elzer ordered a high intensity WAS 3000 airstream generator with spare parts (WAS 3000) for Josberg from the U.S. manufacturer in Huntsville, Alabama, on April 15, 1983. He submitted with his order a Swedish Import Certificate dated April 15, 1983. The import certificate states that he was importing the WAS 3000 to an end-user in sweden, not diverting it to another destination.

The manufacturer submitted the import certificate with its export license application. Based on the information provided in the export license application, including the Swedish import certificate, the Department of Commerce issued, a validated export license (No. A707644), issued on about July 23, 1983, authorizing the export of the WAS 3000 system to Elzer, who was listed as consignee of ultimate destination.

The manner in which Elzer ordered the WAS 3000 is evidence of a conspiracy. First, there is no apparent reason why Josberg could not have ordered the WAS 3000 himself for import into Sweden, except that it was consistent with his usual mode to keep his participation secret. Second, although it appears that Elzer ordered the WAS 3000 for Josberg, he did not provide Josberg's or Globe Metal's name as the consignee, which is also consistent with Josberg's pattern of secrecy. More important, however, is that neither Elzer nor Josberg could have obtained a validated license to ship the WAS 3000 to the U.S.S.R., its true ultimate destination, because it was prohibited for national security reasons from being exported to the U.S.S.R. Thus obtaining the WAS 3000 from the United States on the pretext that sweden was the country of ultimate destination was necessary to the overall plan of shipping it to the U.S.S.R.

About a month after Elzer was notified by the manufacturer on August 23, 1983 that the WAS 3000 would arrive

in Sweden about October 1, 1983, and before the actual delivery of the WAS 3000 to Sweden, Elzer initiated correspondence with the manager of Allinson, Ltd. in Singapore. This implemented the paper transfer of the WAS 3000 to Allinson. The file reflects that Allinson, Ltd. was a front corporation established by Elzer and Josberg and others to conceal the conspirators' participation in the sale of the WAS 3000 to the U.S.S.R. Early in 1983, Elzer engaged in correspondence with Josberg and others about establishing offshore trading companies which would be concealed. The participants were concerned that there be a chinese partner, but under such an arrangement that company ownership could not be traced.

In fact, Elzer and a Chinese partner (Chew) established Allinson, each owning half the shares in the company, in 1983 in Hong Kong, with a branch office in Singapore. Elzer made attempts to hide the ownership of the company. The manager and sole employee of the Singapore office held Elzer's shares. According to Chew, Elzer was given the title of technical consultant in exchange for his financial participation, a fact which Elzer used repeatedly to try to distance himself from Allinson. Elzer consistently has maintained that his role as consultant has insulated his liability for the actions of Allinson. His attempts at concealment were unsuccessful.

Elzer was apprently the acting force behind establishing and owning Allinson, and transferring the goods through it. Though he or his company may never have directly shipped the WAS 3000 to the U.S.S.R., Respondent cannot claim clean hands, where he solicited, conspired with, and acted in concert with others to obtain and arrange for the unauthorized reexport of such goods to the U.S.S.R., intentionally violating the Regulations. When Elzer was asked about his participation in the establishment of Allinson in Hong Kong and Singapore he refused to answer any questions stating that Allison was an independent company. It is clear from the evidence, however, that Elzer was a driving force behind the establishment of Allinson, and was a half owner. Furthermore, the only firms Allinson represented from its inception in 1983 to October 1985 are those belonging to the three participants, and all its transactions were conducted in cash. The conclusion that Allinson was a front company used to hide the participation of Elzer in the sale of the WAS 3000 is inescapable.

In the course of Elzer's transactions with Allinson concerning the WAS 3000, the manufacturer shipped the WAS 3000 from the United States to Elzer at his post office address, on or about september 30, 1983. Elzer arranged to have the goods delivered to the duty free port in Gothenburg, rather than his post office box or to his business address, which was an office in his home. The goods were unloaded in the duty free port in Gothenburg on or about October 18, 1983. On or about October 25, 1983, Elzer transferred the WAS 3000 from Gothenburg to Wright and Olsen at the duty free port in Stockholm, Josberg's place of business.

Elzer's version of this delivery has been inconsistent. He initially stated in his answers that the WAS 3000 was delivered to his company's address in Gothenburg. He now claims that the goods arrived directly in the duty free port of Gothenburg, and denies that he instructed the local agent to deliver the goods to the duty free port instead of his address. Because the goods were addressed to Elzer's post office box, Elzer must have instructed the local agent to leave the goods in the duty free port until transshipment arrangements were made.

It is logical to infer that Elzer wanted the goods delivered to the duty free port instead of to himself or to Josberg in Sweden proper because he knew that the goods were to be transshipped out of Sweden, and by keeping them in duty free ports, taxes would not have to be paid. The evidence shows that this was the case. Elzer states that the WAS 3000 went from duty free port to duty free port because the sales price included no taxes. Taxes would have been paid if Elzer had the goods delivered within Sweden, and then sold the goods to Josberg, as he has repeatedly claimed. Instead, Elzer arranged to have the goods transhipped through Sweden and it appears that he never intended to ship the WAS 3000 into Sweden. Therefore Elzer's statement in his Import Certificate is a false representation of material fact in violation of section 387.5 of the Regulations.

Josberg subsequently sold and shipped the WAS 3000 to Promashimport in the U.S.S.R., a regular customer of Globe Metals. While Elzer denies that he ever knew that the goods were intended to be shipped to the U.S.S.R., the evidence belies this denial. When the Department of Commerce's Export Control Attache interviewed Elzer concerning the WAS 3000 system on or about May 10, 1985, Elzer admitted that he had known Josberg for many years, that he knew that the WAS 3000s were in the U.S.S.R., and that he knew he was in trouble. The evidence indicates that Josberg's primary business was with the U.S.S.R. He bragged openly to his associates about being able to divert U.S. technology to the U.S.S.R. through Sweden. Because of Elzer's long time association with Josberg and their complicity in establishing and using Allinson, Elzer's assertion that he knew nothing of Josberg's intent to export the goods to the U.S.S.R. is simply not credible. Particularly in the absence of another viable explanation. Elzer's knowledge that the goods were for Josberg's Soviet customer is inferred from his long time and confidential association with a denied party and known diverter to the U.S.S.R. In participating in this reexport of the WAS 3000 to the U.S.S.R. without the required authorization, Elzer knew or had reason to know of the violations of the Regulations.

In the second transaction, Elzer, as consultant to Allinson, solicited Helmut Keck, individually and doing business as OTC Mess-und Videotechnik GmbH, ("Keck"), to obtain the WAS 3000 for him on the representation that West Germany was the country of ultimate destination, and then shipped the goods to the U.S.S.R. Elzer inquired about ordering another WAS 3000 for Josberg in about April 1984. The manufacturer asked Elzer to complete an ITA-629P form providing information about the ultimate end user, as required by the Regulations. Elzer and Josberg declined to provide the form and Elzer did not place an order. Elzer, as consultant to Allinson, then asked Keck on or about April 24, 1984, to obtain the WAS 3000 for him, and about May 24, 1984, Keck placed an order with the manufacturer for a WAS 3000 airstream modulator with spare parts.

Elzer denies that he solicited Keck to order this WAS 3000 for him, but the evidence demonstrated otherwise. Elzer was a long time business associate, consultant and friend of Keck, and Elzer has admitted using Keck as a front in another transaction. And clearly, Allinson had asked Keck to obtain a WAS 3000 for Josberg before Keck ordered it from the U.S. manufacturer. That the only business conducted by Allinson, Ltd. in Singapore was the sale of the two WAS 3000s reflects the nature of this "front" established by Respondent Elzer. The packing slip for the WAS 3000 on April 24, 1984, and Keck confirmed this order on May 14, 1984, ten days before Keck ordered the WAS 3000 from the manufacturer.

Keck supplied the U.S. exporter with a West German Import Certificate No. 728167. The Department of Commerce issued an export license authorizing

shipment of the goods to Keck in West Germany, and these goods were shipped from the United States to Hamburg on or about October 12, 1984. On about October 25, 1984, Keck made "delivery" of the WAS 3000 to Elzer, as consultant to Allinson, although the goods had not left West Germany.

Elzer transferred the goods from Hamburg to Nurminen Oy, a freight forwarding company in Helsinki, Finland, on about October 24, 1984. Elzer's position on whether he shipped the goods to Nurminen Oy is inconsistent. He stated clearly and emphatically in 1985 that he, and not Keck, shipped the goods to Finland. In more recent documents, he denies any involvement in this transfer. Elzer's earlier version of the facts is the most credible, and that, as in the first transaction, he took the responsibility to ship the WAS 3000 to his customer's (Josberg's) freight forwarder, this time being Nurminen Oy in Finland.

Elzer shipped the WAS 3000 to Globe Metals, Moscow, U.S.S.R., on October 26, 1984. He now denies that he had any involvement with this shipment, even though his name appeared on the documents as the shipper, asserting that his name was falsely used. The fact that the goods were shipped to Nurminen Oy considered with the evidence of complicity among Elzer, Keck, and Josberg supports a strong inference that Elzer was responsible for the shipment to the U.S.S.R. His denial, in the absence of any evidence, is simply not believable. By participating in the shipment of the WAS 3000 to Nurminen Oy, Elzer knew or had reason to know that it was on its way to the U.S.S.R. destination. Despite his protestations to the contrary, the evidence, establish that Respondent Elzer was an active participant in both diversion schemes from the outset and knew or had reason to know that the export to the U.S.S.R. was without the authorization required by the regulation.

Conspiracy is inherently secretive by nature, and is often proved only by circumstantial evidence. "Inferential proof may be controlling where the offense charged is so inherently secretive in nature as to permit the marshalling of only circumstantial evidence." *United States v. Pelfrey*, 822 F.2d 628, 632 (6th Cir. 1987). As another Circuit Court has stated:

> For it is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence, the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others.

*United States v. Donsky*, 825 F.2d 746, 753 (3d Cir. 1987), citing *Blumenthal v. United States*, 332 U.S. 539, 556–7 (1947). It is also well-settled that each conspirator does not have to know all of the details of the conspiracy or participate in every phase of the scheme. *See, e.g., United States v. Carter*, 760 F.2d 1568 (11th Cir. 1985).

The sum total of the evidence and the inferences to be drawn, clearly demonstrate an illegal conspiracy in which Elzer played an active role.

**Conclusion**

Based on the evidence in this record I find that Elzer conspired with others on two occasions to acquire U.S.-orign WAS 3000 airstream modulatros on the false representation that Sweden or Germany was the country of ultimate destination, and then reexported those goods through Allinson, Ltd. in Singapore to the Union of Soviet Socialist Republics (U.S.S.R.) without the reexport authorizations required by the Department of Commerce. The evidence and attendant circumstances demonstrates that Allinson, Ltd. was a "front" company established by the Respondent Elzer and others to conceal the conspirators' participation in the sale of the WAS 3000s to the U.S.S.R.

Each and all of the overt acts set forth in the charging letter of August 14, 1987 have been established and found as have the seven violations of the Regulations alleged.

From the above findings, I conclude that an Order denying Respondents' U.S. export privileges for a period of twenty years from the date a final order becomes effective should be entered in this proceeding.[1] The final order in these proceedings will constitute the final administrative disposition and action, on these charges, against Respondents.

**Order**

I. For a period of 20 years from the date of the final Agency action, Respondent: Anton Elzer, individually and doing business as Development and Consultant Elzer ECO AB, Avesgarde 15, S–417 44 Gothenburg, Sweden; and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing,

[1] I do not concur in Agency counsel's suggestion of an "indefinite" denial period. The practice, started over a decade ago, of fixing definite periods of years appears to be a better approach. It will have the effect of clearing the denied parties list without reopening the proceeding. A decade or so ago the list was cluttered with permanent denials from a generation before.

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shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. 2412(c)(1)).

**Hugh J. Dolan,**

*Administrative Law Judge.*

Date: June 23, 1988.

[FR Doc. 88-17148 Filed 7-28-88; 8:45 am]

BILLING CODE 3510-DT-M

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## International Trade Administration

### Children's Hospital-Boston et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 7(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket No.* 88-178. *Applicant:* Children's Hospital, Boston, MA 02173. *Instrument:* Electron Microscope, JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended use:* See notice at 53 FR 20153, June 2, 1988. *Instrument Ordered:* October 14, 1987.

*Docket No.* 88-185. *Applicant:* Geisinger Clinic, Danville, PA 17822-2600. *Instrument:* Electron Microscope, Model JEM-1200/EX/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. *Instrument Ordered:* March 9, 1988.

Docket No. 88-193. *Applicant:* Tufts University School of Medicine, Boston, MA 02111. *Instrument:* Electron Microscope with Accessories, Model EM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 53 FR 19983, June 1, 1988. *Instrument Ordered:* July 9, 1987.

*Docket No.* 88-197. *Applicant:* The University of Tulsa, Tulsa, OK 74104. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 53 FR 19983, June 1, 1988. *Instrument Ordered:* January 27, 1988.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

*Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-17149 Filed 7-28-88; 8:45 am]

BILLING CODE 3510-DS-M

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### Northwestern University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

*Docket No.* 88-078. *Applicant:* Northwestern University, Evanston, IL 60208. *Instrument:* Mass Spectrometer System, Model VG70-259SE. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 4866, February 16, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) FAB and thermospray capabilities, (2) resolution to 50 000, and (3) a scan rate of 0.1 second per decade. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

*Docket No.* 88-094. *Applicant:* U.S. Department of the Interior, National Fisheries Contaminant Research Center, Columbia, MO 65201. *Instrument:* Gas Chromatograph/Mass Spectrometer/Data System, Model VG 70-250S. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 9958, March 28 1988. *Reasons for This Decision:* The foreign instrument provides: (1) Linked scanning MS/MS under data system control, (2) resolution to 50 000, (3) a scan rate to 0.1 second per decade, and (4) FAB and thermospray ionization. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

*Docket No.* 88-105. *Applicant:* University of Colorado, Denver, CO 80262. *Instrument:* Gas Chromatograph/Mass Spectrometer, Model TS-250. *Manufacturer:* VG Tritech, United Kingdom. *Intended Use:* See notice at 53 FR 12446, April 14, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) A scanning rate of 0.1 second per decade with switching times of 50 milliseconds and (2) selected ion recording with mass differentials as large as a factor of ten. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

*Docket No.* 88-109. *Applicant:* University of California, San Francisco, CA 94143-0446. *Instrument:* Four Sector Tandem Mass Spectrometer, Model MS50TC. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 53 FR 15101, April 27, 1988. *Reason for This Decision:* The foreign instrument provides: (1) Tandem 4-sector geometry, (2) mass range to 10 000 at 8 kV, (3) resolution to 100 000, and (4) FAB capability. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

*Docket No.* 88-147. *Applicant:* Department of Commerce, NOAA, Ann Arbor, MI 48105. *Instrument:* Stable Isotope Ratio Mass Spectrometer with Accessory, Model VG PRISM. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended Use:* See notice at 53 FR 15101, April 27, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) A guaranteed internal precision of 0.006% for 75 bar $\mu$1 samples (STP) of $CO_2$, (2) an externally adjustable triple Faraday collector, and (3) an automatic cold-finger microvolume inlet. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

*Docket No.* 88–167. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Borehole Seismometer Array. *Manufacturer:* Compagnie Generale De Geophysique, France. *Intended Use:* See notice at 53 FR 18329, May 23, 1988. *Reasons for This Decision:* The foreign instrument provides simultaneous seismic measurements at four levels and stores the data in digital format for up to three months. *Advice Submitted By:* The National Oceanic and Atmospheric Administration, July 1, 1988.

*Docket No.* 88–174. *Applicant:* University of Michigan, Ann Arbor, MI 48109–2125. *Instrument:* Motion Analysis System, Model WATSMART. *Manufacturer:* Northern Digital, Inc., Canada. *Intended Use:* See notice at 53 FR 18330, May 23, 1988. *Reasons for This Decision:* The foreign instrument provides measurements derived from multiple position markers with a data acquisition rate to 10 000 markers per second. *Advice Submitted By:* The National Bureau of Standards, July 11, 1988.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health, National Bureau of Standards, and National Oceanic and Atmospheric Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88–17150 Filed 7–28–88; 8:45 am]

BILLING CODE 3510–DS–M

## Rutgers University; for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. The application may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket No.* 88–146R. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Beam Tester, Model Number HST13. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88–17151 Filed 7–28–88; 8:45 am]

BILLING CODE 3510–DS–M

# National Oceanic and Atmospheric Administration

## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Services, NOAA, Commerce.

The Pacific Fishery Management Council at its July 13–14, 1988, meeting adopted recommendations contained in the final report of its Limited Entry Committee. Among the recommendations, one was that the Pacific Council should provide direction on unresolved issues. Therefore the Council elected to establish an ad hoc committee to develop opinions on unresolved issues and to respond to comments of the Council's advisory committees. The ad hoc committee will convene a public meeting on August 9, 1988, at 10 a.m., at the National Marine Fisheries Service, Northwest Regional Office Conference Room, 7600 Sand Point Way, NE., Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Dated: July 22, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–17153 Filed 7–28–88; 8:45 am]

BILLING CODE 3510–22–M

## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will convene a public meeting on August 10, 1988, at 8 a.m., at the California Department of Fish and Game, 411 Burgess Drive, Menlo Park, CA. The GMT will begin preparation of the annual stock assessment and fishery evaluation document, continue preparation of draft Amendment #4 to the fishery management plan, and review harvest projections for sablefish, widow rockfish, yellowtail rockfish, and other species. Other issues related to groundfish fishery management may be discussed also. The public meeting will adjourn on August 12.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW., First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: July 22, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–17154 Filed 7–28–88; 8:45 am]

BILLING CODE 3510–22–M

# COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

## Procurement List 1988 Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1988 services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** August 29, 1988.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** E.R. Alley, Jr., (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On April 1 and April 22, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 10555 and 53 FR 13310) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1988:

Janitorial/Custodial, 911th Tactical Airlift Group (AFRES), Greater Pittsburgh International Airport, Pittsburgh, Pennsylvania

Litter Pick-Up, Edwards Air Force Base, California.

E.R. Alley, Jr.,

*Acting Executive Director.*

[FR Doc. 88–17142 Filed 7–28–88; 8:45 am]

BILLING CODE 6820–33–M

## Procurement List 1988 Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: August 29, 1988.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** E.R. Alley, Jr. (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

### Commodities

Shirt, Woman's
8410–01–224–6081, 8410–01–224–6082, 8410–01–224–6084,
8410–01–224–6085, 8410–01–224–6086, 8410–01–224–6087,
8410–01–224–6088, 8410–01–224–6089, 8410–01–224–6076,
8410–01–224–6091, 8410–01–224–6092, 8410–01–224–6093,
8410–01–224–6094, 8410–01–224–6095, 8410–01–224–6096,
8410–01–224–6100, 8410–01–105–2503, 8410–01–224–6101,
8410–01–224–6102, 8410–01–224–6103, 8410–01–224–6104,
8410–01–224–6106, 8410–01–105–2506, 8410–01–224–6108,
8410–01–224–6109, 8410–01–224–6110, 8410–01–224–6111,
8410–01–224–6112, 8410–01–104–7954, 8410–01–224–6113,
8410–01–104–7955, 8410–01–224–6114, 8410–01–224–6115,
8410–01–105–2510, 8410–01–224–6116, 8410–01–224–6117,
8410–01–224–6118, 8410–01–224–6119, 8410–01–224–6120,
8410–01–104–7958, 8410–01–224–6121, 8410–01–104–7959,
8410–01–224–6122, 8410–01–224–6123, 8410–01–105–2514,
8410–01–224–6124, 8410–01–105–2515, 8410–01–224–6125,
8410–01–224–6126, 8410–01–224–6127, 8410–01–224–6128,
8410–01–104–7962, 8410–01–224–6129, 8410–01–224–6130,
8410–01–224–6131, 8410–01–105–2519, 8410–01–224–6132,
8410–01–105–2520, 8410–01–224–6133, 8410–01–105–2521,
8410–01–224–6134, 8410–01–105–2522, 8410–01–105–2524,
8410–01–224–6139, 8410–01–105–2525, 8410–01–224–6140,
8410–01–224–6078, 8410–01–105–2526, 8410–01–224–6135,
8410–01–105–4713, 8410–01–224–6136, 8410–01–105–2497,
8410–01–224–6137, 8410–01–224–6138, 8410–01–224–6141,
8410–01–224–6142, 8410–01–105–2499, 8410–01–105–2530,
8410–01–105–2534, 8410–01–224–6075, 8410–01–224–6077,
8410–01–224–6078, 8410–01–224–6079, 8410–01–224–6080,
8410–01–224–6083, 8410–01–224–6090, 8410–01–224–6097,
8410–01–224–6098, 8410–01–224–6099, 8410–01–224–6105,
8410–01–224–6107, 8410–01–104–7947, 8410–01–104–7948,
8410–01–104–7949, 8410–01–104–7950, 8410–01–104–7951,
8410–01–104–7952, 8410–01–104–7953, 8410–01–104–7956,
8410–01–104–7957, 8410–01–104–7960, 8410–01–104–7961,
8410–01–105–2494, 8410–01–105–2495, 8410–01–105–2496,
8410–01–105–2498, 8410–01–105–2500, 8410–01–105–2501,
8410–01–105–2502, 8410–01–105–2504, 8410–01–105–2507,
8410–01–105–2508, 8410–01–105–2509, 8410–01–105–2511,
8410–01–105–2512, 8410–01–105–2513, 8410–01–105–2516,
8410–01–105–2517, 8410–01–105–2518, 8410–01–105–2523,
8410–01–105–2527, 8410–01–105–2528, 8410–01–105–2529,
8410–01–105–2531, 8410–01–105–2532, 8410–01–105–2533.

### Services

Janitorial/Custodial, U.S. Army Reserve Center, Lock Haven, Pennsylvania

Janitorial/Custodial, Lycoming Memorial USARC, 1605 Four Mile Drive, Williamsport, Pennsylvania.

E.R. Alley, Jr.,

*Acting Executive Director.*

[FR Doc. 88–17143 Filed 7–28–88; 8:45 am]

BILLING CODE 6820–33–M

## DEPARTMENT OF DEFENSE

### Patent Licenses; Pennwalt Corp.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Intent to grant partially exclusive patent license; Pennwalt Corp.

**SUMMARY:** The Department of the Navy hereby gives notice of intent to grant to Pennwalt Corporation, a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,469,967, entitled "Single-Side Connected Transducer," issued September 4, 1984; inventor: William R. Scott.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCCIP), Arlington, VA 22217–5000.

**DATE:** July 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy

BEST COPY AVAILABLE

Street, Arlington, VA 22217–5000, telephone (202) 696–4001.

Date: July 26, 1988.

Jane M. Virga,

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 88–17106 Filed 7–28–88; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF ENERGY

### Office of Fossil Energy

### Liquids Transportation Task Group, Coordinating Subcommittee On Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Tuesday, August 23, 1988, 9:30 AM.

Place: Stapleton Plaza Hotel, Arapahoe Room, 3333 Quebec Street, Denver, CO.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss pipeline survey and progress on individual assignments.

**Tentative Agenda**

—Opening remarks by Chairman and Government Cochairman
—Discuss the pipeline survey
—Review progress on individual assignments
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 AM and 4:00 PM Monday through Friday, except Federal holidays.

J. Allen Wampler,

*Assistant Secretary Fossil Energy.*

[FR Doc. 88–17185 Filed 7–28–88; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket Nos. CP87–478–000; CP87–480–000; Docket No. CP85–437–000, et al., Docket No. CP85–552–000, et al.

### Wyoming-California Pipeline Co., et al., Final Environmental Impact Report Statement and Notification of Schedule for Public Meetings

July 25, 1988.

Notice is hereby given that the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (SLC) have available a Joint Draft Supplement to the Final Environmental Impact Report/Statement (FEIR/S) which was made available in December 1987 for the then various proposals of transport natural gas from various sources outside California to the Bakersfield, California area for use in enhanced oil recovery (EOR) and related cogeneration projects.

**Background**

During 1985, three applications were filed with the Commission to serve the EOR market. Specifically, Kern River Gas Transmission Company (Kern River) proposed to build an 837-mile pipeline (Docket No. CP85–552–000); Mojave Pipeline Company (Mojave) proposed to build a 389-mile pipeline (Docket No. CP85–437–000); and El Dorado Interstate Transmission Company (El Dorado) proposed to build a 381-mile pipeline (Docket No. CP85–625–000).[1] The Commission's "Notice of Intent To Prepare a Draft Environmental Impact Statement" for these proposals was published in the Federal Register on August 23, 1985 (50 FR 34,174) and supplemented on December 13, 1985, and May 19 and June 30, 1986 (50 FR 50,941, 51 FR 18,357 and 23,579). These notices identified that the SLC was working with the FERC Staff to produce a joint environmental impact report/statement (EIR/EIS). During February 1986, six scoping meetings were announced and subsequently held at Albuquerque, New Mexico; Flagstaff, Arizona; Barstow and Bakersfield, California; Heber City, Utah; and Las Vegas, Nevada (51 FR 3,402). An additional scoping meeting was held in Grand Junction, Colorado in July 1986 (51 FR 23,580) to discuss an alternative associated with the Mojave proposal. The Draft EIR/EIS was released and noticed in the Federal Register on January 23, 1987 (52 FR 2,584). Public meetings to receive comments on the Draft EIR/EIS were announced and subsequently held during the week of March 23, 1987 in Bakersfield and Barstow, California; Las Vegas, Nevada; and Salt Lake City, Utah (52 FR 6,379). The FEIR/S for the Kern River/Mojave projects was released to the public on December 18, 1987, and noticed in the Federal Register on December 24, 1987 (52 FR 48,753). Formal evidentiary hearings began at the FERC on September 9, 1987 before Administrative Law Judge Isaac D. Benkin and are ongoing. The FEIR/S was placed into this evidentiary hearing with accompanying FERC staff testimony on December 24, 1987.

On August 4, 1987, Wyoming-California Pipeline Company (WyCal) filed an application with the FERC to transport natural gas from various sources outside of California to the same Bakersfield, California area for use in EOR and related cogeneration projects. On December 14, 1987, the FERC issued a Notice of Intent to Prepare a Supplement to the FEIR/S in order to analyze the WyCal project and stated that the Supplement would address only those aspects of the WyCal project not previously addressed in the FEIR/S for the Kern Rier and Mojave projects.

The proposed WyCal pipeline deviates from Kern River's proposal at the northern end of the project from Opal to Evanston, Wyoming for approximately 54 miles. From that point on, except as noted below, WyCal proposes to follow the very same right-of-way (ROW) which Kern River proposed from a point approximately 5 miles east of Evanston, Wyoming to Kern River's proposed milepost (MP) 401 where it would intersect with the East Las Vegas System Alternative route identified in the FEIR/S. WyCal would follow the very same ROW examined along this alternative to Piute Junction, California where it would interconnect

[1] The El Dorado application was subsequently dismissed from the FERC proceeding on October 20, 1987. While the FEIR/S examines portions of the El Dorado route as an alternative, it is no longer a competitor to Mojave, Kern River, or WyCal.

with the route proposed by Mojave. WyCal then proposes to follow the exact same ROW which Mojave proposed both east to Topock, Arizona and west to Bakersfield, California. Since the proposed WyCal project is on the very same ROW proposed by both Kern River and Mojave in many areas, a significant amount of work has already been completed relevant to the environmental impact caused by the construction and operation of the pipeline. The Supplement was therefore structured in such a way as to tier or build upon the FEIR/S issued in December 1987.[2] The Draft Supplement issued pursuant to this notice only addresses those areas of the WyCal project which deviate from the Mojave and Kern River proposals and the East Las Vegas route alternative previously analyzed in the FEIS. Deviations of compressor site locations is also examined in the Draft Supplement.

**Commenting of the Draft Supplement**

Copies of this Draft Supplement are available for review in the FERC Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, and at the SLC, 1807 13th Street, Sacramento, CA 95814. Approximately 1,300 copies of this Draft Supplement have been sent to the public, all parties to the FERC proceeding, and federal, state, and local officials, and are available in limited quantities at the above addresses. Copies of the FEIR/S issued in December 1987 are extremely limited in number and it is suggested that those in need of viewing a copy contact a Bureau of Land Management U.S. Forest Service field office or local university or library. Additional copies will be made available until supplies are exhausted, with library requests given priority. Copies are also available for viewing at both the FERC and SLC. Copies are also available by purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487–4650.

*Anyone wishing to do so may file comments on the Draft Supplement no later than September 12, 1988. The Commission intends to issue a Final Supplement in October 1988. Therefore, comments received after September 12, 1988 will not be considered nor addressed in the Final Supplement. Staff will be extremely stringent about this.* Comments should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. *The scope of the comments must be limited to issues discussed in the Draft Supplement. Comments on issues covered in the FEIR/S published in December 1987, will not be addressed in the Final Supplement, i.e., the comment for old issues is closed.* Additional information about the project is available from Mr. Robert Arvedlund, FERC Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, telephone (202) 357–9091, or Ms. Mary Griggs, SLC Project Manager, telephone (916) 322–0354. *A copy of all comments should also be sent to Mr. Arvedlund.*

**Public Meetings Notice**

Two public meetings will be held to receive comments on the Draft Supplement. Mr. Arvedlund should be contacted for details. The meetings will begin promptly at 7:00 p.m. at the following locations:

Monday, August 22, 1988—Board Room of the Clark County, School District Education Center, 2832 East Flamingo Road, Las Vegas, NV.

Tuesday, August 23, 1988—State Office Building Auditorium, (immediately behind the State Capitol Building), 500 North State Street, Salt Lake City, Utah.

**Claire T. Dedrick,**

*Executive Officer, SLC.*

**Lois Cashell,**

*Acting Secretary, FERC.*

[FR Doc. 88–17177 Filed 7–28–88; 8:45 am]

BILLING CODE 6717-01-M

[2] The tiering process is encouraged in Section 1502.20 of the Council on Environmental Quality Regulations implementing the National Environmental Policy Act.

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**[Docket Nos. CP88–580–000, et al.]**

## United Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. United Gas Pipeline Company**

[Docket No. CP88–580–000]

July 22, 1988.

Take notice that on July 14, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88–580–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Arco Oil and Gas Company (Arco). United explains that service commenced June 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4643. United explains that the peak day quantity would be 15,450 dekatherms, the average daily quantity would be 15,450 dekatherms, and that the annual quantity would be 5,639,250 dekatherms. United explains that it would receive natural gas for Arco's account at points of receipt in the state of Texas. United states that it would redeliver the gas for Arco's account at an existing interconnection between United and Mobile Gas Service Company in Mobile County, Alabama or an existing interconnection between United and International Paper Company in Jackson County, Mississippi.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

**2. Tennessee Gas Pipeline Company**

[Docket No. CP88–572–000]

July 22, 1988.

Take notice that on July 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252 filed in Docket No. CP88–572–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Chevron USA Inc., (Chevron), a producer. Tennessee explains that service commenced June 16, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4655–000. Tennessee further explains that the peak day quantity would be 77,000 dekatherms, the average daily quantity would be 104 dekatherms, and that the annual quantity would be 37,960 dekatherms. Tennessee explains that it would receive natural gas for Chevron's account in the states of Louisiana, Texas, and Offshore Louisiana. Tennessee further explains that, it would redeliver natural gas for the account of Chevron in the states of Louisiana and Mississippi. It is indicated that the location of the ultimate delivery points of the gas are in the states of Indiana, Pennsylvania, Louisiana, Ohio, and New York.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

**3. United Gas Pipeline Company**

[Docket No. CP88-582-000]

July 22, 1988.

Take notice that on July 14, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-582-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Midcon Marketing Corporation (Midcon). United explains that service commenced May 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4642. United explains that the peak day quantity would be 206,000 dekatherms, the average daily quantity would be 206,000 dekatherms, and that the annual quantity would be 75,190,000 dekatherms. United explains that it would receive natural gas for Midcon's account at points of receipt in the state of Louisiana. United States that it would redeliver the gas for Midcon's at an existing interconnection between United and Tennessee Gas Pipeline Company in Ouachita Parish, Louisiana.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

**4. United Gas Pipe Line Company**

[Docket No. CP88-581-000]

July 25, 1988.

Take notice that on July 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-581-000 a prior notice request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on an interruptible basis on behalf of MidCon Marketing Corporation (MidCon), a marketer of natural gas, under the certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United States that it proposes to transport on an interruptible basis pursuant to a gas transportation agreement dated March 23, 1988, a maximum daily quantity of 51,500 MMBtu of natural gas, and that service commenced May 1, 1988, as reported in Docket No. ST88-4646, pursuant to § 284.223(a) of the Commission's Regulations. United further states that the average day and annual quantities would be 51,500 MMBtu and 18,797,500 MMBtu, respectively.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**5. Tennessee Gas Pipeline Company**

[Docket No. CP88-577-000]

July 25, 1988.

Take notice that on July 14, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-577-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service for Mobile Natural Gas, Inc. (Mobil) under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 23, 1988, it proposes to transport natural gas for Mobile, a producer/marketer, from points of receipt located in the states of Texas and Louisiana to points of delivery located in the state of Louisiana. Tennessee further states that the peak day quantities would be 100,000 dekatherms, the average daily quantities would be 5,705 dekatherms, and the annual quantities would be 2,082,325 dekatherms. Finally, Tennessee advises that service under § 284.223(a) commenced June 2, 1988, as reported in Docket No. ST88-4715 on June 29, 1988.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**6. United Gas Pipe Line Company**

[Docket No. CP88-579-000]

July 25, 1988.

Take notice that on July 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-579-000, a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Tenngasco Corporation (Tenngasco), a marketer, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an interruptible transportation agreement dated May 18, 1988, it proposes to transport natural gas for Tenngasco from points of receipt located in the states of Texas and Louisiana to points of delivery located in the States of Texas, Louisiana and Mississippi.

United further states that the peak day quantities would be 432,600 MMBtu, the average daily quantities would be 432,600 MMBtu and that the annual quantities would be 157,899,000 MMBtu. Service under § 284.223(a) commenced June 1, 1988, as reported in Docket No. ST88-4644, filed July 7, 1988.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**7. Tennessee Gas Pipeline Company**

[Docket No. CP88-585-000]

July 25, 1988.

Take notice that on June 15, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-585-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for Energy Marketing Exchange, Inc. (EME), under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 102,600 dekatherms of natural gas per day for EME, a marketer of natural gas, from various receipt points located in Louisiana, Mississippi, Texas, Pennsylvania, New Jersey, New York and Ohio, Offshore Texas and Offshore Louisiana, to various delivery points off Tennessee's system located in multiple States. Tennessee states that the location of the ultimate delivery point(s) of the gas is the States of Pennsylvania, Massachusetts, Ohio, Illinois, New Hampshire, New York and New Jersey. Tennessee anticipates transporting, on an average day, 991 dekatherms and an annual volume of 361,715 dekatherms.

Tennessee states that the transportation of natural gas for EME commenced May 18, 1988, as reported in Docket No. ST88-4238, for a 120-day period pursuant to § 284.223(a)(1) of the

Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87–115–000. Tennessee proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**8. K N Energy, Inc.**

[Docket No. CP88–583–000]

July 25, 1988.

Take notice that on July 14, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88–583–000 a request pursuant to §§ 157.205 and 157.211(a) of the Regulations under the Natural Gas Act [18 CFR 157.205 and 157.211(a)] to allow construction and operation of sales taps for the delivery of gas to end users under authorization issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that it proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines. K N further states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

*Customer and Location of Tap*

Resident/Occupant 88–45, Gene Henke, NW/4 Sec. 20–T2N–R19W, Harlan Co., NE
Resident/Occupant 88–46, Gerald K. Kreifels, NE/4 Sec. 2–T10N–R4W, York Co., NE
Resident/Occupant 88–47, Kenneth Unruh, SW/4 Sec. 16–T26S–R16W, Edwards Co., KS
Resident/Occupant 88–48, Larry McGinley, NW/4 Sec. 2–T13N–R39W, Keith Co., NE.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**9. Paiute Pipeline Company**

[Docket No. CP88–568–000]

July 25, 1988.

Take notice that on July 12, 1988, as supplemented on July 18, 1988, Paiute Pipeline Company (Paiute), P.O. Box 98510, Las Vegas, Nevada 89193–6510, the successor to the facilities and operations of Southwest Gass Corporation (Southwest) which are subject to the Commission's jurisdiction, filed a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a high pressure mainline sales tap and appurtenant facilities to enable Paiute to provide a sale to Southwest Gas Corporation-Northern Nevada (Southwest-Northern Nevada), an entity which Paiute indicates is a newly-created distribution affiliate of Southwest, for resale to the East Washoe Valley residential area (Washoe Valley), an existing residential area not presently served by Southwest, under the authorization issued in Docket No. CP84–739–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request whch is on file with the Commission and open to public inspection.

Paiute proposes to establish a sales tap to be located in Section 25, Township 16 North, Range 19 East, MDB&M, Washoe County, Nevada. Paiute states that the tap would be used to provide up to 500 Mcf of natural gas per day and 63,000 Mcf per year to meet Priority 1 requirements. Paiute estimates the cost of the tap would be approximately $28,390.

Paiute also states that service to Southwest-Northern Nevada for resale to Washoe Valley would be rendered under Paiute's Rate Schedule G–1. Paiute asserts that it has sufficient capacity available to provide for the proposed deliveries without any detriment or disadvantage to any of its existing customers. Paiute also asserts that the proposed sale would be within Paiute's certificated entitlements.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**10. El Paso Natural Gas Company**

[Docket No. CP88–568–000]

July 25, 1988.

Take notice that on July 12, 1988, El Paso Nutural Gas Company (El Paso), P.O. Box 1492, El Paso Texas, 79978, filed in Docket No. CP88–568–000 pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade the Mobile Tap located in Maricopa County, Arizona, to a meter station in order to permit the measurement and delivery of certain volumes of the natural gas to Southwest Gas Corporation (Southwest) for resale to consumers in the Town of Mobile, Arizona, and environs, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that it is advised by Southwest that the requested volumes of natural gas will be utilized to serve additional commercial space heating and firm industrial natural gas requirements for consumers located near the Town of Mobile, and environs, in Maricopa County, Arizona. It is stated that initial deliveries of natural gas are requested to begin in the third quarter of 1988. The estimated cost of the metering facilities is $110,387.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**11. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP88–563–000]

July 25, 1988.

Take notice that on July 11, 1988, Northern Natural Gas Company Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–563–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (EGM), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport 100,000 MMBtu of natural gas per day for EGM pursuant to the provisions of Northern's Rate Schedule IT–1 Northern states that construction of facilities would not be required to provide the proposed service.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**12. Panhandle Eastern Pipe Line Company**

[Docket No. CP88–588–000]

July 25, 1988.

Take notice that on July 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–588–000 a request pursuant to § 157.205(b) and 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service for Western Gas Processors, Ltd. (Western), a marketer, under the certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas for Western from various receipt points located in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, Offshore Texas, Offshore Louisiana, and Canada to delivery points located in Converse and Campbell Counties, Wyoming, pursuant to a transportation agreement with Western dated May 1, 1988. Panhandle further states that the maximum daily and annual quantities that it would transport for Western pursuant to the referenced agreement would be 10,000 dekatherms and 2,920,000 dekatherms, respectively.

Panhandle indicates that in a filing made with the Commission in Docket ST88-4120, it reported that transportation service for Western commenced on May 1, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**13. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP88-561-000]

July 25, 1988.

Take notice that on July 11, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-561-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tejas Power Corporation, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 40,000 MMBtu/day for Tejas Power Corporation from two: (2) points of receipt offshore Texas to two (2) points of delivery in Warton County, Texas. Northern states that construction of facilities would not be required to provide the proposed service.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

**14. Southern Natural Gas Company**

[Docket No. CP88-575-000]

July 26, 1988.

Take notice that on July 13, 1988, Southern Natural Gas Company (Southern) filed in Docket No.CP88-575-000 an application under section 7(b) of the Natural Gas Act requesting authorization to abandon transportation of gas for direct sale to United States Steel Corporation, a Division of USX Corporation (USS), all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern states that Southern, as seller, and USS, as buyer, are parties to a direct sales contract dated May 14, 1982, providing for the sale and purchase of natural gas for use in operations at USS steel mills located in Jefferson County, Alabama. It is stated that Southern was initially authorized to provide service for USS on October 6, 1942, and was further authorized to transport and deliver to USS the present volumes of firms and interruptible gas for direct sale to USS by order dated October 29, 1969. Southern states that on June 1, 1988, Southern accepted its blanket certificate issued on May 6, 1988, in Docket No. CP88-316-000. Southern states that USS desires to cancel its direct sales contract with Southern along with the accompanying transportation and has requested, in lieu of the firm sales service, that Southern provide it with firm transportation service under Southern's Rate Schedule FT. It is stated that Southern and USS have entered into a transportation agreement dated June 23, 1988, providing for firm transportation service for a term ending December 31, 1999, and year to year thereafter which service will be implemented under Southern's blanket certificate pursuant to § 284.221 *et seq.* of the Commission's Regulations under the NGA. Southern therefore requests abandonment of the transportation of gas for direct sale to USS effective July 1, 1988, to coincide with the commencement of firm transportation. Southern does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of this transportation service, it is stated.

*Comment date:* August 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

**15. Panhandle Eastern Pipe Line Company**

[Docket No. CP88-547-000]

July 26, 1988.

Take notice that on July 7, 1988, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-547-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Consolidated Fuel Corporation (Consolidated), a marketer, under the certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to transport up to 100,000 dt per day on an interruptible basis on behalf of Consolidated pursuant to a transportation agreement dated May 3, 1988, among Applicant and Consolidated. Applicant states that it would receive gas from various existing points of receipt on its system in Texas, Offshore Louisiana and Canada. Applicant states that it would then transport and redeliver subject gas, less fuel used and unaccounted for line loss to Columbia Gas Transmission Corporation (Columbia), in Darke and Lucas Counties, Ohio, for purchase by various local distribution companies.

Applicant states that the estimated daily and estimated annual quantities would be 24,000 dt and 8,760,000 dt, respectively. It is further stated that service under § 284.223(a) commenced on June 1, 1988, as reported in Docket No. ST88-4509. Applicant indicates that the service would continue until terminated by either party upon a 30 day written notice. Applicant proposes to charge Consolidated a rate pursuant to Applicant's currently effective Rate Schedule PT. No new facilities are proposed herein.

*Comment date:* September 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

**16. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP88-595-000]

July 26, 1988.

Take notice that on July 20, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-595-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Exxon Corporation (Exxon), a producer, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated July 15, 1988, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas on an interruptible basis for Exxon from points of receipt in Texas

listed in Appendix "A" of the agreement to numerous redelivery points in Iowa, Illinois, Minnesota, South Dakota, Oklahoma and Texas, also listed in Appendix "A". The transportation service would involve interconnections between Northern and various transporters and would be subject to the rates effective under Northern's Rate Schedule IT–1.

Northern further states that the estimated average daily and annual quantities would be equivalent to 75,000 MMBtu and 36,500,000 MMBtu, respectively. Northern advises that service has commenced under the provisions of § 284.223(a) as reported in Docket No. ST88–4277.

*Comment date:* September 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

**17. High Island Offshore System**

[Docket No. CP88–591–000]

July 26, 1988.

Take notice that on July 19, 1988, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88–591–000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport natural gas, on an interruptible basis, for Elf Aquitaine Inc.; Ampolex (Texas) Inc.; Case-Pomeroy Oil Corp.; and, Felmont Oil Corporation (Shippers), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS states that it has entered into several transportation agreements to provide interruptible transportation service for a primary term of five years continuing year to year thereafter for the Shippers from Block 376, West Cameron Area, offshore Louisiana (Block 376) and Block A–343, High Island Area, offshore Texas (Block A–343) up to the maximum daily volume set forth below:

| Shipper | Volumes (Mcf) | Point of receipt |
|---|---|---|
| Elf Aquitaine, Inc | 3,917 | Block 376. |
| Ampolex (Texas) Inc | 1,142 | Do. |
| Case-Pomeroy Oil Corp. | 500 | Do. |
| Felmont Oil Corp | 853 | Do. |
| Elf Aquitaine, Inc | 5,600 | Block A–343. |

HIOS indicates that all the volumes from Block 376 qualify for the short haul rate under HIOS' Rate Schedule IT and that the long haul rate would apply to the gas volumes from Block A–343. HIOS proposes to charge the Shippers 9.69 cents per Mcf for the long-haul transportation and 4.90 cents per Mcf for the short-haul transportation under its Rate Schedule IT for interruptible transportation service.

HIOS states that all the gas would be delivered at the interconnection of the facilities of HIOS and U–TOS or the facilities of HIOS and ANR Pipeline Company at Block 167, West Cameron Area, Offshore Louisiana.

*Comment date:* August 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

**18. Distrigas Corporation Distrigas of Massachusetts Corporation**

[Docket No. CP88–567–000]

July 26, 1988.

Take notice that on July 15, 1988, Distrigas Corporation (Distrigas) and Distrigas of Massachusetts Corporation (DOMAC), Two Oliver Street, Boston, Massachusetts, 02109, filed an "Abbreviated Application for Issuance of Amendment of Certificate of Public Convenience and Necessity and Abandonment Authority, and Effectuation of Certain Tariff Revisions," pursuant to sections 7(c) and 7(b) of the Natural Gas Act and the applicable regulations thereunder, all as more fully set out in the Application which is on file with the Commission and available for public inspection.

Distrigas and DOMAC request authorization for a major restructing of their services in order to permit them to offer a broad range of flexible, market responsive LNG services to existing and new customers, including interstate pipelines, local distribution companies and end-users. The restructured services are designed to implement Distrigas' revised LNG contract with Sonatrach, through its wholly-owned subsidiary Sonatrading Amsterdam B.V., for which amended import authorization is being sought before the Economic Regulatory Administration (ERA) in ERA Docket No. 88–37–LNG. That contract provides for the sharing of market risk through a 37/63 percent revenue sharing arrangement.

To implement that contract, Distrigas and DOMAC propose to offer interstate pipelines, local distribution customers and end-user customers a variety of market responsive LNG services at negotiated prices. Distrigas and DOMAC note that their market area is characterized by intensive gas-to-gas and interfuel competition. Distrigas and DOMAC submit that their services and prices will be determined and constrained by the competitive forces of the market place, and that a competitive market will assure rates and end results that satisfy the "just and reasonable" pricing structures of the Natural Gas Act.

Distrigas and DOMAC have agreed with all their historic customer to settlements which, when final, will result in the abandonment of all prior service obligations so that customers can avail themselves of the new array of proposed services. Rather than employing cost-of-service rates, Distrigas and DOMAC propose to rely soley on rates negotiated for various types of services with interested customers. Distrigas and DOMAC submit that they will rely on their ability to provide efficient, competitive service options to attract customers. Distrigas and DOMAC claim that only if the revenues generated in a competitive market exceed their costs will they be able to earn profit.

The major elements of the proposed service restructuring are as follows:

1. *Firm Vapor Sales Services.* DOMAC requests authority to offer firm sales of LNG in vapor form to interstate pipelines, LDC's and end-users under Rate Schedule FVSS (Firm Vapor Sales Service). Under the proposal, customers may reserve the right to firm vapor service by making a negotiated prepayment to DOMAC to assure certain rights to LNG and thereafter pay only a negotiated commodity rate for volumes actually purchased. The price, term and all other conditions of service will be negotiated between individual customers and DOMAC.

2. *Firm Liquid Sales Services.* DOMAC requests authority to sell LNG in liquid form to interstate pipelines, LDC's and end-users under Rate Schedule FLSS (Firm Liquid Sales Service). Customers may negotiate with DOMAC a prepayment to assure service under various delivery conditions. The prive, quantity, and other terms of the service with actual purchase of liquid to be at negotiated commodity rates would also be negotiated.

3. *Combination Firm Vapor and Firm Liquid Service.* DOMAC proposes to offer a combination of firm liquid and firm vapor service reflecting the same flexible market-based terms proposed for separate firm vapor and firm liquid service.

4. *Interruptible Sales Services.* DOMAC proposes to offer flexible, market based interruptible sales services for LNG in liquid or vapor form. Terms and conditions for interruptible LNG sales will be freely negotiated between DOMAC and individual customers. Interruptible service will be offered to any interested party.

5. *Boil-Off Service.* DOMAC proposes to revise the boil-off sales service historically provided to Boston Gas under Rate Schedule BO–2 to assure

that the price is competitive with Boston Gas' other alternatives and to promote more efficient operations at the DOMAC's Terminal.

6. *Back-Up Sales Service.* DOMAC proposes to sell certain quantities of LNG in liquid and vapor form to Boston Gas for a period of three (3) years, limited to LNG that Applicants otherwise have not sold. The sales will be at Boston Gas' avoided commodity cost of gas less $0.01 per MMBtu.

7. *Storage Service.* DOMAC proposes to continue providing storage service to historical storage customers, but under revised terms giving DOMAC more flexibility in managing storage facilities. Boston Gas has negotiated such terms and DOMAC thus seeks Commission certificate of a continuation of Boston Gas' storage service under these revised terms.

Distrigas and DOMAC state that the proposed service restructuring is in the public convenience and necessity and that all requisite authorizations should be issued on an expedited basis such that authority will be in place to permit service to commence on or before October 1, 1988. This date would be coincident with the date requested in the amendment of import authorization before the ERA in Docket No. 88-37-LNG.

Distrigas and DOMAC request expedited Commission approval of their Application as no customers, historic or new, will be adversely affected, bound or otherwise obligated by such approval.

*Comment date:* August 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

**19. Trunkline Gas Company**

[Docket No. CP88-589-000]

July 26, 1988.

Take notice that on July 15, 1988 Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-589-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Superior Natural Gas Corporation (Superior), a marketer, under Trunkline's blanket certificate issued in Docket No. CP88-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 10,000 dt. per day on an interruptible basis on behalf of Superior pursuant to a transportation agreement dated June 1, 1988, between Trunkline and Superior (Agreement). It is stated that the Agreement provides for Trunkline to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. It is explained that applicant will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to (1) Acadian Gas Pipe Line System (Acadian), in St. Mary Parish, Louisiana, (2) Columbia Gulf Transmission Company (Columbia Gulf), in St. Mary Parish, Louisiana, (3) Louisiana Intrastate Gas Corporation (Louisiana Intra), in St. Mary Parish, Louisiana, (4) Southern Natural Gas Company (SNG), in St. Mary Parish, Louisiana and (5) Texas Eastern Transmission Corporation (TETCO), in Beauregard Parish, Louisiana for use by various interstate pipelines, intrastate pipelines and end-users.

Trunkline further states that the estimated daily and estimated annual quantities would be 5,000 dt. and 1,825,000 dt., respectiviely. Service under § 284.223(a) commenced on June 1, 1988, as reported in Docket No. ST88-4305.

*Comment date:* September 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natrual Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17178 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP88-218-000]

**ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff**

July 26, 1988.

Take notice that ANR Pipeline Company ("ANR") on July 15, 1988 tendered for filing certain tariff sheets as a part of its FERC Gas Tariff Original Volume No. 1-A.

ANR states that the above referenced tariff sheets are being filed to reflect the present operating and contracting practices of ANR and to establish a transportation service request form in conformance with the Commissions Order No. 497. Such tariff sheets are submitted by ANR without prejudice to any further submittal of tariff sheets following Commission action on ANR's request for rehearing of Order No. 497.

ANR has respectfully requested that the Commission grant all waivers necessary to permit this filing to become effective July 14, 1988.

ANR states that copies of the filing were served upon all of its Volume No. 1-A customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene or protest on or before August 2, 1988. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17179 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-218-001]**

## ANR Pipeline Co.; Proposed Change in FERC Gas Tariff

July 26, 1988.

Take notice that on July 18, 1988, ANR Pipeline Company ("ANR") tendered for filing as part of Original Volume No. 1-A of its FERC Gas Tariff an original and six copies of Substitute Original Sheet No. 167.

ANR states that Substitute Original Sheet No.167 is being filed to replace Original Sheet No. 167 which was submitted to the Commission on July 15, 1988 in ANR's Order No. 497 related filing in Docket No. RP88-218-000. It is stated that Original Sheet No. 167 contained an inadvertent error and should be discarded.

ANR respectfully requests that the Commission grant all waivers necessary to permit this filing to become effective July 14, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene or protest on or before August 2, 1988. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17180 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER88-505-000]**

## Canal Electric Co.; Notice of Filing

July 25, 1988.

Take notice that on July 1, 1988, Canal Electric Company (Canal) tendered for filing a Power Contract which implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Capacity Acquisition Commitment for Seabrook Unit No. 1 (Supplement No. 1 to Canal's Rate Schedule FERC No. 21). Such Power Contract provides the terms and conditions pursuant to which Canal will sell and its customers Cambridge Electric Light Company and Commonwealth Electric Company will purchase and pay for 100% of the output of Seabrook Unit No. 1 plus the transmission costs associated therewith. The estimated revenues to Canal under this Power Contract for Period I (the twelve month period ending December 31, 1987) are approximately $223,734. Canal proposes an effective date of September 1, 1988 and requests that its filing be suspended for no more than one day.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17181 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-115-004]**

## Texas Gas Transmission Corp.; Notice of Filing

July 26, 1988.

Take notice that on July 15, 1988, Texas Gas Transmission Corporation (Texas Gas) filed Substitute Original Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 2-A, proposed to be effective November 1, 1988.

Texas Gas states that the purpose of this filing is to replace Substitute Original Sheet No. 10, previously filed, which was incorrectly headed "Original Volume No. 1."

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17182 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA86-3-29-003, 3 et al.]**

## Transcontinental Gas Pipe Line Corp. et al.; Filing of Pipeline Refund Reports and Refund Plans

July 26, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before August 15, 1988. Copies of the respective

filings are on file with the Commission and available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

**Appendix**

| Filing date | Company | Docket No. |
|---|---|---|
| June 17, 1988 | Transcontinental Gas Pipe Line Corp. | TA86-3-29-003 |
| June 29, 1988 | National Fuel Gas Supply Corp. | RP85-93-004 |
| July 5, 1988 | Algonquin Gas Transmission Co. | RP72-110-046 |
| July 8, 1988 | Granite State Gas Transmission | RP73-17-014 |

[FR Doc. 88-17183 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER-FRL-3421-9]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 11, 1988 through July 15, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

**Draft EISs**

ERP No. DS-COE-A36407-WA, Rating EC1, Chehalis River Flood Control Project, South Aberdeen and Cosmopolis, Design Modifications, Implementation, Grays Harbor County, WA.

*Summary*

EPA is concerned that there will be a net loss of 2.77 acres of wetlands as a result of the proposed project. EPA recommended that the Corps consider construction of additional floodwalls for a portion of the project (rather than the proposed levee fill) as a means of reducing wetland loss.

ERP No. DS-UPS-C81011-NY, Rating LO, Manhattan General Mail Facility Complex Development, Additional Alternative Analysis Study, Implementation, New York City, New York County, NY.

*Summary*

EPA's review of this document has determined that previous concerns about carbon monoxide concentrations underneath a proposed platform have been addressed. Accordingly, EPA has no objections to the implementation of the proposed project.

**Final EISs**

ERP No. F-CVOE-K21001-CA, Tierrasanta Community (formerly Camp Elliott) Remedial Action Alternatives for Conventional Explosive Ordnance Items, San Diego County, CA.

*Summary*

EPA asked the Army to provide it a copy of the Record of Decision when it is issued.

ERP No. F-COE-K36086-AZ, Clifton Flood Damage Reduction Plan, Implementation, San Francisco River, Greenlee County, AZ.

*Summary*

EPA's review of the final EIS has been completed and the project found to be satisfactory. No formal comments were made to the agency.

ERP No. F-FHW-D40223-MD, MD-28 Improvements, MD-124 to I-270 Funding and 404 Permit, Montgomery County, MD.

*Summary*

EPA feels this document satisfactorily addresses the potential short and long term impacts of the proposed project, as well as discuss mitigation measures for adverse impacts that may occur.

Dated: July 26, 1988.

**William D. Dickerson,**

*Deputy Dirctor, Office of Federal Activities.*

[FR Doc. 88-17187 Filed 7-28-88; 8:45 am]

BILLING CODE 6560-50-M

**[ER-FRL-3421-8]**

### Environmental Impact Statements; Notice of Availability of Weekly Receipts

**Responsible Agency**

Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 18, 1988 Through July 22, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880233, Draft, EPA, AK, Diamond Chuitna Coal Project, Development and Construction, NPDES Permit and Section 10 and 404 Permits, Beluga Region, Upper Cook Inlet, AK, Due: September 12, 1988, Contact: Rick Seaborne (206) 442-8510.

EIS No. 880234, Final, COE, UT, Upper Jordan River Flood Control Plan, Jordan Narrows to 2100 South Street, Implementation, Mill Creek, Salt Lake County, UT, Due: August 28, 1988, Contact: Jeff Groska (916) 551-1860.

EIS No. 880235, Draft, GSA, IL, Chicago Downtown Federal Office Building Construction, Implementation, Cook, DuPuge, Lake, Kane, Will and McHenry Counties, IL, Due: September 12, 1988, Contact: Matthew Kling (313) 353-5610.

EIS No. 880236, Final, FRC, WA, Rock Island Hydroelectric Project No. 943, Operating License Renewal, Columbia River, Chelan County, WA, Due: August 28, 1988, Contact: Alan Mitchnick (202) 376-9611.

EIS No. 880237, Final, NOA, NH, New Hampshire Coastal Program, Ocean, Harbor, and Great Bay Areas, Approval, Funding, Due: August 28, 1988, Contact: Kathryn Cousins (202) 637-5152.

EIS No. 880238, DSuppl, FRC, AZ, CA, UT, TX, NM, CO, WY, NV, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Project, Construction, Operation and Maintenance, Licenses and 404 Permit, Alternative Modifications, AZ,

CA, WY, NV, UT, TX, NM, CO, Due: August 28, 1988, Contact: Mary Griggs (916) 322–0354.

EIS No. 880239, Draft, BLM, CA, Death Valley and Joshua Tree National Monuments Boundary Adjustments, Transfer of Land Between the Bureau of Land Management and the National Park Service, California Desert District, Inyo and Riverside Counties, CA, Due: October 27, 1988, Contact: Gerald Hillier (714) 351–6349.

EIS No. 880240, Draft, COE, SC, Gills Creek Flood Control Plan, Implementation, Richland County, SC, Due: September 12, 1988, Contact: Jim Woody (803) 724–4259.

Dated: July 26, 1988.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 88–17186 Filed 7–28–88; 8:45 am]

BILLING CODE 6560-50-M

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## Intent To Prepare an Environmental Impact Statement for the Development and Operation of an EPA Environmental Research Facility in Edison, NJ

**AGENCY:** U.S. Environmental Protection Agency (EPA), Office of Research and Development.

**ACTION:** Preparation of an Environmental Impact Statement (EIS) for the proposed renovation of existing building(s) to provide an environmental research facility, located in Edison, New Jersey, to research, develop, and demonstrate innovative technologies for the abatement of contamination of soil, air, water, or other media.

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Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency has identified a need to prepare an Environmental Impact Statement (EIS) on the proposed research and development facility, and therefore publishes this Notice of Intent pursuant to Title 40, Code of Federal Regulations (CFR), § 1501.7 (40 CFR 1501.7).

**FOR FURTHER INFORMATION CONTACT:** Mr. James J. Yezzi, Jr., Project Officer, U.S. Environmental Protection Agency, Releases Control Branch, Woodbridge Avenue, Edison, New Jersey 08837, Telephone: (201) 321–6703.

**SUMMARY:**

### 1. Background

The Superfund Amendments and Reauthorization Act of 1986 authorized the EPA to establish a research, development, and demonstration program to promote the development and use of innovative technologies that provide alternatives to landfilling. One goal of this program is the establishment of a facility where the research, development, and demonstration of innovative technologies can be undertaken. EPA's Office of Research and Development (ORD) has funded the development of such a facility.

### 2. Proposed EPA Action

The ORD Office of Environmental Engineering and Technology Demonstration's Risk Reduction Engineering Laboratory proposes to develop and operate an Environmental Research Facility. The proposed project will entail the renovation of two interconnected buildings and the improvement of an adjacent 110-acre portion of the federally-owned property located on Woodbridge Avenue in Edison, New Jersey.

The Facility will serve the needs of the EPA in its mission to research, develop, and promote the commercialization of innovative hazardous waste treatment technologies. These technologies will assist in the rapid and cost effective resolution of the nation's hazardous waste problems. Treatment technologies to be developed and demonstrated at the Facility will support the Superfund Innovative Technology Evaluation Program, established jointly by the EPA's Office of Research and Development and Office of Solid Waste and Emergency Response. Additionally, the Facility will bring together governmental, academic, and industrial organizations engaged in the study and mitigation of hazardous substances.

The types of technologies to be tested and evaluated may include physical, chemical, thermal, and biological treatment processes. Evaluations of such technologies under strictly controlled conditions will establish the reliability, cost effectiveness, and optimum range of performance of each technology.

The design and operation of the Facility will incorporate a full range of environmental controls to protect the public and the environment. All required Federal, State, and municipal permits will be obtained for the Facility.

### 3. Issues to be addressed in the EIS

a. Potential impacts on health and safety.

b. Potential impacts on the surrounding environment, including flora and fauna, cultural resources, air and water quality, and environmentally sensitive areas.

c. Procedures for material handling.

d. Measures to be used during emergency situations (fire, etc.).

e. Evaluation of the following categories of alternatives for environmental soundness, cost effectiveness, and implementability:

1. No action.

2. Leasing an existing building at an alternate location.

3. Construction of the facility at an alternate location.

4. Proposed action: See item 2 above.

### 4. Public Participation in the EIS Process

Participation by regulatory agencies, interested organizations and the general public is encouraged. In order to develop the scope of the EIS, the EPA will conduct a public meeting on Sept. 22, 1988, at 7:30 p.m., in the Council Chambers of the Edison Township Municipal Building, 100 Municipal Blvd., Edison, New Jersey. During the scoping meeting, participants can comment upon the scope of the EIS, reasonable alternatives that should be considered, anticipated environmental impacts, and actions that might be taken. Participation at the scoping meeting is not contingent upon the advance submission of written materials or a formal notification of intent to participate. However, participants are encouraged to do so. If attendance at the scoping meeting is not possible, written comments on scoping issues may be sent within 45 days of the date of this notice to the EPA contact person named above.

Copies of preliminary information will be made available for public review, prior to the meeting, at the Edison Main Library (201–287–2298), 340 Plainfield Avenue, Edison, New Jersey, or upon request to the EPA contact person named above. For additional information, contact the EPA contact person named above, or Mr. John Grun, Director of Health and Human Resrouces, Edison Township Division of Health (201–287–0900, Ext. 291).

### 5. Timing

The EPA expects to issue a draft Environmental Impact Statement (EIS) for public review and comment within five (5) months. The draft EIS will be published in the **Federal Register**, and will be available for a 45 day public review and comment period.

### 6. Requests for Copies of the Draft EIS

Interested parties are requested to submit their names and address to the EPA contact person named above for inclusion on the distribution list for the draft EIS and related public notices.

Responsible Official John H. Skinner for Thomas R. Hauser, Director, Risk Reduction Engineering Laboratory Mgr.

Dated: July 20, 1988.
**Richard E. Sanderson,**
*Director, Office of Federal Activities.*
[FR Doc. 88-17168 Filed 7-28-88; 8:45 am]
BILLING CODE 6560-50-M

[AMS-FRL-3421-6]

## Public Notice of Agreement Between Environmental Protection Agency and National Highway Traffic Safety Administration on Joint Consultation Process

**AGENCY:** Environmental Protection Agency.
**ACTION:** Notice.

**SUMMARY:** This notice is for the purpose of notifying the public that the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) have jointly agreed to a Memorandum of Understanding (MOU) which establishes a consultation process between the two agencies whereby pending rulemaking and other policy and regulatory documents of mutual concern will be exchanged and discussed on a regular basis. The agreement is to assure that each agency solicits the viewpoints of the other agency when developing rules or other policy which have potential impact on the programs of the other agency. The MOU in its entirety is included in the appendix to this notice.

**FOR FURTHER INFORMATION CONTACT:** John Cabaniss, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382-7647 or FTS 382-7647.

Date: July 25, 1988.
**Don R. Clay,**
*Acting Assistant Administrator for Air and Radiation.*

### Appendix—Memorandum of Understanding

The Environmental Protection Agency (EPA) and the National Highway Traffic Safety Adminsitration (NHTSA) agree to establish a consultation process, the details of which are contained herein, whereby pending rulemaking and other policy and regulatory documents of mutual concern will be exchanged and discussed on a regular basis.

The purpose of this agreement is to assure that each agency solicits the viewpoints of the other agency when developing rules or other policy which have potential impact on the programs of the other agency.

To this end, NHTSA and EPA each agree to meet at least once per calendar quarter, at a time and location mutually agreeable, to discuss rulemaking and other activities of concern.

Further, EPA agrees to the following actions:

(1) Identify as early as possible, for purposes of raising for discussion at the quarterly meetings discussed above, actions under consideration which have potential impact on NHTSA's motor vehicle programs. Projects shall be identified, if possible, in the planning stage.

(2) Send to NHTSA for review and comment all draft rulemaking notices which may impact NHTSA's motor vehicle safety, fuel economy, theft, or other motor vehicle related program. Such rulemaking will not be limited to those initiated by EPA's Office of Mobile Sources, but will also include actions under consideration in other EPA offices. Draft rulemaking notices which affect NHTSA's programs shall be sent to NHTSA no later than the time they are sent to the Office of Management and Budget (OMB).

(3) Prior to issuance of a proposed rulemaking identified in accordance with item (2) above, EPA shall consider and accommodate NHTSA's comments, where appropriate, consistent with the Clean Air Act or other laws.

(4) Discuss at the quarterly meetings the progress in addressing any concerns raised by NHTSA about any EPA proposal.

(5) Consider and accommodate, where appropriate, consistent with the Clean Air Act or other laws, any additional NHTSA comments in subsequent EPA decisions regarding the rulemakings under discussion.

(6) Send to NHTSA for review and comment the draft final rule no later than the time it is sent to OMB.

(7) Prior to issuance of the final rule, EPA shall consider and accommodate NHTSA's comments, where appropriate, consistent with the Clean Air Act or other laws.

Likewise, NHTSA agrees to the following actions:

(1) Identify as early as possible, for purposes of raising for discussion at the quarterly meetings discussed above, actions under consideration which have potential impact on EPA's programs or which require EPA action (such as review of Environmental Impact Statements). Projects shall be identified, if possible, in the planning stage.

(2) Send to EPA for review and comment all draft rulemaking notices which may impact any of EPA's programs. Draft rulemaking notices which affect EPA's programs shall be sent to EPA no later than the time they are sent to the OMB.

(3) Prior to issuance of a proposed rulemaking identified in accordance with item (2) above, NHTSA shall consider and accommodate EPA's comments, where appropriate, consistent with NHTSA's statutes.

(4) Discuss at the quarterly meetings the progress in addressing any concerns raised by EPA about any NHTSA proposal.

(5) Consider and accommodate, where appropriate, consistent with NHTSA's governing statutes, any additional EPA comments in subsequent NHTSA decisions regarding the rulemakings under discussion.

(6) Send to EPA for review and comment the draft final rule no later than the time it is sent to OMB.

(7) Prior to issuance of the final rule, NHTSA shall consider and accommodate EPA's comments, where appropriate, consistent with NHTSA's governing statutes.

This agreement becomes effective upon the date of signature.

*For NHTSA:*
**Diane K. Steed,**
*Administrator.*

Date: April 29, 1988.
*For EPA:*
**Lee M. Thomas,**
*Administrator.*

Date: June 21, 1988.
[FR Doc. 88-17115 Filed 7-28-88; 8:45 am]
BILLING CODE 6560-50-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 213-010972-001.

*Title:* Three Lines' Far East-Atlantic Coast Space Charter and Sailing Agreement.

*Parties:*

Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Yamashita-Shinnihon Steamship Co., Ltd. ("YSL")

*Synopsis:* The proposed amendment would substitute Nippon Liner System, Ltd., as a party to the agreement in place of YSL effective as of October 1, 1988.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: July 26, 1988.

[FR Doc. 88-17152 Filed 7-28-88; 8:45 am]

BILLING CODE 6735-01-M

## FEDERAL RESERVE SYSTEM

### CNBC Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNBC Bancorp., Inc.*, Chicago, Illinois; to engage *de novo* through its subsidiary, CNBC Development Corporation, Chicago, Illinois, in making real estate development loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 25, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17080 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

### Fleet/Norstar Financial Group, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to retain control of 100 percent of the voting shares of Fleet/Norstar New York, Inc., Providence, Rhode Island, and thereby indirectly acquire Norstar Bank of Upstate New York, Albany, New York, Norstar Bank, Hempstead, New York, Norstar Bank, N.A., Buffalo, New York; and Norstar Bank of Central New York, Syracuse, New York. In connection with this application, Fleet/Norstar New York, Inc, has applied to become a bank holding company.

In addition, Fleet/Norstar New York, Inc., Providence Rhode Island, also proposes to acquire Norstar Leasing Services, Inc., Albany, New York, and thereby engage in equipment leasing and commerical lending pursuant to § 225.25 (b)(1) and (b)(5); Norstar Auto Lease, Inc., Albany, New York, and thereby engaged in automobile leasing pursuant to § 225.25(b)(5); Norstar Investment Advisory Services, Inc., Rochester, New York, and thereby engage in portfolio management and investment advices pursuant to § 225.25(b)(4); Norstar Trust Company, Rochester, New York, and its wholly-owned subsidiary, Norstar Trust Company of Florida, National Association, Naples, Florida, and thereby engage in trust and financial management services pursuant to § 225.25(b)(3); Norstar Mortgage Corporation, Westbury, New York, and thereby engage in the origination and servicing of residential mortgage loans and the provision of related advisory services pursuant to § 225.25 (b)(1) and (b)(4); Chapdelaine & Co. Government Securities, Inc., New York, New York,

and thereby act as a broker of government securities on behalf of other brokers who are principal dealers in such securities purusant to § 225.25(b)(16); Norlife Reinsurance Company, Phoenix, Arizona, and thereby act as a reinsurer of credit life, credit accident health insurance and mortgage life and mortgage accident and health insurance sold in connection with extensions of credit to consumers pursuant to § 225.25(b)(8); Adams, McEntree & Co., Inc., New York, New York, and thereby engage in the sale of underwriting of state and municipal securities and brokerage of certain mutual fund shares pursuant to § 225.25(b)(16); Altman, Brown & Everett, Inc., Albany, New York, and thereby engaged in employee benefits consulting services pursuant to Board Orders dated June 19, 1985, and August 19, 1986; Norstar Brokerage Corporation, New York, New York, and its wholly-owned subsidiary, NB Clearing Corporation, New York, New York, and thereby engage in retail discount brokerage services pursuant to § 225.25(b)(15); and Norstar Servics, Inc., Albany, New York, and thereby engage in providing data processing services to affiliates of the parent comany and, in the past, to third persons pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 25, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17081 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

## Fleet/Norstar Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Banking Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 18, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island, and Fleet Bancorp of New Hampshire, Inc., Nashua, New Hampshire; to acquire 100 percent of the voting shares of Fleet Bank of New Hampshire, Nashua, New Hampshire, a *de novo* bank. In connection with this application, Fleet Bancorp of New Hampshire, Inc. has also applied to become a bank holding company. Comments on this application must be received by August 12, 1988.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Greenwood National Corporation*, Greenwood, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Greenwood National Bank, Greenwood, South Carolina, a *de novo* bank. Comments on this application must be received by August 17, 1988.

2. *Washington Bancorporation*, Washington, DC; to acquire 100 percent of the voting shares of The Washington Bank (of Maryland), Baltimore, Maryland, a *de novo* bank.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Pasco Financial Corporation*, Dade City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Pasco, Dade City, Florida.

2. *Soperton Naval Stores, Inc.*, Soperton, Georgia; to become a bank holding company by acquiring up to 47.3 percent of the voting shares of The Bank of Soperton, Soperton, Georgia.

3. *SouthTrust of Florida, Inc.*, St. Petersburg, Florida, and SouthTrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust Bank of Sarasota County, Sarasota, Florida, a *de novo* bank.

4. *Sunset Commercial Corporation*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Sunset Financial Corporation, Miami, Florida, and thereby indirectly acquire Sunset Commercial Bank, Miami, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Exchange Bancorp, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Exchange Bank of Lake County, Vernon Hills, Illinois, a *de novo* bank.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoeing, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Midwest Bankshares, Inc.*, formely Farmers and Merchants Insurance Agency, Inc., Colby, Kansas; to acquire 87.5 percent of the voting shares of First Belleville Bancshares, Inc., Belleville, Kansas, and thereby indirectly acquire First National Bank in Belleville, Belleville, Kansas.

Board of Governors of the Federal Reserve System, July 25, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17082 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

## Guaranty Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Guaranty Bancshares, Inc.*, Mt. Pleasant, Texas; to acquire Computer SIGNET, Mt. Pleasant, Texas, and thereby engage in providing to others financially related data processing and data transmission services, facilities, and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Northeast Texas.

Board of Governors of the Federal Reserve System, July 25, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17083 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

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**Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 12, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Dr. James M. Hill, IV,* Coconut Grove, Florida; to acquire an additional 2.88 percent of the voting shares of Cardinal Bancshares, Inc., Lexington, Kentucky.

2. *Mickey W. Taylor,* Yakima, Washington; to acquire an additional 2.88 percent of the voting shares of Cardinal Bancshares, Inc., Lexington, Kentucky.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. **Mary Robertson,** Maryville, Tennessee; to retain 0.8 percent, and to acquire an additional 3.4 percent of the voting shares of Twin Cities Financial Services, Inc., Maryville, Tennessee, and thereby indirectly acquire Citizens Bank of Blount County, Maryville, Tennessee.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jeral Venoy Miller,* to acquire control of Cattleman's Bancshares, Inc., Gordon, Texas.

2. *Klaus Peter Ulrich,* Kingwood, Texas; to acquire 100 percent of the voting shares of Sun Belt Bancshares Corp., Conroe, Texas, and thereby indirectly acquire National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, July 25, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17084 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

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## FEDERAL TRADE COMMISSION

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JULY 11, 1988 AND JULY 22, 1988

| Name of acquiring person, name of acquiring person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Masco Industries, Inc., Durakon Industries, Inc., Durakon Industries, Inc | 88-1931 | 07/11/88 |
| Cincinnati Bell Inc., Vanguard Technologies International, Inc., Vanguard Technologies International, Inc | 88-1970 | 07/11/88 |
| Silicon Systems, Inc., American Telephone & Telegraph Co., AT&T Technologies, Inc | 88-1975 | 07/11/88 |
| Continental Cablevision, Inc., R.E. Turner, Turner Broadcasting System, Inc | 88-1978 | 07/11/88 |
| Petrofina S.A., Tenneco Inc., Tenneco Oil Co | 88-1979 | 07/11/88 |
| Gerald Carrus, Infinity Broadcasting Corp., Infinity Broadcasting Corp | 88-1980 | 07/11/88 |
| Michael A. Wiener, Infinity Broadcasting Corp., Infinity Broadcasting Corp | 88-1981 | 07/11/88 |
| Amax, Inc., Kaneb Services, Inc., Kaneb Energy Partners, Ltd | 88-1987 | 07/11/88 |
| AMR Corp., Simmons Airlines, Inc., Simmons Airlines, Inc | 88-1995 | 07/11/88 |
| John W. Kluge, Empire Hotel/Lincoln Center Associates, Empire Hotel/Lincoln Center Associates | 88-2000 | 07/11/88 |
| Evered Holdings PLC, Fidler, Inc., Fidler, Inc | 88-2001 | 07/11/88 |
| Roxboro Investments (1976) Ltd., The Manitowoc Co., Inc., The Manitowoc Co., Inc | 88-1907 | 07/12/88 |
| Roy J. Rose, Steven A. Altman, Sun Runner Marine, Inc | 88-1946 | 07/12/88 |
| The Henley Group, Inc., Marmon Holdings, Inc. (Pritzer family), Union Tank Car Co | 88-1997 | 07/12/88 |
| National Data Corp., Chemical Banking Corp., Chemical Banking Corp | 88-2010 | 07/12/88 |
| FlightSafety International, Inc., UAL Corp., United Airlines Services Corp | 88-1866 | 07/13/88 |
| Maxwell Foundation, International Business Machines Corp., Science Research Associates, Inc | 88-1867 | 07/13/88 |
| Archer-Daniels-Midland Co., Midwest Processing Co., Midwest Processing Co | 88-1874 | 07/13/88 |
| Sonat Inc., Kaneb Services, Inc., UPE and 50% interest in two subs | 88-1880 | 07/13/88 |
| Secom Co., Ltd., Med-Trans, Med-Trans | 88-1944 | 07/13/88 |
| Kelso Investment Associates III, L.P., Arkansas Best Corp., Arkansas Best Corp | 88-1973 | 07/13/88 |
| Kelso Investment Associates III, L.P., Arkansas Best Corp., Arkansas Best Corp | 88-1974 | 07/13/88 |
| Kelso Investment Associates III, L.P., Best Acquisition Corp., Best Acquisition Corp | 88-1976 | 07/13/88 |
| Agip S.p.A., Steuart Investment Co., Steuart Petroleum Co | 88-1863 | 07/13/88 |
| Chargeurs S.A., Prouvost, S.A., Plusa, Inc | 88-1639 | 07/14/88 |
| Acadia Partners, L.P., URM Investors Inc., URM Investors Inc | 88-1956 | 07/14/88 |
| The Talbex Group PLC, Mr. Marshall S. Cogan, Victoreen, Inc | 88-1989 | 07/14/88 |
| Chloride Group PLC, Altus Corp., Altus Corp | 88-1765 | 07/15/88 |
| General Electric Co., Roger Penske, Hertz Penske Truck Leasing, Inc | 88-1890 | 07/15/88 |
| Roger S. Penske, General Electric Co., Gelco Corp | 88-1891 | 07/15/88 |
| Newell Co., Vermont American Corp., Vermont American Corp | 88-1910 | 07/15/88 |
| Michael Wayne, Durakon Industries, Inc., Durakon Industries, Inc | 88-1930 | 07/15/88 |
| Brierley Investments Ltd., Steego Corp., Steego Corp | 88-1942 | 07/15/88 |
| The Wharf (Holdings) Ltd., Aer Lingus P.L.C., 14 subsidiaries of AE | 88-1991 | 07/15/88 |
| Michael G. DeGroote, Willett, Inc., Willett, Inc | 88-2015 | 07/15/88 |
| Catholic Healthcare West, Dominican Santa Cruz Hospital, Dominican Santa Cruz Hospital | 88-2018 | 07/15/88 |
| Co-operative Eka Corp., Clarendon Group Ltd., CG America Corp | 88-2031 | 07/15/88 |
| American Exploration Co., Tesoro Petroleum Co., Tesoro Petroleum Corp. & Tesoro Natural Gas Co | 88-2032 | 07/15/88 |
| MLGA Fund I, L.P., Dorton Broadcasting, Inc., Dorton Broadcasting, Inc | 88-2034 | 07/15/88 |
| Eli S. Jacobs, National Felt Co., National Felt Co | 88-2036 | 07/15/88 |
| Television South plc, MTM Entertainment, Inc., MTM Entertainment, Inc | 88-2038 | 07/15/88 |
| Integrated Resources, Inc., Bizerian Partners Limited Partnership 1, Career Systems Development Corp | 88-2058 | 07/15/88 |
| World International (Holdings) Ltd., Aer Lingus, plc, 14 subsidiaries of AE | 88-2060 | 07/15/88 |
| Jean-Michel Tivoly, Litton Industries, Inc., Litton Industrial Automation Systems, Inc | 88-1804 | 07/16/88 |
| Sears Roebuck & Co., Eric Lorentzen, Levolor Lorentzen, Inc | 88-1839 | 07/18/88 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JULY 11, 1988 AND JULY 22, 1988—Continued

| Name of acquiring person, name of acquiring person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Millipore Corp., New Brunswick Scientific Co., Inc., Biosearch, Inc | 88-1899 | 07/18/88 |
| Gandalf Technologies Inc., Case Group PLC, Case Group PLC | 88-1929 | 07/18/88 |
| The Clayton & Dubilier Private Equity Fund II Ltd. Partnership, Robert Rosenkranz, Hyponex Corp | 88-1959 | 07/18/88 |
| Bowthorpe Holdings plc, David H. Kennington, Thermalloy Investment Co | 88-1963 | 07/18/88 |
| Ford Motor Co., Fomento Proa, S.A. de C.V., Carplastic, S.A. de C.V | 88-1985 | 07/18/88 |
| The Clayton & Dubilier Private Equity Fund Ltd. Partnership, SRH Acquisition Corp., SRH Acquisition Corp | 88-2006 | 07/18/88 |
| AMR Corp., Command Airways, Inc., Command Airways, Inc | 88-2045 | 07/18/88 |
| Household International, Inc., Beverly Hills Savings, Beverly Hills Savings | 88-2055 | 07/18/88 |
| Cox Enterprises, Inc., Stuart Arnold d.b.a. Trade Publications, Stuart Arnold d.b.a. Trade Publications | 88-1977 | 07/19/88 |
| American Cyanamid Co., Ideal Industries, Conap, Inc | 88-1992 | 07/19/88 |
| Aktiebolaget Volvo, Ford Motor Co., Park Ridge Corp | 88-1993 | 07/19/88 |
| Morgan Stanley Group Inc., FH Acquisition Corp., FH Acquisition Corp | 88-2011 | 07/19/88 |
| The Morgan Stanley Leveraged Equity Fund II, L.P., FH Acquisition Corp., FH Acquisition Corp | 88-2012 | 07/19/88 |
| The Morgan Stanley Leveraged Equity Fund II, L.P., Fort Howard Corp., Fort Howard Corp | 88-2013 | 07/19/88 |
| Lucas Industries plc, Epsco, Inc., Epsco, Inc | 88-2028 | 07/19/88 |
| NYNEX Corp., AGS Computers, Inc., AGS Computers, Inc | 88-2044 | 07/19/88 |
| W.D. Co., Inc., Maverick Management Partnership, Joseph Horne Co., Inc | 88-2030 | 07/20/88 |
| Mrs. Lea Knurr Sternberg, The May Department Stores Co., The May Department Stores Co., May Florida division | 88-1859 | 07/21/88 |
| Sumitomo Electric Industries, Ltd., S.&W. Berisford PLC, High Voltage Engineering Corp., (Judd wire division) | 88-1898 | 07/21/88 |
| Henkel KGaA, The Clorox Co., The Clorox Co | 88-1932 | 07/21/88 |
| IMI plc, R. Scott Schafler, Conax Buffalo Corp | 88-1940 | 07/21/88 |
| R.L. Polk & Co., National Demographics & Lifestyles Inc., National Demographics & Lifestyles Inc | 88-1958 | 07/21/88 |
| Basf Aktiengesellschaft, Flexible Products Co., Flexible Products Co | 88-1994 | 07/21/88 |
| McKechnie plc, Donald McCourtney, McCourtney Plastics Inc | 88-1996 | 07/21/88 |
| Michael D. Dingman, The Henley Group, Inc., Henley Manufacturing Corp | 88-2003 | 07/21/88 |
| Daishowa Paper Mfg. Co., Ltd., Reed International P.L.C., Reed Canadian Holdings Ltd., Reed Lignin Inc | 88-2029 | 07/21/88 |
| Apache Corp., Apache Corp. (controlling partner of APC), Apache Petroleum Co., L.P | 88-2043 | 07/21/88 |
| Michael D. Dingman, The Pullman Co., The Pullman Co | 88-2059 | 07/21/88 |
| FFL Partners, Cala Foods, Inc., Cala Foods, Inc | 88-2062 | 07/21/88 |
| Johnson Controls, Inc., Hoover Ikeda, Inc., Hoover Ikeda, Inc | 88-1968 | 07/22/88 |
| Mark IV Industries, Inc., Armtek Corp., Armtek Corp | 88-2002 | 07/22/88 |
| Richard R. Kelley (Hotel Operating Co. of Hawaii, Ltd.), Luther Damon Gadd, Luther Damon Gadd | 88-2007 | 07/22/88 |
| General Accident Fire & Life Assurance Corp., p.1.c., NZI Corporation Ltd., NZI Corporation Ltd | 88-2033 | 07/22/88 |
| Ikeda Bussan Co., Ltd., Hoover Ikeda, Inc., Hoover Ikeda, Inc | 88-2050 | 07/22/88 |
| Arabian Investment Banking Corp. (INVESTCORP) EC, Nestle S.A., Carnation Co., Southern California dairies division | 88-2057 | 07/22/88 |
| Mr. Yasuji Hatano (Kokusai Motorcars Co. Ltd.), Hemmeter Investment Co., Hemmeter Investment Co | 88-2064 | 07/22/88 |
| Marley plc, Webster Brick Co., Inc., Webster Brick Co., Inc | 88-2070 | 07/22/88 |
| Knight-Ridder, Inc., Lockheed Corp., Dialog Information Services, Inc | 88-2071 | 07/22/88 |
| Inter Pacific Equity Ltd., Robert E. Black Trust, E.E. Black, Ltd | 88-2073 | 07/22/88 |
| Freeport-McMoran, Inc., Community Federal Savings & Loan, Community Investing & Development Corp | 88-2085 | 07/22/88 |

**FOR FURTHER INFORMATION CONTACT:**
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88–17117 Filed 7–28–88; 8:45 am]
BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 22, 1988.

**Public Health Service**

(Call Reports Clearance Officer on 202–245–2100 for copies of package).

**Food and Drug Administration**

1. Reporting and Recordkeeping Requirements for Electronic Products under Pub. L. 90–602-General Requirements—0910–0025—The purpose of the Radiation Control for Health and Safety Act is to protect the public from unnecessary exposure to radiation from electronic products. To carry out this responsibility, FDA must collect certain information from the manufacturers and dealer/distributors about the electronic products they sell and install. This request contains several types of information collections and recordkeeping requirements. Respondents: Business or other for-profit, small business or organizations. Number of Respondents: 1,601; Frequency of Response: On Occasion; Estimated Annual Burden: 1,385,691 hours.

OMB Desk Officer: Shannah Koss-McCallum

**Office of Human Development Services**

(Call Reports Clearance Officer on 202–472–4415 for copies of package).

1. Interim Final Regulations for the Administration for Native Americans—New—These interim regulations establish the procedures and criteria by which ANA will make a five-year demonstration grant to either one agency in the State of Hawaii or native Hawaiian organization to manage a revolving loan fund. Respondents: State or local governments, Non-profit institutions; Number of Respondents: 1; Frequency of Response: 11; Estimated Annual Burden: 510 hours.

OMB Desk Officer: Shannah Koss-McCallum

**Health Care Financing Administration**

1. Outpatient Rehabilitation Provider Cost Report—0938–0037—The HCFA–2088 is completed by outpatient physical therapy provides outpatient speech pathology providers, and comprehensive outpatient Rehabilitation Facilities. It allows HCFA to reimburse providers for services rendered to medicare beneficiaries. Respondents: State or local governments/Business or other for-profit. Number of Respondents: 600; Frequency of Response: Annually; Estimated Annual Burden: 83,400 hours.

2. PRO Reporting Forms—NEW—PROs are authorized to review inpatient and outpatient services for quality of care provided and to eliminate unnecessary, unreasonable and inappropriate care to Medicare beneficiaries, these forms are used to record results of reviews. Respondents: Business or other for-profit; Number of Respondents: 54; Frequency of Response: Occasionally; Estimated Annual Burden: 8,910 hours.

3. Hospital Provider of Long Term Care Services (Swing-Bed) Survey Report Form—0938–0485—This survey form is an instrument used by the State agency to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal government. Respondents: Individuals or households, State or local governments. Number of Respondents: 53; Frequency of Response: 14.26; Estimated Annual Burden: 378 hours.

OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk

Officer designated above at the following address: OMB Reports Management Branch New Executive Officer Building, Room 3208 Washington, DC 20503.

ATTN: Shannah Koss-McCallum.

Date: July 26, 1988.

**James V. Oberthaler,**

*Deputy Assistant Secretary, Information Resources Management.*

[FR Doc. 88-17133 Filed 7-28-88; 8:45 am]

BILLING CODE 4150-04-M

## Food and Drug Administration

**[Docket No. 88F-0236]**

## Bionox Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Bionox Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use in contact with food an aqueous sanitizing solution containing sodium, calcium, or postassium hypochlorite; citric acid; sodium citrate; and *alpha*-[*para*-(1,1,3,3-tetramethylbutyl)phenyl]-*omega*-hydroxypoly(oxyethylene), containing 9 to 10 moles of ethylene oxide.

**FOR FURTHER INFORMATION CONTACT:** Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8B4050) has been filed by Bionox Corp., 6890 East Loma del Bribon, Tucson, AZ 85715, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use in contact with food of an aqueous sanitizing solution containing sodium, calcium, or potassium hypochlorite; citric; sodium citrate; and *alpha*-[*para*-(1,1,3,3-tetramethylbutyl)phenyl—*omega*-hydroxypoly(oxythylene), containing 9 to 10 moles of ethylene oxide.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 22, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88-17146 Filed 7-28-88; 8:45 am]

BILLING CODE 4150-01-M

**[Docket No. 88N-0097]**

## Revised Chapter in Regulatory Procedures Manual; Perishable Foods, Including Fresh Fish and Seafood and Fresh Produce; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the revised Regulatory Procedures Manual (RPM), Chapter 9-73, "Perishable Foods, Including Fresh Fish and and Seafood and Fresh Produce." This chapter provides FDA districts with guidance for uniform handling of sampled import shipments of these products. Under these procedures, importers would be required to maintain temporary control over all imported perishable food products which FDA has sampled, but which are not suspected to violate the Federal Food, Drug, and Cosmetic Act. Such control must last at least until 5 p.m. local time on the day following FDA sample collection, unless released earlier by the agency. Agreements by importers to retrieve sampled lots that are distributed and later found violative by FDA will no longer be required, because redelivery bonds will remain in force until FDA's analyses are completed and sampled lots are formally released.

**EFFECTIVE DATE:** Revised RPM Chapter 9-73 will be effective on September 27, 1988.

**ADDRESS:** Regulatory Procedures Manual Chapter 9-73 "Perishable Food Products, Including Fresh Fish and Seafood and Fresh Produce" is available for public examination at, and written requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your request.).

**FOR FURTHER INFORMATION CONTACT:** James C. Lyda, Office of Regulatory Affairs (HFC-131), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-6553.

**SUPPLEMENTARY INFORMATION:** Experience shows that importers can temporarily maintain control of perishable foods without spoilage and that many FDA sample analyses can be completed within 24 to 32 hours of sample collection. Shipments can be controlled by importers either at the point of entry or they may proceed intact to some inland point where they would be held. A temporary delay in final distribution of FDA-sampled lots increases the likelihood that any violative shipments will not be distributed to consumers.

Revised RPM Chapter 9–73 requires that FDA districts modify the Notice of Sampling directing importers to maintain temporary control of shipments of perishable food products sampled by FDA that are not suspect. Importers must hold, intact, FDA-sampled suspect shipments, pending results of FDA's sample analysis. In revising RPM Chapter 9–73, FDA concluded that it is no longer necessary to require a written agreement by importers that they will retrieve shipments later found violative by FDA analyses. Distribution of products that are not suspect into retail channels may take place at the discretion of the importer at the time specified when FDA has not completed analyses. Redelivery bonds, however, remain in force until shipments are formally released. FDA intends to recommend to the U.S. Customs Service that a penalty of three times the value of unrecovered product be assessed when a shipment is found violative and recall is necessary. In addition, other regulatory action may be initiated by FDA to remove violative products that have been distributed.

Dated: July 20, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88–17145 Filed 7–26–88; 3:50 pm]

BILLING CODE 4160–01–M

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## Health Care Financing Administration

**[HSQ-159-N]**

## Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest from In-State Organizations

**AGENCY:** Health Care Financing Administration (HCFA), HSS.

**ACTION:** General notice.

**SUMMARY:** This notice, in accordance with section 4092 of the Omnibus Budget Reconciliation Act (OBRA) of 1987, gives six months advance notice of the dates when contracts with out-of-State Utilization and Quality Control Peer Review Organizations (PROs) end. It also specifies the period of time in which in-State organizations may submit statements of interest so that they may receive Requests for Proposals (RFPs) and compete for those contracts. The areas currently affected are Alaska, Idaho, Maine, Vermont and the District of Columbia.

**DATE:** Statements of interest must be received at the appropriate address as provided below no later than 5:00 p.m. EST on August 19, 1988.

**ADDRESS:** Statements of interest must be submitted to: William J. Tate, Health Care Financing Administration, OMB, Room 389 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

**FOR FURTHER INFORMATION, CONTACT:** Michael Rappaport, (301) 966–6893.

### I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No 97-248) amended Part B of Title XI of the Social Security Act (Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs currently review certain health care services funded under Title XVIII of the Act (Medicare) and, in the future will also be responsible for review of the medical care which is reimbursed under other Federal programs, to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality which meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify and enchance the cost-effectiveness and efficiency of the peer review process.

In June of 1984, HCFA began awarding contracts to PROs. We currently maintain 54 PRO contracts with organizations that provide medical review activities for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam and American Samoa. In accordance with section 1153 of the Act, the organizations that are eligible to contract as PROs have satisfactorily demonstrated either that they are: (1) Physician-sponsored organizations that are composed of a substantial number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the respective review area and who are representative of the physicians practicing in the area; or (2) physician access organizations that

have available, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, or a health care facility affiliate, and must have a consumer (a Medicare beneficiary) on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) includes provisions that impose new requirements on the Secretary with respect to contracts with PROs. Section 4092 of OBRA amends section 1153 of the Act by adding a new subsection (i) that prohibits the Secretary from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than six months before the date of expiration, and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time HCFA may not automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. We note that the conference agreement accompanying the legislation specifically removed the Senate amendment requirement that the Secretary give *additional* consideration to any qualified in-State organization in the contract competition process.

These requirements are effective with contracts scheduled for renewal on or after August 1, 1988. For purposes of renewal under section 4092, the statute defines an in-State organization as one which has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation, the headquarters of which is located in such State).

We previously published a notice on March 11, 1988 (53 FR 7976) which was subsequently amended on April 1, 1988 (53 FR 10565), that identified eleven review areas for which PRO contracts were held by out-of-State organizations. These areas were Alaska, American Samoa and Guam, the District of Columbia, Delaware, Idaho, Kentucky, Maine, Nebraska, South Carolina, and Wyoming. The March 31st notice requested statements of interest for the areas of Delaware, Kentucky, Nebraska, South Carolina, and Wyoming. The areas currently affected by this notice are the District of Columbia, Alaska, Maine, Vermont, and Idaho.

We intend to implement these changes in the most equitable manner, and will therefore apply this new procedure in any state where doubt exists with respect to the "in-State" status of the incumbent PRO. In addition, rather than requiring an in-State organization to submit a fully developed contract proposal at the time of this notice, we will ask only that the organization demonstrate that it meets the definition of an in-State organization and that it is otherwise an eligible organization in accordance with section 1153 of the Act. If we receive one or more qualified statements of interest, we will conduct a full and open competition in the acquisition of medical review services for that PRO area. All eligible in-State organizations and other potential sources will be furnished with a Request for Proposal (RFP) as part of the competitive contracting process. We are following this two-step procedure to assure the integrity of the competitive bidding process.

Additionally, section 4091 of OBRA permits the Secretary to provide for extensions of existing PRO contracts to provide for a staggered period of contract expiration dates and to permit adequate time to complete contract renewal negotiations. We will extend PRO contracts under the authority of this section to provide an opportunity for an orderly transition. Specifically, we intend to extend the PRO contracts in Alaska, the District of Columbia, Maine, and Vermont, which were originally scheduled to expire on October 31, 1988; and Idaho, which was originally scheduled to expire on September 30, 1988, through March 31, 1989.

## II. Provisions of the Notice

This notice announces that current contracts (including intended extensions) between HCFA and out-of-State PROs responsible for review in Alaska, Idaho, Maine, Vermont, and the District of Columbia, will expire on March 31, 1989. Interested organizations in these areas may submit statements of interest in those contracts. The statements must be received by HCFA no later than August 19, 1988, and, in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted (or, it must be one which is owned by a parent corporation the headquarters of which is located in that State). In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be either a physician sponsored or a physician access organization.

1. Physician sponsored organization.

i. The organization must be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area and who are representative of the physicians practicing in the area.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. In order to meet the requirements of A.1.i and A.1.ii., an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to demonstrate that it meets this criterion, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area; or, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, then the organization must demonstrate in its statement of interest, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician access organization.

i. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. An organization meets the requirements of A.2.i. and A.2.ii. if it demonstrates that it has available to it at least one physician in every generally recognized specialty; and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

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B. Have a consumer (that is, a Medicare beneficiary) on its governing board.

If one or more organizations meet the above requirements, and submit statements of interest in accordance with this notice, HCFA will consider those organizations to be potential sources for the contracts (identified above) that are expiring on March 31, 1989. These organizations will be furnished with an RFP and will be considered in full and open competition for the PRO contract to provide medical review services for that State.

**III. Regulatory Impact Statement**

This notice merely announces the dates when contracts with various out-of-State Peer Review Organizations expire, and the period of time in which in-State organizations may file statements of interest. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined and the Secretary certifies that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

**IV. Information Collection Requirements**

This notice contains information collection requirements that have been approved and assigned Control Number OMB 0938–0526 by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(Sec. 1153 of the Social Security Act (42 U.S.C. 1320c–2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 23, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 88–17079 Filed 7–28–88; 8:45 am]

BILLING CODE 4120–01–M

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## Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 52, No. 163, pp 31818–31819, dated Monday, August 24, 1987 and **Federal Register**, Vol. 52, No. 155, pp 29889–29890, dated Wednesday, August 12, 1987) is amended to reflect the organizational changes within the Office of the Actuary and the Bureau of Data Management and Strategy (BDMS). The changes are being made in order to consolidate the responsibility for managing HCFA's statistical data systems with BDMS.

The specific amendment to Part F. is described below

- Section FH.20.B.2., Office of Medicaid Cost Estimates (FHG2), is deleted and replaced with a new functional statement to read as follows:

2. Office of Medicaid Cost Estimates (FHG2).

Provides cost estimates of the Medicaid program and any proposed legislative changes in the program. Creates and maintains a State-by-State data base relating to the low income population, their health use, and incurred and expected costs. Develops descriptive information detailing and projecting the effect of changes in the economy or national health care system on the Medicaid program. Develops annual Medicaid program budget requirements for the President's budget preparation and presentation, including the Congressional justification. Prepares long-range program cost estimates, determines gross rates of program cost changes, and revises data requirements for future program costs. Prepares cost estimates for legislative and regulatory proposals affecting Medicaid benefits. Provides actuarial consultation to other HCFA components, States, or outside organizations.

- Section FH.20.B.2.b., the Division of Medicaid Statistics (FHG22) is deleted in its entirety. This Division is being transferred to the Office of Statistics and Data Management in the Bureau of Data Management and Strategy.
- A new Section FH.20.D.4.e., Division of Medicaid Statistics (FHE77), is added to read as follows:

e. Division of Medicaid Statistics (FHE77).

Collects annual (HCFA–2082) Medicaid program statistical reports for State Medicaid agencies. Works with State Medicaid agencies to correct errors and collect missing information. Conducts consistency checks across data bases to verify the validity of submitted data and makes corrections to current and historical data to produce accurate statistics. Publishes annual Medicaid statistics in various HCFA publication series and produces statistical tables for use by HCFA managers in administering the Medicaid program. Collects special project statistics (i.e., Early and Periodic Screening, Diagnosis, and Treatment and sterilization) to be used by HCFA personnel to administer or monitor special Medicaid programs. Responds to Medicaid data requests from HCFA staff, other agencies in the Department of Health and Human Services, the Executive Office of Management and Budget, Members of Congress, other Federal departments, State agencies, public and private higher education institutions and individual researchers. Provides statistical consultation to other components of HCFA concerning the Medicaid program. Designs and develops the computerized mechanisms for collecting person-based Medicaid data. Collects individual eligibility, provider, and claims data from State automated-data systems. Processes these data to verify the accuracy of the data consistent with development standards. Provides technical assistance to the States in the development and submittal of these data and maintains ongoing contact with State agencies to maintain a high quality of data submitted. Designs, develops, and maintains a system for computerizing and making available to all components the Medicaid program characteristics data contained in State Medicaid Plans. Designs and develops computer systems to utilize the data collected for statistical and actuarial purposes. Provides technical assistance to other components of HCFA in the development and use of these statistical data as they relate to specific program areas.

Date: June 30, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 88–17078 Filed 7–28–88; 8:45 am]

BILLING CODE 4120–03–M

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## National Institutes of Health

### Amended Notice of Meeting; Advisory Committee to Director

Notice is hereby given of a change in the schedule of the meeting of the Human Fetal Tissue Transplantation Research Panel scheduled for September 14–16, 1988, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland, that was published in the **Federal Register** on June 29, 1988, [53 FR 24500].

This panel was to have accepted public testimony from organizations according to the instructions specified in the notice on the late afternoon of September 14 and morning of September 15, but these times have been changed. The panel will now accept testimony

from organizations on the late afternoon of September 14 and late afternoon of September 15.

Dated: July 19, 1988.

**James B. Wyngaarden,**

*Director.*

[FR Doc. 88-17102 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

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**National Cancer Institute; Notice of Meeting of the Cancer Biology-Immunology Contracts Review**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 26, 1988, Guest Quarters Hotel, Calvert Conference Room, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 26 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 26 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A Wooda, Executive Secretary, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496-7153) will furnish substantive program information.

Dated: July 19, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88-17098 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

**National Cancer Institute; Notice of Meeting of the Cancer Center Support Review Committee**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, August 11-12, 1988, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on August 11, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 11, from approximately 9:30 a.m. to 6:00 p.m. and August 12, from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301-496-9767) will furnish substantive program information.

Dated: July 19, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88-17099 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

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**National Center for Nursing Research; Notice of Meeting of the National Advisory Council for Nursing Research**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, September 15-16, 1988, Building 37, Conference Room 6-B-23, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on September 15, from 9 a.m. to 1:30 p.m. and on September 16 from 8:30 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, National Advisory Council for Nursing Research Biennial Report, Trajectory for Research Training and Career Development, Nurse Scientist Award Program, Nursing Research Centers, First Awards, and Report of Meeting of Advisory Committee to the Director, NIH.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d)) of Pub. L. 92-463, the meeting will be closed to the public on September 15 from 1:30 p.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31A, Room 1E08, Bethesda, Maryland 20892, (301) 496-0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: July 19, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88-17104 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

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**National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 8-9, 1988, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 8 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6),

Title 5, U.S.C. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. on September 8 to adjournment on September 9 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Frances A. Pitlick, Director, Division of Extramural Affairs, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 19, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–17103 Filed 7–28–88; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 19–20, 1988, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on September 19 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on September 19 from 9:30 am. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Mental Retardation and Developmental Disabilities Branch, Center for Research for Mothers and Children. The meeting will be open on September 20 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on September 19 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 20 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Council Secretary, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: July 19, 1988

**Betty J. Beveridge,**

*Committee Management Officer, NIH*

[FR Doc. 88–17100 Filed 7–28–88; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on Septermber 22 and 23, 1988, Bethesda Hyatt Regency, Cartier-Tiffany Conference Room, Bethesda, Maryland.

This meeting will be open to the public on September 22, from 8:30 a.m. to 11:30 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 22 from 11:30 a.m. to 6:00 p.m., and on September 23 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. Elke Jordan, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC])

Dated: July 19, 1988

**Betty J. Beveridge,**

*Committee Management Officer, NIH*

[FR Doc. 88–17101 Filed 7–28–88; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* New York Zoological Society, Bronx, NY, PRT–727954.

The applicant requests a permit to reexport one wild caught female St. Vincent parrot (*Amazona guildingii*), imported in 1984 from Jersey Wildlife Preservation Trust, Jersey, Channel Islands, to Loro Parque, Tenerife, Canary Islands, for propagation.

*Applicant:* Ernest L. Johnson, Immokalee, FL, PRT–729767.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. Mike Cawood,

Gannahoek, Mortimer, C.P., Republic of South Africa, for the purpose of enhancement of survival of the species.

*Applicant:* San Diego Zoological Society, San Diego, CA, PRT–729790.

The applicant requests a permit to import one pair of captive/hatched golden-shouldered (=hooded) parakeets (*Psephotus chrysopterygius*) from Tierpark Berlin, Berlin, East Germany, for the purpose of exhibition, education, and propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: July 25, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 88–17159 Filed 7–28–88; 8:45 am]

BILLING CODE 4310–AN–M

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**Bureau of Land Management**

**[CA–060–08–4410–08]**

**The Monuments; Draft Environmental Impact Statement; Availability**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) concerning the transfer of certain lands under the jurisdiction of the BLM to the National Park Service's Death Valley and Joshua Tree National Monuments.

**DATE:** Comments on the DEIS are being accepted until October 27, 1988.

**ADDRESS:** For further information contact: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management is considering the transfer of five parcels of public lands currently managed by the Bureau to the Death Valley and Joshua Tree National Monuments. The purpose of the additions is to adjust the boundaries of the monuments so that they are more manageable, and so that natural areas and ecosystems currently bisected by the boundary are managed under a single jurisdiction.

On May 19, 1988, the Western Regional Office of the National Park Service proposed to the California State Office of the BLM that five parcels of land currently under BLM jurisdiction be transfered to the Joshua Tree and Death Valley National Monuments. The parcels, and the acreage of each, follow:

**Parcel 1**

North Death Valley, on the extreme north end of Death Valley National Monument, 84,389 acres. This area is a topographic extension of Death Valley, and its transfer would enhance its manageability.

**Parcel 2**

Hunter Mountain, on the western boundary of Death Valley National Monument, 26,687 acres. Inclusion of this parcel in the monument would bring all of Hunter Mountain under the jurisdiction of a single agency.

**Parcel 3**

Pyramid Peak, on the eastern boundary of Death Valley National Monument, 14,268 acres. A more definable monument boundary would be established and the entirety of Red Ampitheater and Pyramid Peak would be brought within the monument.

**Parcel 4**

Greenwater Valley, on the eastern boundary of Death Valley National Monument just south of Pyramid Mountain, 117,505 acres. Transfer of the large Greenwater Valley Parcel would bring the entire Black Mountain watershed within the monument, and would establish a readily-identifiable road as the monument's eastern boundary.

**Parcel 5**

Pinto Basin, on the southern boundary of Joshua Tree National Monument, 4,480 acres. This proposed BLM wilderness area is topographically related to adjacent Monument lands.

About 24 percent of the land proposed for transfer is classified by the BLM's California Desert Conservation Area Plan as either multiple use class M (moderate use) or class I (intensive use). The management of these lands after the transfer would not necessarily be in conformance with the Desert Plan. "If a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment" (43 CFR 1610.5–3). As a result, a plan amendment is necessary and is being considered through the DEIS.

Five alternatives are considered in detail by the DEIS. These include the following:

**Alternative A**

Park Service proposal.

**Alternative B**

Modified Greenwater Valley parcel (excluding a highly mineralized area in the Ibex Hills).

**Alternative C**

Eagle Mountains Alternative (an additional 25,000 acres proposed for transfer adjacent to the Pinto Basin parcel).

**Alternative D**

Modified Pyramid Peak parcel. Includes an additional portion of BLM's Funeral Mountains wilderness study area.

**Alternative E**

No action (lands would not be transfered, but would continue to be managed by BLM under the guidance of the California Desert Conservation Area Plan).

In addition, a highly mineralized area around Crater in the North Death Valley parcel would not be transfered if a mitigation measure considered by the DEIS was implemented.

The preferred alternative is to transfer the parcels to the Park Service. Two of the parcels (Hunter Mountain and Pinto Basin) would be transfered as proposed. Three would be transfered with boundaries modified as a result of the findings of the EIS (North Death Valley, Pyramid Peak, and Greenwater Valley). A total of 210,970 acres would be transfered.

Six public hearings will be held during the public review. The locations and dates follow:

*Date, Time, and Location*

September 19, 1988, 10:00 a.m. and 7:00 p.m., Holiday Inn, Riverside, Riverside, California

September 20, 1988, 7:00 p.m., Rodeway Inn, Palm Springs, California

September 21, 1988, 7:00 p.m., Carriage Inn, Ridgecrest, California

September 27, 1988, 7:00 p.m., Stathain Hall, Lone Pine, California

September 28, 1988, 7:00 p.m., Hurlbut-Rook Community Center, Tecopa, California

Comments on the DEIS should be submitted to the following address. Use of any other address may result in comments not being processed: California Desert District, Bureau of Land Management, ATTN: Monuments EIS, 1695 Spruce Street, Riverside, CA 92507.

A limited number of copies of the DEIS are available upon written request at the same address.

Dated: July 21, 1988.

**Wes Chambers,**

*Acting District Manager.*

[FR Doc. 88-17240 Filed 7-28-88; 8:45 am]

BILLING CODE 4310-40-M

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**[OR-010-08-4322-02:GP8-198]**

## Lakeview District Grazing Advisory Board; Change in Date of Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of a change in meeting date of the Lakeview District Grazing Advisory Board.

**SUMMARY:** The meeting scheduled for August 4, 1988 of the Lakeview District Grazing Advisory Board, published in the Federal Register June 14, 1988, has been changed to September 12, 1988. The meeting is open to the public and will begin at 10:00 a.m. in the Lakeview District conference room at 1000 South Ninth Street, Lakeview, Oregon.

The purpose of the meeting is to discuss the Board's recommendations on the Warner Lakes Plan Amendment for Wetlands and Associate Uplands and a discussion of the GAO Riparian Study.

**DATE:** September 12, 1988; 10:00 a.m.

**FOR FURTHER INFORMATION CONTACT:** Renee Synder, Public Affairs Officer, (503) 947-2177.

**July Nelson,**

*District Manager.*

[FR Doc. 88-17071 Filed 7-28-88 8:45 am]

BILLING CODE 4310-33-M

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**[NV-930-08-4212-14; N-42554]**

## Realty Action; Battle Mountain District, Tonopah Resource Area; Esmeralda County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Realty action; modified competitive sale of Federal land in Esmeralda County, NV.

**SUMMARY:** The following described land has been examined and identified as suitable for disposal by sale through modified competitive bidding procedures under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

**Mount Diablo Meridian**

T. 3 S., R. 35 E.,
Sec. 22, E½NE¼NE¼SE¼.
A parcel of land containing 5 acres.

### General Information

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the Federal Register, of a termination of the segregation, or 270 days from the date of publication of this notice, whichever comes first.

The sale will be held at a later date. The aprraised fair market value will also be available at a later date, but not less than 30 days before the sale.

The lands are proposed to be offered by sealed bid, utilizing modified competitive bidding procedures. The adjacent landowner has waived his preference right in favor of the proponent of the sale. The proponent, Larimore H. Albert, will be given a preference right to purchase the parcel by meeting the high bid.

Conveyance of the available mineral interests will occur simultaneously with the sale of the lands. A successful bid for the lands will constitute an application for conveyance of those mineral interests.

The sale is consistent with the Bureau's planning system and the Esmeralda-Southern Nye Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The land will not be offered for sale for at least 60 days after the publication of this Notice in the Federal Register.

The lands are within the White Wolf Grazing Allotment. The lessee has been given the requisite two-year notification.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Oil and gas, together with the right to prospect for, mine, and remove these minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Battle Mountain District Office.

The sale will be subject to the following right-of-way of record: NEV-051579, Valley Electric Association powerline.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

July 15, 1988.

**Michael C. Mitchel,**

*Acting District Manager, Battle Mountain District.*

[FR Doc. 88-17085 Filed 7-28-88; 8:45 am]

BILLING CODE 4310-HC-M

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## INTERSTATE COMMERCE COMMISSION

**[Docket No. MC-F-19154]**

## Capitol Bus Co.—Pooling—Greyhound Lines, Inc.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed pooling application.

**SUMMARY:** By application filed April 29, 1988, Capitol Bus Company (Capitol) and Greyhound Lines, Inc. (Greyhound), jointly request approval of a pooling arrangement under 49 U.S.C. 11342(a) to pool portions of their services, in the form of an agreement to coordinate schedules, between Syracuse, NY and Harrisburg, PA, and between Harrisburg, PA and Washington, DC. Under the proposed pooling arrangement, Capitol and Greyhound will coordinate schedules over the route between Syracuse and Washington serving the intermediate points of Baltimore, MD, York, Harrisburg, Wilkes-Barre and Scranton, PA and Binghamton, NY. Capitol and Greyhound will place a 5-year freeze on unilateral changes in the number or share of schedules operated over all or any segment of the involved route. The carriers will eliminate two duplicating schedules, one of Capitol's and one of Greyhound's, in each direction between Harrisburg and Washington. The agreement will limit Greyhound's use of

the Trailways logo on the route north of Harrisburg and the carriers will make some minor adjustments in schedule times to coordinate with Greyhound's through service.

By entering into a service pooling agreement, the carriers seek to increase the number of passengers per bus and spread their schedules more evenly through the day. The petitioners do not intend to pool revenues or to share expenses arising from operations of the schedules governed by their agreement. If other intercity bus carriers operating between the pooled points wish to be included in the service pooling agreement, Capitol and Greyhound are prepared to negotiate their participation.

**DATES:** Comments on the proposed agreement may be filed with us in the form of verified statements on or before August 29, 1988. Petitioners' rebuttal statements are due on or before September 19, 1988.

**ADDRESSES:** Send verified statements to:

(1) Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representations:

S. Berne Smith, William A. Chestnutt, P.O. Box 1166, Harrisburg, PA 17108

George W. Hanthorn, Esq., Greyhound Lines, Inc., 901 Main Street, 2500 InterFirst Plaza, Dallas, TX 75202

Fritz R. Kahn, Esq., 1660 L Street NW., Suite 1000, Wahsington, DC 20036

**FOR FURTHER INFORMATION CONTACT:**

Judy Ann Barnes, (202) 275–7962

or

Richard Felder, (202) 275–7691

(TDD for hearing impaired (202) 275–1721)

**SUPPLEMENTARY INFORMATION:** The involved route encounters competition from other modes of transportation. Harrisburg, Syracuse and Washington are served by Amtrak, and Piedmont, United, USAir, and TWA operate between Harrisburg and Washington. Piedmont and USAir operate between Syracuse and Washington, and between Wilkes-Barre/Scranton and Washington. Continental, Piedmont and United operate between Binghamton and Washington. Also, Syracuse, Harrisburg, Binghamton, Wilkes-Barre/Scranton and Washington are all served by Interstate Highways. The Wilkes-Barre/Scranton area is also served by another intercity bus line, Frank Martz Coach Company.

Please refer to the pooling application, which may be obtained free of charge by contacting petitioners' representatives. In the alternative, the pooling application may be inspected at the offices of the Interstate Commerce Commission, Room 1221, during usual business hours (assistance for the hearing impaired is available through TDD service (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission Headquarters).

Decided: July 22, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–17107 Filed 7–28–88; 8:45 am]

BILLING CODE 7035–01–M

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**[Finance Docket No. 31299]**

## Ann Arbor Acquisition Corp. Acquisition and Operation Exemption Rail Lines of Michigan Interstate Railway Co.

Ann Arbor Acquisition Corporation (Ann Arbor), a noncarrier, has filed a notice of exemption to acquire and operate various railroad assets from W. Clark Durant, III, Trustee-in-Bankruptcy of the property of Michigan Interstate Railway Company (MIRC). Ann Arbor, subject to approval of the bankruptcy court, will acquire all of the track and trackage rights presently owned and/or operated by MIRC as the Ann Arbor Railroad, constituting a mainline of 45.58 miles, branch lines of 10.60 miles, and additional yard tracks and siding of 22.92 miles. The lines and yards involved are located in southeastern Michigan and northern Ohio and can be described as follows:

1. Galena Street Branch: Beginning near Galena Street in Toledo, OH, at milepost 0.0, and extending in a northeasterly then northwesterly direction to milepost 2.82.

2. Cherry Street Branch: Beginning near Cherry Street in Toledo, at milepost 0.15, and extending in a northeasterly direction to milepost 3.57.

3. Ann Arbor Railroad Main Track: Beginning at milepost 3.57, in Lucas County, OH, and extending in a northwesterly direction to milepost 47.5. at Ann Harbor, MI.

4. Saline Branch: Beginning at milepost S–0.0, in Washtenaw County, MI, and extending in a southwesterly direction to milepost S–6.39, in Saline, MI.

5. Uptown Lead: Beginning near milepost 22.56 of the Ann Arbor Railroad Main track in Dundee, MI, and beginning at the point of switch of the Uptown Lead and Number 2 Track, also known as survey station 0+00, and extending westerly along the Uptown Lead track to survey station 56+55, near Tecumseh Street in Dundee.

6. Railroad yards: Railroad yards located on the above lines and branches and commonly known as Ottawa Yard, Wheeling Yard, Diann Yard, Dundee Yard, Dundee Cement Yard, Milan Yard, and Ferry Yard.

As part of the same transaction, Ann Arbor will acquire from MIRC all of the outstanding stock of Old Post Office, Inc., a noncarrier, that has a wholly-owned subsidiary, Temperance Yard Corporation (TYC), a Class III switching and terminal carrier.[1]

Ann Arbor, which will be a Class III carrier, will issue securities in connection with the transaction, which is exempt under 49 CFR 1175.1.

Any comments must be filed with the Commission and served on Robert H. Wheeler, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601.

Ann Arbor must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901,* 4 I.C.C. 2d 305 (1988).[2]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 20, 1988.

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[1] Ann Arbor has concurrently filed a petition for exemption in Finance Docket No. 31299 (Sub-No. 1), *Ann Arbor Acquisition Corporation Continuance in Control Exemption—Temperance Yard Corporation,* regarding the common control of the assets noted above and TYC. A decision disposing of that petition will be issued separately. TYC purchased its principal asset, the Temperance Yard, in Toledo, from the Grand Trunk Western Railroad Company on March 10, 1988. *See* Finance Docket No. 31222, *Temperance Yard Corporation—Acquisition and Operation Exemption—Temperance Yard of Grand Trunk Western Railroad Company in Toledo, OH* (not printed) served February, 19, 1988. On July 18, 1988, TYC filed a supplemental statement changing the carrier from which it will obtain incidental trackage rights to serve the Temperance Yard. A supplemental notice of exemption reflecting this change in carriers is being published concurrently.

[2] Ann Arbor has certified that it has identified such sites and structures to the appropriate historic preservation offices of Michigan and Ohio.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88-17121 Filed 7-28-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31222]

**Temperance Yard Corp.; Acquisition and Operation Exemption; Temperance Yard of Grand Trunk Western Railroad Co. in Toledo, OH; Supplement**

The notice of exemption served February 19, 1988, concerned the acquisition and operation by the Temperance Yard Corporation (TYC) of the Temperance Yard (Yard), in Toledo, OH, of the Grand Trunk Western Railroad Company (GTW).[1]

The notice of exemption stated that TYC also would obtain incidental trackage rights over the Toledo Terminal Railroad Company lines between the Yard and Hallett Tower, located in Ottawa Yard at Toledo, by means of an assignment from GTW, to enable TYC to move cars to and from GTW's leased track.

By supplemental statement filed July 18, 1988, TYC states that around the time of consummation of the acquisition of the Yard, GTW declined to assign the Toledo Terminal trackager rights to TYC, and TYC instead obtained the same trackage rights by assignment from the trustee-in-bankruptcy of Michigan Interstate Railway Company.

The initial notice of exemption should be considered clarified to the extent indicated here, and in all other respects it remains in full force and effect.

Decided: July 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88-17122 Filed 7-28-88; 8:45 am]

BILLING CODE 7035-01-M

[1] Subsequent to the initial filing of this notice of exemption by TYC, Ann Arbor Acquisition Corporation (Ann Arbor), on July 11, 1988, filed a notice of exemption to acquire and operate various railroad assets of Michigan Interstate Railway Company (MIRC), and to acquire from MIRC's trustee-in-bankruptcy all of the outstanding stock of Old Post Office, Inc., of which TYC is a wholly-owned subsidiary. That proceeding has been docketed as Finance Docket No. 31299, *Ann Arbor Acquisition Corporation—Acquisition and Operation Exemption—Rail Lines of Michigan Interstate Railway Company*. In addition, Ann Arbor's common control of the railroad assets of MIRC and TYC is the subject of a petition for exemption currently being processed in Finance Docket No. 31299 (Sub-No. 1) *Ann Arbor Acquisition Corporation—Continuance in Control Exemption—Temperance Yard Corporation*. A decision in the latter proceeding will be issued separately.

## DEPARTMENT OF JUSTICE

**Lodging of Consent Decree Pursuant to the Clean Water Act; Carlisle, Ky et al.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed Consent Decree in United States v. City of Carlisle, et al., Civil Action No. 88-250, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Carlisle ("City") and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations, poor operation and maintenance, and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to complete the necessary construction and improvements to bring its discharges within the the terms and limitations of its NPDES permit. It also imposes a civil penalty of $3,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Carlisle, et al., D.J. Ref. 90-5-1-1-3151.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, U.S. Courthouse, 4th Floor, Limestone and Barr Streets, Lexington, Kentucky 40501, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17124 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree Pursuant to the Clean Water Act; Cave City, KY et al.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1988, a proposed Consent Decree in United States v. City of Cave City, et al., Civil Action No. 88-0108-BG(M), was lodged with the United States District Court for the Western District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Cave City ("City"), the Caveland Sanitation Authority and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to make the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $3,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Cave City, et al., D.J. Ref. 90-5-1-1-3143. The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Kentucky, Bank of Louisville Building, 10th Floor, 510 Broadway, Louisville, Kentucky 40202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be

obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17125 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Water Act; Central City, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1988, a proposed Consent Decree in United States v. City of Central City, et al., Civil Action No. 88-0109-O(CS), was lodged with the United States District Court for the Western District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Central City ("City"), and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to make the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $4,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Central City, et al., D.J. Ref. 90-5-1-1-3139.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Kentucky, Bank of Louisville Building, 10th Floor, 510 Broadway, Louisville, Kentucky 40202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17126 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Water Act; Horse Cave, KY et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1988, a proposed Consent Decree in United States v. City of Horse Cave, et al., Civil Action No. 88-0109-BG(M), was lodged with the United States District Court for the Western District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Horse Cave ("City"), the Caveland Sanitation Authority and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to make the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $3,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Horse Cave, et al., D.J. Ref. 90-5-1-1-3141. The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Kentucky, Bank of Louisville Building, 10th Floor, 510 Broadway, Louisville, Kentucky 40202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17127 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Water Act; Stanton, KY et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed Consent Decree in United States v. city of Stanton, et al., Civil Action No. 88-251, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Stanton ("City") and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations, poor operation and maintenance, and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to complete the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $5,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the

Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Stanton, et al., D.J. Ref. 90-5-1-1-3140.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, U.S. Courthouse, 4th Floor, Limestone and Barr Streets, Lexington, Kentucky 40591, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17128 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Air Act; Texaco Refining and Marketing Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 28, 1988, a proposed consent decree in United States v. Texaco Refining and Marketing Inc., f/k/a/ Getty Refining and Marketing Company, and Texaco Chemical Company (Civ. Action No. 86-321-MMS), was lodged with the United States District Court for the District of Delaware.

The proposed consent decree resolves a judicial enforcement action brought by the United States aganist Texaco Refining and Marketing Inc., f/k/a Getty Refining and Marketing Company, and Texaco Chemical Company (collectively "Texaco") for violations of the Clean Air Act. The complaint filed by the United States alleged that Texaco violated the requirements of the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for benzene, 40 CFR Part 61.

The proposed consent decree requires tht Texaco retain an independent contractor to conduct an audit of Texaco's Delaware City refinery. The consent decree further requires Texaco to pay a civil penalty of $153,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. Texaco Refining and Marketing Inc., f/k/a/ Getty Refining and Marketing Company, and Texaco Chemical Company (Civ. Action No. 86-321-MMS), D.O.J. Ref. No. 90-5-2-1-952.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Wilmington, Delaware, 19801 and at Region III of the U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, Attention: Katherine L. Shine. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20503. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $2.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17129 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

**[Civil No. 6429M]**

## Proposed Termination of Final Judgment; The Coca-Cola Co. et al.

Notice is hereby given that The Coca-Cola Company ("Coca-Cola"), as successor to the Minute Maid Corporation, has filed with the United States District Court for the Southern District of Florida a motion to terminate the final judgment in *United States v. Minute Maid Corporation,* Civil No. 6429M; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on September 7, 1955) alleged that Minute Maid had violated section 7 of the Clayton Act by acquiring frozen citrus concentrate facilities in Dunedin and Frostproof, Florida. The judgment (entered by consent of the parties on September 7, 1955) enjoins Minute Maid (and its successors in interest, including Coca-Cola) from acquiring any interest in facilities at Dunedin or Frostproof and from operating a facility in Davenport, Florida.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Coca-Cola's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Suite 1394, Richard B. Russell Building, 75 Spring Street, Atlanta, Georgia (telephone 404/331-7100), and at the Office of the Clerk of the United States District Court for the Southern District of Florida in Miami. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within a period of twenty-five days from the publication of this notice, and will be filed with the court. Comments should be addressed to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, Department of Justice, 1394 Richard B. Russell Building, 75 Spring Street, SW., Atlanta, GA 30303.

Dated: July 26, 1988.

**John W. Clark,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 88-17251 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-10-M

## Drug Enforcement Administration

## Controlled Substances; Proposed Aggregate Production Quotas for 1989

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of proposed aggregate production quotas for 1989.

**SUMMARY:** This notice proposes initial 1989 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

**DATE:** Comments or objections should be received on or before August 29, 1988.

**ADDRESS:** Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section Drug Enforcement Administration, Washington, DC 20537 (202) 633–1366

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1989 aggregate production quotas, the Administrator considered the following factors:

(1) Total actual 1987 and estimated 1988 and 1989 net disposals of each substance by all manufacturers;

(2) estimates of inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and

(3) projected demand as indicated by procurement quota applications which were filed pursuant to § 303.12 of Title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of Title 21 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration will in early 1989 adjust individual manufacturing quotas allocated for the year based upon 1988 year-end inventory and actual 1988 disposition data supplied by quota applicants for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the Drug Enforcement Administration hereby proposes that aggregate production quotas for 1989 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

| Basic Class | Proposed 1989 Quotas |
|---|---|
| Schedule I: | |
| 2,5-Dimethoxyamphetamine | 15,500,000 |
| Lysergic Acid Diethylamide | 11 |
| 3,4-Methylenedioxyamphetamine | 5 |
| 3,4-Methylenedioxymethamphetamine | 10 |
| Tetrahydrocannabinols | 20,000 |
| Psilocyn | 2 |
| Psilocybin | 2 |
| Normorphine | 5 |
| 4-Methylaminorex | 5 |
| Schedule II: | |
| Alfentanil | 0 |
| Amobarbital | 213,000 |
| Amphetamine | 328,000 |
| Cocaine | 700,000 |
| Codeine (for sale) | 54,135,000 |
| Codeine (for conversion) | 4,528,000 |
| Desoxyephedrine | 1,318,000 |
| 1,281,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 37,000 grams for the production of methamphetamine. | |
| Dextropropoxyphene | 78,338,000 |
| Dihydrocodeine | 535,000 |
| Diphenoxylate | 810,000 |
| Ecgonine (for conversion) | 650,000 |
| Fentanyl | 40,000 |
| Hydrocodone | 2,507,000 |
| Hydromorphone | 197,000 |
| Levorphanol | 13,600 |
| Meperidine | 9,851,000 |
| Methadone | 1,441,000 |
| Methadone Intermediate (4-Cyano-2-dimethylamino-4,4-diphenylbutane) | 1,802,000 |
| Methamphetamine (for conversion) | 1,500,000 |
| Methylphenidate | 2,061,000 |
| Mixed Alkaloids of Opium | 9,200 |
| Morphine (for sale) | 3,208,000 |
| Morphone (for conversion) | 61,532,000 |
| Opium (tinctures, extracts, etc, expressed in terms of USP powdered opium) | 1,452,000 |
| Oxycodone (for sale) | 2,329,000 |
| Oxycodone (for conversion) | 5,200 |
| Oxymorphone | 2,500 |
| Pentobarbital | 11,777,000 |
| Phencyclidine | 31 |
| Phenmetrazine | 0 |
| Phenylacetone (for conversion) | 617,000 |
| 1-Piperidinocyclohexanecarbonitrile (for conversion) | 64 |
| Secobarbital | 1,288,000 |
| Sufentanil | 400 |
| Thebaine | 4,782,000 |

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on one of the above-mentioned substances without filing comments or objections regarding the others. Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC. 20537, Attn: DEA Federal Representative, and must be received by (30 days from date of publication). If a person believes that one or more issues warrant a hearing, a statement to that effect with a summary of reasons for such belief should be submitted.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall cause such hearing to be convened pursuant to the provisions of Title 21 of the Code of Federal Regulations, § 1303.31(a).

Pursuant to section (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: July 6, 1988.

**John C. Lawn,**
*Administrator, Drug Enforcement Administration.*

[FR Doc. 88–17076 Filed 7–28–88; 8:45 am]
BILLING CODE 4410-09-M

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**[Docket No. 88–24]**

## Clifford E. Bigott, D.M.D.; Revocation of Registration

On January 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Clifford E. Bigott, D.M.D. (Respondent) of P.O. Box 1000, 500 Central Avenue, LaFollette, Tennessee 37766 proposing to revoke his DEA Certificate of Registration AB1549990 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's lack of authorization to handle controlled substances in the State of Tennessee. 21 U.S.C. 824(a)(3).

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed

before Administrative Law Judge Francis L. Young. The Administrative Law Judge provided the Government an opportunity to file a motion for summary disposition, which the Government filed. Judge Young then provided Respondent an opportunity to respond to the motion for summary disposition. Respondent did not file such a response. In light of Respondent's failure to file a response to the Government's motion, the Administrative Law Judge issued an Order Terminating the Proceedings on July 15, 1988. Judge Young reasoned that no contest was presented between the parties which would call for any adjudicatory decision by the Administrative Law Judge. Accordingly, the Administrator hereby enters his final order in this mater based upon the investigative file pursuant to 21 CFR 1301.54(d) and (e).

The Administrator finds that on July 15, 1987, the State of Tennessee, Department of Health and Environment, Division of Health Related Boards, summarily suspended Respondent's license to practice dentistry. Therefore, Respondent is currently not authorized to handle controlled substances in the State of Tennessee.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f). See, *Edward L. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein.

Having considered the facts and circumstances in this matter, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Tennessee. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AB1549990, previously issued to Clifford E. Bigott, D.M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective immediately.

Date: July 22, 1988.

**John C. Lawn,**

*Administrator.*

[FR Doc. 88-17075 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be ontained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut:
CT88-1 (Jan. 8, 1988) ..... pp. 63-64.
District of Columbia:
DC88-1 (Jan. 8, 1988) ..... pp. 83, 85.
North Carolina:
NC88-1 (Jan. 8, 1988) ..... p. 522.
New York:
NY88-7 (Jan. 8, 1988) ..... pp. 738, 740.
New York:
NY88-18 (Jan. 8, 1988) ..... pp. 830-831, pp. 833-835.

*Volume II*

Iowa:
IA88–2 (Jan. 8, 1988) ..... p. 29.
Ohio:
OH88–1 (Jan. 8, 1988) ..... pp. 725–727,732.
Ohio:
OH88–2 (Jan. 8, 1988) ..... pp. 738–740, pp. 742, 744–745.
Ohio:
OH88–3 (Jan. 8, 1988) ..... pp. 758–761.
Ohio:
OH88–28 (Jan. 8, 1988) ..... p. 814.
Ohio:
OH88–29 (Jan. 8, 1988) ..... pp. 820–825, pp. 827–828, pp. 831–832, pp. 836, 844.
Wisconsin:
WI88–10 (Jan. 8, 1988) ..... p. 1137.

*Volume III*

Montana:
MT88–3 (Jan. 8, 1988)..... p. 189.
Oregon:
OR88–1 (Jan. 8, 1988)..... p. 307.
Washington:
WA88–1 (Jan. 8, 1988) ..... pp. 360–384.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 22nd Day of July 1988.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 88–16954 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–27–M

## Mine Safety and Health Administration

**[Docket No. M–88–124–C]**

### Buck Mountain Coal Co. No. 2; Petition for Modification of Application of Mandatory Safety Standard

Buck Mountain Coal Company No. 2, R.D. No. 4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its Buck Mountain Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be supported by employing the full box method.

3. In support of this request, petitioner states that in Anthracite Mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In the harder pitch mines 60 degrees and up, the breasts are driven full. In the full box method, manways are timbered 30-inches wide and loose coal supports every square inch of roof between the manway timber.

4. Petitioner further states that roof bolts would create a hazard in the hard pitch mines, because they would be installed at 30 degrees to as little as 2 degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88–17164 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–43–M

**[Docket No. M–88–8–M]**

### Camp Bird Venture; Petition for Modification of Application of Mandatory Safety Standard

Camp Bird Venture, P.O. Box 1790, Ouray, Colorado 81427 has filed a petition to modify the application of 30 CFR 57.19070 (closing cage doors or gates) to its Camp Bird Mine (I.D. No. 05–00437) located in Ouray County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cage doors or gates be closed while persons are being hoisted; they are required not to be opened until the cage has stopped.

2. As an alternate method, petitioner proposes to use a skip gate on the 1410 shaft. In support of this request, petitioner states that—

(a) This type of gate allows transportation of supplies without bending or mutilating a solid side-to-side gate; and

(b) A gate which would completely close off the front of the skip would be more of a hazard because of having to open the gate every time supplies are hoisted. Persons would tend to transport themselves without reattaching the gate.

3. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

Date: July 25, 1988.

[FR Doc. 88–17165 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-88-121-C]

**Carter-ROAG Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard**

Carter-ROAG Coal Company; Inc., P.O. Box 2327, Elkins, West Virginia 26241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment, maintenance) to its No. 1A Mine (I.D. No. 46-06715) and its No. 5 Mine (I.D. No. 46-05809) both located in Randolph County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17166 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-111-C]

**Cyprus Emerald Resources Corp; Petition for Modification of Application of Mandatory Safety Standard**

Cyprus Emerald Resources Corp., P.O. Box 871, Waynesburg, Pennsylvania 15370 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Emerald Mine (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The Petition concerns the arrangement of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single line of automatic sprinklers for fire protection systems at main and secondary belt-conveyor drives. In support of this request, petitioner states that—

(a) Automatic sprinklers on the proposed single line would be maintained at a distance of not more than 10 (10) to ten and one half (10½) feet apart with actuation temperatures between 200 and 230 degrees Fahrenheit;

(b) Automatic sprinklers would be located so that the discharge of water would extend over the belt drive, belt takeup, electrical control, and gear reducing unit;

(c) During operation of the system, water pressure would not be less than 10 psi;

(d) The sprinkler line would be a minimum length at the drive of 50 feet of belt; and

(e) A test to ensure proper operation would be conducted during the installation of each new system and during the subsequent repair or replacement of any critical part thereof.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17167 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-49-C]

**The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)**

The Helen Mining Company, R.D. No. 2, Box 2110, Homer City, Pennsylvania 15748-9558 has filed an amendment to a petition for modification. On March 21, 1988, The Helen Mining Company, submitted a petition to modify the application of 30 CFR 75.205 (installation of roof support using mining machines with integral roof bolters) to its Homer City Mine (I.D. No. 36-00926) located in Indiana County, Pennsylvania. On May 25, 1988, MSHA published notice of the petition in the **Federal Register** (53 FR 18918), allowing interested parties 30 days to submit comments. On June 27, 1988, petitioner submitted a request to amend the originally submitted petition for modification to include paragraph (k). Roof bolts used in conjunction with the 3-inch by 8-inch by 12-foot wooden planks would be of the two piece point anchor type, with a minimum length of 5 feet. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**Request for Comments**

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the amendment and the original petition for modification are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

Date: July 25, 1988.

[FR Doc. 88-17168 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-133-C]

**Michael Mining Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Michael Mining Coal Company, Route 1, Box 197, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-16331) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnished written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

Date: July 25, 1988.

[FR Doc. 88-17169 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-88-131-C]

**R.S. & W. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard**

R.S. & W. Coal Company, Inc., Box 36, R.D. No. 1, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its R.S. & W. Drift (I.D. No. 36-01818) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be supported by employing the full box method.

3. In support of this request, petitioner states that in Anthracite Mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In the harder pitch mines 60 degrees and up, the breasts are driven full. In the full box method, manways are timbered 30-inches wide and loose coal supports every square inch of roof between the manway timber.

4. Petitioner further states that roof bolts would create a hazard in the hard pitch mines, because they would be installed at 30 degrees to as little as 2 degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17170 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-88-130-C]

**Wenrich Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Wenrich Coal Company, Star Route, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its Buck Mountain Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be

supported by employing the full box method.

3. In support of this request, petitioner states that in Anthracite Mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In the harder pitch mines 60 degrees and up, the breasts are driven full. In the full box method, manways are timbered 30-inches wide and loose coal supports every square inch of roof between the manway timber.

4. Petitioner further states that roof bolts would create a hazard in the hard pitch mines, because they would be installed at 30 degrees to as little as 2 degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Dated: July 25, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17171 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

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**[Docket No. M-88-9-M]**

**Windfall Gold Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard**

Windfall Gold Mining Corporation, P.O. Box 1929, Nome, Alaska 99762 has filed a petition to modify the application of 30 CFR 56.9003 (mobile equipment brakes) to its Cooper Gulch Mine No. 2 (I.D. No. 50-01484) located in Seward Peninsula County, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that powered mobile equipment be provided with adequate brakes.

2. Petitioner operates four Caterpillar 631C scrapers for the purpose of hauling overburden and placer materials. The ground over which the scrapers must operate is layered with tundra, loamy peat, clays, placer silts, placer gravel and ancient beach sands.

3. The mine pit is encircled by "mined out" dredge tailings ponds and as such the newly developed pits have ground water entering the units as the water table is violated. With the exception of the placer gravel, all of the mined materials are especially susceptible to the retention of water leaving wet, abrasive material for an approximate depth of three feet through which the scrapers must traverse at any given time.

4. Due to continuous operation of the scrapers in this material, application of the standard would result in a diminution of safety.

5. As an alternate method, petitioner proposes three methods of providing alternate braking for the scrapers: (a) Engagement of the torque conveter retarder, this unit is part of the drive train and is not exposed to the elements encountered in the pit; (b) lowering of the bowl which allows the leading edge to penetrate the ground stopping the machine immediately, and (c) downshifting of the transmission into reverse. The first two methods allow the operator to stop the scraper whether it be loaded or empty in less space than that required to stop the scraper utilizing the brakes as originally installed for an unloaded unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

Date: July 25, 1988.

[FR Doc. 88-17172 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

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**Pension and Welfare Benefits Administration**

**[Application No. D-6837]**

**Proposed Exemptions; Real Estate for American Labor A Balcor Group Trust (the Trust) et. al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in

applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issued exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issue solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Real Estate for American Labor a Balcor Group Trust (the Trust), Located in Chicago, IL**

[Application No. D–6837]

*Proposed Exemption*

**Section I. Exemption for Certain Transactions Involving the Trust**

(a) The restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section IV are met.

(1) *Transactions Between Parties-In-Interest and the Trust: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Trust (a Participating Plan) and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if the party in interest is not Balcor Institutional Realty Advisors, Inc. (Balcor) or one of its affiliates, any other trust maintained by Balcor or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interest of any other Participating Plans maintained by the same employer or employee organization in the Trust, does not exceed 10 percent of the total of all assets in the Trust.

(2) *Special Transaction Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Trust.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Trust exceeds 10 percent of the total assets in the Trust, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Trust which does not meet the requirement of paragraphs (a)(1) and (a)(2) of this section I, if no commission is paid to Balcor or to the employer, or any affiliate of Balcor or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease or employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Trust are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Trust that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Balcor nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Trust owns the obligation at the time the plan acquires an interest in the Trust, and interests in the Trust are offered and redeemed in accordance with valuation procedures of the Trust applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Trust not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Balcor, its affiliates, and any collective investment fund maintained by Balcor or its affiliates, shall be considered to be persons independent of the issuer if Balcor is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Balcor or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Balcor or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section IV are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Trust by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Trust to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Trust, if—

(A) In the case of goods, they are furnished to or by the Trust in connection with real property owned by the Trust;

(B) The party-in-interest is not Balcor, any affiliate of Balcor, or one of the other trusts and;

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Trust with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Trust on the most recent valuation date of the Trust prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing

of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Trust to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions if the conditions of section IV are met:

Any transaction betwen the Trust and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Trust;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Trust, does not exceed 20 percent of the total of all assets in the Trust; and

(3) The person is not Balcor or an affiliate of Balcor.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reasons of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest (Units) in the Trust if no more than reasonable compensation is paid therefor and (a) each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Balcor and any of its affiliates or (b) the purchase or sale is a mandatory redemption required by the Trust Agreement, including the failure of the Participating Plan to remain a plan which can invest in a group trust described in section 401(a)(24) of the Code, and the applicable conditions of section IV are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Trust) by a Participating Plan if: (1) the acquisition of holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Trust; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of section I of this exemption are met; and (3) the applicable conditions set forth in section IV of this exemption are met.

*Section III. Transfers of Real Property From Balcor to the Trust*

(a) The restrictions of section 406(a), 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any sale to the Trust of real property acquired by Balcor or an affiliate during the offering period if the following conditions are met:

(a) The price paid by the Trust for the property will be no greater than the lesser of the sum of the amount paid and the holding costs incurred by Balcor or an affiliate or the fair market value of the property, as determined by an independent appraiser, as of the date of sale to the Trust;

(b) The offering memorandum (Memorandum) is supplemented during the offering period with a description of the proposed investment;

(c) All documents relating to such an investment by Balcor indicate specifically that the investment is being made on behalf of the Trust and all documents relating to the calling of funds from investors specify the investment for which such funds will be used;

(d) All such transfers are completed within 120 days of purchase by Balcor or an affiliate; and

(e) The conditions set forth in section IV of this exemption are met.

Section IV. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Balcor or its affilitate, the terms of the transaction are not less favorable to the Trust than the terms generally available in arm's-length transactions between unrelated parties.

(b) Balcor or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section IV to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Balcor or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section IV are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Trust of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Balcor or its affiliate, or commercial or financial information which is privileged or confidential.

Section V. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Trust" shall include any collective investment fund that may hereafter be established, operated and managed by Balcor or its affiliate in essentially the same manner as the Real Estate for American Labor A Balcor Group Trust.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management of policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Trust occurs on or after the effective date of this exemption, and the requirments of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and I(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Trust by the Participating Plan. For this purpose, assets allocated do not include the investment of Trust earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction described in section 406 of the Act of section 4975 of the Code while the transaction is continuing, unless the conditions or the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Trust as its proportionate interest in the total assets of the Trust as calculated on the most recent preceding valuation date of the Trust.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

*Preamble*

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

To date the Department has proposed and granted various individual exemptions on behalf of collective investment funds which have not qualified for relief under PTE 80–51 or Prohibited Transaction Exemption 78–19 (PTE 78–19, 43 FR 59915, December 22, 1978; class relief on behalf of pooled separate accounts sponsored by insurance companies). Such individual exemptions have provided relief for similar transactions subject to, in most instances, similar terms and conditions as those contained in the class exemptions.

*Summary of Facts and Representations*

1. The Trust is intended to be a group trust described in section 401(a)(24) of the Code and Rev. Rul. 81–100, 1981–1 C.B.326, to provide multiemployer plans (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) a vehicle for pooling a portion of their funds for the purpose of making investments in real estate and mortgage loans. The Trust is intended to be qualified under section 401(a) of the Code and exempt from tax under section 501(a) of the Code.

2. Pursuant to a written investment management agreement entered into with the trustees (the Trustees) of the Trust, Balcor will serve as the investment manager for the Trust. Prior to the offering of Units, Balcor, a newly formed corporation, will acquire all of the partnership interests of and become successor to Balcor Real Estate Investment Advisors, a registered investment advisor. Thereafter, Balcor will become an investment advisor registered under the Investment Advisors Act of 1940. The Balcor Company (Balcor Co.) owns all of the outstanding shares of Balcor and will unconditionally guarantee payment of all of the liabilities of Balcor. Balcor Co. and its subsidiaries have shareholder's equity in excess of $163,000,000 and manage property valued at more than $5,000,000,000. Balcor Co. is a wholly-owned subsidiary of Shearson Lehman Brothers, Inc. (Shearson), an investment banking and brokerage firm and an investment advisor to, among other entities, multiemployer pension plans. Shearson is wholly-owned by American Express Company, which is primarily in the business of providing travel related services, insurance services, and international banking services. Affiliates of Balcor Co. have formed numerous public and private real estate entities. In addition, Balcor Co. and its affiliates manage or advise additional public and private real estate entities, as well as entities not engaged in the real estate business. They also engage in other business activities. Any successor investment manager will be chosen by a majority of the Trustees. Balcor expects to manage additional trusts in the future which will be structured similarly to the

Trust. Pursuant to the investment management agreement, Balcor will be vested with the exclusive authority to acquire, manage and dispose of the Trust's investments in real property. Balcor will be responsible for performing the day-to-day administrative and investment operations of the Trust. Balcor will, directly or through an affiliate, provide property acquisition, maintenance and repair, rent collection, bookkeeping, lease negotiation, mortgage brokerage and servicing and other related management services. Balcor is not currently a qualified professional asset manager as defined in Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494) since it does not yet have $50 million of assets under management. Messrs. Jerry M. Reinsdorf, Stephen H. Silverstein, John L. West, Barry R. Jackson, Van L. Pell and Thomas E. Meador serve as the Trustees. The Trustees are officers of Balcor or an affiliate. The Trustees will receive no compensation for serving as Trustee. They will be solely responsible for accepting or rejecting participation in the Trust by a prospective Participating Plan, determining the fair market value of the Trust's assets for the purpose of valuing Units, and determining the time and amount of distributions to Participating Plans.

3. Interests in the Trust will be offered pursuant to the Memorandum, which describes the management, operation, investment objectives and income tax consequences of the Trust and compensation to be paid to Balcor as investment manager. The initial offering price of each Unit is $100,000, with a minimum subscription by an investor of 10 Units. The offering price per Unit will be adjusted to reflect quarterly re-evaluations of the Units. There is no minimum or maximum total offering of Units, although the Trust will only accept payment for Units for which it has received investor commitments or subscriptions when subscriptions for at least 200 Units ($20,000,0000) have been accepted by the Trustees. In order to avoid making short-term investments for the Trust, Balcor will not call commitments to invest in the Trust until it has made appropriate investments on behalf of the Trust equal to the amount of the commitments. If such investments are not made within 15 months after obtaining the initial $20,000,000 of commitments, each investor will be offered the right to rescind its commitment. Afterward, the process will be repeated for each $10,000,000 in commitments and investments. The Trust provides that Balcor or an affiliate may, for the purpose of facilitating the acquisition of an investment by the Trust, make or acquire an investment in its own name and within 120 days transfer such investment to the Trust. The price will be no greater than the lesser of the sum of the amount paid and the holding costs incurred by Balcor or an affiliate or the fair market value of the investment, as determined by an independent appraiser, as of the date of sale to the Trust. It is contemplated that Units will be offered for an indefinite period which is not expected to exceed ten years. After that time, Units will only be offered to current Participating Plans and no new investors will be permitted unless such investor is purchasing Units which are being redeemed. The Units will be privately offered commencing on or about September 15, 1988 and will not be registered under the Securities Act of 1933. Neither the Units nor any interest therein may be resold, transferred, assigned, or otherwise disposed of or encumbered by Participating Plans, as required by Rev. Rul. 81–100.

4. The decision of any plan to invest in the Trust will be made by fiduciaries of that plan. The Trustees may reject a subscription for any reason. The applicant states that none of the individual Trustees of the Trust, nor any of the employees, officers, directors or shareholders of Balcor or its affiliates will exercise any discretionary authority over or otherwise participate in the decision of any plan to invest in the Trust. In connection with the proposed exemption for the purchase and sale of Units in the Trust, the applicant represents that Balcor or its affiliates may act as an investment adviser or investment manager with respect to portions of the assets of plans that may become Participating Plans and may on occasion be retained by such plans to provide services with respect to specific real estate investments made by the plans. However, the applicant represents further that assets of plans for which Balcor or any of its affiliates acts as investment adviser or investment manager or otherwise subject to the investment discretion of Balcor or any of its affiliates will not be eligible for investment in the Trust. In addition, Balcor expects to engage in normal marketing and promotional activity in connection with the Trust, but it will not recommend investment therein of plan assets with respect to which it acts as an investment adviser or investment manager.[1]

5. The Trustees, in their sole discretion, may terminate the Trust at any time. Upon termination, the Trustees are required to liquidate the Trust's properties and distribute its assets to Participating Plans, pro rata, subject to appropriate reserves for existing liabilities and contingencies.

6. A Participating Plan may request that the Trust redeem all or any portion of its Units. Furthermore, under certain circumstances described below, the Units of a Participating Plan may be involuntarily redeemed.

The Trustees will make redemption payments out of available funds and will be under no obligation to sell any properties to satisfy redemption requests. However, the Trust may not enter into any new commitments to purchase properties or make new mortgage loans if any redemption requests are outstanding unless the Trustees determine that a redemption at that time will violate the conditions of the Trust Agreement. Upon receipt of the redemption request the Trustees may, in their discretion, notify all remaining Participating Plans of the availability of additional Units that may be purchased at the existing Unit asset value as of the date of redemption. If the remaining Participating Plans do not purchase all the Units being redeemed, the Trustees may, in their discretion, offer the remaining Units to other eligible investors. Upon the redemption date, the Trustees will distribute to the redeeming Participating Plan the existing Unit asset value as of the date the Units are redeemed. The redemption price will be decreased by any estimates of the costs of disposition of assets the proceeds of which are used to redeem Units, which costs are not reflected in such Unit asset value.

Upon termination of the status of a Participating Plan as a qualified trust under section 401(a) of the Code or upon amendment of the Participating Plan so that it is no longer authorized to invest in the Trust, the Units held by such Participating Plan shall be deemed to have been redeemed as of the

[1] To the extent that, in the ordinary course of business, Balcor or any of its affiliates provides "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B) and recommends an investment of the plan's assets in the Trust, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984). The Department is unable to conclude that fiduciary self dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of Units in the Trust to section 406(a) violations only.

coincident or preceding Valuation Date. As funds are made available, the Trustees will distribute to such Participating Plan 90% of the Unit asset value of the Units which were redeemed, decreased by any costs of redemption. Ten percent of the value of the Units being redeemed will be placed in an interest bearing escrow account and treated as a contingent liability of the Trust for seven years. At the end of seven years, the Trustees will compare the Unit value at that time with 90% of the Unit value at the time of the redemption (the Settlement Value). If the Unit value is less than the Settlement Value, the contingent liability will be eliminated, with no additional payment to the Participating Plan which had Units which were subject to a mandatory redemption. If the Unit value is greater than the Settlement Value, the former Participating Plan will be refunded some or all of the retained ten percent, including interest on that amount, up to the current Unit value.

The applicant represents that in the event of such a mandatory redemption, the Trust will be obligated to repurchase the Units held by such Participating Plan in order to maintain its tax-exempt status. The need to repurchase such Units could disrupt the investment portfolio and Balcor's strategy and adversely affect the return on the investments of the other Participating Plans. The Trust therefore requires that the Participating Plan which causes a mandatory redemption to bear a greater share of the risk of loss caused by the redemption. If there are no adverse consequences to the Trust, the 10% retained interest will be paid out to such Participating Plan after seven years, which is the expected turnover time of the Trust's portfolio.

Upon the Trustees' determination that the Trust will be engaged in a non-exempt prohibited transaction because of a Participating Plan's acquisitioin or ownership of Units, such Units will be subject to a mandatory redemption as described in the preceding paragraph, except that there will be no ten percent retention.

7. The purposes of the Trust are preserving and protecting capital, generating income on investments, providing for capital appreciation and providing jobs for union labor. Consistent with these purposes, funds of the Trust will be invested in direct or indirect ownership, contract, or leasehold interests in (1) Realty currently or soon to be under construction or rehabilitation, (2) land underlying realty described in (1) above, and (3) realty the investment of which is incidental to investments described in (1) and (2) above. Funds of the Trust will also be invested in direct or indirect interests in loans or commitments to make loans related to the types of realty described above.

8. All investments will be evaluated by Balcor in accordance with Balcor's investment criteria and must offer a commercially competitive rate of return. A requirement for all investments by the Trust in realty or in loans thereon is that the construction or rehabilitation by the developers must be provided by contractors and sub-contractors who employ union labor, defined as laborers who are members of United States labor unions and registered with the Department of Labor or who are covered by collective bargaining agreements. Where some laborers are required on a project but cannot satisfy the foregoing condition, work will be deemed to be performed by union labor if the building trades council or other body representing union trades in the locale of the realty being developed approves or endorses the plan of construction by a mix of union and non-union labor. The seller or borrower must provide, as a condition to receiving assets of the Trust, a commitment of the developer or general contractor that all labor will be provided by union labor or, where that condition cannot be satisfied, in accordance with such plan of construction approved by the local building trades council or other body.[2]

[2] The Department notes that to the extent the fiduciaries of the Participating Plans restrict their consideration of investment opportunities for non-economic reasons, such conduct may involve certain violations of Part 4 of Title I of the Act which violations if present would not be provided relief by this exemption.

In this regard, section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. To act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his plan. Because the investments made by the Trust are investments which would be selected, if at all, in preference to alternative investments, such an investment would not be prudent if it provided the Participating Plans with less return, in comparison to risk, than comparable investments available to the Plans, or if it involved a greater risk to the security of Plan assests than other investments offering a similar return.

The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in a particular investment, a fiduciary must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make an investment may not be influenced by desire to stimulate the real estate industry and generate employment, unless the investment, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan. (See Advisory Opinion 81–12A, January 13, 1981).

Financing applications will be individually considered and accepted by Balcor after it is determined that they satisfy the investment criteria. The applicant represents that Balcor or its affiliates seek similar types of investments (i.e., forward-commitment first mortgage loans on commercial properties) without regard for whether union labor will be used for several funds or client accounts managed by Balcor and its affiliates. Balcor therefore seeks such investments generally, and will allocate those that first meet its financial investment standards among the funds and accounts on the basis of which fund or account committed money first. Whether a project uses union labor will be a factor only to determine if the investment should be allocated to the Trust. Balcor will consider financing applications without regard to the identity of the general contractors or the subcontractors who may potentially be selected (or who may already have been selected if such selection was made prior to submission of the financing application). Neither Balcor nor any affiliate thereof will develop, rehabilitate or contract or subcontract to develop or rehabilitate the realty in which the Trust has an interest. Balcor will not be directly involved in the process of selecting contractors, subcontractors or providers of goods, services or facilities, as selection will be made by the developer or general contractor, neither of which will be affiliated with the Trustees or Balcor. However, Balcor may establish and administer guidelines regarding the terms of such selection process to ensure prudent selection and compliance with the investment objectives, policies and limitations of the Trust. Balcor's decisions on the issuance of loans are final.

9. Balcor's investment criteria will contain no requirement that the real estate underlying investments be within any specific locales, and it is expected that the investments will be geographically dispersed. Therefore, there will be no obligation on the part of Balcor to invest in areas where employers whose employees are covered by the Participating Plans are located. Similarly, there is no obligation on the part of Balcor to invest funds of the Trust in realty which is under

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construction or to be rehabilitated by employers whose employees are covered by a Participating Plan. The requirement that the developer have construction provided by contractors or subcontractors who employ union laborers is a general requirement and not tied to laborers represented by unions whose members are covered by a Participating Plan.

10. Balcor as investment manager will receive a single fee for its management services, including property management, equal to 1.45% per annum of the net value of investments in real property or loans. No additional fees, commissions or compensation will be paid by the Trust to Balcor or any of its affiliates. However, Balcor or its affiliates will be reimbursed by the Trust for certain costs and expenses, including travel, appraisal and other out-of-pocket expenses incurred in connection with administration of the Trust and property evaluation, negotiation, operation or disposition. The Trust will also pay costs of on-site building management personnel and office space, leasing fees paid to third parties and other fees for professional and technical services. Balcor will pay all fees and expenses in connection with the organization of the Trust and the offering of Units. The fee arrangement will be fully disclosed in the Trust Agreement and Memorandum and will be known to the fiduciaries of each of the Participating Plans at the time of their decision to invest in the Trust.

11. The books and records of the Trust will be audited by an independent certified public accountant each fiscal year. Copies of such reports and other pertinent information, including a summary of fees and expenses, report of acquisitions and appraisals and schedules of net asset and unit values, will be forwarded to each Participating Plan. Trust assets will be valued by the Trustees quarterly based on valuations by independent evaluators or appraisers. Each real property owned by the Trust will be appraised annually by an independent appraiser.

12. Because each Participating Plan will incorporate as part of such plan the terms, provisions, and conditions of the Trust agreement, the Trust will occupy a position equivalent to the trust created under such Participating Plan. Accordingly, pursuant to Revenue Ruling 81–100, it is the position of the Department that a "party in interest" as defined in the Act, or a "disqualified person" as defined in the Code, with respect to a Participating Plan may be viewed as a party in interest or disqualified person with respect to the Trust. Thus, a transaction between such party and the Trust may be viewed as a prohibited transaction as described in section 406(a) of the Act, section 4975(c) of the Code, or both. The applicant represents that if the Trust is unable to enter into transactions with certain persons because such persons are parties in interest with respect to a Participating Plan, the Trust's ability to prudently make its investments and conduct its operations solely for the benefit of the Participating Plans will be unduly restricted. In addition, the purchase and sale of Units in the Trust may be considered a prohibited sale or transfer or assets between a Participating Plan and the Trustees that is not exempted by operation of the statutory exemption provided in section 408(b)(8) of the Act because the Trust is not maintained by a bank or an insurance company.

13. The applicant requests prospective exemptive relief for many of those classes of transactions between the Trust and certain parties in interest which were afforded exemptive relief in PTE 80–51. The applicant proposes that such classes of transactions be subject to similar conditions, limitations, and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80–51.

14. In summary, the applicant represents that the proposed exemption for certain transactions between the Trust and certain parties in interest satisfies the criteria of section 408(a) of the Act because: (a) The proposed exemption would allow the Trust to enter into transactions which, although prohibited, are necessary for the Trust to prudently make its investments and conduct its operations solely for the benefit of its Participating Plans and their participants and beneficiaries; (b) the proposed exemption would primarily apply to various classes of prohibited transactions which were afforded relief in PTE 80–51 and would be subject to similar conditions, limitations and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80–51; and (c) independent fiduciaries, unrelated to the Trust, the Trustees, Balcor or any other related party, will maintain complete discretion with respect to investment of the Participating Plan's assets in the Trust.

For Forther Information Contact: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

**M&W Pump Corporation Employees Profit Sharing Plan (the Plan), Located in Deerfield Beach, Florida**

[Application No. D–6922]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of certain improved property located in Deerfield Beach, Florida (the Property) by the Plan to the Plan sponsor at the greater of $283,000 or the appraised fair market value as of the date of the Sale; provided the terms and conditions of the transaction are similar to those obtainable in an arm's-length transaction between unrelated parties.

*Summary of Facts and Representations*

1. The Plan is a profit sharing plan with 78 participants and total assets of $1,671,512 as of June 30, 1987. The trustee of the Plan is J. David Eller, who is also President of the Plan sponsor.

2. The Employer was incorporated in 1950 and manufactures water pumps for agricultural, municipal and construction industries.

3.On December 7, 1984, the Plan was formally terminated. The Plan has chosen a five-year liquidation program in which all Plan assets will be liquidated and distribution of proceeds made to Plan participants.

To facilitate the distribution, the applicant requests an exemption which would permit the Plan to sell the improved Property to the Employer for cash in amount of the greater of $283,000 or the Property's appraised fair market value as of the date of the Sale.

4. The Property is located at 208 N.W. 1st Street, Deerfield Beach, Florida, which, the applicant represents, is closely proximate to the Employer's main manufacturing plant. The Property consists of an office building, a warehouse, a concrete tank above ground, three sheds and four underground metal tanks.

5. The Plan acquired the Property from the city of Deerfield Beach (the City) in 1980 by means of an exchange of land purchased by the Plan in 1974 and 1975 for $56,250. In addition to the Property, the City also granted the Plan another

parcel of realty valued at $42,000 as part of the exchange.

6. The Plan has leased the Property to the Employer under a long-term triple net lease, effective July 1, 1980 (the Lease). The Lease requires the payment of $1,600 per month, totalling $19,200 in annual rental. In addition to the base rental, the Employer is responsible for all costs of maintaining the Property, including taxes, insurance, and repairs, which average $5,000 per year.[3]

7. Mahlon J. Saxon, a qualified independent appraiser, A.S.A., of M.J. Saxon & Associates, Plantation, Florida, has determined the fair market value of the improved Property. Mr. Saxon considered and incorporated the special value of the Property to the Employer under the Lease and appraised the Property at $283,000 as of April 15, 1988.

8. D. Douglas Hill, a certified public accountant, has reviewed the transaction and found it to be in the best interests of the Plan and its participants. In Mr. Hill's opinion, the Sale will result in a substantial gain to the Plan over the Plan's acquisition cost of the Property.

9. In summary, the applicant represents that the transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Plan will receive fair market value for its asset but in no event will it receive less than $283,000; (b) a qualified independent appraiser will determine the Property's fair market value as of the date of the Sale; (c) the Sale will be a one-time transaction consummated for cash; (d) the Employer will pay the applicable excise tax and file Form 5330, Return of Initial Excise Tax Relating to Pension and Profit Sharing Plan, within 60 days of the granting of this proposed exemption; and (e) a certified public accountant has determined that the transaction is in the best interests and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**The Boston Company Real Estate Counsel, Inc. (TBCREC), Located in Boston, Massachusetts**

[Application No. D–7511]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, TBCREC shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of TBCREC's failure to satisfy Section I(g) of PTE 84–14 as a result of its affiliation with E.F. Hutton & Company (Hutton),

Effective Date: If granted, this exemption will be effective as of the date on which TBREC became an affiliate of Hutton.

*Summary of Facts and Representations*

1. Shearson Lehman Hutton Inc. (Shearson), which is incorporated in Delaware, is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. (Shearson Holdings) which in turn is a majority-owned subsidiary of American Express Compnay (American Express). Both Shearson Holdings and American Express are publicly-owned companies whose stock is traded on the New York Stock Exchange. American Express and its subsidiaries form a diversified financial and travel services company.

On January 13, 1988, over 90 percent of the stock of E.F. Hutton Group Inc. (Hutton Group), the parent company of Hutton, was tendered to SLBP Acquisition Corp. (SLBP), a wholly-owned subsidiary of Shearson Holdings, pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 2, 1987, as amended on December 28, 1987, entered into among Shearson Holdings, SLBP, and the Hutton Group. On January 21, 1988, as permitted by the terms of the Merger Agreement, SLBP assigned its right to purchase those shares so accepted to Shearson, and Shearson purchased the shares. As a result of the acquisition of the Hutton Group stock, Shearson controls the Hutton Group and indirectly controls Hutton.

2. On May 2, 1985, Hutton entered a plea of quilty (the Guilty Plea) to an Information filed in the United States District Court for the Middle District of Pennsylvania. The Information charged that Hutton had violated the federal mail and wire fraud statutes in connection with its handling of certain checking accounts it maintained for the deposit of its own funds during the period from July 1, 1980 to February 28, 1982. As a result of the Guilty Plea, Hutton agreed to pay, and has paid, a criminal fine of $2,000,000 plus $750,000 to defray the costs of the government investigation. Hutton further agreed to establish, and has established, a restitution program for the benefit of commercial banks that may have been damaged by its actions. None of the acts alleged in the Information, however, involved funds or securities owned by any investment advisory or brokerage clients of Hutton or any employee benefit plan for which Hutton or any affiliate is a party in interest.

3. On May 16, 1988, Hutton entered a plea of guilty (the Providence Plea) in the United States District Court for the District of Rhode Island on two counts of violating the Bank Secrecy Act and one count of conspiracy to violate that Act. Hutton agreed to pay, and has paid, an aggregate fine of $1,010,000 as a result of the Providence Plea. The Information filed by the government in connection with the Providence Plea alleges that the conduct of the two brokers, formerly employed at Hutton-Providence, was in violation of the Bank Secrecy Act. The Bank Secrecy Act requires the filing of a Currency Transaction Report, under certain, circumstances, if more than $10,000 in cash is deposited with a financial institution. The brokers' unlawful conduct occurred primarily in the period from 1982 to 1983, and no such conduct transpired later than October 1984—more than three years before Shearson acquired its majority interest in Hutton.

4. The applicant represents that although none of the unlawful conduct that occurred at Hutton-Providence involved Hutton's investment management activities or any ERISA plans, Hutton's Guilty Pleas preclude Hutton and its affiliates from serving as a "qualified professional asset manager" (QPAM) pursuant to sections I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity. For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined in relevant part as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person * * *" (PTE 84–14, section V(d)). As such, under this definition American Express, Shearson Holdings and all of their majority-owned subsidiaries, including TBCREC, would be considered affiliates of Hutton as a result of Shearson's acquisition of a controlling interest in the Hutton Group.

[3] The applicant represents that Form 5330, Return of Initial Excise Tax Relating to Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and that all applicable excise taxes in connection with the continuation of the Lease beyond June 30, 1984 will be paid by the Employer within 60 days of the granting of this exemption.

5. TBCREC, a registered investment advisor and pension fund manager, is a Massachusetts corporation established in 1968 which specializes in large, sophisticated real estate transactions. Throughout its existence, TBCREC has been a wholly-owned subsidiary of the Boston Company, Inc. (TBC). TBC is a Massachusetts corporation which was established in 1964. In addition to TBCREC, TBC owns Boston Safe Deposit and Trust Company and several other investment subsidiaries. In 1981, TBC, which had theretofore been an independently-owned public company, was acquired by Shearson. TBC has been an indirect, wholly-owned subsidiary of Shearson since 1981.

The applicant represnets that TBC is a separate unit within the Shearson group managed by a 14-person Board of Directors of whom 2 are employees of Shearson, 2 are employees of TBC, and 10 are outside directors unaffiliated with Shearson. TBC maintains its own separate corporate headquarters in Boston, Massachusetts, and is essentially operated independently of Shearson.

The applicant represents further that TBCREC, also headquartered in Boston, is managed by a team of executive officers none or whom is, in any other respect, affiliated with Shearson. In particular, no TBCREC officer is an officer or an employee of Shearson or any non-TBC Shearson subsidiary. None of the TBCREC officers is an officer or employee of Hutton. In addition, Hutton is part of a completely separate operating unit within the Shearson group and none of TBCREC's operations involve Shearson or any of its non-TBC subsidiaries, including Hutton.

6. TBCREC is retained by 15 institutional clients, of which 10 are large ERISA plans. Each of these ERISA plan clients has aggregate assets in excess of $500 million. Real estate assets held by these institutional clients have a value of $2.23 billion.

The applicant asserts that failure to grant the requested exemption will prohibit such plans for which TBCREC acts as investment manager from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14 and will cause plans to forego attractive investment opportunities. TBCREC typically engages in real estate transactions which may be structured in a variety of different ways, including participating mortgages, joint ventures or other partnership interests, or outright fee ownership. In all of these contexts, there is a significant risk that the party with which the plan is dealing will be a party in interest. Given the size of the plans which TBCREC represents, the large number of service providers (particularly financial institutions) which such plans engage and the breadth of the ERISA definition of "party in interest", it is not uncommon for a proposed transaction in the private real estate market to involve a party in interest.

7. Accordingly, the applicant proposes that for the purposes of section V(d) of PTE 84–14, Hutton not be considered an affiliate of TBCREC, in order that TBCREC may continue to avail itself of the provisions of PTE 84–14, notwithstanding the acquisition of Hutton by Shearson and the resultant failure to comply with section I(g) of PTE 84–14.

8. The applicant represents that the following safeguards will be present to assure that the flexibility which PTE 84–14 provides will be utilized by TBCREC in a manner protective of and beneficial to both ERISA plans and their participants:

(a) PTE 84–14 includes numerous other conditions all of which would continue to apply and to assure that the best interests of ERISA plans are served;

(b) All of TBCREC's ERISA plan clients are large plans, and hence have access to the resources and sophistication needed to properly monitor TBCREC's performance as investment manager;

(c) All of the Hutton criminal activity in question occurred to its acquisition by Shearson. Shearson is fully cooperating with all ongoing government investigations, and Shearson is actively working to install various safeguards and procedures designed to protect against such violations in the future; and

(d) As an investment adviser registered under the Investment Advisers Act of 1940 (the Advisers Act), TBCREC is subject to the jurisdiction of the Securities and Exchange Commission (SEC) and to the substantive requirements of the Advisers Act. TBCREC must make annual filings with the SEC and is subject to unannounced audits by the SEC to assure compliance with the requirements of the Advisers Act.

9. In addition, the applicant represents that Hutton and Shearson have taken a number of steps to ensure that conduct such as that leading to the Guilty Plea and the Providence Plea will not recur. In connection with the Guilty Plea, Hutton acted to recompense its depository banks for any harm that may have been caused by the illegal acts. Hutton offered to make full restitution (including interest to date of payment) to any bank with which it maintained a deposit relationship during the period July 1, 1980 to December 31, 1982 for any net uncompensated interest losses incurred by the bank as a result of Hutton's having drawn on uncollected funds without prior written agreement. Hutton's offer to reimburse its banks included unreimbursed service fees, unreimbursed charges in respect of uses of uncollected funds, and interest on the foregoing amounts.

The applicant represents that Hutton also initiated changes in its organizational structure and management practices as follows:

(a) Nearly all of Hutton's financial operations were realigned and subjected to centralized control.

(b) Hutton also installed a computerized Branch Information Processing System to expedite and improve communications between its New York headquarters and its more than 400 branches, which allows Hutton's headquarters in New York to monitor drawdown activity at the branch and regional levels.

(c) Hutton also held instructional meetings for its employees in 18 cities from coast to coast with respect to the nature of the activities that were found unlawful and/or now are enjoined, and explained the revised internal controls and auditing procedures that Hutton was putting in place with respect to its cash concentration system.

10. Subsequent to the Guilty Plea, Hutton Group retained the Honorable Griffin Bell, former Attorney General of the United Staes and a one time Judge of the United States Court of Appeals for the Fifth Circuit, to conduct an independent inquiry into the cash management practices to which Hutton pleaded guilty.

Judge Bell found that ultimate management responsibility for the practices in question rested with Thomas P. Lynch, then Executive Vice President and Chief Financial Officer of Hutton, and with Thomas P. Morley, then Senior Vice President and Money Mobilizer of Hutton. Judge Bell determined that the practices were developed and carried out by middle management employees who generally believed they were operating within the law, and that Messrs. Lynch and Morley, though not bearing any criminal responsibility for the practices, should have detected and/or prevented them. Following the release of the Bell Report, both Mr. Lynch and Mr. Morley relinquished their positions.

The Bell Report also recommended substantial monetary and other sanctions against other Hutton employees. All of the culpable Hutton employees involved in the activities

which led to the Guilty Plea resigned or were dismissed prior to Shearson's acquisition of Hutton Group. In addition, Judge Bell recommended a number of procedural and structural reforms designed to ensure that the practices in question did not recur.

These changes included:

(a) Restructuring the financing, financial control, operations and general counsel functions;

(b) Establishing a separate audit committee for Hutton to specificially review Hutton's activities to supplement the existing audit committee of Hutton Group, with full access to the chief executive officer and the board of directors; and

(c) Working in conjunction with the Ethics Resource Center in Washington, DC to develop a corporate code of ethics, supplemented by educational and monitoring programs.

11. In late December 1987, following the announcement of Shearson's acquisition of Hutton, Shearson retained outside counsel to conduct an internal investigation and provide legal advice concerning compliance by Hutton, prior to its acquisition by Shearson, with the reporting requirements of the Bank Secrecy Act.

The investigation revealed unreported currency transactions (over half involved under $20,000 and 90% involved under $50,000) at Hutton branch offices, prior to Shearson's acquisition of Hutton. A majority of potential non-reporting occurred in two New York retail offices. Isolated instances of possible non-reporting were found in seven additional Hutton branch offices in the New York metropolitan area. No such instances were found in the offices reviewed outside the New York area. The persons potentially involved in the possible violations were exclusively branch office personnel. Outside counsel is in the process of evaluating the possible involvement of any individuals in these branches and will provide Shearson with a report as to such involvement. Shearson has advised the United States Attorney for the Southern District of New York of Shearson's internal investigation and is cooperating with the United States Attorney in his inquiry.

12. The applicant states that in connection with its request for an exemption from the Securities and Exchange Commission from the provisions of section 9(a) of the Investment Company Act of 1940,[4] Shearson at its expense has agreed to retain independent auditors:

(a) To confirm that the Shearson currency reporting procedures are in place, and that the computer software program used in connection with the procedures is operational, with respect to each former Hutton branch office;

(b) To review the procedures: (i) To determine whether the procedures are reasonably designed to ensure compliance with the currency transaction reporting provisions of the Bank Secrecy Act, (ii) to detect non-compliance with the procedures, and (iii) to make recommendations, if appropriate, for changes in the procedures and staffing necessary reasonably to ensure compliance with applicable law relating to currency transaction reporting; and

(c) To report to Shearson the results of its review.

The auditors' review will be completed within 180 days of the filing of the request for exemption. Shearson will, within 60 days of delivery to it of the auditors' report and recommendations, if any, submit the report and recommendations to the Commission together with a report of Shearson setting forth the action it has taken or proposes to take concerning the implementation of the recommendations.

13. The applicant states that as of February 8, 1988, as part of the consolidation of the Hutton branch offices into the Shearson branch office system, each Hutton branch has been made subject to the same internal procedures for processing currency transactions as those to which Shearson is subject. Shearson's procedures with respect to currency transaction reporting were adopted as a means of avoiding the type of situation that occurred at Hutton-Providence. The procedures prohibit the deposit or payment in currency at any Shearson or Hutton branch office. The procedures also mandate that any Shearson or Hutton employee who is asked by a customer to deposit currency in any account, inform the customer that Shearson and Hutton will only accept a non-cash instrument and will not accept cash. The procedures further protect against the kind of irregularities that occurred at Hutton-Providence by requiring Shearson and Hutton employees to notify immediately not only their branch manager, but also Shearson's Compliance Department, if any customer, during a limited period of time, deposits a series of cashier's checks, traveler's checks, money order or checks in bearer form (*i.e.*, checks made payable to cash or endorsed in blank) that are each under $10,000 but collectively exceed $10,000.

The applicant also notes that as an additional safeguard against irregularities in currency transaction reporting, the procedures expressly forbid Shearson and Hutton brokers and all other Shearson and Hutton employees from engaging in any of the following activities:

(a) Taking procession of currency for a customer;

(b) Escorting a customer to a financial institution to convert currency to an acceptable means of payment; and/or

(c) Advising a customer as to how to "structure" his transaction with a financial institution in order to avoid the financial institution's reporting requirements under the Currency Transaction Reporting Act.

Shearson and Hutton employees are also informed that failure to comply with these procedures will subject the offender to internal disciplinary action and possibly to civil and criminal liability for violating Federal Law.

14. In summary, the applicant represents that this proposed exemption satisfies the criteria of section 408(a) of the Act because, among other things: (a) TBCREC is to a very significant respect operated independently of Shearson and is operated independently of Hutton; (b) none of TBCREC's officers is an officer or employee of Hutton; (c) Hutton's criminal activity in every case took place before its acquisition by Shearson; (d) both Hutton and Shearson have undertaken substantial reforms and put in place procedures designed to prevent any recurrence of the criminal activity; (e) the other provisions of PTE 84–14 taken together with Shearson's independent audit procedures established pursuant to its exemption request under section 9(a) of the Investment Company Act of 1940, are sufficient to assure that the best interests of the ERISA plans and their participants are served; and (f) TBCREC will be able to take advantage of a broader variety of attractive investment opportunities on behalf of the participants and beneficiaries of its clients' plans.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

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[4] Section 9(a) of the Investment Company Act of 1940 states, in part, that it shall be unlawful for a person to serve as or act in the capacity of employee, officer, director, member of an advisory board, investment advisor, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliate of such person, has engaged in certain criminal activity (as specified in section 9(a)(1)).

**Puckett Machinery Company Profit Sharing Plan (the Plan), Located in Jackson, MS**

[Application No. D–7576]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continued leasing (the Extended Lease) of certain improved real property (the Real Property) by the Plan to Puckett Machinery Company (the Employer), a party in interest with respect to the Plan, provided the terms of the Extended Lease are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Effective Date: If granted, this proposed exemption will be effective April 1, 1985.

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan having 194 participants and net assets of approximately $2,480,522 as of December 31, 1986. The trustee of the Plan is Deposit Guaranty National Bank (the Trustee), a national banking association with its principal office located in Jackson, Mississippi. The Trustee makes investment decisions for the Plan.

2. The Employer, which maintains its principal place of business in Natchez, Mississippi, is engaged in the business of selling and leasing heavy equipment and machinery. The Employer is a dealer for Caterpillar, Inc. equipment and machinery which it sells to the public.

3. Among the assets of the Plan is an unencumbered parcel of land located at Highway 61 North, Natchez, Mississippi. The Real Property consists of 6.5 acres of land and two buildings situated thereon. A predecessor of the Plan acquired the Real Property in 1970 for $250,000 from a party in interest. At that time of the purchase, the Real Property was leased to a related party. Since 1970, the Plan and its predecessor entities have leased the Real Property to the Employer and the Employer's predecessor corporations under the terms of a formal written lease (the Original Lease).

4. The Original Lease had an initial term beginning April 1, 1970 and ending March 31, 1985. It also contained a renewal option for another ten year period. The Original Lease required the Employer to pay the Plan a total annual rental of $24,000 for the Real Property or $2,000 monthly. The Original Lease also required the Employer to repair and maintain the demised premises with the exception of the roof and foundation which remained the responsibility of the Plan. The Original Lease further obligated the Employer to insure the premises against casualty loss and to pay all state, county and municipal ad valorem taxes and special improvement assessments levied against the real Property. The applicant represents that the Original Lease satisfied the requirements of section 414(c)(2) of the Act and, therefore, was exempt statutorily from the prohibitions of sections 406 and 407 of the Act through June 30, 1984.[5]

5. On March 25, 1985, the Plan and the Employer agreed to continue their leasing arrangement for a period of five years commencing April 1, 1985 and ending March 31, 1990. Although the Extended Lease was based primarily on the same terms and conditions as the Original Lease, the rental was increased from $2,000 to $4,000 per month to reflect the fair market rental value of the Real Property. According to the applicant, the Employer has paid all rental amounts under the Extended Lease in a timely manner. In addition, the applicant represents that the Trustee has represented the interests of the Plan as the independent fiduciary under the Extended Lease and has agreed with the decision to extend such lease.

6. On August 12, 1987, the Employer was notified by the Department of violations of sections 406 and 407 of the Act stemming from its continued leasing arrangement with the Plan. In this connection, the Trustee has requested an administrative exemption that will permit the continuation of the Extended Lease as well as the holding of the Real Property by the Plan. The Employer represents that for the period July 1, 1984 through April 1, 1985 it will pay the Internal Revenue Service (the Service) all applicable excise taxes that may be due by reason of the continuing nature of the Extended Lease within 90 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption. In addition, the Employer represents that it will pay the Plan the difference between the fair market rental value of the Real Property and the rental actually paid plus reasonable interest on the rental deficiency for the same period. Appropriate determinations of deficient rent and interest will be made by the Trustee.

7. As stated previously, the Extended Lease requires an annual rental of $48,000 which is payable in equal monthly installments until its expiration on March 31, 1990. The Extended Lease also obligates the Employer to pay all ad valorem taxes assessed against the Real Property, all insurance premiums as well as certain repair and maintenance costs incurred on the Real Property. In the event the Employer defaults on its lease obligations, the Trustee is empowered to sell the Real Property to an unrelated party.

The Trustee proposes to supplement the Extended Lease with a written addendum (the Addendum). The Addendum lengthens the terms of the Extended Lease for two successive five year periods (from April 1, 1990 until March 31, 1995 and from April 1, 1995 until March 31, 2000). Such option to extend the Extended Lease may be exercised by the Employer by giving written notice to the Plan not more than twelve months nor less than six months prior to the then existing term. Each extended term of the Extended Lease will be pursuant to the terms and conditions described above, but at an increased rental. No extension of the Extended Lease beyond its initial term will be permitted unless the Trustee determines before each proposed extension, that such extension is in the best interests of the Plan and its participants and beneficiaries. The Addendum further provides that the annual rental of the leased premises for the initial and subsequent Extended Lease term will be an amount equal to the greater of the annual rental being charged for the preceding lease term or comparable market rentals in Natchez, Mississippi as determined by an independent appraiser. Such reappraisals will be performed at the direction of the Trustee.

8. The Real Property was appraised by Mr. Gary H. Krize (Mr. Krize), ASA, CRPA, CRA, an independent appraiser affiliated with Krize Appraisal Company of Natchez, Mississippi. On May 9, 1985, Mr. Krize placed the fair market value and annual fair market rental value of the Real Property at $321,000 and $43,000, respectively. In an updated appraisal report dated September 14, 1987, Mr. Krize determined that the Real Property had a fair market value of

[5] The Department expresses no opinion on whether the Original Lease satisfied the requirements of section 414(c)(2) of the Act.

$349,000 and a fair market rental value of $45,000, annually.[6]

9. As noted above, the Trustee will continue serving as the independent fiduciary for the Plan with respect to the continuation of the Extended Lease. The Trustee represents that it maintains retirement plans with total assets that are in excess of $300 million and it says it has been administering plans for over 30 years. The Trustee also asserts, that it has had experience under the Act through its involvement in audits initiated by the Department and the Service. Moreover, the Trustee represents that it recognizes its duties, responsibilities and liabilities under the Act as a Plan fiduciary.

In describing its pre-existing relationship with the Employer, the Trustee states that no shareholders of the Employer serve on its board of directors or vice versa. The Trustee represents that it has given the Employer a line of credit totaling $7.5 million. The Trustee asserts that the Employer's draw against this line of credit is $5 million or .003 percent of the Trustee's loans and lines of credit. The Trustee also states that it has total deposits exceeding $2 billion and that it holds deposits of the Employer of less than $10,000.

10. The Trustee states that it has reviewed all documentation associated with the transaction and certifies that the terms contained therein are comparable with the terms of similar transactions in Mississippi. The Trustee also believes the Extended Lease provision requiring the Plan to repair the roof and the foundation of the demised premises is an appropriate condition and a common practice in the leasing of commercial buildings within Mississippi. Based upon its review of transaction documents, the Trustee believes the transaction is in the best interests of the Plan and its participants and beneficiaries.

In conjunction with the transaction, the Trustee has reviewed the overall investment portfolio of the Plan and considered the liquidity requirements. In addition, the Trustee has examined the diversification of the Plan's assets in light of the transaction and it has determined that there exists sufficient diversification to satisfy the Plan's liquidity needs. Based upon its analysis of the Plan's portfolio, the Trustee concludes that the transaction complies with the Plan's investment objectives and policies.

The Trustee asserts that it has used due care in examining the safety of the Extended Lease as well as the probable income and gain to be derived therefrom by the Plan. In addition, the Trustee has determined that the Extended Lease will offer the Plan a fair return that is commensurate with prevailing lease rates. Finally, with respect to the diversification of the Plan's assets, the Trustee believes the transaction, which represents approximately 14 percent of the Plan's assets, will not result in Plan property being invested in whole, or in an unreasonably large proportion, in one type of investment vehicle or in various investment vehicles that are dependent upon the success of a single enterprise or the conditions of one locality.

The Trustee has agreed to monitor the Extended Lease throughout its duration and to take actions that are necessary and proper to safeguard the interests of the Plan. In this connection, the Trustee represents that it will receive and review financial statements and other documents that are required to be filed by the Plan. Moreover, the Trustee states that it will discharge its duties in accordance with the documents and instruments governing the Plan insofar as they are consistent with the protection of employee benefit rights under the Act.

11. In summary, it is represented that the transaction satisfies the terms and conditions of section 408(a) of the Act because: (a) The Trustee, as the independent fiduciary on behalf of the Plan, has determined that the Extended Lease with the proposed Addendum is an appropriate investment for the Plan and is in the best interests of the Plan and its participants and beneficiaries; (b) the rights of the participants and beneficiaries of the Plan are being protected by the Trustee which has approved the terms of the Extended Lease and will continue monitoring such lease throughout its duration; (c) the value of the Real Property is approximately 14 percent of the Plan's assets; (d) in the event the Employer defaults in payments due under the Extended Lease, the Trustee will have the discretion to sell the Real Property to an unrelated party; (e) the Employer will pay the Service all applicable excise taxes which may be due by reason of the past leasing of the Real Property within 90 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption; and (f) the Employer will pay the Plan the difference between the fair market rental value of the Real Property and the amount of rental actually paid together with interest on such excess for the period July 1, 1984 until April 1, 1985 as such amounts are determined by the Trustee

*Tax Consequences of Transaction*

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415

**Notice to Interested Persons**

Notice of the proposed exemption will be provided to all interested persons by either mail or hand delivery within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments are due within 60 days of the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

[6] The Employer represents that to the extent the annual rental amount of $48,000 exceeds the fair market rental value of the Real Property, it will treat the amount of excess rent as a contribution to the Plan. The Employer also states that the amount of excess rental when added to the annual additions to the Plan will not exceed the limitation prescribed by section 415 of the Code.

employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of July 1988.

**Robert J. Doyle,**

*Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

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**[Prohibited Transaction Exemption 88-72; Exemption Application No. D-6911 et al.]**

## Grant of Individual Exemptions; Schroder Real Estate Fund A (the Fund) et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Schroder Real Estate Fund A (the Fund), Located in New York, NY

[Prohibited Transaction Exemption 88-72; Exemption Application No. D-6911]

*Exemption*

Section I. Exemption for Certain Transactions Involving the Fund

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Fund (a Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not Schroder Real Estate Associates (Schroder) or one of its affiliates, any other Fund maintained by Schroder or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the Participating Plan does not exceed 10% of the total assets of the Fund, and the employer is not as "substantial employer" with respect to the Participating Plan, as defined in section 4001(a)(2) of the Act; or

(B) The interest of the Participating Plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section I, if no commission is paid to Schroder or to the employer, or any affiliate of Schroder or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Schroder nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Fund not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Schroder, its affiliates, and any collective investment fund maintained by Schroder or its affiliates, shall be considered to be persons independent of the issuer if Schroder is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Schroder or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Schroder or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406 b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not Schroder, any affiliate of Schroder, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406 (a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3 (14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not Schroder or an affiliate of Schroder.

(d) The restrictions of section 406 (a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Schroder and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if: (1) The acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Schroder or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) Schroder or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Schroder or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Schroder of its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Fund" shall include any collective investment fund that may hereafter be established, operated and managed by Schroder or its affiliate in essentially the same manner as the Schroder Real Estate Fund A.

(b) An "affiliate" of person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means that power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is define in section 4975 (e) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are member of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occures is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in this case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

Effective Date: This exemption is effective December 22, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18922.

Written Comment: The Department received one written comment, from the applicant. The comment updated certain representations contained in the Notice of Proposed Exemption. Braeswood Advisory Corporation, which was owned by Mr. Charles Grossman is no longer a partner in Schroder and Mr. Grossman is ne longer a trustee of the Fund. Several additional partners have been admitted by Schroder Real Estate Associates, L.P., and Marguerite Leanne Lachman, one of the new partners in Schroder, has been appointed as a trustee of the Fund. In addition, the Trustees have amended the Group Trust to permit consideration of requests for redemption of Units at any time, although the Trustees do not expect to pay cash in such a redemption prior to the expiration of the four year period beginning on the date of the closing of the last acquisition of real property or an interest therein by the Fund, unless another investor, either a Participating Plan or a prospective investor, is willing to purchase the redeemed Units. Finally, the applicant requests that the exemption be made retroactive to December 22, 1987, which is the date on which the Fund accepted its first contribution.

After due consideration of the entire record, the Department has decided to grant the proposed exemption, as modified.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

**Quevado Properties, Ltd. (Quevado), Located in Tyler, TX**

[Prohibited Transaction Exemption 88–73; Exemption Application No. D–7138]

*Exemption*

The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the

Code, shall not apply to the payment of an investment management fee to the general partner of Quevado, a limited partnership in which employee benefit plans may invest, in connection with the investment by Quevado in a particular parcel of unimproved real property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18929.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

**Elliot Siegel Self-Employed Retirement Plan (the Plan), Located in Massapequa, New York**

[Prohibited Transaction Exemption 88–74; Exemption Application No. D–7321]

*Exemption*

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of unimproved real property (the Property) from the Plan to Elliot Siegel, D.D.S., a party in interest with respect to the Plan, provided the Plan receives no less than the greater of $190,000 or fair market value for the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 25, 1988, at 53 FR 18932.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**Sammons Trucking Amended and Restated Profit Sharing Plan (the Plan), Located in Missoula, Montana**

[Prohibited Transaction Exemption 88–75; Exemption Application No. D–7340]

*Exemption*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The past sales by the Plan of five parcels of unimproved real property (the Properties) to Robert R. and Mary Lynn Van Derhoff (the Van Derhoffs), parties in interest with respect to the Plan; and (2) past extensions of credit by the Plan to the Van Derhoffs in conjunction with the sales of the Properties; provided that the terms and conditions of such transactions were at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Tuesday, June 7, 1988 at 53 FR 20920.

Effective Date: The effective date of this exemption is June 3, 1975.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Andes-Buchanan Medical Corporation Defined Benefit Pension Plan and Money Purchase Pension Plan (together, the Plans), Located in Fullerton, California**

[Prohibited Transaction Exemption 88–76; Exemption Application No. D–7402]

*Exemption*

The restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the Plans of a certain promissory note (the Note) which is secured by a deed of trust against certain real property owned by F.V. Ltd., an unrelated party, from the Jerry P. Andes and Barbara J. Andes Revocable Estate Trust, a party in interest with respect to the Plans, provided that the price paid for the Note is the lesser of either the outstanding principal balance on the Note or the fair market value of the Note on the date of purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1988 at 53 FR 20921.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**The AT&T Management Pension Plan and the AT&T Pension Plan, Located in New York, New York**

[Prohibited Transaction Exemption 88–77; Exemption Application Nos. D–7463 and D–7464]

*Exemption*

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the acquisition by AT&T Communications, Inc. of an easement across certain real property in Oconee County, Georgia, owned by the First National Bank of Atlanta Collective Timberland Trust—II for Qualified Employee Benefit Trusts, provided the cash amount paid is not less than the fair market value of the easement on the day of the acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13359.

Written Comments and Hearing Requests: The applicants informed the Department that they were unable to notify interested persons of their right to comment and request a hearing within the time period set forth in the proposed exemption. Pursuant to discussions with the Department, the applicants notified interested persons by June 17, 1988 that the period for written comments and requests for a public hearing would be extended until July 17, 1988. No written comments or hearing requests have been received by the Department.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**McInerney & Dillon, Professional Corporations, Profit Sharing Plan and Trust (the Plan), Located in Oakland, California**

[Prohibited Transaction Exemption 88–78; Exemption Application No. D–7487]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan by the Plan to McInerney & Dillon, P.C., the Plan sponsor, under the terms and conditions described in the notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21941.

*Correction*

On page 21942 in the Summary of Facts and Representations, on the last line of the first paragraph beginning on that page, the figure "35%" is corrected to read "25%".

For Further Information Contact: Joseph L. Roberts III of the Department,

telephone (202) 523-8881. (This is not a toll-free number.)

**Brentwood Orthopedics, Inc. Defined Benefit Pension Plan and Trust (the Plan), Located in Warrensville Heights, Ohio**

[Prohibited Transaction Exemption 88-79; Exemption Application No. D-7533]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain firearms (the Firearms) to Edward L. Andrews, M.D., a party in interest with respect to the Plan, provided that the price paid is the higher of either the Plan's original purchase price for the Firearms, plus the expenses incurred by the Plan in connection with the holding and maintenance of the Firearms, or the fair market value of the Firearms on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21963.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the tranaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of July 1988.

**Robert J. Doyle,**

*Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 88-17176 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL SCIENCE FOUNDATION

**Forms Submitted for OMB Review**

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer:* Herman G. Fleming, (202) 357-9520.

*OMB Desk Officer:* Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title:* 1989 National Survey of Natural and Social Scientists and Engineers.

*Affected Public:* Individuals.

*Responses/Burden Hours:* 44,134 responses, 13 minutes per response for a total of 9,577 burden hours.

*Abstract:* The data collected in this survey will enable the Foundation to partly fulfill the legislative requirement which obligates the agency to develop data on the Nation's scientists and engineers and otherwise act as a central clearinghouse for information about the scientific and technical population of the United States. The information provided allows for policy and planning activities by officials of government, private industries, and academic institutions.

Dated: July 26, 1988.

**Herman G. Fleming,**

*NSF Clearance Officer.*

[FR Doc. 88-17189 Filed 7-28-88; 8:45 am]

BILLING CODE 7555-01-M

**Forms Resubmitted for OMB Review**

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer:* Herman G. Fleming, (202) 357-9520.

*OMB Desk Officer:* Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title:* Survey of Earned Doctorates Awarded in the United States.

*Affected Public:* Individuals.

*Responses/Burden Hours:* 31,000 responses; 20 minutes per response.

*Abstract:* Persons with doctorate-level education are key members of the labor force in scientific, engineering and learned professions. Information on their demographic & educational background and immediate postdoctoral study or employment plans is essential for analyses of supply and demand. These data also report on the flow of women and minorities into the fields.

Dated: July 26, 1988.

**Herman G. Fleming,**

*NSF Clearance Officer.*

[FR Doc. 88-17190 Filed 7-28-88; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

**Connecticut Yankee Atomic Power Co., Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.62 to Connecticut Yankee Atomic

Power Company (the licensee) for the Haddam Neck Plant located at the licensee's site in Middlesex County, Connecticut.

**Environmental Assessment**

*Identification of Proposal Action*

The exemption would provide relief from requirements of 10 CFR 50.62 for the Haddam Neck Plant. The proposed exemption is in accordance with the licensee's request for exemption from the requirement to provide a turbine trip on indication of an Anticipated Transient Without Scram (ATWS), dated August 19, 1986.

*The Need for the Proposed Action*

10 CFR 50.62, "Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants," requires that each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS. For the Haddam Neck Plant, the licensee maintains that the risk from ATWS is sufficiently low, considering such factors as power level and unique design features, and that the addition of turbine trip is not necessary or justified.

*Environmental Impacts of the Proposed Action*

The proposed exemption for a turbine trip exemption from the requiements of 10 CFR 50.62 for the Haddam Neck Plant will not result in a significant environmental impact because:

1. The estimated peak pressure for the most limiting ATWS is well below pressures which could threaten primary system integrity and is also well below the pressure at which significant fuel failures are expected to occur. Therefore, any offsite radiological consequences would be well within the limits of 10 CFR Part 100.

2. The response of the Haddam Neck Plant to an ATWS event is very mild compared to the response of the Westinghouse generic plant. This is due to several factors including:

a. The Haddam Neck Plant is relatively small, approximately half the size of the Westinghouse generic plant,

b. The licensee installed larger pressurizer power operated relief valves providing greater relief capacity per unit power and,

c. The licensee provided a more negative moderator temperature coefficient.

3. The licensee provided a risk assessment of the safety benefit for implementing any further ATWS Rule requirements and determined the reduction in the core melt frequency to be 2.4 E–7 per year or a net decrease of 1.3 E–2 man-rem over the remaining life of the plant.

Thus the likelihood of core melt or radiological release from the ATWS at the Haddam Neck Plant is low.

Our evaluation of the proposed exemption indicates that the exemption will not significantly increase the probability or consequences of any radiological releases, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts and could result in the licensee being in violation of the Commission's regulations.

*Alternative Use of Resources*

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult with agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated August 19, 1986, which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 20th day of July 1988.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I–4, Division of Reactor Projects I/II.*

[FR Doc. 88–17138 Filed 7–28–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–289]**

## GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the Technical Specifications (TS) to incorporate action statements and surveillance requirements for post-accident monitoring instrumentation required by Regulatory Guides 1.97.

The proposed action is in accordance with the licensee's application for amendment dated September 15, 1987.

*The Need for the Proposed Action*

The proposed change to the TS is required to comply with an NRC Order dated July 18, 1985 to GPU Nuclear. The Order required upgrading of certain instrumentation to improve the ability of plant operators to respond to emergency situations.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to Technical Specifications. As a result of these changes, the plant instrumentation needed to deal with conditions following an accident or emergency will be more assured to provide accurate indications. The proposed changes do not increase the probability or consequences of any

accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 2, 1987 (52 FR 45882). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in the safety improvements ordered by the NRC not being implemented.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Three Mile Island Nuclear Station, Unit 1, dated December 1972.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 15, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Government Publication Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Bethesda, Maryland, this 21st day of July 1988.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17137 Filed 7-28-88; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 11-13, 1988, in room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on June 14, 1988.

**Thursday, August 11, 1988**

*8:30 a.m.-9:00 a.m.: Comments by ACRS Chairman* (Open)—The ACRS Chairman will report briefly regarding items of current interest, including the status of NUREG-1150, Reactor Risk Reference Document.

*9:00 a.m.-11:00 a.m.: Meeting with NRC Executive Director for Operations* (Open)—Discuss status of and plans for completion and implementation of NUREG—1150, Reactor Risk Reference Document.

*11:15 a.m.-12:15 p.m. and 1:15 p.m.-2:15 p.m.: Standardization of Nuclear Power Plants* (Open)—Discuss proposed EPRI requirements document for advanced LWRs (Chapters 2, 3, 4, and 5).

*2:15 p.m.-4:45 p.m.: Systems Interactions* (Open)—Review and comment regarding proposed resolution of USI A-17, Systems Interactions in Nuclear Power Plants.

*4:45 p.m.-6:15 p.m.: TVA Nuclear Power Plant Operations* (Open)—Discuss lessons learned from TVA management, operations, and construction problems.

*6:15 p.m.-6:30 p.m.: Future ACRS Activities* (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

**Friday, August 12, 1988**

*8:30 a.m.-11:30 a.m.: NRC Rulemaking Activities on Nuclear Power Plants Maintenance* (Open)—Discuss NRC activities for developing requirements for maintenance programs at nuclear power plants.

*11:45 a.m.-12:30 p.m. and 1:30 p.m.-2:45 p.m.: Decay Heat Removal Systems* (Open/Closed)—Review and comment regarding proposed NRC resolution of USI A-45, Shutdown Decay Heat Removal Requirements and Generic Issue-99, Loss of RHR Capability in PWRs.

Portions of this session will be closed as required to discuss Proprietary Information applicable regarding this subject.

*2:45 p.m.-3:45 p.m.: BWR Power Oscillations* (Open)—Briefing by invited expert regarding power oscillations in boiling water reactors.

*4:00 p.m.-5:45 p.m. Modular High Temperature Gas-Cooled Reactor* (Open)—Review and comment on standardized design for the DOE proposed modular high-temperature gas cooled reactor.

*5:45 p.m.-6:30 p.m.: Safety Implications of Control Systems* (Open)—Review and comment regarding proposed assumptions and limitations to be used in the Multiple System Response Program for evaluating residual concerns associated with USI A-47, Safety Implications of Control Systems in Nuclear Power Plants.

**Saturday, August 13, 1988**

*8:30 p.m.-12:30 p.m.: Preparation of ACRS Reports* (Open/Closed)—Discuss proposed ACRS reports to the NRC regarding items considered during this meeting and the Environmental Qualification-Risk Scoping Study which was considered during the 339th ACRS meeting.

Portions of this session may be closed as required to discuss Proprietary Information relating to the matters being discussed.

*1:30 p.m.-2:00 p.m.: Appointment of ACRS Members* (Closed)—Discuss qualifications of persons nominated for appointment as members of the ACRS.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*2:00 p.m.-2:30 p.m.: Activities of ACRS Subcommittees and Members* (Open/Closed)—Reports of ACRS subcommittee chairmen and members

regarding the status of assigned activities.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

*2:30 p.m.–3:30 p.m.: Important Safety-Related Issues* (Open)—Discuss proposed hierarchical structure for important safety-related issues identified by the ACRS members.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), Proprietary Information applicable to the facility being discussed (5 U.S.C. 552b(c)(4)), and to protect information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: July 26, 1988.

**Samuel J. Chilk,**

*Acting Advisory Committee Management Officer.*

[FR Doc. 88–17141 Filed 7–28–88; 8:45 am]

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**[Docket Nos. 50–269, 50–270 and 50–287]**

## Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee or Duke), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

The proposed amendments would revise the Technical Specifications (TSs) to support operation of Oconee Unit 3, Cycle 11 at full rated power and to include other revisions. To support the reload TSs revisions, Duke submitted the report, "Oconee Unit 3 Cycle 11, Reload Report," DPC–RD–2011, May 1988. These amendments would revise the following 4 areas: (1) Update the operational power imbalance envelope. These envelops would be revised for all three units; (2) Increase the minimum boron concentration in the borated water storage tank (BWST) from 1835 to 1950 parts per million; (3) Increase the minimum volume of the concentrated boric acid storage tank (CBAST) from 1020 to 1100 cubic feet. The increase in volume would ensure that the CBAST can borate the reactor coolant system to 1% delta k/k subcritical with the following assumptions: cold conditions with the maximum worth stuck rod, and no credit for xenon at the most limiting time in the core life; and (4) Revise other areas of the TSs that are administrative in nature. In its submittal, Duke also stated that the bases have been updated in certain sections.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the

hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II-3; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the peitition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 17th Street NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 16, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Dated at Rockville, Maryland, this 21st day of July 1988.

For the Nuclear Regulatory Commission.
**David B. Matthews,**
*Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17135 Filed 7-28-88; 8:45 am]
BILLING CODE 7590-01-M

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**[Docket Nos. 50-269, 50-270 and 50-287]**

## Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55, issued to Duke Power Company (the licensee or Duke), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

In its October 2, 1987 letter, the NRC requested Duke to propose revisions to the Technical Specifications (TSs) that would add, similar to Unit 1, primary to secondary leakage limits of 0.3 gallons per minute (gpm) for Units 2 and 3. With this application, Duke proposed to revise the TSs to establish a 1 gpm leakage limit for all three units. Also, Duke proposed several other revisions to the TSs. Duke proposed to revise the following five areas: (1) To establish a limit of 1.0 gpm total primary to secondary leakage through both steam generators (SG) for each of the three Oconee units. Presently, only Oconee Unit 1 has a limit of 0.3 gpm; Units 2 and 3 have no limit; (2) To delete the last sentence in the current TS 3.1.6.4 which requires NRC notification of SG tube leaks "in accordance with section 6.6.2.1;" (3) To delete the current TS 4.17.6.c which requires NRC notification of the results of SG tube inspections which fall into Category C-3 "pursuant to TS 6.6.2.1.a prior to resumption of plant operation;" (4) To delete the current requirements in Table 4.17-1, Item C-3, for a "prompt notification to NRC pursuant to TS 6.6.2.1.a;" and (5) To change in the current TS 4.17.6.a the term "Director" to Regional Administrator." In its submittal, Duke also stated that the bases have been revised for certain sections.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specfic aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly to so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II–3; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated May 31, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 22nd day of July 1988.

For the Nuclear Regulatory Commission.

**David B. Matthews,**

*Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17136 Filed 7–28–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–282 and 50–306]**

## Northern States Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to the Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

In accordance with the licensee's application for amendments dated July 5, 1988, the amendments would change the values of the nuclear hot channel factor ($F_Q$) and the nuclear enthalpy rise in the hot channel factor ($F_{\Delta H}$) as they relate to the power distribution limits. It should be noted that power distribution limits are used in the Departure from Nucleate boiling (DNB) calculations for analyzing various potential accidents. Specifically, ($F_Q$) and ($F_{\Delta H}$) will have assigned values of 2.50 and 1.70 respectively, instead of the existing condition where the assigned values are based on a function of each other.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated July 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 21st day of July 1988.

For the Nuclear Regulatory Commission.

**Thomas V. Wambach,**

*Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.*

[FR Doc. 88-17139 Filed 7-28-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-25938; File No. SR-AMEX-88-19]**

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 29, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 904C as set forth below. (Italics indicate material proposed to be added.)

Rule 904C

(a)-(d) No change.

* * * Commentary

.01 *Positions in broad-based index options classes traded on the Exchange, held in the aggregate by a customer (who is neither a member nor a broker/dealer), are exempt from this position limit rule to the extent that procedures and criteria as established by the Exchange are met.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange proposes to establish an exemption from broad-based index option position limits for customers holding a pre-approved portfolio of stocks. For purposes of this rule, a customer is defined as neither a member nor a broker/dealer.

Currently, position limits for broad-based index options, specifically the Major Market ("XMI") and the Institutional ("XII") Indexes, are limited to a maximum of 17,000 and 25,000 contracts, respectively. These limits are the same for all investors, regardless of whether an investor holds a portfolio of stocks that could hedge an index option position. On various occasions during the past four years, managers of large portfolios, such as pension and insurance funds, have indicated that the current position limits for broad-based index options restrict the use of such options in hedging stock portfolios. The purpose of this proposal is to provide customers who wish to use index options to hedge large stock portfolios with relief from existing position limits.

The Exchange proposal would operate as a pilot program for one year and would allow exemptions from position limits for up to 50,000 contracts for XMI options and 75,000 contracts for XII options. [1]

It is proposed that a customer may receive an exemption from broad-based index option position limits if the procedures and criteria outlined in Exhibit 1 are met. As more fully described in Exhibit 1, a customer who seeks an exemption from broad-based index option postion limits would need (1) prior Exchange approval and (2) a qualified portfolio consisting of net long positions in at least twenty common stocks [2] representing at least four industry groups (with no stock accounting for more than 15% of the value of the portfolio). The Exchange's Market Surveillance Department is prepared to coordinate the granting of the hedge exemptions with the other options exchanges in an effort to guard against the use of a qualified portfolio to obtain exemption(s) in more than one

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[1] *See letter from Claire P. McGrath, Staff Attorney, Amex, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated July 22, 1988, amending the maximum number of contracts permitted as a hedging exemption for XMI options.*

[2] The Amex initially proposed that a qualified portfolio could consist of net long positions in fifteen common stocks. The Amex subsequently amended its filing to require that a customer's qualified portfolio include net long positions in twenty common stocks in order for the customer to be eligile for the exemption from broad-based index option position limits. Letter from Claire P. McGrath, Staff Attorney, Amex, to Mary Revell, Attorney, Commission, dated July 20, 1988.

[3] Current exercise limits are 10,000 contracts for XMI and 15,000 contracts for XII.

options product. The Surveillance Department also will monitor a hedge customer's options positions daily. Customers who exceed the hedge exemption limits and/or violate any of their undertakings in connection with granting of an exemption will be instructed to liquidate any excess position promptly and in an orderly manner. Although exercise limits in expiring options on expiration will not be restricted, holders who exercise positions in excess of the current limits [3] will be closely examined and there will be a rebuttable presumption of a violation of the Exchange's policy if the customer also liquidates a substantial amount of stock on the day prior to expiration. In addition, the firm carrying the customer's position will be required to telefax to the Surveillance Department on the Wednesday prior to expiration the current status of the customer's qualified portfolio. The Exchange believes these, as well as other requirements, will make it difficult to use the exempted positions to disrupt or manipulate the market. Upon approval of this rule change, the Exchange plans to advise its members of the requirements for a hedger's exemption from index option position limits and the procedures to be followed in applying for an exemption in one or more information circulars.

The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange since it is designed to give investors with large portfolios the ability to hedge those portfolios and may increase the depth and liquidity of index option trading without increasing the risk of market manipulation or disruption.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex believes that the proposed rule change will not impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register.** The proposed rule change is substantially identical to a proposal submitted by the Chicago Board Options Exchange ("CBOE") that was noticed for the full thirty-day period and was recently approved by the Commission.[4] The Commission concludes, as it did with the CBOE proposal, that the Amex proposal to provide public customers who hold a pre-approved portfolio of stocks with an exemption from broad-based index option position limits will allow more effective hedging of large stock portfolios and may increase the depth and liquidity of the stock index options market without significantly increasing concerns regarding manipulation of these products or disruptions of the underlying stock market. The Commission notes that, as with the CBOE proposed rule change, the Amex has proposed a one-year pilot program for the index option hedge exemption. During the one-year pilot, the Amex and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[5]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 22, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17157 Filed 7-28-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25941; File Nos. SR-SCCP-87-04 and SR-Philadep-87-01]**

## Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company; Order Approving Proposed Rule Changes

The Stock Clearing Corporation of Philadelphia ("SCCP") and the Philadelphia Depository Trust Company ("Philadep") on December 8, and December 10, 1987, respectively, submitted proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would authorize SCCP and Philadep to penalize participants that fail to confirm in a timely manner the accuracy of their monthly account statements. Notice of the proposals appeared in the **Federal Register** on February 29, 1988 to solicit public comment.[2] No comments were

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[4] *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988).

[5] The Amex has informed the Commission that it will obtain the following information from the monitoring program: the persons who use the exemption; how often the exemption is used; the size (dollar value) of any portfolios hedged; the number of stocks represented in these portfolios and the quantity of each stock held; positions held by the portfolios in stock index futures, stock index options on futures, or any other stock index option contracts; and the size (number of contracts) of the index options positions held pursuant to the exemption. Letter from Claire P. McGrath, Staff Attorney, Amex, to Mary Revell, Attorney, Commission, dated July 20, 1988. The Amex also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of any of the provisions of the hedge exemption rule.

[1] SCCP and Philadep are wholly-owned subsidiaries of the Philadelphia Stock Exchange, Inc.

[2] Securities Exchange Act Release Nos. 25385 and 25386 (February 23, 1988); 53 FR 6047, 6049.

On January 27, 1988, SCCP and Philadep filed similar proposals (File Nos. SR-SCCP-88-01 and SR-Philadep-88-02) to authorize the imposition of fines on SCCP and Philadep participants that were delinquent in verifying the accuracy of their monthly statements. At that time, however, the Commission expressed concern because the proposals appeared to lack adequate due process standards. SCCP and Philadep voluntarily withdrew these proposals by a letter dated February 27, 1988.

Continued

received. This order approves both proposed rule changes.

**I. Description of the Proposals**

The proposals would: (1) Amend SCCP Rules 21 (financial statements) and 24 (appeals); and (2) add a new Philadep Rule 30 (financial statements) and amend Philadep Rule 21 (appeals). The two proposals, in identical language, would authorize SCCP and Philadep, as self-regulatory organizations ("SROs"), to impose minor sanctions, ranging from warnings to fines up to $250, on their participants that fail to confirm in writing whether the monthly account statements issued to them by SCCP and Philadep are accurate.[3] Specifically, the proposals would authorize the Chairman or Vice-Chairman of either SRO's Audit Committee or any other properly authorized officer to recommend disciplinary action against any participant that fails to respond to an account confirmation request in a timely manner. The proposals would define "in a timely manner" as the 20th day of the month following the date of the statement. Potential disciplinary action would consist of: (1) A warning for the first offense within a 12 month period, (2) a $100 fine for the second offense within a 12 month period, and (3) a $250 fine for the third offense within a 12 month period.

Under the proposals, an alleged delinquency would be noticed to the affected participant by a written statement of charges. The participant could choose to accept the allegation of delinquency, pay the fine (if any), and waive the opportunity for a hearing. Alternatively, the participant could elect to contest the matter and, if so, would have a right to a hearing on the record before an Audit Committee member who would serve as hearing officer. The hearing officer would be appointed by the Chairman of the SRO's Audit Committee, and the hearing officer's ruling would be subject to appeal to the SRO's board of directors.

**II. Rationale of SCCP and Philadep**

SCCP and Philadep state that they should have the authority to impose reasonable penalties on their participants for occasional or repeated failure to confirm their monthly statements. SCCP and Philadep believe that the exercise of such authority would be a legitimate regulatory aid and that such authority would be within their statutory mandate as SROs. They further assert that the proposals would promote sound business policies without being unduly burdensome. SCCP and Philadep emphasize their belief that the proposals include specific due process standards that conform to the disciplinary procedure requirements of section 17A of the Act.

**III. Discussion of the Proposals**

The Commission believes that it is appropriate for SCCP and Philadep to set and enforce compliance with basic standards of financial recordkeeping. The proposed penalties, however, while administrative in nature, would constitute disciplinary sanctions under the Act. Accordingly, the penalties must be imposed in a manner consistent with section 17A(b)(3)(H) of the Act, which: (1) Requires that a clearing agency provide a "fair procedure" [4] for the disciplining of its participants; and (2) incorporates by reference section 17A(b)(5) of the Act which requires that a clearing agency grant and accused party specific due process rights including a statement of charges, notice of the charges, an opportunity for a hearing, and a record.

In this regard, the proposals submitted by SCCP and Philadep expressly provide for each of these mandatory rights of due process. Additionally, as amended,[5] the proposals would authorize, as a matter of right, appeals from the decisions of the hearing officers to the SCCP and Philadep boards of directors. The proposals also would permit and informal proceeding whereby an accused participant may elect not to contest the offense, to pay the fine (if any), to waive the right to a hearing, and to avoid the commencement of a formal disciplinary proceeding.

Accordingly, the Commission is satisfied that, as required by the Act, the proposals would provide an accused party with a fair and orderly disciplinary procedure that would include the basic rights of due process. Moreover, the Commission notes that these proposals are not matters of first impression and that similar rules, authorizing modest fines for minor offenses and informal disciplinary procedures, already are in effect at other SROs.[6] Such fines and procedures, where authorized at other SROs, generally apply to offenses that, like the subject of the instant filings, are technical, inadvertent, or otherwise minor in nature.[7]

The Commission believes that the two proposals in question are consistent with the Act, particularly Section 17A of the Act. The Commission further believes that these proposals, by fostering improved standards of financial recordkeeping among clearing agency participants, will facilitate efficiency in the clearing and settlement of securities transactions.

**IV. Conclusion**

For the reasons discussed in this order, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule changes (File Nos. SR-SCCP-87-04 and SR-Philadep-87-01) be and hereby are approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 25, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17158 Filed 7-28-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16492; 812-6980]**

## Centel Capital Corp.; Notice of Application

July 22, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

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*See* Securities Exchange Act Release No. 23124 (February 14, 1986), 51 FR 13309.

The Commission likewise expressed due process concerns with the instant filings. As a result, SCCP and Philadep submitted letters that amended their filings by adding due process rights in the form of rights of appeal. *See* letters from William W. Uchimoto, General Counsel SCCP and Philadep, to Thomas C. Etter, Attorney, Securities and Exchange Commission, dated May 18, 1988, and July 12, 1988.

[3] A "monthly account statement" details a participant's activity and account balances with SCCP and Philadep.

[4] The term "fair procedure" as used in section 17A(b)(3)(H) of the Act means that any SRO disciplinary action must be conducted under rules that provide a fair and orderly procedure, including the obligation that an SRO bring specific charges, give notice to the accused, and provide an opportunity for a hearing. *See* Sen. Report to Accompany S.249, Doc. No. 75, 94th Cong. 1st Sess. 25, 96, 124 (1975).

[5] *See, supra,* note 2.

[6] *See, e.g.,* New York Stock Exchange Rule 476A (Imposition of Fines for Minor Violation(s) of Rules).

[7] They include the so-called "traffic tickets" that are issued to individuals for breaches of decorum, such as running, eating, wearing improper attire, or using abusive language on a trading floor. *See* Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025. More comparable to the two instant proposals are "late fees" (actually fines) for a broker-dealer's lateness in transferring a customer's securities account. *See* NYSE Rule 412(g), Securities Exchange Act Release No. 22913 (February 14, 1986), 50 FR 40838. *See also,* Securities Exchange Act Rule 19d-1(c)(2), 17 CFR 240. 19d-1(c)(2), which provides an exception whereby SROs ordinarily need not report to the Commission fines imposed for certain minor offenses.

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

*Applicant:* Centel Capital Corporation ("Applicant")

*Relevant 1940 Act Sections:* Exemption requested under Section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant, a wholly-owned finance subsidiary of Centel Corporation ("Centel"), seeks an order to permit it to issue debt securities that will provide funds for use by Centel in connection with its own diversification and in support of the activities of subsidiaries of Centel.

*Filing Dates:* The application was filed on February 1, 1988 and amended on July 21, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o Ms. Barbara R. Johannesen, General Attorney, Centel Corporation, 8725 Higgins Road, Chicago, Illinois 60631.

**FURTHER INFORMATION:** Paul J. Heaney, Financial Analyst (202) 272–3420 or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. The Applicant, a Delaware corporation, was incorporated on January 18, 1988, and is a wholly-owned subsidiary of Centel. Centel was incorporated in Kansas on September 22, 1909, as the Concordia Electric Light Company. Through its telephone subsidiaries, it operates local exchange telephone systems in nine states. In addition, Centel, through other subsidiaries (the "Diversified Subsidiaries"), provides cable television service in seven states; and designs, engineers, installs and maintain advanced business telecommnications and information systems and networks. Centel itself directly provides electric service to customers in two states. In addition, Centel's electric operations are subject to utility commission regulation. Centel may establish additional such subsidiaries in the future.

2. Applicant was formed to advance efficient administration and management of financing activities for Centel and the Diversified Subsidiaries. In addition, legal and business reasons arising out of the regulatory framework to which Centel is subject, including the need to keep cash flows for the Diversfied Subsidiaries clearly separate and distinct from those of the telephone subsidiaries, indicate that the formation and utilization of a finance subisidiary is the preferable method of obtaining debt financing for the activities and uses of Centel and the Diversified Subsidiaries. Neither Centel nor any of the Diversified Subsidiaries is an investment company under section 3(a) of the 1940 Act.

3. The Applicant's primary business will be to provide funds which Centel will use to finance its own activities and for the activities of the Diversified Subsidiaries. The Applicant will issue debt securities for sale in the United States and foreign markets (collectively, the "Securities") and, in turn, loan the proceeds of these issuances to Centel and the Diversified Subsidiaries. All loans by Applicant to Centel and the Diversified Subsidiaries will bear interest equal to that which the Applicant is required to pay to obtain funds through its corresponding borrowings, plus a small mark-up sufficient to cover operating costs. Further, the amounts and maturities of these loans will allow the Applicant to make timely payments of principal, interest and premium, if any, on the Securities. The Applicant will remit to Centel and/or the Diversified Subsidiaries at least 85% of the cash or cash equivalents raised by the Applicant as soon as practicable after receipt thereof, but in no event later than six months after the Applicant receives such cash or cash equivalents. The Applicant represents that it will not issue voting securities to any person other than Centel or a wholly-owned subsidiary of Centel, and that it will not hold securities other than Government securities and other securities as permitted by Rule 3a–5(a)(6) under the 1940 Act.

4. Before Applicant issues any Securities, Centel and the Applicant will enter into a Support Agreement (the "Support Agreement"). Under the Support Agreement, Centel will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest and premium, if any, owed by it in connection with the Securities, then Centel shall provide funds to Applicant to assure that Applicant will be able to pay when due such principal, interest and premium, if any. The Support Agreement will also provide that in the event of any default by Centel in meeting its obligations under such Support Agreement, or in the event of default by the Applicant in the timely payment of principal, interest, and premium, if any, owed on any Securities, holders of the Securities or, if applicable, a trustee acting on their behalf, shall be entitled to proceed directly against Centel.

5. The Support Agreement will also provide that without the written consent of all the holders of the then outstanding Securities (other than Securities having an original maturity of one year or less, which will not be affected by such amendment or termination) the Support Agreement may not be amended in a way adverse to them or terminated unless all outstanding Securities have been retired.

6. The Applicant represents that its offerings of Securities are expected to consist of short-term, intermediate-term and long-term Securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") or in public offerings of securities registered under the 1933 Act. In the case of a public offering of any of its Securities not exempt from the registration requirements of the 1933 Act, the Applicant and Centel will, prior to offering such securities, file a registration statement under the 1933 Act with the SEC and will not sell such Securities until the registration statement is declared effective by the SEC and any related indenture is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. The Applicant and Centel will comply with the prospectus delivery requirements of the 1933 Act in connection with the offering and sale of such Securities.

7. In the case of an offering of Securities not requiring registration under the 1933 Act, the Applicant will

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provide each offeree with disclosure materials which will include a description of the business of Centel and other data of the character customarily supplied in such offerings. In the event of subsequent offerings, these materials will be updated at the time thereof to reflect material changes in the financial condition of Centel and its subsidiaries taken as a whole.

8. Further, prior to any issuance and sale of the Securities in the United States capital market, such Securities shall have received one of the four highest investiment ratings (signifying investment grade) from at least one nationally recognized rating organization. No such rating shall be required, however, if the Applicant's counsel opines that an exemption from registration is available with respect to such issue and sale under Section 4(2) of the 1933 Act.

**Applicant's Legal Conclusions**

1. The Applicant was formed as a financing conduit to provide funds for Centel's own activities and those of the Diversified Subsidiaries, and to advance efficient administration and management of financing activities of Centel and the Diversified Subsidiaries. All funds raised by it through the issuance of Securities will be lent only to Centel or the Diversified Subsidiaries. The Applicant meets all of the requirements for the Rule 3a–5 exemption under the 1940 Act except for the requirement that Centel unconditionally guarantee the Securities. The execution and delivery of the Support Agreement provides a functional equivalent to an unconditional guarantee of the Securities since the Support Agreement enables purchasers of the Securities to proceed directly against Centel in the event the Applicant fails to meet its obligations. Therefore, the Support Agreement will enable purchasers of the Securities to look ultimately to Centel for repayment.

2. Centel intends to support the Securities with all legally available assets. By means of the Support Agreement, Centel will make available to all holders of the Securities the same assets which would be available to the holders of Centel's own debt securities used to fund the Diversified Subsidiaries and, thus, the holders of the Securities will be in the same position as if Centel itself has issued the Securities directly.

3. Granting of the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Johathan G. Katz,**

*Secretary.*

[FR Doc. 88–17086 Filed 7–28–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–16491; 812–7006]**

## Lifetime Gold & Precious Metals Trust et al.; of Application

July 22, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Amendment of a Prior Order for Exemption under the Investment Company Act of 1940 ("1940 Act").

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*Applicants:* Lifetime Gold & Precious Metals Trust, Lifetime Intermediate Income Trust (the "New Trusts"), Lifetime Money Market Trust, Lifetime Managed Municipal Bond Trust, Lifetime Government Income Plus Trust, Lifetime High Income Trust, Lifetime Capital Growth Trust, Lifetime Emerging Growth Trust, Lifetime Managed Sectors Trust, Lifetime Global Equity Trust, Lifetime Dividends Plus Trust (collectively, the "Existing Trusts") and MFS Financial Services, Inc. ("FSI").

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c–1 thereunder, and approval requested under section 11(a) of the 1940 Act.

*Summary of Application:* Applicants seek an order amending a prior order permitting the assessment and waiver of a contingent deferred sales load and approving a continuing exchange offer.

*Filing Dates:* The application was filed on March 18, 1988, and amended on May 16 and June 22, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, 200 Berkeley Street, Boston, Massachusetts 02116. Attention: Arnold D. Scott, Esq. (with a copy to Roger P. Joseph, Esq.), Bingham, Dana & Gould, 100 Federal St., Boston, MA 02110.

**FOR FURTHER INFORMATION CONTACT:** James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application as amended; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

**Applicants' Representations**

1. Each Trust was organized as a business trust under the laws of the Commonwealth of Massachusetts and is registered under the 1940 Act as an open-end management investment company. Each Trust, except Lifetime Managed Sectors Trust, Lifetime Gold & Precious Metals Trust and Lifetime Intermediate Income Trust, is registered as a diversified investment company. Shares of each Trust are offered for sale as part of the Lifetime Investment Program. Although none of the Trusts have any current intention to create and issue any additional series or classes of shares, each Trust and FSI request that the order requested herein extend to such shares that may at any time hereafter be offered on substantially the same basis.

2. The principal underwriter of each Trust is FSI ("the Distributor"), and the investment adviser of each Trust is Lifetime Advisers, Inc. ("the Adviser"). The Distributor and Adviser are subsidiaries of Massachusetts Financial Services Company ("MFS"). MFS is a subsidiary of Sun Life Assurance Company of Canada (U.S.), which in turn is a subsidiary of Sun Life Assurance Company of Canada.

3. On January 28, 1987, the SEC issued an exemptive order (Investment Company Act Release No. IC–15555) permitting Existing Trusts to assess and waive a contingent deferred sales charge on certain redemptions and approving certain exchange offers involving shares of the Existing Trusts. Each Trust now proposes to: (1) Offer shares of the Trust without an initial sales charge but subject to a contingent deferred sales charge (the "Charge") to be paid directly to the Distributor, (2)

waive the Charge for certain redemptions of Trust shares as enumerated in the application, (3) distribute its shares pursuant to a plan of distribution adopted in accordance with Rule 12b–1 under the 1940 Act (the "Plan"), and (4) impose a service charge of $5.00 on exchanges of Trust shares for shares of any other Trust made pursuant to a continuing offer of exchange ("Exchange Offer").

4. Although there is no initial sales charge, the Distributor compensates each dealer which sells shares of a Trust at the rate of 4% of the purchase price of such Trust's shares sold through such dealer. The Charge will only be imposed on investments in a Trust's shares upon which a dealer commission has been paid ("Direct Purchases"). Such investments will be subject to the charge for a period of six years from the time of purchase. For purposes of determining the number of years from the time of purchase of a Trust's shares, all such Direct Purchases will be aggregated on a calendar year basis, with the effect that all Direct Purchases made during a calendar year, regardless of when they have occurred, will age one year on December 31 of that year and each subsequent year.

5. At the time of redemption, the amount by which the value of a shareholder's account represented by Direct Purchases exceeds the sum of the six calendar year aggregations of Direct Purchases may be redeemed without charge ("Free Amount"). No Charge will ever be assessed on additional shares acquired through automatic reinvestment of dividends or capital gain distributions ("Reinvested Shares"). At the time of redemption, the amount of the redemption equal to the then-current value of Reinvested Shares and any Free Amount will not be subject to the Charge, but any amount of the redemption in excess of the aggregate of the then-current value of Reinvested Shares and such Free Amount will be subject to the Charge.

6. The amount of any Charge will be calculated on the basis of the number of years since the investor made the purchase from which an amount is being redeemed. The Charge will be 6% for redemptions in the first calendar year of purchase and will decline 1% for each calendar year thereafter until the seventh and following years when no Charge will be assessed on redemptions. The amount of the Charge will be calculated by first determining the date on which the Direct Purchase which is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption that is subject to the Charge. In determining whether a Charge is payable and, if so, the percentage Charge applicable, it will be assumed that the amount invested first is the first to be redeemed. This will result in any such Charge being imposed at the lowest possible rate.

7. Under the proposed Exchange Offers, shareholders of each Trust will be able to exchange their Trust shares for shares of the other Trusts at their relative net asset values without the imposition of the Charge at the time of the exchange. An exchange is subject to the minimum initial purchase requirement of the Trust the shares of which are being acquired (which is currently $1,000 in the case of each Trust), except that a shareholder may exchange all the shares in his or her account even if their net asset value is less than such minimum initial purchase requirement. Shareholders cannot make more than five exchanges in any one telephone call. Furthermore, a service fee of $5.00 will be deducted on each exchange and paid to MFS Service Center, Inc. (the "Shareholder Service Agent"). For purposes of calculating the Charge upon redemption of shares acquired in such exchange, the purchase of shares acquired in one or more exchanges will be deemed to have occurred at the time of the original purchase of the exchanged shares.

8. Under the Plan of each Trust, the Trust will pay to the Distributor a distribution fee at an annual rate of 1.00% of the Trust's average daily net assets to compensate the Distributor for its distribution services provided to the Trust. In their review of the Plan pursuant to Rule 12b–1, the Trustees of each Trust will consider, among other things, the use by the Distributor of revenues raised by the Charges.

**Applicants' Legal Conclusions**

1. The requested exemptions and the approval of the service fee charged in connection with an exchange made pursuant to the Exchange Offers are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act. The proposed Charge permits shareholders of each Trust to have the advantage of greater investment dollars working for them from the time of their purchase of shares in a Trust. Furthermore, the proposed waivers of the Charge in connection with certain redemptions of each Trust's shares as specified in the application are appropriate and fair because such shares are primarily sold at little or no selling expense to the Distributor, and no sales commission to a dealer is involved in such sales. In addition, the imposition of a Charge on redemptions effected upon the death of an investor or pursuant to the Trusts' right to liquidate certain accounts might be deemed unfair in the context of such redemptions which are involuntary in nature. Finally, the proposed waivers of the Charge are consistent with Rule 22d–1 and will not discriminate among shareholders of the Trusts.

2. The imposition of a service fee of $5.00 under the Exchange Offers is fair and will not harm shareholders or discriminate among shareholders of the Trusts. The Exchange Offers will provide shareholders the opportunity to change their investment objective from time to time. Furthermore, the service fee is designed merely to compensate the Shareholder Service Agent for its costs in facilitating exchanges among the Trusts.

*Applicant's Proposed Conditions:*

If the requested order is granted, the Applicants agree to the following conditions:

1. The Trusts will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. The Trusts will comply with the provisions of proposed Rule 11a–3 under the 1940 Act when and if it is adopted by the SEC.

3. Any administrative fee will be uniformly applied to all shareholders participating in the Exchange Offer.

4. The Trusts will comply with the provision of Rule 12b–1 under the 1940 Act.

5. The Trusts will give shareholders notice in writing at least 60 days prior to any modification of the proposed Exchange Offer, unless such modification involves the reduction or termination of the service fee imposed on certain exchanges; provided, however, that neither the temporary cessation of the sale of a Trust's shares under extraordinary circumstances such as when a Trust is unable to effectively invest amounts in accordance with its investment objectives, policies or restrictions, nor the suspension of the redemption of a Trust's shares pursuant to section 22(e) of the Act and the rules and regulations thereunder, shall be considered a modification of the Exchange Offer which would require such advance notice.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17087 Filed 7-28-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-16496; 811-3612]**

## Master Reserves Income Fund; Notice of Application

July 25, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

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*Applicant:* Master Reserves Income Fund ("Applicant").

*Relevant 1940 Act Sections:* Order requested under Section 8(f) of the 1940 Act.

*Summary of Application:* Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

*Filing Date:* The application was filed on December 31, 1987, and amended on July 13, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th street NW., Washington, DC 20549. Applicant, 99 High Street, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** Jeremy N. Rubenstein, Staff Attorney (202) 272-2847, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. Applicant is organized as a Massachusetts business trust and is registered as open-end, diversified management investment company under the 1940 Act. Although Applicant filed a registration statement under the Securities Act of 1933 on December 2, 1982, which became effective on April 23, 1983, no public offering of Applicant's shares has been made.

2. Keystone Custodian Funds, Inc. ("Keystone") has been the sole shareholder of Applicant since Applicnt's inception. On December 31, 1987, $128,274 was distributed to Keystone in complete liquidation of its shares in Applicant, which amount represented Keystone's initial capital contribution of $100,000, together with accrued interest, after deduction of accrued administrative expenses.

3. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaires of which were or are securityholders of Applicant.

4. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

5. Applicant has filed a Form N-SAR for each semi-annual period for which such form was required. Applicant's Form N-SAR for the period ending April 30, 1988 was filed on June 16, 1988. If a Form N-SAR is required for any period from April 30, 1988 through the date of Applicant is deregistered, such form will be filed promptly after the earlier of the due date of the form or the issuance of the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17088 Filed 7-28-88; 8:45 am]

BILLING CODE 8010-01-M

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## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending July 22, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

*[Docket No. 45718]*

*Parties:* DHL Corporation and DHL International, Ltd.

*Date Filed:* July 21, 1988.

Subject: Application of DLH Corporation and DHL International, Ltd. pursuant to section 412 of the Act, and Part 303 of the Department's Regulations, submits several amended agreements which have previously been filed by DHL Corporation and given numbers Agreement CAB Nos. 24307 through and including 24307-A4. The instant agreement has been numbered as 24307-A5. This amendment to the DHL-DHLI Agreement creates a compensation mechanism to adjust for the imbalance in traffic coming into the United States which is delivered by DHL Corporation/Airways and the traffic sent out of the United States by DHL Corporation/Airways which is delivered by DHL International.

**Phyllis T. Kaylor,**

*Chief, Documentary Service Division.*

[FR Doc. 88-17132 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-62-M

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### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 22, 1988

The following applications for certificates of public convenience and necessity and foriegn air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket No. 45712*

*Date Filed:* July 20, 1988.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 17, 1988.

*Description:* Application of Prairie Flying Service (1976) Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail between Minot, North Dakota and Regina, Saskatchewan, Canada.

*Docket No. 45720*

*Date Filed:* July 22, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 19, 1988.

*Description:* Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for an amendment of its certificate of public convenience and necessity for Route 137 to authorize service between a point or points in the United States, on the one hand, and a point in Denmark, Norway, and Sweden, on the other hand, and to integrate such authority with American's present route rights to Germany and Finland.

*Docket No. 45723*

*Date Filed:* July 22, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 19, 1988.

*Description:* Application of Transportes Aereos Ejectivos, S.A. de C.V., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in charter air transportation of persons, property and mail between points in Mexico, on the one hand, and points in the U.S., on the other hand.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 88-17131 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-62-M

## Office of the Secretary

### In the Matter of U.S.-Mexico Air Transportation Operations

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Order 88-7-43, U.S. Mexico Authority—Order to Show Cause, Order 88-7-43. Docket 45728.

**SUMMARY:** On January 29, 1988, the United States and Mexico initialed a new aviation agreement which will govern the air transportation operations between the two countries. By Order 88-7-43, the Department is proposing procedures for the award of route rights to U.S. carriers who wish to provide air transportation services between the United States and Mexico under the new agreement. The Department also is requesting that all air taxi and commuter operators registered under Part 298 of the Department's Regulations and currently serving Mexico, submit to the Department information concerning their current operations. In addition, the Department is inviting all carriers interested in serving the U.S.-Mexico market under the new agreement to file applications for the authority.

**DATES:** Objections to the Department's proposed procedures are due August 8, 1988; answers are due not later than August 15, 1988. Information responses by Part 298 operators and carrier applications are due August 26, 1988. Interested parties may obtain a service copy of the order by calling the Licensing Division (202) 366-2387 or by writing to the address below for the Licensing Division.

**ADDRESS:** Objections, comments, supporting information and certificated carrier applications should be filed in Docket 45728, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties listed in Appendix A of the order. Air taxi and commuter carrier information responses and applications for designation should be addressed to the Licensing Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 6412, Washington, DC 20590.

Dated: July 26, 1988.

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 88-17130 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

### Oxygen Mask Assembly, Continuous Flow, Passenger

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of technical standard order (TSO) and request for comments.

**SUMMARY:** The proposed TSO-C64a prescribes the minimum performance standards that Oxygen Mask Assembly, Continuous Flow, Passenger, must meet to be identified with the marking "TSO-C64a."

**DATE:** Comments must identify the TSO file number and be received on or before November 16, 1988.

**ADDRESS:**

Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C64a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

**Background**

Proposed TSO-C64a will include revised Marking and Data Requirements for oxygen mask assembly, continuous flow, passenger. Also, the proposed TSO incorporates Society of Automotive Engineers, Inc. (SAE), Aerospace Standard (AS) 8025, Passenger Oxygen Mask.

**How To Obtain Copies**

A copy of the proposed TSO-C64a may be obtained by contacting the person under "For Further Information Contact." TSO-C64a references SAE AS 8025, dated February 24, 1988, for minimum performance standards. SAE AS 8025 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

Issued in Washington, DC, on July 19, 1988.

**Daniel P. Salvano**

*Acting Manager, Aircraft Engineering Division, Office of Airworthiness.*

[FR Doc. 88-16819 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-13-M

**National Highway Traffic Safety Administration**

**[Docket No. IP88-03; Notice 2]**

**General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance**

This notice grants the petition by General Motors Corporation, of Warren, Michigan to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.210, Federal Motor Vehicle Safety Standard No. 210, "Seat Belt Assembly Anchorages." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 22, 1988, and an opportunity afforded for comment (53 FR 13373).

Paragraph S6(c) of Standard No. 210 requires owner's manuals in vehicles with GVWR of 10,000 pounds or less manufactured on or after September 1, 1987 to have a diagram showing the location of the shoulder belt anchorages (required by Standard No. 210) "for the rear outboard designated seating positions, if shoulder belts are not installed as items of original equipment by the vehicle manufacturer at those positions." General Motors reported that 20,514, 1987 and 1988 Chevrolet Caprice vehicles do not have owner's manuals containing the required seat belt anchorage location diagram.

General Motors argued that this noncompliance is inconsequential as it relates to motor vehicle safety because the owner's manuals in question have a secton titled "Rear Seat Shoulder Belts (Dealer-Installed Accessory)" which explains the proper use and availability of rear seat lap shoulder belt kits. These kits also include diagrams of the rear seat shoulder belt anchorage locations. General Motors feels that this section of the owner's manual makes people aware that shoulder belts can be installed in the rear seat; therefore, it serves the intended purpose of Paragraph S6(c) of Standard No. 210.

No comments were received on the petition.

The agency believes that the noncompliance standing alone is not inconsequential as it relates to motor vehicle safety. Owners of vehicles who wish to install these restraints must be properly informed of the location of the anchorage locations. Without a diagram it is possible that the belt will not be installed properly. Such an error could reduce or negate the effectiveness of the rear upper torso protection. However, there are special circumstances unique to this case that merit favorable consideration of the petition. First, the Chevrolet Caprice vehicles themselves contain the requisite upper torso anchorages in compliance with the standard. The noncompliance reported does not affect the vehicle. After the close of the comment period, General Motors informed the agency on June 9, 1988, that it "is planning to send a copy of the subject diagram and a letter of explanation to each owner of the subject vehicles." GM will mail the information "early in July which is as soon as a complete list of owner names and addresses can be compiled." although petitioner has not met its burden of persuasion that the noncompliance, standing alone, is inconsequential as it relates to motor vehicle safety, the importance of the noncompliance diminishes in view of the fact that the owners will receive the diagrams originally denied them. The agency has considered the possibility that receipt of the diagram apart from the owner's manual may focus attention on the availability of the option in a manner that its placement in the manual might not have. NHTSA has determined that the safety purposes of the Act are met with the provision of the missing information, and that no substantive purpose would be served by a denial of the petittion. In consideration of these additional factors, the agency believes that the burden of persuasion is met and grants the petition.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

July 25, 1988.

[FR Doc. 88-17162 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-59-M

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**[Docket No. IP88-01; Notice 2]**

**Uniroyal Goodrich Tire Company; Grant of Petition for Determination of Inconsequential Noncompliance**

This notice grants the petition by Uniroyal Tire Company, Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 1, 1988, and an opportunity offered for comment (53 FR 6215).

Paragraphs S6.5(d) and S6.5(f), "Tire Markings," of Standard No. 119 require that tires be marked with the maximum load rating and corresponding inflation pressure and the actual number of plies. During the production weeks of August 15, 1987, through October 27, 1987, Uniroyal manufactured 5,000 31×10.50R LT Uniroyal Laredo raised white letter sidewall tires that do not comply with Standard No. 119. These tires were labeled with the incorrect maximum load, corresponding inflation pressure and ply rating. The correct branding of these tires is:

Load Range C, Max. Load, 2,250 lbs. at 50 PSI cold, 6 Ply Rating

However, Uniroyal branded the tires on both sidewalls as follows: Load Range C, Max. 1,750 lbs. at 35 PSI cold, 4 Ply Rating

Uniroyal argued that the noncompliance is inconsequential because the correct load range and ply rating are imprinted on the paper label adhered to the tread of the tire.

One comment was received on the petition, from Robert F. Schlegel, Jr., a professional engineer. He opposed granting it, concluding that "A recall action or notification of purchasers would be appropriate." Mr. Schlegel commented that Uniroyal Goodrich had not stated whether the tires in question were sold for installation on new trucks (and the associated makes and models), or the replacement market. In his opinion, the petitioner should also have discussed "the effects of operating at 35 psi * * * where the 2,250 lb. load at 50 psi is needed for the vehicle to safely carry *its* rated load."

The noncompliance under consideration has resulted in a margin of misstatement greater than that which is ordinarily the subject of inconsequentiality petitions. While the petition was pending, the agency informally suggested that the petitioner conduct endurance and strength tests on the tires at the correct load and incorrect pressure indicated on the sidewall. The petitioner conducted these tests. The results did not indicate any apparent safety problems when the tires are overutilized. Nevertheless, at NHTSA's request, the petitioner has agreed to send information bulletins to purchasers of the tires who are known to it, i.e., those who have returned registration forms. The information bulletins give the correct inflation pressure and maximum load for these tires and should reduce the possibility of misuse due to labeling errors.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: July 25, 1988.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 88-17161 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-59-M

## Research and Special Programs Administration

## Grants and Denials of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Notice of grants and denials of applications for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in May 31, 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 970-X | DOT-E 970 | Callery Chemical Co., Pittsburg, PA | 49 CFR 173.21(b), 173.300, 173.302(g). | To authorize use of DOT Specification 3AA2015 or 3AA2400 cylinders, for the transportation of a flammable poisonous gas. (modes 1, 2) |
| 2462-X | DOT-E 2462 | ETI Explosives Technologies International Inc., Wilmington, DE. | 49 CFR 173.73(b) | To authorize shipment of certain lead azides in glass bottles overpacked in non-DOT specification wooden boxes. (mode 1) |
| 2462-X | DOT-E 2462 | E.I. du Pont de Nemours & Company, Inc., Wilmington, DE. | 49 CFR 173.73(b) | To authorize shipment of certain lead azides in glass bottles overpacked in non-DOT specification wooden boxes. (mode 1) |
| 3216-X | DOT-E 3216 | Pennwalt Corp., King of Prussia, PA. | 49 CFR 173.314(c) | To authorize use of a proposed DOT Specification 110A3000W tank car tank, for transportation of certain flammable compressed gases. (modes 1, 3) |
| 3216-X | DOT-E 3216 | E.I. du Pont de Nemours & Company, Inc., Wilmington, DE. | 49 CFR 173.314(c) | To authorize use of a proposed DOT Specification 110A3000W tank car tank, for transportation of certain flammable compressed gases. (modes 1, 3) |
| 4453-X | DOT-E 4453 | Alamo Explosives Co., Inc., Houston, TX. | 49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83. | To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (modes 1, 3) |
| 5232-X | DOT-E 5232 | E.I. du Pont de Nemours & Company, Inc., Wilmington, DE. | 49 CFR 173.314(c) Table | To authorize shipment of certain flammable and nonflammable liquefied compressed gases in AAR Specification 120A300W tank cars and DOT Specification 105A500W tank cars. (mode 2) |
| 6016-X | DOT-E 6016 | Acety Arc, Inc., Paducah, KY | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (mode 1) |
| 6016-X | DOT-E 6016 | Huber Supply Co., Mason City, IA | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (mode 1) |
| 6296-X | DOT-E 6296 | Rhone-Poulenc Inc., Monmouth Junction, NJ. | 49 CFR 173.377(g) | To authorize materials identified as organophosphorus pesticide, solid, n.o.s. as additional materials. (modes 1,2) |
| 6563-X | DOT-E 6563 | S.L.O. Health Products, Inc., Los Osos, CA. | 49 CFR 173.302(a)(1), 175.3, 178.42-2. | To authorize shipment of certain nonflammable gases in non-DOT specification steel cylinders, made in compliance with DOT Specification 3E with certain exceptions. (modes 1, 2, 3, 4, 5) |
| 6614-P | DOT-E 6614 | Arco Industries, Inc., Milwaukee, WI. | 49 CFR 173.263(a)(28), 173.277(a)(6). | To become a party to exemption 6614 (mode 1) |
| 6694-X | DOT-E 6694 | Eurotainer, S.A., Paris, France | 49 CFR 173.315 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3) |
| 6694-X | DOT-E 6694 | Compagnie des Containers Reservoirs, Paris, France. | 49 CFR 173.315 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3) |
| 6694-X | DOT-E 6694 | Arbel-Fauvet-Rail, Paris, France | 49 CFR 173.315 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3) |
| 6772-X | DOT-E 6772 | Thomas Gray & Associates, Inc., Orange, CA. | 49 CFR 173.119(a)(22), 173.245, 173.264(a), 173.346, 173.349, 173.369. | To authorize transport of limited quantities of waste flammable, poisonous and corrosive liquids in inside glass or compatible plastic bottles or metal can, overpacked in a DOT Specification 17H steel drum. (mode 1) |
| 6672-X | DOT-E 6772 | Monsanto Chemical Co., St. Louis, MO. | 49 CFR 173.119(a)(22), 173.245, 173.264(a), 173.346, 173.349, 173.369. | To authorize transport of limited quantities of waste flammable, poisonous and corrosive liquids in inside glass or compatible plastic bottles or metal can, overpacked in a DOT Specification 17H steel drum. (mode 1) |
| 6859-X | DOT-E 6859 | Pyronetics Devices, Inc., Denver, CO. | 49 CFR 173.302(a)(1), 173.34(d), 175.3. | To authorize use of a non-DOT specification nonrefillable titanium alloy spherical pressure vessel, for shipment of a nonflammable compressed gas. (modes 1, 3, 4) |
| 6927-X | DOT-E 6927 | Bromine Compounds, Limited, Beer-Sheva, Isreal 84101. | 49 CFR 173.353 | To authorize use of a non-DOT specification portable tank, for transportation of certain Class B poisonous liquids. (modes 1, 3) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 6932-X | DOT-E 6932 | Arbel-Fauvet-Rail, Paris, France | 49 CFR 173.264(b)(4) | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydrofluoric acid. (modes 1, 3) |
| 7024-X | DOT-E 7024 | Greenwood Motor Lines, Inc., Greenwood, SC. | 49 CFR 173.249(a)(7) | To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealed tanks. (mode 1) |
| 7024-X | DOT-E 7024 | Avondale Mills, Sylacauga, AL | 49 CFR 173.249(a)(7) | To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealed tanks. (mode 1) |
| 7032-X | DOT-E 7032 | Polaroid Corp., Needham Heights, MA. | 49 CFR 172.101, 175.3 | To authorize outside packages exceeding the 100 pounds limitation to be carried aboard cargo aircraft only for shipment of a certain corrosive solid. (mode 4) |
| 7052-X | DOT-E 7052 | Exploration Logging, Inc., Sacramento, CA. | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (modes 1, 2, 3, 4) |
| 7285-X | DOT-E 7285 | Arbel-Fauvet-Rail, Paris, France | 49 CFR 173.315(a) | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transporation of certain nonflammable, liquefied gases. (modes 1, 2, 3) |
| 7544-X | DOT-E 7544 | Eastman Kodak Co., Rochester, NY. | 49 CFR 173.245, 173.249, 173.272 | To authorize transport of solutions of sodium hydroxide and certain other liquid corrosives, or other liquid corrosive materials in a DOT Specifications 2U polyethylene inside container, overpacked in a non-DOT specification fiberboard box. (modes 1, 2, 3) |
| 7640-X | DOT-E 7640 | Mauser Packaging, Limited, Litchfield, CT. | 49 CFR 173.266(a), 178.19 | To authorize use of a DOT Specification 34 polyethylene container of 15 gallon capacity, for shipment of hydrogen peroxide, 60%. (modes 1, 2, 3) |
| 7694-X | DOT-E 7694 | Applied Companies, San Fernando, CA. | 49 CFR 173.302(a)(4), 175.3 | To authorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (modes 1, 2, 4) |
| 7876-P | DOT-E 7876 | Ashland Oil, Inc., Dublin, OH | 49 CFR 173.299(a), 175.3 | To become a party to exemption 7876 (modes 1, 2, 3, 4) |
| 7909-X | DOT-E 7909 | The Dow Chemical Co., Midland, MI. | 49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, 175.33. | To authorize renewal and an alternative packaging configuration. (modes 1, 2, 4) |
| 7969-X | DOT-E 7969 | Crosby & Overton, Inc., Long Beach, CA. | 49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5. | To authorize transport of certain waste hazardous materials in non-DOT specification single compartment cargo tanks similar to DOT Specification 307/312 except for bottom outlet and circumferential reinforcement. (mode 1) |
| 7971-X | DOT-E 7971 | Walter Kidde, Wilson, NC | 49 CFR 173.302, 173.304, 175.3, 178.53. | To authorize manufacture, marking and sale of non-DOT specification cylinders, for transportation of nonflammable compressed gases. (modes 1, 2, 3, 4, 5) |
| 8091-X | DOT-E 8091 | Restor Communications, Inc., Florence, KY. | 49 CFR Parts 100-177 | To authorize transport of certain mercury relays exempted from 49 CFR 100-177, in heat sealed glass vials. (modes 4, 5) |
| 8111-X | DOT-E 8111 | U.S. Department of Energy, Washington, DC. | 49 CFR 173.304(a), 175.3 | To authorize use of non-DOT specification welded, stainless steel cylinders, for transportation of a nonflammable gas mixture. (modes 1, 2, 3, 4, 5) |
| 8125-X | DOT-E 8125 | Arbel-Fauvet-Rail, Paris, France | 49 CFR 173.123, 173.315 | To authorize use of non-DOT specification IMO type 5 portable tanks, for transportation of certain flammable and nonflammable gases and flammable liquids. (modes 1, 2, 3) |
| 8127-X | DOT-E 8127 | Union Explosivos Rio Tinto, S.A., Madrid, Spain. | 49 CFR 171.12(d), 173.127, 173.184, 178.224. | To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (modes 1, 2, 3) |
| 8127-X | DOT-E 8127 | Hercules, Inc., Wilmington, DE | 49 CFR 171.12(d), 173.127, 173.184, 178.224. | To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (modes 1, 2, 3) |
| 8127-P | DOT-E 8127 | General Plastics & Chemicals Co., Natick, MA. | 49 CFR 171.12(d), 173.127, 173.184, 178.224. | To become a party to exemption 8127 (modes 1, 2, 3) |
| 8426-X | DOT-E 8426 | Crosby & Overton, Inc., Long Beach, CA. | 49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5. | To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 with certain exceptions, for transportation of liquid and semi-solid waste materials. (mode 1) |
| 8436-X | DOT-E 8436 | Pennwalt Corp., Buffalo, NY | 49 CFR 173.119(m), 173.154 | To authorize transport of a flammable liquid which is also an organic peroxide, in a DOT Specification MC-331 cargo tank. (mode 1) |
| 8445-X | DOT-E 8445 | Rohm and Haas Co., Philadelphia, PA. | 49 CFR Part 173, Subparts D, E, F, H. | To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (mode 1) |
| 8445-X | DOT-E 8445 | McDonnell Douglas Corp., St. Louis, MO. | 49 CFR Part 173, Subparts D, E, F, H. | To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (mode 1) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 8445–P | DOT–E 8445 | Rhone-Poulenc AG Co., Research Triangle Park, NC. | 49 CFR Part 173, Subparts D, E, F, H. | To become a party to exemption 8445 (mode 1) |
| 8451–P | DOT–E 8451 | The Potomac Edison Co., Hagerstown, MD. | 49 CFR 173.65, 173.86(e), 175.3 | To become a party to exemption 8451 (modes 1, 2, 4) |
| 8453–X | DOT–E 8453 | PACCO, Inc., Tenino, WA | 49 CFR 173.114a | To authorize cargo vessel as an additional mode of transportation for bulk shipment of certain blasting agents. (modes 1, 3) |
| 8467–X | DOT–E 8467 | Compagnie des Containers Reservoirs, Paris, France. | 49 CFR 173.315 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3) |
| 8489–P | DOT–E 8489 | Transnitro, Inc., Tampa, FL | 49 CFR 173.154, 173.182, 173.217, 173.245b. | To become a party to exemption 8489 (modes 1, 2, 3) |
| 8551–P | DOT–E 8551 | Parkem Industrial Service Inc., Gonzales, LA. | 49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5. | To become a party to exemption 8551 (mode 1) |
| 8582–X | DOT–E 8582 | Illinois Central Gulf Railroad Co., Chicago, IL. | 49 CFR Parts 100–177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1) |
| 8582–X | DOT–E 8582 | Southern Pacific Transportation Co., San Francisco, CA. | 49 CFR Parts 100–177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1) |
| 8582–X | DOT–E 8582 | Chicago South Shore & South Bend Railroad, Company Michigan City, IN. | 49 CFR Parts 100–177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1) |
| 8582–X | DOT–E 8582 | Chicago, Missouri & Western Railway, Co., Michigan City, IN. | 49 CFR Parts 100–177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1) |
| 8582–X | DOT–E 8582 | Consolidated Rail Corp., Philadelphia, PA. | 49 CFR Parts 100–177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1) |
| 8674–X | DOT–E 8674 | Thermex Energy Corp., Dallas, TX | 49 CFR 173.114a(b) | To authorize transport of blasting agents in a non-DOT specification cement mixer, linad with cold tar epoxy. (mode 1) |
| 8706–X | DOT–E 8706 | Petro-Steel Division of Prairie State Equipment, Sioux Falls, SD. | 49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5. | To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/MC–312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (mode 1) |
| 8820–X | DOT–E 8820 | Arbel-Fauvet-Rail, St Laurent Blangy, France. | 49 CFR 173.315 | To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (modes 1, 2, 3) |
| 8822–X | DOT–E 8822 | Certified Tank Manufacturing, Inc., Compton, CA. | 49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5. | To authorize manufacture, marking and sale of non-DOT specification cargo tanks made in full compliance with DOT Specification MC–307 or MC–312 with certain exceptions, for transportation of certain waste hazardous materials. (mode 1) |
| 8854–X | DOT–E 8854 | Arbel-Fauvet-Rail, Neuilly-Sur-Seine, France. | 49 CFR 173.264(b)(4) | To authorize use of non-DOT specification IMO Type 5 portable tanks for transportation of anhydrous hydrofluoric acid. (modes 1, 2, 3) |
| 8862–X | DOT–E 8862 | ABERCO Inc. Seabrook, MD | 49 CFR 173.119, 173.124(a)(4), 173.305. | To authorize shipment of propylene oxide, classed as a flammable liquid, in DOT Specification 5P lagged steel drums. (mode 1) |
| 8864–X | DOT–E 8864 | Redwing Carriers, Inc., Tampa, FL | 49 CFR 173.245(a), 178.340–10, 178.340–8, 178.341–3, 178.341–4, 178.341–5, 178.341–7. | To become a party to exemption 8864 (mode 1) |
| 8886–X | DOT–E 8886 | Amerex Corp., Trussville, AL | 49 CFR 173.34(e)(9) 175.3 | To authorize a longer time period between retests of DOT Specification 4B or 4B240ET cylinders containing nonflammable gas. (modes 1, 2, 4) |
| 9066–X | DOT–E 9066 | BMW of North America, Inc., Montvale, NJ. | 49 CFR 173.154, 175.3 | To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption. (modes 1, 2, 3, 4) |
| 9130–X | DOT–E 9130 | Bio-Lab, Inc. Decatur, GA | 49 CFR 173.154 | To authorize an additional oxidizer for shipment. (modes 1, 2) |
| 9233–X | DOT–E 9233 | Occidental Chemical Corp., Dallas, TX. | 49 CFR 173.164 | To authorize shipment of dry chromic acid in a non-DOT specification 900-cubic-foot, two-compartment, sift-proof covered hopper type tank motor vehicle. (mode 1) |
| 9262–X | DOT–E 9262 | GOEX, Inc., Cleburne, TX | 49 CFR 173.100(v), 175.30 | To authorize certain DOT Specification fiberboard boxes as additional packaging. (modes 1, 2, 4) |
| 9262–P | DOT–E 9262 | NL Petroleum Services, Inc., Houston, TX. | 49 CFR 173.100(v), 175.30 | To become a party to exemption 9262 (modes 1, 3, 4) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 9262-X | DOT-E 9262 | Jet Research Center, Inc., Mansfield, TX. | 49 CFR 173.100(v), 175.30 | To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4) |
| 9262-X | DOT-E 9262 | Western Atlas International, formerly, NL McCulloug, Houston, TX. | 49 CFR 173.100(v), 175.30 | To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4) |
| 9262-X | DOT-E 9262 | GOEX, Inc., Cleburne, TX | 49 CFR 173.100(v), 175.30 | To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4) |
| 9262-X | DOT-E 9262 | Owen Oil Tools, Inc., Fort Worth, TX. | 49 CFR 173.100(v), 175.30 | To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4) |
| 9266-X | DOT-E 9266 | National Refrigerants, Inc., Radnor, PA. | 49 CFR 173.315, 178.245 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (modes 1, 2, 3) |
| 9266-X | DOT-E 9266 | Eurotainer, S.A., Paris, France | 49 CFR 173.315, 178.245 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (modes 1, 2, 3) |
| 9266-X | DOT-E 9266 | Compagnie des Containers Reservoirs, Paris, France. | 49 CFR 173.315, 178.245 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (modes 1, 2, 3) |
| 9388-X | DOT-E 9388 | Gulf Central Storage & Terminal Co., Tulsa, OK. | 49 CFR 173.314(e) | To authorize use of DOT specification tank cars which have had the amount of liquefied gas loaded into the tank measured by a metering device. (mode 2) |
| 9400-X | DOT-E 9400 | Poly Processing Company, Inc., Monroe, LA. | 49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F. | To authorize manufacture, marketing and sale of non-DOT specification rotationally molded, spherical polyethylene portable tank enclosed in a steel skid unit, for shipment of corrosive liquids, flammable liquids or an oxidizer. (modes 1, 2, 3) |
| 9519-X | DOT-E 9519 | Transchem, Inc., South Bend, IN | 49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F. | To authorize an alternative non-DOT specification packaging for shipment of materials classed as corrosive material or flammable liquid or a material classed as oxidizer. (modes 1, 2) |
| 9549-X | DOT-E 9549 | Owen Oil Tools, Inc., Fort Worth, TX. | 49 CFR 173.100(v), 175.30 | To authorize transport of oil well cartridges containing more than 350 grains, but not more than 600 grains of Class A, type 3 explosive, as Class C explosive, in DOT Specification 12H fiberboard box. (modes 1, 3, 4) |
| 9558-X | DOT-E 9558 | Day & Zimmermann, Inc., Parsons, KS. | 49 CFR 173.56(a), 173.56(c)(1), 173.86(b). | To renew an exemption orginally issued on an emergency basis that provided for a one-time shipment of explosive projectiles, Class A explosives in specifically designed non-DOT specification packaging. (modes 1, 2) |
| 9612-X | DOT-E 9612 | PPG Industries, Inc., Pittsburgh, PA | 49 CFR 173.288 | To authorize transport of ethyl chloroformate and methyl chloroformate in DOT Specification 105A500W tank cars which have been restenciled DOT 105A100W. (mode 2) |
| 9690-X | DOT-E 9690 | Snyder Industries, Inc., Lincoln, NE | 49 CFR 173.119, 176.340, 178.19, 178.253; Part 173, Subpart F. | To authorize cargo vessel as an additional mode of transportation and to approve combustible liquids as additional materials. (modes 1, 2, 3) |
| 9704-X | DOT-E 9704 | Western Atlas International (formerly Dresser), Houston, TX. | 49 CFR 173.107, 175.3 | Identification of an additional packaging. (modes 1, 3, 4, 5) |
| 9761-X | DOT-E 9761 | Systron Donner, Safety Systems Division, Concord, CA. | 49 CFR 173.304(a)(1), 175.3, 178.47. | To authorize manufacture, marking and sale of non-DOT specification welded stainless steel cylinders patterned after DOT-4DS with exceptions, for transportation of nonflammable gases. (modes 1, 4, 5) |
| 9770-X | DOT-E 9770 | AMSPEC Chemical Corp., Gloucester City, NJ. | 49 CFR 173.154(a)(2), 173.28(m), 178.118. | To authorize the round-trip shipment of sodium methylate, classed as flammable solid, in reusable DOT Specification 17H drums to an additional location in Newport, Delaware. (mode 1) |
| 9785-P | DOT-E 9785 | Independent Container Line Ltd., Richmond, VA. | 49 CFR 173.30, 176.11, 176.83 | To become a party to exemption 9785 (modes 1, 2, 3) |
| 9851-X | DOT-E 9851 | Northwest Airlines, Inc., St. Paul, MN. | 49 CFR Parts 100-199 | To authorize shipment of insulated dewars containing liquid nitrogen to be transported in the cabin of a passenger aircraft under special conditions. (mode 5) |
| 9907-X | DOT-E 9907 | General Defense Corp., York, PA | 49 CFR 173.56(a),(c)(1) | To authorize transport of unfuzed explosive projectiles, Class A explosive, in non-DOT specification packagings. (modes 1, 2, 3) |
| 9941-P | DOT-E 9941 | McDonnell Douglas Astronautics Co., Huntington Beach, CA. | 49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b). | To become a party to exemption 9941. (mode 1) |

## NEW EXEMPTIONS

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 9825-N | DOT-E 9825 | Sequoyah Fuels Corp., Oklahoma City, OK. | 49 CFR 173.403(n)(4), 173.425(c)(2). | To authorize sludge to be classified as Low Specific Activity (LSA) at a specific activity greater than that normally allowed for liquids transported in the specification MC-312 cargo tank. (Mode 1.) |
| 9840-N | DOT-E 9840 | Kenai Air Alaska, Inc., Kenai, AK | 49 CFR 172.101, 175.30 | To authorize transport of hydrogen peroxide solution in DOT Specification 34 polyethylene (55-gallon drum) by cargo-aircraft only (a helicopter) between Nikiski, Alaska and Cook International, Tyonek, Alaska. (Mode 4.) |
| 9858-N | DOT-E 9858 | Formo Products, Inc., Norton, OH | 49 CFR 173.1200(a)(8)(ii)(2) | To authorize an alternative testing provision for DOT Specification 2Q containers as prepared for transportation. (Mode 1.) |
| 9865-N | DOT-E 9865 | Atlas Powder Co., Dallas, TX | 49 CFR 173.65 | To authorize transportation of an aqueous solution of a Class A explosive in a DOT Specification 17H drum with a DOT Specification 2S polyethylene liner in temperature controlled vans. (Mode 1.) |
| 9867-N | DOT-E 9867 | Olin Hunt Specialty Products, Inc., Seward, IL. | 49 CFR 173.247(a)(1), 175.3 | To authorize shipment of silicon tetrachloride and titanium tetrachloride, classed as corrosive materials, in a stainless steel ampule of 2.2 liter or less capacity inside a Military MS27684-21 metal removable head drums, and overpacked in a DOT Specification 19B wooden box. (Modes 1, 2, 4, 5.) |
| 9872-N | DOT-E 9872 | Sonoco Fibre Drum, Cheshire, England. | 49 CFR 173.154, 173.156, 173.217, 173.365, 173.510, 175.3, 178.224-1. | To authorize manufacture, marking and sale of non-DOT specification fiber drums conforming to DOT Specification 21C fiber drums except that the top cover of lid is constructed of high density polyethylene, and secured to the side wall by a metal lever action closing ring. (Modes 1, 2, 3, 4.) |
| 9885-N | DOT-E 9886 | Clayton Mark Inc., Rogers, AR | 49 CFR 173.306, Part 172, Subparts D, E. | To authorize Manufacture, marking and sale of non-DOT specification steel water pump system tank with an outside diameter not exceeding 28 inches and a precharge of compressed air or nitrogen not exceeding 42 psig. (Modes 1, 2, 3.) |
| 9888-N | DOT-E 9888 | Ford Motor Co., Dearborn, MI | 49 CFR Parts 100-199 | To authorize transport of an electric car containing a sodium-sulfur battery which is at its operating temperature (575-660 degrees Fahrenheit); authorizes shipment of electric cars containing depleted sodium-sulfur batteries. (Mode 1.) |
| 9889-N | DOT-E 9889 | Assmann Corp. of America, Garrett, IN. | 49 CFR Part 173, Subparts D, E, F | To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, linear low density polyethylene portable tank enclosed within a protective steel cage for the shipment of corrosive liquids, flammable liquids, or an oxidizer. (Modes 1, 2.) |
| 9891-N | DOT-E 9891 | Sonoco Fibre Drum, Inc., Lombard, IL. | 49 CFR 173.154, 173.156, 173.217, 173.365, 175.3, 178.224. | To authorize manufacture, marking and sale of non-DOT specification fibre drums of not over 115 pounds net weight, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring. (Modes 1, 2, 3, 4) |
| 9892-N | DOT-E 9892 | Bergen Barrel & Drum Co., Kearney, NJ. | 49 CFR 178.224, Part 173, Subparts E, F, H. | To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, medium density polyethylene drum, with removable head, for transportation of oxidizers, organic peroxides, flammable, corrosive and poison B solids. (Modes 1, 2, 3) |
| 7235- | DOT-E 9894 | Luxfer USA Limited, Riverside, CA | 49 CFR 173.302(a)(1), 175.3 | To authorize Manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) hoop wrapped (HW) cylinders, for transportation of nonflammable gases. (Modes 1, 2, 3, 4, 5.) |
| 9923-N | DOT-E 9923 | Chemical Handling Equipment Co., Toledo, OH. | 49 CFR 173.119, 173.125, 173.266, 178.19, 178.253; Part 173, Subpart F. | To authorize Manufacture, mark and sale of a non-DOT specification rotationally molded, polyethylene portable tank enclosed in a steel frame, for shipment of corrosive materials, flammable liquids, or an oxidizer. (Modes 1, 2.) |
| 9924-N | DOT-E 9924 | U.S. Department of Energy, Washington, DC. | 49 CFR 173.420(a)(4) | To authorize shipment of depleted uranium hexafluoride, low specific activity, classed as radioactive materials, in a DOT authorized packaging, Model 48G, filled to 62% of its certified volumetric capacity. (Modes 1, 2.) |
| 9954-N | DOT-E 9954 | Cook Inlet Pipe Line Co., Dallas, TX | 49 CFR 172.101(6)(b), 175.30 | To authorize shipment of hydrogen peroxide solution (50% peroxide), classed as oxidizer, by air in DOT Specification 34 polyethylene drums. (Mode 4.) |

## EMERGENCY EXEMPTIONS

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| EE 4453-X | DOT-E 4453 | Kentucky Powder Co., Lexington, KY. | 49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83. | To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.) |

EMERGENCY EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| EE 7052-X.. | DOT-E 7052 | Technical Oil Tool Corp., Houston, TX. | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.) |
| EE 7991-X.. | DOT-E 7991 | Burlington Northern Railroad Co., Ft. Worth, TX. | 49 CFR Parts 100-177 | To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.) |
| EE 9855-X.. | DOT-E 9855 | Korean Air Lines Co., Ltd. Los Angeles, CA. | 49 CFR 172.101 Column 6(b), 175.30. | To authorize shipment of explosive projectiles, Class A explosives; and rocket motor and propellant explosive, solids, Class B explosive, which are forbidden for transportation by air or are in quantities greater than those prescribed for transportation. (Mode 4.) |
| EE 9961-N.. | DOT-E 9961 | Brown Measurement Co., Inc., Kilgore, TX. | 49 CFR 173.119, 173.304, 173.315 | To authorize manufacture, marking and sale of a non-DOT specification container described as mechanical displacement meter provers mounted on a truck chassis or trailer, for transportation of hydrocarbon products. (Mode 1.) |
| EE 9962-N.. | DOT-E 9962 | Monsanto Chemical Co., St. Louis, MO. | 49 CFR 171.2(a), 173.327, 177.801 | To authorize transport of 10 one-pound compressed gas cylinders which possibly contain an unknown hazardous material. (Mode 1.) |
| EE 9963-N.. | DOT-E 9963 | PLM Railcar Maintenance Co., San Francisco, CA. | 49 CFR 173.314 | To authorize shipments of liquefied petroleum gas in DOT Specification 105S300W tank cars which are equipped with thermal protection systems that have not yet been tested. (Mode 2.) |
| EE 9978-N.. | DOT-E 9978 | Air Products and Chemicals, Inc., Allentown, PA. | 49 CFR 172.101, 173.119(m), 173.304(a), 173.3a. | To authorize one-time shipment of certain hazardous materials in non-DOT specification steel seamless cylinders meeting Japanese standards. (Modes 1, 3.) |
| EE 9979-N.. | DOT-E 9979 | U.S. Department of the Treasury, Seattle, WA. | 49 CFR 172.101, 173.66, 173.86, 173.87, 175.3. | To authorize transport of several types of explosives by air which are not permitted for air shipment. (Modes 1, 4.) |

WITHDRAWAL EXEMPTIONS

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 6556-X | Castle & Cooke, Inc., San Francisco, CA | 49 CFR 173.132 | To authorize use of a non-DOT specification single compartment portable tank, for transportation of a flammable liquid. (Modes 1, 3.) |
| 8451-X | ICI Americas, Inc., Bryon, GA | 49 CFR 173.65, 173.86(e), 175.3 | To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.) |
| 9379-X | Kaichem International Corp., Savannah, GA | 49 CFR 172.301, 173.182(b)(6)(ii), 176.410(d). | To authorize shipment of ammonium nitrate fertilizer in collapsible polyethylene-lined, woven polypropylene bags having a capacity for approximately 2,000 pounds each. (Mode 3.) |

**Denials**

8526-P Request by North Star Transport, Inc. St. Paul, MN to authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment denied May 31, 1988.

Issued in Washington, DC, on July 13, 1988.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 88-17119 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of the Public Debt**

*OMB Number:* 1535-0050.
*Form Number:* PD 1003.
*Type of Review:* Extension.
*Title:* Power of Attorney by a Corporation or Unincorporated Association Authorizing Disposition of Registered Transferable Securities.

*Description:* Form PD 1003 is used as the request by an officer of a corporation or an official of an unincorporated association. The officer or official may use the form to lessen the paperwork necessary to appoint an attorney-in-fact to act as a caretaker, who may legally dispose of the corporation's Treasury securities.

*Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

*Estimated Number of Respondents:* 220.

*Estimated Burden Hours Per Response:* 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 165 hours.

*OMB Number:* 1535-0060.

*Form Number:* PD 2488–1.
*Type of Review:* Extension.
*Title:* Certificate by Legal Representative(s) of Decedent's Estate During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1,000 (face amount) United States Savings Bonds/Notes, Excluding Checks Representing Interest.
*Description:* Form PD 2448–1 is used to establish the authority of a legal representative to represent the decedent's estate if the face amount of securities is less than $1,000.
*Respondents:* Individuals or households, Businesses or other for-profit.
*Estimated Number of Respondents:* 30.
*Estimated Burden Hours Per Response:* 15 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 8 hours.

*OMB Number:* 1535–0064.
*Form Number:* PD 1980.
*Type of Review:* Reinstatement.
*Title:* Description of United States Savings Bonds Series HH/H.
*Description:* Form PD 1980 is used by an owner of United States Savings Bonds to describe the owner's security holdings when applying for some type of relief or service by the Bureau of the Public Debt.
*Respondents:* Individuals of households.
*Estimated Number of Respondents:* 15,000.
*Estimated Burden Hours Per Response:* 6 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 1,500 hours.

*Clearance Officer:* Nancy Veret, (202) 376–3902, Bureau of the Public Debt, Room 445, 999 E Street, NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 88–17096 Filed 7–28–88; 8:45 am]

BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OBM for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* New.
*Form Number:* None.
*Type of Review:* New Collection.
*Title:* Employment Availability Statement for Tax Technician (Tax Auditor)—GS–526–5/7/9.
*Description:* This form is designed to compile all the information needed for the IRS automated register system about tax technician (tax auditor) applicant that enables us to expedite the certification process. Information on Standard Form 171 is not sufficient for narrowing the systems selection and sorting process to appropriately meet the applicant's preference and needs. Also, it will enable us to serve our field offices (12) more efficiently by having a quick turnaround. This form's format is also designed for easy understanding and quick completion by the applicant, and for easy computer program input by the data transcriber.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 6,000.
*Estimated Burden Hours Per Response:* 15 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 1,500 hours.

*OMB Number:* 1545–0134.
*Form Number:* 1128.
*Type of Review:* Revision.
*Title:* Application for Change in Accounting Period.
*Description:* Form 1128 is needed in order to process taxpayers' requests to change their accounting period. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
*Estimated Number of Respondents:* 20,000.
*Estimated Burden Hours Per Response:* 1 hour and 22 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 35,257 hours.

*OMB Number:* 1545–0609.
*Form Number:* 1285C, 1285 (DO/SC) (C).
*Type of Review:* Extension.
*Title:* Problem Resolution Program; Follow-up Letter.
*Description:* After the taxpayer problem is resolved, follow-up letter comments are needed to evaluate individual case processing, monitor taxpayer satisfaction, and provide a form for taxpayer to comment or suggest improvements on the program. The 1285 Letters are used for these purposes.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit.
*Estimated Number of Respondents:* 15,000.
*Estimated Burden Hours Per Response:*
Letter 1285 (DO/SC) (C): 12 minutes.
Letter 1285C: 12 minutes.
*Frequency of Response:* Quarterly.
*Estimated Total Reporting Burden:* 3,000 hours.

*OMB Number:* 1545–1008.
*Form Number:* 8582.
*Type of Review:* Revision.
*Title:* Passive Activity Loss Limitations.
*Description:* Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheets 3 through 6 are used to allocate the losses allowed back to individual activities.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit.
*Estimated Number of Respondents:* 15,000,000.
*Estimated Burden Hours Per Response:* 1 hour and 11 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 17,844,119 hours.

*OMB Number:* 1545–1034.
*Form Number:* 8582–CR.
*Type of Review:* Revision.
*Title:* Passive Activity Credit Limitations.
*Description:* Under section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income are not allowed. Form 8582–CR is used to figure the

passive activity credit allowed and the amount of credit to be reported on the tax return. Worksheets 1, 2, and 3 in the instructions are used to figure the amount to be entered on lines 1, 2, and 3 of Form 8582–CR and worksheets 4 through 7 are used to allocate the credits allowed back to the individual activities.

*Respondents:* Individuals or households, Farms, Businesses or other for-profit.

*Estimated Number of Respondents:* 1,000,000.

*Estimated Burden Hours Per Response:* 1 hour and 9 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 1,147,901 hours.

*Clearance Officer:* Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 88–17097 Filed 7–28–88; 8:45 am]

BILLING CODE 4810–35–M

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## Fiscal Service

**[Dept. Circ. 570, 1988 Rev., Supp. No. 1]**

## Surety Companies Acceptable on Federal Bonds; Maine Bonding and Casualty Co.; Correction of Address

The business address for the above mentioned company was listed at 53 FR 25067 (July 1, 1988) as: P.O. Box 448, Portland, ME 04112. The company's business address is hereby corrected to: P.O. Box 4488, Portland, ME 04112.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1988 Revision, at the appropriate page to reflect this correction.

Questions concerning this correction notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, or by calling (202) 287–3921.

Dated: July 25, 1988.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 88–17077 Filed 7–28–88; 8:45 am]

BILLING CODE 4810–35–M

VOL 53 ISS 146 JL 29 1988 UMI

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 146
Friday, July 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 53 Page 29721, July 25, 1988.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** Wednesday, July 27, 1988.

**CHANGES:** Agenda revised by deleting previous item 1 concerning staff participation in voluntary standards activities.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

July 26, 1988.

[FR Doc. 88–17191 Filed 7–27–88; 8:58 am]
BILLING CODE 6355–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:07 p.m. on Monday, July 25, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of director C.C. Hoe, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(4), (c)(6), (c)(8), (c)(g)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: July 26, 1988.

Federal Deposit Insurance Corporation.
**Robert E. Feldman,**
*Deputy Executive Secretary.*
[FR Doc. 88–17184 Filed 7–26–88; 5:11 pm]
BILLING CODE 6714-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, August 3, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Issues related to the Board's capital adequacy guidelines.
2. Proposals regarding the Board's 1988 budget.
3. Proposed amendments to Regulation C (Home Mortgage Disclosure) to implement the Home Mortgage Disclosure Act amendments that permanently extend the Act and expand its coverage. (Proposed earlier for public comment; Docket No. R–0635)
4. Any items carried forward from a previously announced meeting.

**Note.** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 27, 1988.

**James McAfee,**
*Associate Secretary of the Board.*
[FR Doc. 88–17243 Filed 7–27–88; 2:02 pm]
BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.**

**TIME AND DATE:** Approximately 12:00 noon, Wednesday, August 3, 1988, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 27, 1988.

**James McAfee,**
*Associate Secretary of the Board.*
[FR Doc. 88–17244 Filed 7–27–88; 2:02 pm]
BILLING CODE 6210-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** (53 FR 27594 July 21, 1988).

**STATUS:** Closed/open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Monday, July 18, 1988.

**CHANGES IN THE MEETING:** Deletions/additions.

The following item will not be considered at a closed meeting scheduled for Tuesday, July 26, 1988, at 2:30 p.m.

Formal order of investigation.

The following item will be considered at a closed meeting scheduled for Tuesday, July 26, 1988, at 2:30 p.m.

Institution of injunctive action.

The following item will be considered at a closed meeting scheduled for Thursday, July 28, 1988, following the 9:30 a.m. open meeting.

Institution of injunctive action.

The following item will not be considered at an open meeting scheduled for Thursday, July 28, 1988, at 9:30 a.m.

Consideration of whether to propose for public comment Rule 17 and amendments to Rule 2 and Form U–3A–2 under the Public Utility Holding Company Act of 1935. Rule 17

would specify the circumstances in which non-utility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. Amended Rule 2 would provide that a claim of exemption under Rule 2 by an intrastate public-utility holding company, in order to be effective, would require the holding company to meet one of the safe harbor provisions of Rule 17, and amended Form U-3A-2 would require the company to furnish information supporting its ability to rely on one of the safe harbor provisions of Rule 17. For more information, please contact Sidney L. Cimmet at (202) 272-7430.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Martha Peterson at (202) 272-7502.

**Jonathan G. Katz,**

*Secretary.*

July 25, 1988.

[FR Doc. 88-17239 Filed 7-27-88; 12:48 pm]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 1, 1988.

A closed meeting will be held on Tuesday, August 2, 1988, at 2:30 p.m.

The Commissioner, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 2, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement action.

Settlement of administrative proceedings of an enforcement action.

Settlement of injunction action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

**Jonathan G. Katz,**

*Secretary.*

July 26, 1988.

[FR Doc. 88-17238 Filed 7-27-88 12:48 pm]

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Friday
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Part II

# Environmental Protection Agency

**40 CFR Part 350**
**Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Final Rule**

VOL 53 ISS 146 JL 29 1988 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 350**

**[FRL-3382-1]**

# Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule publishes the procedures for claims of trade secrecy made by facilities reporting under sections 303(d)(2) and (d)(3), 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (Act), and for EPA's handling of such claims, for submission and handling of petitions requesting reviews of trade secrecy claims, and for disclosure to health professionals of information claimed as trade secret.

**DATE:** This rule is effective August 29, 1988.

**ADDRESS:** The record supporting this rulemaking is contained in the Superfund Docket located in Room LG-100 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Beverly D. Horn, Attorney-Advisor, Office of General Counsel, Contracts and Information Law Branch, LE-132G, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5460, or the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202 (in Washington, DC and in Alaska at (202) 479-2449).

**SUPPLEMENTARY INFORMATION:** The contents of today's Preamble are listed in the following outline:

I. Introduction
  A. Authority
  B. Background of this Rulemaking
  C. Summary of Public Participation
II. Trade Secrecy Claim Procedure
  A. Definition of Trade Secret
  B. Methods of Claiming Trade Secrecy
  C. Claims Under Sections 303(d)(2) and 303(d)(3)
  D. Claims Under Section 311
  E. Claims Under Section 312
  F. Claims Under Section 313
  G. Initial Substantiation
  H. Substantiation Form
  I. Claims of Confidentiality in the Substantiation
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  K. Cross-Referencing of Substantiations
  L. Submissions to State and Local Authorities
III. Petitions Requesting Review of Trade Secrecy Claims
IV. EPA Review of Trade Secrecy Claims
  A. Overview of the Process
  B. Initial Review
  C. Determination of Sufficiency
  D. Determination of Insufficiency
  E. Determination of Trade Secrecy
  F. Appeals
  G. Common Errors Found on Substantiations
  H. Enforcement
V. Relationship of Section 322 to Other Statutes
  A. Relationship to State Confidentiality Statutes
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  C. Relationship to Freedom of Information Act
VI. Release of Trade Secret Information
  A. Releases to States
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VII. Disclosure to Health Professionals
  A. Non-emergency Diagnosis or Treatment
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  C. Preventive and Treatment Measures
  D. Statement of Need
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  B. Regulatory Flexibility Analysis
  C. Paperwork Reduction Act

## I. Introduction

### *A. Authority*

EPA publishes this rule pursuant to sections 322, 323, and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (also known as Title III or the Act), of the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. 99-499. Section 322 provides the procedures for claiming trade secrecy and confidentiality for information submitted under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of the Act. It also provides a process whereby members of the public can file petitions requesting the disclosure of chemical identities claimed as trade secret. Section 323 provides procedures for access to chemical identities, including those claimed as trade secret, by health professionals who need the information for diagnosis, treatment, or research.

### *B. Background of this Rulemaking*

The Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, signed into law on October 17, 1986, amends and reauthorizes portions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* Title III contains the Emergency Planning and Community Right-to-Know Act of 1986, which is itself a free-standing statute. It contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and release of extremely hazardous substances (described in sections 302 and 304), and hazardous and toxic chemicals (described in sections 311, 312, and 313 respectively). For the reporting required in sections 303, 311, 312 and 313, a submitter may under certain circumstances claim the identity of the chemical reported as trade secret.

#### 1. Section 303

Section 303 involves the formulation of comprehensive emergency response plans for extremely hazardous substances. These are any of the substances on a list published by EPA under section 302. The regulations implementing section 303 (and, because of their relationship, sections 302 and 304) were published on April 22, 1987, at 52 FR 13378, codified at 40 CFR Part 355. On December 17, 1987, the Agency deleted three of the substances from the Extremely Hazardous Substances List, and on February 25, 1988, the Agency deleted an additional 36. These deletions were published in rulemakings at 52 FR 48072 and 53 FR 5574, respectively.

Any facility where an extremely hazardous substance under section 302 is present in excess of the threshold quantity (as determined by EPA) must report to the State emergency response commission, established under section 301 of the Act. The local emergency planning committee (LEPC), also established under section 301 of the Act, will contact any facility that has identified itself in order to formulate a local emergency contingency plan. In this planning process, a facility is required to provide the local emergency planning committee with information the committee requests, except that the facility may withhold trade secret chemical identity from the committee. The facility must also inform the committee of any relevant changes which occur or are expected to occur which may affect the contingency plan. When informing the committee of these changes, the facility may also withhold trade secret chemical identity from the committee. Trade secret claims for chemical identities withheld from facility reports must be substantiated according to the requirements of this regulation.

2. Sections 311 and 312

Section 311 requires the owner or operator of facilities subject to the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act (25 U.S.C. 651 *et seq.* as amended, 52 FR 31852, August 24, 1987) to submit material safety data sheets (MSDS), or a list of the chemicals for which the facility is required to have an MSDS, to the local emergency planning committees, State emergency response commissions, and local fire departments. The facilities were required to submit the MSDS or alternative list by October 17, 1987, or three months after the facility is required to prepare or have an MSDS for a hazardous chemical under OSHA regulations, whichever is later. In addition, a revised MSDS or list must be submitted to the LEPC within three months following the discovery of significant new information concerning an aspect of a hazardous chemical for which an MSDS or list was previously submitted. Facilities in the non-manufacturing sector will be required to submit the MSDS or alternative list when the OSHA Hazard Communication Standard (HCS) is expanded to cover the nonmanufacturing sector. Any trade secret chemical identity may be withheld from the MSDS or list of chemicals, provided the submitter follows the trade secret claims procedures under the section 322 regulation.

Under section 312, owners and operators of facilities that must submit an MSDS under section 311 are also required to submit additional information on the hazardous chemicals present at the facility. Beginning March 1, 1988, and annually thereafter, the owner or operator of such a facility must submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these chemicals at the facility. Section 312(a) requires owners or operators of such facilities to submit the inventory form to the appropriate local emergency planning committee, State emergency response commission, and local fire department on or before March 1, 1988, (or March 1 of the first year after the facility first becomes subject to the OSHA MSDS requirements for a hazardous chemical) and annually thereafter on March 1. For the non-manufacturing sector, facilities are first required to submit an MSDS or alternative list when the HCS is expanded to cover the non-manufacturing sector; if the expansion becomes effective in 1988, the first Tier I or Tier II reports are required beginning March 1, 1989.

Section 312 specifies that there be two reporting "tiers" containing information on hazardous chemicals at the facility in different levels of detail. "Tier I," containing general information on the amount and location of hazardous chemicals by category, is submitted annually. "Tier II," containing more detailed information on individual chemicals, is submitted upon request by the State or local agencies. There will be no trade secrecy claims for Tier I reporting since no specific chemical identity is required to be given. However, submitters may withhold trade secret chemical identity from the Tier II form, and facilities should be prepared to submit their trade secret claims as appropriate, even if the Tier I report is initially submitted.

As noted above, the Department of Labor recently published a final HCS rulemaking at 52 FR 31852, on August 24, 1987, expanding coverage of the facilities required to maintain MSDSs. The number of facilities thereby subject to reporting under sections 311 and 312 will have expanded from 350,000 to over 4 million, when the expansion becomes effective.

The final rule for sections 311 and 312 was published on October 15, 1987 at 52 FR 38344, 40 CFR Part 370.

3. Section 313

Under section 313, a toxic chemical release inventory form (published by EPA) must be filed with a designated State agency and EPA. This form must be filed for any toxic chemical (on a list published by EPA) which is manufactured, processed or otherwise used in amounts exceeding the threshold quantity at a covered facility. The form also indicates the total annual releases of the chemical to the environment. A covered facility is any facility with 10 or more employees in Standard Industrial Classification (SIC) Codes 20–39. The rule for section 313 was published on February 16, 1988, at 53 FR 4500, 40 CFR Part 372. As with other sections of Title III, trade secret chemical identity may be withheld from the toxic chemical release inventory form.

4. Section 322

The section 322 regulations contain the procedures which a submitter must follow in order to file a trade secrecy claim. Trade secrecy claims are submitted to EPA only, by including with the appropriate 303, 311, 312 or 313 submittals, as explained below, both a sanitized and unsanitized trade secret substantiation form. The unsanitized version must contain the chemical identity claimed as trade secret, and the sanitized version is identical to the unsanitized version in all respects except that the trade secret chemical identity is deleted, and in its place a generic class or category to describe the chemical is included. This sanitized version is the one that is submitted to the State or local authorities, as appropriate.

Section 322(b) of Title III requires a submitter to substantiate its trade secrecy claim when submitting the filing containing the chemical identity claimed as trade secret. This up-front substantiation will consist of the answers to six questions which are intended to elicit sufficient factual support to indicate whether the claim will meet the criteria set forth in the statute for a claim of trade secrecy.

In order to fully answer the six questions in the substantiation, a submitter may need to include additional trade secret or other confidential information. The statute in section 322(f) allows submitters to designate as confidential any information in the substantiation entitled to protection under 18 U.S.C. 1905 (the Federal Trade Secrets Act). Claims of confidentiality in the substantiation are more expansive in scope than those allowed under the reporting requirements of the Act, and are limited solely to information necessary to substantiate the trade secrecy claim. A detailed explanation on how to make a trade secrecy claim for information in the substantiation is found under section II.G. of this Preamble.

The section 322 regulation also contains the procedures to be used by the public for requesting disclosure of chemical identity claimed as trade secret. (This public petition process does not cover requests for public disclosure of information claimed as trade secret in the substantiation other than chemical identity. These requests for disclosure must be submitted under EPA's Freedom of Information Act regulations at 40 CFR Part 2.) The section 322 regulation also sets forth procedures the Agency must follow in making a determination as to whether any trade secrecy claim is valid. These determinations will be made by the program designated to receive and handle trade secrecy claims for that particular reporting section in Title III. The Office of General Counsel will hear intra-agency appeals from the determinations of trade secrecy.

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5. Section 323

The section 323 regulation contains provisions allowing health professionals to gain access to chemical identities, including those claimed as trade secret, in three different situations. The first situation is for non-emergency treatment and diagnosis of an exposed individual. Second, access is permitted for emergency diagnosis and treatment. Finally, health professionals employed by a local government may receive access to a trade secret chemical identity to conduct preventive research studies and to render medical treatment. In all situations but the medical emergency, the health professional must submit a written request and a statement of need, as well as a confidentiality agreement, to the facility holding the trade secret. The statement of need verifies that the health professional will be using the trade secret information only for the needs permitted in the statute, and the confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret. In the event of medical emergency, the health professional granted access to chemical identify claimed as trade secret may be required to execute a confidentiality agreement.

*C. Summary of Public Participation*

EPA issued a proposed rule for trade secrecy claims and for trade secret disclosures to health professionals; which was published in the **Federal Register** on October 15, 1987 (52 FR 38312). The proposed rule contained the form for the substantiation to accompany claims of trade secrecy and requirements for making claims of trade secrecy under the Act. After publication, EPA received over 40 written comments on the proposed rule. In addition, EPA held public meetings in Washington, DC, Chicago, IL, Boston, MA, Dallas, TX, and San Francisco, CA. Attendees at these meetings presented oral comments representative of a wide range of interests including the affected industry, environmental and other public interest groups, State and local governments, and individual citizens. These comments are part of the official record of this rulemaking

**II. Trade Secrecy Claim Procedure**

*A. Definition of Trade Secret*

1. Overview of Trade Secrecy Claims

The Emergency Planning and Community Right-to-Know Act of 1986 does not give facilities blanket authority to withhold any information they consider sensitive or confidential. The purpose of the Act is to provide information to the public, and the statute limits the types of information that may be withheld as well as the circumstances in which a claim of trade secrecy can be made.

Regardless of the basis for a trade secret (e.g., a chemical's presence at a facility, its use for a particular process, or its production in a certain quantity), the only information that a facility may withhold from an Act's report (other than location information, as explained below) is the specific chemical identity. When a facility makes a claim of trade secrecy, it must provide all of the information normally required to be reported with the sole exception of the specific identity of the chemical being claimed as trade secret.

Submitters of trade secrecy claims must distinguish two concepts: (1) What may be withheld; and (2) the basis for withholding information. As noted, the only information that may be withheld from a public report is the *identity* of a chemical found at a facility.

The basis, or reasons, for considering a chemical identity as a trade secret can vary. In most instances, the presence of the chemical at a facility is the basis for a chemical being a trade secret. However, in certain instances facilities may believe the connection between the chemical identity and other information that must be included on the Act's reports, such as quantity or process information, may also be a basis for a claim of trade secrecy. For example, a facility may believe that its estimate of the maximum amount of chemical X on site on its toxic chemical reporting form under section 313 is a trade secret, even though public knowledge of its use of chemical X is not. In such a case, the connection or as it is sometimes termed, the linkage, of the chemical identity with the quantity information is the basis for the facility's trade secrecy claim. However, the facility may only withhold the chemical identity (i.e., chemical X in this example); the quantity on site must still be reported. As Congress provided, public reports would not disclose the specific chemical, although a generic name for chemical X must be provided as a substitute, as well as data on its hazardous characteristics and adverse health effects. Hence, what can be withheld is only the chemical identity, but facilities may base their trade secrecy claims on the connection between the chemical identity and a broader set of information required on the Act's reports.

This discussion, so far, has dealt with trade secrecy claims for chemical identity on the reports required under the Act. This is the class of trade secret claims addressed by the rule. However, two other classes of confidential information are also involved under the Act, and rules for treatment of these are different.

First, when facilities explain why a chemical is a trade secret, it is recognized that they may need to cite other confidential information (such as process or financial data) in their substantiations. The statute and the rule allow facilities to make claims of confidentiality, explained below, for information they provide on their substantiations accompanying claims. Second, location information required under section 312 is considered a separate class of confidential information, and is provided only to State and local recipient(s). Section 312 location information should not be sent to EPA. The statute does not require facilities to justify the confidentiality of either of these two types of information under section 322. Under section 324, copies of the publicly available substantiations for trade secrecy claims are accessible during normal business hours through the designated State and local authorities, and through EPA, as appropriate. These substantiations are also accessible under the Freedom of Information Act, as discussed at section V.C. of this Preamble.

2. Rationale

The definition of a trade secret in this regulation is equivalent to that in the Restatement of Torts, section 757, and the regulation developed by the Occupational Safety and Health Administration to implement its Hazard Communication Standard, 52 FR 31876 (August 24, 1987), 29 CFR 1910.1200. The OSHA Hazard Communication Standard requires disclosure of the specific chemical identity of chemicals to which employees are exposed in the workplace, except in those cases in which the identity of the chemical in question can be justified by a facility to be a bona fide trade secret. The U.S. Court of Appeals ruling in *United Steelworkers of America v. Auchter*, 763 F.2d 728 (3d Cir. 1985), required that OSHA amend its Hazard Communication Standard to adopt a definition of trade secret that conformed to common law protections. OSHA selected the generally accepted definition provided in the Restatement of Torts, section 757, Comment b (1939), which reads: " 'trade secret' may consist of any formula, pattern, device, or compilation of information which is used in one's business, and which gives [the employer] an opportunity to obtain

an advantage over competitors who do not know or use it."

The Emergency Planning and Community Right-to-Know Act of 1986 only allows trade secrecy claims for a subset of the material which is traditionally covered under trade secrecy law. Section 322(a) specifically states that submitters under Title III may withhold only the "specific chemical identity (including the chemical name and other specific identification)" as a trade secret. The "specific chemical identity" means either the chemical name or other specific identification that reveals the precise chemical designation of the substance, such as the Chemical Abstract Services Registry Number (CASRN).

In the proposed rule, EPA set forth several options for determining the permissible basis for claims of trade secrecy for specific chemical identity. The most narrow interpretation of the statute would be to limit all claims of trade secrecy to claims protecting either the composition of the chemical, or the presence of the chemical at the facility. Congress stated in the Conference Report that, "the knowledge of [the] presence [of a specific chemical] at the purchasing facility could effectively define for its competitors the process and/or products being made there." H.R. Conf. Rep. No. 99–962, 99th Cong., 2d Sess. 304 (1986).

The second option set forth in the proposed rule was to allow, as a basis for a claim of trade secrecy for chemical identity, that the connection, or "linkage" between chemical identity and other information on the Title III form would reveal the trade secret. Throughout the Conference Report Congress displayed general concern for the protection of all legitimate trade secrets. For instance, in discussing the reporting requirements under section 313, it was noted, "[t]he conference substitute provides for reporting categories of use and ranges of chemical present because the exact [identity] of identified chemical[s] at a facility or the exact amount present may disclose secret processes." *Id.* at 298. Similarly, in discussing the reporting requirements under section 312, Congress stated, "[i]n order to protect chemical process trade secret information, reporting ranges may need to be broad." *Id.* at 290. Congress probably anticipated that it would be possible for the Act's reporting forms to be structured broadly enough to avoid compromising legitimate trade secrets. In the proposed rule, the Agency stated that it was making every effort to do this. EPA believed that even with the use of broad ranges and reporting categories, however, the amount of detail requested on the Act's forms would in some cases allow competitors of submitters to compare and thus to link information, thereby revealing valuable trade secrets.

EPA's proposed interpretation of the basis for a claim of trade secrecy for chemical identity was supported by several comments from industry voicing concurrence with Congressional intent to provide trade secret protection to trade secret information about use, processing, and handling which might be linked to corresponding chemical identities reported under sections 311, 312, or 313. Industry commenters referred to the definition of trade secret put forth in the Restatement of Torts to assert that the Agency's linkage concept is firmly rooted in traditional trade secret law, where trade secrecy of chemical identity occurs because of links between that chemical identity and other data. Consequently, some commenters suggested that denial by the Agency of trade secret protection to linked information, and its disclosure to the public, would constitute a taking under the Takings clause of the Fifth Amendment, even though the specific identities of component chemicals might be well known to the public.

EPA also received some comments from public interest groups which disagreed with this interpretation. They argued that trade secrecy claims should be restricted solely to claims for the presence or chemical composition of the chemicals present at a facility, and not allowed for any linkages between chemical identity and other data. These comments claimed that the four criteria listed under section 322(b) apply only to trade secrecy claims for specific chemical identities, and reflect Congressional intent to maximize the availability of information to the public. One group asserted that trade secret regulations intended to protect claims for linkage "will encourage the filing of excessive claims of trade secrecy, as well as claims that cannot be substantiated in accordance with section 322(b)" of the statute.

After carefully considering the comments, the OSHA HCS, the Conference Report, and trade secret case law, EPA has decided to allow trade secrecy claims for chemical identity to be made to protect the linkage between a specific chemical identity and other information about its use, production, storage, or processing. Such claims will be permitted even in cases when the specific chemical identity is already known to the public; however, the submitter will always have to prove that its trade secret meets the four criteria under section 322(b) by submitting the up-front substantiation described in section II.G. of this Preamble. In all trade secrecy claims the specific identities of chemicals present at the facility are the only reporting information that may be withheld, in accordance with the statute; all other information requested on the Act's forms must be reported.

Generally accepted trade secret law found under the Restatement of Torts and the OSHA Hazard Communication Standard supports protection of linkage information. According to these precedents, confidential information does not necessarily depend on public knowledge of one component of a production process; rather, it is often the means by which components are combined and used which renders the information a protectable trade secret.

The Agency believes that this interpretation of the basis for a claim of trade secrecy will not involve great numbers of additional claims beyond those that could also be based on the narrower concept of simple presence at a facility. Submitters of trade secrecy claims for linkage information will still have to meet the same four criteria in section 322(b) which all trade secrecy claims must meet.

EPA also believes that this interpretation does not run counter to the purpose of the Act—that of public disclosure—because the requirement of an up-front substantiation, which will cause submitters to justify their claims, will limit spurious claims. Further, EPA's intention is to routinely evaluate trade secrecy claims and to vigorously prosecute those submitting frivolous claims. The $25,000 penalty per frivolous claim under such circumstances is evidence of Congress intent to deter such claims. All submitters should be aware that supplemental information submitted to EPA after the initial substantiation should clearly confirm the validity of their claim as set out in the initial substantiation, or they may be subject to the penalty for frivolous claims.

3. Emission and Effluent Data

The Natural Resources Defense Counsel, Citizens for a Better Environment, and OMB Watch have argued in their comments that EPA cannot allow claims of trade secrecy for data collected on the section 313 toxic release inventory form because this data is emission or effluent data that is required to be made public by the Clean Air Act and the Clean Water Act.

Section 322(b) of Title III requires that a trade secrecy claimant demonstrate, when making a trade secrecy claim, that the chemical identity claimed as trade secret "is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law." The commenters claimed that under section 114(c) of the Clean Air Act and section 308(b) of the Clean Water Act, emission and effluent data, respectively, are required to be made public and, therefore, when collected under Title III must be made public. Section 114(c) of the Clean Air Act requires that:

> Any records, reports, or information obtained under [the Clean Air Act] shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (*other than emission data*) to which the Administrator has access under this section, would divulge methods or processes entitled to protection as trade secrets * * * the Administrator shall consider such record * * * confidential. (Emphasis added.)

Section 308(b) of the Clean Water Act has a similar provision excepting effluent data from confidential treatment.

Information which has been determined administratively (by EPA) or judicially (by a court on appeal from an EPA determination) to constitute emission or effluent data within the meaning of section 114(c) of the Clean Air Act, or section 308(b) of the Clean Water Act is clearly required to be disclosed to the public and could not be withheld from disclosure under section 322(b). Thus, a company could not claim as trade secret under Title III information which is part of a class of information for which EPA has, by regulation or otherwise, prohibited a claim of business confidentiality, such as information required in National Pollutant Discharge Elimination System (NPDES) permit applications. 40 CFR section 122.7(c). Also, a company could not claim as trade secret under Title III data already collected by EPA under another statute, such as the Clean Air or Clean Water Acts, where the Agency had decided that the data presented no valid claim of trade secrecy, either because it was emission or effluent data or for other reasons, such as, that no valid trade secrecy claim was presented.

The question posed by the comments concerns the exact meaning of the prior disclosure language—does this language concern only the circumstances described above, where EPA has determined, either generically or specifically, whether the information is eligible for trade secret status, or does it also concern circumstances where the information's trade secret status is undetermined. The commenters argued that information which EPA could obtain, but has not requested, under the Clean Air or Clean Water Acts and which could constitute emission or effluent data, cannot be claimed as trade secret on the section 313 form or in other Title III submissions.

The comments also raised the same question regarding information in EPA's possession which could constitute emission or effluent data but as to which no determination has been made. The commenters argued that this information also cannot be claimed as trade secret if later submitted under Title III. In so arguing, the commenters assumed that the definitions of emission and effluent data are self-executing and therefore that no trade secrecy claims should even be accepted by EPA for information which could be emission or effluent data.

There is no discussion of this issue in the Conference Report or elsewhere; however, EPA's position is that the most probable interpretation is that Congress intended to prevent trade secret claimants from claiming as secret information which was already in the possession of a State or Federal agency and was required to be disclosed, either because no claim of confidentiality was permitted under State or Federal law, or because a decision had been made that no valid claim was presented.

The comments did not address the threshold issue of the definition of emission or effluent data, merely asserting that EPA's definitions are "self-executing." EPA does not consider this definition to be self-executing. The definition of emission data provides:

> (2)(i) "Emission data" means, with reference to any source of emission of any substance into the air—
>
> (A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
>
> (B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and
>
> (C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 CFR 2.301(a)(2)(i) (A), (B), and (C).

Whether information constitutes emission or effluent data depends on what information is "necessary" to make the needed determination. EPA has to date made no determinations that categories of information always constitute emissions data. Instead, EPA has proceeded on a case-by-case basis.

The regulations interpreting the Clean Water Act contain a similar definition for effluent data, information "necessary to determine the identity * * * or other characteristics * * * of any pollutant which has been discharged by the source * * *" 40 CFR 2.302(a)(2)(i). The NPDES regulations under the Clean Water Act (CWA) do not, however, allow confidential treatment of information required by, or contained in NPDES permits or permit applications, or of data concerning the discharge of pollutants regulated in the permit, and accordingly, that data is not allowed trade secrecy treatment under section 313. Submitters claiming this information as confidential may be subject to penalties under section 325(d) for submission of frivolous claims.

Submitters should be aware that data submitted on the section 313 form will be used for activities conducted under the Clean Water Act (including implementation of section 304(1) of the Clean Water Act and development of NPDES permit limits) and Clean Air Act. EPA is in the process of developing a class determination under 40 CFR 2.207 which would find that information, including chemical identities, submitted on the section 313 form regarding releases to air or to waters of the United States or to Publicly Owned Treatment Works, is emission or effluent data under the Clean Air or Clean Water Acts and, as such, is not eligible for confidential treatment under section 322 of Title III.

The commenters also argued that the definition of emission and effluent data includes not only data which was actually collected under section 114(c) and 308(b), but data which "could have been" collected under these sections, citing 40 CFR 2.301(b)(2) and 2.302(b)(2). Thus, the commenters argued that any data which *could* be gathered under the Clean Air Act cannot be claimed trade secret when submitted to the Agency under section 313.

The Clean Air Act regulations at 40 CFR 2.301(b)(2) state:

> Information will be considered to have been provided or obtained under section 114 of the Clean Air Act if it was provided in response to a request by EPA made for any of the purposes stated in section 114, or if its submission *could have been required* under

section 114, regardless of whether section 114 was cited as the authority for any request for the information * * * (Emphasis added.)

The comparable section of the Clean Water Act regulations has a similar provision. See 40 CFR 2.302(b)(2).

On this basis, the commenters argued that because the data collected under section 313 of Title III is emission or effluent data which could have been collected under section 114(c) of the Clean Air Act or section 308(b) of the Clean Water Act, no trade secrecy claims can be made for chemical identities of chemicals for which emission or effluent data is included on a Title III submission.

The commenters have misconstrued the meaning and function of the "could have been" language. It serves to prevent submitters from thwarting EPA's statutory right to obtain data by voluntarily submitting it to the Agency for the use of the Clean Air or Clean Water programs, and then arguing, as voluntarily submitted, that it is not subject to statutory limits on trade secret or confidential business information.

For these reasons, EPA does not agree with the commenters, assertions that the provisions of the Clean Air and Clean Water Acts render most trade secrecy claims invalid under section 313. The final rule adopts the interpretation set forth in the proposed rule with respect to the meaning of the language under section 322(b), regarding whether information claimed as trade secret is required to be disclosed under another State or federal law. Thus, information is required to be disclosed under another Federal or State law if:

(i) It is information that is specifically or is in a class that is determined administratively (by EPA) or judicially (by a court on appeal from an EPA determination) to constitute emission or effluent data within the meaning of section 114(c) of the Clean Air Act or section 308(b) of the Clean Water Act; or

(ii) It is information which is either specifically or in a class for which EPA or any other State or Federal Agency has disallowed confidential treatment, such as information required by EPA in NPDES permit applications; or

(iii) It is information collected by EPA or another State or Federal Agency where the State or Federal Agency has decided that the data presented no valid claim of trade secrecy (for any reason).

### *B. Methods of Claiming Trade Secrecy*

There are five different types of submissions that can be made under Title III on which a facility may make a claim of trade secrecy. These are: (1) The notification (to a local emergency planning committee) of any changes at a facility which would affect emergency plans, under section 303(d)(2); (2) answers to questicns posed by local emergency planning committees under section 303(d)(3); (3) material safety data sheets or chemical lists submitted under section 311; (4) Tier II emergency and hazardous chemical inventory forms submitted under section 312; and (5) the toxic release inventory form submitted under section 313.

#### 1. Basic Requirements

The basic requirements for making a claim are similar, although there are some differences between submissions under the different sections. These differences will not affect the validity of a submitter's claim, provided the submitter adheres to all of the requirements.

When fashioning reporting requirements under Title III, EPA has made every effort to avoid unnecessary duplication. To this end, when reporting under section 303 (d)(2) and (d)(3), and under section 311 using an MSDS, EPA only needs to receive a copy of the submittal sent to the State and local authorities. This submittal is a public document, and should not contain the specific chemical identity claimed as trade secret. EPA is not requesting an unsanitized version of this submittal.

When reporting under section 311 using the list approach, and for all section 312 Tier II forms, and section 313 reports, EPA must receive at the same time both an unsanitized and a sanitized version of the reporting form. A sanitized copy of the reporting form is one in which the chemical identity claimed as trade secret is deleted and in its place is included the generic class or category of the chemical claimed trade secret. This sanitized copy should be identical to the copy submitted to the appropriate State and local organizations in all respects except that it does not contain the chemical identity.

Finally, EPA must receive substantiations for each chemical claimed as trade secret under all reporting sections, as explained in section II.G. below. EPA must receive both sanitized and unsanitized versions of the substantiation. Although these items are the minimum required for a claim of trade secrecy under all sections, EPA suggests that submitters carefully review the requirements under each section before filing a trade secrecy claim.

In this rule, the term "sanitized" is used to refer to the copy of the report or substantiation which does not contain the chemical identity of the chemical that is being withheld as trade secret. The term "unsanitized" refers to a report or substantiation that contains the trade secret chemical identity. EPA received some comments from the public objecting to the use of these terms on the grounds that an "unsanitized" item is sometimes regarded as "unclean." EPA has decided to retain these terms because they are terms of art often used to indicate whether or not these documents contain information that may be released to the general public; their continued use helps to clarify the terms of the rule.

EPA received some questions as to whether a trade secret claim must be made at the same time the Title III submittal is submitted. Section 322 requires a submitter making a claim of trade secrecy to include in the submittal an explanation of why the information is claimed to be a trade secret. This clearly requires that the substantiation must be filed concurrently with the submittal.

To facilitate accurate processing and filing of these confidential documents, submitters of claims to EPA should arrange the parts of each claim in the following order: (1) The unsanitized trade secret substantiation, (2) the sanitized trade secret substantiation, (3) the unsanitized reporting document (not applicable to section 303 reports and section 311 MSDSs, as explained below), and (4) the sanitized reporting document. Each substantiation and reporting document should be individually stapled but the Agency requests that the individual parts for each claim be assembled into a single package using only a binder clip or rubber band. Do not staple the individual parts together.

When facilities submit trade secrecy claims for more than one chemical, EPA requests that the three or four parts associated with each chemical be assembled as a set and each set for different chemicals be kept separate within the package sent to EPA.

#### 2. Users of Trade Name Products

Reports and claims regarding mixtures and trade name chemical products raise a number of special issues. Public comments were received on a number of points that EPA clarifies below.

Public comments indicated some users are concerned as to their responsibilities in cases where they do not know the chemical identity of mixtures and trade name products. Commenters were concerned about whether they had to submit a trade secrecy claim if they did not know the specific chemical identity of the product they use, even though they do not consider that the fact that they use the product is a trade secret. EPA does not require a trade secrecy claim if the user does not consider its

use of the product as a trade secret. For example, if a user does not know the specific chemical identity of a chemical and must provide a common name or trade name on the Title III submittal, EPA does not require a claim of trade secrecy for the omitted chemical identity because this identity, being unknown to the user, cannot be provided in such an instance. This issue is also discussed in the section 313 final rule addressing supplier notification. See 53 FR 4500.

If the submitter considers its use of the trade name chemical as a trade secret, it may file a trade secrecy claim according to the usual procedures set forth in this rule. The user will be allowed to file for trade secrecy treating the trade name as the chemical identity and filling out those parts of the Title III submittal sent to EPA that it can supply without knowing the specific chemical identity. The user must still file a complete substantiation. When making trade secrecy claims for trade name products, some commenters indicated that portions of the substantiation questions would not apply to their trade secrecy claim, however. If so, EPA requires that the user making a trade secrecy claim for its use of a trade name chemical must answer each question by explaining why it believes the question to be inapplicable.

EPA does *not* extend permission to file trade secret claims for common or trade names to users that know the specific chemical names of the chemical to be reported and consider that chemical use to be a trade secret. If users know the chemical names of substances they use and wish to file a trade secrecy claim, they must make the claim in terms of the chemical names of the substances. On the other hand, downstream chemical users and chemical licensees who happen to know the chemical identity of the trade name chemical are not required to submit claims of trade secrecy based solely on their knowledge of the specific chemical identity since this requirement would entirely duplicate the trade secrecy claim of the original chemical manufacturer and serve no purpose.

In the rulemaking process, EPA considered more extensive requirements on users making trade secrecy claims for their uses of trade name chemicals. One approach would have required suppliers to inform EPA of the chemical identity and complete the substantiation questions for the users who wished to make a trade secrecy claim. Another option considered was the "best efforts" approach based on the proposed section 313 rule (52 FR 21151, 21155), which would have required the user to make multiple attempts to obtain the chemical identity from the supplier, including offering to enter into a confidentiality agreement with the supplier.

In some cases, it may be especially difficult for facilities to acquire from their suppliers the identity of chemicals claimed trade secret by their supplier. Users of chemicals may encounter instances where the supplier does not have the same interest in providing information to them or in protecting the confidentiality of their trade secrets. Suppliers may, in some instances, sell to competitors from whom a facility wishes to keep chemical identities or applications a trade secret. EPA decided on the more pragmatic approach of allowing users of trade secret chemicals who wished to make a trade secrecy claim for their use of the trade name chemical to file claims based on their current knowledge, rather than having to rely upon obtaining cooperation from suppliers.

3. Licensees

One commenter stated that the rule does not address trade secret protection in the context of licensing arrangements that include private confidentiality agreements between suppliers and users. The commenter asserted that in these instances, a facility that is licensed to produce or otherwise use a trade secret chemical may have information about that chemical, including its chemical identity. At the same time, neither the chemical identity nor the use of the chemical is the trade secret of the licensee, and the licensee may not be able to justify it as such. As a response to this circumstance, the commenter suggested that the rule provide for a blanket trade secret substantiation by the licensor with a letter submission by the licensee referring back to the licensor's substantiation or explanation submission.

EPA requires in the above situation that users who are licensees of trade secret chemicals and who wish to make a trade secrecy claim for their own use of the chemical, file a claim of trade secrecy. If possible, these submitters should obtain the information necessary to complete the substantiation form, where relevant, from the supplier with whom they signed the confidentiality agreement, to the extent such information is needed to answer the questions on the form. If, upon review of the claim EPA requests supplemental information which the licensee does not have, the licensee will be required to contact the licensor who must contact EPA directly with the necessary information.

4. Addresses for Claims and Petitions

All trade secret claims and petitions requesting disclosure of identities claimed as trade secret should be sent to the following address:

U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know Program, P.O. Box 70266, Washington, DC 20024–0266

Submitters may hand deliver their submittals to:

Title III Reporting Center, 470/490 L' Enfant Plaza East, SW., 7th Floor, Suite 7103, Washington, DC

*C. Claims Under Sections 303(d)(2) and 303(d)(3)*

Section 303 concerns the formulation of contingency plans by local emergency planning committees. Section 303(d)(2) states that owners or operators of facilities must promptly inform committees of any relevant changes occurring at the facilities as the changes occur or are expected to occur. Section 303(d)(3) states that owners or operators of facilities must promptly provide information to committees when committees request information from facilities necessary for the development and implementation of emergency plans.

A trade secrecy claim under section 303(d)(2) must include a copy of the notification of changes in the facility that was provided to the local committee. This notification may be in the form of a letter or other written communication. The document must include the name and address of the submitter. A trade secrecy claim under section 303(d)(3) must include a copy of the information requested by the local emergency planning committee and the information provided by the facility in response to the request. A letter or other written communication containing this information is sufficient. The document must include the name and address of the submitter.

In both of these submittals, where there is a need to refer to a specific chemical identity, the generic class or category of each chemical ("class" is synonymous with "category") claimed as trade secret should be used instead of the trade secret chemical identity. The generic class or category for chemicals subject to section 303 reporting is discussed below in this section.

EPA is taking the burden-reducing step of not requiring submitters to prepare an unsanitized version of this document for the reason that EPA will be receiving the claimed chemical identity on the unsanitized version of the substantiation form. For each chemical identity claimed as trade

secret in a section 303 report, a complete substantiation must be submitted to EPA. The substantiation will be discussed in greater detail in section II.G. below. Claims should be packaged as described in section II.B.1. of this preamble, and in instructions to the substantiation form.

Generic Class or Category

When a local emergency planning committee develops its contingency plan, identification of the specific chemicals that are present in its jurisdiction is vital to the development of the plan and is the first issue to be resolved in the initial preparation of the plan. As stated above, if a facility does not wish to reveal the specific chemical identity to the committee in the context of sections 303 (d)(2) and (d)(3), the section 303 submittal must include in the place of chemical identity, the generic class or category of the chemical claimed as trade secret. The purpose of the generic class or category is to provide a description of the chemical that is not as specific as the specific chemical identity. The generic class or category should provide the best description possible of the claimed chemical, as explained below.

The purpose of a contingency plan is to provide effective, expedient emergency response to aid response workers and community residents in the event of a chemical release. In order to prepare an effective contingency plan, the hazards involved with the specific chemicals such as explosivity or flammability and the adverse health effects associated with the release must be known. Only by knowing this information, can proper equipment and procedures be used to contain the release. If chemical identity is claimed as trade secret by a facility, such information can in many circumstances still be obtained through the determination of a generic class or category that reflects the information, as well as by other questions posed to the facility by the local emergency planning committee.

The proposed rule set forth for public comment three alternatives regarding the choice of generic class or category for Title III submittals under sections 303 (d)(2) and (d)(3). The alternatives all required negotiation because the Agency believed it would be impossible to devise a finite list of generic classes or categories that would incorporate the wide variety of safety factors that LEPCs and the general public may desire to know. These safety factors included chemical release hazards, adverse health effects information, distance of the affected community from the facility, level of sophistication of the first responder, and type of land use near the facility. Language in the proposed rule suggested that safety factors should be reflected in the generic class or category chosen.

The alternatives suggested in the proposed rule were:

(1) LEPCs and owners or operators would negotiate a suitable class or category, with no example list offered by the Agency;

(2) The sections 311–312 hazard categories would be provided as examples from which LEPCs and owners or operators could choose a class or category, or if they believed it to be necessary, the parties could choose another hazard-based class or category which better reflected the safety information described above;

(3) LEPCs and facilities would negotiate a class based on chemical structure.

The proposed rule on trade secrets did not discuss generic class or category determinations for section 313 submittals; another alternative was adopted by EPA in the final rule for section 313. The section 313 proposed rule stated that owners or operators should choose a generic class or category based on the preassigned class or category code for each chemical which was set out in the section 313 proposed rule. This process was changed in the section 313 final rule to allow reporting facilities to use any generic class or category that is structurally descriptive of the chemical claimed as trade secret. This change was made because of the possibility that trade secrecy could be compromised when the preassigned class or category was cross-referenced with one or more of the four adverse health effect categories provided for the section 313 chemicals in the Toxic Release Inventory database.

The comments received on the alternatives were divided. Some of the commenters wanted EPA to publish a finite list of classes or categories based on hazard categories alone, and allow facilities to choose the appropriate class or categories. Some commenters wanted facilities to choose a class based on chemical function or chemical structure without negotiation with LEPCs, State Emergency Response Commissions (SERCs), or fire departments. A few commenters supported the requirement of negotiation of generic class or category among the parties involved.

EPA has reevaluated the necessity for negotiation in choosing generic class or category and has decided to follow the process chosen for the section 313 final rule. Allowing owners or operators to choose classes on their own based on chemical structure is preferable to the options set forth in the proposed rule for several reasons. First, it will be simpler for industry, LEPCs, SERCs, and fire departments than requiring the time-consuming process of negotiation; second, negotiation of generic classes could also be technically burdensome to LEPCs; and third, this approach will provide greater consistency for choosing generic class or category under the various sections of the law.

Although owners or operators will be choosing generic classes or categories on their own, EPA is advising that classes be chosen following the guidelines of the Act's legislative history. The Conference Report directs that generic class or category be defined only as broadly as necessary to protect the specific chemical identity from disclosure, and it should at the same time reflect the thrust of the law to transmit chemical information to the public. Thus, EPA advises that classes be determined so that information on the specific chemical identity's release hazards and adverse health effects are included in the class or category. As an example of such a class, volatile aldehyde is a generic class that is functionally descriptive of the chemical acid aldehyde and provides information on the chemical's volatility.

*D. Claims Under Section 311*

As provided in the rule for sections 311–312, when reporting, a submitter of a section 311 report must submit either an MSDS for each hazardous chemical (above a threshold quantity), or a list of the hazardous chemicals with the chemical or common name of each hazardous chemical as provided on the MSDS.

Claims of Trade Secrecy for MSDSs

Submitters must send to EPA a copy of the MSDS, and an unsanitized and sanitized substantiation. An explanation of the substantiation is set forth in section II.G. below. Claims should be packaged as described in section II.B.1 of this preamble, and the instructions to the substantiation form.

EPA is not requiring submitters to provide an unsanitized version of the MSDS. The Agency received comments indicating that most facilities do not have "unsanitized" copies (i.e., copies indicating chemical identities) of MSDSs on file under the HCS where they have claimed chemical identity as trade secret. In such cases, facilities have on file only MSDSs that omit the chemical names of trade secret chemicals and instead contain a common name for the chemical. For a facility to supply an "unsanitized" MSDS—i.e., one containing the chemical identity of a

chemical claimed as trade secret—to EPA under the section 322 rule, as proposed, the facility would have had to modify an MSDS that did not previously indicate the chemical identity. One suggestion by commenters was to allow facilities to attach supplements of their own design indicating the chemical identities. EPA decided, however, that because the information on chemical identity will be provided to EPA in the unsanitized version of the substantiation form attached to the MSDS, a supplement or unsanitized MSDS is therefore unnecessary. Hence, EPA is taking the burden reducing step in the final rule of not requiring an unsanitized MSDS (though the requirements for unsanitized copies of sections 311 lists, 312 Tier II forms, and 313 forms remain unchanged from the proposed rule).

Three commenters stated that trade secrecy claims should not be necessary under section 322 in cases where a specific chemical identity has already been withheld as trade secret on an MSDS under OSHA's Hazard Communication Standard. Section 322(a) states that a person required to submit information under Title III may withhold from such submittal the specific chemical identity. When the specific chemical identity is claimed as trade secret under the HCS, the identity does not appear on the MSDS that the facility keeps on file under that standard. The commenters argued that because the identity is not present when these MSDSs are to be submitted under section 311, the submitters are not "withholding" chemical identity and thus a claim of trade secrecy under section 322 should not be required.

EPA disagrees with this argument for several reasons. First, if a manufacturer of a chemical were not required to file a trade secrecy claim under Title III because it had already treated the chemical as a trade secret under the HCS, the detailed, upfront substantiation provisions of section 322 would be circumvented. The HCS allows chemicals to be treated as trade secrets at the discretion of facilities, provided the facility can substantiate the secret if challenged. Congress was more strict in enacting Title III in this regard, requiring that the claim be substantiated at the time it is made.

Further, under the commenters' view, the public would be denied the means to petition for review of the trade secret claim because no claim would ever have been made, and no similar option for review by the general public exists under the HCS. Therefore, EPA requires that a claim of trade secrecy must be filed for section 311 MSDS submittals even when the chemical identity is previously withheld from the MSDS as trade secret under the OSHA HCS.

Reporting of mixtures on the MSDS is discussed below.

Claims of Trade Secrecy for the Section 311 List

The list option under section 311 is structured so that submitters may report either the chemical or common names of a chemical on the list. Submitters wishing to claim chemical identity as trade secret must submit to EPA an unsanitized version of the list which contains the chemical identity or identities which are being claimed. The submitter must also send a sanitized version of the list in which the chemical identity or identities are replaced with generic classes or categories. When more than one chemical is claimed as a trade secret, to avoid confusion the order of chemical names found on the unsanitized list must match the order of generic classes or categories found on the sanitized list. As with all other trade secrecy claims under Title III, submitters must also send to EPA a sanitized and unsanitized version of the substantiation. Claims should be packaged as described in section II.B.1 of this preamble and in the instructions to the substantiation form.

Since submitters have the option of reporting chemicals on the section 311 list by either chemical or common name, some submitters may believe that even with the use of the common name trade secret chemical identity will be revealed. In this instance submitters may want to make a claim of trade secrecy for the chemical identity. However, in other instances, as commenters noted, the use of the common name may sufficiently protect trade secret chemical identity, and the submitter may decide that no trade secrecy claim needs to be filed. LEPCs may later request the MSDSs for the chemicals on the list. If the submitter has made no trade secrecy claim for the chemical on the list, (because the use of the common name sufficiently protected trade secret chemical identity), but the specific chemical identity is withheld from the MSDS distributed to the LEPC, then the submitter must, at that time, file a trade secrecy claim with EPA regarding that MSDS.

Mixtures Reporting on the MSDS, Section 311 List, and Section 312 Tier II Form

For reporting mixtures under sections 311 and 312 (on MSDSs, lists, or Tier II forms) the submitter may provide the required information on each hazardous component in the mixture, or may provide the required information on the mixture as a whole.

If a mixture is reported as a whole by common name on the section 311 MSDS, section 311 list, or section 312 Tier II form, no trade secrecy claim needs to be filed with EPA if the submitter believes that common name sufficiently protects trade secrecy. However, if the common name or other identifier, e.g., CAS number, insufficiently protects trade secret chemical identity the submitter may file a trade secrecy claim. Claims are to be made in the manner specified for the MSDS, section 311 list or section 312 Tier II form, whichever is appropriate.

EPA received some comment on the question of whether trade secrecy claims need to be made for hazardous components of mixtures reported on the OSHA MSDS. Commenters indicated that EPA should consider instances where the specific chemical identities of hazardous components of mixtures would be claimed as trade secret on the OSHA MSDS. These commenters argued that although OSHA usually requires hazardous components to be listed on an MSDS when a mixture is reported as a whole, section 311 is silent regarding whether such hazardous components must be submitted. These commenters argued therefore, that no trade secrecy claim needed to be submitted to EPA for those hazardous components listed on the OSHA MSDS. EPA believes that since Congress authorized the reporting of mixtures as a whole under sections 311 and 312, and since health and safety data are provided for the mixtures on MSDSs, no trade secrecy claims need to be made for hazardous components when a mixture is reported as a whole.

Two commenters suggested that to reduce the paperwork burden on themselves and the Agency, EPA should allow trade secret claimants of mixtures to submit one claim rather than several claims in the situation where the same hazardous chemical is present in many different mixtures. This approach is permitted in section 311(a)(3) of the statute, which states that only one MSDS is required to be submitted for each component where the reporting is on the hazardous component(s) of the mixture, and not on the mixture itself.

Generic Class or Category

The procedures for determining generic class or category are outlined in the Generic Class or Category subsection of section II.C.

*E. Claims Under Section 312*

Section 312 requires the submission of emergency and hazardous chemical

inventory forms. Information filed on the Tier I emergency and hazardous chemical inventory form will not involve claims of trade secrecy since chemical identity is not requested on the form. Trade secrecy claims under section 312 may involve only Tier II inventory forms where the specific chemical identity or other specific identifier is reported.

Submitters are permitted to report Tier II chemicals by either chemical or common names. In some instances, as commenters noted, the use of the common name may sufficiently protect trade secret chemical identity, and the submitter may decide that no trade secrecy claim needs to be filed. However, some submitters may believe that even with the use of the common name trade secret chemical identity will be revealed. In this instance submitters may want to make a claim of trade secrecy for the chemical identity.

To make a trade secrecy claim on the Federal section 312 Tier II inventory form, the submitter must check the trade secret box which appears to the right of the space for chemical identity on the form. EPA must receive an unsanitized copy of the form, which will include the trade secret chemical identity. EPA must also receive a sanitized version of the form which must be a duplicate of the original except that the chemical identity will be deleted and in its place the generic class or category of that chemical will be inserted. The two copies should be attached by rubber band or binder clip (not stapled) to each other, the unsanitized form on top and the sanitized form on the bottom. When more than one chemical is claimed as a trade secret, to avoid confusion the order of chemical names found on the unsanitized Tier II form (the top page) must match the order of generic classes or categories found on the sanitized form. The sanitized Tier II form should be sent to the requesting State emergency response commission, local emergency planning committee, or fire department. In addition, a sanitized and unsanitized substantiation must be included for each chemical claimed as trade secret, as explained in section II.G. of this preamble. Claims should be packaged as described in section II.B.1 of this preamble and in the instructions to the substantiation form.

A few States have expressed an interest in using State-designed Tier II inventory forms rather than the Federal inventory form. Under § 370.41 of the final rule for sections 311 and 312, facilities will meet section 312 requirements if they submit the Federal form, an identical State form, or an identical State form with supplemental questions authorized under State law. If a submitter wishes to make a trade secrecy claim, however, it must use the Federal form as its section 312 Tier II submittal. EPA believes it cannot accept State forms for this purpose because State forms may contain additional information not required under this Federal law, some of which may be confidential, and EPA does not wish to accept extraneous confidential materials requiring confidential handling under State law. State forms that collect confidential information under State right-to-know laws are covered under State confidentiality laws.

Claims of confidentiality regarding the *location* of chemicals in facilities are not covered by Title III trade secret protection. The confidential location information should not be sent to EPA, but only to the requesting entity. This information will be kept confidential by that entity under section 312(d)(2)(F) which refers to section 324. Section 324(a) states that upon request by a facility owner or operator subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee must withhold from disclosure the location of any specific chemical required by section 312(d)(2) to be contained in a Tier II inventory form. This process of confidential treatment of location information is separate from the process for treatment of trade secret information contained in the rule for section 322.

*F. Claims Under Section 313*

Trade secrecy claims under section 313 must include a copy of the toxic release inventory form. This form is published at 53 FR 4540. The submitter must check the box on the form indicating a trade secrecy claim and include a generic class or category. This generic class or category must be structurally descriptive of the chemical claimed as trade secret, as described in the Generic Class or Category subsection of section II.C. of this preamble.

EPA must also receive a sanitized copy of the toxic release inventory form which is identical to the original except that the chemical identity will be deleted, leaving the generic class or category. A substantiation for each claimed chemical identity must also be submitted, as described in section II.G. below. Claims should be packaged as described in section II.B.1 of this preamble and in the instructions to the substantiation form.

*G. Initial Substantiation*

Section 350.7 of the proposed rule required that all claims of trade secrecy must be substantiated by the claimant providing specific answers to seven questions set forth in the section. The answers to each of the questions posed, or an explanation as to why that question is not applicable, were to be provided on the substantiation form in § 350.27 and to accompany the submission. The questions posed in the rule (and the identical questions on the form) were based on the four statutory criteria in section 322(b) of Title III and are intended to elicit from a submitter all the information necessary to fulfill the statutory criteria.

The information submitted in response to these questions is the basis for EPA's initial determination as to whether the substantiation is sufficient according to the statutory criteria to support a claim of trade secrecy. Consequently, the role of the initial substantiation in the trade secret protection process as well as the specific language of individual questions asked under § 350.7(a) received considerable comment.

A description of the relationship between the rule and the statutory scheme is as follows. The first decision EPA must make after receiving a petition to disclose trade secret chemical identity or after initiating such a decision on its own concerns the sufficiency of the trade secret claim, that is, whether, assuming all assertions made in support of the claim are true, the assertions are sufficient to support a claim of trade secrecy for the chemical identity. EPA must make this determination of sufficiency based solely on the information which the trade secret claimant submits in the substantiation included with its Title III submission. See section 322(d)(2). It is only when a submitter's claim is deemed sufficient that it is entitled to "supplement the explanation with detailed information to support the assertions." See section 322(d)(3)(A). Then, EPA is to determine whether the "assertions in the explanation are true and the specific chemical identity is a trade secret." See section 322(d)(3)(B).

A major concern of several commenters was that the initial substantiation requirements were too detailed and burdensome, and that they undercut the statutory scheme noted above. Commenters argued that Congress clearly intended to establish a two-step process for substantiation of trade secrets, as expressed in section 322(d)(3)(A). The commenters asserted

that the proposed rule blurred the distinction between the two-step trade secret substantiation process by requiring the "detailed information" initially.

The commenters proposed several options to remedy their concerns. The commenters argued that claimants should be allowed to make assertions in the initial substantiation and that details supporting the assertion need only be supplied when a third party files a petition for disclosure. One commenter argued the foregoing point by stating that EPA should merely accept the assertion by a submitter that competitive harm will result if an alleged trade secret is made public—no up-front substantiation should be required for that particular assertion, and only upon challenge would a substantiation be required. The commenter felt that this option would assist a company in meeting filing deadlines because the time-consuming substantiation form would be delayed pending a challenge to the claim.

EPA has carefully considered the commenter's statements. One approach that was considered, though not adopted, was, instead of utilizing the proposed form, listing the four statutory requirements as set forth in the statute and requesting the submitter to verify that it believes it has met these requirements. The Agency chose not to adopt this method because of concerns that responses might not include the specific facts necessary for EPA to evaluate the sufficiency of a trade secret claim, as Congress required in the statute.

The Agency has concluded that while Congress did not intend the information collected up-front to consist solely of conclusory statements parroting the four criteria of trade secrecy set forth in the statute, neither was an overly detailed information collection intended, which could prove unduly burdensome. EPA has sought to strike a balance between these two extremes.

In striking this balance, the Agency has decided to make some changes in the rule as proposed (and discussed below), in order to lessen the amount of detail required in the up-front substantiation, so that the reporting burden is not so great. More specific additional details may still be requested as supplemental information.

The Agency has also revised § 350.7(a) (Substantiating claims of trade secrecy) and the substantiation form to state that a submitter must assert "where applicable" specific facts. This change is intended to reduce uncertainty as to when detail is required and to relieve claimants of the burden of having to certify as true speculative statements or negative conclusions, which commenters pointed out as a problem with some of the questions as proposed. EPA is concerned that adoption of this change might encourage claimants to not provide specific detail in many cases where their assertions require it; the change is not intended to relieve submitters of this responsibility.

The comments also raised issues concerning several of the individual questions or sub-parts to questions, proposed in § 350.7(a), and these are discussed individually below.

*Question 1.* The question as proposed read: "Describe the specific measures taken to safeguard the confidentiality of the chemical identity claimed as trade secret."

Two comments were received concerning the text of Question 1. These comments stated that the question requested information not required by the Act. However, the Agency disagrees since the statute in specific terms requires this information. Basic to the law of trade secrets is the requirement that the owner of a trade secret has taken steps to protect the secret from disclosure. Therefore, the question is a necessary and required first inquiry in determining whether trade secret protection is warranted for the specific chemical identity.

The Agency also received comments that proposed Question 1 did not request all the information specifically required by section 322(b) of the statute; that is, whether the submitter intends to continue taking measures to safeguard its trade secret information. The commenter also noted that this information was expected under the sufficiency criteria. (See discussion of sufficiency criteria below under section IV.C.) The Agency agrees with the commenter that such information is required, and has revised Question 1 accordingly.

Question 1 has been revised to read as follows: "Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret, and indicate whether these measures will continue in the future."

*Question 2.* The question as proposed read: "Have you disclosed this chemical identity to any person not an employee of your company or of a local, State or Federal government entity, who has not signed a confidentiality agreement requiring them to refrain from disclosing the chemical identity to others?"

Section 350.7(a)(2) and Question 2 ask whether the submitter has disclosed the chemical identity to any person not a company or government employee who has not signed a confidentiality agreement. The one significant comment on the question noted that the proposed regulation specifies a signed confidentiality agreement, whereas, the statutory language upon which this Question is based requires persons claiming a trade secret to show that persons dealing with the alleged trade secret are "bound by a confidentiality agreement." The form of the agreement is not specified. The commenters cited State law, common law, and custom as establishing that unwritten trade secrecy agreements are enforceable.

EPA agrees with the commenters that Congress did not specify that the confidentiality agreement must be a written document. Indeed, the purpose of the question is to ascertain whether there exists a confidential relationship between a submitter and other parties that would prevent disclosure. The threshold test for a confidentiality agreement is whether it is legally enforceable. Although having a written agreement, as proposed, simplifies substantiation of the fact that the information was treated as a trade secret and steps were taken to secure its secrecy, EPA agrees that the requirement for a written agreement is not specified by Congress and the intent of the requirement can be met without a writing.

One minor comment was received which did not require any change in the rule. Several commenters cited to situations in which a trade secret is inadvertently disclosed; however, the company does not sustain an injury because the error is corrected before the trade secret falls into the hands of a competitor. They requested that Question 2 of the Proposed Form be expanded to allow for explanation of inadvertent or mistaken disclosures that were promptly corrected or retrieved before competitors became aware of the disclosure.

The Agency does not believe that any change in the form or question was necessary in response to this comment. The submitter must answer affirmatively to Question 2, but then should attach an explanation. EPA will consider the explanation in the context of all the other steps the submitter has taken to protect the trade secret.

EPA has deleted the reference to a "writing" in the final § 350.7(a)(2) and Question 2. The final Question 2 reads: "Have you disclosed the information claimed as trade secret to any other person (other than a member of a local emergency planning committee, officer or employee of the United States or a State or local government, or your

employee) who is not bound by a confidentiality agreement to refrain from disclosing this trade secret to others?" This formulation of the question avoids the double negative in the proposed question about which some commenters complained.

*Question 3.* The question as proposed read: "List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim."

One commenter thought that the question did not address situations where information deemed "confidential" is often submitted to the government and the claim left unchallenged, without a determination of the claim's validity. The commenter stated that even if the claim is not expressly denied, it is possible that the confidentiality claim would be denied if eventually reviewed.

In this question, EPA is attempting to ascertain the submitter's efforts to protect its trade secret. The most important elements of this question are whether chemical identity was previously claimed as trade secret and whether the claim was ever denied. If the claim of trade secrecy was denied and the chemical identity therefore made public, the submitter would not be able to meet the statutory test for confidentiality. Therefore the Agency will not revise Question 3 to include the question of whether the submission was reviewed under the other authority.

Several commenters questioned whether an explanation should be permitted in instances where there is a qualified or partial grant of confidentiality by a government entity, or of where a prior determination does not affect the current claim. One commenter stated that Question 3 does not consider the potential situation of a qualified or partial grant of confidentiality by a government entity, since the question does not request an explanation in the event that a particular government entity has denied a trade secrecy claim. The commenter asserted that there may be circumstances in which a partial or total denial of the claim should not adversely affect the claim being made under Title III. A second commenter observed that the fact that the specific chemical identity of a chemical has been disclosed in some context in the past should not result in forfeiture of trade secret status if the disclosure was not tied to the specific Title III information that is at issue.

Another aspect to this issue is raised by a third commenter who alleged that Question 3 does not take into consideration the trade secret status of chemicals whose identity may have been disclosed to a government agency under circumstances where the confidential connection to the submitting firm remains undisclosed. Specifically, the commenter cites to the nonconfidential Toxic Substances Control Act (TSCA) inventory where specific chemical substances are reported without claims of confidentiality because the inventory is compiled in such a manner as not to link a chemical with a firm.

The Agency must collect information on whether the submitter has disclosed the information claimed as trade secret to a State, local or Federal agency, including previous disclosures to EPA under Title III or other statutes, and the steps the submitter took to protect this data. In doing so, the Agency is also attempting to discover whether there has been a public disclosure of the information. Submitters who believe it necessary to explain special circumstances may do so. The Agency also wishes to point out that it is sometimes possible to link specific chemical substances with the reporting firm under the non-confidential TSCA inventory. The submitter must have claimed the information reported as confidential to assure that there is no link under the inventory.

One commenter stated that if "disclosure" was defined too broadly it would negate the intent of the Community Right-to-Know aspect of Title III. A company might be reluctant to share information with an LEPC to avoid being held to have disclosed the trade secret. However, the commenter's discussion seemed to indicate that the information being provided to the LEPC would be health and safety data, not the specific chemical identity which constitutes the trade secret. Therefore, the situation described by the commenter would not constitute a disclosure of the trade secret, and the Agency has decided that no revision to the final rule is necessary to respond to this comment.

*Question 4.* Proposed § 350.7(a)(4) and Question 4 require trade secret claimants to substantiate the harm to their competitive position that would result from disclosure of the information claimed as trade secret. The proposed Question 4 provided:

(1) In order to show the validity of a trade secrecy claim, you must identify your specific use of the substance claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(a) Describe the specific use of the chemical substance, identifying the product or process in which it is used. (If you use the substance other than as a component of a product or in a manufacturing process, identify the activity where the substance is used.)

(b) Has your company or facility identity been linked to the specific chemical identity of the substance in publications or other information available to the public (of which you are aware)? ☐ Yes ☐ No. Is this linkage known to your competitors? ☐ Yes ☐ No. If the answer to either question is yes, explain why this knowledge does not eliminate the justification for trade secrecy.

(c) If this use of the substance is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the form.

(d) Explain why your use of the substance would be valuable information to your competitors.

Several commenters asserted that it is unreasonable for the Agency to require claimants to characterize their competitors' knowledge of the information claimed to be trade secret, as in Questions 4 (b) and (c). They argued that it is impossible to state what someone else knows, and that the inability to provide an accurate assessment of what competitors know should not endanger a trade secret claim. This requirement was also claimed to be inconsistent with the common law of trade secrecy, which does not require a trade secret claimant to show the knowledge, motivation, or capabilities of its competitors in order to avoid forfeiture of a trade secret. Moreover, commenters argued, a substantiation should not be determined insufficient on the basis that a competitor is aware of the claimant's use of a substance. As long as the information confers an advantage on the firms that do know it and it is treated as a secret by each of them, the information should qualify for trade secret status. Finally, one commenter went so far as to suggest that any reference to competitors' knowledge should be deleted altogether.

The problem of requiring claimants to assert facts concerning the knowledge of competitors is related to a more general complaint of commenters that the criteria of proposed § 350.7 tended to be phrased as "negative conclusions," and thus were difficult to prove. Commenters asserted that these provisions would place claimants in the untenable position of being required to certify the accuracy of statements that cannot be anything more than speculation.

Commenters are correct in stating that trade secrecy claimants should not be required to certify to the truth of

speculative statements. It is also true that more than one person can claim trade secrecy protection regarding the same information. Nevertheless, one of the factors that the Agency must consider in determining whether information is a trade secret is the *extent* to which the information is known outside of the claimant's business. Therefore, claimants should be required to address their competitors' knowledge if they know whether such knowledge exists.

Accordingly, the Agency has revised § 350.7(a)(4) and Question 4 to require claimants to characterize their competitors' knowledge of the information claimed as trade secret, to the extent that they know whether such knowledge exists.

One commenter also stated that the term "substance" is used for the first time in substantiation Question 4, is not defined, and therefore is ambiguous. The commenter suggested that EPA define the term or, preferably, replace it with a term that is already among the terms used in the rule. In order to conform Question 4 with terminology used throughout the rule, EPA has replaced the term "substance" with the phrase "chemical claimed as trade secret" in the final rule.

Several individual questions within Question 4 also received comment, and are discussed in order.

*Question 4(a).* This question asks the submitter to describe the specific use of the chemical substance, identifying the product or process in which it is used. One commenter suggested that EPA delete the term "specific" as it relates to the use or process of the chemical being described because no more than a general description is necessary here. The commenter also asked the Agency to clarify that a facility need only provide process or use information that is relevant to the claim being made, i.e., that the claim of trade secrecy may not relate solely to the use of the chemical, but may relate to other factors.

EPA disagrees with the commenter on the specificity of use information that is required. Such information is always relevant to a trade secrecy claim. Although information regarding use may not always be sufficient, standing alone, for the Agency to determine the validity of a trade secrecy claim, it is necessary information in the Agency's evaluation of the claim which should, together with other required information, enable the Agency to make the determinations required by Title III. Accordingly, EPA has retained the requirement for information regarding the specific use in the final rule, but has revised § 350.7(a)(4)(i) and Question 4(a) to substitute the term "chemical" for "substance" (as explained above).

*Question 4(b).* This question asks whether the company or facility identity has been linked to the specific chemical identity of the substance in publications or other information available to the public and whether this linkage is known to competitors. The one comment received suggested that the subquestion, "Is this linkage known to your competitors?", should be deleted, because the claimant cannot know the answer, making it speculative. Further, the commenter stated that even if the linkages were known by a competitor, this would not necessarily render the trade secret invalid.

As discussed above, EPA agrees that the knowledge of competitors may not be known. EPA has amended the final rule to reflect this change. In addition, EPA added a reference to patents in this question, which are a subset of publications. The discussion under Question 7 describes in detail the reasons why the requirements of the substantiation dealing with patents can be adequately addressed in the modified Question 4(b). Therefore, in the final rule, § 350.7(a)(4)(ii) and Question 4(b) have been revised to read as follows: "Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy."

*Question 4(c).* The question asks the submitter to explain how competitors could deduce a trade secret use from disclosure of the chemical identity together with other information on the reporting form. One commenter stated that this question should be deleted as speculative. The commenter argued that if chemical identity as related to use could be deduced from other information on a Title III submission, there would hardly be reason for the claimant to incur the time and expense of submitting a trade secrecy claim. Another commenter argued that this question and Question 4(d) (discussed below) appear to be more appropriate for substantiating claims of *use* confidentiality than *chemical identity* confidentiality. The commenter argued that a competitor may be able to determine information on a generic basis sufficient to recognize the specific information it needs in order to learn the trade secret. The commenter stated that a company should be able to protect itself from future competitors as well as present ones.

The Agency is not persuaded by comments that Question 4(c) should be dropped from the substantiation that must be provided by each claimant. Regarding the supposed distinction between use confidentiality and chemical identity confidentiality, the two concepts are not mutually exclusive. Rather, information on the use of a chemical is necessary to determine the validity of a trade secrecy claim as to the identity of that chemical.

The final rule, however, contains a revision of § 350.7(a)(4)(iii) and Question 4(c) that substitutes "chemical claimed as trade secret" for the term "substance."

*Question 4(d).* The question requires the submitter to explain how his use of the substance would be valuable information to competitors. One commenter asked the Agency to clarify that submitters are not required to include a dollar estimate in their statement of "value," particularly since such an estimate would be speculative and, therefore, would not be certifiable as a "specific fact." Another commenter suggested that this question be revised to read, "Explain why the information for which chemical identity is being claimed trade secret would be valuable information to other business entities." This commenter stated that it is not only "competitors" but other business entities that could use trade secret information to the detriment of the claimant.

First, EPA does not intend for submitters to provide a dollar estimate as the sole measure of value in Question 4(d). Such a requirement would indeed put submitters in the position of certifying what could be highly speculative information. Reasonable dollar estimates may be worthwhile in the final determination, and may be requested as supplemental information. Second, the law of trade secrecy refers to "competitors," not "other business entities," as the universe of entities against whom trade secrecy protection applies.

The only change that has been made to § 350.7(a)(4) and Question 4(d) in the final rule has been the substitution of the term "chemical" for the term "substance."

The final version of question 4 reads: "In order to show the validity of a trade secrecy claim, you must identify your specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in

which it is used. (If you use the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the chemical claimed as trade secret is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

(iv) Explain why your use of the chemical claimed as trade secret would be valuable information to your competitors."

*Question 5.* The proposed Question 5 read: "Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss of sales or profitability."

Two commenters stated that an estimate of the potential loss of sales or profitability should not be required. One of these commenters asked EPA to indicate in the Preamble to the final rule that detailed information need not be submitted in response to this question at the time of an initial submission. The commenter stated that this question would be time-consuming due to the amount and diverse sources of marketing and other data required to provide an accurate estimate.

A more detailed estimate of the potential loss of sales or profitability may be more appropriate as part of a supplemental substantiation (at which time EPA assesses the factual accuracy of the submitter's assertion). The purposes of an initial substantiation may be fulfilled by requiring a description of the nature of harm to competitive position that may result from trade secret disclosure, and an explanation of why such harm would be substantial. EPA agrees with these commenters, and has dropped the requirement to develop a loss of sales estimate as part of the initial substantiation.

One commenter requested that EPA recognize that trade secrets developed by "serendipity" are protectable under section 322 of Title III. The commenter noted that although the submitter may not have gone to any great expense to develop the trade secret, the secret nevertheless may be of great value to the submitter. This is consistent with the intent of the statute and the sufficiency criteria described in the final rule. The costs discussed in the rule relate to the cost to a competitor of replicating the information, not to the owner of the information in developing it originally. Although information will not be protectable as trade secret if it is readily available public knowledge, nothing will prevent the protection as trade secret information which the claimant has discovered with minimal effort by a stroke of good fortune.

Accordingly, EPA has revised § 350.7(a)(5) and Question 5 to read as follows: "Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial."

*Question 6.* The proposed question 6 read: "To what extent is the substance available to the public or your competitors in products, articles, or environmental releases?

Describe the factors which influence the cost of determining the identity of the substance by chemical analysis of the product, article, or waste which contains the substance (e.g., whether the substance is in pure form or is mixed with other substances), and provide a rough estimate of that cost."

The issue of discovery of a chemical by reverse engineering arises in Question 6 of the substantiation form, § 350.7(a)(6), although the term "reverse engineering" is not mentioned in the question. This section of the substantiation is derived from the fourth statutory criterion (that chemical identity is not readily discoverable through reverse engineering) and the question requires answers that reflect on whether the trade secret claimed can be reverse engineered.

Most comments regarding reverse engineering focused on the difference between the proposed rule's use of the term "reasonably learn" as opposed to the statutory term "readily discoverable" as the appropriate standard of sufficiency for evaluating a chemical's susceptibility to discovery by reverse engineering. Commenters generally objected to the proposed rule's use of the term "reasonably learn", primarily on the basis that it would provide less protection for trade secrets than would the statutory standard "readily discoverable." The statutory term was also favored because it is a generally accepted and understood term employed in analytic chemistry, while "reasonably learn" is not.

Most commenters who addressed this issue explained that given sufficient time and ample resources, the discovery of almost any chemical by reverse engineering would be considered "reasonable." The commonly understood definition of the statutory standard, on the other hand, takes into account whether the time and resources necessary to successfully reverse engineer a product are readily available. Conversely, one commenter supported a definition that would deny trade secret protection if an identity is at all discoverable by reverse engineering.

Essentially, the reasonably learn versus readily discoverable issue is a matter of terminology. The Agency's choice of the term "reasonably learn" in the proposed rule was derived from the statute's directive in section 322(c) that the regulations regarding reverse engineering be "equivalent to comparable provisions" in OSHA's Hazard Communication Standard, and any revisions to the HCS required by *United States Steelworkers v. Auchter*, 763 F.2d 728 (3d Cir. 1985).

The definition of trade secrecy in the HCS was determined by the *Auchter* court to be legally deficient with respect to determining the legitimacy of trade secret claims because it failed to account for a chemical's susceptibility to reverse engineering. The revised HCS accordingly adopted the Restatement's definition of trade secret as an appendix, which requires consideration of the ability of others to discover the secret by legitimate means, including reverse engineering.

It is apparent from these revised OSHA regulations, as well as from the Restatement's definition and applicable case law, that the generally understood meaning of "readily discoverable" by reverse engineering requires that the chemical identity at issue be discoverable using readily available equipment, generally known analytic techniques, and that the required costs, time, and resources are reasonable considering the benefits derived. This is the standard the Agency intended by its initial choice of the "reasonably learn" language. The Agency also intended, with the use of this language, to avoid denying trade secrecy claims on a purely theoretical ability to reverse engineer, since this would disregard the costs involved.

The Agency has replaced the term "reasonably learn" with "readily discoverable." This standard is consistent with the revised OSHA HCS and the holding of *Auchter*, as directed by section 322(c). In order to avoid any confusion about the applicable standard, and to make it as consistent as possible with the HCS, the Agency has also adopted the Restatement

definition of trade secret as an appendix.

These changes should be recognized as changes in terms solely for the purpose of promoting clarity; it does not indicate a substantive change in the standard.

Commenters also perceived other practical and legal problems arising from the proposed trade secret definition with respect to reverse engineering. Section 350.7(a)(6) and Question 6 of the proposed rule requested trade secrecy claimants to "provide a rough estimate of [the] cost" of determining the identity of the trade secret substance through reverse engineering. The development of such cost estimates was considered useful by the Agency because cost is a factor to consider in determining whether a trade secret is readily ascertainable by reverse engineering. Commenters nevertheless pointed out difficulties, such as that developing a preestimate of the costs to reverse engineer would be speculative owing to the uncertainties of analytic chemistry, and that the costs will vary widely from company to company for analysis of similar chemical compounds because of differences in available resources and equipment and in the level of training and sophistication of those conducting the analyses.

Definitional problems were also raised, such as whether the cost estimate should include costs other than those to conduct the chemical analysis (i.e., the costs to develop and replicate the product once the chemical constituents have been identified), and whether the estimates should include the cost of the necessary equipment. Commenters also noted that the uncertainty of reverse engineering costs contributes to the trade secret's protection, since unknown costs may influence a competitor's decision not to undertake such an analysis.

The concerns regarding the possible compromise of trade secret protection by providing an estimate of the costs to reverse engineer seem to be the result of some confusion about the rule's requirements. If cost information is itself confidential information that information may be claimed as such on the trade secret substantiation.

Nevertheless, trade secret law requires some indication of the cost to discover the trade secret in order to determine the validity of the claim. If the cost of identifying the trade secret by reverse engineering exceeds the value of the trade secret itself, the trade secret is not considered to be readily discoverable. However, as one commenter correctly pointed out, cost is an inexact proxy for the pertinent factual determination of whether the trade secret is disclosable by reverse engineering. The variation in resources available to different companies also makes dollar comparisons difficult, thereby lessening the value of dollar-specific estimates.

While it is impossible to determine the ease or difficulty of reverse engineering without considering the costs and equipment involved, it is apparent that the requirement to develop specific dollar estimates will not appreciably further the inquiry at the initial stage of substantiating a trade secret under Title III. More useful to the analysis are the descriptions of the factors influencing the cost of identifying the substance sufficient to disclose the trade secret through chemical analysis. Accordingly, the Agency in the final rule has deleted the requirement to provide a "rough cost estimate" of the costs of reverse engineering in the substantiation form, but has retained the requirement to provide a description of the factors that influence the costs of analysis.

Claimants may still be requested to develop cost estimates as supplemental information following the initial review of the substantiation. The descriptions of cost factors in the substantiation must be as specific and detailed as practicable and should include information regarding the level of expertise needed, the type of equipment required, the time involved, and so forth. It is in the submitter's best interest to provide a well-detailed description of those factors that are indicative of cost, so that the Agency can make a realistic appraisal of this express statutory criterion. The failure to provide a sufficiently detailed description will likely jeopardize a trade secrecy claim.

Section 350.7(a)(6) and Question 6 of the trade secret substantiation form request information regarding the trade secret chemical's availability in both final products and in environmental releases. Commenters objected to the requirement to assess availability in environmental releases, citing myriad practical problems attendant to analyzing waste streams, such as the extent to which a waste flow may be treated prior to discharge, varying flow rates, dilutions, unintended reactions, the presence of impurities, and similar factors. These factors are asserted to make it economically impractical to conduct such a chemical analysis, and to adversely affect the ability of presently-available technologies to detect the chemical at all.

The Agency recognizes that, as a practical matter, the likelihood of successfully identifying a chemical present in facility wastes is less than the likelihood for analysis of a finished product available on the open market. Nevertheless, the assessment of whether the chemical identity is discoverable in a waste stream or release is not significantly different from the same assessment for the discoverability of a chemical present in a product available to the public or competitors. The salient question is, given the compound or mixture under scrutiny, can it be readily reverse engineered to identify the chemical that is claimed as trade secret. In order to address those cases in which a release is of sufficient purity such that the chemical is susceptible to discovery through reverse engineering, or where technological advances make such analysis feasible, this factor has been retained in the final rule.

Commenters also suggested that presumptions be established against a product's susceptibility to reverse engineering in certain cases. However, because assessing whether a "secret" can be discovered by reverse engineering or other investigatory method is fact-specific and often a unique inquiry, the Agency does not believe that a decisionmaking process punctuated by presumptions in lieu of specific fact-finding is useful or appropriate.

One commenter questioned whether a history of disinterest on the part of competitors in the trade secret chemical should be taken into consideration in determining whether a chemical is discoverable by reverse engineering. EPA agrees that a history of disinterest in a claimant's product is relevant to a trade secret claim, as it is some indication that the secret is not generally known to competitors. The history of disinterest may also be some indication that the chemical is not susceptible to reverse engineering, but it cannot be considered dispositive.

The final question 6 reads: "(i) To what extent is the chemical claimed as trade secret available to the public or your competitors in products, articles, or environmental releases? (ii) Describe the factors which influence the cost of determining the identity of the chemical whose identity is being claimed trade secret by chemical analysis of the product, article, or waste which contains the chemical (e.g., whether the chemical is in pure form or is mixed with other substances)."

*Question 7.* The proposed question 7 read: "Is your use of this substance subject to any U.S. patent?

If so, identify the patent and explain why (A) it does not connect you with the

substance and (B) why it does not protect you from competitive harm.

Patent Number: _____.

The commenters raised several issues concerning the patent question. First, they pointed out that a patent is a "publication" and, as such, is covered by Question 4 in the substantiation. Next, the commenters described several situations in which a patent would not reveal the trade secret, for example, the specific identity of the valuable substance is buried in a large listing of substances, or the use of the identified substance is the trade secret (i.e., the linkage is the trade secret). Also, the commenters feared that a "yes" answer to Question 7 would disqualify the claim for trade secret protection, even though trade secret protection and patent protection are not identical.

Merging Question 7 into Question 4(ii) satisfies many of the commenter's concerns. Question 4(ii) now expressly considers patents, as well as any other publications, in the relevant context of whether the publication of the chemical identity eliminates the submitter's claim for trade secret protection.

The second issue under Question 7 that must be addressed is why patent protection does not adequately protect the claimant from competitive harm. Eliminating Question 7 does not leave this issue unaddressed because of its merging into Question 4(ii) and because the Agency intends to gather additional detail on this issue in supplemental questions to the submitter.

EPA has determined that the substance of Question 7 can be adequately addressed in Question 4(ii), on publications, and Question 5 on competitive harm. Therefore, Question 4(ii) has been amended to specifically reference patents. In the final rule, § 350.7(a)(4)(ii) and Question 4(ii) read: "Has your company or facility identity been linked to the specific chemical claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy."

Finally, commenters raised a question about the requirement in the proposed rule, in § 350.5(g), that trade secrecy claims with missing substantiations or lacking a response to each question would be rejected without notice to the submitter, and the chemical identity would be made available to the public. Various commenters criticized this provision as unduly harsh, and noted that various circumstances could occur, such as clerical errors or explanations being separated from the substantiation forms which could result in EPA receiving an incomplete substantiation. EPA agrees and accordingly, this provision has been deleted. However, if a company's submissions indicate a disregard for the rule's requirements, EPA will consider this in evaluating whether a claim is frivolous.

*H. Substantiation Form*

A discussion of the comments on and changes to each of the questions on the substantiation form is found in section II.G. above. The form itself is designed to provide sufficient space for submitters to succinctly answer each question. The Agency is looking only for specific facts, briefly stated within the space permitted to indicate that the submitter has met the prima facie threshold of trade secrecy. If submitters believe it necessary to make an attachment, they may, although such instances should be rare. Additional, more extensive facts can be gathered in the supplemental round of questions.

The Agency also received several public comments on the certification statement included at the bottom of the form. The preamble of the proposed rule required that a corporate officer sign the certification form. Several commenters suggested this was unduly burdensome in a large corporation because the officer would be required to handle a large number of submissions and would not have personal knowledge about the information contained in each submission. A few commenters also suggested that the word "immediately" should be deleted from the phrase "based on my inquiry of those individuals immediately responsible for obtaining the information" because large corporations would have an intermediary between the person gathering the information and the signer of the certification. Also, the certifications for sections 312 and 313 do not contain this language.

EPA has added a definition of "senior management official" to § 350.1 of the rule. The certification form must now be signed by an owner, operator or a senior management official. The Agency believes this requirement balances the commenter's concerns of burden on the corporate officer who may not have personal knowledge of the information with the need to assure high level responsibility for the information on the substantiation form, in accordance with Congressional intent. The Agency accepts the commenters' reasoning concerning the word "immediately" in the certification and has deleted the word in this final rule.

EPA received comment requesting the deletion of the last two sentences of the certification statement. The two-tiered substantiation process described in section II.G. allows the submitter to supply and the Agency to request more factual information concerning the trade secret substantiation. EPA is not requesting that the up-front substantiation contain as much detail as was originally proposed, thus there must be additional details for some of the questions available upon request. This requirement will not be deleted.

The last sentence of the certification concerns the penalty for a frivolous claim. One commenter requested that the Agency not interpret the certification requirements to provide a basis for asserting individual liability against corporate officers. EPA will not delete this provision; however, the language has been modified. In most cases, the company, not the individual signer, would be liable for the civilly or administratively imposed penalty. In addition, knowingly providing false or misleading statements to the United States government is a criminal offense under 18 U.S.C. 1001, and language to this effect has been added.

One commenter requested clarification as to whether the owner, operator or senior management official who signs the trade secret certification must be the same individual who signed the section 312 or section 313 certification. The Agency does not require the same individual to sign all the forms; the Agency wishes to encourage the most knowledgeable individuals with sufficient authority to sign each certification. This balance of knowledge and authority for all sections of Title III may not be possible for one individual in a large corporation with various divisions.

Finally, the Agency received one comment stating that the phrase requiring the official to verify that the substantiation was "true, accurate and complete to the best knowledge and belief" of that official was unduly burdensome and defeated the purpose of the trade secret provisions. The Agency believes that the language in the proposed rule is appropriate to convey the serious nature of the certification statement and the trade secret substantiation and has retained it in the final rule.

*I. Claims of Confidentiality in the Substantiation*

Sometimes the submitter may need to refer to the chemical identity claimed as trade secret in the substantiation for that chemical. Also, in order to supply a complete explanation of its claim of trade secrecy, the submitter may include

other trade secrets or confidential business information in the explanation.

Section 322(f) allows submitters to claim as confidential on the substantiation form any information which falls within 18 U.S.C. 1905, the federal Trade Secrets Act, which requires the federal government to protect trade secrets and confidential business information unless another federal statute authorizes disclosure. Thus, the information which may be claimed confidential in the substantiation includes the specific chemical identity, as well as any other trade secret or confidential business information.

One commenter requested that the term "business confidentiality," which is defined in the Definitions section, be deleted wherever it appears. The commenter requests that the term "confidential business information" be used in its place. The Agency agrees that "confidential business information" has a common usage in the law of trade secrets. However, "business confidentiality," as defined in the final rule, is the same term used in the Agency's confidential business information regulations at 40 CFR Part 2.

To make these claims, the submitter must clearly label what information it considers to be trade secret or confidential. This substantiation is to be submitted to EPA, along with a sanitized substantiation, in which the trade secret and confidential business information is deleted. If any of the information claimed as trade secret on the substantiation is the chemical identity of a claimed chemical, then the submitter should include the appropriate generic class or category of that chemical on the sanitized version of the substantiation.

No substantiation needs to be submitted for information that the submitter includes in the substantiation and claims as trade secret or confidential. The submitter need only sign the certification included at the end of the substantiation form, as discussed above in section H. The claims of trade secrecy and confidentiality for information submitted in the substantiation are not subject to the petition process described below because this process applies only to claims of trade secrecy for the chemical identity made under Title III. Instead, requests for disclosure of other trade secret or confidential material must be submitted pursuant to the Freedom of Information Act regulations under 40 CFR Part 2.

The Agency received a comment requesting that the unsanitized substantiations be automatically classified as confidential under Executive Order 12600 which sets forth designation and notification procedures for confidential business information under FOIA. The provisions of this rule are in compliance with the Executive Order; unsanitized substantiations claimed as confidential are treated as such until determined otherwise.

*J. Updating Substantiations Submitted Prior to Final Rule*

Several commenters suggested that, in order to achieve "fundamental fairness," EPA should allow companies that submitted their Title III submittals prior to the effective date of this final rule on trade secrets to update their substantiations without penalty.

EPA agrees with this comment. Submitters could not know exactly what information would be required on the substantiation form until the final rule on section 322 is published. Thus, submissions filed prior to the effective date of this final rule will be allowed to be updated. Submitters may wish to utilize the final rule for filing submittals immediately upon publication, prior to the effective date, and are free to do so.

Commenters also requested that previous substantiations be returned to them when they submit an updated version. This is not possible, however. The Federal Records Retention Act requires that government keep such submittals as part of the Agency's record in order to support the Agency's activities and decisions.

*K. Cross-Referencing of Substantiations*

EPA has been encouraged by industry commenters to develop a reporting option that would allow trade secret claimants to cross-reference trade secret substantiations already submitted to EPA in subsequent Title III filings involving the same chemical and trade secret. Because the same chemical involving the same trade secret may be reported under different sections of Title III, and because these reports require periodic updating, claimants argued that the trade secret substantiations for each claim would be the same.

At least three different scenarios involving cross-referencing were identified by the commenters: (1) Subsequent reports involving the same chemical reported under different sections could all reference and rely on the same trade secret substantiation (multi-section referencing); (2) subsequent reports involving the same chemical and the same section—e.g., annual section 313 toxic chemical release reporting—could reference and rely on the earlier submitted substantiation (multi-year referencing); and (3) multi-facility companies could cross-reference a single substantiation when reporting for each of their facilities at which the same chemical is present, both for reporting under different sections (multi-facility referencing) and in subsequent years (multi-facility, multi-year referencing).

The issues raised by these comments require the Agency to strike a balance between a submitter's ease and convenience in making and substantiating trade secret claims, and the relative burdens, costs, and risks posed by altering the trade secret substantiation requirements to accommodate this proposed method of reporting.

On the one side of the balance, EPA's analysis indicates that a submitter's reporting burden is not reduced by cross-referencing.

First, a submitter must review their prior-prepared substantiations to identify one that is appropriate and relevant for re-use (that is, an identical substantiation). Cross-referencing requires that the submitter provide EPA with information sufficient to accurately identify the prior-submitted substantiation. Without cross-referencing, a submitter wishing to re-use an appropriate and relevant substantiation would be expected to photocopy the form, alter the reporting section check-off box, and re-sign the certification statement. The time and costs associated with each of these tasks are approximately equal, the costs for the cross referencing method being slightly higher for the submitter.

This somewhat counter-intuitive result is traceable to the labor-intensive procedures for cross referencing. While cross-referencing reduces the amount of paper involved, it is a slightly more complex process that increases the labor costs for submitters. The result is that there is no net savings for submitters achievable by cross referencing on a per document basis.

Second, EPA does not expect the number of trade secret substantiations that will be identical to be high, further reducing the potential for cross referencing to be an effective burden-reducing reporting method. The overall number of trade secret claims should not be high—approximately 0.1 percent of all Title III filings are expected to include trade secret claims—and because of the inexact nature of trade secrets and the differences in information required to be disclosed under each of the five reporting sections for which trade secret claims are allowed, the universe of substantiations that will be identical and appropriate for re-use should be small. There is thus a

low potential for cross referencing to measurably reduce a submitter's reporting burden.

Weighing against cross referencing are a variety of costs and other factors not consonant with the disclosure focus of the Title III program.

Trade secrets by definition run counter to the right-to-know intent of Title III, and just as the decision to make a trade secret claim should not be taken lightly, neither should substantiations be prepared as a routine document. The Agency encourages claimants to closely examine the reported information required in each case, and carefully assess whether and how that information affects what the submitter believes to be a trade secret. This explanation must be included in the substantiation. Even where previously created substantiations are relevant and appropriate for referencing, the claimant should have taken the time to carefully review the substantiation to determine its applicability to another claim. EPA procedures are designed to encourage this process.

Cross referencing has the potential to discourage such reviews and makes more likely the preparation and use of "boilerplate" substantiations for routine use. A review of substantiations submitted thus far under sections 311–312 indicates that many submitters are treating trade secret substantiations in this way. This is not consistent with the clear congressional intent that facilities subject to Title III provide EPA and the public with specific and detailed information when making a trade secret claim. Moreover, because of their general nature, boilerplate substantiations are more likely to be found insufficient to support a trade secret (thereby imperiling the claim), than is one specifically prepared to support a particular claim.

Finally, the costs to the Agency to implement a cross referencing system are not justified by the small potential for reducing a submitter's reporting burden. Cross referencing adds up to nearly 50 percent to the Agency's costs on a per document basis, exclusive of other system design and development costs and requirements. And because cross referencing increases the risk of an inadvertent disclosure of submitter's trade secret information (due, for example, to faulty identification information), additional quality-control procedures and security measures are required, at increased cost.

On balance, weighing the lack of any savings in the time and costs required for submitters to prepare a substantiation against the increased costs to the EPA and to the Title III program, cross referencing is not justifiable as a viable and effective reporting alternative. However, EPA is sensitive to and understands the burdens imposed by the extensive reporting requirements of Title III.

One significant factor contributing to the number of duplicate reports required is the number of different recipients specified by the Act. Within this statutory framework, EPA has investigated and will continue to investigate ways to reduce the overall reporting burden without compromising the primary objective of Title III. Toward this end, EPA has been able to identify and plans to implement other improvements to streamline the reporting process.

One burden-reducing improvement is the deletion of the requirement for the creation of an "unsanitized" MSDS when making a trade secret claim under section 311. Since most Title III reports and trade secret claims involve section 311, this should represent a significant savings. For similar reasons, EPA also deleted the requirement for unsanitized section 303 reports. In addition, EPA considered—and rejected—a requirement for claimants to substantiate as trade secrets the hazardous components of mixtures reported as a whole under section 311, which would have significantly added to the reporting burdens of complying with the trade secret rule.

EPA has taken steps to reduce the Title III reporting burden in other ways, such as permitting facilities to report their non-trade secret information by magnetic media.

EPA will continue to investigate ways to make compliance easier and more cost-effective both for EPA and for those subject to this law, while meeting the mandate received from Congress. Weighing the potential benefits of referencing against the costs and burdens, it does not appear that cross referencing is a viable method. However, EPA will look at the number of opportunities for cross referencing through the summer of 1989 and if actual experience provides contrary data, this issue will be revisited. Also, EPA will permit cross referencing of previous submissions sent to States on a State by State basis, as the States allow.

*L. Submissions to State and Local Authorities*

If a trade secrecy claim is made with respect to a particular submission, the sanitized Title III submittal and the accompanying sanitized substantiation must be sent to the appropriate State or local authorities, as required under section 322(a)(2)(ii) of the statute. Specifically, under section 303, the submittal and accompanying sanitized substantiation should be sent to LEPCs, and under sections 311–312 the MSDS or a sanitized section 311 list or Tier II submittal, as appropriate, and accompanying substantiation should be sent to the SERCs, the LEPCs and to local fire departments. Finally, a sanitized 313 submittal and substantiation must be sent to the designated State entity. If a Title III reporting form or a substantiation containing trade secret information is sent to a State or local authority by the submitter, under the law of trade secrets it will constitute public disclosure of the information, and the claim will be considered invalid.

Several commenters requested that EPA delete the requirement that a sanitized copy of the substantiation be sent to the State authorities and the local emergency planning committees. Section 322(a)(2)(A)(ii) requires that a trade secret claimant include in its section 303 (d)(2) and (d)(3), sections 311–312 and section 313 submittals an "explanation of the reasons why such information is claimed trade secret." Finally, these sections provide that all facilities subject to the Act submit this Title III submittal to the appropriate state and local authorities. Therefore, EPA cannot delete this requirement.

**III. Petitions Requesting Review of Trade Secrecy Claims**

Section 322 provides for a public petition process to request the disclosure of chemical identity claimed as trade secret. This petition process is only for requesting a review of the validity of a claim that a chemical identity is a trade secret. If requesters want disclosure of other items that have been claimed confidential (that is, items claimed as confidential in the substantiation, rather than the Title III reporting document), such requests for disclosure must be made pursuant to EPA's Freedom of Information Act regulations under 40 CFR Part 2.

The petition requesting disclosure must include the petitioner's name, address, and telephone number. The petitioner may be an individual, corporation, or other entity. It must also include the sanitized copy of the submission (e.g., the MSDS, toxic chemical release inventory reporting form) in which the chemical is claimed as trade secret, and the petitioner must clearly indicate on the form which chemical identity is requested for disclosure. Copies of the section 303 (d)(2) and (d)(3) filings are available at a location designated by the local

emergency planning committee. Copies of the section 311 and 312 filings are available at locations designated by the State emergency response commission and the local emergency planning committee. Copies of the section 313 filings are available from EPA and from the designated State agency.

EPA is requiring that a copy of the submission claiming trade secrecy accompany petitions for disclosure of chemical identity claimed as trade secret. The Agency believes that the requirement of a copy serves to prevent any confusion about what disclosure the petitioner is requesting. In the proposed rule, public comment was specifically requested on this issue. All four of the commenters who addressed this issue agreed that a petition for the disclosure of a chemical identity claimed as a trade secret should include a copy of the submission claiming the trade secret.

One commenter requested that the trade secret submitter be informed of the identity of a petitioner who has petitioned for the release of a trade secret specific chemical identity. This is not required by the statute and the Agency has decided not to add it to the final rule. However, the petitioner's name is publicly available under the Freedom of Information Act. Also, the petitioner is free to contact the facility directly.

EPA received several comments concerning standards for the petition process. A few commenters requested that EPA restrict the petition process in order to discourage petitioners who are seeking information for commercial, competitive or harassment purposes. Other commenters highlighted the importance of placing no limits on petitions to disclose the specific chemical identity since no restrictions were set forth in the statute. EPA agrees that it would be inappropriate to require petitioners to have a particular reason for requesting disclosure of chemical identity claimed as trade secret. The statute specifically states that "any person may petition the Administrator" and thus the Agency will not impose restrictions.

At least one commenter requested that EPA limit the number of times a trade secret could be challenged through the petition process, to avoid the filing of multiple petitions for disclosure of the same trade secret. However, the limitations of the statute, as described above, apply to the multiple petition situation as well, and EPA can provide no change in the final rule.

As soon as a petition is filed, EPA will begin the process of reviewing the trade secrecy claim. The time for reviewing the claim may vary, but the statute requires EPA to reach a decision within 9 months.

The petition should be mailed to the address set forth in § 350.16 of the rule, and set forth in this preamble at section II.B.4.

## IV. EPA Review of Trade Secrecy Claims

As described in the proposed rule, section 322 defines the process by which EPA determines whether a claimed chemical identity is entitled to trade secrecy. First, EPA must decide whether the answers to the substantiation questions are, if true, sufficient to support the conclusion that the chemical identity is a trade secret. This is the determination of sufficiency referred to in the statute and is made prior to any determination of the validity of the trade secrecy claim. The statute requires EPA to follow different procedures depending on whether EPA decides the answers to the substantiation questions are sufficient or insufficient.

### *A. Overview of the Process*

After receiving a petition requesting disclosure of chemical identity, EPA has 30 days to make a determination of sufficiency. If the claim meets EPA's criteria of sufficiency (explained in IV.C), EPA will notify the submitter that he has 30 days from the date of receipt of the notice to submit supplemental material in writing, supporting the truth of the assertions made in the substantiation. If this additional information is not forthcoming, EPA will make its determination based only upon information previously submitted in the substantiation.

If the claim does not meet the criteria of sufficiency, EPA will notify the submitter, who may either file an appeal within 30 days to EPA's Office of General Counsel or, for good cause shown, amend the substantiation in support of its claim.

Once a claim has been determined to be sufficient, EPA must decide whether the claim is entitled to trade secrecy. If EPA determines that the facts support the claim of trade secrecy, the petitioner will be notified. If EPA determines that the facts do not support the claim of trade secrecy for chemical identity, the submitter will be notified.

The statute provides for intra-agency appeal by the submitter to appeal adverse decisions and for U.S. District Court review after intra-agency appeal. This process is explained below in more detail.

### *B. Initial Review*

Proposed § 350.9(d) required that when EPA receives a petition requesting disclosure of a trade secret, or if EPA decides to initiate a determination of the validity of a trade secrecy claim, EPA shall first determine whether the chemical identity claimed as trade secret is the subject of a prior EPA determination of trade secrecy for that chemical identity at that same facility. If the earlier determination held that the facility's trade secret claim for the chemical identity was invalid, EPA was previously authorized to release the information. Before releasing the information, the proposed rule stated that the Agency would notify the petitioner that the facility's claim for trade secrecy status for the chemical identity is the subject of a prior determination concerning the same facility and that such claim was invalid.

Four commenters discussed the role that prior determinations should play in determining the validity of a trade secret claim. Some commenters said that prior determinations denying claims of trade secrecy should not be determinative of future claims concerning the same chemical, and suggested that this could violate constitutional due process. One commenter suggested that, in the alternative, the section should be revised to give equal weight to prior determinations that *upheld* the trade secret. Two commenters stated that once a specific chemical identity has been determined to be a trade secret, that finding of validity should be determinative against subsequent challenges to the same chemical.

While the Agency is not changing the scope of the provisions dealing with prior determinations in the final rule, EPA believes that some clarification of § 350.9(d) would better explain the nature of the prior determination and would respond to the commenter's concerns. The purpose of § 350.9(d) is to establish a simple procedure for releasing a chemical identity which has already been disclosed in a prior determination for the same chemical identity at the same facility. If the trade secret has been previously disclosed, Title III does not permit EPA to continue to withhold the chemical identity as a trade secret. Obviously, if the chemical identity has been revealed, the chemical identity is no longer a trade secret. Of course, the Agency's prior determination that the trade secret is invalid must have survived any appeals before the disclosure provision will be applied. The value of this provision was to expedite release of chemical identity which has already been revealed, but to satisfy due process EPA will not disclose the identity until the submitter has exhausted his challenges to the initial

Agency determination upon appeal to OGC and in U.S. District Court. The final rule has been amended to clarify this point.

The Agency is bound by the prior disclosure only if the chemical identity claimed as trade secret that is the subject of the second petition is identical to the trade secret disclosed when the prior determination held the claim to be invalid. There may be instances where the use of the chemical identity claimed as trade secret that is subject to the prior petition (and Agency determination) is different from the trade secret use that is the subject of the second petition. The information on different Title III submittals could represent different uses, one that did not qualify for trade secret protection under Title III and one that does. In short, EPA agrees with commenters to the extent that § 350.9(d) in the final rule will not automatically disclose a chemical identity until the Agency has determined that the identical trade secret has been held invalid in a prior determination.

The Agency will not be bound by a prior decision upholding trade secret protection in this rule. Trade secrets can be lost over time and the burden is on the claimant to prove that the chemical identity meets the statutory criteria upon receipt of a petition for disclosure. However, the Agency's prior determination of validity will be considered in later determinations.

Two commenters asked that a trade secret claimant be given adequate notice before a chemical identity is released. One of these commenters stated that if a prior determination was made that a facility's chemical identity was not a trade secret, EPA should delay 30 days before releasing the information in order for the claimant to seek judicial review. EPA has provided notice of intent to release chemical identity in various sections of the proposed rule where the Agency has determined that the chemical identity claimed as trade secret is not entitled to protection. The case of disclosure of chemical identity where a prior determination has been made is not significantly different from those other cases where the rule provides for notice and the opportunity to appeal to U.S. District Court before release of the claimed trade secret. As a result, § 350.9(d) of the final rule will be referenced to an amended § 350.18(c) which contains detailed requirements for notice of intent to release chemical identity determined not to be trade secret.

*C. Determination of Sufficiency*

A person withholding specific chemical identity from a submission under Title III must make specific factual assertions that are sufficient to support a conclusion that the chemical identity is a trade secret. These assertions are made by completely answering all of the questions listed in § 350.7 of the rule (and found also on the Trade Secrets Substantiation form), where EPA has listed the questions that must be answered to fully address the four requirements set forth in section 322(b) of the statute.

To assist submitters in answering the questions, EPA indicates in § 350.13 of the rule the criteria that it regards as the legal basis for evaluating whether answers provided by submitters are sufficient to support the trade secrecy of a chemical. Submitters may wish to examine these criteria in preparing their answers to the questions contained on the form.

EPA received several comments discussing the proposed sufficiency criteria. Some comments suggested that the Agency reduce the detail of the sufficiency criteria, so that the sufficiency criteria are not overinclusive of the statutory criteria and, in turn, the questions on the proposed form. The suggestions leaned toward making the sufficiency criteria identical to the proposed questions. Other comments suggested altering the proposed questions so that they identically reflect the sufficiency criteria. This way a claimant can directly address the criteria that EPA is seeking in order to establish a prima facie case of trade secrecy. Finally, other comments suggested that EPA review the proposed substantiation form to match the trade secrecy factors in section 322(b). This would substitute for the proposed sufficiency criteria altogether.

EPA determined that the sufficiency criteria, as proposed, are a valuable aid in evaluating the sufficiency of trade secret claims. While the substantiation form elicits specific facts, the criteria stated at § 350.13 are the legal standard used to determine whether the submitter has established a prima facie case for trade secrecy. The facts from the form are considered against the sufficiency criteria to make that determination.

The commenters' suggestions would alter the purpose of the criteria and undermine the ability of the Agency to determine whether or not submitters have made a prima facie case for trade secrecy under the initial review process. EPA did make changes in the sufficiency criteria to reflect changes made in the substantiation questions.

Submitters are encouraged to use the sufficiency criteria as a guide in formulating their answers to the substantiation questions. Both the questions and the criteria reflect the trade secrecy provisions of section 322(b) of Title III.

Under the first criterion, the facts must show that reasonable safeguards have been taken against unauthorized disclosure of the specific identity, that the specific chemical identity has not been disclosed to any person not bound by a confidentiality agreement including local, State or Federal government entities, and that any safeguards will be continued in the future.

Under the second criterion, the submitter must show that the chemical identity claimed as trade secret is not required to be released: (1) Under a determination by a State or Federal agency that the chemical identity in question is not a trade secret, or (2) under a State or Federal law which does not allow the chemical identity to be claimed as trade secret. This criterion was also discussed in section II.A. of this preamble under emission and effluent data.

Under the third criterion, as proposed, to show that disclosure of the information is likely to cause substantial competitive harm, the facts must show that either competitors do not know that the substance can be used in the fashion used by the submitter and that duplication of the specific use cannot be determined by competitors' own research activities or that competitors are unaware that the submitter is using the substance in this manner.

Some of the comments on substantiation Question 4 also raised similar concerns with this criterion. The final sufficiency requirement has been amended where appropriate to reflect the Agency's determination that a submitter cannot be required to certify another's state of knowledge, yet must adequately support his claim of trade secrecy. The revised § 350.13(a)(3) reads as follows, in the final rule:

(i) Either:

(A) competitors do not know *or the submitter is not aware that competitors know* that the *chemical whose identity is being claimed trade secret* can be used in the fashion that the submitter uses it, and competitors cannot easily duplicate the specific use of this chemical through their own research and development activities; or

(B) competitors are not aware *or the submitter does not know whether competitors are aware* that the submitter is using *this chemical* in this fashion.

(ii) The fact that the submitter manufactures, imports or otherwise uses *this chemical* in a particular fashion is not

contained in any publication or other information source (*of which the submitter is aware*) available to competitors or the public.

(Emphasis added to show changes in final rule.)

Several commenters, following the lead of the Chemical Manufacturers Association and the American Petroleum Institute, requested that EPA revise the final rule to recognize that just because one (or even several) competitors in a field of many know that a substance is being used in a particular fashion, this does not prevent the use from constituting a trade secret. EPA agrees with the commenters. The law of trade secrets does not require that the owner of the information be the only one aware of the information for it to be of value. The language of the rule refers to the knowledge of "competitors," and this is open-ended enough to encompass a claim asserted in a factual situation where some competitors are aware of a secret of which others are unaware. Therefore, EPA recognizes the validity of the commenters' arguments but has not changed the language of the final rule to reflect this. Trade secrecy claimants may file substantiations based on a factual situation such as the one described above.

Finally, the fourth criterion requires that a trade secret claimant show that the chemical identity claimed trade secret cannot be readily discovered by reverse engineering of the submitter's products or environmental releases. This requires the claimant to show that the chemical is not available to the public or competitors in the claimant's products or environmental releases. The claimant must show that the chemical identity is only discoverable using equipment that is not readily or generally available, that discovery requires the use of uncommon or exotic analytic techniques, and that the time, costs, and resources required for discovery exceed the benefits provided by the trade secret chemical. The more difficult, costly, and time-consuming the analysis required to discover the identity, the more likely the chemical identity will qualify for trade secret protection.

If the substantiation does contain sufficient answers, EPA will notify the submitter by certified mail. Under the statute, a finding of sufficiency automatically entitles the submitter to submit supplemental information to support the truth of the answers contained in the substantiation. This could include any information or documents which would demonstrate the veracity of the submitter's substantiation, or provide even greater detail in support of the submitter's claim. Based on comments on the proposed rule, EPA narrowed the level of detail required in the initial substantiation and thus increased the importance of the material provided in this second stage. This was done in order to decrease the initial burden without sacrificing the amount of information that would be used to determine the veracity of a claim of trade secrecy.

Upon receiving EPA's request for supplemental information, the submitter will have 30 calendar days to submit the information. If EPA does not receive the supplemental information within this time, it will make a trade secret determination based upon the information already submitted. One commenter inquired as to when the 30 days provided to submit additional information to EPA tolls. Specifically, must the information be received by EPA within 30 days or will the Agency adopt a "mailbox rule", as suggested by the commenter? The Agency has decided to adopt the "mailbox rule," and will consider the submission to be timely filed if postmarked within 30 days by certified mail with the U.S. Postal Service.

*D. Determination of Insufficiency*

If EPA concludes that a substantiation does not contain answers sufficient to support the four requirements of section 322(b), then EPA will find that the trade secret claim is insufficient. The submitter will be notified by certified mail of EPA's finding of insufficiency. The submitter may either appeal EPA's finding to EPA's Office of General Counsel or may amend its original substantiation if it demonstrates good cause to do so.

Good cause was limited in the proposed rule to the following:

(1) The submitter was not aware of the facts underlying the additional information at the time the original substantiation was submitted, and could not reasonably have known the facts at that time; or

(2) Neither EPA regulations nor other EPA guidance called for such information at the time the substantiation was submitted.

The Small Business Administration commented, prior to the publication of the proposed rule, that the good cause standard should include the circumstance where the submitter mistakenly does not provide information but otherwise acts in good faith to comply with the rule, and that such a provision was mentioned in the Conference Report.

Various commenters agreed with the Small Business Administration and criticized this provision as unduly harsh. These commenters noted that various circumstances could occur, such as clerical errors or explanations being separated from the substantiation forms, that would result in EPA receiving an incomplete substantiation.

EPA has evaluated these comments and largely agrees with the commenters. The Agency has included inadvertent omissions as one of the good cause exceptions in the final rule. It is still incumbent on submitters to ensure that claims are complete and properly packaged. Submitters should not be tempted to rely on this good cause exception to routinely cure defective submissions.

One commenter interpreted the "neither-nor" language in the second exception as indicating that the Agency would be giving guidance, which is published without notice and comment, the same weight as regulations. The commenter also noted that the Conference Report used the conjunctive "and." The Agency intended to adopt the same meaning as that included in the Conference Report. Accordingly this language has been changed in the final rule.

EPA has revised the good cause exceptions to read as follows:

"(A) The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at that time; or

(B) EPA regulations and other EPA guidance did not call for such information at the time the substantiation was submitted; or

(C) The submitter had made a good faith effort to submit a complete substantiation, but failed to do so due to an inadvertent omission or clerical error."

The submitter must notify EPA by letter of its contentions as to good cause and should include in that letter the additional supporting material. EPA will notify the submitter by certified mail if the good cause standard has not been met and the additional supporting material will not be accepted. The submitter may then seek review in U.S. District Court. If after acceptance of additional supporting material for good cause, EPA decides the claim is still insufficient, the submitter will be notified by certified mail and may seek review in U.S. District Court.

If EPA reverses itself on appeal or after accepting additional assertions for good cause, and decides that the trade secret claim is sufficient, then the claim will be processed as though it had been initially found to be sufficient. If upon appeal, EPA makes a final determination that the original answers in the substantiation were insufficient,

the submitter may request review in U.S. District Court within 30 days of notice of the final determination.

*E. Determination of Trade Secrecy*

All claims determined to be sufficient either initially, after appeal, or after acceptance of additional material for good cause, will be examined in order to determine whether a valid claim of trade secrecy is presented. In making a determination of trade secrecy, EPA will examine the factual information provided in the substantiation form in light of the four factors under section 322(b).

If EPA decides that the chemical identity is a trade secret, the petitioner shall be notified by certified mail and may seek review in U.S. District Court. If EPA decides that the chemical identity is not a trade secret, the submitter shall be notified by certified mail and may appeal this determination to EPA's Office of General Counsel within 30 days. If EPA does not reverse its decision on appeal, the submitter may seek review in U.S. District Court within 30 days of notice of the final determination.

*F. Appeals*

Section 350.17 of the proposed rule established procedures for appeal from an EPA determination that a claim presented insufficient support for a finding of trade secrecy under § 350.11(a)(2)(i), or an EPA finding that a specific chemical identity is not a trade secret under § 350.11(b)(2)(i). The proposal provided procedures for filing an appeal to EPA's Office of General Counsel (OGC), a description of the appeal process in OGC, and procedures for further appeal to Federal court if OGC upholds the Agency's rejection of the claim for trade secret protection. The proposed rule did not specify the standard that OGC will apply in considering a submitter's appeal, nor did it provide for a hearing. These two features as well as other details of the appeal process received comment.

Two commenters requested that EPA amend § 350.17 to provide the right to a hearing on appeal to OGC. One of these commenters specified that the hearing should be provided upon request of the trade secret claimant.

One commenter asked that the regulation be revised to establish a standard under which review by OGC on appeal will be conducted. The same commenter further stated that, because a reviewing court will consider the Agency opinion on a de novo basis, OGC should use a de novo standard in reviewing the program office's decisions on appeal.

Four commenters stated that § 350.17 should be revised to require OGC to state the basis for its decision on appeal. Another of these commenters recommended the use of procedures paralleling those referred to in § 350.11(b), which are applicable to EPA's initial decision on a trade secrecy claim and require EPA to provide a claimant with the reasons for EPA's decision.

One commenter requested that the rule be revised to permit a submitter of a trade secret claim to appeal to OGC if his claim is judged to be insufficient, even after he has submitted additional material upon a showing of good cause.

EPA's provisions on appeals in § 350.17 closely follow the scheme for appeals under Title III. Title III did not provide the submitter with an opportunity for a hearing as part of the administrative appeal process and EPA will not include such a provision.

Title III also did not specify a standard of review for the administrative appeal process. In its review, the Office of General Counsel will be examining the entire record of the determination and statement of reasons. This review will encompass the complete file. Submitters who are denied trade secret protection have full access to U.S. District Court.

The Agency agrees with commenters that sound administrative procedures dictate that the submitter be provided with a statement of the reasons for OGC's decision to uphold or reverse the program office's decision on appeal. The final rule has been amended to include a requirement for a statement of reasons to accompany the OGC decisions upon appeal.

Finally, EPA has not changed the final rule to allow an appeal to OGC when a submitter whose trade secrecy claim has been found to be insufficient has chosen to submit additional material in support of its claim (for good cause shown). This provision tracks statutory language that permits the trade secret claimant to either amend the claim in order to meet the sufficiency requirements *or* to appeal the finding of insufficiency to OGC. If the claimant opts to amend the claim, the statute requires that the right to appeal the Agency's initial finding is forfeited. However, the submitter who loses the right to an OGC appeal still has the right to appeal the Agency's adverse determination to U.S. District Court.

Judicial Appeal

Section 350.18(c) of the proposed rule established procedures to be used by EPA when submitters are slow to appeal Agency decisions to U.S. District Court or fail to prosecute the appeal in a timely fashion. One provision of the proposed section received considerable comment. That provision authorized the Agency to disclose the identity of the trade secret, "once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or whenever it appears to the Office of General Counsel, after reasonable notice to the business, that the business is not taking appropriate measures to obtain a speedy resolution of the action."

In urging deletion of the provision, the commenters made several arguments. First, the commenters noted that, once the submitter's appeal is under the court's jurisdiction, there are existing mechanisms to insure a speedy resolution of the case at issue. The Federal Rules of Civil Procedure allow the government to request a status conference to press action (Rule 11) or to move for dismissal of the appeal for failure to prosecute if there is an undue delay (Rule 41). Next, a few commenters maintained that the government's action to speed up the appeal would destroy the trade secret unilaterally during the pendency of action challenging the government's right to make that destruction. The commenters believe this action was unfair and undercut the court's jurisdiction. Moreover, since a trade secret is an intangible property right guaranteed by Constitutional protections, government destruction of that property during the course of the appeal could constitute a violation of submitter's due process rights.

EPA has decided not to delete the provision in question in the final rule. The provision is identical to language in EPA's Confidential Business Information regulations at 40 CFR 2.205(f)(2), and thus makes Title III regulations consistent with similar EPA procedures. The language of proposed § 350.18(c) and final § 350.18(d) states that EPA *may* disclose the trade secret, that is, use of the provision is not mandatory. Also, this disclosure may take place only after reasonable notice to the business. Accordingly, EPA has finalized this section as proposed, except for changing the reference to the party appealing the denial from "business" (used in 40 CFR Part 2) to "submitters" (used in Title III).

*G. Common Errors Found on Substantiations*

The Agency examined a sample of substantiations received since the proposed rule was issued and discovered a number of errors that occurred frequently enough that the

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Agency wishes to alert submitters to the need to carefully prepare their substantiations to avoid these, and other, errors. Common errors found by the Agency fall into the following categories:

(i) Problems associated with not using the EPA substantiation form;

(ii) Certification of the substantiation;

(iii) Contents of responses to questions in the form; and

(iv) Packaging of the claim.

In order for EPA to work together with claimants to adequately protect their trade secrets, EPA strongly advises claimants to submit claims according to the following guidelines. Failure to do so could result in the claim being found insufficient and/or frivolous. Submitters found making frivolous claims are subject to a penalty not to exceed $25,000 per claim. As stated in the preamble, EPA plans to evaluate claims and vigorously prosecute those found to be frivolous.

1. Problems Associated With Not Using the EPA Substantiation Form

The first area of errors concerned non-use of the substantiation form as provided in the rule. Several claimants devised their own substantiation form, or did not use any form at all. In almost every case where a submitter-devised form was used, the forms were inaccurately reproduced. This invariably led to inappropriate and inapplicable responses (many submitters had altered the wording of substantiation questions), and, especially where no form was used, entire areas of information required to be reported were omitted. Almost every submitter-devised substantiation form did not sufficiently identify the reporting facility. Also, many submitter-devised substantiations neglected to report the specific chemical identity, and all but one form that was reviewed for errors omitted the certification statement in its entirety.

EPA is required to collect the information requested by the form. Incomplete substantiations will in all likelihood be found insufficient to support the claim, and the claim will be denied. Moreover, the statute provides that a submitter who fails to provide information in the initial substantiation will be subject to a $10,000 penalty. Substantiations that do not sufficiently identify the chemical or reporting facility increase the likelihood of a finding that the facility is not in compliance.

Several claimants who used the Agency form failed to fill out the form in its entirety, or neglected to submit all the pages of the form. Although missing pages would ordinarily be expected to indicate a mere clerical error, at least one submitter omitted the same page in each filing for the facility, suggesting a systematic disregard for the rule's requirements. Again, the probable consequence of an incomplete substantiation is a $10,000 penalty, and the increased possibility that the claim will be denied.

2. Certification of the Substantiation

The next area of error concerns the substantiation form's certification. Common errors included the certification's inaccurate reproduction or omission in its entirety from submitter-devised forms, unsigned certifications, and photocopied signatures.

The certification statement may not be varied by submitters. It contains specific assurances regarding the quality of the information and statements regarding the submitter's obligations under Title III. Noncompliance with this specific certification requirement may jeopardize the trade secret claim.

An original signature is required for each trade secret substantiation submitted to EPA, both sanitized and unsanitized. An original signature indicates that the submitter is in fact certifying that the particular substantiation provided to EPA is complete, true, and accurate, and that it is intended to support the particular trade secret claim being made. In light of the heavy penalties for noncompliance, this requirement protects both the Agency and the submitter.

3. Contents of Responses to Substantiation Questions

The first common error in this area is the setting forth of conclusory statements rather than descriptive factual assertions. The proposed rule specifically stated that more than a conclusory statement of compliance must be made in the substantiation because EPA is required under section 322(d) to make a determination of sufficiency based upon the information provided by the submitter in the substantiation. To determine sufficiency EPA must decide, assuming that the assertions in the substantiation are true, whether the assertions are sufficient to support a claim of trade secrecy. Descriptive factual statements are necessary for this purpose. Conclusory statements of compliance do not provide enough information for EPA to make this determination. Substantiations containing only conclusory statements are therefore insufficient to support the claim.

In addition, mere conclusory statements are insufficient since EPA is required to evaluate whether the factual assertions are true based on supplemental information that a claimant may be required to submit following the initial review.

The second common problem in this area concerns what information may be claimed trade secret under Title III. EPA has received claims both for entire products (and not the chemical(s) that is (are) the trade secret), and for chemicals that are not reportable under Title III. Only the specific chemical identity required to be disclosed in sections 303, 311, 312, and 313 submissions may be claimed as trade secret. No other information may be withheld as a trade secret from publicly available Title III reports.

The final problem in this area is that location information claimed as confidential under section 312(d)(2)(F) should not be sent to EPA; this information should only be sent to the SERC, LEPC, and the fire department. EPA has received several claims accompanied by blueprints of facilities. It is neither necessary nor appropriate to send such information to the Agency.

4. Packaging of the Claim

The fourth problem area involved packaging of claims. The items required for a complete filing have been varied from the proposed rule, so submitters are advised to pay close attention to what is needed. In order for a claim to be complete under section 322, the submitter must include in the submittal the following items: for section 303 reports and reporting by MSDS under section 311, a complete package will include 3 items: The public 303 report or 311 MSDS, and sanitized and unsanitized substantiation. Reports under section 311 using the list approach, 312 Tier II reports, and 313 toxi release inventory reports will include 4 items: Sanitized and unsanitized 311, 312, or 313 reports, plus a sanitized and unsanitized substantiation for *each* chemical claimed trade secret.

Because multiple chemicals may be reported (and claimed trade secret) using the 311 list method and under 312 Tier II, it is of paramount importance that claimants (1) include in the unsanitized submittals the specific chemical identity being claimed trade secret, and (2) not separate the 311 or 312 filing from the accompanying substantiations.

In some cases, submitters provided separately each of the four parts of a trade secret submittal. The Agency must receive a complete package; otherwise,

it is difficult to determine whether a claim is complete and what chemical(s) is (are) being claimed trade secret. If it is not clear that a chemical identity is being claimed trade secret, EPA will not know that it should not make the information available to the public. For the submitter's own protection, securing together all three or four parts of a claim will make it clear that a claim is complete when submitted.

These guidelines and requirements are designed for the submitter's and the Agency's protection. If they are not followed, it will be much more likely that the Agency will conclude, based solely on the information provided by a submitter, that a claim is frivolous or incomplete. It also makes more likely that the Agency will disclose information that the submitter intended to claim trade secret because it was not clear that a claim was being made. At the same time, following these guidelines permits EPA to make appropriate determinations of trade secrecy, and to legally make public those portions of each submittal required to be disclosed. In this way EPA can work to preserve the confidentiality of legitimate trade secrets, and fulfill the Congressional mandate to make non-trade secret information public.

*H. Enforcement*

Section 325(d) authorizes the Administrator to assess a civil penalty of $25,000 per claim against a trade secret claimant if the Administrator determines that a trade secret claim is frivolous. Two commenters asked for an explanation of the term "frivolous claims." One of these commenters asked for policy guidance and recommended that a good faith test be employed. A third commenter expressed support for the Agency position on frivolous claims, and requested that the Agency determine the validity of each trade secrecy claim without waiting for petitions for disclosure of the information.

A frivolous claim is one without a factual or legal basis or one where the facts and circumstances relied upon to substantiate a trade secrecy claim are without merit. Section 325(c) authorizes the assessment of a civil penalty of $10,000 per violation for any person who fails to furnish a substantiation. These penalties can be assessed by either administrative order or through the appropriate U.S. District Court.

The proposed rule contained a provision indicating that submitters of trade secret claims who failed to submit supplemental information requested by EPA may be liable for a fine of up to $10,000 per violation under section 325(c). When EPA reviewed the statute, it was found that this provision had been inadvertently included in the proposed rule, but was not contained in the Act. The final rule, therefore, contains no such provision.

## V. Relationship of Section 322 to Other Statutes

*A. Relationship to State Confidentiality Statutes*

As stated in the proposed rule, section 321 of Title III provides that nothing in Title III "shall preempt any State or local law." This means that the confidentiality requirements of Title III are not to displace State confidentiality requirements under State Right-To-Know Acts. A State can still prescribe the type of information it will classify as confidential when it gathers information for its own use under a State law, such as a Right-To-Know Act. However, state confidentiality statutes do not govern information gathered under Federal law, here Title III. State confidentiality statutes only apply to information collected pursuant to State law for State use. When information is gathered under Title III, the Federal confidentiality requirements of section 322 apply regardless of whether the information is sent to a State or Federal agency because the information is being gathered pursuant to a Federal statute.

One commenter requested that the "other" information in the Title III trade secret substantiation that is protected under the Freedom of Information Act be covered instead under more protective State law. The commenter argues that this is justified because the information is being sent to State and local entities. As stated above, the destination of the data is irrelevant because it is being gathered pursuant to a Federal statute and thus the only protection allowed is Federally based.

State confidentiality statutes may affect Title III information if State trade secrecy law or regulations prohibit claims of trade secrecy under State law for information that a submitter must also report under Title III. Under the substantiation provisions of Title III, a facility will not be able to justify withholding the information under Title III. One commenter stated that a State law may require submission of data and provide greater public access to the data than would be allowed under Title III protection of trade secrets. In such cases, the data may not be eligible for trade secret treatment under section 322.

*B. Overlap with Other EPA-Administered Statutes*

Information collected pursuant to EPA regulations under statutes other than Title III may be similar to that collected under Title III. For purposes of confidentiality, information should be claimed as confidential and will be treated by EPA as is required by the statute under which it is collected. However, the mandatory release of information under one statute may affect its trade secret status under another statute.

*C. Relationship to Freedom of Information Act*

The procedures set out in section 322 apply only to claims of trade secrecy for chemical identity made under Title III. Pursuant to section 322(f), however, submitters may claim as trade secret any other confidential business or trade secret information which is included in the substantiation, or supplemental information submitted in the petition process. Requests for disclosure of this material must be submitted under the Freedom of Information Act regulations at 40 CFR Part 2. EPA will make determinations regarding the disclosure of this material under those regulations.

## VI. Release of Trade Secret Information

*A. Releases to States*

Under section 322(b) of the Act, the States, either the governors or the State emergency response commissions, must provide to any requesting person the adverse health effects associated with extremely hazardous substances (section 303) and hazardous chemicals (sections 311 and 312) claimed as trade secret. The States will not have direct access to the identities of chemicals claimed as trade secret in preparing adverse health effects descriptions. However, the States have information on health effects in the MSDSs submitted under section 311 for this purpose. The MSDS is required to include such information for any substance claimed as trade secret. Thus, governors or State commissions should not be hindered in meeting their responsibilities to provide descriptions of adverse health effects and the trade secret status of the chemicals will not be endangered.

Under section 322(g) of the Act, the Administrator shall provide to the State governor, upon request, any information EPA has obtained under subsection (a)(2), which includes specific chemical identities and substantiations for trade secrecy claims, and under subsection (d)(3), which includes the findings that

assertions made in the above substantiation materials are sufficient. Thus, if a State governor wished to request the chemical identities of any or all chemicals claimed as trade secret in any State, EPA will provide this information to the State governor, upon request. However, governors are prevented by section 325(d)(2) from "knowingly and willfully" disclosing trade secret information to the public, as are all other individuals.

EPA considered the advantages and disadvantages of allowing State governors to provide access to trade secret information to SERCs and LEPCs. Public comments also proposed several alternative ways of restricting disclosure of trade secret information released to States.

While providing selected members of SERCs and LEPCs access to chemical identities may provide some benefits to State and local preparedness and planning, it was determined that these potential advantages were outweighed by the possible consequences of unintended disclosure of bona fide trade secrets. Because SERCs often include representatives from industry and the public and LEPCs must include these representatives from industry and the public, it could be very difficult to protect trade secrets from wider disclosure than is intended. EPA determined that the decision of whether State governors may provide trade secret information to any members of SERCs and LEPCs shall be left up to the discretion of the governors themselves. However, EPA has included a provision in the rule which prohibits State governors from releasing trade secret information to non-State employees. One commenter requested that trade secret information be given to a State only after the State has demonstrated its ability to safeguard trade secret information. The Agency requires in the rule that States take the same precautions to safeguard this information as EPA itself does. The Agency believes that this approach is appropriate to adequately protect trade secret information.

The Agency considered the option of allowing State governors to appoint designees to be provided with the authority to request trade secret chemical identities from EPA. This could expedite requests by the State departments of public health for information needed to conduct medical research on the health effects of airborne toxics. However, such an expansion of the list of authorized State representatives beyond governors alone might also increase the likelihood of unintended disclosure of bona fide trade secrets. The Agency concluded that it does not have the authority to determine who State governors may authorize to obtain trade secret information from EPA. Consequently, the EPA determined that only State governors are authorized to request and receive trade secret information directly from EPA, as stated in the statute.

*B. Releases to Authorized Representatives of EPA*

In addition to contractors and subcontractors, EPA has recently begun to use grantee personnel to perform Agency functions. Public comments raised two points. First, it was suggested that the employees of grantees be required to sign confidentiality agreements (as is required of the employees of contractors and subcontractors). Second, grantees were described as presenting a greater risk of disclosure of trade secrets (because they are typically retired engineers or other technical people having close associations with former employers) and should be placed under greater restrictions than contractors or subcontractors in general. Greater restrictions were suggested to include either requirements for signing written conflict-of-interest statements or requirements that grantees must demonstrate a greater need for trade secret information.

The Agency believes it is appropriate to designate grantees as "authorized representatives," to be treated in the same manner as Federal contractors and subcontractors, as that term is used in this regulation. This includes requiring full confidentiality protection, the same procedures that contractors must follow, and similarly employees of grantees will be required to sign confidentiality agreements.

One commenter objected to proposed § 350.23, which makes contractors authorized representatives of EPA for the purposes of the release of trade secret information. This provision is mandated by the Act, however, and the Agency cannot alter or delete it. Another commenter requested that the Agency add a provision to the final rule to make contractors who receive trade secret information on behalf of EPA aware of potential conflicts of interest. The Agency has decided not to do so because contractors are already required to provide the Agency with such assurances as part of the contractual process.

One commenter stated that EPA should comply with Export Administration Act (EAA) restrictions on the export of technical data through foreign nationals. The commenter suggested that through the petition process, and in particular through releases to health professionals, technical data could be exported. The commenter also questioned whether there exist suitable precautions to prevent the export of technical data through EPA's contractors, subcontractors, and grantees to the EPA. Especially of concern would be the disclosure of confidential business information to a citizen of a Category S or Z country, which are listed in the Export Administration regulations.

EPA has determined that the intent of these regulations is consistent with those implementing the Export Administration Act. The definition of "technical data" found in the EAA regulations reads in part as follows: "Technical data means information of any kind that can be used, or adapted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials." In section II.A. of the preamble to these regulations, the definition of trade secret protection of specific chemical identity was said to allow for trade secrecy claims to be made to protect the linkage between a specific chemical identity and its "use, production, storage, or processing." While these definitions are similar, it is noteworthy that these regulations are designed to protect the described information from release except under very narrow, clearly defined, and controlled circumstances.

It is not EPA's intention for a foreign national to obtain trade secret information and export the information. The intent of the statute is "community right to know." EPA has every intention of doing everything in its power to assure that the information collected is used to inform and protect local residents from chemical hazards present in their communities. Disclosures which lead to the export of that information out of the United States run counter to that intent.

The statute does not require, and EPA has declined to establish a requirement in these regulations, that petitioners for information claimed as trade secret declare the reasons for their request. It would go beyond the content of the statute for EPA to require them to state that they are citizens of the United States. When the request of a petitioner for release of information claimed to be trade secret is granted, the Agency has determined that the information is not, in fact, a trade secret.

As to the export of technical data through contractors, subcontractors, and grantees to the EPA, these authorized

representatives of EPA are required to sign confidentiality agreements and to provide full confidentiality protection.

## VII. Disclosure to Health Professionals

Section 323 of Title III consists of three provisions regarding access to chemical identity information by health professionals. These provisions require the facility owner or operator to disclose the chemical identity, including trade secret chemical identity, to a health professional for diagnosis or treatment in both non-emergency and emergency situations, and for purposes of conducting preventive research studies and providing medical treatment by a health professional who is a local government employee. The health professional must sign a statement regarding his need for the chemical identity, and a confidentiality agreement, prior to disclosure, except in emergency situations, when these two documents may be delivered later.

One commenter requested that EPA delete entirely the requirement to provide specific chemical identity to health professionals. The commenter indicated that, in its experience, health professionals were more concerned with obtaining detailed health and safety data than the specific chemical identity. However, the commenter overlooks the fact that the provision of the specific chemical identity, under specified circumstances, is a direct requirement of section 323 of Title III. EPA cannot alter the basic requirements of the statute.

Health professionals may obtain trade secret information for the three purposes set out in the statute. However, they are required to sign a confidentiality agreement and a statement of need stating that they need the information for the purposes set out in the statute.

### *A. Non-emergency Diagnosis or Treatment*

The first provision, part (a) of section 323, requires that in non-emergency situations, an owner or operator of a facility which is subject to the requirements of sections 311, 312, or 313, shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional who requests the identity in writing and describes in a written statement of need described below a reasonable basis for suspecting that the specific chemical identity is needed for diagnosis or treatment of an individual or individuals who have been exposed to the chemical concerned. The health professional must also state that knowledge of the specific chemical identity will assist in diagnosis or treatment of the exposed individual(s). The health professional must certify that the information contained in the statement of need is true and accurate. The health professional must also provide a signed confidentiality agreement described in VII.E to the facility prior to gaining access to trade secret chemical identity. Any health professional performing diagnosis or treatment, not solely doctors or nurses, is permitted access to trade secret chemical identity in a non-emergency situation.

### *B. Emergency Situations*

The second provision of section 323 deals with medical emergencies and requires an owner or operator of a facility subject to the requirements of sections 311, 312, or 313 to immediately provide a copy of an MSDS, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests the chemical identity under emergency conditions as specified in the statute. The treating physicians or nurses must determine that: (1) a medical emergency exists; (2) the specific identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and (3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

In response to public comments, EPA considered whether health professionals other than treating physicians and nurses (such as commercial spill contractors, paramedics, and other emergency medical services workers) should be provided access to trade secret chemical identities under this provision. The Agency decided that only treating physicians and nurses are entitled to such access, in accordance with the specific wording of the statute and following the intent of the OSHA provisions. In a medical emergency, only the doctor or nurse will conduct the medical examination and diagnose the necessary treatment. Most necessary information could be obtained from MSDSs and other Title III forms. Consequently, it is not necessary for personnel other than doctors and nurses to have access to trade secret information.

The requesting physician or nurse in such an emergency does not need to submit a written confidentiality agreement or statement of need prior to receiving the trade secret chemical identity. The owner or operator disclosing such information may, however, require a written confidentiality agreement and statement of need as soon as circumstances permit.

Some industry commenters on the proposed rule expressed concern that although they would be willing to provide information in the case of a true emergency, that the procedures therein would not provide adequate protection against fraudulent attempts to obtain confidential information. EPA considered requiring procedures such as phone calls or the development of a system of identification numbers. These procedures, however, would be burdensome, beyond the scope of the statute and of limited efficiency for the various scenarios possible in emergency situations. For these reasons, EPA decided not to recommend a specific verification procedure. If the facility wishes to verify that the situation is an emergency, the facility must do so without compromising the need to immediately provide the information requested by treating physicians and nurses. Chemical identities absolutely may not be disclosed or used for any purpose other than the proper treatment and diagnosis of a chemically related injury or illness.

### *C. Preventive and Treatment Measures*

The third provision of section 323 deals with preventive and treatment measures by local health professionals. This subsection is intended to allow local health professionals access to information on chemicals in order to facilitate epidemiological and toxicological research and to render medical treatment for the effects of chemical exposures. This subsection requires an owner or operator of a facility to promptly provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional who is a local government employee or under contract with a local government who submits a request in writing and provides a written statement of need and a confidentiality agreement. The statement of need must describe one or more of the needs set forth in the regulations.

Under this section of the statute, EPA interprets the term "health professional" to be any health professional with the professional expertise to perform the types of research and treatment set forth in the statute, and who is employed by the local government. Under this section, such health professionals as physicians, toxicologists and

epidemiologists may gain access to trade secret chemical identity.

A few industry commenters argued that a provision should be made for allowing disclosure of relevant health effects information other than the chemical identity in this preventive and treatment measures section. They asserted that other information will be sufficient to conduct the listed types of studies and surveillance. EPA considers it inappropriate to place regulatory limitations on the six statutory situations in which health professionals may seek disclosure of chemical identities because they are explicitly mentioned in the statute.

*D. Statement of Need*

In the proposed rule, EPA requested comment concerning whether the statement of need should contain a detailed description of why the disclosure of the following information would not be sufficient to enable the health professional to provide medical services: (a) The properties and effects of the chemical, (b) measures for controlling the public's exposure to the chemical, (c) methods of monitoring and analyzing the public's exposure to the chemical, and (d) methods of diagnosing and treating harmful exposure to the chemical. These are the provisions in the Occupational Safety and Health Act Hazard Communication Standard. One commenter objected strongly to the inclusion of these provisions, citing the paramount interest in allowing health professionals to "undertake their own independent course of treatment, and hopefully to prevent future disease." Industry commenters, on the other hand, asserted that, in the vast majority of cases, information necessary for diagnosis and treatment can be provided without disclosing specific chemical identity. They argued for a presumption against disclosure, which would justify a higher standard for the health professional to meet in demonstrating that trade secret information should be disclosed.

The Agency has decided not to explicitly include the OSHA provisions in the final rule. The statutory requirement that a health professional describe "a reasonable basis" why the specific chemical identity is needed will implicitly explain why other information would not be sufficient. The Agency believes the OSHA provisions would be unnecessary.

*E. Confidentiality Agreement*

The confidentiality agreement required of the health professional must state that the health professional will not use the trade secret chemical identity for any purpose other than the health needs asserted in the statement of need, or as may otherwise be authorized by the terms of the agreement itself. This agreement may be negotiated between the health professional and the facility.

The provisions in the confidentiality agreement will enable the health professional to clearly understand the extent of disclosures permissible. At a minimum, the written confidentiality agreement shall include a description of the procedures to be used to maintain the confidentiality of the disclosed information and a statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need. Also, the health professional must agree not to release the information under any circumstances, except as authorized by the terms of the agreement. However, this authorized disclosure may be structured so that the health professional may release the trade secret chemical identity to other health professionals if the professionals routinely rely on each other's expertise for needed advice. The agreement may also specify that the first health professional may disclose the trade secret chemical identity to other health professionals if such disclosure is necessary in order for the first professional to learn necessary information to render a professional opinion. Except in those instances specified in the confidentiality agreement, the health professional may not be permitted to release the information to other health professionals. The health professional may be permitted to write articles for medical journals or to go on speaking tours discussing the chemical involved if such activity does not result in the disclosure of the identity of the chemical and the facility's relationship to that chemical.

The proposed rule included a reasonable pre-estimate of damages as an appropriate legal remedy in the event of a breach of the confidentiality agreement. Commenters expressed concern that inclusion of pre-estimates of damages in confidentiality agreements may have a chilling effect on health professionals, discouraging them from entering into such agreements. Many health professionals may be unable or unwilling to assume the liability associated with such a provision in exchange for obtaining information necessary for them to provide proper treatment or diagnosis. Several commenters characterized this liability as "unreasonable" and "not contemplated by the legislation." EPA agrees with the commenters and the provision for a pre-estimate of damages has been deleted from the final rule. The Agency believes that the underlying purpose of the confidentiality agreement is to protect a facility's trade secret chemical identity from unlimited and unbridled disclosure, not to make it overly burdensome or difficult for the health professional to obtain the specific identity of a chemical.

This confidentiality agreement is subject to State law and State contractual remedies. Also, nothing in this regulation precludes the facility or health professional from pursuing non-contractual remedies to the extent permitted by law.

*F. Related Issues*

Following the receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the health professional. EPA considered specifically defining "promptly" and "immediately" to mean a particular number of days. Two commenters discussed the Agency's failure to define the term "immediately" in the context of the requirement to release chemical identification information to health professionals. One of these commenters asked that the Agency define the term, while the other commenter expressed support for the Agency's decision to not specify a particular time period to provide the information. For the reasons stated above, the Agency will refrain from defining "immediately" more specifically. The Agency did not receive any comments on this issue and has decided not to define the terms because of the concern that defined times will limit the speed of response. The statute requires "immediate" provision of data in the case of medical emergencies and EPA interprets this to mean that the owner or operator will provide the data over the telephone, without requiring a written statement of need or a confidentiality agreement in advance.

As stated in the proposed rule, the Agency is aware of the possible situation where the owner or operator of a facility is unable to provide the chemical identity because the manufacturer of the chemical has kept the identity confidential. In these situations, EPA suggests that the owner or operator of the facility put the requester in touch with the supplier of the chemical, but the facility is not responsible for supplying information which it cannot obtain for itself.

EPA received a comment that if a patient becomes aware, or wishes to learn, the chemical identity of a substance he was exposed to, he should be required to sign a confidentiality agreement. Since the provisions of section 323 deal only with the release of information to health professionals, the Agency cannot require disclosures to patients as part of this rulemaking.

The regulation authorizes health professionals to refer to trade secret chemical identity in discussions with EPA personnel, who themselves are authorized to have access to Title III trade secret information. This is based on a provision of the OSHA Hazard Communication Standard. Several commenters suggested that the Title III regulations should restrict the release of confidential information from health professionals to EPA to a greater extent than was provided in the proposed rule. Specifically, several commenters stated that Title III trade secret regulations should mirror the procedures in the OSHA Hazard Communication Standard, which requires that the government provide notice to the facility owner or operator whenever a health professional transmits trade secret information to the government agency. Based on the comments, EPA considered three options for restricting releases of trade secret information from health professionals to the Agency. First, EPA considered the addition of a requirement similar to OSHA's that notice be given to the facility owner or operator whenever a health professional provides trade secret information to EPA. The second option considered was the limitation of communications between EPA and the health professional to the generic class or category, in non-emergency situations. The third option considered was to establish procedures similar to Confidential Business Information (CBI) Procedures utilized under TSCA. In this option, the health professional would be required to verify that an EPA employee is on a CBI authorized access list before disclosing trade secret chemical identities.

EPA evaluated the options and decided that each one would impede timely transmission of important health effects data necessary for proper diagnosis and treatment. The procedures would be administratively cumbersome and they are not explicitly required by the statute. The Agency is already fully aware of the necessity to protect trade secret information and believes additional procedures are unnecessary.

EPA construes section 323 to mean that a facility is not permitted to deny disclosure of a specific chemical identity to a health professional under any circumstances provided there is a written statement of need and a written confidentiality agreement. Section 325(c) empowers EPA to assess civil penalties of up to $10,000 for failure to disclose the trade secret chemical identity to health professionals in emergency situations, as required by section 323(b). Health professionals may also sue under section 325(e) in U.S. District Court to obtain the information.

## VIII. Summary of Supporting Analyses

### *A. Regulatory Impact Analysis*

#### 1. Purpose

Executive Order (E.O.) No. 12291 requires each federal agency to determine if a regulation is a "major" rule as defined by the Order and to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. EPA has determined that the requirements and procedures established in this rulemaking for treatment of chemical data considered to be trade secret by facilities reporting under other sections of Title III do not constitute a major rule under E.O. No. 12291. The Agency has prepared an economic analysis to assess the economic impacts of the final regulation on affected industry and government entities. The following summary of results are presented in detail in *Regulatory Impact Analysis in Support of Final Rulemaking under Sections 322–323 of the Superfund Amendment and Reauthorization Act of 1986.*

#### 2. Methodology

EPA conducted an assessment of the costs and benefits associated with this final rule and the primary provisions of sections 322 and 323, including the preparation of trade secrecy claims by facilities; the processing and storing of claims by EPA; the public petition and review process; the provision of adverse health effects data for chemicals whose identities are withheld as trade secrets; and special access procedures under which facilities must promptly provide chemical data to members of the health profession.

This analysis considered the costs that five groups will incur as a result of the rule and the section 322–323 provisions. These five groups are: facilities, EPA, public petitioners, States, and health professionals.

The economic analysis conducted for the final rule took into account public comments on the proposed rule and modifications made to other Title III reporting provisions. Among the changes incorporated into the economic analysis supporting the final rule are the trade secret claims made by non-manufacturing facilities submitting reports under sections 311 and 312 of SARA; increased costs for the public petition and review process; and consideration of the potential for cost savings per claim that may result when facilities file trade secret claims for the same chemical under different Title III reporting sections.

The economic analysis for the final rule confirms that facilities will make trade secret claims in about 0.1 percent of the reports submitted under Title III. This confirmation is based on the low number of trade secret claims having actually been made by facilities in 1987 during the first round of reporting under section 311 of SARA.

#### 3. Results

The economic analysis conducted for the final rule estimated the costs that would be incurred by each of the five groups affected by the rule and the statutory provisions. The aggregate present value costs during the first 10 years of Title III reporting, using a discount rate of 4 percent, are estimated to be approximately $67.6 million, or an average of $6.8 million annually. The following discussion summarizes the costs that each of the major groups is estimated to incur.

*Facilities.* Industrial facilities incur the largest amount of costs in preparing and filing trade secret claims. They also will incur costs when they respond to public petitions challenging their trade secret claims and when they provide trade secret information to health professionals.

Facilities will incur the greatest costs in 1990, when the section 311 MSDS reporting threshold for non-manufacturing facilities is assumed to decline from 10,000 pounds to 500 pounds. The 1990 facility costs are estimated in the analysis to be approximately $26.4 million.

The analysis also estimates the costs of an individual facility filing a trade secret claim for the first time and the costs to file subsequent trade secret claims. An average facility will incur costs of approximately $1,100 when it files its first trade secret claim, and between $270 and $563 when it files a subsequent claim, depending on the type of claim made. If the public challenges a trade secret claim that a facility makes, the analysis estimates that a facility will incur an average of about $1,300 dollars to provide supplemental information to support the original substantiation. The analysis also estimates that these costs could range as high as $3,400 if a facility's claim is rejected by EPA and

the facility appeals the decision to EPA's Office of General Counsel. Finally, the analysis estimates that facilities will incur costs under the provisions of section 323 that range from $110 to $250 in responding to each request made by a health professional for information about trade secret chemicals.

The time burden that this rule places upon facilities having trade secrets is estimated to consist of: 10.4 hours for a facility to become familiar with the provisions of the rule and screen its chemicals to determine which are trade secrets, 22.8 hours to prepare a claim (including 21.3 hours to complete the substantiation form) for the first chemical submitted as a trade secret, and 17.7 hours to prepare additional claims for other chemicals (including 16.2 hours per chemical to complete the substantiation form). In cases where a facility submits claims for the same chemical involving reports made under different sections of Title III, the additional related claims require less effort because the facility will be able to utilize some or all of the information prepared for the first claim (generally associated with the chemical's MSDS filing). The time needed for each such related claim is estimated to range from 1.7 to 14.8 hours.

*EPA.* The economic analysis estimates the aggregate ten-year present value cost that EPA will incur under the three sections of the rule to be approximately $2.6 million, or an average of $260,000 annually. These costs result from EPA processing and storing trade secret claims, responding to public petitions challenging trade secret claims, and providing adverse health effects information on section 313 chemicals to states and the public.

The processing and storing of trade secret claims and responding to public petitions result in EPA incurring the largest costs. The analysis estimates that EPA will incur costs of approximately nine dollars to process and store each trade secret claim, in addition to annual costs of approximately $60,000 to maintain a record storage and tracking system. The Agency also will incur average costs of approximately $1,900 when the public files a petition to challenge a trade secret claim. The analysis estimates that these costs could range from $1,450 to $5,040, depending on the circumstances of the claim and the decision made about the validity of the petition.

*Petitioners.* Public petitioners are estimated to incur total present value costs of about $48,000 over the ten year period analyzed in the report. Each public petition filed is estimated to cost the public petitioner approximately $75, and the public is assumed to file an average of 72 petitions annually during the first ten years of Title III reporting. The analysis estimates that the public will file the largest number of petitions in 1990, corresponding to the year in which facilities file the largest number of claims. The total estimated costs incurred by the public in 1990 are approximately $20,000.

*States.* The economic analysis conducted for the final rule estimates that the present value of costs incurred by the states will be about $443,000 during the first ten years of Title III reporting, or approximately $44,000 annually ($880 annually per state). These costs will be incurred in the course of requesting information from EPA on trade secret chemicals and disseminating adverse health effects information to the public. The analysis estimates that each state will incur costs of $33 to request from EPA adverse health effects information on section 313 chemicals; the state will incur costs of about $56 to respond to each request from the public for adverse health information on section 302–304 and 311–312 chemicals that facilities claim trade secret.

States also will incur costs to compile adverse health effects information on chemicals reported under Title III in preparation for public requests, and to sanitize the profiles in order not to divulge trade secret information. This is estimated to cost states approximately $85,300 in 1988, when they will develop most of the chemical profiles, and approximately $4,200 in each subsequent year to develop profiles for new chemicals that facilities claim trade secret.

*Health Professionals.* The analysis estimates that the aggregate present value costs to health professionals will be approximately $372,000 during the first ten years of Title III reporting, or approximately $37,200 annually. The analysis also estimates that health professionals will incur a range of costs between $110 and $140 in making a request of a facility for a trade secret, depending on the particular circumstances of the request as described under section 323 of the rule.

*Sensitivity Analyses.* After calculating aggregate costs for each of the five groups, eight sensitivity analyses were conducted to test the effect of important assumptions on the total costs of the rule. These analyses included the number of trade secret claims that facilities will file, the costs of filing a trade secret claim, the likely effect of linkage on the number of trade secret claims, the number of Tier II claims under section 312, the number of petitions that the public files challenging facility trade secret claims, the number of requests for adverse health effects information, and the number of requests health professionals make for the identity of trade secret chemicals.

The sensitivity analyses demonstrated that the costs of the final rule are most sensitive to the number of trade secret claims that facilities will file and the costs of filing each claim.

*Benefits.* Benefits may arise as a result of this rule both for facilities and for the public. Relationships among the activities undertaken by various affected groups are complex and only a qualitative discussion of benefits is included in the economic analysis. For facilities, direct benefits may include protection of trade secrets involving chemicals used in production processes, that, by definition, involve information that permit a facility to have a competitive advantage over another facility. For the public, the rule provides a petition and review process that allows challenge of the validity of a trade secret claim through an administrative review process, and allows health effects information to be disclosed without jeopardizing the competitive position of the facility.

### *B. Regulatory Flexibility Analysis*

#### 1. Purpose

Under the Regulatory Flexibility Act of 1980, a Regulatory Flexibility Analysis must be performed for all rule that are likely to have a "significant impact on a substantial number of small entities" (small businesses, small organizations, and small governmental jurisdictions). The analysis contained in this economic analysis addresses the impact of this rule on small entities. Based on this analysis, EPA has concluded that although a large number of small businesses reporting under Title III could be affected by this rule, the costs of the rule generally will be low on a per facility basis and that significant impacts will not result.

#### 2. Methodology and Results

In order to assess the likely economic impacts that this final rule will have on small businesses, EPA compared likely average costs for small facilities to file a trade secret claim with median sales for those facilities, and evaluated whether the rule likely would affect a substantial number of small entities.

The results of the economic analysis show generally that the cost of filing a trade secret claim will not be a burden on facilities because the likely costs of

filing a trade secret claim under a worst-case scenario tested in the analysis are less than one percent of median sales.

EPA defined small businesses in this analysis to be those with fewer than 20 employees. The number of small businesses under this definition is estimated to be approximately 2,794,400 facilities (the universe of facilities in categories covered by section 303, the broadest of the sections associated with trade secrecy claims). The economic analysis conducted for the final rule estimates that approximately 61,600 facilities will file trade secret claims during the first ten years of Title III reporting. If all facilities filing trade secret claims met the definition of "small business," this would encompass only 2.2 percent of small businesses, well below the usual level of 20 percent established by EPA to represent a "substantial" number of small facilities.

3. Certification

On the basis of the analyses contained in the economic analysis with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

*C. Paperwork Reduction Act*

Public reporting burden for this collection of information is estimated to vary from 27.7 to 33.2 hours per response, with an average of 28.8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB has reviewed the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2050-0078.

**List of Subjects in 40 CFR Part 350**

Chemicals, Hazardous substances, Extremely hazardous substances, Toxic chemicals, Community right-to-know, Superfund Amendments and Reauthorization Act, Trade secrets, Trade secrecy claims, Intergovernmental relations.

Dated: July 21, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended by adding a new Part 350 to read as follows:

## PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION: AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS

**Subpart A—Trade Secrecy Claims**

Sec.

350.1 Definitions.
350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR Part 2.
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350.7 Substantiating claims of trade secrecy.
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350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.
350.16 Address to send trade secrecy claims and petitions requesting disclosure.
350.17 Appeals.
350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.
350.19 Provision of information to States.
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350.23 Disclosure to authorized representatives.
350.25 Disclosure in special circumstances.
350.27 Substantiation form to accompany claims of trade secrecy, instructions to substantiation form.
Appendix A—Restatement of Torts section 757, comment b

**Subpart B—Disclosure of Trade Secret Information to Health Professionals**

350.40 Disclosure to health professionals.

**Authority:** 42 U.S.C. 11042, 11043 and 11048 Pub. L. 99-499, 100 Stat. 1747.

### Subpart A—Trade Secrecy Claims

**§ 350.1 Definitions.**

"Administrator" and "General Counsel" mean the EPA officers or employees occupying the positions so titled.

"Business confidentiality" or "confidential business information" includes the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its right in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905.

"Claimant" means a person submitting a claim of trade secrecy to EPA in connection with a chemical otherwise required to be disclosed in a report or other filing made under Title III.

"Petitioner" is any person who submits a petition under this regulation requesting disclosure of a chemical identity claimed as trade secret.

"Sanitized" means a version of a document from which information claimed as trade secret or confidential has been omitted or withheld.

"Senior management official" means an official with management responsibility for the person or persons completing the report, or the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for certifying similar reports under other environmental regulatory requirements.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance. Where the trade name is reported in lieu of the specific chemical identity, the trade name will be treated as the specific chemical identity for purposes of this part.

"Submitter" means a person filing a required report or making a claim of trade secrecy to EPA under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III.

"Substantiation" means the written answers submitted to EPA by a submitter to the specific questions set forth in this regulation in support of a claim that chemical identity is a trade secret.

"Title III" means Title III of the Superfund Amendments and Reauthorization Act of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986.

"Trade secrecy claim" is a submittal under sections 303 (d)(2) or (d)(3), 311, 312 or 313 of Title III in which a chemical identity is claimed as trade secret, and is accompanied by a substantiation in support of the claim of trade secrecy for chemical identity.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of

information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it. EPA intends to be guided by the Restatement of Torts, section 757, comment b.

"Unsanitized" means a version of a document from which information claimed as trade secret or confidential has not been withheld or omitted.

"Working day" is any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days; all other days are.

**§ 350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR Part 2.**

(a) *Applicability of subpart.* Sections 350.1 through 350.27 establish rules governing assertion of trade secrecy claims for chemical identity information collected under the authority of sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, and for trade secrecy or business confidentiality claims for information submitted in a substantiation under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III. This subpart also establishes rules governing petitions from the public requesting the disclosure of chemical identity claimed as trade secret, and determinations by EPA of whether this information is entitled to trade secret treatment. Claims for confidentiality of the location of a hazardous chemical under section 312(d)(2)(F) of Title III are not subject to the requirements of this subpart.

(b) *Priority where provisions conflict.* Where information subject to the requirements of this subpart is also collected under another statutory authority, the confidentiality provisions of that authority shall be used to claim that information as trade secret or confidential when submitting it to EPA under that statutory authority.

(c) *Interaction with 40 CFR Part 2, EPA's Freedom of Information Act procedures.* (1) No trade secrecy or business confidentiality claims other than those allowed in this subpart are permitted for information collected under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III.

(2) Except as provided in § 350.25 of this subpart, request for access to chemical identities withheld as trade secret under this regulation is solely through this regulation and procedures hereunder, not through EPA's Freedom of Information Act procedures set forth at 40 CFR Part 2.

(3) Request for access to information other than chemical identity submitted to EPA under this regulation is through EPA's Freedom of Information Act regulations at 40 CFR Part 2.

**§ 350.5 Assertion of claims of trade secrecy.**

(a) A claim of trade secrecy may be made only for the specific chemical identity of an extremely hazardous substance under sections 303 (d)(2) and (d)(3), a hazardous chemical under sections 311 and 312, and a toxic chemical under section 313.

(b) Method of asserting claims of trade secrecy for information submitted under sections 303 (d)(2) and (d)(3).

(1) In submitting information to the local emergency planning committee under sections 303 (d)(2) or (d)(3), the submitter may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 303.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) A copy of the information which is being submitted under sections 303 (d)(2) or (d)(3) to the local emergency planning committee, with the chemical identity or identities claimed trade secret deleted, and the generic class or category of the chemical identity or identities inserted in its place. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized and unsanitized substantiation in accordance with § 350.7 for each chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 303 claims shall be sent to the address specified in § 350.16 of this regulation.

(c) Method of asserting claims of trade secrecy for information submitted under section 311.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 311 on the material safety data sheet or chemical list under section 311.

(2) To assert a claim for a chemical identity on a material safety data sheet under section 311, the submitter shall submit to EPA the following:

(i) One copy of the material safety data sheet which is being submitted to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public. In place of the specific chemical identity claimed as trade secret, the generic class or category of the chemical claimed as trade secret shall be inserted. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) To assert a claim for a chemical identity on a list under section 311, the submitter shall submit to EPA the following:

(i) An unsanitized copy of the chemical list under section 311. The submitter shall clearly indicate the specific chemical identity claimed as trade secret, and shall label it *"Trade Secret."* The generic class or category of the chemical claimed as trade secret shall be inserted directly below the claimed chemical identity. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized copy of the chemical list under section 311. This copy shall be identical to the document in paragraph (c)(3)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret, leaving in place the generic class or category of the chemical claimed as trade secret. This copy shall be sent by the submitter to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public.

(iii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(4) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(5) Section 311 claims shall be sent to the address specified in § 350.16 of this regulation.

(d) Method of asserting claims of trade secrecy for information submitted under section 312.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 312.

(2) To assert a claim the submitter shall submit to EPA the following:

(i) An unsanitized copy of the Tier II emergency and hazardous chemical inventory form under section 312. (The Tier I emergency and hazardous chemical inventory form does not require the reporting of specific chemical identity and therefore no trade

secrecy claims may be made with respect to that form.) The submitter shall clearly indicate the specific chemical identity claimed as trade secret by checking the box marked "trade secret" next to the claimed chemical identity.

(ii) A sanitized copy of the Tier II emergency and hazardous chemical inventory form. This copy shall be identical to the document in paragraph (d)(2)(i) of this section except that the submitter shall delete the chemical identity or identities claimed as trade secret and include instead the generic class or category of the chemical claimed as trade secret. The method of choosing generic class or category is set forth in paragraph (f) of this section. The sanitized copy shall be sent by the submitter to the State emergency response commission, local emergency planning committee or the local fire department, whichever entity requested the information.

(iii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 312 claims shall be sent to the address specified in § 350.16 of this regulation.

(e) Method of asserting claims of trade secrecy for information submitted under section 313.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 313.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) An unsanitized copy of the toxic release inventory form under section 313 with the information claimed as trade secret clearly identified. To do this, the submitter shall check the box on the form indicating that the chemical identity is being claimed as trade secret. The submitter shall enter the generic class or category that is structurally descriptive of the chemical, as specified in paragraph (f) of this section.

(ii) A sanitized copy of the toxic release inventory form. This copy shall be identical to the document in paragraph (e)(2)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret. This copy shall also be submitted to the State official or officials designated to receive this information.

(iii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 313 claims shall be sent to the address specified in § 350.16 of this regulation.

(f) Method of choosing generic class or category for sections 303, 311, 312 and 313. A facility owner or operator claiming chemical identity as trade secret should choose a generic class or category for the chemical that is structurally descriptive of the chemical.

(g) If a specific chemical identity is submitted under Title III to EPA, or to a State emergency response commission, designated State agency, local emergency planning committee or local fire department, without asserting a trade secrecy claim, the chemical identity shall be considered to have been voluntarily disclosed, and non-trade secret.

(h) A submitter making a trade secrecy claim under this section shall submit to entities other than EPA (e.g., a designated State agency, local emergency planning committee and local fire department) only the sanitized or public copy of the submission and substantiation.

**§ 350.7 Substantiating claims of trade secrecy.**

(a) Claims of trade secrecy must be substantiated by providing a specific answer including, where applicable, specific facts, to each of the following questions with the submission to which the trade secrecy claim pertains. Submitters must answer these questions on the form entitled "Substantiation to Accompany Claims of Trade Secrecy" in § 350.27 of this subpart.

(1) Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret, and indicate whether these measures will continue in the future.

(2) Have you disclosed the information claimed as trade secret to any other person (other than a member of a local emergency planning committee, officer or employee of the United States or a State or local government, or your employee) who is not bound by a confidentiality agreement to refrain from disclosing this trade secret information to others?

(3) List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

(4) In order to show the validity of a trade secrecy claim, you must identify your specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in which it is used. (If you use the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the chemical claimed as trade secret is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

(iv) Explain why your use of the chemical claimed as trade secret would be valuable information to your competitors.

(5) Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial.

(6)(i) To what extent is the chemical claimed as trade secret available to the public or your competitors in products, articles, or environmental releases?

(ii) Describe the factors which influence the cost of determining the identity of the chemical claimed as trade secret by chemical analysis of the product, article, or waste which contains the chemical (e.g., whether the chemical is in pure form or is mixed with other substances).

(b) The answers to the substantiation questions listed in paragraph (a) of this section are to be submitted on the form in § 350.27 of this subpart, and included with a submitter's trade secret claim.

(c) An owner, operator or senior official with management responsibility shall sign the certification at the end of the form contained in § 350.27. The certification in both the sanitized and unsanitized versions of the substantiation must bear an original signature.

(d) *Claims of confidentiality in the substantiation.* (1) The submitter may claim as confidential any trade secret or

confidential business information contained in the substantiation. Such claims for material in the substantiation are not limited to claims of trade secrecy for specific chemical identity, but may also include claims of confidentiality for any confidential business information. To claim this material as confidential, the submitter shall clearly designate those portions of the substantiation to be claimed as confidential by marking those portions "Confidential," or "Trade Secret." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(2) An owner, operator, or senior official with management responsibility shall sign the certification stating that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. This certification is combined on the substantiation form in § 350.27 with the certification described in paragraph (c) of this section.

(3) The submitter shall submit to EPA two copies of the substantiation, one of which shall be the unsanitized version, and the other shall be the sanitized version.

(i) The unsanitized copy shall contain all of the information claimed as trade secret or business confidential, marked as indicated in paragraph (d)(1) of this section.

(ii) The second copy shall be identical to the unsanitized substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the substantiation is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or category of the chemical claimed as trade secret. This sanitized copy shall be submitted to the State emergency response commission, a designated State agency, the local emergency planning committee and the local fire department, as appropriate, and made publicly available.

(e) *Supplemental information.* (1) EPA may request supplemental information from the submitter in support of its trade secret claim, pursuant to § 350.11(a)(1). EPA may specify the kind of information to be submitted, or the submitter may submit any additional detailed information which further supports the truth of the information previously supplied to EPA in its initial substantiation, under this section.

(2) The submitter may claim as confidential any trade secret or confidential business information contained in the supplemental information. To claim this material as confidential, the submitter shall clearly designate those portions of the supplemental information to be claimed as confidential by marking those portions "Confidential," or "Trade Secret." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(3) If portions of the supplementary information are claimed confidential, an owner, operator, or senior official with management responsibility of the submitter shall certify that those portions of the supplemental information claimed as confidential would, if disclosed, reveal the chemical identity being claimed as confidential or would reveal other confidential business or trade secret information.

(4) If supplemental information is requested by EPA and the submitter claims portions of it as trade secret or confidential, then the submitter shall submit to EPA two copies of the supplemental information, an unsanitized and a sanitized version.

(i) The unsanitized version shall contain all of the information claimed as trade secret or business confidential, marked as indicated above in paragraph (e)(2) of this section.

(ii) The second copy shall be identical to the unsanitized substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the supplemental information is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or category of the chemical claimed as trade secret.

### § 350.9 Initial action by EPA.

(a) When a claim of trade secrecy, made in accordance with § 350.5 of this part, is received by EPA, that information is treated as confidential until a contrary determination is made.

(b) A determination as to the validity of a trade secrecy claim shall be initiated upon receipt by EPA of a petition under § 350.15 or may be initiated at any time by EPA if EPA desires to determine whether chemical identity information claimed as trade secret is entitled to trade secret treatment, even though no request for release of the information has been received.

(c) If EPA initiates a determination as to the validity of a trade secrecy claim, the procedures set forth in §§ 350.11, 350.15, and 350.17 shall be followed in making the determination.

(d) When EPA receives a petition requesting disclosure of trade secret chemical identity or if EPA decides to initiate a determination of the validity of a trade secrecy claim for chemical identity, EPA shall first make a determination that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy for that chemical identity at that facility.

(1) If EPA determines that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and the same facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy, then EPA shall review the submitter's claim according to § 350.11.

(2) If such a prior determination held that the submitter's claim for that chemical identity is invalid, and such determination was not challenged by appeal to the General Counsel, or by review in the District Court, or, if challenged, was upheld, EPA shall notify the submitter by certified mail (return receipt requested) that the chemical identity claimed as trade secret is the subject of a prior, final Agency determination concerning the same facility in which it was held that such a claim was invalid. In this notification EPA shall include notice of intent to disclose chemical identity within 10 days pursuant to § 350.18(c) of this subpart. EPA shall also notify the petitioner by regular mail of the action taken pursuant to this section.

### § 350.11 Review of claim.

(a) *Determination of sufficiency.* When EPA receives a petition submitted pursuant to § 350.15, or if EPA initiates a determination of the validity of a trade secrecy claim for chemical identity, and EPA has made a determination, as required in paragraph (d)(1) of § 350.9, then EPA shall determine whether the submitter has presented sufficient support for its claim of trade secrecy in its substantiation. EPA must make such a determination within 30 days of receipt of a petition. A claim of trade secrecy for chemical identity will be considered sufficient if, assuming all of the information presented in the substantiation is true, this supporting

information could support a valid claim of trade secrecy. A claim is sufficient if it meets the criteria set forth in § 350.13.

(1) *Sufficient claim.* If the claim meets the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing, by certified mail (return receipt requested), that it has 30 days from the date of receipt of the notice to submit supplemental information in writing in accordance with § 350.7(e), to support the truth of the facts asserted in the substantiation. EPA will not accept any supplemental information, in response to this notice, submitted after the 30 day period has expired. The notice required by this section shall include the address to which supplemental information must be sent. The notice may specifically request supplemental information in particular areas relating to the submitter's claim. The notice must also inform the submitter of his right to claim any trade secret or confidential business information as confidential, and shall include a reference to § 350.7(e) of this regulation as the source for the proper procedure for claiming trade secrecy for trade secret or confidential business information submitted in the supplemental information requested by EPA.

(2) *Insufficient claim.* If the claim does not meet the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing of this fact by certified mail (return receipt requested). Upon receipt of this notice, the submitter may either file an appeal of the matter to the General Counsel under paragraph (a)(2)(i) of this section, or, for good cause shown, submit additional material in support of its claim of trade secrecy to EPA under paragraph (a)(2)(ii) of this section. The notice required by this section shall include the reasons for EPA's decision that the submitter's claim is insufficient, and shall inform the submitter of its rights within 30 days of receiving notice to file an appeal with EPA's General Counsel or to amend its original substantiation for good cause shown. The notice shall include the address of the General Counsel, and the address of the office to which an amendment for good cause shown should be sent. The notice shall also include a reference to § 350.11(a)(2)(i)–(iv) of this subpart as the source on the proper procedures for filing an appeal or for amending the original substantiation.

(i) *Appeal.* The submitter may file an appeal of a determination of insufficiency with the General Counsel within 30 days of receipt of the notice of insufficiency, in accordance with the procedures set forth in § 350.17.

(ii) *Good Cause.* In lieu of an appeal to the General Counsel, the submitter may send additional material in support of its trade secrecy claim, for good cause shown, within 30 days of receipt of the notice of insufficiency. To do so, the submitter shall notify EPA by letter of its contentions as to good cause, and shall include in that letter the additional supporting material.

(iii) Good cause is limited to one or more of the following reasons:

(A) The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at that time; or

(B) EPA regulations and other EPA guidance did not call for such information at the time the substantiation was submitted; or

(C) The submitter had made a good faith effort to submit a complete substantiation, but failed to do so due to an inadvertent omission or clerical error.

(iv) If EPA determines that the submitter has met the standard for good cause, then EPA shall decide, pursuant to paragraph (a) of this section, whether the submitter's claim meets the Agency's standards of sufficiency set forth in § 350.13.

(A) If after receipt of additional material for good cause, EPA decides the claim is sufficient, EPA will determine whether the claim presents a valid claim of trade secrecy according to the procedures set forth in paragraph (b) of this section.

(B) If after receipt of additional material for good cause, EPA decides the claim is insufficient, EPA will notify the submitter by certified mail (return receipt requested) and the submitter may seek review in U.S. District Court within 30 days of receipt of the notice. The notice required by this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of the notice. The petitioner shall be notified of EPA's decision by regular mail.

(v) If EPA determines that the submitter has not met the standard for good cause, then EPA shall notify the submitter by certified mail (return receipt requested). The submitter may seek review of EPA's decision in U.S. District Court within 30 days of receipt of the notice. The notice required in this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of the notice. The petitioner shall be notified of EPA's decision by regular mail.

(b) Determination of trade secrecy. Once a claim has been determined to be sufficient under paragraph (a) of this section, EPA must decide whether the claim is entitled to trade secrecy.

(1) If EPA determines that the information submitted in support of the trade secrecy claim is true and that the chemical identity is a trade secret, the petitioner shall be notified by certified mail (return receipt requested) of EPA's determination and may bring an action in U.S. District Court within 30 days of receipt of such notice. The notice required in this paragraph shall include the reasons why EPA has determined that the chemical identity is a trade secret and shall inform the petitioner of its right to seek review in U.S. District Court within 30 days of receipt of the notice. The submitter shall be notified of EPA's decision by regular mail.

(2) If EPA decides that the information submitted in support of the trade secrecy claim is not true and that the chemical identity is not a trade secret:

(i) The submitter shall be notified by certified mail (return receipt requested) of EPA's determination and may appeal to the General Counsel within 30 days of receipt of such notice, in accordance with the procedures set forth in § 350.17. The notice required by this paragraph shall include the reasons why EPA has determined that the chemical identity is not a trade secret and shall inform the submitter of its appeal rights to EPA's General Counsel. The notice shall include the address to which an appeal should be sent and the procedure for filing an appeal, as set forth in § 350.17(a) of this subpart. The petitioner shall be notified of EPA's decision by regular mail.

(ii) The General Counsel shall notify the submitter by certified mail (return receipt requested) of its decision on appeal pursuant to the requirements in § 350.17. The notice required by this paragraph shall include the reasons for EPA's determination. If the General Counsel affirms the decision that the chemical identity is not a trade secret, then the submitter shall have 30 days from the date it receives notice of the General Counsel's decision to bring an action in U.S. District Court. If the General Counsel decides that the chemical identity is a trade secret, then EPA shall follow the procedure set forth in paragraph (b)(1) of this section.

**§ 350.13 Sufficiency of assertions.**

(a) A substantiation submitted under § 350.7 will be determined to be

insufficient to support a claim of trade secrecy unless the answers to the questions in the substantiation submitted under § 350.7 support all of the following conclusions. This substantiation must include, where applicable, specific facts.

(1) The submitter has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures. To support this conclusion, the facts asserted must show all of the following:

(i) The submitter has taken reasonable measures to prevent unauthorized disclosure of the specific chemical identity and will continue to take such measures.

(ii) The submitter has not disclosed the specific chemical identity to any person who is not bound by an agreement to refrain from disclosing the information.

(iii) The submitter has not previously disclosed the specific chemical identity to a local, State, or Federal government entity without asserting a confidentiality claim.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person. To support this conclusion, the facts asserted must show all of the following:

(i) *Either:* (A) Competitors do not know or the submitter is not aware that competitors know that the chemical whose identity is being claimed trade secret can be used in the fashion that the submitter uses it, and competitors cannot easily duplicate the specific use of this chemical through their own research and development activities; or

(B) Competitors are not aware or the submitter does not know whether competitors are aware that the submitter is using this chemical in this fashion.

(ii) The fact that the submitter manufactures, imports or otherwise uses this chemical in a particular fashion is not contained in any publication or other information source (of which the submitter is aware) available to competitors or the public.

(iii) The non-confidential version of the submission under this title does not contain sufficient information to enable competitors to determine the specific chemical identity withheld therefrom.

(iv) The information referred to in paragraph (a)(3)(i)(A) of this section, is of value to competitors.

(v) Competitors are likely to use this information to the economic detriment of the submitter and are not precluded from doing so by a United States patent.

(vi) The resulting harm to submitter's competitive position would be substantial.

(4) The chemical identity is not readily discoverable through reverse engineering. To support this conclusion, the facts asserted must show that competitors cannot readily discover the specific chemical identity by analysis of the submitter's products or environmental releases.

(b) The sufficiency of the trade secrecy claim shall be decided entirely upon the information submitted under § 350.7, or § 350.11(a)(2)(ii).

**§ 350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.**

(a) The public may request the disclosure of chemical identity claimed as trade secret by submitting a written petition to the address specified in § 350.16.

(b) The petition shall include:

(1) The name, address, and telephone number of the petitioner;

(2) The name and address of the company claiming the chemical identity as trade secret; and

(3) A copy of the submission in which the submitter claimed chemical identity as trade secret, with a specific indication as to which chemical identity the petitioner seeks disclosed.

(c) EPA shall acknowledge, by letter to the petitioner, the receipt of the petition.

(d) Incomplete petitions. If the information contained in the petition is not sufficient to allow EPA to identify which chemical identity the petitioner is seeking to have released, EPA shall notify the petitioner that the petition cannot be further processed until additional information is furnished. EPA will make every reasonable effort to assist a petitioner in providing sufficient information for EPA to identify the chemical identity the petitioner is seeking to have released.

(e) EPA shall make a determination on a petition requesting disclosure, in accordance with § 350.11 and § 350.17, within nine months of receipt of such petition.

**§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.**

All claims of trade secrecy under sections 303 (d)(2), (d)(3), 311, 312, and 313 and all public petitions requesting disclosure of chemical identities claimed as trade secret should be sent to the following address: U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know Program, P.O. Box 70266, Washington, DC 20024–0266.

**§ 350.17 Appeals.**

(a) *Procedure for filing appeal.* A submitter may appeal an EPA determination under §§ 350.11 (a)(2)(i) or (b)(2)(i), by filing an appeal with the General Counsel. The appeal shall be addressed to: The Office of General Counsel, U.S. Environmental Protection Agency, Contracts and Information Law Branch, Room 3600M, LE–132G, 401 M Street, SW., Washington, DC 20460.

The appeal shall contain the following:

(1) A letter requesting review of the appealed decision; and

(2) A copy of the letter containing EPA's decision upon which appeal is requested.

(b) Appeal of determination of insufficient claim.

(1) Where a submitter appeals a determination by EPA under § 350.11(a)(2)(i) that the trade secrecy claim presents insufficient support for a finding of trade secrecy, the General Counsel shall make one of the following determinations:

(i) The trade secrecy claim at issue meets the standards of sufficiency set forth in § 350.13; or

(ii) The trade secrecy claim at issue does not meet the standards of sufficiency set forth in § 350.13.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the claim shall be processed according to § 350.11(a)(1). The General Counsel shall notify the submitter of the determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision.

(3) If the General Counsel upholds the determination of insufficiency made by the EPA office handling the claim, the submitter may seek review in U.S. District Court within 30 days after receipt of notice of the General Counsel's determination. The General Counsel shall notify the submitter of its determination on appeal in writing, by

certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision, and a statement of the submitter's right to seek review in U.S. District Court within 30 days of receipt of such notice. The petitioner shall be notified by regular mail.

(c) *Appeal of determination of no trade secret.* (1) If a submitter appeals from a determination by EPA under § 350.11(b)(2) that the specific chemical identity at issue is not a trade secret, the General Counsel shall make one of the following determinations:

(i) The assertions supporting the claim of trade secrecy are true and the chemical identity is a trade secret; or

(ii) The assertions supporting the claim of trade secrecy are not true and the chemical identity is not a trade secret.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision. The General Counsel shall send the petitioner the notice required in § 350.11(b)(1).

(3) If the General Counsel upholds the decision of the EPA office which made the trade secret determination, the submitter may seek review in U.S. District Court within 30 days of receipt of notice of the General Counsel's decision. The General Counsel shall notify the submitter of the determination on appeal in writing, by certified mail (return receipt requested). The notice shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, the basis for the appeal determination, that it constitutes final Agency action concerning the chemical identity trade secrecy claim, and that such final Agency action may be subject to review in U.S. District Court within 30 days of receipt of such notice. The General Counsel shall notify the petitioner by regular mail.

**§ 350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.**

(a) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of a determination of the General Counsel under § 350.17(b)(3) of this subpart that the trade secrecy claim is insufficient, or under § 350.17(c)(3) of this subpart that chemical identity claimed as trade secret is not entitled to trade secret protection, EPA may furnish notice of intent to disclose the chemical identity claimed as trade secret within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(b) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of an EPA determination under § 350.11(a)(2)(iv)(B), or § 350.11(a)(2)(v) of this regulation, or fails to pursue appeal to the General Counsel within 20 days after being notified of its right to do so under § 350.11(a)(2)(i) or § 350.11(b)(2)(i), EPA may furnish notice of intent to disclose the chemical identity claimed as trade secret within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(c) Where EPA, upon initial review under § 350.9(d), determines that the chemical identity claimed as trade secret in a submittal submitted pursuant to this part is the subject of a prior final Agency determination concerning a claim of trade secrecy for the same chemical identity for the same facility, in which such claim was held invalid, EPA shall furnish notice of intent to disclose chemical identity within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(d) EPA shall furnish notice of its intent to release chemical identity claimed as trade secret by sending the following notification to submitters, under the circumstances set forth in paragraphs (a), (b), and (c) of this section. The notice shall state that EPA will make the chemical identity available to the petitioner and the public on the tenth working day after the date of the submitter's receipt of written notice (or on such later date as the Office of General Counsel may establish), unless the Office of General Counsel has first been notified of the submitter's commencement of an action in Federal court to obtain judicial review of the determination at issue, and to obtain preliminary injunctive relief against disclosure, or, where applicable, as described in paragraph (b) of this section, of commencement of an appeal to the General Counsel. The notice shall further state that if Federal court action is timely commenced, EPA may nonetheless make the information available to the petitioner and the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or, that if Federal court action or appeal to the General Counsel is timely commenced, EPA may nonetheless make the information available to the petitioner and the public whenever it appears to the General Counsel, after reasonable notice to the submitter, that the submitter is not taking appropriate measures to obtain a speedy resolution of the action.

**§ 350.19 Provision of information to States.**

(a) Any State may request access to trade secrecy claims, substantiations, supplemental substantiations, and additional information submitted to EPA. EPA shall release this information, even if claimed confidential, to any State requesting access if:

(1) The request is in writing;

(2) The request is from the Governor of the State; and

(3) The State agrees to safeguard the information with procedures equivalent to those which EPA uses to safeguard the information.

(b) The Governor of a State which receives access to trade secret information under this section may disclose such information only to State employees.

**§ 350.21 Adverse health effects.**

The Governor or State emergency response commission shall identify the adverse health effects associated with each of the chemicals claimed as trade secret and shall make this information available to the public. The material safety data sheets submitted to the State emergency response commissions may be used for this purpose.

**§ 350.23 Disclosure to authorized representatives.**

(a) Under section 322(f) of the Act, EPA possesses the authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to trade secret or confidential treatment under this part. Such authority may be exercised only in accordance with paragraph (b) of this section.

(b)(1) A person under contract or subcontract to EPA or a grantee who performs work for EPA in connection with Title III or regulations which implement Title III may be considered an authorized representative of the

United States for purposes of this § 350.23. Subject to the limitations in this § 350.23(b), information to which this section applies may be disclosed to such a person if the EPA program office managing the contract, subcontract, or grant first determines in writing that such disclosure is necessary in order that the contractor, subcontractor or grantee may carry out the work required by the contract, subcontract or grant.

(2) No information shall be disclosed under this § 350.23(b) unless this contract, subcontract, or grant in question provides:

(i) That the contractor, subcontractor or the grantee and the contractor's, subcontractor's, or grantee's employees shall use the information only for the purpose of carrying out the work required by the contract, subcontract, or grant, and shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected submitter or of an EPA legal office, and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor, subcontractor or grantee for the performance of the work required under the contract, subcontract or grant, or upon completion of the contract, subcontract or grant;

(ii) That the contractor, subcontractor or grantee shall obtain a written agreement to honor such terms of the contract or subcontract from each of the contractor's, subcontractor's or grantee's employees who will have access to the information, before such employee is allowed such access; and

(iii) That the contractor, subcontractor or grantee acknowledges and agrees that the contract, subcontract or grant provisions concerning the use and disclosure of confidential business information are included for the benefit of, and shall be enforceable by, both EPA and any covered facility having an interest in information concerning it supplied to the contractor, subcontractor or grantee by EPA under the contract or subcontract or grant.

(3) No information shall be disclosed under this § 350.23(b) until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than 5 working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor or grantee, the contract, subcontract or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the Federal Register or may be sent to individual submitters.

(4) The EPA program office shall prepare a record of disclosures under this § 350.23(b). The EPA program office shall maintain the record of disclosure and the determination of necessity prepared under paragraph (b)(1) of this section for a period of not less than 36 months after the date of the disclosure.

### § 350.25 Disclosure in special circumstances.

Other disclosure of specific chemical identity may be made in accordance with 40 CFR 2.209.

### § 350.27 Substantiation form to accompany claims of trade secrecy, instructions to substantiation form.

(a) The form in paragraph (b) of this section must be completed and submitted as required in § 350.7(a).

(b) Substantiation form to accompany claims of trade secrecy.

BILLING CODE 6560-50-M

United States Environmental Protection Agency
Washington, DC 20460

EPA

# Substantiation To Accompany Claims of Trade Secrecy Under the Emergency Planning and Community Right-To-Know Act of 1986

Form Approved
OMB No. 2050-0078
Approval expires 10-31-90

**Paperwork Reduction Act Notice**

Public reporting burden for this collection of information is estimated to vary from 27.7 hours to 33.2 hours per response, with an average of 28.8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## Part 1. Substantiation Category

1.1 Title III Reporting Section (check only one)

☐ 303 ☐ 311 ☐ 312 ☐ 313

1.2 Reporting Year 19____

1.3 Indicate Whether This Form is (check only one)

1.3a. ☐ **Sanitized**

(answer 1.3.1a below)

1.3.1a. Generic Class or Category

1.3b. ☐ **Unsanitized**

(answer 1.3.1b. and 1.3.2b. below)

1.3.1b. CAS Number

☐☐☐☐☐☐ – ☐☐ – ☐

1.3.2b. Specific Chemical Identity

## Part 2. Facility Identification Information

2.1 Name

2.2 Street Address

2.3 City, State, and ZIP Code

2.4 Dun and Bradstreet Number

☐☐ – ☐☐☐ – ☐☐☐☐

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## Part 3. Responses to Substantiation Questions

3.1 Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret, and indicate whether these measures will continue in the future.

3.2 Have you disclosed the information claimed as trade secret to any other person (other than a member of a local emergency planning committee, officer or employee of the United States or a State or local government, or your employee) who is not bound by a confidentiality agreement to refrain from disclosing this trade secret information to others?

☐ Yes ☐ No

3.3 List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

| Government Entity | Confidentiality Claim Asserted | | Confidentiality Claim Denied | |
|---|---|---|---|---|
| | Yes | No | Yes | No |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |



3.4

(i)

(ii)

(iii)

3.4 In order to show the validity of a trade secrecy claim, you must identify your specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in which it is used. (If you use the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)?

☐ Yes ☐ No

If so, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the chemical claimed as trade secret is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

3.4 (iv) Explain why your use of the chemical claimed as trade secret would be valuable information to your competitors.

3.5 Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial.

3.6 (i) To what extent is the chemical claimed as trade secret available to the public or your competitors in products, articles, or environmental releases?



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3.6 (ii) Describe the factors which influence the cost of determining the identity of the chemical claimed as trade secret by chemical analysis of the product, article, or waste which contains the chemical (e.g., whether the chemical is in pure form or is mixed with other substances).

## Part 4. Certification (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined the information submitted in this and all attached documents. Based on my inquiry of those individuals responsible for obtaining the information, I certify that the submitted information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. I acknowledge that I may be asked by the Environmental Protection Agency to provide further detailed factual substantiation relating to this claim of trade secrecy, and certify to the best of my knowledge and belief that such information is available. I understand that if it is determined by the Administrator of EPA that this trade secret claim is frivolous, EPA may assess a penalty of up to $25,000 per claim.

I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.

| 4.1 Name and official title of owner or operator or senior management official | |
|---|---|
| 4.2 Signature *(All signatures must be original)* | 4.3 Date Signed |



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BEST COPY AVAILABLE

**Instructions for Completing the EPA Trade Secret Substantiation Form**

*General Information*

EPA requires that the information requested in a trade secret substantiation be completed using this substantiation form in order to ensure that all facility and chemical identifier information, substantiation questions, and certification statements are completed. Submitter-devised forms will not be accepted. Incomplete substantiations will in all likelihood be found insufficient to support the claim, and the claim will be denied. *Moreover, the statute provides that a submitter who fails to provide information required will be subject to a $10,000 fine.* For the submitter's own protection, therefore, the EPA form must be used and completed in its entirety.

The statute for section 322 establishes a two-phase process in which the submitter must do the following:

1. At the time a report is submitted, the submitter must present a complete set of assertions that (if true) would be sufficient to justify the claim of trade secrecy; and

2. If the claim is reviewed by EPA, the submitter will be asked to provide additional factual information sufficient to establish the truthfulness of the assertions made at the time the claim was made.

In making its assertions of trade secrecy, a submitter should provide, where applicable, descriptive factual statements. Conclusory statements of compliance (such as positive or negative restatements of the questions) may not provide EPA with enough information to make a determination and may be found insufficient to support a claim.

What May Be Withheld

Only the specific chemical identity required to be disclosed in sections 303, 311, 312, and 313 submissions may be claimed trade secret on the Title III submittal itself. (Other trade secret or confidential business information included in answer to a question on the substantiation may be claimed trade secret or confidential, as described below.)

Location information claimed as confidential under section 312(d)(2)(F) should *not* be sent to EPA; this should only be sent to the SERC, LEPC, and the fire department, as requested.

Sanitized and Unsanitized Copies

You must submit this form to EPA in sanitized and unsanitized versions, along with the sanitized and unsanitized copies of the submittal that gives rise to this trade secrecy claim (except for the section 303 submittal, and for MSDSs under section 311). The *unsanitized* version of this form contains specific chemical identity and CAS number and may contain other trade secret or confidential business information, which should be clearly labeled as such. Failure to claim other information trade secret or confidential will make that information publicly available. In the *sanitized* version of this form, the specific chemical identity and CAS number must be replaced with the chemical's generic class or category and any other trade secret or confidential business information should be deleted. *You should also send sanitized copies of the submittal and this form to relevant State and local authorities.*

Each question on this form must be answered. *Submitters are encouraged to answer in the space provided.* If you need more space to answer a particular question, please use additional sheets. If you use additional sheets, be sure to include the number (and if applicable, the subpart) of the question being answered and write your facility's Dun and Bradstreet Number on the lower right-hand corner of each sheet.

When the Forms Must be Submitted

The sanitized and unsanitized report forms and trade secret substantiations must be submitted to EPA by the normal reporting deadline for that section (e.g., section 313 submissions for any calendar year must be submitted on or before July 1 of the following year).

Where to Send the Trade Secrecy Claim

All trade secrecy claims should be sent to the following address: U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know Program, P.O. Box 70266, Washington, DC 20024–0266.

In addition, you must send sanitized copies of the report form and substantiation to relevant State and local authorities. States will provide addresses where the copies of the reports are to be sent.

Packaging of Claim(s)

A completed section 322 claim package must include four items, packaged in the following order:

1. An unsanitized trade secret substantiation form.

2. A sanitized trade secret substantiation form.

3. An unsanitized 312 or 313 report (it is not necessary to create an unsanitized section 303 submittal or MSDS for submission under section 311).

4. A sanitized (public) section 303, 311, 312, or 313 or report.

It is important to securely fasten together (binder clip or rubber band) each of the reporting forms and substantiations for the particular chemical being claimed trade secret. This process will make it clear that a claim is physically complete when submitted. When submitters submit claims for more than one chemical, EPA requests that the four parts associated with each chemical be assembled as a set and each set for different chemicals be kept separate within the package sent to EPA. Following these guidelines permits the Agency to make the appropriate determinations of trade secrecy, and to make public only those portions of each submittal required to be disclosed.

How to Obtain Forms and Other Information

Additional copies of the Trade Secret Substantiation Form may be obtained by writing to: Emergency Planning and Community Right-to-Know Program, U.S. Environmental Protection Agency, WH–562A, 401 M Street, SW., Washington, DC 20460.

*Instructions for Completing Specific Sections of the Form*

Part 1. Substantiation Category

*1.1 Title III Reporting Section.* Check the box corresponding to the section for which this particular claim of trade secrecy is being made. Checking off more than one box for a claim is *not* permitted.

*1.2 Reporting Year.* Enter the year to which the reported information applies, not the year in which you are submitting the report.

*1.3a Sanitized.* If this copy of the submission is the "public" or sanitized version, check this box and complete 1.3.1a. which asks for generic class or category. Do *not* complete the information required in the unsanitized box (1.3b.).

*1.3.1a Generic Class or Category.* You must complete this if you are claiming the specific chemical identity as a trade secret and have marked the box in 1.3a. The generic chemical name must be structurally descriptive of the chemical.

*1.3b Unsanitized.* Check the box if this version of the form contains the specific chemical identity or any other trade secret or confidential business information.

*1.3.1b CAS Number.* You must enter the Chemical Abstract Service (CAS) registry number that appears in the appropriate section of the rule for the chemical being reported. Use leading place holding zeros. If you are reporting

a chemical category (e.g., copper compounds), enter N/A in the CAS number space.

*1.3.2b Specific Chemical Identity.* Enter the name of the chemical or chemical category as it is listed in the appropriate section of the reporting rule.

Part 2. Facility Identification Information

*2.1–2.3 Facility Name and Location.* You must enter the name of your facility (plant site name or appropriate facility designation), street address, city, State and ZIP Code in the space provided. You may not use a post office box number for this location.

*2.4 Dun and Bradstreet Number.* You must enter the number assigned by Dun and Bradstreet for your facility or each establishment wthin your facility. If the establishment does not have a D & B number, enter N/A in the boxes reserved for those numbers. Use leading place holding zeros.

Part 3. Responses to Substantiation Questions

The six questions posed in this form are based on the four statutory criteria found in section 322(b) of Title III. The information you submit in response to these questions is the basis for EPA's initial determination as to whether the substantiation is sufficient to support a claim of trade secrecy. EPA has indicated in § 350.13 of the final rule the specific criteria that it regards as the legal basis for evaluating whether the answers you have provided are sufficient to warrant protection of the chemical identity. You are urged to review those criteria before preparing answers to the questions on the form.

Part 4. Certification

An *original* signature is required for each trade secret substantiation submitted to EPA, both sanitized and unsanitized. It indicates the submitter is certifying that the particular substantiation provided to EPA is complete, true, and accurate, and that it is intended to support the specific trade secret claim being made. Noncompliance with this certification requirement may jeopardize the trade secret claim.

*4.1 Name and Official Title.* Print or type the name and title of the person who signs the statement at 4.2.

*4.2 Signature.* This certification must be signed by the owner or operator, or a senior official with management responsibility for the person (or persons) completing the form. An *original* signature is required for each trade secret substantiation submitted to EPA, both sanitized and unsanitized. Since the certification applies to all information supplied on the forms, it should be signed only after the substantiation has been completed.

*4.3 Date.* Enter the date when the certification was signed.

**Appendix A—Restatement of Torts Section 757, Comment b**

b. Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see section 759) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Novelty and prior art. A trade secret may be a device or process which is patentable; but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements are essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

## Subpart B—Disclosure of Trade Secret Information to Health Professionals

### § 350.40 Disclosure to health professionals.

(a) *Definitions.* "Medical emergency" means any unforeseen condition which a health professional would judge to require urgent and unscheduled medical attention. Such a condition is one which results in sudden and/or serious symptom(s) constituting a threat to a person's physical or psychological well-being and which requires immediate medical attention to prevent possible deterioration, disability, or death.

(b) The specific chemical identity, including the chemical name of a hazardous chemical, extremely hazardous substance, or a toxic chemical, is made available to health professionals, in accordance with the applicable provisions of this section.

(c) *Diagnosis or Treatment by Health Professionals in Non-Emergency Situations.* (1) An owner or operator of a facility which is subject to the requirements of sections 311, 312, and 313, shall, upon request, provide the

specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional if:

(i) The request is in writing;

(ii) The request describes why the health professional has a reasonable basis to suspect that:

(A) The specific chemical identity is needed for purposes of diagnosis or treatment of an individual,

(B) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(C) Knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

(iii) The request contains a confidentiality agreement which includes:

(A) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(B) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (c)(1)(ii) of this section and will not release the information under any circumstances, except as authorized by the terms of the confidentiality agreement or by the owner or operator of the facility providing such information.

(iv) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(2) Following receipt of a written request, the facility owner or operator to whom such request is made shall provide the requested information to the health professional promptly.

(d) *Preventive Measures and Treatment by Local Health Professionals.* (1) An owner or operator of a facility subject to the requirements of sections 311, 312, and 313, shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, epidemiologist, or nurse) if:

(i) The requester is a local government employee or a person under contract with the local government;

(ii) The request is in writing;

(iii) The request describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of chemicals that may reasonably be anticipated to cause an observed health effect.

(iv) The request contains a confidentiality agreement which includes:

(A) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(B) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (d)(1)(iii) of this section and will not release the information under any circumstances except as may otherwise be authorized by the terms of such agreement or by the owner or operator of the facility person providing such information.

(v) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(2) Following receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the local health professional.

(e) *Medical Emergency.* (1) An owner or operator of a facility which is subject to the requirements of sections 311, 312, and 313, must provide a copy of a material safety data shreet, an inventory form, or a toxic chemical release form, including the specific chemical identity if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if the treating physician or nurse determines that:

(i) A medical emergency exists as to the individual or individuals being diagnosed or treated;

(ii) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and,

(iii) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

(2) Owners or operators of facilities must provide the specific chemical identity to the requesting treating physician or nurse immediately following the request, without requiring a written statement of need or a confidentiality agreement in advance.

(3) The owner or operator may require a written statement of need and a written confidentiality agreement as soon as circumstances permit. The written statement of need shall describe in reasonable detail the factors set forth in paragraph (e)(1) of this section. The written confidentiality agreement shall be in accordance with paragraphs (c)(1)(iii) and (f) of this section.

(f) *Confidentiality Agreement.* The confidentiality agreement authorized in paragraphs (c)(1)(iii), (d)(1)(iv) and (e)(3) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement; and

(iii) May not include requirements for the posting of a penalty bond.

(g) Nothing in this regulation is meant to preclude the parties from pursuing any non-contractual remedies to the extent permitted by law, or from pursuing the enforcement remedy provided in section 325(e) of Title III.

(h) The health professional receiving the trade secret information may disclose it to EPA only under the following circumstances: The health professional must believe that such disclosure is necessary in order to learn from the Agency additional information about the chemical necessary to assist him in carrying out the responsibilities set forth in paragraphs (c), (d), and (e) of this section. Such information comprises facts regarding adverse health and environmental effects.

[FR Doc. 88-17029 Filed 7-28-88; 10:28 am]

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Friday
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Part III

# Department of Health and Human Services

**National Institute of Health**

## Recombinant DNA Research; Action Under Guidelines; Notice

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Recombinant DNA Research: Action Under Guidelines

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Notice of action under NIH Guidelines for Research Involving Recombinant DNA Molecules.

**SUMMARY:** This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

**EFFECTIVE DATE:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770-0131.

**SUPPLEMENTARY INFORMATION:** Today an action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This proposed action was published for comment in the **Federal Register** of August 11, 1987 (52 FR 29800), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 21, 1987. A transcript of that meeting is available from the Office of Recombinant DNA Activities at the address given above.

In accordance with Section IV-C-1-b of the NIH Guidelines, this action has been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

Part I of this announcement provides background information on the action. Part II provides a summary of the action of the Director, NIH.

### I. Decision on Action Under NIH Guidelines

#### Proposal to Add Bacillus stearothermophilis to Appendix C-V

Drs. Richard Novick and June Polak of the Public Health Research Institute of the City of New York, Inc. requested that *Bacillus stearothermophilis* be added to Appendix C-V, *Extrachromosomal Elements of Gram Positive Organisms*. Information on genetic exchange involving this organism was provided in the submission.

This proposal was published in the August 11, 1987, **Federal Register** (52 FR 29800) for public comment. No comments on the proposal were received.

The RAC considered this proposal at the September 21, 1987 meeting. By a vote of eighteen in favor, none opposed, and no abstentions, the RAC recommended approval of the proposal.

I accept this recommendation and Appendix C-V has been modified accordingly.

### II. Summary of Action

#### Revision of Appendix C-V

Appendix C-V, *Extrachromosomal Elements of Gram Positive Organisms*, is modified by the addition of *Bacillus stearothermophilis* to the list of organisms.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: July 22, 1988.

**James B. Wyngaarden,**

*Director, National Institutes of Health.*

[FR Doc. 88-17030 Filed 7-27-88; 8:45 am]

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Part IV

# Department of the Interior

**Bureau of Land Management**

**43 CFR Part 3470**

**Fees, Rentals, and Royalties; Proposed Rulemaking**

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3470**

**[A-660-08-4121-02]**

**Fees, Rentals, and Royalties**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** Subpart 3473 of Title 43 of the Code of Federal Regulations sets out, among other things, the royalty requirements for all Federal coal leases. The proposed rulemaking would eliminate the latitude the Secretary now has when setting the royalty rate for underground coal leases by requiring that the royalty rate for all underground coal leases be set at a flat percent of the value of coal removed. Additionally, the proposed rule will remove the requirement that Federal coal lease royalty rates be set on an individual case basis. The proposed changes would decrease the Bureau's administrative workload and analytical costs at the time of lease readjustment.

The final rulemaking effecting these changes will be published after the close of the 60-day comment period provided for herein. All comments received during the comment period will be carefully considered and addressed in the final rulemaking, with any changes made as result of the comments on the proposed rulemaking being made part of the final rulemaking.

**DATE:** Comments on the proposed rulemaking should be submitted by September 27, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

**ADDRESS:** Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Paul W. Politzer, (202) 343–7722

or

Phillip C. Perlewitz, (202) 343–7753.

**SUPPLEMENTARY INFORMATION:** Section 6 of the Federal Coal Leasing Amendments Act of August 4, 1976 (FCLAA), amended section 7 of the Mineral Leasing Act of 1920, as amended (MLA), and states in part: "A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." Departmental regulation 43 CFR 3473.3–2(a)(1) provides that: "Royalty rates shall be determined on an individual case basis", and the following provision of 43 CFR 3473.3–2(a)(3) states: "A lease shall require payment of a royalty of not less than 8 percent of the value of coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant."

In 1985, the application of 8 percent to a readjustment was challenged in the United States District Court of Utah (Coastal States Energy Co. vs. Watt, 629 F. Supp. 9). The Court found the application appropriate. However, upon appeal the United States Court of Appeals for the 10th Circuit, while affirming that conclusion, held that the Department of the Interior was required to consider the flexibility of regulations allowing for a lesser amount than 8 percent if conditions warranted (816 F.2d 502 (1987)) and remanded it back to the Department. The Court stated:

> • • • it is error for the Bureau of Land Management to automatically fix the readjusted rate for all underground coal at 8%. Such completely ignores the ensuing proviso in the same regulation that a lesser amount, but not less than 5%, may be set, "if conditions warrant."
>
> • • • That part of the judgment only is reversed, and that particular matter only shall, by order of the district court, be remanded to IBLA with direction that further proceedings be in accord with this opinion.

Given this mandate, the Assistant Secretary for Lands and Minerals Management requested a study to analyze the various factors that should be considered in assessing the proper underground royalty rate for coal and also how to avoid the ambiguity inherent in the current regulations. The Bureau of Land Management has recently completed a draft study of the issues associated with the underground royalty rate. The results of the draft study indicate that considerable changes have occurred in market conditions and expectations for underground Federal coal.

The Findings and Observations of this draft study entitled "Review of Issues for Setting Royalty Rates on Federal Underground Coal Leases" are contained in Chapter VII which reads:

The current royalty rate for underground coal was determined more than 10 years ago through a process which included legislative direction, technical analysis, public review and comment, and formal rule-making. Care was taken to achieve a balance between the various Federal Coal Management Policy objectives, considerations, market conditions and expectations at that time. For the purposes of this analysis, it is assumed that the Congressional response to the prevailing conditions was appropriate, and that the Department's analysis and rule-making that led to a prescription of an 8 percent royalty for underground coal was also correct at that time. However, in 1987, the 10th Circuit Court mandated the Department to review whether or not 8 percent was still appropriate. The Department has responded by reviewing policies and regulations in light of a possible change in the relevant market conditions underlying the initial balance between objectives. If conditions were found to be largely unchanged, no further action would be necessary. Materially different market conditions, however, may signal a need for regulatory action.

It should be stressed that the most important issue for the Department to consider is future coal development, not current and short-term profitability. In order to predict future development, we must ask what a mine could earn, given current costs, under new contracts, or under contracts likely to exist when the mine could earn, given current costs, under new contracts, or under contracts likely to exist when the mine investment is committed. The analysis in Chapter V, "Market Changes and Expectations," indicates that there are underground mines operating profitably. It also indicates, however, that as many as 50 percent of the presently-operating mines may not have been opened if the investment decision were to be made under current market conditions and expectations—and this assumes no further cost increases or market price declines. Further, it assumes that contracts could be negotiated even though no new contracts have been let since 1982 as noted in Chapter VI.

For a variety of reasons, the current market situation for underground coal may not be attractive, from the point of view of new investment, as it once was. A comparison of the current market and market outlook to those characteristic of the mid-to-late 1970s, when the question of the appropriate underground royalty rate was last examined, suggests:

- From an overall industry perspective, production forecasts are significantly lower than those made in mid 1970s through the early 1980s, though the projections for underground coal were relatively accurate for the time period analyzed.
- Although contract prices initially increased, as expected, no new long term contracts have been negotiated since 1982 and spot market contract prices have been falling since the early 1980's,
- Although production and delivery of underground coal under existing long-term contracts gives the perception of continuing market recovery, the minimal interest in

negotiating new long-term contracts for the purchase of underground coal suggests the recovery has leveled off.

• Relative differences in the delivered prices of various coals, including new transportation competition in the Powder River Basin, may have reduced the effective geographic market size for underground coal.

The profitability of the on-going operations, stemming from old contracts, contrasted with the apparent lack of profitable opportunities based on the lack of any demand for current contracts indicates there may be an incremental trade-off between current royalty revenues and future development. At present it is unclear what the magnitude of this trade-off would be. It is diffucult to determine with any exactitude such small margins in this environment. Careful consideration should be given to these issues in any determinations regarding underground coal royalties.

Although our analysis has dealt primarily with efficiency issues, the changing market conditions that we outline also raise an equity issue which the Secretary is authorized to consider. Existing operations utilizing state of the art technology and having already acquired long term contracts negotiated under market expectations of early 1980's can make adequate profits at the current royalty rate (see Chapter VI). However, a Market demand for new underground coal contracts has not existed since 1982 and new mine operators may find it very difficult to obtain a contract and the negotiated price given spot market trends could be considerably lower. The profits under such contracts would also be lower. If the 8 percent royalty represented an equitable division of the profits in the mid-to-late 1970s, it is now appropriate to consider whether the distribution continues to be equitable.

Issues to consider in adopting a regulatory policy establishing a flat royalty rate for underground coals leases at the time of lease issuance or readjustment, as opposed to the current regulations which allow flexibility 'if conditions warrant,' are as follows:

• The mining of less economic reserves as the result of the royalty rate.

• The relationship between the risk of mining underground coal and increased competition in the industry.

• Certainty as to what royalty rate would be applied to all underground coal leases for the lease term, and its impact on administrative burden and industry planning.

• The impacts associated with disruption of the socioeconomic infrastructure resulting from premature mine closure.

• The equitable sharing of revenues between the public and private sectors from coal production given the change in market conditions and expectations.

• States' share of Mineral Leasing Act revenues.

• The potential number of appeals and court challenges to lease readjustments.

• The potential for royalty rate reduction requests under Section 39 of the MLA.

As custodian of the nation's Federal coal resources, the Department of the Interior has an obligation to see that these resources are developed to the greatest mutual benefit of the nation, the coal-producing regions and the coal industry. There has been sufficient change in market conditions to suggest that a prudent land manager consider the propriety of a royalty rate set more than 10 years ago. Given the lack of a demand for long term contracts and the anticipated change toward low or falling prices in the future market for coal, new profit margins may be smaller than existing profit margins. If this is true, then the net (after royalties are paid) return to the producer may be declining, both absolutely as well as relative to required capital investment. Such a decline would certainly result in a reduction in coal development investment. Therefore, it may be appropriate to consider the option of a lower royalty rate for underground coal, consistent with prevailing and expected market conditions. Such consideration should be based on an evaluation of the objectives of the Federal Coal Management Program, as discussed in Chapter III, the effect of lowering the royalty rate on those objectives, and indications of what royalty rate the market is setting in similar, non-Federal regions.

Copies of the entire study can be obtained from the Bureau of Land Management, Office of Public Affairs, 1800 C Street NW., Room 5600, Washington, DC 20240.

The proposed rulemaking would: (1) Eliminate the current process the Bureau of Land Management now utilizes of setting Federal coal lease royalty rates on an individual case basis; and (2) remove the current provision under which the Secretary of the Interior can now set a lower underground coal lease royalty rate at the time of lease issuance or readjustment. The proposed changes would decrease the Bureau's administrative workload and analytical costs at the time of lease readjustment. It costs approximately $30,000 to $50,000 per workyear per underground coal lease to conduct an individual case analysis of the lease royalty rate at the time of lease readjustment. There are at present 334 underground Federal coal leases. Only 53 of these Federal coal leases issued prior to FCLAA have not yet had their terms and conditions readjusted. Of these 53 leases, 5 are in production at this time. The cost savings to the Federal Government of not having to conduct an individual case analysis on these 53 leases to determine whether conditions warrant a lease royalty rate of less than 8 percent, but not less than 5 percent at the time of lease readjustment, would be approximately 2.24 million dollars.

The Department is considering alternatives for a flat royalty rate to be applied to coal removed from Federal lease by underground methods: 8 percent or 5 percent of the value of the coal. This flat rate would be applied to all newly issued coal leases and to existing coal leases upon their next regularly scheduled readjustment. Should a rate other than 8% be deemed appropriate, the Department is also considering whether the flat rate should be made available to leases which have been issued, or readjusted after FCLAA or which are in the readjustment process. This rate would only be available prospectively, subsequent to final rulemaking, and would require submittal of a request for modification of the royalty rate from each lessee.

Comments and associated rationale are invited from the public on whether either of the two flat rates or any flat rate in between these limits should be applied to Federal underground coal leases and whether the flat rate, if less than 8%, should be applied to existing leases which have an 8% royalty rate prior to their next readjustment. After consideration of the comments, a determination will be made as to what the fixed rate will be and to which leases it will be applied. That rate will be set in the final rulemaking without further notice.

Regardless of which rate is set, Federal coal lessees seeking further temporary short-term royalty relief when and if economic conditions warrant may do so by applying for a royalty rate reduction in accordance with section 39 of MLA (30 U.S.C. 209 (1982)), codified at 43 CFR 3485.2(c) and 3473.3–2(d).

The principal author of this proposed rulemaking is Pamela J. Lewis, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic impacts of this proposed rulemaking would not exceed the economic threshold of Executive Order 12291 and the rulemaking would affect all underground lessees equally, regardless of their size.

This rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 43 CFR Part 3470**

Coal management provisions and limitations, Lessee qualification requirements, Fees, rentals, and royalties, Bonds, Lease terms.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), it is proposed to amend Part 3470, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

**PART 3470—[AMENDED]**

1. The authority citation for Part 3470 continues to read:

**Authority:** 30 U.S.C. 181 *et seq.*, and 30 U.S.C. 351–359 and 99 Stat. 1296.

2. Section 3473.3–2 is amended by removing paragraph (a)(1), by redesignating paragraphs (a) (2) through (4) as paragraphs (a) (1) through (3), and by revising redesignated paragraph (a)(2) to read as follows:

**§ 3473.3–2 Royalties.**

* * * * *

(a) * * *

(2) A lease shall require payment of a royalty of [Number to be inserted upon final rulemaking] percent of the value of coal removed from an underground mine.

* * * * *

James E. Cason,

*Deputy Assistant Secretary of the Interior.*

June 13, 1988.

[FR Doc. 88–17155 Filed 7–28–88; 8:45 am]

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Part V

# Commodities Futures Trading Commission

17 CFR Part 30

**Foreign Option Transactions; Orders for Montreal, Singapore and Sydney; Final Rules**

VOL 53 ISS 146 29 JL 1988 UMI

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 30**

### Foreign Option Transactions; Singapore International Monetary Exchange

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is authorizing option contracts traded on the Singapore International Monetary Exchange ("SIMEX") to be offered and sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.[2] Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

### United States of America Before the Commodity Futures Trading Commission

*Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the Singapore International Monetary Exchange To Be Offered and Sold in the United States Thirty Days after Notice to the Commission and Publication in the Federal Register of the Option Contracts to be Traded.*

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign options to persons located in the United States.[3] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28998.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By separate letters dated September 3, 1987, the Singapore International Monetary Exchange ("SIMEX") and its regulator, the Monetary Authority of Singapore ("MAS"), requested that the Commission authorize the offer and sale of option contracts traded on SIMEX to persons located in the United States. By letter dated September 29, 1987, the Commission advised that the request on behalf of the SIMEX would be addressed pursuant to Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The availability of certain information relevant to preventing abuses in the trading of option contracts on SIMEX including, but not limited to, trade confirmation data, data necessary to trace offshore funds, firm-specific data related, among other things, to good standing, fitness of principals and financial condition, and data related to sales practices in respect of such products;[7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including undertakings or arrangements by the appropriate foreign entity for the fulfillment of sales practice compliance obligations commensurate with those which apply to domestic products with respect to firms engaged in the offer and sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer and sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded.

In determining that SIMEX's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer and sale of the products subject to this Order.[8]

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[1] Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer and sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On this same date, the Commission also has issued orders authorizing certain option contracts traded on the Montreal Exchange and the Singapore International Monetary Exchange to be offered and sold in the United States.

[3] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed" *See* 43 FR 16155 (April 17, 1978).

[8] In this connection, the Commission notes that it has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In

Continued

Based upon the representations of SIMEX and MAS contained in their letters dated September 3, 1987, separate letters from MAS dated December 21, 1987, and February 4, 1988, and the memorandum from the Division of Trading and Markets to the Commission dated July 5, 1988 ("Staff Memorandum"), and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer and sale in the United States of options traded on SIMEX subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any SIMEX option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to this Order;

(2) That MAS and SIMEX represent that all transactions with respect to the option(s) referenced in such notice [9] will be governed by the Singapore Futures Trading Act, the Regulations thereunder and SIMEX option rules as more particularly discussed in the Staff Memorandum and that the MAS and SIMEX provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indictes [10] and options on futures on foreign government debt securities [11] will not be permitted to be offered and sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on SIMEX or another market with respect to which the Commission has approved a linkage arrangement with SIMEX;

(5) That options traded pursuant to the Order herein may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

Issued in Washington, DC, on July 20, 1988.

**Jean A. Webb,**

*Secretary of the Commission.*

**Memorandum**

July 5, 1988.

To: The Commission.

From: The Division of Trading and Markets.

Suject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the Singapore International Monetary Exchange to be Offered and Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the Singapore International Monetary Exchange to be offered and sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted:
Division of Economic Analysis
Division of Enforcement
Office of the Executive Director
Office of the General Counsel

**I. Introduction**

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign option products to persons located in the United States. [1] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban, [2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. [3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States. [4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange in determining whether to authorize transactions in specific foreign exchange-traded options. [5]

By separate letters dated September 3, 1987, the Singapore International Monetary Exchange ("SIMEX") and the regulatory authority which governs that exchange, the Monetary Authority of Singapore ("MAS"), requested that the Commission authorize the offer and sale of option contracts traded on SIMEX to

particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[9] The option contracts which will initially be offered and sold pursuant to this Order are Options on Eurodollar Futures, Options on Japanese Yen Futures and Options on Deutschemark Futures.

[10] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[11] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[1] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[4] 52 FR 28980, 28996. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[5] 51 FR 12104, 12105.

persons located in the United States. By letter dated September 29, 1987, the Commission advised that the request on behalf of SIMEX would be addressed pursuant to Commission Rule 30.3(a).

## II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of SIMEX to offer and sell option products traded on SIMEX in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for deterring sales practice abuses; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer and sale of SIMEX option products; and (4) the regulatory environment in which such options are traded. As discussed more fully below, based upon its determinations with respect to the foregoing matters, and subject to the terms and conditions specified herein, the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting certain option contracts traded on SIMEX to be offered and sold in the United States. [6]

## III. Discussion

*Information Sharing*

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer and sale of certain ostensibly foreign options in the United States was impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[7] In connection with the petition of SIMEX under Rule 30.3(a), MAS has advised the Commission in a letter dated December 21, 1987, and the Commission in a letter to MAS dated January 14, 1988 has acknowledged, that MAS will share with the Commission, on an "as needed" basis, information relevant to SIMEX option transactions proposed to be entered into with or on behalf of United States customers pursuant to Rule 30.3(a). The foregoing exchange of correspondence confirms that the Commission's assessment of need will be determinative. The assurances of MAS concerning information sharing on an as needed basis extend, but are not limited, to information as to trade confirmations, offshore funds committed to SIMEX option transactions, firm-related fitness (such as standing to do business and financial condition), and the sales practices of firms selling from Singapore into the United States. MAS also has provided the Commission with further assurances that the secrecy provisions of the Singapore banking laws will not interfere with its sharing of information with the Commission concerning options trading activities. In addition, MAS and SIMEX [8] have each represented that all statements that were made with respect to information sharing in connection with the Commission's consideration of proposed rules submitted by the Chicago Mercantile Exchange ("CME") to implement the CME–SIMEX linkage extend equally and without restriction to transactions in options trade on SIMEX.[9]

*Sales Practice Audits*

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option adequately provide for the monitoring and detection of sales practice abuses.[10] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[11] In this connection, SIMEX represents that it has adopted rules, discussed more fully below, regarding option sales practices including, but not limited to, customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, discretionary accounts and promotional material, which are virtually identical to rules of the CME with respect to the same subjects.[12] Additionally, MAS represents that will ensure that sales practice audits of firms in Singapore selling SIMEX options into the United States will be conducted on a regular basis.[13] SIMEX also has made arrangements with the National Futures Association ("NFA"), which NFA has confirmed by letter dated June 10, 1988, to assure that the sales practices of firms located in the United States engaged in such activities will be audited.[14]

*Dispute Resolution*

In considering linkage arrangements intended in part to foster trading among domestic and foreign markets, the Commission has indicated that a material factor in its decision to approve such arrangements was the existence of a mechanism to permit United States customers to seek relief for disputes occurring in the linked jurisdiction.[15] The availability of a forum to address complaints with respect to trade execution also is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assure a fair trading environment. In this connection, in its March 2, 1984 telex to the Commission

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[6] *See* attached list of option contracts and terms and conditions. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose tests, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to the specific terms and conditions of the option contract. *See* 17 CFR 33.4.

[7] 52 FR 28980, 28988.

[8] *See* letter from Ang Swee Tian, General Manager, SIMEX, dated September 3, 1987 and letter from Koh Beng Seng, Director, Banking and Financial Institutions Department, MAS, dated February 4, 1988.

[9] In this regard, in connection with the Commission's consideration of the CME–SIMEX mutual offset system, MAS specifically had confirmed the Commission's understanding that:

SIMEX will have the same powers for requiring the disclosure of positions as does the CME and * * * the secrecy provisions of the Singapore Banking Laws will not apply in trading involving gold and financial futures on SIMEX. Necessary surveillance information will be readily available from SIMEX to the [Commission] or MAS for purposes of intermarket supervision to further the prevention of manipulation, fraud or in an enforcement proceeding. *See* telex from MAS to Commission dated March 2, 1984 conforming Commission telex to MAS dated February 17, 1984.

[10] *See* 46 FR 54500, 54502 (November 3, 1981).

[11] *Id.*

[12] *See* SIMEX rules AA02–AA06 and AA08 discussed, *infra*.

[13] *See* letter from MAS dated February 4, 1988.

[14] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and option activities of NFA members and associates. By letter dated June 10, 1988 from Daniel A. Driscoll, Vice-President of the NFA, to Andrea M. Corcoran, Director, Division of Trading and Markets, the NFA confirmed that the NFA and U.S. exchanges which are a party to a joint sales practice audit agreement will provide sales practice audit services addressing sales of SIMEX options.

[15] *See* staff memorandum ("Staff Memorandum") dated August 28, 1984, analyzing CME-SIMEX linkage at p. 51; *see also* staff memorandum dated August 1, 1986, analyzing the Commodity Exchange, Inc.—Sydney Futures Exchange linkage at p. 22.

in connection with the mutual offset system, MAS confirmed that:

SIMEX will establish an arbitration system similar to that of the CME which will be available to U.S. citizens for resolution of disputes and further that U.S. citizens have access to the Singapore judicial system for actions involving Singaporeans, just as citizens of other nations may use U.S. courts in actions against U.S. citizens.

In December 1984, the Board of Directors of SIMEX approved rules which established an arbitration system for the resolution of disputes involving transactions on SIMEX or pursuant to the mutual offset system with CME. Pursuant to these rules, SIMEX maintains a forum for resolution of disputes arising out of transactions conducted on SIMEX, including the mutual offset system with CME.[16] All claims not exceedings $15,000 (approximately US$7,500), submitted no more than one year since the party making the claim knew or should have known of the act or transaction that is the subject of the dispute, are arbitrable under these rules. MAS has confirmed in its letter of December 21, 1987, that although all parties have the right to be present when the arbitration board appointed pursuant to SIMEX rules hears a case, such presence is not mandatory. Under the rules, the arbitration board must consider all written documents submitted under oath or affirmation in resolving disputes committed to arbitration. Thus, a foreign futures and option customer may arbitrate a claim using documentary evidence only.

*Regulatory Environment*

When options were originally banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing business with United States firms or customers.[17] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for certain other relief the Commission may accord under its foreign futures and option rules.[18] This review was facilitated by the detailed scrutiny given SIMEX during the Commission's consideration of the rules submitted by the CME to implement the mutual offset system linkage agreement between the CME and SIMEX.[19] In reviewing that application, the Commission's staff analyzed, among other things, the customer protection, market surveillance and trade practice surveillance rules of the Exchange. The Staff Memorandum [20] concluded that the systems and rules adopted by SIMEX, if observed, afforded many of the protections found on regulated United States markets. Rule enforcement reviews conducted to date of the CME have reported no significant deficiencies in the operation of the CME–SIMEX linkage.

Subsequent to the Commission's approval of the CME–SIMEX mutual offset system, Singapore adopted the Singapore Futures Trading Act of 1986 and Regulations thereunder, copies of which have been provided to the Commission. The MAS and SIMEX represent that the Singapore Futures Trading Act and the Regulations promulgated thereunder establish a regulatory environment which parallels that established under the Commodity Exchange Act and Commission rules in terms of the subjects addressed, the content of the statutory and regulatory provisions and the provisions for effecting compliance therewith. Specifically, in support of the SIMEX application to sell its option products within the United States, MAS and SIMEX represent that the Singapore Futures Trading Act of 1986 and the Regulations thereunder are intended to promote market integrity and to provide a fair trading environment for Singapore futures and option products, as follows:

a. Authorization of Exchanges (Fitness of the Marketplace)

Section 4 of the Singapore Futures Trading Act vests sole authority for the establishment of exchanges in a governmental body, the Monetary Authority of Singapore. Before MAS may designate an entity as a futures exchange, it must be satisfied that, among other things, the futures exchange has business rules to ensure that: (1) Standards for membership, including procedures for the expulsion, suspension or discipline of members for conduct inconsistent with just and equitable principles in connection with the transaction of business are maintained; (2) obligations arising out of futures contracts entered into on that exchange will be honored; (3) floor trading practices are fair and properly supervised; (4) adequate measures have been taken to prevent manipulation and excessive speculation; (5) adequate provision has been made to record and publish details of trading; (6) a compensation fund or other system acceptable to MAS has been established to compensate customers who suffer loss as a result of theft by persons entrusted with customer funds; and (7) generally the exchange is capable of carrying on business with due regard to the interests and protection of the public. These rules establish trading standards and also require the maintenance of trading records essential to effective information sharing with respect to option transactions.

b. Licensing of Firms And Personnel (Fitness Standards For Professionals)

Sections 10–24 of the Singapore Futures Trading Act establish licensing standards for futures brokers, trading advisers, pool operators and their representatives. The licensing procedure for persons dealing with the public is set forth in the Second Schedule of the Regulations promulgated pursuant to the Singapore Futures Trading Act. For example, Form 3, Application for Futures Broker's License, requires, *inter alia*, the disclosure of controlling interests in the broker, a detailed description of its organization, prior licenses or revocations of licenses, convictions, bankruptcies and previous employment history of principals for the past 5 years. Under sections 14 and 15 of the Singapore Futures Trading Act, MAS has the authority either to refuse to grant or renew a license under certain conditions, including the failure to disclose information, a previous bankruptcy or conviction of offenses involving fraud or dishonesty, or to

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[16] *See* Chapter 6, SIMEX Rules, and "Your Right to Arbitration," a SIMEX publication.

[17] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[18] 52 FR 28980, 29001.

[19] In generally excluding transactions executed pursuant to a linkage agreement between one or more foreign boards of trade and a United States contract market from the application of the foreign futures and option rules, the Commission noted that linked transactions and the regulatory environment in which such transactions occur would be separately subject to Commission review under section 5a(12) of the Act. Specifically, Rule 30.3(a) reads, in part, as follows:

* * * *And, provided further,* That, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with or rules of a contract market which permit positions in a commodity interest which have been established in one market to be liquidated on another market.

[20] Staff Memorandum at p. 67.

grant or renew a license subject to conditions. These rules are intended to establish a standard of fitness for market professionals who handle customer money and deal with the public.

c. Financial Requirements (Fitness Standards For Firms)

Regulation 12 sets forth minimum financial requirements for futures brokers. In essence, Regulation 12(1) requires that an amount equal to the higher of S$250,000 (US$122,500) or 10% of mandatory segregated customer funds be maintained at all times.[21] (Segregated funds include money, securities or property received by a futures broker to margin, guarantee or secure contracts in futures trading or accruing to a customer as a result of such trading.) In addition, Regulation 12(2) requires futures brokers to file quarterly financial reports, including statements of financial condition, computation of adjusted net capital and segregation requirements and location of segregated funds. *See* Forms 21, 22 and 23 in the Second Schedule of the Regulations. These rules establish a standard of financial fitness which is relevant to the expectation that members will comply with applicable rules and the capacity of members to meet their obligations in the marketplace.

d. Treatment of Customer Funds And Property

Section 37 of the Singapore Futures Trading Act defines customer funds as all money, securities or property received by a futures broker to margin, guarantee or secure contracts in futures trading, or accruing to a customer as a result of such trading. That section of the Act and Regulation 15 thereunder require a futures broker to treat and deal with customer funds as belonging to that customer and prohibit commingling of customer funds with the broker's own funds.[22] Under section 25 of the Act and Regulation 15(1), each futures broker is required to keep books and records which accurately disclose all customer transactions and trace the flow of funds. In addition, Regulation 15(3)(1) restricts the investment of customer funds to Singapore Government securities, any debt instruments of the government of the country in which the market or futures exchange where the futures broker normally transacts its business is situated, and any securities or instruments as MAS from time to time may prescribe. Certified audits of accounts are mandated by section 27 of the Singapore Futures Trading Act for futures brokers. An auditor for a futures broker is required under section 28 to notify MAS if at any time the auditor becomes aware of any adverse financial matter. These rules provide certain protections for customer funds committed to trading on SIMEX. These rules may also assist in tracing funds offshore that are the subject of actions in the United States.

e. Market Integrity

Section 42 of the Singapore Futures Trading Act authorizes MAS or an exchange, with the approval of MAS, to establish position and trading limits to diminish or prevent excessive speculation. Regulation 16 provides that the position limits for "futures contracts" [23] listed on SIMEX shall be the quantity determined by SIMEX and approved by MAS. In addition, SIMEX maintains a large trader reporting system similar to that maintained by the Commission.[24] Sections 50–57 of the Singapore Futures Trading Act prohibit offenses such as false trading, bucketing, manipulation and fraudulent or deceptive devices, and provide for penalties of up to a S$100,000 (US$49,000) fine and seven years imprisonment.

f. Other Customer Protections

Section 39 of the Singapore Futures Trading Act requires customers to be provided with a risk disclosure statement in a form mandated by MAS. Regulations 17 and 18 require futures brokers to provide confirmation statements and monthly account statements to their customers. Regulations 19, 20 and 21 establish business conduct standards for firms which include performance disclosure and disclosure of conflicts of interest where appropriate.

g. SIMEX Option Rules

SIMEX has submitted its option rules [25] which it represents are virtually identical to the rules of the CME. These rules contemplate that SIMEX takes responsibility for ensuring sales practice compliance by its members, maintains fair requirements for executions, and monitors the financial soundness of its members. SIMEX represents that it maintains in effect and enforces rules which:

(1) Prohibit members from soliciting or accepting option orders from any person who the member has reason to believe may be soliciting orders in contravention of the Singapore Futures Trading Act.[26] *Compare* SIMEX rule AA10 with CME rule 1010.

(2) Define exercise conditions—exercise by buyer, assignment of exercise notices by the clearing house, and exercise or assignment under emergency conditions. *Compare* SIMEX rule XX02 with CME rules 5002 and 5003.

(3) Require clearing members to adopt written procedures for allocating option exercise notices in a fair and non-preferential manner. *Compare* SIMEX rule AAO9 with CME rule 1009.

(4) Define put and call options, expiration date, out-of-the-money options, in-the-money options and exercise or strike price. *Compare* SIMEX definitions with CME Chapter 10.

(5) Require the full payment of premiums. *Compare* SIMEX rule AAO7 with CME rule 1007.

(6) Require members to record all customer complaints and send a copy of each complaint and its resolution to SIMEX. *Compare* SIMEX rule AAO2 with CME rule 1002.

(7) Require clearing members to have written procedures for supervising customer accounts, including the solicitation thereof. *Compare* SIMEX rule AAO3 with CME rule 1003.

(8) Require members to notify SIMEX of any disciplinary actions concerning the offer or sale of options. *Compare* SIMEX rule AAO4 with CME rule 1004.

(9) Require clearing members to submit option promotional material to SIMEX. *Compare* SIMEX rule AAO8 with CME rule 1008.

(10) Require the distribution of a mandatory options risk disclosure statement to customers and receipt of acknowledgment from the customer. Also require the disclosure of all commissions, fees and other costs prior to entering into the first option transaction. *Compare* SIMEX rule AAO5 with CME rule 1005.

(11) With respect to discretionary accounts, require that customers are provided with an

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[21] Conversions at June 21, 1988 as published in the *Washington Post*, June 22, 1988.

[22] Although margin is not required for purchased put or call options, the full premium must be paid in cash. SIMEX does maintain margin requirements on short option positions. *See* SIMEX rule AA07 and terms and conditions of options on foreign currency futures traded on SIMEX, attached.

[23] The term "futures contract" is defined under section 2 of the Singapore Futures Trading Act to include commodity options. SIMEX Rule 532 authorizes SIMEX to establish position limits on options.

[24] *See* Agreement for the Creation of a Mutual Offset System between the Chicago Mercantile Exchange and the Singapore International Monetary Exchange Limited, June 28, 1984, p. 22.

[25] In his February 4, 1988 letter to the Commission, Koh Beng Seng, Director, Banking and Financial Institutions Department, MAS, represented that SIMEX rules relating to option contracts on Eurodollar futures came into force on September 25, 1987, while those relating to option contracts on the Deutschemark and Yen futures contracts became effective on November 27, 1987. These are the option contracts which are the subject of SIMEX's petition of September 3, 1987.

[26] Sections 54 and 55 of the Singapore Futures Trading Act prohibit the employment of any fraudulent or deceptive devices in connection with any transaction or fraudulently inducing trading in a futures contract.

explanation of the nature and risks of the strategy or strategies to be used with that account, that an officer approve in writing the discretionary authority prior to trading and that discretionary orders be identified. *Compare* SIMEX rule AAO6 with CME rule 1000.

These rules generally address the regulatory concerns the Commission identified in setting forth conditions for the designation of U.S. contract markets in options. *See* Commission Rule 33.4. In this connection, MAS and SIMEX specifically represent that the regulatory environment governing transactions on SIMEX provides many of the protections found on regulated United States markets.

## IV. Conclusion

Based upon the foregoing, the representations of SIMEX and MAS contained in their separate letters dated September 3, 1987, letters from MAS dated December 21, 1987, and February 4, 1988, and pursuant to Commission Rule 30.3(a), the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order authorizing the offer and sale in the United States of options traded on SIMEX subject to the following terms and conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any SIMEX option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to the order;

(2) That MAS and SIMEX represent that all transactions with respect to the option(s) referenced in such notice will be governed by the Singapore Futures Trading Act of 1986 and Regulations thereunder, and SIMEX option rules as more particularly discussed in this Staff Memorandum and that MAS and/or SIMEX will provide the Commission with information as to all material changes therein promptly;

(3) That options on futures on stock indices [37] and options on futures on foreign government debt securities [38] will not be permitted to be offered and sold absent certain additional procedures;

(4) That options traded pursuant to the order may only be offset on SIMEX or another market with respect to which the Commission has approved a linkage arrangement with SIMEX;

(5) That options traded pursuant to the order may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) If experience demonstrates that the continued effectiveness of the order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject thereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted therein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the order, as appropriate, on its own motion.

SIMEX has specified that the following option contracts, the terms and conditions for which are attached hereto, will initially be offered and sold in the United States: Options on Eurodollar Futures, Options on Japanese Yen Futures and Options on Deutschemark Futures. As noted in condition (6) above, the Division recommends that the Commission retain the authority to terminate the order granting authorization to offer and sell SIMEX options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the order is approved by the Commission, the Division intends to monitor the offer and sale of SIMEX options to persons in the United States pursuant to the terms of the recommended order and to make recommendations for further action to the Commission, as appropriate in light of the operation of that program.

*Contract:* Options on Eurodollar Futures.
Ticker Symbols:
Calls: CE
Puts: PE
*Contract Value:* One Eurodollar Futures Contract.
*Contract Months:* March, June, September, December.
*Strike Price:* 50-point intervals for Eurodollar levels below 91.00 and 25-point intervals for Eurodollar levels above 91.00.
*Minimum Price Fluctuation:* 0.01 Eurodollar point (US$25) except that trades may occur at a price of US$1-if such trades result in the liquidation of position for both parties to the trade.
*Price Limit:* None.
*Trading Hours:* 8:30 am to 5:20 pm (Singapore time) (same as for Eurodollar futures).
*Last Trading Day:* Same date and time as the underlying Eurodollar futures (i.e. the second London business day before the third Wednesday of the contract month).
*News Vendor Reference:* Reuters—SMOA to SMOZ.

Telerate—27800 to 27840.

**Notes:**

*Strike Prices*

When a new contract month is listed for trading, there will be Put and Call strike prices in a range of 1.50 index points above and below the nearest strike price to the underlying futures price. For example, if the March ED futures closed at 91.38 on the previous day, the strikes listed for March Puts and Calls would be: 90.00, 90.50, 91.00, 91.25, 91.50, 91.75, 92.00, 92.25, 92.50, 92.75 and 93.00.

A new strike price will be listed for both Puts and Calls when the underlying futures price touches within half a strike price interval of either the second highest or second lowest strike prices. As an example, if the March Eurodollar futures price touches 91.63 after the options are listed as in the above example, then a new strike price at 93.25 will be listed for Puts and Calls the next day. (No new options will be listed, however, with less than 10 calendar days until expiration.)

*Minimum Margin*

No margin is required for Put or Call option buyers, but the full premium must be paid in cash. Check with your broker for margins on short option positions and combinations of option/futures positions.

*Exercise Procedure*

Option buyers may exercise on any trading day. Check with your brokerage firm for its exercise procedure.

Exercise results in a long futures position for a Call buyer or a Put seller, and a short futures position for a Put buyer or a Call seller. The futures position is effective on the trading day immediately following exercise, and is marked-to-market to the settlement that day.

*Expiration*

Options expire at 5:00 p.m. on the last trading day. *However,* your broker may set a considerably earlier cut-off time for exercising expiring options. Always check with your broker for exercise deadlines. A Eurodollar option that is in-the-money and has not been liquidated or exercised prior to the termination of trading shall be exercised automatically (in the absence of contrary instructions delivered to the SIMEX clearing house by 5:00 p.m. on the expiration date).

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[37] *See* 52 FR 28980, 28982 n.8 and section 2a(1) of the Act.

[38] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

CONTRACT SPECIFICATIONS [1]

| | Trading unit | Strike price | Premium quotations | Ticker symbols | Minimum price fluctuation (tick size) | Trading hours |
|---|---|---|---|---|---|---|
| Options on JY futures. | One Japanese yen futures contract (covering JY12,500,000) of the specified contract month. | Intervals of .01¢ (eg. $.0042, $.0043, $.0044). | Quotations are cents per Japanese yen. A quote of .0050¢ represents an option price of $625. ($.000050 × JY12,500,000). | Calls: CY; Puts: PY | 0001¢ ($.000001), equal to $12.50 (same as JY futures). | 8:15 a.m. to 5:05 p.m. Singapore time (same as JY futures) |
| Options on DM futures. | One deutschemark futures contract (covering DM125,000) of the specified contract month. | Numbers in whole cent intervals. | Quotations are cents per deutschemark. A quote of. 50¢ represents an option price of $625. ($.0050 × DM125,000). | Calls: CM; Puts: PM. | .01¢ ($.0001), equal to $12.50 (same as DM futures). | 8:20 a.m. to 5:10 p.m. Singapore time (same as DM futures) |

*Newsvendor References:*
Reuters: Eurodollar—SMOA to SMOZ; Japanese Yen—SMRE to SMRZ; Deutschemark—SMQA to SMQZ.
Telerate: Eurodollar—27800 to 27807; Japanese Yen—27808 to 27817; Deutschemark—27818 to 27827.
[1] Contract specifications are subject to change. Please check with your broker to confirm this information.

**Specifications Common to All SIMEX Options on Currency Futures**

*Months Traded*

March, June, September, December & Serial Months + + For options that expire in months other than those in the March quarterly cycle, i.e. serial month options, the underlying futures contract is the next Futures contract in the March quarterly cycle. Listing for the serial month cycle includes the spot month, the first deferred, and the second deferred contract months. This is in addition to the contract month options currently listed in the March quarterly cycle. (e.g. Feb, Mar, Apr, Jun, Sep options are listed; when Feb options expire, Mar, Apr, May, Jun, & Sep options will be listed.)

*Daily Price Limit*

None.

*Strike Price*

For Options in the March quarterly cycle, when a new contract month is listed for trading, there will be nine put and call strike prices: the nearest strike to the underlying futures price, the next four higher and the next four lower. For example, if the March DM price closes at $.3851 on the previous day, the strikes listed for March puts and calls will be: 33¢, 34¢, 35¢, 36¢, 37¢, 38¢, 39¢, 40¢, 41¢.

A new strike price will be listed for both puts and calls when the underlying futures price touches within half a strike price interval of either the fourth highest or fourth lowest strike prices. As an example, if the March DM futures price touched .3751 after the options are listed as in the above example, then a new stike price at 42¢ will be listed for puts and calls the next day. (No new options will be listed, however, with less than 10 calendar days until expiration.)

For Options not in the March quarterly cycle, the Exchange shall list put and call options at any exercise price listed for trading in the next March quarterly cycle futures option that is nearest the expiration of the option. Options may be listed for trading up to and including the termination of trading.

*Last Day of Trading*

Two Fridays before the third Wednesday of the contract month. If that Friday is an Exchange holiday, the last trading day will be the business day immediately preceding.

*Minimum Margin*

No margin required for put or call options buyers, but the full premium must be paid in cash. Check with your broker for margins on short option positions and combination option/futures positions.

*Exercise Procedure*

Option buyers may exercise on any trading day. Check with your brokerage firm for its exercise procedure.

Exercise results in a long futures position for a call buyer or a put seller, and a short futures position for a put buyer or a call seller. The futures position is effective on the trading day immediately following exercise, and is marked-to-market to the settlement that day. If the futures position is not offset prior to the expiration of trading in the futures contract, delivery of physical currency will result or be required.

*Expiration*

Options expire at 7:30 p.m. on the last trading day. However, your broker may set a considerably earlier cut-off time for exercising expiring options. Always check with your broker for exercise deadlines.

There is no automatic exercise of the expiring in-the-money currency options by the SIMEX Clearing House.

**List of Subjects in 17 CFR Part 30**

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

**PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS**

1. The authority citation for Part 30 continues to read as follows:

**Authority:** Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix B is added to Part 30 to read as follows:

**Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. pursuant to § 30.3(a)**

*Exchange*

Singapore International Monetary Exchange (SIMEX).

*Type of contract*

Options on Eurodollar, Japanese yen, and Deutschemark futures.

*FR date and citation*

July 29, 1988; 53 FR _____.

[FR Doc. 88-16726 Filed 7-28-88; 8:45 am]
BILLING CODE 6351-01-M

**17 CFR Part 30**

**Foreign Option Transactions; Sydney Futures Exchange**

**AGENCY:** Commodity Futures Trading Commission.
**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is authorizing option contracts traded on the Sydney Futures Exchange to be offered and sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading

[1] Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

Commission, 2033 K Street NW., Washington, DC 20581.[2] Telephone: (202) 254–8955.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

**United States of America Before the Commodity Futures Trading Commission**

*Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the Sydney Futures Exchange To Be Offered and Sold in the United States Thirty Days after Notice to the Commission and Publication in the Federal Register of the Option Contracts To Be Traded*

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign options to person located in the United States.[3] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By letter dated October 13, 1987, the Sydney Futures Exchange ("Exchange") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated March 16, 1988, the Commission advised that the request on behalf of the Exchange would be addressed pursuant to Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The availability of certain information relevant to preventing abuses in the trading of option contracts on the Exchange including, but not limited to, trade confirmation data, data necessary to trace offshore funds, firm-specific data related, among other things, to good standing, fitness of principals and financial condition, and data related to sales practices in respect of such products;[7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including undertakings or arrangements by the appropriate foreign entity for the fulfillment of sales practice compliance obligations commensurate with those which apply to domestic products with respect to firms engaged in the offer and sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer and sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded.

In determining that the Exchange's showing with respect to the foregoing matters is sufficient to warrant the issurance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer and sale of the products subject to this Order.[8]

Based upon the representations of the Exchange contained in its letters dated October 13, 1987 and May 13, 1988, a separate letter from the Exchange's regulator, the National Companies and Securities Commission ("NCSC"), dated May 27, 1988, and the memorandum from the Division of Trading and Markets to the Commission dated July 5, 1988 ("Staff Memorandum"), and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer and sale in the United States of options traded on the Exchange subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to this Order;

(2) That the Exchange and NCSC represent that all transactions with respect to the option(s) referenced in such notice [9] will be governed by the Futures Industry Act, the Futures Industry( New South Wales) Code, the regulations thereunder and Exchange option rules as more particularly discussed in the Staff Memorandum and that they will provide the Commission with information as to all material changes thereto promptly;

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[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer and sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On this same date, the Commission also has issued orders authorizing certain option contracts traded on the Montreal Exchange and the Singapore International Monetary Exchange to be offered and sold in the United States.

[3] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99–641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28996.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[8] In this connection, the Commission notes that it has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[9] The option contracts which will initially be offered and sold pursuant to this Order are Options on 90-Day Bank Accepted Bill Futures, Options on Ten-Year Treasury Bond Futures and Options on Australian Dollar Futures.

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(3) That options on futures on stock indices [10] and options on futures on foreign government debt securities [11] will not be permitted to be offered and sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the Order herein may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) That, notwithstanding any rules of the Exchange or the NCSC, options traded pursuant to this Order may only be offered and sold to foreign futures and options customers if each futures commission merchant receives from each such customer the full amount of each option premium at the time the option is purchased; and

(7) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the representations made and information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

Issued in Washington, DC on July 20, 1988.

**Jean A. Webb,**

*Secretary of the Commission.*

**Memorandum**

July 5, 1988.

To: The Commission.

From: The Division of Trading and Markets

Subject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the Sydney Futures Exchange to be Offered and Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the Sydney Futures Exchange to be offered and sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted:
Division of Economic Analysis,
Division of Enforcement,
Office of the Executive Director,
Office of the General Counsel.

## I. Introduction

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign option products to persons located in the United States.[1] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange in determining whether to authorize transactions in specific foreign-exchange traded options.[5]

By letter dated October 13, 1987, the Sydney Futures Exchange ("Exchange" or "SFE") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated March 16, 1988, the Commission advised the Exchange that its request would be addressed pursuant to Commission Rule 30.3(a)

## II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of the Exchange to offer and sell option products traded on the Exchange in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for deterring sales practice abuses; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer and sale of Exchange products; and (4) the regulatory environment in which options are traded. As discussed more fully below, based upon its determinations with respect to the foregoing matters, and subject to the terms and conditions specified herein, the Division of Trading and Markets recommends that the Commission publish in the **Federal Register** this memorandum and approve

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[10] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[11] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[1] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option" "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("CEA") has been removed, *see* Futures Trading Act of 1986, Pub. L. No. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the CEA, remains in effect.

[4] 52 FR 28980, 28988. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[5] 51 FR 12104, 12105.

and publish the attached order permitting certain option contracts traded on the Exchange to be offered and sold in the United States.[6]

## III. Discussion

*Information-Sharing*

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer and sale of certain ostensibly foreign options in the United States was impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[7] In connection with the petition of the Exchange under Rule 30.3(a), the Exchange, through its counsel, Philip McB. Johnson, and the National Companies and Securities Commission (NCSC), the regulatory authority which governs the Exchange, have each advised the Commission by separate letters dated May 13, 1988 and May 27, 1988, respectively, that they will share with the Commission, on an "as needed" basis, information relevant to such petition with respect to Exchange option transactions proposed to be entered into with or on behalf of customers located in the United States. The foregoing exchange of correspondence confirms that the Commission's assessment of need will be determinative. The assurances of NCSC and the Exchange concerning information-sharing on an as-needed basis extend, but are not limited, to information as to trade confirmations, offshore funds committed to Exchange option transactions, firm-related fitness (such as standing to do business and financial condition), and the sales practices of firms selling from Australia into the United States. NCSC and the Australian Attorney-General also have provided the Commission with assurances that Austrilia's blocking statute or any similar law should not create an obstacle to the sharing of the aforesaid information.[8] In addition, NCSC has represented that all statements that were made with respect to information-sharing in connection with the Commission's consideration of proposed rules submitted by the Commodity Exchange, Inc. ("COMEX") to implement the linkage between COMEX and the Exchange ("COMEX-Sydney linkage") extend equally and without restriction to transactions in options traded on the Exchange.[9]

*Sales Practice Audits*

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option contract adequately provide for the monitoring and detection of sales practice abuses.[10] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[11] In this connection, the Exchange represents that it has adopted rules, discussed more fully below, that regulate option sales practices including, but not limited to, customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, discretionary accounts and promotional material, in a manner similar to rules of contract markets in the United States.[12] Additionally, the Exchange represents that it will ensure that sales practice audits of firms in Australia selling Exchange options into the United States will be conducted on a regular basis.[13] The Exchange also has made arrangements with the National Futures Association ("NFA"), which NFA has confirmed by letter dated June 10, 1988, to assure that the sales practices of firms located in the United States engaged in such activities will be audited.[14]

*Dispute Resolution*

In considering linkage arrangements intended in part to foster trading among domestic and foreign markets, the Commission has indicated that a material factor in its decision to approve such arrangements was the existence of a mechanism to permit United States customers to seek relief for disputes occurring in the linked jurisdiction.[15] The availability of a forum to address complaints with respect to trade execution also is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assuring a fair trading environment.

In its petition of October 13, 1987, the Exchange represented that customers may resolve disputes either through Exchange arbitration proceedings or judicial process. Section 46(2)(a)(xvii) of the Futures Industry Act of 1986 ("Act") and the Futures Industry (New South Wales) Code ("Code")[16] require the Exchange to facilitate the resolution of customer disputes. To this end, the Exchange has established an arbitration program to provide a method for the fair and impartial settlement of disputes that members and their customers are unable to resolve among themselves. The Exchange has represented in its petition that this arbitration program would be fully available to United States option customers of Australian brokers who are members of the Exchange.[17]

Arbitration of customers' claims is mandatory for members of the Exchange (Exchange Article 40.2) but is not mandatory for customers (*see* Exchange Article 40.1(a)(iii)). Pursuant to Exchange Article 40.1(a), a dispute must be arbitrated at the insistence of the customer unless:

(1) Adjudication of the dispute requires the presence of any person whether as witness or

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[6] *See* attached list of option contracts and terms and conditions. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to the specific terms and conditions of the option contracts. *See* 17 CFR 33.4.

[7] 52 FR 28980, 28988.

[8] *See* Letter to the Commission dated May 27, 1988 from R.J. Schoer, Executive Director of the NCSC, with attached letter from the Australian Attorney-General's Department.

[9] *See* letter to the Commission dated May 27, 1988 from R.J. Schoer, Executive Director of the NCSC.

[10] *See* 46 FR 54500, 54502 (November 3, 1981).

[11] *Id.*

[12] *See* discussion of Exchange option rules *infra*.

[13] *See* letter from the Exchange dated May 13, 1988.

[14] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and options activities of NFA members and associates. By letter dated June 10, 1988 from Daniel A. Driscoll, Vich-President of the NFA, to Andrea M. Corcoran, Director, Division of Trading and Markets, the NFA confirmed that the NFA and U.S. exchanges which are a party to a joint sales practice audit agreement will provide sales practice audit services addressing sales of Exchange options.

[15] *See* staff memorandum ("Staff Memorandum") dated August 1, 1986 analyzing COMEX-Sydney linkage at p. 22. *See also* staff memorandum dated August 28, 1984 analyzing Chicago Mercantile Exchange—Singapore International Monetary Exchange linkage at p. 51.

[16] The Futures Industry Act of 1986 is an Act of the Australian Commonwealth Parliament. In order that its provisions may apply to participating States, each State has passed an enabling act which essentially makes the Futures Industry Act apply as the law of that particular State. The Futures Industry (New South Wales) Code makes the Act applicable to that State. Hereinafter, for ease of discussion, reference to the Code should be read to include its counterpart in the 1986 Act.

[17] *See* Exchange petition of October 13, 1987.

otherwise over whom the Exchange has no jurisdiction, except where that person is available to appear before the arbitrator or otherwise to participate in the arbitration as required, and consents to cooperate in the arbitration process; or

(2) The dispute arose more than twelve months before the arbitration was commenced.[18]

Generally, a conference will be held before the arbitration in an attempt to reach a satisfactory resolution of the dispute, or at least to narrow the grounds of dispute between the parties. Where a party to an arbitration is a non-resident of Australia the dispute may be decided by the arbitrator "solely upon the basis of * * * the pleadings and any affidavits filed by the parties * * * *" (Exchange Article 40.8). The Exchange had stated in its petition that where the facts warrant such an arbitration without a hearing, U.S. foreign option customers would be encouraged to avail themselves of this procedure, which would alleviate the burden of their having to attend an arbitration hearing. By letter dated April 26, 1988, counsel for the Exchange represented that:

SFE Article 40.8, which sets forth the "on the papers" alternative to a formal hearing, leaves some flexibility with the Arbitration Committee to refuse a request for that procedure * * *. We are advised, however, that such a refusal has never occurred and that it is highly unlikely that it ever will occur. There might be an occasion where, to avoid manifest injustice (such as where a fair ruling cannot be made without assessing the credibility and demeanor of a complainant), an appearance is necessary but, as noted above, the Arbitration Committee has not had such a situation and, indeed, it strongly favors "on the paper" adjudications whenever possible as more expeditious, economical and manageable than formal hearings.

The decision of the arbitrator is generally final and is subject to review in the Australian courts only on very limited grounds. If a party believes that the decision of the arbitrator was based on a misconstruction or misinterpretation of the Articles, By-Laws or Trading Etiquette of the Exchange, a "Notice of Reference" can be filed, upon payment of a filing fee, in order to appeal the matter to the Board of the Exchange for its decision. The Board considers the matter solely on the pleadings already lodged by the parties and on the written submissions of the parties concerning the Notice of Reference and does not conduct a hearing. Consequently, presence of the parties is not required for such review. (Exchange Article 40.17).

A member of the Exchange who fails to comply with an arbitration award is subject to disciplinary action under the Articles and By-Laws of the Exchange. The prevailing party to the arbitration may also obtain a judgment in any court of competent jurisdiction to enforce the arbitration award. An arbitrator's decision may include an award as to the payment of costs, fees and expenses, including legal costs and other expenses incurred by the Exchange. (Exchange Article 40.18(c)). The expenses of witnesses are to be borne by each party unless otherwise provided in the award of the arbitrator. Exchange Article 40.18(c).[19]

*Regulatory Environment*

When options were originally banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing business with United States firms or customers.[20] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for certain other relief the Commission may accord under its foreign futures and option rules.[21] This review was facilitated by the detailed level of scrutiny given the Exchange in connection with the Commission's review of the linkage agreement between the COMEX and the Exchange.[22] In reviewing that application, the Commission's staff analyzed, among other things, the customer protection, market surveillance and trade practice surveillance rules of the Exchange. The Staff Memorandum [23] concluded that the systems and rules adopted by the Exchange, if observed, afforded many of the protections found on regulated United States markets. Although trading volume under the linkage is not substantial, rule enforcement reviews conducted to date of COMEX have reported no significant deficiencies in the operation of the COMEX-Sydney linkage.

The operations of the Exchange and its members are regulated directly by the NCSC pursuant to the authority of Australia's Futures Industry Act of 1986 and the Futures Industry (New South Wales) Code. Specifically, in support of the Exchange's application to sell its option products within the United States, the Exchange represents that the Act and Code are intended to promote market integrity and to provide a fair trading environment for Exchange futures and option products, as follows:

a. Authorization of Exchange (Fitness of the Marketplace)

Part III of the Code empowers a Ministerial Council to approve the establishment of futures exchanges,[24] clearing houses [25] and futures associations.[26] Pursuant to section 46 of the Code, an entity will be recognized as a futures exchange by the Ministerial Council if it is satisfied that the rules of the entity make satisfactory provision for, among other things: (1) Standards of training and experience for membership; (2) standards of business conduct so as to ensure efficiency, honesty and fair practice; (3) standards for the expulsion, suspension or disciplining of members; (4) the inspection and audit of the accounting records of members; (5) the equitable and expeditious settlement of claims between members and between members and customers; and (6) conduct of the business of the proposed futures exchange with due regard for the interests and protection of the public. The Ministerial Council also must determine that "the interests of the

[18] Article 40.1(a) as restated in the Exchange's petition dated October 13, 1987.

[19] Alternatively, a customer may elect to commence legal proceedings instead of submitting the dispute for arbitration. Under certain circumstances the arbitrator may order that a matter be the subject of legal proceedings rather than arbitration (*e.g.*, if the dispute involves complex legal questions). *See* Exchange petition of October 13, 1987.

[20] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[21] 52 FR 28980, 28001.

[22] In generally excluding transactions executed pursuant to a linkage agreement between one or more foreign boards of trade and a United States contract market from the application of the foreign futures and option rules, the Commission noted that linked transactions and the regulatory environment in which such transactions occur would be separately subject to Commission review under section 5a(12) of the CEA. Specifically, Rule 30.3(a) reads, in part, as follows:

* * * *And, provided further*, That, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established in one market to be liquidated on another market.

[23] Staff Memorandum dated August 1, 1986. *See* pp. 61, 73–74, 92 and 98–99.

[24] Code sections 45 and 46.

[25] Code sections 47 and 48.

[26] Code section 50.

public will be served by granting the application." *See* section 46(2) of the Code.

Oversight of the Exchange is performed by the NCSC. Pursuant to section 54 of the Code, all business rules [27] of an exchange are to be submitted to the NCSC, which has twenty-eight days in which to disallow such a rule. Pursuant to § 56(1) of the Code, the NCSC may, for the purpose of maintaining orderly markets in futures contracts,[28] order an exchange to close, suspend, limit or defer trading in futures contracts or take other actions as directed by the NCSC. Such orders may be enforced by judicial proceedings under section 58 of the Code. Section 56(1) also grants the NCSC authority to close, suspend or condition trading if it finds that such action is; among other things, "in the public interest." *See also* section 56(2)(a) of the Code. These rules establish trading standards and also require the maintenance of trading records essential to effective information-sharing with respect to option transactions.

b. Licensing of Firms and Personnel (Fitness Standards for Professionals)

Part IV of the Code grants licensing powers to the NCSC, which is authorized by sections 66, 67, and 77 of the Code to grant and revoke licenses for futures brokers, futures brokers' representatives, futures advisers and futures advisers' representatives.[29] A futures broker's license or a futures adviser's license may be granted if, among other things, the applicant is not insolvent, has not been convicted of an offense involving fraud within the prior ten years, presents satisfactory educational qualifications or experience and is not otherwise disqualified under the Code. (section 66(1) of the Code.) A representative's license may be granted if the NCSC does not have reason to believe that the applicant will not perform honestly and fairly. (section 67 of the Code.) The application process requires the submission of a personal questionnaire which requires the disclosure of, among other things, past experience, license refusals, convictions and disciplinary actions. (*See* Futures Industry Forms 3 and 4, Futures Industry Regulations (applications for licenses). The NCSC may revoke or suspend a license if the licensee becomes insolvent, is convicted of an offense involving fraud or dishonesty, becomes mentally or physically incompetent to manage its affairs, fails to disclose required information to the NCSC, makes false representations to the NCSC, is disqualified as a licensee under another law, contravenes a condition of a license or does not perform effectively, honestly or fairly. *See* sections 77–78 of the Code. These rules are intended to establish a standard of fitness for market professionals who handle customer money and deal with the public.

c. Financial Requirements (Fitness Standards for Firms)

The Code does not prescribe minimum capital requirements which generally are a measure of liquidity as a condition to registration. Exchange rules do, however, establish minimum "tangible asset" requirements as a condition of membership. *See* Exchange Rules, Article 4.6(4)(b) (A$50,000 (US$41,000) for full associates and A$20,000 (US$16,400) for introducing broker associates), Article 4A.7A(4)(b) (A$50,000 (US$41,000) for local members) and Article 3.6(3)(a) (A$250,000 (US$205,000) for floor members who, pursuant to Article 3.2(c), are required to be clearing members).[30] Moreover, the registration process requires an applicant to provide the NCSC a detailed statement (current within the last fourteen days before the application date) of assets and liabilities, as well as a current audited balance sheet. (*See* Futures Industry Form 3, Futures Industry Regulations.) Based upon a review of this information, the NCSC may condition the grant of a license by, for example, including conditions and restrictions relating to the financial position of the licensee, whether in relation to the business of dealing in futures contracts or otherwise. (Code section 69(4).) Moreover, section 69(5) of the Code makes clear that such conditions may include a requirement that the assets of the licensee include assets of a particular kind and that the licensee maintain assets of a specified minimum value.

Brokers and advisers are required to file with the NCSC an annual statement (Code section 74), which discloses assets and liabilities (*See* Form 8, Futures Industry Regulations (annual statement)). The Code also requires brokers to appoint auditors (Code section 92(1)), to grant auditors full right of access to records (Code section 96(1)), to maintain separate account records (Code sections 86, 90) and, generally, to produce those records to the NCSC when so requested (Code section 90(a)). These rules establish a standard of financial fitness which is relevant to the expectation that members will comply with applicable rules and the capacity of members to meet their obligations in the marketplace.

d. Treatment of Customer Funds and Property

Section 86(3) of the Code requires a broker to deposit funds or property received from or on behalf of a customer in a segregated customer account (that is, an account which can not be used to fund obligations other than those of the customer) on or before the next day after such money or property is received by the broker.[31] Section 86(5) of the Code permits investments of customer funds in any manner in which trustees are authorized by Australian law to invest trust funds; in short term money market dealer instruments; or in a bank account paying interest. These rules provide certain protections for customer funds committed to trading on the Exchange and may also assist in tracing funds that are the subject of United States actions.

e. Market Integrity

As previously noted, section 56 of the Code authorizes NCSC to exercise emergency powers to, among other things, close a futures market or suspend trading of a particular contract if such act is deemed in the public interest. In addition, section 55(1) of the Code requires the Exchange to "take all steps, and do all things, necessary to ensure an orderly and fair market * * *." In that regard, the Exchange has represented in its petition that it has an affirmative surveillance program which is designed to detect activity that may lessen competitive trading or conduct by floor traders that may take advantage of customers, including whether a floor trader has taken the other side of a customer's order contrary to Exchange rules, whether any floor trader is engaging in trading which is intended to have the effect of creating an artificial

[27] Section 4(1) of the Code defines "business rules" of an exchange as rules, regulations and by-laws governing the activities and conduct of the exchange and its members, of each clearing house and its members and of other persons in relation to each futures market maintained by the exchange.

[28] Section 4(1) of the Code defines "futures contract" to include an option.

[29] The Code defines a futures adviser as a person who conducts a business for the purpose of advising other persons concerning futures contracts, the definition of which includes a futures option or specified exchange-traded options. (Section 4(1) of the Code.)

[30] Conversions at June 21, 1988 as published in the *Washington Post*, June 22, 1988.

[31] All option contracts are marked-to-market on a daily basis and margin calls are made when the net margin position exceeds 25% of the total deposit liability. *See* Option by-law Opt. 7.

price, whether non-competitive trading is occurring, whether trading is taking place in excess of the Exchange's speculative limits, where applicable, and whether there is any indication of floor traders trading ahead of their customers or otherwise failing to give customers proper execution of their orders.[32]

In addition to the above, the Exchange maintains a reportable position requirement which is defined as "any open position in a futures contract or an option contract in a commodity in any one delivery month which at the close of trading on a business day equals or exceeds 250 futures contracts or options (or both) or such lesser number of futures contracts or options (or both) as may from time to time be determined by the Board [of Directors] to be the Reportable Position Level." (*See* Exchange Article 1.1.)

f. Other Customer Protections

Part V of the Code establishes minimum standards for the conduct of futures business, such as: requiring the delivery of a disclosure document before accepting a person as a client (Code section 87), written confirmations to customers (Code section 83(2)–(4)), monthly customer statements (Code section 84), special statements for discretionary accounts (Code section 84(3)); prohibiting a broker from taking the other side of an order without consent (Code section 85(3)); and proscribing fraud (Code section 135).[33]

Part VII of the Code requires the establishment of a fidelity fund by futures exchanges and futures associations.[34] Pursuant to this authority, the Exchange has established such a fund which, as of March 31, 1988, had A$2,570,000 in assets (US$2,107,400). The fidelity fund assets are intended to compensate persons who have lost money or property by virtue of "defalcation or * * * fraudulent misuse of money or property" by contributing fund members (*i.e.*, Exchange members). (Code section 116.) The maximum amount payable generally is A$500,000 (US$410,000), although payments exceeding that limit may be made under certain circumstances. *See* sections 116(7) and 116(9) of the Code.

The Division notes that the Exchange is the only foreign market which has petitioned under Rule 30.3(a) for the offer and sale of its option products which permits customer margining of premiums and further notes that the Division intends to monitor closely this requirement and to recommend adjustments, as appropriate. The Division therefore recommends that the Commission adopt a condition to this order to require the full payment of option premiums by foreign option customers of a futures commission merchant. (This does not affect the manner of premium payments by FCMs to clearing members or by clearing members to the clearing organization, however.) As the Commission stated when it adopted Rule 33.4(a)(2) (17 CFR 33.4(a)(2) (1987)):

> A critical distinction between options and futures contracts traditionally has been that, with respect to options, the one-time payment of a premium gives the option purchaser the right, over a fixed period of time, to elect the exercise of the option without incurring any additional obligations on his option contract. In contrast, the purchaser's initial payment of margin on a futures contract is recognized as the deposit of earnest money to insure performance of the contract, but does not represent the full extent of the purchaser's potential liability on the futures contract. The Commission's determination to prohibit the margining of all option premiums is intended to preserve this critical distinction and is viewed by the Commission as essential to the protection of option purchasers who otherwise could reasonably expect that an initial payment of margin on an option contract constituted the full extent of their obligation on the option.
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> 46 FR 54500, 54504 (November 3, 1981).

g. Exchange Option Rules.

The rulebook submitted by the Exchange contains rules of general application as well as rules specific to options. These rules contemplate that the Exchange takes responsibility for sales practice compliance of its members, maintains fair requirements for executions, and monitors the financial soundness of its members. The Exchange represents that it maintains in effect and enforces rules which:

(1) Establish standardized terms of option contracts (unit of trading, expiration, hours of trading, delivery). *See, e.g.*, Bylaw BAB.100–BAB.107 (90 Day Bank Bills).

(2) Establish exercise conditions and procedures for the allocation of exercise notices. *See, e.g.*, Bylaw BAB.105–BAB.107; TB.100–TB.107; *see also* Bylaws Opt. 5 and Opt. 6.

(3) Define option terms, including in-the-money and out-of-the-money options. Trading Etiquette TE.1.1.

(4) Require the payment of the option premium, Bylaw Opt. 2(b), which is itself margined. *See* Bylaw Opt. 7 (deposits and margins).

(5) Require the execution of a customer agreement prior to a member accepting a person as a client as well as the distribution of a risk disclosure document as mandated by Section 87 of the Code. *See, e.g.*, Article 4.6(4)(h) (Associate Members); *see also* Form 4, Part B, Schedules (customer agreements).

(6) Require members to act in a manner consistent with the promotion and protection of the goodwill and public image of the Exchange; to maintain accurate accounting records; to maintain accurate trade records; and to co-operate with the Exchange Committee for Inspection and Audit. *See, e.g.*, Article 4.6.

(7) Require members to refer any arbitrable dispute to arbitration in accordance with Exchange rules. *See, e.g.*, Article 4.6(3)(d), and otherwise to use its best efforts to settle disputes in a manner consistent with upholding the goodwill and public image of the Exchange and its members. *See, e.g.*, Article 4.6(3)(e).

(8) Prohibit advertising in any manner which may be false, misleading or prejudicial to the goodwill and public image of the Exchange, its members and markets. *See e.g.*, Article 4.6(4)(m).

(9) Prohibit any unsolicited business communication or writing to any person other than a client without first obtaining written Exchange approval. *See, e.g.*, Article 4.6(4)(n).

(10) Prohibit a member from operating discretionary account on behalf of a client unless authorized in writing. *See* Bylaw G.21(a). *See also* Form 2, Part B, Schedules. With respect to such discretionary accounts, Exchange Bylaw G.32(d) requires the Exchange member to:

(i) Ensure that only persons who have been approved as Registered Representatives under Article 37 at the request of that member shall exercise discretion in respect of that account;

(ii) Maintain a full and complete record of each exercise of the discretionary authority showing the name of the client, the details of the futures contract, the date and time of the transaction being effected and the name of the Registered Representative placing the order;

(iii) Unless otherwise separately agreed to in writing by the client, forward to the client a written confirmation of all transactions undertaken for the account, together with written advice of the financial results of each position closed out; and a current account statement and an open position statement as of the end of each month; and

(iv) Ensure that the transactions effected for a discretionary account are not excessive in size of frequency having regard to the nature of the financial resources of the account and the market involved.

These rules generally address the regulatory concerns the Commission identified in setting forth conditions for the designation of U.S. contract markets in options. *See* Commission Rule 33.4. In this connection, the Exchange represents that the regulatory environment governing transactions of the Exchange provides many of the

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[32] *See* Exchange petition of October 13, 1987 and Exchange Article 13.

[33] *See* discussion of specific Exchange option rules, *infra*.

[34] A futures association is a corporate body, analogous to NFA, approved by the Ministerial Council under § 50 of the Code (*see* Code section 4(1) and section 50).

protections found on regulated United States markets.

## IV. Conslusion

Based upon the foregoing, the representations of the Exchange and NCSC contained in their letters dated May 13, 1988 and May 27, 1988, respectively, and pursuant to Commission Rule 30.3(a), the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order authorizing the offer and sale in the United States of options traded on the Exchange subject to the following terms and conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to the order;

(2) That NCSC and the Exchange represent that all transactions with respect to the option(s) referenced in such notice will be governed by the Futures Industry Act, the Code and Exchange option rules as more particularly discussed in the Staff Memorandum and that NCSC and the Exchange will provide the Commission with information as to all material changes therein promptly;

(3) That options on futures on stock indices [35] and options on futures on foreign government debt securities [36] will not be permitted to be offered and sold absent certain additional procedures;

(4) That options traded pursuant to the order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the order may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988));

(6) That, notwithstanding any rules of the Exchange or the NCSC, options traded pursuant to the order may only be offered and sold to foreign futures and options customers if each futures commission merchant receives from each such customer the full amount of each option premium at the time the option is purchased; and

(7) If experience demonstrates that the continued effectiveness of the order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the order, as appropriate, on its own motion.

The Exchange has specified that the following option contracts, the terms and conditions for which are attached hereto, will initially be offered and sold in the United States: Options on 90-Day Bank Accepted Bill Futures, Options on Ten-Year Treasury Bond Futures and Options on Australian Dollar Futures. As noted in condition (7) above, the Division recommends that the Commission retain the authority to terminate the order granting authorization to offer and sell Exchange options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the order is approved by the Commission, the Division intends to monitor the offer and sale of Sydney Futures Exchange options to persons in the United States pursuant to the terms of the recommended order and to make recommendations for further action to the Commission, as appropriate in light of the operation of that program.

**Sydney Futures Exchange Contract Specifications**

*Options Contracts*

Options on 90-Day Bank Accepted Bill Futures

*Contract Unit:* One $A500,000 face value 90-day bank accepted bill futures contract for a specified contract month on the Sydney Futures Exchange.

*Exercise Prices:* Set at intervals of 0.50% per annum yield. New option exercise prices created automatically as the underlying futures contract price moves.

*Premiums:* Quoted in yield per cent per annum.

*Contract Months:* Put and call options available on the three nearest months of the "major" calendar cycle (March, June, September and December).

*Expiry:* At 12.00 noon on the Friday one week prior to the settlement day for the corresponding futures contract.

*Exercise of Options:* Options may be exercised on any business day up to and including the day of expiry. In-the-money options are automatically exercised at expiry.

Options on Ten-Year Treasury Bond Futures

*Contract Unit:* One $A100,000 face value, 12% coupon, ten-year Treasury bond futures contract for a specified contract month on the Sydney Futures Exchange.

*Exercise Prices:* Set at intervals of 0.25% per annum yield. New option exercise prices created automatically as the underlying futures contract price moves.

*Premiums:* Quoted in yield per cent per annum.

*Contract Months:* Put and call options available on the two nearest months of the "major" calendar cycle (March, June, September and December).

*Expiry:* At 12.00 noon on the last day of trading in the underlying futures contract (the fifteenth day of the month or the next succeeding business day).

*Exercise of Options:* Options may be exercised on any business day up to and including the day of expiry. In-the-money options are automatically exercised at expiry.

Options on Australian Dollar Futures

*Contract Unit:* One Australian dollar futures contract of face value $A100,000.

*Exercise Prices:* Set at intervals of $0–01 (U.S.) New option exercise prices are created automatically as the underlying futures contract price moves.

*Premiums:* Quoted in $(U.S.) per $(Australia).

*Contract Months:* Options are available in the two nearest of the contract months in the "major" cycle for the Australian dollar futures contract (March, June, September and December).

*Expiry:* Options expire at 5:30 p.m. on the second Wednesday of the delivery month. Futures contracts expire on the following Wednesday.

*Exercise of Options:* Options may be exercised on any business day up to and including the day of expiration. In-the-money options are automatically exercised at expiration.

**List of Subjects in 17 CFR Part 30**

Commodity futures.

Accordingly, 17 CFR Part 30 is amdned as set forth below:

## PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

**Authority:** Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix B is amended by adding the following entry alphabetically:

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[35] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the CEA.

[36] *See* section 2a(1) of the CEA, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

**Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. pursuant to § 30.3(a)**

*Exchange*

* * * * *

Sydney Futures Exchange.

*Type of contract*

* * * * *

Options on 90-day Bank Accepted Bill futures, Ten-year Treasury bond futures, Australian dollar futures.

*FR date and citation*

* * * * *

July 29, 1988; 53 FR _____.

[FR Doc. 88-16728 Filed 7-28-88; 8:45 am]

BILLING CODE 6351-01-M

**17 CFR Part 30**

## Foreign Option Transactions; Montreal Exchange

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is authorizing option contracts traded on the Montreal Exchange to be offered and sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

**EFFECTIVE DATE:** August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.[2] Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

**United States of America Before the Commodity Futures Trading Commission**

*Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the Montreal Exchange To Be Offered and Sold in the Unied States Thirty Days After Notice to the Commission and Publication in the Federal Register of the Option Contracts To Be Traded*

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign options to persons located in the United States.[3] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By letter dated October 7, 1987, the Montreal Exchange ("Exchange") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated Janaury 6, 1988, the Commission advised that the request on behalf of the Exchange would be addressed pursuant to Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The availability of certain information relevant to preventing abuses in the trading of option contracts on the Exchange including, but not limited to, trade confirmation data, data necessary to trace offshore funds, firm-specific data related, among other things, to good standing, fitness of principals and financial condition, and data related to sales practices in respect of such products;[7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including undertakings or arrangements by the appropriate foreign entity for the fulfillment of sales practice compliance obligations commensurate with those which apply to domestic products with respect to firms engaged in the offer and sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer and sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded.

In determining that the Exchange's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the

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[1] Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer and sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On this same date, the Commission also has issued orders authorizing certain option contracts traded on the Montreal Exchange and the Singapore International Monetary Exchange to be offered and sold in the United States.

[3] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer and sale of the products subject to this Order.[8]

Based upon the representations of the Exchange contained in its letters dated October 7, 1987 and June 24, 1988, a separate letter from the Commission des valeurs mobilieres du Quebec ("CVMQ"), the Exchange's regulator, dated June 10, 1988 and the memorandum from the Division of Trading and Markets to the Commission dated July 5, 1988 ("Staff Memorandum"), and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer and sale in the United States of options traded on the Exchange subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to this Order;

(2) That the CVMQ and the Exchange represent that all transactions with respect to the option(s) referenced in such notice [9] will be governed by the Quebec Securities Act, the Regulations thereunder and Exchange option rules as more particularly discussed in the Staff Memorandum and that they will provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [10] and options on futures on foreign government debt securities [11] will not be permitted to be offered and sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the Order herein may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangement to service existing positions will be made.

This Order is issued based on the representations made and information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this order.

Issued in Washington, DC on July 20, 1988.

**Jean A. Webb,**

*Secretary of the Commission.*

**Memorandum**

July 5, 1988.

To: The Commission.

From: The Division of Trading and Markets.

Subject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the Montreal Exchange to be Offered and Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the Montreal Exchange to be offered and sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted: Division of Economic Analysis, Division of Enforcement, Office of the Executive Director, Office of the General Counsel.

## I. Introduction

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign option products to persons located in the United States.[1] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28980.

In this regard, in view of the history of abuses in the options market prior to the imposition of the options ban,[2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign

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[8] In this connection, the Commission notes that it has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[9] The option contracts which will initially be offered and sold pursuant to this Order are the International Options Clearing Corporation ("IOCC") Foreign Currency Options (British Pounds, Deutschemarks, Japanese Yen, Swiss Francs), IOCC Canadian Dollar Options, IOCC Gold Options and IOCC Platinum Options.

[10] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[11] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[1] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[4] 52 FR 28980, 28998. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

exchange in determining whether to authorize transactions in specific foreign-exchange traded options.[5]

By letter dated October 7, 1987, the Montreal Exchange ("Exchange") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated January 6, 1988, the Commission advised the Exchange that its request would be addressed pursuant to Commission Rule 30.3(a).

## II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of the Montreal Exchange to offer and sell option products traded on the Exchange in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for deterring sales practice abuses; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer and sale of Exchange products in the United States; and (4) the regulatory environment in which such options are traded. As discussed more fully below, based upon its determinations with respect to the foregoing matters and subject to the terms and conditions specified herein, the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting certain option contracts traded on the Montreal Exchange to be offered and sold in the United States.[6]

## III. Discussion

### *Information-Sharing*

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer and sale of certain ostensibly foreign options in the United States impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[7] In this regard, the Commission has received confirmations from both the Exchange and its Canadian regulator, the Commission des valeurs mobilieres du Quebec ("CVMQ"),[8] that the CVMQ and the Exchange will share with the Commission, on an "as needed" basis and without restriction, information relevant to Exchange option transactions proposed to be entered into with or on behalf of United States customers. The foregoing exchange of correspondence confirms that the Commission's assessment of need for requested information will be determinative. The assurances of the CVMQ and Exchange concerning information-sharing on an as-needed basis extend, but are not limited, to information as to trade confirmations, offshore funds committed to Exchange option transactions, firm-related fitness (such as standing to do business and financial condition), and the sales practices of firms selling from Canada into the United States. The CVMQ also has provided the Commission with assurances that the secrecy provisions of the Canadian blocking laws, and in particular, the Access to Information Act [9] will not interfere with its sharing of information with the Commission concerning options trading activities including, without limitation, information concerning the execution and pricing of Exchange options.[10] In addition, the Exchange [11] has represented that all statements that were made with respect to information-sharing in connection with the Commission's consideration of prior requests by the Exchange to offer and sell Exchange options in the United States under the trade option exemption will be unconditionally applicable to other transactions in options traded on the Exchange.[12]

### *Sales Practice Audits*

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option adequately provide for the monitoring and detection of sales practice abuses.[13] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[14] In this connection, the Exchange represents that it has adopted rules, discussed more fully below, that regulate option sales practices including, but not limited to, review and response to customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, solicitation of discretionary accounts and promotional material, in a manner similar to rules of U.S. contract markets.[15] Additionally, the Exchange has represented that it will conduct sales practice audits of firms in Canada selling Exchange options into the United States on a regular basis.[16] The Exchange also has made arrangements with the National Futures Association ("NFA"), which NFA has confirmed by letter dated June 10, 1988, to assure that the sales practices of firms located in the United States engaged in such activities will be audited.[17]

### *Dispute Resolution*

In considering linkage arrangements intended in part to foster trading among domestic and foreign markets, the Commission has indicated that a material factor in its decision to approve such arrangements was the existence of a mechanism to permit United States customers to seek relief for disputes occurring in the linked jurisdiction.[18]

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[5] 41 FR 12104, 12105.

[6] *See* attached list of option contracts and terms and conditions. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to specific terms and conditions of the option contracts. *See* 17 CFR 33.4.

[7] 52 FR 29900, 29906.

[8] Letters dated June 10, 1988 from Paul Guy, Chairman of the CVMQ, to Andrea M. Corcoran, Director, Division of Trading and Markets, and June 24, 1988 from Philip McB. Johnson, counsel for the Exchange, to the Commission.

[9] An Act Representing Access to Documents Held by Public Bodies and the Protection of Personal Information, Statutes of Quebec, 1982, Chapter 30, as amended.

[10] Letter to Andrea M. Corcoran dated June 10, 1988 from Paul Guy, Chairman of the CVMQ.

[11] *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[12] In this regard, the CVMQ previously had stated in a letter dated October 30, 1985 from Paul Guy, Chairman of the CVMQ, to Andrea M. Corcoran, that: [The CVMQ] has a long-standing and quite successful information-sharing relationship with the Securities and Exchange Commission in the United States. We are prepared, of course, to maintain a similar relationship with the [Commission].

[13] 46 FR 54500, 54502 (November 3, 1981).

[14] Id.

[15] *See* discussion of the Exchange option rules, *infra*.

[16] Letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[17] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and options activities of NFA members and associates. By letter dated June 10, 1988 from Daniel A. Driscoll, Vice-President of the NFA, to Andrea M. Corcoran, the NFA confirmed that the NFA and U.S. exchanges which are a party to a joint sales practice audit agreement will provide sales practice audit services addressing sales of Montreal Exchange Options.

[18] *See* staff memorandum dated August 28, 1984 analyzing Chicago Mercantile Exchange—Singapore

Continued

The availability of a forum to address complaints with respect to trade execution also is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assure a fair trading environment. In this regard, in its petition of October 7, 1987, the Exchange represented that customers essentially have four levels at which they may attempt to settle or prosecute a dispute:

Directly with their registered representative or a responsive person within the member firm;
By instituting proceedings in a court of law;
By employing the examination, hearing and settlement procedure of the Exchange; [19] or
By employing the examination, hearing and settlement procedures of the CVMQ.

The Exchange represents that customer complaints brought against a person under the jurisdiction of the Exchange are usually lodged either directly with the Exchange or with the CVMQ which, by agreement, delegates investigation and further action to the Exchange. A customer may seek recourse at the CVMQ once the process at the Exchange level is terminated and the customer has not obtained satisfactory resolution of the complaint. Under the Exchange Rules, a complaint may be lodged by "the Exchange, a member, or a permit holder." (Exchange Rule 4221). Thus, a customer complaint received by the Exchange must, upon preliminary investigation, be found to have merit prior to its being formally lodged, at which point it is the Exchange that in fact takes on the role of "plaintiff." (Exchange Rule 4221).

The Exchange represents that all complaints received by the Exchange are submitted to the Member Regulation Department of the Exchange. The Exchange Examiner and staff of the Department proceed with an investigation of the allegations in light of the regulatory and legal framework of the Exchange, the CVMQ and applicable securities and commodities law. When warranted, the complaint is referred to an internal Exchange Committee mandated to examine the facts and validity of the complaint. If the customer complaint is found to be without merit, the file is closed and the customer is notified to this effect.[20] Where a complaint is found to have merit after the initial investigation of the Exchange, the disciplinary procedures contained in Exchange Rules 4221–4308 apply.

Pursuant to Exchange Rule 4226, the Exchange is authorized to impose the following penalties:

(a) A reprimand;
(b) A fine not exceeding C$100,000 (US$83,100);[21]
(c) Suspension of the rights as a member, approved person or permit holder for such period or periods and upon such conditions, including conditions of reinstatement, as the Governing Committee or a Disciplinary Committee may determine;
(d) Expulsion of a member; revocation of the permit or approval; and
(e) The making of restitution to any person that has suffered a loss as a result of the acts or omissions of a person under the jurisdiction of the Exchange.

The Exchange has represented in its petition that all avenues of recourse available to Canadian customers, including proceedings at the Exchange, the CVMQ, and in the courts, are available to non-Canadian customers on an equal basis with Canadian customers.[22] Where a complaint of alleged wrongdoing of an Exchange member or other approved person is found to have merit, the Exchange's disciplinary procedures normally would apply.

Non-Canadian residents making a complaint which becomes subject to the Exchange's disciplinary procedures, including investigation, hearing and settlement, may not necessarily be compelled to appear in person. However, if the Disciplinary Committee determines it to be necessary, the person making the complaint shall at a minimum provide an authorized representative, such as counsel, to adequately represent the case put forward. In this regard, by letter dated June 24, 1988, the Exchange made clear that U.S. residents may, absent any objection by the defendant,[23] give evidence based solely upon written documentation submitted under oath or affirmation in the absence of any authorized representative. The Exchange further represented that if the facts underlying the proceeding may be established by other evidence, the presence of the customer may not be necessary. Finally, the Exchange also represented that it may arrange for a commissioner to be appointed to take the testimony of a person who resides outside Quebec, which would obviate that person's appearing at the Exchange proceeding. Thus, the testimony of U.S. residents in such proceedings may be arranged to be taken in the U.S.[24]

*Regulatory Environment*

When options originally were banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing business with

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International Monetary Exchange linkage at p. 51 and August 1, 1986 staff memorandum analyzing Commodity Exchange, Inc.—Sydney Futures Exchange linkage at p. 22.

[19] The Exchange hearing procedure is the primary non-judicial dispute resolution mechanism. However, the Exchange arbitration program (which is conceived primarily for member-to-member disputes), established by Exchange Rules 5201–5250, allows non-members to submit to arbitration any dispute with a member that relates to a contract subject to the Exchange rules. *See* Exchange Rule 5205. Pursuant to Sections 5201–5250 of the Exchange's Rules, an arbitration proceeding is conducted before an impartial panel, which is empowered to receive documentary and oral evidence and award damages to an aggrieved customer. "On the papers" hearings can be held with the concurrence of the parties but, as is true of U.S. contract markets under Commission regulations, the Exchange is not obliged to provide such a procedure. Compare Commission Regulation § 180.2(d)(1), 17 CFR 180.2(d)(1) (1987), which allows, but does not compel, U.S. contract markets to establish "on the papers" hearings under certain circumstances, and which allows U.S. contract markets to require the personal appearance of complainants, including and other non-U.S. countries. An Exchange member which fails to comply with an arbitration award is deemed to have committed an act detrimental to the interest and welfare of the Exchange, thus subjecting itself to the full range of the Exchange's disciplinary authority. See Exchange Rule 5207. See letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[20] The CVMQ has broad oversight authority under Articles 183, 310 and 322 of the Quebec Securities Act to review the Exchange's disciplinary program generally as well as to review specific actions, including a decision not to prosecute a member. *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[21] Conversions at June 23, 1988, as published in the *Washington Post*, June 24, 1988.

[22] *See* October 7, 1987 petition of the Montreal Exchange, *i.e.*, that U.S. customers will receive no less than "national treatment."

[23] Because the proceeding involving most customer complaints against a member are disciplinary in nature, and may result in penalties as well as restitution, the Exchange is of the view that the member should be able, if the member so desires, to face the accuser. Absent objection, of course, the customer's testimony can be given through sworn affidavit or similar documentation. The Exchange believes that it would be manifestly unjust and unfair to present charges against any person and thereafter deny that person a right to cross-examine the accuser. Compare, *e.g.*, Commission Regulation § 8.17(a)(7), 17 CFR 8.17(a)(7) (1987), (allowing cross-examination of witness at exchange disciplinary hearings). *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the exchange.

[24] *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

United States firms or customers.[25] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for granting exemptions from the Part 30 rules.

In this regard, the Exchange has submitted for the Commission's consideration information relating to the regulatory framework governing futures and option transactions in Quebec.[26] Essentially, as discussed below, the material submitted by the Exchange describes a self-regulatory system subject to governmental oversight by the CVMQ which is intended to promote market integrity and to provide a fair trading environment for Exchange futures and option products, as follows:

a. Authorization of Exchanges (Fitness of the Marketplace)

In order to do business in Quebec, an exchange or clearinghouse must be recognized by the CVMQ as a self-regulatory organization. (QSA Sec. 169). Such recognition is granted by the CVMQ when the CVMQ determines that the organization has adequate financial resources and administrative structures and that the organization's operating rules are in conformity with the QSA. (QSA Sec. 174). In this regard, the constituting documents, by-laws and operating rules of an exchange must provide for: (1) Unrestricted membership for every person who fulfills the conditions of admission; (2) equal access to services for every member; and (3) the disciplining of members or their representatives for breach of Exchange by-laws or operating rules. (QSA Sec. 175).

Any rules which have the effect of limiting competition must be submitted to the CVMQ for its prior approval. (QSA section 176). In addition, all other amendments to the constituting documents, by-laws or operating rules of an exchange must be submitted to the CVMQ for approval (QSA section 177). Such approval is automatic at the expiration of 30 days unless the CVMQ notifies to the contrary (QSA section 178). In this regard, the CVMQ may order an exchange to amend its rules (QSA section 180) or to take other action it deems necessary for the proper operation of the organization or the protection of investors. (QSA section 181). Recognized organizations are required to inform the CVMQ of every decision rendered under delegated powers concerning the admission of new members or disciplinary actions. (QSA section 183). Every recognized organization is required to file audited financial statements yearly (QSA section 184) and to maintain such books and records as the CVMQ may direct. (QSA section 185).

In the case of commodity futures and option contracts, the "issuer" (*i.e.*, the exchange) must be qualified by the CVMQ (QSA Secs. 1 and 67). The qualification process includes the filing of a description of the types of contracts proposed to be traded as well as a disclosure document in the form mandated by CVMQ. (QSA Reg. sections 71 and 73). Contracts may be issued only when the CVMQ approves or does not object to the application within 10 days of receiving the filings. (QSA Reg. section 71.1). These rules foster the maintenance of trading standards essential to meaningful information-sharing with respect to option transactions.

b. Licensing of Firms and Personnel (Fitness Standards for Professionals)

All dealers (*i.e.*, persons acting as brokers or principals, QSA Sec. 5) and advisers, as well as their personnel, are required to register with the CVMQ (QSA secs. 148 and 149). The application process involves the submission of a questionnaire requiring the disclosure of information concerning "fitness," such as education, investment courses or examinations passed, experience, professional references, prior suspensions or disciplinary measures, infractions of laws, convictions, civil proceedings and bankruptcy. The registration process for dealers and advisers includes the submission of financial statements (QSA Reg. section 195) and proof of insurance or bonding. (QSA Reg. section 196). The registration process for representatives of dealers and advisers includes proof of residence in Quebec (QSA Reg. section 204) and the successful completion of a course that demonstrates adequate professional training (QSA Reg. section 205). The CVMQ, after verifying that an applicant meets the conditions established by regulation, will grant registration when the applicant demonstrates that it has the competence and integrity to ensure the protection of investors, is solvent and has the financial resources to ensure the viability of the business. (QSA section 151).

c. Financial requirements (Fitness Standards for Firms)

The QSA regulation establish minimum net capital requirements for dealers as well as advisers.[27] A dealer or adviser is required to keep accounting books and records and retain them for at least five years. (QSA Reg. section 220). Such records must include a detailed specification of each customer's transactions as well as data concerning the firm's financial condition. (QSA Reg. section 222 (dealers and section 224 (advisers)). These rules establish a standard of financial fitness which is relevant to the expectation that members will comply with applicable rules and the capacity of members to meet their obligations in the marketplace.

d. Treatment of Customer Funds and Property

Segregation of customer funds and property in the manner contemplated by the Commodity Exchange Act and Commission rules is not required with respect to option transactions on the Exchange. Customer funds may be used in specified circumstances by the dealer (broker). However, the QSA requires that customer credit balances be maintained so as to be payable on demand. QSA Sec. 168 states that "credit balances appearing in the accounts of clients and not given in guarantee are funds payable on demand; in no case may a dealer use them except to finance his working capital on the

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[25] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[26] The Exchange has submitted the following:

By-Laws and Rules of the Montreal Exchange ("Exchange Rules");

The Quebec Securities Act (Bill 85, Chapter 48) assented to December 16, 1982, as amended February 24, 1987 ("QSA"); and

Quebec Regulations respecting securities (Order in Council 660–83, March 30, 1983), as amended as of January 27, 1987 ("QSA Regs.").

Reference to "securities" in the QSA includes futures and options. As provided in section 2 of the QSA: "The scheme of securities regulation established by the [QSA] and the regulations applies, *mutatis mutandis* to the other forms of investment listed in section 1 * * * [which lists futures and options]."

[27] A dealer with an unrestricted practice must have a net free capital at least equal to the sum of: (1) A proportion of the adjusted liabilities, subject to a minimum of C$75,000 (US$62,318), calculated as follows: (a) 10% of the first C$2,500,000 (US$2,077,250); (b) 8% of the next C$2,500,000; (c) 7% of the next C$2,500,000; (d) 6% of the next C$2,500,000; and (e) 5% of the amount exceeding C$10,000,000 (US$8,310,000); and (2) the amount deductible under the insurance policy or bonding prescribed by QSA Reg. section 213 (*i.e.*, C$1 million (US$831,000) coverage for a dealer with an unrestricted practice; C$100,000 (US$83,100), plus C$50,000 (US$41,545) for each employee, for a dealer selling investment contracts; C$100,000 for a securities adviser) (QSA Reg. section 207). A financial adviser with a restricted practice must have a working capital of at least C$5,000 (US$4,154) (QSA Reg. section 209).

conditions prescribed by regulation."[28] QSA Reg. § 217 provides that a dealer may use free credit balances on the following conditions:

The statement of account sent to the customer must indicate that the funds are being used to finance the dealer's working capital and are payable on demand;

It pays a reasonable interest; and

It may keep such funds only temporarily, with a view to investing them in securities.

However, a dealer who maintains fully paid securities on behalf of a customer and not assigned as security must separate them from other securities. On statements of account and in its registers, it must indicate clearly that such securities are on deposit. (QSA Reg. section 216).

An adviser with an unrestricted practice must keep in a trust account, separate from the adviser's assets, sums received as subscriptions or advance payments, until such time as they are used in accordance with their intended purpose. (QSA Reg. section 218). Otherwise, an adviser may not have securities or cash belonging to its customers in his possession or safekeeping (QSA Reg. section 234).

e. Market Integrity

The Exchange has represented that it has an affirmative surveillance program under the general direction of the Exchange's Floor Committee which is designed to detect activity by floor traders that takes advantage of customers or undermines the integrity of the Exchange. The Floor Committee regulates the trading and conduct on the floor of permit holders, individual members, membership representatives, trading representatives and any other persons associated by employment or contract with a member or permit holder. (Exchange Rule 6043). Under Exchange Rule 6045, the Floor Committee has the authority to interrupt trading whenever the interests of orderly trading so require. The Exchange conducts periodic surveillance of floor activity and regularly reviews the record of trades for any signs of abuses, including:

Front-running (Exchange Rule 6305);

Manipulative or deceptive trading, including creating a false or misleading appearance of active trading or engaging in trading intended to have the effect of creating an artificial price (Exchange Rule 6306);

Not providing best price execution (Exchange Rule 6310); and

Corners in the market (Exchange Rule 6307).

The Floor Committee has the authority to impose fines upon a member for any violation of a rule or floor trading regulation and in addition, may suspend a member's right to trade or expel the member from the trading floor. (Exchange Rule 6048). Any such penalty would not limit the authority of the Governing Committee to impose appropriate penalties or discipline for the same offense. (Exchange Rule 6051).

Other market supervisory powers of the Exchange include the power to establish option position limits (Exchange Rule 11301), including limits on outstanding uncovered short positions (Exchange Rule 11306), as well as general power to impose restrictions "in the interests of maintaining a fair and orderly market." (Exchange Rule 11308).

Although the CVMQ primarily functions in an oversight capacity, that agency is empowered to prescribe a course of action to an exchange if it considers it necessary for the proper operation of the exchange or the protection of investers (QSA Sec. 181).

f. Other Customer Protections

QSA Reg. §215 requires dealers to participate in a contingency fund approved by the CVMQ. The Exchange requires member participation in such a fund, the National Contingency Fund, sponsored by the Exchange and the Calgary, Toronto and Vancouver stock exchanges. (Exchange Rule 101). The Fund's purpose is to maintain public confidence by protecting clients of a member firm from financial loss resulting from the insolvency or bankruptcy of the firm. As of June 1988, the Fund had assets of C$35.6 million (US$29.6 million), which could be increased by unlimited assessments upon its members.[29] In the case of insolvency, individual customers with valid claims are entitled to receive full recovery of amounts owed to them, without dollar limit.[30] In addition, Exchange Rules 5126–5132 establish a brokers' clearing fund, financed by assessments of Exchange members, for the purpose of compensating members for bona-fide losses resulting from uncleared trades.

Exchange Rules 7156 and 7157 require audits of Exchange members' accounts at least once a year (or more often as determined by the Exchange) by auditors approved by the Exchange. Exchange Rule 7161 provides specific minimum guidelines mandating the scope of such audits, which, for example, must include a detailed examination and written confirmation of all client balances, cash deposits, security positions, open contracts, and deposits with clearing houses.

QSA Reg. section 235 mandates that a registered person use the care of a similarly situated informed professional. For example, the registered person must assure that orders are executed at the best price available on Canadian exchanges, unless instructed otherwise. With respect to discretionary accounts, QSA Reg. section 233 requires that transactions be approved in advance by a senior executive of the dealer or adviser. QSA Reg. section 248 requires that a monthly statement be given to customers disclosing the type of instrument, the unit price, amount of transaction and balance at the end of the month.

g. Exchange Option Rules

The rulebook submitted by the Montreal Exchange contains rules of general application, as well as rules specific to options. These rules contemplate that the Exchange takes responsibility for ensuring sales practice compliance of its members, maintaining fair requirements for executions, and monitoring the financial soundness of its members. The Exchange represents that it maintains in effect and enforces rules which:

(1) Establish standardized terms of option contracts (unit of trading, expiration). Exchange Rules 11001–11006.

(2) Establish exercise conditions and fair procedures for the allocation of exercise notices. Exchange Rule 11252.

(3) Require any firm principal ("options principal") and customer representative ("options representative") to be approved by the Exchange as a registered options principal or options representative. Exchange Rules 11102 and 11104. Among other things, a condition to such registration is the successful completion of a registered options principal or representative course, as appropriate. Exchange Rules 11102 and 11106.

(4) Require every registered options principal to be responsible for the operation and supervision of the member firm with respect to option contracts. Such responsibilities include the prior authorization of the opening of every option account, the supervision of all account dealings in options, the prior approval of discretionary orders, and the approval of all advertisements relating to options. Exchange Rule 11103.

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[28] QSA Reg. section 207 requires a dealer to maintain net free capital based on the amount of "adjusted liabilities" of the dealer. Since the term adjusted liabilities includes all amounts owed to customers (as well as the firm's other liabilities), the QSA rules essentially establish a reserve requirement which takes into account, among other things, amounts of customer funds used to finance net capital.

[29] *See* letter dated June 16, 1988 from Philip McB. Johnson, counsel for the Exchange, to Robert Rosenfeld, Division of Trading and Markets staff attorney.

[30] *Id.*

(5) Require the execution of an option trading agreement prior to trading in options. Echange Rule 11151. Such option trading agreement must include the current Disclosure Statement for Exchange-Trade Options, the receipt of which shall be evidenced in writing. (*Compare* form in CVMQ Regs. Schedule VII.1p. 77 with Commission Rule 33.7, 17 CFR 33.7 (1987)). The agreement also is required to disclose to customers the methods of allocation of exercise notices. Exchange Rule 11153(d). (The Exchange has a specialized disclosure document for options cleared through the International Options Clearing Corporation ("IOCC")).

(6) Require the disclosure of all costs, fees, premiums, transaction facts (date, amount, location of trade) and option terms and conditions (expiration month, exercise price, settlement date) in a written confirmation statement delivered promptly to the customer. Exchange Rules 11155 and 7455 as made applicable by Exchange Rules 11152 and 11156.

(7) With respect to discretionary accounts, Exchange Rule 11154 requires member firms to comply with Exchange Rules 7476–7500 ("specific provisions on discretionary accounts") which:

(i) Prohibit any person from exercising discretionary authority unless such person has been designated a "portfolio manager," the client has given prior written authorization and the member has accepted the account in writing. Such written authorization must specify the investment objectives of the client. Exchange Rule 7478.

(ii) Require a member firm to designate one or more partners who shall assume supervisory authority for each managed account and to advise the client in writing of the identity of such supervisor. Exchange Rule 7479.

(iii) Make designation as a "portfolio manager" contingent upon the successful completion of the Canadian Securities Course and the Canadian Investment Finance Course, as well as proof of employment for at least five years in a research capacity involving the financial analysis of investments. Exchange Rule 7480.

(iv) Require firms to appoint a Portfolio Management Committee to review at least quarterly the investment policies of a member concerning its managed accounts. Exchange Rule 7481.

(v) Require the quarterly review of managed accounts. Exchange Rule 7482.

(vi) Require the full disclosure of contingency fees to the client. Exchange Rule 7484.

(vii) Prohibit a member from trading for the member's or portfolio manager's own account in reliance upon information concerning discretionary accounts. Exchange Rule 7486.

(8) Require all long positions in options to be paid fully in cash. Exchange Rule 11202. Exchange Rules 11203–11208 establish margin requirements for short option positions.

(9) Require each member to keep an up-to-date record of all written complaints in a central place. The complaint and reply must be retained for two years and be made available to the Exchange upon request. Exchange Rule 7466. In this regard, the Exchange has a formal disciplinary procedure for addressing violations of Exchange rules. *See* (Exchange Rules 4201–4308).

These rules generally address the regulatory concerns the Commission identified in setting forth conditions for the designation of U.S. contract markets in options. *See* Commission Rule 33.4. In this connection, the Exchange specifically represents that the regulatory environment governing transactions on the Exchange provides many of the protections found on regulated United States markets.

## IV. Conclusion

Based upon the foregoing, the representations of the Exchange contained in letters dated October 7, 1987 and June 24, 1988, representations of the CVMQ contained in its letter dated June 10, 1988, and pursuant to Commission Rule 30.3(a), the Division of Trading and Markets recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order authorizing the offer and sale in the United States of options traded on the Montreal Exchange subject to the following terms and conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to the order;

(2) That the CVMQ and the Exchange represent that all transactions with respect to the option(s) referenced in such notice will be governed by the Quebec Securities Act, the Regulations thereunder and Exchange option rules as more particularly discussed in this Staff Memorandum and that the CVMQ and/or the Exchange will provide the Commission with information as to all material changes therein promptly;

(3) That options on futures on stock indices [31] and options on futures on foreign government debt securities [32] will not be permitted to be offered and sold absent certain additional procedures;

(4) That options traded pursuant to the order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the order may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued January 29, 1988 53 FR 3338 (February 5, 1988); and

(6) If experience demonstrates that the continued effectiveness of the order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject thereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted therein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the order, as appropriate, on its own motion.

The Exchange has specified that the following option contracts, the terms and conditions for which are attached hereto, will initially be offered and sold in the United States: IOCC Foreign Currency Options (British Pounds, Deutsche Marks, Japanese Yen, Swiss Francs), IOCC Canadian Dollar Options, IOCC Gold Options and IOCC Platinum Options. As noted in condition (6) above, the Division recommends that the Commission retain the authority to terminate the order granting authorization to offer and sell Montreal Exchange options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the order is approved by the Commission, the Division intends to monitor the offer and sale of Montreal Exchange options to persons in the United States pursuant to the terms of the recommended order and to make recommendations for further action to the Commission, as appropriate in light of the operation of that program.

[31] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[32] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

**IOCC Foreign Currency Options Contract Specifications**

| Exchange where traded | ME | | | |
|---|---|---|---|---|
| | British pounds | Deutsche marks | Japanese yen | Swiss francs |
| Trading Unit | £5,000 | DM 25,000 | Y 2,500,00 | SF 25,000 |
| Exercise price intervals | U.S. $0.05 | US. $0.02 | U.S. $0.0002 | U.S. $0.02 |
| Minimum premium increment per unit of underlying currency | U.S. $0.0005 | U.S. $0.0001 | US. $0.000001 | U.S. $0.0001 |
| Ticker Symbol | BRP | DMR | Yen | SF |

Making delivery of underlying commodity: Payment of underlying currency by deliverer to the account of IOCC at a bank designated by IOCC.

Taking delivery of underlying commodity: Receipt of underlying currency in the receiving broker's account at a bank designated by IOCC.

Expiry months: March, June, September and December.

Exercise cut-off: 5:00 p.m. the third Friday in an expiry month.

Termination of trading in an expiring option: 4:00 p.m. on the Thursday preceding the third Friday in an expiry month.

Trading currency: Premiums and exercise prices quoted in U.S. dollars and cents: settlement in U.S. funds.

Position limits: None.

Normal trading hours: 9:00–16:00 (EST EDT).

Commission charges: As agreed between the client and the broker.

**IOCC Canadian Dollar Options Contract Specifications**

Exchanges where traded: ME and VSE.

Trading unit: 50,000 Canadian dollars.

Making delivery of underlying commodity: Deposit of certified check at IOCC office.

Taking delivery of underlying commodity: Receipt of check from IOCC to broker.

Expiry months: March, June, September and December.

Exercise cut-off: 5:00 p.m. in Montreal and 4:00 p.m. in Vancouver the third Friday in an expiry month.

Termination of trading in an expiring option: 2:30 p.m. in Monteal and 4:00 p.m. in Vancouver the Thursday preceding the third Friday in an expiry month.

Trading currency: Premiums and exercise prices quoted in U.S. dollars and cents; settlement in U.S. funds.

Exercise prices: Maximum intervals set at U.S. $0.02 per Canadian dollar; normal intervals at U.S. $0.01 per Canadian dollar.

Premium quotations: In increments of U.S. $0.0001 per Candian dollar (i.e. U.S. $5.00 per contract).

Position limits: None

Normal trading hours: On the ME: 9:00–14:30 (EST/EDT) on the VSE: 14:30–19:00 (EST/EDT).

Ticker symbol: CAN.

Commission charges: As agreed between the client and the broker.

**IOCC Gold Options Contract Specifications**

Exchanges where traded: ME, VSE, EOE.

Trading unit: 10 troy ounces of fine gold bullion per option, of minimum .995 fineness in wafer or bar form, acceptable for good London delivery.

Taking delivery of underlying commodity: Receipt of good London deliverable gold in an account with one of the five full members of the London Gold Market or, at extra cost, in any other gold account elsewhere.

Making delivery of underlying commodity: Deposit of good London deliverable gold in an account with one of the five full members of the London Gold Market.

Expiry months: February, May, August and November.

Exercise cut-off: 5:00 p.m. in Montreal and 5:00 p.m. in Vancouver on the third Friday in an expiry month.

Termination of trading in an expiring option: 2-30 p.m. in Montreal and 4:00 p.m. in Vancouver, on the Thursday preceding the third Friday in an expiry month 2:00 p.m. in Amsterdam on the third Friday in an expiry month.

Trading currency: Premiums and exercise prices quoted in U.S. dollars and cents per ounce: settlement in U.S. funds.

Exercise prices: Minimum intervals set at U.S. $25 per ounce.

Premium quotations: In increments of U.S. $0.10 per ounce (i.e. U.S. $1.00 per contract).

Position limits: 5,000 options on the same side of the market.

Normal trading hours:
On the EOE: 4:30–10:30 (EST/EDT).
On the ME: 9:00–14:30 (EST/EDT).
On the VSE: 14:30–19:00 (EST/EDT).

Ticker symbol:
On the ME & VSE: OR.
On the EOE: GD.

Commission charges: Negotiated.

**Specifications for Platinum Options**

*Exchanges Where Traded:* European Options Exchange (Optiebeurs) The Montreal Exchange, Vancouver Stock Exchange, Australian Stock Exchange (Sydney)

*Underlying Value:* 10 troy ounces of platinum of minimum 0.9995 fineness.

*Making Delivery:* Deposit of deliverable grade platinum, in the form specified by IOCC, in IOCC's account with institution acting as its delivery depot.

*Taking Delivery:* Receipt of deliverable grade platinum, in the form specified by IOCC, in an account with institution acting as IOCC's delivery depot or at extra cost, according to other client instructions.

*Expiration Months:* Next three months falling on the March/June/September/December cycle.

*Expiration Date:* Monday following the third Friday in an expiration month. Final exercise cutoff for clients on the third Friday of an expiration month, or at the discretion of the broker.

*Termination of Trading in an Expiring Series:* At the close of each local trading session on the third Friday in an expiration month.

Standard Trading Hours:[1]

*Market, Local Time, Greenwich Mean Time*

Amsterdam, 10:30–16:30, 09:30–15:30
Montreal, 09:30–14:30, 14:00–19:30
Vancouver, 11:30–16:00, 19:30–24:00
Sydney:
1. Nov.–Mar., 11:00–16:30, 24:00–05:30
2. Apr.–Oct., 10:30–16:00, 01:30–07:00

[1] Greenwich Mean Time (GMT) is the accepted time zone referenc expoint. There is a 1.5 hour trading stop in Sydney during the local midday. In Amsterdam, local trading ends at 14:00 on the third Friday in an expiration month.

*Trading Currency:* Premiums and exercise prices quoted in U.S. dollars and cents per troy ounce.

*Exercise Prices:* Minimum intervals set at $US 10 per troy ounce.

*Premium Quotations:* Increments of $US 0.10 per troy ounce ($US 1 per contract).

*Premium and Margin Settlement:* Next business day.

*Ticker Symbols:*

PX (Montreal and Vancouver).

PLA (Amsterdam).

PXA (Sydney).

**List of Subjects in 17 CFR Part 30**

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

## PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

**Authority:** Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix B is amended by adding the following entry alphabetically:

**Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. Pursuant to § 30.3(a)**

| Exchange | Type of contract | FR date and citation |
|---|---|---|
| Montreal Exchange. | International Options Clearing Corporation foreign currency options (British pounds, Deutschemarks, Japanese yen, Swiss francs), Canadian dollar, gold, and platinum options. | July 29, 1988; 53 FR _____. |
| • | • | • |

[FR Doc. 88-16727 Filed 7-28-88; 8:45 am]

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federal register

Friday
July 29, 1988

Part VI

# Department of Transportation

**Research and Special Programs Administration**

**Inconsistency Ruling No. IR-18; Prince Georges County, MD; Code Section Governing Transportation of Radioactive Materials; Notice of Decision on Appeal**

VOL 53 ISS 146 JL 29 1988 UMI

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. IRA-29]

### Inconsistency Ruling No. IR-18; Decision on Appeal; Prince Georges County, MD; Code Section Governing Transportation of Radioactive Materials

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT or the Department).

**ACTION:** Notice of decision on appeal.

**SUMMARY:** In response to the appeal of Prince Georges County from the findings made in Inconsistency Ruling No. IR-18 (52 FR 200, January 2, 1987), that Inconsistency Ruling is affirmed.

**EFFECTIVE DATE:** July 21, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary M. Crouter, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590 (Tel: 202/366-4400).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a State or political subdivision thereof, which is inconsistent with any requirement of the HMTA or the Hazardous Materials Regulations (HMR) issued thereunder (49 CFR Parts 171-179). Section 107.209(c) of Title 49, Code of Federal Regulations sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent:

(1) Whether compliance with both the State or political subdivision requirement and the HMTA and the HMR is possible (the "dual compliance" test); and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings and decisions on appeal only address preemption issues under the HMTA and the HMR. They do not address issues of preemption arising under other statutes or under the Commerce Clause of the United States Constitution.

On May 5, 1983, the Government of Prince Georges County, Maryland (the County) filed an application for an administrative ruling seeking a determination as to whether Prince Georges County Code Section 18-187, restricting the movement of radioactive materials into, within, through, and out of the County, is inconsistent with the HMTA or the HMR.

On December 18, 1986, the Director, Office of Hazardous Materials Transportation (hereinafter the "Director" and "OHMT") issued Inconsistency Ruling No. 18 (IR-18), which was published at 52 FR 200 on January 2, 1987. That ruling determined that subsections (b)(2), (c), (d), (e) and (f) of Prince Georges County Code Section 18-187 are inconsistent with the HMTA and the HMR and therefore preempted by section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). The procedural regulations governing issuance of inconsistency rulings are codified in 49 CFR 107.201-107.211

On January 20, 1987, pursuant to 49 CFR 107.211, the County filed an appeal of IR-18 with the Administrator of RSPA. Comments opposing the appeal were filed by the Baltimore Gas and Electric Company

#### II. The Appeal: Issues and Decisions

*A. Introduction*

I am issuing this decision in my capacity as Administrator of RSPA. I have thoroughly considered all of the issues raised in the appeal and the comments on the appeal. All of the findings being appealed were discussed exhaustively by the Director in IR-18. I will respond only to the specific issues raised on appeal and generally will not reiterate the discussions in IR-18.

In its appeal, the County raises both general and specific arguments against the findings made in IR-18. I have considered the County's arguments in the order presented.

The County's general arguments are that (1) the HMTA and the HMR are not adequate to regulate the flow of hazardous materials through local jurisdictions, (2) the Director incorrectly assumes that the County's certificate requirement amounts to a routing rule which effectively redirects radioactive materials transportation, and (3) the Director incorrectly concludes that the County Code fails the dual compliance and obstacle tests.

The County's specific arguments challenge the Director's findings of consistency concerning the County's definitions and its requirements concerning communications, information, certification, bonds and penalties.

*B. The County's General Arguments*

1. The County's first general argument is that "[b]y its own admission, the DOT through the HMTA and HMR is not equipped to adequately regulate and monitor the flow of hazardous waste materials (radioactive material in particular) through local jurisdictions" and that, therefore, DOT should recognize a right in local jurisdictions to establish requirements to prepare safety measures in the event of an emergency.

In IR-18, the Director stated, in discussing the Federal-State relationship in the area of highway transportation safety, that "there are certain aspects of hazardous materials transportation that are not amenable to exclusive nationwide regulation," including safety hazards which are peculiar to a local area. DOT did not "admit" that it cannot adequately regulate but instead stated that "to the extent that nationwide regulations do not adequately address a uniquely local safety hazard, state or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard. The mere claim of uniqueness, however, is insufficient to insulate a non-Federal requirement from the preemption provisions of the HMTA." 52 FR 200. Thus, the Department does recognize a legitimate role for State and local governments in hazardous materials transportation, so long as the non-Federal requirement does not conflict with the national standards.

The County further asserts that "DOT's assumption that the HMTA and HMR are sufficient to assist the state localities in this effort is clearly erroneous." The Department has made no such assumption. The conclusions in IR-18 do not rely on the adequacy of the Federal regulations. Instead, the conclusions in IR-18 are based on the existence of Federal regulations governing specific areas of radioactive materials transportation safety with which the County's requirements are in conflict.

Furthermore, in adopting the HMR, the Department was implementing the express Congressional objectives underlying enactment of the HMTA: (1) "To protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 App. U.S.C. 1801); and (2) "to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974)). While the

HMTA did not totally preclude State or local action in the area, Congress apparently intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR restricts the scope of authority historically exercised by State and local governments. The nature, necessity and number of hazardous materials shipments make uniformity of standards a critical factor in the safe transportation of these materials.

2. The County's second general argument is that the Director incorrectly assumed that the County certificate requirement amounts to a routing rule and in effect bans shipments on U.S. 301, a State-designated preferred route. The County argues that in order for a State or local "routing rule" to constitute an inconsistent requirement, it not only must "effectively redirect" the movement of hazardous materials but it must also "significantly 'restrict or delay' transportation," which the County argues its permit requirement does not do.

Appendix A to 49 CFR Part 177, defines a "routing rule" as "any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects."

It is important to understand that Appendix A is not a regulation, but a non-binding statement of agency policy. Thus, IR–18 did not rely upon Appendix A in finding the County's certificate requirement inconsistent, but instead relied on findings of inconsistency with specifically enumerated Federal regulations discussed in IR–18. In any event, the County's interpretation of Appendix A is incorrect. A "routing rule" is any action which effectively redirects *or* otherwise significantly restricts or delays transportation of hazardous materials. Thus, a State or local requirement only "redirecting" transportation constitutes a routing rule.

Furthermore, a local routing rule is not per se inconsistent. Paragraph III.B. of Appendix A provides that a local routing rule that applies to highway route controlled quantity radioactive materials is inconsistent with Part 177 if it prohibits or otherwise affects transportation on routes authorized by Part 177 or authorized by a State routing agency in a manner consistent with Part 177. In IR–18, the Director found the County's certificate requirement to be inconsistent because it would allow the County to ban shipments on State-designated preferred routes. As discussed in IR–18, Maryland has designated preferred routes in accordance with 49 CFR 177.825(b). A preferred route is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with the Department's guidelines. Maryland's routes include U.S. 301 and Interstates I–95 and I–495 which run through the County. The Director found that the "permit requirements of section 18–187 would circumvent the State's designation of U.S. 301 by providing the County with an almost unfettered ability to ban shipments on this State-designated route and thereby usurping the State's authority under 49 CFR 177.825(b); it also is inconsistent with that Federal regulation's requirement that highway route controlled quantity radioactive materials be carried on an Interstate System Highway in the absence of a state-designated route." 52 FR 204.

The County also argues that section 18–187 does not attempt to effectively redirect, restrict, delay, or even ban transportation of radioactive materials but is merely to provide notification. The purpose of the County's requirements, however well-intentioned, is not relevant. The County's certificate requirement has the *effect* of redirecting the movement of hazardous materials in order to avoid the County's inconsistent information and permit requirements. Moreover, as discussed at length in IR–18, the County's requirements would ignore the preferred highways designated by the State of Maryland pursuant to 49 CFR 177.825(b). The County argues that any decrease in use of U.S. 301 is attributable to the increased use of Interstates 95 and 495 which are designated (by Maryland) as primary routes and therefore are primarily used. The finding in IR–18 was not based on an actual measurement of traffic on the routes in question, nor is such a measurement required. It is sufficient that the County's requirements would have the effect of circumventing the State's designation of preferred routes and exporting the risk inherent in the transportation of radioactive materials to adjacent jurisdictions. For the reasons discussed above, I conclude that the Director correctly found that the County's certificate requirement is inconsistent with the HMTA and the HMR.

3. The County's third general argument is that the Director incorrectly concludes that the County's certificate requirement fails both the "dual compliance" and "obstacle" tests set forth in 49 CFR 107.209(c). The County asserts that "a transporter can comply with the County's Code certification requirements without violating any of the HMTA or the HMR" and that the certificate requirement "has not proven to redirect traffic to other jurisdictions nor to delay or restrict the transportation of radioactive materials, nor has it proven to be an undue burden or obstacle to the HMTA and HMR." The County also asserts that in IR–18 the Director found that a Michigan permit requirement similar to the County's requirement did not fail the "dual compliance" test, and therefore the County's requirement should not have failed the test.

The County is apparently referring to the statement in IR–8 that "a carrier which complied fully with the [Michigan] rules, thereby obtaining the necessary written approvals, could transport highway route controlled quantity radioactive material via preferred routes in Michigan, and thereby be in compliance with the Federal requirement as well. Consequently, application of the 'dual compliance' test reveals that it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the [Michigan] rules." 49 FR 46639, November 27, 1984.

In IR–18, the Director stated that "the essence of section 18–187 is found in subsection (c)(1), which prohibits the transportation in the County of certain classes of radioative materials" unless a County certificate is obtained. 52 FR 202. The Director determined that the County requirement had, in effect, created a new hazard class by the imposition of additional requirements on a subgroup of radioactive materials. The Director further stated that "the regulations here fail to distinguish between highway route controlled quantity radioactive materials, which are regulated under 49 CFR 177.825(b), and radioactive materials for which placarding is required, which is [sic] regulated under 49 CFR 177.825(a). The effect of these County provisions is to bar transportation of radioactive materials which is in compliance with the HMTA and the HMR unless a County Certificate is obtained". 52 FR 203. Thus the Director found that the County's certificate requirement fails the "dual compliance" test because compliance with the Federal requirements would cause the non-Federal requirements to be violated.

I disagree. In this case, as in IR–8, a carrier can comply with the Federal regulations without violating any of the County regulations, and apparently can comply with the County regulations

without violating any of the Federal regulations. Thus, there is no failure to meet the "dual compliance" test. Therefore, I find that the Director erred in determining that the County's certificate requirement violated the "dual compliance" test. However, the Director also found that the County's hazard class designations, extensive advance notification and information requirements, permit processing discretion, and other provisions exceed the Federal requirements, create additional burden or delay, "prevent" presumptively safe shipments (because they are undertaken in compliance with the HMR), and thus are an obstacle to accomplishment of the HMTA and HMR for the reasons detailed in IR-18 itself. 52 FR 203. Accordingly, I affirm the finding that the County's certificate requirement fails the "obstacle" test and thus is inconsistent with the HMTA and the HMR.

*C. The County's Specific Arguments*

1. Subsection 18-187(b)(2)

The County appeals the finding in IR-18 that subsection (b)(2), the definition of "large quantity radioactive materials", is inconsistent with the HMTA and the HMR.

The term "large quantity radioactive materials" is defined in Section 18-187(b)(2) as "a quantity the aggregate radioactivity of which exceeds that specified in Volume 10 of the Code of Federal Regulations (CFR) Part 71 entitled 'Packaging of Radioactive Material for Transport'; section 71.4(f)". When the County adopted this regulation, the HMR contained a similar definition. However, in a final rule issued on July 1, 1983 (Docket No. HM-169; 48 FR 10218), the term "highway route controlled quantity" was substituted for "large quantity radioactive materials".

The County argues that not only is the County's definition "consistent appearing", it is based on a Federal definition and is therefore consistent. The Director concluded that "use of the superseded terminology could cause confusion and undermine compliance with the HMTA and the HMR". I concur with the Director's conclusion. In a field so extensively regulated by the Federal Government, it would be confusing to those attempting to comply with the HMTA and the HMR to try to distinguish between two different, albeit similar, terms for radioactive material. Such confusion lessens the possibility of compliance.

2. Subsection 18-187(c)(1)

The County appeals the finding in IR-18 that subsections (c)(1)(A-G) (erroneously referred to as (a)(2)(A-G) on page 6 of the Appeal) constitute a system of hazard class designations that is inconsistent with the HMTA and the HMR. The County argues that in IR-8 and IR-12 the Director relied improperly on IR-5 and IR-6, and therefore in IR-18 he should not have relied on the erroneous rulings in IR-8 and IR-12.

The County contends that in IR-8 and IR-12, and in turn IR-18, the Director should not have relied on IR-5 because IR-5 concerned non-radioactive materials hazard classes rather than radioactive materials, and because the definitions in IR-5 overlapped the Federal definitions, whereas the County's definition "merely creates a subclassification".

The rationale articulated in IR-5 and reiterated in IR-8, IR-12 and IR-18 applies without regard to whether the hazard classes concern non-radioactive or radioactive materials, or whether the non-Federal hazard classes overlap or constitute a subset of the Federal hazard classes. The Congressional intent is the promotion of nationwide uniformity in hazardous materials transportation. It is well-settled that hazard class definitions "are the starting point for determining the applicability of nationally uniform requirements", (IR-6, 48 FR 760, January 6, 1983) and that "if every jurisdiction were to assign additonal requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety". (IR-12, 49 FR 46651, November 27, 1984.)

The County also argues that the Director should not have relied on the erroneous ruling in IR-8, which in turn relied on IR-6, because IR-6 dealt with overbroad and subjective non-Federal definitions, whereas the County contends its regulations are clear and unambiguous.

In IR-18, the Director cited IR-8 (not IR-6) for the correct proposition that the Federal role in the definition of hazard classes is exclusive. As stated above, State and local requirements assigned on the basis of hazard classes that differ from the Federal hazard classes increase the likelihood of confusion, lessen the possibility of compliance, and thus decrease public safety. The mere fact that others' definitions arguably may have been more inconsistent does not authorize the County's inconsistent hazard class definitions. Therefore, the County's argument is without merit.

The County argues specifically that subsection 18-187(c)(1)(E), the classification for large quantity radioactive materials, should not have been ruled inconsistent.

For the reasons discussed above under subsection (b)(1), I affirm the Director's finding in IR-18 on this point. The County also contends that subsection 18-187(c)(1)(F) concerning fissile class III materials should not have been ruled inconsistent. The County appears to argue that its hazard class, though different in phraseology than 10 CFR 71.4(d)(3), is a more accurate interpretation, and thus furthers the goal of safe transportation. Again, the Federal role in hazard class definition is exclusive, and the County's argument must fail.

3. Subsections 18-187(c)(2) and 18-187(c)(3)

The County appeals the finding in IR-18 that subsections (c)(2) (D) and (E) fail the dual compliance test because they violate the Federal prohibition against disclosure to non-law enforcement local authorities of schedules and itineraries for specific shipments of specified quantities of radioactive materials which is contained in 10 CFR 73.21 and incorporated by reference in 49 CFR 173.22(c). The County argues that there is only one office to which the information is to be reported, that its employees are local law enforcement authorities, that it is erroneous to assume that they would disclose the information to unauthorized personnel, and that, therefore, the subsections do not fail the "dual compliance" test. While it is true that subsection (c)(2) requires the information to be submitted to a single entity, the County Executive, it does not specify that the information is to be limited to the law enforcement personnel of that office. The County has not provided any information to show that all the employees of the County Executive are law enforcement personnel. Absent such a showing, I concur with the Director's finding in IR-18.

The County also contends that the Ruling erred in finding subsection (c) inconsistent without separately discussing subsections (c)(2)(A-C), (c)(2)(F-G), and (c)(3). Subsection (c)(2) requires information concerning the names of the shipper, carrier, and designee (subsections A, B and F); the type and quantity of radioactive material (subsection (C)); and any other information required by the County Executive which is reasonably related to

the above information (subsection G). With the exception of subsection G, all of this information is required to be provided in advance to the Maryland Governor's Designated Representative for receipt of advance notification of nuclear waste shipments. The requirement is set forth as part of the Nuclear Regulatory Commission (NRC) physical protection regulations (10 CFR 73.37(f)). Section 173.22(c) of the HMR requires shippers to comply with a physical protection plan established under the NRC requirements or equivalent requirements approved by OHMT. To the extent that State or local rules require the submission of the same information as required by the Federal rules, they are redundant, and such "redundancy does not further transportation safety." (IR–2, 44 FR 75571, December 20, 1979). Therefore, I find that subsections (c)(2) (A–C), and (F) constitute obstacles to the accomplishment of the HMTA and are inconsistent.

Although the Director did not specifically discuss in IR–18 every information requirement in subsection (c)(2), he did quote subsection (c)(2)(G), among others, in concluding that the "County's permit system includes extensive and open-ended advance notification requirements [which] exceed Federal requirements, create an additional burden or delay and thus are inconsistent with the HMTA and the HMR" (citations omitted). 52 FR 203, January 2, 1987.

Subsection (c)(3) provides that no certificate may be issued for the transportation of radioactive waste or spent fuel primarily or solely for storage or disposal in the State of Maryland unless the storage or disposal is authorized under State law. Generally, local requirements for compliance with otherwise consistent State requirements are consistent. IR–3 (46 FR 18918, March 26, 1981). While I have not examined the State requirements and do not offer an opinion of their consistency with the HMTA, reliance by local jurisdictions on common State and Federal requirements is not inconsistent with the HMTA. However, because the Director IR–18 found the County's certificate requirement as a whole inconsistent, it was not necessary to make a determination regarding each individual requirement. Therefore, I affirm the Director's finding in IR–18 that subsection (c) is inconsistent with the HMTA.

4. Subsections 18–187(d)(1)(A), 18–187(d)(2), and 18–187(d)(5)

The County appeals the finding in IR–18 that to the extent subsection (d)(1)(A) "represents a local packaging requirement, it is inconsistent." 52 FR 203 (January 2, 1987). The County asserts that "this provision merely requires a 'showing' that the packaging, labeling, and transporting will be in compliance with the Federal regulations. There are absolutely no additional or separate local requirements enumerated in the provisions of the Code nor can this Ruling assume that such requirements exist."

Contrary to the County's assertion, subsection (d)(1)(A) requires a showing that radioactive material has been or will be packaged in conformity with Federal regulations or the regulations of "any other Federal or *County agency having jurisdiction*" (emphasis added). The Director found subsection (d)(1)(A) inconsistent only to the extent that it represents a local packaging requirement. State and local governments may not issue packaging requirements that differ from or add to Federal ones. IR–2 (44 FR 75568, December 20, 1979). Requiring a showing of compliance with unspecified county packaging regulations violates the "dual compliance" test. Therefore, I find the Director correctly determined subsection (d)(1)(A) to be inconsistent with the HMTA and the HMR to the extent it represents a local packaging requirement.

The County also asserts that the Ruling erred in not specifically discussing subsections (d)(2) and (d)(5), and requested that if the Director intended to declare these sections inconsistent, the same argument made in the Appeal regarding certification should be applied to those sections.

Subsection (d)(2) provides that "no certificate shall be issued without a finding that appropriate procedures and precautions exist to protect Prince Georges County and its inhabitants in the event of a transportation accident." The Director discussed subsection (d)(2) (erroneously referring to it as subsection (d)(3)), in stating that "among other fatal defects in section 18–187 are * * * vague prohibitions against such transport in the absence of findings of adequate emergency response capability (section 18–187(d)(3) [sic])." The Director found subsection (d)(2), inconsistent, stating:

> With respect to emergency response, for example, the County neither can shift its own responsibility to carriers, IR–2 (44 FR 75565, December 20, 1979), nor hold carriers hostages to the County's case-by-case determination of its emergency response capabilities. These requirements conflict with the comprehensive OHMT/NRC regulatory system for the transportation of radioactive materials and constitute obstacles to the achievement of the HMTA and HMR. 52 FR 203.

I concur and affirm the Director's finding on this point.

Subsection (d)(5) requires the County Executive to adopt regulations to carry out Code Section 18–187 and establish a fee schedule. The Director did not discuss subsection (d)(5) because it was not necessary to reach that issue in determining the County's certificate requirement as a whole to be inconsistent with the HMTA and the HMR. Generally, regulations to implement and fees to fund inconsistent requirements are themselves inconsistent. IR–8(A), 52 FR 13006 (April 20, 1987); IR–17(A), 52 FR 36200 (September 25, 1987). For the reasons discussed in IR–18 and reiterated in this decision, the County's certificate requirement is inconsistent with the HMTA. Therefore, I find subsection (d)(5) is inconsistent because it is a requirement to implement and fund inconsistent provisions.

5. Subsections 18–187(d)(3) and 18–187(d)(4)

The County appeals the Director's finding in IR–18 that subsection (d)(3) is inconsistent with the HMTA and the HMR. Sbsection (d)(3) provides that the certificate "shall be granted upon a finding that the transporting of such [radioactive] material shall be accomplished in a manner necessary to protect public health and safety of the citizens of the County." The Director found this provision vague and an obstacle to the achievement of the HMTA and the HMR. The County contends that the Director erroneously assumes that even if all the criteria are met, the County still has the discretion to deny the certificate, when in fact, the County has never refused to give a certificate to a carrier who has complied with the provisions of Section 18–187.

The finding was not based on any such erroneous assumption. The finding was based on the vagueness of the threshold criteria themselves and the unbridled discretion to determine when those criteria are satisfied. Therefore, I find that the Director correctly determined subsection (d)(3) to be inconsistent.

The County also appeals the finding that subsection (d)(4) is inconsistent because of the open-ended authority to require escorts. The County argues that its escort provision does not require more than the Federal regulations, and is not a "requirement" but merely an alternative to the County's authority to change dates, routes, and times.

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Subsection (d)(4) provides in relevant part:

> The County Executive or his designee may require changes in dates, routes, or time for the transporting of such material or the use of escorts in the transporting of such material if necessary to protect the public health and safety.

The escort provision clearly is a requirement (because, if exercised by the County Executive, it imposes an obligation to act) that fails the "dual compliance" test. As discussed in IR–18, a State or local requirement identical to or facilitating the requirement of the Nuclear Regulatory Commission for front and rear escorts for certain shipments is consistent, but a requirement which goes beyond the NRC's escort provisions is inconsistent with the HMTA and the HMR. 52 FR 203. In the instant case, the County provision does not specify the type or extent of escorts, who is to furnish the escorts, or when they would be required. In short, the County provision is neither identical to, nor does it facilitate compliance with, the Federal requirement. Therefore, I affirm the Director's finding on subsection (d)(4).

6. Subsection 18–187(e)

The County appeals the finding in IR–18 that subsection (e) is inconsistent because it is an indemnification or insurance requirement for transporting radioactive materials that is different from, or in addition to, the Federal requirements. Subsection (e) allows the County to impose a bond in an amount to be determined, or to waive the bond if the applicant proves it has made adequate provision for indemnifying the County for "the costs of cleanup, decontamination, health care, and related expenses" arising from radiation exposure. The County argues that the Director improperly relied on IR–11 and IR–15 by erroneously assuming that the County's bond requirement directly results in the diversion of shipments into other jurisdictions and thus poses an obstacle to the accomplishment of increased hazardous materials transportation safety.

The Director did not rely on IR–15 to find subsection (e) inconsistent. The Director cited the finding in IR–11 (49 FR 46647, November 27, 1984) which relied on the reasoning in IR–10, not IR–15, to reach the conclusion that where a local insurance requirement is not quantified, the effect is to divert shipments to other jurisdictions. As discussed in IR–18, there is no indication that compliance with the motor carrier financial responsibility provisions of 49 CFR Part 387 (which is required by 49 CFR 177.804 of the HMR) would be deemed "adequate" by the County.

The County also contends that the Director erroneously assumed that the County imposes bonds that are higher than allowed by the HMTA and HMR, when in fact the bonds required do not exceed those allowed by the HMTA and the HMR. The County has incorrectly drawn the inference that if the maximum local bond requirements are lower than the Federal requirements then there is no inconsistency. As plainly stated in IR–18, local bond requirements *in addition to* the Federal requirements are inconsistent. The County's bond provision would authorize the County to require a bond of unspecified amount if the County determines that the carrier's level of financial responsibility is not adequate. Such a requirement allows the *ad hoc* exercise of local discretion which may have the effect of diverting shipments to other jurisdictions and increasing the overall risks of radioactive materials transportation. For the reasons discussed above, I affirm the Director's in IR–18 that subsection (e) is inconsistent with the HMTA and the HMR.

7. Subsection 18–187(f)

The County appeals the finding in IR–18 that subsection (f), concerning fines for violations of Section 18–187, is inconsistent. The Director found that while penalties for violating consistent requirements are themselves consistent, penalties for violating inconsistent requirements are inconsistent. 52 FR 204. For the reasons discussed above, I affirm the finding that subsection (f) is inconsistent because it constitutes a penalty for violating inconsistent requirements.

## III. Conclusion

For the reasons indicated above and for the reasons set forth by the Director in IR–18 itself, I affirm the determination of the Director of the Office of Hazardous Materials Transportation in IR–18 that subsections (b)(2), (c), (d), (e) and (f) of Prince George's County Code Section 18–187 are inconsistent with the HMTA and the HMR. This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on July 21, 1988.

**M. Cynthia Douglass,**

*Administrator, Research and Special Programs Administration.*

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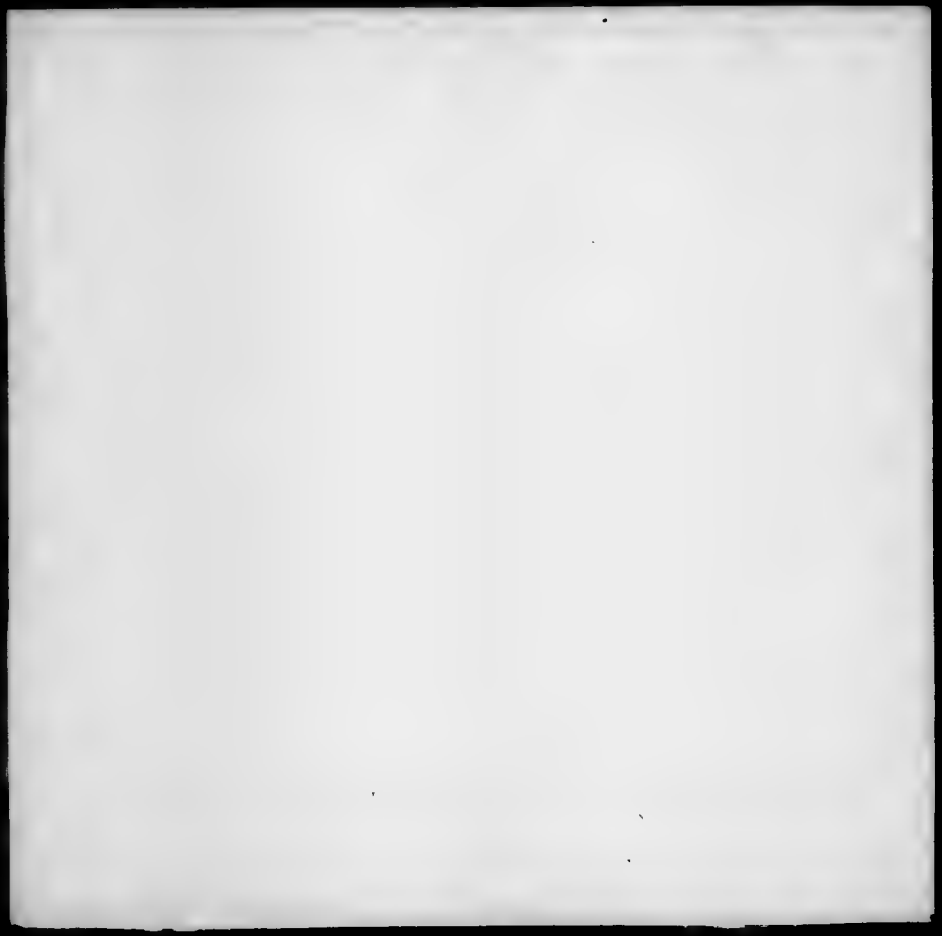

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# Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 87-NM-176-AD; Amdt. 39-5988]**

## Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspection and repair, if necessary, of the wing upper surface stringers for fatigue cracks. This amendment requires inspection of additional stringer-to-rib attachments on airplanes that have experienced stringer-to-rib attachment cracking and rework of certain repairs. This action is necessary because cracking has been reported at locations inboard of the inspection area defined in the existing AD. Failure to detect and repair cracks could result in loss of a wing panel. Furthermore, certain repairs called out in the existing AD have been found to be inadequate and, if installed, must be reworked.

**EFFECTIVE DATE:** September 5, 1988.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 83-13-03, Amendment 39-4673 (48 FR 29468; June 27, 1983), to require inspection for fatigue cracks and repair, if necessary of the wing upper surface stringers from wing stations (WS) 601.5 to 738.5 on Boeing Model 727 series airplanes, was published in the **Federal Register** on March 16, 1988 (53 FR 8634). The notice proposed to require inspection of the wing upper stringer-to-rib attachments at WS 519 and 546.5 on airplanes that have experienced cracking of stringers from WS 601.5 outboard, in addition to the inspections required by AD 83-13-03. Also, certain repairs done in accordance with AD 83-13-03 must be inspected and modified. The period for compliance with the initial inspection requirement, however, remains the same as that required by the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters responded through the Air Transport Association (ATA) of America. All three commenters requested that the compliance time for inspection of the wing stringer-to-rib attachment at WS 519.0 or 546.5, and the rework of certain previous repairs, be extended from the proposed 4,500 flight hours to 11,000 cycles or 3 years since last inspection. The reason for the extension requests were to permit the inspections/rework to be accomplished during the airplane's normal maintenance schedule. These commenters noted that the proposed inspections would take longer to accomplish than the time allotted to a "B" check and longer than was stated in the proposal or the service bulletin. The FAA does not concur. The commenters have not provided sufficient substantiation to establish that the proposed compliance times are inappropriate in regards to the safety issue addressed by this AD action. Since the cracks or repairs which necessitate the new inspections may have occurred some time before the effective date of this AD, the FAA has determined that safety requires that the additional inspections be performed in accordance with the proposal. However, the FAA has determined that the *4,500 flight hour* compliance times, based on the manufacturer's recommendation of "at a 'B' check", should be changed to *4,500 landings* to agree with the other inspection requirements, which are in number of landings. The final rule incorporates this change. The FAA has determined that this change will not increase the economic burden on operators, nor does it increase the scope of the AD.

One commenter questioned whether the inspections required by the existing AD to be performed at 11,000 or 22,000 landings could be extended to 12,000 or 24,000 landings. The commenter, however, did not submit substantiating data that would warrant an extension beyond the 11,000 or 22,000 landings. Therefore, the FAA cannot act upon this request for an extension of the inspection compliance time.

The second commenter requested credit for previous inspections accomplished in accordance with AD 83-13-03. The FAA notes that this "credit" is provided in the final rule by the statement ". . . unless previously accomplished."

The final commenter requested that paragraph E. more clearly define the previous repairs that must be modified. The FAA agrees and has expanded that paragraph in the final rule in response to this comment.

Additionally, the final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph H.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with the changes previously noted.

It is estimated that 200 airplanes of U.S. registry will be affected by this AD. If the inspection of the wing stringers at

WS 519 and 546.5 is conducted at the same time as the inspections of the outboard stringers, it will require 1 to 8 additional manhours, at an average labor cost of $40 per manhour; this equals a total cost of $40 to $320 per airplane. If the inspection of the stringers at WS 519 and 546.5 is not conducted at the same time as that of the outboard stringers, it will require approximately 29 to 36 manhours, at an average labor cost of $40 per manhour; this would equal a total cost of $1,160 to $1,440 per airplane. Based on these figures, the total cost impact on this AD on U.S. operators is estimated to be between $8,000 and $288,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 727 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 83–13–03, Amendment 39–4673 (48 FR 29468; June 27, 1983), with the following new airworthiness directive:

**Boeing:** Applies to Model 727 series airplanes, except Model 727–200F, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the structural integrity of the wing upper surface stringers, accomplish the following:

A. Using eddy current, x-ray, or visual inspection techniques, inspect wing upper surface stringers for cracks, in accordance with Boeing Alert Service Bulletin 727–57A159, Revision 1, dated October 29, 1982, as follows:

1. For airplanes with 45,000 or more landings on August 16, 1983, inspect prior to the accumulation of 1,000 additional landings after August 16, 1983.

2. For airplanes with at least 40,000 and less than 45,000 landings on August 16, 1983, inspect prior to the accumulation of 2,000 additional landings after August 16, 1983.

3. For all other airplanes, inspect prior to the accumulation of 3,000 additional landings after August 16, 1983, or prior to accumulating 33,000 total landings, whichever occurs later.

B. Repeat the inspections required by paragraph A., above, and, if applicable, paragraph C., below, at the following intervals:

1. If the immediately preceding inspection was performed using eddy current methods, reinspect within the next 22,000 landings.

2. If the immediately preceding inspection was performed using x-ray or visual methods, reinspect within the next 11,000 landings.

C. If cracks are detected during the inspections required by paragraph A. or B., above, unless previously accomplished, inspect the stringer-to-rib attachment at wing stations (WS) 519.0 and 546.5 for cracks, using eddy current, x-ray, or visual techniques, in accordance with Boeing Alert Service Bulletin 727–57A159, Revision 3, dated September 18, 1986, in accordance with the following schedule:

1. Prior to the accumulation of 4,500 landings after the effective date of this AD, for airplanes on which cracks have been detected prior to the effective date of this AD.

2. Prior to further flight, for airplanes on which cracks have been detected after the effective date of this AD.

D. Any cracked structure detected as a result of the inspections required by paragraphs A., B., C., E., or F. of this AD, must be repaired prior to further flight, in accordance with a procedure listed in Boeing Alert Service Bulletin 727–57A159, Revision 3, dated September 18, 1986. Repair or modification in accordance with Boeing Alert Service Bulletin 727–57A159, Revision 3, dated September 18, 1986, eliminates the repetitive inspection requirements of paragraph B., above, and constitutes terminating action for only those attachments so repaired or modified.

E. Within the next 4,500 landings after the effective date of this AD, unless previously accomplished in accordance with Boeing Service Bulletin 727–57A159, Revision 3, dated September 18, 1986, inspect and modify stringers (excluding stringer tabs) previously repaired utilizing the preventative modification in accordance with Figure 12 of Boeing Service Bulletin 727–57A159, Revision 1, dated October 29, 1982, or Revision 2, dated March 30, 1984.

F. For airplanes with affected wing stringer rib attach locations previously repaired in accordance with Structural Repair Manual Subject 57–10–4 or any other FAA-approved method (except those identified in paragraph E., above), that have accumulated 22,000 landings prior to August 16, 1983, inspect in accordance with paragraph A., above, within the next 11,000 landings after August 16, 1983, or prior to the accumulation of 33,000 landings since repair, whichever occurs later, and thereafter at intervals in accordance with paragraph B. of this AD.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. The documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 83–13–03, Amendment 39–4673.

The amendment becomes effective September 5, 1988.

Issued in Washington, DC, on July 21, 1988.

**Melvin C. Beard,**

*Director of Airworthiness.*

[FR Doc. 88–17211 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 87–NM–56–AD; Amdt. 39–5986]**

**Airworthiness Directives; Boeing Model 747 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection and testing of leading edge

pneumatic ducts, and repair or replacement, as necessary. This amendment is prompted by reports of cracked or ruptured ducts which have resulted in damage to wing panels and electrical wiring, accompanied by erratic and erroneous cockpit indications. This condition, if not corrected, could lead to damage to the wing leading edge, or imporper pilot action in response to misleading cockpit indications.

**EFFECTIVE DATE:** September 5, 1988.

**ADDRESSES:** The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection and testing, and repair or replacement, if required, on Boeing Model 747 series airplanes, was published in the **Federal Register** on April 14, 1988 (53 FR 12427).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

The first commenter, the Air Transport Association (ATA) of America, agreed with the proposal in stating that its members expressed no objection to the proposal.

The second commenter, Japan Air Lines (JAL), suggested allowing different methods of accomplishing duct cleaning and inspection. JAL reports that it has been successfully using a different method of cleaning and inspecting the duct sections than that specified in the Boeing Alert Service Bulletin called for in the proposed rule. The FAA notes that, as provided in paragraph E. of the final rule, U.S. operators may use an alternate method of compliance with the requirements of this AD, if approved by FAA. Further, this AD is not mandatory for JAL; if the Japanese Civil Aviation Board (JCAB), as foreign regulatory authority, takes similar mandatory action for its operators, JAL may request approval of an alternate method of compliance from the JCAB.

JAL also asked the FAA to void the duct cleaning and penetrant inspection method specified in the Boeing service bulletin. The FAA does not concur; the FAA has no data, nor did this commenter submit additional data, to justify a change in the manufacturer's service information.

The third commentor, while not making a specific request regarding the proposed rule, noted that, based on its experience with performing inspection on over 500 duct sections, circumferential weld cracks accounted for only 35% of the total failures. Since the stress-relieving procedure specified as terminating action for the proposed rule addresses cracks in the weld areas, this commentor believes stress-relieving will not significantly improve duct life. The FAA does not concur with this comment. While the data supplied by the commentor indicates that approximately 65% of the duct failures observed during their duct inspections in the shop occurred in locations other than in the weld area, the duct failures observed in service and addressed by this rule typically occur around the weld attaching an end flange to a duct.

The final rule has been revised to remove all references to the use of "later FAA-approved revisions" of the applicable service bulletin, in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph E.

After a careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule with the change noted above.

It is estimated that 172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 120 manhours per airplane to accomplish the required initial inspection and test, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators for the initial required action is $825,600. In addition, the required repetitive inspections will take 104 manhours per airplane every 7,000 flight cycles, which is approximately 28,000 flight hours or 9.33 years. The average cost associated with the repetitive inspections is approximately $76,690 per year.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, Group 1 and Group 2 airplanes as listed in Boeing Service Bulletin 747-36A2074, dated February 11, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent damage to wing panels and electrical wiring as a result of failure of wing leading edge ducts, accomplish the following:

A. For Group 1 airplanes: prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles, whichever occurs later, after the effective date of this AD, accomplish a proof pressure test and penetrant inspection of the wing leading edge pneumatic ducts in accordance with the Boeing Alert Service Bulletin 747-36A2074, dated February 11, 1988.

B. For Group 2 airplanes: prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles, whicherer occurs later, after the effective date of this AD,

accomplish a penetrant inspection of the wing leading edge pneumatic ducts in accordance with the Boeing Alert Service Bulletin 747–36A2074, dated February 11, 1988.

C. For both Group 1 and Group 2 airplanes, repeat the penetrant inspection required by paragraphs A. and B., above, at intervals not to exceed 7,000 flight cycles.

D. Accomplishing the leading edge duct weld stress relieving procedure in accordance with Boeing Alert Service Bulletin 747–36A2074, dated February 11, 1988, constitutes terminating action for the repetitive penetrant inspections required by paragraph C., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. For the purpose of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of flight cycles may be determined by dividing each airplane's number of hours time-in-service by the operator's fleet average time from takeoff to landing for the airplane type.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 5, 1988.

Issued in Washington, DC, on July 21, 1988.

**Melvin C. Beard,**

*Director of Airworthiness.*

[FR Doc. 88–17212 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 87–NM–162–AD; Amdt. 39–5989]**

## Airworthiness Directives; Canadair Model CL–44D4 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Canadair Model CL–44D4 series airplanes, which currently requires inspection of the left and right main landing gear bogie beam for cracks, and replacement, if necessary. This amendment requires that different techniques be used to perform this inspection. This action is prompted by reports that the inspection technique required by the existing AD has proven to be unsatisfactory in detecting cracks before failure occurs. Cracking in the bogie beam, if not detected and corrected, could result in a gear failure during landing or takeoff.

**EFFECTIVE DATE:** September 5, 1988.

**ADDRESSES:** The applicable service information may be obtained from Canadair, Ltd., Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Birkenholz, Airframe Branch, ANE–172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 68–01–06, Amendment 39–537 (33 FR 257; January 9, 1968), applicable to Canadair Model CL–44D4 series airplanes, to require inspection of the left and right main landing gear bogie beams using new inspection techniques, was published in the **Federal Register** on May 11, 1988 (53 FR 16724).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor costs will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,840.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($480). A final evaluation has been prepared for this regulation and has been placed in the docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 68–01–06, Amendment 39–537 (33 FR 257; January 9, 1968), as follows:

**Canadair:** Applies to all Model CL–44D4 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear during landing or takeoff due to cracks in the main landing gear bogie beam, accomplish the following:

A. Within the next 20 landings after the effective date of this AD, and thereafter at intervals not to exceed 20 landings, perform a visual inspection of the left and right main landing gear bogie beam, P/N 44–87574, for cracks, in accordance with paragraph 2.A.(1) of Canadair Service Bulletin 493–CL44, dated February 29, 1988.

B. At intervals not to exceed 500 landings or 12 months, whichever occurs first, perform the inspection and modification, if necessary, in accordance with paragraphs 2.A.(2), 2.A.(3), 2.A.(4) and 2.A.(5) of Canadair Service Bulletin 493–CL44, dated February 29, 1988.

C. Any structure found to be cracked as a result of the inspections required by paragraph A. or B., above, must be replaced, prior to further flight, with an airworthy part or an FAA-approved equivalent part.

1. Replacement parts must be inspected prior to installation, in accordance with paragraph 2.A.(3) of Canadair Service Bulletin 493–CL44, dated February 29, 1988.

2. Replacement parts must be repetitively inspected in accordance with paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Canadair, Ltd., Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This action amends Amendment 39–537.

This amendment becomes effective September 5, 1988.

Issued in Washington, DC, on July 21, 1988.

**Thomas E. McSweeny,**

*Acting Director of Airworthiness.*

[FR Doc. 88–17213 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 88–NM–27–AD; Amdt. 39–5990]**

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires operational testing of fuel boost pump bypass valves. This action allows for termination of operational testing of boost pump bypass valves, when a certain fuel system modification is installed.

**DATES:** Effective September 5, 1988.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen S. Bray, Propulsion Branch, ANM–140S; telephone (206) 431–1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to revise airworthiness directive 88–01–06, Amendment 39–5823 (53 FR 8; January 4, 1988), applicable to Boeing Model 737 series airplanes, to allow for termination of repetitive operational testing of boost pump bypass valves when a certain fuel system modification is installed, was published in the **Federal Register** on April 29, 1988 (53 FR 15404).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received. The commenter supported the proposal.

The final rule has been revised to remove all references to the use of "later FAA–approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph C.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described.

It is estimated that it will take approximately 3 manhours per airplane to accomplish the optional terminating action, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on those U.S. operators who choose to incorporate the modification is estimated to be $120 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By revising AD 88–01–06, Amendment 39–5823 (53 FR; January 4, 1988), by redesignating paragraph B. as C., and adding a new paragraph B., as follows:

**Boeing:** Applies to Model 737 series airplanes listed in Boeing Alert Service Bulletin 737–28A1072, dated August 27, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine flameout due to boost pump bypass valve freezing, accomplish the following:

A. Prior to accumulation of 150 flight hours after January 27, 1988 (the effective date of Amendment 39–5823, AD 88–01–06), and thereafter at intervals not to exceed 300 flight hours, perform an operational test of the bypass valves in accordance with Boeing Alert Service Bulletin 737–28A1072, dated August 27, 1987.

B. The operational tests required by paragraph A., above, may be terminated when the fuel system modifications, detailed in Boeing Service Bulletin 737–28A1072,

Revision 2, dated February 18, 1988, are installed.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 5, 1988.

Issued in Washington, DC, on July 21, 1988.

**Thomas E. McSweeny,**

*Acting Director of Airworthiness.*

[FR Doc. 88-17210 Filed 7-29-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 87-NM-140-AD; Amdt. 39-5987]**

## Airworthiness Directives; Lockheed Aeronautics Systems Company Model L-1011-385 Series Airplanes, Fuselage Numbers 1001 through 1250

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L-1011-385 series airplanes, which requires inspections of the restraint systems at flight attendant seats, removal of defective restraints, and modification of the seat restraint and guide mechanisms. This amendment is prompted by reports of improper restraint system installations, and chafing of the seat belt and harness. This condition, if not corrected, could result in the malfunction of seat restraints and possible injury to flight attendant crew members due to the loss of the restraints.

**DATES:** Effective September 5, 1988.

**ADDRESSES:** The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5335.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive which requires the inspection of restraint systems at flight attendant seats, removal of defective restraints, and the modification of the seat restraint and guide mechanisms on L-1011-385 series airplanes, was published in the **Federal Register** on February 16, 1988 (53 FR 4419). An error was made with regard to the correct date of the Lockheed Service Bulletin. Lockheed Service Bulletin 093-25-512 was listed as approved on June 4, 1987, in the NPRM. It should have been listed July 23, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters indicated that they no longer use the retraction type seat belt and harness for the subject seats. They reasoned that since part of the justification for the proposed rule is chafing caused by the "abrasive elements within the retraction and attachment assembles," they should not be subjected to the proposed rule. The FAA disagrees. The FAA has determined that any harness or seat belt showing excessive wear, fraying, and stretching from whatever source (i.e., through movement through the retraction mechanism, folding, or excessive use) must be replaced. This determination is based in part on the National Transportation Safety Board's (NTSB) study, which initiated FAA's investigation and NPRM, that showed that worn belts had significantly degraded tensile strength values when tested.

These commenters also expressed concern that, although they had already ordered parts for the modification, the proposed six-month compliance time would not be adequate to obtain parts. They suggested that the proposed compliance period commence after delivery of the parts. The FAA does not concur. The required modification utilizes few parts, none of which are complex. After further contact with parts sources, the FAA has determined that replacement parts will be available within the compliance period.

Finally, the NTSB suggested there was the need for a more definitive, illustrated guide in the AD as to what constitutes unacceptable wear and/or damage to restraint system webbing. The FAA does not concur. The FAA considers that to include an illustrated guide in this AD is impractical, since such a guide could not possibly define a standard for *all* conditions constituting "wear" and "damage." For example, differences in the fabrics used, the weave, or the size of the webbing would add to the problems of developing a standard. Additionally, many different conditions of webbing wear (i.e., frayed, stretched, tattered, ragged, etc.) can constitute an unairworthy restraint. A risk would be taken in that some conditions, which could lead to unairworthy restraints, may not be included in the guide and, therefore, may not be considered by inspectors during the required inspections. The FAA considered that emphasis on repetitive inspections for obvious damage, wear, chafing, etc., which could degrade the integrity of the harness/belt system, is the most satisfactory method to identify and eliminate unairworthy restraints.

Paragraph B. of the final rule has been revised to reflect the correct date of the Lockheed Service Bulletin as "July 23, 1987."

Additionally, the final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph C.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule as proposed, with the changes described above.

It is estimated that 91 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours

per airplane to accomplish the required actions, and that the average labor cost could be $40 per manhour. The actual costs of the modification parts are estimated to be $120 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,840.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model L–1011–385 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Lockheed Aeronautical Systems Company:** Applies to Lockheed Model L–1011–385 series airplanes, Serial Numbers 1001 through 1250, certificated in any category. Compliance is required within six months after the effective date of this Airworthiness Directive (AD), unless previously accomplished.

To prevent injury to flight attendants, resulting from the use of unairworthy seat belts and shoulder harnesses, accomplish the following:

A. Visually inspect flight attendant seat belts and shoulder harnesses for any wear, fraying, or stretching of belt webbing. Thereafter, continue to inspect the seat belts and shoulder harnesses at intervals not to exceed 1,500 hour time-in service. Replace, prior to further flight, any unit showing excessive wear and/or damage.

B. Install two-end shroud, Health-Techna Part Number H0161–1, to all MPD2–1100–( ) seats, in accordance with Lockheed Service Bulletin 093–25–517, dated July 23, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65–33, U–33, B–1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective September 5, 1988.

Issued in Washington, DC, on July 21, 1988.

**Melvin C. Beard,**

*Director of Airworthiness.*

[FR Doc. 88–17209 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 88–ACE–04]**

### Cancellation of Transition Area—Spirit Lake, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects the effective date for the Spirit Lake, Iowa, transition area cancellation which was incorrectly cited as October 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lewis Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (316) 426–3408.

**SUPPLEMENTARY INFORMATION:**

**History**

On May 18, 1988, the Federal Aviation Administration published **Federal Register** Document 88–11049 which amended the Spirit Lake, Iowa, transition area (53 FR 17689). Inadvertently, the effective date was incorrectly listed. This action corrects that mistake.

**Adoption of the Correction**

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88–11049, beginning on page 17689 of the **Federal Register** published on May 19, 1988, should be amended to reflect the correct effective date of August 25, 1988.

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; EO 10854; 49 U.S.C. 106(g), (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69)

Issued in Kansas City, Missouri, on July 22, 1988.

**William Behan,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 88–17205 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 88–ACE–02]**

### Designation of Transaction Area—Fairmont, NE

**AGENCY:** Federal Aviation Administrration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects the effective date for the Fairmont, Nebraska, transition area designation which was incorrectly cited as October 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lewis Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

**SUPPLEMENTARY INFORMATION:**

**History**

On June 14, 1988, the FAA published **Federal Register** Document 88–13293 which amended the Fairmont, Nebraska, transition area (53 FR 22137). Inadvertently, the effective date was incorrectly listed. This action corrects that mistake.

**Adoption of the Correction**

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88–13293, beginning on page 22137 of the **Federal Register**, published on June 14, 1988, should be amended to reflect the correct effective date of August 25, 1988.

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; 10854; 49 U.S.C. 106(g), (Rev. Pub. L. 97–449, January 12, 1983; 14 CFR 11.69) Issued in Kansas City, Missouri, on July 22, 1988.

**William Behan**

*Acting Manager, Air Traffic Division.*

[FR Doc. 88–17206 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Parts 71 and 75**

**[Airspace Docket No. 88–ANM–5]**

## Alteration of VOR Federal Airways, Jet Routes and Low Altitude Reporting Points

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The name of the Casper, WY, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) has been changed to Muddy Mountain. The Casper VORTAC is not located on the Casper Airport. In accordance with FAA Handbook 7400.2C, Procedures for Handling Airspace Matters, navigational aids not located on that airport surface should not have the name of the airport. This action is to change the name of airspace designations which use the Casper VORTAC in order to correspond to the changed name of the VORTAC. However, no change in the airspace configuration results from this action.

**EFFECTIVE DATE:** 0901 u.t.c. October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

The purpose of these amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to change the name of the Casper, WY, VORTAC to Muddy Mountain. These amendments are consistent with the requirements of FAA Handbook 7400.2C. The Casper VORTAC is not located on the Casper Airport; therefore, this name change is mandatory. This action increases aviation safety by eliminating navigational errors for flights landing at Casper. This action changes airspace descriptions to incorporate the new name but makes no change to the configuration of controlled airspace. Sections 71.123, 71.203 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

Because this action only changes the name of the Casper, WY, VORTAC to Muddy Mountain but does not alter controlled airspace, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Parts 71 and 75**

Aviation safety, VOR Federal airways, Low altitude reporting points, Jet routes.

**Adoption of the Amendments**

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V–19, V–28, V–85, V–235, V–298, V–330, V–401 and V–589 [Amended]**

Wherever "Casper" appears substitute "Muddy Mountain"

**§ 71.203 [Amended]**

3. § 71.203 is amended as follows:

Casper, WY [Removed]

**PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES**

4. The authority citation for Part 75 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 75.100 [Amended]**

5. § 75.100 is amended as follows:

**J–13, J–107, J–158, J–170, J–202 [Amended]**

Wherever "Casper" appears substitute "Muddy Mountain".

Issued in Washington, DC, on July 20, 1988.

**Sheloma Wugalter,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 88–17208 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**15 CFR Parts 371 and 385**

**[Docket No. 80505–8105]**

## Exports to North Korea; Expansion of Anti-Terrorism Controls

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Interim rule and request for public comment.

**SUMMARY:** The Department of Commerce has the authority under section 6 of the Export Administration Act of 1979 (EAA), as amended, to control exports to countries that have repeatedly supported acts of international terrorism. On January 20, 1988, the Secretary of State determined that North Korea is a country that has repeatedly supported acts of international terrorism. Accordingly, this rule amends the Export Administration Regulations (EAR) by extending anti-terrorism controls on exports to North Korea.

The anti-terrorism controls are in addition to the validated license controls for foreign policy purposes covering the export and reexport of virtually all U.S.-origin commodities and technical data to North Korea.

**DATES:** Effective Date: The amendments affecting § 385.1 are effective August 1, 1988. Because of statutory requirements, the amendments affecting section 371.17 are effective September 15, 1988.

*Comment Date:* Comments on § 371.17 must be received by August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Glen Schroeder, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–3160.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements and Invitation to Comment**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA requires that this rule be published in interim form because this rule is removing North Korea from that group of countries for which General License GLR is available for replacement parts for aircraft, helicopters, or national security controlled commodities. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Because this rule is being issued in interim form, comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for comments submission will close August 31, 1988. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

**List of Subjects in 15 CFR Parts 371 and 385**

Communist countries, Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

**PARTS 368–399—[AMENDED]**

1. The authority citation for 15 CFR Parts 371 and 385 continues to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

**PART 371—[AMENDED]**

2. Section 371.17(e)(2)(vi) is revised to read as follows:

**§ 371.17 General License GLR; Return or Replacement of Certain Commodities.**

* * * * *

(e) * * *

(2) * * *

(vi) No replacement part shall be exported under this general license to Cuba, Iran, Syria, the People's Democratic Republic of Yemen, Libya, or North Korea (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an aircraft, helicopter, or national security controlled commodity.

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**PART 385—[AMENDED]**

3. Section 385.1 is amended by removing paragraph (b)(1), redesignating pargraph (b)(2) as (c) and by revising the remaining text in paragraph (b) to read as follows:

**§ 385.1 Country Group Z [1]: North Korea, Vietnam, Cambodia and Cuba.**

* * * * *

(b) North Korea and Cuba have been designated by the Secretary of State as countries that have repeatedly provided support for acts of international terrorism.

(c) * * *

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[1] See Supplement No. 1 to Part 370 for listing of Country Groups.

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Dated: July 9, 1988.

**Michael Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 88-17217 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-DT-M

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**15 CFR Part 375**

**[Docket No. 80507-8107]**

## Establishment of Import Certificate/Delivery Verification Procedure for Australia

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** On July 5, 1988 (53 FR 25144) the Bureau of Export Administration published a final rule establishing new documentation requirements for exports to Australia under the Import Certificate/Delivery Verification (IC/DV) procedure. The rule provided that as of August 19, 1988, the Bureau of Export Administration would begin accepting the Australian Import Certificate as supporting documentation for the export license application (Form ITA-622P). It also provided for a grace period until October 3, 1988, within which either the Australian Import Certificate or the Statement by Ultimate Consignee and Purchaser (Form ITA-629P) would be accepted by the Bureau of Export Administration. After October 3 only the Import Certificate would be acceptable. This rule amends that previous rule by extending the grace period indefinitely in order to allow both governments more time to integrate their procedures for implementing new documentation requirements. Starting August 19, 1988, exporters may, at their discretion, submit the Australian Import Certificate, but the Department of Commerce will continue to accept Form ITA-629P until a rule is issued establishing a new date after which only the Australian Import Certificate can be used.

**DATES:** This rule is effective July 5, 1988. Starting August 19, 1988, license applications for exports to Australia will be accepted if supported by either an Australian Import Certificate or a Form ITA-629P.

**FOR FURTHER INFORMATION CONTACT:** Willard Fisher, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-3856.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The Import Certificate and Delivery Verification (IC/DV) requirement set forth in Part 375 supersedes the requirement for Form ITA-629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625-0136) to accompany license applications for exports and reexports to Austrialia. The Import Certificate and Delivery Verification Certificate are issued by the Government of Australia and do not constitute collection of information requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be addressed to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Part 375**

Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR Part 375 of the Export Administration Regulations is amended as follows:

**PART 375—[AMENDED]**

1. The authority citations for 15 CFR Part 375 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

**§ 375.1 [Amended]**

2. The table in § 375.1 is amended by adding a footnote 1 after the word "Australia" in the column titled "and the country of destination is:" reading as follows: "The Bureau of Export Administration will accept either the Australian Import Certificate or Form ITA-629P, Statement by Ultimate Consignee and Purchaser."

**§ 375.3 [Amended]**

3. The footnote in § 375.3(b) is revised to read as follows: "For exports to Australia, the Bureau of Export Administration will accept either the Australian Import Certificate or Form ITA-629P, Statement by Ultimate Consignee and Purchaser. See § 375.4 for Swiss Blue Import Certificate requirements, § 375.5 for Yugoslav End-Use Certificate requirements, § 375.6 for People's Republic of China End-User Certificate requirements."

Dated: July 27, 1988.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 88-17216 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-DT-M

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**15 CFR Part 399**

**[Docket No. 80742-8142]**

## Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Computers

**AGENCY:** Bureau of Export Administration Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends Export Control Commodity Number (ECCN) 1565A, which controls electronic computers and related equipment, by significantly reducing the restrictions on exports of computers, computer peripherals, and computerized equipment.

This revision has resulted from a review of strategic controls maintained by the U.S. and allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national interests.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** For questions of a technical nature regarding equipment controlled for export under ECCN 1565A, call Raj Dheer, Computer Systems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377–0708.

**SUPPLEMENTARY INFORMATION:** This rule significantly reduces export restrictions on computers and related equipment classified under ECCN 1565A on the Commodity Control List. Specifically, it eases licensing standards on exports to controlled countries of lower level computers and computer peripherals, while maintaining restrictions on strategic items such as engineering workstations. An increase in Advisory Note 12 levels, from 48 to 78 Mbit/sec., will allow more license approvals for the Soviet Union under the "no exceptions" policy. Increases in Advisory Note 9, from 28 to 43 Mbit/sec., will not only shorten licensing times for controlled countries, but will increase significantly the range of products eligible for General Licenses G–COM and GFW.

Advisory Note 17 for the People's Republic of China has been amended to permit the export of digital computers having a total processing data rate of 550 Mbit per second, and increase from the prior level of 285 Mbit per second. In addition, the bulk sale limit for the export of personal computers and business computers has been increased from 15 Mbit per second to 136 Mbit per second (Advisory Note 20 for the People's Republic of China).

**Rulemaking Requirements**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from the APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0013. Public reporting burden for computer export applications is estimated to very from one to five hours per response, with an average of two and a half hours per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send commenters regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Administration, Bureau of Export Administration, Room 3889, Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Part 399**

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) is amended as follows:

**PART 399—[AMENDED]**

1. The authority citation for Part 399 continues to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 2, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

*Supplement No. 1 to § 399.1 [Amended]*

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), in ECCN 1565A, the parenthetical clause appearing after the heading is revised to read as set forth below and the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" is amended as follows:

Paragraph (f)(3) is amended by removing "or" from the end of the paragraph;

Paragraph (f)(4) is amended by adding "or" after the semi-colon at the end of the paragraph;

The Note following paragraph (h)(1)(i)(G) is amended by revising the reference to "ECCN 1529(b)(6)(ii)" to read "ECCN 1529(b)(6)";

The Note following paragraph (h)(2)(i)(A) is amended by revising the reference in paragraph (a) to "5.5 million bits per second" to read "5.5 million

bit/s", by revising the reference in paragraph (b) to "200 million bits" to read "320 million bit", by revising in paragraph (c) the words "one independent drive" to read "two independent drives," and by revising paragraph (d) to read as set forth below;

Paragraph (h)(2)(i)(F) is amended by revising the reference to "43 million bit per second" to read "54 million bit/s";

Paragraph (h)(2)(i)(G) is amended by revising the reference to "100 million bits per second" to read "100 million bit/s" and by removing "and" after the semicolon at the end of the paragraph;

Paragraph (h)(2)(i))(J)(*2*) is revised to read as set forth below;

Paragraph (h)(2)(ii)(D) is amended by revising the reference to "15 million bits per second" to read "15 million bit/s";

Paragraph (h)(2)(ii)(E) is amended by revising the reference to "9.8 million bits" to read "9.8 million bit";

Paragraph (h)(2)(ii)(F)(*1*) is amended by revising the reference to "5.5 million bits per second" to read "5.5 million bit/s";

Paragraph (h)(2)(ii)(F)(*2*) is amended by revising the reference to "200 million bits" to read "320 million bits";

Paragraph (h)(2)(ii)(F)(*3*) is amended by revising the words "one independent drive" to read "two independent drives";

Paragraph (h)(2)(ii)(F)(*4*) is revised to read as set forth below;

Paragraph (h)(2)(ii)(G) is amended by revising the reference to "ECCN 1519(c)" to read "ECCN 1519(a)(2)";

Paragraph (h)(2)(ii)(H) is revised to read as set forth below;

Paragraph (h)(2)(ii)(J)(*2*) is revised to read as set forth below;

Paragraph (h)(2)(iii)(D) is amended by revising the reference to "6.5 million bits per second" to read "6.5 million bit/s";

Paragraph (h)(2)(iii)(E) is amended by revising the reference to "6.2 million bits" to read "6.2 million bit";

Paragraph (h)(2)(iii)(J)(*1*) is amended by revising the reference to "5.5 million bits per second" to read "5.5 million bit/s";

Paragraph (h)(2)(iii)(J)(2) is amended by revising the reference to "200 million bits" to read "200 million bit";

Paragraph (h)(2)(iii)(J)(4) is amended by adding the word "and" after the semicolon;

Paragraph (h)(2)(iv)(K)(*2*)(iii) is redesignated as paragraph (h)(2)(iv)(K)(*2*)(*iii*);

Paragraphs (h)(2)(iv)(L), (M), and (N) are revised to read as set forth below;

Paragraph (h)(2)(iv)(P) is removed;

Paragraphs (h)(2)(iv)(Q) through (S) are redesignated as new paragraphs (h)(2)(iv)(P) through (R);

Newly redesignated paragraph (h)(2)(iv)(Q)(*1*) is amended by revising the reference to "17 million bits" to read "17 million bit";

Newly redesignated paragraph (h)(2)(iv)(Q)(*2*) is amended by revising the reference to "0.52 million bits per second" to read "0.52 million bit/s";

Newly redesignated paragraph (h)(2)(iv)(Q)(*3*) is amended by adding an "or" after the semi-colon at the end of the paragraph;

Newly redesignated paragraph (h)(2)(iv)(R)(*1*) is amended by revising the reference to "131 bits per mm (3,300 bits per inch)" to read "131 bit per mm (3,300 bit per inch)" and by removing "*or*" that appears after the semi-colon at the end of the paragraph;

Newly redesignated paragraph (h)(2)(iv)(R)(*2*) is amended by revising the reference to "2.66 million bits per second" to read "2.66 million bit/s";

Paragraph (h)(2)(v)(A) is amended by removing "or" that appears after the semicolon at the end of the paragraph;

Paragraphs (h)(2)(v)(C) and (h)(2)(vi) are added to read as set forth below;

Advisory Note 3 is amended by redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as paragraphs (b)(1), (b)(2) and (b)(3) and by removing the word "and" at the end of the newly redesignated paragraph (b)(1); paragraph (c)(2) is amended by revising "ECCN 1586" to read "ECCN 1586A";

Technical Note 3 to Advisory Note 3 is amended by revising the words "and the generating of functions" that appear at the end of the note to read "or the generating of functions";

Advisory Note 5 is amended by revising the reference in paragraph (c) to "43 million bits per second" to read "43 million bit per second" and by revising in paragraph (d)(2) the words "paragraph (h)(1)(i)(C) to (h)(1)(i)(E) and (M)" to read "paragraphs (h)(1)(i)(E) to (M)";

Advisory Note 7 is amended by revising "ECCN 1565" in paragraph (a)(1) to read "this ECCN 1565A"; by adding "that are identified by the code letter 'A' " after the word "List" and before the semicolon at the end of paragraph (a)(2); and by removing "service" after "supplier's" and before "organization" in paragraph (c) introductory text;

The Technical Note to Advisory Note 7 is amended by revising the references to "ECCN 1564", "ECCN 1572", and "ECCN 1586" to read "ECCN 1564A", "ECCN 1572A" and "ECCN 1586A" respectively in paragraphs (a) through (d);

Advisory Notes 9 and 12 are revised to read as set forth below;

Advisory Note 16 is redesignated as Note 16 and definitions are added in alphabetical order to read as set forth below for the terms "block move data rate," "gateway," and "internetwork gateway"; the definition of "maximum bit packing density" is amended by revising the reference to "ISO 1862–1975" to read "ISO 1863–1975"; the definition of "multi-data-stream processing" is revised to read as set forth below; the words "cartridge type" that appear in the definition of "net capacity" are revised to read "cartridge-type"; the reference to "16 bits" that appears in Note 1 under the definition of "numbers of bits in a" is revised to read "16 bit"; the reference to "30 bits" that appears in paragraph (b) under the definition of "number of bits in a floating point operand" is revised to read "30 bit"; and entries are added to the table that appears in the Note to the definition of "total connected capacity" to read as set forth below;

Advisory Note 17 (for the People's Republic of China) is amended by revising paragraph (b)(1) to read as set forth below; by removing paragraph (b)(2), by redesignating paragraph (b)(3) as new paragraph (b)(2), by revising newly redesignated paragraph (b)(2) to read as set forth below, and by revising paragraph (c) introductory text and paragraph (c)(1) to read as set forth below; and

Advisory Notes 18, 19, and 20 (for the People's Republic of China) are revised to read as set forth below.

**1565A Electronic computers, "related equipment," equipment or systems containing electronic computers; and specially designed components and accessories therefor.**

(For the export control status of "computer software," see Supplement No. 3 to Part 379).

* * * * *

**List of Electronic Computers and Related Equipment Controlled by ECCN 1565A**

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) * * *

**[Note]:** * * * (d) A "total access rate" not exceeding 80 accesses per second with a maximum "access rate" of 40 accesses per second per drive;

* * * * *

(J) * * *

(*2*) "Local area networks" that are excluded from control;

**[Note:** * * *]

* * * * *

(ii) * * *

(F) * * *

(*4*) A "total access rate" not exceeding 80 accesses per second with a maximum "access rate" of 40 accesses per second per drive;

(j) * * *

(*2*) "Local area networks" that are excluded from control;

[Note: * * *]

* * * * *

(iii) * * *

(H) They do not include analog-to-digital or digital-to-analog converter microcircuits exceeding the limits of ECCN 1568;

[Note: This does not apply in the case of direct driven video monitors for normal commercial television;]

* * * * *

(iv) * * *

(L) Displays or monitors having all of the following characteristics:

(*1*) Not including equipment described in paragraph (h)(l)(ii) above;

(*2*) Not containing cathode ray tubes controlled by ECCN 1541A;

(*3*) If capable of other than alpha-numeric characters, graphs and symbols, in fixed formats:

(*i*) Not more than 1,024 resolveble elements along any axis;

(*ii*) Not more than 16 shades of gray or color; *and*

(*iii*) The "maximum bit transfer rate" from the electronic computer to the display does not exceed 19,200 bit/s;

[Note: Paragraphs (h)(2)(iv)(L)(*3*) (*ii*) and (*iii*) above do not apply in the case of direct driven video monitors.]

(M) Displays or monitors having all of the following characteristics:

(*1*) They do not contain cathode-ray tubes;

(*2*) They are not capable of displaying more than 3 levels (*i.e.*, off, intermediate and full on); *and*

(*3*) They do not have as an integral part of the display device:

(*i*) Circuitry; *or*

(*ii*) Non-mechanical character generation devices;

(N) Displays having all of the following characteristics:

(*1*) Not containing cathode-ray tubes controlled by ECCN 1541;

(*2*) Being part of industrial or medical equipment; *and*

(*3*) Not specially designed for use with electronic computers;

* * * * *

(v) * * *

(C) Designed to meet ANSI/IEEE Standard 488–1978 or IEC Publication 625–1;

(vi) Equipment for "local area networks" that do not exceed any of the following characteristics:

(A) Interfaces and protocols up to or including Layer 2 of the Open System Interconnection (OSI) reference model, which is ISO logical link control Draft International Standard (DIS) 8802/2, IEEE 802.2, 802.3, 802.4, 802.5, or equivalents;

(B) Implementations that contain functions of, or equivalent to those provided by, CCITT x .25, Level 3, protocols—none;

(C) Maximum "data signalling rate" on the common transmission medium—2 million bit/s; *or*

(D) "Internetwork gateways"—none;

* * * * *

**Advisory Note 9:** (Eligible for General License G–COM) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (h), provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Are not described in paragraphs (h)(1)(i) (D) to (M);

(2) Are not used with "digital computers" produced in controlled areas;

[Note: This does not prohibit the exchange of data media.]

(3) Are exported as:

(i) Complete systems; *or*

(ii) Enhancements to a previously exported system provided that the enhanced system does not exceed the limits of paragraph (b) of this Advisory Note;

(4) Have not been designed for any equipment:

(i) Controlled by any other ECCN on the Commodity Control List identified by the code letter "A"; *and*

(ii) Are not eligible for export under an applicable Advisory Note to such other ECCN:

(5) Have been primarily designed and used for non-strategic applications;

(6) Do not have any of the following characteristics:

(i) They fall within the scope of both paragraphs (h)(1)(ii) (A) and (B); *or*

(ii) They fall within the scope of paragraph (h)(1)(ii)(A) and are microprocessor-based systems having a word length of more than 8 bit; *or*

(iii) They are ruggedized above the level required for a normal commercial/civil environment, but not necessarily up to the levels specified in paragraph (f) and are microprocessor-based systems having a word length of more than 8 bit; *and*

[Note: Microprocessor based systems with 8-bit word length and not more than 16-bit architecture are regarded as 8-bit systems for the purpose of this paragraph (a)(6).]

(7) Do not have all of the following characteristics:

[Note: Paragraph (a)(7) does not apply to workstations designed for and limited to graphic arts (*e.g.*, printing, publishing).]

(i) They are stand-alone graphics work stations designed or modified for the generation, transformation, and display of 2 or 3 dimensional vectors;

(ii) They have a "total processing data rate" of the central processing unit exceeding 28 million bit per second;

(iii) They have a central processing unit, with a word length exceeding 16 bit; *and*

[Note: Microprocessor based systems with 16-bit word-length and not more than a 32-bit architecture are regarded as 16-bit systems for the purpose of this paragraph (a)(7)(iii).]

(iv) They exceed either of the following limits:

(A) "Block move data rate"—800,000 pixels/sec.; *or*

(B) "Maximum bit transfer rate" of the channel for direct access to the "main storage" (Direct Memory Access or DMA channel)—11 million bit/s;

(8) The number, type and characteristics of the equipment are reasonable for the application;

(9) The equipment is not destined for military end-use.

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate"—43 million bit/s;

(ii) "Total connected capacity" of "main storage"—39 million bit;

(iii) "Non-volatile storage" with "user-accessible programmability" including bubble memory—none;

[Note: Magnetic core "main storage" is not considered "non-volatile storage" for purposes of this paragraph (b)(1)(iii).]

(iv) Number of microprocessor or microcomputer microcircuits implementing the central processing unit—three; *or*

Note: This limit does not include any dedicated microprocessor or microcomputer microcircuit used solely for display, keyboard or input/output control, or any bit-slice microprocessor microcircuit.]

(v) "Virtual storage" capability—512 MByte;

Note: 1. Supermini "digital computers" with a "virtual storage" capability exceeding the level in this paragraph will not be eligible for consideration under this Note. However, other "digital computers" (*e.g.*, mainframes) may have a "virtual storage" capability exceeding this limit, and in such cases they may be considered under this Note.

2. If the "total processing data rate" does not exceed 28 million bit/s, this paragraph will not apply.

(2) Input/output control unit—drum or disk drive combinations:

(i) "Total transfer rate"—16 million bit per second;

(ii) "Total access rate"—200 accesses per second;

(iii) Total connected "net capacity"—5,120 million bit;

(iv) "Maximum bit transfer rate" of any drum or disk drive—16 million bit/s;

(v) Number of independent drum or disk drives—six, of which five must not exceed a "maximum bit transfer rate" of 10.3 million bit/s;

(vi) Exchangeable disk packs that contain magnetic heads:

(A) "Access rate" of an independent seek mechanism—20 accesses per second;

(B) "Net capacity"—240 million bit;

(3) Input/output control unit—bubble memory combinations:

(i) Total connected "net capacity" for point of sale devices used by cashiers—9.8 million bit;

(ii) Total connected "net capacity" for "digital computers" or "related equipment" other than those in paragraph (b)(3)(i) above—2.1 million bit;

(4) Input/output control unit—magnetic tape or cartridge-type streamer tape drive combinations;

(i) Magnetic tape drives:

(A) "Maximum bit packing density"—246 bit/mm (6,250 bpi);

(B) Maximum read/write speed—508 cm/s (200 ips);

(C) "Maximum bit transfer rate"—10 million bit/s;

(D) Number exceeding 131 bit/mm (3,300 bit/inch)—4;

(ii) Cartridge-type streamer tape drives;

(A) Maximum "total transfer rate"—16 million bit/s;

(B) Number—two;

(5) Communication control unit—"communication channel" combinations:

(i) "Total data signalling rate" of all "communication channels" terminating remote from the "computer using facility"—19,200 bit/s;

(ii) Maximum "data signalling rate" of any "communication channels"—9,600 bit/s;

(iii) Number of "communication channels" not dedicated full time to the given application—three, provided that:

(A) They are connected to the public switched network; *and*

(B) They have a "data signalling rate" not exceeding 1,200 bit/s at the interface between the "digital computer" and the public switched network; and

(C) Number of "communication channels" not limited to Telex interfaces for services conforming to CCITT recommendations F60 to F79—one.

(6) Input/output or communication control unit—directly connected date channel combinations:

(i) "Total transfer rate"—1.6 million bit/s;

(ii) "Transfer rate of any data channel"—1.6 million bit/s;

(iii) Terminations of such combinations or any extensions thereto outside the "computer using facility"—none;

(7) Communication control unit—"local area network" combinations:

(i) Maximum "data signalling rate" on the common transmission medium—10 million bit/s;

(ii) Interfaces and protocols up to and including Layer 2 of the Open System Interconnection (OSI) reference model, which is logical link control (Draft International Standard (DIS) 8802/2), IEEE 802.2, 802.3, 802.4, 802.5 or equivalents;

(iii) Implemenations that contain functions of, or equivalent to those provided by, CCITT X .25, Level 3, protocols—none;

(iv) "Internetwork gateways"—none;

(v) "Communications channels" from such combinations to one "digital computer" located outside the "computer using facility"—one, provided that:

(A) The "communication channel" is dedicated full time to the given application;

(B) The maximum "data signalling rate" is 9,600 bit/s; *and*

(C) The "digital computer" is not designed or modified for "local area networks";

(vi) The sum of the "total processing data rate" of all controlled "digital computers" directly connected to a "local area network"—285 million bit/s.

[**Note 1**: For the purpose of this paragraph (b)(7) all "local area networks" interconnected within a "computer using facility" are considered as a single "local area network".

[**Note 2**: If the maximum "data signalling rate" on the common transmission medium does not exceed 2 million bit/s, this paragraph (b)(7)(vi) will not apply.]

(8) "Other peripheral devices":

(i) "Maximum bit transfer rate" of any "terminal device" located remote from the "computer using facility"—19,200 bit/s;

(ii) Displays or graphic input devices:

(A) Resolvable elements along any axis—1024, and shades of gray or color—64;

(B) Resolvable elements along any axis—320, and shades of gray or color—256;

(9) Other limits on equipment, "equivalent multiply rate" for "signal processing" or "image enhancement" equipment—800,000 operations per second;

(c) Exports of "digital computers" or "related equipment" therefor covered by this Advisory Note 9 shall be subject to the following restrictions:

(1) Reserved.

(2) When the parameters of the equipment do not exceed:

(i) "Total processing data rate"—20 million bit/s;

(ii) "Maximum bit transfer rate" of any independent drum or disk drive—10.3 million bit/s—none;

Then the quantity limitations on the export of equipment per transaction imposed by paragraph (c)(3) below do not apply.

(3) When the parameters of any equipment involved in one transaction exceed any limit of paragraph (c)(2) above, then:

(i) The "cumulative total processing data rate" must not exceed 285 million bit/s;

[**Note:** When calculating the "cumulative total processing data rate", the "total processing data rates" of any stand-alone microcomputers are not to be included.]

(ii) The equipment must be used primarily for the specific non-strategic application for which the export would be approved; *and*

(iii) The equipment must not be used for the design, development, or production of controlled items, especially not in microelectronics.

(4) When the "processing data rate" of any equipment involved in one transaction exceeds 28 million bit/s, then:

(i) The condition of paragraph (c)(3) of this Advisory Note would apply;

(ii) The end-user will not be directly involved in significant strategic activities, including intelligence activities;

(iii) The end-user will not be affiliated with organizations that foster diversions to strategic purposes;

(iv) The equipment will not measurably enhance the strategic activities of the end-user.

* * * * *

**Advisory Note 12:** (Not eligible for General License G-COM) Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (h) provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Are not described in paragraphs (h)(1)(i) (D) to (M);

(2) Are not used with "digital computers" produced in controlled areas;

[**Note:** This does not preclude the exchange of data media.]

(3) Are exported as:

(i) Complete systems; or

(ii) Enhancements to a previously exported system provided that the enhanced system does not exceed the limits of paragraph (b) of this Note;

(4) Have not been designed for any equipment:

(i) Controlled by another ECCN on the Commodity Control List identified by the code letter "A"; and

(ii) Are not eligible for export under an applicable Advisory Note to such other ECCN;

(5) Have been primarily designed and used for non-strategic applications; *and*

(6) Do not have any of the following characteristics:

(i) They fall within the scope of both paragraphs (h)(1)(ii) (A) and (B); *or*

(ii) They fall within the scope of paragraph (h)(1)(ii)(A) and are in microprocessor-based systems having a word length of more than 16 bit; *or*

(iii) They are ruggedized above the level required for a normal commercial/civil environment, but not necessarily up to the levels specified in paragraph (f) and are microprocessor-based systems having a word length of more than 16 bit; *and*

[**Note:** Microprocessor-based systems with 16-bit word-length and not more than a 32-bit architecture are regarded as 16-bit systems for the purpose of this paragraph (a)(6).]

(7) Do not have all of the following characteristics:

[**Note:** Paragraph (a)(7)(iv) does not apply to workstations designed for and limited to graphic arts (*e.g.*, printing, publishing.)]

(i) They are stand-alone graphics work stations designed or modified for the generation, transformation, and display of two or three dimensional vectors;

(ii) They have a "total processing data rate" of the central processing unit exceeding 48 million bit per second;

(iii) They have a central processing unit, with a word length exceeding 16 bit; *and*

[**Note:** Microprocessor based systems with 16-bit word-length and not more than a 32-bit architecture are regarded as 16-bit systems for the purpose of this paragraph (a)(7)(iii).]

(iv) They exceed either of the following limits:

(A) "Block move data rate"—1,500,000 pixels/sec; *or*

(B) "Maximum bit transfer rate" of the channel for direct access to the "main storage" (Direct Memory Access or DMA channel)—15 million bit per second;

(8) (i) The equipment is appropriate for the stated end-use;

(ii) The end-users are:

(A) Not directly involved in significant strategic, including intelligence, activities; *or*

(B) Not affiliated with organizations that foster diversion to strategic purposes;

(iii) The equipment will not significantly enhance the strategic activities of the end-user.

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate"—78 million bit per second;

(ii) "Total connected capacity: of "main storage"—76.7 million bit;

(iii) "Non-volatile storage" with "user accessible programmability" including bubble memory—none;

[**Note:** Magnetic core "main storage" is not considered "non-volatile" for purposes of this paragraph.]

(iv) "Virtual storage" capability—512 MByte;

[**Note:** Supermini "digital computers" with a "virtual storage" capability exceeding the level in this paragraph (b)(1)(iv) will not be eligible for consideration under this Note. It is recognized, however, that other "digital computers" (*e.g.*, mainframes) may have a "virtual storage" capability exceeding this limit and in such cases they may be considered under this Note.]

(2) Input/output control unit—drum or disk drive combinations:

(i) "Total transfer rate"—22 million bit/s;

(ii) "Total access rate"—360 accesses per second;

(iii) Total connected "net capacity"—14,000 million bit;

(iv) "Maximum bit transfer rate" of any drum or disk drive—20.6 million bit/s;

(v) Number of drum or disk drives exceeding a "maximum bit transfer rate" of 10.3 million bit/s—four;

(vi) Exchangeable disk packs that contain magnetic heads:

(A) "Access rate" of an independent seek mechanism—29 accesses per second;

(B) "Net capacity"—640 million bit;

(3) Input/output control unit—bubble memory combinations:

(i) Total connected "net capacity" for point of sale used by cashiers—9.8 million bit;

(ii) Total connected "net capacity" for "digital computers" or "related equipment" other than those in paragraph (b)(3)(i) above—2.1 million bit;

(4) Input/output control unit—magnetic tape or cartridge-type streamer tape drive combinations:

(i) Magnetic tape drives:

(A) "Maximum bit packing density"—246 bit/mm (6,250 bpi);

(B) Maximum read/write speed—508 cm/s (200 ips);

(C) "Maximum bit transfer rate"—10 million bit/s;

(D) Number exceeding 131 bit/mm (3,300 bpi)—4;

(ii) Cartridge-type streamer tape drives;

(A) Maximum "total transfer rate"—16 million bit/s;

(B) Number—two;

(5) Communication control unit—"communication channel" combinations:

(i) "Total data signalling rate" of all "communication channels" terminating remote from the "computer using facility"—38,400 bit/s; or

(ii) Maximum "data signalling rate" of any "communication channels"—19,200 bit/s;

(iii) Number of "communication channels" not dedicated full time to the given application—six, provided that:

(A) They are connected to the public switched network;

(B) They have a "data signalling rate" not exceeding 1,200 bit/s at the interface between the "digital computer" and the public switched network; and

(C) Number of "communication channels" not limited to telex interfaces for services conforming to CCITT recommendations F60 to F79—two.

(6) Input/output or communication control unit—directly connected data channel combinations:

(i) "Total transfer rate"—3.6 million bit/s;

(ii) "Transfer rate of any data channel"—3.6 million bit per second;

(iii) Terminations of such combinations or of any extensions thereto outside the "computer using facility"—none;

(7) Communication control unit—"local area network" combinations;

(i) Maximum "data signalling rate" on the common transmission medium—10 million bit/s;

(ii) Interfaces and protocols up to and including Layer 2 of the Open System Interconnection (OSI) reference model, which is ISO logical link control Draft International Standard (DIS) 8802/2, IEEE 802.2, 802.3, 802.4, 802.5 or equivalents;

(iii) Implementations that contain functions of, or equivalent to those provided by, CCITT × .25, Level 3, protocols—none;

(iv) "Internetwork gateways"—none;

(v) "Communications channels" from such combinations to one "digital computer" located outside the "computer using facility"—one, provided that:

(A) The "communication channel" is dedicated full time to the given application;

(B) The maximum "data signalling rate" is 19,200 bit/s; *and*

(C) The "digital computer" is not designed or modified for "local area networks";

(vi) The sum of the "total processing data rate" of all controlled "digital computers" directly connected to a "local area network"—285 million bit/s.

[**Note:** Only one "digital computer" may exceed 54 million bit/s.]

[**Note 1:** For the purpose of this paragraph (b)(7)(vi) all "local area networks" interconnected within a "computer using facility" are considered as a single "local area network".]

[**Note 2:** If the maximum "data signalling rate" on the common transmission medium does not exceed 2 million bit/s, this paragraph (b)(7)(vi) will not apply.]

(8) "Other peripheral devices":

(i) "Maximum bit transfer rate" of any "terminal device" located remote from the "computer using facility"—19,200 bit/s;

(ii) Displays or graphic input devices:

(A) Resolvable elements—512 × 640, and shades of gray or color—256; *or*

[**Note:** Paragraph (b)(8)(ii)(A) does not prohibit the export under this Note of displays for systems specially designed for and limited to graphic arts (*e.g.*, printing, publishing) that have displays not exceeding 576 × 900 resolvable elements and 256 shades of gray or color.]

(B) Resolvable elements—1024 × 1280 and shades of gray or color—64;

[**Note:** Paragraph (b)(8)(ii)(B) does not prohibit the export under this Note of displays for systems specially designed for and limited to graphic arts (*e.g.*, printing, publishing) that have displays not exceeding 1,560 × 1024 resolvable elements and 64 shades of gray or color.]

(9) "Signal processing" or "image enhancement" equipment:

(i) "Equivalent multiply rate"—1,500,000 operations per second;

(ii) Output—10 million image elements per second;

(c) Exports of "digital computers" or "related equipment" therefor covered by this Advisory Note 12 shall be subject to the following restrictions:

(1) In all cases:

(i) A responsible representative of the end-user(s) or the importing agency must submit a signed statement describing the end-use and certifying that:

(A) The "digital computers" or "related equipment" will:

(*1*) Be used only for civil applications; *and*

(*2*) Not be reexported or otherwise disposed of without permission from the Office of Export Licensing;

(B) Responsible Western representatives of the supplier will:

(*1*) Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; *and*

(*2*) Be furnished information demonstrating continued authorized application of the equipment; *and*

(C) These Western representatives will be notified of any significant change of application or of other facts, on which the license was based;

(ii) A full description must be provided of:

(A) The equipment; *and*

(B) Its intended application and workload; *and*

(iii) A complete identification of all end-users and their activities must be provided;

(2) Reserved.

(3) There is no visitation requirement when the parameters of the equipment do not exceed:

(i) "Total processing data rate"—54 million bit/s; *and*

(ii) "Total connected capacity of main storage"—39 million bit;

(4) When the parameters of the equipment exceed either limit of paragraph (c)(3) above, the supplier will:

(i) Have a responsible Western representative visit and inspect the "computer using facility" and all equipment,

BEST COPY AVAILABLE

wherever located, at least quarterly for three years; *and*

(ii) Report periodically to the Office of Export Licensing whether the "digital computers" and "related equipment" therefor are still being used for the approved purposes at the authorized location.

[**Note:** The visitation requirements of paragraph (c)(4) above will be waived for remote "terminal devices" if they consist only of peripheral equipment freed from control by paragraph (h)(2)(iv) above.]

* * * * *

**Note 16:**

* * * * *

"Block Move Data Rate"—

The maximum number of pixels that can be moved per second from one location to another in the storage that functions as the frame buffer.

* * * * *

"Gateway"—

The function, realized by any combination of equipment and "software", to carry out the conversion of conventions for representing, processing or communicating information used in one system into the corresponding but different conventions used in another system.

* * * * *

"Internetwork Gateway"—

A "gateway" for two systems that are themselves "local area networks", "wide area networks" or both.

* * * * *

"Multi-Data-Stream Processing"

The "microprogram" or equipment architecture technique that permits processing two or more data sequences under the control of one or more instruction sequences by means such as:

(a) Parallel processing;

(b) Structured arrays of processing elements;

(c) Single Instruction Multiple Data (SIMD) operations; *or*

(d) Multiple Instruction Multiple Data (MIND) operations;

* * * * *

"Total Connected Capacity"

* * * * *

**Note:** * * *

| Internal storage (MByte) | Cache storage (KByte) | "Total connected capacity" (million bit) |
|---|---|---|
| * * * | * * * | * * * |
| 4.0 | 64 | 39.0 |
| 8.0 | 64 | 76.7 |

* * * * *

**Advisory Note 17 (For the People's Republic of China):** * * *

(b) * * *

(1) Central processing unit with a "total processing data rate" of 550 million bit/s;

(2) Array transform processors:

(i) "Equivalent multiply rate"—800,000 operations per second;

(ii) Fast Fourier transform of 1,024 complex points—40 ms;

(c) The "digital computers" or "related equipment" therefor do not have any of the following characteristics:

(1) Those identified in paragraphs (h)(1)(i)(D) to (H) or (M); *or*

* * * * *

**Advisory Note 18 (For the People's Republic of China)**

Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "digital computers" or "related equipment" therefor in accordance with Advisory Note 5 above, on the understanding that:

(a) Paragraph (b)(1) of Advisory Note 5 does not apply;

(b) The "total processing data rate" under paragraph (c) of Advisory Note 5 does not exceed 155 million bit/s.

**Advisory Note 19 (For the People's Republic of China)**

Licenses are likely to be approved for individual or bulk shipments to satisfactory end-users in the People's Republic of China of peripheral equipment and input/output interface or control units therefor as follows:

(a) Cathode ray tube graphic displays that do not exceed:

(1) 1,024 resolvable elements along one axis and 1,280 resolvable elements along the perpendicular axis; *or*

(2) 256 shades of gray or color (8 bit per pixel);

(b) Plotting equipment and digitizing equipment that has an accuracy of 0.002% or worse, and an active area of 254 cm × 254 cm or smaller;

(c) Disk drives that do not exceed:

(1) "Maximum bit transfer rate"—10.3 million bit/s; *or*

(2) "Net capacity"—1,227 million bit;

(d) Non-impact type printers and laser printers having a resolution not exceeding 120 dots per cm (300 dots per inch);

(e) Optical character recognition (OCR) equipment;

(f) Light gun devices or other manual graphic input devices.

**Advisory Note 20 (For the People's Republic of China)**

Licenses are likely to be approved for bulk shipments to satisfactory end-users in the People's Republic of China of personal computers and small business computer systems controlled by paragraph (h) that do not exceed any of the following parameters:

[**Note:** This does not apply to graphic workstations exceeding the limits of paragraph (a)(7) of Advisory Note 9]

(a) "Total processing data rate"—136 million bit/s;

(b) "Virtual storage" capability—512 MByte.

[**Note:** Supermini "digital computers" with a "virtual storage" capability exceeding the level in this paragraph (b) will not be eligible for consideration under this Note. It is recognized, however, that other "digital computers" (*e.g.*, microcomputers and super microcomputers) may have a "virtual storage" capability exceeding this limit and in such cases they may be considered under this Note.]

(c) The other technical parameters of the system—the limits contained in paragraph (b) of Advisory Note 9 above without taking into account paragraph (b)(2)(v) of Advisory Note 9.

Dated: July 27, 1988.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 88-17234 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 658

**RIN 2125-AC13**

## Truck Size and Weight; National Network-New York

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule technically amends Appendix A of 23 CFR Part 658 which identifies Interstate and other Federal-aid primary routes designated as part of the National Network for trucks available to vehicles described in the Surface Transportation Assistance Act of 1982 (STAA). Specifically this rule removes the footnotes related to time of day and other restrictions on Interstate highway segments in New York which are no longer valid. This amendment is in response to recent revisions to 23 CFR 658 which established specific approval requirements for use restrictions on Interstate highways and to a recent court decision.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin E. Heanue, Office of Planning, (202) 366-2951, Mr. John F. Grimm, Office of Motor Carrier Information Management and Analysis, (202) 366-4039, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** The Tandem Truck Safety Act of 1984 (TTSA) (Pub. L. 98-554, 98 Stat. 2829) amended the STAA (Pub. L. 97-424, 96 Stat. 2097) and defined the conditions under which exemptions from the basic requirement that Interstate highways must be available to vehicles described

in the STAA could be granted. The FHWA issued a final rule (53 FR 12145) amending 23 CFR 658 on April 13, 1988 to implement TTSA amendments.

**Interstate Use Restrictions**

The revised regulation requires FHWA approval of use restrictions on Interstate segments, other than the routine types listed in 23 CFR 658.11(d)(4). The conditions and procedures for FHWA approval are outlined in 23 CFR 658.11(d).

FHWA has notified the State of New York that the hourly restrictions on I–495 (Long Island Expressway) are in violation of current law and has provided the State the opportunity to apply for exemption under the aforementioned procedures, but the State has declined. This action provides clarification that there is no present Federal approval of the operating restrictions.

In the City of New York, the restrictions are not in effect because of a U.S. District Court injunction that has been affirmed by the U.S. Court of Appeals for the Second Circuit (New York Truck Ass'n, Inc. v. The City of New York, 654 F. Supp. 1521 (1987) and 833 F. 2d 430 (2nd Cir. 1987)). This action brings the Appendix into compliance with both the court's order and the TTSA amendments.

**Regulatory Impact**

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. The technical amendment being issued merely conforms the Appendix appearing in the Code of Federal Regulations to the law and regulations as they presently exist. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information in view of the technical nature of this rulemaking.

A regulatory impact analysis was prepared for the June 5, 1984, rulemaking which initially designated the National Network and is available for inspection in the Headquarters Office of the FHWA, 400 7th Street SW., Washington, DC. Copies may be obtained by contacting Mr. Kevin E. Heanue or Mr. David C. Oliver at the address provided under the heading "**FOR FURTHER INFORMATION CONTACT.**" Based on this analysis and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the United Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In consideration of the foregoing, the FHWA is amending Chapter I of Title 23, Code of Federal Regulations, by amending Part 658 Appendix A as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**List of Subjects in 23 Part 658**

Grant programs—transportation, highways and roads, Motor carriers—size and weight.

Issued on: July 25, 1988.

**R.D. Morgan,**

*Executive Director, Federal Highway Administration.*

In consideration of the foregoing, the FHWA amends Chapter I of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of New York as set forth below.

**PART 658—[AMENDED]**

1. The authority citation for 23 CFR Part 658 continues to read as follows:

**Authority:** Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313; 49 U.S.C. App. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

**Appendix—[Amended]**

2. Appendix A to Part 658 is amended for the State of New York by removing all footnotes, except the first footnote.

[FR Doc. 88–17118 Filed 7–29–88; 8:45 am]
BILLING CODE 4910-22-M

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner**

**24 CFR Parts 201, 203, and 234**

**[Docket No. N–88–1833; FR–2537]**

## Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice of revisions to FHA maximum mortgage limits for high-cost areas.

**SUMMARY:** This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the mortgage limits for Dutchess County, New York; Albany County, New York; Garfield County, Colorado; Johnson County, Kansas; Walker County, Alabama; Queen Anne's County, Maryland; Fulton County, Georgia; Cumberland County, Maine; the Bloomington, IN MSA comprised of Monroe County, Indiana and the St. Louis, MO–IL PMSA which is comprised of Franklin, Jefferson, St. Charles and St. Louis Counties, Missouri; St. Louis City, Missouri and Monroe County, Illinois. The single family mortgage limits for Addiston County, Vermont are also added to the list of "high-cost" areas. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, Room 9160; telephone (202) 755–6880; 451 Seventh Street SW., Washington, DC 20410. (These are not tool-free numbers.)

SUPPLEMENTARY INFORMATION:

## Background

The National Housing Act (NHA), 12 U.S.C. (1710–1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On March 3, 1988 (53 FR 6922), the Department published its most recent annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area. (See also April 12, 1988, 53 FR 11997.) Amendments to the annual listing were published March 28, 1988 (53 FR 9869), April 25, 1988 (53 FR 13405), and June 1, 1988 (53 FR 19897).

## This Document

Today's document increases high-cost mortgage amounts for Dutchess County, New York; Albany County, New York; Garfield County, Colorado; Johnson County, Kansas; Walker County, Alabama; Queen Anne's County, Maryland; Fulton County, Georgia; Cumberland County, Maine; the Bloomington, IN MSA comprised of Monroe County, Indiana and the St. Louis, MO–IL PMSA which is comprised of Franklin, Jefferson, St. Charles and St. Louis Counties, Missouri; St. Louis City, Missouri and Monroe County, Illinois. It also adds Addiston County, Vermont to the list of high-cost areas.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

## National Housing Act High Cost Mortgage Limits

### *I. Title I: Method of Computing Limits*

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii)*: To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Albany County, New York has a one-family limit of $98,800. The combination home and lot loan limit for Albany County is $98,800 × .80, $79,040.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii)*: To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Albany County, New York has a one-family limit of $98,800. The lot-only loan limit for Albany County is $98,800 × .20, $19,760.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits*: The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. ($13,500 × 140%).

### *II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits*

REGION I.—HUD FIELD OFFICE—BURLINGTON OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Addiston County, VT | $85,500 | $96,300 | $117,000 | $135,000 |

REGION I.—HUD FIELD OFFICE—BANGOR OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Portland, ME MSA, Cumberland County | $101,250 | $114,000 | $138,000 | $160,500 |

REGION II.—HUD FIELD OFFICE—ALBANY OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Albany County, NY | $98,800 | $111,250 | $135,200 | $156,000 |
| Dutchess County, NY | 101,250 | 114,000 | 138,000 | 160,000 |

REGION III.—HUD FIELD OFFICE—BALTIMORE OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Queen Anne's County, MD | $101,250 | $114,000 | $138,000 | $160,500 |

REGION IV.—HUD FIELD OFFICE—ATLANTA OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Fulton County, GA | $101,250 | $114,000 | $138,000 | $160,500 |

REGION IV.—HUD FIELD OFFICE—BIRMINGHAM OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Walker County, AL | $74,200 | $83,550 | $101,500 | $117,150 |

REGION V.—HUD FIELD OFFICE—INDIANAPOLIS OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Bloomington, IN MSA, Monroe County, | $75,900 | $85,450 | $103,850 | $119,850 |

REGION V.—HUD FIELD OFFICE—SPRINGFIELD OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| St. Louis, MO-IL MSA (part), Monroe County, IL | $99,150 | $111,650 | $135,650 | $156,550 |

REGION VII.—HUD FIELD OFFICE—KANSAS CITY OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Johnson County, KS | $93,550 | $105,350 | $128,050 | $147,750 |

REGION VII.—HUD FIELD OFFICE—ST. LOUIS OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| St. Louis, MO-IL MSA (part), Franklin County, Jefferson County, St. Charles County, St. Louis County, St. Louis City | $99,150 | $111,650 | $135,650 | $156,550 |

REGION VIII.—HUD FIELD OFFICE—DENVER OFFICE

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| Garfield County, CO | $75,200 | $84,700 | $102,950 | $118,800 |

Dated: July 25, 1988.

**James E. Schoenberger,**

*General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 88-17253 Filed 7-29-88; 8:45 am]

BILLING CODE 4210-27-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

**[DoD 6010.8-R, Amdt. 12]**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Participation Requirements for Residential Treatment Centers (RTC)

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule will revise DoD 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule clarifies participation requirements and establishes a new reimbursement system for payment of RTC care while providing safeguards to ensure continued benefit access and quality of care. An RTC is a facility organized and professionally staffed to provide residential treatment of mental disorders to children and adolescents who have sufficient intellectual potential to respond to active psychiatric treatment. The rule will also

ensure that CHAMPUS beneficiaries are not discriminated against solely on the basis of the program payment methodology. The new payment system will provide reasonable reimbursement for high quality care for CHAMPUS beneficiaries.

**DATE:** This amendment is effective as of September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303)-361-3537.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 87-27853 appearing in the **Federal Register** on December 4, 1987 (52 FR 46098), the Office of the Secretary of Defense published for public comment a proposed amendment that clarified the participation requirements of RTCs and established a new reimbursement system for RTC care. The agency received numerous requests from RTCs and the organizations representing them for extension of the public comment period past the original January 4, 1988, deadline. They felt that the comment period was inadequate for public comment because of the lengthy holiday season. In FR Doc. 88-923, appearing in the **Federal Register** on January 19, 1988 (53 FR 1378), the comment period was extended to February 18, 1988, to ensure that all interested parties had an opportunity to make their views known.

It is important to point out that the rates developed under the new reimbursement methodology are in fact a liberalization of the most favored rate concept under the old participation agreement. Under the terms of the old participation agreement, which has been in use since 1977, the most favorable rate has been considered essentially synonymous with the lowest rate offered to any other individual or payor. This position has been upheld in a Final Decision of the Acting Assistant Secretary of Defense (Health Affairs) issued in 1983. The lowest rate was often alleged to represent artificially set state rates and rates provided to an insignificant amount of business. In order to address these concerns, our approach was to establish a rate high enough to cover a reasonable portion of an RTC's total business based upon total patient days and charges to all payors. The rate high enough to cover one-third of the total patient days was determined the most reasonable. It was felt the rate set at 33⅓ percent avoided subsidies and excessive profit-taking.

The proposed reimbursement methodology: (1) Provides the potential for control over rapidly increasing costs for mental health care within the Department of Defense; (2) ensures that CHAMPUS beneficiaries are not subject to exaggerated or unjustified costs for RTC care solely because of the CHAMPUS entitlement; and (3) provides for a rate of reimbursement for all participating RTCs which reflects a reasonable amount consistent with rates charged by their own peers nationally and with reimbursement they were accepting from other third-party payors. In many instances the rates determined under the new system were identical to the billed charges. CHAMPUS simply wishes to avoid shifting to CHAMPUS beneficiaries an RTC's cost for providing care to other patients.

The rates established under the new system reflect the actual charging practices of the RTCs adjusted by an appropriate Consumer Price Index for medical care. The proposed capped amount is a reasonable one, for it protects CHAMPUS from having to subsidize low rates charged for a very substantial portion of the RTC's patient days, without limiting CHAMPUS rates to the absolute lowest rates charged to other payors. The new reimbursement methodology provides a reasonable method of obtaining RTC services for CHAMPUS beneficiaries at a fair cost to the government, and an enhancement of the government's ability to monitor the quality and appropriateness of RTC services provided to such beneficiaries.

**Background**

The change in reimbursement policy was brought about by a culmination of problems and concerns over the RTC benefit dating back to as early as 1979. This included General Accounting Office (GAO) and Defense Audit Service (DAS) findings that led OCHAMPUS to believe that the current RTC payment system was not cost effective and needed revision. Under the current system, RTCs are allowed to set their own per diem rates, which range from $60 to $700, and to be reimbursed for unlimited professional fees and other ancillary charges. In order to achieve consistency of practice, OCHAMPUS developed a rate which was: (1) Prospective; (2) uniform; (3) all-inclusive; and (4) administratively feasible for OCHAMPUS and the RTCs.

The rate established for each individual RTC reflected both the institutional and professional charges which were submitted per an OCHAMPUS request of October 18, 1985. The RTCs were specifically instructed to submit the charges of individual mental health providers which were not employed by or contracted with their facility, along with the frequency of their occurrence.

OCHAMPUS attempted to implement the new reimbursement rates in April of 1986 by sending our new participation agreements to all CHAMPUS authorized RTCs notifying them of their individual rates and capped amount. By July 1, 1986, 74 agreements had been signed and returned to OCHAMPUS (89 percent of the mailed participation agreements). However, on June 30, 1986, OCHAMPUS was enjoined for implementing the proposed RTC payment methodology because of a civil action filed by various interested parties. The District Court found on summary judgment the OCHAMPUS failed to comply with the rulemaking provisions of the Administrative Procedures Act (APA). OCHAMPUS was, therefore, enjoined from implementing the revised participation agreement and reimbursement system until such time that the requirements of the APA were met. The District Court's decision has been appealed to the Tenth Circuit Court of Appeals. OCHAMPUS believed at the time it issued the new participation agreement that it had the requisite authority and that it was proper to do so. OCHAMPUS still believes its position is correct; however, pending the resolution of the appeal, OCHAMPUS has complied with the District Court's decision by publishing a proposed rule in the **Federal Register**.

Until there is a decision in the appeal, it will not be known if the District Court's decision will be reversed. In the event that the District Court's decision is reversed, OCHAMPUS has the option of recouping any payments to RTCS in excess of the payments that would have been made had the District Court not enjoined the implementation of the payment provisions.

Whether the District Court decision is upheld on appeal or reversed, the effective date of a final rule on reimbursement provisions for RTC care will be applicable. Any recoupment, if the District Court is reversed, will be from July 1, 1986 (the original effective date of the new participation agreement), to the effective date of the final rule.

**Review of Comments**

As a result of the publication of the proposed rule, the following comments were received from interested RTCs, associations, agencies and individuals.

1. Several commentors contend that the all-inclusive rate concept would interfere adversely with the physician-patient relationship and the physician-RTC relationship. It is suggested that placing the "economic risk" of providing both institutional and professional mental health services on RTCs may cause the quality of care to suffer because RTCs may compromise on quality for economic reasons.

This argument is not solely against the use of an all-inclusive rate, but against the use of any prospective payment system. The preference for separate reimbursement of individual professionals is based on the premise that such professionals' reimbursement would not be subject to any dollar limits. Under such a system, neither RTCs nor individual professionals would need to concern themselves with the cost of the professionals' services. Such costs would only be of concern to CHAMPUS and to patients, both of whom share in paying those costs. The new payment system places the incentive to economize with the only parties in a position to economize: the providers of services. Further, it places the responsibility for cost containment squarely on the shoulders of the providers with ultimate responsibility for the provision of the services in question: the RTCs.

The quality of care (services) would not be affected by the all-inclusive rate since CHAMPUS regulations already impose on RTCs an all-inclusive responsibility for providing such services, whether through their own employees or through outside professionals. Under these regulations, there is no reason to regard anyone other than the RTC as the provider of such services. This is not a drastic change from care provided in the past since a majority of CHAMPUS-approved RTCs were already billing for their services on an all inclusive basis before OCHAMPUS proposed the all inclusive rate requirement.

The movement for reimbursement of private practitioners to a single all-inclusive per diem rate for RTC care was done, in part, to increase the RTC's accountability for ensuring a high quality of care and to avoid fragmentation of treatment. The all-inclusive system places to total responsibility for treatment of patients with the RTCs, consistent with their licensure and certification requirements. Under current CHAMPUS standards RTCs are required to develop and establish a patient specific treatment plan which outlines in detail the needs of each patient and how the RTC will meet those needs. Under a recent modification to its contract, effective August 1, 1988, the CHAMPUS mental health review contractor will review each treatment plan and authorize care only in those cases where treatment is justified and determined medically necessary and appropriate. RTCs are also required to provide sufficient professional staff to ensure the treatment plan is carried out. This includes the medical directors. OCHAMPUS will closely monitor each RTC patient under the new agreement to ensure that appropriate treatment continues to be available and provided in all cases. RTCs will also be required to meet the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards for psychiatric facilities serving children and adolescents, and OCHAMPUS RTC standards, both of which require the RTC to provide the professional staff necessary to ensure the proper care, treatment, and safety of all patients. These major safeguards would ensure the continuation of high quality care under the proposed reimbursement methodology.

The all-inclusive per diem limit developed by OCHAMPUS was specifically computed to take into account the individual circumstances of each RTC. All participating RTCs were asked to provide specific information concerning their charges, both professional and institutional. The professional charge data represented an average overall charge based on estimated utilization patterns for each facility. This type of payment methodology allows for differing intensity of care; i.e., some patients will require less than the average, while some will require more than the average number of treatment sessions per week.

It has never been OCHAMPUS' intent to exclude professional providers from caring for patients in RTCs. It is, rather, to design a reimbursement methodology that reflects the philosophy that residential treatment is a total therapeutic program. Each RTC is completely free to determine how it will provide services, either through its own staff or through arrangements with professional and ancillary providers in the community.

2. Another commentor felt that an all-inclusive rate concept would result in a relationship between an RTC and its medical staff which could be construed as the unlawful corporate practice of medicine.

Assuming that some state laws prohibit corporate care providers from controlling the professional practice of their professional staff, there is no apparent reason why such laws would apply differently depending upon whether such staff are employees or independent contractors. Thus, it should make no difference under such laws whether CHAMPUS payment rates encompass all RTC services or only those provided through RTC employees. It is the CHAMPUS regulation that has always made the RTC ultimately responsible for the provision of all RTC services, thus requiring the RTC to control the provision of all its services.

3. Other commentors felt that the all-inclusive rate was inconsistent with CHAMPUS statute and regulations; advancing the argument that the statute and regulations clearly contemplate and require separate payment rates for institutional and non-institutional, professional services.

OCHAMPUS is not required to recognize the separate forms of reimbursable RTC services—those provided by an RTC, and those provided at an RTC by individual professionals. While the CHAMPUS regulations allow for reimbursement of RTC services, all such services are encompassed in the regulatory definition of an RTC, and the facility must provide all services to qualify as an RTC. It is entirely consistent with both CHAMPUS statute and regulations to treat all RTC services as being provided by the RTC and to reimburse only the RTC for services. Neither the Dependents' Medical Care Act, nor the regulations promulgated thereunder bar a cap on RTC reimbursement. Rather, they accord the Secretary of Defense full discretion to set reimbursement rates and standards so long as they are reasonable. Since the majority of RTCs billed their services on an all-inclusive basis prior to the new participation provisions, it cannot be construed as unreasonable. The goal of cost containment by setting an outside limit on reimbursement is plainly a valid one. The statute is silent on the method and rates of reimbursement for RTCs, leaving it up to the Secretary to develop a fair standard.

4. Some commenters felt that the all-inclusive rate would limit access outside professional to RTC patients, resulting in a decrease in quality of care.

In developing the new reimbursement methodology, OCHAMPUS relied in part on a study done by a private consultant. In its report it was not shown that RTC treatment was enhanced by

psychotherapy from the outside professionals or that the majority of RTCs providing therapy through in-house professional staff were delivering inadequate treatment. A large majority of RTCs are already providing psychotherapy on an in-house (all-inclusive) basis without any demonstrable loss in quality of care. However, the new participation requirements do not preclude the use of independent professionals, as long as their services are billed to and paid by CHAMPUS on an all-inclusive basis.

5. Some commentors had objections to the alternative cap on reimbursement imposed by the new participation requirements, the so-called "most-favored rate", or 33⅓ percent cap.

This cap limits payment to the lowest rate charged by the RTC to any other payor that is high enough to cover one-third of the total patient days for the year ending on February 28, 1985. The cap is a reasonable one, for it protects OCHAMPUS from having to subsidize low rates charged for a very substantial portion of an RTC's patient days, without limiting CHAMPUS rates to the absolute lowest rates charged to other payors. The prior version of the health care provider contracts (participation agreements) also contained a "most favorable rate" limit, and the "most favorable rate" limit in the proposed rule, in short, allows a higher rate than the one that was contained in the old agreement. If an RTC accepts a relatively low rate from a payor representing as much as one-third of the RTC's patient days, CHAMPUS should not have to pay higher rates, and thus subsidize patients covered by the lower rates. The 33⅓ percent was based on detailed analysis of utilization and charge data, along with projected availability of RTC care.

6. Some commenters assumed that each RTC must be reimbursed on the basis of the reasonable costs or charges actually incurred during the period for which reimbursement is made.

The governing statutes and regulations do not impose any such requirement. They permit OCHAMPUS to determine a reasonable market value for RTC services based upon RTC costs and charges during a base period, and to limit reimbursement accordingly—to limit each RTC's reimbursement rate based upon its base period data, and impose a single per diem, per-patient cap on all RTCs. The new participation requirements are consistent to applicable law and are reasonable.

7. Some commentors complained that the proposed rates do not include any adjustments for the type and level of services provided. An RTC may have several programs in which the rates vary based upon the staffing and physical plant requirements of the unit.

Under the governing regulations, RTC services constitute a single level of care. While costs and charges associated with RTC care undoubtedly vary somewhat from patient to patient, it does not follow that reimbursement rates must be different for each patient or each category of patients defined by the RTC in oder to be reasonable. A single rate for a given RTC, based on average charge date from that RTC, reflects the various charges described in such data and the patient mix giving rise to those charges. This type of averaging technique takes into account the varying levels (intensity) of care; i.e., some patients will require less than the average, while some will require more than the average number of treatment sessions per week. Although it might have been possible to develop different rates for different categories of RTC patients, such an approach would also involve averaging—within multiple smaller categories instead of a single larger category—because no two patients have identical needs. A single rate for each RTC at least has the advantage of simplicity. There is no apparent countervailing advantage of multiple rates.

8. Several commentors complained that OCHAMPUS does not allow individual RTC appeals with regard to adjustments, extraordinary factors, and omissions. Only mathematical errors in rate calculation were subject to administrative appeals.

Participating RTCs were informed of the proposed changes in the reimbursement system, including the all-inclusive rate and recommended payment cap. All RTCs were requested to provide specific charge and utilization data, including professional services, which could be used to determine individual rates for each RTC and ultimately the payment cap amount. The RTCs were requested to identify all payors for whom a rate was established and accepted, what the rate was, and the number of patient days actually provided at the rate. If the rates did not include all charges, the RTCs were requested to identify the charges not included. Also, charges for educational services were identified and excluded. The data submitted by the RTCs were reviewed for completeness and reliability. Each of the RTCs was informed of the importance of the data requested in the determination of its individual rates, as well as the capped amount. OCHAMPUS staff were also available to answer any questions the RTCs might have had regarding the proposed methodology and data requirement. The RTCs were allowed a reasonable period of time for submission of all data.

It was felt that adjustments of the rates for on-going cost increased and extraordinary factors would result in perpetual, continuous and unpredictable rate changes, and would be inconsistent with the very concept of prospective reimbursement rates. Allowing adjustments after the designated based period for other than mathematical errors in rate calculations would have given RTCs an incentive to incur additional costs during that period in order to increase the basis for their rates.

The incentive to incur additional costs/charges in anticipation of a capped per diem can be substantiated by the dramatic increase in RTC rates experienced by the CHAMPUS program since it was enjoined from implementation of the revised participation agreement back in June of 1986. Since then, rates have risen from 10 to 104 percent, with an average increase of 43 percent. At this rate of increase, it is projected that government expenditures for RTC care could exceed $85 million by the end of fiscal year 1988. Because of the delay in implementation alone, the program has forefeited a projected cost savings of more that $15 million.

The new RTC participation requirements provide for a rate of reimbursement for all participating RTCs which reflects a reasonable amount consistent with rates charged by their peers nationally and with reimbursement that they were already accepting from other third-party payors. If the circumstances of some RTCs prevent them from bringing their rates down to the range typical of most RTCs, it does not follow that CHAMPUS must pay rates of the highest-priced RTCs.

9. One commentor felt that the field audits of the "Top 10 RTCs" did not provide an adequate basis for change in the RTC payment system since the administrative appeal process regarding such audits has not even commenced for some of the providers and has not been completed for others.

The results of the multi-year financial audits of the "Top 10 RTCs" was by no means the sole basis for changing the RTC reimbursement system. It was the culmination of problems and concerns over the RTC benefit dating back to as early as 1979. This included General Accounting Office (GAO) and Defense Audit Service (DAS) findings that improvements were needed in the management of funding of psychiatric

care; RTCs were not collecting cost-shares from beneficiaries, resulting in higher charges to CHAMPUS; and no control over provider rates existed. The findings of the top ten RTC audit reports only served to identify the serious deficiencies in OCHAMPUS' ability to adequately monitor RTC costs and charging practices, and the likelihood that substantial over-payment for RTC care in general existed under the current system. These audits, along with subsequent appeals, also demonstrated that the prior participation agreement did not clearly establish the RTC's responsibilities.

10. Several commentors challenged the two caps on reimbursement—the per diem cap of $266 and the individual RTC rates—because CHAMPUS failed to consider a case mix (service mix), staffing and labor cost differences in establishing each RTC's rate.

There is no logical basis for establishing these types of differentiations under the new prospective payment system. The proposed rates already reflect a variety of factors, such as staffing ratios and case mix, since all RTCs are reimbursed for their actual charges unless they exceed the capped amount. The capped amount should cover the reasonable cost of most, it not all, of the RTCs.

These facts were substantiated in a study conducted for us by a private research firm. It was found that RTC rates (billed charges) were widely disparate and could not be related to any valid basis (for example, regional cost differences) to justify the range of charges, particularly those at the higher end of the spectrum. For example, the range of charges within the State of Virginia, a high use state for RTC care, ranged from approximately $188 per day to over $417 per day. In California, another high use state, charges ranged from $78 to $185. Interestingly, the highest charges in these states represented only the RTC's charges and did not include the separate billing by psychiatrists and other mental health providers.

During the base period (March 1, 1984, through February 28, 1985) CHAMPUS RTC rates ranged from $55 to $489 with a mean of $172 and a standard deviation of $90, while the average length of stay of CHAMPUS beneficiaries ranged from 52 days to 411 days with a mean of 179 days and a standard deviation of 90 days. Both rates and length of stay exhibited extreme variability supporting past GAO and DAS audits.

In a previous study of all RTC care in the United States, the National Institute of Mental Health (NIMH) found that total expenditures for RTC care were aggregated in the following manner: (1) 62 percent allocated to salaries; (2) 33 percent for other operating expenses; and (3) 5 percent for capital expenditures. The proportion of salaries to total expenditures was found to vary inversely to the size of the RTC; i.e., 25 beds—66 percent, 100 beds—58 percent. Bed size was also found to affect cost per day and average length of stay. In facilities less than 25 beds, inpatient costs per day amounted to $73, and $23,814 per inpatient stay, with average length of stay (ALOS) at 354 days. In larger facilities (100 beds or more) costs were $45 per inpatient day and $31,997 per inpatient stay, with ALOS at 734 days. Nearly all of the differences attributed to total expenditures per patient day in RTCs, which differed as to bedcount, were differences in salary expenditure per patient day. The study showed strong implications for cost containment in the RTC reimbursement system. If salaries could be controlled without diminishing quality of care and if length of stay could be standardized and made a more accountable variable, then CHAMPUS could better oversee its RTC benefit.

Because of the implication of this study, RTC utilization data were analyzed to determine if rates and lengths of stay were related to the size of the RTC (bed size). It was found that there was neither a relationship between rate and bed size nor length of stay and bed size, refuting the NIMH findings. This tends to indicate that fixed costs (salaries) are not the determining factors in RTC rate setting. This finding is consistent with past GAO and DAS audits which found RTC rates to be unreasonable and without basis.

11. Several commentors expressed concern that implementation of the proposed RTC participation requirements would cause a substantial reduction in availability of RTC care for CHAMPUS beneficiaries.

Prior to the District Court's injunction, all currently participating RTCs were notified in writing of their individual rates, provided with the rationale for the rates, and provided two copies of the final participation agreements for signature and return by June 1, 1986. Although many of the RTCs objected to various aspects of the reimbursement methodology, 89 percent of them agreed to provide care by signing and returning the participation agreement. Since participation requirements in both the proposed and final rule afford increased flexibility for reimbursement of educational costs and geographically distant family therapy, OCHAMPUS does not anticipate a significant reduction in the availability of RTC care.

Because all participating RTCs must meet the regulatory standards of care, it cannot be argued that inadequate care will result if the highest-priced RTCs terminate their participation, even assuming that the latter can claim some qualitative superiority. All RTCs should be able to properly care for all patients appropriately placed in an RTC. RTC placement is not appropriate for patients whose needs exceed those contemplated by the Regulatory standards. Nor can it be argued that termination of high-priced RTCs will result in geographical shortages of RTC services. OCHAMPUS found a wide disparity in RTC rates not only nationally, but also within states and regions, and that disparity was not related to regional cost differences.

12. One commentor felt that an interim participation agreement was not needed to recognize new RTCs applying for CHAMPUS authorization.

As was mentioned in a previous response, past GAO and DAS audits, along with other contracted studies, identified serious deficiencies in OCHAMPUS' ability to adequately monitor RTC costs and charging practices, and showed a likelihood for substantial over-payment for RTC care in general existed under the current system. These findings, along with subsequent appeals, demonstrated that the prior participation agreement did not clearly establish RTC responsibilities consistent with the CHAMPUS RTC standards and regulations. The reimbursement provisions of the interim participation agreement are essentially the same as those contained under the old agreement (most favorable rate concept). It was felt that the interim participation agreement would better convey to new RTCs what was expected of them under CHAMPUS standards and regulations. This agreement was issued to enhance the qualify of care under the CHAMPUS RTC program.

13. One commentor felt that it would be a hardship on an RTC to have therapeutic leave funding reduced by 25 percent after the 3-day limit. The only cost that the facility may save would be on food. Staff, utilities and general operations must continue on a full cost pattern.

The payment provisions appearing in the proposed rule represent a liberalization of recommendations made by a private consulting firm. In accordance with CHAMPUS policy, it was recommended that RTCs be paid at 75 percent of their per diem rate for therapeutic absences. It was further recommended that CHAMPUS consider

a limit on the number of therapeutic leave days allowable per calendar year and on consecutive leave days. They assumed that children able to leave the RTC for more than 10 consecutive days (except in special circumstances) no longer require the specialized environment of a residential treatment center. The Director of OCHAMPUS made a modification to the final reimbursement provisions to continue payment at the full per diem rate for approved absences not exceeding three calendar days. Payment of 75 percent of the established daily charge beginning with the fourth day of absence was felt to be reasonable to cover room and board costs during the patient's absence.

14. One commentor recommended that we consider establishing an upper limit for the length of reimbursable therapeutic leave.

An upper limit for the length of reimbursable therapeutic leave was considered in the development of the proposed rule. However, it was felt that an upper limit was unnecessary since all RTC cases required extensive authorization review. The RTC is required to submit a detailed treatment plan for each CHAMPUS patient within 30 days of admission. This includes any anticipated therapeutic absences. Periodic medical/utilization reviews are also conducted after 6 months of treatment. All therapeutic absences are reviewed individually and approved when they are determined to be medically appropriate. This approach is consistent with existing CHAMPUS regulation.

15. Another commentor felt that the proposed reimbursement methodology unfairly penalized long-standing providers. It allows new facilities to establish their own charge, provided it is not above the CHAMPUS per diem cap, because there is no rate history.

It cannot be disputed that RTCs which began operation after February 28, 1985, will be subject to a different base period than those in operation prior to that date. Under a prospective payment system this is inevitable. However, the calculation of all RTC rates is procedurally consistent and adjusted by an appropriate inflation factor (Consumer Price Index—Urban for medical care) based on the particular base period used.

Individual RTC rates, along with a capped amount, will be adjusted by appropriate annual CPI-Us for medical care to bring them forward to the effective date of the final rule. The inflation factor is used to bring equity to the prospective payment system. The new payment system provides a rate of reimbursement for all participating RTCs (both long-standing and new) which reflects a reasonable amount consistent with rates charged by their own peers nationally and with reimbursement they are already accepting from other third-party payors. The rates established still reflect the actual charging practices of the RTCs subject to an all-inclusive capped amount.

Looking at this from a different perspective, new facilities may contend that rates charged during the startup period (first 6 to 12 months) may not adequately reflect the true operations of the facility.

16. Several commentors felt that the 60-day inpatient mental health limitation forced them to make costly adjustments in their operations in order to accommodate the influx of patients who had previously been or would otherwise be in hospitals.

Pub. L. 98–94, the Defense Authorization Act for fiscal year 1984, amended title 10, chapter 55, United States Code. This Public Law stated that, with certain exceptions, no CHAMPUS funds may be expended for inpatient mental health services in excess of 60 days annually for each beneficiary who receives inpatient mental health services. It was similar to a provision that was contained in Pub. L. 97–77, the Defense Appropriations Act for Fiscal Year 1983, which restricted the funds available to CHAMPUS to pay inpatient mental health services, beginning January 1, 1983. These commentors contend that this 60-day inpatient psychiatric limitation has increased annual FTR expenditures due to the fact that children requiring psychologically necessary care in hospitals were driven by the limitation into less expensive RTCs. OCHAMPUS does not argue this point; however, it is felt that there was a sufficient time lag between implementation of the 60-day inpatient mental health limitation and the base period used in calculating the prospective rate to reflect any adjustments in operations required as a result of this influx of hospital patients. The inpatient mental health limitation went into effect for inpatient admissions beginning on and after January 1, 1983, while the base period for calculation of prospective rates was from March 1, 1984, through February 28, 1985. The RTCs had sufficient time to adjust their charges for increases in level of care brought about by the limitation.

17. One commentor felt that CHAMPUS should acknowledge that other populations (groups) can be served by an RTC and that the 21-year age restriction is specific to CHAMPUS.

CHAMPUS only acknowledges RTC programs as defined by its Regulation, policy, standards and participation agreement. The age restriction (under the age of 21) was set in a precedent setting final appeal decision and incorporated into the definition of residential treatment centers.

18. One commentor stated that the CPI–U used to update the per diem rates does not recognize regional differences in wages or costs.

As was previously stated, the RTC rates (billed charges) were widely disparate and could not be related to any valid basis (for example, regional cost differences) to justify the rate charges, particularly those at the higher end of the spectrum. Since regional differences in wages or costs did not appear to have a bearing on RTCs' charges, national CPI–Us were used to update the rates.

Because of the delay in implementation of the all-inclusive reimbursement system, appropriate annual CPI–U inflation factors for medical care will be used to adjust both individual rates and a capped amount up through February of 1988.

19. One commentor felt that the proposed rule, if implemented, would be in violation of the court order since there were substantive issues in the decision concerning the proposed new participation agreement and payment methodology which went beyond the failure to comply with the Administrative Procedures Act (APA).

The District Court chose to limit its discussion of many procedural and substantive issues in the policy changes in question to the government's non-compliance with APA rulemaking requirements. The District Court invalidated CHAMPUS' issuance of new standard contract provisions solely on the basis of procedural requirements for rulemaking under 5 U.S.C. 553.

OCHAMPUS believed at the time it issued the new RTC participation agreement that it had the requisite authority to do so. OCHAMPUS still believes its position is correct; however, pending the resolution of the appeal in the Tenth Circuit Court of Appeals, OCHAMPUS is complying with the District Court's decision. The proposed and final amendments are being published in compliance with the Court's decision.

20. One commentor wondered if a family therapist could bill individually for care provided to a family outside the RTC.

If an RTC accepts a child for admission whose parents are geographically distant, the facility must

document its plans for including the family in therapy, in accordance with RTC standards and the appropriate medical care standard. If one or both parents reside at a significant distance from the child, the RTC has the flexibility of setting up therapy with the parents at the distant locality, while the child is in treatment in the RTC. The parent's therapist and child's therapist must collaborate in all cases. Collaboration between therapists is the responsibility of the RTC and must be documented in the medical records. All family therapy must be authorized and approved by the CHAMPUS mental health review contractor at the time the RTC treatment plan is submitted in order for cost-sharing to occur.

A decision has been made to exclude the payment of geographically distant family therapy from the all-inclusive RTC rate because of the significant distance involved and administrative flexibility required to make this type of treatment feasible. The family therapist may bill individually from the RTC if the therapy is provided to one or both of the parents residing a minimum of 250 miles from the location of the RTC. It was felt that 250 miles could generally be driven in approximately five hours, which would allow a parent to drive to the RTC and participate in family therapy and return home the next day. This trip could easily be accomplished during the weekend. However, the therapy must still be authorized by the CHAMPUS mental health review contractor. The contractor will send authorizations to the geographically responsible fiscal intermediary (FI). For cases in which there are two FIs because of differing geographical locations, a copy of the appropriate authorization will be sent to each.

21. Several commentors felt that education is an essential part of the total therapeutic program and should be allowed in the reimbursement methodology.

Payment of educational services are specifically excluded by the CHAMPUS regulation for beneficiaries eligible for payment directly or indirectly by a local, state or federal government. These provisions are not new. CHAMPUS has never been authorized to pay for educational services under the Basic Program, and in those instances where audits have determined that payment has been made in error, corrective action has been taken. However, this exclusion has an exception: it allows payment to RTCs for such services "when appropriate education is not available from or not payable by the cognizant public entity." Thus, in reality, the regulation and new participation requirements do not exclude such services from reimbursement, but merely make CHAMPUS the payor of last resort. This is a proper role for CHAMPUS to play, in view of the fact that free education, including special education, is ordinarily available in local school systems.

Under this exception the sponsor seeking a waiver, with the help of the RTC, would have to demonstrate that the school district in which the CHAMPUS beneficiary was last enrolled refused to pay for the educational component of the child's RTC care. All actions must be supported by documentation, which must include copies of all correspondence with cognizant public officials and denials of reimbursement. Requests for payment of educational costs must be referred to the CHAMPUS mental health review contractor for determination of the applicability of CHAMPUS benefits. If coverage of educational services are approved by the contractor, payment will be allowed outside the all-inclusive facility rate. However, the amount paid shall not exceed the RTC's most-favorable rate to any other patient, agency, or organization for educational services.

22. A group of commentors questioned why a separate cap for reimbursement for the physician component and the RTC component on a per diem basis could not be as effective as one all-inclusive rate.

Separate caps would require a total revamping of the CHAMPUS professional provider relationships and of the claims adjudication and payment process for RTC mental health claims. Instead of 70 to 80 RTC agreements, OCHAMPUS would need to negotiate and establish agreements with each of hundreds of professional providers, some of whom may have only one CHAMPUS RTC patient in a year. With any exceptions to the inclusive cap, pressures would occur to expand the exceptions to all RTCs so that savings would sharply decrease while administrative costs climbed. To be consistent in achieving the goals of a capped professional payment, CHAMPUS would need to limit RTC patient professional care to providers who agree to the binding participation agreements as a condition for CHAMPUS payment.

With an inclusive cap, there is one RTC claim for a given patient for a given time period, usually a month. With separate caps, the RTC claims would be augmented by claims from the professionals involved, with the necessity of identifying those claims from among the approximately 8 million received by CHAMPUS claims processors so that the special processing they would require could take place. CHAMPUS fiscal intermediaries would also experience difficulty in marrying-up professional claims with corresponding institutional billing since many professional providers do not bill in neat monthly intervals. They could not be processed in the normal system that uses prevailing payment limits. A new claims processing system would need to be established or the claims would have to be hand processed, either of which would entail administrative costs roughly estimated at five times greater than those incurred with an inclusive rate. This increased claims processing cost does not include the costs of negotiating and maintaining the hundreds of separate individual professional agreements.

23. On May 26, 1988, the Director, OCHAMPUS, and members of his staff met with representatives of the National Association of Psychiatric Treatment Centers for Children (NAPTCC) to review and discuss their proposed alternative payment system for CHAMPUS services. Although their proposal was not adopted, OCHAMPUS did agree to review and evaluate any future hard data that the NAPTCC might wish to submit regarding significant changes in the level of RTC care.

**Summary of Regulation Changes**

Pursuant to the Court's decision, OCHAMPUS is proceeding with the general notice of final rulemaking. The major provisions of the RTC reimbursement system are being incorported into the CHAMPUS regulation, along with the safeguards needed to ensure continued benefit access and quality of care. A provision is also being included which will ensure that CHAMPUS beneficiaries are not discriminated against solely on the basis of program payment methodology.

In the final rule, the all-inclusive per diem rate will still encompass the RTC's daily charge for RTC inpatient care and all mental health treatment determined necessary and rendered as part of the treatment plan established for the patient and accepted by OCHAMPUS. However, payment of geographically distant family therapy will be allowed outside the all-inclusive RTC rate because of the significant distance involved and the need for administrative flexibility. The family therapist may bill individually from the RTC if the therapy is provided to one or both of the parents residing a minimum of 250 miles from

the location of the RTC. Plans for distant family therapy must be documented in the patient's medical records. The RTC is still responsible for setting up the sessions and for making sure that there is collaboration between the parent's therapist and the child's therapist. Payment for geographically distant family therapy will be cost-shared on an inpatient basis, subject to the prevailing charge in the state in which the service was rendered. Payment of educational services will also be allowed outside the all-inclusive rate if it is not available from or payable by other local, state or federal governments. However, the amount paid shall not exceed the RTC's most favorable rate to any other patient, agency, or organization for educational services.

The all-inclusive rate includes charges for the routine medical management of a beneficiary while residing in an RTC. Services provided by medical professionals employed by or contracted with the RTC are part of the all-inclusive per diem rate and cannot be billed separately. These routine medical services are made available to all children entering the facility and are designed to maintain the general health and welfare of the patient population. Examples of this type of care are: (1) Routine health and physical examinations provided by RTC medical staff; (2) in-house pharmaceutical services; and (3) other ancillary medical services routinely provided to the RTC population.

Otherwise covered medical services related to a nonmental health condition and rendered by an independent provider outside the RTC are payable in addition to the all-inclusive per diem rate. This includes medical consultations, laboratory tests, radiology and pharmaceutical services. Professional charges for medical visits or consultations must be billed by the independent professional provider. The remaining ancillary charges may either be billed by the independent provider or through the RTC. However, if the RTC is billing for the service, it must identify the provider by name, the related medical diagnosis and the specific medical procedure rendered. For example, if a child was injured while playing basketball, he or she might need medical care for the injury or suspected injury. Another example is where a child has a serious ear infection and must see an Ear, Nose and Throat Specialist. The specialist would bill CHAMPUS directly for his or her service. The medication prescribed by the specialist may be billed through the RTC as long as the provider is identified. The billing must also include the specific medical diagnosis along with the name and strength of the medication. However, if the medication is routinely dispensed out of the RTC pharmacy or nurse's station it would fall under the all-inclusive rate.

Under the new reimbursement system, one of the following two alternative methods will be used in determining individual RTC rates:

*1. RTCs Participating in CHAMPUS During Base Period*

The per diem rate for an RTC participating in CHAMPUS during the base period of March 1, 1984, through February 28, 1985, will be based on the actual charging practices during that 12-month period. This base period was chosen: (1) Because it corresponded to the base period used in our previous study; and (2) because the drastic increase in RTC charges in the last three years could not be justified by national health care statistics. The individual RTC rate will be the lower of either the CHAMPUS rate in effect on February 28, 1985, or the rate high enough to cover at least one-third of the total patient days of care provided by the RTC during the 12 months ending February 28, 1985. Under either methodology, the rate will be subject to a maximum cap. These rates will be adjusted by annual inflation factors reflecting the national Consumer Price Index for Urban Wage Earners (CPI–U) for medical care for the 3-year period ending February 29, 1988.

*2. RTCs New to CHAMPUS After February 28, 1985*

For RTCs new to the CHAMPUS program, one of the following two alternative methods will be used in determining their individual rates:

A. The rates of RTCs which were in operation during the base period (March 1, 1984 through February 28, 1985) will be calculated based on the actual charging practices of the RTC during the 12 months ending February 28, 1985. The RTC's rate will be the lower of either the rate high enough to cover at least one-third of its total patient days of care provided during the 12 months and inflated by the CPI–U, or the OCHAMPUS determined, capped per diem.

B. The rates for RTCs which began operation after February 28, 1985, or began operation before February 28, 1985, but had less than 6 months of operation by February 28, 1985, will be based on the actual charging practices during their first 6 to 12 consecutive months, with 6 months being the minimum time in operation for certification under the CHAMPUS program. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available the rate will be recalculated. The rates would be calculated the same as in A above except a different base period would be used and the rate would be adjusted by appropriate annual CPI–U factors for medical care to bring it forward to February 29, 1988.

*3. Calculation of Capped Per Diem Amount*

The OCHAMPUS determined capped per diem amount was set at the 80th percentile of all established CHAMPUS rates, weighted by the total CHAMPUS days provided at each rate during the base period and adjusted by appropriate annual CPI–Us for medical care for the 3-year period ending February 29, 1988.

The annual CPI-U inflation factors are being used to update the RTC's individual rates, as well as the capped amount, because of the anticipated delay in their implementation.

All routine and special education costs are excluded from reimbursement except in individual cases where appropriate education is not available through other local, state, or federal agencies. Under the new educational provisions, RTCs will have greater responsibility for ensuring that beneficiaries take maximum advantage of their rights to a free and appropriate public education.

A provision is also being incorporated into the Regulation regarding therapeutic absences. Under this provision CHAMPUS will continue payment at the full per diem rate for approved absences not exceeding three calendar days. Those in excess of this time frame will be paid at 75 percent of the established daily charge beginning with the fourth day of absence.

There will be a grandfathering period for those CHAMPUS patients who are receiving care in an RTC at the time the new reimbursement methodology is adopted. To ensure continued care of these beneficiaries, payment at the current rate, including separate payment for professional services, will continue for all beneficiaries admitted prior to the implementation date, until discharge, transfer or until two months of care have elapsed, whichever occurs first.

Clarifying language is being adopted in the Regulation to further define the level of care provided in an RTC and to establish an appropriate age limit for beneficiaries receiving care in this type of facility.

We feel that the new participation requirements will not have a significant

economic impact on either the institutional or professional components of RTC treatment. The prospective reimbursement methodology was designed to take into account the individual circumstances of each RTC. All participating RTCs were asked to provide specific information concerning their charges, both professional and institutional. The professional charge data represented an average overall charge based on estimated utilization patterns for each facility. The all-inclusive nature of this new payment methodology will not prevent the treatment of RTC patients by community practitioners. The only change will be that community practitioners will look directly to the RTC, rather than to CHAMPUS, for reimbursement. The all-inclusive rate was adopted to ensure that professional services are not duplicated and are provided in accordance with established CHAMPUS standards.

**Regulatory Flexibility Act**

Less than 0.13 percent of CHAMPUS institutional providers and less than 0.04 percent of CHAMPUS individual professional providers will be affected by this amendment. Although several RTCs have expressed concerns over the new system and the potential impact on their method of doing business, approximately 80 percent of the currently approved RTCs have indicated that they will continue their participation in the program. A majority of CHAMPUS approved RTCs already bill their services on an all-inclusive basis. Since the net impact on both institutional and professional components of RTC care will not be significant, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

**List of Subjects in 32 CFR Part 199**

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Part 199, is proposed to be amended as follows:

**PART 199—[AMENDED]**

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Paragraph (b) of § 199.2 is amended by adding definitions for "all-inclusive per diem rate," "capped rate," and "mental health therapeutic absence" in alphabetical order as follows:

**§ 199.2 Definitions.**

* * * * *

(b) Specific definitions.

*All-Inclusive Per Diem Rate.* The OCHAMPUS determined rate that encompasses the daily charge for inpatient care and, unless specifically excepted, all other treatment determined necessary and rendered as part of the treatment plan established for a patient, and accepted by OCHAMPUS.

*Capped Rate.* The maximum per diem or all-inclusive rate that CHAMPUS will allow for care.

*Mental Health Therapeutic Absence.* A therapeutically planned absence from the inpatient setting. The patient is not discharged from the facility and may be away for periods of several hours to several days. The purpose of the therapeutic absence is to give the patient an opportunity to test his or her ability to function outside the inpatient setting before the actual discharge.

3. Section 199.4 is amended by revising paragraph (g)(6) to read as follows:

**§ 199.4 Basic Program benefits.**

* * * * *

(g) * * *

(6) *Therapeutic absences.* Therapeutic absences from an inpatient facility, except when such absences are specifically included in a treatment plan approved by the Director, OCHAMPUS, or a designee. For cost-sharing provisions refer to § 199.14, paragraph (f)(3).

* * * * *

4. Section 199.6 is amended by revising paragraphs (b)(4)(vii) introductory text, introductory text (b)(4)(vii)(A)(*1*), by removing paragraph (b)(4)(vii)(A)(*2*) and redesignating (b)(4)(vii)(A)(*3*) as (b)(4)(vii)(A)(*2*), by redesignating (b)(4)(vii)(A)(*4*) as (b)(4)(vii)(A)(*3*) and revising it, by adding a new paragraph (b)(4)(vii)(A)(*4*), by removing the note under (b)(4)(vii)(B), and by adding new paragraphs (b)(4)(vii)(C) (*6*) and (b)(4)(vii)(D).

**§ 199.6 Authorized providers.**

* * * * *

(b) * * *

(4) * * *

(vii) *Residential treatment centers.* A residential treatment center (RTC) is a facility, or distinct part of a facility, that provides to children and adolescents under the age of 21, a total, 24-hour therapeutically planned group living and learning situation where distinct and individualized psychotherapeutic interventions can take place. Residential treatment is a specific level of care to be differentiated from acute, intermediate and long term hospital care, where the least restrictive environment is maintained to allow for normalization of the patient's surroundings. The RTC must be both physically and programmatically distinct if it is a part or subunit of a larger treatment program. An RTC is organized and professionally staffed to provide residential treatment of mental disorders to children and adolescents who have sufficient intellectual potential to respond to active treatment (that is, for whom medical opinion or medical evidence can reasonably conclude that treatment of the mental disorder will result in an improved ability to function outside the RTC), for whom outpatient, partial hospitalization or other level of inpatient treatment is not appropriate, and for whom a protected and structured environment is medically or psychologically necessary.

(A) * * *

(*1*) Be accredited by the Joint Commission on Accreditation of Healthcare Organizations under the Consolidated Standards Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded;

* * * * *

(*3*) Have entered into a Participation Agreement with OCHAMPUS within which the RTC agrees, in part, to:

(*i*) Render residential treatment center inpatient services to eligible CHAMPUS beneficiaries in need of such services, in accordance with the participation agreement and the CHAMPUS regulation.

(*ii*) Accept payment for its services based upon the methodology provided in § 199.14, paragraph (f) or such other method as determined by the Director, OCHAMPUS;

(*iii*) Accept the CHAMPUS all-inclusive per diem rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in § 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*iv*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability, as defined in § 199.4;

(*v*) Comply with the provisions of Section 199.8, and submit claims first to all health insurance coverage to which

the beneficiary is entitled that is primary to CHAMPUS;

(*vi*) Submit claims for services provided to CHAMPUS beneficiaries at least every 30 days. If claims are not submitted at least every 30 days, the RTC agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS;

(*vii*) Designate an individual who will act as liaison for CHAMPUS inquiries. The RTC shall inform OCHAMPUS in writing of the designated individual;

(*viii*) Furnish OCHAMPUS with cost data certified to by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*ix*) Grant the Director, OCHAMPUS, or designee, the right to conduct quality assurance audits or accounting audits with full access to patients and records to determine the quality and cost-effectiveness of care rendered. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. This right to audit/review includes, but is not limited to:

(*aa*) Examination of fiscal and all other records of the RTC which would confirm compliance with the participation agreement and designation as an authorized CHAMPUS RTC provider;

(*bb*) Conducting such audits of RTC records including clinical, financial, and census records, as may be necessary to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided CHAMPUS beneficiaries;

(*cc*) Examining reports of evaluations and inspections conducted by federal, state and local government, and private agencies and organizations;

(*dd*) Conducting on-site inspections of the facilities of the RTC and interviewing employees, members of the staff, contractors, board members, volunteers, and patients, as required.

(*ee*) Audits conducted by the United States General Accounting Office.

(*4*) Be licensed and operational for a minimum period of six months.

* * * * *

(C) * * *

(*6*) The child's admission to the RTC is authorized by the Director OCHAMPUS, or designee.

(D) Under the terms of the participation agreement, RTCs must provide the following safeguards for continued benefit access and quality of care:

(*1*) Assure that any and all eligible beneficiaries receive care which complies with standards in paragraphs (b)(4)(vii)(A) (*1*) through (*4*) and (b)(4)(vii)(C);

(*2*) Provide inpatient services to CHAMPUS beneficiaries in the same manner it provides inpatient services to all other patients;

(*3*) Not discriminate against CHAMPUS beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or provisions of special or limited treatment.

* * * * *

5. Section 199.14 is amended by redesignating paragraphs (f), (g), and (h) as (g), (h), and (i), adding new paragraph (f), and by redesignating newly designated paragraph (g)(2) as (g)(3), and adding new paragraph (g)(2) to read as follows:

**§ 199.14 Provider reimbursement methods.**

* * * * *

(f) *Reimbursement of residential treatment centers.* The CHAMPUS rate is the per diem rate that CHAMPUS will authorize for all mental health services rendered to a patient and the patient's family as part of the total treatment plan submitted by a CHAMPUS-approved RTC, and approved by the Director OCHAMPUS, or designee.

(1) The all-inclusive per diem rate for RTCs operating or participating in CHAMPUS during the base period of March 1, 1984, through February 28, 1985, will be the lowest of the following conditions:

(i) The CHAMPUS rate paid to the RTC for all-inclusive services as of March 1, 1985, adjusted to include an increase reflecting the annual national Consumer Price Indices for Urban Wage Earners (CPI–U) for medical care for the 3-year period ending February 29, 1988; or

(ii) The per diem rate accepted by the RTC from any other agency or organization (public or private) or individual that is high enough to cover one-third of the total patient days during the 12-month period ending February 28, 1985, adjusted by the CPI–U; or

(iii) An OCHAMPUS determined capped per diem set at the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the base period discussed in (f)(1) above.

(2) The all-inclusive per diem rates for RTCs which began operation after February 28, 1985, or began operation before February 28, 1985, but had less than 6 months of operation by February 28, 1985, will be calculated based on the lower of the per diem rate accepted by the RTC that is high enough to cover one-third of the total patient days during its first 6 to 12 consecutive months of operation adjusted by the CPI–U, or the OCHAMPUS determined capped amount. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated.

(3) The first three days of each approved therapeutic absence will be allowed at 100 percent of the CHAMPUS determined all-inclusive per diem rate. Beginning with day four, reimbursement will be at 75 percent of that rate.

(4) All educational costs, whether they include routine education or special education costs, are excluded from reimbursement except when appropriate education is not available from, or not payable by, a cognizant public entity.

(i) The RTC shall exclude educational costs from its daily costs.

(ii) The RTC's accounting system must be adequate to assure CHAMPUS is not billed for educational costs.

(iii) The RTC may request payment of educational costs on an individual case basis from the Director, OCHAMPUS, or designee, when appropriate education is not available from, or not payable by, a cognizant public entity. To qualify for reimbursement of educational costs in individual cases, the RTC shall comply with the application procedures established by the Director, OCHAMPUS, or designee, including, but not limited to, the following:

(A) As part of its admission procedures, the RTC must counsel and assist the beneficiary and the beneficiary's family in the necessary procedures for assuring their rights to a free and appropriate public education.

(B) The RTC must document any reasons why an individual beneficiary cannot attend public educational facilities and, in such a case, why alternative educational arrangements have not been provided by the cognizant public entity.

(C) If reimbursement of educational costs is approved for an individual beneficiary by the Director, OCHAMPUS, or designee, such educational costs shall be shown separately from the RTC's daily costs on the CHAMPUS claim. The amount paid shall not exceed the RTC's most-favorable rate to any other patient, agency, or organization for special or general educational services whichever is appropriate.

(D) If the RTC fails to request CHAMPUS approval of the educational costs on an individual case, the RTC agrees not to bill the beneficiary or the beneficiary's family for any amounts

disallowed by CHAMPUS. Requests for payment of educational costs must be referred to the Director, OCHAMPUS, or designee for review and a determination of the applicability of CHAMPUS benefits.

(5) Any future adjustments to the RTC rates will be limited to annual changes in the CPI–U for medical care, at the discretion of the Director, OCHAMPUS, or designee.

* * * * *

(g) * * *

(2) *All-inclusive rate.* Claims from individual health-care professional providers for services rendered to CHAMPUS beneficiaries residing in an RTC that is either being reimbursed on an all-inclusive per diem rate, or is billing an all-inclusive per diem rate, shall be denied; with the exception of independent health-care professionals providing geographically distant family therapy to a family member residing a minimum of 250 miles from the RTC or covered medical services related to a nonmental health condition rendered outside the RTC. Reimbursement for individual professional services is included in the rate paid the institutional provider.

* * * * *

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 27, 1988.

[FR Doc. 88–17228 Filed 7–29–88; 8:45]

BILLING CODE 3810–01–M

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**Coast Guard**

**33 CFR Part 117**

**[CGD7–88–22]**

## Drawbridge Operation Regulations; Harbor River, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule—Revocation.

**SUMMARY:** This amendment revokes the regulations for the U.S. 21 drawbridge across the Harbor River, mile 0.6 near Beaufort, South Carolina. This action is being taken at the request of the bridge owner. Notice and public procedure have been omitted from this action due to the lessening of the impacts on navigational interests.

**EFFECTIVE DATE:** This rule becomes effective on August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Pruitt, Bridge Administration Specialist, Seventh Coast Guard District, (305) 536–4103.

*Drafting Information:* The drafters of this rule are Mr. Gary Pruitt, Bridge Administration Specialist, Project Officer, and Lieutenant Commander S.T. Fuger, Jr., Project Attorney.

**SUPPLEMENTARY INFORMATION:** This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge that has 24-hour bridge tender service and opens on signal. Consequently, this action is considered to be non-major under Executive order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact a full regulatory evaluation is unnecessary.

Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## Part 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

**§ 117.931 [Removed]**

2. Section 117.931 is removed.

Dated: July 19, 1988.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 88–17200 Filed 7–29–88 8:45 am]

BILLING CODE 4910–14–M

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**VETERANS ADMINISTRATION**

**38 CFR Part 21**

## Veterans Education; Clarification of Mitigating Circumstances

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The law requires that the Veterans Administration (VA) not pay a veteran for a course from which he or she withdraws without mitigating circumstances. When he or she withdraws with mitigating circumstances, the veteran is paid through the date of withdrawal. In the course of administering the various veterans' education programs the VA has established a policy of considering the circumstances surrounding a withdrawal during a drop-add period to have been mitigating. However, this policy has not appeared in the appropriate regulations. These amended regulations correct this oversight and inform the public of the way in which the VA is administering this provision of law.

**EFFECTIVE DATE:** July 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2092.

**SUPPLEMENTARY INFORMATION:** On pages 5806 and 5807 of the **Federal Register** of February 26, 1988, there was published a notice of intent to amend Part 21 to state additional circumstances which the VA considers to be mitigating when a veteran or eligible person withdraws from a course. Interested people were given 32 days to submit comments, suggestions or objections. The VA received no comments, suggestions or objections. Accordingly, the agency is making the amended regulations final.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no

significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the programs affected by these regulations are 64.111 and 64.117.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs-education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 11, 1988.

**Thomas K. Turnage,**
*Administrator.*

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended as follows:

**PART 21—[AMENDED]**

1. In § 21.4136, paragraph (l)(4) is added to read as follows:

**§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.**

* * * * *

(l) *Mitigating circumstances.* * * *

(4) If the student withdraws from a course during a drop-add period, the VA will consider the circumstances which caused the withdrawal to be mitigating. Veterans who withdraw from a course during a drop-add period are not subject to the reporting requirement found in paragraph (k)(1)(ii) of this section.

Authority: 38 U.S.C. 1780(a)

* * * * *

2. In § 21.4137, paragraph (h)(4) is added to read as follows:

**§ 21.4137 Rates; education assistance allowance; 38 U.S.C. Chapter 35.**

* * * * *

(h) *Mitigating circumstances.* * * *

(4) If an eligible person withdraws from a course during a drop-add period, the VA will consider the circumstances which caused the withdrawal to be mitigating. Eligible persons who withdraw from a course during a drop-add period are not subject to the reporting requirement found in paragraph (h)(1)(ii) of this section.

Authority: 38 U.S.C. 1780(a)

* * * * *

[FR Doc. 88-17227 Filed 7-29-88; 8:45 am]
BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A-1-FRL-3421-5]**

## Approval and Promulgation of Air Quality Implementation Plans, Connecticut; Reasonably Available Control Technology for American Cyanamid Co.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from American Cyanamid Company in Wallingford, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective August 31, 1988.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

**FOR FURTHER INFORMATION CONTACT:** David B. Conroy, (617) 565-3252; FTS 835-3252.

**SUPPLEMENTARY INFORMATION:** On November 4, 1987 (52 FR 42325), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8012 as a revision to the Connecticut SIP. The final State Order was submitted by Connecticut as a formal SIP revision on February 5, 1988. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on American Cyanamid Company as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8012 and has determined that the level of control required by this Order represents RACT for American Cyanamid. American Cyanamid produces polymers at its Wallingford Plant. American Cyanamid has three distinct areas which are subject to the requirements of subsection 22a-174-20(ee) of Connecticut's regulations. The three areas are the Thermoplastics Department (Buildings #1OS and and #1OA), the Thermosetting Department (Building #1), and the Resins Department (Buildings #5 and #6). As RACT, the State Order requires American Cyanamid to install air pollution control equipment on any VOC emission sources at its Wallingford facility with maximum potential VOC emissions in excess of forty pounds per day or five thousand pounds per year Each piece of air pollution control equipment is required to demonstrate a minimum overall VOC reduction of eighty-five percent. Additionally, the State Order requires American Cyanamid to upgrade any of its existing air pollution control equipment that is not achieving a minimum overall VOC reduction of eighty-five percent. All such existing pollution control equipment must be upgraded to also achieve a minimum overall VOC reduction of eighty-five percent.

The State Order exempts any source at American Cyanamid's Wallingford facility which emits less than forty pounds of VOC per day and five thousand pounds of VOC per year from these RACT requirements. This exemption is consistent with the provisions of subsection 22a-174-20(aa) of Connecticut's regulations which was approved by EPA on October 14, 1984 (49 FR 41026). For purposes of determining which of the facility's sources are exempt from meeting RACT, American Cyanamid must aggregate

similar or identical VOC emission points. For each source that is exempt from meeting RACT, the DEP has imposed an enforceable daily cap in pounds VOC per day. That daily cap is forty pounds VOC per day for sources whose potential emissions are greater than 40 pounds per day but actual emissions are less than 40 pounds per day. For sources with both potential and actual VOC emissions of less than 40 pounds per day, the daily cap has been set at a level of the source's current potential VOC emissions.

State Order No. 8012 also requires American Cyanamid to implement a fugitive leak detection program on all of its processes. This program will reduce VOC leaks from valves, pumps, compressors and safety relief valves at American Cyanamid.

American Cyanamid is required to comply with all of the requirements of the State Order by December 31, 1987, which is the final compliance date of subsection 22a–174–20(ee) of Connecticut's regulations. Other specific requirements of the State Order and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

**Final Action**

EPA is approving Connecticut State Order No. 8012 as a revision to the Connecticut SIP. The provisions of State Order No. 8012 define and impose RACT on American Cyanamid Company to control VOC emissions as required by subsection 22a–174–20(ee) of Connecticut's regulations.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 1988. This action may not be challenged later in proceedings to enforce requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 25, 1982.

Dated: July 25, 1988.

**Lee M. Thomas,**

*Administrator.*

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart H—Connecticut**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.370 is amended by adding paragraph (c)(43) to read as follows:

**§ 52.370 Identification of plan.**

* * * * *

(c) * * *

(43) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 5, 1988.

(i) *Incorporation by reference.* (A) Letter from the Connecticut Department of Environmental Protection dated February 5, 1988 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8012 and attached Compliance Timetable, Appendix A (allowable limits on small, uncontrolled vents), and Appendix B (fugitive leak detection program) for American Cyanamid Company in Wallingford, Connecticut. State Order No. 8012 was effective on January 6, 1988.

(ii) *Additional materials.* (A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 88–17113 Filed 7–29–88; 8:45 am]

BILLING CODE 6560–50–M

## GENERAL SERVICES ADMINISTRATION

**48 CFR Parts 505, 514 and 525**

**[Acquisition Circular AC–88–2]**

**Changes to the Government Procurement Code**

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Temporary rule.

**SUMMARY:** This Acquisition Circular temporarily amends Parts 505, 514 and 525 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to implement Item II of Federal Acquisition Circular 84–38, published in the **Federal Register** on July 20, 1988. Item II of the FAC revised the Federal Acquisition Regulation (FAR) to implement amendments to the Agreement on Government Procurement that were negotiated by the United States Trade Representative. The intended effect is to implement Item II of FAC 84–38 and to provide guidance to GSA contracting activities pending a permanent revision to the regulation.

**DATES:** *Effective Date:* August 1, 1988.

*Expiration Date:* August 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Linfield, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4770.

**SUPPLEMENTARY INFORMATION:** This rule was not published in the **Federal Register** for public comment because it merely implements a higher level issuance by deleting material that conflicts with material in the FAR. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply deletes material which conflicts with the FAR, as amended by Item II of FAC 84–38 regarding amendments to the Agreement on Government Procurement. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**List of Subjects in 48 CFR Parts 505, 514 and 525**

Government procurement.

1. The authority citation for 48 CFR Parts 505, 514 and 525 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).

2. 48 CFR Parts 505, 514 and 525 are amended by the following Acquisition Circular.

**General Services Administration Acquisition Regulation Acquisition Circular (AC–88–2)**

July 22, 1988.

To: All GSA contracting activities.

*Subject:* Changes to the Government Procurement Code.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services

Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12), to implement Item II of Federal Acquisition Circular 84–38, published in the Federal Register on July 20, 1988. Item II of the FAC revised the Federal Acquisition Regulation (FAR) to implement amendments to the Agreement on Government Procurement which were negotiated by the United States Trade Representative.

2. *Background.*

a. Final acceptance of certain amendments to the Agreement on Government Procurement was agreed to by all parties to the Agreement by November 16, 1987. Coverage of these amendments under Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511–2518) and 3 U.S.C. 301 became effective on February 14, 1988. FAC 84–38 makes two principal changes to FAR 25.4; first, it extends the application of the Trade Agreements Act to cover leases and rental of designated country end products, as well as purchases, and second, it determines applicability of the Trade Agreements Act coverage is to be based upon the total estimated value of the acquisition including the value of any options, *not* the estimated value of a particular product. In determining whether the threshold of the Trade Agreements Act is met, contracting officers shall consider the total estimated value of all items or products, inclusive of any options, listed in the solicitation, i.e., if the estimated value of all items or products and any options listed in the solicitation equals or exceeds the dollar threshold, the Trade Agreements Act applies to any item or product included in the solicitation.

b. Changes were also made in FAR Parts 5, 14, 15 and 17. FAR 5.301 was amended to include a requirement for publication in the *Commerce Business Daily* of notices synopsizing awards exceeding $25,000, subject to the Trade Agreements Act, not later than 60 days after award. FAR 14.408–1 and 15.1001 were amended to require that for acquisitions subject to the Trade Agreements Act, written notification be given to unsuccessful offerors from designated countries within seven working days after contract award. Under sealed bidding, the written notification must include the following information (1) that their offers were not accepted (2) that a contract has been awarded (3) the dollar amount of the successful offer, and (4) the name and address of the successful offeror. FAR 15.1001(c)(2) requires that the written notification include the same information provided to other unsuccessful offerors (see FAR 15.1001(c)(1)). FAR 17.203 was revised to reflect the addition at FAR 25.402(a)(4) of the requirement to include the estimated value of any options in determining the applicability of the Trade Agreements Act threshold to a particular acquisition.

3. *Effective date.* August 1, 1988. Also solicitations issued on or after February 14, 1988, and for which the date established for receipt of offers is on or after August 1, 1988, shall be amended, as appropriate, to notify offerors of the application of the revised procedures.

4. *Expiration date.* This Acquisition Circular expires August 1, 1989.

5. *Reference to regulation.* Sections 505.301, 514.408–1, 525.401, and 525.402–70 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.*

**505.30 [Removed]**

a. Section 505.301 is removed.

b. Section 514.408–1 is revised to read as follows:

**§ 514.408–1 Award of unclassified contracts.**

The GSA Form 3577, Notification of Contract Award, may be used to notify all unsuccessful bidders other than (1) any apparent low bidder(s) or (2) unsuccessful bidders from designated countries for acquisitions subject to the Trade Agreements Act.

**525.401 [Removed]**

**525.402–70 [Removed]**

c. Sections 525.401 and 525.402–70 are removed.

**Richard H. Hopf, III,**

*Acting Associate Administrator for Acquisition Policy.*

[FR Doc. 88–17195 Filed 7–29–88; 8:45 am]

BILLING CODE 6820–61–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 80477–8140]

### 50 CFR Part 215

### Subsistence Taking of North Pacific Fur Seals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA Commerce.

**ACTION:** Final notice of harvest levels.

**SUMMARY:** Regulations on subsistence taking of North Pacific fur seals require NMFS to annually publish a summary of the previous year's fur seal harvest, and a discussion of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands. NMFS published this notice on May 18, 1988. Following a 30-day public comment period, NMFS is publishing a final notice of the expected harvest levels for 1988, as follows:

St. George Island: 600–725
St. Paul Island: 1,800–2,200

**EFFECTIVE DATE:** June 30, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steven Zimmerman, 907–586–7233 or Georgia Cranmore, 202–673–5351.

**SUPPLEMENTARY INFORMATION:**

**Background**

The subsistence harvest of North Pacific (northern) fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR Part 215 Subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilovians using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The following subsistence harvest levels have been recorded on the Pribilof Islands since 1985:

| | St. Paul Island | St. George Island | Total |
|---|---|---|---|
| 1985 | 3,384 | 329 | 3,713 |
| 1986 | 1,299 | 124 | 1,423 |
| 1987 | 1,710 | 92 | 1,802 |

NMFS published a proposed notice summarizing 1987 harvest data and proposing an estimated 1988 harvest range of 1,800—2,500 on St. Paul Island, and 600—825 on St. George Island (53 FR 17733, May 18, 1988).

**Response to Public Comments**

On June 15, 1988, at the request of the Humane Society of the United States, NMFS held a meeting to discuss the 1988 harvest. The following groups were represented:

Tanadgusix Corporation of St. Paul Island
Monitor
Humane Society of the United States
Greenpeace
Friends of Animals/Committee for Humane Legislation
Center for Environmental Education

During the public comment period, the following groups provided written comments:

Tanadgusix Corporation of St. Paul Island
Humane Society of the United States
Friends of Animals/Committee for Humane Legislation
The Wildlife Legislative Fund of America
Center for Environmental Education

(1) Extension of the Harvest Season

Most comments centered on the option, provided in 50 CFR 215.32(f)(2),

of extending the harvest season beyond August 8. After the first week in August, the rigid segregation of seals on the islands by age and sex begins to break down and young female seals comingle with the harvestable subadult males. Females can be mistaken for males and harvested accidentally. Any taking of female seals must be considered significant to the long term recovery of this declining species. Thus, safeguards have been included in the regulations (See 50 CFR 216.32(f)(2) (ii) and (iii) that require NMFS to terminate the harvest if, during the extension period, too many female seals are accidentally taken. These safeguards were triggered in 1986 and 1987 when extensions of the harvest season were granted to St. Paul Island; and the harvests terminated on the first day of each extension.

Environmental groups that commented on the proposed notice strongly objected to the harvest extension option because it has been shown to result in the taking of female seals. Counsel to the Tanadgusix Corporation (TDX) argues, on the other hand, that delays in granting extensions are responsible for harvests in September; whereas, it has not yet been demonstrated that a harvest after August 8 but before September 2 will result in the take of female seals. Environmental groups have noted that a delay in the start of the harvest, because of fishing or other more pressing interests on St. Paul Island, continues to result in requests for extensions of the season.

As discussed in the 1986 preamble to the final rule on subsistence taking (51 FR 24838, July 9, 1986), and in the 1987 final harvest notice (52 FR 26481, July 15, 1987), NMFS added the harvest extension option at the request of the Pribilovians to accommodate a "family-style" harvest that would take fewer seals per day over a longer period of time. On St. Paul Island, however, harvesting has been confined to weekdays between July 14–August 8 during the 1986 and 1987 harvest seasons, although harvesting was authorized for each day starting on June 30. On St. George, harvests occurred on 4 days in 1986 and 2 days in 1987.

Because of the demonstrated risk of taking females after August 8, the observed inability of harvesters to distinguish young males from females, and the absence of a "family-style" harvest strategy on the Pribilof Islands, NMFS intends to propose an amendment to 50 CFR 216.32(f) that would eliminate the extension option for 1989 and subsequent years. During 1988, any request for an extension beyond August 8 will be responded to within 2 weeks of the receipt of a written request that contains the following information: (1) Reasons why subsistence needs could not be met before August 8, (2) number of subsistence users needing seal meat, (3) number of additional seals requested, (4) number of days needed to complete remaining harvesting, (5) disposition of previously harvested seal meat, and (6) disposition of harvest by-products. This request for an extension is not subject to OMB review under the Paperwork Reduction Act, which does not apply to fewer than ten identical reporting requirements, because no more than two of these requests are expected this year.

(2) Efficiency of Butchering

Environmental groups complained of a decrease in percent-utilization (i.e., the percent by weight of meat removed per carcass). In 1986, percent-utilization was 47.2 and, in 1987, it was 41.1. These groups noted that NMFS referred in the proposed notice to "the mean range between minimally butchered and maximally butchered seals" as "29.1 and 53.3 percent of the initial carcass weight." NMFS continues to encourage the Pribilovians to improve their use of harvested seals. The discussion in the proposed notice was not intended to imply a change in our position. Utilization rates of seal meat must be considered in any decision on subsistence needs estimates.

(3) Commercial Aspects of the Harvest

Two groups mentioned that, in 1987, TDX paid workers to kill seals and process the skins for eventual sale. One group commented as follows:

> Either harvest of fur seals is a traditional activity that provides a source of food in the category of "subsistence," or it is a planned and orchestrated commercial activity that provides cash employment for otherwise unoccupied workers. It can't be both.

This group further commented that the requirement in the regulations for "experienced sealers," which in their view may be responsible for the commercialization of the subsistence harvest, should be reconsidered.

Section 215.32(c)(2) requires, among other things, that "No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination." This requirement is based on reports and recommendations of veterinarians observing the commercial harvests (which ended in 1984). It is NMFS's intention to maintain the same high standards of harvesting that resulted in humane and efficient commercial harvests. NMFS had hoped, however, that in the four years since the commercial harvests ended, experienced sealers, overseeing those less experienced in these methods, would pass on their skills to individuals interested in subsistence sealing for food. NMFS will survey subsistence sealers to determine whether or not this process is occurring and will continue to encourage the sharing of humane harvesting skills.

Two groups commented that legislative proposals to allow the sale of subsistence skins provide incentive for harvesting above subsistence needs for food. TDX strongly disagrees. One group criticized NMFS for endorsing an amendment to the MMPA to allow commercial sale of fur seal skins.

(4) Harvest Level Estimates

One group believes that no killing of fur seals is justified. Another group endorsed the harvest estimates in the proposed notice, but thought that sale of the skins should be allowed. One group provided a range estimate of 925–1,390 for St. Paul Island. TDX commented that the lower bound (1,800) is "too low" for current economic conditions, but provided no alternative estimates. NMFS concludes that the proposed lower bound (i.e., 1,800 seals) remains the best estimate of subsistence needs, but lowers the upper bound from 2,500 to 2,200 based on the results of 1986 and 1987 harvests. As in previous years, St. George Island subsistence needs are estimated as no more than one-third of St. Paul Island.

Dated: July 26, 1988.

**James W. Brennan,**

*Assistant Administrator for Fisheries.*

[FR Doc. 88–17299 Filed 7–29–88; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 147
Monday, August 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Ch. I

**[Summary Notice No. PR-88-7]**

## Petition for Rulemaking; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 3, 1988.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 26, 1988.

**Denise D. Hall,**

*Manager, Program Management Staff.*

### PETITIONS FOR RULEMAKING

| Docket No. | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| 24913 | General Aviation Manufacturers Association. | Part 91 | To require a supplementary (backup) power source for vacuum/pressure-driven gyroscopic flight instruments on what the petitioner characterizes as "high risk" airplanes flown in instrument meteorological conditions. *DENIED July 13, 1988.* |

[FR Doc. 88-17203 Filed 7-29-88; 8:45 am]
BILLING CODE 4910-13-M

### 14 CFR Parts 21 and 23

**[Docket No. 059CE, Notice No. 23-ACE-43]**

## Special Conditions; Modified Cessna Model 414A Airplanes With TCM TSIOL-550 Engines Installed

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Special Conditions.

**SUMMARY:** This notice proposes special conditions for modified Cessna Model 414A airplanes with TCM TSIOL-550 engines installed. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of the TCM TSIOL-550 engines, which incorporates liquid-coolant systems for which the applicable regulations do not contain adequate or appropriate temperature indicator requirements. This notice contains the additional airworthiness requirements which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATE:** Comments must be received on or before August 31, 1988.

**ADDRESS:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 059CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 059CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Oscar Ball, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket No. 059CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Background**

On January 5, 1988, RAM Aircraft Corporation, Post Office Box 5219, Waco, Texas 76708, made application to the FAA for supplemental type certificate (STC) approval on the type design changes necessary to incorporate the Teledyne Continental Motors (TCM) TSIOL–550 engines in the Cessna Model 414A airplane. The TCM TSIOL–550 engines are liquid-cooled replacements for the currently installed air-cooled engines.

**Type Certification Basis**

The proposed type certification basis for the RAM modified Cessna Model 414A is as follows: Part 3 of the Civil Air Regulations (CAR), dated May 15, 1956, as amended by 3–1 through 3–5 and 3–8, excluding the following portions: Subpart B and §§ 3.356, 3.357, 3.358, 3.359, 3.411, 3.429, 3.433, 3.434, 3.435, 3.436, 3.437, 3.445, 3.581, 3.582, 3.583, 3.584, 3.585, 3.587, 3.628, 3.666, 3.672, 3.673, 3.674, 3.675, 3.700(c), 3.728, 3.767(a), and 3.767(b). Include the following portions of Part 23 of the FAR, dated February 1, 1965, as amended by 23-1 through 23–14: Subpart B and §§ 23.729, 23.901, 23.909, 23.951, 23.954, 23.955, 23.959, 23.973, 23.1041, 23.1043, 23.1047, 23.1143, 23.1305, 23.1387(e), 23.1435 and 23.1557(c); as amended by 23–1 through 23–21, § 23.1385(c); as amended by 23–1 through 23–23, § 23.1327. Add § 23.1559(b) for Model 414A only. Findings of Equivalent Level of Safety were made for CAR 3.637, 3.757, and 3.778(a).

Also, Part 36, as applicable, and any special conditions resulting from this notice.

**Discussion**

Liquid-cooled engines have been used in airplanes since the beginning of manned flight. Early airworthiness standards contained requirements for both liquid-cooled and air-cooled engine installations. These requirements continued in place through a number of rule changes and into CAR 3. When CAR 3 was recodified into Part 23, the requirement for a coolant temperature indicator for each liquid-cooled engine was inadvertently omitted.

Since there have been few, if any, liquid-cooled engines installed in Part 23 airplanes, there has been no reason for a rule change. However, the lack of such requirement was noted during a Part 23 airworthiness review. A requirement for a coolant temperature indicator for each liquid-cooled engine has been identified as a result of the Small Airplane Airworthiness Review Program. A Notice of Proposed Rulemaking (NPRM) is currently being prepared for public comment to incorporate this feature.

Current Part 23 contains adequate installation requirements for the coolant system except for the temperature indicator. A special condition is proposed to require a coolant temperature indicator for each liquid-cooled engine installed under the provisions of this proposed STC.

**Federalism Implications**

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

**Conclusion**

In view of the design features discussed above, the following special conditions are proposed for the propulsion system of the Cessna Model 414A airplanes, with TCM TSIOL–550 engines installed, under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in this special condition.

**List of Subjects in 14 CFR Parts 21 and 23**

Aircraft, Air transportation, Aviation safety, and Safety.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the RAM modified Cessna Model 414A airplanes with TCM TSIOL–550 engines installed:

1. The authority citation for these proposed special conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

2. In addition to the requirements of § 23.1305, a coolant temperature indicator is required for each liquid-cooled engine.

Issued in Washington, DC, on July 20, 1988.

**Thomas E. McSweeny,**

*Acting Director of Airworthiness.*

[FR Doc. 88–17204 Filed 7–29–88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-ASO-8]**

## Proposed Amendment to Transition Area, Monroe, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the transition area, Monroe, North Carolina, by deleting an arrival area extension. The Wesley RBN has been relocated off-airport and the NDB RWY 23 standard instrument approach procedure, which required the arrival area extension, has been cancelled. If approved, this action will raise the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area.

**DATE:** Comments must be received on or before September 1, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 88–ASO–8, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to

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participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASO–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Monroe, North Carolina, transition area by deleting an arrival area extension. The NDB RWY 23 standard instrument approach procedure, which required the arrival area extension, has been cancelled. This action will raise the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**The proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. § 71.181 is amended as follows:

**Monroe, NC [Amended]**

By deleting the phrase, "within 3 miles each side of the 057° bearing from the Wesley RBN (Latitude 35°01'25" N., Longitude 80°37'01" W.), extending from the 6.5-mile radius to 8.5 miles northeast of the RBN.," from the present description.

Issued in East Point, Georgia, on July 15, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 88–17207 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–13–M

**Coast Guard**

**33 CFR Part 165**

**[Docket No. CGD5 88–41]**

## Safety Zone; Chesapeake Bay, Off Fort Story, Virginia Beach, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of Proposed Rule Making.

**SUMMARY:** The Coast Guard is considering a proposal to establish a safety zone around a U.S. Navy salt water offshore-onshore transfer exercise in the Naval Restricted Area of the Chesapeake Bay off of Fort Story in Virginia Beach, Virginia. The exercise is scheduled to begin August 14, 1988 and end August 30, 1988. The proposed safety zone is intended to minimize the risk of collision between Naval exercise transfer hoses/vessels/associated equipment and other vessels. Vessels and individuals will be required to obtain permission from the Captain of the Port or one of his designated representatives before entering the safety zone.

**DATE:** Comments must be received on or before August 5, 1988.

**ADDRESSES:** Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia 23510–1888. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M.W. Carr at the above address, telephone number (804) 441–3299.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 553 a notice of proposed rulemaking is not required for military operations. However, in the interest of public safety and the proximity of the exercise to commercial and pleasure vessel activity, a comment period is being provided. Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD5 88–41), the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this

proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this notice are Lieutenant M.W. Carr, project officer, and Capital R.J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Proposed Regulations**

The proposed safety zone would be in effect during the deployment and retrieval of the offshore-onshore transfer hoses. It would be a "moving safety zone," extending 250 yards in all directions from the transfer hoses and the vessels and equipment used to deploy and retrieve the hoses. When fully deployed, the transfer hoses will run about ¾ of a mile from position located at approximately latitude 36°56'43" North, longitude 076°01'30" West, where they will be attached via a mooring buoy to the USNS OSPREY, to the adjacent shoreline at Fort Story, Virginia Beach, Virginia. The outside diameter of a transfer hose will be approximately eight inches. While the transfer hose is being deployed or retrieved it will be partially submerged and will constitute a danger to navigation. The safety zone will be in effect during these periods.

After the deployment is complete, the hose will be filled with salt water and sink to the bottom. At that time, vessels will be able to safely transit over the area where the hose is deployed on the bottom. The safety zone will not be needed or in effect during this period.

Once completely stowed onboard an exercise vessel after being retrieved, the hose will no longer pose a danger to navigation, and the safety zone will not be in effect. It is now anticipated that 2 transfer hoses will be deployed and retrieved on 2 separate occasions over a 16 day period between August 14 and 30, 1988.

It is estimated that deployment and retrieval of the hoses will take a maximum of one day for each operation. In between the deployments and retrievals, and transfer hose will rest on the bottom.

The Navy offshore-onshore salt water transfer exercise is a part of a joint U.S. Army-Navy multi-ship amphibious exercise in the same area.

Mariners would be provided advance notice of scheduled deployment and retrieval of the transfer hoses via marine radio broadcast Notice to Mariners.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on federal regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area of this exercise is not in a main channel and ordinarily not travelled by deep draft marine traffic. In addition, this area is in a restricted area, regulated under 33 CFR 207.158. Vessels are prohibited from anchoring, trawling, crabbing, fishing, and dragging in the area. It is expected that the vast majority of marine traffic that would be affected by this proposed safety zone would be recreational boaters and commercial fishermen in transit to or from the Atlantic Ocean. The small detour by pleasure boaters or commercial fishermen around the area during the deployment and retrieval of the transfer hoses should not constitute a significant or adverse economic impact. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 165**

"Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways"

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5

2. Section 165.T0540 is added to read as follows:

**§ 165.T0540 Safety Zone: Chesapeake Bay, off Fort Story, Virginia Beach, Virginia.**

(a) Location: The following areas are a safety zone: The waters within 250 yards of all offshore-onshore transfer hoses used or to be used during a seawater transfer exercise between the USNS OSPREY and the adjacent shoreline at Fort Story, Virginia Beach, Virginia; the USNS OSPREY; and any other vessels, buoys, moorings, and equipment associated with the deployment, retrieval, or marking of the offshore-onshore transfer hoses. (The USNS OSPREY is anchored at a position at approximately latitude 36°56'43" North, longitude 076°01'30" West.)

(b) Regulations: Except for participants in the joint Navy/Army multi-ship amphibious exercise, no person or vessel may enter or remain in the safety zone without the permission of the Captain of the Port or one of his designated representatives.

(c) *Effective Dates:* This regulation is effective during periods when the offshore-onshore transfer hoses are being deployed and retrieved by the USNS OSPREY, between 7:00 a.m., EDST, on August 14, 1988, until 7:00 p.m., EDST, on August 30, 1988. The actual times that the safety zone will be in effect will be announced by Marine Broadcasts Notice to Mariners.

Dated: July 20, 1988.

**L.C. Burger,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 88–17201 Filed 7–29–88; 8:45 am]

BILLING CODE 491-014-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

### Big Cypress National Preserve, Florida; Indian Use and Occupancy Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule; extension of public comment.

**SUMMARY:** On May 10, 1988, the National Park Service published proposed regulations in the **Federal Register** (53 FR 16561) to define the statutory rights granted to the members of the Miccosukee and Seminole Tribes of Indians of Florida in Pub. L. 93–440 (16 U.S.C. 698f et seq.). Written comments, suggestions, or objections were accepted until July 11, 1988. Due to public request, the public comment period has been extended for an additional thirty (30) days.

**DATES:** Written comments, suggestions, or objections will be accepted on or before August 31, 1988.

**ADDRESS:** Comments should be directed to: Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, FL 33943.

**FOR FURTHER INFORMATION CONTACT:** Fred J. Fagergren, Superintendent, Big Cypress National Preserve, Telephone: (813) 696–2000.

Date: July 19, 1988.

**Robert L. Deskins,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 88-17218 Filed 7-29-88; 8:45 am]

BILLING CODE 4310-70-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[FRL-3421-7]**

## Hazardous Waste Management System, Identification and Listing of Hazardous Waste; New Data and Use of These Data Regarding the Establishment of Regulatory Levels for the Toxicity Characteristic; and Use of the Model for the Delisting Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of data availability and request for comments; supplement to proposed rule.

**SUMMARY:** On June 13, 1986, the Environmental Protection Agency proposed to amend its hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) by modifying the existing Toxicity Characteristic used by waste generators in determining whether their solid wastes are hazardous. As proposed in 1986, the revised Toxicity Characteristic (TC) was based, in part, on compound-specific dilution/attenuation factors (DAFs) that were derived from a subsurface fate and transport model for each of the organic constituents.

Today's notice presents new data related to Subtitle D municipal landfills, soil data, and chemical-specific data that may be used in the ground-water model to calculate DAFs for each of the organic constituents in the TC. These new data became available to the Agency after the TC was originally proposed. In addition, in considering using this data and in response to comments on the June 13, 1986 TC proposal, the Agency is also considering making a number of changes to the model. Therefore, we present the new data that may be used in conjunction with these proposed changes to the model.

The Agency specifically solicits comments on the use of the new data and the proposed modifications to the fate and transport model. (It should be noted that on May 19, 1988 (53 FR 18024), the Agency published a Notice of Data availability. That Notice indicated that the Agency was also considering the use of generic DAFs (instead of determining the DAFs based on specific fate and transport model) and specifically requested comments on the use of generic DAFs. The Agency will not decide on whether to use generic or model-based DAFs until we have evaluated all the comments received on the May 19, 1988 Notice; in the meantime, the Agency is making available for comment the new data for use in the model along with several modifications to the model).

The Agency also requests comments on the possible use by the Delisting Program of the same ground-water model that has been proposed to be used for the Toxicity Characteristic.

**DATE:** EPA will accept public comments on this notice until August 31, 1988.

**ADDRESSES:** One original and three copies of all comments, identified by the Docket Number F-88 TC3N-FFFFF, should be sent to the following address: EPA RCRA Docket (S-212), U.S. Environmental Protection Agency (WH-562), 401 M Street SW., Washington, DC 20460. The EPA RCRA docket is located in the sub-basement area at the above address, and is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal Holidays. To review docket materials, members of the public must make an appointment by calling (202) 475-9327. Material may be copied at a cost of $0.15/page.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline by calling (800) 424-9346 toll-free, or (202) 382-3000. For information on the general aspects of this notice, contact John W. Goodrich-Mahoney (202) 475-8551, for information on the use of models in delisting, contact Scott Maid (202) 382-4783, and for information on the technical aspects concerning the model, contact Dr. Zubair Saleem (202) 382-4770, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

**SUPPLEMENTARY INFORMATION:** The contents of today's notice are listed in the following outline:

I. Background
II. Discussion of New Data and Modifications to the Model
A. Introduction
b. Modifications to the Model
1. Unsaturated Zone
2. Location of the Receptor Well
3. Dispersivity Values
C. Use of New Data
1. Use of Hydrogeologic Data Related to Subtitle D Municipal Landfills
2. Use of Soil and Climatic Data
3. Use of Chemical-Specific Data
III. Possible Use by the Delisting Program
IV. Request for Comments
V. Reference

### I. Background

Section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to identify wastes that pose a substantial hazard to human health and the environment, if the wastes are improperly managed. One means for doing this is through the identification of characteristics of hazardous wastes. In fact, the Agency has already promulgated four hazardous waste characteristics—namely, toxicity, ignitability, corrosivity, and reactivity. In developing the toxicity characteristic, the Agency evaluated and developed reasonable mechanisms by which harm to human health or the environment might occur, then developed a model to establish regulatory levels, and finally, specified a method for testing the wastes to determine their hazardousness.

The Extraction Procedure Toxicity Characteristic (EPTC) (40 CFR Part 261.24) is one such characteristic which has been used to identify wastes with the potential to generate leachate containing significant concentrations of toxicants. (The Extraction Procedure (EP) test, described in detail in 40 CFR Part 261, Appendix II, is the laboratory procedure used to estimate leachability.) Wastes are considered hazardous under the existing Toxicity Characteristic if their EP test leachate concentrations exceed specified regulatory levels. These levels are set so that the National Interim Primary Drinking Water Standards (DWS) will not be exceeded at down-gradient drinking water wells; the EPTC assumes that toxicants will be diluted and/or attenuated during ground-water transport by a factor of 100.

On June 13, 1986 (51 FR 21648), the Agency proposed to amend the EPTC by: (1) Expanding the characteristic to include 38 additional organic constituents, (2) introducing a modified leaching procedure, Method 1311 (referred to as the Toxicity Characteristic Leaching Procedure or TCLP), and (3) applying compound-specific dilution/attenuation factors (DAFs) for each of the organic constituents, while retaining the 100-fold dilution/attenuation factor for the inorganic constituents.

The Agency's June 13, 1986 proposal used a subsurface fate and transport model (EPASMOD) to calculate specific DAFs for each of the organic constituents. A DAF represents a

reduction in concentration of a toxicant to be expected during transport from the bottom of a landfill to a drinking water source. The various DAFs were calculated using the model, incorporating compound-specific hydrolysis and soil adsorption data coupled with parameters describing the subsurface environment (e.g., ground-water flow rate, hydraulic conductivity of the aquifer, ground-water pH, etc.).

EPA proposed to use these compound-specific DAFs in establishing regulatory levels for organic constituent concentrations in TCLP leachate (Method 1311, Appendix I, 40 CFR Part 268). For each organic constituent, the health-based number is multiplied by a specific DAF to establish the regulatory level. Wastes producing leachate concentrations above the regulatory levels would be expected to produce unacceptable toxicant levels at a drinking water source and, thus, would be regulated as a hazardous waste. Waste producing leachate concentrations below the regulatory levels would not exhibit the Toxicity Characteristic and thus, would not be hazardous with respect to that characteristic.

The Agency has received many comments on the June 13, 1986, proposal; a number of commenters took issue with the data that was used in the fate and transport model, while others had concerns about the assumptions in the model. In response to those comments, the Agency is today presenting new hydrogeologic data related to Subtitle D sanitary landfills, soils data, climatic data, and chemical-specific data that may be used in the subsurface fate and transport model. The Agency is also considering making a number of modifications to the fate and transport model based on these new data. Therefore, EPA is now taking comments on the new data as well as the proposed changes to the model. (As was already indicated, the Agency is considering whether to use the subsurface fate and transport model or a standard factor in establishing the DAFs. If the Agency decides to use the fate and transport model, the Agency will address all the comments received on the model when we finalize the TC.)

The Agency is also considering using the fate and transport model that has been proposed to be used in the toxicity characteristic in evaluating delisting petitions. The Agency, therefore, also requests comments on its possible use by the Delisting Program.

## II. Discussion of New Data and Modifications to the Model

### *A. Introduction*

As previously discussed, the DAFs are determined using a subsurface fate and transport model. The model estimates the reduction in toxicant concentration in ground water over a distance from the disposal unit to a point of exposure (drinking-water well). The model estimates the persistence and mobility of a constituent by utilizing compound-specific hydrolysis and aquifer sorption data and other parameters, which characterize the aquifer and the leachate source.

The behavior of a specific constituent in the subsurface environment is highly dependent on both the environmental setting and the properties of the constituent. Thus, assigning specific values to describe the behavior of a constituent in the modeled system is a difficult task. Furthermore, EPA must take into account the range of environmental conditions (e.g., hydrogeology and climate) that could be encountered in the United States in using the fate and transport model in the TC for estimating the attenuation of toxicants as they are transported by ground water from the disposal unit to the point of exposure (the drinking water well). These attenuation factors are used for the development of regulatory levels, which are applicable on a nation-wide basis. Therefore, to utilize EPASMOD successfully, EPA considered specifying a single value representing a "reasonable worst case" for all model parameters. The principal disadvantage of such an approach is the high degree of uncertainty in determining the reasonable worst case value for each parameter. As an alternative to identifying reasonable worst case values for all model input parameters, EPA proposed using a Monte Carlo simulation procedure. This procedure involves using a range of values for the various model input parameters; these values are then selected at random from a data set and are run through the model several thousand times. Each data set describes the range of possible values likely to occur in the United States for each parameter and the distribution of values within each range. In this manner, the Agency could accommodate the possible nationwide variance in environmental settings and uncertainties in specific chemical properties.

The Agency received a large number of comments on the model (EPASMOD). A detailed discussion of the model is provided in the preamble to the January 14, 1986 proposal for the land disposal restrictions program (See 51 *FR* 1602) and in the background document for this notice (See Reference 1, Section V of this Notice). A number of commenters specifically took issue with the data that was used in the fate and transport model. Some commenters had more basic concerns with the model. For example, a number of commenters criticized our assumption of no unsaturated zone between the landfill and the aquifer in the model. In response to these comments, the Agency is considering modifications to the model in several respects. All of these comments will be addressed when the TC is made final; however, the Agency is today noticing additional data that have become available to the Agency since the TC was proposed on June 13, 1986. In addition, the EPA is considering making a number of changes to the proposed fate and transport model; these modifications are also discussed in today's notice.

### *B. Modifications to the Model*

In particular, the following modifications are discussed in today's notice:

(1) Incorporating a component in the model to account for an unsaturated zone beneath the waste management unit;

(2) Modifying the assumed location of the receptor well by treating possible well locations as random variables in the Monte Carlo simulation; and

(3) Modifying the calculation of dispersivity values in the saturated zone to reflect their dependence on distance from the source.

These modifications are described below:

#### 1. Unsaturated Zone

The EPASMOD model discussed in the June 13, 1986, proposal assumed that there was no unsaturated zone, i.e., the bottom of the landfill is directly connected to the top of the aquifer. Many commenters on the proposal stated that this assumption is unrealistic because an unsaturated zone usually exists above the aquifer and that retardation and dilution effects in the unsaturated zone should be considered. The commenters also suggested that the Agency incorporate into the model the depth to the water table (the top of the aquifer) as part of the Monte Carlo analysis.

Based on a careful review, the Agency is now considering including an unsaturated zone in the fate and transport model and that this be part of the Monte Carlo analysis. The Agency believes this modification to the model

is a reasonable one, based in part on results of a survey of existing municipal landfills (see Ref. 2 for results of the survey), that indicated an unsaturated zone existed beneath 95 percent of the surveyed landfills. The incorporation of an unsaturated zone into the model would account for any retardation and/or degradation of chemicals in the unsaturated zone and would increase the DAFs for degrading chemicals.

The details of the unsaturated zone modeling and example analyses are provided in the background document (Ref. 2), which also describes the data sources and analyses that were performed to obtain the data distributions.

2. Location of the Receptor Well

In EPASMOD, the receptor well was assumed to be located down-gradient from the landfill along the centerline of the plume (in the direction of groundwater flow) at a fixed distance of 500 feet (152.4 m). The receptor well was also assumed to be tapping water from the top of the aquifer.

Many commenters argued that the assumptions concerning the locations of the receptor well and the well intake are unrealistic and too conservative. They suggested that the location of the well should be considered in a probabilistic manner and included as part of the Monte Carlo simulations in the model. Furthermore, the commenters pointed out that the receptor well may be placed at locations that are not on the plume centerline. Consequently, the concentation in the receptor well will not always be the peak concentration in the plume.

The Agency is considering revising the assumptions used in EPASMOD concerning the locations of the receptor well and the well intake by treating the receptor well location as a parameter in the Monte Carlo analyses, i.e., randomly located anywhere within the approximate areal extent of the plume in the model.

3. Dispersivity Values

In the proposal, the fate and transport model required values of longitudinal, transverse, and vertical dispersivities in the aquifer. The distance from the landfill to the drinking-water well was assumed to be fixed at 152.4 m (500 feet) in the model.

Consequently, fixed values of the dispersivities were used in the model. Several commenters criticized the assumption that dispersivity values did not vary with distance and reflected only the fixed distance (500 feet) in the model. The basis of their criticism is that field values of dispersivities have been shown to depend on, and usually increase with, the travel distance.

The Agency agrees with commenters and is considering using dispersivity values as a function of distance to the drinking water well. In these relationships, the distance distribution can be the same as used for the distance to the receptor well and is derived from EPA's Subtitle D landfill survey. The Agency believes that the proposed approach, reflecting the distance dependent nature of the dispersivities, is more realistic and is consistent with the available data on dispersivity distributions. The details of the values of longitudinal, transverse, and vertical dispersivities that are used in the model are described in Ref. 1.

*C. Use of New Data*

In the individual sections that follow, the new data are presented in the context of the modifications that the Agency is considering to the subsurface transport model.

1. Use of New Hydrogeologic Data Related to Subtitle D Municipal Landfills

The toxicity characteristic simulates the potential for toxic constituents to leach from a sanitary landfill—namely, the co-disposal of toxic wastes in an actively decomposing municipal landfill (i.e., Subtitle D units). However, the data used for the EPASMOD, as proposed on June 13, 1986, were derived from a data base that contained information on the management of hazardous waste units (i.e., Subtitle C units). Data on Subtitle D units, which would have been more appropriate, were unavailable at that time. In today's notice, as a result of comments received questioning the appropriateness of using Subtitle C data, the Agency presents site-specific Subtitle D data obtained from EPA's survey of Solid Waste Landfills (1).

The new data include the area of Subtitle D landfills, the distance to the closest downgradient drinking water wells, and the thickness of the unsaturated zone. Based on these data, distributions of source and site-specific parameters were obtained that the Agency will use as input to the model to revise DAFs. The list of parameters and their frequency distributions are presented in the background document (Ref. 1).

1. Use of new Soils Data and Climatic Data

EPASMOD requires a distrubution of the rate of leachate generation from the bottom of the landfill. The leaching rate distribution for the EPASMOD, as proposed, was based on the use of a single soil type—loam—as the cover soil for the landfill. This distribution was estimated using climatologic data for a total of 30 cities nationwide, representing the median range for each of 18 climatological conditions or zones identified in the 48 contiguous states. Several commenters suggested that the assumptions of a single soil type and 18 zones were not realistic and resulted in an overly optimistic cap performance. These commenters suggested enhancing the data base by including simulation of different soil covers.

The Agency has reviewed these comments and, in response, is considering a number of changes. The Agency believes that these modifications will significantly improve the validity of the leachate flux distribution and make it more realistic. The revisions include an increase in the number of climatologic stations from 30 to 97, and the incorporation of the landfill cover as a Monte Carlo variable. The revisions are based on combinations of three groups of soil types for the landfill cover and the unsaturated zone materials as described in the next paragraph.

The U.S. Soil Conservation Service (SCS) has a county-by-county soil mapping program under way. More than 90 percent of the land area in the United States has been mapped, and soil data representing approximately 51 percent of the total land area in the United States have been entered into a computer data base. Using this data base, the soil classifications can be grouped into three categories representing soils equivalent in properties to sandy loam, silt loam, and silty clay loam. These categories correspond to coarse, medium, and fine grained soils. These soils, based on data obtained from the SCS, appear to represent the most common soil types in the United States, and thus the most common soils likely to be used as covers for landfills. They also span the range of likely soil covers, from fine grained to coarse grained, or from low to high percolation rates. The same three categories are used to determine the properties of both the landfill cover materials and the unsaturated zone underlying the landfill. The latest results show that of the soils that have been mapped thus far, coarse grained soils, medium grained soils, and fine grained soils represent 15.4, 56.6, and 28.0 percent, respectively, of the soils that have been mapped thus far. According to SCS staff, these percentages are not likely to change significantly after all the soil data are entered in the computer data base (see Ref. 1).

With respect to changes in the climatic data, the number of cities representing climatic variations that were used to develop frequency distributions for the leachate generation has been increased from 18 to 97. The reason for this change would be to reduce the chance that any one city would provide an unrepresentative percolation rate in its climatic range. The Agency is also considering revising the climatic data base by increasing the number of nation-wide precipitation/evaporation ranges from 18 to 30 (see Ref. 1 for data). For the climatic ranges so defined, the percentage of the area of the 48 states represented by each range would be calculated, and the resulting percent a real average used to weight the percolation rate estimated for the selected cities in each range according to probable relative occurrence in the United States. The effect of these changes would be to provide more representative characterization of the overall distribution of the leachate rates on a nation-wide basis.

Percolation rates for each of the selected cities in the 48 contiguous States would be based on the three soil groups—sandy loam, silt loam, and silty clay loam—described above. Simulations would be performed for each of these soil types, and the results weighted according to frequency of occurrence for each type.

The leaching rate flux distribution for each cover soil type would be based on the average, weighted percolation rate from the cities in each climatic range. The background document (Ref. 1) presents the data used and the accompanying changes to the June 13, 1986, proposal runs.

3. Use of Chemical-Specific Data

In the June 13, 1986 proposal, chemical parameters, such as hydrolysis rates and solubility values and aquifer-specific parameters (e.g., pH and fraction organic carbon), were used to calculate retardation factors and degradation rates for selected constituents. Some of the chemical-specific parameters used in that proposal were estimated based on a brief review of the existing chemical data. Some commenters criticized several of the parameter values used for that proposal as being non-representative of the range of parameter values.

The Agency has an ongoing program for the measurement of chemical-specific parameters and for the review of new chemical-specific data as reported in the current scientific literature. The Agency is considering revising some hydrolysis rate constants and octanol-water partition coefficient used in the June 13, 1986 proposal to reflect the most recent laboratory measurements and values reported recently in the literature (1). The parameter values shown in the background document are either measured or best available values as indicated. The Agency is requesting comments on the values being used and submission of any collected data based on reliable measurements.

## III. Possible Use by the Delisting Program

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to exclude (i.e., delist) their wastes from the lists of hazardous waste. In evaluating delisting petitions, the Agency uses (where appropriate) the vertical and horizontal spread (VHS) landfill model to predict the concentration of hazardous constituents that may be attenuated in the aquifer (i.e., it is used to predict the potential impact of the unregulated disposal of the petitioned waste on human health and the environment). See 50 *FR* 7882 (February 26, 1985); and 50 *FR* 48896 (November 27, 1985) and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. EPA treats the VHS model as a non-binding policy, and applies the model where appropriate, and responds to comments challenging the use of the VHS model where proposed to be applied. See 53 *FR* 21640 (June 9, 1988) for a recent statement of Agency policy regarding the application of models in the Delisting Program.

In light of the development of the ground-water model being used for the Toxicity Program and data discussed in this Notice and the June 13, 1986 proposal, the Agency is considering the possible use of this model by the Delisting Program. Comments are particularly solicited on the appropriateness of this model for evaluation of delisting petitions; its advantages and disadvantages in comparison to the VHS model; the situations in which the model could be applied; and how the use of the model could best be introduced into the delisting process.

## IV. Request For Comments

Based on the above discussions, the Agency requests the following:

1. Comments on the use of the new data and the proposed modifications in the subsurface fate and transport model for the Toxicity Characteristic Program.

2. Comments on the possible use of the model (proposed for use in the Toxicity Characteristic Program) by the Delisting Program.

Comments on this notice must be received by EPA on or before (Insert 30 days after publication) to ensure consideration. It should be noted that the Agency is only reopening the comment period for the new data presented, the modifications to the model and the potential use of the model in the Delisting Program.

## V. References

1. U.S. EPA. 1988a. Background Document on the Subsurface Fate and Transport Model. Office of Solid Waste. Washington, DC.

2. U.S. EPA 1988b. Background Document for Modeling Unsaturated Zone. Office of Solid Waste, Washington, DC.

Date: July 21, 1988.

**Thaddeus L. Juszczak, Jr.,**

*Acting Assistant Aministrator for Solid Waste and Emergency Response.*

[FR Doc. 88-17114 Filed 7-29-88; 8:45 am]

BILLING CODE 6560-50-M

# GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 101-1

## Deviations Granting Process

**AGENCY:** General Services Administration.

**ACTION:** Proposed rule.

**SUMMARY:** GSA proposes to amend its regulations to establish a more flexible policy for granting deviations from the requirements of the Federal Property Management Regulations. The proposed changes are expected to simplify and accelerate the waiver process while maintaining adequate controls.

**DATE:** Comments must be submitted on or before August 31, 1988.

**ADDRESS:** Comments may be mailed to the General Services Administration (CAP), Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Barbour, Special Assistant for Regulatory Analysis, Office of Administrative Services, 202-566-1177.

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative

decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefit; and has chosen the alternative approach involving the least net cost to society. This rule will not have a substantial impact on a significant number of small businesses.

**List of Subjects in 41 CFR Part 101–1**

Government property management.

For the reasons set forth in the preamble, it is proposed to revise 41 CFR 101–1 as follows:

**PART 101—[AMENDED]**

1. Section 101–1.110 is revised to read as follows:

**§ 101–1.110 Deviation.**

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations; i.e., the use of any policy or procedure in any manner that is inconsistent with a policy or procedure prescribed in the Federal Property Management Regulations (FPMR), are prohibited unless such deviations have been requested from and approved by the Administrator of General Services or his authorized designee. Deviations may be authorized by the Administrator of General Services or his authorized designee when so doing will be in the best interest of the Government. Requests for deviations shall clearly state the nature of the deviation and the reasons for such special action.

(b) Requests for deviations from the FPMR shall be sent to the General Services Administration for consideration in accordance with the following:

(1) For onetime (individual) deviations, requests shall be sent to the address provided in the applicable regulation. Lacking such direction, requests shall be sent to the Administrator of General Services, Washington, DC 20405.

(2) For class deviations, requests shall be sent only to the Administrator of General Services.

Dated: July 15, 1988.

**John Alderson,**

*Acting Administrator of General Services.*

[FR Doc. 88–17306 Filed 7–29–88; 8:45 am]

BILLING CODE 6820–34–M

**41 CFR Part 105–1**

**Deviations Granting Process**

**AGENCY:** General Services Administration.

**ACTION:** Proposed Rule.

**SUMMARY:** GSA proposes to amend its regulations to establish a more flexible policy for granting deviations from the Federal Property Management Regulations or the General Services Property Management Regulations. The proposed changes are expected to simplify and accelerate the process of granting deviations while maintaining adequate controls.

**DATE:** Comments must be submitted on or before August 31, 1988.

**ADDRESS:** Comments may be mailed to the General Services Administration (CAP), Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Barbour, Special Assistant for Regulatory Analysis, Office of Administrative Services, 202–566–1177.

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule an adequate information concerning the need for and consequences of this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefit; and has chosen the alternative approach involving the least net cost to society. This rule will not have a substantial impact on a significant number of small businesses.

**List of Subjects in 41 CFR Part 105–1**

Government Property Management.

For the reasons set forth in the preamble, it is proposed to revise 41 CFR 105–1 as follows:

**PART 105–1—[AMENDED]**

1. Section 105–1.110 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 105–1.110 Deviation.**

(a) The term "deviation" as used in this Chapter 105 is defined as the use of any policy or procedure that is inconsistent with a policy or procedure prescribed in the regulations.

(b) To maintain uniformity to the greatest extent feasible, deviation from the FPMR to the GSPMR shall be kept to a minimum and controlled. Approval of any deviation from the FPMR or Chapter 105 shall be made only by the Administrator except for onetime (individual) deviations which may be approved by the officials to whom such authority has been delegated by the Administrator. Such delegated authority may not be redelegated, nor may the official to whom such authority has been delegated authorize deviations that impact a fund unless the concurrence of the applicable fund manager has been obtained. In each instance, the authorizing document shall disclose the nature of the deviation and the reasons for such special action. Deviations may be extended but otherwise will expire 12 months from the date of approval, unless sooner rescinded without prejudice to any action thereunder.

(c) * * *

Dated: July 11, 1988.

**John Alderson,**

*Acting Administrator for General Services.*

[FR Doc. 88–17305 Filed 7–29–88; 8:45 am]

BILLING CODE 6820–34–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 67**

**[Docket No. FEMA–6927]**

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed Rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR on June 9, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Knox County, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Knox County, Kentucky previously published at 53 FR on June 9,

1988, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

**List of Subjects in 44 CFR Part 67**

Flood Insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) Flood Elevations

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *East Fork Lynn Camp Creek:* | |
| At mouth | *1,071 |
| Just downstream of Private Road (About 2,100 feet upstream of Indian Creek Road) | *1,100 |
| *Lynn Camo Creek:* | |
| At county boundary | *1,066 |
| About 0.5 mile upstream of Back Street | *1,089 |
| *Cumberland River:* | |
| About 2 miles downstream of confluence of Swanpond | *978 |
| About 2 miles upstream of confluence of Ledger Branch | *995 |
| *Cumberland River High Flow Diversion Channel:* | |
| At confluence with Cumberland River | *980 |
| At divergence with Cumberland River | *983 |
| *Richland Creek:* | |
| Just downstream of School Street | *986 |
| About 2,100 feet upstream of Old Railroad Grade Road | *988 |

Issued: July 26, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88–17225 Filed 7–29–88; 8:45 am]

BILLING CODE 6718–03–M

**44 CFR Part 67**

**[Docket No. FEMA–6927]**

## Proposed Flood Elevation Determinations, Iowa; Correction

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed Rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR on June 9, 1988. This correction notice provides a more accurate representatioin of the Flood Insurance Study and Flood Insurance Rate Map for the City of Elliott, Montgomery County, Iowa.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Elliott, Montgomery County, Iowa previously published at 53 FR on June 9, 1988, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

**List of Subjects in 44 CFR Part 67**

Flood Insurance, Floodplains. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *East Nishnabotna River:* | |
| Just upstream of State Highway 48 | *1,070 |
| About 2900 feet upstream from State Highway 48 | *1,071 |
| *Coe Creek:* | |
| About 0.38 mile upstream of mouth | *1,070 |
| About 0.27 mile upstream of Burlington Northern railroad | *1,084 |
| *Tributary A:* | |
| Just upstream of mouth | *1,070 |
| Just upstream of Burlington Northern railroad | *1,075 |
| *Coe Creek Divergence:* | |
| At convergence | *1,073 |
| At divergence | *1,082 |

Issued: July 26, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88–17226 Filed 7–29–88; 8:45 am]

BILLING CODE 6718–03–M

# Notices

Federal Register
Vol. 53, No. 147
Monday, August 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Policy Advisory Committee on Science and Education Research Grants

Notice is hereby given that the Secretary of Agriculture intends to reestablish the Policy Advisory Committee on Science and Education Research Grants and rename it the Science and Education Competitive Research Grants Office Advisory Committee. This committee will advise the Secretary of Agriculture with respect to areas of agricultural research to be supported, priorities to be adopted, and procedures to be followed in implementing programs of research grants to be awarded competitively.

This Committee will meet annually in Washington, DC. The duties of this Committee are to advise the Secretary of grant policies for the Agencies, examine needs as related to on-going programs, provide an overview of research needs in areas considered for U.S. Department of Agriculture grants, assess program progress and recommend resource shifts, and advise on ways to improve guidelines and evaluation procedures.

It has been determined that the reestablishment of this Advisory Committee is in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit comments, views, or data concerning this proposal to John Patrick Jordan, Administrator, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250, by August 16, 1988.

Done at Washington, DC, this 27th day of July 1988.

**John J. Franke, Jr.,**
*Assistant Secretary for Administration.*

[FR Doc. 88-17282 Filed 7-29-88; 8:45 am]
BILLING CODE 3410-22-M

### Cooperative Agreement With University of Georgia

**AGENCY:** Office of International Cooperation and Development (OICD); USDA.

**ACTION:** Notice of intent.

*Activity:* OICD intends to enter into a Cooperative Agreement with the University of Georgia to provide partial funding for collaborative international research on Wildlife Surveillance of the tropical Bont Tick.

*Authority:* Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds to enter into a cooperative agreement with the University of Georgia to collaborate in international research for wildlife surveillance of the tropical Bont Tick in Antigua, West Indies. Assistance will be provided to the University to conduct collaborative research with Antigua's Ministry of Agriculture. Funds provided by OICD will be used for services, equipment, operating expenses, supplies and travel.

Based on the above, this is not a formal request for application. Funds estimated at $50,000 will be available in FY 1988 to support this work. A total of $160,000 will be provided for this cooperative research effort over a three-year period, subject to the availability of funds in future fiscal years.

Information on proposed Agreement #58-319R-8-040 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

**Nancy J. Croft,**
*Contracting Officer.*

Dated: July 27, 1988.

[FR Doc. 88-17194 Filed 7-29-88; 8:45 am]
BILLING CODE 3410-DP-M

### Cooperative Agreement With University of Nebraska

**AGENCY:** Office of International Cooperation and Development (OICD); USDA.

**ACTION:** Notice of intent.

*Activity:* OICD intends to enter into a Cooperative Agreement with the University of Nebraska to provide partial funding for collaborative research on Breeding Grain Sorghum for Improved Dryland Production.

*Authority:* Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds to enter into an agreement with the University of Nebraska to provide partial funding support for a joint research project between the University, Kansas State University, the Nebraska Grain Sorghum Board and the Kansas State Grain Sorghum Board. The project plans to develop new, improved drought tolerant sorghum lines for drought stable varieties, and, also, for incorporation into hybrids to genetically improve the potential yield under dryland conditions in Kansas, Nebraska, West Africa, Southern Africa, East Africa and South America. Funds provided by OICD will support the use of a screening nursery, testing of advanced lines and development of material for the basic research project.

Based on the above, this is not a formal request for application. Funds estimated at $43,910 will be available in FY 1988 to support this work. A total of $132,737 will be provided for this cooperative research effort over a three-year period, subject to the availability of funds in future fiscal years.

Information on proposed Agreement #58-319R-8-039 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

**Nancy J. Croft,**
*Contracting Officer.*

Date: July 27, 1988.

[FR Doc. 88-17193 Filed 7-29-88; 8:45 am]
BILLING CODE 3410-DP-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration; Commerce.
*Title:* Statement by Ultimate Consignee and Purchaser.

*Form Number:* Agency—BXA 629P; OMB—0694–0021 (formerly 0625–0136).
*Type Of Request:* Extension of the expiration date of a currently approved collection.
*Burden:* 22,178 respondents; 11,459 reporting/recordkeeping hours—Average hours per response —.52.
*Needs And Uses:* To make a determination of approval or rejection on export license applications, BXA needs information on the destination and the intended end-use of U.S.-origin commodities and technology being exported. The licensing officer uses this information in determining whether or not the export will be detrimental to our national security.
*Affected Public:* Businesses or other for-profit institutions; small businesses or organizations.
*Frequency:* On occasion.
*Respondent's Obligation:* Required to obtain or retain a benefit.
*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 21, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17260 Filed 7–29–88; 8:45 am]

BILLING CODE 3510–CW–M

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**Agency Form Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census; Commerce.
*Title:* Monthly Retail Inventory Report.
*Form Number:* B–175(87).
*Type of Request:* Extension of currently approved form.
*Burden:* 3,000 hours.
*Avg Hours Per Response:* 5.8 minutes.
*Needs And Uses:* This survey provides estimated dollar volume end-of-month inventories of retail stores. The Bureau of Economic Analysis uses changes in the value of the inventory levels in calculating the gross national product.
*Affected Public:* Businesses or other for-profit Small businesses or organizations.
*Frequency:* Monthly.
*Respondent's Obligation:* Voluntary.
*OMB Desk Officer:* Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17261 Filed 7–29–88; 8:45 am]

BILLING CODE 3510–07–M

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**Agency Form Under Review by the Office of Managment and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census; Commerce.
*Title:* Business and Professional Classification Report.
*Form Number:* B–625(87).
*Type Of Request:* Extension of currently approved form.
*Burden:* 11,125 hours.
*AVG Hours Per Response:* 15 minutes.
*Needs And Uses:* This form is used to canvass firms which have been assigned Federal Employer Identification numbers. Using this procedure the current retail, wholsale, and service surveys are updated for new firms entering business.
*Affected Public:* Businesses or other for-profit Small businesses or organizations.
*Frequency:* One-time for each respondent Survey is conducted quarterly.
*Respondent's Obligation:* Voluntary.
*OMB Desk Officer:* Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC. 20503.

Dated: July 26, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17262 Filed 7–29–88 8:45 am]

BILLING CODE 3510–07–M

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**Agency Form Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census; Commerce.
*Title:* 1990 Census—Request for Relocation Information.
*Form Number:* D–329 and D–716(L).
*Type Of Request:* Revision of currently approved form.
*Burden:* 1,500.
*AVG Hours Per Response:* 3 minutes.
*Needs And Uses:* This survey is conducted to obtain more complete address and location information for special places, which will then be geographically coded to comply with Census Bureau geography. This information will improve the coverage of special place residents in the 1990 decennial census.
*Affected Public:* State or local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, and small businesses or organizations.
*Frequency:* One-time only.
*Respondent's Obligation:* Mandatory.
*OMB Desk Officer:* Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer,

Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-17263 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-07-M

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**Agency Form Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census; Commerce.
*Title:* Project Description: Project Reporting Evaluation Study, 1987 Census of Construction Industries.
*Form Number:* CC-ES1, EAC 690A.
*Type of Request:* New.
*Burden:* 300 hours.
*AVG Hours Per Response:* 1.2 hours.
*Needs and uses:* This survey will provide data to give direct comparisons between two statistical series which display significant differences, i.e., the value of construction work done and the value of construction work put in place.
*Affected Public:* Businesses or other for-profit.
*Frequency:* One-time survey.
*Respondent's Obligation:* Mandatory.
*OMB Desk Officer:* Francine Picoult, 395-730.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Piscoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-17264 Filed 7-29-88; 8:45 am]

BILLIND CODE 3510-07-M

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**Agency Form Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35).

*Agency:* Bureau of the Census; Commerce.
*Title:* Current Population Survey/ Computer Assisted Telephone Interviewing.
*Form Number:* CPS-1, CPS-260.
*Type of Request:* Revision.
*Burden:* 4,060 hours.
*AVG Hours Per Response:* 12.5 minutes.
*Needs and Uses:* This survey will provide fata on the feasibility of conducting CPS interviews by telephone from a centralized facility.
*Affected Public:* Individuals or households.
*Frequency:* Monthly.
*Respondent's Obligation:* Voluntary.
*OMB Desk Officer:* Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503

Dated: July 26, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-17265 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-07-M

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**Agency Information Collection Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 350).

*Agency:* Bureau of Export Administration; Commerce.
*Title:* Request to Dispose of Commodities or Technical Data Previously Exported.
*Form Number:* Agency—BXA-699P; OMB—0694-0010 (formerly 0625-00090).
*Type of Request:* Extension of the expiration date of a currently approved collection.
*Burden:* 13,900 respondents; 14,424 reporting/recordkeeping hours. Average hours per response—.42 hours.
*Needs and Uses:* This information is needed to comply with U.S. export regulations that control the export of controlled commodities to specified destinations. When goods or technology have been exported from the U.S. on an approved export license, such goods or technology may not be reexported without the authority of BXA. The exporter or foreign firm intending to reexport the item must supply information relating to the transaction so that a decision can be made as to whether or not the reexport will be authorized.
*Affected Public:* Businesses or other for-profit institutions; small businesses or organizations.
*Frequency:* On occasion.
*Respondent's Obligation:* Required to obtain or retain a benefit.
*OMB Desk Officer:* John Griffen 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88-17266 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-CW-M

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**Agency Form Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration; Commerce.
*Title:* Marketing Data Form.
*Form Numbers:* Agency—ITA-466P OMB—0625-0047.
*Type of Request:* Extension of the expiration data of a currently approved collection.
*Burden:* 2,300 respondents; 1,725 reporting hours.
*Average Hours Per Response:* 45 minutes.
*Needs And Uses:* The International Trade Administration (ITA) promotes overseas trade fairs. The Marketing Data form is completed by participants in advance of the show

and used by the U.S. and Foreign Commercial Service to prepare promotional activities on the firm's behalf, contact relevant purchasing organizations in the region in which the exhibition is held, and develop the show catalog/directory.

*Affected Public:* Businesses or other for profit; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New executive Office Building, Washington, DC 20503.

Dated: July 26, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17267 Filed 7–29–88; 8:45 am]

BILLING CODE 3510–CW–M

## Bureau of Export Administration

### Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held August 25, 1988, 9:30 a.m., Room 4830, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

**General Session**

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of 1988 Plan.
5. Discussion of Upcoming TAC Chairmen's Meeting.
6. New Business.

**Executive Session**

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 17, 1986, pursuant to section 19(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 19(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: July 26, 1988.

**Betty Anne Ferrell,**

*Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 88–17215 Filed 7–29–88; 8:45 am]

BILLING CODE 3510–DT–M

## International Trade Administration

### Export Trade Certificate of Review

**AGENCY:** Department of Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certification of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificate of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–00011." A summary of the application follows:

Applicant: Abdullah diversified Marketing, Inc. (ADMI), 939 Jefferson Street, Suite 100, Nashville, Tennessee 37208, Contact: Victor Abdullah, Chairman, Telephone: (615) 726–4936.

Application #: 88–00011

Date Deemed Submitted: July 21, 1988.

Members (in addition to applicant): None.

**Summary of the Application**

*Export Trade*

Export management Services (as they relate to the export of all products and services), including, but not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam,

the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

ADMI seeks certification to:

1. Provide export management services to producers in the United States on a nonexclusive and individual basis.

2. Develop and help implement in-house export procedures for producers in the United States on a nonexclusive and individual basis.

Date: July 26, 1988.

**John E. Stiner,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 88-17268 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-DR-M

## National Oceanic and Atmospheric Administration

### Listing of Endangered and Threatened Species and Designating Critical Habitat; Petition to Adopt a Special Rule

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** On April 19, 1988, NMFS received a petition from GreenWorld requesting the adoption of an emergency rule to protect the northern right whale (*Eubalaena glacialis*) from close approach by vessels and persons during the spring and summer of 1988 (53 FR 19810). NMFS has denied the petition because it did not provide adequate justification for an emergency rule.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 (202/673-5348).

Dated: July 26, 1988.

**James W. Brennan,**

*Assistant Administrator for Fisheries Service.*

[FR Doc. 88-17296 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-22-M

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting on August 10, 1988, at 10 a.m., at the King's Grant Inn, Route 128, Danvers, MA, to discuss reports of the Council's Sea Scallop, Groundfish, and Swordfish Oversight Committees. The Groundfish Committee will report on public hearings held to receive comments on the proposed Amendment #2 to the Northeast Multispecies Fishery Management Plan, and the Council will vote on the Committee's recommendations. There also will be an election of 1988-1989 officers, and the U.S. Coast Guard will report on drafting regulations to implement the pollution prevention requirements of Annex V of MARPOL. The public meeting will recess at approximately 5 p.m., reconvene on August 11 at 9 a.m., and adjourn when agenda items are completed.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Date: July 26, 1988.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-17295 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-22-M

### Marine Mammals; Application for Permits by Sea Life Park (P1OE)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216),

1. Applicant: Associates Four, dba Sea Life Park, Makapuu Point, Waimanalo, Hawaii 96795.

2. Type of Permit: public display.

3. Name and Number of Marine Mammmals: Rough-toothed dolphins (*Steno bredanensis*). 4.

4. Type of Take: The applicant proposes to capture for permanent maintenance four rough-toothed dolphins for public display.

5. Location and Duration of Activity: Hawaiian waters over a 2-year period.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department or Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested person in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island California 90731.

Date: July 26, 1988.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 88-17297 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-22-M

### Marine Mammals; Application for Permit by Southwest Fisheries Center (P77#31)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant: Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific research.

3. Name: Hawaiian monk seal (*Monachus schauinslandi*).

4. Type of Take and Numbers: The proposed activities and take requested

in this permit application are divided into eight major areas.

**I. Census Seals**

The applicant is requesting an unspecified number of seals by inadvertent harassment during censuses or other observational activities.

**II. Monk Seal Mass Mortality Response**

The applicant is requesting to take:

a. Up to ten (10) moribund (dying) seals by sacrificing

b. Up to twenty (20) sick seals by bleach marking and physical restraint up to three times each for blood sampling, taking of culture swabs, stool, and body temperature.

c. Up to ten (10) healthy seals of the same age and sex class as the sick and dying seals, by physical restraint to collect blood and culture swabs.

(1) Half of the above (5) seals may be subjected to liver and blubber biopsy collection only if it is determined that the cause of the die-off being investigated may be a toxic substance.

d. Up to six (6) healthy male seals of the affected age class(es) may be taken by sacrificing in a humane manner.

e. Up to ten (10) additional sick seals may be experimentally treated with pharmocological agents prescribed by a veterinarian.

f. If the experimental treatment(s) tested in item (5) above appear successful, then up to 100 additional seals may be treated, as necessary.

**III. Kure Atoll Monk Seal Pup Temporary Captive Maintenance**

The applicant is requesting to take by capture, tagging, and temporary captive maintenance up to 24 Hawaiian monk seals (6/yr). An additional 32 (8/yr) will be taken by capture, tagging and release.

**IV. Collection of Hawaiian Monk Seals for Rehabilitation and Release to the Wild**

The applicant is requesting to take for temporary maintenance in captivity, rehabilitation, and release 32 animals (8/yr over 4 years).

**V. Tag Hawaiian Monk Seal Pups**

The applicant is requesting to take by restraint and tagging 1,100 Hawaiian monk seals. Some seals may be retagged if tags are lost.

**VI. Tag and Mark Seals for Mobbing Study**

The applicant is requesting to take by tagging and marking 250 Hawaiian monk seals. Some seals will be tagged twice, and seals may be retagged if tags are lost. Marks may be reapplied following the seals' annual molt.

**VII. Mark Seals**

Up to 750 Hawaiian monk will be taken by temporary marking. Some animals may be taken more than once if required following the annual molt.

**VIII. Collect Biopsy Samples**

The applicant is requesting to take by tissue sampling 150 Hawaiian monk seals.

5. Location of Activity: Hawaiian Archipelago or Johnston Atoll.

6. Period of Activity: Five years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should bs submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, South Ferry Str., Terminal Island, California 90731–7415.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs.*

Date: July 22, 1988.

[FR Doc. 88–17298 Filed 7–29–88; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 27, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** August 3, 1988.

**Authority:** 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** The current limit for Category 847 is being increased for carryforward. As a result, the limit, which is currently filled, will re-open.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 27, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, D.C. 20229*

Dear Mr. Commissioner: This directive

amends, but does not cancel, the directive issued to you on December 30, 1987. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on August 3, 1988, the directive of December 30, 1987 is amended to increase to 1,110,037 dozen [1] the previously established limit for silk blend and other vegetable fiber textile products in Category 847, under the provisions of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-17258 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-DR-M

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## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

July 27, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 3, 1988.

**Authority:** E.O. 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer of the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:** The current limits for Categories 336/636, 338/339/340 and 342 are being increased by application of swing. To account for the swing being applied, the current limits for Categories 335 and 337 are being reduced. Categories 335 and 337 are also being adjusted for carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers in available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 58, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 27, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on August 3, 1988, the directive of December 30, 1987 is further amended to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India.

| Category | Adjusted 12-month limit [1] |
|---|---|
| 335 | 166,998 dozen. |
| 336/636 | 499,065 dozen. |
| 337 | 67,647 dozen. |
| 338/339/340 | 1,300,335 dozen. |
| 342 | 452,504 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-17259 Filed 7-29-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

## DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**AGENCY:** Working Group B (Microelectronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Monday, August 29, 1988.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 27, 1988.

[FR Doc. 88-17283 Filed 7-29-88; 8:45 am]

BILLING CODE 3810-01-M

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## Special Operations Policy Advisory Group; Notice of Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on August 11, 1988 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to

the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,

*OSD Federal Register Liaison, Department of Defense.*

July 27, 1988.

[FR Doc. 88-17284 Filed 7-29-88; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Intent to Grant Exclusive Patent License

Notice is hereby given of an intent to grant to R&D Controls of Los Alamos, NM, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,689,541, entitled "Method and Apparatus for Controlling Multiple Motors". The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed exclusive license will be subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written reponses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on July 25, 1988.

Eric J. Fygi,

*Acting General Counsel.*

[FR Doc. 88-17291 Filed 7-29-88; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

[Docket No. PP-76A]

### Availability of Draft Reliability Determination; Amendment to Presidential Permit PP-76; Vermont Electric Transmission Co.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of availability of Draft Reliability Determination for the amendment of Presidential Permit PP-76.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces the availability of its Draft Reliability Determination in the matter of the amendment of Presidential Permit PP-76 issued to the Vermont Electric Transmission Company (VETCO) on April 5, 1984, pursuant to Executive Order 10485, as amended by Executive Order 12038. The requested amendment would permit the extension of the existing electric transmission facilities from New Hampshire into Massachusetts, and would increase the maximum allowable level of power transfer over the resulting facilities form 690 megawatts (MW) to 2000 MW.

**FOR FURTHER INFORMATION CONTACT:**

Anthony J. Como, Department of Energy, Economic Regulatory Administration (RG-22), 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-5935

Lise Courtney M. Howe, Department of Energy, Office of General Counsel (GC-41), 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-2900

**SUPPLEMENTARY INFORMATION:** On March 4, 1985, VETCO applied to the ERA to amend Presidential Permit PP-76 issued to VETCO on April 5, 1984. Presidential Permit PP-76 authorized the construction, connection, operation, and maintenance of a ±450 kilovolt (kV), direct current (DC) transmission line, which crosses the U.S. international border near Norton, Vermont, and extends approximately 60 miles south, terminating at a converter station located in Monroe, New Hampshire. The purpose of the converter station is to convert the DC power to alternating current (AC) power in order to permit integration with the existing New England AC transmission system. These previously permitted facilities (known as Phase I) were placed in operation on October 1, 1986, and are being used by the electric utilities in the New England states to purchase approximately 3 million megawatt-hours (MWH) per year of hydroelectric energy from Hydro-Quebec. The reliability condition imposed by the Permit limited the operation of the Phase I facilities to a maximum instantaneous import level of 690 MW.

In its amendment application, VETCO sought permission to extend the ±450 kV DC transmission line approximately 133 miles south along existing transmission rights-of-way to the sandy Pond substation located near the towns of Ayer and Groton, Massachusetts. Additionally, VETCO requested permission to construct another DC/AC converter station at Sandy Pond and to construct two new 345 kV AC transmission lines in order to integrate the proposed DC facilities with the existing AC transmission system. One of the 345 kV lines is to be constructed from the Sandy Pond converter to the existing Millbury substation; the second 345 kV line is to be constructed between Millbury and the existing Medway substation. The above facilities are referred to as Phase II and are proposed for operation by 1990. The Phase II facilities would be used by VETCO to transmit an additional 7 million MWH per year of hydroelectric energy from Hydro-Quebec to the New England states.

Since installation of the Phase II facilities would constitute a substantial physical change to the previously permitted facilities, an amendment to the existing Permit must be obtained before the Phase II facilities may be placed in service. Also, in order to be able to accommodate the increased level of imports, the reliability condition imposed by the existing permit must be modified to allow operation of the combined Phase I and Phase II facilities up to a maximum level of 2000 MW of instantaneous power transfer in the import mode.

The ERA has reached the preliminary decision that the proposed facilities could be designed and operated at import power levels of up to 2000 MW, subject to certain operating conditions, without adversely impacting on the reliability of the U.S. electric power supply system. The public is invited to review this preliminary determination and to submit comments by August 22, 1988. Copies of the Draft Reliability Determination may be obtained by contacting Mr. Anthony Como or Ms. Lise Howe at the address in the previous section.

Issued in Washington, DC, on July 26, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-17292 Filed 7-29-88; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

## Changes to DOE Energy Information Reporting and Record-Keeping Requirements

**AGENCY:** Energy Information Administration; DOE.

**ACTION:** Notice of changes to the inventory of energy information reporting and record-keeping requirements.

**SUMMARY:** The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are not included in these notices.

During the third quarter of fiscal year 1988 (April 1, 1988 through June 30, 1988), changes were made to the October 1, 1987 inventory of DOE information collections, which was published in the **Federal Register**, 52 FR 43787 (November 16, 1987). Changes during the first and second quarters of the fiscal year were published on February 10, 1988 (53 FR 3914) and May 11, 1988 (53 FR 16761) respectively.

The third quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

**FOR FURTHER INFORMATION CONTACT:** Etta Harris, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2165

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586-8800.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, July 26, 1988.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

| DOE No. | Title | OMB control No. | Expiration date | CFR citation |
|---|---|---|---|---|
| **Federal Energy Regulatory Commission** | | | | |
| FERC-544* | Gas Pipeline Rates: Rate Change (Formal) | 19020153 | 02/28/91 | 18 CFR 154.63-154.67. |
| FERC-545* | Gas Pipeline Rates: Rate Change (Non-Formal) | 19020154 | 02/28/91 | 18 CFR 154.62, 154.64-154.67. |
| FERC-546* | Gas Pipeline Rates: Certificated Rate Filings | 19020155 | 02/28/91 | 18 CFR 154.63-154.67. |

*Does not utilize a structured form.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

| DOE No. | Title | OMB control No. | Expiration date | CFR citation |
|---|---|---|---|---|
| **Economic Regulatory Administration** | | | | |
| ERA-166 | Public Utility Regulatory Policies Act (PURPA) Annual Report on Electric and Gas Utilities. | 19030060 | 04/30/91 | 10 CFR 463.3. |
| ERA-750R* | Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act. | 19030070 | 04/30/91 | 10 CFR 463. |
| ERA-781R | Annual Report of International Electrical Export/Import Data | 19030080 | 08/31/88 | 10 CFR 205.302, .303, .304, .308, .322, .325, .327. |
| **Energy Information Administration** | | | | |
| EIA-254 | Semiannual Report on Status of Reactor Construction | 19050160 | 06/30/91 | |
| EIA-851 | Domestic Uranium Mining Production Report | 19050160 | 06/30/91 | |
| EIA-856 | Monthly Foreign Crude Oil Acquisition Report | 19050174 | 09/30/90 | |
| EIA-858 | Uranium Industry Annual Survey | 19050160 | 06/30/91 | 10 CFR 761.8. |
| **Federal Energy Regulatory Commission** | | | | |
| FERC-556* | Cogeneration and Small Power Production | 19020075 | 08/31-/89 | 18 CFR 292. |
| FERC-566* | Report of Utility's Twenty Largest Purchasers | 19020114 | 09/30/88 | 18 CFR 46.3. |

*Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

| DOE No. | Title | OMB Control No. | Expiration date | CFR citation |
|---|---|---|---|---|
| **Energy Information Administration** | | | | |
| None | None. | | | |

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

| DOE No. | Title | OMB control No. | Discontinued date | CFR citation |
|---|---|---|---|---|
| **Economic Regulatory Administration** | | | | |
| ERA-1330R* | Electric Utility Conservation Plans | 19030078 | 04/30/88 | 10 CFR 508. |
| **Federal Energy Regulatory Commission** | | | | |
| FERC-1593 | Natural Gas Contract Summary Information | 19020149 | 04/30/88 | |

*Does not utilize a structured form.

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

| DOE numbers as previously listed | Changes |
|---|---|
| **Federal Energy Regulatory Commission** | |
| FERC-121* | Changes in regulations in all collections. |
| FERC-516* | |
| FERC-523* | |
| FERC-520* | |
| FERC-530* | |
| FERC-531* | |
| FERC-532* | |
| FERC-519* | |
| FERC-543* | |
| FERC-568* | |
| FERC-542* | |
| FERC-537* | |
| FERC-547* | |
| FERC-549* | |

*Does not utilize structured form.

[FR Doc. 88-17287 Filed 7-29-88; 8:45 am]
BILLING CODE 6450-01-M

## Office of Energy Research

### Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Basic Energy Sciences Advisory Committee (BESAC).

*Date and Time:*

August 15, 1988, 8:15 a.m.-5:00 p.m.
August 16, 1988, 8:15 a.m.-4:15 p.m.

*Place:* Los Alamos National Laboratory, INC Conference Room, Technical Area—48, Building RC-29, Los Alamos, New Mexico 87545.

*Contact:* Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: 301-353-3081.

*Purpose of the Committee:* To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

*Tentative Agenda:* Briefings and discussions of:

*August 15, 1988*

- Status of BES Budgets
- BESAC Subcommittee Interim Reports
- Status of BES Research Reactors
- BESAC Panel Study on Global Change
- Public Comment (10 Minute Rule)

*August 16, 1988*

- BESAC Agenda for 1988
- BESAC 1988 Report
- LANL Research Highlights
- Public Comment (10 Minute Rule)

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW, Washigton, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 27, 1987.

J. Robert Franklin,

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 88-17293 Filed 7-29-88; 8:45 am]
BILLING CODE 6450-01-M

### Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Magnetic Fusion Advisory Committee.

*Date and Time:*

Wednesday, September 7, 1988, 8:30 am—5:00 pm
Thursday, September 1988, 8:30 am—12:00 pm

*Location:* Los Alamos National Laboratory, J. Robert Oppenheimer Study Center, TA-3, SM207, Casa Grande Drive, Los Alamos, New Mexico 87545.

*Contact:* N. Anne Davies, Office of Fusion Energy, Office of Energy Research, ER-51, U.S. Department of Energy, Mail Stop J-204, Washington, DC 20545, Phone: (301)-353-4941.

*Purpose of the Committee:* To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

**MFAC Agenda Outline**

September 7, 1988

1. 8:30 a.m. Welcome and Announcements—LANL
2. Program Status; International Thermonuclear Experimental Reactor (ITER)—J. Clarke
3. Report of MFAC Summer Study—F. Ribe, D. Baldwin
4. MFAC Discussion
5. Los Alamos National Laboratory—I
   Overview—R. Linford
   Reversed Field Pinch Research—J. DiMarco
   Field Reversed Configuration Research—R. Siemon

LUNCH (12:30 p.m.) Ottowi Side Room A

6. Tour of ZT–40, FRX–C, CTX
7. Report of Panel 21—J. Leiss
8. MFAC Discussion
9. PUBLIC COMMENTS
10. Los Alamos National Laboratory—II
    Tritium Systems Test Assembly (TSTA)—B. Anderson
    Confinement Physics Research Facility (CPRF)—P. Thullen
    Aurora—D. Cartwright
11. Tour of TSTA, CPRF, Aurora
12. Adjourn 5:30 p.m.

**MFAC 2nd Day**

September 8, 1988.

1. 8:30 a.m. Tokamak Fusion Test Reactor (TFTR)—D. Meade
2. Compact Ignition Tokamak (CIT)—H. Furth
3. Discussion of Sweet Report—R. Krakowski
4. MFAC Findings on Summer Study—F. Ribe
5. Public Comments
6. New Charge—Panel 22
7. Adjourn 12:00 noon

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James M. Turner at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 27, 1988.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 88–17294 Filed 7–29–88; 8:45 am]

BILLING CODE 6450–01–M

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## Office of Fossil Energy

### Inventories & Storage Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation; National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

*Name:* Inventories & Storage Task Group of the Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

*Date and Time:*
Tuesday, August 16, 1988, 10:00 AM
Wednesday, August 17, 1988, 9:30 AM (if necessary)

*Place:* Shell Oil Company, Eighth Floor Conference Room, One Rockefeller Plaza, New York, New York.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

*Purpose of the Parent Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

*Purpose of the Meeting:* Discuss surveys and progress on assignments.

*Tentative Agenda:*

—Opening remarks by Chairman and Government Cochairman.
—Discuss surveys of inventories and storage capacity.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

*Public Participation:* The meeting is open to the public. The Chairman of the Inventories & Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**J. Allen Wampler,**

*Assistant Secretary, Fossil Energy.*

[FR Doc. 88–17288 Filed 7–29–88; 8:45 am]

BILLING CODE 6450–01–M

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### Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation; National Petroleum Council; Public Meeting

Notice is hereby given of the following meeting:

*Name:* Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

*Date and Time:* Wednesday and Thursday, August 17–18, 1988, 8:30 AM both days.

*Place:* National Petroleum Council, Conference Room, 1625 K Street NW., Washington, DC.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

*Purpose of the Parent Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

*Purpose of the Meeting:* Discuss the gas transportation model runs and review progress on individual assignments.

*Tentative Agenda:*

—Opening remarks by Chairman and Government Cochairman.

—Discuss the gas transportation model runs.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

*Public Participation:* The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**J. Allen Wampler,**

*Assistant Secretary, Fossil Energy.*

[FR Doc. 88–17289 Filed 7–29–88; 8:45 am]

BILLING CODE 6450–01–M

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## Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation; National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

*Name:* Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

*Date and Time:* Wednesday, August 24, 1988, 8:00 AM.

*Place:* Marathon Oil Company, Conference Room, 7400 South Broadway, Littletown, CO.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

*Purpose of the Parent Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

*Purpose of the Meeting:* Review task group status and discuss study draft assignments.

*Tentative Agenda:*

—Opening remarks by the Chairman and Government Cochairman.
—Review task group status.
—Discuss study draft assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

*Public Participation:* The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**J. Allen Wampler,**

*Assistant Secretary, Fossil Energy.*

[FR Doc. 88–17290 Filed 7–29–88; 8:45 am]

BILLING CODE 6450–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–3422–6]**

## Alabama and Tennessee: FY 88 Grant Performance Reports

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of grantee performance evaluation reports.

**SUMMARY:** EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed midyear evaluations of one state air pollution control program (Tennessee Division of Air Pollution Control) and of one local program in Alabama (City of Huntsville Air Pollution Control Department). These midyear audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. The audits were also conducted as part of the National Air Audit System (NAAS) established by EPA in an effort to assure nationwide consistency in the evaluation of state and local air pollution programs. EPA Region IV has prepared reports for the two agencies identified above and these NAAS/section 105 reports are now available for pubic inspection.

**ADDRESS:** The reports may be examined at the EPA's Region IV office, 345 Courtland Street, NE., Atlanta, GA 30365, in the Air, Pesticides & Toxics Management Division.

**FOR FURTHER INFORMATION CONTACT:** Walter Bishop at 404/347–2864 (FTS: 257–2864).

Dated: July 22, 1988.

**Joe R. Franzmathes,**

*Acting Regional Administrator.*

[FR Doc. 88–17246 Filed 7–29–88; 8:45 am]

BILLING CODE 6560–50–M

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**[OPTS–44514; FRL–3422–8]**

## TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on hydroquinone (CAS No. 123–31–9) and biphenyl ((CAS No. 92–52–4) submitted pursuant to final test rules, and 3,4-dichlorobenzotrifluoride (CAS No. 328–84–7), submitted pursuant to a testing consent order, under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d)n of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

BEST COPY AVAILABLE

**I. Test Data Submissions**

*A. Hydroquinone*

Test data for hydroquinone was submitted by the Chemical Manufacturers Association's Hydroquinone Program Panel pursuant to a test rule at 40 CFR 799.2200. It was received by EPA on July 13, 1988. The submission describes toxicokinetics studies with hydroquinone in male and female Fisher 344 rats. Toxicokinetics testing is required by this test rule.

Hydroquinone is produced in a photographic grade for use as a developing agent and in a technical grade which is primarily used as a chemical intermediate in the production of rubber chemicals.

*B. Biphenyl*

Test data for biphenyl was submitted by the Monsanto Company pursuant to a test rule at 40 CFR 799.925. It was received by EPA on July 15, 1988. The submission describes biphenyl: Environmental fate in a lake water/sediment system. Chemical fate testing is required by this test rule.

Biphenyl is used primarily to produce dye carriers, heat transfer fluids and alkylated biphenyls.

*C. DCBTF*

Test data for 3,4-dichlorobenzotrifluoride (DCBTF) was submitted by Occidental Chemical Corporation pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 11, 1988. The submission describes acute fathead minnow and rainbow trout flow through studies. Environmental effects testing is required by the consent order. This chemical is used as an herbicide intermediate.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to their completeness.

**II. Public Record**

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44514). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm NE-G004, 401 M Street SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

Dated: July 26, 1988.

**Joseph J. Merenda,**

*Director, Existing Chemical Assessment Division, Office of Toxic Substances.*

[FR Doc. 88-17247 Filed 7-29-88; 8:45 am]

BILLING CODE 6560-50-M

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**[OA-FRL-3423-5]**

## Municipal Wastewater Treatment Works Construction Programs; Waivers

**AGENCY:** Environmental Protection Agency.

**ACTION:** Waivers of Section 109, Pub. L. 100-202, for the City and County of Honolulu, Wastewater Treatment Construction Grants C-150070-11 and C-150070-06, and the City of Oakland, California, Wastewater Treatment Construction grant, C-062969-110-06.

**SUMMARY:** The Administrator of the Environmental Protection Agency (EPA) has approved waivers from the provisions of the "Brooks-Murkowski amendment", section 109, Pub. L. 100-202, for the City and County of Honolulu, (grantee) wastewater treatment construction grants C-150070-11 and C-150070-06 and for the City of Oakland, California, wastewater treatment construction grant C-062969-110-06. The waivers are printed with this notice.

The waiver for Honolulu allows EPA to participate in the costs of two contracts awarded to the joint venture of PPC-Tokyu, even though one of the firms in the joint venture is a Japanese firm.

The waiver for Oakland allows EPA to participate in the costs of a contract awarded to Kajima Engineering even though the firm is Japanese.

**EFFECTIVE DATE:** July 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Johnson, Grants Administration Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5268.

Date: July 20, 1988.

**Lee M. Thomas,**

*Administrator.*

July 20, 1988.

**Memorandum**

Subject: Waiver of Section 109, Public Law 100-202 (Brooks-Murkowski Amendment), for the City and County of Honolulu, Hawaii, Project Numbers C-150070-11 and C-150070-00.

To: Daniel L. McGovern, Regional Administrator, Region IX.

I am responding to Mr. Harry Seraydarian's request for a waiver of the "Brooks-Murkowski amendment" requirements of Section 109, Public Law 100-202. Section 109 generally prohibits the use of Federal funds for public works contracts awarded during Federal fiscal year 1988 to firms of countries which deny fair and equitable market opportunities for U.S. products and services in major foreign construction projects. Currently, the only such country identified is Japan.

Section 109 allows me to waive this provision if I determine that it is in the public interest to do so.

*Action*

On March 17, 1988, the Office of Management and Budget issued guidance on the Brooks-Murkowski amendment, including factors to consider in determining when waivers may be appropriate. Based on that guidance and the circumstances in this case, I have determined it is in the public interest to waive the provisions of Section 109 for the City and County of Honolulu's contract to PPC-Tokyu Joint Venture to be awarded under wastewater treatment construction grants C-150070-11 and C-150070-06.

The waiver will allow EPA to participate in the cost of the contract between the City and County of Honolulu and the PPC-Tokyu Joint Venture.

*Background*

EPA awarded two grants to the City and County of Honolulu (grantee) to modify two existing wastewater treatment plants. The grantee bid both of these modifications in one public notice. The grantee opened bids on December 19, 1987, before the executive date of the Brooks-Murkowski amendment, and made a conditional award on December 31, 1987, which was after the effective date of Brooks-Murkowski. The same bidders bid on both projects. The low bid on the Kailua project, was $2,600,000 lower than the second low and only other bid. The low bid on the Kaneohe project—which was submitted by the same firm as the low bid on the Kailua project—was $1,300,000 lower than the second low bid. In addition, the firm that submitted the second low bid on both projects is partially owned by a Japanese firm, and so may also be subject to the Brooks-Murkowski amendment provisions. Without a waiver, the grantee would have to award to the second low bidder, if acceptable, or rebid the contract. In either case, it would likely result in a major cost increase for these projects and substantially delay them.

The OMB guidance provides that factors for approval of waivers include whether—

- The contract was awarded before guidance implementing the provision was issued;
- National security interests of the United States are adversely affected;
- Products are of limited availability from other than Japanese sources; and
- Costs will significantly exceed the costs of cancelling the contract and awarding another for similar products or services.

In this case, I have determined that it is appropriate to approve a waiver for the following reasons:

- Although the grantee has not approved the final contract award, it initiated the

bidding process and opened bids before the effective date of the amendment and conditionally awarded the contract before guidance was issued.

• Award to the second low and only other bidder would increase the cost of the project by over $4 million. Further, it is unclear whether the second low bidder is eligible to receive the award.

• The delays caused by rebidding the project will likely further significantly increase the cost of the project.

If you have any questions, please call Harvey Pippen on 8–832–5240.

Lee M. Thomas

July 20, 1988.

**Memorandum**

Subject: Waiver of Section 109, Public Law 100–202 (Brooks-Murkowski Amendment), for the City of Oakland, California, Project Number C–062969–110–08.

To: Daniel L. McGovern, Regional Administrator, Region IX.

I am responding to Mr. Harry Seraydarian's request for a waiver of the "Brooks-Murkowski amendment" requirements of Section 109, Public Law 100–202, for the City of Oakland, California, project number C–06–2969–110–08. Section 109 generally prohibits the use of Federal funds for public works contracts awarded during Federal fiscal year 1988 to firms of countries which deny fair and equitable market opportunities for U.S. products and services in major foreign construction projects. Currently, the only such country identified is Japan.

Section 109 allows me to waive this provision if I determine that it is in the public interest to do so.

*Action*

On March 17, 1988, the Office of Management and Budget issued guidance on the Brooks-Murkowski amendment, including factors to consider in determining whether waivers may be appropriate. Based on that guidance and the circumstances in this case, I have determined it is in the public interest to waive the provisions of Section 109 for the City of Oakland's contract to Kajima Engineering and Construction, Inc. awarded under wastewater treatment construction grants C–062969–110–08.

The waiver will allow EPA to participate in the cost of the contract between the City of Oakland and the firm of Kajima Engineering and Construction, Inc.

*Background*

The City of Oakland advertised for bids on September 18, 1987, and again on October 9, 1987. The low bid—Kajima Engineering—was $1,058,000 and the second low bid was $1,072,220.

The California State Water Resources Control Board gave the grantee approval to award the contract to Kajima Engineering and Construction, Inc. on December 23, 1987. Oakland awarded the contract on January 26, 1988. The contractor initiated construction on March 14, 1988. If EPA does not approve this waiver, the grantee will have to terminate the contract and rebid the project. This would not only delay the project, but would result in increased costs due to the rebidding process, termination costs, and possible increased construction costs.

The OMB guidance provides that factors for approval of waivers include whether—

• The contract was awarded before guidance implementing the provision was issued;

• National security interests of the United States are adversely affected;

• Products are of limited availability from other than Japanese sources; and

• Costs will significantly exceed the costs of cancelling the contract and awarding another for similar projects or services.

In this case, I have determined that it is appropriate to approve a waiver for the following reasons:

• The bidding process was initiated and essentially completed prior to the effective date of the Brooks-Murkowski amendment.

• The grantee did not receive notification from the SWRCB of the requirements under Brooks-Murkowski until after the award of the contract and initiation of work.

• Terminatioin of the contract would cause a major delay in completion of this regional sewer project and result in increased costs to the grantee.

If you have any questions, please call Harvey Pippen on 8–382–5240.

Lee M. Thomas

[FR Doc. 88–17337 Filed 7–29–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**[PR Docket No. 88–345]**

### Application Amateur Operator License; Lawrence Kaczmarczyk

**Notice**

Summary of *Designation Order:* Lawrence Kaczmarczyk. The Federal Communications Commission has released a *Designation Order* designating the application of Lawrence Kaczmarczyk for an amateur radio station license and an Advanced Class amateur operator license for hearing. The issues in this proceeding are to determine; Whether the applicant, Lawrence Kaczmarczyk, operated radio transmitting apparatus without authorization on December 12, 1985, January 24, 1986, and/or December 5, 1986, in willful and/or repeated violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C 301; whether any unlicensed operation established pursuant to the first issue was calculated to cause harmful interference to radio communications; the effect of the applicant's past history in the amateur service upon his qualifications to become an amateur service license; whether the applicant is qualified to become an amateur service license; and whether the grant of the application would serve the public interest, convenience and necessity. Petitions to intervene must be filed within 30 days of publication in the **Federal Register** in accordance with the specific provisions of 47 CFR 1.223(b) and the general provisions of 47 CFR Part 1.

A copy of the complete *Designation Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Federal Communications Commission.

**Robert H. McNamara,**

*Chief, Special Services Division.*

[FR Doc. 88–17271 Filed 7–29–88; 8:45 am]

BILLING CODE 6712–01–M

**[MM Docket No. 88–382]**

### Applications For Consolidated Hearing; WWOR–TV, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant, City and State | File No. | MM Docket No. |
|---|---|---|
| A. WWOR–TV, Inc., Secaucus, NJ. | BRCT–871221KE. | 88–382 |
| B. Garden State Broadcasting Limited Partnership, Secaucus, NJ. | BPCT–871223KG. | |
| C. Whitely Communications, Secaucus, NJ. | BPCT–880321KM. | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an

Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**Roy J. Stewart,**

*Chief Video Services Division, Mass Media Bureau.*

[FR Doc. 88–17272 Filed 7–29–88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL RESERVE SYSTEM

### Anmer Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 19, 1988.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Anmer Corporation*, Neligh, Nebraska; to acquire 64.07 percent of the voting shares of Schuyler State Bank and Trust Company, Schuyler, Nebraska.

Board of Governors of the Federal Reserve System, July 26, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–17198 Filed 8–1–88; 8:45 am]

BILLING CODE 6210-01-M

### United Bancorp of Kentucky, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1988.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *United Bancorp of Kentucky, Inc.*, Lexington, Kentucky; to engage *de novo* through its subsidiary, UBK Data System, Inc., Lexington, Kentucky, in licensing certain internally developed computer software programs to affiliated and unaffiliated financial institutions pursuant to section 225.25(b)(7) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F.W.N.S.*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Illinois Trust Company, Glen Ellyn, Illinois, in trust company functions pursuant to § 225.25(b) (3) of the Board's Regulation Y. Comments on this application must be received by August 22, 1988.

2. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Illinois Trust Company, Glen Ellyn, Illinois, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y. Comments on this application must be received by August 22, 1988.

Board of Governors of the Federal Reserve System, July 26, 1988.

**James McAfee,**

*Associated Secretary of the Board.*

[FR Doc. 88–17197 Filed 7–29–88; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### General Services Administration Advisory Committee on the FTS2000 Procurement; Closed Meeting

Notice is hereby given that a meeting of the General Services Administration (GSA) Advisory Committee on the FTS2000 Procurement is tentatively scheduled for August 24, 1988, from 1:30 p.m. to 4:30 p.m., in the board room of the MITRE Corporation, 7525 Colshire Drive, McLean, VA 22109. The agenda will relate to (1) current status of the project; and (2) negotiation issues and strategy.

The entire meeting will be closed to the public because procurement sensitive matters, especially negotiation issues and strategy, will be discussed. The exemptions for closing the meeting are cited in 5 U.S.C. 552b(c)(4) and (9)(B) (Government in the Sunshine Act).

Questions regarding this meeting should be directed to John J. Landers (202) 523–5308.

Dated: July 25, 1988.

**John J. Landers,**

*Director, Office of Administration Information Resources Management Service.*

[FR Doc. 88–17302 Filed 7–29–88; 8:45 am]

BILLING CODE 6820-25-M

[G-88-1]

### Delegation of Authority to The Secretary of Defense

Pursuant to the authority vested in me by section 3726 of Title 31, United States Code, I have determined that it is both cost-effective and in the public interest to delegate authority to the Secretary of Defense to conduct a prepayment audit of any transportation bill executed by any department, agency, or activity within the Department of Defense, subject to the provisions of the Federal Property Management Regulations, Title 41, Code of Federal Regulations, Subpart 101–41, and amendments thereto. The Department of Defense has identified the following organizations or commands which initially are delegated authority to conduct such audits:

U.S. Army Finance & Accounting Center, Indianapolis, IN
Navy Material Transportation Office, Norfolk, VA
Transportation Voucher Certification Branch, Marine Corps Logistics Base, Albany, GA
Headquarters, Military Traffic Management Command, Washington, DC, and its Area Commands at Bayonne, NJ and Oakland, CA

The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

The Secretary of Defense shall notify GSA in writing of these additional redelegations and their basis. This delegation is effective upon publication in the **Federal Register**.

Dated: July 26, 1988.

**John Alderson,**

*Acting Administrator of General Services.*

[FR Doc. 88–17233 Filed 7–29–88; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### National Institute for Occupational Safety and Health; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

*Name:* Optimization of Speech for Communicative/Protective Disorders.

*Date:* August 10, 1988.

*Place:* Robert A. Taft Laboratories, Room B–32, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

*Time:* 9:00 a.m.—4:00 p.m.

*Status:* Open to the public, limited only by the space availability.

*Purpose:* To review and discuss the scientific merit of an experimental investigation designed to measure speech in the ear canal of the speaker and to determine the alteration of speech as it travels from the vocal tract to the ear canal. The impact of alteration on speech intelligibility will be assessed by calculating the articulation index and the speech transmission index for subjects listening to the ear canal recorded speech.

Additional information may be obtained from: John R. Franks, Physical Agents Effects Branch, NIOSH, CDC, Mail Stop C–27, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: Commercial: (513) 533–8281, FTS: 684–8281.

Dated: July 26, 1988.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 88–17329 Filed 7–29–88; 8:45 am]

BILLING CODE 4160-19-M

### Program Announcement and Availability of Fiscal Year 1988 Funds to Develop Curriculum Guidelines on Infection Control and Patient Management for Dental Education Institutions

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 to provide support to develop curriculum guidelines on infection control and management of infectious patients, with emphasis on human immunodeficiency virus (HIV) infection and acquired immunodeficiency syndrom (AIDS), for use by dental education institutions.

#### Authority

This project is authorized by section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

#### Eligibility

This is not a formal request for applications. Assistance will be provided only to the American Association of Dental Schools (AADS) for this project. No other applications are solicited or will be accepted. The AADS is the only body of dental educators that represents all phases of dental education: dentistry, dental hygiene, dental assistants, and dental laboratory technicians. The membership of this organization is composed of leaders in dental education, with great influence for the direction of curricula for dental schools. The organization is in a unique position to assist individual dental schools and educational programs for other dental personnel in developing curriculum guidelines in infection control and management of HIV-infected individuals for incorporation into their curricula, and in what direction future resources might be allocated in order to develop a comprehensive approach contributing toward national disease prevention/health promotion efforts. The AADS, as representative of the Nation's dental schools, is best suited to develop infection control and patient management curriculum guidelines for incorporation into dental programs of educational institutions.

#### Background

A major thrust of the dental profession's involvement in human immunodeficiency virus (HIV) infection has been to stress the implementaton and routine utilization of universal infection control procedures. When properly used, these measures are effective in preventing transmission of potential microbial pathogens transported by blood and/or saliva during treatment. The challenge of infection control in dentistry has emerged as a major factor in the manner in which patient management is accomplished.

On September 21–22, 1987, a Task Force of experts on AIDS and Dental Education was convened in Washington, DC. The curriculum workgroup identified particular "gaps" in the education of dental personnel, about infection control and the management of infectious patients, that have an impact on education, testing for licensure, and practice settings.

Inclusion of the most current infection control procedures is critical in pre- and post-professional training for dental health professionals/students, to enable them to incorporate the most recent advances in research, epidemiology, infection control, and health care delivery in treatment of patients.

The dental health professional must provide appropriate, comprehensive, coordinated, and up-to-date care of patients with infectious diseases. Successful provision of quality care by the dental health community also requires recognition of access barriers to care for patients with infectious diseases and the elimination of these barriers. Additionally, the dental health professional must: (1) Have substantial awareness of the range of clinical signs and symptoms present in those with infectious diseases; (2) understand the

systemic impact of infection; (3) recognize and know how to provide treatment for the many oral manifestations of such diseases; and (4) function in coordination and cooperation with the entire health care delivery community.

Command of the science-base relative to infection control and management of patients with infectious diseases should result in enhanced access and higher quality services provided to individuals.

**Purpose**

The purpose of this grant is to develop curriculum guidelines on both infection control and management of patients with infectious diseases, with emphasis on HIV infection and AIDS, for dental educational institutions. Didactic curriculum and/or clinical protocols for infection control and treatment in these institutions must be updated in order to prepare dental students/personnel for the management of patients with infectious diseases.

**Availability of Funds**

During fiscal year 1988, approximately $40,000 will be available to support this project. The grant will be funded for one 12-month budget/project period. The funding estimate outlined above may vary and is subject to change.

**Review and Evaluation Criteria**

The application will be reviewed and evaluated on the following:

1. Extent to which the applicant provides complete, specific, and focused description of background and need and the rationale for including particular infection control and patient management guidelines for inclusion in dental schools' curriculum;

2. Degree to which the applicant provides evidence of an ability to carry out the proposed project and the extent to which the applicant institution documents demonstrated capability to achieve objectives similar to those of this project;

3. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to this project;

4. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project;

5. Adequacy of plans for administering the project;

6. Quality of the evaluation plan to be used to measure progress.

Consideration will also be given to the extent to which the budget request is clearly explained, reasonable, and consistent with the purpose of the project.

**Application Submission and Deadline**

The original and two copies of the application must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before August 22, 1988.

**Revie Requirements**

Application is not subject to review as governed by Executive Order, 12372, Intergovernmental Review of Federal Programs.

**Where to Obtain Additional Information**

Information regarding the business aspects of this project may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, (404) 842-6575 or FTS 236-6575.

Information regarding the technical aspects of this project may be obtained from Dr. Lawrence J. Furman, Chief, Dental Disease Prevention Activity, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1830 or FTS 236-1830.

Dated: July 26, 1988.

**Glenda S. Cowart,**

*Director, Office of Program Support Centers for Disease Control.*

[FR Doc. 88-17235 Filed 7-29-88; 8:45 am]

BILLING CODE 4160-18-M

## National Institutes of Health

### Establishment of Program Advisory Committee on the Human Genome

Pursuant to the Federal Advisory Committee Act of October 6, 1972, [Pub. L. 92-463, 86 Stat. 770-776] the Director, National Institutes of Health, announces the establishment by the Secretary, Department of Health and Human Services, of the Program Advisory Committee on the Human Genome.

The Program Advisory Committee on the Human Genome will advise the Secretary; the Assistant Secretary for Health; the Director, National Institutes of Health; the Associate Director for Human Genome Research, National Institutes of Health; and the NIH Working Group on the Human Genome on long- and short-term planning to meet research needs for genomic analysis. Specifically, the Committee shall identify opportunities to further research on information and database technology and the methodology of genomic analysis and the characteristization of the genomes of a variety of organisms, with the goal of applying this knowledge to the analysis of the human genome and ultimately to the prevention, diagnosis, and treatment of human disorders; recommend areas in which research should be stimulated; and suggest conference, workshops, or other activities that the NIH should support to further the development of this research area.

Unless renewed by appropriate action prior to its expiration, the Program Advisory Committee on the Human Genome shall terminate two years from the date of etablishment.

Dated: July 26, 1988.

**James B. Wyngaarden,**

*Director, National Institutes of Health.*

[FR Doc. 88-17279 Filed 7-29-88; 8:45 am]

BILLING CODE 4140-01-M

### Meeting of the National Advisory Council on Aging

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on September 8, 1988, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, September 8, from 8:30 a.m. to approximately 2:00 p.m. for a status report by the Director, National Institute on Aging, a report on the Behavioral and Social Research Program, and for discussions of program policies and issues, recent legislation, and other items of interest. Attendance by the Public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sections 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on September 8 from 2:00 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A roster of committee members and summary minutes of the meeting can be obtained from Ms. June McCann, Committee Management Officer, Building 31, Room 5C02, National

Institute on Aging, National Institutes of Health, Bethesda, Maryland 20892, (Phone: (301) 496–9322).

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: July 19, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–17280 Filed 7–29–88; 8:45 am]

BILLING CODE 4140–01–M

## Office of Human Development Services

### Developmental Disabilities Program; Intent To Reallot Basic Support and Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

**AGENCY:** Administration on Developmental Disabilities, Office of Human Development Services, HHS.

**ACTION:** Notice of intent to reallot funds.

**SUMMARY:** The Administration on Developmental Disabilities herein gives notice of intent to reallot Fiscal Year 1988 funds which are not available to the Trust Territories of the Pacific and Fiscal Year 1988 funds which prior to September 30, 1989 will not be obligated by any other State. This notice is given in accordance with section 125(d) of the Developmental Disabilities Assistance and Bill of Rights Act. To identify States that do not intend to obligate Fiscal Year 1988 funds by September 30, 1989, and to identify those States that wish to be considered for receipt of additional funds under this reallotment, each State or Territory must provide the following information in writing:

(1) The amount of Fiscal Year 1988 funds that will not be obligated by September 30, 1989, under its approved State Plan. If all the funds will be obligated, provide a statement to that effect;

(2) The amount of additional funds that can be obligated by September 30, 1989, if any; or

(3) A statement that no additional funds can be used by that date.

This information will be used to calculate the amounts to be reallotted. It should be submitted no later than August 31, 1988, to: Bettye J. Mobley, Grants and Contracts Management Division, Office of Human Development Services, Department of Health and Human Services, 200 Independence Avenue SW., Room 341F.4 HHH Bldg., Washington, DC 20201.

A State or Territory which does not provide the written notice as described above will not receive a reallocation of additional funds for Fiscal Year 1988.

**FOR FURTHER INFORMATION CONTACT:** Bettye J. Mobley, (202) 245–7220.

Dated: July 7, 1988.

**Carolyn Doppelt Gray,**

*Commissioner, Administration on Developmental Disabilities.*

Approved: July 25, 1988.

**Sydney Olson,**

*Assistant Secretary for Human Development Services.*

[FR Doc. 88–17230 Filed 7–29–88; 8:45 am]

BILLING CODE 4130–01–M

## Public Health Service

### National Center for Health Services Research and Health Care Technology Assessment; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety and clinical effectiveness and indications for use of refractive keratoplasty procedures. This assessment will not address radial keratotomy. We are interested in the safety and effectiveness of keratophakia, keratomileusis, and epikeratophakia. In keratophakia the front of the cornea is sliced off, a donor piece of cornea curved to shape is inserted over the eye and the front part of the cornea that was removed is reattached over the donor cornea. Keratomileusis involves removing the front of the cornea, freezing and reshaping it and stiching it back on the eye. Epikeratophakia is a procedure in which a commercially prepared piece of corneal tissue is sutured onto the patient's cornea which has been surgically prepared to accept this tissue. Specifically, we are interested in: (1) The indications including keratoconus, myopia, aphakia and others for which these procedures are deemed appropriate, (2) patient selection criteria to identify patient populations that would benefit from these procedures, and (3) specific guidelines under which patients with specific diagnoses may benefit from the procedures being evaluated. This assessment also seeks to determine if one procedure is more appropriate for patients with a specific diagnosis as opposed to another. The PHS also seeks to determine under what circumstances these procedures are considered alternatives to intraocular lens implantation or contact lenses.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, as well as on clinical acceptability and the effectiveness of this technology and extent of use are also being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than October 24, 1988 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Mr. Martin Erlichman, Health Science Analyst, Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A–27, Rockville, MD 20857, 301 443–4990.

Date: July 25, 1988.

**Enrique D. Carter,**

*Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.*

[FR Doc. 88–17231 Filed 7–29–88; 8:45 am]

BILLING CODE 4160–17–M

### National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Twelve Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies are needed, including long-term toxicology and

carcinogenesis studies, will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientists within 30 days of the appearance of this announcement. Contact may be made by telephone or mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP in determining which chemicals required additional studies and in designing these studies.

1. *o-Cresol (95-48-7)*—14-day and 90-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Dennis Dietz, telephone 919-541-2272.

2. *m-Cresol (108-39-4)*—14-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Dennis Dietz, telephone 919-541-2272.

3. *p-Cresol (106-44-5)*—14-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Dennis Dietz, telephone 919-541-2272.

4. *Cresol Mixture (1319-77-3)*—14-day and 90-day doses feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Dennis Dietz, telephone 919-541-2272.

5. *t-Butyl perbenzoate (614-45-9)*—14-day and 90-day gavage studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. H. Matthews telephone 919-541-3252.

6. *Chloropropanol (127-00-4)*—14-day and 90-day dosed water studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Raymond Yang, telephone 919-541-2947.

7. *Chloroprene (126-99-8)*—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Ron Melnick, telephone 919-541-4142.

8. *Carisoprodol (78-44-4)*—14-day and 90-day gavage studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Po Chan, telephone 919-541-7561.

9. *Methyl ethyl ketone peroxide (1338-23-4).*14-day and 90-day skin paint studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Kamal Abdo, telephone 919-541-7819.

10. *Pentachlorobenzene (608-93-5)*—14-day and 90-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Raymond Yang, telephone 919-541-2947.

11. *Trichlorofon (52-68-6)*—14-day and 90-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Po Chan, telephone 919-541-7561.

12. *Arsine (7784-42-1)*—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice and 28-day inhalation studies in Golden Syrian hamsters. Contact Person: Dr. Richard Morrissey, telephone 919-541-5035.

Dated: July 27, 1988.

**David P. Rall,**

*Director, National Toxicology Program.*

[FR Doc. 88-17281 Filed 7-29-88; 8:45 am]

BILLING CODE 4140-01-M

## Health Resources and Services Administration; Statement of Organization, Functions and Delegation of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 52 FR 47053-54, December 11, 1987), is amended to reflect the transfer of the Freedom of Information and Privacy Act functions from the Office of Program and Policy Development (HBC12) to the Division of Health Services Scholarships (HBC7), Bureau of Health Care Delivery and Assistance.

Under *Section HB-10, Organization and Functions,* amend the *Bureau of Health Care Delivery and Assistance (HBC),* as follows:

(1) Under functional statement for the *Office of Program and Policy Development (HBC12)* amend item (9) to read "(9) coordinates the Bureau's responsibilities in connection with the Inspector General's 'Hotline'."

(2) Under functional statement for the *Division of Health Services Scholarships (HBC7)* and after item (10), change the period to a semicolon and add the following: "(11) Administers the Bureau's Freedom of Information Act and Privacy Act activities."

Date: July 25, 1988.

**Wilford J. Forbush,**

*Director, Office of Management, PHS.*

[FR Doc. 88-17269 Filed 7-29-88; 8:45 am]

BILLING CODE 4160-16-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. N-88-1838]**

## Notice of Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C.Chapter 35).

The Notices list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 22, 1988.

**David S. Cristy,**

*Deputy Director, Information Policy and Management Division.*

*Proposal:* Definition of Income, Rents, and Recertification of Family Income for the Rent Supplement, Section 236,

and Section 8 Special Allocation Programs
*Office:* Housing
*Description of The Need for the Information and Its Proposed Use:* This information will be used by the project owner to advise HUD and request approval of new utility allowances when the utility rate change results in a cumulative increase of 10 percent or more. If periodic adjustments to the utility allowance are not made, tenants would be required to pay a larger total tenant payment than is permissible
*Form Number:* None
*Respondents:* State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
*Frequency of Submission:* On Occasion
*Reporting Burden*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Periodic Requests | 1,200 | | 1 | | ½ | | 600 |

*Total Estimated Burden Hours:* 600
*Status:* Extension
*Contact:* Judith L. Lemeshewsky, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880
*Date:* July 21, 1988
*Proposal:* Emergency Shelter Grants Program (FR–2387)
*Office:* Community Planning and Development
*Description of the Need for the Information and Its Proposed Use:* This program provides grants to cities, counties, states, and territories for the following eligible activities relating to emergency shelter for the homeless: renovation, rehabilitation, or conversion of buildings; supportive services; and maintenance, operation (other than staff), insurance, utilities, and furnishings. Information collected will be used to ensure grantees comply with the program's statutory and regulatory requirements
*Form Number:* SF–269, SF–424, and certifications
*Respondents:* State or Local Governments and Non-Profit Institutions
*Frequency of Submission:* On Occasion and Annually
*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Application | 350 | | 1 | | 16 | | 5,600 |
| Initial Reports | 350 | | 1 | | 12 | | 4,200 |
| Annual Reports | 350 | | 1 | | 12 | | 4,200 |
| Waiver Reports | 25 | | 1 | | 4 | | 100 |

Total Estimated Burden Hours: 14,100
Status: Extension
Contact: James R. Broughman, HUD, (202) 755–5977; John Allison, OMB, (202) 395–6880
Date: July 22, 1988.

[FR Doc. 88–17524 Filed 7–29–88; 8:45 am]
BILLING CODE 4210–01–M

## Office of the Assistant Secretary for Housing—Federal Housing Commissioner

**[Docket No. N–88–1837; FR–2533]**

## Mortgage and Loan Insurance Programs Under the National Housing Act; Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

**ACTION:** Notice of change in debenture interest rates.

**SUMMARY:** This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning July 1, 1988, is 8⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1988, is 9⅜ percent.

**FOR FURTHER INFORMATION CONTACT:** James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing, and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426–4325 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203,479, 207.259(e)(6) and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the

period beginning July 1, 1988, is 9⅜ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 9⅜ percent for the six-month period beginning July 1, 1988. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1988.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since July 1, 1979:

| Effective rate (percent)— | On or after | Prior to |
|---|---|---|
| 8¼ | July 1, 1979 | Jan. 1, 1980. |
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¾ | Jan. 1, 1981 | July 1, 1981. |
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12¾ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10¼ | Jan. 1, 1983 | July 1, 1983. |
| 10⅜ | July 1, 1983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 13⅜ | July 1, 1984 | Jan. 1, 1985. |
| 11⅝ | Jan. 1, 1985 | July 1, 1985. |
| 11⅛ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 8¼ | July 1, 1986 | Jan. 1, 1987. |
| 8 | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅛ | Jan. 1, 1988 | July 1, 1988. |
| 9⅜ | July 1, 1988 | |

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1988, is 8⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1989.

The subject matter of this notice falls within the categorical exclusions from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 25, 1988.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 88-17255 Filed 7-29-88; 8:45 am]

BILLING CODE 4210-27-M

## Office of the Regional Administrator—Regional Housing Commissioner

**[Docket No. D-88-882]**

### Acting Manager, Region IV (Atlanta); Designation for Memphis Office

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation.

**SUMMARY:** Updates the designation of officials who may serve as Acting Manager for the Memphis Office.

**EFFECTIVE DATE:** June 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303-3388, 404-331-5199.

**Designation of Acting Manager for Memphis Office**

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Property Disposition Branch
3. Chief, Valuation Branch

This designation supersedes the designation effective February 25, 1987, (52 FR 17482, May 8, 1987)

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of June 29, 1988.

**Michael F. Dalton,**

*Acting Manager, Memphis Office.*

[FR Doc. 88-17256 Filed 7-29-88; 8:45 am]

BILLING CODE 4210-01-M

**[Docket No. D-88-883]**

### Acting Manager, Region IV (Atlanta), Designation for Tampa Office

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation.

**SUMMARY:** Updates the designation of officials who may serve as Acting Manager for the Tampa Office.

**EFFECTIVE DATE:** July 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303-3388, 404-331-5199.

**Designation of Acting Manager for Tampa Office**

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager.
2. Chief, Property Disposition Branch.
3. Chief, Valuation Branch.
4. Chief, Mortgage Credit Branch.
5. Chief, Loan Management Branch.

This designation supersedes the designation effective February 25, 1987, (52 FR 17483, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of July 1, 1988.

**George A. Milburn, Jr.,**

*Manager, Tampa Office.*

**Raymond A. Harris,**

*Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.*

[FR Doc. 88-17257 Filed 7-29-88; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ-040-08-4212-12; A 22435(A)]**

### Notice of Realty Action; Exchange of Public Land in Graham, Greenlee, Cochise and Pinal Counties, Arizona With the State of Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Amendment notice.

**SUMMARY:** The **FEDERAL REGISTER** Notice published on July 17, 1987 at 52 FR 137 beginning on page 27063, serial numbers A 22435 and A 22436, should be amended to include the following offered State lands:

**Gila and Salt River Meridian, Arizona**

T. 7 S., R. 23 E.,
Sec. 7, lots 1–4 incl., E½,E½W½;
Sec. 8, all;
Sec. 9, all;
Sec. 13, N½,SW¼,N½SE¼,SW¼SE¼;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, N½,SW¼,N½SE¼,SW¼SE¼;
Sec. 18, lots 1–4 incl., E½,E½W½;
Sec. 20, W½NE¼,SE¼NE¼,W½,SE¼;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, W½NE¼,SE¼NE¼,W½,SE¼.
T. 7 S., R. 25 E.,
Sec. 24, that portion of W½NW¼NE¼ lying north of Golf Course Road.
T. 11 S., R. 20 E.,
Sec. 31, lots 3 and 4, SE¼NE¼,SE¼;
Sec. 32, all.
T. 14 S., R. 24.,
Sec. 36, all.
T. 14 S., R. 25 E.,
Sec. 32, all.
T. 23 S., R. 31 E.,
Sec. 33, NE¼,N½SE¼,SW¼SE¼
Sec. 34, NW¼NE¼,NW¼,NE¼SE¼;
Sec. 35, S½NE¼,S½.
T. 23 S., R. 32 E.,
Sec. 20, all;
Sec. 21, S½NE¼,SE¼NW¼,NE¼SW¼, SE¼;
Sec. 28, all;
Sec. 29, all.
T. 24 S., R. 31 E.,
Sec. 1, N½,SW¼,W½SE¼;
Sec. 2, all;
Sec. 3, NE¼,E½NW¼,SW¼NW¼,S½;
Sec. 4 SE¼NE¼,SW¼,E½SE¼;
Sec. 9, E½NE¼,W½,S½SE¼;
Sec. 10, E½;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 21, lots 1–4 incl. (U.S. Minerals);
Sec. 22, lots 1–4 incl. (U.S. Minerals);
Sec. 23, lots 1–4 incl. (U.S. Minerals);
Sec. 24, lots 1–4 incl. (U.S. Minerals);
T. 24 S., R. 32 E.,
Sec. 6, SW¼,W½SE½;
Sec. 7, all (U.S. Minerals);
Sec. 8, all (U.S. Minerals);
Sec. 17, all (U.S. Minerals);
Sec. 18, all (U.S. Minerals);
Sec. 19, lots 1–4 incl. (U.S. Minerals);
Sec. 20, lots 1–4 incl. (U.S. Minerals).

Containing 24,114.13 acres, more or less in Graham and Cochise Counties.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the exchange proposal may be obtained from the District Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

**John A. Rietz,**
*Acting District Manager.*
Date: July 21, 1988.

[FR Doc. 88-17241 Filed 7-29-88; 8:45 am]
BILLING CODE 4310-32-M

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**[NV-930-08-4212-14; N-48113, et al.]**

### Battle Mountain District; Tonopah Resource Area; NV

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Realty action; Competitive sale of Federal land in Nye County, Nevada.

**SUMMARY:** The following described land has been examined and identified as suitable for disposal by sale through competitive bidding procedures under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

**Mount Diablo Meridian**

T. 12 S., R. 46 E.,
Sec. 7,
N-48113, lot 53,
N-48560, lot 60,
N-48561, SW¼NE¼SE¼SW¼,
N-48562, SE¼NE¼SE¼SW¼,
N-48563, NW¼NW¼SE¼SW¼,
N-48564, SW¼NW¼SE¼SW¼.
N-48565, NE¼SW¼SE¼SW¼,
N-48566, SW¼SW¼SE¼SW¼,
N-48567, SW¼SE¼SE¼SW¼,
N-48568, SE¼SE¼SE¼SW¼.

Ten parcels of land, each containing 2.5 acres, for a total of 25 acres.

The sale is consistent with the Bureau's planning system and the Esmeralda-Southern Nye Resource Management Plan. The parcels are isolated. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency. The land will not be offered for sale for at least 60 days after the publication of this Notice in the **Federal Register**.

The lands are not within any Grazing Allotment.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, together with the right to prospect for, mine, and remove these minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Battle Mountain District Office.

The patents will be subject to a 50 foot easement for roads and public utilities purposes, in favor of Nye County, along the north, south, east, and west boundaries of each parcel.

**General Information**

Publication of this notice in the **Federal Register** segregates the public lands from the all forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the **Federal Register** of a notice of termination or 270 days from the date of publication of this notice, whichevercomes first.

Information relative to the sale and bidding procedures as well as the appraised fair market value of the parcels, will be made available to the public at a later date, not less than 30 days before the sale.

The lands are proposed to be offered for sale by sealed bid, utilizing competitive bidding procedures. Conveyance of the mineral estates, except for oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, will occur simultaneously with the sale of the land. A bid will constitute an application for the mineral estates having no known mineral values; therefore, all bids must be accompanied by a $50.00 filing fee for conveyance of the available mineral interests.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final

determination of the Department of the Interior.

**Michael C. Mitchel,**

*Acting District Manager, Battle Mountain District.*

July 19, 1988.

[FR Doc. 88-17242 Filed 7-29-88; 8:45 am]

BILLING CODE 4310-HC-M

## National Park Service

### Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, Telephone 202-395-7313.

*Title:* Park Use Survey—Katmai NP.

*Abstract:* Results of the survey will be used in operational planning and management of activities designed to support actual public use activities and needs.

*Bureau Form Number:* None.

*Frequency:* On Occasion.

*Description of Respondents:* Individuals or households.

*Annual Responses:* 2,400.

*Annual Burden Hours:* 180.

*Bureau Clearance Officer:* Russell K. Olsen, 523-5133.

**Russell K. Olsen,**

*Chief, Administrative Services Division.*

[FR Doc. 88-17222 Filed 7-29-88; 8:45 am]

BILLING CODE 4310-62-M

### Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone, 202-395-7313.

*Title:* Park Use Survey—Sleeping Bear Dunes.

*Abstract:* Results of the survey will be used in operational planning and management of activities designed to support actual public use activities and needs.

*Bureau Form Number:* None.

*Frequency:* On Occasion.

*Description of Respondents:* Individuals or households.

*Annual Responses:* 2,300.

*Annual Burden Hours:* 383.

*Bureau Clearance Officer:* Russell K. Olsen, 523-5133.

**Russell K. Olsen,**

*Chief, Administrative Services Division.*

[FR Doc. 88-17223 Filed 7-29-88; 8:45 am]

BILLING CODE 4310-02-M

### Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, September 10, 1988 at the Mather Training Center, Harpers Ferry, West Virginia.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC.
Mrs. Dorothy Tappe Grotos, Arlington, Virginia
Mr. Samuel S. D. Marsh, Bethesda, Maryland
Mr. Keith A. Kirk, Hancock, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Professor Charles P. Poland, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Colonel Ralph Albertazzie, Martinsburg, West Virginia
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry A. Passett, Washington, D.C.
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mrs. Josephine L. Beynon, Cumberland, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business.
2. Superintendent's report.
3. Committee reports: Plans and Projects Committee, Recreation Policies and Issues Committee, Resource Protection Committee.
4. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Date: July 25, 1988.

**Lowell V. Sturgill,**

*Regional Director, National Capital Region.*

[FR Doc. 88-17220 Filed 7-29-88; 8:45 am]

BILLING CODE 4310-70-M

### Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., CDT, on September 15, 1988, at the St. Bernard Parish Police Jury Conference Room, 8201 West Judge Perez Drive, Chalmette, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Pub. L. 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program of

the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Planning and Development Committee Report.
—Natural Systems Committee Report.
—Acadian House.
—New Commission Members.
—Update on Cooperative Agreements.
—Update on Acadian Centers.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Date: July 21, 1988.

**John E. Cook,**

*Regional Director, Southwest Region.*

[FR Doc. 88–17219 Filed 7–29–88; 8:45 am]

BILLING CODE 4310–70–M

## National Capital Region, Public Affairs; Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1988 Christmas Pageant of Peace, which opens December 15 on the Ellipse, south of the White House.

A public meeting will be held at 10:30 a.m., Thursday, October 6, at the National Capital Region Building, 1100 Ohio Drive, SW., 2nd floor conference room, (Room 234), Washington, DC.

Interested persons who would like to comment at the meeting should notify the National Park Service by September 30 by calling the Office of the Public Affairs between 9 a.m. and 4 p.m., weekdays at 485–9666. Persons who cannot attend the meeting can send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242.

Date: July 26, 1988.

**Manus J. Fish, Jr.,**

*Regional Director, National Capital Region.*

[FR Doc. 88–17221 Filed 7–29–88; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 261X)]

## CSX Transportation, Inc.; Abandonment Exemption; Greenville County, SC

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 2.36-mile line of railroad between Valuation Station 19+81 and Valuation Station 1793+00 at Greenville, SC, in Greenville County, SC.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 1, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 12, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 22, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (See) will prepare an environmental assessment (EA). See will serve the EA on all parties by August 7, 1988. Other interested persons may obtain a copy of the EA from See by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, See at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–17109 Filed 8–1–88; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[Docket No. AB–55 (Sub-No. 251X)]

## CSX Transportation, Inc.; Abandonment Exemption; Loudon County, TN

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 3.2-mile line of railroad between milepost LKT–302.3 at Jena, TN, and milepost LKT–305.5 at Greenback, TN, in Loudon County, TN.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 1, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 12, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 22, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (See) will prepare an environmental assessment (EA). See will serve the EA on all parties by August 7, 1988. Other interested persons may obtain a copy of the EA from See by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, See at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 22, 1988.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17108 Filed 8-1-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB-298 (Sub-No. 1X)]**

## Iowa Southern Railroad Co.; Exemption; Abandonment in Pottawattamie, Mills, Fremont, and Page Counties, IA

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Iowa Southern Railroad Company of 61.5 miles of main track and 3 miles of additional side track and/or terminal track in Pottawattamie, Mills, Fremont, and Page Counties, IA, subject to employee protective conditions, a public use condition, and environmental conditions with respect to the salvaging of the rail on the line.

**DATES:** Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 11, 1988. Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 16, 1988. Petitions for reconsideration must be filed by August 22, 1988.

**ADDRESSES:** Send pleadings referring to Docket No. AB-298 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Richard L. Barr, 76 S. Sierra Madre, #230, Colorado Springs, CO 80903.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington DC 20423, or call (202) 289-4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

[1] *See Exemption of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987) and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

Decided: July 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley was absent and did not participate in the disposition of this proceeding.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17229 Filed 7-29-88; 8:45 am]

BILLING CODE 7035-01-M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Pursuant to the National Cooperative Research Act of 1984; Microelectronics Center of North Carolina

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. et seq. ("the Act"), the Microelectronics Center of North Carolina ("MCNC") has filed on June 7, 1988, a wriiten notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the nature and objectives of the MCNC joint research and development program and (2) the identities of the parties involved in the program. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the research and development program and its general area of planned activities are given below.

MCNC is one institution along with six other participating institutions comprising a consortium of seven North Carolina nonprofit institutions with educational and research programs that support next-generation microelectronics technology. MCNC enhances these programs through its advanced manufacturing research capability and promotes commercialization of newly developed technologies into direct application in industry.

MCNC's specific objectives include planning, developing, constructing, maintaining and operating related integrated-circuit facilities to support microelectronics education and research in the participating institutions; providing coordination and stimuli for

research in microelectronics in the participating institutions, and developing and improving research facilities and broadening opportunities for scientific and educational research activities by all of the participating institutions; operating microelectronics design and fabrication facilities in furtherance of the charitable, educational, and scientific purposes of the Corporation; and assisting agencies of North Carolina State Government to establish and maintain effective working relationships with industry.

The MCNC Central Laboratory maintains a cooperative educational and scientific research effort through a Research Program wherein MCNC staff and other consortium members' students, faculty and staff conduct research and develop technology relative to microelectronics. In furtherance of this cooperative research effort and to maintain links with industry, MCNC conducts an Industrial Affiliates program, whereby "Resident Professionals" from various companies are assigned to the MCNC Central Laboratory and act as MCNC staff members for a period of time. The Resident Professionals are an integral part of the Research Program and interact with all other researchers.

The Industrial Affilates program provides for in-depth interaction by the Resident Professionals, and an Industry Executive Council comprised of affiliate representatives which identifies, for MCNC consideration, research priorities relevant to industrial application. Additionally, affiliates who manufacture equipment may place equipment at MCNC for development of capability with the support of the MCNC community. When pooled research sponsored by affiliates yields inventions, affiliates get the advantage of early acces to these inventions for their internal use. MCNC also gives Industrial Affiliates priority access to appropriate contract research capabilities when available.

The current MCNC Industrial Affiliates are as follows: Airco Industrial Gases, Cadence Design Systems, Inc., Digital Equipment Corporation, E.I. Du Pont De Nemours & Company, Inc., General Signal Corporation, General Electric Company, International Business Machines Corporation, Megatest Corporation, Northern Telecom, Inc. and Shipley Company, Inc.

The six nonprofit institutions working closely with MCNC are as follows: Duke University, North Carolina A&T State University, North Carolina State University, University of North Carolina at Chapel Hill, University of North Carolina at Charlotte, and the Research Triangle Institute.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 88-17248 Filed 7-29-88; 8:45 am]

BILLING CODE 4410-01-M

## Bureau of Prisons

### National Institute of Corrections; Annual Program Plan and Academy Training Schedule

The National Institute of Corrections (NIC), U.S. Department of Justice, has released its "Annual Program Plan and Academy Training Schedule for Fiscal Year 1989." The document describes the Institute's program of training, technical assistance, information services, research/evaluation, and policy development projects planned for the next fiscal year. It also describes the Institute's schedule of training seminars to be conducted by the NIC National Academy of Corrections and contains application forms.

To obtain a copy of the document, contact the National Institute of Corrections, 320 First Street NW., Washington, DC 20534. Telephone 202-724-8449; TDD for hearing impaired, 202-724-3156.

**Raymond C. Brown,**

*Director.*

[FR Doc. 88-17300 Filed 7-29-88; 8:45 am]

BILLING CODE 1510-01-M

## NUCLEAR REGULATORY COMMISSION

### Energy; Permanent Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel; Memorandum of Understanding

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Memorandum of Understanding between the Nuclear Regulatory Commission and the Department of Energy.

**SUMMARY:** On July 20, 1988, the Nuclear Regulatory Commission and the Department of Energy, entered into the Memorandum of Understanding below. The purpose of the MOU is to establish the terms under which the NRC will be reimbursed from the Nuclear Waste Fund for NRC pre-application activities related to the disposal of high-level radioactive waste and spent fuel in a geologic repository.

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Scroggins, Deputy Director for Financial Management & Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4750.

**Samuel J. Chilk,**

*Secretary of the Commission.*

### Memorandum of Understanding Between the United States Nuclear Regulatory Commission and the United States Department of Energy

The Memorandum of Understanding establishes general policy and procedures regarding the Nuclear Regulatory Commission's (NRC) recovery of the costs it incurs in performing pre-license application activities related to the disposal of high-level radioactive waste and spent fuel in a geologic repository. NRC costs are to be recovered from the Nuclear Waste Fund managed by the Department of Energy (DOE).

#### I. Introduction

*A. Background*

In section III of the Nuclear Waste Policy Act of 1982, as amended (NWPA), Congress made clear that while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and spent nuclear fuel, the costs of disposal should be borne by the generators and owners of the waste and spent fuel. To implement this policy, Congress in section 302 of the NWPA established the Nuclear Waste Fund. The Fund consists of payments from the owners and generators of high-level radioactive waste and spent nuclear fuel. Section 302 authorizes the Secretary of Energy to make expenditures from the Fund for activities under Titles I and II of the NWPA. This would include appropriate reimbursement of NRC costs.

*B. Purpose*

The purpose of this Memorandum of Understanding is to set forth the activities to be performed by the NRC during the pre-license application phase of the Civilian Radioactive Waste Management Program for which costs shall be paid from the Nuclear Waste Fund, and to establish general procedures for the payment of such costs from the Nuclear Waste Fund. The primary objective of these activities is to identify and resolve issues to the extent possible prior to license application. The parties intend to enter into another Memorandum of Understanding at a later date to provide for NRC recovery of its post-license application costs.

*C. Authority*

This Memorandum of Understanding is in accordance with the provisions of sections 111, 113, 114, and 302 of the NWPA.

*D. Policy*

Consistent with the NWPA, both the NRC and DOE's Office of Civilian Radioactive Waste Management (OCRWM) agree that it is in the best interest of the Nuclear Waste Management Program for NRC to review OCRWM activities during the pre-license application phase so that issues can be identified and resolved to the extent possible prior to the submission of a license application by OCRWM. OCRWM agrees to reimburse from the Nuclear Waste Fund all reasonable costs that are incurred by the NRC as a direct result of NRC's pre-license application consultations provided to the OCRWM program. Activities for which costs will be recovered from the Nuclear Waste Fund are as follows: (1) The development of NWPA regulatory requirements and technical guidance (technical guidance in the form of regulatory guides, rules, or other appropriate management approved guidance, consultation with DOE, States, and Indian Tribes, and changes to 10 CFR 2 to accommodate the licensing support system and improve the review and hearing process to meet the mandated three-year licensing schedule); (2) the development of technical assessment capability for repository licensing reviews; (3) the development and implementation of quality assurance/quality control and inspection programs for NWPA activities; (4) site characterization reviews (conducting pre-license application reviews of OCRWM and OCRWM contractor NWPA activities, conducting pre-license application reviews of the environmental impact statement (EIS) resulting from the repository program including those activities required to make the EIS acceptable for adoption by NRC); (5) the review of transport packages certificate applications and technical issues related to package certification; (6) the review of pre-license application activities relating to a monitored retrievable storage (MRS) facility; (7) the conduct of high-level waste research necessary to support NRC regulatory activities directly related to the repository, MRS or transportation aspects of the program; (8) activities relating to the disposal of defense high-level waste in the geologic repository; (9) the cost of an independent auditor performing audits of NRC costs covered by this Memorandum; and (10) that portion of the costs of the following that arise solely as a result of NRC's pre-license application consultations with the OCRWM program: (a) NRC staff's legal support for NWPA activities; (b) Atomic Safety and Licensing Board and Atomic Safety Licensing Appell Panel expenses related to NWPA issues; (c) reviews of NWPA activities conducted by NRC's Advisory Committee on Nuclear Waste; and (d) services provided by NRC's Office of Governmental and Public Affairs related to NWPA issues. In carrying out its responsibilities covered by this Memorandum of Understanding, the NRC will avoid unnecessary duplication of activities performed by DOE.

Additional activities may be added to those listed above, after consultation between OCRWM and NRC.

**II. Management and Program Guidelines**

As soon as practicable, following the end of each fiscal year, the NRC shall provide the DOE with a statement certified by an independent auditory setting forth the amount DOE is obligated to pay for NRC's costs incurred for work as defined in this MOU during the fiscal year just completed. DOE shall promptly, following the appropriation of funds, deposit into the General Fund of the Treasury of the United States a sum equal to the certified NRC costs. If in any year, the NRC audited costs significantly exceed the funds available for NRC reimbursement based upon funds appropriated to OCRWM, DOE shall promptly notify the NRC so that a payment schedule can be set.

The NRC shall provide OCRWM, prior to June of each year, with an estimate of the costs NRC expects to incur during the next three fiscal years. These estimates shall include a description of anticipated work and an explanation of how these amounts were derived. This information shall be included in NRC's budget submission to the Office of Management and Budget.

Further details regarding billing and payment will be set forth in the annual Interagency Agreement between the NRC and the Department of Energy.

**III. Administration**

This Memorandum of Understanding may be modified or amended by written agreement between NRC and OCRWM and terminated by either party upon 60-day written notice to the other party. This Memorandum of Understanding is effective when signed by both parties.

The following signatures constitute acceptance of this agreement.

Nuclear Regulatory Commission.

Date: July 20, 1988.

**Victor Stello, Jr.,**

*Executive Director of Operations.*

Department of Energy.

Date: July 18, 1988.

**Charles E. Kay,**

*Acting Director, Office of Civilian Radioactive Waste Management.*

[FR Doc. 88-17273 Filed 7-29-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-416]**

## Mississippi Power & Light Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Associates, (the licensees), for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would change the onsite diesel generator test schedule in the Technical Specifications (TS) by changing the criterion for more frequent testing.

The proposed action is in accordance with the licensee's application for amendment dated April 8, 1988, as supplemented by letter dated June 21, 1988.

*The Need for the Proposed Action*

The proposed change to the TS is required in order to reduce the ware of diesel generators due to the frequent testing required by the present TS.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed change to TS and has concluded that the proposed amendment would not adversely affect plant safety. Therefore, the proposed amendment does not significantly increase the probability or consequences of any accident. The Commission also concludes that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite and that there should be no significant increase in individual or cumulative occupational radiation exposure.

Accordingly, the Commissioin concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves requirements with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Grand Gulf Nuclear Station Units 1 and 2, dated September 1981.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 8, 1988, as supplemented June 21, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 25th day of July 1988.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, Project Directorate II–I, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17274 Filed 7–29–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–271]**

## Vermont Yankee Nuclear Power Corp.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–28, issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of Vermont Yankee Nuclear Power Station.

**Identification of Proposed Action**

The amendment would consist of changes to the operating license and Technical Specifications (TSs) and would authorize an increase of the storage capacity of the spent fuel pool (SEP) from 2000 fuel assemblies to 2870 fuel assemblies.

The amendment to the TSs is responsive to the licensee's application dated April 25, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of Spent Fuel Pool, Facility Operating License No. DPR–28, Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station, Docket No. 50–271."

**Summary of Environmental Assessment**

The Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflected the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in SEP designs, the FGEIS recommended evaluating SFP expansions on a case-by-case basis.

For the Vermont Yankee Nuclear Power Station, the expansion of the storage capacity of the SFP will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 millirem per year; the estimated dose to the population within a 40-mile radius is estimated to be less than 0.1 person-rem per year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the SFP expansion is the waste heat rejected to the Connecticut River. The increase in total plant waste heat is less than 0.1%. There is no significant environmental impact attributable to the waste heat from the plan due to this very small increase.

**Finding of No Significant Impact**

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated April 25, 1986 and additional information provided by the licensee in letters dated August 1, September 26, October 21, November 24, and December 15, 1986, February 25 March 19, March 31, April 9, April 13, May 22, June 11, September 1, and December 11, 1987; and March 2 and June 7, 1988; (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575); (3) the Final Environmental Statement for the Vermont Yankee Nuclear Power Station, July 1972; and (4) the Environmental Assessment dated July 25, 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 25th day of July 1988.

For the Nuclear Regulatory Commission.

**Victor Nerses,**

*Acting Director, Project Directorate I–3, Division of Reactor Projects, I/II.*

[FR Doc. 88–17276 Filed 7–29–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–397]**

## Washington Public Power Supply System, Nuclear Project No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 20 Appendix A, footnote d–2(c), to the Washington Public Power Supply System (WPPSS), who holds Facility Operating License No. NPF–21, which authorizes operation of WPPSS Nuclear Project No. 2 (WNP–2). WNP–2 utilizes a boiling water reactor and is located in Benton County, Washington.

**Environmental Assessment**

*Identification of the Proposed Action*

Appendix A sets forth protection factors for use in the selection of respiratory protective devices where the airborne contaminants have been identified and the possible concentrations are known. Footnote d–2(c) of that Appendix states that no allowance is to be made for the use of sorbents against radioactive gases or vapors. The exemption would allow the use of a protection factor of 50 for Mine Safety Appliances (MSA) GMR–I canisters for radioiodine atmospheres.

*The Need for the Proposed Action*

The exemption would make permissible the utilization of the GMR–I air-purifying respirator in lieu of supplied air or self contained breathing apparatus. The licensee contends that this will reduce the physical stress on workers, resulting in an associated reduction in personnel exposure.

*Environmental Impacts of the Proposed Action*

There are no significant environmental impacts of the proposed action. The proposed exemption pertains to the selection of breathing apparatus to be used by workers in areas potentially contaminated by radiation. The staff has determined that the proposed exemption involves no significant change in the types and no significant change in the amounts of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. In fact the intent of the action is to allow the licensee to achieve a reduction in occupational radiation exposure.

With regard to potential nonradiological impacts, the proposed exemption involves systems located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

We have concluded that there is no measurable environmental impact associated with the proposed exemption. The principal alternative would be to deny the requested exemption. Denial would not reduce environmental impacts of plant operation, and would not allow the licensee to achieve the reduction in exposure of plant workers to radiation.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2", dated December 1981.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated May 10, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC., and at the Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 19th day of July, 1988.

For the Nuclear Regulatory Commission.

**Robert B. Samworth,**

*Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17277 Filed 7–29–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–029]**

## Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 113 to Facility Operating License No. DPR–3 issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station located neaer Rowe, Massachusetts. The amendment was effective as of the date of issuance.

The amendment changes the Technical Specifications to permit loads of greater than 900 pounds to travel over the spent fuel pit to enable removal of control rods from the spent fuel pit.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 17, 1988 (53 FR 8828). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 27416) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 15, 1988, March 31, 1988 and May 19, 1988, (2) Amendment No. 113 to License No. DPR–3 and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street

NW., Washington, DC and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 25th day of July, 1988.

For the Nuclear Regulatory Commission.

**Victor Nerses,**

*Project Manager, Project Directorate I–3, Division of Reactor Projects-I/II.*

[FR Doc. 88–17278 Filed 7–29–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–416]**

**System Energy Resources, Inc., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Technical Specification 3/4.3.1, "Reactor Protection System (RPS) Instrumentation" and associated Bases 3/4.3.1 to increase surveillance intervals for channel functional tests of most RPS instrumentation and allow more time to complete actions when inoperable instrumentation is found.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 31, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 25th day of July 1988.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17275 Filed 7–29–88; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Request for Public Comments in Connection With Presidential Review of Exclusion Order Under Section 337

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for public comments on the exclusion order issued by the U.S. International Trade Commission (Commission) in Certain High Intensity Retroreflective Sheeting, Inv. No. 337–TA–268.

**SUMMARY:** On July 15, 1988, the Commission referred to the President for review its determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), in the importation into the United States, and in the sale, of certain high intensity retroreflective sheeting because of infringement of certain claims of U.S. Letters Patent 4,025,159 owned by the Minnesota Mining & Manufacturing Co. (3M). The Commission found that this unfair act had the effect or tendency to destroy or substantially injure an efficiently and economically operated industry in the United States.

The Commission issued an order directing the U.S. Customs Service to exclude from entry in the United States imports of high intensity retroreflective sheeting manufactured by or on behalf of Seibu Polymer Chemical Co., Ltd of Tokyo, Japan, unless the product is entered under license from the patent owner. The Commission also issued a cease and desist order directing Seibulite International, Inc. from marketing, distributing, selling or offering for sale in the United States imported infringing high intensity retroreflective sheeting.

Under section 337(g), the President, for policy reasons may disapprove the Commission's determination within 60 days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the Commission's determination rendering the determination and order final on the date that the Commission receives notice of the approval. If the President takes no action to approve or disapprove the determination and order, they become final automatically following the 60-day review period.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this investigation. Parties commenting on domestic policy issues should specifically refer to the portion of the Commission's record related to that issue. If the domestic policy issue was not raised before the Commission, parties should provide a rationale for that omission.

Comments may not exceed 15 letter-sized pages, including attachments. Parties must provide twenty copies of the submission to the Secretary, Trade Policy Staff Committee, Room 521, 600 17th Street, NW., Washington, DC 20506. All submissions must be received by close of business, Monday, August 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Catherine R. Field, Associate General Counsel, Office of the U.S. Trade Representative (202) 395–3432.

**Sandra Kristoff,**

*Chairwoman, Trade Policy Staff Committee.*

[FR Doc. 88–17224 Filed 7–29–88; 8:45 am]

BILLING CODE 3190–01–M

## POSTAL RATE COMMISSION

**[Docket No. MC88–2]**

### Mail Classification Schedule, 1988 Second-Class Eligibility; Prehearing Conference

July 26, 1988.

Notice is hereby given that pursuant to Presiding Officer's Notice of Tentative Hearing Schedule, dated July 26, 1988, a Prehearing Conference is scheduled for August 11, 1988, at 9:00 a.m., Hearing Room, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC, in the above-designated proceeding.

**Cyril J. Pittack,**

*Acting Secretary.*

[FR Doc. 88–17202 Filed 7–29–88; 8:45 am]

BILLING CODE 7715–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

*Agency Clearance Officer:* Kenneth A. Fogash (202) 272–2142.

*Upon Written Request Copy Available From:* Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

**EXTENSION**

| File No. | Rule/Form |
|---|---|
| 270–259 | Rule 17f–5. |
| 270–132 | Rule 20a–1. |
| 270–133 | Rule 20a–2. |
| 270–134 | Rule 20a–3. |
| 270–128 | Rules 20(b), 20(c), 23, and 100(a) and Forms U–1 and U–A. |
| 270–129 | Rules 24 and 50. |
| 270–162 | Rule 44. |
| 270–169 | Rules 29a, 29b, 72 |
| 270–166 | Rule 62, Form U–R–I. |
| 270–79 | Rules 93 and 94, Form U–13–60, and 17 CFR Part 256 and 256a. |
| 270–83 | Rule 2, Form U–3A–2. |
| 270–77 | Rule 3, Form U–3A–3–1. |
| 270–74 | Rule 95, Form U–13E–1. |
| 270–81 | Rules 20(d) and 47(b), Form U–6B–2. |
| 270–75 | Rules 7 and 7(d), Form U–7D. |
| 270–168 | Rules 1(a) and 1(b), Forms U5A and U5B. |
| 270–163 | Rule 42. |

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Investment Company Act of 1940:

Rule 17f–5 regulates the custody of investment ocmpany assets located outside the United States. Approximately 40 respondents spend about 4 hours each, annually, keeping records relating to requirements of the rule.

Rules 20a–1 through 20a–3 set forth various requirements with respect to solicitation of proxies, consents, and authorizations on behalf of registered investment companies. About 970 investment companies spend a total of approximately 94,284 hours annually complying with these rules.

Notice is also given that the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Public Utility Holding Company Act of 1935 ("1935 Act"):

The family of information requests related to Form U–1 provide a legally required record that enables a registered company to seek authorization from the Commission for proposed transactions. The 355 respondents each spend about 147 hours annually meeting the requirements of these information collections.

Rules 24 and 50 require the filing with the Commission of certain information indicating that an authorized transaction has been carried out in accordance with the terms and conditions of the Commission order. The rules impose a burden of about 395 hours annually on approximately 275 respondents.

Rule 44 implements section 12(d) of the 1935 Act by prohibiting sales of utility securities or any utility assets owned by a registered holding company, except pursuant to a declaration which notifies the Commission of the proposed sale and which has become effective. The rule imposes a burden of about 12 hours annually on 13 respondents.

Rule 29 requires the filing of copies of reports submitted by a registered holding company or its subsidiaries to stockholders or reports submitted to state commissions covering operations not reported to the Federal Energy Regulatory Commission. The rule imposes an annual burden ¼ hour on each of 76 companies.

Rule 62 prohibits the solicitation of authorization regarding any security of a regulated company in connection with reorganization subject to Commission approval or regarding any transaction which is the subject ot an application or declaration, except pursuant to a declaration regarding the solicitation which has become effective. The rule imposes a burden of 50 hours on 10 companies.

Rules 93 and 94, Form U–13–60, and 17 CFR Part 256 and 256a require a uniform system of accounts for mutual and subsidiary service companies. The annual burden imposed on the 12 companies subject to this requirement is 138 hours.

Rule 2 permits a public utility holding company to claim exemption from the 1935 Act by filing an annual statement on Form U–3A–2. The rule and form impose a total annual burden of 37 hours on 73 companies.

Rule 3 permits a bank which is also a public utility holding company to claim exemption from the 1935 Act by filing an annual statement on Form U–3A3–1. The Commission receives 1 filing from a bank annually, taking about 4 hours to complete.

Rule 95 requires service companies to file reports with the Commission prior to performing under contracts for registered holding companies or their subsidiaries, for services, construction, or the sale of goods. One company meets this requirement annually, at an estimated average burden of 2 hours.

Rules 20(d) and 47(b) and Form U–6B–2 provide information relating to securities issued, sold, reissued or guaranteed pursuant to an exemption from section 6(a) of the 1935 Act and not subject to the filing of Form U–1 or pursuant to exemption by Rule 48. The rules and form impose a total burden of 2 hours per year on 1 respondent.

Form U–7D establishes the filing company's right to the exemption authorized for financing entities holding title to utility assets leased to a utility company. The form imposes a total burden of 102 hours on 34 respondents, annually.

Rules 1(a) 1935 and 1(b) and Forms U5A and U5B implement section 5(a) of the 1935 Act which requires the filing of a notification of registration with the Commission of any holding company or any person proposing to become a holding company. The burden of this requirement is approximately 1 hour annually for 1 respondent.

Rule 42 prohibits registered holding companies or subsidiaries thereof from acquiring, retiring or redeeming securities of which it is the issuer unless authorized by the Commission. Thirteen companies are required to spend 1 hour annually, each, on this requirement.

Rule 71 and Forms U–12–I–A and U–12–I–B implement sections of the 1935 Act which make it unlawful for any person employed or retained by a regulated company to prevent, advocate, or oppose any matter affecting a regulated company before Congress, the Commission, or the Federal Energy Regulatory Commission unless such person files a statement with the Commission. These information collections impose an annual burden of about 56 hours on 225 respondents.

Rule 83 enables regulated subsidiaries, when dealing with foreign affiliates to seek exemption from certain provisions of the 1935 Act. There have been no filings under this rule in recent years.

Rule 88 requries the filing of Form U–13–1 for a mutual or subsidiary service company performing services for affiliate companies of a holding company system. Four respondents spend a total of approximately 8 hours, annually meeting this requirement.

Rule 26 sets forth the financial statement and recordkeeping requirements for registered holding companies and subsidiaries. The total annual burden is 1 hour.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004, and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, DC 20503.

July 26, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–17236 Filed 7–29–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 34–25942; File No. SR–Amex–88–10, Amdt. No. 1]**

## Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Equity Index Participations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 21, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade Equity Index Participations ("EIPs") based on the S&P 500 Index, a capitalization-weighted stock index calculated by the Standard & Poor's Corporation. This would be in addition to the proposed trading of EIPs based on the Amex Major Market Index ("MMI"). The Exchange is not proposing to trade EIPs based on the Amex Institutional Index ("II") at this time, as the Exchange originally proposed. Proposed Amex rules and procedures applicable to trading in EIPs are set forth in File No. SR–Amex–88–10 (Securities Exchange Act Release No. 25664, May 5, 1988).

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the

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most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

In File No. SR–Amex–88–10, the Amex proposed specific rules applicable to listing and trading of EIPs based on the MMI and II. (Securities Exchange Act Release No. 25664, May 5, 1988). EIPs would permit holders to own a security designed to reflect the principal characteristics of ownership of the stocks comprising those indices, but that does not require the actual purchase or sale of shares of common stock of the issues included in those indices.

The Exchange is amending its filing by proposing to trade EIPs based on the S&P 500 Index, a capitalization-weighted stock index calculated by the Standard & Poor's Corporation. Each EIP based on the S&P 500 Index will represent 1/10— the index multiplier—times the S&P 500 Index value. The standard unit of trading in such securities would be 100 EIPs. The S&P 500 Index will be calculated at least once each minute and disseminated by the Standard & Poor's Corporation or its agent, in accordance with its current procedures. All proposed rules applicable to trading in EIPs based on the MMI would likewise be applicable to EIPs bases on the S&P 500 Index. The Exchange is further amending its filing to specify that it is not proposed to trade EIPs based on the Institutional Index at this time.

In addition, the proposed rule change has been amended to add new Rule 912F to reflect that the Standard & Poor's Corporation has licensed use of the S&P 500 Index to the Amex. Former proposed Rule 912F (Reserved Authority) has been renumbered as Rule 913F. New Rule 913F is amended to provide that the Exchange may require, upon notice of at least one year, the EIP holders and obligors settle their contracts at the closing index value determined by a designated cash-out time if any Amex license to use a particular index for EIPs trading is terminated, and no other market exists for EIPs based on such index. In addition, the Exchange may require that EIP holders and obligors settle their contracts in the event of insubstantial trading activity in EIPs or other exceptional circumstances as determined by the Exchange, in its discretion.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by August 22, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 25, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–17237 Filed 7–29–88; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 34–25944; File No. SR–NYSE–88–19]**

**Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Shareholder Approval Policy for Domestic Companies**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed amendments to Paragraph 312.00 of the NYSE Listed Company Manual continue to require shareholder approval as a prerequisite to listing securities to be issued in circumstances set forth in the policy. The amendments, however, revise threshold requirements, provide definitions and exceptions, and otherwise enhance the objectivity of the policy. The Exchange does not expect that the proposed rule change will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing.

In approving the amendments to the shareholder approval policy described above, the Board of Directors of the Exchange further determined to grandfather those companies which had issued shares in violation of the existing policy while the voting rights policies of the Exchange were being reviewed.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Exchange has a policy which requires prior shareholder approval as a prerequisite to the listing of securities issued in connection with certain transactions. These transactions relate primarily to issuances of common stock or securities convertible into common stock in connection with: (a) Options granted to or special remuneration plans for directors, officers and key employees; (b) actions resulting in a change of control; (c) transactions with directors, officers and substantial security holders; (d) transactions involving the issuance of 18½% or more of the outstanding common shares; and (e) transactions where the present or potential issuance of common stock and any other consideration has a combined fair value of 18½% or more of the market value of the outstanding common shares.

This policy prohibits the listing of securities issued or to be issued in connection with the described transactions unless shareholders approve them.

In addition to refusing to list securities issued in violation of these policies, the Exchange has undertaken delisting proceedings in cases in which the policy was violated.

In June 1984, the Exchange formed the Subcommittee on Shareholder Participation and Qualitative Listing Standards (the "Committee") to consider the continued relevance and appropriateness of the Exchange's voting rights policies which include both the so-called "one share, one vote" policy and the related shareholder approval policy.

As pointed out by the Committee the standards as presently existing pose certain difficulties. For instance, the Exchange staff has frequently been confronted with difficult questions concerning the application of the standard with respect to a change in control of a company, e.g., what constitutes a change of control? There has developed no reliable "rule of thumb" to govern the exercise of discretion by the staff in dealing with these problems.

Moreover, the Committee was unable to find any conceptual basis for selecting 18½% as the standard with respect to the issuance of stock in acquisitions rather than some other figure. Prior to the amendment of these standards several years ago the criterion was "approximately 20%," which was increasingly interpreted by the staff as meaning 18½%, with the result that the latter figure bacame a fixed standard.

The Committee submitted its initial recommendations to the Legal Advisory Committee ("LAC"). After review by the LAC, the Committee's recommendations were returned for further modification and revision. The Committee's final recommeded modifications to the policy received the concurrence of the LAC.

The Committee, having concluded that the present shareholder approval policy is essentially sound in concept, recommended that the Exchange retain it, but with modifications that would simplify the administration of it and conform it to more realistic standards. The Committee therefore made the following recommendations:

1. The provision with respect to the issuance of securities in connection with the acquisition of certain properties from directors, officiers or substantial security holders should be modified in the following details.

a. An interest consisting of less than 5% of the outstanding common shares or 5% of the voting power of a company or party should not be considered a significant interest in determining when the policy should apply (thus the policy would not apply to an acquisition from a shareholder of a listed company who holds less than 5% of such company or voting power, or to an acquisition of an entity or property in which directors, officers and 5% shareholders of the listed company had interests aggregating less than 5%.

b. The policy should not appy to the acquisition of relatively insignificant amounts of property from an officer, director or substantial security holder. The Committee suggests that the issuance of securities representing less than 1% of the outstanding common shares, or less than 1% of the voting power would be a reasonable standard in measuring the significance of the acquisition.

2. The present provision with regard to the issuance of an amount of common stock equal to 18½% or more of the amount outstanding in making acquisitions should be modified to substitute a 25% standard and it should be applied to both the total voting power and the amount of common stock outstanding at the time of issuance with a view toward the existence of a dual class environment.

The separate standard relating to change of control should be eliminated. The Committee believed that staff should be provided greater guidance in determining when there has occurred a change in control. The Committee concluded that there is a widely held belief that the ownership of 20% or more of the outstanding common stock or voting power of a company whose stock is widely held in most instances constitutes control, hence the appropriate standard should be 25% of the amount outstanding or voting power before the issuance, which, of course, results in the shares issued constituting 20% of the amount outstanding or voting power after the issuance.

Issuances of stock that may bring about a change of control are typically made in connection with acquisitions or in private placements of securities. Thus, the Committee's recommendation would require shareholder approval with respect to issuances of 25% or more of the company's common stock or voting power in any transaction other than a public offering, thus relieving the staff of the necessity of making often difficult judgments as to whether an issuance resulted in a change of control. The substitution of a certain standard for the uncertain standard, "change of control," will make it easier for managements to plan transactions since they will have greater advance assurance of the Exchange's treatment of them.

The 25% criterion has been substituted for the 18½% criterion in connection with acquisitions to make the standards with respect to change of control and those with respect to acquisitions uniform. Further, the Committee believes that 25% is as more realistic standard than 18½% in determining whether there is a degree of dilution of shareholders' interests suggesting that the shareholders should have a vote. Obvioulsy the change will permit some transactions which would not be permissible under the present standard; however, the Committee is unable to see that any significant harm is likely to fall upon shareholders.

3. The Committee also recommended elimination of the present requirement for shareholder approval of transactions involving the present or potential issuance of common stock and any other consideration which has a fair value of 18½% or more of the market value of the

outstanding common shares and the common shares portion represents a fair market value in excess of 5% of the market value of the common shares. This particular criterion, like "change of control," has been considered to be an imprecise standard. Its elimination enhances the objectivity of the overall policy.

4. The Committee has concluded that the provision with regard to the approval of options and special remuneration plans for directors, officers and key employees should be modified by eliminating "key employees" from its scope because of the uncertainty of determining who is properly within that term.

5. The Committee felt that a provision should be added which would provide relief from the policy for a financially troubled company. The requirement for shareholder approval would be waived for such a company if: (1) Delaying the issuance of securities in order to obtain shareholder approval would jeopardize the company's existence; (2) the audit committee approved the waiver; and (3) appropriate notice of such action is sent to all shareholders of the company at least 10 days prior to the issuance.

The proposal to modify the policy in line with the Committee recommendations was reviewed with the Exchange's Listed Company Advisory Committee which unanimously concurred. The Board of Directors of the Exchange, at it meeting of July 7, 1988, approved the proposed policy modification. It should be noted that the modified policy retains the basic requirement of shareholder approval and takes into account the significant increases in corporate governance initiatives over the past-few years.

The Board further determined that those companies which had issued shares in violation of the current policy during the period when the Exchange's voting rights policies were under review would be grandfathered. This decision is consistent with the position taken by the Exchange regarding those companies which had violated the one share, one vote policies while those policies were being reviewed by the Committee.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act"). This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title, matters not related to the purposes of this title or the administration of the Exchange. Furthermore, the proposed rule amendments are consistent with Section 11A(a)(1)(c)(ii) of the Act in that they will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments concerning its proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 22, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

July 26, 1988.

[FR Doc. 88-17286 Filed 7-29-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, U.S.C. App. 1), notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. Each meeting will be in Room 3442-46, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

On September 13, 1988, at 9:00 a.m. the Technical Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Gas Gathering Line Definition
- Deletion of Referenced Standards Affecting Iron, Steel and Copper Pipe and Other Materials (53 FR 24968; July 1, 1988)
- Operation and Maintenance Procedures for Gas Pipelines
- Gas Pipelines Operating in Excess of 72 Percent of SMYS
- Gas Pipeline Damage Prevention Program (53 FR 24747; June 30, 1988)
- Pipeline Operator Qualifications

In addition, the committee will discuss an article called "The Smell Survey Results," published in the *National Geographic* (October 1987), as it relates to odorization of natural gas. Time permitting, the committee will

informally discuss preliminary rulemaking proposals regarding (1) Gas Detection and Monitoring in Compressor Station Buildings (53 FR 10906; April 4, 1988), and (2) Determining the Extent of Corrosion on Exposed Gas Pipelines.

On September 14, 1988, at 9:00 a.m. the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet jointly to discuss proposed rules regarding:

- Maps and Records of Pipeline Location and Characteristics; Notification of State Agencies
- Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations (53 FR 25892, July 8, 1988).

On September 14, 1988, after the joint meeting, the Technical Pipeline Safety Standards Committee will reconvene briefly and vote on the technical feasibility, reasonableness, and practicability of the proposals discussed in the joint meeting as they affect gas and liquefied natural gas pipeline facilities.

Also, on September 14, 1988, after the joint meeting the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet to vote on the technical feasibility, reasonableness, and practicability of the proposals discussed in the joint meeting as they affect hazardous liquid pipelines. In addition, the Committee will discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Deletion of Referenced Standards Affecting Iron, Steel, and Copper Pipe and Other Materials (53 FR 24968; July 1, 1988)
- Pressure Testing Certain Hazardous Liquid Pipelines
- Hazardous Liquid Pipeline Damage Prevention Program (53 FR 24747; June 30, 1988)
- Pipeline Operator Qualifications

If this schedule is not completed on September 14, 1988, the Technical Hazardous Liquid Pipeline Safety Standards Committee will reconvene at 9:00 a.m. on September 15, 1988.

Each meeting will be open to the public, but attendance will be limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the subjects. Due to the limited time available, each person who wants to make an oral statement must notify Linda Craver, Room 8417, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1640, not later than September 9, 1988, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the committees before or after any meeting.

Dated: July 27, 1988.

**Cesar De Leon,**

*Assistant Director for Regulation, Office of Pipeline Safety.*

[FR Doc. 88–17249 Filed 7–29–88; 8:45 am]

BILLING CODE 4910–60–M

## Urban Mass Transportation Administration

## UMTA Sections 3 and 9 Grant Obligations; Los Angeles County Transportation Commission

**AGENCY:** Urban Mass Transportation Administration (UMTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100–202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366–2053.

**SUPPLEMENTARY INFORMATION:** The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Los Angeles County Transportation Commission, Los Angeles, CA | CA–03–0332 | $1,237,500 | 6–30–88 |
| Metropolitan Dade County Transportation Administration, Miami, FL | FL–03–0064–02 | 1,108,044 | 6–30–88 |
| Metropolitan Area Rapid Transit Authority, Atlanta, GA | GA–03–0032 | 39,525,699 | 6–30–88 |
| Metropolitan Area Rapid Transit Authority, Atlanta, GA | GA–03–0033 | 105,469,998 | 6–30–88 |
| Cobb County, Atlanta, GA | GA–03–0034 | 3,000,000 | 6–30–88 |
| Regional Transit Authority, New Orleans, LA | LA–03–0044 | 2,630,251 | 6–23–88 |
| Massachusetts Bay Transportation Authority, Boston, MA | MA–03–0146 | 23,475,000 | 6–30–88 |
| Maasachusetts Bay Transportation Authority, Boston, MA | MA–03–0147 | 14,130,000 | 6–30–88 |
| Massachusetts Bay Transportation Authority, Boston, MA | MA–03–0148 | 13,748,625 | 6–30–88 |
| Montachusett Area Regional Transit Authority, Fitchburg-Leominster, MA | MA–03–0150–01 | 405,000 | 6–30–88 |
| Mass Transportation Authority, Flint, MI | MI–03–0114 | 2,013,750 | 6–30–88 |
| City of Rochester, Rochester, MN | MN–90–X035 | 204,000 | 6–30–88 |
| New Jersey Transit Corporation, Statewide, NJ | NJ–03–0073 | 10,000,002 | 6–30–88 |
| City of Albuquerque, Albuquerque, NM | NM–03–0007 | 1,400,000 | 6–30–88 |
| Area Transportation Authority of North Central Pennsylvania, McKean County, PA | PA–03–0192–01 | 496,920 | 6–30–88 |
| Dallas Area Rapid Transit Authority, Dallas, TX | TX–03–0120 | 3,900,000 | 6–30–88 |
| Brazos County, Houston TX | TX–03–0123 | 928,000 | 6–30–88 |
| Utah Transit Authority, Provo, UT | UT–03–0012 | 3,750,000 | 6–30–88 |

## SECTION 3 GRANTS—Continued

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Town of Blacksburg, Blacksburg, VA | VA-03-0038 | 1,960,000 | 6-30-88 |
| Greater Roanoke Transit Company, Roanoke, VA | VA-03-0037 | 847,500 | 6-30-88 |

## SECTION 9 GRANTS

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Alabama Highway Department, Montgomery, AL | AL-90-X033 | $1,507,794 | 6/29/88 |
| Birmingham-Jefferson County Transit Authority, Birmingham, AL | AL-90-X015-01 | 9,952 | 6/29/88 |
| Central Arkansas Transit Authority, Little Rick, AR | AR-90-X012 | 4,158,596 | 6/30/88 |
| City of Phoenix, Phoenix, AZ | AZ-90-X019 | 10,093,144 | 6/30/88 |
| Los Angeles County, Lancaster, CA | CA-90-X304 | 315,700 | 6/30/88 |
| Chico Area Transit System, Chico, CA | CA-90-X299 | 740,400 | 6/30/88 |
| Kern County Council of Governments, Bakersfield, CA | CA-90-X296 | 146,000 | 6/30/88 |
| Yolo County, Sacramento, CA | CA-90-X294 | 162,096 | 6/30/88 |
| Suntine Transit Agency, Palm Springs, CA | CA-90-X303 | 246,976 | 6/30/88 |
| City of Napa, Napa, CA | CA-90-X293 | 354,175 | 6/30/88 |
| North San Diego County Transit Development Board, San Diego, CA | CA-90-X301 | 2,904,049 | 6/30/88 |
| Santa Cruz Metropolitan Transit District, Santa Cruz, CA | CA-90-X300 | 786,307 | 6/30/88 |
| Bay Area Rapid Transit District, San Francisco, CA | CA-90-X232-01 | 1,452,096 | 6/30/88 |
| City of La Mirada, Los Angeles, CA | CA-90-X297 | 76,000 | 6/30/88 |
| Monterey County, Seaside-Monterey, CA | CA-90-X302 | 107,774 | 6/30/88 |
| City of Colorado Springs, Colorado Springs, CO | CO-90-X042 | 1,417,772 | 6/30/88 |
| City of Pueblo, Pueblo, CO | CO-90-X027-01 | 38,867 | 6/30/88 |
| South Central Regional Council of Governments, New Haven, CT | CT-90-X118 | 35,684 | 6/30/88 |
| Valley Regional Planning Agency, Bridgeport, CT | CT-90-X116 | 14,000 | 6/30/88 |
| Council of Governments, Central Naugatuck Valley, Waterbury, CT | CT-90-X117 | 36,976 | 6/30/88 |
| Connecticut Department of Transportation, Hartford, CT | CT-90-X112 | 8,960,800 | 6/30/88 |
| Milford Transit District, New Haven, CT | CT-90-X113 | 65,000 | 6/30/88 |
| Connecticut Department of Transportation, Southwestern, CT | CT-90-X108-01 | 9,629,790 | 6/30/88 |
| Southeastern Connecticut Regional Planning Agency, New London-Norwich, CT | CT-90-X115 | 14,000 | 6/30/88 |
| Pinellas Suncoast Transit Authority, Clearwater, FL | FL-90-X108 | 429,576 | 6/30/88 |
| Space Coast Area Transit, Melbourne, FL | FL-90-X109 | 1,323,838 | 6/30/88 |
| Pasco County Board of Commissioners, Tampa, FL | FL-90-X110 | 167,537 | 6/30/88 |
| Palm Beach County Transportation Authority, West Palm Beach, FL | FL-90-X112 | 2,757,318 | 6/30/88 |
| Hillsborough Area Regional Transit, Tampa, FL | FL-90-X063-01 | 526,000 | 6/29/88 |
| Lee County Board of Commissioners, Ft. Myers, FL | FL-90-X114 | 2,858,350 | 6/24/88 |
| Regional Transit System, Gainesville, FL | FL-90-X113 | 2,835,400 | 6/30/88 |
| Manatee County Board of Commissioners, Bradenton, FL | FL-90-X115 | 1,264,349 | 6/30/88 |
| Panama City Urbanized Area MPO, Panama City, FL | FL-90-X082 | 640,000 | 6/24/88 |
| Escambia County Transit System, Pensacola, FL | FL-90-X111 | 1,882,940 | 6/30/88 |
| Sarasota County Transportation Authority, Sarasota, FL | FL-90-X102 | 2,005,479 | 6/24/88 |
| Jacksonville Transportation Authority, Jacksonville, FL | FL-90-X107 | 3,978,863 | 6/30/88 |
| Augusta-Richmond County Planning Commission, Augusta, GA | GA-90-X043 | 28,000 | 6/24/88 |
| Metro Transportation Authority, Columbus, GA | GA-90-X042 | 1,114,061 | 6/24/88 |
| Cobb County Department of Transportation, Atlanta, GA | GA-90-X033 | 1,869,000 | 6/30/88 |
| City of Augusta, Augusta, GA | GA-90-X030 | 486,654 | 6/24/88 |
| Atlanta Regional Commission, Atlanta, GA | GA-90-X041 | 121,140 | 6/30/88 |
| East-Centro Intergovernmental Association, Dubuque, IA | IA-90-X093 | 22,000 | 6/30/88 |
| University of Iowa, Iowa City, IA | IA-90-X087 | 64,000 | 6/30/88 |
| City of Cedar Rapids, Cedar Rapids, IA | IA-90-X089 | 712,205 | 6/30/88 |
| City of Dubuque (Keyline Transit System), Dubuque, IA | IA-90-X072-01 | 306,578 | 6/30/88 |
| City of Cedar Rapids, Cedar Rapids, IA | IA-90-X088 | 248,000 | 6/30/88 |
| City of Bettendorf, Bettendorf, IA | IA-90-X095 | 123,474 | 6/30/88 |
| City of Dubuque (Keyline Transit System), Dubuque, IA | IA-90-X090 | 400,657 | 6/30/88 |
| Metropolitan Transit Authority of Black Hawk County, Waterloo, IA | IA-90-X091 | 33,660 | 6/30/88 |
| City of Davenport, Davenport, IA | IA-90-X092 | 623,097 | 6/30/88 |
| Des Moines Metropolitan Transit Authority, Des Moines, IA | IA-90-X094 | 252,800 | 7/1/88 |
| City of Kankakee, Kankakee, IL | IL-90-X122 | 24,837 | 6/30/88 |
| Greater Peoria Mass Transit District, Peoria, IL | IL-90-X095-01 | 442,540 | 6/30/88 |
| Pekin Municipal Bus System, Peoria, IL | IL-90-X112 | 118,133 | 6/30/88 |
| Decatur Public Transit System, Decatur, IL | IL-90-X099-01 | 851,966 | 6/30/88 |
| City of East Dubuque, East Dubuque, IL | IL-90-X119 | 3,006 | 7/14/88 |
| City of East Dubuque, East Dubuque, IL | IL-90-X120 | 3,711 | 7/14/88 |
| City of East Dubuque, East Dubuque, IL | IL-90-X118 | 293 | 7/14/88 |
| Northwestern Indiana Regional Planning Commission, Northwestern, IN | IN-90-X110 | 1,234,635 | 6/30/88 |
| Northern Indiana Commuter Transportation District, Northwestern, IN | IN-90-X106 | 5,778,981 | 6/30/88 |
| South Bend Public Transportation Corporation, South Bend, IN | IN-90-X109 | 1,944,467 | 6/30/88 |
| East Chicago Public Transportation, Northwestern, IN | IN-90-X108 | 247,500 | 6/30/88 |
| City of Indianapolis, Indianapolis, IN | IN-90-X031-04 | 1,074,726 | 6/30/88 |
| Indianapolis Public Transportation Corporation, Indianapolis, IN | IN-90-X089-01 | 1,044,589 | 6/30/88 |
| Indianapolis Public Transportation Corporation, Indianapolis, IN | IN-90-X102 | 5,031,563 | 6/30/88 |
| Topeka Metropolitan Transit Authority (Topeka Transit), Topeka, KS | KS-90-X029 | 840,000 | 6/30/88 |
| Wichita-Sedgwick County Metropolitan Area Planning Dept., Wichita, KS | KS-90-X030 | 93,000 | 6/30/88 |
| City of Owensboro, Owensboro, KY | KY-90-X037 | 493,570 | 6/24/88 |

SECTION 9 GRANTS—Continued

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Transit Authority of Northern Kentucky, Fort Wright, KY | KY-90-X039 | 1,492,797 | 7/11/88 |
| Henderson Area Rapid Transit, Henderson, KY | KY-90-X038 | 132,920 | 6/30/88 |
| Jefferson Parish, New Orleans, LA | LA-90-X040-01 | 952,600 | 6/30/88 |
| City of Lafayette, Lafayette, LA | LA-90-X077 | 1,262,000 | 6/30/88 |
| City of Baton Rouge/Parish of East Baton Rouge, Baton Rouge, LA | LA-90-X079 | 1,564,600 | 6/30/88 |
| City of Shreveport, Shreveport, LA | LA-90-X080 | 60,000 | 6/30/88 |
| Greater Attleboro-Taunton Regional Transit Authority, Providence-Attleboro, MA | MA-90-X083 | 991,000 | 6/30/88 |
| Merrimack Valley Regional Transit Authority, Haverhill, MA | MA-90-X080-01 | 50,000 | 6/30/88 |
| Cape Ann Transportation Authority, Boston, MA | MA-90-X082 | 75,000 | 6/30/88 |
| Mass Transit Administration, Baltimore, MD | MD-90-X034 | 873,584 | 6/30/88 |
| State Railroad Adminsitration, Baltimore, MD | MD-90-X033 | 7,414,421 | 7/13/88 |
| Mass Transit Administration, Baltimore, MD | MD-90-X032 | 18,862,339 | 6/30/88 |
| Mass Transit Adminstration for Annapolis, Annapolis, MD | MD-90-X035 | 588,927 | 6/30/88 |
| Greater Portland Transit District, Portland, ME | ME-90-X033 | 421,323 | 6/30/88 |
| Maine Department of Transportation, Statewide, ME | ME-90-X036 | 69,900 | 6/30/88 |
| Muskegon Area Transit System, Muskegon, MI | MI-90-X099 | 550,690 | 6/30/88 |
| Bay County Metro Transportation Authority, Bay City, MI | MI-90-X098 | 423,421 | 7/11/88 |
| Southeastern Michigan Transportation Authority, Detroit, MI | MI-90-X100 | 22,530,308 | 6/30/88 |
| Mass Transportation Authority, Flint, MI | MI-90-X102 | 2,835,792 | 6/30/88 |
| Saginaw Transit System, Saginaw, MI | MI-90-X101 | 2,025,520 | 6/30/88 |
| Niles Dial-a-Ride, Miles, MI | MI-90-X097 | 136,700 | 6/30/88 |
| Kansas City Area Transportation Authority, Kansas City, MO | MO-90-X039-01 | 388,678 | 6/30/88 |
| Kansas City Area Transportation Authority, Kansas City, MO | MO-90-X044-01 | 234,102 | 6/30/88 |
| City of Columbia, Columbia, MO | MO-90-X048 | 318,170 | 6/30/88 |
| Mississippi Coast Transportation Authority, Gulfport, MS | MS-90-X019 | 1,216,000 | 6/24/88 |
| Great Falls Transit District, Great Falls, MT | MT-90-X021 | 458,712 | 6/30/88 |
| City of High Point, High Point, NC | NC-90-X074 | 663,200 | 6/28/88 |
| City of Fayetteville, Fayetteville, NC | NC-90-X079 | 898,594 | 6/28/88 |
| City of Greensboro, Greensboro, NC | NC-90-X076 | 148,800 | 6/27/88 |
| City of Raleigh, Raleigh, NC | NC-90-X075 | 3,032,590 | 6/30/88 |
| Town of Carrboro, Durham, NC | NC-90-X077 | 24,000 | 6/27/88 |
| City of Hickory, Hickory, NC | NC-90-X078 | 222,668 | 6/24/88 |
| Transit Authority of the City of Omaha, Omaha, NE | NE-90-X015-01 | 9,264 | 6/30/88 |
| Manchester Transit Authority, Manchester, NH | NH-90-X016 | 610,739 | 6/30/88 |
| New Jersey Transit Corporation, Statewide, NJ | NJ-90-X023-02 | 8,249,440 | 6/30/88 |
| City of Santa Fe, Santa Fe, NM | NM-90-X021 | 261,486 | 6/30/88 |
| City of Albuquerque, Albuquerque, NM | NM-90-X019-01 | 409,456 | 6/30/88 |
| City of Las Cruces, Las Cruces, NM | NM-90-X020 | 159,506 | 6/30/88 |
| County of Albany, Albany, NY | NY-90-X119 | 4,646,400 | 6/30/88 |
| Onandaga County, Syracuse, NY | NY-90-X136 | 322,641 | 6/30/88 |
| Broome County Department of Public Transportation, Binghamton, NY | NY-90-X137 | 1,382,976 | 6/30/88 |
| Capital District Transportation Authority, Albany, NY | NY-90-X138 | 290,136 | 6/30/88 |
| Rochester-Genesee Regional Transportation Authority, Rochester, NY | NY-90-X108-02 | 966,985 | 6/30/88 |
| Oneida County, Utica, NY | NY-90-X129 | 419,486 | 6/30/88 |
| Utica Transit Authority, Utica, NY | NY-90-X105-02 | 2,212 | 6/30/88 |
| County of Orange, Newburgh, NY | NY-90-X122 | 483,562 | 6/30/88 |
| Greater Cleveland Regional Transit Authority, Cleveland, OH | OH-90-X102 | 8,283,752 | 6/30/88 |
| Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK | OK-90-X023 | 3,395,332 | 6/30/88 |
| Metropolitan Tulsa Transit Authority, Tulsa, OK | OK-90-X021-01 | 2,173,124 | 6/30/88 |
| Tri-County Metropolitan Transportation District, Portland, OR | OR-90-X026-01 | 8,437,088 | 7/11/88 |
| City of Washington, Pittsburgh, PA | PA-90-X142 | 115,638 | 6/24/88 |
| Lehigh and Northampton Transportation Authority, Allentown, PA | PA-90-X145 | 3,126,250 | 6/30/88 |
| Transportation and Motor Buses for Public Use Authority, Altoona, PA | PA-90-X146 | 788,002 | 6/24/88 |
| County of Lackawanna Transit System, Scranton, PA | PA-90-X147 | 283,347 | 6/27/88 |
| Williamsport Bureau of Transportation, Williamsport, PA | PA-90-X149 | 418,000 | 6/30/88 |
| Borough of Canonsburg, Pittsburgh, PA | PA-90-X141 | 53,176 | 6/24/88 |
| York Area Transportation Authority, York, PA | PA-90-X144 | 569,834 | 6/24/88 |
| Erie Metropolitan Transit Authority, Erie, PA | PA-90-X148 | 1,949,652 | 6/30/88 |
| Berks Area Reading Transportation Authority, Reading, PA | PA-90-X143 | 940,000 | 6/27/88 |
| Municipality of Aguadilla, Aguadilla, PR | PR-90-X038 | 855,664 | 6/24/88 |
| Municipality of Caguas, Caguas, PR | PR-90-X040 | 1,351,792 | 6/24/88 |
| Municipality of Catano, San Juan, PR | PR-90-X037 | 89,600 | 6/24/88 |
| Municipality of Hatillo, Arecibo, PR | PR-90-X039 | 492,000 | 6/24/88 |
| Metropolitan Bus Authority, San Juan, PR | PR-90-X034-01 | 1,500,000 | 6/24/88 |
| Rhode Island Department of Transportation, Providence, RI | RI-90-X010-01 | 89,464 | 6/30/88 |
| Pee Dee Regional Transportation Authority, Florence, SC | SC-90-X022 | 242,943 | 6/30/88 |
| Greenville Transit Authority, Greenville, SC | SC-90-X021 | 1,600,576 | 6/30/88 |
| Central Midlands Regional Planning Council, Columbia, SC | SC-90-X023 | 96,597 | 6/24/88 |
| City of Sioux Falls, Sioux Falls, SD | SD-90-X012 | 40,028 | 6/30/88 |
| Jackson Transit Authority, Jackson, TN | TN-90-X064 | 286,272 | 6/30/88 |
| Memphis Area Transit Authority, Memphis, TN | TN-90-X065 | 2,052,000 | 6/30/88 |
| City of Clarksville, Clarksville, TN | TN-90-X063 | 240,065 | 6/30/88 |
| Johnson City Transit System, Johnson City, TN | TN-90-X062 | 787,000 | 6/30/88 |
| Dallas Area Rapid Transit Authority, Dallas, TX | TX-90-X103-01 | 1,780,000 | 6/30/88 |
| Houston Metropolitan Transit Authority, Houston, TX | TX-90-X125 | 42,492,552 | 6/30/88 |
| City of Port Arthur, Port Arthur, TX | TX-90-X128 | 400,000 | 6/30/88 |
| City of Lubbock, Lubbock, TX | TX-90-X127 | 1,083,496 | 6/30/88 |
| City of Arlington, Dallas, TX | TX-90-X126 | 230,000 | 6/30/88 |
| City of Galveston, Galveston, TX | TX-90-X124 | 80,000 | 6/30/88 |

SECTION 9 GRANTS—Continued

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Via Metropolitan Transit, San Antonio, TX | TX-90-X121 | 4,716,519 | 6/30/88 |
| Fort Worth Transportation Authority, Fort Worth, TX | TX-90-X116 | 5,058,800 | 6/30/88 |
| City of San Angelo, San Angelo, TX | TX-90-X117 | 409,553 | 6/30/88 |
| Jaunt, Inc., Charlottesville, VA | VA-90-X054 | 158,587 | 6/30/88 |
| Greater Lynchburg Transit Company, Lynchburg, VA | VA-90-X053 | 640,000 | 6/30/88 |
| Ben Franklin Transit, Richland, WA | WA-90-X085 | 480,000 | 6/30/88 |
| Spokane Transit Authority, Spokane, WA | WA-90-X077-01 | 792,000 | 6/30/88 |
| Waukesha Metro Transit, Waukesha, WI | WI-90-X091 | 244,542 | 6/30/88 |
| Beloit Transit System, Beloit, WI | WI-90-X092 | 191,791 | 6/30/88 |
| Transit Network, Eau Claire, WI | WI-90-X096 | 67,754 | 6/30/88 |
| Sheboygan Transit System, Sheboygan, WI | WI-90-X093 | 550,291 | 6/30/88 |
| La Crosse Municipal Transit Utility, La Crosse, WI | WI-90-X089 | 556,278 | 6/30/88 |
| Waukesha County Express and Freeway Flyer, Milwaukee, WI | WI-90-X090 | 163,263 | 6/30/88 |
| Milwaukee County Transit System, Milwaukee, WI | WI-90-X094 | 14,519,251 | 6/30/88 |
| Tri-State Transit Authority, Huntington, WV | WV-90-X025 | 1,137,300 | 6/30/88 |
| Kanawha Valley Regional Transportation Authority, Charleston, WV | WV-90-X026 | 1,226,916 | 6/27/88 |
| Mid Ohio Valley Transit Authority, Parkersburg, WV | WV-90-X027 | 468,426 | 6/27/88 |

SECTION 9 GRANTS READY FOR OBLIGATION WAITING FOR 13(c) CERTIFICATION

| Transit property | Grant number | Grant amount |
|---|---|---|
| Birmingham-Jefferson County Transit Authority, Birmingham, AL | AL-90-X005-03 | $240,000 |
| Birmingham-Jefferson County Transit Authority, Birmingham, AL | AL-90-X031-01 | 232,800 |
| Washington Metropolitan Area Transportation Authority, Washington, DC | DC-90-X010-01 | 30,429,600 |
| Gary Public Transportation Corporation, Northwestern, IN | IN-90-X107 | 2,210,500 |
| Transit Authority of Lexington Fayette Urban County Government, Lexington, KY | KY-90-X036 | 1,797,043 |
| Regional Transit Authority, New Orleans, LA | LA-90-X061 | 9,221,897 |
| Metropolitan Transportation Authority, New York, NY | NY-90-X135-01 | 53,387,196 |
| Central Ohio Transit Authority, Columbus, OH | OH-90-X103 | 338,000 |
| Corpus Christi Regional Transit Authority, Corpus Christi, TX | TX-90-X119 | 2,030,400 |
| Snohomish County Public Transportation Benefit Area, Everett, WA | WA-90-X063 | 1,637,637 |
| Madison Metro, Madison, WI | WI-90-X095 | 3,280,375 |

Issued on: July 21, 1988.

**Matthew M. Wirgau,**

*Deputy Administrator.*

[FR Doc. 88-17250 Filed 7-29-88; 8:45 am]

BILLING CODE 4910-57-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 147
Monday, August 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 5, 1988.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–17362 Filed 7–28–88; 3:26 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 12, 1988.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–17363 Filed 7–28–88; 3:26 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 19, 1988.

**PLACE:** 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–17364 Filed 7–28–88; 3:26 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 26, 1988.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–17565 Filed 7–28–88; 3:26 pm]

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# Corrections

Federal Register
Vol. 53, No. 147
Monday, August 1, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## THE PRESIDENT

**3 CFR**

**Memorandum of July 21, 1988**

**Determination Under Section 301 of the Trade Act**

*Correction*

In a Presidential Memorandum appearing on page 28177 in the issue of Wednesday, July 27, 1988, make the following correction:

On page 28177, the file line at the end of the document was omitted and should have appeared as follows:
[FR Doc. 88-17063
Filed 7-25-88; 4:53 pm]

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88N-0202]**

**Drug Export; Nitropflaster Ratiopharm-5 and 10**

*Correction*

In notice document 88-12158 beginning on page 20021 in the issue of Wednesday, June 1, 1988, make the following correction:

On page 20022, in the first column, in the second line, "**D. Hicks**" should read "**Daniel L. Michels**".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88M-0220]**

**Paragon Optical, Inc.; Premarket Approval of FluoroPerm™ (Paflufocon A) Rigid Gas-Permeable Contact Lens (Clear and Tinted) for Extended Wear**

*Correction*

In notice document 88-15529 beginning on page 26314 in the issue of Tuesday, July 12, 1988, make the following corrections:

On page 26315, in the second column, in the 4th line, "(21 U.S.C. 12)" should read "21 CFR Part 12"; and in the 11th line, "(21 U.S.C. 10.33(b))" should read "(21 CFR 10.33(b))".

BILLING CODE 1505-01-D

federal register

Monday
August 1, 1988

Part II

# Federal Communications Commission

47 CFR Parts 1 and 87
Aviation Services; Final Rule

VOL 53 ISS 147 AUG 1 1988 UMI

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 87

[PR Docket No. 87-214; FCC 88-210]

### Aviation Services

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule.

**SUMMARY:** The FCC is revising and reorganizing Part 87 of the Rules governing the Aviation Services. This action is part of the FCC's ongoing effort to review, simplify and clarify its regulations. The intended effect of this action is to eliminate unnecessary rules and language and improve the organization of the regulations governing the Aviation Services.

**EFFECTIVE DATE:** August 31, 1988.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maureen Cesaitis, Robert Mickley, or James Shaffer, Private Radio Bureau, Aviation and Marine Branch, Washington, DC 20554, (202) 632-7175.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (adopted June 23, 1988, and released July 14, 1988), revising and amending its Aviation Services. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the Report and Order may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Summary of Report and Order

1. We are revising the Commission's Rules governing the Aviation Services, which are contained in Part 87 of Title 47 of the Code of Federal Regulations. The removal of unnecessary language and rules, the elimination of redundant sections and the reorganization of certain rules into tables will result in a 30 percent reduction in the size of Part 87. These changes will significantly improve Part 87 and make it easier to use.

2. We are also making a number of substantive changes. In the aeronautical advisory station (unicom) rules, we are implementing two changes aimed at reducing congestion on certain frequencies. Under the new aviation support station category we are expanding the scope of communications permitted between aircraft and aviation service organizations. We will grant fleet licenses to Civil Air Patrol Wings. Further, we have added a number of tables which we believe will be easier to understand and use than the existing rules. We have included a new subpart consisting of a combined list which gives the frequency's use and references the appropriate subpart(s) for further details.

### Final Regulatory Flexibility Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

### Paperwork Reduction

4. The rule changes contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden which the Commission imposes on the public. Implementation of any new or modified requirements or burden will be subject to approval by the Office of Management and Budget as prescribed in the Act.

### Ordering Clauses

5. Accordingly, it is ordered, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 87 of the Commission's Rules is amended effective August 29, 1988, as shown at the end of this document.

6. A copy of this Report and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

7. It is further ordered that this proceeding is terminated.

### List of Subjects

*47 CFR Part 1*

Administrative practice and procedure.

*47 CFR Part 87*

Aeronautical stations, Aviational services, Civil defense, Communications equipment, General aviation, Incorporation by reference.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.962 is amended by revising paragraph (a)(5) to read as follows:

**§ 1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.**

(a) * * *

* * * * *

(5) Airport control tower stations.

* * * * *

3. Part 87 is revised in its entirety to read as follows:

## PART 87—AVIATION SERVICES

### Subpart A—General Information

Sec.
87.1 Basis and purpose.
87.3 Other applicable rule parts.
87.5 Definitions.

### Subpart B—Applications and Licenses

87.17 Scope.
87.19 Basic eligibility.
87.21 Standard forms to be used.
87.23 Supplemental information required.
87.25 Filing of applications.
87.27 License term.
87.29 Partial grant of application.
87.31 Changes during license term.
87.33 Transfer of aircraft station license prohibited.
87.35 Cancellation of license.
87.37 Developmental license.
87.39 Equipment acceptable for licensing.
87.41 Frequencies.
87.43 Operation during emergency.
87.45 Time in which station is placed in operation.
87.47 Application for a portable aircraft station license.

### Subpart C—Operating Requirements and Procedures

#### Operating Requirements

87.69 Maintenance tests.
87.71 Frequency measurements.
87.73 Transmitter adjustments and tests.
87.75 Maintenance of tower marking and control equipment.
87.77 Availability for inspections.
87.79 Answer to notice of violation.

#### Radio Operator Requirements

87.87 Classification of operator licenses and endorsements.
87.89 Minimum operator requirements.
87.91 Operation of transmitter controls.

#### Operating Procedures

87.103 Posting station license.
87.105 Availability of operator permit or license.
87.107 Station identification.

Sec.
87.109 Station logs.
87.111 Suspension or discontinuance of operation.

**Subpart D—Technical Requirements**

87.131 Power and emissions.
87.133 Frequency stability.
87.135 Bandwidth of emission.
87.137 Types of emission.
87.139 Emission limitations.
87.141 Modulation requirements.
87.143 Transmitter control requirements.
87.145 Acceptability of transmitters for licensing.
87.147 Type acceptance of equipment.

**Subpart E—Frequencies**

87.169 Scope.
87.171 Class of station symbols.
87.173 Frequencies.

**Subpart F—Aircraft Stations**

87.185 Scope of service.
87.187 Frequencies.
87.189 Requirements for public correspondence equipment and operations.
87.191 Foreign aircraft stations.

**Emergency Locator Transmitters**

87.193 Scope of service.
87.195 Frequencies.
87.197 ELT test procedures.

**Subpart G—Aeronautical Advisory Stations (UNICOMs)**

87.213 Scope of service.
87.215 Supplemental eligibility.
87.217 Frequencies.

**Subpart H—Aeronautical Multicom Stations**

87.237 Scope of service.
87.239 Supplemental eligibility.
87.241 Frequencies.

**Subpart I—Aeronautical Enroute and Aeronautical Fixed Stations**

**Aeronautical Enroute Stations**

87.261 Scope of service.
87.263 Frequencies.
87.265 Administrative communications.

**Aeronautical Fixed Stations**

87.275 Scope of service.
87.277 Supplemental eligibility.
87.279 Frequencies.

**Subpart J—Flight Test Stations**

87.299 Scope of service.
87.301 Supplemental eligibility.
87.303 Frequencies.
87.305 Frequency coordination.
87.307 Cooperative use of facilities.

**Subpart K—Aviation Support Stations**

87.319 Scope of service.
87.321 Supplemental eligibility.
87.323 Frequencies.

**Subpart L—Aeronautical Utility Mobile Stations**

87.345 Scope of service.
87.347 Supplemental eligibility.
87.349 Frequencies.
87.351 Frequency change.

**Subpart M—Aeronautical Search and Rescue Stations**

Sec.
87.371 Scope of service.
87.373 Supplemental eligibility.
87.375 Frequencies.

**Subpart N—Emergency Communications**

87.393 Scope of service.
87.395 Plan for the Security Control of Air Traffic Navigation Aids (Short Title: SCATANA).
87.397 Emergency operations.

**Subpart O—Airport Control Tower Stations**

87.417 Scope of service.
87.419 Supplemental eligibility.
87.421 Frequencies.
87.423 Hours of operation.
87.425 Interference.

**Subpart P—Operational Fixed Stations**

87.445 Scope of service.
87.447 Supplemental eligibility.
87.449 Frequencies.
87.451 Licensing limitations.

**Subpart Q—Stations in the Radiodetermination Service**

87.471 Scope of service.
87.473 Supplemental eligibility.
87.475 Frequencies.
87.477 Condition of grant for radionavigation land stations.
87.479 Harmful interference to radionavigation land stations.
87.481 Unattended operation of domestic radiobeacon stations.

**Subpart R—Civil Air Patrol Stations**

87.501 Scope of service.
87.503 Supplemental eligibility.
87.505 Frequencies.

**Subpart S—Automatic Weather Observation Stations**

87.525 Scope of service.
87.527 Supplemental eligibility.
87.529 Frequencies.

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

## Subpart A—General Information

### § 87.1 Basis and purpose.

This section contains the statutory basis and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the aviation services in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission (Commission) to regulate radio transmission and to issue licenses for radio stations. These rules conform with applicable statutes and international treaties, agreements and recommendations to which the United States is a party. The most significant of these documents are listed with the short title appearing in parentheses:

(1) Communications Act of 1934, as amended—(Communications Act).

(2) International Telecommunication Union Radio Regulations, in force for the United States—(Radio Regulations).

(3) The Convention on International Civil Aviation—(ICAO Convention).

(b) *Purpose.* This part states the conditions under which radio stations may be licensed and used in the aviation services. These rules do not govern U.S. Government radio stations.

### § 87.3 Other applicable rule parts.

Other applicable CFR Title 47 parts include:

(a) Part 0 contains the Commission's organizations and delegations of authority. Part 0 also lists Commission publications, standards and procedures for access to Commission records and location of Commission monitoring stations.

(b) Part 1 contains rules of practice and procedure for license applications, adjudicatory proceedings, rule making proceedings, procedures for reconsideration and review of the Commission's actions, provisions concerning violation notices and forfeiture proceedings, and the requirements for environmetal impact statements.

(c) Part 2 contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning marketing of radio frequency devices, and for obtaining equipment authorization.

(d) Part 13 contains information and rules for the licensing of commercial radio operators.

(e) Part 17 contains requirements for construction, marking and lighting of antenna towers.

(f) Part 80 contains rules for the maritime services. Certain maritime frequencies are available for use by aircraft stations for distress and safety, public correspondence and operational communications.

### § 87.5 Definitions.

*Aeronautical advisory station (unicom).* An aeronautical station used for advisory and civil defense communications primarily with private aircraft stations.

*Aeronautical enroute station.* An aeronautical station which communicates with aircraft stations in flight or other aeronautical enroute stations.

*Aeronautical fixed service.* A radiocommunication service between

specified fixed points provided primarily for the safety of air navigation and for the regular, efficient and economical operation of air transport. A station in this service is an aeronautical fixed station.

*Aeronautical mobile service.* A mobile service between aeronautical stations and aircraft stations, or between aircraft stations, in which survival craft stations may also participate; emergency position-indicating radiobeacon stations may also participate in this service on designated distress and emergency frequencies.

*Aeronautical multicom station.* An aeronautical station used to provide communications to conduct the activities being performed by, or directed from, private aircraft.

*Aeronautical radionavigation service.* A radionavigation service intended for the benefit and for the safe operation of aircraft.

*Aeronautical search and rescue station.* An aeronautical station for communication with aircraft and other aeronautical search and rescue stations pertaining to search and rescue activities with aircraft.

*Aeronautical station.* A land station in the aeronautical mobile service. In certain instances an aeronautical station may be located, for example, on board ship or on a platform at sea.

*Aeronautical utility mobile station.* A mobile station used on airports for communications relating to vehicular ground traffic.

*Air carrier aircraft station.* A mobile station on board an aircraft which is engaged in, or essential to, the transportation of passengers or cargo for hire.

*Aircraft station.* A mobile station in the aeronautical mobile service other than a survival craft station, located on board an aircraft.

*Airport.* An area of land or water that is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any.

*Airport control tower (control tower) station.* An aeronautical station providing communication between a control tower and aircraft.

*Automatic weather observation station.* A land station located at an airport and used to automatically transmit weather information to aircraft.

*Aviation service organization.* Any business firm which maintains facilities at an airport for the purposes of one or more of the following general aviation activities: (a) Aircraft fueling; (b) aircraft services (e.g. parking, storage, tie-downs); (c) aircraft maintenance or sales; (d) electronics equipment maintenance or sales; (e) aircraft rental, air taxi service or flight instructions; and (f) baggage and cargo handling, and other passenger or freight services.

*Aviation services.* Radiocommunication services for the operation of aircraft. These services include aeronautical fixed service, aeronautical mobile service, aeronautical radiodetermination service, and secondarily, the handling of public correspondence on frequencies in the maritime mobile and maritime mobile satellite services to and from aircraft.

*Aviation support station.* An aeronautical station used to coordinate aviation services with aircraft and to communicate with aircraft engaged in unique or specialized activities. (See Subpart K)

*Civil Air Patrol station.* A station used exclusively for communications of the Civil Air Patrol.

*Emergency locator transmitter (ELT).* A transmitter of an aircraft or a survival craft actuated manually or automatically that is used as an alerting and locating aid for survival purposes.

*Emergency locator transmitter (ELT) test station.* A land station used for testing ELTs or for training in the use of ELTs.

*Flight test aircraft station.* An aircraft station used in the testing of aircraft or their major components.

*Flight test land station.* An aeronautical station used in the testing of aircraft or their major components.

*Glide path station.* A radionavigation land station which provides vertical guidance to aircraft during approach to landing.

*Instrument landing system (ILS).* A radionavigation system which provides aircraft with horizontal and vertical guidance just before and during landing and, at certain fixed points, indicates the distance to the reference point of landing.

*Instrument landing system glide path.* A system of vertical guidance embodied in the instrument landing system which indicates the vertical deviation of the aircraft from its optimum path of descent.

*Instrument landing system localizer.* A system of horizontal guidance embodied in the instrument landing system which indicates the horizontal deviation of the aircraft from its optimum path of descent along the axis of the runway or along some other path when used as an offset.

*Land station.* A station in the mobile service not intended to be used while in motion.

*Localizer station.* A radionavigation land station which provides horizontal guidance to aircraft with respect to a runway center line.

*Marker beacon station.* A radionavigation land station in the aeronautical radionavigation service which employs a marker beacon. A marker beacon is a transmitter which radiates vertically a distinctive pattern for providing position information to aircraft.

*Mean power (of a radio transmitter).* The average power supplied to the antenna transmission line by a transmitter during an interval of time sufficiently long compared with the lowest frequency encountered in the modulation taken under normal operating conditions.

*Microwave landing system.* An instrument landing system operating in the microwave spectrum that provides lateral and vertical guidance to aircraft having compatible avionics equipment.

*Mobile service.* A radiocommunication service between mobile and land stations, or between mobile stations. A mobile station is intended to be used while in motion or during halts at unspecified points.

*Operational fixed station.* A fixed station, not open to public correspondence, operated by and for the sole use of persons operating their own radiocommunication facilities in the public safety, industrial, land transportation, marine, or aviation services.

*Peak envelope power (of a radio transmitter).* The average power supplied to the antenna transmission line by a transmitter during one radio frequency cycle at the crest of the modulation envelope taken under normal operating conditions.

*Private aircraft station.* A mobile station on board an aircraft not operated as an air carrier. A station on board an air carrier aircraft weighing less than 12,500 pounds maximum certified takeoff gross weight may be licensed as a private aircraft station.

*Racon station.* A radionavigation land station which employs a racon. A racon (radar beacon) is a transmitter-receiver associated with a fixed navigational mark, which when triggered by a radar, automatically returns a distinctive signal which can appear on the display of the triggering radar, providing range, bearing and identification information.

*Radar.* A radiodetermination system based upon the comparison of reference signals with radio signals reflected, or re-transmitted, from the position to be determined.

*Radio altimeter.* Radionavigation equipment, on board an aircraft or spacecraft, used to determine the height

of the aircraft or spacecraft above the Earth's surface or another surface.

*Radiobeacon station.* A station in the radionavigation service the emissions of which are intended to enable a mobile station to determine its bearing or direction in relation to the radiobeacon station.

*Radiodetermination service.* A radiocommuncation service which uses radiodetermination. Radiodetermination is the determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation of radio waves. A station in this service is called a radiodetermination station.

*Radiolocation service.* A radiodetermination service for the purpose of radiolocation. Radiolocation is the use of radiodetermination for purposes other than those of radionavigation.

*Radionavigation land test stations.* A radionavigation land station which is used to transmit information essential to the testing and calibration of aircraft navigational aids, receiving equipment, and interrogators at predetermined surface locations. The Maintenance Test Facility (MTF) is used primarily to permit maintenance testing by aircraft radio service personnel. The Operational Test Facility (OTF) is used primarily to permit the pilot to check a radionavigation system aboard the aircraft prior to takeoff.

*Radionavigation service.* A radiodetermination service for the purpose of radionavigation. Radionavigation is the use of radiodetermination for the purpose of navigation, including obstruction warning.

*Surveillance radar station.* A radionavigation land station in the aeronautical radionavigation service employing radar to display the presence of aircraft within its range.

*Survival craft station.* A mobile station in the maritime or aeronautical mobile service intended solely for survival purposes and located on any lifeboat, life raft or other survival equipment.

*VHF Omni directional range station (VOR).* A radionavigation land station in the aeronautical radionavigation service providing direct indication of the bearing (omni-bearing) of that station from an aircraft.

## Subpart B—Applications and Licenses

### § 87.17 Scope.

This subpart contains the procedures and requirements for the filing of applications for radio station licenses in the aviation services. Part 1 of the Commission's rules contains the general rules of practice and procedure applicable to proceedings before the Commission.

### § 87.19 Basic eligibility.

(a) *General.* Foreign governments or their representatives cannot hold station licenses.

(b) *Aeronautical enroute and aeronautical fixed stations.* The following persons cannot hold an aeronautical enroute or an aeronautical fixed station license.

(1) Any alien or the representative of any alien;

(2) Any corporation organized under the laws of any foreign government;

(3) Any corporation of which any officer or director is an alien;

(4) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or its representative, or by a corporation organized under the laws of a foreign country; or

(5) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or its representatives, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

### § 87.21 Standard forms to be used.

(a) Applications must be submitted on prescribed forms which may be obtained from the Commission in Washington, DC 20554 or from any of its field offices.

(b) The following table indicates the correct standard form or other means to be used when submitting an application:

| Class of station | Application for— | Use— |
|---|---|---|
| Aircraft | New license | FCC Form 404. |
| | Fleet license (new). | FCC Form 404. |
| | Modification of license. | FCC Form 404. |
| | Renewal of license with modification. | FCC Form 404. |
| | Renewal of license without modification. | FCC Form 405–B. |
| | Temporary operating authority in conjunction with application for a new license or modification of license. | FCC Form 404–A. |
| | Transfer of control of corporation. | FCC Form 703. |
| | Special Temporary authority. | Letter/Telegram. |
| | Name or address change. | Letter. |
| Ground | New license | FCC Form 406. |
| | Modification of license. | FCC Form 406. |
| | Renewal of license with modification. | FCC Form 406. |
| | Renewal of license without modification. | FCC Form 405–A. |
| | Assignment of license. | FCC Form 1046 and 406. |
| | Transfer of control of corporation. | FCC Form 703. |
| | Special Temporary Authority. | Letter/Telegram. |
| Civil Air Patrol. | New license | FCC Form 480. |
| | Modification of license. | FCC Form 480. |
| | Renewal of license. | FCC Form 480. |

### § 87.23 Supplemental information required.

(a) To minimize harmful interference at the National Radio Astronomy Observatory site at Green Bank, Pocahontas County, WV, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, WV, an applicant for a new station license (other than mobile, temporary base, temporary fixed or Civil Air Patrol), or for modification of an existing license to change the frequency, power, antenna location, height or directivity within the area bounded by 39′15′N. on the north, 78′30′W. on the east, 37′30′N on the south and 80′30′W on the west, must first notify the Director, National Radio Astronomy Observatory, Attn: Interference Office, Post Office Box No. 2, Green Bank, WV 24944, in writing, of the geographical coordinates of the antenna, antenna height, antenna directivity, frequency, emission and power. The application to the Commission must show the date notification was made to the Observatory. The Commission will allow twenty (20) days after receipt of its copy of the notification for comments

or objections. If a timely response is received, the Commission will consider the comments or objections.

(b) Geographical coordinates of Commission facilities which require protection are listed in § 0.121(c). Applications for stations (except mobile stations) which will be located within 80 km (50 miles) of the referenced coordinates are examined to determine extent of possible interference. A clause protecting the monitoring station may be added to the station license.

(c) Each application for a station license to operate in the vicinity of Boulder County, CO, under this part must give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the Research Laboratories of the Department of Commerce, Boulder County, CO. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that field strength at 40°07'50"N latitude, 105° 14'40"W longitude, resulting from new assignments (other than mobile stations) or from the modification or relocation of the existing facilities do not exceed the following values:

| Frequency range | Field strength (mV/m) in authorized bandwidth of service | Power flux density [1] (dBW/m²) in authorized bandwidth of service |
|---|---|---|
| Below 540 kHz | 10 | −65.8 |
| 540 to 1600 kHz | 20 | −59.8 |
| 1.6 to 470 MHz | 10 | [2] −65.8 |
| 470 to 890 MHz | 30 | [2] −56.2 |
| Above 890 MHz | 1 | [2] −65.8 |

[1] Equivalent values of power flux density are calculated assuming a free-space characteristic impedence of 376.7 120 ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the Commission's rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(d) Each applicant is responsible for determining whether proposals for a new or modified station require envionmental information. Applicants should refer to § 1.1307 to identify those actions for which environmental information must be submitted.

### § 87.25 Filing of applications.

Rules about the filing of applications for radio station licenses are contained in this section.

(a) Each application must specify an address in the United States to be used by the Commission in serving documents or directing correspondence to the licensee. Otherwise the address contained in the licensee's most recent notification will be used for this purpose. Failure to answer Commission correspondence can result in revocation of the license.

(b) An original of each application must be filed with the Commission, Gettysburg, PA 17326, unless otherwise noted on the application form. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

(c) One application may be submitted for the total number of aircraft stations in the fleet (fleet license).

(d) One application for aeronautical land station license may be submitted for the total number of stations in the fleet.

(e) One application for modification or transfer of control may be submitted for two or more stations when the individual stations are clearly identified and the following elements are the same for all existing or requested station licenses involved:

(1) Applicant;

(2) Specific details of request;

(3) Rule part.

(f) One application must be submitted for each Civil Air Patrol wing. The application must show the total number of transmitters to be authorized. The wing need not notify the Commission each time the number of transmitters is altered. Upon renewal, the wing must notify the Commission of any change in the total number of transmitters.

**Note.**—A fee schedule was implemented by the Federal Communications Commission on April 1, 1986. A synopsis of the new fee schedule applicable to the Aviation Services is printed here as a convenience to the reader. Governmental entities are exempt from the fee schedule.

Aircraft stations (new, modification or renewal); no fee; submit to address indicated on FCC Form 404 or FCC Form 405B, as appropriate.

Aviation ground stations (new or modification); $60 fee; submit FCC Form 406 to FCC, Aviation Ground Service, P.O. Box 371632M, Pittsburgh, PA 15251–7632.

Aviation ground stations (renewal); $60 fee; submit FCC Form 405A to FCC, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251–6703.

### § 87.27 License term.

(a) Licenses for regular stations will normally be issued for five years.

(b) Licenses for developmental stations will be issued for a period not to exceed one year and are subject to change or to cancellation by the Commission at any time, upon reasonable notice but without a hearing.

### § 87.29 Partial grant of application.

Whenever the Commission, without a hearing, grants an application in part or with any privileges, terms, or conditions other than those requested, the action will be considered as a grant of the application unless the applicant, within 30 days from the date on which such grant is made, or from its effective date if a later day is specified, files with the Commission a written protest, rejecting the grant as made. Upon receipt of such protest, the Commission will vacate its original action upon the application and, if necessary, set the application for hearing.

### § 87.31 Changes during license term.

The following table indicates the required action for changes made during the license term:

| Type of change | Required action |
|---|---|
| Mailing address | Written notice to FCC, Gettysburg, PA 17326. |
| Name of licensee (without change in ownership, control or corporate structure). | Written notice to FCC, Gettysburg, PA 17326. |
| Transfer of control of a corporation. | Use FCC Form 703. |
| Assignment of a radio station license (except aircraft station license). | Use FCC Form 1046 and 406. |
| Addition of transmitting equipment on a frequency, frequency band or with emission types not authorized on present license. | Use FCC Form 404 (aircraft). Use FCC Form 406 (land). Use FCC Form 480 (C.A.P.). |
| Addition or replacement of transmitting equipment on a frequency or frequency band with emission types authorized on present license. | None. |
| Addition of survival craft station. | None |

### § 87.33 Transfer of aircraft station license prohibited.

An aircraft station license cannot be assigned. If the aircraft ownership is transferred, the previous license must be returned to the Commission. The new owner must file for a new license.

### § 87.35 Cancellation of license.

When a station permanently discontinues operation, the license must be returned to the Commission, Gettysburg, PA 17326.

### § 87.37 Developmental license.

This section contains rules about the licensing of developmental operations subject to this part.

(a) *Showing required.* Each application for a developmental license

must be accompanied by a letter showing that:

(1) The applicant has an organized plan of development leading to a specific objective;

(2) A point has been reached in the program where actual transmission by radio is essential;

(3) The program has reasonable promise of substantial contribution to of the use of radio;

(4) The program will be conducted by qualified personnel;

(5) The applicant is legally qualified and possesses technical facilities for conduct of the program as proposed;

(6) The public interest, convenience and necessity will be served by the proposed operation.

(b) *Signature and statement of understanding.* The showing must be signed by the applicant.

(c) *Assignable frequencies.* Developmental stations may be authorized to use frequencies available for the service and class of station proposed. The number of frequencies assigned will depend upon the specific requirements of the developmental program and the number of frequencies available.

(d) *Developmental program.* (1) The developmental program as described by the applicant must be substantially followed.

(2) Where some phases of the developmental program are not covered by the general rules of the Commission and the rules in this part, the Commission may specify supplemental or additional requirements or conditions as considered necessary in the public interest, convenience or necessity.

(3) The Commission may, from time to time, require a station engaged in developmental work to conduct special tests which are reasonable and desirable to the authorized developmental program.

(e) *Use of developmental stations.* (1) Developmental stations must conform to all applicable technical and operating requirements contained in this part, unless a waiver is specifically provided in the station license.

(2) Communication with any station of a country other than the United States is prohibited unless specifically provided in the station license.

(3) The operation of a developmental station must not cause harmful interference to stations regularly authorized to use the frequency.

(f) *Report of operation required.* A report on the results of the developmental program must be filed within 60 days of the expiration of the license. A report must accompany a request for renewal of the license. Matters which the applicant does not wish to disclose publicly may be so labeled; they will be used solely for the Commission's information. However, public disclosure is governed by § 0.467 of the Commission's rules. The report must include the following:

(1) Results of operation to date.

(2) Analysis of the results obtained.

(3) Copies of any published reports.

(4) Need for continuation of the program.

(5) Number of hours of operation on each authorized frequency during the term of the license to the date of the report.

### § 87.39 Equipment acceptable for licensing.

Transmitters listed in this part must be type accepted for a particular use by the Commission based upon technical requirements contained in Subpart D of this part.

### § 87.41 Frequencies.

(a) *Applicant responsibilities.* The applicant must propose frequencies to be used by the station consistent with the applicant's eligibility, the proposed operation and the frequencies available for assignment. Applicants must cooperate in the selection and use of frequencies in order to minimize interference and obtain the most effective use of stations. See Subpart E and the appropriate subpart applicable to the class of station being considered.

(b) *Licensing limitations.* Frequencies are available for assignment to stations on a shared basis only and will not be assigned for the exclusive use of any licensee. The use of any assigned frequency may be restricted to one or more geographical areas.

(c) *Government frequencies.* Frequencies allocated exclusively to federal government radio stations may be licensed. The applicant for a government frequency must provide a satisfactory showing that such assignment is required for inter-communication with government stations or required for coordination with activities of the federal government. The Commission will coordinate with the appropriate government agency before a government frequency is assigned.

(d) *Assigned frequency.* The frequency coinciding with the center of an authorized bandwidth of emission must be specified as the assigned frequency. For single sideband emission, the carrier frequency must also be specified.

### § 87.43 Operation during emergency.

A station may be used for emergency communications in a manner other than that specified in the station license or in the operating rules when normal communication facilities are disrupted. The Commission may order the discontinuance of any such emergency service.

### § 87.45 Time in which station is placed in operation.

This section applies to unicom stations and radionavigation land stations, excluding radionavigation land test stations. In those cases in which a new or modified license is issued, if the station or modifications authorized have not been placed in operation within eight months from the date of the grant, the license becomes invalid and must be returned to the Commission unless the licensee shows good cause why notification was not made. The licensee must notify the Commission in writing when the station is placed in operation.

### § 87.47 Application for a portable aircraft station license.

A person may apply for a portable aircraft radio station license if the need exists to operate the same station on more than one U.S. aircraft.

## Subpart C—Operating Requirements and Procedures

### Operating Requirements

### § 87.69 Maintenance tests.

The licensee may make routine maintenance tests on equipment other than emergency locator transmitters if there is no interference with the communications of any other station. Procedures for conducting tests on emergency locator transmitters are contained in Subpart F.

### § 87.71 Frequency measurements.

A licensed operator must measure the operating frequencies of all land-based transmitters at the following times:

(a) When the transmitter is originally installed;

(b) When any change or adjustment is made in the transmitter which may affect an operating frequency; or

(c) When an operating frequency has shifted beyond tolerance.

### § 87.73 Transmitter adjustments and tests.

A general radiotelephone operator must directly supervise and be responsible for all transmitter adjustments or tests during installation, servicing or maintenance of a radio station. A general radiotelephone operator must be responsible for the proper functioning of the station equipment.

**§ 87.75 Maintenance of tower marking and control equipment.**

Section 303(q) of the Communications Act of 1934, as amended, requires some antenna structures to be painted or illuminated. The licensee of any radio station which has such an antenna structure must operate and maintain the tower marking and associated control equipment in accordance with Part 17 of this chapter.

**§ 87.77 Availability for inspections.**

The licensee must make the station and its records available for inspection upon request.

**§ 87.79 Answer to notice of violation.**

(a) Any person who receives an official notice of violation of the Communications Act, any legislative act, executive order, treaty to which the U.S. is a party, terms of a station or operator license, or the Commission's rules must send a written answer, in duplicate, to the office which originated the notice, within 10 days of receipt. If the licensee cannot acknowledge within the allotted period due to unavoidable circumstances, an answer must be given at the earliest practicable date with a satisfactory explanation of the delay.

(b) The answer to each notice must be complete in itself. The answer must contain a full expalantion of the incident involved and must give the action taken to prevent a recurrence of the violation. If the notice relates to operator errors, the answer must give the name and license number of the operator on duty.

**Radio Operator Requirements**

**§ 87.87 Classification of operator licenses and endorsements.**

(a) Commercial radio operator licenses issued by the Commission are classified in accordance with the Radio Regulations of the International Telecommunication Union.

(b) The following licenses are issued by the Commission. International classification, if different from the license name, is given in parentheses. The licenses and their alphanumeric designator are listed in descending order.

(1) T–1 First Class Radiotelegraph Operator's Certificate

(2) T–2 Second Class Radiotelegraph Operator's Certificate

(3) G General Radiotelephone Operator Licenes (radiotelephone operator's general certificate)

(4) T–3 Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate)

(5) MP Marine Radio Operator Permit (radiotelephone operator's restricted certificate)

(6) RP Restricted Radiotelephone Operator Permit (radiotelephone operator's restricted certificate)

**§ 87.89 Minimum operator requirements.**

(a) A station operator must hold a commercial radio operator license or permit, except as listed in paragraph (d).

(b) The minimum operator license or permit required for operation of each specific classification is:

**Minimum Operator License or Permit**

*Land stations, all classes*

—All frequencies except VHF telephony transmitters providing domestic service.....RP

*Aircraft stations, all classes*

—Frequencies below 30 MHz allocated exclusively to aeronautical mobile services.....RP

—Frequencies below 30 MHz not allocated exclusively to aeronautical mobile services...MP or higher

—Frequencies above 30 MHz not allocated exclusively to aeronautical mobile services and assigned for international use...MP or higher

—Frequencies above 30 MHz not assigned for international use..... none

—Frequencies not used solely for telephone or exceeding 250 watts carrier power or 1000 watts peak envelope power.....:...G or higher

(c) The operator of a telephony station must directly supervise and be responsible for any other person who transmits from the station, and must ensure that such communications are in accordance with the station license.

(d) No operator license is required to:

(1) Operate an aircraft radar set, radio altimeter, transponder or other aircraft automatic radionavigation transmitter by flight personnel;

(2) Test an emergency locator transmitter or a survival craft station used solely for survival purposes;

(3) Operate an aeronautical enroute station which automatically transmits digital communications to aircraft stations;

(4) Operate a VHF telephony transmitter providing domestic service or used on domestic flights.

**§ 87.91 Operation of transmitter controls.**

The holder of a marine radio operator permit or a restricted radiotelephone operator permit must perform only transmitter operations which are controlled by external switches. These operators must not perform any internal adjustment of transmitter frequency determining elements. Further, the stability of the transmitter frequencies at a station operated by these operators must be maintained by the transmitter itself. When using an aircraft radio station on maritime mobile service frequencies the carrier power of the transmitter must not exceed 250 watts (emission A3E) or 1000 watts (emission R3E, H3E, or J3E).

**Operating Procedures**

**§ 87.103 Posting station license.**

(a) *Stations at fixed locations.* The license or a photocopy must be posted or retained in the station's permanent records.

(b) *Aircraft radio stations.* The license must be either posted in the aircraft or kept with the aircraft registration certificate.

(c) *Aeronautical mobile stations.* The license must be retained as a permanent part of the station records.

**§ 87.105 Availability of operator permit or license.**

All operator permits or licenses must be readily available for inspection.

**§ 87.107 Station identification.**

(a) *Aircraft station.* Identify by one of the following means:

(1) Aircraft radio station call sign.

(2) Assigned FCC control number (assigned to ultralight aircraft).

(3) The type of aircraft followed by the characters of the registration marking ("N" number) of the aircraft, omitting the prefix letter "N". When communication is initiated by a ground station, an aircraft station may use the type of aircraft followed by the last three characters of the registration marking.

(4) The FAA assigned radiotelephony designator of the aircraft operating organization followed by the flight identification number.

(5) An aircraft identification approved by the FAA for use by aircraft stations participating in an organized flying activity of short duration.

(b) *Land and fixed stations.* Identify by means of radio station call sign, its location, its assigned FAA identifier, the name of the city area or airport which it serves, or any additional identification required. An aeronautical enroute station which is part of a multistation network may also be identified by the location of its control point.

(c) *Survival craft station.* Identify by transmitting a reference to its parent aircraft. No identification is required when distress signals are transmitted automatically. Transmissions other than distress or emergency signals, such as equipment testing or adjustment, must be identified by the call sign or by the registration marking of the parent

aircraft followed by a single digit other than 0 or 1.

(d) *Exempted station.* The following types of stations are exempted from the use of a call sign: Airborne weather radar, radio altimeter, air traffic control transponder, distance measuring equipment, collision avoidance equipment, racon, radio relay, radionavigation land test station (MTF), and automatically controlled aeronautical enroute stations.

**§ 87.109 Station logs.**

A station at a fixed location in the international aeronautical mobile service must maintain a written or automatic log in accordance with Paragraph 3.5, Volume II, Annex 10 of the ICAO Convention.

**§ 87.111 Suspension or discontinuance of operation.**

The licensee must notify the nearest FAA regional office upon the temporary suspension or permanent discontinuance of any station. This requirement does not apply to aircraft stations. The FAA center must be notified again when service resumes.

## Subpart D—Technical Requirements

**§ 87.131 Power and emissions.**

(a) The authorized emissions and maximum power are as follows:

| Class of station | Frequency band/ frequency | Authorized emission(s) | Maximum power [1] |
|---|---|---|---|
| Aeronautical advisory | VHF | A3E | 10 watts. |
| Aeronautical multicom | VHF | A3E | 10 watts. |
| Aeronautical enroute and aeronautical fixed | HF | R3E, H3E, J3E, J7B, H2B, A1A, F1B, J2A, J2B | 6 kw<br>1.5 kw. |
| | VHF | A3E | 200 watts. [2] |
| Aeronautical search and rescue | VHF | A3E | 10 watts. |
| | HF | R3E, H3E, J3E | 100 watts. |
| Operational fixed | VHF | G3E, F2D | 30 watts. |
| Flight test land | VHF | A3E | 200 watts. |
| | UHF | F2D, F9D, F7D | 25 watts. [3] |
| | HF | H2B, J3E, J7D, J9W | 6.0 kw. |
| Aviation support | VHF | A3E | 50 watts. |
| Airport control tower | VHF | A3E | 50 watts. |
| Aeronautical utility mobile | below 400 kHz | A3E | 15 watts. |
| | VHF | A3E | 10 watts. |
| Radionavigation land test | 108.150 MHz | A9W | 1 milliwatt. |
| | 334.550 MHz | A1N | 1 milliwatt. |
| | other VHF | M1A, XXA, A1A, A1N, A2A, A2D, A9W | 1 watt. |
| | other UHF | M1A, XXA, A1A, A1N, A2A, A2D, A9W | 1 watt. |
| | 5031.0 MHz | F7D | 1 watt. |
| Radionavigation land | various [4] | various [4] | various [4] |
| Aircraft Communication | | Aeronautical frequencies | |
| | UHF | F2D, F9D, F7D | 25 watts. |
| | VHF | A3E | 55 watts. |
| | HF | R3E, H3E, J3E, J7B, H2B, J7D, J9W | 400 watts. |
| | HF | A1A, F1B, J2A, J2B | 100 watts. |
| Radionavigation | various [5] | various [5] | various [5] |
| | | Marine Frequencies [6] | |
| | 156.300 MHz | G3E | 5 watts. |
| | 156.375 MHz | G3E | 5 watts. |
| | 156.400 MHz | G3E | 5 watts. |
| | 156.425 MHz | G3E | 5 watts. |
| | 156.450 MHz | G3E | 5 watts. |
| | 156.625 MHz | G3E | 5 watts. |
| | 156.800 MHz | G3E | 5 watts. |
| | 156.900 MHz | G3E | 5 watts. |
| | 156.425 MHz | G3E | 5 watts. |
| | HF [7] | R3E, H3E, J3E, J2B, F1B, A3E | 1000 watts<br>250 watts. |
| | MF [7] | R3E, H3E, J3E, J2B, F1B,<br>A3E | 1000 watts<br>250 watts. |

[1] The power is measured at the transmitter output terminals and the type of power is determined according to the emission designator as follows:
(i) Mean power (pY) for amplitude modulated emissions and transmitting both sidebands using unmodulated full carrier.
(ii) Peak envelope power (pX) for all emission designators other than those referred to in paragraph (i) of this note.
[2] Power and antenna height are restricted to the minimum necessary to achieve the required service.
[3] Transmitter power may be increased to overcome line and duplexer losses but must not exceed 25 watts delivered to the antenna.
[4] Frequency, emission and maximum power will be determined after coordination with appropriate Government agencies.
[5] Frequency, emission and maximum power will be determined by appropriate standards during the type acceptance process.
[6] To be used with airborne marine equipment type accepted for Part 80 (ship) and used in accordance with Part 87.
[7] Applicable only to marine frequencies used for public correspondence.
(b) Power must be determined by direct measurement.

**§ 87.133 Frequency stability.**

(a) Except as provided in paragraphs (c), (d), and (f) of this section, the carrier frequency of each station must be maintained within these tolerances:

| Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations | Tolerance [1] | Tolerance [2] |
|---|---|---|
| (1) Band-9 to 535 kHz: | | |
| Aeronautical stations | 100 | 100 |
| Aircraft stations | 200 | 100 |
| Survival craft stations on 500 kHz. | 5,000 | 20 Hz [3] |
| Radionavigation stations | 100 | 100 |
| (2) Band-1605 to 4000 kHz: | | |
| Aeronautical fixed stations: | | |
| Power 200 W or less | 100 | 100 [4] |
| Power above 200 W | 50 | 50 [4] |
| Aeronautical stations: | | |
| Power 200 W or less | 100 [7] | 100 [7, 4] |
| Power above 200 W | 50 [7] | 50 [7, 4] |
| Aircraft stations | 100 [7] | 100 [7] |
| Survival craft stations on 2182 kHz. | 200 | 20 Hz [3] |
| (3) Band-4 to 29.7 MHz: | | |
| Aeronautical fixed stations: | | |
| Power 500 W or less | 50 | |
| Power above 500 W | 15 | |
| Single-sideband and independent-sideband emission: | | |
| Power 500 W or less | | 50 Hz |
| Power above 500 W | | 20 Hz |
| Class F1B emissions | | 10 Hz |
| Other classes of emission: | | |
| Power 500 W or less | | 20 |
| Power above 500 W | | 10 |
| Aeronautical stations: | | |
| Power 500 W or less | [7] 100 | 100 [7] |
| Power above 500 W | [7] 50 | 50 [7] |
| Aircraft stations | [7] 100 | 100 [7] |
| Survival craft stations on 8364 kHz. | 200 | 50 Hz [3] |
| (4) Band-29.7 to 100 MHz: | | |
| Aeronautical fixed stations: | | |
| Power 200 W or less | 50 | |
| Power above 200 W | 30 | |
| Power 50 W or less | | 30 |
| Power above 50 W | | 20 |
| Operational fixed stations: | | |
| 73–74.6 MHz (Power 50 W or less). | 50 | 30 |
| 73–74.6 MHz (Power above 50 W). | 20 | 20 |
| 72–73.0 MHz and 75.4–76.0 MHz. | 5 | 5 |
| Radionavigation stations | 100 | 50 |
| (5) Band-100 to 137 MHz: | | |
| Aeronautical stations | [4] 50 | 20 |
| Emergency locator transmitter test stations. | 50 | 50 |
| Survival craft stations on 121.5 MHz. | 50 | 50 |
| Emergency locator stations | 50 | 50 |
| Aircraft and other mobile stations in the Aviation Services. | 50 [5] | 30 |
| Radionavigation stations | 20 | 20 |
| (6) Band-137 to 470MHz: | | |
| Aeronautical stations | 50 | 20 |
| Survival craft stations on 243 MHz. | 50 | 50 |
| Aircraft stations | 50 [5] | 30 |
| Radionavigation stations | 50 | 50 |
| (7) Band-470 to 2450 MHz: | | |
| Aeronautical stations | 100 | 20 |
| Aircraft stations | 100 | 20 |
| Radionavigation stations: | | |
| 470–960 MHz | 500 | 500 |
| 960–1215 MHz | 20 | 20 |
| 1215–2450 MHz | 500 | 500 |
| (8) Band-2450 to 10500 MHz: | | |
| Radionavigation stations | [6, 8] 1250 | 1250 [6, 8] |
| (9) Band-10.5 GHz to 40 GHz: | | |
| Radionavigation stations | 5000 | 5000 |

[1] This tolerance is the maximum permitted until January 1, 1990, for transmitters installed before January 2, 1985, and used at the same installation. Tolerance is indicated in parts in $10^6$ unless shown as Hertz (Hz).

[2] This tolerance is the maximum permitted after January 1, 1985 for new and replacement transmitters and to all transmitters after January 1, 1990. Tolerance is indicated in parts in $10^6$ unless shown as Hertz (Hz).

[3] For transmitters first type accepted or type approved after November 30, 1977.

[4] The tolerance for transmitters type accepted between January 1, 1966, and January 1, 1974, is 30 parts in $10^6$. The tolerance for transmitters type accepted after January 1, 1974, and stations using offset carrier techniques is 20 parts in $10^6$.

[5] The tolerance for transmitters type accepted after January 1, 1974, is 30 parts in $10^6$.

[6] In the 5000 to 5250 MHz band, the FAA requires a tolerance of ±10 kHz for Microwave Landing System stations which are to be a part of the National Airspace System (FAR 171).

[7] For single-sideband transmitters operating in the frequency bands 1605–4000 kHz and 4–29.7 MHz which are allocated exclusively to the Aeronautical Mobile (R) Service, the tolerance is: Aeronautical stations, 10 Hz; aircraft stations, 20 Hz.

[8] For single-sideband radiotelephone transmitters the tolerance is: In the bands 1605–4000 kHz and 4–29.7 MHz for peak envelope powers of 200 W or less and 500 W or less, respectively, 50 Hz; in the bands 1605–4000 kHz and 4–29.7 MHz for peak envelope powers above 200 W and 500 W, respectively, 20 Hz.

[9] Where specific frequencies are not assigned to radar stations, the bandwidth occupied by the emissions of such stations must be maintained within the band allocated to the service and the indicated tolerance does not apply.

(b) The power shown in paragraph (a) of this section is the peak envelope power for single-sideband transmitters and the mean power for all other transmitters.

(c) For single-sideband transmitters, the tolerance is:

(1) All aeronautical stations on land other than Civil Air Patrol.....10 Hz

(2) All aircraft stations other than Civil Air Patrol.....20 Hz

(3) Civil Air Patrol Stations.....50 Hz

(d) For radar transmitters, except non-pulse signal radio altimeters, the frequency at which maximum emission occurs must be within the authorized frequency band and must not be closer than 1.5/T MHz to the upper and lower limits of the authorized bandwidth, where T is the pulse duration in microseconds.

(e) The Commission may authorize tolerances other than those specified in this section upon a satisfactory showing of need.

(f) The carrier frequency tolerance of transmitters operating in the 1435–1535 MHz and 2310–2390 MHz bands manufactured before January 2, 1985, is 0.003 percent. The carrier frequency tolerance of transmitters operating in the 1435–1535 MHz and 2310–2390 MHz bands manufactured after January 1, 1985, is 0.002 percent. After January 1, 1990, the carrier frequency tolerance of all transmitters operating in the 1435–1535 MHz and 2310–2390 MHz bands is 0.002 percent.

**§ 87.135 Bandwidth of emission.**

(a) Occupied bandwidth is the width of a frequency band such that, below the lower and above the upper frequency limits, the mean powers emitted are each equal to 0.5 percent of the total mean power of a given emission.

(b) The authorized bandwidth is the maximum occupied bandwidth authorized to be used by a station.

(c) The necessary bandwidth for a given class of emission is the width of the frequency band which is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions.

**§ 87.137 Types of emission.**

(a) The assignable emissions, corresponding emission designators and authorized bandwidths are as follows:

| Class of emission | Emission designator | Authorized bandwidth (kilohertz) | | |
|---|---|---|---|---|
| | | Below 50 MHz | Above 50 MHz | Frequency deviation |
| A1A [1] | 100HA1A | 0.25 | | |
| A1N | 300HA1N | | 0.75 | |
| A2A | 2K04A2A | 2.74 | 50 | |
| A2D | 6K0A2D | | 50 | |
| A3E [2] | 6K00A3E | | [3] 50 | |
| A3E | 3K20A3E [15] | | [15] 25 | |

| Class of emission | Emission designator | Authorized bandwidth (kilohertz) | | |
|---|---|---|---|---|
| | | Below 50 MHz | Above 50 MHz | Frequency deviation |
| A3N [4] | 3K20A3N | | 25 | |
| A9W [5] | 13K0A9W | | 25 | |
| F1B [1] | 1K70F1B | 1.7 | | |
| F1B [1] | 2K40F1B | 2.5 | | |
| F2D | 5M0F2D | | ([9]) | |
| F3E [6] | 16K0F3E | | 20 | 5 |
| F3E [7] | 36K0F3E | | 40 | 15 |
| F7D [8] | 5M0F7D | | ([9]) | |
| F9D | 5M0F9D | | ([9]) | |
| G3E [6] | 16K0G3E | | 20 | 5 |
| H2B [10 11] | 2K80H2B | 3.0 | | |
| H3E [11 12] | 2K80H3E | 3.0 | | |
| J2A [1] | 100HJ2A | 0.25 | | |
| J2B [1] | 1K70J2B | 1.7 | | |
| | 2K40J2B | 2 | .5 | |
| J3E [11 12] | 2K80J3E | 3.0 | | |
| J7B [11] | 2K80J7B | 3.0 | | |
| J7D | 5M0J7D | | ([9]) | |
| J9W [11] | 2K80J9W | 3.0 | | |
| M1A | 620HM1A | | | |
| NON | NON | | None [15] | |
| PON [13] | ([9]) | | ([9]) | |
| R3E [11 12] | 2K80R3E | 3.0 | | |
| XXA [14] | 1K12XXA | 2.74 | | |

NOTES:

[1] A1A, F1B, J2A and J2B are permitted provided they do not cause harmful interference to H2B, J3E, J7B and J9W

[2] For use with an authorized bandwidth of 8.0 kilohertz at radiobeacon stations. A3E will not be authorized:

(i) At existing radiobeacon stations that are not authorized to use A3 and at new radiobeacon stations unless specifically recommended by the FAA for safety purposes.

(ii) At existing radiobeacon stations currently authorized to use A3, subsequent to January 1, 1990, unless specifically recommended by the FAA for safety purposes.

[3] In the band 117.975–136 MHz, the authorized bandwidth is 25 kHz for transmitters type accepted after January 1, 1974.

[4] Applicable only to Survival Craft Stations and to the emergency locator transmitters and emergency locator transmitter test stations employing modulation in accordance with that specified in § 87.141 of the Rules. The specified bandwidth and modulation requirements shall apply to emergency locator transmitters for which type acceptance is granted after October 21, 1973.

[5] This emission may be authorized only for audio frequency shift keying and phased shift keying for digital data links on any frequency listed in § 87.263(a)(1).

[6] Applicable to operational fixed stations in the bands 72.0–73.0 MHz and 75.4–76.0 MHz and to CAP stations using F3 on 143.900 MHz and 148.150 MHz.

[7] Applicable to operational fixed stations presently authorized in the band 73.0–74.6 MHz.

[8] The authorized bandwidth is equal to the necessary bandwidth for frequency or digitally modulated transmitters used in aeronautical telemetering and associated aeronautical telemetry or telecommand stations operating in the 1435–1535 MHz and 2310–2390 MHz bands. The necessary bandwidth must be computed in accordance with Part 2 of this chapter.

[9] To be specified on license.

[10] H2B must be used by stations employing digital selective calling.

[11] For A1A, F1B and single sideband emissions, except H2B, the assigned frequency must be 1400 Hz above the carrier frequency.

[12] R3E, H3E, and J3E will be authorized only below 25000 kHz. Only H2B, J3E, J7B, and J9W are authorized, except that A3E and H3E may be used only on 3023 kHz and 5680 kHz for search and rescue operations.

[13] The letters "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars.

[14] Authorized for use at radiobeacon stations.

[15] Applicable only to transmitters of survival craft stations, emergency locator transmitter stations and emergency locator transmitter test stations type accepted after October 21, 1973.

(b) For other emissions, an applicant must determine the emission designator by using Part 2 of this chapter.

(c) A license to use radiotelephony includes the use of tone signals or signaling devices whose sole function is to establish or maintain voice communications.

(d) Emissions other than, or bandwidths in excess of, those listed in

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paragraph (b) of this section, will be authorized only upon a satisfactory showing of need. An application requesting this special license must fully describe the emission desired and the required bandwidth, and must state the purpose of the proposed operation.

**§ 87.139 Emission limitations.**

(a) Except when using single sideband (R3E, H3E, J3E), or frequency modulation (F9) or digital modulation (F9Y) for telemetry or telecommand in the frequency bands 1435–1535 MHz and 2310–2390 MHz, the mean power of any emissions must be attenuated below the mean power of the transmitters (pY) as follows:

(1) When the frequency is removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth the attenuation must be at least 25 dB;

(2) When the frequency is removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth the attenuation must be at least 35 dB.

(3) When the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth the attenuation for aircraft station transmitters must be at least 40 dB; and the attenuation for aeronautical station transmitters must be at least 43 + 10 $\log_{10}$ pY dB.

(b) For aircraft station transmitters and for aeronautical station transmitters first installed before February 1, 1983, and using H2B, H3E, J3E, J7B or J9W, the mean power of any emissions must be attenuated below the mean power of the transmitter (pY) as follows:

(1) When the frequency is removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth of 4.0 kHz, the attenuation must be at least 25 dB.

(2) When the frequency is removed from the assigned frequency by more than 150 percent up to and including 250 percent of the authorized bandwidth of 4.0 kHz, the attenuation must be at least 35 dB.

(3) When the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth of 4.0 kHz for aircraft station transmitters the attenuation must be at least 40 dB; and for aeronautical station transmitters the attenuation must be at least 43 + 10 $\log_{10}$ pY dB.

(c) For aircraft station transmitters first installed after February 1, 1983, and for aeronautical station transmitters in use after February 1, 1983, and using H2B, H3E, J3E, J7B or J9W, the peak envelope power of any emissions must be attenuated below the peak envelope power of the transmitter (pX) as follows:

(1) When the frequency is removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth of 3.0 kHz, the attenuation must be at least 30 dB.

(2) When the frequency is removed from the assigned frequency by more than 150 percent up to and including 250 percent of the authorized bandwidth of 3.0 kHz, the attenuation must be at least 38 dB.

(3) When the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth of 3.0 kHz for aircraft transmitters the attenuation must be at least 43 dB. For aeronautical station transmitters with transmitter power up to and including 50 watts the attenuation must be at least 43 + 10 $\log_{10}$ pX dB and with transmitter power more than 50 watts the attenuation must be at least 60 dB.

(d) Except for telemetry in the 1435–1535 MHz band, when the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth for aircraft stations above 30 MHz and all ground stations the attenuation must be at least 43 + $\log_{10}$ pY dB.

(e) When using frequency modulation or digital modulation for telemetry or telecommand in the 1435–1535 MHz and 2310–2390 MHz frequency bands with an authorized bandwidth equal to or less than 1 MHz the emissions must be attenuated as follows:

(1) On any frequency removed from the assigned frequency by more than 100 percent of the authorized bandwidth up to and including 100 percent plus 0.5 MHz, the attenuation must be at least 60 dB, when measured in a 3.0 kHz bandwidth. This signal need not be attenuated more than 25 dB below 1 milliwatt.

(2) On any frequency removed from the assigned frequency by more than 100 percent of the authorized bandwidth plus 0.5 MHz, the attenuation must be at least 55 + 10 $\log_{10}$ pY dB when measured in a 3.0 kHz bandwidth.

(f) When using frequency modulation or digital modulation for telemetry or telecommand in the 1435–1535 MHz or 2310–2390 MHz frequency bands with an authorized bandwidth greater than 1 MHz, the emissions must be attenuated as follows:

(1) On any frequency removed from the assigned frequency by more than 50 percent of the authorized bandwidth plus 0.5 MHz up to and including 50 percent of the authorized bandwidth plus 1.0 MHz, the attenuation must be 60 dB, when measured in a 3.0 kHz bandwidth. The signal need not be attenuated more than 25 dB below 1 milliwatt.

(2) On any frequency removed from the assigned frequency by more than 50 percent of the authorized bandwidth plus 1.0 MHz, the attenuation must be at least 55 + 10 $\log_{10}$ pY dB, when measured in a 3.0 kHz bandwidth.

(g) The requirements of paragraphs (e) and (f) of this section apply to transmitters type accepted after January 1, 1977, and to all transmitters first installed after January 1, 1983.

**§ 87.141 Modulation requirements.**

(a) When A3E emission is used, the modulation percentage must not exceed 100 percent. This requirement does not apply to emergency locator transmitters or survival craft transmitters.

(b) A double sideband full carrier amplitude modulated radiotelephone transmitter with rated carrier power output exceeding 10 watts must be capable of automatically preventing modulation in excess of 100 percent.

(c) If any licensed radiotelephone transmitter causes harmful interference to any authorized radio service because of excessive modulation, the Commission will require the use of the transmitter to be discontinued until it is rendered capable of automatically preventing modulation in excess of 100 percent.

(d) Single sideband transmitters must be able to operate in the following modes:

| Carrier mode | Level N(dB) of the carrier with respect to peak envelope power |
|---|---|
| Full carrier (H3E) | O>N>-6. |
| Suppressed carrier (J3E) | Aircraft stations N<-26; Aeronautical stations N<-40. |

(e) Each frequency modulated transmitter operating in the band 72.0–76.0 MHz must have a modulation limiter.

(f) Each frequency modulated transmitter equipped with a modulation limiter must have a low pass filter between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 15 kHz the filter must have an attenuation referred to 1 kHz of at least 40 log 10 (f/3) db where "f" is the frequency in kilohertz. Above 15 kHz, the attenuation must be at least 28 db greater than the attenuation at 1 kHz.

(g) The types of emissions for ELTs must be in accordance with those

specified in the Federal Aviation Administration (FAA) Technical Standard Order (TSO) Document TSO–C91a titled "Emergency Locator Transmitter (ELT) Equipment" dated April 29, 1985. TSO–C91a is incorporated by reference in accordance with 5 U.S.C. 552(a). TSO–C91a may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue SW., Washington, DC 20591.

(h) Transmission of A3E or NON emission must not exceed 90 seconds and must be followed by a transmission of at least three minutes of A3N emission; each transmission of a synthesized and/or pre-recorded voice message must be preceded by the words "this is a recording."

(i) ELTs manufactured effective October 1, 1988, must have in emissions A3N, A3E and NON a clearly defined carrier frequency distinct from the modulation sidebands. On 121.500 MHz at least thirty percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be contained within ±30 Hz of the reference carrier frequency. On 243.000 MHz at least thirty percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be contained within ±60 Hz of the reference carrier frequency. See TSO–C91a at paragraph (a)(3)(ii) of this section. Additionally, if the type of modulation is changed the carrier frequency must not shift more than ±30 Hz from the fixed reference frequency on 121.500 MHz and ±60 Hz on 243.000 MHz. The long term stability of the carrier frequency must comply with the requirements in § 87.133.

### § 87.143 Transmitter control requirements.

(a) Each transmitter must be installed so that it is not accessible to, or capable of being operated by persons other than those authorized by the licensee.

(b) Each station must be provided with a control point at the location of the transmitting equipment, unless otherwise specifically authorized. Except for aeronautical enroute stations governed by paragraph (e) of this section, a control point is the location at which the radio operator is stationed. It is the position at which the transmitter(s) can immediately be turned off.

(c) Applicants for additional control points at aeronautical advisory (unicom) stations must specify the location of each proposed control point.

(d) Except for aeronautical enroute stations governed by paragraph (f) of this section, the control point must have the following facilities installed:

(1) A device that indicates when the transmitter is radiating or when the transmitter control circuits have been switched on. This requirement does not apply to aircraft stations;

(2) Aurally monitoring of all transmissions originating at dispatch points;

(3) A way to disconnect dispatch points from the transmitter; and

(4) A way to turn off the transmitter.

(e) A dispatch point is an operating position subordinate to the control point. Dispatch points may be installed without authorization from the Commission, and dispatch point operators are not required to be licensed.

(f) In the aeronautical enroute service, the control point for an automatically controlled enroute station is the computer facility which controls the transmitter. Any computer controlled transmitter must be equipped to automatically shut down after 3 minutes of continuous transmission of an unmodulated carrier.

### § 87.145 Acceptability of transmitters for licensing.

(a) The Commission publishes a list of type approved and type accepted equipment entitled "Radio Equipment List—Equipment Acceptable for Licensing." Copies of this list are available for inspection at any of the Commission's offices.

(b) Each transmitter must be type accepted for use in these services, except as listed in paragraph (d) of this section. However, aircraft stations which transmit on maritime mobile frequencies musts use transmitters type accepted for use in ship stations in accordance with Part 80 of this chapter.

(c) Some radio equipment installed above air carrier aircraft must meet requirements of the Commission and of the FAA. The FAA requirements may be obtained from the Federal Aviation Administration, Aircraft Maintenance Division (AFS–300), 800 Independence SW., Washington, DC 20591.

(d) The equipment listed below is exempted from type acceptance. The operation of transmitters which have not been type accepted must not result in harmful interference due to the failure of those transmitters to comply with technical standards of this subpart.

(1) Development or Civil Air Patrol transmitters.

(2) Flight test station transmitters for limited periods where justified.

(3) U.S. Government transmitters furnished in the performance of a U.S. Government contract if the use of type accepted equipment would increase the cost of the contract or if the transmitter will be incorporated in the finished product. However, such equipment must meet the technical standards contained in this subpart.

### § 87.147 Type acceptance of equipment.

(a) Type acceptance may be requested by following the type acceptance procedure in Part 2 of this chapter. Aircraft transmitters must meet the requirements over an ambient temperature range of –20 degreess to +50 degrees Celsius.

(b) An applicant for a station license may request type acceptance for an individual transmitter by following the type acceptance procedure in Part 2 of this chapter. Such a transmitter will be individually type accepted and so noted on the station license, but will not generally be included in the Commission's "Radio Equipment List—Equipment Acceptable for Licensing".

(c) An applicant for type acceptance of equipment intended for transmission in any of the frequency bands listed in paragraph (c)(3) of this section, must notify the FAA of the filing of a type acceptance application. The letter of notification must be mailed to: FAA, Spectrum Engineering Division (AES–500), 800 Independence Avenue SW., Washington, DC 20591 no later than the date of filing of the application with the Commission.

(1) The notification must describe the equipment, give the manufacturer's identification, antenna characteristics, rated output power, emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required.

(2) The type acceptance application must include a copy of the notification letter to the FAA. The Commission will not act for 21 days after receipt of the application to afford the FAA an opportunity to comment. If the FAA objects to the applicatioin for equipment authorization, it should mail its objection with a showing that the equipment is incompatible with the National Airspace System to: Office of Engineering and Technology—Laurel Laboratory, Authorization And Evaluation Division, 7435 Oakland Mills Road, Columbia, MD 21046. If the Commission receives such an objection, the Commission will consider the FAA showing before taking final action on the application.

(3) The frequency bands are as follows: 74.8 MHz to 75.2 MHz; 108.000 MHz to 136.000 MHz; 328.600 MHz to 335.400 MHz; 960.000 MHz to 1215.000

MHz; 1559.000 MHz to 1626.500 MHz; 5000.000 MHz to 5250.000 MHz; 14.000 GHz to 14.400 GHz; 15.400 GHz to 15.700 GHz; 24.250 GHz to 25.250 GHz; and 31.800 GHz to 33.400 GHz.

## Subpart E—Frequencies

### § 87.169 Scope.

This subpart contains class of station symbols and a frequency table which lists assignable frequencies. Frequencies in the Aviation Services will transmit communications for the safe, expeditious, and economic operation of aircraft and the protection of life and property in the air. Each class of land station and Civil Air Patrol station may communicate in accordance with the particular sections of this part which govern these classes. Land stations in the Aviation Services in Alaska may transmit messages concerning sickness, death, weather, ice conditions or other matters relating to safety of life and property if there is no other established means of communications between the points in question and no charge is made for the communications service.

### § 87.171 Class of station symbols.

The two or three letter symbols for the classes of station in the aviation services are:

*Symbol and class of station*

AX—Aeronautical fixed
AXO—Aeronautical operational fixed
FA—Aeronautical land (unspecified)
FAU—Aeronautical advisory (unicom)
FAC—Airport control tower
FAE—Aeronautical enroute
FAM—Aeronautical multicom
FAP—Civil Air Patrol
FAR—Aeronautical search and rescue
FAS—Aviation support
FAT—Flight test
FAW—Automatic weather observation
MA—Aircraft (Air carrier and Private)
MA1—Air carrier aircraft only
MA2—Private aircraft only
MOU—Aeronautical utility mobile
MRT—ELT test
RL—Radionavigation land (unspecified)
RLA—Marker beacon
RLB—Radiobeacon
RLG—Glide path
RLL—Localizer
RLO—VHF omni-range
RLS—Surveillance radar
RLT—Radionavigation land test
RLW—Microwave landing system

### § 87.173 Frequencies.

(a) The table in paragraph (b) of this section lists assignable carrier frequencies or frequency bands.

(1) The single letter symbol appearing in the "Subpart" column indicates the subpart of this part which contains additional applicable regulations.

(2) The two or three letter symbol appearing in the "Class of Station" column indicates the class of station to which the frequency is assignable.

(b) Frequency table:

| Frequency or frequency band | Subpart | Class of station | Remarks |
|---|---|---|---|
| 90–110 kHz | Q | RL | LORAN "C" |
| 190–285 kHz | Q | RLB | Radiobeacons. |
| 200–285 kHz | O | FAC | Air traffic control. |
| 325–405 kHz | O | FAC | Air traffic control. |
| 325–435 kHz | Q | RLB | Radiobeacons. |
| 410.0 kHz | F | MA | International direction-finding for use outside of U.S. |
| 457.0 kHz | F | MA | Working frequency for aircraft on over water flights. |
| 500.0 kHz | F | MA | International calling and distress frequency for ships and aircraft on over water flights. |
| 510.525 kHz | Q | RLB | Radiobeacons. |
| 2182.0 kHz | F | MA | International distress and calling. |
| 2372.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 2374.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 2375.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 2648.0 kHz | I | AX | Alaska station. |
| 2851.0 kHz | I, J | MA, FAE, FAT | International HF (AFI); Flight test. |
| 2854.0 kHz | I | MA, FAE | International HF (SAT). |
| 2866.0 kHz | I | MA, FAE | Domestic HF (Alaska). |
| 2869.0 kHz | I | MA, FAE | International HF (CEP). |
| 2872.0 kHz | I | MA, FAE | International HF (NAT). |
| 2875.0 kHz | I | MA, FAE | Domestic HF. |
| 2878.0 kHz | I | MA1, FAE | Domestic HF; International HF (AFI). |
| 2887.0 kHz | I | MA, FAE | International HF (CAR). |
| 2899.0 kHz | I | MA, FAE | International HF (NAT). |
| 2911.0 kHz | I | MA, FAE | Domestic HF. |
| 2932.0 kHz | I | MA, FAE | International HF (NP). |
| 2935.0 kHz | I | MA, FAE | International HF (SAT). |
| 2944.0 kHz | I | MA, FAE | International HF (SAM and MID). |
| 2956.0 kHz | I | MA, FAE | Domestic HF. |
| 2962.0 kHz | I | MA, FAE | International HF (NAT). |
| 2971.0 kHz | I | MA, FAE | International HF (NAT). |
| 2992.0 kHz | I | MA, FAE | International HF (MID). |
| 2998.0 kHz | I | MA, FAE | International HF (CWP). |
| 3004.0 kHz | I, J | MA, FAE, FAT | International HF (NCA); Flight test. |
| 3013.0 kHz | I | MA, FAE | Long distance operational control. |
| 3016.0 kHz | I | MA, FAE | International HF (EA, NAT). |
| 3019.0 kHz | I | MA1, FAE | Domestic HF; International HF ( (NCA). |
| 3023.0 kHz | F, M, O | MA1, FAR, FAC | Search and rescue communications. |
| 3281.0 kHz | K | MA, FAS | Lighter-than-air craft and aeronautical stations serving lighter-than-air craft. |
| 3413.0 kHz | I | MA, FAE | International HF (CEP). |
| 3419.0 kHz | I | MA, FAE | International HF (AFI). |
| 3425.0 kHz | I | MA, FAE | International HF (AFI). |
| 3434.0 kHz | I | MA1, FAE | Domestic HF. |
| 3443.0 kHz | J | MA, FAT | |
| 3449.0 kHz | I | MA, FAE | Domestic HF. |
| 3452.0 kHz | I | MA, FAE | International HF (SAT). |

| Frequency or frequency band | Subpart | Class of station | Remarks |
|---|---|---|---|
| 3455.0 kHz | I | MA, FAE | International HF (CAR, CWP). |
| 3467.0 kHz | I | MA, FAE | International HF (AFI, MID, SP). |
| 3470.0 kHz | I | MA, FAE | Domestic HF and International HF (SEA). |
| 3473.0 kHz | I | MA, FAE | International HF (MID). |
| 3476.0 kHz | I | MA, FAE | International HF (INO, NAT). |
| 3479.0 kHz | I | MA, FAE | International HF (EUR, SAM). |
| 3485.0 kHz | I | MA, FAE | International HF (EA, SEA). |
| 3491.0 kHz | I | MA, FAE | International HF (EA). |
| 3494.0 kHz | I | MA, FAE | Long distance operational control. |
| 4125.0 kHz | F | MA | Distress and safety with ships and coast stations. |
| 4466.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 4467.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4469.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 4506.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 4507.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4509.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4550.0 kHz | I | AX | Gulf of Mexico. |
| 4583.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4585.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 4586.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4601.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 4602.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4604.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 4628.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4630.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 4631.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 4645.0 kHz | I | AX | Alaska. |
| 4657.0 kHz | I | MA, FAE | International HF (AFI, CEP). |
| 4666.0 kHz | I | MA, FAE | International HF (CWP). |
| 4669.0 kHz | I | MA, FAE | International HF (MID, SAM). |
| 4672.0 kHz | I | MA1, FAE | Domestic HF. |
| 4675.0 kHz | I | MA, FAE | International HF (NAT). |
| 4678.0 kHz | I | MA, FAE | International HF (NCA). |
| 4947.5 kHz | I | AX | Alaska. |
| 5036.0 kHz | I | AX | Gulf of Mexico. |
| 5122.5 kHz | I | AX | Alaska. |
| 5167.5 kHz | I | FA | Alaska emergency. |
| 5310.0 kHz | I | AX | Alaska. |
| 5451.0 kHz | J | MA, FAT | |
| 5463.0 kHz | I | MA1, FAE | Domestic HF. |
| 5469.0 kHz | J | MA, FAT | |
| 5427.0 kHz | I | MA, FAE | Domestic HF. |
| 5484.0 kHz | I | MA, FAE | Domestic HF. |
| 5490.0 kHz | I | MA, FAE | Domestic HF. |
| 5493.0 kHz | I | MA, FAE | International HF (AFI). |
| 5496.0 kHz | I | MA, FAE | Domestic HF. |
| 5508.0 kHz | I | MA1, FAE | Domestic HF. |
| 5520.0 kHz | I | MA, FAE | International HF (CAR). |
| 5526.0 kHz | I | MA, FAE | International HF (SAM). |
| 5529.0 kHz | I | MA, FAE | Long distance operational control. |
| 5538.0 kHz | I | MA, FAE | Long distance operational control. |
| 5547.0 kHz | I | MA, FAE | International HF (CEP). |
| 5550.0 kHz | I | MA, FAE | International HF (CAR). |
| 5559.0 kHz | I | MA, FAE | International HF (SP). |
| 5565.0 kHz | I | MA, FAE | International HF (SAT). |
| 5571.0 kHz | J | MA, FAT | |
| 5574.0 kHz | I | MA, FAE | International HF (CEP). |
| 5598.0 kHz | I | MA, FAE | International HF (NAT). |
| 5616.0 kHz | I | MA, FAE | International HF (NAT). |
| 5628.0 kHz | I | MA, FAE | International HF (NP). |
| 5631.0 kHz | I | MA, FAE | Domestic HF. |
| 5634.0 kHz | I | MA, FAE | International HF (INO). |
| 5643.0 kHz | I | MA, FAE | International HF (SP). |
| 5646.0 kHz | I | MA, FAE | International HF (NCA). |
| 5649.0 kHz | I | MA, FAE | International HF (NAT, SEA). |
| 5652.0 kHz | I | MA, FAE | International HF (AFI, CWP). |
| 5655.0 kHz | I | MA, FAE | International HF (EA, SEA). |
| 5658.0 kHz | I | MA, FAE | International HF (AFI, MID). |
| 5661.0 kHz | I | MA, FAE | International HF (CWP, EUR). |
| 5664.0 kHz | I | MA, FAE | International HF (NCA). |
| 5667.0 kHz | I | MA, FAE | International HF (MID). |
| 5670.0 kHz | I | MA, FAE | International HF (EA). |
| 5680.0 kHz | F, M, O | MA1, FAC, FAR | Search and rescue communications. |
| 5887.5 kHz | I | AX | Alaska. |
| 6532.0 kHz | I | MA, FAE | International HF (CWP). |
| 6535.0 kHz | I | MA, FAE | International HF (SAT). |
| 6550.0 kHz | J | MA, FAT | |
| 6556.0 kHz | I | MA, FAE | International HF (SEA). |
| 6559.0 kHz | I | MA, FAE | International HF (AFI). |
| 6562.0 kHz | I | MA, FAE | International HF (CWP). |

| Frequency or frequency band | Subpart | Class of station | Remarks |
|---|---|---|---|
| 6571.0 kHz | I | MA, FAE | International HF (EA). |
| 6574.0 kHz | I | MA, FAE | International HF (AFI). |
| 6577.0 kHz | I | MA, FAE | International HF (CAR). |
| 6580.0 kHz | I | MA, FAE | Domestic HF. |
| 6586.0 kHz | I | MA, FAE | International HF (CAR). |
| 6592.0 kHz | I | MA, FAE | International HF (NCA). |
| 6598.0 kHz | I | MA, FAE | International HF (EUR). |
| 6604.0 kHz | I | MA, FAE | Domestic HF. |
| 6622.0 kHz | I | MA, FAE | International HF (NAT). |
| 6625.0 kHz | I | MA, FAE | International HF (MID). |
| 6628.0 kHz | I | MA, FAE | International HF (NAT). |
| 6631.0 kHz | I | MA, FAE | International HF (MID). |
| 6637.0 kHz | I | MA, FAE | Long distance operational control. |
| 6640.0 kHz | I | MA, FAE | Long distance operational control. |
| 6649.0 kHz | I | MA, FAE | International HF (SAM). |
| 6655.0 kHz | I | MA, FAE | International HF (NP). |
| 6661.0 kHz | I | MA, FAE | International HF (NP). |
| 6673.0 kHz | I | MA, FAE | International HF (AFI, CEP). |
| 8015.0 kHz | I | AX | Alaska. |
| 8364.0 kHz | F | MA, | Search and rescue communications. |
| 8822.0 kHz | J | MA, FAT | |
| 8825.0 kHz | I | MA, FAE | International HF (NAT). |
| 8831.0 kHz | I | MA, FAE | International HF (NAT). |
| 8843.0 kHz | I | MA, FAE | International HF (CEP). |
| 8846.0 kHz | I | MA, FAE | International HF (CAR). |
| 8855.0 kHz | I | MA, FAE | Domestic HF; International HF (SAM). |
| 8861.0 kHz | I | MA, FAE | International HF (SAT). |
| 8864.0 kHz | I | MA, FAE | International HF (NAT). |
| 8867.0 kHz | I | MA, FAE | International HF (SP). |
| 8876.0 kHz | I | MA, FAE | Domestic HF. |
| 8879.0 kHz | I | MA, FAE | International HF (INO, NAT). |
| 8891.0 kHz | I | MA, FAE | International HF (NAT). |
| 8894.0 kHz | I | MA, FAE | International HF (AFI). |
| 8897.0 kHz | I | MA, FAE | International HF (EA). |
| 8903.0 kHz | I | MA, FAE | International HF (AFI, CWP). |
| 8906.0 kHz | I | MA, FAE | International HF (NAT). |
| 8918.0 kHz | I | MA, FAE | International HF (CAR, MID). |
| 8933.0 kHz | I | MA, FAE | Long distance operational control. |
| 8942.0 kHz | I | MA, FAE | International HF (SEA). |
| 8951.0 kHz | I | MA, FAE | International HF (MID). |
| 10018.0 kHz | I | MA, FAE | International HF (MID). |
| 10024.0 kHz | I | MA, FAE | International HF (SAM). |
| 10033.0 kHz | I | MA, FAE | Long distance operational control. |
| 10042.0 kHz | I | MA, FAE | International HF (EA). |
| 10045.0 kHz | J | MA, FAT | |
| 10048.0 kHz | I | MA, FAE | International HF (NP). |
| 10057.0 kHz | I | MA, FAE | International HF (CEP). |
| 10066.0 kHz | I | MA, FAE | Domestic HF; International HF (SEA). |
| 10075.0 kHz | I | MA, FAE | Long distance operational control. |
| 10081.0 kHz | I | MA, FAE | International HF (CWP). |
| 10084.0 kHz | I | MA, FAE | International HF (EUR, SP). |
| 10096.0 kHz | I | MA, FAE | International HF (NCA, SAM). |
| 11279.0 kHz | I | MA, FAE | International HF (NAT). |
| 11282.0 kHz | I | MA, FAE | International HF (CEP). |
| 11288.0 kHz | J | MA, FAT | |
| 11291.0 kHz | I | MA, FAE | International HF (SAT). |
| 11300.0 kHz | I | MA, FAE | International HF (AFI). |
| 11306 0 kHz | J | MA, FAT | |
| 11309.0 kHz | I | MA, FAE | International HF (NAT). |
| 11327.0 kHz | I | MA, FAE | International HF (SP). |
| 11330.0 kHz | I | MA, FAE | International HF (AFI, NP). |
| 11336.0 kHz | I | MA, FAE | International HF (NAT). |
| 11342.0 kHz | I | MA, FAE | Long distance operational control. |
| 11348.0 kHz | I | MA, FAE | Long distance operational control. |
| 11357.0 kHz | I | MA, FAE | Domestic HF. |
| 11360.0 kHz | I | MA, FAE | International HF (SAM). |
| 11363.0 kHz | I | MA, FAE | Domestic HF. |
| 11375.0 kHz | I | MA, FAE | International HF (MID). |
| 11384.0 kHz | I | MA, FAE | International HF (CWP). |
| 11387.0 kHz | I | MA, FAE | International HF (CAR). |
| 11396.0 kHz | I | MA, FAE | International HF (CAR, EA, SEA). |
| 13273.0 kHz | I | MA, FAE | International HF (AFI). |
| 13288.0 kHz | I | MA, FAE | International HF (AFI, EUR, MID). |
| 13291.0 kHz | I | MA, FAE | International HF (NAT). |
| 13294.0 kHz | I | MA, FAE | International HF (AFI). |
| 13297.0 kHz | I | MA, FAE | International HF (CAR, EA, SAM). |
| 13300.0 kHz | I | MA, FAE | International HF (CEP, CWP, NP, SP). |
| 13303.0 kHz | I | MA, FAE | International HF (EA, NCA). |
| 13306.0 kHz | I | MA, FAE | International HF (INO, NAT). |
| 13309.0 kHz | I | MA, FAE | International HF (EA, SEA). |
| 13312.0 kHz | I, J | MA, FAE, FAT | International HF (MID); Flight test. |

| Frequency or frequency band | Subpart | Class of station | Remarks |
|---|---|---|---|
| 13315.0 kHz | I | MA, FAE | International HF (NCA, SAT). |
| 13318.0 kHz | I | MA, FAE | International HF (SEA). |
| 13330.0 kHz | I | MA, FAE | Long distance operational control. |
| 13348.0 kHz | I | MA, FAE | Long distance operational control. |
| 13357.0 kHz | I | MA, FAE | International HF (SAT). |
| 17904.0 kHz | I | MA, FAE | International HF (CEP, CWP, NP, SP). |
| 17907.0 kHz | I | MA, FAE | International HF (CAR, EA, SAM, SEA). |
| 17925.0 kHz | I | MA, FAE | Long distance operational control. |
| 17946.0 kHz | I | MA, FAE | International HF (NAT). |
| 17955.0 kHz | I | MA, FAE | International HF (SAT). |
| 17958.0 kHz | I | MA, FAE | International HF (NCA). |
| 17961.0 kHz | I | MA, FAE | International HF (AFI, EUR, INO, MID). |
| 17964.0 kHz | J | MA, FAT | |
| 21931.0 kHz | J | MA, FAT | |
| 21964.0 kHz | I | MA, FAE | Long distance operational control. |
| 26618.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 26620.0 kHz | R | MA, FAP | Civil Air Patrol. |
| 26621.5 kHz | R | MA, FAP | Civil Air Patrol. |
| 72.020–75.980 MHz | P | FA, AXO | Operational fixed; 20 kHz spacing. |
| 75.000 MHz | Q | RLA | Marker beacon. |
| 108.000 MHz | Q | RLT | |
| 108.000–117.950 MHz | Q | RLO | VHF omni-range. |
| 108.050 MHz | Q | RLT | |
| 108.100–111.950 MHz | Q | RLL | ILS localizer. |
| 108.100 MHz | Q | RLT | |
| 108.150 MHz | Q | RLT | |
| 118.000–121.400 MHz | O | MA, FAC, FAW | 25 kHz channel spacing. |
| 121.500 MHz | G, H, I, J, K, M, O | MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP | Emergency and distress. |
| 121.600–121.925 MHz | O, L, Q | MA, FAC, MOU, RLT | 25 kHz channel spacing. |
| 121.950 MHz | K | FAS | |
| 121.975 MHz | F | MA2, FAW | Air traffic control operations. |
| 122.000 MHz | F | MA | Air carrier and private aircraft enroute flight advisory service provided by FAA. |
| 122.025 MHz | F | MA2, FAW | Air traffic control operations. |
| 122.050 MHz | F | MA | Air traffic control operations. |
| 122.075 MHz | F | MA2, FAW | Air traffic control operations. |
| 122.100 MHz | F, O | MA, FAC | Air traffic control operations. |
| 122.125–122.675 | F | MA2 | Air traffic control operations; 25 kHz spacing. |
| 122.700 MHz | G, L | MA, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 122.725 MHz | G, L | MA2, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 122.750 MHz | F | MA2 | Private fixed wing aircraft air-to-air communications. |
| 122.775 MHz | K | MA, FAS | |
| 122.800 MHz | G, L | MA, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 122.825 MHz | I | MA, FAE | Domestic VHF |
| 122.850 MHz | H, K, | MA, FAM, FAS | |
| 122.875 MHz | I | MA, FAE | Domestic VHF |
| 122.900 MHz | F, H, L M | MA, FAR, FAM, MOU | |
| 122.925 MHz | H | MA2, FAM | |
| 122.950 MHz | G, L | MA2, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 122.975 MHz | G, L | MA2, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 123.000 MHz | G, L | MA, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 123.025 MHz | F | MA2 | Helicopter air-to-air communications; Air traffic control operations. |
| 123.050 MHz | G, L | MA2, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 123.075 MHz | G, L | MA2, FAU, MOU | Unicom at airports with no control tower; Aeronautical utility stations. |
| 123.100 MHz | M, O | MA, FAC, FAR | |
| 123.125 MHz | J | MA, FAT | Itinerant. |
| 123.150 MHz | J | MA, FAT | Itinerant. |
| 123.175 MHz | J | MA, FAT | Itinerant. |
| 123.200 MHz | J | MA, FAT | |
| 123.225 MHz | J | MA, FAT | |
| 123.250 MHz | J | MA, FAT | |
| 123.275 MHz | J | MA, FAT | |
| 123.300 MHz | K | MA, FAS | |
| 123.325 MHz | J | MA, FAT | |
| 123.350 MHz | J | MA, FAT | |
| 123.375 MHz | J | MA, FAT | |

| Frequency or frequency band | Subpart | Class of station | Remarks |
|---|---|---|---|
| 123.400 MHz | J | MA, FAT | Itinerant. |
| 123.425 MHz | J | MA, FAT | |
| 123.450 MHz | J | MA, FAT | |
| 123.475 MHz | J | MA, FAT | |
| 123.500 MHz | K | MA, FAS | |
| 123.525 MHz | J | MA, FAT | |
| 123.550 MHz | J | MA, FAT | |
| 123.575 MHz | J | MA, FAT | Itinerant. |
| 123.6–128.8 MHz | O | MA, FAC, FAW | 25 kHz channel spacing. |
| 128.825–132.000 MHz | I | MA, FAE | Domestic VHF; 25 kHz channel spacing. |
| 132.025–135.975 MHz | O | MA, FAC, FAW | 25 kHz channel spacing. |
| 143.900 MHz | R | MA, FAP | Civil Air Patrol. |
| 148.150 MHz | R | MA, FAP | Civil Air Patrol. |
| 156.300 MHz | F | MA | For communications with ship stations under specific conditions. |
| 156.375 MHz | F | MA | For communications with ship stations under specific conditions; Not authorized in New Oreleans vessel traffic service area. |
| 156.400 MHz | F | MA | For communications with ship stations under specific conditions. |
| 156.425 MHz | F | MA | For communications with ship stations under specific conditions. |
| 156.450 MHz | F | MA | For communications with ship stations under specific conditions. |
| 156.625 MHz | F | MA | For communications with ship stations under specific conditions. |
| 156.800 MHz | F | MA | Distress, safety and calling frequency; For communications with ship stations under specific conditions. |
| 156.900 MHz | F | MA | For communications with ship stations under specific conditions. |
| 157.425 MHz | F | MA | For communications with commercial fishing vessels under specific conditions except in Great Lakes and St. Lawrence Seaway areas. |
| 243.000 MHz | F | MA | Emergency and distress frequency for use of survival craft and emergency locator transmitters. |
| 328.600–335.400 MHz | Q | RLG | ILS glide path. |
| 334.550 MHz | Q | RLT | |
| 334.700 MHz | Q | RLT | |
| 960–1215 MHz | F, Q | MA, RL | Electronic aids to air navigation. |
| 978.000 MHz | Q | RLT | |
| 979.000 MHz | Q | RLT | |
| 1030.000 MHz | Q | RLT | |
| 1104.000 MHz | Q | RLT | |
| 979.000 MHz | Q | RLT | |
| 1300–1350 MHz | F, Q | MA, RLS | Surveillance radars and transponders. |
| 1435–1535 MHz | F, J | MA, FAT | Aeronautical telemetry and telecommand operations. |
| 1559–1626.5 MHz | F, Q | MA, RL | Aeronautical radionavigation. |
| 2310–2390 MHz | J | MA, FAT | Aeronautical telemetry and telecommand operations. |
| 2700–2900 MHz | Q | RLS | Airport surveillance and weather radar. |
| 4200–4400 MHz | F | MA | Radio altimeters. |
| 5000–5250 MHz | Q | MA, RLW | Microwave landing system. |
| 5031.000 MHz | Q | RLT | |
| 5350–5470 MHz | F | MA | Airborne radars and associated airborne beacons. |
| 8750–8850 MHz | F | MA | Airborne doppler radar. |
| 9000–9200 MHz | Q | RLS | Land-based radar. |
| 9300–9500 MHz | F | MA | Airborne radars and associated airborne beacons. |
| 13250–13400 MHz | F | MA | Airborne doppler radar. |
| 14000–14400 MHz | F, Q | MA, RL | Aeronautical radionavigation. |
| 15400–15700 MHz | Q | RL | Aeronautical radionavigation. |
| 24250–25250 MHz | F, Q | MA, RL | Aeronautical radionavigation. |
| 31800–33400 MHz | F, Q | MA, RL | Aeronautical radionavigation. |

## Subpart F—Aircraft Stations

### § 87.185 Scope of service.

(a) Aircraft stations must limit their communications to the necessities of safe, efficient, and economic operation of aircraft and the protection of life and property in the air, except as otherwise specifically provided in this part. Contact with an aeronautical land station must only be attempted when the aircraft is within the serivce area of the land station. however, aircraft stations may transmit advisory information on air traffic control, unicom or aeronautical multicom frequencies for the benefit and use of other stations monitoring these frequencies in accordance with FAA recommended traffic advisory practices.

(b) Aircraft public correspondence must make service available to all persons without discrimination and on reasonable demand, and must communicate without discrimination with any maritme public coast station or maritime mobile-satellite earth station.

(c) Public correspondence service may be carried on only by aircraft stations licensed to use maritime mobile or maritime mobile-satellite frequencies, and must follow the rules for public correspondence in Part 80.

### § 87.187 Frequencies.

(a) Frequencies used for air-ground Communications are listed in Subpart E. Aircraft stations may use frequencies assigned to Government or non-Government aeronautical stations or radionavigation land stations if the communications are within the aeronautical or radionavigation land station scope of service.

(b) 410 kHz is the international direction-finding frequency for use outside the continental United States.

(c) 457 kHz is an authorized working frequency for flights over the high seas.

(d) 500 kHz an international calling and distress frequency for aircraft on

flights over the high seas. Except for distress, urgency or safety messages an aircraft station must not transmit on 500 kHz during the silence periods for three minutes twice each hour beginning at x h. 15 and x h.45 Coordinated Universal Time (u.t.c.).

(e) The frequency 2182 khz is an international distress and calling frequency for use by ship, aircraft and survival craft stations. Aircraft stations must use J3E emission when operating on 2182 kHz and communicating with domestic public and private coast stations. The emission H3E may be used when communicating with foreign coast and ship stations.

(f) The frequencies 3023 kHz, 5680 kHz, 122.900 MHz and 123.100 MHz are authorized for use by aircraft engaged in seach and rescue activities in accordance with Subpart M. These frequencies may be used for air-air and air-ground communications.

(g) The frequency 4125 kHz may be used for distress and safety communications between aircraft and ship and coast maritime mobile stations.

(h) The frequency 8364.0 kHz is authorized for use of survival craft for search and rescue communications with stations in the maritime mobile service.

(i) The frequencies in the band 121.975–122.675 MHz are authorized for use by private aircraft of air traffic control operations.

(1) The frequencies 122.00 and 122.050 MHz are authorized for use by air carrier and private aircraft stations for enroute flight advisory service (EFAS) provided by the FAA;

(2) The frequency 122.100 MHz is authorized for use by air carrier aircraft stations for air traffic control operations at locations in Alaska where other frequencies are not available for air traffic control.

(j) The frequency 122.750 MHz is authoried for use by private fixed wing aircraft for air-air communications. The frequency 123.025 MHz is authorized for use by helicopters for air-air Communications.

(k) The frequencies 121.500 MHz and 243.000 MHz are emergency and distress frequencies available for use by survival craft stations, emergency locator transmitters and equipment used for survival purposes. Use of 121.500 MHz and 243.000 MHz shall be limited to transmission of signals and communications for survivial purposes. Types A2A, A3E, or A3N emissions may be employed, except in the case of emergency locator transmitters where only A3N is permitted.

(l) The frequencies 156.300, 156.375, 156,400, 156,425, 156.450, 156.625, 156.800 156.900 and 157.425 MHz may be used by aircraft stations to communicate with ship stations in accordance with Part 80 and the following conditions:

(1) The altitude of aircraft stations must not exceed 1000 feet, except for reconnaissance aircraft participating in icebreaking operations where an altitude of 1,500 feet is allowed;

(2) Aircraft station transmitter power must not exceed five watts;

(3) The frequency 156.300 MHz may be used for safety purposes only. The frequency 156.800 MHz may be used for distress, safety and calling purposes only.

(4) Except in the Great Lakes and along the St. Lawrence Seaway the frequency 157.425 MHz is available for communications with commerical fishing vessels.

(5) The frequency 156.375 MHz cannot be used in the New Orleans, LA, VTS protection area. No harmful interference shall be caused to the VTS.

(m) The frequency band 960–1215 MHz is for the use of airborne electronic aids to air navigation and directly associated land stations.

(n) The frequency band 1300-1350 MHz is for surveillance radar stations and associated airborne transponders.

(o) The frequency band 1435–1535 MHz is available for telemetering and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the earth's atmosphere and incidental orbiting prior to reentry. These frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1524.5 and 1525.5 MHz.

(p) The frequency band 1559–1626.5 MHz is available for airborne electronic aids to air navigation and any associated land station.

(q) The frequency band 4200–4400 MHz is reserved exclusively for radio altimeters.

(r) The frequency band 5350–5470 MHz in the aeronautical radionavigation service is limited to airborne radars and associated airborne beacons.

(s) The frequency band 8750–8850 MHz is available for use by airborne doppler radars in the aeronautical radionavigation service only on the condition that they must accept any interference which may be experienced from stations in the radiolocation service in the band 8500–10,000 MHz.

(t) The frequency band 9300–9500 MHz is limited to airborne radars and associated airborne beacons.

(u) The frequency band 13250–13400 MHz available for airborne doppler radar use.

(v) The frequency bands 14000–14400, 24250–25250, 31800–33400 MHz are available for airborne radionavigation devices.

(w) Brief keyed RF signals (keying the transmitter by momentarily depressing the microphone "push-to-talk" button) may be transmitted from aircraft for the control of airport lights on the following frequencies:

(1) Any air traffic control frequency listed in § 87.421.

(2) FAA Flight Service Station frequencies 121.975–122.675 MHz and 122.700, 122.725, 122.750, 122.775, 122.825, 122.875, 122.975, 123.025, 123.075.

(3) The unicom frequencies 122.700, 122.725, 122.750, 122.800, 122.950, 122.975, 123.000, 123.050 and 123.075 MHz.

(4) Aviation support station frequencies listed in § 87.232(b): 121.950, 123.300 and 123.500 MHz if the frequency is assigned to a station at the airport and no harmful interference is caused to voice communications. If no such station is located at the concerned airport, aircraft may use one of the aviation support station frequencies for the control of airport lights.

(5) The frequency 122.9 MHz when it is used as the common traffic advisory frequency at the concerned airport.

(x) Frequencies for public correspondence radiotelephony between ship and public coast stations in the maritime mobile service (except frequencies in the 156 MHz to 174 MHz band) and maritime mobile-satellite service are available for public correspondence between aircraft and public coast stations. The transmission of public correspondence from aircraft must not cause interference to maritime mobile communications.

(y) Frequencies in the 454.675–459.975 MHz band are available in the Public Mobile Radio Service (Part 22) for use on board aircraft for communications with land mobile stations which are interconnected to the nationwide public telephone system.

### § 87.189 Requirements for public correspondence equipment and operations.

(a) Transmitters used for public correspondence by aircraft stations must be type accepted by the Commission in conformity with Part 80 of this chapter.

(b) A continuous watch must be maintained on the frequencies used for flight safety and regularity while public correspondence communications are being handled.

(c) All communications of stations in the aeronautical mobile service have priority over public correspondence.

(d) Transmission of public correspondence must be suspended when such operation will delay or

interfere with message pertaining to safety of life and property or regularity of flight, or when ordered by the captain of the aircraft.

**§ 87.191 Foreign aircraft stations.**

(a) Aircraft of member States of the International Civil Aviation Organization may carry and operate radio transmitters in the United States airspace only if a license has been issued by the State in which the aircraft is registered and the flight crew is provided with a radio operator license of the proper class, issued or recognized by the State in which the aircraft is registered. The use of radio transmitters in the United States airspace must comply with these rules and regulations.

(b) Notwithstanding paragraph (a) of this section where an agreement with a foreign government has been entered into with respect to aircraft registered in the United States but operated by an aircraft operator who is subject to regulation by that foreign government, the aircraft radio station license and aircraft radio operator license may be issued by such foreign government.

**Emergency Locator Transmitters**

**§ 87.193 Scope of service.**

Transmissions by emergency locator transmitters (ELTs) are intended to be actuated manually or automatically and operated automatically as part of an aircraft or a survival craft station as a locating aid for survival purposes.

**§ 87.195 Frequencies.**

(a) ELTs transmit on the frequency 121.500 MHz, using A3E, A3N or NON emission.

(b) The frequency 243.000 MHz is an emergency and distress frequency available for use by survival craft stations, ELTs and equipment used for survival purposes which are also equipped to transmit on the frequency 121.500 MHz. Use of 243.000 MHz must be limited to transmission of signals and communications for survival purposes. In the case of ELTs use of A3E, A3N or NON emission is permitted.

**§ 87.197 ELT test procedures.**

ELT testing must avoid outside radiation. Bench and ground tests conducted outside of an RF-shielded enclosure must be conducted with the ELT terminated into a dummy load.

**Subpart G—Aeronautical Advisory Stations (Unicoms)**

**§ 87.213 Scope of service.**

(a) An aeronautical advisory station (unicom) must provide service to any aircraft station upon request and without discrimination. A unicom must provide impartial information concerning available ground services.

(b)(1) Unicom transmissions must be limited to the necessities of safe and expeditious operation of aircraft such as condition of runways, types of fuel available, wind conditions, weather information, dispatching, or other necessary information. At any airport at which a control tower or FAA flight service station is located, unicoms must not transmit information pertaining to the conditions of runways, wind conditions, or weather information during the hours of operation of the control tower or FAA flight service station.

(2) On a secondary basis, unicoms may transmit communications which pertain to the efficient portal-to-portal transit of an aircraft, such as requests for ground transportation, food or lodging.

(3) Communications between unicoms and air carrier must be limited to the necessities of safety of life and property.

(4) Unicoms may communicate with aeronautical utility stations and ground vehicles concerning runway conditions and safety hazards on the airport when neither a control tower nor FAA flight service station is in operation.

(c) Unicoms must not be used for air traffic control (ATC) purposes other than to relay ATC information between the pilot and air traffic controller. Relaying of ATC information is limited to the following:

(1) Revisions of proposed departure time;

(2) Takeoff, arrival or flight plan cancellation time;

(3) ATC clearances, provided a letter of agreement is obtained from the FAA by the licensee of the unicom.

**§ 87.215 Supplement eligibility**

(a) A unicom and any associated dispatch or control points must be located on the airport to be served.

(b) Only one unicom will be authorized to operate at an airport which does not have a control tower or FAA flight services station. At an airport which has a part-time or full-time control tower or FAA service station, the one unicom limitation does not apply and the airport operator and all aviation services organizations may be licensed to operate a unicom on the assigned frequency.

(c) At an airport where only one unicom may be licensed, when the Commission believes that the unicom has been abandoned or has ceased operation, another unicom may be licensed on an interim basis pending final determination of the status of the original unicom. An applicant for an interim license must notify the present licensee and must comply with the notice requirements of paragraph (d) of this section.

(d) An applicant for a unicom license, renewal or modification of frequency assignment at an airport which does not have a control tower or FAA flight service station must notify in writing the owner of the airport and all aviation service organizations located at the airport. The notice must include the applicant's name and address, the name of the airport and a statement that the applicant intends to file an application with the Commission for a unicom. The notice must be given within the ten days preceding the filing of the application with the Commission. Each applicant must submit a statement that either notice has been given and include the date of notification or notice is not required because the applicant owns the airport and there are no organizations that should be notified.

**§ 87.217 Frequencies.**

(a) Only one unicom frequency will be assigned at any one airport. The Commission will assign a frequency based on maximum geographic co-channel separation. However, applicants may request a particular frequency which will be taken into consideration when the assignment is made. The frequencies assignable to unicoms are:

(1) 122.950 MHz at airports which have a full time control tower or a full time FAA flight service station.

(2) 122.700, 122.725, 122.800, 122.975, 123.000, 123.050 or 123.075 MHz at all other airports.

(b) 121.500 MHz: emergency and distress only.

**Subpart H—Aeronautical Multicom Stations**

**§ 87.237 Scope of services.**

(a) The communications of an aeronautical multicom station (multicom) must pertain to activities of a temporary, seasonal or emergency nature involving aircraft in flight. Communications are limited to directing or coordinating ground activities from the air or aerial activities from the ground. Air-to-air communications will be authorized if the communications are directly connected with the air-to-ground or ground-to-air activities described above. Multicom communications must not include those air/ground communications provided for elsewhere in this part.

(b) If there is not unicom and an applicant is unable to meet the requirements for a unicom license, the applicant will be eligible for a multicom license.

(1) The multicom license becomes invalid when a unicom is established at the landing area.

(2) Multicoms must not be used for ATC purposes other than the relay of ATC information between the pilot and air traffic controller. Relaying of ATC information is limited to the following:

(i) Revisions of proposed departure time;

(ii) Takeoff, arrival flight plan cancellation time;

(iii) ATC clearances, provided a letter of agreement is obtained from the FAA by the licensee of the multicom.

(3) Communications by a multicom must be limited to the safe and expeditious operation of private aircraft, pertaining to the conditions of runways, types of fuel available, wind conditions, weather information, dispatching or other information. On a secondary basis, multicoms may transmit communictions which pertain to efficient portal-to-portal transit of an aircraft such as requests for ground transportation, food or lodging.

**§ 87.239 Supplemental eligibility.**

An application for a multicom must include a showing demonstrating why such a station is necessary, based on the scope of service defined above.

**§ 87.241 Frequencies.**

(a) 121.500 MHz: emergency and distress only;

(b) 122.850 or 122.900 MHz;

(c) 122.925 MHz: available for assignment to communicate with aircraft when coordinating foresty management and fire suppression, fish and game management and protection, and environmental monitoring and protection.

## Subpart I—Aeronautical Enroute and Aeronautical Fixed Stations

### Aeronautical Enroute Stations

**§ 87.261 Scope of service.**

(a) Aeronautical enroute stations provide operational control communications to aircraft along domestic or international air routes. Operational control communications include the safe, efficient and economical operation of aircraft, such as fuel, weather, position reports, aircraft performance, and essential services and supplies. Public correspondence is prohibited.

(b) Service must be provided to any aircraft station licensee who makes cooperative arrangements for the operation, maintenance and liability of the stations which are to furnish enroute service. In emergency or distress situations service must be provided without prior arrangements.

(c) Except in Alaska, only one aeronautical enroute station licensee will be authorized at any one location. In Alaska, only one aeronautical enroute station licensee in the domestic service and one aeronautical enroute station licensee in the international service will be authorized at any one location. (Because enroute stations may provide service over a large area containing a number of air routes or only provide communications in the local area of an airport, location here means the area which can be adequately served by the particular station.)

(d) In Alaska, only stations which serve scheduled air carriers will be licensed to operate aeronautical enroute stations. Applicants must show that the station will provide communications only along routes served by scheduled air carriers.

**§ 87.263 Frequencies.**

(a) *Domestic VHF service.* (1) Frequencies in the 128.825–132.000 MHz band are available to serve domestic routes. Frequency assignments are based on 25 kHz channel spacing. Proposed operations must be compatible with existing operations in the band.

(2) A system or network of interconnected enroute stations may employ offset carrier techniques on the frequencies listed in paragraph (a)(1) of this section. The carrier frequencies of the individual transmitters must not be offset by more than ± kHz.

(3) The frequencies 122.825 and 122.875 MHz are available for assignment to enroute stations which provide local area service to aircraft approaching or departing a particular airport. These frequencies will be assigned without regard to the restrictions contained in § 87.261 (c) and (d). Only organizations operating aircraft with a maximum capacity of 56 passengers or 18,000 pounds cargo will be authorized use of these enroute frequencies.

(4) In Alaska, the frequencies 131.500, 131.600, 131.800 and 131.900 MHz may be assigned to aeronautical enroute stations without regard to the restrictions contained in § 87.261 (c) and (d).

(b) *Domestic HF service.* (1) Regular use of high frequencies for aeronautical enroute or any aeronautical mobile (R) communications in the domestic service within the continental United States (excluding Alaska) will not be authorized.

(2) These frequencies (carrier) are available for assignment to serve aircraft operating in support of offshore drilling operations in open sea areas beyond the range of VHF propagation:

| *kHz* | *kHz* |
|---|---|
| 2878.0 | 4672.0 |
| 3019.0 | 5463.0 |
| 3434.0 | 5508.0 |

(3) Alaska: The following frequencies (carrier) are available for assignment to serve domestic air routes in the Alaska area:

(i) *Throughout Alaska:* Shared with the FAA and assigned where an applicant shows the need for a service not provided by the FAA.

| *kHz* | *kHz* |
|---|---|
| 2866.0 | 5631.0 |

(ii) *Alaska Aleutian chain and feeders.*

| *kHz* | *kHz* |
|---|---|
| 2911.0 | 8855.0 |
| 2956.0 | 10066.0 |
| 5496.0 | 11363.0 |
| 6580.0 | |

(iii) *Central and Southeast Alaska and feeders.*

| *kHz* | *kHz* |
|---|---|
| 2875.0 | 6580.0 |
| 2911.0 | 6604.0 |
| 3470.0 | 8876.0 |
| 5484.0 | 11357.0 |

(iv) The following frequencies (carrier) are available to enroute stations in Alaska without regard to the restrictions contained in § 87.261 (c) or (d). These frequencies may also be used for communications between enroute stations concerning matters directly affecting aircraft with which they are engaged. Enroute stations located at an uncontrolled airport shall not transmit information concerning runway, wind or weather conditions during the operating hours of a unicom.

| *kHz* | *kHz* |
|---|---|
| 3449.0 | 5472.0 |
| 5167.5 | 5490.0 |

(C) *International VHF service.* Frequencies in the 128.825–132.000 MHz band are available to enroute stations serving international flight operations. Frequency assignments are based on 25 kHz channel spacing. Proposed

[1] The frequency 5167.5 kHz is available to any station for emergency communications in Alaska. No airborne operations are permitted. Peak envelope power of stations operating on this frequency must not exceed 150 watts. This frequency may also be used by Alaska private fixed stations for calling purposes, but only for establishing communications.

operations must be compatible with existing operations in the band.

(d) *International HF service.* High frequencies (carrier) available to enroute stations serving international flight operations on the Major World Air Route Areas (MWARA's), as defined in the international Radio Regulations and the ICAO Assignment Plan, are:

(1) Central East Pacific (CEP):

| kHz | kHz |
|---|---|
| 2869.0 | 8843.0 |
| 3413.0 | 10057.0 |
| 4657.0 | 11282.0 |
| 5547.0 | 13300.0 |
| 5574.0 | 17904.0 |
| 6673.0 | |

(2) Central West Pacific (CWP):

| kHz | kHz |
|---|---|
| 2998.0 | 6562.0 |
| 3455.0 | 8903.0 |
| 4666.0 | 10081.0 |
| 5652.0 | 11384.0 |
| 5661.0 | 13300.0 |
| 6532.0 | 17904.0 |

(3) North Pacific (NP):

| kHz | kHz |
|---|---|
| 2932.0 | 10048.0 |
| 5628.0 | 11330.0 |
| 6655.0 | 13300.0 |
| 6661.0 | 17904.0 |

(4) South Pacific (SP):

| kHz | kHz |
|---|---|
| 3467.0 | 10084.0 |
| 5559.0 | 11327.0 |
| 5643.0 | 13300.0 |
| 5867.0 | 17904.0 |

(5) North Atlantic (NAT):

| kHz | kHz |
|---|---|
| 2872.0 | 8825.0 |
| 2899.0 | 8831.0 |
| 2962.0 | 8864.0 |
| 2971.0 | 8879.0 |
| 3016.0 | 8891.0 |
| 3476.0 | 8906.0 |
| 4675.0 | 11279.0 |
| 5596.0 | 11309.0 |
| 5616.0 | 11336.0 |
| 5649.0 | 13291.0 |
| 6622.0 | 13306.0 |
| 6628.0 | 17946.0 |

(6) Europe (EUR):

| kHz | kHz |
|---|---|
| 3479.0 | 10084.0 |
| 5681.0 | 13288.0 |
| 6586.0 | 17961.0 |

(7) South America (SAM):

| kHz | kHz |
|---|---|
| 2944.0 | 10024.0 |
| 3479.0 | 10096.0 |
| 4669.0 | 11360.0 |
| 5526.0 | 13297.0 |
| 6649.0 | 17907.0 |
| 8855.0 | |

(8) South Atlantic (SAT):

| kHz | kHz |
|---|---|
| 2854.0 | 8861.0 |
| 2935.0 | 11291.0 |
| 3452.0 | 13315.0 |
| 5565.0 | 13357.0 |
| 6535.0 | 17955.0 |

(9) Southeast Asia (SEA):

| kHz | kHz |
|---|---|
| 3470.0 | 10066.0 |
| 3485.0 | 11396.0 |
| 5649.0 | 13309.0 |
| 5655.0 | 13318.0 |
| 6556.0 | 17907.0 |
| 8942.0 | |

(10) East Asia (EA):

| kHz | kHz |
|---|---|
| 3016.0 | 10042.0 |
| 3455.0 | 11396.0 |
| 3491.0 | 13297.0 |
| 5655.0 | 13303.0 |
| 5670.0 | 13309.0 |
| 6571.0 | 17907.0 |
| 8897.0 | |

(11) Middle East (MID):

| kHz | kHz |
|---|---|
| 2944.0 | 8631.0 |
| 2992.0 | 8918.0 |
| 3467.0 | 8951.0 |
| 3473.0 | 10018.0 |
| 4669.0 | 11375.0 |
| 5658.0 | 13288.0 |
| 5667.0 | 13312.0 |
| 6625.0 | 17961.0 |

(12) Africa (AFI):

| kHz | kHz |
|---|---|
| 2851.0 | 6673.0 |
| 2878.0 | 8894.0 |
| 3419.0 | 8903.0 |
| 3425.0 | 8894.0 |
| 3467.0 | 11300.0 |
| 4657.0 | 11330.0 |
| 5493.0 | 13273.0 |
| 5652.0 | 13288.0 |
| 5658.0 | 13294.0 |
| 6559.0 | 17961.0 |
| 8574.0 | |

(13) Indian Ocean (INO):

| kHz | kHz |
|---|---|
| 3476.0 | 13306.0 |
| 5634.0 | 17961.0 |
| 8879.0 | |

(14) North Central Asia (NCA):

| kHz | kHz |
|---|---|
| 3004.0 | 6592.0 |
| 3019.0 | 10096.0 |
| 4676.0 | 13303.0 |
| 5646.0 | 13315.0 |
| 5664.0 | 17958.0 |

(15) Caribbean (CAR):

| kHz | kHz |
|---|---|
| 2887.0 | 8846.0 |
| 3455.0 | 8918.0 |
| 5520.0 | 11387.0 |
| 5550.0 | 11396.0 |
| 6577.0 | 13297.0 |
| 6586.0 | 17907.0 |

(e) *Long distance operational control.* Long distance operational control frequencies provide communications between aeronautical enroute stations and aircraft stations anywhere in the world for control of the regularity and efficiency of flight and safety of aircraft. World-wide frequencies are not assigned by administrations for MWARA and Regional and Domestic Air Route Area (RDARA).

| kHz | kHz |
|---|---|
| 3013.0 | 3494.0 |
| 5529.0 | 10075.0 |
| 5538.0 | 11342.0 |
| 6537.0 | 11348.0 |
| 6540.0 | 13330.0 |
| 8933.0 | 13348.0 |
| 10033.0 | 21964.0 |

(f) *121.500 MHz:* Emergency and distress only.

### § 87.265 Administrative communications.

Domestic VHF aeronautical enroute stations authorized to use A9W emission on any frequency listed in § 87.263(a)(1) may transmit digital administrative communications on a secondary basis, in addition to the operational control communications routinely permitted under § 87.261(a) above. Such secondary administrative communications must directly relate to the business of a participating aircraft operator in providing travel and transportation services to the flying public or to the travel, tranportation or scheduling activities of the aircraft operator itself. Stations transmitting administrative communications must provide absolute priority for operational control and other safety communications by means of an automatic priority control system.

## Aeronautical Fixed Stations

### § 87.275 Scope of service.

Aeronautical fixed stations provide non-public point-to-point communications service pertaining to safety, regularity and economy of flight. These stations must transmit, without discrimination, messages from aircraft which have entered into cooperative arrangements governing the operation and maintenance of such stations. Aeronautical fixed station licensees are required to transmit, without charge or discrimination, all emergency communications.

### § 87.277 Supplemental eligibility.

Aeronautical fixed station licenses will only be issued to the licensees of associated aeronautical enroute stations. Aeronautical fixed station licenses will not be issued where adequate land line facilities are available.

### § 87.279 Frequencies.

(a) *United States (except Alaska).* The applicant must request specific frequencies in accordance with § 2.106 of this chapter. The Commission will determine the suitability of the applicant's selection based on the probability of interference to and from existing services assigned on the same or adjacent frequencies. All new assignments of frequencies will be

subject to such conditions as may be required to minimize the possibility of harmful interference to existing services.

(b) *Alaska.* (1) Only stations which serve scheduled air carriers will be licensed. Applicants must show that the station will provide communications only along routes served by the scheduled operations of such carriers.

(2) The following frequencies are available in Alaska. These frequencies will only be licensed in conjunction with licenses for use of the aeronautical enroute frequencies specified in § 87.263(c).

| *kHz* | *kHz* |
|---|---|
| 2048.0 | 5310.0 |
| 4845.0 | 5887.5 |
| 4947.5 | 8015.0 |
| 5122.5 | |

(c) *Gulf of Mexico.* In addition to the provisions of paragraph (a) of this section, the frequencies 4550.0 and 5036.0 kHz are available in the Gulf of Mexico.

## Subpart J—Flight Test Stations

### § 87.299 Scope of service.

The use of flight test stations is restricted to the transmission of necessary information or instructions relating directly to tests of aircraft or components thereof.

### § 87.301 Supplemental eligibility.

(a) The following entities are eligible for flight test station licenses:

(1) Manufacturers of aircraft or major aircraft components;

(2) A parent corporation or its subsidiary if either corporation is a manufacturer of aircraft or major aircraft components; or

(3) Educational institutions and persons primarily engaged in the design, development, modification, and flight test evaluation of aircraft or major aircraft components.

(b) Each application must be accompanied by a statement containing facts sufficient to establish the applicant's eligibility under the criteria in paragraph (a) of this section.

### § 87.303 Frequencies.

(a) These frequencies are available for assignment to flight test land and aircraft stations:

| kHz | MHz | MHz | MHz |
|---|---|---|---|
| 3281.0[1] | 123.175[2] | 123.225[3] | 123.400[2] |
| | 123.200[3] | 123.375[3] | 123.450[3] |

(b) These additional frequencies are available for assignment only to flight test stations of aircraft manufacturers:

| MHz | MHz | MHz | MHz |
|---|---|---|---|
| 123.125[2] | 123.275[3] | S123.425[3] | 123.550[3] |
| 123.150[2] | 123.325[3] | S123.475[3] | 123.575[2] |
| 123.250[3] | 123.350[3] | S123.525[3] | |

[1] When R3E, H3E or J3E emission is used, the assigned frequency will be 3282.4 kHz (3281.0 kHz carrier frequency).

[2] This frequency is available only to itinerant stations that have a requirement to be periodically transferred to various locations.

[3] Mobile station operations on these frequencies are limited to an area within 200 miles of an associated flight test land station.

(c) These frequencies are available for equipment test, emergency and backup use with aircraft beyond the range of VHF propagation. Either H2B, J3E, J7B or J9W emission may be used.

Frequencies (carrier) available kHz:

| | |
|---|---|
| 2851.0 | 8822.0 |
| 3004.0 | 10045.0 |
| 3443.0 | 11288.0 |
| 5451.0 | 11306.0 |
| 5469.0 | 13312.0 |
| 5571.0 | 17964.0 |
| 6550.0 | 21931.0 |

(d)(1) Frequencies in the bands 1435–1535 and 2310–2390 MHz are assigned primarily for telemetry and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the earth's atmosphere and incidental orbiting prior to reentry. These frequencies are shared with flight telemetering mobile stations: 1444.500, 1453,500, 1501.500, 1515.500, 1524.500 and 1525.500 MHz. In the 2310.000–2390.000 MHz band, all other mobile telemetry and telecommand uses are secondary. The Maritime Mobile-Satellite Service will be the only primary service in the 1530.000–1535.000 Mhz band after January 1, 1990.

(2) The authorized bandwidths for stations operating in the bands 1435.000–1535.000 and 2310.000–2390.000 MHz are normally 1, 3 or 5 MHz. Applications for greater bandwidths will be considered in accordance with the provisions of § 87.135. Each assignment will be centered on a frequency between 1435.500 and 1534.500 and 2310.500 and 2389.500 MHz, with 1 MHz channel spacing.

(e) 121.500 MHz: Emergency and distress only.

### § 87.305 Frequency coordination.

(a)(1) Each application for a new station license, renewal or modification of an existing license concerning flight test frequencies, except as provided in paragraph (b) of this section, must be accompanied by a statement from a frequency advisory committee. The committee must comment on the frequencies requested or the proposed changes in the authorized station and the probable interference to existing stations. The committee must consider all stations operating on the frequencies requested or assigned within 200 miles of the proposed area of operation and all prior coordinations and assignments on the proposed frequency(ies). The committee must also recommend frequencies resulting in the minimum interference. The committee must coordinate in writing all requests for frequencies or proposed operating changes in the 1435–1535 MHz and 2310–2390 MHz bands with the responsible Government Area Frequency Coordinators listed in the NTIA "Manual of Regulations and Procedures for Radio Frequency Management. In addition, committee recommendations may include comments on other technical factors and may contain recommended restrictions which it believes should appear on the license.

(2) The frequency advisory committee must be organized to represent all persons who are eligible for non-Government radio flight test stations. A statement of organization service area and composition of the committee must be submitted to the Commission for approval. The functions of any advisory committee are purely advisory to the applicant and the Commission, and its recommendations are not binding upon either the applicant or the Commission.

(b) These applications need not be accompanied by evidence of frequency coordination:

(1) Any application for modification not involving change in frequency(ies), power, emission, antenna height, antenna location or area of operation.

(2) Any application for 121.5 MHz.

### § 87.307 Cooperative use of facilities.

(a) The Commission will license only one flight test land station per airport, except as provided in paragraph (d) of this section.

(b) Flight test land stations located at an airport are required to provide service without discrimination, on a cooperative maintenance basis, to anyone eligible for a flight test station license.

(c) When the licensee of a flight test land station intends to conduct flight tests at an area served by another flight test land station, which may result in interference, the licensees must coordinate their schedules in advance. If no agreement is reached, the Commission will determine the time division upon request by either licensee.

(d) An application for an additional flight test land station at an airport where such a station is already authorized must be accompanied by a

factual showing which must include the following:

(1) Reasons why shared use of the currently licensed flight test land station is not possible; and

(2) Results of coordination with the current licensee of the flight test station at the airport demonstrating that an additional station can be accommodated without significant degradation of the reliability of existing facilities.

## Subpart K—Aviation Support Stations

### § 87.319 Scope of service.

Aviation support stations are used for the following types of operations:

(a) Pilot training;

(b) Coordination of soaring activities between gliders, tow aircraft and land stations;

(c) Coordination of activities between free balloons or lighter-than-air aircraft and ground stations;

(d) Coordination between aircraft and aviation service organizations located on an airport concerning the safe and efficient portal-to-portal transit of the aircraft, such as the types of fuel and ground services available; and

(e) Promotion of safety of life and property.

### § 87.321 Supplemental eligibility.

Each application must be accompanied by a statement that the applicant is either the operator of a flying school or lighter-than-air aircraft, engaged in soaring or free ballooning activities, or the operator of an airport or an aviation service organization located on an airport.

### § 87.323 Frequencies.

(a) 121.500 MHz: Emergency and distress only.

(b) The frequencies 121.950, 123.300 and 123.500 MHz are available for assignment to aviation support stations used for pilot training, coordination of lighter-than-air aircraft operations, or coordination of soaring or free ballooning activities. Applicants for 121.950 MHz must coordinate their proposal with the appropriate FAA Regional Spectrum Management Office. A coordination statement must accompany the application. Applicants for aviation support land stations may request frequency(ies) based upon their eligibility although the Commission reserves the right to specify the frequency of assignment. Aviation support mobile stations will be assigned 123.300 and 123.500 MHz. However, aviation support mobile stations must operate only on a noninterference basis to communications between aircraft and aviation support land stations.

(c) The frequency 122.775 MHz and, secondary to aeronautical multicom stations, the frequency 122.850 MHz are available for assignment to aviation support stations. These frequencies may be used for communications between aviation service organizations and aircraft in the airport area. These frequencies must not be used for air traffic control purposes or to transmit information pertaining to runway, wind or weather conditions.

(d) The frequency 3281.0 kHz is available for assignment to aviation support stations used for coordination of lighter-than-air aircraft operations.

## Subpart L—Aeronautical Utility Mobile Stations

### § 87.345 Scope of service.

Aeronautical utility mobile stations provide communications for vehicles operating on an airport movement area. An airport movement area is defined as the runways, taxiways and other areas utilized for taxiing, takeoff and landing of aircraft, exclusive of loading ramp and parking areas.

(a) An aeronautical utility mobile station must monitor its assigned frequency during periods of operation.

(b) At an airport which has a control tower or FAA flight service station in operation, communications by an aeronautical utility mobile station are limited to the management of ground vehicular traffic.

(c) Aeronautical utility mobile stations which operate on the airport's unicom frequency or the frequency 122.900 MHz are authorized only to transmit information relating to safety, such as runway conditions and hazards on the airport. These stations are authorized primarily for monitoring communications from and to aircraft approaching or departing the airport.

(d) Transmissions by an aeronautical utility mobile station are subject to the control of the control tower, the FAA flight service station or the unicom, as appropriate. When requested by the control tower, the flight service station or the unicom, an aeronautical utility station must discontinue transmitting immediately.

(e) An aeronautical utility mobile station operating on the frequency assigned to a control tower or FAA flight service station must not transmit on that frequency when either is in operation. An aeronautical utility station assigned a unicom frequency may continue to transmit safety related information while located on the airport movement area when the unicom is not in operation.

(f) Communications between aeronautical utility mobile stations are not authorized.

### § 87.347 Supplemental eligibility.

(a) Aeronautical utility stations may transmit on unicom frequencies only at airports which have a unicom and either a part-time or no control tower or FAA flight service station.

(b) An applicant for an aeronautical utility station operating on a unicom frequency or the frequency 122.900 MHz must:

(1) Demonstrate a need to routinely operate a ground vehicle on the airport movement area;

(2) Identity the vehicle(s) in which the station is to be located; and

(3) Either attach a statement showing that the applicant is the airport owner or operator, or a state or local governmental aeronautical agency; or attach a statement from the airport owner or operator granting permission to operate the vehicle on the airport movement area.

### § 87.349 Frequencies.

(a) The frequency assigned to an aeronautical utility station at an airport served by a control tower or FAA flight service station is the frequency used by the control tower for ground traffic control or by the flight service station for communications with vehicles. The frequency assigned is normally from the band 121.600–121.925 MHz.

(b) The frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis at airports which have a part-time control tower or part-time FAA flight service station and a unicom.

(c) At airports which have a unicom but no control tower or FAA flight service station, the frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis. The frequencies available for assignment to unicoms are described in Subpart G.

(d) At airports which have no control tower, flight service or unicom, the frequency 122.900 MHz is available for assignment to aeronautical utility stations.

### § 87.351 Frequency changes.

When the aeronautical utility frequency is required to be changed because of an action by the FAA or the Commission (such as a change in the ground control of unicom frequency) the licensee must submit an application for modification to specify the new frequency within 10 days from the date the station begins operation on the new

frequency. The licensee has temporary authority to use the new frequency from the date of the change pending receipt of the modified license.

## Subpart M—Aeronautical Search and Rescue Stations

### § 87.371 Scope of service.

Aeronautical search and rescue land and mobile stations must be used only for communications with aircraft and other aeronautical search and rescue stations engaged in search and rescue activities. Aeronautical land search and rescue stations can be moved for temporary periods from a specified location to an area where actual or practice search and rescue operations are being conducted.

### § 87.373 Supplemental eligibility.

Licenses for aeronautical search and rescue stations will be granted only to governmental entities or private organizations chartered to perform aeronautical search and rescue functions.

### § 87.375 Frequencies.

(a) The frequency 123.100 MHz is available for assignment to aeronautical search and rescue stations for actual search and rescue missions. Each search and rescue station must be equipped to operate on this frequency.

(b) The frequency 122.900 MHz is available for assignment to aeronautical search and rescue stations for organized search and rescue training and for practice search and rescue missions.

(c) The frequencies 3023.0 kHz and 5680.0 kHz are available for assignment to aircraft and ship stations for search and rescue scene-of-action coordination, including communications with participating land stations. Ship stations communicating with aircraft stations must employ 2K80J3E emission.

(d) 121.500 MHz: Emergency and distress only.

## Subpart N—Emergency Communications

### § 87.393 Scope of service.

This subpart provides the rules governing operation of stations in the Aviation Services during any national or local emergency situation constituting a threat to national security or safety of life and property. This subpart is consistent with the Aeronautical Emergency Communications System Plan for all Aviation Services licensees of the Commission which was developed pursuant to sections 1, 4(o), 301 and 303 of the Communications Act, and Executive Order 11490, as amended. This Plan provides for emergency communications to meet the requirements of the Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA), Civil Reserve Air Fleet (CRAF), War Air Service Program (WASP) and, where applicable, State and Regional Disaster Airlift Planning (SARDA).

### § 87.395 Plan for the Security Control of Air Traffic and Air Navigation Aids (Short Title: SCATANA).

(a) The Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA) is promulgated in furtherance of the Federal Aviation Act of 1958, as amended, the Communications Act and Executive Order 11490, as amended. SCATANA defines the responsibilities of the Commission for the security control of non-Federal air navigation aids.

(b) Under the responsibilities defined in SCATANA, an FCC Support Plan for the Security Control of Non-Federal Air Navigation Aids has been developed by the Commission. The FCC Support Plan defines responsibilities, procedures, and instructions in consonance with SCATANA which will effect control of non-Federal air navigation aids when SCATANA is implemented. It permits the use of such navigation aids by aircraft of military and civil agencies when SCATANA is implemented. The FCC Support Plan highlights those parts of SCATANA which deal specifically with non-Federal air navigation aids. SCATANA and the FCC Support Plan apply to radionavigation stations authorized by the Commission in the following manner:

(1) All licensees are subject to restrictions imposed by appropriate military authorities pursuant to SCATANA and the FCC Support Plan when an Air Defense Emergency or Defense Emergency exists or is imminent. The restrictions will be imposed through FAA Air Route Traffic Control Centers (ARTCCs).

(2) All licensees of aeronautical radionavigation (VOR/DME, ILS, MLS, LF and MF non-directional beacons) stations will comply with SCATANA implementation instructions from FAA ARTCCs as follows:

(i) Shut down the above navigation aids as directed. These instructions will permit time to land or disperse airborne aircraft, and will permit extension of time when the air traffic situation dictates.

(ii) Shut down as soon as possible stations which require more than five minutes control time, unless directed otherwise or unless such stations are essential for the handling of existing air traffic.

(iii) Operate aeronautical radionavigation stations to ensure that required stations, as indicated in flight plans, will be available for authorized aircraft flights.

(3) Licensees of aeronautical radionavigation stations will be notified of the reduction or removal of SCATANA restrictions by FAA ARTCCs when notice of the termination is issued.

(4) Licensees of aeronautical radionavigation stations may voluntarily participate in SCATANA tests as requested by an ARTCC. SCATANA testing must not interrupt the normal service of non-Federal air navigation aids.

### § 87.397 Emergency operation.

(a) The licensee of any land station in the Aviation services, during a local emergency involving the safety of life and property may communicate in a manner other than that specified in the license (See § 87.395). Such emergency operations may include operation at other locations or with equipment not specified in the license or by unlicensed personnel provided that:

(1) Such operations are under the control and supervision of the station licensee,

(2) The emergency use is discontinued as soon as practicable upon termination of the emergency,

(3) In no event shall any station transmit on frequencies other than or with power in excess of that specified in the license

(4) The details of the emergency must be retained with the station license, and

(5) At a controlled airport these communications must be coordinated with the FAA.

(b) The unicom frequencies listed in Subpart G may also be used for communications with private aircraft engaged in organized civil defense activities in preparation for, during an enemy attack or immediately after an enemy attack. When used for these purposes, unicoms may be moved from place to place or operated at unspecified locations, except at landing areas served by other unicoms or control towers.

(c) In any case in which a license for unattended operation has been granted, the Commission may at any time, for national defense, modify the license.

## Subpart O—Airport Control Tower Stations

### § 87.417 Scope of service.

(a) Airport control tower stations (control towers) must limit their

communications to the necessities of safe and expeditious operations of aircraft operating on or in the vicinity of the airport. Control towers provide air traffic control services to aircraft landing, taking off and taxing on the airport as well as aircraft transiting the airport traffic area. Additionally, control towers can provide air traffic control services to vehicles operating on airport movement areas (see Subpart L) Control towers must serve all aircraft without discrimination.

(b) A control tower must maintain a continuous watch on the following frequencies during the hours of operation:

121.500 MHz
3023.0 kHz (Alaska only)
5680.0 kHz (Alaska only)

**§ 87.419 Supplemental eligibility.**

Only one control tower will be licensed at an airport.

**§ 87.421 Frequencies.**

The Commission will assign VHF frequencies after coordination with the FAA. Frequencies in the following bands are available to control towers. Channel spacing is 25 kHz.

188.000–121.400 MHz
121.600–121.925 MHz
123.600–128.800 MHz
132.025–135.975 MHz

(a) The frequency 123.100 MHz is available for use by control towers at special aeronautical events on the condition that no harmful interference is caused by search and rescue operations in the locale involved.

(b) Frequencies in the bands 200.0–285.0 and 325.0–405. kHz will only be assigned to control towers authorized to operate on at least one VHF frequency, unless a showing has been made that elimination of VHF services will not adversely affect life and property in the air.

(c) Frequencies in the band 121.600–121.925 MHz are available to control towers for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage. Channel spacing is 25 kHz.

(d) 121.500 MHz: emergency and distress only.

**§ 87.423 Hours of operation.**

The control tower must render a communications service 24 hours a day unless a satisfactory showing has been made that elimination of such service will not adversely affect life and property in the air.

**§ 87.425 Interference.**

A control tower shall not cause harmful interference to a control tower at an adjacent airport. If interference between adjacent control towers exists, the Commission will direct the licensees how to eliminate the interference.

## Subpart P—Operational Fixed Stations

**§ 87.445 Scope of service.**

An operational fixed station provides control, repeater or relay functions for its associated aeronautical station.

**§ 87.447 Supplemental eligibility.**

An applicant for an operational fixed station must show that:

(a) The applicant is the licensee of an aeronautical land station in the aeronautical mobile service; and

(b) Common carrier facilities are not available to satisfy the aeronautical station's requirements.

**§ 87.449 Frequencies.**

The following frequencies in the 72–76 MHz band are assignable to operational fixed stations using vertical polarization, if no harmful interference is caused to TV reception on Channels 4 and 5. These frequencies are shared with the Land Mobile and the Maritime Mobile Services.

**Operational frequencies in the 72–76 MHz band**

*Carrier frequency in MHz*

| | | |
|---|---|---|
| 72.02 | 72.54 | 75.50 |
| 72.04 | 72.58 | 75.54 |
| 72.06 | 72.62 | 75.58 |
| 72.08 | 72.64 | 75.62 |
| 72.10 | 72.66 | 75.64 |
| 72.12 | 72.68 | 75.66 |
| 72.14 | 72.70 | 75.68 |
| 72.16 | 72.72 | 75.70 |
| 72.18 | 72.74 | 75.72 |
| 72.20 | 72.76 | 75.74 |
| 72.22 | 72.78 | 75.76 |
| 72.24 | 72.80 | 75.78 |
| 72.26 | 72.82 | 75.80 |
| 72.28 | 72.84 | 75.82 |
| 72.30 | 72.86 | 75.84 |
| 72.32 | 72.88 | 75.86 |
| 72.34 | 72.90 | 75.88 |
| 72.36 | 72.92 | 75.90 |
| 72.38 | 72.94 | 75.92 |
| 72.40 | 72.96 | 75.94 |
| 72.42 | 72.98 | 75.96 |
| 72.46 | 75.42 | 75.98 |
| 72.50 | 75.46 | |

**§ 87.451 Licensing limitations**

Operational fixed stations are subject to the following licensing limitations:

(a) A maximum of four frequencies will be assigned.

(b) Stations will not be authorized when applications indicate less than 16 km (10 miles) separation between a proposed station and a TV transmitter operating on either Channel 4 or 5, or from the post office of a community in which either channel is assigned but not in operation.

(c) Stations located between 16 km (10 miles) and 128 km (80 miles) of a TV transmitter operating on either Channel 4 or 5, or from the post office of a community in which either channel is assigned but not in operation, are secondary to TV operations within the Grade B service contour.[1]

[1] OET Bulletin No. 67, March 1988, entitled "Potential Interference from Operational Fixed Stations in the 72–76 MHz Band to Television Channels 4 and 5" describes an analytical model that can be used to calculate the potential interference that might result from a given fixed station operation. Copies of the bulletin may be obtained from the Commission's current duplication contractor. Information concerning the current duplication contractor may be obtained from the Office of Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–5050.

## Subpart Q—Stations in the Radiodetermination Service

### § 87.471 Scope of service.

Stations in the aeronautical radiodetermination service provide radionavigation and radiolocation services.

(a) Transmission by radionavigation land stations must be limited to aeronautical navigation, including obstruction warning.

(b) Radionavigation land test stations are used for the testing and calibration of aircraft navigational aids and associated equipment. Transmission must be limited to cases when radiation is necessary and there is no alternative.

(c) Transmissions by emergency locator transmitter (ELT) test stations must be limited to necessary testing of ELTs and to training operations related to the use of such transmitters.

### § 87.473 Supplemental eligibility.

(a) Licenses for radionavigation land stations will be granted only to applicants who can justify the need for an aeronautical radionavigation service when the Federal Aviation Administration is not prepared to render this service.

(b) Licenses for radionavigation land test stations (MTF) will be granted only to applicants engaged in the development, manufacture or maintenance of aircraft radionavigation equipment. Licenses for radionavigation land test stations (OTF) will be granted only to applicants who agree to establish the facility at an airport for the use of the public.

(c) Licenses for ELT test stations will be granted only to applicants to train personnel in the operation and location of ELTs, or for testing related to the manufacture or design of ELTs.

### § 87.475 Frequencies.

(a) *Frequency coordination.* The Commission will assign frequencies to radionavigation land stations and radionavigation land test stations after coordination with the FAA. The applicant must notify the appropriate Regional Office of the FAA prior to submission to the Commission of an application for a new station or for modification of an existing station to change frequency, power, location or emission. Each application must be accompanied by a statement showing the name of the FAA Regional Office notified and the date of notification.

(b) *Frequencies available for radionavigation land stations.* (1) LORAN–C is a long range navigation system which operates in the 90–110 kHz band.

(2) Radiobeacon stations enable an aircraft station to determine bearing or direction in relation to the radiobeacon station. Radiobeacons operate in the bands 190–285 kHz; 325–435; and 510–525 kHz.

(3) Aeronautical marker beacon stations radiate a vertical distinctive pattern on 75 MHz which provides position information to aircraft.

(4) The following table lists the specific frequencies in the 108.100–111.950 MHz band which are assignable to localizer stations with simultaneous radiotelephone channels and their associated glide path station frequency from the 328.600–335.400 MHz band.

| Localizer (MHz) | Glide path (MHz) |
|---|---|
| 108.100 | 334.700 |
| 108.150 | 334.550 |
| 108.300 | 334.100 |
| 108.350 | 333.950 |
| 108.500 | 329.900 |
| 108.550 | 329.750 |
| 108.700 | 330.500 |
| 108.750 | 330.350 |
| 108.900 | 329.300 |
| 108.950 | 329.150 |
| 109.100 | 331.400 |
| 109.150 | 331.250 |
| 109.300 | 332.000 |
| 109.350 | 331.850 |
| 109.500 | 332.600 |
| 109.550 | 332.450 |
| 109.700 | 333.200 |
| 109.750 | 333.050 |
| 109.900 | 333.800 |
| 109.950 | 333.650 |
| 110.100 | 334.400 |
| 110.150 | 334.250 |
| 110.300 | 335.000 |
| 110.350 | 334.850 |
| 110.500 | 329.600 |
| 110.550 | 329.450 |
| 110.700 | 330.200 |
| 110.750 | 330.050 |
| 110.900 | 330.800 |
| 110.950 | 330.650 |
| 111.100 | 331.700 |
| 111.150 | 331.550 |
| 111.300 | 332.300 |
| 111.350 | 332.150 |
| 111.500 | 332.900 |
| 111.550 | 332.750 |
| 111.700 | 333.500 |
| 111.750 | 333.350 |
| 111.900 | 331.100 |
| 111.950 | 330.950 |

(5) VHF omni-range (VOR) stations are to be assigned frequencies in the 112.050–117.950 MHz band (50 kHz channel spacing) and the following frequencies in the 108–112 MHz band:

| | |
|---|---|
| 108.200 | 109.250 |
| 108.250 | 109.400 |
| 108.400 | 109.450 |
| 108.450 | 109.600 |
| 108.600 | 109.650 |
| 108.650 | 109.800 |
| 108.800 | 109.850 |
| 108.850 | 110.000 |
| 109.000 | 110.050 |
| 109.050 | 110.200 |
| 109.200 | 110.250 |
| 110.400 | 111.250 |
| 110.450 | 111.400 |
| 110.600 | 111.450 |
| 110.650 | 111.600 |
| 110.800 | 111.650 |
| 110.850 | 111.800 |
| 111.000 | 111.850 |
| 111.050 | 112.000 |
| 111.200 | |

(6) The band 960–1215 MHz is available for the use of land stations and associated airborne electronic aids to air navigation. When distance measuring equipment (DME) is intended to operate with a single VHF navigation station in the 108–117.975 MHz band, the DME operating channel must be paired with the VHF channel as shown in the following table:

DME Channeling and Pairing

[MHz]

| VHF channel | Airborne interrogating frequency | Ground reply frequency |
|---|---|---|
| 108.000 | 1041.000 | 978.000 |
| 108.050 | 1041.000 | 1104.000 |
| 108.100 | 1042.000 | 979.000 |
| 108.150 | 1042.000 | 1105.000 |
| 108.200 | 1043.000 | 980.000 |
| 108.250 | 1043.000 | 1106.000 |
| 108.300 | 1044.000 | 981.000 |
| 108.350 | 1044.000 | 1107.000 |
| 108.400 | 1045.000 | 982.000 |
| 108.450 | 1045.000 | 1108.000 |
| 108.500 | 1046.000 | 983.000 |
| 108.550 | 1046.000 | 1109.000 |
| 108.600 | 1047.000 | 984.000 |
| 108.650 | 1047.000 | 1110.000 |
| 108.700 | 1048.000 | 985.000 |
| 108.750 | 1048.000 | 1111.000 |
| 108.800 | 1049.000 | 986.000 |
| 108.850 | 1049.000 | 1112.000 |
| 108.900 | 1050.000 | 987.000 |
| 108.950 | 1050.000 | 1113.000 |
| 109.000 | 1051.000 | 988.000 |
| 109.050 | 1051.000 | 1114.000 |
| 109.100 | 1052.000 | 989.000 |
| 109.150 | 1052.000 | 1115.000 |
| 109.200 | 1053.000 | 990.000 |
| 109.250 | 1053.000 | 1116.000 |
| 109.300 | 1054.000 | 991.000 |
| 109.350 | 1054.000 | 1117.000 |
| 109.400 | 1055.000 | 992.000 |
| 109.450 | 1055.000 | 1118.000 |
| 109.500 | 1056.000 | 993.000 |
| 109.550 | 1056.000 | 1119.000 |
| 109.600 | 1057.000 | 994.000 |
| 109.650 | 1057.000 | 1120.000 |
| 109.700 | 1058.000 | 995.000 |
| 109.750 | 1058.000 | 1121.000 |
| 109.800 | 1059.000 | 996.000 |
| 109.850 | 1059.000 | 1122.000 |
| 109.900 | 1060.000 | 997.000 |
| 109.950 | 1060.000 | 1123.000 |
| 110.000 | 1061.000 | 998.000 |
| 110.050 | 1061.000 | 1124.000 |
| 110.100 | 1062.000 | 999.000 |
| 110.150 | 1062.000 | 1125.000 |
| 110.200 | 1063.000 | 1000.000 |
| 110.250 | 1063.000 | 1126.000 |
| 110.300 | 1064.000 | 1001.000 |
| 110.350 | 1064.000 | 1127.000 |
| 110.400 | 1065.000 | 1002.000 |
| 110.450 | 1065.000 | 1128.000 |
| 110.500 | 1066.000 | 1003.000 |
| 110.550 | 1066.000 | 1129.000 |
| 110.600 | 1067.000 | 1004.000 |
| 110.650 | 1067.000 | 1130.000 |

DME CHANNELING AND PAIRING—Continued

[MHz]

| VHF channel | Airborne interrogating frequency | Ground reply frequency |
|---|---|---|
| 110.700 | 1068.000 | 1005.000 |
| 110.750 | 1068.000 | 1131.000 |
| 110.800 | 1069.000 | 1006.000 |
| 110.850 | 1069.000 | 1132.000 |
| 110.900 | 1070.000 | 1007.000 |
| 110.950 | 1070.000 | 1133.000 |
| 111.000 | 1071.000 | 1008.000 |
| 111.050 | 1071.000 | 1134.000 |
| 111.100 | 1072.000 | 1009.000 |
| 111.150 | 1072.000 | 1135.000 |
| 111.200 | 1073.000 | 1010.000 |
| 111.250 | 1073.000 | 1136.000 |
| 111.300 | 1074.000 | 1011.000 |
| 111.350 | 1074.000 | 1137.000 |
| 111.400 | 1075.000 | 1012.000 |
| 111.450 | 1075.000 | 1138.000 |
| 111.500 | 1076.000 | 1013.000 |
| 111.550 | 1076.000 | 1139.000 |
| 111.600 | 1077.000 | 1014.000 |
| 111.650 | 1077.000 | 1140.000 |
| 111.700 | 1078.000 | 1015.000 |
| 111.750 | 1078.000 | 1141.000 |
| 111.800 | 1079.000 | 1016.000 |
| 111.850 | 1079.000 | 1142.000 |
| 111.900 | 1080.000 | 1017.000 |
| 111.950 | 1080.000 | 1143.000 |
| 112.000 | 1081.000 | 1018.000 |
| 112.050 | 1081.000 | 1144.000 |
| 112.100 | 1082.000 | 1019.000 |
| 112.150 | 1082.000 | 1145.000 |
| 112.200 | 1083.000 | 1020.000 |
| 112.250 | 1083.000 | 1146.000 |
| 112.300 | 1094.000 | 1157.000 |
| 112.350 | 1094.000 | 1031.000 |
| 112.400 | 1095.000 | 1158.000 |
| 112.450 | 1095.000 | 1032.000 |
| 112.500 | 1096.000 | 1159.000 |
| 112.550 | 1096.000 | 1033.000 |
| 112.600 | 1097.000 | 1160.000 |
| 112.650 | 1097.000 | 1034.000 |
| 112.700 | 1098.000 | 1161.000 |
| 112.750 | 1098.000 | 1035.000 |
| 112.800 | 1099.000 | 1162.000 |
| 112.850 | 1099.000 | 1036.000 |
| 112.900 | 1100.000 | 1163.000 |
| 112.950 | 1100.000 | 1037.000 |
| 113.000 | 1101.000 | 1164.000 |
| 113.050 | 1101.000 | 1038.000 |
| 113.100 | 1102.000 | 1165.000 |
| 113.150 | 1102.000 | 1039.000 |
| 113.200 | 1103.000 | 1166.000 |
| 113.250 | 1103.000 | 1040.000 |
| 113.300 | 1104.000 | 1167.000 |
| 113.350 | 1104.000 | 1041.000 |
| 113.400 | 1105.000 | 1168.000 |
| 113.450 | 1105.000 | 1042.000 |
| 113.500 | 1106.000 | 1169.000 |
| 113.550 | 1106.000 | 1043.000 |
| 113.600 | 1107.000 | 1170.000 |
| 113.650 | 1107.000 | 1044.000 |
| 113.700 | 1108.000 | 1171.000 |
| 113.750 | 1108.000 | 1045.000 |
| 113.800 | 1109.000 | 1172.000 |
| 113.850 | 1109.000 | 1046.000 |
| 113.900 | 1110.000 | 1173.000 |
| 113.950 | 1110.000 | 1047.000 |
| 114.000 | 1111.000 | 1174.000 |
| 114.050 | 1111.000 | 1048.000 |
| 114.100 | 1112.000 | 1175.000 |
| 114.150 | 1112.000 | 1049.000 |
| 114.200 | 1113.000 | 1176.000 |
| 114.250 | 1113.000 | 1050.000 |
| 114.300 | 1114.000 | 1177.000 |
| 114.350 | 1114.000 | 1051.000 |
| 114.400 | 1115.000 | 1178.000 |

DME CHANNELING AND PAIRING—Continued

[MHz]

| VHF channel | Airborne interrogating frequency | Ground reply frequency |
|---|---|---|
| 114.450 | 1115.000 | 1052.000 |
| 114.500 | 1116.000 | 1179.000 |
| 114.550 | 1116.000 | 1053.000 |
| 114.600 | 1117.000 | 1180.000 |
| 114.650 | 1117.000 | 1054.000 |
| 114.700 | 1118.000 | 1181.000 |
| 114.750 | 1118.000 | 1055.000 |
| 114.800 | 1119.000 | 1182.000 |
| 114.850 | 1119.000 | 1056.000 |
| 114.900 | 1120.000 | 1183.000 |
| 114.950 | 1120.000 | 1057.000 |
| 115.000 | 1121.000 | 1184.000 |
| 115.050 | 1121.000 | 1058.000 |
| 115.100 | 1122.000 | 1185.000 |
| 115.150 | 1122.000 | 1059.000 |
| 115.200 | 1123.000 | 1186.000 |
| 115.250 | 1123.000 | 1060.000 |
| 115.300 | 1124.000 | 1187.000 |
| 115.350 | 1124.000 | 1061.000 |
| 115.400 | 1125.000 | 1188.000 |
| 115.450 | 1125.000 | 1062.000 |
| 115.500 | 1126.000 | 1189.000 |
| 115.550 | 1126.000 | 1063.000 |
| 115.600 | 1127.000 | 1190.000 |
| 115.650 | 1127.000 | 1064.000 |
| 115.700 | 1128.000 | 1191.000 |
| 115.750 | 1128.000 | 1065.000 |
| 115.800 | 1129.000 | 1192.000 |
| 115.850 | 1129.000 | 1066.000 |
| 115.900 | 1130.000 | 1193.000 |
| 115.950 | 1130.000 | 1067.000 |
| 116.000 | 1131.000 | 1194.000 |
| 116.050 | 1131.000 | 1068.000 |
| 116.100 | 1132.000 | 1195.000 |
| 116.150 | 1132.000 | 1069.000 |
| 116.200 | 1133.000 | 1196.000 |
| 116.250 | 1133.000 | 1070.000 |
| 116.300 | 1134.000 | 1197.000 |
| 116.350 | 1134.000 | 1071.000 |
| 116.400 | 1135.000 | 1198.000 |
| 116.450 | 1135.000 | 1072.000 |
| 116.500 | 1136.000 | 1199.000 |
| 116.550 | 1136.000 | 1073.000 |
| 116.600 | 1137.000 | 1200.000 |
| 116.650 | 1137.000 | 1074.000 |
| 116.700 | 1138.000 | 1201.000 |
| 116.750 | 1138.000 | 1075.000 |
| 116.800 | 1139.000 | 1202.000 |
| 116.850 | 1139.000 | 1076.000 |
| 116.900 | 1140.000 | 1203.000 |
| 116.950 | 1140.000 | 1077.000 |
| 117.000 | 1141.000 | 1204.000 |
| 117.050 | 1141.000 | 1078.000 |
| 117.100 | 1142.000 | 1205.000 |
| 117.150 | 1142.000 | 1079.000 |
| 117.200 | 1143.000 | 1206.000 |
| 117.250 | 1143.000 | 1080.000 |
| 117.300 | 1144.000 | 1207.000 |
| 117.350 | 1144.000 | 1081.000 |
| 117.400 | 1145.000 | 1208.000 |
| 117.450 | 1145.000 | 1082.000 |
| 117.500 | 1146.000 | 1209.000 |
| 117.550 | 1146.000 | 1083.000 |
| 117.600 | 1147.000 | 1210.000 |
| 117.650 | 1147.000 | 1084.000 |
| 117.700 | 1148.000 | 1211.000 |
| 117.750 | 1148.000 | 1085.000 |
| 117.800 | 1149.000 | 1212.000 |
| 117.850 | 1149.000 | 1086.000 |
| 117.900 | 1150.000 | 1213.000 |
| 117.950 | 1150.000 | 1087.000 |

(7) 1300–1350 MHz: The use of this band is restricted to surveillance radar stations and associated airborne transponders.

(8) 1544–1660.5 MHz: The use of this band is limited to:

(i) 1544–1545 MHz—Transmission from satellite-borne stations (space-to-Earth) in the mobile-satellite service concerning distress and safety operations.

(ii) 1545–1559 MHz—Aeronautical mobile-satellite (R) (space-to-Earth). Transmissions from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links.

(iii) 1559–1626.5 MHz—Airborne electronic aids to air navigation and any associated land stations.

(iv) 1626.5–1645.5 MHz—Maritime mobile-satellite service (Earth-to-space).

(v) 1645.5–1646.5 MHz—Transmissions from earth stations (Earth-to-space) in the mobile-satellite service concerning distress and safety operations.

(vi) 1646.5–1660.5 MHz—Aeronautical mobile-satellite (R) (Earth-to-space).

(vii) Radio altimeters licensed in the frequency band 1600–1660 MHz as of July 1, 1971, may continue to be licensed until international standardization requires the discontinuance of radio altimeters in this band. Applications for type acceptance of new radio altimeters in this band will not be accepted.

(9) 2700–2900 MHz: Non-Government land-based radars may be licensed. U.S. Government coordination is required. Applicants must demonstrate a need for the service which the Government is not prepared to render.

(10) 5000–5250 MHz: This band is to be used for the operation of the international standard system (microwave landing system).

(11) 9000–9200 MHz: This band is available to land-based radars. Stations operating in this band may receive interference from stations operating in the radiolocation service.

(12) 14,000–14,400 MHz: This band is available for use in the aeronautical radionavigation service.

(13) 15,400–15,700 MHz: This band is available for use of land stations associated with airborne electronic aids to air navigation.

(14) 24,250–25,250, 31,800–33,400 MHz: In these bands, land-based radionavigation aids are permitted where they operate with airborne radionavigation devices.

(c) *Frequencies available for radionavigation land test stations.* (1) The frequencies set forth in § 87.187(c), (e) through (j) and § 87.475(b)(6) through

(b)(10), (b)(12) may be assigned to radionavigation land test stations for the testing of aircraft transmitting equipment which normally operate on these frequencies and for the testing of land-based receiving equipment which operate with airborne radionavigation equipment.

(2) The frequencies available for assignment to radionavigation land test stations for the testing of airborne receiving equipment are 108.000 and 108.050 MHz for VHF omni-range; 108.100 and 108.150 MHz for localizer, 334.550 and 334.700 MHz for glide slope; 978 and 979 MHz (X channel)/1104 MHz (Y channel) for DME; 1030 MHz for ATC radar beacon transponders; and 5031.0 MHz for microwave landing systems. Additionally, the frequencies in paragraph (b) of this section may be assigned to radionavigation land test stations after coordination with the FAA. The following conditions apply:

(i) The maximum power authorized on the frequencies 108.150 and 334.550 MHz is 1 milliwatt. The maximum power authorized on all other frequencies is one watt.

(ii) The pulse repetition rate (PRR) of the 1030 MHz ATC radar beacon test set will be 235 pulses per second (pps) ±5pps.

(iii) The assignment of 108.000 MHz is subject to the condition that no interference will be caused to the reception of FM broadcasting stations and stations using the frequency are not protected against interference from FM broadcasting stations.

(d) *Frequencies available for ELT test stations.* The frequencies available for assignment to ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800, 121.850, and 121.900 MHz. Licensees must:

(1) Not cause harmful interference to voice communications on these frequencies or any harmonically related frequency.

(2) Coordinate with the appropriate FAA Regional Spectrum Management Office prior to each activation of the transmitter.

### § 87.477 Condition of grant for radionavigation land stations.

Radionavigation land stations may be designated by the FAA as part of the National Airspace System. Stations so designated will be required to serve the public under IFT conditions. This condition of grant is applicable to all radionavigation land stations.

### § 87.479 Harmful interference to radionavigation land stations.

(a) Military or other Government stations have been authorized to establish wide-band systems using frequency-hopping spread spectrum techniques in the 960–1215 MHz band. Authorization for a Joint Tactical Information Distribution Systems (JTIDS) has been permitted on the basis of non-interference to the established aeronautical radionavigation service in this band. In order to accommodate the requirements for the system within the band, restrictions are imposed. Transmissions will be automatically prevented if:

(1) The frequency-hopping mode fails to distribute the JTIDS spectrum uniformly across the band;

(2) The radiated pulse varies from the specified width of 6.4 microseconds ±5%;

(3) The energy radiated within ±7 MHz of 1030 and 1090 MHz exceeds a level of 60 dB below the peak of the JTIDS spectrum as measured in a 300 kHz bandwidth. The JTIDS will be prohibited from transmitting if the time slot duty factor exceeds a 20 percent duty factor for any single user and a 40 percent composite duty factor for all JTIDS emitters in a geographic area.

(b) If radionavigation systems operating in the 960–1215 MHz band experience interference or unexplained loss of equipment performance, the situation must be reported immediately to the nearest office of the FAA, the National Telecommunications and Information Administration, Washington, DC 20504, or the nearest Federal Communications Commission field office. The following information must be provided to the extent available:

(1) Name, call sign and category of station experiencing the interference;

(2) Date and time of occurrence;

(3) Geographical location at time of occurrence;

(4) Frequency interfered with;

(5) Nature of interference; and

(6) Other particulars.

### § 87.481 Unattended operation of domestic radiobeacon stations.

(a) Radiobeacons may be licensed for unattended operation. An applicant for unattended operations must provide information about the following:

(1) The transmitter is crystal controlled and specifically designed for radiobeacon service and capable of transmitting by self-actuating means;

(2) The emissions of the transmitter must be continuously monitored by a licensed operator, or by a direct positive automatic monitor, supplemented by aural monitoring at suitable intervals;

(3) If as a result of aural monitoring it is determined that a deviation from the terms of the station license has occurred, the transmitters must be disabled immediately by a properly authorized person. If automatic monitoring is used, the monitor must insure that the operation of the transmitter meets the license terms or is disabled;

(4) The time, including travel time, required for a properly authorized person to disable the transmitter;

(5) The equipment must be inspected at least every 180 days. Results of inspections must be kept in the station maintenance records;

(6) The transmitter is not operable by or accessible to, other than authorized persons;

(7) The transmitter is in a remote location.

(b) Authority for unattended operation must be expressly stated in the station license.

## Subpart R—Civil Air Patrol Stations

### § 87.501 Scope of service.

Civil Air Patrol land and mobile stations must be used only for training, operational and emergency activities of the Civil Air Patrol.

(a) Civil Air Patrol land and mobile stations may communicate with other land and, mobile stations of the Civil Air Patrol. A Civil Air Patrol land station may be moved from its authorized location for temporary operation in the same general area for short periods of time not to exceed 72 hours.

(b) When engaged in training or on actual missions in support of the U.S. Air Force, Civil Air Patrol stations may communicate with U.S. Air Force stations on the frequencies specified in Subpart E.

### § 87.503 Supplemental eligibility.

Licenses for Civil Air Patrol land and mobile stations will be issued only to Wings or the Headquarters of the Civil Air Patrol. All application must be submitted to the Commission via Civil Air Patrol Headquarters, Maxwell, ARB. A single fleet license will be issued to Civil Air Patrol Headquarters and to each Civil Air Patrol Wing to authorize all Civil Air Patrol Station transmitters operated by that Wing or Headquarters.

### § 87.505 Frequencies.

The assigned frequencies available for assignment to Civil Air Patrol land and mobile stations are contained in the frequency table in Subpart E. The frequency, emission, and maximum power will be determined by Headquarters Civil Air Patrol in accordance with the Civil Air Patrol Communications Plan.

## Subpart S—Automatic Weather Observation Stations

### § 87.525 Scope of service.

Automatic weather observation stations must provide up-to-date weather information including the time of the latest weather sequence, altimeter setting, wind speed and direction, dewpoint, temperature, visibility and other pertinent data needed at airports having neither a full-time control tower nor a full-time FAA Flight Service Station. When a licensee has entered into an agreement with the FAA, an automatic weather observation station may also operate as an automatic terminal information station during the control tower's operating hours.

### § 87.527 Supplemental eligibility.

(a) Licenses will be granted only upon FAA approval.

(b) Eligibility for an automatic weather observation station or an automatic terminal information station is limited to the owner or operator of an airport or to a person who has entered into a written agreement with the owner or operator for exclusive rights to operate and maintain the station. Where applicable a copy of the agreement between the applicant and owner or operator of the airport must be submitted with an application.

(c) Only one automatic weather observation station or an automatic terminal information station will be licensed at an airport.

### § 87.529 Frequencies.

Prior to submitting an application, each applicant must notify the nearest appropriate FAA Regional Spectrum Management Office. Each application must be accompanied by a statement showing the name of the FAA Regional Office and date notified. The Commission will assign the frequency. Normally frequencies available for air traffic control operations set forth in Subpart E will be assigned to automatic weather observation stations and to automatic terminal information stations. When a licensee has entered into an agreement with the FAA to operate the same station as both an automatic weather observation station and as an automatic terminal information station, the same frequency will be used in both modes of operation.

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Part III

# Department of Transportation

**Coast Guard**

**46 CFR Part 30 et al.**
**Pollution Rules for Ships Carrying Hazardous Liquids; Interim Rule**

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VOL 53 ISS 147 AUG 1 1988 UMI

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Parts 30, 98, 151, and 153**

**[CGD 81-101]**
**RIN 2115-AA73**

## Pollution Rules for Ships Carrying Hazardous Liquids; Interim Rule

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is making some changes to its regulations that implement Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). These changes correct some errors and discrepancies between the regulations and Annex II of MARPOL 73/78. The changes in this interim rule align the regulations with the convention.

**DATES:** 1. The effective date is August 31, 1988.

2. Comments must be submitted on or before September 15, 1988.

**ADDRESSES:** Comments should be submitted to Commandant (G-LRA-2) (CGD 81-101), United States Coast Guard, Washington, DC 20593-0001. Between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays, comments may be delivered to and will be available for inspection or copying at the Regulations Administration Branch (G-LRA-2), United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. The Environmental and Economic Impact Assessments are available for inspection or copying at this same location.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Query, Office of Marine Safety, Security and Environmental Protection, telephone (202) 267-1217 from 8:00 am until 3:30 pm, Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published the final rule implementing Annex II of MARPOL 73/78 in the March 12, 1987 **Federal Register** (52 FR 7765). The Notice of Proposed Rulemaking (NPRM) was published on September 26, 1986 (51 FR 34350). Experience under this rule disclosed several areas that require clarification and revealed some requirements mandated by the convention that are not addressed in the rules. This interim rule makes the necessary changes. Since affected parties are aware of the convention requirements and have been applying the existing rules to implement the convention, these changes are being published as an interim rule, effective 30 days after publication. To ensure that the rules, as changed, accurately reflect all convention requirements, the Coast Guard is soliciting comments on these changes and may further revise the rules as a result of these comments.

### Drafting Information

The principal persons involved in drafting this final rule are Mr. Robert M. Query, Project Manager, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

### Discussion of Changes

*Changes to 46 CFR Part 30*

Table 30.25-1 of 46 CFR Part 30 contains a list of cargoes regulated under 46 CFR Parts 30 through 38. A number of these cargoes are Category A, B, or C noxious liquid substances (NLSs); hence they are also regulated under Part 153 when the vessel carrying them is oceangoing. In the table published in the final rule, the Category A, B, and C NLS cargoes were indicated by a bullet beside the cargo name. The Coast Guard is reprinting Table 30.25-1, replacing the bullets with the actual cargo category for quicker identification. The Category D NLS cargoes in the table are also indicated; the pollution related requirements applying to these Category D NLS cargoes are in 33 CFR Part 151. The text of section 30.25-1 is modified to explain the revised table entries. This change will clarify the status of the cargo when carried on oceangoing ships. Formerly Part 30 did not indicate that some cargoes had not been evaluated for polluting characteristics.

*Changes to Part 98*

In order to be in agreement with Regulation 2 of Annex II of MARPOL 73/78, a new section is added to Subpart 98.30 covering the carriage of NLSs in marine portable tanks. The Coast Guard does not know of any ships carrying NLSs in marine portable tanks, other than those on offshore supply vessels, and does not believe this change will have any impact. In the notice of proposed rulemaking the Coast Guard described its intention to include requirements in the final rule for ships carrying NLSs under this subpart; however, the final rule did not contain these provisions.

The title of § 98.31-10 is revised to clarify what the section covers.

*Changes to Part 151*

Table 151.01-10(d) is removed and reserved. References in this part to this table are replaced with references to the identical Table 30.25-1. This change eliminates the administrative problems of ensuring both tables are identical and up to date. There is no effect on the requirements applying to the cargoes.

Paragraph (c) of § 151.01-15 is removed; the content of this paragraph is covered by the text of § 30.25-1 discussed above. The change does not affect the requirements applying to the cargoes.

Section 153.1130, which concerns reporting of failed equipment, is added to the list of sections contained in § 151.12-10 applying to the carriage of Category D NLS cargoes. The only significant effect this change has is to require that failures of Category D NLS related equipment on oceangoing barges be reported as are those of equipment for Category A, B, and C NLSs. The Coast Guard believes the effect of this change will be very slight. Although the change will give more consistent treatment to the different cargo categories, Category D NLS cargoes have very little in the way of equipment requirements.

*Changes to 46 Part 153*

Paragraph (c) of the Applicability in § 153.1 is rewritten to clarify it.

The definition of "high viscosity NLS" is modified to exclude Category A NLS cargoes included in the previous definition. The only effect the inclusion of Category A cargo in this definition had on the regulation was to require a heated rather than unheated prewash. A change to the requirements for a heated prewash in § 153.1108(d), described later in this preamble, restores the heated prewash requirement for Category A NLS cargoes, so the net effect is editorial only. The change will remove a discrepancy in definitions between the regulation and the Convention.

Paragraph (d)(2) of § 153.7 is revised to clarify the grandfathering of existing oceangoing barges. The changes allow a barge to carry any of the NLS cargoes without having to meet the design and equipment requirements of Part 153 if the barge meets those requirements specifically listed in the section.

Paragraph (a)(3) of § 153.440, which requires cargo temperature indicators in certain circumstances, is revised to show that the requirement can be waived by § 153.491. These temperature indicators would be unnecessary for dedicated tanks operating under a § 153.491 waiver since the indicators only aid in reducing the tank residue, a result that is unimportant when the tank is dedicated. The revision removes a regulatory burden.

A cross-reference to the prewash required under § 153.1118 is added to § 153.481(a) so that the reader is made aware that a prewash is an operating requirement conditioned upon the interim stripping provision. Paragraph (b)(4) of § 153.481 is modified to require the flow controls only if the flow can exceed the limiting value Q. These changes both clarify the requirement and reduce the burden.

Paragraph (b) of § 153.483 is revised to reduce the information required for the waiver and simplify the requirements for a waiver when the vessel trades only between U.S. ports. The change reduces the burden but does not substantially change the conditions under which the Coast Guard grants a waiver.

The requirement for a Procedures and Arrangements Manual in § 153.490(b)(1) is changed to provide an alternative in which the Commandant (G–MTH) can determine the manual's format and contents under certain circumstances. The Coast Guard intends to use this provision to allow an endorsement on the Certificate of Inspection requiring NLS residues to be discharged to a shore reception facility to constitute the Procedures and Arrangements Manual. This alternative will be allowed for ships that carry only a Category D NLS and ships having certain waivers.

Some clarifications of an editorial nature are made to paragraph (a) of § 153.900. Changes to paragraph (c) of that section add a reference to Table § 151.05 and clarify the text. Neither of these has any significant impact.

A footnote is added to § 153.1102(a) to point out that other laws allow controlled discharges of materials that may be NLS's. Several comments have expressed concern that there might be a violation of the rules in Part 153 while discharging properly under an EPA permit. The note points out that discharge under an EPA permit is allowed.

The requirement in § 153.1104 to drain cargo in transfer lines back to shore is modified so that the requirement does not apply when the cargo tank has a waiver under § 153.483 or § 153.491. There is no reason for the requirement if the tank is not going to be washed at sea.

Section 153.1108 is modified to require heated prewash water when a prewash is required for a cargo having a viscosity exceeding 25 mPa.Sec at 20 °C. This Annex II requirement was unintentionally omitted from the final rule. The Coast Guard believes this change to have little effect since so few prewashes are occurring. See the discussion of "high viscosity" under § 153.2 above.

The prewash procedures in § 153.1120 are intended to define what must be done before a prewash may be considered completed. No penalities were intended to apply to an improperly executed prewash beyond the necessity of repeating the operation. The introductory text has been reworded to clarify the procedure and the ramifications when the procedure is violated.

Some typographical corrections to § 153.1128 are made. The entry for "ethyl ether" in Table 1 is corrected because the entry was improperly printed in the final rule. The entry for "styrene" is corrected to remove the requirement for a high level alarm. The entry for "cresylate spent caustic" is revised to correct the pollution category to "A" and to require a type II hull. Although this correction to the entry for "cresylate spent caustic" is substantive, the Coast Guard cannot allow the cargo to be carried with no controls, in violation of MARPOL 73/78.

Table 2 is modified to show the NLS category of those cargoes that are NLSs. Though Table 2 was previously a list of "unregulated" cargoes, many of the entries were NLSs and were removed from the table when the final rule implementing Annex II was published. Removing these NLSs has caused some confusion for the operators of barges that are not under Annex II, since for them these cargoes are still "unregulated." For this reason, the old cargoes have been reinserted into Table 2, along with their NLS categories. Thus, Table 2 is no longer a list of "unregulated" cargoes; it instead is similar to Table 30.25–1(d) of Title 46, where the requirements applying to the cargoes depend on whether or not the vessel is under Annex II.

**Federalism Implications**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**E.O. 12291 and DOT Regulatory Policies and Procedures**

These regulations are not considered to be major under Executive Order 12291 nor significant under DOT regulatory policies and procedures [44 FR 11034; February 26, 1979]. The corrections and changes in this interim final rule do not affect the arguments and conclusions in the Regulatory Evaluation made for the rule.

**Regulatory Flexibility Act**

A Regulatory Flexibility Analysis for the final rule was contained in the Final Regulatory Evaluation for the rule. The corrections and changes in this interim final rule do not materially affect the Regulatory Flexibility Analysis for the final rule. The Coast Guard certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This interim final rule contains no new information collection or recordkeeping requirements.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this interim final rule and concluded that preparation of an environmental impact statement is not necessary since the corrections and changes here do not change the environmental consequences of the final rule.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be to cross reference this action with the Unified Agenda.

**List of Subjects**

*46 CFR Part 30*

Cargo vessels, Foreign relations, Hazardous Materials Transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 98*

Cargo vessels, Hazardous Materials Transportation, Marine Safety.

*46 CFR Part 151*

Cargo vessels, Hazardous Materials Transportation, Marine Safety, Reporting and recordkeeping requirements.

*46 CFR Part 153*

Cargo vessels, Hazardous Materials Transportation, Marine Safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations, is amended as follows:

## PART 30—[AMENDED]

1. The authority citation for Part 30 is revised to read as follows:

**Authority:** 46 U.S.C. 3507, 3703; 49 U.S.C. 1804; 49 CFR 1.46.

2. By revising § 30.25–1 to read as follows:

**§ 30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter.**

The cargoes listed in Table 30.25–1 are flammable or combustible and when transported in bulk must be in vessels certificated under the rules of this subchapter. A mixture or blend of two or more cargoes appearing in Table 30.25–1 may be transported under the provisions of this subchapter. A Category A, B, or C noxious liquid substance (NLS) cargo, as defined in § 153.2 of this chapter, that is listed in Table 30.25–1 and any mixture containing one or more Category A, B, or C NLS cargoes listed in Table 30.25–1 may be carried in bulk under this subchapter if the vessel is not regulated under Part 153 of this chapter. If the vessel is regulated under § 153.1 of this chapter, Category A, B, and C NLS cargoes must be carried under Part 153, or, as an alternative in the case of Category C oil-like NLS, under 33 CFR Part 151. Requirements for Category D NLS cargoes and mixtures of non-NLS cargoes with Category D NLS cargoes are in 33 CFR Part 151.

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

| Cargoes | Pollution Category |
|---|---|
| Acetone | III |
| Acetophenone | D |
| Acetyl tributyl citrate | # |
| Alcohols (mixed) | # |
| Alkenylsuccinic acid | # |
| Alkenylsuccinic anhydride | # |
| Alkyl benzene sulfonic acid (4% or less) | # |
| Alkyl phthalates (n-) | # |
| Alkyl succinate formaldehyde hydroxy amino condensate (3.2% or less) | # |
| Amyl acetate (iso-, n-) | C |
| Amyl alcohol (n-) | D |
| Amylene see Pentene (all isomers) | C |
| Amyl methyl ketone see Methyl amyl ketone | C |
| Amyl tallate | # |
| Asphalt | I |
| Asphalt blending stocks: | |
| Roofers flux | I |
| Straight run residue | I |
| Behenyl alcohol | III |
| Benzyl alcohol | C |
| Bicyclic terpenel polyamine amide salt | # |
| Butane | LFG |
| Butyl acetate (iso-, n-) | C |
| Butyl acetate (sec-) | D |
| Butyl alcohol (iso-, n-, sec-, tert-) | III |
| Butyl benzyl phthalate | A |
| Butylene | LFG |
| 1,3-Butylene glycol | D |
| Butylene polyglycol | # |
| Butyl heptyl ketone | C* |

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

| Cargoes | Pollution Category |
|---|---|
| Butyl methyl ketone | # |
| Butyl stearate | III |
| Butyl toluene | # |
| Butyrolactone (gamma) | D |
| Calcium alkylphenate | # |
| Calcium alkyl salicylate | D |
| Calcium amino nonyl phenolate | # |
| Calcium carboxylate | # |
| Caprolactam solutions | D |
| Carbon black base | # |
| Cetyl alcohol (Hexadecanol) | III |
| Cetyl-Stearyl alcohol | III |
| Cleaning spirit (unleaded) | # |
| Cumene | B |
| Cycloaliphatic resins | # |
| Cyclohexane | C |
| Cyclohexanol | C |
| Cyclopentadiene polymers | # |
| Cymene (para-) | C |
| Decaldehyde (iso-) | C* |
| Decaldehyde (n-) | B* |
| Decane | D |
| Decene | B |
| Decyl alcohol (iso-, n-) | B |
| Decyl benzene (n-) | D |
| Detergent alkylate | # |
| Diacetone alcohol | D |
| Dibutyl carbinol | # |
| Dibutyl phthalate (ortho-) | A |
| Dicyclopentadiene | III |
| Diethyl benzene | C |
| Diethylene glycol | III |
| Diethylene glycol butyl ether | III |
| Diethylene glycol butyl ether acetate | D |
| Diethylene glycol diethyl ether | III |
| Diethylene glycol ethyl ether | III |
| Diethylene glycol ethyl ether acetate | D |
| Diethylene glycol methyl ether | C |
| Diethylene glycol methyl ether acetate | D |
| Diethylene glycol phenyl ether | D |
| Di(ethylhexyl)phthalate | D |
| Diethyl phthalate | C |
| Diglycidyl ether of Bisphenol A | B |
| Diheptyl phthalate | III |
| Dihexyl phthalate | III |
| Diisobutyl carbinol | # |
| Diisobutylene | B |
| Diisobutyl ketone | D |
| Diisobutyl phthalate | B |
| Diisodecyl phthalate | D |
| Diisononyl phthalate | D |
| Diisooctyl phthalate | III |
| Diisopropyl benzene | A |
| Diisopropyl naphthalene | D |
| Dimethyl benzene | # |
| Dimethyl phthalate | C |
| Dimethyl polysiloxane | III |
| 2,2-Dimethylpropane-1,3-diol | D |
| Dinonyl phthalate | D |
| Di(octylphenyl)amine | # |
| Dioctyl phthalate | III |
| Dipentene | C |
| Diphenyl | A |
| Diphenyl/Diphenyl oxide | A |
| Diphenyl ether | A |
| Dipropylene glycol | III |
| Dipropylene glycol dibenzoate | D |
| Dipropylene glycol methyl ether | D |
| Distillates: | |
| Flashed feed stocks | I |
| Straight run | I |
| Diundecyl phthalate | D |
| Dodecylphenol | A |
| Epoxylated linear alcohols, C11-C15 | # |
| Ethane | LFG |

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

| Cargoes | Pollution Category |
|---|---|
| Ethoxyethanol | D |
| Ethoxyethyl acetate | C |
| Ethoxylated alcohols, C11-C15 | # |
| Ethoxy triglycol (crude) | # |
| Ethyl acetate | D |
| Ethyl alcohol | III |
| Ethyl amyl ketone | C* |
| Ethyl benzene | C |
| Ethyl butanol | # |
| Ethyl cyclohexane | D |
| Ethylene | LFG |
| Ethylene carbonate | III |
| Ethylene glycol | D |
| Ethylene glycol butyl ether | III |
| Ethylene glycol butyl ether acetate | D |
| Ethylene glycol diacetate | C |
| Ethylene glycol ethyl ether | # |
| Ethylene glycol ethyl ether acetate | C |
| Ethylene glycol isopropyl ether | D |
| Ethylene glycol methyl butyl ether | D |
| Ethylene glycol methyl ether | D |
| Ethylene glycol methyl ether acetate | D |
| Ethylene glycol phenyl ether | D |
| Ethylene-Propylene copolymer (in liquid mixtures) | III |
| Ethylhexaldehyde see Octyl aldehydes | B |
| Ethylhexanoic acid | D |
| 2-Ethyl hexanol | # |
| Ethylhexoic acid | # |
| Ethyl hexyl phthalate | C* |
| Ethyl hexyl tallate | # |
| Ethyl toluene | B |
| Fatty acid amides | # |
| Formamide | D |
| Furfuryl alcohol | C |
| Gas oil, cracked | I |
| Gasoline blending stocks: | |
| Alkylates | I |
| Reformates | I |
| Gasolines: | |
| Automotive (containing not over 4.23 grams lead per gallon) | I |
| Aviation (containing not over 4.86 grams lead per gallon) | I |
| Casinghead (natural) | I |
| Polymer | I |
| Straight run | I |
| Glycenne | III |
| Glycerol | # |
| Glyceryl triacetate | III |
| Glycidyl ester of tertiary carboxylic acid | B |
| Glycidyl ester of versatic acid | # |
| Glycol diacetate | # |
| Glycols, Resins, & Solvents mixture | # |
| Glycol triacetate | # |
| Glyoxal (40%) | # |
| Grease | # |
| Heptadecane | III |
| Heptane | III |
| Heptanoic acid | D |
| Heptanol | C |
| Heptene | C |
| Herbicide (C15-H22-NO2-Cl) | # |
| Hexaethylene glycol | # |
| Hexamethylene glycol | III |
| Hexane (iso-) | # |
| Hexane (n-) | III |
| Hexanol | D |
| Hexene | C |
| Hexyl acetate | B |
| Hexylene glycol | III |
| Hog grease | # |
| Isophorone | D |

TABLE 30.25-1--LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES--Continued

| Cargoes | Pollution Category |
|---|---|
| Jet fuels: | |
| JP-1 (kerosene) | I |
| JP-3 | I |
| JP-4 | I |
| JP-5 (kerosene, heavy) | I |
| Kerosene | I |
| Lactic acid | D |
| Lard | III |
| Latex, liquid synthetic | # |
| Magnesium nonyl phenol sulfide | # |
| Magnesium sulfonate | # |
| Maleic anhydride copolymer | # |
| 2-Mercaptobenzothiazol (in liquid mixtures) | # |
| Methane | LFG |
| Methoxy triglycol | # |
| Methyl acetate | III |
| Methyl acetoacetate | D |
| Methyl alcohol | III |
| Methyl amyl acetate | C |
| Methyl amyl alcohol | C |
| Methyl amyl ketone | C |
| Methyl butanol | # |
| Methyl ethyl ketone | D |
| Methyl formal (dimethyl formal) | # |
| Methyl heptyl ketone | B |
| Methyl isobutyl carbinol | # |
| Methyl isobutyl ketone | D |
| Methyl naphthalene | A* |
| Methyl pentene | C |
| N-Methyl pyrrolidone | B |
| Methyl tert-butyl ether | D |
| Mineral spirits | I |
| Naphtha: | |
| Aromatic (10% or less Benzene) | I |
| Cracking fraction | I |
| Heavy | I |
| Paraffinic | I |
| Petroleum | I |
| Solvent | I |
| Stoddard Solvent | I |
| Varnish makers' and painters' (75%) | I |
| Naphthenic acid | A* |
| Nonane | D |
| Nonanoic acid | D |
| Nonanoic, Tridecanoic acid mixture | # |
| Nonene | B |
| Nonyl alcohol | C |
| Nonyl phenol | A |
| Nonyl phenol (ethoxylated) | B* |
| Nonyl phenol sulfide (90% or less) | # |
| Octadecene | III |
| Octadecenoamide (Oleamide) | D |
| Octane | D |
| Octene | B |
| Octyl acetate | D |
| Octyl alcohol (iso-, n-) | C |
| Octyl aldehyde (iso-) | B |
| Octyl epoxytallate | # |
| Octyl phthalate | # |
| Oil: | |
| Absorption | I |
| Aliphatic | I |
| Animal | D |
| Aromatic | I |
| Aviation F2300 | I |
| Clarified | I |
| Coal | # |
| Coal tar | A |
| Croton | # |
| Crude | I |
| Diesel | I |
| Fuel oils: | |
| No. 1 (kerosene) | I |
| No. 1-D | I |
| No. 2 | I |
| No. 2-D | I |
| No. 4 | I |
| No. 5 | I |
| No. 6 | I |
| Gas, low pour | I |
| Gas, low sulphur | I |
| Heartcut distillate | I |
| Lanolin | D |
| Linseed | D |
| Lubricating | I |
| Mineral | I |
| Mineral seal | I |
| Motor | I |
| Neatsfoot | D |
| Oiticica | D |
| Penetrating | I |
| Perilla | D |
| Pilchard | D |
| Pine | B* |
| Range | I |
| Residual | I |
| Resin | I |
| Resinous petroleum | # |
| Road | I |
| Rosin | A |
| Seal | I |
| Soapstock | # |
| Sperm | D |
| Spindle | I |
| Spray | # |
| Tall | B |
| Tall, fatty acid | C |
| Tanner's | # |
| Transformer | I |
| Tung | D |
| Turbine | I |
| Whale | D |
| White (mineral) | I |
| Wood | # |
| Edible oils, including: | |
| Babassu | D |
| Beechnut | D |
| Castor | D |
| Cocoa butter | D |
| Coconut | D |
| Coconut oil, esterified | D |
| Coconut oil, fatty acid | C* |
| Coconut oil, methyl ester | # |
| Cod liver | D |
| Corn | D |
| Cottonseed | D |
| Cottonseed, fatty acid | C* |
| Fish | D |
| Grapeseed | # |
| Groundnut | D |
| Hazelnut | D |
| Lard | # |
| Maize | # |
| Mustard seed | # |
| Nutmeg butter | D |
| Olive | D |
| Palm | D |
| Peanut | D |
| Poppy | D |
| Raisin seed | D |
| Rapeseed | D |
| Rice bran | D |
| Safflower | D |
| Salad | D |
| Sesame | D |
| Soya bean | D |
| Soya bean (epoxidized) | # |
| Sunflower seed | # |
| Tucum | D |
| Vegetable | # |
| Walnut | D |
| Oleic acid | D |
| Oleyl alcohol (Octadecenol) | III |
| Organic amine 70 (mixture of high molecular weight alcohol amines) | III |
| Pentadecanol | III |
| Pentaethylene glycol | # |
| Pentane (iso-) | D |
| Pentane (n-) | C |
| 1-Pentene | C |
| Petrolatum | I |
| Phosphosulfurized bicyclic terpene | # |
| Phthalate plasticizers | # |
| Pinene | B |
| Polyalkenyl succinic anhydride amine | # |
| Polyamine, amide mixture | # |
| Polybutene | III |
| Polyethylene glycols | III |
| Polyisobutylene | III |
| Polymerized esters | # |
| Polypropylene | III |
| Polypropylene glycols | D |
| Polypropylene glycol methyl ether | III |
| Polystyrene dialkyl maleate | # |
| Propane | LFG |
| Propyl acetate (iso-) | III |
| Propyl acetate (n-) | D |
| Propyl alcohol (iso-) | III |
| Propyl alcohol (n-) | D |
| Propyl benzene (iso-) see Cumene | B |
| Propyl benzene (n-) | C* |
| Propylene | LFG |
| Propylene butylene polymer | III |
| Propylene glycol | III |
| Propylene glycol ethyl ether | D |
| Propylene glycol methyl ether | D |
| Propylene polymer (in liquid mixtures) | # |
| Propylene tetramer | III |
| Propylene trimer | B |
| Psuedocumene (1,2,4-Trimethylbenzene) | B |
| Rum | # |
| Sodium acetate, Glycol, Water solutions | # |
| Sodium sulfonate | # |
| Stearic acid | # |
| Stearyl alcohol (Octadecanol) | III |
| Sulfolane | III |
| Tallow | D |
| Tallow alcohol | # |
| Tallow fatty acid | D |
| Tallow nitrile | # |
| Tetradecanol | III |
| Tetradecene | III |
| Tetradecyl benzene | C* |
| Tetraethylene glycol | III |
| Tetrahydronaphthalene | C |
| Tetrapropyl benzene | # |
| Toluene | C |
| Triarylphosphate | A* |
| Tributyl phosphate | B |
| Tricresyl (Tritolyl) phosphate (less than 1% ortho isomer) | A |
| Tridecane | D |
| Tridecanoic acid | III |
| Tridecanol | III |
| Tridecene | III |
| Tridecyl benzene | C |
| Triethyl benzene | A |
| Triethylene glycol | III |
| Triethylene glycol butyl ether mixture | # |
| Triethylene glycol diethyl butyrate | C* |
| Triethylene glycol ether mixture | # |
| Triethylene glycol methyl ether | D |
| Triethyl phosphate | D |
| Triisooctyl trimellitate | # |

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

| Cargoes | Pollution Category |
|---|---|
| Trimethyl benzene | B |
| 2,2,4-Trimethylpentanediol-1,3-diisobutyrate | # |
| 2,2,4-Trimethyl-3-pentanol-1-isobutyrate | # |
| Tripropylene | # |
| Tripropylene glycol | III |
| Tripropylene glycol methyl ether | D |
| Trixylenyl phosphate | A |
| Turpentine | B |
| Turpentine substitute (White spirit) | # |
| Undecanol | B |
| Undecene | B |
| Undecylbenzene | C* |
| Vinyl acetate-fumarate copolymer | # |
| Waxes: | D |
| Candelilla | # |
| Carnauba | # |
| Paraffin | III |
| Petroleum | # |
| White spirit | # |
| White spirit, Low Aromatic | B |
| Wine | III |
| Wool grease | # |
| Xylene (meta-, para-, ortho-) | C |
| Zinc dialkyldithiophosphate | # |

Explanation of Symbols: As used in this table the following stands for:

A, B, C, D – NLS Category of Annex II of MARPOL 73/78

I – Considered an "oil" under Annex I of MARPOL 73/78

III – Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78

LFG – Liquefied flammable gas

# – No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

* – No standards in 46 CFR Part 153. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

## PART 98—[AMENDED]

3. The authority citation for Part 98 is revised to read as follows:

**Authority:** 33 U.S.C. 1903(b), 46 U.S.C. 3306, 3703, 49 U.S.C. 1804; 49 CFR 1.46.

4. By adding a new § 98.30–4 to read as follows:

**§ 98.30–4 Requirements for ships carrying NLSs in marine portable tanks.**

(a) The person in charge of a ship, except a ship under Subpart 98.31 of this chapter, that carries an NLS in a marine portable tank shall ensure that—

(1) The ship's Certificate of Inspection is endorsed with the name of the NLS;

(2) Any letters issued by the Commandant (G–MTH) prescribing additional conditions for endorsement are attached; and

(3) Each operating requirement specified in writing by Commandant (MTH) as a condition for endorsement is met.

(b) To have a ship's Certificate of Inspection endorsed to allow the carriage of NLSs in marine portable tanks, the—

(1) Owner of the ship must make a request to the Commandant (G–MTH) following the procedures for requesting alternatives in § 153.10(a) of this chapter; and

(2) The ship must meet any design and equipment requirements specified in writing as a condition for the endorsement by the Commandant (G–MTH).

5. By revising the heading of § 98.31–10 to read as follows:

**§ 98.31–10 Certificate of inspection and NLS Certificate endorsements.**

* * * * *

## PART 151—[AMENDED]

6. The authority citation for Part 151 is revised to read as follows:

**Authority:** 33 U.S.C. 1903(b), 46 U.S.C. 3703; 49 CFR 1.46.

**§ 151.01–10 [Amended]**

7.a By amending § 151.01–10(d) by Table 151.01–10(d).

b. By amending §§ 151.01–10(d) and 151.01–15(a) by removing the words "Table 151.01–10(d)" wherever they appear and inserting in their place the words "Table 30.25–1 of this chapter."

8. By removing § 151.01–15(c).

9. By amending paragraph (b) of § 151.12–10 by adding the section designation "153.1130," between the section designations "153.1128," and "and 153.1132."

## PART 153—[AMENDED]

10. The authority citation for Part 153 is revised to read as follows:

**Authority:** 46 U.S.C. 3703; 49 CFR 1.46, except § 153.40 which is issued under 49 U.S.C. 1804; 49 CFR 1.46. Additional authority under 33 U.S.C. 1903(b); 49 CFR 1.46 for § 153.470 through § 153.491, § 153.1100 through § 153.1132, and § 153.1600 through § 153.1608.

11. By amending § 153.1 by correcting the cross-reference in the introductory text of paragraphs (a) and (b) from "153.900(b)" to "153.900(d)," and by revising paragraph (c) to read as follows:

**§ 153.1 Applicability.**

* * * * *

(c) All ships that carry a bulk liquid, liquefied gas, or compressed gas cargo that is not—

(1) Listed in Table 1 of this part;

(2) Listed in Table 2 of this part;

(3) Carried under a written permission granted under § 153.900(d);

(4) Carried under Parts 30 through 35, 98, 151, or 154 of this chapter; or

(5) Carried as an NLS under 33 CFR Part 151.

12. By amending § 153.2 by revising the definition of "High viscosity NLS" to read as follows:

**§ 153.2 Definitions and acronyms.**

* * * * *

"High viscosity NLS" includes high viscosity Category B NLS and high viscosity Category C NLS.

* * * * *

13. By amending § 153.7 by removing and reserving paragraph (d)(7) and by revising paragraphs (d)(2) and (d)(4) to read as follows:

**§ 153.7 Ships built before December 27, 1977 and non-self-propelled ships built before July 1, 1983: application.**

* * * * *

(d) * * *

(2) The ship carries no NLS cargo or NLS residue at any time it is in waters of another Administration signatory to MARPOL 73/78;

* * * * *

(4) The ship meets all requirements in Parts 30 through 34 and Part 151 of this chapter that apply to the cargo;

* * * * *

14. By amending § 153.440 by revising the introductory text of paragraph (a)(3) to read as follows:

**§ 153.440 Cargo temperature sensors.**

(a) * * *

(3) Unless waived under § 153.491(a), a cargo tank endorsed to carry a Category A, B, or C NLS cargo must have a thermometer whose temperature reading is no greater than the temperature of the cargo at a level above the tank bottom at least one-eighth but no more than one-half the height of the tank if the cargo is—

* * * * *

**§ 153.470 [Amended]**

15. By amending § 153.470(a) by correcting the reference defining "Qd" from "153.1126(e)(2)" to "153.1126(b)(2)."

16. By amending § 153.481 by revising paragraph (a) and the introductory text of paragraph (b)(4) to read as follows:

**§ 153.481 Stripping quantities and interim standards for Category B NLS tanks on ships built before July 1, 1986: Category B.**

* * * * *

(a) Unless the tank meets the interim standard provided by paragraph (b) of this section and is prewashed in accordance with § 153.1118, the tank must have a stripping quantity determined under § 153.1604 that is less than 0.35m $^3$.

* * * * *

(4) Each system that has the capacity to exceed Q calculated under paragraph (b)(1) of this section and does not automatically control the flow rate must have—

* * * * *

17. By amending § 153.483 by removing paragraph (f) and by revising paragraphs (a)(1), (b), (c), (d) and (e) to read as follows, and amending the Note at the end of the section by adding the words "to § 153.483" after the word "Note":

**§ 153.483 Restricted Voyage Waiver for Category B and C NLS tanks on ships built before July 1, 1986: Category B and C.**

* * * * *

(a) * * *

(1) limit the loading and discharge of Category B and C NLS cargoes in a foreign port to those ports and terminals in countries signatory to MARPOL 73/78 and listed in accordance with paragraph (b) of this section; and

* * * * *

(b) A list of—

(1) All foreign ports or terminals at which the ship is expected to load or discharge Category B or C NLS cargo, and

(2) All foreign ports or terminals at which the ship is expected to discharge Category B or C NLS residue from the tank;

(c) An estimate of the quantity of NLS residue to be discharged to each foreign port or terminal listed under paragraph (b)(2) of this section;

(d) Written statements from the owners of adequate reception facilities in the ports and terminals listed in accordance with paragraph (b)(2) of this section who have agreed to take NLS residue from the ship, showing the amount of NLS residue each agrees to take; and

(e) A written attestation from the person in charge of each port or terminal listed in accordance with paragraph (b)(1) of this section that the administration has determined the port or terminal to have adequate reception facilities for the NLS residue.

18. By amending § 153.490 by revising paragraph (b)(1) to read as follows:

**§ 153.490 Cargo Record Book and approved Procedures and Arrangements Manual: Categories A, B, C, and D.**

* * * * *

(b) * * *

(1) The standard format and content prescribed in Chapter 2 and Appendix D of the IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances,* Resolution MEPC 18(22), 1985, or, for ships for which the only NLS carried is a Category D NLS and ships having a waiver under § 153.483 or § 153.491, the format and content prescribed by the Commandant (G–MTH).

* * * * *

19. By amending the introductory text of § 153.491(a) to read as follows:

**§ 153.491 Waiver of certain equipment for dedicated cargo tanks.**

(a) The Coast Guard waives §§ 153.440(a)(3), 153.480, 153.481, 153.482, and 153.488 and endorses a ship's Certificate of Inspection or Certificate of Compliance allowing a cargo tank to carry a single, specific NLS cargo and no other cargo if the ship's owner—

* * * * *

20. By amending § 153.900 by revising the introductory texts of paragraphs (a) and (d), and revising paragraphs (c), (d)(1)(i), (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) to read as follows:

**§ 153.900 Certificates and authorization to carry a bulk liquid hazardous material.**

(a) Except as allowed in 33 CFR 151.33(a), no ship may carry a cargo of bulk liquid hazardous material or an NLS residue if the bulk liquid hazardous material or NLS is listed in Table 1 or carried under a written permission under paragraph (d) of this section unless the ship meets the following:

* * * * *

(c) No ship may carry any bulk liquid cargo not listed in § 30.25–1 of this chapter, Table 151.05 of Part 151 of this chapter, Table 1 or Table 2 of this part, Table 4 of Part 154 of this chapter, 33 CFR 151.47, or 33 CFR 151.49 unless the cargo name is endorsed on the Certificate of Inspection or contained in a letter issued under paragraph (d) of this section.

(d) The Coast Guard at its discretion endorses the Certificate of Inspection with the name of or issues a letter allowing the carriage of an unlisted cargo described under paragraph (c) of this section if—

(1) * * *

(i) Requests the Coast Guard to add the cargo; and

* * * * *

(2) * * *

(i) Has a Certificate of Inspection, Certificate of Compliance, or IOPP Certificate as specified in this part;

(ii) Meets the design and equipment requirements of this part specified by the Coast Guard; and

(iii) Meets any additional requirements made by the Coast Guard.

21. By amending § 153.1102 by adding the word "or" after the semicolon in paragraph (a)(4) and by adding a note following paragraph (a) to read as follows:

**§ 153.1102 Handling and disposal of NLS residue: Categories A, B, C, and D.**

(a) * * *

**Note to paragraph (a).**—The Marine Protection, Research, and Sanctuaries Act allows specific liquids to be discharged to the sea under permits issued by the EPA.

* * * * *

22. By revising § 153.1104 to read as follows:

**§ 153.1104 Draining of Cargo Hose: Category A, B, C, and D.**

Before a cargo hose used in discharging an NLS from a ship's cargo tank is disconnected, the hose must be drained back to the transfer terminal unless the tank unloading the cargo has a waiver under § 153.483 or § 153.491.

23. By revising § 153.1108 to read as follows:

**§ 153.1108 Heated prewash for solidifying NLS, high viscosity NLS and required prewashes of NLS whose viscosity exceeds 25 mPa sec at 20 °C: Categories A, B, and C.**

(a) When a high viscosity or solidifying cargo is unloaded from a cargo tank, the cargo tank must be prewashed unless § 153.1114 or paragraph (c) of this section allows the prewash to be omitted.

(b) When a prewash is required for a tank that has unloaded a solidifying cargo or a cargo having a viscosity exceeding 25 mPa sec at 20 °C, the wash water used in the prewash must leave the tank washing machine at a temperature of at least 60 °C (140 °F).

(c) The prewash required under paragraph (a) of this section may be omitted if the approved Procedures and Arrangements Manual contains a procedure for measuring the temperature of all interior cargo tank surfaces throughout unloading and under the measuring procedure the temperature of these surfaces remains above—

(1) The temperature of the cargo's melting point if the cargo is a Category B or C solidifying NLS; or

(2) The temperature at which the cargo's viscosity exceeds—

(i) 25 mPa.s, if the cargo is a high viscosity Category B NLS; or

(ii) 60 mPa.s, if the cargo is a high viscosity Category C NLS.

24. By amending § 153.1120 by revising the introductory text to read as follows:

**§ 153.1120 Procedures for tank prewash: Category A, B, and C.**

Except where the approved Procedures and Arrangements Manual

prescribes a different procedure, each of the following steps must be done in the order listed for the Coast Guard to consider the tanks prewashed under this part:

* * * * *

**§ 153.1128 [Amended]**

25. By amending § 153.1128, as published at 52 FR 7788, Mar. 12, 1987, by redesignating paragraphs (c)(6) and (c)(7) as (c)(5) and (c)(6) respectively and by correcting the cross reference in paragraph (d)(2) from "§ 1.53.470" to "§ 153.470."

26. By amending Table 1 of Part 153, Summary of Minimum Requirements, by amending the entries for "cresylate spent caustic" to read under the heading "IMO Annex II Pollution Category": "A"; under the heading "Cargo Containment System": "II"; by removing the section number ".409" from the entry for "Styrene" under the heading "Special Requirement" and by amending the entries for "ethyl ether" to read under the heading "IMO Annex II pollution category": "III"; under the heading "Cargo containment system": "II"; under the heading "Vent height": "4m"; under the heading "Vent": "PV"; under the heading "Gauge": "closed"; under the heading "Fire Protection system": "A"; under the heading "Special Requirements": ".236(g), .252, .372, .408, .440, .500, .515, .528, .527"; and under the heading "Electrical Hazard Class and Group": "I–C."

27. By revising Table 2 of Part 153 to read as follows:

**Table 2—Cargoes Not Regulated Under Subchapter D or Subchapter O of this Title When Carried in Bulk on Non-oceangoing Barges**

The cargoes listed in this table are not regulated under Subchapter D or O of this title when carried in bulk on non-oceangoing barges. Category A, B, or C noxious liquid substance (NLS) cargo, as defined in § 153.2 of this chapter, listed in this table, or any mixture containing one or more of these cargoes, must be carried under this subchapter if carried in bulk on an oceangoing ship. Requirements for Category D NLS cargoes and mixtures of non-NLS cargoes with Category D NLS cargoes are in 33 CFR Part 151.

| Cargo | Pollution category |
|---|---|
| Ammonium nitrate solution (45% or less) | D |
| Ammonium nitrate, Urea solution (2% or less $NH_3$. | D |
| Ammonium phosphate solution | # |
| Ammonium phosphate, Urea solution | D |
| Ammonium polyphosphate | # |
| Ammonium sulfate solution (20% or less). | D |
| Apple juice | III |
| Calcium bromide solution | III |
| Calcium chloride solution | III |
| Chlorinated paraffin ($C_{14}$–$C_{17}$) with 52% Chlorine. | III |
| 2-Chloro-4-ethylamino-6-isopropylamino-5-triazine solution. | # |
| Choline chloride solutions | D |
| Diethylenetriamine pentaacetic acid, pentasodium salt solution. | III |
| 1,4-Dihydro-9, 10-dyhydroxy anthracene, disodium salt solution. | D |
| Drilling brine (containing Zinc salts) | A* |
| Ethylenediaminetetraacetic acid, tetrasodium salt solution. | D |
| Ehylene-Vinyl acetate copolymer (emulsion). | III |
| Glucose or Dextrose solutions | III |
| Glycine, sodium salt solution | III |
| Hexamethylenediamine adipate | D |
| N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution. | D |
| Kaolin clay solution | III |
| Lignin liquor (free alkali content, 1% or less) including: | |
| Calcium lignosulfonate solutions | III |
| Sodium lignosulfonate solutions | III |
| Lignin sulfonic acid, salt (low COD) solution. | III |
| Magnesium chloride solution | III |
| Magnesium hydroxide slurry | III |
| Milk | III |
| Molasses | III |
| Pentasodium salt of Diethylenetriamine pentaacetic acid solution. | III |
| Polyaluminum chloride solution | III |
| Sewage sludge (treated so as to pose no additional decompositional or fire hazard). | # |
| Sludge (stable, non-corrosive, non-toxic, non-flammable). | # |
| Sodium aluminosilicate slurry | III |
| Sodium carbonate solutions | D |
| Sodium naphthenate solutions (free alkali content, 3% or less) see Naphthenic acid, sodium salt solution. | A* |
| Sodium polyacrylate solutions | III |
| Sodium silcate solution | D |
| Sorbitol solution | III |
| Tetrasodium salt of Ethylenediamine tetraacetic acid solution. | D |
| 1,1,1-Trichloroethane | B |
| 1,1,2-Trichloro-1,2,2,-trifluoroethane | C |
| Trisodium salt of N-(Hydroxyethyl)-ethylenediamine triacetic acid solution. | D |
| Urea, Ammonium nitrate solution (2% or less $NH_3$). | D |
| Urea, Ammonium phosphate solution | D |
| Urea solution | III |
| Water | III |
| Zinc bromide, Calcium bromide solutions see Drilling brine (containing Zinc salts). | |

Explanation of Symbols: As used in this table the following stands for:

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

I—Considered an "oil" under Annex I of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG—Liquefied flammable gas.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

*—No standards in 46 CFR Part 153. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

Dated: May 19, 1988.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

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Part IV

# Department of the Treasury

## Office of the Assistant Secretary

17 CFR Part 400 et al.

Implementing Regulations for the Government Securities Act of 1986; Final Rule

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**DEPARTMENT OF THE TREASURY**

**Office of the Assistant Secretary (Domestic Finance)**

**17 CFR Parts 400, 402, 403, 404, and 450**

**Implementing Regulations for the Government Securities Act of 1986**

**AGENCY:** Office of the Assistant Secretary (Domestic Finance), Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury ("Department") is issuing in final form clarifying amendments to the regulations issued on July 24, 1987 (52 FR 27910) under the Government Securities Act of 1986 (the "Government Securities Act" or "GSA"). The amendments are being adopted to resolve some technical problems and omissions in the rule, to make conforming changes, and to clarify the Department's intent with respect to certain provisions that have raised questions. The changes relate to the areas of the regulations dealing with general applicability, financial responsibility, protection of customer securities and balances, recordkeeping and custodial holdings. The final rule adopts the amendments as proposed for comment on March 15, 1988. (53 FR 8598).

**EFFECTIVE DATES:** August 1, 1988 for the amendments to Parts 400, 402, 403.1, 403.4, 403.7, 404 and 450; September 1, 1988 for the amendments to § 403.5 except that, for financial institutions that have been relying on an exception contained in § 403.5 (d) and (f)(3) as originally adopted, the amendments to that section are not effective until December 1, 1988 as the amendments apply to requirements for obtaining written agreements with existing customers and the timing requirements for the issuance of confirmations. (The effective dates for amendments to §§ 403.5 (d) and (f)(3) are more fully described in the preamble at the end of the section addressing the applicability of § 403.5(d).)

**FOR FURTHER INFORMATION CONTACT:** Anne Meister (Government Securities Specialist), Don Hammond (Government Securities Specialist) or Clifford Rones (Attorney-Advisor), Bureau of the Public Debt, Room 209, 999 E Street NW., Washington, DC 20239–0001, (202) 376–4632.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The GSA established, for the first time, a federal system for regulation of all government securities brokers and dealers. The Secretary of the Treasury ("Secretary") is required by section 15C(b) of the Securities Exchange Act of 1934, as amended by the GSA (15 U.S.C. 780–5(b)), to adopt rules and regulations concerning the financial responsibility, protection of investor securities and balances, recordkeeping, reporting and audit of government securities brokers and dealers. The rules are designed to enhance the protection of investors in government securities while maintaining a fair, honest, and liquid market in such securities. Title II of the GSA (31 U.S.C. 3121(h); 9110) also requires the Secretary to adopt regulations relating to the custody of government securities held by depository institutions. Final regulations in response to this mandate were issued by the Department on July 24, 1987 (52 FR 27910).

On March 15, 1988 (53 FR 8598), the Department proposed for comment several minor technical changes to correct or clarify various parts of the regulations. Additionally, an amendment to § 403.5(d), rescinding an exception contained therein, was proposed to clarify the Department's intent that hold-in-custody repurchase transactions by financial institutions generally be subject to the basic rules of this section. The comment period closed on April 27, 1988, after being extended (53 FR 12428) at the request of an association representing a number of banks.

Twenty-eight comment letters were received in response to the proposed amendments, all of which focused primarily on the § 403.5(d) amendment. The majority of the commenters objected to the proposed amendment on treatment of hold-in-custody repurchase transactions. The comments and the Department's responses are described more fully below, in the section-by-section analysis. After consideration of the comments and consultation with other appropriate regulatory agencies, the Department has decided to adopt the amendments as proposed; however, as noted in the Effective Dates section above and as more fully described in the Analysis Section below, the Department has agreed to provide a limited extension of time for financial institutions that had been relying on the exception to the § 403.5(d) requirements to comply with certain requirements of § 403.5(d).

**II. Section-by-Section Analysis of Proposed Changes**

*A. Part 400—Rules of General Application*

In Part 400, the Department proposed and is now adopting without change certain amendments to § 400.2, which deals with the filing and handling of requests for exemption or interpretation and the submission and handling of other materials. The specific amendments are described below. The Department received only one specific comment on the changes in this part and that comment was supportive.

Expediting Release of Non-Confidential Material; Treatment of Confidential Material

The Department is amending portions of § 400.2 relating to the submission of requests for interpretation, exemption, and classification and the confidential treatment of such requests. The revised rule will: (1) Provide for expedited public availability of written responses to requests for interpretation, exemption, and classification, together with the incoming request, unless temporary confidential treatment is granted, and (2) clarify the procedure for requesting confidential treatment of sensitive commercial and business information submitted to the Department in connection with a request for interpretation, exemption, or classification.

To expedite public release of written responses to requests for interpretations, classifications and exemptions, together with the incoming request, a routine 30-day hold on such material has been eliminated. Under the amended rule, the Department will make such requests and responses available to the public for inspection and copying as soon as practicable after the response is provided to the requesting party, unless there has been a determination to treat the response and incoming request as confidential. In accordance with § 400.2(c)(7)(ii), a party making a request for interpretation, exemption, or classification will be able to ask that the request and the Department's response be kept confidential for a maximum of 120 days. It should be noted that if, during those 120 days, the Department receives a request pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. 552) for disclosure of material granted temporary confidential treatment under this section, the determination to treat the material as confidential will be reevaluated in accordance with the Department's regulations for disclosure of information under FOIA (31 CFR 1.6).

The Department also recognizes that there are situations in which a party may submit sensitive commercial or business information, in support of a request for an interpretation, exemption, or classification, that the party would

want to keep confidential for a period of time in excess of the 120 days allowed for the Department's response and the incoming request. Section 400.2(c)(3)(iv) has been amended to provide procedures for making requests for such confidential treatment and to clarify that the Department's regulations published at 31 CFR 1.6 will apply to such requests for confidentiality. The regulations set out in 31 CFR Part 1 contain the Department's procedures under FOIA and were amended on July 14, 1987 (52 FR 26302, 26311) to include a provision at 31 CFR 1.6 whereby the Department will notify submitters of potentially sensitive commercial or business information if the information submitted is the subject of a FOIA request and will give the submitter of such information a chance to demonstrate why the information should be kept confidential under section (b)(4) of FOIA (5 U.S.C. 552(b)(4)).

*B. Part 402—Financial Responsibility*

In Part 402, the Department proposed and is now adopting without change certain amendments to § 402.2, which states the capital rule of registered government securities brokers and dealers, and to § 402.2a (Appendix A), which provides a detailed description of the calculation of the market risk haircut required by § 402.2. The specific amendments are described below. No comments were received on the proposed amendments to this part.

Securities of International Organizations

Subsequent to publication of the final regulations, the Department received questions regarding the classification, for purposes of the computation of the capital requirements under § 402.2, of certain securities issued by international organizations, such as the International Bank for Reconstruction and Development, the Inter-American Development Bank, the African Development Bank and the Asian Development Bank, which have a statutory exemption from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. (See, e.g., 22 U.S.C. 286k–1(a).) By adding a new category to the list of Treasury market risk instruments, the Department is clarifying the classification of such securities as Treasury market risk instruments pursuant to § 402.2(e)(1). Only those securities issued by these international organizations whose changes in yield are closely correlated with changes in yield of comparable Treasury securities, including STRIPS, would be included as Treasury market risk instruments. Any other securities issued by these entities would be included in the Other Securities Haircut, § 402.2a(b). Futures and forwards on those securities of international organizations that are Treasury market risk instruments would also be included as Treasury market risk instruments.

Credit Volatility Haircut

Section 402.2(g)(1)(iv) is being amended to clarify that futures and forwards on dollar-denominated time deposits that mature in 45 days or more and whose changes in yield are closely correlated with marketable certificates of deposit of no more than one year to maturity are included in the calculation of the credit volatility haircut.

Changes to the Calculations and Instructions

The Department is adopting conforming and clarifying revisions to the portions of § 402.2a addressing (1) the calculation of the market risk haircut and (2) the instructions to the schedules that may be used by government securities brokers or dealers in the calculation of the total haircuts as required by Part 402. Additionally, the changes include the correction of certain descriptions in § 402.2a, paragraphs (a)(3)(i)(A), (a)(3)(i)(A)(*1*), (a)(3)(ii)(A) and (a)(3)(ii)(A)(*1*). The corrections clarify that futures and forwards that are Treasury market risk instruments should be included in the calculations of the interim haircuts for long and short futures and forward positions.

*C. Part 403—Protection of Customer Securities and Balances*

In Part 403, the Department proposed and is now adopting without change certain amendments to the following sections: § 403.1, which deals with the application of the part to registered brokers and dealers; § 403.4(e), which relates to the provisions for hold-in-custody repurchase transactions effected by registered government securities brokers and dealers; § 403.5 (d) and (f)(3), which contain provisions relating to financial institutions' handling of hold-in-custody repurchase transactions; § 403.5(e), which addresses the reserve requirements for government securities brokers or dealers that are branches or agencies of a foreign bank; and § 403.7, which specifies various effective dates for this part. The specific amendments are described below. Comments on this part related only to the changes proposed for § 403.5 (d) and (f)(3). These comments and the Department's responses are discussed under the related heading below; the effective dates for compliance with § 403.5(d) are discussed under that same heading.

Conforming Changes

The Department's final rules under the Government Securities Act, in § 403.4, required newly registered government securities brokers and dealers to comply with the Securities and Exchange Commission's ("SEC" or "Commission") customer protection rule (17 CFR 240.15c3–3, or "Rule 15c3–3"), with certain modifications. Compliance by registered brokers and dealers with various SEC rules, including Rule 15c3–3 as modified, was deemed to constitute compliance with the Treasury rules with respect to the broker's or dealer's government securities activities. (See § 403.1).

At the time of adoption of the Department's final rules, the amendments to Rule 15c3–3 relating to the requirements applicable to hold-in-custody repurchase transactions had not yet been adopted by the Commission in final form. Thus, the Treasury rules, in § 403.4(e), contained a new § 15c3–3(b)(4), setting out the requirements applicable to such transactions. The Commission later adopted a virtually identical change to Rule 15c3–3, which was issued as a final rule on August 14, 1987 (52 FR 30331) and became effective on January 31, 1988.

Consequently, the Department is now amending § 403.4 to eliminate the detailed rule language pertaining to hold-in-custody repurchase transactions because these provisions are now incorporated in the Commission's rule that the Department has adopted. Those minor differences that exist between the Treasury rule on hold-in-custody repurchase transactions and the rule adopted by the Commission have been retained in § 403.4(e).

Conforming changes relating to the amendment or Rule 15c3–3 are also being made in §§ 403.1 and 403.7. These amendments do not in any way change the actual requirements for treatment of hold-in-custody repurchase transactions.

Applicability to Financial Institutions of § 403.5(d) and Effective Dates—Requirements for Hold-in-Custody Repurchase Transactions

Section 403.5(d) contains rules applicable to financial institutions that engage in hold-in-custody repurchase transactions. These rules essentially parallel the requirements adopted in §§ 403.1 and 403.4 for non-financial institution brokers and dealers. All of the rules provide that the repurchase agreement must be obtained in writing; specify certain disclosures that must be

included in the agreement; require confirmation of the specific securities that are the subject of a hold-in-custody repurchase transaction by the end of the day on which a transaction is initiated and on any day on which substitution of securities occurs; and specify possession or control requirements.

Section 403.5(d), as it appeared in the final GSA regulations, differed from § 403.4 in one respect. It contained a provision whereby a financial institution was exempt from the provisions of § 403.5(d) if it did not retain the right to substitute securities that are the subject of a repurchase transaction and it delivered the subject securities to the separate control of the safekeeping department. (For this purpose, certain criteria for safekeeping were also set out in § 403.5(f)(3).) The Department had intended that the safekeeping exception have limited applicability, and that therefore nearly all hold-in-custody repurchase transactions would be subject to the same rules. Because it became apparent that the safekeeping exception had broader potential applicability than was originally intended, the Department proposed its rescission. As noted in the preamble to the proposed rule, the Department concluded that broader use of the exception to avoid the requirements applicable to hold-in-custody repurchase transactions was not consistent with the mandate of the GSA to improve investor protection. Moreover, it did not appear possible to narrow the scope of the exception in a way that would sufficiently limit its applicability.

All of the twenty-eight comment letters received addressed the proposed amendments relating to the rescission of the safekeeping exception. One commenter, a registered broker-dealer, supported the amendment on the basis that all investors in hold-in-custody repurchase transactions should receive the same protections. This commenter emphasized in particular the importance of the confirmation requirement for investor protection. Twenty-seven commenters, representing financial institutions, opposed the amendments for varying reasons. Most of these commenters expressed the view that safekeeping provided sufficient protection for their counterparties and, more specifically, objected to compliance with one or more of the requirements for hold-in-custody repurchase transactions to which they would be subject if the exception were eliminated.

Four commenters objected to the proposed amendment specifically because it would require them to obtain executed written agreements with their counterparties before entering into hold-in-custody repurchase transactions. Two of these commenters felt that the requirement would place financial institutions at a competitive disadvantage to registered broker-dealers and based this argument on an analogy between a hold-in-custody repurchase transaction by a financial institution and a repurchase transaction by a broker-dealer that delivers out the securities to a customer's account at another institution. As noted, the regulations do not require a written agreement for a deliver-out repurchase transaction. Another commenter mistakenly believed that financial institutions not required to give notice of being government securities dealers are also not required to comply with the provisions of § 403.5(d) for hold-in-custody repurchase transactions; on this erroneous assumption, the commenter stated that financial institutions that are noticed government securities dealers would be placed at a competitive disadvantage by being subject to the requirement in § 403.5(d) to obtain written repurchase agreements with their customers. Finally, one commenter objected to requiring a written agreement if a bank does not retain a right of substitution. This objection appeared to be based on a concern that an investor would have a difficult time assessing the comparative risks between institutions that retain a right of substitution of securities and those that do not, if all financial institutions are required to obtain written agreements.

Nineteen commenters opposed the amendments primarily because of the impact that the confirmation requirements in § 403.5(d) would have on certain cash management programs involving what are commonly referred to as sweep repurchase transactions. In a sweep repurchase transaction, excess funds are swept from a customer's deposit account for overnight investment in a repurchase transaction. Since sweep repurchase transactions are recurring transactions, generally giving rise to a new repurchase transaction daily, the provisions of § 403.5(d) would require the issuance of a confirmation each day.

These commenters generally objected to the daily confirmation for sweep repurchase transactions because of the associated costs and a belief that the daily confirmations would not significantly enhance customer protection. A number of these commenters expressed the view that their customers would prefer to rely solely on a monthly statement detailing all of the transactions for the period. One other commenter, focusing primarily on the requirement for confirmation when substitution of securities takes place, felt that the safekeeping exception should be expanded, so that a financial institution that limits substitution to maturing securities would not be required to confirm the new securities. Finally, one additional commenter, who did not object to the general requirement to confirm securities in a repurchase transaction, opposed the requirement to place the market value of the securities on the confirmation.

A few commenters objected to the rescission of the safekeeping exception on the basis that compliance generally with the requirements of § 403.5(d) would be unnecessarily burdensome and would not give recognition to legal protections afforded by the safekeeping services offered by financial institutions. Finally, one commenter, who did not object to the requirements of § 403.5(d), indicated that it was important to preserve in the regulations the concept of independent safekeeping, a function that the commenter asserted is offered by only a few financial institutions.

While most of the commenters generally recommended retaining the safekeeping exception, a number of other recommendations were also made. One commenter concerned with the written agreement requirement of § 403.5(d) proposed that the requirement be amended to allow execution of the written agreement within 10 days after initiation of the first repurchase transaction with a counterparty. Another commenter recommended limiting the use of the safekeeping exception by requiring that securities maintained through an account at a Federal Reserve Bank be transferred to a separate account at the Federal Reserve that would be under the control of the safekeeping department. This commenter also noted that this recommendation would probably not be practical for those financial institutions concerned with sweep repurchase transactions.

A number of commenters supported a proposal put forth previously by the Bank Capital Markets Association (BCMA) specifically in connection with sweep repurchase transactions. This proposal was premised on delivery of the securities of safekeeping, obtaining a written repurchase agreement, issuance of a monthly statement to the customer that contained the detailed confirmation data for each transaction, and a request that Treasury interpret that the

confirmation requirements of Part 450 would not require the issuance of a separate confirmation for each sweep transaction. The BCMA and American Bankers Association also recommended an alternative proposal, if Treasury ultimately determined to rescind the safekeeping exception. This proposal, which was supported by several commenters but viewed as unworkable and equally costly by another commenter, recommended that § 403.5(d) be amended to provide that, for purposes of confirming sweep transactions, financial institutions be permitted to confirm transactions on a daily basis by electronic transfer of the confirmation data to an unaffiliated third-party custodian with whom the bank would contract to serve as a depository for the information. Under this scenario, it was stated that the customer would have the option, to be exercised affirmatively in the written agreement, to receive daily confirmations directly or to designate the third-party custodian as depository of the daily information. Additionally, the customers would be sent a monthly statement that would include the details of the daily sweep activities for the month. This proposal was viewed as satisfying any potential need to identify a customer's interests in specific securities in the event a financial institution is placed in liquidation and a banking regulator is unable to identify such information from the books and records of the bank.

Two of the commenters expressed the belief that permitting financial institutions to issue monthly confirmations for sweep repurchase transactions would be analogous to the provisions of SEC Rule 10b–10 (b) and (c) (17 CFR 240.10b–10), which permit brokers-dealers effecting certain types of transactions, for example purchases and sales of certain mutual fund shares, to send monthly statements to customers, in lieu of a confirmation for each transaction. One commenter suggested that a confirmation be required on substitutions only when the type of security changed, for example, substitution of a Treasury security with a GNMA security.

Two comments were received in connection with the Department's proposal to make the amendments effective 30 days after publication in final form in the **Federal Register**. One commenter noted generally that more time would be needed but offered no specific alternative proposal; another commenter suggested that 120 days would be needed to permit financial institutions relying on the safekeeping exception to make necessary changes to comply with the requirements of § 403.5(d).

The Department has given careful consideration to the comment letters. With respect to all the comments on the requirements applicable to hold-in-custody repurchase transactions in general, it should be noted that the Department considered at length in the promulgation of the GSA regulations whether these requirements are appropriate measures for customer protection before finally adopting them. However, to the extent that these issues were raised again in the context of the proposed rescission of the safekeeping exception, the Department has reviewed these requirements in terms of the specific comments submitted, as discussed below.

On the issue of written agreements, the Department views the written repurchase agreement as a sound business practice for any type of repurchase transaction and as a fundamental tool for strengthening customer protection, particularly for hold-in-custody repurchase transactions. The Department notes that there continues to be legal uncertainties surrounding the characterization of repurchase transactions and that problems that have arisen in connection with repurchase transactions have more frequently involved hold-in-custody type of repurchase transactions. Hold-in-custody repurchase transactions, by their nature, contain an element of additional risk for the investor, in that the investor's counterparty is serving simultaneously throughout the transaction not only as principal in the transaction, but also as the investor's custodial agent. The Department believes that a written agreement, with appropriate disclosures, is important to advise the investor of risks that may be associated with these transactions, to clarify the intended nature of the transactions undertaken between the counterparties, and to document the obligations agreed to by each counterparty.

Given the somewhat unique nature of these hold-in-custody repurchase transactions, the specific legislative concern with them when the GSA was enacted, and the benefits to be derived from written agreements covering these transactions, the Department has decided to rescind the safekeeping exception in § 403.5(d) and, by this amendment, clearly establish a uniform requirement for the execution of a written repurchase agreement as a condition for engaging in hold-in-custody repurchase transactions with customers. It is noted that the majority of those commenting on the March 15 proposed amendments, as well as those commenting on the GSA regulations as they were being developed, either did not object to or specifically endorsed the requirement for a written agreement.

The Department does not agree with the suggestions of some of the commenters that, because a financial institution may have an existing custody relationship with a customer, this relationship negates the need for establishing in writing the terms and conditions of hold-in-custody repurchase transactions with that customer. The Department also does not agree that the establishment of a uniform requirement for written agreements provides an advantage to registered broker-dealers or to financial institutions that are not required to give notice of being government securities dealers, since all of these entities are subject to the same requirements for hold-in-custody repurchase transactions. Finally, in response to the comment that investors will not be able to assess the relative risks of certain repurchase agreements if all financial institutions are required to obtain a written agreement, whether or not the institutions retain the right of substitution, the Department believes that this comment is based on an erroneous assumption that a financial institution that does not seek to obtain a right of substitution nevertheless must include the disclosure language regarding substitutions in its written agreement.

With respect to confirmation requirements, the Department has concluded, after consideration of the comments, that all hold-in-custody repurchase transactions should be subject to the same confirmation requirements, those that are set out in § 403.5(d) or the parallel requirements adopted in §§ 403.1 and 403.4. The Department believes, as a general principle, that securities transactions should be confirmed promptly and has decided that such treatment is particularly appropriate for hold-in-custody repurchase transactions, even when the subject securities are delivered to a separate safekeeping department within the financial institution. The Department also does not believe that the frequency or short duration of certain repurchase transactions obviates the benefits to a counterparty of receiving prompt confirmation of each such transaction. In this context, it is noted that Article 8 of the Uniform Commercial Code assigns significant value to a

confirmation in establishing a customer's interest in securities. As discussed above, the entity acting as counterparty to an investor in a hold-in-custody repurchase transaction is also acting as custodial agent, with responsibility for evidencing the customer's interests in the specific securities that are the subject of the transaction. The Department believes that the prompt issuance of confirmations, which should be a by-product of the process for recording an investor's interests in particular securities, serves to reinforce the obligation of the custodian/counterparty to record such interests promptly and completely.

Apart from the legal ramifications, prompt confirmation also benefits the customer significantly by providing information with which to act or react knowledgeably and promptly in current and future transactions with a given counterparty. Until confirmation is received, a counterparty may have no knowledge of the specific securities that are the subject of the repurchase transaction. This information is important not only from the standpoint of a customer's ability to identify securities should the customer need to initiate a claim; prompt confirmation also enables the customer to monitor the sufficiency and appropriateness of the securities provided by the counterparty. While not all customers may utilize this information fully or on a timely basis, the Department believes that investors should be encouraged to do so and, in support of that goal, should be provided with the necessary tools.

With respect to an alternative proposed by several commenters, whereby daily confirmation data would be routinely sent to a third-party depository selected by the counterparty-financial institution, the Department believes that approval of such an arrangement, as an alternative to immediate confirmation, would convey an inappropriate message to investors that this arrangement is a satisfactory substitute for continual and careful monitoring of investors' hold-in-custody repurchase transactions. The Department also does not view this alternative as satisfying all of the customer protection purposes for which the confirmation requirement is intended, even though the proposed arrangement also contemplates sending a detailed monthly statement to the investor. As noted above, an important aspect of the confirmation is to provide investors with sufficient information to be able to act knowledgeably and promptly with respect to their transactions. It cannot reasonably be expected that, in the proposal described, the third party recipient of the confirmation data would have any knowledge of a particular transaction or the terms of the underlying agreement. In fact, the third-party recipient would not even know whether it was due to receive confirmation data on a particular day for a particular customer, in order to verify independently that it had in fact received all appropriate data. The Department notes that such an arrangement is markedly different from what is normally referred to as a tri-party repurchase agreement, in which an independent institution agrees to serve as agent for the two counterparties to the transaction, in which the agent is involved in effecting the transfer of funds and securities between the two counterparties and assumes certain responsibilities with respect to safeguarding the interests of both counterparties.

The Department recognizes that meeting the confirmation requirements of § 403.5(d) may entail additional costs for some institutions but also believes that some cost increase is a necessary and expected outcome of the legislative requirements to establish regulations for government securities transactions and, in particular, for repurchase transactions. The data received by the Department on confirmation costs was inconclusive. Only three financial institutions provided estimated annual costs in connection with issuing confirmations for sweep repurchase transactions and these estimates varied widely for similar volumes of transactions. Based on conversations with a number of financial institutions that offer sweep repurchase programs, the Department is aware that some financial institutions are currently confirming such transactions daily. Also, as noted by one of the commenters, broker-dealers that are not financial institutions have developed workable systems to comply with the confirmation requirements for short-term repurchase transactions.

The Department does not agree with the point raised by two commenters that sweep repurchase transactions are analogous to certain mutual fund transactions and that monthly confirmations should be permitted for sweep transactions, since similar treatment is permitted, under SEC Rule 10b–10 for those mutual fund transactions. The exceptions provided in the SEC rule are limited to certain types of transactions in which the broker-dealer is acting solely as agent for its customer, rather than in the dual capacity involved in hold-in-custody repurchase transactions, and in cases where the broker generally does not have custody of the securities. Additionally, the mutual funds referred to are subject to a separate and extensive regulatory scheme, under the Investment Company Act of 1940, that addresses the operations of such companies and the protection of customer investments in such funds.

The Department has previously addressed at considerable length in the preambles to the temporary and final GSA rules (52 FR 19642, May 26, 1987; 52 FR 27910, July 24, 1987) why it believes that confirmations should describe the specific securities that are the subject of repurchase transactions. For those reasons, the Department does not believe it is appropriate to adopt various suggestions by three commenters that (1) confirmations be required only when the general type of security changes upon substitution; (2) that confirmation not be required when substitution occurs only as a result of securities maturing; and (3) that the market value not be required on confirmations.

With regard to the comments that, by eliminating the safekeeping exception, the regulations do not give appropriate recognition to the merits of safekeeping by a financial institution, the Department believes, as stated above, that the unique characteristics of a hold-in-custody repurchase transaction, in which a financial institution is acting simultaneously throughout the transaction in the dual and potentially conflicting capacities of both principal and agent, warrant compliance with the requirements for hold-in-custody repurchase transactions, in addition to compliance with the requirements of Part 450. The provisions of Part 450 have as their basis, elements that are inherent to duties of a safekeeping or custodial agent: that the financial institution hold the securities separate from the institution's own securities; keep the customers' securities free from lien, charge or claim of third parties; and clearly record the customers' interests in the specific securities. It is noted that these same obligations are part of the possession or control requirements placed on broker-dealers that are not financial institutions.

For all of the reasons stated above, the Department has decided to adopt the amendments, as proposed, to rescind the safekeeping exception and subject all hold-in-custody repurchase transactions conducted by any financial institution with a customer to the requirements contained in § 403.5(d). In recognition that a number of financial institutions,

in reliance on the safekeeping exception, are not issuing confirmations in accordance with the timeframes prescribed in § 403.5(d)(1)(ii), the Department is providing until December 1, 1988 for such financial institutions to comply fully with these timing requirements, provided that the institution is, in the interim, issuing confirmation of the specific securities associated with each transaction no less frequently than monthly. For those financial institutions that have not been obtaining written repurchase agreements in reliance on the safekeeping exception, the Department is providing until September 1, 1988 to comply with the written agreement requirements in § 403.5(d)(1) for transactions entered into on or after that date, unless the transaction is with an existing customer. For transactions with existing customers (one with whom the financial institution has engaged in a repurchase transaction on or after September 1, 1987 and before September 1, 1988), these financial institutions have until December 1, 1988 to comply with the written agreement requirements. Financial institutions that are currently complying with any or all of the requirements of § 403.5(d), as amended, must continue to do so.

Foreign Branches and Agencies—Reserve Requirements

Section 403.5(e) of the regulations provides that a government securities broker or dealer that is a branch or agency of a foreign bank is subject to a modified version of the reserve requirement applicable to non-bank brokers and dealers. A foreign branch or agency subject to the rule must keep on deposit with a bank (as that term is defined in 12 U.S.C. 1813(h)) an amount computed in accordance with the modified version of the reserve formula. As stated in the preamble to the temporary regulations (52 FR 19648, May 26, 1987), this requirement was meant to provide a degree of assurance to securities customers to whom the foreign branch or agency owes money, by requiring that such funds be available in the United States in the event of a failure. Inadvertently, the final regulations did not include instructions concerning the timing and frequency of the computation of the amount of the deposit, the timing of the deposit, and recordkeeping on the computations.

To correct this omission, the Department is now amending § 403.5(e) by adding new paragraphs (e)(5) and (e)(6). Paragraph (e)(5) requires that the computation be made weekly as of the close of the last business day of the week and that the deposit so computed by made no later than one hour after the opening of banking business on the second following business day. Paragraph (e)(6) requires that the foreign branch and agency made and maintain a record of each computation and that these records be preserved for three years, the first two years of which the records must be maintained in an easily accessible place.

Effective Dates—Technical Amendments

Section 403.7 contains effective dates for various provisions of Part 403. In § 403.7(b), (c), (d) and (e), references to § 403.4(e) have been changed to refer more generally to § 403.4 to conform to the modifications to § 403.4(e) discussed above. Additionally, the introductory language in paragraphs (d)(1) and (d)(2) has been modified to make clear that the interim disclosures addressed in § 403.7(d) were to be used on a one-time basis only until such time as the original requirement for obtaining a written agreement, with the disclosures required under §§ 403.4 or 403.5(d), became effective. With the requirement for a written agreement in effect, hold-in-custody repurchase transactions may not be entered into with a counterparty until such written agreement is obtained from the counterparty.

The effective dates for the rescission of the safekeeping exception from § 403.5 were addressed separately in the "Effective Dates" section at the front of this document and in the preamble discussion of § 403.5 and are not being reflected again as amendments to § 403.7.

*D. Part 404—Recordkeeping and Record Preservation*

In Part 404, two minor corrections are being made in § 404.4, which contains recordkeeping requirements for government securities brokers and dealers that are financial institutions. No comments were received on these changes. The changes involved are as follows: in § 404.4(a)(2), a reference to § 450.4 (c), (d)(3) and (f) is being corrected to refer to § 450.4 (c), (d) and (f); in § 404.4(a)(3), a reference to a physical count of securities is being modified to delete the word "physical", as the count includes book-entry securities as well.

*E. Part 450—Custodial Holdings of Government Securities by Depository Institutions*

In Part 450, the Department proposed and is now adopting without change an amendment to § 450.1(b) to clarify that the procedure described for requesting and giving interpretations of the regulations described in § 400.2 is also applicable to interpretations of Part 450. No comments were received on this amendment.

**III. Special Analyses**

In the preamble to the proposed regulation, the Department concluded that these amendments did not constitute a major regulation under the criteria stated in Executive Order 12291. The Departmant also certified that these amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the Department concluded that neither a regulatory impact analysis nor a regulatory flexibility analysis was required. After consideration of the comments on the proposed rule, the Department does not believe that there exists any reason to alter either its conclusion that the amendments to the regulations do not constitute a major rule under Executive Order 12291 or its certification that the amendments to the regulations will not have a significant economic impact on a substantial number of small entities.

The collection of the information requirement contained in § 403.5(e) of this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1505–0108. The estimated annual burden associated with the collection of information in § 403.5(e) is 250 hours per recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Bureau of the Public Debt, Government Securities Regulations Staff, Room 209, 999 E Street, NW., Washington, DC 20239–0001 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Department of the Treasury.

Because the amendments to Parts 402, 403.1, 403.4, 403.7, 404 and 450 are technical, non-substantive amendments designed to clarify the regulations as originally adopted and the amendment to Part 400 will provide for earlier public availability of certain information, the Department finds that good cause exists, with respect to these amendments, to dispense with the delayed effective date provision in 5 U.S.C. 553(d).

**List of Subjects**

*17 CFR Part 400*

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

*17 CFR Part 402*

Brokers, Government securities.

*17 CFR Part 403*

Banks, banking, Brokers, Government securities.

*17 CFR Part 404*

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

*17 CFR Part 450*

Banks, banking, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, the Department is amending 17 CFR Parts 400, 402, 403, 404, and 450 as follows:

**PART 400—RULES OF GENERAL APPLICATION**

1. The authority citation for Part 400 continues to read as follows:

**Authority:** Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5).

2. Section 400.2 is amended by revising paragraphs (c)(1) and (c)(3)(iv); by redesignating (c)(3)(v) as (c)(3)(vi) and revising it; by adding a new (c)(3)(v); and by revising paragraph (c)(7) to read as follows:

**§ 400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.**

* * * * *

(c) * * *

(1) Interpretations under this chapter may be provided, at the discretion of the Department, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

* * * * *

(3) * * *

(iv) In addition to requests for confidential treatment under paragraph (c)(7)(ii) of this section, a person may request confidential treatment of information that is submitted as part of, or in support of, a request for interpretation, exemption, or classification. A separate request for confidential treatment and the basis for such request shall be submitted at the time the information for which confidential treatment is requested is submitted. The request for confidential treatment must specifically identify the information for which such confidential treatment is requested. To the extent practicable, the information should be segregated from information for which confidential treatment is not requested and should be clearly marked as confidential.

(v) Information designated as confidential in accordance with paragraph (c)(3)(iv) of this section shall not be disclosed to a person requesting such information other than in accordance with the procedures outlined in the Department's regulations published at 31 CFR 1.6.

(vi) An original and two copies of each request letter shall be submitted to the Office of the Commissioner, Bureau of the Public Debt, Room 553, 999 E Street NW., Washington, DC 20239-0001. The envelope shall be marked "Government Securities Act Request." The letter shall indicate in the upper right hand corner of the first page the particular sections of the Act and of the regulations at issue.

* * * * *

(7)(i) Except as provided in paragraphs (c)(3)(iv) and (c)(7)(ii) of this section, every letter or other written communication requesting the Department to provide interpretive legal advice under the Act or to grant, deny or modify an exemption, classification or modification of the regulations, together with any written response thereto, shall be made available for inspection and copying as soon as practicable after the response has been sent or given to the person requesting it. These documents will be made available at the following location: Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

(ii) Any person submitting a letter or communication may also simultaneously submit a request that the letter or communication and the Department's response be accorded confidential treatment for a specified period of time not to exceed 120 days from the date the response has been made or given to such person. The request shall state the basis upon which the request for confidential treatment has been made. If the Department determines that the request for confidential treatment should be denied, the requester will be given 30 days to withdraw either the request for confidential treatment or the letter or communication requesting an interpretation, classification, or exemption.

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**PART 402—FINANCIAL RESPONSIBILITY**

3. The authority citation for Part 402 continues to read as follows:

**Authority:** Section 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(A), (b)(2)).

4. Section 402.2 is amended by redesignating paragraphs (e)(1)(vi), (vii), and (viii), as (e)(1)(vii), (viii), and (ix) respectively; adding a new paragraph (e)(1)(vi); and revising newly redesignated paragraphs (e)(1)(vii), (viii), and (ix), and (g)(1)(iv) to read as follows:

**§ 402.2 Capital requirements for registered government securities brokers and dealers.**

* * * * *

(e) * * *

(1) * * *

(vi) Securities, other than equity securities, issued by international organizations that have a statutory exemption from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934 provided their changes in yield are closely correlated to the changes in yield of similar Treasury securities, including STRIPS;

(vii) Futures, forwards, and listed options on Treasury market risk instruments described in paragraphs (e)(1)(i)-(vi) of this section or on time deposits whose changes in yield are closely correlated with the Treasury market risk instruments described in paragraph (e)(1)(iii) of this section, settled on a cash or delivery basis;

(viii) Options on those futures contracts described in paragraph (e)(1)(vii) of this section, settled on a cash or delivery basis; and

(ix) Unlisted options on marketable Treasury bills, notes or bonds.

* * * * *

(g) * * *

(1) * * *

(iv) *Credit volatility haircut.* The "credit volatility haircut" equals the product of a credit volatility haircut factor of 0.15 percent and the dollar amount of the larger of the gross long position or gross short position in those Treasury market risk instruments described in paragraphs (e)(1)(iii), (iv) and (v) of this section that have a term to maturity greater than 44 days, including futures and forwards thereon, settled on a cash or delivery basis, and futures and forwards on time deposits described in paragraph (e)(1)(vii) of this

section, that have a term to maturity greater than 44 days, settled on a cash or delivery basis.

5. Section 402.2a is amended by revising paragraphs (a)(1)(iii)(B), (a)(1)(iii)(C), (a)(1)(iv)(B) and (a)(1)(iv)(C); by adding paragraphs (a)(1)(iii)(D) and (a)(1)(iv)(D); by revising paragraphs (a)(3)(i)(A) introductory text, (a)(3)(i)(A)(*1*), (a)(3)(ii)(A) introductory text and (a)(3)(ii)(A)(*1*); by revising in paragraph (c) *Instructions to Schedules A through E, Schedule A—Liquid Capital Requirement Summary Computation,* Line 3 c.; *Schedule B—Calculation of Net Immediate Position in Securities and Financings,* Columns 3 and 4, paragraphs (4) and (5), adding a new paragraph (6), and revising the first paragraph after newly added paragraph (6); and *Schedule D—Consolidation of New Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts,* the second and third paragraphs, to read as follows:

**§ 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).**

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(B) The net long when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net long when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net long when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

(iv) * * *

(B) The net short when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net short when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net short when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

* * * * *

(3) * * *

(i) * * *

(A) *Gross long futures and forward interim haircut.* The "gross long futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each long futures position and long forward position placed, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each long futures position and each long forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the long futures position or long forward position evaluated at the current market price for such contract.

* * * * *

(ii) * * *

(A) *Gross short futures and forward interim haircut.* The "gross short futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each short futures position and short forward position placed, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each short futures position and each short forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the short futures position or short forward position evaluated at the current market price for such contract.

* * * * *

(c) * * *

*Instructions to Schedules A through E* * * *

*Schedule A* * * *

Line 3 * * *

c. Enter the credit volatility haircut which equals a factor of 0.15 percent applied to the larger of the gross long or gross short position in money market instruments qualifying as Treasury market risk instruments which mature in 45 days or more, in futures and forwards on these instruments that are settled on a cash or delivery basis, and in futures and forwards on time deposits described in § 402.2(e)(1)(vii), that mature in 45 days or more, settled on a cash or delivery basis. Money market instruments qualifying as Treasury market risk instruments are (1) marketable certificates of deposit with no more than one year to maturity, (2) bankers acceptances, and (3) commercial paper which has no more than one year to maturity and is rated in one of the three highest categories by at last two nationally recognized statistical rating organizations.

* * * * *

*Schedule B* * * *

Columns 3 and 4 * * *

(4) Bankers acceptances;

(5) Commercial paper of no more than one year to maturity rated in one of the three highest categories by at least two nationally recognized statistical rating organizations; and

(6) Securities described in § 402.2(e)(1)(vi).

Report all positions as of the trade date. If the settlement date is scheduled for more than five business days in the future (or, in the case of a mortgage-backed security, more than thirty calendar days in the future), then report the position as a forward contract on Schedule D. Also, under "Securities Positions" in the appropriate column and category, report any when-issued position in a marketable Treasury security between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

* * * * *

*Schedule D* * * *

Report on Schedule D futures, forwards, and options which are Treasury market risk instruments as defined in § 402.2(e). These futures,

forwards, and listed option contracts may be based on any of the Treasury market risk instruments described in the instructions to columns 3 and 4 on Schedule B or on time deposits whose changes in yield are closely correlated with marketable certificates of deposit which are Treasury market risk instruments, as described in § 402.2(e)(1)(vii). Options on Treasury market risk futures contracts and unlisted options on marketable Treasury bills, notes, and bonds are also to be included. Futures contracts may settle on a cash or delivery basis. Any of these contracts which are being included as part of a hedge in the calculation of the other securities haircut must be excluded from Schedule D.

Report as a forward contract any position for which the time between trade date and settlement date is more than five business days (30 calendar days for a mortgage-backed security). Any when-issued position in a marketable Treasury security established between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security established between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date is reported in the appropriate category on Schedule B under "Securities Positions."

* * * * *

## PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

6. The authority citation for Part 403 continues to read as follows:

**Authority:** Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(A), (b)(2)).

7. Section 403.1 is revised to read as follows:

### § 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c–1 of this title (SEC Rule 8c–1), as modified by § 403.2(a), (b) and (c), with § 240.15c2–1 of this title (SEC Rule 15c2–1), with § 240.15c3–2 of this title (SEC Rule 15c3–2), as modified by § 403.3, and with § 240.15c3–3 of this title (SEC Rule 15c3–3), as modified by § 403.4(a)–(d), (e)(2)–(3), and (f)–(i), constitutes compliance with this part.

8. Section 403.4 is amended by revising paragraph (e) to read as follows:

### § 403.4 Customer protection—reserves and custody of securities.

* * * * *

(e)(1) For purposes of this section, § 240.15c3–3(b)(4)(i)(C) is modified to read as follows:

"(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 will not provide protection to the counterparty with respect to the repurchase agreement."

(2) For purposes of this section, § 240.15c3–3(b)(4)(ii) is modified to read as follows:

"(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3(c)(1), (c)(3), (c)(5), (c)(6), or § 403.4(f) of this title."

(3) For purposes of this section, § 240.15c3–3(b)(4)(iv) is redesignated § 240.15c3–3(b)(4)(iv)(A) and paragraph (b)(4)(iv)(B) is added to read as follows:

"(B) A person that is a non-U.S. citizen residing outside of the United States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (b)(4)(i)(B) of this section."

* * * * *

9. Section 403.5 is amended by revising the introductory text of paragraph (d)(1); by adding paragraphs (e)(5) and (e)(6) and by removing paragraph (f)(3); and adding an OMB number at the end of the section to read as follows:

### § 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

* * * * *

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty shall:

* * * * *

(e) * * *

(5) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of this week, and the deposit so computed shall be made no later than one hour after the opening of banking business on the second following business day.

(6) A government securities broker or dealer that is a branch or agency of a foreign bank shall make and maintain a record of each computation made pursuant to paragraph (e)(5) of this section and preserve each such record for a period of not less than three years, the first two years in an easily accessible place.

* * * * *

[Approved by the Office of Management and Budget under Control No. 1505–0108.]

10. Section 403.7 is amended by revising paragraph (b), the first sentence of paragraph (c), the introductory texts of paragraphs (d)(1) and (2), and paragraph (e) to read as follows:

### § 403.7 Effective Dates.

* * * * *

(b) *Confirmations.* The requirements of §§ 403.4 and 403.5(d) to describe the specific securities that are the subject of a repurchase transaction, including the market value of such securities, on a confirmation at the initiation of a repurchase transaction or on substitution of other securities shall be effective January 31, 1988.

(c) *Written repurchase agreements.* The requirement to obtain a repurchase agreement in writing with the provisions described in §§ 403.4 and 403.5(d) shall be effective October 31, 1987, in the case of new customers of a government securities broker or dealer and shall be effective January 31, 1988, in the case of existing customers of a government securities broker or dealer. * * *

(d) *Disclosures.* (1) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a government securities broker or dealer that is subject to § 403.4 shall furnish the counterparty with a separate interim disclosure document containing: (i) The disclosure referred to in § 403.4 concerning the Securities Investor Protection Act of 1970, and (ii) if applicable, the following disclosure:

* * *

(2) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a financial institution that is subject to § 403.5(d) shall furnish the counterparty with a separate interim disclosure document containing: (i) The disclosure referred to in § 403.5(d) concerning the inapplicability of deposit insurance, and (ii) if applicable, the following disclosure: * * *

* * * * *

(e) *Existing term repurchase transactions.* Notwithstanding paragraphs (b), (c) and (d) of this section, the requirements of §§ 403.4 and 403.5(d) (with respect to hold-in-custody repurchase transactions), with the

exception of the requirements to confirm the substitution of securities subject to a repurchase transaction, shall not be applicable to any repurchase transaction, initiated on or before August 31, 1987, that, by its terms, matures on a specific date after August 31, 1987.

## PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

11. The authority citation for Part 404 continues to read as follows:

**Authority:** Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(B), (b)(1)(C), (b)(2)).

12. Section 404.4 is amended by revising paragraphs (a)(2) and (a)(3)(i)(A) to read as follows:

**§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.**

(a) * * *

(2) Complies with the recordkeeping requirements of § 450.4(c), (d) and (f) of this chapter; and

(3) * * *

(i)(A) A securities record or ledger reflecting separately for each government security as of the settlement dates all "long" or "short" positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its own account or for the account of its customers or others (except securities held in a fiduciary capacity) and showing the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

* * * * *

## PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

13. The authority citation for Part 450 continues to read as follows:

**Authority:** Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o-5 (b)(1)(A), (b)(2), (b)(3)(B)); Sec. 201, Pub. L. 99–571, 100 Stat. 3222–23 (31 U.S.C. 3121, 9110).

14. Section 450.1 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

**§450.1 Scope of regulations; office responsible.**

* * * * *

(b) * * * Procedures for obtaining interpretations of the regulations are set forth at § 400.2.

Date: July 21, 1988.

**Charles O. Sethness,**

*Assistant Secretary for Domestic Finance*

[FR Doc. 88–17173 Filed 7–29–88; 8:45 am]

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Part V

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 511**

**Rental Rehabilitation Program; Reallocation of Grant Amounts; Final Rule**

BEST COPY AVAILABLE

VOL 53 ISS 147 AUG 1 1988 UMI

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 511**

**[Docket No. R-88-1406; FR 2530]**

## Rental Rehabilitation Program; Reallocation of Rental Rehabilitation Grant Amounts

**AGENCY:** Office of Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Rental Rehabilitation Program provides grants to States and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes and is designed to increase the supply of standard housing units affordable to lower income families. This final rule eliminates the administratively established ceiling on the maximum amount of additional rental rehabilitation grant funds an existing grantee can receive through the program's "reallocation" process. Under 24 CFR 511.33(b), a Rental Rehabilitation grantee may receive reallocated funds in an amount not exceeding 30 percent of the cumulative amount initially obligated to the grantee for the current fiscal year and for any preceding fiscal years for which rehabilitation grant amounts remain available for obligation.

After the effective date of this rule, there will be no regulatory ceiling limiting the maximum reallocation that a specific Rental Rehabilitation grantee may receive, subject to the availability of grant amounts for reallocation.

**EFFECTIVE DATE:** September 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Kolesar, Rental Rehabilitation Division, Office of Urban Rehabilitation, Room 7162, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-7000 telephone (202) 755-5970.

(This is not a toll-free number)

**SUPPLEMENTARY INFORMATION:**

### Background

Section 17 of the United States Housing Act of 1937 (The 1937 Act), 42 U.S.C. 1437o, established the Rental Rehabilitation Program. This program provides grants to States and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. The program is designed to increase the supply of standard housing units affordable to lower income families.

Under section 17(b)(3) of the 1937 Act, the Secretary, after initially allocating Rental Rehabilitation grant amounts, may reallocate these amounts among grantees based on an assessment of the progress of grantees in carrying out rehabilitation grant activities in accordance with their specified schedules. Under the statute, reallocations must be designed to encourage expeditious use of Rental Rehabilitation grant amounts, consistent with the sound development and administration of the grantees' programs.

Grant amounts may become available for reallocation in several ways under Part 511. Formula grantees may fail to apply for their formula allocations or may have their program descriptions disapproved, or grant amounts may be deobligated by HUD for lack of progress by the grantee under the criteria and procedures in § 511.33(c) or as a corrective and remedial action under § 511.82(c)(3). In a HUD-administered State's program, there may be insufficient approvable applications for the grant amounts available. Generally, it has been HUD's experience that § 511.33(c) deobligations are by far the most important source of funds for reallocations, since few grantees fail to apply for their grants and few, if any, program descriptions are disapproved.

Whatever the method by which grant amounts become available for reallocation, § 511.33(b) sets out the basic criteria under which HUD reallocates the available funds. Among other things, paragraph (b) currently limits reallocations to any grantee so that the *cumulative* grant amount resulting from the reallocation (including all previous original grants and reallocations) may not exceed 130 percent of the *cumulative* grant amounts initially obligated to the grantee for the fiscal years for which funds remain available for obligation. This strict numeric limitation was imposed administratively in order to assure that excessively large reallocations would not occur. However, it has already become necessary to amend this provision twice. Compare 51 FR 12700, April 15, 1986; 52 FR 25593, July 8, 1987, and the original version of this provision at 51 FR 16936, 16952, April 20, 1984.

HUD has found that this strict and rather arbitrary ceiling restricts HUD's ability to reallocate program funds for valid programmatic reasons. Thus, HUD has decided to eliminate it entirely and to rely primarily on the judicious exercise of HUD's discretion to assure that reallocations achieve their statutory purpose of "encouraging the use of these resources expeditiously, consistent with the sound development and administration of grantees' rental rehabilitation programs."

The regulation as presently drafted is adversely affecting HUD's ability to achieve this statutory purpose for the following reasons.

The better performing grantees tend to have the smaller grants, while the poor performers tend to have the larger grants. Most Regional Offices would like to be able to reward their good performers. Unfortunately, most of the good performers receive small grant amounts and have reached the 130 percent limit. Meanwhile, many Regions have slow performing grantees with large amounts of funds not being spent. HUD is *required* by § 511.33(c) to deobligate uncommitted grant amounts at the end of the deadline for expenditure under that section. However, the Regional Offices may be reluctant to deobligate earlier because of a lack of good performers who have not yet reached the 130 percent limit. Since Rental Rehabilitation funds are generally appropriated for obligation within 3 years, HUD's ability to reallocate the funds (in effect, making new obligations to new grantees) may lapse before the Regional Offices are able to reallocate all funds that should be deobligated. Ultimately, the combined effect of these provisions will be a loss of funds to the program and an inability by HUD to carry out the statutory intent of the reallocation authority.

Over 70 grantees have been "topped out" regularly at the 130 percent cap, with projects ready to be committed and no money to fund them. These grantees must "gear down" their successful, ongoing program to await more funds. Such "stop-start" funding is inherently inefficient.

The reallocation process is a "reward" effort more than it is a "punishment" effort. Grant amounts cannot be deobligated from a poor performer unless the regulatory standard under § 511.33(c) is met, which requires consultation with the affected grantee as to the reasons for the slow rates of commitment and expenditure. HUD will not deobligate grant amounts if the grantee has an immediate need for the funds. Furthermore, if the performance of grantees which lose funds improves, they could receive reallocations if funds are available at a later date.

The removal of the reallocation cap will not have a negative impact on grantees' ability to receive a reallocation. Funds will be available to reallocate to all good performing grantees.

**Other Information**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public Inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipients are relatively larger cities, urban counties, or States, and the Rental Rehabilitation funds to be made available through reallocations to any grantee are relatively small in relation to other sources of Federal funding for State and local government and in relation to private enterprise in rental housing.

The subject matter of this rulemaking action relates to grants and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions with such subject matter to public comment, notwithstanding the statutory exemption. The Secretary has determined that in this instance notice and prior comment are impractical and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible. A major purpose for deobligating grant amounts is to reallocate those amounts to grantees that can use them expeditiously. Although grant amounts can be deobligated later, Fiscal Year 1986 grant amounts cannot be reallocated after September 30, 1988, since the Fiscal Year 1986 appropriation lapses on that date. For reasons previously stated, the existing cap limits HUD's ability to reallocate all the grants that should, in the interest of sound administration be deobligated. The statutory purpose of the reallocation authority is to permit the use of grant amounts by grantees that have an immediate need for the funds, not to cause the funds to lapse.

It is inefficient and contrary to the public interest to permit grant amounts to remain with grantees that have had sufficient opportunity to use them and have not done so, while other grantees with the ability to use additional resources are marking time because of lack of funds. HUD has a responsibility to assure that program funds are used responsibly and efficiently for the purpose intended. The current reallocation ceiling language in § 511.33(b) is impeding HUD's exercise of this responsibility. This ceiling must be removed as quickly as possible.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 at 53 FR 13855.

**List of Subjects in 24 CFR Part 511**

Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Rental rehabilitation grants, Reporting and recordkeeping requirements.

Accordingly, 24 CFR 511.33 is amended as follows:

## PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for Part 511 is revised to read as follows:

**Authority:** Sec. 17, United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 511.33, the section heading and paragraph (b) are revised to read as follows:

**§ 511.33 Reallocation of rental rehabilitation grant amounts.**

* * * * *

(b) Reallocation of rental rehabilitation grant amounts within the fiscal year. Except for end-of-fiscal year reallocations as provided in paragraph (d) of this section, HUD will reallocate rental rehabilitation grant amounts that are available during any fiscal year to such grantee or grantees as HUD determines to be appropriate to promote the expeditious use of grant amounts, consistent with the sound development and administration of grantee's rental rehabilitation programs. Grant amounts reallocated may come from any fiscal year's appropriation for which amounts are available for reallocation.

Dated: July 26, 1988.

**Jack R. Stokvis,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 88-17252 Filed 7-29-88; 8:45 am]

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Part VI

# Department of Transportation

**Federal Highway Administration**

**49 CFR Part 24**

**Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally-Assisted Programs; Correction; Notice of Proposed Rulemaking**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Part 24**

**[FHWA Docket No. 87-22]**

**RIN 2125-AB85**

## Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally-Assisted Programs; Correction

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This notice corrects Appendix A and Appendix B of the notice of proposed rulemaking on the Uniform Act of 1970 as published in FR Doc. 88-16304 beginning on page 27598 in the issue of Thursday, July 21, 1988. This notice correctly places the text of § 24.404(b), 24.404(c), and 24.503 in Appendix A and removes it from Appendix B, "General," where it was inadvertently misplaced.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Moore, Chief, Policy Development, Office of Right-of-Way, HRW-11, (202) 366-0116; or Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

The FHWA hereby corrects Appendix A and Appendix B of 49 CFR 24 as published at 53 FR 27598 as follows:

The text of § 24.404(b), 24.404(c), and 24.503 of Appendix A and the text portion of Appendix B under the heading "General" are corrected to read as follows:

**Appendix A to Part 24—Additional Information**

* * * * *

**Subpart E—Replacement Housing Payments**

* * * * *

**§ 24.404(b) Basic rights of persons to be displaced.**

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(n). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

**§ 24.404(c) Methods of providing replacement housing.**

The use of cost effective means of providing replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

**Subpart F—Mobile Homes**

**§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.**

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

**Appendix B to Part 24—Statistical Report Form**

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

**General**

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1—September 30.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in Part B indicate the Section of the Uniform Act that authorizes the cost.

*Part A—Persons Displaced*

* * * * *

*Part B—Relocation Payments and Expenses*

* * * * *

*Part C—Real Property Acquisition Subject to Uniform Act*

* * * * *

Issued on: July 26, 1988.

**R.D. Morgan,**

*Executive Director.*

[FR Doc. 88-17192 Filed 7-29-88; 8:45 am]

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## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List July 29, 1988**

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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| 4 | 14.00 | Jan. 1, 1988 |
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| 1–699 | 14.00 | Jan. 1, 1988 |
| 700–1199 | 15.00 | Jan. 1, 1988 |
| 1200–End, 6 (6 Reserved) | 11.00 | Jan. 1, 1988 |
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# Rules and Regulations

Federal Register
Vol. 53, No. 146
Tuesday, August 2, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 890

### Federal Employees Health Benefits Program; Medically Underserved Areas for 1988

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting as final its interim regulations under the Federal Employees Health Benefits (FEHB) Program pertaining to benefits for individuals in Medically Underserved Areas. The interim regulations announced the states that qualify as Medically Underserved Areas under the FEHB Program for 1988.

**EFFECTIVE DATE:** January 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Barbara Myers (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** On January 14, 1988, OPM published interim regulations in the **Federal Register** (53 FR 860) to announce the results of its annual determination of the states that qualify as Medically Underserved Areas for purposes of the FEHB Program. The interim regulations were effective January 1, 1988.

No comments were received during the comment period.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

1. The authority citation for 5 CFR Part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. The interim regulations amending 5 CFR 890.701, that were published at 53 FR 860 on January 14, 1988, are adopted as final rules without change.

[FR Doc. 88–17314 Filed 8–1–88; 8:45 am]
BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1446

**[Amdt. 2]**

### Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts with clarifying revisions, a proposed rule published on June 1, 1988 (53 FR 19923), concerning, for the 1988 through 1990 crops of peanuts, the requirements for the furnishing of letters of credit by peanut handlers to insure their compliance with regulations governing the handling and use of additional peanuts. Also, this rule permits the Executive Vice President, Commodity Credit Corporation (CCC), to extend the deadline for the filing of letters of credit to permit handlers time to acquire adequate financing.

**EFFECTIVE DATE:** August 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202–382–0152.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export makets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553, or any other provision of law, to pubilsh a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 359(p) of the Agricultural Adjustment Act of 1938, as amended, requires that a peanut handler submit adequate financial guarantees to ensure the handler's compliance with the obligation to export "additional" peanuts. For this purpose, 7 CFR 1446.106 sets forth requirements for the submission by handlers of letter of credit, and includes a provision requiring higher letters of credit for handlers with a history of peanut program violations.

A rule published in the **Federal Register** (53 FR 19923), on June 1, 1988, proposed amendments to § 1446.106 which set forth rules for determining when such increases would be required.

**Comments**

A total of four comments were received by July 5, 1988, in response to the proposed rule.

One respondent favored the proposed rule as published. Two respondents generally supported the proposed rule but suggested modifications. One respondent supported the recommendations of another respondent but requested clarification of certain language contained in the proposed rule.

Two respondents suggested that the final rule make clear that the letter of credit shall be increased by 10 percent (or 5 percent under certain conditions) for *each* of the three preceding crop years with respect to which a handler has been assessed penalties for program violations. The rule has been clarified concerning this point.

One respondent requested clarification of the terms "related individual," or "related entity," or "associated with another handler" as used in the proposed rule. The final rule specifies that the Executive Vice President, CCC, shall determine if a handler is considered related to, or associated with, another individual, handler or other entity involved in a penalty assessment. These determinations will take into account such factors as deemed needed to prevent avoidance of letter of credit requirements through reorganizations as well as other situations where "relatedness" may have an effect on insuring compliance with additional peanut requirements.

One respondent felt that, as long as a penalty was being challenged administratively or in court, there should be no increase in the letter of credit based on the penalty. This suggestion was not adopted in the final rule. Such a provision would encourage a handler with a penalty assessment to challenge the assessment solely to delay an increase in the letter of credit amount.

One respondent contested the determination set out in the proposed rule that the rule would not have significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in the export market. The final rule, which maintains the substantive provisions of the proposed rule, does not, as was the case with the proposed rule, adversely affect a handler's ability to compete in the export market. Increases in letter of credit requirements above minimum levels for nonphysical and physical supervision will apply only to handlers with a history of peanut program violations. Therefore, handlers themselves control whether an increased letter of credit is required.

One respondent requested clarification of the provision in the proposed rule that permitted the Executive Vice President, CCC, in his discretion, to permit waiver of the requirements that letter of credit determinations will be based on facts as they exist as of June 1 of the calendar year in which the letter of credit is to be supplied, if adequate security is presented. As indicated in the proposed rule's supplementary information, this was designed to cover the special letter of credit increase for unpaid penalties. The rule itself has been clarified in this respect.

One respondent asked whether a penalty reduction would effect the quantity of peanuts considered involved in a violation for letter of credit purposes. No clarification of the rule was deemed needed on this point. A reduction does not effect the quantity of peanuts involved in the violation unless such a recalculation of quantity was, itself, the basis of the reduction. However, the final rule, like the proposed rule, provides for lesser letter of credit increases where penalties have been reduced and paid. Also, like the proposed rule, the final rule provides, for violations involving paid penalties, that increases in the letter of credit will be required only with respect to certain types of violations. Hence, a penalty reduction could also affect the letter of credit amount if the penalty reduction involved a material redetermination of the nature of the violations themselves.

The final rule reorganizes the proposed rule and makes technical corrections in the rule as well as the other clarifying revisions indicated above. In addition, a provision has been added providing that the Executive Vice President, CCC, may extend the deadline for the filing of letters of credit by handlers. This authority is particularly necessary with respect to the current crop year as, otherwise, all initial financing would have to be complete by July 31, 1988.

**List of Subjects in 7 CFR Part 1446**

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse.

**Final Rule**

Accordingly, Title 7, Subtitle B, Chapter XIV, Part 1446, Subpart-Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops, is amended as follows:

**PART 1446—[AMENDED]**

1. The authority citation for Subpart-Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops is revised to read as follows:

**Authority:** 15 U.S.C. 714b and c; 7 U.S.C. 1441, 1421 *et seq.*; 7 U.S.C. 1359, 1375.

2. Section 1446.106 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1446.106 Letter of credit.**

* * * * *

(b) *Increased letter of credit based on performance record.* For the 1988 through 1990 crop years, the amount of the letters of credit required to be submitted under paragraph (a) of this section by any handler who has a poor performance record, as evidenced by previous penalty assessment for violations of the provisions of this part, or who is associated with another handler who has such a record, shall be increased to an amount CCC determines necessary to assure compliance with this part, such amount of increase to be determined in accordance with the guidelines set forth in paragraph (c) of this section.

(c) *Guidelines for increasing letters of credit.* (1) With respect to the establishment of letters of credit for each of the 1988 through 1990 crop years, if the handler and/or related entity was assessed penalties for program violations for any of the previous three crop years, the percentage of the pounds of contracted peanuts to which the support differential specified in paragraph (a) of this section shall be applied, shall be increased by 10 percent for each and every year of the three-year period in which such a penalty was assessed, except that:

(i) The increase in the percentage of contracted peanuts to which the support differential is applied which is attributable to violations for a particular crop year shall be 5 percent rather than 10 percent if, for all violations for that crop year:

(A) The penalties were reduced by the Executive Vice President, CCC, and paid; or

(B) Less than 120 days, or such further period as established by the Executive Vice President, have passed since the penalty assessment was made by the CCC Contracting Officer.

(ii) Previous penalty assessments which have been paid shall not be considered as part of the violation history for any crop year if:

(A) The violations do not involve the importation of additional peanuts, or the failure to properly dispose of additional peanuts; and

(B) The total violations for any crop year by the handler, and related individuals or entities, involved less than 100,000 pounds of peanuts.

(iii) If there are penalties assessed against the handler and/or related individual or entity, as determined by the Executive Vice President, CCC, for any crop year for any violation of this part of any kind (including, but not limited to those identified in paragraph (c)(1)(ii) of this section) which remain unpaid more than 120 days after the assessment was made by the CCC Contracting Officer, the amount of the letter of credit otherwise required by this paragraph for any of the 1988 and subsequent crops shall be increased by the amount of the unpaid assessment.

(2) References to unpaid penalties in paragraph (c)(1) of this section shall include associated unpaid interest and unpaid late payment charges.

(3) Letter of credit determinations under this section for the 1988 and subsequent crop years shall be made based upon the facts as they exist on June 1 of the calendar year in which the letter of credit is to be supplied. However, the Executive Vice President, CCC, in his discretion, may waive the increase required under paragraph (c)(1)(iii) of this section upon the presentment of adequate security as determined acceptable by the Executive Vice President, CCC. Further, notwithstanding any other provision of this section, the Executive Vice President, CCC, may extent the time for filing of the required letter of credit if such an extension is deemed needed to allow handlers sufficient time to acquire the necessary financing.

* * * * *

Signed at Washington, DC on July 29, 1988.

**Earle J. Bedenbaugh,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 88-17495 Filed 7-29-88; 5:02 pm]

BILLING CODE 3410-05-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 88-NM-95-AD; Amdt. 39-5991]

## Airworthiness Directives: McDonnell Douglas Model DC-10-30, -30F, -40, and KC-10A (Military) Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-30, -30F, -40, and KC-10A (Military) series airplanes, which requires all landing gear brakes be inspected for wear, and replaced if the wear limits prescribed in this AD are not met. This amendment is prompted by a recent report where a Model DC-10-30 series airplane executed a rejected takeoff and was unable to stop on the runway. Subsequent investigation has revealed that a majority of the brakes on the airplane were close to their wear limits, which may have contributed to the incident. This condition, if not corrected, could result in the failure of the landing gear brakes and overrun of the runway by the airplane.

**DATES:** Effective August 20, 1988.

**ADDRESSES:** There is no applicable service information.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5335.

**SUPPLEMENTARY INFORMATION:** Recently, a Model DC-10-30 series airplane executed a rejected takeoff (RTO) following a takeoff warning indication in the cockpit. The airplane stopped approximately 1,000 feet beyond the end of the runway. Prior to this incident, a maintenance inspection of the ten brakes on the airplane revealed that eight brakes were near wear limits. Subsequent to the incident, on these eight brakes, there were two failed pistons, one on each of the two hydraulic systems. O-rings in the pistons were damaged by the extension of the piston beyond its normal limits. After the loss of the O-rings, hydraulic fluid was released and braking action was ineffective.

The FAA has determined that the fact that the brakes were at or near their wear limits may have contributed to the incident. This condition, if not corrected, could result in the failure of the main landing gear brakes and overrun of the runway by the airplane.

In light of this, the FAA has determined that the brake wear limits prescribed in the McDonnell Douglas DC-10-30 Maintenance Manual are not acceptable.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD, applicable to all McDonnell Douglas Model DC-10-30, -30F, -40, and KC-10A (Military) airplanes, requires the inspection of main landing gear brakes to the wear limits set forth in this AD, and the replacement, prior to further flight, of any brakes which are determined not to be within these limits. Subsequently, these limitations must be utilized in lieu of those called out in the maintenance manual.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to McDonnell Douglas Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent the loss of main landing gear brake effectiveness, accomplish the following:

A. Within 30 days after the effective date of this Airworthiness Directive (AD), inspect the brakes for wear. If the brake wear is greater than the following limits, replace the brake with one within limits prior to further flight. Thereafter, these limits must be maintained:

1. For Goodyear/Loral Systems part numbers 5000758–2, –3, and –5 the maximum brake wear limit is 1.50 inches.

2. For Goodyear/Loral Systems part numbers 5000758–4, –6, and –10 the maximum brake wear limit is 1.75 inches.

B. Within 30 days after the effective date of this AD, incorporate the wear limits listed in paragraph A., above., into the FAA-approved maintenance inspection program.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This Amendment becomes effective August 20, 1988.

Issued in Washington, DC, on July 26, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88–17353 Filed 7–28–88; 2:42 pm]

BILLING CODE 4910–13–M

**14 CFR Part 97**

**[Docket No. 25668; Amdt. No. 1379]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATE:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

**Note:** Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA forms are identified as FAA forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied

to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on July 22, 1988.

**Robert L. Goodrich,**

*Director of Flight Standards.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

**PART 97—[AMENDED]**

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective October 20, 1988*

Anvik, AK—Anvik, NDB RWY 35, Orig.
Fresno, CA—Fresno Air Terminal, VOR or TACAN RWY 11L, Amdt. 10
Fresno, CA—Fresno Air Terminal, LOC BC RWY 11L, Amdt. 7
Fresno, CA—Fresno Air Terminal, NDB RWY 29R, Amdt. 22
Fresno, CA—Fresno Air Terminal, ILS RWY 29R, Amdt. 30
Corning, IA—Corning Muni, NDB RWY 17, Orig.
Athens/Albany, OH—Ohio University, LOC RWY 25, Amdt. 1
Athens/Albany, OH—Ohio University, NDB RWY 25, Amdt. 7
Milford, UT—Milford Muni, VOR-A, Amdt. 3

* * * *Effective September 22, 1988*

Shishmaref, AK—New Shishmaref, NDB RWY 5, Orig.
Shishmaref, AK—New Shishmaref, NDB RWY 23, Orig.
Chicago, IL—Chicago-O Hare Intl, NDB RWY 27R, Amdt. 21
Chicago, IL—Chicago-O Hare Intl, ILS RWY 27R, Amdt. 23
Council Bluffs, IA—Council Bluffs Muni, VOR-A, Amdt. 3
Dension, IA—Denison Muni, NDB RWY 30, Amdt. 3
Shenandoah, IA—Shenandoah Muni, VOR/DME RWY 12, Amdt. 2
Shenandoah, IA—Shenandoah Muni, NDB RWY 30, Amdt. 10
Covington/Cincinnati, OH, KY—Greater Cincinnati Intl, ILS RWY 27L, Amdt. 9
Covington/Cincinnati, OH, KY—Greater Cincinnati Intl, ILS RWY 36, Amdt. 33
Great Barrington, MA—Great Barrington, NDB-A, Amdt. 4
Marthas Vineyard, MA—Marthas Vineyard, VOR RWY 6, Amdt. 5
Marthas Vineyard, MA—Marthas Vineyard, ILS RWY 24, Amdt. 8
Nantucket, MA—Nantucket Memorial, VOR RWY 24, Amdt. 11
Nantucket, MA—Nantucket Memorial, NDB RWY 24, Amdt. 9
Nantucket, MA—Nantucket Memorial, ILS RWY 24, Amdt.13
Hutchinson, MN—Hutchinson Muni-Butler Field, NDB RWY 15, Amdt. 2
Grand Island, NE—Central Nebraska Regional, VOR RWY 13, Amdt. 17
Grand Island, NE—Central Nebraska Regional, VOR RWY 17, Amdt. 21
Grand Island, NE—Central Nebraska Regional, VOR/DME RWY 31, Amdt. 5
Grand Island, NE—Central Nebraska Regional, VOR/DME RWY 35, Amdt. 13
Grand Island, NE—Central Nebraska Regional, LOC/DME BC RWY 17, Amdt. 7
Grand Island, NE—Central Nebraska Regional, NDB RWY 35, Amdt. 6
Grand Island, NE—Central Nebraska Regional, ILS RWY 35, Amdt. 7
O'Neill, NE—The O'Neill Municipal Airport—John L. Baker Field, VOR RWY 13, Amdt. 4
O'Neill, NE—The O'Neill Municipal Airport—John L. Baker Field, VOR RWY 31, Orig.
Buffalo, NY—Greater Buffalo Intl, NDB RWY 23, Amdt. 15
Buffalo, NY—Greater Buffalo Intl, ILS RWY 23, Amdt. 28
Greenville, NC—Pitt-Greenville, SDF RWY 19, Amdt. 5
Greenville, NC—Pitt-Greenville, NDB RWY 19, Amdt. 11
Columbus, OH—Port Columbus Intl, LOC BC RWY 28R, Amdt. 5
Columbus, OH—Port Columbus Intl, NDB RWY 10L, Amdt. 5
Columbus, OH—Port Columbus Intl, NDB RWY 10R, Amdt. 5
Columbus, OH—Port Columbus Intl, ILS RWY 10L, Amdt. 13
Columbus, OH—Port Columbus Intl, ILS RWY 10R, Amdt. 4
Clemson, SC—Clemson-Oconee County, NDB-A, Amdt. 5
Lancaster, TX—Lancaster, NDB RWY 31, Orig., CANCELLED
Bryce Canyon, UT—Bryce Canyon, VOR-A, Amdt. 6
Monroe, WI—Monroe Muni, VOR/DME RWY 30, Amdt. 6
Monroe, WI—Monroe Muni, RNAV RWY 12, Amdt. 3
Laramie, WY—General Brees Field, VOR or TACAN RWY 12, Amdt. 5
Laramie, WY—General Brees Field, VOR/DME or TACAN RWY 30, Amdt. 6

* * * *Effective August 25, 1988*

Eufaula, AL—Weedon Field, VOR RWY 18, Amdt. 7
Chicago IL—Chicago-O Hare Intl, NDB RWY 32R, Amdt. 19
Chicago IL—Chicago-O Hare Intl, ILS RWY 32R, Amdt. 19
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, VOR RWY 9, Amdt. 12, CANCELLED
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, RADAR-1, Amdt. 23
Henderson, KY—Henderson City-County, NDB RWY 9, Amdt. 2
Roxboro, NC—Person County, NDB RWY 6, Orig.
Gruver, TX—Gruver Muni, NDB RWY 20, Amdt. 1, CANCELLED

* * * *Effective July 19, 1988*

Greenville, ME—Greenville Muni, NDB RWY 14, Amdt. 3
Greenville, ME—Greenville Seaplane Base, NDB-A, Amdt. 3

* * * *Effective July 18, 1988*

Harlan, IA—Harlan Muni, NDB RWY 33, Amdt. 2

* * * *Effective July 15, 1988*

Meriden, CT—Meriden Markham Muni, VOR RWY 36, Amdt. 2
Meriden, CT—Meriden Markham Muni, NDB RWY 36, Amdt. 6

* * * *Effective July 13, 1988*

Miami, FL—Miami Intl, VOR RWY 12, Amdt. 28
Miami, FL—Miami Intl, ILS RWY 12, Amdt. 2

* * * *Effective July 8, 1988*

Lake Charles, LA—Chennault Industrial Airpark, ILS RWY 15R, Amdt. 1
Augusta, ME—Augusta State, VOR/DME RWY 17, Amdt. 4
Augusta, ME—Augusta State, ILS RWY 17, Amdt. 1

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 157

**[Order No. 490-A; Docket No. RM87-16-001]**

## Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts

Issued July 22, 1988.

**AGENCY:** Federal Energy Regulatory Commission; DOE.

**ACTION:** Order denying rehearing and clarifying final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 490, 53 FR 4121 (Feb. 12, 1988), FERC Statutes & Regulations, Regulations Preambles ¶ 30,797 (1988), and clarifying the final rule. The final rule, which became effective April 12, 1988, permits abandonment of certain sales and purchases under the Natural Gas Act by both sellers and purchasers where the underlying contract term has expired, or the contract has been terminated or modified with respect to the sales obligations by mutual agreement of the parties. Similarly, where the sales or purchase obligation has been unilaterally reduced, suspended or terminated by the exercise of a contractual provision, abandonment is authorized to the extent of the contractually authorized adjustment of takes or deliveries. The order makes no substantive change in the final rule, but addresses a number of questions concerning the operation of the rule and its relations to existing limited term abandonments.

**EFFECTIVE DATE:** July 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jacob Silverman Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 357-8315.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this Order Denying Rehearing is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

## Order Denying Rehearing and Clarifying Final Rule

### *I. Introduction*

On February 5, 1988, the Commission issued the final rule in this docket, Order No. 490 (the rule), which became effective April 12, 1988.[1] This order amended the Commission's regulations to provide for abandonment, on a generic basis, of certain sales and purchases under section 7(b) of the Natural Gas Act (NGA). The Commission received thirty-six timely requests for rehearing listed in Appendix A.[2] One party, American Public Gas Association, also sought a stay of Order No. 490.

On April 4, 1988, the Commission issued an order granting rehearing solely for the purpose of further consideration of the rehearing requests and denying the motion for a stay.[3]

### *II. Background*

The rule authorizes abandonment by both sellers and purchasers where the underlying contract term has expired, or where the sales and purchase obligations have been terminated or modified by mutual agreement of the parties.[4] Similarly, where the sales or purchase obligation has been unilaterally reduced, suspended or terminated by the exercise of a contractual provision, abandonment is authorized to the extent of the contractually authorized adjustment of takes or deliveries. When a contract has expired or been terminated, either party to the contract may, upon thirty (30) days written notice, abandon its service obligation to sell or purchase the gas. The abandonment is automatically effective in accordance with the notice given. If the parties agree to terminate the contract or to modify their sales and purchase obligations under the contract, the abandonment is effective in accordance with the parties' agreement. Where there is unilateral abandonment, the abandoning party must notify the Commission of the abandonment within thirty (30) days of the effective date of abandonment. When abandonment occurs by mutual agreement, the former purchaser must notify the Commission within thirty (30) days of the effective date of abandonment.

The rule differs from the proposed rule in two respects,[5] and clarifies that the rule will apply where the contract permits one party to the contract to reduce, suspend or terminate its purchase or sales obligation, such as by the exercise of a "market out" clause. First, the rule provides that it will be applicable to all first sales, including first sales to local distribution companies (LDC's).[6] The Commission

[1] 53 FR 4121 (Feb. 12, 1988), FERC Statutes & Regulations, Regulations Preambles ¶ 30,797 (1988).

[2] On April 5, 1988, as amended April 25, 1988, the Producer-Marketer Transportation Group (PMTG) filed a Motion for Clarification. In addition, a number of requests for rehearing state they also seek clarification. However, only the requests of Anadarko Petroleum Corp. and Indicated Producers (IP) actually seek clarification. The others actually seek modification of the rule.

[3] 43 FERC ¶ 61,010, 53 FR 11,845 (April 11, 1988).

[4] We should again note that the rule also applies to arrangements for less than permanent abandonment.

[5] Notice of Proposed Rulemaking (NOPR), 52 FR 18,703 (May 19, 1988), FERC Statutes & Regulations [Proposed Regulations 1982-1987] ¶ 32,441 (1987).

[6] The rule is also applicable to purchases under contracts between pipelines.

explained that if sales to LDC's were excluded, producers might be deterred from entering into new contracts with LDC's because they would require specific Commission approval to abandon such sales, and LDC's might be deprived of the benefit of the released supplies of gas. The Commission noted that most sales by producers to LDC's are of recent origin, and thus it is unlikely that many such contracts would be terminating in the near future, nor would they likely involve the sale of relatively low-priced gas. None of the requests for rehearing raise any issue with respect to this change.

Second, under the proposed rule, abandonment of purchases by a pipeline from a producer would be conditioned upon that pipeline providing transportation of the abandoned gas. However, in the final rule the Commission decided that only pipelines that have accepted a blanket certificate of public convenience and necessity authorizing transportation of gas under § 284.221 of the Commission's regulations [7] may unilaterally abandon purchases under expired contracts. The Commission reasoned that allowing only Part 284 blanket carriers to abandon unilaterally will help assure that the pipelines' customers will have access to the abandoned gas supplies. As Part 284 carriers, the pipelines will be subject to the nondiscriminatory access condition in §§ 284.8 and 284.9 of the regulations, and will not be able to discontinue transportation without the Commission's authorization. Moreover, because the rule does not mandate transportation when the producer initiates abandonment, to ensure that the rule does not act as a disincentive to pipelines' becoming Part 284 transporters, only pipelines that have accepted blanket certificates under Part 284 will be eligible to exercise the right to abandon purchases unilaterally.

### *III. The Rationale for the Rule*

The Commission concluded that under the conditions created by the Natural Gas Policy Act of 1978 (NGPA), the Commission's former approach to abandonment required modification. The Commission found that continuation of the service obligation after the contract has expired is no longer required by the public convenience and necessity because it prevents market forces from operating efficiently. When either a producer or a purchaser concludes that it is no longer economically efficient to continue sales or purchases under an expired contract, Congress' NGPA policies are thwarted by policies that prevent that gas from entering the marketplace.

The rule must be viewed in the context of the Congressional and Commission policy of permitting market forces to determine the allocation of the nation's gas reserves to the greatest extent possible. By encouraging open access on the pipelines in other proceedings,[8] and thereby more competitive markets, the Commission is seeking to permit the market itself to determine where the gas should flow and at what price. This rule is an integral part of that overall strategy. It allows gas to move where it is needed, rather than tying it indefinitely to the dedicated purchaser who may have no current need for the gas.

At the same time the Commission seeks to ensure that the rule is consistent with other important policy considerations. The constituent elements of the rule reflect these factors.

In light of the court's concerns with respect to the potential for aggravating a pipeline's take-or-pay problems, as expressed in *Con Ed* [9] and *AGD* [10], the Commission has not imposed a transportation requirement upon the pipeline when the producer unilaterally abandons sales. Thus, where a pipeline does not provide open-access transportation, a producer that abandons sales will be required to negotiate with the pipeline for the transportation of the gas. The rule is not intended to enhance the pipeline's bargaining position, nor does it grant the pipeline any rights it did not have previously, but merely continues the *status quo* except for the abandonment right.

The Commission recognizes that in the event a carrier elects to take advantage of the regulations promulgated under Order No. 500 to become an open-access carrier, it would be required to transport the gas that a producer abandons under the rule. This follows not from the rule, but because of the pipeline's status as a Part 284 carrier. The Order No. 500 series constitutes a comprehensive treatment to date of the take-or-pay problem, where the Commission, after making a thorough examination of all aspects of that problem, carefully balanced the various competing interests in light of the public interest.[11] Under these orders no take-or-pay credits are required for transportation of gas that the producer formerly sold to the transporting pipeline under a terminated take-or-pay contract and that is not currently subject to a gas purchase contract between the parties. The Commission concluded in Order No. 490 that it would not modify the provisions of Order No. 500 when a producer terminates its sales obligations under this rule because it could upset the delicate balance crafted in Order No. 500.

The rule also provides that only Part 284 blanket carriers may abandon purchases unilaterally under expired contracts. This provision serves two purposes. It will assure that when a pipeline unilaterally abandons purchases, the pipeline's customers will have access to the abandoned gas and be in a position to purchase it.[12] The Commission recognizes that permitting abandonment by producers when the contract has expired may exacerbate the take-or-pay problems of Part 284 blanket carriers, because they will be required to transport the gas that is being abandoned. However, such pipelines will enjoy the benefits of a right to abandon purchases unilaterally under the rule. To ensure that the rule does not act as a disincentive to pipelines accepting Part 284 blanket certificates, the rule permits only such carriers to unilaterally abandon the purchase of gas. Thus the benefits of the rule are balanced not only between sellers and purchasers, but also between purchasers that have accepted a blanket

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[7] 18 CFR 284.221 (1987).

[8] *See, e.g.* Order Nos. 436 and 500. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42,408 (October 18, 1985), FERC Statutes & Regulations [Regulations Preambles 1982–1985] ¶ 30,665 (October 9, 1985). In the Order No. 500 series, 52 FR 30,334 (August 14, 1987), FERC Statutes & Regulations ¶ 30,761 (August 7, 1987) the Commission promulgated interim regulations in response to the decision of the United States Court of Appeals for the District of Columbia Circuit in Associated Gas Distributors v. FERC, 824 F.2d 981 (DC Cir. 1987) which vacated Order No. 436 and remanded the matter to the Commission for further proceedings. On December 1, 1987, that court denied motions to enforce the mandate. On April 18, 1988, the Supreme Court denied certiorari, No. 87–1091, 108 S.Ct. 1469 (1988). The Commission has not as yet issued the final regulations in response to the court's remand.

[9] Consolidated Edison Co. of New York v. FERC, 823 F.2d 630 (DC Cir. 1987). On April 28, 1988, the court denied the motion of intervenor Associated Gas Distributors for an order directing the Commission to comply with the court's mandate.

[10] Associated Gas Distributors v. FERC, 824 F.2d 981 (DC Cir. 1987), *cert. denied sub. nom.*, Southern California Gas Company v FERC, No. 87–1091, 108 S.Ct. 1469 (1988).

[11] As noted above, *supra* n.8, the Commission has not issued the final regulations under Order No. 500.

[12] The Commission also determined that it would not provide a right of first refusal to the firm sales customers of the pipeline purchaser. The Commission stated that the concern about security of supply that such right seeks to assure will be provided by permitting gas to move more freely to those who need it, rather than restricting it to those whose pipeline may have initially dealt with the producer

certificate under Part 284 and those that have not.

*IV. Discussion*

We will first discuss contentions relating to the authority of the Commission to adopt the rule, and then to the specific issues raised in the requests for rehearing.

A. Validity of Rulemaking

Various parties question the Commission's authority to adopt the rule, arguing in essence that NGA section 7(b) requires a case specific approach to abandonment.[13] The Commission has concluded that the goal of the NGA, of affording "consumers * * * protection from excessive rates and charges",[14] including the assurance of an adequate and reliable supply of natural gas,[15] is promoted by permitting abandonment under the criteria of the rule, without case-by-case examination that may have been necessary under the pre-NGPA conditions.

In adopting the rule the Commission found that, consistent with NGA section 7(b), the present or future public convenience or necessity permits abandonment under the circumstance provided therein, and that the *Con Ed* and *AGD* decisions support the Commission authority to adopt such policy, providing the policy is adequately explained and based on reasoned decision-making. To hold otherwise would bind the Commission to outmoded policies no longer suited to the existing regulatory climate of promoting competition to the greatest extent practicable.[16]

In *AGD* the court specifically upheld the automatic abandonment provisions in Order No. 436 and rejected the argument that section 7(b) always mandates a case-by-case determination. The court stated that the Commission has:

identified circumstances under which pipelines are automatically entitled to abandonment of service—namely, when the customer exercises the election provided. In support of this it has made the necessary finding under section 7(b) that such abandonment serves the "public convenience or necessity." [17]

We note that under the Commission's prior abandonment policy, where abandonment was contested, the Commission weighed the comparative needs of the competing pipelines and their customers and thus a hearing was usually necessary. There is no need for such hearing under the rule because the Commission has determined that the "public convenience or necessity" is served by permitting abandonments when contracts terminate or the parties otherwise meet the requirements. Moreover in *Wisconsin Gas Co.* v. *FERC* [18] the court held that rulemaking is appropriate for determination of policies of general applicability such as those determined herein.[19]

A number of parties argue that NGPA section 601(a) of the Natural Gas Policy Act of 1978 (NGPA),[20] which in essence provides that gas dedicated before enactment of the NGPA remains dedicated unless removed from the Commission's NGA jurisdiction by the NGPA, indicates Congress' intent to continue the Commission's jurisdiction over dedicated gas, and that the rule is in direct conflict with this Congressional intent. This argument is flawed. The Commission is not removing its jurisdiction over the dedicated gas, but exercising that jurisdiction to authorize abandonment when it is in the public interest. The Commission has made the necessary finding that the NGA section 7(b) requirements for abandonment authorization are satisfied when a contract is terminated, or the parties agree to the termination or modification of a contract's sales or purchase obligation. Thus abandonment is permitted by the public convenience or necessity.

In the Commission's judgment the rule presents a balanced approach for all segments of the industry. Producers will be able to market their gas upon the termination of their contracts without the fear of being shut-in. Part 284 blanket certificate pipelines will be permitted to abandon purchases upon contract termination, and transportation will not be required of pipelines that are not entitled to unilaterally abandon purchases under the rule. Finally, consumers will benefit from the greater availability of gas, and where their pipeline supplier is an open-access carrier, will be assured of access to abandoned gas.

Finally, the validity of the rule is challenged on the grounds that the rule is in direct conflict with NGPA section 315.[21] That section requires that a first seller of any gas that is removed from the Commission's NGA jurisdiction by NGPA section 601(a)(1)(B) give the purchaser two opportunities to continue purchases when the contract expires. The seller must first make a bona fide offer to continue sales, and then give the purchaser a right of first refusal of any offer to a third party. It is asserted that this section demonstrates Congress' intention to assure that purchasers of gas continue to have a right to purchase gas upon a contract's termination. The rule, it is argued, is directly contrary to this expressed intent because it cuts off the purchaser's right to continue purchasing when the contract terminates.

The argument is unpersuasive for a number of reasons. First, the rule only applies to gas still within the Commission's NGA jurisdiction, and not to gas removed from the Commission's NGA jurisdiction to which section 315 is related. Moreover, section 315 was directed to a different concern. At the time of passage of the NGPA in 1978, Congress was concerned that purchasers of any gas that was being removed from the Commission's NGA jurisdiction, and thus would no longer have the protection afforded by NGA section 7(b), continue to have that protection at the contract's termination. Thus Congress provided that upon contract termination, the purchaser has the option of continuing to purchase from the seller,[22] in lieu of the protection of NGA section 7(b), which required Commission approval before the seller could terminate its obligation to the purchaser.

What Congress determined in 1978 with respect to gas covered by section 315, and not subject to the Commission's NGA jurisdiction, continues to govern that gas. However, that determination has no relevance to the Commission's determination in 1988, based upon current circumstances, that the public convenience and necessity is served by permitting abandonment as provided under the rule.

Moreover, as a result of the rule, additional supplies of gas will be available to all segments of the market. This will provide ample opportunities for purchasers to secure supply in the event their previous arrangements for gas supply are affected by this rule.

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[13] See e.g. Michigan at 2–6; Williams at 2–10 and LDC's in general.

[14] Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378, 388 (1959).

[15] California *et al.* v. Southland Royalty Co., *et al.*, 436 U.S. 519, 523 (1978).

[16] In *Con Ed* the court stated:

[B]y delegating abandonment power in such broad terms, Congress expected that the Commission would develop an appropriate test to fit the regulatory climate. 823 F.2d at 630.

[17] 824 F.2d at 1015.

[18] 770 F.2d 1144 (DC Cir. 1985), *cert. denied* 476 U.S. 114 (1986).

[19] *Id.* at 1166.

[20] 15 U.S.C. 3431(a) (1982).

[21] See Williams at 13–11.

[22] For a full exposition, *see* Order No. 95–A, Refusal of Bona Fide Offers, 51 FR 7923 (Mar. 7, 1986), FERC Statutes & Regulations, Regulations Preambles 1982–1985 ¶30,690 (1986).

B. Take-or-Pay and Mandatory Transportation

Most of the requests for rehearing address the issues of take-or-pay and mandatory transportation. On the one hand, the requests urge that we modify the rule and require a pipeline to transport gas that is being abandoned by a producer under the rule.[23] Some proponents of this position also submit that the firm sales customers of pipelines should be afforded the right of first refusal when gas is being abandoned under the rule.[24] It is argued that unless mandatory transportation is required, pipelines may limit the effectiveness of the rule by imposing unreasonable conditions on the transportation of abandoned gas. Proponents of the right of first refusal assert that such a right is necessary to assure firm sales customers the ability to purchase the released gas. The two modifications are related because, absent transportation, the right of first refusal may be of no consequence.

On the other hand, the Commission is urged to modify the rule to address "head on," as discussed by the court in *Con Ed* and *AGD*, the impact on the pipelines' take-or-pay liability that Order No. 490 would have.[25] These parties argue that the rule will enable producers to terminate the sale of low-priced gas, thereby raising the pipelines' weighted average cost of gas (WACOG), and adversely affect the pipelines' ability to sell gas. Moreover, the pipelines will now be competing with the lower-priced gas which they will be forced to release by virtue of the provisions of Order No. 490.[26] The Commission is urged to modify the rule to extinguish all existing take-or-pay claims, and to require refunds of outstanding take-or-pay payments or prepayments.[27]

Some parties argue that without affording some take-or-pay relief, the rule will undermine Order No. 500.[28] They note that under Order No. 500, take-or-pay relief is not available for terminated contracts. Since abandonments may be accomplished by unilateral action of gas producers, transportation of the abandoned gas will be exempt from crediting under Order No. 500. According to these petitioners, the effect of Order No. 490 will be to weaken the take-or-pay relief provided under Order No. 500 and exacerbate the take-or-pay problem. Thus, they urge that Order No. 490 be modified to include a crediting mechanism like that found in Order No. 500.

In evaluating the consequences of permitting unilateral abandonment by procedures, the Commission took into consideration the effect that the rule would have on pipelines and their customers. If we modified the rule to require mandatory transportation there would be greater assurance that the gas would be available to all. Nevertheless, the Commission concluded that to do so might run afoul of the concerns expressed by the court in *Con Ed* because it might exacerbate the pipelines' take-or-pay positions. The Commission is satisfied that the rule as constituted will further the Commission's objectives while it is also consistent with *Con Ed*.

The rule represents a balanced approach toward advancing the Commission's long-term goals. It is one aspect of the Commission's overall policy of moving toward a more competitive market. The Commission has determined that the prior abandonment policy was designed to achieve objectives under different market and regulatory conditions. We recently stated the reason for the need to change that policy:

> Prior to enactment of the NGPA, natural gas prices in the interstate market were regulated at artificially low levels under the NGA. Much higher prices generally existed in the unregulated intrastate market. As a result, producers had greater incentive to sell gas in the intrastate, rather than the interstate, market. The old abandonment policy was intended, as least in part, as a brake on the movement of gas from the interstate to the intrastate market.
>
> However, under the NGPA most price controls and certificate requirements on new gas have been removed. Accordingly, interstate and intrastate gas purchasers now have equal access to new gas production without substantial price differences. The move to deregulated prices for new gas has eliminated gas shortages in the interstate market. Accordingly, the concerns underlying the Commission's previous abandonment policy do not currently have the force they once did.

The Commission believes that modification of the old abandonment test is necessary to address the different problems arising under today's market conditions. The particular problem observed by the Commission in Opinion No. 245 is that many pipelines unable to market all the gas under contract to them have shut-in low priced cost supplies of gas in favor of higher takes of more expensive gas subject to take-or-pay requirements. Pipelines have an incentive to do this since they must pay for the high-cost gas even if they do not take it.

Release of this gas to the spot market would, as the Court found, allow those purchasers able to purchase that gas to switch from higher priced supplies to these lower priced supplies. Furthermore, the increase in supplies available to the spot market will lower overall prices in that market.

We believe that these unquestioned benefits of Opinion No. 245's change in abandonment policy for natural gas consumers outweigh any detriment resulting from that change.[29]

The same reasoning applies here. The rule must be viewed in the context of the Commission's overall policy, including Order No. 500. By limiting unilateral abandonment of purchases to pipelines that have accepted Part 284 certificates, the rule assures that firm sales customers will benefit from the abandonment of purchases by pipelines. On the other hand, by not mandating transportation when the producer unilaterally abandons, the pipelines' take-or-pay problem will not be exacerbated by the rule.

The Commission recognizes that permitting producers to initiate abandonment where the contract terminates will permit the producer in any subsequent sales agreement to seek the alternative ceiling price for the gas under Order No. 451.[30] However, the rule will also permit pipelines to abandon purchases, enabling them to cease purchasing high-priced gas. Moreover, the reasons set forth in Order No. 451 for permitting the alternative ceiling price demonstrate the soundness of allowing the producer to seek that price when it exercise its right to abandon sales under this rule.

The Commission reaffirms its position that Order No. 500 represents a balanced position on the take-or-pay

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[23] See, *e.g.*, Producers Associations, Amoco, Anadarko and IP.

[24] See, *e.g.*, PG&E, SoCal and APGA.

[25] See, *e.g.*, INGAA, ANR and CIG, Columbia, Texas, El Paso, NG, PG&E, SoCal, and MPC.

[26] See ANR and CIG.

[27] *See* ANR and CIG at 8–9; El Paso at 2; INGAA at 3; National Fuel at 23–24; Panhandle and Trunkline at 2; Transco at 1; and Williston at 1. Comments submitted in response to the NOPR had suggested a variety of proposals for take-or-pay relief, including refund of pre-payments, waiver of outstanding take-or-pay claims relating to the gas being abandoned, and credits against take-or-pay obligations for all volumes of abandoned gas sold to others.

[28] INGAA, ANR and CIG, El Paso, Columbia, Enron and Transco.

[29] Felmont Oil Corp. and Essex Offshore, Inc., Order on Remand Reaffirming Prior Determination, 42 FERC ¶ 61,172 at 61,615–16 (February 8, 1988). On April 26, 1988, the court denied the motion of Associated Gas Distributors for an order directing compliance with its mandate in *Con Ed*, No. 86–1168 (DC Cir.).

[30] Ceiling prices; Old Gas Pricing Structure, Order No. 451, 51 FR 22,168 (June 18, 1986), FERC Statutes and Regulations, Regulations Preambles, ¶ 30,701 (1986); *order on rehearing*, Order No. 451–A, 51 FR 46,762 (Dec. 24, 1986). *Appeal pending sub nom.* Mobil Oil Exploration, *et al.* v. FERC, No. 86–4940 (5th Cir.).

problem. That balance would be upset by imposing the modifications requested, and the effectiveness of this rule would be limited.[31] Accordingly, we shall deny the requests for rehearing concerning mandatory transportation and take-or-pay relief.

C. Effect of Rule on Consumers

As noted previously, several petitioners argue that absent mandatory transportation, there is no assurance that consumers will benefit from the rule. We have already discussed the reasons not to impose mandatory transportation upon the pipeline purchaser when a producer unilaterally abandons sales. Thus, to the extent that pipelines have not accepted blanket certificates,[32] there is no guarantee that the pipelines' captive customers will be able to purchase the abandoned gas. Nevertheless, on the whole, the rule will benefit the pipelines' customers. If they are on a pipeline that has accepted a blanket certificate, the gas will be available to all customers, whenever gas is released under the rule. Moreover, pipelines that have not accepted such a certificate will not be able to abandon purchases unilaterally. Nor would they be required to provide transportation. Consequently, captive customers on those systems would have no access to alternative supplies in any event. In this instance, the rule maintains the *status quo*.

The Commission pointed out in Order No. 490 that granting pipelines the right to abandon purchases will enable them to terminate their obligations under expired high-priced contracts. The abandonment of these contracts will also benefit the pipelines' customers. The Commission further noted that the rule merely authorizes pipelines to abandon purchases but does not mandate it. The exercise of that right and the release of gas constitutes a purchasing practice which is subject to a prudence review in the pipelines' rate proceedings.[33] The request of various pipelines [34] that the rule be modified so that pipelines would no longer be subject to the applicable prudence test is denied. Current customers are entitled to be protected from any imprudent release of gas by the pipeline that serves them.

The Commission is also satisfied that the immediate price impact of the rule upon consumers is not likely to be significant and none of the requests for rehearing present any argument that undermines this finding. Although the rule may have price consequences in certain situations, on balance the rule will benefit the market as a whole, and will be in the public interest.[35]

D. Contractually Authorized Adjustment of Takes or Deliveries

A number of parties request that the Commission modify or clarify what it intended under the provision of the rule that permits abandonment when the sales or purchase obligation has been unilaterally suspended or terminated by the exercise of a contractual right under an unexpired contract.[36] To the extent that the contract permits a party to reduce or cease its sales or purchases of gas, the rule grants automatic abandonment and permits the gas to be sold to another party. Specific reference was made to the situation where a purchaser exercises its rights under a "market-out" clause. In that instance, the rule enables the seller to sell the gas to any other party during the period when the purchaser exercises its contract market-out right with regard to reducing, suspending, or terminating purchases. That period is determined by the contract, not by the rule. The rule does not authorize abandonment as a result of any other modifications (such as delivery point, pressure etc.), but only in conjunction with modification of the obligation to purchase or sell gas under the contract. Any disputes over whether a right to modify sales or purchase obligations has been properly exercised is to be determined, like other contractual disputes, by a court of competent jurisdiction.[37] We see no need to further clarify the rule.

The effect of this feature of the rule on the cost impact analysis set forth in the rule has been questioned.[38] We believe that this feature of the rule will be used most frequently in "market-out" situations. Thus it would be used where purchasers were exercising their rights to cease purchasing high-priced gas. The seller would then be free to sell the gas to another. Since the purchaser would exercise the market-out clause only when it could purchase other supplies of gas at a lower cost, this feature of the rule is unlikely to cause any increase in the cost of gas to customers of the pipeline exercising its contractual right to reduce its purchases.

E. Pipeline Abandonment of Purchases

The Commission concluded after considering the comments, and *AGD* and *Con Ed*, that only pipelines that have accepted blanket certificates under Part 284 will be granted the right to abandon purchases unilaterally under expired contracts. This condition will help to assure that consumers have meaningful long-term access to gas supplies released under this rule. In addition since the Commission has not imposed mandatory transportation when producers unilaterally abandon, the positive benefits from abandonment of purchases is limited to Part 284 carriers to ensure that the rule does not act as a disincentive to pipelines becoming such carriers.

A number of petitioners challenge the validity of this condition, contending that the Commission adopted the provision without notice in violation of the Administrative Procedure Act,[39] and second, that it is not sound policy.[40] We find no merit in these contentions. First, the relationship between the rule and a pipeline's acceptance of transportation authority under Part 284 was one of the concerns raised by Commissioner Stalon in the NOPR. The NOPR specifically

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[31] We note that various petitioners urge that unless the take-or-pay modification is adopted, permitting the producer to abandon gas as to which it has a take-or-pay claim may lead to the producer's receiving a price in violation of maximum lawful price in Title I of the NGPA as well as a violation of sections 4 and 5 of the NGA. These arguments raise issues that are pending in other proceedings, and are more appropriately addressed in those proceedings. See *e.g.*, ANR Pipeline Co. v. Wagner and Brown, GP86-57-000; Colorado Interstate Gas Co. v. Chemco, *et al.*, CP84-18-000.

[32] We note that as of the issuance of this order, more than half of the major pipelines (12 out of 23), as well as several smaller pipelines, have accepted blanket certificates. Gas transported on behalf of others accounts for more than half of the gas currently flowing through the interstate pipelines.

[33] The same reasoning may not necessarily apply when the producer unilaterally abandons.

[34] See, *e.g.*, ANR and CIG, INGAA, Panhandle and Transco.

[35] The price impact of the rule is also discussed *infra*, part D.

[36] See, *e.g.*, Producers Association, Anadarko.

[37] In dismissing certain applications for abandonment as moot in light of Order No. 490, the Commission noted one applicant's claim that the contract had been terminated by the exercise of a contractual right because of the purchaser's breach of certain provisions. The Commission stated: The abandonment application is based on the applicant's claim that the contract between the applicant and its purchaser is void due to the purchaser's failure to perform its take-or-pay obligation under the subject contract. The Commission is not deciding whether each application has satisfied the criteria for authorization under Order No. 490. As the Commission stated in Order No. 490, "[T]he nature of the rights granted (under the contract) and whether the right was properly exercised are contractual issues to be determined by a court of competent jurisdiction." Arco Oil and Gas Company, *et al.*, 43 FERC ¶ 61,072 at 61,222, n.2 (1988).

[38] See concurring opinion of Commissioner Trabandt, FERC Statutes & Regulations ¶ 30,797 at 31,055-56.

[39] See *e.g.*, Mountain Fuel, National Fuel and United Gas.

[40] See, *e.g.*, ANR and CIG, El Paso and Transco.

requested comments "on modifying the proposed rule to condition the blanket abandonment authorized under the rule on the pipeline purchaser providing Order No. 436 transportation." [41] We fail to see how any party could claim lack of notice when the NOPR directed parties to comment on the modification which we have adopted. The courts have repeatedly stated that an agency has the authority to promulgate a final rule that differs in some particulars from its proposed rule because "[a] contrary rule would lead to the absurdity that * * * the agency can learn from the comments on its proposals only at the peril of starting a new procedural round of commentary." [42] Moreover, as long as the final rule is a "logical outgrowth" of the proposed rule, the agency can make changes in the final rule that may not have been clearly presaged in the NOPR.[43] Here the rule's limitation on pipelines' eligibility to abandon purchases unilaterally is a logical outgrowth of the NOPR. Thus, the Commission properly adopted it.

None of the arguments raised warrants a change of the policy adopted. Various petitioners argue that limiting the rule to Part 284 carriers will worsen the carriers' take-or-pay problems. As noted above, limiting abandonment of purchases to Part 284 carriers assures that consumers will have access to gas that is abandoned by the pipeline. Moreover, the Commission is concerned that the rule not act as a disincentive to carriers accepting blanket certificates. Since the Commission is not imposing a transportation obligation when a producer unilaterally abandons sales, carriers might be inclined to refrain from becoming Part 284 carriers if they could obtain the benefit of abandonment of purchases and at the same time deny market access to producers who exercised their abandonment rights under the rule. Accordingly, only if the carrier is a Part 284 carrier will it be able to abandon purchases unilaterally. This limitation on abandonment of purchases will not therefore worsen pipelines' take-or-pay problems, but assures that the rule is balanced not only between sellers and purchasers, but also between pipelines that have accepted blanket certificates under Part 284 and those that have not.

Several parties object to the rule's applicability to only the abandonment of purchases by pipelines under expired contracts with other pipelines and not to the abandonment of sales by upstream pipelines.[44] The Commission's rationale for so limiting the rule was to ensure continuity of service between pipelines where necessary. The rule permits downstream pipelines to abandon purchases if the pipeline has accepted an open-access blanket certificate. Granting such right will not disrupt the continuity of service to downstream customers because the downstream pipelines are in a position to determine their gas requirements upon expiration of a contract, and their customers are in a position to obtain any needed gas from other sources and have it transported through their pipeline. Such protection could not be guaranteed to captive customers of downstream pipelines if the rule were broadened to permit upstream pipelines to abandon sales, because the security of supply would depend upon the open or closed-access status of the pipeline that was not abandoning, *i.e.*, the downstream pipeline.

We find no merit in the contention that the rule may worsen the take-or-pay situation of the upstream pipelines due to loss of sales when a downstream pipeline exercises its right to abandon purchases. The Commission recognized that the rule might have an adverse impact on a particular upstream pipeline. However, the overall impact on the take-or-pay problem of pipelines as a class should be neutral, because any adverse impact on the upstream pipeline is matched by the beneficial effect on the downstream pipeline. The Commission's policy considers the effect of the rule upon the take-or-pay position of pipelines as a class, not whether the rule may have negative consequences for a particular pipeline.

Finally, a number of petitioners urge the Commission to modify the rule so that pipelines that transport under NGPA section 311 [45] be permitted to abandon purchases. The Commission has concluded that authorizations under NGPA section 311 do not provide sufficient guarantee of access by consumers because the pipeline may unilaterally terminate that type of transportation without Commission approval.[46] Such a pipeline could obtain the benefits of the rule, and then cease providing transportation, thereby frustrating the purpose of the requirement. Accordingly, only pipelines that have accepted a blanket certificate under Part 284 will be permitted to unilaterally abandon purchases.

F. Miscellaneous Issues

In view of certain questions that have been raised over operation of the rule, both in the requests for rehearing and other requests or application to the Commission, the Commission makes the following clarifications of the rule.

1. Certain parties request that the Commission clarify that the rule grants blanket sales certificates where the abandonment is the result of mutual agreement.[47] This aspect of the rule was inadvertently omitted from the regulatory text, but was corrected by notice issued on March 7, 1988, 53 FR 8176 (March 14, 1988), making technical corrections to § 157.30 and 157.301 to cross reference paragraphs (c) and (d) of § 157.30.

2. The Commission also wishes to clarify that abandonment of purchases requires only one thirty-day notice, and that the seller does not have to send its own notice to obtain authority to abandon sales of the same gas and resell it under the § 157.301 blanket certificate. Thus, if a purchaser gives the producer a thirty-day notice of its abandonment of purchases, the producer is granted authority to abandon the sale and to sell the gas to any other purchaser at the end of the notice period. Sections 157.21(a) and 157.30(c) are amended to insert after the words "upon 30-days written notice to" the words "(or from)" to clarify this provision of the rule. In this connection the Commission notes that where a contract has not expired, the thirty-day notice or contractual termination notice required, invokes the rule, and that no additional notice is required.

3. A question has been raised as to whether the rule applies to company-owned production. Where the rule's criteria are satisfied, it does. The rule's rationale applies to this type of production, and accordingly, there is no reason why abandonment should not be permitted.[48] The release of company-

[41] 52 FR at 18,710.

[42] International Harvester Co. v. Ruckelshaus, 478 F.2d 615, 632 n.51 (DC Cir. 1973).

[43] South Terminal Corp. v. EPA, 504 F.2d 646, 659 (1st Cir. 1974).

[44] See *e.g.*, United, Tennessee and Enron.

[45] 15 U.S.C. 3371 (1982).

[46] See Texas Eastern Transmission Corp., 41 FERC ¶ 61,015 at 61,022 (1987).

[47] See *e.g.*, Anadarko.

[48] The Commission notes that limited-term abandonment has been granted to pipelines for company-owned production. See Northwest Pipeline Corp. and Northwest Marketing Company, 38 FERC ¶ 61,046 at 61, 132 (1987); EL Paso Natural Gas Co, 42 FERC ¶ 61,155 at 61,578 (1988) ("Precisely the same policy considerations that support limited-term abandonment authority for El Paso's other NGA gas supplies apply equally to El Paso's own production"). Moreover, in Public Service Comm'n of the State of New York v. Mid-Louisiana Gas Co., 463 U.S. 319 (1983), the Supreme Court held that NGPA pricing provisions are applicable to pipeline production. Accordingly, the Commission has applied the principle that producer and pipeline production should receive "parity treatment". Order No. 391–A, First Sales of Pipeline Production under section 2(21) of the Natural Gas Policy Act of 1978, 31 FERC ¶ 61,036 at 61,066 (1985).

owned production would be subject to the same "prudence" test as the release of any other gas, and subject to the same notice[49] and reporting requirements.

4. Where the parties' agreement requires abandonment before the gas may be released and all other conditions are satisfied the rule provides the necessary authorization because the agreement is a mutual termination under the rule. Thus, if the parties agree that the gas may be released once abandonment authorization is secured, the necessary authorization is granted automatically and concurrently under the rule, and the gas is released as provided in the parties' agreement.

5. Any seller who has properly permanently terminated sales under a contract is, after the effective date of the rule, entitled to permanent abandonment and a permanent blanket certificate with pregranted abandonment to sell the abandoned gas. Thus where a party has previously received Commission authorization to abandon for a limited term, after the effective date of the rule, the rule's self implementing abandonment authorization permits abandonment to the extent the parties have agreed, including permanent abandonment.[50]

6. In any instance where a party has been granted permanent abandonment by the Commission but with a limited-term certificate of sale,[51] that party is granted a blanket certificate under 157.301 to make sales of such gas with pregranted abandonment.

7. The Indicated Producers (IP) seek clarification of the applicability of Order No. 490 to authorize abandonment of sales for resale to gatherers, processors or resellers where the seller receives a percentage of the proceeds realized by the reseller. IP seeks assurance that such percentage-of-proceeds sales are eligible for abandonment under the provisions of Order No. 490, even if they are not treated as "first sales" under the Commission's regulations.[52]

The Commission grants IP's requested clarification. The Commission intends for sales to resellers (or purchases by resellers) on a percentage-of-proceeds basis to be eligible for abandonment authority under Order No. 490. Such sales are encompassed by the NGPS's definition of "first sale." The Commission's decision not to treat such sales as first sales for purposes of determining maximum lawful prices (MLP's) under Title I was based on other considerations not relevant to abandonment.[53] Furthermore, the eligibility of such sales for abandonment authority is in no way inconsistent with the purposes of Order No. 490.

8. IP also seeks clarification that the abandonment rule is applicable to all sales that qualify as "independent producer sales" under § 154.91(a) of the Commission's regulations by amending Order No. 490's definition of "first seller" to include those engaged in transactions that are treated as first sales under the Commission's orders or regulations as well as "first sales" as defined by the NGPA. Although it is not entirely clear, IP appears to be concerned that some sales by gatherers, processors, or resellers that are affiliates of interstate or intrastate pipelines, or local distribution companies may not be eligible for abandonment under the rule because of the exclusion of certain sales from the definition of "first sale" under NGPA section 2(21)(B).[54] However, as IP notes, the Commission has exercised its authority under NGPA section 2(21)(A)(v) to define sales by affiliates of interstate or intrastate pipelines, or of local distribution companies as first sales. Thus sales by affiliated gatherers, processors or resellers have already been included within the Commission's implementation of the NGPA's definition of first sale.[55] The Commission concludes, therefore, that sales by affiliated gatherers, processors, or resellers are eligible for abandonment under the rule without amending the regulatory text of the rule as suggested by IP.

9. PMTG moved for clarification, requesting that the Commission define the term contract to include an "implied contract". PMTG notes that the Commission specifically referred to implied contracts in the regulations governing NGPA section 315, namely in 18 CFR 277.203(g) (1987). However, in that case the Commission concluded that it was necessary to deal specifically with that matter because certain conduct is required under section 315 before a contract's termination, and under the regulations, implied contracts arise at the end of the contract term because of the service obligation under the NGA. Thus, implied contracts were specifically excluded from the requirement that a bona fide offer must be made 18 months before the contract's expiration in order to make compliance with section 315 more certain.[56] The same dilemma does not apply under this rule. The rule applies when a contract has terminated. As noted *supra*, pp. 20 and 21, the rule states that contractual issues are to be determined by a court of competent jurisdiction. Whether or not an implied contract has arisen, and under what circumstances it may be terminated, are issues for a court to determine if the parties cannot reach an agreement. Accordingly, the motion for clarification will be denied.

**List of Subjects in 18 CFR part 157**

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 157, Chapter 1, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission. Commissioner Sousa concurred in part and dissented in part with a separate statement attached.

Commissioner Stalon concurred with a separate statement attached.

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[49] Since there is no contract, the Commission will consider the notice to the Commission as the necessary indication of mutual agreement.

[50] *See e.g.*, Arco Oil and Gas Company, *et al.*, 43 FERC ¶ 61,072 (1988).

[51] *See e.g.*, Conoco, Inc., 41 FERC ¶ 61,064 (1987).

[52] IP notes that the regulations promulgated in Order No. 490, § 157.21 (abandonment of purchases) and § 157.30 (c)–(f) (abandonment of service), authorize abandonment by "first sellers" and by purchasers from first sellers defined by reference to the NGPA's definition of "first sale." However, § 270.202(h)(1) of the Commission's regulations provides that if a reseller determines its maximum lawful price as if the sale were in fact a "first" sale (using the ordinary sense of the phrase, not the NGPA's technical definition) rather than a resale, any percentage-of-proceeds sale to such reseller is not treated as a "first sale" for purposes of applying the ceiling price provisions of Title I of the NGPA.

[53] The Commission was concerned with the practical difficulties of determining the applicable MLP's for percentage-of-proceeds sales to resellers in intrastate commerce under sections 105 (existing intrastate contracts) and 106(b) (intrastate rollover contracts). The wording of these sections assumes the existence of a specific price stipulated by terms of a contract, and do not appear to contemplate intrastate percentage-of-proceeds-sale contracts. However, the Commission's decision not to regulate directly the price of such sales under the regulations implementing Title I of the NGPA, for the reasons explained in Order No. 68, does not remove percentage-of-proceeds sales from the NGPA's definition of "first sale". Rules Generally Applicable to Regulated Sales of Natural Gas and Ceiling Prices; Final Regulations, 45 FR 5678 (Jan. 24, 1980); FERC Stats. and Regs. [Regulations Preambles 1977–1981] ¶ 30, 125 at 30,857–859 (Order No. 68).

[54] CERTAIN SALES NOT INCLUDED.—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or affiliate thereof.

[55] 18 CFR 270.203(c) (1987). The Commission has also decided to treat sales of affiliated marketers as first sales. See Order No. 497, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, 43 FERC ¶ 61,420 (June 1, 1988).

[56] *See* Order No. 95–A, FERC Statutes & Regulations ¶ 30,690 at 30,162–63 (1981).

Commissioner Trabandt dissented in part with a separate statement attached.

**Lois D. Cashell,**

*Acting Secretary.*

## PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for Part 157 continues to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp. p. 142.

2. Section 157.21 is amended by revising paragraph (a) to read as follows:

**§ 157.21 Abandonment of purchases.**

(a) Except as provided in paragraph (c) of this section, a purchaser subject to the Commission's jurisdiction under the Natural Gas Act is authorized, upon 30-days written notice to (or from) the seller, or any longer notice period required by contract, to abandon purchases of natural gas from any first seller or pipeline:

(1) Permanently, under a contract that has expired, or

(2) To the extent that the obligation of the purchaser to take or pay for gas (or both), or of the seller to deliver gas, is unilaterally reduced, suspended or terminated by either party in accordance with a provision of an unexpired contract.

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3. Section 157.30 is amended by revising paragraph (c) to read as follows:

**§ 157.30 Abandonment of service.**

* * * * *

(c) A first seller is authorized, upon 30-days written notice to (or from) the purchaser, or any longer notice period required by contract, to abandon sales of gas to any purchaser:

(1) Permanently, under a contract that has expired, or

(2) To the extent that the obligation of the purchaser to take or pay for gas (or both), or of the seller to deliver gas, is unilaterally reduced, suspended or terminated by either party in accordance with a provision of an unexpired contract

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**Note.**—*This appendix will not be published in the Code of Federal Regulations*

## Appendix A

**Requests For Rehearing**

American Gas Association (AGA)
American Public Gas Association (APGA)
Amoco Production Co. (Amoco)
ANR Pipeline Co. & CIG (ANR and CIG)
Anadarko Petroleum Corporation (Anadarko)
Arkla, Inc.
Association Gas Distributors (AGD)
Columbia Gas Transmission Corp. (Columbia)
El Paso Natural Gas Co. (EL Paso)
Enron Interstate Pipeline Group (Enron)
Indicated Producers (IP)
Interstate Natural Gas Assoc. of America (INGAA)
Maryland People's Counsel (MPC)
State of Michigan and Michigan PSC (Michigan)
Michigan Consolidated Gas Company (Michigan)
Minnesota Department of Public Services (Minnesota)
Mountain Fuel Resources (Mountain Fuel)
National Fuel Gas Supply Corporation (National Fuel)
Northern Illinois Gas Company (NI)
Pacific Gas and Electric Company (PG&E)
Panhandle Eastern Pipeline Company and Trunkline Gas Company (Panhandle and Trunkline)
Peoples Gas Light and Coke Company and North Shore Gas Company (Peoples Gas and North Shore)
Peoples Natural Gas Company (Peoples Natural)
Process Gas Consumers Group, Georgia Industrial Group, Am. Front Steel Institute (Process Gas)
PSC of State of New York (New York)
Producers Associations
Southern California Gas Company (SoCal)
Tennessee Gas Pipe Line Company (Tennessee)
Texas Gas Transmission Corp.
Transcontinental Gas Pipe Line Corp. (Transco)
UGI Corporation
United Distribution Companies (UDC)
United Gas Pipeline Co. (United Gas)
Valero Interstate Transmission Co. (Vitco)
Williams Natural Gas Company (Williams)
Williston Basin Interstate Pipeline Company (Williston)

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts.

Issued: July 22, 1988.

Sousa, Anthony G., Commissioner, *concurring in part and dissenting in part:*

I continue to concur with and support the overall objectives of Order No. 490. However, I am disappointed that this rehearing order doesn't reflect any reconsideration of the issues of take-or-pay relief in cases of unilateral producer abandonment and pipeline eligibility to initiate abandonment pursuant to the regulations adopted by Order No. 490. I must continue to dissent on these aspects of the final rule for the reasons stated in my initial partial dissent.[1]

Anthony G. Sousa,

*Commissioner.*

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts.

Issued February 5, 1988.

Sousa, Anthony G., Commissioner, *concurring in part and dissenting in part:*

I concur with and support fully the overall policy objectives of the abandonment rule approved by the Commission today. This rule is another step in the direction the Commission is taking towards lessening regulation so long as it is in the public interest.

However, I dissent from that part of the rule where the Commission fails to provide for take-or-pay relief where unilateral producer abandonment is permitted. I also dissent from that part of the rule which limits a pipeline's eligibility to initiate abandonment only if it is an Order No. 500 blanket certificate holder. This is a significant departure from the Notice of Proposed Rulemaking which had no such qualifying limitation. To ignore take-or-pay relief and refund of prepayments on the one hand and then to condition pipeline abandonment on enforced acceptance of a blanket certificate under section 7 appears to me to be grossly unfair. I would not object to conditioning unilateral pipeline abandonment on acceptance of a blanket certificate if take-or-pay relief is also granted on unilateral producer abandonment. The effect of the majority decision is that it will inevitably exacerbate the take-or-pay problem.

Anthony G. Sousa,

*Commissioner.*

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts.

Issued July 22, 1988.

Stalon, Commissioner, *concurring:*

I am displeased that the Commission has not taken action to alleviate the effect of a producer's unilateral abandonment on a pipeline's take-or-pay liability. As I stated in my concurrence to the rule,[1] this problem

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[1] FERC Statutes and Regulations, Regulation Preambles ¶ 30,797 at p. 31,043 (1988). For convenience, I have attached a copy of my statement as an appendix.

[1] FERC Statutes & Regulations, Regulations Preambles ¶ 30,797 (1988).

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could be alleviated by conditioning unilateral producer abandonment on the producer's agreement to refund all prepayments or to allow the purchaser to make up the gas for which it has made prepayments. However, on balance, I am still convinced that the benefits of this rule outweigh this short-term problem. Therefore, I shall concur with this order.

Charles G. Stalon,

*Commissioner.*

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts, Final Rule.

Issued: July 22, 1988.

*Opinion of Commissioner Charles A. Trabandt, Dissenting in Part:*

While I concur generally with the direction of the new abandonment policy adopted in the final rule on rehearing, I set forth my specific concerns about the final rule in my concurring opinion issued February 17, 1988, which I briefly summarize below. I recommended that the Commission adopt a right of first refusal for firm customers and mandatory transportation for released gas, where the pipeline is not providing open access transportation services. These additional protections for firm customers are very important, since the rule has made eligible immediately for abandonment at least 22.3 percent of current section 104 gas supplies and another 21.1 percent by 1990. That gas today has an average price of $0.99 and under the rule would be eligible for the higher, Order No. 451 Maximum Lawful Price of $2.70. Also, there would be no offsetting price effect from the pipeline's abandonment of higher price expired contracts, where the pipeline is not an open access transporter, because it does not have unilateal abandonment authority under the rule. In addition, while I support allowing parties to agree to partial or limited term abandonments (LTA) for gas not taken under existing contracts, this order has not fully analyzed the price impact of these arrangements if most of the gas released under current LTAs becomes subject to unilateral abandonment under the final rule.

I also believe that the authority granted under the rule may exceed the Commission's legal authority under section 7(b) of the Natural Gas Act (NGA) and disregard the court's concerns in *Consolidated Edison Company of New York v. FERC*, 823 F.2d, 630 (DC Cir. 1987) (*Con Ed*) which remanded the Commission's orders in *Felmont Oil Corporation and Essex Offshore, Inc.*, 33 FERC ¶ 61,3331 (1985) rehearing denied, 34 FERC ¶ 61,296 (1986) (*Felmont*). The Commission does not fully consider the impact of the final rule on captive customers, especially where the pipeline does not hold a blanket certificate for open access transportation. In reviewing comments in the petitions for rehearing, I find that there was extensive support for the right of first refusal and mandatory transportation of released gas. In particular, the petitions of almost all state public service commissions and local distribution companies express serious concern about the effects of the final rule in this regard and very strong support for these two requirements, along with the possible additional requirement for a prior notice procedure before the abandonment becomes effective.

On balance, this order on rehearing largely ignores completely, or unceremoniously dismisses out of hand, the extensive discussion of my concerns in my concurring opinion to Order No. 490, as well as the numerous comments in the rehearing petitions. For example, concern in my concurring opinion about the potential cost impacts of one feature of the final rule on customers is superficially afforded a four sentence rebuttal based wholly on unsupported speculation. See text associated with Footnote 38, at page 21 of the slip opinion. There is no analytical response to that very serious concern discussed at some length in my concurring opinion and the rehearing petitions of many parties.

The order, beginning at page 9 of the slip opinion, summarily rejects the legal challenges raised in my concurring opinion and the rehearing petitions on the scope of the Commission's discretion under NGA section 7(b), under *ConEd* as to the substantive standard and under *Associated Gas Distributors v. FERC*, 824 F.2d 981 (DC Cir. 1987). *cert. denied sub. nom.*, as to the automatic abandonment procedures of the final rule. The summary rejection is based solely on a reiteration of the unsupported assertion "that the *ConEd* and *AGD* decisions support the Commission authority to adopt such policy." without any response to the extensive legal analysis in the concurring opinion and the rehearing petitions, which lead to directly contrary conclusions. The majority, it seems, has adopted the analytical approach of merely saying it so must make it so. Others, I would hope, will not be quite so easily persuaded of the majority's conclusory statements and will demand a rebuttal response to the arguments and conclusions to the contrary.

The U.S. Court of Appeals for the District of Columbia Circuit has just addressed the new policy under section 7(b) in an L.T.A. case decided this week. *Kansas Power and Light Company v. FERC* No. 87-1422, decided July 19, 1988. In affirming the Commission's approval of four L.T.A. authorizations, the court concluded that the approval was valid even though the Commission rejected KPL's request for an evidentiary hearing. The court upheld our determination, "that KPL's allegations of possible future harm were too speculative to warrant a pre-authorized adjudicative hearing and that any challenges to the LTAs would most logically be conducted in the pipelines' rate proceeding." (Slip opinion at page 12, Footnote omitted). The court in Footnote 3 agreed with the Commission that KPL had not been persuasive in merely asserting without more that a prudence review after the fact is a poor substitute for prior scrutiny of the proposed abandonment. I will be interested in the court's inevitable review of this order as to the adequacy for captive customers of after the fact prudence reviews, where the old gas producer-supplier of a pipeline not providing open access transportation services unilaterally abandons upon expiration of the contract under this rule.

My concurring opinion and many rehearing petitions argued that later prudence review would be inadequate under such circumstances.

The KPL court also concluded, "that the Commission did not act in violation of its own (abandonment) policies in granting the latest round of LTA applications." (Slip opinion at page 15). In reaching that conclusion, the court noted that the Commission had found that the LTAs provide benefits to all segments of the natural gas industry, including consumers, consistent with the new test under *Felmont*. The court also saw the LTA orders "as a natural extension of the Commission's evolving abandonment policy." (Slip opinion at page 13). Lastly, the court believed "that the Commission adequately addressed the impact of the LTA authorizations on existing pipeline customers," because (1) we specified that the LTA authority does not alter pipelines' existing obligations to their customers and is not intended to affect contractual claims and defenses arising under a pipeline's gas purchase contracts, and (2) we made clear that the pipelines would ultimately be responsible to its customers for any consequent effects of the LTAs on adequacy of gas supplies and reasonableness of gas costs in

subsequent rate proceedings. (Slip opinion at page 14 and 15).

The court expressly stated that the Commission's conclusion on the adequacy of review in subsequent rate proceedings was a reasonable exercise of the Commission's discretion. Again, I will be very interested in the court's eventual review of this order and the final rule in the context of whether the Commission, in fact, has adequately addressed the impact of the rule on existing captive customers of pipelines not providing open access transportation. For example, will the reviewing court be similarly impressed here with the pipelines existing obligations to their customers, contractual claims and defenses arising under a pipeline's gas purchase contracts, or the badly, if not fatally, flawed cost impact analysis conducted by the Commission staff. I simply am not satisfied here that the Commission has adequately addressed the impacts and effects on such captive customers, nor provided any meaningful protection for them beyond general market theory on the operations of the national market as a whole.

The net effect of this order, then, is to sanction the broadest possible generic abandonment in the context of expired contracts and create vast new eligibility for the alternate MLP pursuant to Order No. 451, with virtually no provision for protection of captive customers of pipelines not providing open access transportation. Captive customers have no direct access to the national market for natural gas and cannot benefit directly from the unilateral abandonment by producer-suppliers of their pipeline. Consequently, the test adopted in *Felmont* effectively has been emasculated for those customers, because any objective comparison of the needs of those current customers against the benefit that would accrue to the natural gas market as a whole must conclude that the needs of such captive customers have been totally ignored. They are left with no access to lower priced gas, on the one hand, while their pipeline supplier has lost previously dedicated, low price gas deliverability and reserves, or in the alternative, must repurchase the old gas supplies at prices pursuant to the Order No. 451 higher MLP (but without the various offsetting protections available under Order No. 451 Good Faith Negotiation provisions). I cannot support that result as to captive customers of pipelines not providing open access transportation services, as a matter of law and policy under NGA section 7(b).

Let me conclude by restating again my general support for the broadest abandonment policy, which is fully legal and protects the captive customers of pipelines not providing open access transportation services. I am prepared to support some form of expedited or generic abandonment based on contract expiration or termination to the extent of our available legal authority and such protection for those captive customers. Since the instant order fails to dispose of the concerns on those points, I am not persuaded that the final rule is acceptable.

Therefore, I dissent in part.

Charles A. Trabandt,

*Commissioner.*

[FR Doc. 88-17317 Filed 8-1-88; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404 and 416

**[Regulations No. 4 and No. 16]**

### Federal Old-Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Continued Payment of Benefits During Appeal

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** These final regulations implement section 223(g) of the Social Security Act (the Act) as added by section 2 of Pub. L. 97-455 and amended by section 7 of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98-460 enacted in October 1984) and section 9009 of Pub. L. 100-203. These regulations also implement section 1631 of the Act, as amended by section 7 of Pub. L. 98-460. These statutory provisions provide that the Secretary of Health and Human Services shall by regulations prescribe the manner, form, and time limit within which an individual may elect continued payment of disability/blindness benefits and/or Medicare pending the outcome of his or her appeal of a determination by the Social Security Administration (SSA) that his or her physical or mental impairment(s) for which benefits were payable has ceased, never existed, or is no longer disabling. These final regulations provide the rules for electing continuation of benefits under these statutory provisions.

Under these final regulations, the option to elect to continue receiving benefits pending the outcome of a request for reconsideration or hearing before an administrative law judge on a medical cessation will be provided to the following:

—Recipients of disability insurance benefits (and their auxiliary dependents receiving benefits on the recipient's wage record).

—Recipients of disabled adult child's benefits.

—Recipients of disabled widow's and disabled widower's benefits.

—Mothers and fathers having in care a disabled adult child.

—Mothers and fathers having in care a child, under age 18 but over age 15, who is disabled and receiving child's benefits.

—Recipients of Supplemental Security Income (SSI) benefits based on disability or blindness.

**DATES:** These rules are effective August 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965-1795.

**SUPPLEMENTARY INFORMATION:** These rules implement sections 223(g) and 1631 of the Act, as amended by section 7 of Pub. L. 98-460 and section 9009 of Pub. L. 100-203 which temporarily extend the title II benefit continuation provisions of prior laws and permanently create a statutory benefit continuation provision for title XVI medical cessation cases.

Section 223(a)(1) of the Act provides that a Social Security title II disability insurance beneficiary found to be not disabled under the provisions of the Act will receive benefits for two months after the month in which his or her disability ceased. Disability is ordinarily considered to have ceased in the month the cessation determination is made. Similarly, section 202(d)(1)(G) of the Act provides that a title II disabled child beneficiary (as defined by the Act) found to be not disabled under the provisions of the Act will receive benefits for two months after the month in which his or her disability ceased. Disability is ordinarily considered to have ceased in the month the cessation determination is made. The regulations at 20 CFR 404.900 *et seq.* give these title II beneficiaries the right to appeal a determination of medical cessation through the administrative process. Prior to Pub. L. 97-455, title II beneficiaries were not eligible for payment of continued benefits during an appeal of a determination that they were no longer

medically disabled. However, if the initial cessation determination was reversed on appeal, benefits were paid retroactively to the first month for which benefits were not paid as a result of the determination of disability cessation.

Section 1631(a)(5) of the Act similarly provides that a title XVI recipient of disability or blindness benefits will receive benefits for two months after the month in which his or her disability/blindness ceased. Disability is ordinarily considered to have ceased in the month the cessation determination is made. Revised regulations at 20 CFR 416.1413(d), 51 FR 288 (January 3, 1986) provide for an opportunity for a disability hearing at the reconsideration level when title XVI or concurrent title II/XVI individuals appeal a determination, based on medical factors, that he or she is not blind or disabled (a medical cessation). These individuals retain the right to appeal this reconsideration determination through a hearing before an administrative law judge.

Prior to the enactment of Pub. L. 98–460, benefit continuation was provided in title XVI and concurrent title II/title XVI cases bases on the U.S. Supreme Court decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970). Prior to the publication of these rules, regulations at 20 CFR 416.1336 provided that title XVI recipients found to be no longer disabled or blind could have their benefits continued through the first step of appeal.

**Section 2 of Pub. L. 97–455**

Section 2 of Pub. L. 97–455, enacted in January 1983, added a new subsection (g) to section 223 of the Act. Under this provision, a title II disability insurance beneficiary or a child, widow, or widower entitled to benefits based on disability, who receives a determination that the physical or mental impairment(s) on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling may elect to have benefits continued during appeal of the cessation determination through the reconsideration level, and/or until a hearing decision or order of dismissal is issued by an administrative law judge. Section 2 of Pub. L. 97–455 also permits the beneficiary to elect continuation of any other benefits that are based on his or her wages and self-employment income, including benefits under title XVIII of the Act (Medicare). Any continued benefits paid under this provision, except for those made under title XVIII, are subject to recovery as overpayments, subject to the same waiver provisions in current law (section 204 of the Act) and regulations (20 CFR 404.501 *et seq.*), where the medical cessation determination is upheld, on appeal, by the final decision of the Secretary. However, waiver of recovery of such an overpayment is considered only if the cessation determination was appealed in good faith.

This temporary provision allows continued payment of title II disability insurance benefits for months beginning in February 1983 for January 1983 or, if later, the first month for which benefits were no longer otherwise payable under the most recent medical cessation determination or order of remand.

This provision was originally effective for medical cessation determinations made after January 11, 1983, pending administrative review, and prior to October 1, 1983.

**Section 2 of Pub. L. 98–118**

This provision extended the sunset date of section of Pub. L. 97–455 for continued payment of title II disability benefits during appeal to include medical cessation determinations made prior to December 7, 1983.

**Section 7 of Pub. L. 98–460 and Section 9009 of Pub. L. 100–203**

Section 7 of Pub. L. 98–460 (which amends section 223(g) of the Act) extended the effective date of the provisions of Pub. L. 97–455 for title II cases to include determinations that the physical or mental impairment(s) on the basis of which such benefits are payable is found to have ceased, not to have existed or to no longer be disabling made prior to January 1, 1988. (Extended to January 1, 1989 by section 9009 of Pub. L. 100–203.) Because this provision remains temporary, in no case can title II disability benefit payments be made for months after June 1989. Section 7 also provides for the continuation of payment of benefits under title II and benefits under title XVIII to a father or mother who has in his or her care a child, over age 15, who is disabled and receiving child's benefits, based on such disability.

Section 7 of Pub. L. 98–460 also amends section 1631(a) of the Act to add a new paragraph (7). Under this permanent provision, a recipient of supplemental security income benefits based on disability or blindness, who receives a determination that the physical or mental impairment(s) on the basis of which such benefits are payable is found to have ceased, not to have existed or to no longer be disabling may elect to have benefits continued during appeal of this determination. If elected, these benefits would be paid until the month before the month a decision is issued after an administrative law judge hearing or the month before the month no appeal for a review or hearing is pending, whichever is earlier. Supplemental security income benefits paid under this provision are subject to recovery as overpayments and to the waiver of recovery provisions pursuant to section 1631(b) of the Act if the initial medical cessation determination is affirmed by a final decision of the Secretary. However, waiver of recovery of such an overpayment will be considered only if the determination was appealed in good faith.

**Regulatory Provisions**

*Title II*

These regulations at § 404.1597(b) explain that after we have made a determination that an individual's physical or mental impairment(s) has ceased, never existed, or is no longer disabling, the individual's title II benefits based on disability will be stopped. We will send the individual written notice of our determination that explains it, the right to appeal and the right to request continued benefits pending reconsideration and/or a hearing on the disability cessation determination.

For the purpose of the regulations of § 404.1597(b) and 404.1597a only, "benefits" means disability case payments and/or Medicare, if applicable. "Election of benefits" means the election of disability case payments and/or Medicare, if applicable.

Under section 7 of Pub. L. 98–460 and these implementing regulations, title II individuals who receive a closed period of disability determination do not have the right to request continuation of benefits during appeal. A closed period of disability determination is a determination on an application for benefits that establishes a period of disability for only a specified period of time in the past. In a closed period of disability, there is no determination that would reach current status. Continuation of benefits during appeal is available only if current entitlement is in question. Also, under these regulations, title II individuals who receive an unfavorable determination on their initial disability claim (that is their application for benefits based on disability) do not have the right to request continuation of benefits during appeal since continued benefits are only available to claimants who were already receiving benefits.

The regulations at § 404.1597a (a) and (b) explain that title II individuals who

receive a medical cessation determination may elect to have benefits continued during appeal of that determination. Title II benefits may be continued only if the determination that the individual's physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made on or after January 12, 1983 (or before January 12, 1983, and a timely request for reconsideration or a hearing before an ALJ was pending on that date) and before January 1, 1989. If elected, title II benefits may be continued beginning with the month of January 1983 or the first month for which benefits are no longer otherwise payable following a medical cessation determination or the month of election, whichever is later.

The payments to a title II individual who has elected to have benefits continued will continue until the earlier of the month before the month a decision is issued after the ALJ hearing or the month before the month a new decision is issued by the ALJ (or final action is taken by the Appeals Council on the ALJ's recommended decision) if the individual's case was sent back to an ALJ for further action, or until the month before the month no timely request for appeal is pending after notification of an unfavorable title II reconsideration determination, or June 1989.

To clarify our policy on cessation appeals filed under both title II and title XVI (a concurrent claim), we added new language to these final regulations at § 404.1597a(a). This new language does not represent a change in the concurrent claim policy announced in the Notice of Proposed Rulemaking (NPRM). Although we stated in the NPRM preamble how concurrent appeals would be processed, we had no statement on concurrent appeals in the rules themselves. We explained in the preamble to the NPRM that in a concurrent claim, the title II appeal is processed under the title II rules and the title XVI appeal is processed under the title XVI rules. In this final regulation, we have explicitly stated this policy in the regulatory text at § 404.1597a(a).

The regulations at § 404.1597a(c) explain that a title II primary beneficiary may also elect to have benefits continued for any title II auxiliary beneficiaries (e.g., eligible spouse or children) during this appeal. If elected, continued benefits for the auxiliaries will be continued for the same time periods provided for the title II primary beneficiary. Under these regulations, auxiliary beneficiaries may also elect whether they wish to receive continued payment of benefits, but the title II primary beneficiary must also elect to have their benefits continued in order for the auxiliary beneficiaries to be paid. The right also to elect continued payment of benefits is given to title II auxiliary beneficiaries because these beneficiaries will be asked to repay any overpayment resulting from benefits continued pending the outcome of the appeal. Since the auxiliary beneficiaries may not be aware of the primary beneficiary's election of continued benefits on their behalf, they will be required to make a separate election to have their benefits continue.

The regulations at § 404.1597a(d) explain that we will notify the title II individual of his or her right to elect continued benefits if he or she requests reconsideration or a hearing on our disability cessation determination. If the individual requests reconsideration or a hearing, we will request a written statement of choice from the title II individual as to whether or not he or she wants benefits to continue during appeal, and whether or not he or she also wants title II benefits to continue to anyone else who is receiving benefits based on the title II individual's wages and self-employment income.

Title II beneficiaries may elect continuation of benefits at the time reconsideration is requested and again at the time a hearing before an administrative law judge is requested. In title II cases, a separate election must be made at each level of appeal.

If the title II beneficiary does not elect continuation of benefits at the time reconsideration is requested, but requests it at the time the administrative law judge hearing is requested, we will reinstate continued benefits effective with the month of the latest medical cessation determination rather than the first month of nonpayment after the initial medical cessation determination. The written statement of choice, which must be completed by the primary beneficiary, explains this provision.

The regulations at § 404.1597a(e) explain that we also will contact the spouse and/or children of a title II individual, and obtain a statement in writing from them as to whether or not they wish to receive continued benefits. However, for the auxiliary beneficiaries (spouse or children) to receive continued benefits, the title II individual must also request that benefits be continued for them. Under these regulations, title II auxiliary beneficiaries (spouse or children) who are living in a separate household and those in the same household will be asked to repay any overpayment resulting from benefits continued pending the outcome of the appeal. Since auxiliaries (spouse or children) may not be aware of the title II primary beneficiary's election of continued benefits on their behalf, these regulations provide that a separate statement of choice to receive or not to receive continued benefits will also be required from auxiliary beneficiaries.

The regulations at § 404.1597a(f), (g), (h) and (i) explain that a title II individual must request continued benefits: (1) Within 10 days after he or she receives notice of our initial cessation determination along with requesting reconsideration of that initial determination (The 60-day period for requesting reconsideration is not affected by this provision.); (2) within 10 days after receiving notice of our reconsideration cessation determination along with requesting a hearing before an administrative law judge (The 60-day period for requesting a hearing is not affected by this provision.); or (3) within 10 days after receiving a notice of the option for continued benefits in connection with a decision (including court remand cases except those court remands which carry special benefit continuation rights explained in section 2(e) of Pub. L. 98–460) that has been vacated and sent back (remanded) by the Appeals Council to an administrative law judge for further action.

Our experience with benefit continuation under Pub. L. 97–455 and 98–118, which utilized a 10-day time frame, showed that most eligible title II individuals made an election within the 10 days. Under these regulations, these individuals are given the same period (10 days) for making such election. This 10-day time limit is consistent with longstanding title XVI continued payments policy based on *Goldberg v. Kelly*.

If the election for continued benefits is requested after the 10-day period, we will use the standards in current regulations, 20 CFR 404.911, to determine whether good cause exists for failing to request benefit continuation within the 10-day period. If the election for continued benefits is made after this 10-day period, continued benefits can only be paid if good cause is established for the delayed request. We apply a good cause exception with regard to other time limits in the appeals process. For consistency and recognizing that certain justifiable factors may prevent timely requests in this situation, we are using the same good cause considerations here.

The regulations at § 404.1597a(h)(2) also explain that if the primary beneficiary requests continued title II

benefits for a spouse or child, the spouse or child must also request continued benefits within 10 days after receipt of the notification of our determination. The standards in § 404.911 will be used to determine if good cause exists for the spouse's or child's request for continuation of benefits made after the 10-day period. We will consider their request to be timely and will pay the title II spouse or child continued benefits only if good cause for delay is found.

Under the regulations at § 404.1597a(i), in decisions (including court remand cases except those court remands with special benefit continuation rights under section 2(e) of Pub. L. 98–460) vacated and sent back (remanded) by the Appeals Council to an administrative law judge for further action, benefit continuation is available effective with the first month of nonpayment based on the prior administrative law judge decision if continued benefits were previously elected at the administrative law judge level.

In such remanded cases, the prior administrative law judge's decision or dismissal order is vacated as having no force or effect, and accordingly benefit continuation is again available for these title II beneficiaries. In these remanded cases, continued benefits will be reinstated without a new election if continued benefits were previously elected at the administrative law judge level. In these remanded cases reaching the administrative law judge, if the title II beneficiary did not previously elect benefit continuation at the administrative law judge level, continuation of benefits is available upon a new election by the beneficiary and effective for the month of the Appeals Council remand order.

If benefit continuation was previously elected at the administrative law judge level, we will automatically reinstate these same continued benefits and then update our records regarding events that may affect the right to receive benefits. If any of these events have occurred, then continued benefits will be stopped or adjusted accordingly. If benefit continuation was *not* previously elected at the administrative law judge level, we will verify whether all requirements are met *before* paying title II continued benefits. This updating of our records before payment is necessary because benefit continuation is intended to replace *only* those benefits received prior to the medical cessation, i.e., benefits for *only* those individuals who were entitled at the time of the cessation. If any events that may affect the right to receive benefits have occurred, then necessary adjustments to the benefits will be made before reinstatement. Individuals who did *not* previously elect benefit continuation did not have to report any of these events to us, since they were not receiving any benefits.

The regulations at § 404.1597a(j) explain that any title II continued benefits received during appeal (with the exception of Medicare benefits) are subject to the overpayment recovery and waiver provisions of regulations at 20 CFR Part 404, Subpart F, if the determination that the title II individual is no longer disabled is not changed by the final decision of the Secretary. The title II individuals who received continued benefits would then be asked to pay back these benefits. However, recovery of the continued benefits would be subject to the waiver provisions of regulations at 20 CFR Part 404, Subpart F, only if the appeal was made in good faith. We will assume that an appeal was made in good faith *unless* an individual fails to cooperate in connection with an appeals, e.g., if he or she fails (without a good reason) to give us medical or other evidence, or to go for a physical or mental examination when requested.

If an individual has an appeal on a medical cessation pending under both title II and title XVI (that is, a concurrent case), the title II claim will be handled in accordance with the title II regulations, while the title XVI claim will be handled in accordance with the title XVI regulations.

*Title XVI*

The regulations at § 416.995 explain that after we have made a determination that an individual's physical or mental impairment(s) has ceased, never existed, or is no longer disabling, the individual's title XVI benefits based on disability or blindness will be stopped. We will send the title XVI individual written notice of our determination that explains it, the right to appeal and the right to request continued benefits pending reconsideration and/or a hearing on the disability/blindness cessation determination.

Under these regulations, title XVI individuals who receive determinations on their applications for benefits based on disability or blindness that they were disabled or blind for only a specified period of time (i.e., a closed period) do not have the right to request continuation of benefits during appeal. When disability has been established for only a specified period of time, there is no determination that would reach current status. Continuation of benefits during appeal is available only if current entitlement is in question. Also, under these regulations, title XVI individuals who receive an unfavorable determination on their application for benefits based on disability or blindness do not have the right to request continuation of benefits during appeal since continued benefits are only available to individuals who were already receiving benefits.

The regulations at § 416.996(a) explain that title XVI individuals who receive a medical cessation determination may elect to have benefits continued during appeal of that determination. We have added language in these final rules to show that these benefits include the special cash benefits or special Supplemental Security Income (SSI) eligibility status of Medicaid under §§ 416.261 and 416.264. Section 416.996(a) applies to determinations that the individual's physical or mental impairment(s) has ceased, has never existed, or is no longer disabling made after October 1984. The payments to a title XVI individual who has elected to have benefits continued will continue until the earlier of the month before the month a decision is issued after the administrative law judge hearing or the month before the month a new decision is issued by the ALJ (or final action is taken by the Appeals Council on the ALJ's recommended decision) if the individual's case was sent back to an ALJ for further action, or until the month before the month no timely request for reconsideration or a hearing before an administrative law judge is pending after notification of an unfavorable title XVI initial or reconsideration cessation determination.

Regulations at 20 CFR 416.1413(d), 51 FR 288 (January 3, 1986), which are effective for reconsideration requests filed on or after January 3, 1986, provide a title XVI or concurrent title II/XVI beneficiary an opportunity for a disability hearing at the reconsideration level when the beneficiary appeals an initial medical cessation determination. Before January 3, 1986, the first level of appeal for title XVI or concurrent title II/XVI medical cessations was a hearing before an administrative law judge. The disability hearing regulations result in similar treatment of title II and title XVI beneficiaries in the appeals process, including the payment of continued benefits.

Individuals electing continuation of title XVI benefits, in States where Medicaid eligibility is based on receipt of title XVI benefits and for which SSA does Medicaid eligibility determinations, will also have Medicaid

eligibility continued. In other States, they will be referred to the State Medicaid agency.

To clarify our policy on cessation appeals filed under both title II and title XVI (a concurrent claim), we added new language to these final regulations at § 416.996(a). This new language does not represent a change in the concurrent claim policy which was announced in the NPRM. Although we stated in the NPRM preamble how concurrent appeals would be processed, we had no statement on concurrent appeals in the rules themselves. We explained in the preamble to the NPRM that in a concurrent claim, the title II appeal is processed under the II rules and the title XVI appeal is processed under the title XVI rules. In this final regulations, we have explicitly stated this policy in the regulatory text at § 416.996(a).

The regulations at § 416.996(b) explain that we will notify the title XVI individual of his or her right to elect continued benefits if he or she requests a reconsideration or hearing before an administrative law judge on our disability/blindness cessation determination. If the individual requests a reconsideration or hearing, we will request a written statement of election as to whether or not he or she wants benefits to continue during appeal.

Title XVI individuals may elect continuation of benefits at the time reconsideration is requested and again at the time a hearing before an administrative law judge is requested. A separate election must be made at each level of appeal.

It the title XVI individual does not elect continuation of benefits at the time reconsideration is requested, but requests it at the time the administrative law judge hearing is requested, we will reinstate continued benefits effective with the month of the latest medical cessation determination rather than the first month of nonpayment after the initial medical cessation determination. The written statement of choice, which must be completed by the individual, explains this provision.

The regulations at § 416.996(c) explain that a title XVI individual must request continued benefits within 10 days after receiving notice of an initial medical cessation determination along with requesting a reconsideration. The 60-day period for requesting a reconsideration is not affect by this provision.

The new section 1631(a)(7) of the Act, as added by section 7 of Pub. L. 98–460, requires that title XVI individuals now make an affirmative request to have benefits continued. The existing title XVI regulation (20 CFR 416.1336(b)), which is based on the U.S. Supreme Court decision in the case of *Goldberg v. Kelly*, provides that unless waived title XVI benefits would continue to be paid until a decision (or order of dismissal) was issued at the initial level of appeal if the appeal is filed within 10 days after receipt of the notice of planned action to stop benefits. The new statutory authority for title XVI benefit continuation differs from the *Goldberg v. Kelly* approach by requiring that the individual affirmatively elect benefit continuation rather than assuming that the individual wants continued benefits if an appeal is requested within 10 days unless such benefits are waived. Under these regulations, title XVI individuals are given the same period (per current regulations) of 10 days from receipt of notice for making such election.

Our experience with providing the 10-day time frame for filing a request for hearing and receiving benefit continuation in title XVI cases under the *Goldberg v. Kelly* procedures, which has been in effect since 1974, has proven that this is an adequate time frame for most individuals.

The title XVI regulations at § 416.996(c) also explain that if continued benefits are requested after the 10-day period, we will use the standards in current regulations, 20 CFR 416.1411, to determine whether good cause exists for failing to request benefit continuation within the 10-day period. If the election for continued benefits is made late, we will consider the request to be timely and will pay continued benefits only if good cause for delay is found. We apply a good cause exception with regard to other time limits in the appeals process. For consistency and recognizing that certain justifiable factors may prevent timely requests in this situation, we are using the same good cause considerations here.

The regulations at § 416.996(d) explain that a title XVI individual must request continued benefits within 10 days after receiving notice of our reconsideration cessation determination along with requesting a hearing before an administrative law judge. The 60-day period for requesting a hearing is not affected by this provision.

If the request for continued benefits is made after the 10-day period, we will use the standards in current regulations, 20 CFR 416.1411, to determine whether good cause exists for failing to request benefit continuation timely. If the election for continued benefits is made late, we will consider the request to be timely only if good cause for delay is found.

The regulations at § 416.996(e) explain that in title XVI decisions (including court remand cases, except those court remands with special benefit continuation rights under section 2(e) of Pub. L. 98–460) vacated and sent back (remanded) by the Appeals Council to an administrative law judge for further action, benefit continuation may be available, without a new election, effective with the first month of nonpayment based on the prior administrative law judge decision if benefits were previously elected at the administrative law judge level. In such title XVI remanded cases, the prior administrative law judge's decision or dismissal order is vacated, having no force or effect, and accordingly benefit continuation may be available again for these title XVI beneficiaries.

If the title XVI beneficiary did not previously elect benefit continuation at the administrative law judge level, continuation of benefits may be available upon a new election by the beneficiary and effective for the month of the Appeals Council remand order.

Before reinstating benefits in any remand case (including court remand cases, except those court remands with special benefit continuation rights under section 2(e) of Pub. L. 98–460), we will contact the title XVI individual to update our records regarding events that affect the right to receive, and the amount of, benefits, such as work activity, living arrangements, income and resources. Before reinstatement, we will review and redetermine eligibility in all cases, whether or not benefits were previously elected at the administrative law judge level. This policy to do a redetermination before reinstatement is consistent with our responsibility to redetermine eligibility contained in section 1611(c)(1) of the Act and the regulations at 20 CFR 416.204. The redetermination is necessary because we have not had recent contact with the individual during the period of nonpayment since the individual was not under any obligation to report changes in circumstances that could affect eligibility or payment amount. Since the title XVI program is a program based on current needs, it is essential that a determination be made that the individual's current needs support the payment, as well as the amount, of title XVI benefits. Upon redetermination, if all eligiblity factors are not met (other than disability or blindness or, in certain cases, not engaging in substantial gainful activity), we will not reinstate benefits. (Effective July 1, 1987, a title XVI individual will no longer be subject to a trail work period or cessation based on engaging in substantial gainful activity in order to be eligible for special benefits under § 416.261 or special

status under § 416.264). Any retroactive continued benefits paid to concurrent title II and title XVI beneficiaries will be subject to the provisions of section 1127 of the Social Security Act, as amended. That section provides that, effective February 1985, benefits paid after a period of suspension or termination will be adjusted to reflect the title XVI benefits that would not be paid if the title II benefits were paid when due.

Prior to November 1984, in concurrent title II/title XVI medical cessation cases, under the provisions in 20 CFR 416.1336, an individual who had filed for a hearing within 10 days of receipt of the cessation notice could waive his or her right to receive continued benefits pending the hearing decision. He or she could also restrict this waiver to either title II *or* title XVI benefits only. Therefore the claimant could continue to receive benefits under both titles or choose to receive benefits under only one title. This policy will be continued.

For clarification, we added a new § 416.996(f) to these final rules. This added regulation at § 416.996(f) explains that title XVI recipients of disability/blindness benefits whose benefits are suspended, reduced or terminated for reasons *not* connected with their medical condition still will be covered under the existing procedures (20 CFR 416.1336(b)) based on the decision in *Goldberg* v. *Kelly*, which provides for the continuation of benefits through the first level of appeal when the appeal is requested within 10 days of receipt of the notice of suspension, reduction or termination.

The regulations at § 416.996(g) explain that any continued title XVI benefits received during appeal are subject to the overpayment recovery and waiver provisions of Regulations 20 CFR Part 416, Subpart E, if the determination that the title XVI individual is no longer disabled or blind is not changed by the final decision of the Secretary. The title XVI individuals who received continued benefits would then be asked to pay back these benefits. However, the continued benefits would be subject to the waiver provisions of Regulations 20 CFR Part 416, Subpart E, only if the appeal was made in good faith. We will assume that an appeal was made in good faith *unless* an individual fails to cooperate in connection with an appeal, e.g., if he or she fails (without a good reason) to give us medical or other evidence or to go for a physical or mental examination when requested.

If an individual has an appeal on a medical cessation pending under both title XVI and title II (that is, a concurrent case), the title XVI claim will be handled in accordance with the title XVI regulations while the title II claim will be handled in accordance with the title II regulations.

Conforming changes will be made later in 20 CFR 416.1336.

**Comments**

These rules were published as a Notice of Proposed Rulemaking at 51 FR 18611 on May 21, 1986. We received comments from 13 respondents.

*Language and Format of Notices*

*Comment:* Several commenters expressed concern about the quality and tone of our notices and forms used in the benefit continuation process and the attitudes of SSA employees responsible for presenting benefit continuation information to claimants. It was suggested that both written and oral information be presented in as simple a manner as possible. These commenters remarked that the language and format of the cessation notices can be critical in the lives of people who are disabled, particularly those with mental disabilities.

**Response:** We believe that the improvements we have made in the language and format of our notices satisfies the concern about our written communications. A major initiative of SSA is to issue clear and understandable notices to claimants and other parties. As a part of this important initiative, we have developed new, improved standards for all SSA notices. In developing these standards, SSA consulted with and adopted concepts from nongovernmental authorities on readability and communication. These standards reflect a tone which we believe is personalized, courteous and nonthreatening.

The notices of disability cessation have been revised to conform to the clear notice standards. The improved cessation notices consist of a streamlined format with clearer language. These notices contain explicit language about appeal rights *and* the right to elect continued benefits. The appeal paragraph includes a sentence which reads "Come to one of our offices if you want help." Further, each notice concludes with a paragraph which encourages the claimant to contact any Social Security office if he or she has questions about his or her claim.

In developing the language for the paragraph to explain the benefit continuation provision, we avoided language that overemphasizes the beneficiary's obligation to repay continued benefits in the event of an unfavorable decision on appeal. The paragraph reads "If you lose your appeal, you might have to pay back some or all of this money." The notices use the word "might" because overpayments which result from the election of continued benefits are subject to the waiver consideration provisions of the Social Security Act if the appeal was made in good faith.

In addition to the improvements in our written communications, we have provided training for Social Security office employees to improve their interviews and oral communication with claimants. Further, Social Security office employees have been provided extensive training for more effective interviewing of mentally impaired claimaints to ensure that their disability claims are fully developed and that the process is understandable.

*Comment:* Two commenters suggested that the form for requesting reconsideration or hearing have a check-off box for requesting continuation of benefits. This would assure that Social Security office employees do not fail to present the option to elect continued benefits to the beneficiary at the time he or she makes the request for appeal.

*Response:* It is not necessary to revise the forms for requesting reconsideration or hearing to include benefit continuation boxes to ensure that the option to elect continued benefits is presented to the beneficiary when he or she makes the request for appeal. The notice of the disability/blindness cessation determination as well as the reconsideration determination informs a beneficiary of the right to have benefits continued during appeal if he or she disagrees with the determination and requests appeal. This informs the beneficiary regarding his or her rights and also serves to put the beneficiary at ease regarding possible financial hardship. Cessation cases are held in Social Security offices specifically to await the beneficiary's response regarding continuation of benefits. Employees are instructed to explain the continuation of benefits provision when a medical cessation appeal is requested. Finally, training is provided to Social Security office employees on how to explain the right to elect continued benefits to beneficiaries appealing cessation determinations as part of our continuing effort to provide quality service to the public.

Therefore, we do not believe that it is necessary to revise the forms for requesting reconsideration or hearing to ensure that this option will be explained to the claimant.

*10-Day Time Limit To Request Benefit Continuation*

*Comment:* Eight of the 13 commenters were especially critical of the rule that a beneficiary whose disability or blindness has been found to have ceased has only 10 days from receipt of the cessation notice to request or elect to receive continued benefits while appealing the cessation. It was indicated that the 10-day time limit is too rigorous, burdensome and is not required by the statute. The commenters believe that the 10-day rule places a particular burden on mentally impaired individuals, and some suggested that a provision be added to this rule to make it clear that beneficiaries with mental disabilities should receive extra consideration and be given more time to request continuation of benefits. Some thought a 30-day time limit would be better, while others proposed a time limit of 60 days, the same amount of time allowed for requesting appeal.

More specifically, in connection with the objection to this 10-day rule, several commenters recommended that these rules and the rules at 20 CFR 404.911 and 416.1411 be amended to include specific language stating that the "good cause" for lateness provisions will be applied liberally for mentally impaired beneficiaries. The commenters believe that such regulatory language would accommodate the special circumstances which many mentally impaired beneficiaries experience which include difficulty in responding to written communications, thus assuring that these individuals have the full opportunity for having their benefits continued during appeal. These commenters stated the SSA's flexibility in applying good cause is not readily apparent in these rules.

*Response:* Although many commenters voiced strong objection to the 10-day rule, we did not amend the final rule to change this time limit. We believe, as we stated in the preamble to the Notice of Proposed Rulemaking, that the 10-day time limit is adequate time for beneficiaries to make an election. In addition, as we also previously stated, we recognize that certain justifiable causes may prevent a beneficiary from making a timely request for continued benefits, and therefore, in these situations we will apply the good cause exception applicable to other time limits in the appeals process.

Section 2 of Pub. L. 97–455 and section 7 of Pub. L. 98–460 provide that the Secretary "shall by regulations prescribe" the manner, form, *and time* within which an individual may elect continued disability benefits during appeal.

For consistent program administration between title II and title XVI cases, these regulations provide the same 10-day period for having benefits continued in connection with an appeal already provided by 20 CFR 416.1336(b) for title XVI suspension, reduction or termination cases. This 10-day time limit is a longstanding policy which began with the policy and procedures we provided for benefit continuation in title XVI cases, based on the principles in the Supreme Court's decision in *Goldberg v. Kelly*. Under these procedures, as provided in 20 CFR 416.1336(b), an individual who appealed an adverse action within the 10-day time limit automatically received benefit continuation unless such benefits were waived. We also followed a 10-day time limit policy in implementing continued benefits under title II, in accordance with section 2 of Pub. L. 97–455 which was enacted in 1983.

Since we implemented this 10-day rule in title II cases under Pub. L. 97–455, the vast majority of the beneficiaries appealing a cessation have requested the continuation of benefits within 10 days. Therefore, we do not believe that the 10-day time limt, or our application of the good cause exception, has represented a disadvantage or disincentive for individuals whose benefits have been ceased. In addition, we have had no indication that the use of a 10-day rule has been a problem for claimants in title XVI cases, where it has been used since 1974.

We did not amend these rules to add specific language to give extra consideration to mentally impaired beneficiaries who miss the time limit for requesting continuation of benefits, because we believe that our current rules on "good cause" for missing the deadline to request review provide for such special consideration. Our regulations at 20 CFR 404.911 and 416.1411 provide that the deadline or time limit can be extended if the individual had "good cause" for missing the deadline. These regulations cite examples of circumstances when good cause may exist but state that the examples listed are not exclusive. One such example reads that good cause may be found if an individual "were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person." Another example reads that "good cause" may be found if "unusual or unavoidable circumstances exist which show that you could not have known of the need to file timely or which prevented you from filing timely." Although a mental disability is not specifically mentioned in these regulations, we believe the language of 20 CFR 404.911 and 416.1411 covers a variety of circumstances including those which may be associated with mentally impaired individuals.

*"Closed Period" Cases Should Be Included for Benefit Continuation*

*Comment:* Six commenters indicated that claimants who are simultaneously awarded disability benefits for a prior period and whose entitlement or eligibility for benefits ceased at the end of such period, i.e., granted a closed period of disability, should be given the opportunity to elect continuation of benefits during appeal of such closed period decisions. Several of these commenters pointed out that several medical improvement class action court orders have required that "closed period" cases be regarded as *cessation* cases and accordingly be afforded the right to elect continued benefits on appeal. The commenters also pointed out that "closed period" cases are adjudicted under the medical improvement review standard and, therefore, in this context should be recognized as medical cessation cases eligible for continued benefits.

*Response:* We considered this comment and reexamined the rule to exclude "closed period" cases from benefit continuation. Upon reexamination, we concluded that this rule is consistent with the statute. Sections 223(g) and 1631(a)(7) as added by section 7 provide for benefit continuation to "recipients" of title II or tile XVI benefits. The intent of section 7 is to prevent disruption to those individuals who are currently recipients of benefits and who then receive medical cessation determinations. Because individuals granted a closed period were not already recipients of disability benefits when their disabilities ceased, they are not eligible for benefit continuation. Further, a closed period of disability determination is a determination on an application for benefits that establishes a period of disability for only a specified period of time in the past. In a closed period of disability, there is no determination that would reach current status. Continuation of benefits during appeal is available only if current entitlement is in question. Thus, we have not changed this rule. The medical improvement class actions referred to by the commenter are governed by section 2(d) of Pub. L. 98–460. Section 2(d) provided for remand to the Secretary and review

under the medical improvement review standard of certain cases pending in Federal courts. These final regulations do not apply to title II and XVI cases remanded under section 2(d). The special benefit provisions of section 2(e) apply to those cases.

*Claimant's Obligation To Repay Benefits Received During Cessation Appeal*

*Comment:* Several commenters questioned the procedures for collecting overpayments resulting from an unfavorable decision on appeal. Specifically, the commenters believe that these rules do not go far enough to assure that beneficiaries whose disability/blindness has been found to have ceased feel free to exercise their right to receive benefits during appeal without being intimidated by an overemphasis on the obligation to repay benefits if the medical cessation is affirmed on appeal.

*Response:* Currently the vast majority of those individuals who appeal a cessation elect to receive continued benefits. There is no credible evidence that beneficiaries are intimidated from electing benefits.

Since the Act requires that continued benefits will be considered overpayments if the medical cessation is affirmed on appeal, we must inform the beneficiary about this requirement. We believe that the cessation determination notice which explains the determination and the benefit continuation provision does not overemphasize this requirement, moreover, the notice explains that any resulting overpayment may receive waiver consideration.

Social Security office employees are instructed to advise beneficiaries of their right to continued benefit payments and when the payments will end, as well as the consequences if more than the correct amount of payment is made. This is standard procedure for all types of payments and not just "continued benefits" payments. In addition, in contacts with beneficiaries, Social Security office employees provide information and assitance and are instructed not to intimidate or influence an individual.

In conclusion, the policies and procedures for benefit continuation overpayment cases are the same as those procedures for all overpayment cases. We are confident that Social Security office employees will continue to provide quality service in a courteous and nonthreatening manner.

*Comment:* One commenter proposed that these rules be amended to indicate that in addition to being eligible for regular overpayment waiver provisions, that beneficiaries whose disability/blindness has been found to have ceased also be eligible for a long-term repayment plan.

*Response:* Although beneficiaries whose disability/blindness has been found to have ceased may be eligible for a long-term repayment plan, it would not be appropriate to include rules on overpayments and collection of overpayments in these benefit continuation rules.

The regulations on overpayments and recovery and/or waiver of overpayments are found in 20 CFR 404.501 through 404.515 and 416.535 through 416.570. Processing and recovery of any overpayments due to continuation of benefits will be made under procedures already in place.

In addition to the above regulations, the Federal Claims Collection (FCC) standards, based on the Debt Collection Act of 1982 and issued jointly by the General Accounting Office and the Department of Justice, set forth the national standards for the collection of debts owed the United States and its agencies. The FCC standards (4 CFR 102.1 through 120.20) provide that an agency discuss alternative methods of repayment with the debtor. FCC standards are contained in Department of Health and Human Services regulations, 45 CFR Part 30, the revised version of which is set forth at 52 FR 260 (January 5, 1987).

The Social Security Administration follows the FCC standards for debt collection, and the overpayment notice(s) SSA sends complies with these standards. Our initial notice requesting repayment not only asks for refund, but advises the debtor if he or she cannot repay in a lump sum, to submit a plan for repayment.

Since debt collection standards are in 4 CFR 102.1 through 102.20, there is no need to duplicate the repayment provisions in 20 CFR 404.501 through 404.515 and 416.535 through 416.570.

*Comment:* Several commenters indicated that these rules do not sufficiently discuss when SSA will begin collection of any resulting overpayment. It was suggested that "these rules should state that SSA will not act to collect any funds alleged to be owed until such time as the individual has exhausted his/her appeal rights." This would include deferring overpayment collection through the judicial (court) level of appeal.

*Response:* As we stated earlier in response to the preceding comment, these regulations on the continuation of benefits during the appeal of a medical cessation determination refer to the current overpayment rules and the standards and procedures contained in these rules.

In benefit continuation cases, our policy is that the notice of overpayment on the amount of continued benefits paid will not be issued until any judicial appeal of the Secretary's final decision is completed. Therefore, the overpayment collection process is deferred to take into consideration possible judicial review and reversal of the Secretary's decision. If the claimant does not seek judicial review of the cessation determination, we will issue the overpayment notice and begin the collection process.

*Comment:* One commenter recommended that these rules be modified to also allow recovery of Medicaid expenditures whenever State money was expended and the cessation determination was upheld on appeal. This commenter believes that since recovery of disability benefits is allowed when the claimant loses the appeal, then States also should be allowed to recover Medicaid expenditures when a title XVI cessation appeal is lost and a retroactive determination of ineligibility is made.

*Response:* Section 1902(a)(10(A) of the Social Security Act requires that title-XVI-criteria States provide Medicaid to individuals receiving title XVI payments. In this regard, Medicaid eligibility is conditional based on the receipt of title XVI *payments*, not title XVI *eligibility*. As long as a title XVI payment is made, the State is acting appropriately when it provides Medicaid to a title XVI recipient.

When a title XVI recipient is determined retroactively ineligible for benefits under title XVI, his or her eligibility for Medicaid during that retroactive period is not at issue as long as a title XVI payment was made. Regardless of why the individual has remained in payment status (e.g., *Goldberg* v. *Kelly* payment continuation or continuation of benefits during disability/blindness cessation appeal), if SSA provided a title XVI payment, the State's providing Medicaid was proper and is unaffected by a retroactive title XVI disallowance.

However, an exception to this may apply in cases involving retroactive ineligibility determinations. Medicaid recovery is not allowed *unless* Medicaid eligibility was established by fraud or similar fault on the part of the individual. If Medicaid eligibility was established fraudulently, then the State must attempt to collect or recover medical expenditures from the individual.

*Election of Continued Benefits for Title II Auxiliary Beneficiaries (Spouse or Children)*

*Comment:* Five commenters objected to the requirement that auxiliary beneficiaries also make a separate written election to receive continuation of benefits during the wage earner's appeal. These commenters believe that the statute does not permit or require a separate election from auxiliary beneficiaries. Hence, it was suggested that these rules require only the wage earner's election, without an additional obstacle and more paperwork.

*Response:* We have decided not to eliminate the rule for obtaining separate elections from auxiliary beneficiaries. As we previously explained in the NPRM, title II auxiliary beneficiaries who are living in a separate household and those in the wage earner's household will be asked to repay any overpayment resulting from an unfavorable decision on appeal. Since these beneficiaries may not be aware of the wage earner's election of continued benefits on their behalf, a separate statement of choice is required. Having to make a separate election does not place any added liability on the auxiliaries, rather it serves to give the auxiliaries the chance to choose for themselves whether or not they wish to receive continued benefits. Although the statute does not specifically mention auxiliary beneficiaries' electing to receive continued benefits, we believe our policy reflects a reasonable interpretation of the statute and is consistent with its intent which is to prevent disruption to recipients of benefits during appeal of a medical cessation determination.

*Election of Continued Benefits on Behalf of New Auxiliary Beneficiaries*

*Comment:* Two commenters requested that we clarify these rules with respect to the right of new auxiliary beneficiaries to receive continued benefits. In this context, new auxiliaries or "after-acquired auxiliaries" refers to those auxiliary beneficiaries who were not entitled and receiving benefits when the wage earner's benefits were initially ceased, but subsequently filed for benefits during the wage earner's appeal of the cessation. The commenters indicated that these rules incorrectly excluded new auxiliary beneficiaries, violating congressional intent and the "spirit" of the statute.

*Response:* We can appreciate this comment and the concern for these individuals. However, these rules do not extend the right to receive continued benefits to new (after-acquired) auxiliaries. "Benefit continuation," as provided by law, is intended to replace only those benefits received prior to the medical cessation. In other words, benefits would be *continued* for only those individuals who were recipients at the time of the cessation determination. After-acquired auxiliaries were not recipients of benefits at the time of the cessation determination.

*Making a New Written Election at Each Level of Appeal*

*Comment:* Two commenters objected to the rule to require a new election for continued benefits at each level of appeal. The commenters stated that this was an unnecessary burden for the wage earner and auxiliary beneficiaries, and proposed that we *automatically* continue benefits with the option to *decline* continued benefits on appeals, as 20 CFR 416.1336(b) currently provides during an appeal of an adverse title XVI action.

*Response:* The Act provides that the beneficiary may elect (i.e., choose) to receive continued benefits while pursuing an appeal of a medical cessation decision. To provide for automatic continuation of benefits without such election would be inconsistent with this statutory provision.

Administratively, we require a separate election at each level of appeal rather than have the claimant's first choice (election or waiver) remain in effect for all subsequent levels of appeal. This requirement affords a second chance to elect continued benefits to each claimant who waived or declined continued benefits when the reconsideration was requested, if he or she should lose the reconsideration appeal. Also, this provides another opportunity for us to discuss the nature of continued benefits and the claimant's responsibility to report changes that could affect payment of these benefits. This may be necessary since the claimant may believe that since he or she was sent a notice of cessation, he or she may not be under any obligation to report changes in circumstances that affect receipt of benefits. Further, this review is consistent with our responsibility to periodically advise the claimant of his or her rights and responsibilities.

Finally, submitting a new election at each level of appeal is not significantly burdensome, since the claimant must contact us if he or she wishes to request an appeal. Therefore, we have retained the provision to require that the claimant renew his or her election each time a new appeal is requested.

*Statement To Decline or Waive Continued Benefits*

*Comment:* One commenter objected to the rule to require a statement to waive or decline receipt of continued benefits during appeal. The commenter suggested that we delete all references to securing a waiver statement as the statute requires only an *election* statement.

*Response:* Although the statute provides for the right to *elect* continued benefits, we have also required that the beneficiary and/or auxiliary beneficiaries indicate in writing when they do not wish to receive continued benefits pending a decision on the medical cessation appeal. It is important that the beneficiary fully understand the effect of this action and remember the choice made, since a waiver of continued benefits is binding through that particular level of appeal.

*Benefit Continuation for Title XVI "Blindness" Cessations*

*Comment:* One commenter indicated that these rules do not specifically mention "blindness" cessations. Title XVI disability recipients are categorized as *blind* or *disabled*. It was suggested that these rules ensure that blind beneficiaries be able to elect continuation of benefits during cessation appeal.

*Response:* In the preamble to the NPRM for title XVI, we explained that under these rules title XVI beneficiaries whose benefits based on disability or blindness are stopped because of a medical cessation would be eligible to elect continued benefits during appeal of the cessation. However, we agree with this suggestion and we have made the appropriate changes. We amended the final rules in §§ 416.995 and 416.996 to read "disability or blindness" benefits based on a physical or mental impairment, rather than "benefits" based on a physical or mental impairment.

**Regulatory Procedures**

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. The program cost associated with these final regulations is estimated to be $60 million in fiscal year 1988. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act*

These regulations impose no new reporting or recordkeeping requirements

requiring Office of Management and Budget clearance.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 13.803 Social Security Retirement Insurance)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Death benefits; Disability benefits; Old-age, survivors and disability insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: April 28, 1988.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approved: June 20, 1988.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

Subpart P of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

**PART 404—[AMENDED]**

1. The authority citation for Subpart P is revised to read as follows:

**Authority:** Secs. 202, 205 (a), (b), and (d)-(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; Sec. 505 (a) of Pub. L. 96–265, 94 Stat. 473, Secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808, Sec. 9009 of Pub. L. 100–203, 100 Stat.

2. The text of existing § 404.1597 is redesignated paragraph (a) *General* and a new paragraph (b) is added to read as follows:

**§ 404.1597 After we make a determination that you are not now disabled.**

(a) *General.* * * *

(b) *If we make a determination that your physical or mental impairment(s) has ceased, did not exist, or is no longer disabling (Medical Cessation Determination).* If we make a determination that the physical or mental impairment(s) on the basis of which benefits were payable has ceased, did not exist, or is no longer disabling (a medical cessation determination, your benefits will stop. As described in paragraph (a) of this section, you will receive a written notice explaining this determination and the month your benefits will stop. The written notice will also explain your right to appeal if you disagree with our determination and your right to request that your benefits and the benefits, if any, of your spouse or children, be continued under § 404.1597a. For the purpose of this section, "benefits" means disability cash payments and/or Medicare, if applicable. The continued benefit provisions of this section do not apply to an initial determination on an application for disability benefits, or to a determination that you were disabled only for a specified period of time.

3. In Part 404, Subpart P, a new § 404.1597a is added to read as follows:

**§ 404.1597a Continued benefits pending appeal of a medical cessation determination.**

(a) *General.* If we determine that you are not entitled to benefits because the physical or mental impairment(s) on the basis of which such benefits were payable is found to have ceased, not to have existed, or to no longer be disabling, and you appeal that determination, you may choose to have your benefits continued pending reconsideration and/or a hearing before an administrative law judge on the disability cessation determination. For the purpose of this entire section, the election of "continued benefits" means the election of disability cash payments and/or Medicare, if applicable. You can also choose to have the benefits continued for anyone else receiving benefits based on your wages and self-employment income (and anyone else receiving benefits because of your entitlement to benefits based on disability). If you appeal a medical cessation under both title II and title XVI (a concurrent case), the title II claim will be handled in accordance with title II regulations while the title XVI claim will be handled in accordance with the title XVI regulations.

(b) *The provisions of this section are available for a limited time only.* (1) Benefits may be continued under this section only if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made on or after January 12, 1983 (or before January 12, 1983, and a timely request for reconsideration or a hearing before an administrative law judge is pending on that date), and before January 1, 1989.

(2) Benefits may be continued under this section only for months beginning with January 1983, or the first month for which benefits are no longer otherwise payable following our determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, whichever is later.

(3) Continued payment of benefits under this section will stop effective with the earlier of: (i) The month before the month in which an administrative law judge's hearing decision finds that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling or the month before the month of a new administrative law judge decision (or final action by the Appeals Council on the administrative law judge's recommended decision) if your case was sent back to an administrative law judge for further action; or (ii) the month before the month no timely request for a reconsideration or a hearing before an administrative law judge is pending; or (iii) June 1989. These continued benefits may be stopped or adjusted because of certain events (such as work and earning or receipt of worker's compensation) which occur while you are receiving these continued benefits and affect your right to receive continued benefits.

(c) *Continuation of benefits for anyone else pending your appeal.* (1) When you file a request for reconsideration or hearing before an administrative law judge on our determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, or your case has been sent back (remanded) to an administrative law judge for further action, you may also choose to have benefits continue for anyone else who is receiving benefits based on your wages and self-employment income (and for anyone else receiving benefits because of your entitlement to benefits based on disability), pending the outcome of your appeal.

(2) If anyone else is receiving benefits based on your wages and self-employment income, we will notify him or her of the right to choose to have his or her benefits continue pending the outcome of your appeal. Such benefits can be continued for the time period in paragraph (b) of this section only if he or she chooses to have benefits continued and you also choose to have his or her benefits continued.

(d) *Statement of choice.* When you or another party request reconsideration under § 404.908(a) or a hearing before an administrative law judge under § 404.932(a) on our determination that your physical or mental impairment(s)

has ceased, has never existed, or is no longer disabling, or if your case is sent back (remanded) to an administrative law judge for further action, we will explain your right to receive continued benefits and ask you to complete a statement specifying which benefits you wish to have continued pending the outcome of the reconsideration or hearing before an administrative law judge. You may elect to receive only Medicare benefits during appeal even if you do not want to receive continued disability benefits. if anyone else is receiving benefits based on your wages and self-employment income (or because of your entitlement to benefits based on disability), we will ask you to complete a statement specifying which benefits you wish to have continued for them, pending the outcome of the request for reconsideration or hearing before an administrative law judge. If you request appeal but you do not want to receive continued benefits, we will ask you to complete a statement declining continued benefits indicating that you do not want to have your benefits and those of your family, if any, continued during the appeal.

(e) *Your spouse's or children's statement of choice.* If you request, in accordance with paragraph (d) of this section, that benefits also be continued for anyone who had been receiving benefits based on your wages and self-employment, we will send them a written notice. The notice will explain their rights and ask them to complete a statement either declining continued benefits, or specifying which benefits they wish to have continued, pending the outcome of the request for reconsideration or a hearing before an administrative law judge.

(f) *What you must do to receive continued benefits pending notice of our reconsideration determination.* (1) If you want to receive continued benefits pending the outcome of your request for reconsideration, you must request reconsideration and continuation of benefits no later than 10 days after the date you receive the notice of our initial determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. Reconsideration must be requested as provided in § 404.909, and you must request continued benefits using a statement in accordance with paragraph (d) of this section.

(2) If you fail to request reconsideration and continued benefits within the 10-day period required by paragraph (f)(1) of this section, but later ask that we continue your benefits pending a reconsidered determination, we will use the rules in § 404.911 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the notice of the initial cessation determination. If you request continued benefits after the 10-day period, we will consider the request to be timely and will pay continued benefits only if good cause for delay is established.

(g) *What you must do to receive continued benefits pending an administrative law judge's decision.* (1) To receive continued benefits pending an administrative law judge's decision on our reconsideration determination, you must request a hearing and continuation of benefits no later than 10 days after the date you receive the notice of our reconsideration determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. A hearing must be requested as provided in § 404.933, and you must request continued benefits using a statement in accordance with paragraph (d) of this section.

(2) If you request continued benefits pending an administrative law judge's decision but did not request continued benefits while we were reconsidering the initial cessation determination, your benefits will begin effective the month of the reconsideration determination.

(3) If you fail to request continued payment of benefits within the 10-day period required by paragraph (g)(1) of this section, but you later ask that we continue your benefits pending an administrative law judge's decision on our reconsidered determination, we will use the rules as provided in § 404.911 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the reconsideration determination. If you request continued benefits after the 10-day period, we will consider the request to be timely and will pay continued benefits only if good cause for delay is established.

(h) *What anyone else must do to receive continued benefits pending our reconsideration determination or an administrative law judge's decision.* (1) When you or another party (see §§ 404.908(a) and 404.932(a)) request a reconsideration or a hearing before an administrative law judge on our medical cessation determination or when your case is sent back (remanded) to an administrative law judge for further action, you may choose to have benefits continue for anyone else who is receiving benefits based on your wages and self-employment income. An eligible individual must also choose whether or not to have his or her benefits continue pending your appeal by completing a separate statement of election as described in paragraph (e) of this section.

(2) He or she must request continuation of benefits no later than 10 days after the date he or she receives notice of termination of benefits. He or she will then receive continued benefits beginning with the later of January 1983, or the first month for which benefits are no longer otherwise payable following our initial or reconsideration determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. Continued benefits will continue until the earlier of: (i) The month before the month in which an administrative law judge's hearing decision finds that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling or the month before the month of the new administrative law judge decision (or final action is taken by the Appeals Council on the administrative law judge's recommended decision) if your case was sent back to an administrative law judge for further action; or (ii) the month before the month no timely request for a reconsideration or a hearing before an administrative law judge is pending; or (iii) June 1989. These continued benefits may be stopped or adjusted because of certain events (such as work and earnings or payment of workers compensation) which occur while an eligible individual is receiving continued benefits and affect his or her right to receive continued benefits.

(3) If he or she fails to request continuation of benefits within the 10-day period required by this paragraph, but requests continuation of benefits at a later date, we will use the rules as provided in § 404.911 to determine whether good cause exists for his or her failure to request continuation of benefits within 10 days after receipt of the notice of termination of his or her benefits. His or her late request will be considered to be timely and we will pay him or her continued benefits only if good cause for delay is established.

(4) If you choose not to have benefits continued for anyone else who is receiving benefits based on your wages and self-employment income, pending the appeal on our determination, we will not continue benefits to him or her.

(i) *What you must do when you case is remanded to an administrative law judge.* If we send back (remand) your case to an administrative law judge for futher action under the rules provided in § 404.977, and the administrative law

judge's decision or dismissal order issued on you medical cessation appeal is vacated and is no longer in effect, continued benefits are payable pending a new decision by the administrative law judge or final action is taken by the Appeals Council on the administrative law judge's recommended decision.

(1) If you (and anyone else receiving benefits based on your wages and self-employment income or because of your disability) previously elected to receive continued benefits pending the administrative law judge's decision, we will automatically start these same continued benefits again. We will send you a notice telling you this, and that you do not have to do anything to have these same benefits continued until the month before the month the new decision of order of dismissal is issued by the administrative law judge or until the month before the month the Appeals Council takes final action on the administrative law judge's recommended decision. These benefits will begin again with the first month of nonpayment based on the prior administrative law judge hearing decision or dismissal order. Our notice explaining reinstatement of continued benefits will also tell you to report to us any changes or events that affect your receipt of benefits.

(2) After we automatically reinstate your continued benefits as described in paragraph (h)(1) of this section, we will contact you to determine if any adjustment is required to the amount of continued benefits payable due to events that affect the right to receive benefits involving you, your spouse and/or children. If you have returned to work, we will request additional information about this work activity. If you are working, your continued benefits will not be stopped while your appeal of the medical cessation of disability is still pending unless you have completed a trial work period and are engaging in substantial gainful activity. In this event, we will suspend your continued benefits. If any other changes have occurred which would require a reduction in benefits amounts, or nonpayment of benefits, we will send an advance notice to advise of any adverse change before the adjustment action is taken. The notice will also advise you of the right to explain why these benefits should not be adjusted or stopped. You will also receive a witten notice of our determination. The notice will also explain your right to reconsideration if you disagree with this determination.

(3) If the final decision on your appeal of your medical cessation is a favorable one, we will send you a written notice in which we will advise you of your right to benefits, if any, before you engaged in substantial gainful activity and to reentitlement should you stop performing substantial gainful activity. If you disagree with our determination, you will have the right to appeal this decision.

(4) If the final decision on your appeal of your medical cessation is an unfavorable one (the cessation is affirmed), you will also be sent a written notice advising you of our determination, and your right to appeal if you think we are wrong.

(5) If you (or the others receiving benefits based on your wages and self-employment income or because of your disability) did not previously elect to have benefits continued pending an administrative law judge decision, and you now want to elect continued benefits, you must request to do so no later than 10 days after you receive our notice telling you about continued benefits. If you fail to request continued benefits within the 10-day period required by paragraph (f)(1) of this section, but later ask that we continue your benefits pending an administrative law judge remand decision, we will use the rules in § 404.911 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the notice telling you about benefit continuation. We will consider the request to be timely and will pay continued benefits only if good cause for delay is established. If you make this new election, benefits may begin with the month of the order sending (remanding) your case back to the administrative law judge. Before we begin to pay you continued benefits as described in paragraph (h)(1) of this section we will contact you to determine if any adjustment is required to the amount of continued benefits payable due to events which may affect your right to benefits. If you have returned to work, we will request additional information about this work activity. If you are working, continued benefits may be started and will not be stopped because of your work while your appeal of the medical cessation of your disability is still pending unless you have completed a trial work period and are engaging in substantial gainful activity. If any changes have occurred which establish a basis for not paying continued benefits or a reduction in benefit amount, we will send you a notice explaining the adjustment or the reason why we cannot pay continued benefits. The notice will also explain your right to reconsideration if you disagree with this determination. If the final decision on your appeal of your medical cessation is a favorable one, we will send you a written notice in which we will advise you of your right to benefits, if any, before you engaged in substantial gainful activity and to reentitlement should you stop performing substantial gainful activity. If you disagree with our determination, you will have the right to appeal this decision. If the final decision on your appeal of your medical cessation is an unfavorable one (the cessation is affirmed), you will also be sent a written notice advising you of our determination, and your right to appeal if you think we are wrong.

(6) If a court orders that your case be sent back to us (remanded) and your case is sent to an administrative law judge for further action under the rules provided in § 404.983, the administrative law judge's decision or dismissal order on your medical cessation appeal is vacated and is no longer in effect. Continued benefits are payable to you and anyone else receiving benefits based on your wages and self-employment income or because of your disability pending a new decision by the administrative law jduge or final action is taken by the Appeals Council on the administrative law judge's recommended decision. In these court-remanded cases reaching the administrative law judge, we will follow the same rules provided in paragraphs (i) (1), (2), (3), (4) and (5) of this section.

(j) *Responsibility to pay back continued benefits.* (1) If the final decision of the Secretary affirms the determination that you are not entitled to benefits, you will be asked to pay back any continued benefits you receive. However, as described in the overpayment recovery and waiver provisions of Subpart F of this Part, you will have the right to ask that you not be required to pay back the benefits. You will not be asked to pay back any Medicare benefits you received during the appeal.

(2) Anyone else receiving benefits based on your wages and self-employment income (or because of your disability) will be asked to pay back any continued benefits he or she received if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, is not changed by the final decision of the Secretary. However, he or she will have the right to ask that he or she not be required to pay them back, as described in the overpayment recovery and waiver provisions of Subpart F of this Part. He or she will not be asked to

pay back any Medicare benefits he or she received during the appeal.

(3) Waiver of recovery of an overpayment resulting from the continued benefits paid to you or anyone else receiving benefits based on your wages and self-employment income (or because of your disability) may be considered as long as the determination was appealed in good faith. It will be assumed that such appeal is made in good faith and, therefore, any overpaid individual has the right to waiver consideration *unless* such individual fails to cooperate in connection with the appeal, e.g., if the individual fails (without good reason) to give us medical or other evidence we request, or to go for a physical or mental examination when requested by us, in connection with the appeal.

Subpart I of Part 416 of Title 20 of the Code of Federal Regulations is amended to read as follows:

## PART 416—[AMENDED]

1. The authority citation for Subpart I is revised to read as follows:

Authority: Secs. 1102, 1614(a), 1619, and 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(2), 1382h, 1383(2) and (d)(1), and 1383b; Secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416. 995 is added to read as follows:

**§ 416.995 If we make a determination that your physical or mental impairment(s) has ceased, did not exist or is no longer disabling (Medical Cessation Determination).**

If we make a determination that the physical or mental impairment(s) on the basis of which disability or blindness benefits were payable has ceased, did not exist or is no longer disabling (a medical cessation determination), your benefits will stop. You will receive a written notice explaining this determination and the month your benefits will stop. The written notice will also explain your right to appeal if you disagree with our determination and your right to request that your disability or blindness benefits be continued under § 416.996. The continued benefit provisions of this section do not apply to an initial determination on an application for disability or blindness benefits or to a determination that you were disabled or blind only for a specified period of time.

3. In Part 416, Subpart I, a new § 416.996 is added to read as follows:

**§ 416.996 Continued disability or blindness benefits pending appeal of a medical cessation determination.**

(a) *General.* If we determine that you are not eligible for disability or blindness benefits because the physical or mental impairment(s) on the basis of which such benefits were payable is found to have ceased, not to have existed, or to no longer be disabling, and you appeal that determination, you may choose to have your disability or blindness benefits, including special cash benefits or special SSI eligibility status under §§ 416.261 and 416.264, continued pending reconsideration and/or a hearing before an administrative law judge on the disability/blindness cessation determination.

If you appeal a medical cessation under both title II and title XVI (a concurrent case), the title II claim will be handled in accordance with title II regulations while the title XVI claim will be handled in accordance with the title XVI regulations.

(1) Benefits may be continued under this section only if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made after October 1984.

(2) Continued benefits under this section will stop effective with the earlier of: (i) The month before the month in which an administrative law judge's hearing decision finds that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling or the month before the month of a new administrative law judge decision (or final action is taken by the Appeals Council on the administrative law judge's recommended decision) if your case was sent back to an administrative law judge for further action; or (ii) the month before the month in which no timely request for reconsideration or administrative law judge hearing is pending after notification of our initial or reconsideration cessation determination. These benefits may be stopped or adjusted because of certain events (such as, change in income or resources or your living arrangements) which may occur while you are receiving these continued benefits, in accordance with § 416.1336(b).

(b) *Statement of choice.* If you or another party (see § 416.1432(a)) request reconsideration under § 416.1409 or a hearing before an administrative law judge in accordance with § 416.1433 on our determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling, or if your case is sent back (remanded) to an administrative law judge for further action, we will explain your right to receive continued benefits and ask you to complete a statement indicating that you wish to have benefits continued pending the outcome of the reconsideration or administrative law judge hearing. If you request reconsideration and/or hearing but you do not want to receive continued benefits, we will ask you to complete a statement declining continued benefits indicating that you do not want to have your benefits continued during the appeal. A separate election must be made at each level of appeal.

(c) *What you must do to receive continued benefits pending notice of our reconsideration determination.* (1) If you want to receive continued benefits pending the outcome of your request for reconsideration, you must request reconsideration and continuation of benefits no later than 10 days after the date you receive the notice of our initial determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. Reconsideration must be requested as provided in § 416.1409, and you must request continued benefits using a statement in accordance with paragraph (b) of this section.

(2) If you fail to request reconsideration and continued benefits within the 10-day period required by paragraph (c)(1) of this section, but later ask that we continue your benefits pending a reconsidered determination, we will use the rules in § 416.1411 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the notice of the initial cessation determination. If you request continued benefits after the 10-day period, we will consider the request to be timely and will pay continued benefits only if good cause for delay is established.

(d) *What you must do to receive continued benefits pending an administrative law judge's decision.* (1) To receive continued benefits pending an administrative law judge's decision on our reconsideration determination, you must request a hearing and continuation of benefits no later than 10 days after the date you receive the notice of our reconsideration determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling. A hearing must be requested as provided in § 416.1433, and you must request continued benefits using a statement in accordance with paragraph (b) of this section.

(2) If you fail to request a hearing and continued benefits within the 10-day period required under paragraph (d)(1) of this section, but you later ask that we continue your benefits pending an administrative law judge's decision, we will use the rules as provided in

§ 416.1411 to determine whether good cause exists for your failing to request benefit continuation within 10 days after receipt of the reconsideration determination. If you request continued benefits after the 10-day period, we will consider the delayed request to be timely and will pay continued benefits only if good cause for delay is established.

(e) *What you must do when your case is remanded to an administrative law judge.* If we send back (remand) your case to an administrative law judge for further action under the rules provided in § 416.1477, and the administrative law judge's decision or dismissal order issued on your medical cessation appeal is vacated and is no longer in effect, you may be eligible for continued benefits pending a new decision by the administrative law judge or final action by the Appeals Council on the administrative law judge's recommended decision.

(1) When your case is remanded to an administrative law judge, and you have elected to receive continued benefits, we will contact you to update our file to verify that you continue to meet the nonmedical requirements to receive benefits based on disability or blindness. To determine your correct payment amount, we will ask you to provide information about events such as changes in living arrangements, income, or resources since our last contact with you. If you have returned to work, we will request additional information about this work activity. Unless your earnings cause your income to be too much to receive benefits, your continued benefits will be paid while your appeal of the medical cessation of your disability/blindness is still pending, unless you have completed a trial work period and are engaging in substantial gainful activity. If you have completed a trial work period and previously received continued benefits you may still be eligible for special cash benefits under § 416.261 or special SSI eligibility status under § 416.264. (Effective July 1, 1987, a title XVI individual is no longer subject to a trial work period or cessation based on engaging in substantial gainful activity in order to be eligible for special benefits under § 416.261 or special status under § 416.264.) If we determine that you no longer meet a requirement to receive benefits, we will send you a written notice. The written notice will explain why your continued benefits will not be reinstated or will be for an amount less than you received before the prior administrative law judge's decision. The notice will also explain your right to reconsideration under § 416.1407, if you disagree. If you request a reconsideration, you will have the chance to explain why you believe your benefits whould be reinstated or should be at a higher amount. If the final decision on your appeal of your medical cessation is a favorable one, we will send you a written notice in which we will advise you of any right to reentitlement to benefits including special benefits under § 416.261 or special status under § 416.264. If you disagree with our determination on your appeal, you will have the right to appeal this decision.

(2) After we verify that you meet all the nonmedical requirements to receive benefits as stated in paragraph (e)(1) of this section, and if you previously elected to receive continued benefits pending the administrative law judge's decision, we will start continued benefits again. We will send you a notice telling you this. You do not have to complete a request to have these same benefits continued through the month before the month the new decision or order of dismissal is issued by the administrative law judge or through the month before the month the Appeals Council takes final action on the administrative law judge's recommended decision. These continued benefits will begin again with the first month of nonpayment based on the prior administrative law judge hearing decision or dismissal order. Our notice explaining continued benefits will also tell you to report to us any changes or events that affect your receipt of benefits.

(3) When your case is remanded to an administrative law judge, and if you did *not* previously elect to have benefits continued pending an administrative law judge decision, we will send you a notice telling you that if you want to change that election, you must request to do so no later than 10 days after you receive our notice. If you do make this new election, and after we verify that you meet all the nonmedical requirements as explained in paragraph (e)(1) of this section, benefits will begin with the month of the Appeals Council remand order and will continue as stated in paragraph (e)(2) of this section.

(4) If a court orders that your case be sent back to us (remanded) and your case is sent to an administrative law judge for further action under the rules provided in § 416.1483, the administrative law judge's decision or dismissal order on your medical cessation appeal is vacated and is no longer in effect. You may be eligible for continued benefits pending a new decision by the administrative law judge or final action by the Appeals Council on the administrative law judge's recommended decision. In these court-remanded cases reaching the administrative law judge, we will follow the same rules provided in paragraph (e)(1), (2), and (3) of this section.

(f) *What if your benefits are suspended, reduced or terminated for other reasons.* If we determine that your payments should be reduced, suspended or terminated for reasons not connected with your medical condition (see Subpart M of Regulations No. 16) benefits may be continued under the procedure described in § 416.1336.

(g) *Responsibility to pay back continued benefits.* (1) If the final decision of the Secretary affirms the determination that you are not entitled to benefits, you will be asked to pay back any continued benefits you receive. However, you will have the right to ask that you not be required to pay back the benefits as described in the overpayment recovery and waiver provisions of Subpart E of this Part.

(2) Waiver of recovery of an overpayment resulting from continued benefits to you may be considered as long as the cessation determination was appealed in good faith. We will assume that your appeal was made in good faith and, therefore, you have the right to waiver consideration *unless* you fail to cooperate in connection with the appeal, e.g., if you fail (without good reason) to give us medical or other evidence we request, or to go for a physical or mental examination when requested, in connection with the appeal.

[FR Doc. 88-17352 Filed 8-1-88; 8:45 am]
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## Food and Drug Administration

## 21 CFR Parts 74, 81, and 82

**[Docket No. 87N-0182]**

## Color Additives; D&C Red No. 36

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is permanently listing D&C Red No. 36 for general use in drugs and cosmetics, except for use in the area of the eye. This action responds to a petition filed by the Cosmetic, Toiletry and Fragrance Association (CTFA). This rule will remove D&C Red No. 36 from the provisional list of color additives for general use in drugs and cosmetics.

**DATES:** Effective September 2, 1988, except as to any provisions that may be stayed by the filing of proper objections; objections and hearing requests by September 1, 1988.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

**SUPPLEMENTARY INFORMATION:**

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## I. INTRODUCTION

In 1960, Congress passed the Color Additive Amendents (the amendments). In Certified Color Mfrs. Ass'n v. Mathews, 543 F.2d 284, 286–287 (D.C. Cir. 1976), the United States Court of Appeals for the District of Columbia Circuit explained the purpose of this legislation:

> The Color Additive Amendments of 1960 reflect a Congressional and administrative response to the need in contemporary society for a scientifically and administratively sound basis for determining the safety of artificial color additives, widely used for coloring food, drugs, and cosmetics. The Amendments reflect a general unwillingness to allow widespread use of such products in the absence of scientific information on the effect of these products on the human body. The previously used system had some glaring deficiencies, and the 1960 Amendments were designed to overcome them. * * *
>
> (Footnotes omitted.)

As amended, section 706(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(a)) provides that a color additive will be deemed unsafe for use in food, drugs, cosmetics, and some medical devices unless FDA has issued a regulation permanently listing that color additive for its intended use. FDA will issue such a regulation only if it has been presented with data that establish with reasonable certainty that no harm will result from the use of the color additive. The burden of presenting such data is on the person who is seeking approval of the use of the additive.

In passing the amendments, Congress provided for the provisional listing of the color additives in use at that time, pending completion of the scientific investigations needed for a determination about the safety of these additives (section 203(b) of the transitional provisions of the amendments, Title II, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note)). Section 81.1 (21 CFR 81.1) of the agency's color additive regulations enumerates those color additives that are still provisionally listed. Among them is D&C Red No. 36 for use in drugs and cosmetics.

## II. Regulatory History

### *A. The Color Additive*

D&C Red No. 36, a reddish orange dye of the monoazo class, is identified in *Chemical Abstracts* as 1-[(2-chloro-4-nitrophenyl)azo]-2-naphthalenol (CAS Reg. No. 2814–77–9). It is identified in § 82.1336 (21 CFR 82.1336) as 1-(*o*-chloro-*p*-nitrophenylazo)-2-naphthol. Other names include Colour Index Pigment Red 4 (C.I. No. 12085), Permanent red R, and Permaton red.

The color additive is manufactured by diazotization of 2-chloro-4-nitrobenzenamine in acid medium and coupling with 2-naphthalenol in acid medium. D&C Red No. 36 is insoluble in water and alcohols.

D&C Red No. 36 is used in a few ingested drug preparations and a few externally applied drugs. It is used in cosmetics such as lipstick, skin care, and makeup preparations.

The color additive D&C Red No. 36 has been in use for many years. Because D&C Red No. 36 was in use at the time the Color Additive Amendments of 1960 were enacted, it was provisionally listed for drug and cosmetic use in the **Federal Register** of October 12, 1960 (25 FR 9759).

In the **Federal Register** of October 12, 1960 (25 FR 9759), the agency established temporary tolerances for the provisional listing of certain color additives for use in lipsticks, ingested drugs, and other products subject to ingestion, such as mouthwashes and dentifrices. These temporary tolerances, based on preliminary usage information and toxicity data available at that time, were intended to limit use of the color additive to safe levels until all required toxicity tests were completed. A publication on April 14, 1970 (35 FR 6045) added D&C Red No. 36 to the temporary tolerances list. The agency has revised the temporary tolerances over the years as additional data became available, the latest revision being on August 21, 1979 (44 FR 48964). D&C Red No. 36 usage is limited under the temporary tolerances in 21 CFR 81.25 to 3.0 percent by weight in lip cosmetics, to 1.70 milligrams (mg) per daily dose of drugs, and to amounts consistent with good manufacturing practice in mouthwashes and dentifrices.

Between 1960 and February 4, 1977, FDA postponed the closing date for the provisional listing of D&C Red No. 36 several times. The agency granted these postponements in response to requests for additional time to complete the scientific investigations necessary for listing the color additive under section 706 of the act.

### *B. The Color Additive Petition*

In the **Federal Register** of August 6, 1973 (38 FR 21199), FDA announced that a petition (CAP 9C0089) for the permanent listing of D&C Red No. 36 as a color additive for use in drugs and cosmetics had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association (CTFA)), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046 (now 9200 Leesburg Turnpike, Vienna, VA 22180).

The petition was filed under section 706 of the act (21 U.S.C. 376). A later notice (41 FR 9584; March 5, 1976) amended the notice of filing of the petition to include the additional use of D&C Red No. 36 in cosmetics intended for use in the area of the eye.

FDA notified the petitioner by letters dated May 14, 1976, August 15, 1977, and August 4, 1978, of the need for data to support the use of D&C Red No. 36 in cosmetics intended for use in the area of the eye. In a fourth letter, dated October 24, 1978, FDA advised the petitioner to consider withdrawing the portion of the petition that sought approval of the use of D&C Red No. 36 in cosmetics intended for use in the area of the eye

because it appeared that the required data from eye-area studies were not readily available.

The petitioner has not submitted the required data on eye-area use. Therefore, FDA considers that portion of the petition that relates to the listing of D&C Red No. 36 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Use of D&C Red No. 36 in the area of the eye has never been covered by the provisional listing of this color additive.

The petitioner for CAP 9C0089 requested a regulation permitting up to 1.7 mg of D&C Red No. 36 per daily dose in ingested drugs, up to 3 percent of the color additive in cosmetics subject to ingestion, and use in amounts consistent with current good manufacturing practice in other cosmetics and topically applied drugs. These uses and limitations are the same as the current uses and limitations under the provisional listing.

The petitioner has provided data concerning current use of the color additive in cosmetics which show a wide range of use levels within the limitation of three percent in lip cosmetics.

The petitioner has not provided information, however, on use levels in drugs. The agency searched its new drug application files for data on current use levels of the color additive and found three products, all tablets, that contain the color additive. The largest amount used in any product is 18 micrograms ($\mu$g) per tablet.

Section 706(b)(7)(B) states that if a tolerance limitation is necessary to assure that a proposed use of a color additive is safe, the Secretary of Health and Human Services (the Secretary) shall not fix a tolerance limitation at a level higher that he finds to be reasonably required to accomplish the intended physical or other technical effect. Based on current use in ingested drugs, the agency believes that an intended coloring effect can be accomplished in any future product at a level below that requested by the petitioner. The agency concludes that a limitation of 1.0 mg of D&C Red No. 36 per daily dose of an ingested drug is sufficient and more appropriate than the 1.7 mg originally requested by the petitioner. The agency is willing to reconsider this limitation if further information is presented in a petition to amend the regulation.

*C. Toxicological Testing of D&C Red No. 36*

In the **Federal Register** of February 4, 1977 (42 FR 6992), FDA published revised regulations that required new chronic toxicity studies on 31 color additives, including D&C Red No. 36, as a condition for continued provisional listing for ingested uses. FDA required the new toxicity studies because the earlier toxicity studies that the petitioners had submitted to support the safe use of these color additives were deficient in several respects. FDA described these deficiencies in the **Federal Register** of September 23, 1976 (41 FR 41860):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.

2. In a number of the studies, the number of animals surviving to and meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.

3. In a number of the studies, an insufficient number of animals was reviewed histologically.

4. In a number of the studies, and insufficient number of tissues was examined in those animals selected for pathology.

5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

In the February 4, 1977, rule, FDA postponed the closing date for the provisional listing of the color additives until January 31, 1981, for the completion of required toxicity studies.

In the **Federal Register** of March 27, 1981 (46 FR 18954), FDA established the closing date of September 30, 1984, for the completion of the evaluation of D&C Red No. 36. Because its review of the data and of the scientific and legal issues raised on this color additive took longer than the agency anticipated, FDA had to extend the provisional listing of the color additive on a number of occasions. On June 26, 1985 (50 FR 26377), FDA proposed a longer extension of the provisional listing for several color additives, including D&C Red No. 36, to provide for the submission of additional information.

On September 4, 1985 (50 FR 35783), the agency published a final rule extending the provisional listing for D&C Red No. 36 until March 3, 1987. On July 30, 1986, CTFA submitted additional information, which is discussed below. To provide time for the completion of its review and preparation of the appropriate documents, the agency further extended the closing date by publication in the **Federal Register** and established the current closing date of August 30, 1988, on July 1, 1988 (53 FR 25127).

*D. Citizen Petition Filed by Public Citizen Health Research Group*

On December 17, 1984, the Public Citizen Health Research Group (Public Citizen) petitioned FDA to ban the use of the color additives that remained provisionally listed. On January 22, 1985, Public Citizen filed a complaint in the District Court for the District of Columbia seeking the same relief. Public Citizen alleged that, by continuing to provisionally list the color additives, including D&C Red No. 36, FDA had violated the Color Additive Amendments to the act, as well as those provisions of the Administrative Procedure Act (5 U.S.C. 706(1)) that pertain to unreasonable delay of agency action. Public Citizen sought to enjoin FDA from using the provisional list or any other means to allow the marketing of the provisionally listed color additives.

On June 21, 1985, the Commissioner of Food and Drugs sent a detailed response to the petition to Public Citizen. In his response, the Commissioner carefully reviewed and discussed the arguments and information submitted in support of the petition. The Commissioner concluded that the public health would not be endangered by the continued marketing of the color additives while scientific, legal, and policy issues were addressed and, therefore, the Commissioner denied the petition.

On February 13, 1986, Judge Stanley S. Harris granted FDA's motion for summary judgment and dismissed Public Citizen's complaint. *Public Citizen, et al.* v. *DHHS,* et al., No. 85–1573 (D.D.C. February 13, 1986). Public Citizen's appeal of this decision was denied by the U.S. Court of Appeals, No. 86–5150 (October 23, 1987).

**III. Evaluation of Toxicological Tests With D&C Red No. 36**

*A. Statutory Safety Requirements*

Under section 706(b)(4) of the act (21 U.S.C. 376(b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that it is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history makes clear that this word is to have the same meaning for color additives as for food additives. (See H. Rept. 1761, "Color Additive Amendments of 1960,"

Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rept. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 40.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists.

The general safety clause is buttressed by the anticancer or Delaney clause, section 706(b)(5)(B) of the act, which provides that a color additive shall be deemed to be unsafe "for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary to induce cancer when ingested by man or animal, or if it is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal," and it shall be deemed unsafe "for any use which will not result in ingestion of any part of such additive, if, after tests which are appropriate for the evaluation of the safety of additives for such use, or after other relevant exposure of man or animal to such additive, it is found by the Secretary to induce cancer in man or animal" (21 U.S.C 376(b)(5)(B)). Recently, the United States Court of Appeals for the District of Columbia held that, once FDA finds that a color additive "induces" cancer, the Delaney clause denies FDA the authority to approve the color. See Public Citizen, et al. v. Young, et al. (D.C. Cir. No. 86–1548, October 23, 1987).

*B. Earlier Studies*

Among the earlier toxicity studies on the color additive, submitted by the petitioner before 1977, were acute oral toxicity studies in rats and mice; short-term feeding studies in dogs, mice, and rats; chronic feeding studies in dogs and rats; a one-generation and a three-generation reproduction study in rats; teratology studies in rats and rabbits; short-term dermal studies in rabbits; and a chronic skin-painting study in mice. Only minor toxic effects were seen in the pre-1977 feeding studies, and the agency concluded that the color additive could be used safely until the completion of further testing.

From the earlier studies with D&C Red No. 36 submitted by the petitioner, the agency has evaluated the dermal safety of the color additive. The data from these studies demonstrate that D&C Red No. 36 is nonirritating when applied repeatedly to skin. Furthermore, D&C Red No. 36 was not found to be carcinogenic when it was applied periodically to the skin of mice over their lifetimes. No adverse effects in reproduction and teratology studies were seen.

Only fragmentary information on genotoxicity of D&C Red No. 36 is available from the scientific literature. While some in vitro tests using different strains of the bacterium *Salmonella typhimurium* were claimed to be positive with D&C Red No. 36, other were negative. No information is available from several other kinds of the tests that are normally relied upon for making judgments about genotoxicity. Given the incomplete and inconsistent nature of the available data from the in vitro testing, and the fact that FDA considers the full complement of animal toxicity studies to provide more pertinent information on safety than these in vitro tests, FDA finds no basis for further concern.

*C. New Studies*

Reports were submitted to FDA on the new chronic toxicity studies in rats and mice required by the February 4, 1977, order. These new studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity protocols. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of the two species tested, significantly increase the power of these tests to detect treatment-related effects.

Chronic studies were conducted for the petitioner by Litton Bionetics, Inc., Kensington, MD. The color additive fed to the animals in these studies contained 97 to 98 percent total color.

In the new chronic mouse study, D&C Red No. 36 was fed to Charles River CD–1 mice at dietary levels of 0, 0.05, 1.0, and 5.0 percent for a maximum duration of 106 weeks. Sixty females and 60 males were used for each dietary level and in each of 2 control groups. The 5.0 percent dose mice, compared to the controls, showed increased spleen weights in males and increased kidney and liver weights in females. There was also an increased incidence of extramedullary hematopoiesis in spleens of male mice fed 5.0 percent. No adverse effects were seen at the 1.0 or 0.05 percent levels. Based on the evaluation of the results of this chronic mouse toxicity study, the agency has determined that D&C Red No. 36 did not cause cancer in Charles River DC–1 mice.

In one chronic study, Sprague-Dawley (Charles River CD) rats were fed dietary levels of 0, 0.01, 0.025, and 0.1 percent of D&C Red No. 36 for 28 to 29 months. These rats were exposed in utero and during lactation by the feeding of the same dietary levels of D&C Red No. 36 to their parents. Seventy females and 70 males were used for each dietary level and in each of 2 control groups.

A related second study was performed with the same strain of rats, in which the animals, similarly exposed in utero and during lactation, were fed either 0 or 2.0 percent of D&C Red No. 36. FDA requested that this feeding level be added to provide testing at the highest level compatible with completion of the test. The agency's analysis of data from earlier studies suggested that this maximum level of 2.0 percent could be used without jeopardizing completion of the study. The females were sacrificed at 120 weeks of feeding and the males at 127 weeks. There were 70 animals of each sex in each group.

Male rats fed 0.1 percent or 2.0 percent of the color additive showed gastrointestinal tract irritation. Rats fed 2.0 percent showed adverse effects associated with anemia, including decreased erythrocyte counts, decreased hematocrits, decreased hemoglobin levels, and increased reticulocyte counts. Both males and females of this dose group showed a marked increase in parenchymal fibrosis of the spleen compared to their controls. Both sexes also had other splenic changes, that is,

increased organ weights, capsular thickening, capsular fibrous tags, extramedullary hematopoiesis,and pigmentation. One male rat fed 2.0 percent of the color additive had a fibrosarcoma in the spleen. Based on the evaluation of the results of both chronic rat studies, the agency has determined that D&C Red No. 36 did not cause cancer in Sprague-Dawley rats. No adverse effects were seen at the 0.025 percent level or below.

*D. The Issue of Whether More Testing Is Necessary*

1. *Statement of the issue.* In a notice of proposed rulemaking (50 FR 26377; June 26, 1985), FDA stated that the chronic testing of both D&C Red No. 33 and D&C Red No. 36 did not reveal a carcinogenic effect in the animals in which they were tested. There were increased incidences of splenic lesions that are unusual, but not neoplastic, in Sprague-Dawley rats fed high doses of either color additive; and there were a few splenic tumors with D&C Red No. 33. With D&C Red No. 36, there were higher incidences of parenchymal fibrosis, enlargement, capsular thickening, capsular fibrous tags, and extramedullary hematopoiesis of the spleen. With D&C Red No. 33, there were higher incidences of parenchymal fibrosis, enlargement, capsular fibrosis, and (in males) fatty metamorphosis of the spleen. There was one splenic fibrosarcoma with D&C Red No. 36, and in the 140 rats fed D&C Red No. 33 there were three fibrosarcomas, one capsule hemangioma, and one fibroma.

In the proposal, FDA stated that if it had only results of the testing of D&C Red No. 33 and D&C Red No. 36 before it, the agency would in all likelihood have approved the use of these color additives because the observed effects, standing alone, did not raise any safety concerns. However, the proliferative effects seen in the testing of D&C Red No. 33 and D&C Red No. 36 indicated to FDA that there was a similarity between these color additives and certain other compounds, such as D&C Red No. 9, that have been shown to be carcinogenic. When D&C Red No. 9 was fed to Sprague-Dawley rats, a few rare tumors and numerous rare lesions of the spleen were produced. These rats had the same kinds of nonneoplastic lesions as with D&C Red No. 33 and D&C Red No. 36. When D&C Red No. 9 was fed to Fischer 344 rats, however, numerous rare tumors of the spleen were produced, and D&C Red No. 9 was found to be a splenic carcinogen in this strain.

The association between the nonneoplastic splenic lesions and the occurrence of tumors suggested to FDA that the nonneoplastic lesions may be precursors or indicators of the start of a carcinogenic process. This similarity of effects in the Sprague-Dawley strain of rats between D&C Red No. 33 and D&C Red No. 36, on the one hand, and D&C Red No. 9, on the other, raised concerns that D&C Red No. 33 and D&C Red No. 36 may be carcinogenic in the Fischer 344 rat. To clarify the significance of this similarity of effects, FDA proposed that new studies be conducted on D&C Red No. 33 and D&C Red No. 36 (50 FR 26377). The agency stated that it believed such studies would be the best way to resolve the ambiguities about these color additives that have been created by the results of the testing with D&C Red No. 9 and other compounds in Fischer 344 rats. The agency also noted, however, that it would reconsider the issue of additional testing if data and information were received that showed that such testing was not necessary.

In an earlier approach to this problem, FDA, in 1984, had asked a panel of experts from the National Toxicology Program (NTP) to examine the data on D&C Red No. 33 (but not on D&C Red No. 36) in conjunction with the data on D&C Red No. 9. The NTP panel agreed with agency scientists that there were similarities between the nonneoplastic splenic effects produced by D&C Red No. 33 and D&C Red No. 9. They also thought that the evidence was insufficient to demonstrate a carcinogenic effect from D&C Red No. 33 treatment. The NTP panel recommended that further research be done to gain a better understanding of "the mechanisms of the toxic action of this particular family of compounds in the spleen of rats." The NTP panel did not consider the level of human exposure or whether this color additive posed an actual health concern.

Comments from the petitioner, on the 1985 proposal, suggested that conducting a risk assessment based on the comparative toxicities of D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 in Sprague-Dawley rats would show that additional testing would not be necessary. The petitioner later submitted a lengthy comparative assesament on the relative splenic toxicities of these three color additives.

2. *Resolution of the issue.* The agency carefully considered the petitioner's comments and concluded that if the splenic toxicity associated with the use of these color additives were produced by the major components of the colors, then it should be possible to evaluate the health concern raised by the color additives using the data from the studies involving the Sprague-Dawley rat and the D&C Red No. 9 study in the Fischer 344 rat. FDA concluded that knowledge of the relative toxicities of these additives would enable the agency to make a determination about the safety of D&C Red No. 33 and D&C Red No. 36 without requiring new long-term studies. See 50 FR 35788; September 4, 1985.

FDA has conducted its own comparative evaluation based on the relative toxicities of D&C Red No. 9 and D&C Red No. 36 (Ref. 1). The assessment shows that even assuming that D&C Red No. 36 were carcinogenic if subjected to further testing in a strain of rat other than the Sprague-Dawley, the theoretical, upper-bound, lifetime risk associated with exaggerated use exposure to the compound would be extremely small, that is, less than $8X10^{-8}$ (Ref. 2).

In light of this comparative evaluation, the agency has reconsidered whether additional chronic testing of D&C Red No. 36 is necessary to establish the safety of the compound. When deciding whether to require additional testing for a compound under review, the agency routinely follows the principle articulated in its toxicology guidelines that "the degree of effort expended in reducing uncertainty about the safety of an additive ought to relate in some concrete way to the likelihood that the substance poses a potential for health risk to the public * * *." (Ref. 3, p. 10). By showing that the splenic toxicity presents no reasonable likelihood of harm to the public, the assessment removes the agency's initial concern that additional testing of the additive was necessary. In fact, in light of the assessment, to require additional testing would be pointless from a public health perspective and contrary to agency practice. Accordingly, the agency concludes that the existing carcinogenicity studies concerning D&C Red No. 30 are adequate for the evaluation of this color additive.

*E. Evidence for the Safety of D&C Red No. 36*

1. *Adequacy of the submitted studies to demonstrate safety.* The series of studies completed by the petitioner and discussed in sections B and C fulfills the usual requirement to demonstrate safety for a color additive that will be ingested or applied dermally. The studies were properly conducted and are satisfactory by today's standards of toxicity testing. Agency scientists have found no adverse effects related to treatment with the color additive in doses up to the highest dose of 12.5 milligrams per kilogram (mg/kg) in the teratology studies or the reproduction studies. The

long-term studies in dogs, mice, and rats showed no effect levels at 0.125 percent (31 mg/kg) in dogs, 1.0 percent (1,500 mg/kg) in mice, and 0.025 percent (12.5 mg/kg) in rats. Thus, the safety studies established a no-observed-effect-level of 12.5 mg/kg body weight or higher in all species tested.

2. *Negative results of carcinogenicity studies.* As discussed above, the agency believes that these studies are adequate to determine the carcinogenicity of D&C Red No. 36. No increased incidence of any type of tumor, in any of the many tissues examined, in either sex, in any dose group, in any strain of any species tested, by either ingestion or skin application, in any of the studies, was associated with D&C Red No. 36 treatment. Thus, the agency concludes that the completed studies show that D&C Red No. 36 does not induce cancer in the strains of animals tested under the conditions of these studies. As a consequence, the Delaney clause is not applicable to this color additive.

3. *Conclusion.* For the foregoing reasons, the agency considers that the direct testing of D&C Red No. 36 shows that the color additive is safe for use in drugs and cosmetics. The agency must still consider, however, any risk posed by the possibility of a carcinogenic impurity in D&C Red No. 36.

## IV. Potential Risk From a Carcinogenic Impurity

During the safety review, the agency developed a new analytical methodology for examining the color additive for the presence of trace level impurities. Analyses by this new methodology found an impurity, 1-[(2,4-dinitrophenyl) azo]-2-naphthalenol, in commercial, certified batches of D&C Red No. 36 (Ref. 4). This chemical can form as an impurity during the process of manufacturing D&C Red No. 36. This chemical is the main component of D&C Orange No. 17, which was found to be carcinogenic (48 FR 14045; April 1, 1983). To ensure that any risk from a carcinogenic impurity is not overlooked, the agency is considering the carcinogenicity of D&C Orange No. 17 to be attributable to its main component. In evaluating the risk from this chemical as a carcinogenic impurity of D&C Red No. 36, the agency used estimates of carcinogenic potency for D&C Orange No. 17 together with estimates of exposure to the impurity for users of D&C Red No. 36.

Because of its concerns about the impurity, the agency has analyzed representative samples from 27 certified batches of the color additive (Ref. 4). Detectable amounts of the impurity were found in 15 commercial batches of D&C Red No. 36, ranging from a trace amount to 0.45 percent. The average impurity level was 0.13 percent. From 0.02 to 0.45 percent was found in the samples used for chronic studies in rats and mice.

### *A. Prior Actions by FDA*

The current testing of D&C Red No. 36 has not proven it to be a carcinogen, and, thus, the anticancer clause does not apply to it. Nevertheless, the agency must still consider whether the color additive, in light of the fact that it may contain a carcinogenic impurity, may be safely used in drugs and cosmetics.

The agency is using the same approach for this situation concerning the impurity in D&C Red No. 36 as it used to examine the risk associated with the presence of minor carcinogenic impurities in other color additives (50 FR 35774; September 4, 1985 and 51 FR 41765; November 19, 1986). These color additives had not been shown to be carcinogenic by appropriate bioassays. FDA concluded that the use of each of these color additives, within prescribed specifications, is safe.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5 (47 FR 24278; June 4, 1982), which contained a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list D&C Green No. 5, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulations.

The risk assessment procedure used to estimate risk from the impurity has two aspects: (1) Assessment of the probable exposure to the impurity from the proposed use of the additive, and (2) extrapolation of carcinogenic potency observed in the animal bioassay with the impurity to the conditions of probable human exposure.

### *B. Exposure to the Carcinogenic Impurity in D&C Red No. 36*

The agency has estimated the maximum risk from exposure to the carcinogenic impurity that may result from use of D&C Red No. 36 in drugs and cosmetics. The lifetime exposure to D&C Red No. 36 is not expected to exceed 90 μg/person/day internally for the high user. With this estimate, the agency has examined the likely exposure to the carcinogenic impurity in D&C Red No. 36.

In adopting specifications for D&C Red No. 36, FDA considered the concentration of the carcinogenic impurity that was present in the certified batches of the color additive that the agency recently surveyed and in the batches used for the toxicological testing.

The agency believes that a specification of 0.5 percent 1-[(2,4-dinitrophenyl)azo]-2-naphthalenol is readily obtainable under good manufacturing practice and will assure safe use of D&C Red No. 36. By multiplying the high user exposure for the color additive itself (90 μg/person/day) by the specification, FDA estimates that the high user systemic exposure to the impurity will be less than 0.45 μg/person/day (Ref. 5). Systemic exposure to the impurity from dermal application will be negligible compared to ingestion because the majority of exposure to this color additive results from its ingested uses and because only a small fraction of a dermally applied product is likely to be absorbed.

### *C. Risk Estimations for the Impurity*

The second part of the evaluation of the risk presented by the presence of the impurity is an extrapolation from the actual compound-related incidence of tumors found in animal bioassays, under conditions of exaggerated exposure, to the conditions of much lower probable exposure for humans.

The agency has used estimates of carcinogenic potency for D&C Orange No. 17 and estimates of exposure to the carcinogenic impurity for high users of D&C Red No. 36 (with the carcinogenic impurity at the maximum concentration allowed by the specification) to estimate risk for exposure to the impurity.

FDA evaluated chronic studies with D&C Orange No. 17 in rats and mice and found that the color additive is carcinogenic to the liver of rats and mice when administered in the diet (51 FR 28331; August 7, 1986). The Color Additive Scientific Review Panel reviewed D&C Orange No. 17 as well as D&C Red No. 9 and other color additives (51 FR 43877). From the panel's report, the agency estimated the potency of D&C Orange No. 17. Using this as the carcinogenic potency for the impurity in D&C Red No. 36, it then estimated that the lifetime risk of cancer, from systemic exposure (0.45 μg/person/day) to the impurity in products containing D&C Red No. 36, is less than $3.2 \times 10^{-9}$ (3.2 in 1 billion) (Ref. 5).

The agency concludes that this risk from the impurity is negligible. FDA has determined that the use of batches of D&C Red No. 36 that meet the specifications adopted by this rule is safe.

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## V. References

The following references have been placed on file at the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.


1. Memorandum, McLaughlin, P.J., to File for D&C Red No. 36, "Comparative Evaluation for Additional Safety Considerations, D&C Red No. 36," June 3, 1988.
2. Memorandum, Quantitative Risk Assessment Committee, "Carcinogenicity Risk Analysis for D&C Red No. 33 and D&C Red No. 36, Including a Discussion of ENVIRON/CTFA's Risk Analysis and Incorportion of Recommendations of the Color Additive Scientific Review Panel," March 12, 1987.
3. FDA, Bureau of Foods, "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food," 1982.
4. Memorandum, Scher, A.L., to G.L. McCowin, "Color Additive Petition No. 9C0089—D&C Red No. 36, D&C Orange No. 17 in D&C Red No. 36," May 12, 1986.
5. Memorandum, Quantitative Risk Assessment Committee, "Upper Bound Risks from Carcinogenic Impurities in D&C Red No. 33 and D&C Red No. 36," March 31, 1987.


## VI. Conclusions

The agency concludes that D&C Red No. 36 is safe under the conditions of use set forth below for general use in drugs and cosmetics, and that certification is necessary for the protection of the public health. In reaching this conclusion, the agency evaluated a full battery of animal feeding and dermal studies adequate to demonstrate the safety of a color additive. Based on all relevant data, including the comparative splenic toxicity evaluation, the agency concludes that there is a reasonable certainty of no harm from use of the additive and that further testing is unnecessary and of no benefit to the public health.

The final toxicity study reports, interim reports, and the agency's evaluations of these studies are on file at the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

The agency concludes that it is necessary to have limitations on the levels of D&C Red No. 36 that may be used in drugs and cosmetics to ensure safe use. As discussed above, the agency is establishing a limit for drug use that is less than that requested because available data show that higher levels are not necessary.

In the past, all of the provisionally listed color additives that were limited by the temporary tolerances (21 CFR 81.25) were permitted for mouthwash and dentifrice use, including D&C Red No. 36. However, this color additive is insoluble in water and in alcohol, which makes it unsuitable for these uses and the agency has no evidence that it has been used in such products. The petitioner has not specifically requested mouthwash and dentifrice uses. Therefore, the regulations below do not provide for use of D&C Red No. 36 in mouthwashes or dentifrices.

The petitioner has not submitted the required data for eye-area use. Therefore, FDA now considers that portion of the petition that included the permanent listing of D&C Red No. 36 for eye-area use to be withdrawn without prejudice in accordance with provisions of 21 CFR 71.4 Use of D&C Red No. 36 in the area of the eye has never been covered by provisional listing. The agency's listing of a color additive for general use in drugs and cosmetics does not encompass eye-area use.

The agency is describing the color additive in this regulation according to the current Chemical Abstracts nomenclature, which differs somewhat from the nomenclature FDA previously used.

The Agency concludes that it is necessary to include in the listing regulations for D&C Red No. 36 a brief description of its manufacturing process to ensure the safety of the color additive. FDA has included that description to define as closely as possible the color additive that has been tested and shown to be safe. The agency is providing this description because use of a different manufacturing process is likely to produce different impurities that have not been considered in establishing specifications for this color additive. The agency is not able at this time to set specifications that would control the presence of all such impurities. FDA is willing to consider petitions for alternative manufacturing processes, but those petitions should contain evidence that demonstrates that those processes will not produce impurities that will make use of the color additive unsafe.

The agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemicals Codex. Similarly, appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by NAS/NRC in its evaluation of color additives used in food. The agency concludes that specifying, through a general description, the manufacturing process in the regulations for this color additive will provide an adequate assurance of safety until suitable specifications can be developed.

The agency finds that because of the presence, or possible presence, of a carcinogenic impurity in the color additive, a specification for this impurity is necessary to protect the public health. Specifications are included in the regulation also for other impurities to identify the color additive more precisely and to ensure that the sample tested toxicologically adequately represents future batches.

In the past, D&C lakes have been permitted to be prepared from uncertified straight color additives. The resulting lakes would subsequently be certified. However, to assure that all lakes meet the specification limits for the carcinogenic impurity and that the use of lakes remains consistent with the evaluation, the agency is establishing the requirement that all lakes of D&C Red No. 36 be prepared from certified batches of the straight color additive. Accordingly, 21 CFR 82.1336 is amended to reflect this requirement.

This order does not permanently list D&C Red No. 36 lakes. FDA published a notice of intent in the **Federal Register** of June 22, 1979 (44 FR 36411), which discussed the additional information that the agency believes is needed before final regulations on lakes can be issued. FDA intends to publish proposed regulations governing the use of color additives in lakes in the **Federal Register** in the near future and concludes that the listing of color additives for use in lakes can best be implemented by general regulations. D&C Red No. 36 lakes will, therefore, continue to be provisionally listed for coloring drugs and cosmetics under 21 CFR Parts 81 and 82.

The agency has determined under 21 CFR 25.24(b)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 1, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be

separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

**List of Subjects**

*21 CFR Part 74*

Color additives, Cosmetics, Drugs, Medical devices.

*21 CFR Part 81*

Color additives, Cosmetics, Drugs.

*21 CFR Part 82*

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

## PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

**Authority:** Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. Section 74.1336 is added to Subpart B to read as follows:

### § 74.1336 D&C Red No. 36.

(a) *Identity.* (1) The color additive D&C Red No. 36 is 1-[(2-chloro-4-nitrophenyl)azo]-2-naphthalenol (CAS Reg. No. 2814–77–9). The color additive is manufactured by diazotization of 2-chloro-4-nitrobenzenamine in acid medium and coupling with 2-naphthalenol in acid medium.

(2) Color additive mixtures for drug use made with D&C Red No. 36 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* D&C Red No. 36 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Volatile matter at 135 °C (275 °F), not more than 1.5 percent.
Matter insoluble in toluene, not more than 1.5 percent.
2-Chloro-4-nitrobenzenamie, not more than 0.3 percent.
2-Naphthalenol, not more than 1 percent.
2,4-Dinitrobenzenamine, not more than 0.02 percent.
1-[(2,4-Dinitrophenyl)azo]-2-naphthalenol, not more than 0.5 percent.
4-[(2-Chloro-4-nitrophenyl)azo]-1-naphthalenol, not more than 0.5 percent.
1-[(4-Nitrophenyl)azo]-2-naphthalenol, not more than 0.3 percent.
1-[(4-Chloro-2-nitrophenyl)azo]-2-naphthalenol, not more than 0.3 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 parts per million.
Total color, not less than 95 percent.

(c) *Uses and restrictions.* The color additive D&C Red No. 36 may be safely used for coloring ingested drugs, other than mouthwashes and dentifrices, in amounts not to exceed 1.0 milligram per daily dose of the drug. D&C Red No. 36 may be safely used for coloring externally applied drugs in amounts consistent with current good manufacturing practice.

(d) *Labeling requirements.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 36 shall be certified in accordance with regulations in Part 80 of this chapter.

3. Section 74.2336 is added to Subpart C to read as follows:

### § 74.2336 D&C Red No. 36.

(a) *Identity and specifications.* The color additive D&C Red No. 36 shall conform in identity and specifications to the requirements of § 74.1336 (a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 36 may be safely used for coloring cosmetic lip products in amounts not to exceed 3 percent total color by weight of the finished cosmetic products. D&C Red No. 36 may be safely used for coloring externally applied cosmetics in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 36 shall be certified in accordance with regulations in Part 80 of this chapter.

## PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

4. The authority citation for 21 CFR Part 81 continues to read as follows:

**Authority:** Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

### § 81.1 [Amended]

5. In § 81.1 *Provisional lists of color additives,* the entry for "D&C Red No. 36" is removed from the table in paragraph (b).

### § 81.25 [Amended]

6. In § 81.25 *Temporary tolerances,* the entries for "D&C Red No. 36" are removed from the tables in paragraphs (a)(1) and (c)(1) and the words "and D&C Red No. 36" are removed from paragraph (b)(1)(i).

### § 81.27 [Amended]

7. In § 81.27 *Conditions of provisional listing,* the entry for "D&C Red No. 36" is removed from the table in paragraph (d) introductory text.

## PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

8. The authority citation for 21 CFR Part 82 continues to read as follows:

**Authority:** Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

9. Section 82.1336 is revised to read as follows:

### § 82.1336 D&C Red No. 36.

(a) The color additive D&C Red No. 36 shall conform in identity and

specifications to the requirements of § 74.1336 (a)(1) and (b) of this chapter.

(b) All lakes of D&C Red No. 36 shall be manufactured from previously certified batches of the straight color additive.

Dated: July 26, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-17360 Filed 8-1-88; 8:45 am]

BILLING CODE 4160-01-M

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 110**

**[CCGD5 87-037]**

## Anchorage Ground; Baltimore Harbor, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending the boundaries of Anchorages 2, 3, and 6 in Baltimore Harbor. These changes were requested by the Maryland Port Administration to assist navigation into Dundalk Marine Terminal and Seagirt Marine Terminal.

**EFFECTIVE DATE:** September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Walters (804) 398-6230.

**SUPPLEMENTARY INFORMATION:** On Friday, November 6, 1987, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 42683). Interested persons were requested to submit comments and one comment was received.

### Drafting Information

The drafters of this notice are Mr. John R. Walters, Project Officer and Captain Robert J. Reining, Project Attorney, Fifth Coast Guard District.

### Discussion of Comments

The only comment received was from the Coast Guard's Marine Safety Office in Baltimore, Maryland. They questioned the references to Lazaretto Point in the notice of proposed rulemaking. They stated that while this reference is in the current regulation, there is no distinct geographic feature that can be identified as Lazaretto Point. They recommended that the reference be eliminated. Based on this comment and the fact that the references to both Lazaretto Point and Sollers Point do not directly relate to the description of the anchorages, the references have been eliminated in the final rule.

### Economic Assessment and Certification

This rule is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. The Association of Maryland Pilots has indicated that the change in the boundaries will not affect the capacity of the anchorages. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 110

Anchorage grounds.

### Final Regulations

In consideration of the foregoing Part 110 of Title 33, Code of Federal Regulations is amended as follows:

## PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 417, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05.1(g).

2. In § 110.158(a), paragraphs (2), (3), and (6) revised to read as follows:

**§ 110.158 Baltimore Harbor, MD.**

(a) * * *

(2) *Anchorage No. 2, general anchorage.* In the Patapsco River beginning at latitude 39°15'01.43" N., longitude 76°33'43.39" W.; thence southeast to latitude 39°14'49.09" N., longitude 76°33'30.37" W.; thence northeast to latitude 39°14'58.49" N., longitude 76°33'15.63" W.; thence southeast to latitude 39°14'40.5" N., longitude 76°32'57" W.; thence northeast to latitude 39°14'50" N., longitude 76°32'41.5" W.; thence northwest to latitude 39°15'17.2" N., longitude 76°33'10.0" W.; thence northwest to latitude 39°15'18.95" N., longitude 76°33'15.46" W.; thence west to latitude 39°15'18.90" N., longitude 76°33'25.63" W.; thence southwest to latitude 39°15'08.17" N., longitude 76°33'38.79" W., thence southwest to point of beginning. A vessel with a draft of over 24 feet may not use the anchorage. No vessel may remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(3) *Anchorage No. 3, general anchorage.* In the Patapsco River beginning at latitude 39°14'49.09" N, longitude 76°33'30.37" W; thence southeast to latitude 39°14'14.70" N, 76°32'54.10" W; thence northeast to latitude 39°14'24.10" N, longitude 76°32'39.36" W; thence northwest to latitude 39°14'58.49" N, longitude 76°33'15.63" W; thence southwest to point of beginning. A vessel with a draft of less than 24 feet may not use the anchorage. No vessel may remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

* * * * *

(6) *Anchorage No. 6, general anchorage.* In the Patapsco River approximately 2,000 yards west of Sollars Point beginning at latitude 39°13'42.58" N, longitude 76°32'20.24" W thence southeast to latitude 39°13'20" N., longitude 76°31'56" W., thence northeast to latitude 39°13'34" N., longitude 76°31'33.5" W., thence northwest to latitude 39°14'02" N., longitude 76°32'02.9" W., thence southwest to latitude 39°13'50.5" N., longitude 76°32'20" W., thence south to point of beginning. A vessel with a draft over 20 feet may not use this general anchorage. No vessel may remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

* * * * *

Dated: July 19, 1988.

**W. J. Ecker,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 88-17350 Filed 8-1-88; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 117**

**[CGD5-88-28]**

## Drawbridge Operation Regulations; Potomac River, District of Columbia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary regulation with request for comments.

**SUMMARY:** At the request of the Cianbro Corporation, contractors for the District of Columbia, Department of Public Works, the Coast Guard is issuing additional temporary regulations that govern the operation of the drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to extend the times that the draw remains closed to vessel traffic. The purpose of this temporary regulation is to allow the Cianbro Corporation to replace parts of the drawspan during periods of light vehicular traffic congestion. This action provides for the reasonable needs of

navigation. Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be amended based on the comments received.

**DATES:** This temporary rule is effective from August 6, 1988, until November 20, 1988, unless amended or terminated before that date. Comments on this temporary rule must be received by September 2, 1988.

**ADDRESSES:** Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 507, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, and arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the temporary rule. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine whether the temporary rule should be changed in light of the comments received.

**Drafting Information**

The drafters of this notice are Linda L. Gilliam, Project Officer, and CAPT Robert J. Reining, Project Attorney.

**Discussion of Temporary Rule**

On January 21, 1988, the Cianbro Corporation, contractors for the District of Columbia, Department of Public Works, requested the drawbridge regulations be amended to restrict openings during the weekends from August 1 through November 30, 1988. The contractor requested that the drawbridge remain closed from 6:00 p.m. on Saturdays to 12:30 p.m. on Sundays. During these times, half of the channel will be blocked to vessel traffic. After 12:30 p.m. on Sundays, the repair work on the drawspan would stop, and the bridge would resume opening on signal until the existing weekday rush hour restrictions begin on Monday morning. However, they indicated no work would be done on the weekends of September 3, November 12, and November 26, 1988. Therefore, this temporary rule ends on November 20, 1988, rather than November 30, 1988, as requested.

The closure will permit the Cianbro Corporation to replace grating and support stringers of the drawspan, which are in poor condition. In order for this work to be accomplished, the bridge must remain in the closed position. Robinson Terminals in Alexandria, Virginia, the major commercial waterway user on the Potomac River, was consulted concerning the weekend closures. They stated that one or two vessels may require passage through the drawbridge during the four month timeframe that the weekend repair work would be conducted.

Subsequently, Cianbro Corporation indicated that in addition to leaving the draw closed, they would also need to block half of the channel under the drawspan with construction equipment during the repairs. They will need five hours advance notice to move the barges out of the channel for the passage of vessels which are not able to transmit through the other half of the main channel or the flanking channels. The Coast Guard then consulted with the tour boat industry on the Potomac, who indicated they would have some problems with the proposed schedule.

On June 23, 1988, a meeting between Cianbro Corporation, D.C. Department of Public Works, Robinson Terminals, a representative of the tour boat industry, and the Coast Guard was held at Cianbro Corporation's office located in Alexandria, Virginia, to discuss the weekend closures and to work out a schedule agreeable to everyone. During the course of this meeting, D.C. Department of Public Works advised Cianbro Corporation that the repair schedule they requested was not the schedule approved by DC. The original request would have closed the bridge from 9:30 p.m. on Fridays to 7:30 a.m. on Saturdays, and from 8:00 pm. on Saturdays to 10:30 a.m. on Sundays. Robinson Terminals and the tour boat representative had no objections to this new schedule. This new schedule was forwarded to the Coast Guard for approval by Cianbro Corporation's letter dated June 24, 1988.

The other primary waterway users who require drawbridge openings are recreational sailboat operators. They have not been consulted. While sailboat operators would be inconvenienced and their use of the Potomac River restricted by the temporary rule, a larger public interest will be served by repairing this vital highway link.

While scheduling problems by the contractor precluded processing this action in time to permit publication of a notice of proposed rulemaking, the public is being afforded an opportunity to comment. Because of the critical need for repairs to this bridge, good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking. Delaying this rule for publication of a notice of proposed rulemaking would be contrary to the public interest. However, the opportunity to make comments on the rule provides the public with a reasonable opportunity to submit additional issues for consideration. The public should be aware that other regulatory actions effecting the bridge have taken place during the last six months.

A temporary rule governing the operation of the Woodrow Wilson Memorial Bridge was issued on February 14, 1988, and published in the **Federal Register** on March 4, 1988, (52 FR 6984). That temporary rule was issued for repair work on the bridge and required a one hour advance notice between the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday. That temporary rule is effective between February 29, 1988, and November 30, 1988.

On March 17, 1988, a notice of temporary deviation from drawbridge regulations with request for comments was published in the **Federal Register** (53 FR 8848). That temporary deviation amended the February 14, 1988, temporary rule. The temporary deviation was issued at the request of the City of Alexandria, Virginia; Fairfax County, Virginia; and Congressman Frank R. Wolf of Virginia, and it extended the hours the drawbridge remains closed to most vessel traffic during the morning and evening rush hours. The temporary deviation which expired on June 15, 1988, was issued in conjunction with a notice of proposed rulemaking that was also published in the **Federal Register** on March 17, 1988 (53 FR 8850).

A final rule establishing new permanent regulations for the draw goes into effect on August 1, 1988, and is published in this issue of the **Federal Register**. It extends the periods that the draw may remain closed to vessels other than deep draft commercial vessels and requires one hour advance notice of all draw openings.

This temporary rule amends that final rule during the times and dates specified in this rule. It is being promulgated because of the difficulty in opening the span and clearing the channel during construction. Also, the operator will not be able to open the bridge on signal for

vessels in distress while this temporary rule is in effect.

**Economic Assessment and Certification**

The temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 24, 1979).

While the temporary rule may have some economic impact on commercial navigation, the impact is expected to be minimal; therefore, a full regulatory evaluation is considered unnecessary. This conclusion is based on the fact that the schedule has been coordinated with the major commercial waterway users, who have indicated it is acceptable to them. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 449 CFR 1–46; 33 CFR 1.05–(g).

2. Section 117.255(a) is temporarily revised to read as follows:

**§ 117.255 Potomac River.**

(a) The draw of the Woodrow Wilson Memorial (I–95) bridge, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland—

(1) Need not open:

(i) Except as provided in subparagraph (iv) of this paragraph, for the passage of any vessel unless at least one hour advance notice is given.

(ii) For the passage of any vessel from 6:30 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:30 p.m., on Mondays through Fridays, other than Federal holidays.

(iii) For the passage of any vessel, other than a commercial vessel with a draft of over 20 feet, from 6:00 a.m. to 6:30 a.m., 9:00 a.m. to 10:00 a.m., 3:00 p.m. to 4:00 p.m., and 6:30 p.m. to 8:00 p.m., on Mondays through Fridays, other than Federal holidays.

(iv) For the passage of any vessel, other than a commercial vessel that has given five hours advance notice and is not able to pass under the draw span or flanking spans of the bridge, from August 6, 1988 to November 20, 1988, Between the hours of 9:30 p.m. on Fridays and 7:30 a.m. on Saturdays and the hours of 8:00 p.m. on Saturdays and 10:30 a.m. on Sundays.

(2) From August 6, 1988, until November 20, 1988, between the hours of 9:30 p.m. on Fridays and 7:30 a.m. on Saturdays and 8:00 p.m. on Saturdays and 10:30 a.m. on Sundays, the operator of the bridge may obstruct half of the channel under the draw, but shall clear the channel to permit the passage of a vessel that requires a draw opening under paragraph (a)(1)(iv) of this paragraph.

3. This temporary rule is effective from August 6, 1988, through November 20, 1988, but it is not effective on September 3 and 4, October 8 and 9, November 12, and 13, 1988.

Dated: July 20, 1988.

**W.J. Ecker,**

*Captain, U.S. Coast Guard, Chief of Staff, Fifth Coast Guard District.*

[FR Doc. 88–17349 Filed 8–1–88; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 117**

**[CGD5–88–08]**

## Drawbridge Operation Regulations; Potomac River, District of Columbia, Maryland, and Virginia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule with request for comments.

**SUMMARY:** At the request of the City of Alexandria, Virginia; Fairfax County, Virginia; and Congressman Frank R. Wolf of Virginia, the Coast Guard is changing the regulations governing the Woodrow Wilson Memorial (I–95) drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to extend the times that the draw remains closed to vessel traffic, other than commercial vessels with drafts over 20 feet. This change is being made to help relieve highway traffic congestion during the extended rush hours on this major commuter artery, an important segment of the interstate highway system that connects the northeastern and southeastern portions of the United States. This rule also requires all vessels to give at least one hour advance notice for all bridge openings, and it revokes the temporary regulations that were published in the **Federal Register** on March 4, 1988 (53 FR 6984). This action provides for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on August 1, 1988.

Comments on the provision relating to the requirement for one hour advance notice must be received by September 2, 1988.

**ADDRESS:** Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at the above address in Room 507. Normal working hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

**SUPPLEMENTARY INFORMATION:** On March 17, 1988, the Coast Guard published proposed rules (52 FR 8850) and a temporary deviation from the existing regulations to evaluate the proposal (52 FR 8848) for the Woodrow Wilson Memorial Bridge. The Commander, Fifth Coast Guard District, also published the temporary deviation as a public notice on March 28, 1988. Interested persons were given until June 15, 1988, to submit comments on the temporary deviation, and until May 2, 1988, to submit comments on the proposed rule. The operation of the bridge is also regulated by a temporary rule that was published in the **Federal Register** on March 4, 1988 (53 FR 6984). That temporary rule, which was issued to accommodate repairs to the draw span, is effective between February 29, 1988, and November 30, 1988. It requires one hour advance notice for openings between 9:00 a.m. and 4:00 p.m.

This final rule also requires at least one hour advance notice for all bridge openings. This requirement was not included in the March 17, 1988, notice of proposed rulemaking. While this requirement is beyond the scope of the notice of proposed rulemaking, a supplemental notice of proposed rulemaking was not published because good cause exists to take such action. Following normal regulatory procedures is not in the public's interest and is, in part, unnecessary. Delaying the imposition of the one hour advance notice requirement will subject motorists to further unnecessary traffic delays at nights and on weekends. Imposition of the one hour advance notice requirement provides motorists with an immediate opportunity to learn about scheduled bridge openings by

radio broadcasts and highway sign announcements, worthwhile communications which would have been delayed for three to four months if the normal extended rulemaking process was followed. The additional regulatory procedures are also, in part, unnecessary since this final rule merely makes permanent a temporary rule that has been in effect for almost 4 months and will be in effect for another 4 months. The March 4, 1988, temporary rule requires one hour advance notice from 9:00 a.m. to 4:00 p.m. on week days. That temporary rule, if not superseded by this final rule, would have remained in effect until November 30, 1988. While comments were requested on the temporary rule when it was published, no comments were received. If marine interests felt that this provision imposed an unreasonable burden upon them, they would have voiced their concerns. While the one hour advance notice requirement is a small additional burden on vessel operators, it does not unduly restrict their passage through the bridge.

Nevertheless, public comments are requested on the one hour advance notice provision to ensure that the rule is both reasonable and workable. Persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Persons submitting comments should include their names and addresses, identify the docket number of this rule (CGD5–88–06), and give reasons for their comments. Comments on this provision must be received by September 2, 1988. This rule may be changed based on the comments received.

Good cause exists for making this rule effective in less than 30 days from the date of publication. This rule will help alleviate traffic congestion on a major commuter and interstate transportation artery around the nation's capital, at a time when traffic delays can be expected due to a major repair project on the draw span. This final rule, in conjunction with the additional temporary rule published elsewhere in this issue of the **Federal Register**, will help provide relief to motorists, while still providing for the reasonable needs of both commercial and recreational vessel operators. This rule and the temporary rules will also help expedite the repair of the draw span. (Additional temporary regulations are published elsewhere in this issue of the **Federal Register** that temporarily modify this final rule by restricting bridge openings on the weekends to accommodate necessary repairs to the draw span.)

**Drafting Information**

The drafters of this notice are Linda L. Gilliam, project officer, Fifth Coast Guard District Bridge Section, and CAPT Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Comments**

The City of Alexandria, Virginia; Fairfax County, Virginia; and Congressman Frank R. Wolf of Virginia requested that this drawbridge be regulated to further restrict openings during morning and evening rush hours, Monday through Friday, except Federal holidays, by extending the hours that the bridge is required to be closed to all vessel traffic. As a result of their requests, the March 17, 1988, notice of proposed rulemaking was published, which would have extended the times beyond the existing closed periods that the draw remains closed to all vessel traffic. The bridge is presently allowed to remain closed from 6:30 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:30 p.m., on Mondays through Fridays, except Federal holidays. The proposal would permit the bridge to remain closed from 6:00 a.m. to 10:00 a.m. and from 3:00 p.m. to 8:00 p.m., on Mondays through Fridays, except Federal holidays. A temporary deviation was published on March 17, 1988, in conjunction with the proposed rule. It differed from the proposed rule by requiring the bridge to open only for vessels calling at Robinson Terminals during the extended closed periods.

The proposed rule also eliminated the existing provision that requires the draw to open on signal at all times for public vessels, tour boats, and vessels in distress. The public vessels that are affected are primarily naval vessels visiting the Washington, DC, area and Coast Guard buoy tenders working aids to navigation on the upper Potomac. Only two comments were received that favored the March 17, 1988, proposal. One from the Maryland Department of Transportation merely supported the trial deviation. The second was from a private citizen who provided anecdotal information on the "hours" that traffic is backed up after draw openings during peak commuter hours. Since the bridge logs indicate that the draw is only open for between 8 and 15 minutes at a time, the lengthy delays attributed by the writer to the draw openings must have had causes other than the passage of vessels, although the openings may have been one of the causal factors.

Eight letters were received in opposition to the March 17, 1988, proposal and temporary deviation. Two of the letters were from Robinson Terminals, the last major marine terminal in Alexandria, Virginia. Robinson Terminals pointed out the historic significance of Alexandria as a seaport dating back to colonial days. They stated that the proposal threatened the commercial viability of both their terminal and the port. Their letter documented how it costs a shipper $8000 per day to use their terminal, and that those costs can be increased by $2500 if four hours of overtime are required on a Saturday. They pointed out that the proposal will restrict access to their terminal for nine hours a day, 75% of their working day. Approximately 30% of the vessels that call at their terminal would be effected by the extended closed periods (15 out of 50 vessels). Robinson Terminals also questioned whether the Washington rush hour really extended over the entire nine hour period for which restrictions were proposed. They claimed that the draw is actually open for 7 to 10 minutes for the passage of their ships. They blame the traffic tie-ups on the volume of traffic; the limited capacity of the bridge and its approaches; accidents; weather; the large number of large trucks that use the bridge, even during rush-hours; and problems on the bridge. Robinson Terminals took the position that while they can live with the current restrictions, they do not believe they can survive if the March 17, 1988, notice of proposal rulemaking is adopted as proposed. They recommended an exception for commercial vessels.

Three letters were received from shippers, who ship newsprint and other cargoes to Alexandria, Virginia—Bowater Sales Company, Abitibi-Price, Inc., and Quebec & Ontario Paper Company, Ltd. They argue that because of the current draft limitations on vessels navigating the Potomac River, they are required to pay a dead freight premium, and that if the March 17, 1988, proposal was adopted, they will face increased stevedoring costs due to overtime premiums. They stated that the proposed restrictions will be detrimental to ship operators and those supplying auxiliary services. They intimated the viability of using Alexandria as a port of call could be jeopardized, if additional restrictions are placed on the bridge.

Reed, Inc., the operator of a vessel that routinely calls at Robinson Terminals, described in detail the difficulties they face with the existing restrictions and the anticipated problems if the March 17, 1988, proposal were adopted. They pointed out that access is currently denied for 5 hours out of a 14 hour working day, and the

proposal would increase the closed periods by 80%, from 5 hours to 9 hours. They cited the fact that the vessel presently can only carry 80% of its capacity due to draft limitations, and that the vessel must frequently delay its arrival for 8–10 hours awaiting high tide and another 2½ hours for access to the terminal. The operator pointed out how the delays on the Potomac River would affect arrivals at subsequent ports of call. They pointed out that while the costs of each delay may not be significant, the aggregate can be great. For example, a two hour delay on one day may prevent the complete discharge of the vessel, resulting in an additional 12 hour delay. If the delay causes work to be performed on weekends or holidays, increased overtime costs will result. They also recommended that commercial vessels be required to give advance notice of bridge openings so the highway authorities can advise motorists of a scheduled bridge lift in advance of the opening.

We believe that the proposal to require advance notice for bridge openings has merit; however, we do not believe the advance notice requirement should be limited to only commercial vessels or only during the rush hour periods. It is being adopted for all bridge openings. While we are not, at this time, aware that the District of Columbia Department of Public Works is broadcasting bridge advisories for motorists, we expect them to do so.

Since this one hour advance opening notice requirement was not included within the scope of the original notice of proposed rulemaking, comments are requested on the appropriateness of the requirement. Rather than issue a separate notice of proposed rulemaking and a temporary deviation to evaluate the proposal, it is being included in this final rule as a matter of administrative economy. If the comments received indicate that this provision is inappropriate, a further rule will be issued to delete the requirement.

This provision makes the temporary rule published in the **Federal Register** on March 4, 1988 (53 FR 6984), unnecessary, and the temporary rule is revoked. That temporary rule required all vessels to give at least one hour advance notice for an opening between 9:00 a.m. and 4:00 p.m. due to repair work being conducted on the bridge. That temporary rule was to be in effect until November 30, 1988. Clipper Cruise Lines objected to the provision in the temporary deviation that only permitted vessels bound to or from Robinson Terminals to pass through the bridge during the extended opening period. They felt this forced them to choose one specific dock site over all the others available in the Washington, DC/Alexandria, Virginia area. This final rule no longer specifies that deep draft vessels tie up at Robinson Terminals to gain passage during the extended rush hour periods.

The Virginia Pilot Association objected to the proposal as it would apply to commercial vessels. They stated that most commercial vessels must time their arrivals at the bridge due to draft limitations. While the current 2½ hour closed periods give them enough leeway, the proposed four and five hour closed periods will cause them problems. They pointed out that a vessel that missed a morning opening might also have to miss the evening opening, and the following morning and evening openings due to the timing of the high tides. They also pointed out that the traffic delays are not caused by the brief passages of vessels, but by frequent electrical failures of the bridge equipment. The pilots also complained that the vessels are frequently delayed because the bridge tower is not always manned as required. In a subsequent discussion to determine which vessels are restricted in their ability to navigate the Potomac River, the pilots reported that vessels with drafts of less than 20 feet are not restricted by the depth of the channel between the mouth of the Potomac River and Haines Point in the District of Columbia.

Neither the Maryland Department of Transportation on the original requestors of the amendment have provided any detailed information to support the position that the draw openings alone contribute substantially to the traffic problems on the bridge and its approaches. Rather, it appears from the comments received that the traffic problems are due to a number of factors, such as the amount of traffic, road conditions, accidents, mechanical breakdowns, and bad weather, and not only by the 6 to 15 minutes required for a bridge opening.

No comments were received from the Navy on the proposal. While Coast Guard vessels will be inconvenienced by this rule, they will work their schedules around the extended closed periods. In any event, the impact on public vessels should be minimal. A review of the drawlogs revealed that only 7 public vessels required openings of the bridge during 1986–1987. Therefore, the exception for public vessels in the current regulations is being eliminated in this final rule.

It is understood that all of the tour boats that routinely use the upper Potomac River are able to pass under the bridge at normal tide levels. No comments were received from the tour boat industry during the comment period. Therefore, the opening requirement for tour boats is also being eliminated by this final rule.

In retrospect, it is felt that it would be prudent to leave intact the provision that requires the bridge to open on signal for vessels in distress. These situations are extremely rare, but the failure to open the bridge would result in loss of life aboard a vessel or an allision of a vessel with the bridge, possibly closing this vital highway link. Therefore, the exception for vessels in distress is retained in this final rule.

Drawlogs for the past two years submitted by the District of Columbia, Department of Public Works were reviewed and they do not substantiate the claims that vehicular traffic is needlessly impeded by draw openings for commercial vessels. These openings are in fact infrequent during morning and evening rush hours. For the entire year of 1987, only 14 openings for commercial vessels occurred during the extended morning rush hours, while only 19 openings occurred during the extended evening rush hours.

In deciding the issues in case, consideration was given to the needs of the motorists who use the bridge, Robinson Terminals, shippers who ship cargoes through the Port of Alexandria, Virginia, commercial vessel operators, and recreational boaters. Also considered was the concept that traffic delays were one of the factors taken into account when the Federal government, the District of Columbia, the State of Maryland, and the Commonwealth of Virginia decided to build and maintain a drawbridge instead of building a fixed bridge with adequate navigational clearances. Since extending the closed periods to deep draft commercial traffic beyond the existing closure periods will seriously jeopardize the economic viability of the Port of Alexandria, Virginia, this final rule will require the draw to open for those vessels during the extended closed period. Since shallow draft commercial vessels are not subject to the same navigational limitations and do not need to time their arrivals to the tides, the bridge will not be required to open for these vessels during the extended closed periods. These vessels, public vessels (primarily Navy and Coast Guard vessels), tour boats, and recreational vessels will need to plan their schedules to accommodate the restricted opening hours. It is felt that it would be unreasonable to tie up this vital highway artery during rush-hour traffic to permit

the passage of vessels that can make minor alterations in their schedules. While they may be inconvenienced, they will not suffer the same hardships as deep draft commercial vessels.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied in Room 507, Federal Building, 431 Crawford Street, Portsmouth, Virginia. Copies may also be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT" in this preamble.

The economic impact of the proposed rules on Robinson Terminals and other commercial shippers was considered in adopting this rule. The shippers already have restrictions to deal with when transporting their newspaper print to Alexandria, Virginia. They must schedule their ships to coincide with high tides due to the shallow channel in order to transit upriver to Alexandria. The cost for doing so to these shippers is approximately $8000 per day. Additional costs were anticipated if the vessels are further delayed by lack of bridge openings and these additional costs could result in shippers looking elsewhere for ports to deliver their cargoes, If that happened, Robinson Terminals would lose business and, eventually, be forced to close down. It is anticipated that the draw will be required to open less than 35 times per year during the extended weekday rush hours for deep draft commercial traffic, resulting in traffic delays of less than six hours over the year, which can be directly attributable to the passage of these vessels. While the Woodrow Wilson Memorial (I–95) bridge is an important and vital highway link between Virginia and Maryland, and is heavily used by both commuters and interstate highway travelers, the economic needs of local commercial waterway users outweigh the benefits to highway traffic which would be derived by closing the drawbridge to all navigation during the weekday rush hours. This regulation should have no effect on commercial navigation, or on any industries that depend on waterborne transportation.

Based upon the information in the final evaluation, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g)

2. Section 117.255(a) is revised to read as follows:

**§ 117.255 Potomac River.**

(a) The draw of the Woodrow Wilson Memorial (I–95) bridge, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland—

(1) Shall open on signal at any time for a vessel in distress.

(2) Need not open:

(i) Except as provided in subparagraph (1) of this paragraph, for the passage of any vessel unless at least one hour advance notice is given.

(ii) For the passage of any vessel from 6:30 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:30 p.m., on Mondays through Fridays, other than Federal holidays.

(iii) For the passage of any vessel, other than a commercial vessel with a draft of over 20 feet, from 6:00 a.m. to 6:30 a.m., 9:00 a.m. to 10:00 a.m., 3:00 p.m. to 4:00 p.m., and 6:30 p.m. to 8:00 p.m., on Mondays through Fridays, other than Federal holidays.

* * * * *

3. The temporary regulation issued on February 17, 1988, which was published in the **Federal Register** on March 4, 1988 (53 FR 6984), is revoked.

Dated: July 20, 1988.

**W.J. Ecker,**

*Captain, U.S. Coast Guard; Commander, Fifth Coast Guard District, Acting.*

[FR Doc. 88–17348 Filed 8–1–88; 8:45 am]

BILLING CODE 4910–14

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 166 and 168**

**[OPP–250080; FRL–3423–9]**

## Notification to Secretary of Agriculture of a Final Regulation on Advertising of Unregistered Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification to the Secretary of Agriculture.

**SUMMARY:** Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation that treats unlawful under FIFRA section 12 certain advertising of unregistered pesticides and FIFRA section 24(c) registrations. This action is required by section 25(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:**
*By Mail:*
Franklin Gee, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460
Office location and telephone number:
Rm. 1120B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–0592).

**SUPPLEMENTARY INFORMATION:** Section 25(a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime after the 15-day period.

As required by FIFRA section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on

Agriculture, Nutrition, and Forestry of the Senate.

FIFRA section 25(d) requires that a copy of this final rule be forwarded to the Scientific Advisory Panel (SAP) for review and comment. However, because of the nature of the rule, the SAP waived review and comment.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: July 25, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 88-17342 Filed 8-1-88; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 261**

**[SW-FRL-3423-2]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR Part 261 for certain solid wastes generated by Lederle Laboratories, Pearl River, NY. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**EFFECTIVE DATE:** August 2, 1988.

**ADDRESSES:** The RCRA regulatory docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC, 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-LDEF-FFFFF". The public may copy materials from any regulatory docket at a cost of $.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Linda Cessar, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9828.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Authority*

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 260.32. To have their wastes excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner must demonstrate also that the waste does not exhibit any of the hazardous waste characteristics, (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22, 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

*B. History of This Rulemaking*

Lederle Laboratories (Lederle), a Division of the American Cyanamid Company, located in Pearl River, New York, submitted its petition on March 27, 1981 requesting an exclusion for its filter press sludge and wastewater influent. Lederle was granted a temporary exclusion on November 22, 1982 (47 *FR* 52677). Lederle subsequently withdrew its request to delist the wastewater influent. On October 24, 1986, EPA proposed to exclude Lederle's filter press sludge and the compost derived from the sludge from hazardous waste regulation (see 51 *FR* 37760). Because the Agency did not make a final decision on Lederle's petition by November 8, 1986, pursuant to RCRA section 3001(f), Lederle's temporary exclusion expired on that date.

During the comment period for the proposed rule, the Agency received a request to extend the comment period to allow the commenter more time to review the Agency's proposal to exclude Lederle's waste. The Agency granted the request, extending the comment period (which was to end on November 3, 1986) to November 24, 1986. The decision to extend this comment period was published in the **Federal Register** (see 51 *FR* 40343-40344) on November 6, 1986. Today's notice addresses the comments received during the extended comment period and makes final the decision to grant the delisting petition for Lederle Laboratories.

### II. Disposition of Delisting Petition

*A. Lederle Laboratories*

1. Proposed Exclusion

Lederle Laboratories (Lederle), located in Pearl River, New York, produces vitamins, antibiotics, and other pharmaceutical products. Lederle petitioned the Agency to exclude its wastewater treatment sludges (filter press sludge and composted sludge) from classification as EPA Hazardous Waste Nos. F003 and F005 based on the low concentration and immobilization of the listed constituents in the wastes. The primary and secondary filter press sludges are produced by Lederle's 1.5 million gallon per day Industrial Waste Treatment Plant (IWP). The IWP produces a maximum of 20,640 cubic yards of filter press sludge per year. This sludge is composted with leaves and lime using the windrow method. The composted sludge (also approximately 20,640 cubic yards) is permitted for use under New York State requirements (Case II of 6NYCRR Part 360) which restrict such use to publicly owned land or land dedicated to a specific non-agricultural use, such as a golf course or industrial park.

In the proposed rule, EPA concluded that data submitted by Lederle substantiate its claim that the listed constituents of concern are essentially present in an immobile form. Further more, additional data provided by Lederle indicate that no other hazardous constituents are present in the wastes at levels of regulatory concern, and that the wastes do not exhibit any of the characteristics of hazardous waste. (See 51 *FR* 37760-37767, October 24, 1986, for a more detailed explanation of why EPA proposed to grant Lederle's petition.)

2. Agency Response to Public Comments

The Agency received comments from a single commenter during the extended comment period regarding its decision to grant an exclusion to Lederle for the wastes identified in the petition. The comments received were of two varieties: (1) Those concerning the appropriateness of the vertical and

horizontal spread (VHS) model and (2) those questioning the detection limits encountered in the sample analyses. The specific comments, grouped by these two issues, are addressed below.

*Comments Regarding Use of the VHS Model.* The commenter stated that using the VHS model for evaluating the composted sludge would be inappropriate since the VHS model predicts the contamination potential for wastes disposed in a Subtitle D landfill. The commenter indicated that use of the composted waste as a soil amendment virtually would guarantee that individuals will come into direct contact with the waste. The commenter identified three pathways for human exposure: Dermal absorption of organic constituents, inhalation of entrained particles, and ingestion. The commenter contended that total constituent analysis data should be used to evaluate the potential hazard posed by the waste due to direct human contact.

The Agency maintains that the VHS model should be used to evaluate Lederle's petitioned waste because these excluded wastes could be disposed as non-hazardous in a Subtitle D landfill should the petitioner choose to do so. However, the Agency does agree with the commenter that other exposure routes may be relevant for this petition and, therefore, alternate scenarios should be explored. The results of the alternate exposure analyses are presented below; the results of the VHS model analysis were presented in the proposed exclusion (51 *FR* 37760). The VHS model analysis demonstrated that Lederle's primary filter press sludge, secondary filter press sludge, and composted sludge do not pose a threat to human health through a ground-water exposure pathway. The results of the VHS model analysis will not be recapitulated in this notice.

The commenter also expressed concern that uninformed individuals would be exposed to health-threatening levels of hazardous constituents. The Agency disagrees with this contention because the results of the Agency's analysis of alternate exposure scenarios (*i.e.*, ingestion, inhalation of suspended particles, and dermal absorption of organic constituents) showed Lederle's waste to be non-hazardous. Additionally, the delisted composted sludge will continue to be subject to state and local regulations regarding transport and use of industrial wastewater treatment sludge. In particular, Lederle's composted sludge will continue to be regulated by the New York State Department of Environmental Conservation according to permit conditions for use and marketing of composted sewage sludge (6NYCRR Part 360). A discussion of the Agency's analysis of the alternate routes of exposure is presented below.

*Analysis of Alternate Exposure Scenarios.* In response to public comment, the Agency evaluated the alternate exposure pathways suggested by the commenter (ingestion, inhalation of suspended particles, and dermal absorption of organic constituents) in order to determine whether Lederle's composted waste poses a threat to human health.

To perform these evaluations, the Agency identified the appropriate exposure scenario governing the three exposure pathways, the most exposed individual (MEI), and the basis used to assign values to particular exposure assumptions. The Agency attempted to assign reasonable worst-case values or typical-case values (where appropriate) to the factors in the equations used to assess the three alternate exposure pathways. A value was assigned whenever the Agency identified a widely accepted value used in exposure assessments. For example, the Agency assigned a value of 23 cubic meters per day to the respiratory volume factor used in the inhalation exposure equation described in Section II.A.2.b; this is a widely accepted value.[1] Numerous factors, however, did not have widely accepted values. Because each of the exposure scenarios used in the evaluation of Lederle's waste had one or more factors that did not have widely accepted values, the Agency used a two-tiered strategy in the exposure assessment. Initially, overly conservative values were assigned to the exposure assumptions for any parameter in the exposure analysis equation for which a widely accepted value could not be identified. This resulted in an unreasonably conservative (*i.e.*, screening) analysis. If the waste passed the screening analysis for an exposure pathway, then an in-depth analysis would not be required as the waste would clearly be non-hazardous. If the waste failed the screening analysis, a more reasoned analysis (*i.e.*, where more reasonable values were assigned to each factor in the exposure equation) was pursued. The Agency believes that the two-tiered analysis employed is appropriate for assessing the potential effects of the petitioner's composted waste. The Agency does not claim that the assumptions used for this assessment are appropriate for all cases.

In the following discussions of the exposure assessments, each assumption is identified as being a typical-case or a reasonable, absolute, or impossible wort-case assumption. These designations are specific to the exposure assessments of Lederle's waste. The overly conservative values chosen for the screening analysis represent absolute or impossible worst-case assumptions.

Typical-case or reasonable worst-case assumptions were used when widely accepted values were available. An absolute worst-case assumption represents a value at the extreme end (*i.e.*, most conservative with regard to protecting human health) of a range of possible values. Absolute values were used in the screening analysis where it was possible to identify an accepted range of values for a factor. An impossible worst-case assumption represents a value so extreme that it is beyond the range of possible values. Impossible values were used where it was not possible to identify an accepted range of values for a factor. For example, lacking a widely accepted reasonable worst-case value for the frequency of exposure to composted soil through an ingestion pathway, the Agency was confronted with a wide range of possible values depending on the number of years a person would be expected to spend at a residence, the amount of time spent away from the home, and the number of days a person could not ingest a given quantity of soil (*e.g.*, because of illness). Rather than attempt to pinpoint the extreme end of the range of possible values, the Agency chose to assume that a person would ingest compost bearing soil every day of his or her life. Because a value assuming daily exposure over a 70-year lifespan is beyond the range of possible values, it is labeled an impossible worst-case assumption.

The specific exposure assessmsent equations used to evaluate the three routes of exposure are presented below.

(a) *Ingestion.* The Agency performed a screening analysis to determine whether an ingestion exposure pathway warranted closer investigation. The analysis employed reasonable worst-case or typical-case assumptions where appropriate and unreasonably conservative values (*e.g.*, impossible assumptions) for those factors which lacked widely accepted standards. This combination of reasonable and unreasonable worst-case assumptions resulted in an exposure assessment that is overly conservative. The petitioned

[1] International Commission on Radiological Protection, *Report of the Task Group on Reference Man*, New York: Pergammon Press, October 1974, p. 346.

waste passed this analysis for the ingestion pathway; therefore, the Agency concluded that ingestion of the composted sludge is not likely to pose a threat to human health.

To calculate the exposure rate due to the ingestion of the composted waste, the Agency used the following assumptions:

- A person would ingest 100 mg of soil per day.[2] The choice of a 100 mg per day ingestion rate represents a typical-case assumption. The ingestion rate assumed by the Agency does not account for pica. A small fraction of children between the ages of 2 and 6 years exhibit pica tendencies, consuming up to 5 grams of soil per day. The Agency has not assumed pica behavior because it is pathological and is not representative of the population at large. That is, a pica assumption would not be reasonable worst-case.
- A person would ingest this amount of composted waste every day of his or her life. This is an impossible worst-case scenario.
- The soil ingested would contain the same concentration of hazardous constituents as the composted sludge. This is an absolute worst-case assumption.
- All of the contaminants ingested would be absorbed into the body (*i.e.*, the ingestion rate equals the exposure rate). This is an absolute worst-case assumption.

Using these assumptions, the Agency calculated the ingestion exposure rates for the EP toxic metals, nickel, cyanide, and the organic constituents detected in the composted sludge and filter press sludge. For example, the ingestion exposure rate for levels of arsenic in the composted sludge (reported as 8.6 mg/kg) was calculated as follows:

$$\frac{8.6\ \text{mg}}{\text{kg soil}} \times \frac{100\ \text{mg soil}}{\text{day}} \times \frac{\text{kg}}{10^6\ \text{mg}} = 8.6 \times 10^{-4}\ \text{mg/day}$$

The ingestion exposure rates for each of these constituents were then compared with the health-based levels used in delisting decision-making for each constituent. The regulatory levels were calculated from reference doses (RfDs), risk specific doses (RSDs), or maximum contaminant levels (MCLs). A 70 kg body weight was used to convert RfDs and RSDs to units of mg/day. A 2 liter per day water consumption rate was used to convert MCLs to units of mg/day. These levels are specific to an oral exposure route and, therefore, are appropriate to an ingestion exposure analysis. The results of these calculations are presented in Table 1.

TABLE 1.—EXPOSURE FROM INGESTION

| Constituents | Total constituent analyses (mg/kg) | Ingestion exposure rate (mg/day) | Levels of regulatory concern [1] (mg/day) |
|---|---|---|---|
| Arsenic | 8.6 | $8.6\times10^{-4}$ | 0.1 |
| Barium | 38 | $3.8\times10^{-3}$ | 2 |
| Cadmium | <3 | $3.0\times10^{-4}$ | 0.02 |
| Chromium | 9.1 | $9.1\times10^{-4}$ | 0.1 |
| Lead | 36 | $3.6\times10^{-3}$ | 0.1 |
| Mercury | 0.89 | $8.9\times10^{-5}$ | 0.004 |
| Nickel | 23 | $2.3\times10^{-3}$ | 1 |
| Selenium | <5 | $5.0\times10^{-4}$ | 0.02 |
| Silver | <1 | $1.0\times10^{-4}$ | 0.1 |
| Cyanide | 1.6 | $1.6\times10^{-4}$ | 1 |
| MIBK | 0.6 | $6.0\times10^{-5}$ | 4 |
| Carbon Disulfide | 0.59 | $5.9\times10^{-5}$ | 7 |
| Phenol | [2] 11 | $1.1\times10^{-3}$ | 3 |
| Toluene | [2] 3.1 | $3.1\times10^{-4}$ | 20 |
| Xylene | [2] 1.3 | $1.3\times10^{-4}$ | 100 |

NOTE: <: Denotes concentrations below the detection limit.
[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.
[2] From total constituent analyses of the primary filter press sludge.

In this and subsequent analyses, the highest constituent concentrations in the composted waste were used in the calculations except for phenol, toluene, and xylene. These latter three compounds were detected in the filter press sludge but not in the composted sludge. The exposure analysis equation was applied to the filter press concentrations of these constituents to determine whether they would pose a health risk.

The exposure rates for all of the constituents are well below the health-based levels. The screening analysis demonstrates that even using some unreasonable worst-case assumptions Lederle's waste does not pose a threat to human health from an ingestion route, thereby obviating the need for a more in-depth analysis.

(b) *Inhalation of Suspended Particles.* The inhalation rate of four constituents (arsenic, cadmium, chromium, and nickel) computed using the screening analysis exceeded the health-based level indicating that this pathway warranted further investigation. Therefore, the Agency determined it

[2] *Superfund Public Health Evaluation Manual,* EPA–540/1–861060 (OSWER Directive 9285.4–1), October 1988, p. D–2.

was necessary to perform a more in-depth analysis for this exposure route. The Agency replaced the unreasonable worst-case or typical-case assumptions used in the screening analysis with reasonable worst-case or typical-case assumptions deemed appropriate for Lederle's disposal scenario. This more reasoned analysis indicated that exposure through inhalation of suspended, composted sludge waste particles is not likely to pose a threat to human health.

The more reasoned analysis used the following assumptions to calculate the exposure rate due to the inhalation of suspended particles:

- The concentration of suspended particulate matter in air was assumed to be 0.075 mg/m³. EPA's Office of Air Quality Planning and Standards indicated that 95 percent of the 2,044 sites monitored nationally reported total suspended particulates (TSP) concentrations of 0.075 mg/m³ or lower.[3] The Agency, therefore, believes that this is a reasonable worst-case assumption.
- The concentration of the hazardous constituents in the suspended particulate matter was assumed to be the same as the concentration of hazardous constituents in the composted sludge. This assumption is appropriate to this exposure assessment because no other source of suspended particulate matter (*e.g.*, an incinerator) is under investigation. This is an absolute worst-case assumption.
- The fraction of inhaled particulates that would be absorbed into the lungs would be 12.5 percent. The remaining 87.5 percent would be exhaled (25 percent) or eliminated from the respiratory passages and swallowed (62.5 percent).[4] This is a reasonable worst-case assumption.
- A moderately active person breathes 23 m³ of air per day.[5] This is a reasonable worst-case assumption.
- A person would be exposed to this concentration of suspended waste particulates on the 262 days per year that climatic conditions favor dust emissions. A person would remain at the residence 80 percent of the time over a 70-year lifespan.[6] This a reasonable worst-case assumption.

Using these assumptions, the Agency calculated the inhalation exposure rates for the EP toxic metals, nickel, cyanide, and the organic constituents detected in the composted sludge and filter press sludge. For example, the inhalation exposure rate for levels of arsenic in the composted sludge (reported as 8.6 mg/kg) was calculated as follows:

[3] EPA, *National Air Quality and Emissions Trends Report 1986*, EPA 450/4-88-001, February 1988, p. 3-6.

[4] EPA, *Risk Analysis of TCDD Contaminated Soil*, EPA-600/8-84-031, November 1984, p. 20.

[5] International Commission on Radiological Protection, *Report of the Task Group on Reference Man*, New York: Pergammon Press, October 1984, p. 346.

[6] EPA, *Risk Analysis of TCDD Contaminated Soil*, p. 17

$$\frac{8.6\ \text{mg}}{\text{kg soil}} \left| \frac{0.075\ \text{mg}}{\text{m}^3} \right| \frac{0.125}{} \left| \frac{23\ \text{m}^3}{\text{day}} \right|$$

$$\frac{262\ \text{days}}{365\ \text{days}} \left| \frac{0.8}{} \right| \frac{\text{kg}}{10^6\ \text{mg}} = 1.1 \times 10^{-6}\ \text{mg/day}$$

These inhalation exposure rates were then compared with the health-based level for each constituent. The health-based levels were calculated from available inhalation-based RSDs for arsenic, cadmium, chromium, and nickel. In the absence of an established inhalation level, an oral MCL, RfD, or RSD was used. The extremely low regulatory levels for arsenic, cadmium, chromium, and nickel derive from their higher carcinogenic potency from an inhalation route. The results of these calculations are presented in Table 2.

TABLE 2.—EXPOSURE FROM INHALATION OF SUSPENDED PARTICLES

| Constituents | Total constituent analyses (mg/kg) | Inhalation exposure rate (mg/day) | Levels of regulatory concern [1] (mg/day) |
|---|---|---|---|
| Arsenic | 8.6 | $1.1\times10^{-6}$ | $5.3\times10^{-6}$ |
| Barium | 38 | $4.7\times10^{-6}$ | 2 |
| Cadmium | <3 | $3.7\times10^{-7}$ | $1.3\times10^{-5}$ |
| Chromium | 9.1 | $1.1\times10^{-6}$ | $1.9\times10^{-6}$ |
| Lead | 36 | $4.5\times10^{-6}$ | 0.1 |
| Mercury | 0.89 | $1.1\times10^{-7}$ | 0.004 |
| Nickel | 23 | $2.8\times10^{-6}$ | $9.6\times10^{-5}$ |
| Selenium | <5 | $6.2\times10^{-7}$ | 0.02 |
| Silver | <1 | $1.2\times10^{-7}$ | 0.1 |
| Cyanide | 1.6 | $2.0\times10^{-7}$ | 1 |
| MIBK | 0.6 | $7.4\times10^{-8}$ | 4 |
| Carbon disulfide | 0.59 | $7.3\times10^{-8}$ | 7 |
| Phenol | [2] 11 | $1.4\times10^{-6}$ | 3 |
| Toluene | [2] 3.1 | $3.8\times10^{-7}$ | 20 |
| Xylene | [2] 1.3 | $1.6\times10^{-7}$ | 100 |

NOTE. <: Denotes concentrations below the detection limit.

[1] For inhalation-based RSDs used to calculate health-based levels for arsenic, cadmium, chromium, and nickel, see "Carcinogenic Risk Assessment Verification Endeavor (CRAVE) Risk Estimate for Carcinogenicity, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH, 1988. For oral MCLs, RfDs, RSDs used to calculate the health-based levels for the remaining constituents, see "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

[2] From total constituent analyses of the primary filter press sludge.

The exposure rates for these constituents are well below the health-based levels. The reasonable worst-case analysis demonstrates that Lederle's waste does not pose a threat to human health from an inhalation pathway.

The Agency also determined whether the ingestion of hazardous constituents eliminated from the respiratory pathway (*i.e.*, the 62.5 percent of inhaled particulates that are eliminated and swallowed) would significantly impact the ingestion exposure analysis. These calculations indicated that, although the respiratory tract elimination and subsequent ingestion of inhaled particulates would be 5 times greater than the amount absorbed into the lungs, the inhalation contribution to the ingestion pathway would be insignificant (3 orders of magnitude lower than the amount directly ingested).

(c) *Dermal Absorption of Organic Constituents.* The Agency performed a screening analysis to determine whether this exposure pathway warranted closer investigation. The analysis employed reasonable worst-case or typical-case assumptions where available and unreasonably conservative values (*e.g.*, impossible assumptions) for those factors which lacked widely accepted standards. This combination of reasonable and unreasonable worst-case assumptions resulted in an exposure assessment that is overly conservative. The petitioned waste passed this analysis for the dermal absorption pathway; therefore, the Agency concluded that exposure through dermal absorption via handling the composted waste is not likely to pose a threat to human health.

The Agency calculated the daily intake of hazardous constituents through dermal absorption using the following assumptions:

- The overall daily contact rate would be 1.5 mg of soil per $cm^2$ of exposed skin.[7] This is a reasonable worst-case assumption.
- The exposed surface area of an adult wearing a short-sleeved, open-necked shirt, pants, and shoes with no gloves or hat is 2,940 $cm^2$.[8] This is a typical-case assumption.
- The accumulated soil would be pure composted waste; there would be no dilution with ordinary topsoil. This is an absolute worst-case assumption.
- All of the organic constituents present in soil that accumulate on an exposed person's skin would be absorbed. This is an absolute worst-case assumption.
- An adult would be exposed to the composted waste every day of his or her life. This is an impossible worst-case assumption.

Using these assumptions, the Agency calculated dermal absorption rates for MIBK and carbon disulfide, the two organic constituents that were present at detectable levels in the composted sludge. For example, the dermal absorption rate for levels of carbon disulfide in the composted sludge (reported as 0.59 mg/kg) was calculated as follows:

[7] The determination of an overall daily contact rate was suggested by EPA, *Risk Analysis of TCDD Contaminated Soil*, p. 26, by using soil accumulation results presented in "Exposure to Lead by the Oral and Pulmonary Routes of Children Living in the Vicinity of a Primary Lead Smelter," Roels, Harry et al., Environmental Research, Vol. 22, pp. 81–94 (1980).

[8] The value cited was obtained from EPA, *Risk Analysis of TCDD Contaminated Soil*, p. 26. The original source is Sendroy, J. and Cecchini, L.P., "Determination of Human Body Surface Area from Height and Weight," J. of Appl. Physiology, 7(1):1–12 (1954).

$$\frac{0.59\ mg}{kg\ soil} \times \frac{1.5\ mg\ soil}{cm^2\ day} \times 2{,}940\ cm^2 \times \frac{kg}{10^6\ mg} = 0.0026\ mg/day$$

Dermal absorption rates were also calculated for phenol, toluene, and xylene (which were detected only in the filter press sludge) using total constituent analysis data to determine whether these constituents might pose a threat to human health. These dermal absorption rates were then compared to the health-based level for each organic constituent. The health-based levels are specific to an oral exposure route. Although standards for dermal exposure would likely be much higher, the Agency has opted to use the more conservative oral levels to be consistent with the premise that the screening analysis is an unreasonable worst-case analysis. The results of these analyses are presented in Table 3.

TABLE 3.—EXPOSURE FROM DERMAL ABSORPTION

| Constituents | Total constituent analyses (mg/kg) | Dermal absorption rate (mg/day) | Levels of regulatory concern [1] (mg/day) |
|---|---|---|---|
| Carbon disulfide | 0.59 | $2.6\times10^{-3}$ | 7 |
| MIBK | 0.6 | $2.7\times10^{-3}$ | 4 |
| Phenol | [2] 11 | $4.9\times10^{-3}$ | 3 |
| Toluene | [2] 3.1 | $1.4\times10^{-2}$ | 20 |
| Xylenes | [2] 1.3 | $5.7\times10^{-3}$ | 100 |

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

[2] From total constituent analyses of the primary filter press sludge.

As shown in Table 3, exposure rates for these constituents are well below the health-based levels. Because the waste proved to be non-hazardous using this overly conservative approach, a more in-depth analysis was not required.

In summary, the alternate exposure analyses demonstrate that Lederle's composted waste does not pose a threat to human health due to ingestion, inhalation, or dermal absorption of hazardous constituents.

*Evaluation of Lederle's Pre-compost Sludge.* The composting process seeks to reduce the toxicity of the sludge using two mechanisms: Biological degradation and dilution/stabilization. Biological degradation works to reduce the concentration of hazardous organic constituents. Dilution and matrix stabilization effects from the mixing of soil and organic matter (leaves) with the filter press sludge work to reduce the concentrations of both the organic and inorganic species. The composted sludge is, therefore, likely to have lower concentrations of the hazardous constituents present in the filter press sludge. However, there is a possibility that these mechanisms may fail to produce the expected reduction in toxic constituent concentrations. A number of circumstances could result in hindered performance of these mechanisms. For example, the microbes which break down the organic constituents could die off during the winter months. The Agency investigated the impacts of a complete break down of these mechanisms using the same alternate exposure pathway analysis methodologies described above. Several constituents were detected in the primary or secondary filter press sludge at higher concentrations than in the composted sludge and thus these levels were subjected to the alternate exposure analyses used for the composted sludge. The primary filter press sludge concentrations of three of these constituents (phenol, toluene, and xylene) were included in the original analyses of the composted sludge. The results of the alternate exposure analyses for the remaining three compounds (chromium, mercury, and MIBK) detected at higher concentrations in the filter press sludges are presented in Table 4. These results reflect the use of the higher filter press concentrations as inputs to the exposure assessment equations; that is, the exposure analyses used are identical, except for the use of the filter press concentrations in place of the composted sludge concentrations in the calculations.

TABLE 4.—EXPOSURE ASSUMING INADEQUATE COMPOSTING

| Constituents | Total constituent analyses (mg/kg) | Exposure rate (mg/day) | Levels of regulatory concern [1] (mg/day) |
|---|---|---|---|
| Ingestion: | | | |
| Chromium | 12 | $1.2 \times 10^{-3}$ | 0.1 |
| Mercury | 0.96 | $1.0 \times 10^{-4}$ | 0.004 |
| MIBK | 7.3 | $7.3 \times 10^{-4}$ | 4 |
| Inhalation: | | | |
| Chromium | 12 | $1.2 \times 10^{-6}$ | $1.9 \times 10^{-6}$ |
| Mercury | 0.96 | $9.5 \times 10^{-8}$ | 0.004 |
| MIBK | 7.3 | $7.2 \times 10^{-7}$ | 4 |
| Dermal absorption: | | | |
| MIBK | 7.3 | $3.2 \times 10^{-2}$ | 4 |

[1] For all health-based levels except the inhalation level for chromium, see "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket. For the inhalation level for chromium, see "Carcinogenic Risk Assessment Verification Endeavor (CRAVE) Risk Estimate for Carcinogenicity, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH, 1988.

Based on the evaluation of organic constituent and metal levels in the filter press sludge, the raw sludge would not pose a threat to human health by the three pathways discussed in today's notice.

*Comments Regarding Detection Limits.* In addition to questioning the Agency's use of the VHS model, the commenter questioned the detection limits listed for organic constituents of concern. The commenter stated that the detection limits presented in Table 4 (51 *FR* 37766) of the proposed exclusion were unusually high. The commenter also stated that the Agency did not provide the detection limits associated with the analysis for priority pollutants in the composted sludge.

The Agency believes that the test methods employed and detection limits encountered in the analysis of Lederle's waste are appropriate and acceptable for Lederle's waste matrix. Consistent with requirements for delisting petitions, the analytical methods used derive from the EPA document entitled *Test Methods for Evaluating Solid Waste* (SW–846). The detection limits associated with the composted sludge analysis were 7.6 to 16 ppm for base/neutral extractables (Method 8270), 1.7 to 16 ppm for acid extractables (Method 8270), 1.7 to 16 ppm for acid extractables (Method 8270), 0.1 to 0.4 ppm for pesticides (Method 8080), and 0.5 ppm for purgeables (Method 8240). The vegetable matter and oil and grease content of the composted sludge contributed to the relatively high detection limits encountered. The presence of a number of aliphatic compounds in the composted sludge samples (documented in the spot-check report: ERCO/Energy Resources Co., Inc., Sampling Mission #3, Lederle Laboratories, Pearl River NY, Draft Report, February 1984) resulted in chromatographic baseline elevation, making analyses of the GC results more difficult and increasing detection limits. That is, pure extract could not be run through the column because certain compounds were present at concentrations which could damage the column; the extract was diluted and the extract/diluent mixture was injected into the column. The amount of diluent necessary varied according to the concentration of the compounds that could damage the column and the detection limits increased proportionally with the rate of dilution. As expected, the detection limits varied between samples collected from the filter press and the compost pile and were higher than what would be expected from "clean" wastes. The Agency is not indicating that these limits are appropriate detection limits for all petitioners, but for Lederle's particular waste matrix these limits are adequate.

### 3. Final Agency Decision

For the reasons stated in the proposal and the responses to public comment, the Agency believes that the filter press sludge and the composted sludge are non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Lederle Laboratories for its

wastewater treatment sludges (EPA Hazardous Waste Nos. F003 and F005) generated at Lederle's Pearl River, New York facility. The exclusion remains in effect unless the wastes vary from those originally described in the petition (*i.e.*, the wastes are altered as a result of changes in the manufacturing or treatment processes).

Delisted wastes must be managed in accordance with the same applicable Federal and State regulations as other industrial non-hazardous wastes. Therefore, when the Agency delists a petitioned waste, the generator of the waste must either treat, store, or dispose of the waste in an on-site or an off-site storage, treatment, or disposal facility, either of which complies with State regulations for permitting, licensing, and management of municipal or industrial solid waste. Alternatively, a delisted waste may be delivered to a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste; or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

In Lederle's case, State regulations (6NYCRR Part 360) permit restricted use of composted sludge as a soil amendment. The New York State Department of Environmental Conservation will continue to regulate the delisted waste under Case II of Part 360 which specifies that the compost (a) must not be available to the general public, (b) must be used to establish final vegetative cover on a landfill or other publicly-owned lands dedicated to non-agricultural uses, (c) will be tested to determine whether metals concentrations render the compost unsuitable for land application, and (d) must be applied in accordance with the "Solid Waste Management Facilities Guidelines" on land application with regard to site separation distances (500 feet from the nearest private residence) and application practices (application rates not to exceed vegetation nutrient requirements). Thus, Lederle's waste management practices must comply with the stipulations presented in the preceding paragraph.

While the State of New York provides a mechanism for Lederle's distribution of their composted sludge, other states are not obliged to do so. If Lederle's composted sludge is transported outside the State of New York, the waste will be subject to appropriate state and local regulations regarding the transport and use of industrial wastewater treatment sludge. For example, if the waste were transported to New Jersey for disposal, the facility would be required to obtain a NJPDES permit which similarly restricts disposal.

### III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA, regulatory requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the regulatory status of their wastes under State law.

### IV. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation, and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

### V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

### VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have a adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

**Authority:** Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: July 25, 1988.

**Jeffery D. Denit,**

*Deputy Director, Office of Solid Waste.*

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

**Authority:** Sec. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 1 the following wastestreams in alphabetical order:

## Appendix X—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| • | • | • |
| Lederle Laboratories. | Pearl River, NY. | Spent non-halogenated solvents and still bottoms (EPA Hazardous Waste Nos. F003 and F005) generated from the recovery of the following solvents: Xylene, acetone, ethyl acetate, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, methanol, toluene, and pyridine after [insert publication date]. Exclusion applies to primary and secondary filter press sludges and compost soils generated from these sludges. |
| • | • | • |

[FR Doc. 88-17335 Filed 8-1-88; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-7

**[FPMR Temp. Reg. A-30, Supp. 3]**

### Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** FPMR Temp. Reg. A-30 prescribes policies and procedures governing the use of U.S. certificated air carriers and rail carriers under contract with the General Services Administration (GSA) to furnish passenger services to Federal employees and other persons authorized to travel at Government expense between selected cities/airports. This supplement incorporates changes in the carrier contracts effective February 1, 1988. Supplements 1 and 2 are canceled and the expiration date of FPMR Temp. Reg. A-30 is extended to January 31, 1989. Attachment A of this regulation is amended as follows: Par. 3 is revised to change the criteria for exempt persons. Subpar. a of par. 6 is revised to correct the reference to subpar. "g" to read "h," and the reference to "Traffic" Management Centers to read "Travel" Management Centers. Subpar. h of par. 6 is revised for editorial reasons. In the caption of par. 7, reference to "Traffic" Management Centers is revised to read "Travel" Management Centers. Par. 10 is revised by adding a reference to travelers of the uniformed services.

**DATES:** *Effective date:* August 2, 1988.

*Expiration date:* January 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Stright, Director, Travel and Transportation Management Division (FBT); telephone FTS 557-1261 or commercial 703-557-1261.

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

### List of Subjects in 41 CFR Part 101-7

Government employees, Government property management, Motor vehicles, Travel, Travel allowances, Travel and transportation expenses.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, supplement 3 is added to the appendix at the end of Subchapter A to read as follows:

**Federal Property Management Regulations, Temporary Regulation A-30, Supplement 3**

July 14, 1988

To: Heads of Federal agencies.

Subject: Use of contract airline/rail passenger service between selected cities/airports.

1. *Purpose.* This supplement incorporates changes in the carrier contracts effective February 1, 1988. Supplements 1 and 2 are canceled and the expiration date of FPMR Temp. Reg. A-30 is extended to January 31, 1989.

2. *Effective date.* This regulation is effective August 2, 1988.

3. *Expiration date.* This regulation expires January 31, 1989.

4. *Explanation of changes.*

a. The expiration date in par. 3 of the regulation is revised to January 31, 1989.

b. Par. 3 of attachment A is revised to read as follows:

3. *Applicability.*

a. This regulation is mandatory for all executive agencies (except the Department of Defense (DOD)) and other Federal agencies subject to the authority of the Administrator of General Services under section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481), and 5 U.S.C. 5701 and 5721 *et seq.* (Uniformed members and civilian employees and DOD are subject to the procedures established in the Military Traffic Management Regulations AR 55-355/NAVSUPINST 4600.70/MCO P4600.14A/DLAR 4500.3.)

b. The following persons are exempt from the mandatory use of this regulation; however, they are authorized to obtain services under this regulation at the option of the contractors when seating space is available:

(1) Uniformed members of the U.S. Coast Guard;

(2) Members and employees of the U.S. Congress;

(3) Employees of the judicial branch of the Government;

(4) Employees of the U.S. Postal Service;

(5) Foreign service officers;

(6) Employees of any agency having independent statutory authority to prescribe travel allowances and who are not subject to the provisions of 5 U.S.C. 5701 through 5709; and

(7) Eligible contractors working for the Government, including:

(a) Contractors working under cost reimbursable contracts or other types of contracts involving direct travel costs to the Government; or

(b) Contractors working for the Government at specific sites under special arrangements with the applicable contracting agency, and which are wholly funded at such sites through Congressional appropriations (e.g., Government-owned, contractor-operated (GOCO), federally funded research and development (FFRDC), or management and operating (M&O) contracts).

**Note.**—Each contracting agency is responsible for identifying contractor eligibility and authorization for GSA contract fares.

c. Par. 6 of attachment A is revised to read as follows:

6. *Procedures for obtaining service.*

a. Except as provided in subpars. b, c, and h of this paragraph, contract airline/rail passenger service shall be ordered by the issuance of a U.S. Government Transportation Request (GTR) (Standard Form 1169), either directly to contractors or indirectly to Travel Management Centers (TMCs) established by GSA as provided in FPMR Temp. Reg. A-24. (See par. 7 on the use of TMCs.)

b. Agencies and departments participating in GSA's travel and transportation expense payment system are authorized to use GSA contractor-issued charge cards to the extent provided in FPMR Temp. Reg. A-25 and supplements thereto. These charge cards may be presented to contractors, TMCs, airline and AMTRAK ticket counters, or agency travel officers, as appropriate and in accordance with agency policies and procedures implementing the charge card program.

c. In limited circumstances when a traveler uses cash to procure service under FPMR 101-41.203-2, the traveler shall be prepared to authenticate the trip as official travel. When cash is used, the contractors listed in the FTD

have the option of furnishing services at either the contract or noncontract fare. If only one contract is awarded for a city/airport pair and the contractor does not provide a contract fare with the use of cash, the traveler shall procure service from a contract or noncontract carrier offering the lowest fare. If more than one carrier has been awarded a contract for a city/airport pair, the traveler shall observe the order of contractor succession in selecting a contractor which provides a contract fare with the use of cash; if none of the contractors provides a contract fare with the use of cash, the traveler shall procure service from a contract or noncontract carrier offering the lowest fare and which will accept cash. Cash or personal credit cards shall not be used to circumvent the Government's contracts.

d. When a reservation for contract service is requested, the fare basis shall be identified as "YCA' (unrestricted) or "____CA" (restricted), as appropriate, and the contractor's ticket agent shall be instructed to apply the appropriate fare basis and contract fare. Agencies using teletype ticketing equipment shall examine airline tickets to determine if the tickets contain the correct fare or whether they should be canceled and new tickets issued. Tickets picked up at the airline ticket office shall be verified to ensure that the proper fare is shown on the ticket.

e. Contract fares apply only for the city-airport pairs named in the FTD, and are not applicable to or from intermediate points. However, the contract fares are applicable in conjunction with other published fares or other contract fares. Contract fares shall not be used for personal travel taken in connection with official travel.

f. When a city/airport pair published in the FTD indicates that only one contract is awarded and the contractor subsequently offers a fare lower than its contract fare for the same service, the ordering agency may elect to use the lower fare. Promotional, restricted, and those special fares offered by the contractor and applicable only to Government employees on official travel (commonly known as status fares) may be used if the traveler can meet the qualifying restrictions to obtain such fares.

g. When the FTD indicates that separate contract fares apply for specific airports in selected cities served by more than one airport, travelers may (without further justification) use the airport which best meets their needs.

h. Eligible contractors (as defined in subpar. 3b(7)), traveling in performance of a Government contract and with proper identification from the contracting agency, are authorized to obtain contract fares if the carrier contractor agrees to the arrangement. Carriers may, at their option, require Government contractors to furnish a GTR or contract number, for endorsement purposes, in conjunction with the form of payment (GTR, cash, or personal credit card). The FTD identifies those carriers which have agreed to furnish transportation services at the GSA contract fare to eligible contractors.

d. Par. 7 of attachment A is revised to read as follows:

*7. Use of Travel Management Centers (TMCs).* TMCs are commercial offices operated by travel agents under contract with GSA. These TMCs are responsible for providing and arranging all travel services required by the participating agencies.

a. When GTRs are used, the TMCs are assigned GTR numbers by each participating agency and these GTR numbers shall be shown on all transportation tickets issued.

b. When GSA contractor-issued charge cards or Government Travel System (GTS) accounts are used, travel management services will be furnished as provided in FPMR Temp. Reg. A–25. (See the FTD for the location of TMCs.)

e. Par. 10 of attachment A is revised to read as follows:

10. *Traveler liability.* In the absence of specific authorization or approval stated on or attached to the travel authorization or travel voucher, a civilian traveler shall be responsible for any difference in the cost that may result from the traveler's unauthorized use of noncontract service or failure to observe the order of contractor succession. The traveler's indebtedness to the Government shall be the difference between the price of the service used and the lowest contract fare applicable to the travel involved. The entitlement of a uniformed services traveler who fails to use directed Government-procured transportation shall be as specified in the Joint Federal Travel Regulations, Volume 1.

**John Alderson,**

*Acting Administrator.*

[FR Doc. 88–17303 Filed 8–1–88; 8:45 am]

BILLING CODE 6820-34-M

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## 41 CFR Part 101–40

**[FPMR Temp. Reg. G–51]**

## Use of Carrier Contractors for Express Small Package Transportation

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** The provisions of this regulation were formerly issued as FPMR Temp. Reg. A–23 and added to the appendix at the end of Subchapter A in 41 CFR Chapter 101. Since FPMR Temp. Reg. A–23 and the supplements thereto are transportation oriented, GSA has determined that the provisions governing the use of carrier contractors for express small package transportation should be added to the appendix at the end of Subchapter G (entitled "Transportation and Motor Vehicles") in 41 CFR Chapter 101.

**DATES:** *Effective date:* August 2, 1988.

*Expiration date:* September 30, 1988.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Stright, Director, Travel and Transportation Management Division (FBT), Washington, DC 20406, telephone FTS 557–1261 or commercial 703–557–1216.

**SUPPLEMENTARY INFORMATION:** GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101–40**

Freight, Government property, Moving of household goods, Office relocations, Transportation.

1. The authority citation for 41 CFR Part 101–40 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter G to read as follows:

**Federal Property Management Regulations Temporary Regulation G–51**

July 7, 1988.

To: Heads of Federal agencies.

Subject: Use of carrier contractors for express small package transportation.

1. *Purpose.* This regulation prescribes policies, procedures, and contract rates applicable to Federal civilian agencies and departments when next day express small package transportation service from and to specified city-pairs is required.

2. *Effective date.* August 2, 1988.

3. *Expiration date.* September 30, 1988.

4. *Background.*

a. The provisions of this regulation were formerly issued as FPMR Temp. Reg. A–23 and added to the appendix at the end of Subchapter A in 41 CFR Chapter 101. Since FPMR Temp. Reg. A–23 is transportation oriented, GSA has determined that the provisions governing the use of carrier contractors for express small package transportation should be transferred to the appendix at the end of Subchapter G (entitled "Transportation and Motor Vehicles") in 41 CFR Chapter 101. Except for the removal of the former paragraph 13 (which has become obsolete with the passage of time), the provisions of FPMR Temp. Reg. A–23 are transferred to Subchapter G without change in policy or procedures.

b. Under section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, the General Services Administration (GSA) is responsible for prescribing policies and procedures that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic

management. Accordingly, GSA has entered into a contract with the carrier listed in attachment A for the transportation of express small packages from and to specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, where the contractor or its agent presently provides or will provide next day service. In consideration of the contract rates listed in attachment A and to the extent provided in this regulation, the Government has agreed to place all its transportation requirements for express small package service with the contractor.

5. *Scope.*

a. This regulation is mandatory for all civilian executive agencies pursuant to section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, and also may be used by (1) cost-reimbursable contractors working for the Government, (2) the legislative and judicial branches of the U.S. Government, and (3) the Department of Defense.

b. Next day express small package transportation is premium transportation. Therefore, agencies and other qualified users shall make prudent use of the services available under this regulation. When next day service is not required to accomplish an agency's mission, other less costly methods of transportation shall be used.

6. *Definitions.*

a. "Agency" means any ordering activity (including cost-reimbursable contractors) authorized to obtain contractor services at the contract rate.

b. "Commercial form" means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading (see 41 CFR 101–41.302–3).

c. "Commercial forms and procedures" means a provision whereby shipments are made using commercial forms and commercial billing procedures instead of Government bills of lading (SF 1103) and their related billing procedures. (See 41 CFR 101–41.304–2.)

d. "Contractor" means the contract awardee listed in attachment A.

e. "Contract rate" means a shipment charge listed in attachment A.

f. "Express small package" means a package weighing 50 pounds or less, measuring a maximum of 108 inches in length and girth combined, and containing general commodities except:

(1) Hazardous materials as defined in 49 CFR 172.101;

(2) Property of extraordinary value;

(3) Live animals or plants;

(4) Precious metals or stones;

(5) Weapons or firearms;

(6) Liquor or tobacco products;

(7) Currenty, inlcuding money orders;

(8) Narcotics or other controlled substances, unless otherwise accepted by the contractor;

(9) Any other article which the contractor prohibits its commercial customers from shipping; and

(10) Letters, unless adhering to the criteria established by the U.S. Postal Service as specified in subpar. 7a, below.

g. "Geographical areas" means locations lying wholly or partially within cities, towns, and communities identified by the U.S. Postal Service national five-digit ZIP code in the contractor's service guide or analogous listing.

h. "Holiday" means a Federal holiday.

i. "Special service" means any other agency-required services, such as weekend delivery, escorted courier service, insurance, proof of delivery, additional airbill copies, etc., which, if requested, will be subject to fees not higher than those charged to the contractor's regular commercial customers.

j. "Standard service" means pickup and next day delivery (including desk pickup and desk delivery) between the hours of 8 a.m. and 5 p.m., Mondays through Fridays, except holidays.

7. *Applicability*

a. The scope of the express small package contract does not include "letters"; i.e., routine first class mail, as defined in U.S. Postal Service Regulations, 39 CFR 310.1 (Private Express Statutes) unless the letters are so "extremely urgent" that the value or usefulness of the letters would be lost or greatly diminished if not delivered within the time liimts noted in par. (2), below. "Letter" is generally defined as "a message directed to a specific person or address and recorded in or on a tangible object." (See 39 CFR 310.1 for specific exclusions from the definition.)

(1) It is conclusively presumed that a letter is "extremely urgent" if the amount paid for carriage under the contract is at least $3 or twice the applicable U.S. postage for first class mail (including priority mail), whichever is greater. If a single shipment consists of a number of letters that are picked up together at a single origin for shipment to a single destination, postage may be computed as though the shipment constitutes a single letter. For other types of charges, a bona fide estimate of the average number of letters or shipments may be divided into the charge.

(2) If the value or usefulness of a letter would be lost or greatly diminished if the letter were not delivered under the following conditions, then the letter is considered "extremely urgent" and may be shipped by the contractor under the express small package contract:

(a) Where the letter is dispatched within 50 miles of the intended destination, delivery must be completed within 6 hours or by the close of the addressee's normal business hours on the date of dispatch, whichever is later, except that letters dispatched after noon, and before midnight must be delivered by 10 a.m. of the addressee's next business day;

(b) For all other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day;

(c) Agencies shall ensure that all outside covers or containers of letters are prominently marked with the words "Extremely Urgent—Private Carriage Authorized." In addition, each outside cover shall show the names and addresses of the contractor, the sender, and the addressee;

(d) The determination that a letter or letters meet the extreme urgency provisions of 39 CFR 320.6 shall be made by the responsible sending office. If such letters are sent to an agency mailroom for pickup by a private carrier rather than pickup at the sending office, the sending office shall ensure that such letters are marked clearly with the legend "Extremely Urgent—Private Carriage Authorized"; or

(e) Any letters, the extreme urgency of which meets the requirements of 39 CFR 320.6, sent by a private express carrier, shall be placed in plain envelopes.

(3) In addition to the exception for extremely urgent letters, data processing materials may be shipped as an express small package if the data processing materials are conveyed (a) to data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (b) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center.

(4) For further guidance with respect to shipments of letters, including data processing materials, see U.S. Postal Service Regulations at 39 CFR Parts 310 and 320, or call the Law Department of the U.S. Postal Service at FTS 245–4616.

b. The provisions of this regulation apply only when agencies subject to this regulation are using commercial forms and procedures. These agencies shall ship their express small packages by the contractor specified in attachment A, except that the Government reserves the right to use the U.S. Postal Service when in the Government's best interest.

c. To the extent cost-reimbursable contractors are authorized by an agency to ship under this regulation and are reimbursed the transportation costs as direct allowable costs, the contract rates and services provided in this regulation apply to cost-reimbursable contractors. Agencies shall instruct their cost-reimbursable contractors that, before a shipment is made under this regulation, the commercial shipping document must be annotated with either of the following notations, as appropriate:

(1) *When the Government is shown as the consignee*—"Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor are assignable to, and shall be reimbursed by, the Government"; or

(2) *When the Government is not shown as either the consignor or consignee*—"Transportation is for the (name or specific agency) and the actual total transportation charges paid to the carrier by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract number _____. This may be confirmed by contacting (name and address of the contract administration office listed in the contract)."

d. If the contractor offers and publishes for use by the general public a charge that is

lower than the contract rate for the same service, agencies shall pay the lower charge.

e. The contract rate does not apply for local pickup and delivery between locations in the metropolitan area of any city, town, or community.

8. *Contractor responsibilities.*

a. In consideration of payment for services provided at the contract rates, the contractor will furnish:

(1) Standard service (see subpar. 6j);

(2) Delivery service for "extremely urgent" letters (see par. 7);

(3) Pickup service on the same day pickup is requested (see subpar. 12a); and

(4) Delivery service on the next day (excluding Staurdays, Sundays, and holidays) following receipt from the shipper. Next day delivery service will not apply when delivery is delayed due to acts of God, the public enemy, the authority of law, or the acts of the consignor (shipper) or consignee (receiver).

b. Packages not delivered on the next day as prescribed in subpar. 8a(4) shall be transported free of charge.

c. When an agency uses purchase orders (POs) or blanket purchase agreements (BPAs), as authorized at 48 CFR Subpart 13.2, and these contain a dollar value limitation, the contractor will monitor the BPAs/POs and promptly notify the issuing agency when the contractor's service charges approach the dollar value ceilings noted on the BPAs/POs. The contractor will monitor the BPAs/POs to determine if such instruments restrict the ordering of contractor service to only certain authorized personnel of an agency. If there are restrictions, the contractor will communicate with the issuer of the BPAs/POs to clarify the intent and purpose of the restriction or to remove the restriction, as agreed to by the Government agency involved. The contractor's financial system should have the flexibility to separately account for contractural and noncontractural services which may have been authorized by separate BPAs/POs, and also "break out" the charges for such services on subsequent invoices.

9. *Payment responsibilities.* In accordance with the terms of the contract, payments to the contractor will be due on the 30th calendar day after the date of actual receipt of a proper invoice. The contractor is authorized to suspend service to an account to the extent that undisputed amounts are overdue more than 90 calendar days from the invoice date in accordance with par. 10. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made. The Prompt Payment Act (Pub. L. 97–177, 31 U.S.C. 3902, May 21, 1982) provides for the assessment of interest penalties when payments are overdue. A claim for reimbursement of paid transportation charges shall be filed against the contractor when it is determined that the contractor failed to furnish next day delivery service as provided in subpars. 8a(4) and 8b.

a. GSA has determined that the contractor's invoicer form meets the requirements of 41 CFR 101–41.304–2(d)(2) regarding payment of charges and is a proper invoice for payment and for the purposes of implementing the Prompt Payment Act. Accordingly, agencies should establish simplified procedures to ensure prompt payment to the contractor. If agencies do not have an effective payment system to achieve this purpose, they should consider requiring the shipper and/or consignee to forward a copy of the contractor's airbill to the appropriate paying office for payment or reconciliation. (Requests for additional airbill copies are considered "special services" under subpar. 6i, however.)

b. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commercial document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date.

c. At the option of the agency, and with the concurrence of the contractor, use of automated electronic billing and payment systems, or other sophisticated methods to simplify the verification and control process, may be separately negotiated and established by agreement between the Government agency and the contractor.

10. *Suspension of service.*

a. Service to any delinquent agency account may be suspended to the extent that undisputed amounts are overdue more than 90 calendar days provided the contractor has simultaneously notified the account holder and the appropriate GSA zone office 60 calendar days after the invoice date that amounts are overdue and need to be paid within 30 calendar days of the date of the delinquency notice.

b. When a question arises concerning the proper amount of charges for services rendered (e.g., improper billing, failure to post payments, erroneous charges, etc.), agencies shall give notice of the apparent error, defect, or impropriety in an invoice to the contractor's billing office, with a copy to the appropriate GSA zone office, within 15 calendar days of receipt of the invoice, pursuant to 31 U.S.C. 390(5) and OMB circular A–125, sec. 6b., which implement the Prompt Payment Act.

c. No suspension of service will be initiated where such disputes exist if an activity has paid the balance of undisputed billings. The GSA contracting officer will make the final decisions concerning any disputed charges.

d. Any suspension will be taken only against the activity to which the account number is assigned, not against the entire agency.

e. Service shall be restored within 5 calendar days of payment of the overdue amount(s).

11. *Shipment weight and charge.* Rates applicable under this regulation will be assessed on the total weight of each shipment moving at one time from one consignor to one consignee. For example, if three packages weigh one pound each, the applicable charge of the shipment will be computed at the rate applicable to one 3-pound package.

12. *Agency procedures for obtaining service.*

a. Pickup service as noted in subpar. 6j may be ordered on an as-needed basis. In these instances, agencies shall allow the contractor a minimum of 2 hours to make the pickup. For repetitive shipments agencies may arrange with the contractor to install "lock boxes" and/or furnish regular pickup service at specified times on specified days to meet the shipper's requirements. Agencies should arrange such security clearances and passes as may be necessary to enable the contractor to perform pickup services in a timely fashion in accordance with agency procedures.

b. When and where practicable, agencies shall minimize transportation and administrative costs by consolidating into one shipment packages moving at one time from one consignor to one consignee.

c. Agencies shall determine the weight of each shipment and have the weight indicated on the appropriate commercial form. The total weight of a shipment shall be rounded to the nearest whole pound. Shipments weighing less than 1 pound shall be shown as weighing 1 pound.

d. Where the Government requires special services beyond the scope of the contract (such as weekend or holiday pickup and delivery, escorted courier services, insurance, airbill copies, and proof of delivery, international service, service to communities not served next day by the contractor or its agent), an agency will have the option either to purchase these services from the contractor at the same fees charged to its regular commercial customers or use another carrier.

e. Agencies shall provide the contractor with a billing address at the time an agency account is established. To ensure that billings are directed to the proper paying office and subsequent payments are credited, agencies may establish a centralized payment system or clearly identify individual shipping activities/accounts to which billings are to be directed. Some agencies may require more than one account number per ordering activity if they wish to differentiate billing of different type shipments.

f. Agencies using a purchase order (PO), a blanket purchase agreement (BPA) pursuant to 48 CFR Subpart 13.2 or other simplified acquisition procedures, should provide the following information:

(1) Name of contractor;

(2) Account number(s);

(3) GSA contract number GS–00F–88038;

(4) Purchase order number;

(5) "Bill to" address;

(6) Term of the BPA/PO; and

(7) Total dollar value authorized under the BPA/PO.

g. The contractor's Government coordinator may be contacted to establish accounts or resolve service issues. (See attachment A.)

13. *Contractor performance.* The performance of contractor responsibilities as specified in par. 8 is essential to meet the objectives for which the express small package contract and these regulations were developed. Agencies should notify the appropriate GSA zone office, Federal Supply Service Bureau, Attn: Traffic and Travel Services Zone Manager, in writing, when the contractor fails to meet its contractural responsibilities. For purposes of this paragraph, the appropriate GSA zone office is that office listed in attachment B having

jurisdiction over specified locations from which a shipment originates. These agency reports shall be compiled and forwarded for appropriate action to the GSA Travel and Transportation Management Division (FBT), Washington, DC 20406.

14. *Comments.* Comments and recommendations concerning use of this program or implementing regulations may be submitted to the General Services Administration, Travel and Transportation Management Division (FBT), Washington, DC 20406.

15. *Effects on other directives.* FPMR Temporary Regulation A–23 and supplements 3 through 5 are canceled.

**John Alderson,**

*Acting Administrator of General Services.*

## *Contractor, Shipment Charges, and Geographical Areas*

CONTRACTOR CODE AND NAME: DHL–DHL AIRWAYS, INCORPORATED

| Shipment weight (lbs) | Shipment charge |
|---|---|
| 1 | $4.94 |
| 2 | 5.88 |
| 3 | 6.82 |
| 4 | 7.76 |
| 5 | 8.70 |
| 6 | 9.64 |
| 7 | 10.58 |
| 8 | 11.52 |
| 9 | 12.46 |
| 10 | 13.40 |
| 11 | 14.34 |
| 12 | 15.28 |
| 13 | 16.22 |
| 14 | 17.16 |
| 15 | 18.10 |
| 16 | 19.04 |
| 17 | 19.98 |
| 18 | 20.92 |
| 19 | 21.86 |
| 20 | 22.80 |
| 21 | 23.74 |
| 22 | 24.68 |
| 23 | 25.62 |
| 24 | 26.56 |
| 25 | 27.50 |
| 26 | 28.44 |
| 27 | 29.38 |
| 28 | 30.32 |
| 29 | 31.26 |
| 30 | 32.20 |
| 31 | 33.14 |
| 32 | 34.08 |
| 33 | 35.02 |
| 34 | 35.96 |
| 35 | 36.90 |
| 36 | 37.84 |
| 37 | 38.78 |
| 38 | 39.72 |
| 39 | 40.66 |
| 40 | 41.60 |
| 41 | 42.54 |
| 42 | 43.48 |
| 43 | 44.42 |
| 44 | 45.36 |
| 45 | 46.30 |
| 46 | 47.24 |
| 47 | 48.18 |
| 48 | 49.12 |
| 49 | 50.06 |
| 50 | 51.00 |

*Geographical Areas Served*

The DHL contract rates listed in this attachment apply to any location within the geographical area of cities, towns, and communities in the United States (including Alaska and Hawaii) and Puerto Rico, where DHL or its agent presently, or in the future, provides or will provide next day service to the extent prescribed in par. 8 of this regulation. The geographical area of cities, towns, and communities is the U.S. Postal Service national five-digit ZIP code area listed in DHL's publication, "DHL Express Guide for U.S. Federal Government Shippers," or as may be subsequently identified by DHL as being served next day. Since it is impracticable to print a current area listing in these regulations, agencies may determine up-to-date areas of service and obtain other information by contacting either DHL's Government coordinator at 703–684–0102, the DHL offices listed herein, or the appropriate GSA office listed in attachment B. DHL will furnish its guide to agencies upon request.

**DHL Offices**

*Alabama*

Birmingham, (205) 591–6560
Huntsville, (205) 772–3887
Mobile, (800) 231–3391
Montgomery, (205) 265–5666

*Alaska*

Anchorage, (907) 243–1503
Fairbanks, (907) 456–1707
Homer, (907) 235–5244
Juneau, (907) 789–2187
Kenai, (907) 283–4650
Ketchikan, (907) 225–5777
Kodiak, (907) 486–5354
Prudhoe Bay, (907) 659–2547
Sitka, (907) 747–3063
Valdez, (907) 835–2625

*Arizona*

Phoenix, (602) 244–9922
Tucson, (602) 294–1887

*Arkansas*

Little Rock, (501) 562–1666

*California*

Bakersfield, (805) 392–0183
Burbank, (818) 785–7555
Concord, (800) 345–6011
Fresno, (209) 454–0535
Los Angeles, (213) 973–7300
Ontario, (714) 241–1520
Oxnard, (805) 967–5551
Sacramento, (916) 929–1112
San Diego, (619) 275–3890
San Francisco, (415) 345–9400
San Jose, (408) 345–9400
Santa Ana,
(714) 241–1520
Santa Barbara, (805) 967–5551
Santa Maria, (805) 967–5551
Stockton, (800) 632–4774
Van Nuys, (213) 973–7300

*Colorado*

Colorado Springs, (303) 528–6777
Denver, (303) 388–9212

*Connecticut*

Hartford, (203) 683–2014

*Delaware*

(215) 461–8111

*District of Columbia*

Washington, (703) 684–8733

*Florida*

Ft. Lauderdale, (305) 791–7400
Ft. Myers, (800) 231–3391
Jacksonville, (904) 739–2327
Melbourne, (305) 851–1432
Miami, (305) 592–8795
Orlando, (305) 851–1432
Pensacola, (800) 231–3391
St. Petersburg, (813) 886–5889
Sarasota, (813) 886–5889
Tallahassee, (800) 231–3391
Tampa, (813) 886–5889
West Palm Beach, (305) 737–2922

*Georgia*

Atlanta, (404) 997–1635
Savannah, (912) 233–5111

*Hawaii*

Hilo, (808) 836–0441
Honolulu, (808) 836–0441
Kaanapali, (808) 836–0441
Kahului, (808) 836–0441
Kailua/Kona, (808) 836–0441
Lihue, (808) 836–0441

*Idaho*

Boise, (208) 322–1466
Idaho Falls, (800) 828–3314
Lewiston, (800) 828–3314
Pocatello, (800) 828–3314
Twin Falls, (800) 828–3314

*Illinois*

Chicago, (312) 456–3200
Decatur, (800) 942–0503
Moline, (800) 942–0503
Peoria, (800) 942–0503
Rockford, (800) 942–0503
Springfield, (800) 942–0503

*Indiana*

Fort Wayne, (800) 231–3391
Indianapolis, (317) 241–4464
South Bend, (800) 231–3391

*Iowa*

Cedar Rapids, (800) 942–0503
Des Moines, (515) 282–5418

*Kansas*

Kansas City, (816) 587–5040
Topeka, (913) 232–5096
Wichita, (316) 263–8300

*Kentucky*

Lexington, (606) 254–0105
Louisville, (502) 499–7131

*Louisiana*

Baton Rouge, (800) 231–3391
Lafayette, (800) 231–3391
Lake Charles, (800) 231–3391

BEST COPY AVAILABLE

New Orleans, (504) 464–0231
Shreveport, (318) 631–9843

*Maine*

Portland, (800) 225–5345

*Maryland*

Baltimore, (301) 768–3730

*Massachusetts*

Boston, (617) 846–8900

*Michigan*

Battle Creek, (800) 446–6650
Detroit, (313) 388–6810
Flint, (800) 446–6650
Grand Rapids, (800) 446–6650
Jackson, (800) 446–6650
Lansing, (800) 446–6650
Saginaw, (800) 446–6650

*Minnesota*

Duluth, (800) 272–1825
Minneapolis/St. Paul, (612) 727–1100
Rochester, (800) 272–1825
St. Cloud, (800) 272–1825

*Mississippi*

Gulfport, (800) 231–3391
Jackson, (800) 231–3391

*Missouri*

Kansas City, (816) 587–5040
St. Louis, (314) 423–8663
Springfield, (913) 621–0900

*Montana*

Billings, (800) 826–1063

*Nebraska*

Lincoln, (402) 474–1111
Omaha, (402) 330–6806

*Nevada*

Las Vegas, (702) 798–4090
Reno, (702) 358–0545

*New Hampshire*

Manchester, (800) 225–5345

*New Jersey*

Newark, (201) 225–8800
Teterboro, (201) 225–8800
Trenton, (201) 382–8820

*New Mexico*

Albuquerque, (505) 292–7699

*New York*

Albany, (800) 632–3301
Buffalo, (716) 685–2500/01/03/04
Elmira, (800) 225–5345
Farmingdale, (516) 333–3370
New York City, (718) 917–8000
Rochester, (716) 436–7031
Syracuse, (315) 432–8953
White Plains, (914) 683–1183

*North Carolina*

Charlotte, (704) 398–2354
Fayetteville, (704) 398–2354
Greensboro, (919) 668–9533
High Point, (919) 668–9533
Raleigh/Durham, (919) 787–9584
Wilmington, (800) 722–8620
Winston-Salem, (919) 668–9533

*North Dakota*

Bismarck, (612) 727–1100
Fargo, (701) 232–2838
Moorhead, (800) 272–1825

*Ohio*

Akron, (216) 798–0155
Cincinnati, (606) 331–7777
Cleveland, (261) 671–4700
Columbus, (614) 252–8470
Dayton, (513) 252–3773
Toledo, (419) 866–1560
Youngstown, (261) 671–4700

*Oklahoma*

Oklahoma City, (405) 682–8088
Tulsa, (918) 622–8311

*Oregon*

Eugene, (503) 257–3551
Medford, (503) 257–3551
Portland, (503) 275–3551
Redmond, (503) 257–3551

*Pennsylvania*

Allentown/Bethlehem/Easton, (215) 264–4550
Erie, (412) 262–2764
Philadelphia, (215) 461–8111
Pittsburgh, (412) 262–2764
Scranton, (800) 225–5345
York, (717) 564–7860

*Rhode Island*

Providence, (401) 739–5900

*Puerto Rico*

San Juan, (809) 757–5800

*South Carolina*

Charleston, (803) 767–0275
Columbia (803) 796–9640
Florence, (803) 767–0275
Greenville/Spartanburg, (803) 234–8651

*South Dakota*

Sioux Falls, (605) 335–8053 + dial tone + 950–1088

*Tennessee*

Chattanooga, (404) 820–0621
Johnson City, (800) 231–3391
Knoxville, (615) 970–2232
Memphis, (901) 795–9911
Nashville, (615) 889–4602

*Texas*

Addison, (214) 471–1999
Amarillo, (800) 833–0151
Austin (512) 928–3960
Beaumont/Pt. Arthur, (713) 442–4500
College Station, (713) 442–4500
Corpus Christi, (800) 833–0151
Dallas/Ft. Worth, (214) 471–1999
El Paso, (800) 833–0151
Harlingen-McAllen/Brownsville, (800)–833–0151
Houston, (713) 442–4500
Lake Jackson, (713) 442–4500
Laredo, (800) 833–0151
Longview/Tyler, (214) 757–9287
Lubbock, (800) 833–0151
Midland, (800) 833–0151
San Antonio, (512) 491–0430
Sugarland, (713) 442–4500
Texarkana, (800) 833–0151
Town & Country, (800) 833–0151
Victoria, (713) 442–4500

*Utah*

Ogen, (801) 539–8900
Provo, (801) 539–8900
Salt Lake City (801) 539–8900

*Vermont*

Burlington, (800) 225–5345

*Virginia*

Charlottesville, (800) 225–5345
Norfolk, (804) 857–6116
Richmond, (804) 353–2277
Roanoke, (800) 225–5345

*Washinton*

Pasco, (800) 468–6856
Seattle, (206) 763–4222
Spokane, (509) 456–6200
Wenatchee, (800) 468–6856
Yakima (800) 468–6856

*West Virginia*

Charleston, (800) 225–5345
Huntington, (800) 225–5345

*Wisconsin*

Appleton, (800) 242–5243
Greenbay, (414) 762–3372
Madison, (800) 242–5243
Manitowoc, (414) 762–3372
Wausau, (414) 762–3372
Milwaukee, (414) 762–3372

*Wyoming*

Casper, (800) 826–1063
Cheyenne, (800) 826–1063

**Attachment B**

*Areas of Jurisdiction, Federal Supply Service Bureaus, Traffic and Travel Services Zone Offices*

Eastern Zone

Jurisdiction: AL, CT, DE, FL, GA, KY, MA, MD (note A), ME, MS, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, TN, VT, VA (note B), Virgin Islands, WV
Address: GSA, Attn: 4FBT, 75 Spring Street, SW., Atlanta, GA 30303
Telephone: FTS 242–5121, CML (404) 331–5121

Central Zone

Jurisdiction: IA, IL, IN, KS, MI, MN, MO, NE, OH, WI
Address: GSA, Attn: 6FBT, 1500 E. Bannister Street, Kansas City, MO 64131
Telephone: FTS (not available), CML (816) 523–8029

Southwestern Zone

Jurisdiction: AR, CO, LA, MT, ND, NM, OK, SD, TX, UT, WY
Address: GSA, Attn: 7FBT, 819 Taylor Street, Fort Worth, TX 76102
Telephone: FTS 334–2737, CML (817) 334–2737

Western Zone

Jurisdiction: AK, American Samoa, AZ, CA, GU, HI, ID, NV, Northern Mariana Islands, OR, Pacific Trust Territories, WA
Address: GSA, Attn: 9FBT, 525 Market Street, San Francisco, CA 94105
Telephone: FTS 454–9288, CML (415) 974–9288

National Capital Region (NCR)

Jurisdiction: DC, MD (note C). VA (note D)

Address: GSA, Attn: WFBT, 7th & D Streets, SW., Washington, DC 20407
Telephone: FTS 472-1626, CML (202) 472-1626
Note A—Except for those counties under NCR jurisdiction as listed in note C.
Note B—Except for those cities and counties under NCR jurisdiction as listed in note D.
Note C—Counties of Prince Georges and Montgomery only.
Note D—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

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## 41 CFR Parts 201-11, 201-30, 201-31, and 201-32

[FIRMR Amdt. 13]

## Revision To Remove Additional Redundant and Nonregulatory Provisions

**AGENCY:** Information Resources Management Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This revision is the second of two amendments to streamline and simplify the FIRMR by immediately removing redundancies and nonregulatory provisions. The first amendment removed and updated provisions without change to regulatory requirements, policies, or procedures. This amendment consolidates provisions and removes additional provisions not requiring regulatory coverage. Although the amendment results in no policy revisions, some changes have been made to reporting requirements and procedures. The intent is to streamline and simplify provisions to facilitate useability.

**EFFECTIVE DATE:** This rule is effective October 3, 1988, but may be observed earlier.

**FOR FURTHER INFORMATION CONTACT:** Carolyn A. Thomas, Regulations Branch, Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194.

**SUPPLEMENTARY INFORMATION:** (1) The purpose of this amendment is to streamline and simplify FIRMR provisions to facilitate ease of use. Although no changes have been made to current policies, some changes have been made to reporting requirements and procedures.

(2) A notice of proposed rulemaking regarding this action was published in the **Federal Register** on January 22, 1988. All comments received have been considered.

(3) Changes made in 41 CFR Chapter 201 are explained in the following paragraphs.

(a) In Part 201-11, Competition, the following changes are made.

(i) Section 201-11.001, paragraph (b) is revised to incorporate provisions removed from § 201-11.003, paragraph (a) related to the full and open competitive objective.

(ii) Section 201-11.003, paragraph (a) is removed to eliminate redundant provisions on full and open competition as the basic procurement objective of the Government. Pertinent provisions from paragraph (a) are consolidated in § 201-11.001 (subject: the full and open competitive objective).

(iii) Section 201-11.003, paragraph (b) is revised to incorporate provisions removed from § 201-30.008 related to agency responsibilities for managing and planning for full and open competition in subsequent procurements.

(iv) Section 201-11.003, paragraph (c) is revised to make editorial changes.

(b) The changes made in Part 201-30, Management of ADP Resources, are explained in the following paragraphs.

(i) Section 201-30.007, paragraph (c), which contains provisions on the use of specifications, is removed. Pertinent provisions from paragraph (c) are consolidated in § 201-30.013 (subject: specifications).

(ii) Section 201-30.007, paragraphs (d)(5) and (d)(6) are removed as factors to be considered in the determination of need and requirements analysis. Paragraph (d)(5) is consolidated in § 201-30.009 (subject: analysis of alternatives for satisfying a requirement) since the provisions contained in that paragraph are more appropriate as factors to be considered when analyzing alternatives. The provisions contained in paragraph (d)(6) are adequately covered in paragraph (d)(3).

(iii) In § 201-30.008, paragraph (a) is revised to clarify use of the determination of need and requirements analysis in determining the system/item life and to remove provisions related to unplanned augmentations. Paragraph (d) is revised to remove and consolidate in § 201-11.003, provisions related to agency responsibilities for managing and planning for full and open competition for subsequent procurements. Paragraph (d) is further revised to clarify existing provisions on system/item life and to expand upon provisions related to unplanned augmentations and the need for a new system/item life.

(iv) In § 201-30.009, paragraph (a) is revised to remove the cross-reference to § 201-16.002 and paragraph (b) is revised to remove the cross-reference to § 201-30.009-2(a). Paragraph (a)(2), providing information related to the requirements of OMB Circular A-130 when sharing ADP resources, is moved to § 201-31.001 since that section addresses policies for sharing ADP resources. A new paragraph (a)(3) is added to include provisions removed from § 201-30.007 (see paragraph 2b).

(v) In § 201-30.013, paragraph (a) is revised by removing the parenthetical listing of responsible sources to obtain full and open competition and paragraph (b) is revised to remove the cross-reference to § 201-11.002-1. Paragraph (a) is also revised to include provisions removed from § 201-30.007 (see paragraph 2a).

(c) The changes made in Part 201-31, Sharing of ADP Resources, are explained in the following paragraphs.

(i) Section § 201-31.001 is revised to include provisions removed from § 201-30.009 (see paragraph 2d).

(ii) Section 201-31.006, paragraph (b) requiring agencies to report to GSA on services obtained from commercial sources is removed.

(d) The changes made in Part 201-32, Contracting for ADP Resources, are explained in the following paragraphs.

(i) Section 201-32.103, requiring agencies to report to GSA when contracting for major system acquisitions under OMB Circular A-109 is removed.

(ii) Section 201-32.106, paragraph (a) serving to cross-reference FAR provisions on synopsizing is removed.

(iii) In § 201-32.206, paragraphs (g)(2)(iii)(A) through (g)(2)(iii)(C) are removed. These paragraphs contained provisions for issuing solicitations and synopsizing procurements when the results of a schedule order synopsis indicates that ordering from a GSA nonmandatory ADP schedule may not result in the lowest overall cost alternative to the Government. The provisions of the Federal Acquisition Regulation are applicable.

(4) The General Services Administration (GSA) has determined that this is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**List of Subjects in 41 CFR Parts 201–11, 201–30, 201–31, and 201–32**

Information resources activities, Competition.

## PART 201–11—COMPETITION

1. The authority citation for Part 201–11 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. Section 201–11.001, paragrpah (b) is revised to read as follows:

**§ 201–11.001 The full and open competition objective.**

* * * * *

(b) It is essential that agencies accomplish proper management actions, including planning and market research activities before contract actions becomes imminent. This requires an acquisition strategy, suitable to the circumstances, in which the statement of the user's requirement is set forth in the least restrictive terms possible without compromising economy or efficiency. It shall be designed to elicit favorable offers from all responsible sources capable of satisfying the Government's needs.

* * * * *

3. Section 201–11.003 is revised to read as follows:

**§ 201–11.003 Agency responsibilities.**

(a) Both agency information resources managers and contracting officers have the responsibility for ensuring that the Government's basic procurement objective for full and open competition is met. This responsibility extends to fostering competitive conditions and planning for subsequent procurements. The information contained in prior justifications for other than full and open competition shall be used to manage and plan actions necessary to foster competitive conditions for subsequent procurements.

(b) Agencies must consider the systems life and contract expiration dates for existing systems when planning for future information resources requirements activities. Agency plans for follow-on procurements should allow sufficient time for completion of the acquisition process, including any required conversion of data files and programs. Agencies shall begin competition for the follow-on period in sufficient time to ensure completion before the expiration of the existing contract.

## PART 201–30—MANAGEMENT OF ADP RESOURCES

1. The authority citation for Part 201–30 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. Section 201–30.007 is amended by removing paragraph (d) and revising paragraph (c) to read as follows:

**§ 201–30.007 Determination of need and requirements analysis.**

* * * * *

(c) As a minimum, the agency shall consider the following factors in the requirements analysis:

(1) The information processing functions that must be performed.

(2) The agency applications, information resource systems, and components involved, their physical locations, and operational constraints.

(3) The problem that will be solved by acquiring new or additional equipment, systems and/or software.

(4) The nature of the data or information to be generated, transmitted, or stored on the proposed equipment or system, who will mintain it, and who will require access to it.

(5) Space management considerations; e.g., heat dissipation, air flow, temperature range, relative humidity, energy conservation, power supply, cables, including coordination with building managers and GSA. (See FPMR § 101–17.101–5.)

(6) The present and projected workload in terms of:

(i) Systems life;

(ii) Data entry and associated telecommunications support;

(iii) Data base(s) and data base management;

(iv) Data handling or transaction processing by type and volume;

(v) Output needs and associated telecommunications support;

(vi) Expandability requirements; and

(vii) Privacy and security safeguards.

(7) A performance evaluation of the currently installed ADP system(s) to provide a baseline for evaluation of proposed alternatives for meeting the data processing needs.

(8) The risks over the systems life of adverse impact on agency missions by acquiring insufficient ADPE capacity versus the extra costs of acquiring excessive ADPE capacity.

(9) The appropriate performance and capability validation techniques that should be employed in the acquisition.

3. Section 201–30.008 is amended by revising paragraphs (a) introductory text, (a)(1), and (d) to read as follows:

**§ 201–30.008 Determination of system/item life.**

(a) Except as provided in paragraph (c) of this § 201–30.008, the Government system/item life shall be established by the initial acquiring agency as a part of each determination of need and requirements analysis. This life shall be used in the evaluation to determine the lowest overall cost offer and whether purchase, lease to ownership, lease with option to purchase, or straight lease is the lowest cost method of acquisition for the Government. The following factors shall be considered in determining the Government system/item life:

(1) The period of time that the system/item, plus any planned augmentation, will satisfy the needs of the initial user;

* * * * *

(d) Agencies shall consider subsequent procurement when establishing system/item lives. If augmentation other than that provided for in the initial acquisition is necessary, consideration should be given to establishing a new system/item life. The new system/item would be useful for replacement planning and lease/purchase evaluations.

4. Section 201–30.009 is revised to read as follows:

**§ 201–30.009 Analysis of alternatives for satisfying a requirement.**

(a) A comparative cost analysis shall be performed for each identified requirement or when planning indicates the possible existence of outdated ADPE. The purpose of the analysis is to determine which alternative will meet the user's needs at the lowest overall cost over the system/item life. The alternatives to be considered shall include, but are not limited to the following:

(1) Use of non-ADP resources to satisfy the requirement.

(2) Use of existing ADP facilities (e.g., Federal Data Processing Centers) and resources on a shared basis.

(3) Use of reassigned or excess Government-owned or -leased equipment.

(4) Use of commercial ADP services.

(5) Redesign of application programs, using Federal or ANSI standard language to the maximum practicable extent.

(6) Revision of production schedule or job stream and matching work elements to resource systems to improve productivity.

(7) Addition or change in working shifts to increase capacity.

(8) Augmentation of installed ADPE by adding additional components to increase data processing capacity.

(9) Upgrading selected system components, such as adding additional selector channels, memory, faster tape or disk units, etc., in order to improve throughput capability

(10) Replacing installed ADP system with a compatible system that will handle the workload.

(11) Competitive replacement of the installed ADP system through use of functional specifications.

(b) Where the analysis includes evaluation of the continued use of outdated ADPE, the analysis shall also evaluate the newer functionally-similar ADPE alternatives. Identifiable and quantifiable costs that are directly related to the costs of obsolescence (e.g., maintenance and operation, energy consumption, floor space, personnel, and other applicable factors) shall be considered.

4. Section 201–30.013 is revised to read as follows:

**§ 201–30.013 Specifications.**

(a) Agencies shall design ADP specifications to describe their requirements based on need and the specific circumstances of the agency. Specifications shall be designed to obtain full and open competition from all responsible sources with due regard to the nature of the property or services to be acquired, including market availability to satisfy needs. Functional specifications maximize competition. If functional specifications cannot be used, other types of specifications shall be used in the following order of precedence:

(1) Equipment performance specifications.

(2) Software and equipment plug-to-plug compatible functionally equivalent specifications.

(3) Brand name or equal specifications.

(4) Specific make and model specifications.

(b) Specific make and model type specifications restrict competition. Use of this type of specification must be justified.

## PART 201–31—SHARING OF ADP RESOURCES

1. The authority citation for Part 201–31 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. The table of contents for Part 201–31 is amended by revising the entry for § 201–31.006 to read as follows:

201–31.006 Reporting of sharing.

3. Section 201–31.001 is revised to read as follows:

**§ 201–31.001 Relationship to management policy.**

OMB Circular A–130 requires executive agencies to establish a management control procedure to determine which existing data processing facility will be used to support major new applications. Agencies shall consider sharing and use of existing ADP resources as an economical and efficient means of meeting their ADP needs.

**§ 201–31.006 [Amended]**

4. The section heading for § 201–31.006 is revised to read as follows:

**§ 201–31.006 Reporting of sharing.**

5. Section 201–31.006 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

## PART 201–32—CONTRACTING FOR ADP RESOURCES

1. The authority citation for Part 201–32 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. The table of contents for Part 201–32 is amended by removing and reserving the entry for § 201–32.103 to read as follows:

§ 201–32.103 [Reserved]

**§ 201–32.103 [Reserved]**

3. Section 201–32.103 is removed and reserved.

**§ 201–32.106 [Amended]**

4. In § 201.32.106 remove paragraph (a) and redesignate paragraphs (b) through (d) as paragraphs (a) through (c). Newly redesignated paragraph (b) is amended by changing the reference to "Section 201–32.106(b)" to read "Section 201–32.106(a)". Newly redesignated paragraph (c) is amended by changing the reference to "paragraph (b) of this section" to read "paragraph (a) of this section ", and changing the reference to "§ 201–32.106(d)" to read "§ 201–32.106(c)".

**§ 201–32.206 [Amended]**

5. In § 201–32.206, paragraph (g)(2)(iii) introductory text, remove the words "In this event:" at the end of the paragraph, and remove paragraphs (g)(2)(iii) (A) through (g)(2)(iii) (C).

Dated: July 7, 1988.

**John Alderson,**

*Acting Administrator of General Services.*

[FR Doc. 88–17304 Filed 8–1–88; 8:45 am]

BILLING CODE 6820–25–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 64**

**[Docket No. 6803]**

### Suspension of Community Eligibility Under the National Flood Insurance Program; New York; Correction

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes correction to final rule, Suspension of Community Eligibility under the National Flood Insurance Program, (NFIP), published on July 27, 1988, at 53 FR 28206, Docket No. 6802. The following community was erroneously omitted from this rule. It should be added to the list of communities subject to be suspended on August 4, 1988 for failure to adopt the required NFIP October 1, 1986 revised regulations.

Community Name: Town of Orwell
State: New York
County: Oswego
Community Number: 361262
Effective date: August 4, 1988

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, Room 416, Washington, DC 20472.

## PART 64—[CORRECTED]

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88–17330 Filed 8–1–88; 8:45 am]

BILLING CODE 6718–21–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 0 and 64**

### Common Carrier Services; National Security and Emergency Preparedness

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action makes several editorial changes to the rules to reflect current organizational arrangements and functional assignments. The Order also amends the rules to reflect the internal responsibilities for national security and

emergency preparedness matters in light of the elimination of the Emergency Communications Division.

**EFFECTIVE DATE:** August 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Brent Weingardt, Office of the Managing Director, (202) 632-3906.

**SUPPLEMENTARY INFORMATION:**

**Order**

Adopted: June 24, 1988.

Released: July 21, 1988.

1. By this Order Part 0 and 64 of the rules are amended to simplify, clarify and update them to reflect current organizational arrangements and functional assignments at the Federal Communications Commission.

2. Also, various rule changes are made concerning National Security Emergency Preparedness related activities. Included are those changes required to transfer functions of the former Emergency Communications Division (ECD) to the Management Planning and Program Evaluation Office/Office of the Managing Director. Part 64, Appendix A, sections 7 and 10 are also amended to indicate that the Common Carrier Bureau is responsible for receiving and processing restoration priority (RP) certification applications instead of the Emergency Communications Division staff. These changes were previously approved by the Commission. The public should note that changes to the RP system are now under consideration by the Commission. *Notice of Proposed Rule Making in General Docket 87-505,* 2 FCC Rcd 724 (1987).

3. Because these amendments concern rules of agency organization, procedures or practices, the notice and comment provisions of the provisions of the Administrative Procedure Act are not applicable. *See* 5 U.S.C. 553(b)(A). These rules are not considered substantive in nature and are therefore effective upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d).

4. Because a notice of proposed rule making is not required, an initial and final regulatory flexibility analysis is not required. See the Regulatory Flexibility Act of 1980, 5. U.S.C. 603 and 604.

5. This action is taken under the Managing Director's delegated authority to make nonsubstantive, editorial amendments of the Commission's rules and regulations. 47 CFR 0.231(d).

6. Accordingly, it is ordered, pursuant to the authority provided by sections 4(i), 4(j), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 154(j) and 303(r), Part 0 and 64 of the Commission's Rules are amended as shown below.

**List of Subjects**

*47 CFR Part 0*

Organization and functions (Government agencies).

*47 CFR Part 64*

Civil defense.

**Rule Amendments**

Parts 0 and 64 of title 47 of the Code of Federal Regulations are amended as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 0.1 is revised to read as follows:

**§ 0.1 The Commission.**

The Federal Communications Commission is composed of five (5) members who are appointed by the president subject to confirmation by the Senate. Normally, one Commissioner is appointed or reappointed each year, for a term of five (5) years.

3. 47 CFR 0.5 is amended by revising paragraph (b) to read as follows:

**§ 0.5 General description of Commission organization and operations.**

* * * * *

(b) Staff responsibilities and functions. The organization and functions of these major staff units are described in detail in §§ 0.11 through 0.161. The defense and emergency preparedness functions of the Commission are set forth separately, beginning at Section 0.181. For a complete description of staff functions, reference should be made to those provisions. (See also the U.S. Government Organization Manual, which contains a chart showing the Commission's organization, the names of the members and principal staff officers of the Commission, and other information concerning the Commission.)

* * * * *

**§ 0.6 [Removed]**

4. 47 CFR 0.6 is removed.

5. 47 CFR 0.11 is amended by revising paragraph (b) to read as follows:

**§ 0.11 Functions of the office.**

* * * * *

(b) The Secretary is the official custodian of the Commission's documents.

**§ 0.12 [Removed]**

6. 47 CFR 0.12 is removed.

**§ 0.16 [Removed]**

7. 47 CFR 0.16 is removed.

**§ 0.32 [Removed]**

8. 47 CFR 0.32 is removed.

**§ 0.42 [Removed]**

9. 47 CFR 0.42 is removed.

**§ 0.62 [Removed]**

10. 47 CFR 0.62 is removed.

**§ 0.92 [Removed]**

11. 47 CFR 0.92 is removed.

**§ 0.112 [Removed]**

12. 47 CFR 0.112 is removed.

13. 47 CFR 0.121 is revised to read as follows:

**§ 0.121 Location of field installations.**

(a) Field offices are located throughout the United States. For the address and phone number of the closest office contact the Field Operations Bureau or see the U.S. Government Manual.

(b) Protected field offices are located at the following geographical coordinates:

Allegan, Michigan
42</d>36'20" N. Latitude
85</d>57'20" W. Longitude
Anchorage, Alaska
61</d>09'43" N. Latitude
149</d>59'55" W. Longitude
Belfast, Maine
44</d>26'42" N. Latitude
69</d>04'58" W. Longitude
Canandaigua, New York
42</d>54'48" N. Latitude
77</d>15'59" W. Longitude
Douglas, Arizona
31</d>30'02" N. Latitude
109</d>39'12" W. Longitude
Ferndale, Washington
48</d>57'21" N. Latitude
122</d>33'13" W. Longitude
Grand Island, Nebraska
40</d>55'21" N. Latitude
98</d>25'42" W. Longitude
Kingsville, Texas
27</d>26'29" N. Latitude
97</d>53'00" W. Longitude
Laurel, Maryland
39</d>09'54" N. Latitude
76</d>49'17" W. Longitude
Livermore, California
37</d>43'30" N. Latitude
121</d>45'12" W. Longitude
Powder Springs, Georgia
33</d>51'44" N. Latitude
84</d>43'26" W. Longitude
Sabana Seca, Puerto Rico
18</d>27'23" N. Latitude
66</d>13'37" W. Longitude

Santa Isabel, Puerto Rico
18</d>00'26" N. Latitude
66</d>22'32" W. Longitude
Vero Beach, Florida
27</d>36'21" N. Latitude
80</d>38'06" W. Longitude
Waipahu, Hawaii
21</d>22'45" N. Latitude
157</d>59'54" W. Longitude

**§ 0.132 [Removed]**

14. 47 CFR 0.132 is removed.

**§ 0.152 [Removed]**

15. 47 CFR 0.152 is removed.

**§ 0.176 [Removed]**

16. 47 CFR 0.176 is removed.

17. 47 CFR 0.183 is revised to read as follows:

**§ 0.183 Emergency Communications Administration.**

The Management Planning and Program Evaluation Office, Office of the Managing Director, coordinates the National Security and Emergency Preparedness (NSEP) activities of the Federal Communications Commission including Continuity of Government Planning and the Emergency Broadcasting System (EBS) and other such functions as may be delegated during a national emergency or activation of the President's war emergency powers as specified in section 706 of the Communications Act; maintains liaison with FCC Bureaus/Offices, other government agencies, the telecommunications industry and FCC licensees on NSEP matters; and, as requested, represents the Commission at NSEP meetings and conferences.

18. 47 CFR 0.186 is revised to read as follows:

**§ 0.186 Emergency Relocation Board.**

(a) As specified in the Commission's Continuity of Government Plan and consistent with the exercise of the War Emergency Powers of the President as set forth in section 706 of the Communications Act of 1934, as amended, an Emergency Relocation Board will be convened at the Commission's Headquarters or other relocation site designated to serve as Primary FCC Staff to perform the functions of the Commission following the announcement of national level mobilization of the Federal government by the President or other designated authority; in the absence of such announcement, immediately following receipt of an attack warning signal; or in the absence of either announcement or attack warning, immediately following an actual attack.

(b) The Board shall comprise such Commissioners as may be present and able to act. In the absence of the Chairman, the Commissioner present with the longest seniority in office will serve as acting Chairman. If no Commissioner is present and able to act, the person designated as next most senior official in the Commission's Continuity of Government Plan will head the Board.

19. 47 CFR 0.231 is amended by adding paragraph (l) to read as follows:

**§ 0.231 Authority delegated.**

* * * * *

(l) The Secretary, acting under the supervision of the Managing Director, serves as the official custodian of the Commission's documents and shall have authority to appoint a deputy or deputies for purposes of custody and certification of documents located in Gettysburg, Pennsylvania or other established locations.

20. 47 CFR 0.284 is amended by revising paragraph (a)(4) to read as follows:

**§ 0.284 Actions taken under delegated authority.**

(a) * * *

(4) Matters involving emergency communications, including the issuance of Emergency Broadcast System Authorizations (FCC Form 392)—Office of the Managing Director.

* * * * *

21. 47 CFR 0.314 is amended by revising paragraph (g) to read as follows:

**§ 0.314 Additional authority delegated.**

* * * * *

(g) To act on and make determinations on behalf of the Commission regarding requests for reassignment of restoration priority levels and assignment of new restoration priorities concerning the restoration in emergencies of common carrier-provided intercity private line service pursuant to Appendix A of Part 64 of the Commission's rules when, for any reason, the Commission's RP processing staff cannot be contacted.

* * * * *

22. The heading preceding 47 CFR 0.381 is revised to read as follows:

**National Security and Emergency Preparedness Delegations**

23. 47 CFR 0.383 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 0.383 Emergency Relocation Board, authority delegated.**

(a) During any period in which the Commission is unable to function because of the circumstances set forth in § 0.186(b), all work, business or functions of the Federal Communications Commission arising under the Communications Act of 1934, as amended, is assigned and referred to the Emergency Relocation Board.

* * * * *

24. 47 CFR 0.387 is amended by revising paragraph (a) to read as follows:

**§ 0.387 Other National Security and Emegency Preparedness delegations; cross reference**

(a) For authority of the Chief of the Mass Media Bureau to issue Emergency Broadcast System Authorizations (FCC Form 392), see §§ 0.284(a)(4) and 73.913.

* * * * *

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

25. The authority citation for Part 64 continues to read as follows:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

26. 47 CFR Part 64, Appendix A is amended by revising section 7, paragraph b. to read as follows:

**Appendix A—Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services**

* * * * *

7. Certification

b. All other private line users are required to provide their request for a restoration priority directly to the FCC. This information is to be filed on FCC Form 915—Priority Request and Certification—and will be used by the Commission's RP processing staff (Common Carrier Bureau) in making a determination. Each request should be accompanied by a copy of an emergency communications plan or reference to an FCC approved plan for the individual user organization or for an industry [e.g.: Aeronautical Emergency Communications System (AECS)]. In addition, a recommendation from the associated Federal agency is required for restoration priority requests to the FCC that involve prearranged voluntary participation with the Federal government in emergencies. In applying for a restoration priority the user of a private line service accepts responsibility for making semi-annual appraisals of the criticality of the service, for making appraisals at the time of any change in the nature or use of the service, and for notifying the FCC promptly of discontinuation of the

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service or of any factors that may affect either the requirement for restoration priority or the level of priority.

* * * * *

Federal Communications Commission.

**Edward J. Minkel,**

*Managing Director.*

[FR Doc. 88-17270 Filed 8-1-88; 8:45 am]

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**47 CFR Part 73**

**[MM Docket No. 87-298; RM-5754]**

## Radio Broadcasting Services; Garden City, IN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document stays the opening of the filing window for FM Channel 275A at Garden City, Indiana. This window period for filing applications would have opened on July 12 and closed on August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order Granting Petition for Stay, MM Docket No. 87-298, adopted July 7, 1988, and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16658 Filed 8-1-88; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 53, No 148
Tuesday, August 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Parts 831 and 841

## Court Orders Affecting Retirement Benefits

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing regulations concerning modifications of State court orders affecting survivor annuities under the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS). These rule implement sections 8341(h)(4) and 8445(d) of Title 5, United States Code, that, after the retirement or death of the employee, prohibit modification of State court orders relating to survivor annuities. These regulations clarify that OPM will not honor a State court order awarding a survivor annuity if issued after the retirement or death of the employee unless that order actually terminates the marriage. The regulations also clarify that State courts cannot bypass the statutory prohibition against modifications by reserving jurisidiction in the decree terminating the marriage or by making the award effective retroactively to the date of the judgment terminating the marriage.

**DATE:** Comments must be received on or before October 3, 1988.

**ADDRESS:** Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Siegelman, (202) 632–4682.

**SUPPLEMENTARY INFORMATION:** The Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, added section 8341(h) to title 5, United States Code. This section permits State courts, when terminating a marriage, to award survivor annuities under CSRS to former spouses of employees and retirees covered by that retirement system. Paragraph (h)(4) of this section nullifies modifications of State court orders or court-approved property settlement agreements after the retirement or death of the employee to the extent that the modification involves a CSRS survivor annuity for a former spouse.

Similarly, the FERS Act of 1986, Pub. L. 99–335, applied a similar provision, in section 8445 of title 5, United States Code, to employees covered by FERS. Subsection (d) of that section contains the same restriction against modifications involving FERS survivor annuities.

Recently, OPM has received an increasing number of State court orders that terminate marriages of Federal employees and retirees but leave property rights of the parties (including the right to survivor annuities under CSRS or FERS) for later adjudication. These regulations clarify that OPM will not honor court orders awarding a survivor annuity if issued after the retirement or death of the employee, unless the award is made in, or prior to, the judgement terminating the marriage, regardless of any reservation of jurisdiction or retroactive effective date of the order granting the survivor annuity.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

### List of Subjects in 5 CFR Parts 831 and 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management
**Constance Horner,**
*Director.*

Accordingly, OPM proposes to amend Title 5, Code of Federal Regulations, as follows:

## PART 831—RETIREMENT

### Subpart Q—Court Orders Affecting Retirement Benefits

1. The authority citation for Subpart Q of Part 831 continues to read:

**Authority:** 5 U.S.C. 8347.

2. In § 831.1704, paragraph (e) is revised to read as follows:

**§ 831.1704 Qualifying court orders.**

* * * * *

(e)(1) For purposes of awarding, increasing, reducing, or eliminating a former spouse annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order terminating the marital relationship between the employee and the former spouse.

(2) In paragraph (e)(1) of this section, "date of retirement" means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (e)(1) and (e)(4) of this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., order issued *nunc pro tunc).*

(4) In paragraph (e)(1)(ii) of this section, the "first order terminating the marital relationship between the employee and the former spouse" means the original order that first ends the marriage, and does not include—

(i) Any order that amends, explains, clarifies, or interprets the original order regardless of the effective date of the order making the amendment, explanation, clarification, or interpretation; or

(ii) Any order issued under reserved jurisdiction or any other orders issued subsequent to the order terminating the marriage that divide marital property (even if no division of marital property was made in the order terminating the marriage) regardless of the effective date of the order.

## PART 841—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—GENERAL ADMINISTRATION

### Subpart I—Court Orders Affecting Retirement Benefits

### PART 841—[AMENDED]

3. The authority citation for Subpart I of Part 841 continues to read:

Authority: 5 U.S.C. 8461

4. In 841.903, Paragraph (d) is revised to read as follows:

**§ 841.903 Qualifying court orders.**

* * * * *

(d)(1) For purposes of awarding, increasing, reducing, or eliminating a former spouse annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order terminating the marital relationship between the employee and the former spouse.

(2) In paragraph (d)(1) of this section, "date of retirement" means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (d)(1) and (d)(4) of this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., order issued *nunc pro tunc).*

(4) In paragraph (d)(10(ii) of this section, the "first order terminating the marital relationship between the employee and the former spouse" means the original order that first ends the marriage, and does not include—

(i) Any order that amends, explains, clarifies, or interprets the original order regardless of the effective date of the order making the amendment, explanation, clarification, or interpretation; or

(ii) Any order issued under reserved jurisdiction or any other orders issued subsequent to the order terminating the marriage that divide marital property (even if no division of marital property was made in the order terminating the marriage) regardless of the effective date of the order.

[FR Doc. 88-17315 Filed 8-1-88; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 166

**[CGD 88-041]**

### Part Access Routes; Approaches to Chesapeake Bay, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of study; correction.

**SUMMARY:** This notice corrects an error published in the **Federal Register** July 12, 1988, Volume 53, page 26282, second column, under the Study Area section. The last geographic coordinate in the "Longitude" column is incorrect and should read 76°05' W instead of 75°05' W.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Walters, (804) 398-6230.

July 25, 1988.

**R.T. Nelson,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety And Waterway Services.*

[FR Doc. 88-17351 Filed 8-1-88; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

**[SW-FRL-3423-1]**

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Vulcan Materials Company, Port Edwards, Wisconsin, to exclude, on a one-time basis, certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentrations of hazardous constituents released from the petitoned waste, once it is disposed of.

**DATES:** EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until September 16, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Bruce R. Weddle, whose address appears below, by August 17, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send the copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-VMEP-FFFFF."

Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washingotn, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the

RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washingtin, DC 20460, (202) 382–4783.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Authority*

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

### *B. Approach Used To Evaluate This Petition*

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous, based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a fate and transport model to predict the concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Vulcan's petitioned waste on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations, which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-sepecific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Vulcan is seeking a delisting for waste disposed on-site (*i.e.*, subsoils beneath a closed storage pad), ground-water monitoring data collected from the area where Vulcan has diposed of the waste are necessary to determine whether hazardous constituents have migrated from the unit to the underlying ground water. Because the petitioned waste is disposed on-site, ground-water data collected from Vulcan's monitoring wells are compared directly to the levels of regulatory concern for particular hazardous constituents detected in the ground water, and will help to characterize the potential impact (if any) of the unregulated disposal of Vulcan's petitioned waste on human health and the environment.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before

granting or denying a final exclusion. Thus, a final decision will not be made on this petition until all public comments (including those at requested hearings, if any) are addressed.

**II. Disposition of Petition**

Vulcan Materials Company, Port Edwards, Wisconsin.

*1. Petition for Exclusion*

Vulcan Materials Company (Vulcan), located in Port Edwards, Wisconsin, manufactures chlorine and caustic soda by the mercury cell process, with some chlorine used on-site for the produciton of muriatic acid. Vulcan petitioned the Agency to exclude, on a one-time basis, subsoils beneath a former waste pile where quantities of EPA Hazardous Waste No. K071—"Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used"—were previously stored. The listed constituent of concern for EPA Hazardous Waste No. K071 is mercury. Vulcan petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Vulcan also believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Todays' proposal to grant this petition for delisting is the result of the Agency's evaluation of Vulcan's petition.

*2. Background*

Vulcan petitioned the Agency to exclude its subsoils on May 5, 1986 and subsequently provided additional information to complete its petition. In support of its petition, Vulcan has submitted (1) results from total constituent and EP leachate analyses for the EPA toxic metals, nickel, and cyanide from representative samples of the subject subsoils, (2) results form constituent analyses for total sulfide, (3) results from total oil and grease analyses, (4) ground-water monitoring data collected between 1980 and 1986 for mercury from ground-water monitoring wells located upgradient and downgradient of the waste pile storage area, and (5) test results for the characteristics of ignitability corrosivity, and ignitability. In addition, Vulcan had previously submitted to the Agency a detailed description of its production processes and a list of all raw materials used in both the manufacturing and treating processes, in support of an earlier exclusion petition covering the Port Edwards facility's treated brine purification muds and saturator insolubles. The Agency granted this earlier petition. See both the proposed and final exclusion notices, 51 FR 16860, May 7, 1986, and 51 FR 41486, November 17, 1986, respectively.

K071 wastes were accumulated and stored in waste piles at the Vulcan plant from late 1970 to early 1973 while construction of a process development and treatment facility was underway. Accumulated piled wastes were stored on a curbed asphalt pad and covered with tarpaulins. In mid-1982, a failure of the asphalt pad occurred, and mercury-bearing lachates reached the subsoils beneath the storage pad.

By November 1983, all of the previously accumulated and piled K071 waste was either processed or removed to a hazardous waste landfill. During the summer of 1984, the subsoils beneath the pile storage area were sampled, and any subsoil containing 40 ppm or more of total mercury, or more than 0.2 mg/l of EP leachable mercury, were excavated and disposed of at an off-site hazardous waste landfill.

Vulcan initially provided the results of analyses on six core samples for the EP toxic constituents in 1985. However, the Agency determined that the sampling method used by Vulcan to collect the six core samples was inadequate and, therefore, requested that the subsoils area be resampled. When sampling soils, petitioners are generally requested to divide the soils area into four sections and randomly collect five full-depth core samples from each quadrant (the number of full-depth core samples can decrease if the number of sections is increased). The full-depth core samples then are composited by section and depth. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Waste—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

In January 1987, Vulcan divided the waste pile storage area into five subdivisions of approximately equal area. Four full-depth core samples were randomly collected from each of the five subdivisions (*i.e.*, each core sample was collected by driving a coring device through the waste until the bottom of the subsoil area was reached, thus collecting a representative core sample of all the soil layers in the subsoils area—see explanation below). Based on knowledge gained during the clean-up activities in 1984, Vulcan determined that the full-depth core samples should span twelve feet (*i.e.*, Vulcan believed that only the remaining twelve feet of subsoils were potentially contaminated with mercury leachate). Additionally, Vulcan claims that a schistose layer begins at a depth of approximatley 10–12 feet and that the schistose layer is relatively impermeable. Therefore, Vulcan reasoned that samples collected at or above the schistose layer would represent a "worst-case" analysis for the presence of contaminants in the remaining subsoils because the schistose layer would cause any migrating materials to follow the path of least resistance (*i.e.*, horizontally, rather than vertically).

Each single core sample was collected as an 18-inch long "cut" at depths of 2–3.5 feet (25 percent of the total depth of the contaminated subsoils); 5–6.5 feet (25 percent of the total depth); 8–9.5 feet (25 percent of the total depth); and 10.5–12 feet (25 percent of the total depth). Equal weight cuts from each core sample collected at the same depth were then combined by subdivision to form four composite samples each representing 25 percent of the depth of the contaminated subsoils. Twenty composite samples (four composite samples from each of the five subdivisions) were prepared using this method.

*3. Agency Analysis*

Vulcan used SW–846 method numbers 7060 through 7760, 9010, and 9030 to quantify the total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the EP toxic metals, nickel, cyanide, and sulfide. Vulcan used SW–846 method number 1310 to quantity the EPA leachable concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals, nickel, and cyanide in the subsoils. Table 1 presents the maximum total constituent concentrations of the EPA toxic metals, nickel, cyanide, and sulfide. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide. (Analysis for EP leachable concentrations of sulfide or reactive sulfide is not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of sulfide.) Detection limits represent the lowest concentrations quantifiable by Vulcan when using the appropriate SW–846

analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—TOTAL CONSTITUENT ANALYSES (MG/KG)

[Subsoils previously in contact with leachate from K071 waste]

| Constituents | Concentration by core depth (feet) | | | |
|---|---|---|---|---|
| | 2–3.5 | 5–6.5 | 8–9.5 | 10.5–12 |
| Arsenic: | | | | |
| Sample I | 3.3 | 1.8 | 0.5 | 1.3 |
| Sample II | 2.8 | 1.4 | .8 | .7 |
| Sample III | 2.7 | 1.2 | .5 | .7 |
| Sample IV | 1.4 | 1.5 | .5 | .9 |
| Sample V | .8 | .8 | .2 | .2 |
| Barium: | | | | |
| Sample I | 96.2 | 22.5 | 16.5 | 15.6 |
| Sample II | 36.5 | 27.8 | 19.4 | 21.7 |
| Sample III | 55.8 | 56.2 | 32.1 | 22.7 |
| Sample IV | 25.9 | 48.6 | 7.6 | 11.3 |
| Sample V | 27.4 | 28.1 | 10.3 | 11.9 |
| Cadmium: | | | | |
| Sample I | 3.7 | .2 | .1 | .1 |
| Sample II | .1 | .1 | .1 | .1 |
| Sample III | .6 | .2 | .2 | .1 |
| Sample IV | .2 | .4 | .3 | .1 |
| Sample V | .1 | .1 | .2 | .1 |
| Chromium: | | | | |
| Sample I | 55.3 | 17.0 | 41.1 | 16.5 |
| Sample II | 42.5 | 53.0 | 8.8 | 16.7 |
| Sample III | 20.3 | 13.3 | 21.6 | 17.0 |
| Sample IV | 17.5 | 15.7 | 50.1 | 8.8 |
| Sample V | 25.8 | 17.8 | 18.8 | 10.3 |
| Lead: | | | | |
| Sample I | 5.3 | .9 | <.1 | <.1 |
| Sample II | 9.3 | 1.1 | 1.0 | .3 |
| Sample III | 12.0 | 5.0 | .5 | .6 |
| Sample IV | .1 | 4.5 | .3 | .3 |
| Sample V | 2.8 | .5 | .4 | .5 |
| Mercury: | | | | |
| Sample I | 8.5 | 3.6 | 1.2 | 1.6 |
| Sample II | 4.8 | 5.8 | 1.1 | .3 |
| Sample III | 12.8 | 6.7 | .6 | 1.4 |
| Sample IV | 17.9 | 34.0 | 1.5 | .4 |
| Sample V | 7.1 | 1.9 | .7 | 1.1 |
| Selenium: | | | | |
| Sample I | 1.5 | .2 | .3 | .4 |
| Sample II | 0.3 | <.1 | .1 | .1 |
| Sample III | <.1 | <.1 | <.1 | .2 |
| Sample IV | .2 | .5 | .1 | .2 |
| Sample V | .2 | .1 | .2 | .2 |
| Silver: | | | | |
| Sample I | 1.4 | 5.8 | .8 | .7 |
| Sample II | 2.9 | .6 | 1.1 | .7 |
| Sample III | 1.8 | 5.5 | 2.4 | 6.5 |
| Sample IV | 2.6 | 3.8 | 1.8 | .6 |
| Sample V | .7 | .6 | 1.4 | .7 |
| Nickel: | | | | |
| Sample I | 23.2 | 17.5 | 14.0 | 9.2 |
| Sample II | 5.2 | 4.2 | 4.3 | 4.9 |
| Sample III | 8.0 | 5.8 | 17.5 | 3.8 |
| Sample IV | 6.4 | 4.2 | 2.9 | 7.1 |
| Sample V | 4.4 | 10.9 | 3.6 | 2.6 |
| Sulfide: | | | | |
| Sample I | 64.6 | 59.46 | 12.28 | 59.48 |
| Sample II | 126.94 | 20.18 | 23.76 | 166.98 |
| Sample III | 56.30 | 40.97 | 29.20 | 25.27 |
| Sample IV | 56.77 | 74.56 | 44.02 | 50.26 |
| Sample V | 123.24 | 52.95 | 31.54 | 331.56 |
| Cyanide: | | | | |
| Sample I | <.25 | <.25 | <.25 | <.25 |
| Sample II | <.25 | <.25 | <.25 | <.25 |
| Sample III | .28 | <.25 | .34 | <.25 |
| Sample IV | .25 | <.25 | <.25 | <.25 |
| Sample V | <.25 | <.25 | <.25 | <.25 |

<: Denotes that the actual value is below the detection limit specified in the table.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (MG/L)

[Subsoils previously in contact with leachate from K071 waste]

| Constituents | Concentration by core depth (feet) | | | |
|---|---|---|---|---|
| | 2-3.5 | 5-6.5 | 8-9.5 | 10.5-12 |
| Arsenic: | | | | |
| Sample I | 0.007 | <0.001 | <0.001 | <0.001 |
| Sample II | .001 | <.001 | <.001 | <.001 |
| Sample III | .011 | .004 | <.001 | <.001 |
| Sample IV | .002 | .003 | <.001 | <.001 |
| Sample V | .004 | <.001 | <.001 | <.001 |
| Barium: | | | | |
| Sample I | .216 | .280 | .114 | .052 |
| Sample II | .050 | .306 | .052 | .020 |
| Sample III | .082 | .124 | .110 | .128 |
| Sample IV | .082 | .100 | .096 | .012 |
| Sample V | .012 | .032 | .042 | .090 |
| Cadmium: | | | | |
| Sample I | .004 | .003 | .004 | .001 |
| Sample II | .004 | .002 | .001 | .002 |
| Sample III | .007 | .005 | .001 | .002 |
| Sample IV | .003 | .005 | .001 | .001 |
| Sample V | .002 | .001 | .001 | .001 |
| Chromium: | | | | |
| Sample I | .002 | .006 | .009 | .003 |
| Sample II | .015 | .001 | .001 | .002 |
| Sample III | .002 | .001 | .001 | .002 |
| Sample IV | .001 | .002 | .002 | <.001 |
| Sample V | .002 | <.001 | <.001 | .001 |
| Lead: | | | | |
| Sample I | .058 | .271 | .005 | .093 |
| Sample II | .081 | .001 | .001 | .009 |
| Sample III | .052 | .025 | .017 | .095 |
| Sample IV | .029 | .052 | .006 | .004 |
| Sample V | .018 | .002 | .002 | .001 |
| Mercury: | | | | |
| Sample I | <.001 | <.001 | .003 | .002 |
| Sample II | <.001 | <.001 | .001 | .002 |
| Sample III | <.001 | <.001 | <.001 | <.001 |
| Sample IV | <.001 | <.001 | .002 | <.001 |
| Sample V | <.001 | <.001 | .003 | <.001 |
| Selenium: | | | | |
| Sample I | <.001 | .004 | <.001 | <.001 |
| Sample II | <.001 | .006 | <.001 | <.001 |
| Sample III | <.001 | .012 | .002 | .002 |
| Sample IV | .001 | .001 | <.001 | <.001 |
| Sample V | <.001 | <.001 | <.001 | .002 |
| Silver: | | | | |
| Sample I | <.001 | <.001 | <.001 | <.001 |
| Sample II | <.001 | <.001 | <.001 | <.001 |
| Sample III | <.001 | <.001 | <.001 | <.001 |
| Sample IV | <.001 | <.001 | <.001 | <.001 |
| Sample V | <.001 | <.001 | <.001 | <.001 |
| Nickel: | | | | |
| Sample I | .188 | .508 | .132 | .080 |
| Sample II | .104 | .080 | .058 | .044 |
| Sample III | .055 | .028 | .020 | .040 |
| Sample IV | .020 | .032 | .012 | .004 |
| Sample V | .008 | .009 | .004 | .092 |
| Cyanide: | | | | |
| Sample I | .03 | <.01 | <.01 | <.01 |
| Sample II | <.01 | <.01 | <.01 | .01 |
| Sample III | .02 | .01 | .01 | <.01 |
| Sample IV | <.01 | <.01 | <.01 | <.01 |
| Sample V | <.01 | <.01 | <.01 | <.02 |

<: Denotes that the actual value is below the detection limit specified in the table.

Table 3 and Table 4 present ground-water monitoring data for dissolved mercury and total mercury, respectively, for the years 1984 through 1986. Data were collected from ground-water monitoring wells upgradient and downgradient of the waste storage area.

TABLE 3.—CONCENTRATIONS OF DISSOLVED MERCURY IN GROUND WATER NEAR THE WASTE STORAGE AREA (MG/1)

| Date | Upgradient | | Downgradient | | |
|---|---|---|---|---|---|
| | Well No. 7 | Well No. 15 | Well No. 4 | Well No. 4A | Well No. 9 |
| Mar. 3, 1986 | 0.0003 | <0.0002 | 0.0005 | 0.0010 | 0.0002 |
| June 11, 1986 | 0.0003 | 0.0008 | 0.0005 | 0.0010 | 0.0002 |
| Sept. 22, 1986 | (*) | 0.0002 | 0.0010 | 0.0007 | 0.0010 |
| Oct. 21, 1986 | 0.0020 | 0.0008 | 0.0011 | 0.0006 | 0.0011 |
| Mar. 20, 1985 | 0.0018 | 0.0002 | 0.0018 | 0.0002 | 0.0002 |
| June. 13, 1985 | 0.0006 | <0.0002 | <0.0002 | <0.0002 | <0.0002 |
| Aug. 27, 1985 | 0.0008 | 0.0002 | 0.0011 | 0.0010 | 0.0008 |
| Nov. 6, 1985 | 0.0008 | 0.0006 | 0.0011 | 0.0018 | 0.0004 |
| Jan. 6, 1984 | (*) | (*) | (*) | (*) | (*) |
| Jan. 6, 1984 | (*) | 0.0002 | (*) | <0.0002 | (*) |
| Feb. 22, 1984 | (*) | 0.0008 | (*) | 0.0005 | 0.0010 |
| Mar. 26, 1984 | (*) | 0.0002 | (*) | 0.0002 | 0.0004 |
| June 18, 1984 | (*) | 0.0029 | (*) | 0.0004 | 0.0028 |
| Sept. 20, 1984 | (*) | 0.0004 | (*) | 0.0002 | 0.0004 |
| Nov. 7, 1984 | 0.0008 | 0.0002 | 0.0005 | 0.0007 | 0.0004 |

(*) No sample collected due to well damage.
<: Denotes that the actual value is below the detection limit specified in the table.

TABLE 4.—CONCENTRATIONS OF TOTAL MERCURY IN GROUND WATER NEAR THE WASTE STORAGE AREA (MG/1)

| Date | Upgradient | | Downgradient | | |
|---|---|---|---|---|---|
| | Well No. 7 | Well No. 15 | Well No. 4 | Well No. 4A | Well No. 9 |
| Mar. 24, 1986 | 0.0040 | 0.0006 | 0.0006 | 0.0023 | 0.0040 |
| June 11, 1986 | 0.0020 | 0.0003 | 0.0020 | 0.0050 | 0.0032 |
| Sept. 22, 1986 | (*) | 0.0006 | 0.0020 | 0.0018 | 0.0056 |
| Oct. 21, 1986 | 0.0310 | 0.0004 | 0.0048 | 0.0031 | 0.0116 |
| Mar. 20, 1985 | 0.0180 | 1.0015 | 0.0060 | 0.0032 | 0.0090 |
| June 13, 1985 | 0.0050 | 0.0008 | 0.0009 | 0.0015 | 0.0075 |
| Aug. 27, 1985 | 0.0030 | 0.0011 | 0.0260 | 0.0033 | 0.0060 |
| Nov. 6, 1985 | 0.0022 | 0.0006 | 0.0240 | 0.0015 | 0.0072 |
| Jan. 6, 1984 | (*) | (*) | (*) | (*) | 0.0002 |
| Jan. 24, 1984 | (*) | 0.0010 | (*) | <0.0002 | (*) |
| Feb. 22, 1984 | (*) | 0.0008 | (*) | 0.0016 | 0.0160 |
| Mar. 26, 1984 | (*) | 0.0016 | (*) | 0.0002 | 0.0080 |
| June 18, 1984 | (*) | 0.0019 | (*) | 0.0056 | 0.0048 |
| Sept 20, 1984 | (*) | 0.0036 | (*) | 0.0008 | 0.0020 |
| Nov. 7, 1984 | 0.0455 | 0.0019 | 0.0048 | 0.0030 | 0.0132 |

(*) No sample collected due to well damage.
<: Denotes that the actual value is below the detection limit specified in the table.

Using SW–846 method number 3540, Vulcan determined that the subsoils had a maximum oil and grease content of 0.42 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.,* wastes having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of metals from the sample). See SW–846 method number 1330. Vulcan also submitted test results for the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Vulcan submitted a signed certification stating that, based on the dimensions of the subsoils area, the maximum volume of contaminated subsoils is 5400 tons. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Vulcan's certified estimate of 5400 tons (approximately 5,333 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Vulcan's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit this facility in the future for spot-sampling.

*4. Agency Evaluation*

The Agency considered the appropriateness of alternative disposal scenarios for contaminted subsoils and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evalauted the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.,* the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model

as applied to the evaluation of Vulcan's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the inorganic constituents from Vulcan's waste. The Agency's evaluation, using the waste volume of 5,333 cubic yards and the maximum EP leachate concentration of the listed constituent of concern in the VHS model, generated the compliance-point concentration in Table 5.

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATION (MG/1) LISTED CONSTITUENT SUBSOILS PREVIOUSLY IN CONTACT WITH LEACHATE FROM K071 WASTE

| Constituent | Compliance-point concentration (January 1987 samples) | Regulatory standard |
|---|---|---|
| Mercury | 0.0005 | 0.002 |

Mercury levels at the compliance point are below the level prescribed by the National Primary Drinking Water Regulations (NPDWR). See 40 CFR Part 141.

The Agency also evaluated the mobility of the non-listed EP toxic metals (except silver—see explanation below), nickel, and cyanide in the subject subsoils using the VHS model. The compliance-point concentrations for these constituents are presented in Table 6. The Agency did not evaluate the mobility of silver from Vulcan's subsoils because it was not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 6.—VHS MODEL: COMPLIANCE-POINT CONCENTRATION (MG/1) LISTED CONSTITUENT SUBSOILS PREVIOUSLY IN CONTACT WITH LEACHATE FROM K071 WASTE

| Constituents | Compliance-point concentration (January 1987 samples) | Regulatory standards |
|---|---|---|
| Arsenic | 0.0017 | 0.05 |
| Barium | 0.049 | 1.0 |
| Cadmium | 0.001 | 0.01 |
| Chromium | 0.002 | 0.05 |
| Lead | 0.043 | 0.05 |
| Selenium | 0.0019 | 0.01 |
| Nickel | 0.08 | 0.5 |
| Cyanide | 0.005 | 0.7 |

The calculated compliance-point concentrations of arsenic, barium, cadmium, chromium, lead, and selenium are below the levels prescribed by the NPDWR. The nickel level (at the compliance point) does not exceed the Agency's health-based standard of 0.5 mg/1.[1] Additionally, the cyanide level (at the compliance point) does not exceed the Agency's health-based standard of 0.7 mg/1.[2] Lastly, because the maximum total constituent concentrations of cyanide and sulfide (see Table 1) were 0.34 ppm and 331.56 ppm, respectively, the Agency believes that the total concentrations of reactive cyanide and reactive sulfide will be below the Agency's interim standards of 250 ppm and 500 ppm respectively.[3]

Based on the review of Vulcan's processes and raw materials list, the Agency determined that no Appendix VIII hazardous constituents, other than those for which tests were conducted, are likely to be present or formed in the subsoils previously in contact with leachate originating from the K071 waste storage pile. On the basis of test results submitted by the petitioner, pursuant to 260.22, the Agency concludes that the subject subsoils do not exhibit any of the characteristics of ignitability, reactivity, or corrosivity. See 40 CFR 261.21, 261.22, and 261.23.

The Agency also evaluated the ground-water monitoring data submitted for the years 1980 through 1986 to determine whether the ground-water contamination at the site is a direct result of the petitioned waste. Ground water at the site is contaminated with mercury as shown in the isopleth of total mercury contamination provided in Figure 1.

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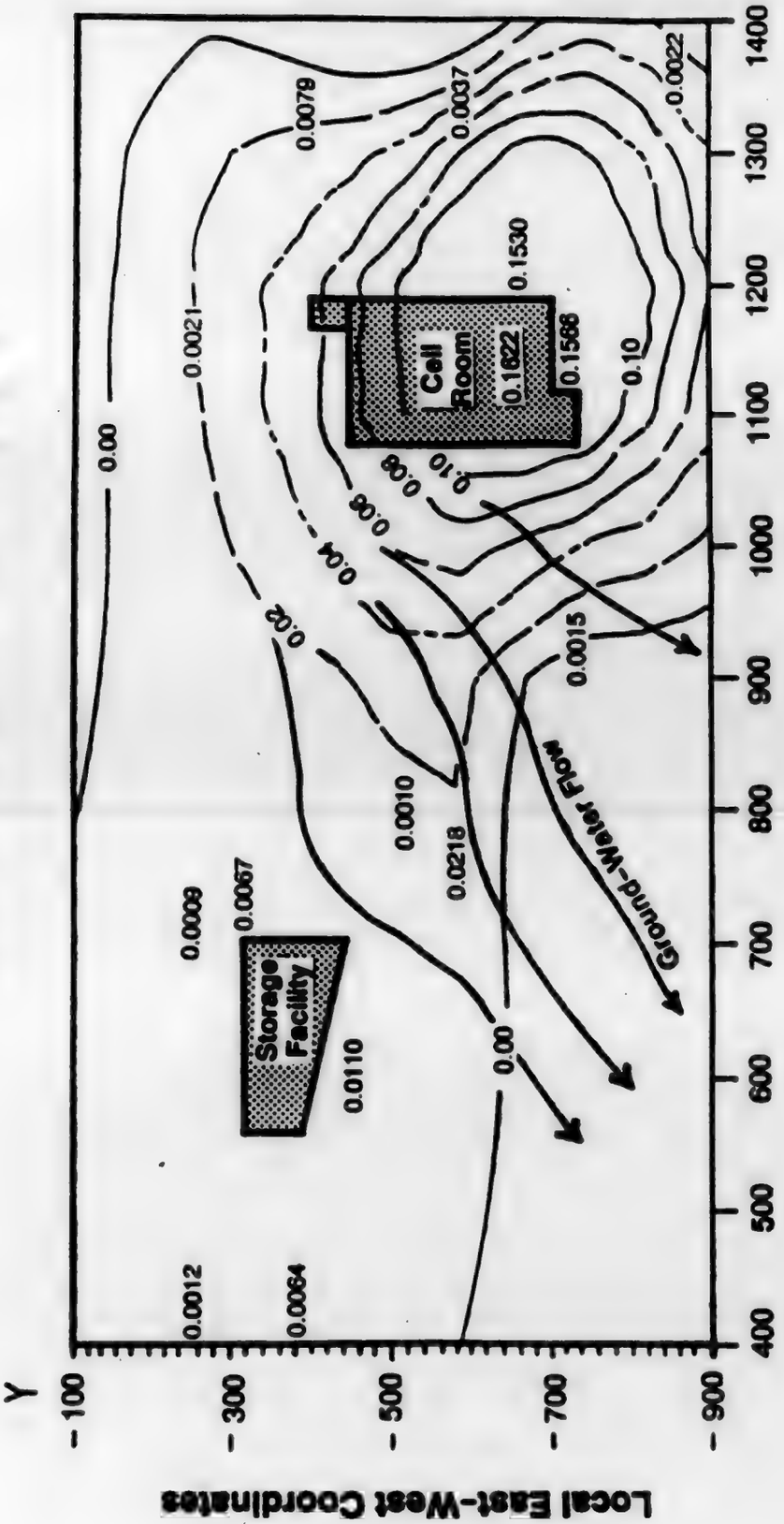
[1] See Hazardous Waste Management System; Land Disposal Restrictions: Notice of Availability and Request for Comment. 52 FR 29994. Proposed Health-Based levels for Nickel and Cyanide. August 12, 1987.

[2] See Verified Reference Doses of the U.S. Environmental Protection Agency. Office of Health and Environmental Assessment (OHEA). Environmental Criteria and Assessment Office. Cincinnati, Ohio. 1988.

[3] See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

*Figure 1*

**Total Mercury Concentrations in Ground Water at the Vulcan Plant (mg/l)**




BILLING CODE 6560-50-C

As indicated by Figure 1, the highest concentrations of mercury are found in the vicinity of the cell room area. This indicates that the cell area is a source of contamination independent of the waste storage area. Additionally, the concentrations of mercury in ground water both upgradient and downgradient of the waste storage area appear to be approximately the same. (This conclusion comes from the results of the well monitoring both upgradient and downgradient of the waste storage pad.) Therefore, it appears that there is no increase in mercury concentrations as ground water passes the waste storage area. The Agency believes that the ground-water monitoring data for mercury supports Vulcan's claim that the ground-water contamination with mercury resulted from fallout from the cell room air discharges and mercury brine spills in the cell room. The Agency accepts the evidence submitted by Vulcan in support of their claim that there is another source of mercury, and believes that no additional mercury enters the ground water as it flows past the waste storage area.

*5. Conclusion*

The Agency believes that Vulcan has successfully demonstarated that the remaining subsoils previously in contact with leachate originating from K071 waste are non-hazardous. The Agency considers the sampling procedures used by Vulcan during January 1987 to be adequate, and it believes that the reported analytical data are representative of the subject subsoils. By collecting full-depth core samples and compositing them by both depth and section, Vulcan adequately assessed the possible temporal and spatial variability of the constituent concentrations in the subsoils. As a result, the Agency believes that the samples are representative of any variation in constituent concentrations. The Agency, therefore, believes that Vulcan's waste should be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant a one-time exclusion to the Vulcan Materials Company, located in Port Edwards, Wisconsin, for the remaining subsoils described in their petition as EPA Hazardous Waste No. K071. If the proposed rule becomes effective, the remaining subsoils should no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the subsoils covered by the original demonstration.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste; or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

## III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, we believe that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

## IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

## V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities This regulation, therefore, does not require a regulatory flexibility analysis.

## List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

**Authority:** Sec. 3001 RCRA, 42 U.S.C 6921

Date: July 25, 1988.

**Jeffery D. Denit,**

*Deputy Director, Office of Solid Waste*

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 2 the following wastestreams in alphabetical order:

**Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address | Waste Description |
|---|---|---|
| • | • | • |
| Vulcan Materials Co. | Port Edwards, WI. | Remaining subsoils which had been in contact with leachate from a storage pad holding brine purification muds (EPA Hazardous Waste No. K071). This one-time exclusion for the remaining subsoils will be effective after (insert date of final rule's publications). |

[FR Doc. 88-17334 Filed 8-1-88; 8:45 am]
BILLING CODE 6560-50-M

**40 CFR Part 261**

**[SW-FRL-3423-3]**

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by CF&I Steel Corporation, Pueblo, Colorado, to conditionally exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

**DATES:** EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted unitl September 16, 1988. Comments postmarked after the close of the comment period will be stamped "late.".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by August 17, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send three copies of your documents to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-CFEP-FFFFF."

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Scott Maid, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Authority*

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for

"delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

*B. Approach Used To Evaluate This Petition*

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of CF&I Steel Corporation's petitioned waste on human health and the environment. Specifically, the model will be ued to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because CF&I Steel Corporation is seeking an upfront delisting (*i.e.*, an exclusion for wastes generated from a laboratory-scale treatment process), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned waste stream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and, thus, would serve no propose.

CF&I Steel Corporation petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a laboratory-scale waste treatment process (*i.e.*, a scaled-down version of a proposed treatment system), untreated waste characteristics, and process descriptions. Additionally, the Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment system verifying that the treatment system is one-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of CF&I Steel Corporation's upfront delisting petition, a list of constitutents was developed for the verification testing. Tentative maximum allowable treated waste concentrations for these constituents then were derived by back calculating from the regulatory standards through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

**II. Disposition of Petition**

*CF&I Steel Corporation, Pueblo, Colorado*

1. Petition for Exclusion

CF&I Steel Corporation (CF&I), located in Pueblo, Colorado, produces rails, associated rail products, reinforcing bars, billets, rounds, seamless tube, wire, and bars. CF&I petitioned the Agency to exclude its chemically stablized electric arc furnace dust (CSEADF), presently listed as EPA

Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, chromium, and lead. CF&I petitioned to exclude its waste because it does not believe that the waste will meet the Criteria for which it was listed. CF&I also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, will be in an essentially immobile form. CF&I further believes that the waste will not be hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of CF&I's petition.

2. Background

CF&I petitioned the Agency to exclude its CSEAFD on November 20, 1987 and subsequently provided additional information to complete its petition. In support of its petition, CF&I submitted (1) detailed descriptions of its manufacturing and proposed Solifix waste treatment processes; [1] (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent analyses for all the EP toxic metal, nickel, cyanide, and total sulfide from representative samples of the untreated EAF dust; (4) results from the EP toxicity and the multiple extraction procedure (MEP) analyses (required for stabilized wastes) for all the EP toxic metals, nickel, and cyanide from representative samples of the fully-cured (*i.e.*, hardened) CSEAFD derived from a bench-scale treatment system; (5) results from total oil and grease analyses on representative samples of the untreated EAF dust; and (6) test results for the hazardous waste characteristics of ignitability, corrosivity, and reactivity. Once CF&I's full-scale treatment system is on-line, EPA proposes that CF&I be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel, and cyanide, and total constituent concentrations of total reactive sulfide and total reactive cyanide on batches of treated waste (see section 6—*Verification Testing Conditions*).

CF&I produces the products noted above by processing steel scraps in two electric arc furnaces (EAFs). The scrap steel is melted and refined in the furnace when an electric arc surges between the electrodes and scrap. When the molten steel reaches 3,000 degrees Fahrenheit, it is poured into a ladle and cast into ingot molds.

The EAFs produce dust during (1) melting of scrap, (2) pouring molten steel, (3) pneumatic injection of additives, (4) oxygen blowing, and (5) meltdown/refining periods. The EAF dust is conveyed pneumatically from the EAF dust baghouses to the storage silo.

The EAF dust is then mixed with specific amounts of certain chemicals in a prescribed ratio in accordance with the Solifix proprietary processing sequence. CF&I tested laboratory-scale levels of fully-cured stabilized waste derived from an experimental treatment unit. Data from this unit were submitted as the basis for an upfront delisting petition. CF&I plans to construct a full-scale mixing and stabilization facility if their laboratory-scale system produces treated wastes that support an upfront delisting decision. The fully-cured chemically stablized EAF dust would be disposed of at a non-harzardous dedicated landfill, if the exclusion is granted.

To collect representative samples from EAF baghouses like CF&I's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Over a 40 day period, between July 10, 1987 and August 19, 1987, CF&I collected a total of sixty grab samples of the EAF dust from the two EAF dust hoppers prior to the pneumatic transfer of the EAF dust to the storage silo. Each sample was collected in a one gallon container on a staggered schedule rotating between mid-morning, mid-day, and mid-afternoon during the daily melt cycle. The two daily samples (one from each EAF dust hopper) were mixed to produce thirty daily composite samples. The thirty daily composite samples were further composited to produce fifteen sequential daily composite samples (*i.e.*, day 1 and day 2, day 3 and day 4, day 5 and day 6, etc.). The fifteen sequential daily composite samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of all the EP toxic metals, nickels, and cyanide, the total constituent concentration of sulfide, and total oil and grease content. The fifteen samples then were ranked by the total constituent concentrations of cadmium, chromium, and lead, and the three highest composite samples were segregated for direct Solifix process fixation. The remaining twelve composite samples were divided into three groups of four and further composited to produce three additional composite samples for Solifix process fixation. EP and MEP leachate analyses were performed on the six fully-cured CSEAFD samples to quantify the leachate concentrations of all the EP toxic metals, nickel, and cyanide (*i.e.*, mass of a particular constituent per unit volume of extract). CF&I claims that due to a consistent manufacturing and treament process, the analyses from samples collected over a five-week period are representative of any variation in fully-cured CSEAFD constituent concentrations.

3. Agency Analysis

CF&I used SW–846 method numbers 7061–7760, 9010, and 9030 to quantify the total constituent concentrations of all the EP toxic metals, nickel, cyanide, and sulfide in the untreated EAF dust. CF&I used SW–846 method numbers 1310 (standard EP) and 1320 (MEP) to quantify the leachable concentrations of the EP toxic metals, nickels, and cyanide in the fully-cured CSEAFD. Table 1 presents the maximum total constituent concentrations of the EP toxic metals, nickel, cyanide, and sulfide. Tables 2 and 3 present the maximum EP leachate values and maximum MEP leachate values, respectively, of the EP toxic metals, nickel, and cyanide. (Analysis for EP or MEP leachable concentrations of sulfide (or reactive sulfide) is not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by CF&I when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix

[1] CF&I has claimed that the Solifix treatment process is confidential and proprietary; therefore, the Agency is handling information on the Solifix treatment process as Confidential Business Information (CBI).

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being analyzed, *i.e.*, the "cleanliness" of waste matrices varies, and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS UNTREATED EAF DUST

| Constituents | Total constituent concentrations (mg/kg) |
|---|---|
| Arsenic | ND (below detection limit of 1.0). |
| Barium | 224.0. |
| Cadmium | 410.0. |
| Chromium | 1360.0. |
| Lead | 5170.0. |
| Mercury | 29.0. |
| Selenium | ND (below detection limit of 1.0). |
| Silver | 85.0. |
| Nickel | 260.0. |
| Cyanide | ND (below detection limit of 0.2). |
| Sulfide | ND (below detection limit of 10.0). |

ND: Not Detected. Donotes concentrations below the detection limits.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS FULLY-CURED CSEAFD

| Constituents | EP leachate concentrations (mg/1) |
|---|---|
| Arsenic | 0.05.[1] |
| Barium | 1.47. |
| Cadmium | 0.061. |
| Chromium | 0.282. |
| Lead | 0.251. |
| Mercury | ND (below detection limit of 0.005). |
| Selenium | 0.050.[1] |
| Silver | 0.041. |
| Nickel | 0.252. |
| Cyanide | ND (below detection limit of 0.020). |

ND: Not Detected. Donotes concentrations below the detection limits.

[1] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution of 2000 ml of water) and a theoretical worst-case leaching of 100 percent.

TABLE 3.—MAXIMUM MEP LEACHATE CONCENTRATIONS FULLY-CURED CSEAFD (MG/1)

| Constituent | Concentration days | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Arsenic [1] | — | — | — | — | — | — | — | — | — |
| Barium | <1.00 | <1.00 | <1.00 | <1.00 | <1.00 | <1.00 | <1.00 | <1.00 | <1.00 |
| Cadimum | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 |
| Chromium | 0.091 | 0.093 | 0.041 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 |
| Lead | 0.052 | 0.231 | 0.151 | 0.181 | 0.021 | 0.052 | <0.020 | <0.020 | <0.020 |
| Mercury | <0.005 | <0.005 | <0.005 | <0.005 | <0.005 | <0.005 | <0.005 | <0.005 | <0.005 |
| Nickel | 0.021 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 |
| Seleninum [1] | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 |
| Cyanide | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 | <0.020 |

<: Denotes that the actual concentration is below the detection limit specified in the above table.

[1] MEP's were not completed due to the sufficiently low total constituent concentrations (*i.e.*, assuming the 20:1 liquid to solid ratio of the EP toxicity test and 100 percent leaching, the worst-case extract concentration would be below the level of regulatory concern).

CF&I used SW–846 method number 9071 to determine that its waste had a maximum oil and grease content of 0.107 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may have significant concentrations of the constituent of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the phase of the sample and interfere with the leaching out of metals from the sample). See SW–846 method number 1330. CF&I also submitted test results for the characteristics of ignitability, corrosivity, and reactivity. See 40 CFR 261.21, 261.22, and 261.23.

CF&I submitted a signed certification stating that, based on the current annual waste generation and the laboratory-scale mixing ratio of reagent of EAF dust, its maximum annual generation rate of CSEAFD will be 35,000 tons. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts CF&I's certified estimate of 35,000 tons (approximately 34,500 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it purposes to grant CF&I's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the date for some percentage of the submitted petitions, and may elect to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for stabilized wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill mode which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of CF&I's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except mercury and cyanide—see explanation below) from CF&I's fully-cured CSEAFD waste. The Agency's evaluation, using the CSEAFD volume of 34,500 cubic yards and the maximun EP leachate

concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 4. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, mercury and cyanide) from CF&I's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling effort if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 4

VHS: Calculated Complicance-Point Concentrations Listed and Non-Listed Constituents Fully-Cured CSEAFD

| Constituents | Compliance-point concentrations (mg/l) | Regulatory standards (mg/l) [1] |
|---|---|---|
| Arsenic | 0.0079 | 0.05 |
| Barium | 0.2330 | 1.0 |
| Cadmium | 0.0097 | 0.01 |
| Chromium | 0.0447 | 0.05 |
| Lead | 0.0398 | 0.05 |
| Nickel | *0.3990 | 0.5 |
| Selenium | 0.0079 | 0.01 |
| Silver | 0.0065 | 0.05 |

[1] See "Docket Report on Health-Based Regulatory Levels and solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The fully-cured CSEAFD exhibited arsenic, barium, cadmium, chromium, lead, nickel, selenium, and silver levels at the compliance point below the Agency's health-base levels used in delisting decision making.

The Agency used the MEP test to assess the long-term stability of CF&I's fully-cured stabilized waste. In this procedure, a sample of CF&I's fully-cured stabilized waste was ground and passed through a 100x mesh screen in order to determine whether the metals are chemically bound in the waste matrix. Once a sample was prepared, a series of nine synthetic acid rain extractions was performed in order to determine whether the metals would leach from the waste matrix over time. The MEP data reported in Table 3 indicate that the fully-cured CSEAFD treatment residue exhibits long-term stability by leaching non-hazardous levels of metals after multiple extractions.

Because the concentration of total cyanide is less than 0.2 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum, in the RCRA public docket. Lastly, because the total constituent concentration of total sulfide is less than 10 mg/kg, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum, in the RCRA public docket.

The Agency concluded, after reviewing CF&I's processes and raw materials list, that no other hazardous constituents of concern are being used by CF&I, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of CF&I's waste. On the basis of test results submitted by the petitioner pursuant to § 260.22, the Agency concludes that the waste does no exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The Agency believes that CF&I's Solifix treatment system can render the K061 wastes non-hazardous. The Agency believes that the analyzed samples of the fully-cured treated waste reflect the day-to-day variations in manufacturing and treatment processes for both the particular grades of scrap used and the particular grades of steel produced during the demonstration period and that are intended to be used and produced, thereafter. The Agency, therefore, is proposing that CF&I's fully-cured CSEAFD waste, if it meets certain verification testing requirements, be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to the CF&I Steel Corporation, located in Pueblo, Colorado, for its fully cured chemically stabilized electric arc furnace dust treatment residue described in their petition as EPA Hazardous Waste No. K061. If the proposed rule becomes effective, the fully cured treatment residue would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (i.e., "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by CF&I.

This proposed exclusion is conditional upon the following:

(1) *Testing:*

(A) *Initial Testing.* During the first four weeks of operation of the full-scale treatment system, CF&I must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. CF&I must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

(B) *Subsequent Testing.* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A).

(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(3) *Termination of Testing.* The requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Chief, Variances Section, notifies CF&I that the conditions have been lifted.

The Agency has determined, through its review of similar petitions from the iron and steel industry, that approximately four weeks are required for a facility to train operators and to collect sufficient data to verify that a full-scale stabilization process is operating correctly. Accordingly, the Agency is proposing an initial testing condition and a subsequent testing condition.

The proposed initial testing condition would require CF&I to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency proposed

this initial testing condition both to gather data obtained from the full-scale treatment system and to ensure that the full-scale treatment system is closely monitored during the start-up period.

The proposed subsequent testing condition would be effective once the initial testing period is completed. It would provide the Agency with final verification data showing that the full-scale treatment system is operating as described in the petition. As proposed, the subsequent testing condition would require a CF&I to continue the daily testing and reporting requirements of the initial testing condition until EPA received the results from four consecutive daily composites of the petitioned waste showing that the maximum allowable levels (*i.e.*, the delisting levels of condition (2)) were not exceeded and the Chief, Variances Section, notified CF&I that the conditions had been lifted.

The Agency is proposing a mechanism to terminate the testing and reporting requirements of the subsequent testing condition for the following reasons: (1) Based on the laboratory-scale data submitted by CF&I, the Agency believes that consistently non-hazardous wastes can be generated from the CSEAFD treatment process and thus continued testing would be excessive; and (2) termination of this condition after four consecutive daily composites meeting the delisting levels of condition (2) is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 FR 41323, November 14, 1986), may require continuous batch testing.

(4) *Data submittals:* All data must be submitted to the Chief, Variances Section, PSPD/OSW (WH-563), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke CF&I's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

(Name of Certifying Person)

(Title of Certifying Person)

Date

If made final, the proposed exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered or if the percentage of each different type of scrap metal (*i.e.*, molds and stools, cast scrap, haystack and pot buttons, mill scrap, ferro process scrap, borings and turnings, miscellaneous furnace scrap, and roll scale briquettes) used to charge the furnace falls outside the percent range of each type of scrap metal historically used to charge the furnaces (as documented in the petition). Accordingly, CF&I would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

## III. Effective date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

## IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

## V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a

regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 261**

Hazardous materials, Waste treatment and disposal, recycling.

**Authority:** Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: July 25, 1988.

**Jeffery D. Denit,**

*Deputy Director, Office of Solid Waste.*

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 2 the following wastestreams in alphabetical order:

**Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 2. WASTES EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| CF&I Steel Corp. | Pueblo, CO | Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after [insert date of final rule's publication]. This exclusion is conditioned upon the data obtained from CF&I's full-scale CSEAFD treatment facility because CF&I's original data were obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, CF&I must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid:<br>(1) *Testing:*<br>(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, CF&I must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. CF&I must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.<br>(B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A).<br>(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.<br>(3) *Termination of Testing:* The requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Chief, Variances Section, notifies CF&I that the conditions have been lifted.<br>(4) *Data submittals:* All data must be submitted to the Chief, Variances Section, PSPD/OSW (WH–563), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke CF&I's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." |

[FR Doc. 88–17336 Filed 8–1–88; 8:45 am]

BILLING CODE 6560–50–M

# Notices

Federal Register
Vol. 53, No. 148
Tuesday, August 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### Designation Renewal of the Denver, CO, and East Indiana, IN, Agencies and the State of Kansas, KS

**AGENCY:** Federal Grain Inspection Service (Service).

**ACTION:** Notice.

**SUMMARY:** This notice announces the designation renewal of Hutchings, Inc., dba Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and Kansas State Grain Inspection Department (Kansas) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

**EFFECTIVE DATE:** September 1, 1988.

**ADDRESS:** James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1412–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Denver's East Indiana's, and Kansas' designations terminate on August 31, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the March 1, 1988, **Federal Register** (53 FR 6168). Applications were to be postmarked by March 31, 1988. Denver and Kansas were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency. There were two applications for the East Indiana designation; East Indiana applied for designation renewal in the entire area currently assigned to that agency, except for Williams County, Ohio, and a neighboring official agency, Lima Grain Inspection Service, Inc., applied for designation only in that County.

The Service announced the applicant names in the May 3, 1988, **Federal Register** (53 FR 15720) and requested comments on the applicants' designation. Comments were to be postmarked by June 20, 1988; none were received for Denver or East Indiana. One favorable comment was received from a trade group, recommending the designation renewal of Kansas.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Denver, East Indiana, and Kansas are able to provide official services in the geographic area for which the Service is renewing their designations. Effective September 1, 1988, and terminating August 31, 1991, Denver and Kansas will provide official inspection services in their specified geographic areas, previously described in the March 1 **Federal Register**. Effective September 1, 1988, and terminating August 31, 1991, East Indiana will provide official inspection services in the specified geographic area previously described in the March 1 **Federal Register**, with the exception of Williams County, Ohio. Lima is able to provide official services in Williams County, Ohio, for which the Service is selecting it for designation. Lima will provide official inspection services in Williams County effective September 1, 1988, and terminating January 31, 1989, when that agency's current designation terminates.

Interested persons may obtain official services by contacting the agencies at the following telephone number: Denver at (303) 287–0167; East Indiana at (317) 289–1206; Kansas at (913) 296–3451; and Lima at (419) 223–7866.

Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

Date: July 27, 1988.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 88–17355 Filed 8–1–88; 8:45 am]

BILLING CODE 3410–EN–M

### Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Idaho, ID, and Lewiston, ID, Agencies and the State of Utah, UT

**AGENCY:** Federal Grain Inspection Service (Service).

**ACTION:** Notice.

**SUMMARY:** This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Idaho Grain Inspection Service, Inc. (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and Utah Department of Agriculture (Utah).

**DATE:** Comments to be postmarked on or before September 15, 1988.

**ADDRESS:** Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

*Telemail* users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

*Telex* users may respond as follows: To: Lewis Lebakken TLX: 7607351, ANS: FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., telephone (202) 475–3428.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within the specified geographic areas in the June 1, 1988, **Federal Register** (53 FR 19976). Applications were to be postmarked by July 1, 1988. Idaho, Lewiston, and Utah were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants'

designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Date: July 27, 1988.

**J.T. Abshier**

*Director, Compliance Division.*

[FR Doc. 88–17356 Filed 8–1–88; 8:45 am]

BILLING CODE 3410-EN-M

## Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Lima, OH Agency and the State of Virginia, VA

**AGENCY:** Federal Grain Inspection Service (Service).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Lima Grain Inspection Service, Inc. (Lima), and Virginia Department of Agriculture and Consumer Services (Virginia).

**DATE:** Applications to be postmarked on or before September 1, 1988.

**ADDRESS:** Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Lima, located at 2242 Arcadia Avenue, Lima, OH 45805; and Virginia, located at 1100 Bank Street, 704 Washington Building, Richmond, VA 23209; were each designated under the Act as an official agency on February 1, 1986. Lima was designated to provide official inspection functions, and Virginia was designated to provide official inspection and weighing functions.

Each official agency's designation terminates on January 31, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Lima, in the State of Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern and eastern Williams County lines; the northern and eastern Defiance County lines south to U.S. Route 24; U.S. Route 24 northeast to State Route 108;

Bounded on the East by State Route 108 south to Putnam County; the northern and eastern Putnam County lines; the eastern Allen County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to U.S. Route 47;

Bounded on the South by U.S. Route 47 west-southwest to Interstate 75; Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line.

This area includes Williams County, Ohio, which was assigned to Lima effective September 1, 1988, as published in the Federal Register on the same date as this notice.

An exception to Lima's assigned geographic area is the following location inside Lima's area which has been and will continue to be serviced by the following official agency:

East Indiana Grain Inspection, Inc.: Payne Cooperative Association, Payne, Paulding County.

The geographic area presently assigned to Virginia, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Virginia, except those export port locations within the State.

Interested parties, including Lima and Virginia, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning February 1, 1989, and ending January 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicent will be designated to provide official services of a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 27, 1988.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 88–17357 Filed 8–1–88; 8:45 am]

BILLING CODE 3196–88

## COMMISSION ON CIVIL RIGHTS

### Oklahoma Advisory Committee Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on August 15, 1988 at the Lincoln Plaza Hotel Conference Center, Seminole Room, 4445 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The purpose of the meeting is to plan future program activities and to discuss current civil rignts issues affecting the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Fagin or Philip Montez, Director of the

Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 20, 1988.

**Susan J. Prado,**

*Acting Staff Director.*

[FR Doc. 88–17313 Filed 8–1–88; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–201–402]

### Lime From Mexico

### Initiation of Changed Circumstances Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of changed circumstances countervailing duty administrative review.

**SUMMARY:** The Department of Commerce is initiating a changed circumstances administrative review of the countervailing duty order on lime from Mexico. In this review, we will determine whether bounties or grants received by Sonocal continue to provide benefits to Bomintzha. This review will be conducted for the purpose of determining whether the deposit rate of estimated countervailing duties for exports by Bomintzha should be changed.

**EFFECTIVE DATE:** August 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Terri Ann Benny or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3337.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35672) a notice of final affirmative countervailing duty determination and countervailing duty order on lime from Mexico. The order, which excluded seven firms, established rates of cash deposit of estimated countervailing duties of 55.89 percent for Sonocal and 1.21 percent for all other firms. On April 14, 1987, after receiving information that lime produced at the Sonocal facility was being exported under a new company name, Bomintzha, the Department instructed the U.S. Customs Service to collect estimated countervailing duties on exports by Bomintzha at the same 55.89 percent rate applicable to Sonocal. We had also received some information concerning the purchase of Sonocal by Bomintzha along with a claim that the purchase was an arm's-length transaction. But, given our final determination that Sonocal had benefited from substantial bounties or grants, we could not consider Bomintzha a new company, eligible for the 1.21 percent "all other" rate, absent an administrative review. In such a review we could determine whether Bomintzha had benefited from a pass through of benefits received by Sonocal or whether, absent such benefits, Bomintzha should be subject to a country-wide countervailing duty rate.

On September 30, 1987, the Government of Mexico requested in accordance with 19 CFR 355.10 an administrative review of the order for calendar year 1986. We published the initiation of the administrative review on October 20, 1987. On April 15 and July 7, 1988, we received requests from Bomintzha that the ongoing review covering 1986 exports be expanded to include 1987 exports because Bomintzha, which exported in 1987 but not in 1986, could not demonstrate that it did not receive countervailable benefits without the inclusion of the 1987 period. Under our normal procedures, the opportunity to request a review for calendar year 1987 would not occur until September 1988. On July 21, 1988, we received a request from the Government of Mexico for a changed circumstances administrative review of this order in accordance with section 751(b) of the Tariff Act of 1930.

The Government of Mexico requested the section 751(b) review because of the unusual circumstances present in this case and because the huge difference between the 55.89 percent rate and the 1.21 percent "all other" rate imposed a considerable burden on Bomintzha. As a way to remedy this sitution as soon as possible, the Mexican government requested that the section 751(b) review address the issue of the potential pass through of benefits in the Sonocal/Bomintzha transaction and, pending completion of the 1986 and 1987 reviews, establish a cash deposit of estimated countervailing duties for Bomintzha at the 1.21 percent "all other" rate.

#### Initiation of Review

In accordance with section 751(b) of the Tariff Act of 1930, we are initiating a changed circumstances administrative review of the countervailing duty order on lime from Mexico. In this review, we will determine whether bounties or grants received by Sonocal continue to provide benefits to Bomintzha. The review will be conducted to determine whether the deposit rate of estimated countervailing duties for exports by Bomintzha should be changed to the "all other" rate. We still intend to complete the section 751(a) review for the 1986 period and, if requested during the anniversary month, for the 1987 period.

We believe that there are "changed circumstances sufficient to warrant review," as defined by section 355.41(b) of the Commerce Regulations, for the following reasons: (1) Information submitted by Bomintzha in the section 751(a) review of calendar year 1986 provides a sufficient basis for examining the circumstances associated with the sale of Sonocal to Bomintzha; (2) because Bomintzha did not export during 1986, completion of the section 751(a) review for that period will not result in the determination of assessment and estimated countervailing duty deposit rates based on Bomintzha's exports; (3) maintaining an estimated duty deposit rate that includes benefits received by Sonocal until completion of the 1987 section 751(a) review may constitute an excessive burden on Bomintzha; (4) a review under section 751(b) provides an expeditious means by which to examine the nature of the Sonocal/Bomintzha transaction and the impact on Bomintzha of bounties and grants received by Sonocal; and (5) conduct of this review would not impose an administrative burden on the Department.

This initiation and notice are in accordance with section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and 19 CFR 355.41(b).

Date: July 27, 1988.

**Jan W. Mares,**

*Assistant Secretary, Import Administration.*

[FR Doc. 88–17378 Filed 8–1–88; 8:45 am]

BILLING CODE 3510–DS–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

July 28, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing directives for the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** August 4, 1988.

**AUTHORITY:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refere to the Quota Status Report posted on the bulletin boards of each Customs port or call (202) 323–6495. For information on embargoes ad quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** The current aggregate limit and limits for Categories 333/334/335/833/834/835, 338, 339, 340, 341, 347/348/847 and 345 are being reduced for carry forward applied to corresponding limits during the previous agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49466, published on December 31, 1987.

The letter to the Commssioner of Customs and the actions taken pursuant to it is not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 28, 1988

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Tetile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on August 4, 1988, the directive of December 28, 1987 is hereby amended to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

| Category | Adjusted 12-month limit [1] |
|---|---|
| 200–239, 300–369, 400–469, 600–670 and 800–899, as a group. | 85,968,158 square yards equivalent. |
| Sublevels in Group I 333/334/335/833/834/835. | 136,345 doz. |
| 338 | 181,111 doz. |
| 339 | 784,855 doz. |
| 340 | 169,195 doz. |
| 341 | 112,506 doz. |
| 345 | 31,749 doz. |
| 347/348/847 | 438,190 doz. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–17361 Filed 8–1–88; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### Guaranteed Student Loan Program, SLS Program, Plus Program, and Consolidation Loan Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of Special Allowance for Quarter Ending June 30, 1988.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP), the Supplemental Loans for Students (SLS) Program, the PLUS Program and the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending June 30, 1988, the special allowance will be paid at the following rates:

| Applicable interest rate (percent) | Annual special allowance rate (percent) | Special allowance rate percent for quarter ending June 30, 1988 |
|---|---|---|
| I. GSLP, PLUS or Consolidation loans made prior to October 1, 1981: | | |
| 7 | 3.00 | 0.75 |
| 9 | 1.00 | .25 |
| II. GSLP, SLS or PLUS loans made on or after October 1, 1981, but prior to November 16, 1986, for periods of enrollment beginning prior to November 16, 1986; Consolidation loans made on or after October 1, 1981, but prior to November 16, 1986: | | |
| 7 | 2.94 | .735 |
| 8 | 1.94 | .485 |
| 9 | .94 | .235 |
| 12 | 0 | 0 |
| 14 | 0 | 0 |
| III. GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986; SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986; Consolidation loans made on or after November 16, 1986: | | |
| 7 | 2.69 | .6725 |
| 8 | 1.69 | .4225 |
| 9 | .69 | .1725 |
| 10 | 0 | 0 |
| 11 | 0 | 0 |
| 12 | 0 | 0 |
| 13 | 0 | 0 |
| 14 | 0 | 0 |

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (6.44 percent for the quarter ending June 30, 1988);

(b) *Step 2.*

Subtract from that average the applicable interest rate of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.25 percent in the case of (i) GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986,

or (iii) Consolidation loans made on or after November 16, 1986; and

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

**FOR FURTHER INFORMATION CONTACT:** Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 732–4242.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: July 13, 1988.

**Kenneth D. Whitehead,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 88–17377 Filed 8–1–88; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award Intent To Award Grant to The Combustion Institute

**AGENCY:** Department of Energy.

**ACTION:** Notice of Non-Competitive Financial Assistance Award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2), it is making a noncompetitive financial assistance award under Grant Number DE–FG01–88FE61626 to the Combustion Institute for the Twenty-Second International Symposium on Combustion.

*Scope:* This grant will partially fund the Twenty-Second International Symposium on Combustion. The technical program will consist of sessions formed from contributed papers and poster sessions of work-in-progress. Colloquia will be organized on topics of special interest, including but not limited to: reaction kinetics in combustion, turbulent reacting flow, combustion-generated particulates, and combustion diagnostics.

This symposium is of great importance in encouraging workers at universities and other institutions to take an interest in the combustion field in order to provide scientific training in the field and to maintain the flow and interchange of basic combustion information. The Combustion Institute encourages outstanding young scientists and engineers to participate in the Symposia and assists young investigators in attending the Symposia.

In accordance with 10 CFR 600.7(b)(2)(i)(B), negotiations will be conducted only with the Combustion Institute. The conference will be conducted by the Combustion Institute; however, DOE support would enhance the public benefits by increasing the cooperative information exchange among key DOE and industrial participants. There is no known other entity which is conducting or is planning to conduct such a conference on combustion in the near future.

The term of this grant shall be from August 14 through August 19, 1988, and the project cost is estimated at $544,560, of which the share contributed by DOE will be $20,000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, ATTN: Lisa Jones, MA–452.1, 1000 Independence Ave., SW., Washington, DC 20585.

**Robert J. Walsh,**

*Acting Director, Contract Operations Division "A" Office of Procurement Operations.*

[FR Doc. 88–17389 Filed 8–1–88; 8:45 am]

BILLING CODE 6450-01-M

## Assistant Secretary for International Affairs and Energy Emergencies

### Proposed Subsequent Arrangement; Atomic Energy Agreements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SD(EU)–53, for the transfer of mixed-oxide fuel samples containing 18.5 grams of uranium enriched to approximately 5 percent in the isotope uranium–235 and 0.12 grams of plutonium from Belgonucleaire, Mol, Belgium to the Swiss Federal Institute for Reactor Research, Wuerenlingen, Switzerland, for destructive post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: July 28, 1988.

**George J. Bradley, Jr.,**

*Principal Deputy Assistance Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 88–17387 Filed 8–1–88; 8:45 am]

BILLING CODE 6450-01-M

### Proposed Subsequent Arrangement; Atomic Energy Agreements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the post-irradtiation examination of irradiated mixed uranium-plutonium oxide fuel samples at the Swiss Institute for Reactor Research (EIR), Wuerlingen, Switzerland. This subsequent arrangement records the joint determination of the Government of the United States of America and the Government of Switzerland that safeguards may be effectively applied to the post-irradiation examination at the EIR facility in Switzerland for the said samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteeen days after the date of publication of this notice.

For the Department of Energy.

Date: July 28, 1988.

**George J. Bradley, Jr.,**

*Principal Deputy Assistance Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 88–17388 Filed 8–1–88; 8:45 am]

BILLING CODE 6450-01-M

## Conservation and Renewable Energy

### National Energy Extension Service Advisory Board; Renewal

Notice is hereby given that the National Energy Extension Service Advisory Board, established in

accordance with the National Energy Extension Service Act, Pub. L. 95–39, has been renewed for a 2-year period ending June 14, 1990.

The Board will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the National Energy Extension Service Act (Pub. L. 95–39), the Department of Energy Organization Act (Pub. L. 95–91), the General Services Administration Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory board may be obtained from Susan Heard, 202–586–8290.

Issued in Washington, DC, on July 28, 1988.

**Howard H. Raiken,**

*Advisory Committee Management Officer.*

[FR Doc. 88–17391 Filed 8–1–88; 8:45 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

**[ERA Docket No. 88–13–NG]**

### Pentex Petroleum, Inc.; Order Granting Blanket Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration; Department of Energy.

**ACTION:** Order granting blanket authorization to Import Natural Gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Pentex Petroleum, Inc. (Pentex), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88–13–NG authorizes Pentex to import up to 7.3 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–17390 Filed 8–1–88; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

### Coal Survey Forms

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Solicitation of comments concerning proposed changes to the Coal Survey Forms.

**SUMMARY:** The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980), conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing reporting forms. This program ensures that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments on the extension of its coal forms for 3 years. These forms include: EIA–1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces"; EIA–3, "Quarterly Coal Consumption Report—Manufacturing Plants"; EIA–4, "Weekly Coal Monitoring Report—Coke Plants"; EIA–5, "Coke Plant Report—Quarterly"; EIA–6, "Coal Distribution Report"; EIA–7A, "Coal Production Report"; EIA–7A (Supp), "Coal Production Report (Supplement)"; and EIA–20, "Weekly Telephone Survey of Coal Burning Utilities."

**DATE:** Written comments must be submitted on or before September 1, 1988.

**ADDRESS:** Send written comments to: Thelda McMillian, Office of Coal, Nuclear, Electric and Alternate Fuels, Energy Information Administration, Mail Stop 2G–090, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586–2982.

**FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS:** To obtain additional information or copies of the proposed forms, contact Ms. McMillian at the address or telephone number listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

### I. Background

In order to fulfill its responsibilities under the Federal Energy Act of 1974 (Pub. L. 93–275), and the Department of Energy (DOE) Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to publish, and otherwise make available to the public, high-quality statistical data that accurately reflect national and regional coal supply, distribution and consumption activity.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant coal supply, distribution and consumption activity in the United States.

### II. Current Actions

EIA proposes only minor changes and modifications to the forms. These changes will have little impact on respondent burden, better reflect current industry operations and respond to congressional, Federal and public data users requirements. The proposed changes are summarized below:

1. *EIA–3:*

a. Reduced the two receipts categories (contract and spot) to one (total). These two categories were not published and their percentage of total receipts had remained fairly consistent over time.

b. Added an adjustment column to cover stock changes/re-estimates and company transfers. This was previously reported in the Remarks section of the form and, prior to that, was on the form itself.

c. Set a reporting threshold of 1,000 short tons of coal consumption annually. This will remove approximately 100 plants and represents less than .01 percent of annual coal consumption by manufacturing plants.

2. *EIA–5:*

a. Reduced the two coal receipts categories (open and captive) to one (total). These two categories were not published and, due to changes in the structure of steel company operations, the captive portion of coal receipts is not an important data parameter.

b. Added an adjustment column to coal and coke sections to cover stock changes/re-estimates and company transfers. This was previously reported in the Remarks section of the form and, prior to that, was on the form itself.

3. *EIA–6:*

a. Respondents will report by coal-producing district and State in 1989, and then just by State in 1990. There is almost unanimous agreement among congressional, Federal and public coal distribution data users that origin information should be by State and that the coal-producing districts are no longer relevant.

b. Deleted the reporting of mine level production and purchases (Sections II A and B). This removes a duplication of

production data reported on both the EIA–6 and EIA–7A forms.

c. Added to the reporting of parent company information the name, address, and telephone number of the parent company point of contact.

d. Added a section to report the identification of a change in ownership, including when it occurred and the name, address, and telephone number of the new owner, if applicable (Section I C).

e. Deleted in Section III G (Other Uses) the separate identification of coal gasification and liquefaction use. It is now identified in the instructions as part of manufacturing.

4. *EIA–7A:*

a. Added to Section I G (Kind of Mining Operation) an identification of the underground method of mining (continuous, convention, longwall, shortwall). This identification of the underground mining method is needed to effectively evaluate and identify the productivity effects of advanced underground mining methods.

b. Added to Section II A an identification of average raw coal quality, as mined, and average coal quality, as sold or used, by coal seam in pounds of sulfur per million BTU. In conjunction with these data, added an identification of blended (versus by seam) quality of used or sold coal and a question to indicate the source(s) of the blend. This section responds to a requirement for more up-to-date coal reserves quality data for use in assessing the impacts of proposed legislation and to better evaluate and estimate coal supplies and prices. It also responds to the National Coal Council's June 1987 report to the Secretary of Energy that cited the need for additional coal reserves quality data. The simplest and most cost-effective way to collect the data is through the EIA–7A survey.

c. Delete the Coal Stocks Section (Section III). This section duplicated data collected by company on Form EIA–6.

5. *EIA–7A (supplement):* No change. This form is on standby status only.

6. *Coal Strike Monitoring Forms (EIA–1, 4, 20):* No change. These forms are on standby status only.

### III. Request for Comments

The EIA invites the public to comment on these proposed changes within 30 days of the publication of this notice. The following guidelines are provided to assist in the preparation of responses. When providing comments, please indicate the form(s) to which each comment applies.

*As a potential respondent:*

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response specified in the instructions?

D. Public reporting burden (estimated average hours per response) for the collections in the Coal Program Package are listed below. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required forms?

| EIA survey form | Burden hours per response |
|---|---|
| 1. EIA–1 | 1.0 |
| 2. EIA–3 | 0.5 |
| 3. EIA–4 | 1.0 |
| 4. EIA–5 | 1.0 |
| 5. EIA–6 | 2.5 |
| 6. EIA–7A | 1.21 |
| 7. EIA–7A (Supp) | 2.0 |
| 8. EIA–20 | 1.0 |

E. What is the estimated cost of completing the form(s), including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, development, assembly, equipment, ADP, and any other one-time or recurring costs.

F. Estimate the cost in subsequent years of reporting.

G. How can the form(s) be improved?

H. Do you know other Federal, State, or local agencies that collect similar data? If yes, specify the agency, the data elements, and the means of collection.

*As a potential data user:*

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purposes would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in the Coal Surveys.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these data surveys and will become a matter of public record.

**Statutory Authority:** Sections 5(a), 5(b), 13(b), and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974, as amended (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, on July 27, 1988.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 88–17386 Filed 8–1–88; 8:45 am]

BILLING CODE 6450–01–M

## Manufacturing Energy Consumption Survey (MECS) Forms

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Request for comments on the 1988 MECS survey forms.

**SUMMARY:** The Energy Information Administration (EIA) of the Department of Energy (DOE) is seeking comments on the proposed survey forms for the 1988 Manufacturing Energy Consumption Survey (MECS). The MECS is a general purpose statistical survey conducted for nonregulatory purposes. The survey is mandatory under Title 3, Subtitle B, of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509. The MECS is being designed by EIA and will be administered and compiled by the U.S. Bureau of the Census (Census). By having Census administer the survey, responses are kept strictly confidential under section 9 of Title 13, U.S. Code. Responses and other identifiable data may be seen only by sworn Census employees.

The 1985 MECS was conducted in two different parts during 1986. The first, sent out in July of 1986 and utilizing Form EIA–846F, collected basic annual consumption data for combustible and noncombustible energy sources. For combustible energy sources, data items included purchases and expenditures, onsite production, fuel use, nonfuel use, and storage capacity. For noncombustible energy sources (e.g., electricity and stream), the data collected were purchases and expenditures, net transfers, and for electricity only, different types of onsite generation and sales to utilities. The second of the MECS, conducted in November 1986 and utilizing Form EIA–846S, collected data on the short-term capability of manufacturers to have switched energy sources based on their actual consumption in 1985.

The sample design for the 1985 MECS was a probability sample of approximately 12,000 manufacturing establishments representing a universe of an estimated 220,000 establishments with five or more employees. The sample was subselected from the

sample for Census' 1985 Annual Survey of Manufacturers (ASM). It was stratified by Standard Industrial Classification (SIC) two-digit major groups from 20 to 39 and the ten four-digit industries known to be the most consumptive of energy. The design for the 1988 MECS sample will be basically the same except that all ASM manufacturing establishments that generate electricity will be sampled with certainty and added to the sample.

The proposed 1988 MECS is not substantially different from the 1985 survey in its basic data requirements. Some changes were made, however, in order to make the collection more efficient, improve reliability, and reduce respondent burden. To minimize complexity, three separate forms have been prepared to meet the special needs of various groups of manufacturers. Both the consumption and the fuel-switching sections appear on each of the forms.

**ADDRESS:** To obtain additional information or copies of the proposed forms, contact Mr. John L. Preston, Energy End Use Division, Energy Information Administration, Department of Energy, Mail Stop 1H–053, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: 202–586–1128.

**DATE:** Written responses on the proposed forms should be submitted to John L. Preston, Energy End Use Division at the above address on or before September 1, 1988.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Written Comments

## I. Background

Comments on the 1985 MECS were solicited in a March 21, 1985, **Federal Register** Notice (50 FR 11486). That version of the MECS was modified on the basis of those comments and the results of a pilot test. The proposed 1988 MECS design utilizes experience gained from the administration and processing of the 1985 MECS, and consultations with respondents, trade association representatives, and data users.

## II. Current Actions

EIA proposes to make the changes described below to the 1985 MECS survey forms for use in 1988. These changes are being made to better serve the needs of data users, streamline the administration and processing of the survey, and reduce respondent burden where possible.

For the 1988 MECS, the fuel-switching and consumption sections will be consolidated on each of three forms. That change will facilitate collection and processing of the data and will reduce respondent burden as record-gathering and respondent analysis will only be necessary once during the MECS cycle. Thus each survey form will contain three sections: Section I, Non-Combustible Energy Sources; Section II, Combustible Energy Sources; and Section III, Fuel Switching Capability.

Separate forms have been designed to meet the special needs of three groups of manufacturers. EIA–846A will be sent to the majority of the manufacturing establishments; EIA–846B will be sent to establishments in SIC 2911 (Petroleum Refining); and EIA–846C will be sent to all other establishments in SIC 29 (Petroleum Refining and Related Industries), as well as establishments in SIC 28 (Chemicals and Allied Products) and SIC 3312 (Blast Furnaces and Steel Mills). EIA–846A is the most general form and collects the basic consumption and fuel-switching data. EIA–846B minimizes burden for the refining industry by taking advantage of data already collected by other EIA surveys. Finally, EIA–846C is very similar to EIA–846A except that it contains an additional question on energy source shipments.

Specific changes in data items from the 1985 MECS are discussed section by section below.

Section I (Noncombustible energy sources): This section will not differ among the three forms. There will be a minor change in format from the 1985 version of the MECS. For clarity of presentation, questions will be asked in the form of a table, with the noncombustible energy sources (electricity, steam, other) as the column headings and the desired quantities forming the rows. Of greater importance is the addition of four new questions relating to the cogeneration of electricity. Because of a number of data user requests concerning cogeneration, the following questions now must be answered if the respondent had a non-zero entry for the amount of cogenerated electricity at the establishment:

1. Enter the total nameplate capacity of all cogeneration units that were in place at this establishment on December 31, 1988.

2. What is the maximum additional quantity of electricity that you could have cogenerated during 1988 over and above that which you actually produced at your establishment?

3. Enter the quantity of each energy source that was consumed for the purpose of cogeneration in 1988. (Space is provided for possible energy sources.)

4. Was this establishment designated as a Qualifying Facility under the Public Utility Regulatory Policies Act of 1978 as of December 31, 1988? (Yes/No)

In order to increase the reliability of the electricity cogeneration estimates, the MECS sample will be supplemented by those establishments known to be generators of electricity, from data submitted on the previous year's ASM.

Section II (Combustible energy sources): Form EIA–846C will be sent to respondents in SIC 28, 3312, and 29 (but not in 2911) and will contain an additional question on the Btu content of all energy source product shipments. The industries in those SIC's produce energy sources from other energy source inputs. Processing of those inputs would normally be counted as nonfuel use and thus contribute to total consumption at the establishment. Any resulting energy sources that are shipped and consumed elsewhere would duplicate the Btu of the energy source inputs. By subtracting the energy source shipments from total consumption, EIA can obtain a more accurate measure for actual consumption at the establishment.

Form EIA–846B will require petroleum refiners (SIC 2911) to be cognizant of the division between the refinery part of the establishment and the nonrefinery (i.e., petrochemical) part and how that division is reflected in reporting on the ASM. The MECS will take advantage of data reported on other EIA forms covering refinery operations in order to minimize respondent burden.

Section III (Fuel Switching): This section is very similar to the 1985 EIA–846S survey, "Part II—Fuel Switching." One change is that liquid petroleum gases (LPG) will also be included as a fuel for which to report substitution. The other change involves the reporting of the lead time to switch fuels. The time to make each potential switch will be obtained rather than just the time for switching to the primary replacement fuel. That change represents a very small increase in reporting burden but will greatly enhance the data analysis, because ambiguity in relating lead times to alternate energy sources will be eliminated.

## III. Written Comments

The following general guidelines are provided to assist in the preparation of comments. When providing comments, please indicate the form to which the comment applies (EIA–846A, B, or C).

As a potential data user:

A. Can you use data at the levels of detail indicated on the forms (or at higher levels of aggregation, if necessary)?

B. For what purpose would you use these data? Please be specific.

C. How could the forms be improved to better meet your specific data needs?

D. Are there alternative sources for these data? What are they? Do you use them? What are their deficiencies?

As a potential respondent:

A. Are the instructions clear and sufficient?

B. How can the forms be improved?

C. Can the data be submitted using the definitions included in the instructions?

D. Public reporting burden for this collection is estimated to average 8 hours per response for each of the three forms. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. Do you know of other Federal, State, or local agencies that collect similar data? If so, specify the agency and the means of collection.

In addition to receiving comments to the general questions listed above, the EIA would like to receive comments specifically related to the changes mentioned previously in the data collection.

1. If by your SIC code you would be required to complete EIA–846C, how difficult would it be to answer the question on the Btu value of energy source shipments? How much time would it take you to answer?

2. If you would be required to complete EIA–846B, can you easily make the division between the refinery portion and the petrochemical portion of your establishment? Are you aware of the establishment boundaries used for your response on the Census Bureau's Annual Survey of Manufacturers?

3. On all three forms, are the new questions on cogeneration easily understood and answerable?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in this survey.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this survey and will become a matter of public record.

**Statutory Authority:** Sections 5(a), 5(b), 13(b), and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974, as amended (15 U.S.C. S764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, on July 27, 1988.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 88–17385 Filed 8–1–88; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket No. RP88–127–003]**

### Carnegie Natural Gas Co.; Compliance Filing

July 28, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie"), on July 22, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. Specifically, Carnegie filed the following tariff sheets:

Second Revised Sheet No. 91
Third Revised Sheet No. 92
First Revised Sheet No. 92a
First Revised Sheet No. 92b
First Revised Sheet No. 92c
First Revised Sheet No. 92d
First Revised Sheet No. 92e
Original Sheet No. 92f
Original Sheet No. 92g
Original Sheet No. 92h

Carnegie states that these tariff sheets, which contain portions of its purchased gas cost adjustment ("PGA") clause, are being filed in compliance with a Letter Order issued June 15, 1988. The Letter Order indicated that certain enumerated changes in Carnegie's April 29, 1988, tariff filing in this Docket No. RP88–127–000 were necessary to bring that filing into compliance with Order Nos. 483 and 483–A.

Copies of the filing were served upon Carnegie's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17318 Filed 8–1–88; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. RP88–143–001 and TQ88–2–47–001]**

### MIGC, Inc., Compliance Filing

July 28, 1988.

Take notice that on July 20, 1988, MIGC, Inc. (MIGC) filed Substitute First Revised Sheet No. 26, Substitute Second Revised Sheet No. 28, Substitute First Revised Sheet No. 31, and Substitute Forty-Eighth Revised Sheet No. 32 to its FERC Gas Tariff, Original Volume No. 1.

MIGC states that Sheet Nos. 26, 28, and 31 are filed in compliance with the Commission's Letter Order of June 23, 1988 concerning MIGC's filing of revised purchased gas cost adjustment (PGA) provisions in accordance with the Commission's new PGA Regulations promulgated by Order Nos. 483, *et seq.* MIGC states that Sheet No. 32 is filed correcting a pagination error.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17319 Filed 8–1–88; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP88–220–000]**

### Mississippi River Transmission Corp.; Tariff Filing

July 28, 1988.

Take notice that on July 20, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing Twenty-Fifth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised

Volume No. 1. Such sheet is proposed to be made effective October 1, 1988.

MRT states that its filing is being submitted for the purpose of reclassifying in MRT's jurisdictional rates costs which are presently reflected as sales demand charges paid by MRT to Natural Gas Pipeline Company of America (Natural). Pursuant to the provisions of Natural's pending Gas Supply Charge settlement in Docket No. CP88–291–000, MRT has indicated to Natural that it desires to convert its entire firm sales contract demand to firm transportation service, effective October 1, 1988. MRT states that following this conversion, charges currently paid by MRT as sales demand charges will continue to be paid Natural in the form of firm transportation reservation fees, and approval of MRT's filing will permit MRT to continue to reflect these costs in its rates, appropriately reclassified as charges attributable to the transportation of gas by others.

MRT states that the filing will produce no rate increase or change in rate level for any customer or class of customers of MRT, and may in fact result in cost savings through the avoidance of Natural's proposed gas supply charge or purchasing Natural's system supply gas. MRT further states that to the extent it incurs charges from Natural which are less than the costs reflected in the subject filing, either through the operation of Natural's PGA or modification of the billing adjustment provision of Natural's pending Gas Supply Charge settlement, it will credit such differences to Account No. 191. MRT also proposes that the filing be made subject to downward adjustment from and after January 1, 1989, to reflect any reduction in firm transportation charges paid Natural as a result of a final Commission order in Natural's pending rate proceedings at Docket No. RP88–209–000.

MRT requests waiver of § 154.22 of the Commission's Regulations in order to permit this filing to be submitted more than sixty days in advance of its proposed October 1, 1988 effective date, such date corresponding with the effective date of MRT's desired conversion of firm sales service from Natural.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17320 Filed 8–1–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. SA88–12–000]**

## Pine Tree Independent School District Well No. 2, Working Interest Owners; Petition for Adjustment

Issued: July 28, 1988.

On June 13, 1988, the current working interest owners in the Pine Tree Independent School District Well No. 2 located in Gregg County, Texas, filed with the Commission, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from the filing requirement of § 271.805(f)(1) of the Commission's regulations. The requested adjustment, if granted, would excuse petitioners from refunding a portion of the NGPA section 108 stripper well prices collected for gas sold from the Pine Tree well during the period December 1983 through October 1987.

The Pine Tree well qualified as an NGPA section 108 stripper well on April 25, 1984. In August 1983, the last month of the required 90-day test period for stripper well status, a compressor was connected to the well by the operator, Clemco, Inc. As a result, the average production rate for the succeeding 90-day production period exceeded the 60 Mcf per day production limit to qualify as stripper well under § 271.804 of the Commission's regulations. The well disqualified as a stripper well on November 1, 1983. Petitioners allege that neither Clemco nor the purchaser, United Gas Pipeline Company (United), filed a notice of disqualification as required under § 271.805(d) of the Commission's regulations. [1] Petitioners state that they did not discover Clemco's failure to file an enhanced recovery application pursuant to § 271.805(e) until Octoer 1987. According to the petitioners, filing such an application would have allowed the well to continue to qualify as a section 108 stripper well. The petitioners contend that imposition of a refund obligation, as requested by United, would cause them to incur a special hardship.

Petitioners request the Commission to grant the petition for adjustment by exempting them from the filing requirement of § 271.805 and allowing them to file a notice of disqualification within 15 days after the issuance of an order granting this petition for adjustment.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rule 214 or 211 of the Commission's rules of practice and procedure. [2] Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17321 Filed 8–1–88; 8:45 am]

BILLING CODE 6717–1–M

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**[Docket No. RP88–67–005]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 28, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 22, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, tariff sheets listed on Appendix A. Texas Eastern requests the Commission to accept these tariff sheets to be effective subject to refund on September 1, 1988, the end of the suspension period for tariff sheets originally filed on March 1, 1988 in this proceeding.

Texas Eastern states that these tariff sheets are being filed in compliance with a letter order issued by the Director of the Office of Pipeline and Producer Regulation on June 28, 1988 in Docket No. RP88–67–003. The letter order rejected tariff sheets filed by Texas Eastern in purported compliance with Commision orders dated March 31, 1988

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[1] This section requires the operator and any purchaser to serve notice on the Commission, the operator and any purchasers, as appropriate, if a well has been disqualified by producing more than 60 Mcf of gas per production day for any 90-day production period.

[2] 18 CFR 385.214 and 385.211 (1987).

and April 21, 1988, pertaining to Texas Eastern's March 1, 1988 filing for a rate increase pursuant to section 4 of the Natural Gas Act. Texas Eastern states that it will appeal the June 28 letter order but that it will withdraw the appeal if the Commission permits, pursuant to final non-appealable order, the revised tariff sheets submitted herewith to become effective, subject to refund on September 1, 1988 as requested.

Texas Eastern states that the rates in the revised tariff sheets are based upon a projected total volume for sales and interruptible transportation of 941,524,916 dth, consisting of 783,133,896 dth of sales and 158,391,020 dth of interruptible transportation. It further states that these rates are in excess of the D–2 and commodity rates set forth in Texas Eastern's original rate filing on March 1, 1988.

Texas Eastern has not updated the tariff sheets proposed for filing herein for tariff changes approved by the Commission since Texas Eastern's March 1, 1988 filing. In addition, Texas Eastern states that further revisions may be required when it moves to place these rates into effect on September 1, 1988 to reflect gas plant in service and an updated capitalization structure and also to reflect tariff changes approved by the Commission prior to September 1, 1988. Texas Eastern states that it intends to supplement its Statement P by September 18, 1988 to reflect these revised tariff sheets to file revised statements and schedules to the extent necessary.

Copies of this filing are being served upon all parties of record in Docket No. RP88–67, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17322 Filed 8–1–88; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP88–161–001]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 28, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 22, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Substitute First Revised Sheet No. 447
Substitute Second Revised Sheet No. 448
Substitute Second Revised Sheet No. 449
Substitute First Revised Sheet No. 450
Substitute Second Revised Sheet No. 451
Substitute Second Revised Sheet No. 452
Substitute Second Revised Sheet No. 453
Substitute Second Revised Sheet No. 455
Substitute Second Revised Sheet No. 456
Substitute Second Revised Sheet No. 457

The purpose of this filing is to make the revisions to Texas Eastern's May 2, 1988 tariff filing in Docket No. RP88–161 as required by the Commission's June 23, 1988 Order. The proposed effective date of the tariff sheets listed above is June 1, 1988, the effective date of the initial tariff sheets filed in this proceeding.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commision, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17323 Filed 8–1–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–221–000]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 28, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 22, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Revised First Revised Sheet No. 104
Revised First Revised Sheet No. 118
Revised First Revised Sheet No. 119
Revised First Revised Sheet No. 129
Revised First Revised Sheet No. 130
Revised First Revised Sheet No. 133
Revised First Revised Sheet No. 137
Revised First Revised Sheet No. 138
Revised Second Revised Sheet No. 400
Revised Second Revised Sheet No. 484
Revised Second Revised Sheet No. 489

Texas Eastern states that these tariff sheets exclude references to the minimum commodity bills that are proposed to be deleted in a filing made by Texas Eastern on July 19, 1988 in Docket Nos. RP85–177 and RP85–178. The proposed effective date of these tariff sheets is September 1, 1988, the date of the D–2 nominations reflected in Texas Eastern's compliance filing in Docket No. R–88–67 which was made on July 22, 1988.

Texas Eastern states the purpose of this filing is to establish, separate and apart from Texas Eastern's Docket No. R–88–67, charges for gas taken in excess of a customer's D–2 nomination (Section 32.2 of Texas Eastern's General Terms and Conditions). Under proposed § 32.2, if quantities taken in any contract year by a Buyer under Texas Eastern's sales rate schedules DCQ, GS, SGS, ACQ, or WS are in excess of 102% up to and including 104% of the D–2 nomination under the applicable rate schedule, the Buyer shall pay $5.00 per dekatherm for all gas in excess of 100% under said rate schedule. If quantities taken in any contract year are in excess of 104% of the D–2 nomination, the Buyer shall pay $10.00 per dekatherm for all gas in excess of 104%.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 88-17324 Filed 8-1-88; 8:45 am]

BILLING CODE 6717-01-M

## Western Area Power Administration

### Boulder Canyon Project Proposed Power Rate

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of extension of consultation and comment period for a Proposed Power Rate Adjustment.

**SUMMARY:** The Western Area Power Administration (Western) announced in the **Federal Register** published June 22, 1988 (53 FR 23446), a proposed adjustment of the rates for power and energy from the Boulder Canyon Project (BCP). In that notice, Western scheduled a public information forum for June 30, 1988, with the consultation and comment period to end August 8, 1988. Western also stated that consideration would be given to an extension of the consultation and comment period if requested by customers or interested parties.

Western received several requests for an extension of 45 days to the originally published consultation and comment period. The basis for the extension is to allow all interested parties an opportunity to review and analyze a new energy forecast, a new method of forecasting future replacement requirements, and new rate calculations.

Western has reviewed these requests for extension and hereby concurs with the requests. Therefore, Western rescheduled the public comment forum previously scheduled for July 22, 1988, in addition to rescheduling the ending date of the consultation and comment period.

Also, the effective date of the rate adjustment is no longer the beginning of the October 1988 billing period but will be at some later date.

**DATES:** The consultation and comment period which began with the notification of the BCP rate adjustment (53 FR 23446, June 22, 1988) will end September 22, 1988. A public comment forum will be held at 10 a.m. on September 7, 1988.

**ADDRESSES:** The public comment forum will be held at the Boulder City Area Office, 3 miles south on Buchanan Road, Boulder City, Nevada, on the dates and times cited above. Written comments may be sent to:

Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

Issued at Golden, Colorado, July 26, 1988.

William H. Clagett,

*Administrator.*

[FR Doc. 88-17304 Filed 8-1-88; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[ECAO-R-053; FRL-3424-3]**

### Draft Health Assessment Document for Mineral Fibers

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a workshop to be held by the Environmental Criteria and Assessment Office of EPA's Office of Health and Environmental Assessment to facilitate preparation of an external review draft of a Health Assessment Document for Mineral Fibers. The conference site is the Pickett Hotel, 2515 Meridian Parkway, Research Triangle Park, North Carolina.

**DATES:** The workshop will be held on August 29, 30, and 31, 1988, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend as observers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dennis J. Kotchmar, Project Manager for Mineral Fibers, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4158 or (FTS-629-4158).

**SUPPLEMENTARY INFORMATION:** EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for mineral fibers. The document will be used by EPA in the decision-making process to possibly regulate mineral fibers under the Clean Air Act, 42 U.S.C., 7401 *et seq.*

ECAO is now assembling a panel of scientifically and technically qualified persons to review the draft document at the workshop. Copies of the workshop draft will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft document subsequently will be revised and released as an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of the first external review draft. The public comment period will be announced in a subsequent Federal Register notice.

Dated: July 26, 1988.

Charles Brunot,

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 88-17339 Filed 8-1-88; 8:45 am]

BILLING CODE 6560-50-M

**[FRL-3522-9]**

### Availability of Report; Municipal Solid Waste; 1988 Update

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) today is announcing the availability of a document entitled, "Characterization of Municipal Solid Waste in the United States 1960-2000 (Update 1988)." This report updates the June 1986 report entitled "Characterization of Municipal Solid Waste in the United States 1960-2000," which provided information for the waste characterization portion of the overall Subtitle D Phase I Study released in October 1986. The 1988 update provides additional estimates of historical quantities and composition of municipal solid waste from 1984-1986 and revises projections to the year 2000. This report is one of several prepared in response to a Congressionally-mandated study of the existing Part 257 Criteria. The study was conducted under the authority of section 4010 of the 1984 Amendments to the Resource Conservation and Recovery Act (RCRA). (U.S.C. 6949a).

**DATE:** August 2, 1988.

**ADDRESSES:** The document is available for review at all EPA libraries and in the RCRA Docket Room, LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Monday through Friday, except legal holidays; phone (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page. This document also is available through the National Technical Information Service (NTIS), 5835 Port Royal Road, Springfield, VA 22161, phone (703) 487-4650, Order No. PB88-232 780, cost $12.95.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA/CERCLA Hotline at (202) 382–3000 or toll free at (800) 424–9346 outside the Washington DC metropolitan area. For technical information on the "Characterization of Municipal Solid Waste in the United States 1960–2000 (Update 1988)," contact Gerry Dorian, Office of Solid Waste (WH–565E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, phone (202) 475–7700.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

In the 1984 Amendments to RCRA, Congress required EPA to examine the existing Part 257 Criteria for solid waste disposal facilities and revise them as necessary. Section 4010 of RCRA requires EPA to "conduct a study of the extent to which the guidelines and criteria * * * applicable to solid waste management and disposal facilities are adequate to protect human health and the environment."

In response to this Congressional mandate, EPA initiated a two-phase study of existing Subtitle D Criteria for solid waste disposal facilities. Phase I involved collecting and analyzing existing data and Phase II included filing the information gaps identified during Phase I through the collection of additional data. The Subtitle D Study Phase I Report, NTIS issued in October 1986, presents information on Subtitle D wastes, facilities, and State programs.

As part of the Phase I study, EPA sponsored a report characterizing municipal solid waste (MSW) that provided historical MSW quantities and composition from 1960–1984 and projections to the year 2000. In 1988, EPA sponsored a second study to update and revise the 1986 report. This report provides data for 1985 and 1986 and revise existing data where necessary. Results of this study are being used to assist in evaluating and revising the current Criteria for solid waste disposal found at 40 CFR Part 257.

**II. Notice of Availability**

This document includes the methodology used to derive municipal solid waste estimates, materials and products in the municipal waste stream, and trends in municipal solid waste. EPA used a materials flow methodology, which is based on the U.S. production of the various components of the waste stream, to prepare these estimates. For this report, products were grouped as durable goods, nondurable goods, containers and packaging, and other wastes.

Trends discussed include gross and net discards of municipal solid waste, materials recovery, and energy recovery.

Municipal solid waste, as defined for this report, includes residential, commercial solid waste (after materials and energy recovery) are estimated to have increased from 81.7 million tons in 1960 to 131.2 million tons in 1986. Net discards are projected to be 136.8 million tons in 2000. Paper and paperboard comprise the largest material component of municipal solid waste—about 36 percent of total (after recycling) in 1986. The largest product category is containers and packaging at about 30 percent of total (after recycling) in 1986. Gross discards grew from 87.5 million tons in 1960 to 157.7 million tons in 1986. Materials recovery increased from 5.8 million tons in 1960 to 16.9 million tons in 1986. Energy recovery from incineration of municipal solid waste was negligible in 1960, but increased to 9.6 million tons in 1986.

Date: July 19, 1988.

**J. Winston Porter,**

*Assistant Administrator for Solid Waste and Emergency Response.*

[FR Doc. 88–17333 Filed 8–1–88; 8:45 am]

BILLING CODE 6560–50–M

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**[OPTS–59262; FRL–3423–8]**

## Toxic and Hazardous Substances; Test Market Exemption Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments by:

T 88–15, July 31, 1988.
T 88–16, August 10, 1988.

**ADDRESS:** Written comments, identified by the document control number "(OPTS–59262)" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**T 88–15**

*Close of Review Period.* August 14, 1988.

*Manufacturer.* Confidential.

*Chemical.* (G) Tolutriazole compound.

*Use/Production.* (S) Antioxidant for hydraulic oil systems. Prod. range: Confidential.

**T 88–16**

*Close of Review Period.* August 24, 1988.

*Manufacturer.* Confidential.

*Chemical.* (G) Halo-sulfo aromatic ester, sodium salt.

*Use/Production.* (S) Isolated intermediate. Prod. range: Confidential.

Date: July 27, 1988.

**Steve Newburg-Rinn,**

*Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.*

[FR Doc. 88–17341 Filed 8–1–88; 8:45 am]

BILLING CODE 6560–50–M

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**[OPTS–59847; FRL–3423–7]**

## Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requries any person who intends to manufacture or import a new chemcial substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences.

Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983, (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eighteen such PMNs and provides a summary of each.

**DATES:** Close of Review Periods:

Y 88–211, 88–212—July 19, 1988.
Y 88–213—July 25, 1988.
Y 88–214, 88–215, 88–216, 88–217, 88–218, 88–219, 88–220, 88–221—July 26, 1988.
Y 88–222—July 28, 1988.
Y 88–223—July 31, 1988.
Y 88–224—August 4, 1988.
Y 88–225, 88–226, 88–227, 88–228—August 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401, M Street SW., Washington, DC 20460 (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version on the submission provided by the manufacturer of the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 88–211**

*Manufacturer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Polyester-base resin.
*Use/Production.* (S) Intermadiate for use as a reactant in the production of polyester resins. Prod. range: Confidential.

**Y 88–212**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyvinyl alcohol poly(alkyleneoxy) acrylate copolymer.
*Use/Production.* (G) polymer for water-soluble biodegradable packaging. Prod. range: 10,000–200,000 kg/yr.

**Y 88–213**

*Manufacturer.* S.C. Johnson & Son, Inc.
*Chemical.* (G) Aqueous styyrene/acrylic copolymer.
*Use/Production.* (G) Aqueous acrylic emulsion copolymer for the application of overprint vehicles. Prod. range: Confidential.

**Y 88–214**

*Manufacturer.* NL Chemical, Inc.
*Chemical.* (G) Polyester resin.
*Use/Production.* (G) Open nondispersive use. Prod. range: Confidential.

**Y 88–215**

*Importer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Polyurethane.
*Use/Import.* (G) General laminating adhesive. Import range: Confidential.

**Y 88–216**

*Importer.* Richhold Chemicals. Inc.
*Chemical.* (G) Urethane modified polyester resin.
*Use/Import.* (S) Resin for sheet molding compounds in the automotive industry. Import range: Confidential.

**Y 88–217**

*Manufacturer.* Valchem Polymer, Div. of Merchants & Man.
*Chemical.* (G) 2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, (1-methyl ethyl) benzene and methyl 2-methyl-2-propenoate, sodium salt.
*Use/Production.* (S) Printing ink additive Prod. range: Confidential.

**Y 88–218**

*Manufacturer.* Valchem Polymers, Div. of United Merchant.
*Chemical.* (G) 2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, (1-methyl ethenyl) benzene and methyl 2-methyl-2-propenoate.
*Use/Production.* (S) Printing ink additive. Prod. range: Confidential.

**Y 88–219**

*Manufacturer.* Valchem Polymers, Div. of United Merchant.
*Chemical.* (G) 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, (1-methyl ethyl) benzene and methyl 2-methyl-2 propenoate, sodium salt.
*Use/Production.* (S) Printing ink additive. Prod. range: Confidential.

**Y 88–220**

*Manufacturer.* Valchem Polymers, Div. of United Merchant.
*Chemical.* (G) 2-propenoic acid, 2-methyl-, polymer with ethylbenzene, ethyl 2-propenoate and methyl 2-methyl-2-propenoate ammonium salt.
*Use/Production.* (S) Ink binder for paper coating. Prod. range: Confidential.

**Y 88–221**

*Manufacturer.* Valchem Polymers, Div. of United Merchant.
*Chemical.* (G) 2-propenoic acid, 2-methyl-, polymer with ethylbenzene, ethyl 2-propenate and methyl 2-methyl-2 propenoate, ammonium salt.
*Use/Production.* (S) Ink binder for paper coatings. Prod. range: Confidential.

**Y 88–222**

*Manufacturer.* Confidential.
*Chemical.* (G) Water reducible alkyd.
*Use/Production.* (G) Water-reducible resin for coating. Prod. range: Confidential.

**Y 88–223**

*Manufacturer.* Confidential.
*Chemical.* (G) Oil-free polyester resin.
*Use/Production.* (G) . Prod. range: 131,250–393,750 kg/yr.

**Y 88–224**

*Manufacturer.* Aristech Chemical Corporation.
*Chemical.* (G) Saturated polyester resin.
*Use/Production.* (G) Polyester resin (shrinkage reducer). Prod. range: Confidential.

**Y 88–225**

*Manufacturer.* Confidential.
*Chemical.* (G) Norbornene copolymer.
*Use/Production.* (G) Injection molding. Prod. range: Confidential.

**Y 88–226**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylate copolymer.
*Use/Production.* (G) Dispersive, water treatment. Prod. range: Confidential.

**Y 88–227**

*Manufacturer.* Confidential.
*Chemical.* (G) Norbornene copolymer.
*Use/Production.* (G) Injection molding. Prod. range: Confidential.

**Y 88–228**

*Manufacturer.* Confidential.
*Chemical.* (G) Aliphatic polyester urethane.
*Use/Production.* (G) Industrial coating. Prod. range: Confidential.

Date: July 27, 1988.

**Steve Newburg-Rinn,**
*Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.*

[FR Doc 88–17343 Filed 8–1–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance.

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* Extension of 3067–0180.

*Title:* Civil Rights Higher Education and Rehabilitation Act Survey.

*Abstract:* Annually evaluates compliance with nondiscrimination regulations by State emergency management agencies. Administered by FEMA program personnel. Areas covered: administrative procedures, training, construction, and planning. Will be used to provide technical assistance to accomplish voluntary compliance and as basis for budgetary recommendations to the Director of FEMA.

*Type of Respondents:* State or local governments.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 138

*Number of Respondents:* 55.

*Estimated Average Burden Hours Per Response:* 1.5 hours.

*Frequency of response:* Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, D.C. 20503 within two weeks of this notice.

Date: July 25, 1988.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 88–17331 Filed 8–1–88; 8:45 am]

BILLING CODE 6718–01–M

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540)

Aloha Pacific Cruises Limited/S.S. Monterey Limited Partnership, 510 King Street, Suite 501, Alexandria, Virginia 22314–3132

Date: July 28, 1988.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88–17392 Filed 8–1–88; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Human Development Services

### Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging, HHS.

Time and Date: Meeting begins at 9:00 a.m. and ends at 5:00 p.m. on Wednesday, August 24, 1988 and begins at 9:00 a.m. and ends at 3:00 p.m. on Thursday, August 25, 1988.

Place: On Wednesday, August 24 from 9:00 to 12:00 noon, The Jupiter Room, Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024, and from 2:00 to 4:00 p.m., Congressional Conference Room S–126, U.S. Capitol. On Thursday, August 25, from 9:00 to 3:00 p.m., meeting will be held in The Jupiter Room, Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

Status: Meeting is open to the public.

Contact Person: Pete Conroy, Room 4545, Wilbur J. Cohen North Building, 330 Independence Avenue, SW., Washington, DC 20201; Phone: 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (PL 92–453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on August 24 and 25, 1988 from 9:00 a.m.–5:00 p.m. and from 9:00 a.m.–3:00 p.m. respectively. On August 24, the afternoon session from 2 p.m.–4 p.m., will be a Conference on Targeting Older Americans Act Funds, in Congressional Conference Room S–126, U.S. Capitol. On August 25 the meeting will be held all day in The Jupiter Room, Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

The agenda will include: A Conference on Targeting Older Americans Act Funds. Participants are as follows: Members of the Federal Council on the Aging; Dr. Robert Binstock, Case Western Reserve Uniersity; Cynthia M. Taeuber, Bureau of the Census; Joan F. Van Nostrand, National Center for Health Statistics; Carol Fraser Fisk, Commissioner, Administration on Aging; Margaret Lynn Dugger, Director, Florida Aging Adult Services, and House and Senate Aging Committee staff members. The rest of the two-day meeting will include discussion of Current Projects, Committee Reports, 1988–1989 Budget and Agenda Projects including the 1991 White House Conference on Aging Plan project.

Dated: July 28, 1988.

**Ingrid Azvedo,**

*Chairperson, Federal Council on the Aging.*

[FR Doc. 88–17376 Filed 8–1–88; 8:45 am]

BILLING CODE 4130–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Cherokees of Southeast Alabama, Inc.

July 21, 1988.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Dm 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a) notice is hereby given that the Cherokees of Southeast Alabama, Inc., c/o Mr. Deal Wambles, 510 S. Park Avenue, Dothan, Alabama 36301, have filed a petition for acknowledgment by the Secetary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on February 22, 1988, and was signed by member of the group's governing body.

This a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627–MIB, 18th and C Streets, NW., Washington, DC 20240, Phone: (202) 343–3592.

W.P. Ragsdale,

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc 88–17312 Filed 8–1–88; 8:45 am]

BILLING CODE 4310–02–M

## Plan for the Use of the Navajo Tribe's Indian Judgment Funds in Dockets 69 and 299, 256–69 and 377–70, and 588–83L Before the United States Claims Court

July 22, 1988.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

**EFFECTIVE DATE:** This plan was effective on June 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 4627–MIB, 18th and C Streets, NW., Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The Act of October 19, 1973, (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian Tribe. Funds were appropriated on February 27, 1987, in satisfaction of the award granted to the Navajo Tribe before the United States Claims Court in Dockets 69 and 299, 256–69 and 377–70, and 588–83L. The plan for the use of the funds was submitted to Congress with a letter dated February 24, 1988, and was received (as recorded in the Congressional Record) by the Senate on March 14, 1988, and by the House of Representatives on February 25, 1988. The plan became effective on June 11, 1988, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

### For the Use of the Judgment Funds Awarded to the Navajo Tribe in Dockets 69 and 299, 256–69 and 377–70 and 588–83L Before the United States Claims Court

The funds appropriated February 27, 1987, in satisfaction of the judgment granted to the Navajo Tribe in Dockets 69 and 299, 256–69 and 377–70 and 588–83L before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used as follows.

The funds shall be transferred to the Navajo Tribe to be managed under an investment plan; such transfer will take place following approval of the investment plan by the Secretary of the Interior. The investment plan will contain or be subject to the following requirements. The investment plan shall be made for the Trust Fund for Chapter Government Nation Building in accordance with accepted tribal procedures for the investment and administration of trust funds. The Division of Community Development shall administer the investment fund.

The fund principal shall consist of the judgment funds, any additional appropriations made by the Navajo Tribal Council, and contributions from other sources.

The fund income shall consist of all interest and investment income accrued.

Five percent (5%) of the interest earned annually shall be reinvested with the fund principal, to provide for reasonable fund growth and inflation.

Ninety-five percent (95%) of the interest earned annually shall be allocated on a budgetary basis to each certified Navajo chapter based upon the latest updated and certified list of registered Navajo voters. Each chapter shall determine the most appropriate use of its apportioned share of the funds, provided that the funds are used in accordance with the approved guidelines, for the common benefit of chapter members for general, social, and economic development programs.

Guidelines for utilization of funds to be allocated to the certified Navajo chapters will be developed and require approval by the Navajo Tribal Council.

The trust fund shall be audited annually. Within ninety (90) days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Tribal Council, certified Navajo chapters, and interested members of the Navajo Tribe. The report shall include a statement of the fund's performance and information relevant to the management of the fund, including but not limited to financial statements, the amount of interest earned from each investment during the reporting period, and a statement of the investments of the fund with an appraisal at market value.

Any proposed change in the use of the fund principal shall be pursuant only to a two-thirds vote of the full membership of the Navajo Tribal Council to place a referendum on the ballot of any primary, general, or special election. The tribal referendum will require adoption by a two-thirds vote of all registered Navajo voters.

With the exception of the referendum requirement for the use of the fund principal, provisions of this plan may be amended by a majority vote of the Navajo Tribal Council.

All annual expenses associated with the administration and management of the fund shall be paid from the fund income, prior to the allocation of the ninety-five percent (95%) interest income among the chapters.

All responsibility of the United States for the judgment funds or the investment or use of the judgment funds after their transfer to the tribe pursuant to the investment plan shall cease at the time the funds are transferred to the Navajo Tribe.

None of the funds shall be distributed as per capita or dividend payments.

### General Provisions

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita

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shares in excess of $2,000, any Federal or federally assisted program.

**W.P. Ragsdale,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc 88-17311 Filed 8-1-88; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

[WY-040-08-4300-80]

### Rock Springs District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the Rock Springs District Grazing Advisory Board.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Pub. L. 92-463.

**DATE:** September 8, 1988, 9:30 a.m. until 4 p.m.

**ADDRESS:** Bureau of Land Management, Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming 82901.

**FOR FURTHER INFORMATION CONTACT:** Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Approval of minutes of the August 7, 1987 meeting.
3. Election of a Chairman and Vice Chairman.
4. Improvements proposed for completion in FY 89 with range betterment (8100) funds.
5. Update on wild horse gathering.
6. South LaBarge Common AMP.
7. Smith's Fork AMP.
8. Pine Mountain AMP.
9. Public comment period.
10. Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00-3:30 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, by September 7, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A transcript of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

**Donald H. Sweep,**

*District Manager.*

[FR Doc. 88-17310 Filed 8-1-88; 8:45 am]

BILLING CODE 4310-22-M

[CO-940-08-4220-10; COC-48691]

### Proposed Withdrawal; Proposed Public Meeting; Colorado

July 27, 1988.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw National Forest System land near Vail, Colorado, for 20 years to protect recreational facilities and resource values at the Vail Ski Area. This notice closes the land to location and entry under the mining laws for up to 2 years. The land remains open to mineral leasing and to Forest Service management.

**DATE:** Comments on this proposed withdrawal must be received on or before October 31, 1988.

**ADDRESS:** Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, (303) 236-1768.

**SUPPLEMENTARY INFORMATION:** On July 26, 1988, the Department of Agriculture, Forest Service, filed application to withdraw the following described National Forest System land from location and entry under the mining laws, subject to valid existing rights:

**Sixth Principal Meridian**

*White River National Forest*

T. 5 S., R. 80 W.,
- Sec. 7, lot 2 S½NE¼, SE¼NW¼, S½;
- Sec. 8, SW¼NW¼, S½ (all Federal land within the section);
- Sec. 13, SW¼SW¼;
- Sec. 14, S½NW¼, S½;
- Sec. 15, all;
- Sec. 16, all;
- Sec. 17, all;
- Sec. 18, lots 1 thru 4, E½W½, E½;
- Sec. 19, lots 1 and 2, NE¼NW¼, N½NE¼, SE¼NE¼, SE¼;
- Sec. 20, all;
- Sec. 21, all;
- Sec. 22, all;
- Sec. 23, all;
- Sec. 24, W½W½;
- Sec. 25, NW¼;
- Sec. 26, N½;
- Sec. 27, all;
- Sec. 28, N½;
- Sec. 29, N½;
- Sec. 30, NE¼NE¼.

T. 5 S., R. 81 W.,
- Sec. 12, lots 1 and 2.

The areas described aggregates approximately 8,820 acres of National Forest System land in Eagle County, Colorado.

The purpose of this proposed withdrawal is to protect recreational facilities and high resource values within the Vail Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connectin with this proposal may present their views in writing to the undersigned officer of the Bureau of Land Management.

A public meeting will be scheduled and held concerning the proposed withdrawal as required by regulations. Notice of time and location this meeting will be published in the **Federal Register** at least 30 days prior to the date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to allow those discretionary uses that do not conflict with the ski area permit and use.

**Evelyn W. Axelson,**

*Acting Chief, Branch of Adjudication.*

[FR Doc. 88-17328 Filed 8-1-88; 8:45 am]

BILLING CODE 4310-JB-M

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 23, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC

20013–7127. Written comments should be submitted by August 17, 1988.

Carol D. Shull,

*Chief of Registration, National Register.*

**MISSOURI**

**Jackson County**

*Coca-Cola Building*, 2101–2111 Grand Ave., Kansas City, 88001300

**MONTANA**

**Ravalli County**

*Bean, Daniel V., House (Hamilton MRA)*, 611 N. Second, Hamilton, 88001288
*Blood, Oliver, House (Hamilton MRA)*, 524 S. First St., Hamilton, 88001279
*Conway House (Hamilton MRA)*, 805 S. Fourth St., Hamilton, 88001291
*Drinkenberg's, F.H., First Home (Hamilton MRA)*, 701 N. Second, Hamilton, 88001289
*Ellis, E.G., Houses (Hamilton MRA)*, 801 N. Third, Hamilton, 88001281
*Foye Rental Houses (Hamilton MRA)*, 819 and 821 N. Fourth, Hamilton, 88001292
*Gill, Sherman, House (Hamilton MRA)*, 605 N. Third, Hamilton, 88001282
*Goff House (Hamilton MRA)*, 115 N. Fifth, Hamilton, 88001283
*Gordon House (Hamilton MRA)*, 806 S. Fourth, Hamilton, 88001294
*Granke, Charles, House (Hamilton MRA)*, 406 S. Seventh St., Hamilton, 88001278
*Hamilton Commercial Historic District (Hamilton MRA)*, Main, N. Second, S. Second, S. Third, and State Sts., Hamilton, 88001273
*Hamilton Southside Residential Historic District (Hamilton MRA)*, S. First, S. Second, S. Third, S. Fourth, and S. Fifth Sts., Hamilton, 88001272
*Hoffman, Charles, House (Hamilton MRA)*, 807 S. Third, Hamilton, 88001277
*Lagerquist, John, House (Hamilton MRA)*, 701 N. Forth St., Hamilton, 88001284
*McGlauflin House (Hamilton MRA)*, 518 S. Eighth, Hamilton, 88001276
*Pine Apartments (Hamilton MRA)*, 804 S. Fourth St., Hamilton, 88001295
*Reinkeh, Allison, House (Hamilton MRA)*, 207 Adirondac St., Hamilton, 88001280
*Rocky Mountain Laboratory Historic District (Hamilton MRA)*, 900 blk. of Fourth St., Hamilton, 88001274
*Stout, John, House (Hamilton MRA)*, 1000 S. First, Hamilton, 88001290
*Trosdahl, Erick, House (Hamilton MRA)*, 206 S. Seventh St., Hamilton, 88001275
*VFW Club (Hamilton MRA)*, 930 Adirondac, Hamilton, 88001287
*Wallin, Frank, House (Hamilton MRA)*, 608 N. Seventh St., Hamilton, 88001293
*Wamsley, Other C., House (Hamilton MRA)*, 200 N. Fifth St., Hamilton, 88001285

**NEW YORK**

**Otsego County**

*Wright, Roswell, House, 25 Main St., Unadilla, 88001271*

**NORTH CAROLINA**

**Granville County**

*Adoniram Masonic Lodge (Granville County MPS)*, Jct of NC 1410 and NC 1300, Cornwall vicinity, 88001253
*Bobbitt–Rogers House and Tobacco Manufactory District (Granville County MPS)*, Address Restricted, Wilton vicinity, 88001262
*Brassfield Baptist Church (Granville County MPS)*, NC 96 and NC 1700, Wilton vicinity, 88001267
*Central Orphanage (Granville County MPS)*, Antioch Dr. and Raleigh Rd., Oxford, 88001257
*First National Bank Building (Granville County MPS)*, 302 Main St., Creedmoor, 88001254
*Harris–Currin House (Granville County MPS)*, Address Restricted, Wilton vicinity, 88001258
*Hunt, Joseph P., Farm (Granville County MPS)*, NC 1514, Dexter vicinity, 88001265
*Lawrence, John P., Plantation (Granville County MPS)*, NC 1700, Grisson vicinity, 88001264
*Littlejohn, Joseph B., House (Granville County MPS)*, 219 Devin St., Oxford, 88001268
*Mount Energy Historic District (Granville County MPS)*, NC 1636 and NC 56, Mount Energy, 88001266
*Oliver–Morton Farm (Granville County MPS)*, NC 1417, Oak Hill vicinity, 88001269
*Royster, John Henry, Farm (Granville County MPS)*, Address Restricted, Bullock vicinity, 88001260
*Salem Methodist Church (Granville County MPS)*, NC 1522, Huntsboro vicinity, 88001259
*Sherman, Elijah, Farm (Granville County MPS)*, US 158, Berea vicinity, 88001256
*Stovall, John W., Farm (Granville County MPS)*, NC 1507, Stovall vicinity, 88001270
*Tunstall, Eldon B., Farm (Granville County MPS)*, NC 1500, Bullock vicinity, 88001255
*Winston, Obediah, Farm (Granville County MPS)*, NC 1638, Creedmoor vicinity, 88001261

**OHIO**

**Cuyahoga County**

*Newton Avenue Historic District*, 9700–10003 Newton Ave., Cleveland, 88001296

**Greene County**

*Old, The, Hotel*, 100–101½ W. Main St., Spring Valley, 88001298

**Licking County**

*Pitzer, Anthony, Jr., House*, 6019 White Chapel Rd., Newark vicinity, 88001297

**Montgomery County**

*Dayton Young Men's Christian Association Building*, 117 W. Monument Ave., Dayton, 88001299

**PUERTO RICO**

**Caguas Municipality**

*Alcaldia de Caquas*, Calle Munoz Rivera Num. 42, Caguas, 88001307

**Dorado Municipality**

*Punta Boca Juana*, Address Restricted, Dorado vicinity, 88001308

**Manati Municipality**

*Brunet–Calaf Residence*, Quinones corner of Patriota Pozo St., Manati, 88001306
*La Colectiva Tabacelera*, 18 Quinones St., Manati, 88001305
*Plaza del Mercado de Manati*, Quinones, Padial and Baldorioty Sts., Manati, 88001303

**San Juan Municipality**

*Residencia Aboy—Lompre*, Avenida Ponce de Leon #900, Santurce, 88001304

**VERMONT**

**Bennington County**

*Bennington Railroad Station*, Depot and River Sts., Bennington, 88001301
*Henry, William, House*, River Rd., Bennington, 88001301

[FR Doc. 88–17393 Filed 8–1–88; 8:45 am]

BILLING CODE 4310–70–M

## Office of Surface Minning Reclamation and Enforcement

## Availability of the Draft Environmental Impact Statement on the Proposed Area B Expansion of the Big Sky Mine, Rosebud County, Montana (Federal Coal Lease M–15965)

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice of availability of a draft environmental impact statement.

**SUMMARY:** The office of Surface Mining Reclamation and Enforcement (OSMRE) and the Montana Department of State Lands (DSL) are making available a jointly prepared draft environmental impact statement (EIS) on the proposed Big Sky Area B mine. The EIS has been prepared to assist the Department of the Interior and Montana DSL in making a decision on the application submitted by Peabody Coal Company (Peabody) for their proposed surface coal mine, located approximately 5 miles south-southwest of Colstrip, Montana. OSMRE and Montana DSL are requesting that any interested party submit written comments on the draft EIS to assist with the preparation of the final EIS OSMRE and Montana DSL may hold a public hearing in Billings, Montana, to receive oral comments if substantial interest is expressed.

**DATES:**

*Comment Period:* Written comments on the draft EIS must be received by 4:00 p.m. (MDT) on September 26, 1988 at one of the locations listed below, under "**ADDRESSES**".

*Public Meetings:* Expressions of interest in a public meeting should be submitted by 4:00 p.m. (MDT) on August 22, 1988 at one of the locations listed below, under "**ADDRESSES.**"

**ADDRESSES:** Written comments, expressions of interest for a public

meeting, and/or requests for additional copies of the draft EIS: Hand-deliver or mail to either Raymond L. Lowrie, Assistant Director, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second Floor, 1020—15th Street, Denver, Colorado 80202 (Attention: Floyd McMullen); or Dennis Hemmer, Commissioner, Montana Department of State Lands, Capital Station, Helena, Montana 59620 (Attention: Bonnie Lovelace).

**FOR FURTHER INFORMATION, CONTACT:** Floyd McMullen, Big Sky Area B EIS Project Leader (telephone: 303–844–3104) at the Denver, Colorado, location given under "**ADDRESSES**".

**SUPPLEMENTARY INFORMATION:** Peabody's Big Sky mine is an existing surface coal mine located approximately 120 miles east of Billings, Montana, and 5 miles south-southwest of Colstrip, Montana. Peabody intends that mine to eventually cover 8,090 acres of land, of which approximately 2,500 acres have already been or are in the process of being mined within Area A of the mine.

Peabody is currently seeking approval to mine 64 million tons of coals at the Area B expansion of the mine over a 23-year period at an average rate of approximately 2.8 million tons per year. The proposed expansion would add 5,435 acres to the Big Sky mine in secs. 23, 24, and 25, T. 1 N., R. 40 E., and secs. 19, 21, 22, and 27 through 33, T. 1 N., R. 41 E., Montana Principle Meridian; 3,200 of these 5,435 acres would be disturbed by mining activities.

The draft EIS analyzes the probable impacts that would result should OSMRE and Montana DSL approve the application for, and Peabody subsequently expand into, the proposed mine. The EIS also analyzes the probable cumulative impacts that would result from surface coal mining operations not only at the proposed Big Sky Area B mine but also at the Big Sky Area A mine, and the other 4 existing and 3 proposed mines in its vicinity in southeastern Montana. Three alternatives that treat the available range of decision are evaluated in the EIS. These include: approval of the applicant's proposal with conditions; approval of the applicant's proposal with conditions and the addition of economic coal reserves in section 36; and disapproval of the applicant's proposal. OSMRE and Montana DSL have identified "approval of the applicant's proposal with conditions and the addition of economic coal reserves in section 36" as the preferred alternative.

If substantial interest is shown, OSMRE may hold a public meeting on the draft EIS during the comment period. If a public meeting is needed, notice will be given in the **Federal Register** and the Billing Gazette newspaper. Details regarding the meeting will be provided in the public notice.

Date: July 28, 1988.

**Brent Walquist,**

*Assistant Director, Program Policy.*

[FR Doc. 88–17358 Filed 8–1–88; 8:45 am]

BILLING CODE 4310-05-M

## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 290 (Sub-No. 2)]**

### Railroad Cost Recovery Procedures

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time to file comments.

**SUMMARY:** In a **Federal Register** notice of July 22, 1988 (53 FR 27773) the Commission established August 11, 1988 as the due date for comments concerning the proposal to revise the calculation of the fuel component of the all inclusive index of railroad input prices. The index is used to calculate the quarterly rail cost adjustment factor. At the request of the Association of American Railroads the due dates for filing comments has been postponed to September 12, 1988.

**DATES:** Comments are due September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** William T. Bono, (202) 275–7354. TDD for hearing impaired (202) 275–1721.

By the Commission, Heather J. Gradison, Chairman.

Dated: July 27, 1988.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–17359 Filed 8–1–88; 8:45 am]

BILLING CODE 7035-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Design Arts Advisory Panel (Challenge II Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge II Section) to the National Council on the Arts will be held on August 17, 1988, from 9:00 a.m.–5:30 p.m., and on August 18, 1988, from 9:00 a.m.–4:30 p.m., in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 18, 1988, from 3:30 p.m.–4:30 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on August 17, 1988, from 9:00 a.m.–5:30 p.m., and on August 18, 1988, from 9:00 a.m.–3:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

July 28, 1988.

[FR Doc. 88–17309 Filed 8–1–88; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–397]**

### Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to Washington Nuclear Project No. 2 (WNP–2), located in Benton County, Washington.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise Technical Specifications section 2.2 "Limiting Safety System Settings", section 3/4.2 "Power Distribution Limits", section 3/4.3.6 "Control Rod Block Instrumentation", 3/4.4.1 "Reactor Coolant System Recirculation System", and associated bases to incorporate limits applicable to operation of the unit up to 75% power with one recirculation pump unavailable to a fuel burnup of 35,000 MWD/MT.

It would also divide section 3/4.3.10 "Neutron Flux Monitoring Instrumentation" into two parts and relocate the two parts in the Technical Specifications. The two new parts would be section 3/4.2.6 "Power/Flow Instability" and 3/4.2.7 "Neutron Flux Noise Monitors."

The proposed action is in accordance with the licensee's application for amendment dated March 7, 1988, as supplemented by letter dated May 13, 1988.

*The Need for the Proposed Action*

The proposed change to the Technical Specifications will make it possible to operate the facility up to 75% power with one of the two recirculation pumps out of service at any time to the end of the station life. Under the current license, operation with one recirculation pump out of service (called "single loop operation") is only permitted to a fuel burnup of 15,000 MWD/MT. This burnup level will be reached in mid 1988. Without the amendment WNP–2 would be required to be shut down if one recirculation pump were taken out of service.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions will allow the facility to continue to operate in the event that it becomes necessary to take one recirculation pump out of service for testing or for repair. The licensee has extensive experience with single loop operation gained during the first two fuel cycles because of mechanical problems with the pumps. Both pumps remained in service during the third fuel cycle. Operation with two pumps is preferred by the licensee because higher power production is achievable.

The current limitation on single loop operation exists because the licensee had not previously evaluated use of a single pump at the proposed power level at later periods in the station life.

The original operating license allowed single loop operation up to a 50% power level for the duration of the operating license. When mechanical problems with one recirculation pump made it evident that the unit would operate for an extended period with just one pump, the licensee performed an analysis which showed that the unit could operate safely at a power level higher than 50% with one pump. This analysis looked only at the early years of station operation, extending to an average fuel burnup of 15,000 MWD/MT. The license was amended to allow higher power operation with a single pump but was restricted to the conditions for which the safety analysis applied.

Analyses submitted in support of the amendment application provide limits which ensure safe operation for the life of the station, meeting all objectives of existing technical specifications. Operation with a single loop will be at a reduced power level and is within the scope of analyses in the Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2, dated December, 1981. The proposed changes do not increase the probability or consequences of any accident. No changes are proposed in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed amendment to the Technical Specifications involves only the continued operation of systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and had no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** May 10, 1988 (53 FR 16605). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there is no significant environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. Denial of the request would result in intermittent stopping of plant operation while the recirculation pump is being serviced. However comparable environmental impacts would be associated with the generation of replacement power at an alternative location.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2, dated December, 1981.

*Agencies and Person Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of no significant impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 7, 1988 and supplement dated May 13, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Richland City Library, Swift and Northgate Streets, Richland, Washington, 99352.

Dated at Rockville Maryland, this 27th day of July 1988.

For the Nuclear Regulatory Commission.

**Harry Rood,**

*Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17369 Filed 8–1–88; 8:45 am]

BILLING CODE 7590–01–M

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**Advisory Committee on Nuclear Waste; Meeting; Revised**

The **Federal Register** published Friday, July 15, 1988 (53 FR 26915) contained a notice of the third meeting of the Advisory Committee on Nuclear Waste (ACNW) to be held on August 3–5, 1988. On August 3rd the meeting will start at 4:00 p.m. and on August 4th

at 6:00 p.m. at the Holley Inn, 235 Richland Avenue and Laurens Street, Aiken, SC. On August 5 the meeting will start at 2:00 p.m. at the Fims Building, 2600 Bull Street, Room 405, Columbia, SC. Additional topics to be considered by the Committee include the following:

1. Letter to the Commission on Below Regulatory Concern.
2. Letter to the Commission on the term Anticipated Events and Processes and Unanticipated Events and Processes.
3. Agenda for the 4th ACNW meeting, September 13–14, 1988.
4. Agenda for the 5th ACNW meeting, November 3–4, 1988.
5. Administrative matters relating to the scheduling and operating of ACNW meetings.
6. Administrative matters relating to the structure and operation of the ACNW.

All other items pertaining to this meeting remained the same as previously published.

Dated: July 27, 1988.

**Samuel J. Chilk,**

*Acting Advisory Committee Management Officer.*

[FR Doc. 88-17368 Filed 8-1-88; 8:45 am]

BILLING CODE 7590-01-M

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## Advisory Committee on Reactor Safeguards, Subcommittee on TVA Organizational Issues; Meeting; Cancelled

The **Federal Register** published Friday, July 22, 1988 (53 FR 27782) contained notice of a meeting of the ACRS Subcommittee on TVA Organizational Issues scheduled for August 5, 1988. This meeting has been *cancelled.*

Dated: July 26, 1988.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 88-17367 Filed 8-1-88; 8:45 am]

BILLING CODE 7590-01-M

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## NUREG/CR-5147, Fundamental Attributes of a Configuration Management Program for Nuclear Plant Design Control; Availability

The Nuclear Regulatory Commission has published a report the describes the results of an evaluation of findings identified during a number of NRC Safety System Functional Inspections and Safety System Outage Modification Inspections which are related to configuration management. Attributes were developed which are responsive to minimizing these types of inspection findings. Incorporation of these key attributes is considered good practice in the development of a configuration management program for nuclear plant design control.

NUREGs are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued NUREGs may be purchased from the Government Printing Office at the current GPO price. Information of current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued NUREGs may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of July 1988.

For the Nuclear Regulatory Commission.

**Brian K. Grimes,**

*Acting Director, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17372 Filed 8-1-88; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-335]

## Florida Power and Light Co., et al., St. Lucie Plant, Unit No. 1; Correction to Denial of Amendment to Facility Operating License and Opportunity for Hearing

On July 20, 1988, the **Federal Register** published a Notice of Denial of Amendment to Facility Operating License and Opportunity for a Hearing for the Florida Power and Light Company, St. Lucie Unit No. 1. On page 27417 of that notice, second column, fifth paragraph, the date should have been August 19, 1988, instead of July 7, 1988.

Dated at Rockville, Maryland, this 25th day of July, 1988.

For the Nuclear Regulatory Commission.

**E.G. Tourigny,**

*Acting Director, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[FR DOc. 88-17370 Filed 8-1-88; 8:45 am]

BILING CODE 7590-01-M

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[Docket No. 50-416]

## System Energy Resources, Inc., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc., (the licensees) for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Attachment 1 to the GGNS Unit 1 Operating License by extending the implementation date for a neutron flux monitor meeting the requirements of Regulatory Guide 1.97 until the fourth refueling outage. The present implementation date is the third refueling outage which is scheduled to start in February 1989. With the planned 18-month fuel cycle, the fourth outage would start about August 1990.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 1, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to interene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 1, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 28th day of July 1988.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17371 Filed 8–1–88; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, August 10, 1988
Wednesday, August 17, 1988.

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street

NW., Washington, DC 20415 (202) 632-9710.

**Thomas E. Anfinson,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

July 26, 1988.

[FR Doc. 88-17316 Filed 8-1-88; 8:45 am]

BILLING CODE 6325-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-25947; File No. SR-DTC-88-11]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Co.

The Depository Trust Company ("DTC") on July 7, 1988, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would authorize the DTC to convert certain municipal debt holdings from bearer form to registered form. The Commission is publishing this notice to solicit public comment on the proposal.

### I. DTC's Description of the Proposal

DTC states in its filing that the approval by the Commission of proposed Rules G-12 and G-15 of the Municipal Securities Rulemaking Board ("MSRB") permits municipal securities which are issuable in both bearer and registered form ("interchangeables") to be delivered in either form, unless the parties agree to a specific form of delivery at the time of a trade.[1] DTC states that these rule changes by MSRB (which will become effective on Septemer 18, 1988) will elminate the existing presumption in favor of delivering bearer certificates for interchangeables.

DTC states that registered certificates provide numerous benefits and efficiencies over bearer certificates.[2] and that, accordingly, commencing with the effective date of the said MSRB rule changes, DTC plans to effect a comprehensive conversion of "almost all" of its inventory of interchangeable bearer certificates into registered form.[3] DTC notes in its filing that it has maintained a policy of carrying a portion of its inventory in each interchangeable issue in bearer form to service customer requests for delivery of bearer certificates.[4] However, DTC intends gradually to phase out this policy over the next one or two years and to convert virtually all of its inventory of interchangeable issues to registered form.[5]

### II. DTC's Rationale for the Proposal

DTC states in its filing that the proposed conversion of the bulk of its interchangeable inventory from bearer to registered form would reduce operating expenses for itself and its participants and would provide improved services to public customers. DTC further states that the proposal is consistent with the Act in that it would promote the prompt and accurate clearance and settlement of transactions in municipal securities.

### III. Proposal's Effectiveness and Solicitation of Comments

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary of appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of such comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of the DTC. All submissions should refer to File No. SR-DTC-88-11 and should be submitted by August 23, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 27, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17379 Filed 8-1-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25949; File No. SR-NASD-88-19]**

### Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the OTC Bulletin Board Display Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to establish a new service, the OTC Bulletin Board Display Service ("Bulletin Board Service" or "Service"), respecting securities traded over-the-counter that are not included in the NASDAQ System nor listed on a national securities exchange (collectively referred to as "non-NASDAQ securities"). The new Service will permit eligible NASD member firms to enter, update and retrieve quotation information (as well as unpriced indications of interest) on a real-time basis in non-NASDAQ securities chosen by the participating market makers. The Service will utilize separate processing facilities from those used for NASDAQ, except for portions of the communications network that will

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[1] *See* Securities Exchange Act Release No. 25489 (March 18, 1988, 53 FR 9837

"Interchangeables" are municipal debt issues that may be held in registered or bearer form and may be coverted from one form to the other.

[2] DTC states that the benefits and efficiencies include: (1) For DTC itself, reduced processing expenses (*e.g.*, a reduction in labor-intensive coupon clipping and monitoring of newspapers for call notices) and reduced carrying expenses (*e.g.*, the ability to hold jumbo certificates instead of individual certificates); (2) for broker-dealers, lower depository fees and reduced risk of certificate loss or theft; and (3) for customers, reduced loss of interest revenues from missed call notices and reduced risk of lost or stolen certificates. *See, supra*, note 1, Securities Exchange Act Release No. 25489.

[3] *See* DTC's Important Notice, dated June 17, 1988.

[4] A small segment of public customers reportedly prefer bearer certificates for, among other reasons, the certificates' ease of transferability. *Id.*

[5] Telephone conversation between Richard Nesson, General Counsel, DTC, and Thomas C. Etter, Attorney, Securities and Exchange Commission, July 25, 1988. DTC has noted that, notwithstanding its preference for converting all interchangeables to registered form, certain obstacles (particularly nuances of state laws governing municipal securities) render it infeasible for DTC to convert absolutely 100% of all interchangeable issues in its inventory from bearer to registered form. *Id.*

support terminal access to NASD members.

During the pilot phase, real-time access to the Bulletin Board Service will be limited to NASD member firms utilizing their NASDAQ terminal devices and Workstation units authorized for Level 2 or Level 3 NASDAQ service. The Service is intended to be and is designed as a membership service for use by NASD broekr/dealers and market makers, not investors. Hence, firm/non-firm quotations, unpriced indications of interest, and the telephone numbers of participating market makers will appear on the NASD internal membership display. However, the NASD recognizes that independent vendors may have an interest in disseminating certain components of this information. If requested, Bulletin Board information will be made available to independent vendors of quotation information, subsequent to the pilot period, on terms that are fair and reasonable, and in a form that assures the integrity of the information.

Member firm participation by entry of quotations or other indications of interest in non-NASDAQ securities into the Service will be voluntary. Nonetheless, the Service is structured to encourage the entry of priced quotations in non-NASDAQ securities by allowing maximum flexibility to participating market makers. Specifically, a participating market maker has the option of entering a priced bid (and/or a priced offer) with the designation "*F*" indicating that the market maker's quotation is being held out as firm. Until that entry is modified by that market maker, the priced entry must be honored for one trading unit (*i.e.;* 100 shares). The NASD Board of Governors, in reviewing the parameters of the Service, has taken the position that a market maker's failure to honor a priced entry designated as "firm" shall constitute a violation of Article III, Section 1 of the NASD Ruels of Fair Practice. That provision requires that member firms conduct their business in accord with jsut and equitable principles of trade.

The NASD proposes to operate the Bulletin Board Service on a pilot basis for six months. A pilot program is particularly appropriate here because the NASD is uncertain of the degree of interest among member firms and vendors as well as the types of information that vendors would desire. The pilot will permit the NASD to test the system capabilities and to identify technological enhancements that should be made if the Service becomes permanent. Further, the experience gained from the pilot will enable the NASD to assess the economic viability of the Service and to formulate a cost-based fee to recover the costs of developing and operating the Service. During the pilot period, the NASD will work with interested vendors to solicit their cooperation in fashioning reasonable access terms and fees for distribution of Bulletin Board information through their respective networks. Those efforts will include definition of the scope of information to be supplied to vendors and the development of format specifications for displaying Bulletin Board information. For example, if vendors choose to market a service capable of showing all market makers' indications in a non-NASDAQ security, the ranking of market makers' entries should not deviate from one vendor service to another. Resolution of these basic issues is essential to avoid misleading displays of Bulletin Board information to public investors. Assuming Commission approval of the instant filing, the foregoing issues will be addressed in a subsequent filing to obtain permanent status for the Bulletin Board Service.

Finally, during the pilot phase of the Service, the NASD is prepared to provide an end-of-day static feed to any vendor that produces a printed medium compiling market makers' indications of interest in non-NASDAQ securities.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this filing is to obtain the Commission's approval to commence operation of the Bulletin Board Service, without charge, for a limited pilot term of six months. The Service is designed to capture and display quotation information (including unpriced indications of interest) entered by NASD member firms that function as market makers in non-NASDAQ securities. A member's ability to enter and update information displayed through the Service requires use of a NASDAQ terminal device or Workstation unit authorized for Level 3 NASDAQ service. NASD member firms will be able to retrieve Bulletin Board information, on a real-time basis, by means of NASDAQ terminal devices or Workstation units authorized either for Level 3 or Level 2 NASDAQ service. Providing access to Level 2 subscribers will facilitate the handling of retail orders in non-NASDAQ securities by member firms that do not function as market makers.

The principal aspects of the pilot operation of the Bulletin Board Service may be summarized as follows:

- The Service will operate on a real-time basis (during market hours) allowing eligible member firms to view, enter, and update information real-time on certain non-NASDAQ securities;
- Market makers' participation in the Service will be entirely voluntary:
- Market makers electing to participate will incur no minimum obligation as to time or the number of non-NASDAQ securities that they may select for inclusion in the Bulletin Board Service:
- Non-NASDAQ securities chosen for inclusion by participating market makers will be separately accessed and identified by utilization of the prefix "3" with the issue's four or five letter symbol code;[1]
- Participating market makers will be provided a scan function enabling them to view all securities in which they have registered:
- Access to the Service will be limited initially to registered broker dealers who are NASD members and subscribe to either Level 2 or Level 3 NASDAQ service.
- A participating market maker will be permitted to enter two-sided or one-sided quotes for one unit of trading (*i.e.*, 100 shares) at a specified price, to designate whether a priced bid or priced offer is firm, to solicit a bid or offer without stipulating a price, or to advertise a general interest in trading a particular security without specifying a price:
- The universe of securities eligible for quotation through the Service will exclude any security authorized for inclusion in the NASDAQ System or listed on a national securities exchange; and
- Separate processors from those supporting the NASDAQ System will

[1] The numeric perfix will differentiate a quotation display for a non-NASDAQ security from a quote display for a NASDAQ security

perform the data processing and storage functions for the Bulletin Board system.

The display of information contemplated by the Bulletin Board service can be demonstrated by the following example.

| *P* 3ABCD | ABC Development Corp. | | | | |
|---|---|---|---|---|---|
| BADR | 10 | F | 11 | F | 800-256-1620 |
| DBCC | 10 | F | 11 | F | 212-585-1000 |
| WALC | 10⅛ | F | 11 | | 202-898-1000 |
| MATS | 9.5 | F | 11.25 | | 800-909-2100 |
| BAGN | 10 | | 13 | | 800-243-6120 |
| BOTE | 10½ | | 11⅛ | | 303-525-4230 |
| RJAA | b.w. | | | | 800-126-1423 |
| DANI | | | | | 541-202-2067 |

This hypothetical display reflects the trading interests of eight market makers who have elected to participate in the Bulletin Board Service by entering information on the stock of ABC Development Corp., a non-NASDAQ issues. The sequencing of market maker information shown on the screen display is determined by an algorithm incorporated into the system design.[2] For example, market makers BADR and DBCC appear at the top because they have entered two-sided, firm quotes. Market makers WALC and MATS appear next because both have firm bids, but non-firm offers. Because WALC's firm bid is superior in price, WALC is listed a head of MATS.[3] BOTE Ad BAGN follow all market makers displaying a firm bid price because their priced bids are not designated as "firm". However, BAGN ranks ahead of BOTE on the basis of time priority. Finally, RJAA and DANI are listed below all other market makers because neither firm has made a price entry. Multiple firms with unpriced entires in a particular security will be listed by time priority. In this example, RJAA appears ahead of DANI solely because of the former's indication of "bid wanted" ("b.w."). Finally, it should be noted that all firms registering as market makers in non-NASDAQ securities must enter their respective telephone numbers. These will be displayed regardless of whether a firm inserts a priced entery.

[2] The algorithm for ranking the display of market makers' entries will work in the following manner: (i) All two-side firm quotes will be displayed first and ranked in price/time sequence; (ii) all one-sided firm quotes will be desplayed second and ranked in price/time sequence; (iii) all quotations ranked by price will be sequenced according to the bid price; (iv) all non-firm quotations will be displayed after the firm quotes (two-sided and one-sided) and will be sequenced solely on the basis of time; and (v) unpriced entries will appear last, with entries of "bid wanted"/"offer wanted" being displayed ahead of other unpriced entries; multiple unpriced entries will be sequenced on the basis of time.

[3] The priced entries of WALC and MATS illustrate the Service's capacity to accept quotation in fractions or in decimal form.

The NASD's submission of the filing is premised on its ability to ensure within its own systems that displays of Bulletin Board information can be differentiated from market data displays respecting NASDAQ issues. To accomplish this differentiation, the NASD will affix a special identifier to covered securities and assign a special key (*P*) to retrieve information on non-NASDAQ securities included in the Service. The NASD will require vendors to implement comparable procedures as a condition of their receiving Bulletin Board information from the NASD.

## Regulatory Issues

The structure of the proposed Service is that of a quotation medium for unlisted securities traded outside the NASDAQ market. Several printed media already exist for the purposes of gathering and disseminating broker-dealers' indications of interest (*i.e.*, quotes and unprice entries) in non-NASDAQ securities. The NASD intends the Bulletin Board Service to be an electronic medium that provides for an intra-day, dynamic display of similar information. Like the printed media, the Bulletin Board Service will be dependent upon the voluntary participation of maket makers and their selection, based upon business considerations, of non-NASDAQ securities in which they choose to indicate trading interest. Given these factors, the NASD's Bulletin Board Service constitutes an additional quotation medium for unlisted securities, not another market center. The NASD regards its operation of the Service as performing the function of a non-exclusive, securities information processor.

On May 2, 1988, the Commission approved an NASD rule proposal, File No. SR–NASD–87–55, designed to intensify surveillance of member firms' trading in non-NASDAQ securities.[4] Initiation of the Bulletin Board Service will not alter the scope or application of the regulatory reporting requirements established by File No. SR–NASD–87–55. On the other hand, market makers participating in the Service will be obliged to consider the impact of such participation in relation to the information maintenance requirements established by Exchange Act Rule 15c2–11.[5] Generally, if a market maker now satisfies the information maintenance requirement of Rule 15c2–11 (which requirement applies on a security-by-security basis), the firm will not incur an additional compliance burden by entering quotes or other indications of interest in the proposed electronic medium However, market makers that now rely upon the so-called "piggyback" exemption to Rule 15c2–11 merit continuation of that exemption to promote their participation in the new Service.[6] Accordingly, upon approval of the instant filing, the NASD requests that the Commission sanction extension of the "piggyback" exemption to any market maker wishing to participate in the Service so long as that market maker is now entitled to invoke the exemption for publication of "quotations" [7] in particular non-NASDAQ securities via an existing quotation medium.[8]

Finally, the NASD notes that Rule 15c2–11(d) requires that a broker dealer proposing to initiate a quote in a non-NASDAQ security pursuant to paragraph (a)(5) (which primarily applies to non-reporting companies), submit a copy of the requisite issuer data to the entity operating the quotation medium. This submission is required at least two days before the broker dealer initiates quotes based upon compliance with the information maintenance requirement set forth in paragraph (a)(5). The NASD understands that this information is shared with the Commission staff for regulatory purposes. To the extent that a broker-dealer has previously supplied this information to support its quote entries (or unpriced indications) in another medium, the NASD requests confirmation that such a firm would not have to make a duplicative filing to initiate quotes in a covered security via the Service. Nonetheless, if a firm has not previously made such a filing and cannot qualify for the "piggyback" exemption, the NASD will provide a

[4] Securities Exchange Act Release No. 34–25637 (May 2, 1988).

[5] 17 CFR 240.15c2–11.

[6] The "piggyback" exemption is found in paragraph (f)(3) of Rule 15c2–11. That provision allows an exception to the Rule's information maintenance requirement if the particular security has been the subject of quotations, in an interdealer quotation system, on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation. Unpriced entries "count" for purposes of invoking this exemption only if the interdealer quotation system or medium specifically identifies unsolicited indications of customer interest. Because the Bulletin Board Service is a new quotation medium, it has no quotation history for any eligible security. Therefor, exemptive relief is needed to extend the "piggyback" provision to the initiation of the Service.

[7] Paragraph (e)(3) of Rule 15c2–11 defines "quotation" to include priced entires, indications of interest in receiving a bid of offer, or a broker-dealer's advertising his "general interest in buying or selling a particular security."

[8] Paragraph (h) of Rule 15c2–11 provides ample authority for the Commission to grant the sort of exemptive relief being requested.

form for member firms' submission of paragraph (a)(5) information and develop procedures for supplying the data to the Commission.

Statutory Bases

The NASD cites sections 11A(a)(1) and 15A(b) (6) and (11) of the Act as the statutory bases for the proposed Bulletin Board Service.

Section 11A(a)(1) articulates the Congressional findings and policy goals respecting operational enhancements to the securities markets. Essentially, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and promote competition among market participants. Implementation of the Bulletin Board Service will allow the market makers in non-NASDAQ securities to enter and update quotation information on a real-time basis. This capability should enhance the efficiency of pricing and foster competition within the inter-dealer market for a particular security. Similarly, order entry firms will have real-time access to the trading interest being displayed by market makers in each covered security. Such access will assist them in negotiating the execution of customer orders at the best available price. Because the Bulletin Board display includes the telephone numbers of participating market makers, this feature should expedite the retail firms' processing of market orders. Assuming the pilot is successful, the NASD envisions expanded access to Bulletin Board information through commercial services offered by vendors. That development will comport with the Congressional goal of broadening the distribution of market information to investors. Accordingly, the NASD believes that the proposed Service is fully consistent with the key provisions of section 11A(a)(1) of the Act.

Additionally, the NASD believes that implementation of the Service is supported by subsections (6) and (11) of Exchange Act section 15A(b). Subsection (6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. The design and operational features of the Bulletin Board Service, particularly the on-line data entry and retrieval capabilities, serve to advance each of these statutory goals.

Subsection (11) under Exchange Act section 15A(b) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Further, such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Essentially, the Service's design and display features achieve the regulatory purposes contemplated by section 15A(b)(11) of the Act. For example, the preferential ranking of market makers entering two-sided, firm quotes reflects the NASD's effort to display quotation information for non-NASDAQ securities in a fair and informative manner. Similarly, the NASD's commitment to take enforcement action against any market maker who fails to honor quotes designated as "firm" should deter the entry of misleading or fictitious quotations by participating member firms. Therefore, the NASD believes that the display features incorporated into the Service satisfy the regulatory requirements of section 15A(b)(11) under the Act.

In sum, the NASD believes that sections 11A(a)(1) and 15A(b) (6) and (11) of the Act provide ample statutory bases for Commission approval of the Bulletin Board Service.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that Commission approval of the Bulletin Board Service, as described herein, will not create any competitive burden. Several factors support this belief. First, member firm participation by registration as a market maker in one or more non-NASDAQ securities is entirely voluntary. Second, registration as a market maker does not entail a minimum commitment as to time or the number of securities in which a firm may register. Third, a participating market maker may continue to insert quotes or indications of interest in the printed media that contain such information on non-NASDAQ securities. Fourth, participating market makers incur no obligation to insert priced entries or to designate a priced bid or offer as "firm".

The NASD views its operation of the Bulletin Board Service as the activity of a non-exclusive processor of securities information. The proposed Service simply provides another medium in which broker-dealers that make markets in non-NASDAQ securities can elect to advertise indications of interest (priced or unpriced). As such, the Bulletin Board Service differs markedly from other NASD systems/services that support the operations of the NASDAQ market. Nonetheless, the NASD acknowledges that some vendors may be interested in distributing applicable portions of Bulletin Board information to their subscribers. Assuming Commission approval of the pilot operation, the NASD will proceed to define the nature and scope of information to be provided to vendors and formulate a cost-based fee for expanded access to real-time data collected from participating market makers and distributed through vendors or the Bulletin Board Service. Simultaneously, the NASD will attempt to work with the vendors to establish reasonable terms of access covering the receipt and delivery of Bulletin Board information to their subscribers.

Finally, during the six-month pilot, the NASD has committed to provide an end-of-day transmission of static quotation information entered by participating market makers to any vendor that produces a printed medium compiling market makers' indications of interest in non-NASDAQ securities. The NASD will not assess a fee for access to this end-of-day information. However, vendors will be required to absorb the costs of developing the computer-to-computer interface needed to receive this transmission.

Accordingly, the NASD believes that no competitive burden will result from the Commission's approval of the Bulletin Board Service for a pilot term of six months.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments were neither solicited nor received on this proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Various rules under the Act and the Securities Act of 1933 use the terms "inter-dealer quotation system" (or some variation thereof) and "automated inter-dealer quotation system." Some of these rules have been construed to

apply only to the NASDAQ System, while others apply also to other inter-dealer quotation media. Based on a review of the rules, the Commission believes that the proposed service should be subject to those rules which apply to all inter-dealer quotation media, but not to those rules which have heretofore been construed to apply only to the NASDAQ System.

Interested persons are invited to submit data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 23, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 28, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17381 Filed 8-1-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25943; File No. SR-PSE-88-13]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Extension of Effectiveness of its Pilot Program for the Appointment and Evaluation of Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1988 the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE originally filed its program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts ("pilot program") with the Commission on May 4, 1981. In order to adopt the structure of the pilot program as a permanent part of PSE rules, the Board of Governors previously submitted proposed rule filing SR-PSE-87-19.[1] As this request for permanent approval is still pending with the Commission, the PSE is submitting this filing to request that the current temporary structure of the pilot program be extended for an indefinite period in order to enable the PSE to maintain the program while such request for permanent approval is pending and to allow the Commission the time necessary to review the rule filing submitted by the PSE. An indefinite extension is based upon the desire of the PSE to eliminate the need for the Exchange to continually file, and the Commission to process, periodic extension requests.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The PSE Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts was originally filed with the Commission on May 4, 1981. The purpose of the pilot has been to establish an effective procedure and criteria for (a) the appointment of new specialists, and (b) the evaluation of the appointment of new specialists, and (c) the evaluation of the performance of PSE specialists. In 1982, 1985, and 1986, the pilot program was amended to provide for changes in the specialist evaluation system. Since its original adoption the program has been renewed on a continual and regular basis.

Prior to the end of the third quarter of 1987, the PSE submitted proposed rule change SR-PSE-87-19 for the purpose of adopting the structure of the pilot program as a permanent part of its rules.

At this time, the PSE is seeking to extend the temporary nature of the pilot program for an indefinite period for the purpose of allowing the Commission the necessary time to process and evaluate the proposed PSE rule change outlined in SR-PSE-87-19 and to allow the program to remain in effect while such proposal is pending.

The proposed rule change is consistent with section 6(b) of the Act in general and section 6(b)(5) in particular, in that it helps to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to, and perfect the mechanics of, a free and open market, and protect investors and the public interest by allowing for an adequate and effective measure of specialist performance.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change imposes no burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received by the Exchange.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The PSE believes that the continued maintenance of its current pilot program will be consistent with the obligations of the Exchange as prescribed in the Act, particularly section 6, and the rules and regulations thereunder. In addition, the PSE's request for accelerated effectiveness of this filing is based on the desire to maintain the currently existing program as previously approved by the Commission.

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[1] *See* Securities Exchange Act Rel. No. 24800 (August 14, 1987) 52 FR 32372.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the PSE. All submissions should refer to the file number in the caption above and should be submitted by August 23, 1988.

### V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. In this regard, we note that the extension of the pilot furthers the protection of investors and the public interest because it allows for the continued evaluation of specialist performance while the Commission considers the Exchange's request for permanent approval.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in that the Commission believes it is appropriate to permit the program to remain in effect while the Commission considers the Exchange's proposal to approve the pilot program on a permanent basis. Further, the Commission has not received any comments on previous PSE proposed rule changes to extend the pilot program. The Commisison believes, therefore, that accelerated effectiveness of the extension of the pilot program is appropriate.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: July 26, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17382 Filed 8-1-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16501; 811-4762]**

## Corporate Cash Management Plus Fund Inc.; Application for Deregistration

July 27, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Corporate Cash Management Plus Fund Inc. ("Applicant").

*Relevant 1940 Act Section:* Section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

**FILING DATES:** The application on Form N-8F was filed on November 17, 1987, and an amendment was filed on July 22, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, One First National Plaza, Dayton, Ohio 45402.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Regina Hamilton, (202) 272-2856, or Special Counsel H.R. Hallock, Jr., (202) 272-3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. Applicant, a Maryland corporation and open-end diversified management investment company under the 1940 Act, filed a registration statement under the 1940 Act on Form N-1A on July 23, 1986. The registration statement became effective on October 23, 1986. Applicant also registered under the Securities Act of 1933 an indefinite number of shares of common stock pursuant to Rule 24f-2 of the 1940 Act. Applicant's initial public offering was on November 1, 1986.

2. On July 14, 1987, the Board of Directors of the Applicant authorized the sale of Applicant's net assets to Corporate Cash Management Fund Inc. ("CCM"), a registered series investment company. On July 15, 1987, Applicant executed and delivered to CCM an Agreement and Plan of Reorganization which provided for the sale of Applicant's assets in exchange for shares of Corporate Cash Management Plus Fund Portfolio Stock ("Portfolio Stock"), a new series of CCM with no shares outstanding prior to the sale of assets. Applicant's stockholders received the same number of Portfolio Stock shares as the number of shares of Applicant's stock outstanding on the last business day prior to the closing date. The Applicant's net assets were transferred to CCM on October 15, 1987, in exchange for 246,623,514 shares of Portfolio Stock, on the basis of net asset value per share of the Applicant's shares as determined the preceding business day.

3. As of the date of the sale, the Applicant had outstanding 246,623,514 shares of common stock, with a net asset value of $46.44 per share and net assets of $11,454,286.75.

4. Stockholders received a proxy statement and meeting notice mailed on August 27, 1987. At the stockholder's meeting held on October 15, 1987, 160,745,560 shares (69.746% of the shares authorized to vote) approved the sale of assets. No further stockholder action was required under Maryland law to consummate the transaction and dissolve the Applicant.

5. As of the time of filing the application, Applicant had no security holders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. It is not presently engaged in, nor does it propose to engage in, any business activities other than those

[2] 17 CFR 200.30-3.

necessary for the winding up of its affairs.

6. Applicant filed Articles of Dissolution with the State of Maryland on October 15, 1987, and has dissolved.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17360 Filed 8-1-88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of Reporting Requirements Submitted for Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** Notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted by September 1, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*Agency Clearance Officer:* William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

*OMB Reviewer:* Robert Neal, Office of Information and Regulatory Affair, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

*Title:* SBA Grants Management Reporting and Recordkeeping Requirements.

*Form Nos.:* SBA Form 1222, 1223, 1224.

*Frequency:* On occasion.

*Description of Respondents:* SBA requires the recipients of Federal dollars to report both programmatic and financial status for prudent monitoring by Federal officials.

*Annual Responses:* 2,000.

*Annual Burden Hours:* 10,500.

*Title:* Prebusiness Workshop Evaluation.

*Form Nos.:* SBA Form 1591.

*Frequency:* On occasion.

*Description of Respondents:* This information is obtained from clients attending prebusiness workshops. Information is needed to monitor and measure the quality of the workshops.

*Annual Responses:* 40,000.

*Annual Burden hours:* 10,000.

*Title:* Score Counseling Evaluation.

*Form Nos.:* SBA Form 1551.

*Frequency:* On occasion.

*Description of Respondents:* This information is obtained from clients obtaining score counseling. Information is needed to monitor and measure the quality of the counseling.

*Annual Response:* 50,000.

*Annual Burden Hours:* 8,333.

**William Cline,**

*Chief, Administrative Information Branch.*

[FR Doc. 88-17308 Filed 8-1-88; 8:45 am]

BILLING CODE 8025-01-M

### Action Subject to Intergovernmental Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

**SUMMARY:** This notice provides for public awareness of SBA's intention to refund twenty-eight presently existent Small Business Development Centers (SBDCs) on January 1, 1989. Currently, there are 52 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Arizona, Arkansas, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, and Wisconsin. This notice also provides a description of the SBDC program by settting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

**DATE:** Comments will be accepted through October 31, 1988.

**ADDRESS:** Comments should be addressed to Ms. Janice E. Wolfe, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Same as above.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has pro-mulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-eight presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 120 Days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 120-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

**Description of the SBDC Program**

The Small Business Development Center (SBDC) Program is a Business Development program of the U.S. Small Business Administration (SBA). The SBDC operates under the general management and oversight of SBA, but with recognition that a partnrship exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties.

SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Pub. L. 96–302, as amended by Pub. L. 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

**Purpose and Scope**

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

**Program Objectives**

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Makes assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

**SBDC Program Organization:**

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

**SBDC Services**

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise.

These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

**SBDC Program Requirements**

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resource within the State, particulary the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

**Advance Understandings**

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: July 26, 1988.

**James Abdnor,**

*Administrator.*

**Addresses of Relevant SBDC Directors**

Mr. Bill Dewey, Acting State Director, Gateway Community College, 108 North 40th Street Phoneix, AZ 85034 (602) 392–5224

Mr. Paul McGinnis, State Director, University of Arkansas, 100 South Main, Suite 401, Little Rock, AR 72201 (501) 371–5381

Dr. Richard E. Wilson, State Director, Colorado Community College, 600 Grant Street, Suite 505, Denver, CO 80203 (303) 894–2422

Ms. Nancy Flake, State Director, Howard University, 6th and Fairmount Street NW., Room 128 Washington, DC 20059 (202) 636–5150

Mr. Gregory Higgins, State Director, University of West Florida, Building 38, Pensacola, FL 32514 (904) 474-3016

Dr. Frank Hoy, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602 (404) 542–5760

Mr. Ronald Hall, State Director, Boise State University, 1910 University Drive Boise, ID 83725 (208) 385–1640

Mr. Jeff Mitchell, State Director, Dept. of Commerce & Community Affairs, 620 East Adams Street, Springfield, IL 62701 (217) 524–5856

Mr. Steve Thrash, State Director, Indiana Economic Development Council, One North Capitol, Suite 200, Indianapolis, IN 46204 (317) 634–1690

Ms. Cynthia Friend, Acting State Director, Wichita State University, Campus Box 48, 021 Clinton Hall, Wichita, KS 67208 (316) 689–3193

Mr. Robert Hird, State Director, University of Southern Main, 246 Deering Avenue, Portland, ME 04102 (207) 780–4423

Mr. Jerry Cartwright, State Director, College of St. Thomas, 1107 Hazeltine Gates Blvd., Suite 452, Chaska, MN 55318 (612) 448–8810

Ms. Carol Daly, Acting State Director, Montana Department of Commerce, 1424 Ninth Avenue, Helena, MT 59620 (406) 444–3923

Mr. Robert Bernie, State Director, University of Nebraska/Omaha, Peter Kiewit Center, Omaha, NE 68182 (402) 554–2521

Mr. Samuel Males, State Director, University of Nevada/Reno, College of Business Admin., Reno, NV 89557–0016 (702) 784–1717

Mr. James Bean, State Director, University of New Hampshire, 370 Commercial Street, Manchester, NH 03103 (603) 625–4522

Ms. Janet Holloway State Director, Rutgers University, Ackerson Hall, 3rd Floor, 180 University Street, Newark, NJ 07102 (201) 648–5950

Mr. Scott Daugherty, State Director, Unversity of North Carolina, 820 Clay Street, Raleigh, NC 27605 (919) 733–4643

Mr. Herb Manning, Acting State Director, SE Oklahoma State University, Station A, Box 4194, Durant, Oklahoma 74701 (405) 924–0277

Mr. Sandy Cutler, State Director Lane Community College, 1059 Willamette Street, Eugene, OR 97401 (503) 726–2250

Ms. Judith Fox, Acting State Director, University of Pennsylvania, The Wharton School, 3201 Steinberg-Dietrich Hall/CC, Philadelphia, PA 19104 (215) 898–1219

Mr. Douglas Jobling, State Director, Bryant College, Smithfield, RI 02917 (401) 232–6111

Mr. William Littlejohn, State Director, University of South Carolina, College of Business Admin., Columbia, SC 29208 (803) 777–4907

Mr. Donald Greenfiled, State Director, University of South Dakota, 414 East Clark, Vermillion, SD 57069 (605) 677–5272

Dr Leonard Rosser, State Director, Memphis State University, Memphis, TN 38152 (901) 454–2500

Mr. Kumen Davis, State Director, University of Utah, 660 South 200 East, Suite 418, Salt Lake City, UT 84111 (801) 581–7905

Mr. Lyle Anderson, State Anderson, State Director, Washington State University, College of Business and Economics, Pullman, WA 99164 (509) 335–1576

Dr. Peggy Wireman, State Director, University of Wisconsin, 602 State Street, Second Floor, Madison, WI 53703 (608) 263–7794.

[FR Doc. 88–17307 Filed 8–1–88; 8:45 am]

BILLING CODE 3025-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Privacy Act of 1974; General Air Transportation Records on Individuals

The Department of Transportation herewith publishes a notice proposing to add three new routine uses and make editorial changes to update the existing Privacy Act System of Records, DOT/FAA 847, General Air Transportation Records on Individuals.

Any person or agency may submit written comments on the proposed system to the Privacy Officer (M–34) Room 7109, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Comments must be received within 30 days from date this notice is issued to be considered.

If no comments are received, the proposed changes will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC July 22, 1988.

**Jon H. Seymour,**

*Assistant Secretary for Administration.*

**Narrative Statement for the Department of Transportation Federal Aviation Administration**

*Explanation of Change:*

The Federal Aviation Administration (FAA) proposes to revise the existing system of records, General Air Transportation Records on Individuals, DOT/FAA 847, to add three additional routine uses and make editorial changes to the rest of the system description.

One routine use, (a), has been added to permit the disclosure of basic certification information to the public upon request. Basic information about certificated airmen has historically been provided by the Aeronautical Center systems managers of DOT/FAA 847, General Air Transportation Records on Individuals. Such information is either given directly to public requesters or to FAA public affairs officers and other FAA employees who, in turn, release it to the media and other requesters. The information released pertains only to certificates, ratings, privileges, limitations, and other such information which historically has been considered in the public domain. Information which, if released, might constitute an unwarranted invasion of privacy (e.g., social security numbers, dates of birth, test score results, pending enforcement actions, etc.) is never released unless required or authorized by some other provision of law.

The second routine use, (b), has been added to make necessary records available to the National Transportation Safety Board (NTSB) for accident investigation purposes. The NTSB investigates civil aircraft accidents to determine and report publicly, the facts, conditions, and circumstances relating to each accident and the probable cause thereof. Currently, authorized representatives of NTSB have the explicit statutory authority to "inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation

* * *." (49 U.S.C. section 1903(b)(2)). When the performance of an airman or air traffic controller may have been a factor in an accident, NTSB should have access to medical records in the possession of the FAA. Such access is proper and necessary to the NTSB's investigation so that a determination can be made whether any medical, physiological, or psychological conditions may have been causal or contributory to the accident. Also, a determination by the NTSB that there were no such contributory factors is an important aspect of focusing on the probable cause. NTSB's use of medical data in this fashion will be consistent and compatible with the reasons for which the data are obtained.

A third routine use, (c), has been added to permit disclosure of necessary information about airmen to Federal, state, and local law enforcement agencies when those entities are engaged in the investigation or apprehension of drug law violators. This provision is considered compatible with the purpose for which these airman records are maintained in view of the recently-added Section 609(c)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1429(c)(1)). That section essentially mandates that the Administrator shall revoke the certificate of any airman who is convicted of a crime under Federal or state law relating to controlled substances, if the Administrator determines that: (1) An aircraft was used in the commission of the offense, and (2) the individual served as an airman, or was on board the aircraft, in connection with the commission of the crime. Since this 1984 amendment has now introduced drug-related offenses as the basis for the revocation of airmen certificates, we believe that disclosure of airmen registry information is appropriate when it can be established that the law enforcement agency requesting it is engaged in a drug-related investigation or enforcement effort.

Other routine uses will undergo changes. Six of the routine uses currently listed are strictly for internal use covered under 5 U.S.C. 552a(b)(1) and are not considered routine uses. These will be taken out of the routine use section. One of the routine uses listed duplicates one listed in the Department of Transportation prefatory statement of routine uses and as such need not be listed again. It will be removed. The remaining routine uses will be rewritten for clarification.

The following statements, which are written in compliance with the terms of the Office of Management and Budget (OMB) Circular A–130, Appendix 1, entitled "Federal Agency Responsibilities for Maintaining Records About Individuals," (50 Federal Register 52738 (1985)), describe the revised system.

1. *Purpose of system.* The General Air Transportation Records on Individuals, DOT/FAA 847, contains a broad range of information, including information used for issuance of airmen certificates, and on individuals against whom enforcement action has been taken, plus accident/incident and medical records information.

2. *Authority under which the system is maintained.* 5 U.S.C. 301, 49 U.S.C. 1341(a), 49 U.S.C. 1429.

3. *Effect on individual rights.* The information in this system is used in accordance with the purpose for which it was collected and in accordance with the stated routine uses. It is not expected to cause any harmful effects on individual privacy or property rights.

4. *Relationship to government agencies.* Information in the system will be provided to Federal, state, local, and foreign governments and the NTSB with a legitimate need to conduct investigations and carry out other safety related activities.

5. *Security.* Personal information in this system of records is processed in both hard copy and digital environments. Applicable safeguards for each have been established.

6. *Compatibility of routine uses with the purposes for which the records were collected.* Three new routine uses have been added to this system of records. In accordance with these new routine uses, information will be released as follows:

a. To the public requesting basic certification information such as airmen certificates, ratings, privileges, and limitations.

b. To NTSB to be used for accident investigation purposes.

c. To Federal, state, and local law enforcement agencies needing necessary information about airmen for the investigation or apprehension of drug law violators.

7. *OMB Control Numbers.* The following OMB control numbers apply as follows:

2120–0007, Flight Engineers and Flight Navigators
2120–0021, Certification: Pilots and Flight Instructors
2120–0022, Certification: Mechanics, Repairmen, Parachute Riggers
2120–0025, Crewmember Certificate Application
2120–0033, Representatives of the Administrator
2120–0034, Medical Standards and Certification

**DOT/FAA 847**

**SYSTEM NAME:**

General Air Transportation Records on Individuals, DOT/FAA.

**SYSTEM LOCATION:**

Records are maintained primarily at:

Department of Transportation (DOT)
Federal Aviation Administration (FAA), Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma 73125

Portions of these records are located in:

U.S. Department of Transportation
Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
General Aviation District Offices (GADO's)
Flight Standards District Offices (FSDO's)
Air Carrier District Offices (ACDO's)
International Field Offices
Civil Aviation Security Field Offices (CASFO's)
FAA regional offices
(Contact your nearest FAA office for location)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current certificated airmen, airmen whose certificates have expired, airmen who are deceased, airmen rejected for medical certification, airmen with special certification, and others requiring medical certification.

Air traffic controllers in air route traffic control centers, terminals, and flight service stations and applicants for these positions.

Holders of and applicants for airmen certificates, airmen seeking additional certifications or additional ratings, individuals denied certification, airmen holding inactive certificates, airmen who have had certificates revoked, and airmen and flight attendants engaged in international air transportation.

Persons who are involved in aircraft accidents or incidents; pilots, crew members, passengers, persons on the ground, and witnesses.

Individuals against whom the Federal Aviation Administration has initiated administrative action or legal enforcement action for violation of certain Federal Aviation Regulations (FAR) or Department of Transportation Hazardous Materials Regulations (HMR).

**CATEGORIES OF RECORDS IN THE SYTEM:**

All categories of records include identifying information such as name(s), date of birth, place of residence, mailing address, social security number, airman

certificate number, and home telephone number. Records in this system are:

Records that are required to determine the physical condition of an individual with respect to the medical standards established by FAA.

Records concerning applications for certification, applications for written examinations, results of written tests, applications for inspection authority, certificates held, ratings, stop orders, and requests for duplicate certificates.

Reports of fatal accidents, autopsies, toxicological studies, aviation medical examiner reports, medical record printouts, nonfatal reports, injury reports, accident name cards, magnetic tape records of fatal accidents, physiological autopsy, and consulting pathologist's summary of findings.

Records of accident investigations, preliminary notices of accident injury reports, engineering analyses, witness statements, investigators' analyses, pictures of accident scenes.

Records concerning safety compliance notices, letters of warning, letters of correction, letters of investigation, letters of proposed legal enforcement action, final action legal documents in enforcement actions, correspondence of Regional Counsels, Office of Chief Counsel, and others in enforcement cases.

**PURPOSE:**

General Air Transportation Records on Individuals are the official repository of records, documents, and papers required in connection with the issuance of airmen certificates by the Federal Aviation Administration. Basic information in this file concerning the qualifications of airmen has traditionally been regarded as available to the public upon request. Examples of basic information about these individuals include the type of certificates and ratings held, the date and class of latest physical, pilot's license number, and information relating to the status of the airmen's certificate; that is, whether it is current or has been suspended or revoked for any reason.

The file also serves as a repository for legal documents that relate to an individual's physical status or condition used to determine statistically the validity of FAA medical standards. These files are used to provide information for determining eligibility for airmen medical certification, for review of requests for exemption from medical requirements, and for review of certificate denials. Also, the information in the system is used to inform airmen of meetings and seminars conducted by the FAA regarding aviation safety.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To provide basic airmen certification and qualification information to the public upon request.

b. To disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.

c. To provide information about airmen to Federal, state, and local law enforcement agencies when engaged in the investigation and apprehension of drug law violators.

d. To provide information about enforcement actions arising out of violations of the Federal Aviation Regulations to government agencies, the aviation industry, and the public upon request.

e. To disclose information to another Federal agency, or to a court or an administrative tribunal, when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.

f. See Prefatory Statement of General Routine Uses.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

**DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):**

Disclosures may be made from these systems to 'consumer reporting agencies' (collecting on behalf of the U.S. Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)) and to debt collection agencies as defined by inference in the Federal Collection Act of 1966 (31 U.S.C. 3711(f)(1)) as amended.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders, on lists and forms, and in computer processable storage media. Records are also stored on microfiche and roll microfilm.

**RETRIEVABILITY:**

These records are retrieved by various combinations of name, birth date, social security account number, airman certificate number, or other identification number of the individual on whom the records are maintained. Records are also indexed by sex. Records are also filed by accident number and/or incident number, and administrative action or legal enforcement numbers.

**SAFEGUARDS:**

Personal information in this system of records is processed in both hard copy and digital environments. Applicable safeguards for each are described in the following subparagraphs:

Manual records: Strict information handling procedures have been developed to cover the use, transmission, storage, and destination of personal data in hard copy form. These are periodically reviewed for compliance.

Automated Processing (FAA Systems): Computer processing of personal information is conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

Automated Processing (Commercial Time Sharing Contractor): A limited amount of personal information covered by this system of records will be processed at a commercial facility. This data is of low sensitivity to disclosure. A comprehensive security review of the contractor installation was accomplished by the FAA security organization. Computer programs operated on commercial time share systems that contain data on individuals have multiple security levels and record element restrictions to prevent release data to unauthorized parties.

**RETENTION AND DISPOSAL:**

All records and files are retained and/or disposed of in accordance with the provisions of Order 1350.15B, Records Organization, Transfer, and Destruction Standards.

**SYSTEM MANAGER(S) AND ADDRESS:**

Records Concerning Aviation Medical Certification: Manager, Aeromedical Certification Branch, Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, Oklahoma 73125

Records From Regional Files: Regional Flight Surgeon within the region where examination was conducted.

FAA Certification Records and General Airmen Records: Manager, Airmen Certification Branch, Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, Oklahoma 73125. Requests for assistance may be made to the originating district office.

Records Concerning General Aviation Accidents and Incidents and Air Carrier Incidents: Aviation Standards National

Field Office, Attn: Manager, National Safety Data Branch, Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, Oklahoma 73125.

Records Concerning Administrative and Legal Enforcement Action:

FAA Enforcement Information System Data Bases for Administrative and Legal Enforcement Actions: Aviation Standards National Field Office, Attn: Manager, National Safety Data Branch, AVN–120, Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, Oklahoma 73125.

Official FAA Enforcement Files: The Office of the Chief Counsel, the Office of the Regional Counsel, or the investigating FAA field office, as appropriate. (The address of the appropriate FAA legal or field office maintaining the official agency enforcement file may be obtained from AVN–120.)

(Visit or call the local FAA office in the area in which you reside for any proper address not specifically listed above).

**NOTIFICATION PROCEDURE:**

Individuals wishing to know if their records appear on this system of records may inquire in person, or in writing, to the system manager.

**RECORD ACCESS PROCEDURE:**

Individuals who desire access to information about themselves in this system of records should contact or address their inquiries to the system manager.

**CONTESTING RECORD PROCEDURES:**

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Associate Administrator for Administration or his delegate at the following address: Department of Transportation, Federal Aviation Administration, Associate Administrator for Administration, AAD–1, 800 Independence Avenue SW., Washington, DC 20591.

**RECORD SOURCE CATEGORIES:**

Medical Information: Information is obtained from Aviation Medical Examiners, individuals themselves, consultants, hospitals, treating or examining physicians, and other Government agencies.

Airmen Certification Records: information is obtained from the individual to whom the records pertain, FAA aviation safety inspectors, and FAA designated representatives. Written test scores are derived from answers given by individuals. Actions filed by FAA personnel.

General Aviation Accident/Incident Records and Air Carrier Incident Records: Information is obtained from Aviation Medical Examiners, pathologists, accident investigations, medical laboratories, law enforcement officials, and FAA employees. Data is also collected from manufacturers of aircraft, and involved passengers.

Administrative Action and Legal Enforcement Records: Information is obtained from witnesses, Regional Counsels, the National Transportation Safety Bord, Civil Aviation Security personnel, Flight Standards personnel, Aeronautical Center personnel, and the Office of Chief Counsel.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Consistent with the provisions of Section (j)(2) and (k)(2) of the Privacy Act, records in this system which relate to administrative actions and legal enforcement may be exempted from certain access and disclosure requirements of the Act.

[FR Doc. 88–17347 Filed 8–1–88; 8:45 am]

BILLING CODE 4910–62–M

## Federal Highway Administration

### National Motor Carrier Advisory Committee; Public Meeting

**AGENCY:** Federal Highway Administration (PHWA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The FHWA announces that the Safety subcommittee of the National Motor Carrier Advisory Committee will hold a meeting on August 10, 1988, in Washington, DC, at the U.S. Department of Transportation headquarters building, 400 7th Street SW., Washington, DC. The meeting will being at 9:00 a.m. and will be held in Room 4200. This meeting is open to the public.

The agenda of the subcommittee for this meeting will include issues raised in the Federal Highway Administration's (FHWA) recently published notice of proposed rulemaking (NPRM) which proposed mandatory chemical testing of interstate or foreign commerce drivers for the use of drugs. 53 FR 22268 (June 14, 1988).

The FHWA's NRPM proposed to require motor carriers to establish programs to test drivers for the use of drugs. These programs would consist of five types of testing: pre-employment, periodic (biennial), post-accident, reasonable cause, and random drug testing. The testing procedures to be used would protect individual privacy, ensure accountability and integrity of specimens, require confirmation of all positive screening tests, mandate the use of laboratories operating within the guidelines established by the U.S. Department of Health and Human Services, provide confidentiality for test results and medical histories, and ensure nondiscriminatory testing methods. The FHWA further proposed that all motor carriers be required to establish effective drug abuse prevention programs. Finally, the NPRM proposed four different options concerning the circumstances under which employees would be given the opportunity to seek rehabilitation.

Comments to the FHWA's NPRM must be received on or before September 12, 1988. As part of this rulemaking process, the FHWA has decided to hold a series of public hearings. See 53 FR 25353 (July 6, 1988). The last scheduled hearing will be held on August 9, 1988, in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA–1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366–2238. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

Issued on: July 26, 1988.

R.D. Morgan,

*Executive Director.*

[FR Doc. 88–17346 Filed 8–1–88; 8:45 am]

BILLING CODE 4910–22–M

## Federal Railroad Administration

### Petitions for Approval and Exemptions

In accordance with 49 CFR 211.9, 211.41 and 211.55, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a special approval and requests for exemptions from compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

The individual petitions seeking an approval or exemption are as follows:

**National Railroad Passenger Corporation**

*[General Docket Number RST–88–1]*

The National Railroad Passenger Corporation (Amtrak) has submitted a request for a special approval under 49 CFR 213.9(c), which states in part,

"Maximum operating speed may not exceed 110 mph without prior approval of the Federal Railroad Administrator." Amtrak requests approval to operate converted Capitoliner passenger cars in a push-pull mode at 125 mph between Washington, DC and New York City, New York. The Capitoliner cars were converted from multiple-unit (MU) Metroliner motive powered cars to non-motive powered cars with an operating cab at one end. The propelling motors have been removed; however, the pantographs will be utilized to draw power from the overhead catenary wire for the electrically operated equipment for each individual car. This conversion makes it possible for Amtrak to operate Capitoliner cars in trains hauled by electric locomotives in both the push and pull mode over electrified sections of the railroad.

In June of 1987, braking and ride quality tests of the Capitoliner cars were successfully completed at speeds up to 125 mph. The tests were made while the train was in both the push and pull mode with electric locomotives and a diesel electric locomotive. Based on the results of those tests, Amtrak is requesting a special approval under 49 CFR 213.9(c) to operate the Capitoliner cars in revenue service, in the push-pull mode, at speeds up to 125 mph, on the Northeast Corridor between Washington, DC and New York City, New York.

**Union Pacific Railroad Company**

[*Waiver Petition Docket Number PB–88–1*]

The Union Pacific Railroad Company (UP) requests a waiver of compliance with certain provisions of the railroad power brakes regulation (49 CFR Part 232). the UP seeks a waiver of compliance with § 232.12(b), which stipulates, "Each carrier shall designate additional inspection points not more than 1,000 miles apart where intermediate inspection will be made to determine that—

1. Brake pipe leakage does not exceed five pounds per minute;
2. Brakes apply on each car in response to a 20-pound service brake pipe pressure reduction; and
3. Brake rigging is properly secured and does not bind or foul."

The UP request for relief is for only the double stack unit trains operating the West Coast to Chicago, Illinois, and return. It proposes to perform a single intermediate train air brake test at Rawlins, Wyoming, a distance of 1,126 miles from Los Angeles, California; 1,092 miles from Portland, Oregon; 1,269 miles from Oakland, California; 1,232 miles from Tacoma, Washington; 1,270 miles from Seattle, Washington; and 1,137 miles from Chicago, Illinois. At the present time the UP is performing the required intermediate tests at two locations, Salt Lake City, Utah and North Platte, Nebraska, to comply with the Federal regulation.

The railroad states the change is necessary to meet its customers' requirements concerning delivery and time schedules. It refers to the Association of American Railroads' (AAR) long distance train tests made in 1981 and 1985. An analysis of those test results showed that composition brake shoes, which are standard on the double stack cars, wear slightly more than 1/32s of an inch per 1,000 miles. Brake piston travel increase averaged less than 0.2-inch per trip for all trains tested.

**Norfolk Southern Corporation**

[*Waiver Petition Docket Number PB–87–2*]

On behalf of its operating subsidiaries, the Norfolk Southern Corporation (NS) requests a waiver of compliance with certain provisions of the railroad power brakes regulation (49 CFR Part 232). The NS seeks a waiver of the compliance with § 232.12(b), which stipulates, "Each carrier shall designate additional inspection points not more than 1,000 miles apart where intermediate inspection will be made to determine that:

1. Brake pipe leakage does not exceed five pounds per minute;
2. Brakes apply on each car in response to a 20-pound service brake pipe pressure reduction; and
3. Brake rigging is properly secured and does not bind or foul."

The NS request for relief is for a unit coal train operation between Marrowbone coal mine (near Williamson, West Virginia) and Sherrer, Georgia, a roundtrip of 1,168 miles. At the present time the NS is (1) performing an initial terminal train air brake test at Knoxville, Tennessee (located between Marrowbone and Sherrer) before the empty train departs for the loading site at the Marrowbone coal mine and (2) a 1,000-mile intermediate train air brake test also at Knoxville before the loaded train departs for the Georgia Power Company plant at Sherrer, Georgia. Knoxville, Tennessee is the designated maintenance point for the motive power and rapid-dump hopper cars in the Marrowbone-Sherrer service, according to the NS. It states that the train receives a particularly thorough initial terminal inspection in order to insure that the cars' bottom door operating mechanisms, air brakes, drawgear and running gear are in proper condition for the unit train to maintain its scheduled operating cycle of 72 hours between mine and power plant without equipment-related delays. In addition, the NS schedules 10 cars for removal from the train on a rotating basis for preventive maintenance at the Knoxville car repair shop.

The NS states that the intermediate air brake test made at Knoxville on the train's southbound trip is performed solely in order to comply with § 232.12(b). The NS contends that the inspection and maintenance program for the train keeps the brake systems on the cars in excellent condition to perform properly during the full cycle of 1,168 miles after an initial terminal train air brake test at Knoxville. The railroad is of the opinion that a waiver of the "1,000 mile" intermediate train air brake test required by § 232.12(b) would cause no adverse impacts or increased costs to the private sector, to consumers, or to Federal, State or local governments.

**Napa Valley Railroad Company**

[*Waiver Petition Docket Number SA–88–1*]

The Napa Valley Railroad Company (NVR) requests a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231) for its locomotive number NVR 50. The NVR seeks a waiver of compliance with those provisions of § 231.30, "Locomotive used in switching service," that require that each locomotive used in switching service be equipped with four side switching steps, with uncoupling levers that can be operated from the steps, and with side vertical handholds.

This recently acquired locomotive is a 44-ton industrial switcher type locomotive rated at 380 horsepower that was built by the General Electric Company in 1941. This locomotive was formerly owned by the Camino, Placerville and Lake Tahoe Railroad Company and was numbered 102. That railroad was granted a waiver (Docket Number SA–79–7) to operate the 102 without the required side switching steps (§ 231.30(c)), wide vertical handholds (§ 230.30(e)) and uncoupling mechanisms (section 230(f)), based upon its geographical location and operating environments. The NVR has renumbered the locomotive as NVR 50.

The NVR is requesting the same kind of waiver for this locomotive based upon the fact that it will be operated primarily on its own trackage between Napa, California and St. Helena, California, a distance of approximately 21 miles. The locomotive will be used occasionally in interchange freight service.

**Border Pacific Railroad**

[*Waiver Petition Docket Numbers RSGM–88–7 and LI–88–2*]

The Border Pacific Railroad Company requests a waiver of compliance with certain provisions of the Federal Railroad Administration (FRA) safety standards 49 CFR Part 223 (Safety Glazing Standards) and 49 CFR Part 229 (Locomotive Safety Standards) for its locomotive number BOP 50. The Border Pacific Railroad is a Class III short-line railroad located in south Texas.

The railroad seeks a waiver of the FRA's requirements (1) for certified glazing of locomotive windshields pursuant to § 223.11 (Docket Number RSGM–88–7) and (2) for welded wheels pursuant to § 229.75(m) (Docket Number LI–88–2).

The Border Pacific Railroad line is 31 miles long and operates through a remote area of south Texas between Rio Grande City (at the United States and Mexican border) and Misison, Texas. The largest city through which the railroad operates has a population of 10,000 people. The carrier states that it has never experienced any problems with vandalism or objects being thrown at the locomotive. The maximum permitted speed is 10 mph, and no passengers are carried on its line. In 1987, a total of 327 cars were moved, and none contained hazardous materials. The railroad interchanges with the Missouri Pacific Railroad at a minor location. Section 223.11(a)–(c) requires certified safety glazing for locomotives. The glazing presently installed on locomotive BOP 50 does not comply with those regulations. The Border Pacific Railroad believes that the existing windshield is more than adequate to meet safety concerns relative to its operational and geographical environment. Further, it would cost the railroad several thousand dollars to replace the windshield.

The Border Pacific Railroad seeks a waiver of compliance with those provisions of § 229.75(m) that prohibit the use of welded wheels. The regulation provides in pertinent part as follows:

Fusion welding may not be used on tires or steel wheels of locomotives, except for the repair of flat spots and worn flanges on locomotives used exclusively in yard service. A wheel that has been welded is a welded wheel for the life of the wheel.

The Border Pacific Railroad states that after several years of use, the locomotive wheels were required to be recontoured in order for them to have the necessary width at the flange. Although the length of the flanges was in compliance with FRA regulations, in an abundance of caution, the carrier decided to lengthen the flanges of three wheels so as to maintain an even higher level of safety. It was brought to the carrier's attention by a Federal inspector that fusion welding is not permitted on wheels of locomotives used in other than yard service and that its locomotive was being used in road service. The carrier states that it feels a waiver of § 229.75(m) should be granted for the continued use of its locomotive with welded flanges, given the operating and geographical situation.

The Border Pacific Railroad also states it would cost $10,000 to replace the welded wheels. It submits that a grant of this waiver would result in an equivalent level of safety as required by the existing regulation.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–88–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 16, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, July 26, 1988.

**J.W. Walsh,**

*Associate Administrator for Safety.*

[FR Doc. 88–17345 Filed 8–1–88; 8:45 am]

BILLING CODE 4910–06–M

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**Maritime Administration**

**Identification of American Market Capacity for Marine Hull Insurance**

On June 20, 1988, the Maritime Administration (MARAD) published in the **Federal Register** a final rule to govern the placement of marine hull insurance on subsubized and Title XI program vessels (53 FR 23112). This rule is effective July 20, 1988. Section 249.9 of the rule requires that the American market be given an opportunity to compete for the placement of marine hull insurance on each vessel. If less than 50% of the placement is made in the American market, the owner or broker must certify that 50% or 75% of the American market (measured in terms of capacity) were offered the risk.

This procedure requires MARAD to identify all qualified American underwriters and their respective capacities, and to make such information available to vessels owners and brokers. The purpose of this notice is to solicit such information from American underwriters, which MARAD intends to do annually. The list prepared as a result of this notice will be distributed to owners and brokers prior to renewal of insurance.

All underwriters licensed to do business in a state, and having at least a B Security rating as published in the latest edition of A.M. Best's Insurance Reports, and who wish to be included in MARAD's list of American market capacity must advise MARAD of their per risk capacity to write marine hull insurance. They must state separately, per risk capacity for blue water and non blue water vessels. In addition, if there are any other capacity limits which only apply to certain types of vessel/rigs, such limits must also be stated separately.

For purposes of determining American market capacity, the American Hull Syndicate and its member companies are to be treated separately, provided they remain able to write independently. Therefore, MARAD expects that the Syndicate members will individually submit their capacity to write independently.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Responses must be received by close of business on September 16, 1988.

Dated: July 28, 1988.

**James E. Saari,**

*Secretary, Maritime Administration.*

[FR Doc. 88–17373 Filed 8–1–88; 8:45 am]

BILLING CODE 4910–81–M

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## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 27, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau of Clearance Officer listed. Comments regarding this infromation collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0227.
*Form Number:* 6251.
*Type of Review:* Revision.
*Title:* Alternative Minimum Tax-Individuals.
*Description:* Form 6251 is used by individuals having adjustments or tax preference items or a taxable income above certain exemption amounts together with credits against their regular tax. The form provides a computation of the alternative minimum tax which is added to tax liability. The information is needed to see whether taxpayers are complying with the law.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 1,025,145.
*Estimated Burden of Hours Per Response:* 50 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 938,603 hours.
*OMB Number:* 1545–0890.
*Form Number:* 1120–A.
*Type of Review:* Revision
*Title:* U.S. Corporation Short-Form Income Tax Return.
*Description:* Form 1120–A is used by small corporations, those with less than $250,000 of income and assets, to compute their taxable income and their tax liability. The IRS uses Form 1120–A to determine whether corporations have correctly computed their tax liability.
*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 239,255.
*Estimated Burden of Hours Per Response:* 5 hours and 25 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 1,297,622 hours.
*OMB Number:* 1545–1002.
*Form Number:* 8621
*Type of Review:* Revision
*Title:* Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
*Description:* Form 8621 is used by shareholders of foreign investment companies to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts in income, made the election correctly, and have properly computed the additional tax and interest amount.
*Estimated Number of Respondents:* 7,500.
*Estimated Burden of Hours Per Response:* 1 hour and 44 minutes
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 12,964 hours.

Clearrance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 88–17375 Filed 8–1–88; 8:45 am]
BILLING CODE 4810-25-M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.
**ACTION:** Notice.

**SUMMARY:** The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

**DATES:** Comments on the information should be directed to the OMB Desk Office within 30 days of this notice.

Dated: July 18, 1988.

By direction of the Administrator.

**Frank E. Lalley,**
*Director, Office of Information Management and Statistics.*

**Revision**

1. Department of Veterans Benefits.
2. Designation of Beneficiary.
3. VA Form 29–336.
4. This form is used by the insured to designate a beneficiary and select an optional settlement to be used when the insurance matures by death. The information is required to determine the claimant's eligibilty to receive the proceeds.
6. Individuals and households.
7. 83,500 responses.
8. 13,917 hours.
9. Not applicable.

[FR Doc. 88–17325 Filed 8–1–88; 8:45 am]
BILLING CODE 8320-01-M

### Advisory Committee on Native American Veterans; Reestablishment

In accordance wtih the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, the Administrator of Veterans Affairs gives notice that the Advisory Committee on Native American Veterans, estabished by Pub. L. 99–272 and extended by Pub. L. 100–322, has been reestablished for one year, from July 7, 1988, to July 6, 1989.

The committee will examine and evaluate programs and activities of the Veterans Administration with respect to the needs of veterans who are Native Americans, including American Indians, Alaska Natives, and Native Hawaiians. They will assess the needs of the Native Americans with respect to health care, rehabilitation, readjustment counseling, outreach services, and other benefits and services under programs administered by the Veterans Administration. The committee will be composed of representatives from the Department of Labor, Department of Interior, Veterans Administration, as well as members of the general public

who represent American Indians, Alaska Natives, and Native Hawaiians.

Comments of interested persons concerning the reestablishment of the Committee may be submitted to John Fulton, Committee Manager, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: July 25, 1988.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 88-17327 Filed 8-1-88; 8:45 am]

BILLING CODE 8320-01-M

## Voluntary Service National Advisory Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that the annual meeting of the Veterans Administration Voluntary Service National Advisory Committee, comprised of 56 national voluntary organizations, will be held at the Albuquerque Hilton Hotel, Albuquerque, New Mexico, on October 27 through October 30, 1988.

Registration of the conferees and orientation of new committee members will be held beginning at 1 p.m. on October 27, 1988. The committee will officially convene with the Opening Session at 9 a.m., October 28, 1988, and will conclude at 12 noon, October 30, 1988.

The purposes of the meeting are to instruct committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the agency's nationwide medical program.

For further information contact Mr. Edward F. Rose, Director, Voluntary Service (135), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, Telephone (202) 233-4110.

Dated: July 25, 1988.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 88-17326 Filed 8-1-88; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 148
Tuesday, August 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 27103, Monday, July 18, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Tuesday, July 26, 1988.

**CHANGE IN THE MEETING:** The meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: July 25, 1988.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 88–17394 Filed 7–29–88; 9:40 am]

BILLING CODE 6750–06–M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

July 28, 1988.

**TIME AND DATE:** 10:00 a.m., Thursday, August 4, 1988.

**PLACE:** Room 600, 1730 K Street NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *U.S. Steel Mining Co., Inc.,* Docket Nos. PENN 87–37, etc. (Issues include whether the Administrative Law Judge erred in concluding that the operator violated 30 CFR 75.601, dealing with identification of disconnecting devices.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653–5629 or (202) 566–2673 for TDD Relay.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 88–17443 Filed 7–29–88; 1:42 pm]

BILLING CODE 6735–01–M

**NUCLEAR REGULATORY COMMISSION:**

**DATE:** Weeks of August 1, 8, 15, and 22, 1988.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of August 1**

*Wednesday, August 3*

2:00 p.m.
Briefing by NUMARC on Plant Maintenance (Public Meeting)

*Thursday, August 4*

2:00 p.m.
Briefing on the Status of Sequoyah I (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Revision of the ECCS Rule Contained in Appendix K and § 50.46 of 10 CFR 50 (Final Rule)
b. Allocation Between Commission and Illinois of Regulatory Authority Over West Chicago Waste Materials
c. Licensing Board Decision on Senior Reactor Operator License for David W. Held

*Friday, August 5*

10:00 a.m.
Briefing on Status of Efforts to Enhance Safety of Users of By-Product Materials (Public Meeting)
2:00 p.m.
Briefing on Individual Plant Examinations Generic Letter (Public Meeting)

**Week of August 8—Tentative**

*Tuesday, August 9*

10:00 a.m.
Briefing on Status of Agreements with OSHA, EPA and FEMA Concerning Jurisdiction Over Non-Radiological Hazards (Public Meeting)
2:00 p.m.
Briefing on Key Licensing Issues Associated with DOE Sponsored Advanced Reactor Designs (Public Meeting)

*Wednesday, August 10*

10:00 a.m.
Briefing on Current Status of Nuclear Materials Transportation (Public Meeting)

*Thursday, August 11*

10:00 a.m.
Briefing on Status, Results, and Implementation of B&W Reassessment (Public Meeting)
2:00 p.m.
Briefing on Standardization of Advanced Reactor Designs (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 15—Tentative**

*Monday, August 15*

2:00 p.m.
Briefing on Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting)

*Tuesday, August 16*

2:00 p.m.
Briefing on Maintenance Workshop (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 22—Tentative**

There are no meetings scheduled for the Week of August 22.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (301) 492–0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492–1661.

**William M. Hill, Jr.,**

*Office of the Secretary.*

July 28, 1988.

[FR Doc. 88–17463 Filed 7–29–88; 3:13 pm]

BILLING CODE 7590–01–M

**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** (To be published).

**STATUS:** Closed meeting.

**PLACE:** 450 5th Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** July 26, 1988.

**CHANGE IN THE MEETING:** Additional item.

The following additional item will be considered at a closed meeting scheduled for Tuesday, August 2, 1988, at 10:00 a.m.:

Opinion.

Commissioner Cox, as duty officer, determined that Commission business required the above changed.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

**Jonathan G. Katz,**

*Secretary.*

July 27, 1988.

[FR Doc. 88-17383 Filed 7-29-88; 8:47 am]

BILLING CODE 8010-01-M

# Corrections

Federal Register
Vol. 53, No. 148
Tuesday, August 2, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 761**

**[OPTS-62053A; FLR 3369-2]**

### Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations

*Correction*

In rule document 88-14291 beginning on page 24206 in the issue of Monday, June 27, 1988, make the following correction:

On page 24212, in the third column, in the second complete paragraph, in the 17th line, after "(A)," insert "(B),".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO-0030-08-4332-09]**

### Proposed Change in Wilderness Suitability Recommendation; Colorado

*Correction*

In notice document 88-16264 appearing on page 27403 in the issue of Wednesday, July 20, 1988, make the following correction:

In the second column, under **DATE**:, in the second line, "August 9, 1988" should read "August 19, 1988".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV-930-08-4212-22]**

### Filing of Plats of Survey; Nevada

*Correction*

In notice document 88-15774 beginning on page 26680 in the issue of Thursday, July 14, 1988, make the following corrections:

On page 26681, in the third column, under T. 12 N., R. 68 E., in Sec. 15, "SE¼S¼" should read "SE¼SE¼". Also, in Sec. 23, in the second line, "W½NE¼" should read "W½NW¼".

BILLING CODE 1505-01-D

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Federal Register

Tuesday
August 2, 1988

Part II

# Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Crane or Derrick Suspended Personnel Platforms; Final Rule

VOL 53 ISS 148 AUG 2 1988 UMI

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1926**

**[Docket No. S-409]**

## Crane or Derrick Suspended Personnel Platforms

**AGENCY:** Occupational Safety and Health Administration, U.S. Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) hereby amends its Construction Standards for Cranes and Derricks, 29 CFR 1926.550, by adding a new paragraph (g) to prohibit the use of cranes or derricks to hoist personnel except in the situation where no safe alternative is possible, and as long as the requirements for such hoisting set out in paragraph (g) are satisfied. OSHA initiated this rulemaking action to establish clearly the conditions under which employees on personnel platforms may be hoisted by cranes or derricks, and to insure that this information is readily available to employers. The intended effect of this regulation is to increase safety for workers.

**EFFECTIVE DATE:** October 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 *et seq.*) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA), significantly strengthened employee protection by providing occupational safety and health standards for employees of the building trades and construction industry in Federal and federally financed or federally assisted construction projects.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 650 *et seq.*), expanded coverage to virtually all employments, and authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the CSA, as occupational safety and health standards. Accordingly, the Secretary adopted the construction standards issued under the CSA as OSHA standards on May 29, 1971 (36 FR 10466) and redesignated these rules as 29 CFR Part 1926 on December 30, 1971 (36 FR 25232). The standard entitled "Cranes and Derricks," § 1926.550, was adopted as an OSHA standard in Subpart N of Part 1926 as part of this process.

Paragraph (b)(2) of § 1926.550 requires employers to ensure that their crawler, locomotive and truck crane operations meet the applicable requirements in the American National Standards Institute (ANSI) standard B30.5-1968, "Safety Code for Crawler, Locomotive and Truck Cranes." Section 5-3.2.3(e) of ANSI B30.5-1968 provides that "the operator shall hoist, lower, swing, or travel while anyone is on the load or hook." Section 5-3.2.1.4(r) of the most recent ANSI edition (1982) retains the ban on riding a bare hook or a load of material.

A similar requirement appears in section 6-3.3.3 of ANSI B30.6-1984, "Safety Code for Derricks," which requires that "the operator shall not hoist, lower, or swing while anyone is on the load or hook."

Ever since OSHA first adopted the CSA standards, the construction industry has expressed concern as to the application of the above-described provisions, particularly with regard to whether they should be interpreted to prohibit the hoisting of personnel platforms, sometimes also known as man baskets or man-skip boxes, by cranes and derricks. OSHA's approach to this question can best be understood by examining the chronology of this rulemaking.

In 1972, a group of Florida contractors requested that OSHA clarify the meaning of the § 1926.550(b)(2) ban on "riding the hook." OSHA responded that, where there were no other practical alternative means of transporting employees, no citations would be issued under § 1926.550(b)(2) provided that employers took specified measures to safeguard hoisted employees (Ex. 2-1).

In 1973, OSHA received an ANSI B30 Committee interpretation of ANSI B30.5, section 5-3.2.3(e). ANSI interpreted the section as referring to the hoisting of employees on the hook itself or on normal material loads, such as beams, girders or concrete buckets. The committee further stated its view that a specially designed scale box or other guarded platform for personnel that was attached to the crane hook was permissible under controlled conditions (Ex. 2-2).

Also in 1973, the Boeing Corporation applied to OSHA for a variance from the application of § 1926.550(b)(2) to its personnel hoisting operations. OSHA determined that Boeing did not need a variance because Boeing's specially designed suspended work platform was not a "load." OSHA further stated that riding and working on these platforms while using a lifebelt-lifeline system did not constitute riding the hook (Ex. 2-3).

In December 1973, the Advisory Committee on Construction Safety and Health (ACCSH) appointed an informal subgroup to examine this issue, to evaluate the need for regulatory action, and to make recommendations to the full committee.

On July 30-31, 1974, the ACCSH subgroup held a public meeting in which interested parties were invited to participate (Ex. 2-4). The ACCSH subgroup reviewed the comments received, along with data developed by the subgroup, and prepared recommendations for consideration by the full committee. On October 30-31, 1974, the Advisory Committee voted to recommend that OSHA initiate rulemaking to regulate employee hoisting operations. (Ex. 2-5).

Since 1975, OSHA has issued four interpretations which provided guidelines for the use of crane suspended work platforms (Exs. 2-6, 2-7, 2-8 and 2-9). On October 8, 1981, the provisions of these guidelines were incorporated into OSHA Instruction STD 1-11.2A. (Ex. 2-10). That instruction, in turn, was replaced by OSHA Instruction STD 1-11.2B on August 8, 1983 (Ex. 2-11).

Despite the issuance of these guidelines, there have been persistent questions about the required equipment and procedures, and a rising toll of fatalities and injuries among hoisted employees. In particular, OSHA is concerned that those guidelines, since they are generally available only to compliance officers, are not known to employers who might be hoisting personnel. Therefore, employers might learn about the approved procedures only after an inspection or accident investigation has taken place.

OSHA determined that these administrative interpretations of § 1926.550(b) have not provided adequate guidance for employers or protection for workers. OSHA initiated this rulemaking action to establish clearly the conditions under which employees on personnel platforms may be hoisted by cranes or derricks, and to

insure that this information is readily available to employers.

Accordingly, OSHA developed a draft proposed rule, which incorporated the best available information on feasible equipment and work practices, language from an adopted but then unpublished revision of ANSI B30.5, and a draft ANSI A10.28 "Crane or Derrick Suspended Work Platforms," which had not yet been adopted by ANSI (Exs. 2–14 and 2–15). The draft OSHA proposal was discussed by ACCSH on May 23 and 24, 1983 (Ex. 2–12). The recommendations of ACCSH were substantially the same as those received by OSHA in 1974, and are discussed in the preamble in conjunction with the appropriate provisions. In addition to the ACCSH review, OSHA distributed drafts of the proposal to interested parties. The Agency received 30 comments, which diverged substantially regarding the limits to be placed on personnel hoisting. On October 31, 1983, ANSI formally issued its revised B30.5, in which section 5–3.2.2 provided guidelines for personnel hoisting.

On February 17, 1984, OSHA issued a notice of proposed rulemaking (NPR) (49 FR 6280). The Agency proposed adding a new paragraph (g), regulating the use of crane or derrick hoisted personnel platforms, to 29 CFR 1926.550, "Cranes and derricks." The NPR established a sixty day period, which ended April 17, 1984, for submission of written comments. The comments received raised a number of important issues and included a hearing request. As discussed below, commenters were particularly concerned with the proposed scope and application of the standard, equipment safety factors, anti-two-blocking precautions and testing requirements.

On June 20, 1984, OSHA announced that it would convene an informal public hearing on September 11, 1984, and extended the period for submitting testimony, documentary evidence and additional comments until August 10, 1984 (49 FR 25248). On July 26, 1984, the Agency rescheduled the hearings to begin on September 18, 1984 (49 FR 30077). The hearings were held on September 18–19, 1984, with Administrative Law Judge Leonard N. Lawrence presiding. At the close of the hearings, Judge Lawrence set a period, ending November 7, 1984, for the submission of additional comments and information. On January 25, 1985, Judge Lawrence certified the hearing transcript and related submissions, closing the record for this proceeding.

OSHA received 92 comments in response to its NPR and hearing notices. A wide range of employees, businesses, labor unions, trade associations, state governments and other interested parties contributed to the development of this record. OSHA appreciates the efforts interested parties have made to help develop a rulemaking record which would provide a sound basis for the promulgation of a final rule.

Based on its review of the record, OSHA has determined that hoisting with crane or derrick suspended personnel platforms constitutes a significant hazard to hoisted employees, and that it will not be permitted unless conventional means of transporting employees are not feasible, or unless they present greater hazards. OSHA has determined that compliance with the provisions of this standard will provide the best available protection for hoisted personnel, in those limited situations where personnel hoisting is necessary.

Employees who are hoisted in crane, or derrick suspended personnel platforms are exposed to several serious hazards, including being spilled from the platform or having the platform dropped while they are on board. These hazards, whether caused by mechanical failures or human errors, can result in fatalities and crippling injuries to the hoisted personnel. Those same hazards would simply cause inconvenience and monetary loss when construction materials are spilled or dropped.

As the accident reports presented below indicate, many things can go wrong in a personnel hoisting operation. For example, "two-blocking," one of the most serious and commonly experienced hazards, occurs when a crane operator who is adjusting the elevation of a platform or the length of the crane boom causes the load block on the load line to contact the boom tip, thereby severing the load line and dropping the platform to the ground. Employees can also be injured or killed when a crane tips due to inadequate stabilization; when they ride the hook or a material load attached to a hook; when employers improperly select, assemble and maintain their cranes, derricks and personnel platforms; when the position of the platform or its occupants shifts suddenly; and when the platform is overloaded. Overloading, in particular, results when a crane attempts to hoist a weight which exceeds either the stated capacity of the crane or the crane capacity as limited by worksite conditions.

OSHA determined, in the course of preparing the regulatory analysis for this rulemaking, that accidents resulting from the use of cranes or derricks to hoist personnel result in approximately 63 injuries annually. Of those injuries, approximately 15 are fatal, and at least seven result in total disability.

OSHA believes that the primary cause of non-compliance is the lack of clear regulatory language in Subpart N of 29 CFR Part 1926. In particular, existing § 1926.550(b)(2) provides no direct regulatory guidance. It simply incorporates ANSI B30.5–1968 by reference. Therefore, under the current regulations, employers are expected to obtain and read an ANSI document which, as stated above, has been superseded, and determine from it the procedures for personnel hoisting. In view of this situation, it is easy to see why, despite OSHA's adoption of the ANSI ban on riding the load, so many employees continue to ride the load and are killed or injured each year while doing so. Because of this problem of outdated ANSI Standards, OSHA has avoided the use of incorporation by reference whenever possible in recent years, and has attempted to include all relevant provisions within the regulatory text.

The text of the current directive, the proposed rule and the final rule are very similar. OSHA has found, however, that many employers are unaware of or simply do not follow the interpretations and guidelines in OSHA's directive on § 1926.550(b). Therefore, in order to protect employees who must be hoisted on personnel platforms, the Agency is promulgating this standard to eliminate any uncertainty about what is required. OSHA expects that employers will comply with the requirements of paragraph (g) of § 1926.550, and that compliance will prevent most of the fatalities and injuries which have been experienced under the existing standard. In addition, OSHA anticipates that compliance with this new standard will reduce the number of injuries and fatalities among employees who might otherwise be assigned to construct, use, and disassemble scaffolds, or other "conventional" means of access, in workplace situations which would expose these employees to greater hazards than would be involved with the use of crane or derrick suspended platforms.

OSHA has determined, through its regulatory impact analysis, that the number of employees exposed to the hazards of personnel hoisting is relatively small. However, the injuries which can result from accidents occurring during personnel hoisting are usually very severe. A review of some hoisting accidents illustrates the magnitude of the danger to which employees are exposed.

An accident in Cheyenne, Wyoming (1973) resulted in two deaths when a telescoping boom severed the load line.

Those deaths would have been averted if the employees in the platform had been wearing safety belts and lanyards attached to a lifeline secured to the boom tip, or if the crane had been equipped with a positive acting anti-two-blocking device. The operator, while experienced in operating cranes, was not familiar with the specific machine being used, nor with the hoisting operation during which the accident occurred. OSHA has found that even crane operators who are well acquainted with telescoping boom cranes have had problems when working with this equipment in new locations and in unfamiliar surroundings.

In Kansas City (1972), a structural framework carrying five men and a significant amount of material and equipment fell to the ground when an outrigger of the crane failed. The total weight was reported to be only have the rated capacity of the crane when boomed out to the work location, but the outrigger broke loose from its mounting and the boom collapsed before it reached the intended radius. Failures of this nature point out the need for exact knowledge of crane or derrick stability, and the need for careful inspection and testing of such machinery prior to its use for hoisting employees.

In Chicago (1981), five employees were killed and a sixth employee was seriously injured when a job-built personnel basket fell 100 feet. The employees were being hoisted by a mobile crane to a work station atop a tower crane being assembled on the site. The metal framework at the top of the cage, to which the hoisting rope was attached, separated, causing the platform and its occupants to fall. The implementation of the specific design criteria and inspection and testing requirements in the final rule should prevent such accidents caused by structural failure.

In Tampa, Florida (1983), four men on a personnel platform were killed in an accident at Tampa Stadium when they were being raised by a crane to a work station 135 feet above the ground at the top of the stadium. When the platform reached 130 feet, the boom of the crane fell and the men in the platform fell with it. The Agency believes the implementation of inspection and testing requirements should prevent these types of accidents.

OSHA has carefully developed and reviewed the record for this rulemaking to ensure that the standard, as promulgated, is based on substantial evidence. OSHA has determined, based on the record, that crane and derrick personnel hoisting poses significant risks for affected employees, even when employers comply with the final rule, and, therefore, prohibits personnel hoisting except where there is no feasible safe alternative. The new provisions in paragraph (g) of § 1926.550 provide criteria for equipment and work practices that will enable those employers who have no safe alternative means of transporting employees to or supporting them at their workplace, to hoist personnel as safely as possible.

OSHA has determined that personnel hoisting operations for which there is no safe alternative and which comply with paragraph (g) will protect workers from the kind of accidents that resulted in most of the fatalities and crippling injuries which occurred under the existing crane and derrick regulations; from most of the fatalities and injuries which occurred when employees inappropriately used scaffolds or other "conventional" means of access; and from virtually all of the fatalities and injuries which have occurred when employees rode the hook or load. The Agency believes that although compliance with these regulations will lessen the potential for fatalities and serious injuries, it will not totally eliminate accidents related to the use of crane or derrick suspended personnel platforms. The Agency concludes that this type of operation is inherently dangerous and must only be used as a last resort. OSHA notes that three states (Maryland, Washington and California) with stringent personnel platform regulations were reported by JACA (Ex. 5–2, p. 4–13) as having had no personnel platform accidents for at least five years. While the Agency believes this sample is too small to represent or predict national experience, OSHA observes that the three state standards in question would tend to minimize accidents because of the tight limits on the circumstances where personnel platforms may be used.

## II. Summary and Explanation of the Final Rule

OSHA requested comments on ten specific issues in the preamble of the proposed standard (49 FR 6282–6284). All these issues are addressed in conjunction with the appropriate provisions of this final rule.

Paragraph (g)(1) presents the scope and application of the final rule. OSHA identified this subject as a matter of special concern in Issue 1 in the preamble of the proposal. This paragraph has been revised extensively in order to simplify the language and clarify OSHA's regulatory intent. Several changes were made in response to public comment or as clarifications, as discussed below.

As a matter of clarification, the Agency has revised this provision to indicate that paragraph (g) covers not only the hoisting of the personnel platform, but the design, construction, testing, use and maintenance of the personnel platform as well. OSHA recognizes that several paragraphs of this final rule do, indeed, regulate other matters related to personnel platforms and that this was not explicitly stated in the proposed rule. Additionally, OSHA has added a definitions section to paragraph (g)(1) which incorporates some of the definitions which were provided as "Notes" in the proposal. Other definitions in this paragraph are new and reflect changes in terminology which OSHA feels will most clearly express its regulatory intent. Finally, some notes which functioned as definitions in the proposed rule have been incorporated directly into the affected provisions. This reformatting reflects OSHA's recognition that the definition of terms used in the standard is more appropriately placed within the text of the regulation instead of in explanatory notes, and will provide clearer guidance to employers.

In its proposal, OSHA presented a list of cranes which it believed might be used for personnel hoisting. OSHA received many comments, like that of the Granite Construction Company (Ex. 3–50), which stated that the listing of particular machines in proposed paragraph (g)(1) was unnecessarily lengthy and machine-specific. Indeed, several commenters pointed out that, by being so specific, OSHA could create loopholes for specific cranes not listed. For example, the State of California (Ex. 3–33) asserted that OSHA's proposed language did not cover electric cranes, such as hammerhead-type tower cranes. In addition, Unit Crane & Shovel Corporation (Unit Crane) (Ex. 3–47) listed five cranes not mentioned in the proposed rule and recommended that the rule cover all cranes which could be used for personnel hoisting. Unit Crane also recommended that the proposed specification of "friction or hydraulic" be replaced by the word "all." The Associated General Contractors of America (AGC), in turn, testified (Tr. 164) that "Reference to specific types of equipment will result in overly broad coverage which * * * will regulate operations outside of those areas of concern. The AGC, therefore, "recommends that the standard apply only to the hoisting of personnel platforms on the load line of cranes and derricks."

The list of cranes and derricks was intended to illustrate what types of equipment are covered, rather than to limit the scope of the standard. OSHA recognizes that the list gave a misleading impression of the intended scope and that the scope can be set forth without using a list. Therefore, based on the comments received, OSHA has revised paragraph (g)(1) to cover all cranes and derricks used to hoist personnel platforms.

OSHA received comments from Ingersoll-Rand Company (Ex. 3–18) which suggested that the use of derricks for hoisting personnel be prohibited. Ingersoll-Rand asserted that derrick hoisting was more likely than crane hoisting to result in accidents, even if derrick operators complied with the draft revision of ANSI B30.6–1982, because derricks are material handling devices which do not incorporate the safety devices needed for personnel hoisting. Furthermore, the commenter noted that derricks are usually designed and assembled at the jobsite, and that safe alternatives are available. On the other hand, the National Constructors Association and DuPont (Exs. 3–74 and 3–75) stated that derrick hoisting which complies with the existing derrick standards and with the requirements of this standard will not expose hoisted employees to an unreasonable risk, because derricks, though temporary structures, are more stable than mobile cranes and because derricks are available with the same safety devices which would be required for cranes.

OSHA has determined, upon review of the record, that derricks can comply with the provisions of this standard; that there are circumstances, such as during the painting of a water tower (Tr. 554), where there is no safe alternative to the use of a derrick to hoist personnel; and that derrick hoisting in compliance with this standard does not ppse a greater danger than crane hoisting. Therefore, OSHA has retained derricks within the scope of paragraph (g), as proposed.

OSHA has deleted the second and third sentences of proposed paragraph (g)(1) because the Agency has determined that they do not deal with the scope and application, and because they add nothing to the requirements of the standard. These sentences merely pointed out that the requirements of this paragraph must be met before hoisting personnel, and that paragraph (g)(2) specifies when this practice is permitted.

The Magma Copper Company and National Constructors Association (Exs. 3–27 and 3–30) suggested that the definition of "hoisting," which appeared as a note to proposed paragraph (g)(1), be revised to cover explicitly booming up or down; extending the boom; swinging; and positioning, so that the term would more fully cover the circumstances encountered during personnel hoisting.

OSHA's intent has been to establish a single term, "hoisting," which could be applied to all operations covered by paragraph (g). Therefore, OSHA has made the suggested change in order to state clearly the meaning of the term "hoisting."

Paragraph (g)(2) of this final rule sets forth OSHA's general policy regarding the use of cranes or derricks to hoist personnel platforms. In proposed paragraph (g)(2), OSHA "permitted" the use of cranes or derrick to hoist personnel when that use was "as safe as the erection, use or dismantling of conventional means of reaching the worksite * * *". OSHA has modified proposed paragraph (g)(2) so it clearly states OSHA's recognition that cranes and derricks are not manufactured for use as personnel hoists. In particular, paragraph (g)(2) of the final rule states that personnel hoisting is "prohibited," subject to exceptions based on necessity. The AGC (Ex. 3–28 and Tr. 164) and Granite Construction (Ex. 3–50), suggested that OSHA permit crane or derrick hoisting "where the use of other conventional means of reaching the worksite is more hazardous or is not practical because of structural design and worksite conditions." In addition, Johnson Brothers Corporation and Gulf Oil Corporation (Exs. 3–43 and 3–68) stated that OSHA should concern itself with ensuring that the appropriate equipment and procedures are used, rather than with limiting circumstances where cranes or derricks may be used for personnel hoisting. Furthermore, Organization Resource Counselors, Inc. (Ex. 3–89) commented that, given the "difficult, if not impossible, task of determining the safest way to perform work, employers will continue to base their decision to use personnel platforms on many considerations, not just safety." As stated above, OSHA has determined that, given the significant risk posed by personnel hoisting, concern for employee safety is the only justification for the practice. Therefore, the Agency will consider personnel hoisting conducted for reasons of practicality or convenience alone, to violate this standard. As discussed above, the experience of three states with stringent personnel platform standards indicates that setting such narrow limits on the circumstances under which personnel platforms may be used will minimize personnel platform accidents.

Several commenters, including the Frey & Egle Company and the United Steelworkers of America (Exs. 3–7 and 3–10) objected to the use of cranes or derricks for personnel hoisting under any circumstances. They stated that personnel hoisting is inherently dangerous and noted that cranes and derricks are not designed or manufactured for personnel hoisting. In addition, the Farm and Industrial Equipment Institute [FIEI] (Ex. 3–37) commented that using a boom-mounted bucket is always safer than using a suspended personnel platform. National Crane Services (Ex. 3–71), while disagreeing with the FIEI contention that boom-mounted baskets are always safer than crane-hoisted platforms, supported harrowly liniting personnel hoisting because cranes are not designed to hoist personnel and because crane hoisting requires more skill and process control than material hoisting.

OSHA recognizes the seriousness of these concerns. In addition, the Agency has received written comments (Ex. 3–7) and public hearing testimony (Tr. 58–163) from Frey & Egle which states that its product, the Crane Air Bridge (CAB), hoists personnel for all the purposes where employers might use cranes or derricks without exposing employees to the hazards associated with crane or derrick hoisting.

OSHA, however, is concerned that the CAB has not been extensively marketed or operated in the United States. OSHA also notes that there is inadequate information in the record to determine if the CAB could satisfactorily replace crane and derrick personnel hoisting equipment totally, now or in the future. Additionally, due to the lack of information, the Agency is unable to determine whether the CAB can be considered a conventional means of access under § 1926.556, Aerial Lifts, or under § 1926.451(f) Elevating and Rotating Work Platforms. That determination will depend upon compliance with ANSI A92.2–1969, Vehicle Mounted Elevating and Rotating Workplatforms, required by both §§ 1926.556 and 1926.451(f). Therefore, while the use of the CAB is arguably as safe as or safer than crane or derrick personnel hoisting, OSHA is going forward with the promulgation of this standard, pending a future determination as to whether or not the CAB can indeed provide safe and reliably available personnel positioning.

The final rule requires that employers take a hard look at their workplace situations before deciding how employees will be transported to or maintained at different elevations.

Where conventional means of access, such as scaffolds, ladders and, perhaps ultimately, CAB's are less hazardous, personnel hoisting by crane or derrick will be prohibited. Where conventional means of access would not be considered safer, personnel hoisting operations which comply with the terms of this standard would be authorized, only to the limited extent that the dangers of using conventional means would justify them or to the extent that it is not possible to transport or position employees using conventional means. OSHA stresses that employee safety, and not practicality or convenience, must be the basis for the employer's choice of method.

The Construction Industry Manufacturers Association (Ex. 3–31) stated that OSHA's use of the word "permitted" in proposed paragraph (g)(2) seemed to promote rather than limit the use of cranes or derricks to hoist personnel. As has already been discussed, OSHA is limiting, not promoting, crane or derrick personnel hoisting. Therefore, OSHA has revised the language of paragraph (g)(2) to reflect the Agency's policy more clearly.

Also, in paragraph (g)(2), OSHA has added "personnel hoist" to the list of conventional means used to reach a worksite. OSHA had intended only to provide examples of such means, not an exhaustive list. However, since a personnel hoist is a commonly used piece of conventional access equipment, OSHA decided that the addition was appropriate.

Paragraph (g)(3) presents the requirements for operating and equipping cranes or derricks used to hoist employees.

Paragraph (g)(3)(i) presents general operational criteria. OSHA received a number of comments regarding the provisions of this paragraph, and has revised it to reflect commenter input as discussed below.

In proposed paragraph (g)(3)(i)(A), OSHA required that hoisting speed not exceed 100 feet per minute. This proposed requirement was based on ANSI B30.5–1982 and recommendations from ACCSH in 1974 and 1983, and reflected the recognition that employee hoisting requires even greater caution and margin of safety than material hoisting. In particular, OSHA was concerned that hoisted personnel or their platforms could be tipped or dropped if hoist speed outstripped the operator's ability to maneuver safely. The Agency believes that those dangers would be especially great when a hoist operation is beginning or ending.

OSHA observed, in its discussion of the proposed provision and in Issue 5, that there were questions regarding the feasibility of and need for a specific speed limit, and for a device to indicate the line speed to the operator. In light of these questions, OSHA did not propose to require that cranes used to hoist personnel be equipped with line speed indicators. The Agency noted that ACCSH in 1974 viewed line speed indicators as either infeasible or unnecessary. In addition, OSHA cited a draft revision of ANSI B30.5–1982, section 5–3.2.2(a)(13), (Ex. 2–14) under which the 100 foot per minute limit would have been changed to a requirement "that movement of the work platform with personnel shall be done in a slow, controlled, cautious manner with no sudden movements of the crane or work platform." (49 FR 6285). OSHA also noted that Grove Crane (Ex. 2–17) included a 100 foot per minute limit in the specifications for the use of its cranes to hoist personnel. As with ANSI and ACCSH, Grove did not suggest specific means by which operators could determine if they were operating within the 100 feet per minute limit.

OSHA received a number of comments on this proposed paragraph. The Tennessee Road Builders Association and the Commonwealth of Puerto Rico (Exs. 3–41 and 3–55) expressed support for the provision as proposed, with Puerto Rico suggesting that employers following the draft revision of ANSI B30.5 use 100 feet per minute as the upper limit of "slow," even if ANSI revised it standard to require "caution" instead of a set limit. On the other hand, Bechtel Corporation (Ex. 3–45) commented that the proposed limit was overly conservative because crane manufacturers' technical specifications for personnel hoisting showed speeds between 150 and 300 feet per minute, and because a requirement that the hoist speed be "reasonable for the conditions" would provide adequate protection. In addition, the Standard Oil Company (Indiana) (Ex 3–46) emphasized that it is the rate of acceleration or deceleration, not the speed, itself, that was the primary safety concern. Also, the T.A. Loving Company (Ex. 3–82) and the AGC of America (Tr. 191–192) suggested that OSHA not require a line speed indicator because watching it would distract the operator from watching the platform and thus increase the risk of two-blocking.

Most of the comments received on this proposed provision, such as those from the State of California, the Boeing Company and the Panama Canal Commission (Exs. 3–33, 3–38 and 3–51) supported wording similar to that in the draft revision of ANSI B30.5, section 5–3.2.2(a)(13).

ANSI retained the 100 foot per minute speed limit when it revised B30.5. OSHA has determined, however, based on its review of the record, that requiring "slow, cautious and controlled" hoisting will provide hoisted personnel with better protection than would a 100 foot per minute limit.

In the course of this rulemaking, OSHA has determined that line speed indicators capable of measuring a speed as slow as 100 feet per minute are not readily available for many cranes. Additionally, OSHA agrees with comments that the operator's attention should be directed to the platform during a lift, and not to a line speed indicator. Also, OSHA agrees with Standard Oil that line speed indicators are not needed on cranes or derrick hoisting personnel because the rate of acceleration or deceleration is more important than the line speed itself in determining the safety of hoisting operations. OSHA notes that the size of the crane or derrick hoist drum and the height of the lift are important considerations in determining what is "slow." For example, when using a crane with a large hoist drum for personnel lifts of several hundred feet, OSHA believes that hoisting at 100 feet per minute is unnecessarily slow. On the other hand, when using cranes with small hoist drums, a rate of 100 feet per minute or less may be necessary for proper control of the platform. As a point of reference, OSHA notes that 100 feet per minute is equivalent to a very slow walk. Site conditions also are important in deciding what rate is safe for a particular lift. Furthermore, a limit on the number of feet a platform can travel in a minute will not protect employees unless the crane or derrick operator otherwise exercises caution while hoisting. Finally, OSHA believes that requiring "slow, cautious and controlled" hoisting will ensure that the operator pays attention to the location of the platform during the lift, the rate of acceleration and deceleration, and the rate of ascent or descent. OSHA, therefore, agrees with the commenters who suggest that the Agency require "slow, cautious and controlled" hoisting as the appropriate means of protecting hoisted employees from sudden pitching of the crane or platform. Accordingly, OSHA is issuing paragraph (g)(3)(i)(A) as revised.

In Issue 5 of the proposed rule, OSHA also asked for comments and information on the need for load line position indicators. The commenters who responded to this Issue (Exs. 3–9, 3–

14, 3–22, 3–30, 3–33 and 3–47) generally stated that the position indicator would be an unnecessary burden because the requirement in proposed paragraph (g)(6)(viii) for continuous sight and communication would protect hoisted employees. The State of California (Ex. 3–33) also stated that specifications for use and maintenance raised concerns. OSHA has determined, based on the record, that the requirements for continuous sight and communication in paragraph (g)(6)(vi) of the final rule make a requirement for a loadline position indicator unnecessary.

Paragraph (g)(3)(i)(B) sets forth the safety factors for load hoist wire ropes on cranes or derricks used to hoist personnel. The proposed paragraph simply stated that the minimum hoist load safety factor would be seven. It became clear to OSHA from commenter responses that the proposal did not indicate clearly how the safety factor for hoisting personnel compared to the safety factor already required for materials hoisting in § 1926.550. The Agency also determined employers need additional information in the standard to determine if their operations comply with the standard. Therefore, the Agency has revised this paragraph to state clearly the required strength of wire rope used to hoist personnel.

OSHA has also added definitions for "failure," "load refusal," and "maximum intended load" in paragraph (g)(1)(ii) in order to state clearly the usage of those terms in the final rule. Additionally, OSHA has added an explanation of how employers are to comply with this requirement.

Section 1926.32(m) defines "safety factor" as "the ratio of the ultimate breaking strength of a member or piece of material or equipment to the actual work stress or safe load when in use."

Under existing OSHA regulations, § 1926.550 (b) and (e), which incorporate ANSI B30.5–1968 (cranes) and B30.6–1969 (derricks) by reference, wire ropes used to hoist material must have a minimum safety factor of 3.5. OSHA has determined, based in part on information from the ACCSH, and ANSI B30.5 Committee and the "Rigging Manual" published by the Construction Safety Association of Ontario, Canada, that a wire rope safety factor of 3.5, alone, is inadequate to protect hoisted personnel from hoisting risks such as the severing of the load line. The ACCSH recommended that the safety factor be eight, while a draft revision of ANSI B30.5, section 5–3.2.2.3(a)(5) recommended a safety factor of eight for rotation resistant rope, and five for other wire rope. The draft revision was not adopted by ANSI as a national consensus standard. The Canadian "Rigging Manual" specifies 10 as the minimum wire rope safety factor for personnel hoisting.

OSHA did not propose any of the suggested safety factors in paragraph (g)(3)(i)(B). Instead, OSHA determined that the necessary employee protection could be achieved by keeping the existing 3.5 safety factor requirement and derating the capacity of a crane or derrick by 50 percent, which would effectively double the safety factor to seven. The proposed safety factor, seven, was intended as an adequate and easy to calculate upgrade in the protection provided by wire ropes used for personnel hoisting.

In Issue 4 of the proposal, OSHA discussed the above-mentioned safety factors and explained how the requirements of proposed paragraph (g)(3)(i)(B) and the 50 percent derating required in paragraph (g)(3)(i)(F) are intended to provide the safety factor of seven. OSHA also requested input regarding the adequacy of the proposed regulatory approach and regarding the need for a different safety factor for rotation resistant wire rope. The latter topic reflected OSHA's concern that while rotation resistant rope reduces platform swaying and spinning, it is also subject to internal, often undetectable, damage.

Ebasco Constructors, Inc. (Ex. 3–6), the National Constructors Association (Ex. 3–30) and Organization Resource Counselors (Exs. 3–89) suggested that OSHA simply refer employers to the manufacturers' specifications for their cranes or derricks and apply the derating provisions of proposed paragraph (g)(3)(i)(B) without setting a separate safety factor provision. Ebasco, in particular, stated that OSHA would confuse compliance efforts if it promulgated both as 50 percent derating and a safety factor, because employers might conclude that they were required both to use wire ropes with a safety factor of seven and to derate capacity by 50 percent. Indeed, the Commonwealth of Puerto Rico (Ex. 3–55) apparently drew that conclusion, as reflected by its comments which favored the proposed safety factor of seven because the 50 percent derating would raise the safety factor to 14.

On the other hand, some commenters, such as Unit Crane, Dupont, and Union Wire Rope (Exs. 3–47, 3–75 and 3–22), stated that the proposed deratings alone would not raise the wire rope safety factors to the extent predicted by OSHA. Those commenters noted that variations in a crane or derrick boom angle, boom weight, or rigging configuration would determine the extent to which derating increased the safety factor. Indeed, Unit Crane observed that, if the boom weighed 20,000 pounds and the rated load was 5,000 pounds, derating by 50 percent would reduce the suspension system load by only 10 percent. Dupont, however, noted that rerating capacity by 50 percent would provide a "generous" addition margin of safety for personnel hoisting operations, as long as the minimum boom angle was at least 40 degrees. Another commenter, the United Steelworkers of America (Ex. 3–10), suggested that OSHA require employers to make charts available to crane operators so that they can quickly and accurately calculate a crane's capacity when the crane boom is at a particular angle.

Several commenters, such as Magma Copper, Bechtel Corporation and the Granite Construction Corp. (Exs. 3–27, 3–45 and 3–50), stated that a safety factor lower than seven would protect workers adequately. Bechtel suggested that OSHA retain 3.5 as the safety factor, without derating, while Magma Copper and Granite Construction suggested that the safety factor be set at five, as recommended by a draft revision of ANSI B30.5 which was then in circulation. The Salt River Project (Ex. 3–61) specifically opposed raising the wire rope safety factor either to seven or 10. Other commenters, including the Wire Rope Safety Board, Kerr-McGee Corporation and Spartan Equipment Company (Exs. 3–15, 3–23 and 3–82), stated that setting the wire rope safety factor at seven would provide adequate protection. In particular, Spartan expressed its understanding that the safety factor of seven would be achieved through derating.

Several commenters, including the Boeing Company, Unit Crane & Shovel and Boeing Aerospace Company (Exs. 3–38, 3–47 and 3–57) suggested that OSHA set the minimum wire rope safety factor for personnel hoisting at 10. In particular, those commenters cited the Canadian "Rigging Manual" published by the Construction Safety Association to support their position. The Boeing commenters also referenced regulations for powered platforms (29 CFR 1910.66) and consensus standards for personnel hoists (ANSI A10.4). In addition, Unit Crane & Shovel based its recommendation on the Power Crane and Shovel Association Standard No. 4–1983, the American Petroleum Institute's API Spec. 2C, Third Edition, March 1983, and the retirement criteria for wire rope presented in ANSI B30.5–1982. The Boeing Company (Ex. 3–78) later reversed its position regarding wire rope

safety factors, suggesting that OSHA raise the safety factors above the levels mandated for material hoisting only if OSHA determined, through a review of accident data, that hoisting personnel with ropes satisfying the existing safety factors poses a significant risk to employees.

The commenters differed in their suggestions for the standard wire rope safety factor but were uniform in their recommendation that OSHA ban or limit the use of rotation resistant wire rope for personnel hoisting. Many commenters suggested that OSHA set a higher safety factor for rotation resistant wire rope. Granite Construction specifically invoked ANSI and, in addition, suggested that OSHA prohibit the use of rotation resistant rope for personnel hoisting. Kerr-McGee suggested that employers avoid the use of rotation resistant rope for personnel hoisting because of problems with the rate and detection of rope deterioration. The Wire Rope Safety Board noted that static tests on rotation resistant rope indicated reduction in breaking strength of up to 50 percent when compared to the same tests on non-rotation resistant rope. The Wire Rope Safety Board also observed that, while the safety factor of seven would provide a reassuring level of protection, the tendency for rotation resistant rope to break down could be important if the rope was burdened at its full breaking strength. That situation could occur in an emergency, such as the snagging of a platform on a projection.

Both the Boeing Company and Boeing Aerospace (Exs. 3–38 and 3–57) expressed special concern about the use of rotation resistant wire rope for personnel hoisting, because that rope is "susceptible to internal damage (from overload) that cannot be detected by inspection." They noted that wire rope manufacturers recommended that employers effectively double the safety factors when using rotation resistant rope. Therefore, they suggested that OSHA set the safety factor for rotation resistant wire rope at double that for other hoisting rope.

The United Steelworkers of America (USWA) and the Construction Industry Manufacturers Association (CIMA) (Exs. 3–10 and 3–31), suggested that, because of the potential hazards to hoisted personnel, OSHA set the safety factor for rotation resistant wire rope at 10, rather than at seven. The USWA cited MSHA's proposed regulation for personnel lifts which requires a 10:1 safety factor for rotation resistant ropes. Also, the CIMA pointed out that, since section 5–1.7.1(c) of ANSI B30.5–1982 requires rotation resistant wire rope to have a minimum design factor of five, setting the minimum safety factor at 10 for personnel hoisting would be consistent with OSHA's position that halving the rated capacity doubles the safety factor.

OSHA has determined, based on its review of the record, that requiring a safety factor of seven for running ropes, other than rotation resistant ropes, provides adequate protection for hoisted personnel. In particular, the Agency believes that setting the safety factor below seven would not satisfy OSHA's intention that hoisted personnel receive more protection than hoisted material. On the other hand, OSHA has decided that setting the safety factor at 10 for standard design running rope is not necessary to protect employees, and would be unnecessarily burdensome, without providing a significant increase in employee safety. In addition, OSHA notes that compliance would be more complicated if the Agency set the safety factor at 10 because the simple 50 percent derating approach could not be applied. OSHA believes that using the 50 percent derating is a convenient and easy to use method of providing the required employee protection. OSHA's deliberations regarding derating are discussed below in more detail under paragraph (g)(3)(i)(F).

OSHA has determined, through its review of the numerous comments received and other information in the record, that although the minimum safety factor of seven is adequate for standard wire rope, it would not adequately protect employees being hoisted with rotation resistant wire rope. In particular, OSHA has concluded that rotation resistant rope is more easily damaged and is more difficult to inspect than other wire rope. Section 5–1.7.1 of ANSI B30.5–1982, for example, takes those differences into account in the context of material hoisting, by setting the minimum design factor at 3.5 for live or running ropes and at five for rotation resistant ropes. Therefore, consistent with its calculations for other wire rope, OSHA believes that derating cranes using rotation resistant wire rope by 50 percent will raise the effective safety factor to 10. The Agency has determined that this increase in the safety factor is necessary to protect employees from the combined hazards of personnel hoisting and rotation resistant rope. OSHA has chosen to set a separate, higher, safety factor for rotation resistant rope rather than limit or prohibit its use because, when used in compliance with the provisions of this standard, rotation resistant rope increases the crane or derrick operator's control over the movement and position of a personnel platform during hoisting, and precludes having to change ropes on a crane already using rotation resistant rope that is used to hoist personnel. OSHA has determined that rotation resistant rope which satisfies the safety factor of 10 is already used by or readily available to employers, so this requirement imposes a minimal additional burden.

Paragraph (g)(3)(i)(C) requires that all brakes and other locking devices be engaged when a personnel platform is in a stationary working position, so that hoisted employees are not exposed to the hazards of cable to slip. The Boeing Company, Boeing Aerospace and Unit Crane & Shovel (Exs. 3–38, 3–57 and 3–47), were the only commenters on this provision. The Boeing commenters supported regulatory language which would protect hoisted employees against sudden platform movement during periods when the platform was suspended at a work position. Unit Crane commented that "this provision in this position is a good one and should be retained." United Crane also noted that this provision, while not part of section 5–3.2.2, Personnel lifting, of ANSI B30.5, was implied by section 5–3.2.1.3(c), "Holding the load." In addition, the commenters suggested that OSHA require automatic brakes in order to prevent inadvertent platform movement. This issue is discussed in detail below. Based on the record, OSHA has determined that paragrapah (g)(3)(i)(C) is necessary to protect hoisted employees from the hazards of being spilled from the platform.

Paragraph (g)(3)(i)(D) of the final rule requires that cranes and derricks used to hoist personnel be equipped for and operated with controlled load lowering. This provision also prohibits free fall. The paragraph is based on ANSI B30.5–1982, section 5–3.2.2(a)(9). Issue 2 specifically requested additional comments on this subject. This paragraph is intended to ensure that employers operate their personnel hoisting equipment so that hoisted personnel are not exposed to the hazards of sudden, fast descents.

The Agency received many comments on this provision. The Milwaukee Construction Industry Safety Council (MCISC), (Exs. 3–26 and 3–70), for example, asserted that engineering and economic constraints would prevent all but the largest contractors from retrofitting their cranes, so the small contractors would be unable to hoist employees. In addition, the Associated General Contructors of America (AGC)

(Ex. 3–28) suggested that such a requirement should be phased in as new equipment is marketed. The AGC joined with the MCISC in recommending that cranes used for pile driving be exempted from this paragraph because "companies engaged in pile driving cannot operate with power load lowering" and those companies "have to hoist personnel aloft to perform pile driving work." Therefore, according to the AGC, the proposed requirement was impracticable for pile driving cranes. Also, the National Association of Demolition Contractors (NADC) (Ex. 3–8) commented that controlled load lowering would impede demolition operations which require free fall. The NADC suggested that the use of oversized brakes and clutches would ensure the safety of hoisted personnel, because the oversized brakes and clutches could be engaged to slow descent safely. Unit Crane & Shovel (Exs. 3–47 and 3–81), on the other hand, asserted that effective field-installed retrofit kets are available at reasonable cost. Unit Crane also observed that the restrictions on personnel hoisting would mean that relatively few cranes with the required equipment would be needed and that contractors could plan ahead to have a properly equipped crane on hand when needed. Indeed, the vast majority of commenters who addressed this issue agreed that OSHA should require controlled load lowering features on all cranes which hoist personnel. These commenters included Northwest Engineering Company, the State of Alaska, the U.S. Air Force, Johnson Brothers Corporation, the Farm and Industrial Equipment Institute, the National Construction Association and the Spartan Equipment Company. (Exs. 3–3, 3–4, 3–24, 3–43, 3–47, 3–73, 3–74 and 3–82). The Parsons Corporation (Ex. 3–22) stated that "We agree with OSHA's proposal to require controlled load lowering; in fact, we consider such a function as essential. DuPont (Ex. 3–75) took issue with those commenters who suggested that OSHA exempt cranes used for pile driving and demolition from the controlled load lowering requirements, stating that most cranes are available with drum drives that allow operation in free fall or controlled lowering mode and that the cost of retrofitting is reasonable. In addition, Northwest Engineering Company (Ex. 3–3) noted that, while it may be impractical to retrofit old cranes, there are enough properly equipped cranes which could be borrowed or rented to hoist employees safely.

OSHA has determined that a controlled load lowering requirement will effectively protect hoisted employees from sudden stops, starts and free fall, without unduly burdening employers. Although they can help stop a fall once it has begun, oversized brakes or clutches will not themselves prevent precipitous free fall. OSHA is also concerned that without controlled load lowering, the use of oversize brakes to stop free fall would jolt the platform, possibly throwing employees off. As documented by JACA, OSHA's contractor for this rulemaking (Ex. 5–2, Appendix C) many employees have been killed or injured in accidents which would have been prevented by the use of controlled load lowering. Therefore, OSHA has decided, based on the evidence in the record, to promulgate paragraph (g)(3)(i)(D) as proposed, except that the explanatory note in the proposed provision has been incorporated into the standard itself.

In addition, Issue 7 requested information on the need for an automatic brake which stops the load when the operator releases the controls. The comments received indicated that opinions on automatic brakes (also referred to as "deadman brakes") intertwined with views on the proposed controlled load lowering requirement. Thus, commenters, such as the AGC of America (Exs. 3–28 and 3–67), and the National Constructors Association mixed their statements of opposition to automatic brakes with assertions that free fall was necessary. Commenters such as Dupont, Spartan Equipment, and Organization Resource Counselors (Exs. 3–75, 3–82 and 3–89) stated that an automatic brake requirement would pose great expense and difficulty for users of mechanical clutch-drive cranes (i.e., cranes which do not have controlled load lowering). On the other hand, Puerto Rico and Boeing Aerospace (Exs. 3–55 and 3–57) stated that automatic brakes were needed to prevent free-fall, and the Construction Safety Association of Ontario (Ex. 3–81) stated that inexpensive automatic brake retrofit kits were readily available.

OSHA has determined, based on its review of the record on Issue 7, that the benefits of an automatic brake requirement will be gained through the promulgation of the proposed controlled load lowering and, in part, anti-two blocking requirements, because the equipment and procedures necessary to prevent free fall or two-blocking will approximate those envisioned for an automatic brake. Therefore, OSHA has decided not to promulgate a separate requirement for an automatic brake.

Paragraph (g)(3)(i)(E) requires that cranes used to hoist personnel be uniformly level within one percent of level grade and located on firm footing. In addition, cranes equipped with outriggers shall have all of them deployed, according to manufacturer's specifications, when personnel are to be hoisted. This language is essentially identical to that in the proposed requirement.

This requirement, based on ANSI B30.5–1968, section 5–1.2, B30.5–1982, sections 5–1.2.2(e) and 5–3.2.1.4(a)(1), and the specifications provided by manufacturers such as Grove (Ex. 2–17), requires that the crane be "level." The Agency notes that B30.5–1968 as referenced in § 1926.550(b)(2), sets the requirements for compliance with the existing standard. OSHA is aware that a crane loses between five and 30 percent of its capacity when it deviates from level by as little as one degree. Indeed, capacity charts generally are based on the assumption that hoisting cranes are within one percent of level. Also, OSHA is aware that most cranes used to hoist personnel are "free-swinging," so that the boom of a crane which is not level will swing around to the "low spot." Based on those considerations and the Agency's concern about the tipping hazards to which hoisted employees are exposed, OSHA has determined that limiting deviation to within one percent of level will provide operators with reliable capacity information and overall stability.

Some of the commenters, such as the Carolinas Branch of the AGC and the T.A. Loving Company (Exs. 3–39 and 3–82), stated that it was impossible to operate a crane uniformly level within one percent of level grade because movement of certain crane components causes one percent deviation, even when no load is hoisted. OSHA observes that the proposed provision covers the placement of the crane, not the operation. Even so, the Agency has determined that the operation of a crane on a surface which has been properly leveled will not result in deviation beyond one percent of level grade. Therefore, OSHA notes the importance of choosing the appropriate set up location and leveling materials and procedures to ensure that deviation does not exceed one percent. Also, the Equitable Gas Company (Ex. 3–25) stated that requiring mobile cranes to be leveled within one percent of level grade would defeat the design of the rear tires, which are designed to be load bearing under certain conditions. OSHA notes that mobile cranes equipped with outriggers are often required to deploy all outriggers, and that the leveling of the crane is accomplished by use of the

outriggers, so that the tires are not load bearing during hoisting operations.

The AGC of America (Ex. 3–28 and Tr. 165, 197), suggested that a crane operating within three percent of level grade would be safe. Another commenter, Granite Construction (Ex. 3–50), suggested that mobile cranes equipped with outriggers can readily satisfy the proposed one percent limit, while crawler cranes, which are not so equipped, should only have to operate within three percent of level grade because it would be too difficult for the crawler cranes to achieve one percent.

The Agency agrees that providing a level grade for a crane without outriggers may be more difficult. OSHA has determined, however, based on the record, that all cranes can be leveled within one percent of grade and that the additional effort required to do so is not an unreasonable burden. The Agency reiterates that employee safety, not the employer's convenience, controls the setting of requirements for personnel hoisting.

Several commenters, such as the State of Maryland, the Construction Industry Manufacturer's Association (CIMA), the Boeing Company and Boeing Aerospace (Exs. 3–19, 3–31, 3–38 and 3–57). expressed support for the one percent limit.

In particular, the CIMA stated that "the correct level is critical to the safe operation of the crane," especially because, as stated above, the load charts only apply when the crane is level. CIMA suggested that the one percent limit be measured as one foot of rise for one hundred feet of run.

The State of Maryland (Ex. 3–19) suggested that OSHA revise this paragraph to specify that *all* outriggers on a given crane be deployed because otherwise employers could interpret the provision as not requiring that all outriggers be used. The danger is that deploying only some of the outriggers could permit the crane to tip out of balance as the boom swings, as documented by JACA, OSHA's contractor for this rulemaking (Ex. 5–2, Case No. P–6). Since some manufacturers do not specify that *all* outriggers must be used, OSHA is requiring that, in the absence of applicable manufacturer instructions, all outriggers be fully extended and positioned.

OSHA believes that the crane leveling requirement, as clarified, provides the necessary protection for hoisted employees, while taking into account the deviation from level for which crane load charts make allowance. OSHA has concluded that allowing greater leeway for deviation from level would dangerously reduce the reliability of the load charts and increase the likelihood of the crane tipping over. Therefore, OSHA promulgates this paragraph, as revised.

Paragraph (g)(3)(i)(F) requires a 50 percent derating of a crane used to hoist personnel, so that the crane would be authorized to lift no more than half the load it could lift if it were hoisting materials. This provision is based on section 5–3.2.2(a)(17) of ANSI B30.5–1982. Parsons Corporation (Ex. 3–22) and the National Constructors Association (Ex. 3–74), among others, supported the proposed derating, focusing on the ease of applying a provision which simply requires the crane operator to divide the referenced load chart figure by two, and on the attendant safety benefit. Universal Wire Rope Products (Ex. 3–36) and DuPont (Ex. 3–75) supported the derating, but noted that achieving the advantages of derating depended on carefully controlling boom angle. Other commenters, such as the United Steelworkers of America (Ex. 3–10) and the Organization Resources Counselors (Ex. 3–89), emphasized the need to provide crane operators with charts so they could calculate the crane's capacity at different boom angles.

The National Association of Demolition Contractors (NADC) (Ex. 3–8) and Unit Crane & Shovel (Ex. 3–47) recommended the cranes be derated to 25 percent, with Unit Crane considering derating to 33 percent adequate for some cranes. NADC apparently viewed derating as a substitute for controlled load lowering and other paragraph (g)(3) requirements. Unit Crane, in turn, based its recommendation on the American Petroleum Institute's Specification 2C, March 1982, which addresses tipping hazards.

OSHA received comments from the Associated General Contractors of St. Louis (Ex. 3–14), the Carolinas Branch of the AGC, (Exs. 3–39 and 3–82), Bechtel (Ex. 3–45) and the State of Michigan (Ex. 3–84) which challenged the need for the proposed derating. Those commenters generally stated that existing safeguards were adequate or that the anticipated platform load was too low compared to the rating of the crane to justify derating. The AGC of America (Ex. 3–28 and Tr. 199) and Granite Construction (Ex. 3–50) asserted that existing and proposed safety requirements made it unnecessary to derate below 75 percent of rated capacity.

OSHA notes that load rating charts are already required by existing § 1926.550(a)(2). OSHA also notes that the commenters who opposed derating and other proposed criteria generally did not distinguish between the safeguards considered adequate for hoisting material and those necessary for hoisting personnel. OSHA has determined that personnel hoisting, insofar as it is allowed, requires a higher degree of caution and a greater margin of safety than is required for material hoisting because the potential for employee injury in a personnel hoisting accident is far greater. OSHA agrees with the commenters who stress that the 50 per cent derating is both protective and easy to apply, increasing the assurance that crane operators will calculate correctly the load limits and safely hoist personnel platforms. OSHA has no basis for concluding that setting the derating requirement at some other percentage would provide more safety. Indeed, the Agency is concerned that setting a different derating percentage would increase the likelihood that the operator would miscalculate the load limit, possibly causing an accident. Therefore, based on the evidence in the record, OSHA is promulgating paragraph (g)(3)(i)(F) as proposed.

Paragraph (g)(3)(i)(G) prohibits employers from hoisting personnel using cranes or derricks with live booms. This provision is based on ANSI A10.28–1983, "Work Platforms Suspended from Cranes or Derricks—Safety Requirements," section 3.1 ANSI A10.28 defines a live boom as one whose lowering is controlled by brakes without aid from other devices. OSHA agrees with ANSI that the use of live booms would endanger hoisted employees.

The agency received comments on this provision from the Carolinas Branch of the AGC (Ex. 3–39 and 3–82) and the Tennessee Roadbuilders Association (Ex. 3–41), requesting that OSHA add an exemption for "life or death emergencies." OSHA understands that during a "life or death emergency" people will do what is necessary, using whatever equipment is available to prevent death or injury. Therefore, this provision is promulgated as proposed, except that the explanatory note in the proposal has been incorporated into the standard.

Paragraph (g)(3)(ii) requires that cranes or derricks used to hoist personnel be equipped with certain operational aids in order to prevent tipping, two-blocking or other accidents. OSHA specifically requested additional input in this subject in Issue 5.

Proposed paragraph (g)(3)(ii)(A) required employers to equip those cranes and derricks having variable angle booms with boom angle indicators which are readily visible to the operator. This provision is based on ANSI B30.5–1982, section 5–1.9.1(c). The Agency

received comments from Unit Crane & Shovel (Ex. 3–47) and Puerto Rico (Ex. 3–55) which supported this requirement as proposed. The State of California, the Boeing Company and Boeing Aerospace (Exs. 3–33, 3–38 and 3–57) supported the proposed requirements and suggested that the Agency also require a radius chart. That suggestion has not been adopted because the necessary data is incorporated in the load chart which is already required by § 1926.550(a)(2) of the construction standards.

As proposed, paragraph (g)(3)(ii)(A) appeared to require that cranes be equipped with boom angle indicators, whether or not they had variable angle booms. Therefore, in promulgating the final rule, OSHA has rephrased paragraph (g)(3)(ii)(A) to make it clear that only cranes and derricks equipped with variable angle booms and used to hoist personnel must have boom angle indicators.

Proposed paragraph (g)(3)(ii)(B) required employers to equip or mark any telescoping boom so that the extended length is clearly indicated. This provision is based on ANSI B30.5–1982, section 5–1.9.1(e). However, commenters such as the Daniel Construction Company and the Carolinas Branch of the AGC (Exs. 3–17 and 3–39), indicated that the marking would be ineffective because the marking would not be visible to the crane operator at the controls. Another commenter, the Al Johnson Construction Company (Ex. 3–42), asserted that effective instruments are not available, and that compliance with paragraph (g)(6)(vi), which requires continuous contact between the operator or signal person and the platform occupants, will provide the operator with the information necessary to hoist employees safely. On the other hand, Wylie Systems presented testimony at the public hearings (Tr. 472–73, 489–90) and the PAT Equipment Corporation submitted information (Ex. 7–E) which indicated that effective instrumentation is available.

Standard Oil (Indiana) (Ex. 3–46) commented that "Safe work practice requires that a crane operator knows the load weight, load radius and height of lift prior to actually making the lift." Using that information, the operator could refer to the crane's range diagram to determine the required boom length without reference to length markings or indicators.

OSHA has determined that there are effective boom length indicators readily available for installation on telescoping booms. In addition, the Agency believes that markings on the boom can provide the operator with boom length information. OSHA also agrees with Standard Oil (Indiana) that an operator preparing to hoist personnel could determine the boom length without using a boom length indicator. Therefore, OSHA has revised proposed paragraph (g)(3)(ii)(B) so that, as promulgated, it permits operators, as an alternative to using the required markings or indicators, to determine the anticipated load radius accurately and use that finding to calculate the necessary boom length.

Paragraph (g)(3)(ii)(C) of this final rule requires the use of an anti-two-blocking device, or a two-block damage prevention feature on cranes or derricks used to hoist personnel. These devices are intended to prevent the boom tip from contacting the load block or overhaul ball and severing the hoist rope. Anti-two-blocking devices detect that the overhaul ball has come close to the boom tip and activate a brake which immediately stops the hoist and holds the platform in place. This provision is based, in part, on ANSI B30.5–1982, section 5–3.2.2, which states that employers shall have warning or other limiting devices "to prevent two-blocking, unless audible communications have been provided and one of the persons being lifted has been specifically assigned" to warn against two-blocking hazards. OSHA did not adopt this approach in the proposed rule. The Agency, however, did request (49 FR 6285) that commenters inform OSHA of any conditions where the use of warning devices would be more feasible than the use of positive acting mechanisms.

OSHA received a great volume of comment on this provision, most of it opposing the requirement or urging that OSHA require something less than the proposed positive acting preventive devices. For example, Longview Fibre Company, Columbia Nitrogen Corporation and the AGC of California (Exs. 3–52, 3–58 and 3–66) asserted that available anti-two-blocking equipment does not work properly and that careful operation of a crane would obviate the need for installation of anti-two-block controls. In addition, Dupont (Ex. 3–75) stated that the kind of automatic brake needed to prevent two-blocking has not yet been developed to the point where it could be considered "a reliable safety component." Therefore, Dupont along with other commenters, such as the Pennzoil Company (Ex. 3–29), Boeing Company (Ex. 3–38), Boeing Aerospace (Ex. 3–57) and the Carolinas Branch of the AGC (Exs. 3–39 and 3–82) requested that OSHA permit employers to use warning devices so that operators could be alerted to two-blocking situations and avoid two-blocking accidents. These commenters stated that requiring positive acting devices would impose unreasonable economic burdens; that many cranes and derricks, particularly older ones, could not be retrofitted; and that anti-two-blocking devices require excessive maintenance, are unreliable, and are misused or abused by operators.

On the other hand, comments by Unit Crane & Shovel (Exs. 3–47 and 3–81) and Kenny Construction Company (Ex. 3–56), in addition to testimony by the Operating Engineers at the public hearing (Tr. 454–457), indicated that workable anti-two-blocking "stop and hold" devices are available and should be required. BWB Controls, Inc. (Ex. 3–63), a manufacturer of anti-two-blocking warning devices, submitted product literature and testimonials attesting to the reliability of its products. OSHA also noted that the CAL/OSHA hearing transcript from May 12, 1983, submitted by opponents of a requirement for anti-two-blocking devices (Exs. 3–28 and 3–66), also included testimony that the devices were, in fact, available and workable.

OSHA does not believe that alarm devices or shouted warnings would provide effective protection for hoisted personnel because they place too much reliance on operator reaction time. For example, the system may function properly, but the operator may be distracted by the noise of the construction site, or the noise of the crane engine and hoist mechanism and not notice the alarm or warning for several seconds, or the reaction time of the operator may simply be too slow. In either case, a two-blocking incident could easily result. Therefore, because the Agency believes that only two-blocking preventive devices will provide the necessary employee protection, OSHA has not followed the pertinent ANSI standard. As stated in its discussion of Issue 7, above, OSHA has, in part, based it decision not to promulgate a separate automatic brake requirement on its determination that the brake mechanism of an anti-two-blocking device will provide reliable protection for hoisted personnel.

OSHA concludes, based on the evidence in the record and its regulatory impact analysis, that the anti-two-blocking device requirement is both feasible and cost effective. The Agency agrees that cranes equipped with these devices require more maintenance than cranes which are not so equipped. OSHA notes, however, that this maintenance would be comparable to that required on the alarm devices which many commenters recommended. The major maintenance and malfunction

concern with either system is the switch at the boom tip. OSHA believes that proper maintenance of the device and proper treatment during rig up, rig down, and transport, coupled with proper adjustment of the device once the crane is in place, will prevent the reported unreliability and malfunctioning.

OSHA has received a considerable amount of information regarding the misuse of anti-two blocking devices by operators. OSHA has determined that the proper selection and training of operators is necessary to prevent the misuse of these devices as "operational controls." In particular, operators must be taught that an anti-two-blocking device is a backup for proper operator control, and must not be used routinely as a stopping device.

Therefore, based on its review of the evidence in the record, which includes many two-blocking accident reports, such as the one discussed earlier in this preamble (Cheyenne, Wyoming, 1973), OSHA is promulgating paragraph (g)(3)(ii)(C) as proposed, except that the term "fall ball" has been replaced by the term "overhaul ball," to conform with current industry terminology.

Paragraph (g)(4) provides design criteria, platform specifications, loading requirements and rigging requirements for personnel platforms.

Paragraph (g)(4)(i) provides design criteria for personnel platforms. One proposed provision, paragraph (g)(4)(i)(D), has been moved to paragraph (g)(4)(ii)(E) because it involves platform specifications. The language of the remaining three provisions is identical to that in the proposal, except as discussed below.

Paragraph (g)(4)(i)(A) requires the employer to ensure that personnel platforms and suspension systems are designed by a qualified engineer or qualified person who has demonstrated skill and experience in structural design. The term "qualified" is defined in § 1926.32(e). In the proposed standard, this provision required that the employer have a qualified engineer design the platform, based on ANSI A10.28–1983, section 5.1. The States of Maryland and California (Exs. 3–19 and 3–33) commented favorably on the proposed requirement. However, the International Cargo Gear Bureau Inc. (ICGBI) (Ex. 3–1) asserted that the proposed language was too vague and asked OSHA to specify design criteria and accredit persons who would certify that the platforms were built to specifications. The ICGBI did not express an opinion on the need to require that only engineers provide the certification. On the other hand, Magma Copper (Ex. 3–27) and Lunda Construction Company (Ex. 3–92) suggested that only a "competent" individual is necessary to design a personnel platform. OSHA notes that the term "competent person" has a unique meaning by definition in §1926.32(f). However, the Magma Copper and Lunda Construction comments appear to use the term "competent" to indicate that the person designing the platform must be "competent" to design and construct platforms which meet this standard, and that a person need not be an engineer to demonstrate such competence. In other words, they indicate that the standard should not require design by an engineer, because platforms can be properly designed by knowledgeable non-engineers, as well. OSHA agrees that some individuals, who lack engineering degrees, have the requisite skill and experience to design and construct a personnel platform which meets the requirements of the standard. Based on the above discussion, OSHA has determined, notwithstanding ANSI A10.28–1983, that design by a qualified engineer or a qualified person with specific structural design skills and experience will ensure that a personnel platform and its rigging provide the necessary employee protection and has revised this provision as noted.

This paragraph has also been modified to make it clear that the suspension system (i.e., the permanently attached rigging), as well as the platform, must be designed by a qualified engineer or qualified person. Based on comments from Bechtel (Ex. 3–45), OSHA determined that the compatibility of the platform structure with the attached rigging is critical to safe hoisting. OSHA also notes that the rigging is subject to the same loads and operating conditions as the platform, and that the platform tackle is often attached to the platform at the time the platform is made. The Agency notes that in some circumstances the person who designs the platform will also design the tackle attached to the platform.

Proposed paragraph (g)(4)(i)(B) required that the suspension system for personnel platforms be designed to minimize tipping. The Agency received very few comments on this provision. Bechtel (Ex. 3–45) commented that the requirement was unnecessary in light of the preceding paragraph. The State of Maryland (Ex. 3–19) suggested that OSHA require a suspension system consisting of a factory-made wire bridle with four legs and suspended at 60 degrees to the horizontal, because this configuration has a known rated capacity and is easily inspected. OSHA notes that employers use personnel platforms to access a wide variety of workplaces and believes a specific bridle configuration would not be appropriate with all platforms or for all hoists. In addition, as was stated in the discussion of the previous paragraph, OSHA has determined that requiring qualified engineers or qualified persons to design the bridle provides adequate protection. Therefore, OSHA will not prescribe what tackle may be used. The ICGBI (Ex. 3–1) argued that the requirement should be "to prevent tipping." OSHA agrees with the ICGBI that "to prevent tipping" is the desired goal, but believes it is not feasible to prevent tipping totally, due to the nature of personnel platforms. Therefore, this paragraph is promulgated as proposed.

Proposed paragraph (g)(4)(i)(C) required that personnel platforms be designed with a minimum safety factor of five. As discussed under paragraph (g)(3)(i)(B), above, OSHA is incorporating language related to safety factors which the Agency believes will express clearly the regulatory intent of the provision. OSHA based this provision on ANSI standards B30.5–1982, section 5–3.2.2(b)(3) and A10.28–1983, section 5.2.

In 1974, as noted in the proposal, the ACCSH recommended a safety factor of six for the design of personnel platforms. In 1983, the ACCSH discussed setting a safety factor for personnel platforms, but made no recommendations. OSHA specifically requested input regarding the sufficiency of the proposed safety factor in Issue 4 of the proposal (49 FR at 6283).

Bechtel (Ex. 3–45) stated that the proposed safety factor of five was "unnecessary and wasteful," because existing American Institute of Steel Construction (AISC) specifications provided sufficient guidance for the design of personnel platforms, just as they already did for other temporary personnel supports."

The Department of the Air Force, Milwaukee Construction Industry Safety Council, National Constructors Association and Unit Crane & Shovel (Exs. 3–24, 3–26, 3–30 and 3–47) expressed support for the proposed safety factor. In particular, Unit Crane cited ANSI B30.5–1982 to support this provision and noted that, "since a platform is not subject to the same sorts of fatigue as running ropes," there was no inconsistency in supporting five as a safety factor for platforms, while suggesting that OSHA set the wire rope safety factor at 10.

The Boeing Company (Ex. 3–38) recommended setting the safety factor at four, as provided in the § 1910.28(a)(4)

requirements for "suspended scaffolds," so that the provision would be consistent with the "safety factors established for similar set ups." Boeing Aerospace (Ex. 3–57) disagreed with this recommendation, suggesting that "the safety factor should be at least 5," because personnel platforms are exposed to hazards, such as snagging, which ordinary scaffolds do not confront. Boeing Aerospace also stated that setting the safety factor at five was appropriate so that hoisted personnel would have at least as much protection as hoisted material, citing § 1926.251(c)(i), rigging, and § 1926.251(f)(1), shackles and hooks for material handling.

The United Steelworkers of America and the Spartan Equipment Company (Exs. 3–10 and 3–82) suggested that setting the platform safety factor at 10 would provide adequate protection. In particular, the United Steelworkers stated that the higher the safety factor, the greater the assurance that OSHA is satisfying its statutory duty to protect employees.

Norpac Engineering (Ex. 3–88) suggested that OSHA set personnel platform safety factors which are comparable to those for elevator design and which are at least as safe as those required for scaffolds. OSHA has determined that the current ANSI standard for Elevators, A17.1–1984, is not an appropriate reference because it does not provide clear guidance for the construction of personnel platforms. Norpac (Ex. 3–88) also recommended that OSHA use the scaffold standards, §§ 1926.28(a)(4) and 1926.451(a)(7) which, as noted above, require a safety factor of four.

OSHA has determined that setting the platform safety factor at five provides adequate protection for hoisted personnel, consistent with the applicable consensus standards and most of the comments received. In addition, the Agency believes that neither the AISC specifications nor the ANSI elevator standard provides the specific pertinent information which an employer needs to fabricate a platform properly. Furthermore, OSHA has determined that setting the safety factor at four, as is required under the scaffold standard, would not adequately protect hoisted personnel because, as noted by Boeing Aerospace (Ex. 3–57), platforms are exposed to hazards which suspended scaffolds do not face.

OSHA also has determined that it is unnecessary to set the safety factor at six or ten, as recommended by the ACCSH and certain commenters because, as observed by Unit Crane & Shovel (Ex. 3–47), five is recognized by ANSI as providing adequate protection under the conditions where platforms are used. Accordingly, the Agency promulgates this paragraph as revised and has added an explanation to clarify that the criteria for guardrails and body belt/harness system anchorage points are found in other Subparts of the Construction Standards. OSHA believes that this revision will clarify the requirements and increase consistency within the construction standards, thereby improving compliance.

Proposed paragraph (g)(4)(i)(D) required that personnel platforms have six feet minimum headroom. The commenters uniformly considered this provision as overly restrictive in that it limited the employer's flexibility. Ebasco Constructors and the International Brotherhood of Boilermakers. (Exs. 3–6 and 3–53) suggested a minimum height of six feet, six inches. The National Association of Demolition Contractors and Parson Corporation (Exs. 3–8 and 3–22) suggested seven feet. Other commenters, such as Magma Copper, Bechtel, Unit Crane & Shovel and the Commonwealth of Puerto Rico (Exs. 3–27, 3–45, 3–47 and 3–55), suggested that OSHA simply require "adequate" headroom. OSHA agrees that specifying a minimum height is unnecessary to protect workers and has deleted this specification from paragraph (g)(4)(ii)(E) of the final rule. OSHA has also determined that the headroom requirements for hoisted personnel are already properly addressed in paragraph (g)(4)(ii), "Platform specifications," instead of in paragraph (g)(4)(i), "Design criteria."

Paragraph (g)(4)(ii) of this final rule specifies that personnel platforms must have certain features.

Proposed paragraph (g)(4)(ii)(A) required employers to equip personnel platforms with perimeter protection from the floor to 42 inches, plus or minus three inches, which would consist of either solid construction or expanded metal with openings no greater than one-half inch. This provision was based on § 1926.500(f) and ANSI A10.28–1983, section 5.6. Commenters, including the National Association of Demolition Contractors, Equitable Gas, the Associated General Contractors of America and Standard Oil (Indiana) (Exs. 3–8, 3–25, 3–28 and 3–46), stated that standard guardrails have satisfactorily prevented accidental falls. Commenters, such as Columbia Nitrogen and the Milwaukee Construction Industry Safety Council (Ex. 3–26 and 3–58), suggested that OSHA permit the use of standard guardrails, except with six inch or 12 inch toe plates in lieu of enclosure between the toe plate and mid-rail. In addition, commenters, such as Granite Construction (Ex. 3–50) and Organization Resources Counselors, Inc. (Ex. 3–32 and 3–89) stated that requiring enclosure to 42 inches, as proposed, would unnecessarily interfere with the intended use of the platform. The State of Maryland (Ex. 3–19) noted that the requirement would necessitate the frequent repositioning of the platform to make the work area accessible.

Further, Unit Crane & Shovel (Ex. 3–47) commented that permitting the use of solid sidewalls would increase the tendency of a platform to swing in the wind and recommended that only expanded metal be allowed.

On the other hand, the Boeing Company (Ex. 3–38), Boeing Aerospace (Ex. 3–57), and the Salt River Project (SRP) (Ex. 3–61) stated that the proposed enclosure requirement was "acceptable." The Boeing commenters also stated that "Guardrails have been satisfactory," and SRP noted that it has a variance for certain operations which require top guardrails at 30 inches.

OSHA has revised this provision to require simply that the employer provide a guardrail system which meets the requirements of Subpart M. OSHA anticipates that employers will already be familiar with the requirements for guardrail systems in Subpart M, so it would be unnecessary to set out specifications in this provision. OSHA notes that, under Subpart M, the required height for a top rail is approximately 42 inches, as was proposed. In addition, OSHA has determined that perimeter enclosure between the toe board and the midrail of the guardrail provides appropriate platform level protection against the hazard to employees below from falling objects. Further, OSHA has determined that since perimeter enclosure will only be required between the toe board and the mid-rail, swinging will not pose difficulties and employers will have flexibility to address workplace circumstances.

Paragraph (g)(4)(ii)(B) requires that the employer provide a grab rail inside the entire perimeter of the personnel platform. This provision is based, in part, on A10.28–1983, section 5.8. The proposal did not specify that the grab rail would extend along the entire inside perimeter of the platform. OSHA revised the provision because it determined that, as noted by the State of Maryland (Ex. 3–19) and Unit Crane & Shovel (Ex. 3–47), a worker might not otherwise have a grab rail readily available when needed.

The Salt River Project (Ex. 3–61) suggested that the top rail of a platform

constitutes an adequate grab rail. OSHA, however, believes that permitting the use of the top rail as a grab rail would expose employees to the risk of having their hands smashed against external objects while grabbing the top rail. The ACCSH drew a clear distinction between the use of the guardrail to prevent falls and the use of a grab rail to help employees maintain balance during hoists (Tr. 5–23–83, pp. 123–124.) Therefore, OSHA has determined that the required grab rails must be inside the personnel platform, and promulgates this provision as revised.

Proposed paragraph (g)(4)(ii)(C) required that an access gate, if provided, must not swing outward during hoisting and must be equipped with a restraining device to prevent accidental opening. This provision was based on ANSI A10.28–1983, section 5.4 and B30.5–1982, section 5–3.2.2(b)(7). The Agency has decided, however, to relocate the restraining device requirement to a separate provision (paragraph (g)(4)(ii)(D)) of this final rule, for the sake of clarity. OSHA received several comments, including those from Ebasco Constructors, The National Constructors Association and Granite Construction (Exs. 3–6, 3–30 and 3–50), which suggested a revision of the proposed rule to permit the use of sliding or folding gates. Since the modifications requested are in line with the Agency's original intent, paragraph (g)(4)(ii)(D) of the final rule reflects the acceptability of these other approaches and incorporates the proposed requirement for restraining devices. This provision is discussed further below.

OSHA also received comments from the Carolinas Branch of the AGC (Exs. 3–39 and 3–82) which requested that OSHA permit the access gate on small platforms to swing out when there is not room for it to swing in. The Agency has not adopted this suggestion because, as noted by Unit Crane & Shovel (Ex. 3–47), an outward opening gate could strike against a wall or other object during hoisting, possibly upsetting the platform. In addition, OSHA is concerned that an improperly designed outward opening gate could open accidentally if objects or personnel inside the platform were thrown against it. On the other hand, OSHA recognizes that the restrictive approach of the proposed standard is not necessary to protect workers because the Agency knows of platforms which do not conform to the proposed rule but which adequately protect occupants. OSHA also recognizes that some personnel platforms are used in emergency situations to transport injured employees on stretchers or to effect rescues. In such circumstances access gates that only swing inward would create access and egress problems, especially on smaller platforms. OSHA also notes that sliding or folding gates may not be feasible for a given personnel platform. The Agency does not wish to preclude the use of properly designed personnel platforms in emergency situations by requiring a gate swing which would render them useless.

In order to resolve these conflicting concerns, OSHA has decided that access gates that swing, must be configured so that they do not open outward during hoisting. OSHA notes that it is technically feasible and equally protective to install a single gate which is capable of swinging both inwardly and outwardly, provided that the gate not open outwardly during hoisting. Therefore, based on the above discussion, OSHA promulgates this paragraph as revised and relocated.

Paragraph (g)(4)(ii)(D) requires that access gates be equipped with a restraining device to prevent accidental opening. This provision was proposed as part of paragraph (g)(4)(ii)(C). The Agency determined that, because of the above-described revisions to paragraph (g)(4)(ii)(C), retaining this provision within paragraph (g)(4)(ii)(C) could obscure this important requirement. Therefore, the Agency decided to incorporate the appropriate comments received on this provision and promulgate the revised requirement as a separate provision. The comments received on this provision are discussed above under paragraph (g)(4)(ii)(C).

As discussed above, paragraph (g)(4)(ii)(E) of this final rule presents the revised requirements of proposed paragraph (g)(4)(i)(D) for adequate headroom in the personnel platform. Specifically, this provision requires that platforms have headroom which allows employees to stand upright. OSHA has determined that this performance-oriented approach is appropriate for a provision where, as the commenters observed, the circumstances for its application may vary significantly. Therefore as revised and relocated, OSHA is promulgating this provision.

Paragraph (g)(4)(ii)(F) requires that personnel platforms have overhead protection when there is employee exposure to falling objects. This provision is based on ANSI A10.28–1983, section 5.5, and B30.5–1982, section 5.3.2.2(b)(8). This requirement is similar to that in proposed paragraph (g)(4)(ii)(D), and has been shifted because of the addition or relocation of paragraphs, as discussed above.

OSHA requested additional information on the need for overhead protection on personnel platforms in Issue 6. A number of commenters, such as the State of Alaska (Ex. 3–4), Unit Crane & Shovel (Ex. 3–47) and Kenny Construction (Ex. 3–56), agreed that overhead protection should be required "as needed." Several commenters, including the State of Maryland (Ex. 3–19) and the AGC of America (Exs. 3–28 and 3–67) expressed general support for the requirement, while noting that certain work cannot be performed when overhead protection is in place. Unit Crane (Ex. 3–47) noted that the boom tip and hoist lines above the platform effectively block work which is directly overhead and constitute falling object hazards because they may be lowered into a landed platform. Unit Crane also noted that, "Anytime the occupants must work above shoulder height and might be restricted from the work piece (SIC) by overhead protection, such a condition can be eliminated by merely elevating the platform another three feet."

Gulf Oil (Ex. 3–68), stated that overhead protection on the platform was unnecessary and would reduce visibility. Gulf suggested that, "If a hazard of falling objects is present, a more positive means of protection should be provided other than assuming the personnel platform would withstand the dropping objects." Gulf Oil, however, did not specify any "positive means." The Carolinas Branch of the AGC (Exs. 3–39 and 3–82) observed that requiring overhead protection would negate the possibility of employees tying off to anything other than the platform itself, an action which is useless and impractical. The Carolinas Branch was apparently concerned that if the platform tipped or fell the lanyard attached to an employee's body belt or harness would pull the employee up against the overhead protection, preventing escape from the platform and increasing the likelihood and severity of injuries. The Carolinas Branch was also concerned that "work from a platform often must be done above the top of the platform, such as, but not limited to: Rubbing concrete; form work; passing and receiving tools and material, etc." In addition, the Al Johnson Company (Ex. 3–42) stated that the proposed overhead protection was unnecessary because it is more effectively handled under the general safety regulations which limit work overhead * * *". Some commenters, including Equitable Gas, Standard Oil (Indiana) and Organization

Resources Counselors (Exs. 3–25, 3–46 and 3–89), suggested that requiring the use of hard hats would generally be preferable to requiring overhead protection.

OSHA has determined, based on the evidence in the record, that hoisted personnel who are exposed to falling objects need overhead protection. Given the small area of a personnel platform, OSHA is concerned that workers would not be able to avoid falling materials, and that head protection alone would not be sufficient. OSHA notes that this provision is consistent with the requirements for scaffolds in §§ 1926.451(a)(16) and 1926.451(h)(13), which require overhead protection when employees working on other types of scaffolds are exposed to overhead hazards. The Agency is concerned that overhead protection and the use of hard hats could be viewed as either equivalent or mutually exclusive. Therefore, OSHA has added language to this provision so it is clear that overhead protection is required in addition to the use of hard hats.

The final rule is drafted in performance-oriented language which requires that employers install the protective covering whenever employees are exposed to falling objects. Therefore; when there is no potential for injury, whether due to the nature of the work or the work practices enforced at the workplace, the employer need not provide overhead protection other than hard hats.

OSHA notes that this paragraph does not prohibit the use of a personnel platform with overhead protection that incorporates a removable top, a hinged top, or a trap door to permit overhead work, if such work is necessary, as long as the necessary overhead protection function is not compromised. In addition, this paragraph does not prohibit the use of transparent materials to provide a viewing port in the overhead protection.

In response to the concern that overhead protection would complicate tying off (as required by paragraph (g)(6)(viii) of the final rule), the Agency notes that the requirement to tie off is intended to protect employees from falling in the event the platform tips or the employees are thrown from the platform. It is not intended to protect workers in the event that the platform breaks free of the load line or hook. Most of the remaining provisions of the standard focus on preventing the platform from dropping. These provisions, such as the requirement for tests, derating and prevention of two-blocking are intended to prevent situations where the personnel platform breaks free of the load line or hook.

Paragraph (g)(4)(ii)(G) of this final rule requires employers to ensure that all rough edges of the platform exposed to employee contact are so surfaced as to prevent injury to employees from punctures or lacerations. This paragraph, based on ANSI A10.28–1983, section 6.1, is similar to (g)(4)(ii)(E) of the proposal, but has been rephrased to clarify OSHA's intent. The Agency received virtually no comment on this provision. Bechtel (Ex. 3–45) asserted that this requirement was a matter of common sense and that it need not be covered by an OSHA standard. OSHA believes that this provision provides necessary guidance to employers, so it is promulgating this provision as revised.

Proposed paragraph (g)(4)(ii)(H) has been deleted from the final rule. That proposed paragraph required that a personnel platform be readily identifiable by color or marking. This provision was based on ANSI B30.5–1982, section 5–3.2.2(b)(9).

Most of the comments received, such as those from Magma Copper, Bechtel, and Granite Construction (Exs. 3–27, 3–45 and 3–50), indicated that this provision was unnecessary and would impose high maintenance costs. The State of California and Boeing Company (Exs. 3–33 and 3–38) supported the proposed provision. OSHA has determined, based on its consideration of the record, that the proposed provision is not needed to protect workers, given the other provisions of paragraph (g) which cover the design, construction, testing and use of the personnel platform. The Agency, therefore has eliminated proposed paragraph (g)(4)(ii)(H).

Paragraph (g)(4)(ii)(H) requires that all welding of the platform and components be performed by a qualified welder familiar with the weld grades, types and materials specified in the design. This provision, which is virtually identical to proposed paragraph (g)(4)(ii)(F), is based on ANSI A10.28–1983, section 6.3.

In addition, OSHA solicited comments on whether a welder who is "qualified" as defined in § 1926.32(1) is sufficient or if a certified welder would be more appropriate. Magma Copper (Ex. 3–27) cautioned OSHA regarding use of the term "qualified," because "Any experienced * * * welder could assemble a cage." Unit Crane & Shovel (Ex. 3–47) suggested that OSHA require American Welding Society certified-welders, while the Boilermakers Union (Ex. 3–53) suggested that OSHA require that fabrication be done by a certified welder who has passed a welding test that meets the specifications of the ASME welding code. On the other hand, Puerto Rico (Ex. 3–55) suggested that requiring a "qualified" welder, as understood in terms of section 1926.32(1), provided adequate assurance that the platform would be safe. The Agency believes that requiring welder certification or specifying a particular set of credentials for a platform welder would not improve employee protection. Indeed, OSHA agrees with Puerto Rico that the term "qualified," as defined, provides appropriate assurances that the welder assigned to construct a personnel platform will assemble it properly.

Paragraph (g)(4)(ii)(I) of this final rule requires that employers post personnel platforms with plates or other permanent markings indicating the platform weight and its rated load capacity or maximum intended load. This provision is based on ANSI A10.28–1983, section 5–3 and, in part, on B30.5–1982, section 5–3.2.2(b)(4). This requirement was proposed as paragraph (g)(4)(ii)(G) and has been redesignated.

A few commenters, including the International Cargo Gear Bureau, the United Steelworkers, and Norpac Engineering, Inc. (Exs. 3–1, 3–10 and 3–88), suggested that the marking also indicate the maximum number of personnel who may be lifted. OSHA notes that ANSI B30.5–1983, section 5–3.2.2(b)(4), provides that the plate shall specify the maximum number of persons to be hoisted. In addition, the United Steelworkers of America (Ex. 3–10) recommended that this provision be revised to include a platform certification requirement, with the certification posted on the platform.

OSHA has determined that the platform posting provision as proposed will provide adequate protection for hoisted workers by alerting everyone involved in a lift of the rated load capacity or maximum intended load of the platform. Furthermore, insofar as A10.28 and B30.5 differ in their provisions for marking of personnel platforms, OSHA has decided to rely on ANSI A10.28–1983, which exclusively covers personnel platforms, rather than B30.5–1982, which focuses on cranes, in deciding not to require the plate to state the maximum number of passengers. The Agency believes that an additional requirement to post the personnel platform with the maximum number of passengers will not add to the degree of employee protection provided by the requirement to post the maximum intended load or rated load capacity. Finally, OSHA has determined that although a personnel platform designed

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and built at the worksite may not have a rated load capacity (such capacities are normally determined for manufactured platforms) the design will have been based on a determinable maximum intended load. In those situations where a platform does not have a rated load capacity, the maximum intended load shall be posted. Therefore, this paragraph is being promulgated as revised.

Paragraph (g)(4)(iii) of this final rule covers personnel platform loading.

Paragraph (g)(4)(iii)(A) prohibits loading the platform in excess of its rated load capacity or maximum intended load, whichever is less. This provision is similar to the proposed requirement and is based on ANSI B30.5–1982, sections 5–3.2.1.1–(b) and (c). The Agency received no comments which opposed this requirement. Ebasco Constructors (Ex. 3–6) suggested that OSHA base the rated load capacity on a specified minimum pounds-per-square-foot requirement.

The performance-oriented language of the provision, as originally proposed, allows the employer to determine what criteria are used to rate the capacity of the personnel platform. OSHA believes that this provision, when coupled with the design, construction, and testing requirements presented in this standard, will provide adequate protection for employees. As noted above, a job built and designed personnel platform may not have a rated capacity, but the design will have been based on a maximum intended load. Therefore, for platforms whose rated load capacity has not been determined, or for which there is no such rating, the employer can comply with this provision by ensuring that the maximum intended load is not exceeded.

Paragraph (g)(4)(iii)(B) limits the number of employees being hoisted to those required to do the work. This provision, which is identical to the proposed requirement, is based on ANSI A10.28–1983, section 12.2. OSHA specifically requested additional input on this subject in Issue 3. Many commenters, especially contractors such as Parsons, Johnson Bros. and Granite (Exs. 3–22, 3–43 and 3–50), supported the provision as proposed. Supportive comments were also received from the Boilermakers Union (Ex. 3–53).

As indicated by the discussion of paragraph (g)(4)(ii)(I) above, some commenters suggested that OSHA limit the number of employees to be hoisted and that the maximum intended load and rated load capacity be based on that number of employees times a pounds per employee load factor (Exs. 3–24, 3–27, 3–33, 3–47, 3–76, and 3–82).

However, other commenters, such as Puerto Rico (Ex. 3–55) and the Salt River Project (Ex. 3–61), asserted that OSHA should focus on preventing loads from exceeding capacity, not on the number of employees needed to perform work duties. OSHA agrees with those commenters who favored compliance capacity requirements set forth in terms of total load weight. Indeed, OSHA has determined that compliance with the load limits of the platform and maintenance of the platform safety factor established by the standard will provide the necessary protection, while allowing the employer the flexibility to determine how many employees must be hoisted to perform assigned work. The Agency believes that specifying a limit on the number of hoisted personnel would unreasonably restrict the determination of how many workers are required to perform a particular task safely. Accordingly, OSHA has promulgated this paragraph unchanged.

Paragraph (g)(4)(iii)(C) limits the occupancy of the personnel platform to employees, and the tools and materials necessary to do the work they are assigned. This provision reflects input from the ACCSH which urged OSHA to ensure that personnel platforms were not used as material hoists (Tr. 5–23–83 pp. 50–52). Unit Crane & Shovel (Ex. 3–47) recommended that OSHA prohibit the use of personnel platforms to hoist bulk material because a shifting load could endanger the hoisted personnel. The Carolinas Branch of the AGC (Exs. 3–48 and 3–82) opposed such a restriction on transporting material in bulk or other loads not related to the task to be performed on personnel platforms, as long as the capacity of the platform was not exceeded. OSHA believes that compliance with capacity limitations above does not provide adequate assurance of employee safety when loading personnel platforms. OSHA believes that it is less likely that the appropriate concern for capacity limitations would be shown when using a personnel platform as a material hoist. This misuse would cause structural fatigue which may not be readily detected by inspection, until failure occurs. The Agency reiterates its concern that personnel hoisting, insofar as it is permitted under the terms of this standard, must satisfy more demanding criteria than are required for material hoisting. Given the special concern OSHA has expressed regarding the hazards of personnel hoisting, the Agency has determined that it would be inappropriate to allow personnel platforms to be used as material hoists. In addition, the Agency believes that any blurring of the distinction between personnel hoisting and material hoisting would increase the likelihood of operator error. Therefore, OSHA is promulgating this paragraph as proposed, with a clarification that the platforms are not to be used for other purposes when they are not hoisting personnel.

Proposed paragraph (g)(4)(iii)(D) has been separated into two provisions for the sake of clarity, but the provisions will be discussed jointly since it was proposed as one provision. The proposed paragraph required that materials on a personnel platform be secured and evenly distributed while the platform is in motion. Paragraph (g)(4)(iii)(D) requires that materials and tools on an occupied personnel platform be secured to prevent displacement. Paragraph (g)(4)(iii)(E) requires materials to be evenly distributed within the confines of the platform. These provisions are based on ANSI A10.28–1983, section 8.1. The few comments received support these provisions in principle. The Boeing Company and Boeing Aerospace (Exs. 3–38 and 3–57), however, suggested that OSHA change the wording to "loaded in such a way that they do not present a hazard to personnel." Ebasco Construction (Ex. 3–6) suggested that the language be changed to require materials to be "evenly distributed within the confines of the platform." The Agency believes that the Boeing commenters' suggested revision provides less guidance to the employer, and would be less protective than the requirement, as proposed. On the other hand, OSHA has determined that Ebasco's suggested language better expresses OSHA's original intent that the load be evenly distributed within the platform. Therefore, the Agency has adopted Ebasco's suggested change and promulgates these paragraphs as revised and separated.

Paragraph (g)(4)(iv) addresses the rigging used to suspend personnel platforms.

Paragraph (g)(4)(iv)(A) requires that if a rope bridle is used to connect the personnel platform to the load line, the bridle legs shall be connected to a master link or shackle, so that the weight of the platform is evenly distributed among the bridle legs.

The State of California (Ex. 3–33) suggested requiring that four part bridles be designed as if only two legs were supporting the platform to ensure stability, because the weight of the loaded platform would probably not be evenly distributed. Although this suggestion, in general, is technically sound rigging practice, OSHA has determined that other bridle

configurations will provide the necessary protection In addition, OSHA believes that the bridle configuration suggested by the State of California may not be appropriate in all circumstances. Therefore, OSHA has determined that the requirement, as proposed, provides the necessary protection for hoisted employees.

Lift-All Company, Inc., the Boeing Company and Boeing Aerospace (Exs. 3–13, 3–38 and 3–57) commented that the use of the term "ring" in paragraph (g)(4)(iv)(A) was inappropriate. They suggested that OSHA use the term "master link" adopted by ANSI B30.9–1984, "Slings". OSHA has decided that the suggested change is proper and has reworded the final rule accordingly.

Standard Oil (Indiana) (Ex. 3–46) expressed concern that this provision as proposed would not permit alternatives to wire rope bridles and requested that OSHA clearly state that such alternatives were permitted. OSHA believes that it is sufficiently clear from the use of the expression "when a wire rope bridle is used" that OSHA is simply taking into account the consequences of a particular rigging choice and does not mean to limit the choice of equipment. Therefore, OSHA has not made the requested change.

The Organization Resources Counselors (Ex. 3–32) asserted that hoisted personnel would be safer if OSHA permitted bridle legs to be attached to the hook individually, rather than joined at a single ring or shackle. OSHA has determined that the suggested change would allow hoisted personnel to be exposed to greater danger than would be permitted under the standard as proposed, because the displacement of any one of the bridle legs could cause the platform to tip. Therefore, the suggested change has not been made.

Paragraph (g)(4)(iv)(B) requires that the hooks or other attachment assemblies used for rigging personnel hoists be of types that can be closed and locked. This provision, which is identical to the proposed requirement, is based on ANSI A10.28–1983, section 9.2. OSHA highlighted this subject in Issue 8. Many commenters, including Johnson Bros. Corporation, Unit Crane & Shovel and Lunda Construction Company (Ex. 3–43, 3–47 and 3–92), strongly supported this requirement. On the other hand, Bechtel (Ex. 3–45) asserted that this provision was redundant with existing safety standards, and the American Road & Transportation Builders Association (ARTBA) (Ex. 3–65) stated that the proposed requirements were "excessively descriptive and restrictive," though ARTBA did suggest that OSHA require positive locking devices on hooks. As has been discussed above, OSHA believes that the hoisting of personnel requires even greater care than the hoisting of material, so the precautions required by this paragraph are necessary.

Some commenters, such as Standard Oil (Indiana) (Ex. 3–46) and Gulf Oil (Ex. 3–68), suggested that OSHA permit "mousing," a practice by which wire rope is wrapped around a hook to cover the hook opening and to prevent the dropping of a hoisted load, as an alternative to the shackles and locking hooks required in the proposed standard. These commenters asserted that mousing was a safe and proven technique and that the provision, as proposed, would impose hardship. Indeed, ANSI B30.5–1982, section 5–3.2.2(b)(10), recognizes mousing as a means of securing the hook opening for personnel hoisting operations. Other commenters, including Parsons Corporation (Ex. 3–22), the State of California (Ex. 3–33), the Boilermakers Union (Ex. 3–53) and NORPAC Engineering (Ex. 3–88), asserted that OSHA should not allow mousing. These commenters stated that mousing was unsafe and that a strong, securely locked hook should be used instead. In addition, the International Union of Operating Engineers testified (Tr. 465–466) that mousing does not close a hook opening and that properly closing safety hooks are available.

OSHA has determined that mousing would not provide the necessary assurance that a personnel platform would not be dropped, because the platform could still slip off the hook despite the mousing. The Agency agrees with those commenters who suggest that only hooks whose openings lock closed may be used. Therefore, OSHA has not made the suggested revision. OSHA has followed ANSI A10.28 instead of ANSI B30.5 in this case, because the Agency believes that permitting mousing under this standard would not effectuate the purposes of the OSHA Act.

OSHA has revised the wording of proposed paragraph (g)(4)(iv)(B) in several places to clarify the intended meaning. As was the case with paragraph (g)(3)(ii)(C), the term "overhaul ball" has replaced "fall ball" to be consistent with current industry terminology. In addition, OSHA has replaced the term "screw pin" with "bolt" and has specified that any shackles used must be of the "alloy anchor-type," in response to comments from Columbus McKinnon Corporation (Ex. 3–16), which reflect current usage in the industry. Otherwise, this paragraph has been promulgated unchanged.

Proposed paragraph (g)(4)(iv)(C) required that all wire rope and hardware used to rig personnel platforms have a minimum safety factor of seven, in order to be consistent with the proposed load line (running rope) safety factor. Issue 4 of the proposal discussed the proposed equipment safety factors and solicited additional input. Some commenters, including Lift-All and the Wire Rope Technical Board (Exs. 3–13 and 3–15), supported setting the safety factor at seven. Other commenters, such as the Salt River Project and the Spartan Equipment Co. (Exs. 3–61 and 3–82), "accepted" the proposed safety factor, while Standard Oil (Indiana) (Ex. 3–46) simply took it as a "given." Spartan suggested that setting the safety factor at five instead of seven would still provide "satisfactory" protection. These comments either did not provide a basis for using seven or they relied on the rationale presented in the proposal to support setting seven as the safety factor for hoist ropes.

Unit Crane & Shovel, the Boeing Company, and Boeing Aerospace (Exs. 3–47, 3–38 and 3–57) suggested that OSHA set the safety factor for rigging at 10, based on the same authorities and rationale used to support their suggestion that the safety factor for running ropes be set at 10 (See discussion of paragraph (g)(3)(i)(A) of the final rule.) The Boeing commenters also suggested that OSHA require a higher safety factor when employers use rotation resistant rope. OSHA notes that Unit Crane would set different safety factors for the personnel platform and its "attaching devices" (safety factor of 5) on the one hand, and running ropes (safety factor of 10) on the other, citing ANSI B30.5–1982, section 5–3.2.2(b)(3). This raises the question whether platform rigging should be considered part of the platform or part of the load line for the purpose of setting a safety factor for rigging.

ANSI A10.28–1983 does not specify a safety factor for rigging, but it does agree with ANSI B30.5–1982 in setting the safety factor for the personnel platform at five. The National Constructors Association, Johnson Bros. Corporation and Granite Construction (Exs. 3–30, 3–43 and 3–50) suggested setting the rigging safety factor at five so that it would be consistent with the personnel platform safety factor. Magma Copper and the AGC of America (Exs. 3–27 and 3–28) suggested that setting the safety factor for rigging at five would be adequate. In addition, Columbus McKinnon (Ex. 3–16) opposed the proposed rigging safety factor of seven because it was inconsistent with the

industry practice regarding hooks (safety factor of three to five) and shackles (five to six).

OSHA notes that the load imposed on the hoist line is greater than that imposed on any single static line, such as a platform sling. Based on the comments and the pertinent consensus standards, OSHA is convinced that it is critical to provide employers with clear, readily applicable guidance for designing the platform and its rigging. Accordingly, the Agency has determined that the platform rigging safety factor should be the same as for the platform itself and has revised the proposed paragraph to require a safety factor of five. OSHA agrees that rotation resistant rope is subject to greater and harder to detect deterioration than standard wire rope, therefore the Agency has set the safety factor for rotation resistant rope at 10. Therefore, OSHA promulgates paragraph (g)(4)(iv)(C), as revised.

Paragraph (g)(4)(iv)(D) requires that all eyes in wire rope slings be fabricated with thimbles to prevent excessive wear on the rigging.

Magma Copper (Ex. 3–27) commented that thimbles were unnecessary, based on its suggestion that OSHA set the wire rope and hardware safety factors at five. In addition, Standard Oil (Indiana) (Ex. 3–46) commented that thimbles would only be minimally useful, based on a safety factor of seven. The Salt River Project (Ex. 3–61) and Lunda Construction Company (Ex. 3–92) supported the proposed provision, with the Salt River Project emphasizing that OSHA should require thimbles of the flemish eye type, rather than the fold back splice type.

OSHA has determined that there is a reasonable basis for this requirement because thimbles are generally used in the fabrication of slings intended for use more than one time, whether hoisting material or personnel. Thimbles allow a smoother bending of the portion of wire rope used to make eyes, and help prevent kinks and crimps that would occur without the thimble. This results in less deformation of the wire rope, and, therefore, reduces deterioration of the ropes strength. In keeping with the performance-oriented approach OSHA has taken in setting requirements for personnel platforms, the Agency will not specify the type of thimble to be used. Therefore, this paragraph is promulgated unchanged.

Paragraph (g)(4)(iv)(E) prohibits the use of personnel hoisting bridles and other personnel hoisting rigging for any other purpose. This provision appeared in the proposed standard as paragraph (g)(6)(x). It has been relocated so it will appear with other provisions which regulate rigging.

The Construction Industry Manufacturers Association (Ex. 3–31) recommended that "no external load shall be lifted by attaching to the personnel platform." The State of California (Ex. 3–33) and the National Constructors Association (Ex. 3–74), while generally opposed to hoisting of other loads, commented that it should be permitted in the isolated circumstances when need was shown. The Milwaukee Construction Industry Safety Council (MCISC) (Ex. 3–70) commented that a crane should not hoist other loads while employees are aloft, suggesting that the platform be lowered when the workers need more materials. DuPont (Ex. 3–75) and the State of Michigan (Ex. 3–84) suggested that OSHA expressly prohibit any other crane operations while employees are being hoisted. On the other hand, Kenny Construction (Ex. 3–69) asserted that it needs to use a "whip" line to assist hoisted personnel in their work.

As already stated in the discussion of paragraph (g)(4)(iii)(C), OSHA believes that the use of a personnel platform for material hoisting would expose hoisted employees to increased risks. Given the close relationship between the platform and the attached rigging, OSHA has concluded that the ban on material hoisting should also apply to the rigging. In particular, OSHA has determined based on the evidence in the record, that the danger of excessive wear and entanglement from hoisting other loads far outweighs the convenience value of permitting the practice. OSHA has revised the language to prohibit clearly the use of the rigging for other service and to make the language consistent with the similar restrictions for use of the platform found in paragraph (g)(4)(iii)(C).

In addition, OSHA solicited comments in Issue 10 regarding the need for an additional sling (bridle) which would be in position to support the personnel platform in case the primary connection failed. Several commenters, such as Parsons Corporation, the U.S. Air Force and the Research and Trading Corporation (Exs. 3–22, 3–24 and 3–60) stated that a secondary bridle was necessary for protection of hoisted personnel. Other commenters, the Boeing Company and Boeing Aerospace (Exs. 3–38 and 3–57), stated that secondary bridles were not always needed, particularly where independent lifelines were feasible. The Boeing commenters noted that the "safety" bridle protected against only one possible cause of platform fall. The State of California (Ex. 3–33) noted that a secondary bridle would not be needed where the requirement in proposed paragraph (g)(4)(iv)(B) for positive locking load hook was satisfied and suggested that hooks be designed to ensure that secondary bridles would not be needed. The Milwaukee Construction Industry Safety Council (Ex. 3–26), in turn, noted that a standard hook with a safety latch would be sufficient to comply with proposed paragraph (g)(4)(iv)(B) if the second sling was required.

On the other hand, the Northwest Engineering Company, the AGC of St. Louis, Unit Crane and Shovel and Norpac Engineering, Inc. (Exs. 3–3, 3–14, 3–47 and 3–88) commented that a safety sling requirement was neither necessary nor desirable. In particular, the AGC of St. Louis and Unit Crane stated that the proximity of the "redundant" sling to the load line would cause damage through chafing and tangling. Unit Crane added that compliance with the proposed requirements for closing the hook throat, prohibiting free fall, using lifelines and performing prelift safety checks would properly protect hoisted personnel. In addition, the Boilermakers Union (Ex. 3–53) stated that there had been no accidents involving its members which indicated need for a safety bridle. The Boilermakers added that the "rigorous testing" required under the proposed rule made the possibility of such an accident "virtually non-existent."

OSHA agrees with the commenters who noted that compliance with the provisions of the proposed rule, such as the requirements for hook throat closing and equipment testing, will protect hoisted personnel, so that a secondary sling is not needed.

Paragraph (g)(5) of this final rule details the inspection and testing requirements for cranes, derricks and platforms used to hoist personnel. This paragraph has been extensively revised, as discussed below.

Paragraph (g)(5)(i) as proposed required the inspection, by a competent person, of the crane or derrick used to hoist personnel, before each shift and after material handling operations where the load exceeded 50 percent of the rated capacity. The Boeing Company and Boeing Aerospace (Exs. 3–38 and 3–57) commented that the latter requirement would necessitate disruptive mid-shift inspections. In addition, the National Constructors Association and Bechtel (Exs. 3–30 and 3–45) noted that inspections are already required by other paragraphs in § 1926.550.

OSHA has determined that any potential problem involving a crane or

derrick supported personnel hoisting system or set-up would be detected through compliance with the existing requirements of § 1926.550, or through the evaluation of a trial lift which satisfies the terms of new paragraph (g). Therefore, OSHA has deleted the inspection requirements set out in proposed paragraph (g)(5)(i).

In the proposed rule, OSHA required that employers perform trial lifts, and the Agency provided guidance regarding the information to be obtained through the trial lifts. OSHA recognizes that some commenters were confused by the proposed language.

OSHA intended to require that employers conduct trial lifts with the personnel platform unoccupied. The trial lift would encompass the entire operational cycle—from the point where an employee entered the platform; through each work location accessible from the set up location, in sequence; and, return to the point where the employees would exit the platform. The trial lift would be repeated each time the crane was set up in a new location. The Agency position regarding this provision has not changed. In this final rule, OSHA provides specific guidance to employers as to what must be determined during this trial lift.

Commenters also expressed uncertainty regarding the Agency's purpose in requiring trial lifts. Many commenters apparently confused the trial lift and proof testing requirements. In order to eliminate misunderstanding, OSHA notes that the purpose of the trial lift is to determine that the lift route is free of obstacles; to determine work location accessibility; to confirm that no work locations will place the crane or derrick in such a configuration where the intended load would exceed the 50 percent limit of the crane's rated capacity; to ensure soil or other supporting surface stability, and to determine suitability for the intended lift. The trial lift is conducted just prior to commencing actual hoisting operations. The proof test, on the other hand, is conducted to test the capacity and construction of the personnel platform. Proof testing is required prior to hoisting personnel and after any repair or modification. The proof test and trial lift can be conducted simultaneously, as long as the specific requirements for each are satisfied.

Paragraph (g)(5)(i), as promulgated, requires that the operator perform a full cycle operational trial lift before allowing personnel in the platform. This paragraph is similar to proposed paragraph (g)(5)(ii) and is based on ANSI B30.5–1982, section 5–3.2.2(a)(6). Additionally, this paragraph requires the operator to determine that all systems, controls and safety devices actuate and function properly; that there is nothing along the hoisting route which would interfere with the platform reaching the work location and returning; and that all configurations needed during the hoisting operation will allow the operator to remain within the derated capacity. OSHA believes that the crane or derrick operator is the best and, probably, the only person qualified to make these determinations.

Most of the commenters supported proposed paragraph (g)(5)(ii), although they diverged as to the circumstances when the trial lift must be performed. A few commenters, such as Columbia Nitrogen (Ex. 3–58), stated that the requirement would impose a burden without providing a benefit, because the 50 percent derating already provided the necessary protection. Some commenters, such as Unit Crane & Shovel and the Organization Resources Counselors (Exs. 3–47 and 3–88), suggested that OSHA promulgate the provision as proposed. Others, such as the Associated General Contractors of America and Granite Construction (Exs. 3–28 and 3–50), asserted that trial lifts should only be required at the beginning of a shift. Granite Construction's comment, however, reflected the mistaken impression that operators would have to interrupt hoisting to perform a trial lift each time the *platform* was repositioned, even if the crane or derrick were not moved. OSHA's intent is for operators to run the unoccupied platform through all movements and positions necessary to do the work before permitting employees aboard the platform. By contrast, a change in the set-up location of the *crane or derrick*, the addition of one or more work locations to those already reached from an existing set-up location, or a significant change in the lift route, will require another trial lift.

OSHA has determined that a trial lift should be performed directly before personnel are hoisted, rather than at the beginning of a shift, as was proposed. The Agency is concerned that a trial lift would not take into account the circumstances under which personnel hoisting would take place if the trial lift were conducted hours before the hoisting. Under those circumstances, the proposed trial lift might not provide the necessary assurance that the lift would be completed safely.

OSHA believes that the requirement as revised will impose a more reasonable regulatory burden on employers than did the requirement as proposed. Employers will only need to perform trial lifts when they will actually be hoisting employees, instead of having to perform them at the beginning of any shift in which there is a possibility that they might need to hoist personnel. Therefore, OSHA has decided that this requirement, as revised, most effectively regulates the timing of trial lifts.

Paragraph (g)(5)(ii) of this final rule requires that the trial lift be repeated whenever the crane is moved and set up in a new location or returned to a previously used location. This provision is similar to and replaces paragraph (g)(5)(iii) of the proposal.

In the proposal, OSHA required that the test lift at each new set-up location be conducted at 150 percent of the intended load. OSHA recognizes that the proposed language was not sufficiently clear. Several commenters apparently misconstrued the trial lift requirement as requiring a proof test of the platform. For example, the Bechtel Power Corporation (Ex. 3–45) commented as follows:

> The proposed requirement is excessive, costly and nonproductive. We agree a load test of the personnel platform is a good practice but there is no sense in requiring load testing more often than that for the crane. ANSI requires load testing of cranes at the time they first come on the job or when modified or possibly damaged or on an annual basis.

The National Constructors Association, Standard Oil Company (Indiana), the American Road and Transportation Builders Association, and the Carolinas Branch of the AGC, (Exs. 3–30, 3–46 3–65 and 3–82), opposed the proposed requirement on the grounds that compliance would involve frequent handling of materials, which could damage the platform and cause employee injury, and would require employers to carry test weights or ensure test weights are available.

On the other hand, many commenters, such as the Commonwealth of Puerto Rico (Ex. 3–55) and the Milwaukee Construction Industry Safety Council (Ex. 3–26), supported the proposed trial lift requirements. Unit Crane & Shovel (Ex. 3–47) suggested that, in addition, OSHA require a trial lift when a crane or derrick is moved back to a former set-up location. Further, the International Union of Operating Engineers testified:

> And whenever that crane is relocated, I mean, from coming around from this side of the building over to this other side of the building, and set up to work to operate again with a work platform, it should be tested again.
>
> Our feeling is that it should be tested again. Because, we're not just testing, and load the

sandbags in and take it up to the point where the work is going to be performed.

We're not just testing for the rigging or the stability of the crane, but we're testing for clearances on whatever obstructions there might be, like the edge of a building, or a tree over here, or a guide wire going up to a stack.

We're going to see if we can get the crane into this place with this work platform, with the men in it, without hitting any kind of an obstruction. So, we're testing for clearances, as well as for stability of the crane.

And, of course, there could be something. There's always the possibility that there's an old manhole or a sewer or something down there. And we get this concentrated ground bearing pressure under an outrigger or under the end of the cats or something, that we might drop down through. (Tr. 424–425)

OSHA agrees with the Operating Engineers' reasons for performing trial lifts in these situations. Accordingly, based on the evidence in the record, the Agency is requiring that the employer conduct a trial lift, with the platform loaded to the anticipated lift weight, at each new set-up location and when returning to previously used locations.

OSHA has relocated the provisions of proposed paragraph (g)(6)(vii) to paragraph (g)(5)(iii) in the final rule. This consolidates the inspection and testing requirements in paragraph (g)(5), as suggested by the National Constructors Association (Ex. 3–30). Proposed paragraph (g)(6)(vii), which is based on ANSI B30.5–1982, section 5–2.4.2(a), requires testing and inspection to ensure, prior to hoisting, that a personnel platform is secure and properly balanced. In particular, the inspection must ensure that hoist ropes are free of kinks; lines are not twisted around each other; the primary attachment is centered over the platform; and all ropes are properly seated on drums and in sheaves.

Several commenters, including the American Road & Transportation Builder Association (ARTBA) (Ex. 3–65), stated that these proposed provisions were unnecessary and should be deleted. In particular, the ARTBA contended that the determinations required under proposed paragraph (g)(6)(vii) could be made in conjunction with the trial lift. This was OSHA's intent, and in order to clarify this intent, the Agency now specifically states that this is to be done as part of the trial lift.

OSHA has relocated these provisions, related to hoist rope and rigging inspection, to paragraph (g)(5)(iii) because the Agency believes that they deserve specific mention as a reminder to employers that these items must be inspected at the end of the trial lift, and directly before actually hoisting personnel.

Paragraph (g)(5)(iv) provides that a competent person shall inspect the equipment and base support or ground immediately after a trial lift, to determine whether the test exposed any defects or had any adverse effects. This requirement is virtually identical to proposed paragraph (g)(5)(iii)(A). The added "competent person" requirement reflects input from the ACCSH (Tr. 5–23–83 pp. 148–149) and is intended to ensure that the designated person has the skill, experience and authority to perform the inspection and have any defects repaired. Unit Crane & Shovel (3–47) suggested that OSHA specifically require employers to inspect the rigging after a trial lift. The Agency intended the employers to include the rigging when they performed their post-trial lift inspection. For the sake of clarity, OSHA has revised this provision as suggested. Therefore, OSHA promulgates paragraph (g)(5)(iv) as renumbered and revised.

Paragraph (g)(5)(v) requires that employers correct any defects found during an inspection before hoisting personnel. This provision is identical to proposed paragraph (g)(5)(iii)(B). There were no comments regarding this requirement. Therefore, OSHA promulgates proposed paragraph (g)(5)(iii)(B) as paragraph (g)(5)(v).

Paragraph (g)(5)(vi) requires that employers proof test their personnel platforms and hoist rigging at 125 percent of the rated capacity of the platform, with the test load evenly distributed on the platform. The proof test is to be performed prior to hoisting personnel for the first time at a work site, or whenever the platform or rigging has been repaired or modified. This provision, based on ANSI A10.28–1983, section 7.2, has been added because of OSHA's concern that employees might otherwise be hoisted unsafely in personnel platforms whose structural integrity may have been compromised by damage, repair or modification. In its discussion of proposed paragraph (g)(4)(ii)(F), covering welding (49 FR 6286), OSHA requested input regarding the need for proof testing and the appropriate weight and procedure. Unit Crane & Shovel (Ex. 3–47) recommended that "the platform be proof tested after fabrication and certified to have withstood a load five times its assigned capacity rating." The Specialized Carriers and Rigging Association (Ex. 3–54) noted that "B30.9 of ANSI requires that all welded assemblies used in overhead lifting (personnel platform) must be proof tested to twice their rated capacity." The Commonwealth of Puerto Rico (Ex. 3–55) recommended proof testing at 150 percent of rated capacity after fabrication, and the Boeing Company and Boeing Aerospace (Exs. 3–38 and 3–57) recommended proof testing at 200 percent every three months, if the platform is in continual use. In addition, Bechtel (Ex. 3–45) suggested that OSHA require proof testing at 125 percent of the rated capacity of the personnel platform.

The State of California (Ex. 3–33) recognized proof testing as an option, but suggested that OSHA instead require personnel platform certification by an engineer, coupled with periodic inspection by a competent person.

OSHA has determined that proof testing at each job site is the most effective way to evaluate structural integrity, because the testing would detect deficiencies in fabrication and any damage caused in transit. OSHA also believes that a platform certification requirement is unnecessary because the required proof testing and inspection requirements would disclose any defects.

OSHA believes that field proof testing at 200 percent of the rated capacity could possibly permanently deform structural members. The Agency has further determined that suspending the platform for five minutes, loaded at 125 percent of the rated capacity, is considered an adequate, non-destructive field test and will provide the necessary assurance that any defect in the platform or rigging would be detected and corrected before any personnel were hoisted. Therefore, new paragraph (g)(5)(vi) incorporates such a requirement.

Paragraph (g)(6) addresses work practices which the Agency has determined will enhance the safety of workers being hoisted in personnel platforms.

Paragraph (g)(6)(i) of this final rule requires that hoisted employees keep all parts of their bodies inside the platform during raising, lowering and positioning. This provision, which is based on ANSI A10.28–1983, section 12.6, is identical to the proposed provision, except that the Agency has added an explanation which states that the requirement does not apply to an occupant of the platform performing the duties of a signal person. Thus, the paragraph, as promulgated, takes into account a common sense consideration which was overlooked in the proposal. OSHA determined that this revision was needed based on comments submitted by Magma Copper and Bechtel (Exs. 3–27 and 3–45). The Construction Industry Manufacturers Association (Ex. 3–31) expressed support for the provision as proposed.

Proposed paragraph (g)(6)(ii) required that the platform be landed or secured to the structure before employees enter or exit the platform. This provision was based on ANSI A10.28–1983, section 12.7. One commenter, the State of Maryland (Ex. 3–19), disagreed with the proposed requirement, stating that "securing the platform to another structure can be dangerous." On the other hand, commenters such as the Commonwealth of Puerto Rico (Ex. 3–55) supported the proposed provision. In addition, Unit Crane & Shovel (Ex. 3–47) commented that "it is unclear what structure OSHA is referring to." Unit Crane suggested that OSHA use the term "stable structure." Unit Crane also noted that the movement of workers in a personnel platform could cause dangerous instability and suggested that the hoisted platform be secured to a "stable structure" whenever employees were working either in the platform or outside.

OSHA has reviewed the evidence in the record regarding this issue and agrees that the language of this provision needs to be clarified. In response to Unit Crane's concern, the Agency is revising the paragraph to make it clear that the platform is to be secured to "the structure where the work is to be performed * * *.". On the other hand, the Agency concluded that a requirement to secure the platform to a "stable structure" would be inappropriate for certain work activities, such as demolition, where securing to the structure would create an unsafe condition. Indeed, OSHA recognizes that there are circumstances where there is no structure to which it is possible to secure the platform safely, and has revised the paragraph accordingly. Therefore, OSHA has decided to promulgate this provision as revised.

Paragraph (g)(6)(iii) of the final rule is identical to the proposed provision. This provision, which is based on ANSI A10.28–1983, section 12.8, requires the use of tag lines, unless the use of a tag line creates an unsafe condition. The Agency believes, based on ANSI B30.5–1982, section 5–3.2.1.4(m) and the *Crane Handbook* (Ex. 5–2D), that compliance with this provision will be an important element in ensuring that any hoisting while traveling, as regulated by paragraph (g)(7) below, proceeds safely. The Agency received few comments on this provision. Kerr-McGee (Ex. 3–23) commented that the use of a tag line as a means of controlling platform motion was preferable to the use of rotation resistant wire rope. In addition, the Milwaukee Construction Industry Safety Council (Ex. 3–26) and Organization Resources Counselors (Ex. 3–89) expressed support for the proposed requirement. Therefore, OSHA promulgates the requirement as proposed.

Proposed paragraph (g)(6)(iv), which prohibited traveling with personnel suspended on a hoisted platform, has been deleted. Traveling is now addressed in paragraph (g)(7), below.

Proposed paragraph (g)(6)(v) has been redesignated as paragraph (g)(6)(iv) in the final rule. The proposed provision required that the crane or derrick operator remain at the controls at all times when hoisting employees. The requirement was based on ANSI A10.28–1983, section 12.4, and B30.5–1982, section 5–3.2.2(a)(12), which provide that the crane or derrick operator shall stay at the controls while the platform is suspended. Boeing (Ex. 3–38) and Standard Oil (Indiana) (Ex. 3–46) agreed that this requirement should only apply when the platform was suspended. In addition, Unit Crane & Shovel (Ex. 3–47) suggested that the crane operator remain at the controls, with "attention directed to the platform at all times when the platform is suspended." Unit Crane recognized that careful regulatory drafting would be necessary to ensure that compliance with this requirement did not detract from the performance of the operator's other duties. OSHA believes that a requirement for the operator to remain at the controls and carefully conduct the lift ((g)(3)(i)(A)) will ensure that the necessary attention is paid to the position of the platform. Therefore, OSHA has responded to Unit Crane's concern, but has not adopted the suggested language.

Also, the Construction Industry Manufacturers Association (CIMA) and the Boilermakers Union (Exs. 3–31 and 3–53) stated that the operator should remain at the controls while the platform is "occupied." The CIMA emphasized the alertness required to ensure the safety of platform passengers while the crane engine is running, and the Boilermakers Union was particularly concerned that hoisted personnel would be endangered if the operator left the controls once the platform had been hoisted to and secured at its working position.

OSHA agrees with the CIMA and Boilermakers Union that the operator should be at the controls once the crane engine is running and the personnel platform is occupied, because inadvertent movement by the crane before hoisting or after landing could cause injuries. Therefore, OSHA has revised this paragraph to require that the operator remain at the controls whenever the crane engine is running and the personnel platform is occupied.

Paragraph (g)(6)(v) requires that employers discontinue personnel hoisting promptly when there are indications that hoisted employees would be exposed to dangerous weather conditions or other impending danger. This provision is virtually identical to paragraph (g)(6)(vi) of the proposed standard. The Agency has added the word "promptly" to this paragraph, as recommended by the Construction Industry Manufacturers Association (Ex. 3–31). The Agency believes that this modification clarifies its regulatory intent.

Some commenters suggested that OSHA set a specific wind speed at which operations would be discontinued (Ex. 3–31 and 3–46). Other commenters, such as the Boeing Company (Ex. 3–38), suggested that OSHA specify the weather conditions under which employers would be required to discontinue personnel hoisting operations. OSHA believes that it is neither possible nor necessary to compile such a list, because circumstances vary so much between construction sites. Indeed, the ACCSH declined to suggest more specific language for this provision because it felt that a broadly worded requirement was needed to cover the many hazards which could arise (Tr. 5–23–83 pp. 147–148). OSHA also notes that its enforcement efforts would be adversely affected if problems arose due to conditions not specifically included in a list.

In addition, the Boilermakers Union (Ex. 3–53) suggested that OSHA require a "constant monitor" to detect hazardous gases when employees are hoisted to repair the tops of foundry stacks, coke ovens and other chimneys at facilities where normal operations are continuing. Although OSHA is concerned that hoisted employees could be harmed by toxic materials, the hazards raised by the Boilermakers are already regulated by other construction standards, such as the permissible exposure limits set forth in § 1926.55. Therefore, the Agency believes that it is not necessary to adopt the suggested revision.

The provisions of proposed paragraph (g)(6)(vii) have been moved to paragraph (g)(5) and have been discussed above.

Paragraph (g)(6)(vi) of this final rule, which is virtually identical to proposed paragraph (g)(6)(viii), requires that employees being hoisted remain in continuous sight of and in direct

communication with the operator or signal person, while allowing the use of direct communications alone only if the circumstances warrant. This provision is consistent with ANSI A10.28–1983, sections 11.1 and 11.2, and with B30.5–1982, section 5–3.2.2(a)(15). Proposed paragraph (g)(6)(viii) required in all circumstances both continuous visual contact, and communication with the operator or signal person. OSHA received written comments and hearing testimony which indicated that radios or other means of communication would enable the hoist to proceed safely when direct visual contact with the operator or signal person was impossible or unsafe.

A representative of Sigma Associates, Ltd. testified as follows:

> I can envision times when it's going to be impractical and really unsafe to place a signalman in a position where he would have view of the crane operator as well as the personnel work platform. So I can see some conditions where it would not be possible or practical to have a signalman in view and, under these conditions, would recommend that communications would be permitted in lieu of the signalman concept. (Tr. 39)

Several other commenters suggested that OSHA permit the use of two-way audio communication equipment as an alternative to visual contact. Some commenters, such as Morrison-Knudsen Co. and Standard Oil Company (Indiana) (3–9 and 3–46), stated that audio contact was appropriate where visual contact could be lost in the course of the hoisting operation, such as where employees are hoisted inside a silo or furnace stack. Other commenters, such as the National Constructors Association, Boeing Aerospace and the Organization Resources Counselors (Exs. 3–30, 3–57 and 3–89), stated that audio contact was a satisfactory means of maintaining communication.

OSHA has determined that there are circumstances where it would be impossible or unsafe for hoisted personnel to maintain visual contact with the signal person or crane operator. In particular, the Agency believes that stationing a signal person atop a chimney or silo to observe hoist operations would be dangerous. Therefore, OSHA has revised the proposed standard to provide that hoisted employees may use direct communication, such as audio contact, as an alternative to continuous sight when it would be more dangerous for the signal person to remain in continuous sight.

Paragraph (g)(6)(vii) of this final rule is essentially the same as paragraph (g)(6)(ix) of the proposed standard, except that proposed paragraph (g)(6)(ix) provided only for the use of body belts. The final rule reflects the ACCSH recommendations for flexible approaches to protection of hoisted personnel from fall hazards (Tr. 5–23–83 p. 143). This provision requires employees occupying a personnel platform to use a body belt or harness system, with a lanyard attached to either the load block, overhaul ball or a structural member of the platform capable of supporting the anticipated fall impact. This provision is based on ANSI A10.28–1983, sections 10.1 and 10.2. However, at the suggestion of the Boeing Company (Ex. 3–38), OSHA has added the option for personnel to use a body harness system to comply with this provision.

Several commenters, including the Panama Canal Commission (Ex. 3–51) and Standard Oil Company (Indiana) (Ex. 3–46), asserted that the tie-off requirement, especially during over water operations, would be hazardous. The Panama Canal Commission pointed out that:

> In the event of cable or crane failure, employees attached to the work platform by belts or lanyards would be dragged under with the dropped platform.

In addition, the American Road and Transportation Builders Association (ARTBA) (Ex. 3–65) commented that the proposed provision was "not realistic." ARTBA stated that tie-off should not be required "where it creates another hazardous situation."

OSHA recognizes that there is a basis for special concern regarding crane or cable failure over water, and has incorporated this suggestion into this revised paragraph. In addition, OSHA notes that the revision is consistent with the existing § 1926.106 which requires specific precautions for all construction work over water.

Proposed paragraph (g)(6)(x) has been relocated to paragraph (g)(4)(iv)(E) of the final rule so that all provisions related to rigging are consolidated. The provisions of that paragraph are discussed as part of paragraph (g)(4).

OSHA has added a new paragraph (g)(6)(viii) to the final rule. This provision prohibits cranes or derricks being used to hoist personnel from hoisting any other loads at the same time. OSHA added this paragraph because, as noted by several commenters, including the Construction Industry Manufacturing Association and the National Roofing Constructors Association (Exs. 3–31 and 3–59), the use of other lines would endanger hoisted personnel due to risks of entanglement and destabilization.

OSHA has added a new paragraph (g)(7) to the final rule in order to provide requirements for cranes which need to travel with employees suspended in a personnel platform.

Proposed paragraph (g)(6)(iv) prohibited hoisting personnel while the supporting crane was traveling, except where a portal or tower crane was operating on & fixed track. This proposed provision reflected OSHA's concern that a crane moving across a construction site would be unable to maintain the stability necessary to protect employees from tipping or other hazards. OSHA notes that section 5–3.2.2(a)(14) of ANSI B30.5–1982 prohibits "travel while personnel are on the platform." On the other hand, ANSI A10.28–1983, section 12.9, provides that cranes shall not travel while hoisting personnel, "except under carefully controlled conditions." In Issue 9, the Agency presented questions regarding the circumstances which would make it necessary for a truck or crawler crane to travel while hoisting personnel.

Several commenters, such as the State of Alaska, Granite Construction Company and the Spartan Equipment Company (Exs. 3–4, 3–50 and 3–82), stated that traveling while hoisting was sometimes necessary in order to protect employees from greater hazards. In particular, Alaska stated that the decision should be based on the weather, terrain, the height to which personnel would be hoisted and the obstacles anticipated in lowering and rehoisting personnel and suggested that employers be required to demonstrate the need for travel. Also, Granite Construction stated that traveling while hoisting would be necessary where the crane was so hemmed in by structures that the boom could not be adjusted to reach all work stations. Granite Construction and Spartan Equipment stated that limited travel should be permitted to position the crane properly. In addition, the AGC of America (Exs. 3–28 and 3–67) stated that the proposed provision was too restrictive and unrealistic in light of workplace realities. The AGC suggested that OSHA permit travel when the terrain is firm, smooth and even; when traveling is done at a very slow speed; when travel is limited to the radius of the boom; when the boom is parallel to the direction of travel; and with outriggers, if equipped, fully extended with rams no more than 50 percent raised.

The National Constructors Association and the State of California (Exs. 3–30, and 3–33) generally favored prohibition of traveling, subject to exception for minor movement for final

positioning. California added that "traveling on rail, prepared level pads, or concrete floors could be acceptable." The State of Maryland (Ex. 3–19) also commented that hoisting while traveling on rails was acceptable.

Other commenters, such as Ebasco Constructors, Inc., Unit Crane & Shovel and the Commonwealth of Puerto Rico (Exs. 3–6, 3–47 and 3–55), suggested that OSHA prohibit travel. Ebasco Constructors noted the continual "changes in the physical surrounding" and the high rate of employee turnover as reasons why traveling would be unsafe. Unit Crane & Shovel stated that even slightly uneven terrain could cause a personnel platform to bounce and swing, and that traveling would cause stability and occupant footing problems. Unit Crane and Puerto Rico noted that swinging of the boom during travel was a particularly dangerous situation. Norpac Engineering, Inc. (Ex. 3–88) commented that cranes should not be allowed to travel while hoisting and that requiring mobile cranes to deploy their outriggers while hoisting would ensure that cranes would not travel.

The Parsons Corporation (Ex. 3–22) supported the proposed ban on travel by truck or crawler cranes while hoisting. Parsons also suggested that OSHA regulate travel by cranes on fixed tracks to ensure that the speed and path of movement are safe.

Sigma Associates, in its hearing testimony (Tr. 48–49), stated that it knew of "no condition where a pneumatic or rubber tired crane or even a crawler would * * * need to travel." Sigma Associates emphasized the importance of ensuring that the crane was supported on a firm level surface and indicated that travel would detract from crane stability and would endanger employees.

OSHA has determined, based on the evidence in the record, that hoisting of employees while traveling is, in general, an extremely dangerous practice. Therefore, the Agency has prohibited the practice, *except* under very limited circumstances. Because this practice is so inherently dangerous, OSHA has determined that the ANSI A10.28 requirement for "careful control" of operations is not sufficient to protect employees from the hazards of traveling. The Agency has determined that a prohibition against all hoisting while traveling, except as set forth in paragraph (g)((7) of this standard, is the only way to ensure that personnel hoisting is done only in those situations where it is necessary, and not just for an employer's convenience. OSHA notes that the Panama Canal Commission (Ex. 3–51) has had successful experience with locomotive cranes and agrees that those types of cranes should be included, along with tower and portal cranes, in the exception to the prohibition. In addition, OSHA believes that the circumstances where other kinds of cranes would need to travel while hoisting are so rare that the proper course is to require an employer to demonstrate to OSHA, as suggested by the State of Alaska (Ex. 3–4), that traveling is necessary to avoid greater hazards while performing work.

Paragraph (g)(7)(i) prohibits cranes from traveling while hoisting employees, except for portal, tower and locomotive cranes, or where the employer demonstrates that there is no less hazardous way for employees to perform their work. This paragraph, which is similar to proposed paragraph (g)(6)(iv), adds exceptions for personnel hoisting operations involving locomotive crane and other circumstances where traveling has been shown to be necessary. OSHA stresses that this practice would still have to satisfy all of the other requirements of the standard so that employees would be hoisted safely. This provision reflects a recommendation from Granite Construction (Ex. 3–50) which commented:

> Hoisting of personnel while the crane travels should be permitted to a limited extent under carefully controlled conditions where necessitated by worksite restrictions.

Other commenters, including the State of Alaska (Ex. 3–4), The National Constructors Association (Ex. 3–30), and the Spartan Equipment Company (Ex. 3–82) also suggested that OSHA allow some travel under controlled conditions, when the circumstances required it.

Paragraph (g)(7)(ii) provides additional rules that must be followed when cranes travel while hoisting employees.

Paragraph (g)(7)(ii)(A) requires crane travel to be restricted to a fixed track or runway. This provision is similar to the exception in proposed paragraph (g)(6)(iv). OSHA has added provision for traveling on a "runway," as defined in paragraph (g)(1)(ii)(E), to reflect recognition that there may be cranes, other than those on fixed tracks, which need to travel while hoisting personnel. This requirement, as revised, reflects comments from the State of California (CAL/OSHA) (Ex. 3–33) and the approved revision of ANSI A10.28–1983, which has not yet been published. In particular, CAL/OSHA stated that "traveling on rail, prepared level pads, or concrete floors could be acceptable."

Paragraph (g)(7)(ii)(B) limits travel to the load radius of the boom used during the lift. This requirement was suggested by the AGC of America (Ex. 3–28) and Granite Construction (Ex. 3–50). Therefore, if travel would exceed the boom radius used during a particular personnel hoisting operation, the crane operator would be required to lower the platform, unload the occupants, reposition the crane, and perform another trial lift at the new position, before resuming the hoist operations. OSHA believes that this limitation will ensure that only the minimal, necessary traveling takes place.

Paragraph (g)(7)(ii)(C) requires that the boom be parallel to the direction of travel. This requirement, also suggested by the AGC (Ex. 3–28) and Granite Construction (Ex. 3–50), is consistent with ANSI B30.5–1982, section 5–3.2.1.4(m) which covers travel while hoisting material. This provision is intended to minimize the possibility that the crane will tip over, due to swinging of the boom and platform during travel.

Paragraph (g)(7)(ii)(D) requires that an employer perform a complete trial run before allowing employees on the platform. OSHA intends this requirement to supplement the requirements of paragraph (g)(5). It imposes only a nominal additional burden, because all testing requirements can be satisfied through one full cycle trial lift or run. This provision reminds the employer to test the route of travel as well as the route of the lift.

Paragraph (g)(7)(ii)(E) provides requirements for travel by rubber-tired cranes, reflecting OSHA's concern that rubber-tired cranes have lower capacity ratings than crawler cranes. These provisions are based on generally accepted good safety practice and comments received from the AGC of America (Ex. 3–28).

Paragraph (g)(8) requires that a pre-lift meeting be held prior to the trial lift. This paragraph reflects a suggestion received from the ACCSH at the May 23–24, 1983 meeting (Tr. 149–150), and is very similar to proposed paragraph (g)(7). The pre-lift meeting requirements have been modified slightly to clarify the Agency's regulatory intent.

One commenter, the Farm and Industrial Equipment Institute (FIEI) (Ex. 3–37), suggested that OSHA require employers to document, in writing, that they have complied with the standard. The FIEI stated "such documentation will fix accountability, aid enforcement and immeasurably improve the overall effectiveness of the rule in actual practice." Another commenter, the State of California (Ex. 3–33) suggested that OSHA require a written pre-lift plan.

OSHA has determined that the suggested written plan and recordkeeping requirements are not necessary. The procedures to be followed are clearly set forth and whether or not they have been followed can be readily determined by employee interviews at the hoist site.

The Agency has undertaken several recent rulemakings which follow the mandate of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and section 8(d) of the OSH Act (29 U.S.C. 657(d) to reduce recordkeeping requirements where they do not significantly contribute to employee safety and, therefore, unnecessarily burden employers. Accordingly, OSHA is very concerned that there be a clear benefit from any additional recordkeeping requirements. OSHA believes that requiring employers to document their compliance efforts, as suggested, would not significantly enhance the protection provided to employees by this standard. Therefore, the Agency has not adopted the suggested paperwork requirements, and promulgates paragraph (g)(8) as revised.

## III. Final Analyses of Regulatory Impact, Regulatory Flexibility, and Environmental Impact

The following is a summary of the final regulatory impact and regulatory flexibility analyses prepared by OSHA for the final revised standard for crane or derrick suspended personnel platforms. The full text of the document may be examined and copied in OSHA's Docket Office, 200 Constitution Avenue, NW., Room N–3670, Washington, DC, 20210; telephone (202) 523–7894.

### Summary of Effects

*Affected Firms and Industries and Construction*

The hoisting of personnel occurs in construction firms classified under a broad range of four-digit Standard Industrial Classification Codes (SICs). OSHA has determined that the final rule could potentially affect all firms within SICs 1541, Industrial Buildings and Warehouses; 1542, Nonresidential, not elsewhere classified; 1622, Bridge, Tunnel, and Elevated Highway Construction; 1629, Heavy Construction, Not Elsewhere Classified; 1791, Steel Erection; and 1795, Demolition. There were 42,804 firms in these SICs in 1982, and OSHA estimates that the number increased to about 45,000 firms in 1987. However, a number of these firms may adopt alternative means for hoisting personnel, such as aerial lifts, once the standard is implemented.

In addition to directly affecting the construction industry, the final rule will also indirectly affect the crane manufacturing industry and the firms that sell, lease, or rent cranes. In 1983, there were 26 companies that manufactured the types of cranes covered by the final rule, 7 of which were considered large companies. Crane rental agencies buy about 60 percent of all new construction cranes and construction companies buy most of the remainder.

*Feasibility, Benefits, and Costs*

OSHA has determined that compliance with this standard is technologically feasible. The standard does not require any devices that are not presently available for use on cranes and derricks. However, some cranes, especially the older mechanical ones, would require considerable modification in order to comply with the standard.

The benefits of the rule accrue to those workers who are at risk from current hoisting practices in the construction industry. Although the JACA Corp., OSHA's contractor, was unable to estimate the total number of workers who would benefit from the final standard due to the infrequency of such operations and the wide diversity of potentially affected workers, JACA was able to estimate the rate of injuries per lift. It is estimated that 1 injury occurs for every 36,500 persons lifted and that 3 fatalities and 3 nonfatal injuries occur each year as a result of crane- or derrick-suspended platform accidents. OSHA concludes that compliance with the final standard will avert most of these predicted fatalities and nonfatal injuries. In fact, a review of the experience of the states with stringent suspended platform rules in place for five years revealed no accidents during the five-year period.

Using current industry practice as a baseline, OSHA estimates that the annualized costs of full compliance with the final standard would be $5.8 million in 1987 and $5.5 million each for the years 1988–1991. The cost of using substitutes where they are a safe alternative to hoisting personnel by means of cranes or derricks accounts for over half of the estimated annual compliance cost for this baseline. The costs of retrofitting or converting cranes, retrofitting or building personnel platforms, and providing locking hooks and test weights comprise about 26% of the total cost. Delay-of-job, pre-lift meeting, and familiarization costs comprise the remainder. If all firms were in full compliance with the current OSHA Directive on work platforms suspended from crane booms, the cost of the proposed changes would be $2.8 million in 1987, and from $2.4 million to $2.6 million on an annual basis over the 1988–1991 period. There would be no cost for the substitution of alternative hosting methods because the current OSHA Directive requires the use of less hazardous substitutes. This category represents the bulk of the cost difference between the two baselines.

*Economic Effect*

JACA used model firms to characterize the impacts on major users of suspended platforms. JACA estimated that the percentage increases in prices that would be needed for model firms to pass forward their compliance costs fully to their customers were insignificant; none would exceed 0.1 percent. JACA also calculated the effects of compliance costs on return-on-assets and profit margins assuming costs would be fully absorbed by model firms, and concluded that the decline in the rates of return on assets and profit margins was insignificant for all size firms. JACA concluded further that firms would be able to pass on most of their incremental costs to customers, and projected that compliance with the proposed standard would not result in decreased competition within the affected sectors of the construction industry as compliance costs are not likely to force the closure of any firms. In view of these factors, OSHA concludes that compliance with this final rule is economically feasible.

OSHA has assumed that crane manufacturers would be able to pass forward to the construction industry the increased costs of their product attributable to the standard because the magnitude of the costs is small. But if it were assumed that manufacturers would not be able to pass forward the increased costs, any adverse financial effects would be mitigated by the very small proportion of total output represented by cranes used for personnel hoisting. OSHA therefore concludes that the final rule will have no adverse economic effects on the crane manufacturing industry.

### Regulatory Flexibility Certification and Environmental Impact Assessment

*Regulatory Flexibility Certification*

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), OSHA has assessed the impact of the final rule and concludes that it would not significantly affect a substantial number of small entities. Specialization and the highly fragmented nature of the market structure in the construction industry

tend to minimize the extent of direct competition between small and large firms.

Assuming that the full cost of compliance would be passed through, OSHA estimated the economic impacts according to firm size by examining the relationship between compliance costs (in both low and high-cost estimates) and annual contract revenues for three size categories of model firms (annual revenues of $11 million, $50 million, and $250 million). The ratio of these costs to annual revenues was nearly proportional across all size categories for both low and high cost estimates, in no case exceeding 0.1 percent. However, if firms would be forced to absorb all of their compliance costs, OSHA found that the percentage decline in the profit margins of small firms would be slightly greater than for larger firms under both cost estimates. Under the low cost estimate, the small firm's profitability declined an average 1.7 percent over the five year period while the large firm's profitability declined an average 1.5 percent. Under the high cost estimate, the small firm's profitability declined 5 percent over the five years while the large firm's profitability declined 3 percent. The significance of the differential impact on profit margins is reduced by the likelihood that all firms in the industry should be able to pass on a substantial portion, if not all, of their compliance costs. OSHA believes the demand for the projects built by construction firms which rely on hoisting of personnel by cranes and derricks is inelastic. Therefore, construction firms would have no incentive to underbid on projects requiring cranes since they would be unable to reduce operating costs merely by using equipment other than cranes to hoist personnel platforms or by redesigning structures to eliminate the use of cranes. In effect, both large and small firms will shift costs forward to the buyer.

For these reasons, OSHA concludes that small entities would not be significantly affected by the final rule.

*Environmental Impact Assessment*

This final rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Parts 1500–1517), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As the result of this review, the Assistant Secretary of Labor for OSHA has determined that the final rule qualifies as a categorically excluded action according to Subpart B, § 11.10 of the DOL NEPA regulations and that the final rule would have no significant environmental impact.

OSHA's final rule contains provisions for work practices which will enhance worker safety and reduce safety hazards from the hoisting of personnel platforms by cranes and derricks. The provisions include design criteria for cranes, derricks, and platforms; inspection and testing of cranes and derricks; required test lifts; and pre-lift meetings. Because the final rule focuses on the reduction of accident or injury by means of compliance with design criteria and work practices and procedures, it does not impact on air, water, or soil quality, plant or animal life, the use of land or other aspects of the environment.

## IV. Recordkeeping

The recordkeeping requirements in this standard have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The approval number is 1218–0151 and the approval has been granted until June, 1991.

## List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Cranes, Derricks, Hoisting, Personnel platform, Rigging.

## V. State Plan Standards

The 25 States with their own OSHA-approved Occupational Safety and Health plans must adopt a comparable standard within six months of this publication date. These States are: Alaska, Arizona, California, Connecticut,[1] Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York,[1] North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

## VI. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Construction Safety Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Part 1926 is amended as set forth below.

Signed at Washington, DC this 26th day of 1988.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

29 CFR Part 1926 is amended as follows:

## PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for Subpart N of Part 1926 is revised to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (49 FR 35736), as applicable. Section 1926.550 also issued under 29 CFR Part 1911.

2. In § 1926.550, a new paragraph (g) is added to read as follows:

**§ 1926.550 Cranes and derricks.**

* * * * *

(g) *Crane or derrick suspended personnel platforms*—(1) *Scope, application and definitions*—(i) *Scope and application.* This standard applies to the design, construction, testing, use and maintenance of personnel platforms, and the hoisting of personnel platforms on the load lines of cranes or derricks.

(ii) *Definitions.* For the purposes of this paragraph (g), the following definitions apply:

(A) "Failure" means load refusal, breakage, or separation of components.

(B) "Hoist" (or hoisting) means all crane or derrick functions such as lowering, lifting, swinging, booming in and out or up and down, or suspending a personnel platform.

(C) "Load refusal" means the point where the ultimate strength is exceeded.

(D) "Maximum intended load" means the total load of all employees, tools, materials, and other loads reasonably anticipated to be applied to a personnel platform or personnel platform component at any one time.

(E) "Runway" means a firm, level surface designed, prepared and designated as a path of travel for the weight and configuration of the crane being used to lift and travel with the crane suspended platform. An existing surface may be used as long as it meets these criteria.

(2) *General requirements.* The use of a crane or derrick to hoist employees on a personnel platform is prohibited, except when the erection, use, and dismantling

[1] Plan covers only State and local government employees.

of conventional means of reaching the worksite, such as a personnel hoist, ladder, stairway, aerial lift, elevating work platform or scaffold, would be more hazardous, or is not possible because of structural design or worksite conditions.

(3) *Cranes and derricks*—(i) *Operational criteria.* (A) Hoisting of the personnel platform shall be performed in a slow, controlled, cautious manner with no sudden movements of the crane or derrick, or the platform.

(B) Load lines shall be capable of supporting, without failure, at least seven times the maximum intended load, except that where rotation resistant rope is used, the lines shall be capable of supporting without failure, at least ten times the maximum intended load. The required design factor is achieved by taking the current safety factor of 3.5 (required under § 1926.550(b)(2)) and applying the 50 per cent derating of the crane capacity which is required by § 1926.550(g)(3)(i)(F).

(C) Load and boom hoist drum brakes, swing brakes, and locking devices such as pawls or dogs shall be engaged when the occupied personnel platform is in a stationary working position.

(D) The load line hoist drum shall have a system or device on the power train, other than the load hoist brake, which regulates the lowering rate of speed of the hoist mechanism (controlled load lowering.) Free fall is prohibited.

(E) The crane shall be uniformly level within one percent of level grade and located on firm footing. Cranes equipped with outriggers shall have them all fully deployed following manufacturer's specifications, insofar as applicable, when hoisting employees.

(F) The total weight of the loaded personnel platform and related rigging shall not exceed 50 percent of the rated capacity for the radius and configuration of the crane or derrick.

(G) The use of machines having live booms (booms in which lowering is controlled by a brake without aid from other devices which slow the lowering speeds) is prohibited.

(ii) *Instruments and components.* (A) Cranes and derricks with variable angle booms shall be equipped with a boom angle indicator, readily visible to the operator.

(B) Cranes with telescoping booms shall be equipped with a device to indicate clearly to the operator, at all times, the boom's extended length, or an accurate determination of the load radius to be used during the lift shall be made prior to hoisting personnel.

(C) A positive acting device shall be used which prevents contact between the load block or overhaul ball and the boom tip (anti-two-blocking device), or a system shall be used which deactivates the hoisting action before damage occurs in the event of a two-blocking situation (two block damage prevention feature).

(4) *Personnel Platforms.*—(i) *Design criteria.* (A) The personnel platform and suspension system shall be designed by a qualified engineer or a qualified person competent in structural design.

(B) The suspension system shall be designed to minimize tipping of the platform due to movement of employees occupying the platform.

(C) The personnel platform itself, except the guardrail system and body belt/harness anchorages, shall be capable of supporting, without failure, its own weight and at least five times the maximum intended load. Criteria for guardrail systems and body belt/harness anchorages are contained in other Subparts, E and M, respectively of this part.

(ii) *Platform specifications.* (A) Each personnel platform shall be equipped with a guardrail system which meets the requirements of Subpart M, and, shall be enclosed at least from the toeboard to mid-rail with either solid construction or expanded metal having openings no greater than ½ inch (1.27 cm).

(B) A grab rail shall be installed inside the entire perimeter of the personnel platform.

(C) Access gates, if installed, shall not swing outward during hoisting.

(D) Access gates, including sliding or folding gates, shall be equipped with a restraining device to prevent accidental opening.

(E) Headroom shall be provided which allows employees to stand upright in the platform.

(F) In addition to the use of hard hats, employees shall be protected by overhead protection on the personnel platform when employees are exposed to falling objects.

(G) All rough edges exposed to contact by employees shall be surfaced or smoothed in order to prevent injury to employees from punctures or lacerations.

(H) All welding of the personnel platform and its components shall be performed by a qualified welder familiar with the weld grades, types and material specified in the platform design.

(I) The personnel platform shall be conspicuously posted with a plate or other permanent marking which indicates the weight of the platform and its rated load capacity or maximum intended load.

(iii) *Personnel platform loading.* (A) The personnel platform shall not be loaded in excess of its rated load capacity. When a personnel platform does not have a rated load capacity then the personnel platform shall not be loaded in excess of its maximum intended load.

(B) The number of employees occupying the personnel platform shall not exceed the number required for the work being performed.

(C) Personnel platforms shall be used only for employees, their tools, and the materials necessary to do their work, and shall not be used to hoist only materials or tools when not hoisting personnel.

(D) Materials and tools for use during a personnel lift shall be secured to prevent displacement.

(E) Materials and tools for use during a personnel lift shall be evenly distributed within the confines of the platform while the platform is suspended.

(iv) *Rigging.* (A) When a wire rope bridle is used to connect the personnel platform to the load line, each bridle leg shall be connected to a master link or shackle in such a manner to ensure that the load is evenly divided among the bridle legs.

(B) Hooks on overhaul ball assemblies, lower load blocks, or other attachment assemblies shall be of a type that can be closed and locked, eliminating the hook throat opening. Alternatively, an alloy anchor type shackle with a bolt, nut and retaining pin may be used.

(C) Wire rope, shackles, rings, master links, and other rigging hardware must be capable of supporting, without failure, at least five times the maximum intended load applied or transmitted to that component. Where rotation resistant rope is used, the slings shall be capable of supporting without failure at least ten times the maximum intended load.

(D) All eyes in wire rope slings shall be fabricated with thimbles.

(E) Bridles and associated rigging for attaching the personnel platform to the hoist line shall be used only for the platform and the necessary employees, their tools and the materials necessary to do their work, and shall not be used for any other purpose when not hoisting personnel.

(5) *Trial lift, inspection, and proof testing.* (i) A trial lift with the unoccupied personnel platform loaded at least to the anticipated liftweight shall be made from ground level, or any other location where employees will enter the platform, to each location at

which the personnel platform is to be hoisted and positioned. This trial lift shall be performed immediately prior to placing personnel on the platform. The operator shall determine that all systems, controls and safety devices are activated and functioning properly; that no interferences exist; and that all configurations necessary to reach those work locations will allow the operator to remain under the 50 percent limit of the hoist's rated capacity. Materials and tools to be used during the actual lift can be loaded in the platform, as provided in paragraphs (g)(4)(iii) (D), and (E) of this section for the trial lift. A single trial lift may be performed at one time for all locations that are to be reached from a single set up position.

(ii) The trial lift shall be repeated prior to hoisting employees whenever the crane or derrick is moved and set up in a new location or returned to a previously used location. Additionally, the trial lift shall be repeated when the lift route is changed unless the operator determines that the route change is not significant (i.e. the route change would not affect the safety of hoisted employees.)

(iii) After the trial lift, and just prior to hoisting personnel, the platform shall be hoisted a few inches and inspected to ensure that it is secure and properly balanced. Employees shall not be hoisted unless the following conditions are determined to exist:

(A) Hoist ropes shall be free of kinks;

(B) Multiple part lines shall not be twisted around each other;

(C) The primary attachment shall be centered over the platform; and

(D) The hoisting system shall be inspected if the load rope is slack to ensure all ropes are properly stated on drums and in sheaves.

(iv) A visual inspection of the crane or derrick, rigging, personnel platform, and the crane or derrick base support or ground shall be conducted by a competent person immediately after the trial lift to determine whether the testing has exposed any defect or produced any adverse effect upon any component or structure.

(v) Any defects found during inspections which create a safety hazard shall be corrected before hoisting personnel.

(vi) At each job site, prior to hoisting employees on the personnel platform, and after any repair or modification, the platform and rigging shall be proof tested to 125 percent of the platform's rated capacity by holding it in a suspended position for five minutes with the test load evenly distributed on the platform (this may be done concurrently with the trial lift). After prooftesting, a competent person shall inspect the platform and rigging. Any deficiencies found shall be corrected and another proof test shall be conducted. Personnel hoisting shall not be conducted until the proof testing requirements are satisfied.

(6) *Work practices.* (i) Employees shall keep all parts of the body inside the platform during raising, lowering, and positioning. This provision does not apply to an occupant of the platform performing the duties of a signal person.

(ii) Before employees exit or enter a hoisted personnel platform that is not landed, the platform shall be secured to the structure where the work is to be performed, unless securing to the structure creates an unsafe situation.

(iii) Tag lines shall be used unless their use creates an unsafe condition.

(iv) The crane or derrick operator shall remain at the controls at all times when the crane engine is running and the platform is occupied.

(v) Hoisting of employees shall be promptly discontinued upon indication of any dangerous weather conditions or other impending danger.

(vi) Employees being hoisted shall remain in continuous sight of and in direct communication with the operator or signal person. In those situations where direct visual contact with the operator is not possible, and the use of a signal person would create a greater hazard for that person, direct communication alone such as by radio may be used.

(vii) Except over water, employees occupying the personnel platform shall use a body belt/harness system with lanyard appropriately attached to the lower load block or overhaul ball, or to a structural member within the personnel platform capable of supporting a fall impact for employees using the anchorage. When working over water, the requirements of § 1926.106 shall apply.

(viii) No lifts shall be made on another of the crane's or derrick's loadlines while personnel are suspended on a platform.

(7) *Traveling.* (i) Hoisting of employees while the crane is traveling is prohibited, except for portal, tower and locomotive cranes, or where the employer demonstrates that there is no less hazardous way to perform the work.

(ii) Under any circumstances where a crane would travel while hoisting personnel, the employer shall implement the following procedures to safeguard employees:

(A) Crane travel shall be restricted to a fixed track or runway;

(B) Travel shall be limited to the load radius of the boom used during the lift; and

(C) The boom must be parallel to the direction of travel.

(D) A complete trial run shall be performed to test the route of travel before employees are allowed to occupy the platform. This trial run can be performed at the same time as the trial lift required by paragraph (g)(5)(i) of this section which tests the route of the lift.

(E) If travel is done with a rubber tired-carrier, the condition and air pressure of the tires shall be checked. The chart capacity for lifts on rubber shall be used for application of the 50 percent reduction of rated capacity. Notwithstanding paragraph (g)(3)(i)(E) of this section, outriggers may be partially retracted as necessary for travel.

(8) *Pre-lift meeting.* (i) A meeting attended by the crane or derrick operator, signal person(s) (if necessary for the lift), employee(s) to be lifted, and the person responsible for the task to be performed shall be held to review the appropriate requirements of paragraph (g) of this section and the procedures to be followed.

(ii) This meeting shall be held prior to the trial lift at each new work location, and shall be repeated for any employees newly assigned to the operation.

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Part III

# Department of Agriculture

**Food and Nutrition Service**

**7 CFR Part 210**
**National School Lunch Program Revision; Final Rule**

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 210**

**National School Lunch Program, Revision**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking is a complete revision of 7 CFR Part 210, the regulations governing the National School Lunch Program and the Commodity School Program. This revision finalizes an interim rule (51 FR 4864) which was intended to resolve ambiguities and inconsistencies; eliminate unnecessary, duplicative and obsolete provisions; and clarify both language and style so that Part 210 is easily understood. Further, this rulemaking makes several policy changes which are addressed in detail in the following preamble.

**EFFECTIVE DATE:** This rule is effective on September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; telephone (703) 756–3620.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

Although this rule reflects a number of changes to Part 210, the reporting and recordkeeping requirements remain unchanged. These requirements have been approved by the Office of Management and Budget (OMB) for use through June 30, 1990 (OMB No. 0584–0006).

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983.)

**Background**

The last major revision of 7 CFR Part 210, the regulations governing the National School Lunch and Commodity School Programs, was published in the **Federal Register** on January 20, 1970 (35 FR 753). Since that time, Part 210 was amended by over 70 final and interim rules, many of which were promulgated quickly in response to legislation or litigation. As a result, Part 210 contained ambiguities and inconsistencies as well as duplicative and obsolete provisions.

On February 12, 1985, the Department published a proposed revision of Part 210 in the **Federal Register** (50 FR 5950). The proposal was intended to clear up ambiguities and inconsistencies, remove unnecessary, duplicative and obsolete provisions; examine the organization of Part 210 and its components; rewrite as necessary to ensure that Part 210 is easily understood; and, based on the resultant revisions, redesignate paragraphs and sections to accommodate the changes. Several policy changes were also proposed. The Department provided a 60-day comment period, during which time 927 comments were received.

The Department determined that, in recognition of the large number of comments received and the extensive changes made, a second round of public comments would be beneficial. Thus, on September 30, 1986, the Department published an interim rule in the **Federal Register** (51 FR 34864). This interim rule provided commenters with a 120-day comment period. During this comment period, 154 comments were received from a variety of sources, including State educational agencies, school personnel, industry, and the general public. The Department would like to thank all those commenters who responded to both the proposed and interm rules. Especially appreciated were those many detailed suggestions which proved helpful in formulating this final rule.

**General Comments**

Of the 154 comments received on the interim rule, 82 addressed a single issue, i.e., the duration of contracts between school food authorities and food service management companies. Only 75 commenters addressed other aspects of Part 210 (three of whom also addressed the duration issue). Of the 75 commenters addressing other issues, the major areas of concern included the elimination of Federal reimbursement for second lunches, the newly defined "subsidized lunch", and the subsitution of food items for handicapped children.

Since commenters did not express any opposition to the reorganization of Part 210, the Department has adopted the new format. A redesignation table was provided in the interim rule which indicated the old section numbers and the corresponding new section numbers. Since this final rule has adopted the same format provided in the interim rule, the redesignation table was not restated in this rule. Interested parties may obtain a copy of the redesignation table from the Deaprtment upon request.

The remainder of this preamble discusses concerns expressed by commenters and the specific changes being made in the final rule. For ease in reference, commenter concerns and any corresponding changes are explained under the final rule section headings. The preamble does not address sections for which no substantive objections were raised by commenters or those comments which resulted in nonsubstantive revisions which simply serve to clarify the regulatory wording. Commenters will note that the Appendices remain unchanged, except for minor corrections, and are not restated in this final rule. Subsequent amendments will be numbered consecutively, beginning with number 1.

**Subpart A—General**

*Section 210.2 Definitions.*

Several commenters requested clarification of the definition "*Commodity School Program*" and an explanation of how it relates to Commodity Only Schools. To clarify the definition, several changes were made to the final rule. "Commodity School Program" is defined to mean a program under which participating schools operate a nonprofit lunch program in accordance with the provisions of Part 210 and receive donated food assistance in lieu of general cash assistance. Participating schools also receive special cash assistance, the entitlement value of donated food assistance and bonus donated foods.

Prior to August 1981, the National School Lunch Act authorized the participation of schools which received only commodity assistance. Such schools were termed "Commodity Only Schools". In 1981, Pub. L. 97–35 amended the Act to allow these schools to receive special cash assistance, thus changing their commodity only status. To acknowledge this change in status, the interim rule termed these schools as the Commodity School Program. While usage of this term suggests a totally separate program, it does provide a technical advantage. The Department defined "Program" to mean both the National School Lunch Program and Commodity School Program, thus throughout Part 210, references to Program refer to both types of operations.

Several commenters expressed concerns regarding the definition "*Food item*". The interim rule defined food item to mean one of the five required food servings that compose the reimbursable school lunch. Commenters were concerned that the word "servings" suggested that each food item would need to be a distinct item, thus disallowing a food that combined food items, such as pizza. To clarify the definition, the final rule defines a food item as one of the five required foods that compose the reimbursable school lunch.

The definition, "*High tuition private school*", has been deleted. This definition was added in response to the Child Nutrition Amendments of 1986 which increased the tuition limit on private schools from $1,500 to $2,000. Subsequently, Pub. L. 100–71, enacted July 11, 1987, removed all tuition limitations, thereby making this definition obsolete.

The interim rule defined "*Lunch*" to mean a meal which meets the school lunch pattern for specified age/grade groups of children as designated in section 210.10 and, unless otherwise exempted by FNS, which is served at or about midday. Several commenters requested clarification of "unless otherwise exempted by FNS". For purposes of clarity, that portion of the definition regarding timeframes has been moved to § 210.10(g), *Lunch period*.

This final rule presents a slightly abbreviated definition of "*School*". The Department is hopeful that this definition will provide the clarity requested by commenters. To ensure that no misinterpretation occurs, the Department would like to restate its intent regarding preprimary classes. Preprimary classes are eligible to participate: (a) When they are recognized as part of the educational system of the State; or (b) when they are conducted in a participating school having classes of primary or higher grades.

"*School food authority*" has been revised to clarify that a school food authority means the governing body which is responsible for the administration of one or more schools. Such governing body "* * * shall have the legal authority to operate the Program therein or be otherwise approved by FNS to operate the Program." This definition is designed to provide FNS with the authority to approve arrangements between schools which are administered by different legal entities. For example, FNS may authorize a public school district to act as a school food authority for schools within the public school district and, provided that a contractual arrangement exists, for any nearby eligible private schools. The school food authority would be required to ensure all program requirements are met for any school for which it acts as governing body.

Almost 40 commenters disapproved of the definition of "*Subsidized lunch*" and suggested a return to the term "paid lunch". However, each "paid lunch" bought by students is subsidized by the Department with both cash assistance and donated food assistance. Therefore, the final rule restates the definition without change.

The definition "*Tuition*" has been deleted. Pub. L. 100–71, enacted on July 11, 1987, removed all tuition limitations previously imposed upon private schools, thereby making this definition obsolete.

**Subpart B—Assistance to States and School Food Authorities**

*Section 210.8 Method of reimbursement.*

One commenter expressed some concern regarding the intent of paragraph (b), *Content of claim*, which states that the State agency "may authorize a school food authority to submit a consolidated Claim for Reimbursement * * *". The commenter suggested that this wording allowed a school food authority to make the determination of whether or not to submit a consolidated claim. This is not the Department's intent; clearly, the determination rests with the State agency. The final rule restates this provision without change.

Paragraph (c), *Advance funds*, of both the interim and final regulations establishes procedures whereby State agencies may make advance funds available for the Program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Several commenters noted that the regulatory language conflicts with the Department's policy on making advance funds available.

The Department would like to point out that while the authority currently exists to make advance funding available, all funding is contingent upon the extent to which funds are available. Currently, the Department is unable to make such advance funding available. However, the States continue to have the authority to make advances available to schools. While the Department will not provide the funds to do so, States may rely on available State funds or on their existing authority to vary rates of reimbursement.

**Subpart C—Requirements for School Food Authority Participation**

*Section 210.9 Agreement With State Agency.*

Paragraph (b), *Annual agreement*, of the interim rule required each school food authority to maintain a current written agreement on file at the State agency each year. State agencies were authorized to allow school food authorities to extend by amendment a previous year's agreement in lieu of taking a new agreement annually, provided that a current written agreement is on file each year. Fifteen commenters recommended revising the interim provision to allow agreements to stay on file until substantial changes necessitate the development of a new agreement.

The Department cannot accept the commenters' suggestion. The Program is a grant program with funds appropriated on a fiscal year basis. The Department does not believe a longstanding agreement would be supported by the National School Lunch Act nor would it be in the best interest of the Program. Maintenance of a current agreement is a good management practice which enables State agencies and FNS to be fully apprised of the responsible parties and their duties. This requirement also serves to assure the Department that any new school officials will be cognizant of their responsibilities under the Program. Therefore, the final rule restates the interim wording.

*Section 210.10 Lunch components and quantities.*

Several commenters to the proposed rule recommended deletion of production records, contending that the prohibition on claiming reimbursement for second lunches obviates the need for production records. The Department

retained the requirement for production records in paragraph (b), *General,* of the interim rule; however, commenters were encouraged to address the usefulness of retaining production records.

Of the 12 commenters who addressed this issue, 8 opposed the retention of production records arguing that offer versus serve and the prohibition on claiming for second lunches make production records obsolete. Commenters in favor of retaining these records indicated that this requirement leads to good management practices. This complements the Department's contention that schools can use the historical perspective provided by production records to assist in forecasting the number of lunches and quantities of each food item needed to provide one lunch per child per day. Since so few commenters expressed concern regarding this issue, the Department does not believe that sufficient cause exists to remove this requirement. Thus, the final rule remains unchanged.

Approximately 60 commenters addressed the requirement in paragraph (b), for the elimination of reimbursement for excess lunches. Most of these commenters (95%) opposed the elimination of reimbursement for excess lunches citing the difficulties in monitoring and in predicting the actual number of lunches needed and the burden placed on satellite programs.

The Department recognizes the validity of commenter concerns and the consequent burden of such a requirement. However, fiscal constraints mandate that no Federal reimbursement be claimed for lunches served in excess of one reimbursable lunch per child per day. In support of the Department's position, several commenters identified the costs of allowing excess lunches to be claimed. Extrapolation of those costs nationwide suggests that an excessive amount of program funds are being expended to provide children more than one lunch per child per day. The Department remains firm in its position to prohibit reimbursement for lunches served in excess of one reimbursable lunch per child per day. Therefore, the final rule remains unchanged from the interim.

Several commenters questioned whether the "one lunch per child per day" provision applied to enrolled or participating children. To ensure no confusion exists, the Department would like to clarify that this provision applies to participating children and in no way may it be construed to apply to enrolled children.

One commenter pointed out an inconsistency between the meal pattern chart and the regulatory language in paragraph (d)(2)(ii). The interim rule stated that nuts and seeds served as a meat alternate meet 50 percent of the meat/meat alternate requirement and must be combined with 50 percent of another meat/meat alternate. This language was revised in the final rule to state that nuts and seeds served as a meat alternate may be used to meet "no more than" 50 percent of the meat/meat alternate requirement and must be used in combination with any other meat/meat alternate.

Readers will note that the meal pattern chart and paragraphs (d)(1), *Milk,* and (i)(5), *Insufficient milk supply,* have been revised to include a revision of the milk requirement mandated by Public Laws 99–500 and 99–591 and subsequently implemented by a final rule published in the **Federal Register** on March 23, 1987 (52 FR 9109). Specifically, the meal pattern chart and paragraphs (d)(1) and (i)(5) have been revised to require schools to offer students fluid whole milk in addition to at least one type of unflavored fluid milk containing two percent or less milk fats, such as lowfat milk, skim milk, or buttermilk.

Readers should also note that paragraph (e), *Offer versus serve,* has been revised to make it clear that a school must offer all five required food items; however, senior high school students must be permitted to decline up to two of the five required food items and, at local discretion, students below the senior high school level may be permitted to decline one or two of the required five food items. While the decision to implement the offer versus serve provision for students below senior high rests with the local school food authority, the decision regarding which food items to decline rests solely with the student.

In response to commenters concerns, paragraph (g), *Lunch period,* has been clarified to specify that "mid-day" means between 10:00 a.m. and 2:00 p.m., unless otherwise exempted by FNS. The Department believes that with few exceptions schools can schedule lunches within these hours. To provide flexibility for unusual circumstances, such as some split-shifts, the Department has provided for FNS exceptions to these hours. However, the Department does not believe evening meals can be considered lunch and does not intend to provide reimbursement for such meals.

Paragraph (h), *Infant lunch pattern,* has been revised to incorporate the provisions of a final rule which establishes consistency in the infant meal pattern requirements among the Child Nutrition Programs and reflects the most recent information regarding infant feeding practices. This rule was published in the **Federal Register** on July 6, 1988 (53 FR 25303), and becomes effective on September 6, 1988.

Interim paragraph (i)(1), *Medical or dietary needs,* requires substitutions in the meal pattern to be made for those handicapped children whose handicap restricts their diet and allows, at local discretion, substitutions to be made for nonhandicapped children who are unable to consume the regular lunch because of medical or other special dietary needs. In order to claim reimbursement for such lunches, substitutions are to be made on a case by case basis and supported by a statement of the need for substitutions signed, in the case of a handicapped child, by a physician, and, in the case of a nonhandicapped child, by a recognized medical authority.

Commenters requested clarification and guidance in implementing this provision. Special areas of concern included the definitions of handicapped and recognized medical authority, and the responsibility of the school food service to provide special food items. While the Department has additional guidance on the implementation of this provision, it would like to take this opportunity to clarify some of the areas of confusion.

A handicapped student, as defined in 7 CFR Part 15b, is one who has "* * * a physical or mental impairment which substantially limits one or more major life activities * * *" Major life activities are defined to include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Lunches claimed for reimbursement under this section must be supported by a statement from a physician, in the case of a handicapped child, and by a statement from a recognized medical authority, in the case of a nonhandicapped child. A recognized medical authority may include a physician, a registered nurse, or other health professionals specified by the State agency.

Several commenters recommended that the required signature authority be the same for handicapped as for nonhandicapped, but there was no consensus on whether the signature authority should be a physician or recognized medical authority. Since a school is required to make substitutions for a handicapped child, the physician is indeed the appropriate authority. However, in the case of a nonhandicapped child, the school is authorized by not required to make substitutions, thus the signature of a

physician was determined to be too stringent. For these reasons, the final rule remains unchanged.

Commenters also expressed concerns regarding whether a school food service is to provide foods not readily available to the kitchen. Nothing in this regulation is meant to require schools to operate special diet kitchens. Usually there is no difficulty acquiring substitute items in local markets.

However, if the authorized substitute foods are not normally kept in inventory or are not generally available in local markets, the parents should provide the substitute food prescribed by the physician or recognized medical authority.

*Section 210.14 Resource management.*

Paragraph (a), *Nonprofit school food service,* has been revised to incorporate a provision of Public Laws 99–500 and 99–591 which authorizes schools to use facilities, equipment and personnel supported with nonprofit school food revenues to support a nonprofit nutrition program for the elderly. A final rule implementing this provision was published in the **Federal Register** on April 28, 1987 (52 FR 15297).

*Section 210.16 Food service management companies.*

Paragraph (a), *General,* has been revised to include the provisions of Public Laws 99–500 and 99–591 which prohibit a school or school food authority from contracting with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and school food authority designated full price reimbursable meals to all eligible children. Implementing regulations were published in the **Federal Register** on April 8, 1987 (52 FR 11186).

Paragraph (d), *Duration of contract,* has also been revised to accommodate a change published in the **Federal Register** on February 16, 1988 (53 FR 4377). That final rule responded to comments originally received on the interim Part 210 rewrite. Seventy-nine comments were received which recommended revising the existing requirement which limits a contract to one year with two yearly renewals, i.e., a 3-year bidding cycle. However, no change in the number of possible contract renewals had been proposed. Hence, the Department issued a separate proposal rather than make any change without soliciting additional comments. A proposed rule was published in the **Federal Register** on September 1, 1987 (52 FR 32930) which solicited comments on expanding the current requirement to allow a one year contract with four yearly renewals. One hundred sixty-seven comment letters were received on the proposal. Of these comments, 151 expressed support for the proposal. The supportive comments generally fell into three categories: reduction of administrative burden at all levels, impact on school food service staff, and impact on food service management company contract provisions and operations. Therefore, the final rule published on February 16, 1988 allows school food authorities to annually renew their one-year contracts with food service management companies four times for a maximum contract term of five years. Only new contracts signed after February 16, 1988, are covered by this change. All previously existing contracts are subject to the two-year renewal maximum that was in effect when those contracts were negotiated.

Several commenters suggested additional revisions to the food service management company portion of the regulations. Specifically, some commenters recommended revisions to a number of requirements in this section to reflect the diverse arrangements between school food authorities and food service management companies. A number of commenters recommended requiring all food service management companies to register with the State. The Department has taken these comments under consideration and is reviewing the requirements of this section for possible revision in the future. No substantive changes have been made in this final rule because the Department would first issue a proposed rulemaking in order to implement such changes. Readers will, however, note several minor technical changes to paragraphs (a)(6) and (c) of this section which are not intended to change current operating procedures.

**Subpart D—Requirements for State Agency Participation**

*Section 210.17 Matching Federal funds.*

Paragraph (g), *Reports,* has been revised to extend the submission of the Annual Report of Revenues (FNS–13) from 90 days to 120 days. This revision is intended to reflect actual operating policy.

*Section 210.18 Monitoring responsibilities.*

Paragraph (c), *Improved management,* of the interim rule restated the requirement that the State agency shall work with a school food authority toward improving a school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low student participation and/or poor student acceptance of the Program or of foods served. Efforts to assist in the correction of management problems were to include the promotion of student and parent involvement in Program activities.

Over 20 commenters opposed the requirement for parent/student involvement, arguing that the correction of management problems is very subjective, and that an additional requirement for parent/student involvement is difficult to administer and monitor. In response to commenter concerns, this paragraph has been revised in the final rule to remove the requirement for parent/student involvement. The Department has also revised its assessment of what constitutes poor student acceptance to allow for more flexibility.

Readers will note a number of changes to § 210.18 which implement the provisions of a final rule which revised the AIMS reporting and recordkeeping requirements. This final rule was published in the **Federal Register** on February 26, 1987 (52 FR 5735). In addition to these changes, paragraph (m), *AIMS recordkeeping,* has been revised to require State agencies to maintain AIMS records for 3 years after the end of the school year in which the review or audit was conducted. Previously, such records were to be maintained for 3 years after the date of the exit conference. This revision is intended to ensure that AIMS records are maintained for a complete 4-year cycle and not, as previously authorized, for only a portion of that cycle.

*Appendix A, B and C*

The Appendices remain unchanged, except for minor corrections, and are not restated in this final rule.

**List of Subjects in 7 CFR Part 210**

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs-Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Subpart A, B, C, D, E, and F of Part 210 are revised as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

### Subpart A—General

Sec.

210.1 General purpose and scope.
210.2 Definitions.
210.3 Administration.

**Subpart B—Assistance to States and School Food Authorities**

210.4 Cash and donated food assistance to States.
210.5 Payment process to States.
210.6 Use of Federal funds.
210.7 Reimbursement for school food authorities.
210.8 Method of reimbursement.

**Subpart C—Requirements for School Food Authority Participation**

210.9 Agreement with State agency.
210.10 Lunch components and quantities.
210.11 Competitive food services.
210.12 Student, parent and community involvement.
210.13 Facilities management.
210.14 Resource management.
210.15 Reporting and recordkeeping.
210.16 Food service management companies.

**Subpart D—Requirements for State Agency Participation**

210.17 Matching Federal funds.
210.18 Monitoring responsibilities.
210.19 Additional responsibilities.
210.20 Reporting and recordkeeping.

**Subpart E—State Agency and School Food Authority Responsibilities**

210.21 Procurement.
210.22 Audits.
210.23 Other responsibilities.

**Subpart F—Additional Provisions**

210.24 Suspension, termination and grant closeout procedures.
210.25 Penalties.
210.26 Educational prohibitions.
210.27 State Food Distribution Advisory Council.
210.28 Regional office addresses.
210.29 OMB control numbers.

**Appendices**

A—Alternate foods for meals.
B—Categories of foods of minimal nutritional value.
C—Child Nutrition Labeling Program.

**Authority:** The provisions of Part 210 issued under sec. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

## Subpart A—General

### § 210.1 General purpose and scope.

(a) *Purpose of the program.* Section 2 of the National School Lunch Act (42 U.S.C. 1751), states: "It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs." Pursuant to this act, the Department provides States with general and special cash assistance and donations of foods acquired by the Department to be used to assist schools in serving nutritious lunches to children each school day. In furtherance of Program objectives, participating schools shall serve lunches that are nutritionally adequate, as set forth in these regulations, and shall to the extent practicable, ensure that participating children gain a full understanding of the relationship between proper eating and good health.

(b) *Scope of the regulations.* This part sets forth the requirements for participation in the National School Lunch and Commodity School Programs. It specifies Program responsibilities of State and local officials in the areas of program administration, preparation and service of nutritious lunches, payment of funds, use of program funds, program monitoring, and reporting and recordkeeping requirements.

### § 210.2 Definitions.

For the purpose of this part:

"Act" means the National School Lunch Act, as amended.

"AIMS" means the Assessment, Improvement and Monitoring System. This is a management improvement system used in the National School Lunch and the Commodity School Programs.

"Child" means—(a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of "*School,*" including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (c) and (d) of the definition of "School."

"CND" means the Child Nutrition Division of the Food and Nutrition Service of the Department.

"Commodity School Program" means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and receive donated food assistance in lieu of general cash assistance. Schools participating in the Commodity School Program shall also receive special cash and donated food assistance in accordance with § 210.4(c).

"Department" means the United States Department of Agriculture.

"Distributing agency" means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to Part 250 of this chapter.

"Donated foods" means food commodities donated by the Department for use in nonprofit lunch programs.

"Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

"FNS" means the Food and Nutrition Service, United States Department of Agriculture.

"FNSRO" means the appropriate Regional Office of the Food and Nutrition Service of the Department.

"Food component" means one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit.

"Food item" means one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both.

"Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.

"Free lunch" means a lunch served under the Program to a child from a household eligible for such benefits under 7 CFR Part 245 and for which neither the child nor any member of the household pays or is required to work.

"Handicapped student" means any child who has a physical or mental impairment as defined in § 15b.3 of the Department's nondiscrimination regulations (7 CFR Part 15b).

"Lunch" means a meal which meets the school lunch pattern for specified age/grade groups of children as designated in § 210.10.

"National School Lunch Program" means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

"Net cash resources" means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

"Nonprofit", when applied to schools or institutions eligible for the Program, means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

"Nonprofit school food service" means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

"OIG" means the Office of the Inspector General of the Department.

"Program" means the National School Lunch Program and the Commodity School Program.

"Reduced price lunch" means a lunch served under the Program: (a) to a child from a household eligible for such benefits under 7 CFR Part 245; (b) for which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under 7 CFR Part 245; and (c) for which neither the child nor any member of the household is required to work.

"Reimbursement" means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of § 210.10 and served to eligible children.

"Revenue", when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

"School" means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (d) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"School food authority" means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein *or* be otherwise approved by FNS to operate the Program.

"School year" means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

"Secretary" means the Secretary of Agriculture.

"7 CFR Part 3015", means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, A-124, and A-128; the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.); and Executive Order 12372.

**Note:** OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW, Room 2200, Washington, DC 20503.

"State" means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, or the Federated States of Micronesia, the Republic of the Marshalls, and the Republic of Palau.

"State agency" means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in § 210.3(b); or (c) the FNSRO, where the FNSRO administers the Program as specified in § 210.3(c).

"State educational agency" means, as the State legislature may determine, (a) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

"State food distribution advisory council" means a group which meets to advise the State educational agency and the State distributing agency with respect to the needs of schools participating in the Program concerning the manner of selection and distribution of commodities.

"Subsidized lunch" (paid lunch) means a lunch served to children who are either not eligible for or elect not to receive the free or reduced price benefits offered under 7 CFR Part 245. The Department subsidizes each paid lunch with both general cash assistance and donated foods. Although a paid lunch student pays for a large portion of his or her lunch, the Department's subsidy accounts for a significant portion of the cost of that lunch.

### § 210.3 Administration.

(a) *FNS.* FNS will act on behalf of the Department in the administration of the Program. Within FNS, the CND will be responsible for Program administration.

(b) *States.* Within the States, the responsibility for the administration of the Program in schools, as defined in § 210.2, shall be in the State educational agency. If the State educational agency is unable to administer the Program in public or private nonprofit residential child care institutions or nonprofit private schools, then Program administration for such schools may be assumed by FNSRO as provided in paragraph (c) of this section, or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer such schools. Each State agency desiring to administer the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the applicable requirements of this part; Part 235; Part 245; Parts 15, 15a, 15b, and 3015 of Departmental regulations; and FNS instructions.

(c) *FNSRO.* The FNSRO will administer the Program in nonprofit private schools or public or nonprofit private residential child care institutions if the State agency is prohibited by law from disbursing Federal funds paid to such schools. In addition, the FNSRO will continue to administer the Program in those States in which nonprofit private schools or public or nonprofit private residential child care institutions have been under continuous FNS administration since October 1, 1980.

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unless the administration of the Program in such schools is assumed by the State. The FNSRO will, in each State in which it administers the Program, assume all responsibilities of a State agency as set forth in this part and Part 245 of this chapter as appropriate. References in this part to "State agency" include FNSRO, as applicable, when it is the agency administering the Program.

(d) *School food authorities.* The school food authority shall be responsible for the administration of the Program in schools. State agencies shall ensure that school food authorities administer the Program in accordance with the applicable requirements of this part; Part 245; Parts 15, 15a, 15b, and 3015 of Departmental regulations; and FNS instructions.

## Subpart B—Assistance to States and School Food Authorities

### § 210.4 Cash and donated food assistance to States.

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with the provisions of this section to each State agency for lunches served to children under the National School Lunch and Commodity School Programs. To the extent donated foods are available, FNS will provide donated food assistance to distributing agencies for each lunch served in accordance with the provisions of this part and Part 250 of this chapter.

(b) *Assistance for the National School Lunch Program.* The Secretary will make cash and/or donated food assistance available to each State agency and distributing agency, as appropriate, administering the National School Lunch Program, as follows:

(1) *Cash assistance:* Cash assistance payments are composed of a *general* cash assistance payment, authorized under section 4 of the Act, and a *special* cash assistance payment, authorized under section 11 of the Act. General cash assistance is provided to each State agency for *all* lunches served to children in accordance with the provisions of the National School Lunch Program. Special cash assistance is provided to each State agency for lunches served under the National School Lunch Program to children determined eligible for free or reduced price lunches in accordance with Part 245 of this chapter. The total general cash assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year, by the applicable national average payment rate prescribed by FNS. The total special assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of free and reduced price lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year by the applicable national average payment rate prescribed by FNS. In accordance with section 11 of the Act, FNS will prescribe annual adjustments to the per meal national average payment rate (general cash assistance) and the special assistance national average payment rates (special cash assistance) which are effective on July 1 of each year. These adjustments, which reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers, are annually announced by Notice in July of each year in the **Federal Register**. FNS will also establish maximum per meal rates of reimbursement within which a State may vary reimbursement rates to school food authorities. These maximum rates of reimbursement are established at the same time and announced in the same Notice as the national average payment rates.

(2) *Donated food assistance.* For each school year, FNS will provide distributing agencies with donated foods for lunches served under the National School Lunch Program as provided under Part 250 of this chapter. The per lunch value of donated food assistance is adjusted by the Secretary annually to reflect changes as required under section 6 of the Act. These adjustments, which reflect changes in the Price Index for Foods Used in Schools and Institutions, are effective on July 1 of each year and are announced by Notice in the **Federal Register** in July of each year.

(c) *Assistance for the Commodity School Program.* FNS will make special cash assistance available to each State agency for lunches served in commodity schools in the same manner as special cash assistance is provided in the National School Lunch Program. Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.5(d). FNS will provide donated food assistance in accordance with Part 250 of this chapter. Of the total value of donated food assistance to which it is entitled, the school food authority may elect to receive cash payments of up to 5 cents per lunch served in its commodity school(s) for donated foods processing and handling expenses. Such expenses include any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods. The school food authority may have all or part of these cash payments retained by the State agency for use on its behalf for processing and handling expenses by the State agency or it may authorize the State agency to transfer to the distributing agency all or any part of these payments for use on its behalf for these expenses. Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.5(d). The total value of donated food assistance is calculated on a school year basis by adding:

(1) The applicable national average payment rate (general cash assistance) prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program; and

(2) The national per lunch average value of donated foods prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program.

### § 210.5 Payment process to States.

(a) *Grant award.* FNS will specify the terms and conditions of the State agency's grant in a grant award document and will generally make payments available by means of a Letter of Credit issued in favor of the State agency. The State agency shall obtain funds for reimbursement to participating school food authorities through procedures established by FNS in accordance with 7 CFR Part 3015. State agencies shall limit requests for funds to such times and amounts as will permit prompt payment of claims or authorized advances. The State agency shall disburse funds received from such requests without delay for the purpose for which drawn. FNS may, at its option, reimburse a State agency by Treasury Check. FNS will pay by Treasury Check with funds available in settlement of a valid claim if payment for that claim cannot be made within the grant closeout period specified in paragraph (d) of this section.

(b) *Cash-in-lieu of donated foods.* All Federal funds to be paid to any State in place of donated foods will be made

available as provided in Part 240 of this chapter.

(c) *Recovery of funds.* FNS will recover any Federal funds made available to the State agency under this part which are in excess of obligations reported at the end of each fiscal year in accordance with the reconciliation procedures specified in paragraph (d) of this section. Such recoveries shall be reflected by a related adjustment in the State agency's Letter of Credit.

(d) *Substantiation and reconciliation process.* Each State agency shall maintain Program records as necessary to support the reimbursement payments made to school food authorities under § 210.7 and § 210.8 and the reports submitted to FNS under this paragraph. The State agency shall ensure such records are retained for a period of 3 years or as otherwise specified in § 210.23(c).

(1) *Monthly report.* Each State agency shall submit a final Report of School Program Operations (FNS–10) to FNS for each month. The final reports shall be limited to claims submitted in accordance with § 210.8 and shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments to a State's report shall always be made regardless of when it is determined that such adjustments are necessary. FNS authorization is not required for downward adjustments. Any adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS.

(2) *Quarterly report.* Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.

(3) *End of year report.* Each State agency shall submit a final Financial Status Report (SF–269) for each fiscal year. This final fiscal year grant closeout report shall be postmarked and/or submitted to FNS within 120 days after the end of each fiscal year or part thereof that the State agency administered the Program. Obligations shall be reported only for the fiscal year in which they occur. FNS will not be responsible for reimbursing Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred. Grant closeout procedures are to be carried out in accordance with 7 CFR Part 3015.

### § 210.6 Use of Federal funds.

*General.* State agencies shall use Federal funds made available under the Program to reimburse or make advance payments to school food authorities in connection with lunches served in accordance with the provisions of this part; *except that,* with the approval of FNS, any State agency may reserve an amount up to one percent of the funds earned in any fiscal year under this part for use in carrying out special developmental projects. Advance payments to school food authorities may be made at such times and in such amounts as are necessary to meet the current fiscal obligations. All Federal funds paid to any State in place of donated foods shall be used as provided in Part 240 of this chapter.

### § 210.7 Reimbursement for school food authorities.

(a) *General.* Reimbursement payments to finance nonprofit school food service operations shall be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of § 210.8(b), such payments may be made for lunches served in accordance with provisions of this part and Part 245 in the calendar month preceding the calendar month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program and special cash assistance payments for free or reduced price lunches served to children determined eligible for such benefits under the National School Lunch and Commodity School Programs. The school food authority shall not claim reimbursement for any lunches produced in excess of the one lunch per child per day limitation specified under § 210.10(b). Any excess lunches that are produced may be served, but shall not be claimed for general or special cash assistance provided under § 210.4. Nor shall any school food authority claim or be eligible for special cash assistance reimbursement for free or reduced price lunches in excess of the number of children approved for and served such lunches in each school food authority. Approval shall be in accordance with Part 245 of this chapter.

(b) *Assignment of rates.* At the beginning of each school year, State agencies shall establish the per meal rates of reimbursement for school food authorities participating in the Program. These rates of reimbursement may be assigned at levels based on financial need; *except that,* the rates are not to exceed the maximum rates of reimbursement established by the Secretary under § 210.4(b) and are to permit reimbursement for the total number of lunches in the State from funds available under § 210.4. Within each school food authority, the State agency shall assign the same rate of reimbursement from general cash assistance funds for all lunches served to children under the Program. Assigned rates of reimbursement may be changed at any time by the State agency, *provided that* notice of any change is given to the school food authority. The total general and special cash assistance reimbursement paid to any school food authority for lunches served to children during the school year are not to exceed the sum of the products obtained by multiplying the total reported number of lunches, by type, served to eligible children during the school year by the applicable maximum per lunch reimbursements prescribed for the school year for each type of lunch.

### § 210.8 Method of reimbursement.

(a) *Monthly claims.* To be entitled to reimbursement under this part, each school food authority shall submit to the State agency, a monthly Claim for Reimbursement, as described in paragraph (b) of this section. A final Claim for Reimbursement shall be postmarked or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless otherwise authorized by FNS. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claims review process or otherwise. In taking such corrective action, State agencies may make adjustments on claims filed within the 60-day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month required under § 210.5(d). Upward adjustments in Program funds claimed which are not reflected in the final FNS–10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in amounts claimed shall always be made, without FNS authorization, regardless of when it

is determined that such adjustments are necessary.

(b) *Content of claim.* The Claim for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Report of School Program Operations required under § 210.5(d). The State agency may authorize a school food authority to submit a consolidated Claim for Reimbursement for all schools under its jurisdiction, *provided that* the data on each school's operations required in this section are maintained on file at the local office of the school food authority, and the claim separates consolidated data for commodity schools from data for other schools. Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only lunches served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. However, Claims for Reimbursement may not combine operations occurring in two fiscal years.

(c) *Advance funds.* The State agency may advance funds available for the Program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency shall make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches by reimbursement type served to children times the respective payment rates assigned by the State in accordance with § 210.7(b). The State agency shall recover advances of funds to any school food authority failing to comply with the 60-day claim submission requirements in paragraph (a) of this section.

## Subpart C—Requirements for School Food Authority Participation

### § 210.9 Agreement with State agency.

(a) *Application.* An official of a school food authority shall make written application to the State agency for any school in which it desires to operate the Program. Applications shall provide the State agency with sufficient information to determine eligibility. The school food authority shall also submit for approval a Free and Reduced Price Policy Statement in accordance with Part 245 of this chapter.

(b) *Annual agreement.* The school food authority shall annually enter into a written agreement with the State agency. The State agency may allow school food authorities to extend by amendment a previous year's agreement in lieu of taking a new agreement annually *provided* that each year a current written agreement is on file at the State agency. The agreement shall contain a statement to the effect that the "School Food Authority and participating schools under its jurisdiction, shall comply with all provisions of 7 CFR Parts 210 and 245." This agreement shall provide that each school food authority shall, with respect to participating schools under its jurisdiction:

(1) Maintain a nonprofit school food service and observe the limitations on the use of nonprofit school food service revenues set forth in § 210.14(a) and the limitations on any competitive school food service as set forth in § 210.11(b);

(2) Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved in accordance with § 210.19(a);

(3) Maintain a financial management system as prescribed under § 210.14(c);

(4) Comply with the requirements of the Department's regulations regarding financial management (7 CFR Part 3015);

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in § 210.10;

(6) Price the lunch as a unit;

(7) Serve lunches free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under 7 CFR Part 245;

(8) Claim reimbursement at the assigned rates only for lunches served in accordance with the agreement;

(9) Submit Claims for Reimbursement in accordance with § 210.8;

(10) Comply with the requirements of the Department's regulations regarding nondiscrimination (7 CFR Parts 15, 15a, 15b);

(11) Make no discrimination against any child because of his or her eligibility for free or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement;

(12) Enter into an agreement to receive donated foods as required by 7 CFR Part 250;

(13) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(14) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(15) Maintain necessary facilities for storing, preparing and serving food;

(16) Upon request, make all accounts and records pertaining to its school food service available to the State agency and to FNS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final Claim for Reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit;

(17) Maintain files of currently approved and denied free and reduced price applications, respectively. If applications are maintained at the school food authority level, they shall be readily retrievable by school;

(18) Retain the individual applications for free and reduced price lunches submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(16) of this section.

### § 210.10 Lunch components and quantities.

(a) *Meal pattern definitions.* For the purpose of this section:

(1) "Infant cereal" means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(2) "Infant formula" means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(b) *General.* School food authorities shall ensure that participating schools provide nutritious and well-balanced lunches to children in accordance with the provisions of this section. The requirements and recommendations of this section are designed so that the nutrients of the lunch, averaged over a period of time, *approximate* one-third of the Recommended Dietary Allowances for children of each age/grade group as specified in paragraph (c) of this section. School food authorities shall ensure that each lunch is priced as a unit. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of food are planned and

produced so that lunches provided contain all the required food items in at least the amounts indicated in the table presented under paragraph (c) of this section. School food authorities shall ensure that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Production and participation records shall be maintained to demonstrate positive action toward providing one reimbursable lunch per child per day. Any excess lunches that are produced may be served, but shall *not* be claimed for general or special cash assistance provided under § 210.4.

(c) *Minimum required lunch quantities.* Schools that are able to provide quantities of food to children solely on the basis of their ages or grade level should do so. Schools that cannot serve children on the basis of age or grade level shall provide all school age children Group IV portions as specified in the table presented in this paragraph. Schools serving children on the basis of age or grade level shall plan and produce sufficient quantities of food to provide Groups I–IV no less than the amounts specified for those children in the table presented in this paragraph, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the food items; however, schools shall plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV. Schools shall ensure that lunches are served with the objective of providing the per lunch minimums for each age and grade level as specified in the following table:

SCHOOL LUNCH PATTERN—PER LUNCH MINIMUMS

| Food Components and Food Items | Minimum Quantities | | | | Recommended quantities: Group V, 12 years and older (7–12) |
|---|---|---|---|---|---|
| | Group I, age 1–2 (Preschool) | Group II, age 3–4 (Preschool) | Group III, age 5–8 (K–3) | Group IV, age 9 and older (4–12) | |
| Milk (as a beverage): Fluid whole milk *and* fluid unflavored lowfat milk, skim milk or buttermilk must be offered (Flavored fluid milk optional). | ¾ cup (6 fl. oz.) | ¾ cup (6 fl. oz.) | ½ pint (8 fl. oz.) | ½ pint (8 fl. oz.) | ½ pint (8 fl. oz.) |
| Meat or Meat Alternate (quantity of the edible portion as served): | | | | | |
| Lean meat, poultry, or fish | 1 oz | 1½ oz | 1½ oz | 2 oz | 3 oz. |
| Cheese | 1 oz | 1½ oz | 1½ oz | 2 oz | 3 oz. |
| Large egg | ½ | ¾ | ¾ | 1 | 1½ |
| Cooked dry beans or peas | ¼ cup | ⅜ cup | ⅜ cup | ½ cup | ¾ cup |
| Peanut butter or other nut or seed butters | 2 Tbsp | 3 Tbsp | 3 Tbsp | 4 Tbsp | 6 Tbsp. |
| The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: | | | | | |
| Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1oz. of nuts/seeds = 1oz. of cooked lean meat, poultry, or fish. | ½ oz.=50% | ¾ oz.=50% | ¾ oz.=50% | 1 oz.=50% | 1½ oz.=50% |
| Vegetable or Fruit: 2 or more servings of vegetables or fruits or both. | ½ cup | ½ cup | ½ cup | ¾ cup | ¾ cup. |
| Bread or Bread Alternate (Servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains. | 5 per week—minimum of ½ day. | 8 per week—minimum of 1 per day. | 8 per week—minimum of 1 per day. | 8 per week—minimum of 1 per day. | 10 per week—minimum of 1 per day. |

(d) *Lunch components.* This section specifies the basic food components of the school lunch pattern which shall be served as food items in quantities specified in paragraph (c) of this section.

(1) *Milk.* Schools shall offer students fluid whole milk *and* at least one of the following:

(i) Fluid unflavored milk containing two percent or less milk fats;

(ii) Fluid unflavored skim milk; or

(iii) Buttermilk.

All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; *except that,* in the meal pattern for infants under 1 year of age, the milk shall be unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk shall contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk. School food authorities that served ¾ cup (6 fluid ounces) of milk to Group III children prior to May 1, 1980, may continue to do so. Such school food authorities shall retain documentation of the date on which they began such service and the reasons for adopting this portion size.

(2) *Meat or meat alternate.* The quantity of meat or meat alternate shall be the quantity of the edible portion *as served.* When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other menu item. The Department recommends that if schools do not offer children choices of meat or meat alternates each day, they serve no one meat alternate or form of meat (e.g., ground, diced, pieces) more than three times in a single week.

(i) Vegetable protein products, cheese alternate products, and enriched

macaroni with fortified protein defined in Appendix A may be used to meet part of the meat or meat alternate requirement when used as specified in Appendix A. An enriched macaroni product with fortified protein as defined in Appendix A may be used as part of a meat alternate or as a bread alternate, but not as both food components in the same meal.

(ii) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein and iron content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals. As noted in the School Lunch Pattern table of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement. Therefore, nuts and seeds must be used in the meal with another meat/meat alternate to fulfill the requirement.

(3) *Vegetable or fruit.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal.

(4) *Bread or bread alternate.* (i) All breads or bread alternates such as bread, biscuits, muffins or rice, macaroni, noodles, other pastas or cereal grains such as bulgur or corn grits, shall be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) Unlike the other component requirements, the bread requirement is based on minimum daily servings *and* total servings per week. Schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I *and* at least one serving to children in Groups II–V. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II–V. Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than five. The servings for biscuits, rolls, muffins, and other bread alternates are specified in the *Food Buying Guide for Child Nutrition Programs (PA 1331)*, an FNS publication.

(e) *Offer versus serve.* Each school shall *offer* its students all five required food items as set forth in the table presented under paragraph (c). Senior high students shall be permitted to decline up to two of the five required food items. At the discretion of the school food authority, students below the senior high level *may* be permitted to decline one or two of the required five food items. The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions. State educational agencies shall define "senior high."

(f) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of foods and types of milk from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of foods and milk for choice within the required lunch pattern, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority designated full price. The school may establish different unit prices for each type of lunch served provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(g) *Lunch period.* At or about mid-day schools shall serve lunches which meet the requirements of this part during a period designated as the lunch period by the school food authority. Such lunch periods shall occur between 10:00 a.m. and 2:00 p.m., unless otherwise exempted by FNS. With State approval, schools that serve children 1–5 years old are encouraged to divide the service of the specified quantities and food items into two distinct service periods. Such schools may divide the quantities and/or food items between these service periods in any combination that they choose.

(h) *Infant lunch pattern.* Infants under 1 year of age shall be served an infant lunch as specified in this paragraph when they participate in the Program. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other required meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) Birth through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(2) 4 through 7 months—(i) 4 to 8 fluid ounces of iron-fortified infant formula; (ii) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and (iii) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(3) 8 through 11 months—(i) 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk; (ii) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and (iii) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(i) *Exceptions.* Lunches claimed for reimbursement shall meet the school lunch pattern requirements specified in paragraphs (c) and (d) of this section. However, lunches served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in foods listed in this section for students who are

considered handicapped under 7 CFR Part 15b and whose handicap restricts their diet. Schools may also make substitutions for nonhandicapped students who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement shall, in the case of a handicapped student, be signed by a physician or, in the case of a nonhandicapped student, by a recognized medical authority.

(2) *Ethnic, religious or economic variations.* FNS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *Foreign meal patterns.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the bread or bread alternate requirement. For the Commonwealth of the Northern Mariana Islands, FNS has established a meal pattern which is consistent with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9, the requirements of that pattern.

(4) *Natural disaster.* In the event of a natural disaster or other catastrophe, FNS may temporarily allow schools to serve lunches for reimbursement that do not meet requirements of this section.

(5) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of fluid whole milk and fluid unflavored milk containing two percent or less milk fats on a continuing basis, the State agency may approve the service of either fluid whole milk or fluid unflavored milk containing two percent or less milk fats. The Department recommends that the State agency approve for service the available fluid milk with the lowest fat and sugar content. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Marianas, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FNS.

(iii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of lunches without milk if the school uses an equivalent amount of canned, whole or nonfat dry milk in the preparation of the lunch.

### § 210.11 Competitive food services.

(a) *Definitions.* For the purpose of this section:

(1) "Competitive foods" means any foods sold in competition with the Program to children in food service areas during the lunch periods.

(2) "Food of minimal nutritional value" means: (i) In the case of artificially sweetened foods, a food which provides less than five percent of the United States Recommended Dietary Allowances (USRDA) for each of eight specified nutrients per serving; and (ii) in the case of all other foods, a food which provides less than five percent of the USRDA for each of eight specified nutrients per 100 calories and less than five percent of the USRDA for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are—protein, vitamin A, vitamin C, niacin, riboflavin, thiamine, calcium, and iron. All categories of food of minimal nutritional value and petitioning requirements for changing the categories are listed in Appendix B of this part.

(b) *General.* State agencies and school food authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

### § 210.12 Student, parent and community involvement.

(a) *General.* School food authorities shall promote activities to involve students and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, Program promotion, and related student-community support activities. School food authorities are encouraged to use the school food service program to teach students about good nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(b) *Food service management companies.* School food authorities contracting with a food service management company shall comply with the provisions of § 210.16(a) regarding the establishment of an advisory board of parents, teachers and students.

(c) *Residential child care institutions.* Residential child care institutions shall comply with the provisions of this section, to the extent possible.

### § 210.13 Facilities management.

(a) *Health standards.* The school food authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations.

(b) *Storage.* The school food authority shall ensure that the necessary facilities for storage, preparation and service of food are maintained. Facilities for the handling, storage, and distribution of purchased and donated foods shall be such as to properly safeguard against theft, spoilage and other loss.

### § 210.14 Resource management.

(a) *Nonprofit school food service.* School food authorities shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, *except that,* such revenues shall not be used to purchase land or buildings, unless otherwise approved by FNS, or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the State agency under § 210.19(a) of this part. School food authorities may use facilities, equipment, and personnel supported with nonprofit school food revenues to

support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(b) *Net cash resources.* The school food authority shall limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved by the State agency in accordance with § 210.19(a).

(c) *Financial management system.* The school food authority shall maintain a financial management system in accordance with § 210.19(a) of this part. School food authorities shall keep records for the nonprofit school food service cited in paragraph (a) of this section separate from records for any other food service which may be operated by the school food authority.

(d) *Use of donated foods.* The school food authority shall enter into an agreement with the distributing agency to receive donated foods as required by Part 250 of this chapter. In addition, the school food authority shall accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department.

**§ 210.15 Reporting and recordkeeping.**

(a) *Reporting summary.* Participating school food authorities are required to submit forms and reports to the State agency or the distributing agency, as appropriate, to demonstrate compliance with Program requirements. These reports include, but are not limited to:

(1) A Claim for Reimbursement as specified by the State agency in accordance with § 210.8;

(2) An application and agreement for Program operations between the school food authority and the State agency, and a Free and Reduced Price Policy Statement as required under § 210.9;

(3) Documentation of corrective action taken for any program deficiency found on any review/audit as required under § 210.18(k);

(4) A formal corrective action plan whenever AIMS performance standard violations in excees of error tolerances are disclosed on either a first or second review as specified under § 210.18(i);

(5) A written response to AIMS audit findings under § 210.18(k);

(6) A commodity school's preference whether to receive part of its donated food allocation in cash for processing and handling of donated foods as required under § 210.19(b);

(7) A written response to audit findings pertaining to the school food authority's operation as required under § 210.22; and

(8) Information on civil rights complaints, if any, and their resolution as required under § 210.23.

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority shall maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

(1) Documentation of participation data by school in support of the Claim for Reimbursement, as required under § 210.8(b);

(2) Production and participation records to demonstrate positive action toward providing one lunch per child per day as required under § 210.10(b);

(3) Records of revenues and expenditures to demonstrate that the food service is being operated on a nonprofit basis, as required under § 210.14(a) including net cash resources, or the information necessary for the State to compute net cash resources through a review or audit as specified under § 210.18(b); and

(4) Currently approved and denied applications for free and reduced price lunches and a description of the verification activities, as required under 7 CFR Part 245.

**§ 210.16 Food service management companies.**

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

(1) Adhere to the procurement standards specified in § 210.21 when contracting with the food service management company;

(2) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(3) Monitor the food service operation through periodic on-site visits;

(4) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(5) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(6) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;

(7) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility; and

(8) Establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(b) *Invitation to bid.* In addition to adhering to the procurement standards under § 210.21, school food authorities contracting with food service management companies shall ensure that:

(1) The invitation to bid or request for proposal contains a 21-day cycle menu to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a school food authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu be developed and submitted by each food service management company which intends to submit a bid or proposal to the school food authority. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority.

(2) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 210.21.

(c) *Contracts.* Contracts that permit all income and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met. Such agreements shall also include the following:

(1) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be retained in accordance with § 210.23(c).

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract.

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such a grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(d) *Duration of contract.* The contract between a school food authority and food service management company shall be a of a duration of no longer than 1 year; and options for the yearly renewal of a contract signed after February 16, 1988, may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

## Subpart D—Requirements for State Agency Participation

### § 210.17 Matching Federal funds.

(a) *State revenue matching.* For each school year, the amount of State revenues appropriated or used specifically by the State for program purposes shall not be less than 30 percent of the funds received by such State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980; *provided that,* the State revenues derived from the operation of such programs and State revenues expended for salaries and administrative expenses of such programs at the State level are not considered in this computation. However, if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption.* No State in which the State agency is prohibited by law from disbursing State appropriated funds to nonpublic schools shall be required to match general cash assistance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section. Furthermore, the requirements of this section do not apply to schools in which the Program is administered by a FNSRO.

(c) *Territorial waiver.* American Samoa and the Commonwealth of the Northern Mariana Islands shall be exempted from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $100,000.

(d) *Applicable revenues.* The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year:

(1) State revenues disbursed by the State agency to school food authorities for program purposes, including revenue disbursed to nonprofit private schools where the State administers the program in such schools;

(2) State revenues made available to school food authorities and transferred by the school food authorities to the nonprofit school food service accounts or otherwise expended by the school food authorities in connection with the nonprofit school food service program; and

(3) State revenues used to finance the costs (other than State salaries or other State level administrative costs) of the nonprofit school food service program, i.e.:

(i) Local program supervision;

(ii) Operating the program in participating schools; and

(iii) The intrastate distribution of foods donated under Part 250 of this chapter to schools participating in the program.

(e) *Distribution of matching revenues.* All State revenues made available under paragraph (a) of this section are to be disbursed to school food authorities participating in the Program, *except as* provided for under paragraph (b) of this section. Distribution of matching revenues may be made with respect to a class of school food authorities as well as with respect to individual school food authorities.

(f) *Failure to match.* If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FNS.

(g) *Reports.* Within 120 days after the end of each school year, each State agency shall submit an Annual Report of Revenues (FNS–13) to FNS. This report identifies the State revenues to be counted toward the State revenue matching requirements specified in paragraph (a) of this section.

(h) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

### § 210.18 Monitoring responsibilities.

(a) *General program compliance.* Each State agency shall require that school food authorities comply with the applicable provisions of this part. The State agency shall ensure compliance through audits, supervisory assistance reviews, visits to participating schools, or by other means.

(b) *Net cash resources.* Each State agency shall monitor through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that such resources exceed 3 months average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with § 210.19(a), the State agency may require the school food authority to reduce the price children are charged for meals, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(c) *Improved management.* The State agency shall work with the school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low student participation and/or poor student acceptance of the Program or of foods served. Poor student acceptance may be indicated by a substantial number of students who routinely and over a period of time:

(1) Do not favorably accept a particular menu item;

(2) Return foods; or

(3) Choose less than all five food items as authorized under § 210.10(e).

(d) *Food service management companies.* Each State agency shall annually review each contract between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in § 210.16. Each State agency shall perform an on-site review of each school food authority contracting with a food service management company at least once during each 4-year period. Such reviews shall include an assessment of the school food authority's compliance with § 210.16. The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State must register with the State agency. State agencies shall provide assistance upon request of a school food authority to assure compliance with Program requirements.

(e) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence of such investigations and actions. FNS and OIG may make investigations at the request of the State agency or where FNS or OIG determines investigations are appropriate.

(f) *Assessment, Improvement and Monitoring System (AIMS).* Each State agency shall perform AIMS reviews, audits or a combination thereof of all school food authorities participating in the Program in accordance with the provisions of this section; or a State agency may develop an alternate monitoring system as specified in paragraph (n) of this section.

(g) *AIMS definitions.* The following definitions are provided in order to clarify AIMS requirements:

(1) "AIMS audits" means on-site evaluations of school food authorities participating in the Program for compliance with AIMS performance standards, by State auditors or State contracted auditors once every 2 years, in accordance with USDA's audit guide or an audit guide approved by FNS and USDA's OIG.

(2) "AIMS error tolerance level" means the degree of error of an AIMS performance standard as specified in paragraph (i)(4) of this section which, if exceeded in a reviewed school food authority, triggers a second AIMS review in all large school food authorities and in at least 25 percent of those small school food authorities which exceed error tolerance levels on a first AIMS review.

(3) "AIMS performance standards" means the following standards which measure compliance with Program regulations:

(i) Performance Standard 1—Certification—Within the school food authority, each child's application for free and reduced price meals is correctly approved or denied in accordance with the applicable provisions of Part 245.

(ii) Performance Standard 2—Claims—The numbers of free and reduced price meals claimed for reimbursement by each school for any review period are, in each case, less than or equal to the number of children in that school correctly approved for free and reduced price meals, respectively for the review period, times the days of operation for the review period.

(iii) Performance Standard 3—Counting—The *system* used for counting and recording meal totals, by type, claimed for reimbursement at both the school food authority and school levels yields correct claims.

(iv) Performance Standard 4—Components—Meals claimed for reimbursement within the school food authority contain food items as required by § 210.10.

(4) "AIMS reviews" means on-site evaluation, of all school food authorities participating in the Program during each 4-year AIMS review period, by the State agency or State auditors for compliance with the AIMS performance standards and follow-up reviews, as required.

(5) "Corrective action plan" means the written description a school food authority submits to the State agency to explain how and when a program deficiency will be corrected.

(6) "Large school food authority" means, in any State:

(i) All school food authorities that participate in the Program and have enrollments of 40,000 students or more each; and

(ii) The two largest school food authorities that participate in the Program and have enrollments of 2,000 students or more each.

(7) "Small school food authority" means, in any State, a school food authority that participates in the Program and is not a large school food authority.

(h) *Number of schools reviewed or audited under AIMS.* The number of schools within the school food authority which must be included in a review or audit is dependent upon the total number of schools in the school food authority. The minimum number of schools the State agency shall review or audit is illustrated in Table A:

TABLE A

| Number of schools in the school food authority | Minimum [1] |
|---|---|
| 1 to 5 | 1 |
| 6 to 10 | 2 |
| 11 to 20 | 3 |
| 21 to 40 | 4 |
| 41 to 60 | 5 |
| 61 to 80 | 6 |
| 81 to 100 | 10 |
| 101 or more | [2]12 |

[1] Minimum number of schools to be reviewed or audited.

[2] Twelve plus 5 percent of the number of schools over 100. Fractions shall be rounded to the nearest whole number.

(i) *AIMS reviews.* States performing AIMS reviews shall monitor compliance with the AIMS performance standards described in paragraph (g) of this section. On the first AIMS review, the State agency shall review the school food authority for Performance Standards 1–4. On second AIMS reviews, the State agency shall, at a minimum, review the school food authority for the performance standards which exceeded error tolerances in the first review.

(1) *Scope of AIMS reviews.* In reviewing performance standards:

(i) The State agency shall analyze and determine the adequacy of local approval procedures for free and reduced price meals by examining the eligibility determinations made within the school food authority. The State agency shall review the applications for all children for whom application was made attending the reviewed schools, or a statistically valid sample of the applications for such children. The State agency shall also ensure that the system to update the application file is adequate. If the State agency chooses to review a statistically valid sample of applications, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for a second review and base fiscal action upon the error rate found in the sample.

(ii) The State agency shall ensure that, at a minimum, for each school reviewed, the number of free meals claimed in the school food authority's most recent Claim for Reimbursement does not exceed the number of children correctly

approved for free meals for the claim period times the days of operation of that school, as reported to the school food authority for the claim month. The State agency shall apply the same procedure to the claim for reduced price meals.

(iii) The State agency shall ensure that each school reviewed has an adequate system for counting and recording meals served by reimbursement type and that the school food authority properly consolidates meal counts from its schools.

(iv) The State agency shall determine by observation of a representative sample of meals that meals contain food items as required in § 210.10.

(2) *Timing of AIMS reviews.* During each 4-year AIMS review period, the first AIMS review of a school food authority shall be completed within the school year in which the review was begun. A second AIMS review, when required, is recommended to be conducted in the same school year as the first review and is required to be conducted no later than December 31 of the school year following the first review.

(3) *Method of selecting school food authorities and schools to review.*

(i) Each school year, the State agency shall use its own criteria to select school food authorities for AIMS reviews; *provided that* all participating school food authorities are reviewed at least once every 4 years and that school food authorities found on the first review to exceed error tolerance levels are subject to second reviews as specified in paragraph (i)(4) of this section.

(ii) on A first AIMS review of a school food authority, the State agency shall select, to the extend practicable, the required minimum number of schools to review on a proportionate basis from each type of attendance unit (e.g., elementary school, middle school, high school), and shall select schools within attendance unit grouping either randomly or by using State agency criteria which shall be kept on file at the State agency. If using its own criteria, the State agency shall ensure that some of the schools selected are chosen because of the likelihood of problems. On a second AIMS review, the State agency shall choose schools using State agency criteria, which may include random selection. State agency criteria for selecting schools for second AIMS reviews shall also be kept on file. The minimum number of schools to be selected and reviewed during a first or second AIMS review of a school food authority is specified in paragraph (h) of this section.

(4) *Error tolerance for AIMS review.* State agencies shall ensure that corrective action plans are completed by all school food authorities which are found on first reviews to exceed the error tolerance described below. Further, State agencies shall conduct second reviews of: all large school food authorities found to exceed such tolerances on first reviews; and at least 25 percent of small school food authorities found to exceed such tolerances on first reviews. An error tolerance is exceeded when:

(i) For AIMS Performance Standard 1, 10 percent or more (but not less than 10 children) of the children listed on reviewed applications and attending reviewed schools in a school food authority are incorrectly approved or denied for free or reduced price meal benefits; and/or

(ii) For AIMS Performance Standard 2, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (i)(5), claim reimbursement for more free or more reduced price meals, respectively, than the number of children correctly approved for such meals for the test period times the days of operation for the period; and/or

(iii) For AIMS Performance Standard 3, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (i)(5), have an inadequate system for counting and recording meal totals by type claimed for reimbursement, or the school food authority does not use valid procedures for consolidating claims; and/or

(iv) For AIMS Performance Standard 4, 10 percent or more of the total meals observed in a school food authority are missing one or more required food items.

(5) *Performance standards 2 and 3 tolerances.* Table B indicates the number of schools violating Performance Standards 2 or 3, thus necessitating a corrective action plan in the applicable school food authority and a second review in all large school authorities and at least 25 percent of the small school food authorities which exceed error tolerance levels on a first AIMS review.

TABLE B

| Number of schools reviewed | Number of schools [1] |
|---|---|
| 1 to 10 | 1 |
| 11 to 20 | 2 |
| 21 to 30 | 3 |
| 31 to 40 | 4 |
| 41 to 50 | 5 |
| 51 to 60 | 6 |
| 61 to 70 | 7 |
| 71 to 80 | 8 |
| 81 to 90 | 9 |
| 91 to 100 | 10 |
| 101 or more | [2] 10 |

[1] Number of schools violating Performance Standards 2 or 3 respectively, thus necessitating a second review of the school food authority.

[2] 10 plus the number identified above for the appropriate increment.

(6) *Corrective action plans for AIMS reviews.* Corrective action plans are required to address AIMS performance standard deficiencies exceeding the error tolerance levels described in this section. The following procedures shall be followed to develop a corrective action plan:

(i) The State agency shall assist the school food authority in developing a mutually agreed upon corrective action plan.

(ii) The corrective action plan shall identify the corrective actions and timeframes needed to correct the deficiencies found during the review. Corrective action shall include all necessary fiscal actions as described in § 210.19(c), including adjusting data to be used in preparing the Claim for Reimbursement.

(iii) The plan shall be written, signed by the proper official of the school food authority, and submitted to and approved by the State agency within 60 days following the exit conference of a review. State agencies may extend this deadline to 90 days. Extensions beyond 90 days may be made, for cause, with written justification to and approval by FNSRO.

(iv) The State agency shall require the school food authority to implement an amended or extended corrective action plan when error tolerance levels are exceeded on a second AIMS review.

(7) *New violations found on a second AIMS review.* If, during the course of a second AIMS review, a performance standard violation is found that has not been noted on a previous AIMS review, the State agency shall institute and document appropriate corrective action. If the violation exceeds the error tolerance level, the State agency shall require a corrective action plan and the completion of corrective action. The State agency shall take fiscal action as described in § 210.19(c) of this part for any degree of violation of AIMS Performance Standards 2, 3, and 4.

(j) *AIMS audits.* Audits by State agency, State or State-contracted auditors may be used as an alternative to AIMS reviews. if the State agency

chooses this option, the audit must ensure that the four performance standards listed under paragraph (g) of this section are being complied with by the audited school food authority. This includes performing all activities described in paragraph (i)(1) of this section. Additionally, a State using AIMS audits in place of AIMS reviews shall:

(1) Audit school food authorities once every 2 years;

(2) Take fiscal action in accordance with § 210.19(c);

(3) Have a documented system for achieving corrective action;

(4) Select schools within a school food authority based upon generally accepted audit principles; and

(5) Use a State audit guide approved by FNS. A State agency shall submit its guide to FNSRO by February 1 of each year; except that portions of the guide which do not change annually need not be resubmitted. State agencies shall provide the title of the sections that remain unchanged, as well as the year of the last guide in which the sections were submitted.

(k) *AIMS exit conference, notification and corrective action.* The State agency and the school food authority shall hold an exit conference at the close of an AIMS review or audit to discuss the deficiencies observed, the extent of the deficiencies and the corrective action needed to correct the deficiencies. If a corrective action plan is required as described in paragraph (i)(6) of this seciton, it shall be discussed during the exit conference. After every AIMS review or audit, the State shall provide written notification of the review or audit findings to the school food authority's superintendent or authorized representative who signed the State agency/school food authority agreement or who is otherwise authorized to represent the superintendent. The State shall require that the school food authority take and document corrective action for any program deficiency found on any review or audit. Corrective action may include training, assistance, recalculation of data to ensure the correctness of any claim that the school food authority is preparing at the time of the review, or other actions.

(l) *AIMS reporting.* Each State agency shall report to FNSRO:

(1) The name of any school food authority which exceeds an error tolerance level on a second AIMS review in any review period and the type and extent of the regulatory violations; and

(2) Beginning March 1, 1989, the results of AIMS reviews/audits by March 1 of each school year, on a form designated by FNS. In such annual reports, the State agency shall include the results of all AIMS reviews/audits conducted in the preceding school year and any consequent second AIMS reviews performed in the preceding school year or by December 31 of the current school year.

(m) *AIMS recordkeeping.* Each State agency shall keep records which document the details of all AIMS reviews or audits and demonstrate the degree of compliance with AIMS performance standards. AIMS records shall be kept on file by the State agency for a minimum of 3 years after the end of the school year in which the review or audit was conducted or after the school year in which problems have been resolved, whichever is later. Such records shall include documentation of AIMS first reviews and any consequent second reviews. When necessary, the records must include a corrective action plan as described in this section. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and second reviews, if the selection is not random;

(2) Its system for selecting small school food authorities for second reviews; and

(3) Documentation demonstrating compliance with the statistical sampling requirements specified in § 210.18(i).

(n) *State alternate to AIMS.* Any State developed monitoring system shall:

(1) Be equivalent to AIMS in scope;

(2) Monitor compliance with AIMS Performance Standards 1–4;

(3) Include on-site visits of all school food authorities on a cyclical basis;

(4) Require that corrective action be taken and documented for any Program deficiency found;

(5) Provide for fiscal action and set forth the State agency's criteria for taking such action;

(6) Provide for the maintenance of a detailed description of the system and records of all monitoring visits and activities which demonstrate the degree of compliance with AIMS performance standards, corrective action needed and taken, and fiscal action taken;

(7) Receive approval by the appropriate FNSRO prior to implementation; and

(8) Beginning March 1, 1989, submit annual reports of the results of such alternate State monitoring reviews to FNSRO on a form designated by FNS.

**§ 210.19 Additional responsibilities.**

(a) *General program management.* Each State agency shall provide an adequate number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all program requirements. Such personnel shall, at a minimum, visit participating schools to monitor for compliance with Program regulations and instructions, the Department's nondiscrimination regulations (7 CFR Parts 15, 15a and 15b), and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Each State agency shall establish a financial management system under which school food authorities shall account for all revenues and expenditures of their nonprofit school food service. The system shall prescribe the allowability of nonprofit school food service expenditures in accordance with this part, and, as applicable, 7 CFR Part 3015. The system shall permit determination of school food service net cash resources, and shall include any criteria for approval of net cash resources in excess of 3 months' average expenditures.

(b) *Commodity distribution information.* The State agency shall periodically assess school needs for donated foods under 7 CFR Part 250, notify the distributing agency of the schools' commodity needs, and recommend appropriate variations in rates of distribution. In assessing the commodity needs of schools, usage history and existing donated food inventories should be considered. As early as practicable each school year, but later than September 1, the State agency shall forward to the distributing agency and FNSRO an estimate of the average daily number of Program lunches to be served by school food authorities; an estimate of the average daily number of lunches to be served by commodity schools; and the amount of any cash payments in lieu of commodities for donated food processing and handling expenses to be received by or on behalf of commodity schools in accordance with § 240.5 of this chapter. That State agency shall promptly revise the information required by this paragraph to reflect additions or deletions of eligible schools and provide any necessary adjustment in the number of lunches served.

(c) *Fiscal action.* Fiscal action includes, but is not limited to, the recovery of overpayments through direct assessment or offset of future claims; disallowance of overclaims as reflected in unpaid Claims for Reimbursement; and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. State agencies are responsible for ensuring program integrity at the school food authority level. As such, they shall take fiscal

action against school food authorities for Claims for Reimbursement that are not properly payable under this part. In taking fiscal action, State agencies shall use their own procedures, within the constraints of this part, and shall maintain all records pertaining to action taken under this section. The State shall determine the extent of fiscal action based on the severity and longevity of the problems. The State agency may refer to FNS for assistance in making a claims determination under this paragraph.

(1) *AIMS.* When a State agency chooses to conduct AIMS reviews, as described in § 210.18(i), fiscal action may be taken on a first review: *except* fiscal action shall be taken when, under Performance Standard 3, the number of meals claimed for school food authority reimbursement has been incorrectly aggregated from individual school reports so that an excessive number of meals has been claimed. State agencies shall take fiscal action on the second review for any degree of violation of AIMS Performance Standards 2, 3 and 4. When a State agency chooses to conduct AIMS audits, as described in § 210.18(j), fiscal action shall be assessed for any degree of violation of Performance Standards 2, 3 and 4. When a State agency develops its own compliance monitoring system in accordance with § 210.18(n), fiscal action shall be taken in accordance with the criteria established under that system. The criteria shall be consistent in principle with the fiscal action requirements for AIMS reviews and audits as set forth in this section.

(2) *Failure to collect.* If a State agency fails to disallow a claim or recover an overpayment from a school food authority, as described in this section, FNS will notify the State agency that a claim may be assessed against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning overpayment. If after considering all available information, FNS determines that a claim is warranted, FNS will assess a claim in the amount of such overpayment against the State agency. If the State agency fails to pay any such demand for funds promptly, FNS will reduce the State agency's Letter of Credit by the sum due in accordance with FNS' existing offset procedures for Letter of Credit. In such event, the State agency shall provide the funds necessary to maintain Program operations at the level of earnings from a source other than the Program.

(3) *Interest charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit, interest will be charged against the State agency from the date the demand leter was sent, at the rate established by the Secretary of Treasury.

(4) *Use of recovered payment.* The amounts recovered by the State agency from school food authorities may be utilized during the fiscal year for which the funds were initially available, first, to make payments to school food authorities for the purposes of the Program; and second, to repay any State funds expended in the reimbursement of claims under the Program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

(5) *Exception.* In the event that the State agency finds, during a State review or State audit, that a school food authority is failing to meet the quantities for each food item required under the meal pattern in § 210.10, the State agency need not disallow payment or collect an overpayment arising out of such failure, if the State agency takes such other action as, in its opinion, will have a corrective effect.

(6) *Claims adjustment.* FNS will have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. FNS will also have the authority to waive such claims if FNS determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(d) *Management evaluations.* Each State agency shall provide FNS with full opportunity to conduct management evaluations of all State agency Program operations and shall provide OIG with full opportunity to conduct audits of all State agency Program operations. Each State agency shall make available its records, including records of the receipt and disbursement of funds under the Program and records of any claim compromised in accordance with paragraph (d)(1) of this section, upon a reasonable request by FNS, OIG, or the Comptroller General of the United States. FNS and OIG retain the right to visit schools and OIG also has the right to make audits of the records and operations of any school.

(1) *Disregard overpayment.* In conducting management evaluations or audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations, or procedure as a minimum amount for which claim will be made for State losses. However, no overpayment is to be disregarded where there are unpaid claims of the same fiscal year from which the overpayment can be deducted or there is substantial evidence of violations of criminal law or civil fraud statutes.

(2) *AIMS.* As a part of its management evaluation of a State agency, FNS will evaluate the State's progress in effectively meeting the AIMS requirements consistent with administrative responsibilities placed upon the State agency by this part.

(e) *Additional requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part.

### § 210.20 Reporting and recordkeeping.

(a) *Reporting summary.* Participating State agencies shall submit forms and reports to FNS to demonstrate compliance with Program requirements. The reports include but are not limited to:

(1) Requests for cash to make reimbursement payments to school food authorities as required under § 210.5(a);

(2) Information on the amounts of Federal Program funds expended and obligated to date (SF–269) as required under § 210.5(d);

(3) Statewide totals on Program participation (FNS–10) as required under § 210.5(d);

(4) Information on State funds provided by the State to meet the State matching requirements (FNS–13) specified under § 210.17(g);

(5) Names of school food authorities found in violation of AIMS performance standards on AIMS second reviews, together with information on the type and extent of violations, as required under § 210.18(l);

(6) Result of AIMS reviews/audits as required under § 210.18(l); and

(7) Results of the commodity preference survey and recommendations for commodity purchases as required under § 210.27(d).

(b) *Recordkeeping summary.* Participating State agencies are required to maintain records to demonstrate compliance with Program requirements. The records include but are not limited to:

(1) Accounting records and source documents to control the receipt,

custody and disbursement of Federal Program funds as required under § 210.5(a);

(2) Documentation supporting all school food authority claims paid by the State agency as required under § 210.5(d);

(3) Documentation to support the amount the State agency reported having used for State revenue matching as required under § 210.17(h);

(4) Records supporting the State agency's review of net cash resources as required under § 210.18(b);

(5) Reports on the results of investigations of complaints received or irregularities noted in connection with Program operations as required under § 210.18(e)

(6) Confirmation of a State agency's approval of a school food authority's AIMS corrective action plan as required under § 210.18(i) and records of all AIMS reviews and audits, including records of action taken to correct program deficiencies as required under § 210.18(m);

(7) State agency criteria, for selecting schools for AIMS reviews and small school food authorities for AIMS second reviews as required under § 210.18(m);

(8) Documentation of action taken to disallow improper claims submitted by school food authorities, as required by § 210.19(c) and as determined through claims processing, resulting from actions such as AIMS reviews, AIMS audits, and USDA audits;

(9) Records of USDA audit findings, State agency's and school food authorities' responses to them and of corrective action taken as required by § 210.22(a);

(10) Records pertaining to civil rights responsibilities as defined under § 210.23(b); and

(11) Records pertaining to the annual food preference survey of school food authorities as required by § 210.27(d).

## Subpart E—State Agency and School Food Authority Responsibilities

### § 210.21 Procurement.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR Part 3015 concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR Part 3015 do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency or school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, *provided that* procurements made with Program funds adhere to the standards set forth in 7 CFR Part 3015.

### § 210.22 Audits.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR Part 3015 concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) *Audit procedure.* These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in 7 CFR Part 3015.

### § 210.23 Other responsibilities.

(a) *Free and reduced price lunches.* State agencies and school food authorities shall ensure that lunches are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price lunches is to be made in accordance with 7 CFR Part 245.

(b) *Civil rights.* In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or handicap. State agencies and school food authorities shall comply with the requirements of: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR Parts 15, 15a, and 15b); and FNS Instruction 113–6.

(c) *Retention of records.* State agencies and school food authorities may retain necessary records in their original form or on microfilm. State agency records shall be retained for a period of 3 years after the date of submission of the final Financial Status Report for the fiscal year. School food authority records shall be retained for a period of 3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

## Subpart F—Additional Provisions

### § 210.24 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency shall apply these provisions to suspension or termination of the Program in school food authorities.

### § 210.25 Penalties.

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department, shall if such funds, assets, or property are of a value of $100 or more, be fined no more than $10,000 or imprisoned not more than 5 years or both; or if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever

receives, conceals, or retains for personal use or gain, funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties.

**§ 210.26 Educational prohibitions.**

In carrying out the provisions of the Act, neither the Department nor the State agency shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

**§ 210.27 State Food Distribution Advisory Council.**

(a) *Council composition.* Each State educational agency, in cooperation with the State distributing agency, shall establish a State Food Distribution (SFD) Advisory Council which is composed of at least five representatives, excluding ex officio representatives, of schools which participate in the Program in the State. The State should make every effort to appoint individuals who represent large urban public schools; small rural public schools; residential child care institutions; private schools; parent teacher organizations; students from junior or senior high schools; nutritionists; school administrators; and teachers. These representatives shall be appointed for not more than 3 years.

(b) *Council leadership.* The Chairman and Vice Chairman of the SFD Advisory Council shall be elected by members of the Council. The Chief State School Officer, or designee, shall be an ex officio member of the SFD Advisory Council acting in an advisory capacity and as a non-voting member. The Chief Officer of the State distributing agency which distributes USDA donated foods to schools within the State, or designee will be an ex officio member of the SFD Advisory Council, also acting in an advisory capacity and as a non-voting member. If the State educational agency and the State distributing agency are the same entity within the State, the ex officio member of the SFD Advisory Council shall be the Chief Food Distribution Officer of the State educational agency, or designee.

(c) *Council timeframe.* The Council shall meet at least once a year and shall report to the State educational agency and State distributing agency, if it is a different entity, no later than March 30 of each year, recommendations concerning the manner of selection and distribution of commodity assistance for the next school year. The State educational agency shall inform FNSRO of the Council's recommendations no later than April 30 of each year.

(d) *Council responsibilities.* Major responsibilites of the Council include providing the State educational and distributing agencies with information concerning the most desired foods and the least desired foods. This information shall be obtained in a survey of school food authorities within the State. The Council shall also advise the State educational and distributing agencies on the types and amounts of available donated food items to order, the preferred available package size, and donated foods school food authorities would like processed and desired end products. The Council may also advise the State educational and distributing agency on intra State distribution systems, delivery schedules, and State food distribution program operations. Recommendations for the Department regarding national purchasing practices, changes in donated food specifications and packaging improvements may also be included in the report.

(e) *State responsibilities.* In reporting the Council's recommendations to FNSRO, the State educational agency shall include the number of school food authorities providing the required information to the Council; the average daily number of lunches served by schools in these school food authorities during April of the previous year; and the average daily number of lunches served by all school food authorities within the State during April of the previous year.

(f) *State recordkeeping.* The State educational agency shall maintain records concerning the survey of school food authorities including, at a minimum, a description of survey methods and a copy of the format used to obtain food preferences; the name and address of each school food authority included in the survey; and a record of the data obtained from each school food authority.

(g) *Expenses.* The State educational agency may make payment for justified expenses incurred for or by the SFD Advisory Council from State Administrative Expense funds. In instances when State Administrative Expense funds are used, payments shall be made in accordance with Part 235 of this chapter. State agencies which are the same entity as the State distributing agency may also use food distribution assessment funds as provided for in § 250.6 (i) and (j) of this chapter. Members of the SFD Advisory Council shall serve without compensation. The State educational agency shall provide compensation for necessary travel and subsistence expenses incurred by Council members in the performance of Council duties. Parent and student participant members, in addition to necessary travel and subsistence expenses, shall be compensated for personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings. The State educational agency shall establish a system whereby expenses are paid in advance for any member who indicates that they cannot financially afford to meet any of the allowed expenses. In instances where members can meet these expenses, a reimbursement shall be provided in a timely manner.

**§ 210.28 Regional office addresses.**

School food authorities desiring information concerning the Program should write to their State educational agency or to the appropriate Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer

Corporate Park, Corporate Boulevard, CN 02150, Trenton, New Jersey 08650.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

**§ 210.23 OMB control numbers.**

The following control numbers have been assigned to the information collection requirements in 7 CFR Part 210 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

| 7 CFR section where requirements are described | Current OMB control No. |
|---|---|
| 210.3(b) | 0584-0327 |
| 210.5(d) | 0584-0006 |
| 210.5(d)(1) | 0584-0002 |
| 210.5(d)(2) | 0584-0341 |
| 210.5(d)(3) | 0584-0341 |
| 210.6(b) | 0584-0006 |
| 210.8 | 0584-0006 |
| | 0584-0284 |
| 210.9 | 0584-0006 |
| | 0584-0026 |
| | 0584-0329 |
| 210.10(b) | 0584-0006 |
| 210.10(f)(1) | 0584-0006 |
| 210.14(c) | 0584-0006 |
| 210.16 | 0584-0006 |
| 210.17 | 0584-0006 |
| 210.17(g) | 0584-0075 |
| 210.18 | 0584-0006 |
| 210.19 | 0584-0006 |
| 210.22 | 0584-0006 |
| 210.23(c) | 0584-0006 |
| 210.24 | 0584-0006 |
| 210.27 | 0584-0006 |

2. In Part 210, Appendix A thru C as published on September 30, 1986 (51 FR 4864), are adopted as final with the following changes:

a. In Appendix A—Alternate Food For Meals—Enriched Macaroni Products With Fortified Protein, paragraph 3.(b)(1) is amended by removing the word "thiamin" and adding, in its place, "thiamine".

b. In Appendix A—Alternate Food For Meals—Cheese Alternate Products, in the chart contained in paragraph 3.(c), the word "Thiamin" in the Nutrient column is removed and "Thiamine" is added.

c. In Appendix A—Alternate Food For Meals—Vegetable Protein Products, paragraph 1. introductory text, paragraph 1.(d), paragraph 1.(e) and paragraph 3., is amended by removing the citations "§ 225.10 or § 226.21" and adding, in their place, "§ 225.20 or § 226.20".

d. In Appendix A—Alternate Food For Meals—Vegetable Protein Products, paragraph 2.(b)(1) is amended by removing the word "flour," and adding, in its place "——— flour,".

e. In Appendix A—Alternate Food For Meals—Vegetable Protein Products, in the chart contained in paragraph 2.(e)(3), "1.5" in the Amount column corresponding to Magnesium is removed and "1.15" is added.

f. In Appendix C—Child Nutrition Labeling Program, paragraph 2.(a), paragraph 3.(c)(2) and paragraph 6., is amended by removing the citation "§ 225.21" and adding, in its place, "§ 225.20".

Dated: July 20, 1988.

**Anna Kondratas,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 88-17196 Filed 8-1-88; 8:45 am]

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Part IV

# Environmental Protection Agency

**40 CFR Part 248**

**Guideline for Procurement of Building Insulation Products Containing Recovered Materials; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 248**

**[SWH-FRL 3409-8]**

## Guideline for Procurement of Building Insulation Products Containing Recovered Materials

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today is proposing a guideline for Federal procurement of certain insulation products containing recovered materials. The guideline would implement section 6002(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), which requires EPA: (1) To designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated an item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable. This guideline designates building insulation products as products for which the procurement requirements of RCRA section 6002 apply. The guideline also contains recommendations for implementing the section 6002 procurement requirements as well as the requirements for revising specifications.

**DATE:** EPA will accept public comments on this proposed guideline until September 1, 1988.

**ADDRESS:** Comments on this proposed guideline should be addressed to the EPA RCRA Docket Clerk, Office of Solid Waste, WH-562, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should identify the docket number, which is F-88-PIPP-FFFFF.

The public docket is available for viewing in Room LG-100, U.S. EPA, 401 M Street, SW., Washington, DC from 9:00 AM to 4:00 PM, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 is free.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382-4502.

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## I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

## II. Introduction

### *A. Purpose and Scope*

The Environmental Protection Agency (EPA) is today proposing one in a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a procuring agency, defined as any Federal agency or any State or local procuring agency which is using appropriated Federal funds, purchases certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR Part 249). EPA issued a second guideline, for paper and

paper products containing recovered materials, on October 6, 1987 (52 FR 37293; 40 CFR Part 250) with concurrently proposed amendments (52 FR 37335). A revised final paper guideline was promulgated on June 22, 1988 (53 FR 23546). EPA promulgated a final guideline for lubricating oils containing re-refined oil on June 30, 1988 (53 FR 24699). A guideline for asphalt materials containing ground tire rubber was proposed on February 20, 1986 (51 FR 6202), while a guideline for retread tires was proposed on May 2, 1988 (53 FR 15624).

This preamble describes the requirements for Section 6002, explains the basis for designating building insulation products as procurement items subject to section 6002, and discusses the provisions of the proposed guideline. It also provides information regarding the price, availability, and performance of building insulation products.

*B. Requirements of Section 6002*

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies which use appropriated Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

Section 6002(c) requires procuring agencies to obtain from vendors an estimate of and certification regarding the percentage of recovered materials contained in their products. Federal agencies responsible for drafting or reviewing specifications for procurement items were required under section 6002(d)(1) to review and revise them by May 8, 1986 in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, within one year from the date of publication of a procurement guideline by EPA, the Federal agencies must revise their specifications to require the use of recovered materials in such items to the maximum extent possible without affecting the intended use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616) added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable, be consistent with applicable provisions of Federal procurement law, and contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designed to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability. In addition, Federal procurement guidelines can provide guidance to state and local governments interested in procuring products containing recovered materials, and Federal procurement of such products is expected to result in increased procurement by these agencies as well.

*C. Criteria for Selection of Procurement Items*

In the preamble to the fly ash guidelines, EPA established the following four criteria for the selection of procurement items for which guidelines will be prepared (48 FR 4231-4232, January 28, 1983);

(1) The waste material must constitute a significant solid waste management program due either to volume, degree of hazard, or difficulties in disposal;

(2) Economic methods of separation and recovery must exist;

(3) The material must have technically proven uses; and

(4) The Federal government's ability to affect purchasing or use of the final product or recovered material must be substantial.

These criteria incorporate all of the factors which section 6002(e) requires EPA to consider in designating items subject to the section 6002 procurement requirements.

Section III of this preamble demonstrates that building insulation products made with recovered materials meet the criteria for designation. Industrial byproducts currently used to produce building insulation products are also discussed in more detail.

*D. Background Information on Insulation Products Containing Recovered Materials*

1. *Introduction to Insulation.* There are many applications for insulation, including building insulation to provide human comfort, equipment insulation, pipe insulation, and refrigeration or cold storage insulation. Building insulation accounts for by far the largest volume of insulation manufactured and is least likely to require specialty products or materials for special insulation purposes. Moreover, the building insulation market is dominated by products which can and often do contain recovered materials.

In this guideline, "building insulation", "building insulation products", and "insulation products" all refer to the insulation uses and product types that follow.

*Building insulation* refers to a material, primarily designed to resist heat flow, which is installed between the conditioned (heated and/or mechanically cooled) volume of a building and adjacent, unconditioned volumes or the outside. This term includes but is not limited to products such as blanket, board, spray-in-place, and loose-fill insulation

Locations suitable for the installation of building insulation include but are not limited to ceilings, floors, foundations, and walls. Ceiling insulation is used between the conditioned area of a building and an unconditioned attic, in common ceiling floor assemblies between separately conditioned units in multi-unit structures, and between the underside and upperside of the roof where the conditioned area of a building extends to the roofs. Floor insulation is used between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it; and around the perimeter of or on a ground level concrete slab where the first level conditioned area of a building is on a slab. Foundation insulation is used at foundation walls between conditioned volumes and unconditioned volumes and the outside or surrounding earth, at the perimeters

of concrete slab-on-grade foundations, and at common foundation wall assemblies between conditioned basement volumes. Wall insulation is used within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside, and in common wall assembles between separately conditioned units in multiple unit structures.

The principal categories of insulating materials are fiberglass, plastic rigid foams (polyurethane, polyisocyanurate, polystyrene, and phenolic), rock wool, and cellulose. These materials are sometimes used in combination in composite products. Insulation products made from these materials dominate the insulation market and are the primary focus of this guideline.

There also are specialty materials, principally calcium silicate, vermiculite, and perlite, used for insulation products. These materials are virgin minerals which are neither practical nor economical to recover for recycling, and they represent a relatively small part of the insulation market. These minerals, as well as other specialty materials, however, can also be mixed in composite products with other materials which can contain recovered materials.

The primary factors in the choice of insulating material are thermal resistance (R-value); performance standards; price; availability; life-cycle cost considering the installed cost of insulation in relation to the estimated reduction in energy cost over the life of the product in use; flammability; corrosiveness of the insulating materials to metallic building components; ease and cost of installation; durability; resistance to moisture absorption; strength; retention of insulating value with time; the dimensions of and access to the space to the insulated and the thickness of the insulation desired.

The process of selecting appropriate thermal insulation for buildings may be broken down in steps as follows:

1. The building type and function is first established, with a view to local, national or government codes and standards requirements. Of particular importance are fire safety and life safety considerations, which affect necessary insulation characteristics, such as insulation flamespread and potential smoke or off-gassing of ignited or smoldering insulation.

2. The preliminary design of the exterior building envelope is examined, in relation to the appropriate insulation form and the availability of space for the insulation, within the anticipated exterior building assemblies. At this point, a preliminary decision may be made as to whether loose fill, flexible blanket, or rigid materials (or combinations of these) will be finally selected. Thermal resistance (R-value) requirements are then finalized, coordinating these as necessary to dimensions and other considerations such as codes.

3. Installation requirements are then considered. Does the insulation require additional support, installed by other skilled workers? Is some form of facing or covering material required for fire safety? Will the workers normally installing the insulation be familiar with the material specified and how it should be placed? Will scheduling of other workers be affected? What level of supervision or inspection is necessary? Other installation considerations may apply, depending on the size and complexity of the building.

4. The level of material and installation costs to be expected is estimated, both as a flat figure and in relation to anticipated building heating and cooling requirements. Installation costs should include all ancillary costs as outlined above.

5. Material specification compliance with code or owner requirements are checked, and provision of certificates of compliance, as appropriate, is added as a specification clause.

6. Specification sections, covering necessary inspections, clean-up and any other prepayment requirements are added, as desired.

2. *Types of Recovered Materials Used.* At present, several of the major types of insulation are commercially available with recovered materials content, as defined by RCRA section 1004(19):

> The term 'recovered material' means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

Some types of insulation are produced using postconsumer materials as feedstocks.[1] An example of this is cellulose insulation, which is made from old newspaper. Others rely on recovered byproducts as feedstocks, such as rock wool insulation, which is primarily made from slags from smelting processes. Fiberglass manufacturers use waste glass from other industries. Plastic foam insulation is made with chemical byproducts, such as dimethyl terepthalate (DMT), which would otherwise be disposed.

3. *The Insulation Industry.* The following information puts the insulation industry in perspective. The national energy conservation movement caused the insulation industry to grow substantially until 1984. From 1984 to the present, the insulation industry has shown little or no growth. According to the estimated market share based on dollar volume, fiberglass is the predominant insulation material (68 percent), followed by rigid plastic foams (21 percent), rock wool (3 percent), cellulose (3 percent) and all other types including vermiculite, perlite and other specialties (5 percent). Recently, rock wool and fiberglass have lost the greatest share of the market, while plastic foams have been growing most substantially.

During the energy crunch of the late 70s, producers of fiberglass and mineral wool were not able to meet demand. From the mid-70s to the early 80s, fiberglass slipped from 85 percent of the market to around 70 percent, losing market share to cellulose and foam plastics. Neither fiberglass nor rock wool have recovered their market positions.

Cellulose fiber plants expanded from 98 in 1973 to 750 in 1978, but the industry contracted severely after 1977, losing 60 percent of production capacity by 1984.

An estimate of the 1986 total dollar volume of building insulation at manufacturer's net price is $2,901,090,000 as shown in Table 1.

TABLE 1.—1986 SALES OF INSULATION

| | |
|---|---|
| Commercial and industrial roofs | $1,150,000,000 |
| Residential building | 825,000,000 |
| Attic | 340,000,000 |
| Cavity | 220,000,000 |
| Sheathing | 165,000,000 |
| Slab and basement | 100,000,000 |
| Residential retrofit | 666,090,000 |
| Non-residential building | 260,000,000 |
| Cavity | 225,000,000 |
| Slab and foundation | 35,000,000 |
| Total | 2,901,090,000 |

Source: Hull & Company and A.W. Johnson.

[1] "Postconsumer material" is not defined in RCRA. The term is defined in various State and local solid waste management laws, however. For example, the following definition from the State of New Jersey Mandatory Statewise Source Separation and Recycling Act, Pub. L. 1987, Chapter 2, section 2, has been used as a model by other governments:

> Postconsumer waste material means any product generated by a business or a consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling or disposition, and which does not include secondary waste material * * *
>
> "Secondary waste material" refers to preconsumer materials such as manufacturing wastes, industrial byproducts, or other wastes resulting from the production of an end use product.

Although there are numerous estimates of relative market share by insulation material, these are not consistently broken down between residential, commercial and industrial uses. Morever, because government funds are used for all types of construction, distinctions between uses have not been considered necessary.

### III. Rationale for Designating Building Insulation Products

This section of the preamble demonstrates that building insulation products satisfy EPA's criteria for designating items subject to the procurement requirements of RCRA section 6002.

#### *A. Significant Solid Waste Disposal Problem*

The first criterion is that the waste material constitutes a significant solid waste management problem. The waste materials of immediate concern is the production of building insulation are postconsumer newspaper, container glass, and plastics. Each material represents a significant fraction of the municipal solid waste stream as shown by the data in Table 2. In addition, metallurgical slags and certain chemicals are industrial byproducts which would contribute to the industrial waste stream if they were not used in products like insulation. Some manufacturing wastes, such as plate glass and plastics, raise the same concerns. Although use of these byproducts and manufacturing wastes is already substantial, concerns remain about the contribution of the unrecycled portion to the industrial waste stream because of the large quantity of material involved. In every case, the management problems deal with quantity, not toxicity, of the recyclable materials.

TABLE 2.—SELECTED ITEMS IN THE MUNICIPAL SOLID WASTE STREAM

[In percent of total discards and thousands of tons]

| | Total discards | Newspaper | Glass containers | Plastic containers |
|---|---|---|---|---|
| 1980 | 125,700 | | | |
| Percent of total | | 6.5 | 10.5 | 1.7 |
| Tons per year | | 8,100 | 13,200 | 2,100 |
| 1982 | 124,900 | | | |
| Percent of total | | 6.1 | 10.2 | 1.6 |
| Tons per year | | 7,600 | 12,800 | 2,000 |
| 1984 | 133,000 | | | |
| Percent of total | | 6.7 | 8.9 | 1.8 |
| Tons per year | | 9,000 | 11,800 | 2,400 |
| 1990 | 141,400 | | | |
| Percent of total | | 6.7 | 8.0 | 2.1 |
| Tons per year | | 9,700 | 11,300 | 2,900 |
| 1995 | 149,900 | | | |
| Percent of total | | 7.0 | 7.4 | 2.3 |
| Tons per year | | 10,500 | 11,100 | 3,400 |
| 2000 | 158,800 | | | |
| Percent of total | | 7.2 | 6.8 | 2.5 |
| Tons per year | | 11,400 | 10,800 | 3,900 |

Note.—Total discards are net of materials recovery prior to disposal but do not reflect energy recovery. Municipal solid waste consumed for energy recovery is estimated to grow from 2,700,000 tons in 1980 to 32,000,000 tons in 2000.
Source: Franklin Associates, Ltd.

Each of the solid waste categories shown in Table 2 result from different industries and are used in different insulation materials. Therefore each category is discussed separately.

1. *Newspaper.* Newspaper is the most easily recycled material in the residential waste stream and therefore is targeted for collection most frequently. Problems of oversupply of recycled old newspaper have appeared on the East Coast. The number of recycling programs mandated by municipal and State requirements nationwide that are currently in place or in the planning stages suggests that the oversupply problem may become severe nationwide in the near future.

The category "old newspaper" contains overissue newspapers (newspapers unsold to the public which do not always enter the municipal waste stream) and postconsumer newspaper. Old newspaper is primarily consumed by the paper industry for a variety of recycled paper products and by the cellulose insulation industry. Substantial quantities are also exported out of the country.

In 1983, actual demand for old newspaper, including demand from the paper industry, exporters, and the cellulose insulation industry was 3.67 million short tons. Estimated 1984, 1985, 1986 and 1987 demand was 3.93 million, 3.96 million, 4.23 million, and 4.58 million short tons, respectively. The estimated growth in demand from 1983 to 1987 was therefore 915,700 short tons or 24.9 percent.

To compare demand with supply, total United States and Canadian production capacity for newsprint in 1985 was 16.58 million short tons, with consumption of newsprint by United States publishers being 13.1 million short tons in 1986. In 1987, the newsprint industry announced a production capacity expanion of 1.63 million short tons to be in place by 1990, approximately a 10 percent increase, with 338,000 tons of this new capacity to be produced from old newspaper.

In 1986, unused old newspaper supply (total U.S. newsprint consumption less demand for old newspaper) was 8.71 million short tons. Assuming newspaper quickly enters the waste flow, the 1986 national recovery efforts represented just under 33 percent of available supplies. National recovery of a feasible 50 percent of available supplies would recycle an additional 2.32 million tons. Assuming all factors remain the same, this would require an increase in demand for old newspapers of 55 percent over 1986 levels. This is more than twice the growth in demand for the past four years. The new North American production capacity which is expected to be on line by late 1990 would raise the necessary growth rate in old newspaper use to over 65 percent in order to achieve the same 50 percent recovery rate.

2. *Glass.* The largest volume of waste glass in the solid waste stream comes from containers. According to industry

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spokesmen, recycling of glass has increased, with glass container plants currently using an average of 20 to 30 percent of cullet [2] in their mix. Some plants use considerably higher percentages if the cullet is readily available.

U.S. Department of Commerce data on container production shows that 309 million gross containers with a net packed weight of 12.7 million tons were produced in 1982. In 1985 and 1986, production was 273 million and 283 million gross with net packed weight of 11.10 million and 11 million tons, respectively. The increase in container quantities may be due to the stronger economy or to increased use of glass in microwave, wine cooler and other specialty containers.

According to 1982 Census of Manufacturers data, the glass container industry consumed 1.66 million tons of glass cullet (in-plant, pre- and post-consumer) and 13.82 million tons of other materials, including 8 million tons of sand. This represents 11 percent cullet to the total feedstocks. If all documented 1982 cullet consumption in the container industry was postconsumer glass, an unlikely assumption, it would have represented only 13 percent of potential postconsumer cullet supplies, which as previously stated, were 12.7 million tons.

Another use of postconsumer bottle cullet, as a substitute aggregate in asphalt paving, has been explored since the 1960s. Experimentation has increased in the 1980s and this use appears to be very promising. However, no data exist for the quantities of cullet in current use nor for the potential demand if "glassphalt" becomes a common paving practice.

As of January 1988, it was not difficult to find buyers for postconsumer bottle cullet within reasonable transportation radii. The container industry, using existing equipment, is capable and willing to double its consumption. The only limitation is lack of supplies that are consistent in quantity and quality. The market for postconsumer bottle cullet will also increase as "glassphalt" is used more commonly.

Published data on preconsumer (or manufacturing waste glass including flat and window glass, table and cookware and so on) which is brokered to other users is not available. The glass processing industry estimates that approximately 500,000 tons per year changes hands. Such waste glass, with the exception of automotive windshield wastes which are very difficult to process, enter the waste disposal system only when consumers of cullet are beyond economic transportation distances.

3. *Plastic.* Plastics have increased steadily in the waste stream according to data presented in the EPA waste characterization report.[3] Plastic disposal grew from 0.5 million tons in 1960 to 9.6 million tons in 1984 or 7 percent of total residential waste. Plastics are expected to increase to 10 percent of the waste in the year 2000. Although many types of plastic are included in the general trend, polyethylene terephthalate (PET), polystyrene (PS), and manufacturing wastes (DMT and phthalic anhydride bottoms) were analyzed for solid waste management impacts because they are the only recovered plastics apt to be used in insulation products.

Data from the U.S. Department of Commerce's Bureau of Trade indicates that PET use is growing faster than other plastic container resins. From 1985 to 1986, PET use grew 37.5 percent compared with high density polyethylene (12.9 percent), low and medium density polyethylene (25.9 percent), polypropylene (4.8 percent), polyvinyl chloride (9.5 percent), polystyrene and others (29.4 percent). The quantity of PS in containers is small, and miscellaneous other resins are included in the data. The rapid growth in PET use is presented in Table 3.

TABLE 3.—CONSUMPTION OF PET IN PLASTIC BOTTLE MATERIALS

| Year | Million lbs. | Tons | Percent growth |
|---|---|---|---|
| 1983 | 420.5 | 210,250 | |
| 1984 | 452.0 | 226,000 | 7%. |
| 1985 | 480.0 | 240,000 | 6% estimate. |
| 1986 | 660.0 | 330,000 | 37.5% estimate. |
| 1987 | 800.0 | 400,000 | 21% forecast. |

Source: U.S. Department of Commerce.

There are two types of postconsumer PET easily available, containers and used film stock. Industry sources state that PET production for packaging is approaching 1 billion pounds per year with approximately 150 million pounds (or 15 percent) currently recycled. The industry is targeting 2 billion pounds of PET for packaging by 1990. All film stock, including x-ray, photographic and micrographic, is extruded PET. According to industry sources, approximately 600 million pounds of PET film stock is producted annually. About one third, or 200 million pounds, is x-ray film. While specific data on disposal of used x-ray film is not gathered, one source stated that approximately 200 million pounds of used x-ray film is disposed of annually, of which about 10 percent or 20 million pounds is recycled.

In addition to postconsumer plastic bottles and film, an average of 5 percent of every type of plastic resin production becomes manufacturers' or industrial waste plastic annually. Polyester resin production was 6.3 billion pounds in 1985. The amount of manufacturer's polyester waste generated in 1985 was estimated to be 315 million pounds. Total supplies of recyclable PET from bottles, x-ray film and industrial wastes can be roughly estimated to be 1.25 billion pounds annually.

The Society of the Plastics Industry reported 1986 production of PS resin to be 4.47 billion pounds. Approximately 1.36 billion pounds were produced for packaging and 418 million pounds for building construction. Production capacity was reported to be 5.39 billion pounds.

Recycling of postconsumer PS from the municipal waste stream has not been attempted and data on manufacturers' waste PS is not gathered. For 1986, industrial waste was estimated to be 5 percent of production or 223.5 million pounds. Manufacturing waste PS is regularly brokered.

EPA has identified another industrial waste that could be used to produce plastic rigid foam insulation, DMT. Bottoms are the heavy fraction, or residue, from plastics production, which may or may not have recoverable materials. An EPA data base of plastic industry waste products suggests that DMT wastes that potentially had value were not recovered for sale in 1981; this data base contained only a partial sample of 1981 data, however. Those DMT wastes with value were recovered for internal use or were burned to extract energy value. DMT wastes without apparent value (e.g., very dilute) did not appear to be recovered at all but were disposed in a variety of ways.

Phthalic anhydride bottoms may also be used, but this has not been documented nor are quantity data and information on phthalic anhydride wastes currently available from the EPA data base.

[2] Crushed or processed waste glass is called cullet. In-plant manufacturing waste (home scrap) is also called cullet and has always been used in the glass container and fiberglass industries. However, unless otherwise noted, references to cullet throughout this preamble and guideline refer only to pre- and postconsumer waste glass in accordance with the RCRA definition of recovered materials.

[3] Office of Solid Waste, U.S. Environmental Protection Agency, *Characterization of Municipal Solid Waste in the United States, 1960 to 2000 (Update 1988)*, Franklin Associates, Ltd., March 30, 1988.

4. *Slag.* Slag is a by-product from blast furnaces and other metal smelting processes. According to the National Slag Association, metallurgical slags from the production of iron and steel do not represent a significant solid waste management problem. Stockpiles are said to be used efficiently in most, though not all, parts of the country. Iron-blast-furnace slag (the general term) sold or used totaled 15.4 million short tons in 1986, of which 88 percent or 13.5 million tons were air-cooled iron blast furnace slag. Road construction materials, such as road base and substitute aggregates in concrete and asphalt, absorbed 81 percent of the total supply. Rock wool manufacturers purchased 519,000 short tons, or 3.8 percent of the air-cooled iron blast furnace slag. According to recent Bureau of Mines data, purchases of slag for rock wool fell from 617,000 short tons in 1985 to 519,000 short tons in 1986.

Based on current data, EPA believes that the major volumes of metallurgical slags are recycled and do not currently represent a nationwide solid waste management problem. However, increased iron and steel production, increasing competition from other recovered materials in roadbuilding, and changes in the national economy could adversely affect the balance of supply and demand for metallurgical slags in the future with a resulting impact on solid waste disposal.

5. *Conclusions.* EPA concludes that newspaper and plastics (PET and PS) in the municipal waste stream represent solid waste management problems based on quantity. Supplies of postconsumer glass are currently used efficiently, and the container industry is capable of doubling its consumption of postconsumer cullet. Manufacturing wastes (such as plate glass and plastic scrap) as well as industrial byproducts (such as metallurgical slags and chemical bottoms), which qualify under the RCRA definition of recovered materials, would also represent solid waste management problems based on quantity if current markets are interrupted.

*B. Feasible Methods of Recovery*

The second EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA Section 6002 is the existence of economic methods of separation and recovery.

Source separation programs in operation and in the planning stages all target newspaper and container glass, and some target container plastics (particularly PET in bottle bill states). Materials are picked up through curb-side collection programs, drop-off centers, charity drives and so on. There is no national count of such recycling programs, but in some states they are as many as 200 local programs. More programs are being implemented each year. Government-sponsored collection programs are being subsidized because state-sponsored economic analyses have indicated that recycling is less expensive than other disposal options.

Three states and one city (Rhode Island, New Jersey, Connecticut and Philadelphia), passed mandatory recycling legislation by the end of 1987. Numerous municipalities and counties around the country have passed similar local legislation. There also is a healthy system of brokers for materials collected by source separation programs as well as all types of manufacturers' waste materials.

1. *Newspaper.* Recycling programs mandated by municipal and State laws always target postconsumer newspaper because it is one of the easiest materials to collect. The waste paper brokerage system handles a large proportion of this postconsumer newspaper as well as the pre-consumer or overissue waste newspaper.

Recovery rates in the two leading states have set precedents that others are trying to equal. New Jersey, according to the American Paper Institute (API), recovered 207,134 tons of old newspaper in 1983. API estimated the total recoverable tonnage to be 370,000 tons and the 1983 recovery rate to be 56 percent. The average recovery rate for the nation was 30 percent the same year. Oregon, with excellent markets for old newspaper, has achieved a recovery rate of 75 percent according to the Oregon Department of Environmental Quality.

2. *Glass.* The Glass Packaging Institute reported in 1987 that seventeen non-bottle bill states and the District of Columbia have joined individual state or joint state associations to foster collection of glass containers and publicize redemption centers. For example, the Pennsylvania Glass Recycling Corporation publishes a newsletter that listed forty-three "glass for cash" centers within the state in 1987. Beverage Industry Recycling Programs serve some of the same non-bottle bill states as well as three others. In addition, ten bottle bill states have developed glass collection and processing systems. The EPA waste characterization report estimated that 1.25 million tons of glass were recycled in 1986, just under ten percent of the available supply. This compares with 368,000 tons or barely three percent ten years earlier.

Processing centers have been established in both bottle bill and non-bottle bill states to crush and clean glass to market specifications. A new center in Pennsylvania opened in the summer of 1987 with annual processing capacity of over 100,000 tons per year. The center is operated by a private company with 17 other glass processing facilities and depots around the country. Other privately owned and operated glass processing facilities exist nationwide. While national data is not gathered on the numbers of these facilities nor the quantities of cullet they handle, new processing centers, both public and private, are opening in urban areas all around the country.

The container glass industry requires bottle cullet to be color-sorted, a labor intensive process which either requires citizens to do the color separating or requires hand sorting lines at the processing centers. Mixed-color cullet is suitable for aggregate substitute in "glassphalt". THe fiberglass industry has accepted color-mixed cullet in the past, although fiberglass furnaces are much more sensitive than container furnaces to contaminants such as carbon, plastics and metals. Recycling programs are being proposed and implemented that stress quantity over color separation. If sufficient demand develops for color-mixed cullet, it should become available because it is less expensive to collect and process. The technology has already been developed to prepare cullet for aggregate substitutes. Additional processing to remove contaminants and prepare color-mixed cullet to fiberglass industry specifications is more complex and therefore more expensive. However, processing lines will be developed if supplies of postconsumer cullet are greater than other markets can absorb.

3. *Plastic.* Postconsumer PET containers are recovered primarily in the bottle bill states, although some additional state and local governments are planning collection for PET and other plastic containers. According to the EPA waste characterization report, 63,000 tons of soft drink bottles (PET with high density polyethylene (HDPE) base cups) were recovered in 1984 from collection in bottle bill states. This represented 18 percent of national production and 1 percent of gross plastic discards.

Used x-ray film and other film stock is processed to recover silver nitrate and other metals, then is disposed or routed for further contaminant removal and sale or to disposal facilities. At least one company has been established to decontaminate x-ray plastics and

market clean PET film scrap. In 1987, throughput at this mill was about 6 million pounds per year. The design capacity for the mill is 48 million pounds (or 24,000 short tons) per year. This capacity represents approximately 25 percent of the estimated used x-ray stock.

Postconsumer PS is not currently recovered for recycling. Although data is not gathered systematically for manufacturing waste PS, one broker roughly estimated that 200 million pounds of crystalline and foam PS are purchased and sold in some form to other users. If waste PS can be accumulated in 40,000 pound truckloads, and if these wastes meet specifications for contamination, users can be found.

The network of waste plastic brokers will handle any plastic waste for which it can find an economically feasible market. This entails a market value high enough to cover the costs of processing and transportation.

The DMT bottoms are definitely in commercial use and therefore must be economically feasible to recover as explained above. The use of phthalic anhydride bottoms has not yet been documented.

4. *Slag.* Metallurgical slag is used as an aggregate substitute in road construction and as the raw material for most rock wool insulation made in the United States. Collection and transportation of this industrial byproduct appears to be well established.

5. *Conclusions.* EPA has concluded that feasible recovery methods exist for postconsumer newspaper, glass, and PET plastics. The industrial byproducts, slag and DMT bottoms, as well as preconsumer, or manufacturing waste, PET and PS, are also recovered efficiently.

*C. Technically Proven Uses*

The third EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA Section 6002 is that the material has technically proven uses in the designated items. Recovered materials are currently commercially acceptable feedstocks in five types of insulating materials covered by the guideline proposed today: cellulose, composites, fiberglass, plastic rigid foam, and rock wool.

1. *Cellulose.* There are two types of cellulose insulation products—cellulose insulation and cellulose fiberboard.

a. *Cellulose loose-fill and spray-on insulation.* Cellulose insulation is made from approximately 75 percent waste paper; the remaining portion consists of chemicals to retard flammability and to deter insects and pests. While there is some spray-on cellulose insulation made from waste paper, the industry predominately makes loose-fill insulation which is blown into walls and attics.

Cellulose insulation comprises about 3 percent of the insulation market according to a 1987 industry estimate. The cellulose insulation produced in 1984 consumed approximately 480,000 tons of recycled paper. More recent data has not been obtained.

The Department of Commerce listed 371 manufacturers of cellulose insulation in 1983. Four years later, in July 1987, the Cellulose Industry Standards Enforcement Program (CISEP) identified 138 active firms. This indicates continued shrinkage in the cellulose insulation industry. Thirteen of the companies identified by CISEP produced approximately 20 percent of the cellulose insulation manufactured in 1987. Cellulose insulation manufacturers are located all across the country; consequently availability to procurement agencies should present no problems.

b. *Cellulose fiberboard.* A range of fiberboards are made with postconsumer recovered paper, which provides short fibers that complement longer, coarser fibers from wood. Some boards are made entirely from postconsumer paper. Cellulose fiberboards are made in panels of varying thicknesses. They are often called insulating boards, although they are used for structural reasons as well as for their insulation properties. The American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) includes two paper-based categories under the general term vegetable fiberboard: "Laminated paperboard" and "homogenous board from repulped paper". R-value, according to ASHRAE, is about 2.

Cellulosic fiberboard, a related product, is predominantly made with wood fibers, and is more frequently identified as a structural product. EPA was unable to determine whether any or all cellulosic fiberboards contain postconsumer recovered paper. Therefore, EPA solicits comments on whether the category "cellulosic fiberboard" as defined by the American Society of Testing and Materials (ASTM) can be produced with postconsumer recovered paper.

Manufacturers of cellulose fiberboards no longer have a trade association, and data regarding market share is not available. The American Paper Institute groups data about "insulating boards" within the construction paper and board category. Estimated production of insulating board for 1986 to 1989 remained flat at 1,178,000 short tons. The entire construction paper and board category was estimated at 2.2 million short tons, with estimated consumption of recovered paper materials growing from 929,000 short tons in 1986 to just over 1 million short tons in 1989. The recovered paper feedstocks were predominantly postconsumer newspaper, mixed paper and corrugated. There is no estimate of recovered paper consumption for insulating boards alone.

At least one company, Homasote, uses 100 percent postconsumer recovered paper material in its products. This was not true for all other companies. One uses preconsumer kraft paper trimmings, others use a proportion of posteconsumer paper with virgin ingredients such as wood fibers, binders, waxes, clays, starches and so on.

2. *Perlite Insulation Board.* Some composite boards are made with expanded perlite aggregate (a virgin mineral), small amounts of selected binders, and waste newsapers. The materials are mixed together and formed into rigid, flat, rectangular units which may have facings on one or both sides according to the ASTM C–728–82 standard specification. Perlite board is primarily used for commerical- and industrial-type roof insulation. Market growth for this specialty product follows growth in the gross national product and is expected to remain at 1987 levels for the next few years.

Approximately 0.2 pounds of newspaper is used per board foot of the finished product. Approximately 500 million board feet were produced in 1987 by the only two known manufacturers, consuming about 50,000 tons of waste newspaper. The percentage of newspaper to other ingredients varies from 23 percent to 30 percent according to individual product characteristics, with the average about 24 percent. Product availability to government procuring agencies is limited only because it is manufactured by just two companies.

3. *Fiberglass Insulation.* Fiberglass insulation is primarily made from sand, limestone, soda ash, and boron. There are other material added to product mixes in small quantities. The materials are melted together and spun into filaments called "batt". Cullet is a substitute for sand, limestone, and soda ash. Boron, the most expensive primary ingredient, is not contained in bottle or plate glass cullet.

Recovered materials used in fiberglass insulation products include

pre-consumer waste glass from other manufacturing processes, such as plate glass, container glass, transition cullet (material from glass furnaces produced while mixes are being changed), as well as postconsumer bottle cullet in isolated instances. Home scrap (scrap produced in the fiberglass manufacturing process) is always consumed by the generator. Mixed-color waste glass can be used by the fiberglass industry if the mixtures are consistent batch to batch. However, green and amber bottle cullet introduces trace metals used to create the colors which can cause difficulties in fiberglass furnaces. Variations in quantities of the colors change the characteristics of melt, and therefore require costly process adjustments.

Some manufacturers have stated that there are production advantages in using recycled glass. Melting cullet instead of melting virgin materials provides a 10–15 percent energy savings, and use of cullet can speed up production lines, increasing the production rate. At least one fiberglass plant was using 40 percent or more recycled material in 1986, including postconsumer bottle cullet. However, this is not common to the industry nor consistently done within the parent company.

Other manufacturers dispute this finding; they generally consider bottle cullet to be an unacceptable feedstock for a number of reasons. First, and most important, it is not consistently available, which would interrupt long term contracts from feedstock suppliers of limestone, soda ash and sand. Long term contracts for feedstocks tend to stabilize the costs of production and assure preferred customer status in times of raw material scarcity. Second, as discussed above, batches of postconsumer mixed-color bottle cullet do not consistently contain the same percentages of individual colors which causes processing disruptions. Third, price is a restraint on using bottle cullet. At 1986 costs of production, a price of $.02–.025 per pound ($40–$50 per ton) for green glass cullet was said to be acceptable. The fourth factor is contaminants. While cullet does not have to be color sorted, even minor contamination with metal, plastics, ceramics, or carbon causes problems in fiberglass processing lines.

Glass processors do sell postconsumer bottle cullet to fiberglass manufacturers in most parts of the country, although not in great amounts. The broader category of preconsumer or manufacturing waste cullet is used more commonly. While data is not gathered, knowledgeable sources estimate 175,000 tons of preconsumer cullet is sold to the fiberglass industry annually. Unlike the glass container industry which favors bottle cullet partly because it contains the key ingredient soda ash, the fiberglass industry obtains much of the needed soda value from other raw materials containing alumina and boron. Therefore, neither soda ash costs nor scarcities have much impact on the costs of producing fiberglass.

Some fiberglass manufacturers indicated interest in using postconsumer cullet if it was available in consistent quantities and quality at competitive prices. These companies believed that cullet processing technology would have to be improved to meet their specifications for consistent color mix and low contaminant levels.

With nearly 70 percent market share, fiberglass dominates the total insulation industry. In 1987, there were six companies producing fiberglass insulation at 26 locations. The manufacturers have fairly good geographic spread around the country; availability is only in question when the entire insulation industry has difficulty meeting demand, as happened during the energy crisis of the 1970s.

4. *Rigid Plastic Foams.* Rigid plastic foam insulation is made by expanding resins to create cells. Blowing agents are used to enhance the formation of cells and, in some cases, the blowing agent remains trapped within the cells to increase insulating properties. Rigid foam insulations have higher R-values than equivalent thicknesses of other insulations, although they tend to cost more. The higher the R-value, the better the insulating properties.

There are several basic types of plastic rigid foam in general use, including polyurethane, polyisocyanurate, polystyrene, and phenolics. Phenolics represent and very small though growing fraction of the total. The use of plastic rigid foam insulation appears to be growing the most rapidly of all types of insulation, although data is not consistently published, and information from different sources rarely agrees. However, despite variations in the data, it is established that polyurethane, polyisocyanurate, and polystyrene foams have an important share of the total market. An estimate of total rigid foam boardstock consumption in residential and commercial applications was presented at a Society of the Plastics Industry conference in 1985. Polyurethane foam use was expected to grow from 230 million pounds in 1984 to 249 million pounds and 280 million pounds in 1986 and 1990, respectively. Projected polystyrene growth for the same years was from 285 to 315 to 375 million pounds. Phenolic growth, again for 1984, 1986, and 1990, was estimated at 10 to 11 to 15 million pounds.

a. *Polyurethane and polyisocyanurate insulation.* References to polyurethane (PU) and polyisocyanurate (PIR) insulations tend to be confusing. The term polyurethane foam can also refer to the flexible foams used for cushioning. Data for PU and PIR feedstocks and insulation production quantities are frequently grouped together under the term polyurethane and sometimes are included under the broader term urethane (U). The differences between PU and PIR rigid foam are slight and do not affect the use of recovered materials. For simplification, in this proposed guideline, the term polyisocyanurate/polyurethane (PIR/PU) will be used, although the original terms will be preserved in cited data.

PIR/PU insulation is primarily board and laminated board products used to insulate walls, roofing, and doors in residential and commercial buildings. The physical blowing agent is trapped in the cells of PIR/PU rigid foams and contributes to the high R- value.

PIR/PU board insulation is made with various formulas depending on the requirements of the final product. Ingredients are used in the following ranges:

- Isocyanate—53–57%.
- Aromatic polyester polyol—30–20%.
- Blowing agent—15–20%.
- Surfactants and catalysts—2–3%.

PIR/PU foam-in-place insulation (with two sub-categories, spray-in-place and pour-in-place) is a smaller segment of the market. It is used primarily for roofing insulation and injection into cavities, with some used in wall insulation. PIR/PU foam-in-place ingredients are combined on site and injected into position where the mixture expands and hardens in place. An estimate of the size of the PIR/PU foam-in-place market was developed for the Department of Energy. In 1982, approximately 65 million pounds of foam were used, primarily in roofs, expanding to approximately 88 million pounds in 1986.

The formulation percentages of PIR/PU foam-in-place are basically 40 percent isocyanate to 40 percent polyol to 20 percent blowing agent and other ingredients. Unlike boardstock, where the ingredients are mixed as they are used, PIR/PU foam-in-place is premixed and sold to installers in drums. Shelf-life of six months is the industry standard. Formulations with more than 30 percent polyester in the polyol fraction break

down in less than six months and viscosity is seriously impaired.

Polyol is the component in all types of PIR/PU rigid foam insulation that can contain recovered materials. ASTM defines polyol in cellular plastic usage to "include compounds containing alcoholic hydroxyl groups such as polyethers, glycols, polyesters, and castor oil used in urethane foam." Industry sources have stated that the foam insulation market for polyol is approximately 100 million to 120 million pounds per year. Two types of polyol are used by the PIR/PU industry, aromatic polyester polyol and polyether polyol:

• *Aromatic polyester polyol* can be derived from recycled pre- and postconsumer PET or from the chemicals DMT and phthalic anhydride. The polyol is made by reacting glycol with the other ingredients. In some cases, waste DMT bottoms are used; phthalic anhydride possibly are used, as well. Various manufacturers contacted between 1986 and 1988 suggested the DMT bottoms and possibly phthalic anhydride bottoms were commonly recovered to produce feedstock resins for plastic rigid foam insulation products. PET polyols are 45 percent PET to 50 percent glycol. DMT polyols are 50 percent DMT to 50 percent glycol.

• *Polyether polyol* is derived from polypropelene oxide, a virgin material process. The insulation industry has switched almost entirely from polyether polyols to the less expensive polyester polyols for boardstock. Premixed foam-in-place insulation uses about 70 percent polyether and 30 percent polyester to avoid loss of viscosity in storage.

At least one company, Freeman Chemical, is marketing polyols made from both postconsumer and manufacturing waste PET bottles as well as x-ray and other films. X-ray film has a lower intrinsic viscosity (IV) than PET beverage bottles and is therefore less valuable for other uses. However, as long as demand for PET bottle materials remains lower than supplies, PET bottle scrap will continue to be used. Other companies are marketing polyols derived from chemical bottoms.

Twenty manufacturers of PIR/PU board have been identified with production facilities in 36 locations. Distribution across the country is fairly good in the northwest and mid-northern states. Although it was not determined how many of these insulation manufacturers use polyols derived from recovered materials, nor exactly how many polyol producers are using recovered materials rather than virgin feedstocks, one third of the polyols currently marketed for PIR/PU rigid foam insulation are said to be derived from recovered materials.

b. *Polystyrene insulation.* Polystyrene insulation for building construction is produced by two processes. Expanded polystyrene foams incorporate a blowing agent, usually pentane, with polystyrene beads which are expanded with steam or hot air. The resulting "prepuff" is aged for six to twenty-four hours before the final product is made in a heated mold. The product is then cooled in the mold to assure uniformity and good quality.

Extruded polystyrene is made by combining polystyrene base resin with a blowing agent in one extruder, feeding the melt through a cooling extruder then through a die for the desired shape. Flame retardants are also added to the product mix. Like the PIR/PU foams, blowing agents are generally retained within the cellular structure to improve R-values.

Representatives from several manufacturers of polystyrene insulation indicated that use of recovered material content is technically feasible. However, one source stated that polystyrene with flame retardants could not be reused, which would appear to restrict the use of home scrap in polystyrene insulation manufacture. Despite indications that research and development efforts may be underway, current use of recovered materials could not be documented.

EPA identified 77 manufacturers of polystyrene insulation. These include producers of both extruded polystyrene and expanded polystyrene products. Numerous other small companies are said to be in business around the country. Geographically, the identified polystyrene insulation manufacturers are spread as widely as the producers of other types of insulation products.

c. *Phenolic insulation.* Phenolic rigid foam insulation is said to have very high R-values per inch, good fire retardation, and potentially low cost, among other characteristics. It is a fairly new product, but the relative market share is expected to grow rapidly from its current small base. Phenolic foam production is similar to PIR/PU foam, although the ingredients differ. Aromatic polyester polyols are used in small quantities as a plasticizer. The product formulations vary according to specific product and manufacturer. Product mixes are also guarded competitive secret because the product is new. Therefore, the following list of ingredients do not add to 100 percent.

- Phenolic resin—65%–85%.
- Blowing agent—5%–15%.
- Catalyst and surfactants—5.5%–21.5%.
- Polyester polyol—3%–10%.

Unlike the approximate 1 to 1 ratio of glycol to other ingredients in PIR/PU polyols, aromatic polyester polyol in phenolic foam manufacture uses 10 percent glycol to other ingredients. The 90 percent fraction of the polyol contains the recovered material. However, one manufacturer stated that larger percentages of polyol used as a plasticizer produce an end product that is too soft for commercial application with mechanized roofing equipment, and therefore a higher percentage of recovered material is technically impracticable.

Only two manufacturers of phenolic foam were identified, which is the only limit on availability for government procurement.

5. *Rock Wool.* Rock Wool is used as loose-fill insulation and also is sold in batts and blankets, although production of batts and blankets is phasing out. While rock wool and fiberglass insulation manufacturers are not necessarily the same companies, they all belong to the same trade associations and the two products are usually tracked together under the general heading mineral fibers.

Rock wool insulation is most frequently made from metallurgical slag, such as slag from steel mills. Approximately 70 percent of the rock wool produced in 1980 was primarily made from blast furnace slag, the other 30 percent was primarily made from steel and copper slag. Not all rock wool manufacturers depend entirely on slag for their feedstock needs, however. Some use trap rock or basaltic rock. Use of slag or alternatives depends on the availability and costs of the materials and their location to production facilities. The rock wool industry is shrinking, and data is no longer consistently gathered. However, conversations with manufacturers in 1988 indicated that more companies are using higher percentages of natural rock than were in 1980.

Natural rock is said to have a lower comparative yield. Slag has a higher melting alumina silicate than natural rock, which makes slag-based insulation attractive in commercial and residential installations where fire protection is important. For comparative purposes, fiberglass is affected by heat at 1,200–1,300 degrees Fahrenheit, compared to rock wool, where temperatures must exceed 1,800–2,000 degrees Fahrenheit before the wool is affected.

The manufacture of rock wool with slag is linked to the metal smelting industries, which provide the principal feedstocks. Smelting in the United States is decreasing, and there is strong

demand for metallurgical slags as aggregate substitutes in asphalt and concrete for road construction. Slag for rock wool must be of higher quality and contain fewer contaminants than slag for substitute aggregates. Although rock wool manufacturers are said to pay premium prices, some slag suppliers are said to prefer volume to specialty customers. For example, in 1986, the demand for slag for rock wool production was 3.8 percent of total slag supplies, compared to demand for slag for use as aggregates, which was 81 percent of total supplies of slag. Rock wool manufacturers have reported some difficulties in obtaining slag supplies in the southern part of the country. There are no sources of postconsumer recovered material for this type of insulation.

Rock wool insulation's market share has been decreasing in recent years. One estimate based on data gathered in 1985 was 9–10 percent of the total market; the percentage dropped to 3 percent in another estimate in 1987. Changes in the industry and in trade associations have made it difficult to make a more accurate assessment. The most recent data cited was for 1982, when U.S. production of rock wool was estimated to be 1.0 billion pounds (453,500 metric tons). Ten manufacturers of rock wool insulation were identified, with plants in 18 locations. Trade association representatives stated that a number of small companies do not belong to the associations and therefore may not be included in this total. Rock wool insulation manufacturers are primarily located in the mid-west and the southern states, with a few companies located in the northeast.

6. *Conclusions.* EPA concludes that six of the principal types of insulation materials used in the United States are commercially available with recovered materials content: Cellulose, cellulose fiberboard, fiber in perlite boards, polyurethane/polyisocyanurate rigid foam, phenolic rigid foam, and rock wool. Moreover, industry sources have suggested that polystyrene insulation containing recovered materials is technically feasible; commercial use of recovered materials was not identified, however.

Based on the evidence reviewed above, EPA further notes that insulation meeting a wide range of construction design applications is available with recovered materials content. EPA did not evaluate the potential for recovered materials usage in specialty types of insulation made with virgin materials because they represent such a small portion of the insulation market.

EPA further concludes that fiberglass insulation often contains preconsumer manufacturing waste glass and may contain some postconsumer cullet, but the percentages are not consistent from manufacturer to manufacturer nor from batch to batch. Representatives from some of the fiberglass companies have indicated willingness to use more postconsumer cullet if it can meet their specifications for contaminants and if consistent supplies are made available at competitive prices.

*D. Federal Purchasing Power*

The fourth EPA criterion for selection of a procurement item for affirmative procurement under RCRA Section 6002 is that the Federal government's ability to affect purchasing or use of the item, when it contains recovered materials, be substantial.

The dollar volume of the building insulation industry was estimated by Hull & Company in 1986 to be $2.24 billion excluding retrofit of residential buildings. A.W. Johnson estimated the 1986 residential retrofit insulation market to be $6.7 million. The total 1986 building insulation market, at manufacturer's net price is estimated to be $2.9 billion. Other industry spokesmen estimated the total market to be $3 billion in 1985. The same sources stated that the industry was holding even, with neither major growth nor shrinkage.

1. *Federal Government.* Government agencies purchase, or finance purchases with appropriated Federal funds, residential, industrial, and commercial types of insulation products. Expenditures for insulation purchased with appropriated Federal dollars is conservatively estimated to be $148 million. This figure represents only those expenditures that could be estimated based on assured insulation use by an agency. Open market expenditures at the local level may be considerable but could not be estimated because centralized records are not currently maintained. Based on 1986 estimates of market size and identified government purchases, the Federal government accounts for approximately 5.1 percent of the insulation market. Procurements by individual agencies are summarized in Table 4.[4]

[4] The basis for these estimates is explained in *Feasibility of a Federal Procurement Guideline for Recovered Materials in Insulation Products*, E.H. Pechan & Associates, Inc., September 1987, which is in the docket for this proposed guideline.

TABLE 4.—SUMMARY OF ESTIMATED GOVERNMENT EXPENDITURES FOR INSULATION

| | |
|---|---|
| Department of Energy (1985) | |
| Weatherization | $38,000,000 |
| Institutional Conservation | 4,593,000 |
| Total DOE | 42,593,000 |
| Health & Human Services (1985) | |
| Low Income Home Energy Assistance Program | 45,750,000 |
| Housing and Urban Development (1986) | |
| Public Housing Modernization Fund | 14,000,000 |
| Housing for Elderly and Handicapped | 3,800,000 |
| Community Development Block Grants | 5,700,000 |
| Indian Housing Program | 2,392,000 |
| Total HUD | 25,892,000 |
| General Services Administration (1986) | |
| Direct purchases | 487,300 |
| New construction, repairs and alterations | 12,344,600 |
| Total GSA | 12,831,900 |
| Department of Defense (1986) | |
| Direct purchases | nominal |
| New construction and rehabilitation | 20,893,600 |
| Total Estimated Government Purchases | 148,050,500 |

The value of Federal insulation purchases was estimated as conservatively as possible, using lowest percentages or lowest range when there was a choice. It is probable that appropriated Federal dollars account for a considerably higher percentage of market share. Insulation is rarely tracked as a line item in any budget. In the one case that EPA knows of, the data are not yet available.

The Department of Energy (DOE) estimates that 20 percent of its expenditures for the Weatherization Program is spent for insulation. Funds are distributed through state agencies, which in turn use a variety of methods to distribute monies through local housing authorities and local grantees. The Institutional Conservation program roughly estimated total insulation expenditures from which an average annual expenditure was computed.

The Department of Health and Human Services (HHS) distributes Low Income Home Energy Assistance Program (LIHEAP) funds. Under this program, states are allowed to spend up to 15 percent of their allocation on weatherization. As these funds are distributed by the same state agencies as DOE funds, the same 20 percent estimate for insulation was used.

Many Department of Housing and Urban Development (HUD) programs provide funds for building construction and/or rehabilitation. Insulation expenditures are not tracked at the national level. HUD funds are distributed many ways, for instance

through the ten regional HUD offices, through local housing authorities or through block grants to states where priorities are determined locally.

Most HUD funds that are dispersed where they could be used to purchase insulation are considered loans. However, loans are repaid through Federal funds and subsidies, not from the private sector. In addition, HUD mortgage insurance programs range from $30 to $100 billion per year, and energy efficiency remains a high priority. The insulation component would be $228 to $760 million. This estimate derived from mortgage insurance was not included in the estimate of Federal purchases of insulation because it could not be established that direct or indirect expenditures of appropriated Federal funds actually take place in insurance programs.

At the General Services Administration (GSA), insulation is purchased directly for use by government agencies and is also purchased through construction contracts. The entire direct purchase program is being revised from warehoused purchases to requirement contracts which allow agencies to buy what they need directly from suppliers under annual contract. Direct expenditures were determined as available. All GSA expenditures for insulation are direct use of Federal funds.

Divisions of the Department of Defense (DOD), the Army, Navy and the Air Force, do not track direct purchases of insulation. Construction projects which would include insulation were estimated from the general construction budget (which includes non-insulated items like bridges). All DOD expenditures for insulation are direct use of Federal funds.

2. *Impact on State and Local Governments.* A significant number of the Federal programs disperse their funds through state, local and non-profit agencies. Funds are not specifically earmarked for insulation purchases; rather monies are used for weatherization, building construction, rehabilitation and so on, usually through construction contracts.

State and local agencies are required to comply with EPA procurement guidelines under the conditions described in Section IV(C) of this preamble. EPA believes that once affirmative procurement programs are established by state and local agencies in compliance with their obligations when using Federal funds, the same provisions that favor the use of recovered material content will be used for other insulation purchases.

3. *Conclusions.* EPA concludes that the expenditure of Federal funds for insulation would have a significant impact on the insulation market. EPA believes not only that direct Federal government agency purchases would have an impact, but also that a considerable ripple effect would develop through state and local governments that use local funds as well as Federal funds for major programs.

### *E. Other Considerations*

There is an additional factor affecting insulation which EPA included in its development of the guideline proposed today. Both pre- and postconsumer waste materials (e.g., newspaper, glass, plastic) and industrial byproducts (e.g., slag and chemical bottoms) are used in many different types of building insulation products. Building insulation products produced with pre- and post-consumer materials and building insulation products produced with byproducts compete for the same end use. Although the byproducts and some pre-consumer materials used in building insulation products are not currently a solid waste management problem, EPA is concerned that a preference only for building insulation products containing certain pre- and post-consumer materials could possibly result in other materials and byproducts ending up in the solid waste stream. Therefore, EPA has intentionally included within the scope of the proposed guideline insulation products made with all pre-consumer materials and industrial byproducts that qualify as recovered materials under the RCRA definition. EPA solicits comments on including this range of insulation products within this guideline.

### *F. Conclusions Regarding the Designation of Building Insulation Products*

Based on the analysis above, including economic and environmental considerations, EPA has determined that building insulation products containing "recovered materials" as defined by RCRA meet the criteria for designation as a procurement item under the provisions of section 6002.

## IV. Proposed Guideline

This portion of the preamble explains each section of the proposed guideline.

### *A. Purpose*

The purpose of this guideline is to (1) designate building insulation products, as described below, as items subject to the procurement requirements of section 6002 of RCRA; and (2) recommend procedures for complying with Section 6002.

Insulation products are not fungible items and consequently do not compete in the marketplace on the basis of price alone. Technical performance considerations may dictate use of one type of insulation material rather than another. EPA believes that the intent of RCRA would best be served by identifying and increasing the use of recovered materials content in as many different types of insulation products as possible. Competition between product type (e.g., loose-fill, blanket, board, or spray-in-place) or material type (e.g., cellulose, fiberglass, rock wool, rigid plastic foam, and specialty materials) would therefore continue, while use of recovered materials would increase. Consequently, EPA has sought to include all the major types of insulation in commercial use within this proposed guideline. EPA solicits comment on this approach to performance criteria.

### *B. Scope*

This guideline applies to building insulation products. This term includes but is not limited to insulation products used in residential, commercial and industrial type applications such as blanket, board, spray-in-place, and loose-fill. As explained in Section II.D of this preamble, building insulation is used in four locations: Ceilings, floors, foundations, and walls. The types of materials from which these products are made include but are not limited to: Cellulose and cellulosic fiber, fiberglass, rock wool, plastic rigid foams, and specialty materials. Composite products made from more than one material are also included within the scope.

All of the predominant types of building insulation products are included within the scope of this proposed guideline, and all contain, or have the technical potential to contain, recovered materials. In addition, specialty materials for all types of building insulation or insulation ingredients where recovered material content use may not have been documented (e.g., vermiculite and polystyrene) *are* included within the scope of this guideline.[5]

[5] Section 6002(d)(2) of RCRA requires the "use of recovered materials to the maximum extent possible without jeopardizing the intended use of the item." This statutory provision effectively allows procuring agencies to exclude use of recovered materials from specifications when performance standards for an item cannot be met if recovered materials are

Continued

In this proposed guideline, recommendations for minimum content standards and any references to recovered material content refer only to the core material of an insulation product and do not include any facings, bindings, or other materials applied to the surfaces of the core materials. In the case of composite products made from more than one material, proposed minimum content standards apply to the respective materials used in the core unless the product is specifically addressed.

EPA has included insulation made with postconsumer recovered paper in the scope of this proposed guideline as well as stressed its use in building insulation products to meet EPA's responsibility under section 6002(c)(1). Section 501 of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616), amended section 6002(c)(1) to stress the maximum practicable use, in the case of paper, of postconsumer recovered materials. These postconsumer paper materials are defined as:

> Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste.

There are other types of insulating products, such as air handling, acoustical, pipe, and cold storage insulation. Building insulation was chosen because it is by far the largest volume of insulation manufactured, is least likely to require virgin specialty materials for specialty purposes, and is dominated by the types of insulation products that for physical or chemical reasons can contain recovered materials. Government purchases of insulation products would also tend to have the greatest impact on this category.

Other types of insulation are defined as follows:

*Air Handling Insulation* may be in flexible or rigid board form and serves to control heat transfer from the inside to or from the ambient surround of rectangular, oval or round ducts, which usually contain conditioned air. The insulation system may include a factory or field-applied water vapor or weather resistant exterior membrane or covering jacket.

*Acoustical Insulations* are manufactured in flexible blanket, rigid board or specialty shaped sections and are intended for use in sound attenuation applications. They may include interior or facing membranes, which are factory applied.

*Cold Storage Insulation* is specifically designed for use in the exterior envelope of refrigerator and freezer storage buildings and rooms. It is usually applied to the inside structural building sections and is designed to perform at subzero temperatures. Critical performance requirements include compressive strength, minimum coefficient of expansion, and permanent thermal resistance.

*Pipe Insulation* is manufactured in performed sections as thermal insulation suitable for application to round piping or tubing which serves to transport liquids or gasses at temperatures above or below the ambient surroundings. The insulation system may include a factory or field-applied water vapor or weather resistant exterior membrane or covering jacket.

These other types of insulation products must meet different and frequently more stringent specifications and are believed to be less easily adapted to manufacture with recovered materials. EPA solicits comments on any or all of these other types of insulation products regarding whether (1) they contain recovered materials, (2) government expenditures represent a significant percentage of total purchases, and (3) they should be included within the scope of this proposed guideline.

### C. Applicability

Many of the requirements of section 6002 apply to "procuring agencies," which is defined by RCRA in section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency of an item costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year.

In addition, the requirements of section 6002 apply to each Federal agency as a whole. This point is particularly important in determining whether the $10,000 threshold has been reached. For example, the Department of Housing and Urban Development as a whole, purchases, or causes the purchase of, more than $10,000 worth of building insulation products during each fiscal year. Therefore, the requirements of section 6002 will apply to all HUD procurements of building insulation products, including procurements by individual regions and subagencies, by state and local grantees and their contractors, and by HUD contractors.

1. *Direct Purchases.* For the purposes of this guideline, purchases made as a result of a solicitation by a procuring agency for its own general use or that of other agencies (for example, GSA purchases) are considered "direct". Insulation purchased as part of a construction contract is also considered a "direct purchase."

2. *Indirect Purchases.* The definition of "procuring agency" in RCRA section 1004(17) makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency or its contractors using appropriated Federal funds. Thus, the guideline applies to insulation purchases meeting the $10,000 threshold made by States and their localities or their contractors, subcontractors, grantees, or other persons which are funded by grants, loans, or other forms of disbursements of monies from Federal agencies. However, the guideline does not apply to such purchases if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. An example of an insulation purchase unrelated or incidental to Federal funding is where funds have been provided for public transit maintenance and a new facility is built in which vehicles are repaired. The contractor constructing the maintenance facility also builds a temporary on-site management structure. Any insulation purchases for the second structure are not subject to the requirements in section 6002 or this guideline, even though some of the grant funds supporting the contract might be used to finance the purchases.

EPA solicits comments on whether this guideline should be revised to exempt block grants from the section 6002 procurement requirements because it generally may not be possible to account separately for block grant funds from non-Federal funds. EPA also solicits comments on whether this guideline should be revised to exempt block grants only when it is not possible to account separately for such funds.

3. *The $10,000 Threshold.* RCRA section 6002(a) provides that the

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included in the content. Thus, the specifications for particular types of building insulation materials that do not or could not contain recovered materials must be based upon performance criteria. EPA suggests a procedure for Federal agencies to establish such an exclusion in § 248.11 of the proposed guideline as discussed below under Specifications.

requirements of section 6002 apply: (1) When the purchase price of an item exceeds $10,000 or (2) when the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. Thus, section 6002 clearly sets out a two-step procedure for determining whether the $10,000 threshold has been reached. First, a procuring agency must determine whether it purchased $10,000 worth of building insulation products during the preceding fiscal year. If so, the requirements of section 6002 apply to all building insulation purchases occurring in the current fiscal year. Second, if a procuring agency did not procure $10,000 worth of building insulation products during the preceding fiscal year, it is not subject to section 6002 unless it makes a $10,000 purchase of building insulation products during the current fiscal year. The requirements of section 6002 then apply to the $10,000 purchase of building insulation products; to all subsequent purchases of building insulation products made during the current fiscal year, regardless of size; and to all procurements of building insulation products made in the following fiscal year.

Section 6002(a) does not provide that the procurement requirements are triggered when the quantity of items purchased during the *current* fiscal year is $10,000 or more. EPA does not believe that Congress intended to require procuring agenices to keep a running tally of procurements of items designated by EPA. Maintaining such a running tally would be very burdensome. Rather, procuring agencies only need to compute their total procurements of building insulation products once at the end of the fiscal year and only if they intend to claim an exemption from the requirements of section 6002 in the following fiscal year.

4. *Functionally Equivalent Items.* In common usage, the term insulation covers many items manufactured to meet different uses and performance standards. EPA believes that restricting the applicability of section 6002 based on a vary narrow, technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of RCRA, because an agency may purchase less than $10,000 of each type of building insulation product.

EPA has concluded that, in the case of building insulation, "functionally equivalent" items should be defined as a category of items having substantially or similar end use. This category, "building insulation," will assure broad applicability of this guideline. Further, building insulation types defined by design (such as loose-fill, blanket, board, and spray-in-place) and building insulation products defined by material content (such as fiberglass, cellulose, cellulose fiberboard, rock wool, rigid plastic foams, composites, and specialty materials) can be used almost interchangeably in ceilings, floors, foundations and walls. The choice of building insulation type and material content is based on technical considerations that are site specific.

Government procuring agencies rarely track building insulation purchases as a line item and certainly do not distinguish between material types or design types of building insulation products. EPA believes that the guideline will be more easily implemented by procuring agencies if all types of insulation used to resist heat flow within a building are included within the single category of building insulation.

Under § 248.3(b) of the guideline, all of the following types of insulation are encompassed by the term "building insulation" and therefore are "functionally equivalent" for purposes of the $10,000, threshold:

- Loose-fill insulation, including but not limited to cellulose fiber, fiberglass, rock wool, vermiculite, and perlite;
- Blanket and batt insulation, including but not limited to fiberglass and rock wool;
- Board (sheathing, roof decking, wall panel) insulation, including but not limited to cellulose fiberboard, glass fiberboard, foam glass, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
- Spray-in-place insulation, including but not limited to polyurethane, polyisoicyanurate and spray-on cellulose.

*D. Definitions*

Most of the definitions used in this proposed guideline are used in RCRA and therefore need no further explanation. Others are standard industry or purchsing definitions. A few are discussed in more detail in this section of the preamble to clarify the information that follows.

1. *Building Insulation.* "Building insulation" is defined as a material, primarily designed to resist heat flow, which is installed between the conditioned (heated and/or mechanically cooled) volume of a building and adjacent, unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill. "Building insulation" is intended to cover all thermal insulation products used in all types of structures with the exception of cold storage and pipe insulation. The phrase "including but not limited to" in the insulation definitions is intended to insure that new types of products will be included within the scope of the guideline as they are developed.

2. *Practicable.* Section 6002(c) requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and section 6002(i) requires procuring agencies to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). EPA defined "practicable" in the final paper guideline (52 FR 37297, October 6, 1987) and is including the definition in this proposed guideline for insulation products.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications; (2) availability at a reasonable price; (3) availability within a reasonable period of time; and (4) maintenance of a satisfactory level of competition. EPA's definition of practicable incorporates these criteria.

3. *Procurement Terms.* To simplify the Federal purchasing process, "commercial item descriptions" (CIDs), which reference industry standards, have generally replaced the multitude of individual insulation specifications previously used by Federal procurement agencies. When soliciting invitations to bid, procuring agencies can stipulate special terms and conditions (such as minimum content standards for recovered material content), in the "invitation to bid" or "request for proposal" documents. These phrases have been defined by the National Institute of Governmental Purchasing as follows:

- *"Commercial Item Descriptions"* are series of simplified item descriptions under the Federal specifications-and-standards program used in the acquisition of commercial off-the-self and commercial type products.
- *"Invitation For Bids (IFB)"* is the solicitation for prospective suppliers by a purchaser requesting their competitive price quotations.
- *"Request For Proposal (RFP)"* is a request for an offer by one party to another of terms and conditions with

references to some work of undertaking; the initial overture or preliminary statement for consideration by the other party to a proposed agreement.

4. *Insulation Terms.* Definitions for terms relating to insulation are directly quoted or have been adapted from the Association of Testing and Materials (ASTM) and the Department of Energy's Residential Conservation Service definitions, as they were available.

As explained above, EPA was unable to determine whether any or all cellulosic fiberboards contain postconsumer recovered paper. Therefore, in this proposed guideline, EPA is using the term "cellulose fiberboard" to refer to fiberboards containing recovered paper. EPA solicits comments on use of this term.

*E. Requirements vs. Recommendations*

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the Section 6002 requirements into the proposed guideline for the benefit of procuring agencies. As a result, the guideline contains two types of provisions: requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in this guideline, the verbs "shall" and "must" indicate Section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies must comply with the requirements of section 6002, whereas EPA's recommendations are only advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the section 6002 requirements.

*F. Specifications*

Subpart B of the guideline, Specifications, contains two sections, Revisions and Recommendations.

1. *Revisions.*

a. *Federal agencies.* RCRA section 6002(d) contains two requirements for revising specifications for procurement items. First, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications, by May 8, 1986, to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials [section 6002(d)(1)].

Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications for designated items require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)]. EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i) fulfills the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

b. *Procuring agencies.* EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure building insulation products with appropriated Federal funds. Unless their specifications (or purchasing practices with respect to building insulation products) are revised to allow the use of recovered materials in building insulation products, these agencies will be unable to implement the affirmative procurement requirements of RCRA section 6002(c)(1) and (i). For this reason, §§ 248.3 and 248.10(b) of the proposed guideline provide that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications (or purchasing practices) for building insulation products require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

2. *Recommendations.* In the early 1980s, the Federal government began to use CIDs for insulation purchases, as they are available, rather than specifications written by each individual agency. CIDs are functional in nature and as generic as possible to permit the maximum number of suppliers to bid for contracts. In general, ASTM and American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) specifications are referenced.

EPA has reviewed the materials requirements of the ASTM specifications and finds that they neither allow nor disallow recovered material content. ASHRAE specifications tend to be test and performance standards, and thus do not refer to specific material content. EPA has also reviewed specifications used by Federal agencies. HUD programs reference minimum property standards, which currently refer to local building codes. Local building codes reference the ASTM and ASHRAE specifications. DOE weatherization program specifications that deal with material content require conformance with equivalent ASTM specifications. GSA referenced ASTM and DOD military specifications and commercial item descriptions in 1986 procurements.

The military specifications address the issue of recycled content in one of two ways, depending on the specification. Either recycled content was neither allowed nor disallowed in the material description or there was a special clause requiring that recovered materials be used to the maximum extent practicable. Recovered materials was defined to mean "materials which have been collected or recovered from solid waste and reprocessed to become a source of raw materials as opposed to virgin raw materials. None of the above shall be interpreted to mean that the use of used or rebuilt products is allowed * * *".

As previously discussed, all procuring agencies must assure that their specifications require the use of recovered materials content to the maximum extent possible without jeopardizing the end use of the item. If the use of CIDs and standard specifications over which procuring agencies have no direct control continues, another method to assure maximum use of recovered material content in building insulation products must be employed.

a. *Use of commercial item descriptions.* EPA believes that the use of industry standards and CIDs is an efficient procurement practice and therefore recommends in § 248.11(a) of the proposed guideline that Commercial Item Descriptions and equivalent standards continue to be used whenever possible. However, the use of CIDs and industry standards does not absolve procuring agencies of the requirement to review specifications to assure that recovered materials are used to the maximum extent possible without jeopardizing the end use of the item. As CIDs or industry standards are adopted, procuring agencies must review them thoroughly to be certain that no unjustifiable discrimination against recovered materials exists.

b. *Use of invitations for bids and requests for proposals.* Bids are solicited

by all procuring agencies through invitations for bids or requests for proposals. Although contractors buy a large portion of the insulation purchased with appropriated Federal dollars as part of their work to build or renovate structures, they do so under contracts which originate with IFBs or RFPs. Procuring agencies can fulfill their obligations under the specification revision requirements of RCRA section 6002 by inserting preferences for building insulation with recovered material content in the special terms and conditions section of their invitations for bids or requests for proposals. Therefore, EPA recommends in § 248.11(b) of the proposed guideline that procuring agencies insert minimum content standards or equivalent preferences for recovered materials content in building insulation in their invitations for bids or in their requests for proposals.

c. *Exclusion of products that do not meet performance standards.* Certain building insulating products cannot be made with recovered materials content without jeopardizing performance standards. In general, this situation applies to specialty materials and insulation items that must meet very stringent performance requirements. In most cases, EPA does not believe that such items will be offered to procuring agencies with recovered materials content. If such items are offered and found to fail performance tests, proposed § 248.11(c) recommends that an agency document any finding that, for a particular end-use, an item containing recovered materials content will not meet reasonable performance standards. The documentation should reference the particular tests used to judge performance. Procuring agencies should also reference such documentation in subsequent solicitations for the specific item to avoid repetition of previously documented findings.

d. *New and adapted products.* EPA believes that as new building insulation products enter the marketplace and as recycling technologies advance for feedstocks used in insulation manufacture, additional types of building insulation with recovered content will become available. EPA recommends in § 248.11(d) of the proposed guideline that procuring agencies assure that language in new specifications for new building insulation products allows recovered materials content. EPA further recommends that as new building insulation products containing recovered materials are identified, the same approaches to procurement recommended in this guideline for existing products be inserted in invitations for bids and requests for proposals whenever the new products could be offered.

The annual review procedure detailed in § 248.24 of this guideline, the certification and estimation process detailed in § 248.23, and the case-by-case procurement approach detailed in § 248.21 provide methods to monitor the introduction of recovered materials content in building insulation products where such use may be developing.

*G. Affirmative Procurement Program*

RCRA section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that building insulation containing recovered materials is purchased to the maximum extent practicable. The program must contain four elements: (1) A recovered materials preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification of recovered materials content; and (4) procedures for annual review and monitoring of the program's effectiveness. The program must be established within one year of the date of publication of this guideline as a final rule.

The following sections explain EPA's recommendations for each element of the affirmative procurement program.

1. *Recovered Materials Preference Program.* Under section 6002(i), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose an approach that is "substantially equivalent" to the preceding approaches. The proposed guideline recommends that procuring agencies adopt minimum content standards for those building insulation products commercially available with recovered materials content. In those cases where the use of recovered materials content is technically feasible but not currently commercially available, or where building insulation products with recovered material content become unavailable, EPA recommends that the case-by-case approach be used.

EPA notes that these approaches are *recommended*, not required. Procuring agencies may adopt "substantially equivalent" alternatives. However, EPA believes that if a procuring agency follows the recommendations, it will meet the requirements of RCRA. Procuring agencies that adopt other approaches must ensure that their preference programs achieve the procurement of building insulation products "with the maximum percentage of recovered materials practicable".

The following sections provide a detailed discussion of the basis for the minimum content standards, including legal and technical considerations.

a. *Background.* Considering the range of building insulation products commercially available with recovered materials content, EPA believes that the use of minimum content standards is the most practical approach for the procuring agencies to use. The minimum content standards approach would also be the most effective way to insure that building insulation products are purchased with the maximum percentage of recovered materials practicable, as required by RCRA sections 6002 (c) and (i).

EPA is proposing to recommend minimum content standards for most types of building insulation products. EPA believes that these minimum content standards are the highest that are currently practicable, and procuring agencies would therefore meet the requirements of section 6002 if the proposed minimum content standards are adopted. These standards are discussed further in section IV.G.1.d.

EPA also recommends that the case-by-case approach be used but only if the availability of products with the standard minimum content becomes uncertain, or when it is not certain that products with recovered material content have reached commercial distribution. This approach is discussed in Section IV.G.1.f.

b. *Alternatives considered.* In addition to minimum content standards and case-by-case procurement, EPA considered two other approaches for a preference program: price preferences and set-asides.

As discussed in the final paper guideline, 52 FR 37298–37299 (October 6, 1987), section 6002(i) requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals. Among those are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain

percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-asides are currently being used in some state programs for the procurement of paper and paper products containing recovered materials. As of January 1988, five states and two cities use price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two states have set-aside programs, one for paper and paper products, the other for all types of products. These states report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. In the case of existing Federal preferential procurement programs that allow a price preference or set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of section 6002 seems, however, to contemplate the adoption of either price preferences or set-asides, and doing so would conflict with existing Federal procurement regulations. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that procuring agencies use the procurement mechanisms provided in RCRA section 6002(i)(3).

c. *Legal considerations.* RCRA section 6002(i)(1) requires that affirmative procurement programs be "consistent with applicable Federal procurement law." EPA was concerned that minimum content standards might violate the Competition in Contracting Act of 1984 (CICA) (10 USC Chapter 137) and the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). Both provide that specifications restricting what can be offered by bidders are legally permissible only to the extent that they reflect the Government's minimum needs or are authorized by law. [CICA 2711(a)(2), 48 CFR 10.002(a)(3)(ii).] EPA has concluded that RCRA section 6002 provides the necessary authorization. See 52 FR 38844 (October 19, 1987). Section 6002(i)(3)(B) expressly permits agencies to establish specifications which restrict bids to those which meet a minimum content standard. Therefore, minimum content standards are not in violation of general Federal procurement law.

CICA requires agencies to use full and open competitive procedures when procuring property and services. The term "full and open competition" means that all responsible sources must be permitted to submit a bid. In the case of a procurement against a restrictive specification, such as a minimum content standard, "full and open competition" means that all responsible sources who can meet the specification can bid. The preference program recommendation in the proposed guideline is consistent with this requirement, since any vendor of building insulation can submit a bid as long as the product offered contains the minimum recovered content.

d. *The minimum content recommendations.* RCRA provides four criteria for establishing a minimum content standard. Section 6002(i)(3)(B) provides that the minimim content required by a specification must be the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1) (A) through (C). Thus, the four criteria are (1) the intended end use of the item, (2) availability, (3) technical performance, and (4) price.

For the items designated by this proposed guideline, the criteria are satisfied by setting the minimum content standards at levels which do not interfere with the technical performance of the items and therefore the intended end uses. In general, the use of recovered materials content within the technical limitations is cost-effective in insulation production, regardless of the type. The third criterion, availability, will be the determining factor. There is a possibility, though not a probability, that industries other than insulation may eventually absorb most of the available supplies of recovered materials suitable for certain types of building insulation (e.g., slag). Should that occur, the case-by-case approach described below can be used until it is certain that market stimulation for the recovered material is no longer needed.

EPA believes that minimum content standards can be set most efficiently by the material type of the building insulation product. While there are variations in the technically acceptable levels of recovered materials content among the myriad types of building insulation products within most material types, they are not wide enough to warrant a separate minimum content standard for each building insulation item.

EPA is proposing to recommend in § 248.21(b)(3) of the guideline that procuring agencies adopt the minimum content standards in Table 5 for all types of building insulation products made with the respective types of material. The proposed standards are based on the core insulation material, disregarding the facings, bindings, or any materials surrounding or attached to the insulation core. (These other materials vary very widely from one insulation products to another and would interfere with meaningful minimum content standards.) The proposed minimum content standards would also apply to the portion(s) of the respective insulation material(s) that is used in composite products.

TABLE 5.—MINIMUM CONTENT STANDARDS FOR RECOVERED MATERIALS IN BUILDING INSULATION PRODUCTS

| Material type | Percent by weight |
|---|---|
| Cellulose loose-fill and spray-on. | 75% postconsumer recovered paper. |
| Cellulose fiberboard | 50% postconsumer recovered paper. |
| Perlite composite board | 23% postconsumer recovered paper. |
| Polyisocyanurate/ polyurethane: | |
| Rigid foam | 9% recovered material. |
| Foam-in-place | 5% recovered material. |
| Phenolic rigid foam | 4% recovered material. |
| Rock wool | 50% recovered material. |

NOTE: The minimum content standards are based on the weight of material in the insulating core only.

For other building insulation products, EPA recommends that procuring agencies use the case-by-case approach as discussed in section IV.G.1.f. below.

Each of the proposed minimum content standards has been set based on technical constraints in the manufacturing processes used in 1988. EPA solicits comments on the appropriateness of these standards or specific alternatives to these standards.

The following subsections discuss the proposed minimum content standards.

i. *Cellulose loose-fill and spray-on insulation.* The principal feedstock for cellulose loose-fill and spray-on insulation is waste paper. In the case of spray-on insulation, the minimum content standard is applied to the insulating feedstock prior to the addition of adhesives.

Section 6002(i((2) states that "in the case of paper, the recovered materials preference program required * * * shall provide for the maximum use of the post consumer recovered materials * * *" Postconsumer waste paper, primarily old newspaper, is not only technically acceptable in cellulose insulation, it is most frequently used.

A variety of chemical additives are also combined with the fibers to retard flammability and to deter pests. The chemical additives are required to meet the performance standards that have been established for this industry. The ratio of fiber to chemicals is 75 to 25. A higher percentage of waste paper fiber

could jeopardize the performance of the end use product for many manufacturers. For these reasons, EPA is proposing to recommend a 75 percent postconsumer recovered paper minimum content standard for cellulose insulation. EPA believes that this percentage will provide the maximum amount practicable.

ii. *Cellulose fiberboard.* One of the principal feedstocks of cellulose fiberboard is postconsumer recovered paper, including old newspapers, mixed paper, and corrugated. Although at least one company produces a product with 100 percent postconsumer recovered paper, this is not true of all manufacturers. It is not apparent that all cellulose fiberboards could be made with only paper. Different structural properties and finishes of the various types of cellulose fiberboard also make it inappropriate to set the minimum content standard at such a high level. Therefore, EPA proposes a minimum content standard of 50 percent postconsumer recovered paper for this product. Although all cellulose fiberboard products may not currently meet this percentage, and some currently exceed it, it is the highest percentage practicable within the overall industry.

iii. *Perlite composite board.* The range of products in this type of insulation is made with various formulations of expanded perlite aggregate, selected binders, and old newspapers. The newspaper component is 23 percent to 30 percent. Although an increase in the newspaper component would be economically advantageous to the manufacturer, it would interfere with performance requirements in individual products. EPA therefore proposes to set the recommended minimum percentage at 23 percent postconsumer recovered paper.

iv. *Polyisocyanurate/polyurethane (PIR/PU) rigid foam board insulation.* The proposed minimum recovered materials content standard for the PIR/PU rigid foams applies only to the total feedstocks in the core materials. However, only the polyol fraction contains recovered materials; therefore, the minimum content standard cannot be very high. Recovered materials are not available for the other components. The terms polyisocyanurate and polyurethane are often used interchangeably, whether accurately or not. Further, the range of formulations in Table 6 is used within the industry to achieve special characteristics for different end use products.

**Table 6.—*Components of Polyisocyanurate and Polyurethane Rigid Foam***

| | |
|---|---|
| 53–57% | Isocyanate. |
| 20–30% | Aromatic polyester polyol. |
| 15–20% | Blowing agent. |
| 2–3% | Surfactants and catalysts. |

As discussed above, there are also two types of recovered materials used in entirely different processes to make polyol, chemical bottoms (DMT and possibly phthalic anhydride) and PET plastic scrap. Based on information in the EPA data base and indications from manufacturers, EPA has concluded that DMT and phthalic anhydride waste bottoms qualify as recovered materials under the RCRA definition. EPA requests comments on this conclusion to include these chemical bottoms within the recovered materials definition and therefore within the scope of this guideline.

The constraints to increasing the minimum content standard are common to both types of recovered materials. Polyols with higher percentages of recovered materials have characteristics that inhibit the flow of the liquid, foaming mass prior to the hardening of the mass into rigid cells. This would have adverse affects on the performance characteristics of the finished products. Further, the PIR/PU rigid foam industry, including all the feedstock suppliers, is currently experimenting with blowing agents other than chlorofluorocarbons (CFCs). These substitute blowing agents are not as efficient as CFCs. Larger quantities by weight may be necessary in the product mixes and would therefore change the relative percentage of polyol. EPA has taken the second constraint into consideration in proposing to set the minimum recovered materials content standard at 9 percent, the highest percentage possible for the lowest percentage of PET-based polyol in the range of product formulations. To avoid confusion in terms and the application of minimum content standards to individual products, one minimum content standard, 9 percent, is proposed for all board products. EPA believes that this percentage will provide the maximum amount practicable.

v. *Polyisocyanurate/polyurethane foam-in-place insulation.* The proposed minimum content standard for PIR/PU foam-in-place insulation applies to the total feedstocks. However, only the polyester polyol fraction contains recovered materials. This type of PIR/PU foam has two sub-categories, pour-in-place and spray-in-place. It is premixed, with a shelf-life of six months. Formulations with more than 30 percent polyester in the polyol fraction break down in less than six months, and viscosity is seriously impaired. The percentages of ingredients is shown in Table 7. The other ingredients also vary compared with PIR/PU board.

**Table 7.—*Components of PIR/PU Foam-in-Place***

| | | |
|---|---|---|
| 40% | Isocyanate. | |
| 40% | Polyol: | |
| | 30% | Aromatic polyester. |
| | 70% | Polyether. |
| 20% | Blowing agent. | |

As with aromatic polyester polyols for PIR/PU board products, the recovered DMT or PET is reacted with glycol in similar ratios. The same constraints regarding the eventual change from CFC to another blowing agent also apply to the PIR/PU foam-in-place products. EPA therefore proposes to set the recommended minimum content standard at 5 percent for PIR/PU foam-in-place rigid foam.

vi. *Phenolic rigid foam insulation.* The only component of phenolic rigid foam insulation that can contain recovered materials is the aromatic polyester polyol which is used in small quantities as a plasticizer. The product formulations vary according to specific product and manufacturer, and are expressed in ranges to protect competitive information. The polyol fraction is said to be 3 percent to 10 percent of the total. The mixture of glycol to DMT or PET differs from the PIR/PU foams when it is used in phenolics as a plasticizer. The ratio is 10 parts glycol to 90 parts other ingredients. Manufacturers recommend 4 percent as the highest practicable minimum content standard for phenolics. This represents approximately 4.5 percent polyol in the total product mix.

There are two technical constraints to setting a higher minimum content standard based on the use of polyol. First, larger percentages of polyol used as a plasticizer produce an end product that is too soft for commercial application with mechanized roofing equipment. Second, manufacturers need leeway in product formulations for different product types and to accommodate potential changes in blowing agents. Therefore, EPA is proposing a 4 percent minimum content standard for phenolic rigid foam insulation.

vii. *Rock wool insulation.* The rock wool industry uses either metallurgical slags or natural rock to make rock wool

fiber. Although some manufacturers are entirely dependent on slag as feedstock, this is not true in certain parts of the country, where good quality metallurgical slags are no longer easily available. EPA believes that the only constraint to setting a higher minimum content standard is the availability of the recovered material feedstock. EPA considered geographic availability of rock wool insulation when proposing to set the recommended minimum recovered material content standard at 50 percent. EPA believes that this percentage will provide the maximum amount practicable.

e. *Limitations set by RCRA.* As mentioned above, the proposed minimum content standard would be subject to the four limitations provided in RCRA section 6002, namely, not jeopardizing the intended end use of the product, reasonable availability, reasonable price, and ability to meet the specifications. Procuring agencies must also be able to maintain a reasonable level of competition. For example, if a procuring agency determines that it cannot obtain a type of building insulation containing the minimum amount of recovered content or that it cannot obtain the insulation at a reasonable price, or that an insufficient number of bids can be obtained to meet competition requirements, the procuring agency can re-evaluate the minimum content standard. Lower minimum content standards can be tested for the particular type of insulation product. Section 248.21(c) of the proposed guideline provides that the recommended procurement approaches, or any other approach used by a procuring agency, are subject to the RCRA limitations.

f. *Case-by-case procurement.* For procurement of building insulation, the case-by-case approach means that bids are to be solicited for the selected type of insulation with an unspecified percentage of recovered materials content. In other words, bidders may offer building insulation products made with recovered materials content from 1 percent to 100 percent of the total product or made entirely with virgin materials. The contract would be awarded to the lowest responsible and responsive bidder. In the case of otherwise identical low bids, preference would be granted to the vendor offering the insulation product with the highest percentage of recovered content. According to section 6002(i)(3)(A) of RCRA, "subject to the limitations of subsection (c)(1)(A)–(C), agencies may make an award to a vendor offering items with less than the minimum content standard."

The case-by-case approach allows procuring agencies to attract bids for building insulation products with less than the minimum recovered material content standard when items containing the minimum content are not available. The case-by-case approach also allows procuring agencies to express a preference for recovered material content in building insulation products when such products are being considered for commercial production.

EPA is proposing to recommend in § 248.21(b)(2)(i) of the guideline that procuring agencies use the case-by-case approach when there is information that a building insulation product can technically be made with recovered material content but is not commercially available. The best current examples are polystryrene and fiberglass. As previously discussed, industry sources have suggested that polystyrene insulation containing recovered materials is technically feasible. Consequently, the Agency has included polystyrene insulation within the scope of the proposed guideline. There are indications that research and development efforts are underway to introduce recovered materials into polystyrene insulation products. EPA solicits comments on the availability, price, and performance of all types of polystyrene insulation made with any percentage of recovered material.

In the case of fiberglass insulation, the use of recovered materials is primarily constrained by the availability of recovered material feedstocks. The case-by-case approach would also be useful to gather information on new types of building insulation materials as they enter commercial distribution.

EPA is further proposing to recommend in § 248.21(b)(2) (ii) of the guideline that the case-by-case approach be used when building insulation products become unavailable with the minimum content standard for recovered materials. An example would be rock wool insulation if supplies of metallurgical slags become unavailable.

g. *Procurement procedures.* Procuring agencies should examine their procedures and eliminate any procurement practice that discriminates against recovered materials content in building insulation products. For instance, invitations to bid a broad range of insulation products on an "all or none basis" may exclude suppliers of insulation with recovered content that can only supply a limited range of items. In § 248.21(e) of the proposed guideline, EPA recommends that procuring agencies eliminate this and any similar forms of discrimination.

2. *Promotion Program.* The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. Proposed § 248.22 of the guideline would recommend several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in invitations to bid, discussing the program at bidders' conferences, informing industry trade associations about the program, providing information about building insulation made with recovered materials in the product information programs sponsored by the Department of Housing and Urban Development, and issuing press releases discussing the affirmative procurement program to recycling industry publications.

Under section 521 of the National Housing Act, HUD is required to provide product-related services and publications. These should be used as avenues to publicize recovered materials content in insulation. HUD publications include:

- National Building Codes
- Bulletins
- Materials releases
- Engineering bulletins
- Use of materials information

EPA is proposing to recommend that procuring agencies use all such avenues to publicize their requirements for recovered material content in building insulation products.

3. *Estimation, Certification, and Verification.* The third requirement of the affirmative procurement program set forth in section 6002(i) covers estimation, certification, and verification of recovered material content in procurements. Estimates and certifications of content in an item are most easily expressed as a percentage of total content and can range from 0 percent to 100 percent, depending on the type of product or the feedstock used in manufacturing the item. Many issues have been raised about these requirements, such as when the information should be provided, who is to provide it, and how it is to be obtained. To clarify this subject, it is necessary to review the requirements of the statute.

a. *Estimation.* RCRA section 6002(c)(3)(B) and section 6002(i)(2)(C) require that, after the effective date of a guideline, vendors that supply procuring agencies with products covered by the guideline also must provide an *estimate* of the total percentage of recovered materials utilized in the performance of

the contract. Furthermore, contracting officers must require that this information be provided.

EPA believes that this requirement is for the purpose of gathering statistical information on price, quantity, availability, and performance of products made from recovered materials. EPA further believes that this requirement applies regardless of the approach used when a contract is solicited or awarded (i.e., minimum content standards, case-by-case procurement, or an equivalent alternative). Estimates may differ from percentages of minimum recovered content specified in certifications and will provide up-to-date information for the annual review which is required of procuring agencies.

Proposed § 248.23(a) would require that contracting officers require vendors to provide estimates of the total percentage of recovered content in building insulation products. Note that the percentage of recovered content refers to the total content of the insulation *core* rather than the entire insulation product, which includes other items such as facings or bindings. EPA is proposing to recommend that procuring agencies retain these data for three years by type of product, quantity purchased, and price paid.

b. *Certification.* The use of certifications is common in government procurement. It is written assurance that goods or services delivered will fulfill the specified requirements. Failure to meet the conditions which have been certified can result in penalties to a vendor. RCRA Section 6002(c)(3)(A) requires that after the effective date of this guideline, vendors must "certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements". RCRA section 6002(i)(2)(C) requires "certification of minimum recovered material content actually utilized * * *."

Together, these sections could be interpreted to mean that multiple certifications will be required; one when bids are offered, and another with each shipment. This issue was addressed in the paper guideline issued October 6, 1987 (52 FR 37300). EPA concluded that one certification would fulfill both statutory requirements and, by requiring the certification no matter which approach is used, procuring agencies could adapt their purchasing programs most easily. For the same reasons enunicated in the paper guideline, EPA is proposing to recommend in § 248.23(b) that procuring agencies meet the certification requirement in RCRA sections 6002(c)(3)(A) and 6002(i)(2)(C) by using a single certification when bids are offered.

Note that there is no requirement to certify the actual recovered content, but rather that the recovered content actually used meets the contract minimum. When minimum content standards are used, the contract minimum is the standard specified in the solicitation or invitation for bid. When case-by-case procurement is used, the contract minimum is the minimum as specified in the offer provided in response to the solicitation or IFB.

Accordingly, EPA recommends that procuring agencies require certification as a condition of a responsive bid when bids are offered, regardless of whether the case-by-case, minimum content standard, or a substantially equivalent approach is used. Also, as previously stated, the successful vendor must estimate the actual recovered content in building insulation products that are supplied. The estimate may or may not be different than the minimum percentage that is certified.

EPA understands that for both estimation and certification, the vendor will not have direct knowledge of recovered materials content. Only the manufacturer that produces the insulation product will have that information. However, there is no direct authority in RCRA section 6002 for the Federal government to require this information from anyone but the vendor. Therefore, vendors must make their own arrangements for obtaining this information from manufacturers.

c. *Verification.* Procuring agencies also are required to establish "reasonable verification procedures for estimates and certifications." See RCRA section 6002(i)(2)(C). If these verification procedures include access to manufacturers' records, then the procuring agency must use some authority other than RCRA to inspect these records or must require vendors to have an agreement with the manufacturer to supply such information or access to the procuring agency.

In general, insulation manufacturers maintain records of the feedstocks used in each "batch" for their own internal quality and specification controls. The optimum mix or recovered and virgin materials often remains the same for each type of insulation though variations may occur in individual batches.

In most cases, manufacturers will be able to provide a certification to vendors as to the specific feedstock content of the product shipped to a customer. It is not intended that the guideline require any additional records to be kept by the manufacturers; records normally kept should be complete enough to estimate or certify to recovered materials content accurately. However, to simplify the verification procedure and accommodate variations dictated by quality control and supply, the average of recovered materials used in each specific product over a one-month period may be used, if necessary, to meet the verification of estimates requirement.

EPA is proposing to recommend in § 248.23(c)(2) that one-month figures be used for estimates of feedstock percentages. If it is necessary to verify the exact content of a specific batch of insulation, the manufacturers' records for that batch can then be consulted.

However, if the vendor knows that the recovered materials content of an insulation product supplied to procuring agencies differs from the monthly average, then the average cannot be used. For example, if the monthly average is 30 percent recovered materials content but the insulation product supplied contains no recovered materials or conversely contains 60 percent recovered content, then the vendor cannot use the monthly average. Use of the average in such instances will be viewed as an attempt to circumvent the requirements of RCRA in supplying insulation products to the procuring agency.

Monthly *averages* cannot be used for certification. Every shipment may not contain recovered materials content equal to or greater than the average. However, the *minimum* percentage of recovered materials used in insulation products by the manufacturer can be determined from monthly records for certification purposes.

It has been suggested that the various insulation industries are very competitive and that the "recipes" for various insulation products are carefully guarded trade secrets. However, the special ingredients that distinguish one manufacturer's product from another's are used in very small quantities. The volumes of virgin and recovered material feedstocks in question are far larger and are the only feedstocks for which verification procedures would be necessary. EPA is proposing to recommend in § 248.23(c)(1) that, should it be necessary to consult manufacturers' records for verification, records of other ingredients should not be reviewed in order to protect trade secrets.

4. *Annual Review and Monitoring.* The fourth requirement of the affirmative procurement program is an annual review and monitoring of the

effectiveness of the program. EPA is proposing to recommend that the review include an estimate of the quantity of building insulation products purchased during the year, an assessment of the effectiveness of the agency promotion program, and an assessment of any remaining barriers to procurement of building insulation containing recovered materials. In assessing barriers to procurement, procuring agencies should determine whether they are internal or external. Internal barriers, such as resistance to use of building insulation with recovered content by agency personnel, without cause, can be corrected by the procuring agencies. External barriers, such as unavailability of building insulation with recovered content, may well be beyond the agencies' control.

EPA also believes that procuring agencies should review the range of estimates and certifications of recovered materials content provided by vendors during the year. Significant and repeated variations between standards, certifications and estimates would signal whether changes in approach (e.g., from case-by-case to minimum content standards) or different minimum content standards are warranted. EPA further believes that information provided by the estimation requirement will be particularly helpful to procuring agencies when they review their compliance with the requirement to purchase building insulation products with the highest percentage of recovered materials practicable.

EPA has determined that one intent of the requirement that vendors estimate the total percentage of recovered materials content is to provide information to procuring agencies that can be used in future procurements. Further, procuring agencies need to keep up-to-date on changes in recycling practices and availability of products containing recovered materials content. For these reasons, EPA believes that agencies should keep statistical records of building insulation product procurements to implement properly the intent of Congress in requiring an affirmative procurement program. A summary of these records should be included in the annual review and monitoring of the effectiveness of the program.

A program for gathering statistics need not be elaborate to be effective. However, agencies should monitor their procurements to provide data on the following:

(a) The percentages of recovered materials content in the products procured or offered;

(b) Comparative price information on competitive procurements;

(c) The quantity of each item procured over a fiscal year;

(d) The availability of the insulation products to procuring agencies;

(e) Type of performance tests conducted, together with the categories of building insulation products containing recovered materials content that failed the tests, the percentage of total virgin products and products containing recovered materials content supplied that failed each test, and the nature of the failure;

(f) Agency experience with the performance of the procured products.

Rather than keep records of each test performed, procuring agencies should identify the performance tests used and maintain records, by test, on the percentage of failures by building insulation products containing recovered materials content and on the nature of these failures.

EPA recommends that each procuring agency prepare a report on its annual review and monitoring of the effectiveness of its procurement program. If the agency is using the case-by-case approach, the report should discuss how that approach is maximizing the use of recovered materials content as required by RCRA section 6002. If the minimum content standard approach is used, the agency should discuss whether the standard should be raised, lowered, or remain constant for each item. The discussion should be based on reasonable determinations of price, quality, and availability as well as a comparison of estimates and certifications provided by the vendors. Agencies should also document their review of specifications and list those which are revised each year.

EPA notes that this guideline will apply to state and local procuring agencies as explained under "Applicability." Information drawn from the experience of Federal procuring agencies about purchases of insulation products containing recovered materials content would therefore be useful to state and local purchasing officials. Accordingly, EPA encourages Federal procuring agencies to make their reports available to the public.

## V. Price, Competition, Availability, and Performance

As described above, Section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that the item is available only at an unreasonable price, a satisfactory level of competition cannot be maintained, the item is not reasonably available within a reasonable period of time, or the item fails to meet the performance standards. EPA has considered the effect of these limitations on insulation containing recovered material content procurement.

### *A. Price*

Several factors will affect the market price, or bid price, of the designated insulation products, including the availability and cost of recovered material feedstocks, transportation costs, and so on. Because these factors can be site specific and are variable, EPA believes the best method of determining the price is through the marketplace. Further, fluctuation in the overall economy affects the prices of individual insulation products.

In many cases, more than one type of insulation could be selected for a particular installation. The different types of insulation do not compete on pricing alone; otherwise the least expensive insulation product would be used in all instances. There is no purchasing history based on relative prices of insulation products made with virgin versus recovered material content. The only price comparison EPA could make is by type of insulation made with virgin materials or with recovered materials content at a particular point in time. The price differences may be the result of factors other than recovered material content, such as special additives or features in one product as compared with another.

Further, manufacturers have suggested that the use of recovered materials rather than virgin materials rarely results in price differences. Cellulose and rock wool insulation is rarely available with primarily virgin content. Cellulose fiberboard and the polyisocyanurate/polyurethane rigid foams are commonly, though not always, made with recovered materials. Price differences between similar products are usually the result of factors unrelated to the choice of virgin or recycled feedstocks.

Each procuring agency may decide whether or not a "reasonable price" includes a price preference. As EPA stated in the paper guideline, 52 FR 37298–37299 (October 6, 1987), RCRA section 6002 does not provide explicit authority to EPA to authorize or recommend repayment of a price preference or to create a set-aside. Therefore, unless an agency has an independent authority to provide a price preference or to create a set-aside, EPA believes that a price is "unreasonable" if it is greater than the price of a

competing product made of virgin material.

However, it should be borne in mind that, when product specifications require a recovered material content, there is no way to guarantee that every item procured under those specifications was procured at a price no greater than the price that would have been paid in the absence of those specifications. On the contrary, EPA expects that there will be fluctuations in price in both directions. Therefore, EPA interprets the reasonable price provision of RCRA section 6002(c)(1)(C) for those specifications to mean that there is no projected or observed long-term or average increase over the price of comparable virgin items.

*B. Competition*

EPA recommends that determinations of "satisfactory" competition be made in accordance with Federal procurement law. For example, 48 CFR Part 14, Sealed Bidding, allows for award of bids even when a small number of bids have been received; see 48 CFR 14.407–1. In the case of negotiated contracts, 48 CFR 15.804–3(b) provides that competition exists if offers are solicited; two or more responsible offerors that can satisfy the Government's requirements submit price offers responsive to the solicitation's expressed requirements; and these offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

EPA believes that the number of manufacturers for the designated types of building insulation products is sufficient to assure competitive bidding. Further, many vendors are able to bid products from a single manufacturer. EPA does not foresee insufficient competition for building insulation products made with recovered materials content. If a lack of competition results because of the recommended minimum content standards, EPA is proposing to recommend that procuring agencies re-evaluate the minimum content standards.

*C. Availability*

EPA believes that the building insulation products designated in the proposed guideline published today are currently available with recovered materials content in each of the following insulation categories: cellulose, cellulose fiberboard, perlite composite board, rock wool, polyurethane/polyisocyanurate rigid foam-in-place and board, and phenolic rigid foam. Although statistics on recovered material feedstock use have not been gathered for any type of building insulation product, both manufacturers and suppliers of recyclable feedstocks have indicated the flow of recovered materials into the insulation industries. Fiberglass insulation made with recovered cullet is not as widely available, and polystyrene insulation made with recovered materials may only be in developmental stages.

In the case of fiberglass insulation, EPA has determined that fiberglass is frequently available with manufacturer's waste cullet, but the percentages are not consistent batch to batch nor among different manufacturers. Currently there is more demand for both preconsumer and postconsumer cullet than there are available supplies. Although EPA has determined that cullet is a technically acceptable feedstock which is used by the fiberglass industry when it is available in constant quantities at competitive prices, the competition for bottle cullet from the glass container industry and for other types of preconsumer glass cullet from other industries makes it impractical to recommend a minimum cullet content standard for the fiberglass industry. However, these circumstances may change over time. Therefore EPA is proposing that procuring agencies use the case-by-case approach to purchase fiberglass insulation with recovered material content at this time.

Although EPA has not confirmed the use of recovered materials in polystyrene insulation, manufacturers have indicated that research and development efforts are underway. EPA therefore proposes that procuring agencies adopt a case-by-case approach for polystyrene insulation. This approach would provide the information necessary for the affirmative preference program required by Section 6002, without jeopardizing current procurements.

New types of insulation products may become available with recovered materials content. Procuring agencies can identify such new products and adaptations to existing products as they monitor new developments. These additional products must be included in the preference program as they become available.

*D. Performance*

In general, performance standards for building insulation products have been established without regard to the kind of feedstocks used. Manufacturers have indicated that the use of recovered materials rather than virgin feedstocks does not affect the performance of the insulation product in question. Performance is determined by other factors. Standard industry specifications for all but cellulose loose-fill insulation neither allow nor disallow recovered material content; cellulose loose-fill insulation specifically mentions that the basic materials is to be recycled. In many other types of insulation products, recovered material is commonly used. Therefore, EPA does not believe that product performance should be an issue of concern to procuring agencies.

## VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986 (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these requirements.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items were to eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)]. In addition, procuring agencies must develop an affirmative procurement program for purchasing designated items, in this instance, building insulation products [section 6002(i)(1)]. Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must procure such items containing the highest percentage of recovered materials practicable [section 6002(c)(1)]. In addition, contracting officers must require vendors to submit estimates and certifications of recovered materials content [section 6002(c)(3)]. Both of these activities must begin after the date specified by EPA in the applicable guideline. EPA believes that procuring agencies should begin to procure the designated products as soon as the specification (or purchasing practice) revisions have been completed and the affirmative procurement

programs have been developed. Since these latter activities must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin no later than one year from publication as well. Section 248.26 specifies this implementation date.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

## VII. Summary of Supporting Analyses

### *A. General*

Three background documents were prepared for EPA and have been placed in the docket for the proposed guideline: *Feasibility of a Procurement Guideline for Recovered Materials in Insulation Products* (E.H. Pechan & Associates, Inc., February, 1988), *Insulating Material Types and Manufacturers* (E.H. Pechan & Associates, Inc., June 1988), and *Energy and Economic Impacts of the Proposed Guideline for Procurement of Building Insulation Products Containing Recovered Materials* (E.H. Pechan & Associates, Inc., June 1988).

### *B. Environmental Impacts*

Recently questions have arisen regarding the environmental consequences of use of chlorofluorocarbons (CFCs) in the manufacture of various items. One of the types of insulation covered by the proposed guideline, rigid plastic foams, contain CFCs. EPA is currently pursuing research and examining the regulatory issues.

Ozone depletion in the upper atmosphere has created environmental concerns. Fully halogenated CFCs are the primary suspects for causing substantial ozone depletion. EPA published a proposed rule on Protection of Stratospheric Ozone (40 CFR Part 82) on December 14, 1987 (52 FR 47486). The regulations would reduce consumption of CFCs and halons, are intended to reduce the release of CFCs and halons to the atmosphere, and would implement the Montreal protocols. The deadline for final EPA regulations is August, 1988.

CFCs are a key ingredient of PIR/PU, extruded PS, and phenolic rigid foam insulations. PIR/PU rigid foam insulation uses CFC–11 (fluorotrichloromethane). Extruded PS foam insulation is manufactured with CFC–12 (dichlorodifluoromethane). CFCs are used as a supplementary blowing agent and are retained within the closed insulation cells. CFCs have good thermal insulation properties and contribute significantly to the high R-values of the rigid foam insulations. Use of CFCs in closed cell foams has changed the emissions scenario from one of quick release (such as aerosol propellants) to a steady, very long term release. Industry sources have informally suggested that the half lives of CFCs in one-inch thick un-clad polyisocyanurate foam boards range 75 to 150 years.

Expandable foam polystyrene (EPS) is not made with CFCs. Instead, hydrocarbons such as pentane are used as blowing agents. R-values for equivalent thicknesses of EPS when compared with extruded polystyrene are said to be lower.

Insulation, by nature, is installed in the broadest range of building applications and geographies. Therefore, release of CFCs cannot be effectively controlled. Continued, and increasing use of CFCs in PIR/PU and extruded PS insulation as market share grows would effectively create a bank of CFCs slowly being released throughout the environment.

Unlike many other uses of CFCs, there are no currently available substitutes for PIR/PU and extruded PS rigid foam insulation. A substitute must interact suitably with the other chemical feedstocks, function as a supplementary blowing agent and also have superior thermal insulating properties. A substitute cannot be toxic in itself nor increase toxicities or flammability of the insulation product. The industry is faced with potential EPA CFC consumption reduction controls that could seriously impact manufacturers of this type of insulation. Consequently, research for a commercial substitute is being pursued aggressively.

EPA has not determined that the use of recovered materials content has any effect on use of chlorofluorocarbons and therefore solicits comments on this issue.

### *C. Energy Impacts*

The primary energy impact of insulation is energy conservation as more buildings are insulated more efficiently. The use of recovered materials in the insulation products would not affect insulation or R-values.

The use of glass cullet rather than virgin materials in fiberglass insulation has been said to reduce energy consumption in fiberglass manufacture. DMT waste bottoms have been said to be burned to recover energy value if they are not recovered to produce products like insulation polyols. Data regarding quantities and potential energy impacts were not available. Therefore EPA solicits comments on the energy impacts of using glass cullet rather than virgin materials in fiberglass and in using DMT waste bottoms in polyols rather than as fuel.

### *D. Executive Order 12291*

Under Executive Order 12291, EPA must determine whether a regulation is major or nonmajor. The proposed guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA does not believe that this guideline will result in higher prices nor that adverse effects throughout the economy will result. In fact, the guideline may stimulate employment, competition, investment, productivity, innovation and United States enterprises may be able to compete more effectively with foreign based counterparts that are importing recovered materials.

This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

### *E. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in the environmental, energy, and economic impact document, the economic impact on both small businesses and small governmental jurisdictions is expected to be in some

cases, negligible and in other instances, beneficial. An extremely limited number of business and governmental entities are affected at all by the guideline.

For the above reasons, EPA certifies that the proposed guideline is not expected to have a significant economic impact on a substantial number of small entities. As a result, the guideline does not require a Regulatory Flexibility Analysis.

**List of Subjects in 40 CFR Part 248**

Commercial item descriptions, Government procurement, Insulation, Military specifications, Postconsumer materials, Recovered materials, Recycling, Resource recovery.

Dated: July 27, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations by adding a new Part 248 reading as follows:

## PART 248—GUIDELINE FOR FEDERAL PROCUREMENT OF BUILDING INSULATION PRODUCTS CONTAINING RECOVERED MATERIALS

### Subpart A—General

Sec.
248.1 Purpose.
248.2 Designation.
248.3 Applicability.
248.4 Definitions.

### Subpart B—Specifications

248.10 Revisions.
248.11 Recommendations.

### Subpart C—Affirmative Procurement Program

248.20 General.
248.21 Preference program.
248.22 Promotion program.
248.23 Estimates, certification, and verification.
248.24 Annual review and monitoring.
248.25 Implementation.

**Authority:** 42 U.S.C. 6912(a) and 6962.

### Subpart A—General

**§ 248.1 Purpose.**

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of building insulation products designated in § 248.2 of this Part.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications, purchasing activities and procurement.

(c) EPA believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

**§ 248.2 Designation.**

EPA designates building insulation products as items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA.

**§ 248.3 Applicability.**

(a)(1) This guideline applies to all procuring agencies and to all procurement actions involving building insulation products where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. For purposes of the $10,000 threshold, functional equivalency extends to all building insulation products used for ceilings, floors, foundations, and walls. All building insulation products are considered to be functionally equivalent and include the following product types and materials:

(i) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;

(ii) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);

(iii) Board (sheathing, roof decking, wall panel) insulation, including but not limited to cellulose fiberboard, glass fiberboard, foam glass, perlite, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and

(iv) Spray-in-place insulation, including but no limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.

(2) This guideline applies to Federal agencies, to State or local agencies using appropriated Federal funds, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of items designated by EPA.

(3) The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies.

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made indirectly by any person in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

**§ 248.4 Definitions.**

As used in this guideline:

(a) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

(b) "Blanket insulation" means relatively flat and flexible insulation in coherent sheet form, furnished in units of substantial area. Batt insulation is included in this term.

(c) "Board insulation" means semi-rigid insulation preformed into rectangular units having a degree of suppleness, particularly related to their geometrical dimensions.

(d) "Building insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned volume of a building and adjacent unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill that are used as ceiling, floor, foundation, and wall insulation.

(e) "Ceiling Insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned area of a building and an unconditioned attic as well as common ceiling floor assemblies between separately conditioned units in multi-unit structures. Where the conditioned area of a building extends to the roof, ceiling insulation includes such a material used between the underside and upperside of the roof.

(f) "Cellular polyisocyanurate insulation" means insulation produced principally by the polymerization of polymeric polyisocyanates, usually in the presence of polyhydroxl compounds with the addition of catalysts, cell stabilizers and blowing agents.

(g) "Cellular polystyrene insulation" means an organic foam composed principally of polymerized styrene resin processed to form a homogenous rigid mass of cells.

(h) "Cellular polyurethane insulation" means insulation composed principally of the catalyzed reaction product of polyisocyanurates and polyhydroxl compounds, processed usually with a blowing agent to form a rigid foam

having a predominantly closed cell structure.

(i) "Cellulose fiber" means insulation composed principally of cellulose fibers usually derived from paper, paperboard stock or wood, with or without binders.

(j) "Cellulose fiber loose-fill" means a basic material of recycled wood-based cellulosic fiber made from selected paper, paperboard stock or ground wood stock, excluding contaminated materials which may reasonably be expected to be retained in the finished product, with suitable chemicals introduced to provide properties such as flame resistance, processing and handling characteristics. The basic cellulosic material may be processed into a form suitable for installation by pneumatic or pouring methods.

(k) "Cellulose fiberboard" means fibrous felted, homogenous, or laminated board, principally composed of cellulose fibers (usually derived from paper, paperboard stock, wood or cane), with or without binders, which provides thermal resistance among other properties.

(l) "Commercial Item Descriptions" are a series of simplified item descriptions under the Federal specifications-and-standards program used in the acquisition of commercial off-the-shelf and commercial type products.

(m) "Conditioned" means heated and/or mechanically cooled.

(n) "Federal agency" means any department, agency, or other instrumentality of the Federal government; any independent agency or establishment of the Federal government including any government corporation; and the Government Printing Office.

(o) "Floor insulation" means a material, primarily designed to resist heat flow, which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, floor insulation includes such a material installed around the perimeter of or on the slab. In the case of mobile homes, floor insulation also means skirting to enclose the space between the building and the ground.

(p) "Foam-in-place insulation" foam is rigid cellular foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications such as spray-in-place and pour-in-place.

(q) "Foundation insulation" means a material, primarily designed to resist heat flow, which is installed in foundation walls between conditioned volumes and unconditioned volumes and the outside or surrounding earth, at the perimeters of concrete slab-on-grade foundations, and at common foundation wall assembles between conditioned basement volumes.

(r) "Invitation For Bids" is the solicitation for prospective suppliers by a purchaser requesting their competitive price quotations.

(s) "Loose-fill insulation" means insulation in granular, nodular, fibrous, powdery, or similar form, designed to be installed by pouring, blowing or hand placement.

(t) "Mineral fiber insulation" means insulation (rock wool or fiberglass) which is composed principally of fibers manufactured from rock, slag or glass, with or without binders.

(u) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

(v) "Phenolic insulation" means insulation made with phenolic plastics which are plastics based on resins made by the condensation of phenols, such as phenol or cresol, with aldehydes.

(w) "Plastic rigid foam insulation" means cellular polyurethane, cellular polyisocyanurate, cellular polystyrene, and phenolic foam insulation.

(x) "Postconsumer recovered materials" means any product generated by a business or a consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, or disposition, and which does not include secondary (or manufacturing waste) material.

(y) "Postconsumer recovered paper" means (1) paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they have passed through their end-usage as a consumer item including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards and used cordage; and (2) all paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste.

(z) "Practicable" means capable of being used consistent with: performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition.

(aa) "Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

(bb) "Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(cc) "Purchasing" means the act of and the function of responsibility for the acquisition of equipment, materials, supplies, and services, including: Buying, determining the need, selecting the supplier, arriving at a fair and reasonable price and terms and conditions, preparing the contract or purchase order, and follow up.

(dd) "Purchasing activities" means all activities included in the purchasing function.

(ee) "Recovered materials" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(ff) "Request for Proposal" is a request for an offer by one party to another of terms and conditions with references to some work of undertaking; the initial overture or preliminary statement for consideration by the other party to a proposed agreement.

(gg) "Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

(hh) "Spray-in-place insulation" means insulation material that is sprayed onto a surface or into cavities and includes cellulose fiber spray-on as well as plastic rigid foam products.

(ii) "Spray-in-place (foam-in-place) foam" is rigid cellular polyurethane or polyisocyanurate foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications.

(jj) "Wall insulation" means a material, primarily designed to resist heat flow, which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside, as well as common wall assemblies between

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separately conditioned units in multiple unit structures.

## Subpart B—Specifications

### § 248.10 Revisions.

(a) Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications, by May 8, 1988, to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.

(b) Within one year after the effective date of this guideline, each procuring agency must assure that its specifications for building insulation products require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

### § 248.11 Recommendations.

(a) Procuring agencies should continue to reference Commercial Item Descriptions or appropriate standards when purchasing building insulation products, after such Commercial Item Descriptions and industry standards (and specifications which are referenced) have been reviewed to be certain that the use of recovered materials is allowed.

(b) Procuring agencies should include minimum content standards or substantially equivalent methods to prefer recovered materials content in their invitations for bids and requests for proposals when purchasing building insulation products or causing the purchase of building insulation products in any contract.

(c) If a procuring agency determines that a building insulation product containing recovered materials cannot meet reasonable performance standards, then the agency can exclude the product on a case-by-case basis. Procuring agencies should document such determinations, and the documentation should reference the particular tests used to judge performance. Procuring agencies should also reference such documentation in subsequent solicitations for the specific item to avoid repetition of previously documented findings.

(d)(1) Procuring agencies should assure that language in new specifications for new insulation products, and for existing products which are introduced with recovered materials content, allows recovered materials content. Methods to monitor the introduction of new or adapted products are detailed in §§ 248.21 and 248.24 of this Part.

(2) As new building insulation products containing or capable of containing recovered materials are identified, minimum content standards or equivalent preferences for recovered material content should be inserted in invitations for bids and requests for proposals whenever such products could be offered.

## Subpart C—Affirmative Procurement Program

### § 248.20 General.

Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures building insulation products must establish an affirmative program for procuring such items containing recovered materials. The program must meet the requirements of section 6002(i) of RCRA, including the establishment of a preference program; a promotion program; procedures for obtaining estimates and certification of recovered materials content and for verifying the estimates and certifications; and an annual review and monitoring program. This subpart provides recommendations for implementing section 6002(i).

### § 248.21 Preference program.

(a)(1) EPA recommends that procuring agencies establish minimum recovered material content standards for building insulation products commercially available with recovered materials content, subject to the limitations described in paragraphs (a)(2) and (c) of this section, so as to achieve procurement of building insulation products containing recovered materials to the maximum extent practicable.

(2) EPA recommends the establishment of minimum postconsumer recovered paper content standards for building insulation products made with cellulose fiber in accordance with RCRA section 6002(i).

(3) EPA recommends that minimum content standards (i) be based on insulation material type, (ii) be based on the weight of component parts, (iii) refer only to the core insulation material and exclude from consideration any facing, binding or other materials surrounding or attached to the core, and (iv) include any insulation material that is used in composite products.

(4) EPA recommends that the following minimum content standards be used:

| Material type | Percent by weight |
|---|---|
| Cellulose loose-fill and spray-on | 75% postconsumer recovered paper material. |
| Cellulose fiberboard | 50% postconsumer recovered paper material. |
| Perlite composite board | 23% postconsumer recovered paper material. |
| Polyisocyanurate: polyurethane: | |
| Rigid foam board | 9% recovered material. |
| Foam-in-place | 5% recovered material. |
| Phenolic rigid foam | 4% recovered material. |
| Rock wool | 50% recovered material. |

(b)(1) In those cases where recovered material content is not yet, or may not be consistently, available, EPA recommends that a case-by-case approach be used.

(2) The case-by-case approach as described in RCRA section 6002(i)(3)(A) of RCRA allows procuring agencies to make an award to a vendor offering items with less than the minimum content standard. All other things being equal, the vendor offering the highest percentage of recovered material content must be awarded the bid. EPA recommends that procuring agencies use the case-by-case approach to purchase building insulation products in three instances:

(i) When an item can technically contain recovered materials content but is not commercially available, or is not consistently available,

(ii) When the item cannot be obtained with the standard minimum content for recovered material and no other method can be used to establish a new minimum content standard, or

(iii) When an item becomes unavailable with recovered material content. Use of the case-by-case approach should continue in this instance until it is proven that the recovered material will no longer be available for the item or until a new minimum content standard can be set.

(c) The recommendations in paragraphs (a) and (b) of this section, as well as any other substantially equivalent affirmative procurement program that an agency may adopt, are subject to the following limitations listed in section 6002(c)(1) of RCRA:

(1) Maintenance of a satisfactory level of competition;

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(d) EPA recommends that if procuring agencies have difficulty obtaining a building insulation product for the reasons listed in paragraph (c) of this

section, the procuring agencies should re-evaluate the minimum content standard.

(e) Procuring agencies should examine their purchasing practices and eliminate those which would inhibit the purchase of building insulation products containing recovered materials (e.g., bids for "all or none" when a broad range of insulation products are required).

(f) Procuring agencies should make determinations regarding competition and availability in accordance with the Federal Acquisition Regulation (FAR), 48 CFR Ch. 1 *et seq.*

**§ 248.22 Promotion program.**

EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement invitations in the *Commerce Business Daily* or similar publications describing the preference program.

(b) Describe the preference program in solicitations or invitations for bids for or which include building insulation.

(c) Discuss the preference program at bidders' conferences.

(d) Inform industry trade associations about the preference program.

(e) Publicize preferences for building insulation products made with recovered materials in all product-related services and publications (e.g., Department of Housing and Urban development publications and product-related services developed in compliance with section 521 of the National Housing Act, such as: National Building Codes, Bulletins, Materials Releases, Engineering Bulletins, and Use of Materials Information).

(f) Issue press releases describing the affirmative procurement program to recycling industry publications.

**§ 248.23 Estimates, certification, and verification.**

Each procuring agency must develop estimation, certification and verification procedures:

(a) When a vendor supplies a building insulation product, the contracting officer must require the vendor to estimate the total percentage of recovered material content in that insulation product. EPA recommends that procuring agencies maintain records of these estimates for three years by type of product, quantity purchased, and price paid.

(b)(1) When a procurement solicitation or invitation for bid requires a minimum recovered materials content, procuring agencies must require offerors or bidders to certify that the percentage of recovered material to be used in the performance of the contract will be at least the amount required by the solicitation or invitation for bid.

(2) When using the case-by-case approach, a procuring agency must require offerors or bidders to certify that the percentage of recovered materials to be used in the performance of the contract will be at least the minimum percentage described in the offer in response to the invitation for bids.

(c)(1) EPA recommends that procuring agencies develop verification procedures for certifications and estimates of recovered materials content in building insulation products that require access only to manufacturers' records of recovered materials and comparable virgin materials used in each batch. Verification need not include review of records of other ingredients used in small percentages, which could include confidential business information.

(2) EPA recommends that the average of recovered materials used in a specific insulation product over a one-month period be used, if necessary, for verification of estimates of recovered materials content actually utilized in insulation products supplied to a procuring agency.

**§ 248.24 Annual review and monitoring.**

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(b) EPA recommends that the annual review include the following items:

(1) An estimate of the quantity of building insulation with recovered material content purchased and the total quantity of building insulation products purchased.

(2) An assessment of the effectiveness of the promotion program.

(3) An assessment of any remaining barriers to purchase of insulation with recovered content to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailability).

(4) A review of the range of estimates and certifications of recovered materials content in building insulation products provided by vendors during the year to determine whether minimum content standards should be raised or lowered, or whether a change from the case-by-case approach to the minimum content standard approach is necessary.

(5) A program to gather statistics. Procuring agencies should monitor their procurements to provide data on the following:

(i) The percentages of recovered materials content in the products procured or offered;

(ii) Comparative price information on competitive procurements;

(iii) The quantity of each item procured over a fiscal year;

(iv) The availability of the insulation products to procuring agencies;

(v) Type of performance tests conducted, together with the type of building insulation product containing recovered materials content that failed the tests, the percentages of total virgin products and products containing recovered materials content supplied that failed each test, and the nature of the failure;

(vi) Agency experience with the performance of the procured products.

(c) Procuring agencies should prepare a report on their annual review and monitoring of the effectiveness of their procurement programs and make these reports available to the public. The reports should contain the following information:

(1) If the case-by-case approach or a substantially equivalent alternative is being used, a discussion of how the procuring agency's approach procures building insulation products containing recovered materials to the maximum extent practicable. The basis for this discussion should be a review of the data compiled on recovered materials content, price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

(2) If the minimum content standards approach is being used, a discussion of whether the minimum content standards in use should be raised, lowered, or remain constant for each item. The basis for this discussion should be a review of the data compiled on recovered materials content, price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

(3) Documentation of specification revisions made during the year.

**§ 248.25 Implementation.**

Procuring agencies must begin procurement of building insulation products, in compliance with this guideline, one year from [the date of publication of the final guideline].

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Part V

# Environmental Protection Agency

**40 CFR Parts 35 and 142**

**National Primary Drinking Water Regulations Implementation; Primary Enforcement Responsibility; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35 and 142

[WH-FRL-3328-8]

## National Primary Drinking Water Regulations Implementation; Primary Enforcement Responsibility

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revise the requirements for States to obtain primary enforcement authority ("primacy") for the public water system supervision (PWSS) program, authorized under the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*). The proposal would also add certain requirements for maintaining primacy. Specifically, the proposal would establish the procedures and deadlines for State submission and EPA review and approval or disapproval of program changes, and the actions to be taken if States with primacy do not adopt the new requirements on schedule. The proposed rule would also change the frequency of State reports to EPA from annually to quarterly, and add a requirement for States to adopt EPA's determination of best available technology (BAT) for use in granting variances from national primary drinking water regulations. Finally, the proposal would clarify the requirement to demonstrate program capability before an initial program grant is given and to obtain or retain primacy.

**DATES:** Written comments should be submitted by October 3, 1988. A public hearing will be held in Washington, DC, on Tuesday, August 30, 1988, beginning at 9:00 a.m. in the Auditorium of the Education Center, EPA, 401 M Street SW., Washington, DC 20460.

**ADDRESSES:** Send written comments to Murlene Lash, Comment Clerk, State Programs Division, Office of Drinking Water (WH-550E), Environmental Protection Agency, 401 "M" Street SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at EPA, Room 1101 East Tower, 401 "M" Street SW., Washington, DC 20460. EPA requests that anyone planning to attend the public hearing (especially those who plan to make statements) register in advance by calling Murlene Lash at (202) 382-5522, or writing her at EPA, WH-550E, 401 "M" Street SW., Washington, DC 20460. Persons planning to make statements at the hearing are encouraged to submit written copies of their remarks at the time of the hearing.

**FOR FURTHER INFORMATION CONTACT:** The Safe Drinking Water Hotline, toll-free (800) 426-4791, or in Washington, DC at (202) 382-5533, or Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, 401 "M" Street SW., Washington, DC 20460, telephone (202) 382-5522.

**SUPPLEMENTARY INFORMATION:**

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### I. Authority

Section 1413 of the Safe Drinking Water Act ("SDWA" or "the Act") establishes requirements a State must meet to obtain primary enforcement responsibility ("primacy") for the public water system supervision (PWSS) program. These include: (1) Adopting drinking water regulations no less stringent than the national primary drinking water regulations (NPDWRs) in effect under sections 1412(a) and 1412(b); (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making such reports with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed at all by the State) under conditions no less stringent than allowed by sections 1415 and 1416; and (5) adopting and being able to implement an adequate plan for the provision of safe drinking water under emergency situations.

### II. Background

40 CFR Part 142, Subpart B sets out requirements for States to obtain primacy for the PWSS program, as authorized by section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976; since then, the basic requirements have remained relatively unchanged. Since 1976, however, much has happened in the PWSS program. With the exception of Wyoming, Indiana, and the District of Columbia, all eligible States and territories have received PWSS primacy. In addition, the SDWA amendments of 1986 made sweeping changes in the scope and content of the drinking water program. For example, the amendments mandate that EPA promulgate NPDWRs for 83 drinking water contaminants by 1989 and for 25 additional contaminants every three years thereafter. In addition, EPA must promulgate NPDWRs to specify criteria under which filtration is required as a treatment technique for public water systems supplied by surface water sources and which require disinfection as a treatment technique for all public water systems. EPA also was required to revise its existing public notification procedures, which was completed on October 28, 1987. (See 52 FR 41534.) The 1986 SDWA amendments also increase the Agency's authority to enforce the requirements of the national primary drinking water regulations.

With these extensive changes in the program and the law, portions of the primacy regulations at 40 CFR Part 142, Subpart B have become outdated. The major deficiency in the existing primacy regulations is that they neither require States with primacy to modify their programs to adopt new or revised EPA national primary drinking water regulations, nor do they provide a procedure for obtaining EPA approval for these changes.

The rule EPA is proposing in this notice would specify which new requirements must be adopted by a State to maintain primacy, when these new requirements must be adopted, and the procedures for State submittal and EPA review and approval of State program revisions. In developing this proposal, EPA considered the impact of the federal program changes on current State programs and evaluated which new provisions might require State statutory or other major institutional changes within the State.

### III. Summary of Proposed Changes to Subpart B

The following table shows the relationship between the proposed

amendments to the PWSS primacy regulations in 40 CFR Part 142, Subpart B and the current regulations in that subpart.

| Proposed subpart B revision | Content of revised section | Current subpart B | Change to current subpart B |
|---|---|---|---|
| 142.10 | Requirements for a determination of primary enforcement responsibility. | 142.10 | Made conforming changes; clarified capability requirement and BAT for variance requirement. |
| 142.11 | Initial determination of primary enforcement authority | 142.11; 142.12(a) | Made conforming changes and redesignated; added Attorney General statement requirement. |
| 142.12 | Revision of State programs | | New section. |
| 142.13 | Public hearing | 142.13 | Made conforming changes. |
| 142.14 | Records kept by States | 142.14 | Unchanged. |
| 142.15 | Reports by States | 142.15 | Amended. |
| 142.16 | Special primacy requirements | 142.16 | Unchanged. [1] |
| 142.17 | Procedures for withdrawal of State programs | 142.12(b) | Redesignated and retitled. |

[1] This section was modified as part of the public notification regulation, promulgated on October 28, 1987 (52 FR 41534). The modified § 142.16 replaces the old section on State public notification requirements.

As indicated in the table, the proposal would restructure the current Subpart B to add a new section on revision of State programs (new § 142.12), retitle and place in a separate section the existing procedures for withdrawal of State programs (new § 142.17), incorporate revised State reporting requirements (revised § 142.15), and make other conforming changes in the remaining sections to be consistent with the new State program revision section. Under this proposal, the revised primacy regulations would not be applicable to State program revisions to adopt new and revised EPA regulations promulgated before the effective date of this rule. State requests for program revisions to adopt EPA regulations promulgated before the effective date of this rule (e.g., the public notification requirements) are to comply with the current regulations under Part 142, Subpart B, and any special primacy requirements in the program regulation to be adopted.

## IV. Discussion of Today's Proposed Rule

### *A. New Program Requirements Under 1986 SDWA Amendments*

As noted above, the SDWA amendments of 1986 greatly increased the scope and content of the PWSS programs. The current program is operated principally by the States; 54 States and Territories operate approved primacy programs under the authority of section 1413 of the Safe Drinking Water Act. Of the States and Territories eligible for primacy, only Indiana and Wyoming do not have primacy. The programs in these two States, in Washington, DC, and on Indian lands are directly implemented by EPA.

In this notice, EPA is proposing that, to retain primacy, each State with a currently approved primacy program must revise that program to incorporate new EPA regulations promulgated under section 1412 (a) and (b), sections 1415 and 1416, and the revised public notification requirements under section 1414. Under the SDWA, EPA has had a policy of approving only State programs that have adopted the full EPA program. This policy was established from the start to avoid split accountability between EPA and the States for direct operations and to ensure that, to the extent possible, public water systems were regulated under a single regulatory scheme. This policy avoids confusion among the regulated community and the public regarding which regulations must be followed to comply with the SDWA requirements. For the same reasons, EPA intends to continue this "full primacy" policy as it implements the 1986 SDWA amendments.

The proposal maintains the "full primacy" policy by setting a deadline for States to revise their approved primacy programs to adopt new and revised EPA regulation. This is discussed in Part IV.C. below. Although the proposal allows extensions to these deadlines for a limited period, some States may be unable to adopt the new requirements by the end of the extension period and, thus, would be in violation of the primacy requirements. In some rare situations, a primacy State may never agree to or be able to adopt all the new and revised requirements promulgated by EPA. EPA solicits comments on the impact the "full primacy" policy will have on current State primacy programs, what responsibility EPA should assume to implement and enforce new federal requirements where the State has not adopted them, and the practical implication of a program that is partially implemented by both EPA and the State.

Table 1 below summarizes the recent and upcoming EPA regulations currently identified that the States would be required to adopt to retain primacy. The list of regulations in Table 1 is not meant to be complete and is subject to change as EPA proceeds to implement the 1986 SDWA amendments.

TABLE 1.—SUMMARY OF NEW EPA REQUIREMENTS UNDER THE SDWA AMENDMENTS ENACTED JUNE 19, 1986

| Regulatory Packages |
|---|
| New NPDWRs: |
| VOCs |
| Coliforms |
| Lead/Copper |
| Inorganics/Synthetic Organics |
| Radionuclides |
| Other Mandated NPDWRs |
| 1st Additional 25 NPDWRs |
| Public Notification |
| Filtration & Disinfection of Surface Water (NPDWR) |
| Disinfection for Groundwater/Disinfectant By-products (NPDWR) |

For NPDWRs promulgated under sections 1412(a) and (b) and for the variance and exemption provisions (under sections 1415 and 1416), States must adopt new provisions that are "no less stringent" than the EPA regulations. EPA is also requiring that States adopt public notification requirements that are no less stringent than the revised Federal regulations (see 52 FR 41534, October 28, 1987).

### *B. Basic Requirements for State Program Revisions (Section 142.12(a))*

EPA is proposing a new section (§ 142.12) to establish the requirements, application procedures, and the EPA review and decision process for State program revisions. EPA is proposing to define "State program revision" as a statutory, regulatory, or administrative change to the "approved State primacy program." The proposed rule defines the

"approved State primacy program" as the program elements submitted with the initial State application for primacy pursuant to § 142.11(a) and subsequently approved by EPA and any EPA-approved revisions to these elements. The elements required under § 142.11(a) include: The text of the State's drinking water statute and regulations; a description of the State's procedures for the enforcement of the State regulations (including six sub-elements); a statement that the State will make such reports as required; the statutory and regulatory provisions related to variances and exemptions (if the State grants them); a description of the State's plan for providing safe drinking water under emergency conditions; and an Attorney General's statement demonstrating adequate State authority. The Attorney General's Statement is a new requirement proposed in this notice and is discussed in further detail below. These elements, which would be updated with each State program revision and would be maintained by both EPA and the State, would describe the current approved State primacy program at any point in time. Not all portions of the State drinking water program are necessarily part of the approved State primacy program; e.g., many States have an operator certification program, a permit program for water treatment plants, or regulations governing other contaminants beyond the EPA NPDWRs. These would not be considered part of the approved program because they go beyond the primacy requirements established by EPA pursuant to the SDWA.

Section 142.12(a) of the proposed rule would require a State to notify EPA in writing of any modifications to its statutory or regulatory authority or program procedures that may affect the approved primacy program. This notification requirement is to ensure that EPA is kept informed of actions that may affect the authority or capability of the State to fully implement the approved primacy program. The material submitted with the notification must be sufficient to allow EPA to determine whether the change constitutes a revision to the approved primacy program, thus requiring EPA review and approval.

Based on the State's notification, EPA would determine, on a case-by-case basis, whether the changes constitute revisions to the State primacy program and thus must be submitted for approval. Under this proposal, State actions to adopt any new or revised EPA regulation (except for very minor changes, which are discussed below) would be considered a revision to the approved primacy program and the State would be required to submit it to EPA for approval. Therefore, for revisions to adopt new or revised EPA regulations, the State could bypass the notification step and simply submit a request for approval of the revision directly. For minor program revisions the information submitted with the notification may be sufficient to review and approve the revision; in such cases, the Agency does not intend to ask the State to submit a separate, formal request for approval. Likewise, in the rare circumstances in which a new or revised EPA regulation does not require any changes to the approved primacy program, the State would simply notify EPA of this fact; in such a case, the Agency does not intend to require the State to submit a formal rquest for approval.

The proposal would also allow the Administrator to require State submission of materials whenever he or she has reason to believe that the State program may have changed, in the event the State fails to notify the Agency of such a change. If the Administrator determines that the State changes affect the approved primacy programs, the Administrator would ask the State to submit a request for EPA approval of the State program revision.

EPA invites comment on whether it is appropriate for the Administrator (or his or her designee) to require States to notify EPA of all changes to their authorities and procedures that may affect the approved primacy program and to approve or disapprove each State program change that revised the approved primacy program. Comments are also requested on what categories of State changes do not require notification and what program revisions are minor and do not require the State to submit a separate, formal request for EPA approval.

*C. Timing of State Program Revisions (Section 142.12(b))*

Proposed § 142.12(b) would require the State to submit to EPA final requests for approval of program revisions to adopt new or revised EPA regulations within 15 months of the promulgation of EPA's regulations. The Administrator would be required to act on such requests within 90 days after receipt of the final and complete State request. EPA would not begin its final review until it has determined that the State submission is complete and final. The proposal would allow the Administrator to initiate an extension of these deadlines or approve a State request for an extension of the 15-month deadline under certain circumstances.

EPA is proposing the 1-month period for review of State requests for approval of program revisions to coincide with the effective date of most of the new EPA regulations. (Section 1412(b)(10) of the SDWA provides that NPDWRs become effective 18 months after promulgation by EPA.) The Agency did consider options for "clustering" the deadlines to minimize the disruption in State programs that may occur with the large number of sequential changes expected over the next several years. EPA recognizes the advantages of "clustering" program revisions and has proposed that "clustering" be an explicit factor in deciding whether to grant State requests for an extension of the 18-month period. (See discussion below.)

By using the effective date of the NPDWR as the deadline for the adoption and review process, EPA would minimize situations of split program responsibility or "partial primacy" because a State that adopts the change and has it approved on time would implement and enforce the new requirement from the time it is effective. This would avoid the need for EPA to implement and enforce the new requirement in a situation where all other requirements are administered by the State. Splitting oversight responsibilities between EPA and the primacy State, however briefly, may confuse administration of the program and make it difficult for public water system owners and operators and the public to determine which State and Federal regulations are being enforced by whom at any given time.

Nevertheless, EPA recognizes that for valid reasons a State request for approval and EPA's review of State program revisions may take more than 18 months. EPA wishes to avoid initiating primacy withdrawal in cases where a State is making a good-faith effort to adopt the new requirements. Therefore, EPA is proposing that a State may request an extension for up to two years, if the State either has statutory or regulatory barriers to meeting the deadline or temporarily lacks program capability to implement adequately the new requirements. Under the proposal, if a State anticipates submission of a final request for approval of a program revision to EPA more than 15 months after promulgation of the EPA regulation, the State would be required to request an extension of the deadline before the expiration of the 15-month period.

To obtain an extension, the State must demonstrate that it: (1) Is requesting the

extension to group two or more program revisions in a single legislative or regulatory action or otherwise cannot meet the original deadline in spite of a good faith effort to do so; (2) is taking steps to adopt and implement the new provisions within its existing authority; and (3) will develop the capability necessary to implement adequately the new provisions. The extension request must include a schedule setting forth when and how the States will be able to adopt and effectively implement the new provisions.

In granting the State an extension to the 18-month deadline, EPA would put itself in the position of directly implementing the new requirement until it finally approves the State's program revision. To minimize the disruption in State program administration in these cases, EPA is proposing that the State, as a condition of obtaining the extension, implement the following interim measures, as they apply to the new regulations, during the extension period: Inform public water systems of the new requirements and the fact that EPA will be overseeing implementation of the requirement until EPA approves the primacy program revision; collect and store laboratory results and other compliance data; conduct informal follow-up on violations and assist EPA in development of enforcement actions; provide technical assistance to public water systems; and provide EPA with all information prescribed by § 142.15 on State reporting.

If a State's request for an extension is based on a temporary lack of program capability to implement the new requirement, the rule would require the State to take steps to remedy the capability deficiency during the extension period. Actions necessary to accomplish this would be determined case by case considering the administrative, technical, and management areas to be addressed. Such actions might include: (1) An increase in resources to the program; (2) training of existing staff; (3) development of State procedures, guidelines, and policies to implement the new provisions; etc. The proposal would require the State to submit with its extension request a plan to build State capability during the extension period.

The extension request could be approved by EPA for a period not to exceed two years. The full extension period should be used only where there is a clear need for that long a period (e.g., when State legislative changes are required in States where the legislature meets infrequently). The procedures for EPA review and oversight of the State program during the extension period would be developed State by State, within the general criteria outlined in this section.

The extension period would be limited to two years because of the need to limit the period during which States may continue to operate with partial primacy. Even though a State would be implementing the new requirements within the limits of its authority and capabilities as a condition of the extension, EPA believes its policy of full primacy requires a fixed deadline for State adoption of the new requirements. Therefore, under the proposal, where a State has not obtained EPA approval of a program revision by the deadline, EPA may initiate procedures leading to withdrawal of the primacy program. EPA intends to begin procedures leading to withdrawal of the primacy program if the State has not submitted an approval request for program revisions in a timely manner. This is necessary to maintain EPA's "full primacy" policy.

EPA invites comment on the proposed deadline, the criteria for EPA approval of extension of the deadline, the length of the extension, and the conditions a State must meet during the extension period.

*D. Content of a Request for EPA Approval of State Program Revisions (Section 142.12(c))*

Proposed § 142.12(c) lists the contents of a State's request for EPA approval of a revision. The State request must include:

(1) The same information required in an application for initial primacy, listed in § 142.11(a), to the extent the items listed apply to the request for approval of the program revision;

(2) Any additional regulation-specific materials required for program changes where the State is given broad discretion to choose how to achieve the objective of the regulation (these will be specified in § 142.16); and (3) an Attorney General's statement that demonstrates that the State has adequate legal authority under its statute and regulations to carry out the program revision. (NOTE: As explained later, this proposal would amend the application requirements for initial primacy to require an Attorney General's statement. Thus, the third requirement above would be encompassed by the first.) These three requirements are explained in more detail below.

1. Documentation Required Under Section 142.11(a)

Under § 142.11(a), a State request for initial primacy must include the text of the State's statute and regulations (and a demonstration that they are no less stringent than the comparable EPA regulations); a description of the State procedures for administration and enforcement of the regulations; a statement that the State will keep records as required by EPA; a copy of the State variance and exemption regulations (if any); and a description of the State's plan for the provision of safe drinking water under emergency conditions. EPA is proposing that an update of the same materials, as applicable, be included in State requests for approval of program revisions as well. The State would not be required to include materials listed in § 142.11(a) that are not directly related to the program revision under consideration. EPA may, however, request additional materials if needed in order to perform a complete review of a specific program revision.

2. Additional Regulation-Specific Materials

Section 142.16 (as amended by the revised public notification rule, see 52 FR 41534, October 28, 1987) lists additional materials specific to an individual EPA regulation that must be included in a State's request for approval of that regulations. EPA anticipates that these regulations-specific requirements will be necessary only where a new or revised EPA regulation gives the State discretion on how to implement certain requirements of the regulations. Since these primacy requirements will be specific to a regulation, they will be promulgated when the new or revised EPA regulation is promulgated. Currently, this section (§ 142.16) contains only special primacy requirements for State adoption of the revised public notification rule promulgated on October 28, 1987 (52 FR 41524). Special primacy requirements have also been proposed for the surface water treatment and coliform rules (52 FR 42178 and 42224, November 3, 1987).

3. Attorney General's Statement

Under the proposed rule, a request for approval of a program revision would be required to include an Attorney General's statement (or a statement from the attorney for the State primacy agency if it has independent legal counsel). This statement would demonstrate that the State has adequate legal authority under its statutes and regulations to implement the program revision submitted to EPA for approval. The Attorney General's statement would be required in all State requests for approval of program revisions, unless

EPA has specifically waived the requirement as described below.

The proposed rule would enable EPA to use its discretion to waive the requirement for the Attorney General's statement in certain circumstances. EPA is proposing that no waiver of the Attorney General's statement be available for State requests for approval of program revisions which adopt new or revised NPDWRs for specific contaminants required under the 1986 SDWA amendments, for the surface water treatment and disinfection requirements, and for the public notification rule. If EPA elects to waive the requirement for an Attorney General's statement in other cases not covered above, EPA would announce this decision in the preamble to the federal regulation the State is to adopt. In the case of State-initiated changes, as discussed above, the State would be required to notify EPA of such changes. EPA would then inform the State whether or not a request for approval of the program revision is required. In EPA's response, if an Attorney General's statement is not required, EPA would so state. If EPA required the State to submit a request for approval of the program revision, and was silent on the requirement for an Attorney General statement, then an Attorney General's statement would be required.

The proposal would also amend § 142.11 to require a jurisdiction which applies for initial State primacy after promulgation of this regulation to submit an Attorney General's statement as part of its application.

EPA has carefully considered the requirement for an Attorney General's statement. Although the Agency did not require an Attorney General's statement for the primacy determinations made to date, it believes that there are clear and valid reasons for this new requirement.

First, the program is now more complex because of the 1986 SDWA amendments. For the first ten years of its existence, the PWSS program was relatively stable. The basic regulatory requirements remained virtually unchanged from year to year, and almost all eligible States and territories applied for and received primacy soon after the Safe Drinking Water Act was passed in 1974. The program requirements were relatively clear and straightforward to implement and to oversee. However, the 1986 amendments to the Act made sweeping changes in the scope and content of the PWSS program, transforming it into a more extensive and complex regulatory program. For example, as noted above, the amendments mandate that EPA promulgate new drinking water standards for 83 contaminants by 1989 and standards for 25 additional contaminants every three years thereafter. Moreover, the amendments require EPA to promulgate a NPDWR establishing criteria where filtration is required as a treatment technique for public water systems supplied by surface water sources and a NPDWR requiring disinfection for all systems. States will have to revise significantly their existing statutory and regulatory authorities to adopt the new federal requirements. Many of the issues which will arise in the State preparation of program revisions and in EPA review of these revisions will be legal ones; therefore, individuals in the State knowledgeable about State law and able to render a definitive legal opinion on the meaning of the State statutes and regulations should be involved in the revision process.

Second, the SDWA amendments strengthened EPA's enforcement authorities and mandated that the Agency strengthen its enforcement efforts for all instances of noncompliance. Since in almost all cases primary enforcement responsibility has been delegated to the States, the Agency has been actively urging the States to take additional enforcement actions. EPA has also initiated more federal enforcement actions to respond to noncompliance and is following up in cases where the State is not taking action. EPA expects this trend toward stronger enforcement to continue into the future. Further, as standards for additional contaminants are promulgated, enforcement efforts will become more complex. To ensure the success of this enhanced enforcement program, EPA must be certain that the States have adequate authority under their laws and regulations to enforce the new standards. The Attorney General's statement in the State request for approval of a program revision would document this authority.

Third, the Attorney General's statement would act as a guide or "road map" for EPA review of State program revisions, which would simplify and expedite EPA's review. EPA envisions the "road map" to be primarily a directory or side-by-side comparison of the federal regulations and the corresponding State statutes and regulations. EPA would not require the Attorney General's statement to be submitted in any specific format; however, EPA would provide the States with samples and assist them in formatting the statement if needed.

Finally, and most importantly, the statement would demonstrate why the State laws and regulations give the State adequate authority to implement the federal laws and regulations, and allow the State to explain any ambitious provisons in those statutes or regulations. By submitting the "road map" and explanation of State law in the Attorney General's statement, the State would reduce the possibility that EPA will misinterpret State laws and regulations and determine that they are not adequate to implement the federal requirements. Such a determination could result in failure to approve the program revision, or, at best, a long process whereby EPA would need to request additional information and clarification from the State. This could greatly delay a final determination on a State application.

The requirement for an Attorney General's statement would generally require the primacy agency to better coordinate its program revisions with the Attorney General. The Agency recognizes that this new requirement may increase the administrative burden both to prepare requests for appoval of revisions to current primacy programs and to apply for initial primacy for those entities which currently lack primary enforcement responsibility. However, EPA believes that the benefits of the statement, as described above, outweigh any additional administrative burden.

EPA considered whether there are alternatives to the requirement for an Attorney General's statement which might be less burdensome to the State, but which would still meet the basic needs as outlined above. Accordingly, EPA is requesting comments on the following alternative to the current proposal.

Under the alternative, a State's request for approval of a program revision would include a side-by-side comparison of the Federal requirements and the corresponding State provisions (as described above) that is prepared by the State primacy agency; in the case, no Attorney General's statement would be required with the request. EPA would review the documentation submitted by the State primacy agency and would then determine, case by case, if the Attorney General's involvement was necessary. For example, the Attorney General's involvement would be necessary if there was ambiguous statutory or regulatory provision that could be interpreted as inconsistent with the Federal program. In such cases, EPA would request an Attorney General's statement to clarify the ambiguity. This option could lessen the administrative burden of involving the Attorney General's office in the process, at least

initially. However, having to go back to the State and ask that the Attorney General prepare a statement could result in substantial delays in approving State program revisions. If most requests for EPA approval of program revisions involve legal issues that eventually require the Attorney General's participation, the benefits of this option would be small.

EPA requests comment on the proposed requirement for an Attorney General's statement. Comments should address the proposed requirement as well as the alternative presented here and should focus particularly on the usefulness of the requirement for the Attorney General's statement in EPA's review and approval of State requests for program revisions and the impact on State programs.

*E. Procedures for Reviewing a State Request for EPA Approval of a State Program Revision (Section 142.12(d))*

Proposed § 142.12(d) would establish procedures for State submission of requests for approval of program revisions and for EPA review and decision on these program revisions. It also would establish the public notice and public hearing requirements for EPA approval or disapproval of State program revisions.

The proposed procedures for State submission and EPA review of a State request for approval of a program revision would be a two-step process, requiring that the State first submit a preliminary request (containing a draft of the materials listed in § 142.12(c)) for EPA review and tentative determination. EPA's tentative determination would be subject to public notice (and a public hearing if requested) for revisions deemed "substantial" by the Administrator. Then, the State would submit a final request (containing final and complete State materials) for formal EPA approval or disapproval. The final State request would include, for example, State statutory and regulation changes already promulgated, a signed Attorney General's statement, and descriptions of any procedures and other administrative processes already adopted and in place within the State.

A summary of the procedures for review and approval of State requests is illustrated in the following chart.

BILLING CODE 6560-50-M

SUMMARY OF PROCEDURES FOR
EPA REVIEW OF STATE REQUEST
FOR APPROVAL OF PROGRAM REVISIONS

EPA promulgates new or revised rule

State notifies EPA of State-initiated changes in program

EPA determines that EPA approval of program revision is required

I. a. State submits preliminary request for EPA approval of program revision

b. EPA makes tentative determination and transmits it to the State

c. For substantial changes:

1. EPA publishes Notice in the Federal Register

2. EPA holds public hearing (if requested)

3. EPA transmits comments and any changes to EPA's tentative determination to the State

II. a. State submits complete and final request

b. EPA approves or disapproves final State request

c. For substantial changes, EPA publishes Federal Register notice of final decision

BILLING CODE 6560-50-C

Proposed § 142.12(d)(1) would require the State to submit a preliminary request for approval of a State program revision as soon as practicable after EPA's promulgation of a new or revised regulation or EPA's determination that a primacy program revision is required for a State-initiated change. This preliminary request would, at a minimum, contain the information required in § 142.12(c), *in draft form*, including any draft statutes and regulations and a draft Attorney General's statement, i.e., one not yet signed by the Attorney General (see Section D above). The information must be complete enough to allow the Administrator to do a full review and make a tentative determination on the adequacy of the proposed State program revision. No specific time period for this first phase is proposed in the rule, to give EPA and the State flexibility to respond to the specific circumstances of each program revision.

It is strongly recommended that the State primacy agency work with the Attorney General's office in developing the program revision (especially any statutory or regulatory changes) to ensure that no major problems occur later. The draft Attorney General's statement would contain the information described in Section D: A comparison between the federal and State regulations to show that all necessary elements are present and an explanation of any ambiguous provisions in the State law. EPA would review this draft statement along with the rest of the preliminary application materials and discuss any needed changes or additions with State personnel. The statement submitted with the final program revision application would be signed by the Attorney General (or his or her designee).

The proposed requirement for a preliminary State submission and tentative EPA determination is new. This change would formalize what has been standard practice in the primacy review process both for initial primacy decisions and for the program revision process for adoption of the national interim primary drinking water regulations for trihalomethanes in 1979 and 1980, as well as in other Agency programs. EPA is proposing to make this preliminary review step a regulatory requirement for review of all future program revisions to ensure that issues are identified early in the program revision process and that there is an opportunity to respond to EPA comments before EPA takes any final action on State requests.

Proposed § 142.12(d)(1)(iii) would require EPA to publish notice in the **Federal Register** that it has made a tentative determination to approve or disapprove a State program revision and to provide an opportunity to request a public hearing and submit comments. Public notice would only be required for program revisions that the Administrator determines are "substantial." EPA would transmit to the State for its consideration all the public comments and any changes to EPA's tentative determination. Public notice of the Administrator's preliminary determination on the State request is also a new requirement; the current regulations for obtaining initial primacy do not require public notice until after the Administrator makes his or her final decision. However, EPA believes that soliciting early public comment, in conjunction with an early review by EPA of draft State program revisions, would help to prevent new issues from emerging later in the process, e.g., after a State promulgates its regulations. The procedures for public notice and hearing would follow the existing procedures in § 142.13.

The proposed rule does not define the specific criteria EPA will use to determine which program revisions are "substantial." However, EPA believes that most of the State program revisions to adopt the new or revised NPDWRs required by the 1986 SDWA amendments would be deemed "substantial." EPA would determine which new or revised EPA regulations require a "substantial" change to the existing primacy program at the time the EPA regulations are promulgated. State-initiated revisions would be determined to be "substantial" on a case-by-case basis by EPA, based on an evaluation of the impact the change has on the existing primacy program.

After EPA has transmitted the tentative determination and, for substantial changes, all comments and changes resulting from the public notice process, proposed § 142.12(d)(2) would require the State to submit a final request for formal EPA approval of the State program revision. The final request would contain complete information *in final form* for all the elements listed in § 142.12(c), in accordance with EPA's tentative determination. For substantial changes, the final request would include the State response to all comments and changes resulting from the public notice process. The information in the final request would include the relevant statutory authorities and regulations and the signed Attorney General's statement, as well as the final materials to meet the other requirements in § 141.12(c).

For program revisions deemed "substantial" by the Administrator, the proposed rule would require EPA to give public notice in the **Federal Register** that a final determination has been made on the State request. This notice may take place after the 18-month deadline (or extended period) has elasped. If the final program revision is substantially changed from the preliminary State request and EPA's tentative determination, EPA may publish a public notice prior to its final decision requesting comment and giving opportunity for another public hearing.

EPA's disapproval of a State's final request for approval of a program revision would likely require the State to re-promulgate its regulatory changes or to modify other State procedures already in place to meet the conditions for approval. To avoid this, EPA strongly encourages early and active EPA/State identification of issues and their resolution even in advance of the preliminary State request. EPA expects that its tentative determination on the preliminary State request would establish the conditions for final approval. If EPA disapproves the final State request, however, the procedures proposed in § 142.12(d)(1) and (2) would allow the State to submit supplemental materials. For revisions to implement new or revised EPA regulations (which have a deadline for final approval), the State could request an extention of the 18-month deadline to allow sufficient time for submission and review of the supplemental materials.

If the State does not have an approved program revision within the 18-month deadline (or by the end of the approved extension period), the proposal would require EPA to notify the State that it no longer meets the requirements set forth in the rule for maintenance of primary enforcement authority. If the State did not take immediate steps to remedy the situation, EPA could initiate procedures leading to program withdrawal as specified in proposed § 142.17.

EPA invites comment on all aspects of the procedures proposed for EPA's review and decision on State requests for approval of program revisions.

*F. Options for Addressing Minimum State Enforcement Authorities*

Both the Safe Drinking Water Act and the implementing regulations at § 142.10 require a State to have adequate procedures for the enforcement of its drinking water regulations in order to obtain and maintain primary

enforcement responsibility for the PWSS program. Under § 142.10(b)(6)(vi), adequate procedures for the enforcement of drinking water regulations include authority to assess civil or criminal penalties for violation of the State's primary drinking water regulations.

The current regulations in Part 142, however, do not specify any minimum penalty authority. This was a major issue in the development of the initial primacy regulations in 1976. At that time, EPA decided to require the State to have the legal authority to assess civil or criminal penalties for violations, but not to require the State to have any specific minimum penalty authority. While EPA, in the preamble to the original regulations (52 FR 2917, January 20, 1976), strongly urged the States to adopt the same level of penalties as was available to EPA under the SDWA (up to $5,000 per day civil penalty for a willful violator), a lower penalty authority was not a bar to approval of the State's program. The preamble did specify, however, that where lower penalty authority levels had a significant adverse effect on the adequacy of the State's enforcement program, EPA could require a State to raise its penalty authority to retain primacy.

EPA has been investigating current State enforcement authorities under the PWSS program to determine whether it should propose amending the current primary requirements to require States to have enforcement authorities close to or the same as EPA's enforcement authorities under the amended SDWA. The 1986 SDWA amendments increased EPA's maximum civil penalty authority from $5,000 to $25,000 per day and eliminated the requirement that a violation be "willful." See section 1414(b) of the SDWA. In addition, section 1414(a) was amended to give EPA authority to issue administrative orders and the authority to assess administrative penalties up to $5,000, if the initial administrative order is violated. The SDWA was also amended to require EPA to take enforcement action where the State has not taken an appropriate enforcement action under its authorities in a timely manner.

EPA has reviewed current State penalty authorities and their use. This survey indicates that current civil penalty monetary amounts specified in State law range from zero in a few States to $25,000 per violation per day in several States. Specifically, of the 54 States and Territories with primacy, four States have authority to assess fines for up to $25,000 per violation per day, five States up to $10,000 per day, 17 States up to $5,000 per day, seven States up to $1,000 per day, five States up to $500 per day, and the remaining 16 States either have no penalty amount specified or the penalty amounts in their State laws are not known.

EPA believes that the availability and proper use of penalties does serve as a deterrent to violations in general and can be particularly effective in ensuring compliance by recalcitrant systems. Although EPA is not explicitly proposing any specific regulatory language to revise the primacy requirements regarding penalty amounts in this rule, EPA is actively considering several options:

(1) Not specifying a penalty amount (i.e., leave the current requirement unchanged); (2) requiring States to have authority to assess penalties up to $5,000 per day (which would match the authority 26 States now have); (3) requiring States to have authority to assess penalties up to $25,000 per day (which would match EPA's new authority); or (4) requiring States to have authority to assess penalties of some other specified amount within this range, based on comments received and further investigation. EPA requests comment on the concept of requiring a specific minimum level of penalty authority for primacy and, if so, what that level should be. EPA also invites comments on the factors it should consider in evaluating these options, including: (1) The potential benefits to the current State enforcement program; (2) the minimum penalty amount that would effectively encourage compliance by public water systems; and (3) the difficulty for the States of adopting such a requirement.

The 1986 SDWA amendments also added administrative order authority to EPA's mix of enforcement tools. All EPA environmental programs (except those under the Clean Air Act) currently have some type of administrative enforcement authority. In the PWSS program, EPA may assess an administrative penalty only for violation of a compliance order. The States in the PWSS program, in general, do not currently have administrative enforcement authority. The major advantage of administrative order authority, particularly when it includes penalty authority, is that State Agency Directors may order compliance and assess penalties without resort to courts, thus expediting what in many cases would be a longer, more resource-intensive process. EPA is concerned about requiring agencies to adopt administrative enforcement authority, however, because generally State agencies do not have authorities and could not get them without State legislative changes. The State legislative change may be difficult to obtain in many State legislatures without clear and convincing proof of its benefits.

EPA requests comment on whether it should require States as a condition of primacy to have, first, administrative order authority and, second, administrative penalty authority equivalent to EPA's authority. Comments should address the need when such authority in the Public Water System Supervision program, when such authority should be required, advantages and uses of such authority, and the potential difficulties States may face in trying to meet such a requirement to obtain or retain primacy. EPA may issue final regulations on State primacy requirements for civil penalty amounts and State administrative order authority when it issues the final primacy regulations.

### *G. Other Changes to Subpart B*

The proposed rule would make other changes to various sections of Part 142, Subpart B in addition to those necessary to restructure and conform the rule language to accomodate the new section on State program revisions. Three of these changes are significant.

*State Adoption of BAT.* The proposal would revise the primacy requirements in § 142.10 to amend paragraph (d), which relates to the variance and exemption procedures. Under the 1986 SDWA amendments, EPA must promulgate its findings of best available technology (BAT) for the purpose of obtaining variances at the time the new or revised NPDWR is promulgated. This notice proposes to add a sentence that requires those States that currently allow variances to adopt requirements no less stringent than EPA's findings of BAT for use in the State's variance process. EPA is proposing this change because the BAT determination is an integral part of each primacy drinking water regulation to be adopted by the States, which, under Section 1413, must be "no less stringent" then EPA's new or revised NPDWR.

*Revision to State Reporting Requirements.* The proposal includes a revision of the current regulations at § 142.15 related to State reporting. The proposal would require States to submit reports to EPA every quarter. The reports would, at a minimum, contain updates of the State's inventory of public water systems, information on violations and enforcement actions, and a summary of newly-granted variances

and exemptions. This would revise the current rule, which only requires information to be submitted annually and does not require information on enforcement actions. The proposal also would require the State to notify EPA of any new variances and exemptions granted during the quarter. (The current rule simply requires "prompt" notification.) This will put this requirement on the same schedule as the other State reports. Finally, the proposal would add a new paragraph to reserve space for special reports beyond the basic reporting requirements. These special reports may be required in new NPDWRS promulgated subsequent to this rule. For example, the proposed surface water treatment requirements (52 FR 42178, November 3, 1987) would amend § 142.15 to require information on which systems must install filtration. EPA is proposing to require a fixed interval (i.e., quarterly) for information on new variances and exemptions, as well as reporting for all other information, to more effectively carry out the new Congressional directive for enhanced Federal enforcement of violations. EPA needs timely information on violations and State enforcement actions on an ongoing basis to meet this Congressional mandate.

*Program Capability Considerations.* The proposal would revise the current program grant regulations (§ 35.410 and 35.415) and existing primacy requirements (§ 142.10(b) and § 142.15(a)) to explicitly consider program capability in the grant and primacy decision process. The revised grant regulations would require a State or Indian Tribe applying for an initial award under section 1443(a) of the Act to demonstrate that it will be capable of establishing a public water system supervision program after the initial grant period. For States, EPA would not approve an award until the State demonstrates that it will be capable of implementing the primacy requirements within one year of the initial award and agrees to use such funding to demonstrate such capability. For Indian Tribes, EPA would not approve an award until the Indian Tribe demonstrates that it will be capable of implementing the primacy requirements within three years of initial award and agrees to use at least one year's funding to demonstrate such capability.

The revised primacy regulations (§ 142.10(b)) would require a State wanting to obtain or retain primacy to demonstrate that it is capable of implementing adequate procedures for the enforcement of the primacy program. Specifically, this change would apply to any State applying for initial primacy. This change would also apply to requests for EPA approval of revisions to existing primacy programs, to the extent a demonstration of program capability is relevant to the program revision under consideration. No explicit criteria or "thresholds" are proposed in this rule for demonstration of capability. For program revisions, in particular, the determination of whether the State is capable of implementing adequate procedures to enforce the program revision will be case by case, depending on the management, technical, and administrative demands of the program revision at issue and the specific situation.

## V. Request for Public Comment

EPA requests public comments and information on all aspects of this proposal, including the specific issues identified in the preamble.

## VI. Compliance with Executive Order 12291

Executive Order 12291 requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that the Agency conduct a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, and geographical regions; or

(3) A significant adverse effect on competition, employment, investment, production, innovation, or on the ability of the United States-based enterprises to compete in domestic or export markets.

Since the proposed rule does not meet the definition of a major regulation, the Agency has not conducted a Regulatory Impact Analysis.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any response to these comments will be available for viewing in the public docket for this rule at EPA, Room 1101ET, Washington, DC 20460.

## VII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document, ICR No. 0270.11, has been prepared by EPA and a copy may be obtained from Carla Levesque, Information Policy Branch; EPA; 401 M Street SW (PM-223); Washington, DC 20460 or by calling (202) 382-2740. Submit comments on these requirements to EPA at the address at the beginning of this notice and to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW., Washington, DC 20530; Attention: Tim Hunt. The final rule will respond to any OMB and public comments on the information collection requirements.

## VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that federal agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such analysis is not required, however, when the head of an agency certifies that a proposed rule would not have a significant effect on a substantial number of small entities.

EPA considers the information that would be required by this proposed rule to be the minimum necessary to effectively administer oversight of States which plan to apply for or have been granted primacy for the PWSS program under section 1413 of the SDWA. The proposal would establish new procedures for State submission of requests for EPA approval of program revisions to current primacy programs. The proposal would also modify existing procedures to require submission of an Attorney General's statement with the material to be submitted by States applying for initial primacy.

The impact of the administrative requirements under the proposed rule beyond that already required of States to meet the statutory requirements for obtaining or retaining primacy would not be significant in any State. Section 1413 of the statute requires States to adopt drinking water regulations no less stringent than EPA regulations, to adopt adequate procedures for the enforcement of there regulations, and to meet other requirements for the administration of a State program. This proposed rule would not require States to collect information beyond that already required to comply with the statutory requirements.

The proposed rule would apply to all States applying for initial primacy or requesting EPA to approve revisions for existing primacy programs. The additional workload in any State because of these administrative requirements would not be significant relative to the total State workload required to obtain or retain primacy. Accordingly, I certify that these

proposed rules, if promulgated, would not have a significant impact on a substantial number of small entities. The Agency seeks comments and any additional information related to the potential impact of these proposed rules on small entitities.

**List of Subjects in 40 CFR Parts 35 and 142**

Administrative practice and procedure, Reporting and recordkeeping requirements, Water supply.

**Lee M. Thomas,**

*Administrator.*

Date: July 18, 1988.

For the reasons set forth in the preamble, Title 40, Chapter I of the Code of Federal Regulations (CFR) is proposed to be amended as follows:

## PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for Part 35 continues to read as follows:

**Authority:** Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); secs. 106, 205(g), 205(j), 208, and 501(a) of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, and 1361(a)); secs. 1443 and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–2 and 300j–9); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b, 136u, and 136w(a)).

2. Section 35.410 is revised to read as follows:

**§ 35.410 Limitations applicable to States.**

(a) The Regional Administrator will not make an initial award of section 1443(a) funds unless the applicant demonstrates that it will be capable of establishing a public water system supervision program within one year of the initial award. Upon agreement by the applicant to establish a public water system supervision program within one year, the initial award shall be used by the State to demonstrate program capability to implement the requirements found in § 142.10 of this part.

(b) The Regional Administrator will not make a subsequent award of section 1443(a) funds unless the applicant has primary enforcement responsibility for the public water system supervision program.

3. Section 35.415, which was proposed to be added on July 27, 1987 (52 FR 28117), would be further amended by revising paragraph (a)(2) to read as follows:

**§ 35.415 Indian Tribes treated as States**

* * * * *

(a) * * *

(2) The applicant has a public water system supervision program or agrees to establish one within three years of the initial award and agrees to assume primacy enforcement responsibility within this period. Upon agreement by the applicant, at least one year of the grant funding will be used to demonstrate program capability to implement the requirements found in § 142.10 of this part.

## PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 is revised to read as follows:

**Authority:** 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.2, which was proposed to be amended on July 27, 1987 (52 FR 28118), would be further amended by redesignating paragraph (q) as (u), and to insert new paragraphs (r) and (s) to read as follows:

**§ 142.2 Definitions.**

* * * * *

(r) "Approved State primacy program" consists of those program elements listed in § 142.11(a) of this part that were submitted with the initial State application for primary enforcement authority and approved by the EPA Administrator and all State program revisions approved thereafter.

(s) "State program revision" means a statutory, regulatory, or administrative change that changes an approved State primacy program.

3. Section 142.10 is amended to revise the introductory paragraph and paragraphs (a), (b) introductory text, and (d), to read as follows:

**§ 142.10 Requirements for a determination of primary enforcement responsibility.**

A State has primary enforcement responsibility for public water systems in the State during any period for which the Administrator determines, based upon a submission made pursuant to § 142.11, and submission under § 142.12 of this part, that such State, pursuant to appropriate State legal authority:

(a) Has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations (NPDWRs) in effect under Part 141 of this chapter;

(b) Has adopted and has demonstrated that it has the program capability to implement adequate procedures for the enforcement of such State regulations, such procedures to include:

* * * * *

(d) If it permits variances or exemptions, or both, from the requirements of the State primary drinking water regulations, it shall do so under conditions and in a manner which is no less stringent than the requirements under sections 1415 and 1416 of the Act. In granting variances, the State must adopt provisions which are no less stringent than the Administrator's findings of best available technology, treatment techniques, or other means available as specified in Subpart G of this part. (States with primary enforcement responsibility may adopt procedures different from those set forth in Subparts E and F of this part, which apply to the issuance of variances and exemptions by the Administrator in States that do not have primary enforcement responsibility, provided, that the State procedures meet the requirements of this paragraph); and

* * * * *

4. Section 142.11 is amended by redesignating the introductory text as the introductory text of paragraph (a), redesignating paragraphs (b)(1) through redesignating paragraph (b)(1) through (b)(6) as paragraphs (a)(2)(i) through (a)(2)(vi), and redesignating paragraphs (c) through (e) as (a)(3) through (a)(5).

5. Section 142.11 is further amended by revising the title and adding a new paragraph (a)(6), to read as follows:

**§ 142.11 Initial determination of primary enforcement responsibility.**

(a) * * *

(6) In applications for a determination that a State has primary enforcement responsibility submitted after [insert date of publication of the final rule], a statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that demonstrates that the laws and regulations of the State or tribal ordinances provide adequate legal authority to carry out the program described in § 142.10 of this part. The statement shall include citations to the specific statutes, administrative regulations or ordinances, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General and tribal ordinances cited by the attorney representing the Indian tribe shall be in the form of lawfully adopted State statutes and regulations or tribal ordinances at the time the statement is

signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State primacy agency or Indian tribe in court on all matters pertaining to the State or tribal program.

6. Section 142.12(a) is redesignated as § 142.11(b) and paragraph (b)(3), as redesignated, is revised to read as follows:

**§ 142.11 Initial determination of primary enforcement responsibility.**

* * * * *

(b) * * *

(3) When the Administrator's determination becomes effective pursuant to § 142.13, it shall continue in effect unless terminated pursuant to § 142.17.

7. Section 142.12(b) and (c) is redesignated as § 142.17(a) and (b), and the section heading is revised to read as follows:

**§ 142.17 Procedures for withdrawal of State programs.**

8. A new § 142.12 is added to read as follows:

**§ 142.12 Revision of State programs.**

(a) *General requirements.* Either EPA or the primacy State may initiate actions that require the State to revise its approved State primacy program. To retain primary enforcement responsibility, States must adopt all new and revised national primary drinking water regulations promulgated in Part 141 of this Chapter and any other requirements specified in this part.

(1) Whenever a State revises its program to adopt new or revised Federal regulations, the State must submit a request to the Administrator for approval of the program revision, using the procedures described in paragraphs (b), (c), and (d) of this section. The Administrator shall approve or disapprove each State request for approval of a program revision based on the requirements of the Safe Drinking Water Act and of this part.

(2) For a State program revision that does not adopt a new or revised EPA regulation (i.e., a State-initiated change), the State shall notify the Administrator in writing of the change, including any proposed or final revisions to its statutory or regulatory authority or program procedures that may affect its approved State primacy program. After reviewing the notice, the Administrator may require the State to submit a request for approval of the program revision as described in paragraphs (c) and (d) of this section. The Administrator will make this determination on a case-by-case basis.

(3) Whenever the Administrator has reason to believe that a State's statutes, regulations, or procedures have changed, the Administrator may request, and then the State must provide, documents or other information as necessary to demonstrate that the requirements or primacy continue to be met. If the Administrator determines, based on these documents and other information, that a request for approval of a State program revision is required, the Administrator will notify the State and the State must follow the procedures in paragraphs (c) and (d) of this section.

(4) A State must notify the Administrator whenever it proposes to transfer all or part of the program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved.

(b) *Timing of State requests for approval of program revisions to adopt new or revised Federal regulations.* (1) Complete and final State requests for approval of program revisions to adopt new or revised EPA regulations must be submitted to the Administrator within 15 months after promulgation of the new or revised EPA regulations and be approved or disapproved by EPA within 90 days after EPA determines that the State has submitted a complete and final request, unless the State requests an extension and the Administrator has approved the request pursuant to paragraphs (b) (2) and (3) of this section. If the State expects to submit a final State request for approval of a program revision to EPA more than 15 months after promulgation of the new or revised EPA regulations, the State shall request an extension of the deadline before the expiration of the 15-month period.

(2) The final date for approval by the Administrator of a State program revision may be extended by EPA for up to a two-year period upon a written application by the State to the Administrator. The application must include a schedule for the submission of a final request by a certain time and provide sufficient information to demonstrate that the State:

(i) (A) Currently lacks the legislative or regulatory authority to enforce the new or revised requirements, or

(B) Currently lacks the program capability adequate to implement the new or revised requirements; and

(C) Is requesting the extension to group two or more program revisions in a single legislative or regulatory action, or cannot meet the original deadline for reasons beyond its control in spite of a good faith effort to do so; and

(ii) Is implementing the EPA requirements to be adopted by the State in its program revision within the scope of its current authority and capabilities.

(3) To be granted an extension, the State must agree to meet certain requirements during the extension period, which include, but are not limited to:

(i) Informing public water systems of the new EPA (and upcoming State) requirements and that EPA will be overseeing implementation of the requirements until EPA approves the State program revision;

(ii) Collecting, storing, and managing laboratory results, public notices, and other compliance and operation data required by the EPA regulation;

(iii) Assisting EPA in development of the technical aspects of enforcement actions and conducting informal follow-up on violations (telephone calls, letters, etc.);

(iv) Providing technical assistance to public water systems;

(v) Providing EPA with all information prescribed by § 142.15 of this part on State reporting; and

(vi) For States whose request for an extension is based on current lack of program capability adequate to implement the new requirements, taking steps agreed to by EPA and the State during the extension period to remedy the deficiency.

(c) *Contents of a State request for approval of a program revision.* (1) The State request for EPA approval of a program revision shall be concise and must include:

(i) The documentation required in § 142.11(a) of this part as it applies to the particular program revision the State is requesting EPA to approve;

(ii) Any additional materials that are listed in § 142.16 of this part for a specific EPA regulation, as appropriate; and

(iii) Unless one of the conditions listed in paragraph (c)(2) of this section are met, a statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that the laws and regulations of the State or tribal ordinances provide adequate authority to carry out the program revision the State or tribe is requesting EPA to approve. The statement shall include citations to the specific statutes and administrative regulations or ordinances and, wherever appropriate, judicial decisions which demonstrate

adequate authority to meet the requirements of § 142.10 of this part as they apply to the program revision. State statutes and regulations cited by the State Attorney General and tribal ordinances cited by the attorney for the Indian tribe shall be in the form of lawfully adopted State statutes and regulations or tribal ordinances at the time the statement is signed and shall be fully effective by the time the request for program revision is approved by EPA. To qualify as "independent legal counsel," the attorney signing the statement required by the section shall have full authority to independently represent the State primacy agency or tribe in court on all matters pertaining to the State or tribal program.

(2) An Attorney General's statement will be required as part of an application for EPA approval of a program revision unless:

(i) EPA has specifically waived this requirement for a specific regulation at the time EPA promulgated it, or by later written notice to the State; or

(ii) EPA has, in its response to a State's notification of a State-initiated program revision, as described in paragraph (a)(2) of this section, specifically informed the State that an Attorney General's statement is not required.

(d) *Procedures for review of a State request for approval of a program revision.*—(1) *Preliminary request.* (i) The State must submit to the Administrator for his or her review a preliminary request for approval of each program revision, containing the information listed in paragraph (c)(1) of this section, *in draft form.* For revisions that adopt new or revised EPA regulations, the preliminary request must be submitted to the Administrator as soon as practicable after the promulgation of the EPA regulations.

For revisions that do not adopt new or revised EPA regulations, the preliminary request must be submitted as soon as practicable after EPA informs the State that it must request approval for the revision pursuant to § 141.12(a)(2) of this part.

(ii) The Administrator will review the preliminary request and supporting materials and make a tentative determination on the request. The Administrator will send the tentative determination and other comments or suggestions to the State for its use in developing the State's final request under paragraph (d)(2) of this section.

(iii) Whenever the Administrator determines, based on the State's preliminary request for approval of the program revision, that the proposed revision is substantial, the Administrator will publish a public notice of the proposed revision and provide an opportunity for comment for a period of at least 30 days. The public notice must be published in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice must summarize the proposed revision and the Administrator's tentative determination on the State's request for approval. The public notice must provide for the opportunity to request a public hearing. The Administrator will hold a public hearing, if he or she determines, there is significant public interest based on the requests and comments received. If EPA holds a public hearing, it will be conducted in accordance with the procedures in § 142.13 of this part. EPA will transmit to the State for its consideration all the public comments and any changes to the tentative determination resulting from the public notice process.

(2) *Final request.* (i) The State must submit a complete and final request for approval of a program revision to the Administrator for his or her review and approval. The request must contain the information listed in paragraph (c)(1) of this section *in complete and final form,* in accordance with EPA's tentative determination. For substantial changes, the final request must include the State response to any comments and changes resulting from the public notice process. Complete and final State requests for program revisions to adopt new or revised EPA regulations shall be submitted within 15 months of the promulgation of the new or revised EPA regulations, as specified in paragraph (b) of this section. Complete and final State requests for EPA approval of program revisions that do not adopt new or revised EPA regulations shall be submitted as soon as practicable after comments are received on the preliminary request.

(ii) If the State program revision is substantial, the Administrator may, if he or she determines that changes in the final State request are significantly different from the preliminary State request and EPA's tentative determination, publish a public notice of the revision and provide opportunities for public comment in accordance with the procedures in paragraph (d)(1)(iii) of this section.

(iii) The Administrator shall approve or disapprove the State request for approval of the program revision within 90 days after determining that the final State request is complete and final and shall promptly notify the State of his or her decision.

(iv) If the Administrator disapproves a final request for approval of a program revision, the Administrator will notify the State in writing. Such notification will include a statement of the reasons for disapproval. The State may submit additional materials to remedy the deficiencies in its final request for approval of the program revision. For program revisions to adopt new or revised EPA regulations, the State may request an extension under paragraph (b) of this section to submit additional materials. Regardless of when the State requests the extension, the final date for approval may be no longer than two years after the original deadline. If the Administrator disapproves the revision after the 18-month period (or the extended period approved by EPA under paragraph (b) of this section), the Administrator will notify the State that it no longer meets the requirements set forth in § 142.10 of this part for the maintenance of primary enforcement authority and may initiate the procedures established in § 142.17 of this part for withdrawal of primacy.

(v) A State program revision becomes part of the approved State's primacy program, upon approval by the Administrator. If the State program revision is substantial, the Administrator will publish in the **Federal Register** a public notice of the Administrator's final determination to approve or disapprove the State program revision. The Administrator may provide notice of approval of non-substantial revisions in writing to the State.

9. Section 142.13 is amended by revising paragraph (a) to read as follows:

**§ 142.13 Public hearing.**

(a) Before any determination pursuant to § 142.11 of this part that a State meets the requirements of § 142.10 of this part for obtaining primary enforcement responsibility, or any determination pursuant to § 142.17 of this part that a State no longer meets the requirements of § 142.10 of this part, the Administrator will provide an opportunity for public hearing on the determination.

* * * * *

10. Section 142.15 is revised to read as follows:

**§ 142.15 Reports by States.**

(a) Each State which has primary enforcement responsibility shall submit quarterly reports to the Administrator on a schedule and in a format prescribed by the Administrator consisting of the following information:

(1) All additions or corrections to the State's inventory of public water systems;

(2) All violations by public water systems in the State, of the State or Federal drinking water regulations;

(3) All enforcement actions taken by the State, against public water systems in the State; and

(4) A summary of the status of each variance and exemption currently in effect.

(5) Notification of any new variance or exemption granted during the last quarter. The notice shall include a statement of reasons for the granting of the variance or exemption, including documentation of the need for the variance or exemption and the finding that the granting of the variance or exemption will not result in an unreasonable risk to health. The State may use a single notification statement to report two or more similar variances or exemptions.

(b) *Special reports.* [Reserved]

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Part VI

# Environmental Protection Agency

**Asbestos-Containing Materials in Schools; Deferral of Deadline for Submission of Asbestos Management Plans; Notice**

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**ENVIRONMENTAL PROTECTION AGENCY**

**[OPTS-62066; FRL-3424-2]**

## Asbestos-Containing Materials in Schools; Deferral of Deadline for Submission of Asbestos Management Plans

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is issuing a notice under amendments to the Asbestos Hazard Emergency Response Act (AHERA) to inform Local Education Agencies (LEAs) of the opportunity to request a deferral until May 9, 1989, for the submission of asbestos management plans to their States if they are unable to provide the plan by the original due date of October 12, 1988.

**DATE:** An LEA must submit its deferral request to the respective State Agency by October 12, 1988.

**ADDRESSES:** For obtaining copies of this notice and the Act, contact the office listed under **FOR FURTHER INFORMATION CONTACT** or the State Offices listed under Unit VIII of this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-1404.

### I. Overview

On July 18, 1988, President Reagan signed Pub. L. 100-368 (formerly H.R. 3893), an amendment to AHERA. The primary provision of the amendment provides an LEA with the opportunity to request a deferral to May 9, 1989 for the submission of its asbestos management plan to the State Governor if it is unable to provide the plan by the original due date of October 12, 1988.

The requirement for submission of management plans for asbestos in schools comes from the original AHERA, signed into law October 22, 1986. Under AHERA, EPA issued the AHERA schools rule, which requires LEAs to inspect for and to manage asbestos-containing materials in their schools. The AHERA schools rule was published at pages 41826-41898 of volume 52 of the **Federal Register**, and is codified at 40 CFR Part 763.

Under the amendment, EPA is required to notify LEAs of the opportunity to request deferrals and to provide a list of offices in each State to which deferral requests should be sent. (The State offices are listed in Unit VIII. below.) EPA is providing notification though this **Federal Register** notice and a subsequent direct mailing to individual LEAs.

### II. How the Deferral Process Works

*A. School Submission*

An LEA may request, from its Governor, a deferral to May 9, 1989, for submission of a management plan to the State. The request may cover one or more schools and must include a list of all schools covered by the request.

The LEA must make certain assurances in its deferral request that requirements specified by the amendment have been met. (The required assurances are listed in Unit III. below.)

Before filing a deferral request, the LEA shall notify affected parent, teacher, and employee organizations of its intent to file, and in the case of a public school, the LEA shall discuss the request at a public meeting of the school board. The deferral request must be filed with the State by October 12, 1988—the original due date for plan submission under AHERA.

*B. State Review*

Within 30 days after receipt of a deferral request, the Governor shall respond to the LEA in writing to acknowledge whether the deferral request is complete or incomplete. If incomplete, the Governor must identify in the response the items which are missing from the request. The LEA may correct and refile its request with the Governor not later than 15 days after it has received a response from the Governor.

Only when a deferral request is accepted as complete and acknowledged in writing by the State, has the deferral been granted.

An LEA whose deferral request has been approved must submit a management plan to the Governor not later than May 9, 1989. (The submission must include a copy of the deferral request and the appropriate assurances accompanying the request, as discussed in Unit III. below.) The Governor must review the deferred management plan in accordance with the applicable standards for review of management plans under the original AHERA. There is one exception, however. Under the original law, the Governor could extend the 30-day period under which an LEA may revise a disapproved plan for an additional 90 days. Under the new law, the Governor may extend the 30-day revision period only for an additional 30 days.

LEAs are still required to begin implementation of their management plans by July 9, 1989, as originally specified in AHERA and the AHERA schools rule.

### III. LEA Assurances Required for Deferrals

The amendment creates two categories of LEA deferrals, with assurances specified for each category. The first category (Category A) applies to LEAs in States which have, before June 1, 1988, requested waivers from AHERA under 40 CFR 763.98. These States are Connecticut, Illinois, New Jersey, and Rhode Island. The second Category (Category B) applies to LEAs in all other States. Many of the activities associated with these deferral assurances must be completed before October 12, 1988.

*A. Category A Deferrals*

Only LEAs in Connecticut, Illinois, New Jersey, and Rhode Island may seek a deferral under Category A. (These States have requested waivers under the AHERA schools rule for their own State programs by June 1, 1988.)

The amendment requires two assurances for Category A deferrals, which may be made in a single statement:

1. *Assurance 1:* That the State in which the LEA is located has requested a waiver from EPA before June 1, 1988.

2. *Assurance 2:* That the LEA has carried out the notification of affected groups and in the case of a public school, that the LEA has conducted the public meeting required by the amendment. The amendment requires that before filing a deferral request, an LEA must notify affected school (parent, teacher, and employee) organizations of its intent. Further, in the case of a public school, the LEA must discuss the request at a public meeting of the school board. Affected school organizations must be notified in advance of the meeting's time and place.

*B. Category B Deferrals*

The amendment requires four assurances for Category B deferrals.

1. *Assurance 1:* A statement and brief explanation why the LEA, despite good faith efforts, will not be able to meet the original October 12, 1988, deadline for submittal of its management plan.

2. *Assurance 2:* A statement that the LEA has made at least one of the following documents available for inspection at each school for which a deferral is sought:

a. A solicitation by the LEA to contract with an accredited asbestos

contractor for inspection or management plan development.

b. A letter certifying that school district personnel are enrolled in an EPA-approved training course for inspection and management plan development.

c. Documentation showing that suspected asbestos-containing material from the school is being analyzed at an accredited laboratory.

d. Documentation showing that an inspection or management plan has been completed in at least one other school under the LEA's authority.

3. *Assurance 3:* A statement giving assurance that the LEA has carried out notification of affected groups and, in the case of a public school, a public meeting. (Again, the new law requires that before filing a deferral request, an LEA shall notify affected parent, teacher, and employee organizations of its intent to file its request. In the case of a public school, the LEA shall discuss the request at a public meeting of the school board, and affected organizations shall be notified in advance of the time and place of the meeting.)

4. *Assurance 4:* A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including the inspection of the school. This schedule must contain a deadline of no later than December 22, 1988, for entering into a contract with an accredited inspector (unless inspections are to be performed by accredited school personnel). Laboratory analysis and management plan development must also be included in the activity schedule.

## IV. Worker Protection Requirements

As of October 12, 1988, renovations or removals, with the exception of "emergency repairs," are prohibited in schools whose management plans have not completed the AHERA State review process unless:

(1) The school is carrying out work with a grant under the EPA's Asbestos School Hazard Abatement Act (ASHAA) award program.

(2) An inspection that complies with the requirements of the AHERA schools rule has been carried out in the school and the LEA complies with key sections of the AHERA schools rule: Section 763.90 (g), (h), and (i) on response actions and Appendix D to Subpart E of Part 763 on transport and disposal of asbestos waste.

An "emergency repair" is a repair in a school building that was not planned and was in response to a sudden, unexpected event that threatens either the health or safety of building occupants or the structural integrity of the building.

In addition (again, as of October 12, 1988), no operations and maintenance (O&M) work can occur in schools whose management plans have not received a completed State review unless the LEA complies with key sections of the AHERA schools rule: Section 763.91 on O&M activities, including Appendix B to Subpart E of Part 763, and § 763.92(a)(2) regarding training.

Finally, any school employee who conducts emergency repairs involving any material containing asbestos or suspected of containing asbestos or who conducts O&M activities must have proper training and equipment to safely conduct the work in order to prevent potential exposure to asbestos.

## V. Responsibilities of the State

The States have two primary responsibilities under the amendment. The first responsibility deals with the deferral process, as outlined in Unit II. of this notice. LEAs must understand that only when a deferral request is accepted as complete and acknowledged in writing by the State, has the deferral been granted.

The second responsibility involves submitting status reports to EPA. No later than December 31, 1988, the Governor of each State must submit to EPA a written statement on the status of management plan submissions and deferral requests received by the State. The list must contain the information specified in section 205(e) of the amendment and must be made available to LEAs in the State. An updated version of the report must be submitted to EPA no later than December 31, 1989.

## VI. Publication of EPA-Approved Courses

EPA must issue each quarter in the **Federal Register**, beginning August 31, 1988, a list of training courses approved by EPA for AHERA purposes and laboratories accredited under AHERA. The list of training courses, which has been published approximately every 4 months since October 1987, was last published in the **Federal Register** of June 1, 1988 (53 FR 20066).

## VII. Penalties for LEAs

LEAs are subject to the civil penalties under the original AHERA for violating worker protection requirements of the amendment, described in Unit IV. above, or for submitting false information in the deferral request. Under AHERA, LEAs are liable for a civil penalty of not more than $5,000 per building for each day during which the violation continues.

Dated: July 28, 1988.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

## VIII. List of State Offices

LEAs should submit their deferral requests to their State office as indicated below:

Alabama:
Alabama Safe State Program, College of Continuing Studies, P.O. Box 2967, University of Alabama, Tuscaloosa, AL 35486–2967, (205) 348–3033, Attn: William Weems.

Alaska:
Alaska Department of Education (Facilities), P.O. Box F, Juneau, AK 99811, (907) 465–2865, Attn: Susan Miller.

American Samoa:
Office of the Governor, American Samoa Government, Pago Pago, AS 96799, (809) 774–8315, Attn: Pati Faiai.

Arizona:
Dept. of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, AZ 85004, (602) 257–2285, Attn: David O. Chelgren.

Arkansas:
School Plant Services, AR Dept. of Education, Arch Ford Education Building, #4 Capitol Mall, Rm. 110B, Little Rock, AR 72201–1021, (501) 682–4261, Attn: Jimmy Moore.

California:
Office of Local Assistance, 501 J Street, Suite 350, Sacramento, CA 95814, (916) 445–3377, Attn: Art S. Kevorkian.

Colorado:
Colorado Department of Health, 4210 E. 11th Avenue, Denver, CO 80220, (303) 331–8587, Attn: Dave Ouimette.

Connecticut:
Dept. of Education Bureau of Grants Processing, 165 Capitol Avenue, Hartford, CT 06106, (203) 566–8204, Attn: William D. Guzman.
Preventable Diseases Division, State of Connecticut, 150 Washington Street, Hartford, CT 06106, (203) 566–3186, Attn: Paul Schur.

Delaware:
Dept. of Administrative Services, Division of Facilities Management, P.O. Box 1401, O'Neill Building, Dover, DE 19901, (302) 736–3611, Attn: Robert Foster.

District of Columbia:
DC Public Schools, Presidential Bldg., 415 12th St., NW., Rm. 1209, Washington, DC 20001, (202) 724–4098, Attn: Andrew Weeks.

Florida:
Florida Dept. of Education, W.V.

Knott Bldg., 114 Collins, Tallahassee, FL 32399-0400, (904) 487-1130, Attn: Bobby L. Johnson.

Georgia:
Director, Transportation Facilities and Asbestos Division, Georgia Dept. of Education, 1670 Twin Towers East, Atlanta, GA 30334, (404) 656-2440, Attn: Don Thornhill.

Guam:
Guam Environmental Protection Agency, P.O. Box 2999, Agana, GU 96910, (671) 646-8863, Attn: Charles P. Crisostmo.

Hawaii:
Environmental Protection Health Services Division, State Health Department, P.O. Box 3378, Honolulu, HI 96801, (808) 548-6455, Attn: James Ikeda.

Idaho:
Department of Administration, 650 West State Street, Boise, ID 83720, (208) 334-3382, Attn: Loren Nelson.

Illinois:
Asbestos Abatement Program, Illinois Dept. of Public Health, 525 W. Jefferson St., 3rd Floor, Springfield, IL 62761, (217) 782-3517, Attn: R. Kent Cook.

Indiana:
Office of Air Management, Dept. of Environmental Management, 105 S. Meridian Street, P.O. Box 6015, Indianapolis, IN 46206-6015, (317) 232-8232, Attn: Andrew Knott.

Iowa:
School Plant & Facilities Unit, Dept. of Education, Grimes State Office Building, Des Moines, IA 50319-0146, (515) 281-4743, Attn: C. Milton Wilson.

Kansas:
Dept. of Health & Environment, Forbes Field, Topeka, KS 66620, (913) 296-1544, Attn: John Irwin.

Kentucky:
Division of Buildings and Grounds, Kentucky Dept. of Education, Capital Plaza Tower, 15th Floor, Frankfort, KY 40601, (502) 564-4326, Attn: Jim Judge.

Louisiana:
Enforcement Program Manager, Office of Air Quality, P.O. Box 44096, Baton Rouge, LA 70804, (504) 342-9053, Attn: Chris Roberie.

Maine:
Dept. of Administration, Division of Asbestos Management Activities, State House Station 77, Augusta, ME 04333, (207) 289-4511, Attn: Henry E. Warren.

Maryland:
Maryland Dept. of the Environment, 201 West Preston Street, Rm. 214, Baltimore, MD 21201, (301) 225-5753, Attn: Dr. Katherine Farrell.

Massachusetts:
Division of Occupational Hygiene, Massachusetts Dept. of Labor & Industry, 1001 Watertown Street, West Newton, MA 02165, (617) 969-7177, Attn: Richard Levine.

Michigan:
Dept. of Public Health, Division of Occupational Health, Attn: Asbestos Program, 3500 N. Logan St., P.O. Box 30035, Lansing, MI 48909, (517) 335-8250, Attn: Bill De Liefde.

Minnesota:
Minnesota Dept. of Education, 943 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101, (612) 296-1382, Attn: Len Nachman.

Mississippi:
Superintendent of School Buildings, Mississippi State Department of Education, P.O. Box 771, Jackson, MS 39205, (601) 359-3555, Attn: Gerald Pevey.

Missouri:
Bureau of Environmental Epidemiology, Health Dept., 1730 East Elm Street, P.O. Box 570, Jefferson City, MO 65102, (314) 751-6411, Attn: Daryl W. Roberts.

Montana:
Dept. of Health & Environmental Science, Cogswell Bldg., Rm A107, Helena, MT 59620, (406) 444-3948, Attn: Tom Ellerhoff.

Nebraska:
Asbestos Program Coordinator, Nebraska Dept. of Health—EHHS, 301 Centennial Mall South, P.O. Box 95007, Lincoln, NE 68509, (402) 471-2541, Attn: Jacqueline M. Fiedler.

Nevada:
Nevada Dept. of Education, 215 E. Bonanza St., State Mail Rm., Las Vegas, NV 89158, (702) 486-6455, Attn: Douglas Stoker.

New Hampshire:
Department of Education, State Office Park South, 101 Pleasant St., Concord, NH 03301, (603) 271-3620, Attn: Douglas Brown.

New Jersey:
New Jersey Department of Health, Asbestos Control Service, AHERA Implementation, CN 360, Trenton, NJ 08625, (609) 984-2193, Attn: James A. Brownlee.

New Mexico:
State Dept. of Education, Education Building, Santa Fe, NM 87501-2876, (505) 827-3848, Attn: Ed Tangman.

New York:
State Education Department, Rm. 3059, Cultural Education Ctr., Albany, NY 12230, (518) 474-3384, Attn: Mae Timer.

North Carolina:
North Carolina Division of Health Services, Couper Memorial Building, Rm. 3011, P.O. Box 2091, 225 N. McDowell Street, Raleigh, NC 27602, (919) 733-0820, Attn: Howard Bridges.

North Dakota:
North Dakota Health Dept., Missouri Office Building, 1200 Missouri Ave., Box 5520, Bismarck, ND 58502, (701) 224-2348, Attn: Dana Mount,

or,

Dept. of Public Instruction, Missouri Office Building, 1200 Missouri Ave., Box 5520, Bismarck, ND 58502, (701) 224-2267, Attn: Alton Koppang.

Northern Marianas:
Dept. of Public Health & Environmental Services, P.O. Box 1304 (CK), Saipan, CM 96950, Attn: Russell F. Mechem.

Ohio:
Ohio Department of Health, 246 N. High St., P.O. Box 118, Columbus, OH 43266-0118, (614) 466-1450, Attn: Marty King.

Oklahoma:
Radiation and Special Hazards Service, Oklahoma State Dept. of Health, N.E. 10th and Stonewall, P.O. Box 53551, Oklahoma City, OK 73152, (405) 271-5221, Attn: Emily Allen or J. Dale McHard.

Oregon:
Oregon Dept. of Education, 700 Pringle Parkway, S.E., Salem, OR 97310, (503) 378-8004, Attn: Al Shannon.

Pennsylvania:
Dept. of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-5480, Attn: Gerald Grove.

Puerto Rico:
Puerto Rico Environmental Quality Board, 204 Pumarada Street, 10th Floor, Box 11488, San Turce, PR 00910, (809) 722-0077, Attn: Juan Merced.

Rhode Island:
Dept. of Health, Division of Occupational Health, 206 Cannon Bldg., 75 Davis St., Providence, RI 02908, (401) 277-3601, Attn: J. Hickey/W. Dundulis.

South Carolina:
South Carolina Dept. of Education, Office of School Planning & Building, 100 Executive Center Drive, Santee Building, Suite A-22, Columbia, SC 29210, (803) 737-8700, Attn: G. Stuart Clarkson.

South Dakota:
Office of School Standards, Division of Education, 700 Governor's Drive, Pierre, SD 57501, (605) 773-3553, Attn: Leonard Powell.

Tennessee:
Tennessee Department of Education, 126 Cordell Hull Building, Nashville, TN 37219, (615) 741-3489, Attn: Dr. Nile McCrary.

Texas:
Occupational Health Program, 1100 West 49th Street, Austin, TX 78756, (512) 458–7254, Attn: Jerry F. Lauderdale.
Occupational Safety and Health Division, 1100 West 49th Street, Austin, TX 78756, (512) 458–7254, Attn: Joel Smith.
Utah:
Department of Health, P.O. Box 16690, 288 North 1460 West, Salt Lake City, UT 84116–0690, (801) 538–6121, Attn: Kenneth L. Alkema.
Vermont:
Vermont Dept. of Health, Asbestos Program, 60 Main Street, P.O. Box 70, Burlington, VT 05402, (802) 863–7231, Attn: James Meriwether.
Virgin Islands:
Dept. of Planning & Natural Resources, Division of Environmental Protection, 179 Altona and Welgunst, Charlotte Amelia, St. Thomas, VI 00802, (809) 774–3411, Attn: Vernon Richards.
Virginia:
Virginia Dept. of Education, James Monroe Building, 24th Floor, 101 N. 14th Street, P.O. Box 6–Q, Richmond, VA 23219, (804) 225–2035, Attn: David Boddy.
Washington:
Superintendent of Public Instruction, Old Capitol Building, FG–11, Olympia, WA 98504, (206) 753–6703, Attn: Harvey C. Childs.
West Virginia:
West Virginia Dept. of Education, Rm. B–264, Capitol Complex Bldg. #6, Charlestown, WV 25305, (304) 348–2969, Attn: Roy Blizzard.
Wisconsin:
Wisconsin Division of Health, P.O. Box 309, Madison, WI 53701, (608) 266–9337, Attn: Bill Otto.
Wyoming:
Wyoming Dept. of Education, 2300 Capitol, Hathaway Building, 2nd Floor, Cheyenne, WY 82002, (307) 777–6198, Attn: Dr. Roger Hammer.

[FR Doc. 88–17366 Filed 8–1–88; 8:45 am]
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Part VII

# Interstate Commerce Commission

**CSX Transportation, Inc.; Abandonment Exemption; Greenville County, SC and Loudon County, TN; Notice of Exemption**

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 261X)]

### CSX Transportation, Inc.—Abandonment Exemption—Greenville County, SC

**Editorial Note.**—This document was inadvertantly published August 1, 1988. It is republished today at the request of the agency.

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 2.36-mile line of railroad between Valuation Station 19+81 and Valuation Station 1793+00 at Greenville, SC, in Greenville County, SC.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 1, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 12, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 22, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 7, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17109 Filed 8-1-88; 8:45 am]

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C. 2d 164 served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

---

[Docket No. AB-55 (Sub-No. 251X)]

### CSX Transportation, Inc.—Abandonment Exemption—Loudon County, TN

**Editorial Note.**—This document was inadvertantly published August 1, 1988. It is republished today at the request of the agency.

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 3.2-mile line of railroad between milepost LKT-302.3 at Jena, TN, and milepost LKT-305.5 at Greenback, TN, in Loudon County, TN.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 1, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 12, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 22, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 7, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C. 2d 164 served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

upon environmental or public use conditions.

Decided: July 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88-17108 Filed 8-1-88; 8:45 am]

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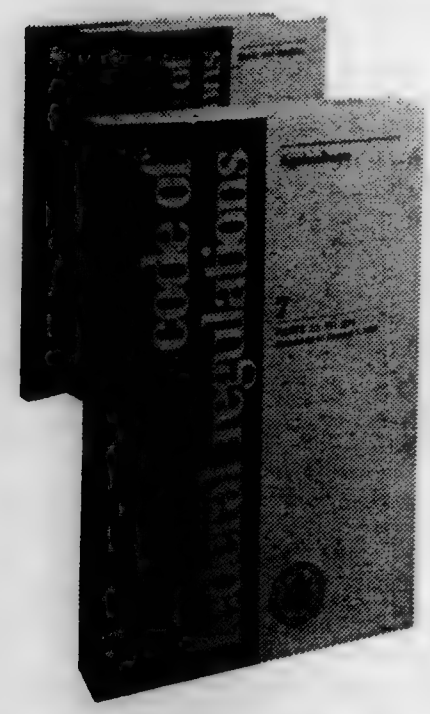


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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Federal Register
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Wednesday, August 3, 1988

# Presidential Documents

Title 3—

## The President

**Proclamation 5843 of August 1, 1988**

## Helsinki Human Rights Day, 1988

**By the President of the United States of America**

**A Proclamation**

Thirteen years ago, 33 European states, the United States, and Canada signed the Helsinki Final Act of the Conference on Security and Cooperation in Europe. In so doing, we and the other signatories undertook a sacred commitment to the principles of freedom, self-determination, and human dignity. The Helsinki Final Act acknowledged the fundamental interrelationship of human rights, economic relations, and security considerations in the overall conduct of affairs within and among states. The Final Act recognized that there can be no true international security without respect for basic political and civil rights; that economic ties can contribute to security, but only if based upon open relations among peoples; and that security and confidence can also be improved through the free exchange of information.

That historic meeting in Helsinki has spawned a dynamic process that we in the United States regard as one of the most important developments in East-West relations in the post-World War II period. The work begun at Helsinki to eliminate the barriers that divide East and West has been carried on in three follow-up meetings during the intervening years. At present we are working with the delegations from all the signatory states in Vienna to advance our cherished objectives of freedom, openness, and security.

While progress has occurred in reducing the tensions between East and West, the Soviet Union and other states of the East have not fully lived up to the commitments undertaken at Helsinki. Respect for human rights in these countries continues to fall far short of the standards set forth in the Final Act, as well as in the document issued at the conclusion of the Madrid review conference in 1983. Freedom of movement, conscience, and religion are still shackled by unreasonable and arbitrary government controls. Individuals such as Ukrainian Helsinki monitors Ivan Kandyba and Ivan Sokulsky and Lithuanian Catholic priest Sigitas Tamkevicius, whose only "crime" was to monitor the Soviet Government's compliance with the Helsinki Final Act and speak out in behalf of political and religious freedom, remain in Soviet labor camps. The free flow of ideas and information from abroad and within Eastern Europe is still impeded.

A few short weeks ago I stood in Finlandia Hall—the historic building in which the Helsinki Final Act was signed. I reiterated the commitment of the American people to continue to work to bring down the barriers that have so cruelly divided the European continent for 4 decades. However, it bears reminding that those barriers were erected by the East, and so much of the demolition work will necessarily fall to those states. We are encouraged by recent hopeful pronouncements coming from the Soviet Union and its allies; we await further concrete progress in the treatment of all individuals in the Soviet Union and Eastern Europe and positive steps in the Vienna meeting to give those pronouncements substance.

It is appropriate that we mark this 13th anniversary of the signing of the Final Act by setting aside a special day to reflect upon and to renew our dedication to the values of human dignity and freedom embodied in that farsighted document. On this occasion, we call upon all signatories of the Final Act to

honor in full its solemn principles. Let us pledge to spare no effort in striving toward this goal.

The Congress, by Senate Joint Resolution 338, has designated August 1, 1988, as "Helsinki Human Rights Day" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 1, 1988, as Helsinki Human Rights Day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-17818
Filed 8-1-88; 4:48 pm]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 53, No. 149
Wednesday, August 3, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 725

### Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Flue-Cured Tobacco

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations at 7 CFR Part 725 to implement provisions of the Agricultural Reconciliation Act of 1987 ("the 1987 Act"), as included in the Omnibus Budget Reconciliation Act of 1987, with respect to: (1) The lease and transfer of tobacco marketing quotas from a farm that has suffered a loss as the result of a natural disaster condition; and (2) the periodic adjustment of yield factors for acreage and poundage quotas. This rule adopts, with minor grammatical changes, a proposed rule which was published in the **Federal Register** on May 11, 1988 (53 FR 16721).

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dennis Daniels, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 (202) 382–0200.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA procedure established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A proposed rule was published in the **Federal Register** at 53 FR 16721 (May 11, 1988) with respect to: (1) The lease and transfer of flue-cured tobacco poundage quota and (2) the elimination of periodic yield adjustments for preliminary acreage allotments and preliminary farm yields.

Six comments, three from farm organizations and three from farmers, were received in response to the proposed rule. Two comments from farmers agreed with the proposed rule as published. One comment, signed by 52 individual farmers, agreed with the proposed rule with no changes recommended. Three comments from farm organizations requested more specificity to determine the sufficiency of the lessor farm's planted acreage in order to ensure uniformity in application of the rule in all flue-cured tobacco producing counties.

These suggested changes have not been adopted since it has been determined that sufficient guidelines exist which will ensure the uniform application of the provisions of the proposed rule. In addition, producers who do not believe that such changes have been implemented properly may appeal the determination made pursuant to these changes in accordance with 7 CFR Part 711.

**List of Subjects in 7 CFR Part 725**

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Accordingly, 7 CFR Part 725 is amended as follows:

**PART 725—[AMENDED]**

1. The authority citation for Part 725 continues to read:

**Authority:** Sec. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 210, 215, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

2. Section 725.56 is amended by revising paragraph (b) to read:

**§ 725.56 Determination of preliminary farm acreage allotments.**

* * * * *

(b) *Preliminary farm acreage allotment.* The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year.

3. Section 725.57 is amended by revising paragraph (a)(1) to read:

**§ 725.57 Determination of preliminary farm yields.**

(a) * * *

(1) *Farm having preliminary farm acreage allotment.* The preliminary farm yield established for the farm shall be the same preliminary farm yield as was in effect for the preceding year.

* * * * *

4. Section 725.72 is amended by: Revising paragraph (a); by removing paragraphs (d) (1) and (2) and redesignating paragraphs (d) (3), (4), (5), and (6) as paragraphs (d) (1), (2), (3), and (4), respectively; by revising newly redesignated paragraphs (d) (1) and (2); by revising paragraph (e)(4)(i); by removing and reserving paragraphs (f), (g), (l), (n), and (o); and by deleting the last sentence in paragraph (q) to read as follows:

**§ 725.72 Transfer of tobacco marketing quotas by lease or by sale.**

(a) *General.* Effective for the 1963 and subsequent crop years a flue-cured tobacco marketing quota, including a quota which has been pooled in

accordance with the provisions of Part 719 of this chapter, may be transferred between farms by sales. A flue-cured tobacco marketing quota transfer by sale must be within the same county. Only the lessor and lessee (or any attorney, trustee, bank, or other agent who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for, a transfer of flue-cured tobacco marketing quota by lease. For the 1988 and subsequent crop years, a flue-cured tobacco marketing quota also may be transferred after June 30 by lease to a farm in any county within the same State when the county committee determines that:

(1) The lessor has planted at least 90 percent of the farm's effective acreage allotment, or

(2) The planted acreage is sufficient to produce and market the effective farm marketing quota under average conditions, and

(3) The farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

* * * * *

(d) *Transfer provisions*—(1) *Lessor farm.* A transfer of quota from a farm by lease shall not be approved:

(i) *New farm.* If the farm is a new farm.

(ii) *Natural disaster.* Unless the county committee in the county in which the farm is located for administrative purposes determines that the:

(A)(*1*) Farm has planted an acreage equal to or more than 90 percent of the effective farm acreage allotment, or

(*2*) In accordance with guidelines issued by the Deputy Administrator, the planted acreage of flue-cured tobacco on the farm is sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota;

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(C) Producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(D) Farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a drought, excessive rain, hail, wind, tornado, or other natural disaster as determined by the Deputy Administrator.

(iii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid unless the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(2) *Lessee farm.* A transfer of quota to a farm by lease shall not be approved:

(i) *Price support eligibility.* Unless the producers on the farm qualify for price support under the provisions of Part 1464 of this title; and

(ii) *Limitation.* If the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

* * * * *

(e) * * *

(4) * * *

(i) *Lease.* November 15.

* * * * *

Signed in Washington, DC on July 29, 1988.

**Earle J. Bedenbaugh,**

*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 88-17496 Filed 8-2-88; 8:45 am]

BILLING CODE 3410-05-M

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**Agricultural Marketing Service**

**7 CFR Part 981**

**[FV-88-116]**

## Handling of Almonds Grown in California; Extension of Date for Satisfying Inedible Disposition Obligation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action temporarily changes the date from July 31, 1988, to August 31, 1988, by which handlers of California almonds must satisfy 18 percent of their 1987–88 crop year inedible disposition obligations. Handlers must satisfy the remaining 82 percent of their inedible disposition obligations by the current July 31, 1988, date. This action is taken in view of a recent final rule which transferred an 18 percent reserve percentage in effect for the 1987–88 crop year to the salable category. This action was recommended by the Almond Board of California (Board), the agency responsible for local administration of the order.

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 105 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action gives handlers of California almonds an additional month to satisfy 18 percent of their 1987-88 crop year inedible disposition obligation. Therefore, this action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule revises, for 1988 only, § 981.442 of "Subpart—Administrative Rules and Regulations." The action is based on a unanimous recommendation of the Board and upon other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Paragraph 981.442(a)(5) of such rules and regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. This action extends the July 31 date to August 31 for 18 percent of handlers' disposition obligations incurred during the 1987–88 crop year only. Thus, handlers have until August 31, 1988, to satisfy the final 18 percent of their 1987–88 crop year inedible disposition obligation which corresponds to the 18 percent reserve almonds which will be released to the salable category on August 1, 1988. Handlers must satisfy the other 82 percent of their inedible disposition obligations by July 31, 1988.

This action is taken in view of a recent final rule which released an 18 percent reserve percentage in effect for merchantable almonds received by handlers during the 1987–88 crop year to the salable category effective August 1, 1988 (53 FR 28630). When the reserve was in effect, handlers were required to withhold 18 percent of their marketable almond receipts from normal domestic and export markets. Consequently, many handlers took no action to process those almonds. However, handlers customarily satisfy their inedible disposition obligations with inedible quality almonds removed during processing. Therefore, since the 18 percent reserve will not be released to the salable category until August 1, 1988, handlers may need additional time to process those almonds to satisfy the 18 percent of their inedible disposition obligations which corresponds to the 18 percent reserve.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that the change hereinafter set forth will tend to effectuate the declared policy of the Act.

It has been determined that conditions warrant publication of this final rule without prior opportunity for public comment, because this action relaxes restrictions on handlers by extending a July 31, 1988, deadline concerning 18 percent of their inedible disposition obligations. Consequently, this action should be taken as soon as possible before July 31, 1988, so that handlers may plan their operations accordingly. Therefore, pursuant to the administrative procedure provision in 5 U.S.C. 553, it is found with good cause that notice of public rulemaking and other public procedure with respect to this final action are impracticable, unnecessary and contrary to the public interest. For these reasons, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

**List of Subjects in 7 CFR Part 981**

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**Subpart—Administrative Rules and Regulations**

2. During the period, July 31, 1988 through August 31, 1988, revise the last sentence in paragraph (a)(5) of § 981.442 to read as follows:

**Note.**—This section will not be published in the annual Code of Federal Regulations.

**§ 981.442 Quality control.**

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred: *Provided*, That for 1987–88 crop year almonds, handlers have until August 31, 1988, to satisfy the 18 percent of their disposition obligation which corresponds to the 18 percent reserve almonds released to salable almonds.

* * * * *

Dated: July 29, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–17488 Filed 8–2–88; 8:45 am]

BILLING CODE 3410–02–M

## FEDERAL RESERVE SYSTEM

**12 CFR Part 227**

**[Reg. AA; Docket No. R–0606]**

## Unfair or Deceptive Acts or Practices; Order Granting an Exemption to the State of California From the Credit Practices Rule

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Order.

**SUMMARY:** The Board has determined that the exemption from the cosigner provision of the Board's Credit Practices Rule, Subpart B of Regulation AA, requested by the state of California will be granted with respect to state-chartered institutions.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Adrienne D. Hurt, Senior Attorney, or Linda Vespereny, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–2412; for the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

In April 1985 the Board adopted the Credit Practices Rule, 12 CFR Part 227 (50 FR 16695), thereby amending its Regulation AA (Unfair or Deceptive Acts or Practices). The Board's rule, which became effective on January 1, 1986, followed the adoption by the Federal Trade Commission (FTC) of its Credit Practices Rule in March 1984 (49 FR 7740), effective March 1, 1985.[1] The

[1] Under section 18(a)(1)(B) and section 5(a)(1) of the Federal Trade Commission Act (FTC Act), the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce with respect to extensions of credit to consumers. Section 18(f) of the FTC Act

Continued

Board's rule applies to all banks and their subsidiaries.

The Board's Credit Practice Rule prohibits banks from entering into any consumer credit obligation that contains a confession of judgment clause, a waiver of exemption, certain types of wage assignments, or a nonpossessory, nonpurchase money security interest in household goods. The rule also prohibits the enforcement of these provisions in a consumer credit obligation purchased by a bank.

In addition, the rule prohibits a practice commonly referred to as "pyramiding" of late charges, deeming it an unfair practice for a bank to assess multiple late charges based on a single delinquent payment that is subsequently paid. The rule also prohibits a bank from misrepresenting a cosigner's liability and requires the bank to give, prior to a cosigner becoming obligated in connection with a consumer credit transaction, a disclosure notice that explains the nature of the cosigner's contractual obligations and liability.

Administrative enforcement of the Board's Credit Practices Rule is carried out through compliance examinations and investigations. Administrative enforcement of the rule may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including the issuance of cease and desist orders and the imposition of penalties up to $1,000 per day for violation of an order. Staff guidelines designed to aid banks in complying with the Credit Practices Rule were issued in November 1985 (50 FR 47036), and updated in October 1986 (51 FR 39846) and in August 1988. (The latter appears in this issue of the **Federal Register**.)

Section 227.16 of the Credit Practices Rule provides that if a state applies for an exemption from a provision of the rule, an exemption may be granted if the Board determines that: (1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of the Credit Practice Rule applies; and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the federal rule. The effect of an exemption is that banks and their subsidiaries (other than federally-chartered institutions) that are subject to the Board's rule become subject solely to state law and enforcement for as long as the state effectively administers and enforces the state requirement or prohibition.

Applicable state law provisions need not be identical to the federal law in order to meet the rule's substantially equivalent standard. Variations, however, should not deprive consumers of protections provided by federal law. The state's enforcement activities, examination and administrative procedures, and other indicators of enforcement efforts are considered, as well as the existence under the state law of any private right of action for aggrieved consumers.

The state of California, through its Attorney General, applied to the Board for an exemption from the cosigner provision of the Board's Credit Practices Rule.[2] Notice of the exemption request, with an opportunity for public comment, was published on July 29, 1987 (52 FR 28271). The comparable state law provisions that form the basis for the exemption request are contained in the California Civil Code and the California Business and Professions Code.

The Board's July notice detailed and requested comments on the differences between the Board's rule and the relevant provisions of the California statutes. The five comments received generally indicated the belief that most of the relevant provisions of California law provide a level of consumer protection that is either substantially equivalent to, or greater than, that provided by the Board's rule.

The commenters also urged the Board to extend the exemption to national banks, as well as state-chartered banks. The commenters suggested that state examination of national banks for compliance is not essential to adequate enforcement of the state law cosigner provisions, given California's statutory remedy for failure to give the required cosigner disclosure notice. State exemptions generally have not applied to consumer credit laws implemented by Board regulation (specifically, the TILA) because states are not permitted to conduct examinations of national banks and the Board has taken the position that the ability to examine banks is a necessary element for proving that a state adequately enforces the state laws which are the basis for an exemption. The Office of the Comptroller of the Currency (OCC) has exclusive jurisdiction over national banks. National banks are not exempt from compliance with the federal law unless the OCC examines national banks for compliance with state laws. Consequently, exemptions under the Board's Credit Practices Rule generally have not extended to national banks.

In the Board's view differences between the Board's rule and California law are not substantial and, therefore, do not adversely affect California's exemption request. Moreover, the Board finds that California has demonstrated that it administers and enforces its laws effectively. Based on its analysis and consideration of the comments made, the Board has determined that the state of California should be granted an exemption from the consigner provision of the Board's Credit Practices Rule.

In accordance with the procedures established by the Board for making exemption determinations (contained in appendix B to Regulation Z, 12 CFR Part 226), the Board reserves the right to revoke this exemption if at any time it determines that the standards required for an exemption are not being met. A state that is granted an exemption must inform the Board within 30 days of any change in its relevant law or regulations. In addition, the state must file with the Board such periodic reports as the Board may require. The Board, in turn, will inform the appropriate state official of any revisions in the federal statute, regulations, interpretations, or enforcement policies that may require action by the state, and will allow sufficient time to the state to revise its law and regulations, in order for the state to maintain its exemption.

**2. Order of Exemption**

The following sets forth the terms of the California exemption:

**Order**

The state of California has applied for an exemption from the cosigner provision of the Board's Credit Practices Rule which became effective January 1, 1986. Pursuant to § 227.16 of Regulation AA, the Board has determined that the relevant laws of this state are substantially equivalent to the federal law and that the state administers and enforces its laws effectively. The Board hereby grants the exemption as follows:

Effective August 1, 1988, consumer credit transactions that are subject to the California Civil Code and California Business and Professions Code are exempt from the

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provides that whenever the FTC promulgates a rule prohibiting practices which it has deemed to be unfair or deceptive, the Board, with certain limited exceptions, must adopt a substantially similar rule prohibiting such practices by banks. The Federal Home Loan Bank Board (FHLBB) is also required under section 18(f) to adopt a rule substantially similar to that of the FTC for institutions that are members of the Federal Home Loan Bank System; the FHLBB did so in May 1985 (50 FR 19325), with its rule also taking effect on January 1, 1986.

[2] The state of California submitted similar applications to the FTC and to the FHLBB, in order to obtain exemptions from the cosigner provisions of the credit practices rules of those agencies. The FTC granted California's exemption request on June 1, 1988 (53 FR 19893). The California exemption request to the FHLBB was published for comment on July 7, 1988 (53 FR 25500).

cosigner provision of the Board's Credit Practices Rule, 12 CFR 227.14. This exemption does not apply to transactions in which a federally chartered institution is a creditor.

By order of the Board of Governors of the Federal Reserve System, July 28, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88–17402 Filed 8–2–88; 8:45 am]

BILLING CODE 6210–01–M

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**12 CFR Part 227**

**[Reg. AA]**

## Unfair or Deceptive Acts or Practices; Update of Staff Guidelines on the Credit Practices Rule

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Update of staff guidelines on the Credit Practices Rule.

**SUMMARY:** The Board is publishing an update to the staff guidelines on the Credit Practices Rule, Subpart B of Regulation AA (Unfair or Deceptive Acts or Practices). The rule prohibits banks and their subsidiaries from using certain creditor remedies in connection with a consumer credit obligation, from using a late-charge practice commonly referred to as pyramiding, and from obligating a cosigner prior to giving a required notice explaining the cosigner's obligations. The update addresses questions on the use of multi-purpose credit documents, the acquisition of a security interest in household goods from a purchase-money lender, and exemptions from the rule.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Adrienne D. Hurt, Senior Attorney, or Linda Vespereny, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–2412; for the hearing impaired *only,* contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

In March 1984, the Federal Trade Commission (FTC) adopted its Credit Practices Rule, effective March 1, 1985, pursuant to the authority granted the FTC under sections 18(a)(1)(B) and 5(a)(1) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 57a(a)(1)(B) and 15 U.S.C. 45(a)(1). Under this statute the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce. Section 18(f) of the FTC Act, 15 U.S.C. 57a(f), provides that whenever the FTC promulgates a rule prohibiting acts or practices that it had deemed to be unfair or deceptive, the Board of Governors of the Federal Reserve System must adopt a substantially similar rule prohibiting such acts or practices by banks unless the Board finds that such acts or practices by banks are not unfair or deceptive, or that the adoption of similar regulations for banks would seriously conflict with essential monetary and payments systems policies of the Board.

In April 1985, the Board adopted a rule substantially similar to the FTC's Credit Practices Rule (50 FR 16695) as an amendment to the Board's Regulation AA, Unfair or Deceptive Acts or Practices (12 CFR Part 227). The Board modified certain provisions of the FTC's rule to take into account the needs and characteristics of the banking industry. The Board's rule went into effect on January 1, 1986.

### 2. Summary of the Rule

The Board's rule applies to all consumer credit obligations other than those for the purchase of real property. It prohibits banks from using certain remedies to enforce consumer credit obligations. Under the rule, banks may not include these remedies in their consumer credit obligations, and if banks purchase obligations that contain a prohibited provision, banks are prohibited from enforcing them. The prohibited provisions are: (1) Confessions of judgment; (2) waivers of exemption; (3) wage assignments; and (4) non-possessory, nonpurchase-money security interests in household goods. In addition, the rule prohibits a certain late charge practice, and provides protections for cosigners in consumer credit transactions.

The Board's rule applies to all banks and their subsidiaries. Institutions that are members of the Federal Home Loan Bank System and nonbank subsidiaries of bank holding companies are covered by the rules of the Federal Home Loan Bank Board and the FTC, respectively.

### 3. Staff Guidelines

Staff guidelines on the Board's Credit Practices Rule were issued in November 1985 (50 FR 47036). The guidelines focus on information of general application that will be useful to most banks, and provide the vehicle for answering questions about the rule. The guidelines are updated periodically, as necessary. The first update was in October 1986 (51 FR 39846). This notice contains the second update.

### 4. Explanation of Revision to Guidelines

Following is a brief description of the revisions to the staff guidelines on the Board's Credit Practices Rule.

*Section 227.13 Unfair Credit Contract Provisions.*

Question 13(a)–2 has been added to clarify the rule regarding the inclusion of a confession of judgment clause in a multi-purpose credit document. Some creditors use multi-purpose credit contracts for consumer, business, and other types of credit obligations. The issue is whether these forms may contain a confession of judgment clause with qualifying language indicating that the clause is not applicable in a consumer credit obligation (for example, stating that a confession of judgment is effective only "in nonconsumer purpose loans," "in business or agricultural purpose loans," or "to the extent permitted by law"). Given the public policy purpose of the rule—to eliminate the use of prohibited contract provisions in consumer credit obligations—§ 227.13(a) is strictly construed to mean that a confession of judgment clause may not be contained in consumer credit documentation, even with qualifying language. Therefore, if a bank uses a multi-purpose credit document for a consumer purpose loan, the bank must cross out, blacken in, or otherwise indicate removal of the clause from the credit document.

Question 13(d)–3a explains that when a bank refinances a purchase-money obligation originated by another lender, the acquisition of the purchase-money lender's security interest in household goods does not violate the rule.

*Section 227.16 State Exemptions.*

Section 227.16 allows a state agency to apply for an exemption from all or part of the provisions of the Board's rule. Question 16(b)–3 has been added to indicate the exemptions that have been granted.

**List of Subjects in 12 CFR Part 227**

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

### 5. Text of Revisions

The revisions to the staff guidelines on the Credit Practices Rule read as follows:

* * * * *

*Section 227.13 Unfair Credit Contract Provisions.*

* * * * *

13(a) Confessions of Judgment

* * * * *

Q13(a)–2: *Language limiting confession of judgment provision.* If a bank uses multi-purpose credit contracts, may the bank include a confession of judgment clause with qualifying language indicating that the clause is not applicable in a consumer purpose loan—such as, "You confess judgment to the extent the law allows," or "This clause applies only in business purpose loans"?

A: No. Given the public policy purpose of the rule, a bank may not have a confession of judgment clause in a consumer credit contract, even with limiting language. Therefore, when a multi-purpose form is used for a consumer purpose loan, the bank must cross out, blacken in, or otherwise indicate clearly the removal of the prohibited clause from the loan document.

* * * * *

13(d) Security Interest in Household Goods

* * * * *

Q13(d)–3a: *Refinancing [new creditor]—original loan purchase money.* On the same facts as those detailed in Q13(d)–3, assume that the consumer refinances the loan with a different bank. May that bank acquire the security interest of the purchase-money lender in household goods without violating the rule?

A: Yes, the bank may acquire the security interest of the purchase-money lender without violating the rule.

* * * * *

*Section 227.16 State Exemptions.*

* * * * *

Q16(b)–3. *Exemption granted.* What states have been granted an exemption from the Board's rule?

A: The state of Wisconsin was granted an exemption from all provisions of the Board's rule effective November 20, 1986, for transactions of $25,000 or less. The state of New York was granted an exemption from the cosigner provisions of the Board's rule effective January 21, 1987, for transactions of $25,000 or less. In both Wisconsin and New York, transactions over $25,000 are subject to the Board's rule but compliance with state law is deemed compliance with the federal law. The state of California was granted an exemption from the cosigner provisions of the Board's rule effective August 1, 1988. These exemptions do not apply to federally-chartered institutions.

Board of Governors of the Federal Reserve System, July 28, 1988.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 88-17401 Filed 8-2-88; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Dkt. 9295]

### Occidental Petroleum Corp. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Tenneco, Inc., a Houston, TX corporation that manufactures and sells polyvinyl chloride (PVC), to abide by any divestiture order issued by the Commission against Occidental and to abide by the stipulations regarding the reacquisition of the Burlington, N.J. plant from Occidental. The order prohibits Tenneco from interfering with the relief ordered by the Commission and requires that they cooperate in the transfer of assets to a third party or business divested by Occidental pursuant to the order of the Commission.

DATE: Complaint issued April 11, 1986. Order issued July 19, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Rhett Krulla, FTC/S–3302, Washington, DC 20580. (202) 326–2906.

SUPPLEMENTARY INFORMATION: On Wednesday, May 11, 1988, there was published in the Federal Register, 53 FR 16725, a proposed consent agreement with analysis In the Matter of Occidental Petroleum Corporation, Occidental Chemical Corporation, Tenneco, Inc., and Tenneco Polymers, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest in disposition of this proceeding as to Tenneco, Inc., and Tenneco Polymers, Inc. as set forth in the proposed consent agreement.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission Act. Subpart—Combining Or Conspiring: § 13.470 To restrain and monopolize trade; § 13.475 To restrict competition in buying. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Polyvinyl chloride resin, Thermoplastic, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

*Acting Secretary.*

[FR Doc. 88-17412 Filed 8-2-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 211, 231, 241, and 271

[Rel. Nos. 33-6791; 34-25951; IC-16069; FR-32]

### Statement of the Commission Regarding Disclosure Obligations of Companies Affected by the Government's Defense Contract Procurement Inquiry and Related Issues

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: Companies are reminded to consider their disclosure obligations in connection with issues arising from the government's defense contract procurement inquiry.

FOR FURTHER INFORMATION CONTACT: Robert A. Bayless, Deputy Chief Accountant, Division of Corporation Finance, (202) 272–2553, or Daniel W. Rumsey, Attorney, (202) 272–3755, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission

("Commission") today called attention to its requirements under the Securities Act of 1933 [1] ("Securities Act"), the Securities Exchange Act of 1934 [2] ("Exchange Act"), and the Investment Company of 1940 ("Investment Company Act") [3] regarding disclosure obligations of registrants in connection with the ongoing government investigation into illegal or unethical activity in the procurement of defense contracts. The Commission recognizes that the exact subjects and scope of the government's inquiry are still unknown. In view of the potential adverse effects upon registrants that may result from the investigation as well as any governmental action that may result, however, companies engaged in the defense buisness should review on an ongoing basis the need for appropriate disclosure, particularly in connection with their forthcoming reports or registration statements to be filed with the Commission.[4]

These considerations equally apply to companies that are subject to the inquiry and to companies that, although not targeted in the investigation, otherwise may be materially affected by the investigation as a result of additional expenditures incurred or policies and practices altered in connection with defense contract procurement. For example, disclosure of a change in practice may be required where a company, through its consultants, agents or otherwise, has been engaged in questionable conduct and thereafter alters its policies for obtaining defense contracts, or if general industry procedures change as a result of issues highlighted by the inquiry.

In addition, any investment company that has adopted a fundamental policy to concentrate [5] its investments in an industry dependent upon government defense contracts should consider disclosing in its prospectus the potentially adverse impact the government's investigation may have upon the investment company's investment in the companies within such industry.

The rules regarding filings with the Commission impose obligations on registrants to disclose specified material information in registration statements filed under the Securities Act, initial registration statements filed under the Exchange Act,[6] and annual [7] and quarterly [8] reports filed under the Exchange Act. Depending upon the provisions of the particular Form, such requirements relate to various aspects of the registrant's business, legal proceedings, management, and financial condition, among other matters.

The requirement regarding a description of the registrant's business [9] includes disclosure pertaining to any material portion of a company's business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the government.[10] A company's or its subsidiary's dependence on government contracts also would be required to be disclosed where the loss of such contracts would have a material adverse effect upon the company.[11] Likewise, companies, at a minimum, must disclose ceratin loss contingencies in their required financial statements.[12]

Disclosure also is required of mateial pending legal proceedings involving a company or its subsidiaries.[13] Legal proceedings known to be contemplated by government agencies similarly should be disclosed where management reasonably believes that such government action will have a material effect upon the company and its business.[14] In this regard, disclosure of known contemplated government proceedings may be required where the result may be the cancellation of a government contract, suspension of payments under a contract, termination of further business with the government, or alteration of the registrant's procedures for obtaining government contracts.

Legal proceedings involving directors, nominees, executive officers, promoters, and control persons should likewise be disclosed where material to the ability or integrity of such person.[15] In this regard, disclosure generally is required, for example, where such person was convicted in a criminal proceeding; a named subject of a pending criminal proceeding; subject to an order, judgment or decree enjoining or limiting such person from engaging in specified activities; or found to have violated any federal or state securities law.

The potential effects of the government's inquiry must be discussed in the Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") in a company's annual and quarterly reports as well as transactional filings if, in light of the associated probabilities and magnitudes, the effects may be material.[16] Such a discussion should be included where the registrant reasonably expects that the government's inquiry will have a material adverse effect on a company's financial condition, liquidity, capital resources, net sales, revenues or income from continuing operations, or such inquiry otherwise would cause a material change in the relationship between costs and revenues. Disclosure also should be provided where, in light of the uncertainty regarding the government's inquiry, reported financial information would not necessarily be indicative of the company's future operating results or financial condition.

The Commission's rules also require disclosure of any additional material information, beyond information specifically required to be disclosed, that is necessary to make the required statements not misleading, as to the business, financial results and condition, and the management of the company.[17] In this regard, consideration should be given to disclosing the effects of the government's inquiry where management reasonably believes that existing disclosure may be materially deficient because of the investigation's potential impact upon company expenditures, earnings, or competitive position within the industry.[18] Moreover, if a company has a policy or approach towards defense contract procurement that is likely to be affected as a result of the inquiry, it may be necessary to disclose such effects,

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[1] 15 U.S.C. 77(a), *et seq.*

[2] 15 U.S.C. 78(a), *et seq.*

[3] 15 U.S.C. 80a–1, *et seq.*

[4] While this Release highlights these disclosure concerns in the context of registration statements and reports filed with the Commission, registrants should be mindful of the fact that similar issues may arise in connection with other filings, particularly transactional filings such as proxy and information statements, tender offer and issuer tender offer documents, and going private filings.

[5] *See, e.g.*, section 8(b)(1), 15 U.S.C. 80a–8(b)(1), of the Investment Company Act and Item 4(a)(ii) of Form N–1A, 17 CFR 274.11A.

[6] Form 10, 17 CFR 249.210.

[7] Form 10–K, 17 CFR 249.310.

[8] Form 10–Q, 17 CFR 249.308(a).

[9] Regulation S–K, Item 101, "Description of Business," 17 CFR 229.101.

[10] Regulation S–K, Item 101(c)(ix), 17 CFR 229.101(c)(ix).

[11] Regulation S–K, Item 101(c)(vii), 17 CFR 229.101(c)(vii).

[12] Regulation S–X, Article 5–02, 17 CFR 210.5–02 *See also* Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (March 1975).

[13] Regulation S–K, Item 103, "Legal Proceedings," 17 CFR 229.103

[14] *Id.*

[15] Regulation S–K, Item 401(f) and (g), "Directors, Executive Officers, Promoters and Control Persons," 17 CFR 229.401(f) and (g).

[16] Regulation S–K, Item 303, 17 CFR 229.303.

[17] *See* Securities Act Rule 408, 17 CFR 230.408; Exchange Act Rule 12b–20, 17 CFR 240.12b–20. *See also* Rule 14a–9, 17 CFR 240.14a–9.

[18] *See also* Regulation S–K, Item 101(c)(x), 17 CFR 229.101(c)(x), which requires disclosure of the competitive conditions within a company's industry.

including the resulting costs, in the description of the company's business, MD&A, or financial statements as appropriate.

Attention also is directed to the antifraud provisions under both the Securities Act and the Exchange Act, which apply not only to statements and omissions made in filings with the Commission but also to those made outside Commission filings.[19] Accordingly, statements made concerning companies and their management should include sufficient disclosure so as not to be materially misleading.

**List of Subjects in 17 CFR Parts 211, 231, 241, and 271**

Reporting and recordkeeping requirements, Securities.

**PARTS 211, 231, 241, AND 271—[AMENDED]**

Parts 211, 231, 241, and 271 of Title 17, Chapter II of the Code of Federal Regulations are amended by adding this Release No. 33-6791, 34-25951, IC-15930, and FR-32 (August 1, 1988) to the lists of interpretive releases.

By the Commission.

Dated: August 1, 1988.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-17578 Filed 8-2-88; 8:45 am]

BILLING CODE 8010-01-M

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 113, 122, and 178**

**[T.D. 88-65]**

## Customs Regulations Amendments Concerning Access to Customs Security Areas at Airports

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final Rule.

**SUMMARY:** This document amends the Customs Regulations to provide that employers of persons requiring access to Customs security areas at airports would be required to post a bond in which they specifically agree that both they and their covered employees will comply with the regulations applicable to those areas and to pay liquidated damages for the failure to do so. The provisions were proposed because Customs experience since the airport security area program was introduced revealed that there were frequent violations. Employees ordered out of security areas because of lack of clearance returned later without having obtained clearance. Further, statements made by employers concerning background checks of their employees proved to be inaccurate. The New regulatory provisions permit the approved identification card, strip, or seal to be removed from employees because of bond insufficiency and permit the district director to waive the bond surety requirement for the period of a temporary identification card. The document also clarifies that law enforcement and governmental officials that are exempt from the Customs security area identification application requirements are not required to submit an Airport Customs Security Area Bond.

**EFFECTIVE DATE:** September 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Operational aspects: Patricia Carr, Office of Inspection and Control (202-566-2148). Bond aspects: William Rosoff, Entry Rulings Branch (202-566-5856).

**SUPPLEMENTARY INFORMATION:**

## Background

Interim regulations, published as T.D. 86-12 in the Federal Register on February 3, 1986 (51 FR 4181), provided for the establishment of an identification system for all employees whose duties required access to Customs security areas at airports handling international air commerce. Federal, and uniformed state and local law enforcement personnel were exempted. These regulations, which are now set forth in § 122.14, Customs Regulations [19 CFR 122.14], provided for the identification of a "Customs security area". They also required that affected employees apply for a Customs approved identification card, or a strip or seal to be affixed to existing identification cards once an authorized official of the employer attested that background checks of employment history of the affected employees had been conducted or that one was not required because the employee had been hired before November 1, 1986.

After analysis of public comments received in response to the publication of such interim regulations, several changes were made. These included changing the employment commencement date from which a background investigation would be required of an affected employee to November 1, 1985, so that it would coincide with the date which the FAA utilized in administering related requirements. Further, the requirement for law enforcement personnel to apply for an exemption was eliminated. They need only request the issuance of an approved identification card with strip or seal affixed thereto. Some comments, including one urging severe penalties for violations of the new security requirements, were considered but not adopted. A final rule, incorporating the adopted changes, was published as T.D. 86-174 in the Federal Register of September 12, 1986 (51 FR 32446).

Customs experience subsequent thereto has revealed that there were frequent violations of the security area provisions. We have noted that some people ordered out of the security area because they did not have clearance returned later without having obtained that clearance. Further, statements made by employers regarding background checks of persons requiring access to security areas have proven to be inaccurate. A national audit of the employee files of approximately 1000 persons subject to these provisions has revealed that there has been a failure to verify the references of almost 50 per cent of new employees. In some instances, the management of ground service companies and others have shown an indifference to these matters. We concluded that there was no existing effective enforcement mechanism and that an appropriate bond which provided for liquidated damages for violations was necessary in order to encourage compliance. We also found that employers were not timely advising Customs of employees who no longer needed access to Customs security areas.

To correct these problems, a proposed amendment to the Customs regulations regarding the airport security area program was published in the Federal Register of December 28, 1987 (52 FR 48833). Under these amendments, employers would be required to periodically file a summary report of these employee changes. Employers would also be required to advise their employees of the regulations relative to Customs airport security areas, to require that their employees familiarize themselves with those provisions and insure that all their employees comply therewith. The failure to comply with the regulations would be considered as default of the conditions of the employer's bond and would make the employer liable for liquidated damages.

If the applicant's employer has on file with Customs a Customs Form 301 containing the bond conditions set forth in §§ 113.62, 113.63, or 113.64, Customs Regulations (19 CFR 113.62, 113.63,

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[19] *See* Securities Act Section 17(a), 15 U.S.C. 77q(a), and Exchange Act Section 10(b), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

113.64) relating to importers, brokers, custodians of bonded merchandise, or international carriers, the applications for an approved identification card, strip or seal would not need to be accompanied by any new bond. If there is no such bond, the application would have to be supported by an Airport Customs Security area Bond, as set forth in new Appendix A of Part 113, Customs Regulations (19 CFR Part 113).

The document clarifies that law enforcement and governmental officials that are exempt from the identification application requirements need not submit an Airport Customs Security Area Bond.

**Analysis of Comments**

Twenty-one comments were received in response to the notice published in the Federal Register on December 28, 1987 (52 FR 48833), proposing this change. A synopsis and analysis of the comments follows:

1. There is no opportunity to contest claims for liquidated damages for default under the terms of the bond.

*Response*—Administrative review is available in a claim for liquidated damages by filing a petition for relief under Subpart A, Part 172, Customs Regulations (19 CFR Part 172).

2. What is meant by the term "such other amount as may be authorized by law and regulation" in paragraph 5 of the Airport Customs Area Bond.

*Response*—If a law or regulation sets forth the amount of liquidated damages for a default, it would prevail over the amount stated in the bond.

3. What is the maximum limit of liability of the surety under the bond?

*Response*—The face amount of the bond determines the maximum liability of the surety. The district director of Customs determines the amount of the bond.

4. Which bond would be liable when an employee is the agent of an employer covered by the Customs Form 301 and the employee is also employed by another employer covered by an Airport Customs Area Bond?

*Response*—The district director of Customs would decide the question. Ordinarily, the bond covering the party deemed most responsible would apply.

5. Would Customs make demand on the surety for a default without first seeking payment from the principal?

*Response*—Section 172.1(a), Customs Regulations (19 CFR 172.1(a)) provides that the principal on a bond shall be notified in writing of any liability for liquidated damages incurred by him and a demand made for payment. It also provides that the surety shall be advised at the same time as the principal of the liability for liquidated damages incurred by the principal.

6. The bond is contradictory because the first sentence requests the name of the principal and then in the third paragraph, the bond refers to the principal as "including the principal's employees, agents, and contractors."

*Response*—The wording of the third paragraph of the bond is intended to make it clear that the principal is responsible for defaults of its employees, agents, and contractors.

7. The authority under 19 U.S.C. 1623 to require a bond not specifically required by law is limited to the protection of the revenue.

*Response*—The conclusion is incorrect. In addition to the protection of the revenue, 19 U.S.C. 1623 provides the authority to require a bond not specifically required by "law to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce." The law is broad enough to authorize the requirement of an Airport Customs Security Area Bond to assure compliance with the Customs Regulations covering security areas at airports.

8. Several commenters were concerned with the economic impact of the bonding cost. They felt that only non-compliance employers should be held financially responsible for security violations and that the current proposal of $1000 in liquidated damages for each default was unjustly high. They felt that strict enforcement of current security regulations would be sufficient and that current efforts to maintain security are either inconsistent or lacking.

*Response*—In order to be equitable and in line with normal bonding procedures, it is a necessary requirement for all employers of persons requiring access to Customs security areas at airports to post a bond. This guarantee would place the burden of compliance on the employer, and provide Customs a consistent enforcement response from port to port.

9. Some commenters state that the definition of a "security area" is unclear and that there are difficulties with zone segregation. They are concerned about employees who have "cross over" functions with necessitate movement from one zone to another in the performance of their duties. They note that these employees, in the performance of their duties, are frequently stopped and questioned when the seal designation they are wearing does not correspond to the zone they wish to enter. They also note that a similar problem exists when, due to logistic constraints, there are employees who work domestic ramp areas adjacent to international ramp areas.

*Response*—While "cross-over" functions do present an operational and recurring problem at many airports, there is no specific seal identifier currently available to permit such employees to travel unchallenged from zone to zone in the performance of their duties. In the event that an employee in the performance of his duties requires access to a Customs security area with a seal designation for a Customs security area other than the one he is entering, the employee must notify Customs of the need for access and provisions will be made for his access. When there is a commingling of domestic and international operations, the security seal requirement still remains for those employees involved in international operations. Customs does reserve the right to challenge any individual in a Customs security area.

10. Violations should be specifically described, the type and number of violations that would produce a notice of liquidated damages should be clarified, the employer should be notified before a liquidated damages notice is issued and should be given an opportunity to respond to the notice.

*Response*—Section 122.14(b), Customs Regulations (19 CFR 122.14) (formerly § 6.12a(b), Customs Regulations (19 CFR 6.12a(b)), specifically states who must display an approved identification card, strip, or seal, issued by Customs and when it must be displayed. It states that such identification must be in the possession of the person to whom it is issued while in the Customs security areas as provided for in § 122.14(a), Customs Regulations (19 CFR 122.14(a)). The failure to comply with these requirements is covered by the bond condition/bond provided for in §§ 113.62, 113.63 and 113.64 and Appendix A of Part 113, Customs Regulations (19 CFR Part 113). The procedures for issuance of a notice for liquidated damages and the filing of a petition for relief therefrom are contained in Part 172, Customs Regulations (19 CFR Part 172). Further, § 122.14(j), Customs Regulations (19 CFR 122.14(j)) provides for the removal, revocation or suspension of an approved identification card, strip, or seal for reasons specified therein. The procedures for doing so are noted therein as are the appeal procedures.

**Determination**

After carefully analyzing the comments received, and further consideration of the matter, it has been

determined to adopt the changes to the requirements concerning Customs security areas at airports. Pursuant to T.D. 88–12, published in the Federal Register of March 22, 1988 (53 FR 9285), a new Part 122, Customs Regulations (19 CFR Part 122) was issued. These regulations set forth the general Customs requirements applicable to all air commerce formerly in Part 6, Customs Regulations (19 CFR Part 6). The amendments which were proposed to be made to Part 6, Customs Regulations and § 6.12a, in particular, are hereby being made, accordingly, to § 122.14, Customs Regulations (19 CFR 122.14). This is a non-substantive change.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

The collection of information in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control numbers 1515–0153, 1515–0028 and 1515–0144. The estimated average burden associated with the collection of information in this final rule is 50 minutes per respondent or recordkeeper (20 minutes, 15 minutes and 15 minutes, respectively, under the above control numbers).

Comments concerning the accuracy of the burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

**Drafting Information**

The principal author of the document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**List of Subjects**

*19 CFR Part 113*

Air carriers, Customs duties and inspection, Exports, Freight, Imports, Surety bonds.

*19 CFR Part 122*

Air carriers, Air transportation, Aircraft, Airports, Cuba, Freight.

*19 CFR Part 178*

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

**Amendments to the Regulations**

Parts 113, 122 and 178, Customs Regulations (19 CFR Parts 113, 122 and 178), are amended as set forth below:

## PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1623 and 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. Section 113.62 is amended by redesignating paragraph (i) as paragraph (j) and by adding a new paragraph (i) to read as follows:

**§ 113.62 Basic importation and entry bond conditions.**

* * * * *

(i) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to the Customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the Customs Regulations in this chapter applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, joint and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

3. The first sentence of § 113.62(j)(1), as redesignated is amended by remvoing" (a) or (g)" and inserting, in its place, "(a), (g) or (i)".

4. Section 113. 63 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and by adding a new paragraph (f) to read as follows:

**§ 113.63 Basic custodial bond conditions.**

* * * * *

(f) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to Customs security areas at airports is desired, the principal (including its employee, agents, and contractors) agrees to comply with the Customs Regulations applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

5. Section 113.64 is amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

**§ 113.64 International carrier bond conditions.**

* * * * *

(d) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to Customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the Customs Regulations applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

6. Part 113 is further amended by adding, as Appendix A, the bond format hereafter noted for the Airport Customs Security Area Bond prescribed in § 122.14 of this chapter.

**Appendix A—Airport Customs Security Area Bond**

AIRPORT CUSTOMS SECURITY AREA BOND

_____ (name of principal) of _____ and _____ (name of surety) of _____ are held and firmly bound unto the United States of America in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this ____ day of _____, 19____.

Whereas, the principal (including the principal's employees, agents, and contractors) desires access to Customs airport security areas located at _____ Airport during the period of one year beginning on the _____ day of _____, 19____, and ending on the ____ day of _____, 19____, both dates inclusive;

Now, therefore, the condition of this obligation is such that—

The principal agrees to comply with the Customs Regulations applicable to Customs security areas at airports.

If the principal defaults on the condition of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

Signed, sealed, and delivered in the presence of —

Name

Address

Name

Address

Principal (Seal)

Name

Address

Name

Address

Name

Address

Principal (Seal)

## PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.14 is amended by redesignating paragraph (b) as (b)(1) and adding a new paragraph (b)(2), by revising paragraph (c), by adding a sentence at the end of paragraph (d), by redesignating paragraph (j)(l)(vi) as paragraph (j)(l)(vii), by adding a new paragraph (j)(l)(vi), by revising redesignated paragraph (j)(l)(vii), and by adding a sentence at the end of the introductory text of paragraph (k), to read as follows:

**§ 122.14 Access to Customs security areas.**

* * * * *

(b)(1) * * *

(b)(2) Employers operating in Customs airport security areas shall advise all their employees of the provisions of the Customs regulations relative to those areas, require that their employees familiarize themselves with those provisions and insure that all their employees comply therewith. The failure to comply with these regulations shall be considered as a default of the conditions of the employers bond, as hereafter specified, and shall make the employer liable for liquidated damages as specified in its bond.

(c) An application for an approved identification card, strip or seal, as required by this section, shall be filed by the applicant with the district director on Customs Form 3078 and shall be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in §§ 113.62, 113.63, or 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities stated above, the application shall be supported by an Airport Customs Security Area Bond, as set forth in Appendix A of Part 113 of this chapter. The application requirement applies to all employees, regardless of the length of their employment. For employees hired on or after November 1, 1985, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check shall include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. For an employee hired before November 1, 1985, the authorized official of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. The fingerprints of the applicant may be required on fingerprint card form FD–258 at the time of the filing of the application. Proof of citizenship or authorized residency, and a photograph may also be required. In addition, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained and made available upon request by the district director for a period of 1 year following cessation of employment by affected employees.

(d) * * * An Airport Customs Security Area Bond is not required.

* * * * *

(j)(1) * * *

(vi) The bond required by paragraph (c) of this section determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(vii) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason. In this instance the employer shall notify the district director in writing, at the time of such change, and shall return the strip or seal to Customs. The notification shall include information regarding the disposition of the approved identification card of the employee who no longer requires access. A summary of such information shall be filed quarterly or at such shorter interval established by the district director. If the employee returns to duties in the Customs security area at the airport for the same employer within 1 year, a Customs Form 3078, as required in paragraph (d) of this section, need not be submitted.

* * * * *

(k) * * * Surety on the bond required by paragraph (c) of this section may be waived in the discretion of the district director, but only for the period of the temporary identification card and authorized renewals of the temporary identification card.

* * * * *

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by deleting the reference to § 6.12a and inserting, in its place, the following in the appropriate numerical sequence according to the section number under the columns indicated:

**§ 178.2 Listing of OMB control numbers.**

| 19 CFR section | Description | OMB control No. |
|---|---|---|
| * | * | * |
| 122.14 | Customs security areas in international airports | 1515–0153 |
| * | * | * |

William von Raab,

*Commissioner of Customs.*

Approved: July 13, 1988.

Salvatore R. Martoche,

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 88–17439 Filed 8–2–88; 8:45 am]

BILLING CODE 4820-02-M

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

**Schedules of Controlled Substances; Temporary Placement of N,N-Dimethylamphetamine into Schedule I**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) in order to temporarily place N,N-dimethylamphetamine into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on a finding by the DEA Administrator that the scheduling of N,N-dimethylamphetamine, at least on a temporary basis, is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the regulatory controls and criminal sanctions imposed on Schedule I substances under the CSA will be applicable to the manufacture, distribution and possession of N,N-dimethylamphetamine.

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

**SUPPLEMENTARY INFORMATION:** The Comprehensive Crime Control Act of 1984 amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General has delegated the authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100). A substance may be temporarily scheduled pursuant to the emergency scheduling provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 of the Federal Food, Drug and Cosmetic Act for the substance.

A notice of intent to temporarily place N,N-dimethylamphetamine into Schedule I of the CSA was published in the **Federal Register** on Wednesday, June 8, 1988 (53 FR 21492). The Administrator transmitted notice of his intention to temporarily place N,N-dimethylamphetamine into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services. In response to this notification, the Food and Drug Administration, by letter, has advised DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Federal Food, Drug and Cosmetic Act for N,N-dimethylamphetamine. The letter further stated that the Department of Health and Human Services has no objections to DEA's intention to temporarily place N,N-dimethylamphetamine into Schedule I of the CSA. No other comments were received regarding this matter.

N,N-dimethylamphetamine, or N,N,alpha-trimethylbenzeneethaneamine, belongs to the chemical class of compounds known as phenylisopropylamines. Amphetamine and methamphetamine also belong to this class. N,N-dimethylamphetamine is very similar in molecular structure to amphetamine and methamphetamine and produces central nervous system stimulant effects in common with them in animals. N,N-dimethylamphetamine has been produced in clandestine laboratories and has been identified in drug evidence submissions to forensic laboratories in several states.

In accordance with 21 U.S.C. 811(h)(3), the Administrator has considered the following factors regarding N,N-dimethylamphetamine: (1) Its history and current pattern of abuse; (2) the scope, duration and significance of abuse; and (3) what, if any, risk there is to the public health.

Based on N,N-dimethylamphetamine's structural similarity to amphetamine and methamphetamine, its amphetamine-like central nervous system stimulant properties in animals, its clandestine production, distribution and abuse, the DEA Administrator, pursuant to 21 U.S.C. 811(h) of the CSA and 28 CFR 0.100, finds that scheduling N,N-dimethylamphetamine in Schedule I of the CSA, on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

The following regulations are in effect on August 3, 1988 regarding N,N-dimethylamphetamine except for individuals registered with DEA in accordance with Part 1301 or Part 1311 of Title 21 of the Code of Federal Regulations and who currently possess N,N-dimethylamphetamine may continue to do so pending DEA's receipt of an amended registration no later than September 2, 1988:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports N,N-dimethylamphetamine or who proposes to engage in the manufacture, distribution, importation or exportation of N,N-dimethylamphetamine or conduct research with N,N-dimethylamphetamine must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* N,N-dimethylamphetamine must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of N,N-dimethylamphetamine must comply with the requirements of §§1302.03–1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for N,N-dimethylamphetamine must submit applications pursuant to §§ 1302.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Registrants in possession of N,N-dimethylamphetamine are required to take inventories of all stocks of this substance on hand pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations must do so regarding N,N-dimethylamphetamine.

7. *Reports.* All registrants engaged in the manufacture, packaging, labeling or distribution of N,N-dimethylamphetamine are required to submit reports in accordance with §§ 1304.35–1304.37 of Title 21 of the Code of Federal Regulations.

8. *Order Forms.* Each distribution of N,N-dimethylamphetamine requires the use of an order form pursuant to §§ 1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of N,N-dimethylamphetamine must be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with N,N-dimethylamphetamine not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act occurring on or after August 3, 1988 is unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the temporary placement of N,N-dimethylamphetamine into Schedule I of the CSA, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the

Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of a substance with no currently approved medical use or manufacture in the United States.

It has been determined that the temporary placement of N,N-dimethylamphetamine into Schedule I of the CSA under the emergency scheduling provisions is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby amends 21 CFR Part 1308 as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b).

2. Paragraph (g)(6) is added to § 1308.11 to read as follows:

**§ 1308.11 Schedule I.**

* * * * *

(g) * * *

| | |
|---|---|
| (6) N,N-dimethylamphetamine (Some other names: N,N,alpha-trimethyl-benzeneethaneamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers, and salts of optical isomers | 1480 |

Dated: July 22, 1988.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 88–17413 Filed 8–2–88; 8:45 am]

BILLING CODE 4410-09-M

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**Parole Commission**

**28 CFR Part 2**

**Paroling, Recommitting and Supervising Federal Prisoners**

**AGENCY:** United States Parole Commission.

**ACTION:** Final rule.

**SUMMARY:** The Parole Commission is amending its interpretive regulation found at 28 CFR 2.64 to explain the Commission's interpretation of section 235(b)(3) of the Sentencing Reform Act of 1984 in light of the amendments to that section made by the Sentencing Act of 1987 at section 2(b)(2), Pub. L. 100–182. The amendment to section 235(b)(3) removes the requirement that the Parole Commission issue decisions within the guidelines for those prisoners who remain within the Commission's jurisdiction after October 31, 1992 and authorize the Commission to make decisions within and outside of the paroling guidelines pursuant to the established paroling policy contained at 18 U.S.C. 4206 (1976). The amended interpretive regulation is intended to reflect these changes to section 235(b)(3). Specifically, the Commission interprets the release provisions of section 235(b)(3) (as amended by the Sentencing Act of 1987) as (a) applying to persons who will be incarcerated on October 31, 1992 (the day before the fifth anniversary of the effective date of the sentencing Reform Act of 1984); (b) not requiring release dates to be set any earlier than three months before October 31, 1992; and (c) not allowing the Commission to set a release date which would conflict with the parole eligibility or ineligibility provisions of a prisoner's sentence; (d) no longer requiring the Parole Commission to make decisions within the applicable parole guideline range or those persons who will still be incarcerated after October 31, 1992 and specifically authorizing the Commission to make decisions outside of its guideline ranges where appropriate as it has done in the past.

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Preston, Attorney, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, telephone (301) 492–5959.

**SUPPLEMENTARY INFORMATION:** Section 235(b)(3) of the Sentencing Reform Act, as amended by the Sentencing Act of 1987 reads as follows.

> The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction on the day before the expiration of five years after the effective date of this Act pursuant to Section 4206 of Title 18 United States Code. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with the Parole Commission's procedures, before the expiration of five years following the effective date of this Act.

The amendments to section 235(b)(3) were intended to clear up any confusion as to the appropriate procedures for the Parole Commission's actions pending its scheduled dissolution on October 31, 1992. The amendment makes clear the proposition that the Parole Commission is to make parole release decisions for those persons who committed their offenses prior to November 1, 1987 and are still in custody pursuant to the same policies and procedures that it had employed in the past.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedures, Probation and parole, Prisoners.

28 CFR Part 2 is amended as follows:

## PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.64 is revised to read as follows:

**§ 2.64 Sentencing Reform Act.**

(a) It is the Commission's interpretation of section 235(b)(3) of the Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984), as amended by the Sentencing Act of 1987, that persons who will be incarcerated at the expiration of five years after the effective date of the Sentencing Reform Act, and whose sentences provide for parole eligibility shall, before the expiration of that five-year period, be given release dates by the Commission pursuant to 18 U.S.C. 4206. Thus, the Commission may continue to make decisions outside of its guideline ranges where appropriate.

(b) The release dates required by section 235(b)(3) need not be set any earlier than the time required to allow an administrative appeal within the five-year period; i.e., three to six months before the end of that period.

(c) Section 235(b)(3) does not apply to persons who will be on parole or mandatory release supervision at the expiration of the five-year period.

(d) Section 235(b)(3) does not change the parole eligibility date established by a prisoner's sentence and does not confer parole eligibility on prisoners whose sentences do not provide any eligibility for parole.

Date: April 25, 1988.

**Benjamin F. Baer,**

*Chairman, United States Parole Commission.*

[FR Doc. 88–17450 Filed 8–2–88; 8:45 am]

BILLING CODE 4410-01-M

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**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 101-26**

**[FPMR Temp. Reg. E-90]**

## Ordering of Items From GSA Supply Catalog

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** This regulation revises the policy on ordering GSA Supply Catalog items and provides specific dollar thresholds which agencies are required to follow when placing orders with GSA. The policy change is necessary to be responsive to recent changes to the Federal Property and Administrative Services Act of 1949, as amended, which placed the Federal Supply Service under industrial funding. The regulation will result in a more cost-effective Federal supply system.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** *For general questions:* Mr. Robert A. Renner, Regulations and Policy Division (703-557-1256).

*For specific policy questions:* Mr. William B. Foote, Office of Policy and Agency Liaison (703-557-7970).

**SUPPLEMENTARY INFORMATION:** GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101-26**

Government property management.

(Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486 (c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

July 14, 1988.

**Federal Property Management Regulations, Temporary Regulation E-90**

*To:* Heads of Federal agencies.

*Subject:* Ordering items from the GSA Supply Catalog.

1. *Purpose.* This regulation revises the policy on ordering items from the General Services Administration (GSA) to conform with recent changes to the Federal Property and Administrative Services Act of 1949, as amended, which place the Federal Supply Service under industrial funding.

2. *Effective date.* This regulation is effective on August 1, 1988.

3. *Expiration date.* This regulation expires July 31, 1989 unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.* Over the course of a number of years, the GSA, Federal Supply Service (FSS), has developed an extensive and viable system for supplying goods and services to Federal agencies. While the system has functioned well, it has been largely dependent upon appropriations from Congress for its financing. Recent changes to the Federal Property and Administrative Services Act of 1949, as amended, were enacted to reduce the dependency on appropriations and replace it with a method for achieving full cost recovery through appropriate pricing of items. This method is known as "industrial funding." Under industrial funding, agencies will be permitted greater latitude to purchase goods or services from the sources that are lowest in price. The program in effect links the viability of the FSS supply program more directly to its success in responding to the changing demands of its customer agencies.

6. *General policy.* a. All executive agencies within the United States (including Hawaii and Alaska), in order to maximize the use of the Government's centralized supply system, shall requisition from GSA all needed items available from the GSA Supply Catalog in accordance with the following:

(1) When the requirement is for Standard and Optional forms, an item produced by the Federal Prison Industries, Inc., or an item listed in the procurement list published by the Committee for Purchase from the Blind and Other Severely Handicapped, the dollar thresholds designated below are not applicable and acquisition of such items shall continue to be as set forth in the applicable sections of the Federal Acquisition Regulation and the Federal Property Management Regulations.

(2) When the total value of the line item requirement is less than $100, procurement from other sources is authorized.

(3) When the total value of the line item requirement is $100 or more, but less than $1,000, procurement from other sources is authorized: *Provided,* that a written justification shall be prepared and placed in the purchase file stating that such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. Cost comparisons shall include the agency administrative costs to effect a local purchase.

(4) When the total value of the line item requirement is $1,000 or more, but less than $5,000, procurement from other sources is authorized: *Provided,* that a written justification shall be prepared as required by paragraph 6a(3), above, signed by a senior procurement official of the requiring agency, and placed in the purchase file.

(5) For total line item requirements of $5,000 and over, agencies shall submit such requests to GSA unless a waiver has been approved by GSA. Requests for waivers shall be submitted in accordance with paragraph 7 for consideration to the Commissioner, Federal Supply Service (F), General Services Administration, Washington, DC 20406, prior to initiating purchase action.

Note. When an urgent requirement exists, requisitioners should consult the Federal Acquisition Regulation, § 6.302-2 (48 CFR 6.302-2) because a waiver is not required under the circumstances provided for therein.

b. Agencies shall not divide requisitions to avoid higher threshold documentation requirements.

c. GSA will process all requisitions for items listed in the GSA Supply Catalog, regardless of total line item value, from activities electing to purchase from GSA.

7. *Requests for waivers.* When the provisions of paragraph 6a(5), above, apply and a determination is made to seek a waiver from the use of GSA supply sources, the following is applicable:

a. When the item listed in the GSA Supply Catalog is not of the requisite quality or will not serve the required functional end-use purpose, a request for waiver shall be submitted to GSA and, if considered justified, will be approved. Approval of such a waiver request does not constitute authority for a sole source procurement. Requests for waiver shall contain:

(1) Complete description of the type of item required to satisfy the requirement. (Descriptive literature such as cuts, illustrations, drawings, and brochures which show the characteristics or construction of the type of item or an explanation of the operation should be furnished whenever possible.)

(2) Inadequacies of the GSA items in performing the required functions.

(3) Quantity required. (If demand is recurrent, nonrecurrent, or unpredictable, so state.)

(4) Other pertinent data, when applicable.

b. When the item listed in the GSA Supply Catalog can be purchased locally at a lower price, a request for waiver shall be submitted to GSA and, if considered justified, will be approved. Approval of such a waiver request does not constitute authority for a sole source procurement. Requests for waiver shall contain.

(1) Complete description of the type of item required to satisfy the requirement.

(2) Quantity required. (If demand is recurrent, nonrecurrent, or unpredictable, so state.)

(3) Destination of item to be delivered.

(4) Name and address of the local source.

(5) A price comparison.

(6) Other pertinent data, when applicable.

8. *Agency comments and assistance.* Comments or inquiries concerning the effect or impact of this regulation should be submitted to the General Services Administration, Federal Supply Services (FFPR), Washington, DC 20406, not later than December 31, 1988, for consideration and

possible incorporation into a permanent regulation. In particular, suggestions are requested on the appropriateness of the designated dollar thresholds, and on mechanisms to adjust these periodically to reflect changes in costs or in ordering patterns. Requests for general information and guidance should be submitted to the same address.

9. *Effect on other directives.* To the extent that any provision of any other regulation promulgated by GSA is in conflict with the policy set forth in this temporary regulation, such provisions are superseded by the policy herein. Any such conflicting regulation, including temporary regulations, will be revised, amended, or canceled in order to achieve conformity with the policy in this temporary regulation, prior to the date shown in paragraph 3, above.

**John Alderson,**

*Acting Administrator of General Services.*

[FR Doc. 88-17444 Filed 8-2-88; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 661

**[Docket No. 80482-8082]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; extension of effective date and request for comments.

**SUMMARY:** An emergency interim rule establishing fishery management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California is in effect until July 29, 1988. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days (through October 27, 1988). This action is necessary because the conditions justifying the emergency action remain unchanged. These regulations are intended to prevent overfishing and to apportion the ocean harvest equitably among non-Indian commercial and recreational, and Treaty Indian, fisheries. These regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for Treaty Indian and non-Indian inside fisheries and spawning.

**DATES:** *Effective date:* This rule is effective from 0001 hours local time, July 30, 1988, through 2400 hours local time, October 27, 1988.

*Comment Date:* Comments on the extension of the effective date of the emergency interim rule will be accepted until August 18, 1988.

**ADDRESSES:** Comments on the extension of the effective date of the emergency interim rule may be submitted to, and copies of the environmental assessment may be obtained from, Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731-7415.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson, 206-526-6140, or Rodney R. McInnis, 213-514-6199.

**SUPPLEMENTARY INFORMATION:** Under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule establishing management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1988 (53 FR 16002, May 4, 1988; corrected at 53 FR 19368, May 27, 1988, and 53 FR 24294, June 28, 1988). That rule was effective for 90 days, from May 1, 1988 through July 29, 1988. The Secretary extends the emergency interim rule for an additional 90 days under section 305(e)(3)(B) of the Magnuson Act because conditions justifying the emergency action remain unchanged. The 90-day extension will allow continuation of the management regime for the ocean salmon fisheries through the end of the 1988 fishing season.

At its July 13-14, 1988 meeting in Portland, Oregon, the Pacific Fishery Management Council recommended this extension. All provisions of the emergency interim rule remain in effect through October 27, 1988.

Because time does not permit a public comment period prior to the date the emergency interim rule is to expire, and to ensure that the emergency rule is extended without disruption, the Secretary has determined that good cause exists for not providing prior public comment. Therefore, comments will be accepted on extension of the effective date of the emergency interim rule for 15 days after the effective date of this notice.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians.

Dated: July 28, 1988.

**William Matuszeski,**

*Executive Director, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 661 and its Appendix are amended to be effective from July 30, 1988, through October 27, 1988, as follows:

## PART 661—[AMENDED]

1. The authority citation for Part 661 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

### Appendix to Part 661—[Amended]

The following amendments to the appendix to Part 661 which were published on May 4, 1988 at 53 FR 16012 are extended:

2. The amendment to section II.B.2 is extended to be effective through October 27, 1988.

3. The temporary suspension of paragraph (c)(ii) in section II.B.7. is extended to be effective through "October 27, 1988."

[FR Doc. 88-17374 Filed 7-29-88; 9:26 am]

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# Proposed Rules

Federal Register
Vol. 53, No. 149
Wednesday, August 3, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[FRL-3424-6]**

### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** USEPA is proposing to approve revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide ($SO_2$). The revisions pertain to Indiana's $SO_2$ emission limits and plans for Floyd and Morgan Counties. USEPA's action is based upon revision requests which were submitted by the State to satisfy the requirements of section 110 of the Clean Air Act (Act).

**DATE:** Comments on these revisions, and the proposed USEPA actions must be received by September 2, 1988.

**ADDRESSES:** Copies of the SIP revisions and supporting documentation are available at the following addresses for review: (It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

Comments on these proposed actions should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Kent Wiley, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

**SUPPLEMENTARY INFORMATION:**

### Status of Indiana $SO_2$ SIP

On March 12, 1982 (47 FR 10813) and May 13, 1982 (47 FR 20583), USEPA approved or conditionally approved Indiana's $SO_2$ SIP for most areas of the State.[1] In these rulemakings, USEPA took no action on one of three compliance methods contained in Indiana's 1980 $SO_2$ regulation (325 IAC 7-1), i.e., the sulfur content in fuel averaging method which is based on 30-day average.

On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside USEPA's approval of the $SO_2$ emission limits in Indiana's revised plan, because USEPA did not rulemake on the 30-day averaging compliance method contained in the rule. See *Indiana & Michigan Electric Company v. USEPA*, 733 F.2d 489. Based on this decision and another recent decision, *Sierra Club v. Indiana-Kentucky Electric Company*, 716 F.2d 1145 (7th Cir. 1983), USEPA determined that there were no federally enforceable $SO_2$ emission limits regulating most existing sources in Indiana; [2] and Indiana no longer had an approvable $SO_2$ plan.

On February 4, 1987 (52 FR 3452), USEPA published a notice of proposed rulemaking on the Indiana $SO_2$ plan. That notice proposed to disapprove Indiana's overall $SO_2$ plan, because the 30-day averaging compliance methodology in the rule (325 IAC 7-1-3) was inconsistent with protection of the 3-hour (short-term) and 24-hour $SO_2$ NAAQS; and the stack test methodology, which is consistent with short-term emission limits, was not independently enforceable. For 77 of Indiana's 92 counties, this was the only basis for the proposed disapproval of Indiana's $SO_2$ plan.[3] For the remaining 15 counties, technical deficiencies were noted as well.[4]

USEPA's February 4, 1987, notice indicated that correction of the identified deficiency in the compliance methodology rule would allow USEPA to reinstate its March 12, 1982 (47 FR 10813), final approval for these 77 counties.

On March 12, 1987, Indiana submitted to USEPA for "parallel processing"[5] its proposed revised compliance methodology rule, 325 IAC 7-1-3.1 as preliminarily adopted by the Board on March 4, 1987.[6] The revised compliance methodology rule replaces 325 IAC 7-1-3 in the 1980 version of 325 IAC 7-1.

The revised rule includes a stack test compliance method and either a 30-day or a calendar month averaging fuel analysis method (depending upon the size of the source), each of which may be used at any time to determine compliance or non-compliance with source emission limitations.[7] However,

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[1] In the March 12, 1982, rulemaking, USEPA approved the $SO_2$ plan for Morgan County, but deferred final action on the Floyd County $SO_2$ plan.

[2] New sources constructed under (or existing sources limited by construction of new sources under) USEPA-approved new source review (NSR) regulations, USEPA's prevention of significant deterioration (PSD) regulations, or USEPA's new source performance standards (NSPS) regulations remain bound by the $SO_2$ emission limitations required by these regulations or permits issued based on these regulations. These limits continue to be fully enforceable, and, unless they are supplemented by more stringent limits in the revised county-specific regulations, these limits are inherent parts of the Indiana $SO_2$ attainment plans being proposed for approval in today's notice.

[3] These 77 Counties are: Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Decatur, Dekalb, Delaware, Dubois, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jennings, Johnson, Knox, Kosciusko, LaGrange, Lawrence, Madison, Marshall, Martin, Miami, Monroe, Montgomery, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Pulaski, Putham, Randolph, Ripley, Rush, St. Joseph, Scott, Shelby, Spencer, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Wabash, Warren, Washington, Wells, White and Whitley. All of these counties are designated "Better than National Standards" for $SO_2$ (40 CFR 81.315).

[4] The remaining 15 counties are: Dearborn, Floyd, Gibson, Jefferson, Lake, LaPorte, Marion, Morgan, Porter, Posey, Sullivan, Vermillion, Vigo, Warrick, and Wayne Counties. USEPA proposed rulemaking on eight of these counties March 3, 1988, (Jefferson, LaPorte, Marion, Posey, Sullivan, Vemillion, Vigo, and Wayne), (53 FR 6845, March 3, 1988). Today, USEPA is proposing rulemaking on two of these counties (Floyd and Morgan). It will rulemake on the remaining five counties in future notices.

[5] The generic procedures for "parallel processing" are described at 47 FR 22073 (June 7, 1982). The State and USEPA propose rulemaking at roughly the same time, announce concurrent comment periods, and jointly review public comments. The State and USEPA then coordinate resolution of any deficiencies prior to the State's final adoption of the rule. If the State's rule, as finally adopted, is substantially identical to the proposed rule, then USEPA will take final action on the rule shortly following its submittal to USEPA. On the other hand, if the final rule is substantially different than the proposed rule, than USEPA may publish a rulemaking notice reproposing action, as necessary.

[6] For the exact language of 325 IAC 7-1-3.1, see 52 FR 27017 (July 17, 1987).

[7] Although the rule contains a 30-day averaging compliance methodology for certain sources and

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a determination of non-compliance through the use of one method cannot be refuted by evidence of compliance through the other method.

In accordance with the February 4, 1987, proposed rulemaking notice, on July 17, 1987 (52 FR 27016), USEPA (1) proposed to approve 325 IAC 7–1–3.1, because it provides for the independent use of stack testing to determine compliance with the $SO_2$ emission limits in 325 IAC 7–1; (2) proposed to reinstate the other provisions of 325 IAC 7–1; and (3) proposed to reinstate its approval of Indiana's plan for the 77 counties, based on the revised compliance methodology.

On October 21, 1987, Indiana submitted 325 IAC 7–1–3.1, as promulgated by the State on September 24, 1987. On January 19, 1988 (53 FR 1354), USEPA approved this rule for inclusion into the Indiana $SO_2$ SIP statewide; reinstated the other general provisions of 325 IAC 7–1 (1980), i.e., 325 IAC 7–1–1, 2 (except for any emission limits in the 15 counties), 4, 5, 6, and 7 statewide; and, based on its approval of the revised compliance methodology, reinstated its approval of Indiana's $SO_2$ plan for the 77 counties.

Indiana has also submitted county-specific plans for several other counties including Floyd and Morgan Counties. These plans consist of source-specific emission limits for certain sources, with the remainder of the sources in each county limited by the underlying 6.0 pounds per million British Thermal Units (lbs/MMBTU) emission limit in 325 IAC 7–1–2.[8]

Additionally, all sources are required to meet the remaining requirements of 325 IAC 7–1, as modified with new compliance methodology 325 IAC 7–1–3.1. [As noted before, on January 19, 1988, the general requirements of 325 IAC 7–1 (with the exception of the 6.0 lbs/MMBTU emission limit in 325 IAC 7–1–2) were reinstated as a portion of the Indiana $SO_2$ SIP for all counties, and new compliance methodology 325 IAC 7–1–3.1 was approved for all counties.]

USEPA is proposing today to approve Indiana's $SO_2$ plans for the two counties listed above. This proposed approval specifically includes (1) the source-specific emission limits and other requirements in Indiana's county-specific rules and (2) the 6.0 lbs/MMBTU emission limit in 325 IAC 7–1–2 which is applicable to all other sources not specifically listed in the county-specific rules (except the new sources described by Footnote 1).

USEPA has previously proposed to approve a plan for Jefferson, LaPorte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne Counties. See 53 FR 6845 (March 2, 1988). Proposed action on the plans for the remaining five counties (Dearborn, Gibson, Porter, Lake, and Warrick, Counties) will be contained in future Federal Register notices.

A short discussion of USEPA's proposed action follows. Additionally, technical support documents more fully explaining each plan are available at the address listed in the front of this notice.

### Floyd County

USEPA noted two major deficiencies with the SIP for Floyd County in its February 4, 1987 proposed rulemaking: (1) The compliance test method was inconsistent with the short-term $SO_2$ NAAQS, and (2) the failure of the emission limits of the plan to ensure attainment of the 3-hour secondary NAAQS. On October 21, 1987, the State submitted a revised compliance test method rule (325 IAC 7–1–3.1). On January 19, 1988, USEPA approved this rule for all 92 counties in Indiana, including Floyd (see 53 FR 1354). Thus, this issue has been resolved.

On March 25, 1988, the State submitted a revised rule (325 IAC 7–1–16) for Floyd County. (The previous $SO_2$ plan for Floyd County was withdrawn on July 31, 1987.) The new rule specifies the following emission limitations for the Public Service Company of Indiana (PSI) Gallagher Station (the only significant source in the County): 6.0 lbs/MMBTU (on and before August 31, 1988) and 4.7 lbs/MMBTU (after August 31, 1988). The 6.0 lbs/MMBTU limit is designed to protect the primary NAAQS and the 4.7 lbs/MMBTU limit is designed to protect the secondary NAAQS. All other sources in Floyd County would be limited to 6.0 lbs/MMBTU. These limits are enforceable by the stack test method in 325 IAC 7–1–3.1, thus protecting the 3-hour NAAQS.

USEPA accepts the immediate compliance date for the primary standard limit and the August 31, 1988, compliance date for the secondary standard limit as being consistent with the Clean Air Act's requirements for primary attainment as expeditiously as practicable and for secondary attainment within a reasonable time.

As technical support for its revised emission limitations, the State has relied on the modeling analyses cited in USEPA's Technical Support Document for its February 4, 1987, proposed rulemaking.

It should be noted that the modeling techniques used in the attainment demonstration supporting the $SO_2$ emission limitations in the State's revised rule 325 IAC 7–1–16 for Floyd County are the modeling analyses cited in USEPA's Technical Support Document for its February 4, 1987, proposed rulemaking. These analyses are based on the modeling guidelines in place at the time the analysis was performed (i.e., "Guideline on Air Quality Models" (April 1978)). Since that time, USEPA has promulgated revisions to its modeling guidelines (i.e., September 8, 1986, publication of "Guideline on Air Quality Models (Revised," July 1986, and January 6, 1988, publication of "Supplement A to the Guideline on Air Quality Models (Revised)," July 1987). Because the modeling was completed prior to the latest revisions, USEPA accepts the Floyd County analysis as it stands.

The modeling analyses relied on by the State and discussed in USEPA's technical support document consist of:

(1) "An Analysis of the Impact Upon Air Quality in Louisville, Kentucky, from the Gallagher Steam Plant," EPA–904/2–79–045 (which is based on the CRSTER Model, two Gallagher stacks, 6 years of Louisville National Weather Service (NWS) data, coarse and fine receptor grids with terrain elevations, and background);

(2) Region IV modeling (which consisted of the CRSTER Model, two Gallagher stacks, 1 year of Louisville NWS data, fine receptor grid in the high terrain area north of Gallagher, and background), and

(3) Region V modeling (which consisted of the MPTER model, two Gallagher stacks, 5 years of Louisville NWS data, coarse receptor grid to assess interaction with Louisville sources, and background).

For a further discussion of these analyses see USEPA's November 10, 1981, memorandum entitled "APC–13 for Floyd County, Indiana."

Additional information was also submitted by the State on April 25, 1988, supporting the assumed background concentrations in the modeling analyses. Based on an emission level of 6.0 lbs/MMBTU, the analyses do not show any violations of the 24-hour and annual primary NAAQS, but do show violations of the 3-hour secondary NAAQS. The highest, second high 3-hour modeled concentration is 1634 μg/m3 (including a background of 57 μg/m3). To attain the 3-hour NAAQS of 1300 μg/m3, an emission limit of 4.7 lbs/MMBTU is

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monthly averaging for others, for purposes of this notice, this combination of methodologies will be referred to as "30-day averaging".

[8] Indiana has recently recodified its rules from Title 325 to Title 326. All rules in today's notice will be codified under Title 326 when submitted instead of Title 325. This in no way affects the substance of the rules, and USEPA will take final action upon them using the codification in which they are promulgated and submitted by the State.

necessary. This result is shown by the three analyses cited previously. These were completed in 1979–1980.

**Additional Issues**

Pursuant to section 123 of the Clean Air Act, USEPA has promulgated regulations which restrict credit for stacks or sources "in existence" and dispersion techniques implemented on or after December 31, 1970.[9] The State has documented that the sources and stacks at Gallagher were "in existence" before this date. Because the post-1970 stack height regulations do not apply to Gallagher, the modeling properly assumed actual stack height and actual stack configuration. There are no other stacks with sources potentially subject to this rule in Floyd County.

USEPA policy requires SIP relaxations submitted after June 19, 1978, to be evaluated for Prevention of Significant Deterioration (PSD) increment consumption. Because the SIP revision for Floyd County represents a decrease rather than an increase in emissions, an increment analysis is not required.

USEPA previously investigated Gallagher and determined that it was not causing or contributing to violations of the $SO_2$ NAAQS in Kentucky (see 47 FR 6624).[10] Kentucky is the only other state within 50 km of Floyd County. This distance generally represents the maximum impact range for USEPA's guideline models.

**Morgan County**

USEPA cited two major deficiencies with the SIP for Morgan County in its February 4, 1987, proposed rulemaking: (1) The compliance test method was inconsistent with the short-term $SO_2$ NAAQS, and (2) the state failed to demonstrate that the emission limits of the plan would ensure attainment of the primary and secondary NAAQS. On October 21, 1987, the State submitted a revised compliance test method rule (325 IAC 7–1–3.1). On January 19, 1988, USEPA approved this rule for all 92 counties in Indiana, including Morgan (see 53 FR 1354). Thus, the first issue has been resolved.

On March 23, 1988, the State submitted a revised rule (325 IAC 7–1–18) for Morgan County. (The previous $SO_2$ plan for Morgan County was withdrawn on December 22, 1987.) The new rule specifies the following emission limitations for Indianapolis Power and Light, Pritchard Station (the most significant $SO_2$ source in the county): Units 1 and 2 are limited to 0.37 lbs/MMBTU. Until September 30, 1990, Units 3, 4, 5, and 6 are limited to 6.0 lbs/MMBTU. After September 30, 1990, two emission limit scenarios exist for Units 3, 4, 5, and 6 which represent two discrete modes of operation. Under the first senario, Unit 3 is limited to 0.37 lbs/MMBTU while Units 4, 5, and 6, are limited to 3.04 lbs/MMBTU. In the second scenario Units 3, 4, 5, and 6 are all limited to 2.57 lbs/MMBTU. Modeling performed by IDEM demonstrates that the national ambient air quality standards will be attained under both scenarios. In addition, Pritchard is required to increase the height of the stack serving Units 3 and 4 and the stack serving Units 5 and 6 to at least 281 feet. USEPA is considering whether the source owner should be required to provide advance notification to IDEM and USEPA prior to switching between emission limit scenarios. USEPA solicits comment on the need for such notification and on the minimum time, if any, within which notification should be required. The rule also explains how the 30-day averaging provisions of 325 IAC 7–1–3.1 will be applied to enforce the post-September 1990 two-scenario emission limits for Units 3.6. (Note, 325 IAC 7–1–3.1 which contains a stack test and a 30 day averaging fuel analysis rule, but of which are independently enforceable, is applicable in Morgan County. The Morgan County rule merely clarifies how compliance determinations will be made using the 30-day averaging provision within 325 IAC 7–1–3.2 in the county. The stack test procedures in 325 IAC 7–1–3.1 provide a testing methodology consistent with the secondary 3-hour NAAQS.)

USEPA also accepts the final compliance date of September 30, 1990. Section 110 of the Clean Air Act requires attainment of the primary NAAQS as expeditiously as practicable, but not later than three years from the date of approval of the plan, and attainment of the secondary NAAQS within a reasonable time. USEPA believes the State's September 30, 1990, final compliance date is consistent with these requirements, since Morgan County is currently designated as attainment for $SO_2$.

As technical support for its revised emission limitations, the State has performed a new modeling analysis (see "Morgan County $SO_2$ Modeling Analysis", September 1987). The analysis is summarized below.

The ISCST rural, UNAMAP Version 6, model was used with the regulatory option switch. The Model PTPLU (rural, UNAMAP Version 6) was also run to assist in developing the receptor grid, to determine the worst-case operating load for Pritchard, and to screen out the only other source in the County (General Shale Products) from further analysis. Five years of meteorological data were used. According to the PTPLU screening analysis. General Shale Products (located 11 km from Pritchard) does not threaten the NAAQS and does not interact with Pritchard. Thus, only PSI was modeled in the subsequent refined modeling analysis.

The existing three stacks (250 feet each) are less than the good engineering practice (GEP) formula height (218 feet). Stack #1 was modeled for building downwash. The rule requires Stacks #2 and #3 to be increased to the taller GEP height. Credit for these stack height increases in acceptable given IPL's fluid modeling study (see discusison below).[11] The modeling predicted that with these parameters, the emission limits in Indiana's Morgan County Plan will assure the attainment and the maintenance of the $SO_2$ NAAQS.

It should be noted that the modeling techniques used in the attainment demonstration are based on the modeling guidelines in place at the time the analysis was performed (i.e., "Guideline on Air Quality Models (Revised)", July 1986). Since that time, USEPA has promulgated a revision to its modeling guidelines (i.e., January 6, 1988 publication of "Supplement A to the Guideline on Air Quality Models (Revised)", July 1987). Because the modeling was completed prior to the latest revision, USEPA accepts the Morgan County Modeling as it stands.

**Additional Issues**

Pursuant to section 123 of the Clean Air Act, USEPA promulgated regulations on July 8, 1985, which restrict credit for stacks or sources in existence and dispersion techniques implemented on or after December 31, 1970. [See 51 FR 27893 (July 8, 1985)]. Indiana has documented that Stack #1 was in existence before this date is, therefore, "grandfather". The height of Stacks #2

[9] See 51 FR 27893 (July 8, 1985).

[10] This determination was appealed to the U.S. Court of Appeals for the Sixth Circuit. The Court upheld USEPA's determination. See *Air Pollution Control District of Jefferson County, Kentucky v. USEPA*, 739 F.2d 1071 (6th Cir. 1984).

[11] The fluid modeling study predicted 1-hour concentrations greater than 10,000 ug/m³ at the existing stack height. It is not clear whether the required stack height increase of 31 feet will correct these concentrations. However, USEPA proposes to approve the Morgan County rule because USEPA relies on dispersion modeling, not fluid modeling, to determine whether a rule will result in attainment of the NAAQS and because IDEM's dispersion modeling is adquate for this purpose. In view of concerns raised by the fluid model estimates, USEPA recommends that ambient monitors be sited in the area of maximum fluid model concentrations.

and #3 will be increased from 250 feed to the GEP formula height of 281 feet. As required by the Stack Height Regulations, IPL performed a fluid modeling study to justifiy the stack height increase (see "Fluid Modeling Study to Determine Excessive Concentrations at Indianapolis Power and light Company's H.T. Pritchard Generating Station" and the addendum report). USEPA has reviewed this study for consistency with the Stack Height Regulations and USEPA's "Guideline for Use of a Fluid Model to Determine Good Engineering Practice Stack Height", July 1981, and has determined that the increased stack height is acceptable. The combined gas stream configuration for each stack was in effect before December 31, 1970, and is, therefore, also grandfathered.

USEPA policy requires SIP relaxations submitted after June 19, 1978, to be evaluated for PSD increment consumption. Because the SIP revision for Morgan County represents a decrease, rather than an increase, in emissions, an increment analysis is not required.

There are no other states within 50 km of Morgan County. Because this distance generally represents the maximum impact range of USEPA's guideline models, an interstate impact analysis is not possible. It should be noted, however, that because the State's analysis shows no violations at the distance of maximum impact from Pritchard, the plant will also not cause any violations at greater, out-of-state distances.

Dated: June 20, 1988.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 88-17483 Filed 8-2-88; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[FRL-3424-7]**

## Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** USEPA is proposing rulemaking on revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide ($SO_2$) under USEPA's "parallel processing" procedures. The revisions consist of five sets of $SO_2$ emission limits being considered by Indiana for Warrick County and Indiana's overall $SO_2$ plan for Warrick County. USEPA is proposing to approve these limits (shown in the table below) and Indiana's plan for Warrick County, if the limits are ultimately adopted by Indiana. This proposed approval is based on the State's demonstrations of attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for $SO_2$. Indiana's submittal and USEPA's actions are based on the requirements of section 110 of the Clean Air Act (Act).

**DATE:** Comments on these revisions, and the proposed USEPA actions must be received by September 2, 1988.

**ADDRESSES:** Copies of the SIP revisions, and support documentation are available at the following addresses for review: (It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

Comments on these proposed actions should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Kent Wiley, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

**SUPPLEMENTARY INFORMATION:** Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for $SO_2$.[1] See 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978) and 40 CFR 81.315 for Indiana. In addition, section 110(a)(2) of the Act requires the State to adopt rules sufficient to assure attainment an maintenance of the $SO_2$ NAAQS in the unclassifiable, e.g., Warrick County, and attainment areas in the remainder of the State.

[1] The primary $SO_2$ NAAQS is violated when, in a calendar year, either: (1) The annual arithmetic mean value of $SO_2$ concentration exceeds 80 micrograms per cubic meter of air (80 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of $SO_2$ at any site exceeds 365 $\mu g/m^3$ more than once (the 24-hour primary standard). The secondary $SO_2$ NAAQS is violated when the maximum 3-hour concentration at any site exceeds 1300 $\mu g/m^3$ more than once.

### Status of Indiana $SO_2$ SIP

On March 12, 1982 (47 FR 10613), and May 13, 1982 (47 FR 20583), USEPA approved or conditionally approved Indiana's $SO_2$ SIP for most areas of the State. However, for Warrick County, USEPA disapproved Indiana's plan. On March 26, 1984 (49 FR 11197), USEPA notified Indiana under section 110(a)(2)(H) that Indiana's SIP was substantially inadequate to assure the attainment and maintenance of the $SO_2$ NAAQS in Warrick County.

In the 1982 rulemakings, USEPA took no action on one of three compliance methods contained in Indiana's 1980 $SO_2$ regulation (325 IAC 7-1), i.e., the sulfer content in fuel averaging method which is based on 30-day averaging. On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside USEPA's approval of most of the $SO_2$ emission limits in Indiana's revised plan, because USEPA did not rulemake on the 30-day averaging compliance method contained in the rule. See *Indiana & Michigan Electric Company* v. *USEPA*, 733 F.2d 489. Based on this decision and another recent decision, *Sierra Club* v. *Indiana-Kentucky Electric Company*, 716 F.2d 1145 (7th Cir. 1983), USEPA determined that there were no federally enforceable $SO_2$ emission limits regulating most existing sources in Indiana and Indiana no longer had an approvable $SO_2$ plan.

On February 4, 1987 (52 FR 3452), USEPA published a notice of proposed rulemaking on the Indiana $SO_2$ plan, including Indiana's $SO_2$ plan for Warrick County. That notice proposed to disapprove Indiana's overall $SO_2$ plan, because the 30-day averaging compliance methodology in the rule (325 IAC 7-1-3) was inconsistent with protection of the 3-hour and 24-hour $SO_2$ NAAQS; and the stack test methodology, which is consistent with short-term emission limits, was not independently enforceable. For 77 of Indiana's 92 counties, this was the only basis for the proposed disapproval of Indiana's $SO_2$ plan.[2] For the remaining

[2] These 77 counties are: Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Decatur, De Kalb, Delaware, Dubois, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jennings, Johnson, Knox, Kosciusko, LaGrange, Lawrence, Madison, Marshall, Martin, Miami, Monroe, Montgomery, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Pulaski, Putham, Randolph, Ripley, Rush, St. Joseph, Scott, Shelby, Spencer, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Wabash, Warren, Washington, Wells, White, and Whitley. All of these counties are designated "Better than National Standards" for $SO_2$ (40 CFR 81.315)

15 counties, including Warrick County, technical deficiencies were noted as well.[3]

USEPA's February 4, 1987, notice indicated that correction of the identified deficiency in the compliance methodology rule would allow USEPA to reinstate its March 12, 1982 (47 FR 10813), final approval for these 77 counties.

On March 12, 1987, Indiana submitted to USEPA for "parallel processing" [4] its proposed revised compliance methodology rule, 325 IAC 7-1-3.1, as preliminarily adopted by the Board on March 4, 1987.[5] The revised compliance methodology rule replaces 325 IAC 7-1-3 in the 1980 version of 325 IAC 7-1. The revised rule includes a stack test compliance method and either a 30-day or a calendar month averaging fuel analysis method (depending upon the size of the source), each of which may be used at any time to determine compliance or non-compliance with source emission limitations.[6] However, a determination of non-compliance through the use of one method cannot be refuted by evidence of compliance through the other method.

In accordance with the February 4, 1987, proposed rulemaking notice, on July 17, 1987 (52 FR 27016), USEPA (1) proposed for parallel processing to approve 325 IAC 7-1-3.1 statewide, because it provides for the independent use of stack testing to determine compliance with the $SO_2$ emission limits in 325 IAC 7-1; (2) proposed to reinstate the other provisions of 325 IAC 7-1 statewide, except for any emission limits for the 15 counties; and (3) proposed to reinstate its approval of Indiana's plan for the 77 counties, based on the revised compliance methodology.

On October 21, 1987, Indiana submitted 325 IAC 7-1-3.1, as promulgated by the State on September 24, 1987. Because this rule was substantially identical to the rule that USEPA proposed to approve on July 17, 1987, on January 19, 1988 (53 FR 1354), USEPA approved this rule for inclusion into the Indiana $SO_2$ SIP statewide; reinstated the other general provisions of 325 IAC 7-1 (1980), i.e., 325 IAC 7-1-1, 2 (except for any emission limits in the 15 counties, including Warrick County), 4, 5, 6, and 7 statewide; and, based on its approval of the revised compliance methodology, reinstated its approval of Indiana's $SO_2$ plan for the 77 counties.

Indiana has also submitted county-specific plans for several other counties, including Warrick County. These plans consist of source-specific emission limits for certain sources, with the remainder of the sources in each county limited by 6.0 pounds per million British Thermal Units (lbs/MMBTU) emission limit in 325 IAC 7-1-2.[7] Additionally, all sources are required to meet the remaining requirements of 325 IAC 7-1, as modified with new compliance methodology 325 IAC 7-1-3.1. (As noted before, on January 19, 1988, the general requirements of 325 IAC 7-1 (with the exception of the 6.0 lbs/MMBTU emission limit in 325 IAC 7-1-2) were reinstated as a portion of the Indiana $SO_2$ SIP for all counties and new compliance methodology 325 IAC 7-1-3.1 was approved for all counties.)

## Indiana's Proposed Plans for Warrick County

Today USEPA is proposing action on Indiana's $SO_2$ plan for Warrick County. This plan consists of the source-specific emission limits and the other requirements in 326 IAC 7-1-17 (as preliminary adopted by the Indiana Air Pollution Control Board (IAPCB) and submitted by the State for parallel processing on July 21, 1988), the remainder of the sources in each county limited by the 6.0 lbs/MMBTU emission limit is 325 IAC 7-1-2, and the other requirements of 325 IAC 7-1, as modified with new compliance methodology 325 IAC 7-1-3.1.

USEPA is proposing to approve Indiana's plan for Warrick County and 326 IAC 7-1-17, if these limits are submitted to USEPA as a State adopted rule. This rule consists of Base and Optional Sets of emission limits. In the Base Set, source-specific emission limits are established for ALCOA—Warrick Power Station and ALCOA—Smelter Operations; Southern Indiana Gas and Electric Company's (SIGECO)—Culley Power Plant is given the discretion to vary its emission limits for units 1, 2, and 3 between two discrete operating alternatives, described more fully in the table below, provided that IDEM and USEPA are notified by certified mail at least 14 days in advance of any change. USEPA is considering whether 14 days provides sufficient advance notification and solicits comment on the adequacy of this period and other periods of time.

Under the Optional Set of alternative emission limits, SIGECO must select one set of emission limits from among the three alternative combinations listed in the table below, and may not vary emission limits among them once the limits are selected. ALCOA—Warrick Power Station and SIGECO must jointly notify IDEM and USEPA prior to December 1, 1989 of their intention to rely on a specified set of emission limits. Under the Base and Optional scenarios, emission limits for ALCOA's smelter operations remain fixed.

**Table of Emissions for Warrick County As Preliminarily Adopted by IAPCB, July 21, 1988**

*Base Set of Emission Limits*

ALCOA—Warrick Power Plant:

6.0 lbs/MMBTU prior to August 1, 1991
5.11 lbs/MMBTU beginning August 1, 1991, and afterward

ALCOA—Smelter Operations

Potline 1 Stacks: 176.3 lbs/hour
Potline 1 Roof Monitors: 19.6 lbs/hours
Potline 2-6 Stacks: 195.2 lbs/hour each
Potline 2-6 Roof Monitors: 21.7 lbs/hour each
Potline 1-6 Combined: 5608 tons/year
Anode Bake Ring Furnace: 94.1 lbs/hour; 412 tons/year[8]

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[3] The remaining 15 counties are: Dearborn, Floyd, Gibson, Jefferson, Lake, La Porte, Marion, Morgan, Porter, Posey, Sullivan, Vermillion, Vigo, Warrick, and Wayne Counties. USEPA proposed rulemaking on eight of these counties on March 13, 1988, (Jefferson, La Porte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne) (53 FR 8845). USEPA has recently proposed, or will soon propose, rulemaking on two of these counties (Floyd and Morgan). Today, USEPA is proposing rulemaking for Warrick County. It will rulemake on the remaining four counties (Gibson, Dearborn, Lake, and Porter) in future notices.

[4] The generic procedures for "parallel processing" are described at 47 FR 22073 (June 7, 1982). The State and USEPA propose rulemaking at roughly the same time, announce concurrent comment periods, and jointly review public comments. The State and USEPA then coordinate resolution of any deficiencies prior to the State's final adoption of the rule. If the State's rule, as finally adopted, is substantially identical to the proposed rule, the USEPA will take final action on the rule shortly following its submittal to USEPA. On the other hand, if the final rule is substantially different than the proposed rule, then USEPA may publish a rulemaking notice reproposing action, as necessary.

[5] For the exact language of 325 IAC 7-1-3.1, see 52 FR 17017 (July 17, 1987).

[6] Although the rule contains a 30-day averaging compliance methodology for certain sources and monthly averaging for others, for purposes of this notice, this combination of methodologies will be referred to as "30-day averaging".

[7] Indiana has recently recodified its rules from Title 325 to Title 326. All rules in today's notice will be codified under Title 326 when submitted instead of 325. This in no way affects the substance of the rules, and USEPA will take final action upon them using the codification in which they are promulgated and submitted by the State.

[8] The emission limits for the ring furnace in all of the plans are approvable in the context of the SIP attainment demonstration. Because this source has applied for a Prevention a Significant Deterioration (PSD) permit, however, the State has correctly included a condition in the rule that the limits established in a PSD permit will supersede the modeled SIP limits, if the permit limits are more stringent.

SIGECO—Culley Power Plant:

6.0 lbs/MMBTU prior to December 31, 1989

5.41 lbs/MMBTU beginning December 31, 1989, and until August 1, 1991

2.79 lbs/MMBTU (unit 1), 2.79 lbs/MMBTU (Unit 2), and 5.41 lbs/MMBTU (Unit 3) beginning August 1, 1991, and afterward.

As an alternative to the August 1, 1991, limits, SIGECO may at any time (provided the Indiana Department of Environmental Management (IDEM) and USEPA are both notified by certified mail at least 14 days in advance) operate under the emission limits (lbs/MMBTU) in the following scenario:

| Unit 1 | Unit 2 | Unit 3 |
|---|---|---|
| 0.0005 | 4.40 | 5.41 |

*Optional Set of Emission Limits*

ALCOA—Warrick Power Plant:

5.4 lbs/MMBTU

ALCOA—Smelter Operations

Same as in Base Set

SIGECO—Culley Power Plant—Three Alternatives:

| | Unit 1 | Unit 2 | Unit 3 |
|---|---|---|---|
| (i) | 0.0005 | 3.2 | 5.4 |
| (ii) | 2.0 | 2.0 | 5.4 |
| (iii) | 5.4 | 0.0005 | 5.4 |

*Joint Notification and Selection of Final Limits*

In order to make these limits the effective State (and SIP) limits, SIGECO and ALCOA must jointly provide notification via certified mail to IDEM and USEPA prior to December 1, 1989, of their intention to begin to rely permanently on one of the sets of limits specified in the optional set of emission limits in the table above. The written notification shall contain a notarized agreement between SIGECO and ALCOA concerning the applicable set of limits.

In each of the optional scenarios, units subject to emission limits of 5.4 lb/MMBTU shall achieve compliance by December 31, 1989, while units subject to emission limits of 3.2 lb/MMBTU or less shall comply with an interim emission limit of 5.4 lb/MMBTU by December 31, 1989, and shall achieve final compliance by August 1, 1991.

*Stack Test Issues*

Rule 325 IAC 7–1–3.1, which contains both independently enforceable stack test and 30-day averaging fuel analysis compliance methodologies, is applicable in Warrick County. The Warrick County rules clarify how compliance determinations will be made using the 30-day averaging provision within 325 IAC 7–1–3.1 in the county, if SIGECO switches operating scenarios among the alternatives provided in the Base Set of limits. The stack test procedures in 325 IAC 7–1–3.1 provide a testing methodology consistent with the 3-hour standard. USEPA finds the State's application of these methodologies acceptable.

A short discussion of Warrick County and USEPA's proposed action follow. Additionally, technical support documents more fully explaining this plan are available at the addresses listed in the front of this notice.

*Warrick County*

As discussed above, five sets of emission limitations for ALCOA and SIGECO Culley are under consideration here. The State has performed some additional analyses to supplement the 1984 modeling analysis discussed in USEPA's February 4, 1987, rulemaking action and to correct the technical deficiencies identified by USEPA. (See "Warrick County $SO_2$ Modeling Analysis", April 1988 and the July 1988 addendum). The additional modeling analyses used to supplement the 1984 attainment demonstration attempt to follow the modeling guidelines which were in-place at the time of the earlier modeling (i.e., "Guideline on Air Quality Models", April 1978 and "Regional Workshops on Air Quality Modeling: A Summary Report" April 1981, with addenda). Since that time, USEPA has promulgated revisions to its modeling guidelines (i.e., September 9, 1986, publication of "Guideline on Air Quality Models (Revised)", July 1986 and January 6, 1988, publication of "Supplement A to the Guideline on Air Quality Models (Revised)", July 1987). USEPA policy generally requires that when additional modeling is performed, such modeling be consistent with the current modeling guidance. In the case of Warrick County the State's additional modeling followed the modeling guidelines in place in 1984. Because the modeling was generally completed prior to the latest revisions, USEPA is proposing to accept Indiana's analysis.

On May 10, 1988, the IDEM submitted a modeling analysis consistent with the guidelines that were applicable in 1984 (e.g., calm hour concentrations excluded).[9] An addendum to this analysis was submitted in July 1988. These analyses are discussed further below.

USEPA cited two major deficiencies with the SIP for Warrick County in its February 4, 1987, proposed rulemaking: (1) The compliance test methods were inconsistent with the attainment of the short-term $SO_2$ NAAQS, and (2) the State's modeled attainment demonstration contained several technical deficiencies, as discussed further below.

**30-Day Averaging Compliance Test Method**

On October 21, 1987, the State submitted a revised compliance test method rule (325 IAC 7–1–3.1). On January 19, 1988, USEPA approved this rule for all 92 counties in Indiana (see 53 FR 1354). Thus, this compliance issue has been resolved.

The technical deficiencies cited in USEPA's February 4, 1987, proposed rulemaking, along with the State's corrective action, are summarized below:

**Lack of Emission Limits for ALCOA Process Sources**

The revised rule(s) and the State's modeling analyses for Warrick County include emission limits for the process sources (smelting operations) at ALCOA.

**Modeled Violations Are Predicted Over Land on ALCOA Property**

This deficiency is unresolved. IDEM still has not certified that ALCOA has erected fences around areas of its property which would otherwise be open to the public. According to USEPA's ambient air policy, 40 CFR 50.1(e),[10] the NAAQS do not apply over company property if public access is precluded by a fence or other physical barrier. Although the State has informally notified USEPA that such a barrier has been erected, USEPA requests the State to provide formal notification along with supporting documentation during the public comment period.

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[9] The State's technical support document for its May 10, 1988, submittal also discusses a second modeling analysis performed with calm hour concentrations included. Because this "calms in" approach is not consistent with the guidelines that were applicable in 1984, USEPA cannot accept this second modeling analysis. See the calms policy portion of Joseph Tikvart's June 13, 1983, memorandum entitled "Regional Meteorologists Workshop, May 1983". USEPA's proposed approval today is based only on the "calms out" modeling analysis.

[10] This policy was discussed in a December 19, 1980, letter from then Administrator Douglas Costle to Senator Jennings Randolph.

**Failure To Consider Building Downwash for Sigeco-Culley and ALCOA Sources, Incomplete Background Analysis, and Uncertain Application of Calm Correction Procedure**

In response to these three issues, IDM recreated the 1984 modeling analysis using the Industrial Source Complex (ISC) model with the following changes: (a) Building downwash considered for certain SIGECO and ALCOA sources, with calms corrected for with the CALMPRO post-processor (i.e., consistent with the applicable guidelines, calm hour concentrations were excluded in the calculation of 3-hour and 24-hour concentrations) (b) anemometer height set to 6.1 meters (m), not 10 m, which was erroneously used before, and (c) background $SO_2$ concentrations accounted for, using the State's background program.

The State's modeling, discussed in a technical support document prepared by the State entitled "Warrick County $SO_2$ Analysis", April 1988, is summarized below.

*Emission Inventory:* The point source inventory consisted of Culley Stacks 1,2,3; ALCOA Power Plant Stacks 1,2,3; ALCOA Potline Stacks 1,2,3,4,5,6 and the ALCOA Ring Furnace Stack. Each set of emission limits was modeled. Stacks below the good engineering practice (GEP) formula height were modeled for building downwash.

*Receptor Grid:* Receptors were excluded from fenced company property consistent with USEPA's ambient air policy. USEPA notes that no receptors were located over the Ohio River, consistent with Regional policy at the time the underlying modeling was performed (in 1984). In a letter dated September 4, 1985, Region V notified the State that all new actions with modeling analysis submitted after January 1, 1986, must include receptors over water. In its public comments dated May 4, 1987, IDEM noted that the Warrick County SIP was initially submitted in February 1985 and should, therefore, be based on the Regional guidance outstanding at that time.

Even though USEPA is today acting on a plan recently submitted by IDEM, USEPA recognizes that this plan and the associated modeling are a continuation of the 1985 submittal. For this reason USEPA proposes not to require receptors over the Ohio River for the purpose of this SIP effort and today's rulemaking actions. USEPA wishes to make clear, however, that USEPA's proposed approval of the analyses for the plan today, which do not address receptors over water, will not apply to any other analysis of the Warrick County area (or any other area) used to support any future regulatory action.

*Model Results:* The State's "calms out" modeling analysis (i.e., the analysis proposed today by USEPA as being consistent with the 1984 USEPA modeling guidelines) predicts that each of the alternative sets of emission limits contained in the Warrick County Plan (See Table, above) will result in concentrations below the 3-hour, 24-hour and annual NAAQS. Thus, USEPA proposes to approve each of the alternative sets of limits.

*Attainment Date:* USEPA accepts the State's determination that the final compliance date of August 1, 1991, for SIGECO and ALCOA meets the requirement of the Clean Air Act.[11] Based on its proposed approval of the compliance date for SIGECO and ALCOA, USEPA also proposes to approve the final attainment date of August 1, 1991, for the Warrick County plan.

**Additional Issues**

Pursuant to section 123 of the Clean Air Act, USEPA has promulgated regulations which restrict credit for stacks of sources in existence, and dispersion techniques implemented on or after December 31, 1970. IDEM has reviewed all sources in Warrick County and has documented that all sources and stacks were modeled consistently with these regulations.

Also Prevention of Significant Deterioration (PSD) increment consumption is not an issue, because the revision establishes Federal emission limits where none now exist. Thus, approval of the base Indiana Warrick County plan is not expected to increase actual (baseline) emissions and does not consume PSD increment. See 45 FR 52735 (August 7, 1980). Under the alternative emission limits, however, actual emissions from some sources may increase (and others may decrease) as a result of the variability afforded to ALCOA and SIGECO. Because the net effect of these emission changes cannot be estimated at this time, USEPA requests IDEM to identify during the public comment period how it will address PSD increment consumption under these conditions.

Finally the modeling included receptors in Kentucky, the only other state within 50 km., which is the normal range for USEPA's reference models. All of the combination of limits in the Table will result in attainment in Kentucky. Thus the requirements of section 110(a)(2)(E) has been met.

**Summary**

The July 21, 1988, plan being considered is approvable because the State's modeling analyses (which are consistent with the modeling guidelines that were applicable in 1984 and Region V guidance) demonstrate attainment and maintenance of the $SO_2$ NAAQS. USEPA proposes to approve the plans preliminarily adopted by the Indiana Air Pollution Control Board on July 21, 1988, provided that it is ultimately adopted by the State. (Under USEPA's parallel processing procedures, a Warrick County-specific rule must be fully State adopted, enforceable, and submitted as such as a revision to Indiana's $SO_2$ SIP before USEPA can take final rulemaking action on it.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. The Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: July 22, 1988.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 88–17484 Filed 8–2–88; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[FRL 3418–9; Docket No. A88055–PA]**

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Ozone**

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed rulemaking.

**SUMMARY:** EPA is today proposing approval of a request from the Commonwealth of Pennsylvania to revise the Philadelphia portion of the Ozone State Implementation Plan (SIP). This revision will amend Air Management Regulation V by adding regulations pertaining to the control of petroleum solvent dry cleaning emissions. Pennsylvania has submitted this revision to meet the requirements of

[11] Warrick County is currently designated unclassifiable for $SO_2$. Section 110 of the Clean Air Act requires attainment of the primary NAAQS as expeditiously as practicable, but no later than three years from the date of approval of the plan, and attainment of the secondary NAAQS within a reasonable time.

the Clean Air Act and its 1982 Ozone SIP.

**DATE:** Comments must be submitted on or before September 2, 1988.

**ADDRESSES:** Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Eighth Floor, Philadelphia, PA 19107, Attn: Donna Abrams (3AM11)

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary L. Triplett

City of Philadelphia, Air Management Services, 500 S. Broad Street, Philadelphia, PA 19146, Attn: William Reilly.

All coments on this proposed action submitted within 30 days of publication of this notice will be considered and should be directed to Mr. Joseph Kunz, Chief, PA/WV Section at the EPA, Region III address above, EPA Docket No. AM055–PA.

**FOR FURTHER INFORMATION CONTACT:** Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597–9134.

**SUPPLEMENTARY INFORMATION:** The Clean Air Act mandates that states adopt regulations requiring Reasonably Available Control Technology (RACT). In accordance with this mandate, Pennsylvania as well as Philadelphia, committed to adopt, implement and enforce RACT regulations for applicable volatile organic compound (VOC) source categories, once future guidelines were released, as part of its 1982 Ozone SIP (50 FR 7774).

On October 6, 1982, EPA published a Group III control technique guideline (CTG) regarding the control of emissions from petroleum solvent dry cleaners (EPA–450/3–82–009). In response to the requirements of the Clean Air Act, and the commitment made in its 1982 Part D Ozone SIP to adopt RACT regulations for applicable VOC source categories, the Pennsylvania Department of Environmental Resources submitted a revision to the Philadelphia portion of the Pennsylvania Ozone SIP on February 23, 1987, which incorporated the recommendations made in this CTG document. The Commonwealth of Pennsylvania also submitted pharmaceutical tablet coating regulations which will be acted upon under a separate rulemaking action. In addition, the Commonwealth of Pennsylvania submitted a revised definition pertaining to VOC, as well as compliance guidelines for VOC. EPA is not acting on this portion of the request at this time, because Philadelphia's revised definition of VOC is inconsistent with EPA's currently recommended definition. EPA will act on this portion of the request at a later date.

This revision would amend Philadelphia's Air Management Regulation V by adding new definitions pertaining to petroleum solvents and petroleum solvent dry cleaning, and adding a new Section XI entitled "Petroleum Solvent Dry Cleaning." Compliance guidelines for implementing this Section were also submitted.

Philadelphia provided adequate notice in a local newspaper informing the public of a hearing on December 10, 1985, pertaining to the proposed amendment to Air Management Regulation V. Comments from the public hearing were taken into consideration prior to adopting final regulations. This proposed revision is discussed in more detail below.

**Section I. Definitions**

*Petroleum Solvents*—Organic material solvents produced by petroleum distillation, comprising a hydrocarbon range of mainly 8 to 12 carbon atoms per organic molecule, that are used as cleaning agents in the petroleum solvent dry cleaning industry.

*Petroleum Solvent Dry Cleaning*—A process for the cleaning of fabrics with a petroleum solvent by means of one or more washings in solvent, extraction of excess solvent, and drying by exposure to a heated air stream. A petroleum solvent dry cleaning facility includes, but is not limited to, washers, dryers, solvent filters and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping valves.

**Section XI. Petroleum Solvent Dry Cleaning**

This section applies to petroleum solvent dry cleaning facilities, as defined in section I, that consume more than one hundred (100) gallons of petroleum solvent on a daily basis.

This regulation specifies that the owner or operator of any petroleum solvent dry cleaning dryer subject to this section shall limit VOC emissions to the atmosphere to an average of 3.5 pounds of VOC per one hundred (100) pounds dry weight of articles dry cleaned; or shall install and operate a solvent recovery dryer in a manner such that the dryer remains closed and the recovery phase continues until a final recovered solvent flow rate of fifty (50) milliliters per minute is attained.

Another provision of this regulation specifies that any petroleum solvent filtration system subject to this section shall reduce the VOC content in all filtration wastes to one (1) pound or less per one hundred (100) pounds dry weight of articles dry cleaned, before disposal and exposure to the atmosphere; or shall install and operate a cartridge filtration system, and drain the filter cartridges in their sealed housings for eight (8) hours or more before their removal.

Furthermore, this regulation requires that the owner or operator of any petroleum solvent dry cleaning facility subject to this section shall repair all petroleum solvent vapor and liquid leaks within three (3) working days after identifying the sources of the leaks. Also, if the necessary repair parts are not on hand, the owner or operator shall order these parts within three (3) working days, and repair the leaks no later than three (3) working days following the arrival of the necessary parts.

Additionally, this regulation specifies that the owner or operator of any petroleum solvent dry cleaning facility subject to this section shall install, operate and maintain equipment consistent with manufacturer's specifications and recommendation in order to minimize VOC emissions. Also, the owner or operator shall minimize fugitive VOC emissions from the storage, handling and transfer of petroleum solvent or petroleum solvent containing materials through employment of appropriate operating practices or procedures to reduce solvent loss and evaporation to the atmosphere.

Lastly, the CTG requires that the implementing agency establish or approve procedures, methods and guidelines for petroleum solvent dry cleaning facilities to determine compliance with the requirements of this section and the owner or operator of any affected facility shall comply with such procedures, methods and guidelines, including requirements for inspection, testing, recordkeeping and reporting, as prescribed by the agency and consistent with current U.S. EPA guidance. The compliance guidelines for control of emissions from petroleum solvent dry cleaning have been submitted as part of the SIP revision, and are discussed in more detail in the technical support document (TSD) accompanying this proposed rulemaking action.

It should be noted that the compliance guidelines currently do not contain specific recordkeeping and reporting

requirements. The Philadelphia Air Management Services (AMS) has drafted reporting and recordkeeping requirements to be incorporated into these guidelines. These proposed requirements read as follows:

**Recordkeeping and Reporting**

The owner or operator of any affected petroleum solvent dry cleaning facility shall maintain records of operations, inspections, and maintenance such that the PADER can determine compliance. These records shall at a minimum, include:

1. Information on purchases, inventory, and daily consumption of petroleum solvents.

2. Operational information on washers, dryers and solvent filtration systems, including daily hours of operation, cycle times, and dry weight of articles cleaned.

3. Information on leak inspections and repairs for all equipment and components handling petroleum solvents.

Each required record or item of information shall be retained at the facility for a period of two (2) years, and shall be made available to the Department for inspection or copying upon request.

A. The owner or operator shall also maintain and make available for inspection by the Department copies of all manufacturers' specifications and recommendations for dry cleaning equipment operated at the facility.

B. The Department may require the owner or operator of any affected facility to submit reports summarizing information on daily operations, inspections and maintenance activities, or such other information as required by the Department to determine compliance. The Department shall notify the owner or operator in writing of such reporting requirements and shall prescribe the form and manner in which such reports are to be submitted.

An addendum to the TSD has been prepared which outlines this proposed amendment to the compliance guideline, as well as outlining other minor revision pertaining to recordkeeping and reporting. The amendments regarding recordkeeping and reporting will be formally incorporated into the compliance guidelines prior to taking final rulemaking action on this request.

EPA is proposing approval of this revision based on a determination that it conforms with the CTG pertaining to large petroleum dry cleaners (EPA 450/3–82–009), as well as fulfilling the requirements of the Clean Air Act which mandates the adoption of such a regulation. Also, in accordance with this mandate, this action fulfills a requirement contained in the 1982 Part D Ozone SIP for Pennsylvania and Philadelphia which specifies that RACT regulations for applicable VOC source categories, for which guidelines are released, must be adopted, implemented and enforced by the state.

In addition to the above, EPA is proposing approval based on a determination that the amendment meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: November 4, 1987.

Stanley L. Laskowski

*Acting Regional Administrator.*

[FR Doc. 88–16548 Filed 8–2–88; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 180**

[OPP–300178; FRL–3423–8]

## Acetyl Tributyl Citrate; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that acetyl tributyl citrate (CAS Reg. No. 77–90–7) be exempted from the requirement of a tolerance when used as an inert ingredient (plasticizer) in pesticide formulations applied to animals. This proposed regulation was requested by Alpha Chemical and Plastics Corp.

**DATE:** Written comments, identified by the document control number [OPP–300178], must be received on or before September 2, 1988.

**ADDRESS:**

By mail, submit comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS–767C), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Kerry B. Leifer, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

**SUPPLEMENTARY INFORMATION:** At the request of Alpha Chemical and Plastics Corp., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for acetyl tributyl citrate when used as a component of plastic animal tags in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrigeenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the

common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

*Name of inert ingredient.* Acetyl tributyl citrate (CAS Reg. No. 77–90–7).

*Name and address of requestor.* Alpha Chemical and Plastics Corp., 1 Jabez St., Newark, NJ 07105.

*Bases for approval of acetyl tributyl citrate.* 1. No effects were observable when acetyl tributyl citrate was administered to rats at 5 percent of the diet in an 8-week feeding study.

2. No concerns were raised during a structure-activity review of acetyl tributyl citrate.

3. Acetyl tributyl citrate is cleared under 21 CFR 181.27 for use as a migrating plasticizer in food-packaging materials.

4. Acetyl tributyl citrate is cleared under 21 CFR 175.300 as a component of resinous and polymeric coatings used as food-contact surface of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendments to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert ingredient may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP–300176]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 21, 1988.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that Part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

**§180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(e) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * | | |
| Acetyl tributyl citrate (CAS Reg. No. 77–90–7). | ..... | Component of plastic animal tags. |
| * * * * * | | |

[FR Doc. 88–17344 Filed 8–2–88; 8:45 am]

BILLING CODE 6560–50–M

**INTERSTATE COMMERCE COMMISSION**

**49 CFR Part 1152**

**[EX Parte No. 274; Sub-No. 13]**

**Rail Abandonments; Use of Rights-of-Way as Trails**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Advanced notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Commission extends, for an additional 15 days, the comment period in this rulemaking proceeding which has been reopened to consider a proposal by the National Association of Reversionary Property Owners (NARPO) to consider whether the rules implementing section 1247(d) of the National Trails System Act (16 U.S.C. 1247(d) (*Trails Act*), adopted in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails I*) and *Rail Abandonments—Supplemental Trails Act Procedures*, 4 I.C.C.2d 152 (1987) (*Trails II*), codified at 49 CFR 1152.29, should be amended to require railroads and trail groups to report to the Commission on the outcome of negotiations to transfer railroad rights-of-way for interim trail use and rail banking purposes under section 1247(d).

Petitioners argue that extending the comment period is necessary to give interested persons the opportunity to comment on NARPO's proposal in the context of *National Wildlife Federation, et al.* v. *Interstate Commerce Commission, et al.*, U.S.C.A., D.C. Cir., Nos. 86–1389. On June 10, 1988, the United States Court of Appeals for the District of Columbia Circuit in that case affirmed in part and remanded in part our decision in *Trails I* regarding the issue of whether trail use and rail banking could ever constitute a taking of reversionary interests for which compensation must be paid under the Fifth Amendment to the U.S. Constitution. While I see no real connection between the remanded questions and the supplemental rulemaking, I will grant a 15-day extension. Only *Trails I* issues *directly relevant* to NARPO's reporting proposals will be considered here. All other issues presented by the *Trails I* remand will not be considered or addressed in this proceeding, but will be considered only when *Trails I* is reopened for that purpose. Any comments beyond the scope of those authorized here will not be considered.

**DATES:** Comments are due on August 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

[TDD for hearing impaired (202) 275–1721]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's prior notice (published at 53 FR 19807–08 (May 31, 1988) and decision (served May 27, 1988). To obtain a copy of that full decision write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan Area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

This action will have no impact on the human environment or energy conservation because it involves only possible reporting requirments.

It has been certified that the proposals, if adopted, would have no significant impact on small businesses because only possible reporting requirements by trail user groups are involved.

**List of Subjects in 49 CFR Part 1152**

Administrative practice and procedure, Environmental protection, National trails system, National resources, Railroads, Recreation, Recreation areas.

**Authority:** 5 U.S.C. 553; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10903, 10904, and 10906.

Decided: July 27, 1988.

By the Commission, Heather J. Gradison, Chairman.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–17424 Filed 8–2–88; 8:45 am]

BILLING CODE 7035–01–M

# Notices

Federal Register
Vol. 53, No. 149
Wednesday, August 3, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

July 29, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

• Agricultural Marketing Service
Marketing Agreement for Peanuts—No. 146
Peanut Administrative Committee Forms
Recordkeeping; On occasion; Weekly; Monthly; Annually
Business or other for-profit; 7903 responses; 2082 hours
Virginia M. Olson (202) 447–5057
• Agricultural Marketing Service
Poultry Market News Reports
PY–10, PY–17, PY–88, PY–90
Weekly; Monthly
Businesses or other for-profit; Small business or organizations; 55,932 responses; 2,242 hours
Floyd D. Blethen (202) 447–6911
• Rural Electrification Administration
Rating Summary of Operations and Maintenance (REA Electric System)
REA Form 300
On occasion
Small businesses or organizations; 328 responses; 1,312 hours
Archie W. Cain (202) 382–1900
• Agricultural Marketing Service
Oregon—Washington—California Winter Pears, Marketing Order No. 927
Committee forms only
Recordkeeping; On occasion
Farms; Businesses or other for-profit; 5,182 responses; 3,320 hours
Virginia M. Olson (202) 447–5057

**Revision**

• Agricultural Marketing Service
Melons Grown in South Texas, Marketing Order No. 979
Recordkeeping; On occasion; Biennially
Farms; Businesses or other for-profit; 149 responses; 15 hours
Virginia M. Olson (202) 447–5057.

**Donald E. Hulcher,**
*Acting Departmental Clearance Officer.*

[FR Doc. 88–17427 Filed 8–2–88; 8:45 am]
BILLING CODE 3410–01–M

## Soil Conservation Service

### Finding of No Significant Impact; Otoucalofa Creek Watershed, MS

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Otoucalofa Creek Watershed, Calhoun, Lafayette, Yalobusha Counties, Mississippi.

**FOR FURTHER INFORMATION CONTACT:** L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection in a partially completed watershed. The planned works of improvement include the land treatment throughout the watershed, 20 floodwater retarding structures, 5 major grade control structures, 8 miles of streambank protection, and minor grade control structures. Planned measures will be installed jointly by the Corps of Engineers and the Soil Conservation Service as a component of a Demonstration Erosion Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

**L. Pete Heard,**
*State Conservationist.*

Dated: July 5, 1988.

[FR Doc. 88–17427 Filed 8–2–88; 8:45 am]
BILLING CODE 3410–16–M

### Finding of No Significant Impact; Polk Creek Watershed, WV

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for supplemental work in the Polk Creek Watershed, Lewis County, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, Telephone: 304–291–4151.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project

The supplemental project concerns a plan for flood control. The planned works of improvement include clearing and snagging 1.3 miles of lower Polk Creek.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, West Virginia.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

**Rollin N. Swank,**

*State Conservationist.*

July 26, 1988.

[FR Doc. 88–17442 Filed 8–2–88; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* Survey of Sole Proprietorships
*Form Number:* Agency—EC–104 OMB—None
*Type of Request:* New Collection
*Burden:* 5000 Respondents; 1250 Reporting hours. Average hours per response—.25 hours.
*Needs and Uses:* Information is used to estimate undercoverage in the sole proprietorship component of the 1987 Economic Censuses.
*Affected Public:* Households that reported self-employment income on the March, 1988 Current Population Survey (CPS).
*Frequency:* One time.
*Respondent's Obligation:* Mandatory
*OMB Desk Officer:* Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 28, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17455 Filed 8–2–88; 8:45 am]

BILLING CODE 3510–CW–M

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* 1988 Long-Term Care Survey
*Form Number:* LTC 1, 2, 3, 7, 9L1, 9L2, 9L3, 9L4, 9L5, 10, 11
*Type of Request:* New
*Burden:* 9,296 hours
*Avg Hours Per Response:* Ranges from 2 to 70 minutes, depending on the form used
*Needs and Uses:* This survey will obtain data to be used by Duke University and others to determine the health care needs of people 65 years and older.
*Affected Public:* Individuals or households Businesses or other for-profit
*Frequency:* One-time, except for institutionalized respondents who will respond twice (semi-annually)
*Respondent's Obligation:* Voluntary
*OMB Desk Officer:* Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 28, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17456 Filed 8–2–88; 8:45 am]

BILLING CODE 3510–07–M

## International Trade Administration

### Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Under Secretary for International Trade, Allen Moore, of the Performance Review Board. This is a revised list of membership which includes previous members as listed in the August 7, 1987, **Federal Register** Announcement (52 FR 29405) with additional members added to serve a two year term. The purpose of the International Trade Administration's PRB is to review and make recommendations and other issues concerning members of the Senior Executive Service (SES). The names of the PRB members are:

Joseph Spetrini, Deputy to the Deputy Assistant Secretary for Import Administration
Maureen R. Smith, Deputy Asssistant Secretary for Japan International Economic Policy
Michael J. Coursey, Director, Office of Investigations Import Administration
Rolf D. Luft, Deputy Assistant Secretary for Services Trade Development
Michael R. Czinkota, Deputy Assistant Secretary for Trade Information and Analysis Trade Development
Saul Padwo. Director, Office of Trade Promotion, U.S. & Foreign Commercial Service
Marilyn Wagner, Assistant General Counsel for Administration.

Dated: July 22, 1988.

**James T. King, Jr.,**

*Personnel Officer, ITA.*

[FR Doc. 88-17420 Filed 8-2-88; 8:45 am]

BILLING CODE 3510-05-M

## Minority Business Development Agency

### Business Development Center Program Applications; North Carolina

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications for an Indian Business Development Center (IBDC) under its American Indian Program (AIP) to operate an IBDC for a 3 year period, subject to satisfactory performance, Agency priorities and availability of funds. The cost of performance for the first 12 months is estimated at $193,000 for the budget period January 1, 1989 to December 31, 1989. The IBDC will operate in the Cherokee Indian Reservation/Asheville, North Carolina geographic service area.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The IBDC is designed to provide management and technical assistance to the minority business community and, in particular, to American Indian clients for the establishment and operation of businesses. In order to establish this, MBDA supports IBDC firms that can coordinate and broker public and private resources on behalf of American Indian and other minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the minority business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing management, and technical assistance (10 points); the firm's approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The IBDC will operate for a 3 year period with periodic reviews culminating in year-to-date quantitative and qualitative evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is September 15, 1988. Applications must be postmarked on or before September 15, 1988.

**ADDRESS:** Atlanta Regional Office, U.S. Department of Commerce/MBDA, 1371 Peachtree St., Suite 505, Atlanta, GA 30309, 404/347-4091, Area Code/ Telephone Number.

**FOR FURTHER INFORMATION CONTACT:** Carlton L. Eccles, Regional Director, Atlanta Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

**Note:** A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Friday, August 26, 1988, at 10:00 a.m.

11.801 Minority Business Development (Catalog of Federal Domestic Assistant)

**Robert M. Henderson,**

*Acting Regional Director, Atlanta Regional Office.*

Dated July 28, 1988.

[FR Doc. 88-17440 Filed 8-2-88; 8:45 am]

BILLING CODE 3510-21-M

## National Bureau of Standards

**[Docket No. 80589-8069]**

### Proposed Federal Information Processing Standards Publication for Conformance Testing Policy and Procedures

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Notice of proposed Federal Information Processing Standards Publication for Conformance Testing Policy and Procedures.

**SUMMARY:** The Institute for Computer Sciences and Technology (ICST), at the National Bureau of Standards (NBS) is responsible for developing the standards that the Federal Government uses in its computer and related telecommunications systems. The ICST works with Government, industry, standards organizations, and research institutions to get the Federal Government's requirements for standards addressed and implemented in off-the-shelf commercial products. Where products are expected to support complex standards specifications, conformance testing may be required to reduce risks and raise confidence in information system products.

Prior to submission of these proposed conformance testing policy and procedures to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a section detailing the policy and procedures. Both sections are included in this announcement.

**DATE:** Comments on this propsoed FIPS must be received on or before November 1, 1988.

**ADDRESS:** Written comments concerning the adoption of this document as a FIPS should be sent to: Director, Institute for

Computer Sciences and Technology, ATTN: FIPS Conformance Testing Policy and Procedures, Technology Building, Room B-154, National Bureau of Standards, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. L. Arnold Johnson, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975-3247.

Date: July 28, 1988.

Ernest Ambler,

*Director.*

Federal Information

Processing Standards Publication

_____

(date)

Announcing the

CONFORMANCE TESTING POLICY AND PROCEDURES

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

*Name of Document.* Conformance Testing Policy and Procedures.

*Category of Document.* General Publication.

*Explanation.* This document establishes a policy and procedures regarding conformance testing programs for Federal Information Processing Standards (FIPS). This FIPS specifies the policy and procedures for conformance test methods, for conformance testing of implementations of FIPS, and for certifying those implementations that comply with the FIPS requirements. An organizational model of a FIPS certification system is described. Under this system an implementation of a FIPS can be tested by an ICST recognized testing laboratory, and the test results accepted by ICST as the basis for a certificate indicating compliance with that FIPS.

*Approving Authority.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

*Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

*Applicability.* The policy and procedures for conformance testing defined herein apply whenever FIPS contain requirements for conformance testing in order to support Government objectives for information systems.

*Implementation.* This FIPS becomes effective *(6 months)* after approval.

*Specifications.* Federal Information Processing Standards Publication _____ (FIPS PUB _____), Conformance Testing Policy and Procedures (affixed).

*Special Information.* Comments and questions concerning this policy and procedures should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: FIPS Conformance Testing Policy and Procedures, National Bureau of Standards, Gaithersburg, MD 20899.

*Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUB _____) and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Federal Information

Processing Standards Publication

_____

(date)

CONFORMANCE TESTING POLICY AND PROCEDURES

CONTENTS

1. Introduction
  1.1 Background
  1.2 Purpose
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3. Testing Laboratory Accreditation
4. Test Method, Procedures, Reports and Certificates
  4.1 Conformance Testing Elements
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5. Recognition of Other Conformance Testing Activities
Appendix

## 1. Introduction

### *1.1 Background*

The National Bureau of Standards (NBS), Institute for Computer Sciences and Technology (ICST) is responsible for developing U.S. Government-wide Standards for computer software, hardware, data management, security, networks and related telecommunication systems. The authority for this responsibility is assigned under the Federal Property and Administrative Services Act of 1949, as amended by Public Law 100-235.

ICST develops standards, provides technical assistance, and carries out research to advance the effective use of computers by government and industry. ICST works through voluntary industry standards organizations to develop standards that will meet the needs of government users. These standards are issued as Federal Information Processing Standards (FIPS) and provide the foundation for compatibility and, where necessary, interoperability among government systems implementing these standards. FIPS also serve as the basis for Government acquisition of commercial off-the-shelf products and services from competitive sources.

The pace of standards development for information systems (information processing and telecommunications) has intensified in recent years, stimulated by user needs for interconnectivity of hardware, software, and network systems. These standards are increasingly complex—often describing functional requirements and allowing for numerous options in implementation.

To achieve interoperability and effective use of information systems, users need off-the-shelf products that work together and conform to these emerging standards. Where products are expected to support complex standards specifications, conformance testing may be required to reduce risks and raise consumer confidence in information system products.

ICST is responsible for organizing, managing, directing and administering the FIPS program. Among the responsibilities assigned under the FIPS program is the task of insuring that, for products to be acquired by the Federal Government, a mechanism is available for determining that these products conform to the FIPS. In carrying out this task, the ICST develops and maintains conformance testing programs for the FIPS. These programs require adequate test methods and procedures, suitable testing laboratories, and a formal acknowledgement of product compliance or noncompliance to FIPS.

### *1.2 Purpose*

This document is intended to inform Government agencies, industry, standards development bodies, and other interested organizations of the

ICST policy with regard to FIPS conformance testing programs.

The purpose of this document is to provide a framework for developing uniform Government-wide conformance testing programs for FIPS. This common framework of policies and procedures serves as the basis upon which the detailed procedures for a conformance testing program are defined. Some or all of the features identified by this framework may be selected where appropriate to meet a FIPS conformance testing need.

The FIPS conformance testing program objectives are:

—To encourage more effective utilization and management of Government staff by ensuring that skills acquired on one job are transportable to other jobs thereby reducing the costs of staff retraining.

—To reduce the overall information systems costs by making it easier and less expensive to maintain information technology applications and to transfer these applications among different information systems, including replacement systems.

—To protect the technical assets and staff time of the Federal Government by insuring to the extent possible that products (off-the-shelf or government developed) brought into the Federal inventory comply with Government approved FIPS.

—To establish proven test methods and competent testing services for assisting Government agencies in the procurement of industry supplied products.

### *1.3 Scope*

The focus of this document is to define policy and procedures related to conformance testing for FIPS. Other types of testing such as performance, acceptance, and quality testing, are not addressed in this document.

In determining conformance testing requirements for a given FIPS, a number of areas are expected to be considered. Among the areas to be considered are the Government testing needs, test method technology, standard specifications, alternative testing sources (third-party testing, Government testing, self-testing, etc.), and existing accreditation and certification systems.

A number of different techniques may be required for testing conformance to the FIPS. Conformance testing may include the facilities of computer hardware, software or communication networks. Where necessary to assess FIPS conformance, it may include a demonstration of interoperability against a reference implementation.

The validation of information system products as used in this document applies to the process of testing and certification of a product that is purported to conform to the FIPS. These policies and procedures do not address the validation and verification (V&V) associated with the various steps of the product development life cycle.

Some terms in this document have specific meaning. The Appendix provides a definition of these terms. Whenever these terms are intended to carry the meaning defined in the Appendix, they will be highlighted in the document.

The policy and procedures for conformance testing defined herein apply whenever FIPS standards are required to support Government objectives for information systems.

## 2. Organizational Model for FIPS Conformance Testing

Conformance testing for a FIPS will be accomplished in accordance with the organizational model described in this section. This organizational model consists of a certification body, testing laboratories and the clients. Each member of this organization shares important responsibilities for assuring compliance of products for conformance to a FIPS. Under the rules and procedures established by ICST, this model will enable a client to have his product tested by any ICST recognized testing laboratory; and the test results produced by that laboratory accepted by ICST as the basis for issuing a validation certificate to the client. The validation certificate is formal notification by ICST that the product meets the compliance requirements for that FIPS.

A certification body is established for each FIPS designated to have a conformance testing program. The same basic organizational model is used for each conformance testing program. Full implementation or use of all parts of the organizational model depend on the complexity of the standard and the conformance testing needs for that standard.

This section identifies the responsibilities for each member involved in the organization.

### *2.1 FIPS Certification Body*

The Director of ICST provides the overall direction for organizing, managing, directing, the administering the FIPS Certification Body.

The Director of ICST is the FIPS Certification Authority for the FIPS conformance testing program. The Director of ICST:

a. Establises and maintains the conformance testing program policies and procedures,

b. Approves the test method used in determining compliance of products to each FIPS,

c. Develop and maintains the validation procedures to be followed by clients in order to receive a validation certificate.

d. Issues a validation certificate based on the results of a test report,

e. Establishes the period of time a validation certificate is effective,

f. Establishes the accreditation criteria for testing laboratories for each FIPS,

g. Maintains and periodically publishes the official list of products that have a current validation certificate,

h. Coordinates with other certification authorities to review certification criteria for the purpose of harmonizing certificates and making provisions for mutual recognition of conformance testing.

i. Evaluates and resolves disputes on all matters concerning conformance testing for FIPS,

j. Periodically assesses the need for a conformance testing program, maintenance of a test method or testing laboratory accreditation program, for a FIPS,

k. Maintains and publishes lists of testing laboratories recognized by ICST to perform FIPS conformance testing,

l. Insures that facilities are available to maintain the test method, and to provide assistance to testing laboratories and clients, and

m. Establishes the fees or rates for ICST provided products and services.

### *2.2 Testing Laboratories*

Testing laboratories as used in this document perform conformance testing in accordance with ICST approved validation procedures. Testing laboratories may be commercial laboratories, university laboratories, Federal, State or local Government laboratories, or foreign-based laboratories.

Only testing laboratories accredited under an ICST approved laboratory accreditation program, or testing laboratories under formal agreement with ICST shall be recognized by ICST to do FIPS conformance testing.

The responsibilities of a testing laboratory are to:

a. Obtain and maintain laboratory accreditation as appropriate,

b. Conduct conformance testing in accordance with the ICST precribed procedures,

c. Prepare a test report in accordance with ICST prescribed procedures as a result of the testing performed,

d. Participate in proficiency testing as required,

e. Pay all relevant fees,

f. Participate in training sessions or meetings as required by ICST to remain up-to-date of changes to the test method and the validation procedures,

g. Provide feedback to ICST on problems and improvements relating to the test methods and validation procedures.

*2.3 Clients*

Clients are responsible for submitting requests for product validation in accordance with ICST prescribed procedures. The responsibilities of a client include:

a. Providing complete and accurate information to the testing laboratory and certification body for the performance of the requested validation.

b. Submitting information in a timely manner so that the validation process can be completed in sufficient time to meet the needs of the client.

c. Submitting a "Declaration of Conformance" as required by the validation procedures.

d. Unless otherwise agreed to by the testing laboratory providing the test facilities and materials necessary for testing.

e. Providing a product in conformity with the FIPS.

**3. Testing Laboratory Accreditation**

ICST will carry out its responsibilities for conformance testing through testing laboratories judged to be competent to objectively perform the necessary tests. Laboratory accreditation serves as a basis for determining laboratory competence. The purpose is to insure that testing facilities are available for obtaining an unbiased assessment of products regarding FIPS conformity.

Wherever appropriate for a given FIPS, ICST will draw upon the NBS National Voluntary Laboratory Accreditation Program (NVLAP) as the basis for accrediting testing laboratories. ICST shall establish technical criteria for laboratory accreditation, and provide technical experts for assessing testing laboratory competence.

The objectives of laboratory accreditation are to:

a. Provide objective unbiased testing services,

b. Assess and evaluate each testing laboratory accredited to do testing for conformance to FIPS by:

(1) Conducting periodic laboratory proficiency testing to identify testing deficiencies,

(2) Initially, and periodically thereafter, conducting on-site assessments to determine compliance with the accreditation criteria, and

(3) Conducting visits to verify reported changes in the laboratory's personnel, facilities, and operations, or to explore possible reasons for poor performance in testing practices.

c. Insure that the testing laboratory has adequate quality control, facilities, equipment and personnel to conduct testing,

d. Determine that the testing laboratory staff is adequately trained in using the appropriate test method, following the prescribed validation procedures and is knowledgeable of the criteria for validation certificates,

e. Insure that adequate records are maintained to support the testing performed and that test reports are produced to provide the necessary information for determining compliance to FIPS,

f. Notify the testing laboratory of deficiencies and specify requirements to correct these deficiencies,

g. Establish criteria and procedures for testing laboratories to both obtain and maintain accreditation.

**4. Test Method, Procedures, Reports and Certificates**

ICST is responsible for providing and implementing conformance testing programs for FIPS. The key elements of a conformance testing program are the test method, validation procedures, test report and validation certificate. The following requirements apply when establishing conformance testing programs for FIPS.

*4.1 Conformance Testing Elements*

A. Test Method

1. ICST shall recognize one test method for each FIPS.

2. The test method includes the test suite, support tools, and documentation.

a. Test suite shall be designed, where feasible, to be self-checking, modular to allow for testing standard options or levels, and have documented test objectives for each test.

b. The test method shall include support tools where appropriate for controlling and automating the conformance testing process. As a minimum, the following automated functions shall be considered:

(1) A mechanism for controlling the setup, integrity and systematizing of the test suite for the implementation under test, and

(2) A mechanism for automating the evaluation of test results.

c. The test method shall include full documentation for the following where applicable:

(1) Installing and executing the test suite, (2) Evaluating the test results for accuracy and completeness, and

(3) Installing and executing the test method support tools.

3. An assessment of the standard and the test suite shall be made to determine what parts of the standard are tested by the test suite. The results of this assessment shall be documented with the test method. Conversely, those areas of the standard that are not tested by the test suite shall be documented. This documentation shall be updated with each new release of the test suite.

4. The test method shall be used solely for the purpose of assessing conformance to the FIPS. The test method should *not* include tests or procedures for assessing other product characteristics such as performance (capacities, speed, usefulness, or vendor support), standard refinement, or product quality. If the test method contains tests not used in determining conformity, then that part of the test method shall be clearly identified, and those tests shall not be used as the basis for obtaining a validation certificate.

5. ICST shall insure that all test methods are adequately tested before being used as the basis for a validation certificate.

6. Before adoption by ICST, and test method shall undergo a "field test" period for public review and comment. This public review period allows ICST to assess suitability of the test method for testing conformance to FIPS. Notice of the availability of the test method for review shall be placed in the Federal Register.

The public review time period for the test method shall be determined by ICST.

7. Test methods shall be accessible and available to all potential users and interested parties (not unduly restriced from use by manufacturers, academia, government, or other users due to legal considerations or cost).

8. For test methods not owned by ICST, ICST shall arrange with the test method owner to evaluate, copy, withdraw from and supplement the test method as necessary to provide for the testing for conformance to FIPS. When changes to the test method are determined necessary, the owner shall be notified of the needed changes. Any comments and recommendations resulting from use of the test method

will be collected and forwarded to the owner of the test method for review.

9. Unless otherwise waived by the Director of ICST, provision for maintaining the test method shall be made before validation use.

10. Test Method Control.

When required, ICST shall insure that the test method is properly maintained for testing conformance to FIPS, and that this maintenance is coordinated with others as needed.

The functions associated with control and maintenance of the test method include procedures for:

a. Handling challenges to the test method,

b. Approving changes to the test method,

c. Testing and release of new versions of the test method.

d. Reporting test method problems,

e. Assisting testing laboratories, clients and others in proper use of the test method, and

f. Coordinating with the respective standard maintenance committee and others as appropriate.

Where the same test method is used by other certification systems, or it is maintained by an organization other than ICST, ICST will obtain coordination among the organizations involved.

*B. Validation Procedures*

The validation procedures define the steps and criteria by which FIPS conformance testing is done in order for a validation certificate to be issued. ICST specifies the validation procedures for each conformance testing program.

The following requirements apply to validation procedures.

1. Notice of the availablity of new or major revisions to validation procedures shall be published in the **Federal Register** for comments. [A copy shall be sent to DOC General Agreement on Trade and Tariff Secretariat.]

2. The procedures for handling client disputes on the test method or validation procedures shall be specified.

3. The procedures followed by ICST for interpretation of a FIPS shall be specified. For software standards, the procedures described in the FIPS PUB 29–2, Interpretation Procedures for Federal Information Processing Standards for Software, shall be followed when requesting technical interpretations.

4. The steps that the client shall follow in order to have a product tested and to obtain a validation certificate shall be specified.

5. The statements or information that the client provides in a declaration of conformance for receiving a valiation certificate shall be specified.

6. Whenever appropriate, the testing, procedures, or information that is required in order for the client to have equivalent configurations or maintained products recognized as having validation status shall be specified.

*C. Test Reports*

1. The test report shall state the specific environment in which the testing was done.

2. The test report shall indicate all deviations from the standard found in the product as a result of using the test method.

3. The test report shall state all facts and results related to testing of the subject product.

4. The test report shall allow for a foreword and statement of disclaimer based on national requirements, e.g., "The ICST may make full and free public disclosure of the Test Report in accordance with the 'Freedom of Information Act' (5 U.S.C. 522). The results of this validation are only for the purpose of satisfying United States Government requirements and apply only to the computer system, operating system release and software product identified in the Test Report. The Test Method is used to determine, insofar as is practical, the degree to which the subject product conforms to the FIPS. Information for this report was provided by the supplier of the product. The United States Government does not represent or warrant that the subject product has no nonconformities to the FIPS other than those presented in the Test Report."

5. Test reports that serve as the bases for a validation certificate shall be available for public review.

*D. Validation Certificate*

A validation certificate is formal notification by ICST that the product has been tested in accordance with ICST prescribed validation procedures, and that the test report indicates product compliance with the FIPS.

A validation certificate does not imply or warrant acceptable use of a product for any given application, nor does it indicate acceptance of the product regarding efficiency or performance. Conformance testing is strictly a means of determining compliance that leads to a judgment of conformity based on the test method used.

A validation certificate is *not* an unequivocal endorsement of complete conformance of a product to the standard or that the subject product has no nonconformities to the standard, other than those identified by the test method.

1. Certification Criteria

ICST shall provide the criteria for issuing a Certificate of Validation.

The certification criteria for a given FIPS may optionally permit a certificate to be issued for implementations that do not pass *all* the test objectives. When the certification criteria allows for this type of certificate, a "Conditional" Certificate of Validation shall be issued in lieu of a Certificate of Validation. The "Conditional" Certificate of Validation gives notice to the user of the product that it was formally tested, but use of the product is conditional on the user's acceptance of the product with the detected conformance limitations. The certification criteria for this type of certificate shall normally require the product to be corrected and retested (i.e., satisfy the criteria for receiving an unconditional Certificate of Validation) within a specified period of time.

The effect of modifications to the product with regard to its certification status shall be specified.

When applicable, the criteria for recertification of products shall be specified, e.g., certificate renewal criteria without retesting may be considered if all the following are present:

a. No deviations from the standard were found during the last validation;

b. The client certifies that there were no changes to the system under test or implementation under test; and

c. There were no changes made to the test method.

The validation certificate may include an expiration date when a change to either the product or the test method could effect product compliance. To keep the certification cycle synchronized with the current version of the test method, the certification period and the planned test method release cycle should be the same (i.e., if the test method release cycle is planned once a year, the effective period of the certificate should be no longer than 12 months).

2. Certificate Content

The validation certificate shall, where appropriate:

a. Fully identify the product tested, including version designation where applicable.

b. Identify the test configuration or test environment (e.g., Hardware and Operating System) that was used for the conformance testing.

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c. Identify the standard(s) tested and the applicable portion(s) thereof that is the basis for the certificate.

d. Identify the testing laboratory that performed the testing.

e. Identify the test method used.

f. Provide an expiration date of the validation certificate.

g. Indicate the areas, or degree of nonconformance when a "Conditional" Certificate of Validation is issued.

h. Provide a statement indicating the scope and limitations associated with the certificate.

*4.2 Testing Program Implementation and Administration*

The following policy applies to implementation and administration of a conformance testing program.

a. ICST shall provide for a validation "trial use" period to verify the accuracy and completeness of the validation procedures. During this period the full validation process will be performed and evaluated. The experience gained will be used to refine the test method, validation procedures, and certification criteria. This experience will also serve as the basis for development of the technical criteria for accrediting testing laboratories. The number of validations performed to obtain the necessary experience shall be determined by ICST. Typically, a "trial use" period should be used whenever new or major enhancements are made to the test method, or major changes are made to the validation procedures.

b. Where feasible, test methods owned by ICST shall be deposited with National Technical Information Service (NTIS) for public and Government distribution.

c. ICST may assess a fee for the test method to help recover costs of development and for enhancement of the test method.

d. ICST shall administer testing of products for conformance to the FIPS where there is no other suitable means available.

e. ICST may require reimbursement of expenses incurred in doing validations. When reimbursement is required, funding for the validation shall be provided before ICST begins work on the project.

f. For validations performed by ICST, the results of a validation as presented in the final test report shall be publicly available. If the client specifically requests that the testing be held confidential, ICST will *not* disclose information concerning the validation scheduling, testing status or information on preliminary test results. All inquiries concerning this information shall be referred to the client.

g. ICST may assess a certification fee. The certification fee covers the administrative cost of evaluating the test report, confirming adherence to the certification criteria and issuing the validation certificate. The certification fee may include a charge for research and maintenance of the test method. The amount of this fee is determined by ICST.

h. Until ICST approved test method, validation procedures and validation services are available, government agencies acquiring products and services in accordance with FIPS may wish to specify their own testing for conformance. The tests to be administered and the testing organization used are at the discretion of the agency or agency acquisition authority.

**5. Recognition of Other Conformance Testing Activities**

ICST will seek to provide economical and adequate conformance testing for the FIPS. In meeting this objective, ICST will consider the use of existing test methods, validation procedures, testing laboratories and certification systems. It is not the intent of ICST to duplicate conformance testing activities where those activities meet ICST requirements. Thus ICST will coordinate with other organizations to harmonize conformance testing requirements.

Recognition of other conformance testing activities may be achieved in many areas. The possible areas include:

a. Test method research and development,

b. Testing laboratory (conformance testing services),

c. Test method administration (maintenance),

d. Validation procedures,

e. Tet reports, or

f. Certificates.

ICST may use any of the following methods for formally recognizing the conformance testing activities of other organizations:

a. Bilateral, unilateral or multilateral agreement,

b. Contract,

c. Accreditation,

d. Memorandum of Understanding, or

e. Agreement or contract requesting ICST to provide assistance.

Any of the above methods is acceptable as long as it does not conflict or compromise ICST's authority in carrying out its responsibilities. Further, the above methods shall not violate any Federal Government regulation.

Unless otherwise approved by the Director of ICST, agreements concerning conformance testing shall not:

a. Grant exclusive rights to others in fulfilling its responsibilities in the areas described above.

b. Unilaterally agree to adopt a product or service that conflict with, or that does not allow for changes to meet, ICST requirements.

**Appendix**

*Acceptance Testing:* Formal testing conducted to determine whether or not a system satisfies its acceptance criteria and to enable the customer to determine whether to accept the system. Formal testing includes the planning and execution of several kinds of tests (e.g., functional, volume, performance tests) to demonstrate that the implementation satisfies the customer requirements.

*Certificate of Validation:* A Certificate authorized by authority of the Director of ICST that formally acknowledges compliance of a product to the FIPS.

*Certification Body:* An impartial body, governmental or nongovernmental, possessing the necessary competence and reliability to operate or accredit operation of a cetification system, and in which the interests of all parties concerned with the function of the system are represented.

*Certification System:* A system having its own rules of procedure and management for carrying out conformance certification.

*Client:* An organization or person requesting validation of a product.

*Compliance:* The state in which correct test results were achieved from the test objectives in the applicable version of the test method as required by the applicable validation procedures. [Note: for purposes of this document, compliance is a practical measure of conformity.]

*"Conditional" Certificate of Validation:* A certificate acknowledging that the product has undergone conformance testing, and the product did not meet all of the conformity criteria.

*Conformance Testing:* The testing of a candidate product for the existence of specific characteristics required by a standard specification; testing the extent to which an implementation is a conforming implementation.

*Conformity:* Fulfillment by a product process or service of all requirements specified [ISO/IEC Guide 2–1986].

*Declaration of Conformance:* The action by which a client declares under his sole responsibility, by means of a "declaration of conformance," that the product is in conformity with designated standards or other technical specifications, without being under the

procedures of a third-party certification system.

*Equivalent Configuration:* Any configuration for which compliance is achievable using the same test method version used in validation of the implementation under test.

*Implementation Under Test (IUT):* A product being studied under testing for one or more characteristics of the standard specification.

*Interoperability Testing:* The testing of a candidate product for its ability to successfully operate or communicate with another component in the same, or different, information system.

*National Voluntary Laboratory Accreditation Program (NVLAP):* A voluntary system for accrediting laboratories found competent to perform specific testing operations. It is part of the National Bureau of Standards Office of Associate Director for Industry and Standards. NVLAP does not confer product or test data certification.

*Product:* An implementation of the FIPS specification.

*Proficiency Testing:* Determination of laboratory testing performance by means of comparison of tests on the same or similar items by two or more laboratories in accordance with predetermined conditions.

*System Under Test (SUT):* The computer hardware, software and communication network required to support the IUT.

*Test Method:* A defined technical procedure to determine one or more specified characteristics of a material or product. For the purposes of this document a test method includes the test suite, testing support tools and documentation (including technical test procedures).

*Test Report:* Document that presents test results and other information relevant to a test [ISO/IEC Guide 2–1986].

*Test Suite:* That part of the test method that consists of the set of tests designed to assess conformity of an implementation to the FIPS.

*Testing Laboratory:* A facility properly equipped and staffed to conduct product testing.

*Validation:* The process of checking the conformity of an implementation of a standard to its standard specification through conformance testing, and when compliance is demonstrated, issuing a validation certificate.

*Validation Certificate:* A Certificate of Validation or "Conditional" Certificate of Validation.

[FR Doc. 88–17422 Filed 8–2–88; 8:45 am]
BILLING CODE 3510-CN-M

## National Oceanic and Atmospheric Administration

### North Pacific Fishery Management Council; Public Meeting

The North Pacific Fishery Management Council's Bycatch Committee will convene a public meeting, August 22, 1988, at 1 p.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE., Building 4, Room 2079, Seattle, WA, to review the final draft of the Bering Sea bycatch amendment, review a draft of the Kodiak time/area closure plan to protect king crab, and to continue development of a directed fishing definition. The public meeting will adjourn on August 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: July 29, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–17472 Filed 8–2–88; 8:45 am]
BILLING CODE 3510-22-M

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council at its July 13–14, 1988, meeting adopted recommendations contained in the final report of its Limited Entry Committee. Among the recommendations, one was that the Pacific Council should form a committee to plan public information activities on limited entry, including media information, mailings, and workshops. The objectives will be to educate and to solicit input on limited entry from the public. Therefore, the committee's first public meeting will convene on August 16, 1988, at 10 a.m., at the Council's Office (address below), and will adjourn on August 17.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: July 29, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–17473 Filed 8–2–88; 8:45 am]
BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Advisory Committee on Women in the Services; Meeting

**AGENCY:** Defense Advisory Committee on Women in the Services (DACOWITS).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the responses to the recommendations, requests for information, and continuing concerns made by the Committee at the 1988 Spring Conference; review the Subcommittee Issue Agenda; discuss current issues relevant to women in the Services; and finalize the program for the next semiannual conference scheduled for November 13–17, 1988. All meeting sessions will be open to the public.

**DATE:** October 3, 1988, 9:30 a.m.–5:00 p.m.

**ADDRESS:** SecDef Conference Room 3E869, The Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 28, 1988.

[FR Doc. 88–17423 Filed 8–2–88; 8:45 am]
BILLING CODE 3810-01-M

## Department of the Army

### Intent To Prepare Environmental Impact Statement (EIS) and To Initiate the Public Scoping Process for the Construction and Operation of a Chemical Munitions Disposal Facility at Tooele Army Depot, UT

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** This announces the Notice of Intent to prepare an EIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Tooele Army Depot, Utah. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at the Tooele Army Depot. Potential environmental impacts will be examined for alternative locations of the on-site incineration facility and the "no action" alternative. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Tooele Army Depot.

**SUPPLEMENTARY INFORMATION:** In its Record of Decision (53 FR 38, pp. 5816–17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. In compliance with the National Environmental Policy Act (NEPA), section 102(2)(c), the Army determined that an EIS will be prepared to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions at Tooele Army Depot. The first phase of this effort will entail the collection and analyses of detailed site-specific information to ensure that the programmatic preferred alternative (on-site incineration) remains valid for Tooele Army Depot. A separate report summarizing this effort will be published prior to preparation of the draft EIS for Tooele Army Depot. The draft EIS should be available in the fall 1988. Upon completion of the draft EIS, public notice of its availability for review will be announced and interested persons may provide comment on that document.

**Notice of Public Meeting**

Notice is further given of the Army's intention to initiate the scoping process to aid in determining the significant issues related to the proposed action at Tooele Army Depot. Public as well as federal, state and local agency participation and input are desired. An initial scoping meeting will be held on August 18, 1988, at 7:00 p.m., at the Tooele Army Depot post theater, Utah. Interested individuals, governmental agencies and private organization are encouraged to attend and submit information and comments for consideration by the Army.

**FOR FURTHER INFORMATION CONTACT:** The Program Executive Officer-Program Manager for Chemical Demilitarization, ATTN: AMCPEO–CDI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401. Individuals desiring to be placed on a mailing list to receive additional information on the public scoping process and copies of the draft and final EIS should contact the Program Executive Officer-Program Manager at the above address.

**Lewis D. Walker,**

*Deputy for Environment, Safety and Occupational Health OASA (I&L).*

[FR Doc. 88–17395 Filed 8–2–88; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[ERA Docket No. 88–41–NG]**

### The Consumers' Gas Co., Ltd.; Application To Export Natural Gas to Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for blanket authorization to export natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 12, 1988, of an application filed by The Consumers' Gas Company Ltd. (Consumers Gas) requesting blanket authorization to export up to 100 Bcf of natural gas from the United States to Canada for short-term and spot market sales over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 2, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Dukes, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–6667

**SUPPLEMENTARY INFORMATION:** Consumers Gas, an Ontario, Canada, gas utility that is headquartered in Toronto, Canada, seeks authorization to export U.S. gas supplies exclusively for its own system supply. Consumers Gas does not plan to export gas as an agent for other parties. While Consumers Gas has negotiated two gas purchase agreements with U.S. suppliers, it proposes to purchase domestic natural gas from a variety of other suppliers.

The terms of each arrangement would be negotiated in response to market conditions. Consumers Gas intends to use existing transmission systems and would not require the construction of new or separate facilities in order to export the natural gas. Consumers Gas also intends to comply with the ERA's quarterly reporting requirements.

This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate by the Administrator, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that current excess gas supplies evidence a lack of need for this gas to serve regional and national markets. The applicant further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this export it may permit the export of the gas at any existing point of exit and through any existing transmission system.

Consumers Gas requests that an authorization be granted on an expedited basis. An ERA decision on Consumers Gas' request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene

or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered an determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and writtem comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., September 2, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Consumers Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–17489 Filed 8–2–88; 8:45 am]

BILLING CODE 6450–01–M

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**[ERA Docket No. 88–26–NG]**

## Portland General Electric Co.; Order Granting Blanket Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of order granting blanket authorization to import natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Portland General Electric Company (Portland) blanket authorization to import natural gas. The order issued in ERA Docket No. 88–26–NG authorizes Portland to import up to 40 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–08–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–17490 Filed 8–2–88; 8:45 am]

BILLING CODE 6450–01–M

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**[ERA Docket No. 88–29–NG]**

## Premier Enterprises, Inc.; Order Granting Blanket Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of order granting blanket authorization to import natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Premier Enterprises, Inc. (Premier), blanket authorization to import Canadian natural gas. The order issued in ERA Docket No. 88–29–NG authorizes Premier to import up to 73 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–17491 Filed 8–2–88; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

**[Docket Nos. ER–88–530–000 et al.]**

## Kansas Gas and Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 1, 1988.

Take notice that the following filings have been made with the Commission:

### 1. Kansas Gas and Electric Company

[Docket No. ER–88–530–000]

Take notice that on July 15, 1988, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed Short-Term Participation Power Service, Service Schedule PP, between KG&E and City of Erie, Kansas.

This filing is necessary because Erie desires to purchase power and energy on a short-term basis to assure its ability to meet the needs of its municipal system. KG&E has requested an effective date of July 1, 1988.

Copies of this filing were served on Erie and the Utilities Division of the Kansas Corporation Commission.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

### 2. Niagara Mohawk Power Corporation

[Docket No. ER–88–529–000]

Take notice that on July 22, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk

Rate Schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Co. (LILCO).

Rate Schedule No. 142 provides for the wheeling of certain loads by Niagara Mohawk to LILCO. The proposed change is the addition of 100 MW of firm power purchased by LILCO from the New York State Electric & Gas Co. (NYSEG) to be wheeled by Niagara Mohawk from June 1, 1988 until September 16, 1988. Niagara Mohawk proposes an effective date of June 1, 1988 and requests waiver of the Commission's notice requirements. In support thereof, Niagara Mohawk states that the service commenced as of June 1, 1988 at LILCO's request and that LILCO has consented to this proposed effective date.

Copies of this filing were served upon the Public Service Commission of the State of New York and the Long Island Light Company.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**3. Union Electric Company**

[Docket No. ER-88-527-000]

Take notice that on July 21, 1988, Union Electric Company (Union) tendered for filing Service Schedule E to the Interconnection Agreement dated November 1, 1969 between the Tennessee Valley Authority and Central Illinois Public Service Company, Illinois Power Company and Union.

Said Schedule provides for Term Energy Exchange and establishes the terms and conditions of such exchange.

Union requests that the filing be permitted to become effective May 18, 1988.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**4. Arkansas Power and Light Company**

[Docket No. ER-88-528-000]

Take notice that on July 20, 1988, Arkansas Power and Light Company (AP&L) tendered for filing the Second Amendment to the Power Coordination, Interchange and Transmission Service Agreement between AP&L and the City of Osceola, Arkansas (City). The Amendment provides for the addition of one Point of Delivery, the combination of two Points of Delivery and an increase in capacity made available at one Point of Delivery.

These changes are being made at the request of City to enable City to provide a dedicated Point of Delivery to one of City's retail customers.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**5. Commonwealth Edison Company**

[Docket No. ER-88-525-000]

Take notice that on July 20, 1988, Commonwealth Edison Company (Edison) tendered for filing a new Interconnection Agreement (Agreement), dated June 15, 1988, between Edison and Central Illinois Light Company (CILCO). The new Agreement replaces an existing Agreement between the Parties. The Agreement provides Service Schedules for the exchange of Limited Term Power, Emergency Energy, Economy Energy, Short Term Power, and General Purpose Energy.

Copies of this filing were served upon the Illinois Commerce Commission and CILCO.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**6. Wisconsin Electric Power Company**

[Docket No. ER88-524-000]

Take notice that on July 20, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a supplement to FERC Rate Schedule No. 45, its interconnection agreement with Upper Peninsula Power Company (UPPCO). The supplement indicates the negotiated capacity charge associated with the provision of Limited Term Power by Wisconsin Electric to UPPCO from January through June, 1988. The capacity charge varies each month to ensure that the same level of charges is rendered to UPPCO as if service was rendered under Service Schedule G—Presque Isle Power.

Wisconsin Electric requests an effective date of January 1, 1988. According to Wisconsin Electric, UPPCO joins in the requested effective date. As a result, Wisconsin Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on UPPCO, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**7. Black Hills Power and Light Company, an assumed business name of Black Hills Corporation**

[Docket No. ER88-523-000]

Take notice that on July 20, 1988, Black Hills Power and Light Company, an assumed business name of Black Hills Corporation (Black Hills) tendered for filing an agreement between Black Hills and Pacific Power & Light Company, an assumed business name of PacifiCorp (Pacific), which provides for the sale of energy by Black Hills to Pacific during a two year period commencing July 1, 1988.

Black Hills requests waiver of the Commission's notice requirements to permit this rate schedule to become effective July 1, 1988, this being the date on which service commenced.

Copies of the filing have been supplied to Pacific and the regulatory commissions of the states of Montana, South Dakota and Wyoming.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**8. Union Electric Company**

[Docket No. ER88-522-000]

Take notice that on July 18, 1988, Union Electric Company tendered for filing Fifth Amendment and Third Revised Schedule C dated both as of June 10, 1988 modifying the September 18, 1979 Interconnection Contract between City of Columbia, Missouri, and Union Electric Company.

Said Amendment and Schedule modifies the daily reservation charge for Short-Term Non-Firm and provides for transactions for periods of greater than twelve months and extends the term of said Contract to December 31, 2000.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**9. Montana Power Company**

[Docket No. ER88-521-000]

Take notice that on July 18, 1988, Montana Power Company (Montana) tendered for filing summaries of sales made under the Company's FERC Electric Traffic, 2nd Revised Volume No. 1, during July 1987 through December with cost jurisdictions for the rates charged.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**10. Alleghany Generating Company**

[Docket No. ER88-533-000]

Take notice that on July 26, 1988, Allegheny Generating Company (AGC) tendered for filing a proposed change in its Rate Schedule FERC No. 1. The proposed change would increase revenues to AGC by about $9,200,000 based on the twelve-month period ended September 30, 1989. The proposed effective date for the increased rates is October 1, 1988.

The change proposed is for the purpose of reflecting changed conditions affecting the rate of return on equity AGC should be permitted to earn.

Copies of the filing were served upon the jurisdictional customers, the Maryland Public Service Commission, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the State Corporation Commission of Virginia, and the West Virginia Public Service Commission, and upon all other parties participating in Docket Nos. EL86-37-000 and EL86-38-000.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**11. Northeast Utilities Service Company**

[Docket No. ER88-528-000]

Take notice that on July 21, 1988, Northeast Utilities Service Company (NUSCO) tendered for filing proposed changes with respect to transmission service agreements between the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company (HWP), City of Holyoke, Massachsuetts Gas & Electric Department (Holyke), and Westfield Gas and Electric Department (Westfield).

The proposed changes would not increase rates, but would (1) extend the termination of the Rate Schedules, (2) change the amounts of service provided under the Rate Schedules, and (3) render null and void the provisions regarding the State of Connecticut Gross Earnings Tax.

Pursuant to § 35.19 of the Commission's Regulations and in order to conform with the requirements of § 35.13 (b) and (c), NUSCO incorporates hereto by reference the information previously submitted to the Commission under FERC Rate Schedule Nos. CL&P 219, WMECO 229, and HWP 37 (Agreement A) and FERC Rate Schedule Nos. CL&P 290 and WMECO 228 (Agreement B).

NUSCO requests that the Commission waive its standard notice periods and permit the rate schedule changes to become effective as of February 1, 1983.

NUSCO states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, HWP, Holyoke and Westfield.

NUSCO further states that the filing is in accordance with section 35 of the Commission's Regulations.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**12. Pacific Gas and Electric Company**

[Docket No. ER-352-000]

Take notice that on July 26, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing changes to a Rate Schedule covering services rendered by PG&E under the agreement entitled, "Interconnection Agreement between Pacific Gas and Electric Company and the City of Santa Clara" (Interconnection Agreement). The Interconnection Agreement was initially filed under Docket No. ER84-6-000 and was assigned FERC Rate Schedule No. 85.

The Interconnection Agreement provides for firm transmission service between Points of Receipt and Points of Delivery as shown in its Exhibit A-4. The rate schedule change is in the form of a revised Exhibit A-4. The revisions to Exhibit A-4 include changing the maximum rates of delivery between certain points of receipt and delivery, and adding another point or receipt. These revisions are necessary to reflect the rerating of NCPA's two geothermal plants, the change in Sacramento Municipal Utility District's assignment on the Pacific Intertie, new agreements to provide firm transmission for Coldwater Creek geothermal plant, reallocation of firm tramismission for small hydro, and the revision of the forecast of Partial Requirements.

PG&E has requested waivers to allow the revised exhibit to be effective retroactively to September 1, 1987.

Copies of this filing have been served upon Santa Clara and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco and PG&E's Mission Trail Regional Office in San Jose.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**13. New York State Electric & Gas Company**

[Docket No. ER88-520-000]

Take notice that on July 15, 1988, New York State Electric & Gas Company (NYSEG) tendered for filing pursuant to § 35.13 of the regulations under the Federal Power Act, as a Supplement to its rate schedules, Letter Agreements with Connecticut Light and Power Company (CL&P), Central Hudson Gas & Electric Corporation (Central Hudson), and the New York Power Authority (NYPA), respectively. The agreements reflect the mutual agreement of NYSEG and the respective parties to an increase in the reservation change ceiling from $15.00 to $29.00 based on the latest calculation of Fixed Charges on NYSEG Generation. Service under these agreements commenced on January 1, 1988 and shall be terminated in writing by mutual agreement.

NYSEG has filed a copy of this filing with the respective parties and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that January 1, 1988 be allowed as the effective date of the filing.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secertary.*

[FR Doc. 88-17474 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. QF86-1001-001 et al.]

**Majave Cogeneration Co., L.P., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

Take notice that the following filings have been made with the Commission:

**1. Majave Cogeneration Company, L.P.**

[Docket No. QF86-1001-001]

July 27, 1988.

On July 13, 1988, Majave Cogeneration Company, L.P. c/o Westinghouse Electric Corporation, Power System Division, 1310 Beulah Road, Pittsburgh, Pennsylvania 15235 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the site of U.S. Borax's mine and refining processing facility in Boron, California. The facility will consist of a combustion turbine generator, a two pressure level heat recovery steam generator (HRSG), and a condensing/extraction steam turbine-generator. The extracted steam together with low pressure steam from the HRSG will be used in the U.S. Borax facility for borate processing operations. The net electric power production capacity of the facility will be 45 MW.

The original application was filed on August 22, 1986 by Louis G. Nannini and was granted on November 20, 1986 (37 FERC ¶62,131). The recertification is requested due to change in ownership. The ownership interest will be transferred from L.G. Nannini to Majave Cogeneration Company, L.P. which is a Delaware Limited Partnership. WESGEN Inc., a Wholly owned subsidiary of Westinghouse Electric Power Corporation will be the managing general partner.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**2. UtiliCorp United Inc.**

[Docket No. ES88-49-000]

July 28, 1988.

Take notice that on July 21, 1988, UtiliCorp United Inc. (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to and including $100 Million of General Mortgage Bonds and for exemption from the compatitive bidding and negotiated placement requirements.

*Comment date:* August 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

**3. Vulcan/BN Geothermal Power Company**

[Docket No. QF85-199-001]

August 1, 1988.

On July 15, 1988, Vulcan/BN Geothermal Power Company, a Nevada Partnership (Applicant) of 7001 Gentry Road Calipatria, California 92233 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in the Niland Area of Imperial County, California, uses geothermal energy obtained from the Salton Sea Known Geothermal Resource Area. The facility consists of one high pressure and one low pressure condensing steam turbine generators. The primary energy source will be natural geothermal water, steam, or brine. The net electric power production capacity of the facility will be 34 MW.

Vulcan Power Company ("Vulcan") and BN Geothermal, Inc. ("BNG") each own a 50% interest in Vulcan/BN Geothermal Power Company. BNG is a wholly-owned subsidiary of Burlington Resources, Inc., a Delaware corporation ("BRI"). BRI plans to sell all of the shares of BNG to Mission Energy Company ("Mission"), which is a wholly-owned subsidiary of the Mission Group, which is in turn a wholly-owned subsidiary of SCEcorp. SCEcorp owns all of the outstanding voting stock of Southern California Edison Company, an investor owned electric utility. Vulcan is a wholly-owned subsidiary of Magma Power Company ("Magma"). Applicant states that neither Vulcan nor Magma are utility Company, however, since Magma stock is publicly traded, it is possible for electric utilities to establish ownership interest in the facility. Magma and subsidiaries of Magma and Mission, through Del Ranch, L.P., a California limited partnership, currently own a 34 MW (net) facility and which is located within one mile of the project.

*Comment date:* Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17475 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-519-000 et al.]

**Questar Pipeline Co. et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Questar Pipeline Company**

[Docket No. CP88-519-000]

July 28, 1988.

Take notice that on June 27, 1988, as supplemented July 22, 1988, Questar Pipeline Company (Questar), 29 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP88-519-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to increase the maximum daily firm withdrawal rate from its Clay Basin storage field in Daggett County, Utah, for a period in excess of two years, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that by Commission order issued in Docket No. CP81-325-000, 19 FERC ¶61,079 (1982) Questar was authorized to provide contract storage service from its Clay Basin underground storage reservoir pursuant to Storage Service Rate Schedule S-3 and construct and operate injection/withdrawal wells and appurtenant facilities required to provide such service. It is asserted that Questar's firm obligation to provide the authorized storage service was limited to: (a) Injecting a maximum of 300 MMcf per day for no more than 225 days during the injection period, (b) withdrawing on a firm basis up to a maximum of 75 MMcf per day for no more than 150 days during any withdrawal period and (c) seasonally delivering (beyond the 1983 heating season) up to 7.5 Bcf. It is stated that Questar is requesting authority to increase the authorized maximum daily withdrawal rate from its Clay Basin storage field from 75 MMcf of natural gas to 125 MMcf of natural gas for a period in excess of two years.

It is asserted that the proposed additional maximum firm daily withdraw level would have minimal or no impact on the peak day or annual deliveries of either Questar's Storage or Transmission Division's since the required peak-day volumes are currently available on a best-efforts basis. It is alleged that Questar anticipates revising its FERC Gas Tariff, Original Volumes No. 2, Rate Schedule S-3 as necessary to reflect any authorization received under the requested authority.

It is explained that no additional facilities are required to effect the

proposed increased firm daily withdrawal rate of natural gas from Clay Basin and that the proposal would have no adverse impact on the current level of services provided for Northwest Pipeline Corporation.

*Comment date:* August 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

**Natural Gas Pipeline Company of America**

[Docket No. CP88-578-000]

July 27, 1988.

Take notice that on July 14, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-578-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Sun Operating Limited Partnership (Sun), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 182,000 MMBtu of gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, and 36,500,000 MMBtu on an annual basis for Sun. It is stated that Natural would receive the gas for Sun's account at various existing receipt points in Texas, offshore Texas, Louisiana and offshore Louisiana. Natural then proposes to deliver equivalent volumes of gas in Louisiana and Illinois. It is asserted that the transportation would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced May 17, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**3. Gas Utility District No. 1 of Tangipahoa Parish, Louisiana**

[Docket No. CP88-555-000]

July 27, 1988.

Take notice that on July 8, 1988, Gas Utility District No. 1 of Tangipahoa Parish, Louisiana (Applicant), 2050 Jerry Wilde Road, Ponchatoula, Louisiana 70454, filed in Docket No. CP88-555-000 an application pursuant to section 7(a) of the Natural Gas Act for an order directing Southern Natural Gas Company (SNG) to establish an interconnection of its facilities with those proposed by Applicant and to sell and deliver up to 704 Mcf of natural gas per day for the first year and up to 880 Mcf of natural gas per day by the third year for resale and distribution to approximately 808 customers in the proposed service area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant explains that the proposed service would be provided to an area east of Amite, Louisiana, including the small communities of Uneedus, Osceola, Husser and Holton, along with rural areas that have sufficient development. Applicant estimates that by the third year of service there would be 800 residential customers, 7 commercial customers, and one school.

Applicant proposes to receive service from one meter station to be built by SNG and located in section 14, T4S, R8E, where SNG's transmission line crosses Louisiana Highway 445. Applicant states that the actual meter station would be at a site mutually agreeable to both parties. It is stated that the project would cost approximately $1,220,000 and would be financed through a 25-year loan from the United States Department of Agriculture Farmers Home Administration. Applicant further proposes that SNG provide this service at a cost based on SNG's Rate Schedule G-1.

*Comment date:* August 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

**4. United Gas Pipe Line Company**

[Docket No. CP88-567-000]

July 27, 1988.

Take notice that on July 12, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-567-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a one-inch sales tap on United's existing 2-inch Poplarville, Mississippi lateral for supplying natural gas to the residence of Mr. David Burrus, who would be served through Entex, Inc. (Entex), a local distributor under its blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the new sales tap would allow Entex to deliver an estimated average of 1.9 Mcf/d of natural gas to Mr. Burrus without detriment or disadvantage to its other existing customers and without an increase in Entex's contractual requirements.

United provides Entex's its gas requirements for resale under United's Rate Schedule DG-N, it is explained.

It is further stated that Entex would reimburse United for the cost of installing the tap.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**5. United Gas Pipe Line Company**

[Docket No. CP88-590-000]

July 27, 1988.

Take notice that on July 18, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-590-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a one-inch sales tap on United's existing 6-inch Boggy Creek/Huntsville main line near Huntsville, Texas, Walker County to supply natural gas to Entex Inc. (Entex), a local distributor, for resale to the Walker County Barn for residential and commercial usage under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the new sales tap would allow Entex to deliver an estimated average of 1.6 Mcf/d of natural gas to the Walker Barn without detriment of disadvantage to its other existing customers and without an increase in Entex's contractual requirements.

United provides Entex's its gas requirements for resale under United's Rate Schedule G-N, it is explained.

It is further stated that Entex would reimburse United for the cost of installing the tap.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**6. Natural Gas Pipeline Company of America**

[Docket No. CP88-625-00]

July 27, 1988.

Take notice that on July 25, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88-625-000 a request pursuant to §§ 157.205 and 284.223 of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for N-GAS, Inc. (N-Gas), a marketer, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Natural proposes to transport on an interruptible basis up to 15,000 MMBtu on natural gas equivalent per day, plus additional quantities or overrun gas, on behalf of N-Gas pursuant to a transportation agreement dated March 24, 1988 between Natural and N-Gas. Natural would receive gas at various existing points of receipt on its system in Oklahoma, Texas, New Mexico, Kansas, Iowa and Illinois and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing points of delivery in Illinois, Arkansas, New Mexico, Iowa, Kansas, Texas and Louisiana.

Natural further states that the estimated average daily and annual quantities would be 6,000 MMBtu and 2,190,000 MMBtu, respectively. Service under § 284.223(a) commenced on May 27, 1988, as reported in Docket No. ST88–4780, it is stated.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. It no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. It a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17429 Filed 8–2–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. CP88–601–000 et al.]**

## Southern Natural Gas Co. et al. Natural Gas Certificate Filings

July 29, 1988.

Take notice that the following filings have been made with the Commission:

[Docket No. CP88–601–000]

Take notice that on July 21, 1988, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303–2563, filed in Docket No. CP88–601–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Amax Metals Recovery, Inc. (Amax) under the authorization issued in Docket No. CP88–601–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Amax, an end user located in Louisiana pursuant a service agreement dated May 31, 1988. It is stated that the term of the service agreement is for a primary term of one month, to continue and remain in effect for successive terms of one month unless canceled by either party. Southern proposed to transport on a peak day up to 4,000 MMBtu; on an average day 2,600 MMBtu; and on an annual basis 949,000 MMBtu of natural gas for Amax. Southern proposes to receive the gas at various receipt points in Texas, Louisiana , Mississippi, and Alabama for delivery to Amax at its plant in Louisiana. Southernm assets that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Amax pursuant to its Rate Schedule IT. It is further stated that Southern may agree from time to time to discount the rate charged Amax for transportation services in accordance with the provisions of Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.23(a)(1) of the Regulations. Southern commenced such self-implementing service on June 2, 1988, as reported on Docket No. ST88–4576–000.

*Comment date:* September 12, 1988, in accordance with standard Paragraph G at the end of this notice.

### 2. Columbia Gas Transmission Corporation

[Docket No. CP88–622–000]

Take notice that on July 22, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP88–622–000 a reqeust pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install 13 new delivery points for existing wholesale customers under the certificate issued on Docket No. CP83–76–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate the facilities necessary to provide 13 additional points of delivery as listed below.

| Wholesalecustomer | Com-mercial | Resi-dential | Indus-trial | Annual Vol. (Dth) |
|---|---|---|---|---|
| Columbia Gas of Kentucky, Inc. | | 1 | 1 | 100,150 |
| Columbia Gas of Ohio, Inc. | 1 | 5 | | 51,438 |
| Dayton Power and Light Company | | 1 | | 6,030 |
| Mountaineer Gas Company | | 4 | | 600 |

Columbia indicates that the volumes of gas that would be delivered through the proposed faiclities would be within the currently authorized levels of service. It is stated that any sales made though the proposed points of delivery would be under Columbia's Rate Schedule CDS. Columbia states that there would be no impact on its existing peak day and annual obligations to its customers as a result of the proposed delivery points.

*Comment date:* September 12, 1988, in accordance withn Standard Paragraph G at the end of this notice.

**3. Texas Gas Transmission Corporation**

[Docket No. CP88-558-000]

Take notice that on July 11, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP88-558-000, an application pursuant to § 157.205 and 157.212(a) of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) to increase the measurement capacities of two existing delivery points to Mississippi Valley Gas Company (MVG) by the installation of an additional 2-inch orifice meter run at each delivery point under the authorization issued to it in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the Request on file with the Commission and open to public inspection.

Texas Gas states that currently it sells natural gas to MVG pursuant to a service agreement dated September 1, 1970. It is stated that the proposed expanded delivery points, located on Texas Gas's main lines in DeSoto County, Mississippi, 01.1 mile north of the city of Southaven, Mississippi, would have a capacity of 400 MMBtu per hour each in order for Texas Gas to alleciate measurement difficulties experienced in the past by Texas Gas at the two points.

It is explained that the expanded delivery points would not result in an increase in MVG's current contract demand or quantity entitlement. Furthermore, it is asserted that service to MVG through the expanded delivery points can be accomplished without detriment to Texas Gas's other customers. It is further stated that the increase in volumes of natural gas delivered by Texas Gas through the explanded delivery points proposed herein would be so minimal that it would have virtually no effect on Texas Gas's peak day and annual deliveries.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**4. CNG Transmission Corporation**

[Docket No. CP88-574-000]

Take notice that on July 13, 1988, CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-574-000 an application pursuant to section 7(c) of the Natural Gas Act, as amended, and the Commission's Rules and Regulations thereunder, for an order issuing a certificate of public convenience and necessity authorizing a new sales service for requirements customers that have elected transportation without one hundred percent standby service, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, CNG Transmission proposes to offer a new sales service under Rate Schedule RQT that would permit customers to elect the desired amount of standby service or drop it completely, with a right to make annual downward adjustments to the amount of standby service elected. it is stated that the service proposed by CNG Transmission would be a requirements service similar to CNG Transmission's current Rate Schedule RQ, except that Rate Schedule RQT expressly relieves CNG Transmission of any obligation to provide service for quantities converted to transportation that exceed the customer's chosen amount of standby service.

CNG Transmission's application states that Rate Schedule RQT would include ratchet clauses that would automatically increase peak day and annual demand levels if those levels exceeded the Billing Demand set forth in the customer's service agreement by more than the limitations set forth in Rate Schedule RQT. The application further states that customers currently served under Rate Schedule RQ would be entitled to elect service under Rate Schedule RQT upon notice to CNG Transmission.

*Comment date:* August 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearings will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the infant notice by the Commission, file pursuant to Rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17476 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CP88-602-000 et al.]

**United Gas Pipline Co. et al; Natural Gas Certificate Filings**

July 28, 1988.

Take notice that the following filings have been made with the Commission:

**1. United Gas Pipeline Company**

[Docket No. CP88-602-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-602-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for E. I. DuPont de Nemours and Company (DuPont). United explains that service commenced June 23, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4696. United explains that the peak day quantity would be 15,450 dekatherms, the average daily quantity would be 15,450 dekatherms, and that the annual quantity would be 5,639,250 dekatherms. United explains that it would receive natural gas for DuPont's account at points of receipt in the States of Louisiana and Mississippi. United states that it would redeliver the gas for DuPont's account at an existing interconnection between United and Shell's North Terrebonne Gas Processing Plant in Terrebonne Parish, Lousiana and a proposed interconnection between United and DuPont in St. John the Baptist Parish, Lousiana.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**2. Williston Basin Interstate Pipeline Company**

[Docket No. CP88-593-000]

Take notice that on July 20, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP88-593-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add metering and appurtenant facilities at locations in Williams and Burke Counties of North Dakota under Williston Basin's blanket certificate issued in Docket No. CP82-487-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin proposes to construct metering and appurtenant facilities at the Williams County, North Dakota location so as to redeliver interruptible transportation gas to Western Gas Processors Ltd.'s Temple Plant for use in an oil enhancement program behind the plant. Williston Basin also proposes to add a meter and regulator station and appurtenant facilities in Burke County, North Dakota to redeliver interruptible transportation gas to Phillips Petroleum Company's McGregor Compressor Station.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**3. Tennessee Gas Pipeline Company**

[Docket No. CP88-597-000]

Take notice that on July 20, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252, filed in Docket No. CP88-597-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Citizens Gas Supply Corporation (Citizens). Tennessee explains that service commenced June 22, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4707. Tennessee further explains that the peak day quantity would be 105,000 dekatherms, the average daily quantity would be 2,000 dekatherms, and that the annual quantity would be 730,000 dekatherms. Tennessee explains that it would receive natural gas for Citizens' account from points of receipt located in the States of Alabama, Louisiana, and Texas. Tennesse states that the points of delivery are located in the States of Alabama, Mississippi, Louisiana, and West Virginia. Tennessee further explains that locations of the ultimate delivery points of the gas are in the States of Ohio, New York, Alabama, Mississippi, Kentucky West Virginia, and Pennsylvania.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**4. United Gas Pipeline Company**

[Docket No. CP88-603-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-603-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Seagull Marketing Services, Inc. (Seagull). United explains that service commenced June 22, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4696. United explains that the peak day quantity would be 77,250 dekatherms, the average daily quantity would be 77,250 dekatherms, the average daily quantity would be 77,250 dekatherms, and that the annual quantity would be 28,196,250 dekatherms. United expalins that it would receive natural gas for Seagull's account at points of receipt in the State of Louisiana. United states that it would redeliver the gas for Seagull's account at an existing interconnection between United and Mississippi River Transmission Corporation in Ouachita Parish, Louisiana.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**5. United Gas Pipeline Company**

[Docket No. CP88-604-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251,

filed in Docket No. CP88-604-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Nerco Oil & Gas, Inc. (Nerco). United explains that service commenced June 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4648. United explains that the peak day quantity would be 77,250 dekatherms, the average daily quantity would be 77,250 dekatherms, and that the annual quantity would be 28,196,250 dekatherms. United explains that it would receive natural gas for Nerco's account at points of receipt in the States of Mississippi and Louisiana. United states that it would redeliver the gas for Nerco's account at points of delivery in the State of Louisiana.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**6. United Gas Pipeline Company**

[Docket No. CP88-605-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No CP88-605-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Texaco Gas Marketing, Inc. (Texaco). United explains that services commenced June 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4645. United explains that the peak day quantity would be 27,810 dekatherms, the average daily quantity would be 27,810 dekatherms, and that the annual quantity would be 10,150,650 dekatherms, United explains that it would receive natural gas for Texaco's account at points of receipt in the State of Louisiana. United states that it would redeliver the gas for Texaco's account at points of delivery in the State of Mississippi and Louisiana.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**7. United Gas Pipeline Company**

[Docket No. CP88-606-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No CP88-606-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Texaco Inc. (Texaco). United explains that service commenced June 1, 1988, under § 284.223(a) of the Commission's Regulation, as reported in Docket No. ST88-4640. United explains that the peak day quantity woule be 51,500 dekatherms, the average daily quantity would be 51,500 dekatherms, and that the annual quantity would be 18,797,500 dekatherms. United explains that it would receive natural gas for Texaco's account at points of receipt in the state of Texas. United states that it would redeliver the gas for Texaco's account at points of delivery in the state of Texas.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**8. United Gas Pipeline Company**

[Docket No. CP88-607-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No CP88-607-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for LaSer Marketing Company (LaSer). United explains that service commenced May 6, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4669. United explains that the peak day quantity would be 77,250 dekatherms, the average daily quantity would be 77,250 dekatherms, and that the annual quantity would be 28,196,250 dekatherms. United explains that it would receive natural gas for LaSer's account at an existing interconnection between United and Sea Robin Pipeline Company in Vermillion Parish, Louisiana. United states that it would redeliver the gas for LaSer's account at an existing interconnection between United and Florida Gas Transmission Company in St. Landry Parish, Louisiana.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**9. United Gas Pipeline Company**

[Docket No. CP88-608-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No CP88-608-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for the Resource Group (Resource). United explains that service commenced June 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4697. United explains that the peak day quantity would be 15,450 dekatherms, the average daily quantity would be 15,450 dekatherms, and that the annual quantity would be 5,639.250 dekatherms. United explains that it would receive natural gas for Resource's account at points of receipt in the State of Louisiana. United states that it would redeliver the gas for Resource's account at an existing interconnection between United and Mississippi Chemical Corporation in Jackson County, Mississippi, and an existing interconnection between United and Shell's Norfth Terrebonne Gas Processing Plant in Terrebonne Parish, Louisiana.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**10. United Gas Pipeline Company**

[Docket No. CP88-609-000]

Take notice that on July 21, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No CP88-609-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Seagull Marketing Services, Inc. (Seagull). United explains that service commenced June 22, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-6998. United explains that the peak day quantity would be 77,250 dekatherms, the average daily quantity would be 77,250 dekatherms, and that the annual quantity would be 28,196, 250 dekatherms. United explains that it would receive natural gas for Seagull's account at points or receipt in the state of Louisiana. United states that it would redeliver the gas for Seagull's account at an existing interconnection between United and Mississippi River Transmission Corporation in Ouachita Parish, Louisiana.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**11. Great Lake Gas Transmission Company**

[Docket No. CP88-599-000]

Take notice that on July 21, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88-599-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Unicorp Energy Inc. (Unicorp), a natural gas marketing company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Unicorp has requested that Great Lakes transport, on an interruptible basis, up to 15,000 Mcf per day for the account of Unicorp, from a point of International Border between the United States and Canada, at Emerson, Manitoba, where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited, to a point where Great Lakes' facilities interconnect with those of: (1) ANR Pipeline Company (ANR) at Fortune Lake and at Farwell, Michigan and (2) Michigan Consolidated Gas Company (MichCon) at Boyne City and at Belle River Mills, Michigan. It is indicated that ANR will transport the subject volumes it receives for the account of Unicorp to various points where its facilities interconnect with the facilities of MichCon. It is further indicated that MichCon will transport and deliver the subject volumes to Unicorp's customers. It is stated that the initial term of the proposed arrangements is to end on November 1, 1989, but the term can be extended year-to-year thereafter, unless terminated by either party.

Great Lakes states that the rate for the transportation of the subject volumes to the Fortune Lake and Boyne delivery points will be a rate equal to the 100 percent load factor rate determined from the transportation components applicable to deliveries in Great Lakes' Central Zone under existing Rate Schedule CQ-2 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from Emerson to Great Lakes' Central Zone. Great Lakes further states that the rate for the transportation service to the Farwell and Belle River delivery points will be equal to the 100 percent load factor rate applicable to deliveries in the Eastern Zone under existing Rate Schedule T-4 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from Emerson to Great Lakes' Eastern Zone.

*Comment date:* August 18, 1988, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natrual Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 88-17430 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CS71-1092-000 et al.]

**Chalk Hill Gas, Inc., Orville Eberly et al.; Applications for Small Producer Certificates [1]**

August 1, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

| Docket No. | Date Filed | Applicant |
|---|---|---|
| CS71-1092-000 | [1] 7-1-88 | Chalk Hill Gas, Inc. (Orville Eberly), c/o Eberly and Meade, Inc., One Grand Park—Suite 210, 777 Northwest Grand Boulevard, Oklahoma City, OK 73118-6088 |
| CS73-369 | [2] 7-8-88 | Pedestal Oil Company, Incorporated (Pedestal Company), P.O. Box 1522, Oklahoma City, OK 73101 |
| CS76-908-001 | [3] 7-1-88 | Greystone Resources, Inc., Mark Mitrisin and Patricia H. Miller (Robert E. Eberly), c/o Eberly and Meade, Inc., One Grand Park—Suite 210, 777 Northwest Grand Boulevard, Oklahoma City, OK 73118-6088 |
| CS77-811 | [4] 7-18-88 | Westar Energy, Inc. (Wood & Locker, Inc.), 505 N. Big Spring Street, Suite 600, Midland, TX 79701-8602 |
| CS86-1-001 | [5] 7-18-88 | W&T Oil Properties, Inc. and W&T Offshore, Inc. (W&T Oil Properties, Inc.), 1012 Pere Marquette Building, New Orleans, LA 70112 |
| CS87-36-000 | [7] 7-5-88 | Daniel L. Veirs and Daniel L. Veirs d/b/a Veirs Production Company, (Daniel L. Veirs), 223 W. Wall, Suite 500, Midland, TX 79701 |
| CS88-76-000 | [8] 6-16-88 | Piney Fork Production Company, P.O. Box 4234, Houston, TX 77210-4234 |
| CS88-77-000 | [8] 6-16-88 | White Pine Company, P.O. Box 33, South Houston, TX 77587 |
| CS88-78-000 | [9] 6-30-88 | Wes-Mor Oil & Gas, Inc., P.O. Box 1269, Graham, TX 76046 |
| CS88-79-000 | 7-11-88 | Landmark Reserves, Inc., P.O. Box 1022, Breckenridge, TX 76024 |
| CS88-80-000 | [10] 7-18-88 | Patwell Oil & Gas Company, *et al.*,[11] 1320 Lake Street, Fort Worth, TX 76102 |
| CS88-81-000 | 7-15-88 | Pepin Oil Ventures, a general partnership, P.O. Box 1936, Stillwater, OK 74076 |

[1] By letter dated June 10, 1988, Applicant requests that the small producer certificate issued to Orville Eberly in Docket No. CS71-1092 be redesignated under the name of Chalk Hill Gas, Inc. Applicant states that Orville Eberly passed away on April 3, 1983, that his estate is in the process of being settled, and that all of his interest is being assigned to Chalk Hill Gas, Inc.

[2] By letter dated July 5, 1988, Applicant requests that the small producer certificate in Docket No. CS73-369 be redesignated from Pedestal Company to Pedestal Oil Company, Incorporated. Applicant states that Pedestal Company and Pedestal Oil Company, Incorporated, are one and the same.

[3] By letter dated June 10, 1988, Applicant requests that the small producer certificate issued to Robert E. Eberly in Docket No. CS76-908 be redesignated in the name of Greystone Resources, Inc. Applicant states that Robert E. Eberly, Sr., has assigned all of his interest to Greystone Resources, Inc., of which he is President. Applicant also states that it would like to include Mark Mitrisin and Patricia H. Miller under the small producer certificate in accordance with § 157.40(b)(5) of the Commission's Regulations. Applicant states Mark Mitrisin is Treasurer and Patricia H. Miller is Assistant Secretary of Greystone Resources, Inc.

[4] By letter dated July 14, 1988, Applicant requests that the small producer certificate issued to Wood & Locker, Inc., in Docket No. CS77-811, be redesignated in the name of Westar Energy, Inc. Applicant states that Wood & Locker's name has been changed to Westar Energy, Inc., as evidenced by Certificate of Amendment issued by The State of Texas Secretary of State on March 21, 1988.

[5] Application received June 17, 1988. Filing date is date of receipt of filing fee.

[6] By letter dated June 17, 1988, as supplemented by letter dated July 15, Applicant requests that W&T Offshore, Inc., be added as small producer certificate co-holder in Docket No. CS86-1-001. Applicant states that W&T Offshore, Inc., is a newly-formed wholly-owned affiliate of W&T Oil Properties, Inc.

[7] By letter dated July 1, 1988, Applicant requests that his small producer certificate issued in Docket No. CS87-36-000 be amended to include his d/b/a/ name for Veirs Production Company in addition to Daniel L. Veirs.

[8] Additional material received July 20, 1988.

[9] Application received June 27, 1988. Filing date is date of receipt of filing fee.

[10] Application received July 13, 1988. Filing date is date of receipt of filing fee.

[11] The *et al.* parties are Patricia Dean Boswell, John P. Boswell, Vivienne Boswell Mays, Patricia Dean Boswell/ Marital Trust, Patricia Dean Boswell Revocable Trust, Marc H. Lowrance, Jr., Mary Anne Lowrance, M.H. Lowrance and Philip H. Wolfard.

[FR Doc. 88-17431 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-152-001]**

## Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 29, 1988.

Take notice that on July 25, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of June 1, 1988:

Second Revised Sheet No. 44
Second Revised Sheet No. 45
Third Revised Sheet No. 46
Fourth Revised Sheet No. 47
Second Revised Sheet No. 47A
Second Revised Sheet No. 48
Second Revised Sheet No. 49

Alabama-Tennessee states that the tariff sheets are in compliance with the Commission's letter order issued on June 23, 1988 in the captioned proceeding. Such letter order directed Alabama-Tennessee to file tariff sheets to conform to the requirements of Order Nos. 483 and 483-A.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17432 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP85-122-010]**

## Colorado Interstate Gas Co.; Compliance Filing

July 29, 1988.

Take notice that on July 25, 1988, Colorado Interstate Gas Company (CIG) tendered for filing Third Revised Sheet No. 54 of Original Volume No. 1 of its FERC Gas Tariff in compliance with the requirements of Opinion No. 290-B. CIG states that the Commission required that

CIG modify its longstanding tariff provision with respect to reductions in annual entitlements. CIG states that the instant tariff filing reflects a modification to Section 18.8 of its FERC Gas Tariff General Terms and Conditions in compliance with Opinion No. 290–B. CIG further states that this filing is made under protest and without prejudice to CIG's rights to seek judicial review of the requirements of Opinion No. 290–B and subject to reinstatement of its existing tariff provision on the basis of the final disposition of such proceedings. CIG states that, should the Commission determine that an effective date is required, it requests an effective date of August 19, 1988. A copy of this filing is being served on CIG's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17433 Filed 8–2–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP87–74–002]**

## Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

July 29, 1988.

Take notice that on July 25, 1988, Colorado Interstate Gas Company ("CIG") tendered for filing certain revised tariff sheets to CIG's FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission's Letter Order issued July 15, 1988, in Docket No. RP87–74–000. The instant revisions reflect modifications to certain provisions of CIG's Sales Standby Service as contained in an Offer of Settlement approved by the Commission in the above-referenced Letter Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17434 Filed 8–2–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–149–002]**

## Paiute Pipeline Co.; Filing

July 29, 1988.

Take notice that on July 25, 1988, Paiute Pipeline Company (Paiute) filed Substitute Original Sheet Nos. 62, 63, 66, 67, 68 and 70 to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective August 1, 1988.

Paiute states that by Letter Order dated June 28, 1988, Southwest Gas Corporation was directed to file certain corrections to its filing of May 2, 1988 in Docket Nos. RP88–149–000 and FERC Order Nos. 483 and 483–A. Paiute requests these tariff sheets be substituted for their counterparts filed on May 2, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17477 Filed 8–2–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–123–002]**

## Panhandle Eastern Pipe Line Co.; Change in Tariff

July 29, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 26, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Sixteenth Revised Sheet No. 43–2
First Substitute Seventeenth Revised Sheet No. 43–4
First Substitute Fifth Revised Sheet No. 43–4.1
First Substitute First Revised Sheet No. 43–4.3

Panhandle states that the proposed effective date of these revised tariff sheets is June 1, 1988.

Panhandle states that the instant filing is being filed in accordance with Order Nos. 483 and 483–A and in compliance with the Commission's letter order dated July 1, 1988 in the subject proceeding.

Copies of the filing were served upon Panhandle's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspecton in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17478 Filed 8–2–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–162–001]**

## Ringwood Gathering Co.; Filing of Revisions to Revised Purchased Gas Adjustment Clause

July 29, 1988.

Take notice that on July 25, 1988, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Eleventh Revised

Sheet No. 59, Sixth Revised Sheet No. 60, Sixth Revised Sheet No. 61, Fifth Revised Sheet No. 62, and Fifth Revised Sheet No. 63 to its FERC Gas Tariff pursuant to the June 23, 1988 letter order in Docket No. RP88-162-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before August 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 88-17479 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP88-222-000]

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 29, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 25, 1988 tendered for filing as part of its FERC Gas Tariff.

*Fifth Revised Volume No. 1*

Revised Second Revised Sheet No. 50
Revised Second Revised Sheet No. 50A
Revised Second Revised Sheet No. 50B
Revised Second Revised Sheet No. 50C
Revised Second Revised Sheet No. 50D
Revised Second Revised Sheet No. 51
Revised Second Revised Sheet No. 51A
Revised Second Revised Sheet No. 51B
Revised Second Revised Sheet No. 51C
Revised Second Revised Sheet No. 51D

*Original Volume No. 2*

Revised Sixth Revised Sheet No. 970
Revised Sixth Revised Sheet No. 971
Revised Seventh Revised Sheet No. 1017
Revised Seventh Revised Sheet No. 1018

Texas Eastern states that the purpose of this filing is to eliminate the mileage rate for transportation within Zone A under Rate Schedules TS-1, TS-2 and IT-1 and in lieu thereof replace it with a single commodity rate for transportation originating and delivered within Zone A under these rate schedules, regardless of the distance of haul.

Texas Eastern states that it is making this rate design change for Zone A in order to provide consistency with the rate methodology utilized in Zones B, C and D with respect to its transportation, to return to the historical method used to establish rates in its Zone A previously approved by the Commission, and to provide flexibility for selected discounting in accordance with Order Nos. 436 and 500. Texas Eastern states that under its proposal, Texas Eastern would be at risk for the full Zone A rate should it not achieve design levels.

Texas Eastern states that the proposed effective date of the tariff sheets listed above is September 1, 1988, the date of Texas Eastern's compliance filing in Docket No. RP88-67 which was made July 22, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and to all current customers under Rate Schedules IT-1, TS-1, and TS-2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 88-17480 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP88-223-000]

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 29, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 25, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Third Revised Sheet No. 60
Third Revised Sheet No. 61
Third Revised Sheet No. 62
Third Revised Sheet No. 63
Third Revised Sheet No. 64-69
First Revised Sheet No. 483A
First Revised Sheet No. 483B

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover the take-or-pay charges to be billed by Southern Natural Gas Company (Southern) and paid by Texas Eastern as proposed by Southern in a filing made on July 1, 1988 in Docket No. RP88-210.[1]

Texas Eastern states that the fixed monthly charge, comprised of principal and first year amortization interest, to be paid by Texas Eastern to Southern as proposed in Southern's July 1, 1988 filing is $481,406. Over a period of 60 months, the total take-or-pay cost, exclusive of amortization interest, to be recovered from Texas Eastern by Southern is $20,764,614.

Texas Eastern states that these tariff sheets are being filed solely to establish the procedures for recovering the take-or-pay charges to be billed by Southern and paid by Texas Eastern. Sheet Nos. 60, 61, 62, and 63 set forth the monthly principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern pursuant to Southern's filing on July 1, 1988 in Docket No. RP88-210. In tracking Southern's methodology, consistent with Commission orders issued June 23, 1988 in Docket No. RP88-60 and July 15, 1988 in Docket No. RP88-192, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods, to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. Workpapers setting forth Texas Eastern's determination of the allocation factor for the monthly principal amount and the monthly principal amounts each Texas Eastern customer will be required to pay are set forth under Attachment A.

Texas Eastern states that if at any time Southern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Southern in Docket No. RP88-210.

Texas Eastern states that the proposed effective date of the tariff sheets listed above is August 1, 1988.

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[1] Texas Eastern notes that it filed a protest to Southern's filing on July 14, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17481 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-191-001]**

**Tennessee Gas Pipeline Co.; Filing**

July 29, 1988.

Take notice that on July 25, 1988, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to Volume No. 1 of its FERC Gas Tariff:

Second Revised Sheet No. 245
Original Sheet Nos. 245A through 245F
Third Revised Sheet No. 246

Tennessee states that the purpose of the filing is to comply with Ordering paragraph (B) of the Commission's July 8, 1988 Order in this proceeding and set forth the accounting and billing procedures applicable to Tennessee's fixed charge recover of take-or-pay costs. Tennessee states that the tariff sheets reflect the terms and conditions of Tennessee's Stipulation and Agreement filed October 14, 1987 in *Tennessee Gas Pipeline Company*, Docket Nos. RP86-119, *et al.* as modified by Commission orders issued February 8, 1988 and May 27, 1988 in that proceeding. In addition, the tariff sheets reflect that Tennessee's customers may elect an amortization period of up to 36 months for payment of their share of Tennessee's take-or-pay costs. The tariff sheets also reflect the elimination of the "sunset date" of December 31, 1988 with respect to gas purchase contracts which are the subject of litigation on December 31, 1988. Consistent with the Commission's decision in El Paso Natural Gas Company's Docket No. RP88-184-000 proceeding, Tennessee will be permitted to recover fifty percent of its take-or-pay costs associated with these contracts through fixed charge recovery irrespective of the date payments were made.

The tariff sheets are proposed to be effective July 1, 1988.

Tennessee further states that it is submitting information with respect to take-or-pay amounts reflected in its last general rate proceeding in Docket No. RP85-178. This information supports Tennessee's calculations of take-or-pay costs it has filed to recover in this proceeding.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17435 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-160-002]**

**Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff**

July 29, 1988.

Taken notice that on July 22, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets of its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date for the subject tariff sheets is June 1, 1988.

Transco states that on May 2, 1988, Transco submitted for filing certain tariff sheets to be effective June 1, 1988 which amended the Purchased Gas Adjustment (PGA) clause pursuant to Commission Order No. 483 and Order No. 483-A. Transco further states that by Commission order issued May 25, 1988 in Docket Nos. RP88-152-000 *et al.*, such sheets were accepted for filing and suspended to become effective June 1, 1988, subject to refund and, subject to further review. Transco states that on June 23, 1988, Transco received a letter from the Director of the Office of Pipeline and Producer Regulation which detailed the required corrections to Transco's PGA clause, and directed Transco to file revised tariff sheets reflecting such corrections within 30 days of the issuance of said letter. Transco states that the tariff sheets filed herein are in compliance with the aforementioned letter.

Transco states that copies of the filing are being mailed to each of its customers, State Commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17436 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-134-002]**

**Trunkline Gas Co.; Change in Tariff**

July 29, 1988.

Take notice that Trunkline Gas Company (Trunkline) on July 25, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Twelfth Revised Sheet No. 21-F
First Substitute Fourth Revised Sheet No. 21-F.1
First Substitute Sixth Revised Sheet No. 21-I
First Substitute Sixth Revised Sheet No. 21-J
First Substitute First Revised Sheet No. 21-J.2
First Substitute Original Revised Sheet No. 21-J.5

Trunkline states that the proposed effective date of these revised tariff sheets is June 1, 1988.

Trunkline states that the instant filing is being filed in accordance with Order Nos. 483 and 483–A and in compliance with the Commission's letter order dated June 23, 1988 in the subject proceeding.

Copies of the filing were served upon Trunkline's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Steet NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17437 Filed 8–2–88; 8:45 am]

BILLING CODE 6717–01–M

## Office of Hearings and Appeals

### Proposed Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $7.2 million, plus accrued interest, in alleged crude oil overcharge funds obtained from New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company and Ladd Petroleum Corporation. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986).

**DATE AND ADDRESS:** Comments must be filed in duplicate within 30 days from the date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Number KFX–0052.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company and Ladd Petroleum Corporation. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE has tentatively decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge moneys are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: July 26, 1988

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### Proposed Decision and Order of the Department of Energy

*Implementation of Special Refund Procedures*

July 26, 1988.

Names of Firms: New York Petroleum, Inc. Chevron U.S.A. Inc., Patton Oil Company, Ladd Petroleum Corporation

Dates of Filing: April 6, 1988, January 27, 1988, March 25, 1988, July 8, 1988

Case Numbers: KFX–0052, KEF–0100, KEF–0107, KEF–0112

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from New York Petroleum, Inc. (NYP), Chevron U.S.A. Inc., Patton Oil Company, and Ladd Petroleum Corporation.[1] These four firms remitted a total of $7.2 million to the DOE. An additional $279,000 in interest has accrued on that amount as of June 30, 1988. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart

[1] On June 29, 1984, the OHA issued a final Decision and Order concerning the petition to implement refund procedures for the crude oil overcharge funds obtained from NYP pursuant to a court approved settlement. *See* New York Petroleum, Inc., 12 DOE ¶ 85,047 (1984). That Decision established procedures for a first-stage refund process only. We specifically noted that no procedures were being adopted at that time for the final disposition of any funds remaining after all meritorious first-stage claims were paid. Two refund applications were received in that proceeding, and one refund was granted. *See* New York Petroleum, Inc./Ashland Oil, Inc., 16 DOE ¶ 85,613 (1987). We now propose to distribute the $115,580.42 in residual funds in the NYP escrow account, plus accrued interest, pursuant to the procedures set forth in this Decision.

Ladd Petroleum Corporation remitted $2,887,611.31 to the DOE pursuant to a July 27, 1987 Judgment of the United States District Court for the Eastern District of Louisiana. Chevron U.S.A. Inc. remitted $3,092,414.21 pursuant to Consent Order Number RGFE006A1W, and Patton Oil Company remitted $1,110,940.14 pursuant to Consent Order Number 810C003232.

V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 8 DOE ¶ 82,506 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the four firms listed above, and have determined that such procedures are appropriate.

**I. Background**

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of the court-approved Settlement Agreement in In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the States, the Federal Government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and monies remaining after all valid claims are paid, are to be disbursed equally to the States and Federal Government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737. The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, see, e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988), and Ernest A. Allerkamp, 17 DOE ¶85,079 (1988), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." In Re: The Department of Energy Stripper Well Exemption Litigation, 3 Fed. Energy Guidelines ¶ 26,587 at 26,826 (D. Kan. 1987) . The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. Id. at 26,827. The States have appealed the latter ruling. In Re: The Department of Energy Stripper Well Exemption Litigation, No. 10–76 (Temp. Emer. Ct. App. filed Nov. 5, 1987).

**II. The Proposed Refund Procedures**

*A. Refund Claims*

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $7.2 million in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $1.44 million (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. See A. Terricone, 15 DOE ¶ 85,495 at 88,893–96 (1987). Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. Id. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. Boise Cascade Corp., 16 DOE ¶ 85,214 at 88,411 (1987); Sea-Land Service, Inc., 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($7.2 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868. This yields a volumetric refund amount of $0.00000356 per gallon. We propose to adopt a deadline of October 31, 1989, for refund applications submitted pursuant to this

Decision. See World Oil Corp., 17 DOE ¶ _____, No. KEF-0005 (July 7, 1988).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. See Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application. A deadline of June 30, 1988, was established for all crude oil refund proceedings implemented pursuant to the MSRP up to and including Shell Oil. See A. Tarricone, Inc., 16 DOE ¶ 85,681 (1987); Allerkamp, 17 DOE at 88,178; Shell Oil, 17 DOE at 88,408. Any applicant that files a refund application after that deadline will be eligible to receive a refund based only on the volumetric amounts approved subsequent to that date. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

*B. Payments to the States and Federal Government*

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $5.76 million, plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register.**

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company and Ladd Petroleum Corporation shall be distributed in accordance with the foregoing Decision.

[FR Doc. 88-17492 Filed 8-2-88; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3424-4]

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for their review. Because we are requesting expedited review, this notice includes the actual data collection instrument. The ICR itself is also available to the public for review and comment. It describes the nature of the information collection and its expected cost and burden.

**FOR FURTHER INFORMATION CONTACT:** Carla Levesque at EPA, (202) 382-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Solid Waste and Emergency Response**

*Title:* Survey of Information Management Issues Under SARA, Title III, sections 311 and 312. (EPA ICR #1478).

*Abstract:* State and local government entities receiving SARA, Title III, sections 311 and 312 data will be asked questions concerning their management of this information. This survey will identify information management models to be used in evaluating alternatives for a permanent reporting threshold. Response is voluntary.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average one hour per respondent. This estimate includes the time for responding to questions in a telephone interview.

*Respondents:* States, and local governments.

*Estimated No. of Respondents:* 113.

*Estimated Total Annual Burden on Respondents:* 113 hours.

*Frequency of Collection:* One-time only.

*Collection Instrument:* Respondents will be asked questions based on the following:

Topic Guide

1. Characteristics of right-to-know information.

a. Correlation between state right-to-know laws and Title III.

b. For states with prior compliance, how many facilities reported? How many more will report under Title III? How many chemicals have been reported? Will this number change under Title III? If so, is this because of differing reporting thresholds? What types of enforcement/compliance figures does the State have?

2. Data management practices.

a. What has been done with the information that has been collected?

(1) Data management requirements.

(2) Need for expansion due to increase in number of reporters (non-manufacturers).

(3) Data quality/data manipulation.

(4) Updating entries with annual filings.

b. Cost and staff elements.

(1) Labor (collecting and managing right-to-know data).

(2) Information retrieval.

(3) Staff.

3. Opinions on setting a permanent threshold.

a. Based on data received, what would be an appropriate permanent threshold? Should it be the same for manufacturers and non-manufacturers?

b. Should EPA add other chemical lists to the list of Extremely Hazardous Substances for the purpose of having lower thresholds for these chemicals?

c. Should reporting be made more standardized?

4. Other.

a. What would you like to see as the final reporting threshold? Why?

b. Rate the final threshold options?

c. Comment on public requests.

d. (For State Emergency Response Commissions only) Does the same agency collect the data for the Underground Storage Tank reporting program and Title III?

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

BEST COPY AVAILABLE

Date: July 26, 1988.

Odelia Funke,

*Acting Director, Information and Regulatory Systems Division.*

[FR Doc. 88-17485 Filed 8-2-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3424-5]

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the notice announces that the Information Collections Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and are available to the public for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Carla Levesque at EPA, (202) 382-2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Air and Radiation

*Title:* NSPS Subpart G—Nitric Acid Plants. (EPA ICR #1056).

*Abstract:* Owners or operators of facilities producing nitric acid must notify EPA of construction, modifications, startups, shutdowns, and malfunctions, as well as the date and results of the initial performance test. They must also keep records identifying production rate and hours of operation, and must install and maintain a device for continuous monitoring of $NO_x$. They must notify EPA of any action that may increase the regulated emission rate, and must report excess emissions quarterly. (EPA has proposed reducing this reporting frequency to semi-annual.)

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 2 to 60 hours per response. This estimate includes the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners or Operators of Nitric Acid Plants.

*Estimated No. Of Respondents:* 47.

*Estimated Burden:* 9,900 hours.

*Frequency Of Collection:* Quarterly.

### Office Of Water

*Title:* State Revolving Fund (SRF) Programs. (EPA ICR #1391).

*Abstract:* States provide EPA with information on how they administer and operate SRF Programs. EPA Uses the data to ensure national accountability, adequate public comments, fiscal integrity, and consistent management of these programs.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 457 hours per respondent per year. This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* States.

*Estimated No. of Respondents:* 39.

*Estimated Total Annual Burden on Respondents:* 17,815 hours.

*Frequency Of Collection:* 5 responses per year.

Send comments regarding the burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burdens, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St. SW., Washington, DC 20460.

and

Nicolas Garcia (ICR #1056) and Tim Hunt (ICR #1391), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: July 26, 1988.

Odelia Funke,

*Acting Director, Information and Regulatory Systems Division.*

[FR Doc. 88-17486 Filed 8-2-88; 8:45 am]

BILLING CODE 6717-01-M

## FEDERAL RESERVE SYSTEM

### Atlantic Bancorporation et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practicies." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Atlantic Bancorporation*, Voorhees, New Jersey; to engage *de nov* through its subsidiary, Glendale Mortgage Services Corporation, Voorhees, New Jersey, in making and servicing residential mortgage pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted in the Commonwealth of Pennsylvania and New Jersey.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation*, Columbia, South Carolina; to engage *de novo* through its subsidiary, Southern Provident Life Insurance Company, Columbia, South Carolina, in reinsuring credit life and credit accident and health insurance sold as agent or broker by the operating subsidiaries of Applicant, including its subsidiary, South Carolina National Bank, Columbia, South Carolina, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Meredosia Bancorporation, Inc.* Springfield, Illinois; to engage *de novo* in making and servicing consumer,

mortgage, and commercial loans for its own account and for the account of other financial institutions pursuant to § 225.25(b)(1)(i), (iii), and (iv) of the Board's Regulation Y. These activities will be conducted within a 200-mile radius of Springfield, Illinois.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W.T.B. Financial Corporation,* Spokane, Washington; to engage *de novo* through its subsidiary, WT Investment Advisors, Inc., Spokane, Washington, in acting as an investment advisor to the extent of providing portfolio investment advice to any person, serving as an investment advisor to a registered investment company and providing financial advice to state and local government, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted with the states of Washington, Oregon, Montana, and Idaho. Comments on this application must be received by August 22, 1988.

Board of Governors of the Federal Reserve System, July 28, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–17403 Filed 8–2–88; 8:45 am]

BILLING CODE 6210–01–M

## Barnett Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 24, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.,* Jacksonville, Florida; to acquire 100 percent of the voting shares of Bank of Madison County, Madison, Florida.

2. *CBS Bancshares, Inc.,* Spencer, Tennessee; to acquire an additional 44.46 percent of the voting shares of Citizens Bank of Gainesboro, Gainesboro, Tennessee.

3. *SouthTrust of Tennessee, Inc.,* Nashville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Meltons Bank, Gassaway, Tennessee, a *de novo* bank which will relocate to Nashville, Tennessee. SouthTrust Corporation, Birminham, Alabama, also has applied to acquire SouthTrust of Tennessee, Inc.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lancaster Bancorporation,* Lincoln, Nebraska; to become a bank holding company by acquiring 99.5 percent of the voting shares of Lancaster County Bank, Waverly, Nebraska.

Board of Governors of the Federal Reserve System July 28, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–17404 Filed 8–2–88; 8:45 am]

BILLING CODE 6210–01–M

## Constellation Bancorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Constellation Bancorp,* Elizabeth, New Jersey; to acquire N.A. Home Investors Mortgage Corporation, Hacksensack, New Jersey, and thereby engage in the acquisition and origination of primary mortgage loans, and the marketing or such loans to institutional and other investors either by sales of whole loans, or sales of participating interests in such loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–17405 Filed 8–2–88; 8:45 am]

BILLING CODE 6210–01–M

## Fairfield County Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 24, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street , New York, New York 10045:

1. *Fairfield County Bancorp, Inc.*, Stamford, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Stamford, Stamford, Connecticut.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Piper Bankshares, Inc.*, Piper City, Illinois; to become a bank holding company by acquiring 99 percent of the voting shares of State Bank of Piper City, Piper City, Illinois.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Throckmorton Bancshares, Inc.*, Throckmorton, Texas; to become a bank holding company by acquiring 100 precent of the voting shares of the First National Bank of Throckmorton, Throckmorton, Texas.

Board of Governors of the Federal Reserve System, July 27, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-17406 Filed 8-2-88; 8:45 am]

BILLING CODE 6210-01-M

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## First Florida Banks, Inc., Tampa, FL; Application To Provide Certain Management and Consulting Services to Failed Savings and Loan Associations Under the Federal Home Loan Bank Board's Management Consignment Program

First Florida Banks, Inc., Tampa, Florida ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BH²C Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to: (1) Engage *de novo* through its subsidiary, First Management Group, Inc., Tampa, Florida, in providing management services to failed savings and loan associations under the Federal Home Loan Bank Board's management consignment program, and (2) engage *de novo* through its subsidiary, Florida Asset Management Group, Inc., Tampa, Florida, in assisting in the disposition of the nonearning assets and other applicable assets of such failed savings and loan associations.

The Federal Home Loan Bank Board ("FHLBB") has developed the management consignment program as a vehicle for preserving the integrity of a failed savings and loan association's assets and liabilities pending disposition of the assets and liabilities to a third-party acquiror. Under the program, the FHLBB charters a new shell federal mutual savings and loan association to which the assets and liabilities of the failed association are transferred. The FHLBB then appoints a Board of Directors of the new association, and the Federal Savings and Loan Insurance Corporation ("FSLIC") (as receiver for the failed association) and the Board of Directors appoint a manager of the association. The manager has responsibility for carrying out the mandates of the association's Board of Directors and supervising operations to ensure conformity with the Board's guidelines. In addition, the FSLIC, the Board of Directors, and the manager may contract for an "assets manager" to provide specific management services in respect of major loan assets or major real estate asets acquired through foreclosure. Applicant proposes to seek the appointment of First Management Group, Inc. by the FHLBB as a principal manager of one or more failed savings and loan associations from time to time. Applicant also proposes to seek the appointment of Florida Asset Management Group, Inc. by the FSLIC as an assets manager of one or more failed savings and loan associations from time to time.

The activities for which approval is requested have not previously been approved by the Board. The Board has determined that bank holding companies may provide management consulting advice to nonaffiliated bank and nonbank depository institutions under certain conditions, but has not authorized such activities to be provided on either a daily or a continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. Section 225.25(b)(11) of Regulation Y (12 CFR 225.25(b)(11)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity that the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant contends that the proposed activities meet this standard. A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 17, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, July 29, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-17407 Filed 8-2-88; 8:45 am]

BILLING CODE 6210-01-M

## General Educational Fund, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23 (a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. General *Educational Fund, Inc.*, Burlington, Vermont, and its subsidiary, Merchants Bancshares, Inc., Burlington, Vermont; to engage *de novo* through their subsidiary, Merchants Properties, Inc., Burlington, Vermont, in making equity and debt investments in business organizations or projects whose objective is primarily to promote community welfare, such as the construction and/or rehabilitation of residential housing for sale and/or rental to persons of low or moderate income pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the State of Vermont.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sanwa Bank, Ltd.*, Osaka, Japan; to engage *de novo*, through its subsidiary, The Sanwa Capital Management, Inc., New York, New York, in acting as investment or financial adviser pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-17408 Filed 8-2-88; 8:45 am]

BILLING CODE 6210-01-M

## Otto Bremer Foundation and Bremer Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the pubic, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Otto Bremer Foundation and Bremer Financial Corporation*, both of St. Paul, Minnesota; to acquire First American Agency, Inc. of St. Cloud, St. Cloud, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in St. Cloud, Minnesota.

Board of Governors of the Federal Reserve System, July 28, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-17409 Filed 8-2-88; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Octane Posting and Certification

**AGENCY:** Federal Trade Commission.

**ACTION:** Grant of partial exemption from the Commission's Octane Rule.

**SUMMARY:** The Commission has responded to the petition of Gilbarco, Inc., requesting permission to post octane ratings by use of an octane label that differs from certain of the specifications contained in the Commission's Octane Posting and Certification Rule. The Commission has granted the partial exemption with respect to Gilbarco's multi-blend gasoline dispensers. Pursuant to Rule 1.26 of the Commission's Rules of Practice, the Commission grants, for good cause, the requested relief without a notice and comment period because the Commission finds that such a procedure is unnecessary to protect the public interest in this case.

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Neil J. Blickman, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3038.

**SUPPLEMENTARY INFORMATION:** On March 30, 1979, the Commission published the Octane Posting and Certification Rule in the **Federal Register** (44 FR 19160). The rule establishing procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers.

Section 306.9 of the rule provides that retailers must post at least one octane rating label on each face of each gasoline dispenser. Retailers (like those using Gilbarco's dispensers) who sell two or more kinds of gasoline with different octane ratings from a single dispenser must post separate octane rating labels for each kind of gasoline on each face of the dispenser. Labels must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per gallon of the gasoline.

Section 306.11 of the rule details specifications for the labels. Labels must be 3 inches wide by 2.5 inches long, and Helvetica type must be used for all text except the octane rating number, which must be in Franklin Gothic type. Type size for the text and numbers is specified, and the type and border must be process black on a process yellow background. The line "MINIMUM OCTANE RATING" must be in 12 point Helvetica bold, all capitals, with letter space set at 12½ points. The line "(R+M)/2 METHOD" must be in 10 point Helvetica bold, all capitals, with letter space set at 10½ points. The octane number must be in 96 point Franklin Gothic Condensed, with ⅛ inch spacing between the numbers. Section 306.11(d) of the rule further states that no marks or information other than that called for by the rule may appear on the label.

By letter dated March 21, 1988, Gilbarco, Inc., a major manufacturer and marketer of gasoline pumps and dispensers, requested permission to post octane ratings by use of an octane label that differs from the label specifications contained in § 306.11 of the Commission's Octane Posting and Certification Rule

Gilbarco, Inc. proposed the following labeling scheme for use with its multi-blend gasoline dispenser control panel switches:

(1) In order to conform with the dimensions of the control panel gasoline dispenser switch Gilbarco has manufactured, it proposes to use an octane label that is 3 inches wide by 2.3 inches long instead of a label that is 3 inches wide by 2.5 inches long as specified in the rule; and

(2) In order to show consumers how to use this new type of octane selection switch, Gilbarco proposes to place the word "PRESS," in 16 point Helvetica bold type, beneath the octane number on the label.

The Commission has decided that the above-described labeling scheme is adequate to meet the Octane Rule's posting objective as it provides clear disclosure of all rule-required information. In addition, the variance accommodates a technological development in the industry without adversely affecting the public interest. Therefore, the Commission has decided to grant Gilbarco permission to use its proposed labeling system on its multi-blend dispensers, provided that Gilbarco will also comply with the Rule's octane label specifications in all other respects.

**List of Subjects in 16 CFR Part 306**

Energy conservation, Gasoline, Labeling.

By direction of the Commission.

**Benjam I. Berman,**

*Acting Secretary.*

[FR Doc. 88–17411 Filed 8–2–88; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Supplemental Funds Available for Fiscal Year 1988; U.S. Conference of Mayors Disseminating Educational Information About AIDS Project

**Introduction**

The Centers for Disease Control announces the availability of supplemental funds to the existing cooperative agreement with the United States Conference of Mayors (USCM). Through this cooperative agreement the USCM supports national, regional, and community-based AIDS health education/risk reduction programs which target the needs of racial and ethnic minoritiets.

**Authority**

The project is authorized under section 301(a) of Public Health Service Act. The catalog of Federal Domestic Assistance No. is 13.118

**Background and Purpose**

On June 1, 1988, the Centers for Disease Control (CDC) awarded $1,690,000 to the USCM to continue to promote the exchange of information about AIDS and HIV infection among mayors of local governments and to support community based AIDS health education/risk eduction projects which target the needs of minorities. For the past several years, in collaboration with CDC, the conference of Mayors has conducted (1) a program to ensure that relevant and current information concerning local roles, policies, and activities in response to AIDS is rapidly disseminated to mayors and health and other local government officials in approximately 860 cities with populations of more than 30,000, and (2) a continuing program of awards to community-based organizations interested in developing locally-oriented AIDS health education/risk reduction programs.

On August 1, 1988, the National AIDS Information/Education Program (NAIEP) expects to award funding to national and regional minority organizations to develop and implement AIDS information and education programs. Many national organizations whose local affiliates are currently supported by the USCM are expected to apply for the NAIEP grants. Up to thirty grants totalling approximately $6 million are expected to be made.

The purpose of this supplement is to support the USCM to expand its technical assistance program to national, regional, State and local minority organizations involved in AIDS prevention. This technical assistance will facilitate rapid information sharing, provide better coordination with State and local health and education agencies' AIDS prevention activities, and assist in stimulating more minority organizations to become active in AIDS prevention efforts.

**Eligibility**

USCM has a unique relationship with mayors, national and community organizations, and local government officials which facilitates the integration of AIDS prevention efforts at the local level. Also USCM is currently the only national organization with the mechanisms already established for making awards and providing technical assistance on a nationwide basis to minority-oriented community-based organizations to address the critical health needs described above. Therefore, no other applications are being solicited.

**Cooperative Activities**

*A. Recipient Activities*

1. The U.S. Conference of Mayors shall provide advice and assistance to local, state, regional and national minority organizations in developing, implementing and evaluating AIDS information, education, and prevention programs targeted toward minority constituencies.

2. Special emphasis will be given to coordination of efforts with existing programs and activities, especially those being conduted by State and local health and education agencies, and stimulating local affiliates of national and regional Federally funded agencies to initiate local AIDS informaiton, education and prevention programs and activities.

*B. CDC Activities*

1. CDC will provide training and access to the Conference of Mayors in the use of the National AIDS Clearinghouse database;

2. Training in performance community needs assessment studies;

3. Information on Federal AIDS programs, especially those with funds available to target minority communities;

4. Information on existing non-Federal resources and programs targeted to minority communities;

5. Technical advice on development, implementation, and evaluation of effective AIDS information and education programs.

**Availability of Funds**

Approximately $300,000 from FY 1988 is available for funding through the end of the current budget period ending May 31, 1989.

**Reporting Requirements**

Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

**Other Requirements**

Recipients must comply with the document titled: Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1988) (53 FR 6034, February 29, 1988).

**Review and Evaluation Criteria**

The application will be reviewed and evaluated based upon the following:

(1) That project personnel are well qualified by training and/or experience for the support sought and the applicant organization has adequate facilities and manpower;

(2) That the proposed activities are capable of attaining project objectives;

(3) That the project objectives are identical with, or are capable of achieving, the specific program objectives defined in the program announcement; and

(4) That the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

**Application Submission**

The original and two copies of the application must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grant Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, GA 30305, on or before August 28, 1988.

**Other Review Requirements**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where to Obtain Additional Information**

Information regarding the business aspects of this project may be obtained from Marsha Jones, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Pace Ferry Road, NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 842-6575 or FTS 236-6575.

Information regarding the technical aspects of this project may be obtained from Gary West, Centers for Prevention Services, Centers for Disease Control, (404) 639-2790, or FTS 236-2790.

Dated: July 27, 1988.

**Glenda S. Cowart,**

*Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 88-17441 Filed 8-2-88; 8:45 am]

BILLING CODE 4160-18-M

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## Food and Drug Administration

**[Docket No. 88N-0203]**

## Amarillo Blood Plasma, Inc.; Revocation of U.S. License No. 969

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 969) and the product license issued to Amarillo Blood Plasma, Inc., for the manufacture of Source Plasma. In a letter received by the agency on March 11, 1988, the firm requested that its establishment and product licenses be revoked and waived an opportunity for a hearing.

**DATE:** The revocation of the establishment and product licenses was effective on April 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph Wilczek, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8049.

**SUPPLEMENTARY INFORMATION:** FDA has revoked the establishment license (U.S. License No. 969) and the product license issued to Amarillo Blood Plasma, Inc., for the manufacture of Source Plasma. Amarillo Blood Plasma, Inc., was located at 310 South Taylor, Amarillo, TX 70101.

On February 2, through February 11, 1988, FDA inspected Amarillo Blood Plasma, Inc. This inspection revealed serious deviations from the applicable biologics regulations. These deviations included, but were not limited to: (1) Empoyees failed to adhere to the firm's standard operating procedure (SOP) for returning red blood cells to the donor in all instances (21 CFR 606.100(b)); (2) records of donor suitability determinations were not maintained concurrently with the performance of the work (21 CFR 606.160); and (3) donors showing a hematocrit change of 5 percent or greater from the previous donation were not referred to a physician as required by the firm's SOP and were subsequently bled without requisite physician's review and approval (21 CFR 606.100(b)(1)).

FDA's investigation revealed that Amarillo Blood Plasma, Inc., was operating in significant noncompliance with the Federal regulations. Among the violations were inadequate donor screening practices, overbleeding of donors, and labeling of Source Plasma to indicate that it was collected from a single donor when the blood actually was collected from two donors.

Because these deviations represented a significant danger to health, FDA suspended the establishment license (U.S. License No. 969) on February 25, 1988.

In a letter received by the agency on March 11, 1988 (dated February 5, 1988), Amarillo Blood Plasma, Inc., requested that its establishment and product licenses be revoked and waived an opportunity for a hearing. The agency granted the licensee's request by letter

to the firm dated April 12, 1988, issued under 21 CFR 601.5(a), which revoked the establishment license (U.S. License No. 969) and the product license for the manufacture of Source Plasma issued to Amarillo Blood Plasma, Inc. FDA has placed copies of the letters dated February 5, February 25, and April 12, 1988, on file under the docket number found in brackets in the heading of this notice with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Accordingly, under 21 CFR 12.38 and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.68, the establishment license (U.S. License No. 969) and the product license issued to Amarillo Blood Plasma, Inc., for the manufacture of Source Plasma were revoked effective April 12, 1988.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: July 26, 1988

**Paul Parkman,**

*Director, Center for Biologics Evaluation and Research.*

[FR Doc. 88–17464 Filed 8–2–88; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 88N–0154]**

## El Paseo Plasma, Inc.; Revocation of U.S. License No. 868

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 868) and the product license issued to El Paseo Plasma, Inc., for the manufacture of Source Plasma. In a letter dated February 19, 1988, the firm requested that its establishment and product licenses be revoked and waived an opportunity for a hearing.

**DATE:** The revocation of the establishment and product licenses was effective on April 4, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Wilczek, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8049.

**SUPPLEMENTARY INFORMATION:** FDA has revoked the establishment license (U.S. License No. 868) and product license issued to El Paseo Plasma, Inc., for the manufacture of Source Plasma. El Paseo Plasma, Inc., was located at 1595 El Paseo, Las Cruces, NM 88001.

On December 1 through December 18, 1987, FDA inspected El Paseo Plasma, Inc. This inspection revealed serious deviations from the applicable bioligics regulations. These deviations included, but were not limited to: (1) Donor suitability determinations, including predonation tests and medical history questions, were abbreviated or eliminated (21 CFR 640.63(c)); (2) a donor record file was falsified to conceal that the donor's red blood cells were not reinfused into the donor but were infused into another donor (21 CFR 640.63(e)); (3) the assistant manager acknowledged the practice of double-bagging, i.e., drawing a second unit of whole blood prior to reinfusion of the first unit of red blood cells (21 CFR 640.65(b)(6)); (4) scales used to weigh blood were not always standardized each day of use (21 CFR 640.60(b)); (5) intentionally inaccurate records of whole blood weights were made to conceal the collection of whole blood units which exceeded the maximum amount of blood allowed to be withdrawn (21 CFR 640.65(b)(6)); and (6) pooled Source Plasma from two or more donors was falsely labeled to indicate that the plasma was collected from one donor only (21 CFR 640.69(a)(1)).

Because the deviations represented a significant danger to health, FDA suspended the establishment license (U.S. License No. 868) on December 31, 1987.

FDA's investigation revealed that El Paseo Plasma, Inc., was operating in significant noncompliance with the Federal regulations and that these practices were intentional. Among the numerous willful violations were inadequate donor screening practices, the intended cover-up of a wrong red blood cell reinfusion, and the intentional maintenance of inaccurate records.

In a letter dated January 11, 1988, the firm proposed corrective actions, including the replacement of the firm's responsible head and alternate responsible head, and requested that revocation of license be placed in abeyance. Based on the willful nature of the violations discovered during the FDA inspection and investigation, FDA denied the firm's request.

As provided in 21 601.5(b), FDA issued a letter on February 10, 1988, notifying the licensee of FDA's intention to revoke U.S. License No. 868, setting forth grounds for the revocation, and offering an opportunity for a hearing on the proposed revocation. In a letter dated February 19, 1988, El Paseo Plasma, Inc., requested that its establishment and product licenses be revoked and waived an opportunity for a hearing. The agency granted the licensee's request by letter to the firm dated April 4, 1988, issued under 21 CFR 601.5(a), which revoked the establishment license (U.S. License No. 868), and the product license of El Paseo Plasma, Inc. FDA has placed copies of the letters dated December 31, 1987; January 11, February 10, February 19, and April 4, 1988, on file under the docket number found in brackets in the heading of this notice with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Accordingly, under 21 CFR 12.38 and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissoiner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.68, the establishment license (U.S. License No. 868) and product license issued to El Paseo, Inc., for the manufacture of Source Plasma were revoked effective April 4, 1988.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: July 26, 1988.

**Paul Parkman,**

*Director, Center for Biologics Evaluation and Research.*

[FR Doc. 88–17465 Filed 8–2–88; 8:45 am]

BILLING CODE 4160-01O-M

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## Allergenic Products Advisory Committee; Renewal

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration announces the renewal of the Allergenic Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)).

**DATE:** Authority for this committee will expire on July 9, 1990, unless the Secretary formally determines that renewal is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: July 25, 1988.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-17466 Filed 8-2-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 78P-0148 et al.]

## Approved Variances for Laser Light Shows; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 18 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

**DATES:** The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

**ADDRESS:** The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (43 U.S.C. 263f), FDA has granted each of the 18 organizations listed in the table below a variance from the requirements of 21 CFR 1040.11(c) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical designs and by warnings in the user manuals and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

| Docket No. | Organization granted the variance | Demonstration laser product | Effective date termination date |
|---|---|---|---|
| 78P-0148 (renewal) | Laser Media, Incorporated, 2046 Armacost Avenue, Los Angeles, California 90025. | Laser Media, Inc. LM and LMS laser projection systems, the LMT and FiberRay fiber-optically coupled projector heads, and laser shows assembled and produced by Laser Media, Inc. which incorporate any of these projection devices and/or the StingRay, ChromeRay and DiscoRay Series projectors. | May 26, 1988-May 26, 1989. |
| 78P-0295 (renewal) | Science Faction Corporation, 333 West 52nd Street, New York, New York 10019. | Class III or IV Science Faction SFC-2000 Series laser light show projectors and laser light shows assembled and produced by Science Faction Corporation incorporating those projectors. | May 9, 1988-May 16, 1990. |
| 80P-0037 (renewal) | School of Music, University of Iowa, Iowa City, Iowa 52242. | University of Iowa Video/Laser III Class IV Laser projector and shows incorporating this projector. | Apr. 13, 1988-May 1, 1990. |
| 80P-0151 (renewal) | Ms. Carol G. Fubini, Attorney-at-Law, Four Liberty Square, Boston, Massachusetts 02109. | Laser light shows manufactured and produced by Guptill Arena incorporating a Science Faction Model SFC-2003 laser projector. | Apr. 1, 1988-June 10, 1990. |
| 81P-0001 (extension) | Lighting Systems Design, Incorporated, 4625 Old Winter Garden Road, Suite B-6, Orlando, Florida 32811. | Lighting Systems Design laser light shows and the incorporated Lighting Systems Design Lumin Projection System Series Projectors which contain Class IV ion lasers. | June 9, 1988-May 31, 1990. |
| 83V-0204 (renewal) | Laser Optronics, P.O. Box 290, Nephi, Utah 84648. | Laser light shows assembled and produced by Laser Optronics incorporating the Class IV Audio-Visual Imagineering Model AVI S400 laser projection system. | Apri. 13, 1988-Sept. 27, 1989. |
| 84V-0065 (renewal) | Southern California Gas Company, 810 South Flower Street, M.L. 202D, Los Angeles, California 90017. | Southern California Gas Company laser light show incorporating the Laser Media Stingray laser projector. | Apr. 20, 1988-May 17, 1990. |
| 85V-0239 (renewal) | Laser Dreams, 7667 Bodega Avenue, Sebastopol, California 95472. | Laser Dreams laser light shows incorporating the Laser Dream Machine Model 1 laser projector with argon, helium-neon, and/or helium-cadmium lasers. | June 3, 1988-May 30, 1990. |
| 86V-0090 (renewal) | Holo-Spectra, 7742-B Gloria Avenue, Van Nuys, California 91406. | Laser light shows assembled and produced by Holo-Spectra incorporating the firm's Class IV Spectrascan projection system with argon, krypton, and/or helium-neon lasers. | Apr. 4, 1988-Feb. 28, 1990 |
| 86V-0135 (renewal) | Mid-America Museum, Hot Springs, Arkansas 71913. | Laser light shows assembled and produced by Md-America Museum incorporating a Model C-3 Laser System Development Corporation Class IV laser projector. | Mar. 20, 1988-Apr. 14, 1990. |
| 87V-0156 | Sea World, 1100 Sea World Drive, Cleveland, Ohio 44202. | Sea World laser light show incorporating the Starlight Series One (FC) laser projection system. | June 3, 1988-June 3, 1990. |
| 87V-0188 | Stardust Hotel, 3000 Las Vegas Boulevard South, Las Vegas, Nevada 89109. | Stardust Hotel laser light shows incorporating the Laser Media Model LMS laser projection system. | June 9, 1988-June 9, 1990. |
| 88V-0069 | Laser Crossfire Incorported, 807 S. Xanthus Place, Tulsa, Oklahoma 74104. | Laser Crossfire Inc. laser light show which incorporates the Laser Media Model LMS laser projection system. | June 3, 1988-June 3, 1990. |
| 88V-0126 | Opryland Hotel, 2800 Opryland Drive, Nashville, Tennessee 37214. | Laser light shows, such as Harp Show 1 and Harp Show 2 assembled and produced by the Opryland Hotel incorporating in Image Engineering Model 360-OL Class IV laser projector. | Apr. 8, 1988-Apr. 8, 1990. |
| 88V-0141 | IBM Corporation, 590 Madison Avenue, New York, New York 10022. | IBM Corporation laser light show incorporating the MIT certified special projection system. | June 9, 1988-June 9, 1989. |

| Docket No. | Organization granted the variance | Demonstration laser product | Effective date termination date |
|---|---|---|---|
| 88V-0206 | Night Magic, Incorporated, c/o Reno Hilton, 225 Sierra Street, Reno, Nevada 89501. | Laser light show assembled and produced by Night Magic, Incorporated, which employ the Model VLS-1 Class IV laser projector. | May 27, 1988–May 27, 1989. |
| 88V-0211 | Los Angeles Laser Light aka L.A. Laser Light, 10936 Gloria Avenue, Granada Hills, California 91344. | Los Angeles Laser Light SBS series laser projection systems and laser shows assembled and produced by Los Angeles Laser Light which incorporate these projectors. | June 9, 1988–June 9, 1990. |
| 88V-0223 | Universal Studios Tour, 100 Universal City Plaza, Universal City, California 91608. | Universal Studoes' Star Trek Aventure laser light show incorporating a Starlasers Class IIIb ion laster projection system. | June 9, 1988–June 9, 1988. |

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above ) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: July 26, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88-17407 Filed 8-2-88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Allocation of Bureau of Indian Affairs Operations and Maintenance (O&M) Program Using a Formula Methodology

July 25, 1988.

**AGENCY:** Office of Construction Management, Interior.

**ACTION:** Notice.

The Department of the Interior, Bureau of Indian Affairs, and Office of Construction Management, to strengthen the internal management and administration of the Facilities Management Program, are proposing to allocate Facilities Operations and Maintenance funding using an equitable distribution process at education and non-education locations beginning with the 1989 fiscal year. The proposed method of allocation, using the proposed formula funding, would be based on the following criteria:

1. The square feet of the Bureau funded facilities;

2. For educational facilities, comparable O&M costs related to public schools;

3. Historical utility costs for the specific Bureau funded facility locations;

4. The age, size, condition, and location of the Bureau funded facilities;

5. For educational facilities, the utilization level of the Bureau funded facilities based on numbers of students in admission; and

6. The historical cost of support programs, such as fire protection and minor equipment replacement, training, pest control, security, communications and contract monitoring.

**DATES:** Written comments must be received on or before August 15, 1988. Oral comments will be accepted at the following regional meetings on the dates listed under addresses.

**ADDRESSES:** Regional Consultation meetings will be held at the following locations:

| Address | Date | Time |
|---|---|---|
| Holiday Inn (I-66 and Glebe Rd.), 4610 North Fairfax Dr., Arlington, VA. | 8/22/88 | 9:00 a.m.–1:00 p.m. |
| Normandy Inn, 405 S. Eighth Street, Minneapolis, MN. | 8/24/88 | 9:00 a.m.–1:00 p.m. |
| Federal Building, 517 Gold Street, Room 4210, Albuquerque, NM. | 8/26/88 | 9:00 a.m.–1:00 p.m. |
| Cypress Inn, 9040 S.E. Adams St., Clackamas, OR. | 8/30/88 | 9:00 a.m.–1:00 p.m. |

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary, Bureau of Indian Affairs, was mandated by the Congress of the United States pursuant to Pub. L. 95–961 and Title 5, Amendment to Title 11 of the Education Amendments of 1978 (25 U.S.C. 2006) Sec 504, d1.) to establish a program, to include the distribution of appropriated funds, for the operation and maintenance of education facilities which provides a methodology of computing the amount necessary for each education facility and to provide similar treatment for Bureau as well as contract schools. The Director, Office of Construction Management was also mandated in reports and accompanying Appropriations Bill Language for FY 1986, FY 1987 and FY 1988 to develop an equitable and per pupil O&M funding formula for Bureau funded school facilities.

The objectives of the proposed funding formula are as follows:

1. Develop a means of identifying and justifying O&M needs for both educational and non-educational facilities;

2. For educational facilities, develop a means of allocating resources in an equitable manner;

3. Promote greater efficiency by providing resources only for pupil needs, thereby reducing under-utilization of educational facilities;

4. Provide a basis whereby local managers can anticipate future needs and funding resources;

5. For education facilities, develop a simple, realistic formula based on readily available national and regional data from existing Bureau systems; and

6. Further reduce the Facilities Improvement and Repair (FI&R) backlog and support preventative maintenance needs by reallocating savings achieved by this funding mechanism to fund needs at the local facilities where savings occurred.

The formula is to serve as a basis for allocation of funds on an Area and Agency-wide basis for Bureau funded facilities. It is the intent, to utilize the proposed formula allocation process for the FY 1989 allocation.

Formula:

$$\text{Funding (O\&M)} = U + [A * I[(K1 * Fw) + (Km) + (Ko)]] - Fu + Fc + Fi + Fs$$

where:

F(O&M) = Estimated O&M funding need per building.

U = Historical annual electricity and fuel costs—3 year average. Total location costs will be prorated to each building via FACCOM. At contract locations where data does not exist, cost for similar nearby facilities will be applied.

A = Building square feet per inventory

K = Regional Public School (PS) cost/SF less Fuel & Electricity.

K1 = Regional PS labor costs, per SF.
Km = Regional PS material costs, per SF.
Ko = Costs not covered by PS Budgets, per SF.
I = (O&M) index to apply weight of Building vs. School.
Fw = BIA wage rate/PS wage rates.
Fu = Utilization factor-weighted scale.
Fc = Condition factor-weighted scale.
Fi = Isolation factor-weighted scale.
Fs = Economy of size-weighted scale.

Extra costs for highly maintained grounds, water/sewer systems are incorporated.

Comments Invited: Interested parties are invited to participate in the development of an Operations and Maintenance formula by submitting written views, data and/or arguments as they may desire, or attend a regional consultation meeting to present orally their views, data, and/or arguments as they may desire. Written comments must be received on or before August 15, 1988. Oral comments will be accepted at the regional consultation meetings.

**FOR FURTHER INFORMATION CONTACT:** Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets NW., Mail Stop 2415, Washington, DC 20240 (202) 343-2403.

Rick Ventura,
*Assistant Secretary, Policy, Budget & Administration.*

[FR Doc. 88-17410 Filed 8-2-88; 8:45 am]
BILLING CODE 4310-RK-M

## Bureau of Land Management

[ID-020-08-4212-13]

### Amendment of the Malad Hills Management Framework Plan (MFP); Exchange of Public Land in Oneida County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Amendment of the Malad Hills Management Framework Plan (MFP)/ Notice of realty action, exchange of public land in Oneida County, Idaho.

**NOTICE:** Notice is hereby given that the BLM has amended the Malad Hills MFP to allow for transfer of certain public lands in exchange for privately owned lands in Oneida County, Idaho.

**SUMMARY:** The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for transfer by land exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Public lands to be transferred are described as:

T.14S., R.30E., Boise Meridian
Sec. 28: E½, SE¼NW¼.
(360 acres)

Non-Federal lands to be acquired are described as:

T. 15S., R.29E., Boise Meridian
Sec. 24: SW¼, W½SE¼, SE¼SE¼;
Sec. 25: NE¼,NE¼, NW¼NW¼.
(360 acres)

Purpose of this exchange is to acquire the non-Federal lands which have high public values for grazing, wildlife habitat, and recreation. Acquisition of those lands will consolidate the public land ownership in the area.

This will make the management of public lands in the area more efficient and cost effective. The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Mr. Blaine Wight of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions: ditches and canals, oil and gas to U.S., and a road right-of-way to the U.S. for portions of the Glen Canyon road as shown on the 1973 Juniper, Idaho, 7.5 minute U.S.G.S. quadrangle topographic map. Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the conditions of the land exchange can be obtained by contacting Wes Duggan, Deep Creek Realty Specialist, at (208) 766-4766.

**Planning Protest**

Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 "C" Street, NW., Washington, DC 20240, within 30 days of this notice.

**Land Exchange Comments:**

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the land exchange to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the land exchange, this realty action will become final determination of the Department of the Interior and the planning amendment will be in effect.

Date: July 26, 1988.

Marvin R. Bagley,
*Associate District Manager.*

[FR Doc. 88-17396 Filed 8-2-88; 8:45 am]
BILLING CODE 4310-GG-M

[MT-020-08-4322-02]

### Montana; Miles City District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** District Grazing Advisory Board meeting notice.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92-463 that the Miles City District Grazing Advisory Board will meet September 16, 1988. The meeting will begin at 10 a.m. in the conference room of the Miles City District Office, Bureau of Land Management, Garryowen Road, Miles City, Montana 59301.

The agenda for the Grazing Advisory Board meeting includes presentations on the effects of the 1988 drought, results of the nomination and election process for the 1989-90 District Grazing Advisory Board, discussion of planned range improvement projects, an update on monitoring plans, and new regulations and new business.

The meeting is open to the public. The public may make oral statements before the board or file written statements for their consideration. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Date: July 26, 1988.

Mat Millenbeck,
*District Manager.*

[FR Doc. 88-17445 Filed 8-2-88; 8:45 am]
BILLING CODE 4310-DN-M

[NV-020-4322-02]

## Winnemucca District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Winnemucca District Grazing Advisory Board Meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-579 and section 3, Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 8, 1988. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10:00 a.m.
2. Allotment Evaluation Update.
3. Drought Situation.
4. Monitoring Update.
5. Range Improvement funds:

FY 88 Projects
FY 89 Projects

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make oral statements should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by August 19, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

**Gerald P. Brandvold,**

*Acting District Manager.*

Dated: July 26, 1988.

[FR Doc. 88-17446 Filed 8-2-88; 8:45 am]

BILLING CODE 4310-HC-M

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[CA-940-07-5410-ZBKE; CACA 21919]

## Realty Action; Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private lands described in this notice, aggregating 8.924 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room 2841, Sacramento, California 95825, (916) 978-4815.

**Serial No. CACA 21919**

T. 1 N., R. 2 E., Mount Diablo Meridian.
Sec. 2, fractional S1/2SE1/4.

County—Contra Costa. Minerals Reservation—50% all minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: July 26, 1988.

**Nancy J. Alex,**

*Chief, Lands Section, Branch of Adjudication and Records.*

[FR Doc. 88-17447 Filed 8-2-88; 8:45 am]

BILLING CODE 4310-GC-M

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## Minerals Management Service

## Alaska Outer Continental Shelf; Public Scoping Meeting Regarding the Environmental Impact Statement for Proposed Oil and Gas Lease Sale No. 114; Gulf of Alaska/Cook Inlet

The May 18, 1988, **Federal Register** contained a Notice of Intent to prepare an environmental impact statement (EIS) for proposed oil and gas Lease Sale No. 114, Gulf of Alaska/Cook Inlet.

The Notice of Intent for the proposed sale announced the scoping process that will be followed for the preparation of each EIS. The scoping process will involve Federal, State, and local governments and other interested parties aiding the Minerals Management Service in determining the significant issues and alternatives to be analyzed in the EIS. This will be done through scoping meetings.

The area included in this sale is described in the **Federal Register** Notice mentioned above. It is hoped that the information received at the scoping meetings will aid in identifying specific proposals and alternatives.

Scoping meetings will be held as follows:

August 17, 1988, Elementary School, 7:00 to 9:00 p.m., Cordova, Alaska
August 18, 1988, City Council Chambers, 7:00 to 9:00 p.m., Yakutat, Alaska
August 24, 1988, City Council Chambers, 7:00 to 9:00 p.m., Kenai, Alaska
August 25, 1988, City Council Chambers, 7:00 to 9:00 p.m., Homer, Alaska
September 12, 1988, Assembly Chambers, 7:00 to 9:00 p.m., Kodiak, Alaska

Additional information concerning these meetings can be obtained from: Minerals Management Service, Alaska OCS Region, Leasing and Environment Office, Attention: Michael Baffrey, 949 East 36th Avenue, Anchorage, AK 99508.

The telephone number is (907) 261-4677.

**Robert J. Brock,**

*Acting Regional Director, Alaska OCS Region.*

[FR Doc. 88-17448 Filed 8-2-88; 8:45 am]

BILLING CODE 4310-MR-M

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## Royalty Management Advisory Committee Meeting

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Minerals Management Service hereby gives notice that the Royalty Management Advisory Committee will hold a meeting in Denver, Colorado, at the location and on the dates indicated below. This meeting will include a briefing of recent systems improvement efforts in the Royalty Management Programs as well as plans for further improvements; a briefing of recent regulatory actions for oil, gas, and coal product valuation; and a presentation of Indian royalty payment processing functions. The Advisory Committee will make recommendations to the Secretary of the Interior, as appropriate.

**LOCATION AND DATE:** The Advisory Committee meeting will be held at the

Sheraton Denver Tech Center Hotel, 4900 Denver Tech Center Parkway, Denver, Colorado, on September 8 and 9, 1988. The Committee will meet from 9 a.m. to 5 p.m. on September 8 and from 8 a.m. to 3 p.m. on September 9.

The meeting will be open to the public. Public attendance may be limited by the space available. Members of the public will be given an opportunity to address the Committee and questions from the public will be addressed at a designated time during each session. Written statements should be submitted by September 2, 1988, to the address listed below. Minutes of this meeting will be available for public inspection and copying by October 15, 1988, at the same address.

**FOR FURTHER INFORMATION CONTACT:** Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

**SUPPLEMENTARY INFORMATION:** The Royalty Management Advisory Committee was established for a 2-year period by the Secretary of the Interior in August 1985, to provide advice and recommendations on different elements of the Royalty Management Program. This will be the initial meeting of the Committee operating under a new charter approved in 1987 by the Secretary of the Interior with 27 appointed committee members representing the diversified interests of Indian Tribes and allottees, State governments, and the minerals industry.

Date: July 27, 1988.

**William D. Bettenberg,**

*Director, Minerals Management Service.*

[FR Doc. 88–17449 Filed 8–2–88; 8:45 am]

BILLING CODE 4310–MR–M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

**Title:** 30 CFR Chapter VII, Subchapter B—Initial Program Regulations; Adoption of State Standards—Part 718.

**Abstract:** Information collected in § 718.1(b) is used to determine whether State laws or regulations contain more stringent standards than the Federal requirements in 30 CFR Parts 715, 716 or 717.

**Bureau Form Number:** None.,

**Frequency:** On occasion.

**Decription of Respondents:** State regulatory authorities.

**Estimated Completion Time:** One hour.

**Annual Responses:** One.

**Annual Burden Hours:** One.

**Bureau Clearance Officer:** Nancy Ann Baka, (202) 343–5981.

Date: July 12, 1988.

**Richard O. Miller,**

*Chief, Regulatory Development and Issues Management.*

[FR Doc. 88–17400 Filed 8–2–88; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. TA–131(b)–12]**

### Tropical Products; Probable Economic Effects on U.S. Industries and Consumers of Elimination of U.S. Tariffs

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation under section 131(b) of the Trade Act of 1974 (19 U.S.C. 2151(b)) and scheduling of public hearing.

**EFFECTIVE DATE:** July 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lowell Grant (202–252–1312) or Aaron Chesser (202–252–1380), Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel at 202–252–1091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

**SUPPLEMENTARY INFORMATION:** The Commission instituted the investigation, No. TA–131(b)–12, on July 22, 1988, following receipt of a request from the U.S. Trade Representative (USTR) on July 6, 1988. As requested by the USTR, the Commission in its report on this investigation will advise the President, with respect to each item on a list of 15 product categories provided by the USTR, as to the probable economic effect of the staged elimination of U.S. duties on industries in the United States producing like or directly competitive products, and on consumers. The articles that may be considered for elimination of U.S. duties are listed, by Harmonized Tariff Schedule item number, in the annex to this notice.

According to the USTR's request, the list of 15 product categories reflects work conducted by the GATT Committee on Trade and Development and is being used to provide an interim basis for proceeding with present work in this area. However, the USTR indicated that the list has not been accepted by the United States as constituting a definition of tropical products in the Uruguay Round negotiations.

As requested by the USTR, the Commission will submit its advice by October 31, 1988.

*Public Hearing:* A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m., on September 7, 1988, to be continued on September 8, 1988, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing and prehearing briefs (a signed original and fourteen (14) copies) should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than noon, August 29, 1988. Post-hearing briefs are required by September 19, 1988.

*Written Submissions:* Interested persons are invited to submit written statements concerning the investigation, in lieu of, or in addition to, appearances at the public hearing. All written submissions to the Commission must be received by or before 12:00 noon on September 19, 1988. A signed original and 14 copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for

public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** This investigation is being conducted under authority of the Trade Act of 1974, section 131(b).

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: July 27, 1988.

## Annex

### Articles Which May Be Considered for Elimination of U.S. Duties

*Tropical Products*

Articles provided for in the subheadings of the proposed Harmonized Tariff Schedules of the United States (HTSUS) which are listed below and which are not annotated with an asterisk may be considered for the elimination of U.S. import duties and are the subject of the request for advice of the U.S. International Trade Commission.

Subheadings listed below which are annotated with an asterisk are included in the indicative list of tropical products developed by the GATT Committee on Trade and Development, but such subheadings currently have a Column 1 rate of duty of "free" in the HTSUS, and the duty-free status is bound in the U.S. Schedule annexed to the GATT.

#### I. Tropical Beverage Items

*Coffee and Products*

| | | |
|---|---|---|
| 0901.11.00* | 0901.22.00* | 2101.10.40 |
| 0901.12.00* | 0901.30.00* | |
| 0901.21.00* | 2101.10.20 | |

*Cocoa and products*

| | | |
|---|---|---|
| 1801.00.00* | 1803.10.00* | 1804.00.00* |
| 1802.00.00* | 1803.20.00 | 1805.00.00 |

*Tea and instant tea*

| | |
|---|---|
| 0902.30.00* | 2101.20.20* |
| 0902.40.00* | 2101.20.40 |

#### II. Spices, Flowers, Plants, etc.

*Spices and Essential Oils—Tropical*

| | | |
|---|---|---|
| 0904.11.00* | 0905.00.00* | 0908.30.00* |
| 0904.12.00* | 0906.10.00* | 0909.10.00* |
| 0904.20.20 | 0906.20.00* | 0909.20.00* |
| 0904.20.40 | 0907.00.00* | 0909.30.00 |
| 0904.20.60 | 0908.10.00* | 0909.40.00* |
| 0904.20.70 | 0908.20.20 | 0909.50.00* |
| 0904.20.80* | 0908.20.40* | 0910.10.20* |
| 0910.10.40 | 0910.99.20* | 3301.29.10 |
| 0910.20.00* | 0910.99.40 | 3301.29.20 |
| 0910.30.00* | 0910.99.50* | 3301.29.50* |
| 0910.40.20* | 0910.99.60 | 3301.30.10 |
| 0910.40.30 | 3301.14.00* | 3301.30.50* |
| 0910.40.40 | 3301.21.00* | 3301.90.00* |
| 0910.50.00* | 3301.22.00* | |
| 0910.91.00 | 3301.28.00* | |

*Cut Flowers*

| | | |
|---|---|---|
| 0603.10.30 | 0603.10.70 | 0603.90.00 |
| 0603.10.60 | 0603.10.80 | |

*Plants, Vegetable Materials, Lacs, etc.*

| | | |
|---|---|---|
| 0602.10.00 | 1402.10.00* | 4602.10.13 |
| 0602.99.20* | 1402.91.00 | 4602.10.19 |
| 0602.99.30 | 1402.99.00* | 4602.10.21 |
| 0602.99.40 | 1403.10.00 | 4602.10.22 |
| 0602.99.60 | 1403.90.20 | 4602.10.23 |
| 0602.99.90 | 1403.90.40 | 4602.10.25 |
| 1211.90.20* | 1404.10.00* | 4602.10.29 |
| 1211.90.40 | 1404.90.00* | 4602.10.40 |
| 1211.90.60 | 1521.10.00 | 4602.10.50 |
| 1211.90.80* | 1521.90.20 | 9401.50.00 |
| 1301.10.00* | 1521.90.40* | 9401.90.10 |
| 1301.20.00* | 3203.00.10* | 9401.90.25 |
| 1301.90.40 | 3203.00.50 | 9401.90.35 |
| 1301.90.90* | 4601.10.00 | 9401.90.50 |
| 1302.14.00* | 4601.20.20 | 9403.80.30 |
| 1302.19.20* | 4601.20.40 | 9403.80.60 |
| 1302.19.40 | 4601.20.60 | 9403.90.10 |
| 1302.19.90* | 4601.20.80 | 9403.90.25 |
| 1302.39.00 | 4601.20.90 | 9403.90.40 |
| 1401.10.00* | 4601.91.20 | 9403.90.50 |
| 1401.20.20* | 4601.91.40 | 9403.90.60 |
| 1401.20.40 | 4602.10.05 | 9403.90.80 |
| 1401.90.20 | 4602.10.11 | |
| 1401.90.40 | 4602.10.12 | |

#### III. Certain Oilseeds, Vegetable Oils and Oil Cakes

| | | |
|---|---|---|
| 1202.10.00 | 1513.19.00* | 1519.19.20 |
| 1202.20.00 | 1513.21.00* | 1519.19.40 |
| 1203.00.00 | 1513.29.00* [5] | 1519.20.00 |
| 1207.10.00 | 1515.30.00 | 1519.30.20 |
| 1207.80.00* | 1515.50.00 | 1519.30.40 |
| 1207.92.00* | 1515.90.20 | 1519.30.60 |
| 1207.99.00* | 1515.90.40 | 1520.10.00 |
| 1208.90.00 | 1516.20.10 | 1520.90.00 |
| 1508.10.00 | 1516.20.90 | 2305.00.00 |
| 1508.90.00 | 1518.00.20 | 2306.50.00 |
| 1511.10.00 [1] | 1518.00.40 | 2306.60.00 |
| 1511.90.00 [1] | 1519.11.00 | 2306.90.00 |
| 1513.11.00* | 1519.12.00 | |

#### IV. Tobacco, Rice, and Tropical Roots

*Tobacco and Tobacco Products*

| | | |
|---|---|---|
| 2401.10.20 | 2401.20.40 | 2402.10.30 |
| 2401.10.40 | 2401.20.60 | 2402.10.60 |
| 2401.10.60 | 2401.20.80 | 2402.10.80 |
| 2401.10.80 | 2401.30.30* | 2402.20.10 |
| 2401.20.05 | 2401.30.60 | 2402.20.60 |
| 2401.20.20 | 2401.30.90 | 2402.20.90 |

*Rice*

| | | |
|---|---|---|
| 1006.10.00 | 1006.30.10 | 1102.30.00 |
| 1006.20.20 | 1006.30.90 | 1103.14.00 |
| 1006.20.40 | 1006.40.00 | |

*Manioc and Other Tropical Roots, and Products Thereof*

| | | |
|---|---|---|
| 0714.10.00 | 0714.90.50* | 1903.00.20* |
| 0714.90.10 | 0714.90.60 | 1903.00.40 |
| 0714.90.20 | 1108.20.00* | |
| 0714.90.40 | 1108.14.00* | |

#### V. Tropical Fruits and Nuts

*Bananas and Banana Products*

| | | |
|---|---|---|
| 0803.00.20* [3] | 0811.90.10 | 2008.99.15 |
| 0803.00.30* | 1106.30.20 | |
| 0803.00.40 | 2008.99.13 | |

*Other Tropical Fruits and Nuts and Products*

| | | |
|---|---|---|
| 0801.10.00* | 0813.40.40 | 2008.19.15 |
| 0801.20.00* | 0813.40.80 | 2008.19.20 |
| 0801.30.00* | 0813.40.90 | 2008.19.25 |
| 0802.90.10 | 0813.50.00 | 2008.19.30 |
| 0802.90.15 | 1106.30.40 | 2008.19.40 |
| 0802.90.20 | 2001.90.10 | 2008.19.50 |
| 0802.90.25 | 2001.90.20 | 2008.19.85 |
| 0802.90.80 | 2001.90.25 | 2008.19.90 |
| 0802.90.90 | 2001.90.30 | 2008.20.00 |
| 0804.10.20 | 2001.90.35 | 2008.91.00 |
| 0804.10.40 | 2001.90.40 | 2008.92.10 |
| 0804.10.60 | 2001.90.42 | 2008.92.90 |
| 0804.10.80 | 2001.90.45 | 2008.99.05 |
| 0804.30.20 | 2001.90.50 | 2008.99.10 |
| 0804.30.40 | 2001.90.60 | 2008.99.18 |
| 0804.30.60 | 2006.00.20 | 2008.99.20 |
| 0804.40.00 | 2006.00.30 | 2008.99.23 |
| 0804.50.40 | 2006.00.40 | 2008.99.25 |
| 0804.50.60 | 2006.00.50 | 2008.99.28 |
| 0804.50.80 | 2006.00.60 | 2008.99.29 |
| 0807.20.00 | 2006.00.70 | 2008.99.30* |
| 0810.90.20* [4] | 2006.00.90 | 2008.99.35 |
| 0810.90.40 | 2007.10.00 | 2008.99.40 |
| 0811.90.20* | 2007.99.05 | 2008.99.42 |
| 0811.90.22 | 2007.99.10 | 2008.99.45 |
| 0811.90.25 | 2007.99.15 | 2008.99.50 |
| 0811.90.30* | 2007.99.20 | 2008.99.60 |
| 0811.99.35 | 2007.99.25 | 2008.99.61 |
| 0811.90.40 | 2007.99.30* | 2008.99.63 |
| 0811.90.50 | 2007.99.35 | 2008.99.65 |
| 0811.90.55 | 2007.99.40 | 2008.99.80 |
| 0811.90.60 | 2007.99.45 | 2008.99.90 |
| 0812.90.10 | 2007.99.48 | 2009.40.20 |
| 0812.90.20 | 2007.99.50 | 2009.40.40 |
| 0812.90.30 | 2007.99.55 | 2009.80.20* |
| 0812.90.40 | 2007.99.60 | 2009.80.40 |
| 0812.90.90 | 2007.99.65 | 2009.80.60 |
| 0813.40.10 | 2007.99.70 | 2009.80.80 |
| 0813.40.15 | 2007.99.75 | 2009.90.20 |
| 0813.40.20 | 2008.11.00 | 2009.90.40 |
| 0813.40.30 | 2008.19.10* | |

#### VI. Tropical Wood and Rubber

*Tropical Wood and Wood Products*

| | | |
|---|---|---|
| 4403.10.00* | 4412.12.05 | 4421.90.70* |
| 4403.31.00* | 4412.12.10 | 4421.90.80 |
| 4403.32.00* | 4412.12.15 | 4421.90.85 |
| 4403.33.00* | 4412.12.20 | 4421.90.88* |
| 4403.34.00* | 4412.12.50 | 4421.90.90 |
| 4403.35.00* | 4414.00.00 | 9401.61.20 |
| 4403.99.00* | 4418.20.00 | 9401.61.40 |
| 4407.21.00* | 4418.30.00 | 9401.61.60 |
| 4407.22.00* | 4418.50.00 | 9401.69.20 |
| 4407.23.00* | 4418.90.20* | 9401.69.40 |
| 4407.99.00* | 4418.90.40 | 9401.69.60 |
| 4408.20.00* | 4419.00.40 | 9401.69.80 |
| 4408.90.00* [6] | 4419.00.80 | 9401.90.15 |
| 4409.20.10* | 4420.10.00 | 9401.90.40 |
| 4409.20.25* | 4420.90.20 | 9403.30.40 |
| 4409.20.40* | 4420.90.40 | 9403.30.80 |
| 4409.20.50 | 4420.90.80 | 9403.40.40 |
| 4409.20.60* | 4420.90.90 | 9403.40.60 |
| 4409.20.65 | 4421.10.00 | 9403.40.80 |
| 4409.20.90* | 4421.90.10 | 9403.50.40 |
| 4410.10.00 | 4421.90.15* | 9403.50.60 |
| 4410.90.00* | 4421.90.20 | 9403.50.80 |
| 4412.11.05 | 4421.90.30 | 9403.60.40 |
| 4412.11.10 | 4421.90.40 | 9403.60.80 |
| 4412.11.20 | 4421.90.50 | 9403.90.70 |
| 4412.11.50 | 4421.90.60 | |

*Natural Rubber and Rubber Products*

| | | |
|---|---|---|
| 4001.10.00* | 4006.90.10 | 4009.20.00 |
| 4001.21.00* | 4006.90.50 | 4009.30.00 |
| 4001.22.00* | 4007.00.00 | 4009.40.00 |
| 4001.29.00* | 4008.11.10 | 4009.50.00 |
| 4001.30.00* | 4008.11.50 | 4011.10.00 |
| 4005.10.00* | 4008.19.10 | 4011.20.00 |
| 4005.20.00* | 4008.19.50 | 4011.40.00 |
| 4005.91.00* | 4008.21.00 | 4011.50.00 |
| 4005.99.00* | 4008.29.00 | 4011.91.10* |
| 4006.10.00 | 4009.10.00 | 4011.91.50 |

| | | |
|---|---|---|
| 4011.99.10* | 4015.11.00 | 4016.95.00 |
| 4011.99.50 | 4015.19.10 | 4016.99.03 |
| 4013.10.00 | 4015.19.50 | 4016.99.05 |
| 4013.20.00 | 4015.90.00 | 4016.99.10 |
| 4013.90.10* | 4016.10.00 | 4016.99.15 |
| 4013.90.50 | 4016.91.00 | 4016.99.20 |
| 4014.10.00 | 4016.92.00 | 4016.99.25 |
| 4014.90.10 | 4016.93.00 | 4016.99.50 |
| 4014.90.50 | 4016.94.00 | 4017.00.00 |

**VII. Jute and Hard Fibers**

| | | |
|---|---|---|
| 5303.10.00* | 5311.00.40 | 5702.39.10 |
| 5303.90.00* | 5311.00.60 | 5702.39.20 |
| 5304.10.00* | 5607.10.00 | 5702.49.10 |
| 5304.90.00* | 5607.21.00* | 5702.49.15 |
| 5305.11.00* | 5607.29.00 | 5702.49.20 |
| 5305.19.00* | 5607.30.10* | 5702.59.10 |
| 5305.21.00* | 5607.30.20 | 5702.59.20 |
| 5305.29.00* | 5608.90.10 | 5702.99.10 |
| 5305.91.00* | 5608.90.20 | 5702.99.20 |
| 5305.99.00* | 5608.90.30 | 5703.00.00 |
| 5307.10.00 | 5609.00.10 | 5705.00.10* |
| 5307.20.00 | 5609.00.20 | 5705.00.20 |
| 5308.10.00* | 5609.00.30 | 5905.00.10* |
| 5308.90.00 | 5609.00.40 | 5905.00.90 |
| 5310.10.00* | 5701.90.10 | 6305.10.00* |
| 5310.90.00 | 5701.90.20 | 6305.90.00 |
| 5311.00.20 | 5702.20.10 | |
| 5311.00.30 | 5702.20.20* | |

[1] Palm oil and its fractions imported to be used in the manufacture of iron or steel products, or of tin plate or terne plate are bound free of duty in the GATT.

[2] Palm kernel oil unfit for use as food is not bound free of duty in the GATT.

[3] Dried bananas are not bound free of duty in the GATT.

[4] Kiwi fruit is not bound free of duty in the GATT.

[5] Reinforced or backed decorative wood veneers, not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the wood are not bound free of duty in the GATT.

[FR Doc. 88-17493 Filed 8-2-88; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

### Motor Carrier Applications to Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

**Findings**

The findings for these applications are set forth at 49 CFR 1182.6.

MC-F-19206, filed July 8, 1988. Greyhound Lines, Inc. (Greyhound) (Suite 2500, 901 Main Street, Dallas, TX 75202)—Purchase—Scenic Trails, Inc., d/b/a Scenic Trailways (Scenic) (2 Copeland Avenue, LaCrosse, WI 54603).

Representatives: Fritz R. Kahn and William C. Evans, Suite 1000, 1660 L Street, NW., Washington, DC 20036.

Greyhound, a motor common carrier of passengers pursuant to MC-1515 and related subs, seeks authority to purchase the interstate and intrastate, regular-route operating authorities of Scenic, a motor common carrier of passengers in interstate and intrastate commerce. The operating authority to be transferred is contained in Certificate No. MC-135552 and Sub-Nos., which authorize the transportation of passengers and package express over a system of regular routes in the States of CO, IL, IN, IA, KS, MD, MI, MN, MO, NE, ND, OH, PA, SD, TX, VA, and WI and DC. Scenic operates regular-route service generally between Minneapolis, MN, and Pittsburgh, PA, via Chicago, IL, serving points in MN, WI, IL, IN, OH, and PA. Approval is also sought for the transfer of Scenic's intrastate, regular-route authorities, granted by this Commission pursuant to 49 U.S.C. 10922(c)(2). Scenic will retain its operating authority to transport passengers in charter and special operations.

Temporary authority under 49 U.S.C. 11349 was granted to Greyhound on July 20, 1988. Greyhound is an indirect wholly owned subsidiary of GLI Holding Company, which indirectly controls BusLease Contract Services, Inc. (MC-193190). GLI Holding Company also has exercised options to purchase Vermont Transit Co., Inc. (MC-45626), and Texas, New Mexico, Oklahoma Coaches, Inc. (MC-61120), but has not yet consummated the transactions. These control relationships of GLI Holding Company were approved by the Commission in Docket MC-F-18260.

In Finance Docket No. MC-F-18505, the Commission approved the purchase by GLI Acquisition Company, an indirect wholly owned subsidiary of GLI Holding Company, of the operating authorities and principal assets of Trailways Lines, Inc. It also approved the acquisition by GLI Acquisition Company of Trailways' 50 per cent stock interest in Continental Panhandle Lines, Inc. In addition, Greyhound holds temporary authority in No. MC-F-19167 to lease the operating rights of S.B. & E. Transportation Company, d/b/a Pacific Trailways.

Decided: July 27, 1988.

By the Commission, the Motor Carrier Board, Members Johnson, Grossman, and Thomas.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17425 Filed 8-2-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB-3 (Sub-No. 74)]**

### Missouri Pacific Railroad Co.; Abandonment in Johnson County, AR

The Commission has issued a Decision and Certificate authorizing Missouri Pacific Railroad Company to abandon its 8.8-mile rail line between milepost 435.6 (near Clarksville Jct.) and milepost 444.4, (near Clarksville) in Johnson County, Arkansas. The decision and Certificate will become effective 30 days after publication in the **Federal Register** unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the railroad within 10 days after publication.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: July 27, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley did not participate in the disposition of this proceeding.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17426 Filed 8-2-88; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Information Collection(s) Under Review

July 29, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

**New Collection**

(1) Cuban Detainees.
(2) No form number, Office of the Associate Attorney General.
(3) One time.
(4) Individuals and households. This form is required to provide necessary information for decisions under the Department's Cuban Detainee Review Program.
(5) 2,200 respondents at .5 hours each.
(6) 1,100 estimated annual public burden hours.
(7) Not applicable under 3504(h).

**Extention of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection**

(1) Return A—Monthly Return of Offenses Known to the Police, Supplement to Return A.
(2) Return: DO-65/65a; Supplement: DO-57/57a. Federal Bureau of Investigation.
(3) Monthly.
(4) State or local governments. Return A collects information regarding crime throughout the United States. The supplement collects information regarding property stolen and recovered. Data from both are published in the comprehensive annual "Crime in the United States."
(5) Return: 2,155 respondents monthly at .5 hours each. Supplement: 2,155 respondents monthly at .5 hours each.
(6) 12,930 estimated annual burden hours for Return. 12,930 estimated annual burden hours for Supplement.
(7) Not applicable under 3504(h).

**Larry E. Miesse,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 88-17428 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Water Act; Escambia County Utilities Authority et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 25, 1988, a proposed Consent Decree in United States v. Escambia County Utilities Authority, et al., Civil Action No. 88-30249/RV, was lodged with the United States District Court for the Northern District of Florida. The Complaint sought penalties and injunctive relief against the Escambia County Utilities Authority ("Authority") and the State of Florida under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the Authority's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The Authority's violations included discharging in violation of permit limitations, and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the Authority to construct the necessary facilities and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $120,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. Escambia County Utilities Authority, DJ Ref. 90-5-1-1-3058.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Florida, 100 N. Palafox St., Room 307, Pensacola, Florida 32501, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17398 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Water Act in United States v. Parish of St. John the Baptist and the State of Louisiana

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 19, 1988, a proposed Consent Decree in United States v. Parish of St. John The Baptist and The State of Louisiana, Civil Action No. 88-3090 F/5 was lodged with the United States District Court for the Eastern District of Louisiana.

The complaint in this enforcement action was filed on July 19, 1988, against the Parish of St. John The Baptist ("the Parish") under sections 309 (b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319 (b) and (d), seeking civil penalties and other relief for the discharge of pollutants into the navigable waters of the United States in violation of National Pollution Discharge Elimination System ("NPDES") permits issued to the Parish. The proposed Consent Decree ("Decree") requires the Parish to undertake a comprehensive program, in accordance with a compliance schedule, to attain and thereafter maintain compliance with the NPDES permits' discharge limits. It further provides for stipulated penalties for failure to comply with the Decree and for payment of a $55,000 civil penalty for past violations of the Act.

The Department of Justice will receive, a for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to United States v. Parish of St. John The Baptist and The State of Louisiana, D.J. No. 90-5-1-1-3009.

The proposed Consent Decree may be examined at the office of the United States Attorney, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.50 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17399 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging a Consent Decree Pursuant to the Safe Drinking Water Act; Whiskey Run Water Association

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 19, 1988 a proposed Consent Decree in United States v. Whiskey Run Water Association, Civil Action No. 83-1175, was lodged with the United States District Court for the Middle District of Pennsylvania.

The Consent Decree filed by the United States settles a contempt motion filed with the District Court on March 6, 1987. The motion for contempt alleged that Whiskey Run had not complied with the Court's Order of March 12, 1984, which required Whiskey Run to remedy violations of the Safe Drinking Water Act, 42 U.S.C. 300f. The Consent Decree requires Whiskey Run to install a raw water disinfection system, and assesses a civil penalty of $250.00.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Divison, Department of Justice, Washington, DC 20530, and should refer to United States v. Whiskey Run Water Association, DOJ# Ref. 90-5-1-1-1640A. The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Pennsylvania, Suite 309, Federal Building, Washington & Linden Streets, Scranton, Pennsylvania, 18501. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. The Consent Decree is 12 pages long and copying costs are $.10 per page, so when requesting a copy of the decree, please enclose a check or money order for $1.20 made out to: "The United States Treasurer."

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17397 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-10-M

# Drug Enforcement Administration

[Docket No. 87-84]

## Harry Aylor, D.D.S., Winston-Salem, NC; Hearing

Notice is hereby given that on December 8, 1987, the Drug Enforcement Administration, Department of Justice, issued to Harry Aylor, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 9, 1988, commencing at 10:00 a.m., at the United States Tax Court, United States Post Office and Courthouse, Room 207, 101 West Fifth Street, Winston-Salem, North Carolina.

Dated: July 27, 1988.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 88-17416 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-72]

## J L B, Inc., d/b/a Boyd Drugs; Hearing

Notice is hereby given that on October 5, 1987, the Drug Enforcement Administration, Department of Justice, issued to J L B, Inc., d/b/a Boyd Drugs, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AJ3023467 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 30, 1988, commencing at 10:00 a.m., at the Jefferson Circuit Court, New Hall of Justice Building, 600 West Jefferson Street, 3rd Floor, Louisville, Kentucky.

Dated: July 27, 1988.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 88-17417 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-2]

## Robert G. Crummie, M.D., Fayetteville, NC; Hearing

Notice is hereby given that on December 9, 1987, the Drug Enforcement Administration, Department of Justice, issued to Robert G. Crummie, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC2497825 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, August 10, 1988, commencing at 10:00 a.m., at the United States Tax Court, United States Post Office and Courthouse, Room 207, 101 West Fifth Street, Winston-Salem, North Carolina.

Dated: July 27, 1988.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 88-17418 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-09-M

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**[Docket No. 88-8]**

### L J B, Inc., d/b/a Jeff's Prescription Shop; Hearing

Notice is hereby given that on December 22, 1987, the Drug Enforcement Administration, Department of Justice, issued to L J B, Inc., d/b/a Jeff's Prescription Shop, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AJ3029851 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 30, 1988, commencing at 10:00 a.m., at the Jefferson Circuit Court, New Hall of Justice Building, 600 West Jefferson Street, 3rd Floor, Louisville, Kentucky.

Dated: July 27, 1988.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 88-17419 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-09-M

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**[Docket No. 88-13]**

### Raymond Lyman, D.M.D.; Revocation of Registration

On January 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (Order) to Raymond Lyman, D.M.D., 28 N. Main St., Blanding, Utah (Respondent). The Order proposed to revoke Respondent's DEA Certificate of Registration, AL2383882, on grounds that Respondent is not currently authorized to handle controlled substances in the state of Utah. On January 29, 1988, the Order was served on Respondent who then requested a hearing to determine all issues raised by the Order. Before a hearing date was set, the Government moved for summary disposition of the case alleging that the Division of Occupational and Professional Licensing of the State of Utah (DOPL) had revoked Respondent's state license to practice dentistry on May 20, 1987, and, therefore, Respondent was not duly authorized to possess, prescribe, dispense or otherwise handle controlled substances in the State of Utah. The motion was supported by an Order from the Director of the DOPL revoking Respondent's state license to practice dentistry.

On April 4, 1988, Respondent filed a response to the Motion for Summary Disposition, asserting that his license was revoked for one year on April 27, 1987, that his attorney had filed a motion with "the board," apparently seeking Respondent reinstatement, and that within four to six weeks Respondent would be authorized to handle controlled substances in Utah. In response, the Government filed a letter from the Director of the DOPL stating that the Respondent had not contacted their office and, even if he had done so, it would be unlikely that he would become licensed in the near future. Respondent provided no documentation to the contrary. On May 9, 1988, the Administrative Law Judge granted the Government's Motion for Summary Disposition and recommended that Respondent's registration be revoked. Proceedings were then terminated and the record was certified and forwarded to the Administrator.

The Administrator has consistently held that a practitioner may not be registered if he is not authorized to handle controlled substances by the state in which he practices. 21 U.S.C. §§ 823(f) and 824(a)(3). Emerson Emory, M.D., Docket No. 85-46, 51 FR 9543 (1986); Avner Kauffman, M.D., Docket No. 85-8, 50 FR 34208 (1985).

In the instant case, the action by the Division of Licensing is conclusive, and it is clear that Respondent's license to practice dentistry has been revoked. In such a case, a Motion for Summary disposition is properly entertained and must be granted. It is settled that when no fact question is involved, an adversarial hearing is not required. U.S. v. Consolidated Mines and Smelting Co., Ltd., 455 F.2d 432, 453 (9th Cir. 1971); see NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, Local 433, 549 F.2d 634 (9th Cir. 1977); Alfred Tennyson Smurthwaite, M.D., Docket No. 77-29, 43 FR 11873 (1978); Philip E. Kirk, M.D., Docket No. 82-36, 48 FR 32887 (1983), Aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator finds the Respondent is not licensed in the State of Utah and concurs with the recommendation of the Administrative Law Judge that Respondent's registration should be revoked and any pending applications should be denied. Therefore, pursuant to 21 U.S.C. 824(a)(3) and 28 CFR O.100(b), the Administrator hereby orders that Certificate of Registration AL2383882, previously granted to Raymond Lyman, D.M.D., is revoked. The Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied.

This Order is effective August 3, 1988.

**John C. Lawn,**

*Administrator.*

Dated: July 25, 1988.

[FR Doc. 88-17414 Filed 8-2-88; 8:45 am]

BILLING CODE 4410-09-M

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**[Docket No. 88-26]**

### Samuel S. Lyness, M.D.; Revocation of Registration

On January 13, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Samuel S. Lyness, M.D. (Respondent), of 958 County Line Road, Bryn Mawr, Pennsylvania, proposing to revoke DEA Certificate of Registration AL8832633 and to deny any pending applications for renewal on the ground that he was no longer authorized to handle controlled substances in the state in which he was registered.

Respondent, through counsel, requested a hearing on the issue raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. On March 21, 1988, Government counsel filed a motion for summary disposition of this matter based upon Respondent's lack of state authorization to handle controlled substances as a result of the recent suspension of his Pennsylvania State medical license. Government counsel subsequently amended the motion to include the recovation of Respondent's Pennsylvania State medical license. Judge Young afforded Respondent's counsel two opportunities to respond to the Government's motion. No such

opposition or other response to the Government's motion for summary disposition was filed.

The Administrative Law Judge issued his opinion and recommended decision on May 20, 1988, recommending the revocation of Respondent's current DEA Certificate of Registration and the denial of any pending applications for renewal based on Respondent's lack of state authorization to handle controlled substances. No exceptions were filed in response to the Administrative Law Judge's opinion and recommended decision.

After a careful review of the entire record, the Administrator adopts the Administrative Law Judge's recommendation.

The Administrator finds that effective July 29, 1987, the Pennsylvania State Board of Medicine suspended Respondent's license to practice medicine in that state. The suspension was to remain in effect until July 28, 1992. On March 22, 1988, the Pennsylvania State Board of Medicine issued a final Adjudication and Order revoking Respondent's license to practice medicine in that state, effective April 22, 1988. Consequently, Respondent is no longer authorized to handle controlled substances in that state.

The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See Fazal Ahmad, M.D., Docket No. 85–46, 51 FR 9543 (1986); Avner Kauffman, M.D., Docket No. 85–8, 50 FR 34208 (1985); and Agostino Carlucci, M.D., Docket No. 82–20, 49 FR 33184 (1984).

In the instant case, it is clear that Respondent is not currently authorized ot handle controlled substances in the State of Pennsylvania. Without the appropriate state authority to handle controlled substances, Respondent cannot hold a Federal controlled substance registration.

Since there is no dispute about Respondent's lack of state authority to handle controlled substances, the Administrative Law Judge properly granted the Government's motion for summary disposition. When no question of fact remains or when the facts are agreed, a plenary adversarial administrative proceeding is not required, even though the statute allows for a hearing. In such situations, the rationale is that Congress did not intend for the Agency to perform the meaningless task of conducting a hearing when no issues remain in dispute. See United States v. Consolidated Mines and Smelting Co., Ltd., 445 F.2d 432, 453 (9th Cir. 1971); N.L.R.B. v. International Asociation of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977); Alfred Tennyson Smurthwaite, M.D., Docket No. 77–29, 43 FR 11873 (1977); Philip E. Kirk, M.D., Docket No. 82–36, 48 FR 32887 (1983), aff'd sub. nom. Kirk v. Mullen, 749 F.2d 297 (6gh Cir. 1984).

Therefore, based on Respondent's lack of state authority to handle controlled substances, the Administrator concludes that Respondent's DEA Certificate of Registration must be revoked. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AL8832633, previously issued to Samuel S. Lyness, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective August 3, 1988.

**John C. Lawn,**

*Administrator.*

Dated: July 26, 1988.

[FR Doc. 88–17415 Filed 8–2–88; 8:45 am]

BILLING CODE 4410–09–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–361 and 50–362]**

### Southern California Edison Co. et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendments would incorporate proposed changes, identified as PCN–231, 233 and 234, as described below:

Proposed Change PCN–231 is a request to revise Technical Specification 3/4.1.3.6, "Regulating CEA Insertion Limits." The proposed change would revise Figure 3.1–2, relaxing the CEA insertion limits as low power levels to increase operating flexibility and to reduce the volume of radioactive waste water.

Proposed Change PCN–233 is a request to revise Technical Specification 3/4.10.2, "Group Height, Insertion and Power Distribution Limits," and Tables 2.2–1 and 3.3–1. The proposed change would modify the existing Technical Specification to allow use of the correct Special Test Exception during the measurement of various CEA reactivity worths at low power levels. Tables 2.2–1 and 3.3–1 would incorporate this Special Test Exception in Footnotes (5) and (C), respectively. Additionally, the proposed change would specify, in Table 3.3–1, an exemption from the requirements of Specification 3.0.4 if the CEACs are inoperable. PCN–233 would also correct a reference error in Surveillance Requirement 4.10.2.2.

Proposed Change PCN–234 is a request to revise Technical Specification 3/4.5.1, "Safety Injection Tanks." The proposed change would increase the upper limit on SIT cover gas pressure from 625 to 640 psig and change the designated units from psig to psia.

*The Need for the Proposed Action*

The proposed changes would provide operational flexibility, clarify and correct the Technical Specifications, and reduce the volume of radioactive waste water.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications and has concluded that the proposed changes provide reasonable assurance that the facility can be operated safely. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Changing the insertion limits will decrease the volume of radioactive waste water and changing the SIT cover gas pressure will result in core reflood after a large break LOCA commencing sooner. Accordingly, the Commission concludes that this proposed action would result in no significant adverse radiological environmental impact.

With regard to potential nonradiological impacts, the proposed

change to the Technical Specifications involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 31, 1988 (53 FR 10452). No request for hearing or petition for leave to intervene was filed following these notices.

*Alternative to the Proposed Action*

Since the Commission concluded that there is no significant adverse environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. Denial of the request would not reduce environmental impacts of plant operation and in fact would prevent a reduction in the volume of radioactive waste water generated at the facility.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to the Operation of the San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981.

*Agencies and Persons Consulted*

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

*Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated December 14, 1987 and the supplementary information provided by letters dated April 14 and May 6, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 29the day of July, 1988.

For the Nuclear Regulatory Commission.

**George W. Kinghton,**

*Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reeactor Regulation.*

[FR Doc. 88-17462 Filed 8-2-88; 8:45 am]

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**[Docket Nos. 50-321 and 366]**

## Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia and City of Dalton, GA; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-57 and NPF-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 located in Appling County, Georgia.

The Technical Specifications (TS) for Units 1 and 2 require that the main steam isolation valves stroke closed in not less than 3 seconds and not more than 5 seconds. The licensee proposes to modify this stroke time interval to require valve closure in not less than 2 seconds and not more than 8 seconds. Other changes to the TS also would be made to make the Unit 2 TS consistent with the Standard Technical Specifications (NUREG-0123, Revision 3) and to improve consistency between the Unit 1 and the Unit 2 TS.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director, Project Directorate II–3: (petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding office or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 27th day of July 1988.

For the Nuclear Regulatory Commission.

**Lawrence P. Crocker,**

*Project Manager, Project Directorate II–3, Division of Reactor Projects I/II.*

[FR Doc. 88–17461 Filed 8–2–88; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–25950; File No. SR–Amex–87–20]**

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

### I. Introduction

On July 16, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange"), purusant to section 19(b) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] submitted to the Securities and Exchange Commission ("Commission") a proposed rule change to increase the number of Institutional Index ("XII") option contracts eligible for execution through Amex's AUTO-EX system from 10 to 100.

The proposed rule change was published for comment in Securities Exchange Act Release No. 24793 (August 12, 1987), 52 FR 31105. No comments were received on the proposed rule change.

### II. Description of Proposal

The Exchange's AUTO-EX system authomatically executes small public customer orders in a select group of option classes.[3] Public customer orders executed through AUTO-EX receive a guaranteed execution at the market quote, with either the specialist in the option or a registered options trader taking the other side of the trade. AUTO-EX reports such executions back to the entering member firm as well as to the last sale tape, thus "locking-in" both sides to the trade and minimizing operational burdens for the parties to the trade and for the Exchange. AUTO-EX currently is operational in the Amex's Major Market ("XMI") index option, 40 equity options, and several competitively traded equity options for orders of 10 contracts or less.

Because of the relatively large number of contracts proposed to be eligible for automatic execution in XII, the Exchange's proposal would limit contra side participation to the XII specialist, rather than allowing Amex market makers to participate in these trades on a rotational basis with the specialist. In order not to disadvantage brokers and traders in the crowd, however, the proposal provides that the specialist must fill any order, whether in the crowd or on the limit order book, that was bidding or offering at the executed price of an AUTO-EX trade. For example, if the specialist is notified of a 75 contract AUTO-EX execution against a quoted bid of 3, he must execute any bids of 3 in the crowd or on the book that are entitled to executions under Amex rules of priority and precedence.[4] To ensure compliance with this aspect of the proposal, the overhead display screens in the XII trading area will be modified to indicate when the last sale is an AUTO-EX execution.

### III. Discussion

The Amex's proposal to increase to 100 the number of contracts eligible for execution through AUTO-EX IN XII is intended to attract increased institutional use to the product and to allow the Exchange to remain competitive with other markets trading similar products. In the past year, the Exchange has undertaken other measures designed to foster market depth and liquidity in XII. These measures include the adoption of a Limited Trading Permits Plan whereby the Exchange added 36 market makers to its non-equity option trading areas through the issuance of Limited Trading Permits ("LTPs").[5] In addition, the Exchange developed a real time option pricing capability that directly interfaces with the Amex Market Data System and automatically generates quotation updates in XII.

The Commission believes that the proposed rule change and the developments cited above are a positive step toward increasing the Exchange's floor trading capability in non-equity options products. The Commission continuously has supported the implementation and expansion of exchange automatic executions systems such as AUTO-EX because of these systems' unique ability to provide customers orders with quaranteed executions at the market quote. These systems also provide many operational benefits to member firms, including nearly instantaneous price reports.

While the benefits of the proposed rule change are significant, nonetheless the Commission has been concerned with the proposal's provision that only the XII specialist participate in AUTO-EX trades. The Commission's concern arose from an Exchange requirement, adopted in conjunction with the issuance of LTPs, that one-third of an

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] AUTO-EX's use was initially approved by the Commission in Securities Exchange Act Release No 22810 (November 8, 1985), 50 FR 47480

[4] *See, e.g.*, Amex Rule 950.

[5] *See* Securities Exchange Act Release No. 24303 (April 6, 1987), 52 FR 11789

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LTP holder's total trading activity [6] be in XII. The Commission was concerned that, if LTP holders could not participate in AUTO-EX trades, they might engage in riskless or pre-arranged proprietary trades in order to meet the Plan's one-third trading requirement. In practice, however, this concern will be addressed by the obligation imposed by the proposed rule on the XII specialist to trade with any orders on the floor at the same price as an AUTO-EX execution. In this regard, the Exchange has committed itself to monitor the trading activity of LTP holders to ensure that their participation in public customer order flow does not decline significantly from current levels [7] as a result of the implementation of the proposed rule change.[8] The Amex has in place procedures to monitor options trading generally and ensure that LTP holders' trading in XII is done for the purpose of contributing to the maintenance of a fair and orderly market, and not solely to fulfill the one-third requirement.[9]

## IV. Conclusion

For the above stated reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [10] and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

*Secretary.*

Dated: July 28, 1988.

[FR Doc. 88-17457 Filed 8-2-88; 8:45 am]

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[6] Total trading activity is calculated on a quarterly basis based on the number of contracts traded.

[7] *See, e.g.*, statistics contained in letter to David Underhill, Division of Market Regulation, SEC, from Claire P. McGrath, Staff Attorney, Amex, dated July 18, 1988, indicating that approximately 44% of the trading activity of LTP holders in XII between October 1, 1987 and May 31, 1988 was conducted with public customers.

[8] Telephone conversation between Howard Baker, Vice President, Amex, and Holly H. Smith, Special Counsel, Division of Market Regulation, SEC, July 28, 1988.

[9] *See* letter to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, from James Duffy, Legal and Regulatory Policy Division, Amex, dated December 23, 1986 (filed in connection with SR-Amex-86-24).

[10] 15 U.S.C. 78f (1982)

[11] 15 U.S.C. 78s(b)(2) (1982)

[12] 17 CFR 200.30-3(a)(12) (1987).

[Release No. 34-25948; File No. SR-DTC-88-13]

## Self-Regulatory Organizations; Depository Trust Co.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on July 12, 1988, the Depository Trust Company ("DTC") filed the proposed rule change described below. The proposal revises DTC's operational arrangements to incorporate issues eligible for DTC's Same-Day Funds Settlement ("SDDFS") Service and to clarify the prerequisites for such issues to become eligible for that service. The Commission is publishing this notice to solicit comments on the rule change.

DTC's proposed rule change is a memorandum, included in the file as *Exhibit A*, that sets out DTC's operational arrangements necessary for an issue to become eligible for DTC services. The memorandum has been updated to include issues eligible for DTC's SDFS Service, which began operation subsequent to the pulication of the memorandum in June 1987. The arrangements in the memorandum otherwise remain virtually unchanged. The memorandum's purpose is to inform participants, underwriters, agents, trustees, bond counsel, and others of what is necessary to make new issues eligible for DTC services. DTC expects the operational arrangements to be considered when participants and others structure, distribute, and administer new issues.)

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act in that it promotes maximization of the number of securities issues that can be made depository-eligible while maintaining orderly processing and permitting timely dividend, interest, and principal payments.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the Federal Register. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW, Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-88-13.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 27, 1988.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-17458 Filed 8-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16503; 812-6508]

## Merrill Lynch California Municipal Bond Trust et al.; Application for Exemption

July 28, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

*Applicants:* Merrill Lynch California Municipal Bond Trust, Merrill Lynch Multi-State Municipal Series Trust, Merrill Lynch Retirement Benefit Investment Program, Inc., Merrill Lynch Retirement/Income Fund, Inc., Merrill Lynch Basic Value Fund, Inc., Merrill Lynch Capital Fund, Inc., Merrill Lynch Corporate Bond Fund, Inc., Merrill Lynch EuroFund, Merrill Lynch Fund for Tomorrow, Inc., Merrill Lynch Global Convertible Fund, Inc., Merrill Lynch Government Fund Inc., Merrill Lynch Institutional Fund, Inc., Merrill Lynch International Holdings, Inc., Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Municipal Series Trust, Merrill Lynch Natural Resources Trust, Merrill Lynch Pacific Fund, Inc., Merrill Lynch Phoenix Fund, Inc., Merrill Lynch Ready Assets Trust, Merrill Lynch Retirement Equity Fund, Merrill Lynch Retirement Global Bond Fund, Merrill Lynch Retirement Series Trust, Merrill Lynch Special Value Fund, Inc., Merrill Lynch Strategic Dividend Fund, Merrill Lynch U.S.A. Government Reserves, Sci/Tech Holdings, Inc., and each open-end management investment company to be established, advised or managed in the future by Merrill Lynch Asset Management, Inc. or Fund Asset

Management, Inc. or distributed by Merrill Lynch Funds Distributor, Inc. (all of the above being referred to collectively, in whole or in part, as the context requires, as the "Funds"), Merrill Lynch Asset Management, Inc. ("MLAM") and Fund Asset Management, Inc. ("FAMI") (together, the "Advisers"), and Merrill Lynch Funds Distributor, Inc. ("MLFD") (the "Distributor") (all of the foregoing being referred to as the "Applicants").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) of the 1940 Act from the provisions of section 18(f), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), 22(d) of the 1940 Act and Rule 22c–1 thereunder and approval requested under section 11(a) of the 1940 Act.

*Summary of Application:* Applicants are requesting an order of the Commission (i) to permit the Funds to sell two classes of securities for the purpose of establishing a dual distribution system, (ii) to permit the Funds to assess a contingent deferred sales load ("CDSL") on certain redemptions of a class of their securities, and to waive the CDSL in certain cases, and (iii) to permit certain offers of exchange between shares of the Funds. This notice only summarizes a detailed and lengthy application.

*Filing Date:* The application was filed on October 21, 1986, and an Amended and Restated Application was filed on February 24, March 17, and June 19, 1987 and June 29, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Box 9011, Princeton, New Jersey 08543–9011 (Merrill Lynch Government Fund Inc. and Merrill Lynch Institutional Fund Inc., 125 High Street, Boston, Massachusetts 02110).

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Fran Pollack-Matz (202) 272–3024 or Branch Chief Karen L. Skidmore (202) 272–3023 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

**Applicants' Representations and Legal Conclusions**

1. Each of the Funds is a diversified, open-end management investment company registered under the 1940 Act. Each Fund has entered into or intends to enter into an investment advisory or management agreement with one of the Advisers, and a distribution agreement with the Distributor under which the Distributor acts as principal underwriter for the Funds.

2. Certain of the Funds are currently offered to investors at net asset value plus a front-end sales load ("Front-End Load Funds"). Other Funds ("CDSL Funds") are offered to the public at their net asset value without a front-end load. Instead, an investor's proceeds from a redemption of the CDSL Funds' shares made within a specified period of time after purchase ("CDSL Period") are subject to a CDSL imposed by the Distributor. In addition, the CDSL Funds pay the Distributor a distribution fee under a distribution plan adopted by the Funds pursuant to Rule 12b–1 under the 1940 Act ("Rule 12b–1 Plan") based on the average daily net assets of a Fund, typically at an annual rate in the 0.5% to 1% range. The Applicant Funds also include money market funds which are generally offered without a sales load (the "Money Market Funds"). Two of the Money Market Funds have Rule 12b–1 Plans, though different in level of charges from the CDSL Funds' Rule 12b–1 Plans. Another two of the Money Market Funds have adopted "defensive" Rule 12b–1 Plans, *i.e.*, the Adviser is permitted under these plans to use a portion of its management and advisory fees to pay for the distribution of these Money Market Fund shares.

*Representations Relating to the Dual Distribution System*

3. Applicants propose the establishment of a dual distribution system (the "Dual Distribution System") which would enable each of the Funds to provide investors with the option of purchasing shares either with a conventional front-end sales load (the "Front-End Load Option") such as is currently offered by the Front-End Load Funds are subject to a CDSL and a Rule 12b–1 Plan charge (the "Deferred Load Option") as is currently offered by the CDSL Funds.

4. Each Fund would create two classes of shares with "Class A" shares being sold under the Front-End Load Option and "Class B" shares being sold under the Deferred Load Option. The two classes would each represent interests in the same portfolio of securities of a fund, and be identical in all respects, except that (i) Class B shares would bear the expenses of the deferred sales arrangements, *i.e.*, the CDSL and the Rule 12b–1 Plan, any incremental transfer agency costs resulting from such sales arrangements, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended ordered ("Differential Expenses"), (ii) Class B shares would have exclusive voting rights with respect to the Rule 12b–1 Plan, and (iii) the two classes would have different exchange privileges. (Sometimes (i), (ii), and (iii) are collectively referred to as the "Class Dissimilarities.")

5. Under the Front-End Load Option relating to Class A shares, the sales loads would be subject to reductions for larger purchases and under a right of accumulation and a letter of intent. Certain other reductions would also apply, as set forth in the registration statement of each of the Funds.

6. The two classes of shares would represent interests in the same portfolio of securities and would have identical voting, dividend, liquidation and other rights and the same terms and conditions, except for the specifc Class Dissimilarities, noted in #4. The net asset value of each share would be computed on a pro rata basis for each share regardless of class, and all expenses incurred by a Fund would be borne on a pro rata basis except for the Differential Expenses which would be borne solely by Class B. The Differential Expenses would cause the net investment income attributed to, and the dividends payable on, Class B shares to be lower than that for Class A shares since the expenses are deducted from gross investment income for each class. And because undistributed net income is a component of net asset value, the net asset value of the Class B shares would be lower than the net asset value of the Class A shares. However, any dividends paid by a Fund with respect to Class A and Class B shares would be calculated in the same manner, at the same time, on the same day, and would be in the same amount, except for the Differential Expenses.

7. In substance, the two classes of a dual-priced fund would be treated as if they were separate funds that share a common securities portfolio. The effect that the allocations of daily income and expenses, changes in realized gains and losses, and unrealized appreciation/depreciation would have on the two classes would depend on the type of fund involved. The application contains a more detailed discussion of the Applicants' proposed methodology for net asset value calculations and expense allocations.

8. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") sales personnel would be paid under different compensation systems for selling Class A or Class B shares, similar to sales of the Front-End Load and CDSL Funds, respectively. Because financial consultant's compensation would vary from case to case depending on breakpoints, length of trailer, and the like, it is not possible to generalize as to which class would provide the financial consultant the highest level of compensation.

9. The prospectuses of the Funds would (i) describe the services rendered and compensation paid under the Rule 12b–1 distribution plans with respect to such shares and the fees payable by each of the Funds for such services; and (ii) disclose all material information concerning the Class A and Class B shares in a manner that would enable an investor to make a comparative analysis of the two classes of shares and facilitiate the making of an investment decision as to which class would be more advantageous to the investor.

*Applicants' Legal Conclusion Relating to the Dual Distribution System*

10. The proposed Dual Distribution System does not create the potential for the abuses relating to complex capital structures and mutuality of risk which section 18 was designed to correct. since all shares would participate pro rata in the Fund's income and the Fund's expenses, except for the Differential Expenses payable by Class B shares, the proposed arrangement would not increase the speculative character of the shares of the Funds or disturb the mutuality of risk among all shareholders. Further, both classes of shares would be redeemable at all times and no one class of shares would have any preference or priority over the other Fund class in the usual sense, that is, no class would have distribution or liquidation preferences with respect to particular assets and no class would be protected by any reserve or other account.

11. The interests of the two classes as to the payment of management and advisory fees would be the same, and not conflict because these fees would be used solely to compensate the Funds' investment advisers for providing services common to all investors. Further, the directors/trustees must analyze the reasonableness of the advisory fee and the distribution fee under the standards defined by section 36(b) of the 1940 Act. Thus, the interests of each class of shareholders would be adequately protected.

12. With respect to potential conflicts of interest between the classes, relating to the allocation of certain Fund expenses, there is no greater potential for the shifting of expenses between the classes of a dual distribution Fund than there is to do likewise between CDSL Funds and Front-End Loan Funds not operating under such Rule 12b–1 Plans within a fund complex. The proposed allocation of expenses and voting rights relating to the Rule 12b–1 Plans is equitable and would not discriminate against any group of shareholders. Investors purchasing Class B shares would bear the deferred charges, but would also enjoy exclusive shareholder voting rights with respect to matter affecting such Rule 12b–1 Plans.

13. Under the proposed Dual Distribution System, investors would be able to choose the method of purchasing shares that is most beneficial given the amount of their purchase, the length of time the investor expects to hold the shares and other relevant circumstances. Owners of both classes may be relieved under the Dual Distribution System of a portion of the fixed costs normally associated with open-end investment companies, since such costs would, potentially, be spread over a greater number of shares. In addition, under contracts with Merrill Lynch companies, the advisory and administrative fees charged some Funds may decrease as the level of assets under management increases.

*Representotions Relating to Assessment of a CDSL.*

14. The Applicants desire to assess a CDSL on certain redemptions of Class B shares of the Funds, and to permit the Funds to waive the CDSL with respect to certain types of redemptions. An investor's proceeds from a redemption of Class B shares made within a specified period (typically four or five years, but not to exceed six years) of their purchase would be subject to a CDSL imposed by the Distributor or MLPF&S, a registered broker-dealer under the Security Exchange Act of 1934, which has entered into agreements with the Distributor. The CDSL typically ranges from 4% to 6% (but can be higher or lower, not to exceed 8.5%) on shares redeemed in the first year of purchase and is reduced typically at a rate of 1% per annum over the applicable CDSL period, so that redemptions of shares held after that period would not be subject to any CDSL.

15. The Deferred Load Option is designed to permit the investor to purchase Class B shares without the assessment of a front-end sales load and at the same time permit the Distributor to pay the account executives or financial consultants of securities dealers selling shares of a Fund, primarily MLPF&S, a commission on the sale of the Class B shares. Proceeds from the distribution fee and the CDSL would be used in whole or in part to defray the expenses of the Distributor and MLPF&S related to providing distribution-related services to the investor choosing the Deferred Load Option.

16. The CDSL would not be imposed on redemptions of shares which were purchased beyond the applicable CDSL Period prior to the redemptions or on Class B shares derived from reinvestment of distributions. Furthermore, no CDSL would be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSL Period. In determining whether a CDSL is applicable, a redemption would be made first of shares derived from reinvestment of distributions, second of shares purchased prior to the CDSL Period, and third of shares purchased during the CDSL Period. The amount of the CDSL to be imposed would be set forth in the Funds' prospectuses.

17. In an exchange between Funds which are not Money Market Funds, the Funds would "tack" the period for which the original Class B shares of a Fund were held onto the holding period of the Class B shares acquired in the exchange for purposes of determining what, if any, CDSL is applicable in the event that such acquired shares are redeemed following the exchange. An investor would be subject to the CDSL of the Fund with the longest CDSL Period or highest CDSL schedule which may have been owed by him, whichever results in the greatest CDSL payment. It is expected that the CDSL schedule and CDSL Period of the Funds would vary depending in part on the front-end sales loads on the Class A shares of a Fund and the compensation paid to financial consultants for selling shares of a Fund.

18. The Funds are requesting the ability to waive the CDSL: (a) On redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code, of a shareholder, (b) in connection with certain distributions from an Individual Retirement Account or other qualified retirement plan, (c) in whole or in part, in connection with shares sold to certain individuals or groups pursuant to special arrangements, as disclosed in a Fund's registration statement, exactly the same as those under which the front-end sales load on Class A shares could be reduced or waived pursuant to Rule 22d–1 under the 1940 Act at the time of the issuance of the order requested by this application, and (d) in connection with the exercise of certain exchange privileges among the Class B shares of the Funds and the Money Market Funds. If the directors/trustees of a Fund determine to no longer waive or reduce such CDSL, the disclosure in a Fund's prospectus would be revised. Any Class B shares purchased prior to the termination of such waiver or reduction would be able to have the CDSL waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

*Applicants' Legal Conclusions Relating to the CDSL*

19. Applicants believe its request for exemptive relief is consistent with the standards of section 6(c). The imposition of the CDSL on the Class B shares of the Funds is fair and in the best interests of their shareholders. The proposed Dual Distribution System permits Class B shareholders to have the advantage of greater investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase, as in the case with the Class A shares. Furthermore, the CDSL is fair to Class B shareholders because it applies only to amounts representing increases in the value of an investor's account through capital appreciation, or to amounts representing reinvestment of distributions. In their review of the Rule 12b–1 distribution plans, the directors/trustees of the Funds intend to consider the use by the distributor of revenues raised by the CDSL.

20. Applicants further believe that an order permitting the waivers of the CDSL described above would be consistent with the standards of section 6(c). Waiver of the CDSL in the extraordinary circumstances of death or total disability or in the case of certain retirement distributions is justified on basic considerations of fairness. The waiver of the CDSL, in whole or in part, in connection with shares sold under the same special arrangements as those applicable to Class A shares pursuant to Rule 22d–1 is justified since, as in the case of the front-end sales load, the Funds generally recognize economies of scale and a reduction of sales related expenses with these programs. Waiver of the CDSL in the case of the excercise of certain exchange privileges is justified by the fact that the investor would still be invested in a mutual fund sponsored by the Advisers and, except if the shares are in a Money Market Fund, would be paying a Rule 12b–1 distribution fee on Class B shares, and would have to pay any applicable CDSL for redemptions made out of the Funds (including the Money Market Funds). Moreover, this waiver would not adversely affect other Class B shareholders of a Fund. Waiver of the charge would not result in the loss of any revenue to a Fund since proceeds from the CDSL would be paid to the Distributor.

*Representations Relating to the Proposed Exchange Privilege*

21. The Applicants desire to permit the proposed exchange privilege among the Funds, including the Money Market Funds. The Front-End Load Funds and the Money Market Funds currently have an exchange program and it is contemplated that Class A shares of a Fund would similarly be exchangeable for Class A shares of the other Funds and Money Market Fund shares. Applicants propose to allow Class B shares of a Fund to be exchangeable for Class B shares of the other Funds and Money Market Fund shares. In addition, Money Market Fund shares would be exchangeable for either Class A or Class B shares of the Funds; however, if Money Market Fund shares were acquired under an exchange privilege, they would only be exchangeable for the class of shares involved in the original exhange into the Money Market Fund shares. In connection with the exchange privilege, a shareholder would be required to hold Class B shares of a Fund or shares of a Money Market Fund for a minimum period of time before they can be exchanged for other shares. This minimum time period would be uniformly applied to all offerees of the class specified.

*Applicants' Legal Conclusions Relating to the Exchange Privilege*

22. Applicants argue that the exchange privilege should be permitted under section 11(a) on the basis that it is in the best interests of the shareholders of the Funds. The purpose of the exchange privilege is to permit Class B shareholders of the funds to exchange their shares with one another and with the Money Market Funds when their investment objectives change or when market conditions favor one type of investment over another. The proposed exchange privilege provides shareholders of the Funds with desirable flexibility for their financial planning. The directors/trustees of each of the Funds can elect that the Fund not participate in the exchange privilege program at any time. The proposed exchange privilege is fair and equitable to the shareholders of all of the Funds, while preventing a shareholder from acquiring Class B shares of a Fund with a relatively long applicable CDSL Period or relatively high CDSL schedule by simply purchasing Class B shares of another Fund with a shorter CDSL period or lower CDSL schedule or no sales charge (such as the Money Market Funds) and then exchanging such shares for those of the former Fund on the basis of relative net asset value per share.

**Applicants' Conditions**

An order granting the requested exemptions would be subject to the following conditions set forth in the application:

*Conditions Relating to the Dual Distribution System*

1. The Class A and Class B shares would represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between Class A and Class B shares of the same Fund would relate solely to: (a) Priorities with respect to the payment of dividends and such priorities would reflect only the impact of the Rule 12b–1 plan distribution fee payments made by the Class B shares of a Fund, any incremental transfer agency costs paid by the Class B shares of a Fund resulting from the Deferred Load Option sales arrangements and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to Rule 12b–1 Plans, (c) the different exchange privileges of the Class A and Class B shares as descibed in the prospectuses (and as more fully dscribed in the statements of additional information) of the Funds and consistent with any order granted pursuant to this application, and (d) the designation of each class of shares of a Fund.

2. The directors/trustees, of each of the Funds, including a majority of the independent directors/trustees would approve the Dual Distribution System

and at least a majority of the existing shareholders of each of the Funds would approve the Dual Distribution by an affirmative vote prior to implementation of the Dual Distribution System by a particular Fund. The minutes of the meetings of the directors/trustees of each of the Funds regarding the deliberations of the directors/trustees with respect to the approvals necessary to implement the Dual Distribution System would reflect in detail the reasons for determining that the proposed Dual Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes would be available for inspection by the Commission staff.

3. On an ongoing basis, the directors/trustees of the Funds, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, would monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The directors/trustees, including a majority of the independent directors/trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. MLAM, FAMI and MLFD would be responsible for reporting any potential or existing conflicts to the directors/trustees. If a conflict arises, the Advisers and the Distributor at their own cost would remedy such conflict up to and including establishing a new registered management investment company.

4. The Rule 12b-1 Plans relating to Class B shares of each Fund have been or would be approved and reviewed by the Funds' directors/trustees in accordance with the requirements and procedures set forth in Rule 12b-1, both currently and as that rule may be amended in the future. Any Class B Rule 12b-1 Plans adopted in connection with or subsequent to the implementation of the Dual Distribution System (i.e., by Front-End Load Funds or newly organized funds) would be submitted to the Class B shareholders for approval at the next meeting of shareholders after the commencement of operation of such Plan (such condition not being applicable to the existing CDSL Funds with existing Rule 12b-1 Plans which have already been submitted to shareholders for approval).

5. The directors/trustees of the Funds would receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of Rule 12b-1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of the Class B shares would be used to justify the Class B Rule 12b-1 fee. Expenditures not related to the sale of the Class B shares would not be presented to the directors/trustees to justify Class B Rule 12b-1 fees. The Statements, including the allocations upon which they are based, would be subject to the review and approval of the independent directors/trustees in the exercise of their fiduciary duties under Rule 12b-1.

6. Dividends paid by a Fund with respect to its Class A and Class B shares, to the extent any dividends are paid, would be calculated in the same manner at the same time on the same day and would be in the same amount, except that distribution fee payments made by a Fund under its Rule 12b-1 Plan and any incremental transfer agency costs relating to Class B shares would be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, would monitor the manner in which the calculations and allocations are being made and, based upon such review, would render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert would be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the 1940 Act and the work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to provide, would be available for inspection by the Commission staff. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above and would be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

9. The prospectuses of the Funds would include a statement to the effect that a financial consultant may receive different compensation for selling Class A or Class B shares.

10. MLPF&S would adopt compliance standards, substantially in the form attached as Exhibit E to the application as to when Class A and Class B shares may appropriately be sold to particular investors.

11. All purchases of shares of the Funds by the directors/trustees made after the issuance of a second class of shares has been authorized would be equally divided between the two classes. Over time, the actual holdings of the two classes of these newly purchased shares would differ to a minor degree if a director/trustee elects to have dividends reinvested.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors/trustees of the Funds with respect to the Dual Distribution System would be set forth in guidelines which would be furnished to the directors/trustees and made a part of the MLAM Directors Manual setting forth the duties and responsibilities of the directors/trustees of the investment companies advised by MLAM and FAMI.

13. Each of the Funds would clearly disclose the difference in the respective yields of the Class A and Class B shares of a Fund in its prospectus, shareholder reports and any advertising materials, including newspaper advertisements. For instance, the supplementary financial information, including the per share table in each Fund's prospectus and the balance sheet in each Fund's prospectus or statement of additional information, would be separately presented for the Class A and Class B shares. Also, the Funds' prospectuses and statements of additional information would disclose the different exchange privilege applicable to the different classes of shares. Similarly, the

information provided by Applicants to any newspaper of similar listing of the Funds' net asset values and public offering prices would separately present the Class A and Class B shares.

14. The Applicants acknowledge that the grant of the exemptive order requested by the Application would not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 Plans in reliance on the exemptive order.

*Conditions Relating to the CDSL and Exchange Privilege*

Any order granted under section 6(c) exempting Applicants from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rule 22c–1 thereunder and under section 11(a) of the 1940 is conditional on the representations summarized above and more fully described in the application. For example, these representations state that:

a. The Applicants do not anticipate that there would be any administrative fee applicable to any exchanges. However, to the extent any administrative or similar fee may be applicable, such fees would be disclosed in the Funds' prospectuses and in any sales or advertising literature relating to the exchange privilege. Furthermore, any such administrative fee or scheduled variation would be uniformly applied to all offerees of the class specified. Any administrative or similar fee applicable to any exchanges would be nominal (i.e., $5.00 or less) or Applicants would obtain an amendment to any order granted in connection with the application permitting a higher fee.

b. The Applicants would disclose in the Funds' prospectuses and in any sales or advertising literature mentioning the exchange privilege the fact that the Applicants have the right to modify or terminate the exchange privilege.

c. The Applicants would not terminate or restrict the exchange privilege of a particular Fund unless the shareholders of a Fund are given written notice of such termination or modification at least 60 days prior to such termination or modification. The Applicants would not restrict the terms of the exchange privilege described in the application and permitted by any order granted pursuant to section 11(a) of the 1940 Act prior to obtaining an amendment to such order.

d. The Applicants would comply with proposed Rule 11a–3 under the 1940 Act, or any similar rule relating to exchange privileges, in the form in which it is adopted, if and when it is adopted.

e. If the Funds waive or reduce the CDSL, such Waiver or reduction would be uniformly applied to all offerees in the class specified.

f. In waiving or reducing a CDSL, the Funds would comply with the requirements of Rule 22d–1 under the 1940 Act.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–17460 Filed 8–2–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–24685]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Mississippi Power and Light Co. and Western Massachusetts Electric Co.

July 28, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 22, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified on any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Mississippi Power & Light Company, (70–6672)**

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi, 39215–1640, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(d) of the Act and Rules 44 and 50(a)(5) thereunder.

In accordance with orders in this matter dated July 12, 1982 (HCAR No. 22574) and November 24, 1982 (HCAR No. 22735), MP&L caused to be issued a total of $30 million of adjustable rate Independence County, Arkansas Pollution Control Revenue Bonds, ("Bonds") in five series. The Bonds contain an optional redemption provision, an optional tender provision, and a rate adjustment mechanism that allows MP&L on a certain date each three years ("Fixed Rate Date") to adjust the interest rate for the next three years, or to fix the rate permanently until maturity.

On July 1, 1988, $10 million principal amount of the Bonds, the 1982 Series A Bonds, reached their Fixed Rate Date. By order dated May 13, 1988 (HCAR No. 24643), in connection with MP&L's possible fixing of a permanent interest rate until maturity for the 1982 Series A Bonds, the Commission authorized MP&L to waive its right of optional redemption with respect to that series for up to thirteen years from July 1, 1988. MP&L has since decided to remarket the tendered 1982 Series A Bonds, on a three-year interest period basis rather than a long-term fixed-rate basis, thereby making the May 13, 1988 order of no further force and effect. The tendered Series A Bonds were remarketed on July 1, 1988 with the understanding that MP&L would use its best efforts to obtain the Commission's approval of its waiver of its optional redemption rights.

MP&L proposes to waive its right to redeem the 1982 Series A Bonds during the three-year period from July 1, 1988 through June 30, 1991. MP&L also seeks authorization to waive its optional right to redeem the 1982 Series A Bonds during any subsequent three-year interest period if it determines to so extend the 1982 Series A Bonds.

**Western Massachusetts Electric Company (70–7542)**

Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, an electric utility subsidiary of Northeast Utilities, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50 thereunder.

WMECO proposes to issue and sell up to $75 million principal amount of its first mortgage bonds ("Bonds"), in one or more series, from time to time through December 31, 1989. Each series of the

Bonds would have a maturity of five to thirty years. The interest rate and the price, exclusive of accrued interest will be determined by the competitive bidding standards of Rule 50 of the Act, as modified, (HCAR No. 22623, September 2, 1982).

WMECO may amend the application to seek an exception from the competitive bidding requirements of Rule 50 so that it may offer the Bonds through a negotiated public offering or through a private placement. WMECO may also amend the application to seek approval of additional credit enhancement for the Bonds through an insurance policy or surety bond.

For the Commission, by the Divison of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17459 Filed 8-2-88; 8:45 am]

BILLING CODE 8010-01

## DEPARTMENT OF STATE

**[Public Notice 1073]**

### Certification on Southern African Development and Mozambique

Pursuant to Title II of The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, I hereby certify that it is in the national interest of the United States to make available for activities in Mozambique funds from the $50,000,000 appropriated to assist sector projects supported by the Southern African Development Coordination Conference (SADCC) to enhance the economic development of member states forming that regional institution.

This certification shall be reported to the Congress immediately.

This certification shall be published in the **Federal Register.**

Date: July 21, 1988.

**John C. Whitehead,**

*Acting Secretary.*

[FR Doc. 88-17452 Filed 8-2-88; 8:45 am]

BILLING CODE 4710-09-M

**[Public Notice 1072]**

### Determination Under SDAA Section 1253; Status of Displaced Tibetans

Pursuant to the authority vested in me by section 1253 of the State Department Authorization Act of 1986, and the Department of State Delegation of Authority No. 145, I hereby determine that the needs of displaced Tibetans are not similar to those of displaced persons and refugees in other parts of the world.

This determination shall be reported to the Congress as required by law.

This determination shall be published in the **Federal Register.**

Date: February 23, 1988.

**John C. Whitehead,**

*Acting Secretary of State.*

[FR Doc. 88-17453 Filed 8-2-88; 8:45 am]

BILLING CODE 4710-08-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on July 28, 1988

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on July 28, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**FOR FURTHER INFORMATION CONTACT:** John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW, Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 3507 of Title 44 of the United States Code, is adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register,** listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

#### Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

#### Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on July 28, 1988.

*DOT No:* 3092.
*OMB No:* 2132-0528.
*Administration:* Urban Mass Transportation Administration.
*Title:* Rail Transit Safety Information Reporting and Analysis System (SIRAS).
*Need for Information:* The information is needed to analyze and determine levels of safety, to identify priorities for safety technical assistance and to assess the effectiveness of countermeasures.
*Proposed Use of Information:* SIRAS data is principally used by management officials that operate Rapid Rail Transit Systems in addressing safety hazards that cause accidents and injuries to the riding public.
*Frequency:* Monthly.
*Burden Estimate:* 867 hours.
*Respondents:* Rapid Rail Transit Systems (RRT).
*Form(s):* F6600.1, F6600.2, F6600.3.

*DOT No:* 3095.
*OMB No:* 2120-0008.
*Administration:* Federal Aviation Administration.
*Title:* Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft—FAR 121.
*Need for Information:* 14 CFR 121 prescribes the requirements governing air carrier operations. The information is needed to show compliance.
*Proposed Use of Information:* The information is used to determine operators compliance and applicant eligibility.
*Frequency:* On Occasion.
*Burden Estimate:* 3,159,234.
*Respondents:* Businesses and small businesses.
*Form(s):* FAA Forms 8400-6 and 8070-1.

*DOT No:* 3096.

*OMB No:* New.
*Administration:* Federal Aviation Administration.
*Title:* Survey to Assess FAA's Effectiveness.
*Need for Information:* The FAA proposes to conduct an independent telephone survey to determine how its users view the quality of FAA's peformance.
*Proposed Use of Information:* The FAA will use the results of the survey as a management tool so that specific improvements can be targeted.
*Frequency:* One time survey.
*Burden Estimate:* 626 hours.
*Respondents:* Individuals (users of FAA services).
*Form(s):* N/A.
*DOT No:* 3097.
*OMB No:* 2125–0034.
*Administration:* Federal Highway Administration.
*Title:* Certification of Enforcement of Vehicle Size and Weight Laws.
*Need for Information:* For each State to annually certify that it is enforcing all size and weight law regulations.
*Proposed Use of Information:* For FHWA to evaluate the effectiveness of a State's vehicle size and weight law program.
*Frequency:* Annually.
*Burden Estimate:* 4,100.
*Respondents:* State highway agencies.
*Form(s):*
*DOT No.:* 3098.
*OMB No.:* 2120–0020.
*Administration:* Federal Aviation Administration.
*Title:* Maintenance, Preventive Maintenance, Rebuilding and Alteration—FAR 43.
*Need/Proposed Use of Information:* The information is necessary to ensure that the maintenance, rebuilding and alteration of aircraft, is performed by qualified persons and at proper intervals.
*Frequency:* On occasion.
*Burden Estimate:* 4,491,597 hours.
*Respondents:* Individuals (Mechanics, pilots, etc.).
*Form(s):* FAA Form 337.
*DOT No.:* 3099.
*OMB No.:* 2133–0029.
*Administration:* Maritime Administration.
*Title:* Shipbuilding Orderbook and Shipyard Employment.
*Need for Information:* To satisfy shipyard mobilization base contingency planning requirements.
*Proposed Use of Information:* To determine the number, location and efficiency of certain shipyards for emergency mobilization planning.
*Frequency:* Quarterly.
*Burden Estimate:* 42 hours.
*Respondents:* Shipyards.
*Forms:* MA–832.
*Average Burden Hours Per Respondent:* Approx. 30 min.
*DOT No.:* 3100.
*OMB No.:* 2105–0510.
*Administration:* Department of Transportation/OST.
*Title:* Report of DBE Awards and Commitments.
*Need for Information:* Needed to determine extent to which DOT recipients are meeting their approved goals.
*Proposed Use of Information:* To report to Congress on DOT's success in meeting its statutory DBE program requirements.
*Frequency:* Annually/semi-annually/quarterly.
*Burden Estimate:* 21,492 hours.
*Respondents:* Recipients of DOT financial assistance funds.
*Form(s):* One.
*DOT No.:* 3101.
*OMB No.:* 2125–0008.
*Administration:* Federal Highway Administration.
*Title:* Unit Maintenance Cost Index.
*Need for Information:* For FHWA to develop national cost trends for labor, materials, and equipment rental rates.
*Proposed Use of Information:* For FHWA to monitor changes in the highway maintenance program and to provide guidance for estimating future highway maintenance requirements.
*Frequency:* Annually.
*Burden Estimate:* 208.
*Respondents:* State highway agencies.
*Form(s):* FHWA–1521.
*DOT No.:* 3102.
*OMB No.:* 2127–0512.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Consolidated Labeling Requirements for Motor Vehicles (Except the VIN Numbers) 49 CFR 571.105, 205, 209 and Part 567.
*Need for Information:* To show performance requirements for the protection of vehicle occupants in crashes.
*Proposed Use of Information:* Motor vehicles and motor vehicle equipment must be properly labeled to provide for safe operation by users and to ensure prompt identification of such equipment in the event of safety related defects.
*Frequency:* On occasion.
*Burden Estimate:* 76,317 hours (see attached page for disaggregated burden estimate).
*Respondents:* 3,005.
*Form(s):* None.
*DOT No.:* 3103.
*OMB No.:* 2127–0002.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Forms Utilized for Assuring Compliance of Imported Motor Vehicles and Motor Vehicle Equipment.
*Need for Information:* To import vehicles and vehicle equipment.
*Proposed Use of Information:* To aid importers of foreign made vehicles import cars that do not comply with FMVSS.
*Frequency:* On occasion.
*Burden Estimate:* 44,832 hours. HS–7 it takes 0.08333 hours to comply with regulations. Handbook it takes 4.0 hours to comply with regulations.
*Respondents:* Importers.
*Form(s):* HS–7 and Statement of Conformity.
*DOT No.:* 3104.
*OMB No.:* 2127–0005.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Motor Vehicle Recall Campaign Audit.
*Need for Information:* To determine if recalls were effective.
*Proposed Use of Information:* Owners of all types of motor vehicles and motor vehicle equipment that have been recalled by manufacturers report how the recall effort was performed by the manufacturer and its dealers, and if the recall work completed was in compliance with the Act.
*Frequency:* On occasion.
*Burden Estimate:* 20,000 hours. It takes 0.1 hour to read the recall letter and complete the card.
*Respondents:* Individuals/state or local governments/businesses/Federal agencies and small businesses.
*Form(s):* HS–116.
*DOT No.:* 3105.
*OMB No.:* 2125–0527.
*Administration:* Federal Highway Administration.
*Title:* Public Lands Highway Applications.
*Need for Information:* To meet FHWA requirements for States to submit an application for the allocation of public lands highway funds.
*Proposed Use of Information:* For FHWA to allocate public lands highway funds based on the application of the State highway agency.
*Frequency:* Annually.
*Burden Estimate:* 2,700.
*Respondents:* State highway agencies.
*Form(s):*
*DOT No.:* 3106.
*OMB No.:* 2127–0006.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Vehicle Owner's Questionnaire.

*Need for Information:* To determine problem vehicles.

*Proposed Use of Information:* Solicits information from vehicle owners to determine whether a safety defect exists in motor vehicles, motor vehicle equipment or tires, which is used to identify and evaluate possible defects and provide the necessary evidence of the existence of such a defect.

*Frequency:* On occasion.

*Burden Estimate:* 15,960 hours. HS–350 and 350B. It takes 25 minutes to complete each of forms.

*Respondents:* Vehicle/vehicle equipment owners.

*Form(s):* HS–350 and 350B.

*DOT No.:* 3107.

*OMB No.:* 2127–0541.

*Administration:* National Highway Traffic Safety Administration.

*Title:* Owner's Manual Requirements—Motor Vehicles and Motor Vehicle Equipment, 49 CFR 571.126, 205, 208, 210 575.102 and 105.

*Need for Information:* To inform vehicle owners and passengers about proper use of the vehicle or equipment.

*Proposed Use of Information:* Certain safety information which could benefit the vehicle owner or operator by reducing the risk of harm must be included in the vehicle owner's manual to provide for safe operation by users.

*Frequency:* On Occasion.

*Burden Estimate:* 704 hours.

*Respondents:* Businesses/small businesses.

*Form(s):* None.

*DOT No.:* 3108.

*OMB No.:* 2127–0045.

*Administration:* National Highway Traffic Safety Administration.

*Title:* 49 CFR Part 556, Petitions for Inconsequentiality.

*Need for Information:* To determine that a defect or noncompliance is inconsequential.

*Proposed Use of Information:* This regulation establishes procedures for manufacturers to petition this agency for an exemption from the notice and remedy requirements of the safety Act due to the inconsequentiality of the defect or noncompliance as it relates to motor vehicle safety.

*Frequency:* On occasion.

*Burden Estimate:* 30 hours. It takes about 2 hours to prepare one petition, based on the length of the petition.

*Respondents:* Businesses/organizations.

*Form(s):* None.

*DOT No.:* 3109.

*OMB No.:* New.

*Administration:* Federal Aviation Administration.

*Title:* FAA Administrator's Award for Excellence in Aviation Education.

*Need for Information:* The FAA needs the information for its recognition and award program to identify candidates for awards.

*Proposed Use of Information:* We will use the information to identify and reward those educators who are making the most use of innovative aviation related instructional techniques.

*Frequency:* Annually.

*Burden Estimate:* 10,750.

*Respondents:* Individuals.

*Form(s):* None.

*DOT No.:* 3110.

*OMB No.:* 2120–0075.

*Administration:* Federal Aviation Administration.

*Title:* Airport Security FAR–107.

*Need/Proposed Use of Information:* To ensure that airport security programs provide for the protection of persons and property in Air Transportation against acts of criminal violence.

*Frequency:* On occasion and Semi-annual.

*Burden Estimate:* 39,486 hours.

*Respondents:* Airport Operators.

*Form(s):* None.

Issued in Washington, DC, on July 28, 1988.

**Robert J. Woods,**

*Director of Information Resource Management.*

[FR Doc. 88–17471 Filed 8–2–88; 8:45 am]

BILLING CODE 4910–62–M

## Office of Commercial Space Transportation

**[Docket 45738; Notice 88–12]**

## Orbital Debris; Request for Comments

**AGENCY:** Office of Commercial Space Transportation, DOT.

**ACTION:** Request for comments [Docket 45738; Notice 88–12].

**SUMMARY:** The U.S. Government is studying the effects of orbital debris on ongoing and future space activities. The Inter-Agency Group for Space (IG(Space)), which includes NASA, DOD, DOT, and other agencies, is conducting a study of this issue that will identify options and make recommendations concerning future federal action. To assist this effort, the IG (Space) is interested in receiving public comments concerning this matter. The Government is interested in receiving comments from all interested parties in light of its dual responsibilities both to conduct space activities itself and to supervise space activities conducted by private commercial U.S. parties.

**DATE:** Comments should be received by August 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ronald K. Gress, Licensing Programs Division, Office of Commercial Space Transportation, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Phone: (202) 366–2810.

**ADDRESS:** The information should identify the commenter and the person, firm, or association that the commenter represents and should be submitted to the Documentary Services Division, Attention /C–55, Docket Number 45738, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** The Office is interested in obtaining the views and comments of interested parties, including the launch industry, satellite manufacturers and owners, universities, astronomical groups, and other users of space. In particular, the Office is interested in receiving comment on the following:

- Physical dimensions of orbital debris growth
- Effects of orbital debris on space activities conducted by commenters
- Potential costs to the commenters of debris effects and potential impact on future space activities, if no action is taken
- Future plans, if any, of the commenters designed to counter the effects of debris
- Future options for dealing with debris, including their perceived cost impacts and cost effectiveness
- Regulatory implications and alternatives that should be considered in addressing the space debris issue

NASA is publishing a similar request for comment in the *Commerce Business Daily* (CBD). Duplicate responses to this request for comment and the CBD announcement are unnecessary. The Department is especially interested, however, in receiving information with specific relevance to its role as lead agency for Federal policy and guidance pertaining to commercial launch activities. Information or data requested to be treated as proprietary or confidential should be clearly marked as such. The Department will consider late filed comments to the extent possible.

Supplementary oral comments may be delivered at forums to be conducted by the Interagency Group on August 31 and September 1, 1988. Only parties submitting written comments by August 26 may be scheduled for verbal comments. Comments will be limited to 15 minutes per party. The meetings for comments will be held at NASA HQ, Washington, DC. Please include a request, with a phone number, for an

opportunity to present supplementary oral comments. Appointments for delivering comments will be confirmed by phone on August 29 and 30. Contact William Djinis, Code MD, NASA HQ at 202/453–1157 with any questions concerning verbal comments.

Issued in Washington, DC on July 29, 1988.

**Courtney A. Stadd,**

*Director, Office of Commercial Space Transportation.*

[FR Doc. 88–17487 Filed 8–2–88; 8:45 am]

BILLING CODE 4910–62–M

## Federal Aviation Administration

**[Summary Notice No. PE–88–28]**

## Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regualtory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 1988.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 1988.

**Deborah E. Swank,**

*Acting Manager, Program Management Staff.*

### PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25079 | Montex Drilling Company | 14 CFR 61.58(c) | To extend Exemption No. 4736 that allows petitioner's pilots to complete the entire 24-month pilot-in-command check in an FAA-approved simulator provided the pilot taking the flight check has complete three takeoffs and three landings within the preceding 90 days in a BAC 1–11 aircraft. |
| 25365 | United States Air Force | 91.70 | USAF on behalf of SAC, would like to withdrawn the petition for exemption to FAR Part 91.70. |
| 25603 | Fokker Aircraft U.S.A., Inc. | 14 CFR 145.73 and 43.3 | To allow petitioner, pursuant to its foreign repair station certification, to perform maintenance and repair work on U.S.-registered aircraft manufactured by the petitioner, and components thereof, regardless of where such aircraft operate. |
| 25068 | Aviation Methods, Inc. | 14 CFR 1325.165(b)(5) and (6) | To allow extended overwater operations using one high frequency (HF) transceiver. |
| 25620 | Hamilton Aviation | 14 CFR 145.37(b) | To allow petitioner to conduct maintenance work on Boeing 747, Douglas DC–10, and Lockheed L–1011 aircraft under a Class IV airframe rating. |

### PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations Affected | Description of relief sought disposition |
|---|---|---|---|
| 23488 | Amway Corporation | 14 CFR 61.58(c) | To extend Exemption No. 4566, which allows pilots of petitioner to complete the 24-month pilot-in-command check in an airplane simulator provided that the pilot taking the check has completed three takeoffs and three landings within the preceding 90 days in the BAC 1–11 aircraft. Exemption No. 4566 expired on 12/3/87. *Grant, July 21, 1988. Exemption No. 4964.* |
| 23543 | Arnautical, Inc. | 14 CFR 61.63(d)(2) and (3) and Part 61, Appendix A. | To permit trainees of petitioner, who are applicants for a type rating to be added to a private or commercial pilot certificate, to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d)(2) and (3), and to complete a portion on that practical test in a simulator as authorized by § 61.157(d). *Grant, July 18, 1988, Exemption No. 4581A.* |
| 24633 | Hercules Flight Training Center | 14 CFR 61.48(c)(1) and (d); 61.157(d)(1) and (2); and Part 61, Appendix A. | To permit petitioner and persons who contract for services provided by petitioner to complete certain proficiency checks and practical tests in its visual simulators. Petitioner previously held Exemption No. 4552, granting the same privileges. Exemption No. 4552 expired on November 30, 1987. *Grant, July 21, 1988, Exemption No. 4963.* |
| 25291 | SilverStar Aviation, Inc. (formerly Pumpkin Air, Inc., and Ramwood Inc.). | 14 CFR 133.45(e)(1) | To allow petitioner emergency lifesaving Class D rotorcraft-load combination operation under certain conditions when one-engine inoperative hover capability cannot be met under the weight and altitude restrictions for the rotorcraft's type certificate. *Denial, July 21, 1988, Exemption No. 4968.* |

PETITIONS FOR EXEMPTION—Continued

| Docket No. | Petitioner | Regulations Affected | Description of relief sought disposition |
|---|---|---|---|
| 25549 | United Technologies Corporation, Pratt & Whitney Group, Overhaul and Repair Operations; and Turbine Overhaul Services Private Limited (TOSPL). | 14 CFR 145.73(a) | To allow TOSPL to perform maintenance, preventive maintenance, and alterations on certain compressor blades and turbine vanes used in JT8D and UT9D engines and utilized on U.S.-registered aircraft without regard as to their geographic scope of operations. *Grant, July 21, 1988, Exemption No. 4965.* |
| 25536 | Hazeltine Corporation | 91.79(b) & (c), 91.87(d)(2) & (d)(3), 91.109(a)(1) & (a)(2). | An exemption would facilitate thorough MLS flight inspections operations necessitated by contract with the Federal Aviation Administration (FAA). *Granted: July 20, 1988.* |

[FR Doc. 88-17438 Filed 8-2-88; 8:45 am]
BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement; St. Joseph County, City of Mishawaka, IN

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Retraction of notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project located in the City of Mishawaka, St. Joseph County, Indiana.

**FOR FURTHER INFORMATION CONTACT:** Mr. James E. Threlkeld, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, Telephone: (317) 269-7481.

**SUPPLEMENTARY INFORMATION:** The FHWA issued a Notice of Intent in the Tuesday, October 13, 1987, **Federal Register** indicating that an environmental impact statement (EIS) would be prepared for a proposed 4-lane access controlled highway in the City of Mishawaka and unincorporated area of St. Joseph County. The proposed highway has an alignment following along and/or adjacent to existing sections of Capital Avenue.

Letters and preliminary information describing the proposed action were sent to various Federal, State and local public agencies on September 9, 1987 to solicit comments on the proposed action. An informal public information meeting was held on December 4, 1987 and an early coordination meeting with Federal and State public agencies was held on February 4, 1988.

Comments received from the public agencies and citizens of the project area during the coordination phase indicated that no significant impacts upon the environment are anticipated. Therefore, it has been determined that an EIS will not be prepared. An Environmental Assessment (EA) will be prepared for assessing potential impacts of the proposed action.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on July 26, 1988.

**James E. Threlkeld,**

*District Engineer, Indianapolis, Indiana.*

[FR Doc. 88-17454 Filed 8-2-88; 8:45 am]
BILLING CODE 4910-22-M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: July 25, 1988.

By direction of the Administrator.

**Frank E. Lalley,**

*Director, Office of Information Management and Statistics.*

**Revision**

1. Department of Veterans Benefits
2. Request for Verification of Employment
3. VA Form 26-8497
4. This form is used by lenders for verifying loan applicants' income and employment information.
5. On occasion
6. Business or profit
7. 369,859 responses
8. 61,643 hours
9. Not applicable

[FR Doc. 88-17421 Filed 8-2-88; 8:45 am]
BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 149
Wednesday, August 3, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:30 a.m., Thursday, August 25, 1988.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Enforcement Matters.
Rule Enforcement Reviews.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88-17596 Filed 8-1-88; 3:51 pm]

BILLING CODE 6351-01-M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, August 25, 1988.

**PLACE:** 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

Application of the AMEX Commodity Corporation for designation as a contract market in Gold Warrants (options).

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88-17595 Filed 8-1-88; 3:51 pm]

BILLING CODE 6351-01-M

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**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

July 29, 1988.

**TIME AND DATE:** 10:00 a.m., Thursday, August 4, 1988.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** In addition to the previously announced item, the Commission will consider and act upon the following:

2. *FMC Wyoming Corporation*, Docket Nos. WEST 86-43-RM, etc. (Issues include consideration of a petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that this item be included on the agenda and that no earlier announcement of the addition was possible.

**CONTACT PERSON FOR MORE INFO:** Jean Ellen, (202) 653-5629 / (202) 566-2673 for TDD Relay.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 88-17564 Filed 8-1-88; 3:04 pm]

BILLING CODE 6735-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, August 8, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 1, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17554 Filed 8-1-88; 12:27 pm]

BILLING CODE 6210-01-M

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**FEDERAL TRADE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR, Wednesday, July 25, 1988, Page No. 28332.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, July 27, 1988.

**CHANGES IN THE AGENDA:** The Federal Trade Commission has deleted the open session of its previously announced meeting at which it was to discuss Consideration of Commission Policy On the Duration and Termination of Commission Orders.

**Note.**—This meeting has been moved from open to closed session to reflect the anticipation of discussion of law enforcement matters.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-17499 Filed 8-1-88; 8:45 am]

BILLING CODE 6750-01-M

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**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Tuesday, August 9, 1988 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints: Certain Electric Power Tools, Battery Cartridges, and Battery Chargers (Docket Number 1438).
5. Inv. Nos. 701-TA-293-295 and 731-TA-412-419 (P) (Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, The United Kingdom, and West Germany)—briefing and vote.
6. Inv. Nos. 731-TA-385-386 (F) (Granular Polytetrafluoroethylene Resin from Italy and Japan)—briefing and vote.
7. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.

**Kenneth R. Mason,**

*Secretary.*

July 27, 1988.

[FR Doc. 88-17494 Filed 7-29-88; 5:05 pm]

BILLING CODE 7020-02-M

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**INTERNATIONAL TRADE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 28332—dated July 27, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 3:00 p.m., Thursday, August 4, 1988.

**CHANGE IN TIME AND DATE OF THE MEETING:** 8:45 a.m., Friday, August 5, 1988.

Notice is given that the Commission meeting previously announced as beginning at 3:00 p.m., on August 4, 1988, will begin at 8:45 a.m. on Friday, August 5, 1988 instead. In conformity with 19 CFR 201.37(b), Commissioners Brunsdale, Eckes, Liebeler, Lodwick,

Rohr, and Cass determined that Commission business required the change in time and date of the meeting originally scheduled for August 4, 1988, and affirmed that no earlier announcement of the change to the date and time was possible, and directed the issuance of this notice at the earliest practicable time.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252–1000.

**Kenneth R. Mason,**

*Secretary.*

July 19, 1988.

[FR Doc. 88–17502 Filed 8–1–88; 9:34 am]

BILLING CODE 7035-02-M

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**INTERSTATE COMMERCE COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, August 9, 1988.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

**STATUS:** Open Special Conference.

**PURPOSE:** The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for public observation, no public participation is permitted.

**MATTERS TO BE DISCUSSED:**

Finance Docket No. 32000.

Rio Grande Industries, Inc., SPTC Holding, Inc., The Denver and Rio Grande Western Railroad Company—Control—Southern Pacific Transportation Company.

**CONTACT PERSON FOR MORE INFORMATION:** Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275–7252.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–17550 Filed 8–1–88; 12:28 pm]

BILLING CODE 7035-01-M

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**STATE JUSTICE INSTITUTE**

**TIME AND DATE:**

9:00 a.m. to 5:00 p.m., August 18, 1988.

9:00 a.m. to 5:00 p.m., August 19, 1988.

9:00 a.m. to 3:00 p.m., August 20, 1988.

**PLACE:** State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia.

**STATUS:** The meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** Consideration of Applications submitted for Institute funding.

**CONTACT PERSON FOR MORE INFORMATION:** David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22312, (703) 684–6100.

**David I. Tevelin,**

*Executive Director.*

[FR Doc. 88–17597 Filed 8–1–88; 3:51 pm]

BILLING CODE 6820-SC-M

# Corrections

Federal Register
Vol. 53, No. 149
Wednesday, August 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1408

### Setoff, Withholding and Stop Payment Policies

*Correction*

In proposed rule document 88-15330 beginning on page 26081 in the issue of Monday, July 11, 1988, make the following correction:

**§ 1408.11 [Corrected]**

On page 26082, in the second column, in the introductory text of § 1408.11, in the second line, "will be" should read "will not be".

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS-51707; FRL-3405-7]**

### Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

*Correction*

In notice document 88-14381 beginning on page 24143 in the issue of Monday, June 27, 1988, make the following corrections:

1. On page 24144, in the second column, under P 88-1337, in the third line, "pheyl" should read "phenyl".

2. On the same page, in the third column, under P 88-1346, in the second line, "Anthracendione" should read "Anthracenedione". Also under P 88-1346, in the fifth line, "*Use/Import.*" should read "*Use/Production.*".

3. On page 24145, in the second column, under P 88-1367, in the seventh line, "toxicity" was misspelled.

4. On the same page, in the third column, under P 88-1375, in the fifth line, "(S) Industrial" should read "(G) Industrial".

5. On page 24146, in the first column, under P 88-1379, in the first line, "Ciba-Deigy" should read "Ciba-Geigy". Also in the fifth line, "(S) Textile" should read "(G) Textile"; and under P 88-1388, in the fifth line, "(S) Ink" should read "(G) Ink".

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ-020-08-4321-01; A 23376]**

### Realty Action; Exchange of Public Lands; Apache County, AZ

*Correction*

In notice document 88-15107 beginning on page 25387 in the issue of Wednesday, July 6, 1988, make the following corrections:

1. On page 25388, in the first column, in the first bold heading "Meridian" was misspelled.

2. On the same page, in the second column, in the fifth line "Sec. 36" should read "Sec. 32".

3. On page 25389, in the first column, in the eighth line, "Sec. 12" should read "Sec. 32".

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Part II

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 701 and 785**

**Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Permits for Special Categories of Mining; Special Permanent Program Performance Standards; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 701 and 785**

**Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Permits for Special Categories of Mining; Special Permanent Program Performance Standards**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) proposes to establish separate definitions of the terms "agricultural activities" and "farming" to replace the suspended definition of "agricultural activities or farming." Related changes are proposed to conform these new definitions with the existing regulations governing mining on Alluvial Valley Floors (AVF's).

Also, OSMRE proposes to amend its regulations to specify the essential hydrologic functions of AVF's for which information must be provided in a permit application.

**DATES:**

*Written comments:* OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on September 19, 1988.

*Public hearings:* Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC and Denver, Colorado at 9:30 a.m. local time on August 31, 1988. In addition, if requested OSMRE also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for hearings at these additional locations until 5:00 p.m. Eastern Time on August 24, 1988. Individuals wishing to attend but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

**ADDRESSES:**

*Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131L, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131L, 1951 Constitution Avenue NW., Washington, DC 20240.

*Public Hearings:* Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; and Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington, will be announced prior to the hearings.

*Request for Public Hearings:* Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

**FOR FURTHER INFORMATION CONTACT:** Douglas Growitz, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–1507 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

## I. Public Comment Procedures

### *Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

### *Public Hearings*

OSMRE will hold public hearings on the proposed rule upon request only. The times, dates and addresses for two scheduled hearings are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates and addresses for any additional hearings which may be requested for the remaining locations have not been determined, but will be announced in the **Federal Register** at least 7 days prior to any hearings held at those locations. Persons who wish to participate in a hearing at any of these additional locations for which no hearing has been pre-scheduled, should notify Mr. Growitz (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time August 24, 1988.

If no one has contacted Mr. Growitz to express an interest in participating in a hearing at any given location by August 24, 1988, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

## II. Background

### *Statutory Provisions*

In addition to the general environmental protection performance standards applicable to all lands, the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, provides specific protection for alluvial valley floors (AVF's). Section 701(1) of the Act, 30 U.S.C. 1291(1), defines "alluvial valley floors" as "unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities * * * ".

Subject to a number of exceptions, section 510(b)(5) of the Act, 30 U.S.C. 1260(b)(5), requires a surface coal mining operation permit application to demonstrate affirmatively, and the regulatory authority to find in writing, that a number of requirements unique to AVF's would be satisfied by the proposed operation. Section 510(b)(5)(A) requires that the application demonstrate that the surface coal mining operation would "not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated * * * ". In addition, section 510(b)(5)(B) requires a demonstration that the operation would not materially damage the quantity or quality of water in surface or underground water systems that supply the AVF's referred to in paragraph (5)(A).

As provided in section 510(b)(5), these requirements do not apply to:

(1) Surface coal mining operations located east of the 100th meridian west longitude;

(2) Undeveloped range lands which are not significant to farming on the AVF's;

(3) Lands for which the regulatory authority finds that the mining operation will only interrupt, discontinue or preclude farming of "such small acreage as to be of negligible impact on the farm's agricultural production[;]" and

(4) Those surface coal mining operations which in the year preceding the enactment of the Act (August 3, 1977) produced coal in commercial quantities, and were located within or adjacent to AVF's or had specific permit approval from the State regulatory authority to conduct surface coal mining operations on AVF's.

Another exemption from the section 510(b)(5) requirements is provided by section 506(d)(2) of the Act, 30 U.S.C. 1256(d)(2), for new operations proposed in an application for renewal or revision of a permit issued under the Act where the new operations extend to land beyond the boundaries authorized in the original permit. This exemption applies only if (1) the new land previously was identified in the reclamation plan submitted under section 508 of the Act, and (2) the original operations were exempt from the requirements of section 510(b)(5) of the Act under the section 510(b)(5) proviso for operations which produced coal in commercial quantities in the year preceding enactment of the Act.

Irrespective of whether the standards of section 510(b)(5) for the protection of farmed AVF's apply to a particular surface coal mining operation, the hydrologic protection requirements of section 515(b)(10) of the Act, 30 U.S.C. 1265(b)(10), do apply. Section 515(b)(10) requires that mining operations take certain steps to minimize disturbances to the prevailing hydrologic balance at the mine site and in associated off site areas, and to the quality and quantity of water in surface and ground water systems. This requirement applies both during and after surface coal mining operations and during reclamation. The required steps include, as specified in section 515(b)(10)(F), preserving throughout the mining and reclamation process the essential hydrologic functions of AVF's in the arid and semiarid areas of the country.

*Regulatory History and Court Decision*

Section 701.5 Definition of "agricultural activities or farming".

The term "agricultural activities" was first defined in a final rule published on March 13, 1979 (44 FR 15317). The rule did not define the term "farming." On June 28, 1983 (48 FR 29820), the substance of the definition was revised somewhat, and its scope was expanded to cover either "agricultural activities *or* farming." Under the revised definition the term "agricultural activities *or* farming" meant:

[W]ith respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, pasturing or grazing of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

The preamble to the June 28, 1983 rule (48 FR 29803) stated that although the Act and OSMRE's regulations use both the terms "agricultural activities" and "farming," their meaning with respect to AVF's is the same.

Coal industry plaintiffs in *In Re: Permanent Surface Mining Regulation Litigation (II) (In Re: Permanent II)*, No. 79–1144 (D.D.C. October 1, 1984), challenged the combined definition of "agricultural activities *or* farming" arguing that the term "agricultural activities" is more general than the term "farming," and thus encompasses more land uses.

Reasoning that the use of two different terms in the Act indicated a congressional intent to prescribe a different meaning to each, the court in *In Re: Permanent II* remanded the definition of "agricultural activities *or* farming." Slip op. at 30–31. The court held that the Secretary must reconsider the definition and any additional regulations necessary to conform them to congressional intent. On February 21, 1985 (50 FR 7274), OSMRE suspended the definition. OSMRE since has reconsidered the definition and is now proposing separate definitions for "agricultural activities" and "farming." OSMRE is also proposing other rule changes needed for conformity with the proposed definitions.

Section 785.19(d)(2)(i) Information on the essential hydrologic functions of alluvial valley floors.

The March 13, 1979, permanent program rules at 30 CFR 785.19(d)(3) (44 FR 15375) described specific information, surveys and analyses that a surface coal mining and reclamation permit application was required to include concerning the geologic, hydrologic and biologic characteristics that support the essential hydrologic functions of AVF's. These rules were revised by OSMRE on June 28, 1983 (48 FR 29821) as part of a major revision of the AVF rules. The revised regulation at 30 CFR 785.19(d)(2)(i) required that the permit application include detailed surveys and baseline data required by the regulatory authority for a determination of the characteristics of AVF's which are necessary to preserve their essential hydrologic functions throughout the mining and reclamation process. However, the details formerly contained in § 785.19(d)(3) of precisely what such surveys and baseline data should consist of had been deleted.

The citizen and environmental plaintiffs in *In Re: Permanent II* challenged the deletion of the specific requirements from the rule on the grounds that the preamble to the rule contained inadequate justification for the revision. The court remanded 30 CFR 785.19(d)(2)(i) for OSMRE to provide guidance to operators and regulatory authorities as to what type of information was required. Slip op. 30–40. The United States Court of Appeals for the District of Columbia Circuit affirmed the district court remand, concluding that the Secretary did not adequately explain why such guidance was not needed. *NWF v. Hodel*, No. 84–5743, Slip op. at 67–73. (D.C. Cir. January 29, 1988). OSMRE now proposes to amend § 785.19 accordingly.

## III. Discussion of Proposed Rule

*General*

In developing the proposed rule, OSMRE solicited and received comments on draft rule language from citizen and environmental groups, industry trade associations, and State regulatory authorities. These comments have been considered in drafting the rule.

The proposed rule would remove from 30 CFR 701.5 the definition of the term "agricultural activities *or* farming" and replace it with separate definitions of the terms "agricultural activities" and "farming." This change is being proposed in response to the court's suggestion that "the use of different words does connote an intent [by the Congress] to prescribe a different meaning" for these terms. Slip op. at 31.

To conform related AVF rules with these proposed definitions OSMRE is also proposing to revise the definition of "materially damage the quantity or quality of water" and to revise 30 CFR 785.19(b)(2)(ii) and (b)(3).

OSMRE also proposes to revise 30 CFR 785.19(d)(2)(i) in response to the

court order that specific guidance to operators and regulatory authorities as to what type of information about potentially affected AVF's must be placed in a permit application.

Each of these proposed changes is discussed in detail below.

*A. Section 701.5 Definitions of "agricultural activities" and "farming"*

The proposed rule at 30 CFR 701.5 would remove the suspended definition of the term "agricultural activities *or* farming" and replace it with separate definitions of the terms "agricultural activities" and "farming." OSMRE is proposing this change following reexamination of the legislative history of the Act in response to the remand order issued by the district court.

1. Court Decision

The district court in *In Re: Permanent II* stated:

> Congress used the term "agricultural activities" in its definition of AVF's, 30 U.S.C. § 1291(1), and "farming" in describing permit requirements. *Id.* at § 1260(5)(A). This court will not presume to define these terms, but the use of different words does connote an intent to prescribe a different meaning.
>
> (Slip op. at 31, citation omitted.)

Thus, separate definitions of these two terms are required by the court's decision if they are needed to conform the OSMRE regulations with congressional intent.

2. Legislative History

To determine congressional intent OSMRE reexamined the legislative history of the Act as it relates to AVF's. Based on the legislative history of section 510(b)(5) of the Act, OSMRE has concluded that separate definitions are appropriate.

The Congress used the term "agricultural activities" in section 701(1) of the Act in defining "alluvial valley floors." The term "farming" was used in section 510(b)(5)(A) of the Act in the AVF permit finding provision. In an attempt to strike a balance between the need to preserve the productive use of AVF's and the need to recover coal beneath them, it appears that the Congress intended section 510(b)(5) of the Act to protect only those AVF's which support farming, and not those which support other agricultural activities such as ranching.

Early versions of section 510(b)(5)(A) of the Act would have protected ranching as well as farming on AVF's. Both the House and Senate bills at one time prohibited the regulatory authority from approving a permit unless it found that the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would "not have a substantial adverse effect on valley floors * * * where farming can be practiced * * * (excluding undeveloped range lands), where such valley floors are significant * * * *farming and ranching operations* * * *" H.R. Rep. No. 45, 94th Cong., 1st Sess. 22 (1975) (Report accompanying H.R. 25); S. Rep. No. 128, 95th Cong., 1st Sess. 20 (1977) (Report accompanying S. 7) (emphasis added). Additionally, both bills extended this prohibition to potential as well as present farming and ranching.

The language extending the coverage to "ranching operations" was deleted by the House in 1976 and by the Senate in 1977. After H.R. 25 was reported out in 1975, a controversy arose concerning the scope of section 510(b)(5). In the next session the House adopted language very similar to the provision as was finally enacted on August 3, 1977. It provided that the regulatory authority could not approve the permit unless it found that the operation would not "interrupt, discontinue, or prevent *farming* on alluvial valley floors, * * * but, excluding undeveloped range lands * * * and those lands as to which the regulatory authority finds that if the *farming* that will be interrupted * * * is of such small acreage as to be of negligible impact on the *farm's agricultural production* * * *" Section 510(b)(5) of the 1976 House bill also contained a provision grandfathering certain operations which existed prior to the enactment of the Act. *See* H.R. Rep. No. 896, 94th Cong., 2nd Sess. 2 (1976) (Report accompanying H.R. 9725).

Although the deletion of the term "ranching" was not specifically discussed, the debates on the floor indicate that the Congress amended the AVF permit finding provision largely in response to the Administration's concern that the provision in the 1975 House bill could be read to "close some existing mines and * * * lock up significant coal reserves." 121 Cong. Rec. 12958, 62–64 (May 5, 1975); H.R. Rep. No. 896, 94th Cong., 2d Sess. 3 (1976). The effect of the amendment was to increase the recoverability of coal underlying AVF's by deleting both the protection for present and potential ranching, and by adding the grandfather provisions and the small acreage exemption.

The Senate did not delete the ranching protection from the AVF permit finding provision of its bill until May of 1977 when it passed a compromise amendment introduced by Senator Melcher. Senator Johnston first introduced an amendment which required a finding that the operation would not interrupt, discontinue or prevent farming on AVF's unless, among other matters, "the total value of the coal mined * * * would exceed, by a ratio of 100 to 1, the total value of the *farming or ranching* products that would be produced from said acreage * * *" 123 Cong. Rec. S 8030 (daily ed.) (May 19, 1977) (emphasis added). Senator Hart then offered an amendment which would have banned all mining on AVF's irrespective of the agricultural use of the land, with a limited grandfather provision. 123 Cong. Rec. 15691 (May 20, 1977). These two amendments were defeated.

A third amendment, introduced by Senator Melcher and ultimately adopted by the Senate, contained the identical language of the 1976 House bill, including the deletion of the protection for ranching, and the addition of the grandfather provision and the small acreage exemption. The Senator emphasized that this language was designed to protect lands where there was farming that depended on irrigation. He further stated that in 1976 this language had been carefully reviewed and represented a compromise among environmental and labor groups, coal companies, individual landowners and government agencies. 123 Cong. Rec. 15751 (May 20, 1977). The Senator characterized his amendment as a "middle ground [between the Hart and the Johnston amendments] * * * because it does retain the restrictions on keeping the alluvial valley floor *farming* operations intact. But it allows enough discretion through the regulatory authority to allow [mining] in those instances where the mining operation would not violently disturb a *farming operation* on a valley floor * * *" 123 Cong. Rec. at 15752 (emphasis added).

The legislative history of section 510(b)(5), therefore, indicates that the Congress twice rejected language which would have broadened the scope of the AVF permit finding provision to encompass ranching as well as farming activities. OSMRE's 1983 combined definition of "agricultural activities *or* farming" therefore appears inconsistent with congressional intent. Accordingly, OSMRE has proposed to define "farming" as a subset of "agricultural activities" distinct from ranching.

3. Definitions Proposed

As described above, it appears from the debates leading to adoption of the Melcher amendment that the Congress intended to protect only those AVF's being farmed and not those being ranched. (See A.2. *Legislative history*, above.) Therefore, in proposing separate definitions of "agricultural activities" and "farming" consistent with the

legislative history it is necessary to distinguish farming from ranching. OSMRE believes the most practical way to make that distinction is to consider "pasturing or grazing of livestock" in the arid and semi-arid areas west of the 100th meridian as ranching, and to limit farming to activities which involve raising plants. That concept is embodied in the proposed definitions described below.

*"Agricultural activities".* The definition proposed for "agricultural activities" is similar to the remanded definition of "agricultural activities *or* farming." However, the specific terms "cultivation," "cropping," and "harvesting" found in the definition of "agricultural activities or farming" are replaced in the proposed definition by the generic term "farming." Therefore, the proposed definition of "agricultural activities" reads as follows:

*Agricultural activities* means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enchanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

*"Farming".* For consistency with the definition of "agricultural activities" described above, OSMRE proposes to define "farming" in terms of the "cultivation," "cropping" and "harvesting" of plants.

*Farming* means, with respect to alluvial valley floors, the primary use of those areas for the cultivation, cropping and harvesting of plants which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors. For purposes of this definition harvesting does not include the grazing of livestock.

This proposed definition of "farming" differs significantly from the former definition of "agricultural activities or farming." Under the former definition there was no distinction made between ranching and farming, and all agricultural activities, including ranching, that could occur on an AVF were considered to be farming. In this proposed definition farming is limited to the "cultivation, cropping, and harvesting of plants." Also, the terms "cultivation," "cropping" and "harvesting" are used in a different way from how they were used in the former definition. The use of "and" instead of "or" in linking the terms requires that all three activities (i.e. cultivation, cropping *and* harvesting) must occur for an AVF to qualify as farmed. For purposes of this rule OSMRE presumes that each is a distinct activity, and that cultivation means the preparation of the land for planting, cropping means planting and tending, and harvesting means the gathering in of the crop.

Requiring all three activities to be performed to establish that an AVF is farmed helps to ensure that there is a distinction maintained between ranching and farming. If only one of the three were required for farming to exist, then those grazed AVF's that are merely improved by cultivation or cropping activities could be considered as farmed although their primary use is the grazing of livestock, a ranching activity. For the same reason OSMRE also presumes, for purposes of this rule, that the "pasturing or grazing of livestock" is not a method of harvesting. Under this proposed rule the production of forage would only be considered a farming activity when the forage crop is mechanically harvested (i.e., cut and either stacked or bailed).

*Farming as the "primary use" of an AVF.* The phrase "primary use" in the definition of "farming" is intended to cover those AVF's which are farmed in most years but not in others due to an unsatisfactory yield, excess production, or some other factor. The use of an AVF for the "pasturing or grazing of livestock" in some years does not preclude the AVF from being classified as farmed and thereby entitled to the protection of section 510(b)(5) of the Act.

However, the "cultivation, cropping *and* harvesting" of plants constitute "farming" only where such activities are actually the primary use of an AVF. The suspended definition placed all "cultivation, cropping *or* harvesting" within the scope of "agricultural activities *or* farming." This proposal differs since occasional farming activities on AVF's not primarily used for "cultivation, cropping *and* harvesting," and not capable of producing crops on a regular basis, would not be considered farming.

*Plants not benefitting from irrigation or subirrigation.* "Farming," under the proposed definition, is limited to those "plants * * * which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors." Therefore, although an AVF is used for the cultivation, cropping and harvesting of plants, it would not qualify as "farmed" if the plants being cultivated, cropped and harvested do not benefit from irrigation or subirrigation.

4. Effect of Proposal

The chief consequence of defining "farming" separately from "agricultural activities" is that whenever 30 CFR 785.19 or 822.12 refers to "farming," it no longer would apply to all "agricultural activities." For example, § 822.12(b)(1) provides an exclusion from the prohibitions of § 822.12(a) "[w]here the premining use of an alluvial valley floor is undeveloped rangeland which is not significant to farming. * * *" Under the proposed definitions, this provision would not apply to every agricultural activity, but only to those activities which involve the "cultivation, cropping and harvesting" of plants. Furthermore, the provision in § 822.12(a) prohibiting mining when operations would "interrupt, discontinue, or preclude farming" on AVF's would apply only to those areas in which "farming" would be affected. The "farmed" AVF areas being affected so as to invoke the § 822.12(a) prohibition can include areas which were not being mined but would have their "farming" interrupted, discontinued, or precluded by a mining operation located on a nearby portion of the same AVF. The net effect of these proposed definitions would be to remove from those areas used for agricultural activities other than "farming" some protection afforded AVF's by the suspended rules.

5. Request for Comments

The proposed rule interprets the pasturing and grazing of livestock as a non-farming (ranching) agricultural activity and limits "farming" to those situations were cultivation, cropping and harvesting practices are all employed. Comments are solicited on whether any other meaningful or practical distinctions, consistent with the court order and the legislative history, can be made between "agricultural activities" and "farming."

*B. Section 701.5 Definition of "materially damage the quantity or quality of water"*

As required by the district court in *In Re: Permanent II*, slip op. at 31, for conformity with the proposed definitions of "agricultural activities" and "farming" OSMRE proposes to amend the definition of "materially damage the quantity or quality of water" by substituting the term "farming" for the term "agricultural activities." The revised definition would read as follows:

*Materially damage the quantity or quality of water* means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the

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water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support farming.

OSMRE believes, based on its previously discussed review of the legislative history of the Act and decision of the district court in *In Re: Permanent II*, that the material damage finding required by section 510(b)(5)(B) of the Act applies only to AVF's which support "farming." Therefore, the definition of "material damage" should be limited to decreases in the capability of those AVF's to support "farming" instead of all "agricultural activities." The result of this change would be to narrow the protection afforded to AVF's by by eliminating protection for AVF's primarily used for non-farming (i.e., ranching) agricultural activities such as grazing.

*C. Section 785.19(b) Applicability of statutory exclusions*

Revisions also are needed to conform existing 30 CFR 785.19(b) to the proposed definitions of "agricultural activities" and "farming." Section 785.19(b)(2) provides for mining on AVF's under two of the section 510(b)(5) statutory exclusions described above. The first exclusion applies to undeveloped rangelands which are not significant to farming; the second exclusion applies to mining when the regulatory authority finds that mining activities would affect farming of "such small acreage as to be of negligible impact on the farm's agricultural production." Proposed § 785.19(b)(2)(ii) would require the regulatory authority to base its determination of whether an impact was "negligible"; on the relationship between the loss of production from the affected farmland areas to the farm's total agricultural production over the life of the mine.

This proposed provision includes several changes, but remains very similar to the 1983 final rule. Because this paragraph deals with the impact of surface coal mining on "farming," and the proposed definition of "farming" does not include the use of AVF's for grazing, OSMRE is proposing that the reference to grazing be deleted from § 785.19(b)(2)(ii). Further, because the use of AVF's for hay production falls within the proposed definition of "farming" as previously discussed, this paragraph has been reorganized and the term "hayed AVF area" deleted.

Two other editorial changes are also being proposed for clarity and consistency with the proposed definition of "farming." First, the word "total" has been added as a modifier to the term "agricultural production" to emphasize that the basis by which any impact is measured is a farm's total agricultural production over the life of the mine. Second, the phrase "vegetation and water of the developed grazed or hayed alluvial valley floor area" has been changed to "farmland areas" because the former can be construed to be related to areas which are not farmed under the proposed definition of "farming." The use of "farmland areas" is consistent with terms found in existing § 785.19(b)(3).

Proposed § 785.19(b)(3) defines a farm as a land unit on which farming is conducted. The requirements of this section are the same as those in the suspended rule except that the term "farming" has been substituted for the term "agricultural activities."

Otherwise § 785.19(b)(3) remains unchanged from the suspended rule. This revision is proposed to conform this paragraph with section 510(b)(5) of the Act, as well as with the proposed definition of "farming."

*D. Section 785.19(d)(2)(i) Information on the essential hydrologic functions of alluvial valley floors*

The district court in *In Re: Permanent II*, Slip op. at 38–40, remanded 30 CFR 785.19(d)(2)(i) to the Secretary to provide guidance to operators and regulatory authorities as to what type of information was required.

Section 785.19(d)(3) of the 1979 rules had included specific information requirements to describe the characteristics which support the essential hydrologic functions of alluvial valley floors. Those specific information requirements had been deleted from § 785.19(d) when it was revised in 1983. The U.S. Court of Appeals for the District of Columbia Circuit in *NWF v. Hodel*, No. 85–5743, slip op. at 68–73 (D.C. Cir. January 29, 1988), "affirm[ed] the remand so that the Secretary may provide appropriate, official guidance to the operators and regulatory authorities, or conversely, explain why such guidance is not needed. Slip op. at 73.

The special protections afforded to AVF's by the Act are described in two sections: Section 510(b)(5) prohibits a regulatory authority from approving a permit unless the applicant submits information which affirmatively demonstrates that certain protections to farming on AVF's are provided. Section 515(b)(10)(F) requires the preservation throughout mining and reclamation of the "essential hydrologic functions" of AVF's. In section 515(b)(10)(F) the Congress identified special protections to be afforded all AVF's independent of the protections for farming on alluvial valley floors provided by section 510(b)(5).

In *NWF v. Hodel* the court of appeals upheld the Secretary's view that the protection of essential hydrologic functions extended to all alluvial valley floors rather than just those significant to farming. Slip op. at 105–106. The court stated that "it seems entirely plausible * * * that Congress intended * * * to protect all alluvial valley floors in arid and semi-arid areas with a performance standard while also providing special protection at the permit stage for those alluvial valley floors significant to farming." Slip op. at 106. The court went on to say that "[a]lthough the legislative history cited by Industry clearly supports the notion that Congress intended special protection for farms dependent on alluvial valley floors, it does nothing to refute the notion that other alluvial valley floors are also subject to protection, *albeit not at the permitting stage*." Slip op. at 106 (emphasis added). This is consistent with the fact that the Act requires no permitting information on the essential hydrologic functions of AVF's.

Although the Act does not require any permit information on essential hydrologic functions, and does not require the Secretary to further elaborate or "flesh out" this performance standard, it remains within the Secretary's discretion to add corresponding permit information requirements. *NWF v. Hodel*, slip op. at 79–80. Therefore, OSMRE intends to continue to require permit information relative to preserving and reestablishing the essential hydrologic functions of all AVF's. The information requirement now being proposed, which differs from that required under the 1979 and 1983 rules, is described below.

In the 1979 rules OSMRE regulated the protection of essential hydrologic functions in three ways: First, by promulgating at 30 CFR 701.5 an extensive definition of "essential hydrologic functions" which read as follows:

*Essential hydrologic functions* means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

(a) The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial

valley floor greater than the amount available from direct precipitation.

(b) The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.

(c)(1) The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel flood plain and adjacent low terraces.

(2) The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.

(d) The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

44 FR 15318 (March 13, 1979)

Second, by promulgating a performance standard at 30 CFR 822.11 requiring the preservation or reestablishment of the geologic, hydrologic, and biologic characteristics that support those functions. In the pertinent part, that standard read as follows:

(a) Surface coal mining and reclamation operations shall be conducted to preserve * * * the essential hydrologic functions of alluvial valley floors not within an affected area * * * by maintaining those geologic, hydrologic and biologic characteristics that support those functions.

(b) Surface coal mining and reclamation operations shall be conducted to reestablish * * * the essential hydrologic functions of alluvial valley floors within an affected area * * * by reconstructing those geologic, hydrologic and biologic characteristics that support those functions.

(c) The characteristics that support the essential hydrologic functions of alluvial valley floors are those in 30 CFR 785.19(d)(3) * * *.

44 FR 15450 (March 13, 1979)

And third, by promulgating, at 30 CFR 785.19(d), permit information requirements to describe those characteristics. See 44 FR 15375 and 15376 (March 13, 1979).

In 1983, OSMRE revised the AVF rules with respect to essential hydrologic functions in four ways: First, the definition of "essential hydrologic functions" was shortened and simplified to read as follows:

*Essential hydrologic functions* means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

Second, the § 822.11 performance standards were rewritten to relate *directly to protection of the essential hydrologic functions*, rather than to the "geologic, hydrologic, and biologic characteristics that support those functions." In pertinent part, § 822.11 was revised to read as follows:

(a) The operator * * * shall minimize disturbances to the hydrologic balance by preserving * * * the essential hydrologic functions of an alluvial valley floor not within the permit area.

(b) The operator * * * shall minimize disturbances to the hydrologic balance within the permit area by reestablishing * * * the essential hydrologic functions of alluvial valley floors.

Third, former paragraph § 822.11(c) containing the cross reference to § 785.19(d)(3), which specified the detailed information requirements to describe those "geologic, hydrologic, and biologic" characteristics, was removed. See 48 FR 29820 (June 28, 1983).

And fourth, the § 785.19(d) permitting requirements were revised. That revision removed: (1) The detailed information requirements previously contained in § 785.19(d)(2), which primarily related to the use of an alluvial valley floor for farming; and (2) § 785.19(d)(3), which required detailed information describing those geologic, hydrologic, and biologic characteristics necessary to support the essential hydrologic functions. See 48 FR 29820 (June 28, 1983). The 1983 revision of § 785.19(d)(2)(i) did retain, however, the requirement for detailed survey and baseline data to determine those characteristics of alluvial valley floors necessary to preserve the essential hydrologic functions, but did not specify what those surveys and baseline data should address.

In its October 1, 1984 decision, the district court in *In Re: Permanent II* remanded § 785.19(d)(2)(i) to the Secretary to provide guidance as to what type of information would satisfy this requirement in the absence of previous § 785.19(d)(3). Slip op. at 39–40. Although the court of appeals in *NWF v. Hodel* noted the deletions of both § 785.19(d)(2) and § 785.19(d)(3) (see slip op. at 69, note 51), only the deletion of previous § 785.19(d)(3), which specified permit information requirements to describe those characteristics which support the essential hydrologic functions, was the subject of the district court remand. Therefore, the scope of this rulemaking is limited to providing the necessary degree of guidance as to what information must be submitted on the permit application to describe the essential hydrologic functions of alluvial valley floors, and to explaining the deviation from the requirements of § 785.19(d)(3) of the 1979 rules. Since the 1983 changes to the information requirements contained in § 785.19(d)(2) of the 1979 rules were not related to the characteristics supporting essential hydrologic functions, and were not covered by the district court remand, this rule does not address them.

In light of the court of appeals decision upholding the district court remand of § 785.19(d)(2)(i) to the Secretary for further guidance, OSMRE has reconsidered the requirements of that section and is proposing a substantial revision. Since this rule is to address those permit application information requirements necessary for a regulatory authority to determine projected compliance with the performance standards, the proposed information requirement is structured to support the definition of essential hydrologic functions at 30 CFR 701.5 and the performance standard requiring their protection at 30 CFR 822.11, as they exist today. Since the performance standard no longer is written in terms of the characteristics which support the essential hydrologic functions, it would be inappropriate to return to the information requirements previously contained in § 785.19(d)(3), which was written in terms of those "characteristics." Instead, proposed § 785.19(d)(2)(i) is structured to reflect the revised definition of essential hydrologic functions and the performance standard requiring direct protection or restoration of those functions.

Proposed § 785.19(d)(2)(i) expands upon the 1983 rule and identifies those specific requirements for AVF information that must be included in a permit application. It requires the applicant to include in the application specified information on essential hydrologic functions of the AVF. This proposal has an emphasis different from the 1983 rule, which contained requirements to provide information on those characteristics of AVF's necessary to support their essential hydrologic functions. OSMRE believes this change is appropriate since the performance standard is no longer structured around

those characteristics, but is now built around the essential hydrologic functions themselves, and those factors related to the AVF that contribute to them. Therefore, OSMRE proposes to revise 30 CFR 785.19(d)(2)(i) (A) through (D) as described below to specify those functions of AVF's for which information is required in a permit application.

Paragraph A requires a description of those factors contributing to the collection of water within the AVF, such as the amount, rate and frequency of rainfall and runoff, surface roughness, slope and vegetative cover, infiltration and evapotranspiration, relief, and slope and density of drainage channels.

Paragraph B requires a description of those factors contributing to storing of water within the AVF, such as permeability, infiltration, depth and direction of ground water flow, porosity, and water holding capacity.

Paragraph C requires a description of those factors contributing to the regulation of the flow of surface and ground water within the AVF, such as longitudinal profile and slope of the valley and channels, the sinuosity and cross sections of the channels, interchange of water between streams and associated alluvial and bedrock aquifers, and rates and amount of water supplied by the aquifers.

Paragraph D requires a description of those factors contributing to the availability of water in the AVF, such as the presence of floodplains and terraces suitable for agricultural activities.

OSMRE believes that the detailed language added to proposed § 785.19(d)(2)(i) (A) through (D), although different from the information required under § 785.19(d)(3) of the March 13, 1979 rule, would provide the necessary guidance to operators and regulatory authorities, consistent with the revised definition and performance standards. Thus, the level of guidance sought by the district court would be provided.

## IV. Procedural Matters

*Effect in Federal Program States and on Indian Lands*

This rule, if adopted, would be applicable through cross-referencing in those States with Federal programs and on Indian lands. Federal program States include Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States are found at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The Indian lands program is found at 30 CFR Part 750.

Comments are solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs or the Indian lands program.

OSMRE has proposed to implement a Federal program for the State of California. 52 FR 39594 (Oct. 22, 1987). Comments are also specifically solicited as to whether conditions exist in California that should be reflected in the proposed Federal program for that State.

*Federal Paperwork Reduction Act*

The information collection requirements contained in paragraph 785.19(d)(2)(i) of 30 CFR 785.19 of the proposed rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0040.

*Executive Order 12291*

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

*Regulatory Flexibility Act*

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities.

*National Environmental Policy Act*

OSMRE has prepared a draft environmental assessment (EA) and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address listed in the "ADDRESSES" section of the preamble. An EA will be completed on the final rule and a conclusion reached on the significance of any resulting impacts before promulgation of the final rule.

*Author*

The principal author of this rule is Douglas Growitz, Division of Reclamation Technology, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–1507.

**List of Subjects**

*30 CFR Part 701*

Law Enforcement, Surface mining, Underground mining.

*30 CFR Part 785*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 701 and 785 as set forth below.

Date: June 24, 1988.

**J. Steven Griles,**

*Assistant Secretary—Land and Minerals Management.*

## PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100–34, unless otherwise noted.

2. In § 701.5 the definition of "agricultural activities *or* farming" is removed, definitions of "agricultural activities" and "farming" are added in alphabetical order, and the definition of "materially damage the quantity or quality of water" is revised to read as follows:

**§ 701.5 Definitions.**

*Agricultural activities* means, with respect to alluvial valley floors, the use of any track of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

* * * * *

*Farming* means, with respect to alluvial valley floors, the primary use of those areas for the cultivation, cropping and harvesting of plants which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors. For purposes of this definition harvesting does not include the grazing of livestock.

* * * * *

*Materially damage the quantity or quality of water* means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support farming.

* * * * *

## PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

3. The authority citation for Part 785 is revised to read as follows:

**Authority:** Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100–34, unless otherwise noted.

4. Section 785.19 is amended by revising paragraphs (b)(2)(ii), (b)(3) and (d)(2)(i) to read as follows:

**§ 785.19 Surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors in the arid and semiarid areas west of the 100th meridian.**

* * * * *

(b) * * *

(2) * * *

(ii) Any farming on the alluvial valley floor that would be affeced by the surface coal mining operation is of such small acreage as to be of neglible impact on the farm's agricultural production. Negligible impact of the proposed operation on farming will be based on the relative importance of the affected farmland areas of the alluvial valley floor area to the farm's total agricultural production over the life of the mine; or

* * * * *

(3) For the purpose of this section, a farm is one or more land units on which farming is conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the arm's agricultural productivity and not related to surface coal mining operations.

* * * * *

(d) * * *

(2) * * *

(i) The essential hydrologic functions of the alluvial valley floor which might be affected by the mining and reclamation process. The information required by this subparagraph shall identify those factors which contribute to the collecting, storing, regulating and making the natural flow of water available for agricultural activities on the alluvial valley floor and shall include, but are not limited to:

(A) Factors contributing to the function of collecting water, such as amount, rate and frequency of rainfall and runoff, surface roughness, slope and vegetative cover, infiltration, and evapotranspiration, relief, slope and density of drainage channels;

(B) Factors contributing to the function of storing water, such as permeability, infiltration, porosity, depth and direction of ground water flow, and water holding capacity;

(C) Factors contributing to the function of regulating the flow of surface and ground water, such as the longitudinal profile and slope of the valley and channels, the sinuosity and cross-sections of the channels, interchange of water between streams and associated alluvial and bedrock aquifers, and rates and amount of water supplied by these aquifers; and

(D) Factors contributing to water availability, such as the presence of flood plains and terraces suitable for agricultural activities.

* * * * *

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Part III

# Environmental Protection Agency

**40 CFR Part 23**

**Designation of Office To Receive Petitions for Review of Agency Actions; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 23**

**[OGL-FRL-3399-5]**

## Designation of Office To Receive Petitions for Review of Agency Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Congress recently adopted Pub. L. 100-236, 101 Stat. 1731, amending 28 U.S.C. 2112 (a section of the United States Judicial Code). The statute requires each federal agency to receive a copy of each petition for review of a final agency action filed in the United States Courts of Appeals. That officer is then required to notify the United States Judicial Panel on Multidistrict Litigation of any petitions received within ten days of the effective date of the action. This rule designates the General Counsel as the appropriate officer for the Environmental Protection Agency.

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Randolph Hill, Office of General Counsel (LE-132W), U.S. EPA, 401 M Street SW., Washington, DC 20460. Phone: (202) 382-7700.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Congress recently adopted Pub. L. 100-236, 101 Stat. 1731, amending 28 U.S.C. 2112 (a section of the United States Judicial Code). The amendment states that when a federal agency receives two or more petitions filed in two or more United States Courts of Appeals challenging a final agency action within ten days of the effective date of that action, the U.S. Judicial Panel on Multidistrict Litigation will pick at random one of the Circuit Courts in which a petition was filed, and consolidate all other appeals in the chosen court.

The amendment is designed to eliminate the so-called "race to the courthouse", which occurs when different parties attempt to file a challenge to an administrative action in one Court of Appeals before the other parties can file in a different court.

Under the amended section 2112(a)(2), each federal agency is required to designate, by rule or regulation, the office and officer to receive a copy of each petition filed. That officer is then required to notify the Judicial Panel of any petitions received within the ten day period, in accordance with Rules 20-25 of the Panel, which were adopted by the Panel following passage of the law. This rule designates the General Counsel as the appropriate officer for the Environmental Protection Agency.

### II. Background of Public Law 100-236

Certain actions taken by federal agencies are subject to direct judicial review in the United States Courts of Appeals. Some federal statutes specify a particular Circuit Court where venue shall lie for a challenge to actions taken under that statute. For instance, the Clean Air Act requires that challenges to national rules be filed in the U.S. Court of Appeals for the District of Columbia (42 U.S.C. 7407(b)(1)). Other federal statutes either do not specify where challenges may be filed, or allow judicial review of agency actions in any appropriate Court of Appeals. The Clean Water Act (CWA) allows direct judicial review of certain EPA actions in the Circuit Court where the petitioner resides or transacts business (33 U.S.C. 1369(b)(1)).

Where judicial review of agency actions is not limited to a single court, challenges to agency action may be filed by several petitioners in several different Courts of Appeals. Prior to the passage of Pub. L. 100-236, these multiple petitions for review would be transferred and consolidated in the court where the first petition was filed. The "first-to-file" rule, adopted in 1958, was designed to make the selection of the court of review as fair as possible.[1] However, the rule created an unintended problem. Many petitioners appear to believe that certain Circuits will be more sympathetic to their arguments on review than other Circuits. Thus, the first-to-file rule created an incentive for them to "race" competing petitioners "to the courthouse" and file in their preferred Circuit Court as soon as the action of the agency became final.

Races to the courthouse have become both highly sophisticated and extremely amusing processes. As documented in EPA's first proposal for eliminating courthouse races under the CWA (44 FR 32006), potential petitioners often go to great lengths to ensure that they file first. Messengers may be placed at the agency to wait for notice of an action to be issued. They may be connected by phone chains, walkie-talkie chains, or people chains to other messengers who wait at the office of the court clerk, petitions for review in hand. Since a petition for review need only state who is challenging the agency action and what action is being challenged (i.e., no reasons for the challenge need be enumerated in the petition), the petition for review can be prepared well in advance. Phone chains allow a petition for review to be filed within minutes or even seconds of when the notice of final agency action is issued. The spectacle of a courthouse race, in addition to being unseemly and somewhat unprofessional, is highly disruptive to both the agency and the U.S. Courts. Furthermore, disputes over who "won" the race have led to time-consuming litigation. In the case of one challenge to an action of the Federal Energy Regulatory Commission, an Administrative Law Judge ordered a "reenactment" of the race to determine how long it would actually have taken the petitioners to file after notice of the action was issued (see 44 FR 32010). In that same race, the ALJ also investigated how accurately the time stamps at the Fifth and D.C. Circuit Courts were calibrated to determine whether the earlier-stamped petition had actually been filed later!

In 1980, the Administrative Conference of the United States recommended statutory changes to eliminate races to the courthouse (1 CFR 305.80-5). Its recommendation, to provide for a random selection of the court of review from among those courts where petitions for review have been filed, was embodied in bills introduced in the 97th, 98th, 99th, and most recently, 100th Congresses (H.R. 1162; S. 1128). H.R. 1162 was the first of these proposals to pass both houses. The President signed the bill on January 8, 1988.

Congress had already eliminated races to the courthouse under the CWA. The Water Quality Act of 1987 (Pub. L. 100-4, passed February 4, 1987) included an amendment to the judicial review provisions of the CWA, which authorized a random selection of the reviewing court if EPA received notice that multiple petitions for review of an agency action under the CWA were filed within 30 days of the date EPA received notice of the first such petition (33 U.S.C. 1369(b)(3)). Pub. L. 100-236 repealed this provision under the CWA in favor of the generic provision in 28 U.S.C. 2112(a).

### III. Past EPA Rulemakings

Prior to the amendments to the CWA, and later, the Judicial Code, EPA had already taken steps to minimize the effects of races to the courthouse. In 1979, EPA responded to requests from concerned parties and proposed a rule which specified the exact moment when

[1] Prior to 1958, if multiple petitions were filed challenging an Agency order, the Agency had the discretion to select in which Court of Appeals the petitions would be heard.

an action under the CWA would become "final" for purposes of judicial review (44 FR 32006). This rule was finalized on April 17, 1980 (45 FR 26046). In 1985, EPA extended the rule to cover all EPA-administered statutes under which the filing of petitions for review in multiple courts could occur (50 FR 7268).[2]

Under the 1985 rule, most final EPA actions reviewable in the Courts of Appeals were deemed to be "final" at 1:00 p.m. eastern time fourteen days after the date of publication in the **Federal Register**, or fourteen days after the date of signature for unpublished documents (40 CFR 23.2–23.10). This rule did not eliminate races to the courthouse; rather, it merely specified precisely when the starting gun would be fired. The rule eliminated phone chains, since no one had to be stationed at EPA to wait for a decision to be issued. Racing parties would merely wait at the courthouses of choice on the appropriate day, and hand their petitions to the appropriate clerk for time-stamping on or after 1:00 p.m. In other words, the 1980 and 1985 rules guaranteed that all races would end in a tie, but with minimal disruption for either the agency or the Courts of Appeals. The 1980 and 1985 rules also helped to ensure that all interested parties could compete in a courthouse race on a fair and equal basis, since no party could win the race merely by knowing of an imminent agency action before the others.

## IV. Today's Rule

Today's rule adds a new § 23.12 to Part 23. Section 23.12 designates the General Counsel of EPA as the appropriate officer to receive petitions for review of agency actions, and lists the address where these petitions should be sent. The General Counsel has been designated as the appropriate officer because the Office of General Counsel is responsible for representing EPA in litigation against the agency, including Circuit Court review of agency action. Staff in the Office of General Counsel will track the submission of petitions for review, and notify the Judicial Panel on Multidistrict Litigation as appropriate.

Under Pub. L. 100–236, only those petitions received by the agency within ten days of the date when an agency action becomes final are eligible for consideration in the random selection process.[3] Any other petitions received after the ten day period will be consolidated in the Court of Appeals selected by the Judicial Panel. The rule therefore specifies that all copies of filed petitions shall be delivered by personal service or by certified mail, return receipt requested. Use of either of these two methods will allow the General Counsel to ascertain the day on which the petition was received at the agency and thus determine whether it falls within the ten-day period.

The requirements of today's rule are not designed to alter or conflict with Rule 15(c) of the Federal Rules of Appellate Procedure. Rule 15(c) requires a petitioner for judicial review of agency action, *inter alia*, to furnish the clerk of the Court of Appeals with a copy of the petition or application for each respondent agency. Under normal practice, the clerk then sends that copy to the agency to formally notify it of the pending challenge. However, under the new 28 U.S.C. 2112(a)(1), "[i]f within ten days after issuance of the order, the agency * * * receives, *from the person instituting the proceedings*, the petition for review with respect to proceedings in at least two courts of appeals, the agency * * * shall [notify the Multidistrict Panel]." (Emphasis added). EPA reads the new statute as requiring the agency to notify the Judicial Panel only of petitions received by the agency from the petitioner. Thus, the new law places the burden on the petitioner to send an additional copy of the petition for review directly to the agency, notwithstanding the requirements of Rule 15(c), if the petitioner desires the Circuit in which he filed to be part of the random selection process.

Today's rule also does not in any way modify or change the sections of Part 23 included in EPA's 1985 rule. In other words, agency actions covered under these sections will continue to be deemed "final" for purposes of judicial review (and the ten-day period for petitions for review to enter the random selection process will begin) at 1:00 p.m. fourteen days after the date of publication or date of signature. EPA sees no reason to repeal the 1985 rule in light of the statutory amendment, given that the rule will still ensure fairness for all interested parties.

## V. Final Agency Action and Effective Date

This rule constitutes final Agency action. EPA has determined that this rule does not necessitate notice and comment under the Administrative Procedure Act, 5 U.S.C. 553. This rule is issued in compliance with a statutory requirement to designate an officer to receive copies of petitions for review of Agency action. This rule is a non-discretionary action on the part of the Agency. Furthermore, the rule does not affect any substantive right of the public, and relates solely to the agency's internal practice and procedure. As such, the Agency believes that public comment is unnecessary.

In addition, under section 3 of Pub. L. 100–236, the new procedure for resolving multiple appeals of agency action became effective 180 days after enactment of the law, *i.e.*, July 6, 1988. Thus, challenges to final agency actions are already subject to the new law's provisions. Therefore, the Agency believes that good cause exists for making this rule immediately effective.

## VI. Regulatory Impact

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must determine whether this regulation constitutes a "major rule", requiring a regulatory impact analysis. This rule requires that any person challenging Agency action send one additional copy of the petition to EPA if they wish the court in which they filed to be eligible in the random selection. It imposes no other requirements. Thus, the rule meets none of the criteria of a "major rule" under E.O. 12291. This rule has been submitted to the Office of Management and Budget for review.

### *B. Paperwork Reduction Act*

The requirements of this rule do not constitute an "information collection activity" within the meaning of the Paperwork Reduction Act. Thus, an Information Collection Request for this rule is unnecessary and was not prepared.

### *C. Regulatory Flexibility Act*

The requirements of this rule are extremely minor. Any entity, whether large or small, who is already challenging an Agency action in the Court of Appeals will be burdened only with the cost of a single certified letter. Thus, I certify that this rule will not have a significant impact on a substantial number of small entities.

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[2] The 1980 "race to the courthouse" rule for the Clean Water Act was codified in 40 CFR Part 100. The 1985 rule removed Part 100, and codified the "race to the courthouse" rules for all EPA-administered statutes in a new Part 23.

[3] If only one petition for review (including multiple petitions filed within a single Circuit) is received by the agency within ten days of the effective date of the order, the case will be heard in that Circuit. Any other petitions received after the ten day period will be consolidated in that Circuit. If no petition is received by the agency within the first ten days, the case will be heard in the Circuit where the first petition is filed. 28 U.S.C. 2112(a).

**List of Subjects in 40 CFR Part 23**

Judicial review, Races to the Courthouse.

Dated: July 27, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations, Chapter I, is amended as follows:

## PART 23—JUDICIAL REVIEW UNDER EPA-ADMINISTERED STATUTES

1. The authority citation for Part 23 is revised to read as follows:

**Authority:** Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j-7(a)(2), 300j-9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 348; 28 U.S.C. 2112(a), 2343, 2344.

2. Section 23.1 is amended by adding paragraph (c) to read as follows:

**§ 23.1 Definitions.**

* * * * *

(c) "General Counsel" means the General Counsel of EPA or any official exercising authority delegated by the General Counsel.

3. Section 23.12 is added to read as follows:

**§ 23.12 Filing notice of judicial review.**

(a) For the purposes of 28 U.S.C. 2112(a), a copy of any petition filed in any United States Court of Appeals challenging a final action of the Administrator shall be sent by certified mail, return receipt requested, or by personal delivery to the General Counsel. The petition copy shall be time-stamped by the Clerk of the Court when the original is filed with the Court. The petition should be addressed to: Correspondence Control Unit, Office of General Counsel (LE-130), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(b) If the General Counsel receives two or more petitions filed in two or more United States Courts of Appeals for review of any Agency action within ten days of the effective date of that action for purposes of judicial review (as specified under §§ 23.2 through 23.10 of this part), the General Counsel will notify the United States Judicial Panel of Multidistrict Litigation of any petitions that were received within the ten day period, in accordance with the applicable rules of the Panel.

(c) For purposes of determining whether a petition for review has been received within the ten day period under paragraph (b) of this section, the petition shall be considered received on the date of service, if served personally. If service is accomplished by mail, the date of receipt shall be considered to be the date noted on the return receipt card.

[FR Doc. 88-17402 Filed 8-2-88; 8:45 am]

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# Presidential Documents

Title 3—

The President

## Executive Order 12647 of August 2, 1988

## Multilateral Investment Guarantee Agency

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1 of the International Organizations Immunities Act (22 U.S.C. 288), Reorganization Plan No. 4 (30 F.R. 9353), and the Multilateral Investment Guarantee Agency Act (22 U.S.C. 290k), and in order to facilitate U.S. participation in the Multilateral Investment Guarantee Agency, it is hereby ordered that:

**Section 1.** The Multilateral Investment Guarantee Agency, in which the United States participates pursuant to P.L. 100–202 and the Convention establishing the Multilateral Investment Guarantee Agency, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges and immunities that such organization has acquired or may acquire by international agreements or by statute.

**Sec. 2.** Executive Order No. 11269, as amended, is further amended by deleting "and Inter-American Investment Corporation," and adding "Inter-American Investment Corporation, and Multilateral Investment Guarantee Agency" in Sections 2(c), 3(d), and 7, respectively.

Ronald Reagan

THE WHITE HOUSE,
*August 2, 1988.*

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# Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 27**

## Revision of Regulations for Determining Price Quotations for Spot Cotton

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations for determining price quotations for spot cotton. The provisions of the proposed rule which was published in the **Federal Register** on June 14, 1988, are adopted without change. The proposal provided for: (1) The indefinite suspension of the quotations committee system and the assumption of the committees' duties by the Cotton Division of the Agricultural Marketing Service; (2) the publication of the volume of bales traded used to determine a quotation along with the quotation; (3) the quotation of all cotton qualities which are tenderable or deliverable on active futures contracts and all nondeliverable qualities normally produced or traded in a particular market in the five markets designated for contract settlement purposes; (4) the quotation of only those qualities normally produced or traded in each of the remaining markets; (5) the expansion and redesignation of the current designated spot markets to seven regional designated spot markets. These modifications are expected to enhance the accuracy and reliability of the quotations.

**EFFECTIVE DATE:** September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Garry Lewicki, USDA/AMS/Cotton Division, Room 2641, P.O. Box 96456, Washington, DC, 20090-6456.

**SUPPLEMENTARY INFORMATION:** A proposed rule which detailed the revisions of the regulations for determining price quotations for spot cotton was published in the **Federal Register** on June 14, 1988 (53 FR 22178). The proposal stated that changes to the regulations are necessary because of the current status of the committee system and to enhance the accuracy and reliability of the quotations.

A 30-day comment period was provided to interested persons to submit comments on the proposed changes in the regulations. No comments were received.

This rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as determined in the Order.

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the revisions: (1) Enhance the accuracy of the information gathered and disseminated; (2) do not affect the competitive position or market access of small entities in the cotton industry; (3) do not impose any new costs on the affected industry. It is further found that good cause exists for not postponing the effective date of these revisions until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The beginning of the marketing year is August 1. Therefore, it is advantageous to have the new regulations in effect as soon as possible so that they may be applicable to as much 1988-1989 cotton as possible. Representatives of all segments of the cotton industry were apprised of the proposed changes at the April 13, 1988, meeting of the National Advisory Committee on Cotton Marketing and no negative comments were received. In addition, no comments were received during the 30-day comment period.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control number 0581-0029 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

### Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are eight such designated markets. Five of the eight are used to determine prices and differences for the settlement of futures contracts. Only the No. 2 New York Cotton Exchange futures contracts are currently active. To facilitate the collection of price information, quotation committees were established in the designated markets. These committees are made up of members of the cotton exchanges or their employees. The regulations contain provisions whereby the committees provide information on prices and price differences of cotton to the Cotton Division of the Agricultural Marketing Service on a daily basis. The Cotton Division also provides market information under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

### Spot Cotton Quotations Committees

Recently, a significant number of trade representatives have indicated that they will no longer participate in quotations committee meetings. In three of eight markets, the committees have ceased to function, and the Cotton Division is determining price quotations in these markets without the assistance of the committees. Therefore, it is necessary to amend the regulations to provide for a new method of determining price quotations. This rule indefinitely suspends the committee system of determining price quotations, with the Cotton Division assuming the duties of the committees. To accomplish this, the provisions pertaining to the committee system of determining price quotations are deleted. The new method of quoting prices will be assessed by the Cotton Division after a period of operation to determine if it needs to be adjusted or changed. Section 27.97 is deleted and § 27.98 is revised to reflect the changes.

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**Trading Volume on Which Quotations are Based**

Price quotations for all qualities in all markets which are based on data from actual sales will be prefixed by the volume of bales traded. Price quotations that are determined when there has been no trading will be prefixed with a zero.

**Quotations in Markets Designated for Contract Settlement Purposes**

Price quotations for all qualities of cotton deliverable on cotton futures contracts will be determined each business day in the markets used to quote prices or values and to determine actual differences for the settlement of futures contracts. The price or value of other qualities of cotton which are normally produced or traded in a particular market will also be determined for that market. In the process of determining price quotations, market reporters of the Cotton Division of AMS will interview, in person or by telephone, at least three persons in each bona fide market. Individuals or firms engaged in the buying and/or selling of cotton will be requested to provide information concerning prices and volume of cotton purchased to the Cotton Division. Analysis of all data obtained will be made to ascertain the current value of all deliverable qualities in each market and of the non-deliverable qualities normally produced or traded in each particular market. Quotations for qualities where no sale shall have been made and for which there is no price data will continue to be determined as provided in § 27.99 of the regulations. All quotations will be reviewed and approved by the Branch Chief or the Assistant Branch Chief of the Cotton Division's Market News Branch before publication.

**Quotations in Other Markets**

In markets not designated for contract settlement purposes, price quotations for all qualities of cotton normally produced or traded in a particular market will be determined on each business day in the same manner as stated above.

**Additional Revisions**

Presently, price quotations and differences are determined in eight designated markets where cooperating cotton exchanges, whose members comprise the quotations committees, are located. These markets bear the names of the cities in which the exchange are located. However, the advent of telephonic and electronic marketing in recent years has expanded the area of trade for each of the designated markets making the geographic limitations of the local area no longer necessary. Therefore, this proposal redesignates and renames the spot markets as seven regional markets which conform to the seven growth areas widely recognized by the cotton industry. This expansion of the designated spot markets is expected to enhance the accuracy of the quotations by broadening the price data base.

Section 27.93 is revised to list the seven designated markets as follows:

*Southeastern*

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart, Houston, Humphreys, Perry, Wayne and Hardin counties.

*North Delta*

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

*South Delta*

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

*East Texas and Oklahoma*

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

*West Texas*

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

*Desert Southwest*

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

*San Joaquin Valley*

All California counties except those included in the Desert Southwest market.

Section 27.94 is revised to list only designated markets for the settlement of No. 2 contracts, since those are the only contracts which are presently active.

Section 27.96 is revised by deleting the reference to the price or value of Strict Low Middling 1 1/16 inches cotton and by referring to cotton in its generic term. Strict Low Middling 1 1/16 inches cotton is used as the base quality in the No. 2 New York Cotton Exchange futures contract, which is the only cotton futures contract presently active. In the event that other contracts are established with a different base quality, this section will be applicable to these as well. Other changes are made to clarify the regulations and to remove unnecessary language.

This rule amends and revises the language in §§ 27.93 through 27.99 of Part 27 of Title 7 of the Code of Federal Regulations to accommodate the changes necessary in the spot quotations system. Section 27.97 is removed and the provisions of § 27.100 are added to § 27.98. All subsequent sections are redesignated.

**List of Subjects in 7 CFR Part 27**

Spot markets, Price quotations and differences.

For the reasons set forth in the preamble, 7 CFR Part 27 is amended as follows:

## PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

1. The authority citation for Part 27 is revised to read as follows:

**Authority:** 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. Section 27.93 is revised to read as follows:

**§ 27.93 Bona fide spot markets.**

The following markets have been determined, after investigation, and are hereby designated to be bona fide spot markets within the meaning of the act:

Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. Such markets will comprise the following areas:

**Southeastern**

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart,

Houston, Humphreys, Perry, Wayne and Hardin counties.

**North Delta**

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

**South Delta**

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

**East Texas and Oklahoma**

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

**West Texas**

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

**Desert Southwest**

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

**San Joaquin Valley**

All California counties except those included in the Desert Southwest market.

3. Section 27.94 is revised to read as follows:

**§ 27.94 Spot markets for contract settlement purposes.**

The following are designated as spot markets for the purpose of determining as provided in paragraph 15b(f)(3) of the act, the differences above or below the contract price which the receiver shall pay for grades tendered or deliverable in settlement of a basis grade contract:

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North Delta, South Delta, Eastern Texas and Oklahoma, and Desert Southwest.

(b) [Reserved]

4. Section 27.95 is revised to read as follows:

**§ 27.95 Spot markets to conform to Act and regulations.**

Every bona fide spot market shall, as a condition of its designation and of the retention thereof, conform to the act and any applicable regulations.

5. Section 27.96 is revised to read as follows:

**§ 27.96 Quotations in bona fide spot markets.**

The price or value and differences between the price or value of grades and staple lengths of cotton shall be based solely upon the official cotton standards of the United States and shall be the actual commercial value or price and differences as determined by the sale of spot cotton in such spot market. Quotations shall be determined and maintained in each designated spot market by the Cotton Division, Agricultural Marketing Service, USDA, as follows:

(a) In spot markets designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or values of base qualities which are deliverable on any active futures contracts, as well as the differences for all other qualities deliverable on such contracts. The prices or differences for non-deliverable qualities will be determined and quoted by bale volume in each such spot market for those qualities normally produced or traded in that particular market.

(b) In spot markets not designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or differences for all qualities of cotton normally produced or traded in each such spot market.

**§ 27.97 [Removed]**

6. Section 27.97 is removed.

**§ 27.98 [Redesignated as § 27.97 and revised]**

7. Section 27.98 is redesignated as § 27.97 and is revised to read as follows:

**§ 27.97 Ascertaining the accuracy of price quotations.**

The buyers and sellers of cotton in each spot market shall be responsible for providing accurate and timely price, quality, and volume of purchases data by growth area to the Cotton Division. The Cotton Division is responsible for ascertaining the accuracy of the price quotations in each designated spot market. The Cotton Division will carry out this responsibility by performing the following duties and functions:

(a) The Cotton Division will collect and analyze pertinent information on the prices and values of spot cotton from each spot market.

(b) In the process of determining price quotations, the Cotton Division will contact a minimum of three buyers and sellers of cotton in each bona fide market at least two times per week during the active trading season and one time per week during the remainder of the year to obtain information on prices, qualities, volume, and terms of sales in sufficient detail to determine quotations.

(c) The Cotton Division will summarize the price and quality data and, based on analysis of this summary, make determinations regarding quotations of price, value and differences.

(d) Quotations for each spot market shall be reviewed and approved by the Cotton Division's Market News Branch Chief or Assistant Branch Chief prior to publication.

(e) The Cotton Division will publish the appropriate quotations by bale volume for grades, staple lengths, micronaire determinations, and other quality factors for each spot market on a daily basis.

[The information collection requirements contained in this section were approved by the Office of Management and Budget under OMB control number 0581-0029.)

**§ 27.99 [Redesignated as § 27.98 and revised]**

8. Section 27.99 is redesignated as § 27.98 and is revised to read as follows:

**§ 27.98 Value of grade where no sale; determination.**

As provided in § 27.96, whenever no sale of a particular grade of cotton shall have been made on a given day in a particular spot market, the value of such grade in the market on that day will be determined as follows:

(a) If on such given day there shall have been in such market both a sale of any higher grade and a sale of any lower grade, the average of the declines, or advances, or decline and advance, as the case may be, of the next higher grade and the next lower grade so sold shall be deducted from, or added to, as the case may be, the value, on the last preceding business day, of the grade the value of which on such given day is sought to be ascertained.

(b) If on such given day there shall have been in such market a sale of either a higher or a lower grade, but not sales of both, the decline or advance of the next higher or the next lower grade so sold shall be deducted from, or added to, as the case may be, the value on the last preceding business day of the grade the value of which on such given day is sought to be ascertained.

(c) If on such given day there shall have been in such market no sale of spot cotton of any grade, the value of each grade shall be deemed to be the same as its value therein on the last preceding business day, unless in the meantime

there shall have been bona fide bids and offers, or sales of hedged cotton, or other sales of cotton, or changes in prices of futures contracts made subject to the act, which in the usual course of business would clearly establish a rise or fall in the value of spot cotton in such market, in which case such rise or fall may be calculated and added to or deducted from the value on the preceding business day of cotton of all grades affected thereby.

§ 27.100 [Removed]

9. Section 27.100 is removed.

§ 27.101 [Redesignated as § 27.99]

10. Section 27.101 is redesignated as § 27.99.

§ 27.102 [Redesignated as § 27.100]

11. Section 27.102 is redesignated as § 27.100.

Dated: July 29, 1988.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 88-17697 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-05-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1260

### Interim Changes to NASA Grant and Cooperative Agreement Handbook

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule eliminates unnecessary administrative burdens on sponsored research by applying the most successful subset of the Florida Demonstration Project procedures to all NASA research grants.

**DATES:** Effective August 4, 1988. Comments are due not later than September 6, 1988.

**ADDRESS:** Comments should be addressed to: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** W.A. Greene, Telephone: (202) 453-8923.

**SUPPLEMENTARY INFORMATION:**

#### Background

By memorandum of May 18, 1988, to the heads of executive departments and establishments, Mr. Joseph R. Wright, Jr., Deputy Director, Office of Management and Budget, provided guidance to reduce unnecessary administrative burdens on sponsored research projects. The memorandum noted that grant accounting and administration remain relatively complex and that overhead costs had gone up while productivity has gone down. The "Florida Demonstration Project (FDP)," which has just been expanded by the Presidential Task Force on Regulatory Relief, was mounted as an attempt to remedy this situation. As a result, OMB authorized the agencies to make routine use, as appropriate, of the most successful subset of the FDP procedures. This rule applies the four authorized procedures to all new NASA research grants.

Agencies are required to report to OMB by January 1, 1989, on experience using these procedures. The short time period allowed to implement these changes and to obtain meaningful feedback constitute urgent and compelling circumstances which are being met by (1) allowing application of the authorized procedures to existing grants (in addition to new awards) at the grantee's request and (2) issuing this rule as an interim rule to permit its immediate use.

#### Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that this rule will not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not significantly alter any reporting or recordkeeping requirements currently approved under OMB Control Numbers 2700-0045, 2700-0047, 2700-0048, and 2700-0049.

#### List of Subjects in 14 CFR Part 1260

Grants.

L.E. Hopkins,

*Deputy Assistant Administrator for Procurement.*

### PART 1260—[AMENDED]

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

**Authority:** Pub. L. 97-258, 31 U.S.C. 6301 *et seq.*

### Subpart 4—Research Grant and Cooperative Agreement Provisions

2. Paragraph 1260.420(f) is added to read as follows:

§ 1260.420 Special conditions.

* * * * *

(f) The following provision shall be appended to all grants and cooperative agreements as a special condition, pending revisions to OMB Circular A-110 and NASA Form 1463A, Provisions for Research Grants and Contracts. The grants officer is authorized to issue a letter agreement making the special condition immediately applicable to all current grants and cooperative agreements at an awardee institution, if so requested by the institution.

**Elimination of Unnecessary Administrative Burden (July 1988)**

The following special terms take precedence over NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements and other terms in the Grant and Cooperative Agreement Handbook, NHB 5800.1 (14 CFR Part 1260).

*(a) Prior Approvals*

Cost related and administrative "prior approvals" required by OMB circulars A-110 and A-21 are hereby waived, except for change in scope or objective, change in principal investigator, or other approvals specifically required by the terms of this grant. The prior approval requirement in NASA Form 1463A regarding domestic travel costs is waived and the prior approval threshold for acquiring property not included in the proposed budget is raised to $5,000. The grantee may maintain such internal prior approval systems as it considers necessary.

*(b) Preaward Costs*

Grantees may approve preaward costs of up to ninety (90) days prior to the effective date of a new award, provided the costs are necessary for the effective and economical conduct of the project and they are otherwise allowable under the terms of the grant. Any preaward expenditures are made at the grantee's risk. Approval by the grantee does not impose any obligations on NASA in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the grantee anticipated.

*(c) No Cost Extensions*

Grantees may extend the expiration date of a grant or a supplement thereto if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the expiration date. The grantee must notify the grants officer in writing within 10 days of the extension. Absent timely notification the prior approval requirement (Form 1463A) shall apply.

*(d) Unobligated Balances*

Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the project. If uncommitted carryover funds are likely to be

substantial, the estimated amount shall be included in any continuation proposal.

[FR Doc. 88-17602 Filed 8-3-88; 8:45 am]
BILLING CODE 7510-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 385

**[DoD Directive 5111.1]**

### Under Secretary of Defense for Policy; Organizations, Functions, and Authority Delegations

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part adds 32 CFR Part 385 to identify the Under Secretary of Defense for Policy and delineates its responsibilities, functions, and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. section 134.

**EFFECTIVE DATE:** September 27, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. H. Becker, Office of the Director of Administration & Management, the Pentagon, Washington, DC 20301-1950, telephone (202) 695-4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 385**

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 385 as follows:

## PART 385—UNDER SECRETARY OF DEFENSE FOR POLICY

Sec.
385.1 Purpose.
385.2 Definition.
385.3 Responsibilities and functions.
385.4 Relationships.
385.5 Authorities.
385.6 Effective date.

**Authority:** 10 U.S.C. 134.

### § 385.1 Purpose.

This part establishes, pursuant to 10 U.S.C. 134 the position of Under Secretary of Defense for Policy (USD(P)) with assigned responsibilities, functions, and authorities as prescribed herein.

### § 385.2 Definition.

*DoD Components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

### § 385.3 Responsibilities and functions.

The Under Secretary of Defense for Policy is the Principal Staff Assistant and advisor to the Secretary of Defense for all matters concerning the integration of DoD plans and policies with overall national security objectives. In the exercise of this responsibility, the USD(P) shall:

(a) Represent the Department of Defense, as directed, in matters involving the National Security Council, Department of State, and other Departments and Agencies, and interagency groups with responsibilities in the national security area.

(b) Develop policies and coordinate implementation of arms limitation negotiations, including DoD positions on arms reductions and other defense related international negotiations.

(c) Develop policies and oversee their implementation with respect to the counterintelligence and security activities of the DoD; provide program management to the Foreign Counterintelligence Program and to the Security and Investigative Activities Program; and carry out the responsibilities of the Secretary for the administration of National Disclosure Policy, and his responsibilities as the U.S. Security Authority for NATO.

(d) Develop policies and coordinate implementation of DoD political-military affairs, including: Nuclear weapons policy and strategy; special operations forces; law of the sea; foreign military rights; contingency planning; strategic offensive and defensive forces, theater nuclear matters, general program forces, and the relationship between strategic and theater force planning, programs and budgets.

(e) Review evaluations and develop recommendations to the Secretary of Defense concerning plans and requirements for, and capabilities of, existing or proposed United States or foreign forces and their deployment with particular attention to performance of missions which are or may be critical in the consideration of United States national security policy.

(f) Provide oversight of all DoD activities related to the North Atlantic Treaty Organization East-West economic policy, including East-West trade, and technology transfer.

(g) Develop policies, plans, and procedures for the discharge of DoD functions for emergency planning and preparedness, crisis management, Defense mobilization and expansion in emergency situations, military support of civil authorities, and continuity of operations and continuity of government; provide support, as required, to DoD and other U.S. Government or State agencies on these as well as civil defense and related matters.

(h) Develop policies, coordinate DoD participation, exercise OSD management oversight, and provide appropriate OSD approval process for DoD involvement in national security special activities, sensitive support to non-DoD agencies and other uniquely sensitive national security programs. Provide special support to the Secretary of Defense in connection with his participation in related National Security Council activities.

(i) Plan and conduct net assessment for the Secretary of Defense.

(j) Negotiate and monitor agreements with foreign governments and defense alliances to which the United States is a party.

(k) Provide policy direction for defense security assistance matters; monitor Military Assistance Advisory Groups and other missions pertaining to security assistance; negotiate and monitor security assistance agreements with foreign governments.

(l) Develop DoD policy and coordinate actions relating to humanitarian assistance support.

(m) Develop DoD space policy and priorities. Review and evaluate programs, plans and systems requirements relating to the use of outer space, including participation in outer space activities of the National Security Council and other interagency fora.

(n) Develop the Defense Guidance and coordinate its publication. Coordinate the planning phase of the DoD Planning, Programming and Budgeting System, to include the lead role in developing overall policy, defense strategy, and force and resource planning.

(o) Develop DoD policies and programs concerning psychological operations.

(p) Develop DoD policy guidance for DoD participation in international activities supporting U.S. information programs.

(q) Perform such other functions as the Secretary of Defense may prescribe.

### § 385.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(P) shall:

(1) Exercise direction, authority, and control over:

(i) The Assistant Secretary of Defense (International Security Affairs).

(ii) The Assistant Secretary of Defense (International Security Policy).

(iii) The Deputy Under Secretary of Defense (Policy).

(iv) The Director, Net Assessment

(v) The Defense Security Assistance Agency.

(vi) The Defense Investigative Service.

(2) Coordinate and exchanges information with other DoD and Federal organizations having collateral or related functions.

(3) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components and organizations shall coordinate all matters concerning the responsibilities and functions cited in § 386.3 with the USD(P).

**§ 386.5 Authorities.**

The USD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda in assigned fields of responsibility, consistent with the provisions of DoD 5025.1–M. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified or Specified Commands shall be issued through the Joint Chiefs of Staff (JCS).

(b) Obtain such reports, information, advice and assistance, as necessary, consistent with the policies and criteria of DoD Directive 5000.19.[1]

(c) Communicate directly on policy matters with heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff (JCS), the Directors of Defense Agencies, and through the JCS, the Commanders of the Unified and Specified Commands.

(d) Communicate with other government agencies, representatives of the Congress, and members of the public, as appropriate, in carrying out assigned functions.

**§ 386.6 Effective date.**

This part is effective September 27, 1985.

July 29, 1988.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 88–17553 Filed 8–3–88; 8:45 am]

BILLING CODE 3810–01–M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, Philadelphia, PA 19120

**32 CFR Part 387**

**[DoD Directive 5132.2]**

## Assistant Secretary of Defense (International Security Affairs); Organization, Functions, and Authority Delegations

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part adds 32 CFR Part 387 to identify the Assistant Secretary of Defense (International Security Affairs) and delineates its responsibilities, functions, relationships and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136.

**EFFECTIVE DATE:** September 27, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. H. Becker, Office of the Director of Administration & Management, the Pentagon, Washington, DC 20301–1950, telephone (202) 695–4231.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 387**

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 387 as follows:

## PART 387—ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY AFFAIRS)

Sec.

387.1 Purpose.
387.2 Definition.
387.3 Responsibilities and functions.
387.4 Relationships.
387.5 Authorities.
387.6 Effective date.

**Authority:** 10 U.S.C. 136.

**§ 387.1 Purpose.**

This part:

(a) Establishes, pursuant to 10 U.S.C. 136, the position of Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) under the direction, authority, and control and the Under Secretary of Defense for Policy (USD(P)) in accordance with DoD Directive 5111.1[1]

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(ISA).

**§ 387.2 Definition.**

*DoD Components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

**§ 387.3 Responsibilities and functions.**

The Assistant Secretary of Defense (International Security Affairs) is the Principal Staff Assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense concerning DoD policy related to general purposes forces, law of the sea, special operations forces and counter-terrorism, and humanitarian assistance. The ASD(ISA) is also the principal staff advisor on other political-military and international economic matters involving foreign countries with the exception of the North Atlantic Treaty Organization (NATO), Europe, and the Soviet Bloc. In the exercise of these responsibilities, the ASD(ISA) shall:

(a) Develop policies and plans, and overall programs related to general purpose forces, law of the sea, special operations forces and counter-terrorism, and humanitarian assistance.

(b) Provide DoD policy guidance and recommendations regarding contingency planning; international trade and energy policy, except technology transfer; economic security relations with foreign countries; and other political-military matters in assigned geographic areas of responsibility.

(c) Develop DoD positions, and recommendations, and coordinate policy matters concerning security assistance, Military Assistance Advisory Groups and other missions pertaining to security assistance in assigned geographic areas of responsibility.

(d) Develop, negotiate, and monitor defense cooperation agreements with foreign governments in assigned geographic areas of responsibility.

(e) Conduct and manage day-to-day bilateral relations with all foreign governments in assigned areas of responsibility.

(f) Cooperate with the Under Secretary of Defense (Research and Engineering) and the Assistant Secretary of Defense (Acquisition and Logistics) to develop industrial cooperation and coproduction arrangements for assigned geographic areas of responsibility.

(g) Serve as DoD focal point for Foreign Military Rights Affairs, negotiations on military facilities, operating rights, status of forces and international political-military matters.

[1] Copies may be obtained, if needed from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia PA 19120.

and monitor agreements with foreign countries for assigned geographic areas of responsibility.

(h) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(i) Perform such other duties as the Secretary of Defense and the USD(P) may prescribe.

**§ 387.4 Relationships.**

(a) In the performance of assigned responsibilities and functions, the ASD(ISA) shall:

(1) Coordinate and exchange information with other DoD and federal; organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components shall coordinate all matters concerning the responsibilities and functions cited in § 387.3 with ASD(ISA).

**§ 387.5 Authorities.**

The ASD(ISA) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoDI 5025.1–M, which carry out policies approved by the Secretary of Defense, in assigned areas of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments of their designees. Instructions to Unified and Specified Commands shall be issued through the Joint Chiefs of Staff (JCS).

(b) Obtain such reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 5000.19 [2] as necessary.

(c) Communicate directly with heads of DoD Components. Communications with the Unified and Specified Commands shall be coordinated with the JCS; all JCS security assistance communications (except those dealing with NATO and the European countries) shall be coordinated with the ASD(ISA).

(d) Establish arrangements for DoD participation in those non-DoD governmental programs for which primary cognizance is assigned.

(e) Communicated with other government agencies, representatives of the Congress, and the public, as appropriate, in carrying out assigned functions.

[2] See footnote 1 to § 387.1(a).

**§ 387.6 Effective date.**

This part is effective September 27, 1985.

July 29, 1988.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 88–17552 Filed 8–3–88; 8:45 am]

BILLING CODE 3810–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 370

**[FRL–3423–4]**

## Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Clarification of Reporting Dates for Newly Covered Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of reporting dates.

**SUMMARY:** On October 15, 1987, EPA published a final rule for reporting under sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Under sections 311 and 312, facilities required to prepare or have available a material safety data sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act and its implementing regulations must submit the MSDS (or a list of the hazardous chemicals) and inventory forms to the State Emergency Response Commission, Local Emergency Planning Committee, and the local fire department. This notice clarifies the reporting dates for facilities which are newly covered by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard as of June 24, 1988.

**DATES:**

1. Initial submission of MSDSs or alternative list: September 24, 1988.

2. Initial submission of the inventory form containing Tier I information: March 1, 1989.

**ADDRESS:** The record supporting this notice is contained in the Superfund Docket located in Room Lower Garage at U.S. EPA, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382–3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Brody, Program Analyst, Preparedness Staff, Office of Solid Waste and Emergency Response, OS–120, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, or the Emergency Planning and Community Right To Know Information Line at 1–(800) 535–0202 or in Washington, DC at (202) 479–2449.

**SUPPLEMENTARY INFORMATION:** On August 24, 1987, OSHA revised its Hazard Communication Standard (52 FR 31852) to expand the scope of the industries covered by the rule from the manufacturing sector to all industries where employees are exposed to hazardous chemicals. The revised rule required the non-manufacturing sector of industry to be in full compliance with its provisions on May 23, 1988. On May 20, 1988, the U.S. Court of Appeals for the District of Columbia Circuit transferred several consolidated cases challenging the standard to the U.S. Court of Appeals for the Third Circuit, and in the interim ordered an administrative stay of the revised standard.

On June 24, 1988, the Third Circuit issued an order granting the stay requested by construction industry representatives. On July 8, 1988, the Third Circuit clarified its earlier order stating: "The order entered on June 24, 1988, is clarified to make clear that the stay applies only with respect to construction employers in the non-manufacturing sector." In a recently published Federal Register notice (53 FR 27679, July 22, 1988) OSHA announced that the revised Hazard Communication Standard has been in effect for all non-manufacturing establishments other than construction since June 24, 1988.

Section 311(d)(B) of Title III of SARA requires that the initial MSDS or list submission be made three months after the owner or operator of a facility is required to prepare or have available a MSDS for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act. Therefore, the date established for section 311 compliance for all newly covered employers is September 24, 1988. Section 312 requires that the same facilities subject to section 311 submit the inventory form containing Tier I information annually on March 1, beginning March 1, 1989. Thus, employers in the non-manufacturing sector excluding the construction industry must submit their Tier I inventory reports by March 1, 1989.

Regulations for compliance with sections 311 and 312 of Title III of SARA were promulgated on October 15, 1987

(52 FR 38344) and codified at 40 CFR Part 370. This final regulation established the minimum threshold quantities applicable to the reporting requirements of all facilities subject to OSHA's MSDS requirements under sections 311 and 312, including facilities newly subject to the requirements at a future date, such as those in the non-manufacturing sector. EPA's promulgation of a minimum threshold applicable to the non-manufacturing sector was based upon its initial analysis that the thresholds applicable to the manufacturing sector would be equally applicable to the non-manufacturing sector. Nevertheless, EPA stated in the preamble to that final rule that it was undertaking additional analysis of the applicability of these threshold levels to the universe of facilities newly-covered by the OSHA's MSDS requirements.

The study referred to in the October 15, 1987, final rule has been completed and confirms EPA's regulatory decision to apply the minimum threshold levels applicable to the manufacturing facilities to the non-manufacturing facilities. The study found that chemical usage by non-manufacturers is significant. A number of non-manufacturing industries use as many different hazardous chemicals as manufacturing industries. The MSDSs that non-manufacturers will be expected to maintain under OSHA's expanded HCS will include a substantial number of extremely hazardous substances and other chemicals that must be reported under provisions of SARA Title III. The study also found that the cost impacts of the sections 311 and 312 reporting requirements will not have a significant impact upon a substantial number of small businesses in the non-manufacturing industries.

In the October 15, 1987 final rule the Agency stated that the initial 10,000 pound threshold for reporting by manufacturers of hazardous chemicals that are not extremely hazardous substances (EHS) provides the appropriate balance between ensuring that the public has access to information on large volume chemicals and reducing the number of reports to manageable levels in the first years of the program. 52 FR 38344, 38352. The Agency found that a threshold equal to 10,000 pounds resulted in the reporting of roughly 13 to 22 percent of manufacturing facilities or 8 to 13 percent of chemicals. *Id.* The Agency's non-manufacturing industry study found that the percentage of facilities that will be required to report and the percentage of chemicals that will be reported by the non-manufacturing sector using the 10,000 pound/TPQ or 500 pound threshold will be roughly similar to these figures. Although reporting at the same threshold by non-manufacturers as manufacturers will increase the number of MSDS submissions to State and local officials, the Agency's study also found that the merits of similar reporting between manufacturers and non-manufacturers, as well as the fact that many State right-to-know laws already include the non-manufacturing industry (which lessens the impact of the increase of MSDS submissions), justifies applying the same initial threshold level to the non-manufacturing industry as is currently applied to the manufacturing industry.

The Agency's study of the effects of applying the initial threshold promulgated in the October 15, 1987 rule to the non-manufacturing sector will be available in the docket on August 8, 1988. EPA will accept comments on the study.

**List of Subjects in 40 CFR Part 370**

Chemical, Hazardous substances, Extremely hazardous substance, Intergovernmental relations, Community right-to-know, Superfund Amendments and Reauthorization Act, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Contingency planning, Reporting, Recordkeeping requirements.

Dated: July 26, 1988.

**Thaddeus L. Juszczak, Jr.,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 88-17338 Filed 8-3-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF DEFENSE

**48 CFR Parts 208 and 252**

### Department of Defense Federal Acquisition Regulation Supplement; Antifriction Bearings

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council has approved adding a new Subpart 208.79 to the Defense Federal Acquisition Regulation Supplement to restrict procurement of antifriction bearings and bearing components for use by the DoD to domestic sources. This restriction was deemed necessary to protect and strengthen the domestic industrial base for an industry critical to national security.

**DATES:** This interim rule is effective on August 4, 1988. Comments on this proposed addition should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before October 3, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 88-35 in all correspondence relating to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)((MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory E. Saunders, Assistant for Commercial Acquisition, OASD(P&L) PS/SDM, Room 2A318, Pentagon, Washington, DC 20301-8000, telephone (202) 695-7915.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The DAR Council published a proposed rule at 53 FR 10129 dated March 29, 1988. Comments was received from over 30 different respondents, both foreign and domestic. As a result of these comments, the following changes were made to the proposed rule:

(1) Definition of domestic manufacture was clarified.

(2) Definition of commercial product clarified to indicate bearings or items described by and developed under (a) a military specification, (b) other DoD prepared specification or (c) purchase description are not considered commercial products.

(3) Wholly manufactured was eliminated and net export value was added as an alternate way.

(4) Exports to Canada were eliminated as a part of the allowable export baseline.

(5) Replace the 6 month phase-in provision with a 12 month phase-in.

(6) Changed to reflect that the Head of the Contracting Activity would grant waivers.

(7) Eliminated the waiving of the restriction after contract award and clarified the manner in which the waiver should be considered.

(8) Clarified the requirement regarding the plan to convert from foreign to domestic manufactured bearings.

(9) Added provision to flow the certification requirement down to the contractor who is purchasing the bearing.

**B. Regulatory Flexibility Act**

The coverage at Subpart 208.79 is not expected to have a significant impact on small businesses. It will impact only those small businesses that (1) manufacture antifriction bearings, or (2) use antifriction bearings in a subassembly, assembly, or end item sold to the DoD either directly or through a subcontract with a DoD contractor. Although there is no existing data to quantify the number of small businesses which may be impacted, it is estimated that only a small quantity will be affected. Further, because the restriction will be applied across the board giving the same advantages and disadvantages to all, and because commercial items are exempted from the restriction, any impact is expected to be minimal. Therefore, an Initial Regulatory Act Analysis has not been prepared. Please cite DAR Case 88–35 for any comments regarding this determination. In addition, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88–610D.

**C. Paperwork Reduction Act**

It is expected that this coverage will impose additional burden on contractors. A paperwork burden clearance for OMB Control Number 0704–0205 was submitted to OMB for review and approval. This clearance reflects an increase of 439,383 hours.

**D. Determination To Issue an Interim Regulation**

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary to protect and strengthen the domestic industrial base for an industry critical to national security.

**List of Subjects in 48 CFR Parts 208 and 252**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, it is proposed to amend 48 CFR Parts 208 and 252 as follows:

1. The authority citation for 48 CFR Parts 208 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. A new Subpart 208.79, consisting of sections 208.7901 through 208.7904, is added to read as follows:

**Subpart 208.79—Antifriction Bearings**

Sec.
208.7901 Definitions.
208.7902 Policy.
208.7903 Procedures.
208.7904 Contract clause.

### Subpart 208.79—Antifriction Bearings

**208.7901 Definitions.**

As used in this subpart:

"Bearing" means antifriction bearing or antifriction bearing assembly.

"Commercial product" means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804–3(c) for an explanation of terms). It does not include bearings or items described by and developed under (a) a Military Specification, (b) other DoD prepared specification, or (c) purchase description.

"Custom/speciality Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5;

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. For the purposes of this definition, raw materials, such as preformed bar or rod stock and lubricants, need not be domestically mined or produced.

"Net Export Value" means the value of any bearing manufactured in whole or in part in the United States minus the value of any foreign manufactured components used in that bearing. The value of the imported components in any year may not exceed the value for calendar year 1987 for bearings sold to the Department of Defense. Raw materials, such as preformed bar or rod stock and lubricants, imported for use in domestic manufacture are excluded from the value of imported components.

"Other authorized manufacture" means manufacture in whole or in part by a company which has its corporate headquarters in a NATO participating country (see DFARS 25.001) and which has a United States subsidiary. However a manufacturer's bearings are included within this term only to the extent that (a) the total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the net export value of bearings exported outside the United States by its United States subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/speciality bearings imported for sale to DoD and its contractors in a calendar year does not exceed the total value of such bearings imported in calendar year 1987. Subject to the sales restrictions in (a) and (b) above, bearings manufactured by the following manufacturers are other-authorized manufacture bearings: FAG Bearings Corporation (additional companies may be added to this list based on a survey of domestic firms).

"Super-precision Bearings" means bearings having a precision classification of ABEC/RBEC 5 or higher;

**208.7902 Policy.**

(a) It has been determined that the ability of the United States bearing industry to meet industrial surge and mobilization requirements for bearings is in serious jeopardy. In view of the national security significance of bearings, the DoD has determined that except as provided in (b) below, all bearings, components of bearings, or items containing bearings, whether procured directly or installed in defense end-items and subassemblies shall be of domestic manufacture. This restriction shall remain in effect for contracts awarded through September 30, 1991. The restriction may be extended an additional two years if conditions warrant.

(b) This subpart does not apply to:

(1) Miniature and instrument bearings restricted by Subpart 208.73;

(2) Bearings covered by the following Military Specifications, for contracts entered into prior to December 31, 1989.

MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction, self-aligning
MIL B 7942 Bearing, ball, airframe, antifriction
MIL B 8942 Bearings, plain, TFE lined, self-aligning
MIL B 8943 Bearing, journal plain and flanged, TFE lined
MIL B 8948 Bearing, plain rod end, TFE lined, self-aligning
MIL B 8952 Bearing, roller, rod end, antifriction self-aligning
MIL B 8976 Bearing, plain, self-aligning, all metal
MIL B 81820 Bearing, plain, self-aligning, self-lubricating, low speed oscillation

MIL B 81934 Bearing, sleeve, plain and flanged, self-lubricating
MIL B 81935 Bearing, plain, rod end, self-aligning, self-lubricating
MIL B 81936 Bearing, plain, self-aligning (BeCU, CRES Race)

**208.7903 Procedures.**

(a) The Head of the Contracting Activity, without delegation, may waive the domestic bearings requirements of this subpart if there is a determination that there is no domestic bearing manufacturer that meets the requirement or if it is not in the best interest of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestic manufacture bearing would cause unreasonable costs or delays.

(b) The determination of unreasonableness should be made in consideration of the DoD policy to assist the United States industrial mobilization base by awarding more contracts to domestic bearing manufacturers thereby increasing their capability to reinvest and to become more competitive.

(c) Before a waiver is granted for a multiyear contract or contract that may exceed 12 months, the contracting officer shall require offerors to submit a written plan for transitioning from the use of nondomestic to domestic manufacture bearings. The plan shall be reviewed to determine whether a domestic manufacture bearing can be qualified at a reasonable cost, and used in lieu of the foreign bearing during the course of the contract period. If approved, the plan shall be incorporated in the contract and shall:

(1) Identify the bearings that are not domestic or other authorized manufacture, application, and source of supply;

(2) Describe the transition, including cost and timetable, for providing a domestic manufacture bearing. The timetable for completing the transition should normally not exceed one year from the date of the waiver.

**208.7904 Contract clause.**

The clause set forth at 252.208–7006, Required Sources for Anti-friction Bearings, shall be inserted in all solicitations and resultant contracts, and before exercising an option, except:

(a) Where the contracting officer knows that the item being procured does not contain bearings;

(b) When purchasing commercial products;

(c) When purchasing foreign manufactured bearings, components of bearings, or foreign manufactured products containing bearings overseas for use overseas;

(d) When purchasing for use in a cooperative or co-production project under an international agreement;

(e) When using small purchase procedures, other than in purchases of bearings as the end item.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.208–7006 is added to read as follows:

**252.208–7006 Required Sources for Antifriction Bearings.**

As prescribed in 208.7904 insert the following clause:

**Required Sources for Antifriction Bearings (Aug 1988)**

(a) For the purpose of this clause:

"Bearing" means antifriction bearing or antifriction bearing assembly.

"Commercial product" means a product, other than bearings or items described by and developed under a Military Specification or other DoD prepared specification or purchase description, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804–3(c) for an explanation of terms);

"Custom/speciality Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5;

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. For purposes of this definition, raw materials, such as preformed bar or rod stock and lubricants, need not be domestically mined or produced.

"Net Export Value" as used in this subpart means the value of any bearing manufactured in whole or in part in the United States minus the value of any foreign manufactured components used in that bearing. The value of the imported components in any year may not exceed the value for calendar year 1987 for bearings sold to the Department of Defense. Raw materials, such as preformed bar or rod stock and lubricants, imported for use in domestic manufacture are excluded from the value of imported components.

"Other authorized manufacture" means manufacture in whole or in part by a company which has its corporate headquarters in a NATO participating country (see DFARS 25.001) and which has a United States subsidiary. However a manufacturer's bearings are included within this term only to the extent that (a) the total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the net export value of bearings exported outside the United States by its United States subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/specialty bearings imported for sale to DoD and its contractors does not exceed the total value of such bearings imported in calendar year 1987. A list of other authorized bearing manufacturers is at DFARS 208.7901;

"Super-precision Bearings" means antifriction bearings having a precision classification of ABEC/RBEC 5 or higher; and

(b) If the Offeror is a bearing manufacturer, the offeror agrees that, if awarded the contract, that—

(1) Bearings and components of bearings supplied under this contract will be of domestic or other authorized manufacture; and

(2) For bearings that are of other authorized manufacture, acceptance by the Government of this offer will not cause the manufacturer to exceed the sales levels described in the definition of the term "other-authorized manufacture".

(c) If the Offeror is not the bearing manufacturer, the offeror agrees that, if awarded the contract, that the bearings, components of bearings, or bearings installed in defense end-items or subassemblies supplied under this contract will be of domestic or other-authorized manufacture.

(d) The requirements in paragraphs (b) and (c) above may be waived, in whole or in part, by the Government. Before a waiver is granted for a multiyear contract or one that may exceed 12 months, the Contracting Officer will require each offeror to submit a written plan for the transition from bearings that are not of domestic or other authorized manufacture, to domestic manufacture bearings. The plan shall identify all bearings that are not of domestic or other authorized manufacture currently used, their application and source of manufacture, a plan for the transition to domestic manufacture bearings, the costs associated with the transition, and a timetable for transition. If approved, the plan will be incorporated into the contract.

(e) The Contractor will provide written certification upon delivery of the bearings, components of bearings, or defense end-items or subassemblies containing bearings, that to the best of its knowledge and belief, such bearings or components of bearings are of domestic or other-authorized manufacture.

(f) Paragraphs (c) and (d) do not apply to end items and components that are commercial products.

(g) Paragraphs (b), (c), and (d) do not apply to:

(1) Miniature and instrument bearings which are restricted by DFARS Subpart 208.73; and

(2) Bearings covered in the following Military Specifications, for contracts entered into prior to December 31, 1989.

MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction self-aligning
MIL B 7949 Bearing, ball, airframe, antifriction
MIL B 8942 Bearings, plain, TFE lined, self-aligning
MIL B 8943 Bearing, journal plain and flanged, TFE lined

MIL B 8948 Bearing, plain rod end, TFE lined, self-aligning
MIL B 8952 Bearing, roller, rod end, antifriction self-aligning
MIL B 8976 Bearing, plain, self-aligning, all metal
MIL B 81820 Bearing, plain, self-aligning, self-lubricating, low speed oscillation
MIL B 81934 Bearing, sleeve, plain and flanged, self-lubricating
MIL B 81935 Bearing, plain, rod end, self-aligning, self-lubricating
MIL B 81936 Bearing, plain, self-aligning (BeCU, CRES Race)

(h) The Contractor agrees to insert this clause, appropriately modified to reflect the identity of the parties, including this paragraph, in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no bearings or components of bearings.

(End of clause)

[FR Doc. 88-17650 Filed 8-3-88; 8:45 am]
BILLING CODE 3810-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Determination of Nonessential Experimental Population Status for an Introduced Population of the Yellowfin Madtom in Virginia and Tennessee

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service will reintroduce a small catfish, the yellowfin madtom (*Noturus flavipinnis*) (Federally listed as a threatened species), into the North Fork Holston River, Washington County, Virginia. This population is determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended. Section 10(j) of the Act authorizes nonessential populations to be treated as if they were proposed species for the purposes of section 7. This releases Federal agencies from the Act's prohibition against jeopardizing this population by their actions. The yellowfin madtom once likely inhabited many of the lower gradient streams of the Tennessee River basin upstream of Chattanooga, Tennessee. Presently, populations are confined to only three stream reaches in the Tennessee River valley. This action is being taken in an effort to reestablish the yellowfin madtom within its historic range.

**EFFECTIVE DATE:** September 6, 1988.

**ADDRESSES:** Comments and materials relating to this final rule are available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at the above address.

**SUPPLEMENTARY INFORMATION:**

### Background

Among the significant changes made by the Endangered Species Act Amendments of 1982, Pub. L. 97-304, was the creation of a provision (section 10(j)) which provides for the designation of specific reintroduced populations of listed species as nonessential experimental populations. Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j) of the 1982 Amendments, past and future reintroduced populations established outside the current range but within the species' historic range, may be designated, at the discretion of the Service, as experimental populations or nonessential experimental populations. Experimental population status allows the Service to treat an endangered species as threatened for the purposes of section 9 of the Act. Species listed as threatened can be managed with greater flexibility, especially regarding incidental take and regulated taking. As the yellowfin madtom is already listed as a threatened species with special rules (50 CFR 17.43), which provide that the fish may be taken in accordance with applicable State law, the species' status relative to section 9 will remain the same for any introduced populations.

Nonessential populations are experimental populations found to be nonessential to the continued existence of the species. These populations are treated as if the species were only proposed for listing under section 7 (except for subsection (a)(1)). Therefore, they are not subject to the provisions of section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species. However, two provisions of section 7 would apply on lands that are not within the National Wildlife Refuge System or National Park System: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs, and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Where the species occurs on Refuge or Park System lands, all provisions of section 7 would apply. The organisms used to establish an experimental population will only be removed from an existing source if (1) the removal will not jeopardize the continued existence of the species and (2) a permit has been issued for the take of individuals from the donor population in accordance with the requirements of 50 CFR 17.31.

The yellowfin madtom was listed as a threatened species with critical habitat on September 9, 1977 (42 FR 45528). The species was probably once widely distributed in many lower gradient streams of the Tennessee River drainage upstream of the Chattanooga, Tennessee, area (Jenkins 1975). The species' present distribution (Burkhead and Jenkins 1982, Shute 1984) is represented by only three known populations (Citico Creek, Monroe County, Tennessee; Powell River, Hancock County, Tennessee; and Copper Creek, Scott and Russell Counties, Virginia). Three other historic populations (Chickamauga Creek, Catoosa County, Georgia; Hines Creek, Anderson County, Tennessee; and North Fork Holston River, Virginia) are believed to have been extirpated primarily due to human-related factors (impoundments, pollution, habitat modification, etc.).

The yellowfin madtom occupies small-to-medium-sized (25 to 135 feet wide) warm water streams with moderate current and clean water with little siltation (Jenkins 1975). The species is generally associated with cover (undersides of flat rocks, detritus, and stream banks) (Jenkins 1975, Shute 1984).

Good habitat for the yellowfin madtom is currently located in the North Fork Holston River, Smyth, Washington, and Scott Counties, Virginia. The establishment of an experimental population in this now unoccupied historic habitat will greatly enhance the recovery potential of this species. During the late summer or early fall of 1988 or 1989, 100 to 200 captive-reared madtoms (taken in the spring and

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summer of 1988 or 1989 from nests on Citico Creek, Monroe County, Tennessee) will be reintroduced into one or two pools on the North Fork Holston River, Washington County, Virginia. The techniques for rearing and transplanting the species were developed in 1986 and 1987 when a reintroduction was made into Abrams Creek, Blount County, Tennessee. The success of this introduction attempt is being evaluated.

Based on studies conducted on the Citico Creek population (Shute 1984; David Etnier, Peggy Shute, and Randy Shute, University of Tennessee, personal communication, 1986), it is believed that approximately 125 yellowfin madtom nests exist in Citico Creek each year. The yellowfin madtom nests each contain about 90 eggs. Three to four nests would be taken, and, allowing for natural mortality, these would yield the desired 100 to 200 individuals for stocking. The removal of three to four nests represents only about 3 percent of each year's total clutches. This amount of loss is well within the limits of natural loss that would likely occur on an average reproductive year (D. Etnier, P. Shute, and R. Shute, personal communication, 1986). Therefore, the Service has determined that the removal of the animals from Citico Creek to be used in the North Fork Holston River transplant is not likely to jeopardize the continued existence or viability of the Citico Creek population. Furthermore, the creation of this experimental population, as proposed, will further the conservation of the species throughout its range.

**Status of Reintroduced Population**

This reintroduced population of yellowfin madtoms is being designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The nonessential experimental population status, which is necessary to gain the acceptance of the Virginia Commission of Game and Inland Fisheries for the reintroduction effort, is appropriate for the following reasons: Reproducing populations of the yellowfin madtom presently exist in three river reaches. The removal of individuals from the extant population in Citico Creek, Monroe County, Tennessee, is not expected to adversely affect the viability of that population (see Background section above). Therefore, the loss of the introduced population would not reduce the likelihood of the survival of the species in the wild. In fact, the anticipated success of this reintroduction will enhance the species' recovery potential by extending its current range and reoccupying currently unutilized historic habitat.

**Summary of Comments and Recommendations**

In the September 8, 1987, proposed rule (52 FR 33850) and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and interested parties were contacted and requested to comment. Six written comments were received and are summarized below.

Support for the proposal was received from the Tennessee Department of Conservation, U.S. Forest Service, and the Virginia Cooperative Fishery Research Unit. The State of Virginia Department of Game and Inland Fisheries and the Tennessee Valley Authority provided no specific comments, but did request that the Service inform them of the exact location of the transplant site. The Service will coordinate the release of the fish with these agencies, and specific site data will be provided prior to the release.

The Smyth County Board of Supervisors objected to the proposal to establish a nonessential experimental population of the yellowfin madtom in the North Fork Holston River. However, they provided no reason for their objection.

A Service biologist met with the Board and explained the proposed rule specifically emphasizing the greatly reduced protection the Act provides to nonessential experimental populations. The Board voted again to oppose the reintroduction.

The proposed rule stated that the yellowfin madtom would be introduced into the North Fork Holston River in Smyth County, Virginia. Discussion with ichthyologists knowledgeable with the species indicates that suitable sites for introduction are available downstream in Washington and Scott Counties, Virginia (Charles Sayler, Tennessee Valley Authority; David Etnier, University of Tennessee; and Robert Jenkins, personal communications, 1987). The Service has discussed the use of Washington County as a reintroduction site with the Washington County Administrator, and he had no objection to reintroducing the fish into his county. Therefore, because of Smyth County's objection and the availability of suitable sites in Washington County, Virginia, the final rule has been modified to show that the reintroduction will be made into North Fork Holston River in Washington County, Virginia, rather than Smyth County, Virginia. If the reintroduction is successful and the species expands its range downstream and upstream in the North Fork Holston River, the species could be considered for delisting before any of these fish ever reach Smyth County, Virginia.

**Location of Reintroduced Population**

The area for reintroduction of the yellowfin madtom is totally isolated from existing populations of the species. The madtom will be released into the North Fork Holston River, Washington County, Virginia. This site is separated from other existing populations by both Tennessee River and tributary reservoirs, and the fish is not known from any of these reservoirs or intervening river sections. These reservoirs and river sections act as barriers to movement by the fish and assure that the Holston River population will remain geographically isolated and easily identifiable as a distinct population.

**Management**

This translocation project will be a joint cooperative effort among the Virginia Commission of Game and Inland Fisheries, the Tennessee Wildlife Resources Agency, and the U.S. Fish and Wildlife Service. Present plans call for the release of 100 to 200 young-of-the-year animals in the late summer or early fall of 1988. Subsequent releases will be made contingent on funds in 1989 and later years. Released animals will be monitored to determine survival, reproductive success, and general health.

This nonessential experimental population would be treated as a threatened species under all provisions of the Act, except section 7. Under section 7 (other than subsection (a)(1) thereof) a nonessential experimental population shall be treated, except when it occurs in an area of the National Wildlife Refuge or National Park Systems, as a species proposed to be listed under the Act as a threatened species. All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. In addition, members of this experimental population could be taken in accordance with applicable State laws. Thus, if a fisherman accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

**National Environmental Policy Act**

An environmental assessment under the National Environmental Policy Act

has been prepared and is available to the public at the Service's Asheville Field Office (see "ADDRESSES" section), Atlanta Regional Office (U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303), or the Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Arlington, Virginia 22201 (202/235–1975). This assessment formed the basis for the decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

**Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act**

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). No private entities will be affected by this action. The rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

**References Cited**


Burkhead, N.M., and R.E. Jenkins. 1982. Five-year status review of the yellowfin madtom, *Noturus flavipinnis*, a threatened ictalurid catfish of the Tennessee drainage. Unpublished report to the U.S. Fish and Wildlife Service. 10 pp.

Jenkins, R.E. 1975. Status of the yellowfin madtom, *Noturus flavipinnis*. Unpublished report to U.S. Office of Endangered Species International Activities, Washington. 11 pp.

Shute, P.W. 1984. Ecology of the rare yellowfin madtom (*Noturus flavipinnis*) Taylor, in Citico Creek, Tennessee. Masters thesis. University of Tennessee, Knoxville, TN. 100 pp.


**Author**

The principal author of this final rule is Richard G. Biggins (see "ADDRESSES" section) (704/259–0321 or FTS 672–0321).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by revising the entry "Madtom, yellowfin" under FISHES to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Species: Scientific name | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Fishes: | | | | | | | |
| Madtom, yellowfin | *Noturus flavipinnis* | U.S.A. (TN, VA) | Entire, except where listed as an experimental population below. | T | 28, 317 | 17.95(e) | 17.44(c) |
| Do | do | do | North Fork Holston River and its tributaries, VA, TN; South Fork Holston River and tributaries upstream to Ft. Patrick Henry Dam, TN; and Holston River and tributaries downstream to John Sevier Detention Lake Dam, TN. | XN | 317 | NA | 17.84(e) |

**§ 17.84 [Amended]**

3. Amend Title 50 CFR 17.84 by adding new paragraph (e) as follows:

* * * * *

(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) The yellowfin madtom population identified in paragraph (4) of this subsection is a nonessential experimental population.

(2) All prohibitions and exceptions listed in §§ 17.31 and 17.32 apply to the population identified in paragraph (e)(4) of this section, except that it may also be incidentally taken in accordance with applicable State laws and regulations.

(3) Any violation of State law regulating the take of this species from the population identified in paragraph (e)(4) of this section will also be a violation of the Endangered Species Act.

(4) This experimental population of the yellowfin madtom is found in the North Fork Holston River watershed, Washington, Smyth and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. The reintroduction site is within the historic range of this species but it is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs, and it is unlikely that they could move 100 river miles through these large reservoirs, the possibility of this population contacting extant wild populations is unlikely.

Dated: June 24, 1988.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88–17540 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–55–M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 611 and 663**

**[Docket No. 80749–8149]**

**Pacific Coast Groundfish Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of eligibility criteria for potential limited access to the Pacific coast groundfish fishery.

**SUMMARY:** This notice announces that eligibility criteria have been adopted which may be used in order to establish priorities for future participation in the Pacific coast commercial groundfish fishery in the event a management regime is developed and implemented that limits or reduces the number of vessels allowed to participate in the fishery. A vessel may be given priority for future participation in the fishery if the vessel made commercial landings of groundfish caught off the coast of Washington, Oregon, or California during a window period between July 11, 1984 and August 1, 1988. The Pacific Fishery Management Council (Council) may also consider whether to include those vessels landing shrimp during the same period. This announcement does not prevent the development or implementation of other eligibility criteria, or restrict the type of management regime selected for limited access. The intended effect of giving priority to vessels which landed during the window period is to discourage speculative entry into the fishery while discussions continue on whether and how access to the groundfish resource should be controlled.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150; E. Charles Fullerton (Director, Southwest Region, NMFS), 213–514–6196; or Lawrence D. Six (Executive Director, Pacific Fishery Management Council), 503–221–6352.

**SUPPLEMENTARY INFORMATION:** The Pacific Coast Groundfish Fishery Management Plan was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and implementing regulations appear at 50 CFR Parts 611 and 663.

At the July 8–10, 1987 meeting of the Pacific Fishery Management Council (Council) in Millbrae, California, the Council adopted a July 11, 1987, cut-off date for eligibility for future entry into the west coast groundfish fishery in the event a management regime is developed and implemented that limits access to the groundfish resource. However, at its July 13–14, 1988, meeting the Council extended the eligibility cut-off date to August 1, 1988, and adopted an eligibility window from July 11, 1984, to August 1, 1988. If a limited entry program were adopted, fishing activity during the window period may be used to establish priorities for future participation in the commercial groundfish fishery; e.g., limited access priority would be given to vessels that made commercial landings of groundfish caught off Washington, Oregon, and California during the window period. This priority remains with the vessel and would be given to the person who owns this qualifying vessel at the time the limited entry permit system becomes effective, regardless of previous or subsequent transfers of the vessel. In other words, vessel owners would qualify for a limited entry permit if they own an eligibility priority vessel when the permits are issued. Vessel buyers and sellers should be cognizant of the eligibility status a vessel may have in the limited entry proposal before transferring vessels.

In adopting these eligibility criteria, the Council considered the recommendations from its advisory committee of industry representatives, in addition to comments by the Groundfish Management Team (State and Federal fishery and social scientists), Groundfish Advisory Subpanel (industry and consumer representatives), Scientific and Statistical Committee (State, Federal, and university scientists), and the public. The Council also adopted two license limitation proposals recommended by an industry committee, as well as a third proposal—no limited entry, for further review at public workshops to be held next fall and winter.

In making this announcement, NMFS and the Council intend to prevent speculative entry into the fishery during further development and analysis of limited access alternatives. The Council's eligibility criteria will help to distinguish *bona fide* established fishermen from possible speculative entrants to the fishery. Although a vessel may not qualify under the provision that it must have made landings during the window, it may be allowed access to the fishery if it meets exceptions or other criteria which may be developed later. On the other hand, while vessels which have priority according to these criteria may be granted access initially, that access may be conditional and/or given a low priority depending on any future criteria which may be developed. In the future, the Council may reduce the number of participating vessels which may have qualified by having fished during the window.

This announcement establishes the period July 11, 1984 through August 1, 1988 for potential use in determining historical or traditional participation in the Pacific coast groundfish fishery. This action does not commit the Council or the Secretary of Commerce to any particular management regime or eligibility criterion for entry to the groundfish fishery. Fishermen are not necessarily guaranteed future participation in the groundfish fishery regardless of their date of entry or intensity of participation in the fishery. The Council may choose a management regime that does not make use of the eligibility window date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after this period, as may be the case with any permissible exceptions. The Council also may choose to take no further action to control entry or access to the fishery.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 1, 1988.

**Ann D. Terbush,**

*Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–17592 Filed 8–1–88; 3:46 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 661**

**[Docket No. 80482–8082]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Leadbetter Point, Washington, at midnight, July 31, 1988, to ensure that the coho quota for the subarea from Queets River to Klipsan Beach is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council) and the Washington Department of Fisheries (WDF) that the recreational fishery quota of 50,000 coho salmon for the subarea between the Queets River and Klipsan Beach, Washington, will be reached by July 31, 1988. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of coho salmon.

**EFFECTIVE DATE:** Closure of the EEZ from the Queets River to Leadbetter Point, Washington, to recreational salmon fishing is effective at 2400 hours local time, July 31, 1988. Comments on

this closure will be received through August 15, 1988.

**ADDRESS:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species in the subarea from the Queets River to Klipsan Beach, Washington, commenced on July 3, 1988, and was scheduled to continue through the earliest of September 5, 1988, or the attainment of either a subarea quota of 50,000 coho salmon or an overall quota of 29,800 chinook salmon north of Cape Falcon, Oregon. An inseason adjustment effective midnight, July 24, 1988, established a closed area in a southern portion (between Leadbetter Point and Klipsan Beach, Washington) of the subarea from Queets River to Klipsan Beach (53 FR 28227, July 27, 1988). Therefore, only that portion of the subarea between the Queets River and Leadbetter Point remains open to recreational salmon fishing. Based on the best available information, the recreational fishery catch in the subarea from Queets River to Klipsan Beach is projected to reach the subarea quota of 50,000 coho salmon by midnight, July 31, 1988. Therefore, that portion of the subarea which remained open must be closed to further fishing to ensure conservation of coho salmon.

NOAA issues this notice to close the recreational salmon fishery in the EEZ from the Queets River to Leadbetter Point, Washington, effective midnight, July 31, 1988. This notice does not apply to Treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Council and WDF regarding a closure of the recreational fishery between the Queets River and Leadbetter Point, Washington. The representatives of WDF confirmed that Washington will close the recreational fishery in state waters adjacent to this subarea of the EEZ effective midnight, July 31, 1988.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 15, 1988.

**Other Matters**

This action is authorized by 50 CFR 661.21(a)(1) and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 1, 1988.

**Ann D. Terbush,**

*Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–17551 Filed 8–1–88; 12:16 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 150
Thursday, August 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 401

**[Amdt. No. 38; Doc. No. 5769S]**

### General Crop Insurance Regulations; Flaxseed, etc.

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to include provisions for a Late Planting Agreement Option (7 CFR 401.107) on certain crops in the Late Planting Agreement Option Regulations. The intended effect of this rule is to include these crops among those listed in the Late Planting Agreement Option as being eligible for that option.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than September 6, 1988, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, issuing a new Part 401 to 7 CFR, Title IV. Included in this rule is 7 CFR 401.107, titled the Late Planting Agreement Option, published at 52 FR 28457.

The Late Planting Agreement Option becomes effective when elected by producers on these crops listed as eligible for that option in the option regulations.

FCIC studies indicate that the crops listed below would benefit from the option. The use of the option benefits the insured by allowing coverage to be obtained after the normal crop planting period.

FCIC proposes to add certain crop endorsements to such listing, effective for the 1989 and succeeding crop years, as follows:

7 CFR 401.116—Flaxseed
7 CFR 401.123—Safflower
7 CFR 401.124—Sunflower
7 CFR 401.109—Hybrid Sorghum Seed
7 CFR 401.118—Canning and Processing Bean

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**. All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

### List of Subjects in 7 CFR Part 401

General crop insurance regulations.

### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, in the following instances:

### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. In 7 CFR 401.107—Late Planting Agreement Option, Paragraph (e) is revised to read as follows:

**§401.107 Late Planting Agreement Option.**

* * * * *

(e) *Applicability to crops insured.* The provisions of this section will be applicable to the provisions for insuring crops under the following FCIC endorsements:

401.101 Wheat Endorsement
401.103 Barley Endorsement
401.105 Oat Endorsement
401.106 Rye Endorsement
401.109 Hybrid Sorghum Seed Endorsement
401.116 Flaxseed Endorsement
401.118 Canning and Processing Bean Endorsement
401.123 Safflower Endorsement
401.124 Sunflower Endorsement

The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless prohibited by the

actuarial table in certain counties on fall-planted crops.

* * * * *

Done in Washington, DC, on June 24, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-17558 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-08-M

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**7 CFR Part 401**

**[Amdt. No. 39; Doc. No. 5842S]**

## General Crop Insurance Regulations; Sunflower Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to restore a provision for a replanting payment on insured sunflower crops in the Sunflower Endorsement. The intended effect of this rule is to restore the provision allowing a replant payment, previously included in the sunflower policy in effect for the 1986 crop year.

**DATE:** Written comments, data, and opinions on this proposed rule must be received not later than September 6, 1988, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based exterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, November 25, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 45155, to amend the General Crop Insurance Regulations (7 CFR Part 401) by adding a new Section 7 CFR 401.124, Sunflower Seed Crop Endorsement, effective for the 1988 and succeeding crop years, to contain the provisions for crop insurance protection on sunflowers in an enforsement to the general crop insurance policy.

The provision allowing for a replant payment, which had been previously been included in the sunflower policy in effect for the 1986 crop year, was omitted in the rule published at 52 FR 45155. FCIC proposes to restore that provision to the sunflower crop insurance policy.

FCIC is inviting public comment on this rule for 30 days after publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 401**

General crop insurance regulations, Sunflower endorsement.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposed to amend the General Crop Insurance Regulations (7 CFR Part 401), by amending the Sunflower Endorsement (7 CFR 401.124), proposed to be effective for the 1989 and succeeding crop years, as follows:

**PART 401—[AMENDED]**

1. The authority citation for 7 CFR Part 401 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. 7 CFR 401.124—*Sunflower Endorsement* is amended by adding a new subsection 1.c., effective for the 1989 and succeeding crop years, to read as follows:

**§ 401.124 Sunflower endorsement.**

* * * * *

1. Insured Crop.

* * * * *

c. A replant payment is available under the Sunflower Endorsement. No replant payment will be made on acreage on which our appraisal exceeds 90 percent of the guarantee. The payment per acre will not exceed the product obtained by multiplying 175 pounds times the price election, times your share.

* * * * *

Done in Washington, DC, on June 24, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-17557 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-08-M

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**Farmers Home Administration**

**7 CFR Part 1910**

## Credit Reports on Individuals

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to amend its regulations regarding credit reports on individuals. The circumstances requiring this action are the number of inquiries received from FmHA field offices concerning whether to order a joint report instead of an individual report on married applicants when there is only one income in the household; and the amount of the fee to be collected when ordering a credit report on an applicant and spouse. The intended effects of this action are to

provde FmHA field guidance on ordering joint reports on married applicants, and guidance as to the fee to be collected when ordering joint reports.

**DATE:** Comments must be received on or before October 3, 1988.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Reginald J. Rountree, Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, Telephone: 202–475–4209.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low to Moderate Income Housing Loans
10.416 Soil and Water Loans
10.420 Rural Self-Help Housing Technical Assistance.

This action is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document had been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program" It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

**List of Subjects in 7 CFR Part 1910**

Administrative practice and procedure, Credit, Government contracts, Reporting requirements.

Accordingly, Chapter XVII, Title 7 of the Code of Federal Regulations is amended as follows:

## PART 1910—GENERAL

1. The authority citation for Part 1910 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

### Subpart B—Credit Reports (Individual)

2. Section 1910.52 is amended by revising paragraph (a) to read as follows:

**§ 1910.52 General.**

(a) FmHA will obtain credit reports from credit reporting companies (Contractors) listed in Exhibit A of this subpart (available in any FmHA office) as authorized by the National Office, FmHA. Furthermore, special reports, supplemental employment reports, commercial credit reports, and special services are not authorized.

* * * * *

3. Section 1910.53 is amended by revising paragraphs (d) and (e) as follows:

**§ 1910.53 Policy**

* * * * *

(d) The County Supervisor will determine whether to order a joint report or an individual report. A joint report will be ordered when the applicant and co-applicant are married, except when the applicant is married and applies as an individual, then an individual report will be ordered. In all other cases, if the applicant and co-applicant are not married, then an individual credit report will be ordered on each of the applicants.

(e) A nonrefundable credit report fee of the amount shown in Exhibit A, *General,* (b) of this subpart (available in any FmHA office) will be a one time charge for each initial credit report ordered.

* * * * *

4. Section 1910.54 is amended by revising paragraphs (b) and (f) as follows:

**§ 1910.54 Definitions.**

* * * * *

(b) "Applicant," for other than Farmer Program loans, also includes co-applicant(s), co-signer(s), each individual in an association, and general partner(s) in a partnership. For Farmer Program loans, "applicant" also includes co-signer(s), member(s) of a cooperative, stockholder(s) in a corporation, partner(s) in a partnership, and joint operators of a joint operation.

* * * * *

(f) "Joint Report" is a report providing information on an applicant and spouse, if a co-applicant. It may be supplemented by "antecedent" and/or "supplemental credit reference" reports to provide all the information required by the 2-year report period.

* * * * *

5. Section 1910.59 is revised as follows:

**§1910.59 Type of credit report to be ordered.**

Pursuant to the Equal Credit Opportunity Act (ECOA), credit reporting companies will maintain credit information in three different forms on a married couple: Individual accounts on each spouse; joint accounts covering both spouses; and undesignated accounts (those accounts not designated by the credit grantor as either individual or joint account). A "joint" report will be ordered on the applicant and spouse, if the spouse is the co-applicant. If credit report information is needed on other persons to complete the credit investigation, separate "individual" report request, which will be paid by the applicant, prepared for each person as opposed to the more costly "special services" reports. See § 1910.53 (d) of this subpart for requirements concerning when two "individual" credit reports must be ordered.

6. Section 1910.61 is amended by revising paragraph (a)(2)(ii) to read as follows:

**§ 1910.61 Collecting fees, invoicing, and payments.**

(a) * * *
(2) * * *
(ii) By entering the date and amount of the credit report fee collected in column 9 of Form FmHA 1905–4, "Application and Processing Card-Individual."

* * * * *

Date: July 12, 1988.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 88-17614 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-07-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 177

### Proposed Interpretive Rule Relating To Classification of Motor Vehicles as Automobile Trucks; Extension of Comment Period

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice extends the period of time for two weeks for interested members of the public to submit comments concerning the classification of motor vehicles as "automobile trucks" under item 692.02, Tariff Schedules of the United States.

**DATE:** Comments are requested on or before August 15, 1988.

**ADDRESS:** Comments may be submitted to or inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** John L. Valentine, Commercial Rulings Division (202-566-8181).

**SUPPLEMENTARY INFORMATION:** On June 1, 1988, Customs published a notice in the **Federal Register** (53 FR 19933), stating that it is reconsidering the criteria it considers when it distinguishes, for tariff classification purposes, automobile trucks from other motor vehicles for the transport of persons or articles. Automobile trucks are classified in item 692.02, Tariff Schedules of the United States (TSUS), and other motor vehicles for the transport of persons and articles are classified in item 692.10, TSUS. Comments were requested from the public in the document on or before July 31, 1988. Customs has now determined that additional time is necessary for responsive comments to be prepared and submitted. Accordingly, this document extends the period of time with which interested members of the public may submit comments for another two weeks.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

Dated: August 1, 1988.

**Richard R. Rosettie,**

*Deputy Assistant Commissioner, Office of Commercial Operations.*

[FR Doc. 88-17719 Filed 8-3-88; 8:45 am]

BILLING CODE 4820-02-M

### Internal Revenue Service

### 26 CFR Part 1

**[LR-63-87]**

### Income Taxes; Deductions in Excess of $5,000 Claimed for Charitable Contributions of Certain Property

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to notice of public hearing on proposed regulations.

**SUMMARY:** This document contains corrections to a notice of a public hearing on proposed regulation relating to deductions in excess of $5,000 claimed for charitable contributions of certain property.

**DATES:** These corrections are effective July 21, 1988.

**FOR FURTHER INFORMATION CONTACT:** Carol Savage of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 21, 1988, the **Federal Register** at 53 FR 27531 published a notice of public hearing on proposed regulations under section 170A of the Internal Revenue Code of 1986.

#### Need for Correction

As published, the notice of public hearing contains misinformation concerning the correct day of the week the outline of oral comments must be delivered or mailed.

#### Correction of Publication

Accordingly, the publication of the notice hearing in the **Federal Register** for Thursday, July 21, 1988, at page 27531, column 3, under the subheading "Dates", the paragraph is corrected to read: "The public hearing will be held on Friday, September 23, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, September 9, 1988."

By direction of the Commissioner of Internal Revenue.

**Dale D. Goode,**

*Chief, Technical Section, Legislation and Regulations Division.*

[FR Doc. 88-17591 Filed 8-3-88; 8:45 am]

BILLING CODE 4810-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Parts 773 and 843

### Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Remedial Actions Regarding Improvidently Issued Permits

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of reopening of public comment period and supplemental notice of proposed rulemaking.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior is reopening the public comment period for a portion of a July 16, 1986, proposed rule concerning the requirements for permits and permit processing. The rule, among other things, would have added a new § 773.20 governing permit rescission and a new § 843.21 governing federal enforcement of improvidently issued permits. OSMRE seeks public review of and comment on alternative language for these new sections.

**DATE:** The comment period on the affected portion of the proposed rule is extended until 5 p.m., Eastern time on September 6, 1988.

**ADDRESSES:** Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5954 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Regulatory Text of Proposed Modifications

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IV. Discussion of Proposed Modifications

## I. Public Comment Procedures

Written comments may be submitted on the proposed modifications. Such comments should be specific, confined to issues pertinent to the July 16, 1986 (51 FR 25822) proposed rules and proposed modifications contained in this notice, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not necessarily be considered or included in the Administrative Record for the final rule.

## II. Background

On July 16, 1986 (51 FR 25822) OSMRE published in the **Federal Register** a proposed rule which would amend its regulations governing permits and permit processing. On September 24, 1986 (51 FR 33905) OSMRE extended the comment period for the proposed rule for 30 days. By this notice, OSMRE is reopening the public comment period for proposed § 773.20, a new section governing remedial measures for improvidently issued permits; proposed § 773.21, a new section governing permit rescission; and § 843.21, a new section governing federal enforcement concerning improvidently issued permits. OSMRE seeks public review of and comment on alternative language for these new sections. The comment period on the remainder of the proposed rule is not affected by this notice and remains closed.

The alternative procedures specified in this notice would modify the procedures specified in paragraph number 3 of the January 31, 1985 Court Order in the case of *Save Our Cumberland Mountains, Inc. et al. v. Clark,* Civil Action No. 81–2134 (D.D.C. 1985) (the "Parker order"), relating to enforcement measures that can be taken against operators with unabated Federal cessation orders and unpaid Federal civil penalties. Rules modifying the procedures of Paragraph 3 of the Parker Order are authorized pursuant to Paragraph 31 of the Parker Order.

## III. Regulatory Text of Proposed Modifications

The major proposed regulatory changes from the July 16, 1986 proposal which OSMRE is considering are provided below. A discussion describing the changes follows the regulatory text. The textual changes would replace the language proposed in the corresponding sections published on July 16, 1986.

As an alternative to the previously proposed § 773.20, *Permit rescission,* and § 843.21, *Procedures on improperly or erroneously issued State permits,* OSMRE proposes to substitute the following provisions (§§ 773.20, 773.21, and 843.21):

### § 773.20 Procedures for improvidently issued permits.

(a) The regulatory authority shall require the implementation of the procedures of paragraph (b) of this section if, subsequent to issuance of a permit, it determines that:

(1) At the time of permit issuance, any surface coal mining operation owned or controlled by either the permittee or any person who owned or controlled the permittee—

(i) Was subject to an outstanding cessation order or to a notice of violation for which a cessation order was subsequently issued; or

(ii) Resulted in persons being liable to the Office or the regulatory authority for any civil penalty imposed under sections 518(a) or 518(h) of the Act or regulatory program counterpart for which payment is due, or for any Abandoned Mine Reclamation Fees due but not paid under Subchapter R of this chapter;

(2) The underlying violation, penalty, or fee—

(i) Remains uncorrected or unpaid; and

(ii) Is not the subject of a good faith appeal, or of a payment schedule or abatement plan which the permittee or other responsible person is complying with as approved by the authority which cited the violations, assesses the penalty, or is owed the fee in question;

(3) The link between the permittee or its owner or controller and the violator still exists so as to constitute ownership or control over the violator; and

(4) The existing permit was issued;

(i) As a result of fraud or misrepresentation; or

(ii) The information concerning the outstanding violation or unpaid money was known or should have been known by the regulatory authority, and, under the regulatory program, should have prevented permit issuance. For purposes of this section:

(A) Ownership and control relationships between a permit applicant and the following violators should have prevented permit issuance under the applicable regulatory program:

(*1*) At a minimum, in appropriate circumstances persons included in section 507(b)(4) of the Act, for permits issued prior to the applicability in the regulatory program of the term "owns or controls" in § 773.5 and a compliance review which applies to persons under common control with a permit applicant; and

(*2*) Persons under common ownership or control with the applicant, for permits issued subsequent to the applicability in the regulatory program of the definition of the term "owns or controls" and a revised compliance review; and

(B) Violations that should have been known are:

(*1*) For the period prior to October 1, 1987, Federal failure to abate cessation orders, penalties assessed under section 518(a) and 518(h) of the Act, and any abandoned mine reclamation fees due but not paid under Subchapter R of this chapter; and

(*2*) Subsequent to October 1, 1987, information in the OSMRE Applicant/Violator System.

(b) The regulatory authority shall employ one or more of the following remedial measures if the criteria of paragraph (a) of this section are met:

(1) Establish payment schedules or reclamation agreements agreed to by the permittee or other responsible persons;

(2) Impose a permit condition on the existing permit requiring correction of the outstanding violation or payment of the unpaid monies;

(3) Suspend the existing permit until the violation is abated or the monies are paid; or

(4) Rescind the existing permit in accordance with the procedures in § 773.21.

### § 773.21 Permit suspension and rescission.

If the regulatory authority elects to rescind a permit under § 773.20(b), then the following procedures shall apply:

(a) The regulatory authority shall serve on the permittee a notice of proposed suspension and rescission, and shall therein notify the permittee that following a specified period not to exceed 90 days its permit will be suspended, and 90 days thereafter automatically rescinded, unless within such periods the permittee submits to the regulatory authority satisfactory proof that:

(1) The regulatory authority's determinations under paragraph (a) of § 773.20 were erroneous;

(2) The permittee or other person responsible has corrected any violation, and paid any penalty or fee specified in § 773.20(a) to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty, or fee; or

(3) The permittee or other person responsible has entered into and is

complying with a plan or schedule for the correction of any such violation, and the payment of any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty, or fee.

(b) During the periods of suspension and rescission under this section, no surface coal mining and reclamation operations, other than required reclamation and abatement, shall take place.

(c) The notice of proposed suspension and rescission shall include a right to petition for administrative review in accordance with 43 CFR Part 4.1280–4.1286, or the State program equivalent. A petition for review of the proposed suspension and rescission of a Federal permit shall not be subject to 43 CFR 4.21(a).

**§ 843.21 Procedures for improvidently issued State permits.**

(a) If OSMRE has reason to believe that a State-issued permit falls within the category of permits covered by § 773.20(a) of this chapter, OSMRE shall notify in writing the State and the permittee.

(b) The State shall respond within thirty days to a notice described in paragraph (a) of this section and demonstrate that it has complied with the state program equivalent of § 773.20 of this chapter or show that the permit is not covered by § 773.20(a).

(c) If OSMRE determines that the State failed to demonstrate that it took action pursuant to the state program equivalent of § 773.20, OSMRE shall immediately issue a notice to the State, requesting the State act pursuant to that section.

(d) If OSMRE determines that within ten days of receipt of such notice described in paragraph (c) of this section, the State has failed to take appropriate action under the state program equivalent of § 773.20 or show good cause for such failure, OSMRE shall take appropriate remedial measures, which may include issuance to the permittee of a notice of violation requiring that unless all cessation orders are abated, all civil penalties and abandoned mine reclamation fees are paid, or an appropriate abatement plan or payment schedule is approved for all outstanding cessation orders, civil penalties, and reclamation fees within a specified time, all mining operations shall cease and reclamation of all areas for which a reclamation obligation exists shall commence or continue. Under this paragraph, good cause does not include lack of a state program counterpart to § 773.20.

(e) OSMRE shall vacate, under paragraph (e)(1), or terminate, under paragraph (e)(2) or (e)(3), a notice of violation issued under paragraph (d) of this section upon submission by the permittee or other person responsible, of proof that:

(1) OSMRE's determinations under paragraph (a) of this section were erroneous;

(2) The permittee or other person responsible has corrected any such violation, and paid any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdication over such violation, penalty, or fee; or

(3) The permittee or other person responsible has entered into a plan or schedule for the correction of any such violation, and the payment of any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty or fee.

(f) No civil penalty will be assessed under a notice of violation issued pursuant to this section.

## IV. Discussion of Proposed Modifications

*Section 773.20 Remedial measures for improvidently issued permits.*

Under § 773.20 of the 1986 proposal, any outstanding cessation order or unpaid money owed would be a sufficient basis for the regulatory authority to invoke the permit rescission procedure. Under alternative proposed § 773.20(a), additional factors would be considered before remedial procedures would be required. These additional considerations derive in part from comments received on the earlier proposal.

Alternative proposed § 773.20(a)(3) would be added to require remedial action only if abatement or payment can be compelled. This would be accomplished by requiring a curent link between the permittee or its owner or controller and the violator sufficient to exert control over the violator. OSMRE specifically solicits comments on whether a current link to the violator is ordinarily needed to abate outstanding violations and whether current links should be required before action is taken against an existing permittee.

Several comments were received objecting to the retroactive effect that the proposal would have had upon existing permits. To account for this concern, alternative proposed § 773.20(a)(4) would provide that the regulatory authority need not apply remedial measures against existing permits unless such permits were issued as a result of fraud or misrepresentation or were issued when information concerning outstanding violations or unpaid monies, if known or should have been known by the regulatory authority, should have prevented permit issuance under the regulatory program. This provision would ensure that permits properly issued under a state or federal program would not be retroactively invalidated.

The alternative proposal would clarify how the suspension and rescission procedures would relate to OSMRE's expected new rules that will define ownership and control and that will specify that permit applicants under common control with violators will be denied new permits. Alternative proposed § 773.20(a)(4)(ii)(A) would specify which ownership and control relationships between a permit applicant and a violator should have prevented permit issuance under the applicable regulatory program.

Certain permits may have been issued properly under a state program, but no longer may be issuable when that program is amended to incorporate OSMRE's soon to be revised ownership and control definition in 30 CFR 773.5 and soon to be revised compliance review in 30 CFR 773.15(b)(1) which will extend to owners and controllers of a permit applicant. OSMRE does not intend that a state be required to rescind a permit correctly issued under its program. Thus the alternative proposal would specify that until a state program is amended to incorporate the new OSMRE provisions, the links to a violator that should have prevented permit issuance in most instances are, at a minimum, those set forth in section 507(b)(4) of the Act. Subsequent to the incorporation of the OSMRE provisions in a state program, the links that should prevent permit issuance would be those covered by the state program amendment.

Alternative proposed § 773.20(a)(4)(ii)(B) would define violations that should have been known as: (A) For the period prior to October 1, 1987: Federal failure to abate cessation orders and section 518(a) and section 518(h) penalties, and (B) For the period subsequent to October 1, 1987: information from OSMRE's Applicant Violator System.

Under the 1986 proposal, § 773.20 would have required regulatory authorities to rescind erroneously or improperly issued permits. The alternative § 773.20(b) would enable regulatory authorities to employ one of four different remedial measures to deal with an erroneously or improperly

issued permit. OSMRE believes regulatory authorities need flexibility in determining what type of remedial action should be employed in a particular case. Thus, proposed § 773.20(b) allows the establishment of a payment schedule, the imposition of a permit condition, and the suspension, as well as the rescission of a permit.

*Section 773.21 Permit suspension and rescission.*

Under the 1986 proposal, permit rescission procedures were grouped with other regulatory determination matters in § 773.20. Under the new alternative, once a regulatory authority determines that rescission is required, it would use the procedures of proposed § 773.21, which employs a staged approach of first suspension, then rescission.

Under the alternative proposed § 773.21, if the regulatory authority were to elect to rescind a permit, it would serve on the permittee a notice of proposed suspension and rescission. The notice would specify that following a specified period not to exceed 90 days its permit would be suspended, and 90 days thereafter automatically rescinded, unless within such periods the permittee submitted satisfactory proof that:

(1) The regulatory authority's determinations under paragraph (a) of alternative proposed § 773.20 were erroneous;

(2) The permittee or other person responsible has corrected any violation, and paid any penalty or fee specified in alternative proposed § 773.20(a); or

(3) The permittee or other person responsible has entered into and is complying with a plan or schedule for the correction of any such violation, and the payment of any such penalty or fee to the satisfaction of the regulatory authority, department, or agency having jurisdiction over such violation, penalty, or fee.

During the periods of suspension and rescission, no surface coal mining and reclamation operations, other than required reclamation and abatement, would take place. The notice of proposed suspension and rescission would also include a right to petition for administrative review in accordance with 43 CFR Part 4.1280–4.1286, or the State program equivalent. A petition for review of a Federal permit would not be subject to the automatic stay provisions of 43 CFR 4.21(a).

Alternative § 773.21 has been added in response to comments on the 1986 proposal suggesting the regulatory authority be able to suspend a permit prior to rescission to enable the permit to be reinstated without a former permittee having to initiate a new permit application process. Although a tiered approach, involving suspension as well as rescission, might lengthen the administrative process, it would provide additional opportunities to achieve abatement.

*Section 843.21 Procedures for improvidently issued State permits.*

Under § 843.21(a) of the 1986 proposal, which implemented the procedures of paragraph 3 of the Parker order, OSMRE would issue a notice of violation ceasing all mining operations and requiring immediate reclamation if a state failed to initiate rescission procedures after notification by OSMRE.

The proposed alternative to § 843.21 would recognize the primary state role in acting against improvidently issued permits and would incorporate an "appropriate action/good cause" standard in the rule. In other words, OSMRE would defer to the state response to a "ten day" notice if the state demonstrates that it acted reasonably in implementing its counterpart rule regarding improvidently issued permits. If the state did not act reasonably, OSMRE would take remedial action. Instead of having to issue a notice of violation in such circumstances, as was proposed, OSMRE would be able to tailor the remedial action to the nature of the problem.

In view of the recent amendment to 30 CFR 842.11(b)(1)(ii)(B) defining "good cause" (53 FR 26744), a provision has been added specifically to allow implementation of the rescission requirements of Paragraph No. 3 of the Parker Order in the interim until state programs are amended. Thus, good cause would not include the lack of a counterpart to § 773.20 in the state program, and the lack of such a provision would not preclude OSMRE from acting under § 843.21. This exception is proposed to assure that OSMRE can act immediately against permits improvidently issued under a state program.

If a notice of violation were issued under § 843.21, it would require that unless all cessation orders are abated, all civil penalties and abandoned mine reclamation fees are paid, or an appropriate abatement plan or payment schedule is approved for all outstanding cessation orders, civil penalties, and reclamation fees within a specified time, all mining operations shall cease and reclamation of all areas for which a reclamation obligation exists shall commence or continue. Paragraph (f) would provide that no civil penalty would be assessed under a notice of violation issued under § 843.21.

**Additional Alternatives**

OSMRE recognizes that the possibility of permit rescission can be a powerful inducement to have outstanding violations abated. Although the alternative regulatory language specified earlier in this notice would apply only to permits that should not have been issued under a regulatory program, OSMRE solicits comments on two more expansive alternatives which it is considering adopting.

The first, which is similar to the 1986 proposal, would apply the permit rescission procedures to permits which at the time of permit issuance were under common control with an operation with an outstanding violation, even if the permit could have properly issued under the regulatory program in effect at the time. Such a situation could have occurred if the regulatory program compliance review did not extend to owners and controllers of the permit applicant.

The second additional alternative would apply the permit rescission procedures to any permit under common control with a violator, regardless of whether such common control existed at the time of permit issuance. The legal theory underlying the latter alternative would not be that the existing permit was improvidently issued, but instead would rely upon the Secretary's discretionary authority under section 201 (c)(1) and (c)(2) of the Act.

Dated: August 1, 1988.

**Robert Gentile,**

*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 88–17573 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 50, 51, and 58

[AD FRL–3424–9]

### Proposed Decision Not To Revise the National Ambient Air Quality Standard for Sulfur Oxides (Sulfur Dioxide)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of additions to rulemaking dockets.

**SUMMARY:** The proposed decision also included proposed revisions of 40 CFR Parts 51 and 58, appearing in 53 FR 14926 on April 26, 1988. Today's notice is to advise the public that materials

contained in Docket No. A–84–25, related to the proposed revision to the Significant Harm Level (40 CFR Part 51), have been incorporated by reference into Docket No. A–87–12.

Today's notice is also intended to advise the public that additional materials have been incorporated into Docket No. A–87–06 for the proposed revisions to the Ambient Air Quality Surveillance requirements. These materials include two contract reports on monitor siting, several memoranda regarding proposed modifications of 40 CFR Part 58 Appendices C, F and G, and one letter concerning the number and types of sulfur dioxide ($SO_2$) monitors reporting $SO_2$ concentrations to the National Air Data Bank.

**ADDRESSES:** Dockets No. A–87–06 and No. A–87–12 are located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC. The dockets may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For matters related to the Significant Harm Level (40 CFR Part 51)—Mr. Eric O. Ginsburg, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–15, Research Triangle Park, NC 27711. The telephone number is (919) 541–0877 or (FTS) 629–0877. For matters related to Ambient Air Quality Surveillance (40 CFR Part 58) Mr. Dennis R. Shipman, Technical Support Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–14, Research Triangle Park, NC 27711. The telephone number is (919) 541–5477 or (FTS) 629–5477.

**SUPPLEMENTARY INFORMATION:** On April 26, 1988, EPA proposed its decision not to revise the National Ambient Air Quality Standard (NAAQS) for sulfur oxides (sulfur dioxide) ($SO_2$) and to revise the Significant Harm Level for $SO_2$ (40 CFR Part 51), as well as to revise the Ambient Air Quality Surveillance Requirements (40 CFR Part 58) 53 FR 14926, April 26, 1988. As part of the proposal, EPA announced the establishment of three rulemaking dockets (Dockets No. A–84–25, No. A–87–12 and Docket No. A–87–06), as required by Section 307(d) of the Clean Air Act. Docket No. A–84–25 was established for the proposed action on the NAAQS, while Docket No. A–87–12 is related to the Significant Harm Level (40 CFR Part 51) actions. Docket No. A–87–06 is for actions concerned with revisions of the Ambient Air Quality Surveillance requirements (40 CFR Part 58). In that notice, persons wishing to comment on the Significant Harm Level proposals were asked to submit comments to Docket No. A–87–12, separately from comments on the ambient air quality standards. Docket No. A–87–12 is intended to facilitate the organization of public comments into appropriate subject areas for review and response. All relevant information and materials in support of the April 26 proposed action on the Significant Harm Level and related emergency episode criteria are incorporated into Docket No. A–87–12 by reference to Docket No. A–84–25, where they may be found and examined.

In addition to the matters related to the Significant Harm Level, it has been determined that some materials related to the Ambient Air Quality Surveillance actions were inadvertently omitted from Docket No. A–87–06. These materials have recently been submitted to that docket. Comments related to the ambient surveillance revisions should be submitted to Docket No. A–87–06.

Since EPA has recently extended the comment period on the April 26, 1988, proposal through September 23, 1988, EPA believes the public should have ample opportunity to review and comment on these additional materials.

Date: July 28, 1988.

**Don R. Clay,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 88–17570 Filed 8–3–88; 8:45 am]

BILLING CODE 6560–50–M

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 215

### Department of Defense Federal Acquisition Regulation Supplement; Work Measurement Systems

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed Rule and request for public comments.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council is proposing to revise the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.8 to implement the Department of Defense's policy on Work Measurement Systems (WMS).

**DATE:** Comments on this proposed rule should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before October 3, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87–123 in all correspondence relating to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The Department of Defense has historically imposed MIL–STD 1567A on a program-by-program basis. This standard, when required, contains criteria by which a contractor would either be able to maintain its existing work measurement system, if acceptable, or would be required to develop an acceptable work measurement system. This proposed revision will implement DoD's policy to use WMS in all appropriate contracts, using MIL–STD 1567A or other appropriate criterial tailored for each specific contract or program.

#### B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because work measurement systems are only required on major weapon systems and subsystems production contracts in excess of $20 million annually or a total cost of $100 million, and full scale development contracts in excess of $100 million. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS CASE 88–610D in correspondence.

#### C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501.

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**List of Subjects in 48 CFR Part 215**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, it is proposed to amend 48 CFR Part 215 as follows:

## PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 215.807 is amended by adding to the end of paragraph (b) the following text:

**215.807 Prenegotiation objectives.**

(b) * * * Data resulting from the application of work measurement systems shall be considered in the development of pricing objectives and negotiations.

3. Section 215.876 is added to subpart 215.8 to read as follows:

**215.876 Work measurement systems.**

(a) *Definition.* "Work measurement systems (WMS)," as used in this section, are systems used to analyze the direct labor content of a manufacturing operation, establish standard labor performance factors for that operation, and measure variances from those standards.

(b) *Policy.* The policy of the Department of Defense is that WMS will be used to provide data for use in planning, cost estimating, and monitoring contract performance, on all appropriate contracts and will be tailored to be suitable for the program and contract. An example of an acceptable set of criteria for WMS is found in MIL–STD–1567A. The contracting officer, in coordination with the Program Manager, shall include provisions in the contract to implement the program's work measurement system requirements.

(c) *Applicability.* Solicitations and resulting production contracts in excess of $20 million annually or a total cost of $100 million for major weapons systems or subsystems should contain appropriately tailored provisions for WMS. WMS requirements may also be included in Full Scale Development (FSD) contracts exceeding $100 million. Work measurement systems should not be required on contracts which:

(1) Procure Non-Developmental Items (NDIs);

(2) Have low volume, non-repetitive production runs such as ship construction, ship system contracts, etc.;

(3) Do not require the submission and certification of cost or pricing data; or

(4) Will not gain a cost benefit from the imposition of these systems. This decision will be documented and approved in accordance with agency procedures.

[FR Doc. 88–17651 Filed 8–3–88; 8:45 am]

BILLING CODE 3810–01–M

# Notices

Federal Register
Vol. 53, No. 150
Thursday, August 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Copper Basin Land Exchange and Mine Plan; Prescott National Forest and Phoenix District (BLM) Yavapai County, AZ; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service as lead agency, with cooperation of the U.S. Department of Interior, Bureau of Land Management will prepare an environmental impact statement for a land exchange and mine plan proposed by Phelps Dodge Corporation of Phoeniz, Arizona. Lands in Yavapai County, Arizona which will be affected include areas on Bradshaw Ranger District Prescott National Forest, and the Lower Gila Resource Area, Phoenix District (BLM). In Coconino County both the Blue Ridge Ranger District, Coconino National Forest and the Chalender Ranger District, Kaibab National Forest will be affected.

The Phelps Dodge proposals presented to the Prescott National Forest indicate that the open pit copper mine, located on Corporation owned land surrounded by the Prescott National Forest, approximately 8 air miles southwest of Prescott, will require land administered by both the Forest Service and Bureau of Land Management for placement of ore processing facilities, roads, pipelines, waste rock and tailings dams. Phelps Dodge has requested the land exchange to facilitate the placement and operation of these facilities.

The Prescott National Forest Land and Resource Management Plan is being implemented. The plan states that the environmental impacts of the Copper Basin Land Exchange and Mine Plan Proposals will be evaluated in a separate environmental impact statement. It also states that the adjustment of land ownership to facilitate the administration and use of the National Forest was to be done on an opportunity basis. The land exchange proposal is not consistent with the Prescott National Forest Plan land disposal decisions and the Plan may have to be amended as a result of a decision on the proposed exchange.

The land acquisition decisions in both the Coconino and Kaibab National Forest Lands and Resource Management Plans indicate acquisition of the offered lands would be desirable.

Land disposal decisions in the BLM Lower Gila Resource Area, Management Framework Plan indicate that the Public Domain lands selected by Phelps Dodge are currently available for exchange.

A range of alternatives will be considered for the land exchange proposal. These alternatives will include the proposal, different acreages of offered and selected lands, different parcels of offered lands and a no action alternative. Other variations will evaluate the impacts of land acquisition under the mill site patent procedure and ore processing under an authorized operating plan. It may be necessary to evaluate ore processing alternatives along with the alternatives to the land exchange proposal.

Federal, State and local agencies, organizations and individuals who may be interested in, or affected by the decisions will be invited to participate in the scoping process. Scoping will be initiated during the fall of 1988. Specific locations and times will be announced when they are determined. The scoping process will include:

1. Identification of issue with public participation.
2. Identification of other potential cooperating agencies and assignment of responsibilities.
3. Development of public understanding of the project proposals.
4. Development of public understanding of the decisions to be made as a result of the evaluation process.

Sotero Muniz, Regional Forester, Southwestern Region, Albuquerque, New Mexico, is the responsible official for the Forest Service. Dean Bibles, Arizona State Director, Bureau of Land Management, Phoeniz, Arizona, is the responsible official for the Bureau of Land Management. Separate land exchange decisions by each official will be made on their respective jurisdiction.

The analysis is expected to take 18 to 24 months, and will be prepared by an independent environmental consultant who will be selected and controlled by the Forest Service. The draft environmental impact statement should be available by September 1989. The final environmental impact statement is scheduled to be completed by June 1990.

Written comment and suggestions concerning the analysis should be sent by November 30, 1988 to Mr. Coy G. Jemmett, Forest Supervisor, Prescott National Forest, 344 South Cortex, Prescott, Arizona 86303.

For your convenience questions about the land exchange and mine plan proposals and the environmental impact statement should be directed to Ray Thompson, Copper Basin Interdisciplinary Team Leader, Prescott National Forest, phone 602–445–1762.

Date: July 22, 1988.

**Sotero Muniz,**

*Regional Forester.*

[FR Doc. 88–17561 Filed 8–3–88; 8:45 am]
BILLING CODE 3410–11–M

### Vegetation Management Activities Intermountain Region

**AGENCY:** Forest Service, USA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) covering vegetation management activities on National Forest System (NFS) lands within the Intermountain Region. Lands within all National Forests in the states of Utah and Nevada; the Caribou, Challis, Payette, Salmon, Sawtooth and Targhee National Forests in Idaho; the Bridger-Teton National Forest in Wyoming; the portion of the Manti-LaSal National Forest in Colorado; and the portion of the Toiyabe National Forest in California are included. The major emphasis of the NEPA process will be on development of economic, social and environmental risk criteria for choosing among the various types of alternative vegetation treatments to be used during implementation of Forest Plans.

**SUPPLEMENTARY INFORMATION:**

**History**

Vegetation management activities in the Intermountain Region included the unrestricted use of EPA registered herbicides until 1984. On march 14, 1984, the U.S. District Court for the District of Oregon ruled in the case of the Northwest Coalition for Alternatives to Pesticides, Oregon Environmental Council, and Audubon Society of Portland vs. J.R. Block, Secretary, USDA; J. Watt, Secretary, USDI; and W. Ruckelshaus, Administrator, EPA (Civil 83-6273-E), that "the defendants have not prepared an adequate Worst Case Analysis pursuant to their National Environmental Policy Act (NEPA) obligations under 40 CFR 1502.22." As a result of this decision, subsequently upheld by the Ninth Circuit Court, the use of herbicides on NFS lands was terminated in Oregon and Washington until NEPA compliance via the courts could be achieved. The use of herbicides on NFS lands in other states within the Ninth Circuit was also administratively curtailed considerably. No aerial applications have been permitted on NFS lands anywhere since that time.

The determination to prepare a regional Vegetative Management EIS was based on several factors:

1. The need to provide National Forests in the Intermountain region with criteria for choosing between vegetation management alternatives necessary to implement their Forest Plans.
2. The need to define the issues and meet NEPA requirements for public participation and disclosure in the decision process.
3. The need to evaluate incomplete or unavailable information associated with vegetation management activities to comply with 40 CFR 1502.22, as amended.

**Objectives**

All vegetative management activities, except noxious weeds and nurseries, that are required to carry out Forest Plan implementation will be analyzed. Methods to by analyzed will include, chemical, mechanical, manual, biological, and thermal techniques. Resource management activities that require some vegetation management include timber site preparation, timber stand release and improvement, range improvement, wildlife habitat improvement, fuels management, facilities maintenance, right-of-way maintenance (roads, trails, utilities, and railroads), recreation facilities maintenance, and research. These activities involve USDA Forest Service personnel, as well as numerous cooperators and agents.

**Scoping**

The scoping process will include public meetings established by the individual Forests, personal contacts with individuals and organizations, and requests for participation issued through the media and by mail. Federal, State, and local agencies, affected Indian Tribes, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Defining the scope of the analysis and nature of decisions to be made.
2. Indentifying the Regional and local issues and determining those issues ripe for consideration and analysis within the Vegetation Management EIS.
3. Eliminating insignificant issues—those covered by previous environmental analysis and those issues not within the scope of this decision.
4. Focusing on social issues, as well as technical and bilogical issues of human health and other possible non-target effects.
5. Identifying potential cooperating agencies and assignment of responsibilities.
6. Identifying groups or individuals interested in or affected by the decision.

**Responsible Official and Schedule**

Stan J. Tixier, Regional Forester, Intermountain Region, is the responsible official.

Public meetings and other scoping activities will be conducted in September through November, 1988. Each of the 16 administrative National Forests will establish and notify the public of scoping meetings. Analysis is expected to take about 12 months. The draft environmental impact statement should be available for public review in September 1989. The final environment impact statement is scheduled for completion and filing with EPA by July 1990.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. Comments received during the review period will be analyzed and considered by the Forest Service in preparing the Final EIS and decision

Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533, (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement, *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the agency at a time when it can meaningfully consider them and respond to them in the Final EIS.

**FOR FURTHER INFORMATION:** Written comments concerning the analysis, as well as questions about the proposed action and EIS, should be directed to Warren Ririe, Vegetative Management EIS Team Leader, USDA Forest Service, 324, 25th Street, Ogden, Utah, 84401, telephone (801) 625-5255.

**Clair C. Beasley,**

*Deputy Regional Forester, Administration.*

[FR Doc. 88-17562 Filed 8-3-88; 8:45 am]

BILLING CODE 3410-11-M

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## Suitability Study for the Sopchoppy River Being Considered for National Wild and Scenic River Status

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) for a proposal to study the suitability or non-suitability of the Sopchoppy River on the Apalachicola National Forest in Wakulla County, Florida for inclusion in the National Wild and Scenic River System. The U.S. Fish and Wildlife Service, Department of Interior, and The Florida Department of Natural Resources, will participate as cooperating agencies. The Forest Service invites written comments and suggestions on the suitability of this river and the scope of this analysis. In addition, the Agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Preliminary comments concerning the suitability of this river should be received by September 6, 1988, in order to assure timely consideration.

**ADDRESS:** Submit written comments and suggestions concerning the suitability of the Sopchoppy River to Robert T. Jacobs, Forest Supervisor, National Forests in Florida, 227 N. Bronough St., Tallahassee, Florida 32301.

**FOR FURTHER INFORMATION CONTACT:** Please direct questions about the

proposed action and environmental impact statement to Terry O. Tenold, Landscape Architect, National Forests in Florida, 227 N. Bronough St., Tallahassee, Florida 32301, telephone (904) 681–7337.

**SUPPLEMENTARY INFORMATION:** The National Forests in Florida Land and Resource Management Plan and final EIS, completed in 1986, documented the eligibility of the Sopchoppy River, which was initially identified in the 1982 Nationwide Rivers Inventory, and recommended that the suitability study be conducted later. The planned EIS is in response to this direction.

The suitability study and EIS will consider the Sopchoppy River in its entirety, from its headwaters (including both East and West Branches) to its mouth at Ochlockonee Bay, for a total of 47.6 miles. The area of consideration for the study is a minimum of ¼ mile from each stream bank for the entire length of the river corridor, whether within or outside the Apalachicola National Forest boundary.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for the river corridor. One of these alternatives will be no action, maintaining current management with no specific protection for potential wild and scenic corridors. Other alternatives will consider recommending national designation or nondesignation of all or portions of eligible segments, protection of eligible segments by means other than national designation, and different wild and scenic river classifications for eligible segments.

Richard E. Lyng, Secretary of Agriculture, Washington, DC, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). Initial scoping will be conducted early in the study, beginning in July 1988. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input, which will be used in preparation of the draft environmental impact statement, will be sought through a letter addressed to all known interested and/or affected parties, and through a media release to all newspapers and radio stations serving the area under study. This solicitation will be issued by August 1 and will request replies be returned to the Forest Service by September 1, 1988. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

A public open house will be scheduled for late-October to describe the Wild and Scenic Rivers program and answer questions. This meeting will be announced by letter to all known interested individuals, groups, and agencies and by extensive media release. The Fish and Wildlife Service, Department of the Interior, will participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the river corridor. The Department of Natural Resources, State of Florida, will participate as a cooperating agency to evaluate potential impacts on state lands included in the study area.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1989. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period for this draft EIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important and necessary that those interested in the suitability of this river for inclusion in the National Wild and Scenic River System participate at this time. To be most meaningful and useful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement and the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation on the environmental review of the proposal so that it is meaningful and alerts an agency to the review's position and contentions, *Vermont Yankee Nuclear Power Corp. vs. NRDC*, 435 U.S. 519 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS, scheduled to be completed by June 1989. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The Secretary will consider the comments and responses, the environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of the Sopchoppy River for inclusion in the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Date: July 26, 1988.

**George M. Leonard,**

*Associate Chief.*

[FR Doc. 88–17503 Filed 8–3–88; 8:45 am]

BILLING CODE 3410–11–M

## Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail (PCNST) Advisory Council will meet on September 16, 1987 in San Diego, California. The meeting will begin at 8:00 a.m. at the Seapoint Hotel, 4875 North Harbor Drive.

The Council provides recommendations for the Secretary of Agriculture on policy, programs, and procedures affecting the PCNST. The meeting will include a review of trail completion status, committee efforts, and other related matters about the trail. The meeting will be open to the public.

On September 17, the council will join the Cleveland National Forest and Desert Conservation District, Bureau of Land Management, in co-hosting the dedication of the California/Mexico border monument near Camp, CA as part of the PCNST 20th anniversary celebration.

Persons who wish additional information about the meeting or dedication should contact Dick Benjamin, Assistant Regional Forester, RW&CR, Pacific Southwest Region, Forest Service, 630 Sansome Street, San

Francisco, CA 94111, Phone (415) 556–6986.

Dated: July 6, 1988.

**Richard O. Benjamin,**

*Assistant Regional Forester for Recreation, Wilderness and Cultural Resources.*

[FR Doc. 88–17509 Filed 8–3–88; 8:45 am]

BILLING CODE 3410–11–M

## ARCTIC RESEARCH COMMISSION

### Meeting of Commission

Notice is hereby given that the Arctic Research Commission will meet in Alaska, September 1–2, 1988.

Public meetings are scheduled for the Commission on September 1, from 9:00 AM to 4:00 PM in the Wilda Marston Auditorium, Loussac Library, Anchorage, Alaska.

Matters to be considered at this meeting include:

1. Opening remarks by Chairman Juan G. Roederer,
2. Approval of minutes of May 2, 1988,
3. Status of Commission initiatives,
4. Public comment on Arctic Research Policy, and
5. Schedule for revision of Five Year Arctic Research Plan.

The Commission will meet in Executive Session on August 31 starting at 7:30 p.m., on September 1 starting at 7:30 p.m., and on September 2, starting at 9:00 a.m., at the Golden Lion Hotel in Anchorage.

Matters to be discussed in Executive session include:

1. Commission budget for FY 88, FY 89, and FY 90;
2. Membership of the Commission;
3. Nominations for Group of Advisors;
4. Conflict of interest forms and related legal concerns; and
5. Future activities of the Commission.

In addition to the Commission Public Meetings and Executive Sessions, the Commission will also conduct a site visit to Dutch Harbor. On August 29, the Commission will visit commercial fishing facilities on the island of Unalaska. On August 30, the Commission will conduct a public hearing at the Unalaska School from 9:00 a.m. to 4:00 p.m. On August 31, the Commission will visit other facilities and institutions on Unalaska before departing for Anchorage.

Contact person for more information: Lyle Perrigo, Staff Officer, Arctic Research Commission, (907) 257–2738.

**Philip L. Johnson**

*Executive Director, Arctic Research Commission.*

[FR Doc. 88–17560 Filed 8–3–88; 8:45 am]

BILLING CODE 7555–01–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

**[Docket Nos. 4654–01, 4654–02, 4654–03, 4654–04, 4654–05, 4654–06, 4654–07, and 4654–08]**

### Actions Affecting Export Privileges; Chipex, Inc. et al.

In the Matter Of: Chipex, Inc, Docket No. 4654–01; Hua Ko Electronics, Co., Docket No. 4654–02; Yu Chueng Lee, Docket No. 4654–03; Ying Min Li, Docket No. 4654–04; Yi Chung Nung, Docket No. 4654–05; Ji Wai Sun, Docket No. 4654–06; Elmer Yuen, Docket No. 4654–07; and Robert Yuen, Docket No. 4654–08; Respondents.

Pursuant to the June 30, 1988 Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed in principal part by me, the following Respondents:

Chipex, Inc., 2144 Bering Drive, San Jose, CA 94131;

Hua Ko Electronic, Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Yu Chueng Lee, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T.;

Ying Min Li, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Yi Chung Nung, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Ji Wai Sun, a/k/a Ji Wei Sun, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong;

Elmer Yuen, c/o Tele-Art, Ltd. with locations at both, Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong;

Robert Yuen, c/o Tele-Art, Ltd. with locations at both, Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong.

are denied for a period of ten (10) years, from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368–369).

Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that the individual Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding.

### Comment

From the record it is clear that the Respondents had set out upon a clear course to transfer both controlled commodities and technical data associated with semiconductor manufacturing without having first obtained the requisite export license to do so. Semiconductor manufacturing technology is well recognized in the world as especially strategic technology, and is, therefore, closely controlled. It is inappropriate and cavalier action on the part of the ALJ (Dolan) to characterize a case involving such sensitive technology, applicable to any number of strategic products, as "the 'great Chinese digital watch movement caper'." Such a characterization shows a lack of appreciation on the part of the ALJ of the thrust of the controls involved.

In addition to the above, the ALJ's *obiter dictum* that Agency Counsel had failed to set forth allegations in the charging letters in an appropriate and legally sufficient manner is both gratuitous and directly contrary to the record. The charging letters were subject to Motions to Dismiss for, *inter alia*, failure to state claims of action upon which relief could be granted and for more definite statements of charges. After consideration, the ALJ (Hoya), by Order dated April 23, 1988, denied both motions, finding that "the Department's charging letter does * * * comply with the Regulations * * *." In the face of such finding, the ALJ's "Comment" in the pending recommended Decision and Order is completely inappropriate.

### Order

On June 30, 1988, the Administrative Law Judge entered his recommended Decision and Order in the above-referenced matter, that Decision and Order, a copy of which is attached hereto and made a part thereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge subject only to the comments set out above.

This constitutes the final administrative action in this case.

Dated: July 29, 1988

**Paul Freedenberg,**

*Under Secretary for Export Administration.*

**Decision and Order**

Appearance for Respondents: On behalf of Chipex, Inc., Hua Ko Electronics, Co., Yu Chueng Lee, Ying Min Li, Yi Chung Nung, Ji Wai Sun;

Eric L. Hirschhorn, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth St., NW., Washington, DC 20036

On behalf of Elmer and Robert Yuen: Nicholas F. Coward, Esq., Baker & McKenzie, 815 Connecticut Ave., NW., Washington, DC 20006–4078.

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Attorney-Advisor, U.S. Department of Commerce, Room H3845, Washington, DC 20230.

*Preliminary Statement*

By separate Charging Letters, the then Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce [1] (Agency), initiated administrative proceedings against Chipex Inc., Hua Ko Electronic Company Inc., Ying Min Li, Yi Chung Nung, and Yo Chueng Lee. Three other Respondents were subsequently named, Ji Wai Sun on July 31, 1984, and Robert and Elmer Yuen, on February 8, 1985, (hereinafter they are collectively referred to as Respondents). These charges were made pursuant to the authority of the Export Administration Act, (50 U.S.C. App. 2402 *et sec.*, (1982)), and the Export Adminstration Regulations (15 CFR Parts 368 *et seq.*, (1982)). A hearing was afforded to the parties, however, Counsel for Chipex, Inc., *et al.* chose not to appear and participate, though a representative did observe the proceedings. Counsel for the Yuens offered twelve exhibits which were admitted. Agency Counsel submitted a "paper" chase consisting of 101 exhibits, as is usually done in cases of default and adjudication upon written submissions, which was the appropriate course after Respondents withdrew their requests for a hearing on the record.

The charging letters allege that the Respondents conspired and acted in concert to export to the People's Republic of China (PRC) U.S.-origin commodities and technology, relating to semiconductor manufacturing, without the required export licenses. Further, it was alleged that all Respondents acted with knowledge that export control violations had occurred, or were intended to occur, and with misrepresenting or concealing material facts from Commerce and other agencies of the United States government. Respondents were also charged with exporting and attempting to export U.S.-origin commodities and technical data to the PRC without the required export licenses. It is appropriate to note that the technology involved is that relating to the manufacture of electronic watches.

*Background*

While the origins of the associations and agreements which lead to the charges here are somewhat obscure, the representations indicate that as early as 1979, Tele-Art Ltd., a Hong Kong manufacturer of electronic watches, had acquired a production site in the Taipo industrial estate in Hong Kong to manufacture integrated electronic micro circuits on silicon wafer chips for use in the production of electronic watches. In a distribution agreement executed in August 1979 between a major American manufacturer of semi-conductor manufacturing equipment and technology and an international distributor, the company, Tele-Art Ltd., was listed as a customer. In 1980, apparently before production commenced, in what is described as a joint venture with Hua Ko Electronic Company Ltd., purchase orders for various pieces of equipment were placed on behalf of Tele-Art with the American electronic equipment manufacturing company. It appears that the required export license inquiries and procedures were initiated by the distribution agent and the American manufacturer. Thereafter, initial exports of Ion implanters, photomask aligners, and a wafer track processing system were made to Hong Kong against license number A519519, which was issued in or about November 1980 under the sponsorship of Tele-Art Inc. From the correspondence and the fact that an export license to Hong Kong was required, it was clear and acknowledged that reexport to the PRC was not authorized. When the American manufacturer/supplier of the equipment became aware that the Hua Ko company was in receipt of and dealing with the equipment in Hong Kong, and that it was, in part, owned by the PRC, the supplier stopped exports under that license. Thereafter, in May 1981, representatives of the joint venture applied for a license to export technical information on semiconductor equipment (ion implanters and photo mask aligners). That application was returned with a request for specific information about plant activities and personnel. Such information was not provided, nor the applications resubmitted.

During the same time period Hua Ko was also developing a domestic manufacturing facility at San Jose, California. During 1980, that facility had been established as the Hua Ko Electronic Company, USA division. In August 1981, the name was changed and it was apparently reincorporated as Chipex, Inc.. In any case, it continued as a subsidiary of Hua Ko. It continued to operate until the facility ceased operation in July 1982.

*Respondents*

*Chipex Inc. (Chipex),* located in San Jose, California, was formed in August 1981, as a wholly-owned subsidiary of Hua Ko Electronic Company, Ltd. For the previous twelve month period, it had operated in san Jose as Hua Ko Electronic Company, U.S.A. Division. Hua Ko/Chipex provided training ror Hua Ko employees from Hong Kong and the PRC.

*Hua Ko Electronic Company, Ltd. (Hua Ko),* located in Hong Kong, was formed in August 1980, as a joint venture between Tele-Art, a Hong Kong-based manufacturer of electronic watches, and Hua Yaun, a Hong Kong company engaged in export/import trade that was owned and controlled by the PRC's Third Directorate (Light Industrial Import/Export Company).

*Yu Chueng Lee (Lee),* a Hua Ko manager and Chipex Vice President, had overall responsibility for the day to day operations at Chipex in San Jose and for coordination with Hua Ko and various PRC organizations.

*Ying Min Li (Li),* Chairman of the Hua Ko board of directors, was also on the board of directors of Hua Yuan, one of the joint venture partners that formed Hua Ko.

*Yi Chuno Nung (Nung),* served as a director on the Hua Ko and the Hua Yuan boards. Nung was also at one time chief of the Third Business Department of Hua Yuan. Additionally, Nung was the Vice President of Hua Ko and President of Chipex, though he generally remained in Hong Kong.

*Ji Wai Sun (Sun),* he had been a senior engineer with China Great Wall Industry Corporation, part of the PRC's Seventh Directorate (represented as

[1] Pursuant to the provisions of section 15 of the Export Administration Amendments Act of 1985 as amended (15 U.S.C. App. 2414), the position of Under Secretary for Export Administration was established effective October 1, 1987. Proceedings are now initiated on behalf of the Bureau of Export Administration within the Department of Commerce. The one year period for the processing of these cases fixed by those amendments appears to apply to these pre-1985 cases as well. The complexity of this record and the volume of other cases in combination constitutes good cause for the delay involved here.

being similar to the United States government's National Aeronautics and Space Administration). He traveled from Beijing, PRC, to San Jose, in early 1981, where he served as Chipex's senior engineer for seventeen months, responsible for technological developments. In July 1982, Sun left the United States for the PRC via Hong Kong. Thereafter, Sun served as Executive Vice President of Hua Ko.

*Elmer Yuen*, he was a *Hua Ko* board member and also served on the board of directors of Tele-Art, the other company that formed *Hua Ko* as a joint venture. He was the Managing Director of *Tele-Art*, and also the President of *Hua Ko*. *Elmer Yuen* was also President of Tele-Art's subsidiary, *Tele-Precision Electronics*, located in Canton, PRC, and a director of Tele-Art's New York subsidiary, *Tele-Art Watch Company, Ltd.*

*Robert Yuen*, father of Elmer Yuen, also served as a director on the Hua Ko and Tele-Art boards. He was also Vice Chairman of the Hua Ko board of directors.

*Findings*

1. Hua Ko Electronic Company, Ltd. (Hua Ko) of Hong Kong was a joint business venture of Tele-Art, Ltd. (Tele-Art) and Hua Yuan, Ltd. (Hua Yuan), a Hong Kong-based company controlled and financed by the People's Republic of China (PRC). During the period June 1979 to December 1982, Hua Yuan had direct managerial and financial ties to the PRC.

2. In 1980, Ji Wai Sun, then employed by the China Great Wall Industrial Corporation, Beijing, PRC, was hired by Hua Ko to obtain U.S.-origin commodities and technical data relating to the production, manufacture and construction of complementary metal-oxide-semiconductor (C–MOS) integrated circuit (IC) devices.

3. Hua Ko established an IC manufacturing facility in the United States, which was initially named Hua Ko Electronic Co., Ltd., U.S. Division, and subsequently incorporated in California as a subsidiary named Chipex, Inc. (Chipex) in August 1981.

4. In August 1980, the PRC Ministry of Light Industry, through the Hong Kong-based Hua Yuan, formed a joint venture with Tele-Art to develop and produce integrated circuits (IC) devices in Hong Kong.

5. Hua Yuan contributed $12,000,000 (U.S.) initial working capital to the Hua Ko venture in August 1980 while Tele-Art contributed marketing and technical expertise, as well as the factory that was then under construction at the Tai Po Industrial Estate in Hong Kong.

6. During the period January 1980 to July 1982, Tele-Art was sole owner of a subsidiary, Tele-Precision Electronics, in Canton, PRC.

7. Beginning in August 1980, Hua Ko attempted to establish a duplicate of its Hong Kong-based IC manufacturing facility in Canton, PRC.

8. Nung was actively involved in the construction of the Canton, PRC project between August 1980 and November 1981. His participation and actions were taken with the knowledge of Lee and Li.

9. In or about August 1980, Nung set up a wafer fabrication facility in San Jose, California, to use U.S.-origin IC manufacturing and testing equipment, and to train Hong Kong and PRC engineers in IC methodology. These actions were taken with the knowledge of Lee and Li.

10. Hua Ko established Chipex in San Jose, California, to train Hong Kong and PRC nationals in IC methodology and to purchase U.S.-origin IC manufacturing and testing equipment.

11. Between August 1980 and November 1981, Robert and Elmer Yuen were Directors of Tele-Art, Ltd., and helped form, manage and direct Hua Ko and Chipex.

12. Beginning approximately in August 1980, and continuing through 1981, Nung made representations to the American Consulate in Hong Kong in support of visa applications for three Hua Ko engineers and a technician to travel from Hong Kong to Chipex in San Jose, California. These actions were taken with the knowledge of Lee and Li.

13. On or about October 14, 1980, Hua Ko, through its director, Yi Chung Nung, provided Peter Stauffer, a U.S. consultant to Hua Ko, with a letter of assurance stating that the technical knowledge Mr. Stauffer provided to Hua Ko would not be transmitted to the PRC.

14. In December 1980, Hua Ko, by Nung, made the necessary visa arrangements through the American Embassy in Beijing for three PRC engineers from the China Great Wall Corporation to travel from Beijing to Tele-Art Watch Company, Ltd., in New York City, New York. These actions were taken with the knowledge of Lee and Li.

15. In December 1980, Sun, Yu Shan Liu, and Jing Quing Zhu, all of whom were employed by the China Great Wall Industry Corporation as engineers, applied to the American Embassy in Beijing for business visas to travel to Tele-Art Watch Company, Ltd., in New York City in January 1981 for a stay of six months.

16. The purported purpose of the trip was to make a technical inspection and have trade negotiations at the invitation of Elmer Yuen, Director, Tele-Art Watch Company, Ltd.

17. In December 1980, Hua Ko and/or Chipex officials, including Nung, Lee, Li, Robert Yuen, and Elmer Yuen, knew that three PRC engineers were to travel directly from Beijing to Hua Ko Electronic Company, Ltd., U.S. Division (Chipex) in San Jose, California, for training relating to the production, manufacture and construction of U.S.-origin complementary metal-oxide-semiconductor (C–MOS) IC devices.

18. In January 1981, Hua Ko made arrangements for the three PRC engineers to travel directly from Beijing, PRC to Chipex in San Jose, California.

19. In January 1981, Sun, Liu, and Zhu traveled from Beijing, PRC, to Hua Ko Electronic Company, Ltd., U.S. Division in San Jose, California, for training in C–MOS IC methodology.

20. In January 1981, Hua Ko placed Ji Wei Sun, a PRC national and an engineer from the China Great Wall Corporation, in charge of engineering projects at Hua Ko Electronic Company, Ltd., U.S. Division (Chipex) in San Jose, California.

21. Between January 1981 and July 1982, Sun, in his capacity as the project manager at Chipex, acted with others to set up an IC foundry facility in the United States.

22. Between January 1981 and July 1982, Sun, in his capacity as the project manager at Chipex of San Jose, California, acted with others to set up an IC foundry facility in the United States.

23. Between January 1981 and July 1982, Sun, in his capacity as the project manager at Chipex, acted with others to obtain U.S.-origin IC manufacturing and testing equipment and related technical data, such as C–MOS and N–MOS IC methodology, and to acquire, an unauthorized duplicate of a photomask set ("Gate Array" device) for the PRC.

24. Between January 1981 and July 1982, Hua Ko procured U.S.-origin IC manufacturing/testing equipment and IC technical data through its Chipex facility at San Jose.

25. Between January 1981 and July 1982, Hua Ko used its San Jose facility to train PRC engineers from the China Great Wall Corporation in IC methodology.

26. In February 1981, Hua Ko sent a letter to the American Consulate General in Hong Kong in support of visa applications enabling four engineers to travel to Hua Ko's "branch" facility (Chipex) in San Jose, California, to receive training in IC production processes and the maintenance and operation of U.S.-origin IC

manufacturing and testing equipment. This action was taken with the knowledge of Lee, Li and Nung.

27. In its February 1981 letter to the American Consulate General in Hong Kong in support of the visa applications, Hua Ko implied that the four engineers were Hong Kong citizens.

28. On or about March 30, 1981, Hua Ko provided Kasper Instruments/Eaton Corporation (Kasper Eaton) with a letter of assurance stating that no U.S.-origin technology, direct product or equipment purchased from Kasper Eaton would be transferred to the PRC and that training on and/or observation of the use of that equipment by foreign nationals was strictly prohibited without authorization from the United States Department of Commerce.

29. Hua Ko arranged, through the American Embassy in Beijing, for two PRC engineers and one PRC manager from the Beijing Quianmen Semiconductor Device Plant to travel purportedly from Beijing to the Tele-Art Watch Company, Ltd., in New York City, New York.

30. In May 1981, Xian Zhou Liu, Guozhong Xiao and Hua Sheng You, all of whom were employed by the Beijing Quanmen Semiconductor Device Plant, applied to the American Embassy in Beijing for business visas to travel to Tele-Art Watch Company, Ltd., in New York City for a stay of three months. The purported purpose for Liu's, Xiao's, and You's travel was to study electronic techniques at the invitation of Tele-Art Watch Company, Ltd.

31. In May 1981, Liu, Xiao and You traveled from Beijing, PRC, to Hua Ko Electronic Company, Ltd. (Chipex), U.S. Division in San Jose, California.

32. In May 1981, Hua Ko knew that two PRC engineers and one PRC manager from the Beijing Qianmen Semiconductor Device Plant were to travel from Beijing to Chipex in San Jose, California, to become familiar with U.S.-origin IC manufacturing and testing equipment and to receive training in U.S.-origin technical data relating to the production, manufacture and construction of complimentary metal-oxide-semiconductor (C–MOS) IC devices.

33. In May 1981, Hua Ko placed Xian Zhou Liu, managing director from the Beijing Qianmen Semiconductor Device Plant, in charge of the Hua Ko Electronic Company, Ltd., U.S. Division (Chipex), facilities in San Jose, California, as plant Vice Manager.

34. In August 1981, Yi Chung Nung (Nung) was the Chief of the Third Business Department of Hua Yuan.

35. In August 1981, Nung was Vice President of Hua Ko and President of Chipex.

36. In August 1981, Elmer Yuen was President of Hua Ko.

37. In August 1981, Yu Chueng Lee was a Project Manager of Hua Ko and Secretary of Chipex.

38. In August 1981, Ying Min Li (Li) was a partner in Hua Yuan.

39. In August 1981, Li was a Director of Hua Ko.

40. On October 29, 1981, the revised applications for photomask aligners and ion implanters were rejected for National Security reasons including the risk of illegal diversion.

41. In December 1981, Nung made the visa arrangements through the American Embassy in Beijing for four PRC technicians from the Xian Yen He Radio Factory to travel from Beijing to Chipex in San Jose, California. These actions were taken with the knowledge of Lee and Li.

42. In December 1981, Shizhong Xue, Xiuzhen Zhang, Zhilan Li and Nanyu Lu, employed by the Xian Yen He Radio Factory as technicians, applied to the American Embassy in Beijing for business visas to travel to Chipex, Inc., in San Jose, California, in December 1981 for a stay of six months.

43. In December 1981, Xue, Zhang, Li and Lu, travelled from Beijing, PRC, to Chipex in San Jose, California.

44. In December 1981, Hua Ko provided the American Manufacturer with a letter of assurance that no equipment or technology directly related to the use of the equipment procured by Hua Ko would be transferred to the PRC, and that training on, or observation of, that equipment by the PRC must be authorized by the United States Department of Commerce.

45. In December 1981, there were a manager, five engineers and four technicians of PRC citizenship working and training at Chipex in San Jose, California.

46. In 1982, Hua Ko, through its affiliate Chipex of San Jose, California, obtained and duplicated an LSI Computer, Inc., 3801 photomask set containing N–MOS silicon gate technology and transported it from the United States to Hua Ko in Hong Kong. These actions were taken by, or with the knowledge of, Nung, Lee and Li.

47. In 1982, Hua Ko, through its affiliate Chipex of San Jose, California, obtained and duplicated California Devices, Inc., 3000/4000 and HC 5400 photomask sets containing C–MOS silicon gate technology and transported them from the United States to Hua Ko in Hong Kong. These actions were taken by or with the knowledge of Nung, Lee and Li.

48. Between January 1982 and July 1982, Nung and Lee acquired gate array technology contained in the CDI 3000/4000 and HC 5400 IC photomask sets.

49. Between January 1982 and July 1982, PRC engineers and technicians had access to and used the LSI and the CDI photomask sets and related technology to produce C–MOS and N–MOS IC devices at Chipex in San Jose, California.

50. Between January 1982 and March 1982, Hua Ko, through its affiliate Chipex, transported from the United States, seventy five U.S.-origin (four-inch) silicon wafers with IC devices (dies) to Hua Ko in Hong Kong. These actions were taken with the knowledge of Lee, Li and Nung.

51. On or about May 1, 1982, Hua Ko, through its affiliate Chipex of San Jose, California, attempted to export seventy five U.S.-origin (four-inch) silicon wafers with IC devices (dies) from the United States to Hua Ko in Hong Kong. These actions were taken with the knowledge of Lee, Li and Nung.

52. In July 1982, Ji Wei Sun went to Hong Kong to become the Vice President of Engineering at Hua Ko in Hong Kong.

53. Since July 1982, Sun has had access to U.S.-origin IC manufacturing and testing equipment and technical data at the Hua Ko facility in Hong Kong.

54. Since July 1982, Ji Wei Sun, in his capacity as Vice President of Engineering, has been training PRC and Hong Kong engineers/technicians at Hua Ko in Hong Kong.

In his post-hearing brief, Agency counsel sets forth the details of the many transactions. Those proposed findings with modifications are adopted and appended as schedule II.

**Summary**

Though the record in these proceedings is massive, even as export enforcement proceedings go, many relevant details of what transpired among the named parties and others, particularly in the Peoples Republic of China and Hong Kong, are fragmentary. That is not untypical of such proceedings where the details of activities in other, particularly eastern bloc, countries are frequently not available. From what has been disclosed and the inferences drawn from the evidence presented, I conclude that in and before 1979, Elmer Yuen and his father Robert Yuen were principals of Tele-Art Ltd., a watch manufacturer in Hong Kong, with a subsidiary Tele-Art

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Watch Company in New York. In that time period the Yuens had set up some watch making facility in Canton China, under the name of Tele Precision Electronics. The company had also acquired a site at the Tai Po industrial estate in Hong Kong. The activities of the Yuens and their company Tele-Art in the 1979–1980 period, indicate that they were involved in a substantial expansion both in product lines and facilities. The orders placed in the United States by Elmer Yuen on behalf of Tele-Art in July 1980, for wafer processing systems, wafer aligners and ion implanters for export to Hong Kong reflect the intention to engage in integrated circuit design, testing and production applicable to the manufacturer of digital watches. The usual statement of ultimate consignee and purchaser was executed by Elmer Yuen as a part of the export license application which was granted in November 1980. In August 1980, Tele-Art had entered into a joint business venture with Hua Yuan, Ltd., a company owned by the Peoples Republic of China. That association was, what I conclude to have been, a successful venture on the part of organizations and persons sponsored by the Peoples Republic of China to obtain equipment, technology and data from the United States without the required export licenses. The findings of fact detail the activities of the Chipex Respondents and the Yuens which admit of no conclusion other than that the officers and representatives of Hua Yuan, Inc., by conduct in Hong Kong and in San Jose, California, continuously acted to obtain a commodities and technical data from the United States, which would have been denied to them had their associations and intentions to export to the Peoples Republic of China been made known. The more than one hundred exhibits, received with the presentations, clearly show that the Chipex operation was conducted with a disregard for the export laws and regulations, in that, despite clear acknowledgement of export restrictions on technology and equipment, nationals of the Peoples Republic of China were brought to that facility, remained for extended periods of time and they, as well as the management of Chipex, exported technology in the form of technical data and equipment, without licenses or other authorization.

The Yuens representations that they terminated their relationship with Hua Ko by resignation (November 21, 1981) and that they were not knowing parties to any exports of commodities or technical data to the Peoples Republic of China, even if true, which I do not accept, do not relieve them of the responsibility that they must bear for the total diversions which occurred here. As legitimate businessmen in Hong Kong, they were licensed to receive commodities and related training which included licensable technical data. By not disclosing their association with Hua Yuan and it's ownership they became part of a web of deception which allowed ineligible individuals and companies to function under their aegis. All the acts involved were knowingly done. If the realization of the total possible consequences was not in their minds, that is no excuse, for by assisting in establishing the Hua Ko enterprises in Hong Kong and San Jose, California, they helped set up the mechanisms for diversion. That they, or either of them, did not perform each and every act up to the diversion does not alleviate personal responsibility. The pattern of conduct throughout the entire period was consistent with an extension of the Hua Ko/Tele-Art ventures. Having set it in motion, they, along with the other actors, are responsible for the initial and subsequent actions taken in furtherance of the scheme which they had not repudiated or even disclosed to the responsible licensing authorities. As I have previously observed, conspiracy is inherently secretive by nature, and is often proved only by circumstantial evidence. "Inferential proof may be controlling where the offense charged is so inherently secretive in nature as to permit the marshalling of only circumstantial evidence." *United States* v. *Pelfrey*, 822 F.2d 628, 632 (6th Cir. 1987). As another Circuit Court has stated:

> For it is most often true, especially in broad schemes calling of the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence, the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others.

*United States* v. *Donsky*, 825 F.2d 746, 753 (3d Cir. 1987), citing *Blumenthal* v. *United States*, 332 U.S. 539, 556–7 (1947). It is also well-settled that each conspirator does not have to know all of the details of the conspiracy or participate in every phase of the scheme. *See, e.g., United States* v. *Carter*, 760 F.2d 1568 (11th Cir. 1985).

Transactions involving arrangements to assist foreign enterprises, activities/or employees assist in the acquisition or use of technology and more precisely the transfer and export technical data in the course of such transactions constitutes communication made in the course of a conspiracy. *United States* v. *Elder Industries, Inc.* 579 F.2d 516 (9th Cir. 1978).

The assertions of inadequacy relating to technical data violations are deficient. The commodities involved to which the technical data relates, were controlled. Training nationals from the Peoples Republic of China in the myriad details and operations of such equipment without full disclosure and licenses clearly constituted violations. It is concluded from the facts and inferences that technical data requiring licenses was conveyed to PRC nationals in the employ of Chipex; that the activity at Hua Kuo/Chipex was aimed at gathering such data for export to the parent affiliates in Hong Kong and the Peoples Republic of China; that all of the Respondents cooperated in exporting such data and that during and at the end of the Chipex operation the data and commodities was exported to ineligible recipients in Hong Kong and Peoples Republic of China without benefit of export license.

Counsel for Respondents argues that the evidence does not establish knowing and intentional acts which constitute the violations charged. The thrust of their contentions appears to impose some requirement for a "mens rea" type state of mind. That is not the standard that is to be applied here. The "knowing or should have known" language in the Regulations relates to knowledge of the facts, not of the law. The type of verbiage used here is construed in the same manner as in *United States v. International Minerals and Chemical Corp.* 402 *U.S.* 588 (1971) and *United States v. Jonas Bros of Seattle Inc.* 368 F. Supp. 783 (D. Alaska 1974) where it was reiterated that an "ignorance of the law is no excuse." Each and every one of these Respondents should have known of the requirements of this regulated activity in which they were engaged.

The argument that others may have been equally responsible, who also had an obligation to disclose and who perhaps had a better understanding of the technical requirements, is no defense. All of the parties involved in export transactions are responsible for compliance with the law. The distributor and other representatives who, it is now suggested, were derelect, have not had

the opportunity to explain their actions. Whether the Agency has initiated a proceeding against these others, or even found a basis to do so, is not before me for consideration. It is obvious that the American manufacturer did "blow the whistle" on what appeared to be an unauthorized export, that there was no prompt follow-up is most unfortunate, but that is not an excuse or justification. As mentioned above, the actions and representations of the various Respondents were fraught with deception. That others, whom they would now accuse, did not recognize falsity, is more than a distinct possibility.

While much is made by Agency Counsel of the sponsorship by Tele-Art Inc., of NY, of the visit by three engineers who went directly to the Chipex, California facility and did not visit the New York office of the sponsor, I conclude that the emphasis is, at least, exaggerated. There were a number of other visits by PRC nationals to the Chipex facility with extended stays. The conclusion which I draw is that national security in this open society just wasn't very well preserved here. The inadequacies appear to exist from the embassy level., where the visas were issued, to the individual firms in the United States where they apparently had access to highly technical proprietary machinery, products and information. Their alleged successful efforts to borrow and copy proprietary systems certainly did not endear them to those high-tech vendors. However, what was done at the San Jose facility of Hua Ko/Chipex was rather open and known to United States authorities. The actions constituted the "great Chinese digital watch movement caper" which didn't even rate as a sting operation.

*Conclusion*

Based upon the foregoing findings, I conclude that with respect to Hua Ko Electronic Co., Ltd and Chipex, Inc.:

Between August 9, 1980 and July 1, 1982, with respect to Hua Ko, and between August 25, 1981 and July 1, 1982 with respect to Chipex Inc., in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Hua Ko caused, aided and abetted the export and Chipex, for its part, exported U.S.-origin technical data relating to the production, manufacture and construction of complementary metal-oxide-semiconductor (C–MOS) integrated circuit (IC) devices from the United States to the People's Republic of China (PRC), knowing that the validated export licenses required by §§ 372.1(b), 379.2 and 379.5 of the Regulations had not been obtained. In so doing, Hua Ko violated §§ 387.2 and 387.4 and Chipex violated §§ 387.4 and 387.6 of the Regulations.

Hua Ko set up an IC "foundry" facility in the U.S., initially named Hua Ko Electronic Co., Ltd., U.S. Division, and in August 1981 incorporated it as Chipex, Inc. (Chipex). Chipex was established as a subsidiary of Hua Ko to provide PRC engineers and technicians "hands on" experience with, and access to technical data concerning, high technolcgy equipment within the United States. The release of such technical data to foreign nationals in the United States constituted an export under § 379.1 of the Regulations and required a validated export license for export to the PRC under §§ 379.2 and 379.5 of the Regulations.

Between January 1981 and July 1982, with respect to Huo Ko, and from August 1981 to July 1982, with respect to Chipex, in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Hua Ko and Chipex caused, aided, and abetted the placement within Chipex of five engineers, four technicians, and one administrator, all from the PRC, for training in C–MOS IC methodology and acquiring photomasks and related C–MOS IC devices, without obtaining the validated export license required by §§ 379.2 and 379.5 of the Regulations. In so doing, Hua Ko violated § 387.2 and Chipex violated § 387.6 of the Regulations.

Between August 1980 and December 1981, with respect to Hua Ko, and between October 1981 and December 1981 with respect to Chipex, in connection with each of the transactions listed as items No. 10 through No. 13 on schedule I, Hua Ko and Chipex misrepresented and concealed from U.S. government agencies the fact that PRC personnel under the sponsorship of Hua Ko would have access through the Chipex facility to the U.S.-origin commodities and technical data described in the attached schedule. In so doing, Hua Ko and Chipex each violated § 387.5 of the Regulations. Between January 1982 and March 1982, in connection with each of the transactions listed as items No. 6 and No. 8.on schedule I, Hua Ko caused, aided and abetted to Hong Kong a photomask set and approximately seventy five U.S.-origin four-inch silicon wafers containing C–MOS IC devices, knowing that the validated export license required by § 372.1(b) of the Regulations had not been obtained. In May 1982, in connection with the transaction listed as item No. 9 on the schedule I, Hua Ko and Chipex caused, aided, abetted and attempted to export to Hong Kong an additional seventy five such silicon wafers, knowing that the validated export license required by § 372.1(b) of the Regulations had not been obtained. In so doing, Hua Ko violated §§ 387.2 and 387.4 of the Regulations and Chipex violated § 387.4 and 387.6 of the Regulations.

2. With respect to Yu Chueng Lee, Ying Min Li, Yi Chung Nung, and Ji Wai Sun:

On or about November 1, 1979 and continuing through July 1, 1982, in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Respondents Yo Chung Lee (Lee), Ying Min Li (Li), Yi Chung Nung (Nung) and Ji Wai Sun (Sun) conspired and acted in concert with Elmer Yuen, a director of both Hua Ko Electronic Co. and Tele-Art, Ltd., and others to export, and did in fact export, U.S.-origin technical data relating to the production, manufacture and construction of complementary metal-oxide-semiconductor (C–MOS) integrated circuit (IC) devices from the United States to the People's Republic of China (PRC), knowing that the validated export licenses required by §§ 372.1(b), 379.2 and 379.5 of the Regulations had not been obtained. In so doing, Respondents violated §§ 387.3, 387.4 and 387.6 of the Regulations.

To implement the conspiracy and to facilitate the unlawful export of not only technical data relating to C–MOS IC devices but also the actual devices themselves, Respondents Elmer Yuen and others formed the Hong Kong-based company, Hua Ko, on August 27, 1980, as a joint venture between Tele-Art, Ltd., a Hong Kong manufacturer of electronic watches, and Hua Yuan, Ltd., a Hong Kong-based import/export company controlled and financed by the PRC. Pursuing the conspiracy's purpose to obtain U.S.-origin commodities and technical data relating to the production, manufacture and construction of C–MOS ICs, Respondents acted with others to set up an IC "foundry" facility in the U.S., initially named Hua Ko Electronic Co., Ltd., U.S. Division, and in August 1983 incorporated as Chipex, Inc. (Chipex).

Chipex was established as a subsidiary of Hua Ko to provide PRC engineers and technicians "hands on" experience with, and access to technical data concerning, high technology equipment within the United States. The release of such technical data to foreign nationals in the United States constituted an export under § 379.1 of the Regulations and required a validated

export license for export to the PRC under §§ 379.2 and 379.5 of the Regulations.

In furtherance of their conspiracy, between January 1981 and July 1982, in connection with each of the commodities listed as items No. 1 through No. 9 on schedule I, Respondents Elmer Yuen and others placed within Chipex five engineers, four technicians, and one administrator, all from the PRC, for training in C–MOS IC methodology and acquiring photomasks and related C–MOS IC devices, without obtaining the validated export license required by §§ 379.2 and 379.5 of the Regulations.

Between August 1980 and December 1981, in connection with each of the transactions listed as items No. 10 through No. 13 on schedule I, Respondents individually and collectively misrepresented and concealed from U.S. government agencies the fact that PRC personnel under the sponsorship of Hua Ko would have access, through the Chipex facility to the U.S.-origin commodities and technical data described in the attached schedule. In so doing, Respondents violated § 387.5 of the Regulations.

Between January 1982 and March 1982, in connection with each of the transactions listed as items No. 6 and No. 8 on schedule I, Respondents exported to Hong Kong a photomask set and approximately seventy five U.S.-origin four-inch silicon wafers containing C–MOS IC devices, knowing that the validated export license required by § 372.1(b) of the Regulations had not been obtained. In May 1982, in connection with the transaction listed as item No. 9 on schedule I, Respondents attempted to export to Hong Kong an additional seventy five such silicon wafers, knowing that validated exported license required by § 372.1(b) of the Regulations had not been obtained. In so doing, Respondents violated §§ 387.3, 387.4 and 387.6 of the Regulations.

3. With respect to Robert Bu Yuen and Elmer Yuen:

From on or about November 1, 1979 and continuing through November 2, 1981, in connection with each of the commodities listed as items No. 1 through No. 5 on schedule I, Respondents conspired and acted in concert with each other, as directors of both Chipex, Inc. and Tele-Art, Ltd., and others to export, and did in fact export, U.S.-origin technical data relating to the production, manufacture and construction of complementary metaloxide-semiconductor (C–MOS) integrated circuit (IC) devices from the United States to the People's Republic of China (PRC), knowing that the validated export licenses required by §§ 372.1(b), 379.2 and 379.5 of the Regulations had not been obtained. In so doing, Yuen violated §§ 387.3, 387.4 and 387.6 of the Regulations.

To implement the conspiracy and to facilitate the unlawful export of, not only technical data relating to C–MOS IC devices, but also the actual devices themselves, Respondents and others formed the Hong Kong-based company, Hua Ko Electronic Company, Ltd., (Hua Ko), on August 27, 1980, as a joint venture between Tele-Art, Ltd., a Hong-Kong manufacturer of electronic watches, and Hua Yuan, Ltd., a Hong Kong-based import/export company controlled and financed by the PRC. Pursuing the conspiracy's purpose to obtain U.S.-origin commodities and technical data relating to the production, manufacture and construction of C–MOS ICs, Respondents acted with others to set up an IC "foundry" facility in the U.S., initially named Hua Ko Electronic Co., Ltd., U.S. Division, and in August 1983 incorporated as Chipex, Inc. (Chipex).

Chipex was established as a subsidiary of Hua Ko to provide PRC engineers and technicians "hands on" experience with, and access to technical data concerning, high technology equipment within the United States. The release of such technical data to foreign nationals in the United States constitutes an export under § 379.1 of the Regulations and requires a validated export license for export to the PRC under §§ 379.2 and 379.5 of the Regulations.

In furtherance of their conspiracy, between January 1981 and November 1981, in connection with each of the commodities listed as items No. 1 through No. 5 on schedule I, Respondents and others placed within Chipex five engineers and one administrator, all from the PRC, for training in C–MOS IC devices, without obtaining the validated export license required by §§ 379.2 and 379.5 of the Regulations.

Between August 1980 and November 1981, in connection with each of the transactions listed as items No. 6 through No. 8 on schedule I, Respondents misrepresented and concealed from U.S. government agencies the fact that PRC personnel under the sponsorship of Hua Ko would have access through the Chipex facility to the U.S.-origin commodities and technical data described in schedule I. In so doing, Respondents violated § 387.5 of the Regulations.

*Comment*

The defective manner of pleading and proof fails to state the essential facts and the applicable Regulations with respect to each of the many separate violations charged. Agency Counsel, who is also the scrivener of the Regulations, which he does not follow, tends to accumulate large collections of documents which succeed only in making for a "garbage can" record. Despite repeated admonitions, he and the scriveners of the charging letters refuse to set forth each violation in a separate, clear and concise fashion with citations to the applicable regulatory provision. Because of the failure to arrange the charging document, the effort at proof takes on a scattershot appearance which makes it impossible to arrange findings to each, as asserted, violation as is appropriate.[2]

The facts presented also appear to indicate that Chipex, Inc., of California, terminated operation in August 1982. The sanctions appear to amount to little more than kicking a dead horse. This entire proceeding is an exercise in overkill. No reason has been shown why the initial negotiated compromise with Chipex was not in the proper ball park. The unexplained massive increase in sanctions simply is not warranted.[3] It fortifies my impression that the Agency continues to withhold the required statement of penalties at the outset (including in pre-charging letters) so that it can chasten those who have the temerity to exercise their statutory right to an independent adjudication.

Any issue not specifically addressed has been resolved contrary to the interest of Respondents.

*Order*

I. For a period of 10 years from the date of the final Agency action, Respondents:

Chipex, Inc., 2144 Bering Drive, San Jose, CA 94131

Hua Ko Electronic, Co, Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong

Yu Chueng Lee, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong

Ying Min Li, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong

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[2] From and after July 1, 1988, charging letters which do not set forth each alleged violation and the applicable individual section of the Regulations or law will be subject to dismissal.

[3] In rendering this decision and disposition, I have not altered my judgment respecting limitations, notice of penalties, specialty of allegations, etc. The Agency policy is entitled to some deference.

Yi Chung Nung, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.J., Hong Kong
Ji Wai Sun, a/k/a Ji Wei Sun, c/o Hua Ko Electronic Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, N.T., Hong Kong
Elmer Yuen, c/o Tele-Art, Ltd., with locations at both Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong
Robert Yuen, c/o Tele-Art, Ltd., with locations at both Central Industrial Building, 6th Floor, Block B, 57–61 Ta Chen Ping Street, Kwai Chung, N.T., Hong Kong

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that the individual Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondents may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended during the five-year suspension period set forth above.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related service.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s) privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: June 30, 1988.

Hugh J. Dolan,

*Administrative Law Judge.*

**Appendix Schedule I**

*Additional Findings*

1. On August 15, 1979, a major United States manufacturing company (hereinafter the American supplier), entered into a distribution agreement with Tritek International Company, headed by Albert Chiang, president. The Distribution Agreement, among other things, refers to Tele-Art, Ltd. (Tele-Art) as a customer.

2. On July 5, 1980, Elmer Yuen signed and placed purchase orders on behalf of Tele-Art with the American supplier for four Model 4000A Wafer Process systems, six Model 3001P–4 wafer aligners, and two challenger Model 200MC–A ion implanters.

3. On August 27, 1980, Tele-Art and Hua Yuan, Ltd., a Hong Kong-based import/export company controlled and financed by the People's Republic of China (PRC), formed Hua Ko as a joint venture.

4. On August 31, 1980, Elmer Yuen signed a statement by Ultimate Consignee and Purchaser, Form DIB–629P, which was included with the American supplier's October 12, 1980 application for an individual validated license (A519519) to export the equipment Tele-Art had purchased to Hong Kong. The license application also included three Hong Kong Government import license applications for this equipment which Yi Chung Nung (Nung) had signed for Tele Art on September 30, 1980. The validated export license was issued in November 1980.

5. On October 14, 1980, Nung signed, on Hua Ko's behalf, a certification stating that Peter Stauffer "is employed by our company to help process the design of Integrated Circuits productions and equipments testing," and confirming that the "technological knowledge (sic) Mr. Stauffer applies shall not be transmitted to Mainland China (The People's Republic of China)."

6. On October 15, 1980, Tritek's Mr. Chiang sent a status report to the American supplier, stating that Tele-Art had leased a processing facility in San Jose to do process training, asking that company to ship one aligner and two track systems to the San Jose facility in December 1980, and noting that the "potential problem of Tele-Art order is export license."

7. By telex, dated November 3, 1980, Chiang notified Elmer Yuen and Nung that the aligner and wafer track

equipment was scheduled for shipment in the week of December 15–19, 1980.

8. On December 4, 1980, Tritek's Chiang confirmed by telex, Nung's agreement to accept shipment of one half of Tele-Art's order in December 1980, and specified the number and amounts of letters of credit required for payment. On December 12, 1980, Chiang sent a telex to Nung, again asking that the letters of credit be opened, inquiring whether Nung had yet received an invitation "thru Teleart for training our engineers," and asking when Mr. Y.C. Lee will arrive in the U.S.A. The following day, Chiang sent Nung a telex saying that the Hua Ko letter of credit was acceptable, asking that two letters of credit be opened, one for the equipment to be delivered to Hua Ko's San Jose facility and the other for the equipment to be shipped to Tele-Art in Hong Kong.

9. By cable dated December 17, 1980, the American Embassy in Beijing advised the United States Department of State (State Department) that three PRC nationals, identified as Ji Wai Sun, Yu Shan Liu, and Jing Qing Zhu, had applied for business visas. The cable stated: Applicants plan to leave Beijing for New York on January 10, 1981, to make a technical inspection and have trade negotiations at the invitation of Elmer Yuen, Director, Tele-Art Watch Co., Ltd., No. 32, West 44th St., 3–D, New York, NY 10018 Tel: (212) 354–2133–4, for a stay of six months.

10. Tele-Art's Elmer Yuen acknowledged that in December 1980, he had arranged for Tele-Art's United States distributor to act as the sponsor in the United States in connection with visa applications for technicians from the People's Republic of China, in order to facilitate their dispatch to the United States. These three PRC nationals arrived in San Francisco and went directly to Hua Ko's San Jose facility.

11. On January 9, 1981, Hua Ko sent a letter to "Immigration Officer, Immigration Department, USA" requesting business visas for five engineers from Hong Kong to Hua Ko's branch plant in San Jose to train personnel in machinery operation and maintenance, and attend compulsory training courses offered by its machine suppliers, and stating that "[a]ll of them are Hong Kong legal resident. (*sic*), they have signed contract with us for at least 2 years."

12. At about the same time, Nung confirmed Hua Ko's purchase order for one Nanoline IIIA Critical Dimension Computer Line Width Measurement System, for delivery initially to Hua Ko's San Jose facility and to be exported to Hong Kong approximately six months later.

13. On January 21, 1981, Nung advised Peter Stauffer that "[f]ive persons, two from Hong Kong and three from Beijing will arrive California on 28th Jan. 81. Later I will inform you exact time the particulars of their arrivals. Please hire a house in advance and help solve their future messing [i.e., meals] and transportation problems, etc."

14. On January 27, 1981, two and one-half months after the Agency had approved the license application to export to Tele-Art, the American supplier received Chiang's memorandum advising: that Hua Ko was the new ultimate consignee for the equipment originally ordered by Tele-Art; that because of the high possibility that some of the equipment, particularly the ion implanter, may be transshipped from Hong Kong to China, the American supplier should make a report to the Department of Commerce, that Hua Ko would be sending some engineers directly from China to the Hua Ko facility in San Jose, for training at Kasper/Eaton on the aligner, wafer track and ion implanter, and stating that "Elmer Yuen, Nung and their engineers have made several visits to Kasper/Eason." Six wafer track systems and three aligners were shipped to Hua Ko's San Jose facility on February 7, 1981.

15. On February 10, 1981, Hua Ko sent a letter to the American Consulate in Hong Kong requesting training visas to the United States for four engineers, Messrs. Won Sing Siu, Pui Wa Lee, Sze Hub Li, and Lui Shing Chiu.

16. By letter dated March 2, 1981, Hua Ko's Nung told the American supplier that all of the equipment ordered previously by Tele-Art is half owned by Hua Ko, that Hua Ko intends to produce integrated circuits and to supply those complementary metal-oxide-semiconductor (C–MOS) chips only for the domestic market in Hong Kong, and that the Hua Ko board of directors then consisted of Robert Yuen, Elmer Yuen, Li and Nung.

17. On March 14, 1981, two articles appeared in the *Business Standard*, a Hong Kong newspaper. In one article, Robert Yuen identified as a "director of the joint venture" formed by Hua Yuan and Tele-Art, is reported saying the previous day that China stands to gain considerable expertise in microcircuit technology, that three technicians from Beijing, together with three Hong Kong-based experts had already been sent to the United States for training, and that Tele-Art has already started manufacturing electronic watches in Guangzhou (Canton) under an earlier agreement with Hua Yuen. The other article refers to the joint venture between Hua Yuan and Tele-Art, commenting that this is the first time that China has invested in local light industry. The article continues:

*The project dates back to 1979 when Tele-Art was granted a site at Taipo Industrial Estate to produce integrated electronic microcircuits on silicon wafer chips using the "Complementary metal oxide silicon" process.*

But *Tele-Art* later changed its mind and *invited Hua Yuan to form a joint venture last August.*

*The joint venture, Hua Ko Electronic,* has an initial capital of $60 million and equity is split equally between Hua Yuan and Tele-Art.

The factory will be in production by November and can produce one million circuit components a month in full production capacity, a Hua Ko executive said.

These press reports are consistent with and confirm the relationship and progress of the ventures and implantation.

18. The American supplier thereafter, on March 20, 1981, applied for two validated licenses (A545746, concerning Tele-Art/Hua Ko purchase order KSPH003 for photomask aligners, and A545747, concerning Tele-Art/Hua Ko purchase order KSPH001 for ion implanters) to export this equipment to Hua Ko's Hong Kong facility.

19. In early April 1981, the Department returned both applications to Kasper Eaton without action, requesting specific additional information. On July 10, 1981, the American supplier submitted revised applications, both of which the Department rejected on October 29, 1981, for national security reasons, stating that "[t]he risk * * * of illegal diversion of your order to unauthorized destinations is considered strong."

20. By letter dated March 30, 1981, Hua Ko's Nung provided the American supplier with the following requested assurances, concerning Tele-Art/Hua Ko's purchase orders KSPH001 (ion implanters) and KSPH003 (mask aligners):

(1) We certify that no technology, direct product of subject technology, or equipment purchased under our above-referenced orders will be transferred to any foreign nationals (i.e. The People's Republic of China) without prior authorization from the U.S. Department of Commerce;

(2) We further agree to abide by all U.S. Export Regulations governing U.S. Export Commodity Code 1355A which applies to the equipment purchased under the above-referenced orders;

(3) We understand and agree that training and/or observation of subject equipment's use by foreign nationals from Country Groups P, Q, W, Y, and Z, as defined by U.S. Export Regulations, is strictly prohibited without prior authorization by the U.S. Department of Commerce.

21. On May 4, 1981, Hua Ko consultants Peter Stauffer and Henry Lee, listing Hua Ko's San Jose address, applied for an individual validated license (A555458) to export "technical information on semiconductor equipment" to Hua Ko. On or about June 6, 1981, OEE returned the license application without action, requesting specific additional information. There is no record of any subsequent submission by or on behalf of Hua Ko for the export of the technical data in question.

22. By cable dated May 9, 1981, the American Embassy in Beijing advised the State Department that three additional PRC nationals, identified as Xian Zhou Liu, Guo Zhong Xiao and Hua Sheng You, had applied for business visas, representing to the Embassy that they were going to the United States at the invitation of Tele-Art Watch Co., Ltd., in New York for a stay of three months.

23. On June 12, 1981, Nung, Lee and other Hua Ko employees met to discuss the prospective product lines and plant layout for the first floor of Hua Ko's Tai Po facility in Hong Kong. The minutes of that meeting reflect that Lee was to start approaching mask design sources in the United States as soon as possible and that Lee would make a trip to Changzhow, China on June 13, 1981, in order to obtain the C–MOS mask design on five-function watch chip so that he can bring it back to the United States.

24. On July 5, 1981, Lee, Sun, S.C. Liu and Walter Chiu met to discuss Hua Ko's U.S.A. Division. The minutes of that meeting show that Lee was to be in overall charge of the San Jose facility, while Liu was to handle internal management and Sun was in charge of technical works.

25. On August 28, 1981, Hua Ko's U.S.A. Division was incorporated as Chipex, Inc. The organization minutes of the Chipex Board of Directors show that Nung and Lee were appointed respectively as President and Vice President/Secretary and that Li, Elmer Yuen and Robert Yuen were elected to serve as directors of Chipex along with Nung.

26. On October 17, 1981, Chipex entered into a contract with the China National Light Industrial Products Import and Export Corporation, Peking Branch, to supply 100,000 integrated circuits for electronic watches.

27. By letters dated November 2, 1981, Elmer Yuen and Robert Yuen tendered their resignations as directors of Hua Ko.

28. By cable dated December 14, 1981, the American Embassy in Beijing requested business visas for four PRC nationals from the Xian Yen He Radio Factory, identified as Shu Zhang Xue, Xiu Zhen Zhang, Zhi Lan Li and Nanyu Lu, to go to San Jose at Chipex's invitation for a visit of six months beginning December 26, 1981. The China Great Wall Industry Corporation had earlier sent a telex to Sun's attention asking that he meet the four persons arriving from the PRC.

29. On December 16, 1981, Hua Ko's Nung sent a letter to the American supplier, referencing its export license applications A54746 (concerning Tele-Art/Hua Ko purchase order KSPH003 for photomask aligners) and A545747 (concerning Tele-Art/Hua Ko purchase KSPH001 for ion implanters) and repeating nearly verbatim the same assurances given to Kasper/Eaton on March 30, 1981.

30. By telex dated February 8, 1982, Nung authorized Chipex to begin production of integrated circuits for California Devices Inc. (CDI). Nung's telex originated, not from Hua Ko in Hong Kong, but rather from the Qianmen Semiconductor Device Factory (QSDFB) in Beijing.

31. By letter of May 14, 1982, Chipex provided the Agency investigator with a listing of the Hua Ko employees sent to Chipex and the training they received on the same equipment specified.

32. On July 1, 1982, the Special Agent from the Office of Export Enforcement accompanied special agents from the United States Customs Service and the Federal Bureau of Investigations during a search of the Chipex premises.

33. On July 5, 1982, the PRC personnel employed by Chipex flew from San Francisco International Airport enroute to Shanghai, PRC, via Hong Kong.

[FR Doc. 88–17538 Filed 8–3–87; 8:45 am]

BILLING CODE 3510-DT-M

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**[Docket Nos. 8101–01, 8101–02]**

## Actions Affecting Export Privileges; Ivor Edwards, Individually and d/b/a Datagon, GMBH

### Summary

In the matter of: Ivor Edwards, individually and doing business as Datagon GMBH, Respondent; Docket No. 8101–01, Docket No. 8101–02.

Pursuant to the June 29, 1988 Default Decision and Order of the Administrative Law Judge, which Default Decision and Order is attached hereto and affirmed by me, Ivor Edwards, individually and doing business as Datagon GmbH, with an address at 33 Stucton Road, Newport Givent, Wales, United Kingdom, is denied for a period of twenty (20) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368–389).

### Order

On June 29, 1988, the Administrative Law Judge entered his recommended Default Decision and Order in the above-referenced matter. That Default Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: July 28, 1988.

**Paul Freedenberg,**

*Under Secretary for the Bureau of Export Administration.*

*Appearance for Respondent:* Ivor Edwards, 33 Stucton Road, Newport Givent, Wales, United Kingdom.

*Appearance for Agency:* Daniel C. Hurley, Jr., Attorney-Advisor, Office of Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th and Constitution Avenue NW., Washington, DC 20230.

### Default Decision and Order

*Preliminary Statement*

On September 21, 1987, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a charging letter to Ivor Edwards, individually and doing business as Datagon GmbH (Respondent). This letter was issued under the authority of the Export Administration Act (50 U.S.C. App. 2412(c)(1) ("the Act") and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1977)) ("the Regulations"). Respondent was charged with violating the Act and the Regulations by aiding and abetting the reexport of U.S.-origin computer technology from the Federal Republic of Germany (FRG) through the United

Kingdom to Bulgaria, without the required authorization from the Office of Export Licensing. Further, Respondent is charged with dealing with a denied party in the course of these transactions, and not disclosing material information to the Office of Export Licensing, acts violating §§ 387.2 and 387.12 of the Regulations.

The record reflects that the charging letter was served upon Respondent on September 29, 1987. No answer from Respondent was received. Thereafter, on January 15, 1988 an Order to Show Cause why a Default Order should not be entered was issued, to which no response has been made.

By memorandum dated January 22, 1988, the Agency opposed going forward with a default proceeding, stating that it was not satisfied that proper service on Respondent had been completed. In a submission dated April 29, 1988, Agency Counsel stated assurances affirming that the requirements of § 388.4 of the Regulations, governing service of a charging letter on a nonresident, had been met.

Because no answer has been filed, an Order, dated May 16, 1988, ruled Respondent in default and directed the Agency to file its evidentiary submission by June 15, 1988. Agency Counsel has moved that a Default Order be entered in these proceedings pursuant to § 388.8 of the Regulations.

Section 388.8 of the Regulations provides:

**Default (a) General**

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

Agency counsel also submitted documentary evidence to support the allegations made in the charging letter. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondent on June 15, 1988 to which there has been no response.

*Findings and Discussion*

The evidence shows that these alleged unlawful exports and false statements took place.

The charging letter alleged that the Respondent violated the provisions of §§ 387.2 and 387.12 of the Regulations. Specifically, Agency submits that, between approximately August 29, 1982 and mid-October 1982, the Respondent aided and abetted the reexport of a U.S.-origin Digital Equipment Corporation (DEC) VAX 11/780 computer system from the Federal Republic of Germany (FRG) through the United Kingdom to Bulgaria, without the required authorization from the Office of Export Licensing, by assisting in the shipment of the computer system from the FRG to the United Kingdom, by installing that computer system in Bulgaria and by training Bulgarian technicians and engineers in the use of the system. In doing so, the Respondent violated § 387.2 of the Regulations.

In connection with this shipment, in particular the training and installation described above, Respondent also engaged in export or reexport transactions involving U.S.-origin goods with Bryan V. Williamson (also know as Byron Williams) who was, at the time of these activities, denied all U.S.-export privileges.[1] Edwards dealt with Williamson, a denied party, in U.S.-origin goods, without prior disclosure of the facts to and specific authorization from the Office of Export Licensing. In doing so, the Respondent violated § 387.12 of the Regulations.

The Agency presented documentary evidence showing that Edwards, on behalf of Datagon, placed an order with Computer Maintenance of Minneapolis, Inc. for a VAX 11/780 computer system. The evidence further demonstrated that, in connection with an application for a validated license to export the VAX 11/780 computer to Datagon in the FRG, Datagon indicated, in a Statement of Ultimate Consignee and Purchaser submitted with the license application, that the computer would most likely be used in the FRG. This was done even though, Respondent, and others he was dealing with, knew at the time of application that the computer was intended to be reexported from the FRG.

The Agency additionally submitted evidence showing that, for reasons of national security, the Office of Export Licensing would not have approved any request for authorization to reexport the VAX 11/780 computer to Bulgaria. The evidence detailed Edwards' activities from the time the VAX 11/780 computer arrived in Cologne, FRG, to the time the computer was installed in Sofia, Bulgaria.

This proceeding derives from an earlier administrative proceeding involving Bryan Williamson, individually and doing business as Datalec Ltd. In the earlier proceeding, Edwards was found to be a related party. In this proceedings, Edwards is named as a Respondent with respect to certain activities he engaged in which are alleged to be in violation of the Regulations.

After Williamson and Datalec were placed on the denial list, Williamson began looking for a way by which he could continue to acquire U.S.-origin goods. Williamson decided to order U.S.-origin computers from Computer Maintenance of Minneapolis, Inc. Shortly after the VAX computer arrived in the FRG, it was shipped to Williamson's facility in the United Kingdom for assembly and testing. While at Datalec, the computer was also used for training the Bulgarian technicians and engineers who would eventually use and maintain it following installation in Bulgaria.

The evidence shows that throughout this period there was a continual flow of communications between Williamson and Datagon's principals, including Edwards, through meetings, telexes and letters. A former Datagon employee testified in a sworn statement made to FRG authorities that Edwards went to England to assemble and test a U.S.-origin computer that Williamson obtained from Datagon. The employee also testified that Bulgarians were present when the computer was tested in England and that the computer was subsequently delivered to Bulgaria. Another former Datagon employee made a sworn statement to FRG authorities in which he remembered receiving a telephone call made jointly by Williamson and Respondent asking that he to come to Datalec's facility in England in order to help resolve a problem they were having with the VAX 11/780 computer. Finally, a Dun & Bradstreet report concerning Datagon shows that Williamson and Respondent were both shareholders in Datagon. This report corroborates the statement that Williamson was a "partner" in Datagon.

The evidence clearly establishes that Edwards engaged in transactions involving U.S.-origin goods with Datalec, while both Williamson and Datalec were denied all U.S. export privileges, in violation of § 387.12 of the Regulations.

The evidence provides a "paper trail" from the time Edwards placed an order for the VAX 11/780 computer with Computer Maintenance of Minneapolis through Edwards' installation of this particular computer in Bulgaria, establishing Edwards' assistance at various points along the way. In addition to his involvement in the

[1] Williamson is still denied all U.S. export privileges. Pursuant to the Order of then-Assistant Secretary for Trade Administration Paul Freedenberg, dated June 16, 1986 (51 FR 22324, June 19, 1986), Williamson was denied all U.S. export privileges for a period of 20 years beginning June 16, 1986. *See In the Matter of Byran V. Williamson, et. al.*, Docket Nos. 1617-01 and 1618-01.

ordering and licensing of the VAX computer, Respondent Edwards participated in the shipment as well, by inspecting the VAX 11/780 computer upon arrival from the U.S. at the Cologne, FRG airport, just before it was forwarded to Datalec. The VAX 11/780 computer was never authorized for reexport from the FRG. Computer Maintenance of Minneapolis obtained a validated license, A637343, authorizing the export of this computer to Datagon for distribution or resale in West Germany only. The computer was controlled for reasons of national security under the Commodity Control List number 1565A. The Office of Export Licensing determined that, for reasons of national security, the VAX 11/780 computer would not be authorized for reexport to Bulgaria.

*Conclusion*

The exhibits and explanation by Agency Counsel support the charges made by the Agency in the September 21, 1987 charging letter. The pattern of conduct demonstrated by the violations show a deliberate and willful intent to violate United States export laws and regulations. The goods unlawfully exported to Bulgaria by the Respondent were controlled for national security purposes. I find that an Order denying export privileges for twenty years from the date that a final order is entered in this proceeding is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations.

*Order*

I. For a period of twenty years from the date of the final Agency action, Respondent Ivor Edwards, individually and doing business as Datagon GmbH, Stucton Road, Newport Givent, Wales, United Kingdom, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Hugh J. Dolan,

*Administrative Law Judge.*

Date: June 29, 1988.

[FR Doc. 88-17544 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF COMMERCE

**[Docket No. 7113-02]**

## Actions Affecting Export Privileges; Gilles Gouzene

### Summary

Pursuant to the June 30, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Gilles Gouzene, with an address at 60 bis Rue Victor Hug. 94700, Maison-Alfort, France, is denied for a period of ten (10) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368–369).

Commencing five (5) years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth above, and shall be terminated at the end of such ten-year period, provided that the Respondent has committed no further violations of the Act, the Regulations, or this Order.

### Order

On June 30, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above-referenced matter. That Decision and Order, a copy of which is attached hereto and made a part thereof, has been referred to me for final action. The basis of the ALJ's recommended Decision and Order was an agreement of the parties concerning not only the

period of denial, but certain language to be contained in the final Order. The ALJ omitted portions of agreed upon language, to which action the parties ahve taken exception. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge, with the following modifications in accordance with the agreement of the parties (modifications are underlined):

(1) Page 4, paragraph III, part (i) should read, "as a party or as a representative of a party to a validated export license application *to the Department.*"

(2) Part (ii) should read, "in preparing or filing *with the Department* any export license application or reexport authorization, or any document to be submitted therewith; * * *"

(3) Part (iii) should read, "in obtaining *from the Department* or using any validated or general export license or other export control document; * * *"

(4) Page 5, the second sentence should read, "Such denial of export privileges shall extend *only* to *those commodities and technical data* which are subject to the Act and the Regulations."

(5) Page 5, paragraph IV, the last phrase should read, "or other connection in the conduct of export trade or related services *(hereafter 'related person')*."

This constitutes final agency action in this matter.

Date: July 30, 1988.

**Paul Freedenberg,**

*Under Secretary for the Bureau of Export Administration.*

**Decision and Order**

*Decision*

In the matter of: Gilles Gouzene, Respondent, Docket No. 7113–02.

*Appearance for Respondent:* Stanley N. Lupkin, Esq., Litman, Asche, Lupkin & Gioiella, 45 Broadway Atrium, New York, New York 10006.

*Appearance for Agency:* Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave., NW., Washington, DC 20230.

This proceeding against Respondent Gilles Gouzene began with the issuance April 10, 1987 of a charging letter by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce.[1] This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2401–2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the "Act"), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1988)) (the "Regulations"). The letter charged that Respondent, from above November 29, 1983 to about February 23, 1984, had violated § 387.3 and 387.4 of the Regulations. The alleged violations were: conspiring with Pierre Gouzene, and others, to export U.S.-origin goods from the United States without the required validated export license; and attempting to export a drafting table from the United States to France without the validated export license that Respondent knew or had reason to know was required by § 372.1 of the Regulations.

To settle this matter, Respondent and the Agency, under § 388.17 of the Regulations, have entered into a consent agreement that imposes upon Respondent a denial of U.S. export privileges for ten years, the last five years of which will be suspended. The undersigned approves the terms of the consent agreement. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, *It Is Ordered That:*

*Order*

I. For a period of ten years from the date of the final Agency action, as modified by the suspension set forth in Paragraph II below, Respondent

Gilles Gouzene,
60 bis Rue Victor Hugo,
94700, Maison-Alfort, France

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended during the five-year suspension period set forth above.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or

[1] When the Office of Export Enforcement issued the charging letter April 10, 1987, the office was part of an organization within the U.S. Department of Commerce, titled the "International Trade Administration." As of October 1, 1987, however, it became part of an organization within the Department not titled the "Bureau of Export Administration"

indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or any related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: June 30, 1988.

**Thomas W. Hoya,**

*Administrative Law Judge.*

[FR Doc. 88-17600 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DT-M

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**[Docket No. 7113-03]**

## Actions Affecting Export Privileges; Pierre Gouzene

### Summary

Pursuant to the June 30, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Pierre Gouzene, with an address at 4 Rue des Parclairs, 94000, LePerreux, France, is denied for a period of ten (10) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368-399).

Commencing five (5) years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth above, and shall be terminated at the end of such ten-year period, provided that the Respondent has committed no further violations of the Act, the Regulations, or this Order.

### Order

On June 30, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above-referenced matter. That Decision and Order, a copy of which is attached hereto and made a part thereof, has been referred to me for final action. The basis of the ALJ's recommended Decision and Order was an agreement of the parties concerning not only the period of denial, but certain language to be contained in the final Order. The ALJ omitted portions of agreed upon language, to which action the parties have taken exception. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge, with the following modifications in accordance with the agreement of the parties (modifications are underlined):

(1) Page 4, paragraph III, part (i) should read, "as a party or as a representative of a party to a validated export license application *to the Department*."

(2) Part (ii) should read, "in preparing or filing *with the Department* any export license application or reexport authorization, or any document to be submitted therewith; * * *"

(3) Part (iii) should read, "in obtaining *from the Department* or using any validated or general export license or other export control document; * * *"

(4) Page 5, the second sentence should read, "Such denial of export privileges shall extend *only* to *those commodities and technical data* which are subject to the Act and the Regulations."

(5) Page 5, paragraph IV, the last phrase should read, "or other connection in the conduct of export trade or related services (*hereafter 'related person'*)."

This constitutes final agency action in this matter.

Date: July 30, 1988.

**Paul Freedenberg,**

*Under Secretary for the Bureau of Export Administration.*

### Decision and Order

In the matter of: Pierre Gouzene, Respondent; Docket No. 7113-03.

Appearance for Respondent: Stanley N. Lupkin, Esq., Litman, Asche, Lupkin & Gioiella, 45 Broadway Atrium, New York, New York 10006.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave., NW., Washington, DC 20230.

*Decision*

This proceeding against Respondent Pierre Gouzene [1] began with the issuance April 10, 1987 of a charging letter by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce.[2] This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the "Act"), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1988)) (the "Regulations"). The letter charged that Respondent, from about November 29, 1983 to about February 23, 1984, had violated §§ 387.3, 387.4, and 387.5 of the Regulations. The alleged violations were: conspiring with Gilles Gouzene, and others, to export U.S.-origin goods from the United States without the required validated export license; attempting to export a drafting table from the United States to France without the validated export license that Respondent knew or had reason to know was required by § 372.1 of the Regulations; and making or causing to be made to the U.S. Department of Commerce false and misleading statements on an export control document.

To settle this matter, Respondent and the Agency, under § 388.17 of the Regulations, have entered into a consent agreement that imposes upon Respondent a denial of U.S. export privileges for ten years, the last five years of which will be suspended. The undersigned approves the terms of the consent agreement. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, *It Is Ordered That:*

*Order*

I. For a period of ten years from the date of the final Agency action, as

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[1] At the time of the 1983-84 incidents that are the subject matter of this proceeding, Respondent was the manager of a French company, Societe D'Exportations Agricoles. In the time period between the occurrence of these incidents and the execution of the Consent Agreement described below in this Order, this company has been dissolved.

[2] When the Office of Export Enforcement issued the charging letter on April 10, 1987, the office was part of an organization within the U.S. Department of Commerce, titled the "International Trade Administration." As of October 1, 1987, however, it became part of an organization within the Department now titled the "Bureau of Export Administration"

modified by the suspension set forth in Paragraph II below, Respondent

Pierre Gouzene,
4 Rue des Parclairs,
94000, LePerreux, France

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten-year period set forth in Paragraph I above, and shall be terminated at the end of such ten-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended during the five-year suspension period set forth above.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or any related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: June 30, 1988.

**Thomas W. Hoya,**

*Administrative Law Judge.*

[FR Doc. 88-17601 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration

[A-588-807]

## Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Republication

**Editorial Note:** FR Doc. 88-16802 was originally published at page 28036 in the issue of Tuesday, July 26, 1988. In that publication some paragraphs were printed out of order. The corrected document is republished below in its entirety.

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

**United States Price and Foreign Market Value**

Petitioner considers the prices it must use to meet the competition as its best evidence of Japanese selling prices in the United States. United States price was based on the distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. The resulting price in local currency is then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 11.3% to 176.5%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Japan.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, from Japan currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16802 Filed 7-25-88; 8:45 am]

BILLING CODE 1505-01-M

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[A-475-031]

## Final Results of Antidumping Duty Administrative Review; Large Power Transformers From Italy

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On April 21, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from Italy. We received written comments from the petitioner and two exporters. Based on our analysis of the issues raised in the comments, the final results of review are changed from those presented in the preliminary results with respect to one company.

**EFFECTIVE DATE:** August 4, 1988.

**FOR FURTHER INFORMATION CONTACT:** Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255/2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 21, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 13141) the preliminary results of antidumping duty administrative review of the antidumping finding on large power transformers from Italy (37 FR

11773, June 14, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

*Scope of Review*

Imports covered by the review are shipments of large power transformers ("transformers"); that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination rectifier-transformer units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under Harmonized System item numbers 8504.22.00, 8504.23.00, 8504.34.00, 8504.40.00, 8504.50.00, and 8505.50.00.

The review covers three firms, Nuova Industrie Elettriche di Legnano ("N.I.E.L."), Ansaldo Componenti ("Ansaldo"), and Officine Elettromeccaniche Lombarde ("O.E.L."), and the period June 1, 1986 through May 31, 1987.

**Analysis of Comments Received**

We invited interested parties to comment on the preliminary results. We received written comments from Westinghouse Electric Corporation (petitioner), O.E.L., and Ansaldo.

*Comment 1:* Westinghouse requests that the Department amend the notice of final results of review which was published December 10, 1987 (52 FR 46806) to reflect the results of this review. Petitioner bases its claim on the fact that the units under consideration in the June 1986 through May 1987 review (the current review) were actually sold to the U.S. customer on the same date as those units we considered in the previous review for the period June 1985 through May 1986. Westinghouse interprets the antidumping law to require the Department to analyze each "sale" of merchandise during the period. Therefore, the separation of units of one sale into different review periods is contrary to the requirements of the statute.

*Department's Position:* We are not amending the final results of review for the period June 1, 1985 through May 31, 1986. In this Italian transformer case, as well as in the Japanese and French cases, we have completed reviews of units for which the shipment of the unit occurred in a review period which differed from the review period of the sale. This is not unusual, given the long period of time which can pass between the date of sale and shipment of these technically complex units.

Such is the case with this sale by O.E.L. of several units to the United States. The sale and expense information for the units currently under review was not complete before our earlier determination. However, it was unnecessary to delay the review of the first U.S. units, for which we had information, until all units in the contract had entered the United States. Therefore, we maintain our position that review of the current units is distinct from the previous review and we are not amending the earlier final results of review.

*Comment 2:* Westinghouse disagrees with the Department's choice of home market unit 7559 for comparison to U.S. unit 7823. Unit 7559 has a load tap changer and unit 7823 is without load tap changing equipment. As Westinghouse has long argued, the 1968 Westinghouse Price Rules ("WPR"), which the Department uses in its analysis of physical differences in the transformer cases, do not provide adequate information to make an appropriate adjustment for this difference. In addition, the HV and HV BIL of the two units are sufficiently different to cause further inaccuracies in the theoretical WPR calculation.

*Department's Position:* In its determination of the best home market unit to compare to the U.S. unit under review the Department considered several technical characteristics of the U.S. unit and the units shipped to home market customers during the period, as well as those which O.E.L. and Westinghouse recommended. Such characteristics include MVA, BIL, existence of load tap changing equipment, and relationship of the size between the U.S. unit and potential home market units. We disagree with Westinghouse's home market recommendation due to the combination of its small size (it was only half the kVA size of the U.S. unit) and the two step difference in BIL. In our review we determined that this combination of differences was more distortive than the presence of load tap changing equipment on the home market unit. We also maintain that the WPR adequately addresses the load tap changing equipment difference for our calculations.

*Comment 3:* Westinghouse argues that the Department should not have included a 15% adder in the theoretical WPR calculations of O.E.L.'s home market units 7539 and 7559. O.E.L. did not indicate any special design characteristics in its detailed specification sheets for each unit. Westinghouse also asserts that the administrative record does not provide technical information to support application of the adjustment and all parties have not had an opportunity to comment on the appropriateness of the adder. In addition, the Department's technical expert did not view the actual units for which the 15% adjustment was made.

Petitioner also objects to the application of the special design adjustment because the units to which the Department added 15% for its characteristics are actually part of a series of "cookie cutter" units which O.E.L. designed for a specific customer. If the Department really examined what a "special design" by O.E.L. would entail, the appropriate 15% adjustment would be to the theoretical price of the U.S. units.

*Department's Position:* The Department's technical expert uses detailed specification sheets, outline and nameplate drawings, and customer specifications in the determination of the theoretical WPR price. Details in these documents provide the information on which we rely to make calculations. A visit to a producer's factory often provides additional facts for the technical expert. In this review the Department received factual information and visited O.E.L.'s factory. It is on the basis of all information we gathered that we determine that the 15% special design adjustment is appropriate.

It is not practical for the Department to visually inspect the actual units under consideration because they are already at the customer's site and in operation. Many of the units' special characteristics are internal and not visible once the producer has shipped the merchandise. In lieu of that, the Department's technical expert examined four units (with the same specifications) which were in various stages of completion. During that inspection we determined that special features such as very short and squat windings, a massive yoke, and extensive blocking were a few of the characteristics which made the design of these units different

from the assumptions on design in the WPR.

We note that Westinghouse's assertion that these units are not especially unique (since O.E.L. produced several units from the same specifications) is not relevant to the determination whether the 15% adjustment is appropriate. The 15% adjustment is for designs substantially different from those contemplated in the WPR. However, we note that, even for O.E.L., the design of these units differs from the usual units it manufactures for its home market customers. The fact that O.E.L. produced more than one unit from the specifications does not make the design other than special and, therefore, ineligible for the 15% adjustment.

We also disagree with Westinghouse's assertion that the administrative record does not support this adjustment. In its verification report the Department remarked on the special features of the visually-inspected units and the relationship between the specifications of those units with the units under consideration. The technical expert had also placed his opinion of these units in the record.

*Comment 4:* O.E.L. disagrees with the Department's calculation of credit income and expense for the home market units. O.E.L. asserts that, in its preliminary analysis, the Department inappropriately disregarded the time at which the units were completed, tested, and ready for delivery to the customer ("ex-works date"). Instead, the preliminary figures are based on the date of shipment to the customer which, for one unit, was 18 months after notification that the unit was ready for delivery.

O.E.L. maintains that title had transferred to the buyer at the ex-works date, O.E.L. had forwarded the invoice to the customer for the remainder due, and O.E.L.'s records reflected the amount as a receivable. According to Department and Court of International Trade precedent, as well as the Uniform Commercial Code, the ex-works date is the appropriate date from which the Department should calculate credit costs. Reliance on the date of shipment does not reflect O.E.L.'s expense due to the customer's deferral of delivery. O.E.L. also asserts that the verification documents support the determination of the ex-works date for its units. O.E.L. also notes that the Department's original credit calculations had some minor clerical errors.

*Department's Position:* We agree with O.E.L. Our usual practice is to use the date of shipment as the date from which we measure credit costs because this is the point at which goods typically become associated with a particular sale and the credit costs become directly related to the particular transaction. In this instance, the actual date of delivery to the customer was eighteen months after the "ex-works" date. As of the "ex-works" date the unit at issue was ready for shipment and awaiting the customer's shipment instructions, O.E.L. forwarded the final invoice for the unit to the customer, the receivable was recorded on O.E.L.'s books, and the customer was required to pay for storage at O.E.L.'s facility. For these reasons, we have treated the credit expense period as beginning on the "ex-works" date. Clerical corrections are no longer necessary after this change in our calculations.

*Comment 5:* O.E.L. asserts that the documents which the Department received at verification on home market units 7539 and 7559 do not support the calculation of storage charges which were part of the Department's preliminary analysis. Respondent does not disagree that the contract between O.E.L. and the customer included a storage charge if the customer did not accept the unit within a certain period of time after notification of completion of manufacture and testing. However, the adjustment was improper because the Department did not find evidence of such payment while conducting verification at the factory.

*Department's Position:* These final results reflect the additional provision in the contract. We regard the contract itself, absent any indication that it was not honored, as sufficient evidence that a charge for storage was made. Verification of payment documents is not necessary, particularly as O.E.L. has never claimed the terms of the contract were not enforced. Therefore, it is appropriate for the Department to presume the customer paid for storage according to the terms of the contract.

*Comment 6:* O.E.L. reiterates its objection from the last administrative review on the Department's decision to use the exchange rate in effect on the date of the U.S. contract award instead of the irrevocable bid date. The manufacturer undertook the risk of exchange rate fluctuation on that date and so that is the date the Department should use for currency conversion.

*Department's Position:* We maintain our position in the previous review that there was no contract between O.E.L. and the U.S. customer until the date of acceptance by the U.S. customer. Therefore, we consider the date of acceptance of O.E.L.'s offer to be the date of purchase and, therefore, the date on which to make our currency conversion according to the requirements of the Commerce Regulations (19 CFR 353.56).

*Comment 7:* O.E.L. disagrees with three aspects of the Department's WPR theoretical calculations for U.S. unit 7620. First, O.E.L. argues that the Department inappropriately used a 6% adder for special impedances. The Department's adjustment of the impedance for this unit, a 65 °C transformer, to a 55 °C base by dividing by 1.333 was incorrect. The appropriate adjustment is conversion of the impedance by a factor of 1.12 to reach a 55 °C base. After correction of this error, the 6% special impedances adder is no longer necessary because the adjusted impedances are within the standard ranges in this section of the WPR.

Second, O.E.L. disagrees with the Department's use of a 9% adder for a series-multiple connection. O.E.L. maintains that the contract does not specify a series-multiple connection and the unit is only dual voltage. In addition, the nameplate does not mention a series-multiple connection.

Finally, O.E.L. asserts that the Department developed the most disadvantageous pricing kVA for U.S. unit 7620 by using the simultaneous loading rate of 115/34.5/13.2 kVA, determining a BIL of 200 due to the common winding of 34.5kv. In addition, the Department inconsistently included an adder for 350 BIL pursuant to the WPR, Section 7, rule 8. The correct BIL for the WPR calculation of this unit is 200 BIL which corresponds to the 34.5 XV winding.

*Department's Position:* We agree with O.E.L. that the correct adjustment for impedance is by a factor of 1.12 and have changed our calculation for U.S. unit 7620 accordingly.

The technical characteristics of U.S. unit 7620 indicate that our adjustment for a series-multiple connection is correct. There is only one set of secondary bushings on this transformer. The XV winding has a kilovolt rating of 34.5/69. We have assumed that the bushings are for use at either 69kv or 34.5kv. To accomplish this, two windings of 34.5kv rating each could be connected in series for 69kv or in parallel for 34.5kv. Therefore, our final WPR calculation includes the adjustment for series-multiple connection.

Our method of pricing kVA for this unit remains the same as that which we used in the preliminary results. The BIL of a winding is a function of the construction of the winding. Rule 8 provides a cost for the winding's insulation materials and spacing in the winding. The winding connection at any

given time does not affect these materials once the materials are in the winding.

*Comment 8:* O.E.L. argues that the Department's efficiency adjustment for U.S. unit 7620 and home market unit 7539 does not make the appropriate adjustment for the difference between an autotransformer and a 2-winding transformer. To accomplish this the calculation should use the 2-winding kVA figure to determine percent no load loss and percent load loss, as well as the adjustment of no load loss and load loss to a common kVA base. O.E.L. notes that petitioner has made the same calculations in its submissions during the course of the review.

*Department's Position:* We agree and have recalculated our efficiency adjustment accordingly.

*Comment 9:* O.E.L. disagrees with the Department's calculation of ex-factory price for use in the core and coil cost portion of the efficiency adjustment. To include separately invoiced amounts for transportation and commissioning distorts the calculation for physical differences between the U.S. and home market units. O.E.L. argues that only the invoiced price of the transformer plus the escalation figure is appropriate for use in the efficiency adjustment between units 7620 and 7539.

*Department's Position:* We maintain our position that the home market price we use in our efficiency adjustment should reflect the delivered price, less O.E.L.'s actual cost for transportation and commissioning. We derived the delivered price from the customer's payments for separate invoices for the transformer, escalation, transportation, and commissioning. If the Department were to use the invoiced amounts for transportation and commissioning to determine the value of the services, rather than O.E.L.'s actual costs, the ex-factory price of the transformer could be manipulated at will to achieve whatever results respondent desired. Therefore, for these final results we have included the amounts of O.E.L.'s invoices to the Italian customer for transportation and commissioning in the home market price and then deducted the actual cost to O.E.L. of providing these services.

*Comment 10:* Ansaldo asserts that the Department's denial of revocation is inappropriate because Ansaldo's past practice in the U.S. transformer market clearly meets the standard for revocations in the Commerce Regulations. For the period June 1983 through May 1984 the Department determined that Ansaldo had sold two units with no dumping duty margin. Since May 1984 Ansaldo has made no shipments to the United States. In addition, it has not bid on any U.S. contracts during this period. Departmental precedent for revocations of other dumping duty orders or findings due to cessation of shipments supports Ansaldo's request. Ansaldo has also signed the Department's standard revocation agreement.

*Department's Position:* We have not altered our position from that which we stated in the last administrative review of the antidumping finding on Italian transformers. The decision to revoke an antidumping finding with respect to one company does not rely solely on the absence of sales at less than fair value or lack of shipments. In addition, the Department must be satisfied that there is no likelihood of resumption of sales at less than fair value within the meaning of 19 CFR 353.54(a). In making such a determination, we must consider the merchandise and its market. We note that the transformer market in the United States is limited and there may be many years between shipments from foreign manufacturers. In addition, while we determined no dumping margin for Ansaldo for the May 1984 shipment of two units, an earlier review demonstrated a dumping margin of 92.74 percent. It is not appropriate for the Department to revoke an antidumping duty order or finding after reviewing only one sale at not less than fair value. Because there have been no additional sales by Ansaldo in several years, we have decided that we lack information to determine whether there is no likelihood of resumption of sales at less than fair value. Therefore, any future shipment by Ansaldo will remain subject to the antidumping finding.

**Final Results of Review**

Based on our analysis of the comments received we have determined that the following margins exist for the firms for the period June 1, 1986 through May 31, 1987:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| N.I.E.L. | [1] 71.40 |
| Ansaldo | [1] 0.00 |
| O.E.L. | 0.05 |

[1] No shipments during the period.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required on shipments by the companies under review of large power transformers from Italy.

For any future shipments of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1987 and who is unrelated to any previously reviewed firm, a cash deposit of 0.0 percent shall be required. These deposit requirements are effective for all shipments of Italian transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: July 26, 1988.

Jan W. Mares,

*Assistant Secretary for Import Administration.*

[FR Doc. 88-17534 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

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[A-508-602]

## Amended Antidumping Duty Order; Oil Country Tubular Goods From Israel

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** As a result of an error in the Department's antidumping duty order on Oil Country Tubular Goods (OCTG) from Israel, (52 FR 7000, March 6, 1987), we are hereby amending the antidumping duty order to exclude drill pipe.

**EFFECTIVE DATE:** August 4, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles Wilson (202) 377-5288 or James Riggs (202) 377-1766, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On March 6, 1987, the Department published an antidumping duty order with respect to OCTG from Israel (52 FR 7000), which erroneously included the term "drill pipe" in the scope of the order.

The products covered by this investigation were "OCTG", which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing and tubing of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the Tariff

Schedules of the United States Annotated Items 610.3216, 610.3219, 610.3233, 610.3234, 601.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4230, 610.4240, 610.4310, 610.4320, 610.4335, 610.4942, 610.4944, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244. This investigation included OCTG in both finished and unfinished condition. However, drill pipe was not subject to this investigation because the Department previously determined that petitioners were not "interested parties" with respect to drill pipe, within the meaning of section 771(9)(C) of the Act. Therefore, the Department should not have included drill pipe within the scope of the March 6, 1987 antidumping order.

On and after the date of publication of this notice, United States Customs officers, must refund any cash deposits or bonds collected in conjunction with imports of Israeli drill pipe.

This determination constitutes an amended antidumping duty order with respect to OCTG from Israel, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48.

July 25, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-17530 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

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[C-557-803]

## Postponement of Preliminary Countervailing Duty Determination; Certain Welded Carbon Steel Pipe and Tube Products from Malaysia

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** Based upon the request of petitioners, the Subcommittee on Standard Pipe, the Subcommittee on Line Pipe, the Subcommittee on Structural Tubing and the Subcommittee on Mechanical Tubing of the Committee on Pipe and Tube Imports and the individual producer members of each subcommittee, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigations of certain welded carbon steel pipe and tube products from Malaysia. The preliminary determination will be made on or before August 31, 1988.

**EFFECTIVE DATE:** August 4, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rick Herring Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0187.

**SUPPLEMENTARY INFORMATION:** On June 13, 1988, the Department initiated countervailing duty investigations on certain welded carbon steel pipe and tube products from Malaysia. In our notice of initiation we stated that we would issue our preliminary determination on or before August 17, 1988 (53 FR 22682, June 17, 1988).

On July 22, 1988, the petitioners filed a request that the preliminary determination in this investigation be postponed for 14 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioners in these investigations, the Department is postponing its preliminary determination until no later than August 31, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

July 27, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-17531 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

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## Export Trade Certificate of Review

**AGENCY:** Department of Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00013." A summary of the application follows.

*Applicant:* CISA Export Trade Group, Inc. ("CISA ETG"), 6990 Rieber Street, Worthington, Ohio 43085.

*Contact:* Bruce Harrison, Jr., CISA ETG Legal Counsel.

*Telephone:* (412) 281-6501.

*Application #:* 88-00013.

*Date Deemed Submitted:* July 21, 1988.

*Members (in addition to applicant):* Applied Industrial Materials Corporation of Mundelein, IL, and its controlling entity Aimcor Holdings, Inc. of Mundelein, IL; Asbury Carbons, Inc. of Asbury, NJ, and its controlling entity Asbury Graphite Mills, Inc. of Asbury, NJ; Beardsley & Piper Division of Chicago, IL, and its controlling entity Pettibone Corporation of Des Plaines, IL; Carrier Vibrating Equipment, Inc. of Louisville, KY; C-E Cast Equipment of Cleveland, OH, and its controlling entity Combustion Engineering, Inc. of Stamford, CT; The Centrifugal Casting Machine Company of Tulsa, OK; Dependable Foundry Equipment Co.; Inc./Redford-Carver Foundry Products of Sherwood, OR, and its controlling entity Tromley Industrial Holdings, Inc. of Portland, OR; General Kinematics Corporation of Barrington, IL; George Fischer Foundry Systems, Inc. of Holly, MI, and its controlling entity Georg

Fischer, Ltd. of Switzerland; Georgia-Pacific Resins, Inc. of Newark, OH, and its controlling entity Georgia-Pacific Corporation of Atlanta, GA; Graphite Sales, Inc. of Chagrin Falls, OH; The Herman Corporation of Zeliennople, PA; Hunter Automated Machinery Corporation of Schaumburg, IL; Lester B. Knight & Associates, Inc. of Chicago, IL; Metaullics Systems Division, Standard Oil Engineered Materials Company of Solon, OH, and its controlling entities B P America of Cleveland, OH, and The British Petroleum Company p.l.c. of London, UK; Roberts Corporation of Lansing, MI, and its controlling entity Cross & Trecker Corporation of Bloomfield Hills, MI; Superior Graphite Company of Chicago, IL; Wedron Silica Company of Wedron, IL; The Wheelabrator Corporation of Peachtree City, GA, and its controlling entity Wheelabrator Technologies, Inc. of Danvers, MA; and Whiting Corporation of Harvey, IL.

**Summary of the Application**

*Export Trade*

Products

Metalcasting equipment and supplies (including consumable supplies), construction machinery, agricultural equipment, fabricated metal products, instruments, and electrical goods.

Related Services

Metalcasting services; engineering, construction architectural and surveying services related to Products and to turn-key contracts that substantially incorporate Products, including, but not limited to, the construction of foundries and other industrial plants; servicing and testing of Products; and training with respect to Products, including, but not limited to, their use and servicing.

Export Trade Facilitation Services (as they relate to the Export of Products and Related Services)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. CISA ETG on behalf of its Members may:

a. Act as a clearinghouse in receiving sales leads and orders for Products and Related Services that may be required by the metalcasting industry in the Export Markets.

b. Aid in the preparation of bids and contracts in the Export Markets, including making arrangements for barter trade.

c. Assist Member companies in setting up joint bids for export projects by making distribution to Member companies of bid requirements, bidding dates, and purchase specifications as received from Export Markets.

d. Provide its Members or other suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and Related Services to Export Markets. This may be accomplished by CISA ETG itself, or by agreement with its Members or other parties.

2. CISA ETG and/or its Members may:

a. Engage in joint bidding or other joint selling arrangements, including barter arrangements, for Products and Related Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Related Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to standardization of Products and Related Services for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Related Services;

e. Solicit non-member suppliers to sell their Products and Related Services or offer their Export Trade Facilitation Services through the certified activities of CISA ETG and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Related Service requirements of specific export customers or Export Markets.

3. CISA ETG and one or more of its Members may meet to exchange and discuss the following types of information:

a. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Related Services in the Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; prices and availability of Products and Related Services from competitors for sales in Export Markets; and specifications for Products and Related Services by customers in Export Markets;

b. Information about the export prices, terms, quality, quantity, source, and delivery dates of Products and Related Services available from Members for export or from non-members for use in barter transactions.

c. Information about terms and conditions of contracts of sales (including barter transactions) in Export Markets to be considered and/or bid on by CISA ETG and its Members;

d. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about CISA ETG's or its Members' export operations, including without limitation sales and distribution networks established by CISA ETG or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CISA ETG and/or its Members may enter into agreements wherein CISA ETG and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive export intermediary for Products or Related Services in that country or market. In such agreements, (i) CISA ETG or the Member(s) acting as an exclusive export intermediary may agree not to represent any other Supplier for sale in the relevant country

or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through CISA ETG or the Member(s) acting as exclusive export intermediary, and that they will not export independently to the relevant country or market, either directly or through any other export intermediary. CISA ETG, when acting as an export intermediary, will make its services available to any member on non-discriminatory terms.

Date: August 1, 1988.

**John E. Stiner,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 88-17599 Filed 8-3-88 8:45 am]

BILLING CODE 3510-DR-M

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**Decision on Application for Duty-Free Entry of Scientific Accessories; University of Nebraska**

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

**Docket No.: 88-195**

Applicant: University of Nebraska, Lincoln, NE 68588-0111.

Instrument: Slevin Atomic Hydrogen Source.

Manufacturer: Leisk Engineering Ltd., United Kingdom.

Intended Use: See notice at 53 FR 19983, June 1, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. We know of no domestic accessory which can be readily adapted to the instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-17532 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

**Decision on Application for Duty-Free Entry of Scientific Instrument; Woods Hole Oceanographic Institution**

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

**Docket No. 88-119**

*Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543.

*Instrument:* Ultrasonic Flow Meter, Model DS-102 X-Y.

*Manufacturer:* Denshi Kogyo Co. Ltd., Japan.

*Intended Use:* See notice at 53 FR 15102, April 27, 1988.

*Reasons for this Decision:* The foreign instrument provides spatial and temporal averaging scales of 9.0 cm and 2.0 Hz respectively, and is small and light enough for above-surface mounting.

*Advice Submitted By:* The National Oceanic and Atmospheric Administration, June 27, 1988.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. The National Oceanic and Atmospheric Administration advises that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of the instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-17533 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-DS-M

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**National Oceanic and Atmospheric Administration**

**Membership of the National Oceanic and Atmospheric Administration Performance Review Boards**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of membership of NOAA Performance Review Boards.

**SUMMARY:** In conformance with the Civil Service Reform Act of 1978, 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB's). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for periods of 24 months service beginning August 31, 1988.

**DATE:** The effective date of service of appointees to the NOAA Performance Review Board is August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** John Innocenti, Acting Chief, Personnel Division, Office of Administration, NOAA, 6010 Executive Blvd., Rockville, Maryland 20852, (301) 443-8611.

**SUPPLEMENTARY INFORMATION:** The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

Dennis F. Geer, Director, Office of Administration
Curtis T. Hill, Director, Mountain Administrative Support Center
Kelly C. Sandy, Director, Western Administrative Support Center
Robert S. Smith, Director, Eastern Administrative Support Center
B. Kent Burton, Director, Office of Legislative Affairs
Timothy R. Keeney, General Counsel
Augustine J. LaCovey, Director, Office of Public Affairs
William Matuszeski, Executive Director, National Marine Fisheries Service
Shirley J. Hays, Deputy Under Secretary for Oceans and Atmosphere
J. Roy Spradley, Jr., Special Advisor, Office of Assistant Secretary for Oceans and Atmosphere
Bill A Powell, Chief of Staff, Office of the Under Secretary
Joseph W. Angelovic, Director, Office of Research and Environmental Information, National Marine Fisheries Service
Izadore Barrett, Science and Research Director, Southwest Region, National Marine Fisheries Service
Henry R. Beasley, Director, Office of International Affairs, National Marine Fisheries Service
Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service
Ellsworth C. Fullerton, Director, Southwest Region, National Marine Fisheries Service

Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service
Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service
John J. Carey, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, National Ocean Service
Charles N. Ehler, Director, Office of Oceanography and Marine Assessment, National Ocean Service
Frank W. Maloney, Chief, Aeronautical Charting Division, National Ocean Service
Andrew Robertson, Chief, Ocean Resources Assessment Division, National Ocean Service
Michael A. Chinnery, Director, National Geophysical Data Center, National Environmental Satellite, Data, and Information Service
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service
Russell Koffler, Deputy Assistant Administrator for Satellite and Information Services, National Environmental Satellite, Data, and Information Service
Gregory W. Withee, Director, National Oceanographic Data Center, National Environmental Satellite, Data, and Information Service
Richard P. Augulis, Director, Central Region, National Weather Service
Louis J. Boezi, Director, Transition Program Office, National Weather Service
William D. Bonner, Director, National Meteorological Center, National Weather Service
Michael D. Hudlow, Director, Office of Hydrology, National Weather Service
Richard. A. Wagoner, Chief, Operations Division, National Weather Service
Frederick P. Ostby, Director, National Severe Storms Forecast Center, National Weather Service
Douglas H. Sargeant, Director, Office of Systems Development, National Weather Service
Walter Telesetsky, Director, Office of Systems Operations, National Weather Service
Eddie Bernard, Director, Pacific Marine Environmental Laboratory, Office of Oceanic and Atmospheric Research
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Vernon E. Derr, Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research
J. Michael Hall, Director, Office of Climatic and Atmospheric Research, Office of Oceanic and Atmospheric Research
Jerry D. Mahlman, Director, Geophysical Fluid Dynamics Laboratories, Office of Oceanic and Atmospheric Research
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Ned A. Ostenso, Director, Sea Grant and Extramural Programs, Office of Oceanic and Atmospheric Research
Alan R. Thomas, Deputy Assistant Administrator for Oceanic and Atmospheric Research
Richard J. Caldwell, Manager of the Office of Facilities, United States Information Service
Joseph E. Clark, Deputy Director, National Technical Information Service
Harriet G. Jenkins, Assistant Administrator for Equal Opportunity Programs, National Aeronautics & Space Administration
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Bureau of Standards
Glen Spalding, Director, Office of Naval Technology, Department of the Navy
John D. Hightower, Director, Marine Sciences and Technology, Naval Ocean Systems Center

Date: July 22, 1988.

**William E. Evans,**

*Under Secretary for Oceans and Atmosphere.*

[FR Doc. 88-17506 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-NS-M

## Patent and Trademark Office

### Advisory Committee for Patents and Trademarks; Open Meeting

*Agency:* Patent and Trademark Office; Commerce.

*Summary:* The Committee was established on December 17, 1986, to advise the Patent and Trademark Office on domestic and foreign patent issues, international trademark matters, the Administration of the Office, and its office-wide automation program.

*Time and Place:* September 14, 1988, from 9:00 a.m. to 4:30 p.m. The Committee will meet in the Commissioner's Conference Room at the Patent and Trademark Office, Crystal Park 2, Room 912, in Crystal City, Arlington, VA.

*Agenda:* (1) Technology Transfer. (2) PTO In The Year 2000.

*Public Observation:* The meeting will be open to public observation; approximately 12 seats will be available for the public on a first-come, first-served basis. If time permits, oral comments by the public of no more than three minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

*For further information contact:* E.R. Kazenske, Executive Assistant to the Assistant Secretary, Crystal Park 2, Suite 906, Patent and Trademark Office, Washington, DC 20231. Telephone: 703/557-3071.

Dated: July 28, 1988.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 88-17559 Filed 8-3-88; 8:45 am]

BILLING CODE 3510-16-M

## DEPARTMENT OF DEFENSE

## Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Hurricane Protection and Beach Erosion Control of West Onslow Beach and New River Inlet (Topsail Beach), Pender County, NC

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:**

**Proposed Action**

The selected plan for Topsail Beach is a berm and dune project with a total length of fill of approximately 17,400 feet and a terminal groin of 1,010 feet at the south end of the fill. The action is necessary because of hurricane and storm damage at Topsail Beach. The project is intended to reduce hurricane and storm damage to Topsail Beach.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed project and DEIS can be answered by: Mr. John A. Baden, Environmental Resources Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402-1890, telephone: (919) 343-4754.

**SUPPLEMENTARY INFORMATION:** 1. The study is being conducted pursuant to four congressional resolutions pertaining to West Onslow Beach, New River Inlet, Topsail Beach, and Surf City: Resolution adopted June 24, 1970 by United States Senate; Resolution adopted December 2, 1970 by United States House of Representatives; Resolution adopted June 23, 1971 by United States House of Representatives; and Resolution adopted November 14, 1979 by United States House of Representatives. The primary study emphasis was directed toward Topsail Beach.

2. Alternatives considered were lower or higher levels of protection with a terminal groin at the south end of each fill. Also being considered is the no action alternative.

3a. All private interests and Federal, State, and local agencies having an

interest in the project are hereby notified of the project and are invited to comment at this time. The scopinig process for the project has been initiated and has involved all known interested parties.

3b. The significant issue to be analyzed in the DEIS is the timing of beach nourishment operations because of possible impact to the nesting loggerhead sea turtle.

3c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, or requested by, any other agency.

3d. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. No formal scoping meeting have been or are currently planned; however, the identification of any significant issues relating to the project by others will result in coordination with appropriate interests as needed. The Wilmington District has already coordinated this study with various Federal, State, and local agencies having concerns about hurricane protection, beach erosion control, and the environmental impacts of any potential improvements.

5. The DEIS for the project is currently scheduled for distribution to the public in September 1988.

Dated: July 15, 1989.

**Paul W. Woodbury,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 88-17563 Filed 8-3-88; 8:45 am]

BILLING CODE 3710-GN-M

## Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on August 29–31, 1988. The meeting will be held at the Naval Ocean Systems Center, the USS Valley Forge in San Diego, CA. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on August 29–31, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include discussions on ship embedded computers, interoperability, avionics standards, joint integrated avionics and open architectures. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4879.

Date: July 29, 1988.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 88-17536 Filed 8-3-88; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education

### Intent To Repay to the California State Department of Education Funds Recovered as a Result of a Final Audit Determination

**AGENCY:** Department of Education.

**ACTION:** Intent to award grantback funds.

**SUMMARY:** Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the California State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of Hayward Unified School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

**DATE:** All Written comments must be received on or before September 6, 1988.

**ADDRESS:** All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, MS–6276), Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Dr. James Spillane. Telephone: (202) 732–4692.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

In July 1986, the Department recovered $108,701, plus $6,986.92 in accrued interest, from the California SEA relating to claims arising from an audit of the Hayward Unified School District covering fiscal years 1969–73. The claims involved the LEA's administration of Title I of the Elementary and Secondary Education Act of 1965, a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families.

Specifically, the LEA used $83,721 in Title I funds for nurses and librarians who served the entire school population, rather than concentrating their efforts on Title I students. This was a violation of 20 U.S.C. 241e(a)(1)(A)(1976) and 45 CFR 116.17(g)(1971), which required that Title I projects must be tailored to contribute particularly toward meeting one or more of the special educational needs of educationally deprived children and should not be designed merely to meet the needs of schools or the student body at large in a school. The LEA also used $24,980 in Title I funds for administrative salaries without documenting that these costs were incurred as a result of the Title I program or were supplemental to the LEA's normal operations. This was a violation of 20 U.S.C. 241e(a)(3)(B)(1976) and 45 CFR 116.17(h) and 116.53(c)(1971).

#### B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

BEST COPY AVAILABLE

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

**C. Plan for Use of Funds Awarded Under a Grantback Arrangement**

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $81,525 and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 *et seq.* The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 has superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, that is designed to serve educationally deprived children in low-income areas.

Under the SEA's plan, a summer school program in mathematics would be provided by the LEA for approximately 360 eligible Chapter 1 children at a cost of $36,598. The mathematics program would focus on manipulative activities, problem solving, and critical thinking. Services would be provided at four elementary schools, one intermediate school, and one secondary school. There would be at least one teacher and one instructional assistant at each site. Eligible Chapter 1 students from nonpublic schools would be provided the opportunity to participate in the summer school program.

According to the plan, the LEA would also utilize $44,927 for staff development to benefit Chapter 1 children. Approximately 278 classroom and support teachers, public and nonpublic, and 54 classified staff members would be provided inservice in the area of mathematics. This staff development will be directly related to the summer school program and the mathematics component of the LEA's 1988–89 Chapter 1 program.

Grantback funds will be used to provide training for parents of Chapter 1 participants, public and nonpublic, to enable them to encourage and assist their children at home, and afford more continuity and expansion of learning between home and school. Prior to the beginning of the 1988–89 school year, parents would be invited to attend up to two three-hour sessions at the Chapter 1 school sites. Each parent would receive written materials to augment the information presented.

Materials and supplies necessary for implementation of the summer school program and the planned staff development would be purchased from grantback funds.

**D. The Secretary's Determination**

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

**E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement**

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. The grantback award would be in the amount of $81,525, which is 75 percent of the principal debt of $108,701 recovered by the Department as a result of the final audit determination.

**F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made**

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1988, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1989, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department all overdue debts, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: July 27, 1988.

William J. Bennett,

*Secretary of Education.*

[FR Doc. 88-17022 Filed 8-3-88; 8:45 am]

BILLING CODE 4000-01-M

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## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[ERA Docket No. 88-27-NG]**

### CU Energy Marketing Inc., Order Granting Blanket Authorization To Export Natural Gas

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of order granting blanket authorization to export natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting CU Energy Marketing Inc. (CUEM) blanket authorization to export natural gas to Canada. The order issued in ERA Docket No. 88-27-NG authorizes CUEM to export up to 50 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural

Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–17615 Filed 8–3–88; 8:45 am]

BILLING CODE 6450–01–M

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**[ERA Docket No. 88–22–NG]**

## Phillips 66 Natural Gas Co. and Marathon Oil Co.; Order Extending Authorization To Export Liquefied Natural Gas

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of order extending authorization to export liquefied natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending authorization to Phillips 66 Natural Gas Company and Marathon Oil Company to export liquefied natural gas from May 31, 1989, to March 31, 2004. The order also increases volumes from 52.0 trillion Btu's up to 57.5 trillion Btu's.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 29, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–17616 Filed 8–3–88; 8:45 am]

BILLING CODE 6450–01–M

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## Energy Information Administration

## Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the Collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of response annually; (11) an estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) a brief abstract describing the proposed collection and the respondents.

**DATE:** Comments must be filed on or before September 6, 1988.

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the office of Statistical Standards, at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Carole Patton, Office of Statistical Standards (E1–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

**SUPPLEMENTARY INFORMATION:** If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–800–804, 806, 810–814, 816–818, 820 and 825.
3. 1905–0165.
4. Petroleum Supply Reporting System.
5. Revision.
6. Weekly, Montly, Annually, Triennially.
7. Mandatory for all except EIA–806 which is voluntary.
8. Businesses or other for profit.
9. 3,264 respondents annually (total).
10. 48,000 responses annually (total).
11. The estimated average hours per response for the forms in the Petroleum Supply Reporting System are: EIA–800, 1 hour; EIA–801, .52 hours; EIA–802, .5 hours; EIA–803, .5 hours; EIA–804, 1 hour; EIA–806, 1 hour; EIA–810, 3.25 hours; EIA–811, 1.5 hours; EIA–812, 2 hours; EIA–813, 1.5 hours; EIA–814, 2 hours; EIA–816, .75 hours; EIA–817, 1.5 hours; EIA–818, 3 hours; EIA–820, 2 hours; and EIA–825, .5 hours.
12. 55,760 hours annually (total).
13. The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA. Respondents are operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers and barges, and oil importers.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC., July 29, 1988.

**Yvonne M. Bishop,**

*Director Statistical Standards, Energy Information Administration.*

[FR Doc. 88–17617 Filed 8–3–88; 8:45 am]

BILLING CODE 6450–01–MM

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–814–DR]**

## Major Disaster and Related Determinations; Iowa

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–814–DR), dated July 28, 1988, and related determinations.

**DATED:** July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

**Notice**

Notice is hereby given that, in a letter dated July 28, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from tornadoes, rains, and high winds, which occurred on July 15–16, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Paul Ward of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster: Pottawattamie County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Robert H. Morris,**

*Deputy Director, Federal Emergency Management Agency.*

[FR Doc. 88–17535 Filed 8–3–87; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement Name: 232–011204**

*Title:* EMC/JSS Cross Space Charter and Sailing Agreement.

*Parties:* Evergreen Merchant Marine Corporation (Taiwan) Ltd.; Johnson Scanstar.

*Synopsis:* The proposed agreement would authorize the parties to charter space from one another and coordinate vessel operations between ports on the West Coast of the United States and Northern Europe.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: August 1, 1988.

[FR Doc. 88–17537 Filed 8–3–88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Barclays Bank PLC, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC*, London, England; Barclays PLC, London, England; Barclays USA Inc., Wilmington, Delaware; to engage *de novo* through its subsidiary Barclays de Zoete Wedd Government Securities, Inc., New York, New York, in acting as a futures commission merchant with respect to futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments pursuant to § 225.25(b)(18); and providing investment and financial advice as a futures merchant commission solely with respect to futures contracts and options of futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments pursuant to § 225.25(b)(19) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88–17555 Filed 8–3–88; 8:45 am]

BILLING CODE 6210-01-M

### First National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 26, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. First National Bancorp, Inc.*, Norfolk, New York; to become a bank holding company by acquiring 15.5 percent of the voting shares of First National Bank of Lisbon, Lisbon, New York.

B. **Federal Reserve Bank of Richmond** (Loyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Citizens Bancshares Corporation*, Olanta, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank, Olanta, South Carolina.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

*1. SouthTrust of South Carolina, Inc.*, Latta, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Latta Bank & Trust Company, Latta, South Carolina.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Republic Bancorp, Inc.*, Ann Arbor, Michigan; to acquire 71.4 percent of the voting shares of Premier Bancorporation, Inc., Jackson, Michigan; and thereby indirectly acquire Michigan Bank-Midwest, Jackson, Michigan, and Michigan Bank-Mid South, Litchfield, Michigan.

Board of Governors of the Federal Reserve System, July 29, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88-17556 Filed 8-3-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Statement of Organization, Functions and Delegations of Authority; Chapter AML; Office of Budget

Part A, of the Office of the Secretary of the Statement of Organizational Functional Statement and Delegation of Authority for the Department of Health and Human Services is amended as follows: (1) Chapter AML, Office of Budget, as last amended at 52 FR 28193 (7/28/87); and (2) Chapter AMN, Office of Finance at 52 FR 25916 (7/9/87). This amendment will transfer the Working Capital Fund function from the Office of Finance to the Office of Budget. The changes are as follows:

1. Section AMN.00 Mission delete the last sentence, beginning with "In addition, the Office * * * Board of Governors."

2. Section AMN.10 Organization, delete the "Working Capital Fund Financial Management Staff."

3. Section AMN.20 Function, delete paragraph "5 Working Capital Fund Financial Management Staff" in its entirety.

4. Section AML.00 Mission, delete the word "and" before Item No. 5 and "Item 5" in its entirety and replace with the following:

(5) Management and productivity improvements in program operations;" (6) management and policy for the Working Capital Fund; and (7) audit resolutions.

6. Section AML.00 Organization, change "Division of OS Budget Services," to "Division of OS Budget Analysis."

7. Section AML.20 Functions, paragraph number 1 "Office of Budget," insert the following after Item (K);

(L) Provides policy, management, and financial integrity for the Working Capital Fund. (M) Monitors implementation of cleared Office of Inspector General and General Accounting Office audit and provides status reports to the Assistant Secretary for Management and Budget and key Department officials. (N) Provides policy and technical support to the Assistant Secretary for Management and Budget and other senior officials within the Office of the Assistant Secretary for Management and Budget on regional functions.

6. Section AML.20 Functions, delete paragraph No. 5 "Division of OS Budget Services in its entirety and replace with the following:

5. Division of OS Budget Analysis. The Director, Division of OS Budget Analysis serves as budget officer and financial management adviser for the Office of the Secretary. The Division: (a) Provides staff assistance to the Secretary, the Assistant Secretary for Management and Budget, OPDIV Budget Officers, and STAFFDIV heads in the budgetary management of the Office of the Secretary and the Working Capital Fund. (b) Provides for the policy, management, and financial integrity of departmentwide common services through the WCF. (c) Monitors a central tracking system of cleared OIG and GAO audits and serves as the Department's liaison on follow-up actions between OPDIVs, OIG and GAO. (d) Identifies productivity and management improvements for implementation. (e) Provides budget policy and technical support to the Deputy Assistant Secretaries and the Assistant Secretary for Management and Budget on regional functions. (f) Participates in planning, directing, and coordinating financial and budgetary programs of the Office of the Secretary. (g) Directs and provides technical guidance to administrative officers in preparing budgets. Assists in the planning and preparation of the Office of the Secretary budget for presentation to top HHS management officials, the Office of Management and Budget, and the Congress. (h) Develops materials for key members of the Office of the Secretary who testify at hearings before the Office of Management and Budget and the Congress. (i) Prepares requests for an apportionment of appropriated funds. Maintains and monitors subsidiary expenditure controls appropriations in the Office of the Secretary. (j) Develops financial operating procedures and manuals. Maintains budgetary controls to ensure observance of established ceilings both on funds and personnel. Assures implementation within the Office of the Secretary of Departmental and Federal fiscal policies and procedures.

Date: July 29, 1988.

**S. Anthony McCann,**

*Assistant Secretary for Management and Budget.*

[FR Doc. 88-17543 Filed 8-3-88; 8:45 am]

BILLING CODE 4110-60-M

VOL 53 ISS 150 AG 4 1988 UMI

**Food and Drug Administration**

**[Docket No. 88M-0251]**

**Hanita Lenses; Premarket Approval of ADYPI (Etafilcon A) Contact Lens**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Hanita Lenses, Kibbutz Hanita, 22885 Israel, for premarket approval under the Medical Device Amendments of 1976, of the ADYPI (etafilcon A) Contact Lens. The lens is to be manufactured under an agreement with Vistakon, Inc., Jacksonville, FL, which has authorized Hanita Lenses to incorporate information contained in its approved premarket approval application for the VISTAMARC™ (etafilcon A) Hydrophilic Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by September 6, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On May 5, 1987, Hanita Lenses, Kibbutz Hanita, 22885 Israel, submitted to CDRH an application for premarket approval of the ADYPI (etafilcon A) Contact Lens in spherical and toric configurations. The spherical ADYPI (etafilcon A) Contact Lens for daily wear is indicated for the correction of visual acuity in aphakic or not-aphakic persons with nondiseased eyes that are myopic or hyperopic and may have 1.00 diopter (D) or less of astigmatism that does not interfere with visual acuity. The lens ranges in power from −20.00 D to +20.00 D. The toric lens is indicated for daily wear for the improvement of visual acuity in individuals with nondiseased not-aphakic eyes that are myopic or hyperopic that require refractive astigmatism correction of up to 5.00 D. This lens ranges in power from −20.00 D to +10.00 D. The spherical lens is also indicated for extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in non-aphakic persons with nondiseased eyes that are myopic or hyperopic and have 1.00 D or less of astigmatism that does not interfere with visual acuity. This lens ranges in power from −20.00 D to +14.00 D. The lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Vistakon, Inc., Jacksonville, FL 32207, to incorporate information contained in its approved premarket approval applications for the VISTAMARC™ (etafilcon A) Hydrophilic Contact Lens (Docket No. 84M-0288).

On June 30, 1988, CDRH approved the application by Hanita Lenses by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the ADYPI (etafilcon A) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylemethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 6, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data on information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 26, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88-17590 Filed 8-3-88; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 88M-0255]**

**3M/Vision Care; Premarket Approval of 3M Fluoropolymer (Flurofocon A) Contact Lens for Extended Wear**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its

approval of the supplemental application by 3M/Vision Care, St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the spherical 3M Fluoropolymer (flurofocon A) Contact Lens for extended wear. After reviewing the recommendations of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 21, 1988, of the approval of the supplemental application.

**DATE:** Petitions for administrative review by September 6, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On September 23, 1987, 3M/Vision Care, St. Paul, MN 55144, submitted to CDRH a supplemental application for premarket approval of the 3M Fluoropolymer (flurofocon A) Contact Lens for extended wear. The lens is indicated for daily wear (during waking hours) and extended wear (overnight wear, from 1 to 7 days between removals for cleaning and disinfection) as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic and for the correction of astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from plano to −7.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling.

On April 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On June 21, 1988, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved final labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the 3M Fluoropolymer (flurofocon A) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58, as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 6, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 510(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 26, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–17589 Filed 8–3–88; 8:45 am]

BILLING CODE 4160–01–M

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## Health Care Financing Administration

### Medicaid Program; Hearing; Reconsideration of Disapproval of a Louisiana State Plan Amendment

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing on September 21, 1988 in Dallas, Texas to reconsider our decision to disapprove Louisiana State Plan Amendment 87–33.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the Docket Clerk August 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4470.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider our decision to disapprove Louisiana State Plan Amendment 87–33.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the

hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issues in this matter are whether Louisiana SPA 87–33 violates section 1902(a)(30) of the Social Security Act and regulations at 42 CFR 447.301 and 447.332.

Louisiana SPA 87–33 implements the drug reimbursement regulations published July 31, 1987. The State's plan amendment indicates that the State will use the Average Wholesale Price (AWP) from drug Topics, *Blue Book*, for the purpose of establishing the estimated acquisition cost (EAC) levels. SPA 87–33 also provides that the State agency will be the only one to determine which AWP price best reflects availablility to providers and that "the State agency's determination of availability shall not be subjugated by any other group."

The current rules and the former Maximum Allowable Cost (MAC) regulations require the State agencies to establish EAC levels at "the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of the drug most frequently purchased by providers." This is necessary because, in general, the State payments for drugs may not exceed, in the aggregate, payment levels derived by applying the lower of: The cost of the drug plus a reasonable dispensing fee or the provider's usual and customary charge to the general public. HCFA believes that use of the AWP without modification does not comport with the definition of "estimated acquisition cost" (EAC) in 42 CFR 447.301 because of a preponderance of evidence which demonstrates that the AWP overstates the price that providers actually pay for drug products. Thus, use of an unmodified AWP cannot constitute an agency's "best estimate" of current price. It also does not comport with section 1902(a)(30) of the Act requiring the State plan to assure that payments are consistent with efficiency, economy, and quality of care.

The State also indicates in SPA 87–33 that the State agency will be the only one to determine which AWP price list reflects availability to providers and that "the State agency's determination of availability shall not be subjugated by any other group." The State has indicated that this preemptive language is intended to preclude groups such as the pharmaceutical groups from making a determination about availability, not to preclude HCFA from discharging its rightful activities. However, this language conflicts with 42 CFR 447.332 and could technically bar HCFA from applying to the State its determination of availability.

The notice to Louisana announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Howard L. Prejean,
*Deputy Assistant Secretary, Louisiana Department of Health and Human Resources, Office of Family Security, P.O. Box 94055, Baton Rouge, Louisiana 70804–4055*

Dear Mr. Prejean: I am advising you that your request for reconsideration of the decision to disapprove Louisiana 87–33 was received on July 1, 1988.

Louisiana 87–33 implements the drug reimbursement regulations published on July 31, 1987. The State's plan amendment indicates that the State will use the Average Wholesale Price (AWP) from Drug Topics, *Blue Book*, for the purpose of establishing the estimated acquisition (EAC) levels. The amendment also provides that only the State agency will determine which AWP price best reflects availability to providers and that "the State agency's determination of availability shall not be subjugated by any other group."

The issues in this matter are: (1) whether use of an unmodified AWP constitutes the agencies "best estimate" of current prices as required by 42 CFR 447.310 and, therefore, whether payments resulting from the use of the unmodified AWP are consistent with efficiency, economy, and quality of care as required by section 1902(a)(30) of the Social Security Act; and (2) whether the preemptive language in section II.E.1 of item 12.a (pages 2 and 3) of attachment 4.19–B conflicts with 42 CFR 447.332 and could bar the Health Care Financing Administration from applying its determination of drug availability to the State.

I am scheduling a hearing on your request to be held on September 21, 1988 at 10:00 a.m. in Room 1950, 1200 Main Tower, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 45 CFR 201.4 and Part 213.

I am designating Mr. Albert Miller as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4470.

Sincerely,

William L. Roper,
*Administrator.*

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 45 CFR 201.4)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 27, 1988.

**William L. Roper,**
*Administrator, Health Care Financing Administation.*

[FR Doc. 88–17542 Filed 8–3–88; 8:45 am]
BILLING CODE 4120–03–M

## Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (FR, Vol. 52, No. 163, pp. 31818–31819, dated Monday, August 24, 1987, and FR, Vol. 51, No. 201, pp. 37076–37077, dated Friday, October 17, 1986) is amended to reflect changes within the Office of the Associate Administrator for Management and Support Services (AAMSS). The changes reflect a reorganization of the Division of Coding and Standardization Policy (DCSP), Office of Statistics and Data Management (OSDM), Bureau of Data Management and Strategy.

The specific changes to Part F. are as follows:

- Section FH.20.4. is deleted in its entirety and replaced by an updated functional statement to read as follows:

4. Office of Statistics and Data Management (FHE7).

Develops and implements plans and policies for the identification, classification coding, standardization, development, and security of data, procedures, and standards to meet HCFA's information requirements. Formulates policy necessary for developing strategies to identify, organize, store (inventory), and maintain security over the Agency's program data resources. Performs strategic data resource planning to develop long-range plans to meet future data requirements. Establishes and maintains a data dictionary system to store documentation on all systems, programs, and data bases. Develops and maintains the Agency program information strategy and plan for

applying data planning and management techniques to support the redesign and functioning of Agency systems. Designs, implements, maintains, and ensures the continuing operation of current and revised national health care information and program design support systems. Extracts health care data necessary to support HCFA activities from HCFA components, the Social Security Administration, and other health-related sources using large-scale computer systems and/or personal computers, as necessary. Provides sophisticated computational and statistical services, mathematical modeling, simulations, systems analysis, and statistical programming. Designs information systems, data bases, and software applications for research and development. Conducts special purpose information retrieval and processing activities in support of projects undertaken by HCFA. Develops programs to array data in accordance with general specifications developed within HCFA. Develops standards for and monitors the quality of program management and statistical data. Develops policy and procedures concerning the release of program data. Provides direction to HCFA staff, other agencies and the private sector on the implementation and administration of these policies. Coordinates and provides liaison on data standards activities, the release of data, matters dealing with program data confidentiality, and research plans within HCFA and between HCFA and other governmental agencies and non-governmental groups. Coordinates and provides liaison with HCFA's Privacy Officer and Freedom of Information Officer on all matters pertaining to the Privacy Act or the Freedom of Information Act.

Serves as the focal point for the planning and evaluation of HCFA's data standards development. Disseminates statistical data, estimates, analyses, and other information on health-related programs in response to questions from legislators, program administrators, policymakers, researchers, and health planners in the public and private sectors. Screens, evaluates, and responds to requests for publicly available data including the development of guidelines and initiating data release agreements. Prepares statistical reports for external publications and management reports on HCFA programs and related areas. Provides support for program analysis, policy development, and epidemiological research for the Federal End-Stage Renal Disease (ESRD) program and disseminates ESRD program information in publications, management reports, and responses to ad hoc requests.

• Section FH.20.D.4.d., Division of Coding and Standardization Policy is deleted in its entirety and replaced by a new division whose functional statement reads as follows:

d. Division of Data Documentation and Release (FHE75).

Develops policy to measure the quality of data to improve the efficiency and effectiveness of information management in HCFA. Develops and implements procedures to ensure the integrity and proper usage of statistical data. Develops, maintains, and coordinates documentation of the sources, uses, and data limitations on files produced from HCFA statistical systems. Participates in the development and establishment of data standards used for areas such as uniform billing, uniform reporting, and uniform coding systems. Develops, maintains, and coordinates the publication and dissemination of manuals such as the Statistical Files Manual and HCFA Data Profiles to inform other government agencies and non-government organizations of the data maintained in HCFA's statistical systems. Provides advice and consultation on the availability and use of HCFA's data. Develops and implements data release policies and costing methodologies to be used when releasing information to the public. Serves as the Agency focal point, and provides staff support for the Director, BDMS, for data policy task forces and advisory groups such as the National Committee on Vital and Health Statistics. Develops policy and procedures concerning the release of program data. Develops and implements confidentiality policies applying to the generation, collection, analysis, interpretation, and release of Medicare program and enrollment data. Coordinates with HCFA's Privacy Officer and Freedom of Information Officer in developing and applying Privacy Act and Freedom of Information Act policies and procedures to HCFA program data released to other Federal components, research organizations, HCFA contractors, and to the public.

Date: July 13, 1988.

**William L. Roper,**
*Administrator.*

[FR Doc. 88-17541 Filed 8-3-88; 8:45 am]
BILLING CODE 4120-01-M

## National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees of the National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of subcommittees of the National Kidney and Urologic Diseases Advisory Board, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The primary purpose for the meetings is to develop a national long-range plan to combat kidney and urologic diseases. Although the meetings will be open to the public, attendance will be limited to space available. Notice of the meeting rooms will be posted.

This notice is being published less than fifteen (15) days prior to the meeting date because of difficulty with coordinating attendance in order to assure a quorum.

For any further information, please contact Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide, for example, a membership roster of the Committee and an agenda and summaries of the actual meetings.

**Name of Subcommittee: Access to and Delivery of Care Subcommittee**

*Dates of Meeting:* August 7-8, 1988.
*Time of Meeting:* 8:00 a.m.-5:00 p.m.
*Place of Meeting:* Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852.
*Purpose of Meeting:* To develop a report and make preliminary recommendations related to patient access to care and the delivery of that care.

**Name of Subcommittee: Scope and Impact [Data Subcommittee]**

*Date of Meeting:* August 12, 1988.
*Time of Meeting:* 8:00 a.m.-5:00 p.m.
*Place of Meeting:* Kansas City Airport Marriott, 775 Brasilia, Kansas City, Missouri 64153.
*Purpose of Meeting:* To review the incidence and prevalence of kidney and urologic diseases and develop preliminary recommendations for future data needs.

**Name of Subcommittee: Meeting of Research Subcommittee Chairmen**

*Date of Meeting:* August 15, 1988.
*Time of Meeting:* 8:00 a.m.-5:00 p.m.
*Place of Meeting:* American Airlines Admiral Club, Hartsfield Atlanta

International Airport, Atlanta, Georgia 30320.

*Purpose of Meeting:* To review research accomplishments and research opportunities and to develop a report and recommendations to develop a national long-range plan to combat kidney and urologic diseases.

Dated: July 29, 1988.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 88-17575 Filed 8-3-88; 8:45 am]

BILLING CODE 4140-01-M

## Office of Child Support Enforcement

### Conformity of Child Support Enforcement Plan of the State of Maryland with Federal Requirements; Hearing

Notice of hearing is hereby given as set forth in a letter that has been sent to the State of Maryland's Department of Human Resources.

The letter is in response to the letter of May 18 from Ms. Ruth Massinga, Secretary of the Maryland Department of Human Resources, requesting a hearing prior to my final decision to approve or disapprove Maryland's State IV-D plan in accordance with the procedures set forth in OCSE-AT-88-21.

Pursuant to 45 CFR 213.12, I am scheduling a hearing to be held on the 27th day of September 1988 in Washington, DC, at 9:30 a.m. in Room 2155 of the Board of Contract Appeals, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

In accordance with 45 CFR 213.21, I have designated Norval D. Settle, Chair of the Departmental Grant Appeals Board, as the presiding officer for State plan disapproval hearings, and he has redesignated Donald F. Garrett as the presiding officer for Maryland's hearing. The hearing will be conducted under the provisions of 45 CFR Part 213.

The issues which will be considered at the hearing concern whether Maryland's State IV-D plan is in conformance with State plan requirements, as specified in my notices of December 8, 1987 and March 10, 1988. Specifically, the issues are whether:

1. The State has failed to submit an amendment to its State plan at section 2.12-9 providing for the prohibition of retroactive modification of child support arrears, in accordance with the requirements at 42 U.S.C. 666(a)(9).

2. The State has failed to submit an amendment to its State plan at section 3.11-1 providing for the establishment of guidelines for setting child support awards, in accordance with requirements at 45 CFR 302.56.

Any further inquiries, submissions or correspondence regarding this hearing should be filed in an original and two copies with Mr. Garrett at the Departmental Grant Appeals Board, Room 451, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, where the record of this hearing will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience, please refer to Docket No. 88-123 assigned to these proceedings.

Dated: July 29, 1988.

**Wayne A. Stanton,**

*Director, Office of Child Support Enforcement.*

[FR Doc. 88-17470 Filed 8-3-88; 8:45 am]

BILLING CODE 4150-04-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N-88-1840]

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 20, 1988.

**David S. Cristy,**

*Deputy Director, Information Policy and Management Division.*

**Proposal: Urban Development Action Grant Program—Applications from Consortia of Small Cities (FR-2381)**

*Office:* Community Planning and Development.

*Description of the Need for the Information and its Proposed Use:* This rule proposes to permit consortia of geographically proximate cities of less than 50,000 to apply for grants on behalf of a member city that is otherwise eligible for assistance but unable to handle independently the administrative or financial burden of a desired project. This information will be needed to evaluate funding requests from consortia of small cities.

*Form Number:* None.

*Respondents:* State or Local Governments.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Application | 5 | | 1 | | 8 | | 40 |

*Total Estimated Burden Hours:* 40.
*Status:* New.
*Contact:* Michael J. McMahon, HUD, (202) 755–8227, John Allison, OMB, (202) 395–6880.
*Date:* July 28, 1988.

**Proposal: Single Family Mortgage Insurance on Allegany Reservation of Seneca Indians (FR–2382)**

*Office:* Housing.
*Description of the Need for the Information and its Proposed Use:* This rule implements Section 203(q) of the National Housing Act. The information is necessary to assure that borrowers fully realize their risks, and to document that remedies, other than assignment and foreclosure, have been exhausted.
*Form Number:* None.
*Respondents:* Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.
*Frequency of Submission:* On Occasion.
*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Assignment request | 10 | | 5 | | .55 | | 27.5 |

*Total Estimated Burden Hours:* 27.5
*Status:* Extension.
*Contact:* Richard E. Harrington, HUD, (202) 755–5676, John Allison, OMB, (202) 395–6880.
*Date:* July 21, 1988.

**Proposal: Survey of Market Absorption (SOMA) of New Apartment Buildings**

*Office:* Policy Development and Research.
*Description of the Need for the Information and its Proposed Use:* The survey measures the rate at which different types of new rental and condominium apartments are absorbed, i.e., taken off the market. It provides a basis for analyzing the degree to which apartment building activity is meeting present and future needs.
*Form Number:* H–31.
*Respondents:* Businesses or Other For-Profit.
*Frequency of Submission:* On Occasion and Quarterly.
*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| H–31 | 12,000 | | 1 | | .3 | | 3,600 |

*Total Estimated Burden Hours:* 3,600.
*Status:* Extension.
*Contact:* Connie H. Casey, HUD, (202) 755–5060, John Allison, OMB, (202) 395–6880.
*Date:* July 26, 1988.

[FR Doc. 88–17598 Filed 8–3–88; 8:45 am]
BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Protection Island National Wildlife Refuge; County of Jefferson, WA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that sufficient lands, waters and interests therein have been acquired to establish the Protection Island National Wildlife Refuge located in the County of Jefferson, State of Washington.

**DATE:** This action is effective as of August 26, 1988.

**ADDRESS:** Copies of a map showing the refuge boundary are available upon request at the following location: U.S. Fish and Wildlife Service (ARW/RE), Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Georgia Shirilla of the USFWS Division of Realty at the Portland address given above; telephone 503/231–2236, (FTS) 429–2236.

**SUPPLEMENTARY INFORMATION:** The Act to authorize the Protection Island National Wildlife Refuge was enacted by Congress on October 15, 1982 (Pub. L. 97–333). This Act directed the Secretary of the Interior to establish the refuge by publication in the **Federal Register.**

Date: July 26, 1988.

**Wally Steucker,**
*Acting Regional Director, U.S. Fish and Wildlife Service.*

[FR Doc. 88–17593 Filed 8–3–88; 8:45 am]
BILLING CODE 4310–AM–M

## Bureau of Land Management

[AZ–050–08–4333–12]

### Revision of Regulations Governing Public Use; Betty's Kitchen Wildlife and Interpretation Area; Yuma Resource Area, AZ

**AGENCY:** Bureau of Land Management; Interior.

**ACTION:** Establish additional regulations governing public use at Betty's Kitchen Wildlife and Interpretation Area in the Yuma Resource Area.

**SUMMARY:** In addition to the regulations which apply to all public lands, in the following area there will be no

discharge of firearms and no open fires. Fires will be allowed only in the enclosed fireplaces. Vehicles must be kept on the established roads and within the graveled areas delineated by post-and-cable fence. Pets must be kept on a leash. There will be no cutting or damaging of plants or any other natural features.

*Area and Activity:* Betty's Kitchen, Regulations.

*Location:*

Portion of G&SRM

T. 7 S., R. 22 W., (partially unsurveyed)
Sec. 14, SW¼NW¼SE¼, SE¼NE¼SW¼, SW¼NE¼NE¼SW¼, SE¼NW¼NE¼SW¼.

Containing 10 acres, more or less.

**DATE:** Effective August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Sue E. Richardson, Area Manager; Yuma Resource Area; 3150 Winsor Avenue; Yuma, Arizona 85365; 602–726–6300.

**SUPPLEMENTARY INFORMATION:** Authority for this action is contained in 43 CFR 8364.1. These regulations are being established to protect wildlife and wildlife habitat at the 10-acre Betty's Kitchen Wildlife and Interpretation Area. This area is within the security zone of Laguna Dam, so it is already closed to overnight camping and to swimming. The use of fireworks is also already prohibited by State law.

Date: July 28, 1988.

**Robert V. Abbey,**

*Acting District Manager.*

[FR Doc. 88–17523 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-32-M

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[CA-060-08-4352-12]

## Use Restriction Order; San Bernardino County, CA

### Use Restriction Order

The following order, affecting the lands captioned below, was issued on July 29, 1988.

T. 1 S., R. 2 W., SBM,
Sec. 8, S½NW¼, NW¼SE¼, SW¼.
T. 1 S., R. 3 W., SBM,
Sec. 2, SE¼SE¼;
Sec. 10, S½NW¼, NE¼NE¼, S½NE¼, S½SE¼, SW¼;
SEc. 12, N½SE¼, SW¼SE¼, N½SW¼, SW¼SW¼.

I have determined that vehicular use of the above captioned lands is causing environmental degradation and damage to the habitat of two plant species (*Eriastrum densifolium* ssp. *sanctorum* and *Centrostegia leptoceras*) which are Federally listed as endangered. In order to rectify this situation, I hereby order the above captioned public land closed to all vehicular use pursuant to 43 CFR 8364.1, with the exception of state, county and city roads and the road adjacent to the southern boundary of section 10.

Any person who knowingly and willfully violates this order may be subject to $1000 fine and/or one year imprisonment.

Persons exempt from this order shall include law enforcement personnel, persons performing the official administrative functions of the Bureau of Land Management, persons performing the official administrative functions of the San Bernardino Valley Water Conservation District, and persons acting under specific authorizations granted by the Bureau of Land Management.

This order shall remain in effect until further notice.

Date: July 29, 1988.

**Leslie M. Cone,**

*Area Manager.*

[FR Doc. 88–17522 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-40-M

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[UT-040-08-4333-09]

## Environmental Assessments; Actions Within Wilderness Study Areas

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of three draft environmental assessments for activities within wilderness study areas.

**ADDRESS:** To obtain a copy of the horse endurance ride Environmental Assessment contact George Peternel, Area Manager, Escalante Resource Area, P.O. Box 225, Escalante, UT 84726, or telephone 801/826–4291.

To obtain a copy of the Commercial Guide Service Environmental Assessment, or the Environmental Assessment on the Agricultural Trespass contact Martha Hahn, Area Manager, Kanab Resource Area, P.O. Box 459, Kanab, UT 84741 or telephone 801/644-2672.

**SUMMARY:** The Bureau of Land Management, Cedar City City District, is proposing to authorize a recreation permit for a horseback endurance ride, a commercial permit for a big game guiding service, and a reclamation plan for the rehabilitation of an agricultural trespass. These activities are to take place within several wilderness study areas located in southwestern Utah. These documents are now available for public review and comment. Comments should be submitted on or before September 6, 1988.

Date: July 27, 1988.

**Arthur L. Tait,**

*Acting District Manager.*

[FR Doc. 88–17520 Filed 8–3–88; 8:45 am]

BILLING CODE 4310-DQ-M

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[ID-060-08-4410-08]

## Coeur d'Alene District; Planning Activity

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent; amendment to the Emerald Empire Management Framework Plan and Chief Joseph Management Framework Plan.

**SUMMARY:** The Couer d'Alene District, Bureau of Land Management proposes to amend the Emerald Empire and Chief Joseph Management Framework Plans to categorize all district administered lands into the following land tenure areas:

A. Management Areas—lands which will remain in public ownership for the long-term;

B. Adjustment Areas—lands which are not considered necessary for long-term public ownership.

The planning amendments will involve approximately 250,000 acres of public lands scattered throughout the eleven northernmost counties of Idaho.

The anticipated issues involve timber management, wildlife, livestock grazing, rights-of-way, and those realty actions necessary to implement land tenure adjustments (acquisitions, exchange, and/or disposal of lands).

An interdisciplinary team consisting of wildlife, hydrology, soils, recreation, minerals, forestry, range, archeology, and realty specialists will prepare the amendment and environmental analysis.

Public participation will occur throughout the amendment process and affected publics are invited to participate. Activities will include letters, comment response sheets, public meetings, and District Advisory Council meetings. It is anticipated that a draft proposal will be available for public review in January, 1989 and that public meetings will be held in late February, 1989. These activities will be announced through local newspapers, radio stations, and individual letters.

**ADDRESS:** Persons interested in participating in this plan amendment process or those desiring further information should contact: Ted Graf, Planning Team Leader, Bureau of Land Management, Couer d'Alene District Office, 1808 North Third Street, Couer d'Alene, Idaho 83814.

Date: July 29, 1988.

**Mert Lombard,**

*Acting District Manager.*

[FR Doc. 88-17611 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-GG-M

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**[CO-010-08-4322-02]**

## Craig District Grazing Advisory Board; Meeting

Time and Date: September 8, 1988, at 10 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public, interested persons may make oral statements between 10 a.m. and 11 a.m., or may file written statements.

Matters to be Considered:

1. Election of officers.
2. New Grazing Regulations.
3. Status report on FY '88 range improvement projects.
4. Area reports including updates on land use and activity planning.
5. Expenditure of Grazing Advisory Board Funds.

Contact Person for More Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado 81625, Phone: (303) 824-8261.

Dated: July 28, 1988.

**Jerry L. Kidd,**

*Associate District Manager.*

[FR Doc. 88-17604 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-JB-M

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**[NV-040-08-4322-12]**

## Ely District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of hearing.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Ely District Grazing Advisory Board will be held on Friday, September 16, 1988.

The meeting will convene at 9:30 a.m. in the Conference Room of the Ely District Office located on the Pioche Highway one mile south of Ely, Nevada.

The main agenda items will be the status of activity planning efforts in the district and projects programmed for construction of feasibility and survey and design studies next fiscal year.

Public comment time is scheduled for 11:00 a.m. The public is invited to attend this meeting and may, at the designated time, submit written or oral statements for the advisory board's consideration.

Minutes of the meeting will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

**ADDRESS:** Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

**FOR FURTHER INFORMATION CONTACT:** Kathy Lindsey, (702) 289-4865.

Dated: July 25, 1988.

**Kenneth G. Walker,**

*District Manager.*

[FR Doc. 88-17606 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-HC-M

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**[CO-070-08-4212-01]**

## Grand Junction District Multiple Use Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Grand Junction District Multiple Use Advisory Council Meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Grand Junction District Advisory Council will be held on Friday, September 9, 1988.

**SUPPLEMENTARY INFORMATION:** The meeting on Friday, September 9, will be held at the Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506 from 9 a.m.-5 p.m. A public comment period is scheduled for 4 p.m.

The meeting will include a tour of the wildhorse roundup in the Little Bookcliffs Wildhorse Area.

The tour is open to the public; however, transportation will be provided for Council members only.

**Bruce Conrad,**

*District Manager, Grand Junction District.*

[FR Doc. 88-17526 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-84-M

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**[NM-030-08-4322-14]**

## Las Cruces District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The meeting will be a field trip to view various range improvement projects. The itinerary and agenda are:

1. 8:00 a.m.—Leave the Las Cruces District Office.
2. 9:15 a.m.—Review Prisor Pasture Brush Control Project.
3. 10:15 a.m.—Review Renick Fence.
4. 10:45 a.m.—Review Johnson Pasture Brush Control.
5. 11:15 a.m.—1:00 p.m.—Dutch Treat Lunch, Ben Cain's Aleman (Bar Cross) Ranch.
6. 1:00 p.m.—Review of Minutes.
7. 1:15 p.m.—Public Comment Period.
8. 1:30 p.m.—Update on 8100 Program.
9. 1:45 p.m.—Discussion of Future Agenda Items.
10. 2:00 p.m.—Adjourn.

**DATE:** Board members and interested parties should meet at the Las Cruces District Bureau of Land Management Office, 1800 Marquess, Las Cruces, New Mexico at 7:30 a.m., September 8, 1988. The group will leave the Las Cruces District Office at 8:00 a.m. to proceed to the Lewis Cain allotment.

**FOR FURTHER INFORMATION CONTACT:** H. James Fox, District Manager, Las Cruces District Office, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005 or at (505) 525-8228.

July 28, 1988.

**Robert R. Calkins,**

*Acting District Manager.*

[FR Doc. 88-17527 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-PB-M

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**[OR-100-84-6310-02; GP8-215]**

## Meeting; Roseburg District Advisory Council

**AGENCY:** Bureau of Land Management; Interior.

**ACTION:** Notice of Meeting—July 29, 1988.

**SUMMARY:** The Roseburg District Advisory Council for the Bureau of Land Management will tour recreation areas within the North Umpqua Resource Area, September 13, 1988. The Council will be briefed on existing recreation opportunities and facilities and progress made on the North Umpqua Trail.

**ADDRESS:** The tour will begin in the west parking lot of the BLM Roseburg District Office, 777 NW. Garden Valley Blvd., Roseburg, OR.

**FOR FURTHER INFORMATION CONTACT:** Mel Ingeroi, Public Affairs Specialist, BLM Roseburg District (503) 672-4491.

**SUPPLEMENTAL INFORMATION:** The tour will leave the west parking lot of the District Office at 8:15 a.m. The tour is open to the public, and an opportunity for public comment will be provided at 9:45 a.m. Anyone wishing to address the Council should contact the District Public Affairs Specialist at least one day in advance of the tour. Members of the public are responsible for their own transportation. Summary minutes will be prepared and made available for

public inspection within 30 days of the tour.

Date: July 29, 1988.

**Richard G. Burch,**

*Acting District Manager.*

[FR Doc. 88-17605 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

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[OR-130-08-4830-12-ADVB: GP8-213]

## Spokane District Advisory Council; Meeting

**AGENCY** Bureau of Land Management, Interior.

**ACTION:** Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR, Part 1780, that a meeting of the Spokane District Advisory Council will be held on September 7, 1988. The meeting will begin at 9:30 a.m. in the conference room of the BLM Spokane District Office, East 4217 Main Avenue, Spokane, Washington.

The Agenda for the meeting is as follows:

1. Opening remarks and general business.
2. Yakima Canyon Plan.
3. Iceberg Point and Point Colville Areas of Critical Environmental Concern.
4. Uranium mines status.
5. Land exchanges.
6. Oroville hazardous material site.
7. Lambert Creek recreation proposal.
8. Fiscal year 1988 work plan.

Any responsible person wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spoxane, Washington 99202, or telephone (509) 456-2570 by the close of business, 4:30 p.m., Friday, September 2, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A written report of the Council Meeting will be maintained at the BLM Spokane District Office an will be made available for public inspection. Reproduction of the meeting report will be made available to the public at the cost of duplication.

The meeting is open to the public and news media.

Dated: July 29, 1988.

**Joseph K. Buesing,**

*District Manager.*

[FR Doc. 88-17526 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

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[CA-050-4410-02]

## Ukiah, CA; District Advisory Council Meeting

**AGENCY:** Bureau of Land Management; Interior.

**ACTION:** Notice of meeting, Ukiah, California, District Advisory Council.

**SUMMARY:** Pursuant to Pub. L. 94-579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Redding, California, September 8-9, 1988, to discuss issues and alternatives to be addressed in a resource management plan for public lands in the Bureau's Redding Resource Area.

**DATES:** The meeting will begin at 10:00 a.m. Thursday, September 8, 1988, and adjourn at 3:00 p.m. Friday, September 9, 1988.

**ADDRESS:** The meeting will be held at the Bureau of Land Management Office, 355 Hemsted Drive, Redding, California. A portion of Thursday and Friday will be spent visiting some of the public land parcels to be considered in the resource management plan.

**FOR FURTHER INFORMATION CONTACT:** Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

**SUPPLEMENTARY INFORMATION:** The Redding Resource Area is responsible for the management of approximately 230,000 acres of public land scattered throughout the five-county area of Siskiyou, Trinity, Shasta, Tehema, and Butte. Predominant uses of the public lands are timber harvesting, grazing, mining, wildlife habitat, recreation, and rights-of-way.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 1:00 p.m. Thursday, September 8, 1988. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Date: July 25, 1988.

**Alfred W. Wright,**

*District Manager.*

[FR Doc. 88-17529 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

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[AZ-040-08-4212-14-A042, A 17892]

## Receipt of Conveyance of Mineral Interest Application in Cochise County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of receipt of conveyance of Mineral Interest Application A 17892 in Cochise County, AZ.

**SUMMARY:** Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Jimmie L. Jackson has applied to purchase the mineral estate described as follows:

**Gila and Salt River Meridian, Arizona**

T. 19 S., R. 21 E.,
Sec. 31, SW¼NE¼.
Containing 40.00 acres, more or less.

Upon publication of the notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or two years from the date of publication of this notice.

**SUPPLEMENTARY INFORMATION:** Additional information concerning this application may be obtained from the San Simon Resource Area Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

**Ray A. Brady,**

*District Manager.*

Date: July 27, 1988.

[FR Doc. 88-17517 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-32-M

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[MT-930-08-4920-10-7885; SDM 72425]

## Conveyance of Mineral Estate in Custer County, SD

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public and interested state and local governmental officials of the issuance of a conveyance document to complete the exchange of mineral estates between the State of South Dakota and the Bureau of Land Management pursuant to the Act of October 21, 1976, 43 U.S.C. 1716, (FLPMA). The mineral estate acquired by the United States in this exchange is within the boundary of the Wind Cave National Park Withdrawal created by

Act of Congress dated August 9, 1946. Therefore, the minerals are not available for mineral leasing or mineral location.

**FOR FURTHER INFORMATION CONTACT:** Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 657–6082.

**SUPPLEMENTARY INFORMATION:** 1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described mineral estate was transferred to the State of South Dakota:

**Black Hills Meridian, South Dakota**

T. 5 S., R. 6 E.,
Sec. 25, all.

Containing 640 acres.

2. In exchange for the above selected mineral estate, the United States acquired the following described mineral estate in Custer County, South Dakota:

**Black Hills Meridian, South Dakota**

T. 5 S., R. 6 E.,
Sec. 16, all.

Containing 640 acres.

3. The values of the Federal and State mineral estates were both appraised at $3,200 each.

July 28, 1988.

**Edward H. Croteau,**

*Acting Deputy State Director, Division of Lands and Renewable Resources.*

[FR Doc. 88–17518 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–DN–M

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**[CO–940–88–4111–15; COC 45129]**

## Proposed Reinstatement of Oil and Gas Lease; Rio Blanco County, CO

Notice is hereby given that a petition for reinstatement of oil and gas lease COC 45129 for lands in Rio Blanco County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

**Evelyn W. Axelson,**

*Chief, Fluid Minerals Adjudication Section.*

[FR Doc. 88–17565 Filed 8–3–88 8:45 am]

BILLING CODE 4310–JB–M

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**[WY–920–08–4111–15; W–105158]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; Weston County, WY

July 28, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–105158 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–105158 effective March 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88–17566 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–22–M

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**[AZ–940–08–4212–13; A–22764]**

## Arizona, Exchange of Public and Private Lands in Mohave County

July 28, 1988.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of exchange of land.

**SUMMARY:** This action informs the public of the completion of an exchange between the United States and James E. Briggs and Lois M. Briggs. The United States transferred 1,920.00 acres in Mohave County and James E. Briggs and Lois M. Briggs conveyed 3,949.68 acres in Mohave County.

**FOR FURTHER INFORMATION CONTACT:** Angela Mogel, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

**SUPPLEMENTARY INFORMATION:** On July 12, 1988, the Bureau of Land Management transferred the following described land by Patent No. 02–88–0038 and Deed No. AZ–88–010, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

**Gila and Salt River Meridian, Arizona**

T. 22 N., R. 19 W.,
Sec. 24, all;
Sec. 26, all;
Sec. 36, all.

The area described comprises 1,920.00 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

**Gila and Salt River Meridian, Arizona**

T. 22 N., R. 19 W.,
Sec. 5, N½N½;
Sec. 7, W½W½, N½NE¼, NE¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, E½SW¼;
Sec. 17, all.
T. 22 N., R. 20 W.,
Sec. 13, SE¼ (includes the mineral estate);
Sec. 25, all.
T. 23 N., R. 19 W.,
Sec. 29, all;
Sec. 31, all;
Sec. 33, all.

The area described comprises 3,949.68 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 88–17519 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–32–M

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**[MTM–73152; MT–020–08–4212–13]**

## Realty Action; Exchange of Public and Private Lands; McCone, Prairie, Custer, Sheridan, Dawson, Wibaux, Garfield and Richland Counties, Montana

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** Notice of Realty Action MTM–73152, Exchange of public and private lands in McCone, Prairie, Custer, Sheridan, Dawson, Wibaux, Garfield and Richland Counties.

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**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

**Principal Meridian**

T. 15 N., R. 41 E.,
Sec. 20, SW¼.
T. 20 N., R. 44 E.,
Sec. 14, ALL;
Sec. 22, S½NW¼, E½SE¼.
T. 20 N., R. 45 E.,
Sec. 4, Lot 1;
Sec. 8, S½;
Sec. 18, Lots 1–4, E½, E½W½.
T. 21 N., R. 45 E.,
Sec. 30, Lots 3, 4, E½SW¼, SE¼;
Sec. 32, NW¼NW¼.
T. 20 N., R. 60 E.,
Sec. 10, Lot 4.
T. 36 N., R. 54 E.,
Sec. 31, NE¼SE¼.
T. 14 N., R. 58 E.,
Sec. 22, SW¼NE¼, NW¼.
T. 14 N., R. 59 E.,
Sec. 20, NW¼NW¼.

Containing 2,660.35 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Glacier Park Company.

**Principal Meridian**

T. 9 N., R. 51 E.,
Sec. 27, ALL.
T. 20 N., R. 44 E.,
Sec. 3, SE¼;
Sec. 11, ALL;
Sec. 19, That portion lying west of State Highway 24 Centerline.
T. 12 N., R. 50 E.,
Sec. 27, Lot 5–7;
Sec. 33, Lot 5–7.
T. 13 N., R. 47 E.,
Sec. 13, ALL.

Containing 2,372.71 acres of private land.

**DATES:** For a period of up to and including September 19, 1988, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

**FOR FURTHER INFORMATION CONTACT:** Information related to the exchange, including the environmental assessment and land report, is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

**SUPPLEMENTARY INFORMATION:** The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the Federal lands being transferred.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

4. Value equalization by cash payments or acreage adjustments.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with the Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated time of the exchange is September of 1988. The public interest will be served by completion of this exchange as it will enhance legal access and increase management efficiency of public lands in the area.

Date: July 27, 1988.

**Mat Millenbach,**

*District Manager.*

[FR Doc. 88–17612 Filed 8–3–88; 8:45 am]

BILLING CODE 4310–DN–M

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**[NV–930–08–4212–13; N–46545]**

## Realty Action: Exchange of Public Land; Douglas County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action of exchange of public lands in Douglas County, Nevada.

**SUMMARY:** The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

**Mount Diablo Meridian**

T. 12 N., R. 21 E.,
Sec. 14, W½SE¼;
Sec. 23, NE¼NE¼.
T. 13 N., R. 21 E.,
Sec. 19, Lots 3, 4;
Sec. 30, Lots 6, 7, 10, 11.

The area described contains 329.94 acres.

In exchange for these lands, the federal government will acquire non-federal lands in Carson City, Nevada, from Bently, Nevada, P.O. Box 157, Minden, NV 89423, described as follows:

**Mount Diablo Meridian**

T. 15 N., R. 21 E.,
Sec. 5, SW¼;
Sec. 6, E½SE¼;
Sec. 7, S½ Lot 1 NW¼, NE¼;
Sec. 8, W½NW¼.

The area described contains 520 acres.

The purpose of the exchange is to acquire river frontage lands with high recreational and historical values. The exchange is consistent with Bureau of Land Management planning and is supported by Carson City. The public interest will be well served by making the exchange.

The exact acreage of Federal lands to be transferred or private lands to be acquired will be dependent upon a final fair market appraisal. Both the surface and mineral estates will be exchanged.

In accordance with regulations contained in 43 CFR 2201.11(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws including the mining laws. This segregation shall terminate upon issuance of patent to the above-described public lands, upon publication in the **Federal Register** of a termination of the segregation, or upon expiration of 2 years from the date of this publication, whichever occurs first. Patent to lands to be transferred from Federal ownership will contain the following reservation:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The patent will be issued subject to:

1. Those rights for electric powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way grant NEV–065885, under the Act of March 4, 1911, (36 Stat. 1253; 43 U.S.C. 961).

2. Those rights for telephone line purposes which have been granted to Continental Telephone Company of California, its successors or assigns, by right-of-way grant N–35189, under the Act of October 21, 1976, 90 Stat. 2793, 43 U.S.C.

3. Those rights for access road purposes which have been granted to Ed Graham, Louise Graham, Terri K. Clark, and Sandra J. Lawrence, their successors or assigns, by right-of-way grant N–47291, under the Act of October 21, 1976, 90 Stat. 2793, 43 U.S.C. 1761–1771.

4. Those rights for public road purposes for Pine Nut Road, held by Douglas County under the authority of R. S. 2477 (43 U.S.C. 932).

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Carson City District Office.

For a period of 45 days of up to and including September 19, 1988, interested parties may submit comments to the District Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

Dated this 26th day of July 1988.

**James W. Elliott,**

*District Manager.*

[FR Doc. 88-17613 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-HC-M

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**[OR 954-08-4830-11; GP-08-196]**

## Realty Action; Transfer of Administrative Jurisdiction, Klamath County, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the transfer of certain public lands and interests in lands in Klamath County, Oregon from the Medford District to the Lakeview District.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Steve Leroux; BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208; (503) 230-5735.

**SUPPLEMENTARY INFORMATION:** All lands and interest in lands in Klamath County, Oregon currently administered by the Medford District are transferred to the Lakeview District. Lands transferred include all BLM lands in Klamath County south of State Highway 140 and west of U.S. Highway 97. Inquiries concerning these lands should be addressed to the Lakeview District, P.O. Box 151, Lakeview, Oregon 97630, or to the Klamath Falls Resource Area.

**Charles W. Luscher,**

*State Director.*

[FR Doc. 88-17520 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-33-M

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**[UT-060-08-4212-13]**

## Realty Action; Utah Vernal District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Northwest Pipeline Corporation has submitted a permit to the Utah Vernal District for use of public lands under the Federal Land Policy and Management Act (FLPMA) of 1976, (43 U.S.C., 1701, 1740, 1761-1771). The company operates 10.3 miles of pipeline and related facilities which are constructed to collect and transport natural gas from seven wells, six of which are located on pre-FLPMA leases within the Winter Ridge Wilderness Study Area, Uintah County, Utah.

Northwest is experiencing an accumulation of liquids at low points along the 4½ inch pipeline which freezes during cold weather and causes an interruption in the flow of gas. The interruption is costly to the company and could cause the line to expand or rupture.

To rectify the problem, the company is proposing a facility which would consist of a 20-inch by 20 foot drip, a 100 barrel tank and a 10 ft. x 10 ft. drain pit. The pit would function as both a drain for water from the tank and containment should the tank leak or be ruptured. A one foot high containment dike would be constructed around the tank and pit as an extra safety precaution.

The proposed facility would be located on an existing grandfather right-of-way (U-53945) and would be located on: T.14S., R.22E., Salt Lake Meridian, Section 21 SW¼. Access to the site would be along an existing road which is also within the right-of-way.

An Environmental Assessment pertaining to the proposed project has been prepared for public review. A copy may be obtained by contacting the: Vernal District Office-BLM, 170 South 500 East, Vernal, UT 84078.

Written public comment will be received until September 15, 1988 and should be directed to the Vernal District Office at the above address.

No decision concerning this matter will be made until after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Paul Andrews, Bookcliffs Resource Area Manager, 170 South 500 East, Vernal, UT 84078, (801) 789-1362.

**David E. Little,**

*District Manager.*

[FR Doc. 88-17516 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-DQ-M

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**[WY-060-08-4212-11; WYW-80297]**

## Realty Actions; Sales, Leases, etc.; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, Recreation and Public Purposes Classification, and Application for Sale in Crook County, Wyoming.

**SUMMARY:** The following public lands have been identified and examined and were classified on April 12, 1984 as suitable for lease and sale under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.*

**Sixth Principal Meridian, Wyoming**

T. 50 N., R. 66 W.,
Sec. 5, NW¼SW¼SE¼.

The above land aggregates 10 acres.

**FOR FURTHER INFORMATION CONTACT:** Floyd Ewing, Area Manager, Newcastle Resource Area, Bureau of Land Management, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701, 307-746-4453.

**SUPPLEMENTARY INFORMATION:** The purpose of the classification and application for sale of these lands is for the Town of Pine Haven to use the lands for a cemetery.

Conveyance of the above public lands will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. A reservation to the United States of all mineral deposits and the right to prospect for, mine and remove such deposits under applicable law and regulations (43 U.S.C. 869 *et seq.*)

3. Oil and Gas lease W-96842 and other existing rights of record.

4. A reversionary clause providing that the conveyed lands shall return and revest on the United States if the conveyed lands are transferred to another, or the lands have been devoted to a use other than that for which lands were conveyed (43 U.S.C. 869 *et seq.*).

The proposed sale is consistent with the Newcastle Resource Area Management Framework Plan. The land is not required for any Federal purpose.

The above-described lands were segregated on April 12, 1984 from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

The lands will not be conveyed until at least 60 days after the date of publication of this notice in the **Federal Register**.

The proposed sale to the Town of Pine Haven would be made at fair market value, less 50 percent, in accordance with 43 CFR Subpart 2471.6.

For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments on this lease or sale action to the District Manager, Casper District Office, Bureau of Land Management, 1701 East E Street, Casper, Wyoming 82601. Any adverse comments to the lease or sale action will be evaluated by the State Director, who may vacate or

modify the realty action and issue a final determination. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

July 28, 1988.

**James T. Monroe,**

*District Manager.*

[FR Doc. 88-17567 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FF-M

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**[NM-940-08-4220-11; NM NM 056534, NM NM 016634, NM NM 0556981, NM NM 10388, NM NM 12780, NM NM 46827]**

## Proposed Continuation of Withdrawals; Baca Recreation Area et al., New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes that all or portions of withdrawals for the Baca Recreation Area, Elder Canyon Administrative Site, Mesa Ranger Station, Monjeau Lookout, Oak Grove Picnic Ground, Oak Grove Picnic Ground Addition, Ruidoso Administrative Site, Ruidoso Lookout, Skyline Recreation Area, Smokey Bear Administrative Site (formerly Block Lookout), and South Fork Campground continue for an additional 20 years, and White Mountain Recreation Area continue for an additional 30 years, which is the anticipated life of the projects. The lands will remain closed to mining and where closed be opened to surface entry. All of the lands have been and remain open to mineral leasing.

**DATE:** Comments should be received by November 2, 1988.

**ADDRESS:** Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that all or portions of the existing land withdrawals made by the Secretarial Order of November 28, 1906, and Public Land Order Nos. 1074, 4643, 4799, and 5339 be continued for a period of 20 years, and Public Land Order No. 2368 be continued for a period of 30 years, pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**NEW MEXICO PRINCIPAL MERIDIAN**

*Lincoln National Forest*

1. NM NM 46827—Secretarial Order of November 28, 1906.

Smokey Bear Administrative Site (formerly Station No. 19—Block Lookout/Smokey Bear Lookout Administrative Sites).

T. 7 S., R. 16 E.,
Sec. 20, NE¼NE¼NE¼.

*Mesa Ranger Station (formerly Station No. 2—Mesa Ranger Station)*

T. 9 S., R. 13 E.,
Sec. 21, NW¼NW¼.

2. NM NM 016634—Public Land Order No. 1074.

*Monjeau Lookout*

T. 10 S., R. 12 E.,
Sec. 24, that portion of the NE¼ lying outside of the White Mountain Wilderness Area (Pub. L. 96-550).

*Ruidoso Administrative Site*

T. 11 S., R. 13 E.,
Sec. 16.

*Ruidoso Lookout*

T. 11 S., R. 13 E.,
Sec. 27, S½NE¼NW¼NE¼,N½SE¼NW¼NE¼.

3. NM NM 056534—Public Land Order No. 2368.

*White Mountain Recreation Area*

T. 10 S., R. 11 E.,
Secs. 33 and 34 (unsurveyed).

4. NM NM 0556981—Public Land Order No. 4643; NM NM 12780—Public Land Order No. 5339.

*Elder Canyon Administrative Site*

T. 9 S., R. 10 E.,
Sec. 35, NW¼NE¼NW¼.

*Oak Grove Picnic Ground and Oak Grove Picnic Ground Addition*

T. 10 S., R. 11 E. (unsurveyed),
Sec. 30, NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, S½NE¼SE¼, SE¼SE¼NW¼SE¼, E½NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, NW¼SE¼SE¼.
T. 10 S., R. 12 E. (unsurveyed),
Sec. 35, SE¼NE¼SE¼, NW¼NE¼SE¼SE¼.

*South Fork Campground*

T. 10 S., R. 11 E. (partially unsurveyed),
Sec. 12, E½, of lot 21, lots 22 and 23;
Sec. 13, NW¼NW¼NE¼, NE¼NE¼NW¼ exclusive of lands in HES 244.

5. NM NM 10388—Public Land Order No. 4799.

*Baca Recreation Area*

T. 9 S., R. 16 E.,
Sec. 10, SW¼NE¼, N½NW¼SE¼.

*Skyline Recreation Area*

T. 10 S., R. 12 E.,
Sec. 24, that portion of the W½SE¼ lying outside the White Mountain Wilderness Area (Pub. L. 96-550).

The area described aggregate 2,366.67 acres in Lincoln County.

These withdrawals are essential for protection of substantial capital improvements on these sites. The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals excpet that the lands will be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress; who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 25, 1988.

**Monte G. Jordan,**

*State Director, Associate.*

[FR Doc. 88-17607 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

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**[NM-940-08-4220-11; NM NM 9508]**

## Proposed Continuation of Withdrawal; Pecos River Basin Water Salvage Project, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation proposes a 10-acre withdrawal for the Pecos River Basin Water Salvage Project continue for an additional 20 years. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

**DATE:** Comments should be received by November 2, 1988.

**ADDRESS:** Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Bureau of Reclamation proposes that the existing land withdrawal made

by Public Land Order No. 4950 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

T. 21 S., R. 27 E.,
Sec. 33, SW¼SE¼NE¼.

The area described contains 10 acres in Eddy County.

The purpose of the withdrawal is for protection of the warehouse and work yard used by the Bureau of Reclamation for the storage and maintenance of equipment used in a slat cedar eradication project. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: July 25, 1988.

**Monte G. Jordan,**

*State Director, Associate.*

[FR Doc. 88-17608 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

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**[NM-940-08-4220-11; NM NM 52333]**

## Proposed Continuation of Withdrawal; Target Range (National Guard), New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Department of the Army, Corps of Engineers, proposes that a 720.96 acre-withdrawal for the National Guard Target Range continue for an additional 20 years. The land will remain closed to surface entry and mining and has been and will remain open to mineral leasing.

**DATE:** Comments should be received by November 2, 1988.

**ADDRESS:** Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Sante Fe, NM 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Corps of Engineers proposes that the existing land withdrawal made by the Executive Order of October 6, 1917, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

T. 21 S., R. 26 E.,
Sec. 20, lots 5, 6, 11, 12;
Sec. 21, lots 1, 2, 3, 4;
Sec. 28, lots 1 to 6 inclusive 8;
Sec. 29, lots 1, 2;
Sec. 33, lot 1.

The area described contains 720.96 acres in Eddy County.

The purpose of the withdrawal is to protect the National Guard Target Range. The withdrawal segregates the lands from operation of the public land laws generally including the mining laws, but not the mineral leasing laws. No change is proposed in the segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: July 25, 1988.

**Monte G. Jordan,**

*State Director, Associate.*

[FR Doc. 88-17609 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

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**[NM-940-08-4220-11; NM NM 6844]**

## Proposed Continuation of Withdrawal; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes that a portion of a withdrawal continue for an additional 20 years. The land will remain closed to mining, but has been and will remain open to mineral leasing.

**DATE:** Comments should be received by November 2, 1988.

**ADDRESS:** Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, NM 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that a portion of the existing land withdrawal made by Public Land Order No. 4591 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

*Santa Fe National Forest, Black Canyon Campground*

T. 17 N., R. 10 E.,
Sec. 1, lots 12 and 13;
Sec. 12, NW¼NE¼NW¼ and NE¼NW¼NW¼.

*Little Tesuque Picnic Area*

T. 17 N., R. 10 E.,
Sec. 2, NE¼SE¼SE¼.

*Borrego Mesa Campground*

T. 20 N., R. 11 E.,
Sec. 9, SE¼ of lot 5, SW¼SE¼NE¼, NW¼NE¼SE¼, and NE¼NW¼SE¼.

The areas described aggregate 78.27 acres in Santa Fe County.

The purpose of the withdrawal is to protect the substantial capital investments on the recreation sites. The withdrawal segregates the land from location and entry under the mining laws. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to

determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: July 25, 1988.

Monte G. Jordan,

*State Director, Associate.*

[FR Doc. 88-17610 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-FB-M

## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division, Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf, 30 CFR Part 281.

*OMB Number:* N/A.

*Abstract:* Respondents provide certain information to the Minerals Management Service as participants in the leasing process. This information is used to determine if lessees are in compliance with leasing requirements, to specify lease areas, and to evaluate bids.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Description of Respondents:* Respondents are OCS lessees, prospective bidders, States, and interested members of the public.

*Estimated Completion Time:* 23.1 hours.

*Annual Responses:* 54.

*Annual Burden Hours:* FY 1988-1; FY 1989-1,248.

*Bureau Clearance Officer:* Dorothy Christopher, (703) 435-6213.

Date: July 12, 1988.

Richard B. Krahl,

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 88-17525 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-MR-M

### Development Operations Coordination Document; Walter Oil and Gas Corp.

**AGENCY:** Minerals management Service; Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Walter Oil & Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9047, Block 351, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freeport, Texas.

**DATE:** The subject DOCD was deemed submitted on July 28, 1988.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 29, 1988.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-17524 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731-TA-379 and 380 (Final)]**

### Certain Brass Sheet and Strip From Japan and the Netherlands

#### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2, 3] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports from Japan and the Netherlands of certain brass sheet and strip,[4] provided for in item 612.39 of the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes and Lodwick determine that an industry in the United States is materially injured by reason of the subject imports. Commissioner Rohr determines that an industry in the United States is threatened with material injury by reason of the subject imports. Commissioner Rohr further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that he would have found material injury by reason of the subject imports but for the suspension of liquidation of entries of the merchandise under investigation.

[3] Vice Chairman Brunsdale and Commissioners Liebeler and Cass determine that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan and the Netherlands of the subject merchandise.

[4] For purposes of these investigations the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the Tariff Schedules of the United States Annotated (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (CDA) 200 series or the Unified Numbering System (UNS) C20000 series. Products whose chemical compositions are defined by other CDA or UNS series are not covered by these investigations.

Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

**Background**

The Commission instituted these investigations effective February 1, 1988 (Japan), and February 8, 1988 (Netherlands), following prelminary determinations by the Department of Commerce that imports of certain brass sheet and strip from Japan and the Netherlands were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 24, 1988 (53 FR 5474).

On February 22, 1988, Commerce published a notice in the Federal Register (53 FR 5267) postponing its final LTFV determination for Japan until June 15, 1988; and on March 10, 1988, Commerce published a notice in the Federal Register (53 FR 7771) postponing its final LTFV determination for the Netherlands until June 15, 1988. Accordingly, the Commission published a notice in the Federal Register of March 30, 1988 (53 FR 10301), revising its schedule for the conduct of the investigations. The hearing was held in Washington, DC, on June 28, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on July 29, 1988. The views of the Commission are contained in USITC Publication 2099 (July 1988), entitled "Certain Brass Sheet and Strip from Japan and the Netherlands: Determinations of the Commission in Investigations Nos. 731–TA–379 and 380 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: July 29, 1988.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 88–17501 Filed 8–3–88; 8:45 am]

BILLING CODE 7020-02-M

**[Investigation No. 731–TA–411 (Preliminary)]**

**Calcined Bauxite Proppants from Australia**

**Determination**

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Australia of calcined bauxite proppants, provided for in item 521.17 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

**Background**

On June 14, 1988, a petition was filed with the Commission and the Department of Commerce by Carbo Ceramics, Inc., Irving, TX, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of calcined bauxite proppants from Australia. Accordingly, effective June 14, 1988, the Commission instituted preliminary antidumping investigation No. 731–TA–411 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of June 24, 1988 (53 FR 23808). The conference was held in Washington, DC, on July 5, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 29, 1988. the views of the Commission are contained in USITC Publication 2100 (July 1988), entitled "Calcined Bauxite proppants from Australia: Determination of the Commission in Investigation No. 731–TA–411 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

Issued: July 29, 1988.

[FR Doc. 88–17498 Filed 8–3–88; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

**Lodging of a Stipulation of Dismissal Pursuant to the National Emission Standard for Hazardous Air Pollutants and the Clean Air Act; Carl Burkhart**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 5, 1988, a proposed Consent Decree in *United States* v. *Burkhart*, Civil Action No. 86–70–W, was lodged with the United States District Court for the Southern District of Iowa, Western Division.

The complaint filed by the United States alleged that the defendants had violated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, 40 CFR Part 61, and the Clean Air Act, 42 U.S.C. 7401, and requested permanent injunctive relief and imposition of civil penalties. The proposed Consent Decree requires defendants to comply with notification provisions of the Asbestos NESHAP and to pay a civil penalty of $1,500. Defendant Carl Burkhart must notify EPA before he engages in any future asbestos demolition or renovation activities.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Burkhart*, DOJ# Ref. 90–5–2–1–987. The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, East First and Walnut, Des Moines, Iowa 50309. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $.90 (10 cents per page

BEST COPY AVAILABLE

reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17512 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Under Resource Conservation and Recovery Act; United States Ceramic Tile Co. et al.

In accordance with Departmental policy, notice is hereby given that on June 27, 1988 a proposed Consent Decree in *United States* v. *United States Ceramic Tile Company et al.*, Civil Action No. 88-5152A, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree requires defendants to close the surface impoundment and waste pile at their facility in East Sparta, Ohio, in compliance with the approved closure plan, to comply with interim status standards concerning groundwater monitoring, under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, and to pay a civil penalty of $98,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *United States Ceramic Tile Company et al.*, D.J. reference 90-7-1-376.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114-1748, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 for reproduction cost, payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17513 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

## The National Cooperative Research Act of 1984; Automotive Polymer-Based Composites Joint Research and Development Partnership

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Automotive Polymer-Based Composites Joint Research and Development Partnership ("Partnership"), has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Partnership and (2) the nature and objectives of the Partnership. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Partnership and its general areas of planned activity are given below.

The parties to the Partnership are Chrysler Corporation, Ford Motor Company, and General Motors Corporation. The purpose of the Partnership is to engage in the development of cost-effective advanced uses of Polymer-based composites to promote improved precision, superior appearance, increased strength-to-weight ratios, and reduced weight for use in automotive vehicles and components. The Partnership will undertake: (1) The theoretical analysis, experimentation, and systematic study of phenomena and observable facts connected with polymer-based composites; (2) the development and testing of basic engineering techniques relating to the application of polymer-based composites; (3) the scientific investigation into practical applications of polymer-based composites including the experimental production and testing of models, prototypes, equipment, materials, and processes; (4) the collection, exchange, and analysis of research information; (5) the eventual establishment and operation of facilities for conducting research; (6) the protection of intellectual property created by the Partnership, through the prosecution of patents and other methods to establish a proprietary position; and (7) the granting of licenses. The partners will agree upon and determine specific projects to be undertaken on an annual basis.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 88-17515 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

## National Cooperative Research Act of 1984; Development of Reliability-Based Wood Design Specification; National Forest Products Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by the National Forest Products Association simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The notifications were filed on July 7, 1988. Pursuant to section 6(b) of the Act, the identities of the Parties and general area of planned activities are given below.

The parties are the American Institute of Timber Construction, American Plywood Association, California Lumber Inspection Service, California Redwood Association, Canadian Wood Council, MSR Lumber Producers Council, National Forest Products Association, Northeastern Lumber Manufacturers Association, Pacific Lumber Inspection Bureau, Southeastern Lumber Manufacturers Association, Southern Forest Products Association, Southern Pine Inspection Bureau, Timber Products Inspection, Inc., Trus Joist Corporation, Truss Plate Institute, West Coast Lumber Inspection Bureau, and Western Wood Products Association.

The nature of the planned activity is to produce a Reliability-Based Design Specification for Wood incorporating load resistance factor design. The objective of the planned activity is to provide engineers and architects with an alternative to the currently used allowable stress design method and to present the new design methodology in an easy to use published format.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 88-17514 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

**The National Cooperative Research Act of 1984; Portland Cement Association**

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on July 7, 1988 disclosing that the following firms have joined PCA as "Affiliate Members":

Northwest Concrete Promotion Group (effective May 1, 1988) Rocky Mountain Cement Promotion Council (effective July 1, 1988)

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

**United States**

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corporation
Continental Cement Company Inc.
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Hawaiian Cement
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
Rinker Materials Corporation
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

**Canada**

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporatior
Tilbury Cement Limited

**Mexico**

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihuahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperative de Cementos Cruz Azul
Cooperative de Cementos Hidalgo

**Affiliate Members**

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
F.L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, and March 11, 1988, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), respectively.

**Joseph H. Widmar,**
*Director of Operations, Antitrust Division.*

[FR Doc. 88-17510 Filed 8-3-88; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 88-71]**

**NASA Advisory Council; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting; revised agenda.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

**DATE AND TIME:** August 9, 1988, 9 a.m. to 5:15 p.m., August 10, 1988, 8:30 a.m. to 3:15 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Room 7002, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nathaniel B. Cohen, Code ADI-1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

**SUPPLEMENTARY INFORMATION:** NASA published in the **Federal Register** notice number 88-65 (53 FR 27413) on July 20, 1988. The agenda for this meeting has been revised to read as follows:

**Agenda**

*August 9, 1988*

9 a.m.—Introductory Remarks.
9:15 a.m.—Science Update—Recent Observations of Pluto/Charon System.
9:45 a.m.—NASA Agency-Level Planning.
10:30 a.m.—Program and Budget Overview.

11 a.m.—Exploration Planning.
1 p.m.—Space Science and Applications.
2:45 p.m.—Space Station Planning.
3:45 p.m.—Space Operations Planning.
4:15 p.m.—Space Technology Planning.
5:15 p.m.—Adjourn.

*August 10, 1988*

8:30 a.m.—Space Flight Planning.
9:15 a.m.—Commercial Programs Planning.
9:45 a.m.—Aeronautics Planning.
11:15 a.m.—NASA Institutional Planning.
11:45 a.m.—Closing Discussion of Budget Issues.
1:15 p.m.—Space Applications Board.
1:30 p.m.—Space Science Board.
1:45 p.m.—STS–26 Readiness.
2:15 p.m.—Science Update.
3:15 p.m.—Adjourn.

July 28, 1988.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 88–17500 Filed 8–3–88; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–368]**

### Arkansas Power and Light Co., Arkansas Nuclear One, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to the Arkansas Power and Light Company (the licensee), for Arkansas Nuclear One, Unit 2 (ANO–2) located in Pope County, Arkansas.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant exemptions from certain requirements of sections III.G and III.O of Appendix R to 10 CFR Part 50, which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free to fire damage, and to the provision for the oil collection system for reactor coolant pumps (RCPs). The exemptions are technical since the licensee must demonstrate that fire protection, and RCP oil collection configurations meet the specific requirements of section III.G and III.O, or that alternate configurations can be justified by an acceptable analysis.

*The Need for Proposed Action*

The proposed exemptions are needed because the features described in the licensee's exemption request regarding the existing and proposed fire protection at the plant would result in a net benefit to the public health and safety.

*Environmental Impact of the Proposed Action*

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at ANO–2. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20, with the minor exception of the redundant seismic condensate storage tank level transmitters. These exemptions would not affect non-radiological plant effluents and have no other environmental impact. Therefore we, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

The Commission has determined not to prepare an environmental impact statement of the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated August 15, 1984 and August 30, 1985 which contained the exemption requests, and letters dated October 20, 1986, April 22 and June 24, 1987 which provided supplemental information. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 9th day of June, 1988.

For the Nuclear Regulatory Commission.

**Jose A. Calvo,**

*Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17578 Filed 8–3–88; 8:45 am]

BILLING CODE 7590–01–M

**[Docket Nos. 50–313 and 50–368]**

### Arkansas Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting an Exemption from 10 CFR. 50.71(e) to Arkansas Power and Light Company (AP&L or the licensee) for a one-time 90 day schedular extension of the required due date for the annual revision to the Final Safety Analysis Reports (FSAR) for Arkansas Nuclear One, Units 1 and 2, (ANO–1 and 2) located in Pope County, Arkansas.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed exemption would allow the licensee to submit the 1988 annual FSAR updates for ANO–1 and 2 on October 20, 1988, 90 days after the July 22 date required by 10 CFR 50.71(e). The proposed exemption was requested by the licensee by letter dated May 13, 1988.

*The Need for the Proposed Action*

The proposed exemption is necessary to provide the licensee additional time to complete their Safety Analysis Report Upgrade Project and incorporate all the improvements derived therefrom in the 1988 annual FSAR revision.

*Environmental Impacts of the Proposed Action*

The proposed exemption does not affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated May 13, 1988. The letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 26th day of July 1988.

For the Nuclear Regulatory Commission.

**Jose A. Calvo,**

*Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17579 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-461]**

## Illinois Power Co. et al; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

### Environmental Assessment

*Identification of Proposed Action*

In general, the proposed license amendment would revise the Technical Specifications (TS) related to containment ventilation and drywell purge (VR/VQ) system isolation valves.

Specifically, the licensees proposed (1) deletion of the operability and surveillance requirements for the 50° stops installed for the VR/VQ valves, (2) insertion of footnotes in the limiting conditions for operation and applicable surveillance requirements to exclude the time when the VR/VQ valves are opened for performing stroke-time testing, and (3) extension of the administrative control permitting opening of the VR/VQ valves.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

*The Need for the Proposed Action*

Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF-62 which consists of three changes to the TS concerning the containment ventilation and drywell purge system isolation valves. The first change would delete the requirements associated with the VR/VQ valve opening angle restriction in footnote 1 (one asterisk) of TS 3.6.1.8 (limiting conditions for operations) and in TS 4.6.1.8.2 (surveillance requirements), and would revise footnote 2 (two asterisks) of TS 3.6.1.8.

Footnote 1 of TS 3.6.1.8 requires that the 36-inch containment ventilation supply and exhaust valves be blocked to prevent them from opening more than 50°. The surveillance requirements of TS 4.6.1.8.2 require that the 50° valve-opening restriction for the 36-inch containment ventilation supply and exhaust valves be verified at least once every 31 days. The licensees propose to remove these requirements from the TS. Footnote 2 of TS 3.6.1.8 states that containment ventilation system operation shall be defined as any time the 36-inch water supply and/or exhaust isolation valves are opened. The licensees propopse to insert the following statement to footnote 2: "except when opened for inservice testing performed pursuant to TS 4.0.5".

By letter dated July 20, 1983, the staff informed the licensees that the use of the 24-inch and 36-inch purge valves would be acceptable during operational modes 1, 2, and 3 if the valves were blocked to a maximum opening angle of 50° (90° corresponds to fully open). In its letter dated November 17, 1983, the licensees committed to install mechanical stops on the valves to limit them from opening more than 50° during operational modes 1, 2, and 3. The 50° stops could be removed during modes 4 and 5 if increased purge flow were required during maintenance activities. The staff found the licensees' commitment acceptable as indicated in Supplement 5 to the Clinton Supplemental Safety Evaluation Report (SSER 5) dated January 1986. The licensees incorporated the appropriate operability and surveillance requirements for the 50° stops into the TS.

Subsequently, the licensees found that purge flow was adequate during modes 4 and 5 with the 50° stops in place and thus, periodic removal of the 50° stops to increase purge flow as originally suggested would not be needed. Therefore, the licensees proposed to modify the 50° stops so that they are a permenant part of the installation of the valves and to delete the requirement for confirmation of the 50° opening angle limitation in the TS. The licensees also proposed to revise the bases for TS 3/4 6.1.8 to specify that the blocking devices are permanently installed on the 36-inch purge valves.

TS 3.6.1.8 requires that the opening of the containment building ventilation (36-inch) isolation valves for containment ventilation system operation be limited to less than or equal to 500 hours per year. System operation is defined by TS 3.6.1.8 as any time the valves are open. TS 4.0.5 requires that these valves be tested according to the inservice testing (IST) program by performing stroke-time testing every 92 days. The IST is performed such that the valves are open one at a time for stroke time verification while the other valve in series is closed. The licensees propose to exlude the time when these valves are opened to complete stroke-time testing from a cumulative system operation time limits currently specified in TS 3.6.1.8.

The second change would delete footnote 1 (one asterisk) and revise footnote 2 (two asterisks) in TS 3.6.2.7 (limiting conditions for operation), and deletes TS 4.6.2.7.4 (surveillance requirments) and its footnote.

Footnote 1 requires that the 24-inch drywall vent and purge supply and exhaust isolation valves and the 36-inch outboard isolation valves be blocked to prevent them from opening more than 50°. Footnote 2 specifies that drywell vent system operation shall be defined as any time either the 10-inch or the 24-inch inboard exhaust valves are open when all valves mentioned in TS 3.6.1.8 are closed. The licensees propose to revise footnote 2 by adding the following: "This excludes the time when either of these valves is opened for inservice testing performed pursuant to TS 4.0.5 (concurrent with all valves of TS 3.6.1.8 closed)."

The surveillance requirements of TS 4.6.2.7.4 state that at least once every 31 days, the 24-inch drywell vent and purge supply and exhaust valves and the 36-inch outboard isolation valves shall be verified to be blocked in order to restrict valve opening to less than or equal to 50°. The footnote for TS 4.6.2.7.4 also specifies that the blocking device for the 24-inch valves shall be verified installed prior to drywell closing and during each cold shutdown except such verification need not be performed more often than once every 92 days. The licensees propose to delete TS 3.6.2.7.4 and footnote 1 of TS 3.6.2.7 associated with the 50° valve opening angle limitation

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[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

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since the 50° stop device will become part of the permanent valve installation.

TS Table 3.6.4–1, note (a) states that certain containment isolation values may be open on an intermittent basis under administrative control. The third change would extend the application of this note to include the VR/VQ values since they are needed to be opened while certain local leakrate tests are conducted. Note (a) would be inserted into Table 3.6.4–1 for values 1VR002A,–B and 1VQ006A,–B to allow them to be opened under administrative control during the performance of leak testing associated with the 36-inch containment ventilation supply and exhaust values every 92 days as specified in TS 4.6.1.8.3.

*Environmental Impacts of the Proposed Action*

Because the 50° mechanical stops for these values were previously approved by the staff (as discussed in SSER 5) and are a part of the permanent value installation, the staff finds the elimination of the operability and surveillance requirements for the 50° stops in TS 3.6.1.8 and TS 4.6.1.8.2 to be acceptable. The staff also agrees with the revised bases for TS 3/4 6.1.8 because of the permanent installation of the blocking device on these values.

The staff finds the proposed revision to footnote 2 of TS 3.6.1.8 acceptable because value testing in acccordance with the IST requirements does not require the containment ventilation system to be operable. Therefore, stroke-time testing should not be considered part of the system operation time limit.

The staff finds the proposed deletion of TS 3.6.2.7.4 and footnote 1 of TS 3.6.2.7 associated with the 50° value opening angle limitation acceptable because the 50° stop device will become part of the permanent value installation and cannot be removed.

TS 3.6.2.7 requires that the opening of the drywell vent and purge system (24-inch or 10-inch) isolation for drywell vent system operation be limited to 5 hours per year. The basis for limiting the amount of time the value can be opened for drywell vent system operation is to limit the release of radioactivity to the environs during normal operating conditions. The staff finds that the revision to footnote 2 of TS 3.6.2.7 to exclude the IST stroke-time tests from the system operation time is acceptable, because stroke-time testing per the IST program does not require the drywell vent and purge system to be operable.

The VR/VQ values are part of the test boundary for the 36-inch containment ventilation supply and exhaust values. Also, when these values are being leak tested, the 36-inch values must be closed so that the penetration will remain effectively closed during the test. The staff finds extending the application of note (a) to the values specified above acceptable because the values are required to be opened during the local leakrate testing of the 36-inch ventilation system isolation values every 92 days.

The Commission has determined that potential radiological releases during normal operations, transients, and for accident would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radioligical environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain exposure level's "as low as reasonably achievable."

*Alternative to the Proposed Actions*

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternative with equal or greater environmental impact need not be evaluated.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Finan Environmental Statement dated May 1982 related to this facility.

*Agencies and Person Consulted*

The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult over agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 1717 H Stteet, NW., Washington, DC 20555 and at the Vespasian Warner, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 28th day of July 1988.

For the Nuclear Regulatory Commission.

**Leonard N. Olshan,**

*Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88–17580 Filed 8–3–88; 8:45 am]
BILLING CODE 7590–01–M

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[Docket No. 50–309]

## Maine Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specification (TS) to reflect the operating limits for the Cycle 11 reload core.

The proposed action is in accordance with the licensee's application for amendment dated June 30, 1988.

*The Need for the Proposed Action*

The proposed change to the TS is required in order to provide limiting combination of reactor power and Reactor Coolant System flow, temperature, and pressure during operation of Cycle 11. Maine Yankee is currently in Cycle 10 operation.

*Environmental Impacts of the Proposed Action*

The Commission has completed its initial evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to discharge 73 fuel assemblies and insert 72 new assemblies and one previously irradiated assembly for Cycle 11 refueling. The new fuel assemblies are fabricated by Combustion Engineering and are not significantly different from those previously used at Maine Yankee. In previous reload cores at Maine Yankee and other facilities, the NRC has found the fuel design to be acceptable. The Control Element Assembly (CEA) pattern for Cycle 11 is identical to that used in Cycle 10. Also, the thermal, thermal-hydraulic, and physics characteristics for Cycle 11 are not significantly different from those of Cycle 10. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential non-radiological impacts, the proposed change to the Technical Specification involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 29, 1988 (53 FR 15479). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station dated July 1972.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Findings of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 24, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Local Public Document Room, Wiscasset Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 28th day of July, 1988.

For the Nuclear Regulatory Commission.

**Carl Stahle,**

*Acting Director, Project Directorate I-3, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17582 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-245]**

**Northeast Nuclear Energy Co. et al., Millstone Nuclear Power Station, Unit 1; Issuance of Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-21, issued to Northeast Nuclear Energy Company et al., (the licensee), for operation of the Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

*Identification of Proposed Action*

The amendment would consist of a change to the operating license to extend the expiration date of the operating license for Millstone Nuclear Power Station, Unit 1, from May 19, 2006 to October 2, 2010. The proposed license amendment is in response to the licensee's application dated December 22, 1986. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR-21, Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit No. 1, Docket No. 50-245, dated July 27th 1988."

*Summary of Environmental Assessment*

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for Millstone Nuclear Power Station, Unit 1. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Continuation of Construction of Unit 2 and Operation of Units 1 and 2, Millstone Nuclear Power Station," dated June 1973, the Final Environmental Statement (FES) related to the operation of Millstone Nuclear Power Station, Unit No. 3, NUREG-1064, dated December 1984, the Environmental Assessment in support of the Provisional Operating License conversion to a Full Term Operating License, dated December 17, 1984 and more recent NRC policy.

*Radiological Impacts*

The staff concludes that the Exclusion Area, the Low Population Zone and the nearest population center distances will likely be unchanged from those described in NUREG-1064. Since the 40-year operating license for Millstone Unit 3 will go beyond the proposed operating life of Millstone Unit 1, the analysis in the FES, dated December 1984, would also bound the 40-year license for Millstone Unit 1 with regard to the low population zone, and distance to population centers.

Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulation regarding as low as is reasonably achievable (ALARA) limits, and are indicative of future releases. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the occupational exposures since 1966 for Millstone Unit 1 have been higher than the average in the nuclear industry. The licensee is addressing the problem of high occupational exposures via a number of short- and long-term dose reduction initiatives. The NRC staff has reviewed the licensee's initiatives and believes that these initiatives will result in a substantial reduction in occupational exposures at Millstone Unit 1.

The NRC staff concludes that radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the

FES and the staff's previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the Millstone Nuclear Power Station, Unit 1, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52, and the values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

*Non-Radiological Impacts*

The Commission has concluded that the proposed extension does not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

**Finding of No Significant Impact**

The Commission's staff has reviewed the proposed change to the expiration date of the Millstone Nuclear Power Station, Unit 1, Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated December 26, 1986, (2) the Final Environmental Statement Related to Continuation of Construction of Unit 2 and Operation of Units 1 and 2, Millstone Nuclear Power Station, June 1973, and Environmental Assessment dated December 17, 1984, and (3) the Environmental Assessment dated July 27th 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 27th day of July 1988.

For the Nuclear Regulatory Commmission.

**Michael L. Boyle,**

*Project Manager, Project Directorate I-4, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17581 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

**Vermont Yankee Nuclear Power Corp., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the Technical Specifications (TS) to accommodate limiting conditions of operation and surveillance requirements for the automatic depressurization system (ADS) because of modifications made in response to NUREG 0737, Item II.K.3.18.

The proposed action is in accordance with the licensee's application for amendment dated December 9, 1987.

*The Need for the Proposed Action*

The proposed change to the TS will add new requirements appropriate for plant equipment which has been installed.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions add requirements for the new equipment to the Vermont Yankee Technical Specifications similar to requirements for other safety related equipment. The proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on March 3, 1988 (53 FR 6889). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station, July, 1972.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 9, 1987 which is available for public inspection at the Commission's Public Document Room, Brooks Memorial Library, 244 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 29th day of July, 1988.

For the Nuclear Regulatory Commission.

**Carl Stahle,**

*Acting Director, Project Directorate I-3, Division of Reactor Projects I/II.*

[FR Doc. 88-17583 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341; Fermi-2]

## Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a petition, dated February 4, 1988, filed by the Honorable James Caldwell, the Honorable Steven Langdon, the Honorable Herb Gray and the Honorable Howard McCurdy, members of the Canadian Parliament (petitioners). The petitioners requested that:

(a) The U.S. Nuclear Regulatory Commission (NRC) decision to allow Fermi-2 to operate at 100 percent power be overturned;

(b) The license to operate Fermi-2 be revoked; and

(c) Detroit Edison be required to prove, to the satisfaction of both the NRC and the relevant Canadian authorities that Fermi-2 is absolutely safe to operate at any level and that such Fermi-2 operation does not present any danger to the health and safety of the people of Windsor and Essex County.

The request was based on a January 15, 1988, letter from the NRC to Detroit Edison and an attached NRC Regulatory Assessment, that authorizes Fermi-2 to operate at full power. According to the petitioners, these documents reveal that there are a number of deficiencies at Fermi-2 that should have prevented the NRC from granting this authorization.

The Director has now determined that the petitioners' request should be denied for the reasons set forth in the "Director's Decision Under 10 CFR 2.206" (DD 88-11), which is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and in the local Public Document Room for Fermi-2 located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

A copy of the Decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

For the Nuclear Regulatory Commission.

**Theodore R. Quay,**

*Project Manager, Project Directorate III-1, Division of Reactor Projects III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.*

Dated at Rockville, Maryland, this 28th day of July 1988.

[FR Doc. 88-17588 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

## Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.32, "Criteria for Establishing a Tritium Bioassay Program," provides criteria acceptable to the NRC staff for developing and implementing a bioassay program for licensees who handle or process tritium. It also provides guidance on selecting workers who should participate in a program to detect and measure possible internal radiation exposure.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of July 1988.

For the Nuclear Regulatory Commission.

**Themis P. Speis,**

*Acting Director, Office of Nuclear Regulatory Research.*

[FR Doc. 88-17577 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

## Duke Power Co. et al; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 50 to Facility Operating License No. NPF-35 and Amendment No. 43 to Facility Operating License NPF-52 issued to Duke Power Company, et. al., (the licensee), which revised the Technical Specifications for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina. The amendments were effective as of the date of issuance.

The amendments changed Technical Specification 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels for fuel rods in reconstitutible fuel assemblies to be reinserted in the reactor core during a refueling outage.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 20, 1988 (53 FR 18181). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 25398) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 1, 1988, which superseded portions of a previous request by letter dated February 5, 1988, (2) Amendment No. 50 to License No. NPF-35, and Amendment No. 43 to

License No. NPF-52, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 28th day of July 1988.

For the Nuclear Regulatory Commission.

**Kahtan N. Jabbour,**

*Project Manager, Project Directorate II-3, Division of Reactor Projects I/II.*

[FR Doc. 88-17584 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-289]**

## GPU Nuclear Corp. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 143 to Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation (the licensee), which revised the License and Technical Specifications for operation of the Three Mile Island Nuclear Station Unit 1 located in Dauphin County, Pennsylvania.

The amendment revises the License and the Technical Specifications to allow an increase in the rated power level from 2535 MWt to 2568 MWt, a 1.3% increase.

The applciation for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 24, 1988 (53 FR 18629). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 18, 1988, (2) Amendment No. 143 to License No. DPR-50, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 27th day of July 1988.

**Ronald W. Hernan,**

*Senior Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17585 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-387 and 50-388]**

## Pennsylvania Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-14 and NPF-22 issued to Pennsylvania Power and Light Company (the licensees) for operation of the Susquehanna Steam Electric Station Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would change Technical Specification Section 3/4.3.7.1. "Radiation Monitoring Instrumentation," ACTION 70a. In its present form, the ACTION 70a requires the radiation monitoring instrumentation inoperable channel be placed in tripped condition in 1 hour and allows 7 days to restore the inoperable channel to OPERABLE status. The licensee proposed to eliminate the ACTION 70a requirement to trip the inoperable channel if it has not already tripped.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 6, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 6, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Ousterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 28th day of July 1988.

For The Nuclear Regulatory Commission.

**Donald C. Fischer,**

*Acting Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17587 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-029]**

## Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 112 to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts. The amendment was effective as of the date of issuance.

The amendment changed the shutdown margin switching temperature from 490 °F to 470 °F. In addition a typographical error and the omission of a previously approved surveillance requirement were corrected.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and opportunity for Hearing in connection with this action was published in the **Federal Register** on April 26, 1988 (53 FR 14876). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 28083) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 23, 1988, (2) Amendment No. 112 to License No. DPR-3 and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

**Morton B. Fairtile,**

*Project Manager, Project Directorate I-3, Division of Reactor Projects, I/II.*

[FR Doc. 88-17586 Filed 8-3-88; 8:45 am]

BILLING CODE 7590-01-M

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## RAILROAD RETIREMENT BOARD

## Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

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**Summary of Proposal(s)**

(1) *Collection title:* Statement of Claimed Railroad Service.

(2) *Form(s) submitted:* UI-9, UI-23.

(3) *OMB Number:* 3220-0025.

(4) *Expiration date of current OMB clearance:* 09-30-88.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Total annual responses:* 2,350.

(9) *Estimated annual number of respondents:* 2,350.

(10) *Average time per response:* 7.5 minutes.

(11) *Total annual reporting hours:* 296.

(12) *Collection description:* When the railroad service and/or compensation on the Board's records is insufficient to qualify a claimant for unemployment or sickness benefits, the statements obtain the information needed to reconcile the

compensation and/or service on record with that claimed by the employee.

**Additional Information or Comments**

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Allison Herron (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

**Pauline Lohens,**

*Director of Information Resources Management.*

[FR Doc. 88–17507 Filed 8–3–88; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–16508; 812–7011]**

## Barclays Bank PLC; Application for Order

July 29, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Barclays Bank PLC.

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of section 17(f).

*Summary of Application:* Applicant seeks an order to permit maintenance of securities and other assets of U.S. investment companies, other than those registered under section 7(d) of the 1940 Act ("U.S. Investment Companies"), with certain foreign subsidiaries of Applicant (each of which is hereinafter referred to as a "Foreign Subsidiary"), namely: Barclays Bank of Canada, Barclays Bank S.A. (France), Barclays Trust and Banking Company (Japan) Limited, Barclays Bank S.A.E. (Spain) and Barclays Bank S.A. (Switzerland).

*Filing Dates:* The application was filed on April 6, 1988 and amended on June 23, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 23, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date or a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Barclays Bank PLC, 54 Lombard Street, London, EC3P 3AH, England, or Paul B. Ford, Jr., Esq., Simpson Thacher & Bartlett, One Battery Park Plaza, New York, New York 10004.

**FOR FURTHER INFORMATION CONTACT:** Special Counsel Richard Pfordte at (202) 272–2811, or Karen L. Skidmore, Branch Chief (202) 272–3023, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. Applicant is a company organized and existing under the laws of the United Kingdom. It is one of the ten United Kingdom clearing banks. In the United Kingdom, Applicant is authorized and regulated by the Bank of England; in the United States, Applicant is regulated as a bank holding company and is subject to the International Banking Act of 1978. At December 31, 1987, Applicant had shareholders' equity of 4,118,000,000 pounds sterling.

Applicant is a wholly-owned subsidiary of Barclays PLC, an English public limited company (together with its subsidiaries, including Applicant, "Barclays Group"). The Barclays Group is a leading international banking group and was among the top five banking groups in the world as of December 31, 1986. It is engaged in a broad range of banking and financial services. The Barclays Group will provide custodial and sub-custodial services for U.S. Investment Companies throughout the world through Applicant and the Foreign Subsidiaries.

2. Each Foreign Subsidiary is a wholly-owned or majority-owned (with respect to Barclays Bank S.A.E.), direct or indirect subsidiary of Applicant and is a banking institution or trust company incorporated under the laws of a country other than the United States and regulated as such by that country's government or an agency thereof.

3. Each Foreign Subsidiary is experienced to provide custodial services and is capable and well-qualified to provide custodial and sub-custodial services to U.S. Investment Companies and under the foreign custody arrangements proposed, the protection of investors would not be diminished.

4. Applicant meets the requirements of Rule 17f–5, which permits certain entities to serve as foreign custodians under the 1940 Act provided they meet the qualifications in such rule. Applicant is an eligible foreign custodian because, in part, it has shareholders' equity well in excess of $200,000,000, and is organized and regulated in the United Kingdom as a bank. The Foreign Subsidiaries do not meet the minimum shareholders' equity requirement of the rule, and without the requested order, would not be eligible foreign custodians.

**Applicant's Legal Conclusions**

Applicant believes that the terms of the proposed foreign custody arrangements will adequately protect U.S. Investment Companies and their shareholders against loss. Applicant will remain liable for the performance of the duties and obligations delegated to a Foreign Subsidiary as well as for losses relating to the bankruptcy or insolvency of such Foreign Subsidiary. The risks associated with foreign investment, however, will remain with the Investment Companies (which will presumably disclose any such material risks to investor.

**Applicant's Conditions**

If the requested order is granted, Applicant agrees to the following conditions:

1. The foreign custody arrangements proposed with respect to the Foreign Subsidiaries will satisfy the requirements of Rule 17f–5 in all respects other than with regard to shareholders' equity.

2. Securities of U.S. Investment Companies will be maintained with a Foreign Subsidiary only in accordance with an agreement, required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy all the requirements of Rule 17f–5. Each agreement will be a three-party contract among the Foreign Subsidiary, Applicant and the U.S. Investment Company or the custodian for a U.S. Investment Company pursuant to the terms of which Applicant would undertake to provide specified custodial or sub-custodial services for the U.S. Investment Company or custodian and would delegate to the Foreign Subsidiary such of Applicant's duties and obligations as would be necessary

to permit the Foreign Subsidiary to hold in custory in the country in which it operates, the securities of the U.S. Investment Company or custodian. The agreement would further provide that Applicant's delegation of duties to the Foreign Subsidiary would not relieve Applicant of any responsibility to the U.S. Investment Company or custodian for any loss due to such delegation except such loss as may result from (i) political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and (ii) other risks of loss (excluding bankruptcy or insolvency of the Foreign Subsidiary) for which neither Applicant nor the Foreign Subsidiary would be liable under Rule 17f–5 (e.g., despite the exercise of reasonable care, loss due to Acts of God, nuclear incident and the like).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–17547 Filed 8–3–88; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[CM–8/1205]**

### Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on August 24, 1988, at 9:30 AM in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the twenty-sixth session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) scheduled for September 5–9, 1988. Proposed U.S. positions on MEPC agenda item issues will be discussed.

The major items for discussion will be the following:

1. Consideration to adoption and implementation of Optional Annexes III, IV and V of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973. There are two principal issues: First, finalization of the draft revisions to Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms, or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons) including the establishment of provisions for limited quantities. Second, finalization of the U.S. prepared draft Guidelines for the Implementation of Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) of MARPOL 73/78. Progress on the U.S. initiative to seek the designation of the Gulf of Mexico as a Special Area under Annex V will also be discussed.

2. Implementation of Annex II (Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk) of MARPOL 73/78. Specifically, the establishment of guidelines for the carriage of noxious liquid substances in offshore supply vessels and dry cargo ships.

3. Implementation of Annex I (Regulations for the Prevention of Pollution by Oil) of MARPOL 73/78. Specifically, the desirability of existing specifications for oily-water separating and filtering equipment.

4. Finalization of criteria for designating particularly sensitive areas and Special Areas under MARPOL 73/78.

5. Enforcement of pollution conventions.

6. Consideration of the possible development of a new "Annex VI" of MARPOL 73/78 covering prevention of pollution by noxious solid substances carried in bulk.

7. Inter-related work of other Committees and Subcommittees.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information or documentation pertaining to the NCPMP meeting, contact either Commander D.B. Pascoe or Lieutenant G.T. Jones, U.S. Coast Guard Headquarters (G-Mer-3), 2100 Second Street, SW., Washington, DC 20593–0001, Telephone: (202) 267–0419.

Date: July 25, 1988.

**Thomas J. Wajda,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 88–17508 Filed 8–3–88; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

## DEPARTMENT OF STATE

**[Public Notice 1076]**

### Statement of U.S. International Air Cargo Policy

**AGENCIES:** Office of the Secretary, DOT; Bureau of Economic and Business Affairs, State

**ACTION:** Notice of statement of U.S. international air cargo policy and request for comments.

**SUMMARY:** This notice sets forth a proposed statement of U.S. international air cargo policy. This notice is being published in order to provide interested persons an opportunity to comment on the proposed statement. All comments received will be carefully considered before the policy statement is finalized.

**DATE:** Comments must be received no later than August 25, 1988.

**ADDRESS:** Send comments on this policy statement to Mr. Paul L. Gretch, Director, Office of International Aviation, Department of Transportation, 400 Seventh Street SW., Room 6402, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Oppler, Office of International Aviation, Department of Transportation, 400 Seventh Street SW., Room 6401, Washington, DC 20590, Telephone (202) 366–2358.

**SUPPLEMENTARY INFORMATION:** This statement of U.S. international air cargo policy, which was developed jointly by the Departments of State and Transportation, sets forth objectives and guidelines for use by U.S. Government officials in carrying out U.S. air cargo policy. Before this statement is finalized, the two Departments will carefully consider any comments that are received. In developing this statement, the Departments took into account the views of a variety of parties including air carriers, freight forwarders, airport operators, cities, shippers and other government agencies. The House Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation has shown particular interest in the development of this statement. The Subcommittee, chaired by Congressman James Oberstar, has held several hearings on this subject. The statement also reflects the findings and conclusions of the in-depth study of the U.S. international air cargo market completed in April 1988 by the Departments of State and Transportation.

### Statement of U.S. International Air Cargo Policy

In many respects, the air cargo industry is the most dynamic and fast-changing sector of air transportation. With an increasing percentage of U.S. exports and imports moving by air, the economic importance of air cargo services is expanding rapidly. A competitive air cargo industry ensures the availability of efficient freight

services to exporters and importers, stimulates new service options and promotes trade. Competitive air cargo services also provide a stimulus to airport development, regional economies, and employment and make an important contribution to the national defense through industry participation in the Civil Reserve Air Fleet (CRAF) program.

The air cargo industry involves many participants engaged in a wide variety of cargo activities. Combination carriers, all-cargo carriers, charter specialists, firms providing door-to-door service, small package specialists, freight forwarders, airport operators, and shippers all play a role in this industry.

Air cargo services have specific qualities and requirements which are significantly different from the passenger market. Unlike passengers, air cargo moves in one direction only. Speed is critical to competitive air cargo services. Nonetheless, cargo is less sensitive to the number of stops made enroute, to the circuitry of the routing or to changes in aircraft.

Cargo is nonambulatory. Therefore, the movement and storage of air cargo on the ground is a necessary part of the air cargo business. With the growth of door-to-door service between the U.S. and other countries, the opportunity to establish sort centers and hubs, to operate or contract for pickup and delivery services and to perform take-offs and landings during nighttime hours has become increasingly important.

In order to develop an up-to-date information base and evaluate the air cargo industry's contribution to furthering broader U.S. economic objectives, the Departments of State and Transportation undertook a comprehensive study of the international air cargo industry. The findings and conclusions of the Study were carefully considered in the course of developing this statement.

*The Federal Aviation Act*

U.S international air cargo policy is based on the principles and objectives contained in sections 102(a), 102(b), 1102(b) and 1102(c) of the Federal Aviation Act (Act), as amended by the International Air Transportation Competition Act of 1979. (The texts of these sections are included as Appendix A to this statement.)

Section 102(a) identifies a variety of "Factors for Interstate, Overseas, and Foreign Air Transportation" that are to be considered as being "in the public interest" by U.S. authorities in carrying out the duties and responsibilities mandated by the Act.

Section 102(b) sets forth additional public interest factors aimed specifically at all-cargo services. The provisions of this section include the encouragement and development of an all-cargo air service system "responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense * * *".

Section 1102(b), added by the International Air Transportation Competition Act of 1979, establishes specific "Goals for International Aviation Policy" which the U.S. must pursue in the conduct of its aviation relations with foreign countries. These goals, some of which are similar to the public interest factors contained in section 102(a), identify "a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system * * *".

Section 1102(c) requires that in developing and implementing international aviation negotiating policy, the Secretaries of State and Transportation consult "to the maximum extent practicable" with interested parties including government agencies, airport operators, air carriers, airline labor and consumer interest groups.

Thus, the policy principles enunicated by the Federal Aviation Act identify broad public interest considerations to be taken into account in the conduct of U.S. international aviation affairs. These principles are designed to apply over a long period of time and to a wide variety of circumstances. Within this general framework, the statement of air cargo policy provides specific policy objectives and guidelines. This statement also takes into consideration cargo airlift needs of the U.S. military as expressed in the National Airlift Policy Statement. (See Appendix B of this statement.)

*Policy Objectives*

Consistent with the Federal Aviation Act, the findings of the International Air Cargo Study, and broader U.S. economic and security interests, the principal aims of U.S. air cargo policy are to ensure the provision of efficient, competitive air transport services for U.S. shippers and consignees and to seek expansion of opportunities for the U.S. international air cargo industry. An open, liberal operating environment serves this end by facilitating the establishment and expansion of efficient, innovative, competitive air cargo services.

Accordingly, the United States seeks to achieve the following specific objectives for all types of cargo services including scheduled and charter services:

1. Freedom of Carrier Entry

The U.S. seeks unrestricted entry into international air cargo markets for all types of U.S. cargo operators, including direct air carriers and freight forwarders. Elimination of restrictions on entry is critical if the shipping public is to enjoy fully the benefits of a competitive international aviation marketplace.

2. Routing Flexibility

The U.S. seeks maximum international routing flexibility for U.S. carriers so that they can serve intermediate and beyond points freely and efficiently utilize their hubs in the U.S. and abroad. The U.S. also seeks broader rights to change aircraft at any point on a route and to position aircraft in the most cost effective manner to serve markets that are directionally imbalanced. Increased routing flexibility expands cargo opportunities, and in some cases may be critical to the viability of a cargo operation.

3. Pricing Freedom

The U.S. seeks to establish regimes that permit airline management maximum flexibility in the setting of prices. Government intervention in air cargo pricing should be limited to exceptional cases involving unfair and/or discriminatory practices. Pricing freedom for air cargo services promotes efficiency and cost competitiveness.

4. Elimination of Restrictions on Frequency and Capacity

The U.S. seeks to eliminate governmental controls on U.S. carrier cargo capacity that restrict frequency of service, aircraft type, and/or the amount of cargo that may be carried. These restrictions impair carrier efficiency and adversely affect the availability to shippers of competitive air cargo services.

5. Efficient Ground-Side Evironment

The U.S. seeks to eliminate restrictions, impediments or unduly burdensome requirements in the ground-side enviornment that interfere with efficiency of service and a carrier's ability to compete effectively. Among the areas that U.S. aviation authorities examine closely are: (1) The rights of an airline to perform its own ground handling and to offer ground handling services to other airlines, (2) the availability of adequate warehouse facilities at reasonable cost, and (3) the efficiency of customs clearance.

6. Broad Intermodal Rights

The U.S. seeks broad rights for U.S. carriers and freight forwarders to move cargo by truck and other surface means. Intermodal rights have become particularly critical as air cargo systems have evolved to include door-to-door services.

7. Elimination of Discriminatory Practices

The U.S. insists on elimination of discriminatory practices in all aspects of international air cargo operations. Restrictions which result in discrimination deny carriers the fundamental right of fair competition; they will not be tolerated and may result in countermeasures.

*Negotiating Guidelines*

In seeking to further U.S. policy objectives through the negotiating process, U.S. authorities confront conflicting interests and objectives. For example, a city's desire to stimulate its local economy and promote commerce through additional air services may conflict with the U.S. airline industry's expectation that additional route rights will be offered to the carriers of a foreign country only in the context of a balanced exchange of new opportunities. Different objectives also exist between the U.S. and its aviation partners. Most foreign countries take a more regulatory and protectionist approach to international air cargo services.

Moreover, because negotiations involve issues that are complex and technical, differences in understanding can arise at the implementation stage. To minimize the possibility of such misunderstandings, U.S. negotiators will seek to commit agreements to writing and to define the terms of an agreement as precisely as possible.

The following guidelines are designed to assist U.S. negotiators in pursuing the above objectives:

1. Agreements and Proposals Will Be Evaluated in Terms of Actual Opportunities and Public Interest Factors

The value of air cargo opportunities granted to a country should be comparable to the value of opportunities available to U.S. operators in that country. In practice, air cargo opportunities conferred by an aviation agreement are only of value to the extent U.S. air cargo operators are able to capitalize on them. Key considerations in measuring actual opportunities available are the size of the air cargo market to be accessed through the agreement and the quality of the operating environment in the foreign country. The airlines of a foreign country characterized by a restrictive operating environment should be granted less access than if its environment were more open.

U.S. aviation authorities will also take into account public interest factors in considering the value to the United States of a proposed exchange of new opportunities. Key factors include: the vital importance of air services to remote locations and underutilized airports, the benefits for the local business economy of more convenient air services, and the important contribution of air cargo operators to the CRAF program.

2. Cargo Issues Merit Special Attention

Specific treatment of cargo issues in negotiations is essential. Cargo routes and routing flexibility, the pricing regime for cargo, capacity limitations (if any), the regime for cargo charters, the requirements of express traffic, and the ground-side operating environment are all matters that should be addressed. Specific treatment includes recognition of the important role combination services, including maindeck "combi" services, play in determining market shares of bilateral air cargo markets. This is particularly important in any negotiations involving restricted cargo capacity regimes.

The Government also must continue to develop expertise and commit resources to cargo issues. It must maintain a close dialogue with industry, as well as with other constituency groups affected by air cargo operations, to ensure that air cargo issues are properly addressed.

3. A Flexible Negotiating Posture Best Serves U.S. Cargo Interests

If both the foreign government and the United States are seeking new cargo opportunities that are economically comparable, then a cargo-for-cargo exchange may represent a satisfactory exchange for the two sides. In many negotiations where the U.S. is seeking new cargo opportunities, however, the foreign government involved is often primarily interested in obtaining new combination opportunities. In these cases, U.S. negotiators can maximize cargo benefits by negotiating agreements based on the leverage available—leverage that is a function of what the other side is seeking.

A flexible negotiating approach preserves the ability of the United States to pursue satisfactory resolution of cargo needs and issues, regardless of the particular circumstances. It should be emphasized, however, that trades between the passenger and cargo sectors will be entertained only when the U.S. Government determines such a trade to be in the overall interest of the United States.

4. Special Procedures May Be Necessary To Resolve Doing Business Problems

Regulations and policies of a foreign government that impede a carrier's ground-side operations have a serious impact on the competitiveness of that carrier's service. Such policies may interfere with the exercise of rights specifically conferred by a bilateral agreement and thus may represent a violation of that agreement. The United States is committed to seeking prompt resolution of such problems.

When a doing business issue arises, interested U.S. Government agencies involved will coordinate their actions to bring about a satisfactory resolution of the issue whether or not it involves a violation of bilateral agreement. U.S. authorities first will seek prompt resolution through diplomatic efforts including, if necessary, consultations with all foreign government agencies having relevant jurisdiction. When useful, the U.S. will seek to convene special working groups or task forces composed of industry representatives and U.S. and foreign government officials at an appropriately responsible level.

In cases involving actual violations of bilateral agreements where solutions are not found through diplomatic consultations, it may become necessary to take countermeasures against foreign governments or airlines.

**Appendix A—Excerpts From the Federal Aviation Act**

*Section 102(a)—Factors for Interstate, Overseas, and Foreign Air Transportation*

(a) In the exercise and performance of its powers and duties under this Act, the Board[1] shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(1) The assignment and maintenance of safety as the highest priority in air commerce, and prior to the authorization of new air transportation services, full evaluation of the recommendations of the Secretary of Transportation on the safety implications of such new services

[1] On January 1, 1985, the international functions of the Civil Aeronautics Board were transferred to the Department of Transportation. See Civil Aeronautics Board Sunset Act of 1984, Pub. L. 98-443, October 4, 1984, 49 U.S.C. 1551.

and full evaluation of any report or recommendation submitted under section 107 of this Act.

(2) The prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

(3) The availability of a variety of adequate, economic, efficient, and low-price services by air carriers and foreign air carriers without unjust discriminations, undue preferences of advantages, or unfair or deceptive practices, the need to improve relations among, and coordinate transportation by, air carriers, and the need to encourage fair wages and equitable working conditions for air carriers.

(4) The placement of maximum reliance on competitive market forces and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital, taking account, nevertheless, of material differences, if any, which may exist between interstate and overseas air transportation, on the one hand, and foreign air transportation, on the other.

(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adaption of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service, and the national defense.

(6) The encouragement of air service at major urban areas in the United States through secondary or satellite airports, where consistent with regional airport plans of regional and local authorities, and when such encouragement is endorsed by appropriate State entities encouraging such service by air carriers whose sole responsibility in any specific market is to provide service exclusively at the secondary or satellite airport, and fostering an environment which reasonably enables such carriers to establish themselves and to develop their secondary or satellite airport services.

(7) The prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, and the avoidance of—

(A) Unreasonable industry concentration, excessive market domination, and monopoly power, and

(B) Other conditions; that would tend to allow one or more air carriers or foreign air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(8) The maintenance of a comprehensive and convenient system of continuous scheduled interstate and overseas airline service for small communities and for isolated areas in the United States, with direct Federal assistance where appropriate.

(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.

(10) The encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strenthening of small air carriers so as to assure a more effective, competitive airline industry.

(11) The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry.

(12) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation.

*Section 102(b)—Factors for All-Cargo Air Service*

(b) In addition to the declaration of policy set forth in subsection (a) of this section, the Board,[2] in the exercise and performance of its powers and duties under this Act with respect to all-cargo service shall consider the following, among other things, as being in the public interest:

(1) The encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense.

(2) The encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services.

(3) The provision of services without unjust discriminations, undue preferences and advantages, unfair or deceptive practices, or predatory pricing.

*Section 1102(b)—Goals for International Aviation Policy*

(b) In formulating United States international air transportation policy, the Congress intends that the Secretary of State, the Secretary of Transportation, and the Civil Aeronautics Board [3] shall develop a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system. This includes, among other things:

(1) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation;

(2) Freedom of air carriers and foreign air carriers to offer fares and rates which correspond with consumer demand;

(3) The fewest possible restrictions on charter air transportation;

(4) The maximum degree of multiple and permissive international authority for United States air carriers so that they will be able to respond quickly to shifts in market demand;

(5) The elimination of operational and marketing restrictions to the greatest extent possible;

(6) The integration of domestic and international air transportation;

(7) An increase in the number of nonstop United States gateway cities;

(8) Opportunities for carriers of foreign countries to increase their access to United States points if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away;

(9) The elimination of discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including excessive landing and user fees, unreasonable ground handling requirements, undue restrictions on operations, prohibitions against change of gauge, and similar restrictive practices; and

(10) The promotion, encouragement, and development of civil aeronautics

[2] See footnote 1 of this Appendix A.

[3] See footnote 1 of this Appendix.

and a viable, privately owned United States air transport industry.

*Section 1102(c)—Consultation With Affected Groups*

(c) To assist in developing and implementing such an international aviation negotiating policy, the Secretaries of State and Transportation and the Civil Aeronautics Board [4] shall consult, to the maximum extent practicable, with the Secretary of Commerce, the Secretary of Defense, airport operators, scheduled air carriers, charter air carriers, airline labor, consumer interest groups, travel agents and tour organizers, and other groups, institutions, and government agencies affected by international aviation policy concerning both broad policy goals and individual negotiations.

**Appendix B—National Airlift Policy Statement (National Security Decision Directive 280)**

Key objectives and policies of the National Airlift Policy Statement which are significant to the U.S. international air cargo policy are as follows:

* * * The national defense airlift objective is to ensure that military and civil airlift resources will be able to meet defense mobilization and deployment requirements in support of US defense and foreign policies * * *

* * * The broad purpose of this directive is to provide a framework for implementing actions in both the private and public sectors that will enable the US efficiently and effectively to meet established requirements for airlift in both peacetime and in the event of crisis or war * * *.

1. United States policies shall be designed to * * * enhance the mobilization base of the U.S. commercial air carrier industry * * *.

4. * * * It is therefore the policy of the United States to recognize the interdependence of military and civilian airlift capabilities in meeting wartime airlift requirements, and to protect those national security interests contained within the commercial air carrier industry * * *.

8. The Department of State and other appropriate agencies shall ensure that international agreements and federal policies and regulations governing foreign air carriers foster fair competition, safeguard important US economic rights and protect U.S. national security interests in commercial cargo capabilities. * * *

9. United States aviation policy, both international and domestic, shall be designed to strengthen the nation's airlift capability and where appropriate promote the global position of the United States aviation industry.

Approved: July 28, 1988.

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs, Department of Transportation.*

**Eugene J. McAllister,**

*Assistant Secretary for Economic and Business Affairs, Department of State.*

[FR Doc. 88-17504 Filed 8-3-88; 8:45am]

BILLING CODE 4710-07-M

[4] See footnote 1 of this Appendix.

## Federal Highway Administration

### Environmental Impact Statement; Santa Clara and San Benito Counties, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Santa Clara and San Benito Counties, California.

**FOR FURTHER INFORMATION CONTACT:** Dave Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California, 95812-1915, Telephone: (916) 551-1314, or R.D. Lemmon, Study Manager, State of California, Department of Transportation, Transportation Studies Branch, P.O. Box 7310, San Francisco, California, 94120-7310, Telephone (415) 557-9150.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation will prepare a draft environmental impact statement covering alternative transportation development proposals in the State Route 152 corridor in Santa Clara and San Benito Counties from Uvas Creek, west of Gilroy, Santa Clara County passing through portions of San Benito County to the junction of State Routes 152 and 156 in Santa Clara County, a distance of approximately 17 miles. Transportation improvements are needed in the area to relieve existing and anticipated traffic congestion on highways and streets in the corridor.

Alternatives to be considered, in addition to doing nothing or transportation system management projects, (low cost improvements to existing transportation systems), include the construction of a freeway, expressway, conventional highway, or combination thereof on various alignments.

A public information open house to gather information was held on May 6, 1987 in the City of Gilroy Council Chambers. Additional meetings for scoping purposes will be scheduled with interested parties as early as appropriate or as requested.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties including the views of agencies which may have knowledge about historic resources potentially affected by the proposal or interested in the effects of the project on historic properties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consulation on Federal Programs and activities apply to this program)

Issued on: July 26, 1988.

**Dave L. Eyres,**

*District Engineer, Sacramento, California.*

[FR Doc. 88-17511 Filed 8-3-88; 8:45 am]

BILLING CODE 4910-22-M

### Environmental Impact Statement; City of Fort Worth; Tarrant County; Johnson County, TX

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Tarrant County and Johnson County, Texas.

**FOR FURTHER INFORMATION CONTACT:** W.L. Hall, Jr., P.E., District Engineer, Federal Highway Administration, Federal Office Building, Room 826, 300 East Eighth Street, Austin, Texas 78708, Telephone: (512) 482-5988.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (DHT), intends to prepare an Environmental Impact Statement (EIS) on a proposal to extend State Highway 121 (SH121) on new alignment and right-of-way from Interstate Highway 20 (IH20) to State Highway 174 (SH174) in the City of Fort Worth; Tarrant County and Johnson County, Texas. This proposed highway segment forms the South Section of a proposed extention of SH121 from Interstate Highway 35W (IH35W) to

SH174. Previous documentation efforts on the South Section have consisted of an Environmental Assessment (EA) encompassing four alternative alignments for the proposed facility. Companion documentation is being prepared separately for the North Section of the proposed facility.

The Environmental Impact Statement will assess a variety of alternatives for route selection of the proposed project. The entire project would be on new alignment. It would traverse portions of the City of Fort Worth in Tarrant County and portions of Johnson County north of the City of Cleburne. The entire South Section would be designated as a controlled access facility, and would have continuous frontage roads except at railroad crossings. Four alternative route alignments are being studied for this highway section, in addition to the "no-build" alternative. The longest alternative totals approximately 21.5 miles in length.

The proposed facility will provide a long-needed north-south controlled access highway between the rapidly growing areas of Southwest Fort Worth/Tarrant County, the Cleburne area in Johnson County, and beyond to the counties south and west of Johnson County. The proposed facility has been an integral part of regional transportation plans since the mid-1970's. These plans include a network of local arterial roadways which would intersect with the north-south SH121 alignment.

In combination with the proposed North Section of SH121 which would connect the South Section from IH20 to IH35W and the existing Airport Freeway (SH121) just northeast of the Fort Worth Central Business District, the proposed facility would further provide needed access to Dallas-Fort Worth International Airport and major growth centers in North Tarrant County.

The Dallas-Fort Worth consolidated Metropolitan Statistical Area (CMSA), or "Metroplex", with a current (1986) estimated population of 3.6 million, is estimated by the North Central Texas Council of Governments (NCTCOG) to increase to 5 million by the year 2010. This represents an increase of 40%. Total Metroplex employment during the period 1986–2010 is projected to increase by 52 percent, from less than 2.2 million to over 3.3 million. M/PF Research, Inc., has projected that the Fort Worth-Arlington (Tarrant County) portion of the Metroplex will have at least a short-term growth rate twice that of the remainder of the Metroplex, including Dallas.

The highway section under study will connect the Cities of Fort Worth (Inc.) (1980 population 385,164), Crowley (Inc.) (1980 population 5,852), Burleson (Inc.) (1980 population 11,734), Joshua (Inc.) (1980 population 1,470), and Cleburne (Inc.) (1980 population 19,218).

Traffic projections for the year 2010 show an Average Daily Total (ADT) traffic demand for the proposed SH121 facility of 130,000 at IH35W, and 140,500 at the IH20 interchange, with decreasing amounts for southern portions of the proposed facility. The South Section of the proposed facility thus will be serving two purposes: (1) To relieve congestion on existing facilities in the Tarrant County portion of the corridor and, (2) to provide for continuing growth and commuter-recreational-agricultural access needs in Johnson County and beyond.

The proposed facility will safely and efficiently provide for the transportation needs of the area. It will alleviate congestion and delays and will provide adequate future access to housing, businesses, employment, public health and safety facilities, schools, churches, and other transportation modal facilities.

Because of the difficulty in predicting availability of funds, the DHT has not yet decided whether to use State or Federal funds to finance construction of this project.

Coordination with the communities and with public officials has been initiated and will continue. A public meeting was held on November 12, 1987 within the vicinity of the project. A public hearing will follow at a later date. Adequate notice will be given through the news media concerning the time and location of formal public involvement proceedings.

Prior to the onset of construction, the Environmental Impact Statement and records of associated public involvement process will be reviewed by appropriate agencies. Construction of the proposed project is anticipated within the next ten years.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities supply to this program)

Issued on: July 20, 1988.

W.L. Hall, Jr.,

*District Engineer, Austin, Texas.*

[FR Doc. 88-17505 Filed 8-3-88; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 29, 1988

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0120.
*Form Number:* 1099-G.
*Type of Review:* Extension.
*Title:* Statement for Recipients of Certain Government Payments.
*Description:* Form 1099-G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (e.g., unemployment compensation and income tax refunds). We use the information to insure that the income is being properly reported by the recipients on their returns.
*Respondents:* State or local governments, Federal agencies or employees.
*Estimated Number of Respondents:* 3,879.
*Estimated Burden Hours Per Response:* 2 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 1,042,886 hours.

*OMB Number:* 1545-0123.
*Form Number:* 1120, Schedule D (Form 1120, Schedule PH (Form 1120).
*Type of Review:* Revision.
*Title:* U.S. Corporation Income Tax Return; Capital Gains and Losses; Computation of U.S. Personal Holding Company Tax.
*Description:* Form 1120 is used by corporations to compute their taxable income and their liability. Schedule D (Form 1120) is used by corporations to

report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 2,294,081.

*Estimated Burden Hours Per Response:* 1120: 9 hours and 40 minutes.

Schedule D (Form 1120): 1 hour and 17 minutes.

Schedule PH (Form 1120): 2 hours and 31 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 29,494,027 hours.

*Clearance Officer:* Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 88–17545 Filed 8–3–88 8:45 am]

BILLING CODE 4810-25-M

## Office of the Secretary

**[Supplement To Department Circular—Public Debt Series—No. 19–88]**

### Treasury Notes, Series AD–1990

Washington, July 28, 1988.

The Secretary announced on July 27, 1988, that the interest rate on the notes designated Series AD–1990, described in Department Circular—Public Debt Series—No. 19–88 dated July 21, 1988, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 88–17522 Filed 8–3–88; 8:45 am]

BILLING CODE 4810-40-M

**[General Counsel Designation No. 152]**

### Appointment of Members of the Legal Division to the Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Jeanne S. Archibald, Deputy General Counsel, who shall serve as Chairperson;
Selig S. Merber, Assistant General Counsel (Enforcement);
Kenneth R. Schmalzbach, Assistant General Counsel (Administrative & General Law);
Paul Allan Schott, Chief Counsel, Office of the Comptroller of the Currency;
Leonard B. Terr, International Tax Counsel;
Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco, and Firearms; and
Michael T. Schmitz, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—

Chairperson, Deputy Chief Counsel, IRS;
Deputy General Counsel;
Two Associate Chief Counsel, IRS; and
Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Date: July 29, 1988.

**Mark Sullivan III,**

*General Counsel.*

[FR Doc. 88–17546 Filed 8–3–88; 8:45 am]

BILLING CODE 4810-25-M

## UNITED STATES INFORMATION AGENCY

### US/USSR High School Pairing Program

The United States Information Agency invites applications from private organizations to conduct a program of youth exchanges between the United States and the USSR.

**Objectives**

To establish linkages between US and Soviet high schools for the purpose of promoting educational exchanges of groups including students and teachers.

To promote mutual understanding between the peoples of the US and the USSR.

**Scope**

The program seeks to pair 100 American public and private high schools with 100 Soviet secondary schools over a three-year period and to initiate, expand and maintain annual two-way exchanges between all participating schools by the end of the period of this initiative. The program will be financed by US Government funds, USSR Government funding, contributions from US corporations and foundations, and from participating schools, students and communities. It is anticipated that exchanges will be self-sustaining after the three-year initiative ends.

The Agency seeks proposals from not-for-profit exchange and educational organizations to implement the High School Pairing project.

**Program**

Bilateral exchanges will begin as 5-week visits of student groups with a teacher escort during the academic year; it is anticipated that 25 pairs of schools will be able to implement exchanges by the spring of 1989.

At a minimum each school will: (1) Enhance, or by the third year have developed a program of language studies in order to generate a pool of students qualified to communicate in the language of the host country; (2) develop an extensive orientation program designed to prepare outbound US students for the exchange experience; (3) prepare an orientation program for foreign incoming students; and (4) plan and implement an annual exchange with its partner school. It is anticipated that the initial exchanges will be of groups of no less than 10 students from the same school and one teacher/escort. Each group will spend five weeks in the host country, four in the partner school and the fifth week split between two cities in the host country; generally there will be a 2–3 day period of orientation in the receiving country prior to the visit to the host school, and a 4–5 day period of travel to the additional city or cities at the end of the visit.

In the first year approximately 25 schools on each side will engage in exchanges. In the second and third years the number will increase to involve all 100 pairings. Starting with the 2nd year of the program participating schools have the option to expand the length of stay and develop alternate exchange opportunities, such as semester and year-long exchanges.

All exchanges will take place during the school year. Summer exchanges when schools are not in session are not acceptable. Sending and hosting between paired schools should take place at different times, so that the students who will travel will be present in their home school when their counterparts visit.

The exchange should result in extensive interaction between the

visiting students/faculty and the community. Wherever possible, they should be housed with host families. In the case of boarding schools, it is desirable for the host school to identify and assign sponsoring families in the community who will be responsible for providing some home hospitality (evenings and weekends). Hotel stays may be used only where absolutely necessary and again in partnership with hospitality families.

The school and community will also arrange for participation in cultural events, historical visits, tours, religious and social life, extra-curricular school activities, and local/state government.

The school should also plan a program for the accompanying teacher/escort relevant to the objectives of this initiative.

American schools selected for participation in this program that do not currently teach Russian will be expected to develop a Russian language studies curriculum during the course of the three years, so that students competent in Russian may participate in exchanges by year three. It is anticipated that all participating Russian schools will have established English-teaching programs.

**Organization/Administration**

In the Soviet Union the responsible agency is the State Committee on Public Education.

In the US one private organization will be selected by USIA as the principal coordinator of the program and fiscal agent for contributed funds. The relationship between USIA and the grantee organization will be that of a "cooperative agreement" to allow for extensive interaction between the two parties on all aspects of the program. USIA may also make secondary grants to other organizations as necessary to implement the program.

The principal grantee organization may work in concert with one or more other organizations in the implementation of this program. The proposal from any combination or consortium of organizations must identify one member as the fiscal agent. Subcontracting to other not-for-profit organizations is permissable. Such subcontracting must be identified in the proposal. Subcontracting subsequent to the grant award will be subject to Agency approval.

The grantee organization will be responsible for:

—Selection of US schools-The organization will prepare criteria for selection with USIA concurrence.
—Liaison with the Soviet counterpart agency in all program matters, especially in matching US and Soviet schools, dates for exchanges, financial arrangements, logistics, etc.
—Organizing workshops for school coordinators.
—Preparation of criteria for selection of student participants.
—Consultation with the Soviet agency on ways to enhance English language teaching and American studies in Soviet schools, in consultation with recognized experts in this field. IN conjunction with this activity, in the first year of the initiative the organization may wish to plan joint activities of American and Soviet specialists to address curriculum issues.
—Preparation of orientation materials for both American and Soviet students, in close consultation with USIA.
—Preparation of briefing materials for American host families.
—Health and accident insurance coverage for participants.
—Facilitation of visas for American participants; preparation of IAP 66 forms for Soviet participants (all will travel on J-1 visas).
—Provisions of administrative support and travel arrangements for all aspects of this program, including inbound and outbound delegations of administrators, consultants, et al.
—Public information.

It is anticipated that the grantee organization will need at a minimum one full-time national program coordinator. It will also be necessary for the US organization to have a coordinator in Moscow at key times to assist with logistics, maintain daily contact with the State Committee, and in general provide a base of operations.

**Funding**

The initial grant (in the form of a "cooperative agreement") will be to set up the administrative machinery to launch the program and implement the first round of exchanges during the period from September 15, 1988, to April 30, 1989. Subject to the availability of funding, the U.S. Government may eventually commit up to $1,000,000 over the three-year period of this initiative. USIA funds may be used for both administrative and program expenses. Although it is expected that American students will normally pay their own travel, partial scholarships (principally for travel subsidies) for needy students may be included in the request for funds.

All funding will be handled on a reciprocal non-currency basis. The program will serve equal numbers of participants on both sides each year. In order to assist in planning, both sides will agree on a minimum number of participants that will be exchanged each year. The sending side will pay all travel of its participants to the port of entry in the host country and any programming prior to the exchange (e.g., orientation). The receiving side will pay all host-country costs including domestic travel for the incoming groups, per diem, allowances, health and accident insurance, cultural activities, etc.

**Requirements For Application**

USIA is seeking a private organization or organizations to fulfill the functions described above.

(Note: proposals from individual schools or school districts are not eligible)

Proposals should address the following qualifications:

1. Not-for-profit educational and/or exchange organization.

2. Experience on Soviet exchanges and in working with exchange programs in the Soviet Union.

3. A base of operations in the Washington area.

4. The proven ability to work effectively with and gain the respect and trust of American public and private high schools; preferably a national network of contacts with schools.

5. The ability to set up and run a cost-effective administrative operation.

In order to be eligible for review the proposal must include:

(1) *Summary document:* a typed double-spaced abstract of approximately two pages.

(2) *Narrative:* Total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions; information on the applicant's prior experience with Soviet exchanges; and a description of the institution's resources that would support the program.

b. A detailed description of the proposed program, with special emphasis on the method of selecting US schools and matching them with Soviet schools, the approach to orientations, and approach to in-school preparation activities.

c. A timetable for project activities.

d. A plan for institutional evaluation of the exchange activity.

(3) A detailed three-column budget outlining specific expenditures and sources from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. institutions. The following items should include specific break downs:

—*Salaries*: Annual salary X percent of time X number of months.
—*Fringe benefits*: Explain the component elements.
—Other administrative costs.
—Indirect costs—may be expressed as a percentage only where an approved indirect cost rate agreement with the government is extant.
—*Per diem*: Use a maximum of $85 for students and $105 for adults for other than homestay periods. During homestays the receiving side will provide the incoming students with an allowance of $5–10 a day.
—*Orientation costs*: Materials, room rental, honoraria, etc.
—Scholarships.

(4) Appendices:

—Bio-sketches (curricula vitae) on principal project staff.
—Evidence of insurance coverage.
—Most recent financial statement.
—Articles of incorporation.
—Proof of tax exemption.
—List of current board of directors.
—Indirect cost rate agreement (if applicable).

Applicants should submit an original and twelve (12) copies of their proposals.

**Criteria For Judging Proposals**

The following criteria will be used to judge proposals submitted in response to this announcement:

—Cost-effectiveness—the best return on each federal dollar invested; reasonableness of costs in comparison to other proposals.
—Cost-sharing—the ratio of federal dollars to other contributed costs.
—Creativity in matching the proposed program to this design.
—Capability of the organization in meeting the eligibility requirements.

**Review Process**

The deadline for receipt of proposals in USIA is August 16, 1988.

USIA will review all proposals and make decisions on funding by September 1. Funding will be available by September 15.

For further information please contact Robert Persiko, Acting Director, Youth Exchange Staff, USIA, 301 4th Street SW., Washington, DC 20547; telephone, 202–485–7299.

Dated: August 1, 1988.

**Charles N. Canestro,**

*Federal Register Liaison.*

[FR Doc. 88–17574 Filed 8–3–88; 8:45 am]

BILLING CODE 8230–01–M

BEST COPY AVAILABLE

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 150
Thursday, August 4, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL COMMUNICATIONS COMMISSION

### FEC To Hold Open Commission Meeting, Thursday, August 4, 1988

July 28, 1988.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 4, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

*Agenda, Item No., and Subject*

General—1—Title: Amendment of Part 2, of the commission's Rules Regarding the Allocation of the 216–225 MHz band. Summary: In this proceeding, the Commission considers whether to provide a primary allocation to the amateur, fixed or mobile services, in the 216–225 MHz band.

Private Radio—1—Title: Petitions for waiver and extension of the provisions of § 94.51(a) of the Commission's Rules. Summary: The Commission will consider requests by Associated Information Services and Digital Radio Network, Inc., that it waive its requirement that microwave stations be placed into operation within one year.

Mass Media—1—Title: Public Notice reminding licensees and cablecasters of their political programming obligations. Summary: The Commission will consider the adoption of a Public Notice which would remind broadcasters and cablecasters of their obligations under the lowest unit charge provision of the Communications Act [47 U.S.C. 315(b)], and their obligation to maintain a "political file" [47 CFR 73.1940(d) and 76.209(d)].

Mass Media—2—Title: Review of the Technical and Operational Requirements of Part 76, Cable Television. Summary: The Commission will consider whether to adopt a Further Notice of Proposed Rule Making to address possible changes to its rules concerning cable system technical signal quality.

Mass Media—3—Title: Amendment of Part 76, Subpart J, § 76.501 of the Commission's Rules and Regulations on Common Ownership of Cable Television Systems and National Networks. Summary: The Commission will consider further action on the existing Notice of Proposed Rule Making.

Mass Media—4—Title: Amendment of Part 73, Subpart E, § 73.658(c) of the Commission's Rules and Regulations concerning the Two-Year Limitation of the Term of Network-Affiliate Contracts. Summary: The Commission will consider whether to initiate a notice and comment proceeding reexamining this rule.

Mass Media—5—Title: In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service; Review of Technical and Operational Requirements: Part 73–E, Television Broadcast Stations; Reevaluation of the UHF Television Channel and Distance Separation Requirements of Part 73 of the Commission's Rules. Summary: The Commission will consider further action in this proceeding on the technical, economic, legal, and policy issues relating to authorizing and establishing an advanced television system for terrestrial broadcasting.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commiston.
**H. Walker Feaster III,**
*Acting Secretary.*

Issued: July 28, 1988.

[FR. Doc. 88–17670– Filed 8–2–88; 2:03 p.m.]
BILLING CODE 6712-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:36 a.m. on Wednesday, July 27, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) a personnel matter; and (2) requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 1, 1988.
Federal Deposit Insurance Corporation.
**Robert E. Feldman,**
*Deputy Executive Secretary.*
[FR Doc. 88–17619 Filed 8–1–88; 4:51 pm]
BILLING CODE 6714-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:38 a.m. on Friday, July 29, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 1, 1988.
Federal Deposit Insurance Corporation.
**Robert E. Feldman,**
*Deputy Executive Secretary.*
[FR Doc. 88–17620 Filed 8–1–88; 4:51 pm]
BILLING CODE 6714-01-M

federal register

Thursday
August 4, 1988

Part II

# Office of Management and Budget

## Budget Rescissions and Deferrals

VOL 53 ISS 150 AUG 4 1988 UMI

## OFFICE OF MANAGEMENT AND BUDGET

### Budget Rescissions and Deferrals

*To the Congress of the United States:*

In accordance with the Impoundment Control Act of 1974, I herewith report two revised deferrals of budget authority now totalling $610,581,549.

The deferrals affect programs in the Department of Defense—Civil and Funds Appropriated to the President.

The details of these deferrals are contained in the attached report.

**Ronald Reagan.**

The White House,

July 29, 1988.

BILLING CODE 3110-01-M

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

| DEFERRAL NO. | ITEM | BUDGET AUTHORITY |
|---|---|---|
| | Funds Appropriated to the President: | |
| | International Security Assistance: | |
| D88-21A | Military assistance..... | 609,186 |
| | Department of Defense, Civil: | |
| D88-9B | Wildlife conservation..... | 1,396 |
| | Total, deferrals..... | 610,582 |

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**SUMMARY OF SPECIAL MESSAGES FOR FY 1988**
(in millions of dollars)

| | RESCISSIONS | DEFERRALS |
|---|---|---|
| Fourth special message: | | |
| New items | --- | --- |
| Revisions to previous special messages | --- | 1,611 |
| Effects of fourth special message | --- | 1,611 |
| Amounts from previous special messages that are changed by this message (changes noted above) | --- | 608,971 |
| Subtotal, rescissions and deferrals | --- | 610,582 |
| Amounts from previous special messages that are not changed by this message | --- | 8,700,999 |
| Total amount proposed to date in all special messages | --- | 9,311,581 |

D88-21A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-21 transmitted to Congress on February 19, 1988.

This increases by $1,000,000 the previous deferral of $608,186,000 in the Military assistance fund, Funds Appropriated to the President, resulting in a total deferral of $609,186,000. The increase in the amount deferred is to correct a clerical error in the preparation of the previous report. The deferral is now $298,185,000.

Deferral No: D88-21A

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

| | |
|---|---|
| AGENCY: Funds Appropriated to the President | New budget authority.....$ 700,750,000 (P.L. 100-202) |
| Bureau: International Security Assistance | Other budgetary resources...$ |
| Appropriation title and symbol: Military assistance 1/ 1181080 | Total budgetary resources...$ 700,750,000 |
| | Amount to be deferred: Part of year.....*$ 609,186,000 |
| | Entire year.....$ |
| OMB identification code: 11-1080-0-1-152 | Legal authority (in addition to sec. 1013): [X] Antideficiency Act |
| Grant program: [ ] Yes [X] No | [ ] Other |
| Type of account or fund: [X] Annual | Type of budget authority: [X] Appropriation |
| [ ] Multiple-year (expiration date) | [ ] Contract authority |
| [ ] No-Year | [ ] Other |

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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1/ This account was the subject of a similar deferral in 1987 (D87-23).

* Revised from previous report.

D88-9B

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-9A transmitted to Congress on February 19, 1988.

This revision to a deferral of the Department of Defense - Civil, Wildlife conservation account increases the amount previously reported from $785,035 to $1,395,549. This increase of $610,514 results from the deferral of additional actual carryover from 1987.

Deferral No: D88-9B

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**
Department of Defense - Civil
Bureau: Wildlife Conservation, Military Reservations 1/

**Appropriation title and symbol:**
Wildlife Conservation, Army 21X5095
Wildlife Conservation, Navy 17X5095
Wildlife Conservation, Air Force 57X5095

**OMB identification code:**
97-5095-0-2-303

**Grant program:**
[ ] Yes [X] No

**Type of account or fund:**
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

**New budget authority.....*$** 2,152,160
(16 U.S.C. 670F)
**Other budgetary resources..*** 1,575,677
**Total budgetary resources..*** 3,727,837

**Amount to be deferred:**
Part of year..... $_____
Entire year.....* 1,395,549

**Legal authority (in addition to sec. 1013):**
[X] Antideficiency Act
[ ] Other _____

**Type of budget authority:**
[X] Appropriation
[ ] Contract authority
[ ] Other _____

**Coverage:**

| Appropriation | Account Symbol | OMB Identification Code | Amount Deferred |
|---|---|---|---|
| *Wildlife Conservation, Army..... | 21X5095 | 21-5095-0-2-303 | $1,098,485 |
| Wildlife Conservation, Navy..... | 17X5095 | 17-5095-0-2-303 | 56,000 |
| Wildlife Conservation, Air Force..... | 57X5095 | 57-5095-0-2-303 | 241,064 |
| | | | 1,395,549 |

Justification: *These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These funds are being deferred because: (1) the authorizing legislation states that installations may accumulate funds over a period of time to fund a major project, (2) each installation may be designing and obtaining approval for projects, and (3)

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1/ These accounts were the subject of a similar deferral in 1987 (D87-88).

* Revised from previous report.

D88-9B

there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

[FR Doc. 88-17621 Filed 8-3-88; 8:45 am]
BILLING CODE 3110-01-C

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federal register

Thursday
August 4, 1988

Part III

# Environmental Protection Agency

**40 CFR Part 304**

**Arbitration Procedures for Small Superfund Cost Recovery Claims; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 304**

**[FRL-3307-3]**

## Arbitration Procedures for Small Superfund Cost Recovery Claims

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to sections 107(a) and 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), and Executive Order 12580, the Environmental Protection Agency ("EPA") is proposing today a rule which would establish and govern the procedures for EPA's arbitration of small CERCLA section 107(a) cost recovery claims. This rule would implement EPA's authority under section 122(h)(2) of CERCLA, which authorizes the head of any department or agency with authority to undertake a response action under CERCLA to use arbitration as a method of settling CERCLA section 107 claims for recovery of response costs incurred by the United States pursuant to section 104 of CERCLA, when the total response costs for the facility concerned do not exceed $500,000, excluding interest.

**DATE:** Comments must be submitted on or before October 3, 1988.

**ADDRESSES:** Comments should be addressed to Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, Room M3614B, Mail Code LE-134S, 401 M Street SW., Washington, DC 20460. The public docket for this proposed rule is located in Room M3614B, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, Room M3614B, Mail Code LE-134S, 401 M Street SW., Washington, DC 20460, (202) 382-3077.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are set forth in the following form:

I. Introduction
II. Summary of Proposed Rule
  A. Subpart A
  B. Subpart B
  C. Subpart C
  D. Subpart D
III. Summary of Supporting Analyses
  A. Executive Order No. 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
IV. List of Subjects in 40 CFR Part 304

### I. Introduction

Section 122(h)(2) of CERCLA provides EPA, as well as any other department or agency authorized to undertake a response action under CERCLA, with authority to promulgate regulations, after consultation with the Attorney General, for the use of arbitration as a method of settling CERCLA section107 claims for recovery of response costs incurred by the United States pursuant to section 104 of CERCLA. This authority is limited to cases in which the total response costs for the facility concerned do not exceed $500,000, excluding interest. EPA propses to implement its authority under section 122(h)(2) of CERCLA through this regulation.

This regulation would establish and govern the procedures for EPA's arbitration of CERCLA section 107 cost recovery claims. Arbitration may be used when the total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest, and when EPA and one or more potentially responsible parties ("PRPs") at a facility voluntarily agree to submit one or more issues arising in an EPA cost recovery claim for resolution by binding arbitration. The procedures require EPA and the participating PRPs to set forth the issues they wish to be resolved by the arbitrator. The procedures, therefore, permit the parties to use arbitration to address some or all of the issues that arise in a cost recovery action, *e.g.*, whether any of the participating PRPs are liable under section 107(a) of CERCLA, whether EPA's response costs were incurred in a manner which was not inconsistent with the National Contingency Plan ("NCP"), 40 CFR Part 300, and how responsibility for payment of response costs awarded to EPA by the arbitrator should be allocated among the participating PRPs. To ensure that the arbitration results in full resolution of the claim, any issues arising in the claim that are not submitted for arbitration are deemed to be not in dispute and may not be raised later to avoid payment of the award.

EPA believes that binding arbitration, an alternative dispute resolution technique, will provide a useful method for reaching settlements with PRPs in appropriate small cost recovery cases. It offers both the Agency and PRPs an alternative to traditional litigation and negotiations, which is relatively quick and inexpensive, and which results in a binding and conclusive decision arrived at by a neutral third party within a set period of time. The Agency believes that arbitration will be most beneficially used in routine cases that do not present issues of national or precedential significance. In such cases, arbitration offers the Agency an expedited means of seeking replenishment of the Superfund without the expenditure of the large amounts of enforcement resources often necessary to litigate a cost recovery claim. In such cases, arbitration similarly offers the PRPs an expedited and potentially less costly means of resolving their liability for reimbursement of the Government's response costs. The Agency also believes that arbitration will be most efficiently used when a large percentage of the PRPs at the facility agree to participate.

### II. Summary of Proposed Rule

This part of the preamble will present an overview of each of the four subparts of the proposed rule. While the Agency is interested in receiving comments from PRPs and the public on all aspects of this proposal, this summary will highlight particular issues on which EPA is most interested in receiving comments.

#### *A. Subpart A*

Subpart A of the proposed rule outlines the purpose, scope, and applicability of the regulation and defines terms used throughout the regulation. Subpart A explains that the regulation establishes and governs the procedures for arbitration, under section 122(h)(2) of CERCLA, of EPA claims for recovery, under section 107(a) of CERCLA, of response costs incurred at a facility by the United States pursuant to section 104 of CERCLA. The subpart further explains that, in accordance with section 122(h)(2) of CERCLA, the procedures may be used when the total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest.

#### *B. Subpart B*

Subpart B of the rule defines the jurisdiction of the arbitrator and outlines the procedures for the referral of claims for arbitration and for the appointment of the arbitrator. With regard to referral of claims, the subpart provides that if EPA believes that a claim is appropriate for arbitration, EPA will notify all identified PRPs for the facility and offer them an opportunity to discuss referral for arbitration of one or more issues

arising in the claim. Alternatively, one or more PRPs for the facility may propose use of arbitration to EPA, after which either the PRPs or EPA shall, if practicable, invite remaining site PRPs to discuss use of arbitration. EPA and one or more PRPs may thereafter submit a joint request for arbitration which defines the issues being submitted for resolution, and, among other things, contains the parties' consent to arbitration pursuant to this rule, agreement to be bound by the resulting decision and to pay any award made therein, and agreement that the statute of limitations governing EPA's claim will be extended during the proceeding and any enforcement actions arising therefrom. With regard to the statute of limitations, the subpart also provides that the statute of limitations shall be extended during the arbitration and any enforcement actions relating thereto. The Agency interprets CERCLA as allowing extension of the statute of limitations during the arbitration process so that EPA may pursue arbitration without precluding its ability to proceed through judicial action if necessary.

Subpart B also explains the arbitrator's jurisdiction. It provides that the arbitrator may resolve one or more issues presented in an EPA cost recovery claim when EPA and one or more PRPs at the facility concerned have submitted a joint request for arbitration and when the total response costs for the facility do not exceed the dollar limitation described in part II(A) above. If the total past and projected response costs for the facility concerned increase to an amount that exceeds $500,000, excluding interest, prior to the rendering of the final arbitral decision, the parties may agree to continue the proceeding as non-binding arbitration. In such event, the arbitrator's proposed decision may be adopted by the parties as an administrative cost recovery settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), subject to the prior written approval of the Attorney General or his designee and a thirty-day public comment period. All procedures contained in Part 304 shall apply to the non-binding arbitration, except for §304.33(e), which addresses public comment on the proposed arbitral decision, and § 304.40, which covers effect and enforcement of the final arbitral decision. These two sections are excluded because the non-binding arbitral decision will be treated as a standard CERCLA section 122(h)(1) administrative cost recovery settlement. Accordingly, section 122(i) of CERCLA will provide the public comment requirements (instead of § 304.33(e) of the rule), and the effect and enforcement of the settlement will be governed by sections 122(h)(3) and 122(h)(4) of CERCLA.

Although the proposed rule contains this provision for converting the proceeding to non-binding arbitration if the $500,000 cost limitation is exceeded, the Agency does not anticipate that this procedure will be invoked often. This is because EPA does not intend to use arbitration under this rule unless and until it can establish, with reasonable accuracy and certainty, the total amount of response costs incurred and to be incurred at the site. Thus, prior to entering into a joint request for arbitration, the Agency will have fully documented the United States' past costs at the site. It will also have obtained sufficient information about the site to determine, with reasonable certainty, that no additional response action will be necessary, or that any additional response action will not bring the total response costs to over $500,000, including the cost of the arbitration. As a general matter, the Agency anticipates that the CERCLA section 122(h)(2) arbitration authority will be confined to use at sites at which a removal action has been performed at a total cost of less than $500,000, and at which the Agency does not anticipate, based on available information, that any further response action will be required except for minor additional work to monitor or maintain the site, which will not bring the total costs to over $500,000.

Subpart B further explains that the arbitrator may resolve only those issues that are presented for resolution by the parties in their joint request for arbitration. Issues that are not submitted by the parties for resolution, however, are deemed by the rule to be not in dispute and may not be raised as a defense to payment of the arbitrator's award. If the liability of one or more of the participating PRPs is presented for resolution, subpart B directs the arbitrator to determine whether that (or those) PRP(s) are liable under section 107(a) of CERCLA, subject only to the defenses contained in section 107(b) of CERCLA. If the dollar amount of response costs incurred by the United States is presented for resolution, the subpart directs the arbitrator to determine the total dollar amount of response costs recoverable under section 107 and to award that amount to EPA. Persons found liable under section 107 are, if the actual or threatened harm is indivisible, jointly and severally liable for all response costs incurred and to be incurred in connection with the facility concerned.

Under this proposed rule, there are three ways that joint and several liability may be addressed. First, the joint request for arbitration may ask the arbitrator to determine if the participating PRPs are liable under section 107, without providing further direction. In such instances, the rule directs the arbitrator to find all participating PRPs that he or she determines to be liable, jointly and severally liable, unless the arbitrator finds that the harm at the facility is divisible. If the arbitrator finds divisible harm, he or she is directed by the rule to allocate liability for payment of EPA's award in proportion to the harm attributable to each participating PRP.

Second, the joint request for arbitration may ask the arbitrator to determine liability, and, notwithstanding the applicability of the joint and several liability standard, may request the arbitrator to allocate responsibility for payment among the participating PRPs whom the arbitrator finds liable. In such cases, the rule allows the parties to specify in the joint request the factors to be applied by the arbitrator when performing the allocation. If the parties do not specify the factors, the arbitrator is directed to consider such factors as the arbitrator considers relevant, in his or her sole discretion, such as volume, toxicity, and mobility of the hazardous substances contributed to the facility by each participating PRP, ability to pay, and inequities and aggravating factors. The rule also offers the parties the option of specifying in the joint request that the arbitrator may allocate less than 100% of response costs awarded to EPA among the participating PRPs, or of having the arbitrator allocate 100% of such costs. EPA has included this opinion even though, under established case law, the United States is entitled to full recovery of all allowable response costs from liable PRPs. *See United States* v. *NEPACCO*, 810 F.2d 726, 747 (8th Cir. 1986). This is because the Agency seeks to encourage PRPs to use arbitration even if less than all site PRPs are participating, certain PRPs at the site are non-viable, or a portion of the waste at the site is unaccounted for. Whether EPA will agree to use this option in light of the availability of the joint and several liability standard should the case go to litigation will be determined on a case-specific basis. In any event, the rule places the burden of proving the appropriate allocation of responsibility upon the participating PRPs.

The third way that joint and several liability may be addressed under the

proposed rule is as follows. The parties, in the joint request, may ask the arbitrator to perform a binding allocation without submitting the issue of liability for arbitration. In such cases, the arbitrator will allocate responsibility for payment without rendering a decision on liability. Under this third alternative, the parties again have the options of (1) specifying the factors to be applied by the arbitrator or using the factors set forth in the rule as described above, and (2) specifying that less than all costs awarded to EPA may be allocated or using the 100% allocation method contained in the rule. As in the second joint and several liability option, the burden of proving the appropriate allocation rests with the participating PRPs.

In sum, without waiving the general applicability of the joint and several liability standard, the rule provides certain allocation alternatives that EPA may agree to use in appropriate cases to provide added incentive for use of arbitration. Despite the availability of these alternatives, the Agency realizes that use of arbitration for allocation issues will most often be pursued when the major PRPs at the site are represented in the proceeding. The Agency also expects that it will use arbitration only when the participating PRPs are capable of paying all costs awarded to EPA.

EPA is interested in receiving comments on the scope of issues which may be presented for resolution by arbitration, on whether allocations should be performed by the arbitrator, and on the options for addressing joint and several liability outlined above.

If any issue concerning the adequacy of EPA's response action is submitted for resolution or arises during the arbitrator's determination of the dollar amount of response costs recoverable by EPA, consistent with section 107 of CERCLA, subpart B requires the arbitrator to uphold EPA's selection of the response action unless any participating PRP can establish that the selection was inconsistent with the NCP. Consistent with section 113(j) of CERCLA, the arbitrator's review will be based upon the documents compiled by EPA which formed the basis for the selection of the response action under an arbitrary and capricious standard of review. If EPA's response action selection is upheld, the arbitrator is required to review EPA's costs on an arbitrary and capricious standard and to award EPA all costs incurred or to be incurred in connection with the response action, unless the participating PRPs can establish that all or part of such costs were: (1) Not actually incurred or to be incurred; or (2) not actually incurred or to be incurred in connection with the response action; or (3) clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action. If EPA's response action selection is upheld only in part, the arbitrator is directed to review EPA's costs on an arbitrary and capricious standard and to award EPA all costs incurred or to be incurred in connection with the portions of the response action which were upheld, unless the participating PRPs can show that all or part of such costs were: (1) Not actually incurred or to be incurred; or (2) not actually incurred or to be incurred in connection with the portions of the response action that were upheld; or (3) clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

This burden of proof and standard of review are not necessarily identical to that which would obtain in the judicial arena. In particular, the third factor, relating to whether EPA's costs were excessive, is not necessarily relevant in judicial cost recovery proceedings. Specifically, established case law holds that the United States is entitled to recover all costs associated with any response action upheld as not arbitrary and capricious. *See United States v. NEPACCO*, 810 F.2d 726, 747 (8th Cir. 1986). The Agency is interested in receiving comments on the burden of proof and standard or review.

Subpart B also outlines the prohibition on *ex parte* communications and explains the procedures for appointment, disclosure, and challenge of the arbitrator. The subpart explains that an arbitrator will be chosen from a National Panel of Environmental Arbitrators to be established and maintained by an organization offering arbitration services selected by EPA. EPA proposes to select the organization based upon its ability to provide the services required of the "Association" by this rule (*see* § 304.12(d)), including the provision of technically-capable arbitrators who can satisfy the requirements for impartiality contained in § 304.23(a) of the proposed rule. The selection process will also require the organization to make disclosures designed to ensure that it is free from any institutional biases.

Subpart B also contains procedures for intervention and withdrawal from the proceeding. Because subpart C requires all proposed arbitral decisions to be subject to public comment, intervention is limited to persons who are PRPs at the facility concerned and who wish to have one or more issues relating to their responsibility for payment of the referred claim resolved in the arbitral proceeding.

*C. Subpart C*

Subpart C of the proposed rule describes the arbitral hearing procedures. Time limits are included for each step of the process. In an effort to avoid unnecessary proof at the hearing, this subpart includes requirements for the filing of responsive pleadings with supporting exhibits and documents and for the early identification of witnesses. It also includes a mandatory pre-hearing conference at which the parties exchange witness statements, written direct testimony, a stipulation of uncontested facts, and a statement of disputed issues and consider the settlement of the claim. The arbitrator is given the discretion to determine whether to schedule a hearing on one or more of the disputed issues. Witnesses not identified on a party's witness list and evidence not previously identified or produced in a party's pleadings may be submitted at the hearing only on a showing of good cause or upon consent of all parties. Grounds for which the documents compiled by EPA supporting the selection of the response action may be supplemented are provided. The arbitrator is authorized to define the scope of oral testimony; oral direct testimony may be presented on the request of a party for good cause or on consent of all parties. The arbitrator is also the judge of the relevance and materiality of the evidence offered at the hearing and of the applicability of legal privileges. Further, the arbitrator is authorized to make such orders as may be necessary for *in camera* review of confidential business information. Conformity to legal rules of evidence is not required. The Agency is interested in receiving comment on the pre-hearing procedures and hearing procedures included in the proposed rule.

Subpart C also includes procedures for the rendering of the arbitrator's proposed decision, which, unless the parties settle their dispute during the course of the proceeding, must be issued within forty-five days after the close of the hearing or within forty-days after the pre-hearing conference if no hearing is held. The proposed decision is simply a statement of the arbitrator's determination of the issue(s) presented for resolution, along with an assessment

of fees and expenses of the proceeding. If the parties settle their dispute during the proceeding, the arbitrator, upon request, may set forth the agreement in a proposed decision. Alternatively, the parties may embody the settlement in a CERCLA section 122(h)(1) administrative cost recovery agreement.

In accordance with section 122(i) of CERCLA, subpart C requires notice of the proposed decision to be published by EPA in the **Federal Register** for a thirty-day public comment period. If public comments disclose facts or considerations to EPA which indicate that the proposed decision is inappropriate, improper, or inadequate, the parties have a thirty-day period in which to agree to modify the proposed decision and to set forth the proposed decision, as modified, in an agreed settlement. If the parties are unable to reach agreement on modification of the proposed decision, EPA will withdraw from the arbitral proceeding, and the proposed decision is null and void and of no legal effect. If public comments do not disclose to EPA facts or considerations indicating that the proposed decision is inappropriate, improper, or inadequate, then the proposed decision becomes final thirty days after EPA notifies the parties and the arbitrator that public comments received, if any, do not require modification of the proposed decision or EPA withdrawal from the proceeding. Because the Agency realizes that PRPs who have participated in the proceeding may wish to express their views on any public comments filed before EPA determines whether modification or withdrawal is necessary, the subpart provides the participating PRPs with a ten-day period in which to provide such written comments to EPA. The Agency believes that withdrawal from the proceeding as a result of public comment will be an infrequent occurrence, because small cost recovery decisions of this kind are not likely to generate a large amount of public comment.

*D. Subpart D*

Subpart D of the proposed rule addresses the effect and enforcement of the final decision and describes the fees and expenses of the proceeding. The subpart explains that PRPs who have resolved their liability for a claim through arbitration are entitled to contribution protection for matters addressed in the decision pursuant to section 122(h)(4) of CERCLA. It further explains that the final decision is binding and conclusive as to issues submitted for resolution and addressed in the decision.

In accordance with section 122(h)(3) of CERCLA, the subpart provides that any award made to EPA in the final decision may be enforced by the Government in any appropriate Federal district court, if such award is not paid within thirty days. Pursuant to section 122(h)(3) of CERCLA, in any such enforcement action the terms of the final decision are not subject to review. However, in accordance with generally accepted common law grounds for overturning an arbitrator's decision, subpart D provides that in any enforcement action initiated by the United States the final decision may be challenged if: (1) It was achieved through fraud or misconduct by any of the parties; (2) it was achieved through fraud, misconduct, or partiality by the arbitrator; (3) the arbitrator exceeded his or her jurisdiction or authority as defined under the rule; or (4) the decision violates public policy. Except as may be necessary to establish these four grounds, the parties may not introduce issues not submitted for arbitration as a defense to payment of the award in any such enforcement action. The subpart also precludes the final decision from being introduced as evidence of any issue of fact or law in any proceeding, except for proceedings seeking contribution for matters addressed by the decision and proceedings to enforce or challenge the decision in the manner permitted by subpart D. The subpart further explains that, with respect to the participating parties, neither the submission of a claim for arbitration nor the rendering of a decision limits the United States, including EPA, from seeking injunctive relief for further response action at the facility, from taking further response action at the facility, or from seeking reimbursement for any costs not the subject of the arbitration, pursuant to CERCLA or any other applicable statute, regulation or legal theory. The United States' ability to seek from the participating PRPs natural resources damages and relief for any criminal violations is also preserved. All claims against non-participating PRPs are preserved. The Agency solicits comment on the proposed rule's provisions concerning the effect and enforcement of the arbitral decision.

## III. Summary of Supporting Analyses

*A. Executive Order No. 12291*

Proposed regulations must be classified as major or non-major to satisfy the rulemaking protocol established by Executive Order No. 12291. According to Executive Order No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export matters.

EPA has determined that this proposed regulation is a non-major rule under Executive Order No. 12291 because it will not result in any of the impacts identified above. This proposed regulation provides an entirely voluntary procedure by which PRPs at a facility may reach agreement with EPA to have their liability for a CERCLA section 107 cost recovery claim resolved by arbitration. Arbitration is an alternative dispute resolution technique that should provide a quicker and less costly method or resolution than traditional litigation or negotiation. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation. This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." EPA certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities because the rule provides a wholly voluntary procedure by which PRPs at a facility may reach agreement with EPA to have their liability for a CERCLA section 107 cost recovery claim resolved by arbitration. Arbitration is an alternative dispute resolution technique that should provide a quicker and less expensive method of resolution than traditional litigation or negotiation. Therefore, EPA has not prepared a Regulatory Flexibility Analysis.

*C. Paperwork Reduction Act*

This proposed rule is not subject to the provisions of the Paperwork Reduction Act. Any collection of information in this rule is required in the course of an enforcement action against a specific party or parties and, therefore, is exempt from coverage under the Act.

**List of Subjects in 40 CFR Part 304**

Administrative practice and procedure, Claims, Intergovernmental relations, Hazardous substances, Hazardous wastes, Natural resources, Superfund.

Date: July 28, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set forth in the preamble, Part 304, Title 40 of the Code of Federal Regulations is proposed to be added as set forth below:

## PART 304—ARBITRATION PROCEDURES FOR SMALL SUPERFUND COST RECOVERY CLAIMS

### Subpart A—General

Sec.

304.10 Purpose.
304.11 Scope and applicability.
304.12 Definitions.

### Subpart B—Jurisdiction of Arbitrator, Referral of Claims, and Appointment of Arbitrator

304.20 Jurisdiction of Arbitrator.
304.21 Referral of claims.
304.22 Appointment of Arbitrator.
304.23 Disclosure and challenge procedures.
304.24 Intervention and withdrawal.
304.25 *Ex parte* communication.

### Subpart C—Hearings Before the Arbitrator

304.30 Filing of pleadings.
304.31 Pre-hearing conference.
304.32 Arbitral hearing.
304.33 Arbitral decision and public comment.

### Subpart D—Other Provisions

304.40 Effect and enforcement of final decision.
304.41 Administrative fees, expenses, and Arbitrator's fee.
304.42 Miscellaneous provisions.

Authority: 42 U.S.C. 9607(a) and 9622(h), E.O. 12580.

### Subpart A—General

#### § 304.10 Purpose.

This regulation establishes and governs procedures for the arbitration of EPA cost recovery claims arising under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 100 Stat. 1613 (1986) ("CERCLA"), pursuant to the authority granted EPA by section 122(h) of CERCLA, 42 U.S.C. 9622(h), and Executive Order 12580, 52 FR 2923 (January 29, 1987).

#### § 304.11 Scope and applicability.

The procedures established by this regulation govern the arbitration of EPA claims for recovery, under section 107(a) of CERCLA, 42 U.S.C. 9607(a), of response costs incurred at or in connection with a facility by the United States pursuant to section 104 of CERCLA, 42 U.S.C. 9604. The procedures are applicable when:

(a) The total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest; and

(b) The Administrator and one or more PRPs have submitted a joint request for arbitration pursuant to § 304.21 of this part.

#### § 304.12 Definitions.

Terms not defined in this section have the meaning given by section 101 of CERCLA, 42 U.S.C. 9601, or the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300. All time deadlines in this part are specified in calendar days and shall be computed in the manner described in Rule 6(a) of the Federal Rules of Civil Procedure. *Except when otherwise specified, the following terms are defined for purposes of this part as follows:*

(a) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 100 Stat. 1613 (1986).

(b) "Administrator" means the EPA Administrator or his designee.

(c) "Arbitrator" means the person appointed in accordance with § 304.22 of this part and governed by the provisions of this part.

(d) "Association" means the organization offering arbitration services selected by EPA.

(e) "Claim" means the amount sought by EPA as recovery of response costs incurred and to be incurred by the United States at a facility, which does not exceed $500,000, excluding interest.

(f) "*Ex parte* communication" means any communication, written or oral, relating to the merits of the arbitral proceeding, between the Arbitrator and any interested person, which was not originally filed or stated in the administrative record of the proceeding. Such communication is not "*ex parte* communication" if all parties to the proceeding have received prior written notice of the proposed communication and have been given the opportunity to be present and to participate therein.

(g) "Interested person" means the Administrator, any EPA employee, any party, any potentially responsible party associated with the facility concerned, any person who filed written comments in the proceeding, any participant or intervenor in the proceeding, all officers, directors, employees, consultants, and agents of any party, and any attorney of record for any of the foregoing persons.

(h) "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, developed under section 311(c)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, as amended, revised periodically pursuant to section 105 of CERCLA, 42 U.S.C. 9605, and published at 40 CFR Part 300.

(i) "National Panel of Environmental Arbitrators" or "Panel" means a panel of environmental arbitrators selected and maintained by the Association to arbitrate selected and maintained by the Association to arbitrate costs recovery claims under this part.

(j) "Participating PRP" is any potentially responsible party who has agreed, pursuant to § 304.21 of this part, to submit one or more issues arising in an EPA claim for resolution pursuant to the procedures established by this part.

(k) "Party" means EPA and any person who has agreed, pursuant to § 304.21 of this part, to submit one or more issues arising in an EPA claim for resolution pursuant to the procedures established by this part, and any person who has been granted leave to intervene pursuant to § 304.24(a) of this part.

(l) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United Satates Government, State municipality, commission, political subdivision of a State, or any interstate body.

(m) "Potentially responsible party" or "PRP" means any person who may be liable pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred and to be incurred by the United States not inconsistent with the NCP.

(n) "Response action" means remove, removal, remedy and remedial action, as those terms are defined by section 101 of CERCLA, 42 U.S.C. 9601, including enforcement activities related thereto.

(o) "Response costs" means all costs of removal or remedial action incurred and to be incurred by the United States at a facility pursuant to section 104 of CERCLA, 42 U.S.C. 9604, including, but not limited to, all costs of investigation and information gathering, planning and implementing a response action, administration, enforcement, litigation, interest and indirect costs.

**Subpart B—Jurisdiction of Arbitrator, Referral of Claims, and Appointment of Arbitrator**

**§ 304.20 Jurisdiction of Arbitrator.**

(a) In accordance with the procedures established by this part, the Arbitrator is authorized to arbitrate one or more issues arising in an EPA claim when:

(1) The total past and projected response costs for the facility concerned do not exceed $500,000, excluding interest; and

(2) The Administrator and one or more PRPs have submitted a joint request for arbitration pursuant to § 304.21 of this part.

(b)(1) If the total past and projected response costs for the facility concerned increase to a dollar amount in excess of $500,000, excluding interest, prior to the rendering of the final decision pursuant to § 304.33 of this part, the parties may mutually agree to continue the proceeding as non-binding arbitration pursuant to the procedures established by this part, except that §§ 304.33(e) and 304.40 of this part shall not apply.

(2) If all of the parties agree to continue the proceeding as non-binding arbitration, the proposed decision rendered by the Arbitrator pursuant to § 304.33 of this part shall not be binding upon the parties, unless all of the parties agree to adopt the proposed decision as an administrative settlement pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). Any administrative settlement agreed upon in this manner shall be subject to the prior written approval of the Attorney General (or his designee) pursuant to section 122(h)(1) of CERCLA and shall be subject to public comment pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i).

(3) If the parties do not agree to continue the proceeding as non-binding arbitration, or if the administrative settlement agreed upon is not approved by the Attorney General (or his designee), or if EPA withdraws or withholds consent from the administrative settlement as a result of public comment, EPA shall withdraw from the proceeding and the Association shall assess or refund, as appropriate, any administrative fees, expenses, or Arbitrator's fees.

(c) The Arbitrator's authority, as defined by paragraphs (d) and (e) of this section, to determine issues arising in EPA's claim is limited only to the issues submitted for resolution by the parties in the joint request for arbitration pursuant to § 304.21 of this part. Any issues arising in EPA's claim that are not submitted for resolution shall be deemed to be not in dispute and shall not be raised in any action seeking enforcement of the decision for the purpose of overturning or otherwise challenging the final decision, except as provided in § 304.40(c) of this part.

(d)(1) If the issue of liability of any participating PRP has been submitted for resolution, the Arbitrator shall determine whether the participating PRP is liable pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), subject only to the defenses specifically enumerated in section 107(b) of CERCLA, 42 U.S.C. 9607(b).

(2) If the issue of the dollar amount of response costs recoverable by EPA has been submitted for resolution, the Arbitrator shall determine, pursuant to paragraph (e) of this section, the dollar amount of response costs recoverable by EPA pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), and shall award the total amount of such costs to EPA.

(3) Unless the Arbitrator finds that the actual or threatened harm at the facility is divisible, any participating PRP whom the Arbitrator determines to be liable shall be jointly and severally liable for the total amount of response costs awarded to EPA. If the Arbitrator finds that the harm is divisible, the Arbitrator shall allocate liability for payment of EPA's award among the participating PRPs based on the portion of the harm attributable to each participating PRP.

(4) Notwithstanding the indivisibility of the actual or threatened harm, and without waiving the general applicability of the joint and several liability standard, as an alternative to paragraph (d)(3) of this section, the parties may request the Arbitrator to allocate responsibility for payment of response costs awarded to EPA among the participating PRPs whom the Arbitrator determines to be liable. Any such request shall be made in the joint request for arbitration pursuant to § 304.21 of this part. If such a request is made, the provisions of paragraphs (d)(4)(i), (d)(4)(ii), and (d)(4)(iii) of this section shall apply.

(i) The joint request for arbitration may specify the factors to be applied by the Arbitrator when allocating among the participating PRPs responsibility for payment of the response costs awarded to EPA. If the joint request does not specify such factors, the Arbitrator shall base the allocation on such factors as the Arbitrator considers relevant, in his or her sole discretion, such as volume, toxicity, and mobility of the hazardous substances contributed to the facility by each participating PRP, ability to pay, and inequities and aggravating factors.

(ii) The joint request for arbitration may specify that the Arbitrator may allocate among the participating PRPs less than all response costs awarded to EPA. If this is not specified, the Arbitrator shall allocate among the participating PRPs 100% of the response costs awarded to EPA.

(iii) The burden of establishing the appropriate allocation of responsibility for payment of the response costs awarded to EPA shall rest entirely with the participating PRPs.

(5) The parties may request that the Arbitrator perform an allocation even if the issue of the liability of the participating PRPs is not submitted for resolution in the joint request for arbitration. Such a request for allocation shall be made in the joint request for arbitration pursuant to § 304.21 of this part. If such a request is made, the provisions of paragraphs (d)(4)(i), (d)(4)(ii), and (d)(4)(iii) of this section shall apply.

(e)(1) If any issue concerning the adequacy of EPA's response action has been submitted for resolution or arises during the Arbitrator's determination of the dollar amount of response costs recoverable by EPA, the Arbitrator shall uphold EPA's selection of the response action, unless any participating PRP can establish that the selection was inconsistent with the NCP. The Arbitrator's review of the adequacy of any response action taken by EPA shall be based upon the documents compiled by EPA which formed the basis for the selection of the response action.

(2) If any Arbitrator upholds EPA's selection of the response action in full, the Arbitrator shall award EPA all response costs incurred and to be incurred in connection with the response action, unless any participating PRP can establish that all or part of such costs were:

(i) Not actually incurred or to be incurred; or

(ii) Not actually incurred or to be incurred in connection with the response action; or

(iii) Clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

(3) If the Arbitrator upholds EPA's selection of the response action only in part, the Arbitrator shall award EPA only those response costs incurred and to be incurred in connection with the portions of the response action that were upheld, unless any participating PRP can establish that all or part of such response costs were:

(i) Not actually incurred or to be incurred; or

(ii) Not actually incurred or to be incurred in connection with the portions of the response action that were upheld; or

(iii) Clearly excessive, taking into account the circumstances of the response action and relative to acceptable government procurement and contracting practices in light of the circumstances of the response action.

(4) The standard of review to be applied by the Arbitrator under paragraphs (e)(1), (e)(2), and (e)(3) of this section is arbitrary and capricious or otherwise not in accordance with law.

(5) In reviewing any procedural errors alleged by any party, the Arbitrator may disallow response costs only if the errors were so serious and related to matters of such central relevance that the response action would have been significantly changed had such errors not been made.

**§ 304.21 Referral of claims.**

(a) If EPA believes that a claim may be an appropriate candidate for arbitration, EPA will notify all identified PRPs for the facility concerned and provide such PRPs with an opportunity to discuss referral of one or more issues arising in the claim for resolution pursuant to the procedures established by this part. Alternatively, one or more PRPs at a facility may propose to EPA use of arbitration, after receipt of a demand by EPA for payment of a claim, but prior to commencement of civil litigation of the claim. Where practicable, before an agreement to refer a claim for arbitration is made final under this alternative, either the PRPs or EPA shall notify the other PRPs at the facility of the potential use of arbitration.

(b)(1) The Administrator and one or more PRPs associated with a facility may submit to the Association a joint request for arbitration of one or more issues arising in an EPA claim concerning the facility. The joint request shall be signed by all of the parties and shall include:

(i) A brief description of the facility, the EPA response action taken at the facility, the EPA claim, and the parties;

(ii) A statement of the issues arising in the claim that are being submitted by the parties for resolution by arbitration;

(iii) A statement that the parties consent to resolution of the issues jointly submitted pursuant to the procedures established by this part by an Arbitrator appointed pursuant to § 304.22 of this part;

(iv) A statement that the parties agree to be bound by the final decision on all issues jointly submitted by the parties for resolution and to pay any award made in the final decision, subject to the right to challenge the final decision solely on the grounds and in the manner prescribed by § 304.40(c) of this part;

(v) A statement that the parties agree that the award made in the final decision may be enforced pursuant to § 304.40(c) of this part;

(vi) A statement that the parties agree that the final decision shall be binding only with respect to the response costs at issue in the claim submitted for arbitration;

(vii) A statement that the parties agree that the statute of limitations governing the EPA claim submitted shall be extended for a time period equal to the number of days from the date the joint request for arbitration is submitted to the Association to the date of resolution of any enforcement action relating to the final decision;

(viii) A statement that each signatory to the joint request is authorized to enter into the arbitration and to bind legally the party represented by him or her to the terms of the joint request; and

(ix) The appropriate filing fee (*see* § 304.41(a) of this part).

(2) The joint request shall also include the name, address and telephone number of each party, and, if a party is represented by an attorney, the attorney's name, address and telephone number. A party changing any of this information must promptly communicate the change in writing to the Association and all other parties. A party who fails to furnish such information or any changes thereto is deemed to have waived his or her right to notice and service under this part.

(c) Any party may move to modify the joint request for arbitration to include one or more additional issues arising in the referred claim. To be effective, any such modification must be signed by the Arbitrator and all other parties. The joint request for arbitration may also be modified to add one or more additional parties, if such intervention is permitted by § 304.24(a) of this part. To be effective, any such modification must be signed by the Arbitrator, the intervening party or parties, and all other parties.

(d) The statute of limitations governing the EPA claim submitted for arbitration shall be extended for a time period equal to the number of days from the date the joint request for arbitration is submitted to the Association to the date of resolution of any enforcement action relating to the final decision.

**§ 304.22 Appointment of Arbitrator.**

(a) The Association shall establish and maintain a National Panel of Environmental Arbitrators.

(b) Within ten days of the filing of the joint request for arbitration, the Association shall identify and submit simultaneously to all parties an identical list of ten persons chosen from the National Panel of Environmental Arbitrators, whom the Association believes will not be subject to disqualification because of circumstances likely to affect impartiality pursuant to § 304.23 of this part. Each party shall have ten days from the date of receipt of the list to identify any persons objected to, to rank the remaining persons in the order of preference, and to return the list to the Association. If a party does not return the list within the time specified, all persons on the list are deemed acceptable to that party. From among the persons whom the parties have indicated as acceptable, and, in accordance with the designated order of mutual preference, if any, the Association shall invite an Arbitrator to serve. If the parties fail to mutually agree upon any of the persons named, or if the accepted Arbitrator is unable to serve, or if for any other reason the appointment cannot be made from the submitted lists, the Association shall make the appointment from among the other members of the Panel. In no event shall appointment of the Arbitrator by the Association take longer than thirty days from the filing of the joint request for arbitration.

(c) Within seven days of the appointment of the Arbitrator, the Association shall mail to each of the parties notice of the identity of the Arbitrator and the date of the appointment, together with a copy of these rules. The Arbitrator shall, within five days of his or her appointment, file a signed acceptance of the case with the Association. The Association shall, within seven days of receipt of the Arbitrator's acceptance, mail notice of such acceptance to the parties.

(d) If any appointed Arbitrator should resign, die, withdraw, be disqualified or otherwise be unable to perform the duties of the office, the Association may, on satisfactory proof, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of this section, and the matter shall be resumed.

**§ 304.23 Disclosure and challenge procedures.**

(a) A person appointed as an Arbitrator under § 304.22 of this part shall, within five days of receipt of his or her notice of appointment, disclose to the Association any circumstances likely to affect impartiality, including

any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their counsel, or any past or present relationship with any PRP to which the claim many relate.

(b) Upon receipt of such information from and appointed Arbitrator or other source, the Association shall, within two days of receipt, communicate such information to the parties. Such communication may be made orally or in writing, but if made orally, shall be confirmed in writing.

(c) If any party wishes to request disqualification of an Arbitrator, such party shall notify the Association and the other parties of such request and the basis therefore within seven days of receipt of the information on which such request is based.

(d) The Association shall make a determination on any request for disqualification of an Arbitrator within seven days after the Association receives any such request, and shall notify the parties in writing of such determination. This determination shall be within the sole discretion of the Association, and its decision shall be final.

**§ 304.24 Invention and withdrawal.**

(a) (1) No later than thirty days prior to the pre-hearing conference (*see* § 304.31 of this part), any PRP associated with the facility which is the subject of the referred claim may move to intervene in the arbitral proceeding for the purpose of having one or more issues relating to his or her responsibility for payment of the referred claim resolved.

(2) If the Arbitrator has been appointed, a motion to intervene shall be filed with the Arbitrator and a copy shall be served upon all parties. It the Arbitrator has not yet been appointed, a motion to intervene shall be submitted to the Association and a copy shall be served upon all parties.

(3) Any such motion to intervene may be granted only upon the written approval of the Arbitrator and all of the parties in the form of a modification to the joint request for arbitration pursuant to § 304.21(c) of this part. By signing such a modification, the intervening party consents to be bound by the terms of the joint request for arbitration submitted pursuant to § 304.21(b) of this part and any modifications previously made thereto pursuant to § 304.21(c) of this part, and consents to be bound by such revisions to the time limits for the filing of pleadings as the Arbitrator may make to prevent delaying the pre-hearing conference.

(b) Any party may move to withdraw from the arbitral proceeding within thirty days after receipt of the notice of appointment of the Arbitrator (*see* § 304.22 of this part). The Arbitrator may approve such withdrawal, without prejudice to the moving party, and shall assess such administrative fees and expenses (*see* § 304.41 of this part) again the withdrawing party as the Arbitrator deems appropriate. No party may withdraw from the arbitral proceeding after this thirty-day period, except that EPA may withdraw from the proceeding in accordance with § 304.20(b)(3) or § 304.33(e) of this part.

**§ 304.25 Ex parte communication.**

(a) No interested person shall make or knowingly cause to be made to the Arbitrator an *ex parte* communication.

(b) The Arbitrator shall not make or knowingly cause to be made to any interested person and *ex parte* communication.

(c) The Association may remove the Arbitrator in any proceeding in which it is demonstrated to the Association's satisfaction that the Arbitrator has engaged in prohibited *ex parte* communication to the prejudice of any party. If the Arbitrator is removed, the procedures in § 304.22(d) of this part shall apply.

(d) Whenever *ex parte* communication in violation of this section is received by or made known to the Arbitrator, the Arbitrator shall immediately notify in writing all parties to the proceeding of the circumstances and substance of the communication and may require the party who made the communication or caused the communication to be made, or the party whose representative made the communication or caused the communication to be made, to show cause why that party's arguments or claim should not be denied, disregarded, or otherwise adversely affected on account of such violation.

(e) The prohibitions of this section apply upon appointment of the Arbitrator and terminate on the date of the final decision.

**Subpart C—Hearings Before the Arbitrator**

**§ 304.30 Filing of pleadings.**

(a) Discovery shall be in accordance with this section and § 304.31 of this part.

(b) Within thirty days after receipt of the notice of appointment of the Arbitrator (*see* § 304.22 of this part), EPA shall submit to the Arbitrator two copies of a written statement and shall serve a copy of the written statement upon all other parties. The written statement shall in all cases include the information requested in paragraph (b)(1), (b)(6), and (b)(7) of this section, shall include the information requested in paragraph (b)(2) of this section if the issue of liability of any participating PRP has been submitted for resolution, shall include the information requested in paragraph (b)(3) of this section if any issue concerning the adequacy of EPA's response action has been submitted for resolution or may arise during the Arbitrator's determination of the dollar amount of response costs recoverable by EPA, shall include the information requested in paragraph (b)(4) of this section if the issue of the dollar amount of response costs recoverable by EPA has been submitted for resolution, and shall include the information requested in paragraph (b)(5) of this section if any issue concerning allocation of liability for payment of EPA's award has been submitted for resolution:

(1) A statement of facts, including a description of the facility, the EPA response action taken at the facility, the response costs incurred and to be incurred by the United States in connection with the response action taken at the facility, and the parties;

(2) A description of the evidence in support of the following four elements of liability of the participating PRP(s) whose liability pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), is at issue, and any supporting documentation therefor:

(i) The site at which EPA's response action was taken is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. 9601(9);

(ii) There was a "release or threat of release" within the meaning of sections 101(22) and 104(a) of CERCLA, 42 U.S.C. 9601(22) and 9604(a), of a "hazardous substance" as defined by section 101(14) of CERCLA, 42 U.S.C. 9601(14), at the facility at which EPA's response action was taken;

(iii) The release or threat of release caused the United States to incur "response costs" as defined in § 304.12(o) of this part; and

(iv) The participating PRP is in one of the categories of liable parties in section 107(a) of CERCLA, 42 U.S.C. 9607(a);

(3) An index of any documents compiled by EPA which formed the basis for the selection of the response action taken at the facility (all indexed documents shall be made available to any participating PRP);

(4) A summary, broken down by category, of all response costs incurred and to be incurred by the United States in connection with the response action taken by EPA at the facility (supporting

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documentation for the summary shall be made available to any participating PRP pursuant to the procedures described in Rule 1006 of the Federal Rules of Evidence);

(5) To the extent such information is available, the names and addresses of all identified PRPs for the facility, the volume and nature of the substances contributed to the facility by each identified PRP, and a ranking by volume of the substances contributed to the facility;

(6) A recommended location for the pre-hearing conference and the arbitral hearing; and

(7) Any other statement or documentation that EPA deems necessary to support its claim.

(c) Within thirty days after receipt of EPA's written statement, each participating PRP shall submit to the Arbitrator two copies of an answer and shall serve a copy of the answer upon all other parties. The answer shall in all cases include the information requested in paragraphs (c)(1), (c)(6), and (c)(7) of this section, shall include the information requested in paragraph (c)(2) of this section if the issue of the liability of the answering participating PRP has been submitted for resolution, shall include the information requested in paragraph (c)(3) of this section if any issue concerning the adequacy of EPA's response action has been submitted for resolution or may arise during the Arbitrator's determination of the dollar amount of response costs recoverable by EPA, shall include the information requested in paragraph (c)(4) of this section if the issue of the dollar amount of response costs recoverable by EPA has been submitted for resolution, and shall include the information requested in paragraph (c)(5) of this section if any issue concerning the allocation of responsibility for payment of EPA's award has been submitted for resolution:

(1) Any objections to the statement of facts in EPA's written statement, and, if so, a counterstatement of facts;

(2) Any objections to EPA's position on the liability of the answering participating PRP pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), a description of the evidence in support of the defenses to liability of the answering participating PRP which are specifically enumerated in section 107(b) of CERCLA, 42 U.S.C. 9607(b) (*i.e.*, that the release or threat of release of a hazardous substance at the facility was caused solely by an act of God, an act of war, an act or omission of an unrelated third party, or any combination therof), and any supporting documentation therefore;

(3) Any objections to the response action taken by EPA at the facility based upon any documents compiled by EPA which formed the basis for the selection of the response action;

(4) Any objections to EPA's summary and supporting documentation for all response costs incurred and to be incurred by the United States in connection with the response action taken by EPA at the facility;

(5) Any documentation which the participating PRP deems relevant to the allocation of responsibility for payment of EPA's award;

(6) A recommended location for the pre-hearing conference and the arbitral hearing; and

(7) Any other statement or documentation that the participating PRP deems necessary to support its claim.

(d) EPA may file a response to any participating PRP's answer within twenty days of receipt of such answer. Two copies of any such response shall be served upon the Arbitrator, and a copy of any such response shall be served upon all parties.

(e) If EPA files a response, any participating PRP may file a reply thereto within ten days after receipt of such response. Two copies of any such reply shall be served upon the Arbitrator, and a copy of any such reply shall be served upon all parties.

### § 304.31 Pre-hearing conference.

(a) The Arbitrator and the parties shall exchange witness lists (with a brief summary of the testimony of each witness) and any exhibits or documents that the parties have not submitted in their pleadings pursuant to § 304.30 of this part, within 110 days after the appointment of the Arbitrator (*see* § 304.22 of this part) or within 10 days prior to the pre-hearing conference, whichever is earlier.

(b) The Arbitrator shall select the location, date, and time for the pre-hearing conference, giving due consideration to any recommendations by the parties.

(c) The pre-hearing conference shall be held within one hundred twenty days after the appointment of the Arbitrator (*see* § 304.22 of this part).

(d) The Arbitrator shall mail to each party notice of the pre-hearing conference not later than twenty days in advance of such conference, unless the parties by mutual agreement waive such notice.

(e) Any party may be represented by counsel at the pre-hearing conference. A party who intends to be so represented shall notify the other parties and the Arbitrator of the name and address of counsel at least three days prior to the date set for the pre-hearing conference. When an attorney has initiated the arbitration by signing the joint request for arbitration on behalf of a party, or when an attorney has filed a pleading on behalf of a party, such notice is deemed to have been given.

(f) The pre-hearing conference may proceed in the absence of any party who, after due notice, fails to appear.

(g)(1) At the pre-hearing conference, the Arbitrator and the parties shall exchange witness statements, a stipulation of uncontested facts, a statement of disputed issues, and any other documents, including written direct testimony, that will assist in prompt resolution of the dispute and avoid unnecessary proof.

(2) The Arbitrator and the parties shall consider the settlement of all or part of the claim. The Arbitrator may encourage further settlement discussions among the parties. Any settlement reached may be set forth in a proposed decision in accordance with § 304.33 of this part. If such a settlement is not set forth in a proposed decision, the settlement shall be treated as an administrative settlement pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), and shall be subject to public comment pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i).

### § 304.32 Arbitral hearing.

(a) The Arbitrator may, in his sole discretion, schedule a hearing with the parties on one or more of the disputed issues identified in the statement of disputed issues pursuant to § 304.31(g)(1) of this part.

(b) The Arbitrator shall select the location, date, and time for the arbitral hearing, giving due consideration to any recommendations by the parties.

(c) The hearing shall commence within forty-five days after the pre-hearing conference (*see* § 304.31 of this part). The Arbitrator may, upon showing by the parties that settlement is likely, extend the date for the hearing for up to thirty additional days, if further settlement discussions have been held pursuant to § 304.31(g)(2) of this part.

(d) The Arbitrator shall mail to each party notice of the hearing not later than twenty days in advance of the hearing, unless the parties by mutual agreement waive such notice. Such notice shall include a statement of the disputed issues to be addressed at the hearing. The Arbitrator need not mail a second notice to the parties if the date for the hearing is extended pursuant to paragraph (c) of this section.

(e) Any party may be represented by counsel at the hearing. A party who intends to be so represented shall notify the other parties and the Arbitrator of the name and address of counsel at least three days prior to the date set for the hearing. When an attorney has initiated the arbitration by signing a joint request on behalf of a party, or when an attorney has filed a pleading on behalf of a party, or when notice has been given pursuant to § 304.31(e) of this part, such notice is deemed to have been given.

(f) The Arbitrator shall make the necessary arrangements for the making of a true and accurate record of the arbitral hearing.

(g) The Arbitrator shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties.

(h) The Arbitrator may take adjournments upon the request of any party or upon the Arbitrator's own initiative and shall take such adjournment when all of the parties agree thereto.

(i) The Arbitrator shall administer oaths to all witnesses before they testify at the arbitral hearing.

(j)(1) A hearing shall be opened by the recording of the location, date, and time of hearing, the presence of the Arbitrator and the parties, and counsel if any, and by the Arbritrator's acknowledgement for the record of all pleadings and all other documents that have been filed by the parties.

(2) The hearing shall be conducted in accordance with the Arbitrator's jurisdiction as defined by § 304.20 of this part.

(3) The Arbitrator may, at any time, require oral statements clarifying the issues to be addressed at the hearing.

(4) The Arbitrator may require the parties to present witnesses for questioning by the Arbitrator and for direct and cross-examination by the parties on any of the disputed issues, except for any disputed issues concerning the selection or adequacy of the response action, which shall be governed by paragraph (j)(6) of this section.

(5) The Arbitrator shall define the scope of oral testimony. A party may present oral direct testimony only upon a showing of good cause why such testimony could not have been submitted in written form, or upon consent of all of the parties.

(6) Notwithstanding §§ 304.20(e)(1) and 304.20(e)(4) of this part, the Arbitrator may require EPA to supplement the documents compiled by EPA which formed the basis for the selection of the response action (with additional documents, affidavits, or oral testimony), if any participating PRP asserts, and the Arbitrator finds, that the documents do not adequately explain the grounds for EPA's selection of the response action. In addition, EPA may supplement the documents compiled by EPA which formed the basis for the selection of the response action for the purpose of providing additional background information on the facility or the response action.

(k)(1) Except as provided in paragraph (j)(6) of this section, exhibits and other documentary evidence not included in a party's pleadings, not exchanged prior to the pre-hearing conference pursuant to § 304.31(a) of this part, or not exchanged at the pre-hearing conference pursuant to § 304.31(g)(1) of this part, may be introduced at the hearing only upon a showing of good cause by the moving party or upon consent of all of the parties.

(2) Except as provided in paragraph (j)(6) of this section, witnesses not identified in a party's witness list may be presented at the hearing only upon a showing of good cause by the moving party or upon consent of all of the parties.

(3) The Arbitrator shall be the judge of the relevance and materiality of the evidence offered during the proceeding and of the applicability of legal privileges. Conformity to legal rules of evidence shall not be required.

(4) The Arbitrator may make such orders as may be necessary for *in camera* consideration of evidence for reasons of business confidentiality as defined by 40 CFR 2.201(e) and as consistent with section 104(e)(7) of CERCLA, 42 U.S.C. 9604(e)(7).

(l) The hearing may proceed in the absence of any party who, after due notice, fails to appear or fails to obtain an adjournment. If a party, after due notice, fails to appear or fails to obtain an adjournment, such party will be deemed to have waived the right to be present at the hearing.

(m) After all disputed issues have been heard by the Arbitrator, the Arbitrator may permit the parties to make closing statements, after which the Arbitrator shall declare the hearing closed.

(n) The hearing shall be completed within two weeks, unless the Arbitrator extends the hearing for good cause.

(o) The Arbitrator may permit the parties to submit proposed findings of fact, rulings, or orders within ten days after receipt of the hearing transcript or such longer time upon a finding of good cause.

(p) The parties may provide, by written agreement, for the waiver of the hearing.

**§ 304.33 Arbitral decision and public comment.**

(a) The Arbitrator shall render a proposed decision within forty-five days after the hearing is closed, or within forty-five days after the pre-hearing conference if no hearing is held, unless the parties have settled the dispute prior to the rendering of the proposed decision.

(b)(1) The proposed decision shall be in writing and shall be signed by the Arbitrator. It shall be limited in accordance with the Arbitrator's jurisdiction as defined by § 304.20 of this part, and shall, if such issues have been jointly submitted by the parties for resolution, contain the Arbitrator's determination of:

(i) Which participating PRPs, if any, are liable pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a);

(ii) The dollar amount of response costs, if any, to be awarded to EPA; and

(iii) The allocation of responsibility for payment of EPA's award, if any, among the participating PRPs.

(2) The proposed decision shall also assess arbitration fees and expenses (*see* § 304.41 of this part) in favor of any party, or combination of parties, and, in the event any administrative fees or expenses are due the Association, in favor of the Association.

(c) If the parties settle their dispute during the course of the proceeding, the Arbitrator may, upon the parties' request, set forth the terms of the agreed settlement in a proposed decision. Except as provided in § 304.20(b) of this part, a proposed decision which embodies an agreed settlement shall be subject to all applicable provisions of this part, including, but not limited to, paragraph (e) of this section and § 304.40 of this part.

(d) The parties shall accept as legal delivery of the proposed decision the placing in the United States mail of a true copy of the proposed decision, addressed to each party's last known address or each party's attorney's last known address, or by personal service.

(e)(1) Pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice of the proposed decision shall be published promptly by EPA in the **Federal Register**. Such notice shall include the name and location of the facility concerned, the names of the parties to the proceeding, and a brief summary of the proposed decision, and shall provide persons who are not parties to the proceeding a thirty-day period in which to file written

comments relating to the proposed decision. Any filed comments shall be made available to the participating PRPs and to the public. The participating PRPs shall have ten days from the close of the public comment period in which to submit to EPA in writing their views on the merits of any comments filed. EPA shall consider any comments filed, and shall, within thirty days after the close of the ten-day period during which the participating PRPs may submit their views on any comments filed, provide written notice to the Arbitrator and the participating PRPs. The written notice shall be made available to the public and shall include:

(i) A summary of any comments filed;

(ii) Responses to any comments filed;

(iii) A discussion of whether any comments filed disclose to EPA facts or considerations which indicate the proposed decision is inappropriate, improper or inadequate; and

(iv) EPA's determination as to whether modification of the proposed decision or withdrawal from the arbitral proceeding is necessary based upon such comments.

(2) If EPA's written notice does not state that modification or withdrawal is necessary based upon public comments, then the proposed decision shall become final thirty days after the date of issuance of EPA's written notice. If EPA's written notice states that modification or withdrawal is necessary, the parties shall have thirty days from the date of issuance of EPA's written notice to modify the proposed decision so that it is no longer inappropriate, improper or inadequate and to set forth the proposed decision, as modified, in an agreed settlement. If an agreed settlement is reached, such agreed settlement shall be the final decision. If the parties do not modify the proposed decision in an agreed settlement within thirty days, the proposed decision shall be null and void and of no legal effect, EPA shall withdraw from the proceeding, and the arbitrator shall assess such administrative fees and expenses (*see* § 304.41 of this part) against the parties as the Arbitrator deems appropriate.

(f) Payment of EPA's award, if any, and any fees or expenses due pursuant to the final decision, shall be made within thirty days after the date of the final decision.

(g) The Arbitrator shall, upon written request of any party, furnish to such party certified facsimiles of all papers in the Arbitrator's possession that may be required in judicial proceedings relating to the arbitration pursuant to § 304.40 of this part.

## Subpart D—Other Provisions

### § 304.40 Effect and enforcement of final decision.

(a) Pursuant to section 122(h)(4) of CERCLA, 42 U.S.C. 9622(h)(4), any participating PRP who has resolved his or her liability for an EPA claim through a final decision reached pursuant to the procedures established by this part shall not be liable for claims for contribution regarding matters addressed by the final decision.

(b) The final decision shall be binding and conclusive upon the parties as to issues that were jointly submitted by the parties for resolution and addressed in the decision.

(c)(1) Judgment upon any award made in the final decision may be sought by the Attorney General on behalf of EPA in any appropriate Federal district court, if such award is not paid within the time required by § 304.33(f) of this part. Any judgment obtained may be enforced by the Attorney General on behalf of EPA in any appropriate Federal district court pursuant to section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3). Pursuant to section 122(h)(3) of CERCLA, the terms of the final decision shall not be subject to review in any such action.

(2) In any such enforcement action initiated by the United States, the final decision may be challenged by any party if:

(i) It was achieved through fraud, misconduct, or partiality on the part of the Arbitrator;

(ii) It was achieved through fraud or misconduct by one of the parties affecting the result;

(iii) The Arbitrator exceeded his or her jurisdiction under § 304.20 of this part or failed to decide the claim within the bounds of his or her authority under this part; or

(iv) It violates public policy.

(3) Except as necessary to show such fraud, misconduct, partiality, excess of jurisdiction or authority, or violation of public policy, in any such enforcement action, a party may not raise, for the purpose of overturning or otherwise challenging the final decision, issues arising in the claim that were not submitted for resolution by arbitration.

(d) Except as otherwise provided in this section, and except as necessary for a participating PRP to defend against an action seeking contribution for matters addressed by the final decision, no final decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any provision of CERCLA or any other provision of law.

(e) Neither the institution of an arbitral proceeding nor the rendering of a final decision on an EPA claim shall preclude or otherwise affect the ability of the United States, including EPA, to:

(1) Seek injunctive relief against any participating PRP for further response action at the facility concerned pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(2) Take further response action at the facility concerned pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(3) Seek reimbursement from any participating PRP for any costs not the subject of the arbitral proceeding pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(4) Seek any relief for any violation of criminal law from any participating PRP; or

(5) Seek damages for injury to, destruction of, or loss of natural resources from any participating PRP; or

(6) Seek any relief, civil or criminal, from any person not a party to the arbitral proceeding under CERCLA or any other applicable statute, regulation or legal theory.

### § 304.41 Administrative fees, expenses, and Arbitrator's fee.

(a) The Association shall prescribe an Administrative Fee Schedule and a Refund Schedule, which shall be subject to the approval of EPA. The schedule in effect at the time of filing or the time of refund shall be applicable. The filing fee shall be advanced to the Association by each party as part of the joint request for arbitration, subject to apportionment of the total administrative fees by the arbitrator in the decision. If a claim is withdrawn or settled, a refund shall be made in accordance with the Refund Schedule.

(b) Expenses of witnesses shall be borne by the party producing such witnesses. The expense of the stenographic record and all transcripts thereof shall be prorated equally among all parties ordering copies, unless otherwise agreed by the parties, or unless the Arbitrator assesses such expenses or any part thereof against any specified party in the decision. The expense of an interpreter shall be borne by the party requesting the interpreter.

(c) The Association shall establish the per diem fee for the Arbitrator, subject to the approval of EPA, prior to the commencement of any activities by the Arbitrator. Arrangements for compensation of the Arbitrator shall be made by the Association.

(d) The Association may require an advance deposit from the parties to defray the Arbitrator's fee and the

administrative fee, and shall render an accounting to the parties and return any balance of such deposit in accordance with the Arbitrator's award, within thirty days after the date of the final decision.

**§ 304.42 Miscellaneous provisions.**

(a) Any party who proceeds with the arbitration knowing that any provision or requirement of this part has not been complied with, and who fails to object thereto either orally or in writing in a timely manner, shall be deemed to have waived the right to object.

(b) The original of any joint request for arbitration, modification to any joint request for arbitration, pleading, letter, or other document filed in the proceeding (except for exhibits and other documentary evidence) shall be signed by the filing party or by his or her attorney.

(c) All papers associated with the proceeding shall be served on an opposing party either by personal service or United States mail, First Class, addressed to the party's attorney, or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party.

(d) If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this part shall not be affected thereby.

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# Rules and Regulations

Federal Register
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Friday, August 5, 1988

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 910

[Lemon Reg. 625]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 625 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,000 cartons during the period August 7 through August 13, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 625 (§ 910.925) is effective for the period August 7 through August 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

**SUPPLEMENTAL INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The committee met publicly on August 2, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is fairly good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

### List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 910.925 Lemon Regulation 625.**

The quantity of lemons grown in California and Arizona which may be handled during the period August 7, 1988 through August 13, 1988, is established at 310,000 cartons.

Dated: August 3, 1988.

**Robert C. Keeney,**
*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–17829 Filed 8–4–88; 8:45 am]
BILLING CODE 3410–02–M

### 7 CFR Part 927

### Expenses and Assessment Rate for Marketing Order Covering Winter Pears Grown in Oregon, Washington, and California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 927 for the 1988–89 fiscal year established for that order. The rule is needed for the Winter Pear Control Committee to incur operating expenses during the 1988–89 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATES:** July 1, 1988 through June 30, 1989 (§ 927.228).

**FOR FURTHER INFORMATION CONTACT:** Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 927

(7 CFR Part 927) regulating the handling of winter pears grown in Oregon, Washington, and California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group acting of essentially small entities action on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 96 handlers of winter pears under this marketing order, and approximately 1,800 winter pear producers in Washington, Oregon, and California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Winter Pear Control Committee met on July 12, 1988, and revised the proposed 1988–89 fiscal year budget recommended by the Winter Pear Budget Committee. Revisions in the expenses were necessary because a smaller crop than originally estimated is anticipated. The control committee unanimously adopted 1988–89 fiscal year expenditures of $3,354,351, revised from the $3,593,110 previously recommended by the budget committee, and an assessment rate of $.30 per standard box, or equivalent, of pears shipped under M.O. 927. The assessment rate is the same as proposed on July 1, 1988. In comparison, 1987–88 fiscal year budgeted expenditures were $3,816,563 and the assessment rate was $.30 per standard box or equivalent. There was also a supplemental assessment in 1987–88 at the rate of $.16 per standard box, or equivalent, of comice pears for promotion.

Major expenditure items this year in comparison to 1987–88 budgeted expenditures (in parentheses) and those proposed only July 1, 1988, are $2,774,857 ($3,049,494), revised from $2,850,997 for paid advertising, $209,499 ($324,413), revised from $372,118, for contingencies to cover unanticipated expenses, and $145,000 ($141,235) for research designed to improve winter pear yields and quality. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts.

Assessment income for the 1988–89 fiscal year is expected to total $2,929,016, based on a revised estimate of shipments of 9,763,387 packed boxes of pears. Other available funds, such as $20,000 in prior year assessments, $15,000 in miscellaneous income, $75,000 in voluntary intrastate assessments, and a reserve of $315,335 carried into this fiscal year, will be utilized to cover the proposed 1988–89 fiscal year expenditures of $3,354,351. The reserve is within the limits authorized under the marketing order.

A proposed rule inviting comments on the Winter Pear Control Committee's 1988–89 expenses and assessment rate was published in the **Federal Register** on July 1, 1988 (53 FR 24954). The comment period ended July 15, 1988. The only comment received was from the control committee recommending the revisions in the proposed expenses.

While this proposed action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found that the budget of expenses and assessment rate are reasonable and will tend to effectuate the declared policy of the Act.

This budget of expenses and assessment rate should be expedited because the committee needs to have sufficient funds to pay their expenses, which are incurred on a continuous basis. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after the date of publication in the **Federal Register** (5 U.S.C. 553).

**List of Subjects in 7 CFR Part 927**

Marketing agreements and orders, Winter pears, Oregon, Washington, and California.

For the reasons set forth in the preamble, § 927.228 is added as follows:

**Note: this section will not appear in the Code of Federal Regulations.**

1. The authority citation for 7 CFR Part 927 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

2. New § 927.228, is added to read as follows:

**§ 927.228 Expenses and assessment rate.**

Expenses of $3,354,351 by the Winter Pear Control Committee are authorized, and an assessment rate of $.30 per standard box, or equivalent, of pears is established, for the fiscal year ending June 30, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

Dated: August 2, 1988.
Charles R. Brader,
*Director, Fruit and Vegetable Division.*
[FR Doc. 88-17743 Filed 8-4-88; 8:45 am]
BILLING CODE 3410-02-M

**7 CFR Parts 929 and 967**

## Expenses and Assessment Rates for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and Celery Grown in Florida

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 929 and 967 for the 1988–89 fiscal years established for the cranberry marketing order and celery marketing order. Both marketing orders require that the assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each order's administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing the anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

**EFFECTIVE DATES:** September 1, 1988, through August 31, 1989 (§ 929.229); August 1, 1988, through July 31, 1989 (§ 967.324).

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos. 929 (7 CFR Part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; and 967 (7 CFR Part 967) regulating the handling of celery grown in Florida. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. There are 7 handlers of celery grown in Florida, and 13 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Cranberry Marketing Committee conducted a mail vote and unanimously recommended 1988–89 marketing order expenditures of $198,000 and an assessment rate of $0.055 per 100 pound barrel of cranberries shipped. In comparison, 1987–88 marketing year budgeted expenditures were $154,400 and the assessment rate was $0.043 per 100 pound barrel under M.O. 929. Assessment income for 1988–89 is estimated at $198,000 based on a crop of 3,600,000 barrels of cranberries. Other sources of income, including interest expected to be received, are estimated at $6,000, bringing total income to $204,000.

The Florida Celery Committee met on June 9, 1988, and unanimously recommended 1988–89 marketing order expenditures of $126,000 and an assessment rate of $0.02 per crate of celery shipped. In comparison, 1987–88 marketing year budgeted expenditures were $126,000 and the assessment rate was $0.02 per crate under M.O. 967. Assessment income for 1988–89 is estimated at $120,000 based on a crop of 6,000,000 crates of celery. Other sources of income, including interest expected to be received, are estimated at $6,000, bringing total income to $126,000.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new § 929.229 and § 967.324 and is based on committee

recommendations and other information. A proposed rule was published in the July 7, 1988, issue of the **Federal Register** (53 FR 25495). Comments on the proposed rule were invited from interested persons until July 18, 1988. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

**List of Subjects in 7 CFR Parts 929 and 967**

Celery, Connecticut, Cranberries, Florida, Long Island in the State of New York, Marketing agreements and orders, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Washington, and Wisconsin.

For the reasons set forth in the preamble, new § 929.229 and § 967.324 are added as follows:

**Note:** These sections will not appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 929 and 967 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.229 is added to read as follows:

**§ 929.229 Expenses and assessment rate.**

Expenses of $198,000 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.055 per 100 pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1989. Unexpended funds may be carried over as a reserve.

## PART 967—CELERY GROWN IN FLORIDA

3. Section 967.324 is added to read as follows:

**§ 967.324 Expenses and assessment rate.**

Expenses of $126,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.02 per crate of assessable celery is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 2, 1988.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 88-17664 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 993**

## Expenses and Assessment Rate for Dried Prunes Produced in California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 993 for the 1988–89 fiscal year established under the marketing order for dried prunes produced in California. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses was prepared by the Prune Marketing Committee (committee) and submitted to the U.S. Department of Agriculture for approval. The members of the committee are handlers and producers of regulated prunes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** August 1, 1988 through July 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 16 handlers of prunes grown in California, and approximately 1,200 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of prune handlers and producers may be classified as small entities.

The marketing order requires that assessment rates for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the U.S. Department of Agriculture for approval. The members of the committee are handlers and producers of regulated prunes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing

anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on June 28, 1988, and unanimously recommended 1988–89 marketing order expenditures of $248,320 and an assessment rate of $1.60 per salable ton of prunes. In comparison, 1987–88 marketing year budgeted expenditures were $250,648 and the assessment rate was $1.52 per ton under M.O. 993. Assessment income for 1988–89 is estimated at $248,320 based on a crop of 155,200 salable tons of prunes.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 993.339 and is based on committee recommendations and other information. A proposed rule was published in the July 14, 1988, issue of the **Federal Register** (53 FR 26603). Comments on the proposed rule were invited from interested persons until July 25, 1988. No comments were received.

After consideration of the information and recommendations submitted by the committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

**List of Subjects in 7 CFR Part 993**

California, Dried prunes, Marketing agreements and orders.

For the reasons set forth in the preamble, a new § 993.339 is added as follows:

## PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR Part 993 continues to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 993.339 is added to read as follows:

**§ 993.339 Expenses and assessment rate.**

Expenses of $248,320 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.60 per ton for salable dried prunes for the 1988–89 crop year ending July 31, 1989.

Dated: August 2, 1988.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 88–17883 Filed 8–4–88; 8:45 am]

BILLING CODE 3410-02-M

## FARM CREDIT ADMINISTRATION

**12 CFR Part 611**

**Organization**

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA) Board adopts as final an interim regulation which implements the provisions of section 412 of the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100–233. The final regulation provides for the establishment of a Special Committee on the Merger of Farm Credit Banks, the procedures for the selection of members to the Committee and the timeframes for obtaining required approvals and conducting stockholder votes on merger plans.

**DATES:** This regulation is effective August 5, 1988.

**FOR FURTHER INFORMATION CONTACT.**

James F. Thies, Assistant Chief Financial Analysis and Standards Division, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4475

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** On May 11, 1988, the FCA Board adopted an interim regulation (53 FR 16695) and requested public comments thereon, which implemented provisions of the 1987 Act relating to the creation of a Special Committee to develop a proposal for the merger or consolidation of the Farm Credit Banks. The interim regulation set forth certain requirements governing the organization of the Special Committee and timetables for the submission of its report to the FCA and to stockholders. The interim regulation clarified that the proposal of the Special Committee may include individual merger plans involving two or more Farm Credit Banks. The interim regulation also provided that the Special Committee proposal and each individual merger plan, together with disclosure material, must be submitted to the FCA not later than 90 days prior to the effective date of the merger, which, in any event, must not be later than July 5, 1989.

The FCA received comments only from the Special Committee. The Special Committee expressed the view that the regulation improperly and unnecessarily accelerates the times at which various steps must be accomplished. The Committee commented that although the 1987 Act requires that the consolidation proposals be developed not later than six months after the Special Committee's formation, the 1987 Act does not require that each proposed merger plan and accompanying disclosure materials be submitted to the FCA at that time. The Committee also stated that while the 1987 Act requires that stockholder votes be conducted by July 5, 1989, it does not require that the mergers be effective by that date. The Special Committee felt that the timeframes in the interim regulation, which require all documents to be submitted to the FCA by January 7, 1989 would not allow for comprehensive study and evaluation of potential mergers and financial viability of the resultant entities. The Special Committee recommended that the interim regulation be modified to provide for a two-step FCA approval process whereby the proposal for consolidation would be approved by January 7, 1989, and the individual consolidation plans and disclosure materials would be approved at a later time that would permit a vote of stockholders to occur by July 5, 1989. They futher requested that the interim regulation be modified to permit the effective date of the mergers to take place not later than January 1, 1990.

Upon careful consideration of the comments, the FCA Board has determined that the regulation will be amended to provide for stockholder votes to occur not later than July 5, 1989, and to permit the effective date of any merger to be delayed until not later than January 1, 1990. The Board agrees that in light of the potential complexity involved in analyzing the relevant issues, preparing the required documents, and providing sufficient time for implementation of statutorily mandated review requirements, it would be prudent to provide all parties involved with the maximum flexibility in scheduling as is possible. However, the FCA Board is concerned that while there are several benefits to a 6-month delay in the effective date of a merger, such a delay is not without risks. Accordingly, the final regulation has been amended to authorize the merger to be effective not later than January 1, 1990, but to require that if the proposed effective date is more than two months after the merger vote, the institutions involved must agree on the implementation of procedures and controls that will safeguard each institution's respective interests during the interim period.

The FCA has modified the timeframe for submission of the Special Committee proposal and each individual merger plan, together with disclosure material, to allow the Special Committee additional preparatory time. The final regulation requires the above submissions to be forwarded to the FCA not later than 120 days prior to the scheduled stockholder votes, which would, when considered in conjunction with the amended timeframe for the scheduled stockholder votes, be approximately two months later than required by the interim regulation.

The FCA Board does not agree that a two-stage approval process would materially enhance either the study and evaluation of potential mergers and their related financial viability, or the review and analysis of the subsequent proposal submitted. The FCA Board believes that sufficient time for a meaningful exchange of preliminary information between the Special Committee and the FCA will be afforded by the modified timeframes contained in the final regulation; and that a mutually substantive use of that time by the Special Committee and the FCA would obviate the need for any segmentation of the process for gaining the FCA's approval.

In accordance with 5 U.S.C. 553 (b) and (c), the FCA finds that additional public comments prior to the effective date of this regulation would be impracticable and contrary to the public interest. The FCA Board considered all of the public comments received in response to the advance notice of proposed rulemaking relating to the implementation of section 412 of the Act and in response to the interim regulation. In light of the statutory requirements relating to the completion of the Special Committee work, any delay in the effective date of the final regulation could prevent the Special Committee from completing its work in a timely fashion. For the same reasons, the FCA Board finds, in accordance with section 5.17(c)(2) of the Act, that an emergency exists which requires that these regulations be effective prior to the expiration of the 30-day congressional review period.

**List of Subjects in 12 CFR Part 611**

Agriculture, Banks, Banking, Organizations and functions (Government agencies), Rural areas.

Accordingly, the interim rule amending 12 CFR Part 611 which was published at 53 FR 16695 on May 11, 1988 is adopted as a final rule with the following changes:

**PART 611—ORGANIZATION**

1. The authority citation for Part 611 continues to read as follows:

**Authority:** Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 4.12, 5.9, 5.10, 5.17; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2183, 2243, 2244, 2252; Sec. 412 of Pub. L. 100–233.

2. Section 611.1140 is amended by revising paragraph (d) and adding a new paragraph (e) to read as follows:

**Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987**

**§ 611.1140 Consolidation of Farm Credit Banks.**

* * * * *

(d) The proposal of the Special Committee and each merger plan, together with the disclosure materials, shall be submitted to the Farm Credit Administration for approval not later than 120 days prior to the scheduled date for the stockholder votes for each merger involved. The stockholder votes shall be scheduled to occur not later than July 5, 1989, and the effective dates of the mergers shall not be later than January 1, 1990.

(e) If the proposed effective date of the merger is scheduled to occur more than 60 days after the stockholder vote, the boards of directors of the Farm Credit Banks involved shall enter into an agreement in connection with their approval of the merger agreement. The agreement shall contain adequate procedures and approval requirements that will govern the activities of the banks involved during the interim period between an affirmative stockholder vote and the effective date of the merger.

Dated: July 29, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88–17690 Filed 8–4–88; 8:45 am]

BILLING CODE 6705-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

**12 CFR Part 747**

**Administrative Actions, Adjudicative Hearings, and Rules of Practice and Procedure**

**AGENCY:** National Credit Union Administration ("NCUA").

**ACTION:** Final amendment.

**SUMMARY:** This amendment to NCUA's regulation concerning removal, prohibition and suspension simply conforms the regulations to the changes made to section 206(g) of the Federal Credit Union Act ("FCUA") by the Competitive Equality Banking Act of 1987 ("CEBA"). The amendment is therefore being made effective without prior notice and opportunity for public comment, and without a delayed effective date.

**EFFECTIVE DATE:** August 5, 1988.

**ADDRESS:** National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Julie Tamuleviz, Staff Attorney, Office of General Counsel, NCUA, at the above address, or telephone: (202) 357–1030.

**SUPPLEMENTARY INFORMATION:** CEBA amended section 206(g) of the FCUA as follows:

1. Extended NCUA's power to remove persons from office [12 U.S.C. 1786(g)(1)] to "employees";

2. Extended NCUA's power to prohibit persons from participating "in any manner in the conduct of the affairs" of an insured credit union [12 U.S.C. 1786(g)(2)] to "employees" and "agents";

3. Extended NCUA's power to suspend or prohibit a person temporarily prior to an administrative hearing [12 U.S.C. 1786(g)(4)] to employees and agents; and

4. Added a new section 206(g)(7) [12 U.S.C. (1786(g)(7)] prohibiting any person subject to an NCUA removal, prohibition, or suspension order:

From participation in the conduct of the affairs of any [insured credit union or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation], any bank holding company or subsidiary of a bank holding company, any organization organized and operated under section 25(a) of the Federal Reserve Act, and any savings and loan holding company or subsidiary of a savings and loan holding company (as those terms are defined in the National Housing Act), and any institution chartered by and subject to regulation by the Farm Credit Administration without the prior written approval of the appropriate Federal regulatory agency.

Congress amended Sections 206(g) (1) and (2) to clarify that the NCUA Board's removal, prohibition, and suspension power extends to all persons "in a position to do injury" to a federally-insured credit union. S. Rep. No. 19, 100th Cong., 1st Sess. 24-25, reprinted in [1987] U.S. Code Cong. & Ad. News 487, 514–15. Congress added Section 206(g)(7) to "eliminate the need for the OCC, FDIC, FSLIC, Federal Reserve or the Farm Credit Administration to take separate enforcement action * * *." *Id.*

Sections 747.501–747.503, and 747.505 of NCUA's Rules and Regulations have now been amended to reflect the clarification that the section 206(g) authority reaches an FCU's "employees" and "agents." A new provision [designated § 747.506; old § 747.506 becomes § 747.507] has been added to reflect the extended effect of an NCUA removal, prohibition, or suspension order to include prohibition on participation in the conduct of the affairs of other financial institutions.

Since this amendment simply conforms NCUA's regulations to changes Congress made to the FCUA, the Board has found that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary and not in the public interest. The Board has also found that the requirement for a 30-day delayed effective date under by 5 U.S.C. 553(d) is not applicable in this case; this amendment only restates provisions of the FCUA that federally-insured credit unions are now subject to.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board hereby certifies that this final amendment will not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The final amendment does not contain information collection requirements.

*Executive Order 12612*

This amendments applies to Federal credit unions and federally-insured, state-chartered credit unions. Inclusion of federally-insured, state-chartered credit unions has been required by Congress under the FCUA changes made by CEBA.

**List of Subjects in 12 CFR Part 747**

Credit unions, Removal, Prohibition, Suspension.

By the National Credit Union Administration Board on July 27, 1988.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA has amended its regulations as follows:

**PART 747—[AMENDED]**

1. The authority citation for Part 747 is revised to read as follows:

**Authority:** 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1789, and 12 U.S.C. 1795c, unless otherwise noted.

2. The title to Subpart E is revised to read as follows:

**Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Removal, Prohibition, and Suspension Actions**

3. Section 747.501 is revised to read as follows:

**§ 747.501 Scope.**

The rules and procedures set forth in this subpart are applicable to proceedings by the Board to remove, prohibit from further participation, or suspend a person upon the grounds set forth in section 206(g) of the Federal Credit Union Act and enumerated in this subpart. The rules and procedures set forth in this subpart are not applicable to removal, prohibition, or suspension proceedings brought upon grounds set forth in section 206(i) of the Federal Credit Union Act and enumerated in Subpart F.

4. Section 747.502 is revised to read as follows;

**§ 747.502 Grounds for removal or prohibition.**

(a) The Board may remove any director, officer, committee member, or employee of an insured credit union upon its finding that such a party (1) has violated any applicable law, rule, regulation, or cease-and-desist order which has become final or (2) has engaged or participated in any unsafe or unsound practice in connection with the credit union, or (3) has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as director, officer, committee member, or employee and that the credit union has suffered, or will probably suffer, substantial financial loss or other damage, or that the interests of the credit union's insured members could be seriously prejudiced, by reason of the violation, practice, or breach of fiduciary duty.

(b) The Board may remove or prohibit from further participation in the conduct of the affairs of the credit union any director, officer, committee member, or employee of an insured credit union who the Board finds has, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, evidenced his personal dishonesty or unfitness to continue in his position.

(c) The Board may prohibit any agent or other person participating in the conduct of the affairs of an insured credit union from any further participation therein upon its finding that such a party has, by conduct or practice with respect to the insured credit union, another insured credit union, or another business institution which resulted in substantial financial loss or other damage, evidenced his personal dishonesty or unfitness to continue his participation with the insured credit union.

(d) The Board may remove any director, officer, or committee member of an insured credit union upon its finding that such a party has committed any violation of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) or regulations issued thereunder, including Part 711 of this chapter.

5. Section 747.503 is revised to read as follows:

**§ 747.503 Notice of intent to remove or prohibit; notice of hearing.**

Whenever the Board determines that grounds for a removal or prohibition action exist, it will serve upon the concerned director, officer, committee member, employee, agent, or other person a notice of intent to remove and/or prohibit and a notice of hearing. This notice will contain a statement of the facts constituting the grounds therefor and will fix a time and place at which a hearing will be held thereon. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by the Board at the request of the party concerned, for good cause shown, or at the request of the Attorney General of the United States. Any responding

party not appearing at the hearing in person or by a duly authorized representative, shall be deemed to have consented to the issuance of an order of removal and/or prohibition.

8. Section 747.505 is revised to read as follows:

**§ 747.505 Suspension and immediate prohibition.**

(a) *Grounds for suspension or immediate prohibition; Notice.* In respect to any director, officer, committee member, or employee of an insured credit union, or any agent or other person referred to in § 747.502 (a), (b) or (c), the Board may, if it deems it necessary for the protection of the credit union or the interest of its insured members, by written notice to that effect served upon such a party, suspend that person from office and/or prohibit that party from further participation in any manner in the conduct of the affairs of the credit union.

(b) *Effective date of suspension or immediate prohibition.* The suspension and/or prohibition will be effective upon service of the notice thereof and, unless stayed by a court in proceedings authorized by section 206(g)(6) of the Federal Credit Union Act and described in paragraph (c) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under § 747.503 of this subpart and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director, officer, committee member, employee, agent, or other person, until the effective date of any such order. Copies of any such order shall also be served upon the credit union of which the respondent party is a director, officer, committee member, employee, or agent, or in the conduct of whose affairs the person has participated.

(c) *Stay of suspension or immediate prohibition.* Within 10 days after any director, officer, committee member, employee or agent, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under section 206(g)(4) of the Federal Credit Union Act and as set forth in this subpart, the concerned party may apply to the U.S. District Court for the judicial district in which the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings, and such court shall have jurisdiction to stay such suspension and/or prohibition.

**§ 747.506 [Redesignated as § 747.507]**

7. Section 747.506 is redesignated as § 747.507.

8. A new § 747.506 is added and reads as follows:

**§ 747.506 Effect of removal, prohibition, or suspension.**

(a) Any director, officer, committee member, employee, agent, or any other person who, pursuant to section 206(g) of the Federal Credit Union Act, is removed, suspended, or prohibited from participation in the conduct of the affairs of an insured credit union shall also be removed, suspended, or prohibited from participation in the conduct of the affairs of any insured institution, any bank holding company or subsidiary of a bank holding company, any organization organized and operated under section 25(a) of the Federal Reserve Act, and any savings and loan holding company (as those terms are defined in the National Housing Act), and any institution chartered by and subject to regulation by the Farm Credit Administration, without the prior written approval of the appropriate Federal regulatory agency.

(b) As used in this subpart, the term "insured institution" means an insured credit union or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

[FR Doc. 88-17893 Filed 8-4-88; 8:45 am]
BILLING CODE 7535-01-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88-ANE-27; Amdt. 39-5982]**

## Airworthiness Directives; Schempp-Hirth GmbH Model Nimbus-2B, Janus B, and Mini-Nimbus B Gliders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to the Schempp-Hirth GmbH Model Nimbus-2B, Janus B, and Mini-Nimbus B gliders which requires inspection and replacement of the elevator drive bracket with a modified elevator drive bracket. This action was prompted by the determination that the elevator drive bracket may develop cracks adjacent to the weld area. This condition, if not corrected, could result in failure of the elevator drive bracket and loss of pitch control.

**DATES:**

*Effective*—August 19, 1988.

*Compliance*—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of August 19, 1988.

**ADDRESSES:** The technical information and replacement parts specified in this AD may be obtained from Messrs. Schempp-Hirth, Flugzeugbau GmbH, Krebenstr 25, PostFach 14 43, D-7312 Kircheim/Teck, Federal Republic of Germany. A copy of the technical note is contained in the Rules Docket, Docket Number 88-ANE-27, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Heinz Hellebrand, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.38.30 Ext. 2710; or Mr. John J. Maher, New York Aircraft Certification Office, ANE-172, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6221.

**SUPPLEMENTARY INFORMATION:** Schempp-Hirth GmbH has determined that cracks may develop in the elevator drive bracket. The manufacturer has issued Technical Note (TN) No. 286-24, dated August 14, 1987, TN No. 295-19, dated August 14, 1987, and TN No. 328-8, dated August 14, 1987, compliance with which is required by Luftfahrt Bundesamt (LBA) AD 87-126/2 Schempp-Hirth, dated June 16, 1987. These documents require a visual check, prior to each flight, for cracks in the elevator drive bracket, and replacement with a modified elevator drive bracket, within 5½ months from the issue date of the LBA AD, unless previously replaced.

The FAA's evaluation of the service history of this part indicates that an initial visual inspection for cracks, using a 5 power magnifying glass or greater, within 10 hours flight time from the effective date of this AD with a repetitive inspection within 50 hours from the last inspection, would be more appropriate. Cracked parts must be

replaced before further flight. As there are gliders that may be flown infrequently and the exact cause of the failure is unknown, a calendar date by which the modified part must be installed is incorporated in the FAA AD. The FAA relies upon certification of the LBA, combined with FAA review of pertinent documentation in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Schempp-Hirth GmbH TN No. 286–24, TN No. 295–19, and TN No. 328–8, and the issuance of Schempp-Hirth AD 87–126/2 by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Schempp-Hirth GmbH TN No. 286–24, TN No. 295–19, and TN No. 328–8 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, this AD is being issued to require inspection and replacement of the elevator drive bracket on Schempp-Hirth GmbH Model Nimbus-2B, Janus B, and Mini-Nimbus B gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

**Conclusion**

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding to § 39.13 the following new airworthiness directive (AD):

**Schempp-Hirth GmbH:** Applies to Models Nimbus-2B, Janus B, and MiniNimbus B gliders certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the elevator drive bracket and loss of pitch control accomplish the following:

(a) Within the next 10 hours time in service (TIS) after the effective date of this AD unless already accomplished, and thereafter at intervals not to exceed 50 hours TIS from the last inspection, visually inspect the elevator drive bracket, P/N 30.055, using a 5-power or greater magnifying glass for cracks in the area adjacent to the welds on both sides of the bracket as shown in Sketch 1 or Sketch 3 of Schempp-Hirth Flugzeugbau GmbH Technical Note (TN) No. 286–24, dated August 14, 1987, for Nimbus-2B gliders, TN No. 295–19, dated August 14, 1987, for Janus B gliders, and TN No. 328–8, dated August 14, 1987, for Mini-Nimbus B gliders.

(b) If cracks are found in the elevator drive bracket, replace the elevator drive bracket with elevator drive bracket, Part Number (P/N) 30.055, modification "a", dated August 24, 1987, before further flight.

(c) Prior to November 30, 1988, unless already accomplished, replace elevator drive bracket P/N 30.055 with elevator drive bracket P/N 30.055, modification "a", dated August 24, 1987.

**Note.**—Installation of P/N 30.055, modification "a" is shown in Schempp-Hirth drawing HS5–30.055/1 Elevator-to-Stabilizer Assembly.

(d) Upon request an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium telephone 513.38.30, Ext. 2710; or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581 telephone (516) 791–6680.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office may adjust the compliance times specified in this AD.

Schempp-Hirth GmbH TN No. 286–24 with 4 attached sketches, TN No. 295–19 with 4 attached sketches, and TN No. 328–8 with 4 attached sketches and 1 attached drawing, all dated August 14, 1987, identifed and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Messrs. Schempp-Hirth, Flugzeugbau GmbH, Krebenstr 25, PostFach 14 43, D–7312 Kircheim/Teck, Federal Republic of Germany.

These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachussetts 01803, Room 311, Rules Docket 88–ANE–27, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on August 19, 1988.

Issued in Washington, DC, on July 8, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88–17628 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 88–ASW–26; Amdt. 39–5975]**

## Airworthiness Directives, Schweizer Aircraft Corporation Model 269 Series Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires an initial inspection followed by repetitive inspections and repair or replacement, as necessary, of the fuselage aft cluster fittings on Schweizer Model 269 series helicopters. The AD is prompted by reports of misidentified aft cluster fittings, cracked cluster fittings, and improperly processed cluster fittings which could result in separation of the tailboom support strut from the

helicopter center frame and consequent loss of control of the helicopter.

**EFFECTIVE DATE:** August 19, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 19, 1988.

*Compliance:* As indicated in the body of the AD, unless already accomplished.

**ADDRESSES:** The applicable service information may be obtained from Schweizer Aircraft Corp., P.O. Box 147, Elmira-Corning Regional Airport, Elmira, New York 14902.

A copy of the service information is contained in the Office of the Regional Counsel, FAA, Southwest Region, Room 158, Bldg. 3B, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Maher, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone number (516) 791-6221.

**SUPPLEMENTARY INFORMATION:** There have been recent reports of cracks on the upper strut lug and on the forward tube of Part Numbers (P/N) 269A2234-3 and 269A2235-3 aft cluster fittings. The manufacturer has investigated the reports and determined that the cracks did not all result from the same cause. Two of the lug cracks were attributed to surface defects (i.e., tool marks) and to use of the tailboom support for a step. The tube cracks and one lug crack were attributed to improper heat treating processes resulting in a high carbon content and consequent embrittlement. The manufacturer has further determined that the heat treating problem occurred on aircraft being manufactured at Schweizer from parts delivered to Schweizer from May 1, 1986, through October 22, 1987. Although this limits the extent of the problem, it still must be determined which serial number helicopters have the redesigned -3 fitting installed since Schweizer spare parts with incorrect heat treating could have been installed as replacement parts on previously manufactured helicopters. Also, some -3 fittings were cast but only identified with the basic P/N's 269A2234 and 269A2235 with no dash number. This could result in the redesigned part being unknowingly installed as an original fitting. To preclude this, the FAA has determined that each helicopter must have the aft cluster fittings dimensionally checked to establish whether an original or a redesigned -3 fitting is installed. Once it is determined where the -3 fittings are installed, the calendar period the part was installed must be determined so that only the appropriate Schweizer-supplied and installed fittings will be further inspected.

Proper heat treatment of the subject fittings may be verified by chemical analysis of a sample piece returned to Schweizer Aircraft Corporation. The manufacturer has further determined that certain surface defects could occur only on certain serial number helicopters manufactured at Schweizer. The manufacturer issued Schweizer Service Information Notice (SIN) Nos. 217, 220, and 221 which pertain to this same subject.

Since these conditions are likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires inspections of the aft cluster fitting dimensionally, visually, and chemically so that defective parts can be removed and replaced with serviceable parts on Schweizer Model 269 series helicopters. The AD requires: (1) A dimensional inspection of all Model 269 helicopter aft cluster fittings to determine which serial numbers have the original aft cluster fittings, P/N's 269A2234 and 269A2235, or the redesigned fittings, P/N's 269A2234-3 and 269A2235-3; (2) chemical inspection of fittings determined to be later -3 configurations and also determined to have been purchased between May 1, 1986, and October 22, 1987; (3) daily visual and 100-hour repetitive dye penetrant inspections of fittings determined to be out-of-tolerance chemically until replacement or until December 31, 1988, whichever comes first; (4) visual inspection of certain -3 fittings for cracks or surface defects, and removal and repair or replacement of fittings found to have defects; and (5) the installation of a "No-Step" placard on the tailboom support strut. Failure of the aft cluster fitting could result in separation of the tailboom support strut from the helicopter center frame and consequent loss of control of the helicopter.

Since a situation exits that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Regional Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Schweizer Aircraft Corporation (McDonnell Douglas Helicopter Company, Hughes Helicopters, Inc).** Applies to helicopter Models 269A, TH-55A (all S/N's operated in civil use), 269A-1, 269B, and 269C, certificated in any category. (Docket No. 88-ASW-26)

Compliance is required as indicated, unless already accomplished.

To prevent possible loss of the tail boom support strut and tail boom which could result in loss of the helicopter, accomplish the following:

(a) Within the next 25 hours' time in service after the effective date of this AD, on Model 269C helicopters with S/N's 1166 through 1289, inspect aft cluster fittings (P/N's 269A2234-3 and 269A2235-3) for cracks and surface defects in accordance with the procedures section of Schweizer Service

Information Notice (SIN) No. N–220, dated January 29, 1988.

Note.—SIN No. 220 provides repair procedures and limits for surface defects.

(b) Within the next 25 hours' time in service after the effective date of this AD conduct the following inspections:

(1) On Models 269A, A–1, B, and TH–55A (all serial numbers) and Model 269C (for all S/N's prior to 1262) conduct a dimensional inspection of the aft cluster fittings (P/N's 269A2234, 269A2235, 269A2234–3, and 269A2235–3) in accordance with Part I of Schweizer SIN No. N–217, dated January 29, 1988.

(2) On Model 269C helicopters (S/N's 1262 through 1289) and all other helicopters identified in paragraph (b)(1) as having aft cluster fittings, P/N's 269A2234–3 and 269A2235–3, with fittings purchased from Schweizer Aircraft Corporation between May 1, 1986 and October 22, 1987—

(i) Inspect the fittings for cracks using visual and dye penetrant methods in accordance with Parts II and IV of Schweizer SIN No. N–221, dated January 29, 1988; and

(ii) Remove a sample piece from uncracked fittings and return to Schweizer Aircraft Corporation for laboratory analysis in accordance with Part III of Schweizer SIN No. 221, dated January 29, 1988.

(c) Repeat the inspections of paragraph (b)(2)(i) at the following intervals until the P/N 269A2234–3 and P/N 269A2235–3 fittings are determined to meet the Schweizer process specification or until the aft cluster fittings are replaced with parts which do meet the specifications:

(1) Conduct visual inspections in accordance with Part IV of Schweizer SIN No. N–221, dated January 29, 1988, prior to the first flight of each day.

(2) Conduct dye penetrant inspections in accordance with Part II of Schweizer SIN No. N–221 dated January 29, 1988, at intervals not to exceed 100 hours' time in service from the previous inspections.

(d) Replace fittings found to be cracked or to have surface defects with serviceable fittings before further flight.

(e) No later than December 31, 1988, replace P/N 269A2234–3 and 269A2235–3 fittings not found to meet the Schweizer process specification.

(f) Within the next 25 hours' time in service after the effective date of this AD, on all Model 269A, TH–55A (all S/N's operated in civil use), 269A–1 and 269B (all S/N's) and Model 269C (S/N's 0004 through 1289) install a "NO STEP" placard in accordance with Part II of Schweizer SIN No. N–217 dated January 29, 1988.

(g) Alternative means of compliance which provide an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

(h) Aircraft may be ferried in accordance with the provisions of §§ 21.197 and 21.199 to a base where the AD can be accomplished.

The procedure shall be done in accordance with Schweizer SIN Nos. N–217, N–220, N–221, each dated January 29, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira-Corning Regional Airport, Elmira, New York 14902. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective on August 19, 1988.

Issued in Fort Worth, Texas, on June 24, 1988.

**Don P. Watson,**

*Acting Director, Southwest Region.*

[FR Doc. 88–17629 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 39

**[Docket No. 87–ANE–29; Amdt. 39–5973]**

## Airworthiness Directives; Schweizer Aircraft Corporation Glider Models SGS and SGU Series

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective to all known U.S. owners and operators of Schweizer Glider Models SGS and SGU Series by individual priority letters. Because typographical errors occurred in the part numbers (P/N) in priority letter AD 87–17–01, they are corrected. The AD requires inspection, and replacement if necessary, of the tow-release arm in the tow-release system prior to the next flight, unless already accomplished. The AD is needed to prevent jamming of the tow-release mechanism which could result in failure of the tow-line to release from the glider and result in an unsafe condition during landing.

**DATES:** Effective August 19, 1988 to all persons except those to whom it was made immediately effective by individual priority letter AD 87–17–01, issued August 18, 1987, which contained this amendment.

*Compliance*—As required in the body of the AD.

*Incorporation by Reference*—Approved by the Director of the **Federal Register** as of August 19, 1988.

**ADDRESSES:** Schweizer Aircraft Corporation Service Bulletin (SB) No. SA–005.1, dated January 31, 1988, SB No. SA–001.3, dated January 31, 1988, and replacement parts specified in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902; telephone (607) 739–3821.

Copies of SB No. SA–005.1 and SB No. SA–001.3 are contained in the Rules Docket, Docket No. 87–ANE–29, Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** C. Kallis, ANE–173, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Division, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6428.

**SUPPLEMENTARY INFORMATION:** On August 18, 1987, priority letter AD 87–17–01, was issued and made effective immediately to all known U.S. owners/operators of certain Schweizer Aircraft Corporation Glider Models SGS and SGU Series. AD action resulted from two reports that reflects that certain Schweizer tow-hooks with release arms P/N's 1D217–13, 1D222–15, 1D222–17 or 34017D–15 used on the above Schweizer Aircraft Corporation gliders, can create a jamming condition of the tow-line ring during towing, when an input by the glider pilot commands release of the tow-line. Schweizer Aircraft Corporation has issued SB No. SA–005.1, dated January 31, 1988, which calls for inspection of the tow-release installations, and replacement if necessary with new parts. Failure to release the tow-line while towing one of these gliders may result in an unsafe condition during landing.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter AD issued, August 18, 1987, to all known U.S. owners and operators of certain Schweizer gliders. These conditions still exist, and the AD with typographical corrections to the P/N's, is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to

preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

**Conclusion**

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Administration (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

**Schweizer Aircraft Corp:** Applies to models (including kit built) SGU 1-7; SGS 2-8 (TG-2); SGS 2-12 (TG-3); SGU 1-19; SGU 1-20; SGU 1-21; SGU 2-22, 2-22A, 2-22C, 2-22CK, 2-22E, 2-22EK; SGS 1-23, 1-23B, 1-23C, 1-23D, 1-23E, 1-23F, 1-23G, 1-23H, 1-23H15; SGS 1-24; SGS 1-26, 1-26A, 1-26B, 1-26C, 1-26D, 1-26E; SGS 2-32; SGS 2-33, 2-33A, 2-33AK; SGS 1-34, 1-34R; SGS 1-35C; SGS 1-36 (SPRITE) gliders, certificated in any category.

Compliance is required prior to the next flight after the effective date of this AD, unless already accomplished.

To prevent the possibility of the tow release assembly creating a jammed condition during towing and subsequent failure of the tow line to release, which could result in a forced landing, accomplish the following:

(a) Inspect the tow release installation to determine if any of the following release arms are installed:

P/N 1D217-13, 1D222-15, 1D222-17 or 34017D-15.

**Note.**—The above arms can be identified by a lug which is welded on the front face of the release arm as shown in Figure 1 of Schweizer Service Bulletin (SB) No. SA-005.1, dated January 31, 1988.

(b) Tow release installations which have any of the release arms listed in (a) must have the arms replaced in the following manner:

P/N 1D217-13 replace with 1D217-09
P/N 1D222-15 replace with 1D222-11
P/N 1D222-17 replace with 1D222-13
P/N 34017D-15 replace with 34017D-11

(c) Perform the operational check in accordance with Figure 4 in Schweizer SB No. SA-001.3, dated January 31, 1988, following release arm replacement.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration (FAA), New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

Schweizer Aircraft Corporation SB Nos. SA-005.1 and SA-001.3, both dated January 31, 1988, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902; telephone (607) 739-3821. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket No. 87-ANE-29, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on August 19, 1988, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 87-17-01, issued August 18, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on June 23, 1988.

**Timothy P. Forte,**

*Acting Director, New England Region.*

[FR Doc. 88-17630 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 73**

**[Airspace Docket No. 88-ASO-12]**

## Revocation of Restricted Area R-3701B, Fort Campbell, KY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revokes Restricted Area R-3701B Fort Campbell, KY. An FAA review of the utilization reports for R-3701B indicated that this area has not been activated for a prolonged period and, therefore, no longer needs the restricted designation. This action would return the airspace to general aviation use.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

**The Rule**

This amendment to Part 73 of the Federal Aviation Regulations revokes Restricted Area R-3701B For Campbell, KY. An FAA review of the utilization of R-3701B showed a history of inactivity for that area. The review findings indicate a lack of a valid requirement that would justify retention of this airspace. The Department of the Army concurs with this action. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.37 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.60 dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefor—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 73**

Aviation safety, Restricted areas.

**Adoption of The Amendment**

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

**PART 73—SPECIAL USE AIRSPACE**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 73.37 [Amended]**

2. Section 73.37 is amended as follows:

R–3701B Fort Campbell, KY [Removed]

Issued in Washington, DC, on July 28, 1988.

**O. E. Falsetti,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 88–17631 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 12**

**[Docket No. 87N–0364]**

**Formal Evidentiary Public Hearing; Time Periods for Filing Exceptions to Initial Decisions and Replies to Exceptions**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations governing formal evidentiary public hearings to provide for a period of 60 days in which a party may file exceptions to an initial decision of the administrative law judge and to provide for a period of 60 days for filing replies to exceptions. FDA also revising these regulations to provide that the Commissioner of Food and Drugs (the Commissioner) will grant extensions of these 60-day periods only in extraordinary circumstances.

**EFFECTIVE DATE:** September 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** Tenny P. Neprud, Jr., Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 1, 1988 (53 FR 2767), FDA issued a proposed rule to amend 21 CFR 12.125 of the agency's regulations governing formal evidentiary public hearings to provide a period of 60 days in which parties may file exceptions to the administrative law judge's initial decision and a period of 60 days in which parties may file replies to exceptions. FDA also proposed to provide that the Commissioner would grant extensions of the time for filing such exceptions or replies to exceptions only in extraordinary circumstances.

FDA provided a period of 60 days for interested persons to submit comments on the proposed rule. No comments were received. Accordingly, for the reasons given in the preamble to the proposed rule, FDA is adopting the rule with only minor clarifying changes.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has analyzed the economic impact of this rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency has determined that the rule is not a major rule as defined in Executive Order 12291 and certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

**List of Subjects in 21 CFR Part 12**

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Comestic Act and under authority delegated to the Commissioner of Food and Drugs, Part 12 is amended as follows:

**PART 12—FORMAL EVIDENTIARY PUBLIC HEARING**

1. The authority citation for 12 CFR Part 12 is revised to read as follows:

**Authority:** Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.*); sec.1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.SC. 821 *et seq.*); sec 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 14(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.*); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*).

2. Section 12.125 is amended by revising paragraphs (a), (c), and (d) to read as follows:

**§ 12.125 Appeal from or review of initial decision.**

(a) A participant may appeal an initial decision to the Commissioner by filing exceptions with the Dockets Management Branch, and serving them on the other participants, within 60 days of the date of the initial decision.

* * * * *

(c) Any reply to the exceptions is to be filed and served within 60 days of the end of the period for filing exceptions.

(d) The Commissioner may extend the time for filing exceptions under paragraph (a) of this section or replies to exceptions under paragraph (c) of this section only upon a showing by a participant of extraordinary circumstances. Such an extension shall be requested by filing a written request with the Commissioner's Executive Secretariat (HF–40) and serving copies of the request on the Dockets Management Branch (HFA–305), the Chief Counsel (GCF–1), and all hearing participants.

* * * * *

Dated: July 15, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88–17708 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–01–M

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**21 CFR Part 175**

**[Docket No. 87F–0384]**

**Indirect Food Additives: Adhesives and Components of Coatings**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(benzoate-*O*)(2-propanolato)aluminum as a component of adhesives used in the manufacture of containers intended to contact food. This action responds to a petition filed by Kuraray Co., Ltd.

**DATES:** Effective August 5, 1988; objections and requests for a hearing by September 6, 1988.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of January 11, 1988 (53 FR 643), FDA announced data petition (FAP 7B4035) had been filed by Kuraray Co., Ltd., 12–39 Umeda, 1-Chome, Kita-Ku, Osaka, 530, Japan, proposing that the food additive regulations be amended to provide for the safe use of bis(benzoate-*O*)(2-propanolato)aluminum as a component of adhesives used in the manufacture of multilayer containers intended for food contact.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that 21 CFR 175.105 should be amended by alphabetically adding "bis(benzoate-*O*)(2-propanolato)aluminum (CAS Reg. No. 105442–85–1)" as a new entry in the table in paragraph (c)(5).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 6, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 175**

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding a new entry in the table to read as follows:

**§ 175.105 Adhesives.**

* * * * *

(c) * * *

(5) * * *

| Substances | Limitations |
|---|---|
| * * * * * | |
| Bis(benzoate-*O*)(2-propanolato)aluminum (CAS Reg. No. 105442–85–1) | For use only as a reactant in the preparation of polyester resins. |
| * * * * * | |

Dated: July 26, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88–17640 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–01–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 386

**[DoD Directive 5133.1]**

### Assistant Secretary of Defense (International Security Policy)

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part adds 32 CFR Part 386 to identify the Assistant Secretary of Defense (International Security Policy) and delineates its responsibilities, functions, relationships, and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136.

**EFFECTIVE DATE:** September 27, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. Furtner, Office of the Director of Administration and Management, the Pentagon, Washington, DC 20301–1950, telephone (202) 695–4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 386**

Organization and function.

Accordingly, Title 32, Chapter 1, is amended to add Part 386 as follows:

## PART 386—ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY POLICY)

Sec.

386.1 Purpose.
386.2 Definition.
386.3 Responsibilities and functions.
386.4 Relationships.
386.5 Authorities.
386.6 Effective date.

**Authority:** 10 U.S.C. 136.

**§ 386.1 Purpose.**

This part:

(a) Establishes, pursuant to 10 U.S.C. 136, the position of Assistant Secretary of Defense (International Security Policy) (ASD(ISP)) under the direction, authority, and control of the Under Secretary of Defense for Policy (USD(P)).

(b) Assigns responsibilities, functions, relationships, and authorities, as

prescribed herein Do the ASD(ISP) in accordance with DoD Directive 5111.1.[1]

**§ 386.2 Definition.**

*DoD Components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

**§ 386.3 Responsibilities and functions.**

The Assistant Secretary of Defense (International Security Policy) is the Principal Staff Assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense for defense policy and planning related to nuclear weapons policy and strategy, technology transfer, East-West trade, arms negotiations and nuclear nonproliferation. The ASD(ISP) is also the principal staff advisor on other political-military and international economic matters involving the North Atlantic Treaty Organization (NATO), Europe, and the Soviet Bloc. In the exercise of these responsibilities, the ASD(ISP) shall:

(a) Formulate policy related to strategic offensive and defensive forces including strategic reserve forces and theater nuclear forces.

(b) Formulate policy related to NATO, Europe, and the Soviet Bloc.

(c) Develop and oversee DoD policy for technology transfer matters including, but not limited to, U.S. and Coordinating Committee (COCOM) export licenses, strategic trade, munitions licenses, technology transfer aspects of security assistance programs, U.S. and international technology controls, arms cooperation programs, and international personnel and technical data exchanges.

(d) Develop DoD policy positions and recommendations regarding nuclear nonproliferation policy and arms control and disarmament negotiations, both nuclear and conventional, as well as other multilateral security negotiations.

(e) Conduct and manage day-to-day bilateral relations with all foreign governments in assigned geographic areas of responsibility.

(f) Promote coordination, cooperation, and joint planning on armaments development with NATO allies.

(g) Formulate policy related to strategic offensive and defensive forces, including strategic reserve forces, theater nuclear forces, nuclear forces and their employment, and pertinent budget considerations, and provide oversight and implementation of that policy.

(h) Develop DoD positions and recommendations, and coordinate all policy matters concerning security assistance, Military Assistance Advisory Groups and other missions pertaining to security assistance for NATO, NATO members, and other European countries.

(i) Develop, negotiate, and monitor defense cooperation agreements with foreign governments in assigned geographic areas of responsibility.

(j) Provide international economic, trade, and security policy guidance and recommendations on East-West and West-West relations and the NATO Alliance, other European countries, and the Soviet Bloc, including trade, export, economic security, energy, arms transfer and collaboration, alliance readiness issues, and foreign investments in the United States.

(k) Cooperate with the Under Secretary of Defense (Research and Engineering) and the Assistant Secretary of Defense (Acquisition and Logistics) to develop industrial cooperation and coproduction arrangements with foreign countries under ASD(ISP) cognizance.

(l) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(m) Represent the Office of the USD(P) in National Disclosure Policy Committee (NDPC) actions.

(n) Represent DoD on the Committee on Foreign Investment in the U.S. (CFIUS).

(o) Serve as DoD focal point for Foreign Military Rights Affairs, negotiations on military facilities, operating rights, status of forces and international political-military matters, and monitor agreements with foreign countries under ASD(ISP) cognizance.

(p) Perform such other duties as the Secretary of Defense and the USD(P) may prescribe.

**§ 386.4 Relationships.**

(a) In the performance of duties, the ASD(ISP) shall:

(1) Coordinate and exchange information with other DoD and Federal organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components shall coordinate all matters concerning the responsibilities and functions cited in § 386.3 with the ASD(ISP).

**§ 386.5 Authorities.**

The ASD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with the DoD 5025.1–M, which carry out policies approved by the Secretary of Defense, in assigned areas of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands shall be issued through the Joint Chiefs of Staff (JCS).

(b) Participate in interdepartmental activities as required to carry out functions.

(c) Obtain such reports, information, advice, and assistance, consistent with policies and criteria of DoD Directive 5000.19,[2] as necessary.

(d) Communicate directly with heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated with the JCS; all JCS security assistance communicates regarding NATO and Europe shall be coordinated with the ASD(ISP).

(e) Establish arrangements for DoD participation in those non-DoD governmental programs for which primary cognizance is assigned.

(f) Communicate with other government agencies, representatives of the Legislative Branch, and the public, as appropriate, in carrying out assigned functions.

**§ 386.6 Effective date.**

This part is effective September 27, 1985.

**Linda M. Bynum,**

*Alternative OSD Federal Register Liaison Officer, Department of Defense.*

August 2, 1988.

[FR Doc. 88–17725 Filed 8–4–88; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

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## 32 CFR Part 389

**[DoD Directive 5105.39]**

## Director of Net Assessment

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part adds 32 CFR Part 389 to Identify the Director of Net Assessment and delineates its responsibilities, functions, relationships,

[2] See footnote 1 to § 386.1(b).

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and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 131.

**EFFECTIVE DATE:** September 27, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. Kennedy, Office of the Director of Administration and Management, the Pentagon, Washington, DC 20301–1950, telephone (202) 697–1142.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 389**

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 389 as follows:

## PART 389—DIRECTOR OF NET ASSESSMENT

Sec.
389.1 Purpose.
389.2 Definition.
389.3 Responsibilities.
389.4 Functions.
389.5 Authorities.
389.6 Relationships.
389.7 Effective date.

**Authority:** 10 U.S.C. 131.

### § 389.1 Purpose.

This part:

(a) Establishes, pursuant to 10 U.S.C. 131, the position of Director of Net Assessment under the direction, authority, and control of the Under Secretary of Defense for Policy (USD(P)) in accordance with DoD Directive 5111.1.[1]

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the Director of Net Assessment.

### § 389.2 Definition.

*DoD Components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

### § 389.3 Responsibilities.

The *Director of Net Assessment* shall be the Principal Staff Assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on net assessment matters.

### § 389.4 Functions.

Under the general direction of the USD(P), pursuant to DoD Directive 5111.1, and the Secretary of Defense, the Director of Net Assessment shall perform the following functions:

(a) Develop net assessments of current and projected U.S. and foreign military capabilities by theater, region, function, or mission. In accomplishing these net assessments, the Director may call upon all available intelligence data and all available friendly force data.

(b) Accomplish or provide for the development of specific net assessments of current and projected U.S. and foreign capabilities, operational tactics, doctrine and major weapons categories or systems.

(c) Develop, advise, and consult on the net assessment portion of the Secretary's Annual Defense Report, congressional testimony, and foreign government discussions, and provide guidance for the preparation of the Chairman, Joint Chiefs of Staff (CJCS) Posture Statement.

(d) Provide guidance or staff assistance and representation for the Secretary of Defense in the development of national act assessments by the National Security Council and act as primary focal point for joint efforts with the intelligence community to produce net assessments.

(e) Coordinate and review net assessment efforts throughout the Department of Defense.

(f) Provide support for the improvement and development of net assessments within the Department of Defense, including, but not limited to, the maintenance of a library of historical all-source intelligence and friendly force data.

(g) Provide objective analysis of policy, doctrine, strategy, goals, and objectives, as requested or determined necessary.

### § 389.5 Authorities.

In the discharge of responsibilities and performance of functions as prescribed herein, the Director of Net Assessment is hereby delegated the following authorities on behalf of the USD(P) and the Secretary of Defense:

(a) Task directly the organizational elements within the DoD Components, and the intelligence community to provide assistance, information consistent with DoD Directive 5000.19,[2] data processing, and other support for the development of net assessment and other related functions, such as strategic planning and strategic force plans, as necessary.

(b) Obtain external assistance, as appropriate, from the Defense Agencies, intelligence community, and other organizations of the executive and legislative branches of the government.

(c) Direct the work of assigned staff, and convene and direct the performance of working groups, task forces, and other provisional bodies, as appropriate, in the development of net assessments or execution of other assigned functions.

(d) Communicate with other government agencies as necessary to perform assigned functions.

### § 389.6 Relationships.

The Director of Net Assessment shall report through the USD(P) to the Secretary of Defense.

### § 389.7 Effective Date.

This part is effective September 27, 1985.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 2, 1988.

[FR Doc. 88–17726 Filed 8–4–88; 8:45 am]

BILLING CODE 3810–01–M

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 387.1(a).

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 09–88–27]**

## Special Local Regulations; Cleveland National Air Show, Cleveland, OH; Lake Erie

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Special local regulations are being adopted for the Cleveland National Air Show which is to be conducted over the eastern portion of Cleveland Harbor from 1 September through 5 September 1988. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

**EFFECTIVE DATES:** These regulations become effective on 1 September and terminate on 5 September 1988.

**FOR FURTHER INFORMATION CONTACT:** MST2 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District

until 5 May 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for many years and no negative comments concerning it have been received.

**Drafting Information**

The drafters of this regulation are MST2 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The Cleveland National Air Show will be conducted over the eastern portion of Cleveland Harbor from the 1st of September through the 5th of September 1988. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Cleveland, Ohio).

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0927 to read as follows:

**§ 100.35–0927 Cleveland National Air Show, Cleveland, OH—Lake Erie.**

The following area will be closed to vessel navigation or anchorage from 2:30 p.m. (local time) until 5:30 p.m. on 1 and 2 September; 8:30 a.m. until 5:30 p.m. on 3, 4 and 5 September 1988.

(a) *Restricted Area.* That portion of Lake Erie and Cleveland Harbor enclosed by a line running from the northeast corner of Dock No. 24 northwest to a point on the east breakwall at 41 degrees 30 minutes 36.0 seconds North, 81 degrees 42 minutes 34.2 seconds West; thence, northeastward along the breakwall to 41 degrees 30 minutes 51.7 seconds North, 81 degrees 42 minutes 07.6 seconds West; then, northwestward to 41 degrees 31 minutes 08.1 seconds North, 81 degrees 42 minutes 22.2 seconds West; thence, eastward to 41 degrees 32 minutes 18.1 seconds North, 81 degrees 40 minutes 17.0 seconds West; then, southeastward to a point on the east breakwall at 41 degrees 32 minutes 02.5 seconds North, 81 degrees 40 minutes 03.4 seconds West; continuing east along the breakwall to 41 degrees 32 minutes 13.2 North, 81 degrees 39 minutes 44.0 seconds West; then, southeast to a point on the shoreline at position 41 degrees 31 minutes 49.8 seconds North, 81 degrees 39 minutes 20.5 seconds West; thence, shoreline to the northeast corner of Dock No. 24.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(c) *Effective Date:* This section is effective from 2:30 p.m. (local time) on 1 September 1988 until 5:30 p.m. (local time) on 5 September 1988.

Dated: July 25, 1988.

**R.A. Appelbaum,**

*RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 88–17625 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 100**

**[CGD 09–88–28**

## Special Local Regulations: Labor Day Fireworks Display, Maumee River, Toledo, OH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Special local regulations are being adopted for the Labor Day Fireworks Display. This event will be held on the Maumee River on 5 September 1988 with an alternate date of 9 September 1988. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

**EFFECTIVE DATES:** These regulations become effective on 5 September 1988 and terminate on 9 September 1988.

**FOR FURTHER INFORMATION CONTACT:** MST2 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District until 9 June, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for many years and no negative comments concerning it have been received.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and

procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**Drafting Information**

The drafters of this regulation are MST2 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The Labor Day Fireworks Display will be conducted on the Maumee River on 5 September 1988. The alternate date for the event will be 9 September 1988. This event will have falling debris and ash and an unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Toledo, OH).

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0928 to read as follows:

**§ 100.35–0928 Labor Day Fireworks Display, Maumee River.**

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:30 p.m. (local time) until 10:00 p.m. on 5 September 1988: That portion of the Maumee River from the Cherry Street Bridge to the Anthony Wayne Bridge.

(2) The following portion of the Maumee River will be closed to all vessel traffic, from 8:30 p.m. (local time) until 10:00 p.m. on 5 September 1988: That portion of the Maumee River within a 500 foot radius of the fireworks barges.

(b) *Special Local Regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 9:45 p.m. local or when the fireworks display ends, whichever comes first.

(2) Two 60 foot fireworks barges will be moored at the City of Toledo Division of Streets, Harbor and Bridges Building Dock. Vessel masters shall pass with caution.

(3) If the weather on 5 September 1988 is inclement, the fireworks display and the river closure will be postponed until 8:30 p.m. to 10:00 p.m. on 9 September 1988. If postponed, notice will be given on 5 September 1988 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession on sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in explusion from the area, citation for failure to comply, or both.

(c) *Effective Date.* This section is effective from 8:30 p.m. (e.d.t.) on 5 September 1988 until 10:00 p.m. on 9 September 1988.

Dated: July 25, 1988.

**R.A. Appelbaum,**

*RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 88–17828 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[COTP Cleveland Regulation 88–05]**

## Safety Zone Regulations; Old River and Cuyahoga River, Cleveland, OH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is re-establishing ten safety zones in the Old River and the Cuyahoga River and their adjoining shore areas. They are identical to previously-established zones with the exception that cargo vessels may temporarily moor in the zones while conducting loading/unloading operations until those operations are complete. The zones are needed to protect life and property associated with moored, standing or anchored vessels from a safety hazard arising from the transit of vessels over 1,600 gross tons. Entry into these zones is generally prohibited unless authorized by the Coast Guard Captain of the Port, Cleveland, OH. However, vessels may transit, but not moor, stand or anchor in, these zones as necessary to comply with the Inland Navigation Rules or otherwise facilitiate safe navigation. And, cargo vessels conducting loading/unloading operations may temporarily moor in the zones until operations are complete.

**DATES:** This regulation become effective on August 1, 1988. It terminates on December 1, 1988 unless sooner terminated by the Captain of the Port, Cleveland. Comments on this regulation must be received on or before December 1, 1988.

**ADDRESS:** Comments should be mailed to Commanding Officer, Marine Safety Office, 1055 East Ninth Street, Cleveland, OH 44114. The comments will be available for inspection and copying at the same location. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** CDR Patrick A. Turlo, Captain of the Port, (216) 522–4406.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the vessels involved or further injury to the people involved.

Although this regulation is published as an emergency final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and given reasons for their comments. Based upon comments received, the regulation may be changed.

*Drafting Information:* The drafters of this regulation are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

*Discussion of Regulation:* The circumstance requiring this regulation results from large vessels (lakers) transiting the Cuyahoga River an average of four times a day through areas used increasingly by a large number of small, mainly recreational vessels. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987, one such collision resulted in severe damage to two recreational boats, one of which had persons on board.

Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Ontario Stone, Shooters, Nautica Stage, Columbus Road Bridge, Alpha Precast Products (United Ready Mix), Upriver Marina and Shippers C&D. Preventing mooring, standing or anchoring of vessels in these areas will decrease danger to lives and property.

Seven safety zones were established on September 3, 1987. Those zones were located at specific bends in the Cuyahoga River at which a history of mishaps had developed, and were successful in preventing further mishaps at those designated areas. During the period in which the emergency rules were in effect, the Captain of the Port continued to study the river traffic situation, and determined that three other areas presented a severe hazard to life and property should small craft be allowed to moor there. These areas were incorporated into a proposed regulation which would make all ten areas permanent safety zones, which was published in the **Federal Register** on December 3, 1987.

The comments concerning these proposed regulations resulted in the Captain of the Port holding a public hearing on March 7, 1988 at which several witnesses expressed the desire to form a working group which would study the river situation, and present a mutually agreeable solution to the Captain of the Port within ninety days. The Captain of the Port agreed to this, and significant progress was made. The ninety day deadline having expired, the working group has requested an additional extension of the comment period. The Captain of the Port has agreed to this, and has extended the comment period to December 1, 1988.

These emergency regulations are being effected in order to continue to safeguard life and property while that group continues its work.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water),

Security measures, Vessels, Waterways.

*Regulation:* In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T0901 is added to read as follows:

**§ 165.T0901 Old River and Cuyahoga River, Cleveland, Ohio.**

(a) *Location.* The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) locations, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29'53.5"N, 81 degrees 42'33.5"W, which is the knuckle on the north side of Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver and Fifty (50) feet upriver from 41 degrees 29'48.4"N, 81 degrees 42'44"W, which is the knuckle adjacent to the Ontario Stone warehouse on the south side of Old River.

(3) From 41 degrees 29'51.1"N, 81 degrees 42'32.0"W, which is the corner of Nicky's Pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29'55.1"N, 81 degrees 42'27.6"W, which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9"N, 81 degrees 42'10.7"W, which is the knuckle toward the downriver corner of the Nautical stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5"N, 81 degrees 42'9.7"W, which is the knuckle toward the upriver corner of the Nautica stage.

(6) The fender on the west bank of the river at 41 degrees 29'45.2"N, 81 degrees 42'10"W, which is the knuckle at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8"N, 81 degrees 42'02.3"W), to the chain link fence at the upriver end of Commodore's Club Marina.

(8) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'24.5"N, 81 degrees 41'57.2"W, which is the knuckle at the Upriver Marina fuel pump.

(9) Seventy-five (75) feet downriver and seventy-five (75) feet upriver from 41 degrees 29'33.7"N, 81 degrees 41'57.5"W, which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Fifteen (15) feet downriver to fifteen (15) feet upriver from 41 degrees 29'41"N, 81 degrees 41'38.6"W, which is the end of the chain link fence between Jim's Steak House and Shipper's C&D.

(b) *Regulations.*—(1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in §165.23 of this part.

(2) *Exception.* Vessels may *transit,* but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation. Cargo vessels of 1,600 gross tons (GT) or greater conducting loading/unloading operations may temporarily moor in the zones until operations are complete.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland. Waivers received under the previous emergency rule will remain in effect until December 1, 1988. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1,600 GT or greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1,600 GT or greater.

(c) *Effective date:* This regulation becomes effective on August 1, 1988. It terminates on December 1, 1988 unless sooner terminated by the Captain of the Port.

Dated: July 22, 1988.

**Patrick A. Turlo,**

*Captain of the Port, Cleveland, OH.*

[FR Doc. 88–17624 Filed 8–4–88; 8:45 am]

BILLING CODE 4910-14-M

## POSTAL SERVICE

### 39 CFR Part 232

### Authority of Postal Inspectors

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to correct an omission in postal regulations by including in the regulations governing conduct on postal premises (39 CFR Part 232) a statement of the authority of Postal Inspectors to enforce those regulations.

**EFFECTIVE DATE:** August 5, 1988.

**FOR FURTHER INFORMATION CONTACT:** H.J. Bauman, (202) 268–4415.

**SUPPLEMENTARY INFORMATION:** Postal Inspectors derive enforcement authority from 39 U.S.C. 404(a)(7), 18 U.S.C. 3061, and 39 CFR 233.1. These broad grants of authority include the power to enforce all Postal Service rules and regulations. The purpose of this final rule is to include a specific statement of that authority in the postal regulations governing conduct on postal premises. Therefore, to carry out the purpose stated above, 39 CFR 232.1(q) is amended by adding a new subsection specifically permitting Postal Inspectors to enforce postal building regulations. Accordingly, 39 CFR Part 232 is amended as follows:

**List of Subjects in 39 CFR Part 232**

Law enforcement, Postal Service.

**PART 232—[AMENDED]**

1. The authority citation for Part 232 continues to read as follows:

**Authority:** 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 609, Treasury, Postal Service and General Government Appropriations Act, 1988, Pub. L. 100–202; 18 U.S.C. 3061.

2. In § 232.1, paragraph (q)(3) is added to read as follows:

**§ 232.1 Conduct on Postal property.**

* * * * *

(q) * * *

(3) Postal Inspectors may likewise enforce regulations in this section.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88–17632 Filed 8–4–88; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL–3425–6]

### North Carolina: Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** North Carolina has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Carolina's application and has made a decision, subject to public review and comment, that North Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's application for program revision is available for public review and comment.

**DATES:** Final authorization for North Carolina shall be effective October 4, 1988, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Carolina's program revision application must be received by the close of business September 6, 1988.

**ADDRESSES:** Copies of North Carolina's program revision application are available during 9:00 a.m.–5:00 p.m. at the following addresses for inspection and copying: North Carolina Department of Human Resources, P.O. Box 2091, Raleigh, NC 27602; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA, Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone: (404) 347–4216 Contact: Gail Alston.

**FOR FURTHER INFORMATION CONTACT:** Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, 345 Courtland Street, NE.; Atlanta, Georgia 30365; Phone No: 404/347–3016.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

States with Final Authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

**B. North Carolina**

North Carolina initially received final authorization on December 31, 1984. North Carolina received authorization for a revision to its program on March 25, 1986, for the Redefinition of Solid Waste Provision promulgated January 4, 1985. On January 13, 1988, North Carolina submitted a program revision application for additional program approval. Today North Carolina is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed North Carolina's application, and has made an immediate final decision that North Carolina's hazardous waste program revision satisifies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until September 6, 1988. Copies of North Carolina's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of North Carolina's program revisions shall become effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

North Carolina is today seeking authority to administer the following Federal requirements promulgated between July 1, 1985–June 30, 1986.

| | | Federal promulgated date |
|---|---|---|
| • Closure, Post Closure, and Financial Responsibility Requirements. | 51 FR 16422..... | May 2, 1986. |
| • Listing of Spent Pickle Liquor. | 51 FR 19320..... | May 28, 1986. |

North Carolina is not authorized by the Federal government to operate the RCRA program on Indian lands and this authority will remain with EPA.

### C. Decision

I conclude that North Carolina's application for program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised. North Carolina now has responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(2), 6926, 6974(b).

Date: July 7, 1988.

**Joe R. Franzmathes,**

*Acting Regional Administrator.*

[FR Doc. 88-17705 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 271

**[FRL-3425-7]**

## South Carolina; Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** South Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed South Carolina's application and has made a decision, subject to public review and comment, that South Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve South Carolina's hazardous waste program revisions. South Carolina's application for program revision is available for public review and comment.

**DATES:** Final authorization for South Carolina shall be effective October 4, 1988, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on South Carolina's program revision application must be received by the close of business September 6, 1988.

**ADDRESSES:** Copies of South Carolina's program revision application are available during 8:30 am to 4:30 pm, Monday through Friday, at the following addresses for inspection and copying: Hartsill Truesdale, Bureau of Solid and Hazardous Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201; US EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382–5926; US EPA, Region IV, Library, 345 Courtland St., NE, Atlanta, Georgia 30365, Phone: 404/347–3016, Gayle Alston, Librarian. Written comments should be sent to Otis Johnson, Jr. at the address below.

**FOR FURTHER INFORMATION CONTACT:** Otis Johnson, Jr., U.S. EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347–3016.

**SUPPLEMENTARY INFORMATION:**

### A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

### B. South Carolina

South Carolina initially received final authorization on November 22, 1985. South Carolina received authorization for revisions to its program for Radioactive Mixed Waste on September 13, 1987. On July 7, 1987, South Carolina submitted a program revision application for additional program approvals. Today, South Carolina is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed South Carolina's application, and has made an immediate final decision that South Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to South Carolina. The public may submit written comments on EPA's immediate final decision up until September 6, 1988. Copies of South Carolina's application for program revision are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

Approval of South Carolina's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by

the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

South Carolina is today seeking authority to administer the following Federal requirements promulgated between 1/23/83–7/14/86.

| | | Federal promulgation data |
|---|---|---|
| ● Biennial Report | 48 FR 3977 | 1/28/83 |
| ● Permit Rules—Settlement Agreement. | 48 FR 39622 | 9/1/83 |
| ● Interim Status Standards. | 48 FR 52718 | 11/22/83 |
| ● Chlorinated Aliphatic Hydrocarbon Listing. | 49 FR 5313 | 2/10/84 |
| ● National Uniform Manifest. | 49 FR 10490 | 3/20/84 |
| ● Permit Rules Settlement Agreement. | 49 FR 17716 | 4/24/84 |
| ● Listing Warfarin + Zinc Phosphide. | 49 FR 19922 | 5/10/84 |
| ● Lime Stabilized Pickle Liquor Sludge. | 49 FR 23284 | 6/5/84 |
| ● Exclusion of Household Waste. | 49 FR 44980 | 11/13/84 |
| ● Interim Status Standards Applicability. | 49 FR 46095 | 11/21/84 |
| ● Satellite Accumulation. | 49 FR 49571 | 12/20/84 |
| ● Interim Status Standards for Landfills. | 50 FR 16044 | 4/23/85 |
| ● Listing of Spent Pickle Liquor. | 51 FR 19320 | 5/28/86 |
| ● Hazardous Waste Tank Systems. | 51 FR 25422 | 7/14/86 |
| ● Redefinition of Solid Waste. | 50 FR 614 | 1/4/85 |

South Carolina is currently revising analogous regulations to address EPA's comments of February 12, 1988 for the following provisions:

| | | Federal promulgation date |
|---|---|---|
| ● Interim Status Standards—Applicability. | 49 FR 46095 | 11/21/84 |
| ● Closure Post Closure and Financial Responsibility Requirements. | 51 FR 16422 | 5/2/86 |

South Carolina will file a final application for these provisions in early October 1988. Upon receiving an application for these provisions EPA will evaluate the submission and publish a decision for these provisions in the **Federal Register.**

South Carolina is not authorized by the Federal Government to operate the RCRA program on Indian lands and this authority will remain with EPA.

### C. Decision

I conclude that South Carolina's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Carolina is granted final authorization to operate its hazardous waste program as revised. South Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 6054(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of South Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

**Greer C. Tidwell,**

*Regional Administrator.*

Dated: July 13, 1988.

[FR Doc. 88–17706 Filed 8–4–88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87–482; RM–5974]**

### Radio Broadcasting Services; Hartford, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 282A to Hartford, Vermont, as that community's first FM service, at the request of William A Wittik. The allotment can be made in compliance with the Commssion's minimum spacing requirements using the center city coordinates of 43–39–38 and 72–20–20. Concurrence of the Canadian government has been obtained. With this action this proceeding is terminated.

**DATES:** Effective September 12, 1988. The window period for filing applications will open on September 12, 1988, and close on October 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87–482, adopted June 29, 1988, and released July 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

### § 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments, is amended under Vermont by adding Hartford, Channel 282A.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17682 Filed 8–4–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-554; RM-5999]

## Radio Broadcasting Services; Titusville, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 251C2 for Channel 252A at Titusville, Florida and modifies the license for Station WSCF(FM) at the request of the licensee Frazer Broadcasting Corporation, to provide for a first wide coverage area station. Coordinates for Channel 251C2 at a restricted site 17.8 kilometers east of the city are 28-37-00 and 80-38-00. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-554, adopted June 23, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended for Florida by adding Channel 251C2 and removing Channel 252A at Titusville.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17675 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-456; RM-5917]

## Radio Broadcasting Services; Port Charlotte, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 261C2 for Channel 261A at Port Charlotte, Florida, and modifies the Class A license for Station WEEJ(FM) to specify the new channel, at the request of the licensee, Charlotte Broadcasting Company. The transmitter site for Channel 261C1 is 7.8 miles southeast of the city at coordinates 26-53-40 and 82-01-10. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-456, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Port Charlotte, Florida, Channel 261C1 is added and Channel 261A is deleted.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17678 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-507; RM-5997]

## Radio Broadcasting Services; Mountain Home, ID

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 256C1 for Channel 257A at Mountain Home, Idaho, and modifies the Class A license for Station KJCY(FM) to specify the new channel at the request of the licensee, Mountain Home Broadcasting. The coordinates for Channel 256C1 at the Class A site are 43-12-29 and 115-34-19. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Nancy Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-507, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Mountain Home, Idaho, Channel 256C1 is added and Channel 257A is deleted.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17677 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-606; RM-5923]

## Radio Broadcasting Services; Rexburg, ID

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 251C2 for Channel 252A at Rexburg, Idaho, and modifies the license for Station (KKQT(FM), to specify operation on the Class C1 channel at the request of the licensee, Tri County Radio Corporation. Coordinates for Channel 251C2 are 43-48-55 and 111-46-09. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Nancy Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-606, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Rexburg, Idaho, Channel 252A is deleted and Channel 251C2 is added.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17683 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 87-091; Notice 4]

RIN: 2127-AC42

## Odometer Disclosure Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Truth in Mileage Act of 1986 (Pub. L. 99-579). As required by that statute, this rule requires that the seller (or other transferor) of a motor vehicle must provide mileage disclosure on the title document or, if the title document does not include a space for mileage disclosure (during the phase-in period) or if the motor vehicle has not been previously titled, it requires that the seller or other transferor must make a written disclosure of mileage on a separate document. Also as required by the statute, this rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that, at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds a record retention requirement for lessors and auction companies. In addition, consistent with the statute, this rule amends the form and content of the odometer disclosure statement and sets forth the procedures that a State may follow in requesting technical assistance, extensions of time or approval of alternate State mileage disclosure requirements. Finally, this rule clarifies the definition of transferor and transferee in the current regulation and extends the current record retention requirement for dealers and distributors.

**DATES:** Sections 580.10, 580.11 and 580.12 shall be effective September 6, 1988. As provided by the statute, all other provisions are effective April 29, 1989.

Any petitions for reconsideration of this rule must be received by NHTSA not later than September 6, 1988.

**ADDRESS:** Any petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

### The Truth in Mileage Act of 1986

After hearing testimony that odometer fraud costs consumers hundreds of dollars per purchase, in excess of $2 billion annually; that a significant part of this fraud involves high mileage, recent vintage vehicles; and that odometer fraud occurs frequently under conditions where cars have been sold through mass sales techniques such as auctions, Congress determined that, for the protection of consumers, legislation was needed to strengthen the provisions of the current law with respect to disclosure of motor vehicle mileage when motor vehicles are transferred, and enacted the Truth in Mileage Act of 1986, Pub. L. 99-579. This Act amends Title IV of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1981-1991. The Truth in Mileage Act requires that any transfer of ownership and any application for retitling or licensing of any transferred motor vehicle be accompanied by the title of the vehicle. The title must include a space for the mileage of the vehicle and be printed by secure process, or if not printed, be set forth by a secure system, in order to decrease the possibility of counterfeiting or altering titles. New applications for titles must be accompanied by the transferor's (seller's) title, and if that title contains a space for the transferor to disclose the vehicle's mileage, that information must be included and the statement must be signed and dated by the transferor.

The new law also requires the lessor of vehicles with long-term leases to advise his lessee that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership, and the penalty for noncompliance. In addition, the new law requires that auction companies establish and maintain records for at least four years following the date a vehicle is sold at the auction. The records must include the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction took possession of the vehicle.

Finally, the new law directs this agency to provide technical assistance at the request of any State to conform its laws to this rule and to the Truth in Mileage Act, and authorizes the agency to provide extensions of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the new Federal

criteria. It also directs the agency to approve of alternate motor vehicle mileage disclosure requirements if they are consistent with the purposes of the new law.

**The Notice of Proposed Rulemaking**

In response to this statutory mandate, NHTSA published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27028 (1987). The NPRM proposed to make mileage disclosure a condition of title and require that titles be set forth by a secure process, amend the form and content of the odometer disclosure statement, add disclosure requirements for lessors and lessees, extend the current record retention requirement for dealers and distributors and add a record retention requirement for lessors and auction companies. In addition, we proposed procedures that a State may follow in requesting technical assistance, extensions of time or approval of an alternative State mileage disclosure requirement. Finally, we proposed to clarify some aspects of the current regulation by redefining transferor and transferee and adding a definition of mileage.

The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies involved in odometer enforcement. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed discussion of the provisions of the Truth in Mileage Act and explained the agency's rationale for proposing each of the requirements. This preamble follows a similar organizational format, to allow the reader to easily compare the two documents, with additional detail given to the disclosure requirements.

**Definitions**

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of a vehicle, we proposed to amend the definition of the term "transferor" to include the transferor's agent. Similarly, we proposed to expand the definition of transferee to include the transferee's agent. One commenter stated that the proposed definitions were simple and straightforward and the National Automobile Dealers Association (NADA) supported the objective of the modifications to the extent that they will assist in the successful prosecution of wrongdoers who have avoided convictions based on a technicality. However, NADA and other commenters did express some concern.

Anglo-American Auto Auction, Inc. (Anglo) feared that the definition of transferor may be misconstrued to require that *every* agent who participates in the transfer must complete an odometer statement and suggested that the definition be amended to include that "transferor" also "means any person, who as agent makes the disclosure of odometer information" required by the regulation. However, Anglo correctly noted that the definition of transferor and transferee, if properly construed, would *not* include salespersons or clerks who may play a role in the transfer process, but who, as a legal matter, do not actually transfer the ownership of the vehicle. Since no other commenters misconstrued the definition and since we have the opportunity to clarify the definition of transferor in this preamble, we will not adopt Anglo's proposal.

The National Auto Auction Association (NAAA) asserted that the expansion of the definitions goes beyond the intent of the Motor Vehicle Information and Cost Savings Act ("Cost Savings Act") and the Truth in Mileage Act, and exceeds NHTSA's rulemaking authority. NAAA noted that neither the Cost Savings Act nor the Truth in Mileage Act defines transferor and transferee; that transfer is defined in the Cost Savings Act; and that NHTSA was directed by the Cost Savings Act to promulgate rules concerning a written disclosure by the transferor to the transferee. NAAA argues that there is nothing in either statute which gives NHTSA the authority to define transferor and transferee. Furthermore, NAAA argues that an administrative agency cannot alter a duly enacted statute through the use of its own regulations and cannot distort plain and obvious statutory language.

As NAAA correctly notes, neither statute defines transferor and transferee. Furthermore, the legislative history of these statutes does not define these terms and Congress did not explicitly direct NHTSA to promulgate definitions of them. However, Congress directed NHTSA to prescribe rules requiring any transferor to give a written mileage disclosure to the transferee in connection with the transfer of ownership under section 408 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988. Implicit in this directive is the authority to define the terms. The District Court for the District of Columbia has held that where Congress has delegated certain interpretive powers, either explicitly or implicitly, the agency's interpretation should receive deference. Where neither the statute nor legislation history explicitly define a statutory term, an agency's interpretation must be accepted if it is "based on a permissible construction of the statute, * * *" *Pa. Public Utility Com'n* v. *United States*, 749 F.2d 841, 849 (D.C. Cir. 1984), citing *Chevron, U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843 (1983). The definitions, as proposed, are consistent with the definition of "transfer" which is "to change ownership by purchase, gift, or any other means." 15 U.S.C. 1982(2). Furthermore, rather than going beyond the legislative intent or distorting the statutory language, these definitions help to further the expressed Congressional intent of "establishing safeguards for the protection of consumers with respect to the sale of vehicles having altered odometers", 15 U.S.C. 1981. It closes loopholes which have limited the Government's ability to prosecute certain violations of the odometer laws because of an ambiguity in the definition. (*See, U.S.* v. *Powell*, 806 F.2d 1421 (9th Cir. 1986)). Therefore, these definitions do not exceed NHTSA's statutory authority. Finally, in accordance with the Administrative Procedures Act, these definitions are promulgated pursuant to notice and comment. *See also*, 37 FR 25727 (1972); 38 FR 2978 (1973).

NAAA also objected to the proposed definitions because "this exposes a variety of persons to liability * * * who are not owners of the motor vehicles being transferred. In addition to including employees and independent contractors working for the transferor, this expanded definition would include any person using a power of attorney from the transferor, and frequently, that person not only has no knowledge regarding the accuracy of the odometer reading, but has no means of conducting an investigation to ascertain the accuracy of the odometer reading." NAAA asked that the definitions be limited to including employees working for the owner or authorized to transfer ownership of the motor vehicle. Further concern about the definition of transferor was expressed by a coalition of commenters, "the coalition", consisting of NADA, NAAA, the American Association of Motor Vehicle Administrators (AAMVA), the Automotive Trade Association Executives (ATAE), the American Car Rental Association (ACRA) and the National Independent Automobile Dealers Association (NIADA). The

coalition asserted that those who accurately complete a transferor's mileage disclosure based on the transferor's secure power of attorney (a power of attorney that is set forth by a secure printing process or other secure process) should not be considered agents of the transferor and asked that these individuals be specifically excluded from the definition of transferor. However, the coalition did not include any rationale in support of its position. Similarly, the Texas Automobile Dealers Association proposed, without additional comment, that anyone who completes a disclosure statement on behalf of a transferor based upon a power of attorney should be excluded from the definition of transferor. We will not incorporate these suggestions into the final rule. Contrary to the assertion of NAAA, the expansion of the definitions does not expose more people to liability, but merely closes a loophole where defendants have escaped liability due to ambiguity in the current regulation. While the case law has limited the Government's ability to prosecute a company employee who falsely certifies odometer mileage on the ground that the employee is not a transferor, (*see, U.S.* v. *Powell*, 808 F.2d 1421 (9th Cir. 1986)), we believe that where appropriate under general legal principles of agency, an employee or other agent of a principal should be liable for his actions and that a principal should be liable for the actions of its agents. With regard to whether a person has any "knowledge" concerning the accuracy of the reading, the Motor Vehicle Information and Cost Savings Act itself recognizes that in order to be found liable under the Act, a person must have an intent to defraud for civil liability, or knowingly and willfully commit any act in violation of the Act to be convicted criminally. Through these definitions, we are stressing the importance of mileage. It is incumbent upon anyone acting as an agent, even those with a power of attorney, to obtain mileage information from the appropriate source. The definitions of transferor and transferee are adopted as proposed.

We proposed a definition of mileage for two reasons. First, the definition makes clear that there is a difference between mileage and odometer reading. Second, the proposed definition reflects the agency's position that a person may lawfully replace odometers which register kilometers with those that register miles traveled. No comments were received on this proposal and it is adopted in this final rule.

Definitions of lessee and lessor, consistent with the TIMA's definition of leased motor vehicle, were proposed to clarify all references to these persons. The National Association of Fleet Administrators (NAFA) and PHH Group, Inc. (PHH) requested that the definition of lessee be expanded to include the agent for the lessee. PHH noted that expanding the definition of lessee would allow for flexibility since a lessee could be an entity other than the operator of the vehicle. NAFA noted that an expanded definition of lessee would be more flexible and would allow the lessee's drivers to sign the disclosure statements in accordance with current business practices. In addition, NAFA commented that the expanded definition would parallel the definitions of transferor and transferee. The agency agrees with the commenters and has expanded the definition of lessee to include the agent of the lessee, which is consistent with the definitions of transferor and transferee. Also, for consistency, the agency has also expanded the definition of lessor to include the agent of the lessor.

In accordance with the Congressional intent to encourage new technologies which will provide increased security for titles, we proposed to broadly define the terms "secure printing process" and "other secure processes" as "any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye." 3M requested that the definition be amended to read, in lieu of visible to the naked eye, "easily detected under recommended viewing conditions." 3M stated that the definition, as proposed, could be interpreted to mean without the aid of a verification device and asserted that any verification process that precludes the use of a supporting device is too restrictive. We have not adopted 3M's suggestion. The intent of the Truth in Mileage Act is to provide a paper trail for the protection of consumers. Therefore, any alteration should be visible to the purchaser of a vehicle who would not routinely have the aid of a verification device. Furthermore, any alteration should be visible to title clerks reviewing titles prior to the issuance of new titles, and time constraints may prohibit clerks from examining every title with the aid of a verification device. We adopt the definition as proposed. However, we note that this definition does not preclude a State from utilizing any process which would include a verification device for additional document security.

**Security for Motor Vehicle Titles**

According to the new law, beginning on April 29, 1989, each State motor vehicle title must be set forth by a secure printing process or other secure process. To implement this statutory requirement, we proposed the addition of a new section 580.4 concerning the security of motor vehicle titles. To assist the States in their efforts to issue motor vehicle titles which comply with the requirements of the Truth in Mileage Act and this rule. Appendix A, consisting of a list of technologies that we proposed to deem to be secure processes, was included. Comments were requested on the appropriateness of the methods listed in Appendix A and on whether our final rule should contain a procedure by which a State could seek our concurrence in an alternative method of document security beyond those listed in the final rule.

The comments concerning the title and Appendix A were divergent. At one extreme, 3M suggested that NHTSA require the title be set forth by one of the secure processes listed in Appendix A and that Appendix A be amended to include all available security processes which would be ranked as to the level of security they provide. At the other extreme, AAMVA and several of its member jurisdictions commented that Appendix A is superfluous and unnecessarily limiting, and urged that it be deleted. They asserted that individual jurisdictions should remain free to utilize any processes, including new technologies, without having to secure approval from NHTSA. Other commenters suggested that security paper be added to Appendix A. One commenter urged the addition of a hologram. Another noted that intaglio printing with latent images is a combination of two features and explained that high resolution printing refers to how the original art was prepared.

To allow for maximum administrative discretion on the part of the States, we will not adopt 3M's suggestion to list and rank all secure processes. However, in lieu of deleting Appendix A, we have expanded and corrected it based on the comments received. Appendix A has been included to aid the States in the selection of a secure process and in no way limits the States or adds new requirements or restrictions beyond those listed in the rule itself. Furthermore, States are not required to seek our concurrence in an alternative method of document security beyond those listed in Appendix A. We defer to the States to establish specific

standards on secure processes and will not limit the administrative discretion of the States. However, if it becomes evident that the secure processes being used by the States fail to deter and detect counterfeiting and/or unauthorized reproductions and do not allow alterations to be visible to the naked eye, further rulemaking may have to be undertaken on the security of titles.

We also proposed as a requirement under this new section 580.4, that if a State allows subsequent reassignments of the vehicle to be recorded on a document other than the title itself, the document used to reassign title must be set forth by the same secure process. AAMVA and several of its member jurisdictions urged the agency to amend this requirement to read, rather than by the "same" secure process, by "*a* secure process." Arkansas asserted that it would be a financial burden for the State to use a reassignment document that incorporates the same secure process as its title. Other commenters were opposed to the proposal in its entirety. Texas, Vermont and the Arkansas Independent Auto Dealers Association cited cost burdens and indicated that the requirement was beyond the terms of the statute. Wisconsin, on the other hand, asked that NHTSA eliminate separate reassignment documents, noting that NHTSA expressed concern about issuing odometer disclosure statements on a separate piece of paper. In the alternative, Wisconsin suggested that if reassignments on a separate document are allowed, NHTSA should require the reassignment documents to bear control numbers and that the number be included on the title. Wisconsin also requested that NHTSA require the States to record the control numbers of the reassignment documents they give to each dealer and that each dealer keep a record of the reassignment document issued for each vehicle.

NHTSA has reconsidered its proposed requirement in response to these comments. While separate reassignment documents are not mentioned in the Truth in Mileage Act, they are often an integral part of the transfer process. Since reassignment documents are a logical extension of the title, requiring secure reassignment documents is a logical extension of the statutory requirement. Allowing secure titles to be transferred by a sheet of bond paper is incongruous. Therefore, the final rule requires secure reassignment documents. However, NHTSA has concluded that it can satisfy its statutory obligations and avoid unnecessary financial burdens upon the States by adopting the proposal of AAMVA and several of its member jurisdictions. Accordingly, the final rule has been changed to permit reassignment documents to be set forth by "a secure process" in lieu of the requirement that they be set forth by the same secure process as the title. By requiring reassignment documents to be secure, we hope to achieve deterrence of odometer fraud without the elimination of their use. Furthermore, although adopting Wisconsin's suggestion that secure reassignment documents be controlled may lessen the incidence of odometer fraud, we have no explicit statutory authority to require that any title documents be controlled in the manner suggested by Wisconsin. We will not limit the administrative discretion of the States in this area even though we recognize that it is common practice to control secure documents. Nothing in the Act or this rule should be read as precluding a State from using control techniques on these documents.

**Odometer Disclosure Requirements**

*A. Titles Issued by States*

According to the new law, in addition to being secure, each State motor vehicle title must "indicate the mileage disclosure required to be made under subsection (a) * * *" 15 U.S.C. 1988(d)(2)(A)(ii). Subsection (a) refers to the disclosure requirements promulgated by NHTSA. To implement this provision, paralleling the language of the statute, we proposed, "Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred * * *"

Recognizing the importance of knowing whether the odometer reading on the title represents the actual distance a vehicle has traveled, Wisconsin proposed several qualifying notations or "brands" to include with the odometer reading. These brands would accompany the odometer reading on the face of the newly issued title. These proposed brands include: (1) ACTUAL MILEAGE; (2) MILEAGE EXCEEDS THE MECHANICAL LIMITS; (3) TRUE MILEAGE UNKNOWN; (4) EXEMPT FROM ODOMETER DISCLOSURE; and (5) ODOMETER TAMPERING VERIFIED. Wisconsin noted that AAMVA adopted a resolution (Resolution 19) at its 1987 International Conference in Washington, DC, which states that "all jurisdictions include, in conjunction with the odometer reading which is to be recorded on the certificate of title, a notation that the recorded mileage is actual, not actual, or exceeds the mechanical limits."

Since the definition of mileage is "actual distance that a vehicle has traveled", the title must include a notation as to whether the odometer reading reflects the actual mileage, exceeds the mechanical limits or does not reflect the actual mileage. With regard to the brands proposed by Wisconsin, we do not adopt the brand "TRUE MILEAGE UNKNOWN". As we discussed in the preamble to the proposed rule, true mileage unknown does not take into account situations where although the odometer does not reflect the actual mileage, it is not unknown. 52 FR 27028 (1987). Therefore, the brand should read "NOT THE ACTUAL MILEAGE." With regard to the brand "EXEMPT FROM DISCLOSURE REQUIREMENTS", while NHTSA will not require this notation, States are not prohibited under this final rule from adopting it. Finally, with regard to the brand "ODOMETER TAMPERING VERIFIED", we feel that this brand may lead to confusion upon subsequent sale of a vehicle because this statement is not included as part of the disclosure statement; however, States may use this brand in addition to the brand "NOT THE ACTUAL MILEAGE".

*B. Disclosure on Title*

With regard to the disclosure of mileage, we proposed that "[at the time of transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign title." We invited comments on how titles could be made available to transferors where the vehicle is subject to a lien in order to meet the specific requirements of the law.

The majority of comments to the NPRM have centered around this provision. Several commenters endorsed this requirement. Wisconsin firmly declared that the vehicle documentation should accompany the vehicle itself, otherwise, the buyer's best efforts to protect himself are effectively limited to a quick visual inspection of the vehicle and the odometer. The National Association of Consumer Agency Administrators (NACAA) stated that having the title accompany the vehicle is the most efficient mechanism for achieving meaningful and accurate disclosure to consumers. The Massachusetts Registry of Motor Vehicles wholeheartedly supports the strict odometer disclosure and title transfer requirements of the proposed regulations. The National Odometer

Enforcement Association passed a resolution supporting the proposed rule.

Other commenters either asked that NHTSA define "transfer of ownership" or proposed definitions of the term. The Virginia Independent Automobile Dealers Association opined that transfer of ownership is a process that begins when funds are received by the dealer and ends when the customer receives either the new title or the document necessary to secure new title. NAFA asked NHTSA to define transfer of ownership as the point in time when title changes hands. AAMVA expressed concern that this requirement would be interpreted to mean that the title be present at the time the vehicle itself is transferred. AAMVA noted that over forty jurisdictions allow the lienholder to hold title and that this requirement would result in extensive regulatory and/or legislative change. AAMVA noted that this would be inconsistent with Congress' intent that the Truth in Mileage Act would have minimal impacts on the States. Other commenters consistently stressed the burden upon transferors when the vehicles are under lien in States where the lienholder holds the title. The transferor could not obtain the title unless the lien is paid, and he may not be able to pay it off until he sells the vehicle. NIADA asserted that "* * * it is impossible in many situations for a dealer to conclude a transaction with the title present at the time of sale." Numerous car dealers exclaimed that if dealers had to have titles when selling vehicles, burdensome and costly changes in their recordkeeping practices would result. The Credit Union National Association noted that its members expressed concern that if financial institutions were unable to retain titles, they may feel the necessity to curtail car lending programs. Senator J. James Exon, Representative Thomas J. Tauke and Representative John Bryant asserted that "Congress never intended to require odometer disclosures, which are currently made at the time of a sales transaction, to be placed upon, and made only through, the title document itself. Such a requirement would needlessly increase regulatory burdens and disrupt the purchase and sale of used automobiles, not only by dealers but also by individual consumers. Rather, Congress intended that the mileage recorded on the new title be consistent with the mileage disclosed when the buyer and seller signed the sales contract." Anglo summed up its concerns by stating that a requirement that the title be present at the time of initial sale is inappropriate because of the unnecessary disruption of the efficient operation of the used car vehicle market it would cause for individuals and automobile dealers alike.

To alleviate the burden that might result if NHTSA were to require the title to be present at the time of sale, the coalition urged the Agency to accept an "owner copy" title procedure. Under the owner copy title procedure, title sets consisting of a title and a designated owner copy would be set forth by a secure printing process or other secure process and each would contain an appropriate Federal odometer disclosure statement or statements. In cases where the initial transferor does not have possession of the title at the time of sale or trade-in, the coalition proposed that NHTSA shall permit the transferor to disclose the mileage on the designated owner copy provided that the disclosure statement is fully completed, dated, and signed by the transferor. The owner copy and all subsequent reassignments would be presented with any application for new title. In addition, the coalition suggested that if the transferor does not have either the owner copy or the title, NHTSA should permit the use of a special power of attorney, which would also be submitted at the time of application for new title.

Some commenters, aware of the suggestion of a two part title system, expressed concern over the expenses which might result from its implementation. Delaware stated that there would be costly form and programming changes.

NHTSA has carefully evaluated these comments in light of the Truth in Mileage Act, Congressional intent, policy considerations and investigative experience. To alleviate unnecessary cost burdens on the States and the automobile industry while continuing to provide a paper trail in accordance with the law and Congressional intent, we have amended the language in the proposed regulation concerning the time of the disclosure. The words, "In connection with the transfer of ownership * * *" will replace "At the time of transfer of ownership * * *", as the introductory phrase of § 580.5(c).

In issuing interpretations of the Motor Vehicle Information and Cost Savings Act, NHTSA has stated that "transfer of ownership" is determined by State law. Therefore, we have not, now, attempted to define the phrase.

Furthermore, Congress noted that "[o]ne of the major barriers to decreasing odometer fraud is the lack of evidence or 'paper trail' showing incidence of rollbacks," and enacted section 2 of the Truth in Mileage Act. Section 2 prohibits the licensing of any vehicle for use in any State unless the title which is issued by the State to the transferee following a transfer "contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date the disclosure." It also states that a motor vehicle may not be licensed for use in any State unless, if the transferor's title contains a space for a mileage disclosure, the disclosure is signed and dated by the transferor. Section 408(d) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d). Under these provisions, a disclosure must be made on the title. In the Committee Report accompanying the new law, Congress specifically noted that the amendments require that "any transfer of ownership or licensing of any vehicle be accompanied by the title of such vehicle." H.R. Rep. 833. 99th Cong., 2nd Sess., 18 (1986). We recognize that the remarks of Senator Exon and Representatives Bryant and Tauke differ from the Congressional intent set forth in this Committee Report. However, these comments were set forth in their letter to the Agency after the enactment of the statute, and although we have given their comments careful consideration, we note that postenactment statements of legislators have no probative weight in interpreting statutes and represent only the personal views of the legislators. *Bread Political Action Committee* v. *Federal Election Commission*, 455 U.S. 577 (1982); *Petry* v *Block*, 697 F.2d 1169 (DC Cir. 1983). Additionally, if we were to adopt the comments of these legislators, there would continue to be a duplication of disclosure since there would be a separate odometer disclosure statement and the disclosure of odometer information on State titles because the majority of the States also require this information. In the regulatory evaluation prepared to analyze the details of this rule, NHTSA estimates that annual savings of $2.6 million would result from the elimination of the separate odometer disclosure statement for used vehicle transfers.

We recognize that, under State laws, "transfer of ownership" may not occur at one point in time, but is a process. Under this final rule, at some point during that process, the title, containing the disclosure statement completed and signed by the transferor, must be given to, and signed by, the transferee. The transferee may obtain the title in person or the title may be mailed to the transferee. We caution dealers and

distributors who are required by this part to retain a copy of each odometer statement which they issue that, if they mail the title, they must ensure that they obtain a copy of the statement signed by the transferee in accordance with the record retention requirements of this part.

Under this requirement, the integrity of the paper trail has been maintained since the disclosure will be on the title and consumers will be able to see the disclosures and examine the titles for alterations, erasures or other marks. Furthermore, consumers will learn the names of previous owners that appear on the title.

We have not adopted the suggestion of the coalition to permit the use of a special power of attorney. A secure power of attorney would not allow transferees to see the actual title document, including the disclosures, and could easily be discarded. A forged substitute could then be submitted to the titling office. This final rule is flexible in permitting the disclosure in connection with the transfer of ownership and will not result in the burdens anticipated by the coalition.

NAAA argued that nothing in the Truth in Mileage Act requires that the title be the sole and exclusive means of making the full disclosure and that nothing prohibits the use of an odometer disclosure statement on a form separate from the title or reassignment forms. NHTSA agrees that the Act does not require the title to be the only means of making a disclosure. A seller may issue a separate odometer disclosure statement *in addition to* the one on the title. As we noted in the preamble to the proposed rule, dealers and distributors who elect to issue a disclosure statement in addition to the one on the title, must retain a copy of these separate disclosure statements, and a copy of the front and reverse sides of the title. Recognizing a doubled paperwork burden and resulting cost increases, NHTSA will not require a disclosure statement apart from the disclosure on the title.

*C. Information Required To Be Disclosed*

With regard to the information to be disclosed, the proposed § 580.5 continued to require certain information that the agency had already required and included some additional provisions. The proposal continued to require the transferor to sign the disclosure and to certify whether to the best of his knowledge the odometer reading reflects the vehicle's actual mileage. No comments were received on this proposal and it is adopted in the final rule.

We also proposed to continue to require the transferor to disclose whether the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, while proposing to delete any reference to specific designed mechanical odometer limitations. NADA urged NHTSA to eliminate any requirement for the certification that the odometer reading reflects the amount of mileage in excess of the designed mechanical limit, stating that it is not required by the Act and it is redundant with the requirement that the transferor certify that the odometer reading does not reflect the actual distance a vehicle has traveled. The Minnesota Automobile Dealers Association (MADA) noted that in situations where the odometer has a mechanical limit of 99,999 and the vehicle has traveled in excess of 200,000 miles, there would be no way to indicate this since the language of the proposed regulation requires the transferor to certify if he knows "the odometer reading reflects the amount of mileage in excess of the mechanical limit." This rule does not adopt these suggestions. Knowing whether a vehicle has traveled over 100,000 miles is important in determining its condition and value. Additionally, to allow someone with a vehicle that has traveled over 100,000 miles to merely certify that the odometer reading does not reflect the actual mileage permits unscrupulous transferors to make oral misrepresentations as to the vehicle's actual mileage. Furthermore, it is unusual for passenger vehicles to travel in excess of 200,000 miles. While trucks and buses register such high mileage, transferors of vehicles having a Gross Vehicle Weight Rating over 16,000 pounds are exempt from the the disclosure requirements. If transferors of vehicles that have travelled in excess of 200,000 miles wish to issue a disclosure statement, they may make a line through the words "the amount of", or alternatively, add an additional statement that would indicate how much over the mechanical limit the reading is. The requirement that the transferor disclose whether the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer is adopted as proposed.

As an alternative to certifying that the mileage is actual or exceeds the mechanical limits, we proposed that if the odometer reading does not reflect the actual mileage and should not be relied upon, the transferor must continue to disclose this fact. We also proposed that this disclosure include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage. We received two comments about the warning notice. Delaware asserted that a warning notice would be burdensome because it would increase the required space on the reverse side of the title. From another perspective, NACAA applauded the addition of the warning notice which provides additional consumer protection. NHTSA has adopted this requirement as proposed in the NPRM. The addition of a warning notice which may be as simple as "WARNING ODOMETER DISCREPANCY" will not increase the size of the title, but may appear in space which is normally available at the end of the certification statement. For an example of the spacing of the warning notice, see Appendices B and C.

In addition, we proposed to continue to require the transferee's signature. Although NHTSA has required the transferee's signature on the disclosure statement since 1977, we received many comments on this proposal because the disclosure will be, in many instances, on the title. NACAA, NADA and Comerica (an automobile leasing company) support this proposal. Other commenters had concerns. Arkansas asserted that requiring the signature of the transferee is neither expressed nor implied in the Truth in Mileage Act and is an "absolute misinterpretation of section 2." Alabama stated that the purchaser is unavailable at the time the transaction is consummated and opposed this requirement.

Although the Truth in Mileage Act does not require the transferee's signature, it also was not intended to lessen the tools available to law enforcement officers in the enforcement of odometer laws. Again, we note that this is *not* a new proposal. Rather, it has been a requirement since 1977, authorized by the Motor Vehicle Information and Cost Savings Act. As noted in the preamble to the NPRM, NHTSA considers the transferee's signature to be essential because it is an acknowledgement that the purchaser is aware of the mileage or any problems with the odometer reading. The signature prevents the purchaser from later alleging that he was not informed of the mileage or that the mileage on the vehicle's odometer was different from that appearing on the odometer disclosure statement. Furthermore, the buyer's signature is important to investigative and prosecutorial efforts. Since we have expanded the period of time in which the mileage disclosure

may be made, Alabama's concern has been addressed because, at some point in connection with the transfer of ownership, the purchaser will be available to sign the title.

Judging from the comments, some aspects of the proposed requirement for the transferee's signature were misunderstood. The Delaware Department of Motor Vehicles (Delaware) stated that the transferee should not be required to sign the disclosure statement if required to sign the document elsewhere. NHTSA agrees. If the transferee's signature is required to reassign title, and if the disclosure appears in the same section of the title as the reassignment, the title does not need to include another space for the transferee's signature. As NHTSA has said in the past, information concerning the disclosure need not be repeated if found elsewhere on the document. *See*, 38 FR 2978 (1973). NAFA suggested that NHTSA consider adding a provision noting that an increase in mileage may have taken place prior to the signature of the transferee. NAFA was concerned that a "transferee may balk at attesting to" a disclosure statement if the odometer shows a higher reading. This final rule does not adopt NAFA's suggestion since the transferee does not attest to the disclosure statement, but rather acknowledges receipt of it.

We proposed to continue to require the transferor's current address, the vehicle's model and a reference to the Federal odometer law, including a statement of liability and penalties. Although the address, model and reference are required under the current regulation, they were the subject of some comments.

Noting that the disclosure would be on the title, Delaware feared that requiring the transferor's current address would increase the size of the title. As indicated by Appendix B, if the transferor's address is on the title, and normally it is on the face of the title, it does not have to be included again. Therefore, the titles should not increase in size and we have adopted the requirement for the transferor's current address as proposed.

With regard to the proposal to require a vehicle's model, Delaware asserted that many States do not include the model. Citing cost concerns, Delaware asked that a requirement for model apply to 1989 models and newer. The Oregon Department of Transportation, Motor Vehicle Division (Oregon) noted that its legislature recently removed a model requirement from Oregon law relating to odometers. Oregon asserted that this information is obtainable through the Vehicle Identification Number (VIN) and should not be required to be listed separately.

Vehicle identifying information, including the model, is currently required so that the vehicle would be readily identifiable if the disclosure statement became separated from the other transfer documents. *See*, 38 FR 2979. This rationale is still valid since separate disclosure statements will continue to be issued by transferors of new vehicles which have not been previously titled and by transferors of vehicles titled on nonconforming titles during the phase-in period. Furthermore, the model helps individuals to verify the correctness of the VIN and two-thirds of the States already include the model on their titles. Therefore, we have adopted the proposal to require the model, which is consistent with the current regulation, into this final rule.

As for the reference to the Federal odometer law, we proposed that the disclosure statement "refer to the Motor Vehicle Information and Cost Savings Act and State law, where applicable, and shall state that incorrect information may result in civil liability and civil or criminal penalties." Delaware claimed that the wording is too lengthy and will never be read. NADA proposed to change this requirement to read that "each document containing one or more odometer disclosures shall contain a statement in capital letters as follows: AN INACCURATE OR UNTRUTHFUL STATEMENT MAY MAKE YOU LIABLE FOR DAMAGES AND FOR CIVIL AND CRIMINAL PENALTIES UNDER APPLICABLE LAW." NADA's stated purpose in this proposal is to simplify the statement and make it more forceful. Requiring that it be stated only once on a multi-disclosure document will afford States the flexibility to combine titles with multi-assignment documents. NADA's proposal was supported by the coalition.

While we have not adopted NADA's proposal in form, we agree to simplify and strengthen the reference to the law and penalties. Therefore, the proposal is amended to require a reference to the "Federal odometer law" in lieu of the Motor Vehicle Information and Cost Savings Act. This is consistent with the agency's opinion that the actual law need not always be cited. 45 FR 784 (1980). For clarification, we have added a requirement that the reference indicate that "failure to complete", in addition to providing false information, will result in liability. To make the statement more forceful, references to "civil liability and civil or criminal penalties" will be amended to read "fines and/or imprisonment." To allow for flexibility for States and transferors, reference to State law is discretionary. Finally, if the required information appears once on the document, it does not have to be repeated.

Section 580.5, as proposed, differed from the current § 580.4 in the following ways. We proposed in § 580.5(f) that the transferee, in addition to signing the odometer disclosure statement, print his name. Recognizing that the printed name is helpful in the course of an investigation to identify the person signing the statement where signatures are difficult to read, NACAA supported the proposal. On the other hand, NADA asserted that the requirement for the transferee's printed name should be deleted as redundant with the proposed requirement for the transferee's name and current address, § 580.5(c). NHTSA agrees that in some instances the provisions may result in the same information. However, the transferee whose name and address are required under § 580.5(c) may be a dealer, corporation or other business entity. The signature of these transferees is the signature of the employee or agent acting in their behalf. The employee or agent would print his name. Therefore, the requirements of § 580.5(f) are not redundant and will be adopted as proposed.

In § 580.5(c) we also proposed that the odometer reading cannot include tenths of miles. NACAA and NADA supported this proposal and no comments were received in opposition to it. Therefore, we have adopted this proposal in the final rule.

In addition, we proposed to shorten the odometer disclosure form by eliminating the second set of certifications. No comments were received on this proposal and it is adopted in this final rule.

While no one commented on the elimination of the second set of certifications, we received several proposals for additional certifications. An individual suggested that in order to provide as much information as possible in a formal manner to the transferee, the disclosure statement should include the following: "Optional: The correct mileage is ____." While there is no prohibition against a seller providing this information, NHTSA sees no investigative or consumer benefit to be gained in adding this requirement which would outweigh the burden of including another statement on the title, in light of space limitations. A buyer can, and certainly should, request such information. Yet, anyone who has deliberately violated the odometer laws

is likely to provide an untruthful statement. Therefore, NHTSA will not adopt this suggestion.

Another commenter suggested that a provision be added to require the transferor "to certify that the odometer was repaired or replaced, reset to zero, the mileage on the original odometer was ____, and that the mileage on the present odometer reflects the mileage on the vehicle in excess of that amount." The commenter asserted that this disclosure would allow sellers to explain the odometer discrepancy and create a paper trail as a backup to the notice posted on the left door frame. Without this statement, the commenter felt that unscrupulous sellers could repair or replace the odometer, then simply disclose that the odometer reading is not the actual mileage. Due to space limitations, we must reject this suggestion. Although a shorter disclosure might sacrifice clarity to a degree, NHTSA regards this as an acceptable price for gaining the benefit of combined title and disclosure. Note that there is no prohibition against the seller advising the purchaser of the reason for certifying that the odometer reading does not reflect the actual mileage.

While the proposed regulation sets forth the information which must be disclosed, it also includes, in Appendices B and C, sample forms which may be used. Appendix B is a sample disclosure form which a State may wish to include on its titles. Appendix C is a sample disclosure form which may be used if a vehicle has not been previously titled such as a new vehicle or a vehicle imported into the United States from a foreign country. 3M endorsed the inclusion of Appendices B and C and noted that they provide standard formats. 3M suggested that the placement of information relevant to security, § 580.5(c)(1)–(5), be located consistently in one position on the certificate of title and on other ownership documents. To allow the States the maximum administrative discretion as possible, we will not adopt 3M's suggestion, but have included samples forms in Appendices B and C to the final rule. These Appendices have been changed from the Appendices as proposed to conform to the requirements of the final rule. We wish to repeat that the purpose of these appendices is to serve as examples; they do not introduce new requirements or restrictions into the rule.

Recognizing that titles for vehicles issued prior to the enactment of a State law or regulation implementing the title requirements of the final rule may not contain all the information required by this rule, in § 580.5(g) we proposed that the written disclosure be executed as a separate form when the title does not conform to the final rule. NADA supported the use of a separate disclosure statement when "old", nonconforming titles are involved in the transfer. However, the Chairman of the Consumer Affairs and Protection Committee of the New York State Assembly feared that this section creates a loophole. Discussing the disclosure information on the title, he noted that "to be effective, this information should appear on the title itself, because this document *must* accompany each vehicle transfer, and is recorded by most state Departments of Motor Vehicles. This may mean instituting a phase-in period for all States to develop titles containing appropriate spaces." Rather than creating a loophole, § 580.5(g) recognizes the necessity of a phase-in period. As noted in the preamble to the NPRM, the Truth in Mileage Act does not say that motor vehicles can only be licensed if the transferee includes with the application the transferor's title which includes a disclosure. Rather, the law states that only "* * * if that title contains the space referred to in paragraph (2)(A)(iii) * * *" would the transferor sign and date a disclosure statement. Therefore, § 580.5(g) is adopted in this final rule as proposed.

*D. Power of Attorney*

Prior to the issuance of the NPRM, NIADA asked whether a power of attorney could be granted so that the transferor could sign on behalf of the transferee to avoid any problems in making a disclosure on the title where the vehicle is subject to an existing lien. Although the proposed rule did not include a provision concerning powers of attorney, in the preamble to the proposed rules, we recognized that powers of attorney are necessary in transfers involving an incompetent or deceased owner. However, we emphasized that powers of attorney that allow the same person to sign a disclosure statement as both the transferor and transferee result in only one party to the transfer being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail" and defeat the purpose of the Act.

AAMVA agreed with our position, noting that where the transferee holds the power of attorney of the transferor, the same party is signing the title as seller, to transfer ownership and to disclose mileage, and as the buyer. AAMVA stated that this situation is ripe for fraud if the person holding the power of attorney is intent on rolling back the vehicle's mileage. Several of AAMVA's member jurisdictions concurred in this position.

Wisconsin suggested that a new paragraph be added to § 580.5 providing that no person may sign a disclosure as both the transferor and transferee. Wisconsin also suggested that the additional paragraph provide that no transferor may give his power of attorney or otherwise appoint as the transferor's agent, any agent or employee of the transferee for the purpose of executing an odometer disclosure statement.

An automobile dealer in an area with a large military population declared that the new law would preclude a member of the military from giving a spouse a power of attorney to sell a vehicle and to verify the odometer reading.

Other commenters, concerned that the title had to be present at the time of sale, hoped that the use of a power of attorney would ease the burden that title present might have imposed. NIADA noted that if the power of attorney is submitted with the old title when applying for a new title, and a copy is required to be maintained by the dealer, any alteration would be immediately apparent and the paper trail would be maintained. The coalition, as noted above, suggested the use of a special power of attorney which (i) is set forth by a secure process; (ii) contains the appropriate Federal odometer disclosure statement and (iii) is fully completed, dated and signed by the transferor. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's power of attorney and mileage disclosure thereon. The title, together with the power of attorney and all subsequent title reassignments, shall be presented with any application for title.

To guard against a situation ripe for fraud, we have adopted a new paragraph 580.5(h) which provides that no person may sign a disclosure statement as both the transferor and transferee in the same transaction. It also provides that no transferor may give his power of attorney or otherwise appoint as the transferor's agent, any transferee of the same vehicle in the same transaction for the purpose of executing an odometer disclosure statement. Conversely, no transferee may give his power of attorney or otherwise appoint as the transferee's agent, any transferor of the same vehicle in the same transaction for the purpose

of executing an odometer disclosure statement.

We have not adopted the coalition's suggestion. The burden that a "title present" requirement might have presented has been alleviated since disclosure must now occur in connection with the transfer of ownership. In addition, the integrity of the paper trail with a secure power of attorney would not be maintained because one party to the transaction would not see the title and the power of attorney could be easily discarded and a new one forged. Furthermore, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents and maintain additional records.

**Exemptions**

We proposed a new § 580.6 which exempts certain transferors from issuing odometer disclosure statements. With one exception as noted below, this new section exempts the same transferors exempted by former § 580.5.

3M questioned why any exemptions are allowed, asserting that in 3M's opinion, the odometer reading of any vehicle, regardless of its age, weight, or method of sale, is a significant contributor to the vehicle's worth. In response to 3M's inquiry, NHTSA notes that the odometer reading is not used as a guide to the value of certain vehicles. For example, maintenance records have traditionally been relied upon as the principal guide to the condition of trucks and buses. Antique vehicles are primarily valued because of factors such as rarity and age rather mileage. 38 FR 2978 (1973).

Several Federal courts have reviewed NHTSA's authority to create exemptions and reached different conclusions concerning the validity of former § 580.5. *See, Witkowski v. Mack Trucks, Inc.*, 712 F.2d 1352 (11th Cir. 1983); *Barker v. Cawthon Motor Co.*, 629 F.2d 410 (5th Cir. 1980); *Mitchell v. White Motor Credit Corporation*, 627 F. Supp. 1241 (M.D. Tenn. 1986); *Davis v. Dils Motor Co.*, 586 F. Supp. 1380 (S.D.W. Va. 1983). Nevertheless, as noted in the preamble to the NPRM, while some courts have determined that NHTSA's authority to create exemptions may be limited, we believe that NHTSA has the authority to create exemptions for transferors of vehicles for which the odometer reading is not relied upon as an indicator of vehicle mileage or condition. 47 FR 51885 (1982). Therefore, we have adopted § 580.6 as proposed, with one exception.

We proposed to exempt a transferor of a vehicle that is twenty-five years old or older from the requirements of issuing a disclosure statement. We received numerous requests to lower the vehicle age. AAMVA, several of AAMVA's member jurisdictions and the coalition suggested that the exemption be given to a transferor of a vehicle that is ten years old or older. This suggestion is based on studies done in Wisconsin and Iowa which indicate that the incidence of odometer tampering on vehicles over ten model years old is disproportionately small as compared to the vehicle population represented by that age group. The commenters also noted that the selling price of vehicles over ten years old is not typically based on the odometer reading. AAMVA and several of its members felt that extending the exemption to the transferor of a vehicle ten years old and older would not frustrate the Congressional intent behind the odometer laws since the odometer reading on a vehicle of this age is not used to determine the condition or value of the vehicle. NACAA recommended that the absolute maximum age of vehicle for which the transferor should be required to issue an odometer statement is fifteen years. Based on a study the California Department of Motor Vehicles conducted for NHTSA in 1981, the Director of the Department proposed that the regulation be changed to exempt transferors of vehicles that are six years old and older. Oregon noted that the State legislature, after expressing strong concern about the cost effectiveness of requiring odometer disclosures on vehicles older than eight years, amended Oregon law to require odometer disclosure information only for vehicles eight years old and newer.

NHTSA has reconsidered its proposed requirement in response to these comments. Purchasers of vehicles six and eight years old still rely on the odometer reading to determine the condition and value of the vehicle. While the California study may indicate that odometer tampering is not as prevalent in vehicles six years old and older, the study concerned leased vehicles and does not represent the total used car population. For vehicles over 10 years old, the value is mostly determined by the overall condition and appearance, not primarily mileage. Accordingly, the final rule has been changed to exempt a transferor of a vehicle that is ten years old and older.

Finally, we have not adopted the proposal of American Bankers Association which suggested that the rule exempt from the disclosure requirements, lessors when selling the leased vehicle to the lessee at the end of the lease period. To adopt this suggestion would permit an unscrupulous lessee to purchase the car, roll back the odometer, and sell the car to an unsuspecting buyer for more than its actual value. The lessee's purchaser would be unable to ascertain the veracity of the disclosure statement he receives from the lessee since there would be no previous disclosure record.

**Leased Vehicles**

In accordance with the Congressional mandate, we proposed a new § 580.7 applicable to leased vehicles. Under the proposed § 580.7, lessors were required to provide written notice to the lessee that ownership of the vehicle is being transferred, that the lessee is required by law to provide the lessor with a written disclosure regarding the mileage and the penalties for noncompliance. The American Automotive Leasing Association (AALA) urged NHTSA to delete the requirement that "ownership of the vehicle is being transferred", since notifying lessees at that time would be financially burdensome. AALA claimed that a rule requiring a notice that is contemporaneous with the decision to terminate the lease and a separate notice for each car is unwarranted. Rather, AALA and PHH requested that the regulations permit flexibility as to when the lessor gives notice to the lessee of the lessee's obligation to make the required disclosure. Both noted that there are various possibilities for notifying lessees. The notification could be incorporated into the lease agreement, in mailings sent to the clients throughout the year and in forms completed by the lessee to initiate transfer. We have considered these comments and have determined that the requirement that the lessor give notice to the lessee that "ownership of the vehicle is being transferred" is not required by the law and may result in an unnecessary burden for lessors. Therefore, we adopt AALA's proposal and this requirement has been deleted from the final rule. This will allow flexibility as to when the notice of the lessee's disclosure requirements and penalties for noncompliance is given. Furthermore, we will not require a separate notice for each vehicle. Should this flexibility impede or delay investigative action, further rulemaking may need to be undertaken on this matter.

As noted above, the proposed rule also provided that the lessor must give written notice to the lessee that the lessee is required by law to disclose the mileage of the lease vehicle and the penalties for failure to disclose the information. PHH emphasized that the

penalties for lessee noncompliance should be explicitly stated in the notice and recommended that Appendix D, the Disclosure Form for Leased Vehicles, be amended to explicitly state the nature of the civil or criminal penalties to which a lessee is subject for failure to comply. PHH believes that a more explicit statement of penalties will help to stress the lessee's risk in noncompliance, will encourage greater accuracy of odometer readings and will motivate the prompt return of the lessee disclosure form to the lessor. We agree with PHH's comments. Therefore, consistent with our decision to amend the citation to the law under § 580.5(c), § 580.7(a) will require that the lessor's notice to the lessee contain a reference to the federal odometer law and state that failing to complete the disclosure or providing false information may result in fines and/or imprisonment. For purposes of consistency, we will not require a more detailed statement. However, lessors may include additional information such as an explicit statement of the fines and imprisonment term provided by law. Accordingly, we have amended the reference to the law contained in Appendix D and note that Appendix D is only an example of the minimum requirements under the law.

The disclosure required to be made by the lessee under our proposal paralleled that made by the transferor. It required that the person making the disclosure print his name, provide the current odometer reading (not to include tenths) and date the statement. In addition, we proposed that the disclosure include the lessee's name and current address; the lessor's name and current address; the identity of the vehicle including its make, model, year, body type and vehicle identification number; and the signature of the lessor. We received no comments on these proposals and they have been incorporated into this final rule.

We also proposed that the disclosure include the date that the lessor notified the lessee of disclosure requirements and the date that the completed disclosure was received by the lessor. Delaware asserted that it did not understand the importance of these dates. According to Delaware, the date requirement merely necessitates more paper work and filing of records. NADA requested, without comment, the elimination of these date requirements. We will not grant NADA's request. These dates are important for investigative purposes. Our experience shows that dealers and distributors who have been required to maintain odometer disclosure statements under our regulations, upon request for those records, consistently ask investigators for the date of the record. Requiring these dates, in addition to the date of the statement, will aid in the investigation of allegations that the lessor never notified the lessee or that the lessee never gave the lessor a statement. Therefore, subsections 580.7(b) (7) and (8) are adopted as proposed.

In addition, we proposed that the lessee certify whether the odometer reading reflects the actual mileage, whether it reflects the amount of mileage in excess of the designed mechanical limit or whether it is not the actual mileage. As it did with regard to the disclosure by the transferor, NADA urged NHTSA to eliminate the requirement that the disclosure of mileage is in excess of the designed mechanical limit of the odometer. Again, we have not adopted NADA's suggestion. As noted above, to allow someone with a vehicle having over 100,000 miles to certify that the odometer does not reflect the actual mileage permits oral misrepresentations as to the vehicle's actual mileage. Furthermore, while not specifically referencing the requirement as it applied to leased vehicles, MADA expressed concern with the requirement that a person certify that "the odometer reading reflects the mileage in excess of the designed mechanical limits." NHTSA has addressed this concern above as it relates to the disclosure by the transferor. For the same reasons, we have not adopted MADA's suggestion to amend the statement. The certification requirements are adopted as proposed.

To implement section 2(e) of the Truth in Mileage Act, section 408 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(e), we proposed to permit a lessor who transfers ownership of a vehicle, without obtaining possession of the vehicle, to disclose, on the title, the mileage indicated by the lessee unless he has reason to believe that the lessee's disclosure does not reflect the actual mileage of the vehicle. PHH noted that it is not unusual for vehicles to be driven substantial distances by the lessee after the lessee's disclosure statement is received by the lessor. PHH asked whether it is NHTSA's intention for lessors to certify, in connection with the transfer of ownership, that the odometer does not accurately reflect the mileage of the vehicle. If the lessee had certified that the odometer reading reflected the actual mileage the vehicle had traveled, it is not NHTSA's intention that lessors indicate that the odometer reading does not reflect the actual mileage. When the lessee certifies that the odometer reading reflects the actual mileage, the lessor may also certify that the odometer reading reflects the actual mileage. This certification would be based upon the lessee's statement and the lessor's knowledge of the additional mileage.

Several commenters raised issues that had not been considered in the NPRM. The National Vehicle Leasing Association (NVLA), AALA and PHH noted that the proposed rule did not refer to the situation where the lessee fails to provide the lessor with a disclosure. PHH requested that NHTSA address the action a lessor is expected to take when a lessee fails to provide an odometer statement or fails to provide a statement in a reasonable time, and what remedies or sanctions apply. AALA requested that NHTSA affirmatively state that in cases where the lessor has notified the lessee but the lessee has failed to provide a disclosure, the lessor may sell the vehicle, making the appropriate disclosure. NVLA took AALA request one step further, by suggesting what constitutes an appropriate disclosure. NVLA proposed that where the vehicle is to be transferred to the lessee, the lessor should be permitted to complete the transaction and certify that the mileage information is "unknown." If the lessee failed to provide a disclosure and the lessor is selling the vehicle to a third party, NVLA proposed that the lessor should be permitted to certify that to the best of the lessor's knowledge, the odometer reading, provided to the lessor by the third party purchaser, reflects the actual mileage.

Congress expressly stated that "[i]f the lessee fails to comply, the lessor who has provided the required notice is not intended to be precluded from transferring ownership of the vehicle." H.R. Rep. 833, 99th Cong., 2nd Sess. 33 (1986). Therefore, the lessor may sell the vehicle and make the disclosure based upon available information. When the lessor is selling the vehicle to the lessee, we will not permit the lessor to complete the transaction and certify that the mileage is unknown. The lessor has leverage in this situation and may retain possession of the title to influence the lessee to provide a disclosure. When the lessor is selling a vehicle to a third party purchaser, the lessor must make a certification to the best of his knowledge based upon the available information, including condition reports, maintenance receipts, previous history of lessee vehicle returns and similar business records. To permit a lessor

who does not take possession of a vehicle to routinely certify that the odometer reading reflects the actual mileage, as suggested by NVLA, opens the door to fraud on the part of the third party purchaser who obtains possession of the vehicle from the lessee. In this situation, the third party purchaser could tell the lessor the odometer reading is less than it actually is, resulting in an inaccurate statement by the lessor, and then roll back the odometer.

Finally, PHH requested that NHTSA address the remedies that are available to the lessor against a lessee who fails to provide a disclosure. Under section 409 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1989, the lessor may bring a civil action against the lessee. Note that under this section, the lessor must prove an intent to defraud. If the lessor included a provision concerning the disclosure in the lease agreement or contract, the lessor may have an additional cause of action. The requirement that lessees provide a disclosure is also enforceable by the chief law enforcement officer in the State where the violation occurred and by the Federal government.

**Record Retention**

The NPRM proposed a new § 580.8 concerning the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors. This proposed section increased, from four to five years, the length of time dealers and distributors who are required by this part to issue an odometer disclosure statement shall retain odometer disclosure statements. Lessors shall retain for five years following the date they transfer ownership of the leased vehicle, the odometer statement they receive from their lessee. These dealers, distributors and lessors shall retain the original or a photostat, carbon or other facsimile copy of each odometer statement they issue and receive. The proposal was phrased broadly to include any media by which such information may be stored, provided there is no loss of information.

Some commenters felt that the extension to five years was both reasonable and logical given the five year statute of limitations for criminal violations of the Federal odometer laws. Others raised questions concerning the necessity of retaining, in whole or in part, copies of disclosure statements.

One commenter asserted that since the odometer disclosure statement will be on the title, it will be cumbersome and difficult for the transferor to retain a copy. The commenter stated that it is unlikely that States will provide multiple copy titles and that a large number of dealers do not have access to a photocopy machine. This commenter also claimed that it is against the law in California, and possibly in other States to photocopy a title document. NHTSA does not find this retention requirement to be overly burdensome. In light of increased technology, portable photocopy equipment is available at reasonable prices. The rule allows flexibility in retention, provided there is no loss of information. Finally, while it may be illegal to possess as true or genuine, a false or forged document, it does not appear to be illegal to copy a title solely for the purpose of maintaining records. Alan Metier of the California Department of Motor Vehicles, Legal Office, stated that neither the California Vehicle Code nor the California Government Code prohibit the photocopying of titles for record retention purposes. In the course of its investigations, NHTSA has received copies of titles from auto auctions, dealers, leasing companies and State departments of motor vehicles, including the California Department of Motor Vehicles.

NAFA asked whether the transferor is required to retain a copy of the full disclosure signed by the transferee or if he is only required to maintain a copy of his disclosure. The rule requires the transferor to retain a copy of the full disclosure, including the transferee's signature. In addition, for purposes of meeting the requirement to retain a copy of the disclosure statement which includes the buyer's signature, AALA asked NHTSA to allow the transferor who is also a lessor to obtain a power of attorney from the buyer authorizing the transferor to sign the mileage disclosure on behalf of the buyer. Because this would allow the transferor to sign as both the transferor and transferee, thus creating a situation ripe for fraud, AALA's suggestion has not been adopted.

PHH asserted that it is not reasonable to place a legal requirement on the transferor to retain records over which he does not have control and that any transferee with intent to commit fraud by tampering with the title document, will simply alter the document after the transferor's copy has been made. PHH argued that since the States will be receiving and retaining fully executed title documents, there seems to be little net benefit to require transferors to duplicate these records. Therefore, PHH requested that the final rule require only that the transferor retain a copy of the disclosure statement prior to release of the document to the transferee. AALA suggested that the regulation allow a transferor who is also a lessor to fulfill the retention requirements when he retains a copy of the disclosure statement which he forwards for the buyer's signature and requests the buyer to sign the statement and return a copy.

We have not adopted the requests of AALA or PHH. Requiring the transferor to retain a copy of the disclosure signed by the transferee is essential to enforcement. It prevents a buyer from altering the mileage and later alleging that the altered mileage is the mileage he received from the transferor, since the transferor would have a copy of the disclosure with the higher mileage and the transferee's signature. This unaltered copy would not be on file with the State titling office. In addition, requiring the transferor to retain a copy of the disclosure signed by the transferee protects the transferor. With regard to the reasonableness of a legal requirement on the transferor to retain records over which he does not have control, NHTSA assesses civil penalties for failure to retain records in accordance with section 412 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1990b. This assessment takes into account the nature, circumstances, extent and gravity of the violation of the retention requirement committed, and other matters as justice may require.

Consistent with the requirements of the Truth in Mileage Act, we also proposed the addition of a new § 580.9 which concerns the odometer record retention by auction companies. We proposed that each auction company retain, for five years, the following information: the name of the most recent owner on the date the auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction company took possession of the motor vehicle. This information can be retained in any way that is systematically retrievable. We did not propose to require that this information be included on any special form, but noted that it may be part of the auction invoice or other document currently used by auction companies or be maintained as a portion of a computer data base.

The New Jersey State Police (New Jersey) questioned the requirement that auction companies retain the odometer reading on the date which the auction "took possession of the vehicle." The commenter was concerned that auctions could assert that they do not "take possession", but merely act as a broker between the buyer and seller. In lieu of a requirement that the odometer reading

on the date the auction took possession be retained, New Jersey proposed that the reading on the date of sale be retained.

We have not adopted New Jersey's proposal. While an auction does not take ownership of vehicles, it does routinely take physical possession of them. When the cars are registered for sale, the keys to the each vehicle are given to the auction which prepares the cars for auction and drives them onto the auction block. Furthermore, the language in the rule is consistent with the provisions of the Truth in Mileage Act.

NAAA, while not specifically addressing the retention requirements as they relate to auctions, did declare that the retention requirements are more than reasonable and are necessary to enable successful prosecutions. No other comments were received on this proposal and it has been adopted in the final rule.

**Procedures for State Requests for Assistance, Approval or Extension**

Section 408 (d) (1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d) (1) and (2), requires the Secretary of Transportation to assist a State in revising its laws to comply with the new disclosure requirements for transferors and transferees, upon "application" from the State. In response to this statutory mandate, the agency proposed a new § 580.10 which sets forth the procedures a State may follow to apply for technical assistance. No comments were received concerning the procedures for requests for assistance and they are adopted in the final rule as proposed.

Section 408(f) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988 (f), states that subsection (d), concerning motor vehicle titles, and subsection (e), concerning lessors and lessees, shall apply in a State unless the State has in effect alternate motor vehicle mileage requirements approved by the Department. We proposed, in a new § 580.11, that a State may petition for an exemption from the disclosure requirements and stated that notice of either grant or denial of a petition for approval of alternate motor vehicle disclosure requirements would be issued to the petitioner. We received no comments on this section. However, for consistency, and to better reflect the provisions of the Truth in Mileage Act, we have changed the language in the title of this section and its subsection (a) from "exemption from disclosure requirements" to "approval of alternate motor vehicle disclosure requirements." In all other respects, the proposal is adopted in this final rule.

We proposed a new § 580.12 which specified the procedures that may be followed by a State to request an extension of time in the event that it requires additional time beyond April 29, 1989, to conform its laws to the Motor Vehicle Information and Cost Savings Act and this part. The proposed § 580.12 also allowed for the renewal of an extension of time.

The agency received three comments on proposed § 580.12. NACAA recommended that NHTSA not extend the compliance deadline except where a need has been demonstrated along with significant evidence that the State is making progress toward compliance through realistic efforts calculated to meet the compliance date. The association stressed that the rule cannot really be effective until all States are in compliance. If one State does not require mileage disclosures on the title, title laundering will continue. Arkansas explained that it had just purchased a two year supply of titles and noted that a severe financial burden would result if it was prohibited from using them. The Motor Car Dealers Association of Southern California (MCDASC) asked the agency to postpone certain provisions of § 580.5.

NHTSA has considered these comments. Nevertheless, the proposal will be adopted into this final rule. Section 2(c) of the Truth in Mileage Act allows for extension of time upon a request from a State. Consistent with the statute, we will provide extensions of time in the event that any State needs additional time in revising its laws to meet the new Federal criteria, beyond April 29, 1989, the new law's effective date. Because the statute requires NHTSA to ensure that the State is making reasonable efforts to achieve compliance, we must deny MCDASC's request for a blanket extension of time. We will only consider requests on a State by State basis. NHTSA agrees with NACAA that noncompliance with the Federal odometer laws and this rule would allow title laundering to continue. However, in light of the statutory guidelines, we will not amend the procedures set forth in the proposal. Finally, with regard to Arkansas' concern about discarding titles it may have on April 29, 1989, the agency will take into account financial and administrative burdens and will make every effort to grant reasonable extensions of time so that States may expend their current supply of titles.

**Federalism Assessment**

This rule has federalism implications affecting the relationship between the national government and the States. I certify that it has been assessed in light of the principles, criteria and requirements as outlined in Executive Order 12612. By limiting the effects on the States to the minimum required by the law, this final rule furthers the principles of federalism established by the Framers of the Constitution while striking an appropriate level of Federal involvement. Odometer fraud is national in scope with motor vehicles frequently being transferred over state lines in order to "wash" the titles. For this reason, Congress directed NHTSA to determine methods most effective for combatting the problem, through the implementation of the Truth in Mileage Act of 1986. NHTSA has consulted with the States to implement the law and has examined the comments submitted by approximately thirty-four States, AAMVA, NACAA and NOEA. While this rule requires that titles issued by the States be secure, and include a mileage reading and a space for the transferee to make a mileage disclosure at the time of a future transfer, this rule is consistent with the statutory mandate and allows the States the maximum administrative discretion possible in complying with these requirements. We have not required the States to seek our concurrence in an alternative method of document security beyond those listed in Appendix A nor have we required the States to include the disclosure information in a specific format. It is estimated that this rule will impose an additional cost on the States. The likely source of funding for the States will be from revenues generated by increasing the cost of titling motor vehicles. Over the past ten years, the States have demonstrated their ability to fulfill the purposes of this rule by reviewing and amending their titles in attempts to deter odometer fraud.

**Regulatory Impacts**

*A. Costs to the States, Dealers, Distributors and Vehicle Purchasers*

When the NPRM was issued, NHTSA had tentatively determined that the proposal was neither "major" within the meaning of Executive Order 12291, nor "significant" within the Department of Transportation regulatory policies and procedures. However, the agency invited comments with regard to costs. A regulatory evaluation, analyzing in detail the impacts of the proposal and this rule, has been prepared and placed in Docket 87–09. Any interested person

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may obtain a copy of this regulatory evaluation by writing to NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

To summarize the evaluation, odometer fraud costs consumers between $3.3 billion and $4.1 billion annually. The requirement that the title be present at the time of transfer of ownership, originally proposed in the NPRM, would have increased operating costs by an additional $91–$196 million annually. To alleviate unnecessary cost burdens, while continuing to provide a paper trail in accordance with the law and Congressional intent, we have amended the language in the proposed regulation concerning the time of transfer. The result of this amendment is that the requirements of this final rule will increase some operating costs for States, dealers, distributors and vehicle purchasers by $6.5 million annually. Of this total, $3.9 million will result from costs associated with secured titles and reassignment forms. Most of this cost will be borne by the States. The remaining $2.6 million will result from new disclosure and retention requirements. Most of these costs will be borne by dealers, distributors and vehicle purchasers. However, this rule will permit the elimination of most separate odometer disclosure statements, resulting in a savings of roughly $2.6 million to dealers and distributors. If the procedures established by this rule reduce odometer fraud by as much as one tenth of one percent, it will be cost beneficial.

The agency has now determined that the impact of this final rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures.

*B. Environmental Impacts*

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and has determined that it does not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no Environmental Impact Statement has been filed.

*C. Small Business Impacts*

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The net increase in operating costs resulting from this rule will be an estimated $3.8 million for states, and tens of thousands of dealers and distributors.

*D. Paperwork Reduction Act*

The requirements in this rule that dealers, distributors, lessors and auction companies disclose mileage information and/or retain odometer disclosure information are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1520. Accordingly, the information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through June 30, 1990 (OMB 2127–0047)

In consideration of the foregoing, Part 580 of Title 49 of the Code of Federal Regulations is revised to read as follows:

## PART 580—ODOMETER DISCLOSURE REQUIREMENTS

Sec.

580.1 Scope.
580.2 Purpose.
580.3 Definitions.
580.4 Security of title documents.
580.5 Disclosure of odometer information.
580.6 Exemptions.
580.7 Disclosure of odometer information for leased motor vehicles.
580.8 Odometer disclosure statement retention.
580.9 Odometer record retention for auction companies.
580.10 Application for assistance.
580.11 Petition for approval of alternate disclosure requirements.
580.12 Petition for extension of time.

Appendix A to Part 580 Secure printing processes and other secure processes.

Appendix B to Part 580 Disclosure form for title.

Appendix C to Part 580 Separate disclosure form.

Appendix D to Part 580 Disclosure form for leased vehicles.

**Authority:** 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

### § 580.1 Scope.

This part prescribes rules requiring transferors and lessees of motor vehicles to make written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408 (a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1988 (a) and (e). In addition, this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1990(d) and 1988(g).

### § 580.2 Purpose.

The purpose of this part is to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their lessors the vehicle's mileage at the time the lessors transfer the vehicle. In addition, the purpose of this part is to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.

### § 580.3 Definitions.

All terms defined in sections 2 and 402 of the Motor Vehicle Information and Cost Savings Act are used in their statutory meaning. Other terms used in this part are defined as follows:

"Lessee" means any person, or the agent for any person, to whom a motor vehicle has been leased for a term of at least 4 months.

"Lessor" means any person, or the agent for any person, who has leased 5 or more motor vehicles in the past 12 months.

"Mileage" means actual distance that a vehicle has traveled.

"Secure printing process or other secure process" means any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye.

"Transferee" means any person to whom the ownership in a motor vehicle is transferred, or any person who, as agent, accepts transfer of ownership in a motor vehicle for another, by purchase, gift, or any means other than by creation of a security interest.

"Transferor" means any person who transfers his ownership or any person who, as agent, transfers the ownership of another, in a motor vehicle by sale, gift, or any means other than by creation of a security interest.

### § 580.4 Security of title documents.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign

the title shall be set forth by a secure process.

**§ 580.5 Disclosure of odometer information.**

(a) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of future transfer.

(b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of transfer of ownership.

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(e) In addition to the information provided under paragraphs (c) and (d) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage, or;

(2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the disclosure statement and print his name.

(g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

(h) No person shall sign an odometer disclosure statement as both the transferor and the transferee in the same transaction.

**§ 580.6 Exemptions.**

Notwithstanding the requirements of § 580.5:

(a) A transferor of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;

(2) A vehicle that is not self-propelled;

(3) A vehicle that is 10 years old or older; or

(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

**§ 580.7 Disclosure of odometer information for leased motor vehicles.**

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This notice shall contain a reference to the federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by paragraph (a) of this section, shall contain the following information:

(1) The printed name of the person making the disclosure;

(2) The current odometer reading (not to include tenths of miles);

(3) The date of the statement;

(4) The lessee's name and current address;

(5) The lessor's name and current address;

(6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;

(7) The date that the lessor notified the lessee of disclosure requirements;

(8) The date that the completed disclosure statement was received by the lessor; and

(9) The signature of the lessor.

(c) In addition to the information provided under paragraphs (a) and (b) of this section,

(1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraph (b) and (c) of this section, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

**§ 580.8 Odometer disclosure statement retention.**

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

**§ 580.9 Odometer record retention for auction companies.**

Each auction company shall establish and retain at its primary place of

business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

(a) The name of the most recent owner (other than the auction company);

(b) The name of the buyer;

(c) The vehicle identification number; and

(d) The odometer reading on the date which the auction company took possession of the motor vehicle.

**§ 580.10 Application for assistance.**

(a) A State may apply to NHTSA for assistance in revising its laws to comply with the requirements of 408(d) (1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d) (1) and (2) and §§ 580.4 and 580.5 of this part.

(b) Each application filed under section shall—

(1) Be written in the English language;

(2) Be submitted, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(3) Include a copy of current motor vehicle titling and/or disclosure requirements in effect in the State; and

(4) Include a draft of legislation or regulations intended to amend or revise current State motor vehicle titling and/or disclosure requirements to conform with Federal requirements.

(c) The agency will respond to the applicant, in writing, and provide a list of the Federal statutory and/or regulatory requirements that the State may have failed to include in its proposal and indicate if any sections of the proposal appear to conflict with Federal requirements.

**§ 580.11 Petition for approval of alternate disclosure requirements.**

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5 and 580.7 of this part.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590;

(3) Set forth the motor vehicle disclosure requirements in effect in the State, including a copy of the applicable State law or regulation; and

(4) Explain how the State motor vehicle disclosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act

(c) Notice of either a grant or denial of a petition for approval of alternate motor vehicle disclosure requirements is issued to the petitioner. The effect of a grant of a petition is to relieve a State from responsibility to conform the State motor vehicle titles with §§ 580.5 and 580.7 of this part during the time of the extension. The effect of a denial is to require a State to conform to the requirements of §§ 580.5 and 580.7 of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

**§ 580.12 Petition for extension of time.**

(a) If a State cannot conform its laws to achieve compliance with this part by April 29, 1989, the State may petition for an extension of time.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted, by February 28, 1989, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590;

(3) Set forth a chronological analysis of the efforts the State has taken to meet the deadline, the reasons why it did not do so, the length of time desired for extension and a description of the steps to be taken while the extension is in effect.

(c) Notice of either the grant or denial of the petition is issued to the petitioner and will be published in the **Federal Register.**

(d) A petition for a renewal of an extension of time must be filed no later than 30 days prior to the termination of the extension of time granted by the Agency. A petition for a renewal of an extension of time must meet the same requirements as the original petition for an extension of time.

(e) If a petition for a renewal of the extension of time which meets the requirements of § 580.12(b) is filed, the extension of time will continue until a decision is made on the renewal petition.

## Appendix A to Part 580—Secure Printing Processes and Other Secure Processes

1. Methods to deter or detect counterfeiting and/or unauthorized reproduction.

(a) Intaglio printing—a printing process utilized in the production of bank-notes and other security documents whereby an engraved plate meets the paper under extremely high pressure forcing the paper into the incisions below the surface of the plate.

(b) Intaglio Printing With Latent Images—a printing process utilized in the production of bank-notes and other security documents whereby an engraved plate meets the paper under extremely high pressure forcing the paper into the incisions below the surface of the plate. The three dimensional nature of intaglio printing creates latent images that aid in verification of authenticity and deter counterfeiting.

(c) High Resolution Printing—a printing process which achieves excellent art clarity and detail quality approaching that of the intaglio process.

(d) Micro-line Printing—a reduced line of type that appears to be a solid line to the naked eye but contains readable intelligence under strong magnification.

(e) Pantograph Void Feature—wording incorporated into a pantograph by varying screen density in the pantograph. The wording will appear when attempts are made to photocopy on color copiers.

(f) Hologram—a defraction foil substrate, produced from a negative which was made by splitting a laser beam into two separate beams to produce a three dimensional effect.

(g) Security Paper—paper containing a security watermark and/or a security thread.

2. Methods to allow alterations to be visible to the naked eye.

(a) Erasure Sensitive Background Inks—a process whereby the text is printed in a dark color ink over a fine line erasure-sensitive prismatic ink tint.

(b) Security Lamination—retro-reflective security laminate is placed over vital information after it has been entered to allow for detection of attempts to alter this information.

(c) Security Paper—paper which has been chemically treated to detect chemical alterations.

## Appendix B to Part 580—Disclosure Form for Title

**Odometer Disclosure Statement**

Federal law (and State law, if applicable) requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless one of the following statements is checked.

—(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

—(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

_____
(Transferor's Signature)

_____
(Transferee's Signature)

_____
(Printed name)

_____
(Printed name)

Date of Statement _____

Transferee's Name _____

Transferee's Address _____
(Street)

_____
(City) (State) (ZIP Code)

**Appendix C to Part 580—Separate Disclosure Form**

**Odometer Disclosure Statement**

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, _____ (transferor's name, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

—(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

—(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

Make _____
Model _____
Body Type _____
Vehicle Identification Number _____
Year _____

_____
(Transferor's Signature)

_____
(Printed name)
Transferor's Address _____
(Street)

_____
(City) (State) (ZIP Code)
Date of Statement _____

_____
(Transferee's Signature)

_____
(Printed name)
Transferee's Name _____
Transferee's Address _____
(Street)

_____
(City) (State) (ZIP Code)

**Appendix D to Part 580—Disclosure Form for Leased Vehicle**

**Odometer Disclosure Statement (Leased Vehicle)**

Federal law (and State law, if applicable) requires that the lessee disclose the mileage to the lessor in connection with the transfer of ownership. Failure to complete or making a false statement may result in fines and/or imprisonment. Complete disclosure form below and return to lessor.

I, _____ (name of person making disclosure, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

—(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

—(2) I hereby certify that the odometer reading is NOT the actual mileage.

Make _____
Model _____
Body Type _____
Vehicle Identification Number _____
Year _____
Lessee's Name _____
Lessee's Address _____
(Street)

_____
(City) (State) (ZIP Code)
Lessee's Signature _____
Date of Statement _____
Lessor's Name _____
Lessor's Address _____
(Street)

_____
(City) (State) (ZIP Code)
Date Disclosure Form Sent to Lessee _____
Date Completed Disclosure Form Received from Lessee _____
Lessor's Signature _____

Issued on August 2, 1988.

**Diane K. Steed,**

*National Highway Traffic Safety Administrator.*

[FR Doc. 88-17684 Filed 8-2-88; 2:57 pm]

BILLING CODE 4910-59-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 661

**[Docket No. 80482-8082]**

### Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS) NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to the Queets River, Washington, at midnight, August 2, 1988, the ensure that the coho quota for this subarea is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with representatives of the Pacific Fishery Management Council (Council), the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife (ODFW), that the recreational fishery quota of 20,000 coho salmon for the subarea will be reached by August 2, 1988. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of coho salmon.

**EFFECTIVE DATE:** Closure of the EEZ from the U.S.-Canada border to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, August 2, 1988. Comments on this closure will be received through August 17, 1988.

**ADDRESS:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FUTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species from the U.S.-Canada border to the Queets River, Washington, commenced on July 3, 1988, and was scheduled to continue through the earliest of September 5, 1988, or the attainment of either a subarea quota of 20,000 coho salmon or an overall quota of 29,800 chinook salmon north of Cape Falcon, Oregon. Based on the best available information, the recreational fishery catch in the subarea is projected to reach the subarea quota of 20,000 coho salmon by midnight, August 2, 1988, and therefore must be closed to further fishing.

Therefore, NOAA issues this notice to close the recreational salmon fishery in the EEZ from the U.S.-Canada border to the Queets River, Washington, effective midnight, August 2, 1988. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Council, WDF, and ODFW regarding a closure of the recreational fishery between the U.S.-Canada border and the Queets River, Washington. The representatives of WDF confirmed that Washington will close the recreational fishery in state waters adjacent to this subarea of the EEZ effective midnight, August 2, 1988.

Because of the need for immediate action, the Secretary of Commerce has

determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 17, 1988.

**Other Matters**

This action is authorized by 50 CFR 661.21(a)(1) and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians.

**Authority:** (16 U.S.C. 1801 *et seq.*)

Dated: August 2, 1988.

**Ann D. Terbush,**

*Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-17748 Filed 8-2-88; 4:55 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 663**

**[Docket No. 71158-7288]**

## Pacific Coast Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of fishing restriction and request for comments.

**SUMMARY:** NOAA issues this notice to modify earlier restrictions to limit the levels of landings of sablefish taken in the groundfish fishery off the coasts of Washington, Oregon, and California in 1988, to announce its intent to further restrict landings of widow rockfish later in the year, and to seek public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and are necessary because biological stress has been identified or is expected to occur if landings are not further restricted. This action is intended to lower fishing rates, reduce the likelihood of biological stress while allowing for some unavoidable incidental catches in other fisheries, and extend the landings of sablefish and widow rockfish as long as possible throughout the year.

**DATES:** New restrictions for sablefish are effective 0001 hour Pacific Daylight Time (PDT), August 3, 1988, until modified, superseded, or rescinded. Comments will be accepted through August 22, 1988.

**ADDRESSES:** Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6150, Rodney R. McInnis at 213-514-6202, or the Pacific Fishery Management Council (Council) at 503-221-6352.

**SUPPLEMENTARY INFORMATION:** The regulations implementing the FMP at 50 CFR 663.22 specify that the Secretary of Commerce (Secretary) may reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Council has endorsed the determination of its Groundfish Management Team that if landings of sablefish and widow rockfish are not further restricted, the likelihood of biological stress on these stocks is increased because current fishing mortality rates exceed the rates which would take the acceptable biological catch (ABC).

### Sablefish

*Council recommendation:* Increase the 1988 trawl allocation from 5,200 to 6,000 metric ton (mt), lower the trawl trip limit to one landing per week, not to exceed 2,000 pounds (including sablefish smaller than 22 inches), and change the nontrawl trip limit for sablefish smaller than 22 inches to 1,500 pounds or 3 percent of all sablefish on board, whichever is greater (round weights). All other provisions remain in effect.

*Rationale:* The ABC for sablefish in 1988 is 10,000 metric tons (mt), the midpoint of the optimum yield (OY) range of 9,200–10,800 mt. In January, the Council expressed its intent to manage for this midpoint, and allocated 5,200 mt to trawl gear and 4,800 mt to fixed (nontrawl) gear (53 FR 248, January 6, 1988). Currently, only two landings above 1,000 pounds are allowed in a week and sablefish may comprise no more than 6,000 pounds or 20 percent of all legal fish on board, whichever is greater, which could be taken in each of the two landings by vessels operating in the multispecies trawl fishery. This trip limit was designed to discourage targeting on sablefish and to extend the 5,200 mt quota until the end of the 1988 fishing season. The Council recommended that if projections indicate that trawl landings will exceed 5,200 mt before the end of the calendar year, as much as 800 mt could be added to the trawl allocation to minimize discards of sablefish caught incidentally while fishing for other species.

At its July 13–14, 1988 meeting, the Council reviewed the most recent landings data provided by the Groundfish Management Team which projected that the 5,200 mt trawl quota would be reached by August 25 under the current trip limit. If the full 800 mt were added to the trawl allocation, this quota would be reached by September 22 unless landings were slowed further. Sablefish can be a large component of the deepwater trawl fishery consisting of Dover sole, thornyhead rockfish, arrowtooth flounder, and sablefish. Discards of sablefish occur even under the current trip limit and are likely to increase when the trip limit is reduced. On the other hand, if the trip limit is not reduced and the trawl allocation is reached before the end of the year, all sablefish must be discarded thereafter. Under either scenario, discards will result. The Council considered it preferable to reduce the trip limit as soon as possible which would extend the fishery (and maintain availability of sablefish in the market) to the end of the year, rather than to reach the quota in August and prohibit all subsequent landings in 1988. Therefore, the Council recommended that only one landing per week of trawl-caught sablefish, not exceeding 2,000 pounds, be allowed. This will enable some incidental catches to be landed and a small but consistent supply of sablefish to be maintained in the market.

This 2,000 pound weekly trip limit includes trawl-caught sablefish smaller than 22 inches (total length) and therefore supersedes the current trip limit of 5,000 pounds for sablefish smaller than 22 inches.

The Council also heard testimony that the current trip limit for the nontrawl fishery of 1,500 pounds for sablefish smaller than 22 inches in total length (or 15.5 inches, if headed) was unduly restrictive for the catcher-processors that remain at sea for weeks at a time and land as much as 100,000 pounds from a single trip. As a result, a large catcher-processor is able to land only 1.5 percent of small fish in a 100,000 pound landing, whereas a vessel making shorter trips and smaller landings is able to land a higher percentage. Therefore, the Council agreed with industry representatives on a new trip limit of 1,500 pounds, or three percent of all sablefish on board (round weights) whichever is greater, for nontrawl landings of sablefish smaller than 22 inches. The new trip limit will reduce discards but will not affect the 4,800-mt nontrawl allocation of sablefish for 1988.

**Widow Rockfish**

The Council also heard testimony that the widow rockfish OY of 12,100 mt was expected to be reached before the end of the year, but that better data would be available in the next month or two. The Council recommended that the Secretary impose a 3,000 pound trip limit on widow rockfish landings if it becomes necessary to impose an incidental trip limit before October 1, 1988, in order to reduce biological stress by extending the fishery closer to the end of the year. Otherwise, the Council will reconsider this recommendation at its September meeting.

In its deliberations, the Council considered advice from its Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, the public, and a Groundfish Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, and the Groundfish Management Team.

**Secretarial Action**

The Secretary concurs with the Council's recommendations and announces the following changes to the restrictions imposed at the beginning of the year for sablefish and widow rockfish at 53 FR 248 (January 6, 1988):

(1) The allocation for trawl-caught sablefish is increased from 5,200 mt to 6,000 mt in 1988.

(2) For trawl-caught sablefish, only one landing per vessel may be made in a one-week period. This landing may not exceed 2,000 pounds (round weight). "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. This landing may consist of sablefish of any size.

(3) For sablefish caught with nontrawl gear, the trip limit for sablefish smaller than 22 inches (total length), or 15.5 inches headed, is 1,500 pounds or three percent of all sablefish on board (in round weights), whichever is greater.

(4) For widow rockfish, the Groundfish Management Team will make projections to determine the date that a trip limit of 3,000 pounds should be imposed in order to enable the 12,100 mt OY to be reached but not exceeded before the end of the year. If this date is projected to occur before October 1, 1988, the Secretary will impose a trip limit of 3,000 pounds which will be announced in the **Federal Register** and will become effective on the date which would enable the quota to extend as long as possible in 1988.

All other provisions still apply to the Pacific Coast groundfish fishery as set forth in the **Federal Register** (53 FR 248, January 6, 1988).

**Other Fisheries**

Retention of these species by foreign fishing or processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 663.28. If fishing for groundfish and pink shrimp, or spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

**Classification**

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**), during business hours until the end of the comment period.

This action is taken under the authority of 50 CFR 663.22 and 663.23, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of any action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If landings of trawl-caught sablefish are not immediately restricted, the trawl fishery for sablefish will be closed before the end of the year. Accordingly, further delay of this action is impracticable and contrary to the public interest, and this action is published in final form effective August 3, 1988.

The public has had the opportunity to comment on these management measures. The public participated in Groundfish Management Team and Council meetings in July 1988 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after this notice is published in the **Federal Register.**

**List of Subjects in 50 CFR Part 663**

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: August 2, 1988.

**Ann D. Terbush,**

*Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-17749 Filed 8-2-88; 4:55 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 151
Friday, August 5, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Ch. I

**[Summary Notice No. PR-88-6]**

### Petition for Rulemaking; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions recieved must identify the petition docket number involved and must be received on or before October 7, 1988.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on August 2, 1988.

Deborah E. Swank,
*Acting Manager, Program Management Staff.*

PETITIONS FOR RULEMAKING

| Docket No. | Petitioner | Regulations affected | Description of relief sought, disposition |
|---|---|---|---|
| 25152 | Frank J. Kelley | 14 CFR Part 63 | To establish special rules for military flight engineers or former military flight engineers to permit the issuance of FAA flight engineer certificates based primarily on military flight engineer training and experience in a component of the Armed Forces of the United States. *Denied July 25, 1988.* |

[FR Doc. 88-17751 Filed 8-4-88; 8:45 am]
BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 438

### Proprietary Vocational and Home Study Schools

**AGENCY:** Federal Trade Commission.

**ACTION:** Termination of proposed rulemaking.

**SUMMARY:** The Federal Trade Commission terminates rulemaking with respect to proprietary vocational and home study schools. The Commission concludes that the age of the available evidence renders it inappropriate in this instance for a rule to be issued.

**DATE:** This withdrawal is effective August 5, 1988.

**FOR FURTHER INFORMATION CONTACT:** Walter C. Gross III, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580; (202) 326-3319.

**SUPPLEMENTARY INFORMATION:** On December 28, 1978, the Commission issued a Trade Regulation Rule on Proprietary Vocational and Home Study Schools. 43 FR 60796 (1978). In 1979, prior to its effective date, the rule was set aside and remanded to the Commission for further proceedings. *Katherine Gibbs School, Inc. v. FTC*, 612 F.2d 658 (2d Cir. 1979). The Commission has now decided to terminate this rulemaking for the reasons below:

1. The Commission opened this rulemaking on August 15, 1974. The rulemaking record was closed in January 1976. During that time the Commission received over 900 written comments and testimony from over 400 witnesses. Nevertheless, in *Katherine Gibbs*, the Second Circuit remanded the rule to the Commission for further proceedings, citing both substantive and procedural deficiencies.

2. When the Commission originally issued this rule in 1978, it stated: "The purpose of this rule is to eliminate currently abusive practices against vocational and home study school students and prospective students." 42 FR 60796 (1978). The 1978 evaluation of practices in the vocational schools field was based on the evidence gathered before the closing of the record in January 1976. Today, however, the rulemaking record has been closed for twelve years, and a substantial portion of that record consists of evidence now approaching twenty years in age. We are not confident, therefore, that the Commission can draw valid conclusions on the current practices of vocational schools from this evidence.

3. In addition, the Department of Education has informally proposed new regulations applicable to all schools participating in the Guaranteed Student Loan Program. Department of Education, Fact Sheet on Education Department Plans To Reduce Defaults in the Guaranteed Student Loan (GSL) Program (November 4, 1987). These regulations would require *pro rata* refunds, disclosure of graduation rates and substantiation of claims regarding job placement rates and starting salaries. *Id.* at 4. If these regulations are promulgated, they are likely to affect the practices of vocational schools, thereby undermining further the validity of any information gathered before their issuance.

4. In addition to the age of the record evidence and the likelihood of changes in the practices of vocational schools as a result of the anticipated Department of Education regulations, after further consideration, we have concluded that the evidence in this rulemaking record is inadequate substantively to support the rule. In a rulemaking proceeding, not only must the Commission conclude that the acts it proposes to regulate are unfair or deceptive, but to proceed by rulemaking rather than by case-by-case enforcement, we must decide that those acts are prevalent, that they cause significant harm, that the proposed rule would be likely to reduce the harm and that the benefits of the rule would exceed its costs. *See* Statement of Basis and Purpose for Credit Practices Rule, 49 FR 7740, 7742 (Mar. 1, 1984). The record in this proceeding fails to establish either a suitable premise for rulemaking or adequate support for the rule proposed.

For these reasons, the Commission hereby terminates the rulemaking proceeding.

By direction of the Commission, Commissioner Calvani concurring except as to paragraph 4.

**Benjamin I. Berman,**

*Acting Secretary.*

*Dissenting Statement of Commissioner Strenio*

July 20, 1988.

Reasonable people may differ on how the Vocational Schools Rulemaking ("rulemaking") should have been handled at any stage of its existence. Unfortunately, however, there is no comparable ambiguity regarding the conclusion that the history of this rulemaking since its initiation in 1974 constitutes a case study in institutional failure.

A basic chronology reveals the erratic nature of the process. Fourteen years and 38,720 staff hours ago, the FTC started this rulemaking.[1] Twelve years ago, it closed the record. Ten years ago, it issued a rule. Nine years ago, it received the rule back on remand from the Second Circuit for further proceedings. Between then and now, the agency neglected to proceed further to either a public revision of the rule or any other resolution. Finally, a majority today has terminated the rulemaking.

The majority advances three reasons in support of termination. First, the record is stale. Second, if the Department of Education promulgates new regulations, circumstances are likely to change and render the record less relevant still. Third, according to two commissioners, the record does not "establish either a suitable premise for rulemaking or adequate support for the rule proposed." (Commissioner Calvani does not join in this third assertion).

But these three explanations raise troubling and unaddressed questions. First, how could the Commission allow a rulemaking record to grow so stale as to become unuseable? Further, even if the record is stale, why not reopen it to gather new evidence rather than shut down the matter in its entirety? It does not follow that a stale (or inadequate) record necessarily means that serious, continuing consumer problems are absent from the industry.

Second, if prospective regulations from the Department of Education potentially are so significant, why not wait to see if they actually are issued, what their precise terms are, and whether they have the predicted effect? After years of inaction, a rush to judgment on the basis of what another agency might do seems inappropriate.

Third, why is it that the Department of Education in a relatively short time apparently has been able to amass a record that may support extensive regulation, while the FTC after fourteen years does not even have a "suitable premise for rulemaking"? After all, when the FTC issued its original rule ten years ago, it stated that the action was taken "to eliminate currently abusive practices against vocational and home study school students and prospective students." Have things changed for the better that much since 1978?

One expert thinks not. According to this expert, he has "extensive evidence" that many for-profit trade schools are abusing students. This expert sent a report to Congress on February 9, 1988. He described the contents of this report as follows: "You will find accounts of semiliterate high school dropouts lured to enroll in expensive training programs with false promises of lucrative jobs, only to have their hopes for a better future cruelly dashed. You will read of falsified scores on entrance exams, poor quality training and harsh refund policies."

Of course, the views of one expert seldom are conclusive when it comes to a rulemaking. But when that expert is Education Secretary William J. Bennett, an individual not widely considered to have an excessive preference for regulation, the FTC should be all the more cautious about abandoning its inquiries into behavior of the "bad apples" in this industry.

For the above reasons, I disagree with the result and the reasoning embraced by the majority (although my colleagues—none of whom have been at the agency for even five years—are entitled to credit for grappling with a matter that eluded the attention of many others). In my view, it would be preferable and prudent to at least await the outcome of the Department of Education's examination before closing the Commission's books permanently. Indeed, in light of recent events, reopening the record may well be warranted with an emphasis upon practices and segments of the industry that would not be covered by the proposed Department of Education regulations. Accordingly, I respectfully dissent.

[FR Doc. 88-17656 Filed 8-4-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Fourteen years is a long time to devote to a project only to come up empty. By comparison, it took this country less time to declare its independence, fight the Revolutionary War, realize the Articles of Confederation were insufficient, and write and ratify the Constitution.

## POSTAL SERVICE

## 39 CFR Part 111

## Exclusion of "Plus" Issues From Second-Class Mail

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** In anticipation of the possibility of the adoption of a temporary mail classification change concerning the eligibility of "Plus" issues for second-class mail privileges, the Postal Service is proposing an implementing regulation which, if adopted, would exclude from second-class mail those "Plus" issues distributed on a different day from any other issue of the parent publication.

**DATE:** Comments must be received on or before September 6, 1988.

**ADDRESS:** Written comments should be directed to the Director, Office of Classification and Rates Administration, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC 20260.

**FOR FURTHER INFORMATION CONTACT:** Leo Raymond, (202) 268–5199.

**SUPPLEMENTARY INFORMATION:** On June 17, 1988, the Postal Service, pursuant to 39 U.S.C. 3623, filed a request with the Postal Rate Commission for a change in the mail classification schedule to prevent the abuse of second-class mail through the mailing of "Plus" issues of publications. That request was filed because a decision in *Combined Communications v. USPS,* Civ. No. 3–87–0214 (M.D. TN May 27, 1988), brought into question the validity of the Postal Service's current regulation excluding certain "Plus" issues from second-class eligibility, Domestic Mail Manual section 425.226. The mail classification change requested by the Postal Service would amend § 200.0123 of the Domestic Mail Classification Schedule to read as follows:

For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication if:

a. It is published at a regular frequency either on the same day as another regular issue of the same publication, or at such other frequency as prescribed by the Postal Service by regulation, and

b. It is distributed to more than (i) 10 percent nonsubscribers, or (ii) twice as many nonsubscribers as the other issue on that same day, or if no other issue that day, any other issue distributed at the same frequency, whichever is greater.

Such separate publications must independently meet the qualifications in § 200.0101 through 200.0109, or 200.0110.

Under the provisions of 39 U.S.C. 3641(e), the Postal Service may place this mail classification change into effect on a temporary basis if the Postal Rate Commission does not transmit a recommended decision to the Governors of the Postal Service within 90 days after the Postal Service submits the mail classification change request. In the event that the Postal Rate Commission does not transmit a recommended decision on this request and the Postal Service's Board of Governors authorizes the Postal Service to implement the change on a temporary basis, the Postal Service proposes to implement the change through the adoption of the following amendment to section 425 of the Domestic Mail Manual. This change would by regulation adopt a frequency of publication of more than once per month as a yardstick for "Plus" issues that, nominally, are not published on the same day as another issue of the same publication. Our experience with this matter has shown that such a yardstick does not reach legitimate second-class mail, and that "Plus" issue abuses are not present where publication frequency is once per month or less.

The proposed regulation would erase any legal question about the Postal Service's authority to require "Plus" issues to independently satisfy second-class eligibility requirements when they are published on a day other than another issue of the parent publication. For further information concerning such "Plus" issues, see generally the Postal Service's interim rule, 51 FR 25525 (July 15, 1986), and final rule, 51 FR 33610 (September 22, 1986), adopting current Domestic Mail Manual § 425.226.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendment of Parts 425 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation in 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 553(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 425—WHAT MAY BE MAILED AT THE SECOND-CLASS RATE.

2. In Part 425.2, add a new § 425.227 to read as follows:

425.2 Issues and editions.

* * * * *

425.22 Issues.

* * * * *

425.227 An "issue" of a newspaper or other periodical also will be deemed to be a separate publication, for postal purposes, and must independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, when the following conditions exist:

a. The issue is published on a day different from a regular issue of the same publication, but more frequently than once each month, and

b. At least 10 percent of the total number of copies of the issue is distributed on a regular basis, to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other regular issue distributed to nonsubscribers or nonrequesters during the same period.

**Note:** See 441.121 and 444.1 for requirements for filing certification forms to establish eligibility of an issue under this section.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88–17666 Filed 8–4–88; 8:45 am]

BILLING CODE 7710–12–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[SW–FRL–3425–3]**

### National Oil and Hazardous Substances Contingency Plan; the National Priorities Lists

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete sites from the National Priorities List: Request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) announces its intent to delete the Mowbray Engineering Company site from the National Priorities List (NPL) and requests public comment. The NPL is appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all Fund financed response under CERCLA have been implemented and EPA, in consultation with the State, had determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the Mowbray Engineering Company site.

**DATE:** Comments concerning the site may be submitted on or before April 29, 1988.

**ADDRESSES:** Comments may be mailed to Patrick M. Tobin, Director, Waste Management Division, c/o John Trudell, Site Project Manager, 345 Courtland Street, NE, Atlanta, Georgia 30365. The Comprehensive information on this site is available through the EPA Regional Docket clerks.

Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. The address for the Regional Docket Office is:

Gayle Alston, Region IV, USEPA Library, Room G–8, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404/347–4216.

**FOR FURTHER INFORMATION CONTACT:** Patrick M. Tobin, Director, Waste Management Division, c/o John Trudell, Site Project Manager, 345 Courtland Street, NE, Atlanta, Georgia 30365.

**SUPPLEMENTARY INFORMATION:**

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

## I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete the Mowbray Engineering site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses this site and explains how this site meets the deletion criteria.

## II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912), § 300.66(c)(7) on the NCP provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

## III. Deletion Procedures

In the NPL rulemaking published in the Federal Register on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the Federal Register on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The comment period is being conducted at the local level concurrent with this notice. The following procedures are being used for the intended deletion of this site.

The procedures used are:

1. EPA Regional Office recommended deletion and prepared relevant documents.
2. EPA Regional Office is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.
3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete is made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register,** and the NPL will reflect any deletions in the next update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

## IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete this site from the NPL.

*Mowbray Engineering Company Site, Greenville, Alabama*

The Mowbray Engineering Company (MEC) Superfund Site is a swamp of approximately three acres located in Greenville, Butler County, Alabama. The swamp is bordered on the northeast by Beeland St., the southeast by First St., the southwest by Tanyard Branch, and the northwest by an empty lot.

MEC was in the business of repairing electrical transformers from the early 1940's to late 1986. MEC disposed of the waste transformer oil by dumping it onto the ground behind the plant. The oil flowed into a storm sewer then discharged into the swamp. Approximately 9,000 gallons of oil were dumped annually between 1955 and 1974.

After two (2) fish kills and a removal action in February 1981, the MEC site was ranked on the NPL in 1982 with a score of 53.67. In 1983, the Alabama Department of Environmental Management sampled and found one sample to contain 1,737 mg/kg PCB. In 1984, the EPA Field Investigation Team conducted a site inspection and sampling and found PCB levels similar to the 1981 levels prior to removal. In

1985, Camp, Dresser, & McKee was authorized to conduct a Remedial Investigation/Feasibility Study to determine the nature and extent of contamination at the site and to explore potential remedies. After the public meeting in August 1985, the RI was conducted and completed in November 1985. The combined RI/FS report was completed in July 1986 and presented to the public for comment on August 12, 1986 at the public meeting.

The ROD was signed on September 25, 1986 and the selected remedy included excavation of soils contaminated above 25ppm PCBs and either offsite incineration, onsite incineration, or onsite stabilization/solidification of these soils. Incineration was the preferred option, however, stabilization/solidification was chosen as the remedy due to cost effectiveness.

The Remedial Action commenced in June 1987 and consisted of the following: solidification/stablization of PCB contaminated soil; capping of the monolith; constructing a diversion ditch around the monolith; fencing of the swamp area; grading and revegetating the swamp area; closure of an abandoned city supply well; excavation, removal, and disposal of the underground storage tanks located on the MEC property; removal of abandoned transformers; and the disposal of waste oil in the swamp, the underground storage tanks, and the transformers. The cleanup ended on August 20, 1987.

Confirmatory sampling was conducted after each segment of the Remedial Action and confirmed cleanup to below the 25ppm goal. Core samples were taken of the monolith before closure and tested for leachate. Results indicated no detectable levels of PCBs. Of the remaining core samples taken of the monolith, half will be tested for leachate at the first anniversary of cleanup and the remaining at the fifth year of cleanup.

The operation and maintenance of the facility will include cutting the grass in the monolith area; monitoring the site for leachate, erosion, and burrowing animals; and backfilling if erosion occurs.

EPA, in consultation with the Alabama Department of Environmental Management, has determined that the appropriate fund-financed response under CERCLA at the Mowbray Engineering Company Site has been completed. The State has given their concurrence with the deletion of the MEC Site from the NPL. EPA retains the authority to spend money on a deleted site if future conditions warrant such actions.

Date: March 3, 1988.

**Lee A. DeHihns, III,**

*Acting Regional Administrator.*

[FR Doc. 88-17707 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### Office of Inspector General

### 42 CFR Parts 405, 410, 489, and 1003

**[BERC-426-P]**

## Medicare Program; Prohibiting "Unbundling" of Hospital Outpatient Services

**AGENCY:** Health Care Financing Administration (HCFA) and the Office of Inspector General (OIG), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule, issued jointly by HCFA and OIG, would prohibit Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than the hospital, unless the services are furnished under an arrangement with the hospital. The hospital would be obligated by its provider agreement to furnish the services directly or under an arrangement.

These regulations would also authorize OIG to impose a civil money penalty, not to exceed $2,000, against any individual who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare in violation of an arrangement.

These regulations would implement sections 9343(c)(1), (c)(2), and (c)(3) of the Omnibus Budget Reconciliation Act of 1986.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 4, 1988.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-426-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-426-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:**

Thomas Hoyer (HCFA) concerning Unbundling of Services (301) 966-4607

James Patton (OIG) concerning Civil Money Penalties (301) 965-9601.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Rebundling of Hospital Services*

The Social Security Amendments of 1965 (Pub. L. 89-97) established title XVIII of the Social Security Act (the Act), which authorized the establishment of the Medicare program to pay part of the costs of health care services furnished to eligible beneficiaries. Part A of the program (Hospital Insurance) provides basic health insurance protection against the costs of inpatient hospital care and other inpatient or home health care. Part B of the program (Supplementary Medical Insurance) provides voluntary supplementary insurance covering most physicians' services and certain other items and services not covered under Part A, including hospital outpatient services.

Prior to the enactment of the Social Security Amendments of 1983 (Pub. L. 98-21) on April 7, 1983, which established the Medicare prospective payment system for inpatient hospital services, nonphysician services provided to Medicare beneficiaries who were hospital patients were generally billed by the hospitals. However, under certain circumstances, the statute permitted payments to be made to an outside supplier or another provider for nonphysician services that were furnished to a hospital patient. When payments were made under these circumstances, some nonphysician services were billed as hospital services in one hospital and billed by an outside supplier in another. The practice of billing by suppliers outside the hospital for these services has been referred to in the legislative history as "unbundling" of hospital services.

Since the enactment of Pub. L. 98–21 and the publication of implementing regulations on September 1, 1983 (48 FR 39752), the Medicare program has required that nonphysician services furnished to hospital inpatients be covered and paid for under Medicare as hospital services. This practice of covering nonphysician services furnished to hospital inpatients by an outside supplier as hospital services is referred to as "rebundling". Under the prospective payment system for inpatient hospital services, a single uniform payment is made for a case based on the diagnosis-related group (DRG) to which the cases is assigned. Rebundling ensures that the DRG payments to all hospitals cover a comparable "bundle" of services related to the hospital stay.

Specifically, Pub. L. 98–21 added section 1862(a)(14) to the Act to prohibit payment for services (other than physicians' services) furnished to an inpatient of a hospital by an entity other than the hospital, unless the services are furnished under an arrangement (as defined in section 1861(w)(1) of the Act). (Section 1861(w)(1) of the Act specifies that the term "arrangements" is limited to arrangements under which receipt of payment by the hospital or other provider for Medicare covered services to an individual discharges the liability of the individual or any other person to pay for the services.) Pub. L. 98–21 also added section 1866(a)(1)(H) to the Act to provide that a hospital will be eligible to participate in the Medicare program only if the hospital agrees to furnish to inpatients either directly or under an arrangement all Medicare covered items and services, other than physicians' services.

Regardless of whether the hospital furnishes the services directly or arranges for their provision, the hospital assumes financial responsibility for the services. The Medicare program makes payment only to hospitals, and not to providers or suppliers that furnish inpatient services on behalf of the hospitals.

In Pub. L. 98–21, Congress addressed only nonphysician services provided to Medicare beneficiaries who are hospital *inpatients* and did not address at that time nonphysician services provided to Medicare beneficiaries who are hospital *outpatients*, for which payment is made on a cost basis under Part B of Medicare. Thus, services to hospital outpatients continued to be unbundled in some hospitals. Subsequently, in section 9343(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, enacted October 21, 1986), Congress extended the rebundling provision to all nonphysician services furnished to hospital *patients*, thus including nonphysician services provided to Medicare beneficiaries who are hospital outpatients.

Sections 9343(c)(1) and (c)(2) of Pub. L. 99–509 amended sections 1862(a)(14) and 1866(a)(1)(H) of the Act, respectively. As revised, section 1862(a)(14) of the Act prohibits payment for nonphysician services furnished to hospital patients (inpatients and outpatients), unless the services are furnished by the hospital, either directly or under an arrangement (as defined in section 1861(w)(1) of the Act). As revised, section 1866(a)(1)(H) of the Act requires each Medicare participating hospital to agree to furnish directly all covered nonphysician services required by its patients, or to have the services furnished under an arrangement (as defined in section 1861(w)(1) of the Act).

Another provision of Pub. L. 99–509 made changes that affect our implementation of the rebundling mandate. Section 9338(a)(3) of Pub. L. 99–509 amended section 1861(s)(2)(K) of the Act by permitting services of physician assistants to be covered and billed separately.

Rebundling of outpatient hospital services would provide a basis for developing a prospective payment methodology for outpatient hospital services. Section 9343(f) of Pub. L. 99–509 amended section 1135 of the Act to require the Secretary to submit an interim report to Congress by April 1, 1988 concerning development of a fully prospective payment system for ambulatory surgery. A final report is due to Congress no later than April 1, 1989, with recommendations concerning implementation of a fully prospective payment mechanism for ambulatory surgery services by October 1, 1989. We are also required to develop a model system for prospective payment of outpatient hospital services other than ambulatory surgical procedures and submit a report to Congress concerning the model system by January 1, 1991.

So that we may be able to develop a prospective payment system for ambulatory surgery and other hospital outpatient services, it is necessary to have available clear and consistent rules about the range of services that would be included in such a payment system. Current policies on coverage of hospital outpatient services permit these services to be unbundled, and thus allow providers to vary their practices concerning provision of services. Congress recognized the inconsistencies of the current payment system and required rebundling as a first step toward payment reform.

*B. OIG Civil Money Penalty Authority*

The Department's OIG is authorized under sections 1128(c) and 1128A of the Act, and through implementing regulations at 42 CFR Part 1003, to impose administratively civil money penalties, assessments, and suspensions against any person who files false or certain other improper claims under Medicare, Medicaid, or Maternal and Child Health Services Block Grant programs. Under this authority, the OIG, in certain situations, may fine violators up to $2,000 as a penalty for each false or improper item or service, and impose an additional assessment of up to twice the amounts falsely claimed for each item or service. In addition, a person found liable for a penalty may also be suspended from Medicare or Medicaid program participation for appropriate periods of time.

In order to deter the unbundling of nonphysician hospital outpatient services, sections 9343(c)(3) of Pub. L. 99–509 and 4085(i)(17) of Pub. L. 100–203 further amended section 1866 of the Act. Specifically, this authority provides for the imposition of a penalty, not to exceed $2,000, against any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare that violates the billing arrangement under section 1866(a)(1)(H) of the Act, or the requirement for an arrangement. While the statute requires that a penalty be imposed in the same manner as other penalty billing violations currently imposed under section 1128A of the Act, it does not provide for assessments or for suspensions based on a penalty determination.

## II. Provisions of the Proposed Regulations

*A. Rebundling of Hospital Outpatient Services*

Current Medicare regulations (42 CFR 405.310(m)) implement the statutory requirement for rebundling of inpatient hospital services by excluding from coverage nonphysician services furnished to hospital inpatients by an entity other than the hospital, unless the services are furnished under arrangement. The current exclusion from coverage does not apply to physicians' services that meet the conditions for payment in 42 CFR 405.550(b), or services of anesthetists employed by physicians that meet the conditions for payment in 42 CFR 405.553(b)(4). The

exception for physicians' services is required by section 1862(a)(14) of the Act. Services of physician-employed anesthetists were excepted from rebundling as an administrative measure to prevent disruption of long-standing physician-anesthesia team relationships.

HCFA would implement the requirement for rebundling of outpatient hospital services by amending Medicare regulations (42 CFR 405.310 and Part 410) to exclude from coverage also any services that are furnished in a hospital to a patient who is not currently an inpatient of a hospital but is registered by the hospital as an outpatient, by an entity other than the hospital during or as a result of an encounter in the hospital, unless the services are furnished under arrangement. In addition, HCFA would require rebundling of those diagnostic procedures or tests (for example, magnetic resonance imaging (MRI) procedures) that are furnished outside the hospital by an entity other than the hospital, but were ordered during an encounter in the hospital with the patient or as a result of such encounter.

As in the case of services to hospital inpatients, and for the same reason, physicians' services that meet the conditions for payment in 42 CFR 405.550(b) would not be subject to rebundling under these proposed regulations. HCFA also would except services of physician-employed anesthetists that meet the conditions for payment in 42 CFR 405.553(b)(4) from outpatient rebundling. In addition, the proposed regulations would not apply to physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act from inpatient and outpatient rebundling. This change is being proposed to help accomplish the objective of section 1861(s)(2)(K)(i) of the Act, as amended by section 9338(a)(3) of Pub. L. 99–509, which permits physician assistants' services to be covered and billed separately. We believe section 1861(s)(2)(K) of the Act was intended to establish an exception to the rebundling provisions of Pub. L. 99–509 as they apply to services of physicians' assistants in hospitals. Although this exception is not explicit, to read the statute in any other way would mean that section 1861(s)(2)(K) of the Act would have no meaning with respect to services to hospital patients, a result that is contrary to the normal rule of statutory construction that each provision of an enactment must be construed to have meaning. In addition, the language of section 1861(s)(2)(K) of the Act describes the services affected as those "which *would be* physicians' services if furnished by a physician * * *" (emphasis added). We believe this language places the services in the same generic category as physicians' services, and suggests that they should be treated similarly for rebundling purposes.

HCFA would define (in Medicare regulations at § 410.2) the term "encounter" as a direct personal contact beween a patient and a physician, or other person who is authorized by State licensure law and, where applicable, by hospital staff bylaws to order or provide services for the patient, for the purpose of diagnosis or treatment of the patient. The use of the "encounter" as a basis for identifying the services to be rebundled is not specifically required by Pub. L. 99–509, but is needed in order to implement the rebundling requirement in a uniform and equitable manner, as explained further in section III of this preamble.

To ensure that appropriate payment is made for physicians' services and for the rebundling hospital and other nonphysician services, HCFA would revise the regulations relating to Part B reasonable charge payment (42 CFR 405.555 (b) and (c) and 405.556(c)).

HCFA would also revise Medicare regulations that set forth the basic commitments included in the provider agreement (§ 489.20). The revised regulations would clarify the hospital's responsibilities with respect to services furnished to inpatients, and would require a hospital that furnishes services to a beneficiary who is not currently an inpatient of a hospital but is registered by the hospital as an outpatient to agree to either furnish directly or make arrangements (in accordance with section 1861(w)(1) of the Act) for all items and services for which rebundling is required under the proposed revision described above, and for which the beneficiary is entitled to have payment made under Medicare.

Under the new provisions, if a Medicare outpatient is referred to another provider or supplier for further diagnostic testing or other diagnostic services as a result of an encounter that occurs in the hospital, the hospital would be responsible for arranging with the other entity for the provision of the services.

The hospital also would be responsible for providing or arranging for the provision of prostheses and prosthetic devices (other than dental) that replace all or part of an internal body organ (for example, intraocular lenses (IOLs)) and are implanted or fitted during an encounter. For example, under current policies, the physician who implants an IOL during surgery conducted on an outatient of a hospital also can be the supplier of the IOL, and is allowed to bill Medicare under Part B for it. Under these proposed regulations, this practice would be prohibited and the hospital would have to furnish the IOL, either directly or under arrangement (that is, would have to pay for the lens). The same policies would apply to other items and services, such as, artificial limbs, knees, and hips; durable medical equipment (DME); equipment and supplies covered under the prosthetic device benefit; and services incident to physicians' services. Thus, hospitals would be required to assume financial liability for prostheses and prosthetic devices (which are regarded as "services" for Medicare coverage purposes) and for other services furnished by an outside entity to their outpatients, and the practice of unbundling these services would be prohibited.

Sometimes a hospital may furnish an item or service for which a patient will have a continued need. For example, a hospital may furnish a DME item (for example, a wheel chair), or a prosthetic device and supplies (for example, a nasogastric tube and associated supplies). When this situation occurs, the hospital would be responsible under this regulation for rebundling the items and services it furnishes on site. DME is typically paid for on a monthly basis or in a lump sum, and if it is furnished by a hospital to an outpatient, we would require only the initial charge to be rebundled. Similarly, if a hospital furnishes a nasogastric tube and associated supplies, we would require only the items actually furnished to be rebundled. In both of these examples, subsequent charges for equipment rental or supplies would be billed and considered separately. A patient could continue to purchase them from the hospital or deal with an outside supplier.

In view of the short amount of time available for implementing the statutory requirements of Pub. L. 99–509, HCFA issued interim instructions in the Provider Reimbursement Manual (HCFA Pub. 15–1) and is preparing interim instructions for other HCFA manuals. These instructions were effective for services furnished on or after July 1, 1987. Upon the publication of final regulations that implement section 9343(c) of Pub. L. 99–509, HCFA will revise its program instructions as needed to reflect any differences between those final regulations and the interim instructions.

*B. Civil Money Penalty for Unbundling Hospital Outpatient Services*

In order to implement sections 9343(c)(3) of Pub. L. 99–509 and 4085(i)(17) of Pub. L. 100–203, OIG would impose a penalty, not to exceed $2,000, against any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare, and that bill or request violates the billing arrangement under section 1866(a)(1)(H) of the Act, or the requirement for an arrangement.

Upon issuance of the final rule, HCFA would refer all cases for possible penalty action to the OIG. The method for making referrals to the OIG would be set forth separately in the Part A Intermediary Manual, Part 3 (HCFA Pub. 13–3).

**III. Alternatives Considered**

The extension of the rebundling provision to outpatient services creates a number of practical difficulties that do not exist in the case of inpatient services. Because an individual inpatient's admission and discharge dates are entered in the hospital's medical and billing records, the time period during which the patient is an inpatient can be readily determined. In addition, an individual's access to treatment by other providers or suppliers is inherently limited while he or she is a hospital inpatient. By contrast, one individual may receive treatment on an outpatient basis from two or more hospitals in the same day, and the services received will not necessarily have been ordered by the same physician, or related to the same medical condition. It is also not uncommon for a patient who is seen in a hospital's outpatient department to be referred to another provider or supplier for additional services or specialized testing. Under these circumstances, determining which services should be rebundled can be difficult.

To deal with these problems, HCFA considered rebundling only those services that are not furnished by the hospital directly but are furnished while the patient is on site at the hospital. However, this approach would not adequately account for certain services (for example, computerized tomography (CT) scans or MRI procedures available only at and performed by a source outside the hospital) that may be provided as the direct result of a hospital outpatient visit and may be integrally related to other services, such as a physical examination, provided during the visit. Therefore, HCFA did not adopt this approach.

HCFA also considered rebundling all services, whether or not furnished on site at the hospital, that are required for the diagnosis and treatment of the medical condition for which the patient sought outpatient care from the hospital. Since the same individual may simultaneously be undergoing different courses of treatment for two or more unrelated medical conditions, and may receive services on an ambulatory basis from several providers or suppliers for each condition, making decisions as to which services are related to each condition could present almost insurmountable administrative problems for hospitals, intermediaries, and carriers. HCFA does not now have the information that would be needed to provide reliable guidance to carriers and intermediaries on which services typically are required for treatment of each condition for which an individual may seek outpatient hospital care. Because of these difficulties, HCFA rejected this approach.

To implement the rebundling requirement of section 9343(c) of Pub. L. 99–509 while avoiding the difficulties of the two approaches described above, HCFA proposes to use the site of the encounter that resulted in services being ordered as the key determinant of whether the services must be rebundled. For services provided on site at the hospital to patients who are not currently inpatients of a hospital, but are registered by the hospital as outpatients, rebundling would be required if the services were ordered during or as a result of an encounter that occurred at the hospital. For services provided outside the hospital to such patients, rebundling would be required only if the services are diagnostic procedures or tests ordered during or as a result of an encounter at the hospital. We adopted this "encounter-based" approach to rebundling because we believe it would prevent the unbundling of services that are integrally related to diagnosis or treatment the hospital provides to its patients, and would provide a clinically meaningful and administratively feasible basis for grouping outpatient services for purposes of eventual development of a prospective payment system for them.

**IV. Regulatory Impact Statement**

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any rule that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (FRA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not small entities, but we treat all hospitals and suppliers of medical services as small entities.

Because it appears likely that this rule would result in a significant increase in costs for at least some hospitals, we have prepared the following regulatory flexibility analysis. However, we do not believe that the effects of this proposed rule, in and of itself, would meet the criteria for a major rule.

We do not have sufficient data to assess fully the magnitude, interaction, and effects of this proposed rule on hospital and supplier behavior. However, we expect the following would result from implementation of this proposed rule.

Some items and services for which Part B payment is now made directly to the supplier would be paid for only if furnished directly by the hospital or under arrangements. All payments for those services to be rebundled would be made to the hospital. Payments for some services to outpatients that are currently paid on a reasonable charge basis would be made to the hospital on a reasonable cost basis. To the extent that a hospital's costs increase due to the rebundling of services, the hospital would be able to claim reimbursement on a reasonable cost basis for the increased costs. Therefore, we do not expect hospitals to incur an increase in unreimbursable costs.

We intend to implement this rule in a manner requiring the least change in billing. There has been some concern that burdensome administrative measures would be needed to avoid duplicate payment, or payment for services that are billed in violation of the rebundling provisions. While we expect some administrative costs due to necessary audits to monitor rebundling of services, we also expect that once participating hospitals and suppliers have gained the experience to make appropriate changes to their billing practices, that duplicate payments or noncompliance problems would not

occur more frequently than under current regulations with respect to inpatient services.

We have identified no benefits for hospitals or suppliers resulting directly from this proposal. Hospitals may elect to furnish directly some items and services now furnished by other entities, rather than enter into arrangements. This may affect the market position of non-hospital suppliers. We believe that the most frequently affected services would be laboratory tests, X-ray, CT, MRI, and IOLs.

Beneficiaries should be benefited by coordinated billing for nonphysician outpatient services. Coinsurance liability would be affected only to the extent that rebundling of services results in aggregate charges different from total charges for unbundled services. Beneficiary out-of-pocket expenses, however, may be reduced, since they would not be billed as often for charges in excess of the Medicare reasonable charge. We plan to apply the "prudent buyer" concept, under which costs in excess of those that would be incurred by a prudent and cost-conscious buyer are not considered reasonable, to ensure that rebundling does not unnecessarily increase the costs of services furnished under arrangements to outpatients. For example, if a hospital purchases IOLs from a physician or other supplier rather than directly from a manufacturer, the cost recognized as reasonable would not, in the absence of extenuating circumstances, be allowed to exceed the cost of purchasing directly from the manufacturer. Thus, we do not expect program liability for services to increase because of rebundling.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

### V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

### VI. Information Collection Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

### List of Subjects

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 410*

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

*42 CFR Part 489*

Health facilities, Medicare.

*42 CFR Part 1003*

Administrative practice and procedure, Archives and records, grant programs—social programs, Maternal and child health, Medicaid, Medicare, Penalties.

I. For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, Subpart C is amended as follows:

1. The authority citation for Subpart C continues to read as follows:

**Authority:** Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

### Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

2. In § 405.310, the introductory text to the section is republished, paragraph (m)(2) is revised, and a new paragraph (m)(3) and paragraph (n) are added to read as follows:

**§ 405.310 Particular services excluded from coverage.**

The following services are excluded from coverage.

* * * * *

(m) *Services to hospital inpatients*—

(1) * * *

(2) *Exceptions.* (i) Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis.

(ii) Physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act.

(iii) Services of an anesthetist employed by a physician if the services are furnished—

(A) During a cost reporting period that began on or after October 1, 1984; and

(B) No later than December 31, 1988.

(3) *Scope of exclusion.* Services subject to exclusion under this paragraph (m) may include, but are not limited to—clinical laboratory services; pacemakers and other prostheses and prosthetic devices (other than dental) which replace all or part of an internal body organ (for example, intraocular lenses); artificial limbs, knees, and hips; durable medical equipment; equipment and supplies covered under the prosthetic device benefits; and services incident to physicians' services.

(n) *Services to hospital outpatients.*—(1) *Definitions.* As used in this paragraph—

"Encounter" means a direct personal contact in the hospital between an outpatient and a physician or another person who is authorized by State law and, if applicable, by hospital staff by-laws, to order or furnish services for diagnosis or treatment of the patient.

"Outpatient" means an individual who is not an inpatient of the hospital but is registered as an outpatient.

(2) *Basic rule.* Except as provided in paragraph (n)(3) of this section, any of the following services if furnished by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) to furnish that particular service to the hospital's outpatients:

(i) All services furnished in the hospital during or as a result of an encounter.

(ii) Diagnostic services furnished outside the hospital, but ordered during or as a result of an encounter.

(3) *Exceptions.* (i) Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis.

(ii) Physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act.

(iii) Services of an anesthetist employed by a physician if the services are furnished—

(A) During a cost reporting period that began on or after October 4, 1984; and

(B) No later than December 31, 1988.

(4) *Scope of exclusion.* Services subject to exclusion under this paragraph (n) may include, but are not limited to—clinical laboratory services;

pacemakers and other prostheses and prosthetic devices (other than dental) which replace all or part of an internal body organ (for example, intraocular lenses); artificial limbs, knees, and hips; durable medical equipment; equipment and supplies covered under the prosthetic device benefits; and services incident to physicians' services.

B. Part 405, Subpart E is amended as follows:

1. The authority citation for Subpart E continues to read as follows:

**Authority:** Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

**Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians**

2. In § 405.553, paragraphs (b)(1)(ii) and (4) are revised to read as follows:

**§ 405.553 Reasonable charges for anesthesiology services.**

* * * * *

(b) *Services furnished by the anesthesiologist or by an anesthetist employed by the anesthesiologist.* * * *

(1) * * *

(ii) Except as provided in paragraph (b)(4) of this section, anesthesia services furnished to a hospital patient by an anesthetist under the medical direction of an anesthesiologist will be paid for in accordance with paragraph (c) of this section.

* * * * *

(4) The provisions of paragraph (b)(1)(ii) of this section do not apply to services furnished by an anesthetist employed by a physician if either of the following conditions is met:

(i) The services are inpatient hospital services furnished—

(A) During cost reporting periods that begin on or after October 1, 1984; and

(B) No later than December 31, 1988.

(ii) The services are outpatient hospital services furnished—

(A) During cost reporting periods that begin on or after [the effective date of the final regulation]; and

(B) No later than December 31, 1988.

* * * * *

3. § 405.555 is revised to read as follows:

**§ 405.555 Reasonable charges for radiology services.**

(a) *General rule.* In determining payment for physicians' radiology services that meet the conditions for payment of charges in § 405.554, the carrier—

(1) Determines the amount of payment under the reasonable charge rules for physician services in providers in § 405.551 and the general reasonable charge rules in §§ 405.501 through 405.508; and

(2) Applies the rules in paragraphs (b) or (c) as appropriate.

(b) *Services subject to the 40 percent limitation.* The reasonable charge determined under paragraph (a) of this section, for physicians' radiology services furnished to a provider patient, may not exceed 40 percent of the prevailing charge for similar services furnished in any setting other than a provider. These services include physicians' radiology services—

(1) Furnished in any setting to a hospital inpatient;

(2) Furnished in a provider to a provider patient; or

(3) Associated with diagnostic radiology services furnished outside the hospital but ordered during or as a result of an encounter, as defined in § 405.310(n).

(c) *Services not subject to the 40 percent limitation.* The following services are not subject to the 40 percent limitation set forth in paragraph (b) of this section:

(1) Physician radiology services associated with services, other than those described in paragraph (b)(3) of this section, furnished to a hospital outpatient by an entity outside and other than the hospital.

(2) Physician radiology services furnished to a patient of a provider, other than a hospital patient, by an entity outside and other than the provider.

4. § 405.556 is amended by revising paragraph (c) to read as follows:

**§ 405.556 Conditions for payment of charges: Physician laboratory services.**

* * * * *

(c) *Independent laboratory services furnished to hospital patients.* Laboratory services furnished to a hospital patient by an independent laboratory (as defined in § 405.1310(a)) are paid for on a reasonable charge basis under this subpart only if they are anatomical pathology services furnished by a physician. Physician services associated with abnormal pap smears or abnormal blood smears furnished to other than hospital inpatients are paid under and as part of the clinical laboratory fee schedule payment. For nonphysician services furnished by an independent laboratory, the intermediary pays the hospital in accordance with—

(1) Part 412 of this chapter for services to inpatients; and

(2) Part 413 of this chapter for services ordered during or as a result of an encounter (as defined in § 405.310(n)(1)), and furnished to outpatients.

**PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS**

C. Part 410, Subpart A is amended as follows:

1. The authority citation for Part 410 continues to read as follows:

**Authority:** Secs. 1102, 1832, 1833, 1835, 1861(r), (s), and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x(r), (s), and (cc), 1395hh, and 1395rr).

**Subpart A—General Provisions**

2. Section 410.2 is amended by adding in alphabetical order the definition of "Encounter" to read as follows:

**§ 410.2 Definitions.**

* * * * *

"Encounter" means a direct personal contact between a patient and a physician (or other person who is authorized by State licensure law and, where applicable, by hospital staff bylaws to order or provide services for the patient) for the purpose of diagnosis or treatment of the patient.

* * * * *

**Subpart B—Medical and Other Health Services**

3. Section 410.27 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

**§ 410.27 Outpatient hospital services and supplies incident to physicians' services: Conditions.**

* * * * *

(c) Services furnished by an entity other than the hospital are subject to the limitations specified in § 410.30(a).

* * * * *

4. Sections 410.28 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

**§ 410.28 Hospital diagnostic services furnished to outpatients: Conditions.**

* * * * *

(c) Diagnostic services furnished by an entity other than the hospital are subject to the limitations specified in § 410.30(b).

* * * * *

5. A new § 410.30 is added to read as follows:

**§ 410.30 Limitations on coverage of certain services furnished to hospital outpatients.**

(a) Except as provided in paragraph (c) of this section, Medicare Part B does not pay for any services that are furnished—

(1) In a hospital by an entity other than the hospital unless furnished under an arrangement as defined in § 409.3 of this chapter;

(2) To an individual who is not an inpatient of the hospital, but is registered by the hospital as an outpatient; and

(3) During or as a result of an encounter (as defined n § 410.2) in the hospital with the patient.

(b) Except as provided in paragraph (c) of this section, Medicare Part B does not pay for any diagnostic services if the services are—

(1) Furnished outside the hospital by an entity other than the hospital unless furnished under an arrangement as defined in § 409.3 of this chapter; and

(2) Ordered during or as a result of an encounter (as defined in § 410.2) in the hospital with an individual who is not an inpatient of the hospital but is registered by the hospital as an outpatient.

(c) The limitations stated in paragraphs (a) and (b) of this section do not apply to—

(1) Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment in a reasonable charge basis;

(2) Physician assistant services as defined in section 1861(s)(2)(K) of the Act; and

(3) Services of an anesthetist employed by a physician that meet the conditions of § 405.553(b)(4) of this chapter.

## PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

D. Part 489, Subpart B is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

**Authority:** Secs. 1102, 1861, 1862(h), 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(h), 1395aa, 1395cc, and 1395hh), and sec. 602(k) of Pub. L. 98–21 (42 U.S.C. 1395ww note).

2. In § 489.20, the introductory statement is republished and paragraph (d) is revised to read as follows:

**§ 489.20 Basic commitments.**

The provider agrees to the following:

* * * * *

(d) In the case of a hospital that furnishes services to Medicare beneficiaries, either to furnish directly or to make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services to hospital inpatients and outpatients except the following:

(1) Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment on a reasonable charge basis;

(2) Physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act;

(3) Services of an anesthetist employed by a physician if the services meet the conditions set forth in § 405.553(b) of this chapter; and

* * * * *

II. For the reasons set forth in the preamble, 42 CFR Chapter V would be amended as follows:

## PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

A. Part 1003 is amended as follows:

1. The authority citation for Part 1003 continues to read as follows:

**Authority:** Secs. 1102, 1128, 1128a, 1842(j), and 1842(k) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395u(j), and 1395u(k)).

2. Section 1003.101 is amended by adding definitions for the terms "Encounter", "Hospital outpatient service", and "Outpatient" to read as follows:

**§ 1003.101 Definitions.**

* * * * *

"Encounter" means a direct personal contact between an outpatient and a physician or another person who is authorized by State law and, if applicable, by hospital staff by-laws, to order or furnish services for the purpose of diagnosis or treatment of the patient.

* * * * *

"Hospital outpatient service" means—

(a) A service furnished to an outpatient in a hospital during or as a result of an encounter; or

(b) A diagnostic procedure or test furnished to an outpatient outside the hospital but ordered during or as a result of an encounter.

* * * * *

"Outpatient" means an individual who is not an inpatient of the hospital but is registered as an outpatient.

* * * * *

3. In § 1003.102(b), the introductory text of paragraph (b) is republished, and the paragraph is amended by removing the "; or" at the end of paragraph (b)(1)(iii) and inserting in their place ".", and adding a new paragraph (b)(4) to read as follows:

**§ 1003.102 Basis for civil money penalties and assessments.**

* * * * *

(b) The OIG may impose a penalty against any person whom it determines in accordance with this part:

* * * * *

(4) Has knowingly and willfully presented, or caused to be presented, a bill or request for payment for a hospital outpatient service for which payment may be made under Part B of the Medicare program, if that bill or request violates a billing arrangement under section 1866(a)(1)(H) of the Act, or the requirement for an arrangement.

4. § 1003.105, paragraph (a) is revised to read as follows:

**§ 1003.105 Suspension from participation in Medicare or Medicaid.**

(a) A person subject to a penalty or assessment determined under § 1003.102 (a) and (b)(1) may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he shall specify. The State agency may request the Secretary to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The Secretary will notify the State agency if and when the Secretary waives suspension in response to such a request.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: March 2, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Dated: March 25, 1988.

**Richard P. Kusserow,**

*Inspector General, Department of Health and Human Services.*

Approved: June 21, 1988.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 88–17539 Filed 8–4–88; 8:45 am]

BILLING CODE 4120-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 36

[CC Docket No. 86-341; FCC 88-211]

### Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The FCC proposes to amend Part 36 of its rules, which establish eligibility criteria for the Link Up connection assistance program, to provide that states which verify income need not require that Link Up applicants comply with the requirements that applicant have lived at an address without telephone service for the past three months and not have received Link Up assistance during the past two years. The FCC found that reexamination of the eligibility criteria is warranted because participation in four test markets indicates that 15% of Link Up applicants have been rejected for failure to meet the three-month rule, and thus that the eligibility criteria may frustrate efforts to promote universal service.

**DATES:** Comments must be submitted on or before August 15, 1988, and reply comments must be submitted on or before September 12, 1988.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Peyton Wynns at (202) 632-0745 or E. Laurence Povich at (202) 632-6363, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this NPRM may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 36**

Jurisdictional separations procedures: standard procedures for separating telephone property costs, revenues, expenses, taxes and reserves, telephone.

H. Walker Feaster III,
*Acting Secretary.*

**Proposed Rule Changes**

Part 36 of Title 47 CFR is proposed to be amended as follows:

**PART 36—[AMENDED]**

1. The authority for Part 36 continues to read as follows:

**Authority:** Sections 4, 201, 202, 203, 205, 218, 221(c), 403, and 410(c) of the Communications Act of 1934 as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 221(c), 403, and 410(c).

2. Section 36.721 is proposed to be amended by revising the introductory text of paragraph (a)(2); the texts of (a)(2)(ii) and (a)(2)(iii); by adding a new paragraph (a)(2)(iv); and by revising paragraph (a)(3) and removing (a)(4), to read as follows:

**§ 36.721. Telephone company eligibility for lifeline connection assistance expense allocation.**

(a) * * *

(2) Shall verify that subscribers meet the eligiblity criteria set out in § 36.711(b) provided that:

* * * * *

(ii) If the eligibility criterion in § 36.711(b)(4) is verified, then the criteria in § 36.711(b) (1) and (2) shall not apply;

(iii) If the eligibility criterion in § 36.711(b)(4) is self-certified, then the eligibility criteria in § 36.711(b) (1) and (2) shall apply and must be verified;

(iv) In all cases, the eligibility criterion in § 36.711(b)(3) may be self-certified.

(3) Shall file information with the Commission Secretary demonstrating that it is eligibile for the additional interstate expense adjustment.

* * * * *

[FR Doc. 88-17685 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 87-589; RM-6108]

### Radio Broadcasting Services; Creswell, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed Rule; denial of petition.

**SUMMARY:** The Commission denies the request of Visionary Radio Euphonics of Oregon, Inc., (published at 53 FR 1388, Jan. 19, 1988) to substitute Channel 237C2 for Channel 237A at Creswell, Oregon, and modify its license for Station KZAM to specify the higher powered channel. The Commission found that Channel 237C2 could not be allotted to Creswell in compliance with the Commission's technical requirements. Rather, it was found that Station KZAM could not provide the entire community with the required 70 dBu city grade service due to an obstruction approximately 120 meters in height between the restricted transmitter site and the community of license which could cause shadowing to the western side of Creswell. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-589, adopted July 1, 1988, and released July 29, 1988. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.
Steve Kaminer,
*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17680 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 74

[MM Docket No. 83-523; FCC 88-239]

### Amendment of Rules for Instructional Television Fixed Service

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Proposed rules.

**SUMMARY:** This action proposes further modification of certain rules in the Instructional Television Fixed Service ("ITFS") in response to a partial remand by the U.S. Court of Appeals, DC Circuit in *TRAC v. FCC*, 836 F.2d 1349 (1988). The Court rejected the Commission's use of an unweighted lottery to break ties among competing applicants for mutually exclusive ITFS facilities. It also required the Commission to make a basic classification determination, or explain why it should not have to at this time, for ITFS operators which use their

"excess capacity" for non-ITFS nonsubscription services.

**DATES:** Comments must be submitted on or before September 22, 1988, and reply comments on or before October 12, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Bruce Romano, (202) 632–9356.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order and Second Further Notice of Proposed Rulemaking in MM Docket No. 83–523, FCC 88–239, Adopted July 13, 1988, and Released July 22, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order and Further Notice of Proposed Rulemaking in MM Docket No. 83–523:

1. In this *Order and Second Further Notice of Proposed Rulemaking ("Order and Notice")*, the Commission is proposing the modification of rules governing the Instructional Television Fixed Service ("ITFS"). This action is in response to the rejection by the U.S. Court of Appeals, D.C. Circuit, of two aspects of the ITFS rules in *Telecommunications Research and Action Center ("TRAC v. FCC")*, 836 F.2d 1349 (D.C. Cir., 1988).

2. First, the Court noted that the Commission had not addressed the possibility that an ITFS operator's "excess capacity" could be utilized on a nonsubscription basis, and rejected its argument on appeal that such use is extremely unlikely, and that if it occured, it could be addressed when brought to the Commission's attention. The Commission now proposes to permit "excess capacity" use for non-ITFS purposes on a nonsubscription basis only after notification to and approval by the Commission of such use. This proscription will take effect immediately. Because this notification requirement is procedural in nature, it is imposed without prior notice and comment rulemaking.

3. The Court also rejected the Commission's use of an unweighted random chance tiebreaker in its comparative selection procedure. The Commission now proposes to eliminate or reduce ties after the application of its specified criteria by consideration of an additional criterion, to be used only in tied cases. That criterion will be some formula which measures the extent of use the applicants can make of the ITFS facilities based on the number of enrolled students they will serve. Total enrollment or some variation of student/hours of video classes are both possible, with the Commission intially favoring the former. Interested parties are requested to comment on the efficacy of various enrollment or usage factors and the propriety of any formula for comparing enrollment or usage figures, including the method of documentation or demonstration and the ease and reliability of methods of proof. Suggestions are solicited for additional criteria or procedures to employ for those cases, if any, which might remain tied even after application of the additional secondary enrollment criterion. The basic comparative slection process and the current criteria and their relative weights are not under consideration here; comments should be limited to the appropriate nature and formulation of the secondary criterion (or criteria) to be adopted.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, it is certified that the proposed will not, if promulgated, have a significant economic impact on a substantial number of small entities because submission of additional data will occur on occasionally, and ease and simplicity of ascertainment, assembly and submission is an essential element of any rule which the Commission will adopt.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and it may impose new or modified requirements or burdens on the public. Implementation of any new or modified requirements or burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

6. This is a restricted notice and comment rulemaking proceeding. *See* section 1.1229 of the Commission's rules, 47 CFR 1.1229, for rules regarding permissible *ex parte* contacts.

7. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 22, 1988, and reply comments on or before October 12, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

**Ordering Clauses**

8. Accordingly, it is ordered, that the Motion for Stay filed by NAACP and others is dismissed.

9. It is further ordered, That the Office of the Managing Director SHALL SEND to the Chief Counsel for Advocacy of the Small Business Administration the certification that the proposed action will have no significant economic impact on a substantial number of small entities.

**List of Subjects in 47 CFR Part 74**

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services, Television.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88–17686 Filed 8–4–88; 8:45 am]

BILLING CODE 6712–01–M

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## DEPARTMENT OF ENERGY

## 48 CFR Part 927

## Acquisition Regulation, Patent, Data and Copyrights

**AGENCY:** Department of Energy.

**ACTION:** Proposed amendment with request for comment.

**SUMMARY:** Pursuant to Section 3135 of Pub. L. 100–180, the Department of Energy proposes amendments to 48 CFR Part 927 to specify the elements of a "complete request" for waiver of Government patent rights to inventions and discoveries under contracts or subcontracts of the Naval Nuclear Propulsion Program or nuclear weapons programs or other atomic energy defense activities of DOE. A decision upon such a "complete request" is required within 150 days after the date of submission. The 150 day time period for action on such waivers is to apply to waiver requests submitted after March 1, 1988.

**DATES:** Written comments on the proposed amendment are due no later than September 23, 1988.

A Public Hearing will be held on September 14, 1988 at 9:00 a.m., at DOE Headquarters, 1000 Independence Avenue SW, Washington, DC, in Room GE–063. Requests to present oral statements must be received no later than August 29, 1988.

**ADDRESSES:** Written comments (three copies) must be addressed to: Robert M. Webb, Department of Energy, Procurement and Assistance

Management, Office of Policy, MA–421, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** For further information and to make requests to speak at the public hearing contact: Richard E. Constant, Assistant General Counsel for Patents, Department of Energy, GC–42, Washington, DC 20585; Tel.: (202) 586–2802.

Robert M. Webb, Department of Energy, Procurement and Assistance Management, Office of Policy, MA–421, Washington, DC 20585; Tel.: (202) 586–8247.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Discussion**

Section 3131(a) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 (title I of division C of Pub. L. 99–661) 42 U.S.C. 7261a, (hereinafter "Authorization Act of 1987"), provided that for certain inventions made under contracts and subcontracts of DOE's Naval Nuclear Propulsion Program or DOE's nuclear weapons programs or other atomic energy defense activities, when making patent waiver decisions thereon, the Secretary of Energy shall consider matters additional to those previously provided by statute [section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or subsections (c) and (d) of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908)] for waiver of patent rights. These additional matters to be considered for waiver of title to inventions relating to such Naval Nuclear Propulsion and atomic energy defense activities include, whether national security will be compromised, whether sensitive technical information under these activities for which dissemination is controlled will be released to unauthorized persons, whether an organizational conflict of interest will result and whether these programs will be adversely affected by a patent waiver.

Section 3135 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1988 (title I of division C of Pub. L. 100–180) (hereinafter "Authorization Act of 1988") amended section 3131(a) of the Authorization Act of 1987 by, among other things, providing that for inventions relating to such Naval Nuclear Propulsion and atomic energy defense activities, waiver decisions shall be made within 150 days after the date on which a "complete request" for waiver of such rights has been submitted to the Secretary by the contractor (or assistance recipient or party entering into another arrangement, as applicable). If such waiver decisions are not made within the prescribed 150 day period, DOE is required to submit reports to appropriate Senate and House committees on the reasons for such failure to decide. It is further provided that a "complete request" includes such information, in such detail and form, as the Secretary of Energy by regulation prescribes as necessary to allow the Secretary to take into consideration the matters prescribed for waiver determinations.

The purpose of this rule is to amend DOE's regulations concerning patent waivers to include specific elements of a "complete request" for waiver, for purposes of the initiation of the 150-day period during which a waiver determination must be made for inventions relating to Naval Nuclear Propulsion or atomic energy defense activities. DOE's current regulation concerning patent waivers, 48 CFR 927.3, which incorporates 41 CFR 9–9.1 and in particular 41 CFR 9–9.109–6, addresses generally the information required in a waiver request, but does not specify as such the contents of a "complete request." Since no firm time periods had been prescribed for waiver determinations, DOE had flexibility to accept "incomplete" waiver petitions and as necessary request supplementary information when and if available. This procedure sometimes resulted in lengthy periods of time for making patent waiver determinations. In view of the new statutory requirement that certain waiver determinations be made within a prescribed time period after submission of a complete request, as prescribed by regulation, this amendment is necessary in order to prescribe the contents of a complete request. For waiver requests subject to the 150 day time period for decision, the 150 day time period commences on the date of receipt of the waiver petition, if the petition does not result in a communication from DOE Patent Counsel indicating that the request is incomplete. For advance waiver requests however, if petitioner is not notified that the request is incomplete, the 150 day period commences on the date of receipt of the petition, or on the date on which negotiation of contract terms is completed, whichever is later. The reason for this provision is that for advance waivers, until contract terms are actually negotiated, e.g. level of cost-sharing technical data provisions, licensing of background and subject inventions, it is generally not possible for the waiver request to rise to the level of sufficient completeness for the Department to apply all of the matters to be considered under section 3131 of the Authorization Act of 1987.

In addition to specifying particular information to be included in a complete request for purposes of implementing the Authorization Act of 1988, this amendment formally includes the specific additional matters discussed above that are required to be considered for waivers of inventions made under contracts relating to Naval Nuclear Propulsion or nuclear weapons programs or other atomic energy defense activities of DOE. These additional matters are listed in proposed 927.301(b)(3)–(6).

Generally, a complete request for waiver is to include sufficient information in such detail and form as to allow the Secretary or designee to fully consider all statutory patent waiver objectives and considerations relevant to a particular situation. DOE's current patent waiver regulation specifies such objectives and considerations, and specifies generally the information to be included in a patent waiver request. In view of the statutory requirement discussed above to prescribe a complete request for waiver, this proposed amendment augments DOE's current regulations concerning patent waivers to provide additional specific guidance as to that which is required to constitute a complete waiver request. As discussed more fully in the proposed regulation, this information includes, for an advance waiver request, at a minimum, identification of all of petitioner's contractual arrangements involving the Government relative to the particular technology, and any other Government funding of the technology of which the petitioner is aware; a description of petitioner's past, present and future investment in the technology; information relative to whether the technology may be classified or sensitive; and information as to a possible organizational conflict of interest if petitioner has or intends to be providing program planning advice in the same general technology.

For identified invention waiver requests, the specific minimum information concerning the technical steps required and funds necessary therefor to develop the invention to commercialization; a description of petitioner's plans, intentions, and ability to commercialize the invention; a description of any continuing Government funding of the invention; information regarding reimbursement of Government's costs, if any, for preparation and prosecution of a patent

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application; and information regarding existence of classified or sensitive matter in the inventive material.

The items of information required for a complete request for an advance waiver or an identified invention waiver include items which have been very frequently required so that DOE can apply the objectives and considerations set forth in the existing patent waiver regulations. They also include items which are relevant to national security or organizational conflict of interest considerations. All of these considerations are ones which DOE must take into account in processing a complete request.

## II. Procedural Requirements

### *A. Review Under Executive Order 12291*

This amended rule is exempt from review by the Office of Management and Budget under E.O. 12291 of February 17, 1981, pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85-7, dated December 14, 1984.

### *B. Review Under Regulatory Flexibility Act*

This amended rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. This amendment concerns policy and procedures for patent waivers affecting entities that are generally not small businesses since there is separate statutory authority (35 U.S.C. 202) governing disposition of invention rights of Government contractors that are small businesses. The amended rule imposes no significant burdens or impact on small entities. Therefore, DOE certifies that the amendment will not have significant economic impact on a substantial number of small entities.

### *C. Review Under the Paperwork Reduction Act*

The reporting requirements contained in this proposed rule have been submitted to OMB for approval under the Paperwork Reduction Act.

### *D. Review Under National Environmental Policy Act*

DOE has determined that the amendment is not a major Federal action with significant environmental impact and does not affect the quality of the environment. Consequently, the amendment does not require preparation of an Environmental Assessment or Environmental Impact Statement under National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (1982).

### *E. Opportunities for Public Participation*

Section 501(c)(1) of the Department of Energy Organization Act, 42 U.S.C. 7191(c)(1) (1982), provides that if the Secretary determines that a subtantial issue of fact or law exists or that a proposed rule is likely to have substantial impact on the Nation's economy or on large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. To preclude any issue in this regard, such an opporuntity will be provided.

1. *Written comment procedures.* Interested parties are invited to participate in this rulemaking by submitting views, data, or arguments with respect to the proposal set forth in this notice to Mr. Robert M. Webb, Procurement and Assistance Management, Office of Policy, MA-421, Department of Energy 1000 Independence Avenue SW., Washington, DC 20585. The comments and the outside of the envelope should be identified with the designation, "Docket No. D88-1." Three copies of the comments should be submitted.

All comments received by September 23, 1988 and other relevant information will be considered by DOE before final actions is taken regarding the proposed regulations.

2. *Public Hearing.* DOE has determined to hold one public hearing on this proposal. The time and place of the public hearing is indicated at the beginning of this notice.

Any person who has an interest in the proposed rulemaking or who is a representative of a group of persons that has an interest in this rulemaking may make a written request for an opportunity to make an oral presenation. Such a request should be directed to the DOE Assistant General Counsel for Patents at the address given at the beginning of the preamble and must be received by the date specified at the beginning of this notice. Requests may be hand-delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Requests should be marked as for written comments, with the additional notation "Request to Speak."

The person making the request should briefly describe the interest concerned and, if appropriate, state why that person is a proper representative of a group with such an interest, give a concise summary of the proposed oral presentation, and provide a phone number where the person or group may be contacted through September 7, 1988.

Each person selected to be heard at the public hearing will be notified by September 7, 1988. Witnesses presenting oral testimony must bring seven copies of their statements to the hearing.

In the event any person wishing to testify cannot provide seven copies, alternative arrangements can be made with the hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Richard Constant at the address and telephone number noted earlier in this notice.

3. *Conduct of hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person wishing to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any additional procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 1-E-152, 1000 Independence Avenue SW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday, through Friday except Federal holidays. Any person may purchase a copy of the transcript from the court reporter.

The public hearing may be cancelled if no public testimony is scheduled in advance. In the event the hearing is

cancelled, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register.**

**List of Subjects in 48 CFR Part 927**

Inventions, Patents and waivers.

In consideration of the foregoing, Part 927 of Title 48 of the Code of Federal Regulations is proposed to be amended, as set forth below.

**Berton J. Roth,**

*Director, Procurement and Assistance Management Directorate.*

## PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for Part 927 is proposed to be revised as follows:

**Authority:** Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168). Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, 42 U.S.C. 5908; Atomic Energy Act of 1954, as amended, Sec. 152, 42 U.S.C. 2182; Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), 42 U.S.C. 7261a.

2. Section 927.370 is proposed to be added as follows:

**927.370 Waiver of title to certain sensitive inventions.**

(a) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a) (ii) or (iv) of title 35, United States Code, or pursuant to section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy, and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(b) In making a decision under this Section, the Secretary or his designee shall:

(1) Apply the stated general objectives for patent waivers under 927.300(a) of this subpart;

(2) Take into account the specific considerations applicable to advance waivers and identified invention waivers, respectively, under 927.300(a) of this subpart;

(3) Consider whether national security will be compromised;

(4) Consider whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons program or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(5) Consider whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(6) Consider whether waiving such rights will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(c) A decision under this section shall be made within 150 days after the date on which a complete request for waiver, as described by paragraph (d) of this section, has been submitted to the Patent Counsel by the contractor.

(d) In addition to the requirements for content which apply generally to all waiver requests under 927.300(a) of this subpart, a requestor must include a full and detailed statement of facts, to the extent known by or available to the requestor, directed to the considerations set forth in paragraphs (b) (3)–(6) of this section, as applicable. To be considered complete, a waiver request must contain sufficient information, in addition to the content requirements under 927.300(a) of this subpart, to allow the Secretary or his designee to make a decision under this section. Such information shall include, at a minimum, for advance waiver requests:

(1) An identification of all of the petitioner's contractual arrangements involving the Government (including contracts, subcontracts, grants, or other arrangements) in which the technology involved in the contract was developed or used and any other funding of the technology by the Government, whether direct or indirect, involving any other party, of which the petitioner is aware;

(2) A description of the petitioner's past, current, and future private investment in and development of the technology which is the subject of the contract. This includes expenditures not reimbursed by the Government on research and development which will directly benefit the work to be performed under the instant contract, the amount and percentage of contract costs to be shared by the petitioner, the out-of-pocket costs of facilities or equipment to be made available by the petitioner for performance of the contract work which are not charged directly or indirectly to the Government under the contract, and the contractor's plans and intentions to further develop and commercialize the technology at private expense;

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effect of granting the waiver.

(4) Identification of whether the contract pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended, (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the subject matter of the contract, whether inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(5) Identification of all DOE and DOD programs and projects in the same general technology as the contract for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(e) For identified invention requests, such requests shall include at a minimum:

(1) A description of the technical steps required and funds necessary therefor to develop the invention to the point of readiness for commercialization;

(2) A description of the plans, intentions and ability of the petitioner to commercialize the invention, including any anticipated amounts of capital and expenditures, and associated time periods, to be directed toward development and commercialization of the particular invention, together with a description of the comercial position (if any) of the petitioer in the marketplace, and a statement by the petitioner that either the petitioner or petitioner's present or intended licensee will expend the anticipated amounts of capital and resources required to develop the invention to the point of readiness for commercialization.

(3) A description of any continuing Government funding of the development of the invention (including investigation of materials or processes for use therewith), from whatever Government source, whether direct or indirect, and, to the extent known by the petitioner, any anticipated future Government funding to futher develop the invention.

(4) A description of competitive technologies or other factors which would ameliorate any anticompetitive effects of granting the waiver.

(5) A statement that petitioner will reimburse the Department of Energy for any and all costs and fees incurred by the Department in the preparation and prosecution of the patent applications covering the invention that is the subject of the waiver petition.

(6) Where applicable, a statement of reasons why the petiton was not timely filed in accordance with the applicable patent rights clause of the contract, or why a request for an extension of time to file the petition was not filed in a timely manner.

(7) Identification of whether the invention pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended, (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the invention inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(8) Identification of all DOE and DOD programs and projects in the same general technology as the invention for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(9) A statement of whether a classification review of the invention disclosure, any resulting patent application(s), and/or any reports and other documents disclosing a substantial portion of the invention has been made, together with any determinations on the existence of classified or sensitive information in either the invention disclosure, the patent application(s), or reports or other documents disclosing a substantial portion of the invention; and

(10) Identification of any and all proposals, work for others activities, or other arrangements submitted by the petitioner, DOE, or a third party of which petitioner is aware, which may involve further funding of the work on the invention at either the contractor facility where the invention arose or another facility owned by the Government.

(f) Patent Counsel will notify the petitioner promptly if the waiver request is found not to be a complete request and, in that event, will provide the petitioner with a reasonable period, not to exceed 60 days, to correct any such incompleteness. If petitioner does not respond within the allotted time period, the waiver request will be considered to be withdrawn. If petitioner responds within the allotted time period, but the submittal is still deemed incomplete or insufficient, the waiver request may be denied.

(g) For waiver requests as described in this section, waiver decisions shall be made within 150 days after the date on which a complete request for waiver of such rights, as specified herein, has been submitted by the petitioner to the DOE Patent Counsel. If the original waiver request does not result in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date of receipt of the waiver petition. If the original waiver request results in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date on which supplementary information is received by Patent Counsel sufficient to make the waiver request complete. For advance waiver requests, if petitioner is not notified that the request is incomplete, the 150-day period for decision commences on the date of receipt of the petition, or on the date on which negotiation of contract terms is completed, whichever is later.

(h) Failure of DOE to make a patent waiver decision within the prescribed 150-day period shall in no way be construed as a grant of the waiver.

[FR Doc. 88-17740 Filed 8-4-88; 8:45 am]
BILLING CODE 6450-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1004, 1041, and 1042

[Ex Parte No. 55; Sub-67]

### Non-Rail Interpretations and Routing Regulations

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rule.

**SUMMARY:** The Commission is proposing to consolidate its interpretations and routing regulations, presently found at 49 CFR Parts 1004, 1041, and 1042, in a central location at 49 CFR Part 1004, as described below. The proposal also streamlines and updates these regulations, and removes obsolete matter. No substantive changes are intended. Grouping related provisions in one place should aid the general public in finding and using the material.

**DATES:** Comments are due September 6, 1988.

**ADDRESS:** Send an original and, if possible, 10 copies of comments referring to Ex Parte No. 55 (Sub-No. 67) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:**

Richard L. Gagnon, (202) 275-7711

or

Richard B. Felder, (202) 275-7691

[TDD for hearing impaired: (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. Copies of the decision are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

### Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or conservation of energy resources.

### Initial Regulatory Flexibility Analysis

The Commission certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities because no substantive change in existing regulations is intended and rules targeted for removal are either obsolete or of extremely limited applicability.

The subjects involved in 49 CFR Parts 1004, 1041, and 1042 are: Administrative practice and procedure, motor carriers, and frieght forwarders.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: July 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

*Secretary.*

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 1004 is proposed to be revised to read as follows:

## PART 1004—NON-RAIL INTERPRETATIONS AND ROUTING REGULATIONS

### Subpart A—Interpretation of Operating Rights

Sec.

1004.1 Return transportation.
1004.2 Authority to serve a particular area—construction.
1004.3 Incidental for-hire transportation by private carrier.

### Subpart B—Miscellaneous Interpretations

1004.10 Gifts, donations, and hospitality by carriers.

### Subpart C—Routing Regulations

1004.20 Regular-route motor passenger service.
1004.21 Traversal authority.
1004.22 Tacking.
1004.23 Elimination of routing restrictions—regular-route carriers.
1004.24 Elimination of gateways—regular- and irregular-route carriers.
1004.25 Redesignated highways.
1004.26 Misrouting, adjustment of claims.

**Authority:** 49 U.S.C. 10321 and 5 U.S.C. 553. Subpart C also issued under 49 U.S.C. 10922 (h)(1)(A).

### Subpart A—Interpretation of Operating Rights

#### § 1004.1 Return transportation.

A motor carrier may transport containers and other shipping devices inbound if they were used in its outbound transportation of the base commodity.

#### § 1004.2 Authority to serve a particular area—construction.

(a) *Service at municipality.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder authorized to serve a municipality may serve all points within that municipality's commercial zone not beyond the territorial limits, if any, fixed in such authority.

(b) *Service at unincorporated community.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder, authorized to serve an unincorporated community having a post office of the same name, may serve all points in the United States not beyond the territorial limits, if any, fixed in such authority, as follows: (1) All points within 3 miles of the post office in such unincorporated community if it has a population of less than 2,500; within 4 miles if it has a population of 2,500 but less than 25,000; and within 6 miles if it has a population of 25,000 or more; (2) at all points in any municipality any part of which is within the limits described in paragraph (b)(1) of this section; and (3) at all points in any municipality wholly surrounded, or so surrounded except for a water boundary, by any municipality included under the terms of paragraph (b)(2) of this section.

#### § 1004.3 Incidental for-hire transportation by private carrier.

A private carrier engaged in incidental for-hire transportation shall conduct such operations independently of its private operations and shall maintain separate records for each.

### Subpart B—Miscellaneous Interpretations

#### § 1004.10 Gifts, donations, and hospitality by carriers.

It is unlawful for any common carrier engaged in interstate or foreign commerce to offer, make, or cause any undue or unreasonable preference or advantage to any person. Gifts of services or anything of substantial value to particular shippers or their representatives are considered violations of the law. Expenditures for such gifts may not support requests to increase carrier rates. The Commission shall take appropriate enforcement action to redress such unlawful expenditures.

### Subpart C—Routing Regulations

#### § 1004.20 Regular-route motor passenger service.

A regular-route motor passenger common carrier may serve: (a) All points on, and all municipalities wholly within and all unincorporated areas within 1 airline mile of, its authorized route; and (b) All military posts, airports, schools, and similar establishments that may be entered within 1 airline mile of its authorized route, but operations within any part of such establishment more than 1 airline mile from such authorized route may not be over a public road.

#### § 1004.21 Traversal authority.

(a) *Scope.* An irregular-route motor carrier may operate between authorized service points over any reasonably direct or logical route unless expressly prohibited.

(b) *Requirements.* Before commencing operations, the carrier must, regarding each State traversed: (1) Notify the State regulatory body in writing, attaching a copy of its operating rights; (2) designate a process agent; and (3) comply with 49 CFR 1043.8.

#### § 1004.22 Tacking.

Unless expressly prohibited, a motor common carrier of property holding separate authorities which have common service points may join, or "tack," those authorities at the common point, or "gateway," for the purpose of performing through service as follows:

(a) Regular-route authorities may be tacked with one another;

(b) Regular-route authority may be tacked with irregular-route authority;

(c) Irregular-route authorities may be tacked with one another if the authorities were granted pursuant to applications filed on or before November 23, 1973, and the distance between the points at which service is provided, when measured through the gateway point, is 300 miles or less; and

(d) Irregular-route authorities may be tacked with one another if the authorities involved contain a specific provision granting the right to tack.

#### § 1004.23 Elimination of routing restrictions—regular-route carriers.

(a) *Regular-route authorities—construction.* All certificates that, either singly or in combination, authorize the transportation by a motor common carrier of property over a single regular route or over two or more regular routes that can lawfully be tacked at a common service point shall be construed as authorizing transportation between authorized service points over any available route.

(b) *Service at authorized points.* A common carrier departing from its authorized service routes under paragraph (a) of this section shall continue to serve points authorized to be served on or in connection with its authorized service routes.

(c) *Intermediate point service.* A common carrier conducting operations under paragraph (a) of this section may serve points on, and within 1 airline mile of, an alternative route it elects to use if all the following conditions are met: (1) The carrier is authorized to serve all intermediate points (without regard to nominal restrictions) on the underlying service route; (2) the alternative route involves the use of a superhighway (*i.e.*, a limited access highway with split-level crossings); (3) the alternative superhighway route, including highways connecting the superhighway portion of the route with the carrier's authorized service route, (i) extends in the same general direction as the carrier's authorized service route and (ii) is wholly within 25 airline miles of the carrier's authorized service route; and (4) service is provided in the same manner as, and subject to any

restrictions that apply to, service over the authorized service route.

**§ 1004.24 Elimination of gateways—regular—and irregular-route carriers.**

A motor common carrier of property holding separate grants of authority (including regular-route authority), one or more of which authorizes transportation over irregular routes, where the authorities have a common service point at which they lawfully can be tacked to perform through service, may perform such through service over any available route.

**§ 1004.25 Redesignated highways.**

Where a highway over which a regular-route motor common carrier of property is authorized to operate is assigned a new designation, such as a new number, letter, or name, the carrier shall advise the Commission by letter, and shall provide information concerning the new and the old designation, the points between which the highway is redesignated, and each place where the highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

**§ 1004.26 Misrouting, adjustment of claims.**

Carriers should adjust claims for damages resulting from misrouting. Where a carrier admits responsibility for billing, forwarding, or diverting a shipment over a higher rated route than that directed by the shipper or otherwise available, the misrouting carrier should refund the difference to the shipper (or reimburse the delivering carrier, as the case may be). Where the misrouting carrier alleges justification for using the higher rated route, the Commission may, at its discretion and upon appropriate petition, determine or express an advisory opinion on the lawfulness of such routing. This interpretation must not be used to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for routing instructions. Damages caused by misrouting are not overcharges. Therefore, adjustments of claims for misrouting against rail and water carriers are governed by 49 U.S.C. 11706 (c)(1) and (d).

**PART 1041—[REMOVED]**

2. Part 1041 is proposed to be removed.

**PART 1042—[REMOVED]**

3. Part 1042 is proposed to be removed.

[FR Doc. 88-17652 Filed 8-4-88; 8:45 am]
BILLING CODE 7035-01-M

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 80**

**Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration Acts; Interest Earned From Licenses Fees**

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Revised proposed rule.

**SUMMARY:** On December 9, 1985, the U.S. Fish and Wildlife Service published a proposed rule in the **Federal Register** (50 FR 50185) proposing that interest earned on revenues derived from license fees paid by hunters and fishermen be considered by the Secretary of the Interior as license fee revenue for purposes of the Federal Aid in Wildlife Restoration (Pittman-Robertson) and Federal Aid in Sport Fish Restoration (Dingell-Johnson) Acts. It also clarified situations causing diversions, defined other assets acquired by license fees, and identified sources of license revenues affected by the proposed rule. This action would require States to use interest earned on hunting and fishing license revenues for fish and wildlife resource management as a condition to remain eligible to receive Federal Aid (Pittman-Robertson or Dingell-Johnson) funds.

Twenty-four States and the District of Columbia provided comments on the proposal; nine supported the rule as proposed, one opposed it, and 15 suggested modifications. Seven comments were received from private parties; three supported the rule as proposed, one opposed it, and three suggested modifications.

Because of the high number of comments suggesting modification, the rule was not adopted. This amended proposed rule is being proposed to accommodate the concerns expressed.

**DATES:** Comments must be received by September 19, 1988. A three-year phase-in period for those States that will require legislative action to implement these requirements is intended when and if this proposal is adopted.

**ADDRESSES:** Any comments on the proposed requirements should be mailed to the Assistant Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Room 3024, Interior Building, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Conley Moffett, Chief, Division of Federal Aid, U.S. fish and Wildlife Service, Washington, DC 20240, telephone (703) 235-1526.

**SUPPLEMENTARY INFORMATION:** Both the Federal Aid in Wildlife Restoration (16 U.S.C. 669, *et seq.*) and Federal Aid in Sport Fish Restoration (16 U.S.C. 777 *et seq.*) Acts contain provisions requiring that no money may be appropriated to a State until that State has passed laws assenting to the provisions of the Act and has passed laws for the conservation of wildlife and fish. Such laws must contain a prohibition against diversion of license fees paid by hunters and fishermen for any other purpose than the administration of the State fish and wildlife agency. The proposed rule will clarify previously undefined Department of the Interior rules in accord with the generally-accepted principle that interest should accrue to principal from which it was generated.

Thirty-eight percent of the comments received as a result of the previous proposed rule pointed out that many States would be required to enact State laws to adopt the rules and that it could take several years. It was requested that a phase-in period be allowed so that States would not lose money during the period it took to make the required changes. To accommodate those concerns, this proposal allows a three-year period for those States that are not in compliance to conform their laws.

Twenty-three percent of the comments asked that commercial fishing licenses not be included and stated a variety of reasons why they should not. Because of those comments, this proposal does not include commercial licenses for the taking of fish or wildlife.

Thirteen percent of the comments stated the interest earned on license money has been used to pay for administrative services to support the fish and wildlife agency. If this source of funds were taken away, the fish and wildlife agency may still be charged directly for these services. No changes to the proposed rule were deemed necessary.

The remaining comments related to definitions, speculation on how programs would be affected, and statements of opinion. These comments were considered and incorporated as appropriate.

The existing Federal Aid in Wildlife Restoration Act and Federal Aid in Sport Fish Restoration Act require that

as a prerequisite to receiving federal funds, States must prevent diversions of license fees derived from fishermen and hunters to any purpose other than "the administration of said State game and fish department." The existing rule promulgated under authority of the Acts (50 CFR 80.4) states that "[a] diversion of license fees occurs when a State fish and wildlife agency, through legislation or otherwise: (1) Loses control of the expenditure of any portion of its license revenues, or (2) loses control of capital assets (or income therefrom) derived from license revenues * * * *" Because of the increased complexity of State government and the variety of responsibilities assigned to fish and wildlife agencies, the requirements relating to control of assets and expenditures involve an increased number of controls at higher levels in the State. Accordingly, this proposed rule does not require that fish and wildlife agencies have complete contol over license funds, but, instead, that license revenues must be used by State fish and wildlife agencies only to manage fish and wildlife resources over which they have management authority by the State law.

The Department has determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required.

This proposed rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The annual effect on the economy will be less than the threshold required for a major rule, no major increase in costs or prices will occur, and no significant effects on competition, employment, investment, productivity, innovation are expected. This proposed rule does not contain any recordkeeping or infromation collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

The principal author of this proposal is Thomas W. Taylor, Division of Federal Aid, U.S. Fish and Wildlife Service.

**List of Subject in 50 CFR Part 80**

Fish grant programs, Natural resources, Grant administration, and Wildlife.

**PART 80—[AMENDED]**

Accordingly, it is proposed to amend 50 CFR 80 as follows:

1. Authority for 50 CFR 80 continues to read as follows:

**Authority:** Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777i) and Federal Aid in Wildlife Restoration Act (16 U.S.C. 669i).

2. Part 80 is amended by revising Section 80.4 to read as follows:

**§ 80.4 Diversion of license fees.**

Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency.

(a) Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of license issued by the State conveying to a person the privilege to pursue or take wildlife or fish. For purposes of this rule, revenue with respect to license sales by vendors, is considered to be the net income to the State after deducting reasonable vendor fees or similar amounts retained by sales agents. License revenues include income from:

(1) General or special licenses, permits, stamps, tags, access fees or other charges imposed by the State to hunt or fish for sport or recreation.

(2) Sale of real or personal property acquired or produced with license revenues including, but not limited to, minerals, energy resources, timber, grazing, agriculture crops, and animal products.

(3) Interest, dividends, or other income earned on license revenues.

(4) Federal reimbursements to the States to the extent that license revenues originally funded the project for which the reimbursement is being made.

(b) For purposes of this rule, administration of the State fish and wildlife agency includes only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law.

(c) A diversion of license fee revenues occurs when any portion of license revenues, or assets acquired with such revenues, are used for any purpose other than the administration of the State fish and wildlife agency.

(d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

(1) Adequate legislative prohibitions are in place to prevent further diversion of license revenue, and

(2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenues diverted or the current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency.

(e) Federal funds obligated for projects approved prior to the date a diversion is declared remain available for expenditure on such projects without regard to the intervening period of the State's ineligibility.

Date: June 10, 1988.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88-17716 Filed 8-4-88; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 53, No. 151
Friday, August 5, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[FV-88-113]

### Lemons Grown in California and Arizona

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of Marketing Policy.

**SUMMARY:** This notice sets forth a summary of the 1988–89 marketing policy for lemons grown in California and Arizona. The marketing policy was discussed and approved on July 6, 1988, by the Lemon Administrative Committee, which locally administers the marketing order covering California-Arizona lemons. The marketing policy contains information on crop and market prospects for the 1988–89 season.

**DATE:** Written suggestions, views, or pertinent information relative to the marketing of the 1988–89 California-Arizona lemon crop will be considered if received by September 6, 1988.

**ADDRESS:** Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2085–S, F&V, AMS, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456. Such submissions should reference the date and page number of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120. Growers and handlers of lemons may obtain a copy of the marketing policy directly from the Lemon Administrative Committee, 117 West Ninth Street, Room 905, Los Angeles, California 90015. Copies of the marketing policy are also available from Mr. Belden.

**SUPPLEMENTARY INFORMATION:** Pursuant to § 910.50 of the marketing order covering lemons grown in California and Arizona, the Lemon Administrative Committee, hereinafter referred to as the "committee," is required to hold a marketing policy meeting not later than August 15 of each fiscal year and thereafter submit such marketing policy to the Secretary. The order, issued pursuant to the Agricultural Marketing Agreement Act of 1937 [the "Act," 7 U.S.C. 601–674], as amended, authorizes volume and size regulations applicable to fresh shipments of lemons to domestic markets including Canada. Regulation of export shipments of lemons and lemons utilized in the production of processed lemon products is not authorized under the order.

Each year, not later than August 15 of the fiscal year (or such later date as the committee may establish with the approval of the Secretary), the committee is required to hold a marketing policy meeting and shall thereafter submit to the Secretary its marketing policy for such fiscal year, to continue in force until revised, or superseded by the adoption of a new marketing policy. The marketing policy must contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of size; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) the level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy, the committee is required to submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section.

Marketing policies for California-Arizona lemons are intended to apply to a 12-month period beginning on August 1 and ending on July 31 of the following year. This 12-month period contains a full production cycle in all of the regulated districts and serves to define an annual marketing season.

The committee has prepared a marketing policy for the 1988–89 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's evaluation of supply and demand factors expected during the marketing season. This information is essential to the review and evaluation of committee recommendations for the issuance of regulations. The committee evaluates market conditions and may make recommendations to the Secretary as to the quantity of lemons that can be shipped each week to domestic outlets during the season without disrupting markets. The committee may also recommend size regulations applicable to fresh domestic shipments.

The committee identified several general considerations in forming its 1988–89 marketing policy. It indicated that a satisfactory supply-demand relationship is necessary for a satisfactory price structure for any product. However, the California-Arizona lemon industry, which produces more than 90 percent of the U.S. supply, is faced with unique problems and challenges that distinguish it from other perishable food industries. The committee pointed out that unlike other fruits, lemons are generally not consumed independently but are used as ingredients for flavoring or decorative purposes. These characteristics contribute to a highly inelastic demand for fresh lemons.

The committee also called attention to the seasonality of demand for fresh lemons which peaks when supplies are traditionally lowest. According to the committee, the California-Arizona lemon industry expanded into different geographic areas with different climatic production patterns in order to offset this marketing paradox but has experienced a surplus production capacity in part as a result of this expansion. The committee pointed out that the California-Arizona lemon industry has dealt with the overproduction problem by reducing acreage from a maximum of more than 90,000 acres ten years ago to approximately 63,000 acres currently, and that such adjustments are an ongoing process.

It is the committee's contention, however, that further acreage reduction is not a complete solution to the industry's supply problem, citing sharp weather-related variations in output in the past several years, and that use of the marketing order to stabilize supplies is vital to the survival of the current California-Arizona lemon industry.

In its 1988–89 marketing policy, the committee projects the California-Arizona lemon crop at 44,760 cars (1,000 cartons per car with a net weight of 37½ pounds per carton). This compares with an estimated total production of 43,699 cars in 1987–88 and 57,312 cars in 1986–87.

The production area is divided into three districts. The current production estimates by district (with last year's production in parentheses) are as follows: District 1—6,200 cars (6,868); District 2—26,760 cars (23,790); and District 3—11,800 cars (13,041).

The committee projects that the fruit sizes in the 1988-89 fiscal year will fall within normal ranges and that approximately 80–85 percent of the 1988–89 crop will average size 165's (2.13 inches in diameter) or larger. Current regulations limit domestic fresh market shipments of lemons to size 235's (1.82 inches in diameter) and larger. The committee estimates that less than 3 percent of the projected 1988–89 production will be smaller than this size and that the most efficient utilization of such small sized fruit is in product outlets.

The committee estimates that 1988–89 shipments to domestic fresh market outlets, including Canada, may total 16,500 cars. This would be 9 percent above the preceding four-year average. This would also be above the record large movement being marketed in the marketing season now drawing to a close (1987–88 shipments of fresh lemons to domestic markets are estimated to reach 16,022 cars). The committee anticipates an "opportunity" for fresh export shipments to total 9,000 cars in 1988–89 compared to 8,500 cars in 1987–88. Processing and other disposition is forecast at 19,260 cars compared to 17,800 cars in 1987–88.

In terms of total crop utilization, 37 percent of the 1988–89 crop is expected to be accounted for in domestic fresh markets compared with 38 percent in 1987–88; fresh exports are projected to require 20 percent of total 1988–89 utilization, the same percentage as the 1987–88 season; and processed and other uses would account for a residual 43 percent utilization compared with 42 percent in the season now ending. In terms of volume, domestic fresh market shipments are expected to be up about 1 percent from 1987–88's estimates, export shipments are expected to be up about 6 percent, and processed and other utilization are expected to be up approximately 5 percent.

The market for California-Arizona fresh lemons is influenced by the availability of substitute commodities. Fresh lemons face competition from other varieties of citrus fruit, lemon juice, lemonade, and a number of soft drink products. Moreover, the California-Arizona lemon crop is also in direct competition with Florida and foreign lemons. Florida shipments of lemons are estimated at 600–650 cars for 1988–89. These shipments are expected to be confined to the mid and late summer. The potential for import competition is much larger both in quantity and seasonal availability. However, imports in the last five years have accounted for less than 5 percent of total domestic consumption. The committee feels that the weekly volumes that it recommends for supplying U.S. markets with fresh domestic fruit precludes the need for reliance on import sources.

Based on the most recent data available, the 1987–88 season-to-date average fresh equivalent on-tree parity price for California-Arizona lemons through June is $6.35 per carton, about 102 percent of the equivalent parity price. The projected season average parity price for the 1988–89 season is $6.65 per carton. The Agricultural Marketing Service (AMS) is currently evaluating the 1988–89 price outlook and when this process is completed will use the results of this evaluation in reviewing the committee's marketing policy for the 1988–89 season.

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of, regulation for the 1988–89 season. Comments are invited on the appropriate levels of fresh lemons which can be made available to the fresh domestic market and the intraseasonal dispersion of shipments. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. The notice provides a 30-day period for the receipt of comments. This period is considered to be adequate due to the number of meetings held throughout the production area, both prior to and subsequent to the adoption of the marketing policy, at which such policy was reviewed and discussed by industry representatives and interested persons.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 2, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–17665 Filed 8–4–88; 8:45 am]

BILLING CODE 3410-02-M

## Commodity Credit Corporation

### Proposed Determinations With Regard to the 1989 Feed Grains Program and Farmer-Owned Reserve Program Provisions

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed determinations; Correction.

**SUMMARY:** The Commodity Credit Corporation is correcting an error in the Supplementary Information of the proposed determinations with respect to the 1989 crop of feed grains which appeared in the **Federal Register** on July 7, 1988 (53 FR 25518).

**FOR FURTHER INFORMATION CONTACT:** Philip Sronce, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3748, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7924.

The date "September 1, 1988" where it first appears in paragraph b. *Acreage Reduction Program (ARP)* in the third column on page 25519 of the **Federal Register** on July 7, 1988 (53 FR 25519) is corrected to read "September 30, 1988".

Signed at Washington, DC, on July 25, 1988.

**Milton Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 88–17747 Filed 8–4–88; 8:45 am]

BILLING CODE 3410-05-M

## Cooperative State Research Service

### Animal Health Science Research Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, Cooperative State Research Service announces the following meeting:

*Name:* Animal Health Science Research Advisory Board.

*Date:* September 23, 1988.

*Time:* 8:30 a.m.

*Place:* Room 330–C, Aerospace Building, U.S. Department of Agriculture, 901 'D' Street, SW., Washington, DC.

*Type of Meeting:* Open to the public. Persons may participate in the meeting as time and space permit.

*Comments:* The public may file written comments before or after the meeting with the contact person below.

*Purpose:* The Board will consult with and advise the Secretary of Agriculture on implementing animal health and disease research programs. Recommendations will be made also on priorities of research in these programs.

*Board Member Names and Agenda:* Available from contact person below.

*Contact Person:* Dyarl D. King, Executive Secretary, Animal Health Science Research Advisory Board, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250, telephone (202)447–6428.

Done at Washington, DC, this 2nd day of August, 1988.

**John Patrick Jordan,**

*Administrator.*

[FR Doc. 88–17744 Filed 8–4–88; 8:45 am]

BILLING CODE 3410–22–M

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**Forest Service**

**Lake Bradford Land Exchange; Intent to Prepare Environmental**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement for a proposal to exchange approximately 330 acres of national forest land located in the Wakulla Ranger District, Apalachicola National Forest, Leon County, Florida for approximately 3,100 acres of private land located in the Wakulla Hanger District, Apalachicola National Forest, Wakulla County, Florida. The 3,100 acres of private land consists of 20 separate parcels ranging in size from 10 to 599 acres. These lands are surrounded by or adjacent to national forest lands. The timber has been removed and new stands of trees have been established on most of the private tracts. Of the 20 tracts, two contain river frontage on the Sopchoppy River. That river is currently being studied for inclusion in the National Wild and Scenic River System. If the proposed exchange takes place, the lands acquired by the federal government would become a part of the Apalachicola National Forest and would be managed to help achieve the multiple-use goals and objectives established in the National Forests in Florida Land and Resource Management Plan. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Comments concerning the scope of the analysis should be received by August 31, 1988 to ensure timely consideration.

**ADDRESS:** Submit written comments and suggestions concerning the scope of analysis to Robert T. Jacobs, Forest Supervisor, National Forests in Florida, Suite 4061, 227 N. Bronough Street, Tallahassee, Florida 32301.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and environmental impact statement to Haymond K. Mason, Planning Staff Officer, National Forests in Florida, Tallahassee Florida 32301, phone 904–681–7265.

**SUPPLEMENTARY INFORMATION:** The National Forests in Florida Land and Resource Management Plan that provides management direction for all national forests in Florida, including the Apalachicola National Forest, was completed in January 1986. That Plan gives direction for the identification of tracts of land desirable for exchange. A tract of approximately 330 acres of national forest land located adjacent to the Tallahassee airport has been identified as meeting the criteria for being desirable for exchange. This tract is suited for exchange because it is isolated form other National Forest System lands, it could serve a greater public need by being in other than federal ownership, and it is suitable for development by the private sector.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this tract. One alternative would be to retain the lands in government ownership with management direction remaining unchanged. Another alternative would be to carry out the proposed exchange. Another would be to retain the lands in federal ownership with management direction changing to provide for additional recreation development and use of the area. Other alternatives may be developed based on the results of the scoping process.

John E. Alcock, Regional Forester, Southern Region, Atlanta, Georgia is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies; adjacent landowners; and other individual or organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Scoping for this proposal began in early July when a mailing was made to known interested and affected individuals, organizations, and agencies. Included on the mailing list were the property owners adjacent to both the National Forest tract and the private tracts. This mailing included a description of the proposed action, maps identifying the National Forest tract and the private tracts involved, and an request for assistance in identifying issues, concerns, and opportunities associated with the proposal and the affected tracts.

The draft environmental impact statement is expected to be filed with the Environmental protection Agency and to be available for public review by March 1989. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the area between Lake Bradford and the Tallahassee Municipal Airport participate at this time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement

or the merits of the alternatives discussed (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3) In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by July 1989. In the final environmental impact statement, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

Date: July 28, 1988.

**Leroy Jones,**

*Deputy Regional Forester.*

[FR Doc. 88-17633 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-11-M

## National Environmental Policy Act; Revised Implementing Procedures

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; continuance of interim policy.

**SUMMARY:** The Forest Service is reissuing an interim directive that clarifies its National Environmental Policy Act implementation policy on categorical exclusions from documentation. The directive emphasizes the importance of recordkeeping in conjunction with categorical exclusion determinations, and it limits the types of low-impact silvicultural activities that normally qualify for categorical exclusion. It is necessary to reissue the interim direction to provide continuing direction while the agency prepares a more comprehensive revision of its environmental analysis and documentation policy and procedures.

**EFFECTIVE DATE:** The new interim directive will become effective August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments about this policy should be addressed to David E. Ketcham, Director of Environmental Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 447-4708.

**SUPPLEMENTARY INFORMATION:** Forest Service directive system policy limits the duration of an interim directive (ID) to one year. If, upon expiration of an ID, the Agency is not yet prepared to incorporate the interim direction into the parent directive text, Agency policy allows reissuing the interim directive.

On August 10, 1987, the Forest Service issued Interim Directive No. 14 to Forest Service Manual Chapter 1950 (52 FR 30935). That interim directive superseded the Agency's then existing policy on determining when the analysis of a proposed action could be categorically excluded from documentation in an environmental assessment or environmental impact statement (June 24, 1985; 50 FR 26081).

Interim Directive No. 14 expires August 10, 1988. Because the Agency is in the process of making comprehensive revisions to all of Chapter 1950 and the accompanying environmental analysis handbook, FSH 1909.15, the direction in ID No. 14 cannot be incorporated at this time into the parent text of the Manual. In order to prevent a gap in this needed direction, the agency is reissuing the interim directive.

The Agency plans to publish the more comprehensive changes in its National Environmental Policy Act implementing policy and procedures in the next few months for public comment. Direction on categorical exclusions will be in incorporated in that proposed revision.

The interim directive is being reissued without change. For ease of reference, the full text of the directive as it will be distributed to Forest Service personnel is set out at the end of this notice.

Date: July 28, 1988.

**George M. Leonard,**

*Associate Chief.*

### Forest Service Manual

*Interim Directive No. 16.*

*Duration:* One year.

*Chapter:* 1950—Environmental Policy and Procedures.

*Posting Notice:* Last ID was No. 15 to FSM 1920, issued 2/8/88.

This interim directive is a reissuance of ID No. 14, issued August 10, 1987. It clarifies FSM section 1952.2—Categorical Exclusion From Documentation. It deletes a paraphrase of the Council on Environmental Quality's definition of categorical exclusion. It emphasizes that a project file should be maintained for any records created during analyses of actions that are categorically excluded from documentation in an environmental assessment or an environmental impact statement. It provides examples of the types of records that might be included in the project file. It also limits the use of categorical exclusions for low-impact silvicultural activities to "salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres" and adds "miscellaneous forest product sales."

This policy applies only to the salvage, thinning, and small harvest cuts that are proposed, analyzed, and decided after the effective date of this interim directive. Proposed actions which have been analyzed and categorically excluded under previous policy do not have to be re-analyzed and documented in an environmental assessment or an environmental impact statement as a result of this interim directive.

*1952.2—Categorical Exclusion From Documentation In An Environmental Assessment Or An Environmental Impact Statement.* (40 CFR 1508.4). In addition to the seven categories of actions excluded from documentation in 7 CFR 1(b)(3), certain other actions may be categorically excluded from documentation in an environmental assessment or environmental impact statement. To determine if an action may be categorically excluded, an environmental analysis, including scoping, must be conducted. (FSH 1909.15, ch. 10 and 20).

The guide for determining whether an action may be excluded is the significance of the effects (40 CFR 1508.27). In unusual circumstances an action that normally might be categorically excluded may have a significant environmental effect on the

quality of the human environment and require an environmental impact statement. Unusual circumstances might include areas involving threatened and endangered species; critical habitat; flood plains; wetlands; and specially designated areas, such as wilderness, wilderness study areas, or roadless areas designated for further planning.

Interested and affected persons must be informed in an appropriate manner (40 CFR 1506.6 and FSM 1950.3) of a decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement.

During the analysis, maintain a project file for any records prepared, such as (1) a list of interested and affected people contacted during scoping, (2) the results of the analysis, (3) documentation of the determination of consistency with the Forest Plan (FSM 1920, ID No. 13. 1/20/87), (4) documentation of the notification given of the decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement (for example, telephone message, news release, and so forth), and (5) a list of the people notified of the decision to proceed.

Typical classes and representative examples of actions that might be categorically excluded are listed below. Experience and environmental analysis indicate that these actions and classes usually do not significantly affect the quality of the human environment, individually or cumulatively. These typical classes include most forest management activities that normally could be categorically excluded. Proposed actions considered for categorical exclusion which are not clearly within a typical class must have no more environmental impact than those which are.

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.

2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads, such as traffic service level "D" roads (FSH 7709.56); and trails.

3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.

4. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood and miscellaneous forest product sales; salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres; site preparation; and planting and seeding.

5. Low-impact range management activities, such as fencing, seeding, and installing water facilities.

6. Issuance or modification of authorizations or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.

7. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.

8. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

9. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

10. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act; purchases and gifts; and small transfers and trades with other Federal agencies.

[FR Doc. 88-17659 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-11-M

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## Umpqua National Forest Boundary Extension, Tiller Administrative Site

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of boundary extension.

**SUMMARY:** The Secretary of Agriculture has approved establishment of a purchase unit and the extension of the boundaries of the Umpqua National Forest to include the Tiller Administrative Site. A copy of the order as signed by the Secretary is set out at the end of this notice.

**EFFECTIVE DATE:** By order of the Secretary of Agriculture, the boundary revision was effective June 21, 1988.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Johnson, Lands Specialist, USDA, Forest Service, P.O. Box 96090, Washington, DC 20090-6090. (703) 235-2406.

Date: July 26, 1988.

**George M. Leonard,**

*Associate Chief.*

### Office of the Secretary

*Change in Boundary of Umpqua National Forest*

Pursuant to authority vested in the Secretary of Agriculture by section 11 of the Act of March 1, 1911, (36 Stat. 961) as amended, notice is hereby given of the establishment of a purchase unit and the extension of the boundaries of the Umpqua National Forest as described below to include the same and all lands within the Umpqua National Forest as adjusted that have been acquired by the United States under the Act of March 3, 1925, the Act of April 8, 1935 and the Act of August 3, 1956, and which, by statute (Act of September 2, 1958, 72 Stat. 1571), now attain status as National Forest land subject to the Act of March 1, 1911.

**Umpqua National Forest, Oregon, Willamette Meridan**

*Douglas County*

The following property is located in W½ NE¼, NE¼ NW¼ Sec. 33, T.30 S., R.2 W., W.M.:

Beginning at a point, which is the E¼ corner of section 33, thence N89°42'W 918.34 feet, thence S44°52'W 1230.98 feet, thence S23°48'W 196.67 feet to a point opposite Engineer's station 1220+38.05 on the North Right-of-Way line of Douglas County Rd. #1, thence S84°13'E along said Right-of-way 393.18 feet, thence S61°15'E 84.48 feet along said Right-of-way, thence S55°01'E 100.66 feet to South line of NW¼NE¼ of Section 33, thence S89°37'E 531.08 feet along said South line, thence S48°34'W 328.00 feet, thence S56°33'W 4571 feet to a point on the Nourthern Right-of-way line of Douglas County Road #1, thence S42°28'E 121.12 feet along said Right-of-way line, thence S44°45'E 292, 60 feet along said Right-of-way, thence S61°57'E 378.24 feet along said Right-of-way line, thence S78°04'E 262.58 feet along said Right-of-way line, thence S78°04'E 74.21 feet along said Right-of-way line, thence NO°02'W 783.40 feet, thence NO°02'W 884.15 feet, thence S39°18'W 652.92 feet, thence S40°50'W 230.55 feet, thence N49°10'W 192.90 feet, thence N40°50'E 230.99 feet, thence N41°32' 609.23 feet, thence N39°41' 243.40 feet, thence NO°02'W 176.87 feet to point of beginning containing 51.40 acres more or less.

Effective Date: This order is effective on the 21th of June, 1988.

**Richard E. Ling,**

*Secretary, Department of Agriculture.*

[FR Doc. 88-17660 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-11-M

## Rural Electrification Administration

### Oglethorpe Power Corp., Tucker, GA; Proposed Loan Guarantee

**AGENCY:** Rural Electrification Administration (REA), USDA.

**ACTION:** Proposed Loan Guarantee.

**SUMMARY:** Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $704,000,000 to Oglethorpe Power Corporation (Oglethorpe), Tucker, Georgia. This loan guarantee will provide funds needed to complete construction of the Rocky Mountain Pumped Storage Hydroelectric Project (Project), which includes two reservoirs, two auxiliary pools, approximately 2,700 feet of tunnel and penstock, a nominal 800 MW power plant, a switching station, and 2.7 miles of 230 kV transmission line. The investment requirements for this application may be revised as a result of subsequent engineering and other studies. Based upon an estimate of the final direct construction cost, Georgia Power Company has completed approximately 15 percent of the Project.

**FOR FURTHER INFORMATION CONTACT:** Mr. F.F. Stacy, Jr., President and Chief Executive Officer, Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085–1349.

**SUPPLEMENTARY INFORMATION:** Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed Project, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Stacy at the address given above. In order to be considered, proposals must be submitted on or before September 6, 1988 to Mr. Stacy. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as Oglethorpe and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this Project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 29, 1988.

**Harold V. Hunter,**

*Administrator.*

[FR Doc. 88–17662 Filed 8–4–88; 8:45 am]

BILLING CODE 3410-15-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork reduction Act (44 U.S.C. Chapter 35).

*Agency:* Minority Business Development Agency.

*Title:* Quarterly Narrative Performance Report.

*Form Number:* Agency—None OMB 0640–0007.

*Type of Request:* Revision.

*Burden:* 600 Responses 9600 reporting hours. Average hours per response—16.

*Needs and Uses:* Information is used to compare the individual organization's accomplishments against its performance goals and to evaluate overall results of the agency's funded programs.

*Affected Public:* Project Operators.

*Frequency:* Quarterly.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17643 Filed 8–4–88; 8:45 am]

BILLING CODE 3510-CW-M

## International Trade Administration

[A–475–059]

### Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke In Part

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part.

**SUMMARY:** In response to requests by the petitioner and respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The review covers four manufacturers and/or exporters of this merchandise to the U.S. and generally the period October 1, 1986 through September 30, 1987. The review indicates the existence of dumping margins for three firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. The Department has also tentatively determined to revoke the finding with respect to two firms, Boston and Manuli.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

**EFFECTIVE DATE:** August 5, 1988.

**FOR FURTHER INFORMATION CONTACT:** Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/3601.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 9, 1988, the Department published in the **Federal Register** (53 FR 16444) the final results of its last administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The petitioner and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on November 18, 1987 (52 FR 44161). The Department has now conducted that

administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by this review are shipments of pressure sensitive plastic tape measuring over 1⅝ inches in width and not exceeding 4 mils in thickness, currently classifiable under items 790.5530, 790.5545, and 790.5555 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 3919.90.20, 3919.90.50, 4811.21.00, 4821.90.20, 4823.11.00, and 5906.10.00.

The review covers four manufacturers and/or exporters to the U.S. of Italian pressure sensitive plastic tape and generally the period October 1, 1986 through September 30, 1987.

**United States Price**

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage fees, ocean freight, foreign inland freight, and marine insurance. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, differences in credit expenses, discounts, and differences in packing. NAR's claim for an adjustment for merchandise differences was inadequate. NAR has had seven months and numerous opportunities to submit data to support a differences-in-merchandise adjustment with respect to pressure sensitive tape sold in the U.S. and in the home market. Despite several submissions, NAR failed to provide the Department with an adequate response to questions concerning its differences-in-merchandise claim. NAR failed to provide (1) direct factory overhead, (2) cost data for several tape widths, and (3) any explanation of its production process. In addition, there are inconsistencies between NAR's June 13, 1988 and July 6, 1988 submissions in that certain information was listed in one submission but not the other. Given all of the above deficiencies and inconsistencies, we are compelled to resort to the use of the data used in the last review as best information available. No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Time period | Margin (Percent) |
|---|---|---|
| NAR | 10/86–9/87 | 2.45 |
| Manuli | 10/86–9/87 | [1] 0 |
| Irplastnastri | 10/86–9/87 | [1] 12.66 |
| Boston | 10/85–9/87 | [1] 8.67 |

[1] No shipments during the period; margins from last review in which there were shipments.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication.

Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms (51 FR 43955, December 5, 1986). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after September 30, 1987 and who is unrelated to the reviewed firms or any previously reviewed firm, a cash deposit of 2.45 percent shall be required. These deposit requirements are effective for all shipments of Italian pressure sensitive plastic tape entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Boston made no shipments to the United States for four years and Manuli made no sales at less than fair value for one year and no shipments to the United States for two years. Boston and Manuli have requested partial revocation of the finding and, as provided for in § 353.54(e) of the Commerce Regulations, both firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written agreements.

Therefore, we tentatively determine to revoke in part the antidumping finding on pressure sensitive plastic tape from Italy with respect to Boston and Manuli. It this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Boston or Manuli and entered, or withdrawn from warehouse, for consumption on or after October 1, 1987.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and 19 CFR 353.53a and 353.54.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: July 29, 1988.

[FR Doc. 88–17644 Filed 8–4–88; 8:45 am]

BILLING CODE 3510-DS-M

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**[A–405–071]**

## Viscose Rayon Staple Fiber From Finland; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

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In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Finland. The review covers Kemira Oy Sateri and the

period March 1, 1987 through February 29, 1988. We found no dumping margin during the period.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 5, 1988.

**FOR FURTHER INFORMATION CONTACT:** Barbara Victor or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 12, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 4196) the final results of its last administrative review of the antidumping finding on viscose rayon staple fiber from Finland (44 FR 17156, March 21, 1979). The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on April 27, 1988 (53 FR 15063). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States* ("TSUS") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20330. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable in TSUSA items 309.4320 and 309.4325. This product is currently classifiable under HS item numbers 5504.10.00 and 5504.90.00.

The review covers Kemira Oy Sateri and the period March 1, 1987 through February 29, 1988.

**United States Price**

In calculating United States price the Department used purchase price, because all sales were made to unrelated parties prior to importation, as defined in section 772 of the Tariff Act of 1930, 19 U.S.C. 1677a ("the Tariff Act"). Purchase price was based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for handling, foreign inland freight, ocean freight and insurance. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value the Department used home market price, as defined in section 773 of the Act, since there were sufficient sales of such or similar merchandise in the home market. Home market price was based on the ex-factory price to unrelated purchasers in the home market. We made adjustments for a cash discount and differences in credit expenses. No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margin exists for Kemira Oy Sateri for the period March 1, 1987 through February 29, 1988.

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department shall not require any cash deposit of estimated antidumping duties for Kemira Oy Sateri. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 29, 1988 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of Finnish viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88–17645 Filed 8–4–88; 8:45 am]

BILLING CODE 3510–DS–M

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## National Oceanic and Atmospheric Administration

**[Docket No. 80735–8135]**

## Family of Services and Climate Dial-Up Service

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice announces the National Oceanic and Atmospheric Administration's (NOAA) FY 89 fee schedule for the National Weather Service's (NWS) Family of Services (FOS) and the Climate Analysis Center's (CAC) Climate Dial-Up Service. The FOS and the CAC Climate Dial-Up Service provide external user access to near real-time weather and flood data and other information as well as climatalogical data accessible in the Washington area. This notice announces the fee schedule for the eight medium speed communication services which make up the FOS as well as the CAC Climate Dial-Up Service. It further lists the points of contact for each of these services.

**FOR FURTHER INFORMATION CONTACT:** Edward M. Gross, Constituent Affairs Officer (NWS), 8060 13th Street, Silver Spring, Maryland 20910, (301) 427–7258.

**SUPPLEMENTARY INFORMATION:** Although the Department of Commerce/NOAA/NWS is not legally required to issue this notice of fees under 15 U.S.C. 1525, the

notice is being issued as a matter of general policy.

**Authority:** 15 U.S.C. 313 and 15 U.S.C. 1525.

Date: July 29, 1988.

**Elbert W. Friday, Jr.,**

*Assistant Administrator for Weather Services.*

NOAA announces the FY 89 fee schedule for the National Weather Service (NWS) Family of Services (FOS) and the Climate Analysis Center (CAC) Climate Dial-Up Service.

The FOS provides external user access to near real-time weather and flood data and information available on a family medium speed communication services accessed in the Washington area. The FOS is divided into eight services described below. Along with the service description is the one-time connection fee which covers the expense related to establishing service and the annual maintenance fee which covers the Government's expense in maintaining the service provided. This expense includes direct labor and other related costs as well as computer and communication costs. Each years annual service fee is based on the previous years costs for that individual service divided by the number of direct subscribers.

| The family of services | One time connection fee | FY 89 fee |
|---|---|---|
| *Public Product Service (PPS)*.... Forecasts and warnings in an easily-read, plain language format. | | $2,500 |
| *Public Product Service Back-Up (PPSB)*.... Same as Public Product Service. | | 8,500 |
| *Domestic Data Service (DDS)*.... Coded observations, reports, forecasts, and analysis. | 2,500 | 3,000 |
| *International Data Service (IDS)*.... Worldwide coded observations, reports, and forecasts. | 2,500 | 3,500 |
| *Numerical Product Service (NPS)*.... Global model-derived forecasts and analysis in a gridded binary format. | 5,000 | 12,000 |
| *Direct Connect Service (DCS)*.. Same as NPS, exception being subscriber has a direct post on the NWS Telecommunications Gateway. | 5,000 | 24,500 |
| *National Facsimile Service (NAFAX)*.... 100 facsimile charts of analysis, prognosis and observed data including 10 satellite photos-analog signal. | 2,500 | 19,000 |
| *Digital Facsimile Service (DIFAX)*.... 300 facsimile charts of analysis, prognosis and observed data similar to those on NAFAX plus international aviation charts and agricultural products. | 2,500 | 4,000 |

With the exception of PPSB and NAFAX all fees remained the same as in FY 88 and DCS was reduced.

Besides the fees listed above, subscribers are required to pay for all related telephone line charges into the Washington area. For more information on the Family of Services please contact: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 16th Street, Rm. 1412, Silver Spring, Maryland 20910.

The CAC Climate Dial-Up Service provides near real-time delivery of climate information by providing telephone-computer menu access to the CAC data base. Up until this year, this service was considered a development system and, thus, had levied no charges. In FY 89, this service will be upgraded and will have significant enhanced capabilities. The user fee described below will be based on the number of times per year subscriber's access the service. As with the FOS, the fees are required to recover the costs for operating this service. In addition, subscribers will continue to incur long-distance charges where applicable.

The annual fee scale for the CAC Climate Dial-Up Service will be as follows:

Very Heavy User (100 or more calls per year).....$600
Heavy User (52–99 calls per year).....$400
Moderate User (12–51 calls per year).....$140
Light User (1–11 calls per year).....$48

For more information on this service contact: Ms. Joanna M. Dionne, Climate Dial-Up Service, Room 805, World Weather Building, Washington, DC 20233, Telephone: 301–763–8071.

[FR Doc. 88–17646 Filed 8–4–88; 8:45am]

BILLING CODE 3510–12–M

## Endangered Species; Application for Permit: Steve W. Ross and Dr. Mary L. Moser (P423)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 FR Parts 217–222).

*Applicant:* Steve W. Ross, Dr. Mary L. Moser, Zoology Department, Box 7617, North Carolina State University, Raleigh, NC 27635–7617.

*Type of Permit:* Scientific Research.

*Name and Number of Animals:* Shortnose sturgeon (*Acipenser brevirostrum*) 10.

*Type of Take:* Sturgeon will be captured using bottom-set, large-meshed gill nets and weighed, measured, and tagged for population studies.

*Location of Activity:* Cape Fear and Brunswick Rivers, North Carolina over a 1 year period.

Written data or views or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930.

Date: August 1, 1988.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 88–17724 Filed 8–4–88; 8:45 am]

BILLING CODE 3510–06–M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1988 Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to procurement list.

**SUMMARY:** This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** September 5, 1988.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** E.R. Alley, Jr., (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On June 10, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 21885) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1988.

**E.R. Alley, Jr.,**

*Acting Executive Director.*

[FR Doc. 88–17717 Filed 8–4–88; 8:45 am]

BILLING CODE 6820-33-M

## Procurement List 1988; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: September 5, 1988.

**ADDRESS:** Committe for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** E.R. Alley, Jr., (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped

It is proposed to add the following commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

### Commodities

Cover, Generator Set
6115–00–941–1655
Folder, File
7530–00–990–8884
(Requirements for Chicago, Illinois, Supply Distribution Facility only)
Flagstaff, Wood
8345–00–242–3650
Liner, Flyer's Trousers
8415–00–844–9815
8415–00–844–9816
8415–00–844–9817
8415–00–844–9818

### Services

Forms/Publication Distribution
U.S. Department of Agriculture
Landover, Maryland
Janitorial/Custodial
U.S. Army Reserve Center #1
4350 Kingshighway Boulevard
St. Louis, Missouri.

**E.R. Alley, Jr.,**

*Acting Executive Director.*

[FR Doc. 88–17718 Filed 8–4–88; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

July 28, 1988.

The USAF Scientific Advisory Board panel on Superconductors for Aerospace Applications will meet on August 31, 1988 through September 2, 1988 from 8:30 p.m. to 5:00 p.m. at the Pentagon, Washington, DC.

The purposes of this meeting are to review the programs of various Federal agencies to develop high-temperature superconductors and to identify Air Force missions where application of these new technologies may provide the most benefit.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–17667 Filed 8–4–88; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Meeting

July 29, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs meeting previously published on July 6, 1988, 53FR25363, has been changed to August 23, 1988, from 8:00 a.m. to 5:00 p.m., at the Ogden Air Logistics Center (OA–LC), Hill AFB, UT, and on August 24, 1988 from 8:00 a.m. to 5:00 p.m., at the 421 & 388 Tactical Fighter Wings, Hill AFB, UT.

The purpose of this meeting is to receive briefings and gather information on OA–LC's and two typical fighter wings' perception of the problem and their efforts to solve them. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–17668 Filed 8–4–88; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF EDUCATION

### National Center for Education Statistics

### National Assessment of Educational Progress (NAEP); Meeting

**ACTION:** Notice of a public meeting.

The National Center for Education Statistics will hold a public meeting to discuss changes in the National

Assessment of Educational Progress (NAEP) resulting from amendments to the legislation authorizing NAEP (Pub. L. 100–297).

The meeting will be held on Monday, August 15, 1988 from 9:00 a.m. to 12:00 noon in Room 328, 555 New Jersey Avenue NW., Washington, DC.

Anyone interested in obtaining a copy of briefing papers on the issues to be discussed, as well as preliminary plans for the 1990 and 1992 assessments, may request these documents by writing or calling Eugene Owen, NAEP Project Officer, Room 513b, 555 New Jersey Avenue NW., Washington, DC, 20208; telephone: 202–357–6746.

The public is invited to make comments at the meeting on August 15 or to submit written comments before, during, or after the meeting, but no later than September 30, 1988.

Dated: August 3, 1988.

**Chester E. Finn, Jr.,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 88–17854 Filed 8–4–88; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Trespassing On DOE Property; Idaho Operations Office Properties

**AGENCY:** Department of Energy.

**ACTION:** Designation of Idaho operations office properties and facilities as off-limits areas.

**SUMMARY:** The Depatment of Energy (DOE) hereby amends the previously published site description of the Grand Junction Project Office located in Grand Junction, Colorado and designates the Component Development and Integration Facility, located in Butte, Montana; the Willow Creek Building, DOE Headquarters Building, Technical Sciences Building, and certain warehouse facilities all located in Idaho Falls, Idaho; and various DOE vehicle/bus parking lots, located in Idaho Falls Arco, Highway 20 in Bonneville County, Blackfoot, Mackay, Shelley, Rexburg, Rigby, and Pocatello, as Off-Limits Areas in accordance with 20 CFR Part 860, thereby making it a federal crime under 42 U.S.C. 2279a for unauthorized persons to enter into or upon these Idaho Operations Office properties and facilities. If unauthorized entry into or upon these properties is into an area enclosed by a fence, wall, floor, roof or other such standard barrier, conviction for such unauthorized entry may result in a fine of not more than $5,000 or imprisonment for not more than one year or both. If unauthorized entry into or upon the properties is into an area not enclosed by a fence, wall, floor, roof, or other such standard barrier, conviction for such unauthoized entry may result in a fine of not more than $1,000.

**FOR FURTHER INFORMATION CONTACT:** Jo Ann Williams, Office of General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6975; D.J. Bergquist, Office of Chief Counsel, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, (208) 526–1457.

**SUPPLEMENTARY INFORMATION:** The Department of Energy (DOE), successor agency to the Atomic Energy Commission (AEC), is authorized, pursuant to section 229 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 227a) and section 104 of the Energy Reorganization Act of 1974 (42 U.S.C. 5814), as implemented by 10 CFR Part 860, published in the **Federal Register** on July 9, 1975 (40 FR 28789–28790), and section 301 of the Department of Energy Organization Act (42 U.S.C. 7151), to prohibit unauthorized entry and the unauthorized introduction of weapons or dangerous materials into our upon any DOE facility, installation or real property. By notice dated October 19, 1965, appearing at page 13278 of the **Federal Register** (FR Doc. 65–11108), the Atomic Energy Commission prohibited unauthorized entry into or upon the Grand Junction site of the AEC. This notice amends the site description of the Grand Junction site, now referred to as the Grand Junction Project Office. The DOE also hereby gives notice that the Component Development and Integration Facility, located in Butte, Montana; the Willow Creek Building, DOE Headquarters Building, Technical Sciences Building and certain warehouse facilities, all located in Idaho Falls, Idaho; and various DOE vehicle/bus parking lots, located in Idaho Falls, Arco, Highway 20 in Bonneville County, Blackfoot, Mackay, Shelley, Rexburg, Rigby, and Pocatello are designated as Off-Limits Areas. Accordingly, the DOE prohibits the unauthorized entry and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.3 and 860.4 into and upon these Idaho Operations Office sites. Except for the Grand Junction Project Office, the sites referred to above have not previously been designated as Off-Limits Areas. Descriptions of the sites being designated at this time are are follows:

#### Grand Junction Project Office Facility

All that portion of Lot 1 lying west of the right of way of the Denver and Rio Grande Western (D&RGW) Railroad Company, and all of Lots 6 and 7, excepting out a tract of land located in Mesa County, Colorado, beginning at the northeast corner of Government Lot 7 of Section 27, Township 1 South, Range 1 West, Ute Meridian; thence south along said section line 927.111 feet; thence N 15°13'00" W 960.80 feet; thence due east 252.18 feet back ot the true point of beginning, containing 2.68 acres, more or less; and also excepting out a tract of land located in Mesa County, Colorado Section 27, T1S R1W of the Ute Meridian more particularly described as follows: Commencing at the northeast corner SE¼ NE¼ Sec. 27, Township 1 South, Range 1 West, Ute Meridian; thence N 36°44'34" W 984.95 feet to the true point of beginning, that being a point on the west R.O.W. of the D&RGW Railroad, thence N 32°09'57" W 91.61 feet; thence N 56°13'47" W 100.32 feet; thence N 89°03'27" W 174.50 feet; thence S 85°10'12" W 282.68 feet; thence S 72°14'54" W 58.59 feet; thence S 51°07'33" W 201.80 feet; thence S 47°34'54" W 224.76 feet; thence S 38°11'37" W 113.15 feet; thence S 45°25'29" W 53.64 feet; thence S 05°28'49" E 43.4 8 feet to existing fence line; thence along said fence S 38°53'06" W 34.42 feet; to the high water mark of the Gunnison River, thence along said high water mark for the following eight courses: N 08°15'56" W 282.72 feet; N 00°37'40" E 242.34 feet; N 66°04'07" E 86.18 feet; N 87°11'15" E 209.44 feet; N 87°04'11" E 251.57 feet; N 82°29'46" E 229.91 feet; N 82°54'06" E 162.91 feet; N 80°12'18" E 289.04 feet to the intersection of the west ROW of the D&RGW Railroad; thence along the arc of a curve to the left whose radius is 1030.00 feet and whose long chord bears S 15°58'10" W 311.12 feet to the true point of beginning, containing 5.32 acres more or less; all being subject to fenced right-of-way of the D&RGW Railroad Co., all being in Section 27, township 1 South, Range 1 West, Ute Meridian, Mesa County, Colo., containing 47.71 acres of land, more or less; and that portion of the NW¼ of the SW¼ of Section 28, Township 1 South, Range 1 West, Ute Meridian Mesa County, Colo., lying between the fenced right-of-way of the D&RGW Railroad and the Gunnison River, containing approximately 0.91 acres of land; together with the private railroad spur thereon, and all rights appurtenant thereto, also all water and water rights used thereon or appurtenant thereto, including the private line from the artesian well, and all rights in connection therewith, and all buildings and improvements thereon.

#### Component Development and Integration Facility

A tract of land located in the north half of Section 18, Township 2 North, Range 7 West, Montana Principal Meridian, County of Silver Bow, State of Montana, more particularly described as follows:

Beginning at the point of intersection of the north boundary of said Section 18, Township 2 North, Range 7 West, M.P.M., and the west boundary of the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railway and running thence South 89°23' West along the north boundary of said Section 18 a distance of 2,064.88 feet; thence South a distance of 1,223.5 feet; thence North 89°23' East a

distance of 1,741.80 feet to a point in the west boundary of the C.M. St. P. Ry. right-of-way; thence North 14°35' East along said right-of-way boundary a distance of 1,265.25 feet to the place of beginning containing 53.15 acres, more or less.

**Willow Creek Building**

Tract 1: Lot 1, Block 1, KEEFER OFFICE PARK ADDITION, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

Tract 2: That part of Lot 2, lying South of the Railroad right of way, Section 12, Township 2 North, Range 37 East, Boise Meridian, Bonneville County, Idaho.

**DOE Headquarters Building**

Lot 1, Block 1, of the DOE Addition to the City of Idaho Falls, Idaho.

**Technical Sciences Building A**

All of Lot 2 Block 3 of the Hatch-Grandview Subdivision, Division No. 3 to the City of Idaho Falls, Idaho, and a portion of Lot 1 Block 3 of said Subdivision, described as follows:

Beginning at the N.W. Corner of Lot 1, Block 3 of the Hatch-Grandview Subdivision, Division No. 3 to the City of Idaho Falls, Idaho, and running thence S 0°34'14" W 248.60 feet to the S.W. Corner of said Lot 1, said corner being a point on a curve with the radius of 703.39 feet and a chord that bears S 86°53'47" E 64.22 feet; thence to the left along said curve 64.24 feet; thence N 0°34'14" E 251.44 feet, parallel to, and 10 feet West of an existing building; thence N 89°25'46" W 64.16 feet to the point of beginning, containing 16,072 square feet.

**Technical Sciences Building B**

Three tracts of real property described as Lot 7 of Block 2, Lot 1 of Block 3, and Lot 2 of Block 3 in the Hatch-Grandview Subdivision Division No. 3 to the City of Idaho Falls, Bonneville County, Idaho, within the SW ¼ of Section 13, Township 2 North, Range 37 East Boise Meridian.

**Warehouse Space in Idaho Falls, Idaho**

A 41,850 square foot portion of the entire Lessor property of approximately 10 acres, located in Lot 4, Block 1, Growth Center Addition, Division No. 1, situated in the City of Idaho Falls, Bonneville County, State of Idaho, comprising 15,500 square feet of floor space, 910 square feet of loading dock, a railroad spur, and 25,440 square feet of paved and unpaved loading and parking area.

**DOE Vehicle/Bus Parking Facilities:**

*Idaho Falls Bus Parking Facility*

The South 160.41 feet of Lot 8 and all of Lots 9 through 13, Block 1 of the Chaffin Addition, Division No. 2, to the City of Idaho Falls, Idaho, with improvements as cited in EG&G Specification A–EXS–40031, Revision B.

**Technical Sciences Building Parking Facility**

Beginning at the northeast corner of Lot 1A, Block 2, in Division 4 of the Idaho Falls Airport Industrial Park, City of Idaho Falls, Bonneville County, Idaho; thence proceeding west along the north property line a distance of approximately 180 feet, thence south in a direction parallel to the west property line until intersection with the south property line is reached, thence east along the south property line to the southeast corner, thence north to the point of beginning, containing approximately .83 acres.

**Arco Bus Parking Facility**

Excluding that portion of land upon which the Golden West Cafe is situated, Tract No. 10, commencing at a point 1644.85 feet South 89°54' West and 881.72 feet North 0°01' East of the S¼ corner of Section 31, Township 4 North, Range 27 East, Boise Meridian, Butte County, Idaho, to the point of beginning; continuing thence North 89°54' East 526.80 feet, thence South 0°01' West 206.72 feet to the point of beginning, together with any and all options, rights and appurtenances thereunder and extensions and renewals thereof.

**Highway 20, Bonneville County, Vehicle Parking Facility**

From the N. W. Corner of Section 22 Township 2 North, Range 37 East, Boise Meridian, there is a highway marker 30' East and 36' South. From that highway marker the plot will run South 0°21' for a distance of two hundred twenty feet; then east 90°21' for a distance of fifty feet; then North 0°–21' for a distance of two hundred twenty feet; then West 89°39' a distance of fifty feet, along with rights of ingress and egress to and from said above described tract, more particularly described as follows:

Beginning at a point which is 33 feet south 0°21' west of the NW corner of Section 22, Township 2 North, Range 37 East, Boise Meridian, said point of beginning being coincident with the west section line of said Section 22, thence running south 0°21' west along the west section line of said Section 22 a distance of 284 feet; thence turning and running N 59°11' East a distance of 79 feet more or less, to the west meander line of the Great Western Canal; thence continuing along said meander line N 7°42' east a distance of 92.9 feet; thence N 47°25' east a distance of 87.3 feet; thence N 15°42' east a distance of 95 feet more or less to the south right-of-way line of the Shelley New Sweden Road; thence turning and running along said south right-of-way line N 89°39' west a distance of 16.5 feet more or less to the point of beginning, containing a calculated area of .767 acres more or less.

**Blackfoot Vehicle Parking Facility**

A parcel of land situated in Bingham County, Idaho, being a portion of the SW¼ NW¼ of Section 33, Township 2 South, Range 35 East, Boise Meridian, described as follows, to-wit:

Commencing at the Southwest corner of the SW¼ NW¼ of Section 33, Township 2 South, Range 35 East, Boise Meridian; thence South 89°19'47" East along the South line of said SE¼ NW¼, a distance of 30.0 feet, more or less, to a point in the Easterly right of way line of existing Groveland Road; thence North 0°23'07" East (shown of record to be North) along said existing Easterly right of way line 429.75 feet to the REAL POINT OF BEGINNING; thence East 435.7 feet; thence North 220.0 feet; thence West 435.0 feet, more or less, to a point in said existing Easterly right of way line; thence Southerly along said existing Easterly right of way line 220.0 feet, more or less, to the REAL POINT OF BEGINNING.

The area above described contains approximately 2.20 acres.

**Mackay Bus Parking Facility**

Lots 22, 23 and 24, Block 10, City of Mackay, Idaho Original Townsite, according to the official plat thereof on file with the Custer County, Idaho, Recorder.

**Shelley Bus Parking Facility**

The North 176 feet of Lot 3, of the re-plat of Block 19, of the City of Shelley, Bingham County, Idaho, together with rights of ingress and egress thereto.

**Rexburg Bus Parking Facility**

Beginning 37½ feet South of the N.W. corner of Lot 3, Bock 33 of the Original Rexburg Townsite; thence running South 127½ feet to the Alley right-of-way; thence East 10 Rods; thence North 10 Rods; thence West 65 feet; thence South 37½ feet; thence West 100 feet to the point of beginning. Said parcel being in Madison County, State of Idaho.

**Rigby Bus Parking Facility**

Beginning at a point 90 feet North and 1,064 feet West of the Southeast corner of the Southeast quarter of Section 13, Township 4 North, Range 38 East, Boise Meridian, of Rigby, Jefferson County, State of Idaho, and running thence West 160 feet; thence North 160 feet; thence East 160 feet; thence South 160 feet to the point of beginning, together with rights of ingress and egress to and from said tract.

**Pocatello Bus Parking Facility**

Lots 16 and 17, in Block 2 of the Palmer Tracts, which is part of the subdivision of the northwest quarter of the Southeast quarter, Section 6, Township 7 South, Range 35 East, Boise Meridian, less the Northeast 190 feet by 62 feet of Lot 17. Said parcel being in the City of Pocatello, Bannock County, State of Idaho.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and the penalties of 10 CFR 860.5 are being posted at all entrances of the above-referenced areas and at intervals along their perimeters, as provided in 10 CFR 860.6.

Date: July 18, 1988.

**William L. Barker,**

*Acting Executive Assistant for Defense Programs, Department of Energy.*

[FR Doc. 88–17742 Filed 8–4–88; 8:45 am]

BILLING CODE 6450–01–M

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## Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is here by given of a

proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (UERATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the retransfer of 85 unirradiated research reactor fuel elements from the J.W. Goethe University in the Federal Republic of Germany to the Institute Jozef Stefan, for use in the TRIGA reactor in Yugoslavia. The fuel elements contain 23.483 kilograms of uranium enriched to approximately 19.78 percent in the isotope uranium-235. Retransfer document number RTD/IAEA(EU)-18, has been assigned to this transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 22, 1988.

Date: August 2, 1988.

For the Department of Energy.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 88-17741 Filed 8-4-88; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Project No. 2597-011, et al.]**

### Hydroelectric Applications Filed with the Commission; Connecticut Light and Power Co. et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 2597-011.

c. Date Filed: June 27, 1988.

d. Applicant: Connecticut Light and Power Company.

e. Name of Project: Falls Village Project.

f. Location: On the Housatonic River in Litchfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Robert P. Wax, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270, (203) 665-3838.

i. FERC Contact: Steven H. Rossi—(202) 376-9814.

j. Comment Date: September 21, 1988.

k. Description of Project: The applicant proposes to amend its license by deleting the Generating Unit No. 4 development amendment to its license.

The Generating Unit No. 4 would have consisted of: (1) A new intake structure on the existing canal forebay at elevation 602 feet msl; (2) a 9-foot-diameter, 300-foot-long steel penstock; (3) a concrete powerhouse containing a single 6,000-kW generating unit at a rated head of 90 feet, connected to the existing 7,500-kVA transformer; and (4) appurtenant facilities.

The applicant states that this development is economically infeasible at this time.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2 a. Type of Application: Major License.

b. Project No.: 10468-000.

c. Date filed: September 4, 1987.

d. Applicant: Marsh Valley Hydroelectric Company, an Idaho Corporation.

e. Name of Project: Marsh Valley.

f. Location: On the Portneuf River in Bannock County, Idaho near the town of McCammon. T.9S., R.37E., Section 20, Boise Meridan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Ted S. Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID, 83401 (208) 522-8069. Randall C. Budge, Attorney at Law, Center Plaza, Corner First & Center, Pacatello, ID 83204.

i. FERC Contact: Ms. Deborah Frazier-Stutely.

j. Comment Date: August 31, 1988.

k. Competing Application: Project No. 10242-000 Date Filed: January 12, 1987.

l. Description of Project: The proposed run-of-river project would consist of: (1) An existing 10-foot-high diversion dam at elevation 4,921 feet, diverting water from the Portneuf River into; (2) the existing 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (3) a 7-foot-high concrete diversion structure located on the existing Portneuf-Marsh Valley Canal at elevation 4,911 feet; (4) an intake structure; (5) a 500-foot-long, 60 or 72-inch-diameter penstock; (6) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW operating under an average head of 96 feet; (7) a 50-foot-long tailrace discharging into the Portneuf River; (8) a 0.5-mile-long, 12.4-kV transmission line, tying into an existing Utah Power and Light Company's line; and (9) appurtenant facilities.

m. Purpose of Project: Project power will be sold to Utah Power & Light Company.

n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Minor License.

b. Project No.: 10505-000.

c. Date filed: November 16, 1987.

d. Applicant: Graeagle Land and Water Company.

e. Name of Project: Graeagle Golf Course Water Power Project.

f. Location: On Frazier Creek in Plumas County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Daniel West, Graeagle Land & Water Co., Inc., P.O. Box 68, Graeagle, California 96103. Phone: (916) 836-2523.

i. FERC Contact: Mr. Nanzo T. Coley—Phone: (202) 376-9416.

j. Comment Date: September 21, 1988.

k. Description of Project: The proposed project would be located on lands owned by the Graeagle Land and Water Company. The proposed project would consist of: (1) An existing conduit diversion facility that diverts water from Frazier Creek to an existing 16-inch-diameter conduit that is 4,844 feet long and connected to an existing 12-inch-diameter conduit that is 608 feet long; (2) a proposed variable diameter penstock that would connect to the existing 12-inch penstock, which is used to irrigate the Graeagle Golf Course; (3) a proposed powerhouse containing one generating unit rated at 90-kW; (4) a proposed tailrace, approximately 25 feet long; (5) a proposed electrical tap into the existing 12.5-kV underground cable located adjacent to the powerhouse; and (6) appurtenant facilities.

l. Purpose of Project: Power produced at the project would be sold to Plumas Sierra Rural Electric Coorporative.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 10560-000.

c. Date filed: April 22, 1988.

d. Applicant: Heitmann & Tine Associates.

e. Name of Project: Pow Wow River Project.

f. Location: On the Pow Wow River in Essex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Mr. Sebastian D. Tine, Heitmann & Tine Associates 252 Pleasant Street, Methuen, MA 01844 (617) 475–1186.

i. FERC Contact: Steven H. Rossi (202) 376–9814.

j. Comment Date: September 23, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 40-foot-long concrete gravity dam; (2) a reservoir with a surface area of 30 acres, no storage capacity, and a normal water surface elevation of 87 feet m.s.l.; (3) an existing intake structure; (4) an existing 6-foot-diameter, 600-foot-long concrete penstock; (5) a new powerhouse containing three generating units with a capacity of 100 kW each for a total installed capacity of 300 kW; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 1,500,000 kWh. The existing dam is owned by the Town of Amesbury, Massachusetts. The applicant estimates that the cost of the studies under permit would be $7,800.

l. Purpose of Project: Project power would be sold to the Massachusetts Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, & D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10613–000.

c. Date Filed: June 1, 1988.

d. Applicant: Lower Patterson, Inc.

e. Name of Project: Upper Teton River Hydroelectric Project.

f. Location: On the Teton River, near the town of Felt, in Teton County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Richard L. Graves, 2082 South 2000 East, Gooding, ID 83330 (208) 536–5461.

i. FERC Contact: Thomas Dean, (202) 376–9562.

j. Comment Date: September 21, 1988.

k. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 5,786 feet msl; (2) an 86-inch-diameter, 12,200-foot-long penstock leading to; (3) a powerhouse at elevation 5,630 feet msl containing 2 generating units with a combined capacity of 4,500 kW; (4) a tailrace; and (5) a 9,300-foot-long, 12.5-kV transmission line.

The applicant estimates the average annual energy production to be 24,750 MWh. The approximate cost of the studies under the permit would be $50,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10621–000.

c. Date Filed: June 23, 1988.

d. Applicant: Hydro Investors Inc.

e. Name of Project: Madrid Project.

f. Location: On the Grass River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Neal F. Dunlevy, 185 Genesee Street, Suite 1518, Utica, NY 13501 (315) 793–0366.

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: September 23, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 250-foot-long concrete and stone masonry gravity dam; (2) a reservoir with a surface area of 100 acres, a storage capacity of 880 acre-feet, and a normal water surface elevation of 255 feet m.s.l.; (3) a new concrete intake structure; (4) a new powerhouse containing, (a) one generating unit with a capacity of 770 kW, or (b) two generating units with a capacity of 350 kW each for a total installed capacity of 700 kW; (5) a new transmission line, 200 feet long; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 3,200,000 kWh. The existing dam is owned by the Town of Madrid, New York. The applicant estimates that the cost of the studies under permit would be $21,000.

l. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: P–10619–000.

c. Date Filed: June 21, 1988.

d. Applicant: Cuyahoga Falls Hydro Associates.

e. Name of Project: Cuyahoga Falls Hydro Project.

f. Location: On the Cuyahoga River near Akron, Summit County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Dominique Darne, 1900 L Street NW., Suite 608, Washington, DC 20036, (202) 775–4692.

i. FERC Contact: Ed Lee at (202) 376–5786.

j. Current Date: September 23, 1988.

k. Description of Project: The proposed run-of-river project consists of: (1) An existing Gorge Dam approximately 440 feet long and 57 feet high; (2) a 48-acre reservoir; (3) a proposed steel penstock approximately 3,000 feet long; (4) a new concrete powerhouse housing two 2.75-MW generators for a total installed capacity of 5.5 MW and an average annual generation of 24,000 MWh; (5) a new tailrace; (6) a new 600-foot-long, 12.3-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the cost of the work to be performed under the preliminary permit would be $100,000. The dam and reservoir are owned by Ohio Edison Company, 76 South Main Street, Akron, Ohio.

l. Purpose of Project: The Applicant's generated power would be sold to a nearby local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Transfer of License.

b. Project No.: 2416–006.

c. Date Filed: July 7, 1988.

d. Applicant: Riegel Power Corporation and Aquenergy Systems, Inc.

e. Name of Project: Ware Shoals Project.

f. Location: On the Saluda River in Laurens County, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ralph H. Walker, Riegel Power Corporation, Post Office Box 512, Greenville, SC 29602, (803) 233–8567.

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: September 9, 1988.

k. Description of Transfer: On July 7, 1988, Riegel Power Corporation (licensee) and Aquenergy Systems, Inc. (transferee) filed a joint application for transfer of a major license for the Ware Shoals Project No. 2416.

The purpose of the proposed transfer of license is to consolidate both companies to eliminate operation and maintenance costs. Both companies are owned by the same nine stockholders.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

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l. This notice also consists of the following standard paragraphs: B and C.

9 a. Type of Application: Minor license.

b. Project No.: 8291–003.

c. Date filed: September 30, 1987.

d. Applicant: North Star Hydro Limited.

e. Name of Project: North Star.

f. Location: On Little Walker River in Mono County, California T6N, R23E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Dr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, CA 95814.

i. FERC Contact: Mr. William R. Roy-Harrison, (202) 376–9830.

j. Comment Date: September 26, 1988.

k. Description of Project: The proposed project consists of: (1) A 6-foot-high, 50-foot-long diversion structure at elevation 6,830 feet msl; (2) a 48-inch-diameter, 6,700-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 1,400-kw; (4) a 1.6-mile-long, 12.5 kV transmission line tying into the existing California Edison Company line; and (5) appurtenant facilities. The applicant estimates a 3.9 million kwh average annual energy production.

l. Purpose of Project: Power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10 a. Type of Application: Declaration of Intention.

b. Project No.: EL88–26–000.

c. Date filed: May 13, 1988.

d. Applicant: City of Arlington (TX).

e. Name of Project: South West Water Treatment Plant.

f. Location: Cedar & Richland-Chambers Creeks, Tarrant County, Texas.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: A. William Veselka, P.E., Veselka Engineering Consultants, Inc., 202 East Border Street, Border Centre, Suite 300, Arlington, TX 76010, (817) 469–1671.

i. FERC Contact: Hank Ecton, (202) 376–9073.

j. Comment Date: September 7, 1988.

k. Description of Project: The proposed South West Water Treatment Plant would consist of: (1) A 60-Inch, 11,400-foot-long concrete pressure pipeline, connected with two parallel pipelines which carry water from Cedar Creek and Richland-Chambers Creek Reservoirs; (2) a proposed powerhouse containing one vertical turbine/generator with provisions for installation of a second identical unit, each generating 260 kilowatts (kW); and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To utilize the flow and available head from a 60-inch raw water pipeline to produce a maximum of 280 kW, to supply 20 percent of the energy requirements of a water treatment plant. All generated electricity will be used on site.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

a. Type of Application: Declaration of Intention.

b. Project No: EL88–28.

c. Date Filed: 03/14/88.

d. Applicant: Pennsylvania Gas & Water Company (PG&W).

e. Name of Project: Mill St. Regulating & Pumping Station.

f. Location: In the interior piping of the transmission/distribution system of a public water supply facility, Borough of Dunmore, Pennsylvania.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: James L. Long, Pennsylvania Gas & Water Company, Wilkes-Barre Center Bldg., 39 Public Square, Wilkes-Barre, PA 18711 (717) 829–8778.

i. FERC Contact: Diane M. Scire, (202) 376–1758.

j. Comment Date: September 7, 1988.

k. Description of Project: The proposed project would consist of a small hydropower generating unit with a capacity of less than 175 kilowatts. Considerable energy dissipated in the pressure reduction would be used to generate power and operate the pumping equipment.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To generate power to operate the pumping equipment within the regulating and pumping station, which is an integral facility of PG&W's water supply system. No power generated will be sold to the local utility, Pennsylvania Power & Light Company, or to anyone else.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

a. Type of Application: Declaration of Intention.

b. Project No: EL88–33–000.

c. Date Filed: June 1, 1988.

d. Applicant: Bill Dean.

e. Name of Project: Little Muddy Creek Project.

f. Location: Little Muddy Creek, Pend Oreille County, Washington.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Bill Dean, Post Office Box 512, Ione, WA 99139 (509) 442–3389.

i. FERC Contact: Hank Ecton, (202) 376–9073.

j. Comment Date: September 7, 1988.

k. Description of Project: The proposed Little Muddy Creek Project would consist of: (1) A 6–inch, 1000-foot-long pipeline; (2) a turbine with a capacity of 300–400 watts; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating

capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To divert water from the Little Muddy Creek, using a 6-inch, 1000-foot-long pipeline connected with a turbine, to generate between 300–400 watts of electricity. The project will not be interconnected, and the power generated will be used on site.

m. This notice also consists of the following standard paragraphs: B, C, D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10581–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: San Antonio Reservoir/Dam Power Project.

f. Location: On the San Antonio River in Monterey County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025, (415) 854–3674.

i. FERC Contact: Nanzo T. Coley (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing San Antonio dam is owned by the Monterey County Flood Control and Water Conservation District. The proposed project would consist of: (1) An existing 198-foot-high by 1,432-foot-long dam; (2) an existing reservoir with a surface area of 5,720 acres and a storage capacity of 350,000 acre-feet at elevation 780 feet m.s.l.; (3) an existing 1,300-foot-long by 7-foot-diameter penstock; (4) a proposed powerhouse containing one generating unit rated at 24 MW; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the project is 12,640,000 KWH. The applicant estimates that the cost for the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at the project would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 10582–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: Calero Reservoir/Dam Power Project.

f. Location: On Calero Reservoir in Santa Clara County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025, (415) 854–3574.

i. FERC Contact: Nanzo T. Coley (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing Calero dam is owned by the Santa Clara Valley Water District. The proposed project would consist of three parts. Part 1 would consist of: (1) An existing 98-foot-high dam; (2) an existing reservoir with a surface area of 347 acres and a storage capacity of 10,054 acre-feet at elevation 485 m.s.l.; (3) an existing 481-foot-long by 36-inch-diameter penstock; (4) a proposed powerhouse containing generating units with a total rated capacity of 600 KW and connecting to the Alameden Valley pipeline; and (5) a proposed transmission line. Part 2 would consist of: (1) the existing Cross Valley pipeline outlet; (2) a proposed powerhouse, connected to the Cross Valley pipeline outlet, containing one generating unit rated at 400 KW and connecting to the proposed Calero pipeline or emptying into the Calero reservoir; and (3) a proposed transmission line.

Part 3 would consist of: (1) The existing outlet conduit at McKean Road; (2) a proposed powerhouse, that would be connected to the existing McKean Road conduit, containing one generating unit rated at 400 KW; (3) a proposed tailrace; and (4) a proposed transmission line. The estimated average annual energy output for part 1 is 5,000,000 KWH, and for parts 2 and 3 is 3,500,000 KWH. The applicant estimated the cost of the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at each project entity would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15. a. Type of Application: Preliminary Permit.

b. Project No: 10583–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: Uvas Reservoir/Dam Power Project.

f. Location: On Uvas Creek in Santa Clara County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact Person: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025 (415) 854–3574.

i. FERC Contact: Nanzo T. Coley (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing Uvas dam is owned by the Gavillian Water Conservation District and the Santa Clara Valley Water District. The proposed project would consist of: (1) An existing 118-foot-high dam; (2) an existing reservoir with a surface area of 286 acres and a storage capacity of 10,000 acre-foot at elevation 496 feet m.s.l.; (3) an existing 500-foot-long by 36-inch-diameter penstock with three outlet pipe connections; (4) a proposed powerhouse containing generation units with a total installed capacity of 400 WK, with the turbines connected to the outlet pipes; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the project is 3,500,000 KWH. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at the project would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A10, A19, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 10584–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: Lexington Reservoir/Dam Power Project.

f. Location: Los Gatos Creek in Santa Clara County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025, (415) 854–3574.

i. FERC Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing Lexington dam is owned by the Santa Clara Valley Water District. The proposed project would consist of: (1) An existing 165-foot-high dam; (2) an existing reservoir with a surface area of 404 acres and a storage capacity of 20,250 acre-feet at elevation 665 feet m.s.l.; (3) an existing 1,314-foot-long by 50-inch-diameter bifurcated penstock; (4) a proposed powerhouse containing generating units, connected to the existing penstocks, with a total rated capacity of 1,000 kw; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the project is 8,760,000 kwh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at the project would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of Application: Transfer of License.

b. Project No.: 7242–010.

c. Date filed: June 2, 1988.

d. Applicants: Richard D. Spight (licensee), and STS Hydropower Ltd. (transferee).

e. Name of Project: Kanaka.

f. Location: On Sucker Run, a tributary of the South Fork Feather River (Oroville Reservoir), near Feather Falls, in Butte County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a) — 825(r).

h. Applicant Contacts: Mr. Richard D. Spight, P.O. Box 629, Orinda, CA 94563. Mr. Peter J. Bulandr, Vice President, STS Hydropower Ltd., 111 Pfingsten Road, Northbrook, IL 60062.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 376–9821.

j. Comment Date: September 6, 1988.

k. Description of Transfer: On August 15, 1985, a minor license was issued to Television Communications, Inc. for the construction, operation, and maintenance of the Kanaka Project No. 7242, but later transferred to Mr. Richard D. Spight, August 27, 1987. Mr. Richard D. Spight has proposed to transfer the license to STS Hydropower Ltd.

The transferee is a private corporation organized under the laws of the state of Michigan, and domesticated in the state of Illinois.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound by them to the same extent as though it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

**Standard Paragraphs**

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts

must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 2, 1988.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17739 Filed 8-4-88; 8:45 am]

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**[Docket No. CP88-570-000 [1]]**

## Mobile Bay Pipeline Projects; Deadline for 1989-1990 Certification of Mobile Bay Construction Applications

August 1, 1988.

The Commission has received several applications to construct and operate pipeline facilities to move gas out of the Mobile Bay area. These applications propose construction and operation of major new pipeline facilities and the transportation of large quantities of natural gas out of the Mobile Bay area. Applications have been filed by Citrus Interstate Pipeline Company in Docket No. CP87-415-000, Sunshine Natural Gas System in Docket No. CP87-513-000, Gateway Pipeline Company in Docket No. CP88-393-000, and Tennessee Gas Pipeline Company in Docket No. CP88-437-000. All these facilities would begin and end onshore, downstream of processing plants to be installed by others.

Proven and probable dry gas reserves for the Mobile Bay area are estimated to be approximately 5.4 Tcf. Presently, the only pertinent pipeline in the offshore area that can bring gas onshore was constructed by Mobil Oil Company (Mobil) to carry Mobil's gas from its Mobile Bay production area to the Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI), processing plant, which is in Mobile County, Alabama. This plant currently has a capacity of approximately 80 MMcfd. Each pipeline proposed in these applications would interconnect with the MOEPSI processing plant and/or one of two planned processing plants.

Our primary concern here is to establish a means to process the applications for pipeline construction in the Mobile Bay area in an orderly manner such that we can assure the present applicants listed above, as well as any other pertinent applicants who file timely, complete applications, that certification for their proposed projects will issue, no later than the end of 1990 if the proposals are found to be in the public convenience and necessity. Accordingly, we announced today that the deadline for the filing of applications to construct and operate pipeline facilities for transportation of natural gas out of the Mobile Bay area, where certification for such construction is necessary or desirable no later than the end of calendar year 1990, is December 30, 1988. The Mobile Bay area referred to herein is defined by a line starting at a point located at the Mississippi/Louisiana state line, at the coast, extending in a southeasterly direction to a point 88°00′ W longitude and 29°20′ N latitude and extending in an easterly direction to a point 87°00′ W longitude and 29°20′ N latitude and extending north along the 87°00′ W longitude to the coast of Florida.

Each application presently on file, as well as each new application and amendment thereto which is pertinent to this notice, must be filed and *complete* between now and December 30, 1988, if the certification process is reasonably expected to be completed during 1989-90, and no later than the end of 1990. Each application or amendment thereto on file at the Commission as of the stated deadline which is *complete*, in compliance with the Commission's regulations, and ripe for decision will be processed and a certificate issued, if at all, no later than the end of 1990 if the proposal is found to be in the public convenience and necessity.[2] Applications that are filed or amended after December 30, 1988, will be considered applications for post-1990 certification. This notice is not intended to inhibit or discourage applications for certification of pipeline construction where any certification is not required before the end of 1990.

It must be emphasized that all applications must fully comply with the requirements for applications as set forth in the Commission's regulations, including a *complete* and fully supported set of exhibits, as required under 18 CFR 157.6, for certification no later than the end of 1990. Persons who need to supplement or amend previously filed pertinent applications must do so not later than December 30, 1988, in order to comply with these requirements.

The Commission intends to act efficiently and expeditiously in deciding whether the need for new facilities exists and, if so, what new facilities should be certificated to meet such needs. Consequently, the procedures outlined in this notice provide an efficient, rational and legal procedure to ensure that any needed pipeline construction where certification is required in 1989-90 for transportation of Mobile Bay area natural gas can be considered in a timely way.

### Administrative Procedures

Pursuant to Rule 713(a)(2)(v) of our Rules of Practice and Procedure [18 CFR 385.713(a)(2)(v)], this notice is designated as a final decision of the Commission for the purpose of receiving requests for rehearing filed pursuant to section 19(a) of the Natural Gas Act.

By direction of the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17647 Filed 8-4-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-47-009]**

## Northwest Pipeline Corp.; Filing

August 1, 1988.

Take notice that on July 25, 1988, Northwest Pipeline Corporation (Northwest) filed Corrected Substitute Ninth Revised Sheet No. 2-A and Corrected Substitute Third Revised Sheet No. 2-A.1 to be a part of its FERC

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[1] This docket number designation is applicable to this notice and any requests for rehearing of this notice. Applications for authority to provide new gas service out of the Mobile Bay area filed in response to this notice will be identified by future docket numbers assigned at the time of filing.

[2] Following *Ashbacker Radio Corporation v. F.C.C.*, 326 U.S. 327 (1945), the Commission will establish a comparative evidentiary hearing in the event that it has before it at one time two or more mutually exclusive applications in which issues of material fact are in dispute.

Gas Tariff, Original Volume No 2, proposed to be effective July 3, 1988.

Northwest states that the purpose of this filing is to correct certain of its "X" rate schedules that were inadvertently included under the heading "Interruptible Transportation" and to correct certain other editorial errors. Northwest requests that these tariff sheets be substituted for those contained in its July 18, 1988 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17648 Filed 8-4-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3425-4]

### Environmental Impact Statements; Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 25, 1988 Through July 29, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880241, Final, BOP, TX, Three Rivers Federal Correctional Institution Complex, Construction and Operation, Live Oak County, TX, Due: September 6, 1988, Contact: William J. Patrick (202) 724-3232.

EIS No. 880242, Draft, FHW, NY, NY-290 Relocation, Butternut Interchange (I-481/ I-690) to Manlius Center, Funding and 404 Permit, Towns of DeWitt and Manlius, Onondaga County, NY, Due: September 19, 1988, Contact: Harold Brown (518) 472-3616.

EIS No. 880243, F Suppl, FHW, SC, Mark Clark Expressway/I-526 Construction Project, I-526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC, Due: September 6, 1988, Contact: William Rice (803) 765-5411.

EIS No. 880244, Draft, OSM, MT, Peabody Big Sky Coal Mine-Area B Expanded Operations Project, Plan Approval, Lee Coulee Drainge, Rosebud County, MT, Due: September 26, 1988, Contact: Floyd McMullen (303) 844-3104.

EIS No. 880245, Final, COE, ND, Baldhill Dam and Lake Ashtabula Reservoir, Dam Safety Protection Plan, Implementation, Sheyenne River, Valley City, Barnes County, ND, Due: September 6, 1988, Contact: Gary Palesh (612) 725-7740.

Dated: August 2, 1988.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 88-17727 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3524-5]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 18, 1988 through July 22, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 22, 1988 (53 FR 13318).

#### Draft EISs

ERP No. D-AFS-K65117-CA, Rating EC2, South Fork Fire Recovery and Salvage Project, August through October 1987, South Fork Roadless Area Land and Resource Management Plan, Implementation, Shasta-Trinity National Forest, Trinity County, CA. **SUMMARY:** EPA expressed environmental concerns about potential adverse water quality impacts of the preferred alternative on the South Fork Roadless Area's Watershed, and the lack of specific mitigation measures.

ERP No. D-BLM-K65116-CA, Rating EC2, Arcata Planning Area, Land and Resource Management Plan, Implementation, Humboldt, Mendocino, Trinity and Sonoma Counties, CA. **SUMMARY:** EPA is concerned with potential adverse impacts to water quality and beneficial uses caused by multiple use activities such as timber logging, and potential adverse impacts of herbicides use on surface water, ground water, and beneficial uses.

ERP No. D-FHW-L40166-OR, Rating EC2, Tualatin-Sherwood/Edy Road Improvements, I-5 to OR-99W, Funding and 404 Permit, Washington County, OR. **SUMMARY:** EPA's concerns with this document are based on potential water quality effects from indirect development.

ERP No. D-NPS-L61172-AK, Rating EC2, Lake Clark National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA is concerned about the potential for degradation of park/ preserve resources and the lack of information on the project-specific evaluation process. EPA recommends that additional information is needed and a summary of the General Management Plan should be included in the final EIS as this plan outlines how non-wilderness lands will be managed.

ERP No. D-NPS-L61173-AK, Rating LO, Gates of the Arctic National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA has no objections to the project as described.

ERP No. D-NPS-L61174-AK, Rating LO, Wrangell-St. Elias National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA has no objections to the project as described.

ERP No. D-SCS-H36100-MO, Rating LO, East Yellow Creek Watershed, Soil Erosion and Flood Damage Reduction Plan, Funding and Implementation, Sullivan, Linn and Chariton Counties, MO. **SUMMARY:** EPA has no ojbections to the project as proposed.

(Note: The above summary should have appeared in the 7-29-88 FR Notice.)

ERP No. D-SCS-K31012-NV, Rating EC2, East Walker Watershed Project, Water Management Improvement and Sediment Deposition Reduction, Funding and Implementation, Lyon County, NV. **SUMMARY:** EPA is concerned because the proposed project fails to comply with the section 404(b)(1) Guidelines of the Clean Water Act. EPA is further concerned with the effects of the recommended alternative's increased sediment loading on the watershed's water quality and wetlands.

ERP No. DS-SFW-L64024-AK, Rating LO, Kenai National Wildlife Refuge Comprehensive Conservation Management Plan, Wilderness Recommendations, Designation or Nondesignation, Kenai Peninsula

Borough, AK. **SUMMARY:** EPA has no objections to the project as proposed.

**Final EISs**

ERP No. F–FHW–L40156–OR, US 101/ Oregon Coast Highway Improvements, Rouge River Bridge to Gold Beach, Funding, Curry County, OR. **SUMMARY:** Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

(Note: The above summary should have appeared in the 7–29–88 FR Notice.)

ERP No. FS–IBR–J28002–CO, Colorado-Big Thompson, Windy Gap Projects, Green Mountain Reservoir Water Marketing, Implemenation and 404 Permit, Summit, Grand and Eagle Counties, CO. **SUMMARY:** EPA found the changes in heavy metals identified for Ten Mile Creek to be significant. This, however, appears to be an error in the data and the Bureau of Reclamation has agreed to supply EPA with corrected information. The Bureau agrees with EPA's recommendation that the Record of Decision should contain definitive procedures relative to NEPA requirements in the water supply contracts.

**Regulations**

ERP No. R–COE–A39133–00, 36 CFR Part 327; Shoreline Management at Civil Works Projects (53 FR 21495). **SUMMARY:** EPA expressed concern regarding the lack of specific requirement for National Environmental Policy Act document preparation prior to issuance of shoreline management plans or shoreline use permits. EPA requested that shoreline management plans and permits be reviewed after a specified time rather than periodically. EPA suggested measures to reduce environmental impacts of shoreline use.

Dated: August 2, 1988.

**Wiliam D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 88–17728 Filed 8–4–88; 8:45 am]

BILLING CODE 6560–50–M

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[ER–FRL–3422–3]

## Intent To Prepare an Environmental Impact Statement; Designation of an Ocean Disposal Site for Dredged Material Unacceptable for Disposal at the New York Bight "Mud Dump" Site

**AGENCY:** U.S. Environmental Protection Agency—Region II.

**ACTION:** Preparation of an Environmental Impact Statement on the Designation of an Ocean Disposal Site for Dredged Material Unacceptable for Disposal at the New York Bight "Mud Dump" Site.

Purpose: In accordance with the Environmental Protection Agency's (EPA) procedures for voluntary preparation of environmental impact statements (EIS) on significant regulatory actions (39 FR 37119, October 21, 1974), and in compliance with section 211 of the Water Resources Development Act (WRDA) of 1986. This notice of intent (NOI) is issued pursuant to 40 CFR 1501.7, section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA), and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Verhaar, Environmental Impacts Branch, U.S. Environmental Protection Agency—Region II, 26 Federal Plaza, Room 500, New York, New York 10278, Telephone (212/FTS) 264–6720.

**SUMMARY:**

**Description of Proposed Action**

*Need For Action:* Under section 211 of the WRDA, the Administrator of EPA is required to designate one or more ocean disposal sites in accordance with the MPRSA for the disposal of dredged material unacceptable for disposal at the present Mud Dump site. The WRDA stipulates that the designated site will be located not less than twenty (20) miles from the shoreline and that, no later than thirty (30) days after the site is designated, all disposal of dredged material other than acceptable dredged material will take place at the newly designated site(s).

The EPA action is to evaluate the beneficial and adverse environmental impacts associated with the designation of a site(s) for ocean disposal of dredged material unacceptable for disposal at the Mud Dump site.

It should be emphasized that, if an ocean disposal site(s) is designated for dredged material, such a site designation would not constitute or imply the U.S. Army Corps of Engineers' (COE) or EPA's permit approval of the actual disposal of dredged material at the respective site(s). It would remain the responsibility of each potential user to demonstrate compliance with EPA's marine environmental impact criteria in order to receive a permit from the COE under the MPRSA, independent of the EIS recommendations.

To minimize duplication of effort and reduce paperwork while assuring a thorough examination of all reasonable alternatives, the EPA has entered into a cooperative agreement with the Army Corps of Engineers for the preparation of this EIS.

*Alternatives:* No-action (the no-action alternative is defined as not designating a site for the disposal of dredged material which is unacceptable for disposal at the Mud Dump site), use of alternative ocean disposal sites.

*Scoping:* As part of the EIS scoping process, written comments on the proposed scope (e.g., issues, alternatives to be addressed) of the EIS will be accepted until September 23, 1988. All comments should be addressed to Chief, Environmental Impacts Branch at the above address. Formal scoping meetings, as defined in the regulations of the Council on Environmental Quality (40 CFR 1501.7), will be held as follows:

*Wednesday, September 14, 1988*

Long Branch Municipal Building, Council Chamber, 344 Broadway, Long Branch, New Jersey 07740.

*Thursday, September 15, 1988*

William H. Rogers Legislative Building, Veterans Memorial Highway, Hauppauge, New York 11788.

The meetings will be held in two (2) sessions starting at 2:00 p.m., with the second session starting at 6:00 p.m. after a one hour recess.

*Public Participation:* Full public participation by interested federal, state, and local agencies, as well as other interested organizations and the general public, is invited. All interested parties are encouraged to submit their names and addresses to the contact person indicated above for inclusion on the distribution list for the draft and final EIS and any related public notices.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 88–17729 Filed 8–4–88; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 29, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

*OMB Number:* 3060-0344.
*Title:* Section 1.1705, Method for determining duration of Cuban interference.
*Action:* Extension.
*Respondents:* Businesses including small businesses.
*Frequency of Response:* Recordkeeping and on occasion.
*Estimated Annual Burden:* 5 Response; 1 Recordkeeper; 45 Hours.
*Needs and Uses:* Section 1.1705 requires that U.S. applicants (AM stations) for compensation due to facilities changes required to mitigate Cuban interference shall monitor and log signals of interfering Cuban stations for 60 consecutive days and submit the results to the Commission. The data used by FCC staff to assure that a Cuban station has caused objectionable interference within the service area of an AM station.

*OMB Number:* 3060-0345.
*Title:* Section 1.1709, Requirements for filing application for compensation.
*Action:* Extension.
*Respondents:* Businesses including small businesses.
*Frequency of Response:* On occasion.
*Estimated Annual Burden:* 1 Response; 30 Hours.
*Needs and Uses:* Section 1.1709 requires that U.S. AM radio stations submit an informal application for compensation of expenses incurred in mitigating the effects of Cuban interference and any supplemental information the Commission may request the applicant to file. In order to mitigate the effects from Cuban interference, the application must be accompanied by certain documentation. The informal application and supplemental information is used by FCC staff to assure that compensation to the station is justified.

Federal Communications Commission.
**H. Walker Feaster III,**
*Acting Secretary.*
[FR Doc. 88-17672 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

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## Advisory Committee on Advanced Television Service Steering Committee

The third meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held at 9:00 a.m. on August 10, 1988 in Room 856 at the FCC's offices at 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introductory Remarks—Irwin Dorros.

—Review of Systems Subcommittee charter, organization and operating procedures.

—Description of work flow and transitions from the Planning Subcommittee.

2. Report by Working Party 1 (Systems Analysis)—Birney Dayton.

—Charter and organization.

—Work plan/status.

—Review of ATV systems submitted for consideration.

—Meeting schedule.

3. Report by Working Party 2 (System Evaluation and Testing)—Ben Crutchfield.

—Charter and organization.

—Work plan/status.

—Discussion of availability of ATV testing facilities.

—Discussion of inputs from the Planning Subcommittee, including the availability of ATV test material.

—Meeting schedule.

4. Report by Working Party 3 (Economic Assessment)—Larry Thorpe.

—Charter and organization.

—Work plan/status.

—Meeting schedule.

5. Report by Working Party 4 (System Standard)—Robert Hopkins.

—Charter and organization.

—Work plan/status.

—Meeting schedule.

6. Discussion of plans for February 1, 1989 Interim Report.

7. Subcommittee meeting schedule.

8. Open discussion.

All interested parties are invited to attend. Those interested may also submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Committee Chairman.

Any questions regarding this meeting should be directed to Bruce Franca at (202) 632-7060.

Federal Communications Commission.
**H. Walker Feaster III,**
*Acting Secretary.*
[FR Doc. 88-17687 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

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**[Report No. 1742]**

## Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 27, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed August 22, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

**Subject:** Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Olive Branch, Mississippi) (MM Docket No. 87-260, RM-5728).

Number of petitions received: 1.

Federal Communications Commission.
**H. Walker Feaster III,**
*Acting Secretary.*
[FR Doc. 88-17671 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

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**[Report No. 1739]**

## Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 15, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed August 22, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

**Subject:** Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1934. (MM Docket No. 84-1296). Number of petitions received: 1.

Federal Communications Commission.
H. Walker Feaster III,
*Acting Secretary.*
[FR Doc. 88-17673 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-011049-003.
*Title:* Tampa Port Authority .
*Parties:*
Tampa Port Authority
Seagull Terminal and Stevedoring Company

*Synopsis:* The agreement extends the lease term of the basic agreement as amended for an additional six months from August 1, 1988 through January 31, 1989.

*Agreement No.:* 224-200052-002.
*Title:* Tampa Port Authority Terminal Lease Agreement.
*Parties:*
Tampa Port Authority
Bay Terminal and Stevedoring Co., Inc.

*Synopsis:* The agreement extends the term of the basic lease for an additional six month period through January 31, 1989.

*Agreement No.:* 224-200054-002.
*Title:* Tampa Port Authority Terminal Lease Agreement.
*Parties:*
Tampa Port Authority
G & C Stevedoring Co.

*Synopsis:* The agreement extends the term of the basic lease for an additional six month period through January 31, 1989.

*Agreement No.:* 224-003934-004.
*Title:* Palm Beach Terminal Agreement.
*Parties:*
Port of Palm Beach District (The Port)
Florida Molasses Exchange, Inc. (FME)

*Synopsis:* Under the proposed agreement, FME agrees that paving or landscaping over certain easements on a portion of land FME leased from the Port shall be at FME's risk and that FME shall be responsible for the cost of replacing any paving or landscaping removed during installation of water utility lines on the easement.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
*Secretary.*
Dated: August 1, 1988.
[FR Doc. 88-17668 Filed 8-4-88; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Dime Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be availabile for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 26, 1988.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Dime Financial Corporation,* Wallingford, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Dime Savings Bank of Wallingford, Wallingford, Connecticut; 100 percent of the voting shares of City Savings Bank of Meriden, Meriden, Connecticut; and 7.125 percent of the voting shares of Meriden Trust and Safe Deposit Company, Meriden, Connecticut. Dime Savings engages in the underwriting and sales of Connecticut Savings Bank Life Insurance. City Savings acts as an agent for two banks which issue Savings Bank Life Insurance.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank Maryland Corp.,* Towson, Maryland; to acquire 80 percent of the voting shares of Bay National Bank Annapolis, Maryland.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gore Bronson Bancorp, Inc.,* Northbrook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Palwaukee Bank, Propsect Heights, Illinois.

2. *Pocahontas Bancorporation,* Pocahontas, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of The Pocahontas State Bank, Pocahontas, Iowa.

**D. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Miners Bancshares, Inc.,* Frontenac, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Miners State Bank, Frontenac, Kansas.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Weslaco Bancshares, Inc.,* Weslaco, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of City National Bank, Weslaco, Texas.

**F. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *1867 Western Financial Corporation,* Stockton, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Stockton, Stockton, California.

Board of Governors of the Federal Reserve System, August 1, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17636 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

## First NH Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.*, Manchester, New Hampshire; to acquire Insurance Premium Finance Corporation, Derry, New Hampshire, and thereby engage in financing insurance premiums pursuant to § 225.25(b)(1) (i) and (iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 1, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17637 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

## Mellon Bank Corp. et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Collection Services Corporation, Pittsburgh, Pennsylvania, in permissible loan recovery and collection activities for loans previously held by Applicant's subsidiaries and sold to a liquidating bank pursuant to § 225.25 (b)(1) and (b)(23) of the Board's Regulation Y.

2. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire Grant Street National Bank, Pittsburgh, Pennsylvania, which will be a limited purpose *de novo* bank in voluntary liquidation under section 181 of the National Bank Act (12 U.S.C. 181). Applicant is applying pursuant to the provisions of section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8) and §§ 225.25 (b)(1) and (b)(23) of the Federal Reserve Board's Regulation Y (12 CFR 225.25 (b)(1) and (b)(23)) to engage in its proposed activities.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and disability insurance written in connection with extensions of credit in all states by affiliates of Sovran Financial Corporation pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Comments on this application must be received by August 26, 1988.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Findlay Bancshares, Inc.*, Findlay, Illinois; to engage *de novo* through its subsidiary, Findlay Insurance Agency, Findlay, Illinois; in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Comments on this application must be received by August 23, 1988.

Board of Governors of the Federal Reserve System, August 1, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17638 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

**Warburg, Pincus Capital Company, L.P., Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Warburg, Pincus Capital Company, L.P.;* Warburg, Pincus Capital Partners, L.P.; Warburg, Pincus & Co.; E.M. Warburg, Pincus & Co., Inc.; Warburg, Pincus Ventures, Inc.; John L. Vogelstein; and Lionel I. Pincus; to acquire an additional 14.8 of percent of voting shares of Mellon Bank Corporation, Pittsburgh, Pennsylvania, and thereby indirectly acquire Mellon Bank (North), Oil City, Pennsylvania; Mellon Bank, N.A., Pittsburgh, Pennsylvania; Mellon Bank (MD), Bethesda, Maryland; Mellon Bank (East), Philadelphia, Pennsylvania; Mellon Bank (DE), Wilmington, Delaware; Mellon Bank (Central), State College, Pennsylvania; and Commonwealth National Bank, Harrisburg, Pennsylvania.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *James R. Fraser,* Sandy, Utah; to acquire an additional 1.48 percent of the voting shares of Brighton Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Brighton Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, August 1, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17639 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**Agency Forms Submitted to the Office of Management and Budget for Clearance**

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 29, 1988.

**Public Health Service**

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

**Food and Drug Administration**

1. Medical Device Good Manufacturing Practice Regulation—0910-0073)—The records required by the GMP regulation are an integral part of an effective quality assurance program for the manufacture of devices and an essential mechanism by which manfacturers maintain control over their process. In order to consistently produce devices conforming to established specifications, controls must be in place. Protection of the public health depends upon the information provided to both industry and FDA by GMP records. Respondents: Business or other for-profit, small business or organizations; Number of respondents: 7,172; Frequency of Response: Every two years; Estimated Annual Burden 201,930 hours.

2. Survey of Japanese Pharmaceutical Firms Regarding New Biotechnology Products—NEW—The collected information will provide the means for FDA to make predictions about future demands for expertise and resources and for U.S. industry to gauge the competitiveness of their Japanese counterparts. The affected public consists solely of the Japanese drug manufacturers who respond. Respondents: ____; Number of Respondents: 100; Fequency of Response: One-time; Estimated Annual Burden: 20 hours.

3. FDA Recall Regulations—0910—Recall guidelines set forth procedures to be used by manufacturers and distributors or other responsible persons in notifying or alerting health professionals or other persons of an unreasonable risk of substantial harm to the public health and describes the procedures used or required by FDA in the recall process. Respondents: Business or other for-profit, Small business or organizations. Number of Respondents: 915; Frequency of Response: On occasion; Estimated Annual Burden: 45,567 hours.

*Center for Disease Control*

1. Regulation—42 CFR 51b—Venereal Disease Program Grants—0920-0112—This clearance covers the application requirements for grants to States, political subdivisions of States and to any other public and nonprofit private entity for research, demonstrations, public information and education programs for the prevention and control of sexually transmitted diseases. Respondents: State or Local governments, non-profit institutions. Number of Respondents: ____; Frequency of Response: Annual; Estimated Annual Burden: 1 hour.

2. Longitudinal Study on Aging (LSOA)—0920-0219—This study is designed to measure changes in the functional status and living arrangements of older Americans. The baseline data were collected through the Supplement on Aging to the National Health Interview Survey. Respondents: Individuals or households; Number of Respondents: 6,000; Frequency of Response: One time; Estimated Annual Burden: 1,631 hours.

OMB Desk Officer: Shannah Koss-McCallum.

**Health Care Financing Administration**

(Call Reports Clearance Officer on 301-966-2088 for copies of package)

1. Request for Medicare Payment—Ambulance—0938-0042—This form is completed by the beneficiary and/or the ambulance service, on occasion. It is submitted to the medicare carrier for payment to the ambulance service. Respondents: Business or other for-profit, small business or organizations. Number of Respondents: 26,500; Frequency of Response: 128; Estimated Annual Burden: 544,000 hours.

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-966-2088
FSA: 202-245-0652
SSA: 301-965-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the

following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Attn: Shannah Koss-McCallum.

Date: August 2, 1988.

**James V. Oberthaler,**

*Deputy Assistant Secretary, Information Resources Management.*

[FR Doc. 88-17787 Filed 8-4-88; 8:45 am]

BILLING CODE 4150-04-M

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**Centers for Disease Control**

## Renewal of Cooperative Agreements To Support State Smoking Cessation In Pregnancy Demonstration and Research Projects; Availability of Funds for Fiscal Year 1988

### Introduction

The Center for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 to continue support for Cooperative Agreements with the Colorado Department of Health, the Maryland Department of Health and Mental Hygiene, and the Missouri Department of Health to complete statewide Smoking Cessation in Pregnancy (SCIP) Demonstration and Research Projects. This is not a formal request for applications. Assistance will be provide only to the State Health Departments of Colorado, Maryland, and Missouri for continued support of this project. No other applications are solicited or will be accepted.

**Authority:** These Cooperative Agreements are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)) as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

### Background/Objectives

In September 1986, CDC awarded Cooperative Agreements to the Colorado, Maryland, and Missouri Departments of Health in support of their state SCIP projects. The three States have fully staffed multidisciplinary teams working on the SCIP project. The States have developed the only state-of-the-art intervention strategies and materials developed from the results of focus groups sessions conducted to learn from public prenatal clients what is most helpful to them in quitting and maintaining cessation of smoking. The States have developed and tested the consent and screening forms as well as the questionnaries and have already obtained local health departments' commitments to participate in the study. The three States have also standardized procedures for collecting and shipping urine samples, administering and shipping questionnaries, and editing forms, and they have installed a microcomputer database for tracking patient progress and reporting.

The primary focus of the renewal Cooperative Agreement awards will be to:

1. Integrate the use of the patient education/counseling methoid within intervention public prenatal clinics and WIC (Special Supplemental Feeding Program for Women, Infants, and Children) sites on an ongoing basis using only existing staff to support clients' efforts to quit smoking. These clinics and sites will use only the data management and biochemical testing procedures throughout the study period;
2. Demonstrate the effectiveness of the smoking cessation/maintenance intervention strategy in producing changes in the smoking behavior (i.e., quitting) of patients who use publicly-funded prenatal care on a sustained basis;
3. Evaluate the effect of smoking on the birthweight of babies of women using publicly-funded prenatal care (higher risk patients); and
4. Assess the cost-effectiveness of the intervention as an integral part of prenatal care.

CDC is committed to assisting the States in obtaining the study results in order to (1) assess what proportion of prenatal smokers can be helped to quit smoking and maintain their cessation through intervention; (2) determine what it will cost to integrate cessation/maintenance interventions into routine prenatal care on a sustained basis; (3) measure the effects of smoking cessation on low birthweight for users of public prenatal care, generally higher risk mothers; and (4) evaluate the cost-effectiveness of these efforts.

CDC project activities are:

A. Provide technical assistance and training to assure that State and local staff have the appropriate skills and expertise to complete field testing as appropriate, to complete implementation of SCIP, and to evaluate its effectiveness.

B. Provide technical assistance in the development and conduct of training, quality control, process evaluation, data management, analysis, and evaluation to ensure sharing of experience between SCIP project States and sharing of their lessons learned with non-project States. This collaboration will include site visits when deemed necessary by the State or CDC.

C. Perform laboratory analyses on SCIP urine specimens on behalf of the State and report the results back to them.

D. Collaborate in the preparation and dissemination of information concerning the SCIP project, activities, and results through appropriate presentations and publications.

Recipient activities are:

*A. Field Testing*

As appropriate, complete the evaluation of the field test. Specify modifications that are needed in the intervention and data management instruments and protocols.

*B. Training*

As appropriate, conduct refresher training based on field test modifications for prenatal care (PNC) clinics and WIC staff that participated in the field test.

*C. Quality Control and Process Evaluation*

1. Establish performance standards for acceptable adherence to the intervention and data management protocols.
2. Establish systematic procedures for monitoring adherence to the intervention and data management protocols, and integrate the monitoring procedures into normal supervision of staff activities to the extent possible.
3. Use monitoring information to assess adherence to protocols during and after the study period.
4. Assure that problems are identified and solved at the local and State levels as necessary.
5. Monitor potential sources of influence on participants' smoking behavior that may stem from PNC or WIC staff, the patients themselves, media, or members of the community.

*D. Data Management*

1. Use the State patient/forms tracking system to generate reports that are provided to PNC clinics on a routine basis.
2. Ensure that all forms/urine specimens that are supposed to be received have been received and followed up where discrepancies are identified.
3. Document the condition of urine specimens upon receipt at the State Laboratory.

*E. Analysis and Reporting*

1. Develop State analysis plan.
2. Conduct State analyses.
3. Review results with State health department program managers and policy makers.
4. Complete analyses.
5. Prepare SCIP evaluation (final) report.

6. Prepare and disseminate information concerning the SCIP Project, activities, and results through appropriate presentations and publications.

**Eligible Applicants**

As stated above, the States of Colorado, Maryland, and Missouri are the only three States that have the critical factors in place which permit the SCIP Demonstration and Research Project to be successfully completed within the project period. The States have conducted focus groups' sessions within populations targeted for intervention to assess what should be most helpful in quitting and maintaining cessation. They have already estimated smoking prevalence by local health jurisdiction; have calculated sample size requirements; and have obtained formal agreement from local health departments to participate in the study as either an intervention or control site to be determined by randomization. The States have already developed forms and questionnaires to be filled out by PNC patients at enrollment, at the eighth month of pregnancy, and at six weeks postpartum. These forms were developed by the States without review or approval by CDC. However, technical assistance was provided. In addition, they have already developed a computerized database which can provide timely feedback to local health departments regarding the status of the study.

**Review and Evaluation Criteria**

The review and evaluation of the renewal applications will be based on their merits when considering the following criteria:

1. Overall Understanding.
2. State Commitment.
3. Measurable Objectives.
4. Adequacy of Plan and Timetable.
5. Acceptable Project Management Structure.
6. Effective Problem-Solving Capability.

**Availability of Funds**

Approximately $350,000 will be available in Fiscal Year 1988 to fund three Cooperative Agreements, ranging from $100,000 to $150,000, for the first twelve months of a two-year project period. It is expected that the Cooperative Agreements will be awarded on September 1, 1988. Continuation awards for the second year will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funds may not be used to pay for recurrent costs associated with direct service delivery (i.e., patient counseling and intervention).

**Application Submission and Deadline**

1. *Copies:* The original and 2 copies of the application (form PHS 5161–1 Rev. 3/86) must be submitted to Ms. Nancy C. Bridger, Chief, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E–14, Atlanta, Georgia 30305 on or before August 9, 1988.

2. *Deadlines:* Applications shall be considered as meeting the deadline if they are either:

2.1 Received on or before the deadline date, or

2.2 Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service since private metered postmarks will not be acceptable as proof of timely mailing.)

Applications which do not meet the deadline as described in 2.1 or 2.2 above are considered late applications and will not be considered for review or funding.

**Reviews**

Applications are not subject to review by State and local officials as governed by Executive Order 12372 (Intergovernmental Review of Federal Programs).

**Information For Completion of Applications**

Information on application procedures, copies of application forms, and other material may be obtained from Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E–14, Atlanta, Georgia 30305; telephone (404) 842–6575 or FTS 236–6575.

Technical assistance may be obtained from Dr. Michael E. Dalmat, Assistant Branch Chief, Pregnancy Epidemiology Branch, Division of Reproductive Health, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, NE., Building 1, Room 4065, Mailstop C–06, Atlanta, Georgia 30333; telephone (404) 639–1319 or FTS 236–1319.

Dated: August 1, 1988.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 88–17657 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[Docket No. 88B–0233]**

## Suggested State Regulations for Control of Radiation; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of an Interim Revision to Volume I (Ionizing Radiation) of a publication entitled "Suggested State Regulations for Control of Radiation" (SSRCR) (HHS Publication FDA 83–8203). Included with this Interim Revision is a transmittal sheet with instructions for incorporating these new and revised pages into Volume I of the SSRCR. Copies have been distributed to the State and local radiation control agencies by the Conference of Radiation Control Program Directors, Inc.

**ADDRESSES:** The Interim Revision to Volume I of the SSRCR has been placed on display in, and written comments may be submitted to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the Interim Revision are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (PB 88–140801/AS) at a cost of $14.95 per copy. Requests for a single copy from a limited supply of the SSRCR Interim Revision may be made to the Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Copies of the basic document of Volume I of the SSRCR may be obtained from NTIS (PB 83–252569) at a cost of $38.95.

**FOR FURTHER INFORMATION CONTACT:** Charles P. Froom, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

**SUPPLEMENTARY INFORMATION:** The SSRCR was initially published in 1962 by the Council of State Governments with the advice and assistance of the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) and the U.S. Public Health Service. Since 1970, development and revision of the SSRCR has been accomplished by working groups of the Conference of Radiation Control Program Directors, Inc., representing the State and local agencies, with the support and assistance of NRC; the

Center for Devices and Radiological Health, Food and Drug Administration; and the Environmental Protection Agency.

The suggested State regulations were updated and revised in 1964, 1966, 1970, 1974, 1978, and 1982. These revised suggested regulations being made available are designated as "interim" revisions because the complete document is not being revised, but rather new and revised pages are being inserted into the last complete revision. The Atomic Energy Act of 1954, as amended in section 274 (42 U.S.C. 2021), authorizes NRC to cooperate with the States in formulating standards for protection against hazards of radiation. FDA, under the broad responsibility conferred by the Public Health Service Act (42 U.S.C. 241 and 243), advises and promotes cooperation between the States on matters relating to protecting the public against specified radiation hazards. The Radiation Control for Health and Safety Act of 1968 further provides for the establishment by FDA of an electronic product radiation control program designed to protect the public health and safety (42 U.S.C. 263d and 263e). In implementing this program, the agency is authorized to make such recommendations relating to such hazards and control as it considers appropriate. Acting on these authorizations and responsibilities, NRC and FDA's Center for Devices and Radiological Health cooperated with the Conference of Radiation Control Program Directors and the Environmental Protection Agency in the preparation of these model State regulations.

This Interim Revision and previous revisions of the SSRCR have been prepared to be consistent with Federal radiation control regulations issued by Federal agencies to carry out responsibilities vested in them by law. Changes in Federal regulations, radiation guidance, or recommended standards and the experience and suggestions of the State radiation control agencies and others provide a basis for revision of the SSRCR. The Interim Revision reflects amendments to NRC regulations (10 CFR Chapter I) and the electronic product radiation safety performance standards issued by FDA (21 CFR Chapter I, Subchapter J).

## I. Purpose of Suggested State Regulations for Control of Radiation

The suggested State regulations are basically designed as guidance for development and amendment of State radiation control regulations to encourage uniform regulations among the States, to complement Federal regulations, and to help States maintain regulations compatible with, identical to, or as effective as Federal regulations. Because of requirements placed on State regulatory agencies in promulgating regulations consistent with the standards of a number of Federal agencies, it is especially important that Federal and State agencies cooperate in their development. These model regulations can serve as a means of assisting the States in developing regulations that are consistent with Federal radiation control standards to the extent required. For example:

1. The Atomic Energy Act of 1954, as amended by Pub. L. 86-373 (73 Stat. 688), specifies in section 274 (42 U.S.C. 2021), as a condition for a State to enter into an agreement with NRC to assume regulatory responsibility for byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass, that the State program be compatible with NRC's program for regulation of such material, and that the State program be adequate to protect the public health and safety with respect to the materials covered by the agreement.

2. The Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968, specifies in section 360F (42 U.S.C. 263n) that no State or political subdivision of a State may either establish or continue in effect any standard that applies to the same aspect of performance of an electronic product for which a Federal standard is in effect and which is not identical to the Federal standard.

3. Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) provides that, for a State plan to be approved, the State regulations must be at least as effective as the Federal standards issued under section 6 of that act which relate to the same issues.

These statutory requirements emphasize the importance of cooperation among Federal agencies and State representatives to ensure consistency in radiation control regulations.

The main purpose of this Interim Revision to Volume I (Ionizing Radiation) of the SSRCR is to provide companion regulations consistent and in conformity with certain amendments to Federal standards in 10 CFR Parts 20, 35, and 61, and in 21 CFR Part 1020. Other changes were made to reflect data obtained from special studies and constructive comments received on some provisions of the SSRCR.

## II. Scope and Content

This Interim Revision to Volume I of the SSRCR includes a new Part M—Licensing Requirements for Land Disposal of Radioactive Waste. Also included in this SSRCR Interim Revision are amendments to Part C—Licensing of Radioactive Material, Part D—Standards for Protection Against Radiation, Part F—X-rays in the Healing Arts, and Part G—Use of Sealed Radioactive Sources in the Healing Arts. The table of contents has also been revised to reflect the location of new or revised pages.

A rationale is included for each of the revised and new part(s) of the SSRCR Interim Revision, with documentation for the amendments or new provisions. The amendments to Federal standards, which serve as a basis for changes and additions to the SSRCR, are referenced in the rationale to provide needed background information. Certain proposed changes were not included in the document but were recorded in the rationale for future consideration by the Conference of Radiation Control Program Directors, Inc., and appropriate Federal agencies.

Earlier revisions of the SSRCR have added new parts including: Part H—Radiation Safety Requirements for Analytical X-Ray Equipment, Part I—Radiation Safety Requirements for Particle Accelerators, Part J—Notices, Instructions and Reports to Workers; Inspections, and Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies. Part J incorporates provisions of 10 CFR Part 19 of NRC regulations. These provisions are comparable to those of the Department of Labor for inspections pursuant to the Occupational Safety and Health Act of 1970, under 29 CFR Part 1903. With the addition of the Interim Revision, Volume I (Ionizing Radiation) of the SSRCR now consists of the following parts:

Part A—General Provisions
Part B—Registration of Radiation Machine Facilities and Services
Part C—Licensing of Radioactive Material
Part D—Standards for Protection Against Radiation
Part E—Radiation Safety Requirements for Industrial Radiographic Operations
Part F—X-rays in the Healing Arts
Part G—Use of Sealed Radioactive Sources in the Healing Arts
Part H—Radiation Safety Requirements for Analytical X-ray Equipment
Part I—Radiation Safety Requirements for Particle Accelerators
Part J—Notices, Instructions and Reports to Workers; Inspections
Part M—Licensing Requirements for Land Disposal of Radioactive Waste
Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

### III. Use of Suggested State Regulations

The SSRCR provide a comprehensive set of ionizing radiation control regulations covering a number of subjects, including performance requirements applicable to equipment, safe use of radiation sources, and requirements on the facility wherein the sources are used. Thus, they provide a comprehensive code of radiation control provisions to ensure, at the State level, protection of the public health from radiation. In addition, these model regulations could be used as a resource document by Federal agencies using radiation sources in instituting a total radiation safety program for Federal facilities. For those States that have or that are entering into an agreement with NRC, the model regulations include provisions for the control of byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass; however, these materials, when used within Federal agencies, are under the direct control of NRC. This model could serve as a basis for meeting the requirements of section 19 of the Occupational Safety and Health Act of 1970 and Executive Order 12196 (Occupational Safety and Health Programs for Federal Employees), as they relate to radiation control, enabling each Federal department and agency to establish an occupational safety and health program.

In essence, these suggested radiation control regulations could be used as: (1) An aid in revising current State codes, (2) an aid in developing comprehensive codes at the State level when no regulations are in force, (3) an aid in developing radiation safety programs for Federal installations, or (4) an aid to manufacturers who need to know what type of controls may exist at the State level. It is recommended that applicable Federal or State agency regulations also be consulted directly.

### IV. Review and Comments

Interested persons are invited to submit written comments and recommendations at any time regarding this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Comments should be identified with the docket number appearing in the heading of this notice. Each recommendation should be supported by appropriate rationale and background data that clearly establishes the scientific, technical, and public health bases for the recommendation. Such comments will be provided to the appropriate working groups and kept on file for consideration by those individuals given responsibility for the review and development of their part of the SSRCR.

Dated: July 28, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88–17641 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–01–M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–920–4113–16]**

### California; Proposed Statewide Notice to Lessees and Operators of Federal Geothermal Resources Leases for Diligent Exploration Activities

Notice is hereby given that a Notice to Lessees (NTL) and operators of Federal Geothermal Resources Leases for DILIGENT EXPLORATION EXPENDITURES (DEE) is available in draft for public comment. The NTL clarifies the BLM's policy for receiving and approving expenditure reports, as allowed under the regulations at 43 Code of Federal Regulations (CFR) 3203 and 3264, by updating and superseding NTL–79–01, which was approved by the United States Geological Survey in 1979. This revised NTL provides significant new information in response to important questions by lessees and operators. The NTL identifies the items that will qualify as DEE, explains when DEE reports are due, and lists the information that is required in order to obtain BLM approval. Comments are being accepted through August 26, 1988. A copy of the draft NTL is available from the California State Office of the Bureau of Land Management, Public Room, 2800 Cottage Way, Sacramento, California 95825, or by calling the Public Room at (916) 978–4754.

Date: July 29, 1988.

**Douglas M. Koza,**

*Chief, Branch of Fluids, Division of Minerals Resources.*

[FR Doc. 88–17634 Filed 8–4–88; 8:45 am]

BILLING CODE 4310–40–M

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**[NM–040–08–4212–08; KS NM–63449]**

### Intent To Prepare Supplement to Planning Analysis

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent To Prepare a Supplement to the Land Use Planning Analysis for Public Lands in Kansas and Invitation for Public Participation in the Formulation of Alternatives.

**SUMMARY:** The Bureau of Land Management (BLM), Oklahoma Resource Area of the Tulsa District is preparing a supplement to the 1987 *Planning For Proposed Disposal of Public Lands in Kansas.* The need for preparation of a supplement to this Planning Analysis Decision Document. The Planning Analysis presented and analyzed three alternatives for management of the 1023.49 area of Federal public lands situated on 21 isolated tracts within 15 counties throughout Kansas. The three alternatives analyzed included: (1) Transfer 626.07 acres to private ownership and 397.42 acres to the Kansas Department of Wildlife and Parks; (2) No Action, retain 1023.49 acres in public ownership; (3) Transfer 1023.49 acres into private ownership.

The Supplemental Planning Analysis (SPA) will analyze additional lands and minerals management alternatives developed from public comments or derived as a result of protests received on the 1987 Decision Document.

The Kansas Department of Wildlife and Parks (KDWP) as well as the Kansas Chapter of the Wildlife Society filed protests with the Director of the BLM regarding the lands identified for transfer to KDWP within the proposed Decision Document. The protests were based upon the proposal to transfer tracts with wildlife values to private ownership rather than transferring all these tracts to KDWP for the public's benefits. In order to resolve this protest, one additional alternative to be analyzed by the SPA will be: Transfer 1023.49 acres to the KDWP under provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926. The SPA will address the management of additional tracts of public lands in Kansas in excess of the currently known 1023.49 acres that may be identified in the future. The Development of criteria for the disposition of such tracts and the inclusion of this additional analysis will allow for consistency in the application of any land use decisions resulting from this planning effort. Additionally the SPA will address and analyze the potential leasing and development of Federal Minerals (principally oil and gas) within Kansas. Only those Federally owned minerals which have not been addressed by land use planning conducted by other Federal surface management agencies will be included in this analysis.

**DATE:** Comments related to this SPA and suggested alternatives will be accepted through September 16, 1988.

**ADDRESS:** Comments and suggestions should be sent to: Area Manager, Bureau of Land Management, Oklahoma Resource Area, 200 NW Fifth Street, Room 548, Oklahoma City, Oklahoma 73102.

**FOR FURTHER INFORMATION CONTACT:** Brian Mills, Oklahoma Resource Area, (405) 231-5491.

**SUPPLEMENTARY INFORMATION:** The 1023.49 acres of BLM administered public lands within the State of Kansas vary in size from 0.38 of an acre to 400 acres. The isolated nature of these small tracts as well as legal access issues limit the agencies normal land and resource management programs and result in an absentee landlord situation.

Dated: July 29, 1988.

Larry Woodard,

*Acting State Director.*

[FR Doc. 88-17858 Filed 8-4-88; 8:45 am]

BILLING CODE 4310-FB-M

## INTERSTATE COMMERCE COMMISSION

### Intent To Engage in Compensated Intercorporate Hauling Operations

August 2, 1988.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the name corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. (1) Parent corporation and address of principal office: Dixie Yarns, Inc., 1100 South Watkins Street, P.O. Box 751, Chattanooga, Tennessee 37401.

(2) Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices and states of incorporation:

Subsidiary and State of Incorporation
Ti-Caro, Inc., P.O. Box 699, 1002 Jenkins Road, Gastonia, NC 28052—North Carolina

China Grove Cotton Mills, P.O. Box 507, 308 E. Thom Street, China Grove, NC 28023—North Carolina
North State Knitting Mills, P.O. Box 957, 1140 N. Flint Street, Lincolnton, NC 28093—North Carolina
Southern Mercerizing Company, Highway 176, South, Tryon, NC 28782—North Carolina
Threads of Puerto Rico, Inc., P.O. Box 325, Arroyo, Puerto Rico 00615—North Carolina

B. 1. Parent corporation and address of principal office: Graniteville Company, One Marshall Street, Graniteville, South Carolina 29829.

2. Wholly-owned subsidiaries which will participate in the Operations, and State(s) of incorporation: C.H. Patrick & Company, Inc., incorporated in South Carolina.

C. 1. Parent corporation and address of principal office: Masco Industries, Inc., 21001 Van Born Road, Taylor, Michigan 48180.

2. Wholly-owned subsidiaries* which will participate in the operations, and their States of incorporation:

Acme Steel Door Corp. (NY)
Acme Steel Partition Co., Inc. (NY)
  Architectural Building Components, Inc. (MA)
  Flush-Metal Partition Corp. (NY)
Acme Steel Shelving Corp. (NY)
Acme Office Group, Inc., (NY)
ALUP America, Inc., (DE)
Architectural Specialties Co., Inc. (FL)
Arrow Oil Tools, Inc. (DE)
  Armoun, Inc. (DE)
Arrow Speciality Company (DE)
Atlas Door Corp. (DE)
  Atlas Door Co., Inc. (NV)
BLD Products, Ltd. (MI)
Ball Valve Co., Inc. (KS)
Braun Engineering Co. (MI)
  Precision Production Corp. (MI)
C&C, Incorporated (MI)
  Cars & Concepts, Inc. (MI)
  Cars & Concepts Competition, Inc. (MI)
  Cars & Concepts International, Ltd. (MI)
  C&C Performance, Inc. (MI)
  G.M. Spoilers, Inc. (NY)
  Spoilers Plus, Inc. (NY)
Cold Forge, Inc. (DE)
Crossing Metal Spinning & Stamping Co., Inc. (NY)
Drilex Systems, Inc. (TX)
Eagle Window & Door, Inc. (IA)
Eskay Screw Corporation (DE)
Exotic Metals, Incorporated (DE)
Flo-Con Systems, Inc. (IL)
  Flo-Con Holding, Inc. (DE)
  Slide Gate Services, Inc. (IL)
Foster Oilfield Equipment Co. (DE)
Garrett Manufacturing Company (DE)
Hi-Ram, Inc. (DE)
Hi-Vol Products, Inc. (MI)
Holman Boiler Works, Inc. (DE)
K-Tech, Inc. (IL)
Kendallville Foundry, Inc. (DE)
Lamons Metal Gasket Co. (DE)
Richard Lee Industries, Inc. (PA)
Lindsey Completion Systems, Inc. (DE)
Longman Enterprises, Inc. (FL)
  Pylon Manufacturing Corp. (DE)
W.C. McCurdy Co. (MI)
Tom McGuane Industries, Inc. (MI)
Masco Industries, Services, Inc. (DE)
Nimas Corporation (DE)
  NI Industries, Inc. (DE)
Opdyke Stamping, Inc. (MI)
R&B Manufacturing Company (MI)
Richards Micro-Tool, Inc. (DE)
Rieke Corporation (IN)
  Rieke of Mexico, Inc. (DE)
  Rieke Leasing Co., Incorporated (DE)
Rohrback Corporation (WA)
Rupert Manufacturing Company (DE)
Schmelzer Corporation (MI)
  Tawas Industires, Inc. (MI)
Taylor Building Products Company (MI)
Tools & Technology Investments, Inc. (DE)
Van Wormer Industries, Inc. (MI)
Walker-McDonald Mfg. Co. (DE)

*Directly owned subsidiaries appear at the left hand margin, first tier and second tier subsidiaries are indicated by single and double indentation, respectively, and are listed under the names of their respective parent companies.

D. 1. Parent corporation, address of principal office and State of Incorporation: Sara Lee Corporation, Three First National Plaza, Chicago, Illinois 60602—Maryland

2. Wholly owned subsidiaries which will participate in the operations, the address of their respective principal offices and their States of Incorporation:

Aris Isotoner, Inc., 417 Fifth Avenue, New York, New York 10016—Delaware
Bali Company, 3330 Healy Dr., Winston-Salem, North Carolina 27103—Delaware
Bil Mar Foods, Inc., 6300 98th Avenue, Zeeland, Michigan 49464—Delaware
Booth Fisheries Corporation, 1300 W. Higgins, Park Ridge, Illinois 60068—Delaware
Bryan Foods, Inc., 1 Churchill Road, P.O. Box 1177, West Point, Mississippi 39773—Mississippi
Capitol Foods Company, 6501 Fulton Industrial Blvd., Atlantia, Georgia 30336—Georgia
Circle T Foods Company, Inc., 4560 Leston, Dallas, Texas 75247—Texas
Coach Stores, Inc., 516 West 34th Street, New York, New York 10001—Delaware
Coach Leatherware Company, Inc., 300 Chubb Avenue, Lyndhurst, New Jersey 07071—New Jersey
Country Commons Inc., 500 Waukegan Road, Deerfield, Illinois 60015—Delaware
Douwe Egberts Coffee Service, Inc., 990 Supreme Drive, Bensenville, Illinois 60106—Delaware
Epic Company, Inc., Jimmy Dean Avenue, Osceola, Iowa 50213—Illinois
Frigid Freeze Foods, Inc., 1025 Electric Road, Salem, Virginia 24153—Virginia

The Fuller Brush Company, 5635 Hanes Mill Road, Winston-Salem, North Carolina 27106—Connecticut
Fuller Brush Catalog, Inc., 5635 Hanes Mill Road, Winston-Salem, North Carolina 27106—North Carolina
Gibbon Packing, Inc., P.O. Box 2006, Milwaukee, Wisconsin 53201—Connecticut
Green Hill Incorporated, Rt. 11, Elliston, Virginia 24087—Virginia
Hanes Menswear, Inc., 3334 Healy Drive, Winston-Salem, North Carolina—Delaware
Higdon Food Service, Inc., 1350 N. 10th St., Paducah, Kentucky 44002—Kentucky
Hollywood Brands, Inc., 100 S. Poplar, Centralia, Illinois 62801—Delaware
Illinois Fruit & Produce Corp., One Quality Lane, Streator, Illinois 61364—Illinois
The Jimmy Dean Meat Company, Inc., 1341 W. Mockingbird Lane, Dallas, Texas 75247—Texas
Kiwi Brands Inc., Route 662 North, Douglassville, Pennsylvania 19518—Delaware
Landlock Seafood Company, Inc., 4119 Billy Mitchell Road, Addison, Texas 75001—Texas
L'eggs Brands, Inc., P.O. Box 2495, 5660 University Parkway, Winston-Salem, North Carolina 27105—North Carolina
Lyon's Restaurants, Inc., 1165 Triton Drive, Foster City, California 94404—Delaware
Lyon's Restaurants in Oregon, Inc., 1165 Triton Drive, Foster City, California 94404—Oregon
Ozark Salad Company, Inc., 100 N. Youngman, Baxter Springs, Kansas 66713—Delaware
Peck Foods Corporation, P.O. Box 2006, Milwaukee, Wisconsin 53201—Wisconsin
Priddy's Quality Foods, Inc., 204 H N.E., Ardmore, Oklahoma 73401—Oklahoma
PYA/Monarch, Inc., 107 Frederick Street, P.O. Box 1328, Greenville, South Carolina 29602—Delaware
Rice Hosiery Corporation, 550 Fairfield Road, High Point, North Carolina—North Carolina
Sara Lee Knit Products, Inc., 3334 Healy Drive, Winston-Salem, North Carolina 27103—Delaware
Schloss & Kahn, Inc., US Highway 80 & Newcomb Avenue, Montgomery, Alabama 36195—Delaware
Seitz Foods, Inc., Box 247, St. Joseph, Missouri 64502—Delaware
Sky Bros., Inc., Burns Avenue at Canan Station, Altoona, Pennsylvania 16603—Pennsylvania
Sky Bros. of Lemoyne, Inc., 1135 North Plymouth St., Allentown, Pennsylvania 16103—Pennsylvania
Standard Meat Company, 3709 East First Street, Forth Worth, Texas 76111—Texas
Stedman Corporation, P.O. Box 1288, Asheboro, North Carolina 27203—North Carolina
Superior Coffee and Foods, Inc., 990 Supreme Drive, Bensenville, Illinois 60106—Illinois
Twin Rivers Transportation Company, 955 Hamilton Drive, University Park, Illinois 60466—Illinois
Wolferman's Inc., One Muffin Lane, North Kansas City, Missouri 64116—Delaware

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17653 Filed 8-4-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Finance Docket No. 30800; Sub-No. 25]**

## Union Pacific Corp. and Union Pacific Railroad Co.; Petition for Exemption To Issue Securities and Guarantee Obligations

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Interstate Commerce Commission exempts Union Pacific Corporation (UP) and Union Pacific Railroad Company (UPRR) from the requirements of 49 U.S.C. 11301 with respect to the issuance by UP of securities in a principal amount not to exceed $160 million, and with respect to the guarantee by either UP or UPRR of an obligation assumed by Missouri Pacific Railroad Company. These transactions are intended to facilitate the acquisition of control by UP and its railroad subsidiaries of Missouri-Kansas-Texas Railroad Company.

**DATES:** This exemption will be effective August 8, 1988. Petitions to reopen must be filed by August 25, 1988.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 30800 (Sub-No. 25) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: William J. McDonald, Carl von Bernuth, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 275-7245, [TDD for hearing impaired (202) 275-1721]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289-4357/4359 (D.C. Metropolitan Area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley was absent and did not participate in the disposition of this proceeding.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-17603 Filed 8-4-88; 8:45 am]

BILLING CODE 7035-01-M

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## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at 1211 Avenue of the Americas, 38th Floor, Conference Room A, New York City, New York on September 8, 1988, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirements set forth in Title 5 U.S. Code, section 552b (c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Date: July 29, 1988.

**Leslie S. Shapiro,**

*Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 88-17640 Filed 8-4-88; 8:45 am]

BILLING CODE 4810-25-M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the

Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 14, 1988, Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class controlled substance in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird feed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 6, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: July 28, 1988.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 88–17709 Filed 8–4–88; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations are prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

South Carolina:
SC88–5 (Jan. 8, 1988)—p. 1034

*Volume II*

Michigan:
MI88–1 (Jan. 8, 1988)—pp. 413–514, pp. 417, 423
MI88–2 (Jan. 8, 1988)—pp. 426–439, pp. 417, 423
MI88–3 (Jan. 8, 1988)—pp. 444–452
MI88–4 (Jan. 8, 1988)—pp. 454–459
MI88–5 (Jan. 8, 1988)—pp. 463–468
MI88–6 (Jan. 8, 1988)—p. 476
MI88–7 (Jan. 8, 1988)—pp. 479–498
MI88–12 (Jan. 8, 1988)—pp. 508–513
MI88–17 (Jan. 8, 1988)—pp. 524–525

*Volume III*

None

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 1st day of August 1988.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 88–17594 Filed 8–4–88; 8:45 am]

BILLING CODE 4510–27–M

## NATIONAL COMMUNICATIONS SYSTEM

**Federal Telecommunications Standards; Availability of Impact Assessment Report**

**AGENCY:** Office of Technology and Standards, National Communications System.

**ACTION:** Notice of availablity of impact assessment report.

**SUMMARY:** The purpose of this notice is to announce the availability of a report, prepared by the Commerce Department's Institute for Telecomunication Sciences, assessing the technological and economic impact of proposed Federal Standard 1023. Proposed Federal Standard 1023 is entitled "Telecommunications: Interoperability Requirements for Encrypted, Digitized Voice Utilized with 25 KHz Channel FM Radios Operating Above 30 MHz". Considered in the preparation of this report were comments received as a result of a solicitation of the views of Federal agencies, industry, the public, and state and local governments that appeared in the Federal Register of January 26, 1988 (53 FR 211).

**ADDRESS:** Send request for copies of the report entitled "Impact Assessment of Proposed Federal Standard 1023" to Office of Technology and Standards, National Communications System, Washinlgton, DC 20305–2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Fenichel, National Communications System, telephone (202) 692–2124.

**Dennis Bodson,**

*Assistant Manager, NCS Office of Technology and Standards.*

[FR Doc. 88–17653 Filed 8–4–88; 8:45 am]

BILLING CODE 2510–05–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–461]**

**Illinois Power Co.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company[1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

**Environmental Assessment**

*Indentification of Proposed Action:* In general, the proposed license amendment would revise Surveillance Requirement 4.11.2.7.2. concerning the radioactivity rate of noble gases from the off-gas recombiner effluent in order to ensure compatibility between Specifications 4.0.4 and 4.11.2.7.2. The licensees proposed an exception to Specifications 4.0.4 in Surveillance Requirement 4.11.2.7.2. which would allow the plant to enter the applicable OPERATIONAL CONDITION without having first performed the required surveillances.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

*The Need for the Proposed Action:* Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF–62 which would ensure compatibility between Specifications 4.0.4 and 4.11.2.7.2.

Specification 4.0.4 states that entry into an OPERATIONAL CONDITION or other specified applicable condition shall not be made unless the Surveillance Requirement(s) associated with the Limiting Condition for Operation have been performed within the applicable surveillance interval or as otherwise specified. Specification 4.11.2.7.2 requires the radioactivity rate of noble gases from the off-gas recombiner effluent to be determined at two specified frequencies: (1) At least once per 31 days, and (2) within 4 hours following an increase of 50% in the indicated nominal steady state fission gas release from the primary coolant (with certain provisions). The APPLICABILITY of this Specification (i.e., the applicable OPERATIONAL CONDITION) is "during operation for the main condenser air ejector".

Although it is readily apparent that Surveillance 4.11.2.7.2 cannot be performed until after entering the special applicable OPERATIONAL CONDITION, an exception to Specification 4.0.4 has been proposed to be included in Specification 4.11.2.7.2. in order to ensure compatibility between Specification 4.0.4 and 4.11.2.7.2. This exception formally allows the plant to enter the applicable OPERATIONAL CONDITION without having first performed the required surveillances.

*Environmental Impacts of the Proposed Action:* The Commission has determined that the licensees' proposed change to their RETS meets the intent of the NRC model RETS for BWRs, NUREG–0473, Revision 2, dated February 1, 1980. Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Two plants which are similar to Clinton that were licensed in the past several years have this proposed exception incorporated in their original RETS.

The Commission has determined that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impacts. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982, regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable".

*Alternative to the Proposed Actions:* The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

*Alternative Use of Resources:* This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

*Agencies and Persons Consulted:* The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult other agencies or persons.

**Finding of No Significant Impact:**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 1st day of August 1988.

For the Nuclear Regulatory Commission.

**Leonard N. Olshan,**

*Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V and Special Projects.*

[FR Doc. 88–17698 Filed 8–4–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–182]

## Environmental Assessment and Notice of Finding of No Significant Environmental Impact Regarding Proposed Renewal of Facility Operating License No. R–87, Purdue University

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R–87 for the Purdue University research reactor located on the campus of Purdue University (the licensee) in West Lafayette, Indiana.

### Environmental Assessment

*Description of Proposed Action*

This Environmental Assessment is written in connection with the proposed renewal for 20 years of the operating license of the Purdue University research reactor (PUR) at West Lafayette, Indiana, in response to a timely application from the licensee dated June 30, 1986, as supplemented. The proposed action would authorize continued operation of the reactor in the manner that it has been operated since License No. R–87 was issued in 1962. Currently there are no plans to change any of the structures or operating characteristics associated with the reactor during the renewal period requested by the licensee.

*Need for the Proposed Action*

The operating license for the facility was due to expire in August 1986. The proposed action is required to authorize continued operation so that the facility can continue to be used in the licensee's mission of education and research.

*Alternatives to the Proposed Action*

The only renewable alternative to the proposed action that was considered was not renewing the operating license. This alternative would have led to cessation of operations, with a resulting change in status and a likely small impact on the environment.

*Environmental Impact*

The PUR operates in an existing shielded pool of water inside an existing multiple-purpose building, so this licensing action would lead to no change in the physical environment.

Based on the review of the specific facility operating characteristics that are considered for potential impact on the environment, as set forth in the staff's Safety Evaluation Report (SER) [1] for this action, it is concluded that renewal of this operating license will have an insignificant environmental impact. Although judged insignificant, operating features with the greatest potential environmental impact are summarized below.

Argon–41, a product from nuetron irradiation of air during operation, is the principal airborne radioactive effluent from the PUR during routine operations. Conservative calculations by the staff, based on the total amount of Ar–41 released from the reactor during a year, predict a maximum potential annual whole body dose of less than 1 millirem in unrestricted areas. Radiation exposure rates measured outside of the reactor facility building are consistent with this computation.

The staff has considered hypothetical credible accidents at the PUR and has concluded that there is reasonable assurance that such accidents will not release a significant quantity of fission products from the fuel cladding and, therefore, will not cause significant radiological hazard to the environment or the public.

This conclusion is based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding.

(b) At a thermal power level of 1000 watts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of coolant, and

(c) The hypothetical loss of integrity of the maximum irradiated fueled experiment will not lead to radiation exposures in the unrestricted environment that exceed guideline values of 10 CFR Part 20.

In addition to the analyses in the SER summarized above, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that there will be no significant environmental impact associated with the operation of research reactors licensed to operate at power levels up to and including 2 MW(t) and that an Environmental Impact Statement is not required for the

[1] NUREG–1283, "Safety Evaluation Report Related to the Renewal of the Operating License for the Research Reactor at Purdue University."

issuance of construction permits or operating licenses for such facilities. We have determined that this generic evaluation is applicable to operation of the PUR and that there are no special or unique features that would preclude reliance on the generic evaluation.

*Alternative Use of Resources*

This action does not involve the use of any resources beyond those normally allocated for such activities.

*Agencies and Persons Consulted*

The staff has obtained the technical assistance of the Idaho National Engineering Laboratory in performing the safety evaluation of continued operation of the PUR facility.

*Conclusion and Basis for Finding of No Significant Environmental Impact*

Based on the foregoing Environmental Assessment, the Commission has concluded that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license amendment dated June 30, 1986, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 29th day of July 1988.

For the Nuclear Regulatory Commission.

**Charles L. Miller,**

*Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17699 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

## Intention To Establish a Local Public Document Room Serving Northern Nevada for Records Pertaining to the Potential High-Level Radioactive Waste Geologic Repository Site in Nevada

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of intent to establish a local public document room in northern Nevada, serving principally the Carson City-Reno area, for records pertaining to the potential high-level radioactive waste geologic repository site, Yucca Mountain, Nevada.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) intends to establish a local public document room (LPDR) in the Carson City/Reno area for records pertaining to the potential high-level radioactive waste geologic repository site, located near Yucca Mountain, Nevada. The collection currently measures approximately 75 linear feet of material, and is expected to increase by 25–30 linear feet each year.

**DATE:** Comment period expires September 6, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

**ADDRESSES:** Written comments may be submitted to Ms. Juanita Beeson, Chief, Rules Review and Editorial Section, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jona L. Souder, Local Public Document Room Program Director, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7536, or Toll Free 800–638–8081.

Among the factors the NRC will consider in selecting a location for the collection are the following:

(1) Whether the library is an established document repository with a history of impartially serving the public;

(2) The willingness and ability of the library to house and maintain the collection;

(3) The physical facilities available, including shelf space, work space, and copying and micrographics equipment;

(4) The willingness and ability of the library staff to assist the public locate records; and

(5) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours.

Public comments are requested on libraries in the Carson City/Reno area that might be considered for selection as the NRC local public document room for records pertaining to the potential high-level radioactive waste geologic repository site being considered in Nevada.

Dated at Bethesda, Maryland, this 1st day of August 1988.

For the U.S. Nuclear Regulatory Commission.

**Donnie H. Grimsley,**

*Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.*

[FR Doc. 88-17700 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-320-OLA; ASLBP No. 87-554-04-OLA]**

## General Public Utilities Nuclear Corp.; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *General Public Utilities Nuclear Corporation, et al.* (Three Mile Island Nuclear Station, Unit 2), Docket No. 50-320-OLA, is hereby reconstituted by appointing Administrative Judge Peter B. Bloch in place of Administrative Judge Sheldon J. Wolfe, who is unable to continue to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman
Glenn O. Bright
Oscar H. Paris

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 29th day of July 1988.

**B. Paul Cotter, Jr.**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 88-1770 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-289]**

## GPU Nuclear Corp. et al.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 144 to Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation, et al. (the licensee), which revised the Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit No. 1,

BEST COPY AVAILABLE

located in Dauphin County, Pennsylvania.

The amendment adds to the Technical Specifications action statements and surveillance requirements for certain instrumentation used to monitor plant parameters following an accident as required by Regulatory Guide 1.97.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 2, 1987 (52 FR 45882). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated September 15, 1987, (2) Amendment No. 144 to License No. DPR–50, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 29th day of July 1988.

For the Nuclear Regulatory Commission.

**Ronald W. Hernan,**

*Senior Project Manager, Project Directorate I–4, Division of Rector Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17702 Filed 8–4–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

## Toledo Edison Co. et al.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 113 to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the TS Section 4.4.5.2 relating to steam generator sample selection and inspection. Specifically, the amendment added a third special interest group comprised of tubes near the centers of both steam generators.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 25, 1988 (53 FR 9835). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect of this action see: (1) The application for amendment dated January 11, 1988 as supplemented April 14, 1988, (2) Amendment No. 113 to License No. NPF–3, (3) the Commission's related Safety Evaluation dated July 22, 1988 and (4) the Environmental Assessment dated July 14, 1988 (53 FR 27579). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects–III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 22nd day of July 1988.

For the Nuclear Regulatory Commission.

**Albert W. DeAgazio,**

*Project Manager, Project Directorate—III–3, Division of Reactor Projects–III, IV, V and Special Projects.*

[FR Doc. 88–17703 Filed 8–4–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–224–OLA; ASLBP No. 87–574–07–OLA

## University of California, Berkeley; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *University of California, Berkeley* (Research Reactor), Docket No. 50–224–OLA, is hereby reconstituted by appointing Administrative Judge Helen F. Hoyt in place of Administrative Judge Sheldon J. Wolfe, who is unable to continue to serve.

As reconstituted, the Board is comprised of the following Adminmistrative Judges:

Helen F. Hoyt, Chair
Glenn O. Bright
James A. Carpenter

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Helen F. Hoyt, Chair Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 29th day of July 1988.

**B. Paul Cotter, Jr.,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 88–17704 Filed 8–4–88; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–25956; File No. 600–24]

## Self-Regulatory Organizations; Delta Government Options Corp.; Application for Registration as a Clearing Agency

On July 29, 1988, Delta Government Options Corp. ("Delta") filed with the Commission an application for full registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1 ("Act"). Delta would issue and trade options on U.S. government securities and provide clearance and settlement services with

respect to those options.[1] As described below, Delta has requested several exemptions from the requirements of Section 17A.

Section 17A(b)(1) of the Act permits the Commission to grant exemptions from the requirements of section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of section 17A. Delta first requests a partial exemption from section 17A(b)(3)(A) of the Act in that Delta wants the words "rules of the clearing agency" contained in that provision to refer only to agreements between Delta and its participants and Delta procedures which affect the safeguarding of securities and funds. In this regard, Delta seeks confirmation that its internal corporate relationships, as embodied in its Certificate of Incorporation, By-Laws, shareholders' agreements and related instruments would not be considered "rules" under section 3(a)(27) of the Act for purposes of Section 17A of the Act. Delta also requests exemptions from the participant admission requirements of section 17A(b)(3)(B) of the Act and the fair representation requirements of section 17A(b)(3)(C) of the Act. In addition, Delta requests an exemption from section 17A(b)(3)(F) of the Act, except to the extent that Delta would promote the prompt and accurate clearance and settlement of securities transactions and would provide for the safeguarding of securities and funds. Furthermore, Delta requests an exemption from section 17A(b)(3)(G) of the Act to the extent that it would prohibit Delta from exercising its discretion in responding to particular participant defaults and the circumstances under which they may arise. Delta also requests exemptions from the due process requirements of sections 17A(b)(3)(H) and 17A(b)(5) of the Act, and confirmation that these exemption requests, if granted, would render sections 19(d), 19(c), and 19(f) of the Act inapplicable to Delta. Finally, Delta requests an exemption from the Division of Market Regulation ("Division") standard [2] that requires a clearing agency to perform annually an audit of its system of internal accounting controls.

[1] Brokerage services would be provided to Delta by RMJ Options Trading Corp. Security Pacific National Trust Company (New York) would clear and settle the purchase, sale, and exercise of all options issued and traded by Delta.

[2] The Commission has published standards that the Division of Market Regulation uses in evaluating clearing agency registration applications. *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

You are invited to submit written data, views, and arguments concerning the foregoing application within twenty-one days of the date of publication of this notice in the **Federal Register**. Such written data, views, and arguments will be considered by the Commission in deciding whether to approve Delta's full registration application and grant Delta's exemption requests. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 600–24. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 1, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–17730 Filed 8–4–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 34–25957; File No. 600–19]**

## Self-Regulatory Organizations; MBS Clearing Corporation; Order Extending Registration as a Clearing Agency

On February 2, 1987, the Securities and Exchange Commission granted the application of MBS Clearing Corporation ("MBSCC") for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and Rule 17Ab2–1(c) thereunder, for a period of 18 months.[1] At that time, the Commission granted MBSCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[2]

The order granting MBSCC's application contemplated that on or before August 2, 1988, the Commission would consider whether to grant MBSCC registration as a clearing agency without exemptions from statutory standards or consider whether to grant MBSCC such exemption from statutory standards, as MBSCC may request, as appropriate under the Act. By letter dated July 28, 1988, MBSCC has consented to an extension of the time for action on its application for registration.

It is ordered, that MBSCC's registration as a clearing agency be, and hereby is, extended until August 2, 1989.

By the Commission.

Dated: August 2, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–17731 Filed 8–4–88; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 24046 (February 2, 1987) 52 FR 4218.

[2] Section 17A(b)(3)(C) requires that MBSCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

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**[Rel. No. 34–25955; File No. SR–CSE–88–03]**

## Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change

On June 7, 1988, the Cincinnati Stock Exchange ("CSE") submitted a proposed rule change pursuant to section 19(b)(1) of the Securties Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to reduce on a six months pilot basis the order exposure period from thirty to fifteen seconds.

The proposed rule change will reduce the processing period for public and professional agency orders by lowering the second exposure period from thirty to fifteen seconds. This reduction will be similar to a reduction recently approved on a pilot basis for the Midwest Stock Exchange ("MSE") and the Pacific Stock Exchange ("PSE"). Consequently the proposed rule change would equalize the processing time among the exchanges. The Commission continues to recognize the importance of creating an effective balance between a customer's need to receive the best possible execution price and his need for timely execution. In addition, because the CSE is an automated exchange, market makers must always display the best quotes at which they are willing to trade, and thus, no specific order exposure period is needed for price improvement.

Notice of the proposed rule change was given on June 27, 1988, in Securities Act Release No. 25858 (53 FR 25031, July 1, 1988). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 1, 1988.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-17689 Filed 8-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25952; File No. SR-NASD-88-21]

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on June 15, 1988,[1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Article III, Section 21 of the NASD's Rules of Fair Practice to require the marking of customer order tickets for each transaction in a non-NASDAQ security to reflect the dealers contacted, and the quotations received, to determine the best inter-dealer market.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25831, June 22, 1988) and by publication in the **Federal Register** (53 FR 24389, June 28, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 1, 1988.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-17732 Filed 8-4-88; 8:45 am]

BILLING CODE 8010-01-M

[1] On July 15, 1988, the NASD filed a letter amendment for the purpose of providing the results of the NASD membership vote approving the proposed rule change.

[Rel. No. IC-16510; 812-7043]

## Australia and New Zealand Banking Group Limited; Notice of Application

July 29, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for amended exemptive order under the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Australia and New Zealand Banking Group Limited ("ANZ")

*Relevant 1940 Act Sections:* Exemptions requested under Section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* The Applicant has previously received an order exempting it from all provisions of the 1940 Act in connection with the issuance and sale of its debt securities (Investment Company Act Release No. 13937 (May 9, 1984)). The Applicant seeks an amended order exempting it from all provisions of the 1940 Act in connection with the order and sale of its equity securities, either directly or in the form of American Depositary Shares represented by American Depositary Receipts, rights and other convertible or equity related securities ("Equity Securities").

*Filing Date:* The application was filed on June 1, 1988, and an amendment to the application was filed on July 28, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request must be received by the SCE by 5:30 p.m., on August 22, 1988. Request in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. ANZ, c/o David M. Huggin, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel at (202) 272-3030, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. The Applicant is the second largest "trading bank," by total assets, licensed under the Banking Act 1959 of the Commonwealth of Australia to carry on the business of banking in Australia. ANZ's principal business is to receive deposits and make loans. In addition, ANZ conducts or engages in, either directly or through subsidiaries, a savings bank business, the provision of credit, lease and mortgage finance, factoring, merchant banking, insurance, travel, trust and investment services and share and stockbroking. The Applicant provides retail banking services throughout Australia, New Zealand and India as well as through a network of international branches. At September 30, 1987, the Applicant had total assets, on a consolidated basis, of A$85.3 billion.

2. The Applicant is subject to regulation by Australian and United States banking authorities by virtue of its activities in those countries as well as regulatory authorities in other jurisdictions in which it operates branches or representative offices.

3. The Applicant wishes to offer and sell its Equity Securities in the United States. Such offers and sales may be accomplished through underwritten public offerings or made pursuant to an exemption from registration under the Securities Act of 1933, as amended (the "1933 Act").

4. Exempting the Applicant from all provisions of the 1940 Act in connection with the issue and sale in the United States of its Equity Securities is necessary or appropriate in the public interest; is consistent with the protection of investors; and is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

### Applicant's Conditions

If the requested exemptive order is granted, the Applicant agrees to the following conditions:

1. Any future offering of its Equity Securities in the United States will be made on the basis of disclosure documents which are appropriate and customary for such offerings whether made pursuant to a registration statement under the 1933 Act or an exemption therefrom.

2. In connection with any offering of its Equity Securities in the United

States, the Applicant will irrevocably appoint a United States person as agent to accept process in any action based on the offer and sale of such securities instituted in any state or federal court located in New York City by a holder thereof. ANZ will expressly submit to the jurisdiction of any such court for the purposes of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding. Applicant undertakes that, so long as such securities remain outstanding, it will appoint a successor agent for service if the agent first appointed is discharged or is unwilling or unable to continue to serve as agent for service. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise in connection with such securities.

3. Applicant undertakes with regard to public offerings of debt or Equity Securities that are not issued in the United States or sold to U.S. persons in primary offerings (but where, because of factors such as the development of a secondary market in the securities, there is a reasonble possibility that such debt or equity securities could be offered in the United States or to U.S. persons), that Applicant will adopt agreements and procedures reasonably designed to prevent such securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise in permissible).

4. The Applicant will only issue Equity Securities in the United States so long as it is supervised and examined by governmental authorities in Australia having the power of supervision of banks in that country and by state and federal authorities in the United States having the power and supervision of banks in this country. The Applicant also represents that it has no present intention to curtail its banking activities in the United States so that it will cease to be regulated as a bank in the United States. If, however, such operations in the future are curtailed, so that Applicant is no longer regulated as a bank in the United States, the Applicant agrees that it will continue to compy with its undertaking concerning appointment of an agent and submission to jurisdiction, as set forth in the application, until such time as there shall be no holders in the United States of Equity Securities of the Applicant issued in reliance upon any SEC order made pursuant to the application.

5. Applicant represents that there is no present intention to curtail its banking operations in Australia so that it will cease to be regulated as a bank in Australia.

6. Applicant consents to any SEC order being expressly conditioned on its compliance with the undertakings and representations contained in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-17733 Filed 8-4-88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OBM Review

**ACTION:** Notice of Reporting Requirements Submitted for Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission..

**DATE:** Comments should be submitted on or before September 6, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

*Title:* Score and ACE Application for Membership.

*Form Nos.:* 610.

*Frequency:* On Occasion.

*Description of Respondence:* The form is completed by individuals desiring membership in the SCORE/ACE program. The information in used by SBA and SCORE to match the members skills with the counseling and/or training needs of the small business community.

*Annual Responses:* 2800.

*Annual Burden Hours:* 700.

**William A. Cline,**

*Chief, Administrative Information Branch.*

[FR Doc. 88-17712 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

**[License No. 02/02-5376]**

### Intergroup Funding Corp.; Surrender of License

Notice is hereby given that Intergroup Funding Corp., 230 Park Avenue, New York, New York 10169 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Intergroup Funding Corp., was licensed by the Small Business Administration on August 7, 1978.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on July 21, 1988, and accordingly, all rights, privileges, and franchises derived therefore have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 29, 1988.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 88-17713 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

### Region IV Advisory Council Meeting; Public Meeting; North Carolina

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of North Carolina, will hold a public meeting at 10:00 a.m. on Tuesday, August 16, 1988 at the Kenan Center at the University of North Carolina at Chapel Hill, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, Suite 300,

Charlotte, North Carolina 28202, (704) 371-6561.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

July 28, 1988.

[FR Doc. 88-17714 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0213]

## Caribank Capital Corp.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to the Regulations governing small business investment companies (SBICs) (13 CFR 107.601 (1988) for a transfer of ownership and control of Caribank Capital Corp (CCC), 2400 E. Commercial Boulevard, Suite 814, Ft. Lauderdale, Florida 33308, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as Amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of CCC, which was licensed July 7, 1982, is subject to the prior written of SBA.

The transfer of ownership and control relates to the proposed purchase of 100 percent of the outstanding shares of common stock of CCC by Quantum Partners, Ltd. (Partners), a limited partnership organized under the Laws of the State of Florida, from Caribank, a Florida banking corporation.

Proposed owners of Quantum Partners, Ltd., are as follows:

| Name | Position | Percentage of ownership |
|---|---|---|
| Michael E. Chaney, 4400 N.E. 25th Street, Ft. Lauderdale, Florida 33308. | General partner. | 18.25 |
| Thomas W. Wright, 6019 Twin Coves, Dallas, Texas 75248. | ....do | 1.00 |
| Sunwestern Investment Fund II, Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251. | Limited partner. | 61.425 |
| Sunwestern Investment Company (1984) Ltd., Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251. | ....do | 17.325 |
| Elaine E. Healey, 7505 N.W. 33rd Street, Lauderhill, Florida 33319. | ....do | 2.00 |

Once Partners acquires the common stock of CCC, the stock ownership will be exchanged for a limited partnership interest in Quantum Capital Partners Ltd. (Capital Partners), a newly organized limited partnership, which will operate as the SBIC.

Proposed owners of Capital Partners are as follows:

| Name | Position | Percentage of ownership |
|---|---|---|
| Michael E. Chaney, 4400 N.E. 25th Street, Ft. Lauderdale, Florida 33308. | General partner. | 1.00 |
| Thomas W. Wright, 6019 Twin Coves, Dallas, Texas 75248. | ....do | 1.00 |
| Quantum Partners Ltd., 2400 E. Commercial Blvd., Suite 814, Ft. Lauderdale, Florida 33308. | Limited partner. | 98.00 |

Owners of Quantum Partners Ltd. are as follows:

| Name | Position | Percentage of ownership |
|---|---|---|
| Michael E. Chaney, 4400 N.E. 25th Street, Ft. Lauderdale, Florida 33308. | General partner. | 18.25 |
| Sunwestern Investment, Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251. | Limited partner. | 61.425 |
| Sunwestern Investment Company (1984) Ltd., Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251. | ....do | 17.325 |
| Elaine E. Healey, 7505 N.W. 33rd Street, Lauderhill, Florida 33319. | ....do | 2.00 |
| Thomas W. Wright, 6019 Twin Coves, Dallas, Texas 75248. | ....do | 1.00 |

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in the Dallas, Texas and Ft. Lauderdale, Florida areas, respectively.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 29, 1988.

Robert G. Lineberry,

*Deputy Associate Administrator for Investment.*

[FR Doc. 88-17715 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

### Bureau of Oceans and International Environmental Affairs

[Public Notice 1077]

### U.S. National Committee for Man and the Biosphere Request for Proposals—FY 1989

*For Further Information Contact:* Executive Director, U.S. Man and the Biosphere Program, OES/ENR/MAB, Department of State, Washington, DC 20520.

**Introduction**

The U.S. National Committee for the Man and the Biosphere Program (U.S. MAB) hereby announces its priorities and criteria for the selection of original research proposals and projects to receive U.S. MAB support in fiscal year 1989, contingent upon the availability of funds.

Scientists are encouraged to collaborate in developing new interdisciplinary proposals and to seek complementary funds from other sources. Proposed research and projects, such as symposia, workshops or other activities which further the MAB objectives, may be spread over several years.

Proposed ideas must first be submitted as a two- to three-page prospectus to be reviewed for its responsiveness to this Request by one or more U.S. MAB Directorates. U.S. MAB Directorate endorsed prospectuses will be reviewed by the U.S. National Committee. The National Committee will then identify which projects should be submitted as full proposals for U.S. MAB's peer review process.

Priority will be given to projects requesting $50,000 or less when endorsed by a single Directorate, or a maximum of $100,000 for a project endorsed by two or more Directorates. U.S. MAB will not pay overhead fees on grants of $50,000 or less.

**Criteria for Research Themes, Target Areas and Policy Relevance**

The U.S. National Committee seeks proposals for research and projects on one or more of the following MAB orientations:

1. Ecosystems functioning under different intensities of human impact.
2. Management and restoration of human-impacted resources.
3. Human investment and resource use.
4. Human response to environmental stress.

It is recommended that all scientists who intend to participate review the *Final Report of the General Scientific Advisory Panel*, MAB Report Series No. 59, before commencing work on proposals. This report is available from the U.S. MAB Secretariat.

Preference will be given to proposals which concentrate on one or more of the following target areas:

- Biosphere reserves.
- Biological diversity.
- Global climate and ecological change.
- The biomes or ecotones of the arctic, arid lands or tropics.
- Sustainable/integrated development.

Preferably, projects would examine at least one of the four themes in at least one of the above target areas, and deal with policy issues relevant to U.S. MAB supporting agencies.

**Format, Application and Processing Procedures**

Prospectuses may not exceed three pages and must be accompanied by a summary two-page biographic sketch of the potential principal(s) that includes exceptional qualifications and a list of relevant publications. Early submission during August, September, or October is encouraged. Mail prospectuses to the U.S. MAB Secretariat, OES/ENR/MAB, U.S. Department of State, Washington, DC 20520. No prospectuses will be accepted after November 1, 1988. Prospectuses will be subject to an administrative review for adherence to the requirements listed and will be returned without review if deficiencies are found.

The U.S. MAB Secretariat will distribute prospectuses to the appropriate U.S. MAB Directorates.[1] Directorates will review prospectuses for endorsement based on the prospectuses' responsiveness to this call, relevancy to the U.S. MAB Program and the performance competence of the proposed principal(s) as evidenced by the summary biographic sketch. Directorates will review all prospectuses by December 1, 1988.

Prospectuses endorsed by a Directorate, or Directorates, will be forwarded to the U.S. National Committee for MAB for review. At its January 6, 1989 meeting, the National Committee will further review all prospectuses for their relevance to the U.S. MAB Program priorities and to the policies of U.S. MAB's supporting agencies. The National Committee will then determine which potential principal(s) may submit a full proposal.

Full project and research proposals must be received in the U.S. MAB Secretariat by close of business, May 1, 1989. Proposal texts must not exceed 30 double-spaced pages, excluding a concise two-page executive summary describing the objective of the proposed effort and the method of approach, accompanying bibliographies and curriculum vitae of the principals. An executive summary must clearly establish that the proposed activities are relevant to at least one of the four MAB orientations, one of the target areas, and the policy concerns of the relevant U.S. MAB supporting agency(ies). Each proposal must contain a letter of endorsement from a U.S. MAB supporting agency.[2] All proposals must contain: (1) Clearly defined objectives; (2) a feasible work plan to achieve those objectives within the time frame and resources of the grant; and (3) specified products which will result from the grant. Proposals must identify one individual for contract purposes and specify one institution to receive and sub-allocate funds for the activities. Full proposals will be subject to an administrative review for adherence to listed requirements and if deficiencies are found, will be returned without further consideration.

**Project Peer Review, Ranking And Funding Process**

Appropriate U.S. MAB Directorates and peer reviewers, including discipline specialists in the areas of the proposals, will be selected by U.S. MAB to evaluate and rate the proposals on the basis of their intrinsic scientific merit and intellectual focus. Directorates and reviewers will also assess a proposal's potential to increase scientific understanding and provide the basis for policy development by U.S. MAB's supporting agencies. Directorates and peer reviewers will consider, in their overall assessments of the proposals, the performance competence of the principals and the adequacy of the proposed resources to accomplish the objectives.

A final ranking of the proposals will be made by the U.S. National Committee for the Man and the Biosphere Program based on all of the above factors and their assessment of the proposals' relevancy to U.S. MAB's supporting agencies. Proposals will then be funded in order of their assigned rank according to available funds.

Principals will receive copies of all peer review evaluations made of their porposals and written notification of the Committee's decisions on their projects. Winning proposals become part of the public domain. Proposals not selected by the National Committee for funding will then be returned to the authors.

The National Committee will notify all principals of its final decisions in July 1989. Funds will be committed to the managing institutions identified in the selected proposals by September 30, 1989.

**Roger E. Soles,**

*Executive Director, U.S. Man and the Biosphere Program.*

August 2, 1988.

[FR Doc. 88-17061 Filed 8-4-88; 8:45 am]

BILLING CODE 4710-09-M

[1] *Active U.S. MAB Directorates:*

MAB-1 Tropical Forests
MAB-2 Temperate Forests
MAB-3 Grazing Lands
MAB-4 Arid/Semiarid Lands
MAB-5 Fresh Water Resources
MAB-6 Arctic Ecosystems
MAB-7 Island Ecosystems (Caribbean)
MAB-8 Biosphere Reserves
MAB-11 Urban Ecosystems
MAB-13 Human Issues & Environmental Change
MAB-14 Pollution

[2] *U.S. MAB Sponsoring Agencies:*

U.S. Department of State
Smithsonian Institution
U.S. Department of Agriculture
U.S.D.A. Forest Service
U.S.D.I. National Park Service
Peace Corps
National Aeronautics and Space Administration
National Oceanic and Atmospheric Administration
National Science Foundation
U.S. Agency for International Development

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 29, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR

302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

**Docket No. 45728**

*Date Filed*: July 25, 1988.

*Due Date for Answers, Confroming Applications, or Motion to Modify Scope:* August 22, 1988.

*Description:* Application of Arawak International Corporation, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience to engage in foreign air transportation of persons, property, and mail to transport passenger and cargo service between the following points: New York—Georgetown; New York—Santo Domingo; and New York-Nigeria.

**Docket No. 45730**

*Date Filed:* July 27, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope*: August 24, 1988.

*Description:* Application of Papair, pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to operate charter and non-scheduled cargo services between the points of Port-au-Prince, Haiti and Miami, Forida in the United States.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 88-17722 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-62-M

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**[Docket 45739]**

**SFO Helicopter, Inc., Reporting Violations Enforcement Proceeding; Assignment of Proceeding**

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. Telephone: (202) 366-2142.

**William A. Kane, Jr.,**

*Chief Administrative Law Judge.*

[FR Doc. 88-17723 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-62-M

## Coast Guard

**[CGD 88-059]**

**Towing Safety Advisory Committee; Meeting of Subcommittee**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Personnel Manning and Licensing will meet on August 30, 1988 in Room 1303 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. The agenda for the meeting follows:

(a) Supplemental Notice of Proposed Rulemaking on the Licensing of Pilots, and

(b) Pilotage Routes for the "Acting as" Pilot.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2420, 2100 Second Street, SW., Washington, DC 20593-0001 or by calling (202) 267-0449.

Dated: July 29, 1988.

**R. J. Asaro,**

*Commander, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.*

[FR Doc. 88-17627 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

**Radio Technical Commission for Aeronautics (RTCA); Special Committee 147 (26th Meeting)—Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 26th meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held August 16-18, 1988, in the RTCA Conference Room, One McPherson Square 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of minutes of this 25th meeting, (3) TCAS Program status reports, (4) reports on TCAS II activities, (5) reports on TCAS III activities, (6) reports on TCAS technical studies, (7) discussion of SC-147 plans and schedule, (8) TCAS II Logic Working Group Meeting in separate session, (9) other business, and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 1988

**Herbert P. Goldstein,**

*Designated Officer.*

[FR Doc. 88-17752 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-13-M

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**Radio Technical Commission for Aeronautics (RTCA); Special Committee 160 (10th Meeting)—406 MHz Emergency Locator Transmitters (ELT); Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 10th meeting of RTCA Special Committee 160 on 406 MHZ Emergency Locator Transmitters (ELT) to be held Autust 24-26, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of minutes of the 9th meeting, (3) review and discuss EUROCAE WG-29 activities, (4) reports on problems of frequency interference in the 406 MHz band, (5) review flame/fire test criteria, (6) review self-test feature of ELT's, (7) review of task assignments from last meeting (8) review of the sixth draft of the MOPS, (9) task assignments, (10) other business, and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500,

Washington, DC 20005, (202) 682-0268. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 1988.

**Herbert P. Goldstein,**

*Designated Officer.*

[FR Doc. 88-17753 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-13-M

## National Highway Traffic Safety Adminstration

### Announcing the Third Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Meeting announcement.

**SUMMARY:** This notice announces the third meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW.

**DATE AND TIME:** The meeting is scheduled for Wednesday, August 31, 1988, from 10:30 a.m. to 5:00 p.m.

**ADDRESS:** The meeting will be held in Room 6332 of the U.S. Department of Transportation Building, which is lcoated at 400 Seventh Street SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** In May 1987, the Motor Vehicle Safety Reserach Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety reserach, and provide a forum for the development, consideration, and communication of motor vehicle safety reserach, as set forth in the MVSRAC Charter.

This meeting of the Rollover Subcommittee will focus on crash avoidance modeling and test procedures. Discussions will cover: Available data on the nature, scope, and magnitude of the problem; test facilities and test procedures; analytical computer models; and the technical literature that forms the basis of the above.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88-01—Rollover Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-2768.

**FOR FURTHER INFORMATION CONTACT:** Louis V. Lombardo, Office of Research and Development, 400 Seventh Street SW., Room 6208, Washington, DC 20590, telephone: (202) 366-4862.

Issued on: August 2, 1988.

**Kennerly H. Diggs,**

*Chairman, Rollover Subcommittee, Motor Vehicle Safety Research Advisory Committee.*

[FR Doc. 88-17642 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Comptroller of the Currency**

*OMB Number:* 1557-0127
*Form Number:* FFIEC 001 and FFIEC 006
*Type of Review:* Extension
*Title:* Annual Report of Trust Assets/ Special Report-Trust Department Activities/Interagency Survey of Corporate Foreign Fiduciary Activities
*Description:* Collected data are needed to determine types, extent, and financial viability of fiduciary activities. Data are used to analyze, supervise, and examine back fiduciary activities. Analytical reports are prepared from the data. National banks authorized to exercise fiduciary powers are the affected public.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 3,675
*Estimated Burden Hours Per Response:* 5 hours
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 18,202
*Clearance Officer:* John Ference, (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
*OMB Reviewer:* Robert Neal, (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88-17734 Filed 8-4-88; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**U.S. Customs Service**

*OMB Number:* 1515-0099
*Form Number:* None
*Type of Review:* Extension
*Title:* Foreign Shipper's Declaration
*Description:* The declaration is used by Customs to determine whether or not tariff items 800.00 or 805.00 apply for duty free entry of articles being imported into the U.S.
*Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions
*Estimated Number of Respondents:* 600
*Estimated Burden Hours Per Response:* 13 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 19,449 hours
*OMB Number:* 1515-0108

*Form Number:* None
*Type of Review:* Extension
*Title:* Declaration by Person Abroad Who Received and is Returning Merchandise to the U.S.
*Description:* The declaration is used under conditions when articles are imported and exported and reimported, and are brought in duty free into the U.S. to insure Customs control over duty-free merchandise.
*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents:* 500
*Estimated Burden Hours Per Response:* 12 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 292 hours
*Clearance Officer:* B.J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 88–17735 Filed 8–4–88; 8:45 am]
BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of Treasury has submitted the following public informatin collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau of Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Nmber:* 1545–0129
*Form Number:* IRS Form 1120–POL
*Type of Review:* Revision
*Title:* U.S. Income Tax Return for Certain Political Organizations
*Description:* Form 1120–POL is used by certain political organizations to report the tax imposed by Internal Revenue Code (IRC) section 527. The form is used to designate principal campaign committees that are subject to a lower rate of tax under IRC section 527(h). IRS uses this information to determine whether the tax is being properly reported.
*Respondents:* Non-profit institutions, Small businesses or organizations
*Estimated Number of Respondents:* 4,000
*Estimated Burden Hours Per Response:* 2 hours and 43 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 13,530 hours

*OMB Nmber:* 1545–0130
*Form Number:* IRS Form 1120S, Schedule D (Form 1120S) and Schedule K–1 (Form 1120S)
*Type of Review:* Revision
*Title:* U.S. Income Tax Return for an S Corporation, Capital Gains and Losses and Built-In Gains, and Shareholder's Share of Income, Credits, Deductions, etc.—1988
*Description:* Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S Corporation to figure its tax liability; and income and other tax-related information to pass through to its shareholder's. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S Corporation and its shareholders.
*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 904,631
*Estimated Burden Hours Per Response:*
Form 1120S—8 hours and 35 minutes
Schedule K–1 (Form 1120S)—29 minutes
Schedule D (Form 1120S)—1 hour and 37 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 10,132,156 hours
*OMB Nmber:* 1545–0687
*Form Number:* IRS Form 990–T
*Type of Review:* Revision
*Title:* Exempt Organization Business Income Tax Return
*Description:* Form 990–T is needed to compute the IRC sectin 511 tax on unrelated businesses income of a charitable organization. IRS uses the information to enforce the tax
*Respondents:* Non-profit institutions
*Estimated Number of Respondents:* 27,400
*Estimated Burden Hours Per Response:* 10 hours and 18 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 293,173 hours

*OMB Nmber:* 1545–0895
*Form Number:* IRS Form 3800
*Type of Review:* Revision
*Title:* General Business Credit
*Description:* Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credit carryfoward. Form 3800 is used to figure the correct credit.
*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 200,000
*Estimated Burden Hours Per Response:* 25 mintues
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 84,760
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 88–17736 Filed 8–4–88; 8:45 am]
BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. This correction is submitted to change the *Estimated Burden Hour Per Response* for FR Doc. 88–15492, Filed 7–8–88; 8:45 am.

**Internal Revenue Service**

*OMB Number:* 1545–0085
*Form Number:* IRS Form 1040A
*Type of Review:* Revision

*Title:* U.S Individual Income Tax Return Organizations
*Description:* This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form are correct and are also for statistics use.
*Respondents:* Individuals or households
*Estimated Number of Respondents:* 21,447,413
*Estimated Burden Hours Per Response:* 1 hour and 8 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 21,745,403 hours
*Clearance Officer:* Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 88–17737 Filed 8–4–88; 8:45 am]

BILLING CODE 4810–25–M

## Public Information Collection Requirements Submitted to OMB for Review

**Dated: August 1, 1988.**

The Department of Treasury has submited the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0200
*Form Number:* 5307
*Type of Review:* Revision
*Title:* Short Form Application for Determination for Employee Benefit Plan (Other Than Collectively Bargained Plans) (Under sections 401(a) and 501(a) of the Internal Revenue Code)
*Description:* This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS National Office of a field prototype plan approved by an IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue code sections 401(a) and 501(a) and ERISA (Public Law 93–406). It may not be used to request a ruling for collectively bargained plans.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of respondents:* 39,000
*Estimated Burden Hours Per Response:* 1 hour and 39 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 89,747 hours

*OMB Number:* 1543–0975
*Form Number:* 1120–W
*Type of Review:* Revision
*Title:* Corporation Estimated Tax
*Description:* Form 1120–W is used by corporations to figure estimated income tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of respondents:* 913,997
*Estimated Burden Hours Per Response:* 34 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 516–033 hours

*OMB Number:* 1545–0998
*Form Number:* 8615
*Type of Review:* Revision
*Title:* Computation of Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000
*Description:* Under Section 1(i) of the Internal Revenue Code, children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
*Respondents:* Individuals or households
*Estimated Number of respondents:* 750,000
*Estimated Burden Hours Per Response:* 50 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 624,075 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88–17738 Filed 8–4–88; 8:45 am]

BILLING CODE 4810–25–M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 151
Friday, August 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, August 9, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities.

Wachovia Bank and Trust Company, National Association, Winston-Salem, North Carolina, for consent to purchase the assets of and assume the liability to pay deposits made in North Wilkesboro Federal Savings and Loan Association, North Wilkesboro, North Carolina, a non-FDIC-insured institution.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 48,240
Bossier City Consolidated Office, Bossier City, Louisiana

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Status report on bank examination frequency.

Memorandum and resolution re: Amendment to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing," which eliminate improvement, repair or maintenance loans, including home equity loans for these purposes, from existing "home loan" data-gathering requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: August 2, 1988.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 88-17755 Filed 8-2-88; 5:01 pm]

BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, August 9, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion on those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
The Trust Bank, Hialeah, Florida (Memo dated July 15, 1988)
Audit Report re:
Oak Lawn Consolidated Office, Cost Center 201 (Memo dated June 17, 1988)
Audit Report re:
Knoxville Consolidated Office, Cost Center 503 (Memo dated June 30, 1988)
Audit Report re:
Atlanta Regional Office, Cost Center 100/110 (Memo dated June 17, 1988)
Audit Report re:
Review of Financial Operations Unit's Processing of Travel Vouchers (Memo dated June 30, 1988)

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsectins (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsectins (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: August 2, 1988.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 88-17756 Filed 8-2-88; 5:01 pm]

BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Monday, August 1, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement

pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6020 of the FDIC Building located at 550 —17th Street, NW., Washington, DC.

Dated: August 3, 1988.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 88–17831 Filed 8–3–88; 4:05 pm]

BILLING CODE 6714-01-M

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:38 p.m. on Tuesday, August 2, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,235
The Bowery Savings Bank New York City (Manhattan), New York
Case No. 47,238
Banks from the New York, Dallas, Atlanta, and San Francisco Regional Offices

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6020 of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: August 3, 1988.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 88–17832 Filed 8–3–88; 4:05 pm]

BILLING CODE 6714-01-M

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**FEDERAL ELECTION COMMISSION**

**[Federal Register No. 88–17140]**

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, August 4, 1988, 10:00 a.m.

**THE FOLLOWING ITEM REMOVED FROM THE AGENDA:** Regulations at 11 CFR 110.1–110.6—Affiliation and Earmarking.

**THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:**

Draft AO 1988–28:
Paul Suplizio Associates on behalf of Tele/900 Inc., dba Teleline
(Continued from Meeting of July 28, 1988.)

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**DATE AND TIME:** Tuesday, August 9, 1988.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATE AND TIME:** Thursday, August 11, 1988.

**PLACE:** 999 E Street, NW., Washington DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Status of Presidential Audits
Draft AO 1988–30:
Kathy Gibson on behalf of First Florida Partners For Good Government
Draft AO 1987–31: (Reconsideration)
Terry L. Claassen on behalf of the Chicago Board Options Exchange
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 88–17746 Filed 8–2–88; 4:29 pm]

BILLING CODE 6715-01-M

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**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

August 2, 1988.

**TIME AND DATE:** 10:00 a.m., Thursday, August 4, 1988.

**PLACE:** Room 600, 1730 K Street NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** In addition to the previously announced items, the Commission will consider and act upon the following:

3. *Western Fuels-Utah, Inc.*, Docket Nos. WEST 87–166–R, etc. (Issues include consideration of a petition for discretionary review.)
4. *Mid-Continent Resources, Inc.*, Docket No. WEST 87–88. (Issues include consideration of a petition for discretionary review.)
5. *H. B. Zachry Company*, Docket No. CENT 88–29–M. (Issues include consideration of a petition for interlocutory review.)

It was determined by a unanimous vote of Commissioners that these items be included on the agenda and that no earlier announcement of the additions were possible.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653–5629 / (202) 566–2673 for TDD Relay.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 88–17830 Filed 8–3–88; 4:05 pm]

BILLING CODE 6535-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, August 10, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Proposed changes to Regulation CC (Availability of Funds and Collection of

Checks) regarding the definition of "paying bank".

2. Proposals concerning Regulation CC (Availability of Funds and Collection of Checks): (1) Preemption determinations regarding funds availability laws of Illinois, Maine, and New York (proposed earlier for public comment; Docket No. R-0609); and (2) publication for comment of proposed preemption determinations for Connecticut, Rhode Island, New Mexico, and California.

3. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to make certain foreign debt securities marginable. (Proposed earlier for public comment; Docket No. R-0633).

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: August 3, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-17778 Filed 8-3-88; 11:28 am]

BILLING CODE 6210-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 10, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,

*Associate Secretary of the Board.*

Date: August 3, 1988.

[FR Doc. 88-17779 Filed 8-3-88; 11:28 am]

BILLING CODE 6210-01-M

# Corrections

Federal Register
Vol. 53, No. 151
Friday, August 5, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 625

**[Docket No. 80736-8136]**

### Summer Flounder Fishery

*Correction*

In proposed rule document 88-16360 beginning on page 27536 in the issue of Thursday, July 21, 1988, make the following correction:

On page 27540, in the third column, in the file line at the end of the document, "Filed 7-20-88; 8:45 am" should read "Filed 7-20-88; 12:07 pm".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID-010-08-4212-13; IDI-23782]**

### Realty Actions; Sales, Leases, etc.; Idaho

*Correction*

In notice document 88-16443 appearing on page 27906 in the issue of Monday, July 25, 1988, make the following corrections:

1. In the second column, in the 21st line, "General" should read "Gerald".

2. Also in the same column, the 28th line should read, "Sec. 23, NE¼NE¼, NE¼SW¼; NE¼NW¼, S½NW¼,".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[SDM 57797; (MT-020-08-4212-13)]**

### Montana; Amended Notice of Realty Action

*Correction*

In notice document 88-15771 appearing on page 26678 in the issue of Thursday, July 14, 1988, make the following correction:

In the third column, under "T. 5 N., R. 3 E.", the eighth line should read "Sec. 34, MS1796".

BILLING CODE 1505-01-D

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federal register

Friday
August 5, 1988

Part II

# Department of Agriculture

**Agricultural Stabilization and Conservation Service**
**Commodity Credit Corporation**

**7 CFR Parts 704, 795, 1497, and 1498**
**Payment Limitation and Determination of Eligibility of Foreign Individuals or Entities To Receive Program Benefits; Final Rule**

VOL 53 ISS 151 5 1988 AG UMI

**DEPARTMENT OF AGRICULTURE**

**Agricultural Stabilization and Conservation Service**

**Commodity Credit Corporation**

**7 CFR Parts 704, 795, 1497, and 1498**

## Payment Limitation and Determination of Eligibility of Foreign Individuals or Entities To Receive Program Benefits

**AGENCY:** Commodity Credit Corporation (CCC) and Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to adopt as final, with certain changes, the proposed rule published in the **Federal Register** on April 6, 1988 (53 FR 11474). This final rule sets forth at 7 CFR Part 1497 the regulations which will be used in limiting the making of specified payments which are made in accordance with: (1) Price support and production adjustment programs for the 1989 and 1990 crops; and (2) Conservation Reserve Program contracts executed after December 22, 1987. This final rule also sets forth at 7 CFR Part 1498 the regulations which will be applied in determining whether a foreign individual or entity is eligible to receive certain payments, loans, and benefits. These regulations are issued as required by amendments to the Food Security Act of 1985 which were made by the Omnibus Budget Reconciliation Act of 1987 and will bring payment limitation rules into conformity with Subtitle C of the Agricultural Reconciliation Act of 1987. Conforming amendments are also made to 7 CFR Parts 704 and 795.

**DATES:** Effective on August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** H.E. Maynard, Director, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. 202–447–7641.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this final rule applies are: Commodity Loan and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065; and Conservation Reserve Program—10.069 as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

### Statutory Background

Maximum payment limitations for commodity programs were first mandated by section 101 of the Agricultural Act of 1970. This Act provided for such restrictions with respect to the 1971 through 1973 crops of wheat, feed grains, and upland cotton. Subsequent legislation expanded the application of similar restrictions to subsequent crops of these commodities as well as rice and extra long staple cotton. The most recent payment limitation provisions were authorized by Section 1001 of the Food Security Act of 1985 (the "1985 Act").

The Agricultural Reconciliation Act of 1987 (the "1987 Act"), as included in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 99–203, amended the 1985 Act with respect to the application of maximum payment limitation restrictions to certain agricultural price support, production adjustment and conservation programs. The amendments made by the 1987 Act are effective for the 1989 and 1990 crops of wheat, feed grain, rice, upland and extra long staple cotton, honey, and any other commodity for which a price support loan program is established under the Agricultural Act of 1949, as amended (the "1949 Act"), which allows a producer to repay such a loan at less than the original loan level. The amendments are applicable to any conservation reserve program contract entered into on or after December 22, 1987 but are not applicable to such contracts entered into before that date.

Section 1001(1) of the 1985 Act provides that, with respect to each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any payment which is the result of any reduction in the price support rate for wheat or feed grains under section 107D(c)(1) or 105C(c)(1) of the 1949 Act, respectively, i.e., a "Findley payment") and land diversion payments that a person may receive under one or more of the annual programs established under the 1949 Act for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

Section 1001(2) of the 1985 Act provides that for each of the 1987 through 1990 crops the total amount of the following payments that a person may receive under one or more of the annual programs established under the 1949 Act for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey and any other commodity with respect to which producers may repay a loan at less than the original loan level may not exceed $250,000: (1) Deficiency payments; (2) diversion payments; (3) any part of any payment that is determined by the Secretary to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation; (4) disaster payments; (5) any gain realized by a producer from repaying a price support loan at less than the original loan level; (6) Findley payments; (7) loan deficiency payments; and (8) inventory reduction payments.

As originally enacted, the 1985 Act required the Secretary to issue regulations defining the term "person" and to provide for such rules as the Secretary determines necessary to assure a fair and reasonable application of the maximum payment limitations of the 1985 Act. However, the 1987 Act made significant amendments to the 1985 Act by: (1) Specifying the requirements that must be met by participants in various agricultural programs in order for such participants to be considered to be a person who is eligible to receive the above specified program payments; (2) generally limiting the amount of benefits which a farming operation may receive if an individual or entity who is a program participant has an interest in two or more entities which are engaged in farming operations; (3) providing that foreign individuals and entities would be ineligible to receive specified agricultural program payments, loans, and benefits unless such individuals, or the individuals who own the entity, provide a substantial amount of personal labor in the

production of crops on the farm owned or operated by the individual or entity.

Accordingly, this final rule sets forth at 7 CFR Part 1497 the regulations which define the term "person" for purposes of applying the maximum payment limitation provisions of the 1985 Act. This final rule also sets forth at 7 CFR Part 1498 the regulations which would be applicable in determining whether foreign individuals or entities are eligible to receive specified program payments, loans, and benefits.

As discussed below, the provisions of the final rule will not be applicable to the Agricultural Conservation Program; the Emergency Conservation Program; the Forestry Incentive Program; the Rural Clean Water Program; or the Colorado River Salinity Control Program.

**Discussion of Comments and Changes**

In response to the proposed rule issued on April 6, 1988, 365 timely filed letters containing 893 comments were received. Respondents included the following: 133 individuals, 24 corporations, 22 commodity groups and similar organizations, 3 state agencies, 4 colleges and universities, 3 Certified Public Accountants, 12 ASCS employees, 7 attorneys, 6 financial institutions, 2 cooperatives, 4 foreign embassies, 2 foreign individuals, 5 farm management companies, 8 general farm organizations, 2 foreign representatives, 1 representative of an Indian tribal venture, 1 Indian tribal venture, 4 limited partnerships, 2 Members of Congress, and 8 general partnerships. Some respondents sent more than one letter. Comments were received from persons in all States, except Michigan, Connecticut, Maine, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, West Virginia, Alaska, Wyoming, Alabama, Florida, Kentucky, Puerto Rico, Hawaii, Nevada, Oklahoma, and Utah.

Fourteen comments were received which did not directly relate to the substance of the proposed rule or that made suggestions regarding editorial and grammatical corrections. Numerous minor editorial changes have been made in the text of the regulations for clarity and to facilitate the application of the regulations.

The discussion that follows is organized in the same sequence as the final rule.

*Section 1497.1 Applicability.*

Comments were received from 87 respondents on this section of the proposed rule. The comments ranged from a statement that there should not be any limitation on payments to a statement that there should not be any payments. Other commentators felt that only bona fide farmers should receive payments. Several respondents stated that shareholders in a corporation should be eligible to receive payments just like members of a partnership. Some comments stated that payments should never go to corporations, and others that a corporation should never get more than $50,000. One commentator felt that only entities fully owned by family farmers should be eligible to receive payments. Twenty-seven respondents stated that they felt that payment limitations were very unfair and that payment limitations put a burden on large efficient farmers. One respondent stated that the payment limitation program has been abused and that it may be legally correct but it is morally wrong and goes against the original intent of the production adjustment programs. Several respondents stated that all payments should be targeted to producers on small and medium sized family farms or to those producers on farms that are financially stressed. Several commentators stated that the payment limitation program should be kept in place and strongly enforced. Another respondent felt that in many cases the payment limitation rules have forced landowners to cash rent rather than share rent land, which has increased the risk for the producers who are renting land. Some respondents felt that the limits were too high, others that they were too low. One commentator stated that payment limitation provisions go against American principles. Another commentator felt limitation levels should be raised as other government outlays are raised. Nine respondents stated that they felt the USDA should move away from making direct payments to farmers and let farmers receive their income solely from the marketplace. One commentator felt that if payments were limited to one payment per social security number that the system would be easily implemented. Another commentator requested more examples of the manner in which the regulations would be implemented should be set forth in the final rule.

In order to clarify the manner in which these regulations will be implemented, more examples have been provided in the publication of the final rule. Comments received on this section of the proposed rule were primarily of a philosophical nature in which many respondents expressed their feelings regarding legal issues surrounding payment limitations. Since the 1985 Act specifically states which producers are eligible to receive payments and the manner in which payment limitation provisions will be administered, there is no authority for the Secretary to implement these general philosophical changes. Based upon a review of the programs which, as provided in the proposed rule, would have been subject to these regulations, it has been determined for some programs the implementation of payment limitation provisions can be more easily and fairly administered separate from the payment limitation provisions of 7 CFR Part 1497. Accordingly, the final rule adopts the proposed rule for this § 1497.1 except that the programs listed at § 1497.1(a)(4) through § 1497.1(a)(8) are excluded from this final rule and all references to these programs have been deleted. The programs deleted are the Agricultural Conservation Program, the Emergency Conservation Program, the Forestry Incentive Program, the Rural Clean Water Program, and the Colorado River Salinity Control Program. Payment limitations which are applicable to these programs will continue to be determined in accordance with the provisions of 7 CFR Part 795.

*Section 1497.2 Administration.*

A total of 29 comments were received on this section. Comments received on this section of the proposed rule dealt with a number of general issues, including the concern that the requirements of the proposed rule would constitute an invasion of a producer's privacy and that, in order to administer the rules as proposed, the Department would need to hire a substantial number of additional employees. Other commentators felt that Department employees should be allowed to give producers advice on how best to meet the requirements of the proposed rule. Still other respondents stated that the Department should not require legal documentation to support a producer's status as a "person." One respondent stated that the Department should very specifically define the nature and extent of records producers will be required to maintain to meet the requirements of the proposed rule. Another commentator stated that the Department will need to have an early commodity program sign-up in order to complete all determinations for the 1989 program year. One commentator felt determinations made by county ASC committees should not be subject to reversal by a higher authority, except in the case of fraud or deception. Another commentator felt that to require all producers to provide information on their operations was unnecessary.

ASCS employees are instructed to provide all information necessary to enable a producer to make an informed decision on how the rules regarding payment limitations will affect the producer's farming operation. In order to ensure that only the producer makes the decisions which affect the producer's farming operation, ASCS employees are not instructed to provide specific advice to a producer on exactly how to structure an individual producer's farming operation. A concerted effort has been made in both the proposed and the final rule to adequately define the information that producers will need to support their "person" determinations. It is the intention of CCC and ASCS that ASCS employees begin making determinations that will have to be done for the 1989 program year as soon as this rule becomes effective. The regulations at 7 CFR Part 780 set forth an administrative appeal procedure which has worked well for many years and which provides producers a fair method of settling disputes concerning the administration of CCC and ASCS programs. ASCS has also provided that if a county or State ASCS official has made an erroneous determination, a higher reviewing authority may correct the error in order to ensure that programs are administered in an equitable and legal manner. However, equitable relief may be granted to a producer if the producer has taken action because of the incorrect determination. As amended by the 1987 Act, the 1985 Act provides that only producers who are "actively engaged in farming" are eligible to receive certain payments. Because of this requirement, it is necessary that sufficient information be obtained from all producers in order to make this statutorily required determination. In order to clarify the authority of the county ASC committee to request this information, the final rule provides in a new paragraph at § 1497.2(g) that producers are required to provide documentation to the applicable county ASC committee which will enable such committee to make the necessary determinations.

In the final rule, two new paragraphs, § 1497.2 (e) and (f), have been added in order to facilitate determinations which are made with respect to producers who become incapacitated during the crop year and with respect to estates. The basis for these amendments is set forth in the discussion of comments on §§ 1497.4, 1497.12, and 1497.27.

*Section 1497.3 Definitions.*

A total of 267 comments were received concerning the definitions provided in this part. The comments are addressed as they relate to each individual definition.

*Active personal labor.* Seventeen comments were received with respect to this definition. Several of the comments stated that the definition was not realistic in that it is a good business practice to hire professional labor and that doing so should be considered active personal labor. Other commentators felt that the regulation should provide more guidelines on the kinds of activities which constitute active personal labor. Another commentator stated that the regulation should not be specific and that the Department's county and State ASCS employees should be left to determine what constitutes active personal labor. Another respondent felt that the definition in the proposed rule should be retained in the final rule.

Section 1001A of the 1985 Act provides an individual must provide "personal labor or active personal management" in order to be considered to be a "person" who is eligible to receive certain payments and with respect to the application of the statutory maximum payment limitation provisions. Accordingly, through the use of the word "personal," hired labor may not be used to meet this requirement. In order to insure uniform application of this provision, it is important that sufficient guidelines be maintained with respect to what constitutes active personal labor. Accordingly, this definition has been expanded in the final rule. The proposed rule only included activities normally associated with crop production and the definition has been amended in the final rule to set forth activities involving livestock operations and conservation operations which will also meet the definition. For clarification purposes, the definition has been changed to indicate that the items listed are not inclusive but rather are indicative of the type of activities that are considered to be active personal labor.

*Active personal management.* Twenty-two comments were received on this definition. Most of these comments expressed concerns relating to what exactly constitutes "active personal management." Some comments questioned what the phrase "any service reasonably necessary to conduct the farming operation" meant as it was used in item (2)(vi) of the definition. Some commentators felt that it was going to be very difficult to determine where labor stopped and management began. Other commentators felt that personally hiring management should meet the definition of active personal management. Comments were received which expressed a need to expand the definition to include activities related to promotion and marketing, the hiring and firing of personnel, and providing knowledgeable technical advice to a farming operation. Two commentators felt that the definition should be retained as written.

The 1987 Act amendments provided that if a person is providing management activities in a farming operation that such activities must constitute active "personal" management in order for an individual to become actively engaged in farming and therefore, this precludes the inclusion of hired management in this definition. The proposed rule recognized that activities which constituted "management" would be difficult to determine and, therefore, the proposed rule attempted to provide for the making of a subjective decision regarding this issue by including the provisions set forth in item (2)(vi). This provision provided that county and State ASC Committees would analyze each individual producer's farming operation to determine what the producer was doing to manage the farming operation. The decision on hiring and firing of personnel is an important management decision and it has been determined that this factor will be included in item (2)(ii) of the final rule. This definition also has been changed in the final rule by expanding the activities which meet the definition of "active personal management" to include activities regarding the management of conservation acres, the marketing and promotion of agricultural commodities and the acquiring of technical information used in the farming operation. For clarification purposes, the definition has been changed to provide that the items listed are not inclusive but rather are indicative of the type of activities that are considered active personal management.

*Capital.* Three comments were received regarding the definition of "capital." Comments received expressed a desire to include the value of any labor or management which is contributed to the farming operation in the definition. One commentator suggested that the definition was unclear. One commentator requested a definition of the term "related entity" as it is used in item (3) of the definition. The commentators also expressed concern regarding the restrictions on who could provide financing for the necessary capital. These commentators stated that having all members of a joint

operation as signatories to a financing arrangement should not result in all members of the joint operation being considered to be one "person" because most lenders require all members of a joint operation to sign the financing agreement.

It has been determined that contributed labor or management should not be included as capital since it is not an out of pocket expense of the farming operation. Accordingly, this provision of the definition of capital has not been changed. It was not the intent of the proposed rule to consider several individuals to be one "person" solely on the basis that all members of a joint operation have signed the financing agreement. Rather, the proposed rule contemplates that the contribution of capital, land, or equipment which each member is using to meet the requirements of a significant contribution cannot be financed by another member of the joint operation or the joint operation itself. Accordingly, this definition has been changed in the final rule to provide that capital which is used to meet the significant contribution provision cannot be financed by the farming operation or any individual or entity that has an interest in the farming operation. The final rule also provides that after an individual or entity has made a significant contribution of capital, land, or equipment if a contribution of capital is used to make the individual's or entity's contribution commensurate with its claimed share of the operation and such contribution is financed by the farming operation or any individual or entity that has an interest in the farming operation such financing must bear the prevailing interest rate. For clarity, the definition of a "related entity" has been added to the final rule at § 1497.3.

*Entity.* Three comments were received regarding the definition of "entity." One commentator wanted to know how an association was to become actively engaged in farming. Another commentator felt that the definition should include farm families and one expressed the view that this definition was very close to the same as the definition of "person."

Under the proposed rule, an entity is any farming operation other than one conducted by an individual. Accordingly, there is nothing to prevent a farm family from organizing their farming operation as an entity. An association is treated the same as a corporation or limited partnership and the final rule has been amended at § 1497.9 to include other similar entities under that section.

*Equipment.* Two comments were received that expressed a desire to expand the definition of equipment to include owned and leased equipment and "rolling stock" such as trucks and cars. There is no limitation on whether the equipment which is contributed is owned or leased. Therefore, the proposed rule has been changed to clarify that the list of machinery in the definition of equipment is not inclusive and to expand the list to include machinery needed in livestock and conservation operations. However, mere ownership of an automobile or similar vehicle would not constitute equipment since such an asset is not necessary to the production of an agricultural commodity. The final rule also provides that equipment which is used to meet the significant contribution provision cannot be financed by the farming operation or any individual or entity that has an interest in the farming operation. The final rule also provides that after an individual or entity has made a significant contribution of capital, land, or equipment if a contribution of equipment is used to make the individual's or entity's contribution commensurate with its claimed share of the operation and such contribution is financed by the farming operation or any individual or entity that has an interest in the farming operation such financing must bear the prevailing interest rate.

*Farming operation.* For purposes of clarity the proposed rule has been changed to provide that a farming operation is a business enterprise engaged in the production of agricultural products.

*Financing.* Twenty comments were received with respect to "financing." Several comments expressed concern that the proposed rule was putting too many restrictions in place regarding family members and financing, and members of a joint operation and financing. Commentators also stated that the Department should only be concerned with crop financing related to program crops and not with financing of the entire farming operation. Several other comments were received on the proposed rule which expressed concern that the phrase "the provision of service or goods to such operation at less than the fair market value" was inserted to cause persons to be combined if there was a casual exchange of equipment between neighbors. Other commentators stated that the Department should put more restrictions on passive investors and less on new, young farmers. Several commentators stated that the term "financing" was not used in the proposed rule except in the definition and, therefore, should not be included in the final rule. Financing is used in the proposed rule with respect to the definitions of capital, land, and equipment which are set forth at § 1497.3. In effect, the proposed rule provides that the capital, land, or equipment which an individual contributes to meet the significant contribution requirements may not be financed by the farming operation or any individual or entity that has an interest in that farming operation. Such assets may be financed by an individual or entity that does not have any interest in that farming operation. In addition, it was the intent of the proposed rule that if an individual or entity made a contribution of capital, land, or equipment to a farming operation which was not being used to meet the significant contribution requirements, such contributions could be financed by anyone, including an individual or entity with an interest in the farming operation if it was financed at the prevailing interest rate. However, any contribution of capital, land, or equipment which an individual or entity made in order to meet the requirements of these provisions must not be financed by another member of the farming operation, the farming operation, or any related entity.

With respect to the family member provision provided for at § 1497.14, there is no requirement for an adult family member to make a contribution of capital, land, or equipment in order to be considered to be actively engaged in farming. Therefore, if an adult family member does make a contribution of capital, land, or equipment, such contribution of capital" land, or equipment may be financed by anyone, including a family member who has an interest in the farming operation. The casual exchange of equipment will not be considered as financing. The 1987 Act amendments require that, in order for a person to be eligible to receive payments such person must be actively engaged in farming. In order to be actively engaged in farming, the producer must contribute active personal management or active personal labor. This requirement will prevent abuse of programs by passive investors. However, the proposed rule has been changed to remove the definition of financing found at § 1497.3 since the term "financing" is not used in the regulation.

*Land.* Eight comments were received regarding the definition of "land." Comments were received which expressed the concern that land, in

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order to meet the definition, should not be required to have "normal crop acreage bases for the farming area." Another commentator felt that if land produced a cash flow it should meet the definition of land.

In the final rule, the definition has been changed to provide that land is farmland. In some cases, to meet certain requirements of a program, land will be required to meet certain specifications such as if the land is enrolled in a program where crop acreage bases are used. To do otherwise could lead to the abuse of these programs by allowing producers to use land which does not offer the potential of being used for program purposes but is added to a farming operation solely to meet the substantive change requirements provided for at § 1497.18. The final rule provides that land which is used to meet the significant contribution provision cannot be financed by the farming operation or any individual or entity that has an interest in the farming operation. The final rule also provides that after an individual or entity has made a significant contribution of capital, land, or equipment if a contribution of land is used to make the individual's or entity's contribution commensurate with its claimed share of the operation and such contribution is financed by the farming operation or any individual or entity that has an interest in the farming operation such financing must bear the prevailing interest rate.

*Person.* Twenty-eight comments were received regarding the definition of "person." Commentators felt that the definition of a "person" should be the same that is used by the Internal Revenue Service (IRS). One felt that the IRS definition of "person" was "a warm body" and that the final rule should adopt that definition. Many felt that to allow a corporation to be considered to be only one "person" was very unfair to family farming corporations where there are many family members involved in the farming operation. Some commentators felt that no corporation or joint operation should be defined as a "person" eligible to receive payments. Several commentators felt that any entity not owned by family members should not be defined as a "person" and another commentator expressed the opinion that "person" was very well defined in the proposed rule and should not be changed in the final rule. Another commentator felt that to define a person as a "revocable trust together with the grantor of the trust" was not correct and was, in fact, in opposition to the language and intent of the 1987 Act. Several commentators felt that the requirement found at item (2) of the "person" definition, which called for the individual or entity to be responsible for their share of the costs related to the farming operation from a fund or account separate from any other individual or entity, was unfair and should be eliminated from the final rule. Others suggested that "payment entity" should be used instead of the term "person."

The 1987 Act amendments specifically define a "person" to include: "* * * (I) an individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary); (II) a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary), including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary); * * *." A corporation is defined as a "person" in the 1985 Act, as amended; therefore, a corporation cannot be eliminated from the definition in the regulation. Since 1971, a revocable trust has been considered to be one with the grantor because the grantor has the right to dissolve that trust at any time. The 1987 Act amendments do not provide that a revocable trust is a "person." Accordingly, the grantor of a revocable trust and the trust shall continue to be considered to be one person. It was not the intent of the proposed rule that the requirement that a person have a separate and distinct interest in the land or crop involved in the farming operation be used to combine individuals of a joint operation as one person in all instances. Accordingly, the proposed rule has been changed to provide that a joint operation's separate and distinct interest in the land or crop will meet the requirements of item (2) for the members of the joint operation.

*Public School.* Eleven comments were received which stated that this definition is overly restrictive and that publicly supported colleges and universities should be included in the definition of public school. One commentator felt that only land grant colleges and universities should be included as public schools.

The 1987 Act amendments provide that limitations on "* * * payments to any person shall not be applicable to land owned by a public school district or land owned by a State that is used to maintain a public school * * *." The phrase "public school district" is broad enough to include public schools at a level higher than a primary, elementary, or secondary school. Accordingly, it has been determined that the proposed rule was overly restrictive in its definition of public school and the final rule provides that the definition of "public school" found at § 1497.3 will include publicly supported colleges and universities.

*Sharecropper.* Six comments were received on this definition. Most stated that the definition was too restrictive in requiring that a sharecropper was an individual whose total payment for labor was to be the share of the crop. One respondent stated that a more normal situation involving sharecroppers provides that the individual sharecropper also receive some minimum wage during the year which is actually a draw on the individual's share of the crop.

A determination has been made that the proposed rule was too restrictive and this definition has been removed from the final rule. Accordingly, the definition of sharecropper currently set forth in 7 CFR Part 719 which is used in the administration of other program matters has been adopted for purposes of applying this part.

*Significant contribution.* A total of 135 comments were received with respect to this definition. Most stated that the requirement as applied to capital, land, and equipment should be a total 30 percent requirement whether a person contributed a combination of capital, land, or equipment or just one of the three. Several comments on the proposed rule were received which stated that it was incorrect to require stockholders in a farm corporation to contribute their labor and/or management without compensation. The commentators further stated that, if they were not paid a wage for their labor and/or management but instead were compensated through dividends, the IRS would impute part of those dividends as wages and require them to pay employment taxes. Many comments were received expressing concern with the required hour contributions of labor and management which must be made by a person. Some felt the 1000 hour option was too much and that it should be changed to 500 hours which is the amount IRS uses to determine material participation in a business enterprise. Others expressed that this hour requirement would be an extreme hardship on both producers and ASCS

employees administering the program because producers do not keep those kind of records. Commentators also expressed the view that since it is very difficult to determine management which is reasonable and necessary and no two farming operations were alike, a situation would develop where a determination of management which was reasonable and necessary on one farming operation would not be reasonable and necessary on another. Several commentators stated that the regulations should not try to be very specific but rather should leave those decisions to locally elected county ASC committees who are charged with administering the program. Several commentators felt that the regulations should provide more guidelines. The general concern of the commentators was that, in determining a "significant contribution" of personal management, time was not a good measure of such a contribution. They believed that the type of decisions an individual was making about a farming operation was far more important in determining whether a person had made a significant contribution of management than the number of hours the person took to make the decision. Other commentators stated that requiring 50 percent of an individual's commensurate share was unreasonable and would prevent new farmers from starting to farm. Another commentator stated the 50 percent requirement was very appropriate. Some commentators stated that the producers should be allowed to simply certify the quantity of their inputs and not require supporting documentation. Others felt that ongoing farming operations should be able to meet the labor and management requirements based on a county ASC committee's knowledge of past performance by that producer.

7 CFR 1497.6 provides that, for any person to receive payments under any of the applicable programs, a person must be actively engaged in farming by making a significant contribution of required inputs. The definition of a "substantial contribution" set forth in the proposed rule provided that the contribution of one half or more of a person's share of any one of these inputs was significant. Accordingly, the 50 percent factor is only applied against an amount equal to the value of the capital needed in the operation or the rental value of the land or equipment contributed. If a person contributed any combination of any two or three of these assets, then a 30 percent factor is applied against an amount equal to all of the costs of the farming operation, except for the value of the personal labor and management which is contributed. As used in the 1987 Act amendments, the term "contributed" implies that whatever an individual was contributing could not be paid for by the farming operation. Accordingly, this provision of the proposed rule is not changed.

The intent of the proposed rule was that an individual or entity would need to provide 50 percent or more of the individual's or entity's commensurate share of either labor or management, never to exceed 1000 hours, in order to qualify as actively engaged in farming. It was obvious in the comments that there was not a general understanding that the required contribution was the lesser of 1000 hours or 50 percent of the person's commensurate share and not both. 1000 hours is approximately one half of a normal work year. On very large farming operations which require large amounts of labor and management, it could be impossible to provide 50 percent of a person's commensurate share of the operation's labor or management if the operation is owned by a small number of persons. Because of this situation, the 1000 hour maximum limitation was proposed. The proposed rule also provided the county ASC committee the responsibility for determining the necessary quantity of management needed for a specific farming operation since it was recognized that the required hours would be different on each farming operation.

In order to ensure that farming operations are not adversely affected by the regulations, a determination has been made to change the proposed rule at § 1497.9 to provide that stockholders in a farming corporation may be compensated for the labor and management which they provide in order for the corporation to become actively engaged in farming. In order to provide greater flexibility to producers, the final rule also removes the requirement that a person must provide a specified amount of hours of management but retains the hour requirement for labor. However, the final rule also provides that in the case of active personal management, producers must provide information to show that they are providing management activities that are critical to the overall profitability of the farming operation. In the evaluation of a person's management activities, the potential impact of the decisions made on the profitability of the farming operation in which the person is involved will be taken into account. The proposed rule has also been changed to provide that a significant contribution of labor or management may include a combination of labor and management.

*Substantial beneficial interest.* Three comments were received concerning the definition of a "substantial beneficial interest." Several of the comments received on this definition expressed concern that the 10 percent threshold could serve as a loophole which could lead to program abuse by individuals participating in numerous corporations with less than a 10 percent interest in each such corporation.

It has been determined that adequate safeguards have been taken to ensure that programs are not abused because of the 10 percent ownership threshold. In addition, if it is determined that a person has attempted to avoid the provisions of Part 1497 by organizing a farming operation through a series of entities in which a person has less than a 10 percent ownership interest, an ownership interest of less than 10 percent shall be considered to be a significant beneficial interest. Accordingly, the proposed rule is adopted without change.

*Total value of the farming operation.* Nine comments were received regarding this definition. Several respondents to the proposed rule indicated that this definition was unclear. One comment expressed a request that this figure not include any harvesting or ginning expense. Other respondents expressed concern about using this figure to determine how much capital, land, or equipment a person must contribute because what is projected as the total cost of a farming operation at the beginning of a year many times does not turn out to be the actual cost at the end of the year. They felt that there should be an opportunity at the end of the year to make up any short fall that may exist in a situation like this.

The purpose of determining this value is to determine the required contribution of capital, land, or equipment which is necessary in order for a person to be considered to be actively engaged in farming. The purpose of this provision is not to disqualify persons from program participation. Since producers are able to closely estimate what their annual costs are going to be, this provision will not create an undue burden on producers. Accordingly, this section of the proposed rule has been adopted without change.

*Section 1497.4 Timing for determining status of persons.*

Eighteen comments were received regarding this section of the proposed rule. Several respondents felt that, if an

action was taken after April 1 that would increase the number of persons eligible to receive payments, such an action should be recognized since changes which decrease the number of eligible persons are recognized. Respondents also commented that there was a need for a provision to take into consideration situations when a person, for reasons beyond the individual's control, is prevented from fulfilling the farm's operating plan. One respondent expressed a desire that the date for making this determination never be earlier than April 1.

To allow producers to take an action after the date on which "person" determinations are made which would increase the number of persons would lead to program abuse. Accordingly, this portion of the proposed rule is adopted as the final rule. However, § 1497.2 is changed to provide relief for those individuals who cannot, for reasons beyond their control, fulfill in that year their farm operation plan.

*Section 1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.*

Twenty-four comments were provided on this section of the proposed rule. Respondents to this section provided comments suggesting that this provision would discriminate against large efficient farms and would, therefore, cause a number of reorganizations. Other respondents stated that they thought the number of farming operations should not make a difference if the person did not exeeed the payment limitation when considering all of the operations. Some commentators felt the rule was totally unfair, others felt that the 15 day time limit on notifying the county ASCS office of the individual's permitted entities was too short. Still others expressed concern that this provision would cause producers to not participate in the programs subject to this part and thereby work against the purpose of the programs. Many respondents pointed out that the proposed rule did not provide that ASCS would notify an entity that such entity's payments may be reduced and then give the members of the entity a chance to adjust their interests in the entity.

The 1987 Act amendments specifically provide for a limitation on the number of entities through which an individual or entity can receive payments. The proposed rule inadvertently omitted the provision for notification and adjustment of an entity's or individual's share in program payments prior to a reduction in such payments. As a result, this section of the rule has been changed to provide for this provision. The proposed rule provided that producers had 15 days following the date a contract or agreement was submitted to notify the county ASC committee of their permitted entities. A determination has been made that this provision may be too restrictive depending upon the date upon which program provisions are announced. Accordingly, the final rule provides that the Deputy Administrator will announce the date when this notification is due.

*Section 1497.6 General provisions for determining whether an individual or entity is actively engaged in farming.*

Forty-one comments were received regarding this section of the proposed rule. Some commentators felt that the requirement to document an individual's or entity's active involvement would require unnecessary paperwork and was an invasion of privacy. Some believed the rule was discriminatory against different groups including retired farmers, handicapped individuals, and absentee partners because it requires active personal labor. Other commentators suggested that one family member should be able to supply active personal labor or management and qualify numerous family members as being actively engaged in farming. Other commentators expressed their belief that farmers should not be required to supply active personal labor or management in order to be considered to be actively engaged in farming. Several commentators suggested that anyone who supplied any two of the five possible inputs should be determined to be actively engaged in farming. One commentator suggested that the supplying of water for irrigation purposes should meet the requirement of a contribution of equipment. Several commentators suggested that leased land and equipment which an individual or entity contributes to a farming operation should be eligible to meet the requirement for being actively engaged in farming.

The 1987 Act amendments require each individual or entity that is receiving payments to be actively engaged in farming and also require that, in order for an individual to be considered to be actively engaged in farming, the individual must provide active personal management or active personal labor. In order to meet these requirements, information must be collected from individual producers to determine that they are in compliance with these provisions. The mere provision of water is not considered to meet the requirement of providing equipment to a farming operation since it is not "equipment." However, if the individual or entity providing the water has the machinery necessary to deliver the water and a determination is made that the contribution of such equipment and the labor and management actually used to deliver such water is a significant amount, the individual or entity could be determined to be actively engaged in farming. It was the intent of the proposed rule that leased land and equipment could be used to meet that requirement of providing land or equipment to the farming operation. Accordingly, these suggested changes are not necessary. As discussed above, the proposed rule has been amended to provide for a contribution of a combination of active personal labor and active personal management as discussed at § 1497.3 under the definition of "significant contribution."

*Section 1497.8 Joint operations.*

Twelve comments were received concerning joint operations and how their members can be considered to be actively engaged in farming. One commentator felt that a joint operation should not be considered to be a person for payment limitation purposes. Another commentator suggested that the term joint operation should be defined at § 1497.3. Several comments were received that expressed concern with requiring each partner to provide personal labor or management in order for that partner to be considered actively engaged. Many of these comments suggested that if this requirement could not be deleted, relief should be provided to partnerships that were in existence prior to December 31, 1985. Many commentators stated that they believe the proposed rule requires that each partner make a contribution of capital, land, or equipment each year in order for that partner to be considered actively engaged. They also stated that this requirement, which the commentators believe is found at § 1497.8(c), is directly contrary to the provisions of the 1985 Act.

Since the 1987 Act amendments do not include a joint operation in the definition of a "person," neither did the proposed rule. The proposed rule defined joint operation at § 1497.8(a). The 1987 Act amendments specifically provide that, in order for members of joint operations to be considered actively engaged, they had to make "a significant contribution of active personal labor or active personal management." There is no statutory authority which would allow one member of a joint operation to provide

either active personal labor or active personal management on behalf of all other members of such operation. It is the intent of the 1987 Act amendments that each person be actively engaged in farming each year that a person receives a payment. This means that each year each person must make the required contributions of capital, land, or equipment and labor or management. However, in the case of a joint operation, the 1987 Act amendments provide that a joint operation may make a contribution of capital, land, or equipment on behalf of its members and this is provided for in the proposed rule. Accordingly, it has been determined that this section of the proposed rule will be adopted without change except that the definition of "joint operation" will be moved from this section to § 1497.3.

*Section 1497.9 Limited partnership and corporations.*

Forty comments were received on this section of the proposed rule. Many commentators said that the proposed rule was overly restrictive because the 1987 Act amendments only require that: "* * * members collectively make a significant contribution of personal labor or active personal management * * *." The commentators felt that a great number of family corporations would be adversely impacted by the requirement that those providing the labor or management had to own more than 50 percent of the corporation. Family farm corporations in which the majority stockholder has retired and is no longer providing labor or management is the example most often cited. One commentator suggested that the requirement should be "stockholders with at least 50 percent of the stock" rather than "more than 50 percent." Several commentators felt that stockholders in a corporation should each receive a payment in the same manner that partners in a general partnership do instead of making the corporation a person and limiting it to one payment. Other commentators felt that considering a stockholder that owns more than 50 percent of the corporation together as one with the corporation was not fair and equitable.

One of the major purposes of the amendments to the 1985 Act which were made by the 1987 Act was to reduce the proliferation of new "persons" for payment limitation purposes. To allow one individual with a minority interest in a corporation to provide all of the labor or management clearly violates the intent of the 1987 Act amendments and would encourage the creation of more corporations simply to receive government payments. As amended, the 1985 Act defines a person to include a corporation and not to include a partnership. With respect to corporations and shareholders, the proposed rule retains the same provisions which were used in prior years to consider a stockholder and a corporation as one "person" when the stockholder held a majority interest in the corporation. In order to reflect this continued treatment of corporations, a determination has been made to change the proposed rule to provide that stockholders holding at least 50 percent of the interest in the corporation or limited partnership must be providing active personal management or active personal labor rather than stockholders holding greater than 50 percent as the proposed rule provided. The proposed rule has also been changed to provide that limited partnerships, corporations, and other similar entities may compensate their members for the labor or management which such members contribute to meet the requirements for the entity to be actively engaged in farming.

*Section 1497.10 Irrevocable trusts.*

Several of the 21 comments received on this section of the proposed rule stated that both the trustee and the beneficiaries should be eligible to provide active personal labor or active personal management to enable the trust to be considered actively engaged in farming because in many cases the beneficiaries are minors or the trust provides that the trustee shall manage the business of the trust. One commentator expressed confusion at the use of the term "beneficiary" in the proposed rule because it was unclear whether we intended this to mean "income beneficiary" or "remainder beneficiary."

The 1987 Act amendments require that a person must be actively engaged in farming in order to receive certain payments. In an irrevocable trust, the beneficiaries are the ultimate recipients of the payments and, therefore, should be the individuals who must be actively engaged in farming. Accordingly, this portion of the proposed rule is retained. It was the intent of the proposed rule to provide that the term beneficiary apply to an income beneficiary and not a remainder beneficiary. Therefore, the proposed rule is changed to clarify that references to "beneficiaries" refers to "income beneficiaries."

*Section 1497.11 Revocable trusts.*

Seven respondents made comments on this section of the proposed rule. One respondent felt that a revocable trust and its grantors should be treated as a general partnership and its partners. This particular comment is discussed in detail under the comments on the definition of "person." Other respondent's comments were very similar to the ones received on irrevocable trusts with respect to allowing the trustee to provide labor and management to enable the trust to meet the actively engaged in farming requirement.

For the above discussed reasons, with just minor clarification changes, this section of the proposed rule is adopted without change.

*Section 1497.12 Estates.*

Sixteen comments were received on this section of the proposed rule. Comments were received which stated that if the deceased would have been actively engaged in farming that the estate should automatically be considered to be actively engaged. Other commentators felt that because a heir and the deceased would have been combined, there was no reason to combine such heir with the estate. Another comment stated that the combination should only last for one year. Still another commentator asked how long the combination or separation would last. One commentator felt that estates should be treated the same as irrevocable trusts. Another commentator felt the estate rules as proposed were reasonable and fair.

In developing the proposed rule, every attempt was made to be fair and equitable to the heirs of an estate. Accordingly, the proposed rule assumed that an estate would not be held open simply for the purposes of receiving a program payment because there are valid reasons, including tax consequences, which would ensure that the estate be closed timely. In determining that the estate should be combined with whomever the deceased would have been combined, it was determined that such an action would provide for the fair and equitable treatment of heirs, since the same amount of payments would be made as would have been made if the deceased individual had lived. A determination has been made to adopt the provisions of the proposed rule, except that three years after the individual dies, the estate will no longer be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for purposes of obtaining program payments. For clarification purposes, the proposed rule has been reorganized.

*Section 1497.13 Landowners.*

A total of 122 comments were received on this section of the proposed rule. Several commentators stated that the proposed rule, which excluded members of partnerships as landowners when the land was deeded to the partnership, was grossly unfair. This provision was explained in example 2 of the proposed rule. Other comments received expressed a lack of assurance as to how the landowner provision might apply in the case where the ownership interest is an undivided interest and also as to how the provision would apply for other entities, such as corporations, trusts, and estates. Still other comments stated that simply owning land should not entitle owners to payments and that payments should go only to operators and not to landowners. A few commentators stated that they were in favor of the proposed rule.

It was the intent of the proposed rule that any "person" who owned land would be subject to the landowner provision. This means that the provision will apply to corporations, irrevocable trusts, estates and all entities meeting the definition of a "person." Also, since in the case of ownership in undivided interest title to the land lies with those that have the undivided interest, those individuals would be eligible to use the provision. In the case of a joint operation (such as a general partnership) holding title to the land, the individual partners would not, under the proposed rule, be eligible to use the landowner provision. This portion of the proposed rule was based on the premise that a general partnership does not meet the definition of a "person." However, in order to provide for the fair and equitable treatment of joint operations, a determination has been made to change the proposed rule to provide that members of a joint operation that owns land may use the landowner provision if documentation is provided which indicates upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to the individual members.

*Section 1497.14 Family members.*

Sixteen comments were received concerning this section. Some comments indicated that the regulations should make it easier to bring family members into a farming operation and make them eligible for payments. Other commentators felt that farmers should not be allowed to let their offspring provide a minimum amount of labor and automatically qualify for payments. Some commentators felt there was a need to clarify that individuals or entities other than family members can have a part in a farming operation and still have family members use this provision to be considered to be actively engaged in farming so long as a majority of the members of the operation are members of the family. A number of comments were received which agreed with the change in the rules regarding family members.

The 1987 Act amendments specifically provide for a relaxation in the financing rules as the rules are applied to family farming operations and generally provide for overall relaxation of payment limitation provisions in order to provide greater flexibility to family farming operations desiring to bring additional family members into such farming operation. Accordingly, these provisions of the proposed rule are adopted without change. For clarity, the final rule provides the family member provision is applicable to a farming operation conducted by persons.

*Section 1497.16 Cash rent tenants.*

Many of the 39 comments received concerning this section stated that the requirement that equipment not be leased from the landowner was very unfair. Commentators felt this provision was overly restrictive and not required by the 1987 Act amendments. Several commentators suggested that, if the equipment is leased at a fair market value in an arms length transaction, the tenant should be able to lease the equipment from anyone, including the landowner. Another commentator felt that the prohibition on leasing the landowner's equipment should not apply to equipment that would normally go with the land, such as irrigation equipment. Other commentators felt providing labor and equipment through a custom farmer should be acceptable. Still other commentators felt that the landlord and tenant should only be combined on the farm where the tenant had not supplied the equipment and not on other farms where the two might be working together. Other commentators expressed a concern that a contribution of equipment should not be necessary if the tenant was providing capital and management.

Because of abuses in the past, the requirement that a cash rent tenant provide equipment along with capital and management is required by the 1987 Act amendments. Some of the abuses in the past included using the owner's equipment to farm the cash rented land and leasing the equipment at rates that were lower than the fair market value of such leasing. However, after receiving these comments, it has been determined that the proposed rule is overly restrictive. Accordingly, the final rule provides that the equipment may be leased from the landowner as long as it is leased at the fair market value.

For clarification purposes, the final rule also provides that, if equipment is leased from the same individual who is providing hired labor to the farming operation, the contracts must be two separate contracts with terms that reflect the fair market value of the leased equipment and hired labor. Such a tenant must also exercise complete control over the use of the leased equipment during the crop year.

*Section 1497.17 Persons not considered to be actively engaged in farming.*

Four comments were received on this section of the proposed rule. Respondents stated that a guaranteed crop share lease is the same as a cash lease. It was intended that such treatment be afforded guaranteed share leased. Accordingly, for clarity, this suggested change is adopted.

*Section 1497.18 Changes in farming operations.*

Twenty comments and suggestions on this section of the proposed rule were received. Many respondents stated that the rules as they are proposed would eliminate reorganizations which are done for good business reasons other than for meeting the requirements of this part. Other respondents felt that any reference requiring land which is brought into a farming operation to have crop acreage bases normal for the area should be eliminated. Still others stated that acceptable changes for meeting this provision should include those changes already contained in current ASCS operating procedure. A few respondents felt there is a need to clarify that only farm operations increasing the number of persons have to meet the requirements of this provision. Several respondents stated that the requirements for an increase in acreage to meet this provision should be the lesser of 20 percent or the acreage which is required to increase the program payments which will be earned by the additional person. Respondents also stated that if a person meets the substantive change requirement in one year, but for a different reason the person is not determined to be actively engaged in farming, such person should not have to meet the substantive change requirement again once they are determined to be actively engaged in farming. A few respondents felt that a change from share rent to cash rent should meet this requirement.

In the past, changes have been made by persons to meet the substantive change requirement which in essence were paper changes in which the same people farmed the same land with the same equipment. The proposed rule attempted to tighten some provisions where there have been abuses in the past, such as with the dissolution of an entity, the change in ownership of equipment or land, and a change from a share rent situation to a cash rent situation. It was the intention of the proposed rule that only farm operations that are increasing the number of persons who would be eligible to receive payments would have to meet this requirement. It was also intended that if a person meets this requirement in one year, but for a different reason the person is not considered to be actively engaged in farming, the farming operation subsequently would not have to meet the substantive change requirement again if such person is later determined to be actively engaged in farming.

In order to provide equitable treatment of farming operations which have expanded for legitimate reasons, a determination has been made to expand the number and type of changes which meet this requirement to include the change in ownership of land or equipment as long as the amounts of land or equipment which are changing ownership are commensurate with the shares of the new persons being recognized in the farming operation. Accordingly, § 1497.18 of the proposed rule is changed to reflect these changes.

*Section 1497.19 Husband and wife.*

Forty-three comments were received on this section of the proposed rule. Many commentators in general felt that a farm wife should be considered as a separate person if she maintained her farming operation separate from her husband's farming operation. Other commentators felt that the proposed rule did not go far enough in recognizing farm wives as persons. Some felt that wives should be separate persons in all cases. Some felt that they should never be considered to be separate persons.

The 1987 Act amendments specifically set forth the conditions where a husband and wife can be considered to be separate persons. These conditions are set forth in the proposed rule. Accordingly, this section of the proposed rule has been adopted without change.

*Section 1497.22 Indian tribal ventures.*

Three comments were received which stated that allowing the certification by the Bureau of Indian Affairs or the tribal council to apply only to owned land was overly restrictive and contrary to congressional policy.

The 1985 Act, as amended, provides that all persons, including Indians, are subject to these limitations. However, prior regulations have recognized that payments to tribal ventures can be expedited through the certification procedure. In order to prevent program abuse, the proposed rule provides this exemption only to tribal owned land. However, this section of the proposed rule has been modified to clarify that Indian tribal trust lands are covered under the certification provision.

*Section 1497.23 States, political subdivisions, and agencies thereof.*

Three comments were received which expressed discontent with the proposed rule. They stated that the social and economic impact on States was not considered.

The proposed rule reflects the intent of Congress to consider a State and all of its subdivisions to be one person. Accordingly, this portion of the proposed rule is not changed.

*Section 1497.24 Scheme or device.*

One of the two comments received on this section of the proposed rule suggested that individuals that were found guilty of a scheme or device should be banned from the program for three years. The other respondent expressed that the section was somewhat unclear in that § 1497.24 (a) and (b) seemed to be applying two different standards.

The purpose of § 1497.24(a) is to continue the prior policy of withholding payments in the current year in the event a scheme or device has been employed to avoid these regulations. This paragraph provides some examples of the type of actions which are considered to be a scheme or device. The language in § 1497.24(b) is taken directly from the 1987 Act amendments and provides the authority to determine that an individual shall be ineligible to receive payments for two years if the individual is found to have employed a scheme or device to avoid payment limitation provisions. Accordingly, this section of the proposed rule is adopted without change.

*Section 1497.25 Joint and several liability.*

Two comments were received on this section of the proposed rule. Both respondents stated that, if one member of a combined "person" could be readily identified as the party who failed to comply with these regulations, such party should be the party held liable for any refunds of excess payments. Also, in the case of a cash rent tenant who does not provide equipment or labor, this provision could be used to impose liability on an individual who was a landowner who had no interest in any payments at any time.

The purpose of this section is to provide authority to protect the interest of the government in the case of excess payments being made. Since all producers who farm with other producers have voluntarily elected to engage in the benfits which are derived from such an operation, it has been determined that such producers should be responsible for ensuring that all required program provisions are followed by all producers on the farm. Accordingly, this section of the proposed rule is adopted without change.

*Section 1497.26 Equitable adjustments.*

Eight comments were received on this section of the proposed rule. Respondents to this section of the proposed rule commented that the provision which states that "reorganizations that do not result in an increase in payments" ensures that there is no relief available under this provision. Other respondents felt that relief should be available when the current payment limitation rules are applied to farms that have been in existence for ten years or more.

The purpose of this section is to provide for a transition from the regulations at 7 CFR Part 795 to the rules at 7 CFR Part 1497. The section provides that if an individual or entity takes action in good faith on the action or advice of authorized employees of the Department, the Deputy Administrator may grant relief to the extent the Deputy Administrator deems necessary. It also provides that strict interpretation of the substantive change rules found at § 1497.18 may be waived with respect to a reorganization of a farming operation which, if not reorganized, would result in the decrease of the number of eligible persons under the new regulations so long as the reorganization does not increase the number of eligible persons above the number which would otherwise have been determined under 7 CFR Part 795 prior to the reorganization. Accordingly, this section of the proposed rule is adopted without change.

*Section 1497.27 Appeals.*

Most of the 16 comments received regarding this section of the proposed rule stated that it was unfair to penalize an appellant by completely eliminating

the time limits imposed by this section simply because the appellant requests more time or a postponement of the hearing. Most respondents felt that it would be more equitable to impose the time restraints when the hearing is actually held. Other comments stated that the 1987 Act amendments also provided that a time limit should be placed on the amount of time a county ASC committee has to make an initial person determination before the appeal process is even started.

Once a hearing has been scheduled for a person, any delay or postponement will adversely affect other producers, awaiting a hearing. Accordingly, this section of the proposed rule is adopted; however, the proposed rule has been changed at § 1497.2 to require that the county ASC committees shall make actively engaged in farming and person determinations within 60 days after the producer files the required documentation for these determinations.

*Part 1498—Foreign Persons Ineligible for Program Benefits*

The Department received 39 comments from several sources on Part 1498 of the proposed rule. Four of the comments were received from foreign governments and they were opposed to the proposed rule. All of these foreign governments expressed concern that they were being discriminated against with this rule and that it might be in violation of several international treaties. The proposed rule implements the clear Congressional intent expressed in the 1987 Act. Accordingly, except for editorial changes for the purpose of clarification, the proposed rule found at 7 CFR Part 1498 is adopted without change.

*Part 704—Conservation Reserve Program and Part 795—Payment Limitation*

Conforming amendments are also made to 7 CFR Parts 704 and 795 to make reference to new 7 CFR Parts 1497 and 1498.

**Summary of Provisions of Final Rule**

Section 1301 of the 1987 Act amended the 1985 Act by adding a new section 1001A to provide that: (1) An individual who receives specified farm program payments may not also hold directly or indirectly substantial beneficial interests in more than two entities, as defined in section 1001(5)(B)(i)(II) of the 1985 Act, which are engaged in farming operations that receive such payments; and (2) such an individual who does not receive such payments may not hold directly or indirectly substantial beneficial interests in more than three such entities as defined in section 1001(5)(B)(i)(II) of the 1985 Act. If an individual owns a substantial beneficial interest in excess of the permitted number of entities, the payment which is made to the "excess" entity is reduced by an amount that bears the same relation to the full payment that the individual's beneficial interest in the entity bears to all beneficial interests in the subject entity.

In order for an individual or entity to be made aware of these limitations, section 1001A(a)(2) of the 1985 Act provides that an entity receiving a specified payment must notify each individual or entity that holds a substantial beneficial interest in such entity of these provisions. In addition, each affected individual must notify the Secretary of Agriculture of those entities which are to be considered eligible to receive payments. Failure of the affected person to provide the required notification will result in the reduction of payments commensurate with the individual's or entity's share in the subject entity.

Accordingly, the final rule sets forth at 7 CFR 1491.3 the definitions of the terms "permitted entity," "person," and "substantial beneficial interest." A permitted entity would be an entity which is designated annually by an individual who is eligible to receive payments which are subject to the payment limitation provisions of the 1985 Act.

Generally, a person would be defined as an individual, corporation, joint stock company, association, limited partnership, irrevocable trust, charitable organization or similar entity including any individual or entity participating in a farming operation as: a partner in a general partnership; a participant in a joint venture; or a participant in a similar entity. A State, political subdivision and agencies thereof would also be considered to be one person.

A substantial beneficial interest would be defined as an interest which, either directly or indirectly, results in an ownership interest of 10 percent or more. A lesser amount would be applicable if it was determined that a financial arrangement had been established for the purpose of circumventing the provisions of 7 CFR Part 1497.

The notification procedure applicable to an entity receiving a payment and those individuals and entities who have a substantial beneficial interest in such an entity is set forth at 7 CFR 1497.5. In accordance with 7 CFR 1497.5, under the following example, the following notifications would be required.

AGRICULTURAL INCORPORATED

| Stockholder | Ownership interest (percent) |
|---|---|
| A Incorporated | 33⅓ |
| B and F Partnership | 33⅓ |
| Individual C | 33⅓ |
| A Incorporated: | |
| Individual A | 50 |
| Individual D | 25 |
| Individual E | 25 |
| B and F Partnership: | |
| Individual B | 50 |
| Individual F | 50 |

Agricultural, Inc., consisting of A, Inc., B and F Partnership, and Individual C, must inform the local Agricultural Stabilization and Conservation (ASC) Committee of the stockholders of Agricultural, Inc., and must inform each stockholder of the "permitted entity" provision.

A, Inc., consisting of Individual A, Individual D, and Individual E must inform each stockholder of the "permitted entity" provision. Each stockholder and partner must then inform the local ASC committee of their selected entities for payment.

B and F Partnership, consisting of Individual B and Individual F must inform each partner of the "permitted entity" provision and each partner must then inform the local ASC committee of their selected entities for payment.

If Individual E, a stockholder of A, Inc., does not choose A, Inc.'s interest in Agricultural Inc., as a "permitted entity," the payments made to Agricultural, Inc., would then be reduced by Individual E's ownership interest in A, Inc. For example, if Agricultural, Inc., is eligible to receive $50,000, the 33⅓ interest of A, Inc., in Agricultural, Inc., would be $16,665. Individual E's 25 percent interest in the $16,665 would be $4,166. Therefore, Agricultural, Inc., would be eligible to receive $45,834.

Section 1302 of the 1987 Act amended the 1985 Act by providing in section 1001A(b) of the 1985 Act that in order for a person to be eligible to receive specified payments such person must be actively engaged in farming. In order for an individual, including an individual who is a partner in a general partnership or a participant in a joint venture, to be considered to be actively engaged in farming the individual must make a significant contribution to the farming operation of: (1) Capital, equipment, or land, and (2) active personal labor or active personal management.

With respect to limited partnerships, corporations, and similar entities, the entity must make a significant

contribution of capital, equipment, or land to the farming operation and the stockholders or participants must collectively make a significant contribution of active personal labor or active personal management.

Special provisions are applicable to landowners, family members, and sharecroppers so long as their contributions are at risk and commensurate with the persons' share of the profits and losses from such operation. The special provisions for landowners do not include landlords who do not own the land which is part of the farming operation. Such landlords must contribute active personal labor and/or active personal management to be considered to be actively engaged in farming. Landowners who contribute owned land to a farming operation in return for a share rent of the crop produced on the farm or who retain control of the land and receive all of the income from the land are considered to be actively engaged in farming. Similarly, a sharecropper who makes a significant contribution of active personal labor to the farming operation and who receives a specified share of the crop produced on the farm in payment for such labor is considered to be activeiy engaged in farming.

Section 1001A(b)(3)(B) of the 1985 Act provides that with respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management or active personal labor shall be considered to be actively engaged in farming if such person's contribution to the farming operation is at risk and is commensurate with the person's share of the profits and losses from such operation.

Section 1001A(b)(4) of the 1985 Act provides that a landowner who is contributing land to the farming operation will not be considered to be actively engaged in farming if the landowner receives cash rent or a crop share guaranteed to be paid as rent. This section also provides that any other person who does not meet the actively engaged requirements for individuals, entities, landowners, family members, or sharecroppers shall not be considered to be actively engaged in farming.

Accordingly, 7 CFR 1497.3 sets forth the following definitions which will be used in determining whether a person is actively engaged in farming: "active personal labor;" "active personal management;" "capital;" "equipment;" "family member;" and "land." 7 CFR 1497.6–1497.15 sets forth the regulations which will be used to determine whether a person is actively engaged in farming.

Section 1001(5)(B)(iii) of the 1985 Act provides that, with respect to any married couple, the husband and wife shall be considered to be one person. However, any married couple consisting of spouses who prior to their marriage were separately engaged in unrelated farming operations shall be treated as separate persons with respect to such operations so long as the operations remain separate. Accordingly, 7 CFR 1479.19 sets forth the regulations with respect to farming operations conducted by a husband and wife.

The regulations currently set forth at 7 CFR Part 795 with respect to minor children, charitable organizations, and Indian tribal ventures are generally the same as the regulations set forth in 7 CFR Part 1497. However, 7 CFR 1497.22 provides payments to Indian tribal ventures may be made in excess of the applicab1e payment limitation, only with respect to land which is owned by the tribal venture or held in trust for the tribal council, when BIA or the tribal council certify that no individual Indian will receive more than the applicable limitation.

An estate is currently considered to be the same person as the sole heir of the estate. 7 CFR 1497.12 provides that an estate would be a separate person if the heirs or the personal representative of the estate make a significant contribution of active personal labor or active personal management and the estate makes a significant contribution of capital, equipment, or land. An estate will not be considered to be actively engaged in farming after three years unless the heirs or the personal representative provide evidence that the estate is still in effect for substantive reasons unrelated to the application of the payment limitation provisions. In addition, 7 CFR 1497.12 provides that if the deceased would have been combined with another person for purposes of 7 CFR Part 1497, such person and the estate will continue to be combined.

Section 1001(5)(E) of the 1985 Act requires that a change in a farming operation which results in an increase in the number of persons must be bona fide and substantive. Accordingly, 7 CFR 1497.18 sets forth provisions applicable to changes in farming operations. Section 1305(b) of the 1987 Act provides that the Secretary may waive these provisions in order to allow for the equitab1e reorganization of farming operations so long as the reorganization is completed prior to the final date by which producers must execute a contract to participate in the 1989 commodity programs and the reorganization will not result in an increase in the amount of program payments. Accordingly, 7 CFR 1497.26 provides that the Deputy Administrator may approve such reorganizations as bona fide and substantive to the extent that payments are not increased.

Section 1305(d) of the 1987 Act provides that this part shall apply to all Conservation Reserve Program contracts entered into on or after December 22, 1987. However, since the final rule which will set forth the regulations which implement this section did not become effective until after the execution of such contracts, the provisions of 7 CFR Part 795 will apply to such contracts unless the producer elects in writing to use the provisions of 7 CFR Part 1497 for contracts entered into on or after December 22, 1987 and before August 1, 1988. Accordingly, 7 CFR 1497.1 provides that this part will apply to contracts entered into with respect to the program specified in 7 CFR 1497.1(a)(3) on or after August 1, 1988.

Section 1001(7) of the 1985 Act provides that the Secretary shall establish time limits for the various steps involved in administrative appeals with respect to the application of the maximum payment limitation provisions. Accordingly, 7 CFR 1497.2(f) and 1497.27 set forth the time limits which apply to initial determinations and disputes rising under 7 CFR Part 1497.

In accordance with the final provisions of 7 CFR Part 1497, the following determinations would be made:

*Landowner*

*Example 1.* Landowner A rents land for one-fourth of the crop to Corporation B. Landowner A's share of the profits or losses from the farming operation are commensurate with the landowner's contribution to the operation and the contributions are at risk.

*Determination.* Landowner A is considered to be actively engaged in farming. The actively engaged determination for Corporation B will be determined separately.

*Example 2.* AB Partnership consists of Individual A and Individual B. AB Partnership owns land and rents the land to Individual E for one-third of the crop. The general partnership's share of the profits or losses from the farming operation are commensurate with the partnership's contribution to the operation and the contributions are at risk.

*Determination.* A general partnership is not considered to be a "person" for payment limitation purposes and, therefore, would not be considered to be actively engaged in farming with respect to the landowner provision. However, Individual A and Individual B may be considered actively engaged in farming under the landowner provision if the provisions of the partnership agreement provide that each would have an interest in the land when the partnership is dissolved. If any partner is specified in the partnership agreement as not receiving a share of the land when the partnership dissolves, such partner would be required to make a significant contribution of either active personal management and/or active personal labor in order to be considered actively engaged in farming.

*Example 3.* Individual A is the owner and operator of the farm. Individual A hires the management needed for the operation from a management company. Individual A hires a custom farmer for all labor that is needed for the farm. Individual A borrows capital from a source who has no interest in the farm or farming operation.

*Determination.* Individual A is considered to be actively engaged in farming due to the landowner provision.

*Example 4.* Corporation B owns a farm that is share rented to another producer. Corporation B does not contribute capital, equipment, active personal labor or active personal management to the farming operation.

*Determination.* Corporation B is considered to be actively engaged in farming due to the landowner provision.

*Example 5.* Individual C owns a farm that is leased on a share rent basis to Producer D. Individual C also rents land owned by Corporation A on a share rent basis. On the farming operation rented, Individual C contributes a significant amount of capital and hires all the labor and management.

*Determination.* Individual C is considered to be actively engaged in farming with respect to the land owned by Individual C. However, on the farming operation Individual C rents, Individual C would not be considered to be actively engaged in farming since such individual does not contribute a significant amount of either active personal labor or active personal management.

*Example 6.* Individual E, Trust F, Individual G, and Estate H own land each with a 25 percent undivided interest. All land owned in this farming operation is leased on a share rent basis. None of the landowners contribute capital, equipment, active personal labor, or active personal management to the farming operation.

*Determination.* Since each individual has an interest in the land, each will be considered to be actively engaged in farming due to the landowner provision.

*Landlord*

*Example 1.* Landowner A cash leases land to Individual B. Individual B subleases the land to Operator C. Individual B contributes land and does not contribute a signiiicant amount oi active personal labor or active personal management to the farming operation.

*Determination.* Individual B is not actively engaged in farming. Individual B cannot be considered to be actively engaged in farming due to the landowner provision, since Individual B is a landlord and not a landowner. Landowner A is not actively engaged on this farming operation since cash rent is received for the use of the land, but may be actively engaged with respect to another iarming operation. A separate determination will be made for Operator C.

*Example 2.* Individual D cash leases land from Landowner E. Individual D subleases the land to Producer C on a share rent basis. Individual D contributes the land and active personal management to the farming operation.

*Determination.* Since Individual D cash rents the land, Individual D cannot be considered to be a landowner and, therefore, cannot be considered actively engaged in farming due to the landowner provision but must contribute a significant amount of either active personal labor or active personal management. Since Individual D has provided a significant contribution of land and active personal management, Individual D will be considered to be actively engaged in farming. A separate determination will be made for Producer C. Landowner E is not considered to be actively engaged in farming with respect to this farming operation, but may be actively engaged with respect to another farming operation.

*Individual*

*Example 1.* Individual Z, a producer, rents 1,500 acres of land on a share rent basis. Individual Z owns the equipment and contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the producer's active personal management. In this situation, Individual Z's share of the profits or losses from the farming operation are commensurate with the contribution to the operation and the contributions are at risk.

*Determination.* Individual Z is considered to be actively engaged in farming.

*Example 2.* Individual A rents land on a share rent basis. Individual A contributes a significant amount of leased equipment and a significant amount of active personal management to the farming operation. Capital is borrowed from another producer on the farm at the prevailing interest rate. The labor needed for Individual A's part of the farming operation is hired. Individual A's share of the profits or losses from the farming operation are commensurate with Individual A's contribution to the operation and the contributions are at risk.

*Determination.* Individual A is considered to be actively engaged in farming since Individual A contributes a significant amount of both equipment and active personal management. A contribution of capital, equipment, or land used to meet the significant contribution provision must be provided from a fund or account separate from that of any individual or entity who has a direct or indirect interest in the farm. The fact that the capital, in this example, is borrowed from a person that has an interest in the farm has no bearing on the significant contribution requirement since capital was not a contribution to meet the significant contribution provision. However, if the equipment lease was financed by a producer with an interest in the farm, Individual A would not be considered to be actively engaged in farming since none of the contributions were provided from a fund or account separate from that of any individual or entity having a direct or indirect interest in the farm.

*Example 3.* Individual B share leases and participates in the Conservation Reserve Program on a farm that is owned by Landowner C. Individual B contributes a significant amount of both active personal labor and active personal management in the planting of pine trees which are used to control erosion. Individual B also contributes a significant amount of capital by paying the cost of the trees that is not covered by the cost share practice or Landowner C. Individual B also hires some labor to plant the pine trees.

*Determination.* Individual B is considered to be actively engaged in farming since such individual contributes capital, and active personal labor and active personal management. Landowner C is also considered to be actively engaged in farming on the basis that C is a landowner.

*Example 4.* Individual W provides water with respect to a rice crop

produced on Individual Z's farming operation. Individual W owns the equipment needed to pump and apply the water for the rice crop and determines when to apply the water. Individual W receives a share of the rice crop in payment for the application of water to the rice crop. In this situation, Individual W's share of the profits or losses from the farming operation are commensurate with the contribution to the operation and the contributions are at risk.

*Determination.* Individual W is considered actively engaged in farming since Individual W has provided a significant contribution of equipment and active personal management.

*Sharecropper*

*Example 1.* Individual Y provides labor for Landowner Z on 500 acres of rice in exchange for a share of the crop. Individual Y only contributes active personal labor to the farming operation. Landowner Z provides Individual Y with housing, equipment, and with credit for food, seed, chemicals, fertilizer, and fuel. Individual Y also receives a cash advance that will be set off from the proceeds of the crop after harvest.

*Determination.* Individual Y is considered to be actively engaged in farming since Individual Y is a sharecropper. Landowner Z is considered to be actively engaged in farming since Z is a landowner.

*Joint Operation*

*Example 1.* Partnership AB farms 2,000 acres of land. The partnership owns the equipment and the individual partners provide at least 50 percent of their commensurate share of active personal labor and a significant amount of active personal management. Each partner's share of the profits or losses from the farming operation are commensurate with the partner's contribution to the operation and their contributions are at risk.

*Determination.* Partner A and Partner B are considered to be actively engaged in farming.

*Example 2.* Partnership CD farms 2,000 acres of land. Each of the individual partners contribute a significant amount of both capital and active personal management to the farming operation. Labor is hired. Equipment and land are rented from third parties. Each partner's share of the profits or losses from the farming operation are commensurate with the partner's contribution to the operation and their contributions are at risk.

*Determination.* Partner C and Partner D are considered to be actively engaged in farming.

*Example 3.* Partnership X consists of 3 partners who are Corporation D, Individual A, and Partnership BC. Corporation D provides a significant amount of capital to the farming operation and a significant amount of active personal management. Corporation D finances Individual A's equipment contribution at the prevailing interest rate. Individual A also contributes the use of Individual A's owned land and a significant amount of active personal labor. Partnership BC contributes most of the equipment used in the farming operation and Partners B and C contribute a significant amount of both active personal labor and active personal management.

*Determination.* Assuming that each partner's share of Partnership X is commensurate, Corporation D, Individual A, and partnership members B and C are each considered to be actively engaged in farming. Despite the fact that individual A is financed by Corporation D for the equipment contribution, Individual A is considered to be actively engaged in farming because of the significant contribution of land and active personal labor to the farming operation.

*Example 4.* Partnership ABC consists of 3 partners. Each of the partners claim a one third share of the partnership. Partner A provides a significant amount of owned equipment and a significant amount of active personal labor. Partner B provides a significant amount of capital and a significant amount of active personal labor. Partner C provides a significant amount of equipment and a significant amount of active personal labor and active personal management. Partner B and Partner C's contribution to the partnership are commensurate with their claimed shares of the partnership. Partner B had informed the county ASC committee that Partner B was going to loan Partner A capital, at the prevailing interest rate, so that Partner A could make a capital contribution to the partnership in order to make Partner A's total contribution to the partnership commensurate with Partner A's claimed share of the partnership. During the end of year review the county ASC committee discovers that Partner B's loan to Partner A was a non interest bearing loan.

*Determination.* Partners B and C are determined to be actively engaged in farming because of their significant contributions of capital, equipment, labor and management and because their claimed shares of the partnership are commensurate with their contributions and are at risk. Partner A's contribution was not commensurate with Partner A's claimed share of the partnership and, therefore, Partner A is determined to not be actively engaged in farming even though Partner A made a significant contribution of equipment and active personal labor. The loan which Partner B made to Partner A was not at the prevailing interest rate and was, therefore, not a contribution by Partner A.

*Limited Partnerships, Corporations, and Other Similar Entities*

*Example 1.* Corporation XYZ rents 3,000 acres of land for one-fourth share of the crop. Corporation XYZ contributes a significant amount of capital to the operation. Stockholders, owning a total of 50 percent of Corporation XYZ, contribute a significant amount of active personal labor. The stockholder's share of the profits or losses from the farming operation are commensurate with their contributions to the operation and the contributions are at risk.

*Determination.* Corporation XYZ is considered to be actively engaged in farming and is one "person" for payment limitation purposes.

*Example 2.* Corporation AB consists of Father A and Son B, each having a 50 percent share. Father A is a retired farmer who created the corporation for tax reasons and to aid in the transfer of the farm to Son B. The corporation contributes a significant amount of capital and equipment to the farming operation. Son B contributes a significant amount of both active personal labor and active personal management to the farming operation; however, most of the labor is provided by hired laborers. Father A lives on the farm and contributes a token amount of active personal management.

*Determination.* Since Son B has at least a 50 percent share of the corporation, his significant contribution of active personal labor and active personal management would be enough to qualify the corporation as being actively engaged in farming. Since the corporation provides at least one of the required contributions of capital, equipment, or land and Son B, one of the corporation's stockholders, who has a 50 percent ownership interest, contributes active personal labor and active personal management, Corporation AB is considered to be actively engaged in farming and is considered to be one "person" for payment limitation purposes.

*Example 3.* Corporation GH consists of Husband G owning 25 percent of the stock of the corporation and Wife H owning 30 percent of the stock in the

corporation. Corporation GH provides all the capital, equipment, and land for the farming operation. Husband G and Wife H provide a significant amount of both active personal labor and active personal management.

*Determination.* Corporation GH is actively engaged in farming since Husband G and Wife H provide a significant amount of both active personal labor and active personal management. Since Husband G and Wife H collectively own more than 50 percent of the stock of the corporation, Husband G, Wife H, and Corporation GH are considered to be one person for payment limitation purposes.

*Example 4.* Father J conducts an individual farming operation on owned land. Corporation JKL conducts a farming operation on owned land. Father J also owns 50 percent of the stock of Corporation JKL and Trust KL (an irrevocable trust for the benefit of Father J's two minor children) owns 50 percent of the stock.

*Determination.* Father J and Corporation JKL are considered to be actively engaged in farming due to the landowner provision. However, Father J and Corporation JKL are considered to be one person for payment limitation purposes because Father J owns more than 50 percent of the stock of the corporation, including stock owned by an irrevocable trust for the benefit of such individual's minor children.

*Example 5.* Individuals M, N, and O own stock in two corporations and each has a separate and distinct farming operation on land that they individually own. Corporation MN has stockholders M and N, owning 60 and 40 percent of the stock, respectively. Corporation MO has stockholders M and O, owning 70 and 30 percent of the stock, respectively. Corporations MN and MO each have a separate and distinct farming operation on land owned by each individual corporation.

*Determination.* Individuals M, N, and O, and Corporations MN and MO are considered to be actively engaged in farming due to the landowner provision. Because Individual M owns more than 50 percent interest in both corporations, Individual M is considered to be one "person" with both corporations. Individuals N and O are considered to be separate persons on their individual farming operations and are considered to be actively engaged in farming due to the landowner provision.

*Example 6.* Corporation X has stockholders A, B, C, and D, owning 30 percent, 20 percent, 15 percent, and 35 percent, respectively. Corporation Y has stockholders A, B, C, and E, owning 10 percent, 20 percent, 25 percent, and 45 percent, respectively. Each corporation farms land owned by the corporation.

*Determination.* Corporations X and Y are both considered to be actively engaged in farming due to the landowner provision. However, Corporation X and Corporation Y are considered to be one person for payment limitation purposes since the same two or more stockholders own more than 50 percent of the stock in each of two corporations having farming interests.

*Irrevocable Trusts*

*Example 1.* EF Trust, with Individual E and Individual F, each having an interest of 50 percent, contributes a significant amount of capital to the farming operation. Each beneficiary contributes a significant amount of active personal management. All labor is hired. The land and equipment are leased. The beneficiaries' share of the profits or losses from the farming operation are commensurate with the beneficiaries' contribution to the operation and the contributions are at risk. Individual E also has another farming interest as an individual.

*Determination.* EF Trust is considered to be actively engaged in farming since the trust provides capital, and the beneficiaries contribute a significant amount of active personal management. The trust is considered to be one "person" for payment limitation purposes. Individual E may also be considered to be a separate person with respect to Individual E's individual farming operation.

*Example 2.* Individual G is a 100 percent income beneficiary of G Trust. G Trust contributes a significant amount of both equipment and capital to the farming operation. Individual G contributes at least 50 percent of the operation's active personal labor. G Trust leases all land and hires all management and 50 percent of the labor. Individual G also has farming interests as an individual.

*Determination.* G Trust is considered to be actively engaged in farming. Individual G and G Trust are considered to be one "person" for payment limitation purposes because Individual G is the sole income beneficiary of the trust.

*Example 3.* Testamentary Trust Z has beneficiaries A, B, and C, and is the owner and operator of a farming operation. Trust Y has beneficiaries A, B, and C. The corpus of the Trust Y consists of stocks, bonds, notes receivable, urban real estate, and cropland that is share leased to a separate individual.

*Determination.* Testamentary Trust Z and Trust Y are considered to be actively engaged in farming due to the landowner provision. However, Testamentary Trust Z and Trust Y are considered to be one person for payment limitation purposes because the same two or more beneficiaries have more than a 50 percent interest in two or more irrevocable trusts.

*Example 4.* A widow owns and operates farm property. Under the will of her late husband, certain specific bequests of cash and non-farm property were made to persons other than the widow. The balance of the estate, including farmland, is distributed to a testamentary trust. The widow has the sole right to the income of the trust during her lifetime. At the time of her death, the trust is to be terminated and the property distributed to her heirs.

*Determination.* Since the widow has the sole right to income of the trust during her lifetime, she is considered the sole beneficiary and therefore one person with the trust for payment limitation purposes. The trust would be considered to be actively engaged in farming due to the landowner provision.

*Revocable Trusts*

*Example 1.* ST Trust is a revocable trust with Individual S and Individual T as beneficiaries, each having an interest of 50 percent. Individual U is the grantor. ST Trust contributes a significant amount of both capital and equipment to the farming operation. The beneficiaries each contribute a significant amount of active personal management to the operation. All land is leased and all labor is hired. The beneficiaries share of the profits or losses from the farming operation are commensurate with their contribution to the operation and the contributions are at risk.

*Determination.* ST Trust is considered to be actively engaged in farming. ST Trust and Individual U are considered to be one "person" for payment limitation purposes because Individual U is the grantor of a revocable trust.

*Example 2.* BP Trust is a revocable trust with Individual B and Minor P as beneficiaries. Grandfather G is the grantor. Individual B contributes a significant amount of active personal management to the farming operation. The trust provides all the capital and land. The trust also hires a person to provide the labor required for the farming operation. Minor P does not provide any contribution to the farming operation.

*Determination.* BP Trust is considered to be actively engaged in farming. One

beneficiary provides the required contribution of active personal management and the trust provides the required contribution of capital and land. BP Trust and Grandfather G are considered to be one "person" for payment limitation purposes because Grandfather G is the grantor of the revocable trust.

*Estates*

*Example 1.* E Estate is formed upon the death of Individual E in February of 1989. Individual B is the sole heir of the estate and provides a significant amount of active personal management. E Estate provides equipment and rented land. All labor is hired. Individual B also has individual farming interests. All contributions are commensurate and are at risk.

*Determination.* E Estate is considered to be actively engaged in farming since the heir (Individual B) has provided a significant amount of active personal management and the estate has provided equipment and land. Although Individual B is the sole heir of the estate, Individual B and the estate are not considered to be one "person" because, prior to the death, Individual E and Individual B would not have been combined as one "person". Therefore, if Individual B is determined to be actively engaged in farming with respect to the separate farming operation, Individual B may be considered to be a separate "person" from E Estate.

*Example 2.* C Estate was formed in October 1988 upon the death of Individual C. The heirs are Individual E, F, and G, each having a one-third interest. Prior to the death of Individual C, Individual C owned equipment and all of the acreage farmed was cash leased. Individual E will serve as executor for the estate. For 1989, C Estate will cash lease land. C Estate will contribute a significant amount of cash rented land, owned equipment, and capital for the farming operation. Individual E will provide a significant amount of active personal management with the estate hiring all labor. All contributions are commensurate and are at risk.

*Determination.* C Estate is considered to be actively engaged in farming. The heirs may also be considered to be separate persons with respect to other farming operations if all conditions are met for such operation.

*Example 3.* Y Estate is formed in August 1989 upon the death of Individual Y. Prior to death, Individual Y had been determined to be actively engaged in farming and had entered into a contract to participate in the 1989 Acreage Reduction Program. Y Estate will continue to farm the acreage that was leased to Individual Y, as a successor-in-interest. Y Estate will hire any labor and management that is needed for the farming operation.

*Determination.* Y Estate is considered to be actively engaged in farming because Individual Y was determined to be actively engaged in farming and had executed a contract to participate in the program prior to death. However, to continue to be actively engaged in farming for the following year, the heirs or personal representative of the estate will have to provide a significant amount of active personal labor or active personal management and the estate will have to provide a significant amount of capital, equipment, or land.

*Cash Rent Tenants*

*Example 1.* Individual B rents 800 acres of cropland from Landowner C. Individual B contributes 80 percent of all the active personal labor and capital to the farming operation. 20 percent of the labor is hired and 100 percent of the management is hired. Individual B's share of the profits or losses from the farming operation are commensurate with Individual B's contributions to the operation and the contributions are at risk.

*Determination.* Individual B is considered to be actively engaged in farming and will be considered a separate "person" from the landowner.

*Example 2.* Individual C rents 800 acres of cropland from Landowner D. Individual C contributes 100 percent of the active personal management and capital needed for the operation. 100 percent of the labor is hired. The equipment is leased from the landowner at a fair market value. Individual C's share of the profits or losses from the farming operation are commensurate with Individual C's contributions to the operation and the contributions are at risk.

*Determination.* Individual C is considered to be actively engaged in farming. Individual C is contributing a significant amount of both active personal management and is contributing equipment. In this situation, Individual C and Landowner D would not be considered to be one person. A cash rent tenant may contribute active personal labor and capital, equipment, or land and be considered to be actively engaged in farming and considered a separate person from the landowner. If a cash rent tenant contributes active personal management and does not make a significant contribution of active personal labor, such tenant must also make a significant contribution of equipment to the farming operation. The equipment may be owned by Individual C or it may be leased or rented from another source, including the landowner if leased at a fair market value.

*Example 3.* Individual E is a cash rent tenant. Individual E contributes a significant amount of capital, land, and active personal management to the farming operation. Individual E hires a custom farmer, who has his own equipment, to provide the labor needed on the farm. The custom farmer is compensated by receiving a share of the crop.

*Determination.* Individual E is considered to be actively engaged in farming, but will be combined with the landowner because Individual E is not providing equipment or active personal labor. The custom farmer is no longer considered to be a custom farmer since a share of the crop is received as payment, but Individual E and the custom farmer are considered to be a joint operation since there is a sharing of the crop. The custom farmer shall be considered to be actively engaged in farming and a separate "person" from Individual E.

*Example 4.* Individual D is a cash rent tenant and contributes a significant amount of both equipment and active personal management to the farming operation. The equipment is leased from a custom farmer who is hired to provide the labor necessary for the farming operation. However, the equipment leased is also used by the custom farmer on other farming operations.

*Determination.* Individual D is considered to be actively engaged in farming; however, Individual D is considered to be one person with the landlord. If the equipment is leased from the same person providing the labor, the equipment must be under the control of Individual D during the current crop year. If the custom farmer used another line of equipment for the other farming operations, Individual D would be considered to be actively engaged in farming. The custom farmer is not considered to be actively engaged with respect to this farming operation, but may be determined to be actively engaged with respect to another farming operation. This determination would be the same if the person providing the equipment was not a custom farmer.

*Family Member*

*Example 1.* Father A has been farming owned land and rented land for approximately 15 years. Son B, an adult, is starting to farm with his father. Son B contributes a significant amount of active personal labor. Father A contributes all of the farming operation's

capital, equipment, and active personal management.

*Determination.* Father A and Son B are both considered to be actively engaged in farming and would be considered to be two persons.

*Example 2.* In 1988, Partnership CD consisted of Individual C and Grandfather D. For 1989, however, Grandson E is brought into the farming operation. Individual C contributes all the capital and a significant amount of active personal management. Grandfather D contributes the use of a significant amount of equipment, owned land, and active personal management. Grandson E will provide all the active personal labor.

*Determination.* Individual C, Grandfather D, and Grandson E will each be considered to be actively engaged in farming. The county ASC committee will determine whether the claimed shares are commensurate with each partner's contribution to the farming operation.

*Example 3.* Father Y has a large farming operation, part of which is owned and part of which he share leases. In 1989, Son Z subleases three farms from Father Y and farms them as a separate farming operation. Father Y provides Son Z with all the needed capital and equipment. Son Z contributes a significant amount of both active personal labor and active personal management to the farming operation.

*Determination.* Son Z is not considered to be actively engaged in farming. Son Z does not qualify with respect to the family member provision since he was not brought into a family farming operation. If Father Y had formed a joint operation with his son, then Son Z would have been considered to be actively engaged in farming with respect to the family member provision. A separate actively engaged determination would need to be made for Father Y.

*Example 4.* ABC Partnership is a family held partnership consisting of Father A, Son B, and Daughter C. In 1989, Father A brings Son-in-law D into the farming operation. Daughter C, who is married to Son-in-law D, does not provide a significant amount of active personal labor or active personal management to the farming operation. Son B contributes a significant amount of capital, active personal labor, and active personal management. Father A originally contributed his owned equipment to the partnership and contributes some capital and a significant amount of active personal management. Son-in-law D contributes a significant amount of both active personal labor and active personal management to the farming operation.

*Determination.* Father A, Son B, and Son-in-law D are each considered to be actively engaged in farming. Daughter C is not considered to be actively engaged in farming. Son-in law D was brought into the farming operation using the family member provision. If Daughter C made a significant contribution of active personal labor or active personal management, then Son-in law D would not have been considered to be actively engaged in farming with respect to the family member provision.

*Example 5.* Mother A, Daughter B, and Son C are partners in a family partnership. Son D, a minor, becomes a partner in 1989. Mother A contributes a significant amount of both capital and active personal management. Daughter B contributes a significant amount of both capital and active personal management. Son C contributes a significant amount of equipment, active personal labor, and active personal management. Son D contributes a significant amount of active personal labor.

*Determination.* Mother A, Daughter B, and Son C are considered to be actively engaged in farming. However, Son D is not considered to be actively engaged in farming due to the family member provision since he is not an adult family member.

*Husband and Wife*

*Example 1.* Husband A and Wife B both were involved in separate unrelated farming operations prior to their marriage. Husband A rents 1,000 acres of cropland for one-fourth of the crop. Wife B owns land that was given to her by her father before her marriage to Husband A. Both operations have been kept separate and distinct during the marriage. Both persons have been determined to be actively engaged in farming.

*Determination.* Husband A and Wife B would be considered to be separate persons for payment limitation purposes as both farming operations have remained separate and distinct.

*Example 2.* Husband G owns 500 acres of land that he rents to Producer Z for one-third of the crop. Wife D also owns 500 acres of land which was given to her before her marriage by her grandfather and is rented to Producer Z for one-third of the crop. The financing and accounting for each person has been kept totally separate and distinct.

*Determination.* Husband G and Wife D are each considered to be actively engaged in farming due to the landowner provision. Each will be considered to be a separate "person" since all aspects of the farming operations were kept separate and distinct.

*Example 3.* Husband C owns 500 acres of land that is rented to Producer Y for one-fourth of the crop. Wife E owns 600 acres of land which was bought by her before her marriage and is rented to Producer Y for one-fourth of the crop. Both farms were reconstituted as one farm when both rented their land to Producer Y because they were being farmed as a single farming unit. Accounting and farming operations were not kept separate after the reconstitution.

*Determination.* Husband C and Wife E are each considered to be actively engaged in farming with respect to the landowner provision; however, because the farming operations were not kept separate and distinct, they would be considered to be one "person" for payment limitation purposes.

*Minor Children*

*Example 1.* Minor A has a farming operation in which Parents B and C have no interest. Minor A maintains housing separate from Parents B and C. Minor A contributes a significant amount of equipment leased from an unrelated party, active personal labor, and active personal management to the farming operation.

*Determination.* Minor A would be considered to be actively engaged in farming. Minor A and Parents B and C would be considered to be separate persons since Minor A maintains a separate household.

*Example 2.* Minor D has a farming operation in which neither parent has an interest. However, Minor D does not have a separate household. Minor D's parents are divorced and Minor D's mother has custody of Minor D. Minor D contributes a significant amount of leased equipment, active personal labor, and active personal management to the farming operation.

*Determination.* Minor D is determined to be actively engaged in farming but will be combined with Minor D's mother because all of the provisions concerning a minor have not been met. Minor D is not combined with the father because the mother has custody of Minor D.

*Indian Tribal Ventures*

*Example 1.* Indian tribal venture AB farms owned land. The Bureau of Indian Affairs (BIA) has certified that payments exceeding the applicable payment limitation with respect to such land will not accrue directly or indirectly to any individual Indian, including the spouse or minor children of such Indian.

Individual Indians also farm land owned by third parties.

*Determination.* The BIA certification is effective only for land owned by the Indian tribal venture. Each individual Indian farming land owned by third parties must certify that individually they will not receive payments exceeding the applicable payment limitation with respect to both the earnings from the tribal venture's farming operation and their individual farming operation.

*Example 2.* Indian tribal venture CD farms both owned land and land that is leased to the tribal venture. The tribal venture provides all the capital and equipment, but only a few members of the tribal venture contribute a significant amount of active personal labor or active personal management to the farming operation on the leased land. BIA certifies that no one Indian accrues directly or indirectly more than the applicable limitation for land that is owned by the tribal venture. Some members of the tribal venture lease land and farm as individuals, contributing significant amounts of leased equipment, active personal labor, or active personal management.

*Determination.* The tribal venture is considered to be actively engaged in farming with respect to land that is owned and may earn payments in excess of the applicable payment limitation since no individual Indian receives payments in excess of the applicable payment limitation. The land that is leased by the tribal venture must qualify under the same provisions that apply to joint operations. Therefore, for land leased to the tribal venture, each member of the joint venture must contribute a significant amount of active personal labor or active personal management to the farming operation to be considered actively engaged in farming. Each individual Indian must certify that individually they will not receive payments exceeding the applicable payment limitation with respect to both the earnings from the tribal venture's farming operation and their individual farming operation. BIA's certification is only applicable for the land that is owned by the Indian tribal venture. The tribal venture must complete the necessary forms for the county ASC committee to determine if the members of the tribal venture are actively engaged with respect to the leased land. The individual Indian must also complete the necessary forms for the county ASC committee to determine if such individual is actively engaged in farming.

*States, Political Subdivisions, or Agencies Thereof*

*Example.* The State of X, City Y of State X, and Agency Z of the State of X each own cropland. The land is leased to individual farming operations for a share of the crop.

*Determination.* The State of X, City Y, and Agency Z are considered to be one "person" and are actively engaged in farming due to the landowner provision.

*Bona Fide and Substantive Changes*

*Example 1.* Corporation A owned equally by Stockholders B, C, D, and E, owns and operates a farm. Individuals C, D, and E form General Partnership X that leases land from Corporation A for a share of the crop. General Partnership X also leases land from Individual S, on which Corporation A has never farmed, for a share of the crop. The land leased from Individual S reflects approximately a 20 percent increase in cropland from the land being farmed by Corporation A. The crop acreage bases on the increased land is normal for the area. Partnership X provides a significant amount of both equipment and capital. Partners C, D, and E provide a significant amount of active personal labor and active personal management.

*Determination.* A bona fide and substantive change has occurred, as the size of the farming operation has been increased by at least 20 percent with crop acreage bases normal for the area by leasing additional cropland from Individual S. Corporation A is considered actively engaged in farming due to the landowner provision and is considered a separate person. Members C, D, and E are each considered to be actively engaged in farming, since each member provides a significant amount of active personal labor and active personal management and Partnership X provided a significant amount of equipment and land. Individual S is considered to be actively engaged in farming due to the landowner provision. Corporation A, Members C, D, and E, and Individual S are each considered to be separate "persons" for payment limitation purposes.

*Example 2.* Father A has previously conducted an individual farming operation consisting of owned land. For the current year, Father A proposes to expand the operation by forming a joint venture with his adult daughters B and C, with each member having equal shares. No additional acreage is farmed, but Father A has gifted to each daughter one-third of the owned land.

*Determination.* A bona fide and substantive change has occurred since a gift of land commensurate with the individuals' share of the farming operation has been received. Father A and Daughters B and C are considered to be actively engaged in farming due to the landowner provision.

*Example 3.* Brother D has conducted a individual farming operation consisting of owned land. For the current year, Brother D proposes to expand the operation by forming a partnership with Sister E. Brother D will receive 75 percent of the partnership earnings and Sister E will receive 25 percent of the partnership earnings. Brother D sold the equipment that will be used to plant and harvest the crop to Sister E who receives financing from a commercial lending institution. Brother D provides a significant amount of both active personal labor and active personal management. Sister E provides a significant amount of active personal management.

*Determination.* A bona fide and substantive change has occurred since a sale of equipment commensurate with the individuals' share of the farming operation has taken place. Brother D is considered to be actively engaged in farming due to both the landowner and individual provisions. Sister E is considered to be actively engaged in farming since she provides a significant amount of both equipment and active personal management.

Section 1001C of the 1985 Act provides with respect to the 1989 and 1990 crops that any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence shall be ineligible to receive any type of production adjustment payment, price support program loan, payment, or benefit made available under the 1949 Act, the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), or Subtitle D of Title XII of the 1985 Act with respect to any commodity produced, or any land set aside from production, on a farm that is owned or operated by such person. However, such an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such a farm would not be ineligible to receive such payments, loans, and benefits.

Section 1001C of the 1985 Act also provides that a corporation or other entity shall be ineligible to receive such payments, loans, or other benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or aliens lawfully admitted to the United States for permanent residence unless such

persons provide a substantial amount of active personal labor in the production of crops produced on the farm. The Secretary is also authorized to make payments, loans, and other benefits to such an ineligible entity in an amount which the Secretary determines to be representative of the percentage interests in the entity that is owned by citizens of the United States and aliens lawfully admitted to the United States for permanent residence.

Accordingly, this final rule would set forth at 7 CFR Part 1498 the regulations which implement section 1001C of the 1985 Act with respect to the 1989 and 1990 crops. For purposes of 7 CFR Part 1498, the terms "person," "entity," "capital," "land," and "active personal labor" are defined in 7 CFR 1498.3 in virtually the same manner as in 7 CFR 1497.3. Those payments, loans, and benefits which are subject to the provisions of 7 CFR Part 1498 are defined in 7 CFR 1498.3 as any cash or in-kind payment, loan disbursement or other benefit made in accordance with the 1949 Act, the Charter Act, and subtitle D of title XII of the 1985 Act which results in an expenditure by the Commodity Credit Corporation or any other Federal agency.

The regulations at 7 CFR 1497.25, 1497.27 and 1497.28 set forth provisions which are applicable to: determinations of a scheme or device which are designed to evade 7 CFR Part 1497; the granting of equitable relief by the Deputy Administrator; and the right to seek an administrative appeal in accordance with 7 CFR Part 780. Similar provisions are set forth at 7 CFR 1498.6, 1498.7, and 1498.8.

In determining whether more than 10 percent of the beneficial ownership of an entity is held by persons who are not citizens of the United States or by aliens lawfully admitted into the United States for permanent residence, 7 CFR 1498.4 provides that such a determination is made based upon such ownership interest which is the higher of such amount on the date the applicable program contract or agreement is executed or as determined by the Deputy Administrator, the final harvest date which is normal in the area for the applicable program crop. Accordingly, any increase in the foreign ownership of an entity after the date of execution of such a contract or agreement will affect the eligibility of an entity to receive a payment, loan, and benefit. Any payment, loan, and benefit which had been made prior to the date on which the beneficial ownership requirement was exceeded would be required to be refunded by the entity.

In accordance with 7 CFR 1498.4, payments, loans, and benefits may be received by: (1) A citizen of the United States; (2) an alien legally admitted to the United States for permanent residence; and (3) an entity which is not subject to 7 CFR Part 1498 who, through such means as a lease, is in lawful possession of a farm owned by an entity or individual who is ineligible to receive payments, loans, and benefits. Similarly, such individual or entity who is a successor-in-interest to a program contract or agreement executed by a foreign individual or entity with respect to such a farm may be eligible to receive payments, loans, and benefits.

In accordance with 7 CFR 1498.5, an entity subject to the provisions of 7 CFR Part 1498 is required to provide to the county ASC committee or other party who is executing the program contract or agreement, the names and social security or tax identification numbers of all foreign individuals and foreign entities who have a beneficial ownership interest in an entity. Failure to provide such information will result in the ineligibility of the entity to receive any payment, loan, and benefit.

*Foreign Individual*

*Example.* Individual A is a foreign person who does not have an Alien Registration Receipt card. Individual A lives in another country and makes yearly visits to the farm as well as making monthly phone calls to the foreman of the farming operation. Individual A hires all the labor required for the farming operation. Individual A contributes most of the management and all of the capital required for the farming operation.

*Determination.* Individual A is not eligible to receive any type of a production adjustment payment or a price support program loan with respect to this farming operation. Individual A must contribute a substantial amount of active personal labor to be considered to be eligible for program payments as specified in 7 CFR 1498.3 since Individual A is not a U.S. citizen or an alien lawfully admitted into the U.S. Individual A must also meet the requirements of 7 CFR Part 1497 to be eligible to receive a payment.

*Corporations in Which a Foreign Individual Has an Interest*

*Example.* Corporation ABC consists of Individual A having a 25 percent share, Partnership B having a 25 percent share, and Foreign Individual C having a 50 percent share. Individual A and the members of Partnership B contribute a significant amount of active personal labor, active personal management, and equipment. Foreign Individual C contributes capital and owned land to the farming operation. The county ASC committee has determined that the corporation is actively engaged in farming.

*Determination.* Even though the county ASC committee has determined the corporation to be actively engaged in farming, the corporation may not receive a full payment since Foreign Individual C does not contribute a substantial amount of active personal labor. The stockholders who are U.S. citizens or aliens who are lawfully admitted into the U.S. may request a payment which represents their share of the corporation's payment.

**List of Subjects**

*7 CFR Part 1497*

Price support programs.

*7 CFR Part 1498*

Aliens, Loan programs—agriculture, Grant programs—agriculture.

Accordingly, this final rule amends Title 7 of the Code of Federal Regulations as follows:

**PART 704—[AMENDED]**

1. The authority citation for Part 704 continues to read as follows:

**Authority:** Secs. 1201, 1231–1244; Pub. L. 99–198, 99 Stat. 1354, as amended (16 U.S.C. 3801, 3831–3844).

**§ 704.16 [Amended]**

2. Section 704.16(c) is amended by removing the phrase "Part 795" and inserting in lieu thereof "Parts 795, 1497, and 1498".

**PART 795—[AMENDED]**

3. The authority citation for Part 795 continues to read as follows:

**Authority:** Sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 7 U.S.C. 1308; Pub. L. 99–500 and Pub. L. 99–591.

**§ 795.2 [Amended]**

4. Section 795.2 is amended by adding a new paragraph (e) to read as follows:

* * * * *

(e) Except as provided in Part 1497 of this title, this part shall not be applicable to contracts entered into on or after August 1, 1988 in accordance with Part 704 of this chapter.

5. A new Part 1497 is added to read as follows:

## PART 1497—PAYMENT LIMITATION

Sec.

1497.1 Applicability.
1497.2 Administration.
1497.3 Definitions.
1497.4 Timing for determining status of persons.
1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.
1497.6 General provisions for determining whether an individual or entity is actively engaged in farming.
1497.7 Individuals.
1497.8 Joint operations.
1497.9 Limited partnerships, corporations and other similar entities.
1497.10 Irrevocable trusts.
1497.11 Revocable trusts.
1497.12 Estates.
1497.13 Landowners.
1497.14 Family members.
1497.15 Sharecroppers.
1497.16 Cash rent tenants.
1497.17 Persons not considered to be actively engaged in farming.
1497.18 Changes in farming operations.
1497.19 Husband and wife.
1497.20 Minor children.
1497.21 Charitable organizations.
1497.22 Indian tribal ventures.
1497.23 States, political subdivisions, and agencies thereof.
1497.24 Scheme or device.
1497.25 Joint and several liability.
1497.26 Equitable adjustments.
1497.27 Appeals.
1497.28 Paperwork Reduction Act assigned number.

**Authority:** Sections 1001 through 1001C of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended (7 U.S.C. 1308, et seq.).

### § 1497.1 Applicability.

(a) This part is applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The annual price support and production adjustment programs for the 1989 and subsequent crops of wheat, feed grains, upland cotton, extra long staple cotton, and rice;

(2) Any program authorized by the Agricultural Act of 1949 under which a gain is realized by the repayment of a loan at a level lower than the original loan level;

(3) The Conservation Reserve Program;

(b) This part shall be applied to the programs specified in paragraph (a) (1) and (2) on a crop year basis and with respect to the program in paragraph (a)(3) on a fiscal year basis.

(c) This part is applicable to rental payments made in accordance with a Conservation Reserve Program contract entered into on or after August 1, 1988. For Conservation Reserve Program contracts entered into on or after December 22, 1987 and before August 1, 1988, the person may elect to have the provisions of this part apply to such a contract by notifying the county committee in writing of such election.

(d) The regulations set forth at Part 795 of this title shall be applicable to Conservation Reserve Program contracts entered into prior to December 22, 1987, and to Conservation Reserve Program contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (c) of this section.

(e) This part shall be used to determine whether certain individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the payment limitation provisions which are applicable to the programs specified in paragraph (a) of this section.

(f) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(g) Payments made to public schools with respect to land which is owned by a public school district and payments made to a State with respect to land owned by a State which is used to maintain a public school shall not be subject to the payment limitations.

### § 1497.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State and county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) The county committee shall make the initial "actively engaged in farming" and "person" determinations within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year which reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented to the county committee for such year.

(f) The county committee shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year. If the individual dies or is incapacitated before a determination is made that the individual is "actively engaged in farming," the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the county committee information that verifies that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be "actively engaged in farming," the county committee shall allow such determination to be in effect for that program year. However, the following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

(g) Data furnished by the producers will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

### § 1497.3 Definitions.

(a) The terms defined in Part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

*Active Personal Labor.* Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming

operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

*Active Personal Management.* Active personal management is personally providing:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Providing services (whether performed on-site or off-site) reasonably related and necessary to the farming operation including any of the following:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops or conserving use acreage and activities required in livestock operations.

(ii) Business-related actions which include discretionary decision-making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; or

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

*Capital.* Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity. With respect to a farming operation which consists of more than one individual or entity:

(1) Such capital which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries or related entities.

(2) Such capital which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

*Entity.* An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

*Equipment.* Equipment is the machinery and implements needed by the farming operation to conduct activities of the farming operation including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conservation cover crops or conservation use acreages and those needed to conduct livestock operations. With respect to a farming operation which consists of more than one individual or entity:

(1) Such equipment which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not have been acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries, or related entities.

(2) Such equipment which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, the equipment must be leased at a fair market value.

*Family Member.* The term "family member" means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those family members who do not make a significant contribution to the farming operation themselves.

*Farming operation.* A farming operation is a business enterprise engaged in the production of agricultural products which is operated by an individual or entity which is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1497.1.

*Joint operation.* A joint operation is a general partnership, joint venture, or other similar business organization.

*Land.* Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program. With respect to a farming operation which consists of more than one individual or entity:

(1) Such land which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not have been acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries, or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries, or related entities.

(2) Such land which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, the land must be leased at a fair market value.

*Payment.* A payment includes:

(1) With respect to the programs specified in § 1497.1 paragraph (a) (1) and (2):

(i) Any part of any payment that is determined by the Deputy Administrator to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(ii) Any disaster payment made under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

(iii) Any gain realized by a producer from repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a)(5), 105C(a)(4), 103A(a)(5), 101A(a)(5), or 201(b)(2), respectively, of the Agricultural Act of 1949, or any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level established than the original loan level under the Agricultural Act of 1949;

(iv) Any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, or the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of the Agricultural Act of 1949;

(v) Any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(g), respectively, of the Agricultural Act of 1949;

(vi) Any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of the Agricultural Act of 1949; and

(vii) With respect to the Conservation Reserve Program, annual rental payments.

*Permitted Entity.* A permitted entity is an entity designated annually by an individual which is to receive a payment, loan, or benefit under a program specified in § 1497.1.

*Person.* (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person.

*Public School.* A public school is a primary, elementary, secondary school, college, or university which is directly administered under the authority of a governmental body or which receives a predominant amount of its financing from public funds.

*Related entity.* A related entity is an entity in which a member of a farming operation, which consists of two or more entities, has an interest, either directly or indirectly.

*Significant Contribution.* A significant contribution is the provision of the following to a farming operation by an individual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution which has a value which is equal to at least 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or entity consists of any combination of land, capital, and equipment, such combined contribution must have a value which is equal to 30 percent of the individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours which would be required to conduct a farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities which are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management when viewed together which results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as provided in paragraphs (2) and (3) of this definition.

*Substantial Beneficial Interest.* A substantial beneficial interest in any entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity which are owned by an individual or entity directly or indirectly through such means as ownership of a corporation which owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

*Total Value of the Farming Operation.* The total value of the farming operation is the total of the costs, excluding the value of active personal labor and active personal management which is contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

**§ 1497.4 Timing for determining status of persons.**

(a) Except as otherwise set forth in this part, the status of an individual or entity on April 1 of the current year, or such other date as may be determined and announced by the Deputy Administrator, shall be the basis on which determinations are made in accordance with this part for the year in which the determination is made.

(b) Actions taken by an individual or entity after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the final harvest date of the last program crop in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the current year. Actions taken by a person after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the harvest of the last program crop in the area, shall be used to determine whether there has been a decrease in the number of persons for the current year.

**§ 1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.**

(a) An individual shall receive a payment under a program specified in § 1497.1 either directly or indirectly from no more than three permitted entities. An individual which receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual shall only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Each entity entering into a contract or agreement under a program specified in § 1497.1 shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted entities specified in paragraph (a) of this section for which a contract or agreement has been submitted to the county committee shall notify the county committee, in each county in which they conduct a farming operation, in writing of those entities that shall be considered as permitted entities by a date as determined and announced by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(d) If an individual or entity fails to make such a notification as specified in paragraph (c) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (c)(2) of this section.

**§ 1497.6 General provisions for determining whether an individual or entity is actively engaged in farming.**

(a) To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops produced by the farming operation;

(2) The normal and customary farming practices of the area; and

(3) The total amount of labor and management which is necessary for such a farming operation in the area.

(d) In order to be considered to be actively engaged in farming an individual or entity specified in § 1497.7 through § 1497.15 must have:

(1) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation which are at risk.

**§ 1497.7 Individuals.**

(a) An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

**§ 1.497.8 Joint operations.**

(a) Members of a joint operation must furnish satisfactory evidence that their contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with their claimed shares of the profits or losses of the joint operation.

(b) A member shall be considered to be actively engaged in farming with respect to a farming operation if the member makes a significant contribution of:

(1) Capital, equipment, or land or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(c) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1497.6(d), the members of the joint operation who make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

(d) Each individual who shares in the profits or losses of such farming

operation shall be considered to be a separate person only if the individual is actively engaged in the farming operation.

**§ 1497.9 Limited partnerships, corporations and other similar entities.**

(a) A limited partnership, corporation, or other similar entity shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) The partners, stockholders, or members collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor or active personal management must be at least 50 percent.

(b) A limited partnership, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(c) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, corporations, or other similar entities shall be considered to be one person.

(d) The percentage share of the interest in a limited partnership, corporation, or other similar entity which is owned by an individual or other entity shall be determined as of April 1, or such other date as may be determined and announced by the Deputy Administrator. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last program crop in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(e) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

**§ 1497.10 Irrevocable trusts.**

(a) An irrevocable trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation.

(b) An irrevocable trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that an irrevocable trust which has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(c) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

**§ 1497.11 Revocable trusts.**

(a) A revocable trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) The beneficiaries collectively make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the operation.

(b) A grantor and the revocable trust shall be considered to be one person.

**§ 1497.12 Estates.**

(a) For two program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management.

(b) If the deceased individual would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

(c) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

**§ 1497.13 Landowners.**

A person who is a landowner, including landowners with an undivided interest in land, contributing owned land to the farming operation shall be considered to be actively engaged in farming if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. A landowner also includes a member of a joint operation when the joint operation holds title to land in the name of the joint operation if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such a member of such joint operation.

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**§ 1497.14 Family members.**

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

**§ 1497.15 Sharecroppers.**

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

**§ 1497.16 Cash rent tenants.**

Any tenant that conducts a farming operation in which the tenant rents the land for cash or a crop share guaranteed as to the amount of the commodity shall be considered to be the same person as the landlord unless the tenant makes a significant contribution to the farming operation of:

(a) Active personal labor and capital, land or equipment; or

(b) Active personal management and equipment. If such equipment is leased by the tenant from:

(1) The landlord, the lease must reflect the fair market value of the equipment leased.

(2) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

**§ 1497.17 Persons not considered to be actively engaged in farming.**

An individual or entity who does not meet any of the provisions of § 1497.7 through 1497.15 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity shall not be considered to be actively engaged in farming.

**§ 1497.18 Changes in farming operations.**

(a) Any change in a farming operation that would increase the number of persons must be bona fide and substantive. The addition of a family member to a farming operation in accordance with § 1497.14 shall be considered to be such a change, except that such an addition will not affect the status of any other individual or entity which is added to the farming operation. A change in a farming operation in a previous year that was not considered to be bona fide and substantive shall not increase the number of persons in a subsequent year. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(1) With respect to a landowner only, a change from a cash rent to a share rent;

(2) An increase through the acquisition of land not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation if such cropland has crop acreage bases which are at least normal for the area;

(3) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been invoived in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation; or

(4) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be bona fide and substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

(5) The Deputy Administrator may determine other bona fide changes to be substantive.

**§ 1497.19 Husband and wife.**

With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remains separate and distinct from any farming operation conducted by the other spouse.

**§ 1497.20 Minor children.**

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor if the minor is a producer on a farm and the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition it must be determined that the minor:

(1) Has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Does not live in the same household as such minor's parent and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Ownership of the farm is vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

**§ 1497.21 Charitable organizations.**

Charitable organizations, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of crops as a separate person, except where the land or the proceeds from the farming operation may revert to an entity which exercises control or authority over such organization.

**§ 1497.22 Indian tribal ventures.**

Payments may be made in excess of an applicable payment limitation provision with respect to land which is owned or held in trust for an Indian tribal council and not rented or otherwise acquired by an Indian tribal venture if a responsible official of the Bureau of Indian Affairs (BIA) or the Indian tribal council certifies that no payment in excess of such limitation will accrue directly or indirectly to any individual Indian, including the individual's spouse and minor children.

**§ 1497.23 States, political subdivisions, and agencies thereof.**

A State, political subdivision and agencies thereof shall be considered to be one person.

**§ 1497.24 Scheme or device.**

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C of the Food Security Act of 1985 such person shall be ineligible to receive payments under the programs specified in § 1497.1(a)(1)–(3) with respect to the year for which such scheme or device was adopted and the succeeding year.

**§ 1497.25 Joint and several liability.**

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability which arises therefrom. The provisions of this section shall be applicable in addition to any liability which arises under a criminal or civil statute.

**§ 1497.26 Equitable adjustments.**

(a) Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

(b) In cases in which the application of this part will reduce payments to a farming operation, the Deputy Administrator may waive the application of the provisions of § 1497.18 with respect to any reorganization applied for prior to April 1, 1989, or such other date as may be determined and announced by the Deputy Administrator, to the extent the Deputy Administrator determines appropriate to facilitate equitable reorganizations that do not result in an increase in payments.

**§ 1497.27 Appeals.**

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) of this section shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved which affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented initially to the county committee for the year which is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

**§ 1497.28 Paperwork Reduction Act assigned number.**

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560–0096.

6. A new Part 1498 is added to read as follows:

## PART 1498—FOREIGN PERSONS INELIGIBLE FOR PROGRAM BENEFITS

Sec.

1498.1 Applicability.
1498.2 Administration.
1498.3 Definitions.
1498.4 Ineligibility.
1498.5 Notification.
1498.6 Scheme or device.
1498.7 Equitable relief.
1498.8 Appeals.
1498.9 Paperwork Reduction Act assigned number.

**Authority:** Section 1001C of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended (7 U.S.C. 1308, et seq.).

**§ 1498.1 Applicability.**

This part is applicable to any type of payment, loan, and benefit made with respect to 1989 and 1990 crops. This part is not applicable to any payment, loan, and benefit which is made with respect to the production of a commodity planted, or commodity program or Conservation Reserve Program contract approved, before December 22, 1987.

**§ 1498.2 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State and county committees", respectively). State and county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(b) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(c) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

**§ 1498.3 Definitions.**

(a) The terms defined in Part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

*Active Personal Labor.* Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

*Alien.* Any person not a citizen or national of the United States.

*Capital.* Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity. With respect to a farming operation which consists of more than one individual or entity:

(1) Such capital which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries or related entities.

(2) Such capital which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

*Entity.* An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

*Land.* Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program. With respect to a farming operation which consists of more than one individual or entity:

(1) Such land which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not have been acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries, or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries, or related entities.

(2) Such land which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, the land must be leased at a fair market value.

*Lawful Alien.* Any person that is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card (Form I–551 or I–151).

*Payment, Loan, and Benefit.* A payment, loan, or benefit made in accordance with the Agricultural Act of 1949, the Commodity Credit Corporation Charter Act, or Subtitle D of Title XIII of the Food Security Act of 1985, which results in a direct expenditure by the Commodity Credit Corporation or any other agency of the Federal government, including a payment made in accordance with Part 1470 of this title. Such term does not include the establishment of crop acreage bases, farm program payment yields, acreage allotments, marketing quotas, and similar program provisions.

*Person.* (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person.

*Substantial amount of active personal labor.* Substantial amount of active personal labor means the provision of active personal labor in an amount which is the smaller of:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours which would be required to conduct a farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation.

### § 1498.4 Ineligibility.

(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is an individual who is providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other entity shall be ineligible to receive payments, loans, and benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or lawful aliens unless such persons provide a substantia1 amount of active personal labor in the production of crops on a farm owned by such an entity. However, upon the written request of the entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the entity which is owned by citizens of the United States and lawful aliens.

(2) In determining whether more than 10 percent of the beneficial ownership of an entity is held by such persons, the beneficial ownership interest shall be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the entity; or

(ii) Any other date prior to the final harvest date which is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other entity shall inform the county committee of any increase in such ownership which occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, and benefit has been made, the entity shall refund such payment, loan, and benefit.

(5) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

(c) A citizen of the United States, lawful alien, and entity which is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by an individual or entity who is subject to this part or who is successor-in-interest to a program contract or agreement with respect to such a farm may receive a payment, loan, and benefit without regard to this part.

### § 1498.5 Notification.

(a) Any entity, whether foreign or domestic, who executes a program contract or agreement under which a payment, loan, and benefit may be available must provide written notification to the county committee in the county where the entity conducts its farming operation if:

(1) Any individual, group of individuals, entity, or group of entities holds more than a 10 percent beneficial interest in such entity; and

(2) Such individual, group of individuals, entity, or group of entities, in accordance with § 1498.4, are ineligible to receive a payment, loan and benefit.

(b) Such written notification should include the name and social security number or taxpayer identification number of such individual or entity and of all individuals and entities that hold a beneficial interest.

(c) The failure of the entity to provide this information will result in the ineligibility of the entity to receive any payment, loan, and benefit.

### § 1498.6 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating any fictitious entity for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C, of the Food Security Act of 1985, such person shall be ineligible to receive payments under the programs specified in § 1498.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

### § 1498.7 Equitable relief.

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

### § 1498.8 Appeals.

Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth as Part 780 of this title.

### § 1498.9 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560–0096.

Signed at Washington, DC, on July 29, 1988

**Milton Hertz,**

*Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 88–17468 Filed 8–1–88; 5:05 pm]

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Part III

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 61, 141, and 143**

**Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules; Extension of Comment Period**

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 141, and 143

[Docket No. 25627]

## Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules; Extension of Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice extends the comment period for the topics of discussion announced in the Notice of Public Hearings on the *Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules* (53 FR 24178; June 27, 1988). In addition, the FAA solicits comments from the public on the management action plan that was announced in the Notice of Public Hearings document. This management action plan describes, in detail, the methodology to be used by the FAA to identify pilot and instructor certification tasks and the underlying knowledge, skills, and abilities necessary to operate the different categories, classes, and types of aircraft in today's environment. The comment period is being extended because a number of participants at the public hearings requested additional time to comment on the topics of discussion and the management action plan. This extension of the comment period will make it possible for the FAA to receive data pertinent to the review of the review of the pilot and flight instructor, pilot school, and ground instructor certification rules.

**DATE:** Comments on the topics of discussion and management action plan must be received on or before September 9, 1988.

**ADDRESSES:** Comments on the topics of discussion and management action plan may be sent in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC–204), Docket No. 25627, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments received and the management action plan may be examined in the Rules Docket on all weekdays, except Federal holidays, between the hours of 8:30 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Edna H. French—Manager, AFS–850 Project Development Branch or John Lynch, General Aviation and Commercial Division, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267–8150.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

All interested persons are invited to participate in this regulatory review by submitting written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, or economic impacts on the topics of discussion items, contained in the Notice of Public Hearing document, and on the management action plan are invited. Communications should identify the regulatory docket number, and be submitted in duplicate to the address noted previously in the **"ADDRESS"** section of this document. All communications received on or before the closing date for comments will be considered by the Administrator. The topics of discussion items and the methodology of the management action plan contained in the Notice of Public Hearing document may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 916 of the FAA Building, both before and after the closing date. A report summarizing the public comments concerning this advanced notice will also be available for review in the Rules Docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with their comments a self-addressed, stamped postcard of which the following statement is made: "Comments to Docket Number 25627." The postcard will be dated, time stamped, and returned to the commenter by the FAA.

### Availability of the Notice of Public Hearing Document

Any person may obtain a copy of the Notice of Public Hearing document by submitting a request to the FAA, Office of Public Affairs, ATTN: APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267–3484. Communications must identify the docket number of this notice. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Availability of the Management Action Plan

A copy of the Management Action Plan is available for examination in the Rules Docket in Room 916 of the FAA Building. The hours of operation for the Rules Docket are Mondays through Fridays from 8:30 a.m. to 5 p.m., except on Federal holidays. A copy of the management action plan is also available from the person listed under "For Further Information Contact".

### Background

A Notice of Public Hearing was published in the **Federal Register** on June 27, 1988 (53 FR 24178) requesting participation from the public for a regulatory review of the pilot and flight instructor, pilot schools, and ground instructor certification rules. In that Notice of Public Hearing document, the FAA announced the schedule and topics of discussion for two public hearings. One public hearing was held on July 26 and 27, 1988, at the FAA Building in Washington, DC. The other public hearing was held on August 3 and 4, 1988, at the FAA Building in Oshkosh, Wisconsin. In the Notice of Public Hearing document, the FAA listed several topics of discussion, which are restated in their entirety in the following section marked "Topics for Discussion Contained in the Notice of Public Hearing Document." A number of participants at the hearing requested additional time to comment on these topics of discussion items and also on the methodology of the management action plan. The FAA agrees with these commenters' request and extends the comment period.

### Topics for Discussion Contained in the Notice of Public Hearing Document

The FAA requests the participation of all interested persons, and the identification of data, literature, statistics, research papers, or other documents, available in the public sector, that may be relevant to the issues involved in pilot and flight instructor, pilot school, and ground instructor requirements and training. Public participation would allow the FAA to consider thoroughly the topics specifically contained in this notice or raised during the regulatory review and would provide a valid and reliable basis for regulatory review of the regulations. All comments will be reviewed and considered in any future rulemaking proceedings by the FAA regarding Parts 61, 141, or 143.

Interested persons are invited to express views and to make recommendations for regulatory

changes. The issues and topics for discussion have been identified on the basis of regulatory amendments previously adopted by the FAA, petitions for exemption, letters, petitions for rulemaking, National Transportation Safety Board (NTSB) recommendations, and FAA evaluations of training and certification rules.

Participants also should address any economic consequences (e.g., implementation costs, potential savings) of the views or changes that they recommend. The FAA encourages those persons submitting comments to include any source of supporting data that may be applicable to the views or recommendations.

Although the FAA has considerable data on many of the recommendations and questions listed below, any additional data that the public may have on these recommendations and questions is requested. The FAA invites comment on the following specific topics.

*1. NTSB Recommendations*

a. NTSB Recommendation A–78–43: Recommendation to amend certain sections of Parts 61 and 141 to incorporate those ground and flight training items listed in FAA Report No. FAA–RD–77–26, "General Aviation Pilot Stall Awareness Training Study."

b. NTSB Recommendation A–79–96: Recommendation to amend § 61.57 to require a person who serves as pilot in command of a multiengine aircraft to have successfully completed a flight review in that class of aircraft within the preceding 24-calendar months.

c. NTSB Recommendation A–79–97: Recommendation to amend § 61.57 to require a person who serves as pilot in command of a multiengine aircraft to successfully demonstrate those multiengine flight maneuvers listed in the appropriate practical test guide (with special emphasis on those flight maneuvers relating to power loss) during the flight review recommended by NTSB Recommendation A–79–96.

d. NTSB Recommendation A–80–25: Recommendation to amend § 61.57(c) by adding provisions that establish increased currency standards for a person who serves as pilot in command of tail-configured airplanes.

e. NTSB Recommendation A–82–127: Recommendation to amend Parts 61 and 141 by establishing a minimum curriculum for those schools that conduct initial pilot qualification training in turbojet airplanes. The NTSB recommended that this curriculum establish minimum training in aerodynamics and meteorological and physiological aspects of high performance, high altitude flight.

f. NTSB Recommendation A–82–128: Recommendation to require an applicant seeking an initial type rating in a turbojet airplane to have completed an FAA-approved training curriculum which establishes minimum training hours.

g. NTSB Recommendation A–82–129: Recommendation to require applicants seeking type ratings in turbojet airplanes to successfully demonstrate pilot competency in handling characteristics of high altitude flight at airspeed ranges compatible with the specific flight envelope for that airplane.

*2. Terminal Control Area (TCA) Task Force Recommendation No. 24*

Recommendation to revise Part 61 to require flight instructors to report to the FAA the completion of all biennial flight reviews.

*3. Addition or deletion of pilot and instructor certificates and ratings*

a. What additional pilot, flight instructor, and ground instructor certificates and ratings (e.g., powered/self launching glider ratings) are needed?

b. Which pilot, flight instructor, and ground instructor certificates or ratings should the FAA consider to be obsolete or unnecessary?

*4. Type rating requirements*

a. What changes should the FAA consider to the type rating certification requirements of Part 61?

b. What changes should the FAA consider on the issue of when a type rating is required?

c. What changes should the FAA consider to improve the pilot-in-command proficiency requirements of § 61.58 and the second-in-command proficiency requirements of § 61.55?

*5. Annual check and recency of experience requirements*

a. What changes should the FAA consider concerning the biennial flight review requirements of Part 61?

b. Should the FAA establish additional criteria concerning recency of experience requirements?

*6. Minimum certification requirements*

a. What changes should the FAA consider to improve the pilot and instructor eligibility standards?

b. Should the FAA establish a minimum age eligibility standard for student pilots to log flight time toward a pilot certificate?

c. What experience requirements are appropriate for flight instructors providing instruction to persons applying for a flight instructor certificate?

d. Should applicants for a flight instructor certificate be required to demonstrate spins on flight tests (in the case of airplanes) and autorotations (in the case of helicopters)? If so, what is the justification for establishing these additional requirements?

*7. Pilot and instructor privileges and limitations*

a. What changes are needed concerning pilot and instructor privileges and limitations?

b. Should the FAA consider expanding some pilot and instructor privileges and limitations? If so, what privileges and limitations should be considered?

c. What changes to the ground instructor ratings and privileges are necessary and appropriate?

*8. Military pilots and foreign pilots*

a. What changes should the FAA consider concerning FAA certificates issued to rated military pilots or to former rated military pilots on the basis of military pilot qualifications and experience?

b. What additional safety considerations should the FAA address concerning FAA pilot certificates issued to foreign pilots who do not understand or speak English?

*9. Flight and ground instructor endorsements and recordkeeping*

a. What revisions should the FAA consider to the written test and flight test prerequisites of Part 61?

b. What changes are appropriate regarding flight instructor endorsements for student pilot solo flights?

c. What changes are necessary concerning flight instructor recordkeeping requirements?

d. Should the regulations allow flight instructors to place limited endorsements on student cross-country flights (e.g., limited endorsements concerning weather minimums, wind limitations, or specified time frames for commencement or completion of a trip)?

e. What changes are appropriate regarding the amount of flight instruction that an instructor may give in a 24-hour period (including instruction given in a simulator or training device)?

*10. Schools certificated under Part 141*

a. Are there alternatives to the "pass-rate" percentage requirements of § 141.5(b) used to determine the quality of instruction given to students in order

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for an applicant to receive approved pilot school status?

b. Are there alternatives to the "pass-rate" percentage requirements of § 141.63(b)(2) used to measure and ensure the quality of instruction given to students by a pilot school in order for the school to retain examining authority status?

c. Are there alternatives to the "pass-rate" percentage requirements of § 141.63(a) used to measure and ensure the quality of instruction given to students by a pilot school in order for the school to retain approved pilot school status?

d. What measures can be developed to ensure that Part 141-approved curricula and training course outlines evolve to meet changing training and regulatory needs?

e. What changes are appropriate for the chief flight instructor or the assistant chief flight instructor with respect to eligibility and currency requirements?

f. What changes are appropriate concerning a chief flight instructor's availability and responsibilities during times when flight instruction is being conducted (including availability and responsibilities during instruction at a satellite base)?

g. What should be required of a chief flight instructor with respect to the designation of assistants to conduct phase and end-of-course flight checks?

h. Which additional certificates and ratings should the FAA allow an approved pilot school to add to the school's examining authority?

i. What are some appropriate limitations and allowances that need to be addressed concerning flight students who transfer between Part-141 approved pilot schools?

j. What alternatives should the FAA consider concerning the rules that relate to the recordkeeping requirements of Part 141?

k. What changes should the FAA consider to the method by which a provisional pilot school progresses to approved pilot school status?

*11. Clarification of terms and definitions*

a. How should the phrase "preflight planning," as it is used in Part 61, be defined?

b. How should the phrases "high performance airplane" and "complex airplane" be defined and what restrictions or privileges are applicable to the operation of those airplanes? For example, should commercial certification requirements be revised to allow the use of airplanes (e.g., turbojet or turboprop airplanes) that are more sophisticated than implied by the current definition of "complex airplane?"

c. What kinds of operations should be covered or excluded by the phrase "compensation or hire?"

In addition to consideration of the issues listed above, the FAA may consider rulemaking action that would eliminate obsolete phrases and sections of the regulations and that would result in minor editorial changes to Parts 61, 141, 143.

**Extension of Comment Period**

In consideration of the requests for additional time to comment on the topics of discussion items and methodology of the management action plan, the FAA concludes that extending the comment period for an additional 30 days would serve the public interest. Accordingly, the comment period will close on September 9, 1988.

D.C. Beaudette,

*Acting Director of Flight Standards.*

Issued in Washington, DC, August 2, 1988.

[FR Doc. 88-17750 Filed 8-3-88; 8:45 am]

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federal register

Friday
August 5, 1988

Part IV

# Department of the Interior

**Bureau of Land Management**

**Federal Coal and Other Solid Mineral Leases; Royalty Reduction Guidelines; Notice**

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-660-08-4121-02]

## Federal Coal and Other Solid Mineral Leases; Royalty Reduction Guidelines

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed action.

**SUMMARY:** Notice is hereby given of the Bureau of Land Management's (BLM) intent to amend its procedural document entitled "Royalty Rate Reduction Guidelines for Solid Minerals," based on a BLM royalty rate study. The guidelines implement section 39 of the Mineral Leasing Act, and were issued on June 26, 1987, (52 FR 24347, June 30, 1987).

**DATE:** Written comments on this notice and on the BLM study should be submitted by October 4, 1988.

**ADDRESSES:** Copies of the guidelines and of the BLM royalty rate study can be obtained from: Bureau of Land Management, Office of Public Affairs, 1800 C Street NW., Room 5600, Washington, DC 20240. Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Room 5555, Washington, DC 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Office of Public Affairs, 1800 C Street NW., Room 5600, Washington, DC 20240, (202) 343-9435.

**SUPPLEMENTARY INFORMATION:** Section 39 states in part: "The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, (and a list of other minerals), and in the interest of conservation of natural resources, is authorized to * * * reduce the royalty * * *, whenever in his judgment it is necessary to do so, in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms therein."

In 1976 during the debate regarding President Ford's veto of the Federal Coal Leasing Amendments Act (FCLAA), Congress further clarified this authority with such statements as, "* * * The Secretary of the Interior can reduce that 12.5 percent to 7 percent, 5 percent, or 3 percent. He has always had the right to do that. * * * He can cut the royalty down to whatever he wishes." (122 Cong Rec. 25459 (August 4, 1976)). Further, a recent Interior Board of Appeals (IBLA) decision states that the authority conferred by section 39 is discretionary and thus enables the BLM to exercise professional judgment to make decisions which best protect the economic and resource interest of the United States as owner of the mineral estate (Peabody Coal Company, 93 IBLA 326, 328, and 334 (1986)).

To provide implementing guidance for the exercise of this discretion to lower royalty rates, the BLM adopted procedural guidelines on June 26, 1987. The procedures provided for royalty reductions in four categories:

- 1. *Expanded Recovery:* Where a lessee certifies that, without a royalty rate reduction, either: (a) Adverse geologic and engineering conditions make the solid leasable mineral resources identified in the application economically unrecoverable at the lease royalty rate using current standard industry operating practices, or (b) the lease royalty rate, all geologic and engineering conditions being the same or similar, makes the solid leasable mineral resources identified in the application likely to be bypassed because they are less economically recoverable than resources on non-Federal leases that are part of the near-term mining sequence within the same operation.
- 2. *Extension of Mine Life:* Near the end of mine life, where a reduced royalty rate would extend the period during which mining would occur and thereby encourage the greatest ultimate recovery of solid leasable mineral resources.
- 3. *Financial Test—Unsuccessful Operations:* Where operations on a lease are not financially profitable under the terms of the lease, with lease operating costs exceeding lease production revenue.
- 4. *Financial Test—Expanded Recovery/Extension of Mine Life:* Where lessees qualifying under categories 1 or 2 above request a royalty rate reduction to a level below the specified rates set forth in the guidelines for those categories.

The BLM is revising the royalty rate reduction to add an additional category to facilitate expedited administrative handling of certain reduction applications. The category would contain criteria that recognize the pervasive existence of market conditions associated with coal resources on certain Federal lands. Those resources occur in States where the Federal deposits are currently being forgone in favor of deposits on non-federal lands due to the significant royalty rate differential between Federal and non-Federal coal leases. This new criterion is being added to recognize the non-competitive nature of some Federal coal deposits and, in order to promote development, permits the exercise of authority to reduce royalties.

The following five criteria will be used in determining whether applications for royalty rate reduction qualify under the regional royalty rate differential category. The applicant must show that:

1. The Federal Government is not market dominant;
2. Federal royalty rates are above the current market royalty rate for non-Federal coal in the area;
3. Federal coal would be bypassed or remain undeveloped due to the royalty rate differential;
4. The above conditions exist throughout the region or State; and
5. A regional royalty rate reduction is not likely to result in undue competitive advantages over neighboring regions.

In the areas where lessees qualify for a rate adjustment due to a regional royalty rate differential situation, BLM personnel will compile information regarding royalty rates on non-Federal coal leases, determine an appropriate regional royalty rate for Federal coal resources, and publish that rate locally.

The BLM personnel will review the application for completeness and confirm the likelihood of Federal coal being bypassed or not being developed due to the presence of a royalty rate differential.

For approved royalty rate reductions in this category, the term of the rate reduction shall be to the next readjustment date of the lease under consideration. Upon readjustment, the royalty rate will be set at the rate established by statute or regulation or as specified in the lease document.

At the time of the notification of readjusted terms and conditions, the lessee will need to reapply if conditions still exist which merit a royalty reduction in this category.

Applications will be submitted to the appropriate BLM State Director, under whose auspices all requisite analyses and determinations will be completed in accordance with the guidelines. The decision to approve or deny a royalty reduction under this category will be made by the appropriate State Director, following coordination with the affected Governor. The BLM State Director's authority to act on royalty rate reduction applications for coal leases is contained in regulations at 43 CFR 3485.2(c)(1).

If approved, the royalty rate reduction shall be in effect as of the date of the filing of a completed application.

Payments made in the interim period between application and approval will be at the lease rate. If a royalty rate reduction is granted, any payments already made in excess of the reduced royalty rate will be credited against future royalty payments. Regional royalty rate reductions do not alter the legal obligation with regard to the payment of advance or minimum royalty in lieu of annual production or on the "bonus" bid received in a competitive lease sale.

These guideline amendments are based in part on a study entitled "The Competitive Position of Federal Coal in North Dakota, Alabama, and Oklahoma." Comments are solicited on both the study itself and the possible use of the new criteria to expedite consideration for a royalty reduction.

Following the determinations by BLM of an appropriate regional royalty rate in North Dakota, Alabama, and Oklahoma, applications from operators in those States will be accepted for consideration under the regional royalty rate reduction guidelines, as amended to reflect this new category. Application procedures are similar to those established in the present guidelines. However, for this new category the applicant merely must certify that its circumstances are consistent with those conditions already documented for this area.

Based on petition from operators, affected users, or Governors of States involved, BLM may conduct future studies to determine if other areas may be included in this category.

July 28, 1988.

**James E. Cason,**

*Acting Assistant Secretary, Land and Minerals Management.*

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Part V

# Department of Health and Human Services

**Health Care Financing Administration**

**42 CFR Part 74 et al.**

**Medicare, Medicaid and CLIA Programs; Revision of the Clinical Laboratory Regulations for the Medicare, Medicaid, and Clinical Laboratory Improvement Act of 1967 Programs; Proposed Rule**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 74, 405, 416, 440, 482, 483, 488, and 493**

**[HSQ-146-P]**

# Medicare, Medicaid and CLIA Programs; Revision of the Clinical Laboratory Regulations for the Medicare, Medicaid, and Clinical Laboratories Improvement Act of 1967 Programs

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would revise regulations for laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA) programs. The revisions would recodify the regulations for these programs into a new Part 493 in order to simplify administration and unify the health and safety requirements for all programs as much as possible. We propose to have a single set of regulations for the three programs, with an additional subpart for the licensure procedures unique to the CLIA program.

We propose to revise the regulations to remove outdated, obsolete and redundant requirements, make provision for new technologies, place increased reliance on outcome measures of performance, and emphasize the responsibilities and duties of personnel rather than the formal credentialing requirements and detailed personnel standards in existing regulations. We would provide for new uniform proficiency testing standards and add requirements for additional specialties, such as cytogenetics.

**DATE:** To ensure consideration, comments must be received by November 3, 1988.

**ADDRESSES:** Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: HSQ-146-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please address a copy of comments on information collection requirements to: Allison Herron, Office of Information and Regulatory Affairs, Room 3208 New Executive Office Building, Washington, DC 20503.

In commenting, please refer to file code HSQ-146-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Pamela Renner, (301) 966-6818.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*Multiple Laboratory Activities*

Under the Medicare program, we pay for diagnostic services furnished to beneficiaries by a variety of laboratories. These include a laboratory that is "hospital-based" (that is, it is located in or it is under the supervision of a hospital), located in a physician's office, or is "independent" (not a hospital-based and not a rural health clinic, a group medical practice or a physician's office). By statute, the definition of a hospital contained in Section 1861(e) of the Social Security Act (the Act) extends Medicare participation to hospital laboratories. The paragraph following section 1861(s)(11) and sections 1861(s) (12) and (13) provide coverage for independent laboratory services.

Under the Clinical Laboratories Improvement Act of 1967 (CLIA), laboratories engaged in testing in interstate commerce must meet the requirements of Section 353 of the Public Health Service Act (42 U.S.C. 263a) in order to be licensed or remain licensed for testing in interstate commerce.

Medicaid, under the authority of Section 1902(a)(9)(C) of the Social Security Act, pays for services furnished only by laboratories that meet Medicare conditions for coverage. Because participation in the Medicaid program is governed by Medicare rules, henceforth when we refer to Medicare we are including Medicaid.

Various State laws govern licensure requirements for laboratories engaged in intrastate commerce. There are also Medicare-Medicaid requirements that laboratories must meet in terms of personnel qualifications and accuracy of test results. Under existing regulations, the laboratory requirements are integrated with other requirements applicable to the provider or supplier. Thus, conditions of participation for a hospital-based laboratory are found in the hospital conditions of participation in 42 CFR 482.27. Laboratories in skilled nursing facilities must meet the same conditions of participation as laboratories in hospitals. Conditions for coverage of independent laboratory services are found at 42 CFR 405.1310 to 405.1317. Except for laboratory services furnished by a physician, group medical practice, or rural health clinic or a few services furnished by an end-stage renal disease facility, which are not subject to our rules, laboratory services furnished by any entity other than a hospital or skilled nursing facility are governed by our rules concerning independent laboratories.

Regulations found at 42 CFR Part 74 implement Section 353 of CLIA.

A CLIA laboratory and any other entity identified as a laboratory under title XVIII of the Social Security Act that wishes to receive payment for its services from Medicare or Medicaid must meet Medicare's conditions of participation or conditions for coverage of services.

A laboratory that fails to meet the Medicare conditions for coverage for a given specialty is not "approved" for payment of services for that specialty. The loss of approval ("termination of approval") or failure to be approved initially results in no payment from Medicare or Medicaid for the services in the failed specialty. Failure to meet CLIA requirements for a category of services or a specific test results in the loss of licensure, or licensure is denied, for the category of services or that test. A laboratory may fail general conditions and fail to become approved for Medicare reimbursement for any specialty; similarly, a CLIA laboratory failing to meet general requirements would not be licensed for any tests.

*Federal Oversight Activities*

HCFA, under an interagency agreement and a memorandum of understanding (MOU) with the Public Health Service (PHS), has administrative responsibility for both the Medicare and CLIA programs. However, PHS (for the Food and Drug Administration (FDA)) has primary responsibility for the provision of technical advice on blood bank programs, including the revision of regulations concerning blood and blood products. An MOU in 1980 between HCFA and PHS (FDA) resulted in a reduction in the duplication of the inspection responsibilities in the area of blood banking and transfusion services and in a more coordinated follow-up on the transfusion related fatalities

reported to FDA. Before the establishment of HCFA in 1977 and the signing of an interagency agreement, PHS, through the Centers for Disease Control (CDC), was responsible for the CLIA program. The most recent MOU between HCFA and CDC further delineated responsibilities by specifying that HCFA is responsible for developing regulations that relate to Medicare and CLIA and that CDC is responsible for assisting HCFA in obtaining technical and scientific expertise.

Over the past few years, we have been working with CDC and FDA in reviewing the various departmental regulations concerning laboratories to determine the appropriate modifications and revisions. This process has included meetings of HCFA, FDA and CDC with various private-sector organizations, concerned members of the laboratory industry and the public, State health officials, and other Federal agencies. Our review indicated the need for revising the regulations because of a lack of uniformity in the various laboratory program requirements, obsolete or redundant requirements, and the numerous changes in technology and data management systems that have occurred since the regulations were originally written.

The Department commissioned a study on clinical laboratories (Final Report on Assessment of Clinical Laboratory Regulations (April 1986)) that recommended that HHS review the existing regulations to determine how to improve the assurance of quality laboratory testing and to achieve as much program uniformity as possible. We determined that the best approach to achieve these goals was to revise both the CLIA and Medicare/Medicaid regulations concerning laboratories, since the various regulations are interrelated.

*Legislation*

Section 4064 of the Omnibus Budget Reconciliation Act of 1987 (OBRA' 87), Pub. L. 100–203, enacted on December 22, 1987, amended the sentence following section 1861(s)(11) by requiring that physicians' offices that perform more than 5000 tests per year must meet conditions relating to the health and safety of individuals with respect for whom such tests are performed. This amendment applies to tests performed on or after January 1, 1990. We are not proposing regulations at this time to implement this legislation. However, we recognize that some of the standards in this proposed rule might also be applicable to tests run in physician office laboratories. Therefore, we ask commenters to inform us whether and on what basis they believe the standards we are proposing in this rule would be appropriate to apply to tests run in physician office laboratories.

*Consolidation of Regulations*

In this proposed rule we propose to consolidate all CLIA and Medicare-Medicaid laboratory requirements in a new 42 CFR Part 493. We propose to remove outdated and overly prescriptive requirements. We would require laboratories to comply with the health and safety standards of other Federal, State and local agencies and our decisions to approve or license laboratories would be affected by their compliance with these laws. We would also add provisions requiring facilities to develop and implement their own internal quality assurance programs, and we would also provide for increased reliance on outcome measures by using quality control and proficiency testing data in the assessment of laboratory performance.

Laboratory testing in both physicians' offices and rural health clinics that perform no tests on referral would not be subject to these revisions because both the Medicare and CLIA statutes (the sentence following § 1861(s)(11) of the Act and section 351(i) of the PHS Act, respectively) preclude the regulation at this time of physician office laboratories and of rural health clinics that perform tests only for their own patients. (As mentioned earlier, section 4064 of the Omnibus Budget Reconciliation Act of 1987 amended section 1861(s) of the Social Security Act to require the regulation of physician office laboratories performing more than 5000 tests a year effective January 1, 1990.)

## II. Purposes of the Proposed Revisions

We propose to recodify and revise existing laboratory regulations to accomplish several goals.

- We intend, as stated above, to consolidate current laboratory requirements into one new part to make these requirements uniform—to the extent possible—from one provider or supplier to another and between CLIA and Medicare. Thus, a laboratory seeking CLIA licensure or approval for payment for services to Medicare or Medicaid beneficiaries would look in only one part of the regulations. Similarly, a laboratory operated by a skilled nursing facility would not be governed by regulations in two separate parts (one for hospitals and one for independent laboratories) as it is currently.
- Another major goal of the proposed regulation is to have, to the extent possible, the same requirements for both CLIA and Medicare. HCFA is responsible for implementing the requirements for both CLIA and Medicare; approximately 1300 of the 1500 CLIA laboratories also participate in Medicare. One agency imposing different program requirements on the same laboratory is confusing. As the major difference between CLIA and Medicare is that CLIA laboratories engage in interstate commerce, there is no compelling reason (other than where the statute requires) for having dissimilar requirements. These regulations would require that a laboratory that is denied approval for Medicare or Medicaid coverage also be denied licensure under CLIA.

To this end, we are proposing to revise requirements relating to personnel, proficiency testing, quality control, the applicability of the regulations, compliance with State and local laws, recordkeeping and inspection.

- We intend to revise our personnel standards so that personnel requirements are not focused primarily on qualifications but on the accurate performance of laboraory tests. Current hospital laboratory personnel requirements are not based on credentials for individuals other than the laboratory director, but current independent laboratory requirements specify credentials for laboratory director, technical and general supervisors, technologists, cytotechnologists, technicians and technician trainees. We would combine hospital-based and independent laboratory requirements and establish consistent requirements for all laboratories.
- We would impose a new quality assurance program on all laboratories. This provision would require a laboratory to be responsible for the quality of its services and provide the laboratory with the flexibility to evaluate the competency of technical staff.
- We also intend to update current internal quality control requirements for each specialty and subspecialty, taking into consideration current and future technological advances. We propose to emphasize the importance of quality control and we would make failure of quality control in a specialty or subspeciality result in the loss of approval or licensure in that specialty or subspecialty.
- We intend to revise the current Medicare and CLIA proficiency testing

requirements considerably. We would require every laboratory to enroll and participate successfully in an approved proficiency testing program for each specialty and subspecialty for which there is an approved program and for which the laboratory seeks or has Medicare approval or CLIA licensure. The proficiency testing programs would have to meet our requirements, including grading criteria, in order to be considered an approved program for purposes of our regulations.

• We propose to update the licensure requirements applicable only to CLIA laboratories by eliminating overly-prescriptive requirements, such as those involved with annual license renewal.

• We propose to require Medicare laboratories to comply with Federal laws concerning health and safety and CLIA laboratories to comply with Federal, State and local laws concerning health and safety. Currently, a laboratory out of compliance with a State or local law may lose its Medicare approval but retain CLIA licensure, an inconsistency that this regulation would eliminate.

## III. Proposed Rule

*General Approach*

We propose to revise the standards for all laboratories participating in Medicare or Medicaid or licensed under CLIA to provide as much uniformity as possible within these programs. (For these proposed regulations we would not consider a physician or group of physicians that performs tests only on his, her, or their own patients as a laboratory; however, the OBRA's change concerning physicians performing 5000 tests does not distinguish between tests done on referral and those that are not.) There are certain limitations on the extent to which the regulations can be unified because of differences in the Medicare and CLIA statutes.

The new Part 493 would have ten subparts dealing with general provisions, administration, proficiency testing, proficiency testing programs, patient test management, quality control, personnel, quality assurance, inspection, and requirements unique to CLIA laboratories and CLIA licensure procedures. The regulations affecting other facilities that have requirements for laboratory services would be modified by cross-referring them to the new regulations.

Under the Medicare program, conditions of participation or for coverage are the requirements that an entity, such as a laboratory, must meet in order to participate and have tests paid for by Medicare or Medicaid. Each condition is usually comprised of one or more standards, which enumerate activities, outcomes, or other requirements that, upon evaluation by HCFA or a State survey agency under contract with HCFA, serve as the basis for determining that a particular condition has been satisfied. If the laboratory fails to comply with any condition for coverage, we initiate an adverse action to terminate the laboratory's participation in Medicare or revoke the laboratory's licensure under CLIA. The adverse action may be taken by terminating a laboratory's participation or licensure in a specialty or subspecialty if the deficiencies are limited to particular categories of testing or the laboratory's approval for all services may be terminated if the deficiencies are pervasive, affecting the overall services offered by the laboratory.

Unless otherwise identified in our regulations, standards refer to the condition immediately preceding them. Depending on the complexity of the subject matter a standard may be designated as a regulation section or subsection. A subordinate designation does not imply that some standards are more important than others.

### Subpart A—General Provisions

*1. Section 493.1, Basis and Scope*

In a new § 493.1, Basis and scope, we would indicate the sections of the laws that apply to the new part—sections 1861 (e) and (j), the sentence following section 1861(s)(11), sections 1861(s) (12) and (13) and 1902 of the Social Security Act and section 353 of the Public Health Service Act. We intend for this part to apply to all independent and hospital-based laboratories, intermediate care facilities for the mentally retarded, skilled nursing facilities and ambulatory surgical centers that perform laboratory services, rural health clinics that perform tests on referral, and physicians' offices that perform any tests on referral.

*2. Section 493.2, Definitions*

It is our practice to define terms whose meanings may not be clear from their context or where we apply an interpretation that may not be commonly used. This section would contain definitions that are applicable to both Medicare and CLIA. We would eliminate requirements of present regulations that we feel are unnecessarily prescriptive; hence, many definitions found in current §§ 405.1310 and 74.2 are no longer necessary.

• Independent laboratory—

Currently, "independent laboratory" is defined in § 405.1310(a). We propose to delete the definition of "independent laboratory" from the definition section because it placed emphasis on location and ownership, conditions no longer considered relevant under this proposal. We would remove the exception in the present definition for laboratories maintained by physicians that accept no more than 100 specimens on referral in any category during any calendar year because our experience has not shown that the definition is effective in assuring that physician office laboratories limit testing of specimens received on referral. Rather, we will continue to enforce rigorously our requirement that Medicare-approved laboratories refer tests only to approved laboratories. We would maintain the exception for physician office and rural health clinic laboratories that perform no tests on referral. Under this proposed rule these rural health clinics and physician office laboratories that perform any tests on referral would be required to meet these conditions for coverage of services of laboratories.

In addition, on January 1, 1990, the legislative provision requiring that physicians performing 5,000 or more tests per year must meet health and safety conditions will go into effect.

• Clinical Laboratory—

Currently, under § 405.1310 a clinical laboratory is a facility for the examination of the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for purpose of diagnosis, prevention or treatment of disease or assessment of a medical condition. Section 74.2(a) makes Part 74 applicable to laboratories engaged in the laboratory examination of, or other laboratory procedures relating to, specimens solicited or accepted in interstate commerce for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment, or the assessment of the health, of human beings.

Our proposed definition of a clinical laboratory would remove the word "clinical". It does not add anything to the definition and may create confusion, since we also pay for the services of independent laboratories, hospital laboratories, etc., which perform anatomic services, which are generally not considered part of clinical laboratory services. In addition, our definition would differ from that currently in § 405.1310(b) and § 74.2(a) since we would include in the

examination of material derived from the human body screening tests and any test where a measurement is made on an analyte (test) or where a procedure is performed.

We would make this modification because, in the case of CLIA laboratories, there have been questions concerning the applicability of CLIA to certain screening procedures, such as drug testing or HIV (AIDS) testing. Some people believe that these tests are not subject to regulation because they would indicate a drug level or presence of HIV virus and are not a diagnosis or an assessment of health and thus subject to regulation. However, these tests are currently reimbursed under Medicare and Medicaid and are considered test procedures for health assessment. Therefore, in moving the definition in § 74.2(a) and § 405.1310(b) to new § 493.2 we would expand it to provide uniformity between Medicare and CLIA and to clarify the types of procedures covered by the regulations.

We would not consider as laboratories those facilities that only collect specimens and do not perform testing. We also would not consider mailing services as laboratories if they just send out reports, the testing laboratory assumes responsibility for the report, and the name and address of the testing laboratory is on the report.

• Proficiency testing—

We would not include a definition of proficiency testing because the two proposed subparts, C and D, include extensive discussion of proficiency testing. We propose to provide criteria for State and private-sector programs to meet in order to be approved for use in the Medicare and CLIA programs. Laboratories would have to enroll in these approved programs to meet DHHS' requirements for successful participation in a proficiency testing program for both CLIA and Medicare.

• Personnel requirements—

Terms currently contained in paragraphs (d), (e), (g), (h), (i) and (k) in § 405.1310 and in § 74.1(c) would not appear in our proposed rule. Therefore, these definitions are no longer required.

• Radiobioassay and histocompatibility—

We would not include the current definitions for radiobioassay and histocompatibility in § 405.1310 (l) and (m) and for radiobioassay in § 74.1(i) since these terms are cleary explained elsewhere in the proposed regulations.

• Authorized person—

We would add a definition of "authorized person" as the person authorized to order and receive tests. Under Medicare that person is a physician as defined in section 1861(r) of the Act. We would permit other individuals, including patients, to be "authorized persons" when State law and Medicaid allows. This would reduce the conflict between Federal and State law over who can order and receive tests and would defer to the States for Medicaid purposes as well as to the State where Federal funding under Medicare or Medicaid is not involved.

• Consultation—

We would not include two definitions currently contained in § 405.1310. "Consultation" and "Secretary" do not appear in proposed new Part 493. (We use, instead of "Secretary," "HHS," which is defined in Part 400.)

• Miscellaneous—

+ "Referee laboratory", which is a laboratory used for comparison of proficiency test results, would be defined as it is currently in § 74.1(j).

+ Reference laboratory", currently defined in Part 74.1(k), would be deleted because the proposed proficiency testing program does not include the term "reference laboratory" in defining grading criteria.

+ We would explain what "CLIA" stands for.

+ We would define "accredited laboratory" based on current § 74.1(c), including the current definition of "approved accreditation body" that is now in § 74.1(e)

+ Accredited institution," "director," "health insurance program," and "physician" now defined in Part 74 would be excluded from our proposed rule as duplicative or unnecessary. "Specimen" would be defined as it appears in current § 405.1310 and § 74.1(b).

+ We would define "challenge" and "target value," which are related to the proficiency testing requirements.

**Subpart B—Administration**

*Section 493.11 Condition—Compliance With Federal, State and Local Laws*

Present Medicare requirements in § 405.1311 relating to compliance with State and local laws do not include compliance with Federal laws related to health and safety nor do current requirements under CLIA. We do not believe that a laboratory should be certified if it is not in compliance with other Federal regulations concerning patient health and safety. New § 493.11 would include this requirement.

The requirement to comply with Federal, State and local laws would also apply to CLIA laboratories. This requirement is more stringent that CLIA requirements currently in § 74.30, which requires compliance with State laws for personnel standards only, by cross-referring to the Medicare standards. The inclusion of these provisions for CLIA laboratories would eliminate the requirement for a State survey agency to inspect the laboratory for CLIA licensure purposes when the laboratory cannot operate in the State because of noncompliance with State laws. In the case of laboratories participating in both the Medicare and CLIA programs, which are the majority of interstate laboratories, unifying the requirements to assure compliance with State and local laws would eliminate the possibility of laboratories being acceptable under CLIA and unacceptable in the Medicare program for the same test procedures.

We would require compliance with the existing regulatory programs covered by State and local laws for fire safety and with State, Federal and local laws on environment and health-related matters.

Proposed § 493.11 would not include the requirements in present § 405.1316(c) concerning who may draw specimens from a patient, as this issue is governed by State law if such requirements exist.

**Subpart C—Participation in Proficiency Testing**

Present regulations at 42 CFR 405.1314(a) and Part 74, Subpart E require laboratories to participate in proficiency testing (PT) programs. We would greatly expand these requirements. A new Subpart C would contain the general requirements a laboratory must meet for PT and would elevate current requirements for enrollment and successful participation to the condition level.

The new PT requirements would emphasize the increased importance attached to obtaining a passing score on samples with known contents as an outcome measure of the quality of testing in laboratories. CDC, under an Interagency Agreement with HCFA, established a Task Force that developed proposed PT requirements in response to our request for a PT program that could be applied to both Medicare and CLIA laboratories.

Although specific requirements for a PT program are included for CLIA laboratories in 42 CFR Part 74, minimally acceptable requirements for Medicare-approved laboratories have never been described by HHS in terms of program content, challenge, frequency of PT shipments or testing events and grading criteria for individual analytes and specialties and subspecialties. As a consequence, State and private organizations have offered PT programs

that have been approved for Medicare purposes. These programs vary considerably in degree of challenge and grading criteria from each other and from the existing CLIA PT requirements.

Our proposed regulatory revisions would focus on assessing the quality of laboratory tests that are commonly performed or have results critical to the patient's health (e.g., an incorrect result has a moderate to high risk of death), or both. In the future we hope to include additional tests in areas such as histopathology, cytogenetics and drug abuse testing. We also propose to exclude from the proposed PT program those test areas for which no performance problems are evident, such as routine urinalysis, and to continue to reevaluate the necessity for PT for other test areas in the future.

The regulations would include a PT grading system by specialty and subspecialty. The current CLIA requirements in 42 CFR Part 74 include a composite score for a few specialty areas but do not include a scoring system for most areas that would provide for a determination to be made of the overall performance of the laboratory in each specialty and subspecialty.

The proposed PT requirements would apply to selected tests, named in the regulations. It is neither possible nor currently feasible to evaluate every test a laboratory can perform by PT, since many tests are not available in PT programs presently offered. The tests and analytes we selected for challenge are representative of the laboratory's ability to perform in each specialty and subspecialty.

These proposed regulations would make adverse actions based on unsuccessful PT performances consistent for laboratories approved under Medicare and those licensed under CLIA.

The Medicare program currently requires successful participation in a PT program in each specialty and subspecialty. We do not currently provide States with criteria for determining successful participation for specialties and subspecialties. Hence, under Medicare, States may establish individual protocols for evaluating PT performance and these evaluations vary from State to State.

Under CLIA, HCFA may take an adverse action against a laboratory by removing licensure for individual tests. However, current CLIA PT regulations do not provide for grading PT performance by specialty or subspecialty except for bacteriology, mycology and parasitology, which are not graded by test but are graded by overall subspecialties.

Therefore, with the exception of the subspecialties of bacteriology, mycology and parasitology, adverse actions proceed test by test as unsatisfactory performance occurs with no provisions for removing licensure by specialty or subspecialty even though the laboratory may be performing related methodologies in the same specialty or subspecialty. Moreover, a laboratory could fail all PT testing in a particular specialty or subspecialty and lose its license for those tests but would still be allowed to perform related testing in the specialty or subspecialty because PT testing is not offered for all tests categorized in a specialty or subspecialty.

In the Medicare program, we approve and disapprove independent laboratories by specialties and subspecialties rather than by individual tests. The Medicare carrier is notified of the laboratory's approval by specialty and subspecialty, not by test(s) performed. It is not feasible under Medicare to terminate approval for individual tests since thousands of tests are involved. Monitoring laboratories' continuous changes in approval status by individual tests is not effective since test offerings change frequently and updates to the States, regions and carriers would always lag behind changes in laboratory services.

We have decided that the development of a specialty and subspecialty grading system is the most reasonable and appropriate mechanism to monitor quality of testing. Since our intent is to make the Medicare and CLIA programs as consistent as possible and to provide an overall assurance of the quality, we propose to require identical mechanisms of assessing PT performance for CLIA and Medicare laboratories. We propose a unified assessment to be made by the Medicare State survey agency or HHS in determining the licensure and Medicare approval status of a laboratory by specialty and subspecialty. The State survey agencies would receive a single set of PT data and would consistently determine compliance for the two programs at the same time. A laboratory failing the PT requirements and the enhanced PT requirements would lose Medicare approval for the specialty or subspecialty. Similarly, a CLIA licensed laboratory would be notified of any PT failure and, if a hearing is not requested, the license would be revoked for the specialty or subspecialty.

Currently, a laboratory may enroll in one or more PT programs to satisfy Medicare requirements and a different program to satisfy requirements under CLIA. The proposed modification of the regulation would require laboratories to specify the PT program it is using to meet the Medicare or CLIA requirements (or both). It would not preclude a State or private-sector accreditation program from having different standards for its own program purposes but it would require that laboratories be enrolled and successfully participate in a PT program that meets the Federal criteria.

We would introduce requirements for an enhanced PT program in § 493.25, Condition: Enhanced proficiency testing. If a laboratory were to perform unsuccessfully in PT, it would be able to request enrollment in an enhanced PT program within 15 days of notification of unsuccessful performance in order to prevent immediate termination for that failed specialty or subspecialty. While the laboratory is participating in the enhanced PT program, Medicare approval and CLIA licensure, as applicable, for the tests performed under the specialty or subspecialty would continue. If the laboratory also fails the enhanced PT, we would initiate termination of Medicare approval or revocation of CLIA licensure, as applicable, for the failed specialty or subspecialty. By instituting the enhanced PT program, we would not be penalizing a laboratory for one set of aberrant results. The laboratory during this period of participation in enhanced PT would be able to undertake any necessary corrective action while also demonstrating sustained successful performance in the failed specialty or subspecialty.

In the new section on enhanced PT (§ 493.25), we propose that laboratories that fail PT must successfully participate in an enhanced PT program for three consecutive shipments, testing events or combination thereof in the failed specialty or subspecialty in order to prevent immediate termination of approval or licensure for the specialty or subspecialty. The enhanced PT program would consist of more specimens per shipment or testing event than what is required in the routine PT and may be at a frequency greater than quarterly. Enhanced PT may consist of challenges to cover the overall specialty or subspecialty or it may consist of individual analyte challenges, depending upon the laboratory's PT failure. If laboratory performance falls below the acceptable level after one, two or three shipments or testing events of enhanced PT, approval of the applicable specialty or subspecialty would be terminated, licensure

revocation proceedings instituted, or both. If a laboratory's Medicare participation were terminated or its CLIA license were revoked as a result of a PT failure, the laboratory's participation or licensure for the applicable specialty or subspecialty could not be reinstated until the laboratory demonstrated sustained successful performance in three consecutive shipments or testing events (or combination) of enhanced PT. The proposed acceptable levels for enhanced PT (80 percent of results within limits for categories of testing; and for individual analysis: 5 of 6 results for one shipment, 10 of 12 for two shipments and 15 of 18 for three shipments) are based on statistical calculations and intended to detect substandard performance without falsely identifying competent laboratories. For these calculations, a competent laboratory is assumed to have less than a one percent chance of exceeding the acceptable limits established for each analyte. We ask for comments regarding other alternative enhanced PT schemes, for example, the desirability of requiring satisfactory scores on five of six results for each of two shipments, rather than requiring satisfactory scores on five of six results for each of three shipments. We seek comments on the ability of laboratories, including physician office laboratories, to meet these criteria, and the adequacy of these criteria for protecting health and safety.

We are not considering enhanced PT for cytology at this time but are instead proposing different remedial actions a laboratory failing PT in cytology would have to take to remain approved or licensed. See "Remedial actions for cytology" below.

The revised regulations would establish an evaluation system based on successful participation for each testing event or shipment of PT at approximately quarterly intervals. Under current Medicare practice we disapprove a facility if three out of four shipment scores are unsatisfactory. Currently, if a laboratory has three unsatisfactory shipments out of four, it takes over a year to initiate a termination. Under the proposed revision we could decrease this time interval to as short as two months if the laboratory does not enroll in enhanced PT. (The PT program has one month to notify us of PT results; we notify the laboratory of its loss of approval within one month.)

The proposal for revision of the PT requirements also would include a provision for action against a laboratory when there is unsatisfactory performance for the same single analyte in any PT shipment or testing event or when there is unsatisfactory performance for one of two challenges for the same analyte in each of two consecutive shipments or testing events (or combination). We would terminate approval of the entire specialty or subspecialty in which the failed analyte is categorized unless the laboratory requests enrollment in the enhanced PT program, since under the Medicare program there is no mechanism for taking action to deny payment for a single test.

Since the tests that we have selected for participation in the PT program are critical to patient health and are representative of the universe of tests frequently performed in the specialty or subspecialty, poor performance in even one test, if uncorrected, is indicative of more widespread problems in testing, management and proper quality assurance procedures. If a laboratory performs unsatisfactorily on the individual analytes selected for PT and the same analytes in the enhanced PT program, we would take termination action against the laboratory within 15 days of notification by the PT program to protect the health and safety of the individuals being tested.

We would also institute an overall PT evaluation by specialty in chemistry, immunology and microbiology. Our objective is to assess overall performance to the extent possible. Thus, poor performance in one subspecialty would result in the laboratory failing the specialty as well and the laboratory would be unable to obtain approval for any of the other subspecialties in the same category. The laboratory would therefore have an additional incentive to participate successfully in PT.

*Laboratory Requirements*

- General

In new § 493.21, Condition: Enrollment and testing of samples, we would have two standards: (1) If a PT program has been approved under new Subpart D for a specialty or subspecialty for which a laboratory seeks or has approval or licensure, a laboratory must enroll in an approved PT program for each specialty and subspecialty for which it seeks approval (Medicare or Medicaid) or licensure (CLIA); and (2) the laboratory must test or examine the PT samples in the laboratory's routine manner.

This section would require the laboratory to notify HHS of the PT program it has chosen; it would be able to designate no more than one PT program per specialty (in specialties without subspecialties) or subspecialty for the purposes of meeting the PT enrollment requirements. A laboratory could change its selection of PT programs after four quarterly shipments but would have to notify us. The laboratory would have to agree to allow the PT program to release any data to us that we need to evaluate the laboratory's performance.

Section 493.21 would contain a standard concerning how the laboratory is to run the PT samples it receives from the PT program. The laboratory would have to run the samples with its regular work and by personnel who ordinarily perform the laboratory's testing; it could not run tests in replicate unless it usually does so; and it could not send the samples to another laboratory for analysis.

In § 493.22, Condition: Successful participation, a laboratory that does not successfully participate in PT for a given specialty and subspecialty for which it seeks approval for Medicare or Medicaid participation or licensure under CLIA may request enrollment in an enhanced PT program to prevent immediate termination of approval or institution of license revocation proceedings for the failure specialty or subspecialty. If we institute an enhanced PT program, good laboratories would not be penalized for a single PT failure since the laboratory would be afforded the opportunity to demonstrate sustained successful PT performance through enrollment in the enhanced PT program. The enhanced PT program would identify marginal and poorly performing laboratories (those that cannot demonstrate sustained successful performance) for expeditious adverse action.

In § 493.24, Reinstatement after failure to participate successfully, we propose that a laboratory failing PT in any specialty or subspecialty must demonstrate successful performance for three consecutive shipments or testing events (or combination) of enhanced PT in that failed specialty or subspecialty before it may discontinue enhanced PT, or, if it has been terminated, before it can be reinstated in the specialty or subspecialty.

When a laboratory performs poorly over an extended period of time, it should not be allowed back into the program until it has demonstrated its ability to perform successfully for a sufficient length of time to assure that it has not made just a temporary improvement in its testing performance. Therefore, we determined that approval for the failed specialty or subspecialty would be terminated for a

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period of no less than six months. Reinstatement of approval in the specialty or subspecialty that had been the subject of an adverse action would not be considered until the laboratory has demonstrated successful performance over three consecutive enhanced PT shipments or testing events (or combination). We are extending the successful performance period for reinstatement from two shipments to three shipments or testing events to assure that the laboratory demonstrates sustained improvement.

• Proficiency Testing by Specialty and Subspecialty

+ General

Sections 493.31 through 493.63 would contain the criteria for acceptable performance a laboratory would have to meet to participate successfully in a PT program for each specialty and subspecialty. The specialties and subspecialties named in these proposed regulations would be microbiology (bacteriology, mycobacteriology, mycology, and parasitology), diagnostic immunology (syphilis serology and general immunology), chemistry (routine chemistry, endocrinology, and toxicology), hematology, pathology (including cytology for gynecologic examinations) and immunohematology.

As stated earlier, PT would consist of four annual shipments from the PT program for each specialty and subspecialty. In addition, we are considering conducting onsite PT, through the State survey agencies. (All cytology PT might be conducted onsite; see proposal below.)

Whenever possible, we determined a composite performance score for specialties and subspecialties of quantitative testing after evaluating historical accreditation program PT performance data from 1986. We consider a grade of 80% for an overall specialty or subspecialty of testing to be a reasonable, achievable level of performance. In immunohematology in which even one error may have serious and immediate consequences, we would require a performance level of 100% for subspecialties of testing.

The 80% composite score for specialties and subspecialties of service together with the evaluation of analyte performance, which focuses on identifying analyte testing problems, would provide the basis for assessing laboratory performance to permit detection of laboratories whose results are consistently marginal or worse, while not penalizing a laboratory that rarely produces marginal results. The unique feature of including the enhanced PT program, although not currently offered by PT programs, would provide an improved measure for separating a rare single laboratory error from a true laboratory performance problem ensuring that poor performers are recognized as such and that good performers retain Medicare approval or CLIA licensure (or both).

After we have implemented the PT program and collected and examined PT performance data, we anticipate that additional refinements in the PT program grading criteria would be necessary.

Whenever changes are necessary, we would expedite the rulemaking process to ensure the most rapid implementation in order to have dynamic requirements to respond timely to new testing procedures and methodologies as well as refinements in performance and evaluation criteria.

We would publish a notice in the **Federal Register** before revising PT program requirements.

+ Cytology

While we recognize especially the importance of developing a national consistent standard for a PT program for cytology, we also acknowledge the complexity and uniqueness of this area of laboratory testing. Cytology PT differs from most other PT programs because (1) cytology testing remains a manual process that is totally dependent upon the judgment of the person viewing the specimen; (2) a cytology PT program tests the accuracy of each individual engaged in the examination of cytologic preparations more than the overall performance of the laboratory; and (3) there is a substantial degree of difficulty in obtaining cytology specimens for PT.

Currently, most PT programs do not test cytology services. As a result, we do not have as much information as in other areas from which to assess cytology PT. We are therefore proposing three options (onsite testing, mailed shipments of specimens, and a combination) for interested parties to comment upon. All options include ranges for accuracy rates, number of challenges per testing event and number of testing events per year. We would appreciate comments concerning which accuracy rate in each range commenters prefer (and why) as well as which PT option is preferred and why.

We are proposing at this time to require cytological PT only for gynecologic examinations; thus we are proposing standards at this time for a national PT program in cytology for Pap smears only. We are proposing that Cytology: Gynecologic examinations be a subspecialty under the specialty of pathology. Other tests, such as fine needle aspiration, breast fluid, etc., which are non-gynecologic cytology tests, constitute a small portion of cytology tests, and all cases are ultimately reviewed by qualified pathologists. Therefore, we are not proposing standards for a PT program for non-gynecological cytology testing at this time.

We considered numerous approaches to cytology PT, some of which were found to be impractical as the basis for a national standard for PT in cytology. For example, we considered "blind" PT as one approach. In blind PT, samples are submitted through cooperative clients (physicians) to the laboratory. These slides are theoretically undetected as PT test cases because they resemble routine specimens received by the laboratory. We decided this approach would not be practical to use on a national basis because of the difficulty in obtaining enough specimens as well as the cooperation of physicians to distribute PT samples to the laboratories and assuring that these specimens are, in actuality, not easily identified as PT challenges. While we agree that a true "blind" PT program is a valuable methodology, we could not implement such a complex program on a national basis because of the logistics. Therefore, we propose to include the "blind" submittal of known specimens as an option for the laboratory to use as part of its own internal quality assurance program to evaluate cytotechnologist performance and to document the quality of laboratory performance (See Subpart H—Quality Assurance).

We also considered a retrospective PT program approach and likewise found it to be impractical to implement on a large scale. This system involves the selection of previously screened slides for screening by either exchanging slides with another laboratory as a "round robin" scheme, rescreening one laboratory's cytology cases by a reference laboratory with recognized expertise in cytology, or rescreening by a panel of cytology experts in a State. The slides selected would have to be representative of the laboratory's workload and would have to include some abnormal specimens. Since managing a retrospective program would be highly labor-intensive and complicated to conduct and maintain, and criteria do not exist for selecting the laboratories which would have final responsibility for determining correctness of diagnosis, we have also decided to propose including the retrospective PT approach as an option

for the laboratory to use as part of its own quality assurance program. Retrospective PT may be used to evaluate individual cytotechnologist performance and overall laboratory performance and as one of several approaches for remedial action if any cytotechnologists fail the national standards for the cytology PT program ultimately selected.

– Options

We would like to develop a program that will be feasible and practical and that will serve as a strong measure of performance evaluation in cytology testing. We are seeking public comment on three possible approaches to cytology PT.

1. The first approach to cytology PT standards about which we seek comment involves an "onsite" methodology. This system involves taking actual PT slides to the laboratory or testing the individuals engaged in examination of cytologic preparations at an offsite testing center and directly observing the individuals as they review the slides. This system, to be conducted by the State survey agency, would allow us to test all individuals in the laboratory who are involved in the examination of slides and has the advantage of permitting immediate feedback if a performance problem is detected.

Disadvantages are: slides are pre-stained and may differ from the laboratory's usual staining quality; positives may sometimes be present in greater frequency than would ordinarily be found in the laboratory's regular screening workload; and a set time limit for review per slide, imposed to expedite the testing process, may be discomforting to some examinees and may not reflect the conditions under which cytotechnologists routinely examine slides. In addition, though the onsite PT methodology is practical as a standard for a national PT program it is expensive to operate, especially in terms of the personnel needed to transport the slides and conduct the PT program.

We are proposing that satisfactory performance for each individual would be based on a 80 to 100 percent correct response on each PT survey and over the span of three testing events. Successful performance for the laboratory, which includes all individuals engaged in slide examination, would also be based on 80 to 100 percent correct responses on each testing event. A correct response would be an 80 percent or greater agreement of participants. We are interested in receiving comments regarding instances when there is not agreement of a minimum 80% of the response or when a graded response may be close to the consensus but not exact.

2. The second approach to cytology PT standards about which we seek comment involves mailed specimens. This system involves mailing sets of slides or photographs or interactive video discs that represent a spectrum of possible cytologic findings. Each individual in the laboratory who is engaged in slide examination analyzes the set of samples and reports his or her results in a standardized format.

Problems with this approach include slide breakage in transit, poor reproducibility of colors in photographs and variations in slide staining. However, video discs may offer solutions to these problems. Overall, this option would tend to reflect the best rather than the usual performance by individual and laboratory.

We are proposing the same scoring system for this option as for the "onsite" option, but hope to receive comments on more stringent grading criteria.

3. The third approach is simply a combination of onsite and mailed cytology PT. We are seeking detailed comments on how we could set standards for a cytology PT program that would contain features of both onsite and mailed PT.

+ Remedial Actions for Cytology (Gynecologic Preparations Only)

The principal purpose of any PT program is to identify areas of performance that need correction or improvement and to ensure that good performance is maintained over time. Because correct cytology performance involves the skill and judgment of individuals viewing slide preparations (as opposed to a machine making correct analyses of fluids, for example) and because the results are especially critical to diagnosis and treatment, we are proposing different remedial actions that would be taken when individuals fail the cytology PT program.

We are proposing remedial actions applicable to individuals who do not demonstrate satisfactory performance and penalties applicable to laboratories that fail to maintain overall successful performance in their cytology testing programs. The remedial actions would be the same for any of the cytology PT options: mailed specimens, onsite testing and a combination of the two.

We are inviting comments on this proposal, especially in terms of ways we can improve the process of remedial actions when individuals fail the PT program.

1. Remedial Actions Concerning Individuals

The first time an individual fails any part of a cytology PT survey, the laboratory would have to provide the individual with immediate remedial training and education in the area of the failure and a review in those areas passed. If the individual's score is 50 percent or less in each of two testing events, we would require a more stringent form of remedial action up to prohibiting the individual from reporting negative slides until the individual has been retrained and demonstrates necessary accuracy by scoring 100 percent on two consecutive PT testing events. If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail any PT testing event, all individuals engaged in the examination of slides would have to undergo additional training and education in addition to that required in Subpart G (personnel requirements) *and* the laboratory would have to participate in a retrospective PT program until the laboratory achieves an overall score of 95 percent or more correct responses over three subsequent consecutive PT testing events. The 95 percent score for the laboratory represents the composite score of all cytotechnologists

2. Fiscal Penalties for Laboratories

We are proposing that if the laboratory fails to take required remedial actions (as described above) when an individual fails the PT program or if either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail two or more of PT testing events, we would terminate the laboratory's Medicare approval for the subspecialty of gynecologic examinations, revoke its CLIA licensure, or both as applicable.

**Subpart D—Proficiency Testing Programs**

A new Subpart D would contain the requirements a PT program would have to meet before a laboratory could use it to meet the PT requirements of Subpart C. Subpart D would indicate for each specialty and subspecialty (a) program content and frequency of challenge; (b) the number of challenges per quarter; and (c) how to evaluate analytes or test performance.

Before 1986 CDC operated a PT program for CLIA licensed laboratories. The revised regulations would not include a federally-operated PT program. We would depend on private-sector and State-operated programs to provide the PT. We would evaluate the

programs against the standards established in these regulations in Subpart D.

Ideally, the criteria for acceptable laboratory performance should be based on clinical usefulness of test results; however, there are no generally agreed upon medical usefulness criteria. In the absence of medical criteria for acceptable performance, we would define acceptable performance using fixed criteria, when appropriate, and statistical limits elsewhere. This approach corresponds to current laboratory performance evaluations based on the state of the practice. We would use a three standard deviation limit to identify laboratories requiring regulatory intervention; this is similar to laboratory internal quality control systems that currently use a three standard deviation limit to identify serious problems requiring remedial action. We are interested, however, in receiving comments on the marginal effectiveness of using two standard deviations for any analyte.

Basically, programs wishing to qualify as a PT program under these regulations would have to offer a minimum of at least two challenges per quarter for each test or analyte for the subspecialities included in the specialities of diagnostic immunology, chemistry, hematology, and immunohematology and six challenges per quarter for the specialty of microbiology, which includes the subspecialities of bacteriology, mycology, mycobacteriology and parasitology. For the enhanced PT program, we would require six challenges per shipment for each test or analyte for the subspecialties, include in the specialties of diagnostic immunology, chemistry, hematology and immunohematology and twelve challenges per shipment for the specialty of microbiology. Where appropriate, the regulations would describe the different types of services a laboratory could perform for that specialty or subspecialty. The laboratory would be expected to perform tests on PT samples to the same extent that testing is performed on patient samples.

Subpart D would describe criteria for acceptable performance. The criteria for grading was developed through an evaluation of the current criteria in use by States and private sector programs and an evaluation of data CDC had for the performance characteristics of laboratories.

A PT program would evaluate a laboratory in a manner that reflects the scope and level of services the laboratory offers as oppposed to the current CLIA PT requirements that specify that laboratories enroll only in programs of fixed size, regardless of their scope of services.

After the PT program has been in operation for two years we would consider revisions to the program based on the performance of laboratories. We would solicit comments from all concerned groups regarding the need to modify the PT program requirements. Changes in the PT program might be made to incorporate new analytes, tests, or organisms of clinical significance, to delete obsolete or well-performed tests, or to improve the evaluation scheme based on new data describing actual distributions of test scores, and the relationship of test errors to physician practices and patient outcomes. When we have decided to include new challenges or evaluation criteria in future PT, we would expect these changes to be provided by approved PT programs within two years of our approval and announcement. We would review the standards for PT on a regular basis and make such changes as are necessary and provide notice of these changes to all affected.

The requirements for program content and number of challenges per quarter would be implemented through an expedited rulemaking process to enable us to drop or add tests timely to reflect current technologies.

- Cytology (Gynecologic Examinations)

As noted above in the discussion concerning Subpart C, we are proposing three options for cytology. For all options, we are proposing one to four PT testing events per year, with five to 12 slide preparations per individual per testing event. We are proposing that the type of challenges include "normals," infectious agents, benign reactive processes, pre-malignant processes, and malignant processes.

We would require the program to provide previously "referenced" slides: "positive" slides would have been confirmed by tissue biopsy and "negative" slides would have been confirmed by 95 percent consensus agreement.

**Subpart E—Patient test management**

We would establish a new subpart E and a new condition—§ 493.201, Condition—Patient test management. This condition would provide a uniform set of requirements for all laboratories (CLIA and Medicare) for specimen submission and requisition and would more clearly define the actual records that must be kept and why they are required.

The proposed requirement would be based on current Medicare requirements dealing with clinical laboratory management (§§ 405.1316 (d), (e), (f), and (g)), quality control (405.1317(a)(7)), and CLIA laboratory requirements dealing with reports and records (§§ 74.53 and 74.54).

The existing requirements would be modified to allow for electronic requisition of laboratory tests to keep pace with modern technolgy and the advances that allow for computer systems to interact directly. We expect these computer systems to be provided with security systems and "keys" to assure that only authorized persons can order tests. In addition, we would add to the specimen requisition requirement for cytology examinations, in § 493.201(b)(5), the provision that pertinent clinical information necessary for accurate diagnosis of cytology specimens must be provided to the laboratory, including for Pap smear testing, an indication of whether the patient is at risk for developing cervical cancer or its precursors.

The existing requirement for retention of reports in pathology would be increased from two years to ten years because a two-year time period is insufficient to assure adequate patient tracking for cancer screening, diagnosis and follow up.

The proposed standard on specimen records would indicate that the critical requirement is for the laboratory to have a system that ensures identification of the specimen being treated through all stages of testing. The laboratory would not be required to maintain the name of patients as long as there is some mechanism in place to assure specimen identification and enable results to be reported to the person ordering or requiring the test. The regulations would require patient confidentially to be maintained but still provide for the correct identification and reporting of the specimen results. However, the Medicare carriers and intermediaries would continue to be able to require names or other identifiers in assuring payment of a claim.

The proposed rule would remove the restrictive standards under Medicare that only persons authorized under the Medicare program to request or receive results could obtain such results even if they were not seeking Medicare payment. Several State laws permit individuals to order and obtain their own test results and this conflicts with the Medicare regulations. The proposed modification would allow flexibility for those tests performed on non-Medicare beneficiaries, provided State laws have no restrictions on who can order tests.

The laboratory would have to determine or verify normal ranges used for reporting patient test results through validation studies required in § 493.235.

The new section also would require the laboratory to make available to clients, information on factors that may affect the interpretation of test results (if they are known), including interferences, detection limits, sensitivities, specificity, accuracy, precision and validity of these test mesaurements. In addition, laboratories would be required to notify clients whenever changes occur in testing methodology that affects test results or interpretation of test results. This would enable the individual requesting and receiving test results to evaluate the laboratory's quality and any limitations on the information they receive. This is the type of information that any laboratory should know in order to perform and report tests and is obtained through its quality control and quality assurance program and, in many instances, is available from the manufacturers of the test systems.

We would add a requirement on test referral (standard (e)) to indicate that each laboratory performing tests either directly or on referral must have its name and other identifier on the report to the individual requesting or receiving test results so that the individual receiving the report will know which laboratory actually performed the test. The current regulations are not clear on whether all testing facilities must be indicated on the report so that it is possible that multiple referrals do not include the name of all testing facilities on the report.

Under the proposed requirements the laboratory must maintain a legally reproduced copy, rather than an exact duplicate as is required by current § 405.1316(g), to make these regulations consistent with other Medicare recordkeeping requirements and to allow for the use of new technologies in the storage and transmittal of data.

**Subpart F—Quality Control**

Existing quality control requirements are in § 405.1317 and Part 74, Subpart C. We would revise and move them to Part 493 and form separate conditions. New § 493.221, Condition; General quality control, would be applicable to all the specialities and subspecialties. New § 493.241 would specify that failure to meet the condition unique to a particular specialty or subspecialty would result in the loss of Medicare approval or CLIA licensure (or both) of that specialty or subspecialty.

The revision of these requlations would reflect changes in technology as well as clarify the specific requirements for each standard. The clarifications would reflect the current Medicare guidelines and would more explicitly inform the laboratories of their responsibilities under the regulations.

1. General Quality Control (§ 493.221)

The general quality control regulations in §§405.1317(a) and 74.20 would be combined into one uniform condition as § 493.221. We have made the general quality control a condition to indicate its importance. We would divide the requirements in current §§ 405.1317(a)(1) and 74.20(a) into several standards in new sections in order to define more clearly what the requirements are and to separate the various requirements in the current regulatory factor into several distinct and related categories so that each is equal in importance.

New § 493.221 would elaborate on what such items as "adequacy of equipment" and "test systems" consist of beyond descriptions in current § 405.1317(a).

We would add a requirement that the laboratory specify the procedure the staff is to follow in case quality control results or patterns do not follow the expected patterns established by the laboratory. There would also be procedures for reporting patient results when test method limitations are exceeded. These are critical elements in the performance and reporting of test results and are necessary to assure that accurate and reliable results are obtained and reported. Since these factors are essential, the laboratory staff should be aware of these procedures and the quality assurance program (described in § 493.451) would assure that these procedures are in place and followed.

We would also require the laboratory to verify the validity of its procedures. This requirement is contained in the current regulations in § 405.1317(a)(1) but we would spell out in detail what constitutes the validation of each test method.

We would also add a requirement that the laboratory have a mechanism in place to verify the accuracy and reliability of data management and reporting systems to assure that the data is accurately analyzed, processed and reported. This is a critical requirement since no matter how accurate and precise a method is, data not analyzed properly or reported correctly could result in incorrect patient diagnosis or treatment. We also would revise the regulations to indicate the importance of detecting errors in test results and reporting and promptly correcting these errors since the detection of the errors is a critical element in assuring accurate and reliable test results.

We would add a requirement under the general quality control condition for the frequency of running quality control materials. The frequencies are currently indicated in § 405.1317(b). We would place the requirement in the general section, rather than with each specialty, to provide flexibility and eliminate the arbitrary classification of procedures to match the placement of certain quality control requirements in a specialty area. This revision would also reflect the changes in laboratory technology. We would also add provisions to these regulations to allow for lesser frequencies as changes in technology lead to methodological improvements.

Our new requirements on equipment maintenance and function checks would indicate that the laboratory must define its own program based on the manufacturer's instructions. This is a revision from current requirements at § 405.1317(a). The laboratory would have to demonstrate that its procedures produce accurate and reliable test results. We have decided not to specify detailed requirements for these procedures in the regulations; we would allow flexibility and the utilization of the manufacturer's protocols. We are seeking comment on the appropriateness of relying on manufacturers' protocols. The new requirement would also provide for technological change. We would not specify performance characteristics but would specify that the laboratory must determine its own performance characteristics based on validation studies and must adhere to these established performance characteristics. We would require the laboratory to make the performance characteristics available upon request to individuals ordering and receiving test results. The quality assurance subpart, Subpart H, would require the laboratory to adhere to its quality assurance program and established protocols.

We would define validation of methods and remedial actions and specifically indicate what is required. The requirements would match our current guidelines and would better inform the laboratories of their responsibilities.

Whenever possible we would place similar requirements in the general section that apply to more than one specialty area. For example, we would combine the references on recalibration from the sections on hematology, chemistry, and radiobioassay, into a general section. In addition, because of

the advent of certain new technologies, we would no longer require daily instrument verifications separate from quality control checks. Rather, we would specify the basis and frequency for performing instrument checks, which correspond to our current guidelines in this area.

We would also define the timeframes in which control samples must be tested with patient specimens to assure accurate results. The current requirement for including controls with each test run of patient specimens is clarified in these proposed requirements. We would include alternatives to the use of two standards or two controls since these materials are not always available.

2. Specific Quality Control Requirements (§ 493.243–§ 493.315)

We would transfer the contents of current §405.1317(b), Standard: Quality control system methodologies, to this new subpart and create for each specialty a new condition and for each subspecialty new standard. A laboratory must meet the conditions corresponding to the specialties and the standards corresponding to the subspecialities for which it wishes to be approved or licensed. These conditions and standards would appear in §§ 493.243 through 493.315. Any laboratory found out of compliance with a condition for a specialty or standard for a specialty would not become or remain approved or licensed for that specialty or subspecialty.

In § 493.243 we would include revised microbiology requirements to indicate that the frequency of performing controls has been changed to reflect standards for current technology and state of the art developed by HCFA and CDC working with the National Committee for Clinical Laboratory Standards (NCCLS). The NCCLS is a national voluntary standards organization consisting of representatives including manufacturer, laboratories and Federal and State regulatory agencies that develop and publish guidelines and standards for laboratories. The NCCLS standards for microbiology media quality control and susceptibility testing quality control have been implemented through the HCFA State Operations Manual for Survey and Certification and have been in place for approximately two years with no alteration in the quality of testing observed. The regulations would be modified to reflect these changes. The laboratory community has estimated that the implementation of these changes has saved several million dollars per year in quality control costs with no adverse effects on microbiology testing.

HHS is continuing to work with NCCLS and other groups to develop beneficial and cost effective standards. The standards would be modified as data become available and can be assessed to justify additional changes.

We would also revise (in § 493.255) the serology (diagnostic immunology) requirements to reflect the fact that the CDC no longer publishes a reference manual on tests for syphilis serology. We would require the laboratories to follow the manufacturers' instructions. We intend to revise this section at a later date if the CDC revises its manual. We would also add the hepatitis testing and human immunodeficiency virus test requirements for facilities performing this testing on blood and blood products used for transfusions. We would consolidate the requirements for serologic testing of the blood in this section since they relate to this area and we would not require reference laboratories performing this testing for blood banks to obtain additional certification in immunohematology. The requirements would coincide with the PT categories being developed for these regulations.

We would revise the chemistry regulations (in § 493.261) by adding requirements for three subspecialty areas: routine chemistry, endocrinology and toxicology. All three areas, at this time, would have to meet the applicable general quality control requirements and, for routine chemistry, laboratories performing blood gases, urinalysis, or both, would have to meet the subspecialty requirements.

The revised hematology section (§ 493.267) would reflect the fact that most of the requirements have been moved to the general quality control section. We would not retain current provisions for allowing an exemption from running specimens in duplicate for coagulation tests such as prothrombin time since there is no scientific evidence at this time available to justify retaining the current provisions. When criteria are available they would be published.

The requirements for cytology would be revised to assure that the laboratory has a quality control program to detect errors and assure accurate laboratory diagnosis. We would specify that gynecologic preparations must be stained using the Papanicolaou stain because it is the stain of choice for demonstrating abnormal cells. We would impose requirements for staining procedures to protect slide preparations from cross-contamination from other specimens.

We are seeking comments on whether we should establish workload requirements for individuals examining cytology slides. Because of the complexity and difficulty of establishing regulations in this area, we have decided not to include a specific provision in the proposed regulation. However, depending upon the comments, we may do so in the final regulation. Our deliberations on establishing workload requirements resulted in consideration of several options. We seek specific comments on each option as well as the effectiveness and workability of any limitation of this kind.

One option we are considering is setting a limit on the number of slides that may be reviewed by each cytotechnologist in a day. Specifically, we could require that each full-time cytotechnologist who reviews only gynecologic slides may review no more than from 80 to 100 slides in each 8 hour workday of each twenty-four hour period. For part-time cytotechnologists, we would require the number of slides that may be reviewed to be prorated using the same 80 to 100 slide limit per eight hour workday. If the full-time cytotechnologist performs duties other than slide examination, we would require the 80 to 100 slide limit to be prorated to correlate with the actual time spent in slide examinations using the formula:

$$\frac{\text{Hours worked on gynecologic slides}}{\text{Total hours worked}} \times \text{(80 to 100 slide limit)}$$

With respect to the 80 to 100 slide limit, we are identifying what we believe to be a range of acceptable workloads and are interested in comments about the precise number that we should select, or if we should retain a range, leaving the choice of the specific number of slides for each cytotechnologist to review up to the technical supervisor.

Under this option we would require that each full-time cytotechnololgist who reviews only nongynecologic slides may review no more than 30 slides in each 8 hour workday or each twenty-four hour period. If the cytotechnologist is part-time or performs duties other than slide examination, we would require the 30 slide limit to be prorated to correlate with the actual time spent in slide examination using the formula:

$$\frac{\text{Hours worked on nongynecologic slides}}{\text{Total hours worked}} \times 30$$

We would also require that the number of slides of both gynecologic and nongynecologic preparations a full-time cytotechnologist may examine be prorated by multiplying the ratio of hours worked on a given type of slide to the total number hours worked by the selected value in the 80 to 100 range for gynecological slides and 30 for nongynecological slides. (See above paragraphs for formulas.)

A second option we are considering is setting an annual volume limit based on reasonable staffing patterns for cytology laboratories. For example, we could set a limit of 12,000 gynecology cases with 2 slides per case as the maximum for each full-time cytotechnologist who reviews only gynecologic slides and a limit of 3,000 cases for each full-time cytotechnologist who reveiws only nongynecologic slides. Calculations of annual volume for cytotechnologists who are not engaged in examining slides on a full-time basis would be prorated as previously described in the first option.

An alternative that we also are considering to specifying a Federal workload limitation for cytotechnologists is placing with the technical supervisor responsibility for determining the number of slides that can be reviewed competently and accurately by each full-time cytotechnologist in an eight hour day or for part-time cytotechnologists in a lesser time period. The technical supervisor would document the competency of each cytotechnologist and would base the individual workload of each cytotechnologist on assessments of the accuracy of diagnosis for each cytotechnologist at a particular workload rate. We seek comments on this alternative proposal particularly on whether it is feasible for a technical supervisor to determine workload limits based on accuracy assessments.

Finally, we are interested in systematic studies that demonstrate a link between quality and the number of slides examined per day, and whether there is an optimum relationship. We also seek comments on whether such a requirement would necessitate record systems and workload supervision so complex that it would interfer with laboratory performance; whether changes in technology (e.g., computer assisted imaging) would soon make any such limitation counter productive; and whether proficiency testing would render such a limitation unnecessary.

We would revise our current requirements for rescreening of gynecologic or Pap smears interpreted to be negative from our current requirement of a ten percent random sample to either a ten percent rescreen of all negative cases screened by each cytotechnologist or a rescreen of all cases from women who are at risk for developing cervical cancer or its precursors. We would strengthen our requirements for rescreening in response to many comments that our current rescreening requirement is ineffective in detecting false-negative cases and to improve the quality of slide review. We would specify that the laboratory must complete the rescreening before it issues final reports in order to detect and correct any false-negative results in a timely manner. Also, the laboratory would not have to report Pap smear examinations immediately except in cases of viral infections in pregnant patients, dysplasia or abnormal results.

The proposed standards for correlating abnormal Pap smear findings with tissue biopsy reports and for retrospectively reviewing previous cytology results whenever abnormal results are identified are the best approaches to quality control in cytology. However, many laboratories do not have access to tissue biopsy reports and also may not have slides from previous cytology cases; therefore, these requirements, although preferred, may have limited applicability.

We are proposing that laboratories calculate annual data reflecting volume of cases processed by specimen type, number of cases by diagnosis, error rates and number of unsatisfactory specimens in order to develop a statistical approach to evaluate laboratory performance. Evaluating cytotechnologist case diagnosis with overall laboratory performance by diagnosis is an approach to determining outlier performance and focusing case reviews and interaction between cytotechnologists and technical supervisors to improve slide examination performance.

We would specify information that must be on the laboratory report to assure that the individual ordering the cytology exmaination has all of the facts needed to interpret the results reported. The importance of cytology testing and the significance of the examination results makes it critical for laboratories to provide all specimen findings including follow up recommendations, if indicated.

We are increasing our requirements for retention of slides and reports to assure that laboratories correlate previous diagnosis with current findings.

The requirements for histocompatibility testing (§ 493.277) are the same as those that already apply to Medicare laboratories but would now also apply to CLIA laboratories. We would update technical requirements now in Medicare regulations and include the explicit requirements for which HLA antigens are to be identified. We would not retain certain frequency checks for the components of the serum trays found in current regulations because we now believe the requirements are overly burdensome and are no longer necessary to assure quality. We would also make the requirements more explicit with regard to what is required under each section of the regulation. These changes would reflect the current guidelines for the practice of histocompatibility.

We would also consolidate all the requirements for histocompatibility testing into one section. Previously, the requirements were divided between a section on end-stage renal disease and the independent laboratory general quality control requirements. We would move these to one location in order to clarify the exact nature of the requirements and to make the requirements more readily accessible to those seeking requirements for histocompatibility testing. We would also make these requirements applicable to other areas currently mentioned in the regulations, such as liver transplantation and bone marrow transplantation as well as other transplantation areas. We therefore propose to move material from § 405.2171 and include it in this section.

The new section would also provide uniform standards for Medicare and CLIA laboratories for histocompatibility testing. This requirement would impose no additional burden on laboratories currently in both programs but would provide consistency in the regulations and requirements since CLIA histocompatibility testing laboratories are currently classified in serology and Medicare laboratories are classified in a separate category for histocompatibility.

In new § 493.281 we propose to revise the immunohematology requirements now in § 74.25 to make them consistent with the Medicare requirements. The CLIA requirements were not revised at the time Medicare adopted the FDA standards in 1981. We propose to adopt these same standards for CLIA laboratories. We would also cross-refer this standard to all of 21 CFR Part 640 to provide total consistency between Medicare and FDA regulations and to assure that any changes in the FDA regulations are reflected in the Medicare regulations. We also propose to add a requirement that laboratories collecting, processing and transfusing blood and blood products meet the requirements in 21 CFR Part 606 to make the Medicare regulations consistent with the FDA regulations on this subject. The need to refer to Part 606 was inadvertently overlooked during the promulgation of the Medicare regulations in 1981. The revision would clarify the precise requirements that are expected of the facilities.

We would also add explicit requirements for cytogenetics testing because of the importance of this area in testing for genetic defects and the fact that the existing general quality control requirements do not adequately address this area. In addition, laboratories seeking payment for these services have been classified in the anatomic pathology or serology areas under a less than precise methodology and the anatomic pathology and serology requirements are not applicable to cytogenetics testing. The revisions of the regulations would be based on the standards of the private sector and New York State, which are the only existing models for quality control standards.

We propose to add a condition to quality control on blood banking and transfusion services (§ 493.301) to consolidate all the requirements in the regulations relating to the collection, processing, transfusion and storage of blood and blood products in one section of the regulations. Currently there are requirements relating to blood collection and storage in both the quality control sections of the independent laboratory conditions for coverage and in the hospital conditions of participation. The provisions contained in § 405.1317(b)(4)(ii) are more appropriate to a section on collection and processing than a section on the quality control of the testing performed in blood banks and transfusion services.

The regulations in § 405.1317(b)(4)(ii) were adopted as part of the revision of the requirements under the MOU with FDA. However, the establishment of a new condition on blood banking and transfusion services and the consolidation of these requirements would simplify and clarify the regulations; those subject to the provisions of the regulations would be better able to determine the specific requirements applicable to them.

We have reviewed the causes of fatal transfusion reactions since 1976, based on the files of the FDA and HCFA, and have concluded that the facilities' own internal quality assurance programs are an important segment in preventing transfusion reactions and deaths. Therefore, we would modify the existing regulations that were adopted from 42 CFR 482.27(d) to include the importance of a quality assurance review. This would also be emphasized in the general quality assurance standards (Subpart H). It is our intent for the condition on blood banking and transfusion service to apply to all facilities were these services are offered. Therefore, we would not retain in § 493.303 the hospital-specific language contained in § 482.27(d) and would move the remainder to Subpart F and cross-refer all other applicable regulations to this subpart. Facilities not offering these types of services would not have to comply with these requirements.

We also propose to cross-refer the condition on bloodbanking and transfusion services to all of 21 CFR Part 640 rather than just certain sections, as does § 405.1317(b)(4)(ii), since the broader cross-reference would (1) give greater assurance of quality for the bloodbanking activities, (2) reduce the necessity for revising the regulations whenever FDA adds requirements into these sections and (3) reduce duplicative requirements, policies and procedures between HCFA and FDA.

We would also include the reference to 21 CFR Part 606 in this new condition since it contains the specific FDA recordkeeping requirements for this area. This would reduce the uncertainty of what records must be kept, consolidate recordkeeping requirements for collection, processing, and transfusion into the section where they are applicable, and make the survey of the facility and the citation of specific deficiencies easier for the survey agency.

### Subpart G—Personnel Standards

The current Medicare independent laboratory regulations (§§ 405.1312, 405.1313, 405.1314(b) and 405.1315), and CLIA personnel standards (§§ 74.30 through 74.31) contain detailed education and experience requirements for individuals at the director, technical supervisor, general supervisor, technologist and technician level (CLIA does not have a technician level requirement). The Medicare conditions of participation for hospitals (42 CFR Part 482) have specific requirements only for the laboratory director, who has responsibility for determining the qualifications of the supervisory personnel and the individuals performing the tests at the bench. These latter regulations provide the director with the maximum flexibility in the selection and utilization of personnel.

We believe it important to retain technical supervision qualifications for some specialty and subspecialty testing areas currently contained in the regulations. Therefore, qualifications for individuals providing technical supervision of tests in the areas of histopathology, including skin pathology, and oral pathology currently in § 482.27(a)(3)(ii)–(iv) would be moved to § 493.493, as would be the qualifications for individuals supervising transfusion and blood banking services now found at § 482.27(d)(1). In addition, qualifications for individuals providing technical supervision in cytology currently in § 405.1314(b)(9) would be repeated at new § 493.493, as are the qualifications for individuals providing technical

supervision in histocompatibility currently in § 405.1314(b)(13). In order that new § 493.403 contain all qualifications necessary for the range of tests performed, we would also add new requirements for those who supervise cytogenetics testing.

We note that these requirements are new for hosptial-based laboratories. Therefore, we solicit comments on all of the requirements for technical supervision, with specific reference to the need and justification for them, and whether these provisions would, if they were to be applied to physician office or small hospital laboratories, prevent the performance of tests that these laboratories are in fact effectively conducting.

We intend to adopt the same personnel requirements in the new Part 493 for all laboratories that participate in Medicare or Medicaid or are licensed under CLIA. The proposed rule contains the provision required by section 9339(d) of the Omnibus Budget Reconciliation Act of 1986 to accept for Medicare purposes individuals that meet State licensure requirements for laboratory directors. This provision specifies that if a State provides licensing or other standards with respect to the operation of laboratories (including those in hospitals) in the State and establishes qualifications under which an individual may direct a laboratory, title XVIII of the Act may not be construed as authorizing the Secretary of HHS to require other qualifications; this provision was effective January 1, 1987. We are developing a proposed revision to the independent laboratory requirements for Medicare approval, CLIA licensure requirements and hospital-based laboratory rules to incorporate this provision in a separate document.

We would also include a provision to enable individuals who qualify as laboratory directors under current regulations to continue to qualify as such.

We intend to continue to allow for the recognition of private sector certification programs for director level personnel as an alternative mechanism for qualification as is currently contained in §§ 74.30 and 405.1313. This provision reduces the need for the program to evaluate the credentials of individuals who have already been evaluated by a private sector organization approved by HHS and provides recognition for many of the programs in existence.

We would revise the current personnel requirements for the following reasons:

- It is necessary to emphasize the responsibility of the director for assuring the quality of the services of the laboratory and to allow the director the maximum flexibility to choose the personnel required to achieve this goal.
- Changes in technology make it difficult to develop detailed specific standards and revise them as needed to cover the wide variety of instruments, methodology and test systems currently performed and to be performed in the future in laboratories.
- It is more reliable to depend on outcome measures such as quality control, proficiency testing and quality assurance programs, rather than detailed personnel standards, as a mechanism to assure the quality of testing.

Although it is generally believed that degreed individuals are better prepared to assume technical responsibilities to assure quality, there is limited evidence available to correlate the degree level of an individual with the quality of the test results produced.

There have been several studies on the relationship between personnel standards and quality of testing, including one commissioned by the Office of the Assistant Secretary for Planning and Evaluation of the Office of the Secretary of the Department of Health and Human Services, but there are no definitive data to show the nature of the relationship of specific standards to quality of testing. The studies have been applied to limited areas. Although evidence exists of some improvements in performance as a function of credentialing, these studies are limited in scope, and they are not all based on the same assessment techniques. They also do not indicate that inaccurate or medically unacceptable results were produced by any particular type of level of individual.

Our decision to set standards for the director, supervisor and cytotechnologist is based on the model for the current hospital standards with additional requirements for supervisor and cytotechnologist. The hospital laboratory personnel requirements have not resulted in any known adverse effects on patient health and safety in these facilities over the past twenty years. We have heard from some parties that such a model is more relevant in the hospital setting because of the direct oversight by the medical staff. However, the majority of users of laboratory services are physicans and, if the physician is the key to the quality assurance in hospitals, there is no reason to assume that these same physicans will be less concerned when testing is performed in independent laboratories. Supervision of day-to-day testing is necessary to assure accurate and reliable test results. Since the director may not always be present when testing is performed, we would add requirements for laboratory supervision. Moreover, the current cytotechnologist requirements would be maintained because they are essential in assuring the quality of cytology test performance and reporting. We would also require each cytotechnologist to record the number and types of slides screened each day in order to determine compliance with the workload requirements in § 493.271(b).

Proposed rules applicable to the personnel levels below the director and supervisor would provide for maximum flexibility for the director in choosing the laboratory staff, except for cytology where specified personnel qualifications would be required to assure the quality of cytology results. The individuals employed in laboratories would still have to meet State standards, if any exist. This would place responsibility with the States to set specific criteria for personnel to meet local needs. The director would have to ensure that the personnel have the necessary training, experience, continuing education, receive continuous evaluation and monitoring of performance levels and meet any State licensure requirements. The proposed personnel requirements would allow the flexibility to utilize the various private-sector credentialing programs, State licensure programs and private-sector examinations as a guide in selecting individuals for employment purposes.

In proposed § 493.405 we specify laboratory director responsibilities and emphasize the duties required of the laboratory director. The laboratory director would have the overall responsibility for the quality of testing performed by the laboratory and would be responsible for establishing and maintaining a quality assurance program and establishing performance characteristics for the test systems employed by the laboratory. The director would also be responsible for providing evidence that the laboratory can maintain these performance levels: the director would assess factors such as staff performance, quality control results, proficiency testing results, validation of test procedures and methodologies, and assure that the laboratory corrects all problems before reporting test results. In addition, if errors are detected after results are reported, the director would be responsible for providing the necessary

corrected information to the individual requesting or utilizing the test results.

**Subpart H—Quality Assurance**

In new § 493.451 we would add a quality assurance condition for both the Medicare and CLIA laboratories to require the laboratories to establish and follow protocols that assess the effectiveness of their operations. The new condition would require the laboratory to establish procedures for monitoring the quality of its testing and staff performance and to assure that the laboratory's performance is within established acceptable criteria. This section would add an additional level of quality control and place the burden on the laboratory to accept responsibility for monitoring its own performance as an adjunct to the checks placed on the facility by the regulatory agency. The laboratory would utilize its quality control and PT data and regular staff performance evaluations to monitor and assure the quality of testing and reporting.

The responsibility for establishing and implementing a quality assurance program would be placed on the laboratory director; it would serve as an additional outcome measurement of quality and would assure accurate and reliable test performance and reporting.

The director would also have the responsibility for having a program in place to monitor and control various health and safety hazards from a variety of biological, chemical, environmental and radiological materials or factors, which may affect testing as well as patient and worker safety. This would obviate the need for specifying detailed Federal regulations under Medicare and CLIA such as those now contained in 42 CFR 405.1316, which may not cover all possible contingencies. The new requirement would place responsibility on the laboratory director for setting up and implementing an appropriate program, which would include assuring the compliance with the existing Federal, State, and local laws. This would reduce the need for duplicative standards and allow the facility to develop programs to meet its own needs. This is not meant to imply a lessening of concern for employee health and safety, including protection from various hazards, but the provision would implement a more efficient mechanism for monitoring laboratory safety and employee health.

As part of the quality assurance initiative, we would also encourage laboratories to enroll in PT programs for analytes other than those included in the current grading scheme. For the subspecialty of cytology, laboratories would be able to insert "blind samples" into their workload or exchange slides with another laboratory for retrospective screening and comparison.

In addition to soliciting comments on all the proposed revisions we are requesting comments on alternate mechanisms of quality assurance that can be used in a Federal regulatory program. We anticipate that these regulations will provide the flexibility to take into account future changes but we are reviewing and intend to continue to review the need for further changes and improvements in the regulatory system. We solicit specific suggestions for changes in quality assurance requirements and data to support these changes.

**Subpart I—Inspection**

We propose to add a condition on inspection of the laboratories, § 493.501, which specifies the requirements a laboratory must meet for inspections and record retention and availability. Provisions concerning inspection are currently in several different sections of the Medicare and CLIA regulations (42 CFR 405.1317(a)(6), 42 CFR 405.1909, and Part 74, Subpart G) and some of them are obsolete.

Under this proposal, we would require the laboratory to demonstrate satisfactory performance on quality control and PT before inspection or approval.

The proposed § 493.501 would allow us to inspect a laboratory during any hours of operation or business, would state that HHS has the right of access to all records required to make a determination of a facility's status and would require that the laboratory make these records available to us for a reasonable period of time during the course of the inspection.

The regulations would extend our authority to require the laboratory to test specimens or undertake quality control actions on patient materials in the laboratory during the inspection to allow us to determine the competency of the personnel and ability of the laboratory to perform tests. In addition to the Subpart C requirement for participation in a mailed PT program, we are considering the development of a methodology for evaluating laboratory performance through onsite PT to enhance the survey process. In 1990, we plan to select a limited number of States in which a random sampling of laboratories would be chosen for the State survey agencies to conduct unannounced onsite PT surveys to evaluate the feasibility of this type of PT.

In addition, under the proposed requirements, DHHS would be able to reinspect the laboratories at such frequencies as are necessary to determine compliance or continued compliance with the regulations. We propose to indicate that denial of access could result in revocation or denial of licensure, termination, or denial of initial approval under Medicare.

Under this proposal the laboratory would also be required to notify us of changes in ownership, direction, location or services so that we can determine the status of the laboratory and its ability to provide reliable and accurate test results. These provisions would not add new requirements but would serve to clarify and unify the existing Medicare and CLIA requirements.

The new § 493.501 would not include a number of the requirements currently in § 405.1909. What constitutes a laboratory test (in § 405.1909(a)) would not be retained since it refers to a section of our regulations deleted earlier. The provisions relating to specialties and subspecialties for licensure and approval that we would retain would be relocated in Subpart F, Quality Control. The content of § 405.1909(b) would be deleted since the date to which it refers has expired. The content of § 405.1909(c), the requirements for successful participation in proficiency testing, would be revised and moved to Subpart C, Participatioin in Proficiency Testing and Subpart D, Proficiency Testing Program.

In addition, the specific requirement in § 405.1909(c) for onsite PT would be revised in Subpart D, Proficiency Testing Programs, to allow us flexibility in determining the mechanism for compliance with PT requirements after a failure and the time period in which we would have to revisit the laboratory. Specifying a specific three-month interval for onsite PT performance or a six-month interval for evaluation of mailed PT samples does not allow sufficient flexibility. The proposed requirements in Subpart C would clarify the conditions for successful and unsuccessful performance and this subpart would specify that HHS may perform whatever follow-up and inspections are required to determine a laboratory's compliance with the standards.

**Subpart J—CLIA-Only Requirements**

In Subpart J we would place requirements applicable only to laboratories engaged in interstate commerce. For example, the CLIA requirements concerning recognition of accreditation programs are different from those for Medicare laboratories due to differences in the two statutes; CLIA allows HHS more flexibility on the type and scope of information that can be requested.

We also propose to make several modifications in the licensure procedures for laboratories under CLIA. We would revise the regulations to indicate that (1) licenses will be issued or revoked by specialty and subspecialty rather than by individual test procedures in order to achieve uniformity between programs, (2) we are placing increased reliance on overall outcome measures by restructuring of the regulations, and (3) only certain tests are subject to PT because not all tests are currently included in PT programs and some tests, such as chemical screening in urinalysis, may provide such consistent results that continued PT monitoring is not useful.

We would also revise the exemption applicable to certain physician office laboratories that examine specimens on referral so that we would grant exemptions in cases only in which the *total* number of tests performed annually is 100 or fewer rather than granting exemptions for each specialty or subspecialty in which 100 tests or fewer are performed. This would simplify the accounting system for determining if a laboratory requires licensure. We cannot eliminate the test limit since CLIA requires us to provide a low test volume exemption mechanism. We propose to specify that HHS may determine that certain categories or types of tests pose a hazard to public health and no exemption will be granted in these cases. This addition to the regulation would be consistent with the statute and its intent. It will make the Medicare and CLIA regulations more congruent on this matter since the Medicare statute does not have a provision for a low volume exemption.

We are also proposing to add a provision (§ 493.704) that would allow us to issue a notice that a license can continue in effect for another year, rather than reissuing the formal license every year. This would meet the intent of the statute and still permit annual renewal without inordinate paperwork when no changes in licensure status have occurred.

**III. Other Revisions Affecting Laboratories**

- We propose to revise § 405.1909, Special requirements applicable to independent laboratories, to delete the current paragraphs (b) through (d), as the comparable content would be in Part 493, and to add a definition of "independent laboratory." The term "independent laboratory" is still necessary for payment purposes (i.e., Medicare's supplementary medical insurance program (Part B), rather than hospital insurance program (Part A), pays for independent laboratory services); § 405.1909 discusses independent laboratory services and supplementary medical insurance. We would define an independent laboratory as a facility meeting the requirements of Part 493 that is maintained for the purpose of performing diagnostic laboratory tests. It would be a facility that is not controlled, managed or supervised by a hospital, a hospital's medical staff, or the attending or consulting physician's office. (A physician's office performing tests on referral for the attending or consulting physician would be considered an independent laboratory.)

We would also revise the last sentence in paragraph (a), which currently indicates that diagnostic tests performed by an attending or consulting physician are physician's services rather than clinical laboratory services. Section 1833 (h)(1)(A) and (h)(5)(A) of the Social Security Act, as amended on July 18, 1984, requires clinical laboratory services furnished by any person or entity (other than a provider of services for its inpatients) to be paid for based on a fee schedule. The current rule implies that laboratory services are "physicians' services", which are not subject to a fee schedule. Because we pay for these laboratory services based on a fee schedule, we propose to revise the last sentence so that it no longer calls laboratory services "physician services."

- We would revise the definitions found in current 42 CFR 405.2102, to clarify that histocompatibility testing determines compatibility between a potential organ donor and recipient and not between a donor organ and a recipient. This would be a minor technical amendment to clarify the intent of the regulations.
- We would also revise current § 405.2171(d), Condition: Minimal service requirements for a renal transplantation center, to cross-refer it to the new unified regulations for clinical laboratories, including histocompatibility testing for renal transplantation centers. This would simplify the requirements by placing all related requirements in one section of the regulation. However, we would leave the requirement concerning 24-hour availability of services (§ 405.2171(d)(1)) as it would not apply to other laboratories.
- We would revise current 42 CFR 416.49, Condition for coverage—Laboratory and radiological services, to require laboratories in ambulatory surgical centers to comply with the conditions of coverage of laboratory services in new Part 493 if they perform laboratory testing or perform transfusion of blood and blood products.
- Our revisions to § 482.27 (the condition of participation concerning hospital-based laboratories) would only delete requirements that would be in the new part. We intend to retain the requirements currently in § 482.27(a) (1) and (2) as they would continue to apply only to hospital-based laboratories.

**IV. Regulatory Impact Analysis**

*A. Introduction.*

Executive Order 12291 (E. O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E. O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospital-based and independent laboratories as small entities. For purposes of this regulation, physician laboratories that perform any tests on referral from other physicians also are small entities. Individuals and states are not included in the definition of a small entity.

In addition, Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a

substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of Section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

We do not believe that the provisions of this regulation constitute a major rule. However, because we expect that this regulation could have a significant impact on some laboratories, may affect some personnel employed by laboratories, and may have an effect on some States regarding State requirements, licensure and certification of laboratories, we have performed the following analysis voluntarily.

*B. Anticipated Effects*

1. Affected Entities

There are approximately 12,000 Federally regulated laboratories located in hospitals and independent settings. These facilities range from large medical centers and corporate-operated independent laboratories to small, independent laboratories and physician's office laboratories.

Although not small entities, we expect States to be affected by some additional administrative burden because they may have to adapt or establish a methodology for assessment of PT requirements and ensure compliance with these requirements. States may have to make more recommendations for termination of Medicare approval if the PT standards are not met.

We expect entities providing PT programs to be affected because of program changes that may be necessary in order to meet the criteria for an approved PT program and additional documentation required to perform in the Federal program. It is estimated that there may be more than 40,000 physician office laboratories that perform more than 5,000 tests annually and that will be subject to Federal standards under current law beginning in 1990. We have not attempted to estimate the effects of the standards in this proposal on physician office laboratories that do not perform referral tests. However, the possibility exists that cetain of these standards may also be found to be applicable to physician office testing. Therefore, we are soliciting comments on the effect on physician office testing of the proposed proficiency testing, quality control, and personnel requirements were these requirements to be applied to physician office laboratories. If there is substantial evidence that any of the standards contained in this proposed rule would so affect the availability of physician office testing that patient care would be adversely affected, that evidence would be appropriate in the context of this rulemaking.

2. Costs/Savings

We expect our standards to be achievable by the majority of laboratories although some may have to incur costs to achieve the required compliance with PT standards. Depending upon the actual costs in upgrading a specific lab to meet PT standards, the charges of that laboratory for its services may rise to offset the costs of improvements. However, we believe that in an area with sufficient competition, including that from physicians' office laboratories, the charges for services will remain stable. Therefore, since charge increases are unlikely, we assume that laboratories will seek to minimize cost increases through increased efficiencies. The regulation provides increased flexibility over existing regulations to permit different approaches to achieving efficiencies.

This proposed regulation would expand Medicare coverage from physician office laboratories receiving 100 or more referrals to those laboratories receiving any referrals. This change may create a slight increase in the number of laboratories requiring Medicare approval.

We expect that some physician office laboratories would seek Medicare approval and thus comply with Medicare requirements to be reimbursed for tests. We also expect that those physician office laboratories that may incur a substantial increase in costs to upgrade to elect to stop doing tests on referral.

There may also be additional increases in the purchases of automated laboratory equipment and computers when laboratory managers make decisions regarding the methodology of achieving the PT standards.

3. Proficiency testing effects

This regulation establishes consistent PT requirements based on data from professional organizations that operate PT programs. We would require specific minimum PT passing scores for each specialty and subspecialty. Currently, passing levels for PT are set by each State and the levels vary. We expect the PT standards to enable us to identify and take consistent action against Medicare and CLIA laboratories whose PT performances are below the range of acceptability achieved by the vast majority of laboratories. A laboratory's poor PT performance would result in a denial of Medicare or Medicaid payment for a failed specialty or subspecialty of testing or in loss of CLIA licensure.

Even though we lack definitive data, we do not expect this regulation to affect most laboratories adversely because most laboratories already have in place PT mechanisms, both for their own benefit and because Medicare requires it. However, laboratories in States with less rigorous proficiency testing program standards than we would require would be the most likely to be adversely affected. We also expect the number of tests for which payment is denied by the Medicare and Medicaid programs for payment purposes to increase for those laboratories that do not improve to our designated performance level.

Some laboratories may incur greater costs to achieve the required PT standards than others because of the costs that would be incurred to improve their quality control activities and quality assurance programs.

If a laboratory's PT performance is determined to be unsuccessful, payment would not be made for tests in the failed specialty or subspecialty. We expect the number of laboratories not receiving payment to increase. However, we also expect the quality of laboratory services to improve as a result of implementation of these standards.

At present, Medicare and CLIA laboratories are not required to participate in PT programs for cytology, because no such program has been established. This regulation would establish a nationwide cytology proficiency testing program. We are proposing certain limits and specifications concerning the developing cytology program. This may mean additional expense for some laboratories that have to participate in a cytology PT program for the first time or incur additional costs in order to perform successfully in the cytology PT program.

4. Quality Control

This proposed regulation includes an update of quality control requirements to account for changes in technology and instrumentation that have occurred in the laboratory field since 1971. Laboratories would be required to implement their own quality assurance programs that they would be expected to follow. As a result of this regulation, laboratory directors should have more flexibility in meeting the requirements and more opportunities to assess laboratory performance and staff competency.

We expect this regulation to improve laboratory testing in terms of the quality of the end result or outcome while removing many of the process requirements that current regulations specify to achieve that outcome. The laboratory would have more discretion over what type of internal controls, methodology, and equipment (such as computerized rather than manual equipment) are necessary to ensure that the required quality control standards are met.

5. Personnel Standards

Our proposed regulations would place less emphasis on formal credentialing for laboratory personnel and focus on the responsibilities of the laboratory personnel. As a result, the administrative burden on the States to document and maintain more detailed personnel records to meet Federal requirements would be reduced. These regulations would require laboratory directors to be responsible for ensuring that the laboratory staff is competent to perform tests. We would specify education and experience requirements for the laboratory director, technical supervision, laboratory supervisor and cytotechnologists. The qualifications of the remainder of the staff are to be determined by the laboratory director and individual State requirements.

6. Conclusion

We believe that these changes would result in clearer, more uniformly applied criteria for determining acceptability of laboratory performance. We expect some laboratories to incur costs to upgrade their performance. We expect these costs to be somewhat offset by savings from removel of detailed process requirements. Overall benefits, in terms of consistent laboratory requirements and improved quality would increase benefits to patients and would more than offset the costs of upgrading and improvements.

We conclude, based on the analysis above, that the proposed rule is not a major rule under Executive Order 12291. Although some laboratories would be adversely effected, we believe that benefits to society will outweigh the adverse effects. We expect most laboratories not to incur substantial costs to comply with our conditions. The Secretary certifies that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

## V. Paperwork Reduction Act

Sections 493.21, 493.93, 493.99, 493.101, 493.103, 493.105, 493.201, 493.225, 493.231, 493.233, 493.235, 493.237, 493.240, 493.241, 493.271, 493.273, 493.277, 493.279, 493.315, 493.417, 493.451, 493.501, 493.701, 493.704, 493.708, and 493.710 of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, et seq.).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the **ADDRESS** section of the preamble.

Section 405.1317 of the current regulations, as recodified into §§ 493.229, 493.251 and 493.253 of the proposed rule, also contains information collection requirements that are subject to the OMB review. These requirements were approved by that Office in August of 1987 in accordance with the Paperwork Reduction Act under OMB approval number 0938–0368.

## VI. Response to Comments

Because of the large number of items of correspondence we normally receive on rules requesting public comment, we are not able to acknowledge or respond to them individually. A summary of comments and our responses will be included in our final rule.

## VII. List of Subjects

*42 CFR Part 74*

Administrative practice and procedure, health, laboratories, reporting and recordkeeping requirements.

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 416*

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 440*

Grant programs-health, Medicaid.

*42 CFR Part 482*

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 488*

Health facilities, Survey and certification, Forms and guidelines.

*42 CFR Part 493*

Laboratories, Medicare, Medicaid, Health facilities, Reporting and recordkeeping requirements.

DERIVATION TABLE FOR 42 CFR PART 493

| New section | Old section |
|---|---|
| 493.1 | 74.2, 405.1310(a). |
| 493.2 | 74.1, 405.1310. |
| 493.11 | 405.1311. |
| 493.21 | Part 74, Subpart E; 405.1314(a). |
| 493.22 | 74.42, 405.1314(a). |
| 493.23 | New. |
| 493.24 | 405.1909. |
| 493.25 | New. |
| 493.31–493.63. | 74.42. |
| 493.91 | 405.1310(c). |
| 493.93–493.153. | New. |
| 493.201 | 74.20, 74.53, 74.54, 405.1316(e), (f) and (g), 405.1317(a). |
| 493.221 | 74.20, 405.1317(a). |
| 493.223 | 74.20(b), 74.55, 405.1316(b), 405.1317(a). |
| 493.225 | 74.20(b), 405,1317(a). |
| 493.227 | 74.20(b), 405.1316(b), 405.1317(a). |
| 493.229 | 74.20(c), 405.1317(a). |
| 493.231 | 74.20(d), 74.25, 74.27, 405.1316(a), 405.1317(a). |
| 493.233 | 74.20(a), 74.55, 405.1317(a) and (b). |
| 493.235 | 74.20(a), 405.1317(a). |
| 493.237 | 74.21, 74.22, 74.23, 74.25, 74.27, 405.1317(b). |
| 493.239 | 74.20(a), 74.23(a), 405.1317(a) and (b). |
| 493.240 | 74.50, 405.1317(a). |
| 493.241 | 74.21, 74.22, 74.23, 74.24, 74.25, 74.26, 74.27, 405.1317(b). |
| 493.243 | 74.21, 405.1317(b). |
| 493.245 | 74.21(a), 405.1317(b). |
| 493.247 | 74.21, 405.1317(b). |
| 493.249 | 74.21(a), 405.1317(b). |
| 493.251 | 74.21(b), 405.1317(b). |
| 493.253 | 74.21(c), 405.1317(b). |
| 493.255 | 74.22, 405.1317(b). |
| 493.257 | 74.22, 405.1317(b). |
| 493.259 | 74.22, 405.1317(b). |
| 493.261 | 74.23, 405.1317(b). |
| 493.263 | 74.23, 405.1317(b). |
| 493.265 | 74.23, 405.1317(b). |
| 493.267 | 74.23, 405.1317(b). |
| 493.269 | 74.25, 405.1317(b). |
| 493.270 | 74.26, 405.1317(b). |
| 493.271 | 74.26(a), 405.1317(b). |
| 493.273 | 74.26(b), 405.1317(b). |
| 493.274 | 74.26(b), 405.1317(b). |
| 493.275 | 74.27, 405.1317(b). |
| 493.277 | 405.1317(b). |
| 493.279 | New. |
| 493.281 | 74.24, 405.1317(b). |
| 493.301–493.315. | 482.27(d). |
| 493.401 | 74.30, 74.31, 405.1312, 482.27(c). |
| 493.403 | 74.30, 405.1312(b), 482.27(c), 405.1314(b). |
| 493.405 | 74.30, 405.1312(a), 482.27(c). |
| 493.407 | 74.30, 405.1313(b). |
| 493.409 | 74.30, 405.1313(b). |
| 493.411 | 405.1313(a). |
| 493.413 | 405.1317(b). |
| 493.415 | 405.1317(c). |
| 493.417 | New. |
| 493.419 | 482.27(c). |
| 493.451 | New. |
| 493.501 | 74.56. |
| 493.701 | 74.2. |
| 493.702 | 74.1. |
| 493.704 | 74.10, 74.11. |

DERIVATION TABLE FOR 42 CFR PART 493—Continued

| New section | Old section |
|---|---|
| 493.706 | 74.60, 74.61. |
| 493.708 | 74.47. |
| 493.710 | 74.46(c). |

Title 42 of the Code of Federal Regulations would be amended, as set forth below:

I. Chapter I is amended by removing Part 74 and reserving it as follows:

**PART 74—[RESERVED]**

II. Chapter IV is amended as set forth below:

**PART 405—[AMENDED]**

A. Part 405 is amended as follows:

1. Subpart E is amended as follows:

a. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1,814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b) 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

b. Paragraph (c) of § 405.556 is revised to read as follows:

**§ 405.556 Conditions for payment of charges: Physician laboratory charges.**

* * * * *

(c) *Independent laboratory services furnished to hospital inpatients.* Laboratory services furnished to a hospital inpatient by an independent laboratory (as defined in § 405.1909(b) will be reimbursed on a reasonable charge basis under this subpart only if they are physician laboratory services as described in paragraph (a) of this section. Payment for nonphysician services furnished to a hospital inpatient by an independent laboratory will be made by the intermediary to the hospital in accordance with Part 413 of this chapter.

2. Subpart K is amended as follows:

a. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1814, 1832, 1833, 1861, 1863, 1865, 1866, 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f, 1395k, 1395l, 1395x, 1395z, 1395bb, 1395cc, 1395hh.

b. Section 405.1128 is revised to read as follows:

**§ 405.1128 Condition of participation—laboratory and radiologic services.**

The skilled nursing facility has provision for promptly obtaining required laboratory, X-ray, and other diagnostic services.

(a) *Standard: Provision for services.*

(1) If the skilled nursing facility furnishes its own x-ray services, it must meet the applicable conditions established for certification of hospitals in § 482.26 of this chapter. If the facility does not provide x-ray services, it makes arrangements to obtain these services from a physician's office, a participating hospital or skilled nursing facility, or a portable x-ray supplier.

(2) If the skilled nursing facility furnishes its own laboratory services, it must meet the applicable conditions established for certification of hospitals and for approval of laboratories found in §§482.27 and Part 493 of this chapter respectively. If the facility does not provide laboratory services, it makes arrangements to obtain these services from a participating hospital or skilled nursing facility, or a laboratory meeting the requirements of Part 493 of this chapter.

(3) All x-ray and laboratory services are provided only on the orders of the attending physician, who is notified promptly of the findings. The facility assists the patient, if necessary, in arranging for transportation to and from the source of service. Signed and dated reports of a clinical laboratory, X-ray, and other diagnostic services are filed with the patient's medical record.

(b) *Standard: Blood and blood products.* Blood handling and storage facilities are safe, adequate, and properly supervised. If the facility provides for maintaining and transfusing blood and blood products, it meets the conditions established in §§ 493.301 through 493.315 of this chapter. If the facility does not provide its own facilities but does provide transfusion services alone, it meets at least the requirements of §§ 493.305, 493.307, 493.309 and 493.315 of this chapter.

3–4. Subpart M (§§ 405.1310–405.1317) is removed and reserved and the table of contents is amended to reflect this change.

**Subpart M [§§ 405.1310–405.1317]—[Reserved]**

5. Subpart U is amended as follows:

a. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr).

b. The definition of histocompatibility testing in § 405.2102 is revised to read as follows:

**§ 405.2102 Definitions.**

* * * * *

*Histocompatibility testing.* Laboratory test procedures which determine compatibility between a potential organ donor and a potential organ transplant recipient.

* * * * *

c. Paragraph (d) of § 405.2171 is revised to read as follows:

**§ 405.2171 Condition: Minimal services requirements for a renal transplantation center.**

* * * * *

(d) *Standard: laboratory services.* (1) The Renal Transplantation Center makes available, directly or under arrangements, laboratory services to meet the needs of ESRD patients. Laboratory services are performed in a laboratory facility approved in accordance with Part 493 of this chapter to participate in the Medicare program and, for histocompatibility testing purposes, also meets §§ 493.221 through 493.239, 493.257, 493.259, 493.277, and 493.281 of this chapter and, when services are furnished in the subspecialty of histopathology, § 493.273 of this chapter.

(2) Laboratory services for cross-matching of recipient serum and donor lymphocytes for preformed antibodies by an acceptable technique are available on a 24-hour emergency basis.

B. Part 416 is amended as follows:

**PART 416—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395z and 1395aa).

2. Section 416.49 is revised to read as follows:

**§ 416.49 Condition for coverage—Laboratory and radiologic services.**

The ASC must have procedures for obtaining routine and emergency laboratory and radiologic services, from Medicare approved facilities, to meet the needs of patients. The laboratory offering the services must have been approved in accordance with Part 493 of this chapter, except for urinalyses, hemoglobins and hematocrits performed within a few days before, or on, the day of the surgery.

C. Part 440 is amended as follows:

**PART 440—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** 42 U.S.C. 1302.

2. Section 440.30 is amended by republishing the introductory text and revising paragraph (a) to read as follows:

**§ 440.30 Other laboratory and X-ray services.**

"Other laboratory and X-ray services" means professional and technical laboratory and radiological services—

(a) Ordered and provided by or under the direction of a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law or ordered and billed by a physician but provided by an independent laboratory as defined in § 405.1909(b) of this chapter.

* * * * *

D. Part 482 is amended as follows:

**PART 482—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396d(a)).

2. Section 482.27 is revised as follows:

**§ 482.27 Condition of participation: Laboratory services.**

(a) The hospital must maintain, or have available, adequate laboratory services to meet the needs of its patients. The hospital must ensure that all laboratory services provided to its patients are performed in a facility approved by Medicare in accordance with Part 493 of this chapter.

(b) *Standard: Adequacy of laboratory services.* The hospital must have laboratory services available, either directly or through a contractual agreement with a Medicare approved hospital or independent laboratory, that meet the needs of the patients and the medical staff.

(1) Emergency laboratory services must be available 24 hours a day.

(2) A written description of services provided must be available to the medical staff.

(3) The laboratory must make provision for proper receipt and reporting of tissue specimens.

(4) The medical staff and a pathologist must determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examinations.

E. Part 483 is amended as follows:

**PART 483—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1905 (c) and (d) of the Social Security Act (42 U.S.C. 1302, 1396d (c) and (d)).

2. Section 483.460(n) is revised to read as follows:

**§ 483.460 Conditions of participation: Health care services.**

* * * * *

(n) *Standard: Laboratory services.* (1) For purposes of this section, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory must—

(i) Meet the management requirements specified in Part 493 of this chapter; and

(ii) Provide personnel to direct and conduct the laboratory services.

(A) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must meet licensing or other qualification standards established by the State with respect to directors of clinical laboratories. For those States that do not have licensure or qualification requirements pertaining to directors of clinical laboratories, the director must be either—

(1) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(2) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(B) The laboratory director must provide adequate technical supervision of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(C) The laboratory director must ensure that the staff—

(1) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(2) Is sufficient in number for the scope and complexity of the services provided; and

(3) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(D) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory must meet the proficiency testing requirements specified in Part 493 of this chapter.

(4) The laboratory must meet the quality control requirements specified in Part 493 of this chapter.

(5) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved by the Medicare program either as a hospital or an independent laboratory.

F. Part 488 is amended as follows:

**PART 488—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Sec. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, and 1395tt).

2. Section 488.52 is revised to read as follows:

**§ 488.52 Special requirements applicable to independent laboratories.**

(a) The services of a qualified independent laboratory for which reimbursement may be made under the supplementary medical insurance program relate only to diagnostic tests performed in an independent laboratory. Diagnostic laboratory tests for purposes of section 1861(s) (13) and (14) of the Act and for purposes of this Subpart S shall include only those clinical and anatomical pathology diagnostic tests and procedures listed in § 493.2 of this chapter under "laboratory". Such diagnostic tests performed by out-of-hospital physicians whose primary practice is directly attending patients and/or consultation (i.e., furnishing an attending physician with an opinion about a patient's condition or diagnosis), even though conducted partly through diagnostic procedures, are not considered services of an indendent laboratory except when they are done on referral.

(b) For purposes of this section, an independent laboratory is a facility meeting the requirements of Part 493 of this chapter and maintained for the purpose of performing diagnostic laboratory tests. An independent laboratory is not a facility that is controlled, managed or supervised by a hospital as defined by section 1861(e) of

the Act, a hospital's organized medical staff, or the attending or consulting physician's office.

G. A new Part 493 is added as follows:

## PART 493—LABORATORY REQUIREMENTS

### Subpart A—General Provisions


Sec.
493.1 Basis and scope.
493.2 Definitions.


### Subpart B—Administration


493.11 Condition: Compliance with Federal, State and local laws.


### Subpart C—Participation in Proficiency Testing


493.21 Condition: Enrollment and testing of samples.
493.22 Condition: Successful participation.
493.23 Condition: Successful participation before initial approval or licensure.
493.24 Reinstatement after failure to participate successfully.
493.25 Condition: Enhanced proficiency testing.


### Proficiency Testing by Specialty and Subspecialty


493.31 Condition: Microbiology.
493.33 Standard; Bacteriology.
493.35 Standard; Mycobacteriology.
493.37 Standard; Mycology.
493.39 Standard; Parasitology.
493.43 Condition: Diagnostic immunology.
493.45 Standard; Syphilis serology.
493.47 Standard; General immunology.
493.49 Condition: Chemistry.
493.51 Standard; Routine chemistry.
493.53 Standard; Endocrinology.
493.55 Standard; Toxicology.
493.57 Condition: Hematology.
493.59 Condition: Pathology.
493.61 Standard; Cytology: Gynecological examinations.
493.63 Condition: Immunohematology.


### Subpart D—Proficiency Testing Programs


493.91 Approval of proficiency testing programs.
493.93 Administrative responsibilities.
493.95 Disapproved proficiency testing programs.
493.96 Process for updating proficiency testing program.


### Proficiency Testing Programs by Specialty and Subspecialty


493.97 Microbiology.
493.99 Bacteriology.
493.101 Mycobacteriology.
493.103 Mycology.
493.105 Parasitology.
493.107 Diagnostic immunology.
493.109 Syphilis serology.
493.111 General immunology.
493.115 Chemistry.
493.117 Routine chemistry.
493.119 Endocrinology.
493.121 Toxicology.
493.125 Hematology (including routine hematology and coagulation).
493.129 Cytology: Gynecological examinations.
493.153 Immunohematology.


### Subpart E—Patient Test Management


493.201 Condition: Patient test management.


### Subpart F—Quality Control


493.221 Condition: General quality control.
493.223 Standard; Facilities.
493.225 Standard; Adequacy of methods and equipment.
493.227 Standard; Temperature and humidity monitoring.
493.229 Standard; Labeling of testing supplies.
493.231 Standard; Procedure manual.
493.233 Standard; Equipment, maintenance, and function checks.
493.235 Standard; Validation of methods.
493.237 Standard; Frequency of quality control.
493.239 Standard; Remedial actions.
493.240 Standard; Quality control—records.
493.241 Condition: Quality control—specialties and subspecialties.
493.243 Condition: Microbiology.
493.245 Standard; Bacteriology.
493.247 Standard; Mycobacteriology.
493.249 Standard; Mycology.
493.251 Standard; Parasitology.
493.253 Standard; Virology.
493.255 Condition: Diagnostic immunology.
493.257 Standard; Syphilis serology.
493.259 Standard; General immunology.
493.261 Condition: Chemistry.
493.263 Standard; Routine chemistry.
493.265 Standard; Endocrinology.
493.267 Standard; Toxicology.
493.269 Condition: Hematology.
493.270 Condition: Pathology.
493.271 Standard; Cytology.
493.273 Standard; Histopathology.
493.274 Standard; Oral pathology.
493.275 Condition: Radiobioassay.
493.277 Condition: Histocompatibility.
493.279 Condition: Medical cytogenetics.
493.281 Condition: Immunohematology.
493.301 Condition: Transfusion services and bloodbanking.
493.303 Standard; Immunohematological testing, processing, storage and transmission of blood and blood products.
493.305 Standard; Facilities.
493.307 Standard; Arrangement for services.
493.309 Standard; Provision of testing.
493.311 Standard; Storage facilities.
493.313 Standard; Retention of transfused blood.
493.315 Standard; Investigation of transfusion reactions.


### Subpart G—Personnel


493.401 Condition: Laboratory director.
493.403 Standard; Laboratory director qualifications.
493.405 Standard; Laboratory director responsibilities.
493.407 Condition: Laboratory supervision.
493.409 Standard; Laboratory supervisor qualifications.
493.411 Standard; Laboratory supervisor duties.
493.413 Condition: Personnel performing cytology services.
493.415 Standard; Cytotechnologist qualifications.
493.417 Standard; Cytotechnologist duties.
493.419 Condition: Technical personnel.


### Subpart H—Quality Assurance


493.451 Condition: Quality Assurance.


### Subpart I—Inspection


493.501 Condition: Inspection.


### Subpart J—CLIA Requirements


493.701 Basis and scope.
493.702 Definitions.
493.704 Licensure application and issuance.
493.706 Revocation and suspension of licenses and letters of exemption; notice.
493.708 Approval of accreditation and State licensure programs; notice.
493.710 Letter of exemption.
Appendix A—Laboratory Director Qualification Requirements Before [Effective Date of Regulations].
Appendix B—Technologist Requirements Before July 1, 1971.
Appendix C—Cytotechnologist Requirements Before [Effective Date of Regulations].


**Authority:** Secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12) and 1861(s)(13) of the Social Security Act and sec. 353 of the Public Health Service Act (42 U.S.C. 263a, 1302, the sentence following sec. 1395 x(s)(11), and secs. 1395x(s)(12) and (13).)

### Subpart A—General Provisions

#### § 493.1 Basis and scope.

This part set forth the conditions that laboratories must meet in order for their tests to be approved for coverage under the Medicare and Medicaid programs and in order for laboratories to be licensed to perform testing on specimens received in interstate commerce. It implements sections 1861(e) and (j), the sentence following section 1861(s)(11), sections 1861(s)(12) and (13), and 1902 of the Social Security Act, and section 353 of the Public Health Service Act. This part applies to: laboratories located in physicians' offices (including group medical practices) that perform any tests on referred specimens; hospitals meeting at least the requirements specified in section 1861(e) of the Act to qualify for emergency hospital services under section 1814 of the Act; skilled nursing facilities; intermediate care facilities for the mentally retarded; rural health clinics that perform tests on referral; ambulatory surgical centers except as provided in § 416.49 of this chapter; end-stage renal disease facilities except as provided in § 405.2163 of this chapter; and independent laboratories, as defined in § 405.1909 of this chapter. It does not apply to laboratories operated by a rural health clinic or physician's office exclusively for its own patients.

#### § 493.2 Definitions.

As used in this part—

"Accredited laboratory" means a laboratory (including a laboratory in a hospital) accredited by, with respect to hospitals, the Joint Commission on the Accreditation of Healthcare Organizations or the American Osteopathic Association and, with respect to interstate licensed laboratories, the Commission on Laboratory Accreditation of the College of American Pathologists, or any other national accreditation organization that has been approved by HHS as provided in section 353 of the Public Health Service Act.

"Authorized person" means a person authorized under section 1861(r) of the Act to order and to receive test results. With respect to tests performed on individuals not receiving or seeking Medicare reimbursement, an authorized person is an individual not excluded under State law or by Medicaid.

"Challenge" means, for quantitative tests, an assessment of the amount of substance or analyte present in a sample. For qualitative tests, a challenge means the determination of the presence or the absence of an analyte, organism, or substance in a sample.

"CLIA" means the Clinical Laboratories Improvement Act of 1967 (Section 353 of the Public Health Service Act).

"Laboratory" means a facility for the microbiological, serological, chemical, hematological, cytological, histological, pathological, immunohematological, radiobioassay, cytogenetical, toxicological, histocompatibility or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health, of human beings. These examinations also include screening procedures to determine the presence or absence of various substances and organisms in the body. Facilities only collecting specimens or only serving as a mailing service and not performing testing are not considered laboratories.

"Referee laboratory" means a laboratory that has had a record of accurate performance for at least one year in a specific test specialty or subspecialty and has been designated by HHS as a referee laboratory for that specialty or subspecialty.

"Sample" means the material contained in a vial, a slide, or other unit that contains material to be tested by proficiency testing program participants. When possible, samples are of human origin.

"Target value" means either the mean of all responses after removal of outliers (those responses greater than 3 standard deviations from the original mean) or the mean established by groups of 20 or more participants that use the same methodology (to be used only when the method bias results in a skewed distribution of responses). If the method group is less than 20 participants, "target value" means the overall mean after outlier removal (as defined above) unless acceptable scientific reasons are available to indicate that such an evaluation is not appropriate.

## Subpart B—Administration

### § 493.11 Condition—Compliance with Federal, State and local laws.

The laboratory must be in compliance with all applicable Federal, State and local laws.

(a) *Standard; Federal laws.* The laboratory must be in compliance with applicable Federal laws related to the health and safety of individuals whose specimens are submitted to it for testing.

(b) *Standard; State licensure.* The laboratory must be (1) licensed if State or applicable local law requires licensure; or (2) approved as meeting standards for licensing established by the agency of the State or locality responsible for licensing laboratories.

(c) *Standard; licensed staff.* All personnel, including those individuals who collect specimens, must be licensed or meet other applicable standards that are required by State and local laws.

(d) *Standard; fire safety.* The laboratory must comply with State and local laws related to fire safety.

(e) *Standard; environment and health.* The laboratory must comply with Federal, State and local laws relating to the storage, handling and disposal of chemical, biological and radioactive materials.

## Subpart C—Participation of Proficiency Testing

### § 493.21 Condition: Enrollment and testing of samples.

A laboratory must enroll in a proficiency testing program that meets the criteria in Subpart D of this part and is approved by HHS. The laboratory must enroll in such a program for each of the specialities and subspecialties for which it seeks or have approval for Medicare or Medicaid participation or for licensure under CLIA. The laboratory must test the samples in a routine manner.

*(a) Standard; Enrollment.* The laboratory must notify HHS of the approved program or programs in which it chooses to participate to meet proficiency testing requirements of this subpart. The laboratory must—

(1) Designate the program to be used for each specialty and subspecialty to determine compliance with this subpart if the laboratory participates in more than one proficiency testing program approved by HHS;

(2) For each speciality and subspecialty, participate in one approved proficiency testing program for four quarters before designating a different program and notify HHS before any change in designation; and

(3) Authorize the proficiency testing program to release to HHS all data required by HHS to determine the laboratory's compliance with this subpart.

*(b) Standard; Testing of proficiency tesing samples.* The laboratory must examine or test, as applicable, the proficiency testing samples it receives from the proficiency testing program in the same manner as it tests patient specimens.

(1) The samples must be examined or tested with the laboratory's regular patient workload by personnel who routinely perform the testing in the laboratory, using the laboratory's routine methods.

(2) The laboratory may not test the samples in duplicate unless it routinely tests patient samples in duplicate.

(3) The laboratory may not send the samples or portions of samples to another laboratory for analysis.

(4) The laboratory must document the handling, processing, examination, testing and reporting of results for all proficiency testing samples and the records must be maintained for a minimum of two years from the date of the proficiency testing shipment or testing event.

### § 493.22 Condition: Successful participation.

(a) Each laboratory must successfully participate in a proficiency testing program approved by HHS as described in Subpart D of this part for each specialty and subspecialty in which the laboratory seeks Medicare approval or licensure under CLIA.

(b) If the laboratory fails to participate successfully in proficiency testing for a given specialty or subspecialty, the laboratory's Medicare approval or licensure under CLIA, or both, will be terminated for the specialty or subspecialty unless the laboratory enrolls within 15 days of notification of unsuccessful speciality or subspecialty performance and successfully participates in an approved enhanced proficiency testing program as described in § 493.25.

(c) If the laboratory fails to perform satisfactorily for the challenges on a given analyte or test procedure, the laboratory performance for the specialty or subspecialty in which the analyte is categorized is considered unsuccessful. The laboratory's Medicare-approval or licensure under CLIA, or both, for the specialty or subspecialty will be terminated unless the laboratory enrolls within 15 days of notification of unsatisfactory analyte performance and satisfactorily performs in an approved enhanced proficiency testing program as described in § 493.25 for the failed analyte.

**§ 493.23 Condition: Successful participation before initial approval or licensure.**

Laboratories must successfully participate for three consecutive proficiency testing shipments for each specialty and subspecialty before initial Medicare or Medicaid approval or CLIA, licensure of the specialty or subspecialty.

**§ 493.24 Reinstatement after failure to participate successfully.**

(a) If a laboratory fails to participate successfully in one or more specialties or subspecialties, and does not request enrollment in the enhanced proficiency testing program described in § 493.25 of this subpart or voluntarily withdraws its participation from Medicare or Medicaid or its licensure under CLIA (or any applicable combination of the three) for the failed specialty or subspecialty, the laboratory's participation or licensure for the applicable specialty or subspecialty will be terminated. The laboratory must then demonstrate sustained successful performance on three consecutive enhanced proficiency testing shipments or onsite testing events (or combination thereof) in a period of no less than six months before HHS will consider it for reinstatement in the specialty or subspecialty.

(b) If the laboratory enrolls in and fails to participate successfully in the enhanced proficiency tesing program for the failed specialty or subspecialty, the laboratory's Medicare approval or licensure under CLIA, or both, for the applicable specialty or subspecialty will be terminated. The laboratory must then demonstrate sustained successful performance in three consecutive enhanced proficiency testing shipments or testing events (or combination thereof) before HHS will consider it for reinstatement in that specialty or subspecialty.

(c) The termination period for Medicare participation or period for revocation of licensure under CLIA for the failed specialty or subspecialty is for a period of not less than six months from the date of termination or revocation.

**§ 493.25 Condition: Enhanced proficiency testing.**

Each laboratory that fails proficiency testing in a specialty, subspecialty (except cytology) or analyte must successfully participate in an enhanced proficiency testing program for three consecutive shipments or onsite testing events (or combination). (These shipments or testing events may be provided quarterly or more frequently.) Enhanced proficiency testing consists of six specimens per shipment or testing event for the subspecialties included within the specialties of diagnostic immunology, chemistry, hematology, and immunohematology and consists of twelve specimens per shipment for bacteriology, mycobacteriology, mycology and parasitology. (Because cytology has its own remedial program, there is no enhanced proficiency testing for it. See § 493.61 of this subpart.) The enhanced proficiency testing shipment or testing event consists of challenges for the overall specialty or subspecialty when the failure in proficiency testing is for a specialty or subspecialty or consists of analyte challenges when individual analyte(s) are failed in proficiency testing. The samples must be tested as in § 493.21(b).

(a) To participate successfully in enhanced proficiency testing, the laboratory—

(1) Must perform successfully on each shipment or testing event of enhanced proficiency testing by achieving an overall shipment score of at least 80% on each of the three shipments or testing events when unsuccessful proficiency testing performance is in a specialty or subspecialty; and

(2) Must perform satisfactorily on each shipment or testing event of enhanced proficiency testing by achieving correct responses on five of six specimens for the first shipment or testing event; ten of 12 specimens for the first and second shipments or testing events (or combination) and 15 of 18 specimens for all three shipments or testing events (or combination) of the failed analyte when unsatisfactory proficiency testing performance is for any analyte.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return enhanced proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the survey.

(d) Evaluation of a laboratory's analyte or test performance and the criteria for acceptable analyte performance in the enhanced proficiency testing program for each specialty, subspecialty and analyte is the same as that described in Subpart D for the proficiency testing program.

(e) Following three shipments or testing events (or combination) of enhanced proficiency testing in which the laboratory performs successfully for the failed specialty or subspecialty or satisfactorily for each failed analyte, the laboratory returns to proficiency testing as specified in § 493.21.

(f) If the laboratory performs unsuccessfully on any of the three enhanced proficiency testing shipments or testing events for the failed specialty or subspecialty or performs unsatisfactorily on any of the three enhanced proficiency testing shipments or testing events for a failed analyte that results in unsuccessful performance for the specialty or subspecialty in which the analyte is categorized, termination in the applicable specialty or subspecialty will be effective 15 days after notification of unsuccessful or unsatisfactory performance in the enhanced proficiency testing program.

**Proficiency Testing by Specialty and Subspecialty**

**§ 493.31 Condition: Microbiology.**

The specialty of microbiology includes, for purposes of proficiency testing, the subspecialties of bacteriology, mycobacteriology, mycology and parasitology.

(a) To participate successfully in microbiology the laboratory must attain an average score of 80% for a given testing event or shipment and may not have a score in any subspecialty of less than 80% for any testing event or shipment. The average score is the sum of shipment or testing event scores for bacteriology, mycobacteriology, mycology and parasitology divided by the total number of the subspecialties for which the laboratory seeks, or has Medicare or Medicaid approval of CLIA licensure.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing service within the timeframes specified results in a score of 0 for the shipment.

**§ 493.33 Standard: Bacteriology.**

(a) To participate successfully in a bacteriology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in score of 0 for the shipment.

**§ 493.35 Standard; Mycobacteriology.**

(a) To participate successfully in a mycobacteriology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.37 Standard; Mycology.**

(a) To participate successfully in a mycology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.39 Standard; Parasitology.**

(a) To participate successfully in a parasitology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.43 Condition: Diagnostic immunology.**

The specialty of diagnostic immunology includes for the purposes of proficiency testing the subspecialties of syphilis serology and general immunology.

(a) To participate successfully in diagnostic immunology the laboratory must attain an average score of 80% for a given testing event or shipment and may not have a score in any subspecialty of less than 80% for a given testing event or shipment. The average score is the sum of shipment or testing event scores for syphilis serology and general immunology divided by the total number of subspecialties for which the laboratory seeks, or has, Medicare or Medicaid approval or CLIA licensure.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the time frames specified results in a score of 0 for the shipment by the program.

**§ 493.45 Standard; Syphilis serology.**

(a) To participate successfully in a syphilis serology proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable; and

(2) Must attain a score of 80% acceptable responses in a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.47 Standard; General immunology.**

(a) To participate successfully in a general immunology proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% of acceptable responses for a given event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.49 Condition: Chemistry.**

The specialty of chemistry includes for the purposes of proficiency testing the subspecialties of routine chemistry endocrinology and toxicology.

(a) To participate successfully in chemistry the laboratory must attain an average score of 80% for a given testing event or shipment and may not have a score in any subspecialty of less than 80% for a testing event or shipment. The average score is the sum of the shipment scores of routine chemistry, endocrinology and toxicology divided by the total number of the subspecialties for which the laboratory seeks, or has, Medicare or Medicaid approval or CLIA licensure.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the time frames specified by the program results in a score of 0 for the shipment.

**§ 493.51 Standard; Routine chemistry.**

(a) To participate successfully in a routine chemistry proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.53 Standard; Endocrinology.**

(a) To participate successfully in an endocrinology proficiency testing program, the laboratory:

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.55 Standard; Toxicology.**

(a) To participate successfully in a toxicology proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipment, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.57 Condition: Hematology.**

(a) To participate successfully in a proficiency testing program for the specialty of hematology, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain an average score of 80% for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

**§ 493.59 Condition: Pathology.**

The specialty of pathology includes, for purposes of proficiency testing, the subspecialty of cytology limited to gynecologic examinations.

**§ 493.61 Standard; Cytology: Gynecologic examinations.**

(Option 1. Onsite proficiency testing)

To participate successfully in a cytology proficiency testing program for gynecologic examinations (Pap smears), the laboratory must meet the requirements of paragraphs (a) through (d) of this section.

(a) The laboratory must require each individual engaged in the examination of cytologic preparations to be tested directly either onsite at the laboratory or at an offsite location that is chosen by HHS.

(b) The laboratory may have no individual who achieves grades of less than (80–100) [1] percent for any testing event and (80–100) percent overall for three consecutive testing events.

(c) The first time an individual fails any part of a proficiency testing event, the laboratory must provide him or her with immediate remedial training and education in the area of the failure and must review the areas passed. If the individual fails 50 percent or more of two testing events, the laboratory must implement a more stringent form of remedial action, up to prohibiting the individual from reporting negative slides, until the individual has been retrained and scores 100 percent on two consecutive proficiency testing events.

(d) If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail any proficiency testing event, all individuals engaged in the examination of cytologic preparations must undergo additional training and education in addition to that required in Subpart G of this part and the laboratory must participate in a retrospective proficiency testing program until the laboratory achieves 95 percent correct responses over three subsequent consecutive proficiency testing events.

(e) If the laboratory fails to take required remedial actions as described in paragraphs (c) and (d) of this section when individuals are found to be failing the proficiency testing program, HHS will terminate the laboratory's Medicare approval for gynecologic cytology testing or revoke its licensure under CLIA, or both if applicable. If either two or more or 10 percent or more of the individuals in a laboratory, whichever number is greater, fail two or more consecutive testing events, HHS will terminate the laboratory's Medicare approval or revoke the laboratory's CLIA license, or both if applicable, for gynecologic cytology.

(Option 2. Proficiency testing by mail)

To participate successfully in a cytology proficiency testing program for Pap smears, the laboratory must meet the requirements of paragraphs (a) through (d) of this section.

(a) The laboratory may test each individual engaged in the examination of cytologic preparations using prepared materials received from the proficiency testing program.

(b) The laboratory may have no individual who achieves grades of less than (80–100) percent for any shipment and (80–100) percent overall for three consecutive shipments.

(c) The first time an individual fails any part of a proficiency testing shipment, the laboratory must provide the individual with immediate remedial training and education in the area of the failure and review the areas passed. If the individual fails 50 percent or more of two shipments, the laboratory must implement a more stringent form of remedial action up to prohibiting the individual from reporting negative slides until the individual has been retrained and scores 100 percent on two consecutive proficiency testing shipments.

(d) If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail any shipment, all individuals engaged in the examination of cytologic preparations must undergo additional training and education in addition to that required in Subpart G of this part and the laboratory must participate in a retrospective proficiency testing program until the laboratory achieves 95 percent correct responses over three subsequent shipments.

(e) If the laboratory fails to take required remedial actions as described in paragraphs (c) and (d) of this section when individuals fail the proficiency testing program, HHS will terminate the laboratory's Medicare approval for gynecologic cytology testing or revoke the laboratory's CLIA license (or both if applicable). If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail two or more consecutive shipments, HHS will terminate the laboratory's

[1] We are identifying what we believe to be a range of acceptable scores and are interested in comments about the precise value that we should select.

Medicare approval or revoke the laboratory's CLIA license (or both if applicable) for gynecologic cytology.

(Option 3. Combination of Options 1 and 2)

(Reserved—Will be determined by comments to NPRM)

**§ 493.63 Condition: Immunohematology.**

(a) For the specialty of immunohematology, there is no overall specialty score for each shipment or testing event, since the proficiency testing in immunohematology is defined by performance in subspecialty services. To participate successfully in an immunohematology proficiency testing program, the laboratory must attain a score of 100% acceptable responses for the subspecialties of grouping, typing, antibody detection and crossmatch compatibility for incompatible crossmatches. More than one false incompatible result (for a compatible sample) in any shipment or testing event will result in failure of the shipment. For the subspecialty of antibody identification, a score of 80% is required for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

## Subpart D—Proficiency Testing Programs

**§ 493.91 Approval of proficiency testing programs.**

In order for a proficiency testing program to receive HHS approval, the program must, for each specialty and subspecialty for which it provides testing—

(a) Assure the quality of test samples, appropriately evaluate the testing results, and identify performance problems in a timely manner; and

(b) Demonstrate to HHS that it has—

(1) The technical ability required to prepare and distribute samples, using rigorous quality control to assure that samples mimic actual patient specimens when possible and that samples are homogeneous and will be stable within the time frame for analysis by proficiency testing participants;

(2) A scientifically defensible process for determining the correct answer for each challenge offered by the program;

(3) A program of sufficient annual challenge and frequency to establish that a laboratory has met minimum performance requirements; and

(4) The resources needed to provide, statewide or nationwide, reports to regulatory agencies on individual laboratory performance on shipments or testing events, cumulative reports about laboratory performance, and reports of specific laboratory failures using grading criteria acceptable to HHS on a timely basis; and

(c) Meet the specific criteria for proficiency testing programs listed by specialty and subspecialty of services contained in §§ 493.91–943.153 for initial approval and thereafter provide HHS, on an annual basis, with a description of program content and grading criteria.

**§ 493.93 Administrative responsibilities.**

The proficiency testing program must—

(a) Issue reports in a format approved by HHS on each laboratory's performances for the individual Medicare, Medicaid or CLIA-licensed specialty or subspecialty of service within 30 days from the date by which the laboratory must report proficiency testing results to the proficiency testing program. Copies of these laboratory reports must be sent to the State survey agency at the same time reports are sent to the laboratory.

(b) Furnish to HHS cumulative reports on an individual laboratory's performance and aggregate data on Medicare approved and CLIA-licensed laboratories;

(c) Provide HHS with additional information and data upon request; and

(d) Maintain records of Medicare-approved and CLIA-licensed laboratories' performance for a period of five years or such time as may be necessary for any legal proceedings.

**§ 493.95 Disapproved proficiency testing programs.**

If a proficiency testing program fails to meet the criteria contained in §§ 493.97-493.153 for approval of the proficiency testing program, HHS will notify the program and all laboratories that are Medicare-approved or CLIA-licensed of the non-approval and the reasons for non-approval.

**§ 493.96 Process for updating proficiency testing program.**

HHS reviews the requirements for proficiency testing on a regular basis and considers revisions to the program based on the performance of laboratories. It will change requirements after soliciting comments from all concerned groups regarding the need to modify the criteria for an approved proficiency testing program. Changes in the program may be made to incorporate new analytes, tests, or organisms of clinical significance, to delete obsolete or well-performed tests, or to improve the valuation scheme. When HHS decides to include new challenges or evaluation criteria in future proficiency testing, it will notify all proficiency testing programs of the necessary changes in proficiency testing and require these changes to be provided by approved proficiency testing programs within two years of the notice of change.

### Proficiency Testing Programs by Specialty and Subspecialty

**§ 493.97 Microbiology.**

The subspecialties under the specialty of microbiology for which a program may offer proficiency testing are bacteriology, mycobacteriology, mycology, and parasitology. Specific criteria for these subspecialties are found at 493.99 through 493.153.

**§ 493.99 Bacteriology.**

(a) *Types of laboratories.* In bacteriology, for proficiency testing purposes, there are three types of laboratories:

(1) Those that interpret only Gram stains, use direct antigen techniques to detect an organism, perform primary inoculation, or perform any combination of these;

(2) Those that—

(i) May use direct antigen techniques to detect an organism or isolate aerobic and anaerobic bacteria from mixed bacterial populations; and

(ii) Perform limited identification, perform antimicrobial susceptibility tests on selected microorganisms isolated, or both; and

(3) Those that—

(i) Are able to identify aerobic and anaerobic bacteria from mixed bacterial populations to both genus and species in most instances and perform antimicrobial susceptibility tests on the microorganisms isolated; or

(ii) May use direct antigen techniques to detect an organism.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for bacteriology, the annual program must provide a minimum of six samples per quarter. The samples may be provided to the laboratory through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing. An annual program must include bacterial species that are representative of the six major groups of bacteria: anaerobes, Enterobacteriaceae, Gram-positive bacilli, Gram-positive cocci, Gram-

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negative cocci, and miscellaneous Gram-negative bacteria.

(1) An approved program must, during each calendar year, furnish HHS with a description of samples that it plans to include in its annual program. Some of the bacterial species representative of the six major groups must be varied from year to year. At least 50% of the samples must be mixtures of the principal organism and appropriate normal flora. The program must include other important emerging pathogens (as determined by HHS) and either organisms commonly occurring in patient specimens or opportunistic pathogens. The program must include two types of samples and each must meet the 50 percent mixed culture criterion:

(i) Samples that require laboratories to report only organisms that the testing laboratory considers to be a significant pathogen that is clearly responsible for a described illness. The program determines the reportable isolates, including antimicrobial susceptibility for the isolate.

(ii) Samples that require laboratories to report all organisms present. Samples must contain multiple organisms frequently found in specimens such as urine, blood, abscesses, and aspirates where multiple isolates are clearly significant or where specimens are derived from immunocompromised patients. The program determines the reportable isolates.

(2) An approved program may vary over time. For example, the types of organisms that might be included in an approved program over time are—

Anaerobes
*Bacteroides fragilis group*
*Clostridium perfringens*
*Peptostreptococcus anaerobius*

Enterobacteriaceae
*Klebsiella pneumoniae*
*Salmonella typhimurium*
*Serratia marcescens*
*Shigella sonnei*
*Yersinia enterocolitica*

Gram-positive bacilli
Listeria monocytogenes
Corynebacterium Species CDC group JK

Gram-positive cocci
*Staphylococcus aureus*
*Streptococcus* Group A
*Streptococcus* Group B
*Streptococcus* Group D (S. *bovis* and *enterococcus)*
*Streptococcus pneumoniae*

Gram-negative cocci
*Branhamella catarrhalis*
*Neisseria gonorrhoeae*
*Neisseria meningitidis*

Miscellaneous Gram-negative bacteria
*Campylobacter jejuni*
*Haemophilis influenza*, Type B

(3) For antimicrobial susceptibility testing, the program must provide at least one sample per quarter that includes Gram-positive or Gram-negative strains that have a predictable pattern of sensitivity or resistance to the common antimicrobial agents.

(c) *Evaluation of a laboratory performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response which reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. Sample scores must be averaged to determine the score for the shipment or testing event.

(2) For samples described in paragraph (b)(1)(i) of this section, failure to report the specific pathogen or reporting an additional organism as a pathogen must receive equal penalty. For samples described in paragraph (b)(1)(ii) of this section, misidentification or failure to report an isolate receives equal penalty. The total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported is multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not considered reportable, the sample grade would be $1/(1+1)\times 100=50\%$.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent it performs it with patient specimens, the program must use the laboratory's type of service as determined in accordance with paragraph (a) of this section to determine the appropriateness of the laboratory's response.

(4) For antimicrobial susceptibility testing, laboratories must report those antimicrobial agents considered appropriate for the causative organism and infection site. Determination of which antimicrobial agents are appropriate must be based on a consensus document such as a National Committee on Clinical Laboratory Standards (NCCLS) publication. Grading is based on the number of correct responses divided by the number of appropriate drugs tested. A laboratory must indicate which antibiotics are included in its test panel; the program may evaluate the laboratory only for those antibiotics for which service is offered.

(5) A laboratory's shipment score for bacteriology is the score for organism identification or, if the laboratory also performs antimicrobial susceptibility testing, the score determined by dividing the total number of possible organisms a laboratory should have identified plus the number of correct antimicrobial agent responses by the number of correctly identified organisms plus the number of additional organisms reported plus the number of appropriate antimicrobial agents tested multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a shipment or testing event contained three reportable organisms and a laboratory reported all three correctly, but reported one additional organism and made one error in antimicrobial susceptibility testing of three appropriate agents tested, its score for bacteriology would be: $(3+2)/(3+1+3)\times 100=71\%$.

**§ 493.101 Mycobacteriology.**

(a) *Types of laboratories.* In mycobacteriology, there are three types of laboratories for proficiency testing purposes:

(1) Those that perform acid-fast stains and refer cultures to another laboratory for identification;

(2) Those that isolate and perform identification of Mycobacterium tuberculosis, but refer cultures other than M. tuberculosis to another laboratory for identification, perform antimycobacterial susceptibility tests on the organisms isolated, or both; and

(3) Those that isolate and identify all mycobacteria to the extent required for correct clinical diagnosis, perform antimycobacterial susceptibility tests on the organisms isolated, or both.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for mycobacteriology, the annual program must provide a minimum of six samples per quarter. The samples may be provided through mailed shipments or, at HHS' option, provided to HHS for on-site testing. An approved program must furnish HHS a description of samples that it plans to include in its program during each calendar year.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (c) (1) through (3) of this section.

(1) The program determines the reportable organisms. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response which reflects agreement of at least 80% or more of ten or more referee laboratories or all participating laboratories agree. Sample scores must be averaged to determine the shipment or testing event score.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must provide a means of deducting credit for additional erroneous organisms reported. Therefore, the total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported must be multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be 1/(1+1)×100=50%.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent it performs it with patient specimens, the program must use a laboratory's type of service as determined in accordance with paragraph (a) of this section to determine the appropriateness of the laboratory's response.

**§ 493.103 Mycology.**

(a) *Types of laboratories.* In mycology, there are three types of laboratories for proficiency testing purposes that may perform different levels of service for yeasts, dimorphic fungi, dermatophytes, and aerobic actinomycetes:

(1) Those that perform direct examination and culture, recognizing the type of organism that is present and referring isolates to another laboratory for identification;

(2) Those that isolate and perform identification to the genus and, in some cases, the species level or to the extent required to differentiate recognized pathogens from others; and

(3) Those that isolate and identify organisms to the extent required for correct clinical diagnosis.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for mycology, the annual program must provide a minimum of six samples per quarter. The samples may be provided through mailed shipments or, or at HHS' option, may be provided to HHS for on-site testing. An annual program must include representatives of five major groups of organisms: yeast or yeast-like fungi; dimorphic fungi; dematiaceous fungi; dermatophytes; and saprophytes, including opportunistic fungi.

(1) An approved program must furnish HHS, during the calendar year, with a list of organisms that will be included in its annual program. Some of the organisms representative of the five major groups must vary from year to year. At least 50% of the samples must be mixtures of the principal organism and appropriate normal background flora. Other important emerging pathogens (as determined by HHS) and organisms commonly occurring in patient specimens must be included periodically in the program.

(2) An approved program may vary over time. As an example, the types of organisms that might be included in an approved program over time are—

*Candida albicans*
*Candida* (other species)
*Cryptococcus neoformans*
*Sporothrix schenchii*
*Exophiala jeanselmei*
*Fonsecaea pedrosoi*
*Acremonium* sp.
*Trichophyton* sp.
*Aspergillus fumigatus*
*Nocardia* sp.
*Blastomyces dermatitidis* [2]
*Zygomycetes* sp.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (c)(1) through (3) of this section.

(1) The program determines the reportable organisms. To determine the accuracy of a laboratory's response the program must compare the laboratory's response for each sample with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. Sample scores must be averaged to determine the survey score.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must deduct credit for these additional erroneous organisms reported. Therefore, the total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported must be multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be 1/(1+1)×100=50%.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent it performs it with patient specimens, a laboratory's type of service as determined in accordance with paragraph (a) of this section must be used to determine the appropriateness of it response.

**§ 493.105 Parasitology.**

(a) *Types of laboratories.* In parasitology there are three types of laboratories for proficiency testing purposes—

(1) Those that are able to recognize the presence of parasites but usually refer them to another laboratory for identification;

(2) Those that identify parasites to the extent required to establish a correct clinical diagnosis without performing permanent stains for identification; and

(3) Those that identify parasites to the extent required to establish a correct clinical diagnosis and perform permanent stains.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing in parasitology, a program must provide a minimum of six samples per quarter. The samples may be provided through mailed shipments or, or at HHS option, may be provided to HHS for on-site testing. An annual program must include parasites that are commonly encountered in the United States as well as those recently introduced into the United States. Other important emerging pathogens (as determined by HHS) and organisms commonly occurring in patient specimens must be included periodically in the program.

(1) An approved program must furnish HHS, during the calendar year, with a list of organisms that will be included in its annual program. Samples must include both formalinized specimens and PVA (polyvinyl alcohol) fixed specimens and blood smears, as appropriate for a particular parasite and stage of the parasite. Samples must contain protozoa or helminths or a combination of parasites. Some samples must be devoid of parasites.

(2) An approved program may vary over time. As an example, the types of organisms that might be included in an approved program over time are—

*Entamoeba histolytica*

[2] Provided as a nonviable sample.

*Entamoeba coli*
*Giardia lamblia*
*Endolimax nana*
*Dientamoeba fragilis*
*Iodamoeba butschlii*
*Chilomastix mesnili*
Hookworm
*Ascaris lumbricoides*
*Strongyloides stercoralis*
*Trichuris trichiura*
*Enterobius vermicularis*
*Diphyllobothrium latum*
*Cryptosporidium* sp.
*Plasmodium falciparum*

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c)(1) through (3) of this section.

(1) The program must determine the reportable organisms. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories. Sample scores must be averaged to determine the score for the shipment or testing event.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must deduct credit for these additional erroneous organisms reported. Therefore, the total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported must be multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be $1/(1+1)\times 100=50\%$.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent as it performs it with patient specimens, a laboratory's type of service as determined in accordance with paragraph (a) of this section must be used to determine the appropriateness of its response.

**§ 493.107 Diagnostic immunology.**

The subspecialties under the specialty of immunology for which a program may offer proficiency testing are syphilis serology and general immunology. Specific criteria for these subspecialties are found at §§ 493.109 and 493.111.

**§ 493.109 Syphilis serology.**

(a) *Program content and frequency of challenge.*—The annual program must provide a minimum of five samples per quarter and must provide samples that cover the full range of reactivity from highly reactive to nonreactive. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum challenges per quarter a program must offer for syphilis serology are five.

(c) *Evaluation of analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (3) of this section.

(1) To determine the accuracy of a laboratory's response for a qualitative syphilis test, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. The proficiency testing program must indicate the minimum concentration that will be considered as indicating a positive response. For quantitative syphilis tests, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the program must determine the appropriateness of the response by using either fixed criteria or the number of standard deviations the response differs from the target values.

(3) The criterion for acceptable performance for syphilis serology is the target value ± 1 dilution or (positive or negative).

**§ 493.111 General immunology.**

(a) *Program content and frequency of challenge.*

To be approved for proficiency testing for immunology, the annual program must provide a minimum of two samples per quarter and must provide samples that cover the full range of reactivity from highly reactive to nonreactive. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter the program must provide for each analyte or test procedure is two.

*Analyte or Test Procedure*

Alpha-1 antitrypsin
Alpha-fetoprotein
Antinuclear antibody
Antistreptolysin O
Anti-human immunodeficiency virus (HIV)
Complement C3
Complement C4
Hepatitis markers (HBsAg, anti-HBc, HBeAg)
IgA
IgG
IgE
IgM
Infectious mononucleosis
Rheumatoid factor
Rubella

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (4) of this section.

(1) To determine the accuracy of a laboratory's response for qualitative immunology tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. The proficiency testing program must indicate the minimum concentration that will be considered as indicating a positive response. For quantitative immunology analytes or tests, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are—

| Analyte or Test | Criteria for acceptable performance |
|---|---|
| Alpha-1 antitrypsin | Target value ±3 SD. |
| Alpha-fetoprotein | Target value ±3 SD. |
| Antinuclear antibody | Target value ±1 dilution or (pos. or neg.). |
| Antistreptolysin O | Target value ±1 dilution or (pos. or neg.). |
| Anti-human Immunodeficiency Virus. | Reactive or nonreactive. |
| Complement C3 | Target value ±3 SD. |
| Complement C4 | Target value ±3 SD. |
| Hepatitis (HBsAg, anti-HBc, HBeAg). | Reactive (positive) or nonreactive (negative). |
| IgA | Target value ±3 SD. |
| IgE | Target value ±3 SD. |
| IgG | Target value ±3 SD. |
| IgM | Target value ±3 SD. |

| Analyte or Test | Criteria for acceptable performance |
|---|---|
| Infectious mononucleosis. | Target value ±1 dilution or (pos. or neg.). |
| Rheumatoid factor | Target value ±1 dilution or (pos. or neg.). |
| Rubella | Target value ±1 dilution or (pos. or neg.). |

**§ 493.115 Chemistry.**

The subspecialties under the specialty of chemistry for which a proficiency testing program may offer proficiency testing are routine chemistry, endocrinology and toxicology. Specific criteria for these subspecialties are listed in 493.117 through 493.119.

**§ 493.117 Routine chemistry.**

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for chemistry, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the clinically relevant range of values that would be expected in patient specimens. The specimens may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

*Analyte or Test Procedure*

Alanine aminotransferase (ALT/SGPT)
Albumin
Alkaline phosphatase
Amylase
Aspartate aminotransferase (AST/SGOT)
Bilirubin, total
Blood gas pH
$pO_2$
$pCO_2$
Calcium, total
Chloride
Cholesterol, total
Cholesterol, high density lipoprotein
Creatine kinase
Creatine kinase, isoenzymes
Creatinine
Glucose
Iron, total
Lactate dehydrogenase (LDH)
LDH isoenzymes
Magnesium
Potassium
Sodium
Triglycerides
Urea Nitrogen
Uric Acid

(c) *Evaluation of a laboratory analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (3) of this section.

(1) To determine the accuracy of a laboratory's response for qualitative chemistry tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more reference laboratories or all participating laboratories. For quantitative chemistry tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.*

The criteria for acceptable performance are—

| Analyte or test | Criteria for acceptable performance |
|---|---|
| Alanine aminotransferase (ALT/SGPT). | Target value ±20%. |
| Albumin | Target value ±10%. |
| Alkaline phosphatase | Target value ±3 SD. |
| Amylase | Target value ±3 SD. |
| Aspartate aminotransferase (AST/SGOT). | Target value ±10%. |
| Bilirubin, total | Target value ±.3 mg/dL or 20% (greater term). |
| Blood gas p02 | Target value ±3 SD. |
| pC02 | Target value ±3 mm Hg or 8% (greater). |
| pH | Target value ±.04. |
| Calcium, total | Target value ±.8mg/dL. |
| Chloride | Target value ±5%. |
| Cholestrol, total | Target value ±15%. |
| Cholestrol, high density lipoprotein. | Target value ±3 SD. |
| Creatine kinase | Target value ±3 SD. |
| Creatine kinase isoenzymes. | MB elevated (+ or −) or Target value ±3 SD. |
| Creatinine | Target value ±.2 mg/dL or 7% (greater term). |
| Glucose | Target value ±10%. |
| Iron, total | Target value ±20%. |
| Lactate dehydrogenase (LDH). | Target value ±20%. |
| LDH isoenzymes | LDH1/LDH2 (+ or −) or Target value ± 3 SD. |
| Magnesium | Target value ±25%. |
| Potassium | Target value ±.3 mmol/L. |
| Sodium | Target value ±3 mmol/L or ±4 mmol/1 if target value is above 150 mmol/L. |
| Triglycerides | Target value ±3 SD. |
| Urea nitrogen | Target value ±2 mg/dL or 9% (greater). |
| Uric acid | Target value ±17%. |

**§ 493.119 Endocrinology.**

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for endocrinology, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the clinically relevant range of values that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

*Analyte or Test*

Cortisol
Thyroid-stimulating hormone
Thyroxine

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c)(1) through (3) of this section.

(1) To determine the accuracy of a laboratory's responses on qualitative tests or analytes, a program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. For quantitative chemistry tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are—

| Analyte or test | Criteria for acceptable performance |
|---|---|
| Cortisol | Target value ±25%. |
| Thyroxine | Target value ±2SD. |
| Thyroid-stimulating hormone. | Target value ±3SD. |

**§ 493.121 Toxicology.**

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for toxicology, the annual program must provide a

minimum of two samples per quarter. The annual program must provide samples that cover the clinically relevant range of values that would be expected in specimens of patients on drug therapy and that cover the level of clinical significance for the particular drug. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide or for each analyte or test procedure is two.

*Analyte or Test Procedure*

Alcohol (blood)
Blood lead
Carbamazepine
Digoxin
Ethosuximide
Gentamicin
Lithium
Phenobarbital
Phenytoin
Primidone
Procainamide (and metabolite)
Quinidine
Theophylline
Valproic Acid

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c)(1) through (3) of this section.

(1) To determine the accuracy of a laboratory's responses for qualitative tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories. For quantitative chemistry tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are:

| Analyte or test | Criteria for acceptable performance |
|---|---|
| Alcohol, blood | Target value ±25%. |
| Blood lead | Target value ±15% or 6 mcg/dL (greater). |
| Carbamazepine | Target value ±25%. |
| Digoxin | Target value ±20% or ±.2 ng/mL (greater term). |
| Ethosuximide | Target value ±20%. |
| Gentamicin | Target value ±25%. |
| Lithium | Target value ±.2 mmol/L |
| Phenobarbital | Target value ±20%. |
| Phenytoin | Target value ±25%. |
| Primidone | Target value ±25%. |
| Procainamide (and metabolite). | Target value ±25%. |
| Quinidine | Target value ±25%. |
| Theophylline | Target value ±25%. |
| Valproic Acid | Target value ±25%. |

**§ 493.125 Hematology (including routine hematology and coagulation).**

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for hematology, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the full range of values that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

*Analyte or Test Procedure*

Cell identification
White cell differential
Erythrocyte count
Hematocrit
Hemoglobin
Leukocyte count
Platelet count
Fibrinogen
Partial thromboplastin time
Prothrombin time

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (3) of this section.

(1) To determine the accuracy of a laboratory's responses for qualitative tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories. For quantitative hematology tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response is determined using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are:

| Analyte or test | Criteria for acceptable performance |
|---|---|
| Cell identification | 80% consensus on identification. |
| White cell differentiation | Target ±3 SD. |
| Erythrocyte count | Target ±3 SD or 6% (lesser). |
| Hematocrit | Target ±3 SD or 6% (lesser). |
| Hemoglobin | Target ±3 SD or 5% (lesser). |
| Leukocyte count | Target ±3 SD or 10% (lesser). |
| Platelet count | Target ±3 SD or 25% (lesser). |
| Fibrinogen | Target ±3 SD. |
| Partial thromboplastin time. | Target ±3 SD or ±15% (greater). |
| Prothrombin time | Target ±3 SD or ±15% (greater). |

**§ 493.129 Cytology: Gynecologic examinations.**

(Option 1—Onsite PT)

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for gynecologic examinations (Pap smears) in cytology, a program must provide onsite testing. The testing may be at the laboratory or at another site. The program must provide (5 to 12) [3] challenges per testing event (1 to 4) [3] times per year. Each testing event must include normal challenges, infectious agents, benign reactive processes, premalignant processes, and malignant processes.

(b) *Evaluation of an individual's performance.* HHS approves only those programs that assess the responses of each individual engaged in the examination of cytologic preparations. The program must assess the accuracy of each individual's response by using slides that have been referenced.

(1) A slide with atypical results is referenced if there has been a confirmation by tissue biopsy.

(2) A slide with negative results is referenced if there is 95 per cent consensus agreement. The reference review must be conducted before testing the laboratory.

[3] We are inviting comments on the number of challenges and their frequency and are proposing what we consider to be realistic ranges.

(Option 2—Mailed PT)

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for gynecologic examinations (Pap smears) in cytology, a program must provide (5–12) challenges per shipment (1 to 4) times per year. Each shipment must include normal challenges, infectious agents, benign reactive processes, premalignant processes, and malignant processes.

(b) *Evaluation of an individual's performance.* HHS approves only those programs that assess the responses of each individual engaged in the examination of cytologic preparations. The program must assess the accuracy of each individual's response by using slides that have been referenced.

(1) A slide with atypical results is referenced if there has been a confirmation by tissue biopsy.

(2) A slide with negative results is referenced if there is 95 per cent consensus agreement. The reference review must be conducted before testing the laboratory.

**§ 493.153 Immunohematology.**

(a) *Types of laboratories.* In immunohematology, there are three types of laboratories for proficiency testing purposes—

(1) Those that perform ABO and/or Rh typing but do not perform irregular antibody detection or identification;

(2) Those that perform ABO and/or Rh typing, compatibility testing, irregular antibody detection and crossmatching but do not perform antibody identification; and

(3) Those that perform ABO and/or Rh typing, compatibility testing, irregular antibody detection and crossmatching and also perform antibody identification.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for immunohematology, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the full range of interpretation that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(c) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

| *Analyte or Test Procedure* |
|---|
| ABO grouping |
| Rh typing |
| Antibody detection |
| Antibody identification |
| Crossmatch compatibility |

(d) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (d)(1) through (3) of this section.

(1) To determine the accuracy of a laboratory's response, a program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 90% of ten or more referee laboratories or all participating laboratories.

(2) After the target value has been established for each response, the appropriateness of the response is determined using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are—

| Analyte or test | Criteria for acceptable performance |
|---|---|
| ABO grouping | 100% accuracy on 95% consensus. |
| Rh typing | 100% accuracy on 95% consensus. |
| Antibody detection | 100% accuracy on 90% consensus. |
| Antibody identification | 80% accuracy on 90% consensus. |
| Crossmatch compatibility. | 100% accuracy on 95% consensus for incompatible crossmatches and no more than one false incompatible result for a compatible sample. |

## Subpart E—Patient Test Management

**§ 493.201 Condition: Patient test management.**

The laboratory must maintain and employ a system that provides for proper receipt and processing of patient specimens and accurate reporting of patient test results.

(a) *Standard; Procedures for specimen submission.* The laboratory must have written policies and procedures regarding collection, labeling, preservation or fixation, and transportation of specimens that, when followed, assure accurate and reliable test results. The laboratory must follow these practices and make available to clients instructions for specimen collection, handling, preservation and transportation as a means of ensuring that specimens submitted are satisfactory for testing.

(b) *Standard; Specimen requisition.* The laboratory must perform tests only at the written or electronic request of an authorized person and maintain records of test requistions for at least two years. The laboratory must assure that the requisition includes—

(1) The patient's name or other method of specimen identification to assure accurate reporting of results;

(2) The name or other suitable identifier of the person who ordered the test or the name of the clinical laboratory submitting the specimen;

(3) The date of specimen collection and the time of specimen collection, if pertinent;

(4) The source of specimen and type of test ordered; and

(5) For cytology specimens—

(i) Patient age;

(ii) Pertinent clinical information; and

(iii) For Pap smears, the last menstrual period and indication whether the patient is at risk for developing cervical cancer or its presursors.

(c) *Standard; Specimen records.* The laboratory must maintain a system of reliable specimen identification, document each step in processing patient specimens and testing to assure accurate test reporting, and retain records of patient testing for at least two years. This system must provide—

(1) The laboratory number or other identification of the specimen;

(2) The patient's name or other method of specimen identification to assure accurate reporting of results;

(3) The name or other suitable identifier of the person who ordered the test or the name of the clinical laboratory submitting the specimen;

(4) The date of specimen collection; the time of specimen collection, if pertinent; and the date of specimen receipt in the laboratory;

(5) The source of specimen and type of test ordered;

(6) The condition or disposition of specimens that do not meet the laboratory's criteria for specimen acceptability; and

(7) The records and dates of performance of each step in patient testing leading to the final report to assure proper identification and reliable reporting of test results.

(d) *Standard; test report.* The laboratory report must be sent promptly to the authorized person or laboratory that initially requested the test and a legally reproduced record of each test result must be preserved by the testing laboratory for a period of at least two years after the date of reporting. For cytology, test reports must be maintained at least ten years after the date of reporting.

(1) The legally reproduced copies of test reports must be filed in the

laboratory in a manner that permits ready identification and accessibility.

(2) The results of transcripts of laboratory tests or procedures must be released only to authorized persons.

(3) Pertinent "normal" ranges, as determined by the laboratory performing the tests, must be available to the authorized person who ordered or who utilizes the test results.

(4) The laboratory must establish special reporting procedures for potential life-threatening laboratory results or panic values. In addition, the laboratory must immediately alert the individual requesting the test when any result indicating a life-threatening condition is obtained.

(5) The laboratory must indicate on the test report any information regarding the condition or disposition of specimens that do not meet the laboratory's criteria for acceptability.

(6) The laboratory must upon request make available to clients a list of test methods employed by the laboratory and a basis for the listed "normal" ranges. In addition, information that may affect the interpretation of test results, such as test interferences, if known, and performance claims including, where applicable, detection limits, sensitivity, specificity, accuracy, precision and validity of test measurement and other pertinent test characteristics must be provided to the individual requesting the test. Updates on testing information must be provided to clients whenever changes occur that affect the test results or interpretation of test results.

(7) The test report must include the name and address of each laboratory performing each test.

(e) *Standard; referral of specimens.* The laboratory may refer specimens for testing only to a laboratory that is Medicare-approved or CLIA-licensed (or exempted from CLIA-licensure) for the appropriate speciality or subspecialty.

(1) The authorized person who orders a test or procedure must be notified by the referring laboratory of the name and address of each laboratory that performs a laboratory test.

(2) If the referring laboratory interprets or revises in any way the test results provided by the testing laboratory, the referring laboratory must notify the authorized person who requested the test or procedure and the testing laboratory. The referring laboratory must maintain a legally reproduced copy of such interpretations, alterations or revisions and of the notice to the client and testing laboratory.

(3) The referring laboratory may permit each testing laboratory to send the test result directly to the authorized person who initially requested the test. In such case, the referring laboratory must maintain a legally reproduced copy of each testing laboratory's report.

(4) The test report must include the name and address of each testing laboratory.

## Subpart F—Quality Control

### § 493.221 Condition: General quality control.

The laboratory must impose and practice quality control procedures that provide and assure accurate, reliable and valid test results and reports and that meet the standards in §§ 493.223 through 493.239 of this subpart.

### § 493.223 Standard; Facilities.

The laboratory must be constructed, arranged and maintained to ensure adequate space, facilities and essential utilities for the performance and reporting of tests.

### § 493.225 Standard; Adequacy of methods and equipment.

The laboratory must employ methodologies and equipment that provide accurate and reliable test results and reports.

(a) The laboratory must have sufficient equipment and instruments to perform the type and volume of testing offered by the laboratory.

(b) The instrumentation used must be capable of providing test results within the laboratory's stated performance characteristics. These performance characteristics include detection limits, precision, accuracy, specificity, sensitivity as well as freedom from interferences and related test variables.

(c) Test methods are performed in a manner that permits the laboratory to provide test results within the laboratory's stated performance characteristics, including precision, accuracy, sensitivity, specificity, detection limits, as well as freedom from interference and related test variables. In determining test methodology, the laboratory must consider factors such as utilizing the appropriate test system to give the performance characteristics specified by the laboratory, assuring a statistically valid number of counts to give accurate and reliable test results for systems such as cell counters, radioactive counters, spectrophotometers and other equipment for which this is a critical variable.

(d) The laboratory must have adequate systems in place to report results in an accurate and reliable manner and within the time frames established by the laboratory.

### § 493.227 Standard; Temperature and humidity monitoring.

Temperature and humidity must be maintained and monitored within an acceptable range of values to assure—

(a) Proper storage of specimens, reagents and supplies; and

(b) Accurate and reliable test performance and reporting.

### § 493.229 Standard; Labeling of testing supplies.

(a) Reagents, solutions, culture media, controls and calibrators and other materials must be labeled to indicate—

(1) Identity, and, when significant, titer, strength or concentration;

(2) Recommended storage requirements; and

(3) Preparation or expiration date and other pertinent information.

(b) The laboratory may not use materials that have exceeded their expiration date, are of substandard reactivity, or have deteriorated.

### § 493.231 Standard; Procedure manual.

(a) Personnel examining specimens and performing related procedures within a specialty or subspecialty have available in the testing area complete written instructions and descriptions related to—

(1) The current analytical methods used by personnel;

(2) Specimen processing procedures;

(3) Preparation of solutions, reagents, and stains;

(4) Calibration procedures;

(5) Microscopic examination;

(6) Quality control procedures;

(7) Quality assurance policies;

(8) Limitations in methodologies;

(9) Actions to be followed when quality control results deviate from expected values or patterns;

(10) Procedures for reporting patient results;

(11) Pertinent literature references; and

(12) Alternative methods for performing tests or storing the test specimens in the event that a test system becomes inoperable.

(b) Procedures and changes in procedures must be approved and signed and dated by the current director of the laboratory.

(c) The laboratory must maintain, for a period of up to two years, records of each procedure it uses and the span of time the procedure was in use.

(d) Textbooks may be used as supplements to these written descriptions but may not be used in their place.

**§ 493.233 Standard; Equipment maintenance and function checks.**

The laboratory establishes and employs policies and procedures for—

(a) The proper maintenance of equipment, instruments and test systems by—

(1) Defining its preventive maintenance program for each instrument and piece of equipment based on the manufacturer's instructions. If the laboratory choose to perform preventive maintenance less frequently than the manufacturer recommends or the manufacturer does not specify a frequency, the laboratory must document the validity of its preventive maintenance program; and

(2) Documenting the performance of its preventive maintenance program.

(b) Performing function checks on equipment, including spectrophotometers, radioactive counters, cell counters, automated analyzers, centrifuges, densitometer and data processors to assure proper performance and the production of accurate and reliable test results by—

(1) Calibrating, recalibrating, or rechecking each instrument or device or test system at least once each day of use;

(2) Performing the function checks with at least the frequency specified by the manufacturer unless the laboratory has data that document that a lesser frequency will not alter the performance characteristics of the system. The laboratory must establish performance criteria for each test or procedure if the manufacturer of the test system or equipment has not specified the type of maintenance and function checks to perform; and

(3) Performing all necessary baseline or background checks on radioactive counters, cell counters, refractometers, spectrophotometers and other equipment requiring such measurements. The laboratory may not report test results unless the background or baseline checks are within acceptable limits.

**§ 493.235 Standard; Validation of methods**

The laboratory must have a written protocol and documentation for the validation of each method that verifies that the method produces test results within the laboratory's stated performance characteristics.

(a) The linearity of each quantitative method, if applicable, must be established.

(b) In the case of qualitative and screening tests, the laboratory must establish and define the basis for specifying reportable results as positive, negative, degree of reactivity, or in accordance with another reporting system. The laboratory must follow these established limits in reporting test results.

(c) A method used by the laboratory must be validated before it is used and documentation of the validation must be available for the period during which the procedure is used by the laboratory or for two years, whichever is longer.

(d) The laboratory must have documentation of the level of precision, accuracy, sensitivity, and specificity that the laboratory claims for each method in use and for which it reports results.

(e) The laboratory must maintain documentation verifying that test systems perform according to the laboratory's specifications. This documentation must be available to the authorized persons ordering or receiving test results.

(f) The laboratory must define the basis for reporting patient test results.

(g) The laboratory may not report patient test results if it does not have data to verify the specified test performance characteristics and reporting limits.

**§ 493.237 Standard; Frequency of quality control.**

The laboratory must perform quality control at the frequencies specified in this section unless another frequency is specified in §§ 493.241 through 493.315 or HHS approves a lesser frequency in Appendix C of the State Operational Manual (HCFA Pub. 7).

(a) The laboratory must establish and document a schedule for calibration, recalibration or calibration verification of each automated and manual method.

(1) The laboratory must perform procedural calibration or recalibration at least once every six months using a complete range of calibrators and, in addition, when any of the following occur:

(i) A complete change of reagents for a procedure is introduced. If all of the reagents for a test are packaged together, the laboratory is not required to recalibrate for each package of reagents, provided the reagents are received in the same shipment and contain the same lot number;

(ii) There is major preventive maintenance or replacement of critical parts, such as an excitor lamp;

(iii) Controls begin to reflect an unusual trend or are outside of acceptable limits;

(iv) The manufacturer's recommendation specify more frequent recalibration; or

(v) The laboratory's established schedule requires more frequent recalibration.

(2) The number of calibrators the laboratory uses to verify calibration (recalibration) varies by method—

(i) For methods in which a linear relationship exists between concentration and direct instrument reading, at least three points and a zero or minimum value are required; and

(ii) For methods in which a nonlinear relationship exists between concentration and direct instrument readings, at least five points and a zero or minimum value are required.

(3) The calibrators must cover the entire range of expected patient values to be reported for the test procedures.

(4) For patient values above the maximum calibration point or below the minimum calibration point—

(i) The laboratory must report the patient results as greater than the upper limit or less than the lower limit or an equivalent designation; or

(ii) The laboratory must dilute the sample and the diluted sample must fall within the linear range of the method if results are to be reported. If a dilution method is employed, the laboratory must be able to provide evidence that the dilution process can yield accurate, reliable and valid test results.

(b) For quantitative tests, the laboratory must include two calibrator samples, one calibrator sample and one control sample, or two control samples in each run of unknown samples when these reference samples are available.

(1) A run is an interval within which the accuracy and precision of a measuring system is expected to be stable but must not exceed a period of 24 hours and must not exceed the manufacturer's specification for including controls.

(2) The laboratory must use the calibrator samples, the control samples, or combination thereof, and monitor both the abnormal and normal range of reportable patient values.

(i) If calibrators are not used, two controls of different concentrations must be used;

(ii) If controls are not used, two calibrators of different concentrations must be used. Two separate dilutions from a stock calibrator must be prepared or a calibrator and a sample spiked with a calibrator must be used;

(iii) Other exceptions apply as HHS approves in Appendix C of the State Operations Manual (HCFA Pub. 7); and

(iv) If calibrators and controls are not available, the laboratory must have a mechanism to assure the quality,

accuracy and precision of the test results.

(3) A laboratory does not have to meet the requirements of this section when calibrators and controls are not available because of the nature of the instruments or the tests performed.

(4) For qualitative tests, the laboratory must include a positive and negative control with each run of specimens unless otherwise specified by HHS under the provision of these regulations.

(c) The laboratory must determine its statistical limits for each lot number of controls through repetitive testing. The laboratory may use the manufacturer's limits, provided they are verified by the laboratory, represent the actual within-laboratory analytical range expected and the stated limits correspond to the methods employed by the laboratory. Acceptable limits for unassayed materials must be established by the laboratory through concurrent testing with an assayed or laboratory-defined control material.

(d) Initially, the laboratory must check each batch or shipment of reagents, discs, stains, antisera and identification system (systems using two or more substrates and antigen detection systems) for positive and negative reactivity.

(e) Each day of use, unless otherwise specified in this subpart of Appendix C of the State Operations Manual (HCFA Pub. 7), the laboratory must test staining materials for intended reactivity by concurrent application to smears of microorganisms with predictable staining characteristics.

(f) Each day of use, the laboratory must test direct antigen detection systems using positive and negative control organisms that evaluate both the extraction and reaction phases.

(g) The laboratory must check each batch or shipment of media for sterility, ability to support growth and, if appropriate, selectivity/inhibition and/or biochemical response. The laboratory may use a commercial manufacturer's quality control checks of media if the laboratory has documentation to verify that the manufacturer has used the quality assurance practices that have been approved by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7). The laboratory must document that the physical characteristics of the media are not compromised and report any deterioration in the media to the manufacturer. The laboratory must follow the manufacturer's specifications for using the media and be responsible for the test results.

(h) A batch of media (solid or liquid) must—

(1) Consist of all tubes, plates, or containers of medium prepared at the same time and in the same laboratory; or

(2) If received from an outside source or commercial supplier, all of the plates, tubes or containers must have the same lot numbers and be received in a single shipment.

(i) Results must not be reported unless all controls are within acceptable limits.

**§ 493.239 Standard; Remedial actions.**

The laboratory must establish and employ policies and procedures for actions to be taken when—

(a) Test systems do not meet established criteria including—

(1) Quality control results are outside of acceptable limits;

(2) Equipment or methodologies perform outside of established operating limits;

(3) Test results are outside of acceptable linear limits; and

(4) Proficiency test results are not within acceptable limits;

(b) It cannot test samples within specified times that it has established. The laboratory must establish and follow criteria for referring or for storing specimens. The laboratory must notify the authorized person who ordered the test if the laboratory cannot run a specimen because test results may be affected;

(c) It detects errors in the reported patient results. The laboratory must establish and follow policies for correcting reporting errors and notify the authorized person ordering and utilizing the test results promptly; or

(d) It does not report test results within its established timeframes.

**§ 493.240 Standard; Quality control—records.**

The laboratory must document all quality control activities and retain records for at least two years.

(a) The laboratory must maintain records of the following—

(1) Preventive maintenance activities;

(2) Equipment function checks;

(3) Procedural calibrations; and

(4) Validation procedures.

(b) The laboratory must maintain records of each step in the processing and testing of quality control samples to assure that the quality control samples are tested in the same manner as patient samples; the laboratory must document quality control results.

(c) The laboratory must maintain records of remedial activities taken when test systems do not meet established criteria and samples cannot be tested within timeframes established by the laboratory.

**§ 493.241 Condition: Quality control—specialties and subspecialties.**

The laboratory must establish and follow policies and procedures for an acceptable quality control program that include verification and assessment of accuracy, measurement of precision and detection of error for all analyses and procedures performed by the laboratory. In addition to the general requirements specified in §§ 493.221 through 493.240, the laboratory must meet the applicable requirements of §§ 493.243 through 493.315 for each specialty and subspecialty for which the laboratory is licensed (CLIA) or approved (Medicare and Medicaid). Failure to meet any of the applicable conditions in §§ 493.243 through 493.315 will result in the loss of approval, licensure, or letter of exemption for the entire specialty to which the condition applies; failure to meet any of the standards in §§ 493.243 through 493.315 will result in the loss of approval, licensure or exemption from licensure for the subspecialty to which the standard applies.

**§ 493.243 Condition: Microbiology.**

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and in §§ 493.245 through 493.253 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of microbiology.

**§ 493.245 Standard; Bacteriology.**

To meet the quality control requirements for bacteriology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory must check positive and negative reactivity with control organisms—

(1) Each time of use for fluorescent stains and DNA probes based on radioisotopes methods;

(2) Each day of use for catalase, coagulase, and oxidase reagents;

(3) Each week of use for Gram and acid-fast stains, bacitracin, optochin, ONPG, XV, strips, discs and X, V discs or strips; and

(4) Each month of use for antisera.

(b) For antimicrobial susceptibility tests, the laboratory must check each new batch of media and each lot of antimicrobial discs before, or concurrent with, initial use, using approved reference organisms.

(c) The laboratory's zone sizes or minimum inhibitory concentration for reference organisms must be within established limits.

(d) Each day tests are performed, the laboratory must use the appropriate control organism(s) to check the procedure, unless the laboratory can establish precision and accuracy to be within the limits established by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

**§ 493.247 Standard; Mycobacteriology.**

To meet the quality control requirements for mycobacteriology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) Each day of use, the laboratory must check the iron uptake test with at least one acid-fast organism that produces a positive reaction and with an organism that produces a negative reaction and check all other reagents used for Mycobacteria identification with at least one acid-fast organism that produces a positive reaction.

(b) The laboratory must check fluorescent stains for positive and negative reactivity each time of use.

(c) The laboratory must check each week of use acid-fast stains with an acid-fast organism that produces a positive reaction.

(d) For susceptibility tests performed on *Mycobacterium tuberculosis* isolates, the laboratory must check the procedure each week of use with a control strain of *Mycobacterium tuberculosis*.

**§ 493.249 Standard; Mycology.**

To meet the quality control requirements for mycology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (c) of this section.

(a) Each day of use, the laboratory must check the nitrate reagent with a peptone control.

(b) Each week of use, the laboratory must check acid-fast stains for positive and negative reactivity.

(c) For susceptibility tests, the laboratory must test each drug each day of use with at least one control strain that is susceptible to the drug. The laboratory must establish control limits.

**§ 493.251 Standard; Parasitology.**

To meet the quality control requirements for parasitology, the laboratory must comply with the applicable requirements of §§ 493.221 through 493.240 and with paragraphs (a) through (c) of this section.

(a) The laboratory must have available a reference collection of slides, photographs or gross specimens for identification of parasites available and use it in the laboratory for appropriate comparison with diagnostic specimens.

(b) The laboratory must use a calibrated ocular micrometer for determining the size of ova and parasites, if size is a critical parameter.

(c) Each month of use, the laboratory must check permanent stains using fecal samples.

**§ 493.253 Standard; Virology.**

To meet the quality control requirements for virology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (c) of this section.

(a) The laboratory must have available host systems for the isolation of viruses and test methods for the identification of viruses that cover the entire range of viruses that are etiologically related to clinical diseases for which services are offered.

(b) The laboratory must maintain records that reflect the systems used and the reactions observed.

(c) In tests for the identification of viruses, the laboratory must employ uninoculated cell or cell substrate controls to detect erroneous identification results.

**§ 493.255 Condition: Diagnostic immunology.**

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and §§ 493.257 through 493.259 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of diagnostic immunology.

**§ 493.257 Standard; Syphilis serology.**

To meet the quality control requirements for syphilis serology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (e) of this section.

(a) For laboratories performing syphilis testing, the equipment, glassware, reagents, controls, and techniques for tests for syphilis must conform to manufacturers' specifications.

(b) The laboratory must run serologic tests on unknown specimens concurrently with a positive serum control, known titer or controls of graded reactivity plus a negative control unless otherwise specified by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

(c) The laboratory must employ controls for all test components to ensure reactivity and uniform dosages.

(d) The laboratory may not report test results unless the predetermined reactivity pattern is observed.

(e) All facilities transfusing blood and blood products or serving as referral laboratories for these facilities must meet the syphilis serology testing requirements of 21 CFR 640.5(a).

**§ 493.259 Standard; General immunology.**

To meet the quality control requirements for general immunology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory must run serologic tests on unknown specimens concurrently with a positive serum control, known titer or controls of graded reactivity plus a negative control unless otherwise specified by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

(b) The laboratory must employ controls for all test components (antigens, complement, erythrocyte indicator systems, etc.) to ensure reactivity and uniform dosages.

(c) The laboratory may not report test results unless the predetermined reactivity pattern is observed.

(d) All facilities transfusing blood and blood products or serving as referral laboratories for these facilities must meet:

(1) The HIV testing requirements of 21 CFR 610.45; and

(2) Hepatitis testing requirements of 21 CFR 610.40.

**§ 493.261 Condition: Chemistry.**

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and §§ 493.263 through 493.267 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of chemistry.

**§ 493.263 Standard; Routine chemistry.**

To meet the quality control requirements for routine chemistry, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) and (b) of this section.

(a) For blood gas analyses, the laboratory must include two calibrators and a control material each eight hours of testing in addition to including a calibrator or control each time patients are tested.

(b) For urinalysis qualitative or screening tests, the laboratory must include a positive control each day of testing to check the reactivity of each constituent.

**§ 493.265 Standard; Endocrinology.**

To meet the quality control requirements for endocrinology, the laboratory must comply with the applicable requirements contained in §§ 493.21 through 493.240.

**§ 493.267 Standard; Toxicology.**

To meet the quality control requirements for toxicology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240.

**§ 493.269 Condition: Hematology.**

To meet the quality control requirements for hematology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (b) of this section.

(a) For each eight hours of operation, the laboratory must have two levels of control except for manual cell counts, in which one level of control is required for each eight hours of operation.

(b) The laboratory must run tests for coagulation in duplicate.

**§ 493.270 Condition: Pathology.**

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and §§ 493.271 through 493.274 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of pathology.

**§ 493.271 Standard; Cytology.**

To meet the quality control requirements for cytology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and paragraphs (a) and (h) of this section.

(a) The laboratory must assure that—

(1) All gynecologic smears are stained using a Papanicolaou staining method;

(2) Gynecologic and non-gynecologic specimens are stained separately; and

(3) Staining solutions are discarded or filtered after staining body fluids.

(b) The individual providing technical supervision of cytology must assure that—

(1) All genecological smears interpreted to be in the "suspicious" or positive category are confirmed by the technical supervisor in cytology. The report must be signed to reflect the review or, if a computer report is generated, it must reflect an electronic signature authorized by the technical supervisor.

(2) All nongynecological cytological preparations, positive and negative, are reviewed by the technical supervisor in cytology. The report must be signed to reflect technical supervisory review or, if a computer report is generated, it must reflect an electronic signature authorized by the technical supervisor.

(3) Provision is made for documenting and evaluating each cytotechnologist's side examination performance, including feedback on the suspicious or abnormal cases referred to the technical supervisor in cytology, and on each cytotechnologist's performance evaluation through the rescreening of negative cases.

(c) The laboratory must establish and follow a program designed to detect errors in the performance of cytological examinations and the reporting of results.

(1) The laboratory must establish a program that includes on a regular basis a review of slides screened by each individual responsible for the examination of slides; records of initial examinations and rescreening results must be available. The review must meet the requirements of paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(i) At least ten percent of the gynecologic cases reviewed by each cytotechnologist interpreted to be negative must be rescreened by a second cytotechnologist or the technical supervisor in cytology before reporting patient results; or

(ii) All gynecologic cases that are interpreted to be negative and that are from patients who are identified as having a high probability of developing cervical cancer, as defined in § 493.201(b)(5)(iii), must be rescreened by a second cytotechnologist or the technical supervisor before reporting patient results.

(2) The laboratory must compare clinical information with cytology reports and, for all abnormal cytology reports, must compare the cytology report with the histopathology report, if available, and determine the causes of any discrepancies.

(3) The laboratory must review all prior cytologic specimens, if available, for each abnormal cytology result.

(4) The laboratory must establish and document an annual statistical evaluation of the number of cytology cases examined, number of specimens processed by specimen type, volume of patients reported by diagnosis, false-negative and false-positive rates, number of unsatisfactory specimens submitted by each physician or laboratory and number of complaints received from individuals ordering or receiving test reports.

(5) The laboratory must evaluate each cytotechnologist's individual case reviews against its overall statistical rates, document any discrepancies, including reasons for the deviation, and document corrective action, if appropriate.

(d) The laboratory report must—

(1) Distinguish between inadequate smear and negative result;

(2) Contain narrative descriptions for any abnormal or suspicious results;

(3) Include the presence of endometrial cells if endometrial cells are present out of cycle;

(4) Indicate evidence of viral infection if present; and

(5) Contain appropriate provisions for follow-up recommendations.

(e) Corrected reports issued by the laboratory must indicate basis for correction.

(f) The laboratory must retain all negative slides for five years from the date of examination.

(g) The laboratory must retain all abnormal slides and slides from patients with a history of suspicious or abnormal cytology results for ten years from the date of examination.

**§ 493.273 Standard; Histopathology.**

To meet the quality control requirements for histopathology, a laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and paragraphs (a) through (c) of this section.

(a) The laboratory must control all special stains for intended level of reactivity by use of positive slides and records must document the quality control checks of the stain materials.

(b) The laboratory must retain stained slides at least ten years from the date of examination and retain specimen blocks at least two years from the date of examination.

(c) The laboratory must retain remnants of tissue specimens in a fixative solution until the portions submitted for microscopic examination have been examined and a diagnosis made by an individual qualified under § 493.403(b)(2) of this part. In addition, an individual who meets the requirements of § 493.403(b)(3) may examine and provide reports for specimens for skin pathology; an individual meeting the requirements of § 493.407(b)(4) may examine and provide reports for specimens for oral pathology.

(d) The laboratory must utilize acceptable terminology of a recognized system of disease nomenclature in reporting results.

(e) The laboratory must report results of all biopsy-confirmed cases of cervical cancer to an established cancer registry.

**§ 493.274 Standard; Oral pathology.**

To meet the quality control requirements for oral pathology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and 493.273.

**§ 493.275 Condition: Radiobioassay.**

To meet quality control requirements for radiobioassay, the laboratory must meet the specific requirements of §§ 493.221 through 493.240 of this subpart.

**§ 493.277 Condition: Histocompatibility.**

In addition to meeting the requirements for general quality control in §§ 493.221 through 493.240, for quality control for general immunology in § 493.259 of this subpart and for immunohematology in § 493.281 of this subpart, the laboratory must comply with the applicable requirements in paragraphs (a) through (d) of this section.

(a) For renal allotransplantation the laboratory must meet requirement of paragraphs (a)(1) through (23) of this section.

(1) The laboratory must have available and follow criteria for selecting appropriate patient serum samples for crossmatching;

(2) The laboratory must have available results of final crossmatches before an organ or tissue is transplanted.

(3) The laboratory must have available and follow criteria for the technique used in crossmatching;

(4) The laboratory must have available and follow criteria for preparation of donor lymphocytes for crossmatching.

(5) The laboratory must have available and follow criteria for reporting crossmatch results.

(6) The laboratory must have available serum specimens for all potential transplant recipients at initial typing, for periodic screening, for pretransplantation crossmatch and following sensitizing events, such as transfusion and transplant loss.

(7) The laboratory's storage and maintenance of both recipient sera and reagents must—

(i) Be at an acceptable temperature range for sera and components;

(ii) Use a temperature alarm system and have an emergency plan for alternate storage; and

(iii) Be well-organized with all specimens properly identified and easily retrievable.

(8) The laboratory's reagent typing sera inventory (applicable only to locally constructed trays) must indicate source, bleeding date and identification number, and volume remaining.

(9) The laboratory must properly label and store cells, complement, buffer, dyes, etc.

(10) The laboratory must type all potential transplant recipient cells.

(11) The laboratory must type cells from organ donors referred to the laboratory.

(12) The laboratory must have available and follow criteria for the preparation of lymphocytes for HLA–A, B and DR typing.

(13) The laboratory must have available and follow criteria for selecting typing reagents, whether locally or commercially prepared.

(14) The laboratory must have available and follow criteria for the assignment of HLA antigens.

(15) The laboratory's reagent tray or trays for typing recipient and donor cells must be adequate to define all HLA–A, B and DR specificities as required to determine splits and cross-reactivity.

(16) The laboratory must have a written policy that it follows that establishes when antigen redefinition and retyping are required.

(17) The laboratory must screen recipient sera for preformed antibodies with a suitable lymphocyte panel that assures that—

(i) Potential transplant recipient serum are screened for HLA–A and B content; and

(ii) Screening is performed on initial typing of living related donors and cadaver organs. The laboratory must also screen at monthly intervals after initial screening and following sensitizing events.

(18) The laboratory must use a suitable cell panel for screening patient sera (antibody screen), a screen that contains all the major HLA specificities and common splits—

(i) If the laboratory does not use commercial panels, it must maintain a list of individuals for fresh panel bleeding; and

(ii) If the laboratory uses frozen panels, there must be a suitable storage system.

(19) The laboratory must use testing such as the mixed lymphocyte culture to determine cellularly defined antigens.

(20) (i) If the laboratory reports the patient's ABO blood grouping and Rh typing, it must perform the testing in accordance with § 493.281 of this subpart.

(ii) If the laboratory performs an ABO blood grouping to purify cell population, a control for the ABO must be included.

(21) The laboratory must include positive and negative controls on each tray. The laboratory must determine the reactivity of cell panels used for antibody detection by testing the various components of the antigen panel with positive and negative controls when the panel is used. The entire panel does not have to be tested at one time.

(22) The laboratory must, at least once each month, give each individual performing tests a previously tested specimen as an unknown to verify his or her ability to reproduce test results. The laboratory must maintain records of the results for each individual.

(23) The laboratory must participate in at least one national or regional cell exchange program, if available, or develop an exchange system with another laboratory in order to validate interlaboratory reproducibility.

(b) For laboratories performing only transfusions, bone marrow transplants, and other nonrenal transplantation, the laboratory must meet all the requirements specified in this section except for the performance of mixed lymphocyte cultures.

(c) For laboratories performing only disease-associated studies, the laboratory must meet all the requirements specified in this section except for the requirements for those concerning the performance of mixed lymphocyte cultures.

(d) For laboratories performing tests for organ transplantation, the laboratory must test the donor for HIV reactivity using the same protocols as required under § 493.301 of this part for the transfusion of blood and blood products, unless the organ recipient (or an individual authorized to act on his or her behalf) waives the tests because of medical circumstances.

**§ 493.279 Condition: Medical cytogenetics.**

To meet the quality control requirements for cytogenetics, the laboratory must comply with the applicable requirements of §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory examination of X and Y chromatin counts must be based on an examination of an adequate number of cells.

(b) The laboratory must have records that document the number of cells counted, the number of cells karyotyped, the number of chromosomes counted for each metaphase spread, and the quality of the banding; that the resolution is sufficient to support the reported results; and that an adequate number of karyotypes are prepared for each patient.

(c) The laboratory also must have policies and procedures for assuring an adequate patient sample identification

during the process of accessioning, photographing or other image reproduction technique, cell preparation and photographic printing, and storage and reporting of results or photographs.

(d) The laboratory report must include the summary and interpretation of the observations and number of cells counted and the use of appropriate nomenclature.

**§493.281 Condition: Immunohematology.**

To meet the quality control requirements for immunohematology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory must perform ABO and $Rh_o$(D) grouping, antibody detection and identification and compatibility testing in accordance with 21 CFR Part 606 (with the exception of 21 CFR 606.20a, Personnel) and 21 CFR 640 et seq.

(b) The laboratory must perform ABO grouping by testing unknown red cells with anti-A and anti-B grouping serums. For confirmation of ABO grouping, the unknown serum must be tested with known $A_1$ and B red cells.

(c) The laboratory must determine the $Rh_o$(D) group by testing unknown red cells with anti-D (anti-$Rh_o$) blood grouping reagent.

(d) The laboratory must employ a control system capable of detecting false positive Rh test results.

**§493.301 Condition: Transfusion services and bloodbanking.**

If a facility provides services for the transfusion of blood and blood products, the facility must ensure that there are facilities for procurement, safekeeping and transfusion of blood and blood products and that blood products provided are readily available. This condition is met by complying with the standards in §§ 493.303 through 493.315 of this subpart.

**§493.303 Standard; Immunohematological testing, processing, storage and transmission of blood and blood products.**

In addition to the requirements in this section, the facility must also meet the applicable quality control requirements in §§ 493.221 through 493.240 of this part.

(a) Blood and blood product collection, processing and distribution must comply with 21 CFR Part 640 and 21 CFR Part 606, and the testing laboratory must be Medicare-approved.

(b) Dating periods for blood and blood products must conform to 21 CFR 610.53.

**§493.305 Standard; Facilities.**

The facility must maintain, at a minimum, proper blood storage facilities under the adequate control and supervision of the pathologist or other doctor of medicine or osteopathy meeting the qualifications in § 493.403(b)(7).

**§493.307 Standard; Arrangement for services.**

In the case of services provided outside the blood bank, the facility must have an agreement reviewed and approved by the director that governs the procurement, transfer and availability of blood.

**§493.309 Standard; Provision of testing.**

There must be provision for prompt blood grouping, antibody detection, compatibility testing and for laboratory investigation of transfusion reactions, either through the facility or under arrangement with an approved facility on a continuous basis, under the supervision of a pathologist or other doctor of medicine or osteopathy.

**§493.311 Standard; Storage facilities.**

The blood storage facilities must have an adequate temperature alarm system that is regularly inspected.

**§493.313 Standard; Retention of transfused blood.**

According to the facility's established procedures, samples of each unit of transfused blood must be retained for further testing in the event of reactions. The facility must promptly dispose of blood not retained for further testing that has exceeded its expiration date.

**§493.315 Standard; Investigation of transfusion reactions.**

The facility, according to its established procedures, must promptly investigate all transfusion reactions occurring in its own facility for which it has investigational responsibility and make recommendations to the medical staff regarding improvements in transfusion procedures. The facility must document that all necessary remedial actions are taken to prevent future recurrences and that all policies and procedures are reviewed to assure that they are adequate to ensure the safety of individuals being transfused within the facility.

## Subpart G—Personnel

**§493.401 Condition: Laboratory director.**

The laboratory must be directed by an individual who is qualified to provide overall management and supervision of laboratory services.

**§493.403 Standard; Laboratory director qualifications.**

The laboratory director must be qualified to provide day-to-day management of the laboratory personnel and test performance.

(a) The director must be—

(1) A pathologist or other doctor of medicine or osteopathy;

(2) A laboratory specialist with a doctoral degree from an accredited university in physical, chemical or biological sciences;

(3) An individual who before [the effective date of these regulations] was properly qualified and served as a laboratory director in accordance with the requirements specified in Appendix A to this part;

(4) An individual who qualifies under State law to direct the laboratory; or

(5) An individual who has been approved by a certification board acceptable to HHS.

(b) If the laboratory performs services in any of following specialties or subspecialties, specific qualifications are required for the individual providing technical supervision.

(1) Cytology—In the case of tests limited to cytology, the individual is a physician who—

(i) Is certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology;

(ii) Is certified by the American Society of Cytology; or

(iii) Possesses qualifications that are equivalent to those required for certification by the Boards specified in paragraph (b)(1)(i) of this section; and

(iv) Has had three months' experience in cytology.

(2) Histopathology—In the case of tests limited to histopathology, the individual is a physician who meets the requirements of paragraphs (b)(1)(i) or (b)(1)(iii) of this section.

(3) Dermatopathology—In the case of tests limited to dermatopathology, the individual—

(i) Is a physician who meets the requirements of paragrpah (b)(1)(i) or (b)(1)(iii) of this section;

(ii) Is certified in dermatopathology by the American Board of Dermatology, the American Osteopathic Board of Dermatology, the American Board of Pathology, or the American Osteopathic Board of Pathology; or

(iii) Possesses qualifications that are equivalent to those required for certification as specified by the Boards specified in paragraph (b)(2)(i) of this section.

(4) Oral pathology—In the case of tests limited to oral pathology, the individual—

(i) Is a physician who meets the requirements of paragraph (b)(1)(i) or (b)(1)(iii) of this section;

(ii) Is certified in oral pathology by the American Board of Oral Pathology; or

(iii) Possesses qualifications that are equivalent to those required for certification as specified by the Boards specified in paragrah (b)(3)(i) of this section.

(5) Histocompatibility—In the case of tests limited to histocompatibility, the individual—

(i) Holds an earned doctoral degree in a biological science or is a physician; and

(ii) Has had four years of experience in immunology, two of which have been in histocompatibility testing.

(6) Cytogenetics—The individual—

(i) Holds an earned doctoral degree in a biological science or is a physician; and

(ii) Has had four years of experience in immunology or genetics, two of which have been in cytogenetics.

(7) Transfusion services and blood banking—The individual is a pathologist or other doctor of medicine or osteopathy with training and experience in transfusion services.

**§ 493.405 Standard; Laboratory director responsibilities.**

The laboratory director must be responsible for the overall technical supervision of the laboratory personnel, for the performance and reporting of testing procedures and for assuring compliance with the applicable regulations.

(a) The laboratory director must provide technical supervision of the laboratory services and assure that technical supervision is provided by individuals as required under § 493.403(b).

(b) The laboratory director must—

(1) Assure that tests, examinations and procedures are properly performed, recorded and reported;

(2) Assure that the laboratory maintains an ongoing quality assurance program;

(3) Assure that when tests are being performed there is a supervisor on the premises who meets the qualifications of § 493.409; and

(4) Assure compliance with the applicable regulations.

(c) The laboratory director must ensure that the staff—

(1) Has the appropriate education, experience and training to perform and report laboratory tests promptly and proficiently;

(2) Is sufficient in number for the scope and complexity of the services provided;

(3) Receives regular in-service training appropriate for the type and complexity of the laboratory services offered; and

(4) Maintains competency to perform test procedures and report test results promptly and proficiently.

**§ 493.407 Condition: Laboratory supervision.**

(a) Laboratory services must be supervised by an individual who meets the requirements of this subpart and is on the laboratory premises at all times when tests are being performed.

(b) Exception: When there is an emergency outside regularly scheduled hours of duty, an individual who qualifies as a supervisor under this section is not required to be on the premises, provided that the supervisor reviews the emergency test results during the next duty period and that a record is maintained to reflect the actual review.

**§ 493.409 Standard; Laboratory supervisor qualifications.**

The laboratory supervisor is qualified to provide onsite day-to-day supervision of laboratory test performance and test reporting. The supervisor—

(a) Qualifies as a laboratory director under § 493.401 of this part;

(b) Has earned a bachelor's degree in medical technology from an accredited college or university;

(c) Has successfully completed three years of academic study (a minimum of 90 semester hours or equivalent) in an accredited college or university that met the specific requirements for entrance into a school of medical technology accredited by an accrediting agency approved by HHS and has successfully completed a course of training of at least 12 months in such a school of medical technology;

(d) Has earned a bachelor's degree in one of the chemical, physical, or biological sciences and, in addition, has at least one year of pertinent full-time laboratory experience, training, or both, in the specialty or subspecialty in which the individual performs tests;

(e) Has successfully completed three years (90 semester hours or equivalent) in an accredited college or university with the following distribution of courses:

(1) *For those whose training was completed before September 15, 1963.* At least 24 semester hours in chemistry and biology courses of which:

(i) At least six semester hours were in inorganic chemistry *and* at least three semester hours were in other chemistry courses; and

(ii) At least 12 semester hours were in biology courses pertinent to the medical sciences; *or*

(2) *For those whose training was completed after September 14, 1963.*

(i) Sixteen semester hours in chemistry courses that are acceptable toward a major in chemistry, including at least six semester hours in inorganic chemistry;

(ii) Sixteen semester hours in biology courses that are pertinent to the medical sciences and are acceptable toward a major in the biological sciences; and

(iii) Three semester hours of mathematics; and

(3) Has experience, training, or both, covering several fields of medical laboratory work of at least one year and of such quality as to provide him or her with education and training in medical technology equivalent to that described in paragraphs (a) and (b) of this section;

(f) Met the requirements of Appendix B to this part before [effective date of these regulations]; or

(g) Has qualified as a technologist in a Medicare-approved or CLIA-licensed laboratory before July 1, 1971 in accordance with the requirements of Appendix B to this part.

**§ 493.411 Standard; Laboratory supervisor duties.**

The laboratory supervisor, under the general direction of the laboratory director, supervises laboratory personnel, test performance, and test reporting.

**§ 493.413 Condition: Personnel performing cytology services.**

All cytological preparations must be examined by an individual meeting the qualifications of § 493.403(b)(1) or the requirements of § 493.415.

**§ 493.415 Standard; Cytotechnologist qualifications.**

The cytotechnologist—

(a) Has successfully completed two years in an accredited college or university with a least 12 semester hours in science, eight hours of which are in biology, and

(1) Has had 12 months of training in a school of cytotechnology accredited by an accrediting agency approved by HHS; or

(2) Has received six months of formal training in a school of cytotechnology accredited by an accrediting agency approved by HHS and six months of full-time experience in cytotechnology in a laboratory acceptable to the pathologist who directed the formal six months of training; or

(b) Met the requirements of Appendix C to this part before [the effective date of these regulations].

**§ 493.417 Standard; Cytotechnologist duties.**

The cytotechnologist must—

(a) Document the gynecologic and non-gynecologic cases examined; and

(b) Record slide interpretation results of each gynecologic and non-gynecologic case reviewed.

**§ 493.419 Condition: Technical personnel.**

The laboratory staff must be technically competent to perform test procedures and report test results promptly and proficiently.

**Subpart H—Quality Assurance**

**§ 493.451 Condition—Quality assurance.**

The laboratory must establish and follow policies and procedures for an ongoing quality assurance program designed to monitor and evaluate quality; identify and correct problems; assure the accurate, reliable and prompt reporting of test results; and assure the adequacy and competency of the staff.

(a) *Standard.* The laboratory must have an ongoing system under which it monitors and evaluates quality control and proficiency testing data for the purpose of substantiating that all tests performed and reported by the laboratory conform to the laboratory's specified performance criteria. These criteria include: precision, accuracy, detection limits, interferences, linearity, sensitivity, specificity, validity and adequacy.

(b) *Standard.* The laboratory must have a mechanism for assuring the accurate and timely reporting of test results. Reporting times must be within the acceptable time periods established by the laboratory.

(c) *Standard.* The laboratory must have a mechanism for assuring that—

(1) All quality control data are reviewed;

(2) Patient test results are not reported when control values are outside the acceptable range established by the laboratory; and

(3) Actions are taken to correct the problems which led to the unsatisfactory quality control results and the corrective actions are documented.

(d) *Standard.* The laboratory must have a mechanism for assuring that corrective action is taken and is documented on all unacceptable proficiency testing results.

(e) *Standard.* The laboratory must have a mechanism to assure that specimens are not tested unless the laboratory's established criteria for acceptability are met and that the authorized person ordering the test is notified of the condition of specimens not meeting the laboratory's criteria for a satisfactory specimen suitable for testing or any limitations on the reliability of the test results.

(f) *Standard.* The laboratory must have policies and procedures for an ongoing program to assure that employees are competent, and maintain their competency, to perform their duties as specified by the laboratory. Policies and procedures may include direct observation of routine patient test performance as well as analysis of unknowns, monitoring the reporting of test results, or other activities identified by the laboratory. The laboratory must evaluate employee performance by—

(1) Retesting specimens of previously analyzed specimens, internal blind proficiency test samples, or external proficiency test samples (that have already been reported to approved proficiency testing programs) to assess the performance levels of each staff member responsible for performing and supervising testing; or

(2) Enrolling in external proficiency testing programs to the extent that there are programs available to cover all analyses performed, to assess an individual's laboratory performance. (The proficiency test samples are in addition to those required in Subpart C of this part.) For cytology, the laboratory may insert into the workload slides from previously reported cases as blind samples or may arrange to exchange cases with another laboratory for the purpose of rescreening slides and comparing results.

(g) *Standard.* The laboratory must have a mechanism for assessing problems identified during quality assurance reviews and discussing them with the staff. The laboratory must take necessary corrective actions to prevent recurrences and make available to HHS documentation of corrective action.

(h) *Standard.* The laboratory must evaluate all data analysis and test reporting systems to assure that the systems perform according to specifications and provide accurate and reliable reporting, transmittal, storage and retrieval of data.

(i) *Standard.* The laboratory must establish and follow policies and procedures to assure that all complaints and problems reported by individuals or facilities who order, receive and use its test results are investigated and that all necessary corrective actions are instituted and documented.

(j) *Standard.* The laboratory must maintain records of its quality assurance program and document all corrective actions taken to remedy problems it has identified.

**Subpart I—Inspection**

**§ 493.501 Condition: Inspection.**

HHS or its designees may conduct an unannounced inspection of any laboratory at any time during its hours of operation. HHS may deny approval to a laboratory for a period of at least one year for violation of any of the requirements of this part or of the Social Security Act, subject to the appeal rights specified in Part 498 of this chapter.

(a) *Standard.* The laboratory may be required, as part of this inspection, to—

(1) Test samples (including proficiency testing samples) or perform procedures as HHS requires;

(2) Allow an interview of all employees of the laboratory;

(3) Allow employees to be observed performing tests (including proficiency testing specimens provided by the inspection team), data analysis and reporting; and

(4) Provide copies to HHS of all records and data it requires.

(b) *Standard.* All records and data must be readily accessible and retrievable within a reasonable time frame during the course of the inspection. All records must be available for at least two years unless other time frames are specified in this part or HHS specifies a different interval in Appendix C of the State Operations Manual (HCFA Pub. 7).

(c) *Standard.* The laboratory must provide all information and data needed to make a determination of the laboratory's status; this information may be requested before, during or after the inspection.

(d) *Standard.* The laboratory must notify HHS within 30 days of the effective date of all changes in directors, ownership and control, location, test specialties and subspecialties offered, and hours of operation.

(e) *Standard.* The laboratory must successfully participate in an approved proficiency testing program for up to one year before inspection, issuance of a CLIA license (or letter of exemption) or Medicare or Medicaid approval can take place, if HHS so requires. The laboratory must submit the results of the testing to HHS before inspection, approval or licensure of the facility can take place.

(f) *Standard.* HHS may reinspect a laboratory at anytime necessary to evaluate the ability of the laboratory to provide accurate and reliable test results.

## Subpart J—CLIA Requirements

### § 493.701 Basis and scope.

(a) This subpart applies to laboratories engaged in the laboratory examination of, or other laboratory procedures relating to, human specimens solicited or accepted in interstate commerce, directly or indirectly, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health, of human beings. All screening procedures are included as well as quantitative testing of specimens for the presence or absence of any substance, pathogen or other analytes.

(b) This subpart does not apply to—

(1) Any laboratory that performs 100 or fewer tests during any calendar year; however, the laboratory must—

(i) Hold an unrevoked or unsuspended letter of exemption for low volume from HHS;

(ii) Provide information to HHS upon request, permit inspections, and make records available as required by § 493.501 of this part for licensed laboratories; and

(iii) Perform testing that HHS has determined poses no significant threat to public health;

(2) Any laboratory operated by a licensed physician, osteopath, dentist, or podiatrist, or group of these individuals in any combination who performs laboratory tests or procedures solely as an adjunct to the treatment of the practitioner's or practitioners' own patients;

(3) Any laboratory performing tests or other procedures solely for the purpose of determining whether to write an insurance contract or determine eligibility or continued eligibility for insurance payments; and

(4) Any laboratory exempted under section 353(1) of the Public Health Service Act.

### § 493.702 Definitions.

As used in this subpart—

"Act" means the Public Health Service Act, as amended, 42 U.S.C. 201, et seq., also known as the Clinical Laboratories Improvement Act of 1967 (CLIA).

### § 493.704 Licensure application and issuance.

(a) *Licensure application.* (1) An application for the issuance or renewal of a license must be made for each laboratory location by the owner, director or authorized representative of the laboratory on the form or forms prescribed by HHS.

(2) The application for renewal of a license may not be submitted less than 30 days nor more than 60 days before the expiration date of the license.

(b) *Licensure issuance or renewal.* (1) As a part of the review of the application for issuance or renewal of licensure, HHS may require the laboratory to furnish additional information needed to consider the application. HHS also reviews the results of an onsite inspection of the laboratory's premises, performance in proficiency testing and compliance with this part. If HHS determines that the laboratory complies with the standards and other requirements of CLIA and provides consistent performance of accurate and reliable test procedures and services, HHS issues an initial or a renewal license with respect to one or more specialties or subspecialties as specified in §§ 493.243 through 493.281 of this part.

(2) HHS issues initial or renewal licenses for a period of at least one year. If no changes occur that affect the licensure status of the laboratory, HHS notifies the laboratory of its continued approval for at least another year. If changes occur that affect the licensure status of the laboratory, HHS issues a revised license reflecting those changes.

(3) If HHS does not issue or renew a license (in whole or in part), HHS gives the laboratory reasonable notice and issues a statement of grounds on which it proposes to not issue or renew the license or any part of it. The laboratory is also given an opportunity to request a hearing in accordance with the provisions of Part 498 of this chapter.

(4) If a laboratory applies for licensure in any specialty or subspecialty for which a license has been revoked or application for a license has been denied by HHS, licensure for that specialty or subspecialty will not be approved until at least one year elapses from the effective date of the adverse action. HHS may waive this one year period if the laboratory submits good cause for the waiver. A laboratory that requests reinstatement after this one year period must provide assurance that it complies with this subpart.

(c) *Exception.* These standards for issuance and renewal of licenses do not apply to accredited laboratories if—

(1) HHS determines that the standards applied by an accrediting organization are equal to or more stringent than the requirements of CLIA and of these regulations;

(2) The accrediting organization assures that its standards are met by the laboratory;

(3) The accrediting organization and accredited laboratories make available to HHS all records and information required by these regulations and permit inspections as required by HHS.

(4) The laboratory holds an unrevoked and unsuspended letter of exemption issued in accordance with § 493.710 of this subpart.

### § 493.706 Revocation and suspension of licenses and letters of exemption; notice.

(a) A laboratory license or letter of exemption may be revoked or suspended whenever HHS, after reasonable notice and opportunity for a hearing to the owner or director of the laboratory as provided in Part 498 of this chapter, finds—

(1) In the case of a license, that the owner, director or any employee of the laboratory has committed any of the actions specified in section 353(e) of CLIA or has not met the requirements of this part; or

(2) In the case of a letter of exemption, that the laboratory is no longer eligible for its letter of exemption.

(b) Any notice issued under paragraph (a) of this section will contain a statement of the proposed action and of the grounds upon which HHS proposes to act.

(c) If HHS proposes to suspend a license or letter of exemption the notice will state—

(1) The period of such proposed suspension or the action required to end the suspension; and

(2) That the license or letter will be revoked if the appropriate remedial action is not taken within the suspension period.

(d) If HHS proposes to revoke a license or letter of exemption, the notice will state the specialty or subspecialty with respect to which the license or letter of exemption will no longer apply.

### § 493.708 Approval of accreditation and State licensure programs; notice.

(a) Approval of accreditation and State licensure programs is based on HHS' determination that these programs have requirements at least as stringent as those contained in CLIA. HHS, in making this evaluation, considers each program's standards, standards enforcement and survey procedures related to: quality control; maintenance of records, equipment and facilities; qualifications of personnel; proficiency testing; program administration related to renewal of accreditation; frequency and comprehensiveness of onsite inspections; and maintenance and availability of data and records related to accredited laboratories.

(b) In filing an application for approval, the accrediting organization or

State must initially provide all information and data HHS determines necessary to determine if a program can be approved and thereafter must provide all information needed by HHS to determine a program's continued approval. The accrediting organization or State licensure program must—

(1) Provide information regarding the accreditation or licensure, specialties or subspecialties for which accreditation or licensure is applicable which accreditation or licensure is applicable at a frequency required by HHS; and

(2) Notify HHS within five days of any changes in accreditation or licensure.

(c) HHS may require an accrediting organization or State licensure program to sign a written agreement specifying the terms of approval.

(d) If HHS determines at any time that the accrediting organization's or State licensure program's requirements are no longer at least as stringent as CLIA requirements, HHS will notify the accrediting organization or State licensure program and provide a reasonable period of time for revision. If the organization or State licensure program does not provide satisfactory evidence on a timely basis of its continued acceptability, HHS will notify the accrediting organization or State licensure program of the bases for revoking approval. The notice will state that the provisions of section 353 of CLIA and 42 CFR Part 493 requiring licensure will apply to all its accredited or licensed laboratories effective 30 days after the date the notice is received. HHS will also notify each laboratory affected by this determination that its exemption from CLIA licensure is not in effect 30 days after the date the notice is received by the accreditation organization or State licensure program.

**§ 493.710 Letter of exemption.**

(a) HHS may issue a letter of exemption to a laboratory provided that—

(1) The laboratory owner or authorized representative of the laboratory signs an agreement to permit inspections as required by HHS and makes available records and other information HHS requires; and

(2) The laboratory submits an application form provided by HHS that certifies that the laboratory is accredited or licensed by an approved organization or State licensure program and specifies the specialties and subspecialties for which the laboratory is accredited or licensed and the date or dates of accreditation or licensure.

(b) If a laboratory fails to comply with the requirements of this part, the laboratory will no longer be eligible for a letter of exemption and is subject to the revocation and suspension procedures described in § 493.706 of this subpart.

## Appendix A—Laboratory Director Qualification Requirements Before [Effective Date of Regulations]

With respect to individuals first qualifying as laboratory directors before July 1, 1971, an individual who was responsible for the direction of a clinical laboratory for 12 months between July 1, 1961, and January 1, 1968, and, in addition, met one of the following requirements in paragraphs (a) through (d) by July 1, 1971, is qualified to be a laboratory director under § 493.401.

(a) The individual was a physician and after graduation had at least 4 years of pertinent full-time clinical laboratory experience;

(b) The individual held a master's degree from an accredited institution with a chemical, physical, or biological science as a major subject and after graduation had at least four years of pertinent full-time clinical laboratory experience;

(c) The individual held a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject and after graduation had at least six years of pertinent full-time clinical laboratory experience; or

(d) The individual achieved a satisfactory grade through an examination conducted by or under sponsorship of the U.S. Public Health Service on or before July 1, 1970.

**Note:** The January 1, 1968 date for meeting the 12 months laboratory direction requirement in this appendix may be extended one year for each year of full-time clinical laboratory experience obtained before January 1, 1968 required by State law for a clinical laboratory director license. An exception to the July 1, 1971 qualifying date was made provided the individual requested approval of his or her qualifications by October 21, 1975 and had been employed in an approved clinical laboratory for at least three of the five years preceding the date of submission of his or her qualifications.

## Appendix B—Technologist Requirements before July 1, 1971

With respect to individuals first qualifying as technologist before July 1, 1971, an individual who met the following requirements in paragraphs (a) and (b) is now qualified to be a supervisor under § 493.409.

(a) The individual was performing the duties of a clinical laboratory technologist at any time between July 1, 1961, and January 1, 1968, and

(b) The individual has had at least ten years of pertinent clinical laboratory experience before January 1, 1968. This required experience may be substituted by education as follows:

A minimum of 30 semester hours of credit from an approved school of medical technology or toward a bachelor's degree from an accredited institution with a chemical, physical, or biological science as his or her major subject is equivalent to two years of experience. Additional education is equated at the rate of 15 semester hours of credit for one year of experience.

(c) Before [effective date of these regulations], the individual achieved a satisfactory grade in a proficiency examination approved by HHS.

## Appendix C—Cytotechnologist Requirements Before [Effective Date of Regulations]

With respect to individuals first qualifying as a cytotechnologist before July 1, 1969, an individual who met one of the following requirements in paragraph (a) and (b) is qualified to be cytotechnologist under § 493.415.

(a) Before January 1, 1969, the individual has:

(1) Been graduated from high school;

(2) Completed six months of training in cytotechnology in a laboratory directed by a pathologist or other physician recognized as a specialist in cytology; and

(3) Completed two years of full-time supervised experience in cytotechnology.

(b) Before [effective date of these regulations], the individual achieved a satisfactory grade in a proficiency examination approved by HHS.

(Catalog of Federal Domestic Programs No. 13.714—Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 22, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: June 24, 1988.

**Otis R. Bowen,**

*Secretary.*

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**[Docket No. 88-127]**

**7 CFR Part 301**

**Mediterranean Fruit Fly**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are quarantining an area in Los Angeles County in California because of the Mediterranean fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent spread of the Mediterranean fruit fly into noninfested areas of the United States.

**DATES:** Interim rule effective August 2, 1988. Consideration will be given only to comments postmarked or received on or before October 7, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Please state that your comments refer to Docket Number 88-127. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

**SUPPLEMENTARY INFORMATION:**

## Background

We are amending the "Domestic Quarantine Notices" by adding a new § 301.78, "Mediterranean Fruit Fly" (referred to below as the regulations). These regulations quarantine an area in Los Angeles County, California, because of the Mediterranean fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of California state and county agencies and by inspectors of Plant Protection and Quarantine (PPQ), a unit within the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that portions of Los Angeles County, California are infested with the Mediterranean fruit fly. Specifically, inspectors collected two female Mediterranean fruit flies in traps in the Northridge area of Los Angeles County on July 20, 1988. Since that time, one additional male and one additional female Mediterranean fruit flies have been collected in the same area. The Mediterranean fruit fly is not known to occur anywhere else in the United States, except in Hawaii.

Officials of state agencies of California have begun an intensive Mediterranean fruit fly eradication program in the quarantined area in California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the artificial spread of the Mediterranean fruit fly within California. However, it is also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other states. Accordingly, to prevent spread of the Mediterranean fruit fly, this document establishes Federal regulations, which are described below by section.

### Restrictions on Interstate Movement of Regulated Articles (§ 301.78)

Section 301.78 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (footnote 1) has been added to reference the authority of an employee to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

### Definitions (§ 301.78-1)

Section 301.78-1 contains, for informational purposes, definitions of the following terms: "Certificate," "Compliance Agreement," "Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Plant Protection and Quarantine," "Quarantined Area," "Regulated article" and "State."

### Regulated Articles (§ 301.78-2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.78-4 through 301.78-10.

Section 301.78-2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries. Based on research and experience, the articles listed in § 301.78-2 (a) and (b) as regulated articles are articles that are likely to cause spread of the Mediterranean fruit fly. In addition, § 301.78-2(c) allows designation of any other product, article, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Mediterranean fruit fly and notifies the person in possession of the product,

article, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Mediterranean fruit fly (e.g., a truck with Medfly pupae in cracks in the floorboards) to regulate the affected articles immediately, by informing the person in possession of the product, article, or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, dried, or frozen below −17.8°C. (0°F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under those conditions.

**Quarantined Areas (§ 301.78–3)**

As stated in § 301.78–3(a), it is necessary to quarantine areas in which the Mediterranean fruit fly has been found by an inspector, areas in which the Administrator has reason to believe the Mediterranean fruit fly is present, and areas the Administrator considers necessary to quarantine because of their proximity to the Mediterranean fruit fly or their inseparability for quarantine enforcement purposes from localities where Mediterranean fruit flies have been found.

Section 301.78–3(a) further provides that less than an entire state will be designated as a quarantined area only if the Administrator determines that (1) the state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those that are imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire state will prevent the interstate spread of the Mediterranean fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire state as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area an area in Los Angeles County in California. This area is as follows:

**Los Angeles County**

That portion of the county bounded by a line beginning at the intersection of Highway 118 and De Soto Avenue, then south along De Soto Avenue to its intersection with Vanowen Street, then east along Vanowen Street to its intersection with Corbin Avenue, then south along Corbin Avenue to its intersection with Highway 101, then east along Highway 101 to its intersection with Burbank Boulevard, then east along Burbank Boulevard to its intersection with Balboa Boulevard, then north along Balboa Boulevard to its intersection with Victory Boulevard, then east along Victory Boulevard to its intersection with Woodman Avenue, then north along Woodman Avenue to its intersection with Highway 118, then west along Highway 118 to its intersection with Sepulveda Boulevard, then north along Sepulveda Boulevard to its intersection with Rinaldi Street, then west along Rinaldi Street to its intersection with Tampa Avenue, then south along Tampa Avenue to its intersection with Highway 118, then west along Highway 118 to the point of beginning.

It is necessary to designate this portion of Los Angeles County as a quarantined area because it is an area in which the Mediterranean fruit fly has been found, or in which the Administrator has reason to believe the Mediterranean fruit fly is present, or an area necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than those areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Section 301.78–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.78–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent spread of the Mediterranean fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

**Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (§§ 301.78–4 Through 301.78–10)**

*Section 301.78–4*

Section 301.78–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 through 301.78–10, unless moved as prescribed in § 301.78–4(b).

Section 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Mediterranean fruit flies, if the point of origin is clearly indicated on shipping documents, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Also, § 301.78–4(c) allows the Department to move interstate regulated articles without a certificate or limited permit for experimental or scientific purposes. However, they must be moved in accordance with a permit issued by the Administrator, under conditions that prevent the spread of Mediterranean fruit fly.

Section 301.78–4 contains a footnote (number 2) to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for interstate movement.

*Section 301.78–5*

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of Mediterranean fruit fly, has been treated under direction of an inspector in accordance with § 301.78–10, or comes from a premise of origin which is free from Mediterranean fruit fly and has not been exposed to Mediterranean fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) is eligible for unrestricted

movement under all other federal domestic plant quarantines and regulations applicable to that article.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specific destination for specified handling, utilization or processing, and that the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspection has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.78–5 (a) or (b).

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisons for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

*Section 301.78–6*

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of § 301.78. Compliance agreements are provided for the convenience of persons who are involved in frequent shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of § 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote (number 4) to explain where compliance agreement forms can be obtained.

*Sections 301.78–7, 301.78–8 and 301.78–9*

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles should request that an inspector issue a certificate or limited permit as far in advance of movement as possible (no less than 48 hours before the desired movement). A footnote (number 3) is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement.

These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.78–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the quarantine and regulations in § 301.78 are provided without cost during normal business hours, but that will not be responsible for any other costs or charges.

*Section 301.78–10*

Section 301.78–10 identifies as authorized treatments those treatments for the Mediterranean fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. Research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly. Treatment schedules have not been developed for all regulated articles; however, an individual may obtain a certificate or limited permit for the interstate movement of some regulated articles by complying with the inspection provisions of § 301.78–5 (a), (b) or (c), as an alternative to treatment of those articles. The treatment schedule for tomato, and bell pepper and tomato in § 301.78–10 are as follows:

(a) *Tomato:* Fumigation with methyl bromide at normal atmosphere pressure with 32 g/m³ for 3½ hours at 21°C. (70°F.) or above.

(b) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.44°C. (112°F.) until approximate center of article reaches 44.44°C. (112°F.) and maintain at 44.44°C. (112°F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44°C. (112°F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

**Emergency Action**

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread artifically to noninfested areas of the United States, it is necessary to act immediately to control its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553(d)(3) for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register.** Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County, California. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. Specifically, the quarantined area is comprised of private residences and

small wholesale dealers and shops. The small entities that may be affected by this regulation appear to consist of approximately 80 nurseries, 5 open fruit stands, 2 community gardens, two regularly scheduled swap meets (flea markets), 3 caterers who send lunch "chuckwagons" to job sites in the quarantined area, 1 airport with no scheduled passenger flights, 1 tomato and pepper grower with approximately 4000 plants on a ½-acre field, and 1 tomato grower with a 3 acre field, both of whom sell their products locally at roadside stands.

Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities appears to be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other states.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

**PART 301—DOMESTIC QUARANTINE NOTICES**

Accordingly, 7 CFR Part 301 is amended to read as follows:

1. The authority citation for Part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 167; 7 CFR 2.17, 2 51, and 371.2.

2. Part 301 is amended by adding a new "Subpart—Mediterranean Fruit Fly" to read as follows:

**Subpart—Mediterranean Fruit Fly**

Sec.


301.78 Restrictions on interstate movement of regulated articles.
301.78–1 Definitions.
301.78–2 Regulated articles.
301.78–3 Quarantined areas.
301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.78–5 Issuance and cancellation of certificates and limited permits.
301.78–6 Compliance agreement and cancellation.
301.78–7 Assembly and inspection of regulated articles.
301.78–8 Attachment and disposition of certificates and limited permits.
301.78–9 Costs and charges.
301.78–10 Treatments.


**Subpart—Mediterranean Fruit Fly**

**§ 301.78 Restrictions on interstate movement of regulated articles.**

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

**§ 301.78–1 Definitions.**

In this subpart the following definitions apply:

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service, or any officer or employee of the United States Department of Agriculture to whom the Administrator has delegated authority to act in his or her stead.

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Mediterranean fruit fly and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to it.

*Infestation.* The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

[1] Any properly identified employee is authorized to stop and inspecct persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

*Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

*Interstate.* From any state into or through any other state.

*Limited permit.* A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.78–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Mediterranean fruit fly.* The insect known as Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)) in any stage of development.

*Moved (Move, Movement).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Plant Protection and Quarantine.* Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Quarantined area.* Any state, or any portion of a state, listed in § 301.78–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.78–3(b) of this subpart.

*Regulated article.* Any article listed in § 301.78–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.78–2(c) of this subpart.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

**§ 301.78–2 Regulated articles.**

The following are regulated articles:

(a) The following fruits, nuts, vegetables and berries:

Almond with husk (*Prunus dulcis* (P. amygdalus))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Black Myrobalan (*Terminalia cherbula*)
Cherries (sweet and sour) (*Prunus avium, P. cerasus*)
Citrus citron (*Citrus medica*)
Date (*Phoenix dactylifera*)
Fig (*Ficus carica*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)

Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) (smooth-skinned lemon of commerce that is cleaned and waxed)
Lime, sweet (*Citrus aurantiifolia*)
Loquat (*Eriobotrya japonica*)
Mandarin orange (*Citrus reticulata*) (tangerine)
Mango (*Mangifera indica*)
Mock orange (*Murraya* exotica)
Mountain apple (*Syzigium malaccense* (*Eugenia malaccensis*)
Natal plum (*Carissa macrocarpa*)
Nectarine (*Prunus persica* var. *nectarina*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Orange, calamondin (*Citrus riticulata* x. *Fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata* x. *C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Papaya (*Carica papaya*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum frutescens, C. annuum*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava Pomiferum*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Pyriform guajava (*Psidium guajava Pyriform*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sour orange (*Citrus aurantium*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))
Strawberry guava (*Psidium cattleianum*)
Surinam cherry (*Eugenia uniflora*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*)

Any fruits, nuts, vegetables, or berries which are canned or dried or frozen below −17.8°C. (0°F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a).

(c) Any other product, article, or means of conveyance, not covered by paragraph (a) or (b) of this section, that an inspector determines presents a risk of spread of the Mediterranean fruit fly and notifies the person in possession of it that the product, article or means of conveyance is subject to the restrictions of this subpart.

**§ 301.78–3 Quarantined areas.**

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator shall list as a quarantined area in paragraph (c) of this section, each state, or each portion of a state, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found. Less than an entire state will be designated as a quarantined area only if the Administrator determines that:

(1) The state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire state as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a state as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

**California**

*Los Angeles County*

That portion of the county bounded by a line beginning at the intersection of Highway 118 and De Soto Avenue, then south along De Soto Avenue to its intersection with Vanowen Street, then east along Vanowen Street to its intersection with Corbin Avenue, then south along Corbin Avenue to its intersection with Highway 101, then east along Highway 101 to its intersection with Burbank Boulevard, then east along Burbank Boulevard to its intersection with Balboa Boulevard, then north along Balboa Boulevard to its intersection with Victory Boulevard, then east along Victory Boulevard to its intersection with Woodman Avenue, then north along Woodman Avenue to its intersection with Highway 118, then west along Highway 118 to its intersection with Sepulveda Boulevard, then north along Sepulveda Boulevard to its intersection with Rinaldi Street, then west along Rinaldi Street to its intersection with Tampa Avenue, then south along Tampa Avenue to its intersection with Highway 118, then west along Highway 118 to the point of beginning.

**§ 301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.[2]**

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78–5 and 301.78–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and

(2) The point of origin of the regulated article is indicated by shipping documents and the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Mediterranean fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

**§ 301.78–5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector for the interstate movement of a regulated article if the inspector:

(1)(i) Determines that the regulated article has been treated under the direction of an inspector in accordance with § 301.78–10 of this subpart; or

[2] Requirements under all other applicable federal domestic plant quarantines and regulations must also be met.

(ii) Determines, based on inspection of the premises of origin, that the premises of origin are free from Mediterranean fruit flies and the regulated article has not been exposed to Mediterranean fruit fly; or

(iii) Determines, based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) Determines that the regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under the Federal Plant Pest Act to prevent the spread of the Mediterranean fruit fly; and

(3) Determines that the regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

(b) An inspector [3] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved interstate in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if the inspector has made the determination that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within ten days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

**§ 301.78–6 Compliance agreement and cancellation.**

(a) Any person who moves regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.[4]

(b) Any compliance agreement may be cancelled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart or any conditions imposed pursuant to this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. As promptly as circumstances allow, the Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision. A hearing shall be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

**§ 301.78–7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78–5(c) of this subpart), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance of the desired interstate movement as possible (no less than 48 hours before the desired interstate movement), request an inspector [5] to issue the certificate or limited permit.

(b) The regulated article shall be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

**§ 301.78–8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be securely attached to the outside of the container containing the regulated article, securely attached to the regulated article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided*, however, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping document only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

**§ 301.78–9 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost. The United States Department of Agriculture will not be responsible for any other costs or charges.

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[3] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland, 20782.

[4] Compliance agreement forms are available without charge from the Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

[5] See footnote 3 to § 301.78–5 paragraph (b).

**§ 301.78–10 Treatments.**

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Mediterranean fruit fly on regulated articles are authorized treatments. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference." The following treatments are also authorized:

(a) *Tomato:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(b) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.44 °C. (112 °F.) until approximate center of article reaches 44.44 °C. (112 °F.) and maintain at 44.44 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44 °C. (112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

Done at Washington, DC, this 2nd day of August, 1988.

**W.F. Helms,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–17789 Filed 8–5–88; 8:45 am]

BILLING CODE 3410–34–M

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**Agricultural Marketing Service**

**7 CFR Part 948**

## Irish Potatoes Grown in Colorado Area II; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule, regarding Irish potatoes grown in Colorado Area II, authorizes expenses and establishes an assessment rate under Marketing Order No. 948 for the 1988–89 fiscal period. Authorization of this budget will allow the San Luis Valley Potato Administrative Committee Area II to incur expenses reasonable and necessary to administer the program. Funds to cover these expenses will be derived from assessments on handlers.

**EFFECTIVE DATE:** September 1, 1988 through August 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 948 [7 CFR Part 948] regulating the handling of potatoes grown in Colorado. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of Colorado Area II potatoes under this marketing order and approximately 290 potato producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Secretary for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The San Luis Valley Potato Administrative Committee Area II met on June 16, 1988, and unanimously recommended 1988–89 expenditures of $43,552. The budget is $1,350 more than last year's due to salary increases for the committee manager and office personnel and added insurance costs. The committee also recommended an assessment rate of $0.0035 per hundredweight (cwt.) up from last season's rate of $.0034. This rate, when applied to anticipated shipments of 11,800,000 hundredweight, will yield $41,300 in assessment revenue which, when added to interest income and reserve funds, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** [53 FR 27525, July 21, 1988]. That document contained a proposal to add § 948.297 to establish expenses and an assessment rate for the San Luis Valley Potato Administrative Committee Area II. That rule provided that interested persons could file comments through August 1, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the

committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes (Colorado).

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

## PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 948.297 is added to read as follows:

Note.—This section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations.

§ 948.297 Expenses and assessment rate.

Expenses of $43,552 by the San Luis Valley Potato Administrative Committee Area II are authorized, and an assessment rate of $0.0035 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1988. Unexpended funds may be carried over as a reserve.

Dated: August 3, 1988.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88-17790 Filed 8-5-88; 8:45 am]

BILLING CODE 3410-02-M

## NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

### Organization and Operations of Federal Credit Unions; Compensation of Officials

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: This amendment to § 701.33 of NCUA's Rules and Regulations: (1) Provides guidance for FCU indemnification of officials and employees; and (2) conforms the regulation to a recent change in section 112 of the Federal Credit Union ("FCU") Act (12 U.S.C. 1761a), permitting an FCU board of directors to compensate one board officer of its choosing. The regulation has also been given a new title which more accurately reflects the content of the regulation: "Reimbursement, Insurance, and Indemnification of Officials and Employees."

EFFECTIVE DATE: September 7, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Assistant General Counsel, or Julie Tamuleviz, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

### Background

On February 10, 1988, the NCUA Board issued a proposal to amend § 701.33 of NCUA's Rules and Regulations ("Compensation of Officials"). 53 FR 4992 (Feb. 19, 1988). The proposal had three parts:

1. To amend § 701.33(a) to provide that an FCU's board of directors may determine, and specify in their bylaws, which board officer may be compensated as such. This change was recommended to conform the regulation to section 112 of the FCU Act (12 U.S.C. 1761a), which was amended in 1982. Prior to that time, the treasurer was the only board officer who could be compensated as an FCU official.

2. To amend § 701.33 to permit an FCU to reimburse its officials for pay or leave (e.g., annual leave, leave without pay) actually lost while attending a meeting of the board of directors or of the supervisory or credit committees.

3. To amend § 701.33 to provide regulatory guidance to FCU's on indemnification and the purchase of insurance to provide for indemnification of its officials and employees. In the past, NCUA had interpreted section 107(2) (the authority to sue and be sued) and section 107(16) (the incidental powers clause) of the FCU Act (12 U.S.C. 1757(2), 1757(16)) as providing an FCU with the authority to indemnify its officials and employees under limited circumstances. However, no specific guidance had been given.

### Public Comment

The NCUA Board received 86 comments: 73 from FCU's; 2 from state-chartered credit unions; 6 from credit union leagues; 3 from trade associations; and 2 from individuals.

*A. Proposal To Amend Section 701.33 To Conform With Section 112 of the FCU Act (12 U.S.C. 1761a)*

Few of the commenters addressed the first proposal. Those that did favored the change. The Board is amending § 701.33(a) to conform it to section 112 of the FCU Act.

Article VIII, Section 1 of the current FCU Bylaws permits an FCU's board of directors to designate the board officer, if any, that will be compensated. Some FCU's may be operating under older versions of the FCU Bylaws which either do not permit compensation of any board officer, or limit compensation to the financial officer (treasurer). These FCU's will have to adopt Article VIII, Section 1 of the FCU Bylaws if they want to compensate a board officer, or if they want to compensate an officer other than the treasurer.

*B. Proposal To Reimburse Officials for Pay or Leave Lost While Attending Board of Directors or Committee Meetings*

All 86 commenters addressed the suggestion to authorize reimbursing officials for pay or leave actually lost while attending board or committee meetings: 62 were opposed; 22 were in favor; and 2 opposed the proposal, but favored reimbursing officials for pay or leave lost while attending credit union conferences and seminars. (Sixteen of the 22 commenters favoring the proposal also favored permitting officials to be reimbursed for pay or leave lost while attending credit union conferences and seminars.)

The primary reasons given for opposing the proposal concerned the credit union volunteer spirit—that reimbursement was contrary to that philosophy; that voluntarism is what makes credit unions different from other financial institutions; and that easing the reimbursement restriction further could endanger the tax-exempt status of credit unions. Commenters were also concerned about the possible effects of implementing such an authorization: Dissension among board members where some might receive more reimbursement than others; reluctance by some officials to publicly disclose their salaries; additional IRS reporting requirements for FCU's; difficulty with verifying officials' claims of lost pay or leave; and creation of an incentive to officials to hold meetings during working hours.

Commenters favoring the proposal to reimburse officials for lost pay or leave generally noted that the proposal would assist FCU's in obtaining and keeping qualified officials. Most of these commenters also asked that the proposed reimbursement be extended to credit union conferences and seminars. Many of those favoring the proposal stated their assumption that it is currently permissible to reimburse

officials for pay or leave actually lost while attending credit union conferences and seminars.

NCUA staff had recommended this proposal to the NCUA Board in response to FCU's expressing a need for reimbursement for lost pay and leave to attract and retain qualified volunteers. The comments received on the proposal, however, indicate the vast majority of FCU's feel such reimbursement is unnecessary and may be harmful to the credit union spirit. The NCUA Board has decided not to go forward with this proposal. The Board also hereby clarifies that under NCUA's current Rules and Regulations reimbursement of officials for lost pay or leave is not permitted.

*C. Proposal To Permit Indemnification of FCU Officials and Employees*

The NCUA Board's third proposed change to § 701.33 was also designed to encourage voluntary service: Establishment of guidelines for indemnification and the purchase of insurance to provide for indemnification. Thirty-five of the commenters addressed this proposal: 34 supported it and one opposed. In general, the commenters agreed that indemnification protection would enhance the ability of an FCU to attract volunteers, and many expressed the belief that such protection was a necessity in today's litigious society.

As to the proposed scope of the amendment, two commenters suggested that the definition of "official" be expanded to include *all* volunteers serving on FCU committees—the proposal had included only members of the credit and supervisory committees. Because the primary purpose of the indemnification provision is to encourage voluntarism, the NCUA Board concurs and is expanding the definition of "official" in the final amendment to read as follows: "An 'official' is a person who is or was a member of the board of directors, credit committee, supervisory committee, or other volunteer committee established by the board of directors."

Two commenters believed that NCUA should set the standards for indemnification rather than allow FCU's to elect to apply the standards of state law or the Model Business Corporation Act. The NCUA Board considered a range of possibilities—from imposing the clear Federal standard suggested to allowing state law to control entirely. A middle position has been found appropriate.

Under the final amendment, an FCU will be free to choose one of three options: No indemnification; indemnification under the state enabling law applicable to its neighboring state-chartered credit unions; or indemnification under the Model Business Corporation Act. The only caveat is that any FCU bylaw or charter amendment relating to indemnification, like all other such amendments, must be approved by NCUA.

This approach maximizes FCU flexibility (particularly in states which have not enacted an indemnification-enabling statute applicable to credit unions), limits the instances where an FCU or NCUA must determine which state indemnification law is applicable, and accommodates state and local interests.

One commenter suggested that an FCU be authorized to combine provisions of state law and the Model Business Corporation Act in formulating its indemnification standards. An FCU should be able to elect to follow either state law or the Model Act, but not both, since each represents a unified whole. This option should provide adequate flexibility. Permitting an FCU to select portions of state law and the Model Act would likely lead to inconsistency and confusion.

The proposal provided that an FCU which elects to provide indemnification shall specify whether it will follow state law or the Model Act, and further provided that failure to make an election would be deemed a decision not to provide indemnification. Several commenters objected to this portion of the proposal, stating that an FCU should have the flexibility to provide indemnification on a case-by-case basis if appropriate, and that only an affirmative decision not to provide indemnification should be binding on an FCU. The NCUA Board agrees, and the language treating a failure to make an election as an affirmative decision not to provide indemnification has been deleted.

Several commenters objected to the language prohibiting indemnification "for expenses, penalties, or other payments incurred in an administrative proceeding brought by the National Credit Union Administration unless the official or employee substantially prevails on the merits." These commenters were concerned that NCUA could prevail in an administrative proceeding even though an official or employee acted in good faith. One commenter was concerned that this provision might have an inhibiting effect on officials or employees.

Under most state provisions and under the Model Business Corporation Act, indemnification is not available for an employee or official who acts recklessly, wantonly, fraudulently, or in bad faith, receives an improper personal benefit, or does not have reason to believe that his actions are in the best interests of the FCU. This would generally be the case when NCUA prevails in an administrative action; the limitation on indemnification contained in the proposed regulation would therefore affect few, if any, cases. NCUA's interests are therefore adequately protected, and this provision has been deleted from the final rule.

As noted in the proposed amendment, the power to provide for indemnification does not relieve an FCU of its responsibility to determine whether indemnification is appropriate under the circumstances. NCUA will monitor indemnification provisions for consistency with the indemnification standards chosen, for the safety and soundness implications for the institution, and for their application in a given case.

Lastly, the final rule clarifies, as did the proposal, that the purchase of liability insurance is an acceptable method of providing indemnification protection to officials and employees.

*D. Change in Title of the Regulation*

Section 701.33 was previously entitled "Compensation of Officials." Based on certain of the comments received on the proposal, it appears that this title may have contributed to a misimpression that the regulation authorizes FCU's to compensate board and committee members. The regulation has been retitled "Reimbursement, Insurance, and Indemnification of Officials and Employees." This title more accurately reflects the intent of the regulation.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board has determined and certifies that these amendments will not have a significant economic impact on a substantial number of small credit unions. The changes are directed at clarification and reduction of regulatory confusion and interpretive burdens, rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

The amendments do not impose any paperwork requirements.

*Executive Order 12612*

The NCUA Board has determined that this amendment does not have significant federalism implications. The amendment has no effect on federally-insured, state-chartered credit unions.

The amendment attempts to put FCU's in virtually the same position as their state-chartered credit union neighbors. The sole differences are that an FCU will have the option of following the Model Business Corporation Act, and that any FCU bylaw or charter amendment relating to indemnification must be approved by NCUA. Thus the effect on state interests is likely to be minimal. The first difference is needed to accommodate FCU's in states without indemnification-enabling statutes and to ease the need on the part of FCU's and NCUA to determine what state law is appropriate. The second merely maintains NCUA's general oversight of FCU charters and bylaws.

**List of Subjects in 12 CFR Part 701**

Credit unions, Indemnification.

By the National Credit Union Administration Board on July 27, 1988.

**Becky Baker,**

*Secretary, NCUA Board.*

Accordingly, NCUA amends 12 CFR Part 701 as follows:

**PART 701—[AMENDED]**

1. The authority citation for Part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1755, 12 U.S.C. 1756, 12 U.S.C. 1757, 12 U.S.C. 1759, 12 U.S.C. 1761a, U.S.C. 1761b, 12 U.S.C. 1766, 12 U.S.C. 1767, 12 U.S.C. 1782, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1789, and 12 U.S.C. 1798.

Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.33 is revised to read as follows:

**§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.**

(a) *Official.* An "official" is a person who is or was a member of the board of directors, credit committee or supervisory committee, or other volunteer committee established by the board of directors.

(b) *Compensation.* (1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed;

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided,* that such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; and

(iii) Indemnification and related insurance consistent with paragraph (c) of this section.

(c) *Indemnification.* (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business Corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

[FR Doc. 88–17692 Filed 8–5–88; 8:45 am]

BILLING CODE 7535–01–M

**12 CFR Part 701**

**Loan Interest Rates**

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The current 18 percent per year Federal credit union loan rate ceiling was scheduled to revert to 15 percent on September 10, 1988, unless otherwise provided by the NCUA Board. A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of Federal credit unions. At the same time prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the NCUA Board has established an 18 percent Federal credit union loan rate ceiling for the period from September 10, 1988 through March 9, 1990. Loans and line of credit balances existing prior to May 15, 1987 may continue to bear their contractual rate of interest, not to exceed 21 percent. Further, the NCUA Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

**EFFECTIVE DATE:** September 10, 1988.

**ADDRESS:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Charles H. Bradford, Chief Economist or Timothy P. McCollum, Assistant General Counsel, at the above address. Telephone numbers: (202) 357–1100 (Mr. Bradford); (202) 357–1030 (Mr. McCollum).

**SUPPLEMENTARY INFORMATION:**

**Background**

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for Federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the NCUA Board to set a higher limit, after consultation with Congress, the Department of the Treasury, and other Federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (i) Money market interest rates have risen over the preceding six months; and (ii) prevailing interest rate levels threaten the safey and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth.

On December 3, 1980, the NCUA Board met and determined that the foregoing conditions had been met.

Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first half of the 1980's, the NCUA extended the 21 percent ceiling four additional times. On March 11, 1987 the NCUA Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 15, 1987. This action was taken in an environment of a long period of falling market interest rates. The Board felt the 18 percent ceiling would fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions could react to any adverse economic developments, and would ensure that any increase in the cost of funds would not impinge on earnings of Federal credit unions.

The NCUA Board would prefer not to set loan interest rate ceilings for Federal credit unions. In the final analysis the market sets the rates. The Board supports free lending markets and the ability of Federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of credit union members. Congress has, however, imposed loan rate ceilings since 1934. In 1979 Congress raised the loan rate ceilings from 12 percent to 15 percent and required the Board to set and justify any ceiling in excess of 15 percent. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

*Justification for a Ceiling Above 15 Percent*

Current economic conditions necessitate a loan ceiling above 15 percent. First, short term interest rates have risen nearly 70 basis points over the past six months. See Table 1.

TABLE 1.—3-MONTH TREASURY BILL RATE MARKET YIELD

[Averages of daily figures]

| | |
|---|---|
| 1987: | |
| December | 5.77 |
| 1988: | |
| January | 5.81 |
| February | 5.66 |
| March | 5.70 |
| April | 5.91 |
| May | 6.26 |
| June | 6.46 |

Second, earnings of Federal credit unions have deteriorated over the past several years. For example:

• While the cost of funds for credit unions has declined in recent years, gross spreads have steadily declined by 73 basis points and net spreads by 15 basis points the past four years, since 1984. See Table 2.

TABLE 2.—FEDERAL CREDIT UNION SPREADS, 1984–1987

| | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| Return on: | | | | |
| Loans | 13.80% | 13.52% | 12.68% | 11.58% |
| Investments | 10.94% | 9.47% | 7.94% | 7.67% |
| Earning Assets | 12.85% | 12.18% | 10.91% | 10.11% |
| Gross Return on Total Assets | 12.26% | 11.60% | 10.39% | 9.64% |
| – Cost of Funds | 7.54 | 7.23 | 6.37 | 5.65 |
| = Gross spread | 472 bp | 437 bp | 402 bp | 399 bp |
| – Operating expenses | 355 bp | 337 bp | 315 bp | 308 bp |
| + Other income | 36 bp | 48 bp | 55 bp | 46 bp |
| = Net spread [1] | 152 bp | 148 bp | 142 bp | 137 bp |

[1] Before reserve allocation.

• Credit union losses represent a significant and growing problem that must be weighed in setting a loan rate ceiling. In 1987, a total of 1,481 Federal credit unions, 15.8 percent of all Federal credit unions, registered losses, up from 1,360 in 1986 and 1,178 in 1985. Table 3 shows the number of Federal credit unions experiencing losses in 1987, by size. Most credit unions with negative earnings are small, less than $10 million in assets. These credit unions would be among those most adversely affected by a reduction in the interest rate ceiling to 15 percent.

TABLE 3.—FEDERAL CREDIT UNIONS EXPERIENCING LOSSES IN 1987

| Asset Size | No. of FCU's |
|---|---|
| Less than $1 million | 646 |
| $1–2 million | 229 |
| $2–5 million | 246 |
| $5–10 million | 150 |
| $10–20 million | 98 |
| $20–50 million | 71 |
| $50 million and over | 39 |
| Total | 1481 |

Declining spreads in the past four years and increasing credit union losses should raise a warning flag against setting the loan rate ceiling too low, thus threatening the safety and soundness of many credit unions by reducing their flexibility. The major stipulations set forth in Pub. L. 96–221 for the NCUA Board to set a loan ceiling above 15 percent are evident.

Moreover, many credit unions must continue to charge over 15 percent interest on loans to maintain earnings. Over half of the Federal credit unions that offer unsecured personal loans charge 15 percent or more for these loans. See Table 4.

TABLE 4.—DISTRIBUTION OF FEDERAL CREDIT UNION INTEREST RATES FOR DECEMBER 1987

| Rate | Unsecured loans [1] | New auto loans | First mortgage | Other real estate |
|---|---|---|---|---|
| 0 to 9.9% | 47 | 2,996 | 479 | 344 |
| 10 to 14.9 | 3,827 | 5,115 | 1,914 | 3,003 |

TABLE 4.—DISTRIBUTION OF FEDERAL CREDIT UNION INTEREST RATES FOR DECEMBER 1987—Continued

| Rate | Unsecured loans [1] | New auto loans | First mortgage | Other real estate |
|---|---|---|---|---|
| 15 to 15.9 | 2,716 | 135 | 89 | 108 |
| 16 to 16.9 | 806 | 3 | 5 | 6 |
| 17 to 17.9 | 270 | 0 | 0 | 0 |
| 18 to 18.9 [2] | 842 | 8 | 3 | 9 |
| 19 to 19.9 | 4 | 0 | 0 | 2 |
| 20 to 20.9 | 0 | 1 | 0 | 0 |
| 21 and over | 2 | 3 | 0 | 1 |
| | **Agricultural loans** | **Commercial loans** | **Other loans to members** | **Lines of credit** |
| 0 to 9.9% | 6 | 29 | 583 | 20 |
| 10 to 14.9 | 205 | 343 | 5,672 | 895 |
| 15 to 15.9 | 57 | 52 | 1,076 | 654 |
| 16 to 16.9 | 6 | 11 | 133 | 272 |
| 17 to 17.9 | 3 | 1 | 43 | 71 |
| 18 to 18.9 | 6 | 5 | 105 | 150 |
| 19 to 19.9 [2] | 0 | 0 | 1 | 1 |
| 20 to 20.9 | 0 | 1 | 0 | 1 |
| 21 and over | 0 | 0 | 0 | 0 |

[1] The number of credit unions reporting rates charged. Some did not report rates; accordingly the total will be less than the number of Federal credit unions.
[2] NOTE: All loan rates in the 18 to 18.9 bracket were exactly 18 percent except for 1 credit union's commercial loan rate.

Unsecured personal loans (including credit card lines) account for 23 percent of total credit union loan volume and are an important part of credit union loan operations. While loan rates are generally lower for other types of loans, a sizeable number of credit unions are charging rates above 15 percent for some of these other loans as well and would be adversely affected by a 15 percent ceiling.

The cost of handling unsecured loans, particularly the credit card loan, is very high. Delinquency ratios and losses are higher than for other credits. Also, efficiency of operations is an important determinant in setting a loan rate. Unfortunately, some inefficient credit unions could be forced into insolvency with a loan ceiling as low as 15 percent. To drop the loan ceiling to 15 percent would place severe strains on a large segment of the credit union movement.

*Justification for Maintaining the Current Ceiling at 18 Percent*

While a loan ceiling above 15 percent is justified, the NCUA Board cannot justify a rate above the current 18 percent ceiling, in light of current market conditions. Market interest rates have fallen dramatically since 1980. Current rates are anywhere from less than half to less than three fourths those of the peak years 1980–1981 when a 21 percent ceiling was first imposed and subsequently extended until May 15, 1987. See Table 5.

TABLE 5.—MARKET INTEREST RATES ON SELECTED INSTRUMENTS

| December [1] of— | Treasury Securities | | | |
|---|---|---|---|---|
| | Prime rate | 3-month | 2-year | 30-year |
| 1980 | 21.50 | 15.66 | 14.06 | 12.40 |
| 1981 | 15.75 | 10.93 | 13.29 | 13.45 |
| 1982 | 11.50 | 8.01 | 9.66 | 10.54 |
| 1983 | 11.00 | 8.96 | 10.84 | 11.88 |
| 1984 | 10.75 | 8.16 | 10.18 | 11.52 |
| 1985 | 9.50 | 7.07 | 8.15 | 9.54 |
| 1986 | 7.50 | 5.49 | 6.27 | 7.37 |
| 1987 | 8.75 | 5.77 | 7.86 | 9.12 |
| July 15, 1988 | 9.50 | 6.72 | 8.31 | 9.16 |

[1] Monthly average.

Economic conditions warranting an interest rate ceiling above 18 percent, such as high inflation and high interest rates, are unlikely in the next 18 months. Rates have been rising for about six months now as the economy has grown quite rapidly for two quarters, and there will be some further edging up of inflation and interest rates over the next year as the economy reaches full employment of the labor force, high utilization of manufacturing capacity, and the drought in the farm belt raises farm commodity prices.

But dramatic price and interest rate increases, which could put a squeeze on credit unions under an 18 percent ceiling, are not expected. The staff expects short term interest rates to rise about 1 percentage point more and long term rates about ½ to ¾ percentage point more over the next year and a half. Most of this rise will come in 1989. These are not major increases.

Any rise at all in rates is an argument for not permitting the Federal credit union loan ceiling to revert to 15 percent. On the other hand, the interest rate increases the staff foresees for the next year and a half are modest and do not offer a case for raising the loan rate ceiling above its current 18 percent level.

An 18 percent ceiling will provide adequate flexibility to adjust to foreseeable changing economic conditions and should accommodate modest increases in the cost of funds. Less than 10 credit unions currently charge any rates above 18 percent. Presumably these loans are contracts that existed prior to May 15, 1987.

Accordingly, the NCUA Board has continued the Federal credit union loan interest rate ceiling of 18 percent per year for the period from September 10, 1988 through March 9, 1990. As previously indicated, loans and line of credit balances existing on or before May 15, 1987 may continue to bear their contractual rate, not to exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant it.

**Regulatory Procedures**

*Administrative Procedures Act*

The NCUA Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period and the

threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

*Regulatory Flexibility Act*

For the same reasons, a regulatory flexibility analysis is not required, 5 U.S.C. 604(a). However, the NCUA Board has considered the need for this rule, and the alternatives, as set forth above.

*Executive Order 12612*

This Final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal Credit Unions.

This final rule takes effect on September 10, 1988. Such action is necessary in order to prevent a reversion to a 15 percent loan rate ceiling.

**List of Subjects in 12 CFR Part 701**

Credit unions, Loan interest rates.

By the National Credit Union Administration Board July 27, 1988.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA has amended its regulations as follows:

**PART 701—[AMENDED]**

1. The authority citation for Part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and 1798. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.21(c)(7) is revised to read as follows:

**§ 701.21 Loans to members and lines of credit to members.**

* * * * *

(c) * * *

(7) *Loan interest rates—(i) General.* Except when a higher maximum rate is provided for in § 701.21(c)(7)(ii), a Federal credit union may extend credit to its members at rates not to exceed 15 percent per year on the unpaid balance inclusive of all finance charges. Variable rates are permitted on the condition that the effective rate over the term of the loan (or line of credit) does not exceed the maximum permissible rate.

(ii) *Temporary rates.* (A) *21 percent maximum rate.* Effective from December 3, 1980 through May 14, 1987, a Federal credit union may extend credit to its members at rates not to exceed 21 percent per year on the unpaid balance inclusive of all finance charges. Loans and line of credit balances existing on or before May 14, 1987, may continue to bear rates of interest of up to 21 percent per year after May 14, 1987.

(B) *18 percent maximum rate.* Effective May 15, 1987, a Federal credit union may extend credit to its members at rates not to exceed 18 percent per year on the unpaid balance inclusive of all finance charges.

(C) *Expiration.* After March 9, 1990, or as otherwise ordered by the NCUA Board, the maximum rate on Federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii) (A) and (B) of this section, on loans and line of credit balances existing on or before March 9, 1990.

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[FR Doc. 88-17691 Filed 8-5-88; 8:45 am]

BILLING CODE 7535-01-M

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**12 CFR Part 761**

## Operational Procedures for Share Draft Programs; Federally Insured State-Chartered Credit Unions

**AGENCY:** National Credit Union Administration ("NCUA").

**ACTION:** Final rule.

**SUMMARY:** This amendment repeals Part 761 of NCUA's Rules and Regulations. Part 761 concerned the offering of share draft accounts by federally-insured, state-chartered credit unions ("FISCU's"). It placed FISCU's under the same guidelines as Federal credit unions ("FCU's") unless state law conflicted. Since NCUA has removed FCU share draft regulations, Part 761 is no longer needed.

**EFFECTIVE DATE:** August 8, 1988.

**ADDRESS:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Hattie Ulan, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 357–1030.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1980, Congress amended section 205 of the FCU Act (12 U.S.C. 1785) to grant federally-insured credit unions (both Federal and state charters), the authority to offer share draft accounts. Later that year, the NCUA Board modified its Rules and Regulations by amending § 701.35 and adding Part 761. (*See* 45 FR 75169 (Nov. 14, 1980).) The amendments to § 701.35 set forth requirements for FCU's offering share draft accounts. Part 761 made those requirements applicable to FISCU's to the extent that they did not conflict with state law.

Section 701.35 has been amended several times since November, 1980. The requirements addressing share draft accounts have now been deleted from the regulation. Since 701.35 no longer imposes restrictions on share draft accounts, the NCUA Board, in February, 1988, proposed deleting Part 761. 53 FR 4856 (Feb. 18, 1988).

**Comments**

Five comments were received on the proposal: Two from national credit union trade associations; two from state credit union leagues; and one from an FCU. All supported the Board's suggestion that Part 761 was no longer necessary. One commenter suggested reminding credit unions of the need to comply with other Federal law on share drafts—particularly the Federal Reserve Board's Regulation CC implementing the Expedited Funds Availability Act. The NCUA Board has, in the interim, done this for FCU's (*see* 53 FR 19747 (May 31, 1988)); state regulators and trade associations will no doubt take steps as needed to provide similar reminders for state-chartered credit unions.

**Conclusion**

Since the NCUA Board has deregulated share drafts, FISCU's are now in effect governed only by state law and other Federal law—particularly Federal Reserve Regulation CC (checkholds). Part 761 is therefore no longer needed. Since the change has no substantive effect on credit unions, the deletion is effective immediately upon publication in the **Federal Register**, rather than 30 days after publication.

**Regulatory Procedures**

*Regulatory Flexibility and Paperwork Reduction Acts*

Since this is a repeal of a regulation, the requirements of the Regulatory Flexibility Act and the Paperwork Reduction Act are not applicable.

*Executive Order 12612*

The repeal of Part 761 has no practical effect on FISCU's because there are no longer any specific requirements placed on share draft accounts in § 701.35. FISCU's continue to have the authority to offer share draft accounts pursuant to section 205(f) of the FCU Act.

**List of Subjects in 12 CFR Part 761**

Federally insured state-chartered credit unions, Share draft accounts.

BEST COPY AVAILABLE

By the National Credit Union Administration Board on July 27, 1988.

Becky Baker,

*Secretary of the Board.*

Accordingly, NCUA amends its regulations as follows:

**PART 761—[REMOVED]**

Part 761 is removed.

[FR Doc. 88-17694 Filed 8-5-88; 8:45 am]

BILLING CODE 7535-01-M

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**12 CFR Parts 790 and 791**

**Description of Office, Disclosure of Official Records, Availability of Information, Promulgation of Regulations; Rules of Board Procedure**

**AGENCY:** National Credit Union Administration ("NCUA").

**ACTION:** Final rule.

**SUMMARY:** Part 790 of NCUA's regulations describes NCUA's offices and addresses NCUA implementation of Federal information and privacy laws. Part 791 contains rules of NCUA Board procedure. These amendments: (1) Update and clarify provisions concerning issuance of NCUA rules and regulations, and transfer those provisions from Part 790 to Part 791; (2) streamline and clarify NCUA Board procedures; and (3) transfer provisions regarding public observation of Board meetings from Part 790 to Part 791.

**EFFECTIVE DATE:** August 8, 1988.

**ADDRESS:** National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Board Secretary, or Julie Tamuleviz, Staff Attorney, at the above address or telephone: (202) 357-1100 (Ms. Baker) or (202) 357-1030 (Ms. Tamuleviz).

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 10, 1988, the NCUA Board issued a proposal to revise Parts 790 and 791 of NCUA's Rules and Regulations (53 FR 4996, February 19, 1988). The proposed revisions were in two areas.

First, several changes were proposed to update and clarify the rules concerning issuance of NCUA regulations, and it was suggested that these rules be moved from Part 790 (the other provisions of which address NCUA implementation of information and privacy laws) to Part 791 covering "Rules of Board Procedure." The Board also proposed to delete Appendix A to Part 790 entitled "Final Report in Response to Executive Order No. 12044: Improving Government Regulations." The Appendix has been superseded by NCUA Policy Statement Number 87-2, which contains current procedures for reviewing and developing regulations.

Second, the Board proposed several changes to existing Part 791 that would streamline NCUA Board procedure.

**Public Comment**

The NCUA Board received three comments: two from credit union trade associations and one from a state credit union league.

**Proposals to Update and Transfer Provisions Concerning Issuance of Regulations**

None of the commenters addressed the proposal to move the provisions concerning issuance of regulations. The Board is therefore amending Part 790 by deleting § 790.10 and Appendix A. Part 791 is being amended to include a Subpart B addressing issuance of NCUA's rules and regulations. The scope and title of Parts 790 and 791 are being amended to reflect these changes.

One commenter suggested that proposed § 791.8(b), which lists items to be included in a notice of proposed rulemaking, be amended by adding a new paragraph (b)(4) which would state that NCUA will include a discussion of the impact a proposed rule will have on state-chartered, federally-insured credit unions in the notice of proposed rulemaking. NCUA has been including this discussion in its proposed rules. The Board is amending § 791.8 as suggested by the commenter.

One commenter asked for clarification on whether Interpretive Rulings and Policy Statements (IRPS's) are issued for comment. Proposed § 791.8(d) sets forth matters, including IRPS's, for which public notice and comment are not required. This section is in conformance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). As in the past, the Board will make a case-by-case determination on whether an IRPS should be issued for public comment.

One commenter asked for an explanation on the difference between "requests for comments" and "notices of proposed rulemaking." The commenter also asked how NCUA classifies "Letters to Credit Unions." Generally, under the Federal Administrative Procedure Act, the first required step in rulemaking is to issue a "notice of proposed rulemaking," in order to provide interested parties an opportunity to present their views. (*See*, 5 U.S.C. 553.) Depending on the circumstances, NCUA may identify this notice as a "request for comments," a "notice of proposed rulemaking," or a "proposed rule." A sentence to this effect has been added to § 791.8(b) of the final rule. A request for comments is more likely to be used to set forth a range of options without expressing an initial preference or recommendation by NCUA. A notice of proposed rulemaking is typically less specific than a proposed rule, and may describe the substance of a proposal without setting forth specific rule language. In any case, following a review of comments, a final rule change may be issued, or further proposals and public comment may be required.

Letters to Credit Unions are issued by NCUA to provide guidance to credit unions; they are not regulations and are not subject to the regulatory procedures set forth in proposed § 791.8. Requests for comments, notices of proposed rulemaking, final rules, and Letters to Credit Unions are distributed by NCUA to all affected credit unions.

**Proposal to Streamline and Clarify Rules of Board Procedure**

Two of the commenters raised several specific issues regarding the proposed changes to the rules of Board procedure.

One commenter asked that proposed § 791.4(b) be amended by deleting the word "normally." This section provides that "[n]otation voting may be used only for routine matters, which normally will not include decisions on proposed and final rules, adjudications, and formal Board interpretations and policy statements." The Board believes that this provision may be misleading as it could be read to imply that notation voting will be used to make substantive decisions on proposed and final rules, adjudications, and IRPS's. The Board is therefore amending this section to provide that "notation voting may be used only for routine matters." This would include technical revisions, such as grammatical changes, to rules and regulations, adjudications, IRPS's, and notices, but would not include substantive decisions of significant impact on credit unions.

The proposal would have deleted current § 791.5(b), which permits a Board member to attend a special meeting solely for the purpose of objecting to lack of proper notice. The Board has reconsidered this issue and is reinstating it in the final rule.

The current rule provides that a Board member's failure to respond to a notation vote is an indication that the member wants the matter considered at a Board meeting. The proposal would have deleted this provision, in that a Board member's failure to respond to a notation vote has generally been due to

the member being on travel or otherwise unavailable. One commenter asked that this provision be reinstated or that it be amended to clarify what happens when a Board member fails to respond. The Board does not believe that an amendment to this section is necessary. If a member fails to respond, it is the responsibility of the Board secretary to check with the Board member or the member's office to determine the reason for failure to respond. If a Board member wants a matter included at a Board meeting, the procedures set forth in § 791.4(b)(3) or § 791.6 will be followed.

Proposed § 791.5(a) provided that NCUA would hold regular meetings each month unless there were no business or a quorum could not be obtained. One commenter correctly pointed out that open meetings have not typically been scheduled for the month of August. However, since the Board would like the freedom to hold an August meeting, if business requires it, the final provision will be as proposed.

Finally, some concern has been expressed regarding the notice that will be given to Board members when an emergency meeting is called.

Section 791.5(b)(2) is being amended to clarify that there must be a statement and vote on the record of the determination that an emergency exists, rendering it necessary to call a special meeting, or schedule a matter for a regular meeting, without following the normal notice requirements.

**Public Observation of Board Meetings**

Subpart C of Part 790 (Public Observation of Board Meetings) contains regulations implementing provisions of the Government in the Sunshine Act (5 U.S.C. 552b) ("Sunshine Act"). NCUA's regulations implementing the Sunshine Act (§§ 790.40–790.49 of NCUA's Rules and Regulations [12 CFR 790.40–790.49] are intended to "provide the public with the fullest access, authorized by law, to the deliberations and decisions of the Board while protecting the rights of individuals and preserving the ability of the agency to carry out its responsibilities." (*See* § 790.40 of NCUA's Rules and Regulations. [12 CFR 790.40]).

The Board believes that Subpart C would be more appropriately placed in Part 791. The Board is therefore moving Subpart C to Part 791, where it will become Subpart C of Part 791 consisting of § 791.9 through 791.18. The scope sections of Parts 790 and 791 are being amended to reflect this change. While this change was not part of the original proposal, it is merely technical in nature and does not involve substantive amendments to the current regulations. Therefore, public comment and notice is unnecessary.

**Effective Date**

The Board has determined not to delay the effective date of these amendments since they pertain solely to rules of Board practice and procedure.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board has determined and hereby certifies that the amendments do not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

This amendment does not contain any paperwork requirements.

*Executive Order 12612*

This amendment does not affect state regulation of credit unions.

**List of Subjects in 12 CFR Part 791**

Procedures, NCUA Board meetings, Promulgation of NCUA rules and regulations, Sunshine Act.

By the National Credit Union Administration Board on July 27, 1988.

**Becky Baker,**

*Secretary, NCUA Board.*

Accordingly, NCUA is amending its regulations as follows:

1. The authority section for Part 790 is revised to read as follows:

**Authority:** 12 U.S.C. 1766, 1789, 1795f. Subpart A is also issued under 5 U.S.C. 552 and Subpart B is issued under 5 U.S.C. 552a.

2. The heading of Part 790 is revised to read as follows:

## PART 790—DESCRIPTION OF OFFICE, DISCLOSURE OF OFFICIAL RECORDS, AVAILABILITY OF INFORMATION

3. Section 790.1(b) is revised to read as follows:

**§ 790.1 Scope and application.**

* * * * *

(b) The rules contained in this part are promulgated pursuant to the Federal Administrative Procedure Act (5 U.S.C. 551 *et seq.*). This part includes a description of NCUA's offices and the places and method of obtaining information from NCUA. This part contains rules relating to types of information available to the public, fee schedules, and determinations on requests by the Administration, as provided by the Freedom of Information Act (5 U.S.C. 552). Regulations relating to rules of procedure, promulgation of NCUA Rules and Regulations, and the Sunshine Act are contained in Part 791.

4. Section 790.10 and Appendix A to Part 790 are removed.

**§ 790.10 [Removed]**

**Appendix A to Part 790—[Removed]**

5. Part 791 is revised to read as follows:

## PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

**Subpart A—Rules of NCUA Board Procedure**

Sec.
791.1 Scope.
791.2 Number of votes required for board action.
791.3 Voting by proxy.
791.4 Methods of acting.
791.5 Scheduling of board meetings.
791.6 Subject matter of a meeting.

**Subpart B—Promulgation of NCUA Rules and Regulations**

791.7 Scope.
791.8 Promulgation of NCUA rules and regulations.

**Subpart C—Public Observation of NCUA Board Meetings Under the Sunshine Act**

791.9 Scope.
791.10 Definitions.
791.11 Open meetings.
791.12 Exemptions.
791.13 Public announcement of meetings.
791.14 Regular procedure for closing meeting discussions or limiting the disclosure of information.
791.15 Requests for open meeting.
791.16 General counsel certification.
791.17 Maintenance of meeting records.
791.18 Public availability of meeting records and other documents.

**Subpart A—Rules of NCUA Board Procedure**

**§ 791.1 Scope.**

The rules contained in this Subpart are the rules of procedure governing how the Board conducts its business. These rules concern the Board's exercise of its authority to act on behalf of NCUA; the conduct, scheduling and subject matter of Board meetings; and the recording of Board action.

**§ 791.2 Number of votes required for board action.**

The agreement of at least two of the three Board members is required for any action by the Board.

**§ 791.3 Voting by proxy.**

Proxy voting shall not be allowed for any action by the Board.

**§ 791.4 Methods of acting.**

(a) *Board meetings*—(1) *Applicability of the Sunshine Act.* The Government in the Sunshine Act (5 U.S.C. 552b, "Sunshine Act") requires that joint deliberations of the Board be held in accordance with its open meetings provisions (5 U.S.C. 552b (b)–(f)). (Subpart C of this part contains NCUA's regulations implementing the Sunshine Act.)

(2) *Presiding officer.* The Chairman is the presiding officer, and in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings with the right of the objector to request a board ruling.

(b) *Notation voting.* Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member and the tabulation of responses.

(1) *Matters that may be decided by notation voting.* Notation voting may be used only for routine matters.

(2) *Notation vote sheets.* Notation vote sheets will be used to record the vote tally on a notation vote. The Secretary of the Board has administrative responsibility over notation voting, including the authority to establish deadlines for voting, receive notation vote sheets, count votes, and determine whether further action is required.

(3) *Veto of notation voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus require that the matter be placed on the agenda of a Board meeting.

(4) *Disclosure of result.* A record is to be maintained of Board transactions by use of the notation voting procedure. Public disclosure of this record is determined by the provisions of the Freedom of Information Act (5 U.S.C. 552).

**§ 791.5 Scheduling of board meetings.**

(a) *Meeting calls*—(1) *Regular meetings.* The Board will hold regular meetings each month unless there is no business or a quorum is not available. The Secretary of the Board will coordinate the dates for meetings.

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or at the request of any Board member.

(b) *Notice of meetings*—(1) *Notifying the public.* The Sunshine Act and Subpart C set forth the procedures for notifying the public of Board meetings.

(2) *Notifying board members*—(i) *Special meetings.* Except in cases of emergency as determined by a majority of the Board, each Board member is entitled to receive notice of any special meeting at least twenty-four hours in advance of such meeting. The notice shall set forth the place, day, hour, and nature of business to be transacted at the meeting. In cases of emergency a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

(ii) *Regular meetings.* Each Board member is entitled to receive notice of the agenda and/or notice of any changes in the subject matter of such meetings concurrent with the public release of such notices under the Sunshine Act. Each Board member shall be entitled to at least twenty-four hours advance notice of the consideration of a particular subject matter, except in cases of emergency as determined by a majority of the Board. In cases of emergency, a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

**§ 791.6 Subject matter of a meeting.**

(a) *Agenda.* The Chairman is responsible for the final determination of each meeting agenda.

(b) *Submission of agenda items.* Agenda items may be submitted to the Secretary of the Board by each Board member, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Facility), and Regional Directors.

## Subpart B—Promulgation of NCUA Rules and Regulations

**§ 791.7 Scope.**

The rules contained in this Subpart B pertain to the promulgation of NCUA rules and regulations.

**§ 791.8 Promulgation of NCUA rules and regulations.**

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87–2.

(b) *Proposed rulemaking.* Notices of proposed rulemaking are published in the **Federal Register** except as specified in paragraph (d) of this section or as otherwise provided by law. A notice of proposed rulemaking may also be identified as a "request for comments" or as a "proposed rule." The notice will include:

(1) A statement of the nature of the rulemaking proceedings;

(2) Reference to the authority under which the rule is proposed;

(3) Either the terms or substance of the proposed rule or a description of the subjects and issues involved; and

(4) A statement of the effect of the proposed rule on state-chartered federally-insured credit unions.

(c) *Public participation.* After publication of notice of proposed rulemaking, interested persons will be afforded the opportunity to participate in the making of the rule through the submission of written data, views, or arguments, delivered within the time prescribed in the notice of proposed rulemaking, to the Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456. Interested persons may also petition the Board for the issuance, amendment, or repeal of any rule by mailing such petition to the Secretary of the Board at the address given in this section.

(d) *Exceptions to notice.* The following are not subject to the notice requirement contained in paragraph (b) of this section:

(1) Matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts;

(2) When persons subject to the proposed rule are named and either personally served or otherwise have actual notice thereof in accordance with law;

(3) Interpretive rules, general statements of policy, or rules of agency organization, procedure or practice, unless notice or hearing is required by statute; and

(4) If the Board, for good cause, finds (and incorporates the finding and a brief statement therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, unless notice or hearing is required by statute.

(e) *Effective dates.* No substantive rule issued by NCUA shall be effective less than 30 days after its publication in the **Federal Register**, except that this requirement may not apply to:

(1) Rules which grant or recognize an exemption or relieve a restriction;

(2) Interpretive rules and statements of policy; or

(3) Any substantive rule which the Board makes effective at an earlier date upon good cause found and published with such rule.

## Subpart C—Public Observation of NCUA Board Meetings Under the Sunshine Act

### § 791.9 Scope.

This subpart contains regulations implementing subsections (b) through (f) of the "Government in the Sunshine Act" [5 U.S.C. 552b]. The primary purpose of these regulations is to provide the public with the fullest access authorized by law to the deliberations and decisions of the Board, while protecting the rights of individuals and preserving the ability of the agency to carry out its responsibilities.

### § 791.10 Definitions.

For the purpose of this subpart:

(a) "Agency" means the National Credit Union Administration;

(b) "Board" means the National Credit Union Administration Board, whose members were appointed by the President with the advice and consent of the Senate;

(c) "Subdivision of the Board" means a group composed of two Board members authorized by the Board to act on behalf of the agency;

(d) "Meeting" means any deliberations by two or more members of the Board or any subdivision of the Board that determine or result in the joint conduct or disposition of official agency business with the exception of: (1) Deliberations to determine whether a meeting or a portion thereof will be open or closed to public observation and whether information regarding closed meetings will be withheld from public disclosure; (2) deliberations to determine whether or when to schedule a meeting; and (3) infrequent dispositions of official agency business by sequential circulation of written recommendations to individual Board members ("notation voting procedure"), provided the votes of each Board member and the action taken are recorded for each matter and are publicly available, unless exempted from disclosure pursuant to 5 U.S.C. 552 (the Freedom of Information Act);

(e) "Public observation" means that a member or group of the public may listen to and observe any open meeting and may record in an unobtrusive manner any portion of that meeting by use of a camera or any other electronic device, but shall not participate in any meeting unless authorized by the Board;

(f) "Public announcement" or "publicly announce" means making reasonable efforts under the particular circumstances to fully inform the public, especially those individuals who have expressed interest in the subject matters to be discussed or the decisions of the agency;

(g) "Sunshine Act" means the open meeting provisions of the "Government in the Sunshine Act" [5 U.S.C. 552b.]

### § 791.11 Open Meetings.

Except as provided in § 791.12(a), any portion of any meeting of the Board shall be open to public observation. The Board, and any subdivision of the Board, shall jointly conduct official agency business only in accordance with this subpart.

### § 791.12 Exemptions.

(a) Under the procedures specified in § 791.14, the Board may close a meeting or any portion of a meeting from public observation or may withhold information pertaining to such meetings provided the Board has properly determined that the public interest does not require otherwise and that the meeting (or any portion thereof) or the disclosure of meeting information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code, the Freedom of Information Act), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of Federal agencies responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to (i)(A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution, or (ii) be likely to significantly frustrate implementation of a proposed action,

except that this paragraph (a)(9) shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

(b) Prior to closing a meeting whose discussions are likely to fall within the exemptions stated in paragraph (a) of this section, the Board will balance the public interest in observing the deliberations of an exemptible matter and the agency need for confidentiality of the exemptible matter. In weighing these interests, the Board is assisted by the General Counsel as provided in § 791.16, by expressions of the public interest set forth in requests for open meetings as provided by § 791.15(b), and by the brief staff analysis of public interest which will accompany each staff recommendation that an agenda item be considered in a closed meeting.

**§ 791.13 Public announcement of meetings.**

(a) Except as otherwise provided in this section, the Board shall, for each meeting, make a public announcement, at least one week in advance of the meeting, of the time, place and subject matter of the meeting, whether it will be open or closed to public observation, and the name and telephone number of the Secretary of the Board or the person designated by the Board to respond to requests for information about the meeting.

(b) Advance notice is required unless a majority of the members of the Board determine by a recorded vote that agency business requires that a meeting be called at an earlier date, in which case, the information to be announced in paragraph (a) of this section shall be publicly announced at the earliest practicable time.

(c) A change, including a postponement or a cancellation, in the time or place of a meeting after a published announcement may be made only if announced at the earliest practicable time.

(d) A change in or deletion of the subject matter of a meeting or any portion of a meeting or a redetermination to open or close a meeting or any portion of a meeting after a published announcement may be made only if:

(1) A majority of the Board determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible and

(2) Public announcement of the change and of the vote of each member on such change shall be made at the earliest practicable time.

(e) Each meeting announcement or amendment thereof shall be posted on the Public Notice Bulletin Board in the reception area of the agency headquarters and may be made available by other means deemed desirable by the Board. Immediately following each public announcement required by this section, the stated information shall be submitted to the **Federal Register** for publication.

(f) No announcement shall contain information which is determined to be exempt from disclosure under § 791.12(a).

(g) The agency shall maintain a mailing list of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation and amendments to such announcements. Requests to be placed on the mailing list should be made by telephoning or by writing to the Secretary of the Board.

**§ 791.14 Regular procedure for closing meeting discussions or limiting the disclosure of information.**

(a) A decision to close any portion of a meeting and to withhold information about any portion of a meeting closed pursuant to § 791.12(a) will be taken only when a majority of the entire Board votes to take such action. In deciding whether to close a meeting or any portion of a meeting or to withhold information, the Board shall independently consider whether the public interest requires an open meeting. A separate vote of the Board will be taken and recorded for each portion of a meeting to be closed to public observation pursuant to § 791.12(a) or to withhold information from the public pursuant to § 791.12(a). A single vote may be taken and recorded with respect to a series of meetings, or any portions of meetings which are proposed to be closed to the public, or with respect to any information concerning the series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. No proxies shall be allowed.

(b) Any person whose interests may be directly affected by any portion of a meeting for any of the reasons stated in § 791.12(a) (5), (6) or (7) may request that the Board close such portion of the meeting. After receiving notice of a person's desire for any specified portion of a meeting to be closed, the Board, upon a request by one member, will decide by recorded vote whether to close the relevant portion or portions of the meeting. This procedure applies to requests received either prior or subsequent to the announcement of a decision to hold an open meeting.

(c) Within one day after any vote is taken pursuant to paragraphs (a) or (b) of this section, the Board shall make publicly available a written copy of the vote taken indicating the vote of each Board member. Except to the extent that such information is withheld and exempt from disclosure, for each meeting or any portion of a meeting closed to the public, the Board shall make publicly available within one day after the required vote, a written explanation of its action, together with a list of all persons expected to attend the closed meeting and their affiliation. The list of persons to attend need not include the names of individual staff, but shall state the offices of the agency expected to participate in the meeting discussions.

**§ 791.15 Requests for open meeting.**

(a) Following any announcement that the Board intends to close a meeting or any portion of any meeting, any person may make a written request to the Secretary of the Board that the meeting or a portion of the meeting be open. The request shall be circulated to the members of the Board, and the Board, upon the request of one member, shall reconsider its action under § 791.14 before the meeting or before discussion of the matter at the meeting. If the Board decides to open a portion of a meeting proposed to be closed, the Board shall publicly announce its decision in accordance with § 791.13(e). If no request is received from a Board member to reconsider the decision to close a meeting or portion thereof prior to the meeting discussion, the Chairman of the Board shall certify that the Board did not receive a request to reconsider its decision to close the discussion of the matter.

(b) The request to open a portion of a meeting shall be submitted to the Secretary of the Board in advance of the meeting in question. The request shall set forth the requestor's interest in the matter to be discussed and the reasons why the requestor believes that the public interest requires that the meeting or portions thereof be open to public observation.

(c) The submission of a request to open a portion of a meeting shall not act to stay the effectiveness of Board action or to postpone or delay the meeting unless the Board decides otherwise.

(d) The Secretary of the Board shall advise the requestor of the Board's consideration of the request to open a portion of the meeting as soon as practicable.

**§ 791.16 General counsel certification.**

For each meeting or any portion of a meeting closed to public observation under § 791.14, the General Counsel shall publicly certify, whether in his or her opinion, the meeting or portion thereof may be closed to public observation and shall state each relevant exemption provision of law. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained as a part of the permanent meeting records. As part of the certification, the General Counsel shall recommend to the Board whether the public interest requires that the meeting or portions thereof proposed to be closed to public observation be held in the open.

**§ 791.17 Maintenance of meeting records.**

(a) Except in those circumstances which are beyond the control of the

agency, the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or any portion thereof, closed to public observation. However, for meetings closed under § 791.12(a) (8), (9)(i) or (10), the Board shall maintain either a transcript, a recording or a set of minutes. The Board shall maintain a complete electronic recording for each open meeting or any portion thereof. All records shall clearly identify each speaker.

(b) A set of minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for taking such action. Minutes shall also include a description of each of the views expressed by each person in attendance on any item and the record of any roll call vote, reflecting the vote of each member. All documents considered in connection with any action shall be identified in the minutes.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes or a complete electronic recording of each meeting, or any portion of a meeting, closed to public observation, for at least two years after such meeting or for one year after the conclusion of any agency proceeding with respect to which the meeting or any portion was held, whichever occurs later. The agency shall maintain a complete electronic recording of each open meeting for at least three months after the meeting date. A complete set of minutes shall be maintained on a permanent basis for all meetings.

**§ 791.18 Public availability of meeting records and other documents.**

(a) The agency shall make promptly available to the public, in the Public Reference Room, the transcript, electronic recording, or minutes of any meeting, deleting any agenda item or any item of the testimony of a witness received at a closed meeting which the Board determined, pursuant to paragraph (c) of this section, was exempt from disclosure under § 791.12(a). The exemption or exemptions relied upon for any deleted information shall be reflected on any record or recording.

(b) Copies of any transcript, minutes or transcription of a recording, disclosing the identity of each speaker, shall be furnished to any person requesting such information in the form specified in paragraph (a) of this section. Copies shall be furnished at the actual cost of duplication or transcription unless waived by the Secretary of the Board.

(c) Following each meeting or any portion of a meeting closed pursuant to § 791.12(a), as the last item of business, the Board shall determine which, if any, portions of the meeting transcript, electronic recording or minutes not otherwise available under 5 U.S.C. 522a (the Privacy Act), contain information which should be withheld pursuant to § 791.12(a); provided, however, that should the Board not make such determinations immediately following any such closed meeting, the Secretary of the Board, upon the advice of the General Counsel or the General Counsel's designee and after consulting with the Board, shall make such determinations. If, at a later time, the Board determines that there is no further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public.

(d) Except for information determined by the Board to be exempt from disclosure pursuant to paragraph (c) of this section, meeting records shall be promptly available to the public in the Public Reference Room. Meeting records include but are not limited to: The transcript, electronic recording or minutes of each meeting, as required by § 791.17(a); the notice requirements of §§ 791.13 and 791.14(c); and the General Counsel Certification along with the presiding officer's statement, as required by § 791.15.

(e) These provisions do not affect the procedures set forth in Part 790, Subpart A, governing the inspection and copying of agency records, except that the exemptions set forth in § 791.12(a) of this subpart and in 5 U.S.C. 552b(c) shall govern in the case of a request made pursuant to Part 790, Subpart A, to copy or inspect the meeting records described in this section. Any documents considered or mentioned at Board meetings may be obtained subject to the procedures set forth in Part 790, Subpart A.

[FR Doc. 88-17695 Filed 8-5-88; 8:45 am]

BILLING CODE 7535-01-M

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**12 CFR Part 795**

**Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule; OMB control numbers assigned to NCUA regulations pursuant to Paperwork Reduction Act.

**SUMMARY:** 12 CFR Part 795 collects and displays the control numbers assigned to information collection requirements of the National Credit Union Administration by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The National Credit Union Administration intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement found in a regulation. This document updates the control numbers assigned by OMB to paperwork requirements in NCUA regulations.

**EFFECTIVE DATE:** August 8, 1988.

**ADDRESS:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Wilmer Theard, Director, Administrative Procedures, at the above address or telephone (202) 357-1055.

**SUPPLEMENTARY INFORMATION:** The purpose of this final rule, in accordance with the Paperwork Reduction Act, is to put the public on notice of the control numbers assigned by OMB to paperwork requirements in NCUA regulations. The Part was first promulgated in 1984. This regulation was last issued on January 28, 1988 (See 53 FR 3000, Feb. 3, 1988). The February publication contained errors in the display table. Hence, it is being reissued. Section 795.1(a) of the final rule sets forth the purpose of the regulation and has not been amended. Section 795.1(b) provides notice of current control numbers assigned in a display table. This section has been amended to add all current control numbers and delete those that are no longer valid.

**Regulatory Procedures**

The NCUA Board has determined that because this action is non-substantive in nature, consideration of the Regulatory Flexibility Act and Executive Order 12612 is unnecessary.

**List of Subjects in 12 CFR Part 795**

Credit unions, Collection requirements.

By the National Credit Union Administration Board on July 26, 1988.

**Becky Baker,**

*Secretary, National Credit Union Administration Board.*

Accordingly, 12 CFR Part 795 is revised to read as follows:

## PART 795—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

**Authority:** 12 U.S.C. 1766(a) and 5 U.S.C. 3507(f).

### § 795.1 OMB control numbers.

(a) *Purpose.* This subpart collects and displays the control numbers assigned to information collection requirements of the NCUA by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The NCUA intends to comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

| 12 CFR part or section where identified and described | Current OMB control No. |
|---|---|
| 701.1 | 3133–0015 |
| 701.12 | 3133–0075 |
| 701.13 | 3133–0053 |
| 701.21 | 3133–0092 |
| | 3133–0101 |
| | 3133–0110 |
| 701.31 | 3133–0068 |
| 701.36 | 3133–0040 |
| 702.2 | 3133–0072 |
| 705 | 3133–0109 |
| 708 | 3133–0024 |
| 708 | 3133–0107 |
| 710 | 3133–0076 |
| 724.1 | 3133–0035 |
| 725 | 3133–0060 |
| | 3133–0061 |
| | 3133–0063 |
| | 3133–0064 |
| 740.2 | 3133–0096 |
| 741 | 3133–0004 |
| | 3133–0009 |
| | 3133–0011 |
| | 3133–0099 |
| | 3133–0106 |
| 748 | 3133–0033 |
| | 3133–0094 |
| | 3133–0108 |
| 749 | 3133–0032 |

[FR Doc. 88–17696 Filed 8–5–88; 8:45 am]

BILLING CODE 7535–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88–NM–23–AD; Amdt. 39–5962]**

### Airworthiness Directives: Boeing Model 747 and Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes equipped with the two piece off-wing escape ramp and slide, and to all Model 767 series airplanes, which requires modification of the Model 747 door opening thrusters and Model 767 off-wing escape slide door opening/snubbing actuators by replacing certain O-rings. This amendment is prompted by reports of actuator and thruster malfunctions that resulted in non-deployment of the slides. The malfunctions were the result of insufficient oil in the thruster or actuator due to leakage past defective or contaminated O-rings. This condition, if not corrected, could lead to failure of the escape slide to deploy, thus delaying and possibly jeopardizing successful emergency evacuation of an airplane.

**EFFECTIVE DATE:** September 7, 1988.

**ADDRESSES:** The applicable service information may be obtained from OEA, Inc., P.O. Box 10486, Denver, Colorado 80210. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger S. Young, Airframe Branch, ANM–120S; telephone (206) 431–1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of Model 747 off-wing slide compartment door opening thrusters and Model 767 off-wing slide compartment door opening/snubbing actuators, was published in the **Federal Register** on April 8, 1988 (53 FR 11676).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America stated that its members intend to return all the affected units to OEA, Inc., for modification. However, ATA is concerned that OEA will not be able to support the proposed compliance time, and has requested an extension of the proposed compliance time to accurately reflect OEA's delivery schedule. In the absence of OEA's estimate, ATA proposed an extension of the compliance time to 30 months.

Further investigation by the FAA has revealed that most, if not all, of the units in the U.S. fleet will be returned to OEA for modification. OEA has advised that the units can be modified at a maximum rate of 100 per week with an 8 to 14 day turn around time. The modifications can be accomplished within 18 months if OEA receives the units in an orderly manner. In light of this information, the FAA has determined that the compliance time may be extended to 18 months. Considering that the off-wing compartment door opening system was designed to operate when only one of the two thrusters or actuators performs properly, extending the compliance time from 15 to 18 months will allow the operators time to accomplish the modification without undue burden, while providing an acceptable level of safety.

The ATA also suggested that a total of 16 manhours per airplane will be required to accomplish the required actions in addition to the time necessary for OEA to modify the thrusters. The NPRM indicated that 10 manhours would be required. The FAA has reviewed ATA's 16 manhour estimate, which included 4 manhours to rig the door opening system. Boeing's estimate was 4 manhours per airplane. Since it is not normally necessary to rig the door opening system when only a thruster or actuator is changed, the FAA estimates that 10 manhours on the airplane plus 4 manhours for the thruster modification, for a total of 14 manhours, are necessary to accomplish this AD. The economic analysis, as indicated below, has been revised to reflect this new manhour estimate.

Boeing and OEA, Inc., commented that the proposed AD should be revised to allow the modification to be accomplished either in a Federal Standard 209B clean room, or in a clean area with a subsequent leak check, as specified in Revision A of the OEA

Service Bulletins, which were released on June 17, 1988. Since most of the oil leakage reported was due to contaminated O-rings, the FAA concurs that the proposed requirement for both a clean room and a leak check is not necessary. Paragraph A. of the final rule has been revised accordingly. Paragraph A. has also been revised to reflect Revision A of the OEA service bulletins. The FAA has determined that modification in accordance with Revision A does not increase the economic burden of any operator, nor does it increase the scope of the AD.

Boeing also suggested that the AD should more clearly state that the off-wing slide non-deployments were due to leakage of the actuators. The FAA notes that both the Summary and Discussion sections of the NPRM clearly stated that the malfunctions were due to leakage past the O-rings; thus, further clarification is not considered necessary.

OEA, Inc., also commented that the AD should stress that the leak check inspection must be carried out as detailed in their service bulletin. The FAA concurs and has revised the final rule to make this clear.

Additionally, the final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph B.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with the changes previously noted.

It is estimated that 150 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $84,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 747 or Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adpotion of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Boeing:** Applies to all Model 767 series airplanes and to Model 747 series airplanes equipped with the two piece off-wing escape ramp and slide, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To ensure that the off-wing escape slide does not malfunction due to leaking actuators or thrusters, accomplish the following:

A. Replace the O-rings and perform a leak check, or accomplish the O-ring replacement in a clean room, in accordance with Section 2 of the following service bulletins, as applicable; and perform the radiograph inspection in accordance with Section 3 of the following service bulletins, as applicable:

1. Model 747 door opening thrusters identified in OEA Service Bulletin 2174200-25-012, Revision A, dated June 17, 1988.

2. Model 767 door opening/snubbing actuators identified in OEA Service Bulletin 3092100-25-001, Revision A, dated June 17, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to OEA, Inc., P.O. Box 10486, Denver, Colorado 80210. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 7, 1988.

Issued in Washington, DC, on July 29, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88-17764 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-NM-48-AD; Amdt. 39-5993]**

## Airworthiness Directives: Short Brothers, PLC, SD3-60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Shorts Model SD3-60 series airplanes, which requires replacement of certain pitot tubes. This amendment is prompted by reports of inoperative pitot tubes due to icing. This condition, if not corrected, could result in erroneous airspeed and altitude indications.

**EFFECTIVE DATE:** September 7, 1988.

**ADDRESSES:** The applicable service information may be obtained from the Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113, telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive, applicable to Shorts Brothers, PLC, Model SD-360 series airplanes, to require replacement of certain pitot tubes, was published in the Federal Register on May 16, 1988 (53 FR 17222).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule, but suggested that the compliance time be changed from 180 days to 45 days. The commenter stated that, since the service bulletin has been available for over four years now, this period has afforded operators more than sufficient time to modify their airplanes. The FAA does not concur. The compliance time was established with due consideration to the likelihood of the reported problem and an appropriate compliance time previously recommended by the manufacturer and the foreign regulatory agency.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,920.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness direction:

**Short Brothers, PLC:** Applies to Model SD3-60 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent pitot tubes from becoming inoperative due to icing, which could result in erroneous airspeed and altitude indication, accomplish the following:

A. Within the next 180 days after the effective date of this AD, replace pitot tubes having the code letter "Z" adjacent to the serial number with one containing a code letter other than "Z," in accordance with accomplishment instructions in Service Bulletin SD360-34-09, dated March 1984.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to Manager, Standardization Branch, ANM-113.

C. Special-flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 7, 1988.

Issued in Washington, DC on July 29, 1988.

M.C. Beard,

*Director, Office of Airworthiness.*

[FR Doc. 88-17769 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 161, 250, and 284**

**[Docket Nos. RM87-5-001, et al.]**

**Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines**

Issued August 1, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order granting rehearing solely for the purpose of further consideration.

**SUMMARY:** On June 1, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule in Order No. 497 to address possible abuses in the relationship between interstate natural gas pipelines and their marketing or brokering entities. In this order, the Commission grants rehearing of its decision in the final rule solely for the purpose of further consideration.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this rehearing order is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's

copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa,[1] Charles G. Stalon and Charles A. Trabandt.

On June 1, 1988, the Commission issued a final rule in Order No. 497 [2] to address possible abuses in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. Pursuant to 18 CFR 385.713 (1987), the Commission has received a number of requests for rehearing of its decision.

In order to review more fully the comments raised in the rehearing requests, the Commission grants rehearing of its decision in this docket solely for the purpose of further consideration. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.713(d)(1987)), no answers to the requests for rehearing will be entertained by the Commission. This order is effective on the date of issuance.

By the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17821 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 74, 81, and 82

**[Docket Nos. 76N-0366, 83C-0102, 83C-0127, and 83C-0129]**

### Revocation of Regulations; D&C Orange No. 17, D&C Red No. 19, D&C Red No. 8, and D&C Red No. 9; Clarification

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; clarification.

**SUMMARY:** The Food and Drug Administration (FDA) is clarifying inadvertent errors in its final rules of July 15, 1988 (53 FR 26766 and 53 FR 26768), that withdrew the regulations permanently listing D&C Orange No. 17, D&C Red No. 19, D&C Red No. 8, and D&C Red No. 9. Although the notices denying the petitions properly included an opportunity to file objections and requests for hearing, the final rules should not have included a date for submission of objections to the final rule because, pursuant to a holding of the U.S. Court of Appeals for the District of Columbia, the agency has concluded that the issuance of the regulations permanently listing these colors was not in accordance with applicable law.

**EFFECTIVE DATE:** August 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gerad L. McCowin, Center for Food and Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5676.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 15, 1988 (53 FR 26766 and 53 FR 26768), FDA issued final rules that withdrew the regulations permanently listing D&C Orange No. 17, D&C Red No. 19, D&C Red No. 8, and D&C Red No. 9. Those final rules inadvertently included a date for filing objections. The agency wishes to clarify that the filing of objections will not serve to automatically stay the effectiveness of the final rules pursuant to section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act). The agency withdrew the permanent listing regulations of these color additives in response to a decision issued by the U.S. Court of Appeals that found that the principle upon which the listing regulations were based was inconsistent with the statute. Therefore, the agency concluded that the regulations permanently listing these color additives were contrary to law and without legal effect, and, accordingly, had to be withdrawn. In reaching this conclusion, the agency was not required to follow the procedures laid out in section 701(e)(2) of the act.

Additionally, on July 15, 1988, the agency published three notices denying the color additive petitions for D&C Red No. 19 (53 FR 26881), D&C Orange No. 17 (53 FR 26884), and D&C Red No. 8 and D&C Red No. 9 (53 FR 26886). These notices properly provide for a 30-day period in which to submit objections which is not affected by this final rule.

Dated: August 2, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-17814 Filed 8-5-88; 8:45 am]

BILLING CODE 4160-01-M

[1] Commissioner Sousa resigned effective July 31, 1988; however, he was present and voted on this item at the meeting of July 27, 1988.

[2] 53 FR 22139 (June 14, 1988)

### 21 CFR Part 177

**[Docket No. 87F-0269]**

### Indirect Food Additives: Polymers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of pentaerythritol tetrastearate as an optional adjuvant substance in the manufacture of polycarbonate resins. This action is in response to a petition filed by The Dow Chemical Co.

**DATES:** Effective August 8, 1988; objections and requests for a hearing by September 7, 1988.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of September 25, 1987 (52 FR 36104), FDA announced that a food additive petition (FAP 7B3995) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 177.1580 *Polycarbonate resins* (21 CFR 177.1580) be amended to provide for the safe use of pentaerythritol tetrastearate as an optional adjuvant substance in the manufacture of polycarbonate resins.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 177.1580(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not

required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 7, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulations may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 177**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

## PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1580 is amended in paragraph (b) by alphabetically adding a new entry in the table under the headings "List of substances" and "Limitations" to read as follows:

§ 177.1580 Polycarbonate resins.

* * * * *

(b) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | |
| Pentaerythritol tetrastearate (CAS Reg. No. 115–83–3). | For use only as a mold release agent, at a level not to exceed 0.5 percent by weight of the finished resin. |
| * * * * * | |

* * * * *

Dated: July 26, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88–17818 Filed 8–5–88; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 178

[Docket No. 87F–0281]

## Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant and stabilizer in rubber articles intended for repeated use. This action is in response to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective August 8, 1988; objections and requests for a hearing by September 7, 1988.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of September 21, 1987 (52 FR 35482), FDA announced that a food additive petition (FAP 7B4028) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532. The firm's petition proposed that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in rubber articles for repeated use in contact with food by amendment of § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) and as an antioxidant and/or stabilizer in lubricants with incidental food contact by amendment of § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570). By letter dated March 24, 1988, the petitioner withdrew the request for use of the additive in lubricants with incidental food contact and amended the petition to request only the use in repeated-use rubber articles.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.2010 should be amended in paragraph (b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 7, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for

which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table in paragraph (b) by adding a new entry "14" under the heading "Limitations" for the entry "Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate" under the heading "Substances" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * * * * * | |
| Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082-79-3). | For use only: * * * 14. At levels not exceeding 0.5 percent by weight of the finished rubber article complying with § 177.2600 of this chapter. |
| * * * * * | |

Dated: July 28, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88-17815 Filed 8-5-88; 8:45 am]

BILLING CODE 4160-01-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 22 CFR Part 207

### Indemnification of Employees

**AGENCY:** Agency for International Development, IDCA.

**ACTION:** Final rule.

**SUMMARY:** This rule adds a new Part 207 to Title 22 of the Code of Federal Regulations. It parallels provisions adopted by the Department of Justice (28 CFR Part 50) and the Department of Health and Human Services (53 FR 11279, April 6, 1988). It permits indemnification of employees of the Agency for International Development (A.I.D.) for adverse judgments for actions taken within the scope of their employment.

**EFFECTIVE DATE:** August 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jan Miller, Assistant General Counsel for Employee and Public Affairs, Room 6892 N.S., Washington, DC 20523, (202) 647–8216.

**SUPPLEMENTARY INFORMATION:** A.I.D. does not presently indemnify its employees who are sued personally and suffer an adverse judgment as a result of conduct taken within the scope of employment, nor does its settle claims against employees, who are sued in their individual capacities. Since the 1971 Supreme Court decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), lawsuits against federal employees in their individual capacities have proliferated. The most recent statistics from the Department of Justice indicate that over 14,000 claims had been filed against federal employees personally since the Bivens case. Nearly 5,000 such suits are now pending. Despite the fact the Department of Justice is aware of only 37 adverse judgments against federal employees in their individual capacities, suits personally attacking federal employees at all levels of government continue to increase.

The potential for adverse judgments against a federal employee for actions taken within the scope of employment is detrimental to both the individual employee and the federal government. Although there are currently provisions for employees to request representation by the Department of Justice in these actions, the individual employee still bears the risk of personal liability for an adverse judgment as a result of doing his or her job. Moreover, the prospect of personal liability and the uncertainty as to what conduct may result in a lawsuit against the employee personally, tend to intimidate all employees, to impede creativity and to stifle initiative and decisive action. Employees' fears of personal liability affect government operations, decisionmaking and policy determinations.

A.I.D. believes that lawsuits against federal employees in their individual capacities seriously hinder the effective functioning of the Agency. A modification of A.I.D. policy to permit indemnification would help alleviate this problem and would afford A.I.D. employees the same protection given other federal officials.

This modification of policy permits, but does not require, the Agency to indemnify an employee who suffers an adverse judgment, or other monetary award, provided that the actions giving rise to the award were taken within the scope of employment and that such indemnification is in the interest of the United States.

The policy also allows the Agency to settle a claim brought against an employee in his or her individual capacity by the payment of funds. Absent exceptional circumstances, the Agency will not agree either to indemnify or to settle before entry of an adverse judgment. The modification of policy, which is analogous to the approach adopted by the Department of Justice, is designed to discourage the filing of lawsuits against federal employees in their individual capacities solely in order to pressure the Government into settlement. In the usual case, the Agency will not settle a case, before trial and judgment merely because of a dispositive motion filed on behalf of the employee has been denied. This regulation is applicable to actions pending against A.I.D. employees as of its effective date.

**Paperwork Reduction Act**

This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal Agency rules governing personnel.

### Cost/Regulatory Analysis

This rule will not constitute a "major" rule and therefore is not subject to a regulatory impact analysis requirement of the Order. Major rules are those which impose a cost on the economy of $100 million or more a year or have certain other economic impacts.

The rule will not have a significant economic impact on small entities; therefore, preparation of a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

### Public Notice and Comment

These regulations are published in final form without the opportunity for public notice and comment because they relate to Agency management and personnel.

### List of Subjects in 45 CFR Part 207

Administrative practice and procedure, Government employees.

For reasons stated in the preamble, Part 207, as set forth below, is added to Chapter 2 of Title 22 of the Code of Federal Regulations.

## PART 207—INDEMNIFICATION OF EMPLOYEES

**§ 207.01 Policy.**

(a) A.I.D. may indemnify, in whole or in part, its employees (which for the purpose of this regulation includes former employees) for any verdict, judgment or other monetary award which is rendered against any such employee, provided that the conduct giving rise to the verdict, judgment or award was taken within the scope of his or her employment with the Agency and that such indemnification is in the interest of the United States, as determined by the Administrator, or his or her designee, in his or her discretion.

(b) A.I.D. may settle or compromise a personal damage claim against its employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined by the Administrator, or his or her designee, in his or her discretion.

(c) Absent exceptional circumstances, as determined by the Administrator or his or her designee, A.I.D. will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment or monetary award.

(d) When an employee becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify A.I.D. that such an action is pending.

(e) The employee may, thereafter, request either: (1) Indemnification to satisfy a verdict, judgment or award entered against the employee or (2) payment to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with documentation including copies of the verdict, judgment, award or settlement proposal, as appropriate, to the General Counsel. The General Counsel may also seek the views of the Department of Justice. The General Counsel shall forward the request and the General Counsel's recommendation to the Administrator for decision.

(f) Any payment under this part either to indemnify an employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds.

**Authority:** 5 U.S.C. 301; 22 U.S.C. 2381(a).

Date: June 14, 1988.

**Alan Woods,**

*Administrator.*

[FR Doc. 88–17770 Filed 8–5–88; 8:45 am]

BILLING CODE 8116–01–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

**[T.D. 8217]**

## Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to certain cash or deferred arrangements under employee plans. They generally reflect changes in the applicable tax law made by the Revenue Act of 1978. The regulations provide the public with the guidance needed to comply with the law and affect sponsors of plans that contain cash or deferred arrangements and employees who are entitled to make elections under these arrangements.

**DATES:** These provisions are generally effective for plan years which begin after December 31, 1979.

**FOR FURTHER INFORMATION CONTACT:** William D. Gibbs of the Employee Benefits and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–377–9372) (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1069.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending upon their particular circumstances. The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 450 hours, depending on individual circumstances, with an estimated average of 2.1 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Internal Revenue Service.

### Background

On November 10, 1981, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(k) and 402(a)(8) of the Internal Revenue Code of 1954, 46 FR 55544. The Service issued a clarifying Notice on January 8, 1982, 47 FR 988. The amendments were proposed to conform the regulations to section 135 of the Revenue Act of 1978, Pub. L. 95–600, 92 Stat. 2763, 2785 (1978).

A public hearing on the proposed regulations was announced on February 24, 1982, 47 FR 8028, and held on April 20, 1982. After consideration of all comments regarding the proposed regulations, such proposed regulations are adopted as revised by this Treasury Decision.

These regulations are issued under the authority contained in section 7805 of

the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**Tax Reform Act of 1984**

The final regulations include provisions interpreting the amendments to section 401(k) enacted by section 527 of the Tax Reform Act of 1984 (TRA '84), 98 Stat. 494, 875 (1984). These amendments provide for the treatment of certain money purchase pension plans in existence on June 27, 1974, as cash or deferred arrangements and change the application of the special actual deferral percentage (ADP) tests. As amended, section 401(k) requires an arrangement to satisfy one of the special ADP tests in order to be a qualified arrangement.

The amendments also clarify the definition of the actual deferral percentage with respect to an employee who is eligible to participate in more than one cash or deferred arrangement sponsored by the same employer. In addition, the amendments require aggregation of certain arrangements for purposes of testing for discrimination.

**Tax Reform Act of 1986**

The Tax Reform Act of 1986 (TRA '86), Pub. L. 99-514, 100 Stat. 2085, made numerous changes that affect cash or deferred arrangements. Some of these changes raise no questions of interpretation. These include such changes as allowing rural electric cooperatives to maintain qualified cash or deferred arrangements and a new ADP test. Such provisions have been incorporated in the final regulations with appropriate effective dates. The final regulations also use, where appropriate, terms introduced by TRA '86, such as "qualified nonelective contributions" (QNCs) and "qualified matching contributions" (QMACs), in lieu of terms used in the proposed regulations. In addition, the final regulations refer to changes made by TRA '86 relating to new definitions of compensation and highly compensated employee and to new standards for testing discrimination in coverage. The substantive aspects of such changes have been or will be addressed in proposed regulations.

Certain changes affecting cash or deferred arrangements that were made by TRA '86 are not addressed in these regulations. Thus, for example, the circumstances under which QMACs may be treated as elective contributions in plan years beginning after December 31, 1988, are not addressed in these regulations. No inferences as to the interpretation of TRA '86 provisions not specifically addressed in these regulations should be drawn from these regulations.

**Comments Received and Actions Taken**

Comments received about the proposed regulations centered on four major areas: the definition of compensation; the time when contributions must be made to be used in the ADP test; the definition of hardship for purposes of making withdrawals; and whether plans may recharacterize certain deferrals of highly compensated employees as employee contributions. The following discussion summarizes the comments received and the provisions adopted in the final regulations in response to the comments received.

**Cash or Deferred Arrangements Generally**

The proposed regulations defined a cash or deferred arrangement to mean any arrangement which is part of a profit-sharing or stock bonus plan under which an eligible employee may elect to have the employer contribute an amount to a trust under the plan or to have the amount paid to the employee in cash. The proposed regulations did not discuss the cash or deferred election. The final regulations expand the definition of cash or deferred arrangement to include any such arrangement that is part of a qualified plan (including a plan intended to be a qualified plan), rather than merely a profit-sharing or stock bonus plan, and clarify that a cash or deferred election exists if an employee may choose between receiving an employer contribution to a qualified plan and receiving cash or another taxable benefit.

The proposed regulations stated that a profit-sharing or stock bonus plan that included a nonqualified cash or deferred arrangement could nevertheless be a qualified plan under section 401(a). The final regulations adopt this provision, but clarify that in determining whether such a plan satisfies the requirements of section 401(a)(4), elective contributions under the nonqualified cash or deferred arrangement are to be treated as employer contributions to the extent that such contributions would be treated as employer contributions if the arrangement were a qualified cash or deferred arrangement. However, for this purpose, the special nondiscrimination test of section 401(k)(3) and Treas. Reg. § 1.401(k)-1(b)(2) may not be used. This rule applies without regard to the reason the cash or deferred arrangement fails to be a qualified arrangement under section 401(k). Future guidance will set forth the method for determining whether the amount of elective contributions under a nonqualified cash or deferred arrangement satisfies section 401(a)(4).

**401(k) Exclusive Means to Electively Defer Compensation Under Qualified Plans**

Some commentators suggested that section 401(k) is not the exclusive means for electively deferring compensation under qualified plans on a pre-tax basis. Under this theory, an employee (using the rational of Rev. Rul. 60-31, 1960-1 CB 174) would be permitted to choose before the end of a taxable year not to received some portion of the compensation he would earn and to which he would otherwise be entitled for the next taxable year. This amount then could be contributed by the employee's employer to a qualified plan and not be included in the employee's income for the next taxable year. In addition, the qualified plan would not be required to satisfy any of the special rules applicable to cash or deferred arrangements under section 401(k).

Based on the Revenue Act of 1978 (sections 131-135), the legislative history of that Act, and subsequent legislation, the final regulations clarify that section 401(k) is the exclusive method of deferring compensation on an elective, pre-tax basis under a qualified plan. Thus, if the requirements of section 401(k) are not satisfied, an employee's elective contributions under a qualified plan are includible in the employee's gross income for the taxable year in which the employee would have received the amounts (but for the deferral election). This is the case even though the employee makes the election before the taxable year in which the amounts are earned.

This position is consistent with the Service's position on elective contributions under a nonqualified deferred compensation plan, a tax-sheltered annuity contract, and a flexible benefit plan (including a cafeteria plan). Thus, except as provided under sections 401(k) and 402(a)(8) (with respect to certain cash or deferred arrangements in qualified plans), section 457 (with respect to certain nonqualified deferred compensation plans of state and local governments and tax-exempt employers), section 132 of the Revenue Act of 1978 (with respect to certain nonqualified deferred compensation plans of taxable employers), section 403(b) (with respect to certain tax-sheltered annuity contracts), and section 125 (with respect to cafeteria plans), compensation that an employee electively defers or converts under a

deferred compensation plan or a flexible benefit plan, respectively, are includible in the employee's gross income for the taxable year in which such amounts would have been received by the employee (but for the employee's election).

The final regulation provides that the exception under sections 402(a)(8) and 401(k) to this general rule of inclusion of electively deferred or converted compensation applies with respect to compensation that has not yet become currently available. The "currently available" concept is not related to the question of whether amounts are treated as having been made available under section 451.

**Compensation**

Proposed Treas. Reg. § 1.401(k)–1(b)(8)(vi) defined compensation to mean the amount taken into account under the plan for purposes of determining the amount deferred. The proposed regulations also stated that if such amount has the effect of discriminating against employees who are not highly compensated, a nondiscriminatory definition shall be determined by the Commissioner. The proposed regulations permitted a plan to calculate plan compensation other than on a plan year basis if it was calculated on a reasonable and consistent basis.

Many commentators asked that the definition of compensation be clarified. Among the specific issues raised were the permissibility of annualizing compensation and whether compensation could include amounts deferred.

These concerns have been addressed in § 1.401(k)–1(g)(9) of the final regulations. The definition of compensation is intended to give plans flexibility in design while avoiding discrimination. In general, compensation is still defined to mean the amount taken into account under the plan (or plans) in calculating the elective contribution that may be made on behalf of an employee under the deferral election. The regulations specifically provide that plans may define compensation to include or exclude elective contributions. However, actual compensation for a portion of a year may not be annualized for purposes of testing whether a plan meets the discrimination tests of section 401(k)(3).

The final regulations adopt the position in the proposed regulations that if a plan's definition of compensation has the effect of discriminating in favor of employees who are highly compensated, a nondiscriminatory definition shall be determined by the Commissioner. A plan's definition of compensation will be treated as nondiscriminatory if, for purposes of determining the amount that may be contributed under the plan, the plan defines compensation as either total nondeferred compensation or total nondeferred compensation plus elective contributions under the plan.

For plan years which begin after December 31, 1988, plans must use the definition of compensation contained in section 414(s) and the regulations thereunder.

**Time When Contributions Must Be Made**

Prop. Treas. Reg. § 1.401(k)–1(b)(7)(iii) required that elective contributions be paid into the trust within 30 days after the end of the plan year in order to be counted in determining the actual deferral percentage for such year. Many commentators pointed out that employers may not know the amount of their profits by this time and will therefore be unable to communicate with their employees regarding the total contribution available to each and the amount of the total contribution that is to be deferred. Other commentators asserted that the difference between this requirement and the time-of-filing deduction rule (section 404(a)(6)) applicable to all other employer contributions would be administratively complex and that all contributions should be required to be made by the section 404(a)(6) date. Finally, other commentators argued that elective contributions under a qualified cash or deferred arrangement should not be subject to contribution due date rules that are more restrictive than the rules that apply to other employer contributions.

In response to comments, the final regulations (§ 1.401(k)–1(b)(6)) extend the time period for making elective contributions that may be used in the ADP test for a plan year to the last day of the twelve-month period immediately following the plan year to which the contributions relate. The contributions must be allocated to participants' accounts for the plan year with respect to which the APD test is performed. In addition, the final regulations clarify that the elective contributions taken into account for a plan year must relate either to compensation that would have been received in the plan year (but for the deferral election) or to compensation attributable to services performed in the plan year that would have been received by the employee (but for the deferral election) within 2½ months after the close of the plan year.

No inference should be drawn from these regulations as to when elective contributions must be contributed to a trust to satisfy Title I of the Employee Retirement Income Security Act of 1974 (ERISA). The Department of Labor has informed the Treasury Department that elective contributions to an employee benefit plan, whether made pursuant to a salary reduction agreement or otherwise, would be considered amounts paid to or withheld by an employer (i.e., participant contributions) within the scope of § 2510.3–102 (53 FR 17628) and therefore would, in accordance with that regulation, constitute plan assets for purposes of Subtitle A and Parts 1 and 4 of Subtitle B of Title I of ERISA and for purposes of the prohibited transaction provisions of section 4975 of the Internal Revenue Code.

**Hardship Withdrawals**

Prop. Treas. Reg. § 1.401(k)–1(d)(2) permitted hardship distributions to be made only if two tests were met:

(1) The participant had an immediate and heavy financial need; and

(2) Other resources were not reasonably available to meet the need.

Many commentators interpreted the hardship rules as being stricter than those in effect through 1981 under Rev. Rul. 71–224, 1971–1, CB 124, and argued that Congress intended that those same rules should apply to section 401(k) plans. The standard contained in Rev. Rul. 71–224 is not adopted in the final regulations because Rev. Rul. 71–224 merely required that a plan operate in accordance with its definition of hardship.

Commentators also requested clarification of terms such as "immediate and heavy financial needs," "not reasonably available," and "other resources of the employee." Major concerns centered around whether employees would be required to sell non-liquid assets or borrow from other sources before being eligible for a hardship distribution. Several commentators proposed that needs for college tuition, a down payment on a principal residence, or uninsured medical expenses be treated as *per se* hardships, permitting funds to be distributed without regard to the applicant's other financial resources.

The final regulations (§ 1.401(k)–1(d)(2)) retain the two-part definition of hardship in the proposed regulations with additional clarification. However, certain expenses are deemed to constitute immediate and heavy financial needs. These include medical expenses, purchase (excluding mortgage payments) of a principal residence for the employee, payment of tuition for

post-secondary education for the employee, his spouse or children, and payment of amounts necessary to prevent the eviction of the employee from his principal residence or foreclosure on the mortgage of the employee's principal residence. The Commissioner may expand the list of expenses that will be deemed to be made on account of an immediate and heavy financial need of the employee. The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis.

As under the proposed regulations, a hardship distribution cannot be made if the employee has other resources available to meet the financial need (even if the need is deemed to be an immediate and heavy financial need). The final regulations clarify that an employee thus may have to secure the needed funds elsewhere through liquidation of other assets, reimbursement, or borrowing of funds from commercial sources. A plan may provide, however, than an employee will be deemed to lack other resources reasonably available to meet a financial need, including a deemed financial need, if (1) the employee has obtained all distributions, other than hardship distributions, and all nontaxable loans available under all plans maintained by the employer; (2) the plan, and all other plans maintained by the employer, provide that the employee's elective contributions (and employee contributions) will be suspended for at least twelve months after receipt of the hardship distribution; and (3) the plan, and all other plans maintained by the employer, provide that the maximum amount of elective contributions for the employee for the taxable year of the employee following the taxable year in which the employee received the hardship distribution is the excess of the applicable limit under section 402(g) for such next taxable year over such employee's elective contributions for the taxable year in which the employee received the hardship distribution. Of course, the distribution may not exceed the amount of the employee's immediate and heavy financial need. The final regulations also include a limited exception to section 411(d)(6) permitting an employer to adopt the deemed no other resources provision.

Many commentators proposed that the plan administrator have the right to rely upon the applicant's representations regarding his need for, and proposed use of, his benefits. These commentators argued that requiring financial statements from employees would invade the applicant's privacy and deter truly needy employees from applying for hardship distributions. The final regulations permit the employer to reasonably rely upon the representations of the employee regarding the employee's financial affairs and thus do not require the employer or plan administrator to make an independent investigation of an employee's financial affairs. In addition, the special rule under which employees may be deemed to lack other resources is available to minimize a plan administrator's intrusion into the employee's financial affairs.

**Recharacterization**

The proposed regulations permitted a plan to preclude elections or contributions that would cause a plan that contained a cash or deferred arrangement to fail the ADP test and to correct discrimination through additional nonelective employer contributions that met the nonforfeitability and distribution requirements applicable to elective contributions. In the preamble to the proposed regulations, the Service requested comments on additional methods that plans could utilize to satisfy the nondiscrimination test.

Numerous commentators urged the Service to permit employers to recharacterize amounts contributed at the employee's election if, at the end of the plan year, the actual deferral percentage for the higher-paid group exceeded the limits of section 401(k)(3)(A). The effect of recharacterization would be to treat recharacterized amounts as employee contributions and, thus, these amounts would not be subject to the anti-discrimination rules of section 401(a)(4) and 401(k) that apply to employer contributions. If permitted to use this approach after the end of a plan year, plan sponsors could avoid disqualification of their cash or deferred arrangements (and plans including such arrangements) while ensuring that higher-paid employees did not receive elective contributions in excess of the amounts permitted under the ADP tests of section 401(k)(3)(A). The Service announced on January 8, 1982, 47 FR 998, that such recharacterization was not permitted by the proposed regulations.

Several commentators pointed out that the Service itself had established the precedent for recharacterization in the proposed regulations governing TRASOP's, Prop. Treas. Reg. § 1.46–9(f)(3)(iv), 44 FR 48269, 48273 (1979); later adopted in T.D. 7856, 47 FR 54803, 54807 (1982). These regulations permit the return of employer contributions "to the extent that plan operation would otherwise result in prohibited discrimination."

In response to these comments, the final regulations, under the authority of section 7805(b), permit recharacterization; such recharacterization will be permitted for plan years which begin before January 1, 1987. Plans may be amended to permit recharacterization for such plan years. Excess elective contributions recharacterized as employee contributions are to be taxed (income, FICA, SECA, and FUTA) to the employee in the year to which the contributions relate, rather than the year in which the recharacterization takes place. However, for purposes of other Code provisions, including sections 401(k)(2), 404, 409, 411, 412, 415, 416, and 417, recharacterized contributions continue to be treated as employer contributions. In addition, these amounts cannot be distributed except as provided in § 1.401(k)–1(d) of the final regulations.

If amounts recharacterized for any plan year were not previously included in income, they are to be treated as received by employees for income tax purposes on the first day of the first plan year ending in 1988. If notice of recharacterization is provided to the affected highly compensated employees within 75 days after the date of publication of this Treasury Decision in the **Federal Register**, recharacterization is deemed to have occurred 75 days after the close of the plan year and the penalty tax of section 4979 will not be imposed.

For plan years which begin after December 31, 1986, the treatment of excess contributions will be addressed in regulations under 401(k)(8) of the Internal Revenue Code of 1986.

**Other Actions Taken**

Other changes in style and organization have been made in order to improve, clarify and resolve areas that commentators noted as being ambiguous.

**Effective Dates**

These regulations are generally effective for plan years which begin after December 31, 1979. Those provisions of the regulations relating to changes made by the Tax Reform Act of 1986 are generally effective for plan years which begin after December 31, 1986. There is a special effective date rule for the provisions of the Tax Reform Act of 1986 that affect plans maintained pursuant to collective bargaining

agreements. For plan years beginning after December 31, 1979 (or, in the case of a pre-ERISA money purchase plan, plan years beginning after July 18, 1984) and before January 1, 1988, a reasonable interpretation of the rules set forth in section 401(k) of the Code (as in effect during those years) may be relied upon to determine whether a cash or deferred arrangement was qualified during those years. For years beginning before January 1, 1987, operation in accordance with the regulations proposed on November 10, 1981, is a reasonable interpretation of section 401(k).

**Plan Amendments**

Plan sponsors may defer amendments required by these regulations until the earlier of plan termination or the last date for making amendments provided by section 1140 of the Tax Reform Act of 1986, as extended in the regulations under section 401(b). In general, the last day on which a determination letter on plan amendments may be requested under section 401(b) is the last date prescribed by law, including extensions, for filing the income tax return of the employer for the employer's taxable year in which the date of the remedial amendment period begins. If a determination letter is requested during this period, the required plan amendments must be adopted no later than ninety days after receipt of a favorable determination letter.

**401(b) Amendment Period**

Section 1140 of TRA '86 provides, in general, that if the statutory provisions of TRA '86 effective before 1989 require amendment of plan provisions, plan amendments need not be made until the last day of the first plan year beginning after December 31, 1988, provided the amendment is effective retroactively to the statutory effective date and the plan is operated in accordance with the requirements of the provision as of its effective date with respect to the plan. Section 401(b) and the regulations thereunder permit retroactive amendments of "disqualifying provisions."

Pursuant to the authority of section 7805(b), the regulations under section 401(b) of the Code are amended to provide that, under certain circumstances, a plan provision (or the absence of a required plan provision) that results in the failure of a plan to satisfy the qualification requirements of the Code by reason of any change in such requirements effected by the Tax Reform Act of 1986 (TRA '86), Pub. L. 99–514, the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99–509, or the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100–203, that is effective before the first day of the first plan year beginning after December 31, 1989, will be a "disqualifying provision" within the meaning of Treas. Reg. § 1.401(b)–1(b). Included in the definition of disqualifying provisions with respect to TRA '86, OBRA '86 and OBRA '87 are provisions that are integral to a qualification requirement changed by TRA '86, OBRA '86, or OBRA '87 or otherwise treated, directly or indirectly, as subject to the conditions of section 1140 of TRA '86. Examples of provisions to which the preceding sentence might apply are: (1) a plan provision permitting contributions to a profit-sharing plan without regard to current or accumulated profits and (2) plan amendments required under Rev. Rul. 86–74, 1986–1 C.B. 205, that may be deferred until the date the plan must be amended to comply with TRA '86 as determined under section 1140 thereof as provided in Notice 88–9, 1988–4 I.R.B. 21.

Plan provisions will not be considered disqualifying provisions to which the amended section 401(b) retroactive amendment period applies unless two conditions are met. First, with respect to requirements effective before 1989, the plan must have been operated in accordance with the requirement as of the applicable effective date. Second, the applicable qualification requirement must be effective before the first day of the first plan year beginning after December 31, 1989. Thus, for example, if a collectively bargained plan need not comply with TRA '86 provisions until 1990, such plan does not have the section 401(b) amendment period based on the 1990 plan year, since it already has a period longer than that which would apply to the plan under a section 401(b) period based on a 1989 effective date.

In applying Treas. Reg. § 1.401(b)–1(c)(1), as it applies to any disqualifying provision described above resulting from TRA '86, OBRA '86, and OBRA '87, the remedial amendment period begins on the day the applicable disqualifying provision becomes effective with respect to the plan. In applying Treas. Reg. § 1.401(b)–1(c)(2) to determine the end of such remedial amendment period, such remedial amendment period is deemed to have begun on the first day of the first plan year which begins after December 31, 1988.

The regulations under section 401(b) are also being amended to give the Commissioner the authority in the future to treat changes to the qualification requirements made by an amendment to the Code as disqualifying provisions.

**Non-Applicability of Executive Order**

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

**Regulatory Flexibility Act**

No general notice of proposed rule making is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

**Drafting Information**

The principal authors of this regulation were William D. Gibbs and Mary E. Oppenheimer of the Employee Benefits and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR 1.401–0—1.425–1*

Income taxes, Employee benefit plan, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority citation of Part 1 continues to read:

Authority: 26 U.S.C. 7805. * * *

**Par. 2.** Section 1.401(b)–1 is amended by revising paragraphs (b)(2), (c)(1)(iii), and (c)(2) concluding text to read as follows:

**§ 1.401(b)–1 Certain retroactive changes in plan.**

* * * * *

(b) *Disqualifying Provisions.* * * *

(2) A plan provision which results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in such requirements—

(i) Effected by the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406, 88 Stat. 829), hereafter referred to as "ERISA," or the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248, 96 Stat. 324), hereafter referred to as "TEFRA," or

(ii) Effective before the first day of the first plan year beginning after December 31, 1989 and that is effected by the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2489), hereafter referred to as "TRA '86," the Omnibus Budget Reconciliation Act of 1986, (Pub. L. 99–509, 100 Stat. 1874), hereafter referred to as "OBRA '86," or the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, 101 Stat. 1330), hereafter referred to as "OBRA '87." For purposes of this paragraph (b)(2)(ii), a disqualifying provision includes any plan provision that is integral to a qualification requirement changed by TRA '86, OBRA '86, or OBRA '87 or any requirement treated by the Commissioner, directly or indirectly, as if section 1140 of TRA '86 applied to it, but only to the extent such provision is effective before the first day of the first plan year beginning after December 31, 1989. With respect to disqualifying provisions described in this paragraph (b)(2)(ii) effective before the first day of the first plan year which begins after December 31, 1988, there must be compliance with the conditions of section 1140 of TRA '86 (other than the requirement that the plan amendment be made on or before the last day of the first plan year beginning after December 31, 1988), including operation in accordance with the plan provision as of its effective date with respect to the plan.

(iii) Effected by amendments to the Code that are designated by the Commissioner, at his discretion, as disqualifying provisions described in this paragraph (b)(2). For purposes of this paragraph (b)(2), a disqualifying provision includes the absence from a plan of a provision required by such change if the plan was in effect on the date such change became effective with respect to such plan.

(c) *Remedial amendment period.* (1) * * *

(iii) In the case of a disqualifying provision described in paragraph (b)(2) of this section, the date on which the change effected by ERISA, TEFRA, TRA '86, OBRA '86, OBRA '87, or a qualification requirement that is treated, directly or indirectly, as subject to the conditions of section 1140 of TRA '86 described in paragraph (b)(2) of this section, became effective with respect to such plan or, in the case of a provision, described in paragraph (b)(2)(ii) of this section, that is integral to such qualification requirement, the first day on which the plan was operated in accordance with such provision.

(2) * * *

(iv) * * *

For purposes of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section, for any disqualifying provision described in paragraph (b)(2)(ii) of this section, the remedial amendment period shall be deemed to have begun with the first day of the first plan year which begins after December 31, 1988.

For purposes of this paragraph (c)(2) of this section, a master or prototype plan shall not be considered to be a plan maintained by more than one employer, and whether or not a plan is maintained by more than one employer, shall be determined without regard to section 414 (b) and (c) except that if a plan is maintained solely by an affiliated group of corporations (within the meaning of section 1504) which files a consolidated income tax return pursuant to section 1501 for a taxable year within which falls the latest of the dates described in paragraph (c)(2)(i) of this section, such plan shall be deemed to be maintained by one employer.

* * * * *

**Par. 3.** A new § 1.401(k)–0 is added immediately after § 1.401(f)–1 to read as follows:

**§ 1.401 (k)–0 Certain cash or deferred arrangements, table of contents.**

This section contains the captions that appear in § 1.401(k)–1.

*§ 1.401(k)–1 Certain cash or deferred arrangements.*

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(2) Cash or deferred arrangement
(i) In general
(ii) After-tax employee contributions
(3) Cash or deferred election
(i) General rule
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(ii) Treatment of elective contributions as employer contributions
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**Par. 4.** A new § 1.401(k)–1 is added immediately after § 1.401(k)–0 to read as follows:

**§ 1.401(k)–1 Certain cash or deferred arrangements.**

(a) *In general*—(1) *General rule.* A plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural electric cooperative plan, will fail to satisfy the requirements of section 401(a) if the plan includes a cash or deferred arrangement. A profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural electric cooperative plan will not fail to satisfy the requirements of section 401(a) merely because the plan includes a cash or deferred arrangement.

(2) *Cash or deferred arrangement*—(i) *In general.* Except as provided in paragraph (a)(2)(ii), a cash or deferred arrangement is an arrangement under which an eligible employee may make a cash or deferred election to have the employer either contribute an amount to a trust under a plan that meets (or is intended to meet) the requirements of section 401(a) or provide an amount to the employee in cash or in the form of some other taxable benefit. An arrangement under which the employee may make a cash or deferred election to have the employer contribute an amount to a trust under a plan that meets (or is intended to meet) the requirements of section 401(a) includes an arrangement under which the employee may elect either to receive cash or a taxable amount or to accrue a benefit under a defined benefit plan that is intended to meet the requirements of section 401(a), and an arrangement under which the employee may elect either to receive cash or a taxable amount or to have the employer contribute an amount to a contract that meets the requirements of section 401(a) of 403(a).

(ii) *After-tax employee contributions.* A cash or deferred arrangement does not include an arrangement pursuant to which amounts contributed under a plan at an employee's election are designated or treated at the time of deferral or contribution as after-tax employee contributions (e.g., by reporting the contributions as taxable income subject to applicable withholding requirements). See also section 414(h)(1). This is the case even if the employee's election to make after-tax employee contributions is made before the amounts subject to the election are currently available to the employee.

(3) *Cash or deferred election*—(i) *General rule.* A cash or deferred election is an election (or modification of an earlier election) that is made at any time permitted by the plan with respect to cash or other taxable amounts that are not currently available to the electing employee as of the date of the election and are not designated or treated as after-tax employee contributions at the time of deferral or contribution. A cash or deferred election includes a salary reduction agreement between an eligible employee and the employer under which a contribution is made under the plan only if the employee elects to reduce his cash compensation or to forgo an increase in his cash compensation.

(ii) *Amounts currently available.* Cash or another taxable amount is currently available to the employee if it has been paid to the employee or if the employee is able currently to receive the cash or other taxable amount at his discretion. An amount is not currently available to an employee if there is a significant limitation or restriction on the employee's right to receive the amount currently. Similarly, an amount is not currently available as of a date if the employee may under no circumstances receive the amount before a particular time in the future.

(iii) *Certain one-time elections.* A cash or deferred election does not include a one-time irrevocable election, upon an employee's commencement of employment or upon an employee's first becoming eligible under any plan of the employer, to have a specified amount or percentage of compensation (including no amount of compensation) contributed by the employer, on behalf of the employee to the plan and any other plan of the employer (including plans not yet established) for the duration of the employee's employment with the employer. Thus, employer contributions pursuant to such a one-time election are not treated as having been made pursuant to a cash or deferred arrangement.

(iv) *Tax treatment.* An amount generally is includible in an employee's gross income for the taxable year in which the employee actually receives, or is treated as having received, such amount. But for section 402(a)(8) and section 401(k), an employee is treated as having received an amount that is contributed under a plan pursuant to the employee's cash or deferred election. This is the case even if the election to defer is made before the year in which such amount has been earned or becomes currently available. See § 1.402(a)–1(d).

(v) *Examples.* The provisions of this subparagraph (a)(3) are illustrated by the following examples:

*Example (1).* An employer maintains a profit-sharing plan under which each eligible employee has an election with respect to an annual bonus of ten percent of his compensation payable on January 30 each year with respect to the prior calendar year's profits. Deferred amounts are not treated as after-tax employee contributions. An election made prior to January 30 to defer all or part of the bonus is a cash or deferred election and the bonus deferral arrangement is a cash or deferred arrangement.

*Example (2).* An employer maintains a profit-sharing plan under which each eligible employee may elect to defer up to 10 percent of compensation for each payroll period during the plan year. An election to defer compensation for a payroll period is a cash or deferred election if such election is made prior to the date on which such compensation is to be paid to the employee and if such deferred amount is not treated as an after-tax employee contribution at the time of deferral.

(4) *Qualified cash or deferred arrangement*—(i) *In general.* A qualified cash or deferred arrangement is a cash or deferred arrangement that satisfies the requirements of paragraphs (b), (c), (d), and (e) of this section and that is part of a plan that otherwise meets the requirements of section 401(a).

(ii) *Treatment of elective contributions as employer contributions.* Except as provided in paragraph (f) of this section, elective contributions under a qualified cash or deferred arrangement are treated as employer contributions under the Internal Revenue Code of 1986. Thus, for example, such elective contributions are treated as employer contributions for purposes of sections 401(a), 401(k), 404, 409, 411, 412, 415, 416, and 417.

(iii) *Tax treatment of employees.* Except as provided in section 402(g) and paragraph (f) of this section, elective contributions under a qualified cash or deferred arrangement are not includible in an employee's gross income at the time such contributions would have been received in cash (but for the cash or deferred election) or at the time contributed under the plan. See § 1.402(a)–1(d).

(iv) *Nondiscrimination requirement.* The amount of elective contributions under a qualified cash or deferred arrangement must satisfy section 401(a)(4). For plan years beginning after December 31, 1984, the amount of elective contributions will satisfy section 401(a)(4) only if such elective contributions satisfy the special nondiscrimination test in paragraph (b)(2) of this section.

(v) *Plan assets.* The extent to which elective contributions under a cash or deferred arrangement constitute plan assets for purposes of the prohibited transaction provisions of section 4975 of the Internal Revenue Code and Title I of the Employee Retirement Income Security Act of 1974 shall be determined in accordance with regulations and rulings issued by the Department of Labor.

(5) *Nonqualified cash or deferred arrangement*—(i) *In general.* A nonqualified cash or deferred arrangement is a cash or deferred arrangement that is not a qualified cash or deferred arrangement. Thus, if a cash or deferred arrangement fails to satisfy one or more of the requirements in paragraph (b), (c), (d) or (e) of this section, such arrangement is a nonqualified cash or deferred arrangement.

(ii) *Treatment of elective contributions as employer contributions.* Except as specifically provided otherwise, elective contributions under a nonqualified cash or deferred arrangement are treated as employer contributions under the Internal Revenue Code of 1986. Thus, for example, such elective contributions are treated as employer contributions for purposes of sections 401(a) (including section 401(a)(4)), 401(k), 404, 409, 411, 412, 415, 416, and 417.

(iii) *Tax treatment of employees.* Elective contributions under a nonqualified cash or deferred arrangement are includible in an employee's gross income at the time such contributions would have been received (but for the cash or deferred election). See § 1.402(a)–1(d).

(iv) *Qualification of plan that includes a nonqualified cash or deferred arrangement.* A profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural electric cooperative plan will not fail to satisfy section 401(a) merely because such plan includes a nonqualified cash or deferred arrangement. In determining whether such a plan satisfies the requirements of section 401(a)(4), elective contributions under the nonqualified cash or deferred arrangement are to be treated as employer contributions to the extent that such contributions would be treated as employer contributions if the arrangement were a qualified cash or deferred arrangement, but the special nondiscrimination test of paragraph (b)(2) may not be used.

(b) *Coverage and discrimination requirements*—(1) *Coverage.* (i) For plan years which begin before January 1, 1989, or such later date provided under paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (b) for a plan year only if the eligible employees under the arrangement satisfy the 70 percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(H). For purposes of this subdivision, all eligible employees under the arrangement are treated as benefiting under the arrangement. For purposes of this subdivision, section 410(b) means section 410(b) prior to its amendment by section 1112 of the Tax Reform Act of 1986 (TRA '86).

(ii) For plan years which begin after December 31, 1988, or on or after the later date provided under paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (b) for a plan year only if the eligible employees under the arrangement satisfy either the percentage test of section 410(b)(1)(A), the ratio test of section 410(b)(1)(B), or the reasonable classification test of section 410(b)(2)(A)(i) (and, in such case, the average benefit percentage test of section 410(b)(2)(A)(ii) is satisfied). For purposes of applying section 410(b), all eligible employees under the arrangement are treated as benefiting under the arrangement.

(iii) A plan described in section 410(c)(1) will be treated as satisfying the requirements of section 410 if such plan meets the requirements of section 401(a)(3) as in effect on September 1, 1974.

(2) *Nondiscriminatory elective contributions.* A cash or deferred arrangement satisfies this paragraph (b) for a plan year only if—

(i) The elective contributions under the arrangement, or

(ii) The elective contributions, in combination with qualified nonelective contributions and qualified matching contributions that are treated as elective contributions under the arrangement,

satisfy the actual deferral percentage test in paragraph (b)(4) of this section. If a cash or deferred arrangement satisfies this paragraph (b)(2), such arrangement will be treated as satisfying section 401(a)(4) with respect to the amount of elective contributions. See paragraph (e)(1) of this section with respect to the application of section 401(a)(4) to other benefits, rights and features under a cash or deferred arrangement. Employee contributions may not be treated as elective contributions under a cash or deferred arrangement for purposes of this paragraph (b)(2).

(3) *Qualified nonelective contributions and qualified matching contributions that may be treated as elective contributions.* Except as specifically provided otherwise, for purposes of paragraph (b)(2)(ii) of this section, all or part of the qualified nonelective contributions and qualified matching contributions made with respect to those employees who are eligible employees under the cash or deferred arrangement being tested may be treated as elective contributions provided that each of the following (to the extent applicable) is satisfied:

(i) The nonelective contributions, including those qualified nonelective contributions treated as elective contributions for purposes of the actual deferral percentage test, satisfy the requirements of section 401(a)(4).

(ii) The nonelective contributions, excluding those qualified nonelective contributions treated as elective contributions for purposes of the actual deferral percentage test, satisfy the requirements of section 401(a)(4).

(iii) The matching contributions, including those qualified matching contributions treated as elective contributions for purposes of the actual deferral percentage test, satisfy the requirements of section 401(a)(4).

(iv) The matching contributions, excluding those qualified matching contributions treated as elective contributions for purposes of the actual

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deferral percentage test, satisfy the requirements of section 401(a)(4).

(v) Except as provided in subdivisions (i) and (iii) of this paragraph (b)(3), the qualified nonelective contributions for purposes of the actual deferral percentage test are not taken into account in determining whether any other contributions or benefits satisfy section 401(a)(4).

(vi) The qualified nonelective contributions and qualified matching contributions satisfy paragraph (b)(6)(i) for the plan year as if such contributions were elective contributions.

Qualified matching contributions taken into account for plan years which begin after December 31, 1986, or on or after the later date provided under paragraph (h) of this section, are also to be treated in accordance with the requirements of section 401(m) and the regulations thereunder.

(4) *Actual deferral percentage tests.* (i) For plan years which begin after December 31, 1979, and before January 1, 1987, or such later date provided under paragraph (h) of this section, the actual deferral percentage test is satisfied if either of the following test is met:

(A) The actual deferral percentage for the group of eligible highly compensated employees (top one-third) is not more than the actual deferral percentage for the group of all other eligible employees (lower two-thirds) multiplied by 1.5, or

(B) The excess of the actual deferral percentage for the top one-third over the actual deferral percentage for the lower two-thirds is not mroe than three percentage points, and the actual deferral percentage for the top one-third is not more than the actual deferral percentage for the lower two-thirds multiplied by 2.5.

(ii) For plan years which begin after December 31, 1986, or such later date provided under paragraph (h) of this section, the actual deferral percentage test is satisfied if either of the following test is met:

(A) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage for the group of all other eligible employees multiplied by 1.25, or

(B) The excess of the actual deferral percentage for the group of eligible highly compensated employees over the actual deferral percentage for the group of all other eligible employees is not more than two percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage for the group of all other eligible employees multiplied by two.

For plan years which begin after December 31, 1986, or such later date provided in paragraph (h) of this section, the plan must provide that the actual deferral percentage test will be met. For purposes of this paragraph (b)(4)(ii), the plan may incorporate by reference the provisions of section 401(k)(3) and this section.

(5) *Aggregation rules*—(i) *Permissive aggregation of arrangements and plans.* Two or more cash or deferred arrangements may be considered as a single arrangement for purposes of determining whether or not such arrangements satisfy sections 401(a)(4), 410(b), and 401(k). In such a case, the case or deferred arrangements included in such plans and the plans including such arrangements shall be treated as one arrangement and as one plan for purposes of this paragraph (b) and sections 401(a)(4), 401(k) and 410(b). If an employer maintains two or more plans that are treated as a single plan for purposes of section 401(a)(4) or 410(b) (other than section 410(b)(2)(A)(ii) as in effect for plan years which begin after December 31, 1988), all cash or deferred arrangements that are included in such plans are treated as a single arrangement for purposes of this paragraph (b) and sections 401(a)(4), 401(k), and 410(b).

(ii) *Impermissible aggregation of arrangements and plans.* For plan years which begin after December 31, 1988, notwithstanding paragraphs (b)(2), (b)(3) and (b)(5)(i) of this section, contributions and allocations under a plan described in section 4975(e)(7) (an ESOP) may not be combined with contributions or allocations under any plan not described in section 4975(e)(7) (a non-ESOP) for purposes of determining whether either the ESOP or the non-ESOP satisfies this paragraph (b) and sections 401(a)(4), 401(k), and 410(b). See § 54.4975–11(e), which includes an exception to this rule for certain plans in existence on November 1, 1977. See also § 54.4974–11(a)(5), which provides that an ESOP may form a portion of a plan the balance of which includes a qualified pension, profit-sharing, or stock bonus plan which is not an ESOP. For example, in determining whether elective contributions under a cash or deferred arrangement that is included in the portion of a plan that is not an ESOP satisfy paragraph (b) and section 401(a)(4) and whether nonelective contributions under the portion of the plan that is an ESOP satisfy section 401(a)(4), such elective contributions and nonelective contributions may not be considered together. Thus, with respect to such elective contributions, the nonelective contributions may not be treated as qualified nonelective contributions. Similarly, for plan years which begin after December 31, 1988, contributions for which a tax credit is provided may not be treated as elective contributions under paragraphs (b)(2) and (b)(3) of this section.

(6) *Elective contributions taken into account for a plan year.* An elective contribution may be taken into account under paragraph (b)(2) of this section for a plan year only if it satisfies paragraphs (b)(6)(i) and (b)(6)(ii) of this section.

(i) The elective contribution is allocated to the employee under the plan as of a date within that plan year. For purposes of this rule, an elective contribution is considered allocated as of a date within a plan year only if—

(A) The allocation is not contingent upon the employee's participation in the plan or performance of services on any date subsequent to that date, and

(B) The elective contribution is actually paid to the trust no later than the end of the twelve-month period immediately following the plan year to which the contribution relates.

(ii) The elective contribution relates to compensation that either—

(A) Would have been received by the employee in the plan year but for the employee's election to defer under the arrangement, or

(B) Is attributable to services performed by the employee in the plan year and, but for the employee's election to defer, would have been received by the employee within two and one-half months after the close of the plan year.

Elective contributions that do not satisfy the requirements of paragraphs (b)(6) (i) and (ii) of this section may not be taken into account under paragraph (b)(2) for the plan year with respect to which the contributions were made or for any other plan year. Instead, such elective contributions must satisfy section 401(a)(4) (without regard to the special nondiscrimination test in paragraph (b)(2) of this section) for the plan year for which allocated under the plan as if such elective contributions were the only employer contributions for such year.

(7) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples. The examples apply the rules in paragraph (b)(4) of this section for plan years beginning after December 31, 1979, and before January 1, 1987, or such later date provided in paragraph (h) of this section.

*Example (1).* (i) Employees A, B, and C are eligible employees and earn $30,000, $15,000 and $10,000 per year respectively. In addition, their employer, X, contributes a bonus of up to 10 percent of their regular compensation to a trust under a profit-sharing plan that includes a cash or deferred arrangement. Under the arrangement, each eligible employee may elect to receive none, all, or any part of the 10 percent in cash. The employer will contribute the remainder to the trust. For the 1985 plan year, A, B, and C make the following elections:

| Employee | Compensation | Elective contribution | Cash election |
|---|---|---|---|
| A | $30,000 | $2,000 | $1,000 |
| B | 15,000 | 750 | 750 |
| C | 10,000 | 400 | 600 |

(ii) The ratios of employer contributions to the trust on behalf of each eligible employee to the employee's compenation for the plan year (calculated separately for each employee) are:

| Employee | Ratio of elective contribution to compensation | Individual's actual deferral percentage (percent) |
|---|---|---|
| A | $2,000/$30,000 | 6.67 |
| B | 750/15,000 | 5.00 |
| C | 400/10,000 | 4.00 |

(iii) The actual deferral percentage for the top one-third is 6.67 percent (2,000/30,000). The actual deferral percentage for the lower two-thirds is 4.5 percent ((5% + 4%)/2)). Because 6.67 percent is less than 6.75 percent (4.50% multiplied by 1.5), the first percentage test is satisfied.

*Example (2).* (i) The facts are the same as in *Example (1)* except that elective contributions are made pursuant to a salary reduction agreement. Compensation includes amounts that are contributed by salary reduction. In addition, A wishes to defer $2.250. Thus, the compensation and elective contributions for A, B, and C are as shown below:

| Employee | Compensation (A) | Elective contribution (B) | Actual deferral percentage (B/A) (percent) |
|---|---|---|---|
| A | $30,000 | $2,250 | 7.50 |
| B | 15,000 | 750 | 5.00 |
| C | 10,000 | 400 | 4.00 |

(ii) The actual deferral percentage (ADP) for the top one-third is 7.5 percent. The ADP for the lower two-thirds is 4.5 percent ((5.00% + 4.00%/2). Because 7.5 percent exceeds 6.75 percent (4.50 × 1.5), the first percentage test is not satisified. Because 7.5 percent is not more than 11.25 percent (4.50% × 2.5) and not more than 7.5 percent (4.50% + 3), the second percentage test is satisfied.

*Example (3).* (i) Employees 1 through 9 are eligible employees who participate in a profit-sharing plan maintained by employer A. Each eligible employee may elect to defer up to six percent of compensation under the plan. The compensation and elective contributions of these employees for the 1983 plan year are shown below:

| Employee | Compensation | Elective contributions |
|---|---|---|
| 1 | $100,000 | $6,000 |
| 2 | 80,000 | 4,800 |
| 3 | 60,000 | 3,600 |
| 4 | 40,000 | 1,200 |
| 5 | 30,000 | 900 |
| 6 | 20,000 | 600 |
| 7 | 20,000 | 600 |
| 8 | 10,000 | 300 |
| 9 | 5,000 | 150 |

(ii) For the 1983 plan year, the ratios of the elective contributions on behalf of each employee to the employee's compensation are:

| Employee | Ratio of elective contributions to compensation | Individual's deferral percentage (percent) |
|---|---|---|
| 1 | $6,000/$100,000 | 6 |
| 2 | 4,800/ 80,000 | 6 |
| 3 | 3,600/ 60,000 | 6 |
| 4 | 1,200/ 40,000 | 3 |
| 5 | 900/ 30,000 | 3 |
| 6 | 600/ 20,000 | 3 |
| 7 | 600/ 20,000 | 3 |
| 8 | 300/ 10,000 | 3 |
| 9 | 150/ 5,000 | 3 |

(iii) The actual deferral percentage for the top one-third, consisting of employees 1, 2, and 3, is six percent. The actual deferral percentage for the lower two-thirds, consisting of employees 4 through 9, is three percent. Because six percent is greater than 4.5 percent (3% multiplied by 1.5), the first percentage test is not satisfied. However, because six percent is not more than three percentage points greater than three percent and six percent is less than 7.5 percent (3% × 2.5), the second percentage test is satisfied.

*Example (4).* (i) Employees 1 through 9 are the only employees of Employer D. Employer D maintains and contributes to a profit-sharing plan the following amounts:

(A) Six percent of each employee's compensation. These contributions do not satisfy the requirements for qualified nonelective contributions.

(B) Two percent of each employee's compensation. These contributions satisfy the requirements for qualified nonelective contributions.

(C) Up to three percent of each employee's compensation which the employee may elect to receive as a direct cash payment or to defer under the plan.

(ii) For the 1984 plan year, employees 1 through 9 received compensation and plan contributions as indicated in the table below:

| Employee | Compensation | Six percent nonqualified nonelective contribution | Two percent qualified nonelective contribution | Elective contributions |
|---|---|---|---|---|
| 1 | $100,000 | $6,000 | $2,000 | $3,000 |
| 2 | 80,000 | 4,800 | 1,600 | 2,400 |
| 3 | 60,000 | 3,600 | 1,200 | 1,800 |
| 4 | 40,000 | 2,400 | 800 | 0 |
| 5 | 30,000 | 1,800 | 600 | 0 |
| 6 | 20,000 | 1,200 | 400 | 0 |
| 7 | 20,000 | 1,200 | 400 | 0 |
| 8 | 10,000 | 600 | 200 | 0 |
| 9 | 5,000 | 300 | 100 | 0 |

(iii) Both types of nonelective contributions are made for all employees. Thus both the six percent and the two percent nonelective employer contributions satisfy the requirements of section 401(a)(4) and paragraph (b)(3)(i) of this section.

(iv) However, the elective contributions under the plan do not by themselves satisfy the special rules in paragraph (b)(4) of this section because, based solely on such elective deferrals, the actual deferral percentage for the top one-third, consisting of employees 1, 2, and 3, is three percent and the actual deferral percentage for the lower two-thirds is zero. Nevertheless, the two percent nonelective contribution may also be taken into account in applying the special rules because those contributions are qualified nonelective contributions that satisfy paragraph (b)(3) of this section. The six percent nonelective contribution may not be taken into account because it is not a qualified nonelective contribution.

(v) If the two percent qualified nonelective contributions are taken into account, the actual deferral percentage for the top one-third is five percent, and the actual deferral percentage for the lower two-thirds is two percent. Because five percent is not more than three percentage points greater than two percent, and not more than two percent multiplied by 2.5, the actual deferral percentage test in paragraph (b)(4)(i)(B) of this section is satisfied. Thus, the plan satisfies this paragraph (b).

(c) *Nonforfeitability*—(1) *General rule.* A cash or deferred arrangment satisfies this paragraph (c) only if each employee's right to the amount attributable to elective contributions—

(i) Is immediately nonforfeitable within the meaning of section 411, without regard to section 411(a)(3), and would be nonforfeitable under the plan regardless of the age and service of the employee or whether the employee is employed on a specific date;

(ii) Is disregarded for purposes of applying section 411(a) to other contributions or benefits; and

(iii) Remains nonforfeitable even if the employee makes no additional elective contributions under a cash or deferred arrangement.

(2) *Example.* This paragraph may be illustrated by the following example:

*Example.* Employees B and C are covered by Employer Y's stock bonus plan, which includes a qualified cash or deferred arrangement. Under the plan, Employer Y makes a nonelective contribution on behalf of each employee equal to four percent of their compensation. All employees participating in the plan have a nonforfeitable right to a percentage of their accrued benefit derived from this contribution according to the following table:

| Years of service | Nonforfeitable percentage (percent) |
|---|---|
| Less than 1 | 0 |
| 1 | 20 |
| 2 | 40 |
| 3 | 60 |
| 4 | 80 |
| 5 or more | 100 |

B and C have three and six years of service, respectively. Employer Y also permits employees to elect to defer up to six percent of their compensation through salary reduction agreements. Amounts deferred under these agreements are nonforfeitable at all times. In accordance with paragraph (c)(1)(i), the nonforfeitable percentage of Employer Y's nonelective contribution on behalf of B and C may not be treated as a qualified nonelective contribution under paragraph (b)(3) of this section, because these amounts are nonforfeitable by reason of the completion by B and C of a stated number of years of service, and not regardless of the age and service of B and C.

(d) *Distribution limitation*—(1) *General rule.* For plan years which begin before January 1, 1985, a cash or deferred arrangement satisfies this paragraph (d) only if amounts attributable to elective contributions are not distributable earlier than upon one of the following events:

(i) The employee's retirement, death, disability, or separation from service; or

(ii) In the case of a profit-sharing or stock bonus plan, the employee's hardship or attainment of age 59½.

A plan will not fail to satisfy this paragraph by reason of a dividend distribution described in section 404(k)(2).

(2) *Hardship*—(i) *General rule.* For purposes of this section, a distribution is on account of hardship only if the distribution both is made on account of an immediate and heavy financial need of the employee and is necessary to satisfy such financial need. The determinations of the existence of an immediate and heavy financial need and of the amount necessary to meet the need must be made in accordance with nondiscriminatory and objective standards set forth in the plan. See section 411(d)(6) and the regulations thereunder.

(ii) *Immediate and heavy financial need*—(A) *In general.* The determination of whether an employee has an immediate and heavy financial need is to be made on the basis of all relevant facts and circumstances. Generally, for example, the need to pay the funeral expenses of a family member would constitute an immediate and heavy financial need. A distribution made to an employee for the purchase of a boat or television would generally not constitute a distribution made on account of an immediate and heavy financial need. A financial need shall not fail to qualify as immediate and heavy merely because such need was reasonably foreseeable or voluntarily incurred by the employee.

(B) *Deemed immediate and heavy financial need.* A distribution will be deemed to be made on account of an immediate and heavy financial need of the employee if the distribution is on account of:

(*1*) Medical expenses described in section 213(d) incurred by the employee, the employee's spouse, or any dependents of the employee (as defined in section 152);

(*2*) Purchase (excluding mortgage payments) of a principal residence of the employee; or

(*3*) Payment of tuition for the next semester or quarter of post-secondary education for the employee, his or her spouse, children, or dependents.

(*4*) The need to prevent the eviction of the employee from his principal residence or foreclosure on the mortgage of the employee's principal residence.

The Commissioner may expand this list of deemed immediate and heavy financial needs only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis.

(iii) *Distribution necessary to satisfy financial need*—

(A) *In general.* A distribution will not be treated as necessary to satisfy an immediate and heavy financial need of an employee to the extent the amount of the distribution is in excess of the amount required to relieve the financial need or to the extent such need may be satisfied from other resources that are reasonably available to the employee. This determination generally is to be made on the basis of all relevant facts and circumstances. A distribution generally may be treated as necessary to satisfy a financial need if the employer reasonably relies upon the employee's representation that the need cannot be relieved—

(*1*) Through reimbursement or compensation by insurance or otherwise,

(*2*) By reasonable liquidation of the employee's assets, to the extent such liquidation would not itself cause an immediate and heavy financial need,

(*3*) By cessation of elective contributions or employee contributions under the plan, or

(*4*) By other distributions or nontaxable (at the time of the loan) loans from plans maintained by the employer or by any other employer, or by borrowing from commercial sources on reasonable commercial terms.

For purposes of this subdivision, the employee's resources shall be deemed to include those assets of his spouse and minor children that are reasonably available to the employee. Thus, for example, a vacation home owned by the employee and the employee's spouse, whether as community property, joint tenants, tenants by the entirety, or tenants in common, will be deemed a resource of the employee. However, property held for the employee's child under an irrevocable trust or under the Uniform Gifts to Minors Act will not be treated as a resource of the employee.

(B) *Distribution deemed necessary to satisfy financial need.* A distribution will be deemed to be necessary to satisfy an immediate and heavy financial need of an employee if all of the following requirements are satisfied:

(*1*) The distribution is not in excess of the amount of the immediate and heavy financial need of the employee,

(*2*) The employee has obtained all distributions, other than hardship

distributions, and all nontaxable loans currently available under all plans maintained by the employer,

(*3*) The plan, and all other plans maintained by the employer, provide that the employee's elective contributions and employee contributions will be suspended for at least 12 months after receipt of the hardship distribution, and

(*4*) The plan, and all other plans maintained by the employer, provide that the employee may not make elective contributions for the employee's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under section 402(g) for such next taxable year less the amount of such employee's elective contributions for the taxable year of the hardship distribution.

An employee shall not fail to be treated as an eligible employee for purposes of paragraph (b) of this section merely because he is suspended in accordance with this provision. The Commissioner may prescribe additional methods under which distributions will be deemed to be necessary to satisfy an immediate and heavy financial need only through the publication of revenue rulings, notices, and other documents of general applicability.

(iv) *Adoption of deemed hardship standards*—(A) *Exception to section 411(d)(6).* Subject to the requirements of paragraph (d)(2)(iv)(B), a plan that permits hardship distributions of amounts subject to the requirements of paragraph (d) of this section will not be treated as violating section 411(d)(6) merely because such plan is amended to permit hardship distributions only in accordance with the deemed hardship standards set forth in paragraphs (d)(2)(ii)(B) and (d)(2)(iii)(B).

(B) *Required effective and amendment dates.* The exception to section 411(d)(6) set forth in paragraph (d)(2)(iv)(A) is available only with respect to an amendment that is effective on or before the first day of the first plan year commencing on or after January 1, 1989. In the case of a plan maintained pursuant to collective bargaining agreement, such exception is available only with respect to an amendment that is effective on or before the later of the first day of the first plan year commencing on or after January 1, 1989, or the first day of the first plan year that the requirements of section 410(b), as modified by the Tax Reform Act of 1986, first apply to such plan. A plan amendment conforming a plan to the deemed hardship standard selected by an employer in accordance with paragraph (d)(2)(iv)(A) and effective by the applicable required effective date must be adopted within the time period permitted for required amendments to the plan under section 1140 of the Tax Reform Act of 1986 (as extended in the regulations under section 401(b)). Such conforming amendment must be consistent with the plan's operation during the period from the applicable required effective date to the date the amendment is required.

(3) *Impermissible distributions* Amounts attributable to elective contributions may not be distributed on account of any event not described in this paragraph (d), such as completion of a stated period of plan participation or the lapse of a fixed number of years.

(4) *Deemed distributions.* The cost of life insurance (P.S. 58 costs) will not be treated as a distribution for purposes of section 401(k)(2) and this paragraph. The making of a loan is not treated as a distribution, even if the loan is secured by the employee's accrued benefit attributable to elective contributions or is includible in the employee's income under section 72(p). However, the reduction, by reason of default on a loan, of an employee's accrued benefit derived from elective contributions is treated as a distribution.

(5) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

*Example.* Employer C maintains a profit-sharing plan that includes a cash or deferred arrangement. Elective contributions under the arrangement may be withdrawn for any reason after two years following the end of the plan year in which the contributions were made. Because the plan permits distributions of elective contributions before the occurrence of one of the events specified in section 401(k)(2)(B) and this paragraph (d), the plan includes a nonqualified cash or deferred arrangement and the elective contributions are currently includible in income.

(e) *Additional requirements*—(1) *Qualified profit-sharing, stock bonus, pre-ERISA money purchase, and rural electric cooperative plan requirement*—(i) *General rule.* A cash or deferred arrangement satisfies this paragraph (e) only if the elective contributions under such arrangement are treated as contributions under a profit-sharing, stock bonus, pre-ERISA money purchase pension or rural electric cooperative plan that satisfies the requirements of section 401(a). The plan of which a cash or deferred arrangement is a part may provide for other contributions, including employer contributions (other than elective contributions), employee contributions, or both. The plan will be treated as satisfying the requirements of section 401(a) only if such plan, taking into account any cash or deferred arrangement that is part of such plan and any elective contributions under such arrangement, satisfies the requirements of section 401(a). See paragraph (b) of this section for certain limitations on the extent to which elective contributions under a cash or deferred arrangement may be taken into account in determining the extent to which other contributions satisfy the requirements of section 401(a).

(ii) *Nondiscrimination requirements.* A cash or deferred arrangement satisfies this paragraph (e)(1) only if, in addition to satisfying paragraph (b)(2) of this section with respect to the amount of elective contributions, the plan of which the arrangement is a part satisfies section 401(a)(4) with respect to other benefits, rights, and features under the plan, including, for example, the availability of elective contributions to eligible employees. Thus, for example, the percentage of compensation available under a cash or deferred arrangement for deferral as elective contributions by eligible employees may not discriminate in favor of the group of employees described in section 401(a)(4). Furthermore, for example, if all employees are eligible to make elective contributions under an arrangement, but such contributions may be made only from compensation in excess of a stated amount, such as the Social Security taxable wage base, such arrangement would favor highly compensated employees with respect to the availability of elective contributions and thus would not satisfy section 401(a)(4). In such a case, the plan of which the arrangement is a part fails to satisfy section 401(a). See also §1.40(a)–4 with respect to optional forms of benefit.

(2) *Cash availability.* A cash or deferred arrangement satisfies this paragraph (e) only if such arrangement provides that the amount that each eligible employee may defer as an elective contribution is available to the employee in cash. Thus, for example, if an eligible employee is provided the option to receive a taxable benefit (other than cash) or to have the employer contribute on the employee's behalf to a profit-sharing plan an amount equal to the value of the taxable benefit, such arrangement is not a qualified cash or deferred arrangement. Similarly, if an employee has the option to receive a specified amount in cash or to have the employer contribute on his behalf to a profit-sharing plan an amount in excess of the specified cash amount, any contribution made by the employer on the employee's behalf in

excess of the specified cash amount is not treated as made pursuant to a qualified cash or deferred arrangement. This cash availability requirement applies even if the cash or deferred arrangement is part of a cafeteria plan within the meaning of section 125.

(3) *Separate accounting*—(i) *General rule.* A cash or deferred arrangement satisfies this paragraph (e) only if all amounts held under a plan that includes a cash or deferred arrangement or under another plan whose contributions are taken into account under the arrangement for purposes of paragraph (b) (including amounts contributed for plan years which begin prior to January 1, 1980, contributions made other than on account of a cash or deferred election, and contributions made for years when the cash or deferred arrangement is not qualified) are treated as attributable to elective contributions subject to the requirements of paragraphs (c) and (d) of this section.

(ii) *Exception.* The requirements of subdivision (i) of this paragraph (e)(3) will be treated as satisfied if the portion of an employee's benefit that is actually attributable to elective contributions subject to the requirements of paragraphs (c) and (d) of this section, and to qualified nonelective contributions and qualified matching contributions treated as elective contributions, is determined by an acceptable separate accounting between such portion and any other benefits. Separate accounting is not acceptable unless gains, losses, withdrawals, and other credits or charges are separately allocated on a reasonable and consistent basis to the accounts in which accrued benefits are subject to paragraphs (c) and (d) of this section and to the accounts for other benefits. Subject to section 401(a)(4), forfeitures are not required to be allocated to the accounts in which benefits are subject to paragraphs (c) and (d) of this section.

(f) *Correction of excess contributions*—(1) *General rule.* A cash or deferred arrangement will not be treated as failing to satisfy section 401(k)(3) or paragraph (b)(2) of this section with respect to the amount of elective contributions under the arrangement if the employer, in accordance with the terms of the plan and paragraph (b)(3) of this section, makes qualified nonelective contributions or qualified matching contributions that are treated as elective contributions under the arrangement and that, in combination with the elective contributions, satisfy the requirements of paragraph (b)(2) of this section. In addition, a cash or deferred arrangement will not be treated as failing to satisfy section 401(k)(3) or paragraph (b)(2) of this section with respect to the amount of the elective contributions if, in accordance with the terms of the plan that includes the arrangement, excess contributions on behalf of highly compensated employees are recharacterized in accordance with paragraph (f)(3) of this section. Excess contributions for a plan year may not remain unallocated or be allocated to a suspense account for allocation to one or more employees in any future year.

(2) *Amount of excess contributions.* The amount of excess contributions for a highly compensated employee for a plan year is to be determined by the following leveling method, under which the actual deferral ratio of the highly compensated employee with the highest actual deferral ratio is reduced to the extent required to—

(i) Enable the arrangement to satisfy the actual deferral percentage test, or

(ii) Cause such highly compensated employee's actual deferral ratio to equal the ratio of the highly compensated employee with the next highest actual deferral ratio.

This process must be repeated until the cash or deferred arrangement satisfies the actual deferral percentage test. For each highly compensated employee, the amount of excess contributions is equal to the total elective contributions, plus qualified nonelective contributions and qualified matching contributions treated as elective contributions, on behalf of the employee (determined prior to the application of this paragraph (f)(2)) minus the amount determined by multiplying the employee's actual deferral ratio (determined after application of this subparagraph) by his compensation used in determining such ratio. In no case shall the amount of excess contributions to be recharacterized for a plan year with respect to any highly compensated employee exceed the amount of elective contributions made on behalf of such highly compensated employee for such plan year.

(3) *Recharacterization of excess contributions*—(i) *General rule.* Excess contributions are recharacterized in accordance with this paragraph (f)(3) only if the excess contributions are treated as described in paragraph (f)(3)(ii) of this section and all of the conditions set forth in paragraph (f)(3)(iii) of this section are satisfied.

(ii) *Treatment of recharacterized excess contributions.* Excess contributions recharacterized under this paragraph (f)(3) are includible in the employee's gross income on the earliest dates any elective contribution made on behalf of the employee during the plan year would have been received by the employee had he originally elected to receive the amounts in cash or on such later date permitted in paragraph (f)(3)(iv) of this section. Such recharacterized excess contributions must be treated as employee contributions for the following purposes:

(A) The payor or plan administrator must report such recharacterized excess contributions as employee contributions to the Internal Revenue Service and the employee by—

(*1*) Timely providing such forms as the Commissioner shall designate to the employer and to employees whose excess contributions are recharacterized under this paragraph (f)(3); and

(*2*) Timely taking such other action as the Commissioner shall require; and

(B) The plan administrator must account for such amounts as contributions by the employee for purposes of sections 72 and 6047.

For purposes of section 401(a)(4) and paragraph (b) of this section, recharacterized excess contributions are to be treated as employee contributions. For all other purposes under the Code, however, including sections 404, 409, 411, 412, 415, 416, and 417, and, with respect recharacterized excess contributions for plan years which begin after December 31, 1988, section 401(k)(2), recharacterized excess contributions continue to be treated as employer contributions that are elective contributions. Thus, for example, recharacterized excess contributions remain subject to the requirements of paragraphs (c) and (d) of this section; must be deducted under section 404; and are treated as employer contributions described in section 415(c)(2)(A) and § 1.415–6(b). In addition, these amounts are not treated as compensation for purposes of sections 404 and 415, and may be treated as compensation for purposes of sections 401(a)(4), 401(a)(5), 401(k), 401(l) and 414(s) only to the extent that elective contributions may be treated, and are treated under the plan, as compensation. Recharacterized excess contributions which relate to plan years ending on or before October 24, 1988 may be treated as either employer contributions or employee contributions for purposes of paragraph (d) of this section.

(iii) *Additional requirements*—(A) *Time of recharacterization.* Excess contributions may not be recharacterized under this subparagraph after the later of (*1*) two and one-half months after the close of the plan year to which the recharacterization relates

or (2) October 24, 1988.
Recharacterization will be deemed to have occurred on the date on which the last of those highly compensated employees with excess contributions to be recharacterized is notified in accordance with paragraph (f)(3)(ii). Such notification may be provided by such means as the Commissioner may designate.

(B) [Reserved.]

(C) [Reserved.]

(iv) *Transition rules.* If amounts recharacterized for any plan year were not previously included in income, they are to be treated as received by employees for income tax purposes on the first day of the first plan year ending in 1988.

If notice of recharacterization is provided to the affected highly compensated employees by October 24, 1988, recharacterization is deemed to have occurred 2½ months after the close of the plan year and the penalty tax of section 4979 will not be imposed. The rules in this subdivision (iv) are effective only for plan years which end on or before August 8, 1988.

(v) *Example.* The principles of this paragraph (f)(3) are illustrated by the following example:

*Example.* (i) Employer X maintains Plan Y, a calendar year profit-sharing plan that includes a qualified cash or deferred arrangement. Under Plan Y, each eligible employee may elect to defer up to 10 percent of his compensation under a salary reduction agreement. These are the only contributions to the plan. X pays the amounts deferred under the arrangement to the trust under Plan Y each month on the last day of the month. Salaries are paid on the same date.

(ii) In January 1989, X determines that, during 1988, the compensation and actual deferral percentages (ADPs) of X's six employees were as follows:

| Employee | Compensation (A) | Elective contribution (B) | ADP (B/A) (percent) |
|---|---|---|---|
| A | $70,000 | $7,000 | 10.00 |
| B | 60,000 | 4,500 | 7.50 |
| C | 20,000 | 1,000 | 5.00 |
| D | 15,000 | 0 | 0 |
| E | 10,000 | 350 | 3.50 |
| F | 10,000 | 350 | 3.50 |

The ADP for X's highly compensated employees, A and B, is 8.75 percent (10.00% + 7.50% ÷ 2). The ADP for X's other employees is three percent (5.00 percent) + 0% + 3.50% + 3.50%)/4). Because 8.75 percent is more than 2.0 times three percent and more than three percent plus two percent, the plan fails to satisfy paragraph (b)(4) of this section.

(iii) Plan Y provides that each highly compensated participant will have his excess contributions, as defined in paragraph (g)(13) of this section, recharacterized. The amount to be so treated will be determined according to the method described in paragraph (f)(2)(ii) of this section.

(iv) In order to satisfy paragraph (b)(4) of this section, Plan Y must reduce the ADP for X's highly compensated employees to not more than five percent. This will satisfy the test described in paragraph (b)(5)(iii) of this section, because five percent is not more than 2.0 times three percent and is not more than two percentage points greater than three percent. Plan Y does this by reducing A's ADP to 7.5 percent (the ADP of the highly compensated employee having the next highest ADP). Since this is not sufficient to satisfy the ADP test in paragraph (b)(4)(iii) of this section, the ADP of both A and B must be reduced to five percent.

(v) The maximum dollar amount that may be deferred by each employee is determined by using the formula D = (ADP × S) where D is the maximim allowable deferral, ADP is the reduced ADP, and S is the compensation. Thus, A's maximum allowable deferral is $3,500 (.50 × $70,000), and B's maximum allowable deferral is $3,000 (.05 × $60,000). The balance of the original deferrals by A and B ($3,500 and $1,500 respectively) must be included in their taxable wages for 1988, the year in which X would have paid cash to A and B.

(vi) A deferred $583.33 per month, except for January, February, March, and April, when he deferred $583.34. Pursuant to the first-in, first-out rule in paragraph (f)(3)(ii) of this paragraph, the deferrals made in January, February, March, April, May, and June as well as $.02 of the deferral made in July, are treated as employee contributions. A similar procedure is undertaken with respect to B. X and the plan administrator provide A and B with such forms and notices as the Commissioner may require. If A and B had already filed income tax returns for 1988, they must file amended returns. In addition, the plan administrator must satisfy paragraph (f)(3)(ii)(B) of this section.

(g) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Employee.* The term "employee" means an individual who performs services for the employer and who is either a common law employee of the employer or a self-employed individual treated as an employee pursuant to section 401(c)(1). The term "employee" also includes a leased employee who is treated as an employee of the employer-recipient pursuant to the provisions of section 414(n)(2) or 414(o)(2) other than individuals covered by a plan described in section 414(n)(5). Individuals that an employer treats as leased employees under section 414(n), pursuant to the requirements of section 414(o), are considered to be leased employees for purposes of this rule.

(2) *Employer.* The term "employer" means the employer maintaining the plan and those employers required to be aggregated with such employer under sections 414(b), (c), (m), or (o).

(3) *Eligible employee*—(i) *In general.* The term "eligible employee" means an employee who is directly or indirectly eligible to make a cash or deferred election under the plan for all or a portion of the plan year. For example, if an employee must perform certain acts in order to be eligible to make a cash or deferred election for a plan year, such employee is an eligible employee for such plan year without regard to whether the employee performs such acts. An employee is an eligible employee if he is unable to make a cash or deferred election merely because his compensation is less than a stated dollar amount.

(ii) *Certain one-time elections.* An employee is not an eligible employee merely because such employee, upon commencing employment with the employer or upon the employee's first becoming eligible to make a cash or deferred election under any arrangement of the employer, is given the one-time opportunity to elect, and such employee did in fact elect, not to be eligible to make a cash or deferred election under such plan or any other plan maintained by the employer (including plans not yet established) for the duration of the employee's employment with the employer.

(4) *Elective contributions.* The term "elective contributions" means employer contributions made to a plan that were subject to a cash or deferred election under a cash or deferred arrangement (whether or not such arrangement is a qualified cash or deferred arrangement under paragraph (a)(4)). No amount that has become currently available to an employee or that is designated or treated, at the time of deferral or contribution, as an after-tax contribution may be treated as an elective contribution. See paragraphs (a)(2) and (a)(3).

(5) *Nonelective contributions.* The term "nonelective contributions" means employer contributions (other than matching contributions) with respect to which the employee may not elect to have the contributions paid to the employee in cash or other benefits instead of being contributed to the plan.

(6) *Matching contributions.* The term "matching contributions" means employer contributions made to a plan on behalf of an employee on account of employee contributions or elective contributions of such employee.

(7) *Qualified matching contributions and qualified nonelective contributions*—(i) *Qualified matching contributions.* The term "qualified

matching contributions" means matching contributions that satisfy the additional requirements of paragraph (g)(7)(iii) of this section.

(ii) *Qualified nonelective contributions.* The term "qualified nonelective contributions" means employer contributions, other than elective contributions and matching contributions, that satisfy the additional requirements of paragraph (g)(7)(ii) of this section.

(iii) *Additional requirements.* Except to the extent that paragraphs (c) and (d) of this section specifically provide otherwise, the matching contributions and the nonelective contributions must satisfy the requirements of paragraphs (c) and (d) as though such contributions were elective contributions without regard to whether such contributions are actually taken into account as elective contributions under paragraphs (b)(2) and (b)(3).

(8) *Actual deferral percentage*—(i) *General rule.* The actual deferral percentage for the group of eligible highly compensated employees, as well as the actual deferral percentage for the group of other eligible employees, for a plan year is the average of the actual deferral ratios, calculated separately for each employee in the group, of the amount of elective contributions (including qualified nonelective contributions and qualified matching contributions treated as elective contributions under paragraph (b)(3)) made on behalf of each employee for the plan year to the employee's compensation for the plan year. For plan years which begin after December 31, 1988, or such later date provided in paragraph (h) of this section, such actual deferral ratios and the actual deferral percentage for each group shall be calculated to the nearest one-hundredth of one percent of the employee's compensation. The actual deferral ratio of an eligible employee who makes no elective contribution is zero.

(ii) *Employee eligible under more than one arrangement.* In the case of an employee who is eligible to participate in more than one cash or deferred arrangement of the same employer, the actual deferral ratio shall be calculated by treating all the cash or deferred arrangements in which the employee is eligible to participate as one arrangement. For example, if an employee with compensation of $90,000 may make elective contributions under two separate cash or deferred arrangements, the actual deferral ratio for such employee under each arrangement is to be calculated by dividing the total elective contributions by the employee under both arrangements by $90,000. This paragraph (g)(8)(ii) is effective for plan years beginning after December 31, 1984. For plan years which begin after December 31, 1986, or such later date provided under paragraph (h) of this section, this paragraph (g)(8)(ii) shall apply only to employees who are highly compensated employees. See paragraph (b)(5) of this section for the treatment of certain multiple plans and cash or deferred arrangements.

(9) *Compensation*—(i) *Years before January 1, 1987*—(A) *In general.* An employee's compensation for a plan year beginning before January 1, 1987, or such later date provided under paragraph (h) of this section, is the amount taken into account under the plan (or plans) in calculating the elective contribution that may be made on behalf of the employee. In a plan that is top-heavy (as defined in section 416), such compensation may not exceed $200,000. Compensation may not exclude amounts less than a stated amount, such as the integration level under the plan. Compensation may include all compensation for the plan year, including compensation for the period when an employee was ineligible to make a cash or deferred election.

(B) *Nondiscrimination.* (*1*) If the plan's definition of compensation has the effect of discriminating in favor of employees who are highly compensated, a nondiscriminatory definition shall be determined by the Commissioner.

(*2*) A plan's definition of compensation will be treated as nondiscriminatory if the plan defines compensation for a plan year either as (*i*) an employee's total nondeferred compensation includible in gross income plus elective contributions under the plan and/or elective contributions under a plan described in section 125 or (*ii*) an employee's W–2 or total nondeferred compensation includible in gross income.

(ii) *Years after December 31, 1986.* For plan years which begin after December 31, 1986, or such later date provided in paragraph (h) of this section, "compensation" has the meaning given such term by section 414(s). For plan years beginning after December 31, 1988, or on or after the later date provided under paragraph (h) of this section, the applicable period under section 414(s) for purposes of applying section 401(k) and this section is the plan year for which a determination under paragraph (b) is being made.

(10) *Highly compensated employees.* (i) For plan years which begin after December 31, 1979, and before January 1, 1987, or such later date provided under paragraph (h) of this section, for purposes of the actual deferral percentage test, highly compensated employees are the one-third of all eligible employees (rounded to the nearest integer) who receive the most compensation. When one or more employees of a group would be highly compensated employees except that each member of the group receives the same amount of compensation, the employer shall designate which employees of the group are highly compensated, so that one-third of all eligible employees are considered highly compensated.

(ii) For plan years beginning after December 31, 1986, or such later date provided under paragraph (h) of this section, the term "highly compensated employee" has the meaning given such term by section 414(q).

(11) *Pre-ERISA money purchase pension plan.* (i) A pre-ERISA money purchase pension plan is a pension plan—

(A) That is a defined contribution plan (as defined in section 414(i));

(B) That was in existence on June 27, 1974, and as in effect on that date, included a salary reduction agreement described in paragraph (a)(3) of this section; and

(C) Under which neither the employee contributions nor the employer contributions, including elective contributions, may exceed the levels (as a percentage of compensation) provided for by the contribution formula in effect on June 27, 1974.

(ii) A plan was in existence on June 27, 1974, if it was a written plan adopted on or before that date, even if no funds had yet been paid to the trust associated with the plan.

(12) *Rural electric cooperative plan.* For purposes of this section, a rural electric cooperative plan is a plan described in section 401(k)(7).

(13) *Excess contributions.* The term "excess contributions" means, with respect to a plan year, the excess of the elective contributions, including qualified nonelective contributions and qualified matching contributions that are treated as elective contributions under paragraphs (b)(2) and (b)(3), on behalf of eligible highly compensated employees for the plan year over the maximum amount of such contributions permitted under paragraphs (b)(2) and (b)(4). The amount of excess contributions for each highly compensated employee is determined by using the method described in paragraph (f)(2) of this section.

(h) *Effective dates*—(1) *In general.* Except as otherwise provided, in this paragraph (h), or as specifically

provided elsewhere in this section, this section shall apply to plan years beginning after December 31, 1979.

(2) *Collectively bargained plans.* In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986,

(i) The provisions of this section first effective for plan years which begin after December 31, 1986, shall not apply to years which begin before the earlier of—

(A) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1989; and

(ii) The provisions of this section first effective for plan years which begin after December 31, 1988, shall not apply to years which begin before the earlier of—

(A) The later of—

(*1*) January 1, 1989, or,

(*2*) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986) or

(B) January 1, 1991.

(3) *Transitional rules.* (i) See § 1.402(a)–1(d)(3) for a transitional rule applicable to cash or deferred arrangements in existence on June 27, 1974.

(ii) For plan years beginning after December 31, 1979 (or, in the case of a pre-ERISA money purchase plan, plan years beginning after July 18, 1984) and before January 1, 1988, a reasonable interpretation of the rules set forth in section 401(k) of the Code (as in effect during those years) may be relied upon to determine whether a cash or deferred arrangement was qualified during those years. Operation in accordance with the proposed regulations published in the Federal Register on November 10, 1981, 46 FR 55544, will be deemed a reasonable interpretation of section 401(k).

(4) *Transitional rules for plans of state and local governments.* (i) A plan adopted by a state or local government prior to May 6, 1986, that is not a collectively bargained plan is subject to the transitional rules of paragraphs (h)(4) (ii), (iii), and (iv) of this section.

(ii) For plan years beginning before January 1, 1989, the plan is subject to the ADP test in section 401(k)(3) prior to its amendment by section 1116(a) of TRA '86. For plan years beginning after December 31, 1988, the plan is subject to the ADP test in paragraph (b)(4)(i) of this section.

(iii) (A) For plan years beginning before January 1, 1989, in the case of an employee who is eligible to participate in more than one cash or deferred arrangement of the same employer, the actual deferral percentage shall be calculated by treating all cash or deferred arrangements in which the employer is eligible to participate as one cash or deferred arrangement.

(B) For plan years beginning after the December 31, 1988, in the case of a highly compensated employee who is eligible to participate in more than one cash or deferred arrangement of the same employer, the actual deferral percentage shall be calculated by treating all cash or deferred arrangements in which the high-compensated employee is eligible to participate as one cash or deferred arrangement.

(iv) For plan years beginning before January 1, 1989, the plan must use the definition of "highly compensated employee" contained in paragraph (g)(10)(i) of this section, and the definition of compensation contained in paragraph (g)(9)(i) of this section. For plan years which begin after December 31, 1988, the plan must use the definitions of "highly compensated employee" and "compensation" contained in sections 414(q) and (s), respectively, for purposes of the participation and discrimination standards of paragraph (b) of this section and must follow the rules pertaining to compensation in paragraph (g)(9)(ii) of this section.

(v) In the case of a plan that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers adopted by a state or local government prior to May 6, 1986, the provisions in paragraphs (h)(4)(ii), (iii) and (iv) of this section and other provisions of this section that would be subject to paragraph (h)(2) if they were not a state or local plan described above, effective for plan years beginning after December 31, 1988, shall not apply to years beginning before the earlier of—

(A) The later of—

(*1*) January 1, 1989, or

(*2*) The date on which the last such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

**Par. 5.** Section 1.402(a)–1 is amended by adding a new paragraph (d) to read as follows:

**§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).**

* * * * *

(d) *Salary reduction, cash or deferred arrangements—*

(1) *Inclusion in income.* Whether a contribution to an exempt trust or plan described in section 401(a) or 403(a) is made by the employer or the employee must be determined on the basis of the particular facts and circumstances of each case. Nevertheless, an amount contributed to plan or trust will, except as otherwise provided under paragraph (d)(2) of this section, be treated as contributed by the employee if such amount was contributed at the employee's election, even though the election was made before the year in which the amount was earned by the employee or before the year in which the amount has become currently available to the employee. Any amount treated as contributed by the employee is includible in the gross income of the employee for the year in which the amount would have been received by the employee but for the election. Thus, for example, if amounts are contributed to an exempt trust or plan by reason of a salary reduction agreement under a cash or deferred arrangement, such amounts are treated as received by the employee at such time as such amounts would have been received by the employee but for the election to defer, and thus are includible in the gross income of the employee for the year that includes such time (except as provided under paragraph (d)(2) of this section). A matching contribution described in section 401(m)(4) is not treated as an employee contribution merely because it is made by the employer as a result of the employee's election. See § 1.40(k)–1(g) for definitions applicable to this paragraph (d)(1).

(2) *Qualified cash or deferred arrangement.* Elective contributions for a plan year made by an employer on behalf of an employee to a trust pursuant to a cash or deferred election under a qualified cash or deferred arrangement, as defined in section 401(k)(2), shall not be treated as received by or distributed to the employee or as employee contributions. See § 1.401(k)–1(g) for definitions and restrictions applicable to this paragraph (d)(2).

(3) *Effective date and transitional rule.* (i) In the case of a plan or trust that does not include a salary reduction or cash or deferred arrangement in existence on June 27, 1974, this paragraph applies to taxable years ending after such date.

(ii) In the case of a plan or trust that includes a salary reduction or a cash or deferred arrangement in existence on June 27, 1974, this paragraph applies to plan years beginning after December 31, 1979 (or, in the case of pre-ERISA money purchase plan, as defined in § 1.401(k)–1(g), plan years beginning after July 18, 1984). For plan years of such plans or trusts beginning prior to January 1, 1980 (or, in the case of pre-ERISA money purchase plan, plan years beginning before July 19, 1984), the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust shall be determined in a manner consistent with Rev. Rul. 56–497, 1956–2 CB 284, Rev. Rul. 63–180, 1963–1 CB 189, and Rev. Rul. 68–89, 1968–1 CB 402.

(iii) A cash or deferred arrangement shall be considered as in existence on June 27, 1974, if, on or before such date, it was reduced to writing and adopted by the employer (including, in the case of a corporate employer, formal approval by the employer's board of directors and, if required, shareholders), even though no amounts had been contributed pursuant to the terms of the arrangement as of such date.

(iv) For plan years beginning after December 31, 1979 (or in the case of pre-ERISA money purchase plan, plan years beginning after July 18, 1984) and before January 1, 1988, a reasonable interpretation of the rules set forth in section 401(k) of the Code (as in effect during those years) may be relied upon to determine whether contributions were made under a qualified cash or deferred arrangement. Operation in accordance with the proposed regulations published in the **Federal Register** on November 10, 1981, 46 FR 55544, will be deemed a reasonable interpretation of section 401(k).

## PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

**Par. 6.** The authority citation for part 602 continues to read:

**Authority:** 26 U.S.C. 7805.

### § 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by inserting in the appropriate place in the table,

| | |
|---|---|
| § 1.401(k)–1 | 1545–1069. |

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: July 7, 1988.

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

[FR Doc. 88–17720 Filed 8–8–88; 8:45 am]

BILLING CODE 4830-01-M

## Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**[T.D. ATF–276; Ref. Notice No. 642]**

### Warren Hills Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in northwestern New Jersey to be known as "Warren Hills." This decision is the result of a petition submitted by a group of wineries and grape growers from the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

**EFFECTIVE DATE:** September 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Simon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566–7626.

**SUPPLEMENTARY INFORMATION:**

### Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

### Petition

ATF received a petition prepared by Mr. Rudolf Marchesi of Alba Vineyard and submitted on behalf of a group of wineries and grape growers from Warren County, New Jersey. The group consists of Alba Vineyard, Marble Mountain Vineyards, Four Sisters Winery, Tamuzza Vineyards, and Mr. Daniel Campanelli (an individual grape grower). The petition proposed establishmernt of a viticultural area to be known as "Warren Hills."

The "Warren Hills" area is located entirely within Warren County. The area contains approximately 226 square miles, within which there are approximately 77 acres planted to winegrapes. Three wineries are operating within the area. Just to the south is the approved "Central Delaware Valley" viticultural area.

### Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 642, in the **Federal Register** on Tuesday, September 29, 1987 (52 FR 36432). The notice proposed establishment of the "Warren Hills" viticultural area with boundaries as described in the petition, and solicited public comment with respect to the proposal.

### Public Comment

In response to the notice of proposed rulemaking, ATF received no public comments. Accordingly, this Treasury decision establishes "Warren Hills" as a new viticultural area with the name and boundaries as proposed in Notice No. 642.

### Geography of the Area

Geographically, the "Warren Hills" area consists of a series of narrow, parallel valleys formed by tributaries of the Delaware River. The petitioner submitted evidence that the area is distinguished from surrounding areas by soil, topography, and climatic conditions.

According to the petitioner, the "Warren Hills" soils are less acidic than those of some surrounding areas, "due to the nature of the bedrock." He explained that "The vineyard soils of the Warren Hills region are formed from Dolomitic Limestone which has a high concentration of calcium and magnesium," while the soils of surrounding areas "are formed from shale and other sources." The relative pH values of vineyard soils within and to the north of the "Warren Hills" are contrasted as follows:

| "Warren Hills" soils | Soils to the north |
|---|---|
| Hazen loam 5.6–7.8 | Bath soils 4.5–6.5. |
| Annandale gravely loam 5.1–6.5. | Nassau soils 4.5–5.5. |
| Washington loam 5.6–6.3 | Swartswood soils 3.6–5.5. |

The higher pH values of the "Warren Hills" soils indicate less acidity. These

values show that the "Warren Hills" vineyard soils range from moderately acidic to slightly alkaline. This feature contrasts with soils to the south, as well as with those to the north. Typical vineyard soils in the "Central Delaware Valley" viticulatural area (south of the "Warren Hills") have been described, in soil surveys published by the U.S. Department of Agriculture, as: "Natural reaction is strongly acid," and "Natural reaction ranges from medium acid to strongly acid."

The soils to the northeast of the new viticultural area are also distinguishable, but in a different way. The northeastern boundary of the area corresponds generally to the terminal morraine of a glacial advance known as the "Wisconsin." According to the petitioner, there was once a large glacier, which covered the land just northeast of the "Warren Hills" but did not extend into the viticultural area itself. When the glacier receded from the adjacent area, it left deposits behind, which became mixed with the native soil there, rendering it less suitable for viticulture. By contrast, the "Warren Hills" soil generally does not contain glacial deposits.

Westward, across the Delaware River, limestone soils like those of the "Warren Hills" reappear. However, such soils are less prevalent west of the river, and the topography there is significantly different from the "Warren Hills." For these reasons, the Delaware River does form a proper viticultural area boundary, despite a similarity of soils.

Concerning the difference in topography, the farmland west of the Delaware River lies mostly in a single broad valley (the Lehigh Valley), while in the "Warren Hills" area there are about five narrower valleys. These narrow valleys run southwest to northeast, creating numerous south-facing or southeast-facing slopesides. Such slopesides make the best vineyard sites, because they receive more direct sunlight. Consequently, they have microclimates with warmer than average temperatures, especially in winter.

Further, the valleys of the "Warren Hills" create a desirable air drainage situation, in which cool air drains downward, away from the hillside vineyards. This feature is important in the spring and fall, when there may be a danger of untimely frost.

Another way in which the distinctive topography of the "Warren Hills" area affects its viticulture is by channeling the prevailing southwest winds. Since the area's valleys parallel the wind direction, they form channels through which the winds may travel with minimal obstruction. The winds cool the vines on hot summer afternoons and reduce relative humidity. These effects, together with the favorable air drainage already mentioned, "assist in the control of mold and mildew on the vines," according to the petitioner.

Topography also forms a basis for the northwestern and southeastern boundaries of the "Warren Hills." The northwestern boundary marks the beginning of a more mountainous area: Kittatinny Mountain, a member of the Pocono chain. Similarly, the southeastern boundary of the new viticultural area marks the division between two geological regions of New Jersey: The "Upland Valley" region (in which the "Warren Hills" lie) and the "Piedmont" region. The Piedmont's rolling hills contrast with the straight, narrow valleys of the "Warren Hills." (This distinction was previously cited by ATF in the rulemaking for the "Central Delaware Valley" viticultural area.)

The "Warren Hills" viticultural area is also contrasted with surrounding areas on the basis of climate. In particular, the eastern boundary of the area lies where the growing season drops off to less than 150 days. Inside the area, according to the petitioner's evidence, the growing season "averages 175 frost-free days, but is often longer on selected sites." This difference is significant for viticulture, because it means that certain late-repening varieties, such as vidal blanc, seyval blanc, and cabernet sauvignon, could not be grown in the area to the east.

Some of the climatic features that affect viticulture in the "Warren Hills" are directly caused by the area's unique topography. Specifically, the combination of sunny microclimates on the southward-facing vineyard slopes, together with the funneling of prevailing winds by the long, narrow valleys, results in warm days and cool nights during the growing season. This feature significantly benefits the grapes, according to the petitioner.

**Name of the Area**

The petitioner submitted evidence that the area is locally known by the name "Warren Hills." Such evidence included a page from the local telephone directory, listing the "Warren Hills Family Health Center." The petitioner also demonstrated that both a "Warren Hills High School" and a "Warren Hills Junior High School" exist in the area.

The Warren Hills High School draws students from most parts of the new viticultural area. The northern part of Warren County, outside the viticultural area, is served by a different high school, named the "North Warren Regional High School." The Warren Hills Junior High School is near the Warren Hills High School, and the two schools draw students from approximately the same area.

The name "Warren Hills" derives from Warren County and from the area's topography. The county was named in the early nineteenth century after a Revolutionary War patriot from the area who died in the Battle of Bunker Hill.

**Boundaries of the Area**

The area is bounded by the Delaware River, the Musconetcong River, the Warren County/Sussex County line, and Paulins Kill (a stream). The boundaries may be found on 13 U.S.G.S. maps of the 7.5 minute series; namely, the Riegelsville, Easton, Bangor, Bloomsbury, Belvidere, Portland, High Bridge, Washington, Blairstown, Hackettstown, Tranquility, Flatbrookville, and Newton West Quadrangles. The boundaries of the area are fully described in new § 9.121, as added to regulations by this Treasury decision.

**Miscellaneous**

ATF does not want to give the impression by approving "Warren Hills" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Warren Hills" wines.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities

**Executive Order 12291**

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this final rule is not a major rule, since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no requirement to collect information is imposed.

**Drafting Information**

The principal author of this document is Steve Simon of the Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

**Issuance**

Accordingly, 27 CFR Part 9 is amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph A.** The authority citation for Part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. B.** The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.121, to read as follows:

* * * * *

**Subpart C—Approved American Viticultural Areas**

Sec.

9.121 Warren Hills.

* * * * *

**Part. C.** Subpart C of 27 CFR Part 9 is amended by adding § 9.121, which reads as follows:

**§ 9.121 Warren Hills.**

(a) *Name.* The name of the viticultural area described in this section is "Warren Hills."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Warren Hills viticultural area are thirteen U.S.G.S. maps of the 7.5 minute series. They are titled:

(1) Riegelsville Quadrangle, Pennsylvania—New Jersey, 1956 (photorevised 1968 and 1973).

(2) Bloomsbury Quadrangle, New Jersey, 1955 (photorevised 1970).

(3) High Bridge Quadrangle, New Jersey, 1954 (photorevised 1970).

(4) Washington Quadrangle, New Jersey, 1954 (photorevised 1971).

(5) Hackettstown Quadrangle, New Jersey, 1953 (photorevised 1971, photoinspected 1976).

(6) Tranquility Quadrangle, New Jersey, 1954 (photorevised 1971).

(7) Newton West Quadrangle, New Jersey, 1954 (photorevised 1971).

(8) Flatbrookville Quadrangle, New Jersey—Pennsylvania, 1954 (photorevised 1971).

(9) Blairstown Quadrangle, New Jersey—Warren Co., 1954 (photorevised 1971).

(10) Portland Quadrangle, Pennsylvania—New Jersey, 1955 (photorevised 1984).

(11) Belvidere Quadrangle, New Jersey—Pennsylvania, 1955 (photorevised 1984).

(12) Bangor Quadrangle, Pennsylvania—New Jersey, 1956 (photorevised 1968 and 1973).

(13) Easton Quadrangle, New Jersey—Pennsylvania, 1956 (photorevised 1968 and 1973).

(c) *Boundary*—(1). *General.* The Warren Hills viticultural area is located in Warren County, New Jersey. The beginning point of the following boundary description is the junction of the Delaware River and the Musconetcong River, at the southern tip of Warren County (on the Riegelsville map).

(2) *Boundary Description*—(i) From the beginning point, the boundary goes northeastward along the Musconetcong River about 32 miles (on the Riegelsville, Bloomsbury, High Bridge, Washington, Hackettstown, and Tranquility maps) to the point where it intersects the Warren County-Sessex County line;

(ii) Then northwestward along that county line for about 10 miles (on the Tranquility, Newton West, and Flatbrookville maps) to Paulins Kill;

(iii) Then generally southwestward along Paulins Kill (on the Flatbrookville, Blairstown and Portland maps) to the Delaware River;

(iv) Then generally south-southwestward along the Delaware River (on the Portland, Belvidere, Bangor, Easton, and Reigelsville maps) to the beginning point.

Signed: July 8, 1988.

**Stephen E. Higgens,**

*Director.*

Approved: July 23, 1988.

**John P. Simpson,**

*Deputy Assistant Secretary, (Regulatory, Trade, and Tariff Enforcement).*

[FR Doc. 88–17847 Filed 8–5–88; 8:45 am]

BILLING CODE 4810-31-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 05–88–35]**

## Special Local Regulations for Marine Events; Delaware River, Vicinity of Penns Landing, Philadelphia, PA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Permanent special local regulations are adopted for the Delaware River in the vicinity of the Penns Landing area of downtown Philadelphia, Pennsylvania. This area is the site of several marine events each year, including Independence Day Celebrations, New Years Eve Celebrations, Jazz Festival, fireworks displays, etc. The special local regulations govern vessel activities during these events. Notices of precise dates and times that the regulations are effective is published in the Fifth District Local Notice to Mariners and a **Federal Register** Notice. The special local regulations are considered necessary due to the potential dangers to the waterway users and the expected spectator craft congestion at the time of the events.

**EFFECTIVE DATE:** Section is added August 8, 1988. This regulation will be effective from 6:30 p.m. to 10:30 p.m. on August 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a notice of proposed rulemaking in the **Federal Register** on June 17, 1988, (53 FR 22680). Interested persons were requested to submit comments. No comments were received. Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the **Federal Register**. Delaying the effective date would result in a significant adverse impact on this year's Jazz Festival, since the required safety for the event would not be provided.

**Drafting Information**

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Comments and Final Rule**

No comments were received in response to the notice of proposed rulemaking. The regulations as proposed are adopted. By a separate notice published in this issue of the **Federal Register**, these regulations are made applicable to the 1988 Jazz Festival that will be held on Friday August 19, 1988, from 7:30 p.m. to 10:30 p.m.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policy and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine Safety, Navigation (water).

**Final Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.509 is added to read as follows:

**§ 100.509 Delaware River, Philadelphia, Pennsylvania.**

(a) *Definitions:*

(1) *Regulated Area:* The waters of the Delaware River from shore to shore, bounded to the south by a line drawn from Pier 30, Penns Landing, Delaware River, Philadelphia, Pennsylvania, at latitude 39°56'24.0" North, longitude 75°08'26.0" West, across the river to the eastern shoreline at Camden, New Jersey, at latitude 39°56'24.0" North, longitude 75°07'57.0" West, and bounded to the north by the Benjamin Franklin Bridge.

(2) *The Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Philadelphia.

(b) *Special Local Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of these regulations but may not block a navigable channel.

(c) *Effective Period:* This section is effective during, and for one hour before the events start. The Commander, Fifth Coast Guard publishes a notice in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated: July 26, 1988.

**A.D. Breed,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 88-17850 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 100**

**[CGD 09-88-21]**

## Special Local Regulations; Detroit Jazz Festival Fireworks, Detroit River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Cancellation of rulemaking.

**SUMMARY:** Special Local Regulations are being cancelled for the Detroit Jazz Festival Fireworks Display. This event was to be held on the Detroit River on September 2, 1988 from 9:00 p.m. to 10:00 p.m. Due to comments received concerning this event, the Coast Guard is cancelling the Special Local Regulations for the Detroit Jazz Festival.

**FOR FURTHER INFORMATION CONTACT:** MST2 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

**SUPPLEMENTARY INFORMATION:** On July 15, 1988, the Coast Guard published this special local regulation in the **Federal Register** (53 FR 26770). However, interested parties were requested to submit comments. Based on the comments received, this special local regulation is cancelled.

**Drafting Information**

The drafters of this regulation are MST2 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The Detroit Jazz Festival was held for the first time last year. Following the event, comments were received from the Lake Carrier's Association and the Dominion Marine Association concerning the costly delays experienced by commercial carriers in the area.

As explained in the July 15, 1988 **Federal Register**, there was not sufficient time to publish a notice of proposed rulemaking for the event this year since the event application was received on June 16, 1988. However, interested parties were previously, notified of, and some commented on, the event, and those comments were considered in preparing the special local regulation. Also, comments were requested after the fact. The Windsor Harbor Master, Ontario, Canada commented on this regulation and strongly objected because of interference to commercial traffic. As a result of the comments received this year and last year, the Coast Guard is cancelling the special local regulation (§ 100.35-0921) for the Detroit Jazz Festival Fireworks Display.

**List of Subjects In 33 CFR Part 100**

Marine safety, Navigation (water).

Dated: July 27, 1988.

**D.H. Ramsden,**

*Capt., U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.*

[FR Doc. 88-17851 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-14-M

## 33 CFR Parts 100 and 165

**[CGD 88-056]**

## Safety and Security Zones: Temporary Rules

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary rules issued.

**SUMMARY:** This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

**DATES:** The following list includes safety zones, security zones, and special local regulations that were established between April 1, 1988 and June 30, 1988 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

**ADDRESS:** The complete text of any temporary regulations may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477.

**SUPPLEMENTARY INFORMATION:** The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulations, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1988 through June 30, 1988 unless otherwise indicated.

| Docket No. | Location | Type | Date |
|---|---|---|---|
| 1-88-019 | New York Harbor | Security Zone | Apr. 14, 1988. |
| 1-88-013 | N.Y. Harbor, New York, NY | Safety Zone | Apr. 21, 1988. |
| 1-88-024 | Thames River, CT | Security Zone | May 18, 1988. |
| 1-88-033 | Upper New York Bay, New York Harbor | do | May 26, 1988. |
| 1-88-032 | Hempstead Harbor, Long Island, New York | Safety Zone | May 27, 1988. |
| 1-88-027 | Upper New York Bay, Lower East River, NY | do | May 29, 1988. |
| 1-88-028 | Hudson River, Poughkeepsie, NY | do | June 4, 1988. |
| 1-88-038 | New York Harbor, NY | Security Zone | June 5, 1988. |
| 1-88-029 | Hudson River, Newburgh, NY | Safety Zone | June 7, 1988. |
| 1-88-042 | Hudson River, Troy, NY | do | June 10, 1988. |
| COTP Providence, RI, Reg. 88-012 | Rhode Island Sound, Narragansett Bay | do | Mar. 12, 1988. |
| COTP Providence, RI, Reg. 88-018 | do | do | Apr. 13, 1988. |
| COTP Providence, RI, Reg. 88-025 | do | do | May 15, 1988. |
| COTP Providence, RI, Reg. 88-041 | do | do | June 17, 1988. |
| COTP Louisville, KY, Reg. 88-02 | Louisville, KY | do | Apr. 15, 1988. |
| COTP Louisville, KY, Reg. 88-05 | do | do | Apr. 30, 1988. |
| COTP Louisville, KY, Reg. 88-04 | do | do | May 1, 1988. |
| COTP Louisville, KY, Reg. 88-01 | do | do | May 3, 1988. |
| COTP Louisville, KY, Reg. 88-03 | do | do | May 4, 1988. |
| COTP Louisville, KY, Reg. 88-06 | do | do | May 29, 1988. |
| COTP Louisville, KY, Reg. 88-07 | do | do | June 25, 1988. |
| COTP Louisville, KY, Reg. 88-08 | do | do | June 25, 1988. |
| COTP Paducah, KY, Reg. 88-02 | Ohio River, Mile 968, 968 to Mile 975 | do | June 14, 1988. |
| COTP St. Louis, MO, Reg. 88-01 | Pine Bend, MN | do | Apr. 1, 1988. |
| COTP St. Louis, MO, Reg. 88-02 | St. Louis, MO | do | Do. |
| COTP St. Louis, MO, Reg. 88-03 | Leavenworth, KS | do | Apr. 26, 1988. |
| COTP St. Louis, MO, Reg. 88-04 | St. Louis, MO Upper Mississippi River, Mile 180.2 to Mile 179.2. | do | May 29, 1988. |
| COTP Pittsburgh, PA, Reg. 88-02 | Ohio River, from Mile 39.5 to Mile 44.0 | do | June 25, 1988. |
| COTP Memphis, TN, Reg. 88-01 | Lower Mississippi River, Mile 737.0 to Mile 733.0 | do | Jan. 3, 1988. |
| COPT Memphis, TN, Reg. 88-03 | Mississippi River, Mile 734.8 to Mile 736.7 | do | May 28, 1988. |
| COTP Memphis, TN, Reg. 88-02 | Arkansas River, Mile 118.8 | do | May 29, 1988. |
| COTP Memphis, TN, Reg. 87-05 | White River from Mile 0 to Mile 10 | do | June 7, 1988. |
| COTP Memphis, TN, Reg. 88-06 | do | do | June 10, 1988. |
| Do. | do | do | Do. |
| COTP Memphis, TN, Reg. 88-07 | Lower Mississippi River, Mile 743 to Mile 744 | do | June 19, 1988. |
| COTP Memphis, TN, Reg. 88-08 | Lower Mississippi River, Memphis Harbor, Wolf River Chute. | do | June 20, 1988. |
| COTP Memphis, TN, Reg. 88-09 | Lower Mississippi River, Mile 743 to Mile 744 | do | June 21, 1988. |

| Docket No. | Location | Type | Date |
|---|---|---|---|
| COTP Huntington, WV, Reg. 88-01 | Ohio River, Mile 171.5 to Mile 172.1 | do | Feb. 24, 1988. |
| COTP Huntington, WV, Reg. 88-02 | Kanawha River, Mile 59.5 to Mile 60.5 | do | June 5, 1988. |
| COTP Huntington, WV, Reg. 88-03 | Kanawha River, Mile 49.5 to Mile 50.5 | do | June 11, 1988. |
| COTP Huntington, WV, Reg. 88-04 | Ohio River, Mile 327.0 to Mile 329.0 | do | June 23, 1988. |
| 5-88-14 | Elizabeth River between Norfolk and Portsmouth, VA | Special Local Regulations | Apr. 10, 1988. |
| 5-88-01 | Hampton Roads, Norfolk, VA | do | Apr. 23, 1988. |
| 5-88-18 | Willoughy Bay & Swells Point Spit, Norfolk, VA | do | Do. |
| 5-88-42 | Philadelphia, PA | do | June 16, 1988. |
| 5-88-44 | Delaware River, Philadelphia, PA | do | June 25, 1988. |
| 5-88-45 | do | do | June 26, 1988. |
| COTP Baltimore, MD, Reg. 88-01 | Pocomoke River, Upper Chesapeake Bay | Safety Zone | Mar. 25, 1988. |
| COTP Baltimore, MD, Reg. 88-04 | Wicomico River, Upper Chesapeake Bay | do | Apr. 13, 1988. |
| COTP Baltimore, MD. Reg. 88-05 | do | do | Apr. 19, 1988. |
| COTP Baltimore, MD, Reg. 88-06 | do | do | Apr. 20, 1988. |
| COTP Baltimore, MD, Reg. 88-09 | Elk River Channel, Upper Chesapeake Bay | do | June 23, 1988. |
| 7-88-04 | North of Fanny Key, North of The Moser Channel Bridge | Special Local Regulations | Apr. 30, 1988. |
| 7-88-015 | Jacksonville, FL | do | May 29, 1988. |
| COTP Miami, FL, Reg. 88-12 | Atlantic Ocean, Port Everglades, FL; Approaches to and Turn Basin. | Security Zone | Apr. 30, 1988. |
| COTP Savannah, GA, Reg. 88-013 | Savannah River | Safety Zone | May 15, 1988. |
| COTP Savannah, GA, Reg. 88-014 | do | do | June 5, 1988. |
| COTP Port Charles, SC, Reg. 88-165.T0706. | Ashley River, Charleston, SC | do | Do. |
| 8-88-06 | Blessing of the Fleet, Galveston, TX | Special Local Regulations | Apr. 24, 1988. |
| 8-88-07 | Neches River Festival Regatta, Beaumont, TX | do | Do. |
| 8-88-09 | U.S. Customs, Bicentennial Demonstration, Galveston, TX | do | May 11, 1988. |
| 8-88-06 | Popeye's Offshore Grand Prix, Lake Ponchartrain, LA | do | June 4, 1988. |
| COTP Mobile, AL, Reg. 88-02 | Southeast End of Mobile Bay, AL | Safety Zone | Mar. 18, 1988. |
| COTP Mobile, AL, Reg. 88-03 | Pensacola Bay Fishing Pier, Pensacola, FL | do | Mar. 27, 1988. |
| COTP Mobile, AL, Reg. 88-04 | Back Bay Biloxi Channel, Biloxi, MS | do | Apr. 20, 1988. |
| COTP Mobile, AL, Reg. 88-05 | Escambia Bay Channel, Pensacola, FL | do | June 22, 1988. |
| COTP New Orleans, LA, Reg. 88-01 | USS FORRESTAL (CV 59), Mississippi River, Southwest Pass to Julia Street Wharf, Mile 95.3 and return. | do | Feb. 12, 1988. |
| COTP Corpus Christi, TX, Reg. 88-01 | Port Ingleside, TX | do | Feb. 20, 1988. |
| COTP Corpus Christi, TX, Reg. 88-02 | Matagorda Bay, TX | do | Apr. 22, 1988. |
| COTP Corpus Christi, TX, Reg. 88-03 | do | do | Apr. 26, 1988. |
| COTP Corpus Christi, TX, Reg. 88-04 | Brownsville, TX | do | Apr. 28, 1988. |
| COTP Corpus Christi, TX, Reg. 88-05 | Matagorda Bay, TX | do | Apr. 29, 1988. |
| COTP Corpus Christi, TX, Reg. 88-06 | Gulf Intracoastal Waterway, at mile marker 539.4, Port Ingleside, TX. | do | Apr. 30, 1988. |
| COTP Corpus Christi, TX, Reg. 88-07 | Corpus Christi Ship Channel | do | May 9, 1988. |
| COTP Galveston, TX, Reg. 88-03 | Galveston and Innter Bar Channels from the Gulf of Mexico to the Port of Galveston Piers 33 & 34. | do | Mar. 22, 1988. |
| COTP Galveston, TX, Reg. 88-04 | Gulf Intracoastal Waterway (GIWW) MM 389 | do | Mar. 27, 1988. |
| COTP Houston, TX, Reg. 88-004 | Houston Ship Channel, from Buoys 79 and 80 to Morgans Point. | do | Apr. 11, 1988. |
| COTP Houston, TX, Reg. 88-005 | Houston Ship Channel, from Arco Dock to Manchester A Dock. | do | Apr. 12, 1988. |
| COTP Port Arthur, TX, Reg. 88-01 | Neches River, at the Bethlehem Steel Shipyard Vessel Launching Facility, Beaumont, TX. | do | June 4, 1988. |
| 9-88-06 | Toledo, Ohio, Toledo International Grand Prix | Special Local Regulations | May 28, 1988. |
| 9-88-03 | Sandusky Bay Challenge, Lake Erie | do | May 29, 1988. |
| 9-88-03 | Channel Park Heat Wave Classic, Lake Erie | do | June 11, 1988. |
| 9-88-07 | Bridgefest Regatta Hydroplane Races, Keweenaw Waterway. | do | June 19, 1988. |
| 9-88-09 | Tug Across the Detroit River, Detroit, MI | do | June 21, 1988. |
| COTP Chicago, IL, Reg. 88-01 | Lake Michigan at Chicago Harbor and Burnham Park Harbor, Chicago River, Main Branch, North Branch, Chicago, IL. | Security Zone | May 4, 1988. |
| COTP Cleveland, OH, Reg. 88-02 | Lake Erie | Safety Zone | May 22, 1988. |
| Do | do | do | June 6, 1988. |
| COTP Buffalo, NY, Reg. 88-002 | Buffalo Harbor, Buffalo, NY | do | June 30, 1988. |
| COTP LA/LB, CA, Reg. 88-09 | Port of Long Beach, CA | Security Zone | Apr. 6, 1988. |
| COTP LA/LB, CA, Reg. 88-10 | Port of Los Angeles, CA | Safety Zone | Apr. 25, 1988. |
| COTP LA/LB, CA, Reg. 88-11 | do | do | May 7, 1988. |
| COTP LA/LB, CA, Reg. 88-13 | Ports of Los Angeles/Long Beach, CA | do | May 26, 1988. |
| COTP LA/LB, CA, Reg. 88-11-14 | Santa Monica Bay, CA | do | May 27, 1988. |
| COTP San Diego, CA, Reg. 88-06 | San Diego Bay, CA, Pacific Ocean | do | Apr. 1, 1988. |
| COTP San Diego, CA, Reg. 88-09 | do | do | Apr. 12, 1988. |
| COTP San Diego, CA, Reg. 88-10 | Coronado Roads, San Diego, CA, Pacific Ocean | do | Apr. 18, 1988. |
| COTP San Diego, CA, Reg. 88-12 | San Diego Bay, CA, Pacific Ocean | do | Apr. 27, 1988. |
| COTP San Diego, CA, Reg. 88-13 | do | do | May 5, 1988. |
| COTP San Diego, CA, Reg. 88-14 | do | do | May 9, 1988. |
| COTP San Diego, CA, Reg. 88-15 | do | do | May 26, 1988. |
| COTP San Diego, CA, Reg. 88-16 | San Diego Bay, Pacific Ocean | do | June 7, 1988. |
| COTP San Diego, CA, Reg. 88-17 | San Diego Bay, CA Pacific Ocean | do | June 13, 1988. |
| COTP Puget Sound, WA, Reg. 88-01 | Rosario Strait, Lat. 48.30.7N, Long. 122.41.2W | do | Jan. 31, 1988. |
| COTP Puget Sound, WA, Reg. 88-02 | Liberty Bay, Port Gardner, Keyport, WA | do | Mar. 14, 1988. |
| COTP Puget Sound, WA, Reg. 88-03 | Naval Station Indian Island, WA | do | June 16, 1988. |
| COTP Southeast AK, Reg. 88-1 | Sitka Sound, AK | do | June 7, 1988. |

Date: August 3, 1988.

**Bruce P. Novak,**

*Executive Secretary, Marine Safety Council.*

[FR Doc. 88-17852 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 117**

**[CGD1-88-057]**

## Temporary Drawbridge Operation Regulations: Kennebec River, ME

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final temporary rule.

**SUMMARY:** At the request of the Maine Department of Transportation (Maine DOT), the Coast Guard is issuing temporary regulations permitting the Carlton drawbridge over Kennebec River, at mile 14.0, between Bath and Woolwich, Maine, to limit bridge openings within 30 minutes of each other and to extend the evening rush hour forty-five minutes for 60 days commencing 8 August through 6 October 1988. This amendment is being made to examine the effect on vehicular traffic during the above period. This action should accommodate the needs of vehicular traffic, while providing for the reasonable needs of navigation.

**DATE:** This temporary regulation becomes effective on 8 August 1988, and terminates October 7, 1988.

**ADDRESSES:** Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after **Federal Register** Publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these temporary regulations is necessary to evaluate their effect during the summer months when both boating and vehicular traffic are at their peak.

Persons affected by these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic, including observed effects (beneficial and detrimental), and any suggestions for changes. Persons submitting comments should include their name and addresses, identify the bridge, and give reasons for support of or opposition to these temporary regulations. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, First Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. This temporary rule may be changed in light of comments received.

### Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, and CDR R.B. Ellard, project attorney.

### Discussion of Temporary Regulations

This temporary rule is being issued under 33 CFR 117.43 to evaluate suggested changes to the drawbridge regulations (33 CFR 117.525) to reduce vehicular traffic congestions caused by the opening of the bridge during the summer months. Statistics provided by the Maine DOT indicate that bridge openings normally take five to eight minutes per opening. State and local officials have indicated that bridge openings during these months interrupts traffic for 30 to 45 minutes. The officials therefore desire to restrict marine traffic when Bath Iron Works lets out and tourist traffic is at a peak. Openings for recreational vessels from June through September were 112 in 1986 and 84 in 1987. This averages less than one opening per day for recreational vessels. However, total openings for all vessels were 188 in 1986 and 191 in 1987. Additionally, during June and July in 1988, about 17% of the openings occurred with less than 30 minutes between openings and the evening rush hour appeared to extend beyond 4:45 p.m. due to the staggering of shifts at Bath Iron Works.

The impact of this temporary regulation on vehicular and marine traffic during the remainder of the summer will be evaluated to determine if the proposed changes result in substantial improvements in vehicular traffic without restricting marine traffic.

### Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The intent of this temporary regulation is to accommodate vehicular traffic to and from the Bath Iron Works and local parks in the summertime when tourist traffic is at its peak. The draw will continue to open on signal for inbound commercial fishing vessels only in the morning.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 117

Bridges.

### Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.525(a) is revised for the period of August 8, 1988, through October 6, 1988.

**Note.**—Because this is a temporary rule, the following amendment will not be codified in the Code of Federal Regulations.

**§ 117.525 Kennebec River.**

(a) From August 8, through October 6, 1988, the draw of the Carlton highway-railroad bridge, mile 14.0 between Bath and Woolrich shall open on signal as follows:

(1) At all times, as soon as possible for vessels owned and operated by the United States Government, State and local vessels used for public safety, and vessels in distress.

(2) The bridge need not remain open for longer than 10 minutes and shall remain closed for 30 minutes between openings, and

(3) The bridge need not open from 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 5:30 p.m. Monday through Friday excluding legal holidays observed locally, except for inbound loaded commercial fishing vessels during the morning closure.

* * * * *

Dated: August 2, 1988.

R.I. Rybacki,

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 88-17849 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

### Lake Mead National Recreation Area; Noise Abatement

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** On December 20, 1985, the National Park Service, Department of the Interior, published in the **Federal Register** (50 FR 51887) a proposed rule to continue to allow motor vessels to exceed noise level limitations while participating in authorized regattas consistent with the exemptions allowed by Arizona, Nevada and U.S. Coast Guard Regulations when the boats are engaged in an authorized boating regatta. Powerboats designed and constructed for competitive water events have powerful engines with minimum muffling and have traditionally been exempted from State and Federal noise limitations during authorized regattas. This proposal was made available for public review and comment for a period of 30 days following publication in the **Federal Register**, ending on January 21, 1986. No comments were received.

**EFFECTIVE DATE:** September 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Chief Ranger, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005, Telephone: (702) 293-8908.

**SUPPLEMENTARY INFORMATION:** Boating regattas have been accepted activity at Lake Mead since the area was established and are an appropriate use of Lakes Mead and Mohave. The July, 1984, revision of 36 CFR 3.7 deleted the exemption for intense or prolonged noise during periods of regattas and requires all boats not exceed a noise level of 82 decibels measured at 82 feet. Title 36 CFR allowed for exemptions until the July, 1984, revision. The States of Arizona and Nevada provide for exemptions to noise and promote water regattas on the lakes and rivers within their respective jurisdictions. U.S. Coast Guard Regulations provide similar exemptions. Present National Park Service regulations do not make an exemption and are, therefore, in conflict with local State laws. To impose a noise level restriction on vessels participating in regattas is inconsistent with longstanding policy and puts an unnecessary burden on boaters who participate nationwide and who are then expected to meet severe noise limit standards when operating at Lake Mead National Recreation Area.

Allowing this exemption will not impact on other lake users and will occur on a limited basis under a permit basis. There are an average of four such events each year within the recreation area.

### Drafting Information

The following persons participated in the writing of this regulation: Newton Sikes and Aleen E. Inman, Lake Mead National Recreation Area.

### Paperwork Reduction Act

This rule does not contain information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation will not have any significant economic effect because it only serves to make an infrequent exception to the noise level limitation imposed by 36 CFR 3.7, during authorized boating regattas. There should be no additional expenditures involved as a result.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by

Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

### List of Subjects in 36 CFR Part 7

National parks: Reporting and record keeping requirement.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. In § 7.48, by adding paragraph (f) to read as follows:

### § 7.48 Lake Mead National Recreation Area

* * * * *

(f) The Superintendent may exempt motor vessels participating in a regatta that has been authorized by permit issued by the Superintendent from the noise level limitations imposed by § 3.7 of this chapter.

Susan Recce,

*Assistant Secretary for Fish and Wildlife and Parks.*

Date: June 17, 1988.

[FR Doc. 88-17796 Filed 8-5-88; 8:45 am]

BILLING CODE 4310-70-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD-FRL-3367-6]

### Standards of Performance for New Stationary Sources; Method 5F Amendment; Addition of Barium-Thorin Titration Procedure for Sulfates

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This amendment was proposed in the **Federal Register** on March 18, 1987 (52 FR 8476). This action would promulgate the amended method, which would allow the use of an alternative analysis (barium-thorin titration) procedure to the current analysis (ion chromatograph) procedure. The alternative procedure requires a much lower capital outlay and would increase the number of laboratories that can perform Method 5F analyses.

**EFFECTIVE DATE:** August 8, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESS:** *Docket.* Docket No. A–86–17, containing supporting information used in developing the promulgated rule is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary McAlister or Mr. Roger T. Shigehara, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Method 5F is the test method for measurement of nonsulfate particulate matter from stationary sources. It was proposed on May 29, 1985 (50 FR 21863). After the proposal a commenter requested that the barium-thorin titration procedure be included in the method as an alternative. The primary reason for the request was the substantially lower capital cost of the equipment used in the titration procedure as opposed to the cost of the ion chromatograph currently specified in Method 5F. The EPA has completed the necessary development work to allow the use of the titration procedure as an alternative to the ion chromatograph and is now amending Method 5F to include this alternative analysis procedure.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations nor does it change any emission standard. Rather, the rulemaking would simply amend test procedures associated with emission measurement requirements that would apply irrespective of this rulemaking.

## II. Public Participation

The test method was proposed in the **Federal Register** on March 18, 1987 (52 FR 8476). To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed rules, a public hearing was scheduled for May 4, 1987, at the Research Triangle Park, North Carolina, but no one wished to make an oral presentation. The public comment period was from March 18, 1987, to June 1, 1987. One comment letter was received.

## III. Significant Comments and Changes to the Proposed Test Method

One comment letter containing a single comment was received. The commenter thought that the blank determination should be performed on a blank of the same volume as the samples being processed rather than 500 ml as currently specified. The procedure has been changed to reflect this.

## IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test methods and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [section 307(d)(7)(a)].

## Miscellaneous

The rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking amends the test method to which the affected facilities are already subject.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

## List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, and Petroleum refineries.

Date: August 1, 1988.

**Lee M. Thomas,**

*Administrator.*

40 CFR Part 60, Method 5F of Appendix A, is amended as follows:

## PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

**Authority:** Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Method 5F of Appendix A is amended by redesignating the current section 7 as section 8 and by adding a new section 7 to read as follows:

## Appendix A—Reference Methods

* * * * *

### Method 5F—Determination of Nonsulfate Particulate Matter From Stationary Sources

* * * * *

*7. Alternative Procedures*

7.1 The following procedure may be used as an alternative to the procedure in Section 4.3.

7.1.1 Apparatus. Same as for Method 6, Sections 2.3.3 to 2.3.6 with the following additions.

7.1.1.1 Beakers. 250-ml, one for each sample, and 600-ml.

7.1.1.2 Oven. Capable of maintaining temperatures of 75 ± 5 °C and 105 ±5 °C.

7.1.1.3 Buchner Funnel.

7.1.1.4 Glass Columns. 25-mm × 305-mm (1-in. × 12-in.) with Teflon stopcock.

7.1.1.5 Volumetric Flasks. 50-ml and 500-ml, one set for each sample, and 100-ml, 200-ml, and 1000-ml.

7.1.1.6 Pipettes. Two 20-ml and one 200-ml, one set for each sample, and 5-ml.

7.1.1.7 Filter Flasks. 500-ml.

7.1.1.8 Polyethylene Bottle. 500-ml, one for each sample.

7.1.2 Reagents. Same as Method 6, Sections 3.3.2 to 3.3.5 with the following additions:

7.1.2.1 Water, Ammonium Hydroxide, and Phenolphthalein. Same as Sections 3.2.1, 3.2.5, and 3.2.6 of this method, respectively.

7.1.2.2 Filter. Glass fiber to fit Buchner funnel.

7.1.2.3 Hydrochloric Acid (HCl), 1 M. Add 8.3 ml of concentrated HCl (12 M) to 50 ml of

water in a 100-ml volumetric flask. Dilute to 100 ml with water.

7.1.2.4 Glass Wool.

7.1.2.5 Ion Exchange Resin. Strong cation exchange resin, hydrogen form, analytical grade.

7.1.2.6 pH Paper. Range of 1 to 7.

7.1.3 Analysis.

7.1.3.1 Ion Exchange Column Preparation. Slurry the resin with 1 M HCl in a 250-ml beaker, and allow to stand overnight. Place 2.5 cm (1 in.) of glass wool in the bottom of the glass column. Rinse the slurried resin twice with water. Resuspend the resin in water, and pour sufficent resin into the column to make a bed 5.1 cm (2 in.) deep. Do not allow air bubbles to become entrapped in the resin or glass wool to avoid channeling, which may produce erratic results. If necessary, stir the resin with a glass rod to remove air bubbles, after the column has been prepared, never let the liquid level fall below the top of the upper glass wool plug. Place a 2.5-cm (1-in.) plug of glass wool on top of the resin. Rinse the column with water until the eluate gives a pH of 5 or greater as measured with pH paper.

7.1.3.2 Sample Extraction. Follow the procedure given in Section 4.3.1 except do not dilute the sample to 500 ml.

7.1.3.3 Sample Residue. Place at least one clean glass fiber filter for each sample in a Buchner funnel, and rinse the filters with water. Remove the filters from the funnel, and dry them in an oven at 105 ± 5 °C; then cool in a desiccator. Weigh each filter to constant weight according to the procedure in method 5, Section 4.3. Record the weight of each filter to the nearest 0.1 mg.

Assemble the vacuum filter apparatus, and place one of the clean, tared glass fiber filters in the Buchner funnel. Decant the liquid portion of the extracted sample (Section 7.1.3.2) through the tared glass fiber filter into a clean, dry, 500-ml filter flask. Rinse all the particulate matter remaining in the volumetric flask onto the glass fiber filter with water. Rinse the particulate matter with additional water. Transfer the filtrate to a 500-ml volumetric flask, and dilute to 500 ml with water. Dry the filter overnight at 105 ± 5 °C, cool in a desiccator, and weigh to the nearest 0.1 mg.

Dry a 250-ml beaker at 75 ± 5 °C, and cool in a desiccator; then weigh to constant weight to the nearest 0.1 mg. Pipette 200 ml of the filtrate that was saved into a tared 250-ml beaker; add five drops of phenolphtahalein indicator and sufficient concentrated ammonium hydroxide to turn the solution pink. Carefully evaporate the contents of the beaker to dryness at 75 ± 5 °C. Check for dryness every 30 minutes. Do not continue to bake the sample once it has dried. Cool the sample in a desiccator, and weigh to constant weight to the nearest 0.1 mg.

7.1.3.4 Sulfate Analysis. Adjust the flow rate through the ion exchange column to 3 ml/min. Pipette a 20-ml aliquot of the filtrate onto the top of the ion exchange column, and collect the eluate in a 50-ml volumetric flask. Rinse the column with two 15-ml portions of water. Stop collection of the eluate when the volume in the flask reaches 50-ml. Pipette a 20-ml aliquot of the eluate into a 250-ml Erlenmeyer flask, add 80 ml of 100 percent isopropanol and two to four drops of thorin indicator, and titrate to a pink end point using 0.0100 N barium perchlorate. Repeat and average the titration volumes. Run a blank with each series of samples. Replicate titrations must agree within 1 percent or 0.2 ml, whichever is larger. Perform the ion exchange and titration procedures on duplicate portions of the filtrate. Results should agree within 5 percent. Regenerate or replace the ion exchange resin after 20 sample aliquotes have been analyzed or if the end point of the titration becomes unclear.

**Note:** Protect the 0.0100 N barium perchlorate solution from evaporation at all times.

7.1.3.5 Blank Determination. Begin with a sample of water of the same volume as the samples being processed and carry it through the analysis steps described in Sections 7.1.3.3 and 7.1.3.4. A blank value larger that 5 mg should not be subtracted from the final particulate matter mass. Causes for large blank values should be investigated and any problems resolved before proceeding with further analyses.

7.1.4 Calibration. Calibrate the barium perchlorate solutions as in Method 6, Section 5.5.

7.1.5 Calculations.

7.1.5.1 Nomenclature. Same as Section 6.1 with the following additions:

$m_a$ = Mass of clean analytical filter, mg.
$m_d$ = Mass of dissolved particulate matter, mg.
$m_e$ = Mass of beaker and dissolved particulate matter after evaporation of filtrate, mg.
$m_p$ = Mass of insoluble particulate matter, mg.
$m_r$ = Mass of analytical filter, sample filter, and insoluble particulate matter, mg.
$m_{bk}$ = Mass of nonsulfate particulate matter in blank sample, mg.
N = Normality of $ba(C10_4)_2$ titrant, meq/ml.
$V_a$ = Volume of aliquot taken for titration, 20 ml.
$V_c$ = Volume of titrant used for titration blank, ml.
$V_d$ = Volume of filtrate evaporated, 200ml.
$V_e$ = Volume of eluate collected, 50 ml.
$V_f$ = Volume of extracted sample, 500 ml.
$V_i$ = Volume of filtrate added to ion exchange column, 20 ml.
$V_t$ = Volume of $Ba(C10_4)_2$ titrant, ml.
W = Equivalent weight of ammonium sulfate, 66.07 mg/meq.

7.1.5.2 Mass of Insoluble Particulate Matter.

$$m_p = m_r - m_a - m_f \qquad \text{Eq. 5F-4}$$

7.1.5.3 Mass of Dissolved Particulate Matter.

$$m_d = (m_e - m_b)\frac{V_f}{V_d} \qquad \text{Eq. 5F-5}$$

7.1.5.4 Mass of Ammonium Sulfate.

$$m_s = \frac{(V_t - V_c)\,N\,W\,V_e\,V_f}{V_a\,V_i} \qquad \text{Eq. 5F-6}$$

7.1.5.5 Mass of Nonsulfate Particulate Matter.

$$m_n = m_p + m_d - m_s - m_{bk} \qquad \text{Eq. 5F-7}$$

8. *Bibliography*

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[FR Doc. 88-17800 Filed 8-5-88; 8:45 am]

BILLING CODE 6560-50-M

# Proposed Rules

Federal Register
Vol. 53, No. 152
Monday, August 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 430 and 534**

## Pay and Performance Under the Senior Executive Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** OPM is issuing proposed regulations on Senior Executive Service (SES) pay and performance. The regulations establish requirements necessary to apply consistently and equitably the SES pay provisions of the Civil Service Reform Act of 1978, as amended. In particular, the regulations focus on setting individual basic pay under the SES and implementing the statutory provisions on aggregate compensation. They attempt to provide as much flexibility to agencies as possible under the statutory provisions while providing adequate protections for career appointees. The regulations would also permit more flexibility on the part of agencies in operating their SES performance appraisal systems by revising current requirements on the number of SES summary rating levels and the ending date of the SES performance appraisal period.

**DATES:** Comments will be considered if received no later than October 7, 1988.

**ADDRESS:** Send or deliver written comments to the Director, Office of Executive Personnel, Office of Executive Administration, Office of Personnel Management, Room 6R48, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Neal Harwood, (202) 632–4625.

**SUPPLEMENTARY INFORMATION:** These proposed regulations revise current regulations on SES pay and performance to fully implement the provisions of the Civil Service Reform Act (CSRA) of 1978 (Pub. L. 95–454), as amended, in as flexible a manner as possible.

### (1) Pay Under the Senior Executive Service (Part 534, Subpart D)

Since the passage of the CSRA, policy on the administration of pay for the SES has evolved from decisions on specific issues and OPM responses to individual agency inquiries. Additional changes have resulted from enactment of Pub. L. 98–615 on November 8, 1984. The pay provisions of this law were effective February 6, 1985. These regulations would implement the new law, codify interpretations of previous law, and incorporate, or change where necessary, current regulations at 5 CFR Part 534, Subpart D. They provide a basis for consistent and equitable application of the provisions of the CSRA and Pub. L. 98–615. The statutory authority for these regulations may be found in 5 U.S.C. 5382, 5383, and 5385.

Under the SES, which is a gradeless system, management officials enjoy considerable latitude to use pay flexibly. Before CSRA, the specific grades to which positions were classified (e.g., GS–16, 17, 18) most often determined the differences in pay among employees. CSRA removed this automatic linkage. Thus, managers may use pay as an inducement in recruiting, as a means to recognize organizational hierarchy and the responsibility of positions, as a reward for good performance, or as an incentive to improve poor performance. These regulations are written to optimize this flexibility and, at the same time, ensure against arbitrary decisions. The regulations help assure the public and the workforce that pay decisions are made in a reasonable manner and are based upon sound management principles.

*Pay Setting Upon Initial Appointment and While in the SES*

Under 5 U.S.C. 5383(c), pay for SES members may be adjusted only once in a 12-month period by an appointing authority. The change made by the President in the salary attached to each pay rate is not considered a pay adjustment for the purpose of this restriction. A number of questions have arisen, however, over whether other actions affecting an individual's pay are considered adjustments and thus subject to the 12-month waiting period.

The proposed regulations at § 534.401 (b) and (c) provide that pay upon initial SES appointment may be set at any ES rate and clarify that this pay setting action is considered a pay adjustment. Therefore, for example, if an individual is appointed to the SES as an ES–2, that pay rate could not be changed for 12 months. When the rate is changed (e.g., to ES–3), the individual would have to begin a new 12-month waiting period before being eligible for another change.

The 12-month restriction is not applicable if the individual transfers between agencies because the individual is now under a new appointing authority, who can set pay at any SES rate. A new 12-month waiting period would begin, however, if there is a change in the ES rate upon the transfer. Pay setting upon transfer is clarified in the proposed § 534.401(d).

The provision in the current § 534.401 that restricts the reduction of an SES member's pay to no more than one rate in a 12-month period is retained in the proposed § 534.401(c)(3), which also incorporates the requirement in 5 U.S.C. 5383(d) that career SES members be given 15-days' advance notice when pay is to be reduced.

There is no restriction on the number of rates that pay may be adjusted upwards at one time.

The current § 534.402 restrictions on reducing the pay of SES members who converted to the SES under Subpart C of Part 317 are continued in the proposed § 534.401(f).

*Pay Setting Following Break in SES Service*

The proposed regulations at § 534.401(e)(1) provide that if there is a break in SES service of more than 30 days, pay may be set at any rate upon reappointment to the SES. A new 12-month waiting period begins upon the reappointment action.

The proposed § 534.401(e)(2), however, provides that if a career senior executive elected to retain SES pay while serving under a Presidential appointment with Senate confirmation, pay may not be adjusted upon reinstatement to the SES unless 12 months have elapsed since the individual's last pay adjustment. If the executive did not elect to retain SES pay, pay may be set at any rate upon reinstatement.

*Restrictions on Aggregate Compensation*

The proposed regulations at § 534.402(a) define an individual's

aggregate compensation to consist of basic pay, performance awards, Presidential rank awards, and physicians comparability allowances.

In accordance with 5 U.S.C. 5383(b), the regulations at § 534.402(b) state that an individual's aggregate compensation may not exceed the Executive Level I pay rate in effect at the end of that fiscal year. For example, if an executive received a distinguished rank award of $20,000 in FY 1987, had basic pay that equaled $75,000, and received $10,000 in physicians comparability allowance, the executive's aggregate compensation for the fiscal year would be $105,000. The pay rate for Executive Level I at the end of FY 1987, however, was only $99,500. Therefore, as a result of the rank award, the executive would have surplus compensation of $5,500 that could not be paid during FY 1987.

Note.—As in the example here, if either a performance award or a rank award would cause the executive's aggregate compensation to exceed the Executive Level I ceiling by the end of the fiscal year, the excess amount is withheld from the award, rather than from the individual's basic salary.

Before the changes made by Pub. L. 98–615, the executive would have lost the $5,500 surplus. Based on the law, however, proposed § 534.402(c) provides that—

(a) Any surplus compensation (i.e., compensation in excess of the Executive Level I ceiling) will be paid in a lump sum at the beginning of the next fiscal year. In this case, the $5,500 would be paid at the beginning of FY 1988 and become part of that fiscal year's aggregate compensation. (Note that if the full surplus compensation would cause the individual's aggregate compensation for FY 1988 to exceed the Executive Level I ceiling for that year, then the individual would be paid only that portion of the surplus compensation which would bring him to the ceiling; and the remainder would be paid at the beginning of FY 1989.)

(b) The individual is still entitled to any surplus amount in case of separation from the Federal service (e.g., resignation or retirement), or acceptance of a position outside the SES (e.g., at GS–15). As with individuals who remain in the SES, payment may not be made until the beginning of the next fiscal year for individuals who take a position outside the SES. For individuals who leave the Federal service, or who die, payment will be made in accordance with § 534.402(c)(3). The requirement for a 30-day break in service for individuals who separate before payment may be made is to prevent an individual from retiring or resigning solely to receive the payment and then being immediately reemployed.

(c) If the individual transfers between agencies, the agency the individual was in at the time the surplus amount was created is responsible for paying the amount at the beginning of the next fiscal year. For example, if an individual receives a rank award in agency A in FY 1987, and there is a surplus amount of $5,500, but transfers to agency B, agency A must pay the $5,500 when FY 1988 begins. This provision is based on the principle that the agency which creates the obligation should be responsible for paying it. Note that although payment is made by agency A, agency B must still keep a record of it since the payment counts against the aggregate compensation for the new fiscal year.

**(2) Performance Appraisal for the Senior Executive Service (Part 430, Subpart C)**

Final SES performance appraisal regulations were issued in 1986. Based on experience operating under those regulations, two changes are being proposed. The first change would eliminate the requirement for five summary rating levels. The CSRA (5 U.S.C. 4314(a)) required only three levels (unsatisfactory, minimally satisfactory, and fully successful); and until the 1986 regulations, agencies had the option of determining whether to have additional levels. We believe this option should be returned to agencies, and the proposed regulations would allow agencies to have a three, four, or five-level system.

The second change would eliminate the requirement that SES appraisal periods end between June 30 and September 30. Again, this requirement was added by the 1986 regulations, but is not required by law.

One other change was considered, but is not being proposed. Under 5 U.S.C. 4312(b)(3), an SES member is entitled to have a supervisor's rating reviewed by an employee in a higher level in the agency before the rating becomes final. Section 430.306(a)(3) of the current regulations requires that the review take place before review by the agency Performance Review Board (PRB). Some agencies have suggested that the regulation be changed so that agencies could provide the higher level review after, rather than before, the PRB acts. In our view, the intent of the statutory provision was to have the higher level reviewer's comments available for consideration by the PRB. Therefore, no change is being proposed in the regulations. Nevertheless, it should be noted that under the current regulations, those agencies that want to provide a higher level review after PRB action, in addition to before, may do so.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES employees of the Federal Government.

**List of Subjects**

*5 CFR Part 430*

Administrative practice and procedure, Government employees.

*5 CFR Part 534*

Government employees, Wages.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is proposing to amend 5 CFR Part 430 and 5 CFR Part 534 as follows:

## PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. Section 430.304(g) is revised to read as follows:

**§ 430.304 SES performance appraisal systems.**

* * * * *

(g) Each SES appraisal system shall provide for at least three and not more than five summary rating levels. The rating levels must include an "Unsatisfactory" level, a "Minimally Satisfactory" level, and a "Fully Successful" level. Agencies may also establish up to two levels which are above "Fully Successful." For purposes of this subpart, "Unsatisfactory" is referred to as level 1, "Minimally Satisfactory" is level 2, and "Fully Successful" is level 3. A level one level above "Fully Successful" is level 4, and a level two levels above "Fully Successful" is level 5.

* * * * *

3. Section 430.305(a)(1) is revised to read as follows:

**§ 430.305 Appraisal of performance.**

(a) *Appraisal period.* (1) Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall be given a rating of record at least annually. Systems shall provide for preparing a summary rating

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when an executive changes positions during the appraisal period, if the executive has served for the minimum appraisal period in the position from which he/she has changed; agency SES Performance Management Plan(s) must describe how these ratings will be taken into consideration in deriving the next rating of record. A summary rating prepared when an executive changes positions during the appraisal period shall not be considered an initial rating.

* * * * *

## PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for Part 534 is revised as set forth below:

**Authority:** 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5383, 5384, 5385, and 5541.

2. Sections 534.401 and 534.402 of Subpart D are revised to read as follows:

### Subpart D—Pay Under the Senior Executive Service

#### § 534.401 Definitions and setting individual basic pay.

(a) *Definitions.* In this subpart:

(1) "Senior executive" means a member of the Senior Executive Service (SES).

(2) "Agency" means an executive agency or military department, as defined by 5 U.S.C. 105 and 102.

(3) "ES rate" means one of the five or more rates of basic pay established by the President under 5 U.S.C. 5382 for the SES.

(b) *Setting pay upon initial appointment.*

An appointing authority may set the pay of a new appointee into the SES at any ES rate.

(c) Adjusting pay while in the SES. (1) An appointing authority may adjust the pay for a senior executive no more than once in any 12-month period. A pay adjustment includes:

(i) The assignment of an ES rate upon initial appointment to the SES;

(ii) The change from one ES rate to another while employed in the SES; or

(iii) The assignment of an ES rate upon reappointment to the SES following a break in SES service of more than 30 days.

(2) An appointing authority may raise the pay for a senior executive any number of ES rates at the time of adjustment.

(3) An appointing authority may lower the pay for a senior executive only one rate at the time of adjustment. A career senior executive must be provided a 15-day written notice before a pay reduction.

(d) *Setting pay upon transfer.* An appointing authority may set the pay of a senior executive transferring from another agency at any ES rate.

(e) *Setting pay following a break in SES service.* (1) General. An appointing authority may set the pay of a former senior executive at any ES rate upon reappointment if there has been a break in SES service of more than 30 days or if the reappointment is in a different agency.

(2) Reinstatement from a Presidential appointment requiring Senate confirmation. If a former career senior executive elected under 5 CFR 317.801(b) to remain subject to SES pay provisions while serving under the Presidential appointment, pay may be adjusted upon reinstatement to the SES only if 12 months have elapsed since the last SES pay adjustment, in accordance with paragraph (c) of this section. If the former senior executive did not elect to remain subject to the SES pay provisions while serving under the Presidential appointment, pay may be set at any ES rate upon reinstatement.

(f) *Restrictions on reducing the pay of senior executives who converted under Subpart C of Part 317 of this chapter.* The ES rate of a senior executive who entered the SES under the conversion provisions of Subpart C of Part 317 of this chapter cannot be reduced, during such executive's appointment in the SES, below the basic payable salary for that individual immediately before converting to the SES.

#### § 534.402 Aggregate compensation.

(a) *Definition.* "Aggregate compensation" consists of basic pay, performance awards, Presidential rank awards, and physicians comparability allowances.

(b) *Limitation on aggregate compensation.* No senior executive may receive in any fiscal year aggregate compensation that will exceed the payable rate in effect for Level I of the Executive Schedule as of the end of the fiscal year.

(c) *Payment of amount exceeding limitation on aggregate compensation.* (1) Any excess amount that cannot be paid to a senior executive during a fiscal year because of the limitation under paragraph (b) of this section will be paid to that individual in a lump sum at the beginning of the following fiscal year, even if the individual is no longer in the SES. The amount so paid will then be considered part of the aggregate compensation for the new fiscal year.

(2) If a senior executive transfers to a different Federal agency or leaves the Federal service, the agency responsible for making the payment is the agency that employed the executive at the time the excess amount was created.

(3) The only exceptions to waiting until the following fiscal year to make the payment of the excess amount are as follows:

(i) If a senior executive dies. Payment of the entire excess amount will be made immediately as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.

(ii) If a senior executive separates from the Federal service. Payment will be made following a 30-day break in service. The executive shall be paid any excess amount that would not bring aggregate compensation for the fiscal year above the Level I salary rate anticipated to be in effect on the last day of the fiscal year. Any additional excess amount shall be paid at the beginning of the next fiscal year. If the executive is reemployed in the Federal service during the same fiscal year as separation, any previous payment of an excess amount shall be considered part of that year's aggregate compensation for applying the Level I limitation for the remainder of the fiscal year.

[FR Doc. 88-17776 Filed 8-5-88; 8:45 am]
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## 5 CFR Part 890

## Federal Employees Health Benefits Program—Opportunity for Certain Annuitants to Reenroll

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing to revise its Federal Employees Health Benefits (FEHB) Program regulations to permit reenrollment for certain annuitants who are entitled to Part B of Medicare and cancel their FEHB coverage to enroll in a Medicare risk or cost contract under Section 1876 of the Social Security Act, under current regulations, annuitants cannot (except under very limited circumstances) reenroll in the FEHB program once they cancel.

We believe that this proposal will result in a savings to the government and to the annuitant by eliminating duplicative premium costs. This reenrollment opportunity is *limited* to annuitants who: (1) were previously enrolled in FEHB, (2) dropped the FEHB coverage to enroll in a Medicare risk or cost plan, and (3) subsequently lost the Medicare risk or cost plan coverage due to either a move out of the plan

enrollment area or discontinuance of the plan.

**DATE:** Comments must be received on or before October 7, 1988.

**ADDRESS:** Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Bill Smith, (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** Under the FEHB law, to continue FEHB coverage after retirement, a retiring employee must have been covered by the FEHB Program for the 5 years of service immediately before retirement (or, if less than 5 years, for all periods of service during which he or she was eligible for coverage). The law requires that, to qualify for continued FEHB coverage, survivor annuitants must be covered as family members when the employee or annuitant dies. Continuous enrollment after retirement has been a requirement of the FEHB Program since its inception in 1960. At that time, the availability of other federally-sponsored health care programs for annuitants was a rarity.

Today, the Health Care Financing Administration (HCFA) of the Department of Health and Human Services offers individuals who are entitled to Part B of Medicare an opportunity to obtain comprehensive health care services from a health care organization under a Medicare risk or cost contract. Under these contracts, HCFA pays the contracting organization a monthly capitation payment (or premium) for each Medicare enrollee, and the enrollee may also pay a monthly premium. Because of this financing arrangement, an individual may be able to obtain comprehensive coverage that equals that offered under the FEHB program at a lower overall premium cost by enrolling in a Medicare risk or cost contracting organization.

Some annuitants have expressed interest in enrolling in a Medicare risk or cost contract but are reluctant to drop their FEHB coverage because they cannot (except under very limited circumstances) reenroll in the FEHB program once they cancel. Those who do enroll under a Medicare risk or cost contract and maintain their FEHB may be paying an unnecessary cost by contributing their share of premiums for FEHB coverage they do not need. This also results in an unnecessary government expenditure, since a substantial portion of each total FEHB premium is contributed by the Government. We are therefore proposing to allow annuitants who cancel their FEHB enrollment for the purpose of enrolling in a Medicare risk or cost contract under Section 1876 of the Social Security Act to reenroll in FEHB upon involuntary loss of their Medicare risk or cost contract coverage. We believe that this proposal will result in a savings to the government and to the annuitant by eliminating duplicative premium costs.

An important factor for a married annuitant who is considering enrolling in a Medicare risk or cost contract is maintaining continued health benefits coverage for his/her spouse. A spouse who is not eligible for Medicare Part B can not be covered by a Medicare risk or cost contract. If this is the case, the annuitant would need to retain FEHB coverage for the spouse (and/or children).

Annuitants' requests to their employing office to cancel their FEHB enrollment must be accompanied by a statement that they are cancelling to enroll in a plan under a Medicare risk or cost contract. The statement must provide the effective date of enrollment in the risk or cost plan. Failure to provide this statement could result in forfeiture of the opportunity to reenroll in FEHB at a later time.

In order to provide uninterrupted health benefits coverage for those annuitants who enroll in a Medicare risk or cost contract, we are proposing that the effective date of FEHB cancellation would be the day before the date the Medicare risk or cost contract coverage takes effect, as shown in the statement provided by the annuitant.

Disenrollment from the Medicare risk or cost plan results in loss of coverage under that plan. Disenrollment may be initiated either by the individual or by the plan. The *involuntary* disenrollment from a Medicare risk or cost plan, and immediate reenrollment in any FEHB plan, of an annuitant may be required or dictated by either of the circumstances described below:

—The enrollee moves out of the plan enrollment area.
—The plan discontinues or loses its Medicare risk or cost contract for any reason.

An enrolled member may also *voluntarily* disenroll from a risk or cost plan at any time for any reason. However, annuitants who voluntarily disenroll will *not* be allowed back into FEHB. Therefore, individuals who are considering dropping their FEHB enrollment should be mindful of the possible consequences of that action. For example, an individual may decide to disenroll from the Medicare risk or cost plan because their favorite doctor has left the plan. In this case, the disenrollment would be a voluntary one, and the annuitant would not be allowed to reenroll in FEHB.

In order to reenroll in FEHB, the annuitant will be responsible for notifying his/her employing office and providing documentation from the Medicare risk or cost plan confirming the date of involuntary disenrollment. The reenrollment in FEHB would take effect on the effective date of involuntary disenrollment from the plan as shown on the documentation from the plan.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they relate to Federal employees and annuitants.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.
**Constance Horner,**
*Director.*

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104.

2. Section 890.301 is amended by adding paragraph (g)(5) as follows:

**§ 890.301 Opportunities to register to enroll and change enrollments.**

* * * * *

(g) Loss of coverage under Federal programs. * * *

(5)(i) An employee annuitant who had been covered under this part since his or her first opportunity to enroll or for the 5 years immediately preceding the commencing date of annuity payments, whichever is shorter, or a survivor annuitant who had been enrolled or was otherwise eligible to enroll for coverage under this part—who cancels enrollment for the purpose of enrolling in a Medicare risk or cost contract, and is subsequently involuntarily disenrolled

from the Medicare risk or cost contract (due to either a move out of the plan area or discontinuance of the plan)—may register to reenroll in self alone or in self and family coverage under this part.

(ii) Disenrollment under paragraph (g)(5)(i) of this section provides an opportunity to reenroll in FEHB at any time beginning on the 30th day before and ending on the 31st day after the disenrollment.

* * * * *

3. In section 890.304, paragraph (d) is amended by removing the last sentence and adding the two sentences set forth below at the end of the paragraph.

**§ 890.304 Termination of enrollment.**

* * * * *

(d) *Cancellation.* * * * The cancellation of an annuitant who submits documentation that the cancellation is for the purpose of enrolling in a Medicare risk or cost contract becomes effective on the day before the enrollment under the Medicare risk or cost contract takes effect. The employee or annuitant and his or her family members are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits.

4. Section 890.306 is amended by redesignating paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

**§ 890.306 Effective dates.**

* * * * *

(h) *Reenrollment of annuitants.* The effective date of an annuitant's reenrollment under § 890.301(g)(5) is the date of disenrollment from the Medicare risk or cost plan, as shown on the documentation from the plan.

* * * * *

[FR Doc. 88-17777 Filed 8-5-88; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 931 and 932

## Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington; and Proposed Increase in Expenses for Marketing Order Covering California Olives

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule regarding fresh Bartlett pears grown in Oregon and Washington and California olives would authorize expenditures and establish an assessment rate under Marketing Order No. 931 for the 1988–89 fiscal period established for that order. The proposal is needed for the Northwest Fresh Bartlett Pear Marketing Committee established under M.O. 931 to incur operating expenses during the 1988–89 fiscal period and to collect funds during that period to pay those expenses. This would facilitate program operations. The proposal would also authorize an increase in expenditures for the California Olive Committee established under Marketing Order No. 932 for the 1988 fiscal year. This increase is needed to cover liability insurance expenses for the committee manager, members, alternates, and administrative assistant and to fund an additional production research project. Funds to administer these programs are derived from assessments on handlers.

**DATE:** Comments must be received by August 18, 1988.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Order No. 931 [7 CFR Part 931] regulating the handling of fresh Bartlett pears grown in Oregon and Washington and Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 handlers of fresh bartlett pears and seven handlers of California olives regulated under their respective marketing orders, and approximately 1,390 olive producers in California and 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of Bartlett pears may be classified as small entities. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing the anticipated expenses by the expected shipments of the commodity (i.e., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season

starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Northwest Fresh Bartlett Pear Marketing Committee met July 11, 1988, and unanimously recommended 1988–89 fiscal period expenditures of $53,800 and an assessment rate of $0.015 per western standard pear box of assessable pears shipped under M.O. 931. In comparison, 1987–88 fiscal period budgeted expenditures were $56,656 and the assessment rate was the same as recommended for the 1988–89 fiscal period. The proposed expenditures are primarily for program administration.

Assessment income for the 1988–89 fiscal period is expected to total $41,508, based on the shipment of 2,767,200 packed boxes of pears. Other available funds include a reserve of $51,468 carried into this fiscal period, and $1,500 in miscellaneous income primarily from interest bearing accounts.

A final rule establishing expenses in the amount of $1,620,350 for the California Olive Committee for the fiscal year ending December 31, 1988, was published in the **Federal Register** on February 2, 1988 [53 FR 2824]. That action also fixed an assessment rate of $23.92 per ton of assessable olives shipped under M.O. 932 to be levied on handlers during the 1988 fiscal year, ending December 31, 1988.

At a meeting held on July 6, 1988, the California Olive Committee voted unanimously to increase its budget of expenses from $1,620,350 to $1,627,482. The proposed increase is needed to cover the premiums for liability insurance for the committee's manager, members, alternates, and administrative assistant, and to fund an additional production research project to be started during the 1988 fiscal period.

No change in the assessment rate was recommended by the committee. Adequate funds are available to cover any increase in expenses resulting from this proposal.

While the expenses and assessment rate proposed under M.O. 931 and the increase in expenses proposed under M.O. 932 would impose some additional costs on Bartlett pear and olive handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is further found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program and the budget increase for the olive program need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

**List of Subjects**

*7 CFR Part 931*

Marketing agreements and orders, Bartlett pears, Oregon, and Washington.

*7 CFR Part 932*

Marketing agreements and orders, Olives, California.

For the reasons set forth in the preamble, it is proposed that a new § 931.223 be added and that § 932.222 be amended as follows:

1. The authority citation for 7 CFR Parts 931 and 932 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 931.223 is added to read as follows:

**PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON**

**§ 931.223 Expenses and assessment rate.**

Expenses of $53,800 by the Northwest Fresh Bartlett Pear Committee are authorized, and an assessment rate of $0.015 per western standard pear box of assessable pears is established, for the fiscal period ending June 30, 1989. Unexpended funds from the 1988–89 fiscal period may be carried over as a reserve.

3. Section 932.222 is amended as follows:

**PART 932—OLIVES GROWN IN CALIFORNIA**

**§ 932.222 [Amended]**

Section 932.222 is amended by changing "$1,620,350" to "$1,627,482".

Dated: August 3, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–17791 Filed 8–5–88; 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 1126**

**[DA–88–114]**

**Milk in the Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal that would continue, for the months of August 1988 through July 1989, a suspension of portions of the pool plant and producer milk definitions of the Texas order. The continuation of the suspension was requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market.The requested action would continue the suspension of the 60-percent delivery standard for pooling cooperative association plants, the limitation on the types of pool plants at which milk receipts are used to determine the amount of milk that a cooperative may divert to nonpool plants, and the limits on the amount of milk that a pool plant operator may divert to nonpool plants. In addition, the cooperatives have requested that the shipping standards for pooling supply plants under the order, and the individual producer performance standards that must be met to be eligible to be diverted to a nonpool plant, also be suspended for August 1988 through July 1989. The cooperatives contend that the action is necessary to give handlers the flexibility to dispose of the market's increasing milk supplies without engaging in uneconomic movements of milk solely for the purpose of insuring that dairy farmers who have historically supplied the fluid milk needs of the market would continue to have their milk pooled and priced under the order.

**DATE:** Comments are due on or before August 15, 1988.

**ADDRESS:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the

impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executiv Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of August 1988 through July 1989:

1. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13, paragraph (e)(1).

4. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;"

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include August in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed action would continue, for the months of August 1988 through July 1989, a suspension of portions of the pool plant and producer milk definitions of the Texas order. Specifically, the action would continue the suspension of the 60-percent delivery standard for pool plants operated by cooperative associations, the restriction on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants, and the limits on the amount of milk that a pool plant operator may divert to nonpool plants. In addition, the action would, for the same time period, suspend the shipping standards that must be met by supply plants to be pooled under the order and the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order provides for pooling a cooperative association plant located in the marketing area if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. Also, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received at pool distributing and supply plants during the month. In addition, the order provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The suspension would inactivate the 60-percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant. Such provisions were suspended during March–July 1988.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested suspension would remove these performance standards during August 1988 through July 1989 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The suspension would remove these requirements.

The continuation of the current suspension, as well as the additional suspension of the supply plant and producer performance standards, were requested by two cooperative associations (Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.) that represent a substantial proportion of the dairy farmers who supply the Texas market. Associated Milk Producers operates supply-balancing plants that are pooled under the order and Mid-America operates a supply plant in southwestern Missouri that has historically been pooled under the Texas order. The cooperatives contend that the suspension is necessary because of increasing production by Texas dairy farmers. The cooperatives indicate that the supplies of milk are more than ample to meet fluid milk needs and that significant quantities of milk will have to be shipped to nonpool plants for use in manufactured dairy products. In addition, because of increases in production by Texas dairy farmers, the cooperatives contend that it is unlikely that additional supplies of milk from southwestern Missouri would be necessary to meet fluid milk needs. Because of the increasing production, the cooperatives contend that the suspension is necessary to give handlers the flexibility to dispose of excess milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the Texas market.

In view of the foregoing, it may be appropriate to suspend the aforementioned provisions of the Texas order.

**List of Subjects in 7 CFR Part 1126**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1126 continues to read as follows:

**Authority:** Sec. 1–19, Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on August, 3, 1988.

**L.P. Massaro**

*Acting Administrator.*

[FR Doc. 88–17845 Filed 8–5–88; 8:45 am]

BILLING CODE 3410-02-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

### Disaster Loans

**AGENCY:** Small Business Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The first rule proposed here would amend the disaster loan regulation, 13 CFR Ch. I, Part 123, by authorizing SBA to establish a flexible repayment schedule during the first two years of a disaster loan, reflecting the borrower's ability to pay. At present, equal monthly payments of principal and interest are required beginning five months from the date of the note, except for borrowers with seasonal or fluctuating income. The other rule proposed here would harmonize SBA's disaster loan making authority with the Federal Emergency Management Administration's (FEMA) standard flood insurance policy. FEMA's policy bars compensation for damage to or loss of a building and its contents, located seaward of mean high tide, or entirely in, on or over water if such building was constructed or substantially improved on or after October 1, 1982. Because SBA does not make disaster loans on property located in special flood hazard areas unless the property is covered by flood insurance (if available), SBA proposes to bar such structures from disaster loan eligibility, if constructed or substantially improved on or after the effective date of this regulation, unless there is a business need for that specific location.

**DATE:** Comments must be received on or before October 7, 1988.

**ADDRESS:** Written comments, in duplicate, may be sent to Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, (202) 653–6879.

**SUPPLEMENTARY INFORMATION:** The first amendment to SBA's disaster regulations proposed here would authorize a departure from the standard repayment schedule, which requires equal monthly payments of principal and interest, beginning five months after the date of the note, and permits a choice of different payment terms only if the borrower can show a seasonal or fluctuating income flow. There are, however, other circumstances in which it is desirable to accommodate a borrower's individual needs. For example, a borrower may have limited repayment ability, due to the need to satisfy a major debt. However, within two years or sooner that debt will be satisfied and repayment ability can be expected to increase. The converse situation, that a disaster loan borrower would want to pay off more of the loan at an earlier time, is also conceivable; for example, where the borrower is committed to retire. Under the proposed rule, in cases of a definite change in the borrower's circumstances, SBA could authorize a payment plan tailored to the borrower's ability to make payments. This departure from the standard payment schedule would be authorized during the first two years of the note, because for longer periods events are difficult to predict. Accordingly, § 123.9(a) would be revised to permit accommodation of a borrower's individual needs during the first two years of repayment, notwithstanding the absence of a showing of seasonal or fluctuating income.

The other amendment proposed here is geared to FEMA's Standard Flood Insurance Policy, 44 CFR Part 61, Appendix A (2) (1987). That policy excepts from its coverage

B. A building, and its contents, located entirely in, on, or over water, or seward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

"Substantial improvement" is defined in FEMA's regulations. Briefly summarized, that definition considers as substantial improvement any repair or improvement of a structure if the work costs at least 50% of the market value of the structure either before the improvement, or—if damaged—before such damage, not including any improvement to bring the structure "up to Code" or any alteration of a historic structure. For the complete definition, see 44 CFR Ch. 1, 59.1 (1987). SBA regulations implementing the National Flood Insurance Act Program, 13 CFR Ch. I, Part 116, Subpart B (1988), require flood insurance before financial assistance for acquisition or construction purposes in FEMA-designated special flood hazard areas, if such insurance has been made available under the National Flood Insurance Act of 1968, 42 U.S.C. 4011, 4012(a). In line with the Congressional purpose that "any Federal assistance . . . will be related closely to all flood-related programs . . . of the Federal Government" and "to guide the development of proposed future construction * * * away from locations which are threatened by flood hazards," 42 U.S.C. 4001(c) (2) and (4), SBA proposes to exclude from disaster loan eligibility those same structures excluded from FEMA's insurance coverage. Accordingly, a new paragraph would be added to § 123.14 which would track closely FEMA's exclusionary language, adapted to business needs and the giving of public notice.

**Executive Order 12291, Regulatory Flexibility and Paperwork Management**

SBA has determined that the rule changes proposed here woud not constitute a major rule for the purposes of Executive Order 12291, since the annual effect of this rule on the national economy cannot attain $100 million. In this regard, SBA estimates (based on F/Y 1988 to date) that the flexible repayment rule may affect an aggregate loan volume of $13.2 million, and the flood insurance rule $1.35 million. Also, these proposed rules, if adopted, would not result in a major increase in costs or prices to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will have no significant effects on competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this proposal, if promulgated in final form, may have a significant economic impact on a substantial number of small entities. It is estimated that approximately 800 out of approximately 15,000 disaster loan borrowers (roughly 5.3%) will benefit economically from the flexible repayment plan, and that about 100 disaster loan applicants will be affected by the flood insurance rule. The following analysis of those provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

The reasons why these proposal are under consideration, and their purposes are as follows:

The proposal to authorize fluctuating payments during the first two years of a disaster loan is designed to give greater

flexibility to SBA's loan officers and disaster loan borrowers where rigid adherence to a requirement of equal monthly payments of principal plus interest may adversely affect the borrower's financial situation, require a denial of the loan, or require a longer payout period. Since the purpose of SBA's disaster assistance is remedial, close attention to a disaster victim's individual circumstances is preferable to adherence to standardized requirements.

The proposal to remove structures surrounded by water from disaster loan eligibility is prompted by the statutory requirement that all Federal flood assistance programs follow integrated policies. Specifically, recognizing that the various kinds of Federal assistance available in the event of flood damage

are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities [42 U.S.C. 4002(a)(2)],

it is incongruous to offer disaster loan assistance for structures that, because of their location, cannot be covered by FEMA flood insurance, if no business need for such location exists. SBA's loan program for flood disasters should harmonize with, rather than defeat, national flood disaster policy objectives.

The legal authority for these proposed rule changes is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

SBA estimates that the proposal to offer flexible payment terms during the first two years of a disaster loan will benefit 800 disaster victims, out of an average annual disaster loan volume of 15,000 loans. The proposal to bar structures surrounded by water is estimated to affect 100 such structures each year.

There are no additional reporting, recordkeeping and other compliance requirements inherent in these proposed rules which would come under the Paperwork Reduction Act. 44 U.S.C. Chapter 35. There are no federal rules which duplicate, overlap or conflict with these proposed rules; SBA views its policy to harmonize its disaster assistance policy with FEMA's as supplementing rather than duplicating FEMA's rule. There are no significant alternate means to accomplish the objectives of these proposed rules.

**List of Subjects in 13 CFR Part 123**

Disaster assistance—Loan programs/business—Small Business Administration—Small businesses.

For the reasons set out in the preamble, Part 123 of Ch. I, Title 13, Code of Federal Regulations is proposed to be amended as follows:

**PART 123—[AMENDED]**

1. The authority citation for Part 123 continues to read as follows:

**Authority:** Secs. 5(b)(6), 7(b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636(b), (c), (f); Pub. L. 98–270, Title III; Pub. L. 99–272, Sec. 18006.

**§ 123.9 [Amended]**

2. Section 123.9 (a) is proposed to be revised as follows:

(a) *Loan terms.* No loans made under this part, including renewals and extensions thereof, may be authorized for a term in excess of thirty years (see also § 123.13(b)), and no physical disaster loan made to a business able to obtain Credit Elsewhere (as defined in § 123.3) may be authorized for a term exceeding three years. Repayment ability shall be determined by SBA. Maturity and installment terms shall be established on each loan on the basis of the borrower's need and ability to pay. In most cases equal montly installment payments of principal and interest, beginning five months from the date of the note, are required, but other payment terms may be accorded borrowers with seasonal or fluctuating income and installment payments of varying amounts over the first two years of the loan may be agreed upon if SBA determines that such schedule better reflects the borrower's ability to pay. There is no penalty for prepayment of a direct loan.

3. Section 123.14 is proposed to be amended by redesignating paragraphs (c) and (d), respectively, as paragraphs (d) and (e), and adding a new paragraph (c) to read as follows:

**§ 123.14 [Amended]**

* * * * *

(c) *Buildings ineligible for flood insurance.* No loans under this part shall be made to an applicant for losses sustained to a building, and its contents, located seaward of mean high tide, or entirely in, on or over water, without a business need therefor, if such building was newly constructed or substantially improved on or after [the effective date of this regulation]. "Substantial improvement" shall have the same meaning as the definition in 44 CFR Ch. 1, 59.1 (1987).

* * * * *

(Catalog of Federal Domestic Assistance, Numbers 59002, Economic Injury Disaster Loans; 59.008, Physical Disaster Loans]

Dated: July 19, 1988.

James Abdnor,

*Administrator.*

[FR Doc. 88–17711 Filed 8–5–88; 8:45 am]

BILLING CODE 8025–01–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88–NM–93–AD]**

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require replacement of aluminum nose landing gear actuator support fittings. This proposal is prompted by numerous reports of nose landing gear support fitting failures and one recent incident of nose gear collapse on landing. This condition, if not corrected, could lead to failure of the nose landing gear due to inability to achieve a down and locked position.

**DATES:** Comments must be received no later than September 28, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–93–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara J. Mudrovich, Airframe Branch, ANM–120S; telephone (206) 431–1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–93–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**Discussion**

There have been 27 reported failures of the nose landing gear actuator support fitting on Boeing Model 737 series airplanes. The most recent failure caused collapse of the nose gear upon landing. Investigation has revealed that failure of the fitting is due to fatigue.

The fitting was originally made of 7079–T6 aluminum, changed to 7075–T73 aluminum at line number 126, and changed to 4340 steel at line number 447. No cracks have been reported in the steel fittings. Failure of this fitting may lead to the inability to obtain a down and locked nose gear and subsequent collapse upon landing.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of aluminum nose landing gear fittings with the steel fittings currently used in production by the manufacturer.

It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts are estimated to be $3,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $664,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Boeing:** Applies to Model 737 series airplanes, line numbers 1 through 446, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Replace the aluminum nose gear actuator support fitting with steel fitting P/N 65C34095–2, in accordance with the drawing contained in Boeing Kit Number 65C34095.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC on July 29, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88–17762 Filed 8–5–88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88–NM–89–AD]**

**Airworthiness Directives; Boeing Model 757 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require modification of the wing and body duct leak detection system. This proposal is prompted by reports that operators have experienced duct leak detection from the right pneumatic air duct leak detection system when a significant leak had actually developed in the left pneumatic duct. This condition, if not corrected, could result in the flight crew switching off the inappropriate bleed system, causing loss of all air inflow and airplane depressurization.

**DATES:** Comments must be received no later than September 28, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional

Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-89-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**
Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-89-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**Discussion**

Several operators of Boeing Model 757 airplanes have reported that leaks developing in the left pneumatic duct have been sensed by the right duct leak detection system sensors, resulting in the right duct leak caution light illuminating and the Engine Indication and Crew Alerting System (EICAS) displaying a RIGHT DUCT LEAK caution message. Since the pilot procedure recommended when a duct leak is indicated is to turn off the affected bleed system, this situation resulted in loss of airflow from both the left and right bleed systems. This condition, if not corrected, could lead to loss of all cabin air inflow and airplane depressurization.

The FAA has reviewed and approved Boeing Service Bulletin 757-26-0016, dated May 5, 1988, which describes modification of the wing and body duct leak detection system by relocating the duct leak sensing elements to preclude erroneous duct leak sensing.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the wing and body duct leak detection system in accordance with the service bulletin previously mentioned.

It is estimated that 103 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Cost for parts is estimated to be $217 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $88,271.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**§ 39.13 [Amended]**

**Boeing:** Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-26-0016, dated May 5, 1988, certificated in any category. Compliance required within the next 15 months after the effective date of this AD, unless previously accomplished.

To prevent depressurization due to loss of all bleed air inflow following crew action based on an erroneous duct leak indication, accomplish the following:

A. Modify the wing and body duct leak detection system in accordance with Boeing Service Bulletin 757-26-0016, dated May 5, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on July 29, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88-17760 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 88-NM-92-AD]**

## Airworthiness Directives; Fokker Model F-27 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to Fokker Model F-27 series airplanes, which would require a one-time inspection of the main landing gear torque links, and repair, if necessary. This proposal is prompted by reports of a number of torque links that were improperly machined during manufacture. This condition, if not corrected, could lead to jamming of the main landing gear in a position other than full extension.

**DATE:** Comments must be received no later than September 28, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-92-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-92-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Fokker Model F-27 series airplanes.

The manufacturer has reported that a number of main landing gear torque links were improperly machined during manufacture. This condition, if not corrected, could lead to possible jamming of the main landing gear (MLG) in a position other than extension.

Fokker has issued Service Bulletin F27/32-157, dated December 18, 1987, which describes a one-time inspection of the MLG torque links, and repair, if necessary, in accordance with Dowty Rotol Service Bulletins 32-49SW, 32-82S and 32-161B. The RLD has classified this service bulletin as mandatory.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a one-time inspection of the MLG torque links, and repair, if necessary, in accordance with the Fokker service bulletin previously mentioned.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,040.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Fokker:** Applies to Model F-27 series airplanes, Serial Numbers 10102 to 10692, inclusive, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of the main landing gear, accomplish the following:

A. Within 90 days after the effective date of this AD, perform a one-time inspection of the main landing gear torque links, and repair, if necessary, in accordance with Fokker Service Bulletin F27/32-157, dated December 18, 1987.

**Note.**—Fokker Service Bulletin F27/32–157, dated December 18, 1987, references Dowty-Rotol Service Bulletins 32–49SW, 32–82S, and 32–161B for procedures for the inspection and repair.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspection and modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on July 29, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88–17761 Filed 8–5–88; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

### 15 CFR Part 600

### Fair Credit Reporting Act; Statements of General Policy or Interpretation; Proposed Official Commentary

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed interpretations (official commentary).

**SUMMARY:** The Federal Trade Commission ("Commission") is proposing to revise its statements of general policy or interpretations under the Fair Credit Reporting Act ("FCRA"). The basic purpose of the FCRA is to insure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy. The Commission believes that prior Commission and staff interpretations should be streamlined and updated. The Commission proposes to remove the existing interpretations currently appearing in Part 600 and add an Appendix containing an official commentary. A primary purpose of the Commentary is to interpret the FCRA in a manner that gives effect to Congressional intent. Comments are sought on the Commentary which may have a substantial impact on the consumer reporting industry, consumer report users, and consumers.

**DATE:** Comments must be received on or before October 7, 1988.

**ADDRESS:** Comments should be addressed to: David G. Grimes, Jr., Division of Credit Practices, Federal Trade Commission, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Clarke Brinckerhoff, FCRA Program Advisor, (202) 326–3208, David G. Grimes, Jr., Attorney, (202) 326–3171.

**DATES:** Comments on the paperwork reduction implications of the Commentary must be submitted to the address immediately below on or before September 7, 1988.

**ADDRESS:** Send paperwork comments to Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the Request for OMB Review under the Paperwork Act may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Fair Credit Reporting Act (Pub. L. 91–508, 84 Stat. 1127–36, 15 U.S.C. 1681–81t, sometimes referred to as the "FRCA"), enacted on October 26, 1970, and effective on April 24, 1971, is the first Federal regulation of the consumer reporting industry. This industry is comprised mostly of credit bureaus, investigative reporting companies, and other organizations that regularly gather and report information about consumers for use by others in making decisions concerning those consumers, including credit transactions, insurance underwriting, or employment.

The FCRA's basic purpose is to insure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy. The law requires that the manner in which consumers reporting agencies provide information be fair and equitable to the consumer with regard to the confidentiality, accuracy, and proper use of such information.

The FCFRA requires consumer report users to inform consumers when adverse action is taken concerning credit, insurance or employment on the basis of such reports. Such a user must also identify the consumer reporting agency making the report.

The FCRA gives the Federal Trade Commission primary responsibility for enforcing its provisions, by exercising its functions and powers under the Federal Trade Commission Act. Although the Commission has taken formal action against a number of consumer report providers and users, significant staff enforcement activity has involved issuance of informal staff interpretations, contained in the staff's "Compliance with the Fair Credit Reporting Act" manual (Compliance Manual), and in approximately 350 informal staff opinion letters responding to consumer and industry inquiries. The Commission has also issued eight formal interpretations of the FCRA (at 16 CFR 600.1–600.8), pursuant to § 1.73 of the Commission's Rules (16 CFR 1.73). Some of the opinions have been superseded or overruled by subsequent staff interpretations, while others reflect a reading of the statute that the Commission now believes is either consistent with the FCRA legislative history or inappropriate in light of subsequent experience.

The Commission believes that prior Commission and staff interpretations should be streamlined and brought up-to-date by promulgation of a Commission Commentary on the FCRA. In preparing the proposed Commentary, the Commission resolved inconsistencies in prior interpretations, discarded those that it believes may not be supported by the FCRA or that merely paraphrase it, and summarized the remaining interpretations in the Commentary. The proposed Commentary incorporates the Commission's position concerning the issues dealt with in the current eight formal interpretations, which would be withdrawn upon the Commission's adoption of the Commentary. The interpretations in the Commentary are not trade regulation rules or regulations, and, as provided in § 1.73 of the Commission's Rules, they do not have the force or effect of statutory provisions.

A primary purpose of the Commentary is to interpret the FCRA in a manner that gives effect to Congressional intent. In addition, the Commission hopes that adopting a commentary format for interpetations will enhance the document's usefulness in three major respects:

First, the Commentary's consolidation of all interpretations in a single document will enable interested parties to resolve their questions more easily

Second, the Commentary will present more comprehensive interpretations of the FCRA's provisions. A number of previous interpretations were limited to

specific facts and were therefore useful only to parties in very similar situations. Where appropriate, the Commentary explains Commission policy in terms that may be applied to a range of situations. The Commentary also attempts to provide an in-depth discussion of certain portions of the statute.

Third, the Commentary's recasting of seemingly inconsistent or inaccurate interpretations will facilitate compliance with the FCRA.

The proposed Commentary is intended to present the most useful existing interpretations in a clear and comprehensible format. The interpretations have been drafted to include only the essential elements of the principles involved to make them easy to understand, and have been organized to correspond to sections of the Act that they construe, to make them easy to locate.

**Principal Changes From Prior Views**

The following paragraphs highlight some of the issues for which the Commentary expresses views that differ either in substance or emphasis from those expressed in the current formal Commission interpretations, in the Compliance Manual, and in prior informal staff opinion letters. This list is not all-inclusive.

1. *Claims reports* (section 603(d)). The Compliance Manual and some staff interpretations have stated that a claims report—which is not normally a consumer report—can become a consumer report *ab initio*, when the insurer to which it is provided later uses the report for underwriting purposes, with the result that its provider may be considered a consumer reporting agency.

The Commentary rejects this position in situations in which the claims report provider has entered into a contract with the insurer-user that states such reports will not be used for underwriting purposes. The Commission believes that a claims reporting service should not be deemed a consumer reporting agency because of an occurrence beyond its control—a unilateral use decision by the insurer to which it provides a claims report.

2. *Prescreening* (section 604(3)(A)). The Commission's "prescreening" interpretation (16 CFR 600.5) sanctions the common process whereby a consumer reporting agency assists in the development of lists of qualified consumers to be solicited by its customers that market their products or services by direct mail. The consumer reporting agency uses the client's criteria for creditworthiness to either (1) delete names that do not qualify from a list provided by the client or (2) create a list of creditworthy individuals for solicitation. The interpretation requires that the user of the consumer reporting agency's service intend that each consumer whose name is on the list after the prescreening will receive an "offer of extension of credit from the company", in which case a permissible purpose for the service (which amounts to a series of consumer reports) is deemed to exist under section 604(3)(A) of the FCRA.

The Commentary expands the concept of prescreening to encompass the situations where (1) demographic analysis is performed in preparing the list, in addition to the traditional credit screen by the consumer reporting agency, and (2) multiple lists of consumers, who meet different creditworthiness criteria, are provided to a client that intends to make different credit offers (*e.g.*, various credit limits) to consumers, based on which criteria they meet. These changes expand the usefulness of prescreening to the clients of consumer reporting agencies, without detracting from the privacy of consumers that is protected by section 604.

3. *Welfare fraud as a permissible purpose* (section 604(3)(D)). Prior staff interpretations stated or implied that only the government office charged with *granting* a welfare benefit had a permissible purpose to obtain a consumer report in connection with welfare fraud, and/or that the permissible purpose applied only to the *initial* determination of a consumer's eligibility for the benefit.

The Commentary makes it clear that *any* public office that is charged with determining a consumer's eligibility for such a benefit can obtain a consumer report on that consumer under this section, and that it may do so to review the subject's *continuing* eligibility for the benefit, as well as to evaluate the subject's initial application. In our view, the section's provision of a permissible purpose should not be restricted by requirements not within the language of the statute.

4. *Reporting period for wage earner plans* (section 605(a)(1)). The Compliance Manual and some staff opinion letters state that wage earner plans may be reported for only seven years, rather than for the ten year reporting period provided by this subsection for reporting bankruptcies.

However, the subsection states that it applies to "cases under title 11 of the United States Code," a description that clearly includes wage earner plans, because they are covered by Chapter XIII of title 11. Thus, the Commentary concludes that wage earner plans may be reported for ten years.

5. *Reporting period for credit accounts* (section 605(a)(4)). Some staff interpretations have been unclear about the proper date from which a consumer reporting agency should measure the permissible period for reporting a credit account that is charged to profit and loss or placed for collection.

The Commentary states that the actual date the account was "charged to profit and loss" or "placed for collection" starts the seven year reporting period with respect to that event. The fact that the delinquency occurred before the charge off (or placement for collection) does not require that the date be moved back, and the occurrence of a subsequent payment on the account does not permit the date to be moved forward.

6. *Notice to consumers of reports used for purposes other than credit, employment or insurance* (section 607(b), section 615(a), FTC Act section 5). Some staff interpretations have stated that consumer report users must provide notices to consumers under circumstances not limited to the express provisions of section 615(a), which requires users to provide notice that a consumer report was used as a basis for adverse action (and provide the name and address of the consumer reporting agency) only when credit, insurance, or employment is involved. Those letters opined that landlords who refused to rent apartments, or merchants who used consumer reports as the basis for adverse actions not covered by section 615(a), were required by section 5 of the FTC Act to provide such notices. One interpretation stated that section 607(b) required consumer reporting agencies to compel such users to provide such notices, implying that the notices would generate disputes by consumers that could improve the completeness or accuracy of the agencies' reports.

The Commission believes that Congress intended to limit the number of situations for which section 615(a) requires notices to be sent, and that it is therefore not appropriate to expand the number of such situations by broadly reading section 607(b) or by invoking the Commission's authority under section 5 of the FTC Act. Thus, the Commentary rejects the previously mentioned interpretations, and concludes that (1) users need not provide such notices and (2) consumer reporting agencies need not require them to do so.

7. *Extent of consumer reporting agency duty to respond to consumer*

*"completeness" claims* (section 611). Staff opinions have been inconsistent or vague as to whether this section, which imposes requirements on consumer reporting agencies and when consumers dispute the "completeness" of items in their files, requires a consumer reporting agency to either (1) create new files or add information about unreported accounts to consumer's file upon request or (2) add to a consumer's file the consumer's statement that does not dispute the completeness or accuracy of any item, but only explains extenuating circumstances, such as ill health or a layoff, that led to credit delinquencies.

The Commentary answers both questions in the negative, stating that the section is designed to permit a consumer to dispute only the accuracy or completeness of items in the file. It takes the view that "completeness" refers only to items of information contained in a consumer's file (not the file as a whole), and that a consumer's statement solely concerning extenuating circumstances such as inability to pay obligations does not constitute a dispute of the accuracy or completeness of the information being reported.

8. *Notice of consumer report to consumers not selected for employment for which they have not applied* (section 615(a)). Staff interpretations have been inconsistent as to whether an employer must send a "section 615(a)" notice to consumers who are not selected for employment, promotion or reassignment, when they have not applied for the position.

The Commentary concludes that section 615(a) does not require that an individual who has not been selected for a position be given the notice in these circumstances, on the ground that a consumer has not been "denied" a position for which he or she never applied.

**Opportunity For Public Comment**

The Commission will accept written comments on the proposed Commentary for a period of sixty days. The Commission wishes to receive comments to aid in its consideration of the Commentary, which may have a substantial impact on the consumer reporting industry, consumer report users, and consumers. Comments may be addressed to any aspect of the Commentary, including the following:

(1) Is a commentary the most appropriate or useful format in which to communicate Commission views on the FCRA? Are members of the public (including consumer reporting agencies, insurers, employers, creditors, debt collectors, consumers, and others) more likely to rely on the Commentary than on existing Commission and staff interpretations of the Act? Why or why not?

(2) The proposed Commentary attempts to (A) eliminate interpretations that are considered to be relatively unimportant, (B) recast or correct other interpretations that appear inaccurate, or inconsistent with other more recent interpretations, and (c) restate the remaining interpretations in a more understandable format. Are the modifications made by the proposed Commentary beneficial to the industry and other members of the public? Why or why not?

(3) Are there any changes from prior Commission or staff interpretations reflected in the Commentary that you think are particularly valuable? If so, which one(s) and why?

(4) Are there any changes from prior Commisison staff interpretations that should have been made in the Commentary, but were not? If so, which one(s) and why?

(5) The proposed Commentary requires that a firm offer of credit be made to consumers who have been "prescreened" by a consumer reporting agency. (Comment 6 to section 604(3)(A); 16 CFR 600.5) Would sending an application or general advertising, instead of an offer, be consistent with the FCRA and its legislative history? Specifically, would it be appropriate for the Commission to permit prescreening as long as the user of the service will send consumers on the final list an application for credit, or to otherwise liberalize its interpretation? Why or why not?

(6) The user of an investigative consumer report must send the subject of the report a notice stating that the report being prepared will include information as to the individual's character, general reputation, personal characteristics, and mode of living (whichever are applicable), and that he or she has the right to request a complete and accurate disclosure of the nature and scope of the investigation. The proposed Commentary takes the position that this notice must also state that the report will involve personal interviews with sources such as neighbors, friends, and associates of the consumer. (Comment 6 to section 606; *National Indemnity Co.*, 92 F.T.C. 416, 428, 431 (1978)) Would notices that do not include this additional language be consistent with the FCRA and its legislative history? Is the additional language in any way burdensome? Specifically, would it be appropriate for the Commission to require only that the notice include the items specifically set forth in section 606? Why or why not?

(7) Some of users of consumer reports have both permissible and impermissible purposes for using those reports. A law firm or a detective agency may thus be able to procure reports for some purposes but not others. The proposed Commentary states that in those circumstances a separate certification must be made for each report that is ordered, and no general certifications are permitted. (Comment 2C to section 607; *Credit Data Northwest*, 86 F.T.C. 389, 391, 395 (1975), *Credit Bureau of Columbus*, 81 F.T.C. 938, 940, 944 (1972), *Credit Bureau of Lorain*, 81 F.T.C. 381, 382, 384 (1972)). Is this requirement too restrictive, How burdensone (if at all) is the requirement that each report be certified separately, How does the certification process work in practice? Specifically, would it be appropriate for the Commission to permit consumer reporting agencies to rely on a general certification from such users (as is permitted for users such as creditors or insurers, which typically only have permissible purposes) or to use some other procedure (such as a general certification, combined with periodic audits) to ensure that a "mixed purpose" user obtains reports only for permissible purposes? Why or why not?

(8) Will any part of the Commentary as presently drafted impose unnecessary burdens on industry or cause unnecessary injury to consumers. If so, which part(s) and why?

(9) Are there aspects of FCRA compliance not addressed in the proposed Commentary that should be addressed at this time? If so what are they?

**Review Under the Regulatory Flexibility Act**

Pursuant to section 605 of the Regulatory Flexibility Act it is hereby certified that the proposed statements of general policy or interpretations will not have a significant impact on a substantial number of small entities within the meaning of the Act. They are not trade regulation rules or regulations and the proposal would not cause a significant increase in compliance burdens on a substantial number of small entities.

**Review Under the Paperwork Reduction Act**

Because the Commentary may involve the "collection of information" as defined in 5 CFR 1320.7(c), it has been submitted to OMB for review under the Paperwork Reduction Act. The supporting Statement accompanying that submission includes an estimate that, if the Commentary is issued in final

form, the public may spend some 1000 hours per year studying its contents Although the Commentary will likely *reduce* the amount of time and effort spent determining compliance obligations imposed by the FCRA, publication of the document will lead the public to spend some time and effort studying it that obviously would not take place unless it is issued. The time and effort spent reviewing the document will fall primarily on the credit reporting industry and the lawyers who advise it.

**List of Subjects in 16 CFR Part 600**

Credit, Trade practices.

Pursuant to 15 U.S.C. 1681s and 16 CFR 1.73, the Commission hereby proposes to revise 16 CFR Part 600 to read as follows:

## PART 600—STATEMENTS OF GENERAL POLICY OR INTERPRETATIONS

Sec.

600.1 Authority and purpose.
600.2 Legal effect.
Appendix—Commentry on the Fair Credit Reporting Act

**Authority:** 15 U.S.C. 1681s; and 16 CFR 1.73.

### § 600.1 Authority and purpose.

(a) *Authority.* This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act, Pub. L. 91–508, approved October 26, 1970, 84 Stat. 1127–36 (15 U.S.C. 1681 *et seq*).

(b) *Purpose.* The purpose of this part is to clarify and consolidate statements of general policy or interpretations in a commentary in the Appendix to this part. The Commentary will serve as guidance to consumer reporting agencies, their customers, and consumer representatives. The Fair Credit Reporting Act requires that the manner in which consumer reporting agencies provide information be fair and equitable to the consumer with regard to the confidentiality, accuracy, and proper use of such information. The Commentary will enable interested parties to resolve their questions more easily, present a more comprehensive treatment of interpretations and facilitate compliance with the Fair Credit Reporting Act in accordance with Congressional intent.

### § 600.2 Legal effect.

(a) The interpretations in the Commentary are not trade regulation rules or regulations, and, as provided in § 1.73 of the Commission's rules, they do not have the force or effect of statutory provisions.

(b) The regulations of the Commission relating to the administration of the Fair Credit Reporting Act are found in Subpart H of 16 CFR Part 1 (§§ 1.71–1.73).

### Appendix—Commentary on the Fair Credit Reporting Act [1]

*Introduction*

1. *Official status.* This Commentary contains interpretations of the Federal Trade Commission (Commission) of the Fair Credit Reporting Act (FCRA). It is a guideline intended to clarify how the Commission will construe the FCRA in light of Congressional intent as reflected in the statute and its legislative history. The Commentary does not have the force or effect of regulations or statutory provisions, and its contents may be revised and updated as the Commission considers necessary or appropriate.

2. *Status of previous interpretations.* The Commentary primarily addresses issues discussed in the Commission's earlier formal interpretations of the FCRA (16 CFR 600.1–600.8), which are hereby superseded, in the staff's manual entitled "Compliance With the Fair Credit Reporting Act" (the current edition of which was published in May 1973, and revised in January 1977 and March 1979), and in informal staff opinion letters responding to public requests for interpretations, and it also reflects the results of the Commission's FCRA enforcement program. It is intended to synthesize the Commission's views and give clear advice on important issues. The Commentary sets forth some interpretations that differ from those previously expressed by the Commission or its staff, and is intended to supersede all prior formal Commission interpretations, informal staff opinion letters, and the staff manual cited above.

3. *Statutory references.* Reference to several different provisions of the FCRA is frequently required in order to make a complete analysis of an issue. For various sections and subsections of the FCRA, the Commentary discusses the most important and common overlapping references under the heading "Relation to other (sub)sections." FTC has set out excerpts of FCRA for the convenience of the public.

4. *Issuance of staff interpretations.* The Commission will revise and update the Commentary as it deems necessary, based on the staff's experience in responding to public inquiries about, and enforcing, the FCRA. The Commission welcomes input from interested industry and consumer groups and other public parties on the Commentary and on issues discussed in it. Staff will continue to respond to requests for informal staff interpretations. In proposing revisions of the Commentary, staff will consider and, where appropriate, recommend that the Commentary incorporate issues raised in correspondence and other public contacts, as well as in connection with the Commission's enforcement efforts. Therefore, a party may raise an issue for inclusion in future editions of the Commentary without making any formal submission or request to that effect. However, requests for formal Commission interpretations of the FCRA may also still be made pursuant to the procedures set forth in the Commission's Rules (16 CFR 1.73).

5. *Commentary citations to FCRA.* The Commentary should be used in conjunction with the text of the statute. In some cases, the Commentary includes an abbreviated description of the statute, rather than the full text, as a preamble to discussion of issues pertaining to various sections and subsections. These summary statements of the law should not be used as a substitute for the statutory text.

*Section 601 Short Title*

"This title may be cited as the Fair Credit Reporting Act."

The Fair Credit Reporting Act (FCRA) is Title VI of the Consumer Credit Protection Act, which also includes other Federal statutes relating to consumer credit, such as the Truth in Lending Act (Title I), the Equal Credit Opportunity Act (Title VII), and the Fair Debt Collection Practices Act (Title VIII).

*Section 602 Findings and Purpose*

Section 602 recites the Congressional findings regarding the significant role of consumer reporting agencies in the nation's financial system, and states that the basic purpose of the FCRA is to require consumer reporting agencies to adopt reasonable procedures for providing information to credit grantors, insurers, employers and others in a manner that is fair and equitable to the consumer with regard to confidentiality, accuracy, and the proper use of such information.

*Section 603 Definitions and Rules of Construction*

Section 603)a) states that "definitions and rules of construction set forth in this section are applicable for the purposes of this title." Section 603(b) defines "person" to mean "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency or other entity."

[1] The quoted material contained in this Appendix is from the Fair Credit Reporting Act (Pub. L. 91–508, 84 Stat. 1127–36, 5 U.S.C 1681–811).

1. Relation to Other Sections

Certain "persons" must comply with the Act. The term "consumer reporting agency" is defined in section 603(f) to include certain "persons." Section 619 subjects any "person" who knowingly and willfully obtains information from a consumer reporting agency on a consumer under false pretenses to criminal sanctions. Requirements relating to report users apply to "persons." Section 606 imposes disclosure obligations on "persons" who obtain investigative reports or cause them to be prepared. Section 615(c) uses the term "person" to denote those subject to disclosure obligations under sections 615(a) and 615(b).

2. Examples

The term "person" includes universities, creditors, collection agencies, insurance companies, private investigators, and employers.

Section 603(c) defines the term "consumer" to mean "an individual."

1. Relation to Other Sections

The term "consumer" denotes an individual entitled to the Act's protections. Consumer reports, as defined in section 603(d), are reports about consumers. A "consumer" is entitled to obtain disclosures under section 609 from consumer reporting agencies and to take certain steps that require such agencies to follow procedures in section 611, concerning disputes about the completeness or accuracy of items of information in the consumer's file. Disclosures required under section 606 by one procuring an investigative report must be made to the "consumer" on whom the report is sought. Notifications required by section 615 must be provided to "consumers." A "consumer" is the party entitled to sue for willful noncompliance (section 616) or negligent noncompliance (section 617) with the Act's requirements.

2. General

The definition includes only a natural person. It does not include artificial entities (*e.g.*, partnerships, corporations, trusts, estates, cooperatives, associations) or entities created by statute (*e.g.*, governments, governmental subdivisions or agencies).

Section 603(d) defines "consumer report" to mean "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarilly for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under Section 604" (with three specific exclusions).

1. Relation to "Consumer Reporting Agency."

To be a "consumer report," the information must be furnished by a "consumer reporting agency" as that term is defined in section 603(f). Conversely, the term "consumer reporting agency" is restricted to persons that regularly engage in assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing "consumer reports" to third parties. In other words, the term "consumer reporting agency" in section 603(f) and "consumer report" in section 603(d)) are mutually dependent and must therefore be construed together. For example, information is not a "consumer report" if the person furnishing the information is clearly not a "consumer reporting agency" (*e.g.*, if the person furnishing the information does not regularly furnish such information for monetary fees or on a cooperative nonprofit basis).

2. Relation to the Applicability of the Act

If a report is not a "consumer report," then the Act does not usually apply to it.[2] For example, because a commercial credit report is not a report on a consumer, it is not a "consumer report". Therefore, the user need not notify the subject when taking adverse action, and the provider need not omit "obsolete" information, as would be required if the Act applied.

3. Report Concerning a "Consumer's" Attributes and History

A. *General.* A "consumer report" is a report on a "consumer" to be used for certain purposes involving that "consumer."

B. *Artificial entities.* Reports about corporations, associations, and other collective entities are not consumer reports, and the Act does not apply to them.

C. *Reports on businesses for business purposes.* Reports used to determine the eligibility of a business, rather than a consumer, for certain puroses, are not consumer reports and the Act does not apply to them, even if they contain information on individuals.

[2] However, a creditor denying a consumer's application based on a report from a "third party" must give the disclosure required by section 615(b).

4. "(C)redit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. . . ."

A. *General.* To be a "consumer report," the information must bear on at least one of the seven characteristics listed in this definition.

B. *Credit guides.* Credit guides are listings, furnished by credit bureaus to credit grantors, that rate how well consumers pay their bills. Such guides are a series of "consumer reports," because they contain information which is used for the purpose of serving as a factor in establishing the consumers' eligibility for credit. However, if they are coded (by identification such as social security number, driver's license number, or bank account number) so that the consumer's identity is not disclosed, they are not "consumer reports" until decoded. (See discussion of uncoded credit guides under section 604(3)(A), item 8 *infra.*)

C. *Motor vehicle reports.* Motor vehicle reports are distributed by state motor vehicle departments, generally to insurance companies upon request, and usually reveal a consumer's entire driving record, including arrests for driving offenses. Such reports are consumer reports when they are sold by a Department of Motor Vehicles for insurance underwriting purposes and contain information bearing on the consumer's "personal characteristics," such as arrest information. The Act's legislative history indicates Congress intended the Act to cover mutually beneficial exchanges of information between commercial enterprises rather than between governmental entities. Accordingly, these reports are not consumer reports when provided to other governmental authorities involved in licensing or law enforcement activities. (See discussion titled "State Departments of Motor Vehicles," under section 603(f), item 10 *infra.*)

D. *Consumer lists.* A list of the names of creditworthy individuals, or of individuals on whom credit bureaus have derogatory information, is a series of "consumer reports" because the information bears on credit worthiness.

E. *Public record information.* A report solely of public record information is not a "consumer report" unless that information bears on at least one of the seven characteristics listed in the definition. Public record information relating to records of arrest, or the institution or disposition of civil or criminal proceedings, bears on one or more of these characteristics.

F. *Name and Address.* A report consisting of the consumer's name and address alone, with no connotations as to credit worthiness or other characteristics, does not constitute a "consumer report," because it does not bear on any of the seven factors.

G. *Rental characteristics.* Reports about rental charateristics (*e.g.*, consumers' evictions, rental payment histories, treatment of premises) are consumer reports, because they relate to character, general reputation, personal characteristics, or mode of living.

5. "(U)sed or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility * * *."

A. *Law enforcement bulletins.* Bulletins that are limited to a series of descriptions, sometimes accompanied by photographs, of individuals who are being sought by law enforcement authorities for alleged crimes are not a series of "consumer reports" because they have not been collected for use in evaluating consumers for credit, insurance, employment or other consumer purposes, and it cannot reasonably be anticipated they will be used for such purposes.

B. *Directories.* Telephone directories and city directories, to the extent they only provide information regarding name, address and phone number, marital status, home ownership, and number of children, are not "consumer reports," because the information is not used or expected to be used in evaluating consumers for credit, insurance, employment or other purposes and does not reflect on credit standing, credit worthiness, or any of the other factors. A list of names of individuals with checking accounts is not a series of consumer reports because the information does not bear on credit worthiness or any of the other factors. A trade directory, such as a list of all insurance agents licensed to do business in a state, is not a series of consumer reports because it is commercial information that would be used for commercial purposes.

C. *Use of prior consumer report in preparation.* A report that would not otherwise be a consumer report may be a consumer report, notwithstanding the purpose for which it is furnished, if it includes a prior consumer report or information from consumer report files, because it would contain some information "collected in whole or in part" for consumer reporting purposes. For example, an insurance claim report would be a consumer report if a consumer report (or information from a consumer report) were used to prepare it.

D. *Use of reports for purposes not anticipated by the reporting party.* The question arises whether a report that is not othewise a consumer report is subject to the FCRA because the recipient subsequently used the report for a permissible purpose. If the reporting party's procedures are such that it neither knows of nor should reasonably anticipate such use, the report is not a consumer report. If a reporting party has taken reasonable steps to insure that such a report is not used for an impermissible purpose, and if it neither knows of, nor can reasonably anticipate such use, the report should not be deemed a consumer report by virtue of uses beyond the reporting party's control. A reporting party might establish that it does not reasonably anticipate such use of the report by requiring the recipient to certify that the report will not be used for one of the purposes listed in section 604. (Such procedure may be compared to the requirement in section 607(a), discussed *infra*, that consumer reporting agencies furnishing consumer reports require that prospective users certify the purposes for which the information is sought and certify that the information will be used for no other purpose). For example, a claims reporting service could use such a certification to avoid having its insurance claims reports deemed "consumer reports" if the report recipient/insurer were to use the report later for "underwriting purposes" under section 604(3)(C), such as terminating insurance coverage or raising the premium.

6. "(E)stablishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family or household purposes, or (2) employment purposes, or (3) other purposes authorized under Section 604"

A. *Relation to Section 604.* Because section 603(d)(3) refers to "purposes authorized under section 604" (often described as "permissible purposes" of consumer reports), some of which overlap purposes enumerated in section 603 (*e.g.*, 603(d)(1) and 603(d)(2)), section 603 and 604 must be construed together, to determine what are "consumer reports" and "permissible purposes" under the two sections. See discussion *infra*, under section 604.

B. *Commercial credit or insurance.* A report on a consumer for credit or insurance in connection with a business operated by the consumer is not a "consumer report," and the Act does not apply to it.

C. *Insurance claims reports.* (It is assumed that information in prior consumer reports is not used in claims reports. See discussion, *supra*, in item 5–C under this subsection.) Reports obtained solely to determine the validity of insurance claims are not consumer reports, because section 604(3)(C) specifically sets forth only underwriting (not claims) as an insurance-related purpose, and section 603(d)(1) deals specifically with eligibility for insurance and no other insurance-related purposes. To construe section 604(3)(E) as including reports furnished in connection with insurance claims would be to disregard the specific language of sections 604(3)(C) and 603(d)(1).

D. *Scope of employment purpose.* A report that is used or is expected to be used or collected in whole or in part in connection with establishing an employee's eligibility for "promotion, reassignment or retention," as well as to evaluate a job applicant, is a consumer report because sections 603(d)(2) and 604(3)(B) use the term "employment purposes," which section 603(h) defines to include these situations.

E. *Bad check lists.* A report indicating that an individual has issued bad checks, provided by printed list or otherwise, to a business for use in determining whether to accept consumers' checks tendered in transactions primarily for personal, family or household purposes, is a consumer report. The information furnished bears on consumers' character, general reputation and personal characteristics, and it is used or expected to be used in connection with business transactions involving consumers.

F. *Tenant screening reports.* A report used to determine whether to rent a residence to a consumer is a consumer report, because it is used for a business transaction that the consumer wishes to enter into for personal, family or household purposes.

7. Exclusions From the Definition of "Consumer Report."

A. *"(Any) reports containing information solely as to transactions or experiences between the consumer and the person making the report;"*—(1) *Examples of sources.* The exemption applies to reports limited to transactions or experiences between the consumer and the entity making the report (*e.g.*, retail stores, hospitals, present or former employers, banks, credit unions, or universities).

(2) *Information beyond the reporting entity's own transactions or experiences with the consumer.* The exemption does not apply to reports by these entities of information beyond their own

transactions or experiences with the consumer. An example is a creditor's or an insurance company's report of the reasons it cancelled credit or insurance, based on information from an outside source.

(3) *Opinions concerning transactions or experiences.* The exemption applies to reports that are not limited to the facts, but also include opinions (*e.g.*, use of the term "slow pay" to describe a consumer's transactions with a creditor), as long as the facts underlying the opinions involve only transactions or experiences between the consumer and the reporting entity.

B. *"(A)ny authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;"*—(1) *General.* The exemption applies to a credit card issuer's communication of its decision whether or not to authorize a charge, in response to a request from a merchant or other party that the consumer has asked to honor the card.

C. *"(A)ny report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to the consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 615."*—(1) *General.* The exemption covers retailers' attempts to obtain credit for their individual customers from an outside source (such as a bank or a finance company). The communication by the financial institution of its decision whether to extend credit is not a "consumer report" *if* the retailer informs the customer of the name and address of the financial institution to which the application or contract is offered *and* the financial institution makes the disclosures required by section 615 of the Act. Such disclosures must be made only when there is a denial of, or increase in the charge for, credit or insurance. (See discussion of section 615, item 10 *infra.*)

(2) *Information included in the exemption.* The exemption is not limited to a simple "yes" or "no" response, but includes the information constituting the basis for the credit denial, because it applies to "any report."

(3) *How third party creditors can insure that the exemption applies.* Creditors, who are requested by dealers or merchants to make such specific extensions of credit, can assure that communication of their decision to the dealer or merchant will be exempt under this section from the term "consumer report," by having written agreements that require such parties to inform the consumer of the creditor's name and address and by complying with any applicable provisions of section 615.

Section 603(e) defines "investigative consumer report" as "a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer."

1. Relation to Other Sections

The term "investigative consumer report" denotes a subset of "consumer report" for which the Act imposes additional requirements on recipients and consumer reporting agencies. Persons procuring "investigative consumer reports" must make certain disclosures to the consumers who are the subjects of the reports, as required by section 606. Consumer reporting agencies must comply with section 614, when furnishing "investigative consumer reports" containing adverse information that is not a matter of public record. Consumer reporting agencies making disclosure to consumers pursuant to section 609 are not required to disclose "sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purposes."

2. General

An "investigative consumer report" is a type of "consumer report" that contains information that is both related to a consumer's character, general reputation, personal characteristics or mode of living and obtained by personal interviews with the consumer's neighbors, friends, associates or others.

3. Types of Sources Interviewed

A report consisting of information from any third party concerning the subject's character (reputation, etc.) may be an investigative consumer report because the phrase "obtained through personal interviews * * * with others" includes any source that is a third party interviewee. A report containing interview information obtained solely from the subject is not an "investigative consumer report."

4. Telephone Interviews

A consumer report that contains information on a consumer's "character, general reputation, personal characteristics or mode of living" obtained through telephone interviews with third parties is an "investigative consumer report," because "personal interviews" includes interviews conducted by telephone as well as in person.

5. Identity of Interviewer

A consumer report is an "investigative consumer report" if personal interviews are used to obtain information reported on a consumer's "character, general reputation, personal characteristics or mode of living," regardless of who conducted the interview.

6. Noninvestigative Information in "Investigative Consumer Reports"

An "investigative consumer report" may also contain noninvestigative information, because the definition includes reports, a "portion" of which are investigative reports.

7. Exclusions From "Investigative Consumer Reports"

A report that consists solely of information gathered from observation by one who drives by the consumer's residence is not an "investigative consumer report," because it contains no information from "personal interviews."

Section 603(f) defines "consumer reporting agency" as "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

1. Relation to Other Sections

A. *Duties imposed on "consumer reporting agencies."* The Act imposes a number of duties on "consumer reporting agencies." They must have permissible purposes to furnish consumer reports (section 604), avoid furnishing obsolete adverse information in certain consumer reports (sections 605, 607(a)), adopt reasonable procedures to assure privacy (sections 604, 607(a)), and accuracy (section 607(b)) of consumer reports, provide only limited disclosures to governmental agencies (section 608), provide consumers certain disclosures upon request (sections 609 and 610) at no cost or for a reasonable charge (section 612),

follow certain procedures if a consumer disputes the completeness or accuracy of any item of information contained in his file (section 611), and follow certain procedures in reporting public record information for employment purposes or when reporting adverse information other than public record information in investigative consumer reports (sections 613, 614).

B. *Relation to "consumer reports."* The term "consumer reporting agency," as defined in section 603(f), includes certain persons who assemble or evaluate information on individuals for the purpose of furnishing "consumer reports" to third parties. Conversely, section 603(d) defines the term "consumer report" to mean the communication of certain information by a "consumer reporting agency." In other words, the terms "consumer report" in section 603(d) and "consumer reporting agency" as defined in section 603(f) are defined in a mutually dependent manner and must therefore be construed together. For example, a party is not a "consumer reporting agency" if it provides only information that is excepted from the definition of "consumer report" under section 603(d), such as reports limited to the party's own transactions or experiences with a consumer, or credit information on organizations.

2. Isolated Reports

Parties that do not "regularly" engage in assembling or evaluating information for the purpose of furnishing consumer reports to third parties are not consumer reporting agencies. For example, a creditor that furnished information on a consumer to a governmental entity in connection with one of its investigations, would not "regularly" be making such disclosure for a fee or on a cooperative nonprofit basis, and therefore would not become a consumer reporting agency, even if the information exceeded the creditor's transactions or experiences with the consumer.

3. Public Record Information

A firm that regularly compiles and reports public record information about consumers for use in connection with consumer transactions is a consumer reporting agency.

4. Employment Agency

An employment agency that routinely obtains information on job applicants from their former employers and furnishes the information to prospective employers is a consumer reporting agency.

5. Information Compiled for Insurance Underwriting

A business that compiles claim payment histories on individuals from insurers and furnishes them to insurance companies for use in underwriting decisions concerning those individuals is a consumer reporting agency.

6. Private Investigators and Detective Agencies

Private investigators and detective agencies that regularly obtain consumer reports and furnish them to clients may thereby become consumer reporting agencies.

7. Collection Agencies and Creditors

Collection agencies and creditors become consumer reporting agencies if they regularly furnish information beyond their transactions or experiences with consumers for use in connection with consumers' transactions.

8. Joint Users of Consumers Reports

Entities that share consumer reports with others that are jointly involved in decisions for which there are permissible purposes to obtain the reports may be "joint users" rather than consumer reporting agencies. For example, if a lender forwards consumer reports to governmental agencies administering loan guarantee programs, or to other prospective loan insurers or guarantors, or to another creditor for use in considering a consumer's loan application at the consumer's request, the lender does not become a consumer reporting agency by virtue of such action. An agent or employee that obtains consumer reports does not become a consumer reporting agency by sharing such reports with its principal or employer in connection with the purposes for which the reports were initially obtained.

9. Loan Exchanges

Loan exchanges, which are generally owned and operated on a cooperative basis by consumer finance companies, constitute a mechanism whereby each member furnishes the exchange information concerning the full identity and loan amount of each of its borrowers, and receives information from the exchange concerning the number and types of outstanding loans for each of its applicants. A loan exchange or any other exchange that regularly collects information bearing on decisions to grant consumers credit or insurance for personal, family or household purposes, or employment, is a "consumer reporting agency."

10. State Departments of Motor Vehicles

State motor vehicle departments are "consumer reporting agencies" if they regularly furnish motor vehicle reports containing information bearing on the consumer's "personal characteristics," such as arrest information, to insurance companies for insurance underwriting purposes. (See discussion of motor vehicle reports under section 603(d), item 4c *supra*.)

11. Federal Agencies

The Office of Personnel Management collects and files data concerning current and potential employees of the Federal Government and transmits that information to other government agencies for employment purposes. Because Congress did not intend that the FCRA apply to the Office of Personnel Management and similar federal agencies (see 116 Cong. Rec. 36576 (1970) (remarks of Rep. Brown)), no such agency is a "consumer reporting agency."

Section 603(g) defines "file," when used in connection with information on any consumer, to mean "all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored."

1. Relation to Other Sections

Consumer reporting agencies are required to make disclosures of all information in their "files" to consumers upon request (section 609) and to follow reinvestigation procedures if the consumer disputes the completeness or accuracy of any item of information contained in his "file" (section 611).

2. General

The term "file" denotes all information on the consumer that is recorded and retained by a consumer reporting agency that might be furnished, or has been furnished, in a consumer report on that consumer.

3. Audit Trail

The term "file" does not include an "audit trail" (a list of changes made by a consumer reporting agency to a consumer's credit history record, maintained to detect fraudulent changes to that record), because such information is not furnished in consumer reports or used as a basis for preparing them.

4. Other Information

The term "file" does not include information in billing records or in the consumer relations folder that a consumer reporting agency opens on a consumer who obtains disclosures or

files a dispute, if the information has not been used in a consumer report and would not be used in preparing one.

Section 609(h) defines "employment purposes" to mean "a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee."

1. Relation to Other Sections

The terms "employment purposes" is used as part of the definition of "consumer reports" (section 603(d)(2)) and as a permissible purpose for the furnishing of consumer reports (section 604(3)(B)). Where an investigative consumer report is to be used for "employment purposes" for which a consumer has not specifically applied, section 606(a)(2) provides that the notice otherwise required by section 606(a)(1) need not be sent. When a consumer reporting agency furnishes public record information in reports "for employment purposes," it must follow the procedure set out in section 613.

2. Security Clearance

A report in connection with security clearances of a government contractor's employees would be for "employment purposes" under this section.

Section 603(i) defines "medical information" to mean "information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilties."

1. Relation to Other Sections.

Under section 609(a)(1), a consumer reporting agency must, upon the consumer's request and proper identification, disclose the nature and substance of all information in its files ont he consumer, except "medical information."

2. Information From Non-medical Sources.

Information from non-medical sources such as employers, is not "medical information."

*Section 604 Permissible Purposes of Reports*

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other: * * *

1. Relation to Section 603.

Sections 603(d)(3) and 604 must be construed together to determine what are "permisible purposes," because section 603(d)(3) refers to "purposes authorized under section 604" (often described as "permissible purposes" of consumer reports), and some purposes are enumerated in section 603 (e.g., sections 603(d)(1) and 603(d)(2). Subsections of sections 603 and 604 that specifically set forth "permissible purposes" relating to credit, insurance and employment, are the only subsections that cover "permissible purposes" relating to those three areas. Section 604(3)(E), a general subsection, is limited to purposes not otherwise addressed in section 604(3) (A)–(D).

A. *Credit.* Sections 603(d)(1)—which defines "consumer report" to include certain reports for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance primarily for personal, family, or household purposes—and 604(3)(A) must be read together as fully describing permissible purposes involving credit for obtaining consumer reports. Accordingly, section 604(3)(A) permits the furnishing of a consumer report for use in connection with a credit transaction involving the consumer, primarily for personal, family or household purposes, and involving the extension of credit to, or review or collection of an account of, the consumer.

B. *Insurance.* Sections 603(d)(1) and 604(3)(C) must be read together as describing the only permissible insurance purposes for obtaining consumer reports. Accordingly, section 604(3)(C) permits the furnishing of a consumer report, provided it is for use in connection with the underwriting of insurance involving the consumer, primarily for personal, family, or household purposes.

C. *Employment.* Employment is covered exclusively by sections 603(d)(2) and 604(3)(B), and by section 603(h) (which defines "employment purposes"). Therefore, "permissible purposes" relating to employment include reports used for evaluating a consumer "for employment, promotion, reassignment or retention as an employee."

D. *Other purposes.* "Other purposes" are referred to in section 603(d)(3) and covered by section 604(3)(E), as well as sections 604(1), 604(2) and 604(3)(D) (which contain specific purposes not involving credit, insurance, employment). Permissible purposes relating to Section 604(3)(E) are limited to transactions that consumers enter into primarily for personal, family or household purposes (excluding credit, insurance or employment, which are specifically covered by other subsections discussed above). The Act does not cover reports furnished for transactions that consumers enter into primarily in connection with businesses they operate (e.g., a consumer's rental of equipment for use in his retail store).

2. Relation to Other Sections.

A. *Section 607(a).* Section 607(a) requires consumer reporting agencies to keep information confidential by furnishing consumer reports only for purposes listed under section 604, and to follow specified, reasonable procedures to achieve this end. Section 619 provides criminal sanctions against any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

B. *Section 608.* Section 608 allows "consumer reporting agencies" to furnish governmental agencies specified identifying information concerning consumers, notwithstanding the limitations of section 604.

Section 604(1)—A consumer reporting agency may furnish a consumer report "in response to the order of a court having jurisdiction to issue such an order."

1. Subpoena

A subpoena, including a grand jury subpoena, is not an "order of a court" unless signed by a judge.

2. Internal Revenue Service Summons

An I.R.S. summons is an exception to the requirement that an order be signed by a judge before it constitutes an "order of a court" under this section, because a 1976 revision to Federal statutes (26 U.S.C. 7609) specifically requires a consumer reporting agency to furnish a consumer report in response to an I.R.S. summons upon receipt of the designated I.R.S. certificate that the consumer has not filed a timely motion to quash the summons.

Section 604(2)—A consumer reporting agency may furnish a consumer report "in accordance with the written instructions of the consumer to whom it relates"

1. No Other Permissible Purpose Needed

If the report subject furnished written authorization for a report, that creates a permissible purpose for furnishing the report.

2. Refusal to Furnish Report

The consumer reporting agency may refuse to furnish the report because the statute is permissive, not mandatory. (Requirements that consumer reporting agencies make disclosure to consumers (as contrasted with furnishing reports to users) are discussed under section 609 and 610, infra.)

Section 604(3)(A)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe . . . intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be

furnished and involving the extension of credit to, or review or collection of an account of, the consumer;"

1. Reports Sought in Connection with the "Review or Collection of an Account."

A. *Reports for collection.* A collection agency has a permissible purpose under this section to receive a consumer report on a consumer for use in attempting to collect that consumer's debt, regardless of whether that debt is assigned or referred for collection. Similarly, a detective agency or private investigator, attempting to collect a debt owed by a consumer, would have a permissible purpose to obtain a consumer report on that individual for use in collecting that debt. An attorney may obtain a consumer report under this section on a consumer for use in connection with a decision whether to sue that individual to collect a credit account.

B. *Unsolicited reports.* A consumer reporting agency may not send an unsolicited consumer report to the recipient of a previous report on the same consumer, because the recipient will not necessarily have a permissible purpose to receive the unsolicited report.[3] For example, the recipient may have rejected the consumer's application or ceased to do business with the consumer.

2. Judgment Creditors

A judgment creditor has a permissible purpose to receive a consumer report on the judgment debtor for use in connection with collection of the judgment debt, because it is in the same position as any creditor attempting to collect a debt from a consumer who is the subject of a consumer report.

3. Child Support Debts

A district attorney's office or other child support agency may obtain a consumer report in connection with enforcement of the report subject's child support obligation, established by court (or quasi-judicial administrative) orders, since the agency is acting as or on behalf of the judgment creditor, and is, in effect, collecting a debt. However, a consumer reporting agency may not furnish consumer reports to child support agencies seeking to *establish* paternity or the duty to pay child support.

[3] Of course a consumer reporting agency must furnish notifications required by section 611(d), upon the consumer's requests, to prior recipients of reports containing disputed information that is deleted or that is the subject of a dispute statement under section 611(b).

4. Tax obligations

A tax collection agency has no general permissible purpose to obtain a consumer report to collect delinquent tax accounts, because this subsection applies only to collection of "credit" accounts. However, if a tax collection agency acquired a tax lien having the same effect as a judgment or obtained a judgment, it would be a judgment creditor and would have a permissible purpose for obtaining a consumer report on the consumer who owed the tax. Similarly, if a consumer taxpayer entered an agreement with a tax collection agency to pay taxes according to some timetable, that agreement would create a debtor-creditor relationship, thereby giving the agency a permissible purpose to obtain a consumer report on that consumer.

5. Information on an Applicant's Spouse

A. *Permissible purpose.* A creditor may request any information concerning an applicant's spouse if that spouse will be permitted to use the account or will be contractually liable upon the account, or the applicant is relying on the spouse's income as a basis for repayment of the credit requested. A creditor, therefore, may request any information concerning an applicant's spouse if (1) the state law doctrine of necessaries applies to the transaction, or (2) the applicant resides in a community property state, or (3) the property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a state, or (4) the applicant is acting as the agent of the nonapplicant spouse.

B. *Lack of permissible purpose.* If the creditor receives information clearly indicating that the applicant is not acting as the agent of the nonapplicant spouse, and that the applicant is relying only on separate property to repay the credit extended, and that the state law doctrine of necessaries does not apply to the transaction and that the applicant does not reside in a community property state, the creditor does not have a permissible purpose for obtaining a report on a nonapplicant spouse. A permissible purpose for making a consumer report on a nonapplicant spouse can never exist under the FCRA, where Regulation B, issued under the Equal Credit Opportunity Act (12 CFR 202), prohibits the creditor from requesting information on such spouse. There is no permissible purpose to obtain a consumer report on a nonapplicant former spouse or on a nonapplicant spouse who has legally separated or otherwise indicated an intent to legally disassociate with the marriage. (This does not preclude reporting a prior joint credit account of former spouses for which the spouse that is the subject of the report is still contractually liable. See discussion in section 607, item 3–D *infra*.)

6. Prescreening

"Prescreening" means the process whereby a consumer reporting agency, using the client's criteria for creditworthiness, compiles lists of qualified consumers (or deletes unqualified consumers from client-supplied lists) to be solicited by its clients who market products or services by direct mail solicitations. The process may also include demographic analysis of the consumer on the list (*e.g.*, use of census tract data reflecting real estate values) by the consumer reporting agency or by a third party employed for that purpose before the list is provided to the consumer reporting agency's client. In such situations, the client's creditworthiness criteria may be provided only to the consumer reporting agency and not to the third party performing the demographic analysis. The consumer reporting agency that performs a "prescreening" service may furnish a client with several different lists of consumers who meet different sets of creditworthiness criteria supplied by the client, who intends to make different credit offers (*e.g.*, various credit limits) to consumers who meet the different criteria.

A prescreened list constitutes a series of consumer reports, because the list conveys the information that each consumer named meets certain criteria for creditworthiness. Prescreening is permissible under the FCRA if the client agrees in advance that each consumer whose name is on the list after prescreening will receive an offer of credit. In these circumstances, a permissible purpose for the prescreening service exists under this section, because of the client's present intent to grant credit to all consumers on the final list, with the result that the information is used "in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to * * * the consumer."

7. Seller of Property Extending Credit

A seller of property has permissible purpose under this subsection to obtain a consumer report on a prospective purchaser to whom he is planning to extend credit.

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8. Uncoded Credit Guides

A consumer reporting agency may not furnish an uncoded credit guide, because the recipient does not have a permissible purpose to obtain a consumer report on each consumer listed. (As discussed under section 603(d), item 4 supra, credit guides are listings that credit bureaus furnish to credit grantors, rating how consumers pay their bills. Such guides are a series of "consumer reports" on the "consumers" listed therein, unless coded so that the consumer's identity is not disclosed.)

9. Liability for Bad Checks

A party attempting to recover the amount due on a bad check is attempting to collect a debt and, therefore, has a permissible purpose to obtain a consumer report on the consumer who wrote it, and on any other consumer who is liable for the amount of that check under applicable state law.

Section 604(3)(B)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information for employment purposes;"

1. Current Employees

An employer may obtain a consumer report on a current employee in connection with an investigation of the disappearance of money from employment premises, because "retention as an employee" is included in the definition of "employment purposes" (seciton 603(h)).

2. Consumer Reports on Applicants and Non-applicants

An employer may obtain a consumer report for use in evaluating the subject's application for employment but may not obtain a consumer report to evaluate the application of a consumer who is not the subject of the report.

3. Grand Jurors

The fact that grand jurors are usually paid a stipend for their service does not provide a district attorney's office a permissible purpose for obtaining consumer reports on them, because such service is a duty, not "employment."

Section 604(3)(C)—A consumer reporting agency may isue a consumer report to "a person which it has reason be believe * * * intends to use the information in connection with the underwriting of insurance involving the consumer;"

1. Underwriting

An insurer may obtain a consumer report to decide whether or not to issue a policy to the consumer, the amount and terms of coverage, the duration of the policy, the rates or fees charged, or whether or not to renew or cancel a policy, because these are all "underwriting" decisions.

2. Claims Reports

An insurer may not obtain a consumer report for the purpose of evaluating a claim (to ascertain its validity or otherwise determine what action should be taken), because permissible purposes relating to insurance are limited by this section to "underwriting" purposes.

Section 604(3)(D)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or stautus * * *.

1. Appropriate recipient

Any party charged with responsibility for assessing the consumer's eligibiilty for the benefit (not only the agency directly responsible for administering the benefit) has a permissible purpose to receive a consumer report. For example, a district attorney's office or social services bureau, required by law to consider a consumer's financial status in determining whether that consumer qualifies for welfare benefits, has a permissible purpose to obtain a report on the consumer for that purpose. Similarly, consumer reporting agencies may furnish consumer reports to townships on consumers whose financial status the townships are required by law to consider in determining the consumers' eligibility for assistance.

2. Inappropriate Recipient

Parties not charged with the responsibility of determining a consumer's eligibility for a license or other benefit, for example, a party competing for an FCC radio station construction permit, would not have a permissible purpose to obtain a consumer report on that consumer.

3. Initial or Continuing Benefit

The permissible purpose includes the determination of a consumer's continuing eligibility for a benefit, as well as the evaluation of a consumer's initial application for a benefit. If the governmental body has reason to believe a particular consumer's eligibility is in doubt, or wishes to conduct random checks to confirm eligibility, it has a permissible purpose to receive a consumer report.

Section 604(3)(E)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer."

1. Relation to Other Subsections of Section 604(3)

The issue of whether credit, employment, or insurance provides a permissible purpose is determined exclusively by reference to subsections (A), (B), or (C), respectively.

2. Commercial Transactions

The term "business transaction" in this section means a business transaction with a consumer primarily for personal, family, or household purposes. Business transactions that involve purely commercial purposes are not covered by the Act. Therefore, a consumer reporting agency may furnish a report on an individual to a business that has a commercial purpose for obtaining the report, and the Act does not apply to such report.

3. "Legitimate Business Need."

Under this subsection, a party has a permissible purpose to obtain a consumer report on a consumer for use in connection with some action the consumer takes from which he or she might expect to receive a benefit that is not more specifically covered by subsections (A), (B), or (C). For example, a consumer report may be obtained on a consumer who applies to rent an apartment, offers to pay for goods with a check, applies for a checking account or similar service, seeks to be included in a computer dating service, or who has sought and received over-payments or government benefits that he has refused to return.

4. Litigation

The possibility that a party may be involved in litigation involving a consumer does not provide a permissible purpose for that party to receive a consumer report on such consumer under this subsection, because litigation is not a "business transaction" involving the consumer. Therefore, potential plaintiffs may not always obtain reports on potential defendants to determine whether they are worth suing. The transaction that gives rise to the litigation may or may not provide a permissible purpose. A party seeking to sue on a *credit* account would have a permissible purpose under section 604(3)(A). (That section also permits judgment creditors and lien creditors to obtain consumer reports on judgment debtors or individuals whose

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property is subject to the lien creditor's lien.) If that transaction is a business transaction involving the consumer, there is a permissible purpose. If the litigation arises from a tort, there is no permissible purpose. Similarly, a consumer report may not be obtained solely for use in discrediting a witness at trial or for locating a witness. This section does not permit consumer reporting agencies to furnish consumer reports for the purpose of locating a person suspected of committing a crime. (As stated in the discussion of section 608 *infra* (item 2), section 608 permits the furnishing of specified, limited identifying information to governmental agencies, notwithstanding the provisions of section 604.)

5. Impermissible Purposes

A consumer reporting agency may not furnish a consumer report to satisfy a requester's curiosity, or for use by a news reporter in preparing a newspaper or magazine article.

6. Agents

A. *General.* An agent [4] of a party with a "permissible purpose" may obtain a consumer report on behalf of his principal, where he is involved in the decision that gives rise to the permissible purpose. Such involvement may include the agent's making a decision (or taking action) for the principal, or assisting the principal in making the decision (*e.g.*, by evaluating information). In these circumstances, the agent is acting on behalf of the principal. In some cases, the agent and principal are referred to as "joint users." See discussion in section 603(f), *supra*, (item 8).

B. *Real Estate agent.* A real estate agent may obtain a consumer report on behalf of a seller, to evaluate the eligibility as a prospective purchaser of a subject who has expressed an interest in purchasing property from the seller.

C. *Private detective agency.* A private detective agency may obtain a consumer report as agent for its client while investigating a report subject that is a client's prospective employee, or in connection with advising a client concerning a business transaction with the report subject or in attempting to collect a debt owed its client by the subject of the report. In these circumstances, the detective agency is acting on behalf of its client.

D. *Rental clearance agency.* A rental clearance agency that obtains consumer reports to assist owners of residential properties in screening consumers as tenants, has a permissible purpose to obtain the reports, if it uses them in applying the landlord's criteria to approve or disapprove the subjects as tenant applicants. Similarly, an apartment manager investigating applicants for apartment rentals by a landlord may obtain consumer reports on these applicants.

E. *Attorney.* An attorney collecting a debt for a creditor client, including a party suing on a debt or collecting on behalf of a judgment creditor or lien creditor, has a permissible purpose to obtain a consumer report on the debtor to the same extent as the client.

*Section 604 General*

1. Furnishing of Consumer Reports to Other Consumer Reporting Agencies

A consumer reporting agency may furnish a consumer report to another consumer reporting agency for it to furnish pursuant to a subscriber's request. In these circumstances, one consumer reporting agency is acting on behalf of another.

2. Consumer's Permission not Needed

When permissible purposes exist, parties may obtain, and consumer reporting agencies may furnish, consumer reports without the consumers' permission. Similarly, parties may furnish information concerning their transactions with consumers to consumer reporting agencies and others, and consumer reporting agencies may gather information, without consumers' permission.

3. User's Disclosure of Report to Subject Consumer

The FCRA does not prohibit a consumer report user from giving a copy of the report, or otherwise disclosing it, to the consumer who is the subject of the report.

*Section 605 Obsolete Information*

"(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information * * *:

(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $20,000, or more."

1. General

Section 605(a) provides that most adverse information more than seven years old may not be reported, except in certain circumstances set out in section 605(b). With respect to delinquent accounts, accounts placed for collection, and accounts charged to profit and loss, there are many dates that could be deemed to commence seven year reporting periods. The discussion in subsections (a)(2), (a)(4), and (a)(6) is intended to set forth a clear, workable rule that effectuates Congressional intent.

2. Favorable Information

The Act imposes no time restriction on reporting of information that is not adverse.

3. Retention of Information in Files

Consumer reporting agencies may retain obsolete adverse information and furnish it in reports for purposes that are exempt under subsection (b) (*e.g.*, credit for a principal amount of $50,000 or more).

4. Use of Shorter Periods

The section does not require consumer reporting agencies to report adverse information for the time periods set forth, but only prohibits them from reporting adverse items beyond those time periods.

5. Inapplicability to Users

The section does not limit creditors or others from using adverse information that would be "obsolete" under its terms, because it applies only to reporting by consumer reporting agencies. Similarly, this section does not bar a creditor's reporting such adverse obsolete information concerning its transactions or experiences with a consumer, because the report would not constitute a consumer report.

6. Indicating the Existence of Nonspecified, Obsolete Information

A consumer reporting agency may not furnish a consumer report indicating the existence of obsolete adverse information, even if no specific item is reported. For example, a consumer reporting agency may not communicate the existence of a debt older than seven years by reporting that a credit grantor cannot locate a debtor whose debt was charged off ten years ago.

7. Operative Dates

The times or dates set forth in this section, which relate to the occurrence of events involving adverse information, determine whether the item is obsolete.

[4] Of course agents *and* principals are bound by the Act.

The date that the consumer reporting agency acquired the adverse information is irrelevant to how long that information may be reported.

Section 605(a)(1)—"Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years."

1. Relation to Other Subsections

The reporting of suits and judgments is governed by subsection (a)(2), the reporting of accounts placed for collection or charged to profit and loss is governed by subsection (a)(4), and the reporting of other delinquent accounts is governed by subsection (a)(6). Any such item, even if discharged in bankruptcy, may be reported separately for the applicable seven year period, while the existence of the bankruptcy filing may be reported for ten years.

2. Wage Earner Plans

Wage earner plans may be reported for ten years, because they are covered by Title 11 of the United States Code.

3. Date for Filing

A voluntary bankruptcy petition may be reported for ten years from the date that it is filed, because the filing of the petition constitutes the entry of an "order for relief" under this subsection, just like a filing under the Bankruptcy Act (11 U.S.C. 301).

Section 605(a)(2)—"Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period."

1. Operative Date

For a suit, the term "date of entry" means the date the suit was initiated. A protracted suit may be reported for more than seven years from the date it was entered, if the governing statute of limitations has not expired. For a judgment, the term "date of entry" means the date the judgment was rendered.

2. Paid Judgments

Paid judgments cannot be reported for more than seven years after the judgment was entered, because payment of the judgment eliminates any "governing statute of limitations" under this subsection that might otherwise lengthen the period.

Section 605(a)(3)—"Paid tax liens which, from date of payment, antedate the report by more than seven years."

1. Unpaid Liens

If a tax lien (or other lien) remains unsatisfied, it may be reported as long as it remains filed against the consumer, without limitation, because this subsection addresses only paid tax liens.

Section 605(a)(4)—"Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years."

1. Placement for Collection

The term "placed for collection" means internal collection activity by the creditor, as well as placement with an outside collector, whichever occurs first. Sending of the initial past due notices does not constitute placement for collection. Placement for collection occurs when dunning notices or other collection efforts are initiated. The reporting period is not extended by assignment to another entity for further collection, or by a partial or full payment of the account. However, where a borrower brings his delinquent account to date and returns to his regular payment schedule, and later defaults again, a consumer reporting agency may disregard any collection activity with respect to the first delinquency and measure the reporting period from the date the account was placed for collection as a result of the borrower's ultimate default. A consumer's repayment agreement with a collection agency can be treated as a new account that has its own seven year period.

2. Charge to Profit and Loss

The term "charged to profit and loss" means action taken by the creditor to write off the account, and the applicable time period is measured from that event. If an account that was charged off is later paid in part or paid in full by the consumer, the reporting period of seven years from the charge-off is not extended by this subsequent payment.

3. Reporting of a Delinquent Account That Is Later Placed for Collection or Charged to Profit and Loss

The fact that an account has been placed for collection or charged to profit and loss may be reported for seven years from the date that either of those events occurs, regardless of the date the account became delinquent. The fact of delinquency may also be reported for seven years from the date the account became delinquent.

Section 605(a)(5)—"Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years."

1. Records

The term "records" means any information a consumer reporting agency has in its files relating to arrest, indictment or conviction of a crime.

2. Computation of Time Period

The seven year reporting period runs from the date of disposition, release or parole, as applicable. For example, if charges are dismissed, or the consumer is acquitted, the date of such dismissal or acquittal is the date of disposition. If the consumer is convicted of a crime and sentenced to confinement, the date of release or placement on parole controls. (Confinement, whether continuing or resulting from revocation of parole, may be reported until seven years after the confinement is terminated.) The sentencing date controls for a convicted consumer whose sentence does not include confinement. The fact that information concerning the arrest, indictment, or conviction of crime is obtained by the reporting agency at a later date from a more recent source (such as a newspaper or interview) does not serve to extend this reporting period.

Section 605(a)(6)—"Any other adverse item of information which antedates the report by more than seven years."

1. Relation to Other Subsections

This section applies to all adverse information that is not covered by section 605(a)(1)–(5). For example, a delinquent account that has neither been placed for collection, nor charged to profit and loss, may be reported for seven years from the date of the last regularly scheduled payment. (Accounts placed for collection or charged to profit and loss may be reported for the time periods stated in section 605(a)(4).)

2. Non Tax Liens

Liens (other than paid tax liens) may be reported as long as they remain filed against the consumer or the consumer's property, and remain effective (under any applicable statute of limitations). (See discussion under section 605(a)(3), *supra*).

*Section 606 Disclosure of Investigative Consumer Reports*

"(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing

mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after receipt by him of the disclosure required by subsection (a)(1), make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b)."

1. Relation to Other Sections

The term "investigative consumer report" is defined at section 603(e) to mean a consumer report, all or a portion of which contains information obtained through personal interviews (in person or by telephone) with persons other than the subject, which information relates to the subject's character, general reputation, personal characteristics or mode of living.

2. Inapplicability to Consumer Reporting Agencies

The section applies only to report users, not consumer reporting agencies. The FCRA does not require consumer reporting agencies to inform consumers that information will be gathered or that reports will be furnished concerning them.

3. Inapplicability to Noninvestigative Consumer Reports

The section does not apply to noninvestigative reports.

4. Exemptions

An employer who orders investigative consumer reports on a current employee who has not applied for a job change need not notify the employee, because the term "employment purposes" is defined to include "promotion, reassignment or retention" and subsection (b) provides that the disclosure requirements do not apply to "employment purposes for which the consumer has not specifically applied".

5. Form and Delivery of Notice

The notice must be in writing and delivered to the consumer. The user may include the disclosure in an application for employment, insurance, or credit, if it is clear and conspicuous and not obscured by other language. A user may send the required notice via first class mail. The notice must be mailed or otherwise delivered to the consumer not later than three days after the report was first requested.

6. Content of Notice of Right to Disclosure

The notice must clearly and accurately disclose that an "investigative consumer report" including information as to the consumer's character, general reputation, personal characteristics and mode of living (whichever are applicable), may be made. The disclosure must also state that an investigative consumer report involves personal interviews with sources such as neighbors, friends, or associates. The notice may include any additional, accurate information about the report, such as the types of interviews that will be conducted. The notice must include a statement informing the consumer of the right to request complete and accurate disclosure of the nature and scope of the investigation.

7. Content of Disclosure of Report

When the consumer requests disclosure of the "nature and scope" of the investigation, such disclosure must include a complete and accurate description of the types of questions asked, the number and types of persons interviewed, and the name and address of the investigating agency. The user need not disclose the names of sources of information, nor must it provide the dnsumer with a copy of the report. A report user that provides the consumer with a blank copy of the standardized form used to transmit the report from the agency to the user complies with the requirement that it disclose the "nature" of the investigation.

*Section 607 Compliance Procedures*

"(a) Every consumer reporting agency shall maintain reasonable procedues designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in Section 604.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

1. Procedures to Avoid Reporting Obsolete Information

A. *General.* A consumer reporting agency should establish procedures with its sources of adverse information that will avoid the risk of reporting obsolete information. For example, the agency should either require a creditor to supply the date an account was placed for collection or charged off, or the agency should use a conservative date for such placement or charge off (such as the date of the last regularly scheduled payment), to be sure of complying with the statute.

B. *Retention of obsolete information for reporting in excepted circumstances.* If a consumer reporting agency retains adverse information in its files that is "obsolete" under section 605(a) (*e.g.*, information about a satisfied judgment that is more than seven years old), so that it may be reported for use in transactions described by section 605(b) (*i.e.*, applications for credit or life insurance for $50,000 or more, or employment at an annual salary of $20,000 or more), it must have procedural safeguards to avoid reporting the information except in those situations. The procedure should require that such obsolete information be released only after an internal decision that its release will not violate section 605.

2. Procedures to Avoid Reporting for Impermissible Purposes

A. *Verification.* A consumer reporting agency should have a system to verify that it is dealing with a legitimate business having a "permissible purpose" for the information reported. What constitutes adequate veification would vary with the circumstances. If the consumer reporting agency is not familiar with the use, appropriate procedures might require an on-site visit to the user's place of business, or a check of the user's references.

B. *Required certification by user.* A consumer reporting agency should adopt procedures that require prospective report users to identify themselves, certify the purpose for which the information is sought, and certify that

the information will be used for no other purpose. A consumer reporting agency should determine initially that users have permissible purposes and ascertain what those purposes are. It should obtain a specific, written certification that the recipient will obtain reports for those purposes and no others. The user's certification that the report will be used for no other purposes should expressly prohibit the user from sharing the report or providing it to anyone else, other than the subject of the report or to a joint user having the same purpose. A consumer reporting agency should refuse to provide reports to those refusing to provide such certification.

C. *Blanket or individual certification.* Once the consumer reporting agency obtains a certification from a user (e.g., a creditor) that typically has a permissible purpose for receiving a consumer report, stating that it will use those reports only for specified permissible purposes (*e.g.*, for credit or employment purposes), a certification of purpose need not be furnished for each individual report obtained, provided there is no reason to believe the user may be violating its certification. However, in furnishing reports to users that typically could have both permissible and impermissible purposes for ordering consumer reports (*e.g.*, attorneys and detective agencies), the consumer reporting agency must require the user to provide a separate certification each time it requests a consumer report.

D. *Procedures to avoid recipients' abuse of certification.* When doubt arises concerning any user's compliance with its contractual certification, a consumer reporting agency must take steps to insure compliance, such as requiring a separate, advance certification for each report it furnishes that user, or auditing that user to verify that it is obtaining reports only for permissible purposes. A consumer reporting agency must cease furnishing consumer reports to users who repeatedly request consumer reports for impermissible purposes.

E. *Unauthorized access.* A consumer reporting agency should take several other steps when doubt arises concerning whether a user is obtaining reports for a permissible purpose from a computerized system. If it appears that a third party, not a subscriber, has obtained unauthorized access to the system, the consumer reporting agency should take appropriate steps such as altering authorized users' means of access, such as codes and passwords, and making random checks to ensure that future reports are obtained only for permissible purposes. If a subscriber has inadvertently sought reports for impermissible purposes or its employee has obtained reports without a permissible purpose, it would be appropriate for the consumer reporting agency to alter the subscriber's means of access, and require an individual written certification of the permissible purpose for each report requested or randomly verify such purposes. A consumer reporting agency should refuse to furnish any further reports to a user that repeatedly violates certifications.

F. *Use of computerized systems.* A consumer reporting agency may furnish consumer reports to users via terminals, provided the consumer reporting agency includes in its contract with users, a statement that each attempt to access a consumer report via a terminal constitutes a certification of a permissible purpose. (The agency would have to record the identity of consumer report recipients for each consumer, to be able to make any disclosures required under section 609(a)(3) or section 611(d)).

G. *Activity reports.* If a consumer reporting agency provides "activity reports" on all customers who have open-end accounts with a credit grantor, it must make certain that the credit grantor always notifies the agency when accounts are closed, to avoid furnishing reports on former customers or other customers for whom the credit grantor lacks a permissible purpose. (See also discussion in section 604(3)(A), item 1, *supra.*)

3. Reasonable Procedures to Assure Maximum Possible Accuracy

A. *General.* The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable, and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it must review its procedures for assuring accuracy. Examples of errors that would require such review are the issuance of a consumer report pertaining entirely to a consumer other than the one on whom a report was requested, and the issuance of a consumer report containing information on two or more consumers (*e.g.*, information that was mixed in the file) in response to a request for a report on only one of those consumers.

B. *Required steps to improve accuracy.* If the agency's review of its procedures reveals, or the agency should reasonably be aware of, steps it can take to improve the accuracy of its reports at a reasonable cost, it must take any such steps. It should correct inaccuracies that come to its attention. A consumer reporting agency must also adopt reasonable procedures to eliminate systematic errors that it knows about, or should reasonably be aware of, resulting from procedures followed by its sources of information. For example, if a particular credit grantor has often furnished a significant amount of erroneous consumer account information, the agency must require the creditor to revise its procedures to correct whatever problems cause the errors or stop reporting information from that creditor.

C. *Use of automatic data processing equipment.* Consumer reporting agencies that use automatic data processing equipment (particularly for long distance transmission of information) should have procedures to assure that the data is accurately converted into a machine-readable format and not distorted by machine malfunction or transmission failure. Security procedures must be adopted to control the possibility that computerized consumer information will be stolen or altered by either authorized or unauthorized users of the information system.

D. *Reliability of sources.* Whether a consumer reporting agency may rely on the accuracy of information from a source depends on the circumstances. This section does not hold a consumer reporting agency responsible where an item of information that it receives from a source that it reasonably believes to be reputable appears credible on its face, and is transcribed, stored and communicated as provided by that source. Requirements are more stringent where the information furnished appears implausible or inconsistent, or where procedures for furnishing it seem likely to result in inaccuracies, or where the consumer reporting agency has had numerous problems regarding information from a particular source.

E. *Undesignated information in credit transactions.* "Undesignated information" means all credit history information in a married (or formerly married) consumer's file, which was not reported to the consumer reporting agency with a designation indicating that the information relates to either the

consumer's joint or individual credit experience. The question arises what is meant by reasonable procedures under this section for treatment of credit history in the file of only one (present or former) spouse (usually the husband) that has not been designated by the procedure in Regulation B, 12 CFR 202.10, which implements the Equal Credit Opportunity Act. (This situation exists only for certain credit history file information compiled before June 1, 1977, and certain accounts opened before that date.) A consumer reporting agency may report information solely in the file of spouse A, when spouse B applies for a separate extension of credit, only if such information relates to accounts for which spouse B was either a user or was contractually liable, or the report recipient has a permissible purpose for a report on spouse A. A consumer reporting agency may not supply all undesignated information from the file of a consumer's spouse in response to a request for a report on the consumer, because some or all of that information may not relate to both spouses. Consumer reporting agencies must honor without charge the request of a married or formerly married individual that undesignated information (that appears only in the files of the individual's present or former spouse) be segregated—*i.e.*, placed in a separate file that is accessible under that individual's name. This procedure insures greater accuracy and protection of the privacy of spouses than does the automatic reporting of undesignated information.

F. *Reporting of credit obligation*—(1) *Past due accounts.* A consumer reporting agency must employ reasonable procedures to keep its file current on past due accounts (*e.g.*, by requiring its creditors to notify the credit bureau when a previously past due account has been paid or discharged in bankruptcy), but its failure to show such activity in particular instances, despite the maintenance of reasonable procedures to keep files current, does not violate this section. For example, a consumer reporting agency that reports accurately in 1985 that as of 1983 the consumer owed a retail store money, without mentioning that the consumer eventually paid the debt, does not violate this section if it was not informed by the store or the consumer of the later payment.

(2) *Significant, verified information.* A consumer reporting agency must report significant, verified information it possesses about an item. For instance, a consumer reporting agency may continue to report a paid account that was previously delinquent, but should also report that the account has been paid. Similarly, a consumer reporting agency may include delinquencies on debts discharged in bankruptcy in consumer reports, but must accurately note the status of the debt (*e.g.*, discharged, voluntarily repaid). Finally, if a reported bankruptcy has been dismissed, that fact should be reported.

(3) *Guarantor obligations.* Personal guarantees for obligations incurred by others (including a corporation) may be included in a consumer report on the individual who is the guarantor. The report should accurately reflect the individual's involvement (*e.g.*, as guarantor of the corporate debt).

4. Effect of Criminal Sanctions

Notwithstanding the fact that section 619 provides criminal sanctions against persons who knowingly and willfully obtain information on a consumer from a consumer reporting agency under false, pretenses, a consumer reporting agency must follow reasonable procedures to limit the furnishing of reports to those with permissible purposes.

5. Disclosure of Credit Denial

When reporting that a consumer was denied a benefit (such as credit), a consumer reporting agency need not report the reasons for the denial.

6. Content of Report

A consumer report need not be tailored to the user's needs. It may contain any information that is complete, accurate, and not obsolete on the consumer who is the subject of the report.

7. Completeness of Reports

Consumer reporting agencies are not required to include all existing derogatory or favorable information about a consumer in their reports. (See, however, discussion in section 611, item 14, *infra*, concerning conveying consumer dispute statements.) However, a consumer reporting agency may not mislead its subscribers as to the completeness of its reports by deleting nonderogatory information and not disclosing its policy of making such deletions.

8. User Notice of Adverse Action Based on a Consumer Report

A consumer reporting agency need not require users of its consumer reports to provide any notice to consumers against whom adverse action is taken based on a consumer report. The FCRA imposes such notice requirements directly on users, under the circumstances set out in section 615.

*Section 608 Disclosures to Governmental Agencies*

"Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency."

1. Relation to Other Sections

Because a report containing only a consumer's name and address is not a "consumer report" as defined in section 603(d), a consumer reporting agency may provide this identifying information to any party notwithstanding the provisions of sections 604 and 608.

2. Permissible Purpose Necessary for Additional Information

A consumer reporting agency may furnish limited identifying information concerning a consumer to a governmental agency (*e.g.*, an agency seeking a fugitive from justice) even if that agency does not have a "permissible purpose" under section 604 to receive a consumer report. However, a governmental agency must have a permissible purpose in order to obtain information beyond what is authorized by this section.

3. Entities Covered by Section

The term "governmental agency" includes federal, state, county and municipal agencies, and grand juries. Only governmental agencies may obtain disclosures of identifying information under this section.

*Section 609 Disclosures to Consumers*

"(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date."

1. Relation to Other Sections

This section states what consumer reporting agencies must disclose to consumers, upon request and proper identification. Section 610 sets forth the condition under which those disclosures must be made, and section 612 sets forth the circumstances under which consumer reporting agencies may charge for making such disclosures. The term "file" as used in section 609(a)(1) is defined in section 603(g). The term "investigative consumer report," which is used in section 609(a)(2), is defined in section 603(e). The term "medical information," which is used in section 609(a)(1), is defined in section 603(i).

2. Proper Identification

A consumer reporting agency must take reasonable steps to verify the identify of an individual seeking disclosure under this section.

3. Manner of "Proper Identification"

If a consumer provides sufficient identifying information, the consumer reporting agency cannot insist that the consumer execute a "request for interview" form, or provide the items listed on it, as a prerequisite to disclosure. However, the agency may use a form to identify consumers requesting disclosure if it does not use the form to seek or obtain any waiver of the consumers' rights. A consumer reporting agency may provide disclosure by telephone without a written request, if the consumer is properly identified, but may insist on a written request before providing such disclosure.

4. Power of Attorney

A consumer reporting agency must disclose a consumer's file to a third party authorized by the consumer's written power of attorney to obtain the disclosure, if the third party presents adequate identification and fulfills other applicable conditions of disclosure.

5. Nature of Disclosure Required

A consumer reporting agency must disclose the nature and substance of all items in the consumer's file, no matter how or where they are stored (*e.g.*, in other offices of the consumer reporting agency). The consumer reporting agency must have personnel trained to explain to the consumer any information furnished in accordance with the Act. Particularly when the file includes coded information that would be meaningless to the consumer, the agency's personnel must assist the consumer to understand the disclosures. Any summary must not mischaracterize the nature of any item of information in the file. The consumer reporting agency is not required to provide a copy of the file, or any other written disclosure, or to read the file verbatim to the consumer or to permit the consumer to examine any information in its files. A consumer reporting agency may choose to comply with the Act in writing, by providing a copy of the file to the consumer or otherwise.

6. Medical Information

Medical information includes information obtained with the consumer's consent from physicians and medical facilities, but does not include comments on a consumer's health by non-medical personnel. A consumer reporting agency is not required to disclose medical information in its files to consumers, but may do so. Alternatively, a consumer reporting agency may inform consumers that there is medical information in the files concerning them and supply the name of the doctor or other source of the information. Consumer reporting agencies may also disclose such information to a physician of the consumer's choice, upon the consumer's written instructions pursuant to section 604(2).

7. Ancillary Information

A consumer reporting agency is not required to disclose information consisting of an audit trail of changes it makes in the consumer's file, billing records, or the contents of a consumer relations folder, if the information is not from consumer reports and will not be used in preparing future consumer reports. Such data is not included in the term "information in its files" which must be disclosed to the consumer pursuant to this section. A consumer reporting agency must disclose claims report information only if it has appeared in consumer reports.

8. Information on Other Consumers

The consumer has no right to information in the consumer reporting agency's files on other individuals, because the disclosure must be limited to information "on the consumer." However, all information in the files of the consumer making the request must be disclosed, including information about another individual (*e.g.*, concerning that individual's dealings with the subject of the consumer report).

9. Disclosure of Sources of Information

Consumer reporting agencies must disclose the sources of information, except for sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose. When it has used information from another consumer reporting agency, the other agency should be reported as a source.

10. Disclosure of Recipients of Consumer Reports

Consumer reporting agencies must maintain records of recipients of prior consumer reports sufficient to enable them to meet the FCRA's requirements that they disclose the identity of recipients of prior consumer reports.

11. Disclosure of Recipients of Prescreened Lists

A consumer reporting agency must furnish to a consumer requesting file disclosure the identity of recipients of any prescreened lists that contained the disclosure's name when submitted by creditors (or other users) to the consumer reporting agency.

*Section 610 Conditions of Disclosure*

"(a) A consumer reporting agency shall make the disclosures required under section 609 during normal business hours and on reasonable notice.
(b) The disclosures required under section 609 shall be made to the consumer—

(1) in person if he appears in person and furnishes proper identification; or
(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609.

(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Except as provided in sections 616 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 608, 610, or 615, except as to false

information furnished with malice or willful intent to injure such consumers."

1. Time of Disclosure

A consumer reporting agency must take disclosures during normal business hours, upon reasonable notice. However, the consumer reporting agency may waive reasonable notice, and the consumer may agree to disclosure outside of normal business hours.

2. Extra Conditions Prohibited

A consumer reporting agency may not add conditions not set out in the FCRA as a prerequisite to the required disclosure.

3. Manner of Disclosure

A consumer reporting agency may, with the consumer's actual or implied consent, meet its disclosure obligations by mail, in lieu of the in-person or telephone disclosures specified in the statute.

4. Disclosure in the Presence of Third Parties

When the consumer requests disclosure in a third party's presence, the consumer reporting agency may require that a consumer sign an authorization before such disclosure is made. The consumer may choose the third party to accompany him or her for the disclosure.

5. Expense of Telephone Calls

A consumer reporting agency is not required to pay the telephone charge for a telephone interview with a consumer obtaining disclosure.

6. Qualified Defamation Privilege

The privilege extended by subsection 610(e) does not apply to an action brought by a consumer if the action is based on information not disclosed pursuant to sections 609, 610 or 615. A disclosure to a consumer's representative (*e.g.*, based on the consumer's power of attorney) constitutes "information disclosed pursuant to section 609" and is thus covered by this privilege.

*Section 611 Procedure in Case of Disputed Accuracy*

"(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received."

1. Relation to Other Sections

This section sets forth procedures consumer reporting agencies must follow if a consumer conveys a dispute of the completeness or accuracy of any item of information to the consumer reporting agency. Section 609 provides for disclosures by consumer reporting agencies to consumers, and section 610 sets forth conditions of disclosure. Section 612 permits a consumer reporting agency to impose charges for certain disclosures, including the furnishing of certain information to recipients of prior reports, as provided by section 611(d).

2. Proper Reinvestigation

A consumer reporting agency conducting a reinvestigation must make a good faith effort to determine the accuracy of the disputed item or items. At a minimum, it must check with the original sources or other reliable sources of the disputed information and inform them of the nature of the consumer's dispute. In reinvestigating and attempting to verify a disputed credit transaction, a consumer reporting agency may rely on the accuracy of a creditor's ledger sheets and need not require the creditor to produce documentation such as the actual signed sales slips. Reinvestigation and verification may require more than asking the original source of the disputed information the same question and receiving the same answer. If the original source is contacted for reinvestigation, the consumer reporting agency should at least explain to the source that the original statement has been disputed, state the consumer's position, and then ask whether the source would confirm the information, qualify it, or accept the consumer's explanation.

3. Complaint of Insufficient File, or Lack of File

The FCRA does not require a consumer reporting agency to add new items of information to its file. A consumer reporting agency is not required to create new files on consumers for whom it has no file, nor is it required to add new lines of information about new accounts not reflected in an existing file, because the section permits the consumer to dispute only the completeness or accuracy of particular items of information in the file. If a consumer reporting agency chooses to add lines of information at the consumer's request, it may charge a fee for doing so.

4. Explanation of Extenuating Circumstances

A consumer reporting agency has no duty to reinvestigate, or take any other action under this section, if a consumer merely provides a reason for a failure to pay a debt (*e.g.*, sudden illness or layoff), and does not challenge the accuracy or completeness of the item of information in the file relating to a debt. Most creditors are aware that a variety of circumstances may render consumers unable to repay credit obligations. Although a consumer reporting agency is not required to accept a consumer dispute statement that does not challenge the accuracy or completeness of an item in the consumer's file, it may accept such a statement and may charge a fee for doing so.

5. Reinvestigation of a Debt

A consumer reporting agency must reinvestigate if a consumer conveys to it a dispute concerning the validity or status of a debt, such as whether the debt was owed by the consumer, or

whether the debt had subsequently been paid. For example, if a consumer alleges that a judgment reflected in the file as unpaid has been satisfied, or notifies a consumer reporting agency that a past due obligation reflected in the file as unpaid was subsequently paid, the consumer reporting agency must reinvestigate the matter. If a file reflects a debt discharged in bankruptcy without reflecting subsequent reaffirmation and payment of that debt, a consumer may require that the item be reinvestigated.

6. Status of a Debt

The consumer reporting agency must, upon reinvestigation, "record the current status" of the disputed item. This requires inclusion of any information relating to a change in status of an ongoing matter (*e.g.*, that a debt shown as past due had subsequently been paid or discharged in bankruptcy, or that a debt shown as discharged in bankruptcy was later reaffirmed and/or paid).

7. Dispute Conveyed to Party Other Than the Consumer Reporting Agency

A consumer reporting agency is required to take action under this section only if the consumer directly communicates a dispute to it. It is not required to respond to a dispute of information that the consumer merely conveys to others (*e.g.*, to a source of information). But see, however, discussion in section 607, item 3A, of consumer reporting agencies' duties to correct errors that come to their attention.)

8. Dispute Conveyed to the Consumer Reporting Agency by a Party Other Than the Consumer

A consumer reporting agency need not reinvestigate a dispute about a consumer's file raised by any third party, because the obligation under the section arises only where an "item of information in his file is disputed by the consumer."

9. Consumer Disclosures and Adverse Action Not Prerequisites to Reinvestigation Duty

A consumer reporting agency's obligation to reinvestigate disputed items is not contingent upon the consumer's having been denied a benefit or having asserted any rights under the FCRA other than disputing items of information.

10. Reasonable Period of Time

A consumer reporting agency is required to reinvestigate and record the current status of disputed information within a reasonable period of time after the consumer conveys the dispute to it. An appropriate yardstick of what is "reasonable" may be how long it would take to reinvestigate the same matter if it were brought to the consumer reporting agency's attention by one of its customers.

11. Frivolous or Irrelevant

The mere presence of contradictory information in the file does not provide the consumer reporting agency "reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant." A consumer reporting agency must assume a consumer's dispute is bona fide, unless there is clear and convincing evidence to the contrary. Such evidence may constitute receipt of letters from consumers disputing all information in their files without providing any allegations concerning the specific items in the files. The agency is not required to repeat a reinvestigation that it has just conducted simply because the consumer reiterates a dispute about the same item of information.

12. Deletion of Accurate Information That has not Been Disputed

The consumer reporting agency is not required to delete accurate information that would not be verified upon reinvestigation, if it has not been "disputed by a consumer." For example, if a creditor deletes adverse information from its files with the result that informaion could not be reverified if disputed, it is still permissible for a consumer reporting agency to report it (subject to the obsolescence provisions of section 605) until it is disputed.

13. Consumer Dispute Statements on Multiple Items

A consumer who disputes mulitiple items of information in his file may insert a one hundred word statement as to each disputed item.

14. Conveying Dispute Statements to recipients of Subsequent Reports

A consumer reporting agency may not merely tell the recipient of a subsequent report containing disputed information that the consumer's statement is on file but will be provided only if requested, because subsection (c) requires the agency to provide either the statement or "a clear and accurate codification or summary thereof."

*Section 612 Charges for Certain Disclosures*

"A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d). Otherwise, the consumer for making disclosure to such consumer pursuant to section 609, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries,or codifications to persons designated by the consumer pursuant to section 611(d), the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified."

1. Irrelevance of Subsequent Grant of Credit or Reason for Denial

A consumer denied credit because of a consumer report has the right to free disclosure within 30 days of receipt of the section 615(a) notice, even if credit was subsequently granted or the basis of the denial was that the references supplied by the consumer are too few or too new to appear in the credit file.

2. Charge for Investigation Prohibited

This section does not permit consumer reporting agencies to charge for making the reinvestigation or following other procedures required by section 611(a)–(c).

3. Permissible Charges for Services Requested by Consumers

A consumer reporting agency may charge fees for creating files on consumers at their request, or for other services not required by the FCRA that are requested by consumers.

*Section 613 Public Record Information for Employment Purposes*

"A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this

paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported."

1. Relation to Other Sections

A consumer reporting agency that complies with section 613(1) must also follow reasonable procedures to assure maximum possible accuracy, as required by section 607(b).

2. Alternate Methods of Compliance

A consumer reporting agency that furnishes public record information for employment purposes must comply with either subsection (1) or (2), but need not comply with both.

3. Information From Another Consumer Reporting Agency

If a consumer reporting agency uses information or reports from other consumer reporting agencies in a report for employment purposes, it must comply with this section.

4. Method of Providing Notice

A consumer reporting agency may use first class mail to provide the notice required by subsection (1).

5. Waiver

The procedures required by this section cannot be waived by the consumer to whom the report relates.

*Section 614 Restrictions on Investigative Consumer Reports*

"Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished."

*Section 615 Requirements on Users of Consumer Reports*

"(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

"(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

"(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b)."

1. Relation to Other Sections and Regulation B

Sections 606 and 615 are the only two sections that require users of reports to make disclosures to consumers. Section 606 applies only to users of "investigative consumer reports." Creditors should not confuse compliance with section 615(a), which only requires disclosure of the name and address of the consumer reporting agency, and compliance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and Regulation B, 12 CFR Part 202, which require disclosure of the *reasons* for adverse action. Compliance with section 615(a), therefore, does not constitute compliance with Regulation B.

2. Limited Scope of Requirements

The section does not require that creditors disclose their credit criteria or standards or that employers furnish copies of personnel files to former employees. The section does not require that the user provide any kind of advance notification to consumers before a consumer report is obtained. (See section 606 regarding notice of investigative consumer reports.)

3. Method of Disclosure

The disclosures required by this section need not be made in writing. However, users will have evidence that they have taken reasonable steps to comply with this section if they provide written disclosures and retain copies for at least two years, the applicable statute of limitations for most civil liability actions under the FCRA.

4. Adverse Action Based on Direct Information

This section does not require that a user send any notice to a consumer concerning adverse action regarding that consumer that is based neither on information from a consumer reporting agency nor on information from a third party. For example, no disclosures are required concerning adverse action based on information provided by the consumer in an application or based on past experience in direct transaction with the consumer.

5. Creditors Using "Prescreened" Mailing Lists

A creditor is not required to provide notices regarding consumer reporting agencies that prepare mailing lists by "prescreening" because they do not involve consumer requests for credit and credit has not been denied to consumers whose names are deleted from a list furnished to the agency for use in this procedure. See discussion of "prescreening," under section 604(3)(A), item 6, *supra.*

6. Applicability to Users of Motor Vehicle Reports

An insurer that refuses to issue a policy, or charges a higher than normal premium, based on a motor vehicle report is required to comply with subsection (a).

7. Securities and Insurance Transactions

A consumer report user that denies credit to a consumer in connection with a securities transaction must provide the required notice, because the denial is of "credit * * * for personal purposes," unless the consumer engages in such transactions as a business.

8. Denial of Employment

An employer must provide the notice required by subsection (a) to an individual who has applied for employment and has been rejected based on a consumer report. However, an employer is not required to send a notice when it decides not to offer a position to an individual who has not applied for it, because in this case employment is not "denied." (See discussion in section 606, item 4, *supra.*)

9. Adverse Action Involving Credit

A creditor must provide the required notice when it denies the consumer's request for credit (including a rejection based on a scoring system, where a credit report received less than the maximum number of points possible and caused the application to receive an insufficient score), denies the consumer's request for increased credit, grants credit in an amount less than the consumer requested, or raises the charge for credit.

10. Adverse Action Not Involving Credit, Insurance or Employment

The Act does not require that a report user provide any notice to consumers when taking adverse action not relating to credit, insurance or employment. For example, a landlord who refuses to rent an apartment to a consumer based on credit or other information in a consumer report need not provide the notice. Similarly, a party that uses credit or other information in a consumer report as a basis for refusing to accept payment by check need not comply with this section. Checks have historically been treated as cash items, and thus such refusal does not involve a denial of credit, insurance or employment.

11. Adverse Action Based on Non-derogatory Adverse Information

A party taking adverse action concerning credit or insurance or denying employment, "wholly or partly because of information contained in a consumer report," must provide the required notice, even if the information is not derogatory. For example, the user must give the notice if the denial is based wholly or party on the absence of a file or on the fact that the file contained insufficient references.

12. Name and Address of the Consumer Report Agency

The "section 615(a)" notice must include the consumer reporting agency's street address, not just a post office box address.

13. Agency To Be Idenfified

The consumer report user should provide the name and address of the consumer reporting agency from which it obtained the consumer report, even if that agency obtained all or part of the report from another agency.

14. Denial Based Partly on a Consumer Report

A "section 615(a)" notice must be sent even if the adverse action is based only partly on a consumer report.

15. Denial of Credit Based on Information From "Third Parties."

Subsection (b) imposes requirements on a creditor when it denies (or increase the charge for) credit for personal, family or household purposes involving a consumer, based on information from a "third party" source, which means a source *other* than the consumer reporting agency, the creditor's own files, or the consumer's application (*e.g.*, creditor, employer, or landlord). Where a creditor denies a consumer's application based on information obtained directly from another lender, even if the lender's name was furnised to the creditor by a consumer reporting agency, the creditor must give a "third party" disclosure.

16. Substance of Required "Third Party" Disclosures

When adverse action is communicated to the consumer, the creditor must clearly and accurately disclose to the consumer his or her right to make a written request for the disclsoure of the nature of the third party information that led to the adverse action. Upon timely receipt of such a request, however, the creditor need disclose only the nature of the information that led to the adverse action (*e.g.*, history of late rent payments or bad checks) and not the criteria that led to the adverse action. A creditor may comply with subsection (b) by providing a statement of the nature of the third party information that led to the denial when it notifies the consumer of the denial. A statement of principal, specific reasons for adverse action based on third party information that is sufficient to comply with the requirements of the Equal Credit Opportunity Act (*e.g.*, "unable to verify employment") is sufficient to constitute disclosurer of the "nature of the information" under subsection (b).

*Section 616 Civil Liability for Willful Noncompliance*

Section 616 permits consumers who sue and prove willful noncompliance with the Act to recover actual damages, punitive damages, and the costs of the action, together with reasonable attorney's fees.

*Section 617 Civil Liability for Negligent Noncompliance*

Section 617 permits consumers who sue and prove negligent noncompliance with the Act to recover actual damages and the costs of the action, together with reasonable attorney's fees.

*Section 618 Jurisdiction of Courts; Limitation of Actions*

Section 618 provides that any action brought under section 616 or section 617 may be brought in any United States district court or other court of competent jurisdiction. Such suit must be brought within two years from the date on which liability arises, unless a defendant has materially and willfully misrepresented information the Act requires to be disclosed, and the information misrepresented is material to establishment of the defendant's liability. In that event, the action must be brought within two years after the individual discovers the misrepresentation.

*Section 619 Obtaining Information Under False Pretense*

Section 619 provides criminal sanctions against any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

1. Relation to Other Sections

The presence of this provision does not excuse a consumer reporting agency's failure to follow reasonable procedures, as required by section 607(a), to limit the furnishing of consumer reports to the purposes listed under section 604.

*Section 620 Unauthorized Disclosures by Officers or Employees*

Section 620 provides criminal sanctions against any officer or employee of a consumer reporting agency who knowingly and willfully provides information conerning an individual from the agency's file to a person not authorized to receive it.

*Section 621 Administrative Enforcement*

This section gives the Federal Trade Commission authority to enforce the Act with respect to consumer reporting agencies, users of reports, and all others, except to the extent that it gives enforcement jurisdiction specifically to some other agency. Those excepted from the Commission's enforcement jurisdiction include certain financial institutions regulated by Federal agencies or boards, Federal credit unions, common carriers subject to acts to regulate commerce air carriers, and parties subject to the Packers and Stockyards Act, 1921.

1. General

The Commission can use its cease-and-desist power and other procedural, investigative and enforcement powers which it has under the FTC Act to secure compliance, irrespective of commerce or any other jurisdictional tests in the FTC Act.

2. Geographic Coverage

The Commission's authority encompasses the United States, the District of Columbia, the Commonwealth of Puerto Rico, and all United States territories but does not extend to activities outside those areas.

3. Status of Commission Commentary and Staff Interpretations

The FCRA does not give any Federal agency authority to promulgate rules having the force and effect of statutory provisions. The Commission has issued this Commentary, superseding the eight formal Interpretations of the Act (16 CFR 600.1–600.8), previously issued pursuant to § 1.73 of the Commission's Rules, 16 CFR 1.73. The Commentary

does not constitute substantive rules and does not have the force or effect of statutory provisions. It constitutes guidelines to clarify the Act that are advisory in nature and represent the Commission's views as to what particular provisions of the Act mean. Staff opinion letters constitute staff interpretations of the Act's provisions, but do not have the force or effect of statutory provisions and, as provided in § 1.72 of the Commission's Rules, 16 CFR 1.72, do not bind the Commission.

*Section 622 Relation to State Laws*

"This title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency."

1. Basic Rule

State law is pre-empted by the FCRA only when compliance with inconsistent state law would result in violation of the FCRA.

2. Examples of Statutes that are not Pre-empted

A state law requirement that an employer provide notice to a consumer before ordering a consumer report, or that a consumer reporting agency must provide the consumer with a written copy of his file, would not be pre-empted, because a party that complies with such provisions would not violate the FCRA.

3. Examples of Statutes that are Pre-empted

A state law authorizing grand juries to compel consumer reporting agencies to provide consumer reports, by means of subpoenas signed by a court clerk, is pre-empted by the FCRA's requirement that such reports be furnished only pursuant to an "order of the court" signed by a judge (section 604(1)), or furnished for other purposes not applicable to grand jury subpoenas (section 604(2)–(3)), and by section 607(a). A state statute requiring automatic dislosure of a deletion or dispute statement to every person who has previously received a consumer report containing the disputed information, regardless of whether the consumer designates such persons to receive this disclosure, is pre-empted by section 604 of the FCRA, which permits disclosure only for specified, permissible purposes and by section 607(a), which requires consumer reporting agencies to limit the furnishing of consumer reports to purposes listed under section 604. Absent a specific designation by the consumer, the consumer reporting agency has no reason to believe all past recipients would have a present, permissible purpose to receive the reports.

4. Statute Providing Access for Enforcement Purposes

A state "little FCRA" that permits state officials access to a consumer reporting agency's files for the purpose of enforcing that statute just as Federal agencies are permitted access to such files under the FCRA, is not pre-empted by the FCRA.

*Effective Date*

The FCRA was enacted October 26, 1970, and became effective April 24, 1971.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88–17655 Filed 8–5–88; 8:45 am]

BILLING CODE 6750–01–M

## NEIGHBORHOOD REINVESTMENT CORPORATION

### 24 CFR Part 4100

### Organization and Channeling of Functions

**AGENCY:** Neighborhood Reinvestment Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Neighborhood Reinvestment Corporation ("the Corporation") proposes to amend its rules on fees and fee waives in order to comply with the Freedom of Information Reform Act. The Corporation's rules are issued in conformance with Office of Management and Budget ("OMB") guidelines and schedule of fees.

**DATE:** Comments must be received by September 7, 1988.

**ADDRESS:** Send comments to Carol J. McCabe, Secretary, Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC. 20005.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Nance Frazier, Director of Communications, 202-376-3224.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Freedom of Information Reform Act and the OMB guidelines, the Corporation proposes to set fees to recover the direct costs incurred by the Corporation in searching for, reviewing and duplicating documents in response to FOIA requests. In compliance with the FOI Reform Act, requesters are classified into four categories for the purposes of making fee assessments: commercial use requesters; educational and noncommerical scientific institution requesters; representatives of the news media; and all other requesters.

The proposed rule establishes new fees for manual search, computer search, review of records and duplication. The proposed rule also provides for the Corporation to require advance payment of fees if the total fees are estimated to exceed $250.00, or where a requester has previously failed to make timely payment of fees due.

The FOI Reform Act requires that fees shall be waived or reduced where the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commerical interest of the requester. The proposed rule sets forth the required contents of a request for a waiver or reduction of fees and the factors the Corporation will consider in determining whether to grant the request.

**List of Subjects in 24 CFR Part 4100**

Freedom of information, Organization and channeling of functions.

**Carol J. McCabe,**

*Secretary.*

The Neighborhood Reinvestment Corporation hereby proposes to amend Part 4100, Chapter 25 of Title 24, Code of Federal Regulations, as set forth below.

### Part 4100—Organization and Channeling of Functions

1. The authority citation for Part 4100 is revised to read as follows:

**Authority:** Title VI, Pub. L. 95–557, 92 Stat. 2115 (42 U.S.C. 6101 et seq.); as amended by sec. 315, Pub. L. 96–399, 94 Stat. 1645; sec. 710, Pub. L. 97–320, 96 Stat. 1544; and sec. 520, Pub. L. 100–242, 101 Stat. 1815.

**§ 4100.4 [Amended].**

2. In Section 4100.4, paragraph (a) is amended to revise the Corporation's address from "1850 K Street NW., Suite 400, Washington, DC 20006" to "1325 G Street NW., Suite 800, Washington, DC 20005".

3. In § 4100.4, paragraph (c)(1) is amended to remove the last sentence.

4. In § 4100.4, paragraph (d) is revised to read as follows: (d) *Fees for providing copies of records.* Fees shall be assessed pursuant to the Freedom of Information Act (5 U.S.C. 552) in order to recover the full allowable direct costs of providing copies of records. For purposes of this section, the term "direct costs" means

those expenditures which the Corporation actually incurs in searching for and duplicating (and in the case of commerical use requesters, reviewing) documents to respond to a Freedom of Information Act ("FOIA") request. Direct costs include, for example, the salaries of the employees performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line indentification of material within documents. Searches may be done manually or by computer using existing programming. The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The term "review" refers to the process of examing documents located in response to a commerical use request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spend resolving general legal or policy issues regarding the application of exemptions. A schedule based on these principles is set forth in paragraph (d)(9) of this section.

(1) *Categories of requesters.* Fees will be assessed according to the category of the requester. There are four categories:

(i) *Commercial use requesters.* For purposes of this section, the term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the Corporation shall seek additional clarification before assigning the request to a specific category.

(ii) *Educational and noncommercial scientific institution requesters.* For pusposes of this section, the term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis, as that term is used in paragraph (d)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is made as authorized by and under the auspices of a qualifying institution, and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requesters who are representatives of the news media.* For purposes fo this section, the term "representative of the news media" refers to any person actively gathering news for an entity that is organized. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look at the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester must meet the criteria above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(iv) *All other requesters.*

(2) *Limitations on fees to be charged.* (i) *Commercial use requesters.* Commercial use requesters shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at paragraph (d)(9) of his section. Commercial use requesters are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational and noncommercial scientific institution requesters.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for search or review

(iii) *Requesters who are representatives of the news media.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for search or review.

(iv) *all other requesters.* Requesters who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(v) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(vi) *Additional Copies.* The Corporation will normally furnish only one copy of any record. The allowance of 100 free pages of duplication under paragraphs (d)(2) (ii), (iii), and (iv) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each such additional copy.

(3) *Charges for unsuccessful search.* Where applicable under paragraph (d)(2) of this section search fees may be assessed for time spent searching, even if the Corporation fails to locate the records or if records located are determined to be exempt from disclosure.

(4) *Notice of anticipated fees in excess of $25.00.* Unless the person making the request states in his or her initial request that he or she will pay all costs regardless of amount, the Corporation will notify him or her as soon as possible if there is reason to

believe that the cost for obtaining access to and/or copies of such records will exceed $25. If such notice is given, the time limitations contained in the Freedom of Information Act shall not commence until the person making the initial request agrees in writing to pay such costs.

(5) *Advance Payments.* The Communications Director is authorized to require an advance payment of an amount up to full estimated charges whenever he or she determines that: the allowable charges that a requester may be required to pay are likely to exceed $250; or a requester has previously failed to pay a fee charged in a timely manner. If such a payment is required, the time limitations contained in the Freedom of Information Act shall not commence until payment is made.

(6) *Charging Interest.* The Corporation will assess interest charges on any unpaid fees starting on the 31th day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Receipt of the fee by the Corporation, even if not processed, will stay the accrual of interest. Interest is not chargeable for unpaid advance payments under paragraph (d)(5) of this section.

(7) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation may aggregate any such requests and charge accoordingly.

(8) *Waiver or reduction of fee.* The Corporation will furnish documents without charge or at a reduced charge when it is determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commercial interest of the requester. In determining whether disclosure is in the public interest, the following factors may be considered:

(i) The relationship of the records to tthe opertions or activities of the Corporation;

(ii) The informative value of the information to be disclosed;

(ii) Any contribution to an understanding of the subject by the general public likely to result from disclcsure.

(iv) The significance of that contribution to the public understanding of the subject;

(v) the nature of the requester's personal interest, if any, in disclosure; and whether the disclosure would be primarily in the requester's commercial interest. In making a request for a waiver or reduction of fees, a requester should include a clear statement of his or her interest in the requested documents; the proposed use for the docmuments and whether the requester will derive income or other benefit from such use; and a statement of how the public will benefit from such use. Determinations concerning waiver or reduction of fees shall be made by the Executive Director, or his or her designee.

(9) *Schedule of fees.* Fees for searching for, reviewing, duplicating, and providing records and information of the Corporation under this section will be assessed in accordance with the following schedule:

(i) *Manual search.* For each quarter hour or fraction thereof: $3.37.

(ii) *Computer search.* For each quarter hour or fraction thereof: $3.37.

(iii) *Review.* For each quarter hour or fraction thereof: $4.87.

(iv) *Duplication.*

(A) For a paper photocopy of an existing paper record, $.30 per page.

(B) For duplication of records other than existing paper records (such as computer-stored information, audio or video tapes, microfiche or microfilm), the fee shall equal the actual direct cost of production and duplication of the records or information in a form that is reasonably usable by the requester.

(10) *Processing Costs.* The Communications Director will waive payment in instances in which the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 54

**[EE–158–86, 160–86]**

### Excise and Income Taxes; 401(k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1986. This document also contains new nondiscrimination rules for employee contributions and matching contributions made to employee plans. These new rules are contained in section 401(m) of the Code. The changes relating to cash or deferred arrangements and employee and matching contributions were made to the Code by the Tax Reform Act of 1986. These regulations will provide the public with guidance necessary to comply with the law and would affect sponsors of, and participants in, pension, profit-sharing, and stock bonus plans, and certain other employee benefit plans.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by October 7, 1988. In general, these regulations are effective for plan years beginning after December 31, 1986.

**ADDRESS:** Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (EE–158–86, 160–86), 1111 Constitution Ave. NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** William D. Gibbs of the Employee Benefits and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202 377–9372) (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for Internal Revenue Service, with copies to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP, at the address previously specified.

The collections of information in this regulation are in §§ 1.401(k)–(e)(8), 1.401(m)–1(c)(2), 54.4979–1(a)(3)(ii), and 54.4979–1(a)(4). This information is required by the Internal Revenue Service to assure compliance with sections 401(k) and 401(m) of the

Internal Revenue Code and to collect the tax imposed by section 4979. This information will be used to assure compliance with sections 401(k) and 401(m) and to collect the tax imposed by section 4979. The likely respondents and recordkeepers are State or local governments, businesses or other for-profit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending upon their particular circumstances. Estimated total annual reporting and recordkeeping burden: 1,061,000 hours.

The estimated annual burden per respondent/recordkeeper varies from one hour to three hours, depending on individual circumstances, with an estimated average of three hours. Estimated number of respondents and recordkeepers: 351,000. Estimated frequency of responses: once.

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(k), 401(m), 402(g), 414(q), 414(s), 415, and 416 of the Internal Revenue Code of 1986 (Code). This document also contains proposed amendments to the Pension Excise Tax Regulations (26 CFR Part 54) under section 4979. These amendments are proposed to conform the regulations to sections 1105, 1116 and 1117 of the Tax Reform Act of 1986 (TRA '86).

**Changes to 401(k) Arrangements**

Section 1116 of the Tax Reform Act of 1986 made several changes affecting cash or deferred arrangements. Those changes relating to computation of the actual deferral percentage (ADP), allowing rural electric cooperatives to maintain qualified cash or deferred arrangements, new standards for testing discrimination in coverage, and new definitions of compensation and highly compensated employee were contained in final regulations published under section 401(k) on August 8, 1988. Additional changes affecting cash or deferred arrangements are included in this notice of proposed rulemaking.

Section 401(k)(2)(B) permits distributions from cash or deferred arrangements upon termination of a plan without establishment of a successor plan, the sale by a corporation of substantially all of its assets used in its trade or business to another corporation, or the sale by a corporation of such corporation's interest in a subsidiary to an unrelated entity. The proposed regulations provide that a sale of 85 percent of the relevant assets will be deemed a sale of substantially all assets.

Prop. Treas. Reg. § 1.401(k)–1(e)(4) reflects new limits imposed by section 1116(f) of TRA '86 on the ability of state or local governments and tax exempt organizations to establish cash or deferred arrangements after certain dates. A state or local government may not establish a cash or deferred arrangement after May 5, 1986. An organization exempt from tax under Subtitle A of Code, including federal instrumentalities described in section 501(c)(1) of the Code, may not establish a cash or deferred arrangement after July 1, 1986. The proposed regulations contain special rules allowing all employees of an employer to participate in a plan established by the employer before the applicable effective dates. Comments are specifically requested on the definition of the appropriate employer.

Plans established by state and local governments and tax-exempt organizations before the applicable effective dates are, of course, subject to all requirements applicable to other plans that include cash or deferred arrangements. However, special effective dates are provided for plans of state and local governments to comply with the new discrimination tests of section 401(k)(3).

Prop. Treas. Reg. § 1.401(k)–1(e)(5) reflects the amendment of section 401(k)(2) to require a plan to permit an otherwise eligible employee to participate in a cash or deferred arrangement after the employee has completed one year of service.

Section 401(k)(4) provides that a cash or deferred arrangement does not meet the requirements of section 401(k) if any other benefit (other than a matching contribution described in section 401(m)) is contingent upon the employee's electing to have the employer make or not make contributions under the cash or deferred arrangement in lieu of receiving cash. The proposed regulations clarify that other employer benefits include, but are not limited to, health benefits, vacations or vacation pay, life insurance, dental plans, legal services plans, increases in salary, bonuses, loans, financial planning services, subsidized retirement benefits, stock options and property subject to section 83. Also, nonqualified deferred compensation is an employer benefit only to the extent that an employee may receive additional nonqualified deferred compensation to the extent the employee does not make elective contributions.

Section 401(k)(8) permits the distribution or recharacterization of excess contributions which would otherwise cause an employer's plan not to meet the ADP requirements of section 401(k)(3)(A). The proposed regulations provide that, for nondiscrimination purposes, recharacterized amounts are treated as employee contributions for the year in which the elective contributions would have been received (but for the deferral election) and must, therefore, be tested under section 401(m) for that year. The proposed regulations also provide that, whether distributed or recharacterized, excess contributions are annual additions in the year of deferral. Additional rules concerning recharacterization were contained in final regulations under section 401(k) published in August 8, 1988.

**Nondiscrimination Requirements for Employee and Matching Contributions**

Section 401(m), added by section 1117 of TRA '86, contains new nondiscrimination rules for employee and matching contributions. These new nondiscrimination rules, which supplement the ADP tests applicable to cash or deferred arrangements, apply to plans described in section 401(a), annuity plans described in section 403(a), and annuity contracts described in section 403(b).

The proposed regulations define the term "employee contribution" to include both voluntary and mandatory contributions that are credited to a separate account to which gains or losses are allocated. The term also includes recharacterized elective contributions. The term also includes employee contributions to the defined contribution portion of a plan described in section 414(k), employee contributions to a qualified cost-of-living arrangement described in section 415(k)(2)(B), employee contributions applied to the purchase of whole life insurance or survivor benefit protection under a defined contribution plan and employee contributions to a contract described in section 403(b). The term "employee contribution" does not include repayment of loans or buy-backs of benefits described in section 411(a)(7)(C).

The proposed regulations do not allow either elective contributions or matching contributions to be used to satisfy the minimum contribution or benefit which must be made to top-heavy plans on behalf of non-key employees. This is because a non-key employee must

receive the top-heavy minimum contribution or benefit regardless of whether he makes an elective contribution or has a matching contribution made on his behalf. This rule applies to plan years beginning after December 31, 1988. Qualified nonelective contributions, however, can be used to satisfy the minimum required contribution in a top-heavy plan.

The proposed regulations require that employee contributions and matching contributions meet both the special nondiscrimination test of section 401(m)(2)(A) with respect to the amount of contributions and the nondiscrimination test of section 401(a)(4) with respect to other benefits, rights, and features, including the availability of contributions. The special nondiscrimination test requires that the actual contribution percentage for eligible highly compensated employees not exceed the greater of (1) 125 percent of the actual contribution percentage for all other eligible employees, or (2) the lesser of 200 percent of the actual contribution percentage for all other eligible employees, or the actual contribution percentage for all other eligible employees plus two percentage points.

An employee contribution is taken into account under the special nondiscrimination test of section 401(m)(2)(A) for the plan year in which such amounts are contributed to the trust. Payment by the employee to an agent of the plan is treated as a contribution to the trust at the time of payment to the agent if the funds so paid are transmitted to the trust within a reasonable period after payment to the agent.

Section 401(m)(6) permits correction of excess aggregate contribution amounts contributed to a plan subject to the requirements of section 401(m). Such correction must be made through a plan distribution; recharacterization is not available as a method of correction. In addition, excess aggregate contributions may be avoided through making additional qualified nonelective or matching contributions. The proposed regulations also provide rules for coordinating the correction of elective deferrals, excess contributions, and excess aggregate contributions.

For plan years to which section 401(m) applies, the rules of Rev. Rul. 80–307, 1980–2 C.B. 136, and Rev., Rul. 80–350, 1980–2 C.B. 133, which set forth rules governing employee contributions, will no longer apply. Thus, for example, whether mandatory employee contributions and matching contributions are discriminatory will be determined without regard to the "six percent of compensation" rule, and voluntary employee contributions will not be limited to ten percent of compensation.

Section 401(m)(9) gives the Secretary of the Treasury the authority to prescribe rules limiting the use of the alternative limitation test (200 percent/2 percentage points) of sections 401(k)(3)(A)(ii)(II) and 401(m)(2)(A)(ii). In general, the proposed regulations take the position that if the alternative limitation is used to meet the section 401(k) test for any plan year beginning after December 31, 1988, it cannot be used to meet the section 401(m) test for any plan year beginning with or within such 401(k) plan year. Similarly, if the alternative limitation is used to meet the section 401(m) test, it cannot be used to meet the section 401(k) test. There is no limit on multiple use of the alternative limitation for plan years beginning before January 1, 1989. The proposed regulations take the position that the restriction on the alternative limitation applies only to the overlap group consisting of those highly compensated employees who are eligible to participate in both a plan subject to section 401(m) and an arrangement subject to section 401(k).

Section 4979 imposes a ten percent excise tax on excess contributions (amounts which exceed the limitations of section 401(k)(3)(A)(ii)) and excess aggregate contributions (amounts which exceed the limitations of section 401(m)(2)(A)) if such amounts are not corrected by 2½ months following the close of the plan year to which they relate. A plan which does not correct these amounts by the end of the plan year following the plan year to which they relate is disqualified for the plan year to which they relate and all subsequent plan years that they remain in the plan.

**$7,000 Limit on Elective Deferrals**

Section 402(g) limits the amount an employee may defer under a cash or deferred arrangement for any taxable year to $7,000. This amount is increased to $9,500 for elective deferrals under a salary reduction agreement to a section 403(b) contract.

A number of special transition rules relating to section 402(g) were contained in section 1105 of the Tax Reform Act of 1986. These transition rules are not discussed in the proposed regulations, but were discussed in Notice 87–13, 1987–4 I.R.B. 14.

The proposed regulations set forth the methods and requirements for correcting excess deferrals. Such deferrals may be corrected in the taxable year in which made as well as during the period ending on the first April 15 of the subsequent taxable year. The proposed regulations also set forth the manner in which income is computed on excess deferrals.

**Safe-Harbor Income Rule**

Section 402(g)(2)(A)(ii) requires that income on an excess deferral be distributed in order to correct such excess deferral. Similar rules apply under sections 401(k)(8) and 401(m)(6) to the correction of excess contributions and excess aggregate contributions, respectively. The proposed regulations clarify that income attributable to the period between the end of the taxable or plan year and the date of distribution must be distributed in order to correct such defects. In order to simplify plan administration, the proposed regulations contain an optional safe-harbor rule for determining income generated in such period. The income applicable to each month in such period is ten percent of the income for the previous plan year. Amounts distributed on or before the fifteenth day of the month are deemed to have been distributed on the last day of the preceding month. Amounts distributed after the fifteenth day of the month are deemed to be distributed on the last day of the month in which the distribution took place. In the case of excess deferrals, the taxable year of the participant is used instead of the plan year. Comments are invited on additional safe-harbor or procedural methods appropriate for determining income or loss for the period between the end of the taxable or plan year and the date of distribution.

For plan years which begin in 1987, plan sponsors may use any reasonable method for computing the gain or loss allocable to excess deferrals, provided that such method is used consistently for all participants and for all corrective distributions under a plan for that plan year. A similar rule is set forth for correction of excess contributions and excess aggregate contributions.

Additional transition rules relating to correction of excess contributions, excess aggregate contributions, and excess deferrals are contained in Notice 88–33, 1988–13 I.R.B. 17.

**Effective Date of the Proposed Regulations**

These regulations are generally proposed to be effective for plan years beginning after December 31, 1988. However, certain provisions relating to permitted plan distributions, time of participation, contingent benefits, multiple use of the alternative limitation, and other items are proposed to be

effective for plan years beginning after December 31, 1988.

A special effective date is provided for plans maintained pursuant to one or more collective bargaining agreements. This special date is applicable on a plan-wide basis to plans maintained pursuant to one or more collective bargaining agreements even if such plans cover employees other than those in a collective bargaining unit. To use the special effective date, at least twenty-five percent of the plan participants must be members of employee units covered by collective bargaining agreements. The special effective date must be used for sections 401(k)(2) and (8) as well as for other purposes. An additional special effective date is provided for cash or deferred arrangements maintained by state and local governments.

**Time of Plan Amendments**

Plan amendments to reflect the changes contained in these proposed regulations need not be made until the earlier of plan termination or the dates specified in section 1140 of TRA '86 (as amplified by the regulations under section 401(b)). This deferred amendment date is available only if (1) the plan is operated in accordance with the applicable provisions of TRA '86 for the period beginning with the effective date of the provision with respect to the plan; and (2) those plan amendments adopted which are required by TRA '86 are retroactive to such effective date and are consistent with plan operations during the retroactive effective period.

**Reliance on These Proposed Regulations**

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. Because these regulations are generally effective for plan years after 1986, the Service will apply these proposed regulations in issuing determination letters, opinion letters, and other rulings and in auditing returns with respect to taxpayers and plans. If future guidance is more restrictive, such guidance will be applied without retroactive effect.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Comments and Requests for Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is William D. Gibbs of the Employee Benefits and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR 1.401–1—1.425–1*

Income taxes, Employee benefit plans, Pensions, Stock options, Individual Retirement Accounts, Employee Stock Ownership Plans.

*26 CFR Part 54*

Excise taxes, Pensions.

**Proposed Amendments to the Regulations**

The proposed amendments to 26 CFR Parts 1 and 54 are as follows:

**PART 1—[AMENDED]**

Paragraph 1. The authority citation of Part 1 continues to read

**Authority: 26 U.S.C. 7805** * * *

Par. 2. § 1.401(k)–0 is revised to read as follows:

**§ 1.401(k)–0 Certain cash or deferred arrangements, table of contents.**

This section contains the caption in § 1.401(k)–1.

*§ 1.401(k)–1. Certain cash or deferred arrangements*

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(3) Eligible employee.
(i) In general.
(ii) Certain one-time elections.
(4) Elective contributions.
(5) Nonelective contributions.
(6) Matching contributions.
(7) Qualified matching contributions and qualified nonelective contributions.
(i) Qualified matching contributions.
(ii) Qualified nonelective contributions.
(iii) Additional requirements.
(8) Actual deferral percentage.
(i) General rule.
(ii) Employee eligible under more than one arrangement.
(iii) Aggregation of family members.
(9) Compensation.
(i) Years before January 1, 1987.
(A) In general.
(B) Nondiscrimination.
(ii) Years after December 31, 1986.
(10) Highly compensated employees.
(11) Pre-ERISA money purchase plan.
(12) Rural electric cooperative plan.
(13) Excess contributions.
(h) Effective dates.
(1) In general.
(2) Collectively bargained plans.
(3) Transitional rules.
(4) Transitional rules for plans of State and local governments.

Par. 3. Section 1.401(k)–1(a) is amended by adding a sentence at the end of paragraph (a)(3)(i), and adding a new paragraph (a)(6) to read:

**§ 1.401(k)–1 Certain cash or deferred arrangements.**

(a) *In general.* * * *

(3) *Cash or deferred election*—(i) *General rule.* * * * A cash or deferred election does not include an election made with respect to amounts that have become currently available on or before the later of the date on which the employer adopts the cash or deferred arrangement or the date on which such arrangement first becomes effective.

* * * * *

(6) *Application to partnerships*—(i) *In general.* A partnership may maintain a cash or deferred arrangement, and individual partners may make cash or deferred elections with respect to compensation attributable to services rendered to the partnership. Such compensation will be deemed not to be currently available at any time prior to the close of the partnership taxable year.

(ii) *Partnership cash or deferred arrangements.* An arrangement that directly or indirectly permits individual partners to vary the amount of contributions made on their behalf will be deemed to constitute a cash or deferred arrangement with respect to such partners, and any contributions made on behalf of an individual partner pursuant to such an arrangement will constitute elective contributions unless designated or treated as after-tax employee contributions. Consistent with § 1.402(a)–1(d), any such elective contributions will constitute after-tax employee contributions unless the arrangement constitutes a qualified cash or deferred arrangement. For example, the arrangement will constitute a qualified cash or deferred arrangement only if the requirements of section 401(k) and this section (including paragraph (b)) are satisfied. In addition, if such elective contributions are made under a qualified cash or deferred arrangement, the contributions would constitute after-tax employee contributions to the extent they exceed the applicable limit under section 402(g). Conversely, if such an arrangement does not constitute a qualified cash or deferred arrangement, the contributions will be includible in the partner's income and are not deductible or excludable as employer contributions. See § 1.401(k)–1(a)(5)(ii).

(iii) *Certain matching contributions.* If the partnership makes matching contributions with respect to an individual partner's elective contributions or employee contributions and the deduction of such matching contributions is allocated to the partner, then such matching contributions shall constitute elective contributions made on behalf of such partner. In the case of a plan that, on August 8, 1988, did not treat such matching contributions as elective contributions, this rule shall apply only to plan years beginning after August 8, 1988.

* * * * *

Par. 4. Section 1.401(k)–1(b) is amended by revising paragraphs (b)(2), (b)(3) and (b)(4) and adding a new paragraph (b)(5)(iii), to read:

**§ 1.401(k)–1 Certain cash or deferred arrangements.**

* * * * *

(b) *Coverage and discrimination requirements.* * * *

(2) *Nondiscriminatory elective contributions*—(i) *General rule.* A cash or deferred arrangement satisfies this paragraph (b) for a plan year only if—

(A) The elective contributions under the arrangement, or

(B) The elective contributions, in combination with qualified nonelective contributions and qualified matching contributions that are treated as elective contributions under the arrangement, satisfy the actual deferral percentage test in paragraph (b)(4) of this section. If a cash or deferred arrangement satisfies this paragraph (b)(2), such arrangement will be treated as satisfying section 401(a)(4) with respect to the amount of elective contributions. See paragraph (e)(1) of this section with respect to the application of section 401(a)(4) to other benefits, rights and features under a cash or deferred arrangement. An arrangement does not fail to satisfy this paragraph (b) merely because all of the eligible employees under an arrangement for a plan year are highly compensated employees.

(ii) *Separate test.* For plan years which begin after December 31, 1988, or in the case of a collectively-bargained plan, the date specified in paragraph (h) of this section, except as specifically provided otherwise, section 401(k)(3) is the exclusive nondiscrimination test applicable to the amount of elective contributions under a qualified cash or deferred arrangement. Accordingly, a plan under which elective contributions are made under a qualified cash or deferred arrangement will satisfy section 401(a)(4) only if the amount of such elective contributions satisfies section 401(k)(3) and paragraph (b)(1) of this section. In addition, except as expressly permitted under section 401(k) and section 401(m), elective contributions under a cash or deferred arrangement (whether or not such arrangement is a qualified cash or deferred arrangement) may not be taken into account in determining whether any other contributions under any plan (including the plan to which the elective contributions are made) satisfies section 401(a)(4) with respect to the amount of any other contributions or benefits.

(3) *Qualified nonelective contributions and qualified matching contributions that may be treated as elective contributions.* Except as specifically provided otherwise, for purposes of paragraph (b)(2)(i)(B) of this section, all or part of the qualified nonelective contributions and qualified matching contributions made with respect to those employees who are eligible employees under the cash or deferred arrangement being tested may be treated as elective contributions under such arrangement provided that each of the following (to the extent applicable) is satisfied:

(i) The nonelective contributions, including those qualified nonelective contributions treated as elective contributions for purposes of the actual deferral percentage test, satisfy the requirements of section 401(a)(4).

(ii) The nonelective contributions, excluding those qualified nonelective contributions treated as elective contributions for purposes of the actual deferral percentage test and those qualified nonelective contributions treated as matching contributions under § 1.401(m)–1(b)(2) for purposes of the actual contribution percentage test, satisfy the requirements of section 401(a)(4).

(iii) For plan years beginning before January 1, 1987, or such later date provided in paragraph (h) of this section, the matching contributions, including those qualified matching contributions treated as elective contributions for purposes of the actual deferral percentage test, satisfy the requirements of section 401(a)(4).

(iv) For plan years beginning before January 1, 1987, or such later date provided in paragraph (h) of this section, the matching contributions, excluding those qualified matching contributions treated as elective contributions for purposes of the actual deferral percentage test, satisfy the requirements of section 401(a)(4).

(v) For plan years which begin after December 31, 1986, or on or after the later date provided in paragraph (h) of this section, the matching contributions satisfy the requirements of section 401(m). Those qualified nonelective contributions and qualified matching contributions treated as elective contributions for purposes of the actual deferral percentage test shall be disregarded in making this determination.

(vi) Except as provided in subdivisions (i), (iii), and (v) of this paragraph (b)(3), the qualified nonelective contributions and qualified matching contributions treated as elective contributions for purposes of the actual deferral percentage test are not taken into account in determining whether any other contributions or benefits satisfy section 401(a)(4) and are not taken into account in determining whether employee contributions or other matching contributions meet the requirements of section 401(m).

(vii) Qualified nonelective contributions may not be treated as elective contributions if the effect is to increase the difference between the actual deferral percentage for the group of eligible highly compensated employees and the actual deferral percentage for the group of all other eligible employees.

(viii) The qualified nonelective contributions and qualified matching contributions satisfy paragraph (b)(6)(i) for the plan year as if such contributions were elective contributions.

(ix) For plan years which begin after December 31, 1988, or such later date provided in paragraph (h)(4) of this section, the plan year of the plan that includes the cash or deferred arrangement and takes qualified nonelective contributions and qualified matching contributions into account in determining whether elective contributions satisfy section 401(k) is the same as the plan year of the plan or plans to which the qualified nonelective contributions and qualified matching contributions are made. In the case of a short plan year of the plan that includes the cash or deferred arrangement which results from a change in plan years to satisfy the requirements of the preceding sentence, the qualified nonelective contributions and qualified matching contributions may be taken into account only for the plan year of the plan that includes the cash or deferred arrangement for which such contributions satisfy paragraph (b)(6)(i) of this section as if such contributions were elective contributions.

(4) *Actual deferral percentage tests.* (i) For plan years beginning after December 31, 1979, and before January 1, 1987, or such later date provided under paragraph (h) of this section, the actual deferral percentage test is satisfied if either of the following tests is met:

(A) The actual deferral percentage for the group of eligible highly compensated employees (top one-third) is not more than the actual deferral percentage for the group of all other eligible employees (lower two-thirds) multiplied by 1.5.

(B) The excess of the actual deferral percentage for the top one-third over the actual deferral percentage for the lower two-thirds is not more than three percentage points and the actual deferral percentage for the top one-third is not more than the actual deferral percentage for the lower two-thirds multiplied by 2.5.

(ii) For plan years which begin after December 31, 1986, or such later date as is provided under paragraph (h) of this section, the actual deferral percentage test is satisfied if either of the following tests is met:

(A) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage for the group of all other eligible employees multiplied by 1.25.

(B) The excess of the actual deferral percentage for the group of eligible highly compensated employees over the actual deferral percentage for the group of all other eligible employees is not more than two percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage for the group of all other eligible employees multiplied by two.

For plan years which begin after December 31, 1988, or such later date provided under paragraph (h)(4) of this section, if any highly compensated employee is eligible to make elective contributions under a cash or deferred arrangement and to make employee contributions or to receive matching contributions under the plan that includes the cash or deferred arrangement or under any other plan of the employer, the disparities between the actual deferral percentages of the respective groups shall be reduced as described in § 1.401(m)–2. For plan years which begin after December 31, 1986, or on or after the later date provided in paragraph (h) of this section, the plan must provide that the actual deferral percentage test will be met. For purposes of this subparagraph (b)(4)(ii), the plan may incorporate by reference the provisions of section 401(k)(3) and this paragraph (b).

(5) *Aggregation rules.* * * *

(iii) *Plans must have same plan year.* For plan years which begin after December 31, 1989, or such later date provided in paragraph (h) of this section, plans may be aggregated under this subparagraph only if they have the same plan year.

* * * * *

Par. 5. Section 1.401(k)–1(b) is amended by revising so much of paragraph (b)(7) as precedes *Example (1)* and by adding a new *Example (5)* at the end of paragraph (b)(7) to read as follows:

**§ 1.401(k)–1 Certain cash or deferred arrangements**

* * * * *

(b) *Coverage and discrimination requirements.* * * *

(7) The provisions of this paragraph (b) are illustrated by the following examples. Examples (1)–(4) apply rules in this paragraph (b) for plan years beginning after December 31, 1979 and before January 1, 1987, or such later date provided in paragraph (h) of this section. Example (5) applies the rules in this paragraph (b) for plan years beginning after December 31, 1986, or on or after the later date provided in paragraph (h) of this section.

* * * * *

*Example (5).* Assume that the employer is a corporation, and that the plan year and the employer's tax year are the calendar year. Also assume that the employee contributions, elective contributions, matching contributions, and qualified nonelective contributions (QNC's) meet the applicable requirements of section 401(a)(4) and may be treated as elective deferrals under paragraph (b)(3) of this section. Employer N maintains a plan that contains a 401(k) arrangement and makes matching contributions to such plan. Matching contributions on behalf of nonhighly compensated employees are qualified matching contributions (QMAC's). Matching contributions on behalf of highly compensated employees are not QMAC's. For the 1988 plan year, elective contributions and matching contributions with respect to highly compensated and nonhighly compensated employees are as given by the following chart.

| | Elective contributions (percent) | Total matching contributions (percent) | QMAC's (percent) |
|---|---|---|---|
| Highly compensated | 15 | 5 | 0 |
| Nonhighly compensated | 11 | 5 | 5 |

The plan fails to meet the requirements of section 401(k)(3)(A) because fifteen percent is more than 125 percent of, and more than two percentage points greater than, eleven percent. However, the plan provides that QMACs may be used to meet the requirements of section 401(k)(3)(A)(ii) to the extent needed under that section. The deferral and contribution percentage would then be as follows:

| | Elective contributions with needed QMAC's (percent) | Total matching contributions (percent) |
|---|---|---|
| Highly compensated | 15 | 5 |
| Nonhighly compensated | 12 | 4 |

The elective contributions and QMACs taken into account under section 401(k) meet the requirements of section 401(k)(3)(A)(ii) because fifteen percent is 125 percent of twelve percent and five percent is 125 percent of four percent.

* * * * *

Par. 6. Section 1.401(k)–1(d) is amended by revising paragraph (d)(1) and adding a new paragraph (d)(6) to read as follows:

**§ 1.401(k)–1 Certain cash or deferred arrangements.**

* * * * *

(d) *Distribution limitation*—(1) *General rule*—(i) *Distributions in plan years beginning before January 1, 1985.* For plan years beginning before January 1, 1985, a cash or deferred arrangement satisfies this paragraph (d) only if amounts attributable to elective contributions are not distributable earlier than upon one of the following events:

(A) The employee's retirement, death, disability, or separation from service; or

(B) In the case of a profit-sharing or stock bonus plan, the employee's hardship or attainment of age 59½.

A plan will not fail to satisfy this paragraph by reason of a dividend distribution described in section 404(k)(2).

(ii) *Distributions in plan years beginning after December 31, 1984, and before January 1, 1989.* (A) For plan years beginning after December 31, 1984, and before January 1, 1989, or such later date provided in paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (d) only of amounts attributable to elective contributions are not distributable earlier than upon one of the following events.

(*1*) The employee's retirement, death, disability, or separation from service.

(*2*) The termination of the plan without establishment of a successor plan.

(*3*) The date of the sale or other disposition by a corporation to an unrelated corporation, which does not maintain the plan, of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation. This rule applies only with respect to an employee who continues employment with the corporation acquiring such assets. The sale of 85 percent of the assets used in a trade or business will be deemed a sale of "substantially all" the assets used in such trade or business.

(*4*) The date of the sale or other disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)) to an unrelated entity which does not maintain the plan. This paragraph (d)(1)(ii)(A)(*4*) applies only to an employee who continues employment with such subsidiary.

(*5*) In the case of a profit-sharing or stock bonus plan, the employee's hardship or attainment of age 59½.

A plan will not fail to satisfy this paragraph (d)(1)(ii) by reason of a dividend distribution described in section 404(k)(2).

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(B) For purposes of paragraph (D)(1)(ii)(A)(*2*) of this section, the establishment of a successor plan means the existence at the time the plan including the cash or deferred arrangement is terminated or within the period ending twelve months after distribution of all assets from the arrangement of any other defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)) maintained by the employer. If a successor plan exists with respect to a terminated plan, the cash or deferred arrangement under the plan making the distribution will not satisfy section 401(k), the successor plan will be treated as a continuation of the terminated plan, and the successor plan will be treated as not satisfying section 401(a). A plan maintained by an unrelated employer (i.e., an employer other than the employer maintaining the terminating plan and other than an employer related at the time of the termination to the employer maintaining the terminating plan within the meaning of section 414(b), (c), (m), and (o)) will be treated as a successor plan only if, as of the date of termination, the employer knows or has reason to know that such unrelated employer will become related to the employer.

(iii) *Distributions in plan years beginning after December 31, 1988.* (A) For plan years beginning after December 31, 1988, or on or after the later date provided in paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (d) only if amounts attributable to elective contributions are not distributable earlier than upon one of the following events.

(*1*) The employee's retirement, death, disability, or separation from service.

(*2*) The termination of the plan without establishment of a successor plan.

(*3*) The date of the sale or other disposition by a corporation to an unrelated corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation with respect to an employee who continues employment with the corporation acquiring such assets. The sale of 85 percent of the assets used in a trade or business will be deemed a sale of "substantially all" the assets used in such trade or business.

(*4*) The date of the sale or other disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)) to an unrelated entity. This paragraph (d)(1)(iii)(A)(*4*) applies only to an employee who continues employment with such subsidiary.

(*5*) In the case of a profit-sharing or stock bonus plan, the participant's attainment of age 59½.

(*6*) In the case of distributions of elective contributions (and of income allocable thereto credited to a participant's account as of December 31, 1988, such later date as provided in paragraph (h) of this section, or such earlier date as the plan may provide), under a profit-sharing or stock bonus plan, but not of amounts treated as elective contributions (and of income allocable thereto), the employee's hardship.

A plan will not fail to satisfy this subdivision (iii) by reason of a dividend distribution described in section 404(k)(2).

(B) For purposes of paragraph (d)(1)(iii)(A)(*2*) of this section, the establishment of a successor plan means the existence at the time the plan including the cash or deferred arrangement is terminated or within the period ending twelve months after distribution of all assets from the arrangement of any other defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)) maintained by the employer. If a successor plan exists with respect to a terminated plan, the cash or deferred arrangement under the plan making the distribution will not satisfy section 401(k), the successor plan will be treated as a continuation of the terminated plan, and the successor plan will be treated as not satisfying section 401(a). A plan maintained by an unrelated employer (i.e., an employer other than the employer maintaining the terminating plan and other than an employer related at the time of plan termination to the employer maintaining the terminating plan within the meaning of section 414 (b), (c), (m), and (o)) will be treated as a successor plan only if, as of the date of termination, the employer knows or has reason to know that such unrelated employer will become related to the employer.

* * * * *

(6) *Limitations apply after transfer.* The limitations of paragraph (d) of this section continue to apply to amounts attributable to elective contributions (including amounts treated as elective contributions) even if such amounts are transferred to another qualified plan of any employer. Such other plan will fail to meet the requirements of section 401(a) and this section if transferred amounts are distributable prior to the time specified in this paragraph (d).

* * * * *

Par. 7. Section 1.401(k)–1(e) is amended by adding new paragraphs (e)(4) through (e)(8) at the end to read as follows:

**§ 1.401(k)–1 Certain cash or deferred arrangements.**

* * * * *

(e) *Additional requirements.* * * *

(4) *State and local governments and tax-exempt organizations*—(i) A cash or deferred arrangement does not satisfy this paragraph (e) if the arrangement is adopted—

(A) After May 6, 1986, by a state or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(B) After July 1, 1986, by any organization exempt from tax under Subtitle A of the Internal Revenue Code.

For purposes of this paragraph (e)(4), whether an organization is exempt from tax under Subtitle A of the Internal Revenue Code will be determined without regard to sections 414(b), (c), (m) or (o).

(ii) A cash or deferred arrangement is treated as adopted after the dates described in paragraph (e)(4)(1) of this section with respect to all employees of any employer that adopts the arrangement after such dates. If an employer had adopted an arrangement prior to such dates, all employees of the employer may participate in the arrangement.

(iii) For purposes of this paragraph (e)(4), an employer that, on a particular date, makes a legally binding commitment to adopt a cash or deferred arrangement will be treated as having adopted the arrangement on such date.

(5) *One year participation rule.* For plan years which begin after December 31, 1988, or such later date provided in paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (e) only if, as a condition to be eligible for the arrangement, no employee is required to complete a period of service greater than one year (determined without regard to section 410(a)(1)(B)(i)) with the employer (or employers) maintaining the plan.

(6) *Other benefits not contingent upon elective contributions.* (i) For plan years beginning after December 31, 1988, or such later date provided in paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (e) only if no other employer benefit is conditioned (directly or indirectly) upon the employee's electing to make or not to make elective contributions under the arrangement. The preceding sentence shall not apply to any matching contribution (as defined in section

401(m)) made by reason of such an election or to any benefit that is provided at the employee's election under a plan described in section 125(c) in lieu of an elective contribution under a qualified cash or deferred arrangement.

(ii) Other employer benefits include, but are not limited to, benefits under a defined benefit plan; nonelective employer contributions under a defined contribution plan; the availability, cost, or amount of health benefits; vacations or vacation pay; life insurance; dental plans; legal services plans; loans (including plan loans); financial planning services; subsidized retirement benefits; stock options; property subject to section 83; and dependent care assistance. Also, increases in salary and bonuses are employer benefits for purposes of this paragraph (e)(6). The ability to make after-tax employee contributions is an employer benefits, but such benefit is not contingent upon an employee's electing to make or not make elective contributions under the arrangement merely because the amount of elective contributions reduces dollar-for-dollar the amount of after-tax employee contributions that can be made. Participation in a nonqualified deferred compensation plan is an employer benefit only to the extent that an employee may receive additional deferred compensation under such nonqualified plan to the extent the employee does not make elective contributions.

(iii) A loan or distribution of elective contributions is not an employer benefit conditioned on an employee's electing to make or not make elective contributions under the arrangement merely because the amount of such loan or distribution is based on the amount of the employee's account balance. Also, a benefit under a defined benefit plan which is contingent upon elective contributions solely by reason of the combined plan fraction of section 415(e) is not an employer benefit. Similarly, for example, any benefit under an excess benefit plan described in section 3(36) of the Employee Retirement Income Security Act of 1974 that is dependent on the employee's electing to make or not to make elective contributions and deferred compensation under a nonqualified plan of deferred compensation that is dependent on an employee's having made the maximum elective deferrals under section 402(g) or having made the maximum elective contributions under section 401(k)(3) are not employer benefits.

(7) *Coordination with other plans.* (i) For plan years beginning after December 31, 1988, or such later date provided in paragraph (h) of this section, except as provided in section 401(k) and section 401(m), a cash or deferred arrangement satisfies this paragraph (e) only if no elective contributions under such arrangement are taken into account for purposes of determining whether any other contributions under any plan (including the plan to which the elective contributions are made) meets the requirements of section 401(a). This paragraph shall not apply for purposes of determining whether a plan meets the requirement of section 410(b)(2)(A)(ii).

(ii) Elective contributions under a cash or deferred arrangement are impermissibly taken into account under paragraph (e)(7)(i) of this section if such elective contributions are used to enable any plan (including the plan to which the elective contributions are made) of the employer to satisfy the minimum contribution and benefit requirements under section 416. Notwithstanding the foregoing, qualified nonelective contributions that are treated as elective contributions for purposes of section 401(k)(3) or as matching contributions for purposes of section 401(m) (under paragraphs (b)(2) and (b)(3) of this section) may be used to enable a plan to satisfy the minimum contribution or benefit requirement under section 416. See § 1.401(m)–1(f)(8) and § 1.416–1, M–19, with respect to contributions that would be matching contributions but for their being used to satisfy the minimum contribution or benefit requirement of section 416.

(8) *Recordkeeping requirements.* For plan years beginning after December 31, 1986, or such later date provided in paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (e) only if the employer maintains such records as are necessary to demonstrate compliance with the applicable nondiscrimination requirements of paragraph (b) of this section, including the extent to which qualified nonelective contributions and qualified matching contributions are taken into account.

* * * * *

Par. 8. Section 1.401(k)–1(f) is amended by removing the last two sentences of paragraph (f)(1) and adding new language in lieu thereof, adding a new sentence at the end of paragraph (f)(3)(ii); and adding new paragraphs (f)(3)(iii)(B), (C), (f)(4), (f)(5), (f)(6) and (f)(7) to read as follows:

**§ 1.401(k)–1 Certain cash or deferred arrangements**

* * * * *

(f) *Correction of excess contributions*—(1) *General rule.* * * * In addition, a cash or deferred arrangement will not be treated as failing to satisfy section 401(k)(3) or paragraph (b)(2) of this section for a plan year with respect to the amount of the elective contributions under the arrangement if, in accordance with the terms of the plan that includes the cash or deferred arrangement, excess contributions on behalf of highly compensated employees are recharacterized in accordance with paragraph (f)(3) of this section or excess contributions (and income allocable thereto) are distributed in accordance with paragraph (f)(4) of this section. Excess contributions for a plan year may not remain unallocated or be allocated to a suspense account for allocation to one or more employees in any future year. See paragraph (f)(6) of this section with respect to the failure to correct excess contributions.

* * * * *

(3) *Recharacterization of excess contributions.* * * *

(ii) *Treatment of recharacterized excess contributions.* * * * The amount of excess contributions included in an employee's gross income shall be reduced as provided under paragraph (f)(5)(i)(B) of this section.

(iii) *Additional requirements.*— * * *

(B) *Employee contributions available.* Excess contributions may not be recharacterized under this paragraph (f)(3) with respect to a highly compensated employee to the extent that such recharacterized excess contributions, in combination with the employee contributions actually made by such highly compensated employee, exceed the maximum amount of employee contributions (determined prior to application of section 401(m)(2)(A)) that such highly compensated employee is permitted to make under the plan in the absence of recharacterization.

(C) *Plan year requirement.* For plan years which begin after December 31, 1988, or such later date provided under paragraph (h)(4) of this section, elective contributions may not be recharacterized under this paragraph (f)(3) unless they are recharacterized under the plan with respect to which the elective contributions were made or under a plan with the same plan year as the plan under which the elective contributions were made.

(4) *Corrective distribution of excess contributions and income*—(i) *General rule.* Excess contributions (and income allocable thereto) are distributed in accordance with this paragraph (f)(4) only if such excess contributions and allocable income are designated by the

employer as a distribution of excess contributions (and income) and are distributed to the appropriate highly compensated employees after the close of the plan year in which the excess contributions arose and within twelve months after the close of such plan year. In the event of the complete termination of the plan during the plan year in which an excess contribution arose, such distributions are to be made after the date of termination of the plan and as soon as administratively feasible, but in no event later than the close of the twelve-month period immediately following such termination.

(ii) *Income allocable to excess contributions*—(A) *General rule.* The income allocable to excess contributions is equal to the sum of the allocable gain or loss for the plan year and the allocable gain or loss for the period between the end of the plan year and the date of distribution. Income includes all earnings and appreciation, including such items as interest, dividends, rent, royalties, gains from the sale of property, appreciation in the value of stock, bonds, annuity and life insurance contracts, and other property, without regard to whether such appreciation has been realized.

(B) *Allocable income for the plan year.* The income allocable to excess contributions for the plan year is determined by multiplying the income for the plan year allocable to elective contributions and amounts treated as elective contributions by a fraction. The numerator of the fraction is the excess contributions by the employee for the plan year. The denominator of the fraction is the total account balance of the employee attributable to elective contributions and amounts treated as elective contributions as of the end of the plan year, reduced by the gain allocable to such total amount for the plan year and increased by the loss allocable to such total amount for the plan year.

(C) *Allocable income for the period between the end of the plan year and distribution.* The income allocable to excess contributions for the period between the end of the plan year and the date of a corrective distribution may be calculated under the fractional method set forth in paragraph (f)(4)(ii)(B) of this section or, alternatively, under the following safe harbor method. Under the fractional method, the income for the period between the end of the plan year and the last day of the month preceding the distribution date that is allocable to elective contributions is multiplied by a fraction determined under the method described in paragraph (f)(4)(ii)(B) of this section. Under the safe harbor method, the allocable income for the period between the end of the plan year and the distribution date is equal to 10 percent of the income allocable to excess contributions for the plan year (as calculated under paragraph (f)(4)(ii)(B)) multiplied by the number of calendar months that have elapsed since the end of the plan year. For purposes of determining the number of calendar months that have elapsed under the safe harbor method, a distribution occurring on or before the fifteenth day of the month will be treated as having been made on the last day of the preceding month, and a distribution occurring after such fifteenth day of the next month.

(D) *Special rules for plan years which begin in 1987.* For plan years which begin in 1987, plan sponsors may use any reasonable method for computing the income allocable to excess contributions, provided that such method is used consistently for all participants and for all corrective distributions under a plan for that plan year. The closing balance method is a reasonable method for this purpose. Under the closing balance method, the income allocable to the excess contribution is equal to the sum of (*1*) the income allocable to the account containing the excess contributions for the applicable year, and (*2*) the income allocable to such account for the gap period, multiplied by a fraction. The numerator of the fraction is the excess contribution and the denominator is the closing balance (as of the end of the applicable year) of the account containing the excess contribution. The closing balance includes income for the applicable year. A method will not be considered unreasonable if gains or losses between the end of the plan year and the date of distribution ("gap period") are not taken into account.

(iii) *No employee or spousal consent required.* A corrective distribution of excess contributions (and income) may be made under the terms of the plan without regard to any notice or consent otherwise required under sections 411(a)(11) and 417.

(iv) *Tax treatment.* A corrective distribution of excess contributions (and income) under the terms of the plan is includible in gross income on the earliest dates any elective contributions by the employee during the plan year would have been received by the employee had he originally elected to receive the amounts in cash, or, if distributed more than 2½ months after the plan year for which such contributions were made, in the taxable year of the employee in which distributed. The amount of excess contributions includible in an employee's gross income shall be reduced as provided under paragraph (f)(5)(i)(B) of this section. In addition, such a corrective distribution of excess contributions (and income) is not subject to the early distribution tax of section 72(t) and is not treated as a distribution for purposes of applying the excise tax under section 4981A.

(v) *No reduction of required minimum distribution.* A distribution of excess contributions (and income) is not treated as a distribution for purposes of determining whether the plan satisfies the minimum distribution requirements of section 401(a)(9).

(vi) *Partial correction.* Any distribution of less than the entire amount of excess contributions (and income) is treated as a pro rate distribution of excess contributions and income.

(5) *Special rules*—(i) *Coordination with distribution of excess deferrals.* (A) The amount of excess contributions to be recharacterized under paragraph (f)(3) of this section or distributed under paragraph (f)(4) of this section with respect to an employee for a plan year shall be reduced by any excess deferrals previously distributed to such employee for the employee's taxable year ending with or within such plan year.

(B) The amount of excess deferrals that may be distributed under § 1.402(g)–1(d) with respect to an employee for a taxable year shall be reduced by any excess contributions previously distributed or recharacterized with respect to such employee for the plan year beginning with or within such taxable year. In the event of a reduction under this paragraph (f)(5)(i)(B), the amount of excess contributions includible in the gross income of the employee and the amount of excess contributions reported by the payor or plan administrator as includible in the gross income of the employee shall be reduced by the amount of the reduction under this paragraph (f)(5)(i)(B).

(ii) *Combination of correction methods.* A plan may use qualified nonelective contributions, qualified matching contributions, the recharacterization method, the corrective distribution method, or a combination of these methods, to avoid or correct excess contributions. Thus, for example, with respect to a highly compensated employee who has made excess contributions for a plan year, a portion of the excess contributions may be recharacterized and the remaining portion of the excess contributions may be distributed under this subparagraph.

A plan may require that, upon commencement of participation, a highly compensated employee may elect whether any excess contributions are to be recharacterized or distributed. In addition, a plan may permit a highly compensated employee to have all or a portion of the excess contributions on behalf of such employee for a plan year recharacterization distributed. Any recharacterization or distribution of less than the entire amount of excess contributions with respect to any highly compensated employee is treated as a pro rata recharacterization or distribution of excess contributions and allocable income or loss.

(iii) *Family Members.* The determination and correction of excess contributions of a highly compensated employee whose actual deferral ratio is determined under the family aggregation rules of paragraph (g)(8) of this section is accomplished as follows: If the actual deferral ratio of the highly compensated employee is determined under paragraph (g)(8)(iii)(A)(*1*) of this section, then the actual deferral ratio is reduced as required under paragraph (f)(2) of this section and the excess contributions for the family unit shall be allocated among the family members in proportion to the elective contributions of each family member that are combined to determine the actual deferral ratio. If the actual deferral ratio of the highly compensated employees is determined under paragraph (g)(8)(iii)(A)(*2*), then the actual deferral ratio is reduced as required under paragraph (f)(2) of this section in two steps. First, the actual deferral ratio is reduced as required under paragraph (f)(2), but not below the actual deferral ratio of the group of eligible family members who are not highly compensated employees without regard to family aggregation. Excess contributions are determined by taking into account the contributions of the family members whose contributions were combined to determine the actual deferral ratio of the highly compensated employee under paragraph (g)(8)(iii)(A)(*1*), and shall be allocated among such family members in proportion to each such family member's elective contributions. If further reduction of the actual deferral ratio is required under paragraph (f)(2), excess contributions resulting from this reduction are determined by taking into account the contributions of all the eligible family members and are allocated among such family members in proportion to the elective contributions of each family member.

(6) *Failure to correct.* (i) If a plan does not correct excess contributions within 2½ months after the close of the plan year for which such excess contributions are made, the employer will be liable for a 10 percent excise tax on the amount of the excess contributions. See section 4979 and § 54.4979–1. Qualified nonelective contributions and qualified matching contributions properly taken into account under paragraph (b)(3) of this section for a plan year may permit a plan to avoid having excess contributions even if such contributions are made after the close of the 2½ month period.

(ii) If excess contributions are not corrected before the close of the plan year following the plan year for which they were made, the cash or deferred arrangement will fail to meet the requirements of section 401(k)(3) for the plan year for which the excess contributions are made and all subsequent plan years during which the excess contributions remain in the trust.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

*Example (1).* The Y corporation maintains a cash or deferred arrangement described in section 401(k). The plan year is the calendar year. For plan year 1989, all ten of Y's employees are eligible to participate in the plan. The employee's compensation, elective deferrals, and actual deferral percentages are given by the following table.

| Employee | Compensation | Elective deferral | Actual deferral percentage |
|---|---|---|---|
| 1 | 160,000 | 8,000 | 5.0 |
| 2 | 140,000 | 7,000 | 5.0 |
| 3 | 84,000 | 8,400 | 10.0 |
| 4 | 70,000 | 7,000 | 10.0 |
| 5 | 42,000 | 2,100 | 5.0 |
| 6 | 35,000 | 3,500 | 10.0 |
| 7 | 28,000 | 2,800 | 10.0 |
| 8 | 21,000 | 700 | 3.33 |
| 9 | 21,000 | 0 | 0 |
| 10 | 21,000 | 0 | 0 |

Employees 1, 2, 3 and 4 are highly compensated employees within the meaning of section 414(g). Employees 5, 6, 7, 8, 9, and 10 are nonhighly compensated employees. The actual deferral percentage for the highly compensated employees is 7.50%. The actual deferral percentage for the nonhighly compensated employees is 4.72%. These percentages do not meet the requirements of section 401(k)(3)(A)(ii).

Excess deferrals of $1000 and $1400 have been distributed to employees 1 and 3 respectively. However, the ADP for employee 1 remains at 5.0 and that for employee 3 remains at 10.00. The ADP for the group of highly compensated employees remains at 7.50.

The ADP for the highly compensated employees must be reduced to 6.72. This is done by reducing the ADP of the highly compensated employees with the highest ADP (employees 3 and 4) to 8.44. This would make employee 3's maximum elective contribution $7089.60. This requires a distribution or recharacterization of $1310.40. But since $1400 has already been distributed as an excess deferral, no additional distribution or recharacterization is required or permitted. Employee 4's elective contribution must be reduced by $1092 ($70,000—.0844 ($70,000)) to $5908 through distribution or recharacterization.

*Example (2).* A, B, and C are highly compensated employees of Employer R. R maintains a cash or deferred arrangement. For the plan year 1989, A, B, and C each earn $100,000 and contribute $7,000 to the plan during the period January through June. B retires in November of 1989 and makes a withdrawal of his entire account balance of $200,000. In January of 1990, R computes the ADP for his employees and learns that the highly compensated employees should have contributed only 5% of compensation. Since B made a contribution of $7,000 for 1989, his contribution and compensation are used in determining the ADP despite his $200,000 withdrawal. A, B, and C must each withdraw $2,000 in order to meet the ADP test. Since B has already withdrawn his total account balance under the plan, only A and C must receive a distribution of $2,000 each in order for the plan to meet the ADP test of section 401(k)(3)(A)(ii). However, if B had withdrawn less than the total account balance, he would have to withdraw the lesser of $2,000 or the remaining account balance.

*Example (3).* Individual A has a child, B. Both participate in a 401(k) plan maintained by employer X. A is one of the top ten most highly compensated employees and B is a nonhighly compensated employee. (A) has compensated of $100,000 and defers $7,000 under the 401(k) arrangement; B has compensation of $40,000 and defers $4,000 under the arrangement. The actual deferral ratio of A without regard to family aggregation is 7.00%; aggregating the contributions and compensation of A and B produces an actual deferral ratio of 7.86% ($7,000 + $4,000)/($100,000 + $40,000). Thus, the actual deferral ratio of the family unit is 7.86% (the greater of 7.86% and 7.00%).

For the plan, it is determined that under § 1.401(k)–1(f), the actual deferral ratio of the aggregate family unit must be reduced to 7.20%. Since the actual deferral ratio of the family unit was the actual deferral ratio produced by combining A's and B's contributions and compensation, the reduction required by § 1.401(k)–1(f) is applied to both A's contributions and B's contributions in proportions to those contributions. The excess contributions are $920 ($11,000 total contributions minus (7.20% × $140,000)). A's share of the excess contributions is $585.45 ($7,000/$11,000 × $920) and S has excess contributions of $334.55 ($4,000/$11,000 × $920).

*Example (4).* The facts are the same as in *Example (3)* except that B makes $2,000 in elective contributions and has an actual deferral ratio of 5.00%. The actual deferral ratio of F without regard to family aggregation is 7.00%; combining the

contributions and compensation of A and B produces an actual deferral ratio of 6.43% ($7,000 + $2,000)/($100,000 + $40,000). Thus, the actual deferral ratio of the family unit is 7.00% (the greater of 7.00% and 6.43%).

For the plan, it is determined that under § 1.401(k)–1(f), the actual deferral ratio of the family unit must be reduced to 6.50%. Since the actual deferral ratio of the family unit was A's actual deferral ratio, the plan must first reduce A to the greater of 6.50% and 5.00% (B's actual deferral ratio). Thus, A would have excess contributions of $500 ($7,000 minus (6.50% × $100,000)). B will have no excess contributions.

*Example (5).* The facts are the same as in *Example (4)* except that it is determined that under § 1.401(k)–1(f), the actual deferral ratio of the aggregate family unit must be reduced to 4.50%. Since the actual deferral ratio of the family unit was A's actual deferral ratio, the plan must first reduce A to the greater of 4.50% and 5.00% (B's actual deferral ratio). Thus, A would have excess contributions of $2,000 ($7,000 minus (5.00% × $100,000)). After this reduction, the actual deferral ratio of the family unit would be 5.00%. The family unit actual deferral ratio must be further reduced to 4.50%, and this reduction is applied to both A's remaining elective contributions and B's elective contributions in proportion to those contributions. The additional excess contributions are 5.00% minus 4.50% × $140,000 (the sum of A's and B's compensation), or $700. F has additional excess contributions of $500 ($5,000/$7,000 × $7,000), and B has excess contributions of $200 ($2,000/$7,000 × $700).

*Example (6).* Employer X maintains a section 401(k) plan that covers the following individuals:

| Employee | Compensation | Elective contributions | Actual deferral ratios (percentage) |
|---|---|---|---|
| A | $70,000 | $7,000 | 10.00 |
| B | 70,000 | 2,000 | 2.86 |
| C | 50,000 | 5,000 | 10.00 |
| D | 40,000 | 2,400 | 6.00 |
| E | 30,000 | 900 | 3.00 |
| F | 20,000 | 1,300 | 6.50 |

Individuals A, B and C are highly compensated. A, B and E are family members. The ADP for the nonhighly compensated employees is 6.25% (determined by averaging the actual deferral ratios of D and F, and disregarding the actual deferral ratio of E.) The actual deferral ratio for the family unit A, B and E is determined first by combining the compensation and contributions of A and B, producing an actual deferral ratio of 6.43% ($9,000/$140,000). Combining the compensation and contributions of A, B, and E produces an actual deferral ratio of 5.82% ($9,900/$170,000). Thus, the actual deferral ratio of the family unit is 6.43% (the greater of 6.43% and 5.82%). The ADP for the highly compensated group is 8.22% ((10.00% + 6.43%)/2).

Par. 9. Section 1.401(k)–1(g) is revised by adding new language at the end of paragraph (g)(3)(i); adding a new sentence at the end of paragraph (g)(6); adding a new sentence at the end of paragraph (g)(7)(iii); adding a new sentence at the end of paragraph (g)(8)(ii); adding new paragraph (g)(8)(iii); and adding new language at the end of paragraph (g)(9)(ii), to read as follows:

**§ 1.401(k)–1 Certain cash or deferred arrangements.**

* * * * *

(g) *Definitions.* * * *

(3) *Eligible employee*—(i) *In general.* * * * An employee who would be eligible to make elective contributions but for a suspension due to a distribution, a loan, or an election not to participate in the plan will not fail to be an eligible employee for purposes of section 401(k)(3) for a plan year merely because the employee may not make a cash or deferred election by reason of such suspension. Finally, an employee will not fail to be an eligible employee merely because the employee may receive no additional annual additions because of section 415(c)(1) or 415(e).

* * * * *

(6) *Matching contributions.* * * * For plan years which begin after December 31, 1986, see § 1.401(m)–1(f)(8) for treatment of contributions made pursuant to certain Internal Revenue Code provisions.

(7) *Qualified matching contributions and qualified nonelective contributions.* * * *

(iii) *Additional requirements* * * * For plan years beginning after December 31, 1988, or such later date provided in paragraph (h) of this section, amounts attributable to such contributions are not distributable merely on account of the employee's hardship.

(8) *Actual deferral percentage.* * * *

(ii) * * * For plan years beginning after December 31, 1988, or such later date provided under paragraph (h) of this section, if a highly compensated employee participates in two or more cash or deferred arrangements that have different plan years, this subdivision shall be applied by treating all cash or deferred arrangements ending with or within the same calendar year as a single arrangement.

(iii) *Aggregation of family members.* (A) For plan years beginning after December 31, 1988, or such later date provided in paragraph (h) of this section, if an eligible highly compensated employee is subject to the family aggregation rules of section 414(q)(6) because such employee is either a five-percent owner or one of the ten most highly compensated employees, the combined actual deferral ratio for the family group (which is treated as one highly compensated employee) shall be the greater of:

(*1*) The actual deferral ratio determined by combining the elective contributions, compensation, and amounts treated as elective contributions of all the eligible family members who are highly compensated without regard to family aggregation, and

(*2*) The actual deferral ratio determined by combining the elective contributions, compensation, and amounts treated as elective contributions of all the eligible family members.

If the amount determined under paragraph (g)(8)(iii)(A) (*1*)of this section exceeds the amount determined under paragraph (g)(8)(iii)(A) (*2*) of this section, then it may be necessary, for purposes of correcting excess contributions of the family members under paragraph (f)(5)(iii) of this section, to calculate an actual deferral ratio for the eligible family members who are not highly compensated employees without regard to family aggregation. This actual deferral ratio is determined by combining the elective contributions, compensation, and amounts treated as elective contributions of these employees.

(B) The elective contributions, compensation, and amounts treated as elective contributions of all family members are disregarded for purpose of determining the actual deferral percentage for the group of nonhighly compensated employees, except to the extent taken into account in paragraph (g)(8)(iii)(A) above.

(C) If an employee is required to be aggregated as a member of more than one family group in a plan, all eligible employees who are members of those family groups that include that employee are aggregated as one family group in accordance with paragraphs (g)(8)(ii) (A) and (B) of this section.

(9) *Compensation* * * *

(ii) *Years after December 31, 1986.* * * * Thus, for such years in the case of an employee who begins, resumes, or ceases to be eligible to make elective contributions during a plan year, the amount of compensation received by the employee during the entire plan year shall be taken into account for such plan year. Also, for plan years beginning after December 31, 1988, or on or after the later date provided in paragraph (h) of this section, in computing the actual deferral ratio for an employee for the first plan year of the cash or deferred arrangement, the amount of

compensation received by such employee during the entire 12-month period ending on the close of such plan year shall be taken into account. * * * * * * * * *

Par. 10. A new § 1.401(m)–0 is added immediately after § 1.401(k)–1 to read as follows:

**§ 1.401(m)–0 Employee contributions and matching contributions, table of contents.**

This secton contains the captions in §1.401(m)–1.

*§ 1.401(m)–1 Employee contributions and matching contributions.*

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(2) Separate test.
(b) Nondiscrimination requirements.
(1) General rule.
(2) Qualified nonelective contributions and elective contributions that may be treated as matching contributions.
(3) Actual contribution percentage test.
(4) Aggregation rules.
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(iii) Plans must have same plan year.
(5) Employee and matching contributions taken into account for a plan year.
(i) Employee contributions.
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(e) Correction of excess aggregate contributions.
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(E) Special rules for plan years which begin in 1987.
(iii) Treatment of corrective distributions as employer contributions.
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(v) Tax Treatment.
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*§ 1.401(m)–2 Multiple use of alternative limitation.*

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(b) General rule for determination of multiple use.
(1) In general.
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(c) Correction of multiple use.
(1) In general.
(2) Treatment of required reduction.
(3) Required reduction.
(4) Exampes.
(d) Effective dates.

Par. 11. A new § 1.401(m)–1 is added immediately after § 1.401(m)–(o) to read as follows:

**§ 1.401(m)–1 Employee contributions and matching contributions.**

(a) *In general*— (1) *General rule.* A plan satisfies section 401(a)(4) for a plan year only if the amount of employee contributions and matching contributions to the plan for such plan year satisfies section 401(a)(4). For plan years which begin after December 31, 1986, or such later date provided in paragraph (g) of this section, the amount of employee contributions and matching contributions under a plan satisfies section 401(a)(4) only if such contributions satisfy the nondiscrimination requirements of paragraph (b) of this section. See paragraph (c) of this section with respect to the application of section 401(a)(4) to other benefits, rights and features relating to employee contributions and matching contributions under a plan.

(2) *Separate test.* Except as specifically provided otherwise, section 401(m) is the exclusive nondiscrimination test applicable to the amount of employee contributions and matching contributions under a plan. Accordingly, a plan under which employee contributions, matching contributions, or both are made will satisfy section 401(a)(4) only if the amount of such employee contributions and matching contributions, with the exception of certain qualified matching contributions that are treated as elective contributions for purposes of section 401(k)(3), satisfies section 401(m). In addition, except as expressly permitted under section 401(k) and section 401(m), employee contributions and matching contributions may not be taken into account in determining whether any plan (including the plan to which the employee contributions and matching contributions are made) satisfies section 401(a)(4) with respect to the amount of any other contributions or benefits.

(b) *Nondiscrimination requirements*— (1) *General rule.* A plan satisfies this paragraph (b) with respect to the amount of employee contributions and matching contribution only if—

(i) The employee contributions and matching contributions to the plan, or

(ii) The employee contributions and matching contributions to the plan, in combination with qualified nonelective contributions and elective contributions that are treated as matching contributions to the plan, satisfy the actual contribution percentage test of paragraph (b)(3) of this section. Qualified matching contributions used to meet the requirements of section 401(k)(3)(A) are not subject to the requirements of this paragraph (b)(1). Furthermore, qualified matching contributions used to meet the requirements of section 401(k)(3)(A) may not be used to help employee contributions or other matching contributions meet the requirements of this subparagraph.

(2) *Qualified nonelective contributions and elective contributions that may be treated as matching contributions.* For purposes of paragraph (b)(1)(ii) of this section, all or part of the qualified nonelective contributions and elective contributions made with respect to those employees who are eligible employees under the plan of the employer being tested may be treated as

matching contributions provided that each of the following (to the extent applicable) is satisfied:

(i) The nonelective contributions, including those qualified nonelective contributions treated as matching contributions for purposes of the actual contribution percentage test, satisfy the requirements of section 401(a)(4).

(ii) The nonelective contributions, excluding those qualified nonelective contributions treated as matching contributions for purposes of the actual contribution percentage test and those qualified nonelective contributions treated as elective contributions under § 1.401(k)–1(b)(3) for purposes of the actual deferral percentage test, satisfy the requirements of section 401(a)(4).

(iii) The elective contributions, including those treated as matching contributions for purposes of the actual contribution percentage test, satisfy the requirements of section 401(k)(3).

(iv) The elective contributions, excluding those elective contributions treated as matching contributions for purposes of the actual contribution percentage test, satisfy the requirements of section 401(k)(3).

(v) Except as provided in paragraphs (b)(2)(i) and (b)(2)(iii) of this section, the qualified nonelective contributions and the elective contributions treated as matching contributions for purposes of the actual contributions percentage test are not taken into account in determining whether any other contributions or benefits satisfy section 401(a)(4) or 401(k)(3).

(vi) The qualified nonelective contributions are allocated to the employee under the plan as of a date within the plan year (within the meaning of § 1.401(k)–1(b)(6)(i)), and the elective contributions satisfy § 1.401(k)–1(b)(6) with respect to such plan year.

(vii) Qualified nonelective contributions may not be treated as qualified matching contributions if the effect is to increase the difference between the actual contribution percentage for the group of eligible highly compensated employees and the actual contribution percentage for the group of all other eligible employees.

(viii) For plan years which begin after December 31, 1988, or such later date in paragraph (g) of this section, the plan year of the plan which uses qualified nonelective contributions and elective contributions to meet the test of section 401(m)(2)(A) is the same as the plan year of the plans to which the qualified nonelective contributions and elective contributions are made. In the case of a short plan year of the plan being tested, which results from a change in plan years to satisfy the requirements of the preceding sentence, the elective contributions may be taken into account only for the plan year of the plan being tested for which such elective contributions satisfy the requirements of § 1.401(k)–1(b)(6) and the qualified nonelective contributions may be taken into account only for the plan year of the plan being tested for which such contributions satisfy the requirements of § 1.401–1(k)(b)(6)(i) as if such contributions were elective contributions.

(3) *Actual contribution percentage test.* For plan years beginning after December 31, 1986, or such later date as is provided under paragraph (g) of this section, the actual contribution percentage test is satisfied if the plan provides that either of the following tests shall be met and actually satisfies either of such tests:

(i) The actual contribution percentage for the group of eligible highly compensated employees is not more than the actual contribution percentage for the group of all other eligible employees multiplied by 1.25.

(ii) The excess of the actual contribution percentage for the group of eligible highly compensated employees over the actual contribution percentage for the group of all other eligible employees is not more than two percentage points, and the actual contribution percentage for the group of eligible highly compensated employees is not more than the actual contribution percentage of the group of all other eligible employees multiplied by two.

For plan years which begin after December 31, 1988, or such later date provided under paragraph (g) of this section, if any highly compensated employee is eligible to make elective contributions under a cash or deferred arrangement and to make employee contributions or to receive matching contributions under the plan that includes the cash or deferred arrangement or under any other plan of the employer, the disparities between the actual contribution percentages of the respective groups must be reduced as described in § 1.401(m)–2. For purposes of this paragraph (b)(3), the plan may incorporate by reference the provisions of section 401(m), this section, and § 1.401(m)–2.

(4) *Aggregation rules*—(i) *Permissive aggregation.* Two or more plans to which employee contributions, matching contributions or both, are made may be considered as a single plan for purposes of determining whether or not such plans satisfy sections 401(a)(4), 401(m), and 410(b). In such a case, the aggregated plans must satisfy paragraph (b)(1) of this section and section 401(m) with respect to the amount of the employee contributions and matching contributions and must satisfy sections 401(a)(4) and 410(b) as though such aggregated plans were a single plan. If an employee maintains two or more plans that are treated as a single plan for purposes of section 401(a)(4) or 410(b) (other than, for plan years beginning after December 31, 1988, or such later date provided in paragraph (g) of this section, section 410(b)(2)(A)(ii)), all employee contributions and matching contributions are to be treated as made under the same plan for purposes of sections 401(a)(4), 410(b), and 401(m).

(ii) *Impermissible aggregation.* For plan years which begin after December 31, 1988, notwithstanding paragraphs (b)(2) and (b)(3) of this section, contributions and allocations under a plan described in section 4975(e)(7) (an ESOP) generally may not be combined with contributions or allocations under any plan not described in section 4975(e)(7) (non-ESOP) for purposes of determining whether either the ESOP or the non-ESOP satisfies this paragraph (b) and section 401(a)(4), 401(k), and 410(b). See § 54.4975–11(e), which includes an exception to this rule for certain plans in existence on November 1, 1977. See also § 54.4975–11(a)(5), which provides that an ESOP may form a portion of a plan the balance of which includes a qualified pension, profit-sharing, or stock bonus plan which is not an ESOP. Thus, for example, in determining whether matching contributions under the portion of a plan that is not an ESOP satisfy paragraph (b) and section 401(a)(4), and whether nonelective contributions under the portion of the plan that is an ESOP satisfy section 401(a)(4), such matching contributions and nonelective contributions may not be considered together. Thus, with respect to such matching contributions, the nonelective contributions may not be treated as qualified nonelective contributions.

(iii) *Plans must have same plan year.* For plan years which begin after December 31, 1989, or such later date provided in paragraph (g) of this section, plans may be aggregated under this paragraph (b)(4)(iii) only if they have the same plan year.

(5) *Employee and matching contributions taken into account for a plan year*—(i) *Employee contributions.* An employee contribution is taken into account under this paragraph for a plan year in which such amounts are contributed to the trust. Payment by the employee to an agent of the plan shall,

for such purposes. be treated as a contribution to the trust at the time of payment to the agent if the funds so paid are transmitted to the trust within a reasonable period after the payment to the agent. Excess contributions that are recharacterized under § 1.401(k)–1(f)(2) are taken into account as employee contributions for the plan year that includes the time at which such excess contributions are includible in the gross income of the employee under § 1.401(k)–1(f)(2)(ii).

(ii) *Matching contributions.* A matching contribution is taken into account under this paragraph for a plan year only if such contribution is allocated to the employee's account under the terms of the plan as of any date within the plan year, is actually paid to the trust no later than the end of the twelve-month period beginning on the day after the close of such plan year, and is made on behalf of an employee on account of such employee's elective contributions or employee contributions for the plan year. Matching contributions that do not satisfy all of the preceding requirements may not be taken into account under paragraph (b) for any plan year, but instead must satisfy section 401(a)(4) (without regard to the special nondiscrimination rule in this paragraph (b)) for the plan year for which allocated as if they were the only employer contributions for that year.

(c) *Additional requirements*—(1) *Nondiscrimination requirements.* A plan to which employee contributions or matching contributions may be made satisfies section 401(a)(4) only if, in addition to satisfying paragraph (b) of this section with respect to the amount of employee contributions and matching contributions, such plan also satisfies section 401(a)(4) with respect to other benefits, rights and features under the plan, including the availability of employee contributions and the availability of matching contributions. Also, the method of distributing excess aggregate contributions provided in the plan must meet the requirements of section 401(a)(4). See paragraph (e)(4)(ii) of this section. The determination of whether a rate of matching contributions discriminates under section 401(a)(4) shall be made after any corrective distributions of excess deferrals, excess contributions, and excess aggregate contributions. See also § 1.401(a)–4 with respect to optional forms of benefit.

(2) *Recordkeeping requirement.* A plan does not satisfy this section unless the employer maintains such records as are necessary to demonstrate compliance with the applicable rules of section 401(m) and the regulations thereunder. Among other requirements, such records must be sufficient to demonstrate satisfaction of the applicable nondiscrimination requirement of paragraph (b) of this section, including the extent to which qualified nonelective contributions and elective contributions are taken into account.

(d) *Examples.* The provisions of paragraphs (a) through (c) of this section may be illustrated by the following examples. Assume in each case that the employer is a corporation, and that the employer's taxable year and plan year are both the calendar year. Also assume that the employee contributions, elective contributions, matching contributions and qualified nonelective contributions meet the applicable requirements of sections 401(a)(4) and 410. For methods to be used to correct excess aggregate contributions, see paragraph (e) of this section.

*Example (1).* Employer L maintains a voluntary employee contribution account under a profit-sharing plan. The employer maintains no plan that includes a cash or deferred arrangement. For the 1988 plan year the percentage of compensation contributed to the plan for the highly compensated employees and nonhighly compensated employees is given by the following chart:

| | Employee contributions as *percent of compensation* |
|---|---|
| Highly compensated | 10 |
| Nonhighly compensated | 5 |

This plan fails to qualify under either of the tests of section 401(m)(2)(A) because the actual contribution percentage for highly compensated employees exceeds that for nonhighly compensated employees by more than 125 percent and two percentage points. The employer must either reduce the actual contribution percentage for the highly compensated employees to seven percent, (to satisfy the 200 percent/2 percentage point test) or increase the actual contribution percentage of the nonhighly compensated employees to eight percent (to satisfy the 125 percent test).

*Example (2).* Employer M maintains a plan under which it matches each dollar of employee contributions with $.50 of employer contributions. M maintains no other plan. For the 1988 plan year, the percentage of compensation contributed to the plan for the employees is given by the following chart:

| | Employee contributions | Matching contributions (percent) | Contribution percentage |
|---|---|---|---|
| Highly compensated | 10 | 5 | 15 |
| Nonhighly compensated | 5 | 2.5 | 7.5 |

This plan fails to qualify under either of the tests of section 401(m)(2)(A). The employer must either reduce the actual contribution percentage of the highly compensated employees to 9.5 percent (to satisfy the 200 percent/2 percentage point test) or increase the actual contribution percentage of the nonhighly compensated employees to 12 percent (to satisfy the 125 percent test).

*Example (3).* Employer N maintains a plan that contains a cash or deferred arrangement and that also permits employee contributions. For the 1988 plan year, the percentage of compensation contributed to the plan by the highly compensated and nonhighly compensated employees as elective deferrals and employee contributions is given by the following chart. Elective contributions meet the requirements of paragraph (b)(2) of this section.

| | Elective contributions (percent) | Employee contributions (percent) |
|---|---|---|
| Highly compensated | 10 | 10 |
| Nonhighly compensated | 10 | 6 |

This plan fails to meet the requirements of section 401(m) because the actual contribution percentage of highly compensated employees exceeds that of other employees by more than 125 percent and two percentage points.

The plan provides that elective contributions made by nonhighly compensated employees may be used to meet the requirements of section 401(m) to the extent needed under that section. The deferral and contribution percentages would then be as follows:

| | Elective contributions (percent) | Employee contributions (percent) |
|---|---|---|
| Highly compensated | 10 | 10 |
| Nonhighly compensated | 8 | 8 |

The actual contribution percentage of employee contributions and elective contributions for highly compensated employees taken into account under section 401(m) then meets the requirements of section 401(m)(2)(A)(i) because it is 125 percent of that for nonhighly compensated employees. The cash or deferred arrangement similarly satisfies the 125 percent test. The plan would also meet the requirements of section 401(m) if all elective contributions were used in the 401(m) test. This is because the actual contribution percentage for the highly

compensated (20 percent) would be the 125 percent of the actual contribution percentage for the nonhighly compensated (16 percent).

*Example (4).* Employer P maintains a plan that includes a cash or deferred arrangement. Elective contributions, qualified nonelective contributions (QNC's), employee contributions, and matching contributions are made to such plan. The elective contributions and qualified nonelective contributions meet the requirements of paragraph (b)(2) of this section. For the 1989 plan year, the QNC's, elective contributions and employee and matching contributions are given by the following chart:

| | QNC's (percent) | Elective contributions (percent) | Employee/matching contributions (percent) |
|---|---|---|---|
| Highly compensated | 3 | 5 | 6 |
| Nonhighly compensated | 3 | 4 | 2 |

The elective contributions meet the test of section 401(k)(3)(A)(ii). The employee contributions and matching contributions, however, do not meet the requirement of section 401(m)(2)(A). This employer may not use any QNC's of the nonhighly compensated employees to meet the requirements of section 401(m)(2)(A) because the remaining QNC's would discriminate in favor of the highly compensated employees. However, the employer could make an additional QNC or matching contribution of 2.0 percent on behalf of nonhighly compensated employees. Alternatively, Employer P could treat all QNC's for all employees and 1 percent of the elective contributions for nonhighly compensated employees as employee/matching contributions and make an additional QNC of 1.2 percent on behalf of nonhighly compensated employees. The actual contribution percentages for highly and nonhighly compensated employees will then be 9 percent and 7.2 percent respectively, thus satisfying the 125 percent test. The actual deferral percentages will be 5 and 3 percent, thus satisfying the 200 percent/2 percentage point test.

*Example (5).* Employer P maintains a cash or deferred arrangement. Elective contributions, qualified nonelective contributions, employee contributions, and matching contributions are made to such plan. The elective contributions and qualified nonelective contributions meet the requirements of paragraph (b)(2) of this section. For the 1989 plan year, the amount of such contributions is given by the following chart:

| | QNC's (percent) | Elective contributions (percent) | Employee/matching contributions (percent) |
|---|---|---|---|
| Highly compensated | 0 | 6 | 6 |
| Nonhighly compensated | 3 | 3 | 3 |

The QNC's may be used in the 401(k) test or the 401(m) test, or both. By treating one-third of the QNC's as elective contributions and two-thirds as matching contributions, the actual deferral percentages for highly compensated and nonhighly compensated employees are 6 and 4 percent respectively, thus satisfying the 200 percent test. Similarly, the actual contribution percentages for the two groups are 6 and 5 respectively, thus satisfying the 125 percent test.

(e) *Correction of excess aggregate contributions.*—(1) *In general.* A plan shall not be treated as failing to meet the requirements of section 401(m) or paragraph (b)(3) of this section with respect to the amount of employee contributions and matching contributions under such plan if the employer, in accordance with the terms of the plan and paragraph (b)(2) of this section, makes qualified nonelective contributions that, in combination with employee contributions or matching contributions for the plan year, satisfy the requirements of paragraph (b)(3) of this section. In addition, a plan subject to the requirements of section 401(m) will not be treated as failing to satisfy section 401(m)(2) or paragraph (b)(3) of this section if, in accordance with the terms of the plan, excess aggregate contributions (and the income allocable to such contributions) are distributed (or, if forfeitable under the terms of the plan, forfeited) in accordance with paragraph (e)(2) of this section. Matching contributions that are vested may not be forfeited to correct excess aggregate contributions. Neither recharacterization of excess aggregate contributions nor the failure to make matching contributions required under the terms of the plan is a permitted method of correction. See paragraph (e)(5) of this section with respect to the failure to correct excess aggregate contributions. Excess aggregate contributions for a plan year may not remain unallocated or be allocated to a suspense account for allocation to one or more employees in any future year.

(2) *Amount of excess aggregate contributions.* The amount of excess aggregate contributions for a highly compensated employee for a plan year is to be determined by the following leveling method, under which the actual contribution ratio of the highly compensated employee with the highest actual contribution ratio is reduced to the extent required to—

(i) Enable the plan to satisfy the actual contribution percentage test, or

(ii) Cause such highly compensated employee's actual contribution ratio to equal the ratio of the highly compensated employee with the next highest actual contribution ratio.

This process must be repeated until the plan satisfies the actual contribution percentage test. For each highly compensated employee, the amount of excess aggregate contributions is equal to the total employee contributions and matching contributions, plus qualified nonelective contributions and elective contributions treated as matching contributions, on behalf of the employee (determined prior to the application of this paragraph (e)(2)) minus the amount determined by multiplying the employee's actual contribution ratio (determined after application of this paragraph (e)(2)) by his compensation used in determining such ratio. For plan years which begin after 1988, or such later date provided in paragraph (g) of this section, in determining the amount of excess aggregate contributions under this method, actual contribution ratios must be rounded to the nearest one-hundredth of one percent of the employee's compensation. In no case shall the amount of excess aggregate contributions with respect to any highly compensated employee exceed the amount of employee contributions and matching contributions on behalf of such highly compensated employee for such plan year.

(3) *Corrective distribution of excess aggregate contributions (and income).*—(i) *General rule.* Excess aggregate contributions (and income allocable thereto) are corrected in accordance with this paragraph (e)(3) only if such excess aggregate contributions and allocable income are designated by the employer as a distribution of excess aggregate contributions (and income) and are distributed to the appropriate highly compensated employees after the close of the plan year in which the excess aggregate contribution arose and within twelve months after the close of the following plan year. In the event of the complete termination of the plan during the plan year in which an excess aggregate contribution arose, such distributions are to be made after termination of the plan and before the close of the twelve-month period immediately following such termination.

(ii) *Income allocable to excess aggregate contributions.*—(A) *General rule.* The income allocable to excess

aggregate contributions is equal to the sum of the allocable gain or loss for the plan year and the allocable gain or loss for the period between the end of the plan year and the date of distribution. Income includes all earnings and appreciation, including such items as interest, dividends, rent, royalties, gains from the sale of property, appreciation in the value of stocks, bonds, annuity and life insurance contracts, and other property, without regard to whether such appreciation has been realized.

(B) *Allocable income for the plan year.* The income allocable to excess aggregate contributions for the plan year is determined by multiplying the income for the plan year allocable to employee contributions, matching contributions, and amounts treated as matching contributions by a fraction. The numerator of the fraction is the amount of excess aggregate contributions made on behalf of the employee for the plan year. The denominator of the fraction is the total account balance of the employee attributable to employee contributions, matching contributions and amounts treated as matching contributions as of the end of the plan year, reduced by the gain allocable to such total amount for the plan year and increased by the loss allocable to such total amount for the plan year.

(C) *Allocable income for the period between the end of the plan year and date of corrective distribution.* The income allocable to excess aggregate contributions for the period between the end of the plan year and the date of a corrective distribution may be calculated under the fractional method set forth in paragraph (e)(3)(ii)(B) of this section, or alternatively, under the following safe harbor method. Under the fractional method, the income for the period between the end of the plan year and the last day of the month preceding the distribution date that is allocable to employee contributions, matching contributions and amounts treated as matching contributions is multiplied by a fraction determined under the method described in paragraph (e)(3)(ii)(B) of this section. Under the safe harbor method, the allocable income or loss for the period between the end of the plan year and the distribution date is equal to 10 percent of the income or loss allocable to excess aggregate contributions for the plan year (as calculated under paragraph (e)(3)(ii)(B) of this section) multiplied by the number of calendar months that have elapsed since the end of the plan year. For purposes of determining the number of calendar months that have elapsed under the safe harbor method, a distribution occurring on or before the fifteenth day of the month will be treated as having been made on the last day of the preceding month, and a distribution occurring after such fifteenth day will be treated as having been made on the first day of the next month.

(D) *Allocable income for recharacterized elective contributions.* The income allocable to excess aggregate contributions resulting from the recharacterization of elective contributions shall be determined and distributed as if such recharacterized elective contributions had been distributed as excess contributions.

(E) *Special rules for plan years which begin in 1987.* For plan years which begin in 1987, plan sponsors may use any reasonable method for computing the income allocable to excess aggregate contributions, provided that such method is used consistently for all participants and for all corrective distributions under a plan for that plan year. The closing balance method is a reasonable method for this purpose. Under the closing balance method, the income allocable to the excess aggregate contribution is equal to the sum of (*1*) the income allocable to the account containing the excess aggregate contribution for the applicable year, and (*2*) the income allocable to such account for the gap period, multiplied by a fraction. The numerator of the fraction is the excess aggregate contribution and the denominator is the closing balance (as of the end of the applicable year) of the account containing the excess aggregate contribution. The closing balance includes income for the applicable year. A method will not be considered unreasonable if gains or losses between the end of the plan year and the date of distribution ("gap period") are not taken into account.

(iii) *Treatment of corrective distributions as employer contributions.* Excess aggregate contributions attributable to amounts other than employee contributions, including forfeited matching contributions, shall be treated as employer contributions for purposes of section 404 and 415 even if distributed from the plan.

(iv) *No employee or spousal consent required.* A distribution of excess aggregate contributions (and income) may be made under the terms of the plan without regard to any notice or consent otherwise required under sections 411(a)(11) and 417.

(v) *Tax treatment.* A corrective distribution of excess aggregate contributions (and income) under the terms of the plan is includible in gross income for the taxable year of the employee ending with or within the plan year for which the excess aggregate contributions were made or, if distributed more than 2½ months after the plan year for which such excess aggregate contributions were made, in the taxable year of the employee in which distributed. The portion of such distribution that is treated as an investment in the contract is to be determined without regard to any plan contributions other than those distributed as excess aggregate contributions. In addition, such a corrective distribution of excess aggregate contributions (and income) is not subject to the early distribution tax of section 72(t) and is not treated as a distribution for purposes of applying the excise tax under section 4981A.

(vi) *No reduction of required minimum distribution.* A distribution of excess aggregate contributions (and income) is not treated as a distribution for purposes of determining whether the plan satisfied the minimum distribution requirements of section 401(a)(9).

(vii) *Partial correction.* Any distribution of less than the entire amount of excess aggregate contributions (and income) is treated as a pro rata distribution of excess aggregate contributions and income.

(viii) *Method of distributing excess aggregate contributions.* Any distribution or forfeiture of excess aggregate contributions for any plan year shall be made on the basis of the respective portions of such amounts attributable to each highly compensated employee.

(4) *Special rules*—(i) *Coordination with correction of excess contributions and excess deferrals.* The determination of the amount of excess aggregate contributions with respect to a plan year shall be made after determining the excess contributions, if any, to be treated as employee contributions due to recharacterization under section 401(k) for the plan year of the plan subject to section 401(k) ending with the plan year of the plan being tested under section 401(m).

(ii) *Coordination with section 401(a)(4).* The method of distributing excess aggregate contributions provided in the plan must meet the requirements of section 401(a)(4). Thus, a plan under which employee contributions are distributed under this paragraph (e) to highly compensated employees to the extent needed to meet the requirements of section 401(m)(2), while matching contributions attributable to such employee contributions remain allocated to the highly compensated

employee's account will not meet the requirements of section 401(a)(4). A method of distributing excess aggregate contributions will not be considered discriminatory solely because, in accordance with the terms of the plan, unmatched employee contributions that exceed the highest rate at which employee contributions are matched are distributed before matched employee contributions, or matching contributions are distributed (or forfeited) prior to employee contributions. See Examples (5) and (6) in paragraph (e)(6) of this section.

(iii) *Correction of family members.* The determination and correction of excess aggregate contributions of a highly compensated employee whose actual contribution ratio is determined under the family aggregation rules of paragaph (f)(13) is accomplished as follows: If the actual contribution ratio of the highly compensated employee is determined under paragraph (f)(13)(iii)(*1*) of this section, then the actual contribution ratio is reduced as required under paragraph (e)(2) of this section and the excess aggregate contributions for the family unit shall be allocated among the family members in proportion to the employee contributions and matching contributions of each family member that are combined to determine the actual contribution ratio. If the actual contribution ratio of the highly compensated employee is determined under paragraph (f)(13)(iii)(*2*) of this section, then the actual contribution ratio is reduced as required under paragraph (e)(2) in two steps. First, the actual contribution ratio is reduced as required under paragraph (e)(2), but not below the actual contribution ratio of the group of eligible employees who are members of the family group and are not highly compensated without regard to family aggregation. Excess aggregate contributions are determined by taking into account the contributions of the family members whose contributions were combined to determine the actual contribution ratio of the highly compensated employee under paragraph (f)(13)(iii)(*1*), and shall be allocated among such family members in proportion to each such family member's employee contributions and matching contributions. If further reduction of the actual contribution ratio is required under paragraph (e)(2), excess aggregate contributions resulting from this reduction are determined by taking into account the contributions of all the eligible family members and are allocated among such family members in proportion to the employee contributions and matching contributions of each family member.

(5) *Failure to correct.* (i) If a plan does not correct excess aggregate contributions within 2½ months after the close of the plan year for which such excess aggregate contributions are made, the employer will be liable for a 10 percent excise tax on the amount of the excess aggregate contributions. See section 4979 and § 54.4979–1. Qualified nonelective contributions properly taken into account under paragraph (b)(2) for a plan year may permit a plan to avoid having excess aggregate contributions even if such contributions are made after the close of the 2½ month period.

(ii) If excess aggregate contributions are not corrected by the close of the plan year following the plan year for which they were made, the plan will fail to meet the requirements of section 401(a)(4) for the plan year for which the excess aggregate contributions were made and all subsequent plan years in which the excess aggregate contributions remain in the plan.

(6) *Examples.* The principles of this paragraph may be illustrated by the following examples. Assume in each example that no income or loss is allocable to matching contributions, employee contributions or elective contributions.

*Example (1).* Employer A maintains a thrift plan under which the actual contribution percentage for nonhighly compensated employees is four percent. A does not maintain a plan that includes a cash or deferred arrangement. The three highly compensated employees who participated have the following actual contribution percentages:

| Employee | Compensation | Matching and employee contributions | Contribution percentage |
|---|---|---|---|
| A | 100,000 | 10,000 | 10 |
| B | 90,00 | 6,300 | 7 |
| C | 75,000 | 3,750 | 5 |
| Average | | | 7.33 |

The maximum amount of matching and employee contributions permitted on behalf of A, B, and C is determined by reducing contributions in order of actual contribution percentages beginning with the highest of such actual contribution percentages. Thus A's contribution is first reduced to $7000 or 7.0 percent. Because the actual contribution percentage after this reduction is still 6.33%, the contributions allocated to A and B must be reduced to 6.5%. This results in an actual contribution percentage of six percent, which meets the 200 percent/2 percentage point test. The excess aggregate contributions for A and B are $3,500 and $450 respectively.

*Example (2).* Employee A is the sole highly compensated participant in cash or deferred arrangements maintained by unrelated employers X and Y. Plan X provides a fully vested 50% matching contribution. Both plans use the calendar year as the plan year. Plan X corrects excess contributions by recharacterization. For the 1988 plan year, A's compensation from employer X is $58,333 and his elective contributions under the X plan is $7000. A made an elective contribution of $1000 under plan Y. The actual deferral ratios and percentages and actual contribution ratios and percentages of A and other employees under plan X are shown below:

| | Actual deferral ratios (percentage) | Actual contribution ratios (percentage) |
|---|---|---|
| Employee A | 12 | 8 |
| Nonhighly compensated | 6 | 4 |

In January, A requests and receives a distribution of the $1000 excess deferral from plan X. This does not reduce the amount taken into account in determining A's actual deferral ratio under plan X. In February, employer X determines that A's actual deferral ratio must be reduced to 10%, or $5833, which requires a recharacterization of $1167. The amount required to be recharacterized is reduced by the $1000 previously distributed as an excess deferral. The $167 recharacterized as an employee contribution causes A's actual contribution ratio to exceed the permitted maximum and requires a distribution of $167. This distribution may be made from matching contributions, from unmatched employee contributions or pro rata from employee and matching contributions.

*Example (3).* Same as *Example* (2), except that A does not request a distribution of excess deferrals until March. In this case Employer X would have already recharacterized $1167 as employee contributions, thus requiring a distribution of $1167 in excess aggregate contributions. Because the amount recharacterized exceeds the amount of excess deferrals and will be distributed as an excess aggregate contribution, no further amounts can or need be distributed.

*Example (4).* For the 1989 plan year, employee B defers $7000 under plan C and $1000 under plan D. Plans C and D are maintained by unrelated employers; both plans C and D have a calendar year plan year. Plan C provides a 100 percent matching contribution and does not take elective contributions into account under section 401(m) or take matching contributions into account under section 401(k). B timely requests and receives a distribution of the $1000 excess deferral from plan C. Employer C subsequently determines that employee B has an excess contribution of $600, and an excess aggregate contribution of $600. The plan provides that such excess amounts are corrected by distribution. No distribution is

required or permitted to correct the excess contribution because $1000 has been distributed from this plan as excess deferrals. The distribution required to correct the excess aggregate contribution is $600. If B had corrected the excess deferrals of $1,000 by withdrawing $1,000 from plan D, the employer would have had to correct the $600 excess contribution in Plan C by distributing $600 from Plan C and the $600 of excess aggregate contributions n plan C distributing an additional $600 from Plan C.

*Example (5).* Employee A is the sole highly compensated employee in a thrift plan under which the employer matches 100 percent of the first four percent of employee contributions. For the 1988 plan year, A has compensation of $100,000. A makes an employee contribution of $6,000, or six percent and receives a for percent matching contribution of $4,000. This, A's actual contribution ratio (ACR) is ten percent. The actual contribution percentage for the non-highly compensated employees if four percent, and the employer determines that A's ACR must be reduced to six percent to comply with the rules of section 401(m). In this case, the plan satisfies the requirements of this paragraph if it distributes the unmatched employee contributions ($2,000) plus $1,000 of matched employee contributions with its $1,000 of matching contributions, leaving three percent in employee contributions and three percent in matching contributions for an ACR of six percent. The plan could instead have distributed all matching contributions. The plan would fail to meet the requirements of this paragraph if it distributed $4,000 (four percent) of A's employee contributions and none of A's matching contributions.

*Example (6).* Employee B is the sole highly compensated employee in a thrift plan under which the employer matches 100 percent of the first two percent of employee contribution and 50 percent of the next four percent of employee contributions. For the 1988 plan year, B has compensation of $100,000. B makes an employee contribution of $7,000, or seven percent, and receives a four percent matching contribution of $4,000. Thus, B's ACR is eleven percent. The actual contribution percentages for the non-highly compensated employees is five percent, and the employer determines that B's ACR must be reduced to seven percent to comply with the rules of section 401(m). In this case, the plan satisfies the requirements of this paragraph if it distributes the unmatched employee contributions of $1,000, and $2,000 of matched employee contributions with their accompanying matches of $1,000. This would leave B with four percent employee contributions, and three percent matching contributions, for an ACR of seven percent. The plan could instead distribute all matching contributions. The plan would fail to meet the requirements of this paragraph if it distributed $4,000 (four percent) of B's employee contributions and none of B's matching contributions.

(f) *Definitions.* The following is a list of terms and definitions to be used for purposes of section 401(m), this section, and § 1.401(m)–2.

(1) *Employee.* The term "employee" means an individual who performs services for the employer and who is either a common law employee of the employer or a self-employed individual treated as an employee pursuant to section 401(c)(1). The term "employee" also includes a leased employee who is treated as an employee of the employer-recipient pursuant to the provisions of section 414(n)(2) or 414(o)(2) (other than individuals covered by a plan described in section 414(n)(5)). Individuals that an employer treats as leased employees under section 414(n), pursuant to the requirements of section 414(o), are considered to be leased employees for purposes of this rule.

(2) *Employer.* The term "employer" means the employer maintaining the plan and those employers required to be aggregated with such employer under sections 414(b), (c), (m), or (o).

(3) *Eligible employee*—(i) *In general.* The term "eligible employee" means an employee who is directly or indirectly eligible to make an employee contribution or to receive an allocation of matching contributions (including matching contributions derived from forfeitures) under the plan for a plan year. For example, if an employee must perform certain acts in order to be eligible to make an employee contribution for a plan year, such employee is an eligible employee for such plan year without regard to whether the employee performs such acts. An employee is an eligible employee if he is unable to make an employee contribution or to receive an allocation of matching contributions merely because his compensation is less than a stated dollar amount. An employee who would be eligible to make employee contributions but for a suspension due to a distribution, a loan, or an election not to participate in the plan, will not fail to be an eligible employee for purposes of section 401(m) for a plan year merely because the employee may not make an employee contribution or receive an allocation of matching contributions by reason of such suspension. Finally, an employee will not fail to be an eligible employee merely because the employee may receive no additional annual additions because of section 415(c)(1) or 415(e).

(ii) *Certain one-time elections.* An employee is not an eligible employee merely because such employee, upon commencing employment with the employer or upon the employee's first becoming eligible under any plan, is given the one-time opportunity to elect, and such employee did in fact elect, not to be eligible to make employee contributions or to receive allocations of matching contributions under such plan or any other plan maintained by the employer (including plans not yet established) for the duration of the employee's employment with the employer.

(4) *Highly compensated employee.* The term "highly compensated employee" has the meaning set forth in section 414(q).

(5) *Elective contribution.* The term "elective contribution" has the meaning set forth in § 1.401(k)–1(g)(4).

(6) *Nonelective contribution.* The term "nonelective contribution" has the meaning set forth in § 1.401(k)–1(g)(5).

(7) *Employee contributions.* The term "employee contributions" means any contributions to the plan that are designated or treated at the time of deferral or contribution as after-tax employee contributions (e.g., by reporting the contributions as taxable income subject to applicable withholding requirements) and are allocated to a separate account to which the attributable earnings and losses are allocated. See § 1.401(k)–1(a)(2)(ii). Such term includes—

(i) Employee contributions to the defined contribution portion of a plan described in section 414(k),

(ii) Employee contributions to a qualified cost-of-living arrangement described in section 415(k)(2)(B),

(iii) Employee contributions applied to the purchase of whole life insurance protection or survivor benefit protection under a defined contribution plan,

(iv) Amounts attributable to excess contributions within the meaning of section 401(k)(8)(B) which are recharacterized as employee contributions, and

(v) Employee contributions to a contract described in section 403(b).

Such term does not include repayment of loans or buy-backs of benefits described in section 411(a)(7)(C) or employee contributions which are transferred to a plan. For purposes of this paragraph (f), employee contributions described in paragraph (f)(7)(ii) of this section shall be deemed contributed to a defined contribution plan.

(8) *Matching contribution.* The term "matching contribution" means—

(i) Any employer contribution made to a plan on account of an employee contribution to a plan maintained by the employer;

(ii) Any employer contribution made to a plan on account of an elective contribution to a plan maintained by the employer; and

(iii) Any forfeiture allocated on the basis of employee contributions,

matching contributions, or elective contributions.

For purposes of paragraphs (f)(8) (i) and (ii) of this section, whether an employer contribution is made on account of an employee contribution or an elective contribution will be determined on the basis of all relevant facts and circumstances, including the relationship between the employer contribution and employee actions outside the plan. Thus, for example, an employer contribution made to a plan on account of contributions made by an employee under an employer-sponsored savings arrangement that are not held in a plan that is intended to be a qualified plan shall not constitute a matching contribution. Notwithstanding the foregoing, for plan years beginning before January 1, 1989, an employer may elect to take into account as matching contributions, contributions made to a plan pursuant to an arrangement under which the employer makes contributions to the plan on account of either employee contributions to the plan or contributions made by an employee to an employer-sponsored savings arrangement that are not held in the plan, provided that such arrangement was in effect prior to August 8, 1988. For plan years which begin after December 31, 1988, a contribution and/or allocation that is used to meet the minimum contribution or benefit requirement of section 416, is not treated as made on account of an employee or elective contribution and therefore is not a matching contribution.

(9) *Qualified nonelective contributions.* The term "qualified nonelective contributions" has the meaning set forth in § 1.401(k)–1(g)(7)(ii).

(10) *Excess deferrals.*—The term "excess deferrals" has the meaning set forth in § 1.402(g)–1(b)(2).

(11) *Excess contributions.* The term "excess contributions" has the meaning set forth in § 1.401(k)–1(g)(13).

(12) *Excess aggregate contributions.*—The term "excess aggregate contributions" means, with respect to any plan year, the excess of the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective deferrals taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over the maximum amount of such contributions permitted under the limitations of section 401(m)(2)(A). The amount of excess aggregate contributions for each highly compensated employee is determined by using the method described in paragraph (e)(2) of this section. For purposes of this definition, qualified matching contributions treated as elective contributions in accordance with § 1.401(k)–1(b)(3) shall be disregarded.

(13) *Actual contribution percentage*—(i) *In general.* The term "actual contribution percentage" means the average of the actual contribution ratios (calculated separately for each employee in a specified group) of the sum of—

(A) The matching contributions

(B) The employee contributions,

(C) The qualified nonelective contributions taken into account under paragraph (f)(2) of this section, and

(D) The elective contributions taken into account under paragraph (f)(1) of this section,

for each plan year, divided by the employee's compensation for such plan year. For plan years which begin after December 31, 1988, or such later date provided in paragraph (g) of this section, such actual contribution ratios and the actual contribution percentage for each group shall be calculated to the nearest one-hundredth of one percent. Matching contributions treated as elective contributions shall be taken into account only as provided in § 1.401(k)–1(b)(3).

(ii) *Highly compensated employees.* In the case of a highly compensated employee who is eligible to participate in two or more plans of an employer to which matching contributions, employee contributions, or both, are made, all such contributions on behalf of such highly compensated employee must be aggregated for purposes of determining such employee's actual contribution ratio.

(iii) *Aggregation of family members.* (A) For plan years beginning after December 31, 1988, or such later date provided in paragraph (h) of this section, if an eligible highly compensated employee is subject to the family aggregation rules of section 414(q)(6) because such employee is either a five-percent owner or one of the ten most highly compensated employees, the combined actual contribution ratio for the family group (which is treated as one highly compensated employee) shall be the greater of:

(*1*) The actual contribution ratio determined by combining the employee contributions, matching contributions of all the eligible family members who are highly compensated without regard to family aggregation, and (*2*) The actual contribution ratio determined by combining the employee contributions, compensation, matching contributions and amounts treated as matching contributions of all the eligible family members.

If the amount determined under paragraph (f)(13)(iii)(A) (*1*) of this section exceeds the amount determined under paragraph (f)(13)(iii)(A) (*2*) of this section, then it may be necessary, for purposes of correcting excess aggregate contributions of the family members under paragraph (e)(4)(iii) of this section, to calculate an actual contribution ratio for the group of eligible family members who are not highly compensated without regard to family aggregation. This actual contribution ratio is determined by combining the employee contibutions, compensation, matching contributions and amounts treated as matching contributions of all such employees.

(B) The employee contributions, matching contributions compensation, and amounts treated as matching contributions of all family members are disregarded for purposes of determining the actual contribution percentage for the group of highly compensated employees, and the group of nonhighly compensated employees, except to the extent taken into account in paragraph (f)(13)(iii)(A) of this section.

(C) If an employee is required to be aggregated as a member of more than one family group in a plan, all eligible employees who are members of those family groups that include that employee are aggregated as one family group in accordance with paragraphs (f)(13)(iii) (A) and (B) of this section.

(14) *Compensation.* The term "compensation" has the meaning given such term by section 414(s). For plan years beginning after December 31, 1988, or on or after the later date provided under paragraph (g) of this section, the applicable period under section 414(s) for purposes of applying this section is the plan year for which a determination under paragraph (b) is being made. Thus, in the case of an employee who begins, resumes, or ceases to be eligible to make employee contributions or to receive allocations of matching contributions during a plan year, the amount of compensation received by the employee during the entire plan year shall be taken into account for such plan year. Also for such plan years, in computing the actual contribution ratio for an employee for the first plan year of the plan, the amount of compensation received by such employee during the entire 12-month period ending on the close of such plan year shall be taken into account.

(g) *Effective dates.*—(1) Except as provided in paragraphs (g)(2), (g)(3),

(g)(4), and (g)(5), or as specifically provided otherwise in this section, this section is effective for plan years which begin after December 31, 1988.

(2) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, this section shall not apply to years beginning before the earlier of—

(i) January 1, 1989, or,

(ii) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).

(3) In the case of an annuity contract (not maintained pursuant to a collective bargaining agreement) under section 403(b) of the Internal Revenue Code of 1986, this section shall apply to plan years beginning after December 31, 1988.

(4) In the case of an annuity contract described in section 403(b) (maintained pursuant to a collective bargaining agreement described in paragraph (g)(2) of this section) this section shall not apply to years beginning before the earlier of

(i) The later of—

(A) January 1, 1989, or

(B) The date determined under paragraph (g)(2)(ii) of this section, or

(ii) January 1, 1991.

(5)(i) Except as provided in paragraph (g)(5)(ii) of this section, in the case of a plan maintained by a state or local government, the provisions of this section shall apply for plan years which begin after December 31, 1988.

(ii) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and state or local governments, this section shall not apply to plan years beginning before the earlier of—

(A) The later of—

(*1*) January 1, 1989, or

(*2*) The date on which the last such collective bargaining agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

Par. 12. There is inserted after § 1.401(m)–1 the following new section:

**§ 1.401(m)–2. Multiple use of alternative limitation.**

(a) *In general.* The rules in this secion prevent the multiple use of the alternative methods of compliance with sections 401 (k) and (m) contained in section 401(k)(3)(A)(ii)(II) and 401(m)(2)(A)(ii) respectively. Paragraph (b) of this section discusses the scope of this section and contains the general rule for determination of a multiple use of the alternative limitation. Paragraph (c) of this section contains rules for the correction of multiple use.

(b) *General rule for determination of multiple use*—(1) *In general.* Multiple use of the alternative limitation occurs if both of the conditions of this paragraph (b)(1) are satisfied.

(i) One or more highly compensated employees of the employer or a related employer (within the meaning of section 414 (b), (c), (m), or (o)) are eligible both in a cash or deferred arrangement subject to section 401(k) and in a plan maintained by such employer subject to section 401(m).

(ii) The sum of the actual deferral percentage of the entire group of eligible highly compensated employees under such arrangement subject to section 401(k) and the actual contribution percentage of the entire group of eligible highly compensated employees under such plan subject to section 401(m) exceeds the aggregate limit of paragraph (b)(3) of this section.

The actual deferral percentage and actual contribution percentage of the group of eligible highly compensated employees shall be determined after use of qualified nonelective contributions and qualified matching contributions to meet the requirements of section 401(k)(3)(A)(ii) and after use of qualified nonelective contributions and elective contributions to meet the requirements of section 401(m)(2)(A), provided that the use of elective contributions to meet the requirements of section 401(m)(2)(A) is limited to the amount necessary to meet the requirements of section 401(m)(2)(A)(ii). The actual deferral percentage and actual contribution percentage of the group of eligible highly compensated employees shall be determined after any corrective distribution of excess deferrals, excess contributions, or excess aggregate contributions and after any recharacterization of excess contributions required without regard to this section. Only plans and arrangements maintained by the same employer or a related employer (within the meaning of section 414 (b), (c), (m), or (o)) are taken into account under this paragraph (b)(1). If the employer maintains two or more cash or deferred arrangements subject to section 401(k) which are not aggregated pursuant to § 1.401(k)–1(b)(5), multiple use shall be tested separately with respect to each such arrangement subject to section 401(k) and each plan or aggregate group of plans subject to section 401(m) maintained by the employer. Similarly, if the employer maintains two or more plans subject to section 401(m) which are not aggregated pursuant to § 1.401(m)–1(b)(4), multiple use shall be tested separately with respect to each sum plan subject to section 401(m) and each arrangement or aggregated group of arrangements subject to section 401(k) maintained by the employer.

(2) *Alternative limitation.* For purposes of this section, the term "alternative limitation" means the alternative methods of compliance with sections 401 (k) and (m) contained in sections 401(k)(3)(A)(ii)(I) and 401(m)(2)(A)(ii) respectively.

(3) *Aggregate limit*—(i) *In general.* For purposes of this section, the aggregate limit is the sum of:

(A) 125 percent of the greater of (*1*) the actual deferral percentage of the group of non-highly compensated employees eligible under the arrangement subject to section 401(k) for the plan year, or (*2*) the actual contribution percentage of the group of non-highly compensated employees eligible under the plan subject to section 401(m) for the plan year beginning with or within the plan year of the arrangement subject to section 401(k), and

(B) Two plus the lesser of paragraph (b)(3)(i)(A) (*1*) or (*2*) above. In no event, however, shall this amount exceed 200 percent of the lesser of paragraph (b)(3)(i)(A) (*1*) or (*2*) above.

(ii) *Examples.* The preceding rule may be illustrated by the following examples.

*Example (1).* Assume that employer G maintains a plan that contains a cash or deferred arrangement under which the actual deferral percentage of highly compensated and non-highly compensated employees are 5.5 and four percent respectively. The plan also permits employee contributions, and the actual contribution percentages for the two groups are 4.2 and three percent respectively. The multiple use of the alternative limitation is tested as follows:

(1) Greater of actual deferral percentage or actual contribution percentage for non-highly compensated employees. 4.0
(2) 125 percent of (1) 5.0
(3) Lesser of actual deferral percentage or actual contribution percentage for non-highly compensated employees 3.0
(4) (3) plus two percentage points 5.0
(5) Aggregate limit ((2)+(4)) 10.0

In this case, the sum of the actual deferral percentage and the actual contribution percentage of highly compensated employees is 9.70, which is less than the aggregate limit. Therefore, there is no multiple use of the alternative limitation.

*Example (2).* Employer F maintains a plan subject to section 401(k) with a plan year beginning January 1, and a plan subject to section 401(m) with a plan year beginning July 1. The plan subject to section 401(k) does

not correct excess contributions by recharacterization. The first actual deferral percentage taken into account is that for the plan year that begins January 1, 1989. The first actual contribution percentage taken into account is that for the plan year beginning July 1, 1989.

(c) *Correction of multiple use*—(1) *In general.* If a multiple use of the alternative limitation occurs with respect to two or more plans or arrangements maintained by an employer, such multiple use shall be corrected by reducing the actual deferral percentage or actual contribution percentage of highly compensated employees in the manner described in paragraph (c)(3) of this section.

(2) *Treatment of required reduction.* The required reduction shall be treated as an excess contribution under the arrangment subject to section 401(k) or excess aggregate contribution under the plan subject to section 401(m). However, if an excess contribution arising under this section is recharacterized as an employee contribution, such recharacterized amount shall be treated as an excess aggregate contribution.

(3) *Required reduction.* The amount of the reduction to the actual deferral percentage of the entire group of highly compensated employees eligible in the arrangement subject to section 401(k) shall be calculated in the manner described in § 1.401(k)–1(f)(1)(ii) or the amount of the reduction to the actual contribution percentage of the entire group of highly compensated employees eligible in the plan subject to section 401(m) shall be calculated in the manner described in § 1.401(m)–1(b)(6)(ii), as designated in the plan, so that there is no multiple use of the alternative limitation. The employer may elect to reduce the actual deferral ratios or the actual contribution ratios, as designated in the plan, either for all highly compensated employees under the plan and/or arrangements subject to reduction or for only those highly compensated employees who are eligible in both the arrangment subject to section 401(k) and the plan subject to section 401(m).

(4) *Examples.* The principles of this paragraph may be illustrated by the following examples. In all cases, the employer maintains both an arrangement subject to section 401(k) and a plan subject to section 401(m). Assume that there is no income or loss allocable to the elective contributions, matching contributions or employee contributions.

*Example (1).* All employees of employer Q are eligible in both an arrangement subject to section 401(k) and a plan subject to section 401(m). Both plans have a calendar plan year. The employer designation provides that multiple use of the alternative limitation will be corrected in the plan subject to section 401(m) and that any required reduction in actual contribution ratios will apply only to employees eligible to participate in both arrangements. Employees X and Y are highly compensated. Each received compensation of $100,000, deferred $6,000, received a $3000 matching contribution, and made employee contributions of $3000. Actual deferral and contribution percentages under the arrangement and plan for the 1989 plan year are shown below. No excess deferrals, excess contributions, or excess aggregate contributions have yet been required to be distributed or recharacterized under the plan.

| | Actual deferred percentage | Actual contribution percentage |
|---|---|---|
| Highly compensated | 6 | 6 |
| Nonhighly compensated | 4 | 4 |

The aggregate limit and amount required to be corrected are determined as follows:

*Step 1: Determination of aggregate limit*

(1) Greater of actual deferral percentage or actual contribution percentage for nonhighly compensated employees—4%
(2) 125 percent of (1)—5%
(3) Lesser of actual deferral percentage or actual contribution percentage for nonhighly compensated employees—4%
(4) (3) plus two percentage points—6%
(5) Aggregate limit ((2) + (4))—11%

*Step 2: Calculation of correction amount*

(6) Actual deferral percentage of highly compensated—6%
(7) Maximum permitted actual contribution percentage of highly compensated ((5)–(6))—5%
(8) Amount taken into account in determining actual contribution percentage of highly compensated employee X—$6,000
(9) Maximum amount permitted without use of alternative limitation ((7) x compensation of employee X)—$5,000
(10) Excess aggregate contribution ((8) – (9))—$1,000

A similar correction must be made for employee Y.

*Example (2).* Same as (1), but the plan corrects the multiple use in the arrangement subject to section 401(k) and provides that excess contributions are recharacterized. In this case, the aggregate limit for the plans will be eleven percent. Similarly, the excess contribution for employees X and Y, determined in the same manner as in (1), will be $1,000. This will increase the actual contribution percentage for these employees to seven percent, resulting in an excess aggregate contribution of $1,000 which must be distributed.

*Example (3).* Same as (1) except that employee Y is not eligible to participate in the arrangement subject to section 401(k). No reduction of Y's actual contribution ratio is required because Y is only in the plan subject to section 401(m). Of course, employee X will continue to have an excess aggregate contribution of $1,000.

(d) *Effective date.* This section shall be effective for plan years which begin after December 31, 1988, or such later date provided in § 1.401(m)–1(g).

Par. 13. A new § 1.402(g)–0 is added immediately before § 1.403(a)–1 to read as follows:

**§ 1.402(g)–0 Limitation on exclusion for elective deferrals, table of contents.**

This section contains the captions in § 1.402(g)–1.

*§ 1.402(g)–1 Limitation on exclusion for elective deferrals.*

(a) In general.
(b) Elective deferrals.
(c) Applicable limit.
(1) In general.
(2) Special adjustment for elective deferrals with respect to a section 403(b) annuity contract.
(3) Special adjustment for elective deferrals with respect to a section 403(b) annuity contract for certain long-term employees.
(4) Example.
(d) Treatment of excess deferrals.
(1) Plan qualification.
(2) Correction of excess deferrals after the taxable year.
(3) Correction of excess deferrals during taxable year.
(4) Plan provisions.
(5) Income allocable to elective deferrals
(i) General rule.
(ii) Allocable income for the taxable year.
(iii) Allocable income for the period between the end of the taxable year and time of distribution.
(iv) Special rule for corrective distributions within taxable year.
(v) Special rules for plan years which begin in 1987.
(6) Coordination with distribution or recharacterization of excess contributions.
(7) Other provisions of law.
(8) Tax treatment.
(i) Corrective distribution.
(ii) Other distributions of excess deferrals.
(9) No reduction of required minimum distribution.
(10) Partial correction.
(11) Examples.
(e) Community property laws.
(f) Effective date.
(1) In general.
(2) Deferrals under collective bargaining agreements.

Par. 14. Section 1.402(g)–1 is added after § 1.402(g)–0:

**§ 1.402(g)-1 Limitation on exclusion for elective deferrals.**

(a) *In general.* The excess of an individual's elective deferrals for any taxable year over the applicable limit for such year may not be excluded from such individual's gross income under sections 402(a)(8), 402(h)(1)(B), 408(k)(6), and 501(c)(18). Thus, an individual's elective deferrals in excess of the applicable limit for a taxable year (i.e., the individual's excess deferrals for such year) must be included in such individual's gross income for such year.

(b) *Elective deferrals.* An individual's elective deferrals for a taxable year are the sum of the following:

(1) Any elective contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent such contribution is not includible in the individual's gross income for the taxable year on account of section 402(a)(8).

(2) Any employer contribution to a simplified employee pension (as defined in section 408(k)) to the extent such contribution is not includible in the individual's gross income for the taxable year on account of section 402(h)(1)(B).

(3) Any employer contribution to an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)) to the extent such contribution is not includible in the individual's gross income for the taxable year on account of section 403(b).

(4) Any employee contribution designated as deductible under a trust described in section 501(c)(18) to the extent that such contribution is deductible from such individual's income for the taxable year on account of section 501(c)(18). For purposes of this section, such employee contribution shall be treated as though it were excluded from the individual's gross income.

(c) *Applicable limit*—(1) *In general.* Except as adjusted under paragraphs (c)(2) and (c)(3) of this section, the applicable limit for an individual's taxable year beginning in the 1987 calendar year is $7,000. Such amount is to be increased for the taxable year beginning in 1988 and subsequent calendar years in the same manner as the $90,000 amount is adjusted under section 415(d).

(2) *Special adjustment for elective deferrals with respect to a section 403(b) annuity contract.* The applicable limit for an individual who makes elective deferrals described in paragraph (b)(3) of this section for a taxable year is to be adjusted by increasing the applicable limit otherwise determined under paragraph (c)(1) of this section by the amount of the individual's elective deferrals described in paragraph (b)(3) of this section for such taxable year. This adjustment shall not cause the applicable limit for any taxable year to exceed $9,500.

(3) *Special adjustment for elective deferrals with respect to a section 403(b) annuity contract for certain long-term employees.* The applicable limit for an individual who is a qualified employee (as defined in section 402(g)(8)(C)) and has elective deferrals described in paragraph (b)(3) of this section for a taxable year is to be adjusted by increasing the applicable limit otherwise determined under paragraphs (c)(1) and (c)(2) of this section in accordance with section 402(g)(8)(A).

(4) *Example.* The provisions of this paragraph may be illustrated by the following example.

*Example.* An employer (X) maintains a section 401(k) cash or deferred arrangement and also offers its employees section 403(b) contracts to which elective deferrals may be made. For the 1987 taxable year, three of X's employees, A, B, and C, contribute $3,500, $1,000 and $6,500, respectively, as elective deferrals under the section 403(b) contract. The maximum amounts that A, B, and C may contribute to the section 401(k) cash or deferred arrangement are $6,000, $7,000 and $1,000 respectively.

(d) *Treatment of excess deferrals*—(1) *Plan qualification.* A plan, annuity contract, simplified employee pension, or trust shall not fail to meet the requirements of section 401(a), section 403(b), section 408(k), or section 501(c)(18), respectively, merely because excess deferrals are made with respect to such plan, contract, pension, or trust. For purposes of applying the requirements of section 401(a)(4), 401(k)(3), and 415, to a plan or arrangement, excess deferrals are not to be disregarded merely because they are excess deferrals or because they are distributed in accordance with paragraph (d)(2) of this section. However, excess deferrals by nonhighly compensated employees are not to be taken into account under section 401(k)(3) to the extent such excess deferrals are made under a plan or plans of the same employer.

(2) *Correction of excess deferrals after the taxable year.* A plan may provide that, if any amount is included in the gross income of an individual under paragraph (a) of this section for a taxable year—

(i) Not later than the first April 15 (or such earlier date as the plan may specify) following the close of the individual's taxable year, the individual may notify each plan under which deferrals were made of the amount of the excess deferrals received by such plan, and

(ii) Not later than the first April 15 following the close of the taxable year, each such plan may distribute to the individual the amount specified under paragraph (d)(2)(i) of this section (and any income allocable to such amount).

(3) *Correction of excess deferrals during taxable year.* (i) A plan may provide that an individual who has excess deferrals for a taxable year may receive a corrective distribution of such deferrals during the same year. Such corrective distribution may be made only if all of the following conditions are satisfied.

(A) The individual designates the distribution as an excess deferral.

(B) The correcting distribution is made after the date on which the plan received the excess deferral.

(C) The plan designates the distribution as a distribution of excess deferrals.

(ii) The provisions of this paragraph (d)(3) may be illustrated by the following example:

*Example.* S is a 62 year old individual who participates in his employer's qualified cash or deferred arrangement. In January, 1989, S withdraws $5,000 from his employer's cash or deferred arrangement. For the period February through November, S defers $800 per month. In January of 1990, S becomes aware of his $1000 excess deferral for 1989. S must make an additional withdrawal of $1,000 before April 15, 1990 to correct the excess deferral. The $5,000 withdrawal did not correct the excess deferral because it occurred before the excess deferral was made.

(4) *Plan provisions.* In order to distribute excess deferrals pursuant to paragraphs (d)(2) or (d)(3) of this section, a plan must contain language permitting distribution of excess deferrals. A plan may require the specification in paragraphs (d) (2) and (3) of this section to be in writing and may require that the employee certify or otherwise establish that the specified amount is an excess deferral. A plan need not permit distribution of excess deferrals.

(5) *Income allocable to excess deferrals*—(i) *General rule.* The income allocable to excess deferrals is equal to the sum of the allocable gain or loss for the taxable year of the individual and the allocable gain or loss for the period between the end of the taxable year and the date of distribution. Income includes all earnings and appreciation, including such items as interest, dividends, rent, royalties, gains from the sale of property, appreciation in the value of

stocks, bonds, annuity and life insurance contracts, and other property, without regard to whether such appreciation has been realized.

(ii) *Allocable income for the taxable year.* The income allocable to excess deferrals for the taxable year of the individual is determined by multiplying the income for the taxable year of the individual allocable to elective deferrals by a fraction. The numerator of the fraction is the amount of excess deferrals made by the employee for the taxable year. The denominator of the fraction is the total account balance of the employee attributable to elective deferrals as of the end of the taxable year, reduced by the gain allocable to such total amount for the taxable year and increased by the loss allocable to such total amount for the taxable year.

(iii) *Allocable income for the period between the end of the taxable year and time of distribution.* The income allocable to excess deferrals for the period between the end of the taxable year and the date of distribution may be calculated under the fractional method set forth in paragraph (d)(5)(ii) of this section or, alternatively, under the following safe harbor method. Under the fractional method, the income for the period between the end of the taxable year and the distribution date that is allocable to elective deferrals is multiplied by a fraction determined under the method described in paragraph (d)(5)(ii) of this section. Under the safe harbor method, the allocable income for the period between the end of the taxable year and the distribution date is equal to 10 percent of the income allocable to excess deferrals for the taxable year (as calculated under paragraph (d)(5)(ii) of this section) multiplied by the number of calendar months that have elapsed since the end of the taxable year. For purposes of determining the number of calendar months that have elapsed under the safe harbor method, a distribution occurring on or before the fifteenth day of the month will be treated as having been made on the last day of the preceding month, and a distribution occurring after such fifteenth day will be treated as having been made on the first day of the next subsequent month.

(iv) *Special rule for corrective distributions within taxable year.* In the case of a corrective distribution of excess deferrals described in paragraph (d)(3) of this section, the income allocable to elective deferrals from the beginning of the taxable year to the date on which the distribution is made shall be determined using the method described in paragraph (d)(5)(iii) of this section.

(v) *Special rules for taxable years which begin in 1987.* For taxable years which begin in 1987, plan sponsors may use any reasonable method for computing the income allocable to excess deferrals, provided that such method is used consistently for all participants and for all corrective distributions under a plan for that plan year. The closing balance method is a reasonable method for this purpose. Under the closing balance method, the income allocable to excess deferrals is equal to the sum of (A) the income allocable to the account containing the excess deferrals for the applicable year, and (B) the income allocable to such account for the gap period, multiplied by a fraction. The numerator of the fraction is the excess deferral and the denominator is the closing balance (as of the end of the applicable year) of the account containing the excess deferral. The closing balance includes income for the applicable year. A method will not be considered unreasonable if income between the end of the taxable year and the date of distribution ("gap period") is not taken into account.

(6) *Coordination with distribution or recharacterization of excess contributions.* The amount of excess deferrals that may be distributed under this paragraph (d) with respect to an employee for a taxable year shall be reduced by any excess contributions previously distributed or recharacterized with respect to such employee for the plan year beginning with or within such taxable year. In the event of a reduction under this paragraph (d)(6), the amount of excess contributions includible in the gross income of the employee and reported by the employer as a distribution of excess contributions shall be reduced by the amount of the reduction under this paragraph (d)(6). See § 1.401(k)–1(f)(5)(i). In no case may an individual receive from a plan as a corrective distribution for a taxable year under paragraph (d)(2) or (d)(3) of this section an amount in excess of the individual's total elective deferrals under the plan for the taxable year.

(7) *Other provisions of law.* A corrective distribution of excess deferrals (and income) may be made under the terms of the plan without regard to any notice or consent otherwise required under section 411(a)(11) or 417.

(8) *Tax treatment*—(i) *Corrective distribution.* A corrective distribution of excess deferrals described in paragraph (d)(2) or (d)(3) of this paragraph is excludible from the employee's gross income. However, a corrective distribution of income allocable to excess deferrals is includible in the employee's gross income for the taxable year in which the elective deferrals by the employee would have been received by the employee had he originally elected to receive the amounts in cash. A corrective distribution of excess deferrals (and income) under paragraphs (d)(2) or (d)(3) of this section is not subject to the early distribution tax of section 72(t) and is not treated as a distribution for purposes of applying the excise tax under section 4981A.

(ii) *Other distributions of excess deferrals.* If excess deferrals (and income) for a taxable year are not distributed in accordance with paragraphs (d)(2) and (d)(3) of this section, such amounts are treated when distributed as elective deferrals (and income) that were excludible from the individual's gross income under section 402(g). Thus, any amount includible in gross income for any taxable year under this section which is not distributed by April 15 of the following taxable year shall not be treated as an investment in the contract for purposes of section 72 and shall be includible in the employee's gross income when distributed from the plan.

(9) *No reduction of required minimum distribution.* A distribution of excess deferrals (and income) under paragraphs (d)(2) and (d)(3) of this section is not treated as a distribution for purposes of determining whether the plan meets the minimum distribution requirements of section 401(a)(9).

(10) *Partial correction.* Any distribution under paragraphs (d)(2) or (d)(3) of this section of less than the entire amount of excess deferrals (and income) is to be treated as a pro rata distribution of excess deferrals and income.

(11) *Examples.* The provisions of this paragraph may be illustrated by the following examples. Assume in Example (1) and (2) that there is no income or loss allocable to the elective deferrals.

*Example (1).* Employee *A* is a 60 year old highly compensated employee who participates in his employer's section 401(k) arrangement. During the period of January through September of 1988, A contributed $7500 to the arrangement in elective deferrals. In December of 1988, A made a withdrawal of $1,000 but did not designate this as a withdrawal of an excess deferral. In January of 1989, A discovers the excess deferral of $500 for 1988. To correct excess deferrals, A must withdraw an additional $500 even though he has already withdrawn $1,000 for 1988. A may exclude from income in 1988 only $7,000. However, if the $500 is

distributed by April 15, 1989, the distribution is excludible from A's gross income. Even if A withdraws the $500, the employer must take into account the entire $7,500 in computing A's actual deferral percentage for 1988.

*Example (2).* Corporation X maintains a cash or deferred arrangement described in section 401(k). The plan year is the calendar year. For plan year 1989, all ten of X's employees are eligible to participate in the plan. The employees' compensation, contributions, and actual deferral percentages are given by the following table:

| Employee | Compensation | Contribution | Actual deferral percentage |
|---|---|---|---|
| 1 | $140,000 | $7,000 | 5.0 |
| 2 | 70,000 | 7,000 | 10.0 |
| 3 | 70,000 | 7,000 | 10.0 |
| 4 | 45,000 | 2,250 | 5.0 |
| 5 | 40,000 | 4,000 | 10.0 |
| 6 | 35,000 | 1,750 | 5.0 |
| 7 | 35,000 | 350 | 1.0 |
| 8 | 30,000 | 3,000 | 10.0 |
| 9 | 17,500 | 0 | 0 |
| 10 | 17,500 | 0 | 0 |

Employees 1, 2, and 3 are highly-compensated employees within the meaning of section 414(q). Employees 4, 5, 6, 7, 8, 9 and 10 are nonhighly compensated employees. The actual deferral percentage for the highly compensated employees and nonhighly compensated employees are 8.33% and 4.43% respectively. These percentages do not satisfy the requirements of section 401(k)(3)(A)(ii). The actual deferral percentage for the highly compensated employees cannot exceed 6.43%. This was done by reducing the actual deferral percentage of employees 2 and 3 to 7.14 and distributing $2002 ($7000 – .0714 ($70,000)) to employees 2 and 3, respectively in January of 1990. Section 401(k)(3)(A)(ii) was therefore satisfied.

In February of 1990, employees 2 informs Corporation X that he made elective deferrals of $2,000 under a 401(k) plan maintained by an unrelated employer in 1989 and requests distribution of $2,000 from the Corporation X plan. However, since employee 2 has already received a distribution of $2,002 to meet the ADP test, no additional amounts can or need be distributed as excess deferrals by this plan. However, the employer must report $2000 as a distribution of an excess deferral and $2 as a distribution of an excess contribution.

*Example (3).* Employee T has excess deferrals of $1,000. The income attributable to such deferrals is $100. Employee T properly requests a distribution of the excess deferral (and income) on February 1. The plan distributes $1,000 to the employee by April 15. Because the plan did not distribute income, $909 is treated as a distribution of excess deferrals, and $91 is treated as a distribution of earnings. With respect to amounts remaining in the account, $91 is treated as an elective deferral, and, because it was not distributed by the required date, will be includible in gross income upon distribution as well as in the year of deferral.

*Example (4).* Participant A made an elective contribution of $30,000 to a qualified cash or deferred arrangement under section 401(k) during 1987, resulting in an excess deferral for 1987 of $23,000. A had an opening account balance of $80,000. The gain allocable for the calendar year to the elective contribution account is $15,000. The gain allocable for the gap period, January 1, 1988 to March 1, 1988 (the date of distribution), is $5,000. The 1987 closing elective deferral account balance for A is $125,000, determined as follows: $80,000 opening account balance plus $15,000 gain earned through the end of the taxable year plus the $30,000 elective contribution. Under the closing balance method, the income allocable to the excess deferral for the 1987 taxable year is $2,760 ($15,000 multiplied by 23,000/125,000). The income for the gap period is $920 ($5,000 multiplied by 23,000/125,000). Thus, under the closing balance method, the income allocable to the excess deferral is $3,680 ($2,760 plus 920). The same result would be obtained by multiplying the combined income for the applicable year and gap period ($20,000) by the closing balance method fraction ($23,000/125,000). In either case, the amount of income subject to distribution is $3,680. Thus, the amount of income required to be distributed is $26,680 ($23,000 excess plus $3,680 income).

*Example (5).* Assume the facts set forth in Example (4). The elective deferral account balance for the end of the year is $125,000. Under the adjusted balance method, the denominator of the fraction, $110,000 is computing by subtracting from the account balance ($125,000), the gain allocable to the account, ($15,000). Thus, the income allocable to the excess deferral for the 1987 taxable year is $3,136.36 ($15,000 income multiplied by 23,000/110,000). For purposes of computing the gap period income under the adjusted balance method, the elective deferral account balance on the date of distribution is $130,000 ($125,000 opening balance on January 1, 1988 plus $5,000 earnings through the date of distribution). The denominator of the fraction is $125,000 ($130,000 minus $5,000). The income allocable to the excess deferral for the gap period under the adjusted balance method is $920 ($5,000 multiplied by 23,000/125,000). Thus, under the adjusted balance method, the total income allocable to the excess deferral in this example is $4,056.36 ($3,136.36 plus $920). The amount required to be distributed is $27,056.36 ($23,000 excess plus $4,056.36 income).

*Example (6).* Assume the same facts as in Example (4), except that gap period income will be computed pursuant to the Ten-Percent Method. The gap period income allocable to the excess amount described in Example (4) is $552.00 (10% of $2,760.00 multiplied by the number of months (two) between the end of the year and the date of the corrective distribution). The total income allocable to the excess amount using the Ten-Percent Method is conjunction with the closing balance method is $3,312.00 ($2,760.00 plus $552). Accordingly, the amount required to be distributed is $26,312.00 ($23,000 excess plus $3,312.00 income).

*Example (7).* Assume the same facts as in Example (5), except that gap period income will be computed pursuant to the ten-percent method. The gap period income allocable to the excess amount described in Example 2 is $627.27 (10% of 3,136.36 multiplied by the number of months (two) between the end of the year and the date of the corrective disribution). The total income allocable to the excess amount using the ten-percent method in conjunction with the adjusted balance method is $3,763.63 ($3,136.36 plus $627.27). Accordingly, the amount required to be distributed is $26,763.63 ($23,000 excess plus $3,763.63 income).

(e) *Community property laws.* This section shall be applied without regard to community property laws.

(f) *Effective date*—(1) *In general.* Except as otherwise provided, the provisions of this section are effective for taxable years which begin after December 31, 1986.

(2) *Deferrals under collective bargaining agreements.* In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, the provisions of this section shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

(i) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(ii) January 1, 1989.

Such contributions shall be taken into account for purposes of applying this section to elective deferrals under plans not described in this paragraph (f)(2).

Par 15. Section 1.414(q)-1T is amended by adding a new sentence at the end of Q&A–14(b)(1) and by adding a new paragraph

(e) to Q&A–15 to read as follows:

**§ 1.414(q)–1T Highly compensated employee (Temporary).**

* * * * *

Q–14 What periods must be used for determining who is a highly compensated employee for a determination year?

A–14 * * *

(b) *Calendar year calculation election*—(1) *In general.* * * * Alternatively, in such case, the employer may elect to make the look-back year calculation on the basis of the calendar year immediately preceding the calendar year determination year and the determination year calculation on the basis of the calendar year determination year.

* * * * *

Q–15 Is there any transition rule in determining the group of highly

compensated employees for 1987 and 1988?

A–15 * * *

(e) *Special transition rule.* No penalties or plan disqualification will result from an error in the amount of excess contributions (sec. 401(k)) or excess aggregate contributions (sec. 401(m)) if the following requirements are met:

(1) Such failure or error resulted solely from an error in determining the group of highly compensated employees that reflected a reasonable interpretation of the provisions of section 414(q) relied upon by the employer in defining highly compensated employee, and

(2) The excess contributions and excess aggregate contributions are with respect to plan years commencing with or during the 1987 calendar year and ending prior to July 1, 1988. The following examples illustrate potential sources of differences in determining the group of highly compensated employees that will generally be considered reasonable interpretations of section 414(q) for purposes of this paragraph (e):

(i) exclusion of collective bargaining employees in determining the number of employees in the top-paid group;

(ii) determination of the number of employees in the top-paid group on the basis of the total number of active employees at the end of the determination year and look-back year, respectively;

(iii) use of the employer's fiscal year ending in the plan year for the determination year and use of the preceding fiscal year for the look-back year; and

(iv) use of the 1988 and 1987 calendar years for the lookback year and determination year, respectively.

Par. 16. Section 1.415–6 is amended by revising paragraph (b)(1) to read as follows:

**§ 1.415–6 Limitation for defined contribution plans.**

* * * * *

(b) *Annual additions*—(1) *In general*—(i) *Limitation years beginning before January 1, 1987.* For limitation years which begin before january 1, 1987, or such later date provided in paragraph (b)(l)(iii) of this section, the term "annual addition" means, for purposes of this section, the sum, credited to a participant's account for any limitation year, of—

(A) Employer contributions,

(B) The lesser of the amount of employee contributions in excess of 6 percent of his compensation (as defined in paragraph (a)(3) of this section) for the limitation year, or one-half of the employee contributions for that year, and

(C) Forfeitures.

(ii) *Limitation years beginning after December 31, 1986.* For limitation years which begin after December 31, 1986, or such later date provided in paragraph (b)(1)(iii) of this section, the term "annual addition" means, for purposes of this section, the sum, credited to a participant's account for any limitation year, of—

(A) Employer contributions,

(B) Employee contributions, and

(C) Forfeitures.

Contributions do not fail to be annual additions merely because such contributions are excess deferrals, excess contributions, or excess aggregate contributions or merely because such excess deferrals and excess contributions are corrected through distribution or recharacterization.

(iii) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, the date specified in this paragraph is the earlier of—

(A) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1989, in the case of paragraph (b)(1)(i) of this section, and December 31, 1988 in the case of paragraph (b)(1)(ii) of this section.

* * * * *

Par. 17. Section 1.416–1 is amended by adding new questions and answers M–18, M–19, and M–20, to read as follows:

**§ 1.416–1 Questions and answers on top-heavy plans.**

* * * * *

M–18 Q. May qualified nonelective contributions described in section 401(m)(4)(C) be treated as employer contributions for purposes of the minimum contribution or benefit requirement of section 416?

A. Yes. This is the case even if the qualified nonelective contributions are treated as elective contributions under § 1.401(k)–1(b)(2) and (3) or as matching contributions under § 1.401(m)–1(b)(1) and (2).

M–19 Q. May matching contributions described in section 401(m)(4)(A) be treated as employer contributions for purposes of the minimum contribution or benefit requirement of section 416?

A. Matching contributions allocated to key employees are treated as employer contributions for purposes of determining the minimum contribution or benefit under section 416. However, if a plan utilizes contributions allocated to employees other than key employees on the basis of employee contributions or elective contributions to satisfy the minimum contribution requirement, such contributions are not treated as matching contributions for purposes of applying the requirements of sections 401(k) and 401(m) for plan years which begin after December 31, 1988. Thus, such contributions must meet the nondiscrimination requirements of section 401(a)(4) without regard to section 401(m). See sesction 401(k)(4)(C) and the regulations thereunder.

M–20 Q. May elective contributions be treated as an employer contribution for purposes of satisfying the minimum contribution or benefit requirement of section 416(c)(2)?

A. Elective contributions on behalf of key employees are taken into account in determining the minimum required contribution under section 416(c)(2). However, elective contributions on behalf of employees other than key employees may not be treated as employer contributions for purposes of the minimum contribution or benefit requirement of section 416. See section 401(k)(4)(C) and the regulations thereunder. This Question and Answer is effective for plan years which begin after December 31, 1988.

**PART 54—[AMENDED]**

Par. 18. The authority citation of Part 54 continues to read:

**Authority: 26 U.S.C. 7805.**

Par. 19. There is added immediately after § 54.4978–1T new § 54.4979–0 to read as follows:

**§ 54.4979–0 Excise tax on certain excess contributions and excess aggregate contributions, Table of Contents**

This section contains the caption in § 54.4979–1.

*§ 54.4979–1 Excise tax on certain excess contributions and excess aggregate contributions.*

(a) In general.

(1) General rule.

(2) Liability for tax.

(3) Due date and form for payment of tax.

(4) Special rule for simplified employee pensions.

(b) Definitions

(1) Excess aggregate contributions.

(2) Excess contributions.

(3) Plan.

(c) No tax when excess distributed within 2½ months of close of year or additional employer contributions made.

(1) General rule.
(2) Tax treatment of distributions.
(3) Income.
(d) Effective date.

Par. 20. There is added immediately after § 54.4979–1 to read as follows:

**§ 54.4979–1 Excise tax on certain excess contributions and excess aggregate contributions.**

(a) *In general*—(1) *General rule.* In the case of any plan (as defined in paragraph (b)(3) of this section), there is hereby imposed a tax for the employer's taxable year equal to 10 percent of the sum of—

(i) Any excess contributions under a plan for the plan year ending in such taxable year, and

(ii) Any excess aggregate contributions under the plan for the plan year ending in such taxable year.

(2) *Liability for tax.* The tax imposed by paragraph (a)(1) of this section shall be paid by the employer.

(3) *Due date and form for payment of tax.* (i) The tax described in paragraph (a)(1) of this section is due at the same time as the employer's income tax for the taxable year with or within which the plan year ends for which the tax was incurred.

(ii) An employer which owes the tax described in paragraph (a)(1) of this section must file the form prescribed by the Commissioner for the payment of such tax.

(4) *Special rule for simplified employee pensions.* (i) An employer which maintains a simplified employee pension (SEP) that accepts elective contributions is exempted from the tax of section 4979 and paragraph (a)(1) of this section if it notifies its employees of the fact and tax consequences of excess contributions within two and one-half months following the plan year for which excess contributions are made. The notification must meet the standards of subdivision (ii) of this paragraph (a)(4).

(ii) The employer's notification to each affected employee of the excess SEP contributions must specifically state, in a manner calculated to be understood by the average plan participant: the amount of the excess contributions attributable to that employee's elective deferrals; the calendar year for which the excess contributions were made; that the excess contributions are includible in the affected employee's gross income for the specified calendar year; and that failure to withdraw the excess contributions and income attributable thereto by the due date (plus extensions) for filing the affected employee's tax return for the preceding calendar year may result in significant penalties.

(iii) If an employer does not notify its employees by the last day of the twelve-month period following the year of excess SEP contributions, the SEP will no longer be considered to meet the requirements of section 408(k)(6) of the Code.

(b) *Definitions.* The following is a list of terms and definitions to be used for purposes of section 4979 and this section.

(1) *Excess aggregate contributions.* The term "excess aggregate contributions" has the meaning set forth in § 1.401(m)–1(b)(6).

(2) *Excess contributions.* The term "excess contributions" has the meaning given such term by sections 401(k)(8)(B), 403(b), 408(k)(6)(C)(ii) and 501(c)(18). See, e.g., § 1.401(k)–1(g)(13).

(3) *Plan.* The term "plan" means—

(i) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) Any annuity plan described in section 403(a),

(iii) Any annuity contract described in section 403(b),

(iv) A simplified employee pension of an employer which satisfies the requirements of section 408(k), and

(v) A plan described in section 501(c)(18).

Such term includes any plan which, at any time, has been determined by the Secretary to be such a plan.

(c) *No tax when excess distributed within 2½ months of close of year or additional employer contributions made*—(1) *General rule.* No tax shall be imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent such contribution (together with any income allocable thereto) is corrected before the close of the first 2½ months of the following plan year. Qualified nonelective contributions and qualified matching contributions properly taken into account under § 1.401(k)–1(b)(3) or qualified nonelective contributions or elective contributions properly taken into account under § 1.401(m)–1(b)(3) for a pain year may permit a plan to avoid excess contributions or excess aggregate contributions, respectively, even if such contributions are made after the close of the 2½ month period. See, e.g., § 1.401(k)–1(g)(13).

(2) *Tax treatment of distributions.* See § 1.401(k)–1(f)(3)(ii) and (4)(iv) for rules for determining the tax consequences to a participant of a distribution or recharacterization of excess contributions and income allocable thereto. See § 1.401(m)–1(e)(3)(v) for rules for determining the tax consequences to a participant of a distribution of excess aggregate contributions and income allocable thereto.

(3) *Income.* See § 1.401(k)–2(f)(2)(iv) for rules for determining income allocable to excess contributions. See § 1.401(m)–1(f)(3) for rules for determining income allocable to excess aggregate contributions.

(d) *Effective date.* (1) Except as provided in paragraphs (d)(2), (d)(3), (d)(4), and (d)(5), this section is effective for plan years which begin after December 31, 1986.

(2) In the case of a plan maintained pursuant to one or more collective bargaining agreements between an employee representative and one or more employers ratified before March 1, 1986, this section shall not apply to years beginning before the earlier of—

(i) January 1, 1989, or

(ii) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).

(3) In the case of an annuity contract under section 403(b) of the Internal Revenue Code of 1986, this section shall apply to plan years beginning after December 31, 1988.

(4) Notwithstanding paragraphs (d)(3) and (d)(5) of this section, in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and state or local governments (ratified before March 1, 1986) or, an annuity contract (described in paragraph (d)(3)) under section 403(b) (maintained pursuant to a collective bargaining agreement described in subparagraph (2)) the amendments made by this section shall not apply to years beginning before the earlier of—

(i) The later of—

(A) January 1, 1989, or

(B) The date determined under subdivision (2)(ii) of this paragraph, or

(ii) January 1, 1991.

(5) In the case of a plan maintained by a state or local government, the provisions of this section shall apply for plan years which begin after December 31, 1988.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 88–17721 Filed 8–5–88; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 935**

## Ohio Permanent Regulatory Program; Coal Exploration; Reopening of Public Comment Period

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** OSMRE is reopening the public comment period on the adequacy of proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern the filing of notices of intent to conduct coal exploration operations and the issuance of coal exploration permits under the Ohio program.

This notice sets forth the times and locations that the Ohio program, the proposed amendments to that program, and supporting information in the Administration Record will be available for public inspection. This notice also sets forth the comment period during which interested persons may submit written comments on the proposed amendments.

**DATES:** Written comments must be received on or before 4:00 p.m. on August 23, 1988.

**ADDRESSES:** Written comments should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, supporting information in the Administrative Record, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington DC 20240, Telephone: (202) 343–5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

### II. Discussion of the Proposed Amendments

By letter dated March 8, 1988 (Administrative Record No. OH–1019), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed amendments to the Ohio program at Ohio Administrative Code (OAC) Section 1501:13–4–02. The proposed changes were initiated by Ohio and concerned advanced notice by persons conducting exploratory activities, drilling activities which do not constitute a substantial disturbance of the ground surface, and the expiration of notices of intent to explore.

On April 11, 1988, OSMRE published a notice in the **Federal Register** (53 FR 11887) announcing receipt of the proposed amendments and inviting public comment on their adequacy. The public comment period ended on May 11, 1988. The public hearing scheduled for May 6, 1988 was not held because no one requested an opportunity to testify.

On July 1, 1988 (Administrative Record No. OH–1066), Ohio submitted further revisions to OAC Sections 1501:13–4–02(B)(1)(b) and (B)(1)(c) and to Administrative Record supporting the proposed amendments. These revisions are summarized below:

(1) OAC Section 1501:13–4–02(B)(1)(b) would be revised to allow the listing of the name, address, and telephone number of the representative to be present at the exploration site or of the person responsible for conducting the exploration.

(2) OAC Section 1501:13–4–04(B)(c) would be revised to substitute the word "area" for "site" in reference to the location of the exploration activities. This substitution would be for consistency in the terminology used to described exploration areas.

(3) The Administrative Record supporting the proposed amendments would be revised to reduce the rate of inspection by Ohio of proposed notices of intent to conduct exploratory activities. The inspection rate would be reduced from one inspection per two notices to one inspection per ten notices.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments and supporting information proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and including explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1988.

**Carl C. Close,**

*Assistant Director, Eastern Field Operations.*

[FR Doc. 88–17828 Filed 8–5–88; 8:45 am]

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**National Park Service**

**36 CFR Part 13**

## Katmai National Park and Preserve, Alaska; Fishing Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service proposes to modify the fishing regulations for the Brooks River in Katmai National Park and Preserve. These proposed regulations would allow a bag limit of one fish per day, regardless of species. In addition, a minor change would be made to existing regulations that reference dates for an open bait season on that portion of the Naknek River within the park; the purpose being to remain consistent with changing State regulations. These

proposed regulations are necessary to continue safely accommodating use of the popular Brooks River fishery by anglers, while maintaining a healthy fishery for bear populations which feed there. Current bag limits of 5 salmon and 2 trout—the two species for which the river is popular—encourage many anglers to keep fish in their immediate possession or in the nearby area while seeking to fill these catch limits. By providing less opportunity for anglers to retain large bag limits of fish in the area, there will be less chance of bear/human conflicts caused by bears associating humans with food. The effect of these proposed regulations will be to reduce the potential for conflicts between bears and humans in the area, while protecting the natural fish resources available to bears along the Brooks River. This is a primary goal of park management, as stated in the park's General Management Plan (GMP).

**DATES:** Written comments will be accepted through October 7, 1988.

**ADDRESS:** Comments should be addressed to: Superintendent, Katmai National Park and Preserve, P.O. Box 7, King Salmon, AK 99613.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hurd, Chief Ranger, Katmai National Park and Preserve, P.O. Box 7, King Salmon, AK 99613, Telephone (907) 246–3305.

**SUPPLEMENTARY INFORMATION**

**Background**

This proposed regulation change addresses a specific management problem involving bear and human interactions along the popular Brooks River. It is not proposed as a result of any known depletion in fish populations or fisheries habitat impairment. It also corrects a conflict between State and Federal laws and regulations regarding bait fishing along those portions of the Naknek River within the park.

In the summer of 1987 the National Park Service submitted a proposal to the State Board of Fisheries for a change in the State fishing regulations. Current State regulations affecting the Brooks River fishery allow for a bag and possession limit of 5 salmon and 2 rainbow trout during the summer fishing season. The National Park Service proposal had the same objectives as this proposed rulemaking, but differed by being applicable to all rivers within the park and preserve, and by changing bag limits for salmon only to two instead of the current proposal of one. Changes were not proposed to bag limits for any other species of fish. It also did not address changes to bait fishing regulations for the Naknek River. The Board failed to approve this proposal, based in part on a determination from the Alaska Department of Fish and Game that the fishery was healthy and that the proposed action addressed other management considerations not in the purview of the Board. The Board also expressed concern about the large area covered by the proposal and some confusion about the objectives. It was recognized by the Department of Fish and Game at the Board meeting that the National Park Service had the authority to promulgate regulations to address the problem:

> Mr. Chairman, this is a proposal put in by the park service that encompasses a fairly large chunk of real estate * * * most of which has fairly limited angling pressure. Salmon stocks, particularly in the Naknek drainage, appear to be healthy and staff (Department of Fish and Game) see no biological reason to further limit the sport bag limits there. They're presently five a day, five in possession in much of that area. The park service has the authority to do this if they need to * * * (transcript from taped proceedings of State Fish Board meeting, December 17, 1987; Anchorage, Alaska).

Consequently, the bag limit provision of this proposed rulemaking is a modified version of the earlier submission to the State and is specific to the Brooks River.

The Brooks River and its surrounding aquatic resources are major habitats for a diversity of fish and wildlife species. Rainbow trout and salmon are the most abundant fish species in Brooks River. Arctic grayling and Arctic char, as well as other species, are also present. This source of high-protein food is of critical importance to bear populations during their short feeding season before hibernation.

Because of this diverse ecosystem, the Brooks River is well-known and popular among both park anglers and visitors interested in being able to view the Alaska brown bear in its natural habitat. Park managers in Katmai have always been conscious of and concerned about the management of this important area. The Alaska National Interest Lands Conservation Act (ANILCA—Pub. L. 96–487), which added further acreage to the area, mandated that the new park is "to be managed for the following purposes, among others: To protect habitats for, and populations of, fish and wildlife including * * * high concentrations of brown/grizzly bears * * * and * * * to maintain unimpaired the water habitat for significant salmon populations * * *." (section 202(2) of ANILCA; 16 U.S.C. 410hh–1(2)).

Congress also determined that Katmai should be managed to protect "recreational features". Sport fishing is permitted within national park areas in Alaska (section 1314 of ANILCA; 16 U.S.C. 3202; 36 CFR 2.3, 13.21). Providing for the use of the Brooks River by recreational anglers and natural predator activities of the area's brown bears pose both a resource management problem affecting the bears and a safety concern for humans.

The General Management Plan (GMP) for the park, prepared pursuant to section 1301 of ANILCA (16 U.S.C. 3191), addresses specific management responsibilities and objectives regarding Brooks River. The plan notes that:

> Visitors have traditionally come to the Brooks Camp developed area to fish, visit the Valley of Ten Thousand Smokes, and watch Alaska brown bears in their natural environment. This development and the associated activities intrude on prime bear habitat. The result has been potentially dangerous conflicts between bears and humans in this area. The issue is how to reduce this hazardous situation and potential impacts on bears while still providing for visitor activities in this portion of the park.

The objectives of the bear management plan for Katmai, as stated in the GMP,

> * * * are to retain a naturally regulated population of brown bears in the park and to preclude the food-reinforced attraction of bears to people and thereby minimize confrontations between bears and people. The plan calls for * * * minimizing human impacts on bear behavior and patterns of habitat use * * *."

With the Brooks River being such an important habitat for bear populations and the nearby Brooks Camp being the major overnight visitor use area in the park, these objectives are of specific and immediate importance to this area.

Sport fishing along the Brooks River, as well as elsewhere within the park, is regulated by appropriate National Park Service regulations in 36 CFR 2.3, 13.21, 13.66 and by applicable State of Alaska fishing regulations. Current State regulations affecting the Brooks River fishery allow for a bag and possession limit of 5 salmon and 2 rainbow trout during the summer fishing season. Park policy requires that any fish kept is to be immediately taken to a nearby fish cleaning house away from the river to be cleaned and stored. This policy reduces the chance of bears obtaining fish caught by people, thereby learning to associate the easy acquisition of fish with human fishermen and disrupting the bears' natural feeding cycle.

However, an increasing number of anglers, some who travel into the Brooks River area specifically to fish for the maximum legal limit, often do not take their fish directly to the cleaning house,

and instead cache fish they have caught along the shore—a practice that cannot be prevented by any but the most aggressive and costly of law enforcement measures. Bears are then attracted to this food source, encouraging dangerous bear/human interactions.

This proposed rulemaking would amend section 36 CFR 13.66, which is specific to Katmai National Park and Preserve, by establishing a total daily bag limit of one fish, regardless of species, on the Brooks River. A minor amendment to 36 CFR 13.66(b)(1) would also be made to remove the dates during which bait fishing is allowed along the Naknek River to conform with changing State regulations.

**Effects of Proposed Rulemaking**

These changes will have the effect of eliminating the opportunity for anglers to store their catch along the river banks, which tempts bears to feed on the fish, and will help to maintain a healthy fishery for the bears. The immediate effect will be to cause those anglers who fish the Brooks River mainly to acquire food to procure their fish elsewhere. Numerous other areas rich in fish resources are available in the nearby vicinity for these anglers. Sport fishing for enjoyment will not be restricted, and one fish, regardless of species, can still be retained if desired. Human safety and the protection of natural bear populations, both in the short and long term, should be greatly improved. Long term effects will be a continued healthy fishery resource, a lessening of the chances for bear/human confrontations, and an improvement in the natural feeding habitat for bears. By removing the dates from the National Park Service regulation for bait fishing the Naknek River bait fishing season will conform with any changes in State law for bait fishing.

**Options Considered**

Other management options based on stated management objectives in the GMP were also considered in development of this proposed rulemaking. These options include closing all or portions of the area to human use, restricting the Brooks River to catch-and-release angling only, or eliminating angling along the river during certain time periods or seasons. The current proposed rulemaking is in accordance with stated overall management objectives and is less restrictive than other options.

**Public Participation**

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

**Drafting Information**

The primary author of these regulations is Tony Sisto, Park Ranger, Alaska Regional Office, National Park Service, Anchorage.

**Paperwork Reduction Act**

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**Compliance With Other Laws**

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. No person will be prohibited from fishing on the Brooks River under applicable regulations.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Change public angling habits to the extent of adversely affecting the aquatic or other natural ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

**List of Subjects in 36 CFR Part 13**

National parks, Reporting and recordkeeping requirements.

**PART 13—[AMENDED]**

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter 1 as follows:

**Subpart A—National Park System Units in Alaska**

1. The authority citation for Part 13 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. By revising § 13.66 to read as follows:

**§ 13.66 Katmai National Park and Preserve.**

(a) [Reserved].

(b) Fishing is allowed in accordance with § 13.21 of this chapter, but only with artificial lures and with the following additional exceptions:

(1) Bait, as defined by State law, may be used only on the Naknek River during times and dates established by the Alaska Department of Fish and Game, and only from markers located just above Trefon's Cabin downstream to the park boundary.

(2) Flyfishing only is allowed on the Brooks River between Brooks Lake and the posted signs near Brooks Camp.

(3) On the Brooks River the bag limit is one (1) fish per day. The one fish retained may be of any species.

**William P. Horn,**

*Assistant Secretary for Fish Wildlife and Parks.*

Date: June 9, 1988.

[FR Doc. 88-17789 Filed 8-5-88; 8:45 am]
BILLING CODE 4310-70-M

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**POSTAL SERVICE**

**39 CFR PART 111**

**Second-Class Publication; Requirements for Reentry**

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would amend postal regulations concerning applications to reenter a publication at second-class mailing rates on a different frequency of issuance, at a new office of publication, or under a new title. Experience has shown that an application for reentry on one or more of these grounds sometimes indicates a modification or change in the nature of a publication of such a character as to cause later issues to be ineligible for mailing as second-class mail. The proposed amendments would provide that the Postal Service would reevaluate the publication's eligibility for second-class postage rates when considering such a reentry application. This reevaluation would help to prevent use

of the reentry process to mail publications, or issues of publications, at rates of postage for which they are not eligible.

**DATE:** Comments must be received on or before September 7, 1988.

**ADDRESS:** Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday in Room 8430, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Leo F. Raymond, (202) 268–5199.

**SUPPLEMENTARY INFORMATION:** Based upon recent experience, the reentry of a publication with a new frequency, a new title, or a different office of publication, may signal a substantial modification to the publication or change in the nature of the publication sufficient to make some or all "issues" produced thereafter ineligible for second-class mail privileges. The proposed rule would confirm that the Postal Service will review publications which request a modification to their current title, office of original entry, or frequency of issuance to ensure that such amendments will not result in either the publication or some of its "issues" being ineligible for second-class mail privileges. If a publication, as modified by a requested reentry, is found to maintain compliance with postal requirements, the reentry request will be granted. If it is determined, however, that the publication as reentered will not maintain compliance with second-class mailing requirements, the reentry will be denied. If a reentry is denied, the publisher would have the option of abandoning the reentry request, or paying for subsequent mailings at another rate of postage for which the publication might qualify while pursing an appeal of the denial.

For example, the Postal Service would expect to deny a reentry application if one of the following situations existed:

1. A reentry is requested to change a publication's frequency from "Monday-Friday" to "Monday-Saturday." Verification of the publisher's records indicates that the Saturday issue will not be in compliance with second-class requirements.

2. A reentry is requested to change publication's office of original entry. Verification of the publisher's records reveals that the circulation of the publication would change to being primarily to nonsubscribers.

3. A reentry is requested to change publication's title. Verification indicates that the publication, as modified, would be a section or imcomplete copy of a separate second-class publication.

Specifically, the Postal Service proposes to amend DMM section 444.4 to set forth the qualification requirements for the granting of an application for reentry, the procedures for consideration of such an application, and the mailing status of the publication while the initial application is pending. The proposal would allow the publisher to continue to mail at second-class rates while an application for reentry is pending, until the initial decision is made by the Rates and Classification Center. The expectation is that the vast majority of such applications will be granted.

The Postal Service also proposes to revise section 444.5 to set forth the rules that govern an appeal of an initial denial of a reentry application. This section would provide that, where evidence indicates that the reentered publication would not comply with second-class requirements, a publisher who appeals a denial would have to pay postage at the applicable third- or forth-class rate of postage pending a decision on the appeal, because an initial decision will have been made that the publication, or some of its issues, as revised, would not qualify for second-class mail privileges. If the publisher prevails on appeal, a refund will be made of the difference between the postage paid at the third- or forth-class rates and the postage which would have been due at the second-class rates, provided that records demonstrating the amount of the refund due have been submitted.

An amendment would also be made to section 447 that would require verifications in support of applications for reentry to be performed by postal personnel.

Although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553(b), (c)), regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 444—APPLICATION FOR REENTRY

2. Revise 444.4 to read as follows:

*444.4 Application review process*

444.41 Responsibility. The General Manager, Rates and Classification Center (RCC) that serves the known office of publication issues the initial decision on all reentry applications. Before taking action on an application, the General Manager may ask the publisher for additional information or evidence to complete or clarify the application. The publisher's failure to furnish such information is sufficient grounds for denying the application.

444.42 Mailing While Application is Pending. Copies of an authorized second-class publication will be accepted for mailing at the second-class rates while an application for reentry is pending an initial decision by the General Manager, RCC.

444.43 Review of Continued Qualification. In reviewing a reentry application, the Postal Service will examine the qualification of the publication, as reentered, for second-class entry. Publishers must be able to substantiate, to the satisfaction of the Postal Service, that the publication, as reentered under the application, will continue to comply with all applicable second-class requirements.

444.44 Evidence of Qualification and Supporting Documentation. As part of the evidence of continued qualification that must be made available in support of the application for reentry, the publisher may be required to produce circulation records (such as those described in 447.21 and 447.3) to permit verification by postal personnel that all issues or editions of the publication, as reentered, will comply with all applicable second-class requirements (see also 447.54). Other documentation, including circulation records for other issues or editions, must be made available upon request. Refusal or failure to produce such evidence will be sufficient grounds to deny the reentry request.

444.45 Granting an Application. If the General Manager, RCC, grants the application, he will notify the publisher and the postmaster at the original entry office, who will then notify any additional entry offices.

444.46 Denying an Application. If the verification required by 444.43 and 447.54 reveals that the publication (as modified by the requested reentry) will not comply with applicable second-class requirements, the General Manager, RCC, will deny the reentry application,

and notify the publisher in writing, specifying the reasons for the denial. Within 15 days of receipt of such notice, the publisher may elect to: (1) Return to the publication status that existed before the application for reentry was submitted; or (2) pursue an appeal under 444.5. If no appeal is filed under 444.5, the denial will become effective 15 days from the publisher's receipt of the General Manager's decision.

*444.5 Appeal of a denial of reentry*

444.51 Procedures. All appeals of denials of reentry applications must be filed with the Director, Office of Classification and Rates Administration, USPS Headquarters, Washington, DC 20260–5360. The Director may ask the publisher for additional information or evidence to supplement or clarify the appeal. The publisher's failure to furnish such information is sufficient grounds for denying the appeal. Upon completing a review of the appeal and the General Manager's decision, the Director will issue a written decision which will be sent to the publisher, the RCC and the office of publication. The Director will issue the final agency decision on appeals concerning changes of name, frequency, or known office of publication under 444.1. The Director's decision concerning a change in qualification category under 444.2 or 444.3 may be appealed in accordance with 441.23.

*444.52 Mailings deposited while appeal is pending*

444.521 Applicable Rates During Appeal Period. If a publication is denied reentry under 444.1 to change its title, frequency of issuance, or known office of publication, copies of any issues of the publication found to be unqualified for second-class mail privileges will be accepted in a pending status at the applicable third- or fourth-class rates. "Pending status," for purposes of this section, begins on the date the appeal is filed and continues until the conclusion of the appeal process. If a publication is denied reentry under 444.2 or 444.3 to change its qualification category, copies of the publication will be accepted at the currently applicable second-class rate during the consideration of the appeal.

444.522 Mailing Statements. The publisher must submit Form 3541, *Statement of Mailing—2nd Class Pubs Except Requester Publications* (or, as appropriate, Form 3541A, *Statement of Mailing—Second-Class/Requester Publications),* and Form 3602, Statement of Mailing with Permit Imprints, with each mailing of the publication submitted in a pending status while the appeal of the denial of reentry is pending. The publisher's failure to submit these forms will be sufficient grounds to deny a refund of postage under 444.523.

444.523 Refunds of Postage. If the reentry application is approved on appeal, the publisher will be refunded the difference between the applicable second-class postage and the third- or fourth-class postage paid during the period that the appeal was pending, provided records to substantiate the amount of the refund have been submitted by the publisher. If the reentry application is denied on appeal, no refund will be provided.

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## PART 447—MAINTENANCE AND VERIFICATION OF PUBLISHER RECORDS

*447.5 Verification procedures*

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**§ 447.51 [Amended]**

3. Amend 447.51 by adding "Except as provided by 447.54," to the beginning of the section.

4. Add a new 447.54 to read as follows:

447.54 Verifications performed in support of an application for reentry must be performed by postal personnel. For such verifications, reports by independent audit bureaus may not be substituted as acceptable alternatives to postal verification.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88–17796 Filed 8–5–88; 8:45 am]

BILLING CODE 7710-12-M

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**39 CFR Part 232**

## Inspection of Items Entering or Leaving Postal Property; Unauthorized Possession of Controlled Substances; Nondiscrimination

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would amend regulations concerning inspection of items brought onto or taken off of postal property. It would add possession of a controlled substance to the list of prohibited actions on that propoerty.

This would bring postal regulations on this subject into full harmony with existing state and federal laws prohibiting the unauthorized possession of controlled substances. Finally, it would amend postal regulations against discrimination by adding prohibitions against discrimination based on age (at least 40 years of age), reprisal, or physical or mental handicap. This would make this provision reflect more recent statutes.

**DATE:** Comments must be received on or before September 7, 1988.

**ADDRESS:** Written coments should be addressed to the Manager, Legal Liaison Branch, Room 3847, Inspection Service, U.S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, DC 20260–2181. Copies of all written comments will be available for inspection and pohotocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 3847 at the above address.

**FOR FURTHER INFORMATION CONTACT:** H.J. Bauman, (202) 268–4415.

**SUPPLEMENTARY INFORMATION:** Section 232.1(b) of Title 39, Code of Federal Regulations, now deals generally with admission of individuals to Postal Service property when it is closed to the public, and does not address the inspection requirements. The Postal Service currently inspects items entering or leaving postal property pursuant to Item C.3. of Poster 7, entitled "Rules and Regulations Governing Conduct on Postal Property." This proposal would amend and incorporate Item C.3 into § 232.1(b).

Paragraph (g) of § 232.1 prohibits the sale or use of controlled substances on postal property, except as medically authorized. It is proposed to include among these prohibitions the unauthorized possession of controlled substances. This would bring § 232.1)g) into conformity with existing federal and state statutes prohibiting such possession of controlled substances.

Paragraph (m) of § 232.1 presently forbids discrimination against persons based on race, creed, color, sex or national origin. To make this provision reflect more recent statutes, it is proposed to amend these regulations by adding prohibitions against discrimination based on age (at least 40 years of age), reprisal, or physical or mental handicap.

Accordingly, 39 CFR Part 232 is amended as follows:

**List of Subjects in 39 CFR Part 232**

Law enforcement, Postal Service.

**PART 232—[AMENDED]**

1. The authority citation for Part 232 is revised to read as set forth below:

**Authority:** 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 609, Treasury, Postal Service and General Government Appropriations Act, 1988, Pub. L. 100–202; 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

2. In § 232.1, paragraphs (b), (g) and (m) are revised to read as follows:

**§ 232.1 Conduct on postal propoerty.**

* * * * *

(b) *Inspection, Recording presence.* (1) Purses, briefcases, and other containers brought into, while on, or being removed from the property are subject to inspection. A full search of a person may accompany an arrest.

(2) Except as otherwise ordered, properties must be closed to the public after normal working hours. Properties also may be closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of business. Admission to properties during periods when such properties are closed to the public may be limited to authorized individuals who may be required to sign the register and display identification documents when requested by security force personnel or other authorized individuals.

* * * * *

(g) *Alcoholic beverages and drugs.* A person under the influence of an alcoholic beverage or any drug which has been defined as a "controlled substance" may not enter postal property or operate a motor vehicle on postal property. The possession, sale, or use of any "controlled substance" (except one that is medically approved) or the sale or use of any alcoholic beverage on postal premises is prohibited. The term "controlled substance" is defined in section 802 of title 21, U.S.C.

* * * * *

(m) *Nondiscrimination.* There must be no discrimination by segregation or otherwise against any person or persons because of race, color, religion, national origin, sex, age (at least 40 years of age), reprisal, or physical or mental handicap, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on postal property.

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**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88–17797 Filed 8–5–88; 8:45 am]

BILLING CODE 7710–12–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 86–470; RM–5440]**

### Radio Broadcasting Services; Lake Lorraine, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; denial of petition.

**SUMMARY:** This document dismisses the petition of Michael J. Pollack to allot Channel 227A to Lake Lorraine, Florida, as a first FM service (published at 52 FR 2565; January 23, 1987). Petitioner did not respond to the *Further Notice* in this proceeding soliciting additional information regarding the status of Lake Lorraine as a community. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–470, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17676 Filed 8–5–88; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 53, No. 152
Monday, August 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Intent To Prepare an Environmental Impact Statement (EIS) on Mining Activities Proposed by Steven L. Reilly, Jefferson City, MT, in the Wilson Creek Drainage of the Elkhorn Mountains, Helena National Forest, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to analyze and disclose the environmental impacts of proposed mineral exploration by Steven L. Reilly within the Elkhorn Mountains on the Helena Ranger District. Helena National Forest, Jefferson County, Montana. The agency invites written comments and suggestions on the proposed activity, potential impacts and management alternatives or actions which should be considered. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware how they may participate and contribute to the final decision.

**DATE:** Comments concerning the scope of the analysis must be received by September 30, 1988.

**ADDRESS:** Submit written comments and suggestions on the scope of the analysis to Ernest R. Nunn, Forest Supervisor, Helena National Forest, 301 S. Park, Room 328, Helena, MT 59626.

**FOR FURTHER INFORMATION CONTACT:** Direct comments on the proposed action and the environmental impact statement should be made to John Padden, Minerals Staff Officer, Helena National Forest, 301 S. Park, Drawer 10014, Room 328, Helena, MT 59626.

**SUPPLEMENTARY INFORMATION:** The Forest Service will prepare an EIS in response to a Plan of Operations submitted by Steven L. Reilly of Jefferson City, Montana. Mr. Reilly is proposing mineral exploration in the Elkhorn Mountains, Helena Ranger District, Helena National Forest. The Chrysos and Gold Bar placer claims are located in the vicinity of Wilson Creek, Sections 7, 8, 16, 17, 18, Township 7 North, Range 2 West, P.M.M., Jefferson County, Montana. Exploration activities will consist of construction of a 200 x 300 x 4 feet storage/settling pond, construction of a small dam on Wilson Creek, excavation of 42 test holes approximately 5 x 5 feet and extending to bedrock, and removal of up to 36,500 tons of placer materials. Exploration activities are projected to occur in 1989.

Public participation will be important during the analysis. The first point of public participation is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identifying additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies and task assignments.

Scoping has been initiated through a site inspection on June 22, 1988 with Forest Service resource specialists, Montana Department of State Lands specialists, and Mr. Reilly. Several discussions have taken place with interested individuals, groups, and the news media. Additional public involvement will include release of the draft alternatives for public review and comment in January, 1989.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1989. At that time, EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in management of mineral activity in Elkhorn Mountain area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978) and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by March, 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject

to review under applicable Forest Service regulations.

Ernest R. Nunn, Supervisor of the Helena National Forest, is the Responsible Official.

Date: August 1, 1988.

Ernest R. Nunn,

*Forest Supervisor, Helena National Forest.*

[FR Doc. 88-17766 Filed 8-5-88; 8:45 am]

BILLING CODE 3410-11-M

## Soil Conservation Service

### Canandaigua Lake P.L. 566 Watershed Project, New York; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Canandaigua Lake P.L. 566 Watershed Project, Ontario and Yates Counties, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The project concerns a plan for accelerated conservation treatment of farmland in the Canandaigua Lake Watershed. Conservation practices will be implemented on an estimated 8,620 acres of cropland. The planned practices include no-till, contour stripcropping, conservation systems, diversions, and permanent seeding in vineyards. Benefits, attributable to reduced soil erosion, will be derived from maintaining long-term productivity on cropland and helping to protect water quality in Canandaigua Lake.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is one file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until September 7, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable.)

Paul A. Dodd,

*State Conservationist.*

Date: July 27, 1988.

[FR Doc. 88-17775 Filed 8-5-88; 8:45 am]

BILLING CODE 3410-16-M

### Silver Springs Flood Control Project, Nevada; RC&D Measure Plan

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Evironmental Policy Act of 1969; the Council on Environmental Quality Rules (40 CFR Part 1500); and the Soil Conservation Service Rules (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Silver Springs Flood Control Project (RC&D Measure Plan), Lyon County, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Adams, State Conservationist, Soil conservation Service, 1201 Terminal Way, Room 219, Reno, Nevada, 89502, 702-784-5863.

**SUPPLEMENTARY INFORMATION:** The environmental evaluation of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Charles R. Adams, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns RC&D measure plan for flood prevention. The planned works of improvement include the construction of flood conveyance channel and a dike embankment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies if the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Charles R. Adams. No administrative action on implementation of the proposal will be taken until September 7, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Date: July 28, 1988.

Charles R. Adams,

*State Conservationist.*

[FR Doc. 88-17765 Filed 8-5-88; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### Vermont Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:30 p.m. on August 25, 1988, in the Adirondack Room of the Windjammer Conference Center, 1076 Williston Road, South Burlington, Vermont.

The purposes of the meeting are to orient new members, discuss the recently enacted legislation to establish a state human rights commission, and plan activities for Fiscal Year 1988-89.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Eloise R. Hedbor (802/372-6917) in Vermont or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117) in Washington, D.C. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, July 28, 1988.
Susan J. Prado,
*Acting Staff Director.*
[FR Doc. 88-17774 Filed 8-5-88; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket No. 26-88]**

### Foreign-Trade Zone 49—Newark/Elizabeth, NJ; Application for Subzone Agfa-Gevaert West Caldwell, NJ; Specialty Photographic Paper Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting special-purpose subzone status for the specialty photographic paper manufacturing plant of the Peerless Photo Products Division of Agfa-Gevaert, Inc. (AGI), a subsidiary of Agfa-Gavaert NV of Belgium, located in the Township of West Caldwell, New Jersey, within the Newark Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 28, 1988.

The AGI plant (15 acres with 93,000 sq. ft. of building space) is located at 8 Henderson Drive in the West Essex Industrial Park. The facility employs 200 persons and is used to produce several kinds of high quality photographic papers used in advertising and industrial graphic operations. Approximately 50 percent of the value of the components will be sourced abroad, such as photographic emulsions and chemicals, photographic base paper, photographic gelatin, carbon black and plastic containers chiefly used for packing.

Zone procedures would exempt AGI from duty payments on the foreign components used in its exports. On its domestic sales, the company will be able to elect the duty rate that applies to finished photographic paper. The duty rates on the major components range from 0.0 to 8.5 percent, whereas the rate for the finished photographic paper is 3.7 percent. The application indicates that zone savings will improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Peter J. Baish, Area Director, U.S. Customs Service, New York Region, Airport International Plaza, Room 210A, Newark, New Jersey 07114; and Colonel Marion L. Caldwell, District Engineer, U.S. Army Engineer District New York, 26 Federal Plaza, New York, New York 10278–0090.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 16, 1988.

A copy of the application is available for public inspection at each of the following locations:

Area Director's Office, U.S. Customs Service, Airport International Plaza, Room 210A, Newark, New Jersey 07114

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 1, 1988.
Dennis Puccinelli,
*Acting Executive Secretary.*
[FR Doc. 88-17793 Filed 8-5-88; 8:45 am]
BILLING CODE 3510-05-M

## International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration/Import Administration Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with section 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity To Request a Review

Not later than August 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

| Antidumping Duty Proceeding | Period |
|---|---|
| Belgium: Industrial Phosphoric Acid (A-423-602) | 04/20/87-07/31/88 |
| France: Nitrocellulose (A-427-009) | 08/01/87-07/31/88 |
| Israel: Industrial Phosphoric Acid (A-508-604) | 04/20/87-07/31/88 |
| Italy: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-475-603) | 02/06/87-07/31/88 |
| Japan: Acrylic Sheet (A-588-055) | 08/01/87-07/31/88 |
| Japan: Cadmium (A-588-035) | 08/01/87-07/31/88 |
| Japan: High-Capacity Pagers (A-588-007) | 08/01/87-07/31/88 |
| Japan: Tapered Roller Bearings, 4 Inches and Under (A-588-054) | 08/01/87-07/31/88 |
| People's Republic of China: Petroleum Wax Candles (A-570-504) | 08/01/87-07/31/88 |
| Taiwan: Clear Sheet Glass (A-583-023) | 08/01/87-07/31/88 |
| Thailand: Malleable Cast Iron Pipe Fittings (A-549-601) | 02/13/87-07/31/88 |
| Turkey: Acetylsalicylic Acid (Aspirin) (A-489-602) | 04/15/87-07/31/88 |
| Union of Soviet Socialist Republics: Titanium Sponge (A-461-008) | 08/01/87-07/31/88 |
| Yugoslavia: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-479-601) | 02/06/87-07/31/88 |

| Countervailing Duty Proceeding | Period |
|---|---|
| New Zealand: Low-Fuming Brazing Copper Rod and Wire (C-614-501) | 08/01/87-07/31/88 |
| Thailand: Pipes and Tubes (C-549-501) | 01/01/87-12/31/87 |
| Canada: Live Swine (C-122-404) | 04/01/87-03/31/88 |

| Countervailing Duty Proceeding | Period |
|---|---|
| Zimbabwe: Wire Rod (C-796-601) | 01/01/87-12/31/87 |
| Israel: Industrial Phosphoric Acid (C-508-605) | 02/05/87-12/31/87 |
| Turkey: Acetylsalicylic Acid (Aspirin) (C-489-603) | 03/03/87-12/31/87 |

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by August 31, 1988.

If the Department does not receive by August 31, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated August 1, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-17794 Filed 8-5-88; 8:45 am]

BILLING CODE 3510-DS-M

## North Carolina State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 88-179. *Applicant:* North Carolina State University, Raleigh, NC 27695. *Instrument:* Isotope Ratio Mass Spectrometer, Model Delta E. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. Reasons for this decision: The foreign instrument provides automated multiple collector for high precision analysis (i.e. precision of 0.01% on 4μ mol $CO_2$) of $^{13}C/^{12}C$, $^{15}N/^{14}N$, $^{18}O/^{16}O$, $^{34}S/^{32}S$ in sequence without breaking vacuum.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. The capability of the foreign instrument described above is pertinent to the applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-17795 Filed 8-5-88; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/TS21), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235.

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Sagus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the FEDERAL REGISTER. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1988 have been received from the Governments shown below.

**Carmen J. Blondin,**

*Deputy Assistant Secretary for International Interest, National Marine Fisheries Service, NOAA.*

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

| Code and Fishery | Regional Fishery Management Councils |
|---|---|
| ABS Atlantic Billfishes and Sharks. | New England.<br>Mid Atlantic.<br>South Atlantic.<br>Gulf of Mexico.<br>Caribbean. |
| BSA Bering Sea and Aleutian Islands Groundfish. | North Pacific. |
| GOA Gulf of Alaska | North Pacific. |

| Code and Fishery | Regional Fishery Management Councils |
|---|---|
| NWA Northwest Atlantic Ocean. | New England. |
| SNA Snails (Bering Sea) | Mid-Atlantic. |
| | North Pacific. |
| WOC Pacific Groundfish (Washington, Oregon and California). | Pacific. |
| PBS Pacific Billfishes and Sharks. | Western Pacific. |

| Vessel (vessel type) | Application/ permit No. | Fishery-activity (* = joint venture) |
|---|---|---|
| PELARSARID (Large stern trawler) | DA-88-0052 | NWA-1* |
| LUTTEN KLEIN (Cargo/transport vessel) | GC-88-0026 | NWA-3 |
| COSETTA (Medium stern trawler) | IT-88-0005 | NWA-2* |
| DE GIOAS GIUSEPPE (Medium stern trawler) | IT-88-0016 | NWA-2* |
| MARIA C (Medium stern trawler) | IT-88-0021 | NWA-2* |
| MARIA MICHELA (Medium stern trawler) | IT-88-0024 | NWA-2* |
| TONTINI PESCA QUARTO (Large stern trawler) | IT-88-0003 | NWA-2* |
| AKASHI MARU NO. 11 (Pair trawler) | JA-88-1530 | GOA-2* BSA-2* |
| AKASHI MARU NO. 12 (Pair trawler) | JA-88-1531 | GOA-2* BSA-2* |
| AKASHI MARU NO. 18 (Pair trawler) | JA-88-0178 | GOA-2* BSA-2* |
| AKASHI MARU NO. 63 (Pair trawler) | JA-88-0166 | GOA-2* BSA-2* |
| AKASHI MARU NO. 65 (Pair trawler) | JA-88-0167 | GOA-2* BSA-2* |
| AKASHI MARU NO. 66 (Pair trawler) | JA-88-0168 | GOA-2* BSA-2* |
| AKASHI MARU NO. 67 (Pair trawler) | JA-88-0169 | GOA-2* BSA-2* |
| AKASHI MARU NO. 68 (Pair trawler) | JA-88-0170 | GOA-2* BSA-2* |
| AKASHI MARU NO. 69 (Pair trawler) | JA-88-0171 | GOA-2* BSA-2* |
| AKASHI MARU NO. 71 (Pair trawler) | JA-88-0172 | GOA-2* BSA-2* |
| AKASHI MARU NO. 72 (Pair trawler) | JA-88-0173 | GOA-2* BSA-2* |
| AKASHI MARU NO. 73 (Pair trawler) | JA-88-0174 | GOA-2* BSA-2* |
| AKASHI MARU NO. 75 (Pair trawler) | JA-88-0175 | GOA-2* BSA-2* |
| AKASHI MARU NO. 76 (Pair trawler) | JA-88-0176 | GOA-2* BSA-2* |
| AKASHI MARU NO. 77 (Pair trawler) | JA-88-0177 | GOA-2* BSA-2* |
| AKASHIA MARU (Cargo/transport vessel) | JA-88-1156 | SNA-3 NWA-3 GOA-3 BSA-3 |
| AKEBONO MARU NO. 18 (Medium stern trawler) | JA-88-0315 | GOA-2* BSA-2* |
| AKEBONO MARU NO. 22 (Medium stern trawler) | JA-88-0317 | GOA-2* BSA-2* |
| AKEBONO MARU NO. 31 (Medium stern trawler) | JA-88-0306 | GOA-2* BSA-2* |
| AKEBONO MARU NO. 32 (Medium stern trawler) | JA-88-0307 | GOA-2* BSA-2* |
| AKEBONO MARU NO. 72 (Large stern trawler) | JA-88-0338 | GOA-2* BSA-2* |
| AKEBONO MARU NO. 77 (Large stern trawler) | JA-88-0157 | GOA-2* BSA-2* |
| AKEBONO MARU NO. 1 (Medium stern trawler) | JA-88-1153 | GOA-2* BSA-2* |
| AKISHIO MARU (Cargo/transport vessel) | JA-88-0096 | NWA-3 GOA-3 BSA-3 |
| ALBATROSS (Cargo/transport vessel) | JA-88-0081 | NWA-3 GOA-3 BSA-3 |
| ANYO MARU NO. 1 (Medium stern trawler) | JA-88-1552 | GOA-2* BSA-2* |
| ANYO MARU NO. 11 (Medium stern trawler) | JA-88-0541 | BSA-2* |
| ANYO MARU NO. 15 (Medium stern trawler) | JA-88-0104 | GOA-2* BSA-2* |
| ANYO MARU NO. 16 (Medium stern trawler) | JA-88-1175 | GOA-2* BSA-2* |
| ANYO MARU NO. 21 (Longline fishing vessel) | JA-88-0621 | GOA-1 BSA-1 |
| ANYO MARU NO. 22 (Longline fishing vessel) | JA-88-0622 | GOA-1 BSA-1 |
| AOSHIMA MARU (Cargo/transport vessel) | JA-88-0155 | NWA-3 GOA-3 BSA-3 |
| AOYAGI MARU (Cargo/transport vessel) | JA-88-0026 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| ATAGO MARU (Cargo/transport vessel) | JA-88-0195 | SNA-3 NWA-3 GOA-3 BSA-3 |
| BAINBRIDGE REEFER (Cargo/transport vessel) | JA-88-1159 | SNA-3 NWA-3 GOA-3 BSA-3 |
| BANYO MARU (Cargo/transport vessel) | JA-88-0099 | WOC-2 SNA-2 NWA-2 GOA-2 BSA-2 |
| BIYO MARU (Cargo/transport vessel) | JA-88-0586 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| BIZEN REFFER (Cargo/transport vessel) | JA-88-0037 | SNA-3 NWA-3 GOA-3 BSA-3 |
| BLUE ARROW (Cargo/transport vessel) | JA-88-0916 | SNA-3 NWA-3 GOA-3 BSA-3 |
| BUNGO REEFER (Cargo/transport vessel) | JA-88-0038 | SNA-3 NWA-3 GOA-3 BSA-3 |
| CHIKUBU MARU (Large stern trawler) | JA-88-0336 | GOA-2* BSA-2* |
| CHIKUZEN MARU (Large stern trawler) | JA-88-0199 | WOC-2 GOA-2* BSA-2* |
| CHITOSE MARU (Cargo/transport vessel) | JA-88-0180 | SNA-3 NWA-3 GOA-3 BSA-3 |
| CHIYO MARU (Large stern trawler) | JA-88-0197 | GOA-2* BSA-2* |
| CHOYO MARU NO. 81 (Longline fishing vessel) | JA-88-0615 | GOA-1 BSA-1 |
| CHOYO MARU (Cargo/transport vessel) | JA-88-0574 | SNA-3 NWA-3 GOA-3 BSA-3 |
| DAIAN MARU NO. 128 (Small stern trawler) | JA-88-1573 | BSA-1 |
| DAIAN MARU NO. 188 (Medium stern trawler) | JA-88-0553 | GOA-3 BSA-2* |
| DAIGEN MARU (Cargo/transport vessel) | JA-88-1147 | NWA-3 GOA-3 BSA-3 |
| DAIKAN MARU (Cargo/transport vessel) | JA-88-0033 | NWA-3 GOA-3 BSA-3 |
| DAIKICHI MARU NO. 1 (Small stern trawler) | JA-88-1196 | GOA-2* BSA-2* |
| DAIKICHI MARU NO. 5 (Small stern trawler) | JA-88-0187 | GOA-2* BSA-2* |
| DAIKICHI MARU NO. 51 (Medium stern trawler) | JA-88-0484 | GOA-2* BSA-2* |
| DAIKOH MARU (Cargo/transport vessel) | JA-88-0021 | NWA-3 GOA-3 BSA-3 |
| DAISHIN MARU NO. 28 (Large stren trawler) | JA-88-0569 | GOA-2* BSA-2* |
| DAISHO MARU (Cargo/transport vessel) | JA-88-0035 | NWA-3 GOA-3 BSA-3 |
| DAITO MARU NO. 68 (Small stern trawler) | JA-88-1585 | BSA-1 |
| DOUGLAS (Cargo/transport vessel) | JA-88-2028 | NWA-3 GOA-3 BSA-3 |
| EASTERN REEFER (Cargo/transport vessel) | JA-88-0600 | SNA-3 NWA-3 GOA-3 BSA-3 |
| EBISU FONTAINE (Cargo/transport vessel) | JA-88-0589 | NWA-3 GOA-3 BSA-3 |
| EBISU MARU NO. 88 (Longline fishing vessel) | JA-88-0118 | GOA-1 BSA-1 |
| EIHO MARU (Cargo/transport vessel) | JA-88-1062 | SNA-3 GOA-3 BSA-3 |
| EIKYU MARU NO. 12 (Longline fishing vessel) | JA-88-0124 | GOA-1 BSA-1 |
| EIKYU MARU NO. 2 (Medium stern trawler) | JA-88-0299 | BSA-1 |
| EIKYU MARU NO. 3 (Medium stern trawler) | JA-88-1174 | BSA-1 |

| Vessel (vessel type) | Application/ permit No. | Fishery-activity (° = joint venture) |
|---|---|---|
| EIKYU MARU NO. 5 (Medium stern trawler) | JA-88-1549 | BSA-1 |
| EIKYU MARU NO. 6 (Medium stern trawler) | JA-88-1550 | BSA-1 |
| EIKYU MARU NO. 75 (Small stern trawler) | JA-88-1541 | BSA-1 |
| EIKYU MARU NO. 8 (Medium stern trawler) | JA-88-1571 | BSA-1 |
| EIKYU MARU NO. 81 (Medium stern trawler) | JA-88-0082 | BSA-1 |
| EIKYU MARU NO. 82 (Longline fishing vessel) | JA-88-0607 | GOA-1 BSA-1 |
| EIKYU MARU NO. 86 (Small stern trawler) | JA-88-1186 | BSA-1° |
| EIWA MARU NO. 38 (Pot fishing vessel) | JA-88-1566 | SNA-1 |
| EIYO MARU (B) (Cargo transport vessel) | JA-88-0109 | SNA-2 NWA-2 GOA-2 BSA-2 |
| ENA MARU (Cargo/transport vessel) | JA-88-0577 | NWA-2 GOA-2 BSA-2 |
| ENYOH MARU (Cargo/transport vessel) | JA-88-0066 | SNA-3 NWA-3 GOA-3 BSA-3 |
| ETSUYOH MARU (Cargo/transport vessel) | JA-88-0069 | SNA-3 NWA-3 GOA-3 BSA-3 |
| FALCON (Cargo/transport vessel) | JA-88-0918 | NWA-3 GOA-3 BSA-3 |
| FUJISHIO MARU (Cargo/transport vessel) | JA-88-0594 | NWA-3 GOA-3 BSA-3 |
| FUKUCHO MARU NO. 11 (Small stern trawler) | JA-88-1537 | BSA-1 |
| FUKUCHO MARU NO. 38 (Pot fishing vessel) | JA-88-3569 | SNA-1 |
| FUKUHO MARU NO. 78 (Small stern trawler) | JA-88-1548 | GOA-3 BSA-2° |
| FUKUSHIN MARU NO. 8 (Medium stern trawler) | JA-88-0555 | GOA-3 BSA-2° |
| FUKUSHIO MARU (Cargo/transport vessel) | JA-88-1539 | NWA-3 GOA-3 BSA-3 |
| FUKUYOSHI MARU NO. 26 (Longline fishing vessel) | JA-88-0544 | GOA-1 BSA-1 |
| FUKUYOSHI MARU NO. 38 (Medium stern trawler) | JA-88-0304 | GOA-2° BSA-2° |
| FUKUYOSHI MARU NO. 58 (Small stern trawler) | JA-88-1536 | GOA-2° BSA-2° |
| FUKUYOSHI MARU NO. 8 (Longline fishing vessel) | JA-88-0624 | GOA-1 BSA-1 |
| FUYO MARU (Cargo/transport vessel) | JA-88-0925 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HAKKO BOOMERANG (Cargo/transport vessel) | JA-88-0881 | NWA-3 GOA-3 BSA-3 |
| HAKKO FONTAINE (Cargo/transport vessel) | JA-88-0587 | NWA-3 GOA-3 BSA-3 |
| HAKUREI MARU (Pair trawler) | JA-88-0013 | GOA-2° BSA-2° |
| HAKUYO MARU (Cargo/transport vessel) | JA-88-0570 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HAMANASU MARU (Cargo/transport vessel) | JA-88-0883 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HAMAYOSHI MARU NO. 63 (Medium stern trawler) | JA-88-1187 | BSA-1 |
| HANAZONO MARU (Cargo/transport vessel) | JA-88-0147 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| HATSUE MARU NO. 68 (Longline fishing vessel) | JA-88-0562 | GOA-1 BSA-1 |
| HEKIFU (Cargo/transport vessel) | JA-88-0196 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HIKARI MARU NO. 8 (Cargo/transport vessel) | JA-88-0142 | NWA-3 GOA-3 BSA-3 |
| HIYO MARU (Cargo/transport vessel) | JA-88-2025 | SNA-2 NWA-2 GOA-2 BSA-2 |
| HIYOSHI MARU (Cargo/transport vessel) | JA-88-0075 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HOKKAI MARU (Pair trawler) | JA-88-0012 | GOA-2° BSA-2° |
| HOKKAI MARU (B) (Cargo/transport vessel) | JA-88-0922 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HOKKO MARU NO. 137 (Small stern trawler) | JA-88-1199 | BSA-1 |
| HOKUSHIN MARU (Pair trawler) | JA-88-0014 | GOA-2° BSA-2° |
| HOKUSHIN MARU (Cargo/transport vessel) | JA-88-0138 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HOKUTO MARU (Pair trawler) | JA-88-0015 | GOA-2° BSA-2° |
| HOKUYU MARU NO. 68 (Medium stern trawler) | JA-88-1177 | BSA-1 |
| HONAI MARU (Cargo/transport vessel) | JA-88-0648 | SNA-3 NWA-3 GOA-3 BSA-3 |
| HOYO MARU (Factory ship) | JA-88-0190 | BSA-2 |
| HOYO MARU NO. 30 (Pot fishing vessel) | JA-88-1511 | SNA-1 |
| HOYO MARU NO. 78 (Pot fishing vessel) | JA-88-1527 | SNA-1 |
| HOZAN MARU (Cargo/transport vessel) | JA-88-0194 | NWA-3 GOA-3 BSA-3 |
| ISHIKARI MARU (Cargo/transport vessel) | JA-88-0595 | SNA-3 NWA-3 GOA-3 BSA-3 |
| ISOKAZE MARU (Cargo/transport vessel) | JA-88-1038 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| IZUMO REEFER (Cargo/transport vessel) | JA-88-0053 | SNA-3 NWA-3 GOA-3 BSA-3 |
| JAMES (Cargo/transport vessel) | JA-88-0584 | NWA-3 GOA-3 BSA-3 |
| JINKYU MARU No. 21 (Longline fishing vessel) | JA-88-0191 | ABS-1 |
| JUKYU MARU No. 58 (Small stern trawler) | JA-88-0635 | BSA-1 |
| KAIUN MARU No. 65 (Medium stern trawler) | JA-88-2010 | BSA-1 |
| KAIYO MARU No. 15 (Medium stern trawler) | JA-88-1176 | BSA-1 |
| KAIYO MARU (Cargo transport vessel) | JA-88-0068 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| KAIYO MARU No. 11 (Medium stern trawler) | JA-88-0313 | GOA-2°BSA-2° |
| KAIYO MARU No. 18 (Small stern trawler) | JA-88-0079 | BSA-1 |
| KAIYO MARU No. 28 (Medium stern trawler) | JA-88-1544 | BSA-1 |
| KAIYO MARU No. 8 (Pot fishing vessel) | JA-88-1137 | SNA-1 |
| KAIYO MARU No. 5 (Pot fishing vessel) | JA-88-0849 | SNA-1 |
| KAKUYO MARU No. 1 (Pair trawler) | JA-88-0210 | BSA-1 |
| KAKUYO MARU No. 11 (Pair trawler) | JA-88-2008 | BSA-1 |
| KAKUYO MARU No. 12 (Pair trawler) | JA-88-2009 | BSA-1 |
| KAKUYO MARU No. 17 (Pair trawler) | JA-88-1575 | BSA-1 |
| KAKUYO MARU No. 18 (Pair trawler) | JA-88-1574 | BSA-1 |
| KAKUYO MARU No. 2 (Pair trawler) | JA-88-0211 | BSA-1 |
| KAKUYO MARU No. 7 (Pair trawler) | JA-88-0214 | BSA-1 |
| KAKUYO MARU No. 8 (Pair trawler) | JA-88-0215 | BSA-1 |
| KAMUI MARU (Cargo/transport vessel) | JA-88-0223 | SNA-3 GOA-3 BSA-3 |
| KASHIMA MARU (Factory ship) | JA-88-0001 | SNA-3 NWA-3 GOA-2°BSA-2 |
| KASHIMA MARU No. 8 (Small stern trawler) | JA-88-0183 | BSA-1 |
| KASHIMA REEFER (Cargo/transport vessel) | JA-88-0054 | SNA-3 NWA-3 GOA-3 BSA-3 |
| KASHIWAGI MARU (Cargo/transport vessel) | JA-88-0019 | SNA-3 NWA-3 GOA-3 BSA-3 |
| KASHIWAGI MARU No. 1 (Cargo/transport vessel) | JA-88-0684 | SNA-3 BSA-3 |
| KASUGA MARU (Cargo/transport vessel) | JA-88-0181 | SNA-32 NWA-3 GOA-3 BSA-3 |
| KASUGA REEFER (Cargo/transport vessel) | JA-88-0055 | SNA-3 NWA-3 GOA-3 BSA-3 |
| KATAH (Cargo/transport vessel) | JA-88-0148 | GOA-3 BSA-3 |
| KAZU MARU No. 8 (Cargo/transport vessel) | JA-88-0143 | NWA-3 GOA-3 BSA-3 |
| KEIFU MARU (Cargo/transport vessel) | JA-88-0572 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |

| Vessel (vessel type) | Application/ permit No. | Fishery-activity (° = joint venture) |
|---|---|---|
| KEIYO MARU (Cargo/transport vessel) | JA-88-0102 | WOC-3 NWA-3 GOA- BSA-3 |
| KINYO MARU (Cargo/transport vessel) | JA-88-0103 | SNA-2 NWA-2 GOA-2 BSA-2 |
| KISARAGI MARU (Cargo/transport vessel) | JA-88-0929 | SNA-3 GOA-3 BSA-3 |
| KIYO MARU No. 55 (Longline fishing vessel) | JA-88-0602 | GOA-1 BSA-1 |
| KOEI MARU No. 10 (Longliner gillnet) | JA-88-0140 | BSA-1 |
| KOEI MARU No. 20 (Small stern trawler) | JA-88-1576 | BSA-1 |
| KOEI MARU No. 58 (Longline fishing vessel) | JA-88-0618 | GOA-1 BSA-1 |
| KOEI MARU No. 15 (Medium stern trawler) | JA-88-1206 | BSA-1 |
| KOEI MARU No. 51 (Medium stern trawler) | JA-88-1172 | BSA-1 |
| KOHFU MARU (Cargo/transport vessel) | JA-88-0841 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| KOHOKU MARU No. 18 (Pot fishing vessel) | JA-88-0839 | SNA-1 |
| KOHOKU MARU No. 7 (Small stern trawler) | JA-88-1191 | GOA-2° BSA-2° |
| KOHSHO MARU (Cargo/transport vessel) | JA-88-0579 | NWA-3 GOA-3 BSA-3 |
| KOMEI MARU (Cargo/transport vessel) | JA-88-0139 | SNA-3 NWA-3 GOA-3 BSA-3 |
| KORYO MARU No. 52 (Medium stern trawler) | JA-88-1580 | BSA-1 |
| KOSHIN MARU No. 18 (Medium stern trawler) | JA-88-0425 | GOA-2° |
| KOSHIN MARU No. 21 (Medium stern trawler) | JA-88-0525 | GOA-2° BSA-2° |
| KOSHIN MARU No. 3 (Medium stern trawler) | JA-88-0192 | GOA-2° BSA-2° |
| KOTOKU MARU (Cargo/transport vessel) | JA-88-1035 | NWA-3 GOA-3 BSA-3 |
| KOYO MARU (Cargo/transport vessel) | JA-88-0283 | WOC-3 NWA-3 GOA-3 BSA-3 |
| KOYO MARU No. 2 (Large stern trawler) | JA-88-0297 | GOA-2° BSA-2° |
| KOYO MARU No. 3 (Large stern trawler) | JA-88-0242 | WOC-2° BSA-2° |
| KUNASHIRI MARU (Cargo/transport vessel) | JA-88-1151 | NWA-3 GOA-3 BSA-3 |
| KUNISAKI (Cargo/transport vessel) | JA-88-0899 | NWA- GOA-3 BSA-3 |
| KUREHA (Pair trawler) | JA-88-0011 | GOA-2 BSA-2 |
| KUROSHIMA MARU (Cargo/transport vessel) | JA-88-1582 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| KYOKUSHIN MARU (Cargo/transport vessel) | JA-88-1161 | SNA-3 NWA-3 GOA-3 BSA-3 |
| KYOWA MARU No. 1 (Medium stern trawler) | JA-88-1578 | BSA-1 |
| KYOWA MARU No. 8 (Pot fishing vessel) | JA-88-0901 | SNA-1 |
| MABAH (Cargo/transport vessel) | JA-88-0108 | GOA-3 BSA-3 |
| MANRYO MARU No. 52 (Small stern trawler) | JA-88-1189 | BSA-1 |
| MARINE ACE (Cargo/transport vessel) | JA-88-0002 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| MASHU MARU (Cargo/transport vessel) | JA-88-0154 | NWA-3 GOA-3 BSA-3 |
| MATSUEI MARU No. 88 (Longline fishing vessel) | JA-88-0609 | GOA-1 BSA-1 |
| MEISHO MARA NO. 128. (Medium stern trawler) | JA-88-1561 | BSA-1 |
| MEIYO-MARU (Cargo/transport vessel) | JA-88-1123 | SNA-3 NWA-3 GOA-3 BSA-3 |
| MINESHIMA MARU (Factory ship) | JA-88-0080 | GOA-2° BSA-2° |
| MITO MARU NO. 82 (Longline fishing vessel) | JA-88-0611 | GOA-1 BSA-1 |
| MIYAJIMA MARU (Factory ship) | JA-88-1540 | WOC-1° GOA-2° BSA-2° |
| MIYOSHIMA MARU (Cargo/transport vessel) | JA-88-0026 | WOC-2 SNA-2 NWA-2 GOA-2 BSA-2 |
| NICHIYO MARU (Cargo/transport vessel) | JA-88-1167 | SNA-3 NWA-3 GOA-3 BSA-3 |
| NIITAKA MARU (Large stern trawler) | JA-88-0289 | GOA-2° BSA-2° |
| NIPPONHAM MARU NO. 1 (Cargo/transport vessel) | JA-88-1092 | SNA-3 NWA-3 GOA-3 BSA-3 |
| NISSEI MARU (Cargo/transport vessel) | JA-88-0914 | SNA-3 NWA-3 GOA-3 BSA-3 |
| NISSHIN MARU NO. 51 (Medium stern trawler) | JA-88-1198 | BSA-1 |
| NOJIMA MARU (Cargo/transport vessel) | JA-88-1098 | SNA-2 NWA-2 GOA-2 BSA-2 |
| OHTORI MARU (Large stern trawler) | JA-88-0242 | GOA-2° BSA-2° |
| OHYO MARU (Cargo/transport vessel) | JA-88-0158 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| OKUSHIRI (Cargo/transport vessel) | JA-88-0580 | SNA-3 NWA-3 GOA-3 BSA-3 |
| ORIENTAL CRANE (Tanker fuel/water) | JA-88-0184 | SNA-3 GOA-3 BSA-3 |
| ORION (Cargo/transport vessel) | JA-88-0591 | NWA-3 GOA-3 BSA-3 |
| ORION (Cargo/transport vessel) | JA-88-0642 | NWA-2 GOA-2 BSA-2 |
| OTOHA MARU (Pair trawler) | JA-88-0010 | GOA-2° BSA-2° |
| OTOWA MARU (Cargo/transport vessel) | JA-88-1538 | SNA-3 NWA-3 GOA-3 BSA-3 |
| PALOMA (Cargo/transport vessel) | JA-88-0098 | NWA-3 GOA-3 BSA-3 |
| PEGASAS (Cargo/transport vessel) | JA-88-0152 | NWA-3 GOA-3 BSA-3 |
| PHOENIX (Cargo/transport vessel) | JA-88-0917 | NWA-3 GOA-3 BSA-3 |
| POHAH (Cargo/transport vessel) | JA-88-0306 | GOA-3 BSA-3 |
| REEFER BEAVER (Cargo/transport vessel) | JA-88-1145 | SNA-3 NWA-3 GOA-3 BSA-3 |
| REEFER FRESH (Cargo/transport vessel) | JA-88-2029 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| RIKUZEN MARU (Large stern trawler) | JA-88-0340 | WOC-2° GOA-2° BSA-2° |
| RISHIRI (Cargo/transport vessel) | JA-88-0027 | SNA-3 NWA-3 GOA-3 BSA-3 |
| ROKUNOSHIMA MARU NO. 18 (Longline fishing vessel) | JA-88-1553 | ABS-1 |
| RYOAN MARU NO. 21 (Medium stern trawler) | JA-88-1172 | BSA-1 |
| RYOAN MARU NO. 35 (Small stern trawler) | JA-88-1195 | BSA-1 |
| RYOUN MARU NO. 2 (Pot fishing vessel) | JA-88-0677 | SNA-1 |
| RYOUN MARU NO. 6 (Pot fishing vessel) | JA-88-0850 | SNA-1 |
| RYOYO MARU (Cargo/transport vessel) | JA-88-1024 | SNA-2 NWA-2 GOA-2 BSA-2 |
| RYUHO MARU NO. 38 (Longline fishing vessel) | JA-88-0557 | GOA-1 BSA-1 |
| RYUHO MARU NO. 51 (Small stern trawler) | JA-88-1572 | GOA-2 BSA-2° |
| RYUJIN MARU NO. 21 (Small stern trawler) | JA-88-0634 | BSA-1 |
| RYUO MARU NO. 28 (Longline fishing vessel) | JA-88-1373 | ABS-1 |
| RYUSEI MARU (Cargo/transport vessel) | JA-88-0083 | SNA-3 NWA-3 GOA-3 BSA-3 |
| RYUSHO MARU NO. 15 (Longliner/gillnet) | JA-88-0619 | BSA-1 |
| RYUSHO MARU NO. 18 (Longline fishing vessel) | JA-88-0620 | GOA-1 BSA-1 |
| RYUYO MARU (Large stern trawler) | JA-88-0280 | GOA-2° BSA-2° |
| SACHISHIO MARU (Cargo/transport vessel) | JA-88-0097 | NWA-3 GOA-3 BSA-3 |
| SAGAMI MARU (Cargo/transport vessel) | JA-88-0148 | WOC-2 SNA-2 NWA-2 GOA-2 BSA-2 |
| SAKAE MARU (Cargo/transport vessel) | JA-88-0647 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SANKICHI MARU NO. 23 (Pot fishing vessel) | JA-88-0848 | SNA-1 |
| SANUKI MARU (Cargo/transport vessel) | JA-88-0915 | NWA-3 GOA-3 BSA-3 |

| Vessel (vessel type) | Application/ permit No. | Fishery-activity (°=joint venture) |
|---|---|---|
| SANWA FONTAINE (Cargo/transport vessel) | JA-88-0590 | NWA-3 GOA-3 BSA-3 |
| SANYO MARU (Cargo/transport vessel) | JA-88-0924 | NWA-3 GOA-3 BSA-3 |
| SAPPORO MARU (Cargo/transport vessel) | JA-88-0585 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SEAGULL (Cargo/transport vessel) | JA-88-0034 | NWA-3 GOA-3 BSA-3 |
| SEIJU MARU NO. 28 (Medium stern trawler) | JA-88-0465 | BSA-1 |
| SEISHIN MARU (Cargo/transport vessel) | JA-88-0645 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SEITOKU MARU NO. 106 (Medium stern trawler) | JA-88-0411 | BSA-1 |
| SEIYOH MARU (Cargo/transport vessel) | JA-88-0583 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SEKI REX (Cargo/transport vessel) | JA-88-1148 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SHIDAKA MARU (Cargo/transport vessel) | JA-88-0179 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SHIKISHIMA MARU (Cargo/transport vessel) | JA-88-0030 | SNA-2 NWA-2 GOA-2 BSA-2 |
| SHIN SAKURA (Cargo/transport vessel) | JA-88-0153 | NWA-3 GOA-3 BSA-3 |
| SHINASAHI MARU (Cargo/transport vessel) | JA-88-0578 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHINBUNGO MARU (Cargo/transport vessel) | JA-88-0047 | NWA-2 GOA-2 BSA-2 |
| SHINEI MARU NO. 18 (Longline fishing vessel) | JA-88-1555 | ABS-1 |
| SHINEI MARU NO. 63 (Small stern trawler) | JA-88-1196 | GOA-3 BSA-2° |
| SHINEI MARU NO. 81 (Longline fishing vessel) | JA-88-1554 | ABS-1 |
| SHINEI MARU NO. 88 (Longline fishing vessel | JA-88-1458 | ABS-1 |
| SHINKO MARU NO. 11 (Longline fishing vessel) | JA-88-0119 | GOA-1 BSA-1 |
| SHINMEI MARU (Cargo/transport vessel) | JA-88-0207 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHINNICHI MARU NO. 38 (Medium stern trawler) | JA-88-0563 | GOA-3 BSA-2° |
| SHINNICHI MARU NO. 68 (Medium stern trawler) | JA-88-0308 | GOA-2° BSA-2° |
| SHINSEI MARU (Cargo/transport vessel) | JA-88-0890 | NWA-2 GOA-2 BSA-2 |
| SHINSHO MARU (Cargo/transport vessel) | JA-88-0640 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHINTAKARA MARU (Cargo/transport vessel) | JA-88-0046 | NWA-2 GOA-2 BSA-2 |
| SHINTOKU MARU NO. 25 (Longline fishing vessel) | JA-88-0613 | GOA-1 BSA-1 |
| SHINWA MARU (Cargo/transport vessel) | JA-88-0137 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHINYO MARU (Cargo/transport vessel) | JA-88-0074 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SHOEI MARU NO. 5 (Small stern trawler) | JA-88-0639 | BSA-1 |
| SHOJU MARU (Cargo/transport vessel) | JA-88-0134 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHOKEN MARU (Cargo/transport vessel) | JA-88-0930 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHOSHIN MARU NO. 20 (Medium stern trawler) | JA-88-1178 | BSA-1 |
| SHOTOKU MARU NO. 63 (Small stern trawler) | JA-88-1194 | BSA-1 |
| SHOUN DYNASTY (Tanker fuel/water) | JA-88-0208 | SNA-3 GOA-3 BSA-3 |
| SHOUN MARU NO. 11 (Tanker fuel/water) | JA-88-0209 | SNA-3 GOA-3 BSA-3 |
| SHOUTOKU MARU (Cargo/transport vessel) | JA-88-0028 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHOYO MARU (A) (Medium stern trawler) | JA-88-1394 | BSA-1 |
| SHOYO MARU (B) (Cargo/transport vessel) | JA-88-1563 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SHUNYO MARU (Cargo/transport vessel) | JA-88-0136 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SHUNYOO MARU NO. 118 (Medium stern trawler) | JA-88-0564 | GOA-3 BSA-2° |
| SINGAPORE FONTAINE (Cargo/transport vessel) | JA-88-0586 | NWA-3 GOA-3 BSA-3 |
| SKY REEFER (Cargo/transport vessel) | JA-88-0907 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SKYLARK (Cargo/transport vessel) | JA-88-0023 | NWA-3 GOA-3 BSA-3 |
| SOUTHERN CROSS (Cargo/transport vessel) | JA-88-0156 | NWA-3 GOA-3 BSA-3 |
| SOUTHERN REEFER (Cargo/transport vessel) | JA-88-0145 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SOYO MARU (Factory ship) | JA-88-0240 | GOA-2° BSA-2° |
| SOYOKAZE MARU (Cargo/transport vessel) | JA-88-1040 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| STARLING (Cargo/transport vessel) | JA-88-0024 | NWA-3 GOA-3 BSA-3 |
| SUIYO MARU (Cargo/transport vessel) | JA-88-0575 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SUMI MARU NO. 18 (Longline fishing vessel) | JA-88-1491 | ABS-1 |
| SUMI MARU NO. 8 (Longline fishing vessel) | JA-88-1546 | ABS-1 |
| SUMIYOSHI MARU NO. 53 (Longline fishing vessel) | JA-88-0606 | GOA-1 BSA-1 |
| SUN BEAUTY (Cargo/transport vessel) | JA-88-0129 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SUN FIELD (Cargo/transport vessel) | JA-88-0130 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SUNBIRD (Cargo/transport vessel) | JA-88-0576 | NWA-3 GOA-3 BSA-3 |
| SUOH (Cargo/transport vessel) | JA-88-0893 | NWA-3 GOA-3 BSA-3 |
| SURUGA MARU (Cargo/transport vessel) | JA-88-2014 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| SUZURAN MARU (Cargo/transport vessel) | JA-88-1152 | SNA-3 NWA-3 GOA-3 BSA-3 |
| SWALLOW (Cargo/transport vessel) | JA-88-0032 | NWA-3 GOA-3 BSA-3 |
| TAISEI MARU NO. 21 (Medium stern trawler) | JA-88-1579 | BSA-1 |
| TAISEI MARU NO. 101 (Cargo/transport vessel) | JA-88-1144 | WOC-2 SNA-2 NWA-2 GOA-2 BSA-2 |
| TAISEI MARU NO. 15 (Cargo/transport vessel) | JA-88-0205 | WOC-2 SNA-3 NWA-3 GOA-2 BSA-2 |
| TAISEI MARU NO. 3 (Cargo/transport vessel) | JA-88-0085 | WOC-2 SNA-2 NWA-2 GOA-2 BSA-2 |
| TAISEI MARU NO. 35 (Medium stern trawler) | JA-88-0636 | BSA-1 |
| TAISEI MARU NO. 52 (Cargo/transport vessel) | JA-88-1055 | WOC-2 SNA-2 NWA-2 GOA-2 BSA-2 |
| TAISEI MARU NO. 87 (Cargo/transport vessel) | JA-88-1053 | SNA-2 NWA-2 GOA-2 BSA-2 |
| TAISEI MARU NO. 96 (Cargo/transport vessel) | JA-88-1054 | SNA-2 NWA-2 GOA-2 BSA-2 |
| TAISETSU MARU (Cargo/transport vessel) | JA-88-0193 | SNA-3 NWA-3 GOA-3 BSA-3 |
| TAIYO (Cargo/transport vessel) | JA-88-1032 | SNA-3 NWA-3 GOA-3 BSA-3 |
| TAKACHIHO MARU (Large stern trawler) | JA-88-0291 | GOA-2° BSA-2° |
| TAKATOYO MARU NO. 18 (Longline fishing vessel) | JA-88-1331 | ABS-1 |
| TAKATSUKI MARU (Cargo/transport vessel) | JA-88-2022 | SNA-3 NWA-3 GOA-3 BSA-3 |
| TAKUYO MARU (Cargo/transport vessel) | JA-88-0029 | SNA-3 NWA-3 GOA-3 BSA-3 |
| TAMA MARU (Cargo/transport vessel) | JA-88-1027 | GOA-2 BSA-2 |
| TEISHO MARU NO 68 (Small stern trawler) | JA-88-1547 | GOA-3 BSA-2° |
| TENKAI MARU (Tanker fuel/water) | JA-88-0894 | SNA-3 GOA-3 BSA-3 |
| TENSHUN MARU (Tanker fuel/water) | JA-88-0182 | SNA-3 GOA-3 BSA-3 |
| TENYO MARU (Large stern trawler) | JA-88-0352 | GOA-2° BSA-2° |
| TENYO MARU NO. 2 (Large stern trawler) | JA-88-0332 | GOA-2° BSA-2 |
| TENYO MARU NO. 3 (Large stern trawler) | JA-88-0333 | GOA-2° BSA-2 |
| TENYO MARU NO. 5 (Large stern trawler) | JA-88-0334 | GOA-2° BSA-2° |

| Vessel (vessel type) | Application/ permit No. | Fishery-activity (* = joint venture) |
|---|---|---|
| TENYOSHI MARU (tanker fuel/water) | JA-88-1577 | SNA-3 GOA-3 BSA-3 |
| TENYU MARU NO. 37 (Longline fishing vessel) | JA-88-0606 | GOA-1 BSA-1 |
| TENYU MARU NO. 57 (Small stern trawler) | JA-88-0637 | BSA-1 |
| TOKACHI MARU (B) (Cargo transport vessel) | JA-88-0359 | WOC-3 NSA-3 NWA-3 GOA-3 BSA-3 |
| TOKIWA MARU (Cargo transport vessel) | JA-88-031 | SNA-3 NWA-3 GOA-3 BSA-3 |
| TOKUKO MARU (Cargo transport vessel) | JA-88-0593 | NWA-3 GOA-3 BSA-3 |
| TOKURYU MARU (Cargo transport vessel) | JA-88-0592 | NWA-3 GOA-3 BSA-3 |
| TOKYO REEFER (Cargo transport vessel) | JA-88-1135 | WOC-3 SNA-3 NWA-3 GOA-3 BSA-3 |
| TOMI MARU NO. 21 (Longline fishing vessel) | JA-88-1476 | ABS-1 |
| TOMI MARU NO. 51 (Small stern trawler) | JA-88-1197 | GOA-2* BSA-2* |
| TOMI MARU NO. 55 (Small stern trawler) | JA-88-0437 | GOA-2* BSA-2* |
| TOMI MARU NO. 58 (Medium stern trawler) | JA-88-0643 | GOA-2* BSA-2* |
| TOMI MARU NO. 81 (Small stern trawler) | JA-88-1192 | GOA-2* BSA-2* |
| TOMI MARU NO. 82 (Small stern trawler)* | JA-88-1193 | GOA-2* BSA-2* |
| TOMI MARU NO. 83 (Medium stern trawler) | JA-88-1170 | GOA-2* BSA-2* |
| TOMI MARU NO. 85 (Medium stern trawler) | JA-88-0282 | GOA-2* BSA-2* |
| TOMI MARU NO. 86 (Medium stern trawler) | JA-88-0222 | GOA-2* BSA-2* |
| TOMI MARU NO. 87 (Medium stern trawler) | JA-88-0156 | GOA-2* BSA-2* |
| TOMI MARU NO. 88 (Longline fishing vessel) | JA-88-0612 | GOA-1 BSA-1 |
| TORA MARU NO. 58 (Small stern trawler) | JA-88-1190 | BSA-1 |
| THSHIN MARU (Cargo transport vessel) | JA-88-0056 | SNA-3 NWA-3 GOA-3 BSA-3 |
| TSUDA MARU (Large stern trawler) | JA-88-0237 | GOA-2* BSA-2* |
| TSUNE MARU NO. 31 (Longline fishing vessel) | JA-88-0601 | GOA-1 BSA-1 |
| TSURUSAKI (Cargo transport vessel) | JA-88-0830 | SNA-3 NWA-3 GOA-3 BSA-3 |
| WESTERN REEFER (Cargo transport vessel) | JA-88-0599 | SNA-3 NWA-3 GOA-3 BSA-3 |
| WORLD FONTAINE (Cargo/transport vessel) | JA-88-0588 | NWA-3 GOA-3 BSA-3 |
| YAGISHIRI (Cargo/transport vessel) | JA-88-0581 | SNA-3 NWA-3 GOA-3 BSA-3 |
| YAHATA MARU NO. 58 (Medium stern trawler) | JA-88-0682 | BSA-1 |
| YAKUSHI MARU NO. 51 (Medium stern trawler) | JA-88-1184 | BSA-1 |
| YAMASAN MARU NO. 101 (Small stern trawler) | JA-88-1184 | BSA-1 |
| YAMASAN MARU NO. 102 (Small stern trawler) | JA-88-1185 | BSA-1 |
| YAMATO MARU ((Large stern trawler) | JA-88-0339 | GOA-2* BSA-2* |
| YASAKA REEFER (Cargo/transport vessel) | JA-88-0692 | SNA-3 NWA-3 GOA-3 BSA-3 |
| YAYOI MARU (Cargo/transport vessel) | JA-88-0018 | SNA-3 NWA-3 GOA-3 BSA-3 |
| YOHTEI MARU (Cargo/transport vessel) | JA-88-0076 | SNA-3 NWA-3 GOA-3 BSA-3 |
| YOKO MARU (Cargo/transport vessel) | JA-88-0067 | SNA-3 NWA-3 GOA-3 BSA-3 |
| ZUIFU (Cargo/transport vessel) | JA-88-0648 | NWA-3 GOA-3 BSA-3 |
| ZUIHOO MARU NO. 28 (Medium stern trawler) | JA-88-0565 | GOA-3 BSA-2* |
| ZUIYO MARU (Large stern trawler) | JA-88-0335 | GOA-2* BSA-2* |
| ZUIYO MARU NO. 3 (Large stern trawler) | JA-88-0331 | GOA-2* BSA-2* |
| NO. 101 HYUN IL (Cargo/transport vessel) | KS-88-0151 | GOA-3 BSA-3 |
| CALAFIA (Cargo/transport vessel) | NL-88-0037 | WOC-3 NWA-3 GOA-3 BSA-3 |
| CASABLANCA (Cargo/transport vessel) | NL-88-0038 | WOC-3 NWA-3 GOA-3 BSA-3 |
| INCA (Cargo/transport vessel) | NL-88-0040 | WOC-3 NWA-3 GOA-3 BSA-3 |
| JAN WILLEM (Cargo/transport vessel) | NL-88-0039 | WOC-3 NWA-3 GOA-3 BSA-3 |
| LAURA CHRISTINA (Cargo/transport vessel) | NL-88-0036 | WOC-3 NWA-3 GOA-3 BSA-3 |
| MAGDALENA (Cargo/transport vessel) | NL-88-0033 | WOC-3 NWA-3 GOA-3 BSA3 |
| MATHILDA (Cargo/transport vessel) | NL-88-0035 | WOC-3 NWA-3 GOA-3 BSA-3 |
| MAYA (Cargo/transport vessel) | PL-88-0034 | WOC-3 NWA-3 GOA-3 BSA-3 |
| ANDROMEDA (Long stern trawler) | PL-88-0006 | NWA-1* |
| M/V KURPIE (Cargo/transport vessel) | PL-88-0120 | WOC-3 NWA-3 GOA-3 BSA-3 |
| PIENINY 2 (Tanker Fuel/water) | PL-88-0110 | WOC-3 GOA-3 BSA-3 |
| PLOCK (Cargo/transport vessel) | PL-88-0109 | WOC-3 GOA-3 BSA-3 |
| POWISLE (Cargo/transport vessel) | PL-88-0119 | WOC-3 GOA-3 BSA-3 |
| TATRY (Tanker fuel/water) | PL-88-0108 | WOC-3 GOA-3 BSA-3 |
| WINETA (Cargo/transport vessel) | PL-88-0051 | WOC-3 GOA3 BSA-3 |
| ZONDA (Cargo/transport vessel) | PL-88-0102 | WOC-3 NWA-3 BSA-3 |
| ZULAWY (Cargo/transport vessel) | PL-88-0041 | WOC-3 GOA-3 BSA-3 |
| ZYRARDOW (Cargo/transport vessel) | PL-88-0089 | WOC-3 GOA-3 BSA-3 |
| 18 SYEZD VLKSM (Large stern trawler) | UR-88-0617 | WOC-2* |
| ALEKSANDROVSK (Large stern trawler) | UR-88-0207 | WOC-2* |
| ANTON LOPATIN (Large stern trawler) | UR-88-0613 | WOC-1* |
| ARDATOV (Large stern trawler) | UR-88-0344 | WOC-2* |
| ARHIMED (Large stern trawler) | UR-88-0610 | WOC-2* |
| DALNEVOSTOCHNYI (Cargo/transport vessel) | UR-88-0796 | WOC-3 GOA-3 BSA-3 |
| DELEGAT (Tanker fuel/water) | UR-88-0762 | WOC-3 GOA-3 BSA-3 |
| ICHINSKY (Cargo/transport vessel) | UR-88-0807 | GOA-3 BSA-3 |
| IZUMRUDNYI (Large stern trawler) | UR-88-0747 | WOC-2* |
| KURILSK (Cargo/transport vessel) | UR-88-0606 | WOC-3 BSA-3 |
| MIHAIL SHOLOHOV (Passenger ship (crew transfer)) | UR-88-0609 | WOC-3 GOA-3 BSA-3 |
| NADEZHDA (Large stern trawler) | UR-88-0061 | WOC-2* |
| PASVALIS (Large stern trawler) | UR-88-0611 | WOC-2* |
| POLEVOD (Large stern trawler) | UR-88-0626 | WOC-2* |
| RUBINOVYI (Large stern trawler) | UR-88-0716 | WOC-2* |
| SEMIOZERNOE (Large stern trawler) | UR-88-0313 | BSA-1* |
| TALNIKI (Cargo/transport vessel) | UR-88-0741 | WOC-3 GOA-3 BSA-3 |
| TATARSTAN (Cargo/transport vessel) | UR-88-0603 | WOC-3 BSA-3 |
| VASILY GRECHISHNIKOV (Large stern trawler) | UR-88-0612 | WOC-1* |
| ZFRKALNYI (Cargo/transport vessel) | UR-88-0779 | WOC-3 BSA-3 |

| Activity code | Fishing operations |
|---|---|
| 1 | Catching, processing and other support. |
| 2 | Processing and other support. |
| 3 | Other support only. |
| * | Vessel(s) in support of U.S. vessels (joint venture). |
| ** | Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities. |

[FR Doc. 88-17825 Filed 8-5-88; 8:45 am]
BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* 23 August 1988.

*Time:* 0830-1600 hours.

*Place:* The Society of American Engineers, 607 Prince Street, Alexandria, VA 22320-2289.

*Agenda:* The Army Science Board Effectiveness Review Panel of the US Belvoir Research, Development and Engineering Center will meet in a working session to assimilate information from panel members, discuss conclusions, and develop their final draft report. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permited by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 88-18004 Filed 8-5-88; 10:15 am]
BILLING CODE 3710-08-M

### Corps of Engineers, Department of the Army

### Intent To Prepare a Revised Draft Environmental Impact Statement (RDEIS) for the Lower San Joaquin River and Tributaries, California, Clearing and Snagging Project

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a RDEIS.

**SUMMARY:** The action being taken is channel clearing and snagging for the Lower San Joaquin River from Stockton, California, to Friant Dam. This also includes portions of the Middle River and Kings River North tributaries. The reason for the action is to reduce flood damages caused by high flows during major storm events. The project will remove accumulated sand and gravel debris and riparian vegetation, or another alternative, in and adjacent to the previously completed project levees and other project areas. Construction was authorized in 1983.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the RDEIS should be addressed to Mr. Fred Walasavage, Planning Division, Corps of Engineers, 650 Capitol. Mall, Sacramento, California, 95814-4794, telephone (916) 551-1880.

**SUPPLEMENTARY INFORMATION:**

**1. Proposed Action**

Plans and designs for flood protection for the Lower San Joaquin River and the Middle River and Kings River North tributaries are being prepared as authorized by section 10 of the Flood Control Act of 1944, Pub. L. 534 as modified by the Supplemental Appropriations Act of 1983, Pub. L. 98-63 and by Continuing Appropriations, Fiscal Year 1988, Pub. L. 100-202. Authorization allows for clearing and snagging as a part of this project. The 1988 action further allows for clearing and snagging on Kings River North, funding for fish and wildlife mitigation, and rip-rapping as may be necessary to prevent erosion from the clearing and snagging project. In addition, authorization of funds for the project have been increased from $5 million to $8 million. The California State Reclamation Board is the non-Federal sponsor and is responsible for providing lands, easements, rights-of-ways, cost-sharing of construction, and maintaining the completed work.

**2. Alternatives**

Four alternatives are being considered and will be addressed in the RDEIS. These include: (1) No action, (2) the authorized plan of clearing and snagging, (3) modification of reservoir operations, and (4) purchase of flowage easements.

**3. Scoping Process**

a. Two previous Draft EIS's were completed in May 1985 and January 1987. The RDEIS is being prepared to include the work authorized in the Continuing Appropriations, Fiscal Year 1988, Pub. L. 100-202.

b. Close coordination is being maintained with Federal, State, and

local agencies; environmental organizations; and concerned individuals. This is being accomplished through public meetings, public notices and inter-agency coordination. Through this Notice of Intent all segments of the affected public and agencies will be invited to participate in the planning process.

c. Significant issues that will be discussed in the RDEIS include impacts on water quality, agriculture, fisheries, vegetation (riparian and wetlands), wildlife, endangered species, aesthetics, recreation, cumulative impacts, and investigation requirements.

d. The United States Fish and Wildlife Service will provide a Fish and Wildlife Coordiantion Act Report to accompany the RDEIS.

e. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the RDEIS. All interested persons are encouraged to respond to this notice and provide a current address if you wish to be contacted about the RDEIS.

**4. Meeting Schedule**

Twenty-four public meetings and workshops have been conducted since 1985 for the specific purpose of scoping and coordination of potential impacts on the environment. Additional public meetings or workshops can be held if interest is expressed and specific reasons for such meetings are provided.

**5. Availability**

The RDEIS is scheduled to be available for public review and comment in late 1988.

Date: July 25, 1988.

**Robert A Bauman,**

*Lieutenant Colonel, Corps of Engineers, Acting District Engineer.*

[FR Doc. 88-17773 Filed 8-5-88; 8:45 am]

BILLING CODE 3710-GH-M

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**Department of the Navy**

**Board of Advisors to the President, Naval War College, Newport, R.I., Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is given that the Board of Advisors to the president, Naval War College, will meet on September 1, 1988, in Room 210, Conolly Hall, Naval War College, Newport, Rhode Island. The meeting will commence at 8:30 a.m., and the purpose is to elicit the advice of the Board on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the college, and is open to the pubic. for further information contact: Mrs. Mary E. Guimond, Executive Assistant to the Dean of Academics, Naval War College, Newport, Rhode Island 02841-5010. Telephone number (401) 841-3589.

Dated: August 2, 1988.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 88-17840 Filed 8-5-88; 8:45 am]

BILLING CODE 3810-AE-M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket Nos. QF88-448-000 et al.]**

**CCPC Chemical Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

August 1, 1988.

Take notice that the following filing have been made with the Commission:

**1. CCPC Chemical Inc.**

[Docket No. QF88-448-000]

On July 13, 1988, CCpC Chemical Inc. (Applicant), of 1501 McKinzie Road, Corpus Christi, Texas 78413 submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located adjacent to the Applicant's existing olefins plant in Nueces County, Texas. The facility will consist of a combustion turbine generator and a heat recovery steam generator, equipped with supplementary firing. Thermal energy recovered from the facility will be used in an olefin manufacturing process. The electric power production capacity of the facility will be 37,880 KW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin August 1988.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**2. Edison Sault Electric Company**

[Docket No. EC88-18-000]

Take notice that on July 22, 1988, Edison Sault Electric Company tendered for filing a Supplement No. 1 to Application for an Order Granting Authorization to Reorganize (Supplement) with exhibts.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this document.

**3. CP National Corporation**

[Docket No. EC88-26-000]

Take notice that on July 26, 1988, CP National Corporation (CP National) tendered for filing an application pursuant to Section 302 of the Federal Power Act, 16 U.S.C. 824b (1982), for Commission authorization to sell to Oregon Trail Electric Consumers Cooperative, Inc., CP National's Eastern Oregon Electric system in the State of Oregon.

CP National, incorporated in the State of California, provides electric, telephone and natural gas distribution services in Arizona, California, Nevada, New Mexico, Oregon, Texas and Utah.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**4. Northern States Power Company**

[Docket No. ER88-347-000]

Take notice that on July 11, 1988, Northern States Power Company (NSP) tendered for filing clarifications and explanations concerning NSP's initial rate filing dated April 11, 1988.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**5. Centel Corporation**

[Docket No. ER88-469-000]

Take notice that on July 26, 1988, Centel Corporation (Centel) tendered for filing an amendment to the original filing of ER88-469-000 on June 15, 1988 in regard to the Electric Sales and Transmission Contract between Centel and Kansas Electric Power Cooperatives, Inc. (KEPCo). This amendment includes: Item A-Service Schedules and Exhibit E; Item B-Service Schedules.

*Item A*

Service Schedule 88-CWh-2 with a proposed effective date of May 16, 1988 will supersede 85-CWh-2 (Rate Schedule FERC Nos. 74 through 83). Service Schedule 85-TSv-1 with a proposed effective date of May 16, 1988 will supersede 85-TSv-1 (Rate Schedule FERC No. 114) and 85-TSv-2 (Rate Schedule FERC No. 115).

These Service Schedules will reflect wording and phrase changes to reflect the terminology relative to the contract. An Exhibit E has been added to the contract to delineate the applicable scheduling constraints of each power

resource. No changes have been made to rates and they will remain the same as those found under the Schedules being replaced.

*Item B*

The Service Schedules enclosed under "Item B" contain the same rates as filed in Docket ER88–261–000 on February 22, 1988. However, the Service Schedules have been modified so as to conform to the Electric Sales Transmission and Service Contract between Centel Corporation (Centel) and Kansas Electric Power Cooperative Inc. (KEPCo). Pursuant to FERC order issued April 21, 1988 these Service Schedules are to become effective September 23, 1988 subject to refund.

Copies of the filing were served upon the Kansas Electric Power Cooperative, Inc., and the Utilities Division, Kansas Corporation Commission, Topeka, KS.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**6. Montana-Dakota Utilities Co.**

[Docket No. ER88–476–001]

Take notice that on July 19, 1988, Montana-Dakota Utilities Co. (Montana-Dakota) tendered for filing an amendment to the executed agreement between Western Area Power Administration (Western) and Montana-Dakota. The change is contained in Article 23, page 24 or 28, of the agreement and states that the minimum rate level will be no lower than Montana-Dakota's incremental cost of producing or acquiring the energy.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**7. Southern California Edison Company**

[Docket No. ER88–482–000]

Take notice that on July 22, 1988, Southern California Edison Company (Edison) tendered for filing, pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Regulations (18 CFR 35.15) under the Federal Power Act, an Amended Notice of Cancellation of the Agreement for Interim Operating Procedures with the following entities (Cities):

| Entity | Rate schedule FERC No. |
|---|---|
| 1. City of Anaheim | 95.11 |
| 2. City of Azusa | 144.8 |
| 3. City of Banning | 145.8 |
| 4. City of Colton | 146.8 |
| 5. City of Riverside | 94.13 |

Copies of this filing have been served upon all parties affected by this proceeding.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**8. Pacific Gas and Electric Company**

[Docket No. ER88–302–001]

Take notice that on July 11, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing as a compliance filing to the Commission's order of July 5, 1988 in Docket No. ER88–302–000, the price ceiling methodology for Coordination Transmission Service that was accepted by the Commission in Docket No. ER88–219–001. This price ceiling shall replace the ceiling price for Coordination Transmission Service in the Agreement. In addition, PG&E has requested that the ceiling price not be allowed to exceed 15 mills per kilowatt-hour.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**9. Iowa Public Service Company**

[Docket No. ER88–444–000]

Take notice that on July 15, 1988, Iowa Public Service Company (IPS) tendered for filing amendments to its Full Requirements Wholesale—Service Schedule No. 2 Original Issue Sheets Nos. 5 and 6, and executed Full Requirements Power Agreements filed on May 31, 1988, to permit the following Iowa municipalities to receive services pursuant to the filed rates: Auburn, Denver, Hudson, Livermore, Pocahontas, Rockford, and Sergeant Bluff.

IPS states its amendments add an additional municipality, Estherville, Iowa, which has signed a Full Requirements Power Agreement, and clarify four aspects of its original filing.

First, the Agreements permit IPS to supply capacity and energy to the municipalities pursuant to third party purchase agreements. Should IPS make third Party purchases for the purpose of supplying these municipalities, IPS shall charge then in accordance with its approved Order 84 rate, approved in Docket No. ER88–320–000. That rate allows recovery of "* * * the supplying party's purchase cost plus 2.91 mills/kWh to recover fixed transmisson related costs, a 1 mill component to recover difficulties to quantify costs and a separate charge for transmission losses."

Second, IPS's proposed tariff, which is intended to contain the same price terms as exist in the Agreements, also has been amended to allow for energy pricing in accordance with IPS's Order 84 rate, when applicable.

Third, the 4% charge for transmission losses referenced in the energy price section of the Agreements applies to the energy charge and not the transmission charge.

Fourth, the Agreements are self-contained, and thus do not incorporate by reference the proposed tariffs.

IPS requests a waiver of the Commission's regulations and allow the Agreements to become effective as of their respective operative dates. The earliest operative date is May 1, 1987.

These amendments have been served on all the affected municipalities and the Iowa Utilities Board.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17823 Filed 8–5–88; 8:45 am]

BILLING CODE 6717–01–M

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## Public Meetings With Respect to a Supplement to the Draft Environmental Impact Statement (DEIS) for the Twin Falls (FERC No. 18), Milner (FERC No. 2899), Auger Falls (FERC No. 4797), and Star Falls (FERC No. 5797) Hydroelectric Projects on the Mainstem of the Snake River, Idaho

August 2, 1988

In the matter of Public Meetings With Respect to a Supplement to the Draft

Environmental Impact Statement (DEIS) for the Twin Falls (FERC No. 18), Milner (FERC No. 2899), Auger Falls (FERC No. 4797), and Star Falls (FERC No. 5797), Hydroelectric Projects on the Mainstem of the Snake River, Idaho.

In accordance with the notice of intent to prepare a Supplement to the DEIS, issued July 15, 1988, this document outlines the new circumstances and new information made available since the DEIS was issued. In addition, the staff has developed some potential project alternatives, and requests comments from the public on these alternatives.

Public meetings will be held on August 18, 1988, as described in the notice. Interested agencies, officials, and members of the public are invited to review and comment on the new information and proposals that have been developed since the DEIS was issued. The public meetings are to be held at the Holiday Inn Convention Center, 1350 Blue Lakes Boulevard North, Twin Falls, Idaho 83301. The first meeting will be held from 1:00 p.m. to 4:00 p.m.; the second meeting will be held from 7:00 p.m. to 10:00 p.m. For further information, contact Kathleen Sherman at (202) 376–0527.

**New Circumstances**

*Implementation of Comprehensive Planning*

1. Federal Energy Regulatory Commission: Electric Consumers Protection Act of 1986 (Amended the Federal Power Act)

(a) Amended section 10(a)(A) of the Federal Power Act requires the Commission, in its hydropower licensing decisions, to consider, among other things, the extent to which the proposed project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by:

(i) An agency established pursuant to Federal law that has the authority to prepare such a plan; or

(ii) The State in which the facility is or will be located.

(b) In Order No. 481–A, Order on Rehearing, issued April 27, 1988, the Commission found that the Northwest Power Planning Council's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan are comprehensive plans.

2. Northwest Power Planning Council (NWPPC): Protected Areas

(a) The NWPPC is proposing to amend the Columbia River Basin Fish and Wildlife Program and Northwest Conservation and Electric Power Plan to incorporate "protected area" designation to protect critical fish and wildlife habitat from new hydroelectric development; the final rule is expected to be implemented in August, 1988.

(b) A proposed protected area within the reach of the Snake River included in the DEIS, begins at Vinyard Creek located at the headquarters of Twin Falls reservoir, and extends to the mouth of the Snake River; proposed designated protection is for wild resident fish habitat, wintering waterfowl, and bald eagles.

(c) The proposed Milner and Star Falls projects are upstream of Vinyard Creek, so they would not be affected by the proposed rulemaking, however, the proposed Auger Falls project is within the designated reach.

(d) The Twin Falls project would not be affected by the proposed protected areas designation, according to the NWPPC's draft rule dated May 2, 1988, which states that the proposed amendments would apply only to new hydropower projects, not to existing dams.

3. State of Idaho: Comprehensive State Water Plan/Interim Protected Rivers (effective July 1, 1988)

(a) Designates a portion of the Snake River within the study area as an interim protected river, pursuant to section 42–1734H of the Idaho Code, which includes the Star Falls and Auger Falls project sites.

(b) The proposed Milner project is upstream of the designated reach.

(c) The existing Twin Falls project is not affected because any designation of waterways as interim protected rivers or protected rivers does not affect the operation or relicensing of hydropower projects, including but not limited to the expansion of capacity which does not enlarge existing boundaries or project impoundments.

*Proposed Amended Star Falls Application*

1. Proposed Schedule for Filing

(a) The amended application is scheduled to be filed on November 17, 1988, as stated by letter from the applicant to the Commission dated June 30, 1988, which proposes Alternative 1 as described in their filing of April 1, 1988, and described below.

(b) The proposed schedule includes appropriate agency consultation under § 4.38 of the Commission's regulations.

2. Proposed Changes in Project Configuration and Operation

(a) Project features would be moved away from Star Falls by moving the dam upstream, and by using a buried penstock instead of an open canal, to reduce impacts to visual quality and cultural resources.

(b) The dam, would be higher than originally proposed, and the reservoir would be capable of storing and releasing water to enhance conditions for whitewater boating downstream of the project, including the 14-mile-long Murtuagh reach which ends at the Twin Falls reservoir.

(c) The buried penstock would be on the north side of the river, so wetlands on the south side of the river that would have been crossed by the open canal which was originally proposed, would not be disturbed by project construction.

(d) The powerhouse would be located on the north side of the river, and would be placed in an excavation about 20 feet below the surrounding terrain.

(e) No excavation in the river channel would be made for the tailrace, so rapids below Star Falls used by whitewater boaters which would have been excavated for the tailrace at the original powerhouse location, would not be affected.

(f) The bypassed reach between the dam and the powerhouse would be shorter with the new proposed configuration, so the length of river, and related aquatic resources, that would be affected by reduced flows from project operation would be less when compared to the original project configuration.

**New Information Since the Deis was Issued**

*Filing by the applicant for the Milner Project (March 31, 1988)*

1. New Proposals

(a) Minimum flow for fisheries are proposed to be 58 cfs leakage from the dam during the irrigation season, and an additional 92 cfs during the non-irrigation for a total of 150 cfs.

(b) Upland habitat would be developed and donated to Idaho Department of Fish and Game.

(c) New proposals for recreation include: Building an interpretive center with picnic facilities; building additional water ski dock(s) on Milner reservoir; further development of public facilities at a Bureau of Land Management Wildlife Habitat Management Area; building a kayak launch; and developing a communication network to quickly inform kayakers of flow conditions below Milner dam.

2. Information Previously Unavailable to the Staff

(a) Operations and physical constraints of Milner reservoir with respect to releasing flows for whitewater boating were described; releasing the flows over the dam at levels recommended in the DEIS is not possible under present spillway gating conditions, and if providing flows for whitewater recreation required the dewatering of irrigation diversions on weekends, as much as 5 days thereafter would be required to re-regulate irrigation deliveries to 450,000 acres.

(b) Information on project economics was provided, including the cost of building a new dam without the project, and an economic analysis of lost irrigation water to provide staff-recommended flows for fisheries and whitewater recreation.

(c) Information was provided concerning water rights and the implementation of state water law with respect to flows which may be diverted from the Snake River if the proposed Milner Project is not built.

*Filing by the Applicant for the Twin Falls Project (March 31, 1988)*

1. New Proposals

(a) The applicant proposes two alternative plans for flows to be released over Twin Falls; Plan A would provide 140 cfs during daylight hours on weekends and holidays all year, and Plan B would provide 140 cfs during daylight hours on weekends and holidays from September to March and provide 140 cfs during daylight hours daily from April to August.

(b) A small weir would be constructed at the top of the falls to direct the water over both sides of the falls, to create a similar visual impression from a flow of 140 cfs, as is seen with flows of 300 and 500 cfs.

2. Information Previously Unavailable to the Staff

(a) A series of photographs were presented which show Twin Falls at 80 cfs, 140 cfs, 300 cfs, and 500 cfs, and a graph showing the number of viewers seeing flows of 140 cfs or more under existing conditions, the project as originally proposed, and with Plans A and B described above.

(b) Graphs showing average monthly and average daily visitor use at the project were presented.

(c) Results of a cooperative study with the Bureau of Land Management were provided, which concerned the effects of construction activities on nesting raptors, conducted on the Snake River Birds of Prey Natural Area in association with the reconstruction of the Swan Falls dam spillway.

(d) Results of electrofishing efforts at Shoshone Falls, located downstream of Twin Falls, were presented to further characterize the fish species present in the study reach.

(e) Actual operations and maintenance costs, insurance costs, and tax estimates based on historical local costs and current federal tax statutes were provided to more precisely estimate project costs.

*Water Quality Data (To Be Analyzed in the Supplement to the DEIS)*

1. Water quality data filed jointly by all four applicants on September 29, 1987, includes: Diel dissolved oxygen (DO) and temperature data for the Milner, Star Falls, and Twin Falls projects collected July 27–29, 1987, and August 24–26, 1987; DO and other water quality parameters for all four projects collected July 30, 1987, and August 26, 1987; and sediment analyses for pesticides, heavy metals, and PCB's for samples collected above Milner dam, above Star Falls, and above Twin Falls on August 26, 1987.

2. Water quality data filed September 29, 1987, which was collected for the Snake River as required by the NPDES discharge permit for the J.R. Simplot Company and Ore-Ida Foods, Inc.; this includes temperature and DO profiles for Milner reservoir on May 29, 1987, June 10, 1987, June 24, 1987, July 28–29, 1987, August 10, 1987, August 24, 1987, September 7–8, 1987, and September 21–22, 1987 (this information was filed by Ralston Associates, a consultant which collected the data filed jointly by the applicants).

3. Water quality data filed March 31, 1988, by Idaho Power Company which provided a comparison of DO measurements in Milner reservoir and Twin Falls reservoir collected in 1983; this filing also included a partial DO and temperature profile for Twin Falls reservoir collected during June to September 1983.

**New Staff Alternatives**

1. Milner Alternative

(a) In order to provide power generation from project-specific mitigative flow releases and increase the operating range of the project, a small turbine would be installed at the dam in addition to the 44 MW turbine at the powerhouse location proposed by the applicant.

2. Auger Falls Alternative

(a) In order to reduce impacts on visual quality and recreation, prevent raptor collision with the transmission line, and minimize impacts on sturgeon habitat in the pool below the powerhouse from blasting for the penstock trenches and powerhouse, an underground powerhouse and transmission line would be constructed, and tunnels would be used to convey water from the canal to the powerhouse instead of surface penstocks.

3. Comprehensive Water Block (CWB)

(a) Since the Snake River is a regulated system, an objective of the CWB is to ensure that water will be available to provide project-specific mitigative flows to be set by license articles.

(b) Another objective of the CWB is to maximize consistency with the State Water Plan and minimize potential conflicts with existing water rights.

(c) The licensees could potentially lease water for the CWB from the Water Supply Bank, described in Policy 4B of the State Water Plan, which also states that use of the Water Supply Bank created by Idaho Code 42–1762 shall be encouraged.

(d) It is the staff's intent to recognize the physical limitations of the system so that flows for project-specific mitigation would be released so as to minimize interference with irrigation operations and also minimize the potential for flooding of low-lying areas.

(e) Flows to be released for project-specific flow requirements could be accounted for when the water is released from American Falls reservior, and measured below Milner dam.

(f) The CWB could be an accounting mechanism for the licensees, to equitably share the responsibility for providing mitigation flows, since water which is released for American Falls reservoir would flow through all the proposed projects.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17822 Filed 8–5–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. CP88–592–000 et al.]**

## Tennessee Gas Pipeline Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. Tennessee Gas Pipeline Company**

[Docket No. CP88–592–000]

July 29, 1988.

Take notice that on July 19, 1988, Tennessee Gas Pipeline Company (Applicant) filed in Docket No. CP88–

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592-000 a request pursuant to § 284.223 of the Commission's regulations, for authority to transport natural gas for Citizens Gas Supply Corporation (Citizens) under Applicant's blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated June 23, 1988, it proposes to transport peak day volumes of 100,000 dekatherms (dt), average day volumes of 3,341 dt and annual volumes of 1,219,465 dt. Applicant states that transportation under the agreement commenced June 24, 1988 as reflected in its initial report in Docket No. ST88-4700, filed July 13, 1988. Applicant states it would receive Citizens' gas in Starr County, Texas and redeliver equivalent volumes in The Magnolia City Plan, in Pennsylvania.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**2. Michigan Consolidated Gas Company Interstate Storage Division**

[Docket No. CP88-600-000]

July 29, 1988.

Take notice that on July 21, 1988, Michigan Consolidated Gas Company-Interstate Storage Division (ISD), 500 Griswold Street, Detroit, Michigan 48226, filed in Docket No. CP88-600-000 a request pursuant to §§ 157.205 and 157.213 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 18 CFR 157.213) for authority to provide a gas storage service for Michigan Gas Utilities Company (MGU). ISD proposes to provide the storage service under its blanket certificate issued November 24, 1982, in Docket No. CP82-532-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ISD proposes to store, in its Taggart Storage Field located in Montcalm and Mecosta Counties, Michigan, up to 1,600,000 Mcf of gas for MGU pursuant to a gas storage agreement, dated July 1, 1988. It is stated that the storage service would commence with first deliveries and continue through March 31, 1993.

MGU will cause ANR Pipeline Company (ANR) to deliver gas to ISD at interconnections with ANR in Washtenaw and Mecosta Counties, Michigan, and at an interconnection of ISD and Consumers Power Company (CPC) in Wayne County, Michigan. It is stated that ISD will store the gas and redeliver for MGU's account, equivalent quantities of gas less compressor fuel at interconnections with Michigan Consolidated Gas Company's Utility Division (UD), ANR and CPC, in Washtenaw County, Michigan, Mecosta County, Michigan, and Wayne County, Michigan, respectively.

MGU will pay ISD a storage charge of 48.66 cents per Mcf of storage contract demand pursuant to ISD's Rate Schedule S-6, it is stated. The revenues received by ISD will be refunded to its customers in accordance with a stipulation and agreement which the Commission approved by letter order dated January 11, 1985, in Docket No. RP84-13-000.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**3. Natural Gas Pipeline Company of America**

[Docket No. CP88-594-000]

July 29, 1988.

Take notice that on July 20, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-594-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport, on an interruptible basis, up to a maximum of 50,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Natural Gas Clearinghouse, Inc. (NGC), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that pursuant to an Interruptible Transportation Service Agreement dated May 17, 1988, Natural is obligated to accept for transportation, on an interruptible basis, no more than 50,000 MMBtu per day for NGC. Natural further states that NGC may request and Natural may agree to accept additional quantities as overrun gas. Natural states that NGC has advised it that the volumes anticipated to be transported on an average day would be 2,500 MMBtu. Natural further states that based on that average day figure, the annual volumes to be transported would be 912,000 MMBtu. Natural indicates that the receipt points and the delivery point would be located offshore Texas.

Natural indicates that it commenced the transportation of natural gas for NGC on May 25, 1988, at Docket No. ST88-4715, for a one hundred and twenty (120) day period ending September 21, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations (18 CFR 284.223(a)(1)) and the blanket certificate issued to Natural in Docket No. CP86-582-000.

*Comment date:* September 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

**4. Tennessee Gas Pipeline Company**

[Docket No. CP88-628-000]

August 2, 1988.

Take notice that on July 26, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-628-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Endevco Oil & Gas Company (Endevco), a marketer, under the certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 10,000 Dth of natural gas per day for Endevco on an interruptible basis pursuant to a transportation agreement dated June 28, 1988, between Tennessee and Endevco. Tennessee states that it would receive the gas for Endevco's account in the state of Louisiana and that it would deliver the gas for the account of Citizens in the state of Pennsylvania.

Tennessee states that the estimated average daily quantity would be 6,000 Dth and that the annual quantity would be 2,190,000 Dth. It is further stated that service under Section 284.223(a) commenced July 2, 1988, as reported in Docket No. ST88-4811. Tennessee indicates that the service would have a term of two years and continue on a monthly basis thereafter. Tennessee proposes to charge Endevco a rate pursuant to Tennessee's currently effective Rate Schedule IT. No new facilities are proposed herein.

*Comment date:* September 16, 1988, in accordance with Standard Paragraph G at the end of this notice.

**5. Tennessee Gas Pipeline Company**

[Docket No. CP88-630-000]

August 2, 1988.

Take notice that on July 26, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-630-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Loutex Energy.

Inc. (Loutex), a marketer, under the certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 60,000 Dth of natural gas per day for Loutex on an interruptible basis pursuant to a transportation agreement dated June 21, 1988, between Tennessee and Loutex. Tennessee states that it would receive the gas for Loutex's account in offshore Louisiana and the states of Louisiana, Alabama and New York. Tennessee indicates that it would deliver natural gas for the account of Loutex to various points located in various states.

Tennessee states that the estimated average daily quantity would be 554 Dth and that the annual quantity would be 202,210 Dth. It is further stated that service under § 284.223(a) commenced July 1, 1988, as reported in Docket No. ST88–4814. Tennessee indicates that the service would have a term of two years and continue on a monthly basis thereafter. Tennessee proposes to charge Loutex a rate pursuant to Tennessee's currently effective Rate Schedule IT. No new facilities are proposed herein.

*Comment date:* September 16, 1988, in accordance with Standard Paragraph G at the end of this notice.

**6. Tennessee Gas Pipeline Company**

[Docket No. CP88–626–000]

August 2, 1988.

Take notice that on July 25, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–626–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Citizens Gas Supply Corporation (Citizens), a marketer, under the certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 105,000 Dth of Natural gas per day for citizens on an interruptible basis pursuant to a transportation agreement dated June 21, 1988 between Tennessee and Citizens. Tennessee states that it would receive the gas for Citizen's account in offshore Louisiana and the states of Louisiana, Mississippi, Alabama, and Texas. Tennessee indicates that it would redeliver natural gas for the account of Citizens in the states of Alabama and Mississippi.

Tennessee states that the estimated average daily quantity would be 1,230 Dth and that annual quantities would be 448,950 Dth. It is further stated that service under § 284.223(a) commenced July 6, 1988, as reported in Docket No. ST88–4812. Tennessee indicates that the service would have a term of two years and continue on a monthly basis thereafter. Tennessee proposes to charge Citizens a rate of pursuant to Tennessee's currently effective Rate Schedule IT. No new facilities are proposed herein.

*Comment date:* September 16, 1988, in accordance with Standard Paragraph G at the end of the notice.

**7. United Gas Pipeline Company**

Docket No. CP88–632–000]

August 2, 1988.

Take notice that on July 27, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88–609–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorizaton to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for American Cyanamid Company (American Cyanamid). United explains that service commenced July 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4771. United explains that the peak day quantity would be 12,360 dekatherms, the average daily quantity would be 12,360 dekatherms, and that the annual quantity would be 4,511,400 dekatherms. United explains that it would receive natural gas for American Cyanamid's account at points of receipt in the states of Texas and Lousiana. United states that it would redeliver the gas for American Cyanamid's account at an existing interconnection between United and American Cyanamid in Santa Rosa County, Florida.

*Comment date:* September 16, 1988, in accordance with Standard Paragraph G at the end of the notice.

**8. Tennessee Gas Pipeline Company**

[Docket No. CP81–296–015]

August 2, 1988.

Take notice that on July 18, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP81–296–015 an application to amend the certificate issued in Docket No. CP81–296–000, pursuant to section 7(c) of the Natural Gas Act, seeking authorization (1) to deliver 3,000 Dth per day of Boundary gas to Connecticut Light & Power's Norwalk delivery point in lieu of the existing Wallingford delivery point and (2) to replace 0.84 miles of 4" pipeline lateral with 10" pipeline and appropriate measurement facilities necessary to effect these increased deliveries to the Norwalk delivery point. Tennessee further requests that the costs of these pipelines and metering facilities be rolled in with the incremental cost of the Boundary facilities. Applicant estimates the total cost of this pipeline replacement project to be $1,502,000.

*Comment date:* August 23, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**9. Black Marlin Pipeline Company**

[Docket No. CP88–598–000]

August 1, 1988.

Take notice that on July 21, 1988, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88–598–000 an application pursuant to section 7(c) of the Natural Gas Act for authrorization to provide an interruptible transportation service of natural gas for Shell Offshore Inc. (SOI) and/or Shell Gas Trading Company (Shell), under a new Rate Schedule T–4, from the High Island Area of Offshore Texas, to points of delivery near Texas City, Galveston County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Black Marlin proposes the interruptible transportation of up to 150,000 Mcf of gas per day that is produced by Shell from the offshore area of Texas, High Island (HI) Blocks 135, 136, 160 and 161 comprising the Den Field and HI Blocks A–6/201 comprising the Glenda Field. It is stated that Shell will deliver to Black Marlin's offshore pipelines, at existing receipt points located at or near SOI's platforms in HI Block A–6 and HI Block 136, gas that is produced from the Glenda Field and the Den Field, respectively. Black Marlin will transport the gas onshore for redelivery at existing interconnections, located near the terminus of Black Marlin's pipeline system at Texas City, Galveston County, Texas, with Houston Pipeline Company (HPL), Amoco Gas Company (Amoco) and Union Carbide Corporation (Union Carbide). Volumes of gas delivered to HPL will be

transported by HPL under section 311 of the Natural Gas Policy Act.

It is stated, that pursuant to a precedent agreement dated June 24, 1988, with Shell, Black Marlin proposes to transport the gas for a two year period commencing on the date of initial deliveries and continuing thereafter unless terminated by either party of 30 days of prior written notice.

Black Marlin proposes to charge Shell 5 cents [1] per Mcf of gas transported pursuant to a new Rate Schedule T–4, that Black Marlin states will be filed within 30 days subsequent to the issuance of the certificate requested in the subject docket.

*Comment date:* August 22, 1988, in accordance with Standard Paragraph F at the end of the notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washingotn, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intevene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17824 Filed 8–5–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. GP87–57–000]**

**Burk Royalty Co. v. Trunkline Gas Co.; Complaint**

August 4, 1988.

On June 11, 1987, Burk Royalty Company (Burk) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Burk requests that the Production-Related Costs Board (Board) find that Trunkline Gas Company (Trunkline) is in violation of 18 CFR 271.1104 by refusing to reimburse Burk for production-related costs incurred between August, 1980 through February, 1986.

Burk states that by invoice dated April 28, 1987, Trunkline was billed for production-related costs due under a contract dated January 26, 1949, covering the Poole "B" Well No. 1 in Colorado County, Texas. Burk claims that Trunkline responded to the invoice by stating that production-related costs are prospective only, from May 1, 1987, and Burk was precluded from collections between August, 1980 through February, 1986 because the invoice was dated after December 31, 1984.

Burk asserts that the issue in this case is whether 18 CFR 271.1104 bars Burk from collecting production-related costs incurred prior to May, 1987, because it did not submit an invoice to Trunkline until after 1984. Burk believes that the Commission did not intend for its regulations to operate in the manner asserted by Trunkline, but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

Burk requests that the Board issue an order finding Trunkline in violation of 18 CFR 271.1104 for failure to pay Burk for production-related costs incurred for the period prior to May 1, 1987. In the alternative, Burk requests a waiver, if one is required, of the time frame for requesting collection of production-related costs incurred prior to May 1, 1987.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Trunkline must file an answer to Burk's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Trunkline shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17857 Filed 8–5–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. GP87–56–000]**

**Burk Royalty Co. v. Texas Eastern Transmission Corp., Complaint**

August 4, 1988.

On June 11, 1987, Burk Royalty Company (Burk) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Burk requests that the Production-Related Costs Board (Board) find that Texas Eastern Transmission Corporation (Texas Eastern) is in violation of 18 CFR 271.1104 by refusing to reimburse Burk for production-related

[1] 5 cent rate was approved by the Commission in Docket No. RP81–67–000, issued August 27, 1982.

costs incurred between August, 1980 through December, 1985.

Burk states that by invoice dated April 28, 1987, Texas Eastern was billed for production-related costs due under a contract dated February 4, 1959, covering the F.S. Browder Well No. 1 in San Jacinto County, Texas. Burk claims that Texas Eastern responded to the invoice by stating that Burk was ineligible for such production-related costs because Burk failed to notify Texas Eastern of its claim within a reasonable time period that would permit retroactive collection.

Burk asserts that the issue in this case is whether 18 CFR 271.1104 bars Burk from collecting production-related costs incurred after July, 1980, because it did not submit an invoice to Texas Eastern until after 1984. Burk believes that the Commission did not intend for its regulations to operate in the manner asserted by Texas Eastern, but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

Burk requests that the Board issue an order finding Texas Eastern in violation of 18 CFR 271.1104 for failure to pay Burk for production-related costs incurred between August, 1980 and December, 1985. In the alternative, Burk requests a waiver, if one is required, of the time frame for requesting collection of production-related costs incurred for the period August, 1980 through December, 1985.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Texas Eastern must file an answer to Burk's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Texas Eastern shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17858 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. GP88-25-000]**

## Cobra Oil & Gas Corp. v. Texas Eastern Transmission Corp.; Complaint

August 4, 1988.

On July 5, 1988, Cobra Oil & Gas Corporation (Cobra) filed a complaint pursuant to 18 CFR 271.1105(d)(3)(ii) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Cobra requests that the Production-Related Costs Board (Board) find that Texas Eastern Transmission Corporation (Texas Eastern) is in violation of 18 CFR 271.1104 by refusing to reimburse Cobra for production-related costs.

Cobra states that by invoice dated July 13, 1987, Texas Eastern was billed $26,700.66 for production-related costs due under a contract dated September 15, 1982, covering the H. Robinson No. 1 well in Claiborne Parish, Louisiana. Cobra claims that Texas Eastern responded to the invoices by stating that the bills were furnished beyond the time period prescribed in the regulations.

Cobra asserts that the issue in this case is whether 18 CFR 271.1104 bars it from collecting production-related costs invoiced after December 31, 1984. Cobra believes that the Commission did not intend for its regulations to operate in the manner asserted by Texas Eastern but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

Cobra requests that the Board issue an order finding Texas Eastern in violation of 18 CFR 271.1104 for failure to pay Cobra $26,700.66 in production-related costs.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Texas Eastern must file an answer to Cobra's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Texas Eastern shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17859 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. GP88-23-000]**

## Cobra Oil & Gas Corp. v. ANR Pipeline Co.; Complaint

August 4, 1988.

On June 10, 1988, Cobra Oil & Gas Corporation (Cobra) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Cobra requests that the Production-Related Costs Board (Board) find that ANR Pipeline Company (ANR) is in violation of 18 CFR 271.1104 by refusing to reimburse Cobra for production-related costs.

Cobra states that ANR was billed $63,864.69 for production-related costs due under contracts dated December 21, 1978, April 24, 1979, and November 2, 1979. Cobra claims that ANR responded to the invoices by stating that the bills were furnished beyond the time period prescribed in the regulations.

Cobra asserts that the issue in this case is whether 18 CFR 271.1104 bars Cobra from collecting production-related costs invoiced after December 31, 1984. Cobra believes that the Commission did not intend for its regulations to operate in the manner asserted by ANR but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

Cobra requests that the Board issue an order finding ANR in violation of 18 CFR 271.1104 for failure to pay Cobra $63,864.69 in production-related costs.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), ANR must file an answer to Cobra's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered

in default, and all relevant facts stated in such complaint may be deemed admitted. ANR shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17860 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER88-531-000]**

## Commonwealth Edison Co. of Indiana, Inc.; Submittal

August 3, 1988.

Take notice that on July 25, 1988, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff) Commonwealth Edison Company of Indiana, Inc. (formerly Chicago District Generating Corporation and hereafter referred to as "Chicago District"), and Commonwealth Edison Company ("Edison") was filed with the Commission. The Consent Settlement Agreement provides for a decrease in rates under the Electric Service Agreement (dated July 1, 1941, as amended) and the Transmission Service Agreement (dated May 1, 1958, as amended) between Chicago District and Edison.

The signatories request an effective date of January 1, 1988.

Copies of this filing were served upon Chicago District and Edison.

Any person desiring to be heard regarding said submittal should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before September 2, 1988. All signatories to the Consent Settlement Agreement may file reply comments on or before September 21, 1988. Comments will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make entities who file comments parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of the Consent Settlement Agreement is published with this notice.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17866 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. GP88-6-000]**

## El Ran, Inc. v. Transwestern Pipeline Co.; Complaint

August 4, 1988.

On November 23, 1987, El Ran, Inc. (El Ran) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. El Ran requests that the Production-Related Costs Board (Board) find that Transwestern Pipeline Company (Transwestern) is in violation of 18 CFR 271.1104 by refusing to reimburse El Ran for production-related costs incurred between August, 1980 through December, 1985.

El Ran states that by invoices dated September 21, 22, and 30, 1987, Transwestern was billed $40,023.12 for production-related costs due under seven contracts. El Ran claims that Transwestern responded to the invoice by stating that the bills were furnished beyond the time period prescribed in the regulations.

El Ran asserts that the issue in this case is whether 18 CFR 271.1104 bars El Ran from collecting production-related costs invoiced after December 31, 1984. It believes that the Commission did not intend for its regulations to operate in the manner asserted by Transwestern but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

El Ran requests that the Board issue an order finding Transwestern in violation of 18 CFR 271.1104 for failure to pay El Ran $40,023.12 in production-related costs.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Transwestern must file an answer to El Ran's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Transwestern shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17861 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. RP88-165-002 and TQ88-2-4-001]**

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

August 3, 1988.

Take notice that on July 27, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates and tariff provisions for effectiveness on the dates shown below:

| Revised tariff sheet | Proposed effective date |
|---|---|
| Substitute Fourth Substitute Twenty-First Revised Sheet No. 7. | Jan. 15, 1988. |
| Second Substitute Seventh Revised Sheet No. 7-A. | Jan. 15, 1988. |
| Substitute Fifth Substitute Twenty-First Revised Sheet No. 7. | Apr. 1, 1988. |
| Substitute Sixth Substitute Twenty-First Revised Sheet No. 7. | May 1, 1988. |
| Substitute Seventh Substitute Twenty-First Revised Sheet No. 7. | June 1, 1988. |
| Third Substitute Second Revised Sheet No. 69. | June 1, 1988. |
| Fourth Substitute Fourth Revised Sheet No. 70. | June 1, 1988. |
| Fourth Substitute Second Revised Sheet No. 75-A. | June 1, 1988. |
| Third Revised Sheet No. 76 | June 1, 1988. |
| Fifth Substitute First Revised Sheet No. 82. | June 1, 1988. |
| Second Substitute Original Sheet No. 83-A. | June 1, 1988. |

| Revised tariff sheet | Proposed effective date |
|---|---|
| Substitute Eighth Revised Twenty-First Substitute Sheet No. 7 | July 1, 1988. |

According to Granite State, the revised tariff sheets are filed: (1) To comply with a letter order of the Commission issued June 30, 1988 in Docket Nos. RP88–165–000 and TQ88–1–4–000 which required certain changes in the revised purchased gas cost adjustment procedures filed in the foregoing dockets on May 5, 1988 to comply with the provisions of Order Nos. 483 and 483–A; (2) to revise the method of calculating the Transportation Cost Adjustment in the sales rates by annualizing the costs of the underlying transporter's rates instead of on an estimated quarterly basis as Granite State had proposed in Docket No. RP88–165–000 in connection with the revisions in its purchased gas cost adjustment procedures; (3) to reflect a correction in the Transportation Cost Adjustment due to an error in reflecting the cost of an underlying transporter's rate in the sales rates beginning January 15, 1988; and (4) a revision in the quarterly purchased gas cost adjustment, for effectiveness on July 1, 1988, to reflect the appropriate annualized Transportation Cost Adjustment in the sales rates required by the letter order of the Director of Pipeline and Producer Regulation, dated June 23, 1988, in Docket No. TQ88–2–4–000. The quarterly purchased gas cost adjustment also reflects revised estimates of purchased gas costs and sales.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts, and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 88–17841 Filed 8–5–88; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. GP87–53–000]

## Murchison Trust v. Transcontinental Gas Pipe Line Corp.; Complaint

August 4, 1988.

On May 21, 1987, Murchison Trust (Murchison) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Murchison requests that the Production-Related Costs Board (Board) find that Transcontinental Gas Pipe Line Corporation (Transco) is in violation of 18 CFR 271.1104 by refusing to reimburse Murchison for $107,259.29 in production-related costs incurred between July 25, 1980 through March 7, 1983 (retroactive period).

Murchison states that by invoice dated March 5, 1987, Transco was billed $107,259.29 in production-related costs due under two contracts dated February 22, 1979 and January 3, 1980, respectively. These sales cover the Hubberd wells in Liz Field, Webb County, Texas and the S. J. Martin wells in Moritas Creek Field, Webb County, Texas. Murchison claims that Transco responded to the invoice by stating that Murchison was precluded from making retroactive collections because the invoice was dated after December 31, 1984.

Murchison asserts that the issue in this case is whether 18 CFR 271.1104 bars Murchison from collecting production-related costs incurred prior to March 7, 1983, because it did not submit an invoice to Transco until after 1984. It believes that the Commission did not intend for its regulations to operate in the manner asserted by Transco, but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

Murchison requests that the Board issue an order finding Transco in violation of 18 CFR 271.1104 for failure to pay Murchison $107,259.29 in production-related costs. In the alternative, Murchison requests a waiver, if one is required, of the time frame for requesting collection of production-related costs incurred prior to March 7, 1983.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Transco must file an answer to Murchison's complaint with Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Transco shall file its answer with the Commission not later than 15 days after publication of this notice in the Federal Register.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the Federal Register. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 88–17862 Filed 8–5–88; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. GP88–5–000]

## Newman Brothers Drilling Co. v. Williston Basin Interstate Pipeline Co.; Complaint

August 4, 1988.

On November 16, 1987, Newman Brothers Drilling Company (Newman) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Newman requests that the Production-Related Costs Board (Board) find that Williston Basin Interstate Pipeline Company (Williston) is in violation of 18 CFR 271.1104 by refusing to reimburse Newman for production-related costs incurred between July, 1980 through October, 1986.

Newman states that by invoice dated January 8, 1987, Williston was billed $36,649.41 for production-related costs due under a contract dated May 7, 1967, covering the Federal #1–14 well in Big Horn County, Wyoming. Newman claims that Williston responded to the invoice by stating that it has a company policy not to pay production-related costs even though contract authorization exists and the Commission regulations allow the collection of such costs.

Newman asserts that the issue of this complaint is whether Williston has an obligation to perform under Commission Order No. 94–A.

Newman requests that the Board issue an order finding Williston in violation of 18 CFR § 271.1104 for failure to pay Newman $36,649.41 in production-related costs.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Williston must file an answer to Newman's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Williston shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17863 Filed 8–5–88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI85–513–009]**

## Tenngasco Gas Supply Co. et al. v. Southland Royalty Co. et al. Proposes Stipulation and Agreement in Partial Settlement of Proceedings

Issued: August 3, 1988.

Take notice that on July 15, 1988, Chevron U.S.A. Inc., Enforcement Staff of the Federal Energy Regulatory Commission, Southern California Gas Company, Pacific Gas and Electric Company, Southwest Gas Corporation, and Southern Union Gas Company (hereinafter the "Sponsoring Parties") filed with the Commission an offer of settlement and a Stipulation and Agreement (Stipulation) in partial settlement of proceedings in the above-captioned docket.

This proceeding was initiated by a complaint filed June 18, 1985, by HT Gathering Company, Tenngasco Gas Supply Company, Houston Natural Gas Corporation, and Intratex Gas Company (HT *et al.*). The complainants alleged that some or all of the gas sold in intrastate commerce by Gulf Oil Corporation (Gulf) and/or Warren Petroleum Company (Warren), a division of Gulf, to HT Gathering from the Waddell Ranch, Crane County, Texas may have been dedicated to El Paso Natural Gas Company (El Paso) in interstate commerce. On July 1, 1985, Chevron U.S.A. Inc. merged with Gulf Oil Corporation, with the resulting corporate entity being Chevron U.S.A. Inc. (Chevron). The Sponsoring Parties have negotiated a settlement which resolves all issues in the captioned proceeding with respect to Gulf/Warren-Chevron as to the gas produced from the Waddell lease acreage. Additionally, the Stipulation resolves and settles issues not involved in Docket No. CI85–513–000 concerning certain other acreage (non-term lease acreage) as set forth in the Stipulation.

The Stipulation resolves all claims which were or could be raised in the captioned docket against the Sponsoring Parties with respect to the Waddell lease acreage and the non-term lease acreage, including issues relating to the production, gathering, processing, treating, conditioning, purchase, sale, resale, transfer, delivery and/or exchange, accounting, and allocation of the subject gas due to the activities described in the Stipulation.

According to the Stipulation, Chevron shall make refunds to El Paso for distribution to both its jurisdictional and non-jurisdictional customers. The Stipulation delineates how certain of the Chevron gas will be made available to el Paso and what Chevron gas may be sold to other purchasers. In addition, the Stipulation includes a request for certificate, abandonment, and all other authorizations and waivers necessary to implement its provisions, including but not limited to authorizations under the Natural Gas Act and waiver of §§ 157.18 and 157.23 *et seq.* of the Commission's regulations.

Any person not a party and desiring to be heard with respect to the offer of settlement should file a petition to intervene on or before August 29, 1988, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 and 214 of the Commission's rules of practice and procedure.

Comments should be filed with the Secretary of the Commission. Initial comments should be filed on or before August 29, 1988, and reply comments on or before September 7, 1988.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17856 Filed 8–5–88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88–164–002]**

## West Texas Gas, Inc.; Filing

August 2, 1988.

Take notice that on July 25, 1988, West Texas Gas, Inc. (WTG) filed Second Revised Sheet No. 21e to its FERC Gas Tariff, Original Volume No. 1, to be effective July 25, 1988.

WTG states that this filing is submitted in accordance with the Commission's Letter Order of June 28, 1988, which directed WTG to revise its May 3, 1988 filing in accordance with Order Nos. 483 and 483–A. WTG states that specifically it was directed to revise section 19.8 of its tariff to define the "cumulative adjustment" as the difference between the current weighted average cost of gas sold and the base cost of gas of the most recent base tariff rate.

WTG requests that the Commission waive its filing fee requirements and refund the filing fee payment of $4,320. WTG recognizes that it cannot claim the economic hardship normally required for a waiver of Commission fees; however, WTG believes that a waiver is appropriate and necessary to aviod an inequitable application of the Commission's filing fee regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–17842 Filed 8–5–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-139-001]

**Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

August 3, 1988.

Take notice that Williams Natural Gas Company (WNG) on July 27, 1988 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised First Revised Sheet Nos. 74 and 75
Second Revised Second Revised Sheet Nos. 78 and 79

WNG states that the foregoing tariff sheets are being filed in compliance with the Commission's letter order issued July 1, 1988 in Docket No. RP88-139-000. WNG was directed to file within 30 days of the issuance of the letter order to reflect the corrections enumerated in the Appendix to the letter order.

WNG states that Second Revised First Revised Sheet No. 74 is being filed to change Article 21.2 from "Computation of Cumulative Rate Adjustment" to "Computation of Current Rate Adjustment" per direction Nos. 1 and 2 of the Appendix to the letter order and discussion with Commission Staff. Second Revised First Revised Sheet No. 75 is filed to amend Article 21.22 to insert "months of deferral period" in place of "billing periods" per direction No. 3 of the Appendix. Second Revised Second Revised Sheet No. 78 is filed to amend Article 21.33 to explain the methodology used to price storage inventory per direction No. 4 of the Appendix. Second Revised Second Revised Sheet No. 79 is filed to amend Article 21.4, Para. 3, to reflect a refund trigger of 1 cent per Mcf instead of 1 cent per MMBTU per direction No. 5 of the Appendix.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17843 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. GP87-49-000]

**Wintergreen Energy Corp. v. Transcontinental Gas Pipe Line Corp.; Complaint**

August 4, 1988.

On May 13, 1987, Wintergreen Energy Corporation (Wintergreen) filed a complaint pursuant to 18 CFR § 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Wintergreen requests that the Production-Related Costs Board (Board) find that Transcontinental Gas Pipe Line Corporation (Transco) is in violation of 18 CFR 271.1104 by refusing to reimburse Wintergreen for $16,094.51 in production-related costs incurred between July 25, 1980 through March 7, 1983 (retroactive period).

Wintergreen states that by invoice dated February 20, 1987, Transco was billed $16,094.51 in production-related costs due under a contract dated January 3, 1980, covering the S. J. Martin wells in Moritas Creek Field, Webb County, Texas. Wintergreen claims that Transco responded to the invoice by stating that Wintergreen was precluded from making retroactive collections because the invoice was dated after December 31, 1984.

Wintergreen asserts that the issue in this case is whether 18 CFR 271.1104 bars Wintergreen from collecting production-related costs incurred prior to March 7, 1983, because it did not submit an invoice to Transco until after 1984. Wintergreen believes that the Commission did not intend for its regulations to operate in the manner asserted by Transco, but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

Wintergreen requests that the Board issue an order finding Transco in violation of 18 CFR 271.1104 for failure to pay Wintergreen $16,094.51 in production-related costs. In the alternative, Wintergreen requests a waiver, if one is required, of the time frame for requesting collection of production-related costs incurred prior to March 7, 1983.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Transco must file an answer to Wintergreen's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Transco shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17864 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. GP87-50-000]

**Wintergreen Energy Corp. v. Transcontinental Gas Pipe Line Corp.; Complaint**

August 4, 1988.

On May 13, 1987, Wintergreen Energy Corporation (Wintergreen) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Wintergreen requests that the Production-Related Costs Board (Board) find that Transcontinental Gas Pipe Line Corporation (Transco) is in violation of 18 CFR 271.1104 by refusing to reimburse Wintergreen for $20,263.59 in production-related costs incurred between July 25, 1980 through March 7, 1983 (retroactive period).

Wintergreen states that by invoice dated March 5, 1987, Transco was billed $20,263.59 in production-related costs due under a contract dated February 22, 1979, covering the Hubberd wells in Liz Field, Webb County, Texas. Wintergreen claims that Transco responded to the invoice by stating that Wintergreen was precluded from retroactive collections because the invoice was dated after December 31, 1984.

Wintergreen asserts that the issue in this case is whether 18 CFR 271.1104 bars Wintergreen from collecting production-related costs incurred prior to March 7, 1983, because it did not submit an invoice to Transco until after 1984. Wintergreen believes that the Commission did not intend for its regulations to operate in the manner asserted by Transco, but was merely one recovery mechanism to avoid a huge lump sum payment by pipelines.

Wintergreen requests that the Board issue an order finding Transco in violation of 18 CFR 271.1104 for failure to pay Wintergreen $20,263.59 in production-related costs. In the alternative, Wintergreen requests a waiver, if one if required, of the time frame for requesting collection of production-related costs incurred prior to March 7, 1983.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Transco must file an answer to Wintergreen's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a compliant may be considered in default; and all relevant facts stated in such complaint may be deemed admitted. Transco shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protest or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell**

*Acting Secretary.*

[FR Doc. 88-17865 Filed 8-5-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3426-3]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Carla Levesque at EPA, (202) 382-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Solid Waste and Emergency Response**

*Title:* Uniform Hazardous Waste Manifest for Generators, Transporters and Disposal Facilities. (EPA ICR #0801).

*Abstract:* All shipments of hazardous waste made by generators of greater than 100 kg/month must be accompanied by copies of the Uniform Hazardous Waste Manifest form. Copies of the manifest must then be signed and retained by all transporters and the designated disposal facility. The disposal facility must also check the manifest against the shipment and file a discrepancy report if necessary and return a signed copy of the manifest to the generator.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 0.2 to 2.0 hours for generators, 6.7 hours for transporters, and 0.5 to 28.6 hours for disposal facilities per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the collection of information.

*Respondents:* Owners and operators that generate, transport or dispose hazardous waste being shipped off site.

*Estimated No. of Respondents:* 288,640

*Frequency of Collection:* One per shipment

*Total Estimated Annual Burden:* Generators: 666,960; Transporters: 80,030; Disposal Facilities: 164,830 = 911,840 total.

Send comments regarding the burden estimates, or any other aspects of this collection of information, including suggestions for reducing these burdens, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 2046

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503 (Telephone (202) 395-3084)

**OMB Responses to Agency PRA Clearance Requests**

EPA ICR # 1359; RCRA Financial Responsibility Requirements for Underground Storage Tanks; was approved 07/15/88; OMB # 2050-0006; expires: 07/31/91.

EPA ICR # 1356; Pilot Investigation of Soil Ingestion (Amendment: Follow-up); was approved 07/13/88; OMB # 2080-0029; expires: 09/30/88.

EPA ICR # 0607; RCRA Closure and Post Closure (Amendment—Delay of Closure); was approved 07/15/88; OMB # 2050-0006; expires 01/31/89.

EPA ICR # 1449; Maricipa County, Arizona Federal Implementation Plan—Information Requirements; withdrawn at Agency request.

Date: August 2, 1988.

**Odelia Funke,**

*Acting Director, Information and Regulatory Systems Division.*

[FR Doc. 88-17803 Filed 8-5-88; 8:45 am]

BILLING CODE 6560-50-M

**[FRL 3425-1]**

### Emergency Planning and Community Right to Know; Labat-Anderson, Incorporated; Access to Trade Secret Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized Labat-Anderson, Incorporated of Arlington, Virgina for access to trade secret information which has been submitted to EPA pursuant to section 322 of the Emergency Planning and Community Right-to-Know Act of 1986, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Specifically, access is with regard to trade secrecy claims by industry under sections 303, 311, 312, and 313 submittals.

**DATE:** Access to the trade secret information submitted to EPA will occur no sooner than August 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Toy Jover, Preparedness Staff, Office of Solid Waste and Emergency Response, WH-562A, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202-382-2387).

**SUPPLEMENTARY INFORMATION:** Under Title III, facilities must send trade

secrecy claims regarding their Section 303, 311, 312, and 333 submittals to EPA.

Under contract number 68–W8–0108, Labat-Anderson, Incorporated, will assist the Preparedness Staff (Office of Solid Waste and Emergency Response) in receiving and processing the information submitted by industry. EPA has determined that Labat-Anderson, Incorporated will require access to trade secret information, and in so doing, Labat-Anderson, Incorporated will follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned Title III sections that EPA will provide Labat-Anderson Incorporated access to these trade secret materials. Upon termination of their contract, or prior to termination of their contract at EPA's request, Labat-Anderson, Incorporated will return all materials to EPA.

Clearance to access to Title III trade secret information under this contract is scheduled to expire on July 14, 1991.

**James L. Makris,**

*Director, Preparedness Staff, Office of Solid Waste and Emergency Response.*

[FR Doc. 88–17804 Filed 8–5–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Senior Performance Review Board Membership

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Listing names of the members of the Senior Executive Service Performance Review Board.

**DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Denise R. Yachnik, Programs Division, Office of Personnel and Equal Opportunity, 500 C Street, SW., Washington, DC 20472.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4314 (c) are:

**Members**

Frank H. Thomas,
William K. Chipman,
John D. Hwang,
George H. Orrell,
John W. McKay,
Laura A. Buchbinder, and
John R. Curran, Sr.

**George W. Watson,**

*Acting General Counsel.*

[FR Doc. 88–17786 Filed 8–5–88; 8:45 am]

BILLING CODE 6718–01–M

## GENERAL SERVICES ADMINISTRATION

**[GSA Bulletin FPMR A–40, Supp. 28]**

### Changes to Federal Travel Regulations

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of changes to Federal Travel Regulations (FTR).

**SUMMARY:** The General Services Administration (GSA) has issued GSA Bulletin FPMR A–40, Supplement 28, transmitting changed pages to amend the Federal Travel Regulations (FTR), FPMR 101–7, to increase the mileage rate from 21 cents to 22.5 cents per mile for use of privately owned automobiles when authorized as advantageous to the Government and to incorporate the provisions of an amendment to the Federal Information Resources Management Regulation (FIRMR) clarifying the policy regarding the authorized use of Government telephone systems while on official travel.

**EFFECTIVE DATES:**

a. The increase to the POV mileage rate for automobiles is effective for travel performed on or after August 14, 1988.

b. The changes in Chapter 1, Part 6, relating to the policy regarding authorized use of Government telephone systems are effective January 4, 1988, or upon implementation of the policies in individual agency directives, whichever is later.

**FOR FURTHER INFORMATION CONTACT:** Raymond F. Price, Jr., Travel and Transportation Regulations Staff (FBR), FTS 557–1256 or Commercial (703) 557–1256.

**SUPPLEMENTARY INFORMATION:** GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**Background Information**

a. The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975) authorizes the Administrator of General Services to issue regulations prescribing, within statutory limits, mileage allowance rates. GSA is required by law to periodically investigate the cost of operating privately owned vehicles (automobiles, airplanes, and motorcycles) to employees while on official travel and report the results of these investigations to the Congress. GSA reported the results of the November 1987 investigations to the Congress indicating that the governing regulations would be revised to reflect an increase in the mileage allowance for use of privately owned automobiles. Necessary adjustments are reflected in this change to the FTR.

b. The FIRMR (41 CFR 201–38.007) was amended to incorporate several new provisions regarding the use of Government telephone systems and to furnish examples of permissible official business calls. A final rule (FIRMR Amendment 11) was published in the **Federal Register** on November 4, 1987 (52 FR 42292).

**Explanation of Changes**

a. Paragraph 1–4.2a(2) and 1–4.2c (1) and (2) are revised to reflect an increase in the mileage rate from 21 cents per mile to 22.5 cents per mile for use of privately owned automobiles when such use is advantageous to the Government.

b. Chapter 1, Part 6 of the FTR is amended to incorporate the recent policy clarification concerning use of Government telephone systems while on official Government travel. Authorization or approval of employees' use of Government telephone systems during official travel is totally dependent upon agency directions implementing FIRMR Amendment 11 as required by 41 CFR 201–38.007–6. In addition, several editorial and clarifying changes have been made to update provisions in Part 6 relating to the use of other communication services while on official business.

Accordingly, the FTR are amended as follows:

**Chapter 1, Travel Allowances**

*Part 4. Reimbursement for use of Privately Owned Conveyances*

1. **Authority:** (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707; Executive Order 11609, July 22, 1971).

2. Part 1–4 is amended by revising paragraphs 1–4.2a(2) and 1–4.2c (1) and (2) to read as follows:

1–4.2 *When use of a privately owned conveyance is advantageous to the Government.*

a. * * *

(2) For use of a privately owned automobile: 22.5 cents per mile.

* * * * * *

c. * * *

(1) *Round trip when instead of taxicab to carrier terminals.* Instead of using a taxicab under 1–2.3c, payment on a mileage basis at the rate of 22.5 cents per mile and other allowable costs as set forth in 1–4.1c shall be allowed for the round-trip mileage of a privately owned automobile used by an employee going from either the employee's home or place of business to a terminal or from a terminal to either the employee's home or place of business. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under 1–2.3c for a one-way trip between the applicable points.

(2) *Round trip when instead of taxicab between residence and office on day of travel.* Instead of using a taxicab under 1–2.3d (in connection with official travel requiring at least one night's lodging), payment on a mileage basis at the rate of 22.5 cents per mile and other allowable costs as set forth in 1–4.1c shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from the employee's residence to the employee's place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not exceed the taxicab fare, including tip, allowable under 1–2.3d for a one-way trip between the points involved.

* * * * *

*Part 6. Communications Services*

3. Chapter 1, Part 6 of the FTR is revised to read as follows:

*1–6.1. Authorization.*

When necessary, telephone, teletype, telegraph, cable, and radio service may be used on official business.

*1–6.2. Type of service used.*

a. *Government equipment.* Whenever possible, official long distance telephone calls and other communications services shall be through the use of Government-owned and -leased equipment.

b. *Use of commercial services.* If Government services are not available, the least expensive practicable type and class of commercial service shall be used.

*1–6.3. Written messages.*

When necessary, written messages may be used while on official business. However, care shall be exercised in preparing messages to provide only those words, figures, and punctuation necessary to the meaning of the message.

*1–6.4. Official communications.*

a. *Local calls.* Charges for local telephone calls on official business shall be allowed as a transportation expense. (See 1–11.5a(1) regarding entry of such calls on travel vouchers as a transportation expense.)

b. *Reservation of accommodations.* Charges for commercial communication services when necessary for reserving airplane, train, or other transportation accommodations for official business are transportation expenses and may be allowed when supported by a satisfactory explanation.

c. *Use of Government telephone systems during official travel.* The Federal Telecommunications System (FTS) intercity network and other Government-provided long distance telephone services are to be used only to conduct official business; i.e., if the call is necessary in the interest of the Government (31 U.S.C. 1348(b)). These networks are to be used for placement of calls instead of the commercial toll network to the maximum extent practicable (see 1–6.2). Authorization or approval of employees' use of the Government telephone systems (including calls over commercial systems which will be paid for by the Government) during official travel shall be in accordance with agency directives issued pursuant to the Federal Information Resources Management Regulation (FIRMR) (41 CFR 201–38.007 through 201–38.007–7).

*1–6.5. Supporting statement.*

Charges for official commercial telephone calls, telegrams, cablegrams, or radiograms on official business may be allowed provided a statement is furnished showing the points between which service was rendered, the date, the amount paid for each telephone call, telegram, cablegram, or radiogram, and that they were required on official business. When the public interest so requires, the points between which telephone service was rendered need not be stated in the official travel voucher, but may be stated in confidence to the administrative official.

*1–6.6. Charges for telegraph, cable, and radio services.*

a. *Collect service.* Official telegrams, cablegrams, and radiograms sent to Government offices having authorized charge accounts shall be endorsed by the sender as "Official Business-Collect" unless otherwise directed by a designated authority. All others shall be prepaid.

b. *Cash payment.* When "collect" service is refused, payment of the amount demanded shall be made. A report of the circumstances and a receipted copy of the message shall be sent to the administrative office.

c. *Words chargeable.* All messages shall be subject in all respects to the prevailing commercial count of chargeable words. In addition, collect messages may include a surcharge.

*1–6.7. Priority of official messages.*

All Government communications by telegraph, cable, or radio shall have priority over all other business, except radio communications or signals which are given absolute priority under the Communications Act of 1934, as amended, and shall be subject to the prevailing classifications, practices, and regulations applicable to the corresponding commercial communications. Employees sending such communications shall endorse thereon the words "official business." Complaints may be filed with the Federal Communications Commission in accordance with section 208 of the Communications Act of 1934, as amended.

Dated: July 14, 1988.

**John Alderson,**

*Acting Administrator of General Services.*

[FR Doc. 88–17772 Filed 8–5–88; 8:45 am]

BILLING CODE 6820-34-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88N–258L]**

### Prescription Drug Marketing Act of 1987; Availability of Letter Setting Forth Agency Policies

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a letter to industry discussing the Prescription Drug Marketing Act of 1987, and advising the public of the agency's plans to develop implementing regulations. As part of this letter, the agency is receiving comments on any proposed rulemaking which might be necessary for implementing the law.

**DATE:** Written comments by October 7, 1988.

**ADDRESS:** Written requests for copies of this letter should be submitted to the

Division of Regulatory Affairs (HFD–360), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist the Division in processing your request. Written comments should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Arkin, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8040.

**SUPPLEMENTARY INFORMATION:** On April 22, 1988, the President signed into law the Prescription Drug Marketing Act of 1987 (the new law) (Pub. L. 100–293, 102 Stat. 95), which amends the Federal Food, Drug, and Cosmetic Act (the act) to: (1) Require State licensing of wholesale drug distributors under Federal guidelines that include minimum standards for storage, handling, and recordkeeping; (2) ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or for emergency use; (3) ban the sale, purchase, or trade of drug samples; (4) ban trafficking in or counterfeiting of drug coupons; (5) mandate storage, handling, and recordkeeping requirements for drug samples; (6) require practitioners to request drug samples in writing; (7) prohibit with certain exceptions the resale of prescription drugs purchased by hospitals or health care facilities; and (8) set forth criminal and civil penalties for violations of these provisions.

Most provisions of the new law became effective July 22, 1988, although the provisions relating to drug samples will become effective October 20, 1988. FDA is required to publish a final rule establishing minimum standards, conditions, and terms for State licensing of wholesale drug distributors no later than October 20, 1988, and the requirement for State licensing of wholesale drug distributors will become effective 2 years after FDA publishes that final rule.

FDA has issued a letter to regulated industry and other interested persons on the new law. Until regulations are finalized, the information in this letter may be relied upon with assurance of its acceptability to FDA. The letter, however, does not state legal requirements beyond those found in the statute and existing regulations. Nor does the letter bind FDA should events occur prior to the issuance of a rule that require a change in FDA's policy. Changes in FDA policy will be announced in future letters or notices.

Interested persons may, on or before October 7, 1988, submit to the Dockets Management Branch (address above) written comments regarding implementation of the new law and the information in the letter. Comments should be identified with the docket number found in the heading of this document and on the cover page of the letter. Comments should be submitted in duplicate, except individuals may submit one copy. Comments and other information on this topic have been placed on file with the Branch and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Written requests for a single copy of the letter should be sent to the Division of Regulatory Affairs (address above).

Dated: August 2, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88–17817 Filed 8–5–88; 8:45 am]

BILLING CODE 4160–01–M

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## Public Meeting; Issues Concerning Heat Susceptor Packaging

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a forthcoming public meeting to discuss issues concerning the use of heat susceptors in food packaging intended for the microwave cooking of food.

**DATE:** The meeting will be held September 22, 1988, 9:30 a.m. to 12 m.

**ADDRESS:** The meeting will be held in the auditorium of the Health and Human Services North Bldg. (Cohen Bldg.), 330 Independence Ave. SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5090.

**SUPPLEMENTARY INFORMATION:** The meeting is being sponsored by FDA to discuss issues concerning the use of heat susceptors in food packaging intended for microwave cooking of food. These issues are raised by information indicating that adhesives, polymers, paper, and other food packaging components may be degraded during use in structures utilizing heat susceptors. Of particular concern to the agency is whether the components of these food packages have been tested to ensure safety at the temperatures obtained with heat susceptor packaging in microwave ovens.

FDA is holding this meeting to ensure industrywide notification of the agency's concerns and to provide uniform guidance regarding the generation of data suitable to evaluate the safety of the use of heat susceptors and packaging materials used with heat susceptors. The agency is inviting all persons involved in the fabrication or the use of food packaging utilizing heat susceptors, as well as other interested persons, to participate in this meeting.

Dated: August 1, 1988

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88–17818 Filed 8–5–88; 8:45 am]

BILLING CODE 4160–01–M

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## National Institutes of Health

## National Institutes of Health and Alcohol, Drug Abuse and Mental Health Administration; Industry Collaboration Forum

With the passage of the Federal Technology Transfer Act of 1986 (FTTA), incentives have been provided that encourage collaboration between government scientists and industry in the hope that some of these endeavors may lead to a mutually profitable patent or license agreement.

As part of a government-wide effort to implement the FTTA, the National Institute of Health (NIH) and the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) will sponsor an NIH/ADAMHA-Industry Collaboration Forum, to be held on Tuesday, October 25, 1988, at the Omni Shoreham Hotel in Washington, DC. Although eligibility for registration is unrestricted, the forum will be most useful to those for-profit organizations with capabilities and resources to conduct research with biomedical or behavioral applications. The registration fee is $150.00.

The forum will begin at 8:30 a.m. with a brief plenary session, followed by a poster session displaying the goals and research capabilities of various NIH and ADAMHA laboratories. Due to space availability, early registration is strongly encouraged. Deadline for registration is October 1, 1988. Requests for registration after this date may not be honored. To obtain registration information, call (202) 639–4940 or write to: Pat Davenport, Courtesy Associates, Inc., Suite 300, 655 15th Street, NW., Washington, DC 20005, (202) 639–4940.

Dated: July 28, 1988.
James B. Wyngaarden,
*Director, NIH.*
[FR Doc. 88-17867 Filed 8-5-88; 8:45 am]
BILLING CODE 4140-01-M

## Social Security Administration

### Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Notice is given that Part S, as published in the **Federal Register** on January 8, 1986, is being amended to reflect changes in the organizational designations and functional responsibilities for the Office of Hearings and Appeals (OHA). Accordingly, Chapter S is being amended to show the reorganization of OHA.

The revisions are as follows:

Section S.20 *The Social Security Administration*—(Functions):

Chapter S3G *The Office of Hearings and Appeals.*

Delete:

Section SG.00 *The Office of Hearings and Appeals*—(Mission): in its entirety.

Section SG.10 *The Office of Hearings and Appeals*—(Organization): in its entirety.

Section SG.20 *The Office of Hearings and Appeals*—(Functions): in its entirety.

Add:

Section S3G.00 *The Office of Hearings and Appeals*—(Mission):

The Office of Hearings and Appeals (OHA), under direct delegation from the Secretary of the Department of Health and Human Services, administers the nationwide hearings and appeals program for the Social Security Administration (SSA). The Office of Hearings and Appeals issues the final decision of the Secretary on highly complex appealed determinations involving retirement, survivors, disability, health insurance, black lung, and supplemental security income benefits. OHA provides the basic mechanisms through which individuals and organizations dissatisfied with determinations affecting their rights to and amounts of benefits or their participation in programs under the Social Security Act may administratively appeal these determinations in an impartial and unbiased forum in accordance with the requirements of the Administrative Procedure and Social Security Acts. OHA includes a nationwide field organization staffed with Administrative Law Judges (ALJs) who conduct impartial hearings and make decisions on appeals filed by claimants, attorneys, providers-of-service institutions and others under the Social Security Act. The Appeals Council of OHA impartially reviews ALJ decisions, either on the Appeals Council's own motion or at the request of the claimant, and renders the Secretary's final decision when review is taken. OHA reviews new court cases to determine whether the case should be defended on the record or the Secretary should seek voluntary remand, and reviews final court decisions in light of the programmatic and administrative implications involved and makes recommendations as to whether appeal should be sought. Provides advice and recommendations on Social Security Administration program policy and related matters, including proposed Social Security Rulings.

Section S3G.10 *The Office of Hearings and Appeals*—(Organization): The Office of Hearings and Appeals, under the leadership of the Associate Commissioner for Hearings and Appeals, includes:

A. The Associate Commissioner for Hearings and Appeals (S3GA).

B. The Deputy Associate Commissioner for Hearings and Appeals (S3GA).

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (S3GA) which includes:

1. The Executive Secretariat (S3GA1).
2. The Special Counsel Staff (S3G4).

D. The Office of the Chief Administrative Law Judge (S3GJ).

1. The Division of Field Operations and Liaison (S3GJ1).
2. The Division of Field Practices and Procedures (S3GJ2).
3. The Vocational Expert and Medical Advisor Staff (S3GJ4).

E. The Offices of the Regional Chief Administrative Law Judges (S3G–FX—S3G–F9).

F. The Office of Appellate Operations (S3GC), which includes the Executive Director, the Appeals Council and its members, and a Deputy Director for Operations. Units within the Office of Appellate Operations include:

1. The Operations Management, Analysis and Coordination Staff (S3GC3).
2. The Administrative Support Staff. (S3GC4).
3. The Retirement and Survivors Insurance, Health Insurance and Supplemental Security Income Staff (S3GC5).
4. Program Review Branch 1 (S3GC6).
5. Program Review Branch 2 (S3GC7).
6. Program Review Branch 3(S3GC8).
7. Program Review Branch 4 (S3GC9).
8. Program Review Branch 5 (S3GC11).
9. Program Review Branch 6 (S3GC12).
10. Program Review Branch 7 (S3GC13).
11. Program Review Branch 8 (S3GC14).
12. Program Review Branch 9 (S3GC15).
13. Program Review Branch 10 (S3GC16).
14. Program Review Branch 11 (S3GC17).
15. Program Review Branch 12 (S3GC18).
16. Program Review Branch 13 (S3GC19).
17. Program Review Branch 14 (S3GC21).
18. Program Review Branch 15 (S3GC22).
19. Program Review Branch 16 (S3GC23).

G. The Office of Civil Actions (S3GL).

1. The Division of Litigation Analysis and Coordination (S3GL1).
2. Division I (S3GL2).
3. Division II (S3GL3).
4. Division III (S3GL4).
5. Division IV (S3GL5).
6. Division V (S3GL6).

H. The Office of Management (S3GQ).

1. The Operational Planning and Analysis Staff (S3GQ3).
2. The Equal Opportunity Staff (S3GQ4).
3. The Division of Congressional and Public Inquiries (S3GQ5).
4. The Division of Budget and Financial Management (S3GQ6).
5. The Division of Human Resources (S3GQ7).
6. The Division of Materiel Resources (S3GQ8).
7. The Division of Systems Resources (S3GQ9).

I. The Office of Policy, Planning and Evaluation (S3GP).

1. The Division of Planning and Evaluation (S3GP).
2. The Division of Policy (S3GP5).

Section S3G.20. *The Office of Hearings and Appeals*—(Functions):

A. The Associate Commissioner of Hearings and Appeals (S3GA) is directly responsible to the Commissioner of Social Security for carrying out OHA's mission of holding hearings and rendering decisions on appeals filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Associate Commissioner is a principal SSA executive and serves as advisor and consultant to the Commissioner of

Social Security, the Deputy Commissioner for Programs, and the Secretary of Health and Human Services on the full range of SSA policies, concerns and activities relating to the hearings and appeals process, including current and proposed legislation which directly or indirectly affects that process. The Associate Commissioner is responsible for planning, directing, managing, coordinating, and maintaining the integrity of the nationwide SSA hearings and appeals system by directing the planning, development, and promulgation of regulations, policies, and procedures governing the hearings and appeals program of the Social Security Administration. The Associate Commissioner is responsible for maintaining a hearings and appeals system which is impartial and which supports the tenets of fairness and equal treatment under the law. The Associate Commissioner provides executive leadership to, and administrative and management support functions for, the field organization which holds hearings and renders decisions under the Social Security Act. As Chair of the Appeals Council, the Associate Commissioner is responsible for the decisions issued at the final administrative level of the Social Security Administration. Following Appeals Council action, dissatisfied claimants or organizations may file civil actions in the United States District Courts. As Chair of the Appeals Council, the Associate Commissioner directs and coordinates the program for reviewing decisions issued by Administrative Law Judges under the Social Security Act. The Associate Commissioner monitors decisions rendered in the courts and provides recommendations as to appeal and/or interpretations for use by SSA in policymaking. The Associate Commissioner provides executive leadership and direction to the major components of OHA by establishing specific objectives, standards, and management and program policies with respect to the organizational responsibilities of these components.

B. The Deputy Associate Commissioner for Hearings and Appeals (S3GA) is an alter ego to the Associate Commissioner. As such the Deputy Associate Commissioner shares responsibility with the Associate Commissioner for the operations of the Office of Hearings and Appeals. The Deputy Associate Commissioner assists the Associate Commissioner in carrying out his/her OHA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (S3GA) assists the Associate Commissioner and the Deputy Associate Commissioner by providing a full range of staff services to assist them in carrying out their duties.

1. The Executive Secretariat (S3GA1) maintains liaison and coordination between the Office of the Associate Commissioner and major OHA components. Communicates the objectives, priorities and standards of the Associate Commissioner to individuals charged with preparing official OHA correspondence and/or publications, and ensures that communications signed or approved by the Associate Commissioner are consistent with those standards and objectives. Reviews and analyzes memoranda and other communications directed to the Associate Commissioner for adequacy of coordination and clearances, clarity and conciseness of presentation, timeliness, necessary follow-through, consistency with stated policy and other elements of completed staff work. Assigns responsibility for action on requests made by or to the Associate Commissioner and monitors the status of assigned projects and tasks. Prepares and/or coordinates the preparation of briefing material for meetings attended by the Associate Commissioner. Attends meetings held by the Associate Commissioner to record decisions and action requests and follows through to ensure they are implemented. Provides guidance to OHA executive staff in the area of communications. Through regularly printed communications distributed to OHA employees in the field and at headquarters, plans, develops, and administers a comprehensive communications network designed to provide general information about OHA activities to employees; to promote favorable attitudes towards the agency by OHA employees; and to highlight SSA/OHA's policies, programs, or procedural requirements. Improves OHA's overall image with the public by writing or editing articles, publications, speeches, or news releases that are definitive expressions and/or explanations of the agency's policies, programs, or procedural requirements. Plans and directs the development of internal communications policies, techniques and practices for use throughout OHA.

2. The Special Counsel Staff (S3GA4) serves as professional legal advisor to the Associate Commissioner, OHA, and to other members of the OHA executive staff on all matters pertaining to the legislative process, labor relations law, ethics and administrative law, with special emphasis on the Administrative Procedure Act. Provides advice and recommendations regarding problem areas which have far-reaching implications to SSA in general and to the hearings and appeals process in particular. Develops trial strategies and supervises the presentation of cases involving court and administrative hearings which raise unique, precedential or novel issues. Responsible for preparing and trying administrative hearings in disciplinary proceedings against Administrative Law Judges before the Merit Systems Protection Board. Responsible for attorney sanction matters for the Office of Hearings and Appeals. Represents OHA in liaison activities with Congress, the American Bar Association, the Administrative Conference of the United States, and other governmental organizations, with special emphasis on pending, proposed, and prospective legislation pertaining to the Administrative Procedure Act. Provides recommendations for modification of prospective legislation which could adversely affect the hearings and appeals process. Serves as technical advisor to the Department of Health and Human Services (DHHS) representatives on the Administrative Conference of the United States. Conducts studies in the field of administrative law and of the more complex problems arising in the hearings and appeals process and provides recommendations as to improvements as a result of these studies. Reviews regulations and procedures for legality and conformity to SSA/OHA policy. Acts as ethics officer for OHA headquarters. Conducts or coordinates investigations of allegations of misconduct, waste, fraud or abuse by OHA employees in the field and at headquaters.

D. The Office of the Chief Administrative Law Judge (S3GJ) serves as the principal consultant and advisor to the Associate Commissioner on all matters concerning the Adminstrative Law Judge (ALJ) hearing function. Under the executive leadership of the Associate Commissioner, the Chief Administrative Law Judge manages and administers a hearings organization consisting of 132 hearing offices and 10 regional offices nationwide. Plans, directs manages, coordinates and evaluates for the Associate Commissioner, the nationwide hearings process of the Social Security Administration. In coordination with the Director of Management, is responsible

for staffing and other resources needed to achieve organizational objectives. With the assistance of seven Regional Chief Administrative Law Judges (RCALJs), oversees the hearings process conducted by OHA's ALJs, who conduct hearings and render decisions in cases in which claimants disagree with reconsidered and revised determinations issued under the provisions of the Social Security Act. These determinations involve claims for retirement, survivors, disability, health insurance, and supplemental security income benefits under Title II, XVI and XVIII of the Social Security Act, as amended, including claims by hospitals, skilled nursing facilities, and independent laboratories seeking certification or continued certification under the Social Security Act, and disability and survivors insurance benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Chief Administrative Law Judge formulates and develops broad policies and objectives and establishes program goals for OHA's ALJ corps. The Chief Administrative Law Judge has primary responsibility for maintaining effective channels of communication between the Associate Commissioner and the RCALJs and the ALJ corps. The Chief Administrative Law Judge maintains a continuous review of all aspects of OHA field operations, and implements improvements where needed. Responsible for developing and maintaining the procedures for effective operation of the hearings process. Directs a professional staff engaged in providing liaision services to field personnel with respect to implementing substantive policy, program and procedural matters; provides management oversight for all administrative and managerial functions involved in the day-to-day operations of field activities; coordinates hearing office activities; and conducts liaison with other government and private agencies on issues falling within the Office's area of responsibility.

1. The Division of Field Operations and Liaison (S3GJ1) serves as liaison for the field with all headquarters components, and provides advice, guidance, and counsel to field units in all areas of identified needs. Serves as the field's main point of contact with OHA headquarters. Through telephone, mail, and on-site contact with field personnel, maintains an indepth knowledge of regional and hearing office operations. Keeps abreast of field problems in the respective areas of program, administration, management, and operations; develops alternative remedies or solutions to these problems, and makes appropriate recommendations to responsible components. Assists the Chief Administrative Law Judge in setting field office objectives to meet the management and operations goals established by the Associate Commissioner, the Chief Administrative Law Judge or other OHA management officials. Reviews field requests for allocation of resources, including staffing, equipment, training, and travel. Analyzes resource needs and ensures resource allocation to the regions according to OHA's Full-Time Equivalent (FTE) allocation system. Responsible for day-to-day monitoring of field operations, including problem identification and resolution, assessment of progress in meeting the established goals of SSA/OHA, compliance with established policies and procedures, etc. Prepares briefing reports for top management and agendas for major field conferences. Tracks implementation of initiatives arising from national and regional field conferences. Identifies the need for special studies or management reviews related to field operations. Represents the field on ongoing or ad hoc workgroups, task forces, etc.

2. The Division of Field Practices and Procedures (S3GJ2) formulates, develops, and oversees field practices and procedures governing the conduct of the hearing process and other program operations issues in response to the Associate Commissioner, the Chief Administrative Law Judge, or other OHA management officials, as well as a result of court orders and /or changes in the law and regulations. Coordinates with the Division of Field Operations and Liaison in developing and maintaining a system for communicating field practices and procedures through such means as operational manuals, handbooks, or instructional notices. On an ongoing basis reviews and, when necessary, revises existing field practices and procedures. Reviews and recommends revisions to forms and notices related to the hearings process. Reviews and comments on a wide variety of policies and procedures prepared by components both within and outside of OHA. Provides recommendations on policies and/or procedures which may effect the field, assessing the appropriateness, clarity practicability, comprehensiveness, and the probable effect of such on field operations, workloads, and staffing. Maintains an ongoing liaison with OHA, SSA, Health Care Financing Administration (HCFA), and Office of General Counsel (OGC) components regarding the hearings process and field needs.

E. Each Office of the Regional Chief Administrative Law Judge (S3G–FX–S3G–F9) acts on behalf of the Associate Commissioner and the Chief Administrative Law Judge at the respective regional levels on all matters involving the hearings process, and is directly reponsible for the effective execution of the hearings process within the region. Provides direction, leadership, management and guidance to the regional office staff and to the hearing offices in the region, including Administrative Law Judges (ALJs) and their staffs. Responsible for the regional implementation of national policies, goals, objectives, and procedures pertaining to the hearings process, and formulates policies, goals, and objectives for the ALJs and support staff in the region. Plans, organizes and administers regional programs for scheduling and conducting independent and impartial hearings on appealed determinations involving claims for retirement, survivors, disability and health insurance benefits; supplemental security income; and black lung benefits. Develops and recommends OHA action with respect to allegations of unfair hearings within the region. Responsible for evaluating the effectiveness of regional and hearing office management, including workload, personnel, and overall resource management; and executing and making critical evaluations and necessary revisions of applicable regional objectives, policies, practices, and procedures. Reviews hearing practices and procedures to detect trends, training needs, and operational problems. Investigates allegations of improper ALJ conduct, and makes recommendations as to necessary corrective action. Responsible for the acquisition and distribution of human and materiel resources within the region; directs the preparation of the regional budget; and justifies the fiscal requirements needed to carry out the hearings program within the region. Coordinates operation and administrative activities with DHHS regional offices, other SSA regional components, State Agencies, and others, as necessary. Establishes a program to maintain ongoing communication with congressional offices on issues of mutual interest and ensures timely and accurate responses to congressional inquiries. Ensures that court remands are processed efficiently within the region, and coordinates with the Office of the Chief Counsel in the region to

foster OHA compliance with court requirements. Directs regional activities to ensure effective consultation and communication between the field and headquarters to enhance the effectiveness of hearing office operations. Serves as an expert advisor on substantive issues within the region, and upon request by ALJs, provides advice and guidance in matters relating to adjudicating cases under the provisions of the Social Security Act, as amended. Reviews and analyzes fee petitions from attorneys and representatives of claimants for the provision of services at the hearing level, and authorizes payment of fees in those cases where the fees are beyond the authority of a hearing office Administrative Law Judge.

F. The Office of Appellate Operations (S3GC) consists of the Appeals Council and its support staff. In accordance with a direct delegation of authority from the Secretary of Health and Human Services, the Appeals Council is the final level of administrative review under the Administrative Procedure Act for claims filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Director of the Office of Appellate Operations is responsible for the day-to-day operations of a program of administrative review of ALJ decisions issued under the provisions of the Social Security Act. Upon claimant request or on the Appeals Council's own motion, the Office of Appellate Operations reviews ALJ decisions and dismissals involving claims for benefits filed under Titles II and XVI of the Social Security Act, as amended, health insurance cases under Title XVIII of the Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification or continued certification under the Act, and claims under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, to determine if jurisdiction exists, and, if so, takes appropriate action. The Office of Appellate Operations prepares documents to implement such actions while analyzing the appeals process to identify problem areas. The Appeals Council identifies cases which represent broad policy matters or have national impact and acts to resolve the issues in such cases, establishing binding adjudicatory standards and decisional principles that govern OHA's adjudicatory process. The Appeals Council identifies and recommends appropriate improvements in the appeals process. The Appeals Council, through its Members, participates in ALJ conferences, training programs, visits to hearing offices, and public relations activities designed to improve the hearings and appeals process. The Director of the Office of Appellate Operations is a member of the OHA Executive Staff and, as such, is a key advisor to the Associate Commissioner on program operations matters, adjudicative trends at both the administrative appeals level and the court level, and related OHA functions. In conjunction with other Executive Staff members, the Director provides leadership in the development and implementation of new or revised adjudicatory policies, procedures, and evidentiary and decisional techniques. Participates with other OHA Executive Staff members in considering broad aspects of program policy, in formulating long-range policies and guidelines for the administration of the hearings and appeals program, and in the establishing an OHA position on broad matters of operational, administrative, program and legislative planning. The Director of the Office of Appellate Operations maintains liaison with the Offices of the U.S. Attorneys and the Office of the General Counsel, including its Chief Counsels in the regions, to ensure their understanding of the hearings and appeals operating functions and procedures. The Director also maintains close liaison with OHA regional offices to promote a uniform interpretation and implementation of OHA, SSA and DHHS program policies. To assure high quality and uniformity in case adjudication and overall case processing, the Office of Appellate Operations conducts ongoing reviews and evaluations of the substantive aspects of Appeals Council actions and those of its support staff, and recommends corrective actions where appropriate.

1. The Operations Management, Analysis and Coordination Staff (S3GC3) provides a comprehensive program of management analysis and evaluative services to assist the Appeals Council Members in adjudicating cases, to assist the Director of the Office of Appellate Operations, and to assist the support staff of the Appeals Council in performing their program review function. Maintains an effective system of written instructions and prepares new procedures consistent with changes in the law and regulations and statements of SSA/OHA policy. Analyzes proposed procedural and administrative changes in the appeals process. Conducts a quality review program and, based on the results of the progam, recommends corrective action and training.

2. The Administrative Support Staff (S3GC4) under the direction of the Deputy Director for Operations of the Office of Appellate Operations, provides support services to Appeals Council Members, including maintenance of files received in OHA headquarters, reconstruction of lost claim files and receiving and analyzing fee petitions.

3. The Retirement and Survivors Insurance, Health Insurance and Supplemental Security Income Staff (S3GC5) serves as support staff for the Appeals Council in reviewing ALJ decicions and dismissals involving claims to establish entitlement to retirement and survivors insurance benefits; claims to establish dependency status under Title II of the Act; non-disability Title XVI cases; and health insurance cases under Title XVIII of the Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification or continued certification under the Act. Advises the Appeals Council on all matters relating to entitlement to benefits under the Social Security Act, as amended, for retirement and survivors insurance benefits, non-disability Title XVI claims, and health insurance claims, and supports the Appeals Council in all phases of its review function as the final step in the administrative appeals process. Acting on behalf of the Appeals Council, the staff undertakes necessary development and responds to such administrative matters as requests for an extension of time to submit additional evidence, requests for copies of exhibits from the claim file and requests for a copy of the hearing cassette or transcript of the hearing. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of applicable case law, the staff examines hearing decisions and other final actions of the Administrative Law Judge, and requests for Appeals Council review, and makes recommendations to the Appeals Council Member as to what action should be taken on cases pending before the Council. The staff recommendations include: (a) Whether own motion review should be taken or review granted and (b) the appropriate course of action if jurisdiction is assumed, including issuing a decision, dismissal, or remand of the case to an Administrative Law Judge. The staff

initiates implementing action on behalf of the Appeals Council Members, including drafting comprehensive decisions and orders.

4. The Program Review Branches (S3GC8- S3GC23) serve as support staff for the Appeals Council in reviewing ALJ decisions and dismissals involving claims for benefits filed under Titles II and XVI of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Program Review Branches advise the Appeals Council on all matters relating to entitlement to benefits under the applicable provisions of the Social Security Act and Title IV of the Federal Coal Mine Health and Safety Act, and support the Appeals Council in all phases of its review function as the final step in the administrative appeals process. Acting on behalf of the Appeals Council, the staff in the program review branches undertake necessary development and respond to such administrative matters as requests for an extension of time to submit additional evidence or to file a civil action, requests for copies of exhibits from the claim file, and requests for a copy of the hearing cassette or transcript of the hearing. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of applicable case law, the staff in the program review branches examine hearing decisions and other final actions of the Administrative Law Judges, and requests for Appeals Council review, and make recommendations to the Appeals Council Members as to what action should be taken on cases pending before the Council. The staff recommendations include: (a) Whether own motion review should be taken or review granted and (b) the appropriate course of action if jurisdiction is assumed, including issuing a decision, dismissal, or remand of the case to an Administrative Law Judge. The Program Review Branches initiate implementing action on behalf of the Appeals Council Members, including drafting comprehensive decisions and orders.

G. The Office of Civil Actions (S3GL) is headed by a Director who is also a Member of the Appeals Council, and is responsible for OHA action on cases in which a civil suit has been filed, including new court case review, acting on requests for voluntary remand, and recommending whether appeal should be sought when an adverse decision has been made by a federal court. Serves as lead OHA component responsible for formulating, implementing, and evaluating the Associate Commissioner's litigation management strategy, and is the focal point for representing that strategy to other SSA, DHHS, and Department of Justice components. Provides professional and technical advice to the Associate Commissioner, the Appeals Council, the Chief Administrative Law Judge and other OHA officials in all litigated cases involving claims for benefits filed under Titles II, XVI and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended; claims to establish dependency status under Title II of the Act; claims for individual enrollment to participate under Parts A and/or B of Title XVIII of the Act; and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification or continued certification under the Social Security Act. Develops and issues instructions for implementing class action court orders and precedential court decisions. Tracks and analyzes court case trends and disseminates information to guide adjudicators with respect to case law, to implement an effective appeals strategy, and to identify areas and make recommendations as to policies which need to be developed and/or clarified, new regulations need to be developed, or clarifying legislation should be sought.

1. The Division of Litigation Analysis and Implementation (S3GL1), working with other OHA components, develops and implements an appeals strategy which identifies the issues and types of cases which OHA believes should be appealed. Captures court trend information for dissemination to other components to assist in formulating the agency's litigation strategy and in improving adjudication. Develops and maintains a compendium of circuit court case law with systems-based access. Tracks pending class actions, forecasts potential workload impact, and makes recommendations to workload components regarding workload impact. Uses court trend information to identify and make appropriate recommendations with respect to areas in which policies need to be developed and/or clarified, new regulations need to be developed, or clarifying legislation should be sought. Prepares and updates significant court case requirements used in reviewing court cases. Uses court trend information to identify areas where additional training is needed or other measures are needed to improve defensibility. Advises the Associate Commissioner, the Chief Administrative Law Judge, and other OHA officials, as appropriate, of significant cases and trends, and of litigation issues which may require revision of operating instructions, and assists with the preparation of instructions. Coordinates OHA's views on proposed Social Security Acquiescence Rulings. In response to OHA-identified cases, and to requests for appeals recommendations from the Litigation Staff, Office of the Deputy Commissioner for Programs, obtains the views of affected OHA components and formulates an OHA position on appeal. Maintains liaison with the Office of General Counsel (OGC) and the Litigation Staffs of the Office of the Deputy Commissioner for Programs and the Office of Disability to coordinate class action implementation. In coordination with the Office of the Chief Administrative Law Judge and other OHA components, develops instructions for OHA implementation of class action orders. Monitors class action implementation within OHA. Serves as a focal point for questions from OHA adjudicators concerning class action orders. Acts as contact point for OGC and Litigation Staff (SSA) requests for information regarding OHA's procedures, statistics, and other information with respect to OHA operations requested in the course of litigation. Coordinates OHA's response to discovery requests, including maintaining a central file of information disclosed. Administers and coordinates the Freedom of Information Act and Privacy Act provisions for OHA. Develops and maintains internal operating procedures for the Office of Civil Actions.

2. Divisions I–V (S3GL2–S3GL6) provide professional and technical advice to the Associate Commissioner, the Director of the Office of Civil Actions, other Members of the Appeals Council, and other OHA officials in all litigated cases involving claims for benefits filed under Titles II, XVI and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended; claims to establish dependency status under Title II of the Act; claims for individual enrollment to participate under Parts A and/or B of Title XVIII of the Act; and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification or continued certification under the Social Security Act. Analyze and recommend action on cases referred by the Office of General Counsel (OGC) for consideration of whether remand should be requested on the Secretary's motion. Within published guidelines,

recommend to OGC defense on the record of certain litigated cases if further administrative action is not warranted. Analyze and recommend action on cases remanded by the courts. As appropriate, conduct defensibility review of decisions issued by ALJs. Prepare remand orders, affidavits, and related correspondence on behalf of the Director and other Appeals Council Members, and, as necessary, prepare comprehensive decisions for the Director and other Members of the Appeals Council in civil action cases.

3. The Program Support Staff (S3GL7) provides translation services for documents to be entered into the certified record, and performs necessary translation services in support of the Office of Appellate Operations. Provides reprographics services in preparation of the official answer to civil actions filed against the Secretary of DHHS under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Manages equipment, personnel and facilities necessary to ensure timely provision of reprographic services. Performs audit functions for hearing transcripts returned from private contractor. Provides mail distribution services to the operating division of the Office of Civil Actions and prepares sequential filing of all certified transcripts. Purges court transcripts as scheduled and oversees teletype system to receive notification of suit.

H. The Office of Management (S3GQ) provides administrative support to the Associate Commissioner for all management related activities for OHA. Coordinates with the Chief Administrative Law Judge with respect to management support functions which affect field operations. Has direct line authority for all management and administrative support functions for the headquarters and field components of the Office of Hearings and Appeals, including 10 regional offices and 132 hearing offices nationwide. Is directly responsible for the formulation and interpretation of goals, objectives, and policies governing the development and implementation of OHA's resource support programs. Plans, directs and administers a comprehensive human resource development and utilization program to enable OHA to carry out its programmatic functions. Provides personnel administration and management services to OHA headquarters and field employees. Develops and administers an OHA-wide program to identify training needs; develops mechanisms to meet identified training needs; and assesses the effectiveness of the OHA training program in meeting the training needs of managers, supervisors and employees. Directs the policy development and implementation of a comprehensive budget formulation and financial management program to include formulation and execution of budget requirements and controls in the areas of resource management, work measurement and workload forecasting; administrative cost allocation; cost benefit analysis; pay and travel; and position ceiling control and contract services. Provides administrative support services to enable OHA to carry out its nationwide programmatic and operational functions. Executes the full range of policies and activities relating to the resource operations of OHA. Responsible for space and property management and planning, including maintenance of space and equipment and procurement of supplies and other materiel which supports the hearings and appeals process. Plans, develops and administers a program of systems support and data base management for the design and programming of OHA's ADP systems and OHA's management information and statistical reporting activities. Develops and maintains operational planning systems, including analysis of management reports, and formulates management plans, objectives, and priorities for OHA. Coordinates and integrates the management programs and administrative planning initiatives of OHA into the long-range goals and objectives of SSA and DHHS. Monitors OHA's progress toward meeting established agency goals and makes recommendations for needed adjustments to enable OHA to meet these goals. Plans, directs, and implements an equal employment opportunity program within OHA. Plans, directs, administers, and evaluates the congressional and public inquiries activities for OHA.

1. The Operational Planning and Analysis Staff (S3GQ3) provides support to the Director of Management and to the Office of the Associate Commissioner for OHA's operational planning activities. Provides advice and recommendations to the executive management staff of OHA in the formulation of program and administrative plans. Analyzes management reports submitted by OHA headquarters and field components to assess progress in accomplishing SSA/OHA goals and objectives, prepares recommendations for meeting those goals and objectives, and prepares periodic reports of OHA accomplishments. Formulates a planning system for OHA, and coordinates and integrates the management, program, and administrative planning initiatives into the goals and objectives of SSA and DHHS. Analyzes plans submitted by OHA headquarters components, provides guidance and recommendations for improvements in the plans submitted, and recommends Associate Commissioner approval or disapproval of the plans. Develops, implements and maintains continuing responsibility for the Associate Commissioner's management review system. Provides oversight and coordination of the collection and distribution of management information reports and provides advice and guidance to management staff for streamlining OHA's management reports system. Assesses the effectiveness of OHA's internal controls in preventing integrity problems and, as appropriate, recommends ways of strengthening these controls or improving integrity monitoring of susceptible processes.

2. The Equal Opportunity Staff (S3GQ4) is responsible for OHA's equal opportunity program. Plans, develops, implements, and monitors OHA's affirmative action program, and administers the Equal Employment Opportunity (EEO) complaint process for OHA headquarters. Provides guidance for and monitoring of OHA regional EEO programs. Attempts to resolve informal complaints of discrimination made by OHA employees, and evaluates issues in complaints after Departmental investigation. Provides recommendations to SSA's Office of Civil Rights and Equal Opportunity with respect to the development of equal opportunity policies and procedures, and ensures that OHA's EEO policies, procedures, standards and guidelines are consistent with SSA's standards.

3. The Division of Congressional and Public Inquiries (S3GQ5) formulates policies, procedures, and guidelines for use in responding to high priority correspondence from the public and congressional offices. Coordinates with other OHA components to obtain information needed to respond to congressional and public inquiries, and prepares and reviews OHA responses to congressional and public inquiries. Evaluates correspondence for conformance with OHA and SSA standards, policies and procedures, and for determining necessary action. Serves as the correspondence liaison staff with the Commissioner's Office, the Office of

Public Inquiries, and other SSA and DHHS components.

The Division of Budget and Financial Management (S3GQ6) plans, develops and coordinates OHA's budget and financial management programs, advising the Director of Management and/or the Associate Commissioner of the financial impact of all decisions which affect OHA. Advises OHA officials on all budget decisions which may affect the program and administrative operations of the agency. Formulates, justifies and presents OHA's annual and multi-year budget submissions. Controls the collection, recording, and reporting of all financial data in connection with the budget formulation and execution functions. Provides technical and policy guidance to OHA officials in headquarters and the field on the formulation and presentation phases of the budget process. Reviews and analyzes budget requests submitted by OHA components and formulates OHA's financial operating plans and budget projections. Responsible for presenting OHA's budget submissions and the justifications for these submissions to SSA officials, and for the assessment of and response to SSA's reviews of these submissions. Administers cost allocation functions of the budget process. Works with SSA budget officials to obtain the resources necessary to meet OHA goals and objectives. Develops all necessary applications for generating budget data and financial management reports. Responsible for the execution of OHA's budget. Executes and administers a financial management system, integrating resource management controls in the followng areas: workload forecasting; work measurement and productivity; employment ceiling control; cost benefit analysis; administrative cost allocation; payroll and travel; and fiscal operations. Provides technical and policy guidance to regional offices and headquarters components on the execution of OHA's budget. Monitors workload projections for budget execution and control purposes, and monitors and controls employment and fiscal resources based on analyses of work measurement, productivity, cost benefit, and resource utilization. Ensures that employment ceilings and obligations and expenditures of funds are in conformance with authorized allotments and allowances. Performs periodic reviews of budget execution and financial management practices in OHA offices. Maintains liaison with SSA to integrate OHA's financial management system with the financial management system at SSA. Administers the travel and payroll function for all OHA headquarters components and ALJs nationwide.

5. The Division of Human Resources (S3GQ7) plans, develops and administers OHA's human resources management program, including recruitment and placement; position management; classification; pay administration; employee awards; organizational management; labor management and employee relations. Provides advice to the Director of Management and/or the Associate Commissioner on all matters related to the utilization of OHA's human resources. Is the principal advisor to the Director of Management and the Associate Commissioner on OHA's delegations of administrative authority. Effectuates the Associate Commissioner's decisions with respect to delegations of authority. Prepares and maintains documentation with respect to the organizational structure of OHA. Conducts classification and organizational surveys and studies, and develops responses to classification appeals. Administers OHA's position classification and organization management programs in a way that ensures that organization and/or position proposals may by OHA are within established OPM, DHHS, SA, and OHA goals and objectives. Secures and maintains personnel records for all ALJs and headquarters employees. Develops and reviews qualification standards for OHA positions. Maintains and oversees position descriptions for OHA, including writing and/or assisting in the preparation of position descriptions; reviewing OHA position descriptions to determine correct title, series and grade; and recommending corrective action where necessary. Exercises appointment authority for headquarters positions, and acts on behalf of the Associate Commissioner to recruit and appoint ALJs in manner consistent with DHHS/SSA/OPM policies and procedures. Evaluates the effectiveness of OHA's personnel management functions and activities and prepares recommendations for the resolution of personnel management and employee relations issues. Administers OHA's flextime program to ensure compliance with government-wide regulations and OHA policy. Develops and sets national policy for field-interaction with the National Treasury Employees Union (NTEU) regarding labor relations, and administers the American Federation of Government Employees (AFGE) National Agreement. Outlines and disseminates to OHA headquarters and field components general policies for disciplinary and adverse actions, reprimands, etc. Prepares recommendations as to arbitration of employee and contract grievances. Administers OHA's human resource development and training programs to ensure their educational validity, timeliness and appropriateness. Participates with other OHA components in planning, scheduling and preparing materials for training OHA headquarters and field staff. Locates appropriate sources for outside training or consultant services for internal programs to resolve OHA training needs. Counsels employees on career development opportunities, including staff development, executive development and other development programs. Coordinates with other OHA officials in the preparation of on-the-job training and provides support for orientation training needs of vocational and medical consultants. Coordinates training activities with SSA headquarters and regional components.

6. The Division of Material Resources (S3GQ8) plans, directs and provides administrative support services in the areas of space planning and management; forms and records management; property management; equipment control and maintenance; graphic arts; safety and self-protection, including emergency planning; security; procurement and supply; laboring services; mail and messenger services; motor vehicle operations; communications systems management; and library reference. Organizes, controls and coordinates procurement and property management activities, including development of specifications and requisitions for procurement of property, inspections of property owned or leased by the U.S. Government, and property accountability. Maintains liaison with other government officials and private concerns to obtain the latest available information and advice on current trends and development in facilities planning and management. Coordinates administrative support services provided to OHA by SSA, DHHS, OPM, GSA, and other agencies, including such services as building maintenance, alterations, and inventory management. Develops and administers a comprehensive space management program for the assignment and utilization of offices in OHA. Plans, directs, and coordinates the acquisition and installation of a communications network system for OHA. Provides advice and assistance to OHA officials regarding alterations, renovations,

repairs, etc. Assures contractual completion of all work requested for headquarters components. Identifies and maintains property and equipment management requirements, including storing and securing supplies and equipment; identifying the need for maintenance, repair, or replacement of equipment; and maintaining catalogs, brochures and sources of technical data to ensure that OHA's current and future supply requirements are met. Revises procurement procedures as necessary to ensure that the supply needs of OHA field and headquarters components are met. Administers an occupational health and safety program in compliance with established health and safety concepts, regulations, standards and procedures. Administers security programs and inspections, and coordinates with local law enforcement officials to ensure protection of OHA property and personnel.

7. The Division of Systems Resources (S3GQ9) is the focal point for all OHA systems-related activities. Provides office automation and data processing support to all OHA components. Develops OHA's long-range systems goals and objectives. Provides computer programming and systems support for the planning, design, development, and implementation of all OHA ADP systems. Serves as liaison with the Office of Systems, SSA, on all matters pertaining to systems, and ensures that OHA systems efforts are undertaken, that projects underway are carried out successfully, and that OHA participates fully in the SSA systems strategy. Ensures that OHA systems-related projects are integrated within SSA's Systems Modernization Plan, and analyzes the impact of SSA's Claims Modernization Program upon OHA programs and processes. Maintains an indepth knowledge of SSA system development activities and advises the Director of Management of changing plans and strategies with respect to systems. Prepares data for the OHA ADP/TC budget submission, and evaluates OHA user requests for ADP services. Ensures that OHA systems meet user needs and management information requirements, and resolves automation problems of systems users. Responsible for the OHA Case Control System, including the integrity of the management information resulting from that system. Maintains management plans for all automation projects. Develops plans, strategies and user data requirements to respond to OHA's automation needs. Develops proposed automation initiatives in response to user needs and new legislative requirements. Develops and maintains the systems configuration management plan and strategy. Monitors OHA's Information Technology Services (ITS) procurements through the SSA procurement cycle and ensures that they progress through critical processing points. Provides policy and operational guidance in the development of long and short-range systems planning. Identifies OHA training needs with respect to systems activities, and coordinates with responsible OHA/SSA components to ensure that these needs are met. Responsible for the logical and physical structure of all OHA databases, including the establishment and maintenance of the OHA Data Dictionary, coordination with SSA Database Administrators, and mapping OHA database designs against the OHA strategic plan. In compliance with the Privacy Act, ensures that necessary documentation is published for OHA ADP systems changes. Responsible for the security, maintenance and integrity of the ADP equipment inventory. Identifies the functions, policies and related personnel needs to support and manage word/data processing and telecommunications systems. Provides technical support for the nationwide OHA telecommunications network, and ensures efficient and effective implementation and operation of the various telecommunications networks used by OHA and of the telecommunications host. Develops, implements and maintains applications systems for OHA.

I. The Office of Policy, Planning and Evaluation (S3GP) plans, analyzes and develops OHA-wide policy for the hearings, appeals and civil actions processes. Manages the overall OHA policy communications system. Responsible for OHA activity with respect to Social Security regulations, including developing the regulations governing OHA processes and developing an OHA position with respect to program regulations proposed by SSA components. Monitors OHA's implementation of program regulations governing the hearings and appeals process. Plans and conducts a comprehensive OHA-wide evaluation program designed to support OHA policy and regulatory initiatives and measure the overall effectiveness of the nationwide hearings and appeals process. Provides advice and guidance throughout OHA on matters involving program policies, planning, and evaluation. Coordinates policy, planning and evaluation matters within OHA, with other SSA components, and with Health Care Financing Administration (HCFA), Office of General Counsel (OGC), and other Department of Health and Human Services (DHHS) components, other Federal agencies and private organizations. Responsible for SSA policy with respect to claimant representation and the fees charged for these services. Develops and coordinates program training in conjuction with appropriate OHA, SSA, HCFA, DHHS, and OGC components.

1. The Division of Planning and Evaluation (S3GP1) plans, develops, coordinates, and conducts a comprehensive OHA-wide program of studies and analyses of the application of, and compliance with, SSA and OHA policies and procedures in all phases of OHA's hearings and appeals processes and the quality of results achieved. Provides advice and assistance to other OHA components in designing and implementing appropriate systems and procedures for collecting, recording, analyzing and evaluating data pertinent to assessing the quality of work emanating from the hearings and appeals processes. Conducts studies of policy implementation within OHA. Conducts special studies and analyses of claims processes that impact on the quality, quantity and timeliness of the hearings and appeals process or OHA workloads to develop OHA recommendations for SSA policy and procedural changes or other corrective managerial initiatives. Identifies problem areas and deficiencies in policies, policy application, methods and procedures, and recommends corrective action. Develops techniques and systems for conducting evaluations of the substantive and technical aspects of claims processing throughout OHA. Designs and conducts a variety of program evaluation studies and analyses in support of OHA program policy and administrative initiatives. Develops long-range program related plans for OHA. Responsible for strategic planning for OHA, including managing implementation of strategic initiatives and coordinating OHA action on initiatives for simplifying the appeals process, for exploring the feasibility of two-way video hearings, for modernized information architecture, for electronic storage and retrieval of evidentiary materials, and for exploring the applicability of expert systems for OHA, including full implementation of available automated processes. Designs and conducts various program integrity studies and analyses of OHA processes and operations to ensure that OHA programs, policies and practices are consistent with the highest standards of integrity and equity. Analyses the

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results of OHA's evaluation systems to determine deviations from statutory, regulatory, policy, or procedural requirements and/or from established administrative quality standards. Assesses the compatibility of operating results with program philosophy and objectives, and recommends corrective action to program managers and other OHA officials.

2. The Division of Policy (S3GP2) is responsible for policy matters related to the hearings and appeals process and for SSA program-related policy matters for the Office of Hearings and Appeals. Plans, develops, and coordinates the preparation of regulations, policies, and guidelines for the hearings, appeals and claimant representation processes under Titles II, XVI, and XVIII of the Social Security Act, as amended, and under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Ensures that operating procedures and instructions developed to implement the hearings and appeals process conform with national SSA and OHA policy. Provides advisory services, consultation, and staff assistance to other components of OHA. Maintains an effective system for communicating policy positions through program guides and directives and informational notices necessary for an effective hearings and appeals process. Develops and maintains publications, informational materials, references and forms on the hearings, appeals, claimant representation and civil actions processes. Maintains ongoing liaison with SSA, HCFA, DHHS, OGC and others with respect to program, legislative, and policy matters. Develops and coordinates benefit program policy and regulatory activity for OHA. Responds to inquiries on OHA program policy matters. Reviews, coordinates, develops and comments on program regulations, rulings, and other program instructions emanating from SSA, DHHS and other administrative law bodies that may influence or impact on OHA policy areas. Reviews current and developing trends in administrative law and litigation; analyzes and prepares policy recommendations; and develops long-range and short-range plans for hearings and appeals policy matters and OHA's implementation of benefit program policy matters. Develops and coordinates program training in conjunction with other OHA components and SSA, HCFA, DHHS and OGC program components.

Dated: July 19, 1988.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

[FR Doc. 88-17780 Filed 8-5-88; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Advisory Council On Historic Preservation; SES Performance Review Board

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of SES Performance Review Board appointments.

**SUMMARY:** This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the Advisory Council's SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES performance appraisal plan for the Department has been adopted for use by the Advisory Council. The Performance Review Board will review the appraisal, award, and bonus recommendations for the SES members of the Advisory Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

**DATE:** These appointments are effective August 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** J. Lynn Smith, Personnel Officer, Office of the Secretary (PMSP), Department of the Interior, Washington, DC 20240, Telephone number: 343-6702.

The names of the SES Performance Review Board members are:

Ms. Gail D. Niedernhofer (Noncareer), Special Assistant for Programs, Department of the Interior

Mr. Peter J. Basso (Career), Deputy Chairman for Management, National Endowment for the Arts

Mr. Jerry L. Rogers (Career), Associate Director for Cultural Resources, Department of the Interior

Dated: July 29, 1988.

**Rick Ventura,**

*Assistant Secretary, Policy, Budget and Administration.*

[FR Doc. 88-17769 Filed 8-5-88; 8:45 am]

BILLING CODE 4310-10-M

### Bureau of Land Management

[UT-020-88-4830-12; 1784]

### District Multiple Use Advisory Council Meeting and Tour; Salt Lake District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of District Multiple Use Advisory Council Meeting and Tour.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-463, that a meeting of the Salt Lake District Multiple Use Advisory Council will be held on August 18 and 19, 1988, beginning at 8:30 a.m. in the Conference Room in the Salt Lake District Office, 2370 South 2300 West, Salt Lake City.

On August 18, following a morning meeting to discuss the proposed decisions in the Resources Management Plan for the Pony Express Resource Area (Tooele and Utah Counties), the Council will depart for a tour of the West Desert. There, they will inspect the proposed site for the APTUS hazardous waste incinerator, a waterfowl habitat improvement project, and public lands utilized during the recent Firex 88 military exercises.

On August 19, the Council will reconvene in the Salt Lake District Office Conference Room (8:30 a.m.) to discuss current issues. Key agenda items include: Drought effects on livestock grazing; an update on the 1988 wild horse adoptions; and a progress report regarding land exchanges.

The public is invited to attend the morning meetings or to file written statements for the Council's consideration. Those wishing to make oral statements must notify the Salt Lake District Manager by August 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Deane H. Zeller, District Manager, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524-5348.

**John H. Stephenson,**

*Acting Salt Lake District Manager.*

[FR Doc. 88-17702 Filed 8-5-88; 8:45 am]

BILLING CODE 4310-DQ-M

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals; University of Oregon, PRT #693357

On May 16, 1988, a notice was publishd in the **Federal Register** (Vol. 53, FR No. 94) that an application had been filed with the Fish and Wildlife Service by University of Oregon Visual Arts,

Resources Center, Eugene, Oregon (PRT# 663357) for a permit to reimport from Canada, 40 Eskimo dolls, some of which are partially constructed from walrus ivory and various seal and walrus parts.

Notice is hereby given that on July 29, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C.1361–1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Office of Management Authority, Room 403, 1375 K Street, NW., Washington, DC, 20005.

Dated: August 3, 1988.

R. K. Robinson,

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 88–17782 Filed 8–5–88; 8:45 am]

BILLING CODE 4310-DH-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

*Title:* Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information 30 CFR Part 778.

*OMB Number:* 1029–0034.

*Abstract:* Section 507(b) Pub. L. 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property to be affected, their compliance status and history. This information is used to ensure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

*Bureau Form Number:* None.

*Frequency:* Every five years.

*Description of Respondents:* Coal Mine Operators.

*Annual Responses:* 2,420.

*Annual Burden Hours:* 95,752.

*Estimated Completion Time:* 40 hours.

*Bureau clearance officer:* Nancy Ann Baka (202) 343–5981.

Date: July 29, 1988.

Andrew F. DeVito,

*Acting Chief, Regulatory Development and Issues Management Office.*

[FR Doc. 88–17784 Filed 8–5–88; 8:45 am]

BILLING CODE 4310-05-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB–299X]

### Exemption; Oregon & Northwestern Railroad Co.; Abandonment of Railroad in Grant and Harney Counties, OR

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost 3.5 in Burns, Harney County, OR, and milepost 50.2 in Seneca, Grant County, OR.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant with the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective September 7, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues[1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by August 18, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 28, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Wendell Gronso, 709 Ponderosa Village, Burns, OR 97720.

If the notice of exemption contains false or misleading information, use of the exemption is void ab- initio.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmetal assessment (EA). SEE will serve the EA on all parties by August 15, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 26, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88–17548 Filed 8–5–88; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Clean Air Act; Asbestos Safety, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

given that a proposed consent decree in *United States* v. *Asbestos Safety, Inc.*, Civil Action No. 87 C 3945, was lodged with the United States District Court for the Northern District of Illinois, in the Eastern Division on July 26, 1988. This agreement resolves a judicial enforcement action brought by the United States against the defendant which alleged violations of the Clean Air Act and the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) at several sites in Illinois.

The proposed consent decree provides for compliance with the Clean Air Act and NESHAP and payment of $15,000 in settlement of the action.

The Department of Justice will receive for a period up to and including September 7, 1988, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Asbestos Safety, Inc.*, D.J. Ref. 90–5–2–1–1053.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois and at the Region 5 Office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17833 Filed 8–5–88; 8:45 am]

BILLING CODE 4410–01–M

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### Lodging of Consent Decree Pursuant to Clean Water Act; City of Bayou La Batre, AL

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 21, 1988, a proposed Consent Decree in *United States* v. *City of Bayou La Batre, Alabama*, Civil Action No. 88–0620–P–C, was lodged with the United States District Court for the Southern District of Alabama. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Water Act, as amended (the Act), against the City of Bayou La Batre, Alabama, and three seafood processors, namely, QF, Inc., International Oceanic Enterprises of Alabama, Inc. (IOE), and Sea Pearl Seafood Company, Inc. The Complaint alleged that the City discharged pollutants from its sewage treatment plant in violation of its National Pollutant Discharge Elimination System (NPDES) permit and the Act. The Complaint alleged that each of the defendant seafood processors discharged pollutants into the City's sewage treatment plant in violation of pretreatment standards and the Act. The Complaint further alleged that defendants QF and IOE discharged pollutants into the Bayou La Batre without an NPDES permit, in violation of the Act.

Under the proposed Consent Decree, the City will pay a civil penalty of $6,000, and each of the seafood processors will pay a civil penalty of $20,000. The Decree requires the City to undertake numerous remedial measures to ensure that is complies with the Act in its operation of its sewage treatment plant. The Decree also requires the seafood processors to stop discharging their wastewater into the City's sewage treatment plant or into the Bayou La Batre.

The Department of Justice will receive for a period up to and including September 7, 1988, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *City of Bayou La Batre, Alabama*, D.J. Ref. 90–5–1–1–2945.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Alabama, Room 305, United States Courthouse, 113 St. Joseph Street, Mobile, Alabama; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, N.W. Washington, D.C. Copies of the proposed Decree may be ontained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $2.70 ($0.10 per page) payable to "United States Treasurer."

**Roger J. Marzulla,**

*Assistant Attorney General, Land & Natural Resources Division.*

[FR Doc. 88–17834 Filed 8–5–88; 8:45 am]

BILLING CODE 4410–01–M

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### Lodging of Consent Decree Pursuant to the Clean Water Act; City of Joliet

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 30, 1988, a proposed consent decree in *United States* v. *City of Joliet*, Civil Action No. 88 C 5661, was lodged with the United States District Court for the Northern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against the city of Joliet for violations of the Clean Water Act.

The proposed consent decree requires the City of Joliet to attain and, thereafter, maintain compliance with the Clean Water Act and comply with its NPDES permit. To ensure compliance with the final effluent limits, the proposed consent decree requires Joliet to construct a secondary treatment plant upgrade and a single-stage nitrification facility at the east Side Sewage Treatment Plant. The proposed consent decree also requires Joliet to take specified measure to ensure that the East Side Sewage Treatment Plant is property operated and maintained. Finally, the consent decree requires Joliet to pay a civil penalty of $160,000.

The Department of Justice will receive for a period up to and including September 7, 1988, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Joliet*, D.J. Ref. 90–5–1–1–3155.

The proposed consent decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17835 Filed 8-5-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree, Morton Thiokol, Inc., et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that three proposed consent decrees in *United States* v. *Morton Thiokol, Inc., et al.*, Civil Action No. 83-4787, were lodged with the United States District Court for the District of New Jersey on July 29, 1988. The action was filed pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607. The complaint sought the recoverly of costs incurred by the United States in connection with federal clean-up and investigative activities at the "Goose Farm" site in New Egypt, New Jersey.

The most significant of the three consent decrees requires the primary settling defendant to fund and implement the remedial action for the permanent cleanup of the Site. The remedial action plan includes treatment of groundwater contamination and removal of PCB-contaminated soil. This defendant and one other defendant will together pay $4.8 million to the United States and the State of New Jersey for costs incurred in conducting removal and investigation activities at the Site.

The Department of Justice will receive comments relating to the proposed consent decrees for a period up to and including September 7, 1988. Comments should be addressed to the Assistant Attorney General of the Land and Natural resources Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Morton Thiokol, Inc. et al.*, DOJ Reference No. 90-11-2-38.

The proposed consent decrees may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

U.S. Attorney's Office, District of New Jersey, 401 Market Street, Camden, New Jersey 08101, Contact: Paul Blaine, (609) 757-5026.

U.S. EPA, Region II, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, Contact: Robert Carr, (212) 264-3415.

Copies of the proposed consent decrees may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decrees may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decrees, please enclose a check for copying costs in the amount of $12.30 payable to Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17783 Filed 8-5-88; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree; Rohm & Haas Co. et al.

In accordance with 28 CFR 50.7, notice is hereby given that on July 28, 1988, a proposed partial consent decree in *United States* v. *Rohm and Haas Company, Inc. et al.*, Civil Action No. 85-4386, was lodged with the United States District Court for the District of New Jersey. This partial consent decree settles a portion of a lawsuit filed on September 10, 1985, in which an amended complaint was filed on July 28, 1988, pursuant to section 107 of CERCLA, 42 U.S.C. 9607, for the recovery of response costs incurred by the United States with respect to the Lipari Landfill in Gloucester county, New Jersey. The complaints alleged, among other things, that the defendants generated and/or transported hazardous substances that are located at the landfill, and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

The settling defendants are Triangle Publications, Inc., The Glidden Company, E.I. Dupont deNemours & Co., Allied Paper, Inc., Betz Laboratories, Inc., Hercules Incorporated, Owens-Corning Fiberglas Corporation, SPS Technologies, Inc., The Gilbert-Spruance Company and CBS, Inc. Under the terms of the proposed partial consent decree, the settling defendants agree to pay $2.586 million to the United States and $287,000 to the State of New Jersey for reimbursement of response costs. The *de minimis* settlors will pay an additional $161,000 to address any future State natural resource damages. In exchange for these payments, the *de minimis* settlors will receive a covenant not to sue for future liability under sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. The decree contains a covenant not to sue for any natural resource damages within the trusteeship of the Department of Interior and the State of New Jersey.

The United States is entering into the decree under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the decree proposes to settle with parties who are responsible for less than one percent of the waste volume at the landfill.

The Department of Justice will receive comments relating to the proposed partial consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Rohm and Haas Company, Inc. et al.*, D.J. Ref. 90-11-3-86.

The proposed partial consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

*EPA Region II*

Contact: Helene Cohen, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278 (212) 264-3045.

*United States Attorney's Office*

Contact: James Woods, Assistant United States Attorney, 970 Broad Street, Room 502, Newark, New Jersey (201) 621–2700.

Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed partial consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (reproduction charge) payable to the Treasurer of the United States. Additional background information relating to the settlement is available for review at the EPA's Region II, Office of Regional Counsel.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17837 Filed 8–5–88; 8:45 am]

BILLING CODE 4410–01–M

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**Lodging of Consent Decree Pursuant to CERCLA; Russell Martin Bliss et al.**

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 14, 1988, a proposed consent decree in *United States* v. *Russell Martin Bliss, et al.*, Civil No. 84–2086–C–1; *United States* v. *Russell Martin Bliss, Primerica, et al.*, Civil No. 87–1558–C–1; *State of Missouri* v. *Russell Martin Bliss*, Civil No. 84–1148–C–1; and *State of Missouri* v. *Grover Callahan*, Civil No. 84–2092–C–1, was lodged with the United States District Court for the Eastern District of Missouri, Eastern Division.

Four civil actions were brought by the United States and the State of Missouri pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9607, for reimbursement of certain costs incurred by the United States and Missouri in connection with the release of hazardous substances, pollutants and contaminants (hazardous substances) at two waste disposal sites in Ballwin, St. Louis County, Missouri, known as the "Callahan Site" and the "Rosalie Site."

The Consent Decree was entered into between the United States, the State of Missouri, and Grover and Jean Callahan (hereinafter referred to as the Settling Callahan Defendants). Litigation continues against other defendants in these civil actions. The consent decree, subject to certain re-opener provisions, resolves the governmental claims against the Settling Callahan Defendants. Within (5) years of the entry of this consent decree, the Settling Callahan Defendants shall pay to the United States the sum of $27,000.00 in installments in satisfaction of multiple civil claims. Of that amount, $25,000.00 shall be in settlement of Civil No. 84–2086–C–1, and $2,000.00 shall be in settlement of Civil No. 87–1558–C–1. Within thirty (30) days of the entry of the consent decree, the Settling Callahan Defendants shall also pay the sum of $3,000.00 to the State of Missouri for settlement of civil claims as alleged in Civil No. 84–1148–C–1 and Civil No. 84–2092–C–1. Of that amount, $2,500.00 shall be in settlement of Civil No. 84–1148–C–1 and $500.00 shall be in settlement of Civil No. 84–2092–C–1.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of Missouri, 1114 Market Street, St. Louis, Missouri 63101; at the Region VII office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th and Pennsylvania Avenue, Washington, DC 20530.

The Department of Justice will receive written comments relating to the proposed partial consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Russell Martin Bliss, et al.*, Civil No. 84–2086–C–1; *United States* v. *Bliss, Primerica, et al.*, Civil No. 87–1558–C–1; *State of Missouri* v. *Russell Martin Bliss*, Civil No. 84–1148–C–1; and *State of Missouri* v. *Grover Callahan*, Civil No. 84–2092–C–1 Department of Justice Reference Nos. 90–11–2–42; 90–11–3–155.

In requesting a copy please enclose a check in the amount of $1.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17838 Filed 8–5–88; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Child Labor Advisory Committee, Subcommittee on Hazardous Occupations Order No. 10

A meeting of the Child Labor Advisory Committee, Subcommittee on Hazardous Occupations Order No. 10 (HO 10), will be held on August 31, 1988, from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room N5437B, Frances Perkins Building, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The Subcommittee will consider whether power-driven meat slicers used in retail establishments should be covered by HO 10.

Members of the public are invited to attend these proceedings; however, since these are work sessions, seating is limited. Written data, reviews or arguments pertaining to the business before the Subcommittee must be received by the Committee Coordinator on or before August 17, 1988. Twenty-six copies are needed for distribution to the members and for inclusion in the Subcommittee Report.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila Stovall, Coordinator for the Child Labor Advisory Committee, Room S3028, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: area code (202) 523–7640.

Signed at Washington, DC, this 3rd day of August 1988.

**Paula V. Smith,**

*Administrator.*

[FR Doc. 88–17765 Filed 8–5–88; 8:45 am]

BILLING CODE 4510–27–M

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### Employment and Training Administration

**[TA–W–18,678]**

### Bass Enterprises Production Co., Fort Worth, TX; Public Hearing

Pursuant to a court order from the U.S Court of International Trade (USCIT) in *Former Employees of Bass Enterprises Production Company* v. *Secretary of Labor* (USCIT 87–04–00584) on May 27, 1988, a public hearing is scheduled for 1:30 pm on August 29, 1988 in Room 501 in the Federal Building at 525 S. Griffin Street, Dallas, Texas.

The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish additional testimony and evidence of a relevant and material nature bearing upon the investigation regarding petition TA-W-18,678 filed on behalf of workers and former workers of Bass Enterprises Production Company, Fort Worth, Texas.

Such individuals who desire to furnish additional testimony as evidence should inform the Director, Office of Trade Adjustment Assistance of their intention to appear not later than August 19, 1988. Mr. Marvin M. Fooks, Director, Office of Trade Adjustment Assistance can be reached in Washington, DC at (202) 376-2646. The Director's Office is in Room 6434, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 4th day of August 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 88-17913 Filed 8-5-88; 8:45 am]

BILLING CODE 4510-30-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-368]**

### Arkansas Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 86 to Facility Operating License No. NPF-6, to Arkansas Power and Light Company, which revised the Technical Specifications for operation of the Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas. The amendment was effective as of the date of its issuance.

The amendment approved a reduction in the required differential pressure produced by the high pressure safety injection pumps during surveillance testing. The revised differential pressure specification enhances operational flexibility by allowing for greater variation in pump performance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 28, 1987 (52 FR 48887). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because this action will not have a significant environmental impact.

For further details with respect to this action, see (1) the application for amendment dated October 28, 1987, (2) Amendment No. 86 to Facility Operating License No. NPF-6, and (3) the Environmental Assessment and Finding of No Significant Impact (53 FR 27091). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 28th day of July 1988.

For the Nuclear Regulatory Commission.

**C. Craig Harbuck,**

*Project Manager, Project Directorate—IV Division of Reactor Projects—III, IV, V and Speical Projects Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17810 Filed 8-5-88; 8:45 am]

BILLING CODE 7590-01-M

**[Docket Nos. 50-317 and 50-318]**

### Baltimore Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-53 and DPR-69, issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would modify the Units 1 and 2 Technical Specifications 5.6.1, "Criticality-Spent Fuel," and 5.6.2, "Criticality-New Fuel," by increasing the maximum fuel enrichment limit to 5.0 weight percent U-235 from the current limit of 4.1 weight percent U-235.

This proposed TS revision is in response to the licensee's application for amendments dated June 9, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 7, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW Washington, DC, by the above date. Where petitions are filed during the last ten days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D.A. Brune, Jr., General Counsel, Baltimore Gas & Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 9, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 2nd day of August, 1988.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

*Project Manager, Project Directorate I-1, Division of Reactor Projects I/II.*

[FR Doc. 88-17811 filed 8-5-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-261]**

## Carolina Power & Light Co.; Exemption

I.

Carolina Power & Light Company (the licensee is the holder of Facility Operating License No. DPR-23, which authorizes operation of the H. B. Robinson Steam Electric Plant, Unit 2. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

Section 103(c)(2) to 10 CFR Part 20 requires a determination by a physician at least once every 12 months that an individual is physically able to use the respiratory protective equipment in an environment containing airborne radioactive material.

By letter dated January 30, 1986, the licensee requested an exemption from 10 CFR 20.103(c)(2) with regard to the interval for the administration of a physical examination for users of respiratory equipment. Specifically, the licensee requested an exemption to permit the physicals to be administered at an interval of every 9 to 15 months rather than the currently scheduled 8 to 12 months. In support of its request, the licensee notes that the exemption would provide greater flexibility in scheduling of examinations and would preclude the need for administration of two examinations in the same calendar year.

The acceptability of the exemption request is discussed below.

III.

In order to satisfy the 10 CFR 20.103(c)(2) requirement of "at least once every 12 months," the licensee has to administratively schedule the physical examinations every 8 to 12 months because of the large number of workers for whom these examinations have to be scheduled. Therefore, over a period of a few years, a substantial number of workers would receive two physical examinations within one calendar year. This would result in an unnecessary expenditure of the licensee's resources. On the other hand, according to the licensee's proposed schedule of a physical examination of every 9 to 15 months, it would be possible for a worker to average fewer than one examination every year over an extended period of time, for example, only four examinations in five years. This practice clearly does not meet the intent of the regulation.

In order to provide the licensee with administrative flexibility and yet meet the intent of the regulation to provide one physical examination every year, the staff has determined that an exemption to 10 CFR 20.103(c)(2), as requested by the licensee, with a provision that the total time over any three consecutive physical examination periods will not exceed 39 months, should be granted.

IV.

The Commission has determined that, pursuant to 10 CFR 20.501, this exemption is authorized by law, and will not result in undue hazard to life or property. Accordingly, the Commission hereby grants an exemption related to the time interval requirement of 10 CFR 20.103(c)(2) on physical examinations from "at least once every 12 months" to "every 9 to 15 months, provided that the total time over any three consecutive physical examination periods does not exceed 39 months." Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (53 FR 25553).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of July 1988.

For The Nuclear Regulatory Commission.

Steven A. Varga,

*Director, Division of Reactor Projects I/II. Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17812 Filed 8-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

**Georgia Power Co. et al.; Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 7 to Facility Operating License No. NPF-68, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee) which revised the Technical Specifications for operation of the Vogtle Electric Generating Plant, Unit 1, located in Burke County, Georgia. The amendment was effective as of the date of its issuance.

The amendment modified the Technical Specifications to revise the volume limits for the containment spray additive tank.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 4, 1988 (53 FR 10959). No request for a hearing or petition for leave to intervene was filed following the notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated February 4, 1988, (2) Amendment No. 7 to License No. NPF-68, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, this 2nd day of August 1988.

For The Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Project Manager, Project Directorate II-3, Division of Reactor Projects I/II.*

[FR Doc. 88-17813 Filed 8-5-88; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF STATE

[Public Notice 1075]

**Convening Accountability Review Board on the Murder of the Defense Attache in Athens**

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831 *et seq.*), I have determined that the murder on June 28, 1988 of the Defense Attache at the United States Embassy in Athens, Captain William E. Nordeen, USN, involves loss of life related to a United States Government mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and circumstances of the loss of life in Athens and report to me such findings and recommendations as it deems appropriate, in keeping with their mandate.

I have appointed the Honorable Leonard H. Marks as Chairperson of the Board. He will be assisted by the Honorable John E. Reinhardt, the Honorable Jane A. Coon, Mr. James C. McGrath, III and Mr. John W. Berg. The members will bring to their deliberations distinguished backgrounds in government service and private life.

I have asked the Board to submit its conclusions and recommendations to the Secretary within sixty days of its first meeting, unless the Chairperson determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of this incident should contact the Board promptly on 647-8456.

**John C. Whitehead,**

*Acting Secretary.*

July 25, 1988.

[FR Doc. 88-17767 Filed 8-5-88; 8:45 am]

BILLING CODE 4710-01-M

[Public Notice 1074; Delegation of Authority No. 169]

**Delegation of Authority to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs**

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), as amended, I hereby delegate to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs the functions vested in the Secretary of State by the following sections of the South Pacific Tuna Act of 1988 (Pub. L. 100-330):

Section 3
Section 4
Section 8 (a) and (e)
Section 9 (b) and (g)
Section 10 (a), (b)(1), (c)(1) and (c)(2)
Section 11 (a) and (b)
Section 15
Section 16
Section 18
Section 19.

The Assistant Secretary for Oceans and International Environmental and Scientific Affairs may redelegate to officers and employees under his direction and supervision any of the functions delegated to him above, except those required by law to be approved by higher authority.

Date: July 26, 1988.

**George P. Shultz,**

*Secretary of State.*

[FR Doc. 88-17768 Filed 8-5-88; 8:45 am]

BILLING CODE 4710-09-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**Receipt of Noise Compatibility Program Revision No. 2 and Request for Review, Hartsfield Atlanta International Airport, Atlanta, GA**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a revised noise compatibility program that was submitted for the Hartsfield Atlanta International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the City of Atlanta. This revised program was submitted subsequent to a

determination by the FAA that associated noise exposure maps submitted under 14 CFR Part 150 for the Hartsfield Atlanta International Airport were in compliance with applicable requirements effective May 29, 1985. The revised noise compatibility program will be approved or disapproved on or before January 21, 1989.

**DATES:** The effective date of the start of FAA's review of the revised noise compatibility program is July 25, 1988. The public comment period ends September 23, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles V. Prouty, Program Manager, Atlanta Airports District Office, Suite 310, 3420 Norman Berry Drive, Hapeville, Georgia 30354, telephone (404) 763-7631. Comments on the revised noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed noise compatibility program revision for Hartsfield Atlanta International Airport which will be approved or disapproved on or before January 21, 1989. This notice also announces the availability of this program for public review and comment.

This revision will expand the geographical area of noise treatment measures, originally constrained by funding limitations, and will add sound attenuation treatment for private schools, churches, and tenant-occupied single-family residences. A public hearing will not be held because this program extension was covered as future strategies in the original program which was coordinated in conformance with FAR Part 150 and publicized through numerous public information sessions.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program revision for the Hartsfield Atlanta International Airport, effective on July 25, 1988. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 21, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evalution of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Room 617, 800 Independence Avenue, SW., Washington, DC 20591;

Federal Aviation Administration, Atlanta Airports District Office, Suite 310, 3420 Norman Berry Drive, Hapeville, Georgia 30354;

Airport Commissioner's Office, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320.

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Atlanta, Georgia, July 25, 1988.

**Samuel F. Austin,**

*Manager, Atlanta Airports District Office.*

[FR Doc. 88-17808 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-88-31]

## Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regualtory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 29, 1988.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202)X267-3636.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 3, 1988.

**Debbie E. Swank,**

*Acting Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25030 | Pan Am Express Airlines | 14 CFR 93.123, 93.125, 93.129 | Petitioner requests an extension of current Exemption No. 4777, which permits two additional commuter operations in four of the five high density hours at John F Kennedy Airport (JFK) and further requests an additional two slots in the remaining high density hour at JFK. The additional slots may be used only by STOL aircraft under the Separate Access Landing System. Continuation of the exemption would permit further evaluation RNAV approaches to the cross runways at JFK. |

[FR Doc. 88-17809 Filed 8-5-88; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-88-30]

## Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 29, 1988.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 1, 1988.

**Deborah E. Swank,**

*Acting Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25585 | Gerald A. McGinnis | 14 CFR 91.42(a)(1) | To allow flight instruction for hire to take place using designated home-built amphibious seaplanes. |
| 25644 | Wings West Airlines, Inc., dba American Eagle. | 14 CFR 135.293, 135.297, and 135.351(c). | To permit pilots of petitioner to substitute the satisfactory completion of an approved course of training in a visual simulator for the recurrent pilot competency and instrument proficiency check requirements of Part 135 on an alternating basis. Further, to permit satisfactory completion of the entire recurrent pilot competency and instrument proficiency check requirements of Part 135 in an approved simulator if the pilot being checked accomplishes at least two landings in the appropriate airplane during a line check or other check conducted by a pilot check airman. |

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| 21518 | Type rating training | 14 CFR 61.63(d) (2) and (3) and 61.157(d)(1). | To extend Exemption No. 4683 that allows students of petitioner who are applicants for a type rating to be added to any grade of pilot certificate, in Boeing 727 and 737 and McDonnell Douglas DC-9 and DC-10 airplanes, to complete a portion of that practical test in an airplane simulator. Grant, July 28, 1988, Exemption No. 4683A. |
| 23854 | Airways Training Institute, Inc., dba Airline Training Institute. | 14 CFR 61.63(d) (2) and (3); 61.157(d) (1) and (2); and Part 61, Appendix A. | To extend Exemption No. 4691 that allows petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements of the FAR. Grant, July 28, 1988, Exemption No. 4691A. |

[FR Doc. 88-17759 Filed 8-5-88; 8:45 am]
BILLING CODE 4910-13-M

**Federal Railroad Administration**

**Petitions for Exemption or Waiver; Ohio Central Railroad et al.**

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that three railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

**Ohio Central Railroad (OCR)**

**FRA Waiver Petition Docket No. HS–88–12**

The OCR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The OCR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The OCR provides service on over 70 miles of track designated as the Brewster-Zanesville Subdivision. Operations commenced on April 9, 1988, and the operation is based out of Sugar Creek, Ohio. Interline connections and interchanges are located at Brewster, Ohio with the Norfolk Southern, Coshocton, Ohio with Conrail, and Zanesville, Ohio with CSX.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Central Indiana & Western (CIW)**

**FRA Waiver Petition Docket No. HS–88–13**

The CIW seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CIW states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the CIW's operation if it encountered unusual operating conditions or circumstances. The CIW provides freight service on over nine miles of track between Anderson and Lapel all within the State of Indiana. Interchange is made with Conrail at Conrail's South Anderson Yard. The CIW has trackage rights over three miles of Conrail trackage in order to effect the interchange of cars.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Sandersville Railroad (SAN)**

**FRA Waiver Petition Docket No. HS–88–14**

The SAN seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The SAN states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The SAN provides service on over nine miles of track between Tennille and Sandersville, which are located in the State of Georgia.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–87–20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before September 23, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on July 26, 1988.

J. W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 88–17838 Filed 8–5–88; 8:45 am]

BILLING CODE 4910-06-M

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**Petition for Exemption or Waiver of Compliance; Terre Haute, Brazil and Eastern Railroad, et al.**

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 23, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590

The individual petition seeking an exemption or waiver of compliance are as follows:

**Terre Haute, Brazil and Eastern Railroad (Waiver Petition Number RSGM–88–1)**

The Terre Haute, Brazil and Eastern Railroad (TBER) seek a permanent

waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives and six cabooses. The equipment operates over approximately 50 miles of track between Terre Haute and Limedale, Indiana. The area of operation is rural sparsely populated agricultural and mining region of the state. The TBER states that there have been no reported acts of vandalism against the railroad, or known problems in the area where the equipment operates. The carrier feels that the installation of certified glazing would be an unnecessary financial burden to its operation.

**The Huntsville and Madison County Railroad Authority (Waiver Petition Number RSGM–88–2)**

The Huntsville and Madison County Railroad Authority (HMCR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates over approximately 13 miles of track which connects with the Southern Railway in downtown Huntsville. The HMCR operates one train per day, three days a week. The maximum authorized speed is 15 mph, and the average operating speed is 7 mph. The HMCR states that there have been no reported acts of vandalism or accidents involving glazing. The carrier feels that the installation of certified glazing would be an unnecessary financial burden to its operation.

**Knox and Kane Railroad Company (Waiver Petition Docket Number RSGM–88–3)**

The Knox and Kane Railroad Company (KKRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives, four cabooses and eight passenger cars. The equipment operates on approximately 83 miles of track near Gettysburg, Pennsylvania. A major portion of the track is located through rural orchard land that is posted against hunting. The KKRR states that there have been no reported incidents of vandalism against the equipment. The carrier indicates that the equipment is operated the majority of the time with the windows open and feels that the installation of certified glazing would be an unnecessary financial burden to its operation.

**Arcade and Attica Railroad Corporation (Waiver Petition Docket Number RSGM–88–4 and SA–88–3)**

The Arcade and Attica Railroad Corporation (ARA) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) and the Safety Appliance Standards (49 CFR Part 231) for one locomotive. The locomotive operates over approximately 15 miles of track between North Java and Arcade, New York. The area of operation is a rural county with one small town. The ARA has been operating two other locomotives under an existing FRA glazing waiver, RSGM–80–57 without problems with acts of vandalism or accidents involving glazing. The carrier feels that the installation of cerified glazing would, therefore, be an unnecessary financial burden to its operation. The ARA also seeks a permanent waiver of compliance with § 231.30 for corner switching steps. The carrier states that the locomotive cannot be retrofitted to meet the standard.

**Dunn-Erwin Railway Corporation (Waiver Petition Docket Number RSGM–88–5)**

The Dunn-Erwin Railway Corporation (DER) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates over approximately 5.5 miles of track between Dunn and Erwin, North Carolina. The DER operates an average of three trains or less per week. The locomotive operates at speeds of less than 15 mph. The area of operation is rural and includes two residential and light business sections. The carrier has been operating since November 1987, and states that the area of operation has no record of vandalism or stoning of railroad equipment. The carrier feels that the installation of certified glazing would be an unnecessary financial burden to its operation.

**New York and Lake Erie Railroad (Waiver Petition Docket Number RSGM–88–6)**

The New York and Lake Erie Railroad (NYLE) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives and four passenger cars. The equipment operates over segments of track located between Salamanca and Dayton, New York and between Conewango Valley and Gowanda, New York for a total distance of approximately 51 miles. The areas of operation are through rural countryside and small communities. An average of three round trip freight trains are operated weekly. Additionally, during the warm season, an average of four round trip excursion trains are run. The NYLE states that it has never had problems with window breakage due to vandalism nor has it had to replace glazing due to breakage from flying objects. The petitioner feels that the installation of certified glazing would be an unnecessary financial burden to its operation.

**Tulsa Port of Catoosa (Waiver Petition Docket Numbers RSGM–88–8 and SA–88–2)**

The Tulsa Port of Catoosa seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives and of the Safety Appliance Standards (49 CFR Part 231) for one of the locomotives. The locomotives operate over approximately 12 miles of track wholly within the confines of the Port in Tulsa, Oklahoma. The locomotives perform yard switching operations at a maximum speed of 10 mph during daylight hours. The Port maintains its own security force and is closed to the general public between the hours of 6 p.m. and 6 a.m. daily. The petitioner states that since the Port began operations in 1971, there have been no major incidents affecting either the general security of the Port or the safety of its rail system. The petitioner states that the locomotives cannot be modified to meet the requirements of either §§ 223.11 or 231.30 (switching steps), without the incurrence of prohibitive costs. The petitioner feels that the use of these locomotives in their present condition will not materially affect the public interest, safety or welfare, or the personnel who are engaged in the operation thereof.

**Buffalo and Pittsburgh Railroad, Inc. (Waiver Petition Docket Number RSGM–88–9)**

The Buffalo and Pittsburgh Railroad, Inc. (BPRR) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives being leased from the Genesee and Wyoming Railroad Company. The two units will be operated on approximately 16 miles of track between Bradford, Pennsylvania and Salamanca, New York. The area of operation is through rural countryside. The BPRR feels that the cost to install certified glazing in these leased locomotives for temporary

service would present an unnecessary financial burden to their operation.

**Middletown and Hummelstown Railroad Company (Waiver Petition Docket Number RSGM–88–10)**

The Middletown and Hummelstown Railroad Company (MIDH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. One locomotive will operate over approximately 6.5 miles of track between Middletown and Hummelstown, Pennsylvania. The second locomotive will operate over approximately 2.5 miles of track near West Hempfield Township in Lancaster County, Pennsylvania. Both areas of operation are rural, and the maximum speed is 15 mph. The MIDH states that it has not had any locomotive windows broken or stoned by vandals while in operation since it began operation 12 years ago. The petitioner feels that the installation of certified glazing would be an unnecessary financial burden to its operation.

Issued in Washington, DC, on July 28, 1988.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 88-17839 Filed 8-5-88; 8:45 am]

BILLING CODE 4910-06-M

## DEPARTMENT OF THE TREASURY

**Bureau of Alcohol, Tobacco and Firearms**

[Docket No. 668; Ref: ATF O 1130.77H]

**Delegation Order; Authority to Affix the Seal of the Department of the Treasury**

*1. Purpose.* This order sets forth delegation of authority to affix the seal of the Department of the Treasury.

*2. Cancellation.* ATF O 1130.77H, Delegation Order—Authority to Affix the Seal of the Department of the Treasury, dated February 29, 1988, is canceled.

*3. Delegation.* Authority has been delegated to the Director, Bureau of Alcohol, Tobacco and Firearms by Treasury Department Directive 12-51, dated January 29, 1987, to affix the seal of the Department of the Treasury to authenticate originals and copies of books, records, papers, writings, and documents of the Department, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b). Such authority is hereby redelegated as follows:

a. To the officials listed below, without restriction:

(1) Associate Director (Compliance Operations).

(a) Chief, Industry Compliance Division.

(b) Chief, Product Compliance Branch.

(c) Chief, Alcohol Import/Export Branch.

(d) Chief, Revenue Programs Division.

(e) Chief, Wine and Beer Branch.

(f) Chief, Distilled Spirits and Tobacco Branch.

(g) Chief, Tax Compliance Branch.

(h) Chief, Firearms and Explosives Division

(i) Chief, National Firearms Act Branch.

(j) Chief, Firearms and Explosives Import Branch.

(k) Regional Directors (Compliance).

(l) Chiefs, Technical Services.

(2) Associate Director (Law Enforcement).

(a) Chief, Planning and Analysis Staff.

(b) Chief, Special Operations Division.

(c) Chief, Firearms Division.

(d) Chief, Explosives Division.

(e) Special Agent in Charge, Firearms Tracing Branch.

(f) Supervisor, ATF Records Repository.

(3) Comptroller.

(a) Director (Laboratory Services).

b. To the officials listed below, with restrictions as indicated:

(1) Supervisor, Special Tax and Revenue Accounting Section, to authenticate records pertaining to special occupational tax.

(2) Supervisor, Special Tax Processing Unit, to authenticate records pertaining to special occupational tax.

(c) This authority may not be redelegated.

*(4) For Information Contact.* Pauline C. Ashe, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW. Washington, DC 20226 (202) 566–7602.

*5. Effective Date.* This delegation order becomes effective on August 8, 1988.

*6. Approval.* July 25, 1988.

Stephen E. Higgins,

*Director.*

[FR Doc. 88-17848 Filed 8-5-88; 8:45 am]

BILLING CODE 4810-31-M

## UNITED STATES INFORMATION AGENCY

**Culturally Significant Objects Imported For Exhibition; Determination**

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "A Prosperous Past: Dutch Still Life Paintings from the Golden Age" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum, Fort Worth, Texas beginning on or about December 10, 1988 to on or about February 4, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Date: August 1, 1988.

R. Wallace Stuart,

*Acting General Counsel.*

[FR Doc. 88–17706 Filed 8–5–88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485–8027, and the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 152
Monday, August 8, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10:00 a.m., August 11, 1988.

**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, DC 20573-0001.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Section 19 Petition of Navios Management, Inc., d/b/a Pacific America Line—Shipping Conditions in the U.S./Korea Trade—Consideration of Comments.
2. Section 15 Inquiry into Laws, Regulations and Policies of the Republic of Korea Affecting Shipping in the U.S./Korea Trade—Consideration of Comments.
3. Docket No. 87-10—Halstead Industrial Products, Inc. v. Sea-Land Service, Inc.—Consideration of the Record.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 88-17853 Filed 8-3-88; 4:59 pm]
BILLING CODE 6730-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 28755, July 29, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Approximately 12:00 noon, Wednesday, August 3, 1988, following a recess at the conclusion of the open meeting.

**CHANGES IN THE MEETING:** Addition of the following closed item(s) to the meeting: Employment of consultants and related administrative issues regarding the development of the Board's compensation program.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 3, 1988.

**James McAfee,**
*Associate Secretary of the Board.*

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Notice forwarded to Federal Register on August 3, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, August 10, 1988.

**CHANGES IN THE MEETING:**

1. Revisions to Item 2: Proposals concerning Regulation CC (Availability of Funds and Collection of Checks): (1) Preemption determinations regarding funds availability laws of Illinois and New York (proposed earlier for public comment; Docket No. R-0640); and (2) publication for comment of proposed preemption determinations for Connecticut, Rhode Island, New Mexico, California, and Massachusetts.
2. Addition of the Following Open Item to the Meeting: Proposed Electronic Clearinghouse Study to be distributed to Congress under the Expedited Funds Availability Act. (This matter will be considered on the Summary Agenda.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: August 4, 1988.

**James McAfee,**
*Associate Secretary of the Board.*

[FR Doc. 88-17970 Filed 8-4-88; 4:06 pm]
BILLING CODE 6210-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Friday, August 12, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 4, 1988.

**James McAfee,**
*Associate Secretary of the Board.*

[FR Doc. 88-17971 Filed 8-4-88; 4:06 pm]
BILLING CODE 6210-01-M

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**NATIONAL SCIENCE BOARD**

**DATE AND TIME:** August 19, 1988—8:30 a.m. Closed Session, 9:00 a.m. Open Session.

**PLACE:** National Science Foundation, 1800 G Street, NW, Room 540, Washington, DC 20550.

**STATUS:** Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

**MATTERS TO BE CONSIDERED AUGUST 19:**

*Closed Session (8:30 a.m. to 9:00 a.m.)*

1. Minutes—June 1988 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs

*Open Session (9:00 a.m. to 12:00 noon)*

4. Grants, Contracts and Programs
5. Chairman's Report
6. Minutes—June 1988 Meeting
7. Director's Report
8. Fiscal Year 1990 NSF Budget
9. Presentation by Dr. Frederick P. Brooks, Jr.: "Grasping Reality Through Illusion—Interactive Graphics Serving Science"
10. NSB Discussion: "Positioning NSF for the 1990's"
11. Other Business

**Thomas Ubois,**
*Executive Officer.*

[FR Doc. 88-17855 Filed 8-3-88; 5:06 p.m.]
BILLING CODE 7555-01-M

# Corrections

Federal Register
Vol. 53, No. 152
Monday, August 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Population Base Used for Distribution of Preventative Health and Health Services Block Funds for Rape Prevention and Services

*Correction*

In notice document 88-16530 beginning on page 27766 in the issue of Friday, July 22, 1988, make the following corrections:

1. On page 27766, in the table, in the entry for "Alabama", under "Percent change", "-2.288" should read "-2.288"; in the entry for "Arizona", under "Funding 1988", "41,436" should read "41,348"; and in the entry for "Kentucky", under "Percent change", "5.237" should read "-5.237".

2. On page 27767, in the table, in the entry for "Oklahoma", under "Funding 1989", "46,432" should read "46,342"; and in the entry for "S. Caroline", under "Percent change", "2.23" should read "2.223".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-930-08-4220-11; WYW 0105362, WYW 042158, WYW 49110]

### Proposed Continuation of Forest Service Withdrawals; Wyoming

*Correction*

In notice document 88-16723 beginning on page 28070 in the issue of Tuesday, July 26, 1988, make the following corrections:

1. On page 28071, in the first column, in the land description under T. 57 N., R. 89 W., under Sec. 28, the second line should read "NW¼NW¼, S½NW¼, N½SE¼, N½".

2. On the same page, in the same column, in the land description under T. 51 N., R. 84 W., the first line should read "Sec. 12 NE¼, E½NW¼, and NE¼SE¼".

3. On the same page, in the same column, the fifth line from the bottom should read "entry under the mining laws, and from".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-943-08-4220-11; GP-88-115; OR-3530 (WASH), ORE-016840 (WASH)]

### Proposed Continuation of Withdrawals; Washington

*Correction*

In notice document 88-8120 appearing on page 12678 in the issue of April 14, 1988, make the following correction:

In the first column, the second line from the bottom should read "sec. 33; and T. 11 N., R. 45 E., W.M. sec.".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA 943-08-4220-10; CA 17849]

### Proposed Withdrawal and Opportunity for Public Meeting; California

*Correction*

In the issue of Monday, June 27, 1988, on page 24171 in the first and second columns and in the issue of Tuesday, July 19, 1988, in the third column, a correction to FR Doc. 88-11820 appeared incorrectly and should have appeared as follows:

In the second column, under T. 11 N., R. 2 W., in Sec. 10, the second line should read "S½S½SE¼".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 88-ACE-02]

### Designation of Transition Area-Fairmont, NE

*Correction*

In rule document 88-17206 beginning on page 28981 in the issue of Monday, August 1, 1988, make the following correction:

On page 28982, in the third column, the heading should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Parts 191 and 195

[Docket No. PS-66, Amdts. 191-6, 192-59, 193-5, 195-33]

### Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities

*Correction*

In rule document 88-14758 beginning on page 24942 in the issue of Friday, July 1, 1988, make the following corrections:

§ 191.25 [Corrected]

1. On page 24950, in the first column, in § 191.25(b)(8), the fourth line should read "and the planned follow-up or future".

§ 195.55 [Corrected]

2. On the same page, in the third column, in § 195.55(b)(2), in the fourth line, "filling" should read "filing".

§ 195.56 [Corrected]

3. On the same page, in the same column, in § 195.56, in the first line of the section heading, "Filling" should read "Filing".

BILLING CODE 1505-01-D

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[T.D. 8216]**

**Income Taxes; Definition of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986**

*Correction*

In rule document 88-16205 beginning on page 27469 in the issue of Thursday, July 21, 1988, make the following corrections:

1. On page 27490, in the second column, in the eighth line, "anti-base" should read "anti-abuse".

**§ 1.954-2T [Corrected]**

2. On page 27499, in the second column, in § 1.954-2T(a)(3)(ii), in *Example (2)*, in the fifth line, "paragraph (f)(e)(iii)" should read "paragraph (f)(3)(iii)".

BILLING CODE 1505-01-D

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[T.D. 8215]**

**Special Allocation Rules for Certain Asset Acquisitions**

*Correction*

In rule document 88-16095 beginning on page 27035 in the issue of Monday, July 18, 1988, make the following corrections:

1. On page 27036, in the second column, in the last paragraph, in the third line "or" should read "of".

2. On page 27038, in the fourth complete paragraph, in the seventh line, after "statements" insert "or supplemental asset acquisition statements".

**§ 1.1060-1T [Corrected]**

3. On page 27039, in the third column, in § 1.1060-1T(b)(3), in *Example (1)*, in the ninth line, "not" should read "no".

4. On page 27042, in the second column, in § 1.1060-1T(g), in *Example (3)* paragraph (v), in the first line "and like-kind" should read "are like-kind".

5. On page 27044, in the third column, in "Par. 6", in the second line, "§ 1.103(d)-1T" should read "§ 1.1031(d)-1T".

BILLING CODE 1505-01-D

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Part II

# Department of Justice

## Immigration and Naturalization Service

**8 CFR Parts 100, 103, 245a, 264, and 299**
**Adjustment of Status for Certain Aliens and Applicant Processing for the Legalization Program; Proposed Rules**

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number 1022R-88]

## Adjustment of Status for Certain Aliens

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of certain aliens who have been residing illegally in the United States since before January 1, 1982. This section directs the Attorney General to adjust the status of a temporary resident alien to that of an alien lawfully admitted for permanent residence if the alien meets certain requirements. This proposed rule addresses the adjustment of status of temporary resident aliens to that of aliens lawfully admitted for permanent residence.

**DATES:** Comments must be received on or before September 7, 1988.

**ADDRESSES:** Written comments should be mailed in triplicate to Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

**FOR FURTHER INFORMATION CONTACT:** Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

**SUPPLEMENTARY INFORMATION:** The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987, 53 FR 9274, March 21, 1988, 53 FR 9862, March 28, 1988, and at 53 FR 23382, June 22, 1988. This proposed rule outlines the procedures the Immigration and Naturalization Service will use to adjust the status of temporary resident aliens to permanent residence. For the convenience of the public, the Service is combining in this proposed rule the regulations at stated in the May 1, 1987 final rule, and as amended in the November 17, 1987 interim rule, and the June 22, 1988 final rule regulations with respect to the regulations at 245a.3.

At 53 FR 18096, May 20, 1988, the Service published in the **Federal Register** a notice making available to the public the preliminary working draft regulations. More than 170 copies of the preliminary working draft were forwarded to requesters. As a result, 135 individuals and interested organizations submitted written comments. The comments were reviewed and given serious consideration. The Service appreciates the time and effort put forth by all concerned parties.

Under the provisions of the Immigration Reform and Control Act of 1986 a temporary resident alien who has resided in the United States for a period of eighteen (18) months may make application for permanent resident status during the twelve month period beginning on the day after the temporary residence period has been completed. Since the beginning date of the application period falls on a weekend, the Service will, for the mutual convenience of all concerned, begin accepting applications on November 7, 1988, the first workday after November 6, 1988. The Service realizes that an application could be received at Regional Processing Facilities prior to November 7, 1988 or prior to the date an alien would be considered eligible to file an application. Therefore, as a convenience to the public, the Service intends to hold such applications up to 60 days prior to the alien's eligibility date. In these instances, the application will be considered as "filed" on the applicant's eligibility date.

The Service proposes to process applications for adjustment of status to permanent residence by temporary resident aliens by utilizing a processing method that features direct mail of applications to four Regional Processing Facilities located at Williston, Vermont (Eastern); Lincoln, Nebraska (Northern); Dallas, Texas (Southern); and Laguna Niguel, California (Western). After preliminary processing of applications at the Regional Processing Facilities, applicants will be interviewed at selected Service offices throughout the country.

Several commentors addressed the processing method outlined in the preliminary working draft and suggested that the Service should allow filing of applications at legalization and other field offices. The Service considered this as an option to direct mail of applications to the Regional Processing Facilities (RPF), but to do so would mean an increase in operational costs. In order to offset these costs, an increase in the application fees would be necessary. The Service does not wish to set an application fee above the absolute minimum needed to successfully fund the permanent resident phase of the program. In addition, the Service has enjoyed success in the direct mailing of applications to Regional Service Centers. Consequently, the Service proposes to utilize the processing method described in the previous paragraph. However, district offices may choose to permit drop-off services for persons who wish to present their applications in person. These applications will be forwarded to the RPF with fee, and will not be considered filed until received at the RPF. No interview will be conducted at the drop-off site.

The following summarizes the proposed processing method. The adjustment of status of temporary resident aliens to permanent residence is to consist of five major segments: Pre-submission of applications; Regional Processing Facility processing (pre-interview); INS field and legalization office processing; Regional Processing Facility processing (post-interview); and Immigration Card Facility (ICF) processing.

In the pre-submission of applications segment the Service will distribute information and forms for the adjustment to permanent resident phase of the legalization program. The Service will conduct a public information campaign and outreach activities. This is in addition to outreach and education efforts by various public and private organizations.

In the RPF processing (pre-interview) segment, all pre-interview processing tasks (e.g., data entry, fee receipting, etc.) will take place.

The applicants will be interviewed as well as processed for an Alien Registration Card (I-551) during the INS field and legalization office processing segment. The interview may also consist of an English language/U.S. history and government examination for those applicants who wish to demonstrate their abilities in this area.

In the RPF processing (post-interview) segment, appeal processing and other post-interview procedures will occur.

In the final segment, the ICF processing segment, Alien Registration Card (I-551) production will be completed and the card will be mailed to the address specified by the alien, which may be the address of his or her authorized representative.

### Summary of the Proposed Rule

Section 245a.1(h) is being amended to permit intending residents to fulfill employment duties abroad without having their absence from the United States affect their ability to meet

applicable residence requirements for adjustment from temporary resident to permanent resident status. A few commentors suggested expanding the definition. These comments were considered and the definition will be changed to allow the Service the flexibility to permit brief and casual absences from the United States that reflect an intention on the part of the alien to adjust to permanent residence. Section 245a.3(b)(2) will also be amended to reflect this change.

New § 245a.1(r) is being added to define the term in "good-standing" as used in referring to qualified designated entities (QDEs) under 8 CFR 245a.3(b)(5). Numerous comments were received concerning this definition. Several commentors suggested that the Service should extend the cooperative agreements with QDEs. The Immigration Reform and Control Act of 1986 (IRCA) in section 201 provides for filing of applications for temporary resident status with either the Attorney General or with a qualified designated entity. The statute does not provide for a like situation for the filing of applications for permanent residence. Consequently, the Service will neither extend nor expand QDE cooperative agreements. Other commentors suggested revisions to the definition. The Service considered these comments and will retain the definition appearing in the preliminary working draft, with one exception—that being the insertion of the phrase, "prior to January 30, 1989," pertaining to cooperative agreements which were not allowed to lapse by the Service.

New § 245a.1(s) is being added to define the term "satisfactorily pursuing" as used in section 245A(b)(1)(D)(i)(II) of the Act. Some commentors suggested that the definition set too high a level of course attendance. The length of the course was also cited as being too long. Other commentors suggested that the Congressional intent to require a serious effort to learn English and the history and government of the United States is not met because a sixty (60) hour course is insufficient. The Service believes the statute is clear in requiring a demonstration of basic citizenship skills. A course designed to achieve these skills should be of sufficient length to comply with Congressional intent yet not be overly burdensome on the applicant. Consequently, the Service is proposing a definition which incorporates a minimum attendance period of thirty (30) hours and a minimum course length of one hundred (100) hours. Many commentors suggested the Service recognize the good faith effort shown by many aliens who have already enrolled and completed courses in basic citizenship skills. The Service agrees and is proposing that individuals who enrolled in courses that meet the requirements set forth in the proposed definition on or after May 1, 1987, will be considered satisfactorily pursuing a course of study recognized by the Attorney General. Serious concern by commentors from the more populous areas of the country that applicants will be hard pressed to find sufficient course opportunities in the timeframe available has led the Service to consider alternative means of meeting the "satisfactorily pursuing" requirement. As a result, four (4) additional options are proposed for applicants in addition to the attending of courses as discussed above. By providing these options, sufficient opportunities will be available for applicants to meet the satisfactorily pursuing requirement. One commentor questioned how course providers could receive financial assistance. Financial assistance grants (SLIAG) are authorized by section 204 of the Immigration Reform and Control Act of 1986. Under the grant program, $1 billion less an amount termed the "federal offset", is appropriated each year for FY 1988 through FY 1991 to defray part of state and local costs associated with providing public assistance, public health assistance and educational services to aliens granted lawful resident status pursuant to sections 245A, 210, or 210A of the Immigration and Nationality Act (INA), as amended, by IRCA. The Secretary of Health and Human Services administers the SLIAG Program.

New § 245a.1(t) is being added to define the term "minimal understanding of ordinary English" as used in section 245A(b)(1)(D)(i) of the Act. The comments received were mostly favorable and supported the definition as written. The Service, therefore, will make no change in the proposed definition.

New § 245a.1(u) is being added to define the use of a curriculum in a course of study recognized by the Attorney General. One commentor suggested that the content of the Federal Citizenship texts should not be used exclusively in formulating the curriculum of a course of study. Another commentor favored the definition as written. The Service will change its proposed definition to provide for the Federal Citizenship Text serving as a basis for curriculum development and also provide for the use of texts with similar content. The definition is also changed to reflect the change made in § 245a.1(s) pertaining to the minimum length of a course.

Section 245a.3(a) is amended to provide for the acceptance of applications at Regional Processing Facilities. Commentors expressed their concern about determining the date temporary residence was granted. The date an alien was adjusted to temporary residence is addressed in § 245a.2(s) and is the date indicated on the fee receipt Form I–689.

Section 245a.3(b)(4)(i) is being amended to accurately reflect the wording found in the statute regarding the basic citizenship skills requirements.

Section 245a.3(b)(4)(ii) is being amended to include those individuals who are physically unable to comply with the requirements of 8 CFR 245a.3(b)(4)(i) and also to limit the applicability of the basic citizenship skills requirements to individuals who are 16 years or older and under the age of 65. The Service proposes as an exercise of discretion to waive on a blanket basis all applicants under the age of 16 and 65 years of age or older without formal application for waiver, as well as applicants who are physically unable to comply. These proposed changes resulted from a review of numerous comments and reconsideration by the Service of this section.

New § 245a.3(b)(4)(iii) is being added to address the examination for basic citizenship skills. Numerous comments were received concerning § 245a.3(b)(4)(iii). Commentors were concerned about the length of time between examinations in those instances where an individual did not first pass the examination for basic citizenship skills. One commentor recommended a time period of six (6) months be provided between examinations. Several commentors suggested the Service develop questions apart from those found in the Federal Textbooks on Citizenship to be used in the examination. One commentor suggested applicants should have unlimited examination opportunity. In consideration of all the comments received on this section, the Service will now propose to test an applicant's ability to read and write English by excerpts from the Federal Textbooks on Citizenship at the elementary literacy level. In addition, due consideration will be given to the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire basic citizenship skills and any other relevant factors. The Service will also provide for a six (6) month time period

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between examinations unless the applicant requests to be examined sooner. The Service recognizes that a flexible approach for examining basic citizenship skills is called for in order to continue to operate a generous and liberal legalization program as Congress intended.

New § 245a.3(b)(4)(iv) is being added to address the providing of a "Certificate of Satisfactory Pursuit" to satisfy the basic citizenship skills requirements. Several commentors asked whether the Certificate of Satisfactory Pursuit could be presented at the time of interview as opposed to at the time of filing an application. Other commentors suggested that it was not clear whether an applicant had to be enrolled in a recognized course of study at the time of application for permanent residency. The Service proposes that Certificates of Satisfactory Pursuit be presented either at the time of filing or at the time of interview. In addition, applicants need not be enrolled in a recognized course of study at the time of application of permanent residency. The term "certificate" has replaced "affidavit" in this section as the Service feels it has a clearer meaning.

New § 245a.3(b)(4)(v) is being added to set the time period after which the Service will accept enrollment in a recognized course of study and issuance of Certificates of Satisfactory Pursuit. That time period is subsequent to May 1, 1987. The Service has set this time period as May 1, 1987 as it is the date the implementing regulations were published in the **Federal Register**.

Section § 245a.3(b)(5) of this chapter is being amended to allow for the certification of educational programs by district directors locally as the need arises, as well as the certification of national programs by the Outreach Program of INS. It is also being amended to clarify the meaning of qualified designated entities as used in this section. Commentors suggested that district directors maintain and publicize lists of recognized courses and that sufficient courses be recognized by a district director to address the needs of the district. Some comments were received that suggested the Service set a maximum fee that course providers could charge. In response to these suggestions and for clarification purposes the Service is proposing two new sections. Section 245a.3(b)(6), explains the method whereby course providers who are already covered under § 245a.3(b)(5) will be identified by district directors. Section 245a.3(b)(7) explains the fee structure. The Service feels that the district director knows the needs of his or her district and therefore is the proper authority to ensure a sufficient number of course providers. Guidelines for approving additional recognized courses of study will be issued under separate cover. No maximum fee standard will be imposed; however, reasonable fees should be established. If a district director and/or the Director of the Outreach Program believes that a fee charged is excessive, this factor alone can justify either refusal to certify or de-certify a course provider.

New § 245a.3(b)(8) is being added to provide information on the Federal Textbooks on Citizenship. Seven commentors suggested that new materials be designed in lieu of the Federal Textbooks on Citizenship. As previously addressed the Service has proposed that the texts be used as a basis for course instruction and that other similar texts can be used. This section addresses the availability of the Federal Textbooks for interested parties.

New § 245a.3(b)(9) is being added to address the maintenance of student records by course providers.

New § 245a.3(b)(10) is being added to address the issuance of the Certificate of Satisfactory Pursuit (I–699).

New § 245a.3(b)(11) is being added to provide for the "designated official" who will have the authority to sign Certificates of Satisfactory Pursuit.

New § 245a.3(b)(12) is being added to provide for the on-site monitoring of courses of study recognized by the Attorney General. Many comments were received suggesting limiting the scope of INS on-site monitoring or delegating the monitoring in whole or in part to other agencies or organizations such as the States (Department of Education). The monitoring of course providers is necessary both to ensure that the providers are conducting adequate courses and to ensure that the alien public's needs are adequately served. The Service wishes to work in concert with the various state and local agencies to ensure course instruction is proper and meets the intent of the legislation that applicants achieve a basic understanding of citizenship skills. The Service does not intend to closely monitor established bona-fide educational providers but instead will direct most efforts toward providers who are entering into course instruction for the first time.

New § 245a.3(b)(13) is being added to implement certain standards for qualifications of teachers providing instruction in courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter. Implementation of a set of standards is necessary because such courses vary from providers who have had extensive experience in educational services for limited English speakers to new programs with untested skills. Three commentors supported the section as written and agreed with the flexibility relating to the selection of teachers.

Section 245a.3(d)(1) is amended to provide for the filing of an application for change of status to that of a permanent resident alien by direct mailing the application to the Regional Processing Facility. Several commentors expressed concern over mailing applications to the Regional Processing Facility. This issue was addressed previously in this proposed rule concerning the processing method. The Service feels direct mail is a less costly way to operate the permanent resident application phase of the Legalization Program and in many instances, will be more convenient to the alien public in the applications can be submitted without taking time off work, etc. The Service realizes however, that local district practices (e.g., drop boxes) may be already in operation for direct mail to Regional Service Centers, or may be added at legalization offices as a convenience to the public. If drop-box service is made available by the district director, the alien public may certainly avail itself of this alternate way to submit applications.

Section 245a.3(d)(2) is amended to provide for the Regional Processing Facility directors' use of discretion to temporarily retain documents for forensic examination. Several commentors suggested the Service not require the submission of original documents through the mail. The Service agrees and will change the section to reflect that documentation can be provided by supplying copies certified true and correct by the alien's representative pursuant to § 204.2(j) (1) or (2). The Service reserves the right, however, to request original documentation as necessary. Original documentation can either be requested by the director, Regional Processing Facility, or the district director.

New § 245a.3(d)(4) is being added to provide for the submission of medical examination results of Form I–693 only for those applicants who applied for temporary residence and submitted an I–693 which did not reflect that a serologic test was performed to determine the presence or absence of antibody against HIV, the etiologic agent of acquired immuno-deficiency syndrome (AIDS). As of December 1, 1987, the Immigration and Naturalization

Service required serologic testing for HIV infection as part of the medical examination process for aliens applying for lawful resident status under the provisions of IRCA. Several commentors suggested the Service be more specific in the regulations that a complete medical examination is not required of applicants. The Service is changing this section accordingly.

New § 245a.3(d)(5) is being added to provide for the extension of the validity of the temporary resident card (I–688) during the pendency of an application for permanent residence made under this chapter. One commentor agreed with the section as written. Extending the I–688 of an applicant as necessary is an on-going Service procedure and this section restates existing Service policy.

New § 245a.3(d)(6) is being added to provide for the denial of an application for permanent residence for lack of prosecution. Several commentors suggested that this section be changed in various ways to provide for a second opportunity for an applicant to respond before the denial of the application. Upon consideration the Service concurs and will change this section to provide for a second notice and additional time period of sixty (60) days.

Section 245a.3(e) is amended to provide for interviews taking place at other than Service Legalization Offices. Several commentors suggested that confidentiality of the applicant's information would be threatened if interviews are conducted at other than Service offices. The confidentiality of the information supplied by the applicant for the permanent residence phase will be ensured by retention of the application at the Regional Processing Facility in most cases. Adjudication usually will consist of limited computer terminal data review and update by field personnel. A new § 245a.3(n) is being added to this proposed rule to further address confidentiality. Two commentors suggested that interviews be mandatorily waived for individuals under 14. The Service feels that as the need arises individuals may have to be interviewed concerning various aspects of the case. Consequently, the Service does not agree that a blanket waiver of the interview requirement is warranted.

Section 245a.3(g)(4) is being amended to clarify that it is not necessary to file a formal waiver application in order to apply the special rule for determination of public charge.

Section 245a.3(i) is amended to provide for the retention by a temporary resident alien of the temporary resident card (I–688) in the case of an adverse decision. One commentor agreed with the section as written. Other commentors suggested clarification be provided with respect to retention of the temporary resident card (I–688) where an adverse decision is rendered on an application. The Service feels that an adverse decision is not final until the appeal period has tolled. Consequently, this section will be changed to provide for retention of a temporary resident card until such time as the appeal time has tolled or until the expiration date of the card, whichever is later. In addition, one commentor suggested that the Service provide that applicants who have been denied be allowed to submit another application as long as the applicant submits the application within the one-year application period. The Service agrees and is changing this section accordingly.

Section 245a.3(j) is amended to provide for the submission of a brief to support an appeal after the thirty (30) day period allowing for receipt of an appeal has passed. This section is also amended to provide for review of the Record of Processing (ROP) after an appeal has been properly filed. Several commentors suggested longer periods be allowed for submission of appeals. The Service believes the time periods provided are sufficient for a party to submit an appeal and any supporting briefs. Consequently, the Service will not change the appeal periods. The Service will add, for clarification purposes, language to the section concerning the date from which the thirty (30) calendar days begins to toll for the submission of a brief to the Regional Processing Facility.

Section 245a.3(l) is amended to provide for certification to the Administrative Appeals Unit of decisions on appealed cases subsequently remanded back to either the Regional Processing Facility director or the district director. This section is also amended to provide for certification by district directors. Comments were generally in support of the section as written.

Section 245a.3(m) is amended to reflect the fact that the adjustment date shall be the date of approval of the application for permanent residence. The date of adjustment is being changed to be consistent with other Service adjustment actions.

New § 245a.3(n) is being added to address confidentiality during the permanent residence phase of the Legalization Program. Several commentors expressed their concern about confidentiality. The Service desires to reinforce the confidentiality provisions of IRCA and therefore is adding this new section.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information Collection Requirements contained in this regulation have been submitted to the Office of Management and Budget for clearance under the provisions of the Paperwork Reduction Act.

**List of Subjects in 8 CFR Part 245a**

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows.

1. The authority citation for Part 245a is revised to read as follows:

**Authority:** Pub. L. 99–603, 100 Stat. 3359, 8 U.S.C. 1101 note and Pub. L. 100–204, 101 Stat. 1331.

2. The heading for Part 245a is revised to read as follows:

**PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100–204, SECTION 902**

3. In § 245a.1, paragraph (h) is revised and paragraphs (r), (s), (t), and (u) are added to read as follows:

**§ 245a.1 Definitions.**

* * * * *

(h) The term "brief and casual" as used in section 245A(b)(3)(A) of the Act, means temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must comply with § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

* * * * *

(r) A qualified designated entity in good-standing with the Service means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not

allowed to lapse by the Service prior to January 30, 1989, (the expiration date of the INS cooperative agreement for all designated entities).

(s) Satisfactorily pursuing as used in section 245A(b)(1)(D)(i)(II) of the Act means:

(1) An applicant for permanent resident status has attended a recognized program for at least 30 hours of a minimum 100-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); or

(2) An applicant presents a high school diploma or general equivalency diploma (GED) from a school in the United States; or

(3) An applicant has attended for a period of one year, a state recognized, accredited learning institution and that institution certifies such attendance; or

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively if necessary) by the district director or the Director of the Outreach Program; or

(5) An applicant passes a proficiency test for legalization, such test being given by qualified administrators (e.g., State Departments of Education), indicating that the applicant has reached a specific level of knowledge equivalent to a 30-hour enrollment in a designated course as outlined in paragraph (1) of this definition, and submits a "statement of intent" that further education in any necessary area will be pursued.

(t) Minimal understanding of ordinary English as used in section 245A(b)(1)(D)(i) of the Act means an applicant can satisfy basic survival needs and routine social demands. The person can handle jobs that involve following simple oral and very basic written communication.

(u) Curriculum shall mean a defined outline for an instructional program. Minimally, it prescribes WHAT is to be taught. It can also include suggestions for HOW, WHEN, and WITH WHAT MATERIALS. The curriculum must:

(1) Include the content of the Federal Citizenship Text series as the basis for curriculum development (other texts with similar content may also be used);

(2) Be designed to provide at least 100 hours of instruction per class level;

(3) Be relevant and educationally appropriate for the program focus and the intended audience; and

(4) Be available for examination and review by INS as requested.

4. Section 245a.3 is revised to read as follows:

**§ 245a.3 Application for adjustment from temporary to permanent resident status.**

(a) *Application period for permanent residence.* An alien who has resided in the United States for a period of eighteen (18) months after the granting of temporary resident status may make application for permanent resident status during the twelve-month period beginning on the day after the requisite eighteen months' temporary residence has been completed. The date of adjustment to lawful temporary residence status is the date indicated on the fee receipt, Form I-689. Applications for lawful permanent residence under section 245A(b)(1) of the Act will be accepted when received at the Regional Processing Facilities beginning on November 7, 1988. Applications received at the Regional Processing Facilities prior to the beginning of an alien's twelve-month application period will be held by the Service and processed but will not be considered filed until the beginning of the alien's twelve-month application period.

(b) *Eligibility.* Any alien physically present in the United States who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been revoked or terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status;

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purposes of this part if, at the time of applying for adjustment from temporary to permanent resident status, no single absence from the United States has exceeded thirty (30) days, or the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and applying for permanent resident status unless the alien can establish that due to emergent reasons, the return to the United States could not be accomplished with the time period(s) allowed; A single absence from the United States of more than 30 days, or aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (f) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)(A) Can demonstrate that he or she either meets the requirements of section 312 of the Immigration and Nationality Act, as amended, (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

(B) Is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4) of this section must be met by each applicant who is 16 years or older, except that these requirements are waived at the discretion of the Attorney General, for those individuals under the age of 16 and those 65 years of age or older. These requirements may also be waived for those who are physically unable to comply.

(iii)(A) Literacy and basic citizenship skills requirements for applicants who demonstrate that they meet the requirements of paragraph (b)(4)(i)(A) of this section: The ability of an applicant to speak and understand English shall be determined from answers to questions normally asked in the course of the interview and processing for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary literacy level. The test of a petitioner's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject

matter covered in the revised (1987) Federal Textbooks on Citizenship and to the review questions provided at the end of each chapter. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowledge and understanding.

(B) An applicant who fails to pass the English literacy or educational tests at the time of the interview, or other designated period of testing, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests or submit an "Affidavit of Satisfactory Pursuit" of a course of study recognized by the Attorney General before the application for permanent residence is denied.

(iv) An applicant who plans to satisfy the English language and basic citizenship skills requirements of IRCA by satisfactorily pursuing a course of study recognized by the Attorney General must submit a "Certificate of Satisfactory Pursuit" issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(s) of this chapter. Such applicant shall not then be required to demonstrate that he meets the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided he is otherwise eligible. A "Certificate of Satisfactory Pursuit" may be submitted either at the time of filing Form I–698, subsequent to the time of application and prior to the interview, or at the time of the interview. An applicant need not, necessarily, be enrolled in a recognized course of study, at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a "Certificate of Satisfactory Pursuit" must occur subsequent to May 1, 1987.

(5) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if:

(i) It is sponsored or conducted by an established public or private institution of learning recognized as such by a qualified state certifying agency, or by an institution of learning approved to issue Forms I–20 in accordance with § 214.3 of this chapter, or by a qualified designated entity within the meaning of section 245A(c)(2) of the Act, in good-standing with the Service, or is certified by the district director in whose jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally, and

(ii) The course materials for such instruction include textbooks published under the authority of section 346 of the Act.

(6) *Notice of Participation.* All courses of study recognized under § 245a.3(b)(5) which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation to the district director in whose jurisdiction the program is conducted or to the Director of the Outreach Program for national programs. The Notice of Participation shall be in the form of a letter typed on the letterhead of the course provider (if available) and contain the following information:

(i) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(ii) The complete names of persons at sites in charge of conducting English and U.S. history and government courses of study.

(iii) A statement that the course of study will issue "Certificates of Satisfactory Pursuit" to temporary resident enrollees according to INS regulations.

(iv) A list of designated officials of the recognized course of study authorized to sign "Certificates of Satisfactory Pursuit", and samples of their original signatures.

(v) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will be in accordance with the reasonable standard set by the district director or the Director of the Outreach Program.

The Notice of Participation shall be submitted to the district director within thirty (30) days after publication of this Final Rule in the **Federal Register**. Acceptance of "Certificates of Satisfactory Pursuit" may be delayed if the course provider fails to submit the Notice of Participation within the requisite timeframe. Each district director shall compile and maintain lists of recognized courses within his or her district.

(7) *Fee Structure.* No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in § 245a.3(b) (10) and/or (12) of this section.

(8) Citizenship textbooks, for the use of applicants for lawful permanent residence under section 245A of the Act receiving instruction in or under the supervision of a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5) of this chapter in preparation for permanent residence, shall be prepared and distributed by the Service, pursuant to § 332b.3 of this chapter, to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are also available at certain public institutions.

(9) *Maintenance of Student Records.* Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student the following information and documents:

(i) Name.

(ii) A–number (90 million series).

(iii) Date of enrollment.

(iv) Date of termination.

(v) Attendance records.

(vi) Assessment records.

(vii) Photocopy of signed "Certificate of Satisfactory Pursuit" issued to the student.

(10) *Issuance of Certificate of Satisfactory Pursuit (I–699).* (i) Each recognized course of study shall prepare a standardized certificate that is signed by the designated official. The "Certificate of Satisfactory Pursuit" shall be issued to an applicant who has attended a recognized course of study for at least 30 hours of a minimum 100-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English and U.S. history and government course prescribed. Such standards shall conform with the provisions of § 245a.1(s) of this chapter.

(ii) The district director shall reject a "Certificate of Satisfactory Pursuit" if it is determined that the certificate is fraudulent or was fraudulently issued.

(iii) The district director shall reject a "Certificate of Satisfactory Pursuit" if it is determined that the course provider is not complying with INS regulations. In the case of non-compliance, the district director will advise the course provider in writing of the specific deficiencies and give the provider thirty (30) days within which to correct such deficiencies.

(iv) District directors will accept "Certificates of Satisfactory Pursuit" from course providers once it is determined that the deficiencies have been satisfactorily corrected.

(v) Course providers which engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs and the INS will not accept "Certificates of Satisfactory Pursuit" from these providers.

(11) *Designated official.* (i) The designated official is the authorized person from each recognized course of study whose signature appears on all "Certificates of Satisfactory Pursuit" issued by that course;

(ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students.

(iii)(A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must designate a "designated official". Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time;

(B) Each designated official shall have read and otherwise be familiar with the "Requirements and Guidelines for Courses of Study Recognized by the Attorney General". The signature of a designated official shall affirm the official's compliance with INS regulations;

(C) The name, title, and sample signature of each designated official shall be attached to and submitted with each "Certificate of Satisfactory Pursuit".

(12) *Monitoring by INS.* (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5).

(B) Verify the existence of curriculum as defined in § 245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that "Certificates of Satisfactory Pursuit" are being issued in accordance with § 245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with § 245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in accordance with § 245a.3(b)(7).

(ii) If there is reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provider is not performing according to the standards established in either § 245a.3(b) (10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified.

(13)(i) Courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where availability of qualified staff is limited or non-existent, or where budget constraints restrict options, teacher selections should include as many of the following qualities as possible:

(A) Specific training in Teaching English to Speakers of Other Languages (TESOL);

(B) Experience as a classroom teacher with adults;

(C) Cultural sensitivity and openness;

(D) Familiarity with competency-based education;

(E) Knowledge of curriculum and materials adaptation;

(F) Knowledge of a second language; and

(G) Flexibility.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors.

(2) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group or political opinion.

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act during the one year period which began with the nineteenth month that begins after the date the alien was granted such temporary status.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(d) *Filing the application.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I–698. The application will be mailed to the designated Regional Processing Facility having jurisdiction over the applicant's residence. Form I–698 must be accompanied by the documents specified in the instructions.

(2) The submission of original documents is not required at the time of filing Form I–698. Copies certified as true and correct by a qualified designated entity in good-standing or by an alien's representative in the format prescribed § 204.2(j) (1) or (2) of this chapter may be submitted with Form I–698. Original documents must be presented when, and if, requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application (I–698) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(4) Applicants who filed for temporary resident status prior to December 1, 1987, are required to submit the results of a serologic test for the HIV virus on Form I–693, "Medical Examination of Aliens Seeking Adjustment of Status, (Pub. L. 99–603)", completed by a designated civil surgeon. Such applicant is not required to have a complete medical examination.

(5) If necessary, the validity of an alien's temporary resident card (I–688) will be extended in increments of six (6) months until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application deficient in any way shall be returned to the applicant with request for correction, additional

information, and/or documentation. If response to this request is not received within 60 days, a second and final request for correction, additional information, and/or documentation shall be made. If the second request is not complied with within 60 days, the application will be denied for lack of prosecution.

(e) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I–551. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the first scheduled interview may, for good cause, be afforded a second interview opportunity.

(f) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful permanent resident status under section 245A(b) of the Act.

(g) *Applicability of exclusion grounds*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (g)(4) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under section 245A(b)(1) of the Act. In the event that the alien becomes excludable under any provision of section 212(a) of the Act subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under Title XVI of the Social Security Act or section 212 of Pub. L. 93–66 for the month in which such alien is granted lawful temporary residence status under subsection (a);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), (29) (subversive);

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself and his or her family even though his or her income may be below the poverty level is not excludable under paragraph (g)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

(h) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exceed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(i) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. A party affected under this part by an adverse decision is entitled to file an appeal on Form I–694. An alien whose application is denied will not be required to surrender his or her temporary resident card (I–688) until such time as the appeal period has tolled, or until expiration date of the I–688, whichever date is later. If the applicant believes that the grounds for denial have been overcome, he or she may submit another application with fee provided that the application is submitted within his or her one-year application period.

(j) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in § 103.1(f)(2) of this chapter). Any appeal with the required fee shall be filed with the Regional Processing Facility within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility.

For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Administrative Appeals Unit (AAU). If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed.

(k) *Motions.* The Regional Processing Facility director may sua sponte reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(l) *Certifications.* The Regional Processing Facility director or district director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remained to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(m) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of approval.

(n) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof".

(2) No information furnished pursuant to an application for legalization under this section shall be used for any purpose except:

(i) To make a determination on the application; or,

(ii) For the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (n)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowlingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information obtained in granted I–698 applications and contained in the applicant's file is subject to subsequent review in reference to future benefits applied for (including petitions for naturalization and permanent resident status for relatives).

**Attachment**

Although not a part of the CFR, the following Immigration and Naturalization Service forms were developed as a result of the Immigration Reform and Control Act of 1986. The reproductions are not official forms and should not be copied or used in any way and are being included for informational purposes only.

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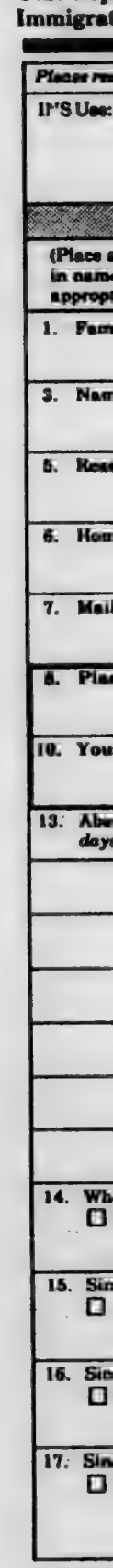
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Form I-4

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OMB No. 1115-0000

**U.S. Department of Justice**
**Immigration and Naturalization Service**

**Application to Adjust Status from Temporary to Permanent Resident**
**(Under Section 245 A of Public Law 99-603)**

| | |
|---|---|
| *Please read instructions: fee will not be refunded.* | Fee Stamp |
| INS Use: Bar Code<br>**Address Label** | |
| (Place adhesive address label here from booklet or fill in name and address, and A 90 million file number in appropriate blocks.) | Applicant's File No.<br>A - 9 _ _ _ _ _ _ _ _ _ |

1. Family Name *(Last Name in CAPITAL Letters) (See instructions)* *(First Name)* *(Middle Name)*

2. Sex ☐ Male ☐ Female

3. Name as it appears on Temporary Resident Card *(I-688)* if different from above.

4. Phone No.'s *(Include Area Codes)*
Home:
Work:

5. Reason for difference in name *(See instructions)*

6. Home Address *(No. and Street)* *(Apt. No.)* *(City)* *(State)* *(Zip Code)*

7. Mailing Address *(if different)* *(Apt. No.)* *(City)* *(State)* *(Zip Code)*

8. Place of Birth *(City or Town)* *(County, Province or State)* *(Country)*

9. Date of Birth *(Month/Day/Year)*

10. Your Mother's First Name

11. Your Father's First Name

12. Enter your Social Security Number
_ _ _ - _ _ - _ _ _ _

13. Absences from the United States since becoming a Temporary Resident Alien. *(List most recent first.)* *(If you have a single absence in excess of 30 days or the total of all your absences exceeds 90 days, explain and attach any relevant information).*

| Country | Purpose of Trip | From *(Month/Day/Year)* | To *(Month/Day/Year)* | Total Days Absent |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

14. When applying for temporary resident alien status, I
☐ did ☐ did not submit a medical examination form (I-693) with my application that included a serologic (blood) test for human immunodeficiency virus (HIV) infection. *(If you did not, submit a medical examination form (I-693) with this application that includes a serologic test for HIV.)*

15. Since becoming a temporary resident alien, I
☐ have ☐ have not been arrested, convicted or confined in a prison. *(If you have, provide the date(s), place(s), specific charge(s) and attach any relevant information.)*

16. Since becoming a temporary resident alien, I
☐ have ☐ have not been the beneficiary of a pardon, amnesty (other than legalization), rehabilitation decree, other act of clemency or similar action. *(If you have, explain and attach any relevant documentation.)*

17. Since becoming a temporary resident alien, I
☐ have ☐ have not received public assistance from any source, including but not limited to, the United States Government, any state, county, city or municipality. *(If you have, explain, including the name(s) and Social Security Number(s) used and attach any relevant information.)*

18. Concerning the requirement of minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States: *(Check appropriate block under Section A or B.)*

A. I will satisfy these requirements by;
- ☐ Examination at the time of interview for permanent residence.
- ☐ Satisfactorily pursuing a course of study recognized by the Attorney General.

B. I have satisfied these requirements by;
- ☐ Having satisfactorily pursued a course of study recognized by the Attorney General *(please attach appropriate documentation)*.
- ☐ Exemption, in that I am 65 years of age or older, under the age of 16, or I am physically unable to comply. *(If physically unable to comply, explain and attach relevant documentation.)*

19. Applicants for status as Permanent Residents must establis' that they are not excludable from the United States under the following provisions of section 212 of the INA. An applicant who is excludable under a provision of section 212 (a) which may not be waived is ineligible for permanent resident status. An applicant who is excludable under a provision of section 212 (a) which may be waived may, if otherwise eligible, be granted permanent resident status, if an application for waiver on form I-690 is filed and approved.

A. Grounds for exclusion which *may not be waived:*
- Listed by paragraph number of section 212(a);

____ (9) Aliens who have committed or who have been convicted of a crime involving moral turpitude (does not include minor traffic violations).
____ (10) Aliens who have been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more.
____ (15) Aliens likely to become a public charge.
____ (23) Aliens who have been convicted of a violation of any law or regulation relating to narcotic drugs or marihuana, or who have been illicit traffickers in narcotic drugs or marihuana.
____ (27) Aliens who intend to engage in activities prejudicial to the national interests or unlawful activities of a subversive nature.
____ (28) Aliens who are or at any time have been anarchists, or members of or affiliated with any Communist or other totalitarian party, including any subdivision or affiliate thereof.
____ (29) Aliens who have advocated or taught, either by personal utterance, or by means of any written matter, or through affiliation with an organization:
1) Opposition to organized government;
2) The overthrow of government by force or violence;
3) The assaulting or killing of government officials because of their official character;
4) The unlawful destruction of property;
5) Sabotage, or;
6) The doctrines of world communism, or the establishment of a totalitarian dictatorship in the United States.
____ (33) Aliens who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, and in association with:
1) The Nazi government in Germany;
2) Any government in any area occupied by the military forces of the Nazi government in Germany;
3) Any government established with the assistance or cooperation of the Nazi government of Germany;
4) Any government which was an ally of the Nazi government of Germany;
ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.
- Provisions of 212 (e):
Aliens who at any time were exchange visitors subject to the two-year foreign residence requirement unless the requirement has been satisfied or waived pursuant to the provisions of section 212 (e) of the Act. (Does not apply to the Extended Voluntary Departure (EVD) class of temporary resident aliens).

Do any of the above classes apply to you?
☐ No ☐ Yes *(If "Yes", attach an explanation, and any relevant documentation. Place mark (X) on line before ground(s) of exclusion.)*

B. Grounds for exclusion which *may be waived:*
- Listed by paragraph number of section 212(a);

____ (1) Aliens who are mentally retarded.
____ (2) Aliens who are insane.
____ (3) Aliens who have suffered one or more attacks of insanity.
____ (4) Aliens afflicted with psychopathic personality, sexual deviation, or a mental defect.
____ (5) Aliens who are narcotic drug addicts or chronic alcoholics.
____ (6) Aliens who are afflicted with any dangerous contagious disease.
____ (7) Aliens who have a physical defect, disease or disability affecting their ability to earn a living.
____ (8) Aliens who are paupers, professional beggars or vagrants.
____ (11) Aliens who are polygamists or advocate polgamy.
____ (12) Aliens who are prostitutes or former prostitutes, or who have procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution or for any other immoral purpose, or aliens coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution.
____ (13) Aliens coming to the United States to engage in any immoral sexual act.
____ (16) Aliens who have been excluded from admission and deported and who again seek admission within one year from the date of such deportation.
____ (17) Aliens who have been arrested and deported and who reentered the United States within five years from the date of deportation.
____ (19) Aliens who have procured or have attempted to procure a visa or other documentation by fraud, or by willfully misrepresenting a material fact.
____ (22) Aliens who have applied for exemption or discharge from training or service in the Armed Forces of the United States on the ground of alienage and who have been relieved or discharged from such training or service.
____ (31) Aliens who at any time shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

Do any of the above classes apply to you?
☐ No ☐ Yes *(If "Yes", attach an explanation, and any relevant documentation and submit Form I-690. Place mark (X) on line before ground(s) of exclusion.)*

| | |
|---|---|
| 20. If your native alphabet is other than Roman letters, write your name in your native alphabet. | 21. Language of native alphabet |
| 22. Signature of Applicant - *I CERTIFY*, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I hereby consent and authorize the Service to verify the information provided, and to conduct record checks pertinent to this application. | 23. Date *(Month/Day/Year)* |
| 24. Signature of person preparing form, if other than applicant. I DECLARE that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge. | 25. Date *(Month/Day/Year)* |
| 26. Name and Address of person preparing form, if other than applicant *(type or print)*. | 27. Occupation |



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OMB No. 1115-0000

**U.S. Department of Justice**
**Immigration and Naturalization Service**

**Application to Adjust Status from Temporary to Permanent Resident**
**(Under Section 245 A of Public Law 99-603)**

**Instructions - Form I-698**

**1. Filing the Application**

A separate application must be filed by each applicant. Applications must be typewritten or printed legibly in ink and completed in full. If extra space is needed to answer any item, attach a continuation sheet and indicate the item number. Applications must be mailed to one of the four Regional Processing Facilities depending on where an applicant resides. *(See below.)*

*If applicant resides in:*
Connecticut; Delaware; District of Columbia; Maine; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Puerto Rico; Rhode Island; Vermont; Virgin Islands; Virginia; or West Virginia;

*Mail application to :*
Regional Processing Facility
U.S. Immigration and Naturalization Service
P.O. Box 590
Williston, Vt 05495

*If applicant resides in:*
Alaska; Colorado; Idaho; Illinois; Indiana; Iowa; Kansas; Michigan; Minnesota; Missouri; Montana; Nebraska; North Dakota; Ohio; Oregon; South Dakota; Utah; Washington; Wisconsin; or Wyoming;

*Mail application to:*
Regional Processing Facility
U.S. Immigration and Naturalization Service
Federal Building and U.S. Courthouse
100 Centennial Mall, Room B-25
Lincoln, Ne 68508

*If applicant resides in:*
Alabama; Arkansas; Florida; Georgia; Kentucky; Louisiana; Mississippi; New Mexico; North Carolina; Oklahoma; South Carolina; Tennesee; or Texas;

*Mail application to:*
Regional Processing Facility
U.S. Immigration and Naturalization Service
P.O. Box 569710
Dallas, Tx 75356-9710

*If applicant resides in:*
Arizona; California; Guam; Hawaii; or Nevada;

*Mail application to:*
Regional Processing Facility
U.S. Immigration and Naturalization Service
P.O. Box 30030
Laguna Niguel, Ca 92677-0030

**Note:** It is recommended that applicants retain a complete copy of their application for their records.

**2. Fee**

A fee of seventy-five dollars ($75.00) is required at the time of filing this application. The fee is not refundable regardless of the action taken on the application. All fees must be submitted in the exact amount. The fee must be in the form of a U.S. Postal Money Order, Money Order, or Bank Check. Cash or personal checks of any type will not be accepted. All money orders and bank checks must be made payable to "Immigration and Naturalization Service". Any stop payment action taken by an applicant or applicant's representative will cause the Service to terminate action on the application. Applicants will receive a notice of fee receipt after applications are received and processed at a Regional Processing Facility.

**3. Photographs**

With the application submit one color photograph of yourself taken within thirty (30) days of the date of this application. Two additional color photographs will be required at the time of the interview. Do not send these two additional photographs with this application. The photos must have a white background, be glossy, unretouched, and not mounted; dimension of facial image should be about one inch from chin to top of hair. Applicant must be shown in photos in a three-fourths profile view showing right side of face with right ear and both eyes visible. Applicant's name and A 90 million file number should be placed lighlty in pencil on the back of the photographs.

**4. Medical Examination**

A medical examination form (I-693) is required only for those applicants who were not given a serologic test for human immunodeficiency virus (HIV) infection as part of their medical examination when applying for temporary residence. If the applicant is 15 years of age or older and the applicant's medical examination for temporary residence did not include a serologic test for HIV, the applicant should choose a doctor from a list of doctors or clinics in the applicant's area that have been approved by the Immigration and Naturalization Service to perform medical examinations and make arrangements with the doctor or clinic to have a serologic test for HIV.

**Note:** Applicants who must comply with this requirement do not have to undergo another complete medical examination. The medical examination form need only reflect the results of the serologic test.

*(Please see additional instructions on the reverse side of this page.)*

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Instructions - Form I-698 *(Continued)*

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5. **Documents - General**
The submission of original documents is not required at the time of filing Form I-698. Copies certified as true and correct by a qualified designated entity in good-standing or by an alien's attorney or accredited representative in the format prescribed section 204.2 (j) (1) or (2) of this chapter may be submitted with Form I-698. Original documents must be presented when, and if, requested by the Service. If any original document is submitted without a certified copy it becomes the property of the Attorney General and will be retained by the Service. Any document in a foreign language must be accompanied by a summary translation into English. A summary translation is a condensation or abstract of the document's text but includes all pertinent facts. The translator must certify that he/she is competent to translate into English and that the translation is accurate.

6. **I-772 - Declaration of Intending Citizen**
Section 274B of the Immigration and Nationality Act prohibits discrimination in employment hiring and firing based on an individual's national origin or citizenship status. To be afforded the protection of this section a temporary resident alien must file a notice of intent to become a U.S. citizen (I-772). For additional information concerning immigration related unfair employment practices contact the Office of Special Counsel for Immigration Related Unfair Employment Practices by mail at P.O. Box 65490, Washington, D. C. 20035-7688 or by telephone at 1-800-255-7688 or 202-653-5710 (for hearing impaired).

7. **Name Changes**
Applicants having experienced a name change must submit the certified copy of the decree of the court or marriage certificate as appropriate. A marrried woman may use either her maiden or present married name.

8. **Eligibility**
An application may be filed by any alien who was lawfully admitted for Temporary Resident status under Section 245A of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 and section 902 of the Department of State Authorization Bill of 1987. In order to be found eligible for Permanent Residence under Section 245A the alien must:

a) Apply for such adjustment during the one year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status;

b) Reside continuously in the United States, that is since becoming a temporary resident alien no single absence from the United States exceeded thirty (30) days or the total of all absences exceeded ninety (90) days;

c) Be found admissible to the United States as an immigrant, except as otherwise provided in the provisions of paragraph (14), (20), (21), (25), and (32) of Section 212 (a) of the Immigration and Nationality Act;

d) Have not been convicted of any felony or three or more misdemeanors committed in the United States;

e) Be able to demonstrate that he/she either;

1) Meets the requirements of Section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

2) Is satisfactorily pursuing a course of study recognized by the Attorney General, to achieve such understanding of English and such knowledge and understanding of the history and government of the United States.

9. **Penalties for False Statements in Applications**
Whoever files an application for adjustment of status under Section 245A of the Act and who knowingly and willfully falsifies, misrepresents, conceals or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry will be subject to criminal prosecution.

**Authority for Collecting this Information**
The authority to prescribe this form is contained in the "Immigration Reform and Control Act of 1986". The information is necessary to determine whether a person is eligible for the immigration benefit sought and for processing permanent resident documentation (I-551). All questions must be answered. Failure to do so may result in the denial of the application.

**Confidentiality**
The information provided in this application is confidential and may only be used to make a determination on the application or for the enforcement of penalties for false statements referred to in instruction #9. The information provided is subject to verification by the Immigration and Naturalization Service.

**Reporting Burden**
Public reporting burden for this collection of information is estimated to average sixty (60) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D. C. 20503.

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U.S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0000
Certificate of Satisfactory Pursuit

**Instructions**

This form is to be completed by the designated official of a course of study recognized by the Attorney General under 8 CFR 245a.3 (b) (5) to provide instruction to temporary resident aliens. The Certificate of Satisfactory Pursuit, along with the appropriate attachments will be submitted by the applicant in support of his or her application for adjustment from temporary to permanent resident status under section 245A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act, Public Law 99-603. A copy of the completed certificate must be retained on file by the recognized course of study.

This is to certify that *(Applicant Name)*: _____

A Number: _____

is enrolled in a course of study recognized by the Attorney General to prepare the individual, whose name and A-90 number appears above, for permanent resident status in the United States.

This applicant has attended this recognized program for at least thirty (30) hours of a minimum one hundred (100) hour course as appropriate for their ability level, and has demonstrated progress according to the performance standards of this English language/Citizenship course. The applicant has attained functional skills related to communicative ability, subject matter knowledge, and English language competency. Attainment of these skills was measured by the successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. I executed this form, after review and evaluation by me or other officials of this institution, of the student's transcripts or other record of courses taken and skills attained. I am a designated official of the institution named below and am authorized to issue this form.

Designated Official *(Signature)*: _____

Date of Issuance: _____

Institution/Entity: _____

Address *(Street Number and Name)*: _____

*(City, State and Zip Code)*: _____

Telephone Number *(Area Code)*: ( ) _____

Attachments:

1. Evidence of certification as a recognized course of study:
   - ☐ Certification from qualified state certifying agency.
   - ☐ INS school approval for attendance by nonimmigrant students.
   - ☐ INS identification number of QDE Cooperative Agreement.
   - ☐ INS approval under 8 CFR 245 a.3 (b) (5) (i).
2. Name(s), title(s), and sample signature(s) of designated official(s).

**Authority for Collecting this Information**

The authority to prescribe this form is contained in the "Immigration Reform and Control Act of 1986". The information is necessary to determine whether a person meets the English language/Citizenship skills of IRCA by satisfactorily pursuing a course of study recognized by the Attorney General in order to be eligible to adjust status from temporary to permanent resident. All information must be provided as requested. Failure to do so may result in the rejection of this form.

**Reporting Burden**

Public reporting burden for this collection of information is estimated to average ten (10) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536; and the Office of Information and Regulatory Affairs Office of Management and Budget, Washington, D.C. 20503.

Form I-699 (07/20/88) DRAFT #2

BILLING CODE 4410-10-C

Date: July 18, 1988.

Richard E. Norton,

*Associate Commissioner, Examinations.*

[FR Doc. 88-17754 Filed 8-5-88; 8:45 am]

BILLING CODE 4410-10-M

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**8 CFR Parts 100, 103, 264 and 299**

**[INS Number 1020R-88]**

## Applicant Processing for the Legalization Program; Conforming Amendments

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend certain regulations to conform to proposed regulation changes published elsewhere in this issue. These provisions related to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The Service published conforming amendment regulations at 52 FR 16205, May 1, 1987. This rule affects some of these regulations.

**DATE:** Comments must be received on or before September 7, 1988.

**ADDRESSES:** Written comments should be mailed in triplicate to Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

**FOR FURTHER INFORMATION CONTACT:** Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

**SUPPLEMENTARY INFORMATION:** The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987; 53 FR 9274, March 21, 1988; 53 FR 9862, March 28, 1988; and at 53 FR 23382, June 22, 1988. The purpose of this proposed rule is to effect the necessary changes to the regulations brought about by the Service's intent to process applications for adjustment of temporary resident aliens for lawful permanent residence status.

At 53 FR 18096, May 20, 1988, the Service published in the **Federal Register** a notice making available to the public the preliminary working draft regulations. More than 170 copies of the preliminary working draft were forwarded to requesters. As a result, 135 individuals and interested organizations submitted written comments. The comments were reviewed and given serious consideration. The Service appreciates the time and effort put forth by all concerned parties.

This proposed rule changes the list of legalization offices; includes other Service offices besides legalization offices where interviews will occur; allows for the approval or denial of permanent resident applications at the district director level; sets the application fee; allows for the district director to certify decisions to the Administrative Appeals Unit; and allows for the submission of I-695, Application for Replacement of Form I-688A, Employment Authorization, or Form I-688, Temporary Residence Card (Under Pub. L. 99-603), to other Service offices besides legalization offices.

### Summary of the Proposed Rule

Section 100.4(f) provides a list of legalization offices which will accommodate applicants for permanent residence. Several commentors stressed that the Service seriously reconsider the decision to close any legalization office for various reasons such as convenience to the public. The Service has carefully considered decisions to close legalization offices. The volume of application receipts (including Special Agricultural Worker applications) is a main factor studied before a decision is made to close a legalization office. The Service agrees with the commentors that the maximum number of legalization offices should remain open within funding constraints. In addition to the legalization offices listed in § 100.4(f) the following Service offices will conduct interviews for permanent residence.

*Eastern Region*

District offices—Baltimore, MD; Buffalo, NY; Philadelphia, PA; Porland, ME; and San Juan, PR; Sub-offices—Albany, NY; Christiansted, VI; Camden, NJ; Hartford, CN; Norfolk, VA; Pittsburgh, PA; Providence, RI; St. Albans, VT; and Syracuse, NY

*Northern Region*

District offices—Anchorage, AK; Cleveland, OH; Denver, CO; Detroit, MI; Helena, MT; Kansas City, MO; Omaha, NB; Portland, OR; Seattle, WA; and Saint Paul, MN; Sub-offices—Boise, ID; Cincinnati, OH; Indianapolis, IN; Milwaukee, WS; Salt Lake City, UT; St. Louis, MO; and Yakima, WA

*Southern Region*

District offices—Atlanta, GA; and New Orleans, LA; Sub-offices—Charlotte, NC; Jacksonville, FL; Memphis, TN; and Oklahoma City, OK

*Western Region*

District offices—Honolulu, HI; Sub-offices—Agana, GU; Reno, NV; and Tucson, AZ

Section 103.1(n) is revised to provide for the approval or denial of applications for permanent residence by the district directors at both legalization and other Service offices. Several commentors recommended that the final approval or denial authority should rest with the director of the Regional Processing Facility instead of the district director. The Service feels that the method of processing permanent residence applications using the Regional Processing Facilities for preliminary processing and the field offices for final adjudication is sound. Applicants will be processed for permanent residence cards, Form I-551, in field offices and will meet the English and History and Government of the United States requirement through examination at field offices (unless that requirement is waived or satisfied by satisfactorily pursuing a course of study). These tasks cannot be performed by the directors of the Regional Processing Facilities.

Section 103.4(b) is revised to provide for the certification of decisions by the district director as well as the Regional Processing Facility Director to the Administrative Appeals Unit. One commentor suggested the Service clarify § 103.4(b) as it was unclear what the certification to the Associate Commissioner, Examinations meant. The Service is adding clarifying language.

Section 103.7(b)(1) is amended to provide for an application fee for the filing of an I-698, Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986). Numerous commentors protested "the proposed $100 token fee" which appeared in an article in the Los Angeles Times on June 3, 1988. Other commentors recommended the fee be set at $35 with various amounts for family caps. One commentor suggested the fee be set at the lowest rate possible and that the Service should provide for a waiver of the fee in hardship cases. The Service has seriously studied the issue of setting a fee for applying for permanent residence. The cost of the Legalization Program is to be self-funding through application fees; therefore, it has been determined that an application fee for permanent residence will be charged.

Section 264.1(c) is revised to provide for the submission of Form I–695, (Application for Replacement of Form I–688A, Employment Authorization, or Form I–688, Temporary Residence Card (Under Pub. L. 99–603)), to legalization and other Service offices. One commentor suggested that this section be expanded to include the procedures involved when a temporary resident alien or applicant for temporary residence loses his or her I–688, Temporary Resident Card, or I–688A, Employment Authorization Card, respectively, while outside the United States. The Service feels it is useful information and it will be included in this section. Other commentors suggested that appeal should be provided for the decision of the Regional Processing Facility director denying an I–695 application. Section 264.1(c) also addresses the processing of Form I–90, Application by Lawful Permanent Resident Alien For Alien Registration Card, Form I–551. No appeal is provided for from the decision of the district director in the denial of an I–90 application. The Service believes it is being consistent in its regulation in not providing an appeal from the Regional Processing Facility director's denial of an I–695 application.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of EO 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation, excepting the I–698, have been cleared by OMB under the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299. The information collection requirements pertaining to the I–698 have been forwarded to OMB for clearance.

**List of Subjects**

*8 CFR Part 100*

Administrative practice and procedure, Authority delegations (Government agencies).

*8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

*8 CFR Part 264*

Reporting and recordkeeping requirements.

*8 CFR Part 299*

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

## PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 66 Stat. 173; 8 U.S.C. 1103.

2. Section 100.4(f) is amended by revising the list of legalization offices to read as follows:

**§ 100.4 Field service.**

* * * * *

(f) * * *

**Legalization offices**

*Eastern Region*

BOS—Boston, MA (XBT)
NEW—Paterson, NJ (XPT)
NYC—Manhattan, NY (XMA)
WAS—Arlington, VA (XAR)

*Northern Region*

CHI—Chicago, IL (XBI); Chicago, IL (XLS); Forest Park, IL (XLI)

*Southern Region*

DAL—Arlington, TX (XDA); Lubbock, TX (XLU)
ELP—El Paso, TX (XEL); Albuquerque, NM (XAL)
HLG—Harlingen, TX (XHA)
HOU—Houston, TX (XHU)
MIA—(Miami) Hialeah, FL (XOP); Tampa, FL (XTA); Fort Lauderdale, FL (XWS)
SNA—Austin, TX (XAU); San Antonio, TX (XSN)

*Western Region*

LOS—Anaheim, CA (XAH); El Monte, CA (XEM); Los Angeles, CA (XHO); Huntington Park, CA (XHP); Indio, CA (XID); East Los Angeles, CA (XLA); Buena Park, CA (XNK); Oxnard, CA (XOX); Pomona, CA (XPO); Riverside, CA (XRV); Santa Maria, CA (XSM); Santa Ana, CA (XSA); San Fernando, CA (XSR); Gardenia, CA (XTO); N. Hollywood, CA (XVN)
PHO—Phoenix, AZ (XPH), Las Vegas, NV (XLV)
SND—Escondido, CA (XES), San Diego, CA (XSD)
SFR—Bakersfield, CA (XBA), Fresno, CA (XFR), San Francisco, CA (XSF), Salinas, CA (XSI), San Jose, CA (XSO), Stockton, CA (XST)

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 is revised to read as follows:

**Authority:** 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR 1982 Comp., p. 166.

4. In § 103.1, a new paragraph (n)(3) is added to read as follows:

**§ 103.1 Delegations of authority.**

* * * * *

(n) * * *

(3) Applications for permanent residence filed by legalization applicants pursuant to section 245A of the Act may be adjudicated by the district director having jurisdiction over the applicant's residence.

5. Section 103.4(b) is revised to read as follows:

**§ 103.4 Certifications.**

* * * * *

(b) *Certification of denials of special agricultural worker and legalization applications.* The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in § 103.1 (f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

**§ 103.7 [Amended]**

6. Section 103.7 (b)(1) is amended by removing "(fee amount to be determined as required)" for Form I–698, and inserting in its place "A fee of seventy-five dollars ($75.00) for each application.

## PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

7. The authority citation for Part 264 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1201, 1201a, 1301–1305; 66 Stat. 173, 191, 223–225; 71 Stat. 641.

8. Section 264.1(c) is amended by replacing all existing text beginning with the eighteenth sentence which reads "Application by an alien lawfully admitted for temporary residence . . ." with the following:

**§ 264.1 Registration and Fingerprinting.**

* * * * *

(c) * * * Application by an alien lawfully admitted for temporary residence for Form I–688, Temporary Resident Card, in lieu of one lost, stolen, mutilated, or destroyed, shall be made on Form I–695 accompanied by the fee required by § 103.7(b)(1) of this chapter, two color photographs, (regardless of the applicant's age, unless the requirement for such photographs has been waived by the director of the

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legalization or Service office in his or her discretion because of hardship to an applicant who is confined due to age or physical infirmity), and when issuance of Form I–688 is desired in a changed name, by appropriate documentary evidence of such change. Any Form I–688 in applicant's possession must also be submitted with the application. An application by an alien within the United States for replacement of evidence of registration shall be submitted to the legalization or Service office having jurisdiction over the applicant's place of residence in the United States. Prior to the issuance of Form I–688, all applicants, regardless of age, shall appear at the appropriate legalization or Service office for interview and placement of fingerprint and signature on I–688 unless these requirements are waived at the discretion of the district director because of infirmity, illiteracy, or other compelling reasons. An alien who files application Form I–695 may be required to appear in person before an immigration officer prior to the adjudication of the application and be interviewed under oath concerning his or her registration. In addition, the applicant may also be required to present a completed fingerprint card (Form FD–285). The decision on an application for replacement of evidence of registration shall be made by the Regional Processing Facility director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the Regional Processing Facility director denying the application. An alien outside the United States shall appear at an American Consulate or Service office abroad and present a full account of the circumstances involving the loss or destruction of Form I–688. A cable shall be sent to the Service's Central Office Records Branch for verification of status. Subsequent to verification that temporary residence was granted, a transportation letter will be issued to the temporary resident alien.

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## PART 299—IMMIGRATION FORMS

9. The authority citation for Part 299 continues to read as follows:

**Authority:** 66 Stat. 173; 8 U.S.C. 1103.

10. Section 299.5 is added to read as follows:

**§ 299.5 Display of Control Numbers**

| INS form No. | INS form title | Currently assigned OMB control No. |
|---|---|---|
| I–688 | Application to Adjustment Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99–603) | 1115–0000 |

Dated: July 18, 1988.

**Richard E. Norton,**

*Associate Commissioner, Examinations.*

[FR Doc. 88–17757 Filed 8–5–88; 8:45 am]

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Part III

# Department of Labor

**Occupational Safety and Health Administration**

**29 CFR Part 1910 et al.**

**Hazard Communication; Notice of Proposed Rulemaking and Notice of Public Hearing**

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, and 1926

[Docket H-022D]

Hazard Communication

**AGENCY:** Occupational Safety and Health Administration (OSHA); Labor.

**ACTION:** Notice of proposed rulemaking (NPRM) and notice of public hearing.

**SUMMARY:** On August 24, 1987, OSHA published a final rule to modify its Hazard Communication Standard (HCS) (52 FR 31852). The original rule, which was promulgated on November 25, 1983, covered employees exposed to hazardous chemicals in the manufacturing sector of industry. The modified rule expanded coverage to all employees exposed to hazardous chemicals, thus providing protection for those in non-manufacturing employments as well as manufacturing.

The HCS requires employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. Implementation of these hazard communication programs will reduce the incidence of chemically-related occupational illnesses and injuries.

An advance notice of proposed rulemaking (ANPR) on expansion of the scope had been published on November 27, 1985 (50 FR 48794). OSHA was subsequently directed by the U.S. Court of Appeals for the Third Circuit to issue a final standard to expand the scope of industries covered by the rule within sixty days of its decision issued on May 29, 1987, *United Steelworkers of America, AFL–CIO–CLC* v. *Pendergrass*, 819 F.2d 1263 (3d Cir. 1987), unless the Agency could demonstrate that such an expansion would not be feasible. The August final rule was OSHA's response to the Court's direction. However, the Agency recognized that had the standard been developed through a more complete rulemaking process, additional information regarding the feasibility or practicality of the provisions may have been included in the record. OSHA therefore established a sixty-day comment period on the final rule to permit interested parties to provide data or evidence regarding the feasibility or practicality of the provisions of the rule.

This NPRM proposes modifications to the final rule based upon information submitted to the rulemaking record, including a determination made by the Office of Management and Budget (OMB) under the Paperwork Reduction Act regarding the information collection requirements of the final rule. OSHA is inviting comment for sixty (60) days following publication of this NPRM, and is scheduling a public hearing to provide an opportunity for additional input.

**DATES:** Comments concerning the proposed standard and notices of intention to appear at the public hearing must be received on or before October 7, 1988. Parties requesting more than 10 minutes for their presentation at the hearing, and parties planning to present documentary evidence at the hearing, must submit the full text of their testimony and all documentary evidence no later than October 24, 1988. The hearing will take place in Washington, DC, and will begin at 9:30 a.m. on November 15, 1988.

**ADDRESSES:** Comments are to be submitted in quadruplicate to the Docket Officer, Docket H–022D, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3670, Washington, DC, 20210; telephone (202) 523–7894.

Notices of intention to appear at the hearing, testimony, and documentary evidence should be submitted, in quadruplicate, to Mr. Tom Hall, Division of Consumer Affairs, Docket H–022D, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3637, Washington, DC, 20210; telephone (202) 523–8615.

Written comments received and notices of intention to appear will be available for inspection and copying in the Docket Office, Room N3670, at the above address.

The informal public hearing will begin at 9:30 a.m. at the following location: Auditorium, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 523–8151.

**SUPPLEMENTARY INFORMATION:** References to the rulemaking record are made in the text of this preamble. The Hazard Communication Standard docket (No. H–022) contains five sub-dockets—H–022A, H–022B, H–022C, H–022D, and H–022E. Everything in all of these docket files is part of the rulemaking record. However, in this document, no specific references are made to either Docket H–022C or H–022E (these files deal exclusively with the issue of trade secrets). The following abbreviations have been used for citations to the other record files:

H–022, Ex.: Exhibit numbers in Docket H–022, which includes H–022A and H–022B.

Ex.: Exhibit numbers in H–022D for exhibits collected since the 1985 Court remand related to the expansion of the scope of industries covered.

Tr.: Public hearing transcript page numbers.

## I. History of OSHA's Hazard Communication Standard

The development of OSHA's Hazard Communication Standard (HCS) was initiated in 1974. The process has been lengthy and is discussed in detail in the preambles to both the original and revised final rules (*see* 48 FR 53280–81 and 52 FR 31852–54). This discussion will focus on the sequence of events which have occurred since the original final rule was filed at the Federal Register in 1983.

Petitions for judicial review of the rule were filed in the U.S. Court of Appeals for the Third Circuit (hereinafter referred to as the "the Court" or "the Third Circuit") on November 22, 1983, by the United Steelworkers of America, AFL–CIO–CLC, and by Public Citizen, Inc., representing itself and a number of labor groups. Motions to intervene in these cases were received from the Chemical Manufacturers Association, the American Petroleum Institute, the National Paint and Coatings Association, and the States of New York, Connecticut, and New Jersey. In addition, petitions for review of the standard were filed by the State of Massachusetts in the First Circuit; the State of New York in the Second Circuit; the State of Illinois in the Seventh Circuit; the Flavor and Extract Manufacturers' Association in the Fourth Circuit; and the Fragrance Materials Association in the District of Columbia Circuit. These cases were subsequently transferred to the Third Circuit and consolidated into one proceeding. The cases brought by the Flavor and Extract Manufacturers' Association and the Fragrance Materials Association were withdrawn prior to filing briefs.

The Court issued its initial decision on the challenges to the rule on May 24, 1985 (*United Steelworkers of America* v. *Auchter*, 763 F.2d 728 (3d Cir. 1985)). (*See* Ex. 4–21.) The standard was upheld in most respects, but three issues were

remanded to the Agency for reconsideration. The decision was not appealed.

First, the Court concluded that the definition of trade secrets incorporated by OSHA included chemical identity information that was readily discoverable through reverse engineering and, therefore, was "broader than the protection afforded trade secrets by state law." The Court directed the Secretary of Labor to reconsider a trade secret definition which would not include chemical identity information that is readily discoverable through reverse engineering. Secondly, the Court held the trade secret access rule in the standard invalid insofar as it limited access to health professionals, but found the access rule otherwise valid. The Secretary was directed to adopt a rule permitting access by employees and their collective bargaining representatives to trade secret chemical identities. OSHA complied with the Court orders regarding the two trade secret issues in a separate rule, published in final form on September 30, 1986 (51 FR 34590). The revised trade secret provisions were incorporated into the test of the final rule published on August 24, 1987.

The third issue remanded to OSHA involved the scope of industries covered by the standard. The original HCS applied to employers and employees in the manufacturing sector. The Court directed the Secretary of Labor to reconsider the standard's application to employees in other industry sectors, and "to order its application in those sectors unless he can state reasons why such application would not be feasible." 763 F.2d at 739, 743.

OSHA subsequently published an advance notice of proposed rulemaking (ANPR) to collect comments and information on the expansion of the scope to cover these additional sectors (50 FR 48795; November 27, 1985). In particular, the Agency sought information on the extent employers in non-manufacturing industries have already implemented various aspects of a hazard communication program. In addition, OSHA wanted to obtain data regarding the applicability of the provisions as written in the original rule to these other sectors. A total of 226 responses were received. (*See* Ex. 2.) OSHA also commissioned a study of the economic impact of extending the HCS to the fifty major non-manufacturing industry groups within its jurisdiction. (*See* Exs. 4–1 and 4–2.) Based on this newly acquired evidence, as well as the previous rulemaking record, OSHA was in the process of drafting a proposed rule.

On January 27, 1987, however, the United Steelworkers of America, AFL–CIO–CLC and Public Citizen, Inc., petitioners in the 1985 challenge, filed a Motion For An Order Enforcing the Court's Judgment and Holding Respondent in Civil Contempt. Petitioners claimed that the Court's 1985 order had not authorized OSHA to embark on further fact gathering, and that OSHA should have made a feasibility determination based upon the 1985 rulemaking record. Petitioners also argued that even if further fact gathering had been allowed by the Court's order, OSHA's pace was unduly slow.

In response, OSHA noted that the Court's 1985 order did not specify that OSHA should act on the then-existing record. OSHA believed that seeking further evidence on feasibility in non-manufacturing was appropriate in light of its statutory obligation to issue rules that are well grounded in a factual record. OSHA also asserted that, consistent with Supreme Court precedent, the Agency should be permitted to exercise its discretion in determining the appropriate rulemaking procedures for complying with the Court's remand order. Lastly, the Agency argued that its schedule to complete the rulemaking was reasonable and did not constitute undue delay.

On May 29, 1987, the Court issued a decision holding that the Court's 1985 remand order required consideration of the feasibility of an expanded standard without further rulemaking. *United Steelworkers of America, AFL–CIO–CLC* v. *Pendergrass*. 819 F.2d 1263 (3d Cir. 1987). (*See* Ex. 4–20.) The Court declared that adequate notice had been provided to non-manufacturers during the original rulemaking that they might be covered by the HCS, *id.* at 1265–1266, 1269, that the answers to the remaining questions OSHA may have had regarding feasibility were "self-evident" or "readily ascertainable" from the original record, *id.* at 1268–69, and that further fact finding was "unnecessary", *id.* at 1268. The Court ordered the Agency to issue, within 60 days of its order, "a hazard communication standard applicable to all workers covered by the OSHA Act, including those which have not been covered in the hazard communication standard as presently written, or a statement of reasons why, on the basis of the present administrative record, a hazard communication standard is not feasible." *Id.* at 1270.

OSHA subsequently re-evaluated the evidence in the record and determined that a modified final rule covering all employers subject to the Act (*i.e.*, both manufacturing and nonmanufacturing) was both necessary and feasible. The Agency therefore issued the final rule on Hazard Communication which was published in the **Federal Register** on August 24, 1987.

The only modifications OSHA made to the original rule in the August revision were those that were related to expansion of the scope. If the Agency had been able to publish a NPRM at that point, it had planned to propose other modifications based upon the ANPR comments as well as OSHA's considerable experience in implementing the original rule, and the experiences of OSHA-approved State Plan States in implementing the HCS in the non-manufacturing sector. Publication of a final rule precluded any actions other than those specifically required by the expansion, particularly since the Court determined that the record it reviewed (exhibits collected through November 1983) was a sufficient basis for the final rule. Thus evidence collected subsequent to that time was merely cited as additional substantiation for the expansion.

The revised final rule expanded the scope of industries covered from just the manufacturing sector to all industries where employees are exposed to hazardous chemicals. As OSHA stated at the time, the Agency has evidence to indicate that there is chemical exposure in every type of industry and thus employees in all industries must have protection under the rule. (*See* 52 FR 31858.)

As noted earlier, although the standard was issued as a final rule, OSHA invited interested parties to submit information, data or evidence regarding the feasibility or practicality of the provisions as written when applied to the non-manufacturing sector as well as any recommendations for further modification. A 60 day period was established for such comments, and it ended on October 23, 1987. A total of 136 comments were received (39 of them were received after the deadline), and entered into Docket H–022D. A variety of opinions were expressed in the comments regarding a number of issues, however, most of the comments did not contain data or evidence concerning either feasibility or practicality. Many of the comments were questions or requests for classification of the provisions.

OSHA is proposing some modifications it believes are appropriate

to address concerns raised and clarify the requirements. The Agency is also providing clarification regarding other issues in this preamble discussion. The Agency is, of course, always prepared to respond to any specific questions from the regulated community regarding compliance. To this end, OSHA has appointed a Hazard Communication Coordinator in each Regional Office to whom such questions should be directed. Instructions to OSHA's compliance staff regarding enforcement of the HCS also include interpretations and many employers have found these documents to be useful to them in complying with the rule. These instructions are included in the docket as Ex. 4–24, and copies may be obtained from OSHA's Publication Officer, (202) 523–9667. A booklet summarizing the rule's provisions is also available and may be used by employers in training workers regarding the requirements of the rule (the publication number is OSHA 3084 Revised).

In addition to the comments submitted to OSHA, the Office of Management and Budget (OMB) convened a public meeting under the Paperwork Reduction Act (44 U.S.C. Chapter 35) to address the information collection requirements of the expanded rule. The transcript of the OMB public meeting (which was held on October 16, 1987) is entered in the docket as comment 5–76, and other relevant documents (*e.g.*, copies of statements, etc.) are entered in Exhibit 6. (In addition, the transcript of an April 2, 1987, public meeting on the information collection requirements for the manufacturing sector is Ex. 4–3.) The majority of the participants in OMB's October 16 meeting submitted written comments to OSHA as well, so there is considerable duplication in Exhibit 6 of opinions that had already been expressed by the same parties in other parts of the rulemaking record.

In a letter sent to the Department of Labor on October 28, 1987, and subsequently published by OSHA in the **Federal Register** on December 4, 1987 (52 FR 46075) (Ex. 4–67), OMB, under the authority of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), disapproved certain information collection requirements in the expanded scope rule, as of the rule's effective date (May 23, 1988), based upon the record of the October 16 public meeting and the previous meeting on April 2, 1987 regarding the information collection requirements for the manufacturing sector, as well as OSHA's preamble to its August 24 rule and its justification submitted formally under the Paperwork Reduction Act. The October 28 letter stated that OMB disapproved: (1) The requirement that material safety data sheets be provided on multi-employer worksites; (2) coverage of any consumer product that falls within the "consumer products" exemption included in section 311(e)(3) of the Superfnd Amendments and Reauthorization Act of 1986; and (3) coverage of any drugs regulated by the Food and Drug Administration in the non-manufacturing sector. In addition, OMB determined that OSHA should reopen the rulemaking on the HCS to consider alternatives to the definition of "article" which was included in both the original and revised final rules. Lastly, OMB conditioned paperwork approval upon OSHA's consulting with the U.S. Small Business Administration and the Department of Commerce in order to develop a plan for a Federal administrative effort that will provide assistance to the regulated industries to alleviate paperwork burdens and costs. For a complete description of OMB's rationale for these determinations, *see* the **Federal Register** notice of December 4, 1987 (52 FR 46075). This document will only summarize the positions taken by OMB.

On April 13, 1988, OMB extended its approval of all information collection requirements in the HCS through April 1991, except that OMB continued to disapprove the three provisions previously disapproved, 53 FR 15033. OMB's approval of the existing definition of "article" was limited to the clarification included in a January 14, 1988, letter from Assistant Secretary for Occupational Safety and Health John Pendergrass to OMB, which stated that "absent evidence that releases of such very small quantities could present a health hazard to employees, the article exception to the rule's requirements would apply." In response to commenters who requested that OMB not extend approval to any requirements in the non-manufacturing sector, OMB also stated:

> The concerns of these commenters are largely based on the possibility that the standard and OMB's decision under the PRA will change dramatically as a result of the rulemaking. Although change is always possible, any such change would be fully considered during the rulemaking process. Of course, in order for OMB to grant PRA approvals, any changes must offer sufficient practical utility to justify any incremental paperwork burden they impose, including the burden of revising already-developed written programs. Moreover, as stated above, we are continuing to disapprove the previously-disapproved provisions; the rulemaking should of course conform the rule to these disapprovals.

In accordance with the Paperwork Reduction Act and the implementing regulations for that Act (5 CFR 1320.13(g) and 1320.14 (f) and (g)), OSHA is reopening the rule on all of the issues raised by OMB in its letter in order to have an opportunity to fully discuss the complete current record on each item, as well as to collect additional data from the public. The issues and alternatives for dealing with them are described further below. OSHA is also proposing certain minor modifications, described below, and invites comment on them as well.

Regarding OMB's requirement that OSHA develop a plan to assist the regulated community with the paperwork associated with the HCS, the Agency is in the process of developing compliance assistance materials. These include OSHA 3084, a booklet explaining the provisions of the rule, and a compliance kit designed to help employers come into compliance. The compliance kit will be made available through the Government Printing Office within a few months. A press release will provide information about obtaining a copy at such time as it becomes available. For further information, please contact OSHA's Office of Information and Consumer Affairs, (202) 523–8151.

The revised final rule has been challenged in the U.S. Court of Appeals by the Associated Builders and Contractors, National Grain and Feed Association, Associated General Contractors of Virginia, Associated General Contractors of America, and United Technologies Corporation. A number of interested parties have intervened in these cases as well. The challenges are in the preliminary stages of adjudication at this point, and generally involve the appropriateness of OSHA's publishing a final rule in response to the Third Circuit's order.

Although these cases were originally consolidated in the U.S. Court of Appeals for the District of Columbia Circuit, they were transferred to the U.S. Court of Appeals for the Third Circuit on May 20, 1988. The cases were transferred to the Third Circuit because the "revised [HCS] was promulgated in response to orders by the Third Circuit * * * and petitioners have raised issues similar to those already considered by that court."

On June 24, 1988, the Third Circuit granted a stay of the standard as it applies to the construction industry (29 CFR 1926.59) pending the outcome of the litigation challenging the rule. The rule is in effect for all other employers in both the manufacturing and

nonmanufacturing sectors. OSHA published a notice in the **Federal Register** on July 22, 1988 (53 FR 27679) to provide affected employers further information regarding the applicability of the stay and enforcement of the rule.

In addition to these challenges of the revised HCS, the United Steelworkers of America, AFL–CIO–CLC, and Public Citizen have filed a motion with the Third Circuit requesting the court to order that OSHA enforce all of the revised HCS including the three requirements OMB disapproved under authority of the Paperwork Reduction Act. OSHA will continue to abide by the OMB decision and will not enforce the disapproved requirements unless otherwise ordered by the Court.

*Advisory Committee on Construction Safety and Health (ACCSH).* As discussed in the preamble to the August 1987 final rule (52 FR 31858–59), the ACCSH reviewed a draft notice of proposed rulemaking to expand the scope of the HCS to construction on June 23, 1987. The ACCSH went through the NPRM line-by-line, making recommendations to adapt it to the construction industry, *i.e.*, the document with the recommended changes constituted an ACCSH recommended standard for hazard communication. A number of the recommendations were adopted (*e.g.*, the definition of workplace was modified to include job sites or projects; the written hazard communication program requirements were amended to clearly state that the programs are to be maintained at the site).

As this NPRM addresses issues that affect construction, OSHA transmitted a draft of it to the ACCSH for review and comment. In a meeting on March 30, 1988, the ACCSH did not provide specific recommendations on the NPRM. The ACCSH reiterated its desire to have a separate standard for construction, and appointed a subcommittee to make further recommendations to the Assistant Secretary. However, the ACCSH also reaffirmed that the standard as written should be implemented as scheduled on May 23, 1988.

The three primary issues in this NPRM that affect construction—the definition of "article," the coverage of consumer products, and the maintenance of material safety data sheets on multi-employer worksites—were all previously considered by the ACCSH on June 23, 1987.

With regard to the definition of "article," the ACCSH recommended that the definition state that vapors, mists, gases, and fumes are not to be considered articles (Tr 97–8). As OSHA explained during the meeting, those types of materials do not meet the definition in any event, and would not be considered articles. Thus there is no need for that particular modification. There were no further comments on the definition or its application to the construction industry during that meeting.

The ACCSH also reviewed OSHA's proposed exemption for consumer products, *i.e.*, that consumer products be exempt where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. A motion was initially made to modify the exemption to allow consumer products used "as approved for consumer use, and which will not result in any duration or frequency of exposure which is greater than applicable threshold limit values for any hour of use." Tr. 81. After further discussion regarding the lack of a mechanism for "approval" for consumer use that would apply in this situation, and the lack of threshold limit values for the majority of chemicals in the workplace, the ACCSH voted to approve an amended exemption which reads "where the employer can demonstrate it is used in the workplace in the same manner as recommended for consumer use, and which will not result in any duration and frequency of exposure, which is greater than exposures experienced by consumers." Tr. 90.

The ACCSH also reviewed the requirement for maintenance of material safety data sheets on multi-employer worksites, and did not object to such a provision or indicate that it would be infeasible or unnecessary to have such a requirement. In fact, the committee further recommended that it be made explicit that written programs be maintained at the worksite, a recommendation that OSHA adopted.

## II. Summary and Explanation of the Issues and the Provisions of the Notice of Proposed Rulemaking

The regulatory text presented in this document only addresses the proposed modifications, rather than reprinting the entire standard and incorporating the proposed changes. Since the HCS is lengthy and complicated, OSHA believes that this will make it easier for interested parties to identify the proposed modifications and provide appropriate comment. When the final rule is promulgated, OSHA will reprint the entire text including the modified provisions.

The discussion which follows is also limited primarily to the proposed changes and related issues. It does not provide a complete summary and explanation of all of the provisions of the rule—for such information interested parties should refer to the preambles of the original (48 FR 53334–40) and revised (52 FR 31860–67) final rules. There are also discussions of alternatives to the proposed modifications which have been suggested to OSHA. OSHA is inviting comment on these as well as the regulatory text itself. While the purpose of this rulemaking is principally to resolve the issues presented by the proposed and alternative provisions, OSHA is also interested in receiving comment on other issues that may be related to the proposal. In order to assist OSHA in its development of the final HCS in the nonmanufacturing sector, comment will also be accepted and considered concerning the entire rule's application to the nonmanufacturing sector.

As most interested parties are aware, the rulemaking record on this standard is quite extensive, and all of the material submitted to date will be considered in development of the new final rule. It is therefore not necessary, or desirable, to repeat comments previously provided unless there is new data, evidence or other information available concerning the arguments made.

In reopening the record, OSHA recognizes that it is not operating "on a clean slate." In developing the existing standard, OSHA had the benefit of an extensive evidentiary record. In addition, the Agency's experience gained under the original standard, as well as under State standards, some of which already applied to the nonmanufacturing sector, further supported OSHA's current standard. As explained in detail below, OSHA continues to believe that the record substantially justified the Agency's regulatory choices, and the information presented to OSHA after the standard was issued has, by and large, not convinced OSHA that significant changes are warranted to comply with the OSH Act.

In this rulemaking, OSHA is seeking additional information on whether these regulatory choices also meet the criteria of the Paperwork Reduction Act. If information collected in the course of this rulemaking responds to the concerns raised by OMB on these issues in its October 28, 1987, letter, OSHA will request that OMB reconsider its paperwork decision on these issues. OSHA will also consider requesting paperwork approval for other options

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substantially supported by the record, as well as conforming the final rule to OMB's paperwork decisions.

OMB has published implementing regulations at 5 CFR 1320.4(b) which state that, to obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:

(1) The collection of information is the least burdensome for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(2) The collection of information is not duplicative of information otherwise accessible to the agency; and,

(3) The collection of information has practical utility. Commenters to the record should focus on these criteria in this rulemaking.

OSHA will fully comply with the Paperwork Reduction Act, which prohibits agencies from "conducting or sponsoring" a collection of information without OMB approval. Hence, the provisions disapproved by OMB will be neither effective nor enforceable until OSHA completes this rulemaking.

It should be noted, however, that OSHA retains "almost unlimited discretion to devise means to achieve the Congressionally mandated goal." *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1230 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981). *Accord, Building and Construction Trades Dept., ALF–CIO* v. *Brock*, 838 F.2d 1258, 1271 (D.C. Cir. 1988). The expectations of the manufacturing sector, which has been subject to the HCS since 1985, are settled, as are those of the nonmanufacturing sector, which has been preparing to comply with the present standard since August 1987, and with the paperwork requirements as approved by OMB since October 1987. Therefore, OSHA does not expect the standard to further change significantly unless the Agency is presented with substantial evidence that a regulatory modification is clearly necessary, either because the present standard is demonstrably infeasible in a specific respect, or because the proposed alternative would significantly increase the standard's intended safety and health benefit or significantly improve its cost-effectiveness. Employers must plan accordingly to fulfill their compliance obligations under the standard as it is currently approved and should not anticipate undue delay in its enforcement.

Comments submitted should clearly identify the provisions being addressed, the rationale for the position taken, and data or evidence in support of that rationale.

The discussion which follows is organized by paragraph of the standard for ease of reference. It is suggested that comments submitted be presented in the same fashion.

*Scope and Application*

*Scope of industries covered.* As OSHA described in the preamble to the revised final rule (52 FR 31855–59), expansion of the protections afforded by the HCS to all nonmanufacturing industries is supported by the rulemaking record. Evidence collected by OSHA indicates that there is chemical exposure occurring in every type of industry covered (although every employee may not be exposed). The Agency's position is that all such employees are entitled to information regarding the chemical hazards they are exposed to in the workplace, and that a uniform Federal hazard communication standard is the best method to ensure that information is provided. This position is consistent with the mandate of the Act (protecting all employees to the extent feasible), as well as with the Court's decision upon review of the rule.

Despite this explicit determination by OSHA, as well as by the Third Circuit, there were a number of comments submitted which suggested that certain industrial sectors should be exempted from the rule, or only covered by limited provisions.

For example, the National Cosmetology Association, Inc. (Ex. 5–54) submitted comments reiterating the position it had submitted in response to the ANPR that all small businesses should be exempt from the requirements, and that in particular, small cosmetology salons should be exempted. The argument presented was that cosmetologists are highly trained professionals and that cosmetics are safe because they are regulated by the Food and Drug Administration (FDA).

While cosmetologists and other such skilled workers are trained to execute their professional duties, it is not clear that they receive any training regarding the safe use of chemicals. To the extent that they do receive such training, the individual employer's duty to train will be minimized. Existence of prior training is certainly not a valid rationale for not promulgating a requirement for training for any particular group of workers. Furthermore, the contention that products used in cosmetology salons are safe due to regulation by the FDA is also not supported by the record. The FDA regulates products primarily for the protection of consumers, not for the protection of professionals who are generally exposed more frequently and to greater levels of the hazardous chemicals involved. For further discussion of the need for hazard communication in such facilities *see* Exs. 2–49 and 4–50.

With regard to the exemption of small businesses in general, OSHA does not consider it to be appropriate to determine the extent of protection afforded an employee by the size of business he/she is employed in. Although the Agency does have enforcement policies that take into consideration the size of the business, as well as free consultation services that are primarily intended for small employers without on-staff safety and health capability (*see* Exs. 4–38 and 4–39), such small businesses must still comply with regulations and ensure that their employees are protected to the same extent as employees of larger businesses.

Other employer representatives indicated that the degree of risk in their particular industry warranted either an exemption or limited coverage. (*See, e.g.*, Ex. 5–5, eating and drinking places; Ex. 5–19, educational institutions; and Ex. 5–44, agriculture.) The degree of "risk" encountered overall by employees in a given industry is also not a viable argument for exempting all such employees totally from coverage under the HCS. The standard already includes a number of exemptions and limitations of coverage that are indirectly related to the issue of risk, *e.g.*, limited coverage for employees who only handle chemicals in sealed containers. The rationale for this limited coverage is based upon the limited potential for exposure in these types of work operations. Under the HCS, the primary concern is the risk of being exposed to chemicals without knowing what the hazards of those chemicals are, and thus not being sure of the proper handling procedures. The purpose of the standard is to convey those hazards, which are intrinsic properties of the chemicals, along with the appropriate handling procedures. Although risk should be addressed in training programs where employers would be discussing extent of exposure and protective measures being implemented to reduce exposure, the extent of risk involved is not a determining factor with regard to a decision as to whether or not the information must be conveyed. Employees have the right-to-know that they are being exposed to a potential hazard—as long as the potential for exposure exists in the work operation and the chemical has been demonstrated to be hazardous, the rule applies.

There were also a number of comments from representatives of the construction industry which indicated that the protections of the rule are not necessary in that industry because exposures to hazardous chemicals are minimal, and therefore risks are low (*see, e.g.*, Exs. 5–17, 5–27, 5–58 (Klug and Smith Company: "We do not have constant exposures to numerous hazardous chemicals and because of this we have a low rate of occupational illnesses * * *."), 5–86, and 5–108). Conversely, there were other construction representatives which were concerned that the requirements would be too burdensome because of the large number of hazardous chemicals on each construction site (*see, e.g.*, Ex. 5–83 (American Subcontractors Association: "In the more chemically hazardous specialty trades, such as painting, roofing and insulation work, there could indeed be hundreds or thousands of chemical substances and compounds which would require MSDSs in accordance with the provisions of the expanded HSC"), and Ex. 5–76 (the National Association of Home Builders): "I have this vision of a truck pulling up to the site and behind it is the trailer and on the trailer is the file cabinet of MSD sheets." Other commenters suggested smaller numbers: Ex. 2–108, ("* * * 25 typical hazardous substances found on most construction sites * * *"); Ex. 2–199 ("* * * [F]irst, no painting job will use more than 30 to 60 coating materials. Many jobs required only four to eight materials * * *.").

OSHA believes that it is fair to assume that the number of chemicals on each site will vary based upon the type and complexity of the construction involved. However, in our experience, the likelihood of there being hundreds or thousands of chemicals on a particular site is very small. In conversations with State Plan States which have already implemented the expanded scope rule, as well as with construction contractors in these states, our experiences have been confirmed.

In any event, the number of hazardous chemicals on a site, whether small or large, is not the determining factor in terms of whether employees should be provided information regarding the hazards of those chemicals. (It should also be noted that very few non-manufacturing facilities would have as many chemicals on-site as many manufacturing firms do. For example, motor vehicle manufacturing plants typically have thousands of hazardous chemical products in each facility (*see, e.g.*, H–022, Tr. 3678, 3691). Yet these types of employers were strong supporters of the HCS, and in particular, the MSDS requirements. Furthermore, many already had programs to obtain MSDSs and make them available to exposed workers. *See, E.g.*, Tr. 3784.) Where there are few chemicals, employers' duties will be minimal. Thus it would not be appropriate to exempt the construction industry based upon this rationale. It is interesting to note that in a Bureau of Labor Statistics' survey of construction workers injured on the job, only 23% indicated that they had received any training regarding hazardous chemicals (Ex. 2–221).

There were other industry representatives who suggested that OSHA has no authority to regulate them because their industries are covered under the requirements of other Federal agencies. For example, the American Association of Railroads (Ex. 5–47) argued that the Department of Transportation (DOT) requirements prempt OSHA from regulating railroad employees with regard to hazard communication. DOT's applicable requirements would be under the Federal Railroad Administration (FRA).

Under section 4(b)(1) of the Act, 29 U.S.C. 653(b)(1), Congress stated that nothing in the Act would apply to "working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health * * *." The operative language in this provision is "exercise statutory authority." As a matter of policy, these issues are generally not addressed in the regulatory language of a standard but rather are worked out between the agencies involved if a potential conflict or duplication of effort arises, or are resolved in litigation. The situation is not static since the extent of preemption would change if the extent of regulation changes. Therefore, it is not appropriate to delineate respective authorities on a given issue in the text of a standard itself.

However, to assist employers attempting to comply with the rules of more than one Agency in this area, OSHA has decided to include in this preamble a discussion of jurisdictions in two industries, transportation and pesticides. This discussion is obviously not a definitive finding of jurisdiction, but merely restates the Agency's position regarding the areas it believes are regulated under the HCS. The primary concern to OSHA is that the protections afforded by hazard communication are provided to all employees, and if that is being done under the regulations of another Federal agency, then section 4(b)(1) of the Act would apply and OSHA's standard would not be applicable. If such protection is not being provided to any group of employees, then the OSHA standard would apply.

In the railroad industry, OSHA standards would generally apply to those employee hazards which are not related to the operation of railroads. The FRA's program for occupational safety and health of employees addresses three major fields of railroad operations: (1) Tracks, road beds, and associated structures, *e.g.*, bridges and signals; (2) equipment, *e.g.*, rolling equipment and safety appliances such as brakes and coupling devices; and, (3) human factors, *e.g.*, hours of services.

The American Trucking Association (Ex. 5–82) recommended that a Memorandum of Understanding be adopted by OSHA and DOT to clarify coverage. This is an option that may be pursued at a later date. The Bureau of Motor Carrier Safety (BMCS) of DOT exercises statutory authority for the operation of commercial motor vehicles engaged in interstate or foreign commerce. BCMS occupational safety and health programs include equipment safety, noise abatement, transport of hazardous materials over the nation's highways, and operators' hours of service. OSHA retains statutory authority for those working conditions not covered by BMCS requirements.

Another area of potential conflict raised in the comments (*see, e.g.*, Exs. 5–6, 5–44, 5–50, and 5–66), involves employees exposed to pesticides. Commenters maintain that OSHA cannot cover pesticide exposures outside the manufacturing sector as these are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) administered by the Environmental Protection Agency (EPA). EPA requires pesticides to be labeled, approves the specific label language, and requires the pesticides to be applied in accordance with the labeling instructions.

As OSHA sees the situation, there are jurisdictional questions regarding three groups of workers exposed to pesticides. First, there are applicators of restricted use pesticides. These workers are certified and receive training regarding proper application. It appears to OSHA that for these workers, EPA has clearly exercised statutory authority for protecting them in the area of hazard communication.

The second group of workers are those applying non-restricted use pesticides. For these workers, protection requires that they read and act on the

labels approved by EPA. There is some evidence to indicate this may not occur (Ex. 4–32), and that additional information sources are required to ensure appropriate protection. It certainly can be argued that material safety data sheets and training would provide more complete, effective information transmittal. However, the issue of whether EPA's promulgation of a label requirement for a non-restricted use pesticide might prohibit OSHA from requiring the other provisions of the HCS—MSDSs and training—to be applied to employees using these hazardous chemicals is a difficult one, and OSHA invites comments and arguments to assist the Agency.

The third group in question are those workers who are incidentally exposed downstream to the pesticide residues after application, *e.g.*, farmworkers, grain elevator workers, and workers in furniture manfuacturing facilities handling preserved wood. In these situations, the workers are often located at a different site from where the application took place, and do not have access to label information at all. It appears that these workers clearly come under OSHA's jurisdiction and hazard communication would apply.

OSHA will, however, continue to have discussions with the other Agencies involved to more clearly delineate the scope of the respective regulatory requirements in these areas.

Representatives of the agriculture industry (Exs. 5–6, 5–50) were also concerned that the revised final rule did not mention the Congressional appropriations rider under which OSHA is prohitibed from promulgating or enforcing standards on farms with 10 or fewer employees unless the farm has a temporary labor camp. As long as this rider appears in OSHA's appropriations bill, the protections of the HCS will not apply on those farms. However, farms with 11 or more employees, as well as those with temporary labor camps, are covered by the rule.

*Labeling exemptions.* The original HCS included a number of exemptions from the requirements for labels on shipped containers for those hazardous chemicals that are already labeled in accordance with the requirements of another Federal agency. In the revised final rule, OSHA added an exemption for medical and veterinary devices labeled in accordance with the requirements of the Food and Drug Administration. Medical and veterinary devices had been inadvertently omitted from the exemptions in the original rule (52 FR 31862).

The Department of Agriculture (Ex. 5–28) and the Animal Health Institute (Ex. 5–37) have requested that a specific exemption be included for labeling of veterinary biological products as well. Although these materials are considered to be drugs, the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 392(b) "defers" regulation of some veterinary biologics to the Department of Agriculture when the biologics are subject to the Virus-Serum-Toxin Act of 1913, 21 U.S.C. 151–58.

To the extent that the hazards of these materials are biological hazards, the HCS would not apply in any event. However, there are apparently some chemicals used in the materials that would potentially be covered by the HCS (in particular, formaldehyde). OSHA is adding an exemption for labeling of these items when they are subject to the labeling requirements of either the Food and Drug Administration or the Department of Agriculture. It should be noted, however, that this exemption is just for labeling, and to the extent chemical hazards are present in these materials, the other provisions of the HCS would apply in terms of employee protection.

*Articles.* The NPRM published in March of 1982 did not include an exemption for articles. Since the rule's provisions were only intended to apply to those substances to which employees are potentially exposed—and substances inextricably bound in a manufactured item do not present a potential for exposure—OSHA did not believe that an article exemption was necessary. However, the Agency did receive a few comments from affected manufacturers that requested such an exemption (*see* H–022 Exs. 19–47, 19–73, 19–76, 19–166, 19–209, and 19–220). For example, the Standard Oil Company (Ex. 19–47) stated: "Consideration should be given to the possibility of exempting hazardous substances contained in articles, such as electrolyte in a battery. One might conclude that these are not 'chemicals present in the workplace in such manner that employees may be exposed under normal conditions of use.' However, a definitive statement in the regulations would be preferable." Similarly, the National Association of Manufacturers (Ex. 19–209) suggested that the definition of containers to be labeled not include "articles posing no unreasonable risk" in the workplace: "For example, brass billets in a storage box need no labels. However, when the billet is melted and may fume, the operating instructions to the employee should include this hazard." And INCO Limited (Ex. 19–166): "The definition of 'chemical' should therefore exclude manufactured items such as metals, alloys, ceramics, plastic, cloth, etc. These materials generally exist in such a state that they may be handled and transported without creating hazards not readily recognized by all * * *." It was also suggested that OSHA might look to the definition of article used by EPA under the Toxic Substances Control Act, 15 U.S.C. 2601, when crafting an appropriate exemption (Ex. 19–73). Otherwise, no specific definitions were suggested by commenters.

Although inclusion of an exemption for "articles" was certainly not a major issue for the manufacturers of such items during the rulemaking, OSHA decided that the addition would serve to clarify the rule's intent. Therefore an article exemption was included in both the original and revised final rules. The HCS does not apply to articles in any respect. The definition of "article" is "a manufacturer item: (i) Which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use." "The purpose of this exemption is to ensure that items which may contain hazardous chemicals, but in such a manner that employees won't be exposed to them, not be included in the hazard communication programs." 48 FR 53293.

OSHA's article definition was based, to a large extent, on the "article" definition used by the Environmental Protection Agency (EPA) under the Toxic Substances Control Act (TSCA):

> "Article" means a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

*See* 40 CFR 704.3.

The first two parts of OSHA's article definition are identical to EPA's definition. However, OSHA was concerned that the third part of EPA's definition was too broad, and if adopted, would exempt manufactured items which result in exposure of workers to hazardous chemicals during their use in the workplace. An example of this potential deficiency in coverage

was described during the rulemaking using formaldehyde emissions from fabrics handled in garment manufacturing facilities—downstream employees are exposed to formaldehyde although the fabric would probably be considered an article under EPA's TSCA regulations. 48 FR 53293. OSHA modified EPA's definition to ensure that manufactured items that release, or otherwise expose workers to hazardous chemicals during normal conditions of their use in the workplace, are covered by the HCS. This modification was necessary to adapt the definition to address the concerns in the workplace, which are different than EPA's purpose under TSCA. In particular, as OSHA described in the preamble to the revised final rule (52 FR 31865), it is important in terms of workplace protection to emphasize the total exemption generally applies to items which are at the point of "end" use. Normal conditions of "use" in the workplace might involve exposures prior to the ultimate use of the product. The article exemption was specifically drafted in the manner promulgated to ensure that employers and employees have information to protect workers involved in these intermediate workplace uses. "Use" under the definitions of the rule means to package, handle, react, or transfer. Certainly an employee installing an item in such a way that an exposure results would be "handling" the item and thus entitled to information under the rule. "Use" of the item in terms of the exemption must be specifically related to the workplace exposure of employees, not the intended purpose of the item once it is in place. It makes a considerable difference in work practices and protective measures when, for example, an employer knows that the tiles his employees are sanding all day when installing them contain lead that is becoming airborne as a result of that operation rather than just generating nuisance dust. Once the tie is installed, it is an article because there is no exposure.

These intermediate "uses" of an article are often of concern in the construction industry. The Advisory Committee on Construction Safety and Health (ACCSH) reviewed the definiton of "article" at a meeting on June 23, 1987 (Ex. 4–6): "We believe that fundamentally the definition is pretty good, with one possible exception. And I would move that in the first line of the definition following the word "fluid" that we add the words vapor, mist, gas, fume * * *." This motion was accepted by the Committee. OSHA agrees that vapors, mists, gases, and fumes are not "articles," but believes that it is quite clear than they are not covered under the current definition so this modification is not being made.

For practicality and feasibility reasons, OSHA has determined that repair of manufactured items at some point after installation is generally not considered to be a "normal condition of use." Although employees involved in these types of operations would certainly benefit from specific information regarding the materials they are dealing with (as in the example of the tiles containing lead which was just described), OSHA recognizes that the time lapse between installation and possible repair is such that it is not reasonable to assume that written information can be maintained and made available on that possibility. 52 FR 31865. Employers involved in such activities must provide the best information available to them. Since repair may involve installation of a replacement part, having information for installation will somewhat alleviate the problem of not having substance-specific information for articles being repaired.

During implementation of the original rule, OSHA received a number of questions regarding the application of the article definition and exemption, particularly with regard to metal casting. The responses to these questions were generally quite clear in terms of determining whether an item was covered or not. In its instructions to compliance officers regarding enforcement of the rule, OSHA provided the following guidance (Ex. 4–24):

> * * * The key to the definition of "article," and thus the exemption, is the term "under normal conditions of use." For example, an item may meet the definition of "article," but produces a hazardous byproduct if burned. If burnng is not considered as part of its normal conditions of use, the item would be an "article" under the standard, and thus exempted. The following items are examples of articles: Stainless steel table; Vinyl upholstery; Tires. The following items are examples of products which would NOT be considered "articles" under the standard, and would thus not be exempted from the requirements: Metal ingots that will be melted under normal conditions of use. Fabric treated with formaldehyde where downstream garment manufacturing employees will be exposed when making clothing. Switches with mercury in them when a certain percentage break under normal conditions of use.
>
> It should be noted that the only information that has to be reported in these situations is that which concerns the hazard of the release. The hazardous chemicals which are still bound in the article would still be exempted under the "article" exemption.

These examples were based upon actual questions OSHA had received from interested parties. Despite the fact that the responses to these questions were generally clear, OSHA determined that it would be helpful to ensure that all interested parties were familiar with the definition and exemption and clearly understood them. Therefore, OSHA decided to raise the issue for comment when the ANPR was published in 1985.

The vast majority of the comments received dealt with metal castings. A number of these simply stated that metal castings should always be considered articles, do not result in hazardous exposures (or if they do everyone already knows what the hazards are), and should not be covered. (*See, e.g.*, Exs. 2–2, 2–16, 2–20, 2–25, 2–32, 2–50, 2–65, 2–170, 2–209, and 2–215.) These comments were specific to the metal castings industry, and did not address the definition of article *per se* except to state that it should explicitly eliminate coverage of metal castings.

OSHA believes that many castings, if not most, would be articles and thus exempted from the rule (*e.g.*, manhole covers; frying pans; wrought iron gates). However, when a metal casting is not in finished form, and is being re-worked by a downstream employer in such a way that a hazardous chemical is released, it is not an exempted "article." If the re-working is done in such a way that no hazardous chemicals are released, it is an article. Under the hazard determination requirements of the rule, the firm producing the casting must determine its normal conditions of use downstream, and whether it is exempted as an article. This requirement applies to manufacturers of all types of products, and metal casting producers are not excepted from this approach.

For those commenters who specified a tye of casting which they contend is an article, *e.g.*, iron (Exs. 2–3, 2–6, 2–24, 2–27, 2–47, 2–74, and 2–136) and aluminum (Ex. 2–29)), the decision in the first instance is the manufacturer's. OSHA has made no across-the-board determination that iron or aluminum castings are or are not articles. If, during an inspection, OSHA finds such castings in a work situation where hazardous chemicals are being released from the casting under normal conditons of use, we will expect the manufacturer of the casting to have provided chemical hazard information to the downstream employer. This also applies to other types of products which commenters suggested should be specifically exempted as articles, *e.g.*, textiles (Exs.

2–40 and 2–103); rubber-like polymer (Ex. 2–18); and scrap metal (Ex. 2–107).

In response to OSHA's request for comments or for suggestions to modify or clarify the definition of article, a number of commenters responded that the definition is workable as it is, and allows employers to apply logic and reason in their determinations (Exs. 2–59, 2–79, 2–98, 2–101, 2–112, 2–154, and 2–187).

For example, Daniel Construction Company (Ex. 2–59), a construction firm which voluntarily implemented hazard communication in its facilities prior to promulgation of the OSHA rule, stated the following:

> We have no problem with the current definition and exemption. It allows for reason and logic to be applied to the work situation. Any more detailed definition and exemption would cause more problems. A common material that we often work with, galvanized steel, illustrates how well the definition and exemption work. When sawed, drilled, bent or bolted together, there are only mechanical hazards involved; when heated to high temperatures, cut with a torch, or welded upon, inhalation of the resulting fume causes the toxic response called fume fever. It would be extremely difficult to write a more specific definition and exclusion that would cover the work with galvanized steel and would then be applicable to a significant number of other situations. We recommend that you leave the definition and exclusion as it is.

Daniel Construction's comment is an excellent example of the application of the article definition and exemption, and the need for such a delineation of use in determining the need for information about the product.

The State of New Mexico, an OSHA-approved State Plan State which used the definition of "article" in its State rule, stated that "[t]he current definition of 'article' is sufficient and does provide enough information to determine what should be defined as an 'article.'" Ex. 2–79. It should be noted that all of the State Plan States, as well as the non-State Plan States with their own right-to-know laws, have adopted an identical or comparable definition for "article" as the one in the OSHA standard, so it is, and has been for some years, the criterion used nationally for determining what manufactured items are exempted from right-to-know requirements. The current OSHA definition is also being used internationally as the Canadian government, which is in the process of implementing and system to communicate information about hazardous materials in the workplace, has also adopted it (Ex. 4–72).

In addition, the Environmental Protection Agency (EPA) recently promulgated a final rule entitled "Toxic Chemical Release Reporting: Community Right-to-Know" which also incorporates the OSHA article definition. EPA had originally proposed to use the TSCA definition. However, based on information submitted to the rulemaking record, EPA determined in the final rule that it was "more appropriate" to use the OSHA definition since it related more specifically to the issue of chemical releases. "The TSCA article definition is worded primarily to distinguish 'chemical substances' and 'mixtures' from those manufactured items that contain chemical substances and mixtures. The OSHA HCS definition was adapted from the TSCA regulatory definition, for the purpose of exempting certain items from the MSDS preparation requirements; the supposition being that the item's normal end use would not release or cause exposure to a 'hazardous chemical' in the article." 53 FR 4507.

Furthermore, Aluminum Company of America (Ex. 2–86), a manufacturer which would be applying the definition to its products, indicated: "Alcoa does not favor further clarification of the article definition. As currently stated, the definition provides sufficient flexibility to enable manufacturers to determine its applicability in a given circumstance. We believe such flexibility for manufacturers is critical to maintain and, therefore, recommend that the article definition not be modified." Similarly, Kaiser Aluminum, another manufacturer involved in application of the definition, concluded (Ex. 2–187): "We believe the current definition of 'article' is adequate as written. It provides the flexibility we believe is needed to determine whether certain aluminum products are covered by the definition. We do not believe a 'cut and dried' definition to be workable. Certainly consideration of foreseeable further processing as well as the products' chemical and physical properties should determine applicability of the Standard in a given circumstance."

Another manufacturing representative, the Manufactured Housing Institute, similarly endorsed the existing definition (Ex. 2–101): "* * * MHI does not believe that the exemption has resulted in confusion. MHI feels that the exemption is appropriate and should be continued."

A comment from the Amalgamated Clothing and Textile Workers Union (ACTWU) (Ex. 2–154A), discussed the types of additional protection afforded workers in garment manufacturing facilities as a result of the article definition as promulgated:

> ACTWU has experienced positive employee responses to the HCS. Employees of downstream garment manufacturers directly benefit from the non-exemption requirement under the "articles" provision. Workers are alerted to the hazards associated with the off-gassing of hazardous chemicals from fabrics.
>
> A recent survey conducted at a uniform manufacturing plant revealed that some employees are experiencing symptoms associated with formaldehyde exposure. Their exposure is formaldehyde off-gassing from fabric treated with permanent press resins. Caution labels supplied by fabric manufacturers alerted these workers to the possible cause of their health effects * * *.

The ACTWU concluded that the "article" definition as written, provides "a unique means through which workers are alerted to the hazards associated with certain end-use products and an irreplaceable mechanism of requesting additional information."

There were several comments which suggested that the definition needed to be clarified, but no specific problems were indicated and no suggestions were made (Exs. 2–34, 2–52, 2–56, 2–83, and 2–93). There was also a series of comments which either suggested adopting the entire EPA definition, or provided an alternative to the definition (*see, e.g.*, Exs. 2–84, 2–103, 2–104, 2–106, 2–124, 2–140, 2–142, 2–145, 2–147, 2–188, 2–200, and 2–211). As stated above, OSHA believes the EPA article definition is inappropriate for the HCS because it would exempt from the rule manufactured items that contain hazardous chemicals and release them in such a way as to expose workers under normal conditions of use. Furthermore, EPA's purpose in exempting these items because of their commercial status is quite different than OSHA's purpose to provide information to exposed workers, and thus a different approach is necessary.

All of these alternative suggestions were in comments submitted and coordinated by representatives of formaldehyde-related industries, such as producers of textiles and wood products which contain formaldehyde resins. These same comments were submitted to the formaldehyde docket, and were considered in the formulation of the final rule on formaldehyde. *See* 52 FR 46168. Since formaldehyde is a specific, unique hazardous chemical used in manufactured articles, *i.e.*, a gas which is released from solid products, and is fairly ubiquitous in both its uses and its presence in the environment, OSHA believes it is appropriate to deal with the problems raised on a substance-specific basis, rather than modifying a generic rule to address one situation.

One alternative that was suggested by these coordinated comments

recommended modifying the third part of the definition to exclude manufactured items which are formed into a specific shape or design for a particular end-use function and which "consist[ ] of substances which have been thermoset, chemically reacted, or bound by molecular forces, or a combination of these or similar chemical/physical factors." (*See, e.g.*, Ex.2–84.)

OSHA does not find that this alternative provides sufficient protection to employees since it does not result in information being provided if a hazardous chemical is released despite the bonding, etc. described. The process used to produce the material is irrelevant to hazard communication—the only concern is what employees are being exposed to in the workplace.

Another alternative suggested by the formaldehyde industry commenters is the OSHA exempt *de minimis* releases so that a manufactured item which releases "small" amounts of a hazardous chemical during normal conditions of use is still considered an article and not covered by the HCS. In particular, the following has been suggested (*e.g.*, Ex. 2–84):

> An amount shall be considered *de minimis* if (a) the concentration of the hazardous chemical in the article is less than 1% by weight, or 0.1% if the chemical is a carcinogen; or (b) the manufacturer has reason to believe that release of the chemical from the article under expected conditions of use will not exceed an established OSHA PEL or ACGIH TLV.

This alternative also does not provide sufficient protection for employees, and does not address the true issue of concern—the exposure of employees. The weight or volume of a gas present in a solid material is totally unrelated to what is released—in the situation of the formaldehyde-contaminated products (which are the only examples provided in the record to substantiate a "need" for a *de minimis* exemption in the definition), the gas is 100% of the release even though the relative weight or volume would be far less than the percentages indicated. In fact, OSHA does not consider the exposures resulting from some of the products of concern to the formaldehyde industry, and which would be exempted if their recommendations are adopted, to be *de minimis* in the sense that they are exposures that result in no hazard to employees and are thus insignificant. Hazard determinations are to be performed under the rule on those chemicals to which employees are actually or potentially exposed. In the case of solid items, this means that the hazard determination must be done only on the release, not on those materials still bound in the article. The hazard determination provisions, including the percentage cut-off, would apply to the released material while the bound materials in the solid remain totally exempted. Chromium, for example, is a hazardous chemical, but the fact that it is present in concentrations of greater than 1% of the weight of a solid metal item, such as a bolt, which does not change in form or release chromium into the workplace air is irrelevant to the employees' protection, and therefore need not be considerd in an evaluation of the hazards.

Determination of the point at which a gas in a solid becomes hazardous under the rule is unlike liquid or gas mixtures where OSHA has used a percentage cut-off (paragraph (d)(5)). Commenters have used the existence of this cut-off for liquid or gas mixtures to support the claim that a similar approach should be used for articles. Although the percentages are not ideal, it is a reasonable conclusion that in a liquid mixture the amount of material released in generally related to the amount of that material in the mixture. Differences in vapor pressures will have some effect on that, but the general rule does apply. Furthermore, OSHA has adopted a provision that will protect employees in the situations where the percentage cut-off will not be protective enough, and stated that if the employer has information to indicate that the material will present a health hazard to employees when present in smaller concentrations, or could exceed an established exposure limit, it is still covered regardless of the fact that the amount of material present in the mixture is small. It should also be noted that where there is a hazardous chemical present in a liquid mixture which presents no potential for exposure, *i.e.*, it is chemically bound in such a way that it will not be released, the presence of that chemical does not have to be indicated and it is not considered in the hazard determination process. For example, if silica is present in a liquid mixture which remains a liquid, and the silica cannot become airborne under normal conditions of use or in a foreseeable emergency, the percentage of it in the mixture is irrelevant and it is not considered in the hazard evaluation. In other words, there is not potential for exposure, therefore it is not subject to the rule.

Similarly, a solid item may contain large concentrations of a hazardous chemical, but the chemicals are bound in such a manner that employees will not be exposed to them when they are being used (*e.g.*, lead nuts and bolts). The percentage of these materials in the solid is irrelevant to employee exposure and thus not to be considered in the hazard determination process, just as the silica in the liquid mixture described above is not to be considered. Other manufactured items may contain only small amounts of hazardous chemicals by weight in the product as a whole, yet clearly pose potential hazards to employees because these chemicals are released into the workplace under normal conditions of use (*e.g.*, the formaldehyde-treated fabric described previously) and employees are exposed.

Furthermore, requiring information disclosure solely in situations where the released chemical might exceed an OSHA PEL or ACGIH TLV is not consistent with the purpose of the rule. "The purpose of hazard communication is to ensure the disclosure of information about the possible hazards of chemicals in the workplace before the worker is exposed to them, and thus is at risk of experiencing adverse health effects." 49 FR 53296. Providing chemical hazard information only if established air contaminant limits might be exceeded would clearly conflict with this purpose. Also, exposure limits have been established for only a limited number of hazardous chemicals and would not address the vast majority of hazardous chemicals encountered in the workplace. Moreover, since the HCS defines employee exposure as including ingestion, skin contact and absorption, in addition to inhalation, the air contaminant limits might be unrelated to the total exposure experienced by workers to the chemical released from the product. If a hazardous chemical is released from an item, employees should be informed.

However, the Agency does recognize the practical considerations in applying the definition is some situations (*e.g.*, whether molecular level releases are covered). In the preamble to the revised final rule, the Agency explicitly reiterated its position on this issue (52 FR 31865):

> Releases of very small quantities of chemicals are not considered to be covered by the rule. So if a few molecules or a trace amount are released, the item is still an article and therefore exempted * * *.

In practice, application of the definition in these situations has not been a problem. OSHA believes that potential coverage of these very small releases have been raised as a theoretical problem, rather than an actual problem of application. Examples of items which may release very small quantities of materials, but which the Agency

considers to be exempted, have been provided in both the compliance directive for the rule (Ex. 4–24), and the revised final rule discussion on articles (52 FR 31865). These would include such items as pens or pencils; emissions from tires when in use; vinyl upholstery; emissions from newly varnished furniture; and adhesive tapes. It should be noted that these very small releases are far below the types of releases that would be exempted if the percentage cut-off *de minimis* approach is taken. Although these nearly imperceptible releases are cited as reasons for having a *de minimis* cut-off, these types of releases have always clearly not been covered by the rule. The proponents of the specific cut-off for *de minimis* releases are, in fact, attempting to exempt other products which are clearly covered by the rule, and are intended to be covered due to the type of exposure and hazard involved.

Comments repeating the arguments regarding the *de minimis* issue were again submitted by the formaldehyde-related industries in the comments submitted in response to the final rule (*see* Exs. 5–1, 5–99, and 5–101), as well as in comments submitted to OMB (Ex. 6). No new arguments were presented. Several other commenters supported use of the EPA TSCA definition (Exs. 5–72, 5–84, 5–93, and 5–94) or the need for a *de minimis* exemption (Exs. 5–83, 5–89, 5–86, and 5–107), but had no substantive discussions regarding the current definition or difficulty in applying it. Furthermore, these comments were from representatives of the non-manufacturing sector which are not in industries involved in hazard evaluation and thus do not have to apply the definition. The only possible impact on them is that they will potentially receive information about more products which they use than they will if the definition is changed.

OSHA concludes that, first of all, the definition of "article" and application of the exemption is an issue in the manufacturing sector where such items are produced, not in non-manufacturing. The decisions regarding the application of the rule to such items has already had to be made by the manufacturing sector, and information on non-exempted materials is already being provided to other manufacturers, and non-manufacturers in those States which have already extended the rule. For non-manufacturers, the difference in the definition only affects them in terms of what information they receive about the items they use in their workplaces. Secondly, the rulemaking record does not indicate there is a pervasive problem with the definition as written, and in fact, as discussed previously, a number of commenters specifically supported the definition. (If manufacturers in general have a significant problem with the article definition, it would have been expected to be a major issue at the April 2, 1987 OMB public meeting on the information collection requirements of the rule affecting manufacturing (Ex. 4–3). However, the "need" for a *de minimis* exception in the article definition was only raised during that meeting by The Formaldehyde Institute.) Those commenters who didn't support the definition were generally objecting to their products being covered, not to the definition *per se*. In fact, it is interesting to note that although the formaldehyde-related industries repeatedly urged that OSHA adopt a *de minimis* exemption for its products, when the Agency took such action representatives of the industries filed a petition for an administrative stay of the hazard communication provisions of the formaldehyde rule (Ex. 4–66):

> Petitioners seek to stay a single requirement of the formaldehyde standard: a cancer label is apparently required for formaldehyde gas, mixtures, and solutions composed of greater than 0.1% formaldehyde, and materials "capable of releasing into the air under any normal conditions of use at concentrations reaching or exceeding 0.1 ppm." This requirement is, on the one hand, unnecessary for worker protection and, on the other hand, devastating to the business of various industries which manufacture and sell products emitting minimal amounts of formaldehyde.

Thus the request for a *de minimis* exception was apparently not merely to clarify the requirements—the ultimate aim was to exempt specific types of products from coverage that would otherwise be covered under the current rule, as well as the formaldehyde standard, even though they pose a potential hazard to workers.

OSHA further concludes that there is no appropriate, protective, generic *de minimis* exemption that has been suggested for the HCS. The only commenters that repeatedly suggested a *de minimis* approach were those involved in formaldehyde industries. The final formaldehyde standard includes a *de minimis* exemption for such products, and thus the Agency has addressed the specific concerns in a substance-specific standard based on the rulemaking record developed for formaldehyde. OSHA believes that it is more appropriate to deal with the issues involving formaldehyde exposures in the substance-specific standard.

On February 2, 1988, OMB disapproved the information collection requirements of the formaldehyde standard for any labeling and MSDS requirements that "go beyond those already approved in the Hazard Communication Standard (HCS)." Ex. 4–101. In OSHA's view, there are no labeling or MSDS requirements in the formaldehyde standard that go beyond those in the HCS.

Chemical manufacturers, importers, and distributors have been required to provide labels and material safety data sheets for formaldehyde and formaldehyde-containing products since the HCS became effective on November 25, 1985. To be considered in compliance with the HCS, an adequately prepared label and MSDS would have had to include all of the information currently specified in the formaldehyde standard under its specific hazard communication requirements.

The formaldehyde standard is less stringent than the HCS insofar as there is a specific cut-off of 0.1 ppm to determine whether or not an item would be considered an article under that rule. Fewer formaldehyde-containing products would be subject to the hazard communication requirements under the formaldehyde standard than would be subject to the HCS itself. Thus the establishment of the specific cut-off was de-regulatory. OSHA will be resubmitting the labeling and MSDS requirements of the formaldehyde standard to OMB for further review in the near future. Until further notice, OSHA will be enforcing the HCS labeling and MSDS requirements for formaldehyde and formaldehyde-containing products. Chemical manufacturers, importers, and distributors may use the applicable provisions in the formaldehyde standard as additional guidance for determining what constitutes an appropriate hazard warning. Furthermore, OSHA's enforcement policy will use the 0.1 ppm cut-off for determining when a health hazard is present, rather than the lower threshold (*i.e.*, very small quantities) used under the HCS.

The Agency has decided to propose modifications to the article definition in several respects to accommodate legitimate concerns about the rule's application. First, consistent with EPA's approach, fluids and particles have been specifically excluded from being considered articles. This is not a change in interpretation, but has merely been added to clarify coverage. Secondly, the definition specifically exempts releases of very small quantities (*e.g.*, minute or trace amounts) of hazardous chemicals

as long as they do not pose a health risk to employees. A reference to the hazard determination provisions of paragraph (d) has also been added to help clarify that a hazard determination, including the mixture percentage cut-offs, is to be done on the released material, not on those materials still bound in solid form.

Therefore, if there is evidence that under normal conditions of use a single chemical, determined to be hazardous under paragraph (d), is released from a manufactured item, the HCS provisions would apply for that released chemical unless the release was of minute or trace quantities and did not pose a health risk to employees. If a mixture of chemicals is released in minute or trace quantities, it would not be covered unless it posed a health risk to employees. If it is released in more than such quantities, then the mixture rule in paragraph (d)(5) would apply.

Thus, if a hazardous chemical component of the released chemical mixture comprises less than 1% (or if a carcinogen, less than 0.1%), and there is no evidence that this hazardous chemical component could exceed an established OSHA permissible exposure limit or American Conference of Governmental Industrial Hygienists' Threshold Limit Value, or could present a physical hazard or health risk to employees in the concentrations released, the employer need not comply with the HCS information transmittal requirements for this truly minute release of hazardous chemical. The rule requires compliance with the HCS when workers are exposed to hazardous chemicals known to be released from manufactured items under normal conditions of use, but clarifies by reference to paragraph (d) that the percentage cut-offs in the current rule's mixture provisions exempt employers from the HCS where there are very small quantities of hazardous chemicals released from these items and which do not pose a health risk to employees.

Other alternatives have been considered by OSHA but rejected for various reasons. For example, establishing a percentage of the permissible exposure limit (PEL) as a cut-off has been discussed. The problems foreseen for this approach include, foremost, the lack of PELs for many substances, and additionally, the difficulty in accurately predicting specific exposures downstream (*i.e.*, a percentage of the PEL being exceeded), and the difficulty in standardizing methods of measuring such releases (an issue that has also been raised in the petition for administrative stay of the formaldehyde rule, Ex. 4–68). Although OSHA has set specific coverage cut-offs in a number of particular standards requiring chemical manufacturers to estimate downstream exposures, these cut-offs were based on administrative records developed specifically for these regulated chemicals. OSHA believes it is inappropriate to set a single exposure cut-off for the hundreds of thousands of chemical products covered by the HCS.

Determining coverage by the level of detectability for each released material has also been suggested. Since the limits of detectability vary by chemical, this does not appear to be a viable approach. Furthermore, sometimes the method of detection for a chemical is so refined that this would result in more items being considered to be covered under the rule than under the current approach. OSHA invites comment on these suggestions and the proposed modifications to the definition and exemption, as well as soliciting other approaches for dealing with or clarifying the issue.

*OMB Determination on Articles.* According to the letter prepared by OMB regarding the information collection requirements of the rule (Ex. 4–67), the record examined by OMB in making its determination "supports the need for an article exemption" but "does not support the existing definition of 'article,' particularly with regard to the lack of a *de minimis* exemption and the agency's interpretation of 'normal conditions of use'." OMB further concludes that "the evidence is convincing that the current definition of 'article' would indeed result in the inclusion of many items that present trivial risks, and that OSHA's preamble discussion of the issue is insufficient to exclude those items." An approach that OMB would consider to be more consistent with the Paperwork Reduction Act "would exclude *de minimis* exposures expressly, and define such exposures in the same terms used in the exclusion for trace components of mixtures."

OMB also believes that "the record suggests that the detailed substance-specific information provided on the MSDS can be useful in a controlled work environment, such as a manufacturing facility, in which the employer knows what hazards are present and where. Detailed substance-specific information does not, however, seem to offer much practical benefit in uncontrolled environments, such as that faced on a construction site or by a repairman, where the employer knows generally but not specifically what hazards the employee will face, or when, or where. In uncontrolled situations, generic hazard training seems much more relevant to protecting workers from the array of hazards they may face and the materials handling decisions that they must make throughout the workday."

OMB uses this argument to object to OSHA's determination that the exemption for an article is based upon its ultimate use, and it is not exempted if it releases material while workers are using it in the course of their employment in operations such as installation. "Outside the manufacturing sector, there is likely to be little practical utility to a requirement that MSDSs and labels accompany solid objects that would be 'articles' under normal conditions of use."

OMB therefore required OSHA "to consider, at least, alternatives to the definition of 'article,' including a *de minimis* exemption and clarification of the concept of 'normal conditions of use,'" and shall conform the requirements on the manufacturing sector with the requirements on the non-manufacturing sector in light of this decision."

OSHA has reconsidered the definition, as described above, and is proposing a modification consistent with existing interpretations of the rule and adequate protection of workers. Comment on the OMB determination is invited as well as comments on the discussion above and the proposed modifications.

*Food, drugs, cosmetics, and alcoholic beverages.* In the revised final rule, OSHA included an exemption for food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers (paragraph (b)(6)(v)). This exemption recognized that even where these chemicals are hazardous chemicals (and many are not, particularly in the area of food items), they present little or no hazard to employees when they are in final packaged form for sale to consumers. This exemption effectively limited coverage of many retail establishments which only have hazardous chemicals in this form, *i.e.*, packaged for sale to consumers. But it did not exempt these products when they are being used in a retail establishment and thus exposing employees—such as beauty products being used in a salon.

OSHA has received comments and questions about the application of this exemption from both businesses distributing to retail food establishments (*see*, Ex. 5–97) and the retail establishments themselves (*see*, Ex. 5–5). As stated in the preamble to the

revised final rule, if a product is exempted downstream, a distributor has no responsibility for providing a MSDS on that product to the retail distributor. "In addition, since these products are exempted, employers which package them for retail sale would not have to furnish material safety data sheets to distributors receiving the products." 52 FR 31862.

OSHA is proposing a further modification to this exemption which both clarifies and extends it to other food and alcoholic beverage products in retail establishments which are being prepared for consumption by consumers. Thus food which is used for cooking meals to be sold to customers would be exempt, as would alcoholic beverages which are sold by the glass and thus prepared for consumption rather than "packaged" for consumer use. Although OSHA believes that most such products in terms of food items would not be hazardous under the rule in any event, it appears that some manufacturers are nevertheless providing material safety data sheets for such items as aflatoxin in peanut butter used in a restaurant. To ensure such interpretations are not made, and that material safety data sheets are not unnecessarily being provided for such items, OSHA is proposing this modification to the exemption and inviting comment on the proposed language.

*Consumer products.* One of the principles upon which the HCS is built is that employees are entitled to information regarding any chemical which is hazardous and to which they are potentially exposed. The type of use this product is intended for is irrelevant—the risk being addressed is exposure to a chemical without knowing what the hazards and appropriate protective measures are. That being the case, the 1982 NPRM contained no exemptions for any "types" of chemicals. The exemptions which were in the original final rule were based upon comments submitted to the rulemaking record after that proposal. OSHA limited the exemptions to situations where other regulatory programs adequately addressed the problems involved (*e.g.*, labeling exemptions for those products labeled in accordance with another Federal agency's requirements), or where the hazards did not result from workplace exposure.

In the area of consumer products, the original final rule included an exemption for additional labels on such products when they are labeled in accordance with the requirements of the Consumer Product Safety Commission (CPSC). CPSC's requirements for labeling of hazardous substances are for the purpose of protecting consumers when such products are used in the home, the school, and recreational facilities (15 U.S.C. 2052(a)(1)). The Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*, and regulations issued under that Act by CPSC are not designed to protect workers. *See American Petroleum Institute v. OSHA*, 581 F.2d 493, 510 (5th Cir. 1978), *aff'd on other grounds sub. nom. Industrial Union Dep't. v. American Petroleum Institute*, 448 U.S. 607 (1980).

Consumer products generally do not include the type of specific hazard information OSHA would require on the labels of containers of hazardous chemicals which are shipped. Although some consideration is given to chronic hazards, the basic emphasis is on acute effects. In addition, the labels focus on precautionary statements and routes of exposure rather than informing the user of the specific hazards. For example, a label for lead solder purchased in a hardware store indicates that it is "fatal if swallowed" and "causes severe burns," but gives no indication of the fact that lead causes not only acute lead poisoning but also has severe effects on a number of body systems, including damage to blood-forming, nervous, and reproductive systems (*see*, OSHA's lead standard, 29 CFR 1910.1025). Furthermore, the primary route of entry for occupational exposure to lead would normally be inhalation—the consumer label does not indicate that inhalation of fumes generated when soldering are of concern. (Ex. 4–71). Conversely, a properly prepared MSDS for the same material will indicate the full range of health effects, the appropriate protective measures, the fact that there is an OSHA standard for the material with a permissible exposure limit, and other useful information for both the employer and the employee being exposed.

OSHA nevertheless decided to permit the CPSC labels to suffice so as not to disrupt the extensive labeling conducted in accordance with those rules. OSHA believed that this could be justified on the basis that some information is provided on the labels that would be useful to workers, and that the requirement for MSDSs would provide what information is necessary to supplement the labels. 48 FR 53289. This additional information is critical to ensuring that training can be properly conducted, and that adequate protective measures are used in the workplace.

OSHA is not preempted from modifying the labeling requirements for those products covered by CPSC that may also be found in the workplace. 15 U.S.C. 2080. Where products are used in both industry and the home "there may be dual, or overlapping jurisdiction between the Secretary of Labor under OSHA and the Commission under the Consumer Product Safety Act." W. Kimble, *Federal Consumer Product Safety Act*, 337 (1975). "Different standards may * * * be applied to eliminate or reduce a hazard to the consumer than are applied to eliminate or reduce the same hazard as it confronts the * * * workman * * * *Id.* As the Fifth Circuit of the U.S. Court of Appeals found when considering labeling requirements for benzene, "[A]lthough an existing requirement for labeling under another act may affect the reasonable necessity for an OSHA requirement" section 4(b)(1) of the OSHA Act does not prohibit OSHA from requiring containers of hazardous chemicals to bear the warning labels authorized by section 6(b)(7) when the CPSC requires labels on the same products. *API v. OSHA*, 581 F.2d at 510. Therefore, OSHA is free to impose requirements determined to be necessary to protect employees from the hazards of products that may also be considered consumer products regulated under the requirements of the CPSC.

Upon considering what information is necessary for the protection of workers exosed to those so-called consumer products in the workplace, OSHA decided that protection of workers would be served by allowing the CPSC labels to suffice, but requiring MSDSs and training as for any other hazardous chemicals. There appears to be some misconception that by virtue of being permitted to be marketed to consumers, consumer products are inherently safe and don't require any additional information be given to workers using them. This certainly is not the case.

The Consumer Product Safety Commission (CPSC), in its National Electronic Injury Surveillance System (NEISS), compiles estimates of product-associated injuries based on a statistically significant sample of incidents reported to institutions with emergency treatment department. Information regarding work-related injuries treated in emergency rooms has subsequently been provided by CPSC to the National Institute for Occupational Safety and Health (NIOSH). *See* Ex. 4–77.

These work-related data are total numbers of chemical injuries, and are not collected in such a way that the consumer product injuries in the workplace can be separated from other chemical product injuries. The CPSC

version of the data is reported by type of product, while the NIOSH work-related data is grouped by source of injury. Nevertheless, much information regarding reported injuries can be derived from the data as presented, and give some indication of the numbers of serious injuries related to the use of chemicals. Since these data only deal with injuries which require emergency room treatment, it can be assumed that they are a small subset of the total number of injuries which occur.

According to the CPSC, the national estimate for emergency room treatments of injuries related to paints, varnishes, and shellacs is 10,712, and 75% of these injuries occur in adults from ages 15 through 64, an age range which would encompass adults who work. At least 5% of these injuries result in hospitalization. National estimates for other types of chemical products which would also be found in the workplace include: 7530 injuries related to adhesives (51% of them in the adult working age categories); 3186 injuries related to lubricants (71% in the adult working age categories); 2977 related to drain cleaners (63% working age adults); 1882 related to automotive chemicals (69% working age adults); and 5584 related to laundry soaps or detergents (52% working age adults). There are many other products for which injuries are reported and which would be expected to be found in the workplace. These numbers indicate that adults of working age are being injured through the use of consumer products, whether in the home or in the workplace. In workplaces where these products are being used more frequently or for longer periods of time, the risk of injury increases. Appropriate communication of hazards and protective measures decreases that risk of injury.

The NIOSH data indicate that a total of 136,212 work-related chemical injuries were estimated to have been treated in emergency rooms in 1986. The sources of injuries included in this total were chemicals and chemical compounds (solids, liquids, gases): 102,428; coal and petroleum products: 23,532; and soaps, detergents, cleaning compounds not classified elsewhere: 10,252. There were other categories of sources of injuries that had chemical product exposures in them, but these three were expected to be the ones of cost significance. As mentioned above, it is not possible to determine which of these work-related injuries result solely from consumer products. However, in categories such as soaps, detergents, and cleaning compounds, it can reasonably be assumed that a number of them were consumer products.

Many products used industrially are also sold and used as consumer products. Thus, exempting such products is in essence exempting them because of the method of distribution for them, *i.e.*, that they are generally sold in retail establishments, rather than through wholesale distribution systems. This is not an appropriate rationale for such an exemption since it does not consider either exposure or hazardous nature. Of particular concern is that the CPSC label is designed to protect consumers under normal conditions of consumer use, or reasonably foreseen misuse, and is frequently directed towards protection of children unintentionally exposed in the home, rather than being directed towards protection of workers exposed repeatedly, and to potentially larger concentrations of the material. In fact, a number of consumer product labels recognize this difference in exposure and note on the label either that the product is not intended to be used in the workplace (Ex. 4–64), or that a material safety data sheet should be acquired if it is used in the workplace (Ex. 4–71).

It is also important to note that the record overwhelmingly supports the need for a comprehensive hazard communication program, comprised of labels, material safety data sheets, and training. In 1981, OSHA published and later withdrew a NPRM which was a labeling standard—it had no provisions for development of material safety data sheets or for training. One of the primary reasons for the withdrawal was the lack of support for a rule which relied only on label information. In fact, only one commenter on the 1982 NPRM believed that the MSDS should not be the primary source of information on the chemical (H–022 Ex. 19–49), whereas numerous respondents endorsed the MSDS provisions and role in hazard communication as being important and necessary (*see, e.g.*, H–022 Exs. 19–11, 19–62, 19–75, 19–91, 19–119, 19–156, 19–177, and 19–207). For example, the Chemical Manufacturers Association (Ex. 19–91) stated that: "[T]he proposed standard appropriately makes the MSDS, rather than the actual container in the workplace, the source from which employees and their representatives may obtain detailed information regarding potentially hazardous substances used in the workplace." Similarly, the American Petroleum Institute (Ex. 19–111) stated that "labels may not always be the most effective means for communicating the potential hazards of a work area * * *" and that "MSDSs constitute a vital means of communicating safety and health hazards presented by particular chemicals and mixtures to *employer/users* * * *." And American Cyanamid Company also agreed that "the use of the MSDS as the primary source of data for properties of commercial chemicals is a worthy part of the proposed regulation * * *." (Ex. 19–119.)

OSHA thus did not exempt consumer products from any provisions of the original final rule other than labeling. This was an explicit recognition by the Agency of the greater potential for exposure in the workplace, and the lack of complete information on consumer product labels to address such situations (48 FR 53289):

> OSHA recognizes, however, that there may be situations where worker exposure is significantly greater than that of consumers, and that under these circumstances substances which are safe for contemplated consumer use may pose unique hazards in the workplace. For this reason, the standard's exclusion is limited to labeling. It does not exempt employers from the material safety data sheet and training requirements of the standard with respect to any of these substances, provided of course that the substance otherwise meets the standard's definition of hazardous chemical. Moreover, it should be stressed that these labeling exclusions are for the enumerated substances only. To the extent that any employer uses other chemicals, such as in the manufacture or processing of these substances, they are fully subject to the requirements of this standard.

During the implementation of the original final rule, OSHA determined that its enforcement policy regarding consumer products would focus on the type and extent of usage (see, OSHA's instructions to compliance officers for enforcement of the HCS, Ex. 4–24):

> A common sense approach must be employed whenever a product is used in a manner similar to which it could be used by a consumer, thus resulting in levels of exposure comparable to consumer exposure. The frequency and duration of use should be considered. For example, it may not be necessary to have a data sheet for a can of cleanser used to clean the sink in an employee restroom. However, if such cleanser is used in large quantities to clean process equipment, it should be addressed in the Hazard Communication Program.

This appeared to OSHA to be a reasonable accommodation for employers who really do use consumer products in the manner intended, and with the same frequency and duration of exposure as would be experienced as consumers. OSHA has had no problems in implementing this enforcement policy, and it has been our experience that covered employers understand it and are able to comply. Therefore, although

it is a policy which decreases the amount of information available to some employees covered under the rule; OSHA felt it could be justified based on the fact that under the same circumstances in the home the same type of information would be available to that individual for protection. Many employers have told OSHA that consumer products are included in their hazard communication programs regardless of the enforcement policy of the Agency because they believe that all hazardous chemicals should be included in an appropriate hazardous materials management program.

OSHA recognized that many more non-manufacturers would use consumer products than would be found in manufacturing facilities, and that the method of obtaining them might more likely be from retail distributors than wholesale. Thus the ANPR included questions regarding the use of such products, and the means of obtaining them. Relatively few responses were received. However, the responses did confirm that in many cases the use of consumer products results in significant exposures that warrant more information being available than that which appears on a consumer product label. For example, Daniel Construction Company responded to the questions as follows (Ex. 2–59):

> The most common "consumer products" used in the construction industry are wood and wood products, caulking, and aerosol cans of spray paints, cleaners, lubricants, and solvents. These products are not typically used differently than consumers do. That does not mean that employees cannot be overexposed to the ingredients. For example, a 16-ounce spray can of paint used in a 10'x10'x10' room can produce a concentration of solvent that is more than ten times the acceptable exposure limit.

Of course a consumer product label would not normally indicate that there is a permissible exposure limit for a solvent present in the paint since this information is unrelated to consumer use and exposure. However, a MSDS for the product would be required to include such information which will enable the employer to ensure that employees are properly protected in a situation as that described by Daniel Construction Company. In fact, the CPSC has recommended the use of MSDSs for products they cover in school laboratories (Ex. 4–56), recognizing that additional information is desirable in these types of exposure situations: "Material safety data sheets should be obtained on each chemical delineating particular hazards or handling procedures." "Have a material safety data sheet on hand before using a chemical."

Similarly, the American Gas Association (Ex. 2–83) indicated that use of consumer products could result in different exposure levels than those encountered during consumer use:

> It could occur—not because of different use, but because the use by employees is for prolonged periods of time. An average consumer may use a cleanser several times a week to clean the kitchen or bathroom floor, whereas a gas company employee may use the same cleanser every day to clean a gas facility.

The Massachusetts Institute of Technology (MIT) (Ex. 2–120) also indicated that their employees are exposed to consumer products in greater amounts than consumers would be, including paint and thinners used by the painters, printing fluids used by the graphic arts services, cleaning and polishing chemicals used by the custodians, lawn and garden chemicals used by the grounds maintenance crew, and lubricating sprays and other maintenance products used by mechanics/electricians. MIT obtains MSDSs from vendors to ensure employees are properly protected from these materials. Mountain Bell (Ex. 2–164) also confirms that consumer product exposures may be greater in its industry, particularly "* * * where products are used on an extensive basis such as in automotive operations, janitorial operations, and copying operations * * *."

A few respondents felt that the consumer product label should be enough information (Exs. 2–75, 2–79, 2–99, 2–107, and 2–116). Others, however, noted that employees are not getting enough information regarding these products and that MSDSs should be made available. For example, Economics Laboratory, Inc., a manufacturer of consumer products for cleaning and sanitizing, suggested (Ex. 2–67):

> In the use of cleaning and sanitizing products, a principal point of worker exposure is during the transfer of concentrate from the original container to prepare a use solution. We supply products labeled as per ANSI and/or FHSA, but we have seen instances of deficient labeling on the products of some other manufacturers. We now send to all customers in these sectors an MSDS for every product they purchase. Many of our customers now use the labels, MSDS and other aids to train employees, but a formal requirement would increase that number throughout the industry.

The Adhesive and Sealant Council, a trade association which represents manufacturers of materials that may be marketed as consumer products, also addressed this issue (Ex. 2–109):

> * * * The Council is concerned that in certain cases hazard information may not reach employees of manufacturers and non-manufacturers. ASC members are aware of cases in which consumer products are purchased from retailers or distributors in consumer quantities but are used in the workplace. Under such circumstances the original manufacturer is not made aware of the use of its consumer products in the workplace. Thus, some workers may lack needed hazard information unless they or their employer affirmatively and voluntarily make an effort to obtain and promulgate the information.
>
> There are, of course, safety requirements applicable to consumer products under the Consumer Product Safety Act, and other federal laws, but these do not contain broad workplace safety requirements beyond standards and labeling, such as material safety data sheets. The present OSHA docket has not been opened as to this issue. However, ASC believes the problem could be greater with regard to non-manufacturer distribution than with direct manufacturer distribution * * *

One further comment submitted by an employee representative summed up the situation by stating that when a product is used by a professional in the workplace, it is no longer a "consumer" product regardless of the fact that a consumer can purchase the same product (Ex. 2–199).

OSHA decided to incorporate into the revised final rule its existing enforcement policy which is tied to type and extent of exposure (52 FR 31878; paragraph (b)(6)(vii)):

> Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers * * *.

OSHA further stated that this exemption "strikes a balance between the practical considerations of acquiring and maintaining material safety data sheets on CPSC regulated products which employees are exposed to at home as well as at work, and the worker's need for more hazard information than a CPSC label when exposures are greater or more frequent than typical public use of the chemical would generate." 52 FR 31863. OSHA had also examined the existing State rules in the area of right-to-know, and found that many had consumer product exemptions that were related to the type and extent of usage. (*See, e.g.*, Illinois, 48 Ill. Rev. Stat. s1401 (consumer goods exempted "provided that employee exposure to such

consumer goods is not significantly greater than consumer exposure occurring during the principal consumer uses of the consumer goods"); Maine, 26 M.R.S.A. s1709–1725 as amended (exempts consumer products and foodstuffs "to which, in the employer's knowledge, employee exposure is not significantly different from that of the general public during foreseeable use of the substance"); Massachusetts, Chapter 111F of Massachusetts General Laws (exempts consumer goods which are not carcinogens, mutagens, teratogens, neurotoxins, or "extraordinarily hazardous" substances and which are "used in the workplace in such a manner that employee exposure is equivalent to exposures resulting from consumer usage"). Other State rules are consistent with the original Federal HCS and have no exemptions for consumer products (*see, e.g.,* Arizona, Kentucky, South Carolina).

There were some comments submitted on the coverage of consumer products following the publication of the revised final rule. A number of them felt that they could not define what exposures in the workplace would be comparable to consumer exposure, and that the rule should exempt such exposures unless they are "significantly" greater than consumer exposure or that such products should be completely exempted (Exs. 5–53, 5–72, 5–88, 5–93, 5–94, and 5–97). As we have stated earlier, a common sense approach is required in making these determinations, and most employers we have dealt with clearly know whether the use of such products is unusual or frequent. However, we are inviting further comment on the issue of adding the word "significantly" to the consumer product exemption to modify "greater."

Another suggestion submitted (Exs. 5–84, 5–83) was to use the same consumer product exemption used by Congress in the community right-to-know provisions of the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. 99–499 (Ex. 4–16), which is being implemented by the Environmental Protection Agency (EPA). The exemption would then be for "any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." As this exemption is also not related to the extent of employee exposure—which is the concern of OSHA in the HCS—it is not appropriate for this rule.

The legislative history for SARA does not discuss the household or consumer product exemption. OSHA's rule preceded the SARA legislation, and it can be argued that the exemptions in SARA were intended by Congress to address the different needs of community right-to-know versus worker right-to-know. Community right-to-know under SARA entails informing the general public and emergency response facilities about chemicals in their neighborhoods that could cause hazardous conditions during emergency situations. The HCS involves informing employees about the chemicals they are potentially exposed to on a day-to-day basis as a result of their work. Exemption of consumer products under SARA was not a determination by Congress that such coverage is unnecessary in the workplace.

The National Paint and Coatings Association (NPCA) suggested that it is too costly to provide MSDSs to paint contractors and retail establishments and that they therefore should not be required for consumer product paints (Ex. 2–75). Alternatively, NPCA suggested containers of one gallon or less should be exempted. As has already been described, OSHA believes that the only appropriate criteria for determining whether a chemical is covered is the existence of a hazard and the potential for exposure. Both of these criteria are met for many paint products. As was described above, use of even a 16 ounce spray can of paint can result in employee exposures of ten times the permissible exposure limit, so the size of the container is not the determining factor.

The NPCA indicated that it would be difficult to comply due to the large numbers of products involved and the multiplicity of distributors. However, there are already a number of States which require MSDSs for such products, and it is our understanding that many employers in construction have been able to obtain MSDSs for consumer product paints from their vendors. Furthermore, there is evidence in the record that paint producers customarily distribute documents referred to as "technical data sheets" which prescribe methods of application and other use-related information, including, in some situations, brief indications of hazards (Ex. 4–60). These technical data sheets are apparently supplied to distributors to provide information regarding the products that does not appear on the product labels. It appears to OSHA that if these sheets can efficiently be distributed for paint products, then MSDSs can as well. Alternatively, the information required on a MSDS could merely be added to the technical data sheets. It certainly cannot be argued that labels alone provide the same type of information that a MSDS would.

An issue that is related to the coverage of consumer products, and is undoubtedly the genesis of some of the recommendations to eliminate such products from coverage, is the distribution of consumer products in commerce. It is important to point out that the vast majority of consumer products are not covered by this rule. Only those which are hazardous are potentially covered, and within that group, only those which are used in the workplace. Producers of the materials which, while marketed to consumers, are likely to be sold to employers and used in the workplace are well aware of that potential market. (*See, e.g.,* Ex. 2–148.) Thus manufacturers of materials used in construction, graphic arts, and clearning operations, are aware that their products have industrial applications even when sold as consumer products. MSDSs have already been prepared and distributed for many, if not most, of these products. Manufacturers are required to have MSDSs for their own workers, and have already been required to distribute such MSDSs to non-manufacturing customers in a significant number of states with right-to-know rules. Furthermore, most manufacturers have and make available MSDSs because of product liability concerns separate and apart from any regulatory requirements. This was certainly demonstrated in the record by the large number of manufacturers that produced MSDSs in the absence of such requirements prior to promulgation of the original HCS. The sealed container provision also eliminates many consumer products from coverage in workplaces which may handle such materials, but do not open the containers to use them.

The record for the original final rule strongly supported the need for automatic transmittal of MSDSs from producers to users through the supply chain. The cost analyses of the rule demonstrated that a system that relies on users requesting a copy of a MSDS will be more costly, and less protective (48 FR 53327). However, in the revised final rule, OSHA determined that where retail distributors are involved in the distribution chain it was necessary to slightly revise this position. Therefore, the revised final rule stated (52 FR 31882, paragraph (g)(7)):

> Retail distributors which sell hazardous chemicals to commercial customers shall provide a material safety data sheet upon request, and shall post a sign or otherwise inform them that a material safety data sheet

is available. Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors which have informed them that the retail distributor does not sell the product to commercial customers or open the sealed container to use it in their own workplaces.

OSHA provided the following rationale for this departure from the automatic provision approach found to be necessary in the original final rule (52 FR 31866):

> Retail distributors, however, often sell to businesses and the general public and frequently have no way of knowing who a particular purchaser is. Under the current rule, retail distributors might have to give material safety data sheets to each customer to ensure that commercial customers get the information they need under the HCS. A specific statement regarding retail distributors is, therefore, included in paragraph (g)(7) to address this practical problem. Those retail distributors who sell hazardous chemicals to employers must provide a material safety data sheet upon request, and must post a sign or otherwise inform the employers that an MSDS is available.

OSHA recognizes that although it is possible for an employer to incidentally purchase a hazardous chemical from any type of retail establishment, it is not reasonable to expect every retail store that happens to carry such materials to keep a file of MSDSs in case an employer decides to make a random purchase at the store. We further recognize that such random purchases would normally be of small amounts that would generally be used as a consumer uses them, and thus would be exempt under the rule anyway. However, even in those cases where they are used in greater quantities, it appears more reasonable to place the burden on the user in that situation to obtain the MSDS than to have every retail establishment keep large numbers of them on file. This provision also limits the number of establishments to which distributors of such products have to transmit MSDSs.

The National Retail Merchants Association (NRMA) (Ex. 5–74) indicated that the final rule "* * * has struck a good balance between the obvious problem of requiring retailers to train all employees about every product which may appear on retailers' shelves, and the real need for employee training for emergency spillage of packaged products." They did think, however, that the definition of "consumer product" as stated by CPSC might be confusing to retailers, particularly small businesses, since "retailers would have to go through the process of examining all goods sold in their stores to determine if they are or are not consumer products." In fact, if retailers are selling the products they are considered to be "consumer" products—there is no determination to be made by the retailer in this respect, it's a determination made by the producer in developing the appropriate label for the material based upon its intended use.

With regard to the issue of making MSDSs available at the retail distribution level, NRMA suggested that OSHA define the term "commercial account" to ensure it is being properly interpreted and applied. They further suggested that this definition be related to selling items in large quantities and below the regular retail price. "Such accounts can be identified, and it would be less burdensome to notify such customers that MSDSs are available upon request. In fact, many retail firms have already done this under many state right-to-know laws." (Ex. 5–74).

The United Brotherhood of Carpenters and Joiners of America (UBCJA) similarly noted that with regard to MSDSs being available from retail distibutors (Ex. 2–105):

> * * * [T]hose contractors who do purchase materials from retail outlets generally buy them from a building-supply house that sells such materials in larger quantities, and may give them a volume discount. These stores would have no problem supplying MSDSs to customers * * *

OSHA agrees with the NRMA that adding such a definition will clarify that many retail distributors have no need to maintain MSDSs because they do not generally supply hazardous chemicals to commercial customers (*e.g.*, grocery stores, clothing stores). Therefore, we are proposing a definition for the term "commercial account" based upon NRMA's recommended criteria, and are inviting comment on the appropriateness of this approach. In addition, we are proposing to further modify the language in paragraph (g)(7) to indicate that when an employer purchases a consumer product from a retail establishment which does not have commercial accounts, and that employer needs to obtain a material safety data sheet, the retail distributor's duty is limited to providing, upon request, the name, address, and telephone number of the chemical manufacturer, importer, or distributor from which a MSDS can be obtained. We believe these modifications should clarify the duties of distributors of consumer products through retail distribution.

In summary, OSHA is not proposing to modify the consumer product exemption *per se*, although it is inviting comment on certain issues. The Agency continues to maintain that the mode of distribution of a product (*i.e.*, through retail distribution rather than wholesale) is not a criterion that is related to employee exposure or the need for information and therefore is not relevant to whether consumer products should be covered by this rule. The modifications proposed to the provisions regarding retail distribution should clarify them to ensure the regulated community is aware what needs to be done to comply with the revised final rule. OSHA invites comments on these issues as well.

*OMB Determination.* OMB has disapproved the information collection requirements for any consumer products that are exempted from the EPA requirements for community right-to-know (Ex. 4–67). OMB maintains that such an exemption would make the OSHA and EPA right-to-know requirements, which are closely linked, mutually consistent. Using the same exemption in both rules avoids the situation in which employers must separate the paperwork for their "consumer products" into two groups: An OSHA "consumer product" and an EPA "consumer product." Furthermore, OMB believes this exemption "establishes objective criteria that enable upstream and downstream employers to determine what is exempted and what is included. Upstream suppliers would not be forced to speculate as to the identity of the final user (consumer or employer?) in determining whether the product is subject to the HCS. The flow of MSDSs and labels would be restricted to unpackaged substances or substances packaged for industrial or commercial use, for which detailed hazard information would be expected to have practical utility." OSHA invites comments on these conclusions as well.

*Drugs.* The original HCS covered the manufacture and formulation of drugs in the manufacturing sector. The rule included a labeling exemption for such products when they were labeled in accordance with the regulations of the Food and Drug Administration (FDA), but all other aspects of the program were applicable to the drug products as well as those chemicals used to make them. In preparing the revised final rule, OSHA determined that it is not necessary to cover such drugs in the non-manufacturing sector when they are in a form that is not likely to result in exposure to employees. Thus the rule totally exempted drugs when they are in a retail establishment (*i.e.*, a drug store of a pharmacy) and packaged for sale to a consumer (paragraph (b)(60(v)). Therefore all over-the-counter drugs were exempted from the point of

packaging, and many prescription drugs were exempted as well since they are packaged prior to reaching the retail establishment. In addition, OSHA included an exemption for drugs in solid, final form for administration to a patient. As mentioned previously, this was based on the Agency's determination that the potential for exposure is minimal for these drugs.

However, in recognition of the fact that there are various types of workers who may be exposed to drugs in hospitals or pharmacies (*e.g.*, nurses, nurses' aides, pharmacy aides, or technicians), OSHA did not exempt those drugs that are not solid or are not pre-packaged for sale to consumers (a pharmacy in a hospital would be considered to be a retail sale establishment for purposes of the exemption as written). Thus nurses required to mix anti-neoplastic drugs, for example, would be entitled to a material safety data sheet and training under the revised final rule. There was little discussion of the drug issue in the record prior to the revised final rule (*see, e.g.*, Ex. 2–176). However, since drugs are designed to be biologically active, OSHA wants to ensure that employees will be properly protected. As an example of potential problems, a recent report in the American Industrial Hygiene Association (Ex. 4–59) described one hospital's experience with a drug that is generated as an aerosol in a tent for administration to children. Nurses, respiratory therapists, doctors, and other employees are directly exposed when they enter the tent to care for the patients. Information on the drug indicates that such occupational exposure may result in carcinogenesis, fertility impairment, and fetotoxicity. In addition, however, employees who were exposed also complained of experiencing acute effects such as headaches, burning and dryness of the eyes, coughing and dryness of the upper respiratory tract. The hospital eventually devised a protective program for exposed employees based upon its experiences. A MSDS with recommendations for protective measures may have helped them resolve the situation prior to employees being exposed.

In response to the approach taken in the revised final rule, the National Wholesale Druggists' Association (NWDA) (Ex. 5–85) recommended that OSHA recognize package inserts approved under FDA regulations as an acceptable alternative to material safety data sheets required under the rule. Additionally, the NWDA suggested that the *Physicians' Desk Reference*, a privately developed reference regarding drugs, also be considered to be an alternative to requiring MSDSs for drugs approved by FDA. Other commenters recommended that all prescription drugs be exempted since they are adequately covered by FDA labels, other available resources, and the medical training of persons handling or supervising handling of the drugs (Exs. 5–77 and 5–102).

Although the purpose of the Federal Food, Drug, and Cosmetic Act administered by the FDA is to protect consumers of such products and the general public (*see, e.g., Pharmaceutical Mfrs v. FDA*, 484 F. Supp. 1179, 1183 (D.Del 1980)), the product data inserts that accompany pharmaceuticals do contain some information that is analogous to that found on MSDSs and would provide some protection for employees. In particular, at 21 CFR 201.100(d)(1)(as paraphrased below), FDA requires that inserts for prescription drugs for human use must contain the following information: Adequate information for such use, including indications, effects, dosages, routes, methods, and frequency and duration of administration and any *relevant warnings, hazards, contraindications, side effects, and precautions, under which practitioners, side effects, and precautions,* under which practitioners licensed by law to administer the drug can use the drug safely and for the purposes for which it is intended * * * [in] the same [ ] language and emphasis as labeling approved or permitted * * *. (Italics added). This would be useful chemical hazard information for employees involved in administering the products even though employee protection is not the primary purpose of the information presented.

In addition to publication of such information in the package inserts themselves, the FDA regulations also state that (21 CFR 202.1(1)(2), as paraphrased below): [R]eferences published (*for example*, the "*Physicians' Desk Reference*") for use by medical practitioners, pharmacists, or nurses, containing drug information supplied by the manufacturer, packer, or distributor of the drug and which are disseminated by or on behalf of its manufacturer, packer, or distributor *are hereby determined to be labeling* as defined [by] the Act." (Italics added.) According to the *Physician's Desk Reference* (PDR) in its *Forward* (40th ed. 1986), "drug information" in the PDR is "prepared by manufacturers, edited and approved by their medical department and/or medical consultant." PDR publishes the information verbatim. *Id.*

OSHA is proposing to modify the definition of "material safety data sheet" under the rule to indicate that a package insert approved by FDA, or an entry in the PDR prepared in accordance with FDA's requirements, be considered in compliance with the HCS requirements for a MSDS for these products. In addition, the exemption regarding solid drugs is being corrected to read "*e.g.*, tablets or pills" rather than "*i.e.*" as is currently indicated in the revised final rule (*see, e.g.*, Exs. 5–77, 5–85, and 5–102).

The Agency is inviting comment on this issue, particularly from employees who would be affected by this modification to ensure that they agree that this information is adequate for their protection. The existing exemption for labeling would remain in effect, employers would still have to have hazard communication programs where covered, and training would have to be given to those employees who have not previously been trained regarding the hazards and protective measures.

Although hospitals and health care institutions have not participated in the rulemaking to date, it appears to OSHA that another issue of concern in these institutions would be labeling of drugs dispensed by a pharmacist to a nurse who gives it to the patient. It is our understanding that these dispensed drugs may not be marked in any way, and since the nurse doesn't transfer the material from the labeled container, the portable container exemption for labeling would not apply. OSHA invites comment on suggestions for dealing with this issue for non-solid drugs.

*OMB Determination.* OMB has disapproved "coverage of any FDA-regulated drug" in the non-manufacturing sector because such coverage "would result in duplicative paperwork and is unlikely to provide additional information of any practical utility." (Ex. 4–67) Comment is also invited on this alternative of totally exempting all drugs from any coverage under the rule in terms of the non-manufacturing sector workplaces.

*Nuisance dust.* Another issue that was raised for comment on the ANPR is the coverage of nuisance particulates. Under the HCS, all chemicals for which OSHA has a standard, or which are listed in the latest edition of the American Conference on Governmental Industrial Hygienists' (ACGIH) *Threshold Limit Values and Biological Exposure Indices* annual publication, are to be considered hazardous in all situations (paragraph (d)(3) (i) and (ii)).

OSHA has a generic permissible exposure limit for all nuisance dust. There are also a number of substances listed in the threshold limit value (TLV) publication which are specifically identified as nuisance particulates. These substances are listed by name in the main table of the TLVs and in Appendix D, entitled "Some Nuisance Particulates." The HCS covers any chemicals listed in the TLV publication, so these nuisance particulates are in fact part of the "floor" of chemicals covered by the HCS.

However, since any dust or particulate can potentially be a "nuisance." OSHA decided as a matter of interpretation to limit coverage of this part of the rule to those nuisance particulates specifically listed in Appendix D of the TLV booklet. OSHA further determined that if a substance listed in Appendix D was found not to be included in an employer's hazard communication program, a *de minimis* citation would be issued as long as the substance did not pose a covered physicial or health hazard other than its nuisance characteristics. A *de minimis* citation has no penalties associated with it, and the employer has no duty to abate the condition.

The majority of those commenting in response to the 1985 ANPR stated that nuisance dust should not be covered (*see, e.g.*, Exs. 2–12, 2–23, 2–64, 2–77, 2–90, 2–107, 2–128, 2–144, 2–167, 2–193, 2–211). Additional comments recommending exclusion of nuisance dusts were received after the final rule as well (Exs. 5–84, 5–86, and 5–93). Edison Electric Institute's argument is an example of the comments received (Ex. 2–107):

> The purposes of the standard can be well-served even with the omission of nuisance dusts. Any solid (powder, flake, granules) can produce nuisance dusts. Requiring MSDSs on nuisance dusts would be impractical in some cases (*e.g.*, floor sweeping dusts), and of little use in others because those do not present a significant health hazard.

OSHA proposes in this document to exempt nuisance particulates from coverage of the rule if, when evaluated in accordance with the hazard determination provisions in paragraph (d), no evidence is found to indicate that the particulate presents any physical or health hazards other than possibly being a nuisance in the workplace. Comment is invited on this modification.

There were a few comments which supported continued coverage of nuisance dust (Exs. 2–30, 2–59, 2–88, and 2–105), and others which addressed specific dusts such as flour (particularly with regard to baker's asthma) (Exs. 2–88, 2–153, and 2–166), and grain (Exs. 2–97, 2–125, and 2–160). With regard to the coverage of flour dust, information concerning the health or physical hazards of flour dust would have to be evaluated in accordance with the requirements of the rule to determine if the scientific literature indicates flour dust presents a health or physical hazard. Elimination of the coverage of nuisance particulates *per se* does not negate the requirement for performing a hazard evaluation, nor does it automatically delete such substances as flour as a result of deleting the specific coverage of nuisance dusts.

*Grain dust.* As mentioned above, a few comments were received in response to the ANPR which addressed the coverage of grain dust (Exs. 2–97, 2–125, and 2–160). Industry representatives contended that grain dust is a nuisance particulate and should not be covered by the HCS. There were many more comments submitted following promulgation of the revised final rule (*see, e.g.*, Exs. 5–2, 5–16, 5–21, 5–32, 5–43, 5–57, 5–104, and 5–124). The vast majority of these comments simply objected to grain dust being considered a hazardous chemical under the rule, and to OSHA "adopting" the ACGIH TLV for grain dust.

Under the provisions of the original final rule, as well as the revised final, OSHA established a "floor" of chemicals which are always considered to be hazardous under the rule. These include chemicals which OSHA regulates, and chemicals which appear in the latest edition of *Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment*, an annual publication of the American Conference of Governmental Industrial Hygienists (ACGIH) (now entitled *Threshold Limit Values and Biological Exposure Indices*) (paragraph (d)(3)). ACGIH is a professional society which is widely recognized as an authority in evaluation of the hazards of materials in the workplace, and establishment of recommended permissible exposure levels for those materials. During the rulemaking on the original rule, participants confirmed that if ACGIH finds a material to be hazardous, and thus establishes a permissible level for it, this is important information to be considered in the hazard determination process. (*See, e.g.*, 48 FR 53296–99.) Therefore, OSHA included this conclusion in the hazard determination process by stating that if the material appears on the ACGIH list, it is, by definition under the rule, a hazardous chemical. Chemicals listed by ACGIH (or regulated by OSHA), however, are not the only substances covered under the scope of the rule. If there is evidence to indicate a material presents a physical hazard in the workplace (*e.g.*, flammability or combustibility) or if there is one statistically significant study that indicates a potential adverse health effect may occur upon exposure, the chemical is covered by the rule (paragraph (d)(2)).

OSHA has not "adopted" the threshold limit value (TLV) for any of the substances on the TLV list. It has simply stated that the fact that this recognized authority has found a substance to be hazardous is important information for exposed employees and users of a product to be aware of, as well as being aware of the level of exposure that authority has recommended. Where OSHA has specific exposure levels, this information must also be indicated on a MSDS, and if the producer has a recommended level—as many larger manufacturers do—this information must also appear. Thus the downstream employers will have the benefit of knowing that such recommendations and requirements exist, and this will help them design appropriate protective measures for their employees.

Whether these materials appeared on the TLV list or not is somewhat immaterial in terms of whether they are covered by the rule since, if they are not listed, an evaluation still has to be made of the available hazard data to determine if they meet the definition of "hazardous chemical" under the standard. For grain dust, there is evidence that it presents both a physical hazard (potential for explosion) and a health hazard (there is evidence that respiratory effects result from exposure). (*See, e.g.*, OSHA Final Rule for Grain Handling Facilities, 52 FR 49542; Ex. 4–29 (MSDS for grain); Ex. 4–30 (ACGIH documentation for the TLV for grain dust); Ex. 4–43 (OSHA Grain Elevator Industry Hazard Alert, 1/5/78); and Ex. 4–49 (U.S. General Accounting Office report on grain fumigation, 1981). Thus grain dust would be covered by the rule regardless of whether the TLV list is referenced or not. The additional TLV reference merely ensures that the downstream employers are provided the necessary information about available recommendations for control of the exposures to the material.

OSHA does not agree that it has "delegated" its authority to ACGIH under the rule, and the Agency certainly has not "adopted" the TLV under this rulemaking process. The HCS requires employers to disclose complete and current information on hazardous materials employees are potentially

exposed to, and employees are entitled to receive available information on grain dust. It is not necessary for the Agency to make individual judgments about the hazards of each chemical under the HCS to determine if it is covered—the HCS is a generic rule which establishes criteria by which these judgments can be made by producers of substances, subject to review by OSHA through its enforcement procedures.

OSHA is aware that information such as material safety data sheets on grain dust, compliance manuals, and training aids have been developed and are currently available in the grain industry (*see, e.g.*, Exs. 4–29, 4–30, 4–43, 4–47, and 4–52).

*Radiation and biological hazards.* Although OSHA has never considered either radioactivity or biological hazards to be covered by the HCS, we do periodically receive inquiries regarding such coverage. Therefore, we are taking this opportunity to specifically indicate that these types of hazards are not covered by the rule. If a radioactive chemical presents other types of chemical hazards that are not the result of the radioactivity of the chemical, it will be covered for those hazards. Otherwise, the hazard of radioactivity itself is covered under the rules of other Federal agencies or under OSHA's radiation rules.

*Definitions*

*Article.* The issues involving the article definition and exemption have already been described in detail in the preceding section. The modified definition for "article" being proposed is "a manufactured item; other than a fluid or particle: (i) Which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which under normal conditions of use does not release more than very small quantities (*e.g.*, minute or trace amounts) of a hazardous chemical (as determined under paragraph (d) of this section) and does not pose a physical hazard or a health risk to employees."

*Commercial account.* As discussed in the preceding discussion on consumer products, OSHA is proposing a definition for "commercial account" to help clarify which retail distributors need to maintain MSDSs for their customers. The definition proposed is "commercial account" means "an arrangement whereby a retail distributor sells hazardous chemicals to an employer, generally in large quantities over time and at costs that are below the regular retail price."

*Hazard warning.* Both the original and revised final rules include a definition for "hazard warning" which states that it means "any words, pictures, symbols, or combination thereof which convey the hazard(s) of the chemical(s) in the container(s)." "Appropriate hazard warnings" are to be put on container labels. Since the rule covers "physical" and "health" *hazards*, specific information regarding these would be required on a label to comply. OSHA provided clarification regarding the Agency's interpretations of these requirements in the preamble to the revised final rule (*see*, 52 FR 31864). However, since the issue was not related to the expansion of the scope, no modifications for purposes of clarification were proposed at that time. The Agency is taking this opportunity to repeat the discussion and to propose changes consistent with these interpretations to clarify the language in the rule itself.

Many labels at the time the HCS was promulgated included only precautionary statements, rather than providing necessary information about the specific hazards of the chemicals. Thus employees encountered statements such as "avoid inhalation" on virtually every chemical container, but were not provided with statements regarding what type or severity of effect inhalation could be expected to produce.

OSHA's intent in devising the labeling requirements for the rule was to keep the required information to a minimum. Although employers could choose to provide additional statements, OSHA's requirements were to be limited to the minimal amount necessary to convey the hazards to the workers. Under the OSHA scheme, other data regarding protective measures, first aid, etc., are to be included on the material safety data sheet or in training, rather than appearing on the label itself. This approach is in keeping with the Agency's evaluation of available data on effectiveness of labels which indicates that the more detail there is on a label, the less likely it is that employees will read and act on the information. The purpose of the label is to serve as an immediate visual warning of the chemical hazards in the workplace. (*See generally*, 48 FR 53300–03).

There have been misinterpretations of the requirements made based on statements in the preamble to the rule concerning various labeling systems (*see* 48 FR 53301). This preamble discussion involves format of labels, and is not an unqualified endorsement of any particular labeling system. It simply states that any format may be used, as long as the label includes the minimal information required by the standard. It should be noted that it can be expected that some labels prepared in accordance with any of the available labeling systems might be found to be deficient. Again, the preamble discussion cited merely reemphasized that employers are not constrained to use any particular format or wording, but are constrained by the necessity to comply with the requirements of the rule concerning the information to be provided—the identity, the hazards, and for containers leaving the workplace, the name and address of the responsible party.

To address questions raised regarding the definition, OSHA has added "physical and health" to modify the term "hazards" in the definition. The terms "physical" and "health" hazards are already defined in the rule, and these are the specific hazards that are to be "conveyed" in an "appropriate" hazard warning. In addition, the phrase "including target organ effects" is being added to clarify what OSHA considers to be "health hazards."

It will not necessarily be "appropriate" to warn on the label about every hazard listed in the MSDS. The data sheet is to address essentially everything that is known about the chemical. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard reported on the data sheet. This does not mean, however, that only acute hazards are to be covered on the label, or that well-substantiated hazards can be omitted from the label because they appear on the data sheet. It also does not mean that employers preparing labels can eliminate hazards from the labels based on their assessment of the potential risks associated with exposure (and, implicitly, their estimates of the exposure levels in downstream workplaces). A "hazard" is an intrinsic property of a chemical, and where there is potential for exposure to that chemical, there is always a potential risk of experiencing adverse health effects. The purpose of the HCS is to provide early warning of such effects, thus resulting in avoidance of exposure and subsequently a reduction in risk. The only time a well-substantiated hazard can be omitted from a label is if the chemical is in a physical state that does not allow exposure to occur (*e.g.*, physically bound).

It may be "appropriate" to provide less detailed information on the chemical hazards in an in-plant labeling system, where MSDSs and training are readily available, than on a label placed

on a container leaving the workplace, where it may provide the only hazard information in certain situations and where there is no guarantee that the downstream employers handling or using the chemical will fully understand the less detailed label. This difference in appropriateness allows employers to establish standardized in-plant labeling systems, as long as training regarding the use of these systems is conducted, and MSDSs provide the required, detailed information. OSHA is proposing to modify the labeling provisions in paragraph (f) to clarify the differences in what is required for labels on shipped containers versus what is permitted for labels on in-plant containers. These modifications are discussed in the section on labels which follows.

*ANSI Standard for Precautionary Labeling.* OSHA is aware that the American National Standards Institute (ANSI) is in the process of revising its standard for precautionary labeling (Z129.1–1982) to include, among other things, guidance for target organ effect labeling. A copy of the latest version of this document is available in the record (Ex. 4–69). OSHA is inviting comment on whether the Agency should consider stating specifically (either in the final rule or in a compliance directive) that the draft ANSI standard, when finalized, and if acceptable to OSHA, provides employers with sufficient guidance to produce an acceptable label for compliance with the HCS. In other words, if the employer follows the guidance provided by ANSI, that would be one way to comply with the requirements of the HCS. Employers would still be free to use other labeling systems or approaches to labeling, where appropriate, as long as they meet the requirements of the HCS. But those employers who wish to have more specific guidance to follow would be able to use the ANSI standard to assist them in complying. OSHA is particularly interested in comments about the extent of target organ information that would be on a label under the ANSI scheme, and whether this would provide enough information to comply with the HCS.

*Material safety data sheet.* As described in the earlier discussion on coverage of drugs, OSHA is proposing to modify the definition of "material safety data sheet" to mean "written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of this section. For hazardous chemicals which are drugs regulated by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), an approved package insert or drug information in the *Physicians' Desk Reference* will be considered a material safety data sheet for purposes of compliance with this rule in the nonmanufacturing sector."

*Hazard Determination*

*Mixtures.* OSHA is making one minor correction to the mixture provisions. In paragraph (d)(5)(iv), OSHA requires that hazardous chemical components of a mixture in concentrations less than one percent (or in the case of carcinogens, less than 0.1 pecent) are covered by the HCS if they can be released in concentrations which may exceed an OSHA exposure limit or ACGIH Threshold Limit Value, or could present a health "hazard" to employees in the concentrations released. OSHA incorrectly used the term "hazard" in this provision. A hazard is an inherent property of the chemical, and would exist no matter what quantity was present. OSHA intended to refer to the presence of a health risk to employees exposed to the chemical. The risk is a function of the inherent hazard and the amount of exposure. Therefore, in accordance with these scientific principles, OSHA is correcting paragraph (d)(5)(iv) to state that such quantities of hazardous chemicals are always covered by the HCS when they present a health risk to employees in concentrations below the cut-offs.

*Written Hazard Communication Program*

*Mobile worksites.* Under the revised final rule, OSHA included what is termed a mobile worksite provision which permitted employers of employees who travel between workplaces during a work shift to maintain MSDSs at the central workplace as long as the information is available to employees immediately in the event of an emergency (paragraph (g)(9)). Such employees would also have access at the central location prior to departing for the other sites, and when they return to the central location. This appeared to OSHA to be a reasonable accommodation for such a work operation, that still provides employees with immediate access to necessary information in an emegency and daily access to all information as a reference source.

Several commenters requested that OSHA clarify that in this situation the written hazard communication programs may also be maintained at the central workplace (Exs. 5–46, 5–67, 5–79, and 5–110). (*See also,* Ex. L–5–100 which suggests that the mobile worksite provision should apply when workers are at a remote site for several days.) Therefore OSHA is proposing to add the following paragraph to the written hazard communication program requirements (paragraph (e)(5)):

> Where employees must travel between workplaces during a workshift, *i.e.*, their work is carried out at more than one geographical location, the written hazard communication program may be kept at a central location at the primary workplace facility.

It should be noted that as in the situation with MSDSs, this exception is limited to work operations where employees travel during each day, thus making it somewhat impractical to either carry a written program with them, or to have a duplicate copy at each site serviced (such as oil wells). Comment is invited on this exception and its application.

*Multi-employer worksite provision.* When OSHA promulgated the original final HCS, there was a requirement in the written hazard communication program that employers include in the plan and implement "the methods the employer will use to inform any contractor employers with employees working in the employer's workplace of the hazardous chemicals their employees may be exposed to while performing their work, and any suggestions for appropriate protective measures." 48 FR 53343, paragraph (e)(1)(iii).

This provision was included in the rule to ensure that contractor employers had enough information to protect their employees when performing work on manufacturing sites. Contractors are often used in this context to perform such tasks as servicing and cleaning out reactor vessels, and their employees may be exposed to significant quantities of hazardous chemicals under those circumstances.

The rule did not address the opposite situation, *i.e.*, where a contractor brings a hazardous chemical to the manufacturing facility and exposes the manufacturing employer's employees. OSHA received many inquiries from manufacturers concerning this issue. It is apparently a pervasive problem, and these manufacturers wanted to be able to use some provision in the rule to compel contractors to provide such information. After a number of informal discussions with interested parties concerning how manufacturers might resolve this problem, OSHA included a recommendation in its compliance directive (Ex. 4–24) that employers consider including arrangements for an exchange of hazard information in their contracts. We had been told that this

practice was being used successfully by a number of manufacturers.

OSHA believes that this problem of multiple employers using hazardous chemicals on the same site becomes even more pressing when the standard covers the non-manufacturing sector, particularly in the construction industry. In fact, representatives of the construction industry have long supported requirements to ensure information is available to them on such sites. As noted in the preamble to the expanded rule (*see* 52 FR 31858–59), the Advisory Committee on Construction Safety and Health (ACCSH) made recommendations for signs, labels, MSDSs, and training on construction sites as early as 1980 (Ex. 4–4, *Report on Occupational Health Standards for the Construction Industry* (5/16/80)). At that time the Committee felt "that the construction employer was not in a position to easily acquire information on the hazards associated with the many products and materials used in the industry, but that such information was fundamental to the preparation of warning signs, labels, training programs, and other important job safety and health activities." 52 FR 31859. The HCS did not exist at the time of the report, and the Committee thus recommended that a solution to the problem of lack of information would be to modify and extend the existing OSHA standard for material safety data sheets which at the time applied only to ship repairing, shipbuilding, and ship breaking (29 CFR 1915, 1917, and 1918):

> The modified standard would require manufacturers or formulators of harmful materials or agents to supply material safety data sheets along with their products in such a fashion that they reach construction employers * * * Under the standard, these data sheets would then be available at the construction worksite for use by employers and employees.

Furthermore, ACCSH indicated in the same report that worker training should include the "exact identification of the material or process that is hazardous," "health effects of the material," and "location and availability of chemical identification lists and substance data sheets." ACCSH clearly believed that substance-specific information is necessary and appropriate on construction sites.

This issue was also addressed in a number of comments submitted in response to the ANPR. For example, the National Association of Home Builders (NAHB) (Ex. 2–223) addressed the issue of multiple subcontractors:

> It is crucial that OSHA recognize that any of these subcontractors may bring "hazardous" materials onto the jobsite, but exposure to these materials will not necessarily be limited to employees of that subcontractor. Thus, an electrician may be exposed to paint fumes, and a plumber may be exposed to muriatic acid. Obviously, some system of conveying information to workers must be developed which accounts for this diverse workforce on the site.

Similarly, the National Erectors Association (Ex. 2–226) suggested:

> The customer and the general or prime contractor(s) should jointly develop and agree on a hazard communication program for that site. The general or prime contractor should in turn discuss and develop an appropriate hazard communication program with each of the subcontractors which he has control over. MSDS information should be discussed and updated at the weekly tool box safety meetings and the contractor progress meetings.

The National Constructors Association (NCA) (Ex. 2–108) also indicated that:

> Another major problem exists in that owner/clients do not automatically furnish their MSDS's to contractors working on the owner/client property, that are or could be, exposed to owner/client controlled hazardous substances.

In a later comment, NCA recommended that language be included in the expanded scope rule as follows (Ex. 2–225):

> Contractor employers using hazardous chemicals which may create a hazard to employees of other employers at a multi-employer workplace during normal conditions of use, or during a foreseeable emergency shall:
>
> * * * Inform the other employers of the storage and work locations of the hazardous chemicals;
>
> * * * Supply a copy of the material safety data sheet to each employer who requests a copy;
>
> * * * Review the material safety data sheet with other employers whose work will be directly affected by the use of the hazardous chemicals.

In addition, NCA included a provision in their recommended standard that addressed employee access to MSDSs at the worksite: "The contractor employer shall maintain copies of the material safety data sheets for each hazardous chemical used by the contractor employer, or furnished by another employer in the workplace, and shall make them readily accessible during each work shift to employees when they are in their work area(s)."

The American Road & Transportation Builders Association (Ex. 2–81) also addressed the issue: "Coordination of responsibility for MSDS access, labeling, and training, again, is necessary * * *. A possible compromise would be to make the information available where notices are generally posted, at a central location, where workers often report for work."

The United Brotherhood of Carpenters and Joiners of America (Ex. 2–105) reported that contractors are already making MSDSs available on construction sites:

> Many contractors now keep a loose-leaf book of MSDSs in their trailer on site for each access. Some contractor associations have produced loose-leaf binders that review the chemicals commonly used at worksites, their hazards, and the HCS requirements. There are also numerous private services available to provide data sheets on microfiche and on-line by computers * * *. Microfiche takes up little space (one loose-leaf binder) * * *. Any contractor with a personal computer could tie into an MSDS data base by purchasing a modem.

The International Brotherhood of Painters and Allied Trades (IBPAT) indicated that, as a general rule, MSDSs have not been provided automatically to contractors. However, paint manufacturers have usually provided them when requested. Given the short duration of some construction jobs, however, receipt upon request from the manufacturer is too late—the job is completed. "Failure to have the MSDS available ahead of time does not allow a contractor ample opportunity to take into consideration the kind of equipment that may be necessary to do a job safely * * *." (Ex. 2–199). The IBPAT confirms that MSDSs are necessary to properly protect painters, regardless of whether the paints are industrial coatings or consumer products: "If the paint manufacturer has any reason to believe that a product sold will be used by a professional, then the product should be provided with ways sufficient for the employer and the user to assure that the employer will receive the proper MSDS for the product * * *. In general, products purchased by professional paint or allied product applicators are used at quicker rates for longer periods of time thus the same product will often pose greater risk to professionals than consumers. The types of products so purchased are also extremely varied, ranging from rather benign to extremely hazardous * * *".

In preparing the revised final rule, OSHA took these comments into consideration and included a multi-employer worksite provision in the written hazard communication program requirements (52 FR 31880; paragraph (e)(2), as summarized below):

> Employers who produce, use, or store hazardous chemicals at a workplace in such a way that the employees of other employer(s) may be exposed (for example, employees of a construction contractor

working on-site) shall additionally ensure that the hazard communication programs developed and implemented under this paragraph (e) include the following:

* * * The methods the employer will use to provide the other employer(s) with a copy of the material safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employer(s)' employees may be exposed to while working;

* * * The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and,

* * * The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

As described in the preamble to the final rule (52 FR 31865), this type of provision is necessary to ensure that all employees have sufficient information to protect themselves in the workplace, regardless of which employer uses the hazardous chemical. It also ensures that employers have the necessary information to adequately conduct training, and to select appropriate protective measures for the work operation. Several OSHA-approved State Plan States have incorporated similar provisions in their expanded scope rules, and have successfully implemented them.

ACCSH reviewed the multi-employer worksite provision at its meeting on June 23, 1987, and did not raise objections to the items addressed, including the provision for MSDSs to be made available on multi-employer worksites (Ex. 4–6). ACCSH recommended that provisions regarding material safety data sheets be amended to preclude use of a chemical on-site prior to receipt of an MSDS (Ex. 4–6, Tr. 218, 222), and that employees who travel between workplaces must have a copy of an MSDS in their vehicles for each chemical they will be using (Tr. 243).

One member cited an incident which occurred on a construction site involving a potentially carcinogenic material. The label indicated the potential carcinogenic effects, but did not provide suggested protective measures. This is consistent with the HCS since protective measures are only required to be included on the MSDS. The job was stopped for three days until the company could obtain the MSDS and ascertain from it the protective measures they needed to implement to protect the workers. "This unfortunately is what is happening with a lot of labels that are being used today. The labels are not specific enough, and as a result, the control measures that are necessary to use that material are not readily available until they get a material safety data sheet and read the details on it." Tr. 188.

Another member suggested that obtaining and maintaining MSDS information on a worksite is analogous to obtaining and maintaining instructions for assembling or installing equipment and similar tasks that are commonly performed in construction. The paperwork necessary to provide instructions is routinely provided prior to use as the job would have to be stopped if it was not received from suppliers at that time. "If the same urgency was placed on the MSDS in getting it to the job as it was [on] getting instructions on how to put * * * together a piece of equipment on the job, it would arrive there." Tr. 190.

OSHA decided that the provisions as written adequately addressed the problems raised, *i.e.*, the standard already requires suppliers to provide the MSDSs, and employers to have MSDSs for each hazardous chemical in the workplace. However. OSHA believes that the ACCSH's discussion of the issues and the recommendations made regarding MSDSs clearly indicate that the Committee did not envision hazard communication requirements for construction that do not include on-site availability of MSDSs.

The Committee also suggested that OSHA clarify the language of the rule to ensure that the written programs are maintained at each worksite, and OSHA adopted that recommendation in the revised final rule. Furthermore, on November 3, 1987, after reviewing the OMB letter regarding the information collection requirements of the rule, ACCSH unanimously reaffirmed its position that while a separate standard would be preferred for the construction industry, "the Committee does not feel it would be appropriate to exempt or remove protections existing now" under the HCS, and that the rule continue to apply in construction (Ex. 4–74).

As discussed above regarding consumer products, without MSDSs the hazard communication program will not be effective. The consensus of the participants in the rulemaking on the original final rule was that labels can only provide limited information—the detailed source of information must be the MSDS. Furthermore, adequate training cannot be conducted if the information is not available on the substances involved. As the National Paint and Coatings Association (H–022 Ex. 19–62) stated:

> NPCA concurs with the Agency's assessment of the function and utility of the MSDS as the primary component of a Hazard Communications Program * * *. The label is limited in the amount and detail of hazard information which it can contain and still effectively communicate. The MSDS serves as the source document and amplification of the information presented on the label * * * NPCA has had a long-standing policy of recommending that MSDS's be provided to customer/employers even though not as yet required by law

OSHA agrees with NPCA's assessment of the importance of MSDSs, although their more recent comments do not appear to be consistent with this approach since they have suggested that MSDSs are not necessary for paint contractors (Ex. 5–75). OSHA believes the need for such information is just as critical in the non-manufacturing sector where employees are exposed to the same hazardous chemicals as in the manufacturing sector. Many other manufacturers and their representatives concurred with OSHA's conclusion that a program cannot be effective without all of the major components included in the OSHA rule—including MSDSs being available to employees and employers at the job site (*see, e.g.*, H–022 Exs. 19–62, 19–91, 19–124, 19–156, 19–185, and 19–199.)

The comments received following publication of the final rule are mixed on this issue. One commenter (Ex. 5–108) posed a question that we believed was answered by the multi-employer worksite provision: "Although the law for training and maintaining MSDS will put the responsibility for their employees on the subcontractor, how about the exposure of two or more subcontractors' employees to each other, our exposure to products subcontractors' employees are using and their employees' exposure to products we are using? These are not everyday problems in manufacturing, therefore, here is another complex area that should be considered if the standard is to be expanded." We agree, and hence addressed it in the written program requirements.

Several commenters believed that the provisions would not work because of the number of contractors on the site and the potential number of chemicals (Exs. 5–83, 5–84, and 5–89). One suggested alternative, however, was to allow contractors to deposit copies of their MSDSs in a central location on-site or make them available on some reasonable basis such as in their truck. This is already explicitly permitted under the rule. Similarly, the National Association of Home Builders (NAHB) testified during the OMB paperwork meeting (Ex. 5–76, Tr. 53) on the issue of keeping MSDSs on a multi-employer worksite. When questioned as to the

feasibility of keeping them at a central location on the site, NAHB indicated that the preamble to the revised final rule appeared to allow such an option, but the standard did not. "Now if OSHA's honest opinion is that a central MSD depository on the site will take care of multi-employer worksites, let's see it in the rule * * *." *See* paragraph (e)(2)(i) stating that the written program shall include methods the employer will use to either "provide the other employer(s) with a copy of the material safety data sheet or make it available at a central location in the workplace." 52 FR 31880. This is in the rule itself, and appears, therefore, to address NAHB's statement.

Some commenters have clearly misinterpreted the requirements of the rule for multi-employer worksites. For example, the Alliance of the Textile Care Associations (ACTA) (Ex. 6, Tr. 190–198) argued that they would have to maintain in their facilities MSDSs for all chemicals at their customers' sites. "An industrial laundry would be required to maintain material safety data sheets and other information from between 1,000 and 5,000 businesses. If one assumes only very conservatively 10 material safety data sheets per account, this would mean that an industrial launderer would be confronted with between 10,000 and 50,000 material safety data sheets organized by service route * * *." The HCS does not require any such collection.

First of all, there is no requirement to maintain MSDSs for products at other sites so the launderer would not be required to maintain in its facilities any MSDSs from the facilities on its routes. MSDSs are only required for the chemicals used at the facility of concern. Secondly, service employees who are simply picking up and dropping off materials such as described in this testimony (10 minutes in the facility) are not generally "working" on that site in the sense of the multi-employer worksite provision, and are probably not "exposed" to the chemicals in the facility. The ACTA indicates that the HCS requires training on each and every chemical—this is not true. The HCS requires training on hazards, and this can be presented either by chemical or by categories of hazard (*e.g.*, flammability). In most situations, it is more practical and effective to train by hazard categories. Furthermore, the training teaches employees to use substance-specific information available to them on labels and material safety data sheets. The delivery people should receive such training, be advised to read lables, and trained to request material safety data sheets if they are "exposed" in the conduct of their duties at the customer's site and need more information. Availability of the MSDSs at the customer's site satisfies the requirements of the rule.

Although some of these commenters mentioned the large number of chemicals on-site as being a potential problem, others argued that construction sites have few hazardous chemicals, and therefore do not need right-to-know programs (*see, e.g.*, 5–17, 5–58, 5–81, 5–86, 5–108, and 5–117.) However, it was interesting to OSHA to note that the alternative recommended by these commenters to the rule as written was to require the following (Exs. 5–10, 5–65, and 5–117):

> Post a list of hazardous chemicals at the job site with a copy of the MSDS.
>
> Each contractor is responsible for posting only MSDS for substances they are using.
>
> Make available to all employees a list of hazardous substances being used at site.
>
> Require proper labeling for all hazardous substances prior to purchase.
>
> Require contractors to provide personal protective equipment for their employees.

It appears that if these construction employers are recommending that MSDSs be maintained at the worksite, they must consider it to be feasible and appropriate. This worksite accessibility appears to be feasible at even the smallest sites (IBPAT, Ex. 2–199):

> The painting contractor usually has an office, a trailer, a hotel room, a car, a shoe box—somewhere—from which business is conducted and where are found documents pertaining to the job, such as bid specs, purchase orders, employment rosters, coating technical data sheets and so on. All of these are materials which from time to time during the course of a job the employer will be required to make available or use at the job site. MSDS's would be treated similarly.

OSHA still believes that the multi-employer worksite provision is critical to the proper functioning of the rule, and that MSDSs are necessary to ensure that proper information is available to both employers and employees. We are inviting further comment on this provision.

*OMB Determination.* OMB has stated that the "practical utility for the requirement to bring MSDSs on-site at multi-employer workplaces" has not been demonstrated. According to OMB, an acceptable option would be to "require employers at multi-employer worksites to keep labels intact on any containers they bring onto the worksite; to train their employees in the hazards with which they work directly, in recognition of and response to the general hazards that are likely to be introduced by other employers, and in the need to observe hazard labels on the worksite and request MSDSs when further information is needed; and to provide MSDSs to other employers upon request." OMB has disapproved the "requirement to bring MSDSs onto multi-employer worksites." OMB's suggested approach "relies on labels and general hazard training to protect workers from substances brought onsite by other employers." OSHA invites comment on this approach as well.

*Labels and Other Forms of Warning*

As mentioned previously, OSHA proposes to modify the language in paragraph (f)(5) to clarify what types of hazard warnings are permitted on labels of in-house chemical containers. OSHA is modifying the rule (paragraph (f)(5)(ii), to clarify that employers may, as an alternative to specific hazard warnings, provide more general hazard information on the labels as long as the specific physical and health hazards of the chemicals are conveyed through implementation of the other aspects of the hazard communication program (*i.e.*, provision of data sheets and training). For example, some labeling systems indicate the presence of a "health" hazard and rate the severity of that hazard using a number system. The specific health hazard is not on the label under this system, but is available on the MSDS. Employers using this type of hazard rating system must ensure that the worker has the required ready access to the data sheet, and understands the labeling system used and how to obtain and use the information provided. The training program must address these aspects of the employer's hazard communication program. Precautionary statements alone are not considered to be general hazard information under this provision.

In the revised final rule, OSHA made a change to the labeling requirements for shipments of solid metal. Solid metal is often considered to be an "article" under the rule, and thus exempt. Where the metal is not an "article" since its downstream use results in hazardous chemical exposure to employees working with it, a provision was added which allows shippers of this type of material to send the label information once, similar to material safety data sheet transmittal, as long as the material is the same and it is being shipped to the same customer. In these situations, there should be no hazard to anyone handling the metal from the time it is produced in solid form, until the time someone works on it in a way that releases a chemical hazard. Since the label information transmitted would only reflect the

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chemical hazards released when it is later worked on, the label would not provide any hazard information that is needed by those handling the material in transit. The label information does serve a different purpose than the MSDS as the label is an immediate visual warning, a "snapshot picture" of the hazards, whereas the MSDS provides detailed hazard information. It was emphasized that this exception is only for the solid metal itself—any hazardous chemicals present in conjunction with the metal in such a form that employees may be exposed when handling the material (e.g., cutting fluids, lubricants, and greases), would require labels with each shipment.

OSHA is proposing to further modify this exception to include wood, plastic, and whole grain. We believe the situation involving wood and plastic is analogous to solid metal in that the hazard potential is in the downstream use and does not involve employees involved in transit. For whole grain, we recognize that some dust may be generated during the transportation process, but believe that the repetitive nature of the shipments and the relatively small amount of dust generated due to the handling at this stage makes such an exemption appropriate. (*See, e.g.*, Ex. 5–13, 5–15, 5–21, 5–52, and 5–82.) The Agency invites comment on this extended exception.

*Material Safety Data Sheets*

As described in more detail above, OSHA is proposing to modify paragraph (g)(7) dealing with the distribution of hazardous chemicals to clarify the duties of the retail distributor in particular, but also distributors in general. First of all, the language regarding the general duty for distributors to provide MSDSs has been modified to track the language in paragraph (g)(6) immediately preceding it regarding the duty of chemical manufacturers and importers to transmit such information with their initial shipment and with the first shipment after a material safety data sheet is updated. Previously, the rule simply stated that "distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers." This slight modification clarifies that distributors are required to provide MSDSs in the same manner that chemical manufacturers and importers do.

The paragraph further indicates that retail distributors only need to provide MSDSs if they have commercial accounts for employers purchasing hazardous chemicals. If an employer incidentally purchases a hazardous chemical from them, and they are not required to have one available since they don't use the chemical or have commercial accounts, then the retail distributor's duty is limited to providing that employer with the name, address, and telephone number of the supplier from which the MSDS can be obtained.

*Employee Information and Training*

OSHA is not proposing to modify the training requirements. However, a number of comments were received regarding training in construction and the Agency would like to respond generally to some of the issues raised.

Several commenters noted that construction standards already require training, and clarification of the construction training standards is all that is necessary (Exs. 5–56, 5–86, and 5–108). OSHA agrees that the construction industry is unique among the non-manufacturing industries because there are long-standing requirements for regular training regarding hazardous chemicals (the following are summaries of the relevant subparagraphs of 29 CFR 1926.21):

(2) The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to this work environment to control or eliminate any hazards or other exposure to illness or injury.

(3) Employees required to handle or use poisons, caustics, and other harmful substances shall be instructed regarding the safe handling and use, and be made aware of the potential hazards, personal hygiene, and personal protective measures required * * *.

(5) Employees required to handle or use flammable liquids, gases, or toxic materials shall be instructed in the safe handling and use of these materials and made aware of the specific requirements contained in Subparts D, F, and other applicable subparts of this part.

Employers who are in compliance with these provisions as required will largely be in compliance with the HCS training provisions as well. The HCS will simply require that construction employers supplement these already established training programs with the additional information required by the HCS, such as the existence of the rule and the use and availability of labels and MSDSs.

Coverage of construction employers under the HCS will enable them to provide more effective training under the construction rules because the HCS will ensure they are provided with necessary substance-specific information upon which to base an appropriate training program. It will also enable them to select more appropriate protective measures for the hazardous chemicals on their sites. As has been previously cited, the Advisory Committee on Construction Safety and Health has long recognized the construction employers' decreased ability to properly transmit hazard information and design appropriate protective measures without the labels and MSDSs for the specific products (Ex. 4–4).

With regard to suggestions that more guidance be provided for training, OSHA promulgated voluntary training guidelines for employers in 1984. These have recently been reprinted along with all OSHA training requirements in "Training Requirements in OSHA Standards and Training Guidelines," OSHA 2254 (revised) (Ex. 4–58). Copies may be obtained from OSHA's publication office at (202) 523–9667.

*Addition of Appendix E.* OSHA has included a new nonmandatory appendix in this proposal to provide additional guidance to employers complying with the HCS. This appendix suggests the steps an employer should follow to achieve compliance, and provides some information regarding how OSHA will be enforcing the requirements of the HCS. This should assist employers in designing and implementing effective programs.

## III. Analyses of Regulatory Impact, Regulatory Flexibility, and Environmental Impact

Executive Order 12291 (46 FR 13197, Feb. 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires the Occupational Safety and Health Administration (OSHA) to consider the impact of a regulation on small entities.

Consistent with these requirements, the Office of Regulatory Analysis (ORA) prepared a preliminary Regulatory Impact and Regulatory Flexibility Analysis for the NPRM OSHA expected to publish to expand the Hazard Communication Standard (HCS) to the non-manufacturing sector. The preliminary analysis describes the industries affected by the standard, some of the potential benefits that will accrue to employees exposed to hazardous chemicals at their places of work, the costs of compliance with the standard, and the technological and economic feasibility of the provisions. It was completed July 1, 1987, and was submitted to the OSHA Docket (Ex. 4–1) on August 14, 1987. As has been

described more fully above, OSHA was ordered by the Third Circuit to expand the rule based on the record developed by the Agency at the time of the 1983 rule. The impact analyses prepared after that time period were summarized in the preamble to the final rule and made available in the docket because they provided supplemental evidence of the economic and technological feasibility of the expansion of the scope. The current NPRM is merely a revision of the already promulgated expansion of the scope, and any further analyses are related solely to that revision. The analyses performed prior to publication of the final rule are not being revised. However, OSHA is taking this opportunity to discuss some issues that have been raised related to those analyses. *See, e.g.,* U.S. Small Business Administration, Exs. 4–86 and 5–93.

To ensure that the Agency had all available information regarding the economic feasibility of extending the HCS to nonmanufacturing industries, OSHA invited the public to submit additional data and evidence pertaining to feasibility at the time of the publication of the final rule.

A number of comments were received. Many of these comments provided no specific data or evidence regarding either the costs or the analysis, but rather simply indicated that the costs would be larger than estimated. OSHA maintained that the economic methodology used in the analysis is appropriate, and the costs are based on reasonable assumptions.

In general, three specific criticisms were made regarding the approach to the analysis: (a) The data used by ORA from the National Institute for Occupational Safety and Health (NIOSH) National Occupational Hazard Survey (NOHS) and the National Occupational Exposure Survey (NOES) to estimate the number of Material Safety Data Sheets (MSDSs) which a given establishment would be required to maintain are inappropriate and have resulted in low cost estimates for maintaining MSDSs; (b) the estimate of two hours of professional time required for providing a written program is too low; and (c) the cost estimates related to the Superfund Amendment and Reauthorization Act (SARA), Title III, Sections 311 and 312, are too low.

The Office of Regulatory Analysis used the same approach to estimating costs associated with the Hazard Communication Standard for nonmanufacturing that it did for manufacturing. This methodology was successfully used to determine the potential costs of the Hazard Communication Standard for manufacturing, and use of the same approach ensured comparability of the analyses. In the 1983 analysis, OSHA relied on exposure data from the NIOSH National Occupational Hazard Survey conducted between 1972 and 1974 to estimate the extent of exposure to hazardous chemicals, and thus the numbers of MSDSs that would be required. Few comments were received on this approach, although some manufacturers argued that these data had been collected ten years prior to use in the OSHA analysis, and that the industries' characteristics had changed (Docket H–022, Exs. 19–44, 19–76, 19–91, 19–147). However, the NOHS was the only data source available to OSHA to obtain these types of estimates and it was used in the final impact analysis for the 1983 rule.

OSHA considered this concern in preparation of the analysis for the rule's expansion to the nonmanufacturing sector, and subsequently utilized unpublished data from the National Occupational Exposure Survey (NOES), conducted between 1981 and 1983, to estimate the average number of MSDSs that would have to be maintained by nonmanufacturing firms under the extended HCS.

The NOES and NOHS surveys were conducted by NIOSH to gather information concerning the number of physical, chemical, and biological hazards to which a worker is potentially exposed in the workplace. The NOHS survey was conducted from 1972–1974 and consisted of samples from 5,200 facilities in 67 Standard Metropolitan Statistical Areas and included establishments of all sizes in assorted industries. The NOES survey was conducted from 1981–1983 and consisted of samples from 4,490 establishments in 98 geographic areas and was also representative of facilities of all sizes in many industries.

In order to estimate the number of products for which a firm must maintain an MSDS, the NOES survey data was used wherever possible because it was more recent than the NOHS data and it collected information on trade name products. While the principal objective of the survey was to assess the number of chemical (as well as physical and biological) agents to which a worker is potentially exposed, when NOES surveyors observed products being used which were known only by trade name, they wrote down manufacturing information about the products and researched the chemical ingredients when the field work of the survey was complete. In this way NIOSH could eventually determine which chemical agents workers are exposed to while using a product.

OSHA requested the unpublished NOES data from NIOSH after the field work was completed, but before the trade name products were broken down into their constituent chemicals. Consequently, the NOES data used by ORA is a count of actual products containing hazardous chemicals to which a worker is potentially exposed and is therefore representative of the number of MSDSs an employer will be required to maintain under the Hazard Communication Standard. The product orientation of the 1982 NOES survey was consistent with OSHA's needs in assessing the MSDS requirements of HCS. The HCS requires a MSDS for a mixture or product, not for each chemical constituent of that mixture. Although some employers have chosen to maintain the MSDSs for each component when mixture-specific information does not exist—and OSHA permits that approach—it is not required and a product MSDS is always preferable. When NOES product data were unavailable, earlier NOHS chemical specific data were used after they were adjusted downward to make the numbers comparable to the newer, product-oriented NOES data. Some criticisms of the appropriateness of the NIOSH data evidently arose from the belief that OSHA should estimate the number of chemicals handled rather than the total number of products. This approach would not be consistent with the requirements of the rule.

It is also interesting to note that another concern expressed by the manufacturing industries about the NOHS data was that it overcounted the number of potential hazards. The Chemical Manufacturers Association (CMA) submitted material to the docket (H–022, Ex. 19–76) which discussed the NOHS data base. CMA's fear was that OSHA's reliance on the NOHS data may "overstate the existing hazards presented by chemicals in the workplace," and that the results of an exhaustive review of the NOHS report by the Franklin Research Center concluded that "occupational exposure to potential carcinogens has been greatly overestimated." However, NIOSH's testimony confirmed the validity of using the NOHS data for estimation of hazardous chemical exposures, and certainly the NOHS and NOES data are the best information available that is based upon a large sampling of industry types and sizes. (*See* 48 FR 53282).

The data used by ORA from the NOES are averages. OSHA expects that

some establishments in the nonmanufacturing industries will maintain more MSDSs than the average, just as some establishments will maintain fewer. Consequently, examples of firms with more than the average number of chemicals do not invalidate the survey (*see* 5–93). Furthermore, it should be noted that OSHA's estimates are for the number of hazardous chemical products at a facility or site, not for an inventory of all the chemicals a firm may have at multiple sites. The HCS also only requires that a firm maintain one MSDS for a particular chemical—where multiple suppliers are used, the chemical is only counted once.

Another issue raised in the record was the appropriateness of reducing the number of hours required for preparing a written program for non-manufacturing facilities from the estimate used in the analysis for the manufacturing sector (Ex. 5–93; Ex. 6). In considering a standard for nonmanufacturing, OSHA carefully considered the differences between manufacturing and nonmanufacturing, as well as its experience in implementing the rule in the manufacturing sector. There are generally fewer hazardous chemicals and chemical hazard exposures in nonmanufacturing industries (this was addressed by the Court, *see* 52 FR 31853), and OSHA took this into account in estimating the average of eight hours of professional time required annually to develop and administer a training program in nonmanufacturing (as opposed to the average 16 hours estimated for a typical firm in manufacturing). Also, the average of two hours allowed to develop a written plan was seen as reasonable for a typical firm in nonmanufacturing, as opposed to the average of eight hours estimated for a typical firm in manufacturing.

OSHA assumed that a substantial savings of compliance effort would result as trade associations, other organizations (such as professional societies), and private sector service providers offer pre-packaged outlines to non-manufacturers complying with the Hazard Communication Standard for a minimal fee. OSHA, Supporting Statement for Information Collection Requirements of the Hazard Communication Standard, at II–4 (September 1987). Public and private organizations had provided such guidance to manufacturers covered by the original HCS and to employers covered by state laws. *See, e.g.*, Exs. 4–24 (OSHA inspection procedures for the HCS, 29 CFR 1910.1200); 4–26 (U.S. Department of Agriculture, *Hazard Communication: A Program Guide for Federal Agencies* (August 1987)); 4–35 (Right to Know Compliance Kit from Academic Products) (available in bulk quantities for $12 per kit); 4–41 (sample written programs from the Refractories Institute and the State of Oregon); 4–65 (Association of Graphic Arts's written program) (free to members).

OMB, however, has determined under authority of the Paperwork Reduction Act that OSHA cannot take into account at this point the savings generated by compliance guides developed to date, or assumed to be developed in the near future, when calculating the information collection burdens of the rule. OMB believes that an additional administrative effort by OSHA, however, "could substantially reduce the start-up paperwork burden and costs of the HCS, particularly those of small businesses." OSHA is pursuing several methods of providing continued guidance to employers attempting to comply with the performance-oriented HCS, and notes that compliance aids have been produced by other public and private organizations as anticipated. *See, e.g.*, Exs. 4–47 (news clipping from Farm and Dairy, Salem, Ohio, noting Grain Elevator and Processing Society's development of HCS compliance materials); 4–83 (materials developed by the AFL–CIO regarding right-to-know); 4–90 (sample written program and guidelines for compliance published in the journal *Professional Safety*); 4–105 ("Countdown to Compliance") (pamphlet prepared by 28 construction trade associations); 4–112 (Maryland Occupational Safety and Health Division's model training program for construction); 4–113 (materials developed by the National Solid Waste Management Association); 4–114 (*PIA Hazard Communication Manual: A Suggested Model Program for Printing Plants*); and 4–115 (Food Marketing Institute's *Guidelines for Complying with OSHA's Hazard Communication Standard*).

The third concern expressed by industry was ORA's cost estimate of Title III of SARA, sections 311 and 312. Several comparisons have been made between OSHA's analysis and an alternative analysis prepared by EPA (*see* Exs. L–5–129 and 5–93). EPA used in its analysis several of the assumptions it made when estimating the costs of Title III to the manufacturing sector. Many of these assumptions are considered by OSHA to be inappropriate for firms in the nonmanufacturing sector. For example, EPA calculated that over five hours of technical time, over five hours of managerial time, and forty minutes of secretarial time would be needed to set up a filing and recordkeeping system for Tier I forms once they are filled out. ORA believes this estimate seriously overstates the time it will take a clerical employee to establish a filing and recordkeeping system for the typical nonmanufacturing firm. EPA based its estimate of the number of affected establishments for specific reporting thresholds on an average of manufacturing data from New Jersey and Michigan, and nonmanufacturing data from Michigan, and made no allowance for the fact that establishments in different SIC's and of different sizes will be affected differently by EPA's establishment of threshold reporting quantities (*i.e.*, the amount of a chemical that must be present to trigger the reporting requirements). In preparing its estimates ORA considered each type of industry, as categorized by the Standard Industrial Classification (SIC) codes, and the likelihood of chemicals being used in the quantities established by EPA for reporting, to assess how each industry would be affected for each different size of establishment. Clearly, industries such as banking or real estate are not represented by data based on a survey of manufacturing facilities. Thus OSHA believes its analysis is more appropriate than a straight percentage based on two unrepresentative data sources.

The documentation submitted to the OSHA docket after the current rule was published does not provide sufficient evidence for OSHA to conclude that the Hazard Communication Standard is infeasible in any industry. Although there are claims from the construction industry that costs are underestimated by OSHA and it is therefore infeasible for this industry to comply (*see e.g.*, Exs. 5–65, 5–83, and 5–86), many firms in the construction industry have been subject to state hazard communication laws for the last several years. The construction industry has also been subject for many years to the requirements of 29 CFR 1926.21, which establishes the obligation to train construction workers in the recognition and the safe handling of hazardous substances. In this regard the Hazard Communication Standard has added very few additional training responsibilities. OSHA's cost estimates focus only on new duties, not on the burdens of pre-existing standards.

If OSHA were to rely on some or all of the assertions in the record regarding estimates of the time involved in complying with the Standard, and estimates of the number of MSDSs which would be generated by the imposition of the Standard, the Standard

would still be feasible in every SIC. Consequently, OSHA finds that claims of infeasible costs are not substantiated by any analysis or evidence, and that nothing in the record supports a conclusion of infeasibility in any SIC.

As has already been detailed in this preamble, the NPRM is proposing some modifications to the provisions of the revised final rule and clarifying other provisions. OSHA expects that these limited modifications will not eliminate protections of the rule, but will make the standard more cost-effective. OSHA does not consider this NPRM to be either a major or significant rule. In addition, the changes are too subtle for the economic model to be able to reflect the decreases in the costs. However, it is expected that if the proposed changes are implemented the costs will be somewhat reduced.

*Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Assistant Secretary certifies that the proposals contained in this document will not, if promulgated, have a significant economic impact on a substantial number of small entities. This NPRM proposes few substantive changes to the HCS promulgated on August 24, 1987. The limited substantive changes would not eliminate protections already provided by the rule, but would make the standard more cost-effective. As noted in the discussion above regarding the regulatory impact analysis, the proposed changes are too subtle to be quantified by the economic model used to calculate compliance costs of the HCS. It is expected, however, that if the proposed changes are implemented, the compliance costs would be somewhat reduced for small businesses.

A regulatory impact and regulatory flexibility analysis was prepared by OSHA for the August 1987 revised HCS (Ex. 4–1 ____. *See also* 52 FR 31867–76 (summary of analyses). OSHA analyzed the impact of expanding the coverage of the HCS from the manufacturing sector to all employers within OSHA's jurisdiction. Economic impacts were analyzed for each provision of the rule; for each of fifty business classifications as indicated by their two-digit Standard Industrial Classification Codes; and for four employment size classes (1–19; 20–99; 100–249; and greater than 250). The majority of non-manufacturers are small businesses with fewer than 20 employees, and the effects of the HCS on small businesses were analyzed. *Id.* at 31868, 75–76 (tables 9 and 10). It should be noted, however, that although a particular workplace may be considered a small business based upon the number of employees at that site, many of these businesses are actually part of large corporations with significant safety and health resources (*e.g.*, fast food franchises, retail store chains). OSHA's analyses indicated that the HCS's compliance costs would be a negligible percentage (less than one-half of one percent) of the typical small business' average annual revenue. *Id.* at 31869, 75 (table 9). In addition, no disproportionate impact was foreseen for small businesses when compared to large businesses. *Id.* at 31870, 75–76 (table 10).

OSHA believes that it has minimized the economic impact of the HCS on small entities in accordance with the Regulatory Flexibility Act, while accomplishing the objectives of the OSH Act. The HCS is a performance-oriented rule which benefits small employers by allowing them to choose compliance methods best suited for their individual workplaces. The HCS is also tailored for some work operations found in small businesses to ensure that the standard is practical and cost-effective in communicating hazards to workers. *See, e.g.*, 29 CFR 1910.1200(b)(3). (laboratories); (b)(4), (handling of sealed containers); (b)(5), (container labeling exemptions); (b)(6), (products totally exempted). *See also* 52 FR 31858. In addition, OSHA-developed compliance guidelines, such as proposed Appendix E, will directly benefit small businesses by clarifying and simplifying compliance efforts.

The U.S. Small Business Administration has submitted a number of comments concerning the impact of the standard on small businesses (*see, e.g.*, Exs. 4–88 and 5–83). These comments have been considered by OSHA, and those involving specific provisions have been addressed in the discussions of the issues raised in this proposed rule.

As noted in the August 24, 1987, Federal Register publication, OSHA's analysis (Ex. 4–1) is available for public inspection and copying in OSHA's Docket Office, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523–7894. OSHA invites the public to comment on the effects the proposed changes to the HCS will have on small entities, and to suggest alternatives to the proposed changes which would minimize any significant economic impact on a substantial number of small entities while accomplishing the objectives of the HCS and the OSH Act.

*Environmental Assessment—Finding of No Significant Impact*

In accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality guidelines (40 CFR Part 1500), and the Department of Labor regulations (29 CFR Part 11), the Assistant Secretary for OSHA has determined that this proposed rule will not have a significant environmental impact. As concluded previously, the current standard will not significantly affect the quality of the human environment outside the workplace. 52 FR 31870; 48 FR 53333–34. Labeling of containers will not have a direct or significant impact on air or water quality, land or energy use, or solid waste disposal outside of the workplace. Similarly, the requirements for preparation of a written compliance plan, provision and maintenance of MSDSs, and provision of information and training should not have an adverse environmental impact. Accordingly, this document's proposed modifications to the HCS also will not have a significant impact on the environment outside the workplace.

## IV. Clearance of Information Collection Requirements

The information collection requirements of the 1987 revised final standard were reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). OSHA subsequently published in the Federal Register the approval numbers for the rule (1218–0072), and OMB's letter regarding its disapproval of several items (December 4, 1987, 52 FR 46075; Ex. 4–67). As discussed above, OMB disapproved: (1) The requirement that material safety data sheets be provided on multi-employer worksites; (2) coverage of any consumer product that falls within the "consumer products" exemption included in section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986; and (3) coverage of any drugs regulated by the Food and Drug Administration in the non-manufacturing sector. In addition, OMB determined that OSHA should reopen the rulemaking on the HCS to consider alternatives to the definition of "article" which was included in both the original and revised final rules. Lastly, OMB conditioned paperwork approval upon OSHA's consulting with the U.S. Small Business Administration and the Department of Commerce in order to develop a plan for a Federal administrative effort that will provide

assistance to the regulated industries to alleviate the paperwork burdens and costs. On April 13, 1988, OMB extended until April 1991 the approval of all provisions except the three that were previously disapproved.

In accordance with the Paperwork Reduction Act and its implementing regulations issued by OMB (5 CFR Part 1320), OSHA certifies that it has submitted the information collection requirements contained in this proposed revision to its current standards to OMB for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, 726 Jackson Place, NW., Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA Docket Office as part of the record for this rulemaking.

## V. Public Participation—Notice of Hearings

*Comments*

Interested persons are invited to submit written data, views, and arguments on all issues regarding this proposed standard. These comments must be received on or before October 7, 1988, and be submitted in quadruplicate to the Docket Officer, Docket No. H–022D, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3670, Washington, DC 20210. Written submissions must clearly identify the provisions of the standard which are addressed and the position taken with respect to each issue. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

*Oral Hearings*

Under section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard will be provided at an informal public hearing scheduled to begin at 9:30 a.m. at the following location on the indicated date: Washington, DC: November 15, 1988, The Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

*Notice of Intention To Appear*

All persons desiring to participate in the hearings must file a notice of intention to appear, in quadruplicate, received on or before October 7, 1988, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–022D, 200 Constitution Avenue, NW., Room N3637, Washington, DC 20210; telephone (202)523–8615.

Notices of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room N3670 at the same address); telephone (202)523–7894; must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken with respect to each issue addressed; and,

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

*Filing of Testimony and Evidence Before Hearings*

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be received by October 24, 1988, and will be available for inspection and copying at the OSHA Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation, and may be requested to return for questioning at a later time.

*Conduct of Hearings*

The hearings will commence at 9:30 a.m., according to the schedule specified above, with resolution of any procedural matters relating to the proceeding. The hearings will be conducted in accordance with 29 CFR Part 1911; and the prehearing guidelines which will be sent to all persons who file a notice of intention to appear. The hearings will be conducted as expeditiously as possible, consistent with the full development of the record and the rights of the parties.

The hearings will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911 and the prehearing guidelines, including the powers:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections, and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To limit the time for questioning;

5. To regulate the conduct of those present at the hearing by appropriate means; and,

6. To keep the record open for a reasonable stated time to receive additional written data, views and arguments from any person who has participated in the oral proceeding.

Following the close of the hearings or of any post-hearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard. The proposed standard will be reviewed in light of all oral and written submissions received as part of the record, and final decisions will be made by the Assistant Secretary based upon the entire record in this proceeding.

## VI. State Plan Applicability

The 25 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California (operating only in the public sector), Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

Although a State HCS becomes effective in accordance with State promulgation provisions, and is enforceable upon promulgation, OSHA must also review and approve the standard to assure that it is "at least as effective" as the Federal standard. OSHA intends to closely scrutinize State standards submitted under current or future State plans to assure not only

equal or greater effectiveness, but also that any additional requirements do not conflict with, or adversely affect, the effectiveness of the national application of OSHA's standard. Because the HCS is "applicable to products" in that it permits the distribution and use of hazardous chemicals in commerce only if they are in labeled containers accompanied by material safety data sheets, OSHA must determine in its review whether any State plan standard provisions which differ from the Federal are "required by compelling local conditions and do not unduly burden interstate commerce." Section 18(c) of the Act, 29 U.S.C. 667(c).

### VII. Authority, Signature, and the Proposed Rule

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For the reasons set out in the preamble, and under the authority of the Paperwork Reduction Act, 5 U.S.C. 3504 and 5 CFR Part 1320, section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), 29 CFR Part 1911, and 5 U.S.C. 553, the Occupational Safety and Health Administration hereby proposes to amend Parts 1910, 1915, 1917, 1918, and 1926 of Title 29 of the Code of Federal Regulations, as set forth below.

**List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, and 1926**

Hazard communication, Occupational safety and health, Right-to-know, Labeling, Material safety data sheets, Employee training.

Signed at Washington, DC, this 2nd day of August.

**John A. Pendergrass,**

*Assistant Secretary for Occupational Safety and Health.*

OSHA proposes to amend Parts 1910, 1915, 1917, 1918, and 1926 of Title 29 of the Code of Federal Regulations as follows:

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart Z of Part 1910 would continue to read as follows:

**Authority:** Secs. 6, 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 25059); or 9–83 (48 FR 35736) as applicable and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 also issued under sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499, and 1910.1500 also issued under 5 U.S.C. 553.

## PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

2. The authority citation for Part 1915 would continue to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Workers' compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1915.97 also issued under 5 U.S.C. 553.

Section 1915.99 also issued under 5 U.S.C. 553.

## PART 1917—MARINE TERMINALS

3. The authority citation for Part 1917 would continue to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

## PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

4. The authority citation for Part 1918 would continue to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

## PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation for Subpart D of Part 1926 would continue to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

## PART 1910, 1915, 1917, 1918, AND 1926—[AMENDED]

### §§ 1910.1200, 1915.99, 1917.28, 1918.90 and 1926.59 [Amended]

6. It is proposed to amend §§ 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 by revising paragraphs (b)(5)(ii), (b)(6)(v), (b)(6)(viii), (d)(5)(iv), (f)(2), (f)(5)(ii), and (g)(7); by revising the definitions of "article," "hazard warning," and "material safety data sheet" in paragraph (c); by adding paragraphs (b)(6)(ix)-(xi), (e)(5); by adding the definition of "commercial account" to paragraph (c); and by adding Appendix E as follows (b)(5), (b)(6), and (f)(5) introductory texts are republished):

§ _____ *Hazard communication.*

* * * * *

(b) *Scope and application.*

(5) This section does not require labeling of the following chemicals:

* * * * *

(ii) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device or product, including materials intended for use as ingredients in such products (*e.g.*, flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151–158) and regulations issued under those Acts, when they are subject to the labeling requirements under those Acts by either the Food and Drug Administration or the Department of Agriculture.

* * * * *

(6) This section does not apply to:

* * * * *

(v) Food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers, and food or alcoholic beverages used or prepared on the premises of a retail establishment (such as a restaurant or drinking place) for customer consumption;

* * * * *

(viii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) when it is in solid, final form for direct administration to the patient (*e.g.*, tablets or pills);

(ix) Nuisance particulates for which, when evaluated in accordance with the provisions of paragraph (d) of this section, no evidence is found to indicate that they pose any covered physical or health hazard;

(x) Ionizing or nonionizing radiation; and,

(xi) Biological hazards.

(c) *Definitions.*

"Article" means a manufactured item, other than a fluid or particle: (i) Which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which under normal conditions of use does not release more than very small quantities, *e.g.*, minute or trace amounts, of a hazardous chemical (as determined under paragraph (d) of this section) and does not pose a physical hazard or a health risk to employees.

* * * * *

"Commercial account" means an arrangement whereby a retail distributor sells hazardous chemicals to an employer, generally in large quantities over time and at costs that are below the regular retail price.

* * * * *

"Hazard warning" means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s). (See the definitions for "physical hazard" and "health hazard" to determine the hazards which must be conveyed.)

* * * * *

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of this section. For hazardous chemicals which are drugs regulated by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), an approved package insert or drug information in the *Physicians' Desk Reference* will be considered a MSDS for purposes of compliance with this rule in the non-manufacturing sector.

* * * * *

(d) *Hazard determination.*

* * * * *

(5) * * *

(iv) If the chemical manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees in those centrations, the mixture shall be assumed to present the same hazard.

* * * * *

(e) *Written hazard communication program.*

* * * * *

(5) Where employees must travel between workplaces during a workshift, *i.e.*, their work is carried out at more than one geographical location, the written hazard communication program may be kept at a central location at the primary workplace facility.

(f) *Labels and other forms of warning.*

* * * * *

(2)(i) For solid metal (such as a steel beam or a metal casting), solid wood, or plactic items that are not exempted as articles due to their downstream use, or shipments of whole grain, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes;

(ii) The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment; and,

(iii) This exception to requiring labels on every container of hazardous chemicals is only for the solid material itself, and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the material and to which employees handling the items in transit may be exposed (for example, cutting fluids or pesticides in grains).

* * * * *

(5) Except as provided in paragraphs (f)(6) and (f)(7) of this section, the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged, or marked with the following information:

* * * * *

(ii) Appropriate hazard warnings, or words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemical, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with specific information regarding the physical and health hazards of the hazardous chemical.

* * * * *

(g) *Material safety data sheets.*

* * * * *

(7)(i) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers with their initial shipment and with the first shipment after a material safety data sheet is updated.

(ii) The distributor shall either provide material safety data sheets with the shipped containers, or send them to the other distributor or employer prior to or at the time of the shipment;

(iii) Retail distributors which sell hazardous chemicals to employers having a commercial account shall provide a material safety data sheet to such employers upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available;

(iv) If an employer which does not have a commercial account purchases a hazardous chemical from a retail distributor which does not have material safety data sheets on file (*i.e.*, it does not have commercial accounts and does not use the materials), the retail distributor must provide the employer, upon request, with the name, address, and telephone number of the chemical manufacturer, importer, or distributor from which a material safety data sheet can be obtained; and,

(v) Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors which have informed them that the retail distributor does not sell the product to commercial accounts or open the sealed container to use it in their own workplaces.

* * * * *

**Appendix E to _____ (Advisory)—Guidelines for Employer Compliance**

The Hazard Communication Standard (HCS) is based on a simple concept—that employees have both a need and right to know the hazards and identities of the chemicals they are exposed to when working. They also need to know what protective measures are available to prevent adverse effects from occurring. The HCS is designed to provide employees with the information they need.

Knowledge acquired under the HCS will help employers provide safer workplaces for their employees. When employers have information about the chemicals being used, they can take steps to reduce exposures, substitute less hazardous materials, and establish proper work practices. These efforts

will help prevent the occurrence of work-related illnesses and injuries caused by chemicals.

The HCS addresses the issues of evaluating and communicating hazards to workers. Evaluation of chemical hazards involves a number of technical concepts, and is a process that requires the professional judgment of experienced experts. That's why the HCS is designed so that employers who simply use chemicals, rather than produce or import them, are not required to evaluate the hazards of those chemicals. Hazard determination is the responsibility of the producers and importers of the materials. Producers and importers of chemicals are then required to provide the hazard information to employers that purchase their products.

Employers that don't produce or import chemicals need only focus on those parts of the rule that deal with establishing a workplace program and communicating information to their workers. This appendix is a general guide for such employers to help them determine what's required under the rule. It does not supplant or substitute for the regulatory provisions, but rather provides a simplified outline of the steps an average employer would follow to meet those requirements.

*1. Becoming Familiar With the Rule*

OSHA has provided a simple summary of the HCS in a pamphlet entitled "Chemical Hazard Communication," OSHA Publication Number 3084. Some employers prefer to begin to become familiar with the rule's requirements by reading this pamphlet. A copy may be obtained from your local OSHA Area Office, or by contacting the OSHA Publications Office at (202) 523–9667.

The standard is long, and some parts of it are technical, but the basic concepts are simple. In fact, the requirements reflect what many employers have been doing for years. You may find that you are already largely in compliance with many of the provisions, and will simply have to modify your existing programs somewhat. It you are operating in an OSHA-approved State Plan State, you must comply with the State's requirements, which may be different than those of the Federal rule. Many of the State Plan States had hazard communication or "right-to-know" laws prior to promulgation of the Federal rule. Employers in State Plan States should contact their State OSHA offices for more information regarding applicable requirements.

The HCS requires information to be prepared and transmitted regarding all hazardous chemicals. The HCS covers both physical hazards (such as flammability), and health hazards (such as irritation, lung damage, and cancer). Most chemicals used in the workplace have some hazard potential, and this will be covered by the rule.

One difference between this rule and many others adopted by OSHA is that this one is performance-oriented. That means that you have the flexibility to adapt the rule to the needs of your workplace, rather than having to follow specific, rigid requirements. It also means that you have to exercise more judgment to implement an appropriate and effective program.

The standard's design is simple. Chemical manufacturers and importers must evaluate the hazards of the chemicals they produce or import. Using that information, they must then prepare labels for containers, and more detailed technical bulletins called material safety data sheets (MSDS).

Chemical manufacturers, importers, and distributors of hazardous chemicals are all required to provide the appropriate labels and material safety data sheets to the employers to which they ship the chemicals. The information is to be provided automatically. Every container of hazardous chemicals you receive must be labeled, tagged, or marked with the required information. Your supplier must also send you a properly completed material safety data sheet (MSDS) at the time of the first shipment of the chemical, and with the next shipment after the MSDS is updated with new and significant information about the hazards.

You can rely on the information received from your supplier. You have no independent duty to analyze the chemical or evaluate the hazards or it.

Employers that "use" hazardous chemicals must have a program to ensure the information is provided to exposed employees. "Use" means to package, handle, react, or transfer. This is an intentionally broad scope, and includes any situation where a chemical is present in such a way that employees may be exposed under normal conditions of use or in a foreseeable emergency.

The requirements of the rule that deal specifically with the hazard communication program are found in the standard in paragraphs (e), written hazard communication program (f), labels and other forms of warning; (g), material safety data sheets; and (h), employee information and training. The requirements of these paragraphs should be the focus on your attention. Concentrate on becoming familiar with them, using paragraph (b), scope and application, and (c), definitions, as references when needed to help explain the provisions.

There are two types of work operations where the coverage of the rule is limited. These are laboratories and operations where chemicals are only handled in sealed containers (*e.g.*, a warehouse). The limited provisions for these workplaces can be found in paragraph (b), scope and application. Basically, employers having these types of work operations need only keep labels on containers as they are received; maintain material safety data sheets that are received, and give employees access to them; and provide information and training for employees. Employers do not have to have written hazard communication programs and lists of chemicals for these types of operations.

The limited coverage of laboratories and sealed container operations addresses the obligation of an employer to the workers in the operations involved, and does not affect the employer's duties as a distributor of chemicals. For example, a distributor may have warehouse operations where employees would be protected under the limited sealed container provisions. In this situation, requirements for obtaining and maintaining MSDSs are limited to providing access to those received with containers while the substance is in the workplace, and requesting MSDSs when employees request access for those not received with the containers. However, as a distributor of hazardous chemicals, that employer will still have responsibilities for providing MSDSs to downstream customers at the time of the first shipment and when the MSDS is updated. Therefore, although they may not be required for the employees in the work operation, the distributor may, nevertheless, have to have MSDSs to satisfy other requirements of the rule.

*2. Identify Responsible Staff*

Hazard communication is going to be a continuing program in your facility. Compliance with the HCS is not a "one shot deal." In order to have a successful program, it will be necessary to assign responsibility for both the initial and ongoing activities that have to be undertaken to comply with the rule. In some cases, these activities may already be part of current job assignments. For example, site supervisors are frequently responsible for on-the-job training sessions. Early identification of the responsible employees, and involvement of them in the development of your plan of action, will result in a more effective program design. Evaluation of the effectiveness of your program will also be enhanced by involvement of affected employees.

For any safety and health program, success depends on commitment at every level of the organization. This is particularly true for hazard communication, where success requires a change in behavior. This will only occur if employers understand the program, and are committed to its success, and if employees are motivated by the people presenting the information to them.

*3. Identify Hazardous Chemicals in the Workplace*

The standard requires a list of hazardous chemicals in the workplace as part of the written hazard communication program. The list will eventually serve as an inventory of everything for which an MSDS must be maintained. At this point, however, preparing the list will help you complete the rest of the program since it will give you some idea of the scope of the program required for compliance in your facility.

The best way to prepare a comprehensive list is to survey the workplace. Purchasing records may also help, and certainly employers should establish procedures to ensure that in the future purchasing procedures result in MSDSs being received before a material is used in the workplace.

The broadest possible perspective should be taken when doing the survey. Sometimes people think of "chemicals" as being only liquids in containers. The HCS covers chemicals in all physical forms—liquids, solids, gases, vapors, fumes, and mists—whether they are "contained" or not. The hazardous nature of the chemical and the potential for exposure are the factors which determine whether a chemical is covered. If it's not hazardous, it's not covered. If there is

no potential for exposure (*e.g.*, the chemical is inextricably bound and cannot be released), the rule does not cover the chemical.

Look around. Identify chemicals in containers, including pipes, but also think about chemicals generated in the work operations. For example, welding fumes, dusts, and exhaust fumes are all sources of chemical exposures. Read labels provided by suppliers for hazard information. Make a list of all chemicals in the workplace that are potentially hazardous. For your own information and planning, you may also want to note on the list the location(s) of the products within the workplace, and an indication of the hazards as found on the label. This will help you as you prepare the rest of your program.

Paragraph (b), scope and application, includes exemptions for various chemicals or workplace situations. After compiling the complete list of chemicals, you should review paragraph (b) to determine if any of the items can be eliminated from the list because they are exempted materials. For example, food, drugs, and cosmetics brought into the workplace for employee consumption are exempt. So rubbing alcohol in the first aid kit would not be covered.

Once you have compiled as complete a list as possible of the potentially hazardous chemicals in the workplace, the next step is to determine if you have received material safety data sheets for all of them. Check your files against the inventory you have just compiled. If any are missing, contact your supplier and request one. It is a good idea to document these requests, either by copy of a letter or a note regarding telephone conversations. If you have MSDSs for chemicals that are not on your list, figure out why. Maybe you don't use the chemical anymore. Or maybe you missed it in your survey. Some suppliers do provide MSDSs for products that are not hazardous. These do not have to be maintained by you.

You should not allow employees to use any chemicals for which you have not received an MSDS. The MSDS provides information you need to ensure proper protective measures are implemented *prior* to exposure.

*4. Preparing and Implementing a Hazard Communication Program*

All workplaces where employees are exposed to hazardous chemicals must have a written plan which describes how the standard will be implemented in that facility. Preparation of a plan is not just a paper exercise—all of the elements must be implemented in the workplace in order to be in compliance with the rule. *See* paragraph (e) of the standard for the specific requirements regarding written hazard communication programs. The only work operations which do not have to comply with the written plan requirements are laboratories and work operations where employees only handle chemicals in sealed containers. *See* paragraph (b), scope and application, for the specific requirements for these two types of workplaces.

The plan does not have to be lengthy or complicated. It is intended to be a blueprint for implementation of your program—an assurance that all aspects of the requirements have been addressed.

Many trade associations and other professional groups have provided sample programs and other assistance materials to affected employers. These have been very helpful to many employers since they tend to be tailored to the particular industry involved. You may wish to investigate whether your industry trade groups have developed such materials.

Although such general guidance may be helpful, you must remember that the written program has to reflect what you are doing in your workplace. Therefore, if you use a generic program it must be adapted to address the facility it covers. For example, the written plan must list the chemicals present at the site, indicate who is to be responsible for the various aspects of the program in your facility, and indicate where written materials will be made available to employees.

If OSHA inspects your workplace for compliance with the HCS, the OSHA compliance officer will ask to see your written plan at the outset of the inspection. In general, the following items will be considered in evaluating your program.

The written program must describe how the requirements for labels and other forms of warning, material safety data sheets, and employee information and training, are going to be met in your facility. The following discussion provides the type of information compliance officers will be looking for to decide whether these elements of the hazard communication program have been properly addressed:

A. Labels and Other Forms of Warning

In-plant containers of hazardous chemicals must be labeled, tagged, or marked with the identity of the material and appropriate hazard warnings. Chemical manufacturers, importers, and distributors are required to ensure that every container of hazardous chemicals they ship is appropriately labeled with such information and with the name and address of the producer or other responsible party. Employers purchasing chemicals can rely on the labels provided by their suppliers. If the material is subsequently transferred by the employer from a labeled container to another container, the employer will have to label that container unless it is subject to the portable container exemption. *See* paragraph (f) for specific labeling requirements.

The primary information to be obtained from an OSHA-required label is an identity for the material, and appropriate hazard warnings. The identity is any term which appears on the label, the MSDS, and the list of chemicals, and thus links these three sources of information. The identity used by the supplier may be a common or trade name ("Black Magic Formula"), or a chemical name (1,1,1,-trichloroethane). The hazard warning is a brief statement of the hazardous effects of the chemical ("flammable," "causes lung damage"). Labels frequently contain other information, such as precautionary measures ("do not use near open flame"), but this information is provided voluntarily and is not required by the rule. Labels must be legible, and prominently displayed. There are no specific requirements for size or color, or any specified text.

With these requirements in mind, the compliance officer will be looking for the following types of information to ensure that labeling will be properly implemented in your facility:

1. Designation of person(s) responsible for ensuring labeling of in-plant containers;
2. Designation of person(s) responsible for ensuring labeling of any shipped containers;
3. Description of labeling system(s) used;
4. Description of written alternatives to labeling of in-plant containers (if used); and,
5. Procedures to review and update label information when necessary.

Employers that are purchasing and using hazardous chemicals—rather than producing or distributing them—will primarily be concerned with ensuring that every purchased container is labeled. If materials are transferred into other containers, the employer must ensure that these are labeled as well, unless they fall under the portable container exemption (paragraph (f)(7)). In terms of labeling systems, you can simply choose to use the labels provided by your suppliers on the containers. These will generally be verbal text labels, and do not usually include numerical rating systems or symbols that require special training. The most important thing to remember is that this is a continuing duty—all in-plant containers of hazardous chemicals must always be labeled. Therefore, it is important to designate someone to be responsible for ensuring that the labels are maintained as required on the containers in your facility, and that newly purchased materials are checked for labels prior to use.

B. Material Safety Data Sheets

Chemical manufacturers and importers are required to obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Distributors are responsible for ensuring that their customers are provided a copy of these MSDSs. Employers must have an MSDS for each hazardous chemical which they use. Employers may rely on the information received from their suppliers. The specific requirements for material safety data sheets are in paragraph (g) of the standard.

There is no specified format for the MSDS under the rule, although there are specific information requirements. OSHA has developed a non-mandatory format, OSHA Form 174, which may be used by chemical manufacturers and importers to comply with the rule. The MSDS must be in English. You are entitled to receive from your supplier a data sheet which includes all of the information required under the rule. If you do not receive one automatically, you should request one. If you receive one that is obviously inadequate, with, for example, blank spaces that are not completed, you should request an appropriately completed one. If your request for a data sheet or for a corrected data sheet does not produce the information needed, you should contact your local OSHA Area Office for assistance in obtaining the MSDS.

The role of MSDSs under the rule is to provide detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical

characteristics, and recommendations for appropriate protective measures. This information should be useful to you as the employer responsible for designing protective programs, as well as to the workers. If you are not familiar with material safety data sheets and with chemical terminology, you may need to learn to use them yourself. A glossary of MSDS terms may be helpful in this regard. Generally speaking, most employers using hazardous chemicals will primarily be concerned with MSDS information regarding hazardous effects and recommended protective measures. Focus on the sections of the MSDS that are applicable to your situation.

MSDSs must be readily accessible to employees when they are in their work areas during their workshifts. This may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. Some employers keep the MSDSs in a binder in a central location (*e.g.*, in the pick-up truck on a construction site). Others, particularly in workplaces with large numbers of chemicals, computerize the information and provide access through terminals. As long as employees can get the information when they need it, any approach may be used. The employees must have access to the MSDSs themselves—simply having a system where the information can be read to them over the phone is only permitted under the mobile worksite provision, paragraph (g)(9), when employees must travel between workplaces during the shift. In this situation, they have access to the MSDSs prior to leaving the primary worksite, and when they return, so the telephone system is simply an emergency arrangement.

In order to ensure that you have a current MSDS for each chemical in the plant as required, and that employee access is provided, the compliance officers will be looking for the following types of information in your written program:

1. Designation of person(s) responsible for obtaining and maintaining the MSDSs;
2. How such sheets are to be maintained in the workplace (*e.g.*, in notebooks in the work area(s) or in a computer with terminal access), and how employees can obtain access to them when they are in their work area during the work shift;
3. Procedures to follow when the MSDS is not received at the time of the first shipment;
4. For producers, procedures to update the MSDS when new and significant health information is found; and,
5. Description of alternatives to actual data sheets in the workplace, if used.

For employers using hazardous chemicals, the most important aspect of the written program in terms of MSDSs is to ensure that someone is responsible for obtaining and maintaining the MSDSs for every hazardous chemical in the workplace. The list of hazardous chemicals required to be maintained as part of the written program will serve as an inventory. As new chemicals are purchased, the list should be updated. Many companies have found it convenient to include on their purchase orders the name and address of the person designated in their company to receive MSDSs.

C. Employee Information and Training

Each employee who may be "exposed" to hazardous chemicals when working must be provided information and trained prior to initial assignment to work with a hazardous chemical, and whenever the hazard changes. "Exposure" or "exposed" under the rule means that "an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (*e.g.*, accidental or possible) exposure." *See* paragraph (h) of the standard for specific requirements. Information and training may be done either by individual chemical, or by categories of hazards (such as flammability or carcinogenicity). If there are only a few chemicals in the workplace, then you may want to discuss each one individually. Where there are large numbers of chemicals, or the chemicals change frequently, you will probably want to train generally based on the hazard categories (*e.g.*, flammable liquids, corrosive materials, carcinogens). Employees will have access to the substance-specific information on the labels and MSDSs.

Information and training is a critical part of the hazard communication program. Information regarding hazards and protective measures are provided to workers through written labels and material safety data sheets. However, through effective information and training, workers will learn to read and understand such information, determine how it can be obtained and used in their own workplaces, and understand the risks of exposure to the chemicals in their workplaces as well as the ways to protect themselves. A properly conducted training program will ensure comprehension and understanding. It is not sufficient to either just read material to the workers, or simply hand them material to read. You want to create a climate where workers feel free to ask questions. This will help you to ensure that the information is understood. You must always remember that the underlying purpose of the HCS is to reduce the incidence of chemical source illnesses and injuries. This will be accomplished by modifying behavior through the provision of hazard information and information about protective measures. If your program works, you and your workers will better understand the chemical hazards within the workplace. The procedures you establish regarding, for example, purchasing, storage, and handling of these chemicals will improve, and thereby reduce the risks posed to employees exposed to the chemical hazards involved. Furthermore, your workers' comprehension will also be increased, and proper work practices will be followed in your workplace.

If you are going to do the training yourself, you will have to understand the material and be prepared to motivate the workers to learn. This is not always an easy task, but the benefits are worth the effort. More information regarding appropriate training can be found in OSHA Publication No. 2254 which contains voluntary training guidelines prepared by OSHA's Training Institute. A copy of this document is available from OSHA's Publications Office at (202) 523-9667.

In reviewing your written program with regard to information and training, the following items need to be considered:

1. Designation of person(s) responsible for conducting training;
2. Format of the program to be used (audiovisuals, classroom instruction, etc.);
3. Elements of the training program (should be consistent with the elements in paragraph (h) of the HCS); and
4. Procedure to train new employees at the time of their initial assignment to work with a hazardous chemical, and to train employees when a new hazard is introduced into the workplace.

The written program should provide enough details about the employer's plans in this area to assess whether or not a good faith effort is being made to train employees. OSHA does not expect that every worker will be able to recite all of the information about each chemical in the workplace. In general, the most important aspects of training under the HCS are to ensure that employees are aware that they are exposed to hazardous chemicals, that they know how to read and use labels and material safety data sheets, and that, as a consequence of learning this information, they are following the appropriate protective measures established by the employer. OSHA compliance officers will be talking to employees to determine if they have received training, if they know they are exposed to hazardous chemicals, and if they know where to obtain substance-specific information on labels and MSDSs.

The rule does not require employers to maintain records of employee training, but many employers choose to do so. This may help you monitor your own program to ensure that all employees are appropriately trained. If you already have a training program, you may simply have to supplement it with whatever additional information is required under the HCS. For example, construction employers that are already in compliance with the construction training standard (29 CFR 1926.21) will have little extra training to do.

An employer can provide employees information and training through whatever means found appropriate and protective. Although there would always have to be some training on-site (such as informing employees of the location and availability of the written program and MSDSs), employee training may be satisfied in part by general training about the requirements of the HCS and about chemical hazards on the job which is provided by, for example, trade associations, unions, colleges, and professional schools. In addition, previous training, education and experience of a worker may relieve the employer of some of the burdens of informing and training that worker. Regardless of the method relied upon, however, the employer is always ultimately responsible for ensuring that employees are adequately trained. If the compliance officer finds that the training is deficient, the employer will be cited for the deficiency regardless of who actually provided the training on behalf of the employer.

D. Other Requirements

In addition to these specific items, compliance officers will also be asking the following questions in assessing the adequacy of the program:

Does a list of the hazardous chemicals exist in each work area or at a central location?

Are methods the employer will use to inform employees of the hazards of non-routine tasks outlined?

Are employees informed of the hazards associated with chemicals contained in unlabeled pipes in their work areas?

On multi-employer worksites, has the employer provided other employers with information about labeling systems and precautionary measures where the other employers have employees exposed to the initial employer's chemicals?

Is the written program made available to employees and their designated representatives?

If your program adequately addresses the means of communicating information to employees in your workplace, and provides answers to the basic questions outlined above, it will be found to be in compliance with the rule.

*5. Checklist for Compliance*

The following checklist will help to ensure you are in compliance with the rule:

| | |
|---|---|
| Obtained a copy of the rule | ____ |
| Read and understood the requirements | ____ |
| Assigned responsibility for tasks | ____ |
| Prepared an inventory of chemicals | ____ |
| Ensured containers are labeled | ____ |
| Obtained MSDS for each chemical | ____ |
| Prepared written program | ____ |
| Made MSDSs available to workers | ____ |
| Conducted training of workers | ____ |
| Established procedures to maintain current program | ____ |
| Established procedures to evaluate effectiveness | ____ |

*6. Further Assistance*

If you have a question regarding compliance with the HCS, you should contact your local OSHA Area Office for assistance. In addition, each OSHA Regional Office has a Hazard Communication Coordinator who can answer your questions. Free consultation services are also available to assist employers, and information regarding these services can be obtained through the Area and Regional offices as well.

The telephone number for the OSHA office closest to you should be listed in your local telephone directory. If you are not able to obtain this information, you may contact OSHA's Office of Information and Consumer Affairs at (202) 523-8151 for further assistance in identifying the appropriate contacts.

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Part IV

# Department of Agriculture

**Food and Nutrition Service**

**7 CFR Part 277**

**Food Stamp Program: Automated Data Processing Equipment and Services; Conditions for Federal Financial Participation; Proposed Rule**

VOL 53 ISS 152 AUG 8 1988 UMI

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 277**

**[Amdt. No. 305]**

**Food Stamp Program; Automated Data Processing Equipment and Services; Conditions for Federal Financial Participation**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes changes to the requirements and conditions under which State and local governments may request and claim Federal funds for the costs associated with the planning, design, development, acquisition or installation of automated data processing (ADP) equipment and services in the administration of the Food Stamp Program. These changes are being proposed by the Food and Nutrition Service (FNS) and, in a separate publication, by the Department of Health and Human Services (HHS), to streamline the procedures for submission, review and approval of Advance Planning Documents, and to ensure consistency among Federal agencies in policies and procedures relating to the acquisition and use of ADP equipment in public assistance programs.

**DATE:** Comments on this proposed rulemaking must be received by October 7, 1988, to be assured of consideration.

**ADDRESS:** Comments should be directed to: Thomas O'Connor, Director, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 716.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be directed to Mr. O'Connor at the above address, or by telephone at (703) 756–3414.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The rule will affect the economy by less than 100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified this action as "not major".

**Executive Order 12372**

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.651. For the reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Regulatory Flexibility Act**

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes will affect State and local agencies which administer the Food Stamp Program. This action is principally directed toward the development of Statewide ADP systems. It is anticipated that Federal funding would be requested for only a small number of county or local government systems under the provisions of this proposed rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Such provisions shall not be effective until OMB approval has been obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should address them to Mr. O'Connor at the above address, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3028), Washington, DC 20503, ATTN: Desk Officer for FNS–USDA.

**Background**

The Department published a rule on December 30, 1980, at 45 FR 85699, which set forth the requirements for payment of certain administrative costs of State agencies which operate the Food Stamp Program. These requirements are codified at 7 CFR Part 277 and Appendix A of that Part, and derived from four Federal Management Circulars (FMC's): FMC 74–4, issued originally by the General Services Administration, but now under the Office of Management and Budget (OMB); OMB Circular A–90, "Cooperating with State and Local Governments to Coordinate and Improve Information Systems"; OMB Circular A–102, "Uniform Requirements for Grants to State and Local Governments"; and OMB Circular A–87, "Cost Principles for State and Local Governments." The procedures and funding conditions for State agencies to request Federal funds for the acquisition of ADP equipment and services to support the administration of the Food Stamp Program are set forth in Section B. (*Costs allowable with approval of FNS*) of Appendix A, to 7 CFR Part 277.

On June 11, 1982, the Department published a rule at 47 FR 25496 to implement Section 129 of Pub. L. 96–249, which allowed enhanced Federal financial participation (FFP) at the 75 percent level for costs associated with the planning, design, development, acquisition, or installation of ADP systems. In section 277.18, the Department codified the requirements and procedures for State agencies to receive 75 percent funding for certain ADP developmental projects. The existing requirements of § 277.18, in conjunction with those of Appendix A to part 277, currently apply to ADP developmental projects to be funded at the 75 percent funding rate. The conditions of Appendix A alone currently apply to ADP projects to be funded at the regular 50 percent rate.

In August 1985, an Interdepartmental Task Force was established consisting of representatives from FNS, the Health Care Financing Administration, the Family Support Administration, and the Office of Human Developmental Services. The Interdepartmental Task force conducted a comprehensive review of the current Federal policies and procedures involved in the review, approval and funding of State agency ADP developmental projects in order to streamline, improve and standardize the overall process and requirements among the affected Federal agencies. Specifically, the Task Force examination and revision of the current HHS and FNS regulatory requirements and procedures were intended to meet the following principal objectives:

1. Streamline the Advance Planning Document (APD) review and approval process to eliminate redundant Federal and State reviews;

2. Enhance State planning for developmental projects;

3. Improve project development continuity;

4. Allow for a more comprehensive Federal review and more timely response to APD's;

5. Standardize procedures and requirements among participating Federal agencies; and

6. Enhance the cooperative partnership between State and Federal agencies to achieve ADP and management information system applications that advance the efficiency and effectiveness of State administration of Federal programs.

The principal changes recommended by the Task Force involve the procedures and conditions under which States may request and receive funding for ADP developmental projects through the submission, review and approval of APD's and other related documents. The procedures proposed herein comprise the revised APD process and are being proposed by both FNS and HHS to ensure standardization, whenever possible, among Federal agencies.

**Significant Proposed Changes in APD Process**

*1. Increased APD Prior Approval Cost Thresholds—Section 277.18(c)*

Current rules in Section B of Appendix A require written prior approval from FNS for the acquisition of ADP equipment or services with a combined Federal and State cost of $100,000 or more over a 12-month period, or a cost of $200,000 or more (Federal *or* State) for the total acquisition. Revised § 277.18(c) would increase the Federal prior approval cost thresholds for ADP development projects to be funded at the 50 percent matching rate from $100,000 to $200,000 in total Federal and State costs over any 12-month period, and from $200,000 to $300,000 for total acquisition costs. State agencies would be required to obtain the prior written approval of FNS for ADP acquisitions exceeding the revised standards. The revised cost thresholds are intended to permit State agencies to implement smaller systems or system changes more quickly, reduce the number of small acquisitions requiring Federal prior approval, and reduce paperwork burden. These changes would also make Food Stamp Program prior approval cost thresholds and procedures consistent with those of HHS agencies, which were revised in a final rule at 51 FR 45321, published on December 16, 1986. This proposed rule also clarifies that *all* ADP developmental projects for which 75 percent Federal funding is requested are subject to FNS prior approval requirements, regardless of cost.

*2. Establishment of Two-Phase APD Process—Section 277.18(d)*

State agencies would request prior approval for ADP services and equipment acquisitions, as outlined above, through the submission of an Advance Planning Document (APD). The proposed APD process would consist of two distinct phases—the Project Planning Phase and the Implementation Phase. The Project Planning Phase would represent all activities necessary for the State agency to determine whether the acquisition and application of ADP services or equipment are necessary and feasible, and to develop plans to design and prepare for the ADP acquisition. The Project Implementation Phase consists of all activities involved in the acquisition, installation and implementation of ADP systems, services and/or equipment. To request and obtain FFP for allowable costs of the Project Planning and Implementation Phases, State agencies would be required to submit a Planning APD and an Implementation APD for the prior approval of FNS. States agencies would be entitled to receive the 75 percent funding rate for approved costs of both the Project Planning and Implementation Phases, provided that the proposed ADP system or application was determined by FNS to meet all applicable conditions for 75 percent funding.

The Department is proposing the two-phase APD process to address a major concern with the current process for requesting and approving funds for ADP developmental projects. The current process does not provide a means to request and receive commitment for up-front Federal funding for the purpose of planning major ADP system acquisitions, before initiating system development. Without a firm up-front commitment of Federal funding, the level of planning for system development has frequently been inadequate. The current process requires submission and prior approval of an APD for total system development prior to the acquisition of any ADP services or equipment for projects exceeding the prior approval cost thresholds. In the past, State agencies have submitted APD funding proposals for total system development without sufficiently planning the entire acquisition, in order to comply with current approval requirements and initiate Federal funding as soon as possible. As a result, many APD proposals and funding requests have been submitted which are inadequate and premature, causing substantial subsequent revisions, time and cost overruns, and, in some cases, project termination due to lack of sufficient prior planning.

The proposed process establishes a separate Project Planning Phase, in which State agencies could request Federal funding only for project planning activities. The Department believes that this approach would contribute to more effective, efficient and economical acquisitions of ADP equipment and services by providing for more comprehensive planning by State agencies prior to full system development. State agency requests to receive FFP for Project Planning Phase activities would be made through the submission of a Planning APD. The costs for project planning activities which are eligible for FFP include, but are not limited to the costs associated with: requirements and systems analyses, feasibility studies and alternatives analyses, general system design, and preparation of an Implementation APD. A State agency's Planning APD may request funding to complete all necessary planning activities, or may request funding to a preliminary step (e.g., feasibility study) with additional funding subsequently requested based on the results of the completed activities. The Planning APD is subject to the prior approval of FNS. Appropriate written prior approval is required before the State agency may proceed with any contractual or other commitments for ADP planning services.

The Planning APD would describe the State agency's needs, objectives, intended planning activities and proposed budget, and would also represent commitment by the State agency to perform necessary planning activities as a condition for FFP for those planning activities. Planning APD funding requests and approvals would be limited to planning activities only, including contractual support; no significant hardware or software development costs would be eligible for funding in the Project Planning Phase.

Upon successful completion of project planning activities, the State agency should be fully prepared to request funding for and proceed with Implementation Phase activities for the acquisition, development, installation and implementation of the proposed ADP system. State agency requests to receive FFP for Implementation Phase activities would be made through submission of an Implementation APD. The Implementation APD represents a written plan of action to acquire,

develop and install the proposed ADP equipment or services.

Following review of the Planning or Implementation APD, FNS will provide written notification to the State agency of approval or the reasons for disapproval. The approval letters will specify the amount of FNS FFP authorized for each separate phase in project development.

A State agency would not receive FFP for planning costs unless a Planning APD is submitted and approved. However, State agencies could submit an Implementation APD directly, without prior submission or approval of the Planning APD, if the State agency does not wish to receive FFP for project planning activities.

*3. Reduction in Prior Approval Requirements—Section 277.18(c)*

To simplify the APD process, reduce paperwork burden and enhance project development continuity, the Department proposes to reduce the number of documents currently required for the prior approval of FNS. FNS prior approval is currently required for the following documents related to ADP equipment or services acquisitions: Advance Planning Documents; Requests for Proposal (RFP's); contracts; and service agreements. In addition to representing a significant paperwork burden, State agencies have commented that the numerous prior approval decision points have caused disruption and temporary discontinuation of project development schedules and activities, resulting in increased project costs. The Department proposes to alleviate these problems by limiting prior approval requirements to those necessary to maintain appropriate control and management of developmental project activities and funding.

The Department proposes that FNS written prior approval be limited to:

—Both the Planning APD and the Implementation APD for all projects to be funded at the 75 percent funding rate, regardless of total project cost, and projects to be funded at the regular FFP rate which exceed the prior approval cost thresholds proposed in § 277.18(c);
—RFP's, when specifically required by FNS; and
—Contracts or contract amendments, when specifically required by FNS.

As indicated above, FNS may require prior approval for RFP's, contracts and/or contract amendments for certain ADP acquisitions due to the complexity of the procurement, the amount of funds involved, or previous State problems with procurement actions. However, RFP's or contracts which are less than $100,000 for regular FFP or $50,000 for enhanced FFP, and are an integral part of the approved APD need not be submitted to FNS; contract amendments under $50,000 for either funding level need not be submitted. FNS would formally notify the State agency of such prior approval requirements at the time of approval of the APD or subsequent Annually Updated APD's, as discussed below and in § 277.18(e). Unless FNS specifically requires prior approval for certain RFP's or contracts, the only documents requiring prior FNS approval would be the Planning and Implementation APD's.

The Department believes that two other documents may be a such importance in the development of certain ADP projects as to warrant the approval (although not the *prior* approval) of FNS. Approval and prior approval differ in that written "prior approval" must be obtained before the State agency may enter into any contractual agreements or make any other commitments for acquiring the ADP equipment or services to be funded with FFP; "approval" means that FNS written approval of specific APD process documents must be obtained before the State agency may claim FFP for certain costs, but State agencies may enter contractual agreements and/or make commitments for the ADP acquisition without first obtaining Federal approval.

Section 277.18(c)(3)(i)(A) would provide for the submission of the feasibility study to FNS for approval within 90 days of completion for certain ADP projects. This approval requirement would be applicable only if specified by FNS as a condition for approving the Planning APD, when a systems development project is particularly large or complex, or when a State agency has experienced previous problems in this area. Section 277.18(d)(2)(ii) would require that the feasibility study and alternatives analyses supporting the selected system design generally be submitted as part of the Implementation APD for FNS approval. Thus, all feasibility studies and associated alternatives analyses would be submitted to FNS and would be subject to approval, either within 90 days after completion or upon submission of the Implementation APD.

Section 277.18 (c)(3)(i)(B) would also require the approval of Annually Updated APD's, as discussed later in this preamble. State agency service agreements would not be submitted to FNS for review or informational purposes. All service agreements would be maintained on file at the State agency and be made available to FNS upon request.

*4. Annually Updated APD—Section 277.18(f)*

The Department is proposing a new paragraph (e) to § 277.18 which would require the submission and approval of an annual report, the Annually Updated APD, on the status of approved ADP developmental projects. The annually Updated APD would represent a self-certification by the State agency of the status of project activities and expenditures in relation to the provisions of the approved Planning or Implementation APD over the past year. The report would be submitted annually as a condition for continued FFP for the ADP development project and would consist of three components:

1. A report on the status of major project activities, milestones and deliverables for the past year;

2. A detailed accounting of all expenditures for the ADP developmental project for the past year as compared to the budget of the Planning or Implementation APD as approved; and

3. Changes to the approved provisions of the Planning and Implementation APD. Such changes may be submitted as they occur during the year or at one time as a component of the Annually Updated APD. The Annually Updated APD would be used by FNS to monitor project development and expenditures within the context of the approved provisions of the APD.

However, for projects funded at the regular FFP rate, the Annually Updated APD need not be submitted unless any of the following changes occur:

(a) A change of $50,000 in total approved project costs over the course of the project;

(b) An extension of 60 days or more in timeframes for projected milestones;

(c) A change in procurement activities; or

(d) A significant change in system concept.

Changes in approved procurement activities include:

—A change in procurement methodology that would limit competition beyond what was decribed in the APD (e.g., a change from competitive to noncompetitive procurement);
—A reduction or increase in the procurement activities which were described in the APD; or
—A change from an acquisition which supports the needs of more than the State agency (e.g., a "blanket"

contract) to an acquisition which would benefit solely the State agency.

Significant changes in approved system concept include:

—A proposal of a different system alternative;
—A proposal for a different "mix" of system hardware and software;
—A change in project plan;
—A change in the cost/benefits projection; or
—A change to the approved cost allocation methodology.

Federal approval, no later than at the time of the next Annually Updated APD, is required for project changes before FFP for the change may be claimed. However, State agencies may proceed with the change without first obtaining Federal approval, to avoid disruption in project activities. In such instances, the State agency would be liable for costs associated with the project change until FNS approval is granted. If the Annually Updated APD is subsequently disapproved, FFP would not be allowed for the costs associated with the project change.

*5. Emergency ADP Acquisitions—Section 277.18(h)*

The Department is proposing procedures for the acquisition of ADP equipment or services for emergency situations in a new paragraph (h) to § 277.18. The Department recognizes that situations may arise which preclude a State agency from following the prior approval requirements of § 277.18(c) before acting to correct an emergency situation in order to meet program requirements. The proposed procedures for State agencies to request approval of FFP for emergency situations, FNS' response to such requests, and subsequent submission of ADP documentation parallel the emergency acquisition procedures currently in place for HHS agencies at 45 CFR 95.624. The Department would consider "emergency situations" to be those which could not be reasonably anticipated by the State agency. Examples of such situations include equipment failure due to physical damage or destruction caused by natural or other disasters, or changes imposed by Federal legislative requirements which necessitate immediate acquisition of ADP equipment or services. The Department would not consider emergency situations to be circumstances arising from poor planning on the part of the State agency. In determining whether a situation should be considered as an emergency, the State agency would be required to demonstrate that its need to immediately acquire ADP equipment or services was unexpected and could not have been anticipated or planned.

*System Transfer—Section 277.18(d)*

On September 18, 1987, the Department published a final rule, titled "Food Stamp Program: Automation of Data Processing (ADP) Model Plan" (52 FR 35221). That rule set forth a requirement for State agencies to submit to the Department their plans for automation in the Food Stamp Program. That rule also addressed the issue of system transfer, and the consideration a State agency must give to modifying an existing system when determining how to best fulfill an identified automation need.

In the analysis of comments received on the model plan rule, it was determined that the actual assessment of potentially transferable systems was more appropriately a part of the Advance Planning Document process, rather than part of the model plan requirements. Therefore language is proposed in the ADP approval requirements at § 277.18(d)(2)(ii) to require that State agencies consider the transfer or modification of an existing system in the Implementation APD, as part of the feasibility study and associated alternatives analyses. The model plan rule, however, continues to require at 7 CFR 272.10(a)(2) and (3) that State agencies show in their plans that system transfer will be considered in the planning process.

In this rule, the Department proposes that State agencies must include an examination of the transfer or modification of an existing system from a similar State or jurisdiction as a component of all feasibility studies. State agencies planning automation using any method other than transfer, or State agencies planning to develop new systems must include a specific analysis of their consultations with other State agencies. The analysis must show that the State agencies they consulted were similar to them in terms of whether the States were urban or rural; whether or not the States' programs were county-administered; the geographic size of the States; and the size of the caseload in each State. In addition, State agencies rejecting transfer must provide a specific analysis describing barriers to transfer. Each barrier must be accompanied by an analysis comparing the costs of overcoming the problem to the cost of developing a new system.

Common reasons cited in opposition to transfer include: the State agency is required to use a central data processing facility and the (otherwise) transferable system is incompatible with it; the State agency's data base management software is incompatible with the transferable system; the State agency's ADP experts are not familiar with the software/hardware used by the transferable system and acquiring new expertise would be expensive; the transferable system is interactive or uses "generic" caseworkers, while the receiving State agency does not, and it would be expensive to modify the existing system and/or procedures; and transfer would provoke disputes with the State agency's personnel union. Demonstration of any of these or similar problems alone is insufficient justification for rejecting transfer or adaptation. While these reasons for rejecting transfer are not unacceptable, State agencies which cite any of these reasons should not expect *automatic* approval. Rather, the State agency will be expected to show, as part of the APD, why the barrier to transfer cannot be overcome.

The Department also recognizes that FNS has an important role to play in regard to the analysis of potential system transfers. The model plan rule cited previously includes a provision at 7 CFR 272.10(a)(3)(iii) which states that FNS will assist State agencies that request assistance in determining what other States have systems that should be considered as possible transfers. The Department believes that some State agencies may request such assistance as one of the Project Planning Phase activities.

*Disallowance of Federal Financial Participation—Section 277.18(o).*

A new paragraph (o), Disallowance of Federal Financial Participation (FFP), would be added to § 277.18 which provides that, if the Department finds that any equipment or services acquisition approved or modified under the provisions of § 277.18(c) fails to substantially comply with the criteria, requirements, and other undertakings prescribed in the approved APD, payment of FFP may be disallowed. The Department approves FFP on the basis that the equipment or services acquisitions proposed under APD's will add to the proper and efficient operation of the Food Stamp Program. By the same token, if the Department finds that a State agency fails to substantially comply with the terms of an approved APD, to the detriment of the proper and efficient operation of the program, the Department may disallow FFP. The reasons for which the Department may disallow FFP include, but may not be limited to, failure of the proposed system to meet program effectiveness

and efficiency objectives contained in the approved APD, and schedule slippages which result in cost overruns which eliminate expected future cost savings or otherwise adversely affect cost-benefit projections.

*ADP System Security Provisions—Section 277.18(p)*

The Department is proposing a new paragraph (p) to § 277.18 titled "ADP System Security Requirements and Review Process" to establish minimum standard requirements for the security of non-Federal ADP systems used by State and local governments in the administration of the Food Stamp Program. The Department believes that increased reliance on automated systems to administer the Program, and greater sophistication and complexity of the systems have resulted in the need to establish standard regulatory requirements to ensure the security of ADP facilities, equipment and operations and the privacy of information. The need for standard regulatory requirements was demonstrated by a recent audit of the security of non-Federal ADP systems conducted by the U.S. Department of Agriculture's Office of the Inspector General (USDA/IG).

The USDA/IG reviewed the security of thirteen non-Federal ADP systems used by State and loca governments to support the administration of the FNS Food Stamp Program and Special Supplemental Food Program for Women, Infants and Children. The USDA/IG Audit Report 50651–2–CH, issued in October 1986, disclosed a wide range of computer security weaknesses and related problems. Some of the more serious problems concerned inadequate controls over physical security which could allow unrestricted access to computer hardware, and inadequate software controls which could permit improper manipulation of data or payments. The USDA/IG found weaknesses in the organizational controls of data processing in all of the thirteen State agencies audited. Further, the USDA/IG found that none of the thirteen State agencies audited had established formal procedures or requirements to ensure that such ADP systems met minimum ADP security standards. A copy of this report can be obtained by contacting the USDA/IG for Audit, Room 247–E, Administration Building, Washington, DC, NW., 20250.

The proposed new paragraph on ADP system security requires State agencies to establish a security program for ADP systems and operations used in the administration of the Food Stamp Program. The security program would consist of three principal components: appropriate State agency ADP security standards and requirements to ensure proper control of ADP equipment, facilities and information; State agency procedures and processes for meeting the established security standards and requirements; and security reviews for ensuring that established standards and requirements are met. Specifically, the proposed ADP security provisions establish the following principal requirements.

1. State agencies are responsible for the development of appropriate standards and requirements to properly safeguard ADP resources and information processing. This requirement is intended to establish a baseline in each State agency for safeguarding ADP resources and information processing against which the effectiveness of the State agency's security program may be measured. The Department considers the establishment of such baseline requirements to be critical to the effective safeguarding of ADP resources and information processing and to subsequent evaluation of the effectiveness of a State agency's security program.

The Department believes that it is more appropriate to allow State agencies to determine the specific minimum standards and requirements to govern the security of their own ADP systems based on the unique circumstances of each State, rather than mandate general standards to apply for all State and local agencies. The rule proposes that, in developing appropriate ADP security standards and requirements, State agencies use standards currently governing the security of Federal ADP systems or recognized industry standards as the basis for the development of State-specific standards and requirements.

2. State agencies would be required by § 277.18(p) to establish an ADP security program to implement plans, policies and procedures to meet the State agency's ADP security standards and requirements and to maintain an ongoing program for conducting periodic risk analyses to evaluate potential threats to the system and incorporate appropriate safeguards. The ongoing ADP security program represents the State agency's policies and operational procedures, and the organizational responsibilities which would be undertaken to meet the standards and requirements to properly safeguard ADP resources and information processing. The Department believes that such procedures are critical to meeting the ADP security standards and requirements established by a State agency. The rule proposes eight specific areas of ADP security which must, at a minimum, be included in the State agency's ADP security requirements and program:

—Physical security of ADP resources;
—Equipment security to protect equipment from theft and unauthorized use;
—Software and data security;
—Telecommunications security;
—Personnel security;
—Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;
—Emergency preparedness; and
—Designation of an Agency ADP Security Manager.

These eight areas comprise what the Department has determined to be the principal critical components of a security program for automated data processing activities. The Department has made this determination based on experience gained from dealing with the security of internal Department automated data processing activities, dealings with other Federal agencies in this area, and dealings with private industry on matters pertaining to automated data processing security.

3. State agencies would be required to establish an ongoing program of reviews of the security of ADP installations to ensure adequacy of safeguards and controls. The Department is proposing the performance of such reviews on a biennial basis and the submission of ADP system review reports to FNS upon completion.

The proposed rule specifies that the proposed ADP security provisions would apply to all developmental ADP projects and currently operating ADP systems. The Department does not intend that the State agency's ADP security standards, requirements or plans would be submitted to FNS for review or approval. It would be the responsibility of the State agency to ensure proper security of the ADP system and information processing. The completed State agency ADP security reviews would be required to be submitted to FNS, in order to identify and monitor any necessary corrective action.

**Other Proposed Revisions**

Several changes and additions to the existing regulatory language are being proposed to increase consistency with HHS in the terminology and policies defined in this section.

1. The "Definitions" currently contained in Part 277 Appendix A would

be moved to § 27.18(b) and revised as follows:

"Advance Planning Document (APD) for Project Planning", "APD for Project Implementation" and "Annually Updated APD" would be added to the list of definitions, to correspond to the revised APD approval procedures which are being proposed concurrently by HHS and FNS.

"Enhanced funding" or "enhanced FFP rate" would be added to specify the 75 percent funding level for the planning, design, development and installation of computerized systems as authorized by § 227.4(b)(1)(ii). A corresponding definition for "regular funding" or "regular FFP rate" would also be added. These definitions are intended to clarify the specific requirements which pertain only to projects funded at the 75 percent level, as opposed to those which apply to any other authorized funding level.

"Emergency situation" would be defined, to correspond to current HHS provisions at 45 CFR 95.605, as discussed previously.

"System design" would be removed from the current list of definitions in Part 277 Appendix A, and would be replaced with the definition of "General Systems Design".

"Requirements analysis" would be defined, to correspond to current HHS provisions at 45 CFR 95.605.

2. Regulatory language is proposed for § 277.18(f) regarding requirements for service agreements when data processing services are to be provided by a State central data processing facility or another State or local agency. In addition to removing the requirement for submission of service agreements to FNS, this paragraph would expand the definition of "Service agreement" currently contained in Part 277 Appendix A, to correspond to current HHS provisions at 45 CFR 95.605.

3. The Department's policy regarding the depreciation of capital expenditures when claiming the costs of ADP equipment having unit or total aggregate acquisition costs of more than $25,000, would be set forth in proposed § 277.18(i)(3). This provision would allow the State agency to request a waiver from the requirement to depreciate such costs, thereby allowing the costs to be "expensed" or claimed at the time of acquisition. The Department wishes to clarify, however, that the approval of a waiver would not affect the approved level of FFP for allowable costs. That is, for projects approved at the 75 percent funding level, only the proportionate share of the costs of capital assets assignable to the developmental phase of the project may be claimed at the enhanced level. This requirement would not preclude the approval of a waiver to expense the costs of such acquisitions, as long as the FFP levels for developmental and operational costs were determined in accordance with the provisions of these regulations.

4. In order to further clarify the delineation between the developmental and operational phases, for purposes of approving and claiming costs at the 75 percent funding level, this rule proposes a provision at § 277.18(g)(6) which would limit pilot tests and parallel processing for test purposes to a period not to exceed three months, unless specifically extended by FNS. The Department believes that three months represents an average and adequate period of time for pilot testing in most systems. However, the Department is interested in receiving comments as to whether or not this provision is consistent with previous State agency experiences.

**Structural Changes to Part 277**

The Department is proposing several structural changes to Part 277 to provide greater clarity, avoid redundancy, and consolidate the requirements and procedures for the FNS APD process in one section of Part 277. Current rules governing the acquisition of ADP services and equipment at the 75 percent funding rate are provided in 7 CFR 277.18. Rules for ADP acquisitions at the regular 50 percent funding rate are contained in Part 277 Appendix A, Section B. The two sections defining the APD process are duplicative and can be confusing, and the Department is proposing to consolidate all procedures, conditions and requirements governing the acquisition of ADP services and equipment in a new proposed § 277.18. The consolidation of the section and appendix would result in the following revisions.

1. Paragraph 277.18(b) would be deleted. This paragraph provided for the retroactive entitlement to the 75 percent funding rate for Advance Planning Documents approved before the June 11, 1982 publication date of the 75 percent funding provisions. As funding for all such projects has already occurred or been resolved, this provision no longer applies.

2. Paragraphs 277.18 (e)(1) and (e)(2) would be deleted. These paragraphs describe the prior approval and document submission processes for projects funded at the 75 percent rate. The provisions of these paragraphs would be redundant, as the revised process would establish the same approval and document submission procedures for ADP projects at either funding rate in new § 277.18(c).

3. Paragraph 277.18(h) would be deleted. This paragraph describes the requirements for system specifications approval, procurements, ownership rights, and the title, use and disposition of property for ADP developmental projects funded at the enhanced rate. Similar requirements are restated in Part 277 Appendix A, Section B. The proposed rule would eliminate duplication by consolidating the requirements in new § 277.18 only. The proposed rule in new § 277.18(c) and (d) would require that system specifications included as part of the general systems design be submitted for prior approval in the Implementation APD for ADP developmental projects.

Part 277 Appendix A, Sections B(5) and B(9) governing procurement requirements and ownership rights, use, title and disposition of property would be redesignated as § 277.18(k) and (m), respectively.

4. Part 277 Appendix A, Sections B(3) and B(6) which provided for general Federal and State agency approval requirements for APD proposals would be deleted. The proposed new § 277.18(c) would provide for all submission and approval requirements for Advance Planning Documents and other associated documents.

5. Part 277 Appendix A, Section B(12), which describes the conditions for applying the provisions governing ADP acquisitions and funding contained in Part 277 Appendix A, would be deleted, as all of the procedures and conditions for requesting and approving funding for ADP acquisitions would be deleted from Part 277 Appendix A and located in proposed new § 277.18. Proposed new § 277.18(a) would describe the conditions and scope of the provisions of the revised § 277.18.

**List of Subjects in 7 CFR Part 277**

Food Stamps, government procedure, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 277 is proposed to be amended as follows:

## PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

1. The authority citation for Part 277 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2029.

2. Section 277.18 is revised to read as follows:

**§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.**

(a) *Scope and application.* This section establishes conditions for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of ADP equipment and services used in the administration of the Food Stamp Program. Due to the nature of the procurement of ADP equipment and services, current State agency approved cost allocation plans for ongoing operational costs shall not apply to ADP system development costs under this section unless documentation required under paragraph (c) of this section is submitted to and approvals are obtained from FNS.

(b) *Definitions.*

"*Acceptance Documents*" means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

"*Advance Planning Document for Project Implementation*" or "*Implementation APD*" means a written plan of action requesting Federal financial participation (FFP) to acquire and implement ADP services and/or equipment.

"*Advance Planning Document for Project Planning*" or "*Planning ADP*" means a document that requests FFP to accomplish the planning necessary for a State agency to determine the need for and plan the acquisition of ADP equipment and/or services, and to acquire information necessary to develop a general system design and Implementation APD.

*"Annually Updated APD"* means an annual self-certification by the State agency on the status of project development activities and expenditures in relation to the approved Planning APD or Implementation APD.

*"Automated Data Processing"* or *"ADP"* means data processing performed by a system of electronic or electric machines so interconnected and interacting as to minimize the need for human assistance or intervention.

*"Automated Data Processing Equipment"* or *"hardware"* means:

(1) Electronic digital computers, regardless of size, capacity, or price, that accept data input, store data, perform calculations, and other processing steps, and prepare information;

(2) All peripheral or auxiliary equipment used in support of electronic digital computers whether selected and acquired with the computer or separately;

(3) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic digital computer; and

(4) Data input equipment used to enter directly or indirectly into an electronic digital computer, peripheral or auxiliary equipment, or data transmission, or communication equipment.

*"Automated Data Processing Services"* means:

(1) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(2) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation. This includes system training, systems development, site preparation, data entry, and personal services related to automated systems development and operations that are specifically identified as part of a Planning APD or Implementation APD.

*"Data Processing"* means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording, and transmitting.

*"Emergency situation"* means as a situation where:

(1) The State agency can demonstrate to FNS an immediate need to acquire ADP equipment or services in order to continue operation of the Food Stamp Progam; and

(2) The State agency can clearly document that the need could not have been anticipated or planned for the State is prevented from following the prior approval requirements of § 277.18(c).

*"Enhanced funding"* or *"enhanced FFP rate"* means Federal reimbursement at the 75-percent level for allowable costs for State agency planning, design, development or installation of computerized systems, as authorized by § 277.4(b)(1)(ii), and in accordance with the requirements at § 277.18(g).

*"Feasibility Study"* means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems would warrant a substantial investment of staff, time, and money being requested, and whether the plan can be accomplished successfully.

*"General Systems Design"* means a combination of narrative and diagrams describing the generic architecture of a system as opposed to the detailed architecture of the system. A general systems design may include a systems diagram; narrative identifying overall logic flow and systems functions; a description of equipment (including capacity) requirements; a description of other resource requirements which will be necessary to operate the system; a description of system performance requirements; and a description of the environment in which the system will operate, including how the system will function within that environment (e.g., how workers will interface with the system).

*"Regular funding"* or *"regular FFP rate"* means any Federal reimbursement rate authorized by § 277.4(b), except the 75-percent funding rate for State agency planning, design, development or installation of computerized systems, as specified at § 277.4(b)(1)(ii).

*"Request for Proposal"* or *"RFP"* means the document used for public solicitations of competitive proposals from qualified sources as outlined in § 277.14(g)(3).

*"Requirements Analysis"* means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

"*Service Agreement*" means the document, described in § 277.18(f), signed by the State or local agency and the State or local central data processing facility whenever a central data processing facility provides ADP services to the State or local agency.

"*Software*" means a set of computer programs, procedures, and associated documentation used to operate the hardware.

"*System specifications*" means information about the new ADP systems, such as: workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data, which is required to determine the ADP equipment and software necessary to implement the system design.

"*System study*" means the examination of existing information flow and operational procedures within an organization. The study consists of three basic phases: data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts

and relationships uncovered through the analysis into an efficient system.

(c) *General Acquisition Requirements.*—(1) *Requirement for prior FNS approval.* A State agency shall obtain prior written approval from FNS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services with proposed FFP at the regular funding rate which it anticipates will have total acquisition costs of $200,000 or more in Federal and State funds over any 12-month period, or $300,000 or more in Federal and State funds for the acquisition. A State agency shall obtain prior written approval from FNS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services with proposed FFP at the 75 percent funding rate authorized by this part, regardless of the cost of the acquisition. The State agency shall request FNS' prior approval by submitting the Planning APD or Implementation APD signed by the appropriate State official to the FNS Regional Office. A State agency shall also obtain prior written approval from FNS when it plans to noncompetitively acquire ADP equipment or services from a non-governmental source:

(i) Which cost more than $100,000 in Federal and State funds, for any acqusition with proposed FFP at the regular funding rate; or

(ii) for any acquisition, regardless of cost, with proposed FFP at the 75 percent funding rate.

(2) *Specific prior approval requirements.* (i) For ADP equipment and services acquisitions which require prior approval as specified in paragraph (c)(1) of this section, the State agency shall obtain the prior written approval of FNS for:

(A) The Planning APD prior to entering into contractual agreements or making any other commitment for acquiring the necessary planning services;

(B) The Implementation APD prior to entering into contractual agreements or making any other commitment for the acquisition of ADP equipment or services.

(ii) For ADP equipment and services acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, FNS may specifically require prior approval of the following documents associated with such acquisitions as a condition to approving either the ADP or a subsequent Annually Updated APD:

(A) RFP's; when required by FNS, the State agency shall obtain prior written approval of the RFP before the RFP may be released. However, RFP's which are less than $100,000 at the regular funding rate or $50,000 at the enhanced funding rate, and are an integral part of the approved APD need not be submitted to FNS.

(B) Contracts; when required by FNS, the State agency shall obtain prior written approval before the contract may be signed by the State agency. However, contracts which are less than $100,000 at the regular funding rate or $50,000 at the enhanced funding rate, and are an integral part of the approved APD need not be submitted to FNS.

(C) Contract amendments; when required by FNS, the State agency shall obtain prior written approval before the contract amendment may be signed by the State agency. However, contract amendments which are less than $50,000 and are an integral part of the approved APD need not be submitted to FNS.

(iii) The State agency must obtain prior written approval from FNS as specified in paragraphs (c)(2)(i) and (ii) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(3) *Approval requirements.* (i) For ADP equipment and service acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, the State agency shall submit the following documents to FNS for approval:

(A) Feasibility studies, when specifically required by FNS as a condition of approving the Planning APD. When required by FNS for approval, the State agency shall submit the feasibility study no later than 90 days after its completion.

(B) Annually Updated APD's as required by paragraph (e) of this section, within 90 days after the annual anniversary date of FNS' approval letter for the Planning APD or the Implementation APD.

(ii) The State agency must obtain FNS approval of the documents specified in paragraph (c)(3)(i) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents specified in this regulation prior to submission for FNS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and services not requiring prior approval by FNS.

(d) *APD Content Requirements*—(1) *Planning APD.* The State agency may request FFP at the regular or enhanced funding rate for the costs of determining the need for and planning the acquisition of ADP equipment or services through the submission of the Planning APD. The State agency may request FFP for the costs of planning activities beginning with initial project inception through the performance of necessary systems and alternatives analyses, selection and design, including the completion of a general systems design. The Planning APD shall contain the following information:

(i) The State agency shall describe the programmatic and organizational needs and/or problems to be addressed by the proposed ADP acquisition and the specific objectives to be accomplished under the Planning APD;

(ii) The State agency shall commit to complete a requirements analysis, feasibility study, alternatives analysis, cost-benefit analysis, and a general system design as part of project planning activities. If an existing ADP system is to be transferred, the State agency may plan to use the general system design of the transferred system. State agencies requesting FFP at 75 percent funding rate shall include a statement of commitment that the proposed ADP acquisition would meet the functional requirements of § 272.10;

(iii) The State agency shall describe the organization, required State and contractual resources and availability of those resources, and the assignments of roles and responsibilities for project planning activities. The State agency shall include a description of resources to be procured and procurement methods;

(iv) The State agency shall indicate the schedule of activities and deliverables during project planning, including a description and schedule of procurement activities to be undertaken in support of the planning project; and

(v) The proposed budget shall identify costs for project planning activities by Federal fiscal year. The budget shall include an estimate of prospective cost distribution to participating Federal agencies and the method for cost allocation. The State agency shall also include an estimate of the total project costs, including both the cost of the planning project and the cost of any eventual ADP equipment and/or services acquisition, which will be used only for determining whether the thresholds of § 277.18(c)(1) are met.

(2) *Implementation APD.* The State agency may request FFP at the regular or enhanced funding rate to acquire ADP equipment and services through the submission of the Implementation APD. The State agency may request FFP for the necessary activities to develop, acquire, install and implement the proposed ADP system or acquisition.

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The Implementation APD shall contain the following information:

(i) The State agency shall complete and submit a requirements analysis;

(ii) The State agency shall submit a feasibility study and associated alternatives analyses, which include the transfer or modification of an existing system from a similar State or jurisdiction in the examination of alternatives. State agencies which reject the transfer or modification of an existing system must provide an analysis describing the barriers to system transfer as part of the feasibility study. The analysis of barriers to system transfer shall include a comparison of the costs of overcoming the problem in transferring an operational system to the costs of developing a new system;

(iii) The State agency shall submit the new or transferred general systems design and shall also document the intended approaches, plans and techniques to develop or modify specific aspects of the proposed ADP system or acquisition including hardware, software, telecommunications, system testing, and data security;

(iv) The State agency shall describe the anticipated resource requirements for implementation of the ADP project, the resources planned to be available for the project, and plans for augmenting resources to meet resource requirements;

(v) The State agency shall indicate the principal events and schedule of activities, milestones, and deliverables during implementation of the project;

(vi) The State agency shall submit a proposed budget which identifies costs for intended project development and implementation activities by Federal fiscal year and shall include a consideration of all possible Implementation APD activity costs (e.g., system conversion, computer capacity planning, supplies, training, and miscellaneous ADP expenses). The budget shall contain an estimate of prospective cost distribution and methods for allocating costs to participating Federal agencies;

(vii) The State agency shall document the scope, methodology, evaluation criteria and results of cost-benefit analyses for evaluating the selected design and alternatives. The cost-benefit analysis shall include a statement indicating the period of time the State agency intends to use the proposed equipment or system; and

(viii) The State agency shall describe the security and interface requirements to be employed and the backup and contingency procedures available.

(3) *APD Budget.* The proposed budget for both the Planning APD and the Implementation APD shall include cost distribution plans containing the bases for proposed rates, both direct and indirect, for costs associated with system planning, development, acquisition or implementation, as appropriate. The budget proposals accompanying the Implementation APD shall also include proposed cost distribution plans and the bases of proposed rates for the operation of the ADP system. The budget activities shall be presented on a Federal fiscal year basis in a clear fashion to associate costs with each planned activity. The budgets must identify all development costs separately from any ongoing operational costs. Costs must be distinguished by developmental projects and developmental time periods. Actual costs claimed must be reconcilable to projected costs as proposed and approved by FNS in the ADP.

(e) *Annually Updated APD.*— (1) *General submission requirements.* The State agency shall submit an Annually Updated APD for FNS approval for all approved Planning and Implementation APD's, unless the conditions described in paragraph (e)(3) of this section are met. The Annually Updated APD shall be submitted to the FNS Regional Office within 90 days after the annual anniversary date of the original APD approval, unless the submission date is specifically altered by FNS. The Annually Updated APD requirements apply to ADP development projects at both the regular and enhanced funding rates.

(2) *Content requirements.* The Annually Updated APD represents a self-certification by the State agency of project status in relation to the provisions of the approved Planning APD and Implementation APD. The Annually Updated APD shall include:

(i) Project activity status.

(A) The status of all major tasks and milestones in the approved Planning APD, Implementation APD or previous Annually Updated APD's for the past year. The Annually Updated APD shall include all major tasks and milestones completed in the past year and degree of completion for unfinished tasks.

(B) The status of all project deliverables completed in the past year and degree of completion for unfinished products.

(C) Reports of past and/or anticipated problems or delays in meeting target dates in the approved Planning APD, Implementation APD or previous Annually Updated APD's for the remainder of the project. The Annually Updated APD shall include an explanation of the need to extend any major project target dates.

(ii) Project expenditures.

(A) A detailed accounting for all expenditures for project development over the past year.

(B) An explanation of differences between projected expenses in the approved Planning or Implementation APD, or previous Annually Updated APD's, and actual expenditures for the past year. If changes in costs are reported, FNS may require the submission of a revised cost-benefit analysis as a condition for approval of the Annually Updated APD.

(C) Changes to the allocation basis in the approved APD's cost allocation methodology.

(iii) Changes to the approved APD.

(A) Revised language for all changes to the approved APD or previous Annually Updated APD's shall be submitted as part of the Annually Updated APD, unless submitted separately by the State agency as the changes occurred throughout the year.

(B) Changes in project management and/or contractor services.

(3) *Exceptions to requirements.* Annually Updated APD's for projects funded at the regular FFP rate need not be submitted unless any of the following changes occur:

(i) A change of $50,000 in total approved project costs over the course of the project;

(ii) An extention of 60 days or more in timeframes for projected milestones;

(iii) A change in procurement activities; or

(iv) A significant change in system concept.

(f) *Service agreements.* The State agency shall execute service agreements when data processing services are to be provided by a State central data processing facility or another State or local agency. Service agreements shall be kept on file by the State agency and be available for Federal review, and shall:

(1) Identify the ADP services that will be provided;

(2) Include, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;

(3) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(4) Include assurances that services provided will be timely and satisfactory;

(5) Include assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance

with provisions of §§ 272.1(c) and 277.13;

(6) Require the provider to obtain prior approval pursuant to § 277.18(c)(1) from FNS for ADP equipment and ADP services that are acquired from commercial sources primarily to support the Food Stamp Program and requires the provider to comply with § 277.14 for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the Food Stamp Program when the Program may reasonably be expected to either: be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of ADP equipment or services;

(7) Include the beginning and ending dates of the period of time covered by the service agreement; and

(8) Include a schedule of expected total charges to the Program for the peiod of the service agreement.

(g) *Entitlement to 75 percent FFP rate.* (1) A State agency may, at its option, request reimbursement at a 75 percent FFP rate for the costs of planning, design, development or installation of ADP and information retrieval systems. State agency requests for the 75 percent FFP rate shall be made in accordance with this section, and appropriate instructions issued by FNS.

(2) The 75 percent funding level may be approved by FNS if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food Stamp Act;

(ii) Meet the program standards specified in § 272.10(b) (1), (2) and (3), except for the requirements in § 272.10(b)(2) (vi) and (vii) and (3)(ix) to eventually transmit data directly to FNS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with other such systems utilized in the administration of State plans under the program of Aid to Families with Dependent Children (AFDC).

(3) State agencies seeking an enhanced level of funding for the planning, design, development or installation of automated data processing and information retrieval systems shall develop statewide systems which are integrated with AFDC. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable, to the extent necessary, of an automated data exchange with the State system used to administer AFDC. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

(4) The system developed in response to these regulations shall contain the following elements, where appropriate:

(i) A data base which receives information, sorts, performs calculations, and stores information;

(ii) An information retrieval system which will have the ability to access the data base, display or print data, and update the data in numerical or alphabetical form;

(iii) Hardware, in addition to that required for the data base, which will include visual display terminal(s) with an attached keyboard, connected to the data base hardware components by telecommunication networks;

(iv) Software which will include system programs for data recall and input, budget calculation capability when not included in the data base system, printout and display for data entry and inquiry terminals, and for network control; and

(v) Technological safeguards and managerial procedures which will be established and applied to computer hardware, software, and data, in accordance with paragraph (p) of this section, in order to ensure the protection of the integrity of the system and individual privacy. System security shall be inherent in the system and provided for in the Implementation APD submitted for approval. The system will process machine readable data files used for the authorized exchange of information between levels of government (i.e., State to State, State to Federal).

(5) Approval of the Planning APD and Implementation APD for payment by FNS of costs at the 75 percent level will be limited to:

(i) Planning and design, i.e. requirements and systems analyses, feasibility studies, preliminary cost benefits analyses, alternatives analyses, and general systems design;

(ii) Development, i.e. detailing of system and program specifications, programming and testing;

(iii) Procurement of ADP equipment and/or services; and

(iv) Installation, i.e. conversion, training of staff, and turnover to operational status.

(6) Costs may not be funded at 75 percent when the approved system produces automated processing of food stamp recipient applications, issuance authorizations or other reports (operations) on a continuing basis for use by State agency personnel for administration of the Food Stamp Program. Operations include the use of purchased or rented computer equipment and software directly required for and used in the operation of the automated data processing and information retrieval system. For ADP development projects with phased installation and implementation, counties, districts or other subdivisions of the State shall be considered operational at the time that the approved system produces automated application processing and/or issuance authorizations for the food stamp caseload for that subdivision of the State. Pilot testing and an initial period of parallel processing for test purposes may be considered developmental costs and eligible for 75 percent funding for a period not to exceed 3 months, unless specifically extended by FNS.

(7) If FNS suspends approval of an APD in the course of a State agency's planning, designing, development, or installation, the 75 percent level of funding shall not be allowable for any costs incurred until such time as the conditions for approval are met.

(8) Cost elements. Incident to the activities listed in paragraph (g)(5) of this section, a State agency may seek payment for the following expenses at a 75 percent level.

*(i) Personnel.* Salaries, wages, travel, and benefits of personnel actually engaged in design, development, or installation of approved ADP systems.

*(ii) Materials, equipment, facilities, and supplies.* Costs of materials, equipment, facilities and supplies used in design, development, or installation of approved ADP systems. Only the proportionate share of the costs of capital assets assignable to the period of time or prorated for usage may be claimed during the design, development or installation of these systems. This share must be determined based on acquisition costs and/or depreciation or approved usage rates. Data with respect to such costs shall be submitted with the request for funding.

*(iii) Contracted services.* Services obtained under the provisions of contracts which meet the procurement standards of this part for the design,

development, or installation of FNS approved systems.

*(iv) Management studies and preparation of other planning documents.* The cost of resources used to produce the Planning APD may be funded at the 75 percent level regardless of final approval or denial of the Planning APD.

(h) *Emergency acquisition requirements.* The State agency may request FFP for the costs of ADP equipment and services acquired to meet emergency situations which preclude the State agency from following the prior approval requirements of § 277.18(c). In order for FNS to consider providing FFP in emergency situations, the following conditions must be met:

(1) The State agency must submit a written request to FNS prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and shall include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State agency's need to proceed with the acquisition prior to obtaining formal FNS approval; and

(iii) A description of the adverse impact which would result if the State agency does not immediately acquire the ADP equipment and/or services.

(2) Upon receipt of a written request for emergency acquisition FNS will provide a written reponse to the State agency within 14 days. The FNS response will:

(i) Inform the State agency that the request has been disapproved and the reason for disapproval; or,

(ii) Inform the State agency that FNS recognizes that an emergency situation exists and the State agency must submit a formal request for approval by FNS which includes the information specified at § 277.18(d)(2) within 90 days from the date of the State agency's initial written request.

(iii) If FNS approves the request submitted under paragraph (h)(1) of this section, FFP will be available from the date the State agency acquires the ADP equipment and services.

(i) *Cost Determination and Claiming Costs*—(1) *Cost determination.* Actual costs must be determined in compliance with an FNS appoved budget and Appendix A to this part, and must be reconcilable with the FNS funding level. There shall be no payments pursuant to this section to the extent that a State agency is reimbursed for such costs pursuant to any other Federal program or uses ADP systems for purposes not connected with the Food Stamp Program. The State agency approved cost allocation plan must be amended to disclose the methods which will be used to identify and classify costs to be claimed at the 75 percent rate. This methodology must be submitted to FNS as part of the request for FNS approval of funding at the 75 percent rate as required in paragraph (d)(3) of this section. Any costs funded pursuant to these regulations shall be excluded in determining the State agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

*(i) Development costs.* Using its normal departmental accounting systems, the State agency shall specifically identify what items of costs constitue development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The mehods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/functions. The State agency shall amend the cost allocation plan required by § 277.9 to include the approved APD methodology for the identification, assignment and distribution of the development costs.

*(ii) Operational costs.* Costs incurred for the operation of an ADP system shall be identified and assigned by the State agency to funding sources in accordance with the approved cost allocation plan required by § 277.9.

(iii) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A–87 to identify and assign costs incurred under service agreements with the State agency. The State agency will then distribute these costs to funding sources in accordance with paragraphs (i)(2) (i) and (ii) of this section.

(3) *Capital expenditures.* The State agency shall charge the costs of ADP equipment having unit acquisition costs or total aggregate costs, at the time of acquisition, of more than $25,000 by means of depreciation or use allowance, unless a waiver is specifically granted by FNS. If the equipment acquisition is part of an APD that is subject to the prior approval requirements of paragrph (c)(2) of this section, the State agency may submit the waiver request as part of the APD.

(4) *Claiming costs.* Prior to claiming funding under this section the State agency must have complied with the requirements for obtaining approval and prior approval of § 227.18(c).

(5) *Budget authority.* FNS approval of requests for funding will provide notification to the State agency of the budget authority and dollar limitations under which such funding may be claimed. FNS shall provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization will be based on the budget submitted by the State agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, shall require FNS approval of an amended State budget for payment. Requests to amend the budget authorization approved by FNS must be submitted to FNS prior to claiming such expenses.

(j) *Procurement requirements.* (1) Procurements of ADP equipment and services are subject to the procurement standards prescribed by § 277.14 regardless of any conditions for prior approval. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(2) The standards prescribed by § 277.14, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local central data processing facility primarily to support the Food Stamp Program.

(3) The competitive procurement policy prescribed by § 277.14 shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(k) *Access to system and records.* Access to the system in all aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State agency to FNS or its authorized representatives at intervals as are deemed necessary by FNS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in suspension and/or

termination of Food Stamp Program funds for the costs of the system and its operation.

(l) *Ownership Rights.* (1) *Software.* (i) The State or local government shall include a clause in all procurement instruments which provides that the State or local government shall have all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with FFP under this section.

(ii) FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the Federal Government purposes, such software, modifications, and documentation.

(iii) Proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisons in paragraphs (k)(2) (i) and (ii) of this section. FFP is not available for proprietary applications software developed specifically for the Food Stamp Program.

(2) *Automated data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which appear at 7 CFR 277.13 are applicable to automated data processing equipment.

(m) *Use of ADP Systems.* ADP systems designed, developed or installed with FFP shall be used for the period of time specified in the APD, unless FNS determines that a shorter period is justified.

(n) *Basis for continued federal financial participation.* FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that ADP resources are used for the purposes authorized. FNS will use the Annually Updated APD to monitor ADP project development. The submission of the report prescribed in § 277.18(e) for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of ADP project development and State and local agency ADP operations may be conducted by or for FNS to assure compliance with approved APD's, proper use of ADP resources, and the adequacy of State or local agency ADP operations.

(o) *Disallowance of federal financial participation.* If FNS finds that any system approved under the provisions of § 277.18(c) fails to comply substantially with the criteria, requirements, and other undertakings prescribed in the approved or modified APD for a proper and efficient system, payment of FFP may be disallowed.

(p) *ADP system security requirements and review process*—(1) (*ADP system security requirements.* State and local agencies are responsible for the security of all ADP projects under development, and operational systems involved in the administration of the Food Stamp Program. State and local agencies shall determine appropriate ADP security requirements based on recognized industry standards or standards governing security of Federal ADP systems and information processing.

(2) *ADP security program.* State agencies shall implement and maintain a comprehensive ADP Security Program for ADP systems and installations involved in the administration of the Food Stamp Program. ADP Security Programs shall include the following components.

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (p)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of ADP security:

(A) Physical security of ADP resources;

(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;

(G) Emergency preparedness; and

(H) Designation of an Agency ADP Security Manager.

(iii) Periodic risk analyses. State agencies shall establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses shall be performed whenever significant system changes occur.

(3) *ADP system security reviews.* State agencies shall review the ADP system security of installations involved in the administration of the Food Stamp Program on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security, operating procedures, and personnel practices. State agencies shall provide copies of ADP system security review reports to FNS upon completion, which will be used to identify and monitor necessary corrective action.

(4) The security requirements of this section apply to all ADP systems used by State and local governments to administer the Food Stamp Program.

(5) Costs incurred for complying with the provisions of paragraphs (p)(1) through (3) of this section are considered regular administrative costs which are funded at the regular FFP level unless they meet the requirements for funding at the 75 percent FFP level.

3. In Part 277, Appendix A, *Standards for Selected Items of Cost*, Section B, paragraphs B(1) through B(12) are removed, paragraphs B(13) through B(20) are redesignated as paragraphs B(2) through B(9), and a new paragraph B(1) is added, to read as follows:

**Appendix A—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies.**

* * * * *

B. *Costs allowable with approval of FNS.* (1) Automated Data Processing. The costs of acquiring data processing equipment and services used in the administration of the Food Stamp Program are allowable. The costs of ADP equipment and services acquisitions to be funded at the 75 percent rate or which exceed the prior approval cost thresholds specified in s277.18(c) are allowable upon the prior written approval of FNS. Requests for prior approval of such costs shall be in accordance with the provisions of s277.18.

* * * * *

Date: August 1, 1988.

**Anna Kondratas,**

*Administrator.*

[FR Doc. 88-17758 Filed 8-5-88; 8:45 am]

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Part V

# The President

**Proclamation 5844—Thanksgiving Day, 1988**

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# Presidential Documents

Title 3—

The President

**Proclamation 5844 of August 4, 1988**

## Thanksgiving Day, 1988

**By the President of the United States of America**

**A Proclamation**

The celebration of Thanksgiving Day is one of our Nation's most venerable and cherished traditions. Almost 200 years ago, the first President of these United States, George Washington, issued the first national Thanksgiving Day Proclamation under the Constitution and recommended to the American people that they "be devoted to the service of that great and glorious Being, who is the beneficent Author of all the good that was, that is, or that will be." He called upon them to raise "prayers and supplications to the Great Lord and Ruler of Nations," not merely for continued blessings on our own land but on all rulers and nations that they might know "good government, peace, and concord."

A century ago, President Grover Cleveland called for "prayers and song of praise" that would render to God the appreciation of the American people for His mercy and for the abundant harvests and rich rewards He had bestowed upon our Nation through the labor of its farmers, shopkeepers, and tradesmen. Both of these Proclamations included something else as well: a recognition of our shortcomings and transgressions and our dependence, in total and in every particular, on the forgiveness and forbearance of the Almighty.

Today, cognizant of our American heritage of freedom and opportunity, we are again called to gratitude, thanksgiving, and contrition. Thanksgiving Day summons every American to pause in the midst of activity, however necessary and valuable, to give simple and humble thanks to God. This gracious gratitude is the "service" of which Washington spoke. It is a service that opens our hearts to one another as members of a single family gathered around the bounteous table of God's Creation. The images of the Thanksgiving celebrations at America's earliest settlement—of Pilgrim and Iroquois Confederacy assembled in festive friendship—resonate with even greater power in our own day. People from every race, culture, and creed on the face of the Earth now inhabit this land. Their presence illuminates the basic yearning for freedom, peace, and prosperity that has always been the spirit of the New World.

In this year when we as a people enjoy the fruits of economic growth and international cooperation, let us take time both to remember the sacrifices that have made this harvest possible and the needs of those who do not fully partake of its benefits. The wonder of our agricultural abundance must be recalled as the work of farmers who, under the best and worst of conditions, give their all to raise food upon the land. The gratitude that fills our being must be tempered with compassion for the needy. The blessings that are ours must be understood as the gift of a loving God Whose greatest gift is healing. Let us join then, with the psalmist of old:

> O give thanks to the Lord, call on His name,
> Make known His deeds among the peoples!
> Sing to Him, sing praises to Him,
> Tell of all His wonderful works!
> Glory in His holy name;
> Let the hearts of those who seek the Lord rejoice!

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Thursday, November 24, 1988, as a National Day of Thanksgiving, and I call upon the citizens of this great Nation to gather together in homes and places of worship on that day of thanks to affirm by their prayers and their gratitude the many blessings God has bestowed upon us.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-18024
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Upon expiration of the 10-day period prescribed by the Constitution of the United States, S. 2527 became law on Aug. 4, 1988, without the President's signature.

## LIST OF PUBLIC LAWS

**Last List August 4, 1988**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

**S. 2527/Pub. L. 100–379**
Worker Adjustment and Retraining Notification Act. (Aug. 4, 1988; 102 Stat. 890; 6 pages) Price: $1.00

## CFR CHECKLIST

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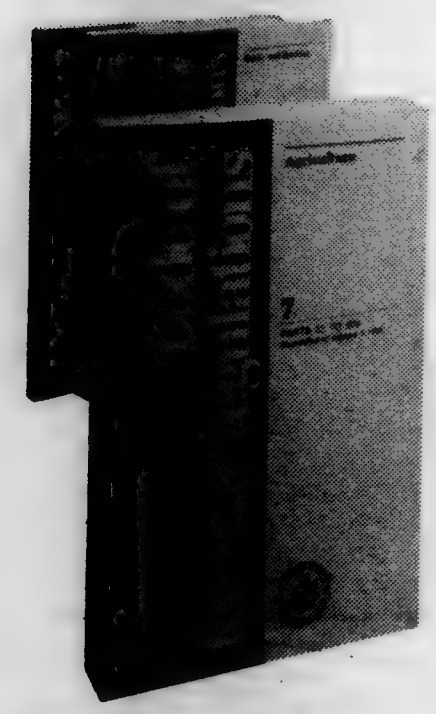

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# Rules and Regulations

Federal Register
Vol. 53, No. 153
Tuesday, August 9, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 917**

## Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule concerning fresh pears, plums, and peaches grown in California authorizes expenditures and establishes an assessment rate for the Pear Commodity Committee established under Marketing Order 917 for the 1988–89 fiscal year. The rule is needed for the Pear Commodity Committee to incur operating expenses during the 1988–89 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATES:** March 1, 1988, through February 28, 1989 [§ 917.252].

**FOR FURTHER INFORMATION CONTACT:** Jerry N. Brown, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–5464.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 917 [7 CFR Part 917] regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. There are approximately 43 handlers of California pears under this marketing order, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (i.e., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay their expenses.

The Pear Commodity Committee met June 21, 1988, and unanimously recommended 1988–89 fiscal year expenditures of $825,793 and an assessment rate of $0.22 per carton (No. 29B special lug box) of assessable pears shipped under M.O. 917. In comparison, 1987–88 fiscal year budgeted expenditures were $910,111 and the assessment rate was $0.20 per carton.

The major expenditure item this year is $675,000 for advertising and promotion compared to $713,800 in 1987–88. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. Total income for 1988–89 is expected to amount to $801,260, including assessment income of $766,260 based on shipments of 3,483,000 cartons of fresh pears, $20,000 from the California Department of Food and Agriculture, and $15,000 from other sources such as interest earned on the reserve fund. The reserve fund of $183,352 is well within the maximum authorized under the program and will be sufficient to cover the anticipated deficit.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule regarding this action was issued on July 12, 1988, and published in the **Federal Register** [53 FR 26783, July 15, 1988]. That document provided that interested persons could file comments through July 25, 1988. No comments were received.

Based on the foregoing, it is found that the specified expenses are reasonable and likely to be incurred, and that such

expenses, assessment rates, and operating reserves will tend to effectuate the declared policy of the Act.

Approval of the expenses, assessment rate, and operating reserve for the pear program should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

**List of Subjects in 7 CFR Part 917**

Marketing agreements and orders, pears, plums, peaches, California.

For the reasons set forth in the preamble, new § 917.252 is added as follows:

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 917.252, is added to read as follows:

**PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA**

**§ 917.252 Expenses and assessment rate.**

Expenses of $825,793 by the Pear Commodity Committee are authorized, and an assessment rate of $0.22 per No. 29B special lug box of assessable pears is established, for the fiscal year ending February 28, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 3, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–17916 Filed 8–8–88; 8:45 am]

BILLING CODE 3410–02–M

## SMALL BUSINESS ADMINISTRATION

**13 CFR Part 121**

**Small Business Size Standards; Size Standard for Commodity Contracts Brokers and Dealers**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Emergency interim final rule.

**SUMMARY:** The SBA is establishing, on an emergency interim basis, a size standard of $3.5 million in average annual receipts for the Commodity Contracts Brokers and Dealers industry, Standard Industrial Classification (SIC) code 6221, for which no size standard exists at present. SBA intends to extend, as a residual size standard, the $3.5 million standard to 53 other industries without size standards. However, these will be issued as a proposed rule with opportunity for public comment. While requests for SBA's assistance from companies in SIC code 6221 are infrequent, they occasionally occur. Size standards are needed to establish eligibility for SBA's financial assistance and other programs in all industries.

**DATE:** Effective August 9, 1988. Comments to be submitted on or before September 8, 1988

**ADDRESS:** Address comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 'L' Street, NW., Room 601, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Alan Odendahl, Economist, Size Standards Staff, (202) 653–6373.

**SUPPLEMENTARY INFORMATION:** An application for SBA's financial assistance has recently been submitted to the SBA's Denver District Office by a firm in the Commodity Contracts Brokers and Dealers (SIC code 6221) industry. At least one additional application by another firm in the same industry is pending and may be submitted very soon. This industry is among the 54 four-digit Standard Industrial Classification (SIC) industries for which SBA does not have any established size standards. SBA's policy is to have a size standard for every industry. Size standards were not established previously for these industries because SBA was not expected to receive requests for assistance from firms in these industries. Also, limited data on the structure of many of the 54 uncovered industries delayed the establishment of size standards.

Since there is an urgent need to set eligibility requirements for a financial assistance request, a residual size standard of $3.5 million in average annual receipts is established on an emergency interim basis for SIC code 6221, Commodity Contracts Brokers and Dealers. This is the same standard that is used as the residual standard for all industries not specifically listed under SIC Division I—Services.

This size standard is being established as an interim emergency final rule under Sections 3 and 5(b) of the Small Business Act, 15 U.S.C. 632 and 634(b) and SBA's implementing regulation § 121.10(b) Title 13 CFR. This legal authority allows SBA to set emergency interim size standards if no size standard exists for the industry in question. At the same time, SBA solicits and welcomes comments on the suitability of making the $3.5 million size standard permanent.

As indicated above, little data are available on many of the 54 industries without size standards, partly because they are not included in the economic censuses published by the U.S. Bureau of the Census. Data are also sometimes contradictory on the size structure and even on the number of firms in these industries. In the current case, a preliminary survey of SIC code 6221, Commodity Contracts Brokers and Dealers, revealed a general lack of data on the size structure of firms in the industry, and contradictory information on the basic parameters of industry characteristics.

Data sources which were consulted included SBA's own data base maintained by its Office of Advocacy, the "Market Potential Report" published by Economic Information Systems, Inc. (now Trinet, Inc.), the annual report of the Commodity Futures Trading Commission, the National Futures Association, the Chicago Board of Trade Clearing Association, and American Business Lists, Inc.

There was no consistency or agreement among these sources on the number of firms in the industry, and little information on the distribution of firms by size, whether measured by employment or annual receipts. As indicated above the U.S. Bureau of the Census does not cover the Commodity Contracts, Brokers and Dealers industry.

In this situation, it is judged appropriate to apply the "anchor standard" of $3.5 million to the uncovered industry, rather than to adopt some other size standard weakly supported by available evidence. (In 1985, the SBA's Size Policy Board adopted the two anchor standards to serve as reference points from which to begin considerations of a specific standard. For receipt-based size standards, $3.5 million is the anchor and for employee-based size standards, 500 employees was adopted.) The dollar-based size standard originated a short time after the inception of the Agency. At that time, size standards of $300,000 to $1,000,000 were established for the retail trade and service industries. In 1963, a single standard of $1,000,000 was established for both industries. Inflationary adjustments to this figure eventually led to the $3.5 million standard in effect today for most retail trade and service industries.

In addition, the size standard is consistent with the $3.5 million already

in use for the residual size standard for all industries not specifically listed in SIC Division I—Services (49 FR 39996, October 12, 1984; 50 FR 10495, March 15, 1985). The other anchor size standard recognized by the Agency is 500 employees. Employee-based standards apply generally to the manufacturing industries. Thus the 500 employee standard is an unsuitable alternative standard for SIC code 6221.

SBA intends to extend the $3.5 million size standard to the other 53 uncovered industries as a residual size standard. In order to afford the public full opportunity for comments on the suitability of this standard, it will be published as a Proposed Rule, rather than on an emergency interim basis. It is recognized that this standard may prove to be too high or too low for one or more of the remaining 53 industries now without a size standard.

Comments are also invited on the application of the $3.5 million standard to SIC code 6221, Commodity Contracts Brokers, and Dealers. Data on the size structure of this industry, or sources of such data, are particularly welcome.

**Compliance With Regulatory Flexibility Act and Executive Order 12291 and the Paperwork Reduction Act**

SBA certifies that this emergency interim final rule is not a major rule within the meaning of Executive Order 12291. This residual size standard is established to facilitate the processing of SBA's financial assistance for specific individual loan guarantees and for procurement assistance programs. Based on requests received to date, SBA anticipates the need for this industry size standard one to two times per year. Consequently, this rule is not likely to have an annual economic impact exceeding $100 million. Similarly, this regulation is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

The SBA certifies, pursuant to section 608 of the Regulatory Flexibility Act, 5 U.S.C. 608, that this interim final rule is being published pursuant to an emergency for the reason indicated above and the SBA is, therefore, waiving the requirements of section 503 of the Regulatory Flexibility Act. The SBA will publish final regulatory analysis when this rule is promulgated in final form, after the expiration of the comment period. This rule poses no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 14 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Recording and recordkeeping requirements, Small business.

**PART 121—[AMENDED]**

Accordingly, Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

**§ 121.2 [Amended]**

2. Section 121.2(d)(2), Table 2, is amended by adding Major Group 62 to "Division H—Finance, Insurance, and Real Estate" after Major Group 60 as follows:

MAJOR GROUP 62—SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES

| SIC | Description | Emergency interim final rule |
|---|---|---|
| 6221 | Commodity Contracts Brokers and Dealers. | $3.5 |

Dated: July 7, 1988.

James Abdnor,

*Administrator, U.S. Small Business Administration.*

[FR Doc. 88-17710 Filed 8-8-88; 8:45 am]

BILLING CODE 8025-01-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88-CE-11-AD; Amendment 39-5994]**

**Airworthiness Directives; MORAVAN Model ZLIN 526L Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to MORAVAN Model ZLIN 526L airplanes, which requires repetitive inspections of certain fuselage welds for cracks. There have been reports of cracks being found near the leveling points in this tubular structure. This AD will assure early detection of these cracks precluding a structural failure and possible loss of the airplane.

**EFFECTIVE DATE:** September 8, 1988.

*Compliance:* As prescribed in the body of the AD.

**ADDRESSES:** Mandatory Service Bulletin (MSB) Z526/62, dated July 30, 1987, applicable to this AD may be obtained from MORAVAN National Corp., 765-81 Otrokovice, Czechoslovakia. This information may also be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. M. Dearing, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. H. Belderok, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive visual inspections for cracks using a 3-power magnifying glass of the tubular structure around the airplane's leveling points at the forward end of the cockpit area on certain MORAVAN Model ZLIN 526L airplanes was published in the Federal Register on May 31, 1988 (53 FR 19801). The proposal resulted from at least two reports of cracks being found in certain tubular portions of the airframe at the leveling points located at the forward end of the cockpit area on MORAVAN Model ZLIN 526L airplanes. These cracks are believed to be caused by loads during aerobatic maneuvers. Cracks in the fuselage tubular structure may cause failure of this structure and possible catastrophic loss of the airplane. Consequently, MORAVAN National Corp. issued MSB Z526/62, dated July 30, 1987, which requires repetitive visual inspections for cracks using a 3-power magnifying glass of the tubular structure around the airplane's leveling points at the forward end of the cockpit area. If a crack is found, before further flight a repair scheme must be obtained from MORAVAN

The State Aviation Inspection (SAI), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Czechoslovakia, classified this Service Bulletin (S/B) Z526/62, dated July 30, 1987, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under Czechoslovakian registration, this action

has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the SAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of MORAVAN MSB Z526/62, dated July 30, 1987, and the mandatory classification of this Service Bulletin by the SAI, and concluded that the condition addressed by MSB Z526/62 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed as amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public.

The FAA has determined there are currently no airplanes of U.S. Registry affected by the proposed AD. The cost of inspecting the tubular structure in the vicinity of the leveling points at the forward end of the cockpit area required by the proposed AD is estimated to be $320 (8 hours at $40 per hour) per airplane. The total cost is estimated to be nil to the private sector.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**MORAVAN:** Applies to Model ZLIN 526L (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD and every 100 hours TIS thereafter, unless already accomplished.

To preclude structural airframe failure, accomplish the following:

(a) Visually inspect, using a 3-power magnifying glass, the forward portion of the cabin area tubular structure around the airplane leveling points, for cracks using supplementary lighting as required in accordance with MORAVAN Mandatory Service Bulletin Z526L, dated July 30, 1987. If a crack is found, before further flight repair the crack in accordance with instructions from MORAVAN approved by the Manager, Aircraft Certification Staff, AEU-100.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All person affected by this directive may obtain copies of the document referred to herein upon request to Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; or MORAVAN National Corp. 765-81 Otrokovice, Czechoslovakia; or may examine this document at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 8, 1988.

Issued in Washington, DC, on August 2, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88-17871 Filed 8-8-88; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Part 404**

**[Reg. No. 4]**

## Determining Disability and Blindness; Extension of Expiration Date for Mental Disorders Listings

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules.

**SUMMARY:** The mental disorders listings in 12.00 of Part A of the Listing of Impairments in Appendix 1 of Subpart P of Part 404 will expire on August 27, 1988. These amendments extend the expiration date of the mental disorders listings through August 27, 1990. We have made no revisions in the medical criteria in these mental disorders listings; they remain the same as they now appear in the Code of Federal Regulations. Thus, under these amendments the Social Security Administration (SSA) will continue to use the medical criteria in these listings for an additional 2 years.

**DATE:** These rules are effective August 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone 301-965-1959.

**SUPPLEMENTARY INFORMATION:**

Regulations issued on August 28, 1985, containing the adult mental disorders listings, included a 3 year "sunset provision" which provided that the listings would expire on August 27, 1988, unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. The preamble to the final rule published in the **Federal Register** (50 FR 35038) on August 28, 1985, explained the reason for the sunset provision in the listings in the following manner:

We are publishing final regulations to be effective for 3 years. The dynamic nature of the diagnosis, evaluation and treatment of the mental disease process requires that the rules in this area be periodically revised and updated. We intend to carefully monitor these regulations over a 3-year period to ensure that they fulfill congressional intent by providing for ongoing evaluation of the medical evaluation criteria. Therefore, 3 years after publication of final rules, these

regulations will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

Although we have been monitoring the implementation of these listings, we have not yet completed a full review of the listings. The results from two major projects, and information from our quality review program and operating experience must still be evaluated. When we have all of this information available, we will be able to determine if we need to revise the criteria and, if so, the nature of the revisions. The major projects are a contract between SSA and the American Psychiatric Association (APA) and a grant to Dr. Robert Liberman of the University of California at Los Angeles.

The contract entered into between SSA and the APA provided for review of both the validity and reliability of the disability evaluation criteria. This contract was described in the preamble to the final mental disorders listings regulations at 50 FR 35038. The APA submitted its report in November 1987 and we are now considering the recommendations it contains.

The grant, No. 10-P-98193, is a research project which is addressing the relationship of psychiatric symptoms and the functional capacity for work. The final report on this project is due March 1989. Before we can determine what, if any, revisions to propose in the listings for mental disorders, we need to review carefully the report we have received from the APA, the report we will be receiving from Dr. Liberman, and our own assessment of the listings.

In order to complete a full review of all of the data we expect to have, we have decided not to propose any revisions to the current adult mental disorders listings at this time. Rather, we are extending the current listings for a period of 24 months from the present expiration date, through August 27, 1990. We believe that this additional time will enable us to incorporate the results of the independent projects we have undertaken with our own evaluation of the mental disorders criteria and will enable us to determine what revisions to the listings may be necessary.

**Regulatory Procedures**

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on these regulations since opportunity for public comment is unnecessary. Prior notice and comment are unnecessary, because these regulations involve only the extension of the expiration date of the mental disorders listings, and make no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. If we decide after our full review of the results of the studies now in progress on the mental evaluation criteria that revisions to those criteria are appropriate, we will, of course, propose any such revisions for public comment.

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not increase or decrease program or administrative costs and do not meet any of the other threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because such impact is not experienced with current use of these regulations.

*Paperwork Reduction Act of 1980*

These regulations impose no additional reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Nos., 13.802 Social Security Disability Insurance; 13-807, Supplemental Security Income Program)

**List of Subjects**

*20 CFR Part 404*

Administrative practive and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: July 19, 1988.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approved: July 29, 1988.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950- )

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20 Code of Federal Regulations is amended as set forth below.

20 CFR Part 404, Subpart P is amended as follows:

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802 and 1808.

*Appendix I, Subpart P—[Amended]*

2. Appendix 1, Subpart P is amended by revising the last sentence of the fifth paragraph of the introductory text to read as follows: The mental disorders listings in Part A will no longer be effective on August 28, 1990, unless extended by the Secretary or revised and promulgated again.

*Listings 12.00, Appendix 1, Subpart P [Amended]*

3. Listings 12.00 Mental Disorders of Appendix 1, Subpart P, Part A is amended by revising the first paragraph to read as follows: The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1990 unless extended by the Secretary or revised and promulgated again.

[FR Doc. 88-17905 Filed 8-8-88; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[T.D. 8218]**

**Income Tax; Inclusion Amounts for Listed Property Leased After December 31, 1986**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations under section 280F of the Internal Revenue Code relating to inclusion amounts for listed property leased after December 31, 1986. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986. This document also amends temporary regulations under Code section 280F relating to inclusion amounts for listed property leased after June 18, 1984. These regulations affect persons who lease listed property after June 18, 1984.

The effect of these regulations is to impose an amount to be included in the gross income of certain lessees of listed property.

**FOR FURTHER INFORMATION CONTACT:** Joel Rutstein of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains temporary regulations under Code section 280F relating to inclusion amounts for listed property leased after December 31, 1986. This document also amends temporary regulations under Code section 280F relating to inclusion amounts for listed property leased after June 18, 1984. These temporary regulations will remain in effect until superseded by final regulations on this subject.

## Explanation of Provisions

Code section 280F limits the amount of depreciation that may be taken for "listed property." "Listed property," as defined in section 280F(d)(4), includes automobiles, other property used for transportation, computers and property of a type generally used for entertainment, recreation or amusement.

Section 280F limits the depreciation allowable for listed property in two ways. First, subsection (a) of section 280F imposes dollar caps on the amount of depreciation allowable for automobiles. Second, subsection (b) of section 280F allows only straight line depreciation for any listed property that is not predominantly used in the taxpayer's trade or business in any tax year.

Subsection (c) of section 280F provides for the application of these limitations with respect to leased property. Pursuant to section 280F(c), the limitations of sections 280F(a) and 280F(b) are not to affect the depreciation deductions of lessors regularly engaged in the business of leasing, but are to reduce lessees' deductions for rentals and other payments under a lease. Section 280F(c) provides that the reduction of lessees' deductions is to be determined under tables prescribed by the Secretary and that such tables shall be prescribed so that the reduction in lessees' deductions is "substantially equivalent" to the limitations imposed by sections 280F(a) and 280F(b).

### *Existing Leasing Tables*

The Internal Revenue Service has prescribed multiple sets of tables under Code section 280F(c). These tables are contained in temporary regulations under Code section 280F and in Revenue Ruling 86–87, 1986–2 C.B. 45. Section 1.280F–5T(d) provides tables for automobiles leased after June 18, 1984, and before April 3, 1985. Section 1.280F–5T(e) provides tables for automobiles leased after April 2, 1985 (and, as to be revised by this document, before January 1, 1987). Section 1.280F–5T(f) provides tables for listed property (other than automobiles) leased after June 18, 1984 (and, as to be revised by this document, before January 1, 1987). Revenue Ruling 86–87 provides tables for automobiles where the lessor passed the investment credit through to the lessee.

In order to achieve reductions in deductions, all of these tables provide for amounts to be included in the income of lessees. These inclusion amounts are intended to approximate the present value of the economic detriment imposed by sections 280F(a) and 280F(b) on similarly situated owners of listed property.

### *New Leasing Tables*

Changes made by the Tax Reform Act of 1986 create a need for new tables to apply to property leased after December 31, 1986. The 1986 Act lowered the dollar caps imposed by section 280F(a) on depreciation for automobiles. The 1986 Act also made various changes in the rules on depreciation, including changes in the recovery periods used in determining depreciation deductions for listed property. In addition, the 1986 Act repealed the investment credit.

The temporary regulations contained in this document provide tables under Code section 280F(c) for listed property for which the taxpayer's lease term begins after December 31, 1986. These new tables are contained in a new § 1.280F–7T. Section 1.280F–5T of the existing regulations continues to apply to listed property for which the taxpayer's lease term begins before January 1, 1987.

Paragraph (a) of new § 1.280F–7T provides a table for determining inclusion amounts for automobiles for which the taxpayer's lease term begins after December 31, 1986. Paragraph (b) of new § 1.280F–7T provides tables for determining inclusion amounts for other listed property for which the taxpayer's lease term begins after December 31, 1986. The inclusion amounts determined under these new tables are intended to approximate the present value of the economic detriment imposed by sections 280F(a) and 280F(b) on similarly situated owners of listed property.

For automobiles for which the taxpayer's lease term begins before January 1, 1987, existing §§ 1.280F–5T(d)(2) and1.280F–5T(e)(6) require an additional inclusion amount to be added to gross income when an automobile is not used predominantly in a qualified business use during a taxable year. The new temporary regulations contained in this document do not provide for a comparable additional inclusion amount for automobiles for which the taxpayer's lease term begins after December 31, 1986. If such an additional inclusion amount is prescribed in the future, it will apply prospectively only.

### *Change in Application of Existing Leasing Tables for Automobiles*

The temporary regulations contained in this document also make a change with respect to the application of the existing leasing tables for automobiles for which the taxpayer's lease term begins before January 1, 1987. Pursuant to amendments made by these new temporary regulations, paragraphs (d)(1) and (e)(1) of § 1.280F–5T no longer require taxpayers to add an inclusion amount to gross income for the last taxable year during which an automobile is leased. However, these paragraphs continue to require inclusion amounts for every other taxable year of a lease. This change does not affect paragraphs (d)(2) and (e)(6) of § 1.280F–5T, which require an additional inclusion amount when an automobile leased before January 1, 1987, is not used predominantly for business.

Taxpayers who have added an inclusion amount to gross income for the last taxable year of a lease pursuant to paragraph (d)(1) or (e)(1) of § 1.280F–5T may file an amended return.

**Special Analyses**

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that these temporary regulations are not a major rule as defined in Executive Order 12291 and that therefore a regulatory impact analysis is not required.

**Drafting Information**

The principal author of these temporary regulations is Joel Rutstein of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**List of Subjects in 26 CFR 1.61–1 Through 1.281–4**

Income taxes, Taxable income, Deductions, Exemptions.

**Adoption of Amendments of the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 1.280F–7T also issue under 26 U.S.c. 280F(c).

**§ 1.280F–1T [Amended]**

**Par. 2.** Section 1.280F–1T is amended as follows:

1. In paragraph (b), the heading in the table that reads "Section 1.280F–5T" is revised to read "Sections 1.280F–5T and 1.280F–7T".

2. Paragraph (c)(1) is amended by adding at the end thereof the following sentence: "Section 1.280F–7T applies to property leased after December 31, 1986, in taxable years ending after that date.".

3. Paragraph (c)(3) is amended by revising the first sentence thereof to read as follows: "Section 1.280F–5T(e) generally applies to passenger automobiles leased after April 2, 1985, and before January 1, 1987, in taxable years ending after April 2, 1985."; paragraph (c)(3) also is amended by adding at the end thereof the following sentence: "Section 1.280F–7T(a) applies to passenger automobiles leased after December 31, 1986, in taxable years ending after that date.".

**§ 1.280F–5T [Amended]**

**Par. 3.** Section 1.280F–5T is amended as follows:

1. Paragraph (a) is amended by adding at the end thereof the following sentences: "For rules on determining inclusion amounts with respect to passenger automobiles, see paragraphs (d), (e) and (g) of this section, and see § 1.280F–7T(a). For rules on determining inclusion amounts with respect to other listed property, see paragraphs (f) and (g) of this section, and see § 1.280F–7T(b)."

2. The first sentence of paragraph (d)(1) introductory text is amended by adding immediately after "for each taxable year" the following words: "(except the last taxable year)".

3. The heading of paragraph (e) is revised to read as follows: "*Inclusions in income of lessees of passenger automobiles leased after April 2, 1985, and before January 1, 1987*—".

4. The first sentence of paragraph (e)(1) is revised to read as follows: "For any passenger automobile that is leased after April 2, 1985, and before January 1, 1987, for each taxable year (except the last taxable year) during which the taxpayer leases the automobile, the taxpayer must include in gross income an inclusion amount determined under subparagraphs (2) through (5) of this paragraph (e)."

5. The first setnence of paragraph (e)(6)(i) is amended by adding immediately after "April 2, 1985," the following words: "and before January 1, 1987,".

6. Paragraph (f)(1) is amended by adding the words "an inclusion amount" immediately after the words "must add"; by removing the words "an inclusion amount determined under this paragraph (f)"; and by adding the following sentences at the end of paragraph (f)(1): "This inclusion amount is determined under paragraph (f)(2) of this section for property leased after June 18, 1984, and before January 1, 1987. The inclusion amount is determined under § 1.280F–7T(b) for property leased after December 31, 1986.".

7. Paragraph (f)(2) is revised to read as follows:

"(2) *Inclusion amount for property leased after June 18, 1984, and before January 1, 1987.* The inclusion amount for property leased after June 18, 1984, and before January 1, 1987, is the product of the following amounts:"

8. In the first sentence of paragraph (g) introductory text, the language "section." is removed, and the language "section, or prescribed under § 1.280F–7T(b)." is added in its place.

9. Paragraph (h)(1) is amended by removing "168(j)(6)(B)" and adding in its place "168(i)(3)(A)".

10. Example (5) of paragraph (i) is amended by removing the number "1990" the first time it appears; by adding in its place the number "1989"; and by removing the bottom line of numbers from the chart.

11. Example (6) of paragraph (i) is amended by removing the number "1990" the second time it appears; by adding in its place the number "1989"; and by removing the bottom line of numbers from the chart.

**Par. 4.** Section 1.280F–7T is added immediately after § 1.280F–6T to read as follows:

**§ 1.280F–7T Property leased after December 31, 1986 (temporary).**

(a) *Inclusions in income of lessees of passenger automobiles leased after December 31, 1986*—(1) *In general.* If a taxpayer leases a passenger automobile after December 31, 1986, the taxpayer must include in gross income an inclusion amount determined under this paragraph (a), for each taxable year during which the taxpayer leases the automobile. This paragraph (a) applies only to passenger automobiles for which the taxpayer's lease term begins after December 31, 1986. See §§ 1.280F–5T(d) and 1.280F–5T(e) for rules on determining inclusion amounts for passenger automobiles for which the taxpayer's lease term begins before January 1, 1987. See § 1.280F–5T(h)(2) for the definition of fair market value.

(2) *Inclusion Amount.* For any passenger automobile leased after December 31, 1986, the inclusion amount for each taxable year during which the automobile is leased is determined as follows:

(i) For the appropriate range of fair market values in the table in paragraph (a)(2)(iv) of this section, select the dollar amount from the column for the taxable year in which the automobile is used under the lease (but for the *last* taxable year during any lease that does not begin and end in the same taxable year, use the dollar amount for the *preceding* year);

(ii) Prorate the dollar amount for the number of days of the lease term included in the taxable year; and

(iii) Multiply the prorated dollar amount by the business/investment use (as defined in § 1.280F–6T(d)(3)(i)) for the taxable year.

(iv) Dollar Amounts:

| Fair market value of automobile: Over | Not over | Taxable year during lease: 1st | 2nd | 3rd | 4th | 5 and later |
|---|---|---|---|---|---|---|
| $12,800 | $13,100 | $2 | $5 | $7 | $8 | $9 |
| 13,100 | 13,400 | 6 | 14 | 20 | 24 | 28 |
| 13,400 | 13,700 | 10 | 23 | 34 | 41 | 47 |
| 13,700 | 14,000 | 15 | 32 | 47 | 57 | 65 |
| 14,000 | 14,300 | 19 | 41 | 61 | 73 | 84 |
| 14,300 | 14,600 | 23 | 50 | 74 | 89 | 103 |
| 14,600 | 14,900 | 27 | 59 | 88 | 105 | 122 |
| 14,900 | 15,200 | 31 | 68 | 101 | 122 | 140 |
| 15,200 | 15,500 | 35 | 77 | 115 | 138 | 159 |
| 15,500 | 15,800 | 40 | 87 | 128 | 154 | 178 |
| 15,800 | 16,100 | 44 | 96 | 142 | 170 | 196 |
| 16,100 | 16,400 | 48 | 105 | 155 | 186 | 215 |
| 16,400 | 16,700 | 52 | 114 | 169 | 203 | 234 |
| 16,700 | 17,000 | 56 | 123 | 182 | 219 | 253 |
| 17,000 | 17,500 | 62 | 135 | 200 | 240 | 277 |
| 17,500 | 18,000 | 69 | 150 | 223 | 267 | 309 |
| 18,000 | 18,500 | 76 | 166 | 246 | 294 | 340 |
| 18,500 | 19,000 | 83 | 181 | 268 | 321 | 371 |
| 19,000 | 19,500 | 90 | 196 | 291 | 348 | 402 |
| 19,500 | 20,000 | 97 | 211 | 313 | 375 | 433 |
| 20,000 | 20,500 | 104 | 226 | 336 | 402 | 465 |
| 20,500 | 21,000 | 111 | 242 | 358 | 429 | 496 |
| 21,000 | 21,500 | 117 | 257 | 381 | 456 | 527 |
| 21,500 | 22,000 | 124 | 272 | 403 | 483 | 558 |
| 22,000 | 23,000 | 135 | 295 | 437 | 524 | 605 |
| 23,000 | 24,000 | 149 | 325 | 482 | 578 | 667 |
| 24,000 | 25,000 | 163 | 356 | 527 | 632 | 729 |
| 25,000 | 26,000 | 177 | 386 | 572 | 686 | 792 |
| 26,000 | 27,000 | 190 | 416 | 617 | 740 | 854 |
| 27,000 | 28,000 | 204 | 447 | 662 | 794 | 917 |
| 28,000 | 29,000 | 218 | 477 | 707 | 848 | 979 |
| 29,000 | 30,000 | 232 | 507 | 752 | 902 | 1,041 |
| 30,000 | 31,000 | 246 | 538 | 797 | 956 | 1,104 |
| 31,000 | 32,000 | 260 | 568 | 842 | 1,010 | 1,166 |
| 32,000 | 33,000 | 274 | 599 | 887 | 1,064 | 1,228 |
| 33,000 | 34,000 | 288 | 629 | 933 | 1,118 | 1,291 |
| 34,000 | 35,000 | 302 | 659 | 978 | 1,172 | 1,353 |
| 35,000 | 36,000 | 316 | 690 | 1,023 | 1,226 | 1,415 |
| 36,000 | 37,000 | 329 | 720 | 1,068 | 1,280 | 1,478 |
| 37,000 | 38,000 | 343 | 751 | 1,113 | 1,334 | 1,540 |
| 38,000 | 39,000 | 357 | 781 | 1,158 | 1,388 | 1,602 |
| 39,000 | 40,000 | 371 | 811 | 1,203 | 1,442 | 1,665 |
| 40,000 | 41,000 | 385 | 842 | 1,248 | 1,496 | 1,727 |
| 41,000 | 42,000 | 399 | 872 | 1,293 | 1,550 | 1,789 |
| 42,000 | 43,000 | 413 | 902 | 1,338 | 1,604 | 1,852 |
| 43,000 | 44,000 | 427 | 933 | 1,383 | 1,658 | 1,914 |
| 44,000 | 45,000 | 441 | 963 | 1,428 | 1,712 | 1,976 |
| 45,000 | 46,000 | 455 | 994 | 1,473 | 1,766 | 2,039 |
| 46,000 | 47,000 | 468 | 1,024 | 1,518 | 1,820 | 2,101 |
| 47,000 | 48,000 | 482 | 1,054 | 1,563 | 1,874 | 2,164 |
| 48,000 | 49,000 | 496 | 1,085 | 1,608 | 1,928 | 2,226 |
| 49,000 | 50,000 | 510 | 1,115 | 1,653 | 1,982 | 2,288 |
| 50,000 | 51,000 | 524 | 1,146 | 1,698 | 2,036 | 2,351 |
| 51,000 | 52,000 | 538 | 1,176 | 1,743 | 2,090 | 2,413 |
| 52,000 | 53,000 | 552 | 1,206 | 1,788 | 2,144 | 2,475 |
| 53,000 | 54,000 | 566 | 1,237 | 1,834 | 2,198 | 2,538 |
| 54,000 | 55,000 | 580 | 1,267 | 1,879 | 2,252 | 2,600 |
| 55,000 | 56,000 | 594 | 1,297 | 1,924 | 2,306 | 2,662 |
| 56,000 | 57,000 | 607 | 1,328 | 1,969 | 2,360 | 2,725 |
| 57,000 | 58,000 | 621 | 1,358 | 2,014 | 2,414 | 2,787 |
| 58,000 | 59,000 | 635 | 1,389 | 2,059 | 2,468 | 2,849 |
| 59,000 | 60,000 | 649 | 1,419 | 2,104 | 2,522 | 2,912 |
| 60,000 | 62,000 | 670 | 1,465 | 2,171 | 2,603 | 3,005 |
| 62,000 | 64,000 | 698 | 1,525 | 2,262 | 2,711 | 3,130 |
| 64,000 | 66,000 | 726 | 1,586 | 2,352 | 2,819 | 3,255 |
| 66,000 | 68,000 | 753 | 1,647 | 2,442 | 2,927 | 3,379 |
| 68,000 | 70,000 | 781 | 1,708 | 2,532 | 3,035 | 3,504 |
| 70,000 | 72,000 | 809 | 1,768 | 2,622 | 3,143 | 3,629 |
| 72,000 | 74,000 | 837 | 1,829 | 2,712 | 3,251 | 3,753 |
| 74,000 | 76,000 | 865 | 1,890 | 2,802 | 3,359 | 3,878 |
| 76,000 | 78,000 | 892 | 1,951 | 2,892 | 3,468 | 4,003 |
| 78,000 | 80,000 | 920 | 2,012 | 2,982 | 3,576 | 4,128 |
| 80,000 | 85,000 | 969 | 2,118 | 3,140 | 3,765 | 4,346 |
| 85,000 | 90,000 | 1,038 | 2,270 | 3,365 | 4,035 | 4,658 |
| 90,000 | 95,000 | 1,108 | 2,422 | 3,590 | 4,305 | 4,969 |
| 95,000 | 100,000 | 1,177 | 2,574 | 3,816 | 4,575 | 5,281 |
| 100,000 | 110,000 | 1,282 | 2,802 | 4,154 | 4,980 | 5,749 |
| 110,000 | 120,000 | 1,421 | 3,105 | 4,604 | 5,520 | 6,372 |
| 120,000 | 130,000 | 1,560 | 3,409 | 5,055 | 6,060 | 6,996 |

| | Taxable year during lease | | | | |
|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 4th | 5 and later |
| 130,000 .. 140,000 | 1,699 | 3,713 | 5,505 | 6,600 | 7,619 |
| 140,000 .. 150,000 | 1,838 | 4,017 | 5,956 | 7,140 | 8,243 |
| 150,000 .. 160,000 | 1,977 | 4,321 | 6,406 | 7,680 | 8,866 |
| 160,000 .. 170,000 | 2,116 | 4,625 | 6,857 | 8,221 | 9,490 |
| 170,000 .. 180,000 | 2,255 | 4,929 | 7,307 | 8,761 | 10,113 |
| 180,000 .. 190,000 | 2,394 | 5,232 | 7,758 | 9,301 | 10,737 |
| 190,000 .. 200,000 | 2,533 | 5,536 | 8,208 | 9,841 | 11,360 |

(e) *Example.* The following example illustrates the application of this paragraph (a):

*Example.* On April 1, 1987, A, a calendar year taxpayer, leases and places in service a passenger automobile with a fair market value of $31,500. The lease is to be for a period of three years. During taxable years 1987 and 1988, A uses the automobile exclusively in a trade or business. During 1989 and 1990, A's business/investment use is 45 percent. The appropriate dollar amounts from the table in paragraph (a)(2)(iv) of this section are $260 for 1987 (first taxable year during the lease), $568 for 1988 (second taxable year during the lease), $842 for 1989 (third taxable year during the lease), and $842 for 1990. Since 1990 is the last taxable year during the lease, the dollar amount for the preceding year (the third year) is used, rather than the dollar amount for the fourth year. For taxable years 1987 through 1990, A's inclusion amounts are determined as follows:

| Tax year | Dollar amount | Proration | Business use (percent) | Inclusion amount |
|---|---|---|---|---|
| 1987 | $260 | 275/365 | 100 | $196 |
| 1988 | 568 | 366/366 | 100 | 568 |
| 1989 | 842 | 365/365 | 45 | 379 |
| 1990 | 842 | 90/365 | 45 | 93 |

(b) *Inclusions in income of lessees of listed property (other than passenger automobiles) leased after December 31, 1986*—(1) *In general.* If listed property other than a passenger automobile is not used predominantly in a qualified business use in any taxable year in which such property is leased, the lessee must add an inclusion amount to gross income in the first taxable year in which such property is not so predominantly used (and only in that year). This year is the first taxable year in which the business use percentage (as defined in § 1.280F–6T(d)(1)) of the property is 50 percent or less. This inclusion amount is determined under this paragraph (b) for property for which the taxpayer's lease term begins after December 31, 1986 (and under § 1.280F–5T(f) for property for which the taxpayer's lease term begins before January 1, 1987). See also § 1.280F–5T(g).

(2) *Inclusion amount.* The inclusion amount for any listed property (other than a passenger automobile) leased after December 31, 1986, is the sum of the amounts determined under subdivisions (i) and (ii) of this subparagraph (2).

(i) The amount determined under this subdivision (i) is the product of the following amounts:

(A) The fair market value (as defined in § 1.280F–5T(h)(?)) of the property,

(B) The business/investment use (as defined in § 1.280F–6T(d)(3)(i)) for the first taxable year in which the business use percentage (as defined in § 1.280F–6T(d)(1)) is 50 percent or less, and

(C) The applicable percentage from the following table:

| Type of property | First taxable year during lease in which business use percentage is 50% or less | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 and Later |
| Property with a recovery period of less than 7 years under the alternative depreciation system (such as computers, trucks and airplanes) | 2.1 | −7.2 | −19.8 | −20.1 | −12.4 | −12.4 | −12.4 | −12.4 | −12.4 | −12.4 | −12.4 | −12.4 |
| Property with a 7- to 10-year recovery period under the alternative depreciation system (such as recreation property) | 3.9 | −3.8 | −17.7 | −25.1 | −27.8 | −27.2 | −27.1 | −27.6 | −23.7 | −14.7 | −14.7 | −14.7 |
| Property with a recovery period of more than 10 years under the alternative depreciation system (such as certain property with no class life) | 6.6 | −1.6 | −16.9 | −25.6 | −29.9 | −31.1 | −32.8 | −35.1 | −33.3 | −26.7 | −19.7 | −12.2 |

(ii) The amount determined under this subdivision (ii) is the product of the following amounts:

(A) The fair market value of the property,

(B) The average of the business/investment use for all taxable years (in which such property is leased) that precede the first taxable year in which the business use percentage is 50 percent or less, and

(C) The applicable percentage from the following table:

| Type of property | First taxable year during lease in which business use percentage is 50% or less | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 and Later |
| Property with a recovery period of less than 7 years under the alternative depreciation system (Such as computers, trucks and airplanes) | 0.0 | 10.0 | 22.0 | 21.2 | 12.7 | 12.7 | 12.7 | 12.7 | 12.7 | 12.7 | 12.7 | 12.7 |
| Property with a 7- to 10-year recovery period under the alternative depreciation system (such as recreation property) | 0.0 | 9.3 | 23.8 | 31.3 | 33.8 | 32.7 | 31.6 | 30.5 | 25.0 | 15.0 | 15.0 | 15.0 |
| Property with a recovery period of more than 10 years under the alternative depreciation system (such as certain property with no class life) | 0.0 | 10.1 | 26.3 | 35.4 | 39.6 | 40.2 | 40.8 | 41.4 | 37.5 | 29.2 | 20.8 | 12.5 |

**(3) *Example.* The following example illustrates the application of this paragraph (b):**

***Example.* On February 1, 1987, B, a calender year taxpayer, leases and places in service a computer with a fair market value of $3,000. The lease is to be for a period of two years. B's qualified business use of the property, which is the only business/investment use, is 60 percent in taxable year 1987, 40 percent in taxable year 1988, and 35 percent in taxable year 1989. B must add an inclusion amount to gross income for taxable year 1988, the first taxable year in which B does not use the computer predominantly for business (*i.e.*, the first taxable year in which B's business use percentage is 50 percent or less). Since 1988 is the second taxable year during the lease, and since the computer has a 5-year recovery period under the General and Alternative Depreciation Systems, the applicable percentage from the table in subdivision (i) of paragraph (b)(2) is −7.2%, and the applicable percentage from the table in subdivision (ii) is 10%. B's inclusion amount is $154, which is the sum of the amounts determined under subdivisions (i) and (ii) of subparagraph (b)(2) of this paragraph. The amount determined under subdivision (i) is −$86 [$3,000 × 40% × (−7.2%)], and the amount determined under subdivision (ii) is $240 [$3,000 × 80% × 10%].**

**There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.**

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

**Approved: May 17, 1988.**

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

**[FR Doc. 88-17819 Filed 8-5-88; 10:02 am]**

**BILLING CODE 4830-01-M**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 256

## Outer Continental Shelf Minerals and Rights-of-Way Management, General

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations in Part 256 by adding a section authorizing the Department of the Interior (DOI), to conduct supplemental lease sales in the Outer Continental Shelf (OCS). The new section also limits such sales to certain categories of blocks. This action enables DOI to respond to new geological data in a way that increases the benefits of leasing.

**EFFECTIVE DATE:** September 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards, Offshore Rules and Operations Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Reston, Virginia 22091, Telephone (703) 648-7816, (FTS) 959-7816.

**SUPPLEMENTARY INFORMATION:** This rule authorizes DOI to conduct supplemental sales and stipulates that such sales, except as provided for in the rules, be conducted generally in accordance with the provisions of Part 256 for regular lease sales. The rule also limits the types of blocks which may be offered in supplemental sales to blocks for which bids were previously forfeited or rejected, and blocks which have been identified as development blocks (including blocks susceptible to drainage). The Minerals Management Service (MMS) of DOI proposed this amendment in order to be able to offer certain blocks for lease sooner than would occur under the schedule for regular lease sales in the 5-year leasing plan. Supplemental sales will provide the flexibility to take into account new geological and geophysical data on a timely basis to avoid loss of net economic benefits due to delay in development and production. Lease sales are conducted annually in the Central and Western Gulf of Mexico Planning Areas. Therefore, supplemental sales in those areas are precluded by this rule.

The MMS received comments from nine respondents concerning the propsed rule published in the **Federal Register** on March 26, 1987 (52 FR 9672). Six respondents specifically supported the concept of supplemental sales, two opposed it, and one did not take a position. Two of the six supporting comments expressed concern about the potential for compromise of confidential or proprietary information inherent in the designation of certain blocks as development blocks. This same concern was the basis for one of the comments opposing the proposed rule. The opposing commenter's position is that the labeling of blocks as development blocks would, in itself, reveal that there are data and information to indicate that such blocks are located on the same geologic structure as a lease which has a well indicating hydrocarbons. According to this commenter, the disclosure of this assessment could be extremely detrimental from a competitive standpoint. Several comments, while not opposing supplemental sales, expressed the same concern about disclosure of confidential information and urged the utmost caution. The MMS addressed this point in the preamble to the proposed rule. It was noted that some blocks may be classified as development blocks on the basis of information that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and section 26 of the OCS Lands Act (OCSLA), 43 U.S.C. 1352, but the publication of block classifications does not reveal the underlying data and information which may not be disclosed. The authorization in the supplemental sales rule to publish the block classifications does not extend to the publication of any underlying

proprietary data or information. The identification of blocks as development blocks (including blocks susceptible to drainage) indicates only that such blocks may be part of a common geologic structure with other blocks which have a well with indicated hydrocarbons.

Another comment suggested that opportunity be provided to add blocks to the Call area based on nominations and suggestions from industry. The reason given for the suggestion was a concern that a block considered to be critical might be omitted by MMS. The opportunity for industry to suggest and nominate additional blocks for inclusion in a supplemental sale was provided for in the proposed rule. In § 256.12(b), the rule provides that supplemental sales are to be conducted in accordance with the provisions of Part 256 unless exceptions to these provisions are specified. Part 256 includes in § 256.23(a) a provision for MMS to "receive and consider indications of interest in areas for mineral leasing."

There were also suggestions to change the definition of "development block." One suggestion would add language so that a development block could be located not only on the same geologic structure as an existing well, as called for in the rule, but also on a "separate structure which may be contiguous to or cornering an existing lease having a well on it." The definition stated in the proposed rule is the same one used by MMS in other activities, notably classification of tracts for postsale evaluation. The MMS believes it is more practical and desirable to use the same definition for development blocks for both purposes, and the definition proposed in the comment was not specific enough for use in classifying tracts for postsale evaluation or for supplemental sales. Therefore, the final rule incorporates the definition as it appeared in the proposed rule.

Additional comments offered two changes to the definition of development blocks relating to environmental assessment concerns. The first was that the definition include a statement specifying that any block qualifying for a supplemental sale will have been included in a full Environmental Impact Statement analysis which was prepared for the previous regular lease sale in that particular planning area. The second suggestion was that blocks considered for a supplemental sale "should specifically exclude tracts from the last regular lease sale that were deleted pursuant to section 19 consultations * * *." This refers to section 19 of the OCSLA (43 U.S.C. 1345) pertaining to consultations about proposed lease sales with affected States. The definition of development blocks in the proposed rule refers to geologic characteristics which are the essential element in determining whether or not a block can be classified as a development block. The inclusion of other conditions unrelated to the nature of a block's geologic features would be confusing. The National Environmental Policy Act (NEPA) review provisions, which the suggestion would inject into the definition, are independent requirements, and compliance with them would not be enhanced by their inclusion here. Similarly, exclusion of blocks on the basis of deletion from a prior sale pursuant to a section 19 consultation would not improve the proposed rule. It is not deemed to be desirable to exclude a block on the basis of a previous finding which may not be a present factor. This would be an unnecessarily restrictive feature. The NEPA requirements will be fully complied with in each supplemental sale. All blocks will go through an NEPA review and are subject to the full section 19 consultations process.

One comment focused on the need to apply to supplemental sales air quality rules which may be developed in a currently ongoing negotiated rulemaking on this subject. The commenter suggested further that if such regulations are not developed, the air-quality stipulations of Lease Sale 73 be incorporated into any supplemental sale. The issue of air quality is one which MMS has addressed on a sale-by-sale basis in Lease Sales 73 and 80. This approach is expected to be continued for areas adjacent to California until such time as revised air-quality rules may be in place. In any event, air-quality regulations would not be located in the supplemental sales rule but would be contained in the regulations governing postlease operations and would be applicable to all lease sales, whether regularly scheduled or supplemental.

One respondent expressed the opinion that, in general, the text of the proposed rule was not stated clearly enough and did not include specific procedures that were discussed in the preamble to the rule. These general remarks were amplified by suggestions for the addition of several specific requirements pertaining to details of the leasing procedures. One suggestion relating to conducting the Call was that the rule be revised to specify a minimum 45-day comment period. Other suggestions were that the rule state that DOI's evaluation of the comments submitted in response to the Call will be announced at the time the environmental assessment is issued, and that the Call area establishes the maximum size of the sale. Another respondent also expressed concern that without a ceiling on the number of tracts authorized to be offered, supplemental sales could easily evolve into large-scale annual lease sales. A ceiling of five tracts was proposed.

In developing this rule, MMS designed its provisions to accomplish the fundamental purpose of establishing a regulatory basis for conducting supplemental sales. The other objective of the rule's design is to assure that the special purpose of supplemental sales is maintained by limiting the types of blocks eligible to be offered. The procedures to be followed in conducting supplemental sales were not spelled out in the proposed rule but rather were established by reference to the existing regulations of Part 256 which already contain provisions for lease sale procedures. These existing procedures are applicable to supplemental sales except where specifically excluded or expanded.

With respect to the 45-day comment period, this period of time is customarily provided by MMS in regular lease sales although it is not specified in the existing regulations. In accordance with the provision in the proposed rule that the procedures for supplemental sales be the same as those for regular lease sales, MMS expects to continue this practice for supplemental sales. As with regular lease sales, it is preferable to address this matter outside of a regulatory requirement in the event that unexpected or exceptional circumstances in a future lease sale might require a greater or lesser time for comment. The MMS's intention to announce the results of its evaluation of comments at the time the environmental assessment is issued is a matter of policy as outlined in the preamble to the proposed rule. Inclusion of a regulatory provisions to require these procedures is unnecessary and would inhibit MMS's ability to respond if a unique situation arose which might call for an alternative approach. With respect to the concern that supplemental sales may evolve into large-scale annual lease sales, we believe this is highly unlikely, if not impossible, given the definitional limitations on eligible blocks.

Other comments concerned limitations on the inclusion of forfeited or rejected blocks. One comment stated that the language is ambiguous in § 256.26(a) of the proposed rule pertaining to determination of the prior time period which may be covered in a

Call for forfeited or rejected blocks when the Call follows a period during which an annual supplemental sale has not been held. The commenter also proposed a 2-year limit on consideration of rejected or forfeited blocks because this would be "in keeping with the triennal pace of lease sales provided for in the new 5-year program."

The statement in the rule establishing the period which may be covered by a Call when an annual sale(s) has not been held is required so that under these circumstances the Call may include a longer time period than the rule prescribes when sales are held annually. The MMS has reviewed this provision in light of the comment and also reconsidered the limitation of the "preceding fiscal year" requirement. It was not clear in the proposed rule that the exception to reach back beyond the immediately preceding year was to be effective only after the initial supplemental sale has been held. A phrase to clarify this has been added, and the language has been changed to state more precisely the meaning of this provision. In addition, in reconsidering the limitations on the period of time during which forfeited or rejected bid blocks should be eligible for supplemental sales, we have determined that the language of the proposed rule is unnecessarily restrictive in that it precludes offering blocks for which bids may have been forfeited or rejected in the same year as a supplemental sale. In view of the purpose of this rule to provide a means of making available on a timely basis a small number of tracts in unique situations, we have added language in the final rule to allow the offering of blocks rejected or forfeited in the year of a sale. For the same reason, we have also determined that use of calendar rather than fiscal years to establish eligibility of forfeited and rejected blocks for inclusion in supplemental sales is more appropriate. This change has also been made in the final rule.

We have not adopted the proposed 2-year limit on reoffering forfeited or rejected blocks. This comment appears to be based on an expectation that after 2 years, forfeited or rejected bids might be reoffered in a regularly scheduled sale. Even if this were to occur, MMS sees nothing to be gained by removing the possibility, after 2 years, of reoffering such blocks in a future supplemental sale. In addition, forfeited or rejected bid blocks would be eligible for reoffering in a later supplemental sale only if supplemental sales were not held annually for the two consecutive years in which blocks are eligible. The suggested limitation is unnecessary since the concept, purpose, and scope of supplemental sales is completely different from regularly scheduled sales. Supplemental sales are to be very limited and structured so as to accommodate a more timely and selective response to current developments.

The DOI has determined that this rule will have a positive effect on the economy and is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required.

The DOI has also determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment, and therefore an environmental impact statement is not required.

This rule does not contain any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by Mary McDonald, Offshore Rules and Operations Division, Minerals Management Service.

**List of Subjects in 30 CFR Part 256**

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Date: July 10, 1988.

**Wm. D. Bettenberg,**

*Director, Minerals Management Service.*

For the reasons set forth in the preamble, 30 CFR Part 256 is to be amended as follows:

**PART 256—[AMENDED]**

1. The authority citation for Part 256 continues to read as follows:

**Authority:** Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

2. In Subpart A, § 256.12 is added to read as follows:

**§ 256.12 Supplemental sales.**

(a) The Secretary may conduct a supplemental sale in accordance with the provisions of this section.

(b) Supplemental sales shall be governed by the regulations in this part, except § 256.22.

(c) Supplemental sales shall be limited to blocks falling into one or more of the following categories:

(1) Blocks for which bids were rejected during the calendar year preceding the year of the supplemental sale in which they are reoffered or blocks for which bids were rejected in the same calendar year as the supplemental sale in which they are reoffered, except that for the initial supplemental sale only blocks for which bids were rejected after October 1, 1987, may be reoffered. If, after the initial supplemental sale, a supplemental sale is not held annually for any reason, the relevant period for determining blocks eligible for a subsequent supplemental sale may be extended to include rejected bid blocks which were eligible for the supplemental sale not held.

(2) Blocks for which the high bid was forfeited during the calendar year preceding the year of the supplemental sale in which they are reoffered or blocks for which high bids were forfeited in the same calendar year as the supplemental sale in which they are reoffered, except that for the initial supplemental sale only blocks for which high bids were forfeited after October 1, 1987, may be reoffered. If, after the initial supplemental sale, a supplemental sale is not held annually for any reason, the relevant period for determining blocks eligible for a subsequent sale may be extended to include forfeited bid blocks which were eligible for the supplemental sale not held.

(3) Development blocks. Development blocks (including blocks susceptible to drainage) are blocks which are located on the same general geologic structure as an existing lease having a well with indicated hydrocarbons; the reservoir may or may not be interpreted to extend on to the block.

(d) Supplemental sales shall not include blocks in the Central or Western Gulf of Mexico Planning Areas.

(e) The Director may disclose the classification of blocks in supplemental sales as development blocks.

3. Section 256.26 is amended by adding a sentence at the end of § 256.26(a) to read as follows:

**§ 256.26 General.**

(a) * * * For supplemental sales provided for by § 256.12 of this part, the Director's recommendation shall be replaced by a statement describing the results of the Director's consideration of

the factors specified above in this section.

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[FR Doc. 88-17951 Filed 8-8-88; 8:45 am]
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**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 202**

**[Docket No. RM 86-1B]**

## Copyright Registration for Colorized Versions of Black and White Motion Pictures; Final Rule

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulation.

**SUMMARY:** The Copyright Office of the Library of Congress is adopting a final rule with respect to the deposit of a black and white print of a motion picture along with a copy of the computer colorized version in order to register a claim to copyright in the colorized version. This is intended to improve the ability of the Copyright Office to process applications to register claims to copyright.

**EFFECTIVE DATE:** August 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

**SUPPLEMENTARY INFORMATION:** On June 22, 1987, the Copyright Office announced its decision to register certain colorized versions of black and white motion pictures (52 FR 23443). Two days later, the Office published a proposed rule that would require the deposit of a black and white print along with a copy of the computer-colorized version in order to register a claim to copyright in the selection of colors. (52 FR 23691). Interested persons were asked to comment on the proposed rule.

Six comment letters were submitted. Two of these objected to the decision to register claims to copyright in the colorized version. For the reasons given in the June 22, 1987 registration decision, the Office maintains the view that certain colorized films can satisfy the original work of authorship standards of the copyright law.

Of the other four comments, one represents the attorney's own views; two represent groups who are making colorized versions; and the fourth is characterized as a summary of responses to the proposed rule made by thirteen members of the Copyright Office Affairs Committee of the Patent, Trademark and Copyright Section of the American Bar Association ("ABA").[1] These comments specifically address the proposed deposit regulation by questioning in one way or another the Copyright Office's authority to make such a rule, the wisdom of requiring the comparison of the two versions in the examination process, or the necessity of requiring a black and white print as a deposit instead of a black and white videtape. They also raise other issues related to this rulemaking.

### 1. The Authority Issue

One attorney questions whether the Copyright Office, a legislative branch agency, should exercise what he characterizes as even broader administrative and executive functions. He contends that the proposed rule on deposit violates both the letter and the spirit of the copyright statute. Eleven of the thirteen ABA committee members who responded felt that the Office lacks the statutory authority to establish the proposed deposit requirement. On the other side, two ABA members including a law professor felt the Copyright Office had sufficient authority to do so. The comments submitted on the behalf of colorizes indicate a willingness to deposit a black and white copy of the motion picture for the benefit of the public without conceding the Office's authority to require one, provided the requirements are reasonable.

The Copyright Office finds that authority for requiring a black and white copy in addition to the colorized copy exists under both the general rulemaking authority of 17 U.S.C. 702 and the specific authority given to the Register of Copyrights to specify by regulation, the "nature of the copies or phonorecords to be deposited in the various classes specified." 17 U.S.C. 408(c)(1). In *National Conference of Bar Examiners v. Multistate Legal Studies, Inc.*, 692 F.2d 478 (7th Cir. 1982), the Seventh Circuit found that the Copyright Act "vest[s] broad authority in the Register of Copyrights to fashion a workable system of registration and deposit of copyrighted works." 692 F.2d at 484. It is clear that the deposit requirements serve many purposes: examination of claims; evidence of the identity, content, and scope of the registered work for litigation and commercial transaction purposes; and enrichment of the collections of the Library of Congress for contemporary users (both the general public and the Congress) and for posterity. The Register of Copyrights is vested with broad authority to establish reasonable deposit requirements that take account of the varied, and sometimes conflicting, purposes of the registration-deposit system.

When the Copyright Office announced its decision to register certain colorized versions of black and white prints, it specified a set of criteria it would use to determine whether the color added to a black and white motion picture is a modification of a preexisting work "which, as a whole, represent(s) an original work of authorship." 17 U.S.C. 101. One of these criteria is that the color added be more than a trivial variation. Another confirms the existing regulatory prohibition on copyright registration based on mere variations of color.

After examination of all of the comments submitted in response to the original Notice of Inquiry and to the proposed regulation, the Copyright Office concludes that the deposit of a black and white film version will facilitate the examination necessary to determine that the colorized version for which registration is sought is more than a trivial variation. Color conversion of films by computer clearly represents a new way of creating derivative works. The Office has stated that it will monitor technological developments to assess further the quantity of human authorship and the degree of control the "technician-author" exercises in relation to the computer. The Office could have adopted other requirements to gain information that would assist in the examination of claims, such as affidavits or other paper documentation. The deposit requirement selected by the Office has the advantage both of facilitating examination to ascertain the fact of original authorship in the colorized version compared to the previous versions of the film, and of enriching the collections of the Library of Congress for the benefit of the public and posterity.

The Office has considered the expense and possible inconvenience to registrants of requiring deposit of the black and white copy. The Office notes that the colorization process itself is expensive. The average cost is $180,000 to $200,000 per film. The cost of a print for registration is modest in comparison, especially when one also considers the

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[1] The Chairman of this Committee mailed a cover letter summing up his views and past discussion to each member with a space provided for each member to check a box denoting wehther he or she agreed with the proposed rule or believed the Committee should oppose the rule. A space was also provided for each member to comment on the rule. It is not clear from the comment submitted to the Copyright Office, primarily a distillation of the views set out in the Chairman's cover letter, how many members made individual comments.

value of the intellectual property protected by the registration.

With respect to convenience, in order to make the colorized version, the colorizer must already have access to the black and white version; and, as a rule, this will be a celluloid print. In those cases where the particular copy does not satisfy the archival standards of the Library, special relief may be requested, based on a proposal to deposit the best available, near-archival quality black and white print.

Precedent exists for requiring supplementary or identifying deposit materials in addition to the copy of the work for which registration is sought. In the case of motion pictures, the Copyright Act of 1909 required the deposit of a description of the work in addition to photographs or prints; the regulations issued in 1978 require deposit of a separate description of the contents, such as a continuity or pressbook, in addition to one complete print. When the Copyright Office first registered claims to copyright in computer programs in 1984, the Office required deposit of two machine-readable copies, a complete print-out in human-readable form, and any accompanying manuals, flow charts, or other documentation. Like computer program registration in 1964, registration of computer-colorized motion pictures in the 1980's presents the Office with difficult, new copyright examination issues. The deposit requirement adopted today is responsive to the unique nature of the computer-colorizing process.

**2. Comparison of Different Versions**

Two comments question the wisdom of allegedly establishing a precedent by comparing the original work and the derivative work to determine the copyrightability of the derivative work.

One comment asserts that if such a practice is limited to colorized motion pictures, it is discriminatory. The commentator maintains that although the proposed deposit rule is not "expressly forbidden," Copyright Office practice and the Compendium of Copyright Office Practices "make it clear that the examination process is not intended to include the making of comparisons." He quotes a pre-1978 regulation which said that the Office does not make comparisons "to determine similarity of works." He also cites a current Compendium statement that the Office does not "*generally* make comparisons of copyright deposits to determine whether or not particular material has already been registered." *Compendium II Copyright Office Practices*, 108.03, (Emphasis added).

The other comment that addresses this issue reports that most of the ABA members who oppose the proposed deposit rule feel that examination of the derivative work by comparison with the original would establish a dangerous precedent. Some of them also expressed the fear that the Copyright Office is moving toward a patent type examination. To the contrary, another ABA respondent asserted that he had already considered all of these arguments, and still felt the proposed deposit requirement to be a good one that would not "place the Copyright Office on a 'slippery slope' toward becoming anything that even begins to approximate the Patent and Trademark Office."

The Copyright Office has considered these arguments especially in light of the grounds asserted for registration of claims to copyright in colorized versions of films. The Copyright Act specifies that the issuance of the certificate follows the examination and determination that "the material deposited constitutes copyrightable subject matter * * *" 17 U.S.C. 410(a). Moreover, "the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. 410(c). The Compendium specifies in section 108.01 that examination is made to determine:

(1) Whether or not the work for which registration is sought constitutes copyrightable subject matter and
(2) Whether or not legal and formal requirements have been met * * *

The arguments based on the pre-1978 regulation or section 108.03 of the Compendium are not persuasive. Like existing 37 CFR 201.2(a)(1), the pre-1978 regulation cited by one commentator applies to "information given by the Copyright Office," in response to requests from a member of the public. Neither regulation applies to examination of claims to copyright, which is governed by regulations set forth at 37 CFR Part *202* and by the *Compendium*. Section 108.03 would apply to a situation where there is a possibility that more than one colorized version of the same black and white film may exist. In that case the Copyright Office would not "generally" make a comparison based on determining whether a prior colorized version has already been registered, although it may do so occasionally—hence we use the qualifying term "generally."

Thus, even if section 108.03 were applicable, it merely states a *general* practice that admits of exception. While the practice may not be generally known, in fact, the Copyright Office does occasionally compare previously registered works in examining a given claim. We have done so for several decades. The application forms have long requested disclosure of a previous registration (including the registration number) where registration is sought for a derivative work. The comparison is made depending on a number of factors, including the nature of the work, the nature of the authorship claimed as new matter, the availability of the prior registered copy, whether the registration number is known, whether the copy of the pending work discloses information that presents a registration issue (e.g. the year date in the notice) that may be resolved by review of the previously registered work, and so forth. In the past, comparisons have been made especially between unpublished music and published music claims, between ad interim books and the American edition, and between original term works and renewal applications for such works.

The Copyright Office is not embarking, and does not seek to embark, upon a patent or trademark-like examination. The regulations we are adopting will ensure that a Copyright Office examiner will have the necessary material to determine whether the colorized version is more than a trivial variation of the original film from which it is derived. The Office will examine *each* colorized version on its own merits in relation to the material each added to the original black and white film.

**3. The Necessity of Requiring a Black and White Print**

Three comments are directed to the burden imposed on the registrant of a colorized version by requiring a deposit of a black and white print. One comment argues that if this deposit requirement is retained, it must be recognized as "ancillary" and cannot impose any "meaningful burden" on the copyright owner. Another urges that the proposed deposit rule "imposes a burdensome and expensive" requirement on one type of derivative work. The third comment asserts that real practical impediments exist:

1. No single print of the underlying work may exist.

2. The registrant may not own the black and white print.

3. It would be "extremely difficult, and prohibitively expensive, to produce a 'complete print' of the version upon which the colorized version was based."

Two of these comments assert that the person making the deposit should be

given the option of depositing either a videotape or a print of the black and white version. One of them suggests that the regulations could require deposit of "one viewable copy of the black and white motion picture upon which the color-converted version is based." The other insists that a balance is needed to accommodate the needs of the Copyright Office and the Library of Congress without burdening the copyright owner.

On the other side, a film group opposed to registration of colorized film urges that only black and white print is acceptable. This group observes that the black and white videotape used to produce colorized versions "is intentionally printed with low contrast to facilitate colorization" and says that the proposed rule does not recognize the "crucial differences in format" between the colorized motion picture, which exists only on videotape, and the original black and white film, which exists in celluloid. It emphasizes that the black and white videotape is unsuitable for archival purposes and questions whether *any* tape, black and white or color, is a viable form of deposit for archival purposes since it has a short shelf life especially when compared to celluloid print.

While only six parties responded to the proposed new regulation, forty-three responded to the original inquiry concerning registrability. A majority of the individuals who responded to the original inquiry characterized colorization as a desecration of the original black and white film, and many of them expressed the fear that the original black and white film would be lost to posterity. In legislative hearings, colorizers assured the congressional copyright subcommittees that colorizing not only enhances the quality of the old black and white film, but also ensures that the old film will be preserved and will always be available in its original form.[2]

In the original comment period, several of those who supported registration of the colorized version, also saw the need for deposit of the black and white print. The Copyright Office preliminarily concluded that such a deposit would serve two purposes: To enable the examiner to determine better whether the colorized version satisfies the applicable standards for copyright registration, and to enrich the collections of the Library of Congress since in many cases the older black and white films were never registered or otherwise deposited with the Library.[3]

Both in this administrative proceeding and in congressional hearings, one or more proponents of colorization stated that they obtained the best quality print of the original black and white film *before* transferring it to a black and white videotape. Representations were made that restoring the black and white print sometimes meant re-assembling the film by putting together several flawed prints, restoring lost reels, putting the restored work on 35mm, or transferring 35mm nitrate stock to safety stock. In the words of a representative of Hal Roach Studios, "That cost a lot of money. We would not be doing this if we did not feel that we could at least get our money back through colorizing the film. But besides that, we are taking a film that nobody really cared about, preserving it, giving it lasting value and making it available to the public in both black and white and color." This spokesperson went on to say that Hal Roach "has a tremendous film library."[4]

Hal Roach Studios now asserts that it would be extremely difficult, and prohibitively expensive, to produce a "complete print of the version upon which the colorized version was based."[5]

On the other hand, film archivists assert that a black and white videotape will not serve any use for archival purposes. Moreover it would be much more expensive for the Library of Congress to take a black and white videotape and transfer it to a print that would be viable for archival purposes than it would be for the colorizer to prepare a print for deposit. Ultimately the deposit of the black and white videotape would satisfy only one of the purposes the Copyright Office foresaw in proposing the new rule—the examination purpose. Moreover, such a deposit would do nothing to assure for posterity that the black and white prints will be preserved.

On balance, the Copyright Office has decided to adopt the proposed amendment modified by a reference to special relief. Upon a showing in a particular case that the registrant does not own an archival quality print or that it would be prohibitively expensive to prepare a new archival quality print where none is otherwise available, the Copyright Office will consider deposit under special relief. The claimant must in such cases make a good faith effort to deposit the best available, near-archival quality print. Special relief to deposit a black and white videotape will be granted only where a celluloid print is demonstrably unavailable. Given the previously noted representations of the colorizers regarding their acquisition or development of archival-like quality black and white prints, we would expect that ordinarily special relief is unnecessary.

**4. Related Issues**

(a) *Availability of the Motion Picture Agreement.* One comment requests clarification of whether a form of the Motion Picture Agreement will be available for black and white deposits. The Motion Picture Agreement does not apply to these deposits. The Agreement was developed to encourage timely registration of a motion picture without requiring the registrant to keep a print out of circulation at the very time that the motion picture was being exhibited for the first time. Such a consideration does not exist here where the registrant is planning primarily to exhibit the colorized videotape version.

Moreover, the Library intends to select all black and white prints received under this regulation. If the Motion Picture Agreement were available, this would lead to unnecessary back and forth transportation of prints between the Library and the depositor.

The Motion Picture Agreement is currently available in the case of the colorized videotape version.

(b) *Applicability of "best edition".* One comment requests confirmation that the Best Edition Statement of the Library of Congress is inapplicable. The Library would prefer deposit of the black and white print in the order of preference listed in the Best Edition Statement. We recognize, however, that older works may not be available in certain gauges, and would request that the registrants make a good faith effort to deposit the best available film print, in particular a print that is clear, undamaged, undeteriorated, and free of splices. We understood that restoring or cleaning the black and white print before colorization involves preparation of an excellent quality print. If

[2] *See* Hearing on Colorization Before the Subcommittee on Technology and Law of the Senate Judiciary Committee, May 12, 1987. (statement of Roger L. Mayer, President, Turner Entertainment Co.) (statement of Rob Word, Senior Vice President, Creative Affairs, Corporate Officer, Hal Roach Studios, Inc.) (hereafter "1987 Senate Hearing").

[3] The gaps in the Library's collection exist primarily with respect to 1930's and 1940's films. Before the introduction in 1942 of the special contractual arrangement, known as the Motion Picture Agreement, many films were not registered: the films could not be acquired through the demand deposit provisions of the Copyright Act of 1909 because the films were arguably unpublished under that former law. Contrary to the assertion of one commentator, the Motion Picture Agreement has been a vehicle for filling gaps in the collection and is not the cause of the gaps.

[4] 1987 Senate Hearing, Statement of Rob Word.

[5] RM 86-1B, Comment 6.

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preservation of the black and white print is one of the benefits of colorization, the Library would expect that a "complete" black and white print will be deposited to achieve that benefit for posterity. Special relief is available, of course, if the requirement cannot be satisfied in a particular case, for example, where a black and white kinescope copy is colorized.

* * * * *

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[6]

**List of Subjects in 37 CFR Part 202**

Claims, Claims to copyright, Copyright registration.

**Final Regulation**

In consideration of the foregoing, the Copyright Office is amending Part 202 of 37 CFR, Chapter II.

1. The authority citation for Part 202 continues to read as follows:

**Authority:** Copyright Act, Pub. L. 94-553, 90 Stat. 2541 [17 U.S.C. 702].

2. Section 202.20(c)(2)(ii) is amended by adding the following sentence at the end thereof:

**§ 202.20 Deposit of copies and phonorecords for copyright registration.**

* * * * *

(c) * * *

(2) * * *

(ii) *Motion pictures.* * * * In the case of colorized versions of motion pictures made from pre-existing black and white motion pictures, in addition to the deposit of one complete copy of the colorized motion picture and the separate description of its contents as specified above, the deposit shall consist of one complete print of the black and white version of the motion picture from which the colorized version was prepared. If special relief from this requirement is requested and granted, the claimant shall make a good faith effort to deposit the best available, near-archival quality black and white print, as a condition of any grant of special relief.

* * * * *

Dated: July 29, 1988.

**Ralph Oman,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 88-17869 Filed 8-8-88; 8:45 am]

BILLING CODE 1410-07-M

[6] The Copyright Office was not subject to the Administrative Procedure Act before 1976, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 708(o)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[FRL-3425-8]**

**Approval and Promulgation of Implementation Plans Georgia: Amendments to Open Burning Rules; GA-010**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Georgia Rule 391-3-1.02, Section (5), entitled "Open Burning," has been amended in subsections (b) and (d). Subsection (b) is amended to allow "reduction of leaves on the premises on which they fall by the person in control of the premises, unless prohibited by local ordinance and/or regulation" in counties whose total population, as listed in the most recent census, exceeds 65,000. This burning is to be done between 10:00 a.m. and 6:00 p.m., whenever feasible. EPA is approving this portion of the regulation because Georgia has provided adequate demonstration that ambient air quality standards will not be jeopardized. Subsection (d) is amended to limit smoke opacity, "except for a reasonable period to get a fire started," to 40 percent opacity rather than #2 of the Ringelmann chart from any source of open burning referred to in subsections (a) and (b) of this rule. Opacities of #2 of the Ringelmann chart and 40 percent opacity are equivalent. This amendment is necessary to update measurement techniques. Therefore, EPA approves the change in subsection (d).

**DATES:** This action will be effective October 11, 1988, unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

**ADDRESSES:** Copies of the State submittal for this action are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Georgia Department of Natural Resources, 205 Butler Street SE., Floyd Towers East, Atlanta, Georgia 30334

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Gregg M. Worley of EPA Region IV, Air Programs Branch at the above address or at FTS 257-2864 or commercial (404) 347-2864.

**SUPPLEMENTARY INFORMATION:** On May 22, 1985, the Georgia Department of Natural Resources submitted to the Environmental Protection Agency (EPA) changes to the Georgia State Implementation Plan (SIP) to provide for attainment of the ozone National Ambient Air Quality Standard in Atlanta and to assure visibility protection for Class I areas throughout Georgia. These regulatory changes were addressed in a public hearing on April 19, 1985, after which they became State-effective on May 27, 1985. That submittal also included amendments to Georgia rule 391-3-1-.02, Section (5) entitled "Open Burning" which are being approved today.

Subsection (b) of Georgia Rule 391-3-1-.02, Section (5) is being amended to allow "reduction of leaves on the premises on which they fall by the person in control of the premises, unless prohibited by local ordinance and/or regulation" in counties whose total population, as listed in the most recent census, exceeds 65,000. Prior to this amendment, burning of this sort was not allowed in counties whose total population exceeded 65,000. EPA's review of this amendment raised several points: (1) The total amount of particulate matter emitted from leaf burning will increase if more leaves will be burned; (2) the particulate emitted per county may likewise increase due to the greater population of these counties (arguably, more residents mean more leaves raked and burned than in less populous counties); (3) the increased leaf burning may impact other areas; (4) there is no demonstration that monitors presently showing attainment in

counties without open burning will continue to do so once leaf burning is allowed. It stands to reason that the likelihood of a threat to ambient standards and public health and welfare will increase as a result of this rule change. In view of these facts, EPA informed the Georgia Environmental Protection Division (EPD) that it would be necessary for EPD to submit a demonstration showing that the revision would not jeopardize the attainment status of these areas. Since the open burning of leaves is of a seasonal nature, it was determined that the short-term ambient particulate standard, rather than the annual standard would be the critical standard in any demonstration. On February 19, 1988, Georgia EPD submitted a modeling demonstration using the ISCST model of UNAMAP VI. The modeling results clearly showed that the short-term NAAQS for particulate matter would be protected. In light of EPA's revision of the particulate matter standard on July 1, 1987 (52 FR 24634), a modeling demonstration was done to show that the standards were protected for $PM_{10}$ (particulate matter with a nominal diameter of 10 micrometers or less).

Modeling the open burning of a pile of leaves using the conditions and assumptions agreed upon in meetings between EPA's Regional Office and Georgia's EPD yields a total concentration of 67.85 $\mu g/m^3$ for total suspended particulate (TSP) and 56.86 $\mu g/m^3$ for $PM_{10}$. These concentrations are well within the 24-hour National Ambient Air Quality Standards (NAAQS) for TSP and $PM_{10}$ of 150 $\mu g/m^3$.

Subsection (d) of Georgia Rule 391–3–1–.02, Section (5) is being amended to limit smoke opacity, "except for a reasonable period to get a fire started," to 40 percent opacity rather than #2 of the Ringelmann chart from any source of open burning referred to in subsections (a) and (b) of Georgia Rule 391–3–1.02 Section (5). Opacities of #2 of the Ringelmann chart and 40 percent opacity are equivalent. This amendment merely updates measurement techniques. There will be no environmental impact from this amendment.

For further information on this action, the reader may examine a Technical Support Document at the EPA Regional Office whose address is listed above.

### Final Action

EPA is approving the previously discussed amendments to Georgia rule 391–3–1.02, Section (5), subsections (b) and (d). No adverse impact on the air, including air quality, is expected.

EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 11, 1988 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 11, 1988.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Air Pollution control, Incorporation by reference, Intergovernmental Relations, Particulate matter.

**Note:** Incorporation by Reference of the State Implementation Plan for the State of Georgia was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 1, 1988.

**Lee M. Thomas,**

*Administrator.*

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

### Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(36) to read as follows:

**§ 52.570 Identification of plan.**

* * * * *

(c) * * *

(36) Revised subsections (b) and (d) of rule 391–3–1–.02 (5), "Open Burning," were submitted by the Georgia Department of Natural Resources on May 22, 1985.

(i) Incorporation by reference.

(A) Letter of May 22, 1985, from the Georgia Department of Natural Resources and revised subsections (b) and (d) of rule 391–3–1–.02(5), entitled "Open Burning," adopted by the Georgia Board of Natural Resources on May 1, 1985, to be effective May 27, 1985.

(ii) Additional material.

(A) Modeling demonstration, submitted on February 19, 1988, by the Georgia Department of Natural Resources.

[FR Doc. 88–17801 Filed 8–8–88; 8:45 am]

BILLING CODE 6560–50–M

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### 40 CFR Part 180

**[PP 6F3452, PP 8F3577/R973; FRL–3426–7]**

## Pesticide Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexen-1-One

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also known as sethoxydim), calculated as parent, in or on the raw agricultural commodities (RACs) brassica leafy vegetables crop group at 5.0 parts per million (ppm), celery at 1.0 ppm, cucurbit vegetables crop group at 2.0 ppm, head lettuce at 1.0 ppm, leaf lettuce at 2.0 ppm, and spinach at 4.0 ppm. This regulation was requested by the BASF Corp. and establishes the maximum permissible level for residues of the herbicide on these RACs.

**EFFECTIVE DATE:** August 9, 1988.

**ADDRESSES:** Written objections, identified by the document control number, [PP 6F3452, 8F3577/R973], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1800.

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the **Federal Register** of June 22, 1988 (53 FR 23420), in which it was announced that the BASF Corp., P.O. Box 181, 100

BEST COPY AVAILABLE

Cherry Hill Rd., Parsippany, NJ 07054, had submitted a pesticide petition, PP 8F3577, to EPA proposing to amend 40 CFR 180.412 by establishing tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the parent) in or on the RACs celery at 1.0 ppm; lettuce, head and leaf, at 10 ppm; and spinach at 3.0 ppm.

The petitioner subsequently amended PP 8F3577 by submitting a revised Section F proposing tolerances of 2.0 ppm for leaf lettuce, 4.0 ppm for spinach, 1.0 ppm for head lettuce, and 1.0 ppm for celery. Originally proposing tolerances of 2.0 ppm for cucurbit vegetables and 9.0 ppm for brassica leafy vegetables, PP 6F3452 was not filed initially, and because of the potential increase in risk to humans from the increased tolerances for spinach and leaf lettuce, the tolerances were proposed for 30 days to allow a period for public comment.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petitions and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 1, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. In § 180.412(a), by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

**§ 180.412 2-[1-(Ethoxyimino)butyl]-5-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.**

(a) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | |
| Brassica leafy vegetables | 5.0 |
| * * * * * | |
| Celery | 1.0 |
| * * * * * | |
| Cucurbit vegetables | 2.0 |
| * * * * * | |
| Lettuce, head | 1.0 |
| Lettuce, leaf | 2.0 |
| * * * * * | |
| Spinach | 4.0 |
| * * * * * | |

[FR Doc. 88-17925 Filed 8-8-88; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 101-47**

**[FPMR Amendment H-168]**

**Utilization and Disposal of Real Property**

**AGENCY:** FPRS, General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations to revise the procedures for reporting certain excess Government-owned real property which contains asbestos-containing materials and for disposing of such real property as has been determined surplus. The procedures are being revised to require the holding end disposal agencies to include information on the presence of asbestos-containing materials in their respective excessing and offering documents as part of the disposal process.

**DATE:** This regulation is effective August 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, General Services Administration (202-535-7052).

**SUPPLEMENTARY INFORMATION:** The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

This regulation informs Federal agencies that excess real property which is reported to GSA for disposal must include information on the presence of certain asbestos-containing materials. In addition, this regulation advises the public that the disposal agency shall include such information in its offering documents as part of its disposal process.

**Comments**

GSA previously published this regulation as a proposed rule in the **Federal Register** of February 17, 1988. In addition, in a letter to the various landholding executive agencies, GSA also indicated that it would require information on the cost and time necessary to remove any asbestos-containing materials. As a result of the publication in the **Federal Register** and through other correspondence with the executive landholding agencies, GSA received a number of comments. The commenters generally endorsed the GSA proposal, with some offering additional suggestions/recommendations as follows:

1. One commenter objected to the requirement to provide the disposal

agency with the estimate of the cost and time to remove deteriorated asbestos-containing materials on the basis that such information would not be reasonably available or ascertainable from the agency files. GSA's intent in proposing to require the estimates was to obtain as much information as possible to assist the disposal agency in its internal decisionmaking regarding the properties reported to it for disposal. GSA has clarified its intent in obtaining such information in this final regulation.

2. One commenter recommended that GSA perform, or contract for, any required technical asbestos-containing materials studies. GSA does not intend in the regulation to require any technical asbestos-containing materials studies. GSA only intends that the holding agency provide to the disposal agency that information that the government already has available with respect to the presence of asbestos-containing materials in the property.

3. Two commenters recommended that GSA clarify the extent to which information is to be made available. GSA does not believe it can adequately describe the extent of the files and records search appropriate for each property. GSA believes that each holding agency is in the best position to know what files may be available and the likelihood that asbestos-containing materials are present in each building.

4. Two commenters recommended that GSA require future owners to include the information on asbestos-containing materials in subsequent resales. GSA does not believe that this requirement would be practical or enforceable. The only effective means of ensuring continuous notice would be a deed covenant. GSA did not intend for this regulation to require such a deed notice. GSA's intent is to ensure a consistent approach to disposals of government real property. Subsequent resales would be subject to State and local law at the time of sale.

5. Several commenters recommended that GSA use the term "asbestos-containing material" in the regulation. This change has been incorporated into the final regulation.

6. One commenter expressed concern over the relationship of this regulation and the Environmental Protection Agency (EPA) proposed regulation implementing section 120(h) of the Superfund Amendments and Reauthorization Act Amendments of 1986 (SARA) (Pub. L. 99-499). The proposed EPA regulation, which was published in the **Federal Register** of January 13, 1988, requires notice to potential purchasers of Federal real property on which hazardous substance activity took place. GSA is aware of this regulation and has worked closely with EPA on both the SARA and this regulation. The SARA regulation concerns the "environment" (i.e. the ambient air, soil, water, etc.). This asbestos regulation concerns buildings where asbestos-containing materials are part of the building. This regulation states in § 101-47.200(b) that the provisions of the regulation do not apply to asbestos which falls under SARA, i.e., asbestos which is an environmental issue will be handled by EPA's SARA regulation. Any asbestos-containing materials which are part of the building will be handled by this GSA regulation.

This commenter also recommended that this regulation be revised to discuss only "friable asbestos". GSA's intent is to provide a method for the government in its surplus property disposals to handle asbestos in any form, friable or not. The government will describe the asbestos-containing materials based on the reasonably available information. As discussed in § 101-47.304-13(f), the purchaser agrees to be responsible for remedial action to meet appropriate Federal, State, and local regulations for occupancy of buildings.

7. One commenter requested clarification of the wording of the warning notice in § 101-47.304-13. We have revised the wording of the warning notice.

8. One commenter questiond the need to disclose the existence of asbestos-containing material in Government real property. This commenter also requested clarification of the wording of the health risks and requested disclosure of any asbestos control programs instituted by the government. GSA believes that the disclosure of the existence of asbestos-containing materials in a building proposed for disposal is a prudent requirement and will ensure a consistent approach to sales of government real property. GSA has changed the regulation to require information on the existence of any asbestos control programs and has reworded the warning notice.

After careful consideration of these comments, GSA continues to believe the publication of the regulation is a prudent action. GSA has modified the content of the final regulation as discussed above.

**List of Subjects in 41 CFR Part 101-47**

Government property management, Surplus Government property.

## PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Accordingly, 41 CFR Part 101-47 is amended as follows:

1. The authority citation for Part 101-47 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. The table of contents for Part 101-47 is amended to add the following entry:

Sec.
101-47.304-13 Provisions relating to asbestos.

### Subpart 101-47.1—General Provisions

3. Section 101-47.103-5 is revised to read as follows:

**§ 101-47.103-5 Decontamination.**

The complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

### Subpart 101-47.2—Utilization of Excess Real Property

4. Section 101-47.200 is revised to read as follows:

**§ 101-47.200 Scope of subpart.**

(a) This subpart prescribes the policies and methods governing the reporting by executive agencies and utilization by Federal agencies of excess real property, including related personal property within the State of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. This subpart does not apply to the abandonment, destruction, or donation to public bodies, under section 202(h) of the Act (covered by Subpart 101-47.5).

(b) The provisions of this Subpart 101-47.2 shall not apply to asbestos on Federal property which is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

5. Section 101-47.202-2 is amended by adding paragraph (b)(9) to read as follows:

**§ 101-47.202-2 Report forms.**

* * * * *

(b) * * *

(9) To the extent such information is reasonably available or ascertainable from agency files, personnel, and other inquiry, a description of the type, location and condition of asbestos incorporated in the construction, repair,

or alteration of any building or improvement on the property (e.g., fireproofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the property. To assist GSA in considering the disposal options for the property, agencies shall also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (See also § 101–47.200(b).)

6. Section 101–47.202–7 is revised to read as follows:

**§ 101–47.202–7 Reports involving contaminated property.**

Any report of excess covering property which in its present condition is dangerous or hazardous to health and safety, shall state the extent of such contamination, the plans for decontamination, and the extent to which the property may be used without further decontamination. In the case of properties containing asbestos-containing materials and in lieu of the requirements of the foregoing provisions of § 101–47.202–7, see subsection 101–47.202–2(b)(9).

**Subpart 101–47.3—Surplus Real Property Disposal**

7. Section 101–47.304–5 is revised to read as follows:

**§ 101–47.304–5 Inspection.**

All persons interested in the acquisition of surplus property available for disposal under this Subpart 101–47.3 shall, with the cooperation of the holding agency, where necessary, and with due regard to its program activities, be permitted to make a complete inspection of such property, including any available inventory records, plans, specifications, and engineering reports made in connection therewith, subject to any necessary restrictions in the interest of national security and subject to such rules as may be prescribed by the disposal agency.

(See § 101–47.304–13 and § 101–47.403.)

8. Section 101–47.304–13 is added to read as follows:

**§ 101–47.304–13 Provisions relating to asbestos.**

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with § 101–47.202–2(b)(9), the disposal agency shall incorporate such information (less any cost or time estimates to remove the asbestos-containing materials) in any Invitation for Bids/Offers to Purchase and include the following:

**Notice of the Presence of Asbestos—Warning!**

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (Offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Bidders (Offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) the description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that in its use and occupancy of the property it will comply with all Federal, state, and local laws relating to asbestos.

Dated: July 14, 1988.

**John Alderson,**

*Acting Administrator of General Services.*

[FR Doc. 88–17771 Filed 8–8–88; 8:45 am]

BILLING CODE 6820–86–M

## OFFICE OF PERSONNEL MANAGEMENT

**45 CFR Part 801**

**Voting Rights Program**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution.

**DATES:** This rule is effective August 9, 1988. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before September 8, 1988.

**ADDRESS:** Send or deliver comments to James Green, Associate General Counsel, Office of Personnel Management, Room 7353, 1900 E Street, NW., Washington, DC. 20415.

**FOR FURTHER INFORMATION CONTACT:** James Green, (202) 632–5087.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated Talbot County, Georgia, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on August 4, 1988, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint

Federal examiners to prepare and maintain lists of persons eligible to vote and Federal observers to observe local elections.

Under 5 U.S.C. 553(b)(3)(B), the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM, to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to 5 U.S.C. 553(d)(3), the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in light of the pending elections to be held on August 9, 1988, in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, (February 17, 1981), Federal Regulation. OPM is required, pursuant to the Voting Rights Act of 1965, as amended, to give notice to the public of the time and place to file applications to vote. In order to carry out the intent of the Voting Rights Act, notice should be given prior to an election. Due to the impending election on August 9, 1988, section 8(a)(2) permits an exemption from the procedures outlined in Executive Order 12291.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

**List of Subjects in 45 CFR Part 801**

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

**Hugh Hewitt,**

*Deputy Director.*

Accordingly, OPM is amending 45 CFR Part 801 as follows:

## PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for Part 801 continues to read as follows:

**Authority:** 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C.) 1973e, 1973g).

2. Section 801.202, Appendix A, is amended by adding alphabetically the Georgia county of Talbot to read as follows:

**§ 801.202 Times and places for filing and forms of application.**

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**Appendix A**

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*Dates, Times, and Places for Filing*

**Georgia**

*County; Place for filing; Beginning Date*

Talbot—Bruce Motel, Room 2, Washington St., Talbotton, Georgia 31827, August 9, 1988.

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[FR Doc. 88-18028 Filed 8-8-88; 8:45 am]

BILLING CODE 6325-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 87-329; RM-5699]**

### Radio Broadcasting Services; Wickenburg, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 287C2 for Channel 288A at Wickenburg, Arizona, and modifies the Class A license of Consolidated Communications Newwork, Inc. for Station KCIW-FM, as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 287C2 at Wickenburg are 34-02-49 and 112-48-21. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** September 16, 1988.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order MM Docket No. 87-329, adopted July 6, 1988, and released August 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230). 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Arizona, is amended by revising the entry for Wickenburg by deleting Channel 288A and adding Channel 287C2.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17882 Filed 8-8-88; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 87-104; RM-5425, RM-5612, RM-5972, RM-5989, RM-5990]**

### Radio Broadcasting Services; Jennings, Erath, Mamou and Maurice, LA; and Groves and Nederland, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 266A to Mamou, Louisiana, as a first local FM service, at the request of Leonard Worden. This action also substitutes Channel 223C2 for Channel 221A at Groves and Channel 225C2 for Channel 224A at Jennings, and modifies the licenses of Stations KTFA(FM) and KJEF-FM to specify operation on the higher class channel, as requested by Voice in the Wilderness Broadcasting, Inc. and Jennings Broadcasting Company, Inc., respectively. In addition, in order to accomplish the substitution at Jennings Channel 299A is substituted for vacant but applied for Channel 225A at Erath, Louisiana. Both upgrades will provide their respective community with a first wide coverage area FM service. With this action, this proceeding is terminated.

**DATES:** Effective September 12, 1988; The window period for filing applications for Channel 266A at Momou, Louisiana, will open on September 13, 1988, and close on October 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-104, adopted July 13, 1988, and released July 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The coordinates used in determining available sites for Channel 266A at Mamou are 30-37-54 and 92-25-12. Channel 223C2 can be used at the current transmitter site of Station KTFA(FM) at coordinates 30-01-45 and 93-52-59. Channel 225C2 at Jennings requires a 24.8 kilometers (15.4 miles) south of the city at coordinates 30-00-20 and 92-44-00. Further, this action denies the petitions for rule making filed by FoxCo Acquisition Corporation for the substitution of Channel 299A for Channel 292A at Maurice, Louisiana (RM-5972), and Jennings Broadcasting Company, Inc., for the allotment of Channel 223C2 at Jennings, Louisiana (RM-5425).

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[ADMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202(b), the table of FM allotments, is amended under Louisiana by adding Channel 266A at Mamou; deleting Channel 225A and adding Channel 299A for Erath; and deleting Channel 224A and adding Channel 225C2 at Jennings. The Table is also amended under Texas, by deleting Channel 221A and adding Channel 223C2 at Groves.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17679 Filed 8-8-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 87-417; RM-5931]**

**Television Broadcasting Services; Lima, OH, et al.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of WKBN Broadcasting Corporation, substitutes noncommercial educational Channel *61 for Channel *17 at Muncie, Indiana, and allots Channel 17 to Lima, Ohio, as the community's third local commercial television service. The Commission found that public interest benefits accruing from the provision of a third commercial service warranted the dereservation of existing Channel *17 at Muncie and its substitution with Channel *61. In addition, the Commission modified the licenses of Winnebago Television Corporation, Station WTVO, Channel 17—, Rockford, Illinois, and TV 17 Unlimited, Station WXMI, Channel 17, Grand Rapids, Michigan, by changing their offset designations to specify plus and minus offsets, respectively, in lieu of their present minus and zero offsets. With this action, this proceeding is terminated.

**DATE:** Effective September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-417, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Channel 17 can be allotted to Lima, Ohio, in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.1 kilometers (19.9 miles) southwest to avoid a short-spacing to Channel 16 at Detroit, Michigan, which is reserved for land mobile use, and to Station WXMI, Channel 17, Grand Rapids, Michigan. The coordinates for this allotment are North Latitude 40-35-18 and West Longitude 84-25-55. Channel *61 can be allotted to Muncie, Indiana, in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this allotment are North Latitude 40-11-30 and West Longitude 85-23-12. Lima is located within the minimum co-channel separation distance to Cincinnati and Columbus, Ohio. Therefore, in light of the Commission's recent freeze on the filing of applications within certain metropolitan areas, including Cincinnati and Columbus, applications for this channel will not be accepted until further notice is given by the Commission.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Television Table of Allotments is amended as follows: Muncie, Indiana, is revised by deleting Channel *17 and adding Channel *61; Rockford, Illinois, is revised by deleting Channel 17— and adding Channel 17+; Grand Rapids, Michigan is revised by deleting Channel 17 and adding Channel 17—; and Lima, Ohio, is revised by adding Channel 17.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17674 Filed 8-8-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 87-397; RM-5961]**

**Radio Broadcasting Services; George West, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 281A to George West, Texas, as that community's first local FM service, at the request of Larry S. Tschirhart. The channel can be allocated in compliance with § 73.207 of the Commission's Rules. The coordinates used in determining the available site are 28-20-06 and 98-06-54. Concurrence by the Mexican government has been obtained. With this action, this proceeding is terminated.

**DATES:** Effective September 16, 1988; The window period for filing applications will open on September 19, 1988 and close on October 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-397, adopted June 30, 1988, and released August 3, 1988. The full text of this

Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas by adding Channel 281A to George West.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17883 Filed 8–8–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 87–276; RM–5716]**

**Radio Broadcasting Services; Seabrook, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 221C2 for Chanel 221A at Seabrook, Texas, and modifies the license of Station KRTS(FM) to specify operation on the higher class co-channel, at the request of KRTS, Inc. A site restriction of 20.3 kilometers (12.6 miles) southeast of Seabrook is required. The restricted site coordinates are 29–25–00 and 94–54–00. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 16, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87–276, adopted July 14, 1988, and released August 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by removing Channel 221A and adding Channel 221C2 for Seabrook.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17884 Filed 8–8–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 87–452; RM–5970]**

**Radio Broadcasting Services; Ellensburg, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 276C2 for Channel 276A at Ellensburg, Washington, and modifies the license of Station KQBE(FM) to specify operation on the higher class co-channel, as requested by Lord Broadcasting Company. The community could be provided with its first wide coverage area FM service. The station's current transmitter site meets the Commission's minimum distance separation requirements, at coordinates 47–00–21 and 120–30–55. Concurrence has been obtained from the Canadian government. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87–452, adopted June 30, 1988, and released August 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by deleting Channel 276A and adding Channel 276C2 at Ellensburg.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17885 Filed 8–8–88; 8:45 am]

BILLING CODE 6712–01–M

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**Migratory Bird Hunting; Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States, Including Alaska, and Puerto Rico and the Virgin Islands, for the 1988–89 Season.**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early-season migratory bird hunting regulations from which States and Puerto Rico and the Virgin Islands may select season dates and daily bag and possession limits for the 1988–89 season. These seasons may open prior to October 1, 1988, and apply to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Kentucky and Tennessee; experimental September Canada goose seasons in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; a special Canada goose season in southwestern Wyoming; extended falconry seasons; and migratory game birds in Alaska, Puerto Rico and the Virgin Islands.

**DATES:** Effective on August 9, 1988. Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the **Federal Register** as amendments to §§ 20.103 through 20.106 and 20.109 of 50 CFR 20.

**ADDRESSES:** Season selections from States are to be mailed to: Director (FWS/MBMO U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, DC 20240, telephone (202) 254–3207.

**SUPPLEMENTARY INFORMATION:** On March 9, 1988, the U.S. Fish and Wildlife Service published for public comment in the **Federal Register** (53 FR 7702) initial proposals to amend 50 CFR Part 20, with comment periods ending July 20, 1988, for Alaska, Puerto Rico, the Virgin Islands, and other early-season frameworks (except Hawaii where the comment period closed on June 22, 1988) and August 29, 1988, for late-season frameworks. The March 9, 1988, document dealt with establishment of seasons, limits and shooting hours for migratory game birds under Sections 20.101 through 20.107, 20.109, and 20.110 of Subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the **Federal Register** dated June 7, 1988 (53 FR 20874).

On June 22, 1988, a public hearing was held in Washington, DC, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, sandhill cranes and other species. The meeting was announced in the **Federal Register** on March 9, 1988 (53 FR 7702) and June 7, 1988 (53 FR 20874). Proposed hunting regulations were discussed for these species and for common snipe; rails; common moorhens and purple gallinules; experimental early duck seasons in Florida, Kentucky and Tennessee; experimental early September Canada goose seasons in parts of Illinois, Michigan and Minnesota; special sea duck seasons in the Atlantic Flyway; sandhill cranes, a special Canada goose season in southwestern Wyoming; extended falconry seasons and hunting regulations for Alaska, Puerto Rico and the Virgin Islands. Public comments on these matters were received.

On July 11, 1988, the Service published in the **Federal Register** (53 FR 26198) a third document in the series of proposed and final rulemaking documents. The third document dealt specifically with proposed frameworks for the 1988–89 season. When published in a fourth document as final frameworks, wildlife conservation agency officials may select season dates and bag limits for hunting certain migratory birds in their respective jurisdictions during the 1988–89 season.

This rulemaking is the fourth in the series and deals specifically with final frameworks for early-season migratory game bird hunting regulations from which wildlife conservation agency officials from the States, Puerto Rico and the Virgin Islands may select season dates and daily bag and possession limits for the 1988–89 season. These seasons may open prior to October 1, 1988, and apply to mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Kentucky and Tennessee; experimental September Canada goose seasons in parts of Illinois, Michigan and Minnesota; sandhill cranes, a special Canada goose season in southwestern Wyoming; extended falconry seasons; and hunting regulations for Alaska, Puerto Rico and the Virgin Islands.

**Review of Public Comments**

The Service has already responded to earlier comments on proposed regulations published in the **Federal Register** on March 9, 1988 (53 FR 7702), and June 7, 1988 (53 FR 20874), and discussed at the June 22, 1988, public hearing in Washington, DC. These responses appeared in the **Federal Register** of June 7, 1988 (53 FR 20874), and July 11, 1988 (53 FR 26198). Additional comments received through July 22, 1988, relating to proposed early season frameworks are discussed here.

The comments are discussed in the same order as the numbered items to which they apply are listed in previous 1988 **Federal Register** publications.

*6. September Teal Seasons*

a. The Oklahoma Department of Wildlife Conservation, the Louisiana Wildlife and Fisheries Commission, the Texas Parks and Wildlife Department, and the Colorado Division of Wildlife all opposed the suspension of the September teal season. Oklahoma noted the closure penalizes States which have little opportunity to harvest blue-winged teal during the regular season and results in unwarranted differences in harvest opportunities among States. Oklahoma supports a reduced season combined with increased enforcement and believes such would maintain hunter support. Louisiana recognized the bluewing population was depressed but noted hunting mortality has little impact on bluewing population dynamics. The State supports a 3-day September teal season as opposed to suspension of same. Texas noted blue-winged teal have low harvest rates, the 1988 breeding population is similar to last year's, and suspension of the season which would maintain hunter interest and support for habitat programs. Colorado noted the September season offers about the only opportunity to harvest bluewings in mid-latitude States and suggests if a reduced harvest is necessary the Service should take action where the greatest harvest occurs. Colorado notes the bluewing breeding population increased (+1 percent) from last year and calls for the Service to consider production information before actually suspending the season. The State will support a shorter teal season if increased protection of bluewings is in order. They also feel it is important to continue hunter opportunity and ensure hunter support for programs to enhance the resource. Thirteen other individuals also supported a continuation of the September teal seasons—nearly all suggested a 3-day season with a 4-bird bag. Most felt such a season would not harm teal populations and would maintain hunter interest and support.

*Response.* The service again notes the blue-winged teal breeding population has been depressed for several years. Further, current survey information suggests the fall flight of the species is likely to be poor. While a shortened season would be expected to reduce the harvest, such a season might still result in a substantial kill. Under these circumstances the Service believes it inappropriate to identify bluewings with added harvest opportunity in the form of September seasons and bonus birds. The Service believes hunters will recognize their continued support for habitat and management programs is needed more than ever during this period of extended drought and accelerating habitat destruction.

b. The Illinois Department of Conservation, the Ohio Department of Natural Resources, the Wisconsin Department of Natural Resources, the Minnesota Waterfowlers Association, the Humane Society of the United States, and 6 individuals recommended

that the September teal season not be offered in 1988. By inference, an additional 8 individuals, who called for a closed duck season, are considered as being opposed to a September teal season in 1988.

*Response.* These frameworks do not offer a September teal season for the 1988–89 hunting season.

*8. Experimental September Duck Seasons*

a. The Florida Game and Fresh Water Fish Commission noted their considerable previous justifications for operational status for the State's September duck season. The State, however, intends to defer their efforts for operational status, but notes this does not change their position.

*Response.* The Service understands Florida's interest in operational status for the September duck season. We appreciate the intent to defer this issue until another year. In the June 7, 1988, **Federal Register** (53 FR 20876), the Service noted that the depressed status of waterfowl populations might require review of harvest management strategies such as September duck seasons. There were no proposed changes in item 8 in the July 11, 1988, **Federal Register** on proposed frameworks for early seasons because the fall flight information was still incomplete. Subsequently, the forecast contained in the July 25, 1988, status report was for a reduced fall flight. As a result it was decided to be more restrictive in regard to all September duck seasons. Therefore, one result is that the Service has established a bag limit of 3 wood ducks only per day for the 5-day 1988 September duck season in Florida. The intent is to limit the take of all ducks.

b. Iowa expressed disappointment in the Service's proposal to cancel the State's September duck season option. They note the State uses regular season days as opposed to bonus days for their September hunt and that harvest opportunity on bluewings increased as intended. The State supports efforts to reduce the bluewing harvest through curtailment of bonus seasons. The State calls for a review of regulations and asks that when regulations relax, Iowa be allowed to return to the option of September seasons.

*Response.* The Service recognizes Iowa's position in regard to their early September duck season. However, the September season does focus harvest more on bluewings than do later seasons. The Service continues to recommend suspension of the September duck season option in Iowa.

c. The Missouri Department of Conservation supports the suspension of the September teal season. The State notes the early duck season in Iowa was suspended while those in Kentucky, Tennessee and Florida were continued with restrictions. Missouri finds these actions inconsistent and urges more equitable application of closures or restrictions among all States.

*Response.* The Service appreciates the view that the regulations may not appear entirely consistent but believes the restrictions imposed in this document will reduce an already small harvest of ducks other than wood ducks in Kentucky, Tennessee and Florida.

d. The Wildlife Management Institute questions whether any blue-winged teal should be permitted in the Kentucky, Tennessee and Florida September seasons. The Illinois Department of Conservation noted their earlier call for elimination of all special seasons. Illinois believes that if such special seasons are continued, that blue-winged teal should not be permitted in the bag.

*Response.* In light of the status of waterfowl outlined in the response to 8.a. above, the Kentucky and Tennessee experimental September season bag limit is reduced to 2 wood ducks per day. The season length is 5 days. The elimination of ducks other than wood ducks will reduce the harvest of other ducks substantially.

*15. Tundra Swans*

As of July 22 the Service has received an additional 300 letters and postcards from individuals urging that swans not be hunted.

*Response.* The Service offers Alaska frameworks for an experimental swan season in Game Management Unit 22 as discussed in the July 11, 1988, **Federal Register** (53 FR 26204). Other swan seasons, existing or proposed, will be addressed in the late-season regulations cycle.

*22. Band-tailed Pigeons*

The Humane Society of the United States believes the restrictions proposed are not sufficient to address the serious decline in band-tailed pigeons. Stating that hunting kill is the only form of mortality that can be controlled, the Humane Society calls for a closure of the pigeon season.

*Response.* The Service notes that 1988 is the second year of a planned 3-year evaluation of restrictive regulations for Pacific coast bandtail populations. Bag limits and season length were curtailed earlier and additional restrictions in the form of a delay in the opening framework to September 15 was proposed for 1988. The Service believes these retrictions are adequate to safeguard the resource. Therefore these final frameworks contain provisions for a restrictive season on Pacific coast band-tailed pigeons.

*23. Mourning Doves*

Western Management Unit

Comments were received from the Arizona Game and Fish Commission and the Pacific Flyway Council, requesting that the Service reconsider the Council recommendation to alter mourning dove frameworks in the Western Management Unit (WMU) for 1988. Specifically, the Council proposed the following:

*Arizona and California*—A 60-day season to be split between two periods, September 1–15 and November 1—January 15. Bag and possession limits: aggregate mourning and white-winged dove limits not to exceed 10/20 (in Arizona the aggregate bag limit may not include more than 6/12 white-winged doves and the white-winged dove season to be concurrent with the first split only).

*Washington, Oregon, Idaho, Utah, and Nevada*—A 30-consecutive day season between September 1—January 15. Bag and possession limits, 10/20 mourning doves (in Nevada, the daily bag and possession limits of mourning and white-winged doves may not exceed 10/20, respectively, singly or in the aggregate).

Arizona referenced a recent publication in which evidence was provided that discrete mourning dove populations occurred in coastal and interior States, and therefore uniform regulations throughout the WMU are unnecessary. Further, differential frameworks for mourning dove seasons have been allowed in the WMU in the past. Both comments stated that the proposed 15-day extension in the second half of a split season in Arizona and California is estimated to result in a 33 percent increase in hunting opportunity while increasing the harvest less than 5 percent.

*Response.* Mourning dove populations in the WMU have experienced a significant long-term downward trend, both in the interior and coastal States. In 1987, the Service, on recommendation by the Pacific Flyway Council, restricted mourning dove framework dates and bag limits in the WMU to regulate the harvest at a level commensurate with the lower population size. The restrictions were to be in effect for a 3-year period (1987–89). Upon reconsideration of the current Council proposal, the Service agrees that the

modest added hunting opportunity during November 1—January 15 will not increase harvest measureably. More importantly, the Council proposal closes the season between September 15 and November 1 in Arizona and California. This closed period protects mourning doves migrating from northern areas from added harvest in Arizona and California—a principal aim of the original restrictions that was not met with the proposed regulations. Therefore, the Service accepts the Council recommendation and will continue the revised frameworks through 1989, pending results of call-count and harvest surveys conducted to monitor annual status of mourning doves in the WMU.

b. One individual from Texas voiced his opposition to all day dove hunting.

*Response.* The Service notes that States now have an option to select half or whole day hunting of doves. The commentor should make his views known to the Texas Parks and Wildlife Department for consideration during their season selection process.

*24. White-winged Doves*

The Texas Parks and Wildlife Department expressed disappointment with the Service proposal to continue the aggregate 10-bird bag limit, including no more than 2 mourning and 2 white-tipped doves, during the special whitewing season in south Texas. The State believes their proposal for a more liberal aggregate bag limit of 12 with no more than 2 white-tipped doves is a reasonable and biologically sound response to problems that have developed in the Lower Rio Grande Valley. Texas believes there is no evidence the proposed bag limits would be detrimental to the mourning dove breeding population. Further, the State cites a Service study that showed no significant difference in daily survival rates of September mourning dove nestlings in hunting or nonhunted areas. Texas seeks reconsideration of their white-winged dove aggregate bag proposal.

*Response.* The Service refers to its statement in the July 11, 1988, **Federal Register** (53 FR 26205), that the white-winged dove population in Texas declined substantially after the 1983 freeze that affected nesting habitat, and that populations have not yet fully recovered. In addition, during the early 1980s when more liberal regulations were permitted, the harvest of mourning doves increased markedly during the early whitewing season at a time when a substantial segment of the mourning dove population is still nesting in Texas. Considering the possible biological consequences to these populations, the Service does not agree that a more liberal aggregate dove bag limit for 1988 would be a reasonable and proper response to a problem that is largely socioeconomic in nature.

The Texas Parks and Wildlife Department cites the 1987 nationwide mourning dove nesting study to support its contention that September hunting has no effect on dove nesting. This Service study was conducted over a wide geographical area including Texas, but it did not specifically address lower south Texas where the special white-winged dove hunt is held. Conversely, a study conducted by Texas Parks and Wildlife Department biologists K.E. Gamble and T.L. Clark in 1966–71 revealed that unlike doves in most areas of Texas, as many as 21 percent of immature mourning doves had hatched after September 1 in south Texas. The Service feels that the heavy harvest of mourning doves projected to occur under the Texas proposal (315,000 birds) could be detrimental to production and population size of mourning doves in south Texas. This is the reason that the September 20 opening date framework has been established for the regular mourning dove season in the South Zone of Texas.

*25. Migratory Bird Hunting in Alaska*

a. The Alaska Department of Fish and Game disagreed with the proposed frameworks for bag limits on ducks in Alaska, especially those limits on pintails and canvasbacks. They reiterated their earlier arguments that further harvest restrictions in the bag limits are unwarranted and such limits should include 3 pintail and 3 canvasback per day. They reasoned that no change was warranted because hunters in Alaska, where seasons are brief due to weather, would be unduly penalized if bag limits were reduced. They noted their harvest is small compared to that in other States and felt that restrictions in States where harvests are large would be more effective. Also, during Alaska's early seasons many male ducks are still in eclipse plumage and species identification is more difficult than in other States where seasons are later.

*Response.* The Service's position concerning bag limits for ducks in Alaska was discussed in the July 11, 1988, **Federal Register** (at 53 FR 26205). Harvests of any and all species of ducks within a particular state may seem inconsequential when compared with harvests in other states or the total harvest. Nonetheless, conservative measures often must be directed throughout regions, flyways and the nation. The situation with canvasbacks is clear since numbers for the Western Population are well below the minimum threshold that triggers a season closure. Current information on status of pintails and other ducks indicates restrictive regulations are warranted in 1988. While Alaska's harvest is smaller than some western States, a 1971–80 harvest study report indicates it ranked 33 among 49 States in total duck harvest, 20 in pintail harvest, and 39 in canvasback harvest and the average seasonal bag of an Alaska hunter was close to the national average.

b. The Alaska Outdoor Council, Inc., echoed the comments of the Alaska Department of Fish and Game concerning the proposed frameworks. The Outdoor Council expressed the hope that conservative measures would be directed at areas where most direct benefits can be obtained. The Outdoor Council proposed frameworks to include 3 pintail per day with 9 in possession, and 3 canvasback per day with 9 in possession.

*Response.* The Service believes these concerns are addressed in the response to 25.a. above and the July 11, 1988, **Federal Register** (53 FR 26205).

*26. Migratory Game Birds in Puerto Rico and the Virgin Islands*

The Humane Society of the United States noted their comments on migratory bird frameworks, in Puerto Rico and the Virgin Islands, and mourning doves were submitted to the Service on June 22, 1988.

*Response.* The Service addressed the Humane Society's comments in the July 11, 1988, **Federal Register** (53 FR 26205) and reaffirms the information provided therein.

*27. Migratory Game Bird Seasons for Falconers*

Forty-seven individuals and/or falconry regional associations have voiced support for the proposed extension of the frameworks for falconry seasons citing limited impact on the migratory bird resource and added safety to falconer's birds. The Humane Society of the United States opposes the framework extension for falconers. The Humane Society believes removing raptors from the wild for falconry is a misguided use of a protected resource and the extension of the falconry seasons will provide greater incentive for such taking of raptors from the wild. The Humane Society asks that the framework extension be dropped.

*Response.* The Service notes the impact of falconry on target or prey species populations is negligible. The

taking of raptors from the wild for falconry is a permitted activity that is closely regulated. The Service believes these final frameworks are not the proper forum to determine the propriety of falconry. In view of these considerations the frameworks for falconry are extended.

**NEPA Consideration**

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–54)" was filed with the Council on Environmental Quality (CEQ) on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the FES, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", was filed with CEQ on June 9, 1988, and Notice of Availability was published in the **Federal Register** of June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727).

**Endangered Species Act Consideration**

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat * * *" The Service therefore initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 17, 1988, the Chief, Division of Endangered Species and Habitat Conservation, concluded that the proposed actions were not likely to jeopardize the continued existence of listed species.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

*Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act*

In the **Federal Register** dated March 9, 1988 (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. these included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

**Memorandum of Law**

In the **Federal Register** dated March 9, 1988, (53 FR 7709) the Service stated that it planned to publish its Memorandum of Law for the 1988–89 migratory bird hunting regulations with its first final rulemaking.

*Memorandum of Law.* Section 4 of Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided for under Section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–708h). Such regulations have been promulgated annually since 1918. They appear in 50 CFR Part 20, Subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the U.S. Fish and Wildlife Service's budget. Among these activities are biological surveys, hunter activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1988–89, the Service has published two proposed rules for public comment and conducted one public hearing to facilitate public input into the rulemaking process. Four additional proposed and final rulemakings, and another public hearing, are included in the remaining schedule for establishing the annual hunting regulations for 1988–89. Numerous public comments summarized and responded to in **Federal Registers** listed in the preamble of this document describe the Service's consideration of the impacts of its proposed rules on the public. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. In general, the comments supported the Service's initial or supplementary regulatory proposals. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of Section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1988–89 migratory bird hunting regulations which are adequately supported by the Service's records.

**Authorship**

The primary author of this final rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

**Regulations Promulgation**

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rules were published March 9, June 7, and July 11, the Service

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established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that States would have insufficient time to select their season dates, shooting hours and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 701–708h), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR Part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Puerto Rico and the Virgin Islands for the 1988–89 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Transportation Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103–04).

**Final Regulations Frameworks for 1988–89 Early Hunting Seasons on Certain Migratory Birds**

Pursuant to the Migratory Bird Treaty Act, the Secretary of Interior has approved final frameworks for season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, moorhens and gallinules; experimental September duck seasons in Florida, Tennessee and Kentucky; sea ducks (scoter, eider, and oldsquaw) in certain defined areas of the Atlantic Flyway; experimental September Canada goose seasons in Michigan, Minnesota, and Illinois; sandhill cranes; special Canada Goose season in Wyoming; extended falconry seasons; and migratory birds in Alaska, Puerto Rico and the Virgin Islands. For the guidance of conservation agencies, these frameworks are summarized below.

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 10, 1988. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. Season selections for the six States offered experimental September waterfowl seasons and Wyoming's special Canada goose season must also be made by August 10, 1988.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 10, 1988. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

*Outside Dates:* All dates noted are inclusive.

*Shooting Hours:* Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

**Mourning Doves**

*Outside Dates:* Between September 1, 1988, and January 15, 1989, except as otherwise provided, States may select hunting seasons and bag limits as follows:

*Eastern Management Unit*

(All States east of the Mississippi River and Louisiana)

*Hunting Seasons, and Daily Bag and Possession Limits:* Not more than 70 days with bag and possession limits of 12 and 24, respectively.

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively. Hunting seasons may be split into not more than 3 periods under either option.

*Shooting Hours:* Between ½ hour before sunrise and sunset daily.

*Zoning: Alabama, Georgia, Illinois, Louisiana* and *Mississippi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

*Alabama*—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

*Georgia*—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

*Illinois*—U.S. Highway 36.

*Louisiana*—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

*Mississippi*—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1988.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

**Central Management Unit**

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

*Hunting Seasons and Daily Bag and Possession Limits:* Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively. Hunting seasons may be split into not more than 3 periods under either option.

*Texas Zoning:*—As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148, north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Manfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones. Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1988 and January 25, 1989; the South zone between September 20, 1988 and January 25, 1989.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

*Western Management Unit*

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

*Hunting Seasons, and Daily Bag and Possession Limits*

*Idaho, Nevada, Oregon, Utah and Washington*—Not more than 30 consecutive days between September 1, 1988 and January 15, 1989. Bag and possession limits, 10/20 mourning doves (in Nevada, the daily bag and possession limits of mourning and white-winged dove may not exceed 10/20, respectively, singly or in the aggregate).

*Arizona and California*—Not more than 60 days to be split between two periods, September 1–15, 1988, and November 1, 1988—January 15, 1989. Bag and possession limits: in Arizona the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. In California the bag and possession limit is 10 and 20 singly or in the aggregate.

**White-Winged Doves**

*Outside Dates: Arizona, California, Nevada, New Mexico,* and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1988. *Florida* may select its hunting season between September 1, 1988 and January 15, 1989.

*Arizona* may select a hunting season of not more than 30 consecutive days running concurrently with the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

*New Mexico* May select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

*Texas* may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than 2 mourning doves and 2 white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than 4 mourning doves and four white-tipped doves in possession.

*and*

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1988, and January 25, 1989, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

*Florida* may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1988, and January 15, 1989, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

**Band-Tailed Pigeons**

*Pacific Coast States and Nevada:* California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

*Outside Dates:* Between September 15, 1988, and January 1, 1989.

*Hunting Seasons, and Daily Bag and Possession Limits:* Not more than 16 consecutive days, with a bag and possession limit of 4.

*Zoning: California* may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

*Four-Corners States:* Arizona, Colorado, New Mexico and Utah.

*Outside Dates:* Between September 1 and November 30, 1988.

*Hunting Seasons, and Daily Bag and Possession Limits:* Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

*Areas:* These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

*Zoning: New Mexico* may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1988, in the North Zone and October 1 and November 30, 1988, in the South Zone.

**Rails**

(Clapper, King, Sora and Virginia)

*Outside Dates:* States included herein may select seasons between September 1, 1988, and January 20, 1989, on clapper, king, sora and Virginia rails as follows:

*Hunting Seasons:* The season may not exceed 70 days. Any State may split its season into two segments.

*Clapper and King Rails*

*Daily Bag and Possession Limits:* In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10 and 20 respectively, singly or in the aggregate of these two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15 and 30, respectively, singly or in the aggregate of the two species.

*Sora and Virginia Rails*

*Daily Bag and Possession Limits:* In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway[2], 25 daily and 25 in possession, singly or in the aggregate of the two species.

**Woodcock**

*Outside Dates:* States in the Atlantic Flyway may select hunting seasons between October 1, 1988, and January 31, 1989. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1988, and February 28, 1989

*Hunting Seasons, and Daily Bag and Possession Limits:* In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Season may be split into two segments.

*Zoning: New Jersey* may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

*Common Snipe*

*Outside Dates:* Between September 1, 1988, and February 28, 1989. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

*Hunting Seasons, and Daily Bag and Possession Limits:* Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

**Common Moorhens and Purple Gallinules**

*Outside Dates:* September 1, 1988, through January 20, 1989, in the Atlantic and Mississippi Flyways September 1, 1988, through January 22, 1989, in the Central Flyway. States in the Pacific Flyway must select their hunting season to coincide with their duck seasons.

*Hunting Seasons, and Daily Bag and Possession Limits:* Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons must be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

**Sandhill Cranes**

*Regular Seasons in the Central Flyway*

Seasons not to exceed 58 days between September 1, 1988, and February 28, 1989, may be selected in the following States: Colorado (the Central Flyway portion except the San Luis Valley); Kansas; Montana (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); North Dakota (west of U.S. 281); South Dakota; and Wyoming (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1988 and February 28, 1989, may be selected in the following States: New Mexico (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); Oklahoma (that portion west of I–35); and Texas (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S.

[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade Meagher and Park, and all counties west thereof.

283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

*Bag and Possession Limits:* 3 and 6, respectively.

*Permits:* Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting a valid Federal sandhill crane hunting permit.

*Special Seasons in the Central and Pacific Flyways*

Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised July 28, 1987), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1—November 30, 1988 except September 1, 1988—January 31, 1989, in the Hatch-Deming Area (Zone) in New Mexico (Sierra, Luna, and Dona Ana Counties).

2. Season(s) in any State or zone may not exceed 30 days.

3. Daily bag limits may not exceed 3 and season limits may not exceed 9.

4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

6. Seasons in the Middle Rio Grande Valley zone and the Hatch-Deming Zone in New Mexico and in Utah will be experimental.

*Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)*

*Outside Dates:* Between September 15, 1988, and January 20, 1989.

*Hunting Seasons, and Daily Bag and Possession Limits:* Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

*Bag and Possession Limits During Regular Duck Season:* Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

*Areas:* In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season convention or point-system daily bag and possession limits.

*Deferred Selection:* Any State desiring its sea duck season to open in September must make its selection no later than August 10, 1988. Any State desiring its sea duck season to open after September may make its selection at the time it selects its waterfowl season.

**Special September Duck Seasons**

*Florida September Duck Season:* An experimental 5-consecutive day duck season may be selected in September. the daily bag limit will be 3 wood ducks and the possession limit will be double the daily bag limit.

*Tennessee and Kentucky September Duck Seasons:* Experimental 5-consecutive-day duck seasons may be selected in September by Tennessee and Kentucky. The daily bag limit will be 2 wood ducks and the possession limit will be double the daily bag limit.

**Special Early-September Canada Goose Seasons**

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by Michigan, Illinois, and Minnesota subject to the following conditions:

1. Outside dates for the season are September 1–10, 1988.

2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively.

3. Areas open to the hunting of Canada geese are as follows:

*Michigan:* Lower Peninsula—all areas except the Shiawassee River, Allegan, Lapeer and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon county Wastewater Area, and the Fish Point and Nayanquing Point Wildlife Areas.

Upper Peninsula—that area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate Highway 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

*Illinois:* McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

*Minnesota:* All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Wyoming may select a September season for Canada geese subject to the following conditions:

1. The season must be concurrent with the September Sandhill crane season.

2. Outside dates for the season(s) are September 1–22, 1988.

3. Hunting will be by State permit.

4. No more than 60 permits may be issued for the Salt River (Star Valley) area in Lincoln County. Each permittee may take 2 Canada geese per season.

5. No more than 75 permits may be issued in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties, each permittee may take no more than 1 goose per season, and the season may not exceed 14 days.

**Special Falconry Regulations**

*Extended Seasons:* Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season not exceeding 107 days for taking migratory game birds in accordance with the following:

*Framework Dates:* Seasons must fall between September 1, 1988 and March 10, 1989.

*Daily Bag and Possession Limits:* Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

*Regulations Publication:* Each State selecting the special season must inform the Service of the season dates and publish said regulations.

*Regular Seasons:* General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area. The extension of this framework to include the period September 1, 1988–March 10, 1989, is considered tentative, and will be evaluated in cooperation with States offering such extensions after a period of several years.

**Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1988–1989**

*Outside Dates:* Between September 1, 1988, and January 26, 1989, Alaska may select seasons on waterfowl, snipe, cranes, and tunda swans subject to the following limitations:

*Shooting hours:* One-half hour before sunrise to sunset daily.

*Hunting seasons*

*Ducks, geese and brant*—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutain Island chain. Throughout the State there is no open hunting season for Aleutain Canada geese, cackling Canada geese and emperor geese.

*Snipe and sandhill cranes*—An open season concurrent with the duck season.

*Daily Bag and Possession Limits*

*Ducks*—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may not include more than 2 pintails daily and 6 pintails in possession. There is no open season on canvasback. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

*Geese*—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or the aggregate of these species.

*Brant*—A daily bag limit of 2 and a possession limit of 4.

*Common snipe*—A daily bag limit of 8 and a possession limit of 16.

*Sandhill cranes*—A daily bag limit of 3 and a possession limit of 6.

*Tundra swans*—In Game Management Unit 22 an experimental open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.
2. The season must be concurrent with the duck season.
3. The appropriate State agency must issue permits, obtain harvest and hunter participation data, and report the results of this hunt to the Service by June 1, 1989.

**Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1988–89**

*Shooting hours:* Between one-half hour before sunrise and sunset daily.

*Doves and Pigeons*

*Outside Dates:* Puerto Rico may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

*Hunting Seasons:* Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

*Daily Bag and Possession Limits:* Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas.—*Municipality of Culebra and Desecheo Island*—closed under Commonwealth regulations.

*Mona Island*—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

*El Verde Closure Area*—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to KM 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

*Cidra Municipality and Adjacent Areas* consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

*Ducks, Coots, Moorhens, Gallinules and Snipe*

*Outside Dates:* Between November 5, 1988, and February 26, 1989, Puerto Rico may select hunting seasons as follows:

*Hunting Seasons:* Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

*Daily Bag and Possession Limits.—Ducks*—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

*Common moorhens*—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

*Common snipe*—Not to exceed 6 daily and 12 in possession.

*Coots*—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

*Closed Areas:* No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

**Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1988–89**

*Shooting Hours:* Between one-half hour before sunrise and sunset daily.

*Doves and Pigeons*

*Outside Dates:* The Virgin Islands may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

*Hunting Season:* Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

*Daily Bag and Possession Limits:* Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

*Closed Seasons:* No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columba passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks

*Outside Dates:* Between December 1, 1988, and January 31, 1989, the Virgin Islands may select a duck hunting season as follows:

*Hunting Seasons:* Not more than 55 consecutive days may be selected for hunting ducks.

*Daily Bag and Possession Limits:* Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Date: July 28, 1988.

**Susan Recce,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88–17952 Filed 8–8–88; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 683**

**[Docket No. 80483–8147]**

**Western Pacific Bottomfish Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues a final rule to implement a limited access program for the bottomfish fishery in certain waters of the Northwestern Hawaiian Islands (NWHI). The program establishes a control zone called the Ho'omalu Zone, in which a person must have a limited entry permit to fish, and a qualifying zone called the Mau Zone, in which a person could earn points to qualify for future eligibility for a limited entry permit. Persons who can demonstrate participation in, or substantial financial commitment to participate in the NWHI fishery, on or before August 7, 1985, would be eligible for initial permits to participate in the Ho'omalu Zone fishery. A landings requirement is established to maintain eligibility for annual renewal of permits. No new permits to enter the fishery will be issued until stocks are sufficiently large to provide adequate catches. A point system is established to qualify persons for permits for future entry to the fishery. The Western Pacific Fishery Management Council (Council), with the advice of an industry and government Advisory Review Board, will make recommendations to the Regional Director, Southwest Region, NMFS, regarding future entry to the fishery. The objectives of the limited access program are to reduce the risk of overfishing, reduce the level of overcapitalization in the fishery, increase stability in the fishery, and increase profitability or net return to the fishery. The Council will undertake a full evaluation of the effectiveness of the program in 5 years. Under the rule, it is a violation of Federal law to fail to report fishery data in accordance with State reporting requirements and vessel operators must notify the U.S. Coast Guard prior to anticipated arrival in port to unload bottomfish taken in the NWHI.

**EFFECTIVE DATES:** September 6, 1988. The permit requirement will go into effect January 1, 1989. Persons who wish to obtain permits by that date must file the application and supplementary information by November 30, 1988.

**ADDRESS:** A copy of the amendment containing the limited access program, the environmental assessment (EA), and the regulatory impact review (RIR) may be obtained by contacting the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1406, Honolulu, Hawaii 96813, 808–523–1368. Comments on information collection requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503. Attention Desk Officer for NOAA.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner (Southwest Region, Terminal Island, CA), 213–514–6660; or Peter Milone (Southwest Region, Honolulu, HI), 808–955–8831.

**SUPPLEMENTARY INFORMATION:** The domestic fisheries for bottomfish in the U.S. exclusive economic zone (EEZ) adjacent to the State of Hawaii are managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). The FMP was developed by the Council under the Magnuson Fishery Conservation and Management Act (MFCMA) and implemented August 27, 1986 (51 FR 27413, July 31, 1986).

The notice of availability of Amendment 2 to the FMP was published on April 18, 1988 (53 FR 12712) and the proposed rule was published on May 11, 1988 (53 FR 16735). Comments were invited until June 20, 1988. One written comment was received.

The preamble to the proposed rule presented in substantial detail the features of the limited access program proposed for the NWHI and that discussion will not be repeated here.

This final rule is scheduled to go into effect January 1, 1989. Interested persons should be advised that the Regional Director, Southwest Region, NMFS, will be working with the Council and the State of Hawaii to prepare for implementation of the Ho'omalu Zone permit requirement and other provisions of the limited access program. Persons who wish to obtain permits under this program are urged to obtain application forms from the Southwest Region and to compile and submit the necessary documentation of participation in the fishery, or of financial commitments made for participation in the fishery by November 30, 1988, in time for review and award of permits in advance of the effective date. The NMFS also will arrange the protected species seminars required for captains and relief captains and will advise applicants of the time and location of seminars when permit applications were received.

**Comments and Responses**

Written comments were received from one individual.

*Comment:* The individual objected to the proposed limited access program because he had been advised that he might not qualify for an initial permit. He indicated he had previously supported the proposal when he had been assured that he would qualify.

*Response:* Whether or not this person would qualify is not yet known. Under the program, the Southwest Regional Director will make a decision based on the information presented in support of an application, including documentation of participation in the fishery on or before August 7, 1985, or of a firm commitment or offer to buy a vessel for the fishery on or before August 7, 1985. It also is noted that even if the individual does not qualify for an initial permit under the criteria of the program, he may qualify for subsequent entry to the fishery under the point system for new participation when the Regional Director concludes that stock and economic conditions warrant additional entry.

**Changes From the Proposed Rule in the Final Rule**

A prohibition that did not appear in the proposed rule is added in the regulatory text of the final rule. The proposed rule and this final rule contain § 683.27, which requires fishermen to notify the U.S. Coast Guard at least 24 hours before making any landing of bottomfish from the Ho'omalu Zone. This final rule adds a new paragraph (n) to § 683.6, General prohibitions, which expressly prohibits failure to comply with the requirement of § 683.27.

**Classification**

The Director, Southwest Region, NMFS, determined that the Amendment, as approved, is necessary for the conservation and management of the NWHI bottomfish resource and is consistent with the Magnuson Act and other applicable law.

The Council included an environmental review as part of the FMP amendment and an environmental assessment was prepared. The Assistant Administrator for Fisheries, NOAA concluded that there will be no significant impact on the human environment as a result of this rule.

Implementation of this rule is not an action that may affect any species listed as endangered or threatened under the Endangered Species Act of 1972 (Act), or the critical habitat of those species. The Council initiated informal consultations with NMFS under section 7 to the Act and it was concluded that the action was not likely to have adverse effects on any listed species or critical habitat.

The Under Secretary, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of this determination appears in the proposed rule (53 FR 16735, May 11, 1988) and is based on the regulatory impact review (RIR) which is included in the Amendment.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. A summary of this determination appears in the proposed rule.

This final rule contains collection of information requirements subject to the Paperwork Reduction Act. These collection of information requirements contained in this rule were approved by the Office of Management and Budget under Control Number 0648-0201. Public reporting burdens for these collection of information requirements are estimated to average 1 hour per response for the permit requirement and 4 minutes per response for each advanced notification of the U.S. Coast Guard before landing bottomfish. These estimates include the time for reviewing instructions, searching existing date sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collection of information requirements, including suggestions for reducing these burdens, to Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry St., Terminal Island, CA 90731; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Hawaii. The State of Hawaii concurred with this determination.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

**List of Subjects in 50 CFR Part 683**

Fisheries, Reporting and recordkeeping requirements.

Dated: August 3, 1988.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR Part 683 is amended as follows:

**PART 683—[AMENDED]**

1. The authority citation for 50 CFR Part 683 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.* unless otherwise noted.

2. In § 683.2, a new definition for *Qualifying landing* is added to read as follows:

**§ 683.2 Definitions.**

* * * * *

*Qualifying landing* means a landing that meets a standard required for permit eligibility under § 683.25, as follows:

(a) Initial permit eligibility. (1) A qualifying landing for initial permit eligibility under § 683.25(b) (1) and (5) is a landing that contained bottomfish from the NWHI, regardless of amount, and which was made on or before August 7, 1985; (2) A qualifying landing for 1986 and 1987 under § 683.25(b)(2) is a landing which contained at least 2,500 pounds of bottomfish from the NWHI or a landing of at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish;

(b) Permit renewal—a qualifying landing for permit renewal under § 683.25(c) is a landing which contained 2,500 pounds of bottomfish from the NWHI or a landing of at lest 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(c) New access eligibility points—a qualifying landing for eligibility points under § 683.25(e) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985; or a landing of at least 2,500 pounds of bottomfish lawfully harvested from the NWHI, or a landing of at least 2,500 pounds of fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

* * * * *

3. In § 683.5, paragraph (a)(2) is amended by adding (a)(2) (i) and (ii) to read as follows:

**§ 683.5 Management subareas.**

(a) * * *

(2) * * *

(i) *Ho'omalu Zone* means that portion of the EEZ around the NWHI west of 165°W longitude.

(ii) *Mau Zone* means that portion of the EEZ around the NWHI between 161°20′ and 165° W. longitude.

* * * * *

4. In § 683.6, paragraph (k) is redesignated (o) and new paragraphs (k), (l), (m) and (n) are added as follows:

**§ 683.6 General prohibitions.**

* * * * *

(k) Fish for bottomfish in the Ho'omalu Zone without a limited access permit issued under § 683.25;

(l) Serve as captain or relief captain on a vessel fishing in the Ho'omalu Zone without first participating in a protected species seminar conducted by NMFS;

(m) Falsify or fail to make and/or file any and all reports of bottomfish landings, containing all data and in the exact manner, required by the applicable State laws and regulations, as specified in § 683.11, provided that the person is required to do so by the applicable State laws and regulations;

(n) Fail to notify the U.S. Coast Guard at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 683.27;

* * * * *

5. A new § 683.10 is added as follows:

**§ 683.10 Appeals of administrative action.**

(a) Except as provided in Subpart D of 15 CFR Part 904, any applicant for a permit or permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Assistant Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set forth in 50 CFR Part 683 and the amendment to the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register** unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(d) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

6. A new § 683.11 is added as follows:

**§ 683.11 Reports.**

Any person who has a Federal permit to fish for bottomfish or seamount groundfish in the NWHI, and who is required to do so by the applicable State laws and regulations, shall make and/or file any and all reports of bottomfish and seamount groundfish landings, containing all data and in the exact manner, required by the applicable State laws and regulations.

7. In § 683.21, paragraphs (a) and (f) are revised to read as follows:

**§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.**

(a) *Permit areas.* (1) The owner of any vessel being used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel.

(2) The owner of any vessel fishing for bottomfish in the Ho'omalu Zone must have a permit issued under § 683.25 for that vessel.

(3) The owner of any vessel fishing for seamount groundfish in a given fishery management area must have a permit issued under this section for that vessel.

(4) No vessel may be covered by a permit to harvest groundfish in the Ho'omalu Zone and the Mau Zone at the same time.

* * * * *

(f) *Expiration.* Permits issued under this section expire on December 31 of the year covered by the permit.

* * * * *

**§ 683.26 [Redisignated from § 683.25]**

8. Section 683.25 is redesignated § 683.26 and a new § 683.25 is added to read as follows:

**§ 683.25 Limited access management program.**

(a) *Limited access permits.* General requirements.

(1) The owner of any vessel engaged in fishing for bottomfish in the Ho'omalu Zone must have a permit issued under this section.

(2) Permits issued under this section shall expire on December 31 of the year covered by the permit.

(3) Each application for a permit must be submitted to the Regional Director by the vessel owner at least 30 days before the date on which the applicant wants the permit to be effective.

(4) Each applicant must be submitted on the form used to apply for a permit under § 683.21(b) and a supplementary information sheet to be provided by the Regional Director. Each application must be signed by the vessel owner and must contain, in addition to the information listed in § 683.21(b)(2), the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit; and

(ii) Copies of landings receipts or other documentation, with a certification from a State or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; or

(iii) Notarized copies of loan documents or other documents that would demonstrate financial commitments on or before August 7,

1985, to enter the NWHI bottomfish fishery; or

(iv) Written evidence indicating that an offer was made to purchase a vessel or that a vessel was under construction, on or before August 7, 1985, and that the vessel was to be used in the NWHI bottomfish fishery.

(v) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(5) Protected species seminar. Each designated captain and relief captain must participate in a seminar conducted by NMFS to ensure familiarity with protected species laws and regulations applicable to the NWHI and the species those laws and regulations are designed to protect.

(6) Sale or transfer of permits to new owners.

(i) A vessel permit may not be sold or otherwise transferred to a new owner.

(ii) A permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Director.

(7) Transfer of permits to new vessels.

(i) An owner of a permitted vessel may, without limitation, transfer his permit to another vessel owned by him, provided that the replacement vessel does not exceed 60 feet in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(ii) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 feet in length. The Regional Director may allow this change upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has equal catching power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(iii) The Regional Director shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(b) *Supplementary requirements for initial permits.* An application for an initial permit under this paragraph must be filed within 5 years of the effective date of this program. A permit for a vessel to be used for fishing for bottomfish in the Ho'omalu Zone may be issued to:

(1) Any owner who can document that a vessel owned by him made one or more qualifying landings of bottomfish from the NWHI on or before August 7, 1985.

(2) Any owner of two or more vessels which qualify under paragraph (b)(1) of this section may obtain a permit for each of such vessels which also made at least one qualifying landing of bottomfish in 1986 and 1987.

(3) Any person who can document that on or before August 7, 1985, he or she had incurred substantial expenditures for or had received written approval of a loan to purchase or construct a vessel to be used in the NWHI bottomfish fishery.

(4) Any person who can document that on or before August 7, 1985, he or she made an offer to purchase a vessel for the NWHI bottomfish fishery or had such a vessel under construction.

(5) Any person who can document that he or she was captain of a vessel that made at least one qualifying landing of bottomfish the NWHI on or before August 7, 1985, and who becomes an owner or 50% or more interest in a vessel within 5 years of the effective date of this program.

(c) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings during the permit year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, he may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions such that the vessel operations would not be profitable.

(d) *Supplementary requirements for new entry permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort. This shall be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalu Zone by an amount at least equal to the average cost of a vessel year. This determination shall be made and published annually in association with the annual report required under § 683.24 of this part.

(e) *Eligibility.* When the Regional Director has determined that new permits may be issued, they shall be issued to applicants based upon eligibility determined as follows:

(1) *Point System.* (i) Two points shall be assigned for each year in which the applicant was owner or captain of a vessel which made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point shall be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 pounds of bottomfish from the main Hawaiian Islands.

(iii) Points will be assigned only under paragraph (e)(1)(i) of this section or under paragraph (e)(1)(ii) of this section for any one year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(2) An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Director through a lottery.

(4) Notwithstanding paragraph (e)(3) of this section, a person who originally qualifies for and obtains a permit under § 683.25(a) and who voluntarily surrenders that permit to the Regional Director within the first 5 years of this program will have priority over applicants under the point scale system for a new permit under this section. If two or more persons qualify under this provision, the person surrendering a permit at the earliest date will have first priority. If two or more such person are equally qualified under the date of surrender criterion, the permit shall be awarded by the Regional Directory by a lottery. A permit holder may qualify for this provision only one time.

(5) The Regional Director shall place a notice in the **Federal Register** and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

9. A new § 683.27 is added as follows:

**§ 683.27 Notification of landings.**

The operator of a fishing vessel that has taken bottomfish in the Ho'omalu Zone must contact the U.S. Coast Guard, by radio or otherwise, at the 14th District, Honolulu, Hawaii (Telex: 392401); Pacific Area, San Francisco, California (Telex: 330427); or 17th District, Juneau, Alaska (Telex: 45305), at lease 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

10. A new § 683.28 is added to read as follows:

**§ 683.28 Native Hawaiian fishing rights.**
**[Reserved]**

[FR Doc. 88-17967 Filed 8-5-88; 8:45 am]
BILLING CODE 3510-22-M

BEST COPY AVAILABLE

# Proposed Rules

Federal Register
Vol. 53, No. 153
Tuesday, August 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

**10 CFR Ch. 1**

### Issuance of Quarterly Report on the Regulatory Agenda

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of regulatory agenda.

**SUMMARY:** The Nuclear Regulatory Commission has issued the June 1988 Regulatory Agenda. The Agenda, which is quarterly compilation of all rules on which the NRC has proposed, or is considering action as well as those on which it has recently completed action, and all petitions for rulemaking which have been received and are pending disposition by the Commission, is issued to provide the public with information regarding NRC's rulemaking activities.

**ADDRESSES:** A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 7, No. 1, is available for inspection and copying at a cost of six cents per page at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Single copies of the report may be purchased from the U.S. Government Printing Office (GPO). Customers may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

**FOR FURTHER INFORMATION CONTACT:** Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–8926, toll free number (800) 368–5642.

Dated at Bethesda, Maryland, this 3rd day of August 1988.

For the Nuclear Regulatory Commission.

**Donnie H. Grimsley,**

*Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.*

[FR Doc. 88–17939 Filed 8–8–88; 8:45 am]

BILLING CODE 7590–01–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**14 CFR Part 39**

**[Docket No. 88–CE–22–AD]**

### Airworthiness Directives; Piper Models PA–60–601, PA–60–601P, PA–60–602P and PA–60–700P Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Piper (Aerostar) Models PA–60–601, PA–60–601P, PA–60–602P and PA–60–700P airplanes. This AD would require replacement and modification of certain engine oil hoses and associated hardware. This action is proposed as a result of reports of burned, chafed, brittle and leaking oil supply hoses which are suspected in several incidents of causing in-flight fires. The actions of this proposed AD would correct the reported conditions and preclude in-flight fires.

**DATE:** Comments must be received on or before September 8, 1988.

**ADDRESSES:** Piper Aircraft Corporation Service Bulletin (SB) No. 761, dated April 18, 1983, and SB No. 815, dated January 3, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4366. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88–CE–22–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested perons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88–CE–22–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

### Discussion

The National Transportation Safety Board has reported several in-flight engine fires on Piper PA–60 series airplanes due to exhaust system leaks and misrouted oil supply hoses. Piper SB No. 818, dated February 26, 1986, required the disassembly, inspection, replacement of defective or worn parts, and proper re-assembly of the exhaust system on the PA–60 series airplanes. The FAA issued AD 87–07–09, Amendment 39–5600 (52 FR 11631, April 10, 1987), with an effective date of May 15, 1987, which implemented Piper SB

No. 818. On April 18, 1983, Piper released SB No. 761 requiring replacement and modification of engine oil hoses and associated hardware.

These actions alleviate the above stated hose conditions by replacing some hoses with higher temperature rated hoses, and also provide for rerouting these and other serviceable hoses for increased clearances between the hoses, the exhaust stacks, and the turbochargers. On January 3, 1986, Piper released SB No. 815 requiring the replacement of ties securing turbochargers oil supply hoses with metal clamps and hardware so as to provide increased security and clearance between the hoses, the exhaust stacks and the turbochargers.

Since the condition described herein is likely to exist or develop in other Piper Model PA–60 airplanes of the same design, the proposed AD would require replacement and rerouting of certain fluid carrying hoses and the proper securing of these hoses as specified in Piper SB Nos. 761 and 815 on the subject airplanes.

The FAA has determined there are approximately 325 airplanes affected by the proposed AD. The one-time cost of implementing the proposed AD is estimated to be $1,040 per airplane. The total cost is estimated to be $338,000 to the private sector. The cost of complying with this proposal would not have a significant financial impact on any small entities owning affected airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et. seq.*) which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1345(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Piper (Aerostar):** Applies to Models PA–60–601 equipped with an automatic waste gate controller per Retrofit Option 106 (S/N 61–0001–004 through 61–0334–111), PA–60–601 (S/N 61–0342–112 through 61–0880–8162157), PA–60–601P (S/N 61P–0157–001 through 61P–0860–8163455), PA–60–602P (S/N 62P–0750–8165001, and 62P–0861–8165002 through 60–8365010), PA–60–700P (S/N 60–8423001 through 60–8423025) airplanes certificated in any category.

*Compliance:* Required within the next 50 hours time-in-service after the effective date of this AD unless already accomplished.

To reduce the possibility of damage to the oil supply which if not corrected could result in an in-flight fire, oil starvation and/or engine failure, accomplish the following:

(a) Replace and modify the engine oil hoses and associated hardware in accordance with the instructions contained in Piper Service Bulletin (SB) No. 761, dated April 18, 1983, and Piper SB No. 815, dated January 3, 1986.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on August 2, 1988.

**M. C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88–17872 Filed 8–8–88; 8:45 am]

BILLING CODE 4910–13–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**14 CFR Part 1260**

**Changes to NASA Grant and Cooperative Agreement Handbook**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Grant and Cooperative Agreement Handbook is amended to (1) establish criteria for grant officer appointments, (2) maintain consistency with the Federal Acquisition Regulation (FAR) and NASA FAR Supplement (NFS) unsolicited proposal regulations and, (3) incorporate the new governmentwide suspension and debarment regulations.

**DATE:** Comments are due not later than September 8, 1988.

**ADDRESS:** Comments should be addressed to : W. A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** W. A. Greene, Telephone: (202) 453–8923.

**SUPPLEMENTARY INFORMATION:**

**Background**

All unsolicited proposals submitted to NASA are governed by the FAR and NFS. However, all processing steps for proposals leading to contracts are not applicable to proposals resulting in grants. The coverage on these variations has been revised to ensure consistency with the FAR and NFS and edited to remove any unnecessary language or overlap. NASA implementation of the common rule at 14 CFR Part 1265, Governmentwide Debarment and Suspension (Nonprocurement) requires the addition of a provision to NASA grants and cooperative agreements and inclusion of supporting instructions.

**Impact**

This proposed rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that these changes will not have a significant economic affect on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule does not impose any reporting or bookkeeping requirements subject to the Paperwork Reduction Act of 1980.

**List of Subjects in 14 CFR Part 1260**

Grants.

S.J. Evans,

*Assistant Administrator for Procurement.*

**PART 1260—[AMENDED]**

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

**Authority:** Pub. L. 97–258, 31 U.S.C. 6301 *et seq.*

**Subpart 1—General**

**§ 1260.107 [Amended]**

2. In § 1260.107, paragraph (f) is revised to read as follows:

* * * * *

(f) *Grants officer.* A qualified NASA employee who has been delegated the authority to award and administer grants and cooperative agreements.

* * * * *

3. Section 1260.110 is added to read as follows:

**§ 1260.110 Grants officer qualifications.**

Procurement officers shall (1) establish installation requirements for experience, education, and training of grants officers and (2) develop procedures to ensure that only individuals meeting these requirements are designated as grants officers.

**Subpart 2—Basic Policies**

**§ 1260.202 [Amended]**

4. Section 1260.202 is amended by revising paragraphs (b) (1) through (4) and (c) to read as follows:

* * * * *

(b) *Unsolicited Proposals.*—(1) *Applicable regulations.* FAR, 49 CFR 15.5 and the NFS, 48 CFR 1815.5, apply to unsolicited proposals which result in grants and cooperative agreements, unless otherwise noted in this § 1260.202(b).

(2) *Preliminary discussions.* In accordance with FAR, 48 CFR 15.504, contact with agency technical personnel prior to proposal submission is permissible and is encouraged to determine if preparation of a formal submission is warranted. Such discussions, confined to the limited objectives of conveying to the potential offeror an understanding of the agency mission and needs relative to the type of effort contemplated, do not jeopardize the unsolicited status of any subsequently submitted proposal.

(3) *Proposal validity.* If an invalid proposal is received for funding action, the grants officer should give the institution an opportunity to provide the missing information and should notify the sponsoring technical office of any resultant substantive changes. In the event excessive delay or possible cancellation of the action is contemplated, the sponsoring office should be notified. In determining proposal validity, note that a broad agency announcement shall not be considered to be an "acquisition requirement" as the term is used at FAR, 48 CFR 15.507(a)(2).

(4) *Renewal proposals.* NFS, 48 CFR 1815.505–70 does not apply. Proposals for renewal of ongoing projects generally emphasize changes since the original award was made and may be simpler than proposals for new efforts. For renewal purposes, solicited proposals received in response to NASA Research Announcements (NRA) may be used to fulfill the unsolicited proposal requirement (see Section 1260.402 and NFS, 48 CFR 1835.016–70).

* * * * *

(c) *Solicited Proposals.* As a result of the instrument selection criteria specified by Pub. L. 97–258 and NASA's implementation in § 1260.203, the award of a grant or cooperative agreement based on a solicited proposal may be appropriate. Grants and cooperative agreements based on solicited proposals are most likely to result from proposals submitted in response to broad agency announcements, such as NRAs or "Announcements of Opportunity" (see NFS, 48 CFR 1870.103).

5. Section 1260.210 is added to read as follows:

**§ 1260.210 Debarment and suspension.**

Grant officers will follow the procedures in NMI ____, Nonprocurement Debarment and Suspension, in implementation of 14 CFR Part 1265. Before making an award, the grants officer shall ensure that the participant's status has been verified (14 CFR 1265.505 (d) and (e)) and the certification requirement at 14 CFR 1265.510 has been met. If the required certification has not been submitted with the proposal, the grants officer shall obtain the certification before proceeding.

**Subpart 4—Research Grant and Cooperative Agreement Provisions**

6. Section 1260.420 is amended as set forth below:

**§ 1260.420 [Amended]**

a. In paragraph (d), the phrase "(b), above, shall" is revised to read "(b), (e), and (f) of this section shall".

b. Paragraph (g) is added to read as follows:

* * * * *

(g) Effective October 1, 1988, the following provision shall be appended, as a special condition, to all grants and cooperative agreements entered into after that date (pending its inclusion in NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements):

**Debarment and Suspension (Oct 1988)**

NASA grants and cooperative agreements, except for those to foreign institutions, are subject to the provisions of 14 CFR Part 1265, Governmentwide Debarment and Suspension (Nonprocurement). The certification required by that regulation must also accompany extension proposals.

[FR Doc. 88–17964 Filed 8–8–88; 8:45 am]

BILLING CODE 7510–01–M

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Parts 270, 274, 275, and 279**

**[Release Nos. IC–16511, IA–1133; File No. S7–16–88]**

**Forms for Filings by Accountants**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposal of forms and amendments to related rules.

**SUMMARY:** The Commission is proposing for comment three new forms to be used by accountants when meeting current filing requirements under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The proposed forms would, if adopted, facilitate the proper filing of examination certificates with the Commission. Use of the forms would result in a greater accessibility of information to both investors and the Commission's staff.

**DATE:** Comments must be received on or before September 23, 1988.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–16–88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** John McGuire, Attorney, or Thomas S. Harman, Chief of Office, (202) 272-2107 Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today is publishing for comment proposed Forms N-17f-1, N-17f-2, and ADV-E, which would serve as cover pages for examination certificates filed by accountants pursuant to rules 17f-1 (17 CFR 270.17f-1) and 17f-2 (17 CFR 270.17f-2) under the Investment Company Act of 1940 ("1940 Act") and rule 206(4)-2 (17 CFR 275.206(4)-2) under the Investment Advisers Act of 1940 ("Advisers Act"). In addition, the Commission is proposing rule revisions to require the use of the proposed forms.

## Discussion

Rules 17f-1, 17f-2, and 206(4)-2 regulate certain aspects of how a management investment company or an investment adviser maintains custody of securities and other assets. Among other things, these rules require than an independent public accountant verify by actual examination: (1) Securities or similar investments of a management investment company that are placed in the custody of a company that is a member of a national securities exchange;[1] (2) securities and similar investments of a management investment company maintained in the custody of such company;[2] and (3) securities and funds of clients in the possession or custody of an investment adviser.[3]

After these examinations, the accountant must promptly file with the Commission a certificate stating that it has made such an examination and describing the extent of the examination.[4] When the Commission receives the examination certificates, the certificates often cannot be matched with the appropriate investment company or investment adviser. The certificates do not always include the company's or adviser's SEC file number and may not refer to the same name as found on the company's or adviser's registration form, thus making it difficult for Commission staff to place the certificate in the correct file or determine whether each company and adviser is complying with Commission rules. Consequently, it is difficult for the Commission staff, as well as investors and other interested persons, to review the examination certificates.

The related rules, 17f-1, 17f-2, and 206(f)-2, would be revised to require that the appropriate proposed form, Forms N-17f-1, N-17f-2, and ADV-E, be attached as a cover sheet to all examination certificates filed with the Commission.[5] The proposed forms would require investment companies and investment advisers to provide their SEC file number, name, and address. Investment companies and investment advisers would be required to provide the appropriate form to any public accountant conducting an examination required by rules 17f-1, 17f-2, or 206(4)-2. Under the amended rules the accountant would then file with the Commission the examination certificate attached to the appropriate form.[6] The original and one copy of the examination certificate and attached form would be filed with the Commission's Washington, DC office, and one copy would be filed with the regional office in the region in which the company's or adviser's principal place of business is located.[7]

The Commission is also considering and seeks comment on an alternative to the proposed Forms N-17f-1, N-17f-2, and ADV-E. Due to the similarity of purpose of the proposed forms, the Commission is considering, in the alternative, the adoption of a single form that would serve as a cover sheet for all examination certificates filed under either the 1940 Act or the Advisers Act. The single form would follow the content of the proposed forms but would require the investment company or investment adviser to indicate, in addition, the rule under which the examination certificate is being filed. Comment is invited as to the costs and benefits of adopting either the three proposed forms or the single form.

In proposing these forms and related rule revisions, the Commission is making no statement as to the circumstances under which companies and advisers become subject to the provisions of Rules 17f-1, 17f-2, and 206(4)-2. It remains the sole responsibility of each investment company or investment adviser and its counsel to determine whether the provisions of any of these rules are applicable.[8]

## Cost/Benefit Analysis

The changes proposed today would neither require disclosure of new information nor impose any significant new cost. The proposed forms would simply serve as a cover page to documents already required to be filed and would aid Commission staff in matching filed examination certificates with the appropriate investment company or investment adviser.

The Commission invites specific comment on its assessment of the costs and benefits associated with today's proposal, including estimates of any costs and benefits perceived by commenters.

## Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the forms and amendments proposed herein would not.

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[1] Rule 17f-1(b)(4) [17 CFR 270.17f-1(b)(4)]

[2] Rule 17f-2(f) [17 CFR 270.17f-2(f)].

[3] Rule 206(f)-2(e)(5) [17 CFR 275.206(4)-2(a)(5)].

[4] To make a complete examination of the securities, as required under rules 17f-1 and 17f-2, the accountant must not only make a physical examination of the securities themselves, or in some cases obtain confirmation, but must also reconcile the physical count or confirmation with the book records. A necessary prerequisite to the reconciliation would be an examination of the investment accounts and support records, including an adequate check or analysis of the security transactions since the last examination and the entries made thereto. The certificate should include, in general terms, an appropriate description of the scope of the examination of the accounts and the physical examination or confirmation of the securities, and should comply with the usual technical requirements as to dating, salutation, and manual signature. Investment Company Act Rel. No. 279 (Dec. 11, 1941) (11 FR 10924 (Sept. 27, 1946) (1937-1982 Accounting Series Releases Transfer Binder) Fed. Sec. L. Rep. (CCH) § 72,045. The nature and extent of the examination and certificate required by rule 206(4)-2 is described in Investment Advisers Act Rel. No. 201 (May 26, 1966) [31 FR 7821 (June 2, 1966)] [1937-1982 Accounting Series Releases Transfer Binder] Fed. Sec. L. Rep. (CCH) section 72,125.

[5] Each form was designed as a uniform for filing examination certificates required by the Commission and various jurisdictions.

[6] It remains the responsibility of the investment company or investment adviser to assure that the examination certificate is properly filed with the Commission.

[7] Investment Advisers Act Rel. No. 201 (May 26, 1966) (31 FR 7821 (June 2, 1966) suggested that examination certificates filed pursuant to rule 206(4)-2 be filed with both the Commission's Washington office and the appropriate regional office. The Commission now proposes to requires this dual filing for all examination certificates filed under either Rules 17f-1, 17f-2, or 206(4)-2.

[8] The Commission staff has discussed the circumstances under which the provisions of these rules are applicable to investment companies and investment advisers on several occasions. *See, e.g.*, Kramer, Levin, Nessen, Kamin & Frankel (pub. avail. June 27, 1983) (rule 17f-1); Pegasus Income and Capital Fund, Inc. (pub. avail. Dec. 31, 1977); IPI—Income and Price Index Fund (pub. avail. Dec. 12, 1980); Composite Group of funds (pub. avail. March 2, 1987); The Rodney Square Fund (pub. avail. June 15, 1987) (rule 17f-2); and Investment Advisers Act Rel. No. 1009 (Dec. 3, 1985) (50 FR 49835 (Dec. 5, 1985)) (interpreting rule 206(4)-2).

if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

**List of Subjects in 17 CFR Parts 270, 274, 275, and 279**

Investment Companies, Reporting and recordkeeping requirements, Securities, Investment Advisers.

**Text of Proposals**

The Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority for Part 270 continues to read, in part, as follows:

**Authority:** Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted.

2. By revising paragraph (b)(4) of § 270.17f–1 to read as follows:

**§ 270.171–1 Custody of securities with members of national securities exchanges.**

* * * * *

(b) * * *

(4) Such securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the investment company, and shall be examined by such accountant at least one other time, chosen by the accountant, during each fiscal year. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–1 and transmitted to the Commission promptly after each examination.

* * * * *

3. By revising paragraph (f) of § 270.17f–2 to read as follows:

**§ 270.171–2 Custody of investments by registered management investment company.**

* * * * *

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–2 and transmitted to the Commission promptly after each examination.

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority for Part 274 continues to read, in part, as follows:

**Authority:** The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

5. By adding § 274.219 to read as follows:

**§ 274.219 Form N–17f–1, cover page for each certificate of accounting of securities and similar investments of a management investment company in the possession or custody of a member of a national securities exchange, filed pursuant to rule 17f–1.**

**Text of Form N–17f–1**

See Appendix A. Form N–17f–1 will not be codified in the Code of Federal Regulations.

6. By adding § 274.220 to read as follows:

**§ 274.220 Form N–17f–2, cover page for each certificate of accounting of securities and similar investments in the possession or custody of a registered management investment company, filed pursuant to rule 17f–2.**

**Text of Form N–17f–2**

See Appendix B. Form N–17f–2 will not be codified in the Code of Federal Regulations.

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 would continue to read:

**Authority:** Secs. 203, 54 Stat. 850 as amended, 15 U.S.C. 80b–3; sec. 204, 54 Stat. 852, as amended 15 U.S.C. 80b–4; sec. 206A, 84 Stat. 1433 as added, 15 U.S.C. 80b–6A; sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b–11.

8. By revising paragraph (a)(5) of § 275.206(4)–2 as follows:

**§ 275.206(4)–2 Custody or possession of funds or securities of clients.**

(a) * * *

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a complete Form ADV–E and transmitted to the Commission promptly after each examination.

* * * * *

## PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

9. The authority citation for Part 279 would continue to read:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

10. By adding § 279.8 to read as follows:

**§ 279.8 Form ADV–E, cover page for certificate of accounting of securities and funds in possession or custody of an investment adviser.**

**Text of Form ADV–E**

See Appendix C. Form ADV–E will not be codified in the Code of Federal Regulations.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

August 2, 1988.

BILLING CODE 8010–01–M

## Appendix A

U.S. Securities and Exchange Commission
Washington, D.C. 20549

**FORM N-17f-1**

Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Possession or Custody of Members of National Securities Exchanges

Pursuant to Rule 17f-1 [17 CFR 270.17f-1]

| OMB APPROVAL |
|---|
| OMB Number: 3235-<br>Expires:Pending OMB action<br>Estimated average burden hours per response....0.05 |

| 1. Investment Company Act File Number:<br>811- | Date examination completed: |
|---|---|

2. State Identification Number:

| | | | | | |
|---|---|---|---|---|---|
| AL | AK | AZ | AR | CA | CO |
| CT | DE | DC | FL | GA | HI |
| ID | IL | IN | IA | KS | KY |
| LA | ME | MD | MA | MI | MN |
| MS | MO | MT | NE | NV | NH |
| NJ | NM | NY | NC | ND | OH |
| OK | OR | PA | RI | SC | SD |
| TN | TX | UT | VT | VA | WA |
| WV | WI | WY | PUERTO RICO | | |
| Other (specify): | | | | | |

3. Exact name of investment company as specified in registration statement:

4. Address of principal executive office: (number, street, city, state, zip code)

**INSTRUCTIONS**

This form must be completed by investment companies who place or maintain securities or similar investments in the custody of a company that is a member of a national securities exchange.

**Investment Company**

1. All items must be completed by the investment company.

2. Give this Form to the independent public accountant who examines securities and similar investments in the custody or possession of a company that is a member of a national securities exchange, in compliance with Rule 17f-1 under the Act and state law.

**Accountant**

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f-1 under the Act and appropriate state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

**THIS FORM MUST BE GIVEN TO YOUR INDEPENDENT PUBLIC ACCOUNTANT**

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, D.C. 20503.

Appendix B

U.S. Securities and Exchange Commission
Washington, D.C. 20549

**FORM N-17f-2**

Certificate of Accounting of Securities and Similar Investments in the Possession or Custody of Management Investment Companies Pursuant to Rule 17f-2 [17 CFR 270.17f-2]

| OMB APPROVAL |
|---|
| OMB Number: 3235- |
| Expires:Pending OMB action |
| Estimated average burden hours per response....0.05 |

1. Investment Company Act File Number:

811-

Date examination completed:

2. State Identification Number:

| | | | | | |
|---|---|---|---|---|---|
| AL | AK | AZ | AR | CA | CO |
| CT | DE | DC | FL | GA | HI |
| ID | IL | IN | IA | KS | KY |
| LA | ME | MD | MA | MI | MN |
| MS | MO | MT | NE | NV | NH |
| NJ | NM | NY | NC | ND | OH |
| OK | OR | PA | RI | SC | SD |
| TN | TX | UT | VT | VA | WA |
| WV | WI | WY | PUERTO RICO | | |
| Other (specify): | | | | | |

3. Exact name of investment company as specified in registration statement:

4. Address of principal executive office: (number, street, city, state, zip code)

**INSTRUCTIONS**

This form must be completed by investment companies who possess or have custody of securities or similar investments.

**Investment Company**

1. All items must be completed by the investment company.

2. Give this Form to the independent public accountant who examines securities and similar investments in the custody or possession of the investment company, in compliance with Rule 17f-2 under the Act and state law.

**Accountant**

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f-2 under the Act and appropriate state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

**THIS FORM MUST BE GIVEN TO YOUR INDEPENDENT PUBLIC ACCOUNTANT**

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, D.C. 20503.

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## Appendix C

U.S. Securities and Exchange Commission
Washington, D.C. 20549

**FORM ADV-E**

Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser

Pursuant to Rule 206(4)-2 [17 CFR 275.206(4)-2]

| OMB APPROVAL |
|---|
| OMB Number: 3235-<br>Expires:Pending OMB action<br>Estimated average burden hours per response....0.05 |

| 1. Investment Adviser Act SEC File Number:<br>801- | Date examination completed: |
|---|---|

2. State Identification Number:

| | | | | | |
|---|---|---|---|---|---|
| AL | AK | AZ | AR | CA | CO |
| CT | DE | DC | FL | GA | HI |
| ID | IL | IN | IA | KS | KY |
| LA | ME | MD | MA | MI | MN |
| MS | MO | MT | NE | NV | NH |
| NJ | NM | NY | NC | ND | OH |
| OK | OR | PA | RI | SC | SD |
| TN | TX | UT | VT | VA | WA |
| WV | WI | WY | PUERTO RICO | | |

Other (specify):

3. Full name of investment adviser: (If individual, state last, first, middle name):

4. Name under which business is conducted, if different from above:

5. Address of principal place of business (number, street, city, state, zip code):

**INSTRUCTIONS**

This form must be completed by investment advisers who possess or have custody of client funds or securities. This form may not be used to amend any information included in an investment adviser's registration statement (e.g. business address).

**Investment Adviser**

1. All items must be completed by the investment adviser.

2. Give this Form to the independent public accountant who examines client funds and securities in the custody or possession of the investment adviser, in compliance with Rule 206(4)-2(a)(5) under the Act and state law.

**Accountant**

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 206(4)-2(a)(5) under the Act and appropriate state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment adviser's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

**THIS FORM MUST BE GIVEN TO YOUR INDEPENDENT PUBLIC ACCOUNTANT**

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, D.C. 20503.

BILLING CODE 8010-01-C

**Regulatory Flexibility Certification**

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed forms N–17f–1 and N–17f–2, and related amendments to rules 17f–1 (17 CFR 270.17f–1) and 17f–2 (17 CFR 270.17f–2), under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and Form ADV–E, and the related amendment to rule 206(4)–2 (17 CFR 275.206(4)–2) under the Investment Advisers Act of 1940 (15 U.S.C. § 80b–1 *et seq.*), set forth in Investment Company Act Rel. No. 16511 and Investment Advisers Act Rel. No. 1133, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed forms would serve as cover sheets to accountant examination certificates currently required to be filed. Consequently, only entities currently required to file an examination certificate would be required to file the proposed forms. The proposed forms would neither require additional information to be gathered or disclosed nor impose a new filing burden. Therefore, adoption of proposed forms N–17f–1, N–17f–2, and ADV–E, and the related rule amendments would not have any significant economic impact on a substantial number of small entities.

Dated: August 2, 1988.

**David S. Ruder,**

*Chairman.*

[FR Doc. 88–17920 Filed 8–8–88; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 301

[LR–133–86]

### Returns Relating to Persons Receiving Contracts From Federal Executive Agencies

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of proposed rulemaking (LR–133–86), which was published in the **Federal Register** on Friday, July 29, 1988 (53 FR 28669). The proposed rules concerned compliance with the new reporting requirements imposed by section 6050M of the Internal Revenue Code, which was added to the Code by the Tax Reform Act of 1986.

**FOR FURTHER INFORMATION CONTACT:** Keith Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T) or telephone (202) 566–3458 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 29, 1988, the **Federal Register** published a notice of proposed rulemaking providing guidance for complying with the provisions of section 6050M of the Internal Revenue Code of 1986.

**Need for Correction**

As published, the notice of proposed rulemaking contains omitted lines and typographical errors which may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking, which was the subject of FR Doc. 88–17134 (53 FR 28669), is corrected as follows:

**Paragraph 1.** In the preamble, under the heading "Explanation of Provisions", on page 28670, column 2, the sentence beginning on line 34 and ending on line 40, which reads, "A special reporting rule permitting the use of paper reporting on Form 8596 is provided for those Federal executive agencies that reasonably expect to enter into fewer than 250 contracts to be reported for a calendar year." is removed and the sentence "A special reporting rule permitting the use of paper reporting on Form 8596 for each quarter of a one year period beginning on an October 1 is provided for those Federal executive agencies that reasonably expect on that October 1 to enter into fewer than 250 contracts to be reported for that one year period." is added in its place.

**Par. 2.** On page 28672, column 3, § 301.6050M–1, line 6 from the bottom of the column, should end with a "period" so as to read "from certain Federal executive agencies."

**Par. 3.** On page 28672, column 3, § 301.6050M–1, line 5 from the bottom of the column, which reads "(temporary)." should be removed with nothing added in its place.

**Dale D. Goode,**

*Chief, Technical Section, Legislation and Regulations Division.*

[FR Doc. 88–17961 Filed 8–8–88; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

[Docket No. S–102A]

### Occupational Safety and Health Control of Hazardous Energy Sources (Lockout/Tagout); Notice of Hearing and Extension of Comment Period

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** Notice of hearing; extension of comment period.

**SUMMARY:** This notice schedules an informal public hearing on the proposed standard on the control of hazardous energy sources (lockout/tagout) which was published in the **Federal Register** on April 29, 1988 (53 FR 15496). This notice also extends the period for the submission of comments on the issues raised in this notice from June 28, 1988, until September 22, 1988.

**DATES:** The hearing will begin in Washington, DC, on September 22, 1988, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Houston, Texas, on September 27, 1988, at 9:30 a.m., for the receipt of testimony of those parties who prefer to testify at that location. Notices of intention to appear at the public hearing and testimony and evidence to be introduced into the record must be postmarked by September 8, 1988. Written comments on the issues raised in this notice must be postmarked by September 22, 1988.

**ADDRESSES:** The informal public hearing will begin in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. The hearing will be reconvened at the Guest Quarters Suite Hotel; 5353 Westheimer Road; Houston, Texas (713–961–9000).

Four copies of written comments must be sent to the Docket Office, Docket No. S–012A; U.S. Department of Labor, Occupational Safety and Health Administration; Room N2439 Rear; 200 Constitution Avenue NW.; Washington, DC 20210.

Four copies of each notice of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall; U.S. Department of Labor, Occupational Safety and Health Administration;

Room N3647; 200 Constitution Avenue NW.; Washington, DC 20210

**FOR FURTHER INFORMATION CONTACT:**
*Hearing:* Mr. Tom Hall; U.S. Department of Labor, Occupational Safety and Health Administration; Room N3647; 200 Constitution Avenue NW.; Washington, DC 20210 (202–523–8615). For additional information on how to submit a notice of intention to appear, see the section on public participation below.

*Proposal:* Mr. James F. Foster; U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647; 200 Constitution Avenue NW.; Washington, DC 20210 (202–523–8148).

**SUPPLEMENTARY INFORMATION:**

**Comments and Information Requested**

On April 29, 1988, OSHA published a proposed standard for the control of hazardous energy sources (lockout/tagout) in the **Federal Register** (53 FR 15495). The requirements of the standard were proposed to protect employees from the unexpected release of hazardous energy while maintenance, repair or servicing is being conducted on machines, equipment or systems. Interested persons were given until June 28, 1988, to submit written comments on the proposal, to file objections, and to request a public hearing. In response to the comments received to date, OSHA has decided to extend the comment period and to schedule an informal public hearing on the issues discussed below.

**Public Hearing**

OSHA has received 87 comments on the proposal, including 24 requests for a hearing. In response to the objections raised and hearing requests received, and in accordance with section 6(b)(3) of the Occupational Safety and Health Act, OSHA has scheduled an informal public hearing to begin on September 22, 1988. This hearing will be held to examine the following issues raised in the requests for a hearing:

(1) The International Molders and Allied Workers Union (Exhibit (Ex.) 2–6); the United Paperworkers International Union (Ex. 2–12); the United Steelworkers of America (Ex. 2–27); the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Ex. 2–29 and 2–79); and the Virginia State American Federation of Labor and Congress of Industrial Organizations (Virginia AFL–CIO) (Ex. 2–44) objected to the proposal not requiring the use of both locks and tags for all energy isolation. They contend that just tagging out a machine or equipment does not provide adequate protection. By contrast, the Edison Electric Institute (EEI) (Ex. 2–33) stated in their hearing request that "Electric utilities have long used tagging systems successfully to protect their workers." OSHA requests information on the need to specify lockout *and* tagout as opposed to lockout *or* tagout as the necessary and sufficient means to protect employees during the servicing or maintenance of machines or equipment. OSHA also solicits comments and supporting rationale on what additional precautions, procedures and safeguards are necessary and should be mandated to allow the use of only locks or tags, respectively.

(2) The Oil, Chemical and Atomic Workers International Union (OCAW) (Ex. 2–11, 2–16, 2–17, 2–19, 2–23, 2–24, 2–25, 2–30, 2–48, 2–65, 2–82, and 2–84), and the United Steelworkers of America (Ex. 2–27) objected to the performance language of the standard. OSHA requests comments on which provisions, if any, of the proposed standard should be stated in more specific terms, and the reasons for any suggested changes.

(3) The United Steelworkers of America (Ex. 2–27); the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America (UAW) (Ex. 2–29 and 2–79); and the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) (Ex. 2–42) objected to the exclusion of certain industries and activities from coverage by this proposed standard. Their comments include objections to the exclusion of construction, agriculture, maritime, oil and gas well drilling industries and the public utilities. Some of these commenters also stated that applying the standard only to servicing and maintenance is too narrow, whereas, the exclusion of so-called minor repairs, adjustments and operation is too broad. Additionally, the exclusion of requirements for cord and plug type equipment is considered unwarranted by these commenters.

In the preamble of the proposal (53 FR 15504), OSHA explained its reasons for limiting the scope of the proposal to general industry, and also indicated why specific exemptions were provided. However, in response to the hearing requests, OSHA requests information on whether or not there is a need to expand the scope and application of this standard to include a greater number or type of industries and activities than was proposed, together with data and evidence which would support such expansion.

(4) The United Steelworkers of America (Ex. 2–27) and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Ex. 2–29 and 2–79) objected to the general nature of the training requirements. These commenters stated that the training requirements should list the subject material on which the employees will be trained and state the frequency at which any retraining must be conducted. OSHA requests information on the appropriate form and content of the required training, and whether the standard should specify a minimum frequency for retraining.

(5) The International Union, United Automobile and Agricultural Implement Workers of America (UAW) (Ex. 2–29 and 2–79) objected to the failure of OSHA to include requirements for employee participation in the formulation of lockout/tagout procedures and training programs. OSHA solicits information on the need or desirability for the standard to provide explicitly for such participation.

**Public Participation**

*Extension of Comment Period*

Interested persons are invited to submit written comments on the issues raised in this notice. Written comments must be postmarked by September 22, 1988. Four copies of these comments must be submitted to the Docket Office, Docket No. S–012A; U.S. Department of Labor, Occupational Safety and Health Administration; Room N2439 Rear; 200 Constitution Avenue NW.; Washington, DC 20210 (Telephone (202) 523–7894). All materials submitted will be available for inspection and copying at this address.

Additionally, under section 6(b)(3) of the Occupational Safety and Health Act, and 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in this notice will be provided at an informal public hearing.

*Notice of Intention to Appear*

Persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear with Mr. Tom Hall; U.S. Department of Labor, Occupational Safety and Health Administration; Division of Consumer Affairs, Room N–3647; 200 Constitution Avenue NW.; Washington, DC 20210 (202–523–8615). This notice must be postmarked by September 8, 1988. The notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (address previously listed), must contain the following information:

1. The name, address and telephone number of each person who will testify;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The location at which the person wishes to make the presentation;
5. The specific issues that will be addressed;
6. A detailed statement of the position that will be taken with respect to each issue addressed;
7. Whether the party intends to submit documentary evidence; and
8. A summary of the evidence proposed to be adduced at the hearing.

*Filing of Testimony and Evidence Before the Hearing*

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony including all documentary evidence, to the OSHA Division of Consumer Affairs. This material will be available for inspection and copying at the Docket Office. This material must be postmarked by September 8, 1988. Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

*Conduct of the Hearing*

The hearing will commence at 9:30 a.m., on September 22, 1988, in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210, with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

At the conclusion of the Washington session, the hearing will recess and reconvene in Houston, Texas at 9:30 a.m. on September 27, 1988. It is important that participants indicate whether they will be testifying in Washington, DC, or Houston, Texas, so that adequate time may be allotted for their presentations.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued, or a determination will be made not to issue a standard, based on the entire record of the proceeding, including the earlier written comments and evidence received from the public.

## Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to Sec. 8(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC this 4th day of August 1988.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

[FR Doc. 88–17973 Filed 8–8–88; 8:45 am]

BILLING CODE 4510–26–M

**Pension and Welfare Benefits Administration**

**29 CFR Part 2510**

## Employee Retirement Income Security Act; Proposed Regulation Relating to the Definition of Adequate Consideration; Notice of Hearing

**AGENCY:** Department of Labor.

**ACTION:** Notice of hearing.

**SUMMARY:** This document contains a notice of a hearing regarding proposed regulations under the Employee Retirement Income Security Act of 1974 (the Act of ERISA) and the Federal Employees' Retirement System Act of 1986 (FERSA). The proposed regulations clarify the definition of the term "adequate consideration" provided in section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA for assets other than securities for which there is a generally recognized market. The proposed regulations were set forth in a notice of proposed rulemaking published in the **Federal Register** at 53 FR 17631 (May 17, 1988).

**DATES:** The hearing will be held Wednesday, August 31, 1988 beginning at 9:15 a.m. e.s.t. If adopted as proposed, the regulation will be effective for transactions taking place after the date 30 days following publication of the regulation in final form.

**ADDRESSES:** The hearing will be held in Room S–4215 A, B & C of the Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Maguire , Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–8506 (not a toll-free number) or Mark A. Greenstein, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523–7901 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On May 17, 1988, the Department of Labor (the Department) published a notice of proposed rulemaking in the **Federal Register** (53 FR 17631) relating to the definition of adequate consideration under section 3(18)(B) of ERISA and section 8477(a)(2)(B) FERSA. In that notice, the Department invited all interested persons to submit written comments concerning the proposed regulation on or before July 18, 1988.

The Department has received a number of comments requesting to testify at a public hearing. In view of these requests, and the importance of

the proposed regulations, the Department has decided to hold a hearing on the proposed regulations on Wednesday, August 31, 1988 at 9:15 a.m. e.s.t. in Room S-4215 A, B & C of the Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

Any interested person who wishes to be assured of an opportunity to present oral comments at the hearing should submit by 3:30 p.m. e.s.t., August 24, 1988: (1) A written request to be heard, and (2) an outline (preferably five copies) of the topics to be discussed, indicating the time allocated to each topic. The request to be heard and accompanying outline should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: Adequate Consideration Hearing." Individuals who do not file written comments regarding the proposed regulations many nonetheless request to make oral comments at the hearing.

The Department will prepare an agenda indicating the order of presentation of oral comments. In the absence of special circumstances, each commentator will be alloted ten minutes in which to complete his presentation. Information about the agenda may be obtained on or after August 29, 1988 by telephoning Mark A. Greenstein, Washington, DC (202) 523-7901 (not at toll free number). Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments. The hearing will be transcribed.

**Notice of Public Hearing**

Notice is hereby given that a public hearing will be held on Wednesday, August 31, 1988 regarding proposed regulations (published at 53 17631, May 17, 1988) under section 3(18)(B) of ERISA and section 8477(a)(2)(B) of FERSA relating to the definition of adequate consideration. The hearing will be held beginning at 9:15 a.m. e.s.t., in Room S-4215 A, B & C of the Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

Signed at Washington, DC this 29th day of July, 1988.

**David M. Walker,**

*Assistant Secretary of Labor, Pension and Welfare Benefits Administration, United States Department of Labor.*

[FR Doc. 88-17953 Filed 8-8-88; 8:45 am]

BILLING CODE 4510-29-M

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 202**

**[Docket No. RM 88-6]**

## Registration of Claims to Copyright Mandatory Deposit of Machine-Readable Copies; Proposed Rulemaking

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of new regulations for deposit of certain machine-readable copies. The amendments would revoke the exemption from mandatory deposit, pursuant to section 407 of the Copyright Act of 1976, of machine-readable copies and require deposit of works published in IBM or Macintosh formats for use in the collections of the Library.

**DATES:** Comments should be received on or before October 11, 1988.

**ADDRESSES:** Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8380.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8380.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

Under section 407 of the Copyright Act of 1976, Title 17 of the United States Code, the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit two copies (or, in the case of sound recordings, two phonorecords) of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required deposit does not affect copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights. As a qualification of these general provisions, section 407 also provides that the Register of Copyrights "may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories."

In reliance on this authorization, the Copyright Office, with the approval of the Librarian of Congress, established regulations governing deposit at 37 CFR Chap. II § 202.19, § 202.20, and § 202.21. Section 202.19 establishes the standards governing mandatory deposit of published copies and phonorecords for the Library of Congress. Section 202.20 concerns the required deposit when application is made for registration of a copyright claim with the Copyright Office under section 408 of title 17, U.S.C. Section 202.21 allows deposit of identifying material in lieu of copies or phonorecords in certain cases. In addition, the Library of Congress published its Best Edition Statement specifying the required deposit in instances where two or more different editions were published with notice of copyright.

At the time these policies were first implemented in 1978, machine-readable copies were not widely marketed to the public at large. For this reason, the Library of Congress decided to exempt all works published solely in machine-readable formats from mandatory deposit. The deposit of machine-readable works for purposes of copyright registration was generally established as identifying material comprising the equivalent of the first and last 25 pages of the work.

Since the time these policies were announced, great changes have occurred. As a result of the great popularity of the personal computer, computer software and data bases are in wide public demand. In response to these public needs, the Library has established a Machine-Readable Collections Reading Room. The Reading Room will provide access to two categories of important machine-readable copies.

The first category is standard data that traditionally has only been available in print form (encyclopedias, census figures, standard reference publications, etc.). With the development of computer technology, many standard reference materials have become available in whole or in part in machine-readable form. The Library desires to provide patrons access to these machine-readable reference sources.

Second, the Library desires to provide patrons access to computer software in

IBM or Macintosh formats for the purposes of study and evaluation and to obtain information. One of the primary purposes of this software collection is to allow scholars in the future to study the computer revolution going on today.

The Library is well aware of the significant value of the machine-readable copies that will be available in the reading room. For this reason, use of the terminals will be monitored in order to prevent copying. Library staff rather than library patrons will maintain physical control of the disks and other machine-readable copies. No lending of copies to patrons or other institutions is contemplated.

**2. Proposed Regulation**

In order to build the collections of the Machine-Readable Collections Reading Room, the Library proposes to eliminate the existing broad exemption with respect to machine-readable copies. In order to avoid imposing hardship on software publishers, however, the Library proposes generally to limit the required deposit to one copy of the best edition, rather than the traditional two copies. Additionally, the Library will not demand published data bases that are available *only online.*

Section 202.19 governing mandatory deposit would be changed in two places. Section 202.19(c)(5) would limit the exemption for machine-readable copies to automated databases available only online. Section 202.19(d) would be modified by adding a new subparagraph (vii) allowing for deposit of only one machine-readable copy, except where a copy-guard system is used. In the latter case, two copies are required.

In implementing mandatory deposit for machine-readable copies, the Library intends to demand only copies of works appearing in the formats designated in the Best Edition Statement. As additional assistance to software publishers, the Library does not intend to demand software that requires the utilization of a password or other special authorization.

Demands for deposit pursuant to section 407 will be made, of course, only with respect to works or versions of works that are themselves original works of authorship, eligible for protection under Title 17 of the United States Code.

When final regulations are promulgated, they will be applied prospectively against works published with notice of copyright in the United States for the first time on or after the effective date of the regulations.

If the proposed changes in the mandatory deposit regulation are adopted, the copies demanded by the Library will differ from the identifying material required for copyright registration. The variance occurs because of the lack of standardization of hardware. The Examining Division is required to examine for copyrightable authorship. Machine-readable copies are generally unsuitable for this task because they require utilization of expensive, and often different, hardware. For the present, the Copyright Office continues to require human-readable deposits for examination. The Machine-Readable Collections Reading Room, on the other hand, can only utilize works in those machine-readable formats for which it has acquired hardware. The Copyright Office and the Library have noted the problem and will monitor technological developments and confer with the industry to find a solution as soon as standardization of equipment and budgets permit.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

**List of Subjects in 37 CFR Part 202**

Claims, Claims to copyright, Copyright, Registration requirements.

**Proposed Regulations**

In consideration of the foregoing, the Copyright Office proposes to amend Part 202 of 37 CFR, Chapter II as set forth following the Appendix below.

**PART 202—[AMENDED]**

*Appendix to Part 202 [Amended]*

Appendix—"Best Edition" of Published Copyright Works For The Collection of the Library of Congress is amended by adding a new section VIII governing machine-readable copies. Present section VIII (Works existing in more than one medium) is renumbered to IX. New section VIII is proposed to read as follows:

* * * * *

**VIII. Machine-Readable Copies**

*A. Computer Programs*

1. With documentation and other accompanying material rather than without.
2. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
*3. Format:*
a. PC–DOS or MS–DOS (or other IBM compatible formats, such as XENIX):
i. 5¼" Diskette(s).
ii. 3½" Diskette(s).
iii. Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.
b. Apple MacIntosh:
i. 3½" Diskette(s).
ii. Optical media, such as CD-ROM— best edition should adhere to prevailing NISO standards.

*B. Computerized Information Works, Including Statistical Compendia, Serials, or Reference Works*

1. With documentation and other accompanying material rather than without.
2. With best edition of accompanying program rather than without.
3. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
4. Format:
a. PC–DOS or MS–DOS (or other IBM compatible formats, such as XENIX):
i. Optical media, such as CD–ROM—best edition should adhere to prevailing NISO standards.
ii. 5¼" Diskette(s).
iii. 3½" Diskette(s).
b. Apple MacIntosh:
i. Optical media, such as CD–ROM—best edition should adhere to prevailing NISO standards.
ii. 3½" Diskette(s).

1. The authority citation for Part 202 would continue to read as follows:

**Authority:** Copyright Act, Pub. L. 94–553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 202.19(c)(5) would be revised and § 202.19 would be amended by adding a new paragraph (d)(2)(vii) to read as follows:

**§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.**

* * * * *

(c) * * *

(5) Automated databases available only online in the United States but not including automated databases distributed only in the form of machine-readable copies (such as magnetic tape or disks, punch cards, or the like) from

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits). (17 U.S.C 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

which the work cannot ordinarily be visually perceived except with the aid of a machine or device, and computerized information works in the nature of statistical compendia, serials, and reference works. Also works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety or microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

* * * * *

(d) * * *

(2) * * *

(vii) In the case of published computer programs and published computerized information works, such as statistical compendia, serials, and reference works that are not copy-protected, the deposit of one complete copy of the best edition as specified in the current Library of Congress Best Edition Statement will suffice in lieu of the two copies required by paragraph (d)(1) of this section. If the works are copy-protected, two copies of the best edition are required.

* * * * *

Dated: July 25, 1988.

**Ralph Oman,**

*Register of Copyrights.*

Approved by

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 88-17870 Filed 8-8-88; 8:45am]

BILLING CODE 1410-07-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 88-366, RM-6260]**

### Radio Broadcasting Services; Jupiter, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Dennis L. Johnson, which proposes to allot Channel 288A to Jupiter, Florida as a second FM service, at coordinates 26-56-30 and 80-05-36.

**DATES:** Comments must be filed on or before September 23, 1988, and reply comments on or before October 11, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Daniel F. Van Horn, Arent, Fox, Kintner, Plotkin, and Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036-5339.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-366, adopted June 29, 1988, and released August 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17886 Filed 8-8-88; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-356, RM-6324]**

### Radio Broadcasting Services; Dahlonega, GA and Murphy, NC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Andrews Broadcasting Company, proposing to allot Channel 282A to Dahlonega, Georgia, as its first FM service at coordinates 34-35-06 and 84-02-37. To permit the use of Channel 282A at Dahlonega, petitioner has requested that Channel 274A be substituted for Channel 282A at Murphy, North Carolina at coordinates 35-07-12 and 84-02-06.

**DATES:** Comments must be filed on or before September 23, 1988, and reply comments on or before October 11, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, Baker & Hostetler, 1050 Connecticut Avenue NW., Suite 1100, Washington, DC 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-356, adopted June 29, 1988, and released August 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17887 Filed 8-8-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-370, RM-6311]

## Radio Broadcasting Services; Idaho Falls, ID

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by AJP Investment Co., Inc., which proposes to allot Channel 288C to Idaho Falls, Idaho, as a fourth FM service using city reference coordinates 43-29-30 and 112-02-00.

**DATES:** Comments must be filed on or before September 22, 1988, and reply comments on or before October 7, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry P. Warner, 1900 Avenue of the Stars, Suite 2440—Century City, Los Angeles, California 90067. (Attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-370, adopted June 29, 1988, and released August 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17918 Filed 8-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-369, RM-6282]

## Radio Broadcasting Services; Savanna and Mt. Morris, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Carroll County Communications, Inc., licensee of Station WCCI(FM), Savanna, Illinois, which seeks to substitute Channel 282B1 for Channel 261A and to modify its license to specify the new channel at coordinates 42-07-49 and 90-09-05. To provide for the Savanna modification it will be necessary to substitute Channel 239A for Channel 263A at Mt. Morris, Illinois at coordinates 42-04-14 and 89-27-04. An Order to Show Cause is being issued to M&M Broadcasting, permittee for Channel 263A at Mt. Morris.

**DATES:** Comments must be filed on or before September 22, 1988, and reply comments on or before October 7, 1988.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven A. Lancellotta, Wheeler & Wheeler, Suit 200, 1729 H Street NW., Washington, DC 20006. (Attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-369, adopted June 29, 1988, and released August 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-17919 Filed 8-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-368, RM-6286]

## Radio Broadcasting Services; Burnside, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Lenn R. Pruitt, licensee of Station WJDJ(FM), Burnside, Kentucky, which proposes to substitute Channel 230C2 for Channel 230A at Burnside, and to modify his Class A license to specify the new channel, at coordinates 37-08-30 and 84-30-00.

**DATES:** Comments must be filed on or before September 22, 1988, and reply comments on or before October 7, 1988.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lenn R. Pruitt, P.O. Box 32, Greensburg, Kentucky 42743. (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-368, adopted June 29, 1988, and released August 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The

complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1208. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17888 Filed 8–8–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–355, RM–6396]**

## Radio Broadcasting Services; Indian Springs, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Claire B. Benezra to allot Channel 257A to Indian Springs, Nevada, as it first local FM service. Channel 257A can be allotted to Indian Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 36–34–30 and West Longitude 115–40–06. However, before the allotment can be made, petitioner is requested to furnish additional information concerning the status of Indian Springs as a community for allotment purposes, since it is neither listed in the 1980 U.S. Census nor incorporated.

**DATES:** Comments must be filed on or before September 22, 1988, and reply comments on or before October 7, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Charles A. Magnuson, Carl T. Jones Corporation, 7901 Yarnwood Court, Springfield, Virginia 22153 (Engineering Consultant to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–355, adopted June 30, 1988, and released August 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17889 filed 8–8–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 87–442; RM–6011]**

## Radio Broadcasting Services; Stamford, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of proposal.

**SUMMARY:** This document dismisses a petition filed by Jon Bruce Thoen, formerly permittee of Station KZOM(FM), Channel 221A, Stamford, Texas, proposing the substitution of Channel 246C2 for Channel 221A at Stamford, because of his failure to demonstrate a continuing interest in the proposal. With this action, this proceeding is terminated.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87–442, adopted June 30, 1988, and released August 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–17890 Filed 8–8–88; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 53, No. 153
Tuesday, August 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Rural Electrification Administration

### Environmental Impact Statement; Oglethorpe Power Co.

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Adoption of final environmental impact statement and availability of information supplement.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmetal Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provision of NEPA (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), is adopting the "Final Environmental Impact Statement—Rocky Mountain Project, No. 2725—Georgia" (FEIS) prepared by the Federal Power Commission (now known as the Federal Energy Regulatory Commission (FERC)) and the "Final Supplement to the FEIS Rocky Mountain Project, No. 2725" prepared by FERC as REA's Final Environmental Impact Statement for its Federal action. Notice is also hereby given that the REA is issuing an Information Supplement in connection with a request for REA financing assistance for ownership participation in the 760 megawatt Rocky Mountain Pumped Storage Hydroelectric Project (Project) by Oglethorpe Power Corporation (OPC).

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex M. Cockey, Jr., Director, Southeast-Area Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, Washington, DC 20250–1500, telephone number (202) 382–8436 or Mr. Dale R. Murphy, Project Director, Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–1349, telephone number (404) 496–7796.

**SUPPLEMENTARY INFORMATION:** The Project is located at Rocky Mountain on Heath Creek in Floyd County, Georgia, 10 miles northwest of the City of Rome. It involves the construction of a hydroelectric facility that will store water at the base of Rocky Mountain in 3 reservoirs totaling 1,200 acres to be created by impounding Heath Creek. A 221-acre reservoir will be constructed at the top of Rocky Mountain. During off-peak hours, water from the lower reservoir will be pumped to the upper reservoir through a system of penstocks, a horizontal tunnel and a vertical shaft in Rocky Mountain. During peak hours when additional generating capacity is needed, the water in the upper reservoir will be released through Rocky Mountain to a powerhouse and back into the lower reservoir. The Project also includes 2.7 miles of 230 KV transmission line and a switching station. Georgia Power Company (GPC) started construction on the Project in 1978 and estimates that it is 15 percent complete today. Extensive clearing of the site has already taken place. Alternatives to OPC's involvement in the Project include no action, load management/conservation, construction of generating resources, and the purchase of power. A more detailed description of the Project is provided in the Information Supplement.

The FEIS for the Project was issued by the Federal Power Commission in May 1976 in connection with the licensing of the Project to GPC. FERC issued the Final Supplement to the FEIS in June 1981, in connection with the relocation of the lower reservoir dam, construction of two smaller dams and a permanent diversion channel. On January 28, 1988, FERC issued an order transferring the license to construct, maintain, and operate the project from GPC to OPC and GPC subject to the filing at FERC of the instruments evidencing the transfer of the Project. OPC and GPC propose to own the Project as tenants in common. OPC will be acquiring a majority interest in the Project and assume the responsibility for completion and operation of the Project subject to obtaining requisite approvals.

REA has reviewed the FEIS and the Final Supplement to the FEIS and has independently determined that these documents together meet the standards for an adequate environmental impact statement. In addition, REA has reviewed other documents including an environmental report submitted by OPC, the articles contained in the FERC license for the project related to mitigating environmental impacts, and amendments to the FERC license. REA has independently determined that there are no substantial changes in the Project and no significant new circumstances or information relevant to environmental concerns related to its Federal action of approving OPC's participation in the Project. Pursuant to 40 CFR 1506.3 of the CEQ regulations and 7 CFR 1794.81(b) of REA's Environmental Policies and Procedures, REA is adopting the FEIS and the Final Supplement to the FEIS as its Final Environmental Impact Statement for its Federal action. In accordance with 7 CFR 1794.90(c), REA has determined the purposes of NEPA will be furthered by preparing an Information Supplement. REA will circulate a copy of its Information Supplement, the FEIS and the Final Supplement to the FEIS to interested parties or agencies with specific expertise related to the project including those receiving the Federal Power Commission's Draft EIS and FERC's Draft Supplement to the EIS for the Project. Copies of the Information Supplement, the FEIS and Final Supplement to the FEIS will be made available to the public and other interested parties.

The Information Supplement provides a description of the Project and the extent to which it has been completed by GPC, describes how it differs from the proposed facilities as described in the FERC FEIS, and discusses OPC's need for the Project and the alternatives to the proposed action. The Information Supplement also discusses the information considered by REA in adopting the FERC FEIS and Final Supplement to the FEIS as REA's Final Environmental Impact Statement for its Federal action related to the Project. Also covered briefly are the environmental impacts of the Project identified in the FEIS and Supplement to the FEIS, recent comments received from the U.S. Fish and Wildlife Service, and a review of articles in the FERC license for the Project that are related to the protection of environmental quality.

Copies of the REA's Information Supplement, the FEIS and the Final

Supplement to the FEIS may be examined or obtained from REA or OPC during regular business hours at the addresses provided in this notice. These three documents are being sent to the Sara Hightower Regional Library, 606 West First Street, Rome, Georgia 30161 (telephone (404) 291–7568) and the Cave Spring Public Library, P.O. Box 339, Cave Spring, Georgia 30124 (telephone (404) 777–3346) so they will be available for public review. Both libraries are in the vicinity of the project area.

OPC will have published in the *Cartersville Herald Tribune* and the *Rome News Tribune* a notice containing the same information provided herein. A paid advertisement referring the reader to the notice will be included in each newspaper. Questions or comments concerning REA's action related to this project should be submitted within 30 days to REA at the address provided in this notice. The 30-day period will begin on the date of this **Federal Register** notice or the date of a legal notice and paid advertisement published for OPC, whichever comes later. REA will take no final action related to the project prior to the expiration of this comment period. REA, at the time it makes its decision regarding the Project, shall prepare a public Record of Decision (ROD). Any person, organization or government body which desires to be notified when a ROD is available should contact REA at the address provided herein.

Date: August 3, 1988.

**Jack Van Mark,**

*Deputy Administrator, Program Operations.*

[FR Doc. 88–17983 Filed 8–8–88; 8:45 am]

BILLING CODE 3410–15–M

## COMMISSION ON CIVIL RIGHTS

### Oklahoma Advisory Committee; Agenda and Notice to Public; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission previously announced in volume 53 FR 29075 (August 2, 1988) has a new date, time, meeting room, and purpose. The meeting will convene at 9:30 a.m. and adjourn at 4:00 p.m. on September 1, 1988, at the Lincoln Plaza Hotel Conference Center, Senate Room, 4445 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The purpose of the meeting is to obtain information through a community forum concerning civil rights issues affecting Native Americans in Oklahoma.

Dated in Washington, DC, August 3, 1988.

**Susan J. Prado,**

*Acting Staff Director.*

[FR Doc. 88–17929 Filed 8–8–88; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration.

*Title:* Overseas Trade Fair Certification Program: Application and Evaluation.

*Form Numbers:* Agency—ITA–4100P and ITA–4103P, OMB—0625–0130.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 85 respondents; 640 reporting hours.

*Average Hours Per Response:* 7.5 hours.

*Needs and Uses:* The International Trade Administration (ITA) designed the Overseas Trade Fair Certification Program to encourage private sector show organizers to develop, operate, and manage U.S. industry participation in trade fairs overseas. The application form (ITA–4100P) provides specifics about a proposed project that will allow ITA to determine if the trade fair and the requesting organization stand a reasonable chance of success and if it meets ITA's promotion program objectives and general selection criteria. The evaluation form (ITA–4103P) is used by (1) the show organizer to critique the event as well as the government's performance and (2) by the overseas post to provide basic analysis of the event. Evaluation of the results gives feedback to both the private sector organizer and ITA for repeating certification of future editions of the fair.

*Affected Public:* Businesses or other for profit; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 2, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17905 Filed 8–8–88; 8:45 am]

BILLING CODE 3510–CW–M

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1988 Farm and Ranch Irrigation Survey.

*Form Number:* Agency—88–A62, OMB—none.

*Type of Request:* New.

*Burden:* 200,000 responses; 14,400 reporting hours. Average hours per response—.72.

*Needs and Uses:* This survey provides measures relevant to the use of water. Competition for limited water resources is high. Federal and state agencies, the irrigation industry, agricultural producers, and universities will use the data.

*Affected Public:* Irrigated land users.

*Frequency:* Every five years.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 2, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17906 Filed 8–8–88; 8:45 am]

BILLING CODE 3510–CW–M

**Agency Information Collection Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Application for Authorized Chart Agent.

*Form Numbers:* NOAA—49–74; OMB—0648–0184.

*Type if Request:* Extension of a currently approved collection.

*Burden:* 600 respondents; 150 reporting hours; average hours per response—.25 hours.

*Needs and Uses:* NOAA produces nautical and aeronautical charts, which are sold to the public through chart agents. Businesses must apply to become agents. The information provided is used to assure that applicants are financially responsible and have a sufficient potential market to justify the costs of maintaining an account.

*Affected public:* Small businesses or organizations.

*Frequency:* On occasion (One application per respondent).

*Respondent's Obligation:* Required to obtain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 2, 1988.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17907 Filed 8–8–88; 8:45am]

BILLING CODE 3510–CW–M

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**Agency Information Collection Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities.

*Form Number:* NOAA—N/A; OMB—0648–0151.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 21 respondents; 200 reporting hours; average hours per response—10 hours.

*Needs and Uses:* U.S. citizen who may incidently take marine mammals in activities other than commercial fishing may request that NOAA issue regulations allowing such a take, which would otherwise violate the Marine Mammal Act. If regulations are issued, persons may apply for letters of authorization for a take; if a letter is issued the respondent must file a report on the take. The information is used to determine that proposed takes fall under the provisions and goals of the Marine Mammal Act.

*Affected Public:* Individuals, state and local governments, businesses or other for-profit institutions, and federal agencies.

*Frequency:* On occasion and annually.

*Respondent's Obligation:* Required to obtain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 1988.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17908 Filed 8–8–88; 8:45 am]

BILLING CODE 3510–CW–M

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**Agency Information Collection Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Marine Mammals: General Incidental Take Permits, Small Take Exemptions, and Certificates of Inclusion.

*Form Number:* Agency—N/A; OMB—0648–0083.

*Type of Request:* Reinstatement of a previously approved collection.

*Burden:* 2,667 respondents; 1,115 reporting hours; average hours per response—.41 hours.

*Needs and Uses:* Commercial fishermen who may incidently take marine mammals in their fishing activities must apply for a waiver to the moratorium in the Marine Mammal Protection Act. The information is used to determine that proposed takes fall under the provisions and goals of the Marine Mammal Act.

*Affected Public:* Businesses or other for-profit institutions, small businesses or organizations.

*Frequency:* Annually, biennially.

*Repondent's Obligation:* Required to obtain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 1988.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17909 Filed 8–8–88; 8:45 am]

BILLING CODE 3510–CW–M

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**Agency Information Collection Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Economic Development Administration (EDA).

*Title:* Application for Finanical Assistance.

*Form Number:* Agency—ED–201; OMB—0610–0025.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 20 respondents; 2,000 reporting hours.

*Average Time Per Response:* 100 hours.

*Needs and Uses:* EDA uses this application to determine whether an applicant for financial assistance meets the statutory and credit standards established to get a loan guarantee.

*Affected Public:* Businesses or other for-profit institutions and small businesses or organizations.

*Frequency:* On occasion.

*Repondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

*Agency:* Economic Development Administration (EDA).

*Title:* Current and Project Employee Data.

*Form Numbers:* Agency—ED–612; OMB—0610–003.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 800 respondents; 600 reporting hours.

*Average Time Per Response:* 45 minutes.

*Needs and Uses:* EDA uses this form as its basic instrument to find out from applicants, recipients, and other parties, what kind of jobs are being created or saved, and when.

*Affected Public:* State or local governments, businesses or other for-profit institutions and non-profit institutions.

*Frequency:* On occasion and annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 1988.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 88–17910 Filed 8–8–88; 8:45 am]

BILLING CODE 3510–07–M

## Commercial Space Advisory Committee; Partially Closed Meeting

**AGENCY:** Office of the Associate Deputy Secretary, Commerce.

**SUMMARY:** Pursuant to the **Federal Register** notice of July 28, 1988, the Commercial Space Advisory Committee has been established to advise the Secretary of Commerce on matters of implementation and institutionalization of the National Space Policy and Commercial Space Initiative, as announced February 11, 1988, and to attempt to determine the most productive course to be taken by this country relating to its commercial space goals.

**TIME AND PLACE:** August 10, 1988 from 9:30 a.m. to 10:30 p.m. The meeting will take place in Room 1413, U.S. Department of Commerce.

**AGENDA FOR OPEN SESSION:** 9:30–10:30 a.m.

Welcome by Secretary Verity, introduction of Committee members, and an overview of the Committee's purpose and objectives.

**CLOSED SESSION:** 10:30–12:30 a.m.

Members will receive and discuss briefing materials, some of which will be classified, on the various sectors of the commercial space market and the President's National Space Policy and Commercial Space Initiative.

**SUPPLEMENTARY INFORMATION:** The time and date of the Partially Closed Meeting for the Commercial Space Advisory Committee as announced in the **Federal Register** on July 20, 1988, is hereby changed to August 10, 1988 from 9:30–10:30, instead of August 12, 1988, from 9:30–4:00. There will be no afternoon session as previously scheduled, and changes to the agenda and meeting location are noted.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Boyle, Program Director, Office of Commercial Space Programs, U.S. Department of Commerce, Room 7064, Washington, DC 20230, Telephone: 202/377–8125.

Date: August 5, 1988.

**Shellyn McCaffrey,**

*Associate Deputy Secretary.*

[FR Doc. 88–18113 Filed 8–8–88; 8:45 am]

BILLING CODE 3510–CW–M

## National Oceanic and Atmospheric Administration

### King and Tanner Crab Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of a draft environmental assessment and regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) and request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has prepared a draft EA/RIR/IRFA in conjunction with a new Fishery Management Plan for King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (FMP). The purpose of this notice is to solicit public comments on the draft EA/RIR/IRFA and the new FMP which focuses specifically on the management role of Federal and State agencies when making preseason and inseason decisions.

**DATE:** Comments on the draft EA/RIR/IRFA and the new FMP are due by 5:00 p.m. on September 5, 1988.

**ADDRESSES:** Comments should be addressed to Ray Baglin, Fishery Biologist, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

Copies of the draft EA/RIR/IRFA and the draft implementing regualtions are available upon request by calling 907–271–2809 or at one of the following locations: (1) Alaska Crab Coalition, 3901 Leary NW., Suite 6, Seattle, WA; (2) Alaska Department of Fish and Game, Unisea Building, Dutch Harbor, AK; (3) North Pacific Fishing Vessel Owner's Association, Fishermen's Terminal C–3, Room 218, Seattle, WA; and (4) United Fishermen's Marketing Association, Fishermen's Hall, Kodiak, AK.

**FOR FURTHER INFORMATION CONTACT:** Ray Baglin, 907–586–7230.

**SUPPLEMENTARY INFORMATION:** The Council directed its crab plan team to prepare an FMP for King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands area in December 1986. A committee of Council members and industry representatives was established to work with the plan team during the development process. The plam team reviewed the issues and identified and analyzed the biological, socioeconomic, and management impacts of various alternative solutions for public and Council consideration based on all available information.

The Council is asking for opinions of the fishing community and other affected individuals regarding which alternatives should be approved. It is hoped that the draft EA/RIR/IRFA will help the public provide constructive feedback to aid the Council in its deliberations. At their September 28–30, 1988, meeting in Anchorage, the Council will make its final decision and submit the FMP and supporting documentation to the Secretary of Commerce for implementation. The Council will accept oral testimony at the September meeting, however, such testimony should be limited to clarification of earlier written comments and recommendations about the Council's

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choice rather than submission of new informatioin.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1988.

**Ann D. Terbush,**

*Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-17990 Filed 8-5-88; 9:31 am]

BILLING CODE 3510-22-M

## Public Advisory Committee for Trademark Affairs; Meeting

**AGENCY:** Patent and Trademark Office.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

*Date:* The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 4:00 p.m. on September 27, 1988.

*Place:* U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, Room 912, Arlington, Virginia.

*Status:* The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come-first-served basis. If time permits, oral comments by the public of three (3) minutes on each topic within the agenda below will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

*Matters to be Considered:* The agenda for the meeting is as follows:

(1) Implementation of Proposed Intent-to-Use Legislation

(2) Automation Activities

(3) Application Processing and Prosecution and Registration Maintenance

(4) TTAB Proposed Rule Amendments

*Contact Person for More Information:* For further information, contact Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CPK2-910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557-7464.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 88-17945 Filed 8-8-88; 8:45 am]

BILLING CODE 3510-16-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

August 3, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 10, 1988.

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:** The current limits for Categories 433, 434, 435, 442, 443, 444, 445/446 and 448 are being adjusted, variously, for shift added, shift subtracted, carryover and carryfoward.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 50, published on January 4, 1988; and 53 FR 17088, published on May 13, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

August 3, 1988.

**Commissioner of Customs,**

*Department of the Treasury Washington, D.C. 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 30, 1987 and May 10, 1988 concerning imports of certain wool and man-made fiber textile products, produced or manufactured in the Hungarian People's Republic and exported during the periods which began, in the case of Categories 433, 434, 435, 443, 444, 445/446 and 448, on January 1, 1988; and, in the case of Category 442, on November 1, 1987; and extend through December 31, 1988.

Effective on August 10, 1988 the directives of December 30, 1987 and May 10, 1988 are amended to include adjustments to the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Hungary:

| Category | Adjusted Limit [1] |
|---|---|
| 443 | 8,961 dozen. |
| 434 | 7,600 dozen. |
| 435 | 11,097 dozen. |
| 442 | 22,050 dozen. |
| 443 | 102,298 numbers. |
| 444 | 72,677 numbers. |
| 445/446 | 38,703 dozen of which not more than 29,027 dozen each shall be in Categories 445 and 446. |
| 448 | 22,936 dozen. |

[1] The limits have not been adjusted to account for any imports exported after October 31, 1988 for Category 442; and December 31, 1987 for Categories 433, 434, 435, 443, 444, 445/446 and 448.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-17904 Filed 8-8-88; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Recruiting Incentives Survey; No Form; and No OMB Control Number.

*Type of Request:* Resubmission.

*Average Burden Hours/Minutes Per Response:* 20 minutes.

*Frequency of Response:* One-time.

*Number of Respondents:* 15,000.

*Annual Burden Hours:* 5,000.

*Annual Responses:* 15,000.

*Needs and Uses:* The Recruiting Incentives Survey, will measure the

attitudes of high school students towards an array of actual or possible Army recruiting incentives and career opportunities using a methodology which can determine quantitatively the magnitude of the importance of the incentive.

*Affected Public:* Individuals or households.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 4, 1988.

[FR Doc. 88-17922 Filed 8-8-88; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Air Force

### USAF Scientific Advisory Board; Meeting

August 2, 1988.

The USAF Scientific Advisory Board Arnold Engineering Development Center Advisory Group will meet on 30 August 1988, from 8:00 a.m. to 4:00 p.m., and on 31 August 1988, from 8:00 a.m. to 2:30 p.m., at Arnold AFB, TN, in the A&E Building Conference Room.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force ground test facilities requirements and programs.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-17930 Filed 8-8-88; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education

### Education Appeal Board Hearings; Intent to Compromise Claim; University of Wisconsin-Milwaukee

**AGENCY:** Department of Education.

**ACTION:** Notice of intent to compromise claim.

**SUMMARY:** The Department intends to compromise a claim against the University of Wisconsin-Milwaukee now pending before the Education Appeal Board (EAB), Docket No. 2(266)88 (20 U.S.C. 1234a(f)).

**DATE:** Interested persons may comment on the proposed action by submitting written data, views, or argument on or before September 23, 1988.

**ADDRESS:** Comments should be addressed to Richard B. Mellman, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4091, FOB-6), Washington, DC 20202.

**SUPPLEMENTARY INFORMATION:** The claim in question arose from an audit, performed by the Department's Office of Inspector General, of the migrant education High School Equivalency Program (HEP) at the University of Wisconsin-Milwaukee (the University) during the four years ending August 31, 1986. Under this program, authorized by section 418A of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d-2), institutions of higher education receive grants on a competitive basis to assist specially recruited high school-aged migrant students obtain the equivalent of a secondary school diploma and then gain employment or enrollment in an institution of higher education or other post-secondary institution. During these four years the Department provided the University $1,359,479 of HEP funds.

The program that the University conducted during this period had between 81 and 132 participating migrant students per year. Some resided in the Milwaukee area. Others were recruited from a broad geographical area stretching from the East Coast to the mid-West. The students' educational program lasted approximately three months, although those needing greater assistance attended for longer periods. HEP funds paid the administrative and instructional costs of the University's program as well as food, housing, and other support costs of participating students. Departmental regulations provide that HEP funds must be spent in a manner that is consistent with the grantee's project application and the Education Department's General Administrative Regulations in 34 CFR Parts 74 and 75.

During the course of the audit, the auditors focused on what they considered to be the University's excessive use of HEP funds to defray certain of the program's administrative and support costs. These costs included charges to the HEP program for (1) a significant amount of unused dormitory space that the University reserved for residential HEP students, (2) meals in University cafeterias that exceeded the number that enrolled HEP students could have eaten, (3) the salary and travel expenses (for over 16,000 miles of travel) of the University's recruiter between August, 1982 and January, 1983, a period for which little documentary support for his work activities existed, (4) penalties attributable to violations of various University policies governing the scheduled use of its vehicles, (5) grant funds that the University never spent, and (6) related indirect costs. Based on these findings, the Acting Chief of the Department's Business Management Branch, Grants and Contracts Service, notified the University in a final audit determination dated December 10, 1987, that the University had to return a total of $48,943 for its improper expenditure of HEP funds.

In December of 1987, the University repaid to the Department $7,667 of funds the audit determination specified had not been spent (plus $154 of indirect costs that the audit determination did not identify). The University appealed to the EAB its liability for $34,799 of the remaining $41,276 that the audit claim required it to repay. In doing so, the University did not contest its liability for $712 in fleet car penalties, $5,285 in the costs of meals charged to students housed in dormitories, and $480 of related indirect costs.

The Department proposes to compromise the full amount of the remaining $41,276 claim for $30,000. This proposal stems principally from a number of existing factual and legal disputes about the Department's claim.

Excessive housing costs ($14,900) represent the largest element in the Department's claim. A significant proportion of dormitory space charged to HEP funds was unused, perhaps because of inadequate recruitment. Over the four-year period that was audited, the actual vacancy rate exceeded the 15 percent rate projected in the University's approved grant applications. However, those applications also specified that HEP

students would be housed in suites. Therefore, the University has claimed that, in approving the grants, the Department had accepted the University's dormitory costs as fixed costs of the grants. Since the University's possible failure to serve sufficient migrant students is not a part of the audit determination, the University has contended that the Department's approval of its applications constitutes approval of the housing costs in question.

In the area of commuter meal costs (approximately $4,000), the University has presented a recreation of data on the number of enrolled HEP students that, while not directly linked to meal charges, could explain some of the excess in meal charges that the audit determination attributes to commuters. Finally, University records do not adequately suggest how its sole migrant student recruiter spent his time between August of 1982 and January of 1983 when he was largely on a travel status. However the conclusion that both his salary and fringe benefits ($7,034) and travel reimbursement ($5,946) for that period be returned might be partially offset by the migrant student recruitment that apparently did occur during this five-month period.

Given each of these factors, the percentage of the claim the University has agreed to repay, and the cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department is satisfied that since the University no longer operates a HEP program, the practices that resulted in the claim will not recur.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Richard B. Mellman, Esq., at the address given at the beginning of the notice.

(20 U.S.C. 1234a(f))

(Catalog of Federal Domestic Assistance No. 84-141 Migrant Education—High School Equivalency Program)

Dated: August 3, 1988.

**Bruce M. Carnes,**

*Acting Deputy Under Secretary for Management.*

[FR Doc. 88-17934 Filed 8-8-88; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award; Benedict College

**AGENCY:** Department of Energy.

**ACTION:** Notice of restriction of eligibility for grant award.

**SUMMARY:** DOE announces that it plans to award a grant to Benedict College to conduct an HBCU (Historically Black Colleges and Universities) regional workshop. The term of the grant will be for one year; DOE funding level is approximately $44,902. Pursuant to § 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to Benedict College.

*Procurement Request Number:* 09-88SR18055.000.

*Project Scope:* Benedict College will conduct a workshop to inform HBCU's in the Southeastern United States of the opportunities available in the HBCU program. Invitations will be sent to approximately 59 HBCU's inviting each to send two (2) representatives. DOE funds will pay for travel and lodging for these representatives. The three-day workshop will be held in Augusta, GA. The objectives of the workshop are: (1) To increase participation of HBCU's in DOE's research and development activities in both nuclear and non-nuclear programs; (2) to develop long and short-term interactions between DOE and HBCU's; and (3) to implement the President's HBCU initiative.

Benedict College is a predominantly black institution located in Columbia, SC. The participation of Historically Black Colleges and Universities (HBCU's) in federally supported research, education and training is relatively limited. In order to overcome some of these limitations, the President's Executive Order 12320 directed federal agencies to increase the participation of HBCU's in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the HBCU community and provide the HBCU's within the Southeastern United States an opportunity to more fully understand the HBCU program.

DOE has determined that this award to Benedict College on a restricted eligibility basis is appropriate.

**FOR FURTHER INFORMATION CONTACT:** Ronald D. Simpson, Chief, Contracts and Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802. Telephone: (803) 725-2096.

Issued in Aiken, SC, on July 25, 1988

**P.W. Kasper,**

*Manager, Savannah River Operations Office.*

[FR Doc. 88-17868 Filed 8-8-88; 8:45 am]

BILLING CODE 6450-01-M

### Compliance with the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed amendments to the Department of Energy's NEPA guidelines.

**SUMMARY:** The Department of Energy (DOE) proposes to amend section D of its NEPA guidelines by adding to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas under Section 3 of the Natural Gas Act, in cases not involving new construction. A categorical exclusion is a class of DOE actions which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). The DOE also proposes to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS. Public comment is invited on these proposals. Pending final adoption or rejection of the proposed amendment, the Department of Energy will utilize the revised classifications for the approval/disapproval of import/export authorizations.

**DATE:** Comments by September 8, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 3E-080, Washington, DC 20585, (202) 586-4600

William Dennison, Esq., Acting Assistant General Counsel for Environment, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, (202) 586-6947.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

On March 28, 1980, the Department of Energy (DOE) published in the **Federal Register** (45 FR 20695) final guidelines for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). In accordance with these regulations, section D of the DOE guidelines lists three classes of agency action: (1) Those which normally require an environmental impact statement (EIS); (2) those which normally require an

environmental assessment (EA) but not necessarily an EIS and; (3) those which normally do not require either an EA or an EIS. This third class was identified pursuant to § 1507.3(b)(2)(ii) of the CEQ regulations and are termed "categorical exclusions." The CEQ regulations define a categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The regulations permit agency discretion, in that "an agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and these guidelines." Pursuant to the guidelines, substantive revisions are to be published in the **Federal Register** and adopted only after opportunity for public review. The last amendments to section D were published in the **Federal Register** on December 15, 1987, concurrently with republication of the DOE's NEPA guidelines in their entirety.

**B. Proposed Amendments**

The DOE proposes to further amend section D of its guidelines by adding to the list of categorical exclusions in section D, the approval or disapproval of an import/export authorization for natural gas under Section 3 of the Natural Gas Act, in cases not involving new construction. In addition, the DOE proposes to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS. This action is being taken because ten years of experience has shown that DOE's original estimate as to which actions would normally require preparation of an EIS or an EA was overly conservative. Normally, natural gas import/export approval actions involving minor new construction have not required the preparation of an EIS. Normally, actions in which no new construction is involved have not required the preparation of either an EA or an EIS. The proposed amendments to section D, therefore, would establish categories that are appropriate for the type of action involved, consistent with DOE's experience.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where the DOE has reason to believe that a significant import could arise from the grant or denial of a specific natural gas import/export authorization, the DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an EA or an EIS would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. Likewise, actions classified as normally requiring an EA but not necessarily an EIS will be evaluated on a case by case basis.

Currently, Section D of the DOE NEPA guidelines lists the approval/disapproval of a natural gas import/export license under Section 3 of the NGA in cases not involving new construction as an action which normally requires an EA. Where new construction is involved, Section D classifies the approval/disapproval of an import/ export license for natural gas as the type of action which normally requires the preparation of an EIS.

During the more than ten years since the inception of the DOE in 1977, the ERA has granted 123 blanket import/export authorizations for short-term and spot market sales of natural gas and 61 authorizations for long-term natural gas import/export arrangements. In addition, 34 approval actions have been taken on applications for extension, amendment or reassignment of existing authorizations for a complete final case action total, as of May 31, 1988, of 218. Of this total, nine cases involved new construction and 209 did not. Each of the cases not involving new construction where individually examined and found not to have a significant effect on the human environment. Accordingly, based on this experience, the DOE has concluded that such actions or functions do not normally constitute major federal actions significantly affecting the quality of the human environment and should be added to the list of categorical exclusions in Section D of the DOE NEPA guidelines. Although under the proposed change, such actions will be presumed not to cause any significant direct or indirect environmental impact, this presumption does not foreclose an environmental review if unusual circumstances indicate that such an action might, in a particular case, have a significant environmental impact.

This proposed change to section D will reduce the regulatory burden on pesons wishing to import or export natural gas through existing facilities by eliminating environmental studies that are not warranted. It is noted in this regard that the Federal Energy Regulatory Commission (FERC) has recently included in the categorical exclusion category the sale, exchange and transportation of natural gas that does not involve the construction of new facilities and the approval of natural gas import/export sites in which no new construction is invovled. See 18 CFR 380.4(a)(27) and (31) (52 FR 47897, December 17, 1987), as amended by 53 FR 8177, March 14, 1988.

The DOE also proposes to change the classification in Section D of its NEPA guidelines for approval actions on natural gas imports/exports that involve minor new construction. As stated above, DOE NEPA guidelines now provide that all natural gas import/export authorization approval actions involving new construction normally require preparation of an EIS. However, the DOE's experience over the past ten years reveals that of the nine cases which involved new construction, four required preparation of an EA, two required the preparation of an EIS, and three were terminated before any NEPA determination was made. Those cases which required preparation of an EA involved relatively minor new construction, such as construction of a short pipeline, adding new connections, looping or compression to an existing natural gas interstate pipeline, or converting an existing interstate oil pipeline to an interstate natural gas pipeline using the existing right-of-way. Conversely, the two cases which required preparation of an EIS involved in one case the construction of 36 miles of pipeline looping and a new gas-fired combined cycle powerplant, and in the other case, 257 miles of pipeline looping in five states plus related facilities. Accordingly, the DOE proposes to include natural gas import/export approval actions involving minor new construction in the category of actions in section D that normally require an EA but no necessarily an EIS.

If section D is amended, as proposed, approval actions that involve major pipeline construction, the construction of LNG terminals, regasification or storage facilities, or other related facilities; or the significant expansion of such facilities, pipelines, or LNG terminals would continue to be classified as actions normally requiring

an EIS. Thus, no change is being proposed for actions involving new construction of major industrial facilities or significant expansion of such facilities.

Comments concerning the proposed amendments to section D of the DOE's NEPA guidelines should be submitted to Ms. Carol M. Borgstrom at the address given above. Pending final adoption or rejection of the proposed action, the DOE will effect the proposed changes on an interim basis.

Issued in Washington, DC, on August 3, 1988.

**Ernest C. Baynard, III,**

*Assistant Secretary, Environment, Safety and Health.*

The DOE NEPA Guidelines are hereby amended in Section D with respect to natural gas actions and functions to read as follows:

**DOE NEPA Guidelines**

Section A—[no change]
Section B—[no change]
Section C—[no change]
Section D—[Typical Classes of Actions]
* * * * *

CLASSES OF ACTIONS GENERALLY APPLICABLE TO AUTHORIZATIONS TO IMPORT/EXPORT NATURAL GAS PURSUANT TO SECTION 3 OF THE NATURAL GAS ACT

| Normally do not require EA's or EIS's | Normally requires EA's but not necessarily EIS's | Normally requires EIS's |
|---|---|---|
| Approval of new authorization or amendment of existing authorization which does not involve new construction but only requires operational changes, such as an increase in natural gas throughput, change in transportation or change in storage operations.. | Approval or disapproval of an application involving minor new construction, such as a relatively short pipeline, adding new connections, looping or compression to an existing natural gas pipeline or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way.. | Approval or disapproval of an application involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities; or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification or storage facility. |

[FR Doc. 88-17986 Filed 8-8-88; 8:45 am]
BILLING CODE 6450-01-M

## Bonneville Power Administration

**[BPA File No. SCE-86M]**

## Proposed Modification of Southern California Edison Formula Rate Schedule SC-86 and Opportunity for Public Review and Comment

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice and request for comments. BPA requests in the process of modifying Southern California Edison Formula Rate Schedule SC-86 reference the file designation SCE-86M.

**SUMMARY:** BPA seeks to modify its existing Southern California Edison Contract Formula Rate Schedule by reopening and supplementing BPA's offical record. This rate is available to the Southern California Edison Company (SCE or Edison) for the purchase of surplus firm power. The existing schedule, SC-86, approved in 1986 by the Federal Energy Regulatory Commission (FERC) for 20 years, defines a rate that is no longer useful for marketing BPA's surplus firm power in today's West Coast energy markets, and is no longer acceptable to SCE. BPA and SCE have negotiated a rate that escalates with SCE's alternate generation cost, *i.e.*, the cost of natural gas and fuel oil. In addition, the proposed rate is bounded by floor and ceiling rates. The proposed rate will recover more revenues than BPA's alternative of sales in the economy energy markets over the term of the power sale.

*Responsible Official:* Shirley R. Melton, Director, Division of Contracts and Rates, is the official responsible for the modification of the SC-86 formula rate schedule.

**DATE:** Any interested person may submit written comments to BPA no later than 5 p.m., September 16, 1988, at the address listed below.

**ADDRESSES:** Written comments should be submitted to Ms. Jo Ann C. Scott, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Sugai, Public Involvement Office, at the address listed above, 503-230-3478. Oregon callers outside Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-328-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terry G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, Suite 400, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Tom Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. The Original SC-86 Contract Formula Rate Schedule*

i. Proceedings Before BPA

BPA's original SC-86 rate proposal was published in the **Federal Register** on March 31, 1986. *See* Proposed Southern California Edison Contract Rates and Opportunity for Public Review and Comment, 51 **Federal Register** 10911 (1986). This notice initiated an original agency proceeding under section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). 16 U.S.C. 839e(i). Subsequently, a prehearing conference was held before an independent hearing officer on April 8, 1986, at which time 13 intervenors were granted party status and a procedural schedule was established.

BPA's initial proposal included the written testimony and exhibits of its witness. Parties were afforded the opportunity to conduct discovery on BPA's rate proposal, and then filed direct and rebuttal testimony on April 28, 1986. Additional rebuttal testimony was filed by BPA on May 9, 1986. Cross-examination of all witnesses was conducted on May 14, 1986. The parties filed briefs on May 27, 1986. BPA issued a Draft Record of Decision on June 13, 1986. In response to the Draft Record of Decision, the parties presented oral arguments to the Administrator's designees on June 20, 1986.

Pursuant to section 7(i)(5) of the Northwest Power Act, 16 U.S.C. 839e(i)(5), the Administrator issued a final Record of Decision on July 10, 1986,

based on the record developed during the hearings. This record included the hearing transcript, exhibits, briefs, and all other materials which were submitted to or developed by the Administrator during the course of the hearings.

The final Record of Decision, along with the record upon which it was based, was filed with FERC on July 14, 1986, together with a request for expedited final approval of the rate schedule for a 20-year period. 51 **Federal Register** 26578 (1986).

ii. Proceeding Before the Federal Energy Regulatory Commission

In response to BPA's request for expedited final approval of the SC–86 formula rate schedule, FERC waived the 180-day advance filing requirement (18 CFR 300.10(a)(3)(iii)(1986)) and granted final, 5-year approval of the formula rate schedule, including its nonfirm energy component, on September 29, 1986. *United States Department of Energy—Bonneville Power Administration*, 36 FERC ¶ 61,350 (1986).

Subsequently, on rehearing, the Commission granted full 20-year approval of the SC–86 formula rate schedule:

> [W]e have determined to modify our earlier order and to approve the rates for a period of 20 years for the following reasons. Given the relatively small influence of the proposed sale on the adequacy of BPA's total annual revenues, the Commission finds that it is reasonable to exercise its discretion in this particular instance and defer to BPA's judgment to some extent. Moreover, the annual escalator provisions in the proposed contract do serve to distinguish the proposed contract from the contract that concerned the Commission in considering rates for the Southwestern Power Administration. At the same time, BPA's general rate filings, occurring at intervals no less frequent than every 5 years, will allow the Commission an opportunity to review BPA's rates in total to determine whether BPA is recovering its costs and repaying the Federal investment. We also believe that approval of the contract allows BPA to market surplus power at higher rates than it might otherwise receive, which should in turn enhance BPA's ability to meet its obligations to the Federal treasury. *United States Department of Energy—Bonneville Power Administration*, 37 FERC ¶ 61,345, 62,041 (1986).

*B. The Changed Circumstances Necessitating Modification*

The SC–86 rate is based on BPA's fully allocated cost of delivering surplus firm power over the Pacific Northwest-Pacific Southwest Intertie. BPA intended that a sale under the rate would provide a stable, long-term revenue stream. At the same time, a sale under the SC–86 rate would assure SCE of predictable costs of power for the long term.

After the SC–86 rate was reviewed in a public process that took several months, the market for surplus power had changed significantly. Prices for the Pacific Northwest's surplus electricity fell as world market prices for natural gas and oil dropped and remained low and unstable for longer than predicted. Natural gas and oil prices also were predicted to be lower over the long term than previously forecast. California utilities were able to generate power less expensively than they could purchase it at fully allocated cost from BPA. BPA suffered declining and unstable revenues from surplus power sales since surplus firm power was sold at low spot market prices. The SC–86 rates appeared less attractive to SCE, and the proposed contract incorporating the SC–86 rate was not signed.

In response to the changing market conditions, BPA and SCE continued to negotiate contract terms and prices that would make a long-term transaction economic for both parties under these changed circumstances. Like the earlier contract proposal, the renegotiated contract, under which deliveries would begin on July 1, 1989, is for the purchase by SCE of 250 MW and 1,173,000 MWh annually. The rate is designed to recover more than would BPA's alternative, that is, continuing to sell surplus firm power in the economy energy market. BPA is protected from much of the instability of the energy market by the rate floor, and SCE is similarly protected by the rate ceiling. And, like the original SC–86 rate, the proposed modified SCE rate for surplus firm power will provide BPA with an economic and stable source of long-term revenues and will provide SCE with predictable prices.

The SC–86 rate schedule approved by FERC in 1986 also contains a formula rate for nonfirm energy which was to be available for application during the capacity-energy exchange phase of the contract. The proposed modified SCE rate schedule does not include a rate for nonfirm energy. The contract includes optional prices for cash payments to BPA from SCE in lieu of returns of energy delivered with capacity during the capacity-energy exchange provided for in the contract, and in lieu of energy delivered to BPA from SCE in exchange for the capacity. If BPA chooses to exercise these options in the future, BPA will ensure that an approved rate schedule accommodates such transactions.

*C. Summary of Contract Terms*

BPA proposes to sell SCE 250 MW of surplus firm power. The power would be delivered with a take-or-pay obligation at an annual load factor of 53.57%, so long as BPA has sufficient surplus firm energy available. When BPA's planning pursuant to the Agreement for Coordination of Operations among Power Systems of the Pacific Northwest, BPA Contract No. 14–02–48221, shows insufficient surplus firm energy to fulfill the contract, the sale would be converted to a seasonal capacity/energy exchange. The conversion to an exchange could also occur at the option of either SCE or BPA, if specified conditions were to make the power sale uneconomical for either party. BPA would deliver firm power during daytime hours in the summer (June through October) when SCE experiences its peakloads. In this same period, the energy that BPA delivered during the peak daytime hours would be returned by SCE during the offpeak nighttime hours (peaking replacement energy).

In exchange for the summer capacity deliveries, SCE would deliver firm energy to BPA in the winter when BPA experiences its peakloads. In addition to receiving the exchange energy, BPA would also be entitled to request specified amounts of supplemental energy from SCE during the winter. BPA would pay SCE 115% of the variable cost of producing the supplemental energy.

The contract also provides an option for BPA to call on SCE for an additional 624,000 MWh of energy deliveries during a period of 13 calendar weeks, ending no later than April 15 each year, at 115% of SCE's incremental cost. SCE has an option to call on BPA for an additional 250 MW of capacity during the five month period of June through October at the demand charge in BPA's SP–87 contract rate or its successor.

This description of the contract is provided solely to give context to the proposed modified rate. Only the rate is at issue in the hearing.

**II. Rate Proposal**

*A. Modified SC–86 Formula Contract Rate*

The following Modified SC–86 Formula Contract Rate is verbatim from the contract:

Section 9(b)—*Surplus Firm Power.* Payment for surplus firm power delivered during the surplus firm power sale shall be at the rate in this section 9(b). The rates specified in this section 9(b) include the Intertie service charge. The effective rate, rate ceiling, rate floor and BASC shall be rounded to the nearest one-tenth of a mill. The rate for surplus firm power is as follows:

(1) *Initial Fiscal Year.* During the period beginning July 1, 1989, through the Fiscal Year ending on September 30, 1989, the rate shall be 28.5 mills/kWh.

(2) *Subsequent Fiscal Years.* (A) For all subsequent Fiscal Years, beginning with the Fiscal Year that starts on October 1, 1989, the rate shall be calculated as follows:

$$R_n = R_{n-1} * \frac{\frac{(OPXDO)_{n-1} + (GPXDG)_{n-1}}{(DO+DG)_{n-1}}}{\frac{(OPXDO)_{n-2} + (GPXDG)_{n-2}}{(DO+DG)_{n-2}}}$$

where:

n = the calendar year during which the Fiscal Year begins;

$R_n$ = the rate, in mills per kilowatthour, for the fiscal year that begins in calendar year n;

$R_{n-1}$ = the rate, in mills per kilowatthour, for the Fiscal Year that begins in calendar year n–1;

OP = the Price of Oil to Electric Utilities in the Pacific Region No. 2 in calendar years (n–1) and (n–2), expressed in dollars per million BTUs and as set forth in Table A–30 of Data Resources, Inc. (DRI) Energy Report as published in the spring of calendar year n (Access Code POILEUB@PAC2);

DO = the Electric Utilities Demand for Oil in the Pacific Region No. 2 in calendar years (n–1) and (n–2), expressed in trillions of BTUs and as set forth in Table A–36 of DRI's Energy Report as published in the spring of calendar year n (Access Code DFOILEUB@PAC2);

GP = the Price of Natural Gas to Electric Utilities in the Pacific Region No. 2 in calendar years (n–1) and (n–2), expressed in dollars per million BTUs and as set forth in Table A–31 of DRI's Energy Report as published in the spring of calendar year n (Access Code PNGEUB@PAC2);

DG = the Electric Utilities Demand for Natural Gas in the Pacific Region No. 2 in calendar years (n–1) and (n–2), expressed in trillions of BTUs and as set forth in Table A–37 of DRI's Energy Report as published in the spring of calendar year n (Access Code DFNGEUB@PAC2).

During the Fiscal Year beginning on October 1, 1911, the rate shall also be changed on April 1, 1992, if the rate calculated using the rate ceiling in section 9(b)(2)(B)(ii) differs from the rate calculated using the rate ceiling in section 9(b)(2)(B)(i).

If the DRI Energy Report, or any of its factors referred to above, ceases to exist or is substantially modified during the term of this Agreement, the Authorized Representatives shall agree upon appropriate replacement factors or reports.

(B) *Rate Ceiling.* The rate for surplus firm power in section 9(b)(2)(A) shall not exceed the rate ceiling determined as follows:

(i) Through March 31, 1992:

$$RC_n = RC_{n-1} * \frac{BASC_n}{BASC_{n-1}}$$

n = The Fiscal Year for which the rate ceiling is being calculated.

n–1 = The Fiscal Year prior to the one for which the rate ceiling is being calculated.

where:

$RC_n$ = The effective rate ceiling during Fiscal Year n, expressed in mills per kilowatthour; 35.0 mills/kWh in the Fiscal Year ending September 30, 1989.

$RC_{n-1}$ = The effective rate ceiling during Fiscal Year n–1, expressed in mills per kilowatthour.

$BASC_n$ = The BPA average system cost (in mills per kilowatthour) as forecast and adopted by BPA in the most recent rate case that determines the generally applicable BPA wholesale power rates to be in effect on October 1 of Fiscal Year n. BPA's average system cost shall equal BPA's total revenue requirement divided by BPA's total energy sales forecasted for the test period of the rate case. The BASC for the Fiscal Year ending September 30, 1989, is 23.2 mills/kWh.

(ii) Effective April 1, 1992:

$$RC_x = RC_{x-1} * \frac{BASC_x}{BASC_{x-1}}$$

x = The Fiscal Year for which the rate ceiling is being calculated.

x–1 = The Fiscal Year prior to the one for which the rate ceiling is being calculated.

where:

$RC_x$ = The effective rate ceiling during Fiscal Year x, expressed in mills per kilowatthour; 36.9 mills/kWh in the Fiscal Year ending September 30, 1989.

$RC_{x-1}$ = The effective rate ceiling during Fiscal Year x–1, expressed in mills per kilowatthour.

$BASC_x$ = The BPA average system cost (in mills per kilowatthour) as forecast and adopted by BPA in the most recent rate case that determines the generally applicable BPA wholesale power rates to be in effect on October 1 of Fiscal Year x. BPA's average system cost shall equal BPA's total revenue requirement divided by BPA's total energy sales forecasted for the test period of the rate case. The BASC for the Fiscal Year ending September 30, 1989, is 23.2 mills/kWh.

(C) *Rate Floor.* (1) The rate for surplus firm power in section 9(b)(2)(A) shall not be less than the rate floor determined as follows:

$$RF_n = RF_{n-1} * \frac{BASC_n}{BASC_{n-1}}$$

n = As defined in section 9(b)(2)(B).

N–1 = As defined in section 9(b)(2)(B).

where:

$RF_n$ = The effective rate floor during Fiscal Year n, expressed in mills per kilowatthour; 28.5 mills/kWh in the Fiscal Year ending September 30, 1989.

$RF_{n-1}$ = The effective rate floor during Fiscal Year n–1, expressed in mills per kilowatthour.

$BASC_n$ = As defined in section 9(b)(2)(B)

Each time BPA files with FERC a change in its wholesale rates following a general rate adjustment proceeding pursuant to Northwest Power Act section 7(i) (16 U.S.C. 839e(i)), BPA shall provide to Edison such filed rates and the percent change in its BASC for the subsequent year(s) and the resulting rate floor and ceiling for the applicable Fiscal Year. BPA shall also provide to Edison any changes to the BASC that may occur as a result of interim or final FERC approval and shall make resulting adjustments to the rate floor and rate ceiling.

(2) *Rate Floor Adjustment.* The rate floor shall be adjusted downward for the ensuing Fiscal Year when certain threshold levels for oil and gas prices are reached.

(A) For each Fiscal Year through the Fiscal Year ending September 30, 1993, the rate floor shall be adjusted downward if the weighted average price for oil and gas to Edison for the previous calendar year is less than:

(i) 20 mills/kWh in 1987 dollars; and

(ii) The rate floor otherwise in effect.

(B) For each Fiscal Year beginning October 1, 1993, the rate floor shall be adjusted downward if the weighted average price for oil and gas to Edison for the previous calendar year is less than:

(i) 24 mills/kWh in 1987 dollars, and

(ii) The rate floor otherwise in effect.

The rate floor shall be adjusted downward by any difference by which the lower of threshold levels (i) and (ii) above exceeds the weighted average price for oil and gas to Edison for the calendar year immediately prior to the Fiscal Year. If for any Fiscal Year this adjustment becomes effective, Edison shall provide to BPA copies of the appropriate sections of its *Financial and Operating Report* showing Edison's consumption and cost of oil and gas generation upon which the determination was made.

Whenever the rate floor has been adjusted pursuant to this section 9(b)(2)(C)(2), $RF_{n-1}$ shall equal the adjusted rate floor in calculating the new rate floor $RF_n$ for the ensuring Fiscal Year pursuant to section 9(b)(2)(C)(1).

*B. Formula Rate Design*

The proposed modified rate for surplus firm power is set initially at 28.5 mills per kilowatthour as of July 1, 1989. Beginning October 1, 1989, the initial rate would escalate annually by factors based on the costs to SCE of natural gas and oil, the fuels that determine a significant portion of SCE's generation costs. Natural gas and oil prices would be weighted by utilities' demand for the two fuels. Information on fuel prices and demands would be obtained from Data Resources, Inc. (DRI) as reported for Pacific Region No. 2.

The proposed modified rate for BPA's sale to SCE is bounded by a ceiling and a floor, to be calculated annually, and both escalated based on changes in BPA's average system cost (BASC). The rate ceiling is set initially at the negotiated level of 35.0 mills/kWh. For the period July 1, 1989, through March 31, 1992, this initial rate ceiling level would escalate annually by the increase in BASC. Beginning April 1, 1992, the ceiling is based on an initial rate for fiscal year 1989 of 36.9 mills/kWh (the fully allocated cost of surplus firm power). This rate, escalated at increases in BASC, is the ceiling for the remainder of the contract term.

The rate floor is set initially at 28.5 mills/kWh. Like the rate ceiling, the floor would escalate annually by the increase in BPA's forecasted average system cost. Through fiscal year 1993, if SCE's weighted average price for oil and gas for the previous calendar year is less than the current floor and less than 20 mills/kWh (in 1987 dollars), the rate floor in effect will be adjusted downward. After 1993, if SCE's weighted average oil and gas price for the previous calendar year is less than the current floor and less than 24 mills per kilowatthour (in 1987 dollars), the floor would be adjusted downward.

The proposed rate for the surplus firm power sold under the SCE contract is forecast to recover more than the opportunity cost of the power, that is, spot sales in the short-term economy energy market. BPA also would benefit from the long-term revenue stability received from the proposed 20-year sale to SCE. This revenue stability would enhance BPA's ability to repay the U.S. Treasury as scheduled and keep BPA's customers' rates as low as possible. Similarly, SCE would receive long-term price and supply predictability. BPA's sales and SCE's purchases on the spot market do not provide the parties with such stability or predictability.

**III. Relevant Statutory Provisions**

The Administrator is authorized under section 5(f) of the Northwest Power Act, 16 U.S.C. 839c(f), to sell surplus firm power. Section 5(f) provides as follows:

> The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsections (b), (c), and (d) of this section in accordance with this and other Acts applicable to the Administrator * * *.

Section 7 of the Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides that

> [s]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Rates established by BPA are effective on a final basis when approved by FERC. 16 U.S.C. 839e.

In addition to the Northwest Power Act, BPA ratemaking is governed by the Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.*, and the Flood Control Act of 1944, 16 U.S.C. 825 *et seq.* BPA power sales are also subject to the provisions of the Pacific Northwest Regional Preference Act, 16 U.S.C. 837 *et seq.*, which operates in conjunction with § 9(c) of the Northwest Power Act, 16 U.S.C. 839f(c), to give Pacific Northwest consumers first call on Federal power generated in the Northwest.

**IV. Procedures Governing This Rate Adjustment**

Pursuant to Rule 1010.3(c) of Procedures Governing Bonneville Power Administration Rate Hearings, 51 **Federal Register** 7611 (1986) (BPA Procedures), the hearing will be conducted under Rule 1010.10, Expedited Rate Proceedings. The reason for using the expedited procedures is twofold.

First, the contract is subject to termination on March 31, 1989, if BPA has not obtained final approval of the proposed rate from FERC by that date. FERC requires BPA to file rate schedules for which final (not interim) approval is requested not later than 180 days in advance of the proposed effective date. 18 CFR 300.10(a)(3)(iii) (1986). BPA must therefore complete this proceeding and file the proposed rate with FERC by September 30, 1988.

Second, the proceeding involves a single discrete rate of very limited application. The SC–86 rate schedule has been the subject of a previous hearing conducted under section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i). *See* 51 **Federal Register** 10,911 (1986). That schedule has received final confirmation and approval by FERC. *United States Department of Energy—Bonneville Power Administration*, 37 FERC ¶61,345 (1986). This proceeding should thus be able to be concluded in a timely manner.

Pursuant to Rule 1010.1(d) of BPA Procedures, the Administrator hereby notifies interested persons that procedures in the following sections are waived: §§ 1010.4(d); 1010.8 (with respect to any requirement that the clarification sessions be transcribed); 1010.10(c) and 1010.11(e).

Consistent with the rights of the parties under section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), the following procedures will be followed.

A prehearing conference will be held before an independent hearing officer at 9 a.m., August 18, 1988, in room 106 of BPA's Headquarters Building, 905 NE. 11th Street, Portland, Oregon. All parties to the original SC–86 proceeding and all intervenors before FERC are deemed to be parties for purposes of the Modified SC–86 Formula Contract Rate proceeding. Any new intervenor desiring party status must file a written petition with the hearing officer in care of Hearing Clerk—APR, P.O. Box 3621, Portland, Oregon 97208, or Hearing Clerk—APR, 7th Floor East, 905 NE. 11th Street, Portland, Oregon 97232, so as to be received no later than 5 p.m. Tuesday, August 16, 1988. A copy of the petition shall also be served on BPA's Office of General Counsel/APR. The petition shall state the name and address of the person and the person's interest in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

On or before August 18, 1988, BPA will make the prefiled direct testimony and

exhibits of its witness(es) available in its Public Information Center, 1st Floor East, 905 NE. 11th Street, Portland, Oregon. BPA will make its witness(es) available for an informal question and answer session, and will respond to reasonable written data requests concerning the modification of the SC–86 Formula Contract Rate Schedule. Parties will be afforded the opportunity to file direct testimony and conduct reasonable discovery. All litigants will be afforded the opportunity to file rebuttal testimony. All parties will be afforded the opportunity to file briefs, or upon unanimous election of all parties, to present oral argument to the Administrator or his designees. A final record of decision based on the record will be filed with FERC on or before September 30, 1988.

At the prehearing conference, the hearing officer will rule on intervention petitions and oppositions to intervention petitions, establish special rules of procedure considered appropriate, establish a service list and a procedural schedule, and consolidate parties with similar interests into groups for the purpose of jointly sponsoring testimony and expediting cross-examination.

Apart from the formal hearing process, BPA will receive comments and recommendations from participants, who are defined in BPA's procedures as persons who wish to express their views, but who do not intervene as formal parties. This category affords the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon parties. Participants are not entitled to cross-examine witnesses or to be served with documents. However, copies of all testimony, exhibits and other relevant documents will be available to any interested person for review in BPA's Public Information Center. Participants need not attend the hearings in order to have their views included in the record. Written comments will be included in the record provided they are received by September 16, 1988. Procedures for submitting written comments are detailed in the Dates and Addresses sections of this notice.

**V. Statement of Issues**

Pursuant to Rule 1010.3(f) of BPA Procedures, the Administrator limits the scope of this hearing to issues respecting the modification of the SC–86 Formula Contract Rate Schedule as described in Section II hereof. *See* Rule 1010.2(j) of BPA Procedures. Issues such as proposed contracts or offers, exchange ratios, cash out provisions, optional deliveries of capacity and energy, and the extent and availability of surplus capacity are not rate matters for the purposes of this hearing.

Issued in Portland, Oregon, on August 2, 1988.

**Jack Robertson,**

*Deputy Administrator.*

[FR Doc. 88–17985 Filed 8–8–88; 8:45 am]

BILLING CODE 6450–01–M

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## Economic Regulatory Administration

**[ERA Docket No. 88–37–LNG]**

## Distrigas Corp.; Application To Amend Import Authorization

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Notice of Application to Amend Import Authorization.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 22, 1988, of an application from Distrigas Corporation (Distrigas) to amend its current import authorization. Distrigas is requesting that its current authorization to import liquefied natural gas (LNG) from Algeria be amended to reflect changes in its 1976 contract with its supplier, Sonatrach, the Algerian national energy corporation. The contractual changes, among other things, would eliminate the take-or-pay provisions of the 1976 contract, change the pricing provisions to allocate risk between Distrigas and its supplier while maintaining market responsive prices, and extend the term of the 1976 contract to October 1, 2003.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments should be filed no later than 4:30 p.m., e.d.t. on September 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lot Cooke, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, Washington, DC 20585, (202) 586–8116. Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–02, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Distrigas is a wholly owned subsidiary of Cabot Corporation, a Delaware corporation, currently authorized, by an order issued by the ERA on December 31, 1977, in ERA Docket No. 77–011–LNG, to import Algerian LNG pursuant to the Agreement for the Sale and Purchase of Liquefied Natural Gas of April 13, 1976 (1976 Agreement), between Distrigas and Sonatrach. Distrigas and Sonatrach, as part of an overall settlement of disputes and claims between them, reached an agreement styled "amendment No. 3 to the Agreement for the Sale and Purchase of Liquefied Natural Gas of April 13, 1976 (Amendment No. 3)." According to Distrigas, Amendment No. 3 is the result of extensive renegotiation of the 1976 Agreement and is aimed at providing secure volumes of LNG at market responsive prices to the U.S. market.

Amendment No. 3 contemplates the importation of 17 cargoes of LNG annually for a term running from September 15, 1988, through October 1, 2003. The amendment eliminates the prior pricing formula and adopts instead a market oriented concept in which Distrigas and Sonatrach, acting through its wholly owned subsidiary, Sonatrading Amsterdam B.V. (Sonatrading), establish the price for the LNG supplied by Sonatrading at the higher of: (1) The reference price, which is 63% of a price derived from a formula utilizing the price of alternative fuels, (2) the minimum price, which is $1.475 per MMBtu for the contract year September 15, 1988, through September 14, 1988, and increases annually up to $1.730 per MMBtu after September 15, 1991, or (3) 63% of the actual sales price received by Distrigas' affiliate, Distrigas of Massachusetts, for the LNG. The following is a list of prices that have been derived by applying the reference price formula during the 1987/1988 winter months:

| Month | Formula price ($/MMBtu) | Reference price (63 percent of formula price) ($/MMBtu) |
|---|---|---|
| October 1987 | 3.108 | 1.966 |
| November 1987 | 3.160 | 1.998 |
| December 1987 | 3.073 | 1.943 |
| January 1988 | 3.045 | 1.925 |
| February 1988 | 2.971 | 1.879 |
| March 1988 | 2.792 | 1.766 |

The average reference price (FOB price) for 1987–1988 would have been $1.923 per MMBtu. After March 15 of each contract year the price for the LNG can be established by mutual agreement.

The transportation costs of the LNG are dealt with in a separate transportation agreement. The transportation cost is derived by an adjustable formula but would be approximately $0.27 per MMBtu.

Amendment No. 3 eliminates the strict take-or-pay provisions of the 1976 Agreement. Although the amended agreement calls for Distrigas to take a minimum of nine of the 17 annual cargoes of LNG, and contemplates the sale of those nine cargoes during the winter months (September 15 through March 15), Distrigas is not obligated to take any cargo if, ten days prior shipping, the reference price is lower than the minimum price. In addition, in the event any of the nine minimum cargoes are scheduled for delivery after March 15 of any contract year, the price shall be as agreed to by Distrigas and Sonatrading.

Amendment No. 3 also includes a make-up provision that would allow Distrigas, to the extent that it took less than 17 cargoes of LNG during a contract year, to purchase additional quantities of LNG in succeeding year(s) until the total of such additional purchases equals the amount by which the original purchases were less than the 17 cargoes of LNG. Further, if at the end of the contract term there are still quantities of LNG remaining to be shipped under the make-up provision, the contract term may be extended for 5 years or until the difference has been delivered, whichever comes first.

**Public Comment Procedures:**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., September 8, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316. A copy of Distrigas Corporations application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 4, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-18074 Filed 8-8-88; 8:45 am]

BILLING CODE 6450-01-M

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## Energy Information Administration

### Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

**DATE:** Comments must be filed on or before September 8, 1988.

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2222.

**SUPPLEMENTARY INFORMATION:** If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–548.
3. 1902–0085.
4. Staff Adjustment Under NGPA Section 502(c).
5. Extension.
6. On Occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 46 respondents.
10. 46 responses.
11. 736 hours.
12. The estimated average hours per response for the FERC–548 is 16 hours per respondent.
13. This reporting requirement is for Commission review of requests for adjustments pursuant to section 502(c) of the NGPA, and in accordance with Part 385, Subpart K of the Commission's Regulations, to certain rules or orders "* * * to prevent special hardship, inequity, or unfair distribution of burdens."

**Statutory Authority**

Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, August 3, 1988.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 88–17987 Filed 8–8–88; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER82–705–004 et al.]**

**Arkansas Power & Light Co. et al.**

**Electric Rate, Small Power Production, and Interlocking Directorate Filings**

August 3, 1988.

Take notice that the following filings have been made with the Commission:

**1. Arkansas Power & Light Company**

[Docket No. ER82–705–004]

Take notice that on July 21, 1988, Arkansas Power & Light Company (AP&L) tendered for filing, pursuant to Commission order issued on June 7, 1988, a Compliance Report showing the monthly billing determinants which were modified under this filing, revenue receipt dates, and monthly interest computed for the total refund period from March 1987 through February 1988.

Copies of this filing have been served upon all parties affected by this proceeding.

*Comment date:* August 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

**2. Consolidated Edison Company of New York, Inc.**

[Docket No. ER87–488–003]

Take notice that on July 21, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Revised Supplements to its Rate Schedules FERC Nos. 60, 66 and 78, agreements to provide transmission service for the Power Authority of the State of New York (Authority). The Supplements provide for a decrease in the monthly transmission charge from $0.93 to $0.82 per kilowatt for transmission of power and energy sold by the Authority to Brookhaven National Laboratory, Grumman Corporation and the Long Island Municipal Distribution Agencies, thus decreasing annual revenues under the Rate Schedules by a total of $75,052.56. The decrease is effective as of July 1, 1987.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

*Comment date:* August 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

**3. Wisconsin Electric Power Company**

[Docket No. ER88–534–000]

Take notice that on July 28, 1988, Wisconsin Electric Power Company tendered for filing a revised interconnection agreement between itself and the Board of Light and Power, City of Marquette. Service had previously been rendered under the terms of assigned interconnection agreement accepted for filing by the Commission in Docket No. ER88–173–000.

Wisconsin Electric requests an effective date of June 1, 1988, the date upon which the first transactions under the agreement were conducted. Accordingly, Wisconsin Electric requests waiver of the Commission's notice requirements. The Board of Light and Power joins in the requested effective date.

Copies of the filing have been served on the Board of Light and Power, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* August 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

**4. Iowa Public Service Company**

[Docket No. ER88–535–000]

Take notice that on July 28, 1988, Iowa Public Service Company (IPS) tendered for filing an executive Letter Agreement dated June 23, 1988 whereby IPS will supply Kansas City Power & Light Company (KCPL) with short-term power and associated energy, commencing June 20, 1988 and continuing through September 3, 1988. IPS requests that the negotiated Agreement be made effective as of June 20, 1988.

*Comment date:* August 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

**5. Tampa Electric Company**

[Docket No. ER88–536–000]

Take notice that on July 28, 1988, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale Tampa Electric to Seminole Electric Cooperative (Seminole) of 65 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Seminole, designated as Tampa Electric Rate Schedule FERC No. 22.

Tampa Electric proposes an effective date of July 29, 1988 for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

**Comment date:** August 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

**Virginia Electric and Power Company**

[Docket No. ER88–537–000]

Take notice that on July 28, 1988, Virginia Electric and Power Company (Company) tendered for filing a second addendum to a Settlement Agreement dated as of October 16, 1987 between the Company and Old Dominion Electric Cooperative (ODEC). The addendum would modify the monthly payments made by ODEC and become effective January 1, 1988.

Waiver of the Commission's notice requirements is requested so as to permit an effective date of Janaury 1, 1988.

Copies of the filing have been served on ODEC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* August 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

**7. Louisiana Power & Light Company**

[Docket No. ER88–540–000]

Taken notice that on July 29, 1988, Louisiana Power & Light Company

(LP&L) tendered for filing proposed amendments to Electric System Interconnection Agreements between LP&L and the following entities:

| Entity | FERC rate Schedule No. |
|---|---|
| City of Ruston, LA | 54 |
| City of Minden, LA | 63 |
| Cajun Electric Cooperative, Inc. | 64 |
| Town of Jonesville, LA | 65 |
| City of Houma, LA | 66 |
| Louisiana Energy & Power Authority | 72 |
| City of Winnfield, LA | 77 |
| Town of Vidalia, LA | 78 |

LP&L states that based on billing determinates for the test year ending December 31, 1988, the proposed amendments will result in an increase in transmission service revenues from such customers of approximately $1,739,000 annually. The proposed amendments also modify the rates and charges under the Electric System Interconnection Agreement for supplemental power service, add a new service schedule for replacement energy service, and clarify certain provisions of the Electric System Interconnection Agreements. LP&L proposes to make the amendments to the Electric System Interconnection Agreements effective on October 1, 1988.

Copies of the filing were served upon each of the affected entities and the Louisiana Public Service Commission.

*Comment date:* August 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

**8. Federal Power Board Company, Inc.**

[Docket No. QF88-454-000]

On July 18, 1988, Federal Power Board Company, Inc. (Applicant) of P.O. Box 1425, Augusta, Georgia 30913 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility which is to be developed in two phases will be located in Augusta, Georgia. Phase I construction commenced May 1987. Phase II construction is scheduled to commence July 1988. In Phase I, the facility will consist of 3 recovery boilers, part of No. 1 power boiler, and three steam driven turbine generators with maximum net electric power production capacity of 66.72 MW. During Phase II, in addition to the above, the facility will consist of 3 power boilers, No. 2 and No. 3 recovery boilers, part of No. 1 power boiler, and three steam driven turbine generators. Primary energy sources will be bark and black liquor. Applicant states that small amounts of natural gas, coal, or oil may be burned for non-primary fuel purposes, including start-up, flame stabilization, back up, etc. However, such fossil fuel usage will not exceed 25% of the total fuel input to the facility during any calendar year period. Applicant further states that significant amounts of natural gas and coal will also be burned however, the electric power output associated with such fuels approximately 27 MW, will not be included as part of the qualifying capacity.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17946 Filed 8-8-88; 8:45am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-187-001]**

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 28, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

*To be Effective June 4, 1988*

Substitute Twelfth Revised Sheet No. 16B
Substitute Second Revised Sheet No. 16B1
Substitute Second Revised Sheet No. 16B2
Substitute Third Revised Sheet No. 46E
Substitute Second Revised Sheet No. 68
Substitute Second Revised Sheet No. 68A

*To be Effective July 29, 1988*

Thirteenth Revised Sheet No. 16B
Third Revised Sheet No. 16B1
Third Revised Sheet No. 16B2

Columbia states that these tariff sheets relate to Columbia's June 3, 1988 filing in Docket No. RP88-187-000, which proposed procedures for Columbia's recovery from its customers of take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to:

(A) Revise Section 25 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, pursuant to ordering paragraphs (B) and (C) of the Commission's July 1, 1988 Order in Docket No. RP88-187-000 and to correct inadvertent clerical errors in certain base and deficiency period volumes reflected for Columbia's customers in the June 3, 1988 filing;[1] and

(B) Supplement its earlier filing to permit it to flow through additional take-or-pay and contract reformation costs to be billed to it by Texas Eastern Transmission Corporation (Texas Eastern) in Docket Nos. RP88-80-004 and RP88-192, relating to costs to be incurred by Texas Eastern from Texas Gas Transmission Corporation and Southern Natural Gas Company, respectively. In addition, Columbia proposes to flow through to its customers amounts billed to it by Tennessee Gas Pipeline Company (Tennessee) for Tennessee's recovery of take-or-pay and contract reformation costs paid to Tennessee's producer suppliers pursuant to Tennessee's filings on June 10, 1988 and July 25, 1988 in Docket No. RP88-191.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88-187-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214

[1] The tariff sheets submitted with the instant filing reflect the revised allocation factors and Fixed Monthly Demand Surcharges resulting from the adjustments to the base and deficiency period volumes. Upon acceptance of this filing, Columbia states that it will adjust the prior billings to its customers to reflect the revised allocation factors and Fixed Monthly Demand Surcharges.

and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17947 Filed 8-8-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-224-000]**

## Freeport Interstate Pipeline Co.; Filing

August 3, 1988.

Take notice that on July 29, 1988, Freeport Interstate Pipeline Company tendered for filing Original Volume No. 1 of its FERC Gas Tariff. This filing was tendered pursuant to section 4 of the Natural Gas Act, section 311 of the Natural Gas Policy Act, Part 154 and § 284.7 in connection with Subparts A and B of Part 284 of the Commission's Regulations. The proposed effective date of the tariff is February 6, 1988. The proposed rate filing is more fully described in the filing itself, which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17948 Filed 8-8-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ88-1-55-000]**

## Questar Pipeline Co.; Rate Change

August 3, 1988.

Take notice that on July 29, 1988, Questar Pipeline Company (Questar Pipeline) tendered for filing and acceptance Fifteenth Revised Sheet No. 12 to be effective September 1, 1988, to its FERC Gas Tariff, First Revised Volume No. 1.

Questar Pipeline states that the purpose of this filing is to: (1) Adjust the purchased gas costs under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective September 1, 1988; and (2) to request a temporary waiver of the PGA clause under its Tariff and related Commission regulations to permit recovery of certain firm transportation demand charges from Northwest Pipeline Corporation related to the conversion of contract demand from Northwest's PL-1 sales rate schedule to its TF-1 transportation rate schedule for the period July 1, 1988, through September 30, 1988.

Questar Pipeline further states that Fifteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.02106/Dth for sales under its Rate Schedule CD-1 which is $0.02926/Dth higher than the currently effective rate of $1.99180/Dth. The demand base cost of purchased gas as adjusted is decreased by $1.24189/Mcf to 0.15516/Mcf.

Questar Pipeline has requested any necessary waivers of the Commission's Rules and Regulations to allow the tendered tariff sheet to become effective as proposed, and states that it has provided a copy of the filing to its sales customer and state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17949 Filed 8-8-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. JD88-16281T]**

## Designation of Tight Formation; Zapata County, Texas, Texas-41; Texas Railroad Commission; Tight Formation Determination

Issued August 4, 1988.

Take notice that on July 18, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that the Roleta (Wilcox 10,200) Field, located in Zapata County, Texas, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued June 27, 1988, finding that the proposed addition meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1987)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-17950 Filed 8-8-88; 8:45 am]

BILLING CODE 6717-01-M

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## Envirosphere Co. a Div. of Ebasco; Proposed Contract Award

**SUMMARY:** In accordance with Department of Energy (DOE) Acquisition Regulations (DEAR), 48 CFR, Chapter 9, Subpart 909.570-9, the Federal Energy Regulatory Commission (FERC) gives public notice that a contract is being awarded, recognizing the existence of potential organizational conflicts of interest, because it has been determined to be in the best interest of the United States.

**FOR FURTHER INFORMATION CONTACT:**

John M. Connors, Director, Procurement Division, Room 3106], 941 North Capitol Street, NE., Washington, DC 20426, Telephone Number (202) 357-5612.

James R. Higgins, Office of Administrative Services, Room 3112A, 941 North Capitol Street, NE., Washington, DC 20426, Telephone Number (202) 357-9082.

**Findings**

1. The Federal Energy Regulatory Commission (FERC), Office of Hydropower Licensing, Office of Pipeline and Producer Regulation, and Office of Electric Power Regulation, has a requirement for technical support for environmental services relating to environmental assessments and environmental impact statements for hydropower facilities, gas pipelines and electric projects.

2. In response to the solicitation for a contractor to perform this type of effort, all offerors deemed to fall into the competitive range were determined to have the potential for a conflict of interest.

3. In accordance with 48 CFR 909.570–5, Envirosphere Company provided statements disclosing relevant information concerning its interest related to other contractual situations and bearing on whether it has possible organizational conflicts of interest (1) with respect to being able to render impartial, technically sound and objective assistance or advice, or (2) which may give it an unfair competitive advantage.

4. Based on an evaluation of the information provided, it has been determined that there could be potential or perceived conflicts of interest with regard to the work under this contract. The clientele of Envirosphere Company, could potentially have organizational conflicts of interest, as defined at 48 CFR 909.570–9(a), with regard to the work required by the Offices of Hydropower Licensing, Pipeline & Producer Regulation, and Electric Power Regulation, in accordance with 48 CFR 909.570–9(a). In particular, Envirosphere Company derives a portion of its annual income from arrangements with entities that could be affected by the work under this proposed contract.

5. Because no other offeror in the competitive range was found to have little or no likelihood of organizational conflicts of interest and based on the needs of the Commission and the fact that it is doubtful that a firm could perform the requirements of this proposed contract without having a potential or perceived conflict of interest, it is neither feasible nor desirable to disqualify Envirosphere from contract award in accordance with 48 CFR 909.570–9(a)(1). Furthermore, it is not possible to totally avoid the organizational conflict of interest by inclusion of appropriate conditions in the resulting contract, pursuant to 48 CFR 909.570–9(a)(2).

**Mitigation**

As this will be a level-of-effort type contract in which specific work directives would be given to the contractor by task assignment, the Contracting Officer's Technical Representative and the Contracting Officer will insure that the assigned work does not present a direct conflict of interest by review and approval of the contractor's proposed mitigation plan for each individual task being placed. In addition, the Organizational Conflicts of Interest Special Clause entitled "Organizational Conflicts of Interest—Special Clause (DEAR 952.209–72)," shall be included in the contract.

**Determination**

In light of the above findings and mitigation, and in accordance with 48 CFR 909.570–9(a)(3), the proposed contract award is in the best interest of the United States.

Date: August 4, 1988.

**Vincent E. Mason,**

*Executive Director, Federal Energy Regulatory Commission.*

[FR Doc. 88–17984 Filed 8–8–88; 8:45 am]

BILLING CODE 6717–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidation Hearing; Gwendolyn Gladys Evans and Stephen E. Brisker

1. The Commission has before it the following mutually exclusive applications for a new AM station:

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. Gwendolyn Gladys Evans; Laurel, DE. | BP–860904AH | 88–340 |
| B. Stephen E. Brisker d/b/a Radio 1170; Falmouth, VA. | BP–861229AC | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. 307(b), All applicants
2. Contingent Comparative, All applicants
3. Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–17891 Filed 8–8–88; 8:45 am]

BILLING CODE 6712–01–M

### Applications for Consolidation Hearing; Oculus Broadcasting Corp. and Bennett's Broadcasting Co.

1. The Commission has before it the following mutually exclusive applications for a new FM station.

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. Oculus Broadcasting Corp.; Royston, GA. | BPH–870819MH | 88–348 |
| B. Bennett's Broadcasting Co; Royston, GA. | BPH–870819MY | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and set forth below in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Comparative, A,B
2. Ultimate, A,B

3. If there is any non-standardized issue in the proceeding, the full text of the issue and the application to which it applies are set forth below in an Appendix to this Notice. A copy of the

complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc. 2100 M Street, NW. Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–17892 Filed 8–8–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearings; Stegus Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Application, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Stegus Corp.; Ocean Pines, MD. | BPH-870330MQ | 88-342 |
| B. Genesis Communications, Inc. and Judith L. Randolph; Ocean Pines, MD. | BPH-870331MI | |
| C. Ocean Pines FM Partnership; Ocean Pines, MD. | BPH-870331NQ | |
| D. Brian Casey; Ocean Pines, MD. | BPH-870331OD | |
| E. Wiltshire Broadcast Co.; Ocean Pines, MD. | BPH-870331OK | |
| F. Hartke Communications Corp.; Ocean Pines, MD. | BPH-870331PB | |
| G. John Geoffrey Wright; Ocean Pines, MD. | BPH-870406KD | |
| H. Ocean Pines LPB Broadcast Corp.; Ocean Pines, MD. | BPH-870406KF | |
| I. Malcolm Kahn, George V. Deleon, Allen Sizulnick & Saul Hertzig d/b/a Ocean Pines Broadcast Co.; Ocean Pines, MD. | BPH-870406KH | |
| J. The Johns Hopkins Broadcasting Foundation; Ocean Pines, MD. | BPED-870406MA | |
| K. Owen P. Mills & John A. Borsari d/b/a Ocean Pines Broadcasting Associates; Ocean Pines, MD. | BPH-870330MP (Dismissed Herein) | |
| L. Alexander W. Soroka d/b/a Ocean Pines Radio Co.; Ocean Pines, MD. | BPH-870406KC (Dismissed Herein) | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

*Issue Heading and Applicants*

1. Air Hazard, B, G
2. Comparative, A, B, C, D, E, F, G, H, I, J
3. Ultimate, A, B, C, D, E, F, G, H, I, J

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–17893 Filed 8–8–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; United Broadcasting of Idaho, Inc., and Media West, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station.

| Application, city and state | File No. | MM Docket No. |
|---|---|---|
| 1. United Broadcasting of Idaho, Inc.; Hayden, ID. | BPH-870730MB | 88-347 |
| 2. Media West, Inc.; Hayden, ID. | BPH-870730MT | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth below in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue in the proceeding, the full text of the issue and the applicant to which it applies are set forth below in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–17894 Filed 8–8–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Frank Werber and Avila Beach, Ltd.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Frank Werber; Silver City, NM. | BPH-870730MH | 88-349 |
| B. Avila Beach, Ltd.; Silver City, NM. | BPH-870730MW | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Financial, A
2. Comparative, A, B
3. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix

to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–17895 Filed 8–8–88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Privacy Act of 1974; Proposed New Routine Use to Existing System of Records; Correction

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of proposed new routine use to existing system of records; correction.

**SUMMARY:** This notice corrects the text portion under the headings, **"SUPPLEMENTARY INFORMATION"** and "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" of the notice of proposed new routine use of existing system of records as published in FR Doc. 88–16983 beginning on page 28437 in the **Federal Register** issue of Thursday, July 28, 1988.

In the **"SUPPLEMENTARY INFORMATION"** section, the second paragraph is corrected to delete the words "insurance agents, brokers, adjusters, lending institutions and" from the second sentence. The second sentence should read, "A new routine use is proposed to permit release of policy expiration information to State and Federal agencies and financial instrumentalities which regulate the lending institutions, for carrying out the purposes of the National Flood Insurance Program."

A routine use which was published on page 331 in the **Federal Register** issue of Monday, January 5, 1987, was inadvertently omitted from the notice which was published on July 28, 1988. That routine use provided that "that property address, flood zone identifier, date of policy issue, and value of policy, solely for the purpose of geocoding the flood insurance policy addresses, may be released to private companies engaged in or planning to engage in activities to market or assist in marketing the sale of flood insurance policies under the National Flood Insurance Program." For the convenience of the reader, we are publishing the entire text under the heading "Routine uses of records maintained in the system, including categories of users and the purposes of such uses."

**FOR FURTHER INFORMATION CONTACT:** Linda M. Keener, FOIA/Privacy Specialist, at (202) 646–3840.

The text portion under the heading "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" is corrected to read as follows:

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

To property loss reporting bureaus, State insurance departments, and insurance companies investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA; to insurance agents, brokers adjusters, and lending institutions for carrying out the purposes of the National Flood Insurance Program; to Small Business Administration, the American Red Cross, the Farmers Home Administration, State and local government individual and family grant and assistance agencies, including but not limited to the State of Ohio Disaster Services Agency and the Johnstown, Pennsylvania Redevelopment Authority for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster; to Write-Your-Own companies as authorized in 44 CFR 62.63 to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program; to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such as States and local government might reasonably expect to assume in the event of a flooding disaster, and to further the flood insurance marketing activities of the National Flood Insurance Program; to State and local government individual and family grant and assistance agencies which furnish to the Federal Insurance Administration the names and addresses of policyholders for purposes consistent with the relocation projects of the Federal Insurance Administration and acquisition projects under the National Flood Insurance Program carried out pursuant to Section 1362 of the National Flood Insurance Act of 1968, as amended, and to State and local government agencies who provide the names and addresses of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties for review by the Federal Insurance Administrator to ensure that their State and/or local government agency is engaged in flood plain management improved real property acquisitions and relocation projects consistent with the National Flood Insurance Program; and, upon the approval by the Federal Insurance Administrator, that the use is in the furtherance of the flood plain management and hazard mitigation goals of the Agency; to State and local government agencies and municipalities to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community; *to State governments, federal agencies, and federal financial instrumentalities responsible for the supervision, approval, regulation or insuring or banks, savings and loan associations or similar institutions, all for carrying out the purpose of the National Flood Insurance Program;* the property address, flood zone identifier, date of policy issue, and value of policy, solely for the purpose of geocoding the flood insurance policy addresses, may be released to private companies engaged in or planning to engage in activities to market or assist in marketing the sale of flood insurance policies under the National Flood Insurance Program.

Routine uses may include Nos. 1, 5, 6, and 8 of Appendix A.

Dated: August 3, 1988.

**George W. Watson,**

*Acting General Counsel, Office of General Counsel, Federal Emergency Management Agency.*

[FR Doc. 88–17911 Filed 8–8–88; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 207–009955–003
*Title:* Star Shipping A/S Joint Service, Chartering and Management Agreement
*Parties:*
A/S Billabong
Westfal-Larsen & Co. A/S
Star Shipping A/S
*Synopsis:* The proposed amendment deletes Fred. Olsen & Co. as a party to the agreement. It further modifies the decision making procedures set forth in the agreement due to the reduction in the number of parties participating in the joint service.

*Agreement No.:* 202–010636–046
*Title:* U.S. Atlantic-North Europe Conference
*Parties:*
Atlantic Container Line, B.V.
Orient Overseas Container Line (UK) Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lignen, B.V.
*Synopsis:* The proposed amendment would modify the parties' service contract rules to incorporate provisions concerning terminal handling charges, container service charges and currency adjustment factor charges.

*Agreement No.:* 202–010637–034
*Title:* North Europe-U.S. Atlantic Conference
*Parties:*
Atlantic Container Line, B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Nedlloyd Lignen, B.V.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
*Synopsis:* The proposed amendment would set forth new rules applicable to service contracts.

*Agreement No.:* 206–010694–007
*Title:* Trans-Atlantic Conference
*Parties:*
North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference
*Synopsis:* The proposed amendment sets forth new rules of general applicability to service contracts adopted by the parties with respect to contract provisions concerning terminal handling, container service, and currency adjustment charges. In addition, it also sets forth rules pertaining to "Crazy Eddie," "Bona-Fide Offer" and "Most Favored Shipper" service contract clauses that are predicated upon the regulations the Commission has proposed to prescribe in pending Docket 88–7.

*Agreement No.:* 202–010833–013
*Title:* Eurocorde–I
*Parties:*
North Europe—U.S. Atlantic Conference
U.S. Atlantic—North Europe Conference
Polish Ocean Lines
American Transport Lines Ltd.
Topgallant Group, Inc.
South Atlantic Cargo Shipping (Atlanticargo) N.V.
Mediterranean Shipping Co., S.A.
Orient Overseas Container Line (UK) Ltd.
Lykes Bros. Steamship Co., Inc.
*Synopsis:* The proposed amendment sets forth new rules of general applicability to service contracts adopted by the parties with respect to contract provisions concerning terminal handling, container service, and currency adjustment charges. In addition, it also sets forth rules pertaining to "Crazy Eddie," "Bonda-Fide Offer" and "Most Favored Shipper" service contract clauses that are predicated upon the regulations the Commission has proposed to prescribe in pending Docket 88–7.

*Agreement No.:* 203–011153–003
*Title:* Hanjin Container Lines, Ltd., Korea Shipping Corporation Facilitation Agreement
*Parties:*
Hanjin Container Lines, Ltd.
Korea Shipping Corporation
*Synopsis:* The proposed modification would permit the parties to clarify their current authority to coordinate and rationalize operations to include the transfer and/or termination of existing operations. The parties have requested a shortened review period.

*Agreement No.:* 207–011205
*Title:* Blue Star Line/Pacific Australia Direct Line Joint Service Agreement
*Parties:*
Pacific Australia Direct Line
Blue Star Line, Ltd.
*Synopsis:* The proposed agreement would permit the parties to operate a joint liner service in the trades: (1) Between ports in New Zealand and certain adjacent Pacific Islands, on the one hand, and ports on the West Coast of North America (including Alaska, Hawaii, Mexico and Canada), on the other hand; and (2) between ports in the Pacific Islands and American Samoa, on the one hand, and ports in New Zealand on the other hand, and inland and coastal points via such ports.

*Agreement No.:* 202–011206
*Title:* North Europe/North America Pacific Coast Rate Agreement
*Parties:*
Hapag-Lloyd AG
Pacific Europe Express
*Synopsis:* The proposed agreement would permit the parties to meet and agree upon rates, tariffs, practices and conditions of service in the trade served via such ports, and Atlantic and Baltic ports in Europe (including Scandinavia, the United Kingdom and the Republic of Ireland) and inland points served via such ports.

By Order of the Federal Maritime Commission.

Dated: August 4, 1988.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 88–17979 Filed 8–8–88; 8:45 am]
BILLING CODE 6730–01–M

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–002401–009
*Title:* Long Beach Terminal Agreement
*Parties:*
City of Long Beach

Sea-Land Service, Inc.
*Synopsis:* The agreement adjusts the annual rent in accordance with the provisions of the preferential assignment agreement as amended.

*Agreement No.:* 224–002401–A–003
*Title:* Long Beach Terminal Agreement
*Parties:*
City of Long Beach
Sea-Land Service, Inc.
*Synopsis:* The agreement adjusts the annual rent in accordance with the provisions of the basic rail and truck terminal lease agreement.

*Agreement No.:* 224–002401–008
*Title:* Long Beach Terminal Agreement
*Parties:*
City of Long Beach
Sea-Land Service, Inc.
*Synopsis:* The agreement provides that subsequent agreements contemplated by provisions in the basic preferential assignment agreement will not become operative until filed and effective pursuant to the Shipping Act of 1984.

By Order of the Federal Maritime Commission.

Dated: August 4, 1988.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 88–17980 Filed 8–8–88; 8:45 am]
BILLING CODE 6730–01–M

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 207–011205–001
*Title:* Blue Star Line, Ltd./Pacific Australia Direct Line Joint Service Agreement
*Parties:*
Pacific Australia Direct Line
Blue Star Line, Ltd.
*Synopsis:* The proposed amendment would expand the geographic scope of the agreement to include the trade between American Samoa and ports on the West Coast of North America. Because of the inclusion of domestic offshore commerce within the scope of the agreement, the Commission-assigned Agreement Number will be changed from 207–011205 to 007–011205.
*Filing Party:*
R. Frederic Fisher, Esquire
Lillick, McHose & Charles
Two Embarcadero Center
San Francisco, California 94111

By Order of the Federal Maritime Commission.

Dated: August 4, 1988.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 88–17981 Filed 8–8–88; 8:45 am]
BILLING CODE 6730–01–M

## Ocean Freight Forwarder License Applicants; FSL Transport, Inc., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

F.S.L. Transport, Inc., 19 West 34th Street, PH–3, New York, NY 10001, Officer: Michael Unger, President
Brandywine International, Inc., 3422 Old Capitol Trail, Wilmington, Delaware 19808, Officer: John A. Pastor, President
Bonnie Williams Willis, 732 Southleaf Dr., Virginia Beach, VA 23462, Officer: Bonnie Williams Willis, Sole Proprietor
Big Apple Customs Brokers, Inc., 157–18 Rockaway Blvd., Jamaica, New York 11434, Officers: George Ferreira, President, Pamela J. Pinter, Vice President
Alps International Customs Broker and Forwarding, Incorporated, 1105 Grandview Drive, South San Francisco, CA 94080, Officer: Wendie Hom, Vice President
Trans-Atlantic Forwarding Co. Inc., 8544 NW. 66th Street, Miami, FL 33166, Officers: Mario M. Obeso, Stockholder; Gustavo Echeverria, Stockholder; Carlos Echeverria, Stockholder; Maria B. Cedeno, Stockholder
All Points Freight Forwarding Inc., 117 Highway 35, Ste 14, Keyport, N.J. 07735, Officers: Donna Borlin-Michelin, President; Martin Rosen, Vice President
Carl V. Lowell dba Lowell International, 8620 SW. 12th Street, Miami, FL 33144, Officer: Carl V. Lowell, Sole Proprietor
Unex International Corp., 3620 SW. 113 Place, Miami, FL 33165, Officers: Sonia Pineyro, President; Gaston Pineyro, Vice President

By the Federal Maritime Commission.

Dated: August 4, 1988.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 88–17982 Filed 8–8–88; 8:45 am]
BILLING CODE 6730–01–M

## Ocean Freight Forwarder License Revocations; Kilo Freight, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shippint Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

*License Number:* 3032
*Name:* Kilo Freight, Inc.
*Address:* 8364 N.W., 68th Street, Miami, FL 33166
*Date Revoked:* July 16, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2573
*Name:* Airnaut International Corp.
*Address:* 149–32 132nd Street, Jamaica NY 11430
*Date Revoked:* July 19, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2413
*Name:* A & A International Freight Forwarders, Inc.
*Address:* 4200 N. 29th Terrace, Hollywood, FL 33020
*Date Revoked:* July 24, 1988

*Reason:* Failed to maintain a valid surety bond

**Bryant L. VanBrakle,**

*Deputy Director, Bureau of Domestic Regulation.*

[FR Doc. 88-17978 Filed 8-8-88; 8:45 am]

BILLING CODE 6710-01-M

## FEDERAL RESERVE SYSTEM

### Bank of Ireland et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Ireland,* Dublin 2, Ireland; to become a bank holding company by acquiring 100 percent of the voting shares of First NH Banks, Inc., Manchester, New Hampshire, and thereby indirectly acquire The Bedford Bank, Bedford, New Hampshire; The Exeter Banking Company, Exeter, New Hampshire; First Capital Bank, N.A., Concord, New Hampshire; First Central Bank, formerly Plymouth Guaranty Savings Bank, Plymouth, New Hampshire; First Cheshire Bank, Keene, New Hampshire; First NH Bank of Lebanon, Lebanon, New Hampshire; First NH Bank of Maine, Portland, Maine; First NH-White Mountain Bank, North Conway, New Hampshire; Granite State National Bank, Somersworth, New Hampshire; The Merchants National Bank of Manchester, Manchester, New Hampshire; and The Wolfeboro National Bank, Wolfeboro, New Hampshire.

In connection with this application, Applicant also proposes to acquire First NH Mortgage Corp, Hooksett, New Hampshire, and thereby engage in mortgage banking activities including the origination, purchase, sale and servicing of residential mortgages pursuant to § 225.25(b)(1) (these activities will be conducted only in New England); First NH Resources, Inc., Boston, Massachusetts, and thereby engage in leasing transactions involving equipment valued at more than $1,000,000 pursuant to §225.25(b)(5); New England Acceptance Corporation, Keene, New Hampshire, and thereby engage in insurance premium financing activities pursuant to § 225.25(b)(1); Vender Funding Co., Inc., New Hyde Park, New York, and thereby engage in leasing equipment valued between $5,000 and $250,000 pursuant to § 225.25(b)(5); and EG&G Financial Services, Inc., Wellesley, Massachusetts, and thereby engage in equipment leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Boatmen's Bancshares, Inc.,* St. Louis, Missouri; to merge with Centerre Bancorporation, St. Louis, Missouri, and thereby indirectly acquire Centerre Bank, N.A., St. Louis, Missouri; Centerre Bank of Branson, Branson, Missouri; Centerre Bank of Cape Girardeau, Cape Girardeau, Missouri; Centerre Bank of Columbia, Columbia, Missouri; Centerre Bank of Crane, Crane, Missouri; Centerre Bank of Kansas City, N.A., Kansas City, Missouri; Centerre Bank of Kennett, Kennett, Missouri; Centerre Bank of Neosho, N.A., Neosho, Missouri; Centerre Bank of Rolla, Rolla, Missouri; Centerre Bank of Springfield, Springfield, Missouri; Centerre Bank of West Plains, N.A., West Plains, Missouri; and Centerre Bank of Vandalia, Vandalia, Missouri.

In connection with this application, Applicant also proposed to acquire Centerre Trust Company of St. Louis, St. Louis, Missouri, and thereby engage in trust company functions pursuant to § 225.25(b)(3); Monetary Transfer System, St. Louis, Missouri, and thereby engage providing data processing services pursuant to § 225.25(b)(7); Centerre Life Insurance Company, St. Louis, Missouri, and thereby act as a reinsurer of credit life and credit accident and health insurance sold in connection with extensions of credit by the affiliate banks pursuant to § 225.25(b)(8); Centerre Insurance Agency, Inc., St. Louis, Missouri, and thereby act as a reinsurer of credit life and credit accident and health insurance sold in connection with extensions of credit by the affiliate banks pursuant to § 225.25(b)(8); Benefit Plan Services, Inc., St. Louis, Missouri, and thereby engage in the design and administration of small to moderately sized employee benefit and pension plans, such as defined benefit plans, defined contribution plans, 401-K plans and profit sharing plans. This activity was approved by Board Order in accordance with § 225.23(a)(3); and Centerre Bank of Delaware, New Castle, Delaware, and thereby engage in credit card lending only pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17898 Filed 8-8-88; 8:45 am]

BILLING CODE 6210-01-M

### Bankverst, Inc., et al; Acquisitions of Compaines Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's

approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets or a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summariziang the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these application must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 31, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Bankvest, Inc.*, Wilkes-Barre, Pennsylvania; to acquire Datavest, Inc., formerly First Data Corp, Wilkes-Barre, Pennsylvania, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1); and to expand the already approved activity of data processing and related services of company to include deposit servicing for Applicant's subsidiary bank pursuant to § 225.25(b)(7) of the Boards's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, and two of its subsidiaries; to acquire Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa, and thereby engage in making, acquiring, and servicing loans of the type made by a consumer finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17897 Filed 8-8-88; 8:45 am]

BILLING CODE 6210-01-M

## Beverly Bancorporation et al.; Formations of; Acquisition by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.C.S. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summariziang the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these application must be received not later than August 26, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beverly Bancorporation, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Firt Wilmington Corp., Wilmington, Illinois, and thereby indirectly acquire The First National Bank of Wilmington, Wilmington, Illionis.

2. *Mechanicsville Trust & Savings Bank*, Trustee of The Mechanicsville Trust and Savings Bank Employee Stock Ownership Plan & Trust, Mechanicsville, Iowa; to become a bank holding company by acquiring 75 percent of the voting shares of Mechanicsville Bancshares, Inc., Mechanicsville, Iowa, and thereby indirectly acquire The Mechanicsville Trust & Savings Bank, Mechanicsville, Iowa.

Board of Governors of the Federal Reserve System, August 3, 1988

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17899 Filed 8-8-88; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *George R. Brokemond*, to acquire 25 percent of the voting shares of Highland Community Company, Chicago, Illinois, and thereby indirectly acquire Highland Community Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, August 3, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17900 Filed 8-8-88; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

BEST COPY AVAILABLE

Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 22, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Robert E. Gallagher;* to acquire 31.99 percent of the voting shares of Standard Bancshares, Inc., Evergreen Park, Illinois, and thereby indirectly acquire Standard Bank & Trust Company, Evergreen Park, Illinois, and Standard Bank & Trust Company, Hickory Hills, Illinois.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Charles L. Hermansen,* Huntington Beach, California; to acquire an additional 14 percent of the voting shares of HNB Financial Group, Huntington Beach, California.

Board of Governors of the Federal Reserve System, August 3, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17901 Filed 8-8-88; 8:45 am]

BILLING CODE 6210-01-M

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## Horizon Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and §225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Horizon Banks, Inc.,* Concord, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Horizon Bank and Trust, Concord, New Hampshire, a *de nove* bank.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *BankVest, Inc.,* Willkes-Barre, Pennsylvania; to acquire 100 percent of the voting shares of Princeton Bank of Pennsylvania, Philadelphia, Pennslyvania.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *G. Fields Bancshares, Inc.,* Cassville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bank of Southwest Missouri, Cassville, Missouri.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bancorp, Inc.,* Huron, South Dakota; to acquire 100 percent of the voting shares of Custer County Bank Custer South Dakota, and Southern Hills Bank, Edgemont, South Dakota.

2. *H & W Holding Company,* Freeman, South Dakota; to become a bank holding company by acquiring at least 80 percent of the voting shares of Merchants State Bank, Freeman, South Dakota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Stockton Bancshares, Inc.,* Stockton, Kansas; to acquire 90.2 percent of the voting shares of The Trego-Wakeeney State Bank, Wakeeney, Kansas. Comments on this application must be received by August 24, 1988.

Board of Governors of the Federal Reserve System, August 3, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17902 Filed 8-8-88; 8:45 am]

BILLING CODE 6210-01-M

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## The Royal Bank of Scotland Group plc; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Royal Bank of Scotland Group plc*, Edinburgh, Scotland; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Financial Group, Inc., Providence, Rhode Island, and thereby indirectly acquire Citizens Savings Bank, Providence, Rhode Island; Citizens Trust Company, Providence, Rhode Island; and Fairhaven Savings Bank, Fairhaven, Massachusetts.

In connection with this application, Applicant also proposes to acquire Gulf States Mortgage Co., Inc., Atlanta, Georgia, and thereby engage in making, acquiring, and servicing residential mortgage loans secured by first and second mortgages pursuant to § 225.25(b)(1); and the sales, as agent, of credit life, credit accident and health and credit disability insurance in connection with extensions of credit pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-17903 Filed 8-8-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 87N-0056]**

### Model Food Protection Unicode; Notice of Availability; Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the period for submitting comments on its draft Model Food Protection Unicode. The Model Food Protection Unicode will update and combine the food protection and sanitation provisions currently contained in separate model codes covering food service, food vending, and retail food stores. FDA received five separate requests for extension of the comment period and is granting an additional 60 days.

**DATE:** Comments by October 7, 1988.

**ADDRESSES:** A copy of the draft Model Food Protection Unicode is available for public review at, and written comments on the draft may be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the draft Model Food Protection Unicode may be obtained by contacting Arthur L. Banks (address below).

**FOR FURTHER INFORMATION CONTACT:** Arthur L. Banks, Center for Food Safety and Applied Nutrition (HFF-342), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0140.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 9, 1988 (53 FR 16472), FDA published a notice of availability for the draft Model Food Protection Unicode. The Model Food Protection Unicode will update and encompass the food protection and sanitation provisions now contained in three separate model codes. Interested persons were given until August 8, 1988, to comment.

Four requests for an extension of the comment period ranging from 30 days to 6 months were received from 3 trade associations and 1 state agency. Specifically, the requests (with the additional amount of time requested in parentheses) were from the National Restaurant Association (30 days); the representative by the National Association of Convenience Stores (60 days); the State of Connecticut's Department of Consumer Protection (90 days); and the National Automatic Merchandising Association (180 days). A fifth request for an extension of the comment period was received from the Conference of Food Protection but the amount of additional time was not specified.

FDA has evaluated the requests and has concluded that an extension of 60 days is appropriate to allow adequate time for interested persons to review the draft document. Therefore, the comment period is being extended until October 7, 1988.

Interested persons may, on or before October 7, 1988, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 2, 1988.

**John M. Taylor,**

*Associate Commissioner.*

[FR Doc. 88-17935 Filed 8-8-88; 8:45 am]

BILLING CODE 4160-01-M

### Advisory Committee Meetings; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that announced forthcoming public advisory committee meetings for the Clinical Chemistry and Clinical Toxicology Devices Panel and the Anesthetic and Life Support Drugs Advisory Committee (53 FR 27239; July 19, 1988). The notice inadvertently stated that the Anesthetic and Life Support Drugs Advisory Committee would discuss new animal drug application Nos. 19-677 and 19-678, for edrophonium and atropine combination (Enlon Plus®, Anaquest). This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 88-16132, appearing at page 27239 in the **Federal Register** of Tuesday, July 19, 1988, the following correction should be made: On page 27240, second column, sixth line under the *"Open committee discussion"* paragraph, "new animal drug" is corrected to read "new drug".

Dated: August 2, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-17936 Filed 8-8-88; 8:45 am]

BILLING CODE 4160-01-M

## Indian Health Service

### Availability of Funds for Loan Repayment Program for Health Professions Education Loans

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Indian Health Service (IHS) announces that $2,000,000 in Fiscal Year (FY) 1988 grant funds is available for the repayment of health professions educational loans in return for full-time clinical service in the Indian Health Service. Funding for this program is provided by Pub. L. 100-202, Final Continuing Appropriations for Fiscal Year 1988, enacted December 22, 1987. The IHS, through this notice, invites potential applicants to request an application for participation in the Loan Repayment Program. The IHS estimates that approximately 80 loan repayment

awards may be awarded with this funding.

**DATES:** Applications for the initial cycle of this program will be accepted through September 8, 1988. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications received after the announced closing date will not be considered for funding.

**ADDRESS:** Application materials may be obtained by calling or writing, and completed applications should be returned to: Health Manpower Support Branch, IHS, Room 9A-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 301-443-4243.

**FOR FURTHER INFORMATION CONTACT:** Hazel Black. Telephone 301-443-4243. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Funding for the IHS Loan Repayment Program was included in Pub. L. 100-202, Final Continuing Appropriations for FY 1988, enacted December 22, 1987, which states in pertinent part:

> * * * of the funds provided, $2,000,000 shall be used to carry out a loan repayment program under which Federal, State, and commercial-type loans for physicians and other health professionals will be repaid at a rate not to exceed $25,000 per year of obligated service in return for full-time clinical service in the Indian Health Service. Each individual participating in this program must sign and submit to the Secretary a written contract to accept repayment of educational loans and to serve for the applicable period of service in the Indian Health Service.

This program is intended to address potential problems the IHS is facing with regard to future staffing shortages. Only individuals who are or will be in full-time clinical practice as Federal employees in the IHS (whether at IHS facilities or assigned to tribal programs) may participate in this loan repayment program. Employees of tribal organizations contracting with the IHS under the Indian Self Determination Act, Pub. L. 93-638, and employees of urban Indian organizations contracting with the IHS uner Title V of the Indian Health Care Improvement Act, Pub. L. 94-437, may not participate.

Applicants may sign agreements with the Secretary for two or three years. In return for the service required by the contract, the IHS will repay health professions educational loans for tuition and reasonable educational and living expenses up to $25,000 per year for the duration of the contract.

Participants will be required to fulfill their contract service agreements through full-time clinical practice at a designated Retention/Recruitment Priority Site. The IHS will designate these sites annually. In general, they are sites characterized by physical, cultural and professional isolation, with histories of frequent staff turnover. Sites may be IHS facilities or facilities operated by tribal contractors to which the IHS employee may be assigned.

There are three separate, but not necessarily exclusive, groups of Retention/Recruitment Priority Sites. These are for the priority medical specialties, other medical specialties, and nursing. Program participants may match to any available and appropriate vacancy to complete their obligation. A listing of the Retention/Recruitment Priority Sites for each group will be found in the Program application packet.

Any individual who enters this Program and satisfactorily completes his/her obligated period of service may, if funds are available, apply to extend the contract on a year-by-year or a multi-year basis, as determined by the IHS, at the $25,000 per year rate. The maximum amount to be funded in this manner may not exceed the total of the individual's outstanding qualified loans.

For FY 1988, the Director, IHS, has determined that, based on IHS staffing needs, only physicians and nurses will be eligible to participate in the loan repayment program and has established the following priorities for funding participants in the Program:

1. Physicians who are certified in or eligible to sit for the certifying examination of the specialty boards: general surgery, obstetrics/gynecology, orthopaedic surgery, ophthalmology, otorhinolaryngology/otolaryngology, anesthesiology, radiology and psychiatry.

2. Physicians in other specialties as the needs of the Service require.

3. Nurses if funds are available after physician participants are funded.

4. Physicians or nurses in training.

Applicants must:

(A) Meet one of the following requirements.

(1) Be enrolled as a full-time student in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine or nursing in an accredited school in a State. (The term "State" includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, The Federated States of Micronesia, the Republic of the Marshall Islands, and The Republic of Palau); or (2) be enrolled in an approved graduate training program in allopathic or osteopathic medicine or nursing; or (3) have a degree in allopathic or osteopathic medicine and have completed an approved post-graduate training program and have a current and valid license to practice medicine in a State; or (4) have a degree in nursing and have a current and valid license to practice nursing in a State; and

(B) Be eligible for appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the IHS; and

(C) Submit an application to participate in the Loan Repayment Program; and

(D) Sign and submit to the Secretary, at the time of the submission of such application, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service a Retention/Recruitment Priority Site as determined by the Director.

Selections among qualified applicants will be based upon consideration of the following factors:

—Length of current employment in the IHS (Employees with the greater length of service will receive higher consideration.);
—Agreement to serve for three years, as opposed to two years;
—Post-graduate training in a specialty (medical or nusing) most needed by the IHS;
—Board eligibility or certification by start of service (medical);
—A former IHS employee with experience in a Retention/Recruitment Priority Site (medical or nursing);
—A former National Health Service Corps (NHSC) Scholarship Program participant, with experience in an IHS or NHSC site, who has or will complete the service obligation on or before September 30, 1988 (medical or nursing;
—Experience in a post-residency practice in a primary care Health Manpower Storage Area (HMSA) (medical or nursing);
—References from persons having direct knowledge of the applicant's professional capability.

Any individual who owes an obligation for health professional service to the Federal Government or to a State or other entity under an agreement with such State or other entity is ineligible for the Loan Repayment Program unless such an obligation will be completely satisfied prior to the beginning of service under this program in the year that an application is made for this program.

This program is not subject to review under Executive Order 12372.

The *Catalog of Federal Domestic Assistance* number is 13.164.

Dated: August 3, 1988.

**Everett R. Rhoades,**

*Assistant Surgeon General, Director.*

[FR Doc. 88-17937 Filed 8-8-88; 8:45 am]

BILLING CODE 4160-16-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK-963-4213-15; AA-8099-1]**

### Alaska Native Claims Selection; Calista Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Calista Corporation, notice of which was published in the **Federal Register** 52 FR 5597 on February 25, 1987, is modified by correcting the land description to exclude certain mineral surveys and mining claims.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in *The Tundra Drums*. Copies of the modified DIC may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 8, 1988, to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given February 25, 1987, is final.

**Ann Johnson,**

*Chief, Branch of Calista Adjudication.*

[FR Doc. 88-17931 Filed 8-8-88; 8:45 am]

BILLING CODE 4310-JA-M

**[ID-943-08-4520-12]**

### Filing Plats of Survey; Idaho

**AGENCY:** Bureau of Land Management, Interior.

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, on the dates hereinafter stated:

T. 28 N., R. 4 E., accepted June 6, 1988, officially filed on July 12, 1988.
T. 48 N., R. 4 E., section 11, accepted July 15, 1988, officially filed August 31, 1988.
T. 48 N., R. 5 E., tracts 37-45, accepted July 15, 1988, officially filed August 31, 1988.
T. 48 N., R. 5 E., section 24, accepted July 15, 1988, officially filed August 31, 1988.
T. 48 N., R. 5 E., tract 46, accepted July 15, 1988, officially filed August 31, 1988.
T. 48 N., R. 6 E., section 19, accepted July 15, 1988, officially filed August 31, 1988.

The above plats represent dependent resurveys and supplemental plats.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

**Donald A. Simpson,**

*Chief, Land Services Section.*

Dated: August 1, 1988.

[FR Doc. 88-17874 Filed 8-8-88; 8:45 am]

BILLING CODE 4310-GG-M

**[MT-930-08-4220-10; SDM 76798]**

### Proposed Withdrawal; South Dakota

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction.

This notice will correct the Notice of Proposed Withdrawal published in the **Federal Register** on May 19, 1988 (52 FR 17983-17984). The notice is corrected by changing the following legal description:

In the third column under T. 3 S., R. 3 E., the land description "sec. 31, lots 1 and 2, E½SW¼, SE¼"; should read "sec. 31, lots 3 and 4, E½SW¼, SE¼."

**John A. Kwiatkowski,**

*Deputy State Director, Division of Lands and Renewable Resources.*

August 1, 1988.

[FR Doc. 88-17875 Filed 8-8-88; 8:45 am]

BILLING CODE 4310-DN-M

## DEPARTMENT OF INTERIOR

**[CO-050-4212-11; C-47737]**

### Realty Action; Rio Grande County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Recreation and Public Purposes Classification, C-47737, Rio Grande County, Colorado.

**SUMMARY:** The following described public lands have been examined and found suitable for classification and disposal under the Recreation and Public Purposes (R & PP) Act of June 14, 1926 (43 USC 869) and the regulations thereunder (43 CFR Part 2740):

**New Mexico Principal Meridian, Colorado**

T. 39 N., R. 11 E.,
Sec. 11, E½NE¼;
Sec. 12, W½SW¼NW¼.
Containing 100 acres.

Rio Grande Sportsman Club has applied for these lands to be used for a rifle range. Only that portion actually developed, about 15 acres, would be included in a conveyance. The proposed classification would be consistent with BLM land use plans for the area.

Publication of this notice will segregate these lands from all appropriation, including mineral entry, except applications under the R & PP Act. Segregation will terminate eighteen (18) months from publication of this notice, or upon publication of a notice of termination, whichever occurs first, unless lease or patent issues.

Any lease or patent issued for these lands under the R & PP Act will reserve all minerals to the United States, and will contain a clause which would result in the lands reverting back to the United States if the use of the land is altered or if the land is transferred. The conveyance will also be subject to Oil and Gas Lease C-31506.

**DATES:** Interested parties may submit comments on this action for a period of 45 days after publication of this notice. Comments should be directed to the District Manager, P.O. Box 311, Canon City, CO 81212. Objections will be reviewed and this realty action may be sustained, vacated, or modified. In the absence of any objection resulting in vacation or modification, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** The Canon City District Office at (719) 275–0631.

**Stuart L. Freer,**

*Associate District Manager.*

[FR Doc. 88–17988 Filed 8–8–88; 8:45 am]

BILLING CODE 4310–JB–M

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**[CO–050–4212–11; C–47719]**

## Realty Action; Jefferson County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Recreation and Public Purposes Classification, C–47719, Jefferson County, Colorado; Application for Patent.

**SUMMARY:** The following described public lands are being examined for classification and disposal under the Recreation and Public Purposes (R & PP) Act of June 14, 1926 (43 USC 869) and the regulations thereunder (43 CFR Part 2740):

Sixth Principal Meridian, Colorado

T. 3 S., R. 71 W.,
Sec. 33, S½S½;
Sec. 34, S½SE¼.
Containing 240 acres.

Clear Creek Land Conservancy has applied for these lands to be used for education and recreational purposes. The proposed classification would be consistent with BLM land use plans for the area.

Publication of this notice will segregate these lands from all appropriation, including mineral entry, except applications under the R & PP Act. Segregation will terminate eighteen (18) months from publication of this notice, or upon publication of a notice of termination, whichever occurs first, unless lease or patent issues.

Any patent issued for these lands under the R & PP Act will reserve all minerals to the United States, and will contain a clause which would result in the lands reverting back to the United States if the use of the land is altered or if the land is transferred.

**DATES:** Interested parties may submit comments on this action for a period of 45 days after publication of this notice. Comments should be directed to the District Manager, P.O. Box 311, Canon City, CO 81212. Objections will be reviewed and this realty action may be sustained, vacated, or modified. In the absence of any objection resulting in vacation or modification, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Priscilla McLaine in the Northeast Resource Area Office at, 303–236–4399.

**Stuart L. Freer,**

*Associate District Manager.*

[FR Doc. 88–17989 Filed 8–8–88; 8:45 am]

BILLING CODE 4310–JB–M

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## Minerals Management Service

## Development Operations Coordination; McMoRan Oil & Gas Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that McMoRan Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5324, 5331, and 5332, Blocks 433, 457, and 458, respectively, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on July 29, 1988. Comments must be received on or before August 24, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 1, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88–17876 Filed 8–8–88; 8:45 am]

BILLING CODE 4310–MR–M

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# DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 29, 1988. Pursuant to §60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 24, 1988.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**ALABAMA**

**Baldwin County**

*First Baptist Church (Rural Churches of Baldwin County TR),* N side D'Olive St., Bay Minette, 88001349

*Latham United Methodist Church (Rural Churches of Baldwin County TR),* E side Hwy. 59, Latham, 88001350

*Lebanon Chapel AME Church (Rural Churches of Baldwin County TR),* Bounded by Young St. on the West and Middle St. on the North, Fairhope, 88001351

*Montgomery Hill Baptist Church (Rural Churches of Baldwin County TR)*, E side Hwy. 59 on CR 80,Tensaw, 88001352
*St. Mark's Lutheran Church (Rural Churches of Baldwin County TR)*, W side CR 83, Elberta, 88001353
*St. Patrick's Catholic Church (Rural Churches of Baldwin County TR)*, E side Hwy. 90, Loxley, 88001354
*St. Paul's Episcopal Church (Rural Churches of Baldwin County TR)*, N side Oak Ave., Magnolia Springs, 88001355
*Stockton Methodist Church (Rural Churches of Baldwin County TR)*, E side Hwy. 59, Stockton, 88001356
*Swift Presbyterian Church (Rural Churches of Baldwin County TR)*, Swift Church Rd., Miflin, 88001357
*Twin Beach AME Church (Rural Churches of Baldwin County TR)*, S side of CR 44, Fairhope, 88001358

**Madison County**

*New Market Presbyterian Church, 1723 New Market Rd., New Market, 88001348*

**ALASKA**

**Juneau Borough-Census Area**

*Fries Miners' Cabins*, 500 blk., Kennedy St., Juneau, 88001347

**CONNECTICUT**

**Fairfield County**

*Methodist Episcopal Church*, 61 E. Putnam Ave., Greenwich, 88001343
*Wilcox, Josiah, House*, 354 Riversville Rd., Greenwich, 88001344

**Hartford County**

*East Granby Historic District*, Church and East Sts., Nicholson and Rainbow Rds., N Main, School and S. Main Sts., East Granby, 88001318
*Marion Historic District*, Along Marion Ave., and Meriden-Waterbury Tnpk., Southington, 88001423

**Middlesex County**

*Broad Street Historic District*, Roughly bounded by High, Washington, Broad and Church Sts., Middletown, 88001319

**Windham County**

*Dayville Historic District*, Main and Pleasant Sts., Killingly, 88001422

**DISTRICT OF COLUMBIA**

**District of Columbia**

*Lothrop Mansion*, 2001 Connecticut Ave., Washington, 88001346

**IOWA**

**Black Hawk County**

*Black Hawk County Soldiers Memorial Hall (Waterloo MPS)*, 194 W. Fifth St., Waterloo, 88001322
*Chicago, Great Western Railroad—Waterloo Freight Depot (Waterloo MPS)*, Sixth St., Waterloo, 88001325
*Fire Station No. 2 (Waterloo MPS)*, 716 Commercial St., Waterloo, 88001321
*Hotel Russell—Lamson (Waterloo MPS)*, 201—215 W. Fifth St., Waterloo, 88001324
*Waterloo Public Library—East Side Branch (Waterloo MPS)*, 626 Mulberry St., Waterloo, 88001323

**Muscatine County**

*Chicago, Rock Island and Pacific Railroad—Wilton Depot*, N. Railroad St., Wilton, 88001326

**Polk County**

*Andrews, Josiah, House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1128 Twenty-seventh St., Des Moines, 88001338
*Bell, Hill McClelland, House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1091 Twenty-sixth St., Des Moines, 88001334
*Denny, Professor Charles O., House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1084 Twenty-fifth St., Des Moines, 88001329
*Drake University Campus Historic District (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, Roughly two blks. along University Ave. near Twenty-fifth St., Des Moines, 88001341
*Kirkham, Francis M., House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1026 Twenty-fourth St., Des Moines, 88001328
*Knotts, Nellie and Thomas, House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1021 Twenty-sixth St., Des Moines, 88001333
*Lord, Richard T. C., and William V. Wilcox House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 2416 Kingman Blvd., Des Moines, 88001336
*Norman Apartment Building (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 3103 University Ave., Des Moines, 88001327
*Odenweller, F. F., and James P. and Nettie Morey House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1115 Twenty-seventh St., Des Moines, 88001337
*Reynolds, Anson O., House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1022 Twenty-sixth St., Des Moines, 88001331
*Scott, Mary A. and Caleb D., House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1014 Twenty-sixth St., Des Moines, 88001332
*Sherman, Lampson P., House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1052 Twenty-sixth St., Des Moines, 88001335
*Simmons, John P., House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1113 Twenty-seventh St., Des Moines, 88001339
*Stuart, Dr. Richard and Paulina, House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1060 Twenty-fifth St., Des Moines, 88001330
*Vail, Mrs. Marian D. and Professor Charles Noyes Kinney House (Drake University and Related Properties in Des Moines, Iowa, 1881—1918 MPS)*, 1318 Twenty-seventh St., Des Moines, 88001340

**KENTUCKY**

**Oldham County**

*Central La Grange Historic District*, Primarily along Washington, Main, and Jefferson Sts., Kentucky Ave., and First through Sixth Aves., La Grange, 88001316

**Wayne County**

*Hotel Breeding*, 201—211 N. Main St., Monticello, 88001315

**NEW YORK**

**Livingston County**

*St. Rose Roman Catholic Church Complex*, Lake Ave., Lima, 88001345

**OHIO**

**Highland County**

*Saint Mary's Episcopal Church and Parish House*, 232 N. High St., Hillsboro, 88001421

**OKLAHOMA**

**Alfalfa County**

*Cherokee Armory (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935—1943 TR)*, Second and Kansas Sts., Cherokee, 88001371

**Atoka County**

*Atoka Armory (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, Ohio and C Sts., Atoka, 88001372
*Atoka Community Building (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, First and Delaware Sts., Atoka, 88001373

**Bryan County**

*Caddo Community Building (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, E. Buffalo St., Caddo, 88001376
*Lee, E., School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, Ninth and Louisiana Sts., Durant, 88001374
*Roberts School Campus (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, Off OK E70, Durant Vicinity, 88001377
*Williams, Robert Lee, Public Library (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, Fourth and Beech Sts., Durant, 88001375

**Canadian County**

*Goff, William I. and Magdalen M., House*, 506 S. Evans, El Reno, 88001317

**Choctaw County**

*Hugo Armory (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, Jefferson and Third Sts., Hugo, 88001378

*Hugo Public Library (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, E. Jefferson St., Hugo, 88001379

*Speer School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, Off US 271 E on a county road, Hugo vicinity, 88001380

*Spencerville School Campus (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, S of Spencerville, Spencerville vicinity, 88001381

**Coal County**

*Coalgate School Gymnasium—Auditorium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR)*, Fox and Frey Sts., Coalgate, 88001382

**Garfield County**

*Enid Armory (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Sixth and Elm Sts., Enid, 88001370

**Grant County**

*Dayton School (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, SE of Lamont, Lamont vicinity, 88001369

*Medford Bathhouse and Swimming Pool (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Guthrie and Fifth Sts., Medford, 88001368

**Harper County**

*Buffalo City Park Pavilion (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, US 64, Buffalo, 88001367

**Haskell County**

*Kinta High School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, OK 2, Kinta, 88001383

*Stigler School Gymnasium—Auditorium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Fourth and E Sts., Stigler, 88001384

**Hughes County**

*Dustin Agricultural Building (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Rutherford and Fourth Sts., Dustin, 88001385

*Holdenville Armory (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, US 270 and N. Butts St., Holdenville, 88001386

*Moss School Gymnasium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off the intersection of US 270 and 75, Holdenville vicinity, 88001388

*Spaulding School Gymnasium—Auditorium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Section Line Hwy. and Second St., Spaulding, 88001389

*Stroup Park Swimming Pool and Bath House (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, N. Broadway and E. Twelfth Sts., Holdenville, 88001387

*Wetumka Armory (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, St. Louis and Wetumka Sts.,Wetumka, 88001390

*Wetumka Cemetery Pavilion and Fence (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, E of Wetumka, Wetumka vicinity, 88001391

**Kay County**

*Blackwell Armory (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Sixth and Doolin Sts., Blackwell, 88001366

*Blaine Stadium and Fieldhouse (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Fifth and Brookfield Sts., Ponca City, 88001364

*Newkirk Water Purification Plant (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Tenth and Elm Sts., Newkirk, 88001365

*Tonkawa Armory (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Third and North Sts., Tonkawa, 88001363

**Latimer County**

*Ash Creek School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off Ash Creek Rd., Wilburton vicinity, 88001392

*Bowers School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off US 270 on county road, Wilburton vicinity, 88001393

*Cambria School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, NE of Hartshorne, Hartshorne vicinity, 88001394

*Colony Park Pavilion (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Veterans Colony, Wilburton vicinity, 88001395

*Degnan School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, NW of Wilburton off OK 2, Wilburton vicinity, 88001396

*Panola High School and Gymnasium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off US 270, on the southside of the railroad tracks, Panola, 88001397

**Le Flore County**

*Arkoma School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Arkoma and Blocker Sts., Arkoma, 88001398

*Dog Creek School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, SW of Shady Point, Shady Point vicinity, 88001399

*Poteau Community Building (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Hill and Hopkins Sts., Poteau, 88001403

*Poteau School Gymnasium—Auditorium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Walter and Parker Sts., Poteau, 88001404

*Shady Point School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, NE edge of the community, Shady Point, 88001405

*Summerfield School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off US 271, Summerfield, 88001406

*Tucker School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off US 59, Spiro vicinity, 88001407

*Twyman Park (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, West St., Poteau vicinity, 88001402

*Westside Elementary School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Second and D Sts., Heavener, 88001400

*Williams School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, NW of Cameron, Cameron vicinity, 88001408

**McCurtain County**

*Idabel Armory (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Washington and SE Avenue F Sts., Idabel, 88001409

*Valliant School Gymnasium—Auditorium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Wilbur and Lucas Sts., Valliant, 88001410

**Noble County**

*Perry Armory (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Delaware and Fourteenth Sts., Perry, 88001362

*Rein School (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma,*

*1935–1943 TR)*, Off US 177, Ponca City vicinity, 88001361

**Pittsburg County**

*Cole Chapel School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, N of Hartshorne, Hartshorne vicinity, 88001411

*Lee, Jeff, Park Bath House and Pool (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Third and Fillmore Sts., McAlester, 88001413

*McAlester Armory (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Third and Polk Sts., McAlester, 88001412

*New State School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, S of Hartshorne near North Fork Elm Creek, Hartshorne vicinity, 88001414

*Pittsburg School and Gymnasium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off OK 63, Pittsburg, 88001415

*Tipton Ridge School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, W. Pine St., Clayton, 88001416

**Pushmataha County**

*Clayton High School—Auditorium (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, W. Pine St., Clayton, 88001416

*Fewell School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, Off OK 144, Nashoba vicinity, 88001419

*Snow School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR)*, US 271, Snow, 88001420

**Woods County**

*Alva Armory (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Choctaw and Third Sts., Alva, 88001360

**Woodward County**

*Woodward Crystal Beach Park (WPA Public Bldgs., Recreational Facilities and Water Quality Improvements in Northwestern Oklahoma, 1935–1943 TR)*, Jim Ben and Temple Houston Sts., Woodward, 88001359

**OREGON**

**Clatsop County**

*Uniontown—Alameda Historic District*, Marine Dr. and Alameda Ave., between Hume and Hull Aves., Astoria 88001311

**Douglas County**

*Smith, Bernard Pitzer, House*, 15892 Old Hwy. 99, S, Myrtle vicinity, 88001313

**Multnomah County**

*Ladd's Addition Historic District*, Bounded by S.E. Division, Hawthorne, Twelfth and Twentieth Sts., Portland 88001310

*Young, John Eben, House*, 916 S.W. King St., Portland, 88001312

**SOUTH DAKOTA**

**Hand County**

*Miller Ree Creek Bridge*, W edge of Miller, Miller, 88001314

**TENNESSEE**

**Henry County**

*Bruce, H.L., House (Paris MRA)*, 202 S. Poplar St., Paris, 88001431

*Jernigan, E.K., House (Paris MRA)*, 207 Dunlap St., Paris, 88001429

*Jernigan, Thomas P., House (Paris MRA)*, 918 Dunlap St., Paris, 88001430

*Lee, Robert E., School (Paris MRA)*, 402 Lee St., Paris, 88001426

*North Poplar Historic District (Paris MRA)*, Along sections of N. Poplar St. and E. Church St., Paris, 88001428

*Paris Commercial Historic District (Paris MRA)*, Along sections of E. and W. Wood, W. Washington, N. and S. Poplar, N. and S. Market, Fentress and W. Blythe Sts., Paris, 88001424

*Sweeney, Judge John C., House (Paris MRA)*, 1212 Chickasaw Rd., Paris, 88001427

*West Paris Historic District (Paris MRA)*, Along sections of W. Washington, N. College and Hudson Sts., Paris, 88001432

*White, Charles M., House (Paris MRA)*, 403 Whitehall Circle, Paris, 88001425

**VIRGINIA**

**Pulaski County**

*Hoge, John, House*, NW side of VA 617, Belspring vicinity, 88001320

The following properties were erroneously listed under West Virginia in our Annual List dated Tuesday, May 24, 1988, under Properties Listed in the National Register in Fiscal Year 1986, and should read as follows:

**WASHINGTON**

**Snohomish County**

*Weyerhauser Office Building*, 1710 W. Marine View Dr., Everett (5/14/86)

**Whitman County**

*Palouse Main Street Historic District*, Main St. between K and Mary Sts., Palouse (5/8/86)

[FR Doc. 88–17912 Filed 8–8–88; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF JUSTICE

### Attorney General

**[Atty. Gen. Order No. 1293–88]**

### Certification of the Attorney General; Talbot County, GA;

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Talbot County, Georgia. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

**Edwin Meese III,**

*Attorney General of the United States.*

August 4, 1988.

[FR Doc. 88–17914 Filed 8–8–88; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Two Partial Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Cannons Engineering Corp. et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19020, notice is hereby given that on August 3, 1988, two proposed partial consent decrees in *United States* v. *Cannons Engineering Corporation, et al.* Civil Action No. 88–1786–WF, were lodged with the United States District Court for the District of Massachusetts. The decrees resolve claims of the United States against the settling parties under the Comprehensive Environmental Response, Compensation and Liability Act as amended, 42 U.S.C. 9601 *et seq.* ("CERCLA"). The claims are related to wastes that were disposed of at four hazardous waste sites, which sites are located in Bridgewater, Massachusetts; Plymouth, Massachusetts; Londonderry, New Hampshire, and Nashua, New Hampshire. All four sites have been placed on the National Priorities List of hazardous waste sites promulgated by the Environmental Protection Agency ("EPA") pursuant to CERCLA. The claims are against persons whose waste was disposed of at the sites, persons who transported waste to the sites, and persons who are or were owners or operators of the sites at relevant times.

In the first of the two partial consent decrees, referred to herein as the Major Party Decree, the settling parties whose waste was disposed of at the sites, or who transported waste to the sites, are Acushnet Company, American Cyanamid Co., American National Can Corp. (formerly National Can Corp.); A.T.C. Petroleum, Inc.; AT&T Technologies, Inc. (formerly Western

Electric Co., Inc.); Atlantic Richfield Co.; Bemis Co., Inc., Chamberlain Manufacturing Corp., Chemical Waste Management of New Jersey, Inc., as successor to Earthline Company (a/k/a R&R Sanitation Services, Gaess Environmental Services, SCA Chemical Services Co., Earthline Division), and the partners in Earthline Company, SCA Services of Passaic, Inc. and Wastequid, Inc.; Ciba Geigy Corp.; Clean Harbors of Braintree, Inc. (formerly SCA Chemical Services (MA), Inc., formerly Recycling Industries, Inc.) and Montvale Laboratories; Clean Harbors of Natick, Inc. (formerly Chemical Waste Management of Massachusetts, Inc., formerly Interex Corporation); Emhart Industries, Inc.; Fairchild Semiconductor Corp.; Foxboro Co.; Franklin Pumping Service, Inc.; General Electric Company; Globe Newspaper Company; Hoechst Celanese Corp. (formerly American Hoechst Corporation); Hoffman-LaRoche, Inc.; ICI Americas Inc., d/b/a Permuthane, Polyvinyl Chemical Industries and Stahl Finish (formerly subsidiaries of Beatrice Companies, Inc.); Millipore Corp., and Millipore Corp., d/b/a Waters Associates, Inc.; Monsanto Co.; Pfizer, Inc.; Polaroid Corp.; and Tech Etch, Inc. The settling parties in the Major Party Settlement whose liability is based on ownership of the sites are (1) for the Londonderry Site: Judy M. Tinkham, Fred L. Tinkham, Fred S. Tinkham, Tinkham Realty, Tinkham Realty, Inc., Tinkham Investments, Londonderry Green Associates, First Londonderry Development Corp., Capital Hill Associates, Northgate Management Corp., Beaver Lake Realty Corp., Sidehill Realty Corp., Dennis S. Sargent, Dolores M. Paino, John F. Paino, Richard Clery, Londonderry Green Realty Trust (collectively, the "Londonderry Owners"); and (2) for the Plymouth Site: Salt Water Trust, d/b/a Cordage Park Company, Francis C. Rogerson, Jr., Arthur B. Blackett, and Konrad Gesner (collectively, the "Plymouth Owners").

Under the Major Party Decree, the settling parties agree to perform EPA's selected remedial actions at two of the four sites: The sites at Bridgewater, Massachusetts and Londonderry, New Hampshire. The remedial action at Bridgewater, Massachusetts, will involve soil removal and treatment, including incineration, and is expected to cost $5,580,000. At Londonderry, New Hampshire, the remedial action will involve soil removal and treatment and groundwater extraction and treatment. The remedial action at Londonderry is expected to cost $9,900,000. The settling parties agree to pay EPA's costs incurred in overseeing the settling parties' response activities. In addition, the settling parties will conduct a soil removal action at the Plymouth, Massachusetts, site, which action is expected to cost $460,000. The settling parties will pay EPA's oversight costs at this site as well. In addition, the Plymouth Owners agree to pay $935,000 for costs incurred for work already undertaken at that site and to provide a letter of credit in the amount of $120,000 to be used in the event that a remedial action is undertaken at that site in the future. Finally, the settling parties have agreed to pay $17,920,000 for past and future response costs incurred at the Nashua, New Hampshire, site. At the Nashua site, EPA has constructed a slurry wall and a groundwater extraction and treatment system, which system has been operating since May, 1986.

The United States has retained its right to sue the Major Party Decree settling parties in the event that additional remediation is needed at the Bridgewater, Plymouth and Londonderry sites due to discovery of unknown conditions or due to additional information acquired after entry of the Major Party Decree. The United States also has retained the right to require the settling defendants to perform additional work if such work is necessary in order to achieve performance standards set forth in the records of decision setting forth the remedial actions to be taken at the Bridgewater and Londonderry sites, or if such work is necessary to protect human health or the environment.

The $17,920,000 to be paid by the settling parties for the Nashua site includes a premium against the possibility of cost overruns at that site. In return for this premium, and due to extraordinary circumstances surrounding the remedial action at that site, under the terms of the Major Party Decree, the United States covenants not to sue the settling parties for a specified portion of any cost overrun at the Nashua site or for costs incurred in responding to unknown conditions unless the additional costs exceed a specified amount. The United States retains its right to pursue its claims against the settling parties for any overruns beyond those specified.

The Major Party Decree provides for stipulated penalties. It also preserves the United States' right to seek judicial review on the administrative record in a dispute with the settling parties over the selection or implementation of a response action. The United States covenants not to sue the settling parties for damages to natural resources under the trusteeship of the Department of the Interior ("DOI") at all four sites or for damages to natural resources under the trusteeship of the National Oceanic and Atmospheric Administration ("NOAA") at the Londonderry site. The United States retains its right to sue for damages to natural resources under the trusteeship of NOAA at the Bridgewater, Plymouth and Nashua sites.

In the second of the two partial consent decrees, referred to herein as the De Minimis Decree, the settling parties are the following parties who disposed of waste at the four sites: Benson Goss Fuels, Century Lumber Co., Clifton Adhesive, Inc., Giusti Baking Company of New Bedford, Ken-Lac Chemical Co., Inc., the City of New Bedford, Petro Serv, Inc., Polyply, Inc., Providence College, The O'Day Boat Corporation, Victory Pearl, and Wright Oil Co., Inc. These parties have agreed to pay a total of $792,000 for past and future response costs incurred at the four sites.

The United States covenants not to sue the De Minimis Decree settling parties for past and future response costs at the four sites. The United States further covenants not to sue the De Minimis Decree settling parties for damages to natural resources under the trusteeship of DOI or NOAA at any of the four sites. The United States retains the right to recover from the De Minimis Decree settling parties the costs, up to a specified maximum, of natural resources damage assessments for natural resources under NOAA's trusteeship at the Bridgewater, Plymouth and Nashua sites if NOAA determines that such assessments are necessary at one or more of those sites.

The United States has retained its rights to pursue all its claims against all non-settling defendants and any other non-settling parties.

The proposed decrees may be examined at the office of the United States Attorney for the District of Massachusetts, 1107 John W. McCormack Federal Office Building, U.S. Post Office and Courthouse, Boston, Massachusetts 02109; at the Region I Office of Regional Counsel, Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203, contact: E. Michael Thomas, Esq.; and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $20.20 for the Major Party

Decree or in the amount of $3.60 for the De Minimis Decree (10 cents per page reproduction charge) payable to the Treasurer of the United States. Additional background information relating to the settlement is available for review at the EPA's Region I Office of Regional Counsel. The Department of Justice will receive written comments relating to the proposed partial consent decrees for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cannons Engineering Corp. et al.*, Civil Action No. 88–1786 (D. Mass.), D.J. Reference No. 90–11–3–105.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17928 Filed 8–8–88; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Training Partnership Act; Requirements for Acceptable Fixed Unit Price, Performance-Based Contracts Written Under 20 CFR 629.38(e)(2)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Department of Labor is proposing an official interpretation of the requirements for writing acceptable fixed unit price, performance-based contracts which conform to the cost classification waiver provisions of 20 CFR 629.38(e)(2) of the Job Training Partnership Act (JTPA) regulations, and other pertinent sections of JTPA and the JTPA regulations.

**DATES:** Comments must be submitted on or before September 8, 1988.

The Department of Labor is committed to provide ample advance notice to the JTPA system before a final official policy interpretation takes effect, and will schedule, if possible, this effective date for the start of Program Year 1989 (July 1, 1989).

**ADDRESS:** Submit comments to: Administrator, Office of Job Training Programs, Employment and Training Administration, Room N–4469, 200 Constitution Avenue NW., Washington, DC 20210.

Commenters on the proposed official interpretation are asked to address one official copy of their comments to the Administrator, Office of Job Training Programs as indicated. To expedite the review and analysis of all responses, it would be helpful if commenters wishing to address individual copies to other Department of Labor officials clearly identify such additional sets as "copies" of the commenters' official submission.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Colombo, Telephone: (202) 535–0577.

**SUPPLEMENTARY INFORMATION:** The Department of Labor (DOL) is proposing the following official interpretation of the requirements for JTPA Title II and III agreements to serve adults and youth, which are fixed unit price, performance-based contracts written under the provisions of 20 CFR 629.38(e)(2) in JTPA regulations. This notice follows an extensive 7-month public discussion of performance-based contracting in JTPA, and careful consideration of comments received in response to a March 11, 1988, publication for comment of a paper describing the issues and options the Department was considering prior to formulating policy.

The publication of this proposed policy presents an important opportunity to revise previous thinking in this area of JTPA policy, and to draw upon the considerable amount of work done by all partners in the JTPA system in responding to the March issues/options paper. While there is by no means a present consensus on the issues, there are, in the Department's view, emerging grounds for a policy interpretation that addresses both the Federal concern for better conformance with statutory direction and the concern of State, local, and private sector partners for non-Federal management prerogatives and the flexibility to innovate in the design and operation of training programs.

The resultant proposed policy broadens the interpretation of appropriate training activities under this regulation to encompass both vocationally specific and remedial skills training, as long as both are designed to lead to placement in an occupational target. The Department has modified its thinking on the nature of payments to contractors prior to placement, in part to facilitate investment in higher-quality training for at-risk individuals as well as to recognize legitimate pre-placement attainments that can be the basis of earned payment under a performance-based contract. Finally, the proposed policy treats revenues in excess of costs accrued by public and private non-profit agencies through JTPA agreements in a way to maintain the concept of agency gain from success concomitant with contract risk, as long as the funds are used for an authorized program purpose.

Following the completion of the comment period on the proposed official policy interpretation, DOL will study all comments received, make any necessary adjustments to the statement of interpretation, and publish the final official policy interpretation in the **Federal Register**. At this time, it is anticipated that the effective date of the final policy interpretation will be July 1, 1989.

### Official Policy Interpretation of the Requirements for Acceptable Fixed Unit Price, Performance-Based Contracts Written under 20 CFR 629.38(e)(2)

*Introduction*

This notice presents the Department of Labor's proposed official interpretation of the requirements for contracts written with JTPA service providers pursuant to 20 CFR 629.38(e)(2). It also identifies a number of policy provisions recommended for adoption by States which are not found within the specific language of 20 CFR 629.38(e)(2) and, therefore, are not required. These recommendations are, however, in the Department's judgment necessary and appropriate for the proper administration of fixed unit price, performance-based contracts given the nature of the JTPA system and of statutory design.

The proposed official policy interpretation will follow the order of presentation in the March 11, 1988 publication of "Policy Considerations in Administering JTPA Regulations on Fixed Unit Price, Performance-Based Contracts (53 FR 7989)." The three main areas are:

—The nature of training activities properly chargeable under 20 CFR 629.38(e)(2);
—Issues surrounding current practices in the JTPA system for making payments to contractors; and
—The question of revenues in excess of costs (or "profits") realized through agreements with public and private non-profit agencies.

The statement of the proposed official policy interpretation will be preceded by summary of the many comments received by the Department in response to the March 11 issues/options paper, and by a listing of the principles which the Department followed in debating and formulating the proposed policy.

*Background on Performance-Based Contracting in JTPA*

On March 15, 1983, DOL published implementing regulations for programs under the Job Training Partnership Act (48 FR 11981), which included the provisions of 20 CFR 629.38(e)(2) governing the use of fixed unit price, performance-based contracts. These regulations were modified by section 7 of the Carl Perkins Vocational Education Act of 1984, Pub. L. 95–524 (June 15, 1985 JTPA Regulations, 50 FR 24764), incorporating a provision of section 141(d)(3) of JTPA on training packages for youth.

This section of JTPA regulations established conditions for contracts written for training that were fixed unit price and specified the following performance criteria for full payment:

Participants are to complete training;
—Be placed;
—In the occupation trained for;
—At not less than the wage specified in the agreement.

The source of this regulation was an administrative action on the part of DOL to transfer into JTPA an identical provision from the Comprehensive Employment and Training Act (CETA) regulations. The CETA regulation had been adopted after the CETA amendments of 1978, to give flexibility to certain private sector trainers to bid on a fixed price basis for performance-based training contracts without being required to break out the administrative cost component of their fixed price total, which they considered to be proprietary information.

Most CETA agreements remained cost reimbursable, although a number of jurisdictions experimented with contractual variations including minimum performance criteria to earn reimbursement. Fixed unit price, performance-based contracting was limited generally to more intensive occupational skill training to meet known labor market needs in relatively higher-paying entry level jobs.

Although the JTPA statute contained no discussion of this or any specific contracting methodology, the belief was that performance-based contracting was consistent with the overall approach of the statue, particularly in its emphasis on placement outcomes and private-sector involvement. The assumption of the Department, clearly wrong in retrospect, was that performance-based contracting under JTPA regulations would go forward as it had under CETA, and expand modestly according to the new system's abilities to develop additional high-quality skills training.

During the period of JTPA implementation a number of inquiries were raised on the application of 20 CFR 629.38(e)(2). The Department chose to respond to these specifically, and avoided generalized statements that might be seen to limit ongoing policy development by States, Service Delivery Areas (SDAs) and their private industry councils (PICs). However, these DOL responses were circulated, and additional requests were made by JTPA program officials for the Department to clarify certain points of its answers. In August 1983, DOL indicated that it was planning to issue a proposed policy letter on this subject. Six national organizations involved in training and employment wrote the Department in September 1983, requesting that DOL refrain from issuing a policy statement on the use of fixed unit price, performance-based contracts under this section of the regulations, fearing that Federal policy-making would have a disruptive rather than positive effect on the establishment of new systems and relationships for delivery of JTPA services. In their letter, the organizations invited DOL to revisit this policy area, after monitoring "this and other transition issues and to base any subsequent policy interpretation upon real program experience with JTPA."

DOL did not make further proposals for general guidance, and dealt with questions and problems involving this regulation on a case-by-case basis. During the early spring of 1987, however, it became apparent that some Federal policy was seriously needed, in part to respond to instances of problems and possible abuse, and in part to spur the JTPA system to think through issues involved in proper administration of fixed unit price, performace-based agreements, and in administration of JTPA procurement in general. Varying levels of formal policy had been developed throughout the JTPA system, and in some areas a vacuum existed which made poor procurement practices, loosely written agreements not conforming fully to 20 CFR 629.38(e)(2), and questionable administrative arrangements possible.

In the interval since JTPA implementation, the use of performance-based contracting had grown steadily, and the Department perceived a major shift with the start of Program Year (PY) 1986 (July 1, 1986—June 30, 1987). Contracts written under 20 CFR 629.38(e)(2) so as to be chargeable 100 percent to the training cost category had now become the predominant mode for service provider agreements under Title II–A. The Department recognized that due to its administrative adoption of this regulation, DOL had particular responsibilities to ensure that performance-based contracting was being used in a legitimate and fully supportable fashion. The strong focus of the JTPA legislation was on training—at least 70 percent of funds to be expended at the SDA level—with definite limits placed in Section 108(a) and (b) on availability for administration and participant support. Use of 20 CFR 629.38(e)(2) provisions without attainment of superior levels of high-quality, high-wage entry level placements would leave the JTPA system vulnerable to serious national criticims.

After a 6-month review to determine current practices in the JTPA system and to analyze examples involving non-compliance with the regulations or otherwise questionable and problematic circumstances, the Department published Training and Employment Guidance Letter (TEGL) 3–87 on November 18, 1987. In the TEGL, DOL described a series of problems that had been identified with fixed unit price performance-based agreements, enumerated types of "problem contracts," and asked for the cooperation of States, SDAs and PICs to examine local contracting practices and particularly compliance with procurement codes.

Following publication of the TEGL, DOL began a series of public discussions on performance-based contracting at meetings of national and regional groups, to establish a dialogue with all portions of the JTPA system. Internally, the Department completed its own review of all main issues and options for policy guidance, regulatory interpretation, and/or new rulemaking. Rather than moving ahead at the time with a DOL policy statement, it was decided to prepare a paper for public review and comment which presented, in the Department's judgment, the issues which existed and the options in resolving questions. Accordingly, the paper "Policy Considerations in Administering JTPA Regulations on Fixed Unit Price, Performance-Based Contracts" was released to public interest groups on February 22, 1988. A briefing was held for Congressional staff from House and Senate Committees on February 23, and the paper was published for a 30-day comment period in the Federal Register on March 11.

*Comments on the March 1988 Issues/ Options Paper*

A total of 209 separate letters or statements of comment was submitted to the Office of Job Training Programs,

Employment and Training Administration (ETA), prior to the close of the comment period. Many comments were received from multiple sources, as commenters had also were received from multiple sources, as commenters had also sent copies to their Congressional delegations, State JTPA administrations, as well as to the Office of the Assistant Secretary for Employment and Training. While some commenters presented summary statements of their views or positions in response to the issues, many commenters presented detailed, point-by-point discussions, reflective of a considerable level of involvement with the subject matter. The Department remains impressed with the level of effort and thought evidenced in the comment letters. Considering the volume of comments, what follows will necessarily be a greatly simplified and condensed overview of basic positions taken.

Correspondence and position papers received following publication of TEGL 3–87 were also included in DOL's comment review and analysis. In addition, a number of United States Senators and members of the House of Representatives have written to transmit or endorse the comments of their constituents.

*General Overview*

The great majority of commenters would prefer for the Departemnt to issue no further policy guidance, interpretation, or regulations on the use of performance-based contracts in JTPA pursuant to 20 CFR 629.38(e)(2). While most commenters concurred to some degree with DOL's analysis of problems, the majority felt these problems resulted from procurement system weaknesses which State and local action was in the process of correcting. System-wide problems of interpretation involving 20 CFR 629.38 were not believed to be substantial, and abuses were believed to exist only in isolated examples. These the Department could better pursue on a case-by-case basis, without burdening the rest of the JTPA system with more regulation. Commenters expressed fears that DOL policy would destabilize their programs. PICs in particular were concerned that any new policy coming from DOL might limit the private-sector approaches being taken within their jurisdictions.

A minority of commenters expressed a conditional level of support for DOL policy guidance. Some of these criticized DOL's 'hands-off' approach at the national level in prior years, feeling that earlier policy leadership would have prevented present problems and would have improved practices. A number of commenters found options they supported in several, but not all major areas described in the March 11 Notice. Finally a group of commenters recognized that a national problem was posed by the approach taken to the JTPA cost limitations found in section 106 of the Act through the use of 20 CFR 629.328(e)(2), without adequate controls to ensure that the deliverable—skills training resulting in specified placements—justified the departure of the system from the statutory cost limits.

It is relevant to report that a body of the letters indicated confusion whether the issues/options paper presented a series of actual DOL policy decisions. Similarly, other commenters thought that the requirements of 20 CFR 629.38(e)(2) came directly from the Act.

Nearly all commenters expressed belief that ETA should be providing technical assistance on contracting methods.

*Training Activities Chargeable Under 20 CFR 629.38(e)(2)*

On the basic question whether there should be a definition of training activities chargeable under this regulation, most commenters supported a definition to be made by the State (using the Governor's authority to define, pursuant to 20 CFR 627.1) or the PIC (since the PIC develops guidelines for skill training programs pursuant to section 107(d) of the Act). A group of commenters in the Midwest saw the question answered by the current regulatory language, "placement in the occupation trained for," with training therefore to be occupationally specific. A number of carefully presented agruments were given that non-occupationally specific remediation in basic literacy and math was more valuable in obtianing placements, since participants may have some occupational skills but lack general skills, or lack time and funding for basic living expenses to enroll in longer-term training. Comments were offered in support of job search assistance (JSA)-only training interventions as allowable under § 629.38(e)(2).

Most commenters favored DOL guidance that training packages are acceptable under the current regulations, but were opposed to a list of acceptable elements. Several commenters supported examples of acceptable training packages, as long as such guidance was not inclusive and would allow State/local flexibility.

On the matter of umbrella contracts, commenters appeared to be evenly divided between endorsing the option that DOL policy indicate such contracts could be only written under 20 CFR 629.38(e)(2) if there was a method to ensure that the costs of participants who do not receive training are allocated among the normal JTPA cost categories, and those who believe DOL should deal with problem contracts on a case-by-case basis. A number of commenters wrote that eliminating umbrella, blanket, or "comprehensive service contracts" is not a viable option, due to the needs of rural areas for a one-stop service center, and the needs of target groups in urban areas for comprehensive serivices. Some presented the view that such contracts can, with greater effort expended, be constructed more tightly, be properly competed, with deliverables clearly delineated and proposed costs evaluated for reasonableness prior to award. Several comments dealt with tiered administrative structures below the level of the SDA, and "broker" arrangements. Although the SDA might retain the entire 15 percent available for its administrative expenses, its umbrella contractors may not themselves be actual or major service providers; rather, each contractor in turn may write performance-based contracts with the actual service providers. Both "tiers" below the SDA might be charged 100 percent to the training cost category under a local interpretation of 20 CFR 629.38(e)(2).

There was not much controversy about the Department clarifying that training packages for youth were acceptable, as long as such packages could be written for the attainment of one or more youth competency skill areas or other outcomes specified by the PIC per section 106(b)(2) of the Act. This issue had been included due to a technical question of the relationship between new DOL reporting requirements and acceptable contracts under § 629.38(e)(2) of the JTPA regulations. Beginning in PY 1989, DOL reporting instructions require SDAs to report attainments for youth who have acquired two or more skill areas, rather than one or more skill area attainments as in earlier years. Since SDAs anticipate linking with basic education and vocational education programs for a part of youth competency training, the Department did not wish to preclude contracting arrangements for the provision of only one youth competency skill area.

*Payments to Contractors*

A very small portion of the comment letters supported the Department's interpretation that § 629.38(e)(2)(iii) of the regulations meant that contracts should treat all incremental payments

made prior to full performance/placement as a form of advance contingent on the placement results, with payments to contractors not achieving full performance to be either prorated among the normal cost categories or reimbursed. Commenters pointed out that DOL had not previously issued general guidance on this key point. Some believed that DOL has misread its own regulations, which stipulate full payment for full performance, but do not exclude and therefore implicitly allow less than full payment for less than full performance. Others pointed out that incremental payments are customary in private sector contracts, where the performance of benchmarks earns payment. Finally, a major objection to DOL's presentation was that reimbursement of advances by unsuccessful contractors would greatly increase risk and therefore unit prices. Proration of costs among the cost categories was not an acceptable option to SDAs, who could not live with uncertainty and possible inflation of reportable administrative costs above planned levels.

Unlike the incremental payments issue, there was diversity of opinion on the question of guidance on the proportion of the full contract that should be withheld from payment until completion of the placement phase. Approximately half of the commenters believe a holdback policy to be a contracts management question, and should be adjusted for either short-term, or long-term and high-risk skills training. A number of PICs wrote of holdback policies more stringent than DOL's option of a 25 to 30 percent amount.

Commenters were also divided on the value of Federal guidelines on acceptable placement wage rates specified in agreements. A number of comments seemed to welcome guidance clarifying that placement wage rates may be specified according to State and SDA policies as an average rate for placements, or as a range of acceptable rates. Others wrote they saw no need for Federal policy in this area, given overall JTPA performance standards. A minority of commenters argued in favor of establishing an acceptable floor level or lowest-value for placement wage rates.

*Revenues in Excess of Costs Accrued by Public and Private Non-Profit Agencies*

The third option presented in the March 11, 1988, notice clearly had the most support—to take no Federal action in the short run to clarify the use of "profits" earned by such agencies through performance-based contracts, but to deal individually with cases where excessive profits appear to have been earned. Many commenters recommended that DOL issue technical assistance on suggested ways for SDAs to "look beyond the unit price" and identify the potential for excessive profits. Several pointed out that an SDA paying an excessive amount of funds through a performance-based contract to either a private-for-profit or a public or private non-profit entity must have its procurement system reviewed.

In contrast to SDAs, at the State level, a larger minority supported either the first or second option described below. Option 1 was for Federal guidance to indicate that revenues in excess of costs earned by public and private non-profit agencies under 20 CFR 629.38(e)(2) were subject to the Internal Revenue Service (IRS) and all other applicable limitations on use. Option 2 went further, specifying that all such revenue was to be considered "program income," and was accountable under JTPA regulations at 20 CFR 629.32. In the main, Option 1 was preferred by those States supporting a Federal policy.

Support for the third option (such revenues to be considered program income) came primarily from a relatively small number of commenters at the national level and from independent non-State, non-SDA commenters. One respondent believed a compromise on this issue was a possible result, with public agencies and non-profit organizations able to realize revenues in excess of costs for taking the risks, with this "program income" devoted in some way to improving or enlarging job training activities.

*DOL's Rethinking of Issues Involved in the Administration of 20 CFR 629.38(e)(2), as a Result of Comments*

The review and analysis of comments made in response to the March publication of the issues/options paper and the information gained during the public consultation process caused the Department of rethink its own basic assumptions about fixed unit price, performance-based contracts. The comments considerably advanced DOL's education on the actual ways the JTPA system does business at the local level, how PICs view there central role in decisionmaking, and how the predominant reliance on performance-based contracting and the cost flexibility of 20 CFR 629.38(e)(2) has significantly increased the JTPA system's vulnerability if contracts written under this regulation are poorly awarded or administered.

This third realization has lead the Department to reemphasize the critical importance of procurement practices in the proper administration of programs. Program directors and PICs should promote better adherence in the JTPA system to generally accepted standards for procurement, including competition in selection and methods for analyzing the reasonableness of proposed costs. Developments in procurement which resulted from State and local review of procurement systems after the issuance of TEGL 3-87 should be followed up, for it is critical to JTPA that any improvements found to be needed be implemented fully and promptly.

DOL has responded to the information presented by commenters by deciding not to tie the official interpretation of training under § 629.38(e)(2) strictly to occupationally specific training, so as not to disturb a number of valid skills remediation designs in use which lead to designated placements. Also, the Department has decided that the earlier question of whether placement occurred in the specific "occupation trained for" or in a "training-related" job was not important, as long as States and SDAs used good judgment in giving full payment credit for placements obtained. Placement, however, should still be connected to the actual training provided and fall within a pre-determined occupational target (albeit generic) established in the contract. DOL determined that JSA-only training interventions did not constitute a sufficient investment in participants to afford contractors and SDA's the cost and accounting flexibility of a contract chargeable 100 percent to the training cost category. All contracts written under § 629.38(e)(2) must meet certain standards, including those written for multiple training sequences and/or comprehensive services.

The Department has accepted arguments put forth on the validity of payments made for the attainment of competencies prior to placement or other measurable performance benchmarks as the basis of earned payments by contractors under § 629.38(e)(2). DOL still believes that payments made prior to placement should total less than actual contract costs up through the placement phase, so that sufficient incentive for performance "rides" on placement. While DOL recognizes that State/local flexibility is needed to make appropriate adjustments in contract terms, in general the holdback of the full fixed price should be in the 25 to 30 percent range.

Relatedly, the Department strongly recommends that each State establish guidelines on a threshold level of placement success that performance contracts must reach in order to qualify

for charging 100 percent of the costs to the training cost category. Proper administration of 20 CFR 629.38(e)(2) requires that the costs of contracts that fail in performance should be prorated among the normal JTPA cost categories of training, participant support, and administration, although under current regulations the definition of such a threshold can only be recommended to States for action.

Additional deliberation on the dilemma posed by free-use "profit" earned by public and private non-profit agencies through the provision of JTPA services has convinced the Department to propose that all revenues in excess of costs accrued by such agencies be considered program income, to be expended for a purpose authorized for the program.

Finally, because the use of performance-based contracting is nearly prevasive, DOL recognizes that administration of requirements touches on most aspects of JTPA planning and programmatic direction. The Department has decided to rethink the application of 20 CFR 629.38(e)(2) in terms of 1988 circumstances, not its original 1983 assumptions. There has been a shift in labor force new entrants towards the Year 2000 workforce profile of increased percentages of females, minority youth, and recently admitted foreign-born workers not yet proficient in English. This suggests that the JTPA system needs to refocus performance-based contracts away from short term training, and more towards longer-term, enriched program designs that can make the investment necessary in at-risk and harder-to-serve segments of the eligible population for these individuals to obtain employment and avoid welfare dependency. Properly administered, the requirements of 20 CFR 629.38(e)(2) can be used to encourage programs and services which address the needs of the more at-risk segments of the eligible population. Requests for proposals can specify the types and duration of training interventions required and set SDA/PIC-determined target group service requirements, resulting in performance-based agreements for longer-term, higher-cost training appropriate to the needs of the JTPA eligible population.

*Proposed Official Interpretation of the Requirements of 20 CFR 629.38(e)(2)*

Basic Principles of the Department in Establishing an Official Policy Interpretation:

—The Department of Labor's overall objective is to provide operational guidance within the framework of the current 20 CFR 629.38(e)(2) regulation, but proper administration of performance-based contracts calls for the establishment of some new policies, which DOL will recommend for State adoption.

—There is no entitlement on the part of the system to the use of performance-based contracts per 20 CFR 629.38(e)(2). It is available only if all of the specifications are met.

—The Department continues to maintain that properly written, performance-based contracts under 20 CFR 629.38(e)(2) are not required to separately report or break out administrative costs for accounting purposes.

—In exchange for the advantage offered by the performance contracting mode, the JTPA system must accept that risk is an inherent feature, both for service providers and SDAs.

—Explicit instruction needs to be provided on the elements necessary for an acceptable performance-based contract.

—DOL is committed to maintaining the opportunity for rewards and incentives for successful operators, but recognizes that public and private non-profit agency excess revenue accruing from contracts must remain within the JTPA system.

—The new policy framework for preformance-based contracts should be undertaken within the context of current policy objectives for the JTPA system, namely: Increase the level of participation of at-risk populations in the program; increase the quality of the training intervention; expand the amount of basic skills training being provided; and thus improve the quality of placements for JTPA participants.

—The Department must undertake the establishment of new policy on performance-based contracting collegially, making clear DOL objectives and DOL's rethinking and reformulation of issues, with the goal that the JTPA system fully understand and accept DOL's objectives even if there is not full agreement on all aspects of the Department's interpretation.

—It is clear that technical assistance is needed for procurement in general and specifically for the new performance-based contracting policy. This may include assistance to States in setting rules.

States and SDAs should implement DOL's interpretations and policy guidance regarding 20 CFR 629.38(e)(2) within the framework of the principles stated above.

Elements of the Department's Interpretation

*I. Training Activities Chargeable*

A. Definition of allowable adult and youth training activities for the purposes of 20 CFR 629.38(e)(2):

• Training must consist of a core of either occupational training or basic skills/remediation training, or both.

• All training must be geared to make participants employment competent and must be tied to a specific or a general occupational target. This training need not involve a specific job title, but can encompass a range of jobs with similar entry requirements.

• Placement must be at or above the specific wage in the agreement, and reflect an appropriate entry wage rate for the specific or general occupational target, given the relative skill level of trainees. Again, this can mean a range of jobs. For example, the skills needed for a data entry technician allow entry into jobs with different occupational titles and types of companies.

B. Clarification of the allowability of training packages for the purposes of 20 CFR 629.38(e)(2):

Acceptable elements may include but are not limited to outreach, intake, skill assessment and employability development planning, participant services, basic skills development, counseling, pre-employment/work maturity training, job search assistance, and followup services, provided that a core of basic skills and/or specific occupational training per I.A. above is the primary purpose of the contract. Also, the program must be designed for all participants to receive the core training.

C. Specifications for acceptable contracts:

• In general, contracts are to be written in accordance with sound procurement practices and applicable codes. This includes methods for assuring wherever possible competition for award, arm's length negotiation of contracts, and proposal review which verifies the reasonableness of proposed costs.

• Each contract shall clearly list and separately price each training curriculum to be provided. All curricula shall have a separate fixed unit cost.

All elements constituting the training package must be clearly spelled out in the contract. This includes the course schedule for each element, the hours and/or the number of weeks of training, the expected number of total participants who would require the element, the policy regarding non-

completers and the measurable outcome.

• The contract should clearly indicate the organization which is providing the training, participant services and administration being charged to the contract. Care should be given to assuring that only those administrative costs attributable to the training are chargeable under the contract. However, DOL is in no way requiring that the actual performance-based contract document separately list administrative costs, or require a separate reporting of administrative costs included in the full unit prices.

• Job Search Assistance designs. Services and participant sequences that do *not* involve core training per I.A. above such as JSA-only interventions, are not acceptable under the 20 CFR 629.38(e)(2).

• Further, it is strongly recommended that States establish policies for performance-based contracts to be designed to accommodate and encourage service to more at-risk populations. This might involve an additional adjustment to the unit price to provide increased financial incentive for training and placing a more at-risk population.

D. Allowability of Umbrella Contracts:

All contracts, including umbrella, blanket, or comprehensive service contracts must meet the requirements of elements I.A., B., and C. above in order to qualify for the cost charging provisions under 20 CFR 629.38(e)(2). The costs of fixed unit price, performance-based agreements which do not satisfy these requirements are to be allocated among the normal JTPA cost categories of training, participant support, and administration.

E. Clarification Regarding Training Package for Youth:

Contracts may be written under 20 CFR 629.38(e)(2) for training packages for youth, which stipulate full performance as attainment of one or more PIC-recognized competency skill areas per the list of positive outcomes found in section 106(b)(2) JTPA, or if the training results in employment.

*II. Payments to Contractors Under 20 CFR 639.38(e)(2)*

A. Full Payment. Full payment of the full unit price is contingent upon:

• Completion of training;

• Placement in the occupation trained for or within a general occupational target;

• At not less than the wage rate specified in the agreement.

Further, the Department recommends that States/SDAs set a policy indicating this wage rate should reflect the entry level wage for the occupational target.

• The agreement must provide for a method to reduce payment in cases where individuals do not complete the training but do place successfully per the contract, or complete the training and are placed below the specified wage level. For example, a participant in word processing drops out in the fifth week of a 10-week training program, but obtains a training related job within the general occupational target at or above the specified wage.

Further, the Department recommends that State/SDA policies provide that participants who leave before entering core training per I.A. above either

—Cannot be the basis of any payment earned by the contractor; or

—Are only the basis for earned payments that are apportioned or prorated among the regular JTPA cost categories, and not charged 100 percent to training.

B. Partial earned payments for attainment of performance benchmarks. The Department has determined that in specific circumstances performance short of full performance/placement can be the basis of earned payments for partial performance when:

• The performance is measurable and documented and includes training per I.A. above;

• The payment schedule amount for any intermediate benchmark is not more than the estimated costs of providing that increment of the planned training. However, the subtotal of possible payment schedule amounts for all performance benchmarks prior to full performance/placements is to be clearly less than the point at which the contractor's costs are covered, in order to ensure the principle of contractor risk and to stimulate contractor performance to earn full payment.

• Costs associated with intake, enrollment and assessment activities alone without participation in core training are not to be the basis of earned benchmark payments chargeable 100 percent to the training cost category per 20 CFR 629.38(e)(2).

C. Advance Payments. All payments made to contractors prior to full performance/placement that do not conform to the above requirements for benchmarks are to be considered advances contingent on the full performance/placement record of the contract.

D. Guidance on Payments to be Withheld Prior to Full Performance. Whether payments made to contractors prior to full performance/placement are advance payments or partial earned payments for the attainment of performance benchmarks, in principle a significant portion of the total fixed price should be held back until earned through placement. States and SDAs have latitude to adjust the amount held back to accommodate longer-term and more intensive programs serving at-risk populations, recognizing the operational needs of contractors for funds. As a matter of general guidance, an amount equal to 25 to 30 percent of the total contract cost would appear to be a prudent and significant holdback level, well below reimbursement of total contractor expenses, and insuring that contracts are consistent with the performance-based contracting concept of risk prior to full performance.

E. Threshold for Contract Performance in Order to Qualify for Provisions at 20 CFR 629.38(e)(2).

In the Department's consideration of payment issues, it was determined that there is a level of contract placement performance below which the contract has failed. Failed contracts should not be afforded under State/SDA policies the advantage of assigning all costs to training according to the provisions of 20 CFR 629.38(e)(2). Therefore, the Department strongly recommends that States and SDAs define a threshold level of placement performance below which a performance-based contract written under 20 CFR 629.38(e)(2) would be determined to have failed. States and SDAs should establish procedures for allocation or proration of all costs of such failed contracts among the regular three JTPA cost categories. This threshold level should be appropriately specified, taking into account greater or lesser contractor risk in terms of length, complexity of training, and the population to be served by a contract.

F. Direct Contracts, Versus Tiered Administrative Structures. Contracts which qualify for the cost allocation provisions of 20 CFR 629.38(e)(2) are contracts for the direct provision of training by an agency, institution, or business, and should never involve intermediary administrative entities. Such an entity, if needed, should be charged to the administrative cost category. This element of DOL's interpretation does not preclude subcontracting by the training contractor of some specialized client services if this is determined to be more effective and efficient, and is authorized by State/SDA policies and the contract document.

*III. Revenues in Excess of Costs, or "Profits"*

Public or private non-profit contractor revenues in excess of costs (which have been properly earned) are to be treated as program income pursuant to 20 CFR 629.32. Accordingly, these funds may be retained by the service provider (or by the SDA or the Governor) to underwrite additional training or training related services pursuant to the project or program which generated them, consistent with the purposes of JTPA. As with other JTPA program income, contractors are to maintain records which account for the use of these funds, in anticipation of possible audit.

*Conclusion*

In the Department's view, fixed unit price, performance-based contracts written under the provisions of 20 CFR 629.38(e)(2) can, if properly administered, focus JTPA resources on strong training approaches that will result in quality placements. It is recognized that these contracts can also increase the effective investment in the JTPA participant to bring about better placement outcomes than those obtained through other modes of contracting. Further, performance-based contracts can be written specifically to improve the degree to which at-risk populations are helped through JTPA. For these objectives to be achieved, some JTPA administrators and PICs will need to move beyond preoccupation with ways to increase total funds available for administrative costs by artificially structuring every service provider agreement or sub-SDA administrative entity agreement as an agreement chargeable 100 percent to training. Similarly, others will meet to reconsider approaches that set over-inflated service provider agreement placement goals. These approaches cause contracts to be written under 20 CFR 629.38(e)(2) primarily to ensure that an SDA has a fail-safe method for achieving its overall performance standards, without careful consideration of pressures on contractors to cream the eligible population to obtain easier, less at-risk participants and low cost placements.

Because the present day reliance on the performance-based contract mode is so pervasive, issues concerning State, SDA, and PIC basic program philosophies and priorities must necessarily be weighed and mediated in administering agreements, in addition to the technical considerations of procurement, contract content, and compliance with Federal requirements. This presents a second and equally important level of challenge in designing the most appropriate contracting approach in each State and SDA.

Signed at Washington, DC, this 2nd day of August 1988.

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 88-17954 Filed 8-8-88; 8:45 am]

BILLING CODE 4510-30-M

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## Mine Safety and Health Administration

**[Docket No. M-88-127-C]**

### Becky Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Becky Coal Company, Inc., P.O. Box 532, Pineville, Kentucky 40977 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 5 (I.D. No. 15-16247) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1988. Copies of the petition are available for inspection at that address.

Date: August 3, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17955 Filed 8-8-88; 8:45 am]

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**[Docket No. M-88-123-C]**

### Green River Coal Co. Inc.; Petition for Modification of Application of Mandatory Safety Standard

Green River Coal Company, Inc., Route 3, Box 284-A, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Green River No. 9 Mine (I.D. No. 15-13469) located in Hopkins County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permanent pumps be housed in fireproof structures or areas.

2. As an alternate method, petitioner proposes to use a TRW submergible pump to drain water from the sump beneath the intake air shaft. In support of this request, petitioner states that—

(a) The operating electrical parts of the submergible pump are submerged in water in the sump at all times;

(b) In the event the water level in the sump drops more than 1 inch below the intake point on this pump, the pump would discontinue pumping water from the sump. Therefore, the electrical operating parts of the pump are never exposed; and

(c) The electrical power supply to the submergible pump enters the pump at a point which is also below the water level in the sump at all times.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1988. Copies of the petition are available for inspection at that address.

Date: August 3, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17956 Filed 8-8-88; 8:45 am]

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**[Docket No. M-88-125-C]**

## Jean and Mary Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Jean and Mary Coal Company, Inc., 109 Broad Bottom Road, Pikesville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.035 (weekly examinations for harzardous conditions) to its No. 1 Mine (I.D. No. 15-13745) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that the abandoned area of the mine has been closed because of unsafe roof conditions. To restore one entry to safe condition would require six months work, or longer, in an area that is already deemed dangerous.

3. As an alternate method, petitioner proposes to establish two evaluation points at the beginning of the abandoned area where a qualified person can examine the quantity and quality of air used to ventilate the abandoned area. In support of this request, petitioner states that—

(a) These examinations would be made daily, instead of weekly, and recorded in the pre-shift/on-shift examination book;

(b) This abandoned area is not part of the mine's escapeway system, intake and belt entries are escapeways;

(c) Air passing through this area does not pass over any power sources; and

(d) No methane has been detected in this area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1988. Copies of the petition are available for inspection at that address.

Dated: August 3, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17957 Filed 8-8-88; 8:45 am]

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**[Docket No. M-88-132-C]**

## Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trollery feeder wires, high voltage cables and transformers) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trollery wires and trolley feeder wires; high voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner plans to use longwall equipment in the No. 6 seam at the mine. The width of the coal panels will require 2900 horsepower to power the longwall system. In order to supply power to such a system from a power system limited to 1000 volts, the following problems arise:

(a) The ampacity requirements at 1000 volts are such that very heavy cables are required. These large, heavy cables can cause congested work space, handling problems, and accidents associated with sprains and strains;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be supplied to the face conveyor; and

(c) At 1000 volts, the interrupting limits of the available circuit breakers is approached, resulting in a diminished safety factor.

3. As an alternate method, petitioner proposes to use high-voltage (2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petition states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1988. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17958 Filed 8-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-120-C]

**North Star Coal Company, Inc.**

**Petition for Modification of Application of Mandatory Safety Standard**

North Star Coal Company, Inc., 110 Main Street, Oak Hill, West Virginia 25901 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Beckley No. 4 Mine (I.D. No. 46-02166) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system would be installed in all belt entries, at each tailpiece and at intervals not to exceed 2000 feet along each conveyor belt entry. The velocity of air in the belt conveyor entry would be 50 feet per minute or greater and have a definite and distinct movement in the designated direction. The low-level CO system would be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed. The CO system would initiate the fire alarm signals at an attended surface location where there is two-way communication. The person would be located so that the signal can be seen if CO levels reach 10 parts per million (ppm) and heard at 15 ppm above the ambient level for the mine. The person would be trained in the operation of the CO monitoring system and in the proper procedures to follow in the event of an emergency or malfunction. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity to detect electrical malfunctions.

3. The CO monitoring system would be visually examined at least once each shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system would be caliberated with known concentrations of CO and air mixtures at least monthly.

4. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor may continue to operate if qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1988. Copies of the petition are available for inspection at that address.

Date: August 3, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17959 Filed 8-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-116-C]

**Stump Coal Co. Inc.; Petition for Modification of Application of Mandatory Safety Standard**

Stump Coal Company, Inc., R. 3, Box 898, Phelps, Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 7 Mine (I.D. No. 15-12359) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined in their entirety on a weekly basis.

2. Petitioner states that a seal installed in the No. 6 entry cannot be safely examined because of an approved corrective action plan for the inadvertent penetration of an active gas well pipe casing.

3. As an alternate method, petitioner proposes to establish air measurement stations that would allow effective evaluation of the ventilation in the area. All air measurement stations and approaches to the stations would be maintained in safe condition. All measurements would be made by a certified person. The date, time and results of the examinations would be recorded in a book, or on a date board at each measuring station. In support of this request, petitioner states that—

(a) A map showing the normal direction of the air current flow in this area would be posted at each measuring station and at other strategic locations. Any change in the flow of the air currents would immediately be reported to the mine foreman;

(b) All persons who work in this area would be instructed in emergency evacuation procedures. Persons not normally employed in this area would be instructed in emergency evacuation procedures and escapeway routes before starting work in the area;

(c) The mine is located above drainage and no methane liberation has been detected;

(d) The mine is ventilated by the use of an exhausting fan;

(e) Explosives are not used, as coal is mined by use of continuous mining methods; and

(f) A high pressure water line, fire sensors and required fire fighting equipment are maintained.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1988. Copies of the petition are available for inspection at that address.

Dated: August 3, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88-17960 Filed 8-8-88; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-72]

**Agency Report Forms Under OMB Review**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by September 8, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

**Reports**

*Title:* Radio Program Survey and Promotion.

*Type of Request:* New.

*Frequency of Report:* Semi-annually.

*Type of Respondent:* Businesses or other for profit, non-profit institutions, small businesses or organizations.

*Number of Respondents:* 1,400.

*Hours per Response:* .10.

*Annual Responses:* 2,800.

*Annual Burden Hours:* 280.

*Abstract-Need/Uses:* Form NHQ Div. 715 will be used to periodically survey and monitor the use of NASA's "Space Story" and "Frontiers" programs that have been distributed to radio stations throughout the country. It provides the necessary information for NASA to measure the effectiveness of these public service programs.

**John F. Duggan,**

*Director, General Management Division.*

August 1, 1988.

[FR Doc. 88–17915 Filed 8–8–88; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts, Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (General Services to the Field Section) to the National Council on the Arts will be held on August 29, 1988, from 8:30 a.m.–8:00 p.m., and on August 30, 1988, from 8:30 a.m.–6:00 p.m., in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 30, 1988, from 4:00 p.m.–6:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on August 29, 1988, from 8:30 a.m.–8:00 p.m., and on August 30, 1988, from 8:30 a.m.–4:00 p.m., and for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

August 2, 1988.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 88–17877 Filed 8–8–88; 8:45 am]

BILLING CODE 7537-01-M

### National Endowment for the Arts, Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on August 22, 1988, from 9:00 a.m.–7:30 p.m., and on August 23–26, 1988, from 8:30 a.m.–7:00 p.m., and on August 27, 1988, from 8:30 a.m.–5:00 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 27, 1988, from 9:00 a.m.–1:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on August 22, 1988, from 9:00 a.m.–7:30 p.m., and on August 23–26, 1988, from 8:30 a.m.–7:00 p.m., and on August 27, 1988, from 8:30 a.m.–9:00 a.m., and on August 27, 1988, from 1:00 p.m.–5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

August 2, 1988.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 88–17878 Filed 8–8–88; 8:45 am]

BILLING CODE 7537-01-M

### National Endowment on the Arts, Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources Section) to the National Council on the Arts will be held on August 23–25, 1988, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for

financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

August 2, 1988.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 88–17679 Filed 8–8–88; 8:45 am]

BILLING CODE 7537–01–M

## National Endowment for the Arts, Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters/Solo Recitalists Presenters Section) to the National Council on the Arts will be held on August 24–25, 1988, from 9:00 a.m.–6:00 p.m., and on August 26, 1988, from 9:00 a.m.–5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 26, 1988, from 3:30 p.m.–5:30 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on August 24–25, 1988, from 9:00 a.m.–6:00 p.m., and on August 26, 1988, from 9:00 a.m.–3:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

August 2, 1988.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 88–17680 Filed 8–8–88; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–361 and 50–362]**

## Southern California Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company, et al. (the licensee), for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

**Environmental Assessment**

*Identification of the Proposed Action*

Section 3/4.1.3.4 of the Technical Specifications currently requires the Control Element Assembly (CEA) drop time, from a withdrawn position greater than or equal to 145 inches, to be less than or equal to 3.0 seconds from when electrical power is interrupted to the CEA drive mechanism until the CEA reaches its 90 percent inserted position. This drop time is required to be demonstrated through measurement prior to criticality whenever the reactor vessel head has been removed, following maintenance on the CEA drive mechanisms which could affect drop time, and every 18 months. The proposed change would increase the maximum allowable drop time from 3.0 seconds to 3.2 seconds.

*Need for the Proposed Action*

Previously each CEA was withdrawn from the core to its full out position and dropped by opening its individual circuit breaker. Beginning with Unit 2 Cycle 4 startup, a new method of measuring CEA drop times was used in which the reactor trip breakers are the point at which power is interrupted to the CEA gripper coils rather than the individual breakers. This new method uses the reactor trip breakers and, therefore, more accurately reflects the operation of the reactor protection system during a scram. During the Unit 2 startup tests, the CEA drop times obtained using the new method were longer than those obtained using the previous method. This has been found to be due to the fact that the circuit dissipating gripper coil stored energy has a longer time constant when tripped by the reactor trip breakers than when tripped by the individual circuit breakers. Unit 3 is currently in a refueling outage and will use the new test method during Cycle 4 startup. Since a review of previous Unit 3 CEA drop time measurements indicated that there is a potential for at least one CEA to fail to meet the 3.0 seconds requirement, the proposed change would increase the specified drop time to 3.2 seconds in order to avoid possible delay of Unit 3 restart.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the Technical Specifications and has concluded that the proposed change provides reasonable assurance that the facility can be operated safely. This change will not alter the impacts of normal operation. The proposed change does not increase the probability or consequences of accidents. There will be no increase in the probability of any accident because the CEA drive mechanisms have not been changed. With respect to the consequences of accidents, the increased drop time is either bounded by previous analyses or is compensated for by penalty factors or design conservatisms. Therefore, the consequences of previously analyzed accidents will not be increased. No changes are being made in the types of any effluents that may be released offsite and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant adverse radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the Technical Specifications involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes

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that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 8, 1988 (53 FR 25711). No request for hearing or petition for leave to intervene was filed following these notices.

*Alternative to the Proposed Action*

Since the Commission concluded that there is no significant adverse environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. Denial of the request would not reduce environmental impacts of plant operation.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to the Operation of the San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981.

*Agencies and Persons Consulted*

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

*Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated June 14, 1988 and the supplementary information provided by letters dated July 13 and July 25, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 4th day of August 1988.

For the Nuclear Regulatory Commission.

**George W. Knighton,**

*Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-17940 Filed 8-8-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-271]**

## Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation, (the licensee), for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise surveillance frequency requirements for trip system logic testing and calibration from once every six months to once per operating cycle and require more detailed testing than is required by current Technical Specification.

The proposed action is in accordance with the licensee's application for amendment dated November 30, 1987 with clarifying information provided January 20, 1988 and April 13, 1988.

*The Need for the Proposed Action*

The proposed change to the TS will be a safety enhancement over the old TS.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions bring the Vermont Yankee TS into closer agreement with the Standard Technical Specifications and require improved testing. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 25, 1988 (53 FR 2115). A petition for leave to intervene was filed following this notice by the State of Vermont; however, following extensive discussion between the technical staffs of the State and the NRC, the State withdrew its hearing request. On June 30, 1988, the Atomic Safety and Licensing Board dismissed the petition to intervene and terminated the proceeding.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in less satisfactory testing.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station, July, 1972.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

*Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 30, 1987 and clarifying information provided January 20, 1988 and April 13, 1988

which are available for public inspection at the Commission's Public Document Room, Brooks Memorial Library, 244 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 2nd day of August 1988.

For the Nuclear Regulatory Commission.

**Daniel G. McDonald,**

*Acting Director, Project Directorate I–3, Division of Reactor Projects I/II*

[FR Doc. 88–17941 Filed 8–8–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–124]**

## Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility Operating License No. R–62; Virginia Polytechnic Institute and State University, Argonaut Reactor Facility

The U.S. Nuclear Regulatory Commission (The Commission) is considering issuance of an Order terminating Facility Operating License No. R–62 for Virginia Polytechnic Institute and State University Argonaut Reactor Facility located in Blacksburg, Virginia, in accordance with the application dated July 17, 1986, as supplemented.

### Environmental Assessment

*Identification of Proposed Action*

By application dated July 17, 1986 as supplemented, Virginia Polytechnic Institute requested authorization to decontaminate and dismantle its Argonaut Reactor Facility, to dispose of its component parts in accordance with the proposed dismantling plan, and to terminate Facility Operarting License No. R–62. Following an "Order Authorizing Dismantling of Facility and Disposition of Component Parts," dated October 29, 1986, Virginia Polytechnic Institute completed the dismantlement and submitted a final survey report on April 6, 1987. Region II conducted final surveys during July 1987 through April 1988. These surveys are documented in Region II Inspection Reports Nos. 50–124/87–01 and 50–124/88–01. The staff agrees with the analysis and the conclusion in the Virginia Polytechnic Institute final report, as amended.

*Need for Proposed Action*

In order to release the facility for unrestricted access and use, Facility Operating License No. R–62 must be terminated.

*Environmental Impact of License Termination*

The Virginia Polytechnic Institute, indicates that the residual contamination and dose exposures are less than the requirements of Regulatory Guide 1.86, Table I and the maximum exposure of 5 microR/hr above background at one meter. These measurements have been verified by the NRC. The NRC finds that since these criteria have been met there is no significant impact on the environment and the facility can be released for unrestricted used. The area formerly occupied by the reactor will be modified to take advantage of the crane used for the reactor to fabricate and assemble equipment used for high-energy research.

*Alternatives to the Proposed Action*

Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility Operating License No. R–62.

*Agencies and Persons Consulted*

Personnel from the Radiological Site Assessment Program, Oak Ridge Associated Universities (an NRC contractor) assisted Region II in the conduct of the Termination Survey for the Virginia Polytechnic Institute Argonaut Reactor Facility.

*Finding of No Significant Impact*

The Commission has determined not to prepare an Environment Impact Statement for the proposed action. Based upon the foregoing Environmental Assessment, the Commission has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility Operating License No. R–62, dated July 17, 1986, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 2nd day of August 1988.

For the Nuclear Regulatory Commission.

**Lester S. Rubenstein,**

*Acting Director, Standardization and Non-Power, Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–17942 Filed 8–8–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–341]**

## Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 24 to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), which revised the Technical Specifications (TSs) for operation of Fermi-2 located in Monroe County, Michigan. The amendment is effective as of the date of issuance.

The amendment allows continued use of release pathways for which effluent monitoring instrumentation is not operable provided grab samples and analysis and/or flow rate calculations are made at the specified frequencies.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 13, 1988 (53 FR 17130). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on July 26, 1988 at 53 FR 28081.

For further details with respect to this action, see (1) the application for amendment dated March 28, 1988, (2) Amendment No. 24 to License No. NPF–43, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 28th day of July, 1988.

For the Nuclear Regulatory Commission.

**Theodore R. Quay,**

*Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.*

[FR Doc. 88-17943 Filed 8-8-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

New Form N-17f-1, File 270-316, Form N-17f-2, File 270-317, Form ADV-E, File 270-318.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed forms N-17f-1 and N-17f-2 under the Investment Company Act of 1940 ("1940 Act") and form ADV-E under the Investment Advisers Act of 1940 ("Advisers Act").

Form N-17f-1 is the cover sheet for accountant examination certificates filed, pursuant to rule 17f-1 under the 1940 Act, by management investment companies maintaining securities or other investments with companies that are members of a national securities exchange. There are approximately 23 registrants currently filing accountant examination certificates. The time necessary for investment companies to comply with the proposed form's requirements would be less than three minutes.

Form N-17f-2 is the cover sheet for accountant examination certificates filed, pursuant to rule 17f-2 under the 1940 Act, by management investment companies maintaining custody of securities or other investments. There are approximately 115 registrants currently filing accountant examination certificates. The time necessary for investment companies to comply with the proposed form's requirements would be less than three minutes.

Form ADV-E is the cover sheet for accountant examination certificates filed, pursuant to rule 206(4)-2 under the Advisers Act, by investment advisers retaining custody of client securities or funds. There are approximately 1200 registrants currently filing accountant examination certificates. The time necessary for investment advisers to comply with the proposed form's requirements would be less than three minutes.

General comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Direct any comments concerning the accuracy of the estimated average burden hours for compliance to Robert Neal at the above address and to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004.

**Jonathan G. Katz,**

*Secretary.*

August 2, 1988.

[FR Doc. 88-17921 Filed 8-8-88; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-25961; File Nos. SR-Amex-88-19; SR-CBOE-88-15; SR-NYSE-88-20; SR-PSE-88-15; SR-Phlx-88-21]**

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; New York Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; Philadelphia Stock Exchange, Inc.; Order Partially Approving Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, the American ("Amex"), New York ("NYSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges, and the Chicago Board Options Exchange ("CBOE") (collectively, the "Exchanges"), submitted to the Securities and Exchange Commission ("Commission" or "SEC") in 1986 proposed amendments to their rules governing the selection and continuing eligibility of stocks underlying exchange-traded options.

The Exchanges' proposed rule changes were published for comment in Securities Exchange Act Release Nos. 23417 (July 11, 1986), 51 FR 26084 (File No. SR-Amex-86-19), and 23597 (September 5, 1986), 51 FR 32988 (File Nos. SR-CBOE-86-15; SR-NYSE-86-20; SR-PSE-86-15; SR-Phlx-86-21). The Commission did not receive any comment letters relating to the Exchanges' proposals.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 7 CFR 240.19b-4 (1988).

The Exchanges currently have in place uniform rules governing the initial and continuing eligibility of equity securities underlying standardized options. In order for options to be traded on an individual stock, the stock and its issuer must satisfy on a continuing basis criteria relating to, for example, non-default, net income, number of shareholders, and market price per share. In general, the initial listing standards and the maintenance criteria measure the quality of the issuer and the quality of the market for the underlying security.

In 1986, the Exchanges proposed modifications to their listing and maintenance standards. The proposed amendments, the specific content of which is contained in the above-referenced releases, would ease the Exchanges' listing and maintenance criteria, thereby increasing the number of stocks eligible for options trading. The Commission, pending final action on its proposal to abolish the options allocation system and institute multiple-trading of options [3] on exchange-listed equity securities, has declined to date to approve the Exchanges' proposals.

In the wake of the October 1987 market break, the Exchanges have asked the Commission to approve the portion of their proposals relating to stock price maintenance standards. In particular, the maintenance standards would be amended so that a security would continue to remain eligible for options trading unless its market price per share closed below $5 on the majority of business days during a six-month period. The current maintenance standard is $8.[4]

[3] Standardized equity options on stocks not listed for trading on a national securities exchange may be traded on more that one options exchange. Currently, however, other than a few "grand-fathered" options, equity options on stocks listed on a national securities exchange can be traded only on one of the five domestic options exchanges. These options were allocated pursuant to a lottery system administered by the Exchanges. The Commission has published for comment and held hearings on a proposed rule, Rule 19c-5 under the Act, that would require multiple-listing of equity options on exchange-listed stocks. *See* Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849.

[4] The Amex, CBOE, PSE, and Phlx petitioned the Commission in a letter from Craig R. Carberry, Director, Options Compliance, PSE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated April 13, 1988 ("Exchange Petition"). The NYSE, which in File No. SR-NYSE-88-20 originally had proposed to reduce its stock price maintenance standard to $6 rather than $5, has agreed to adopt the uniform $5 standard. May 24, 1988 telephone conversation between David Krell, Vice President for Options, NYSE, and David Underhill, Attorney, Division of Market Regulation, SEC.

In support of their proposal, the Exchanges cited the fact that a number of options that would be required to be delisted due to October market break price declines "remain quite active due to continuing investor interest." [5] The Exchanges also aruged that the continuing availability of options on lower-priced stocks would allow investors to hedge against possible future market disruptions and that lower maintenance standards would not affect the proliferation of strike prices and expiration months because options delisted under the current maintenance criteria would simply be replaced by other options. In addition, the Exchanges noted the "growing realization that lower priced issues significantly contribute to the market mix of exchange option floors." [6] Last, the Exchanges requested that institution of the revised maintenance standards be made retroactive to January 1, 1988.

The Commission has determined to approve the reduction of the Exchanges' stock price maintenance standards from $8 to $5. Specifically, the Commission finds that the proposed rule changes relating to stock price maintenance standards are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of section 6 [7] and the rules and regulations thereunder. In the wake of the October 1987 market break, a number of stocks that previously traded above $8 on a consistent basis now trade in the $5 to $8 range. The Commission believes that reduction of the Exchanges' stock price maintenance standards from $8 to $5 will enable the Exchanges to continue to list a number of equity options that are actively-traded and have significant open interest. This will allow market participants to continue to hedge against future price fluctuations of many widely-held stocks. The Commission also believes that permitting options on these stocks to continue to trade would not compromise the quality of issuer and underlying market trading concerns of the stock maintenance standards.

The Commission has determined not to grant retroactive approval to the Exchanges' proposal. The Commission as a matter of policy does not grant such approval absent special circumstances. In this case, the Commission does not believe that retroactive approval is necessary for the protection of investors or the maintenance of fair and orderly markets. In addition, the Commission staff in May 1988 provided to the Exchanges temporary relief from the current standards pending permanent approval of the reduced stock price minimum.[8]

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule changes are partially approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: August 3, 1988.

[FR Doc. 88-17972 Filed 8-8-88; 8:45 am]

BILLING CODE 8010-01-M

[5] Exchange Petition, *supra* note 4, at 1.

[6] *Id.* at 2.

[7] 15 U.S.C. 78f (1982).

[8] Specifically, the Commission staff notified the Exchanges that they could continue to trade for three months options on any stock which as of May 20, 1988 was not in compliance with the minimum price standard but which closed at or above $8 on May 20. Absent special circumstances, the Exchanges were required to delist options overlying stocks which were not in compliance with the minimum price standard and which closed below $8 on May 20.

[9] 15 U.S.C. 78s(b)(2) (1982).

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**[Release No. 34-25958; File No. SR-AMEX-88-15]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Trading of Options on Stocks Listed on the American Stock Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934; 15 U.S.C. 78s(b)(1), notice is hereby given that on June 23, 1988 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to amend Rules 175, 900 and 958 by adding subparagraphs 175(c), 900(b)(38-41) and 958 (e) and (f). The amendments are as follows; italics indicates material proposed to be added;

*Rule 175*

(a)-(b) No change.

(c) *No specialist or his member organization or any member, limited partner, officer, or approved person thereof shall act as an options specialist or function in any capacity involving marketmaking responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such.*

*Rule 900*

(a) No change.

(b) (1)-(37) No change.

(b)(38) *Paired Security—The term "Paired Security" means a security which is the subject of securities trading on the Exchange and Exchange option trading.*

(b)(39) *Related Security—For purposes of this Chapter, the term "Related Security" means:*

*(i) in the case of an equity option, the stock underlying such option; and*

*(ii) in the case of a stock, the option overlying such stock.*

(b)(40) *Designated Options Area—The term "Designated Option Area" means that area of the Exchange trading floor in which an option on a Paired Security is traded. Such Designated Options Area shall be physically separated from the Designated Stock Area.*

(b)(41) *Designated Stock Area—The term "Designated Stock Area" means that area of the Exchange trading floor in which the stock of a Paired Security is traded. Such Designated Stock Area shall be physically separated from the Designated Options Area.*

*Rule 958*

(a)-(d) No change.

(e) *No equity specialist, odd-lot dealer or NASDAQ marketmaker may act as a Registered Options Trader in a class of stock options on a stock in which he is registered in the primary market therefor.*

(f) *No member while acting as a Registered Options Trader if he is also registered as Registered Equity Trader or Registered Equity Marketmaker shall executive a proprietary Exchange option transaction on a Paired Security if during the preceding 60 minutes he has been in the Designated Stock Area where the related security is traded.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The general purpose of the proposed rule changes is to permit the Exchange to trade options on stocks it lists ("Paired Securities"). With the expansion of its trading facility, specifically the addition of a separate room, the Amex is in a position to trade stocks and options thereon in physically separated locations. The proposed rule changes specify that such trading shall take place at different trading locations and provide the safeguards necessary to prevent abuses which could result from the trading of stocks and related options in physical proximity to each other.

1. *Rules 175(c) and 958(e).* In order to minimize regulatory concerns that might arise from the same member or member organization acting as a marketmaker in both the option and the underlying stock, the Exchange will prohibit a specialist, odd-lot dealer or NASDAQ marketmaker in the stock from acting as a registered options trader in connection with the option thereon.

2. *Rule 900(b) (38) and (39).* The Exchange has added definitions of the terms "Related Security" and "Paired Security" for clarification purposes.

3. *Rules 900(b) (40) and (41).* Trading in options on Amex listed stocks on the Exchange shall take place in an area of the trading floor distinct and physically separated from the area in which trading in the underlying stock shall take place. These areas will be known as the "Designated Options Area" and "Designated Stock Area," respectively, and are so defined in Rules 900(b) (40) and (41).

4. *Rule 958(f).* The Exchange is imposing a restriction on proprietary trading in Paired Securities by a registered options trader who is also registered as an equity trader or marketmaker to safeguard against any potential abuse of information which might result from his presence in the crowd trading the underlying stock. Such registered options trader would be prohibited from executing such a transaction in a related option within one hour of his having been in the Designated Stock Area. In this way any advantage due to a traders presence in the stock crowd would be eliminated prior to the time he could execute an options transaction.

The Amex believes the proposed rule changes are consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange in that the proposed rule changes provide a regulatory framework for options trading on Amex listed stocks and safeguards against potential abuses. Therefore, the Amex believes the proposed rule changes are consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex believes that the proposed rule change will not impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Options Committee, a committee of the Amex Board of Governors comprised of members and representatives of member firms, has endorsed the proposed ruyle change.

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it funds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,

*Secretary.*

August 2, 1988.

[FR Doc. 88-17974 Filed 8-8-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25859; File No. SR-CBOE-88-15]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Market-Maker Obligations To Not To Exceed Certain Bid-Ask Differentials.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1988 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II anid III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Obligations of Market-Makers

Rule 8.7 (a) No change.
(b) No change.
(i) No change.
(ii) No change.
(iii) No change.
(iv) To price options contracts fairly by, among other things, bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and offer for each option contract for which the bid is $1 or less, *no more than ⅜ of $1 where the bid is more than $1 but does not exceed $5*, no more than ½ of

[1] 17 CFR 200.30-3(1)(12) (1988).

$1 where the bid is more than *$5* [$1] but does not exceed $10, no more than ¾ of $1 where the bid is more than $10 but does not exceed $20 and no more than $1 where the bid is more than $20, provided that the Floor Procedure Committee may establish differences other than the above for one or more options series. The bid-ask differentials stated above shall not apply to option series which are *five* [ten] or more points in the money. For these series the bid-ask differentials may be as wide as the quotation on the primary market of the underlying security. During the last week of trading preceding expiration, the bid-ask differential on expiring in-the-money options may be as wide as the quotation in the primary market of the underlying security.

(c) No change.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, or the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change would narrow the maximum allowed difference between a bid and offer for an options contract for which the bid is more than $1 but less than $5.

For example, Rule 8.7 (b)(vi) currently states that if an option is bid at between $1 and $10, a market-maker must bid or offer so as to create a bid-ask differential of no more than ½ of $1. Thus, if the bid for a particular option series is 4⅛, a market-maker seeking to initiate an offer can bid or offer at any price provided the bid-ask differential does not exceed ½ of $1 (e.g. 4⅛—4⅝ or 4¼—4¾ or 4⅝—5⅛).

The Equity Floor Procedures, Index Floor Procedures and Market Performance Committees have recommended that the maximum allowable bid-ask differential be narrowed in lower priced options with premiums of between $1 and $5. Such options are favored by a significant number of public investors. The narrowing will result in improved price continuity and tighter and more liquid markets in such lower priced options.

The Exchange belives that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder. In particular, the proposal is consistent with section 6(b)(5) of the Act in that it is designed to make the market more efficient and to protect investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE believes that the proposed rule change will not impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

**Jonathan G. Katz,**

*Secretary.*

August 2, 1988.

[FR Doc. 88-17975 Filed 8-8-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25962; File No. SR-NASD-88-22]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On June 17, 1988, the National Association of Securities Dealers, Inc ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to amend section 66 of the Uniform Practice Code to require syndicate managers of public offerings to provide members of underwriting syndicates with itemized statements detailing the expenses incurred by the syndicate. Notice of the proposed rule change, together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 25840, June 23, 1988) and by publication in the Federal Register (53 FR 24538, June 29, 1988). No comment letters were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Jonathan G. Katz,**

*Secretary.*

Dated: August 3, 1988.

[FR Doc. 88-17976 Filed 8-8-88; 8:45 am]

BILLING CODE 8015-01-M

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[1] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-25960; File No. SR-PHLX-88-23]

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees Associated With Options on Over-the-Counter Stocks

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 18, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described herein. The proposed rule change is effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act because it involves "establishing or changing a due, fee, or other charge." The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PHLX has a continuing interest in listing new equity options, including options on over-the-counter ("OTC") stocks, which will develop active and liquid trading markets. The Exchange previously adopted a policy of encouraging options specialists to make suggestions of possible OTC stocks that might be appropriate for options trading by giving them preferential consideration in the event their suggested options were listed by the Exchange. Because the Exchange researches thoroughly each specialist's suggestion, this option selection process has become very costly and time-consuming. In order to discourage frivolous option feasibility requests by specialists and to help cover the expenses associated with each review,[1] the Exchange has determined to charge a $100 fee for each OTC stock that a specialist requests to be reviewed for potential options trading. Because the vast majority of the option feasibility requests are for OTC stocks, the $100 fee is applicable only to OTC stocks.

Additionally, the Exchange proposes a $5,000 fee to be charged the specialist who is ultimately awarded specialist privileges in any option on an OTC stock. Accordingly to the Exchange, legal costs incurred to ensure compliance with state blue sky laws and research and operating costs associated with the introduction of an option could amount to as much as $15,000 or more. The $5,000 fee will help defray some of these costs. As with the $100 fee for options feasibility reviews, the $5,000 fee is applicable only to OTC stocks.

The PHLX does not believe the proposed rule change will impose any burden on competition. According to the Exchange, the fees will not have an adverse impact on a specialist firm or the manner in which it conducts business because they are small in size and they apply to all options specialists in the Exchange. In particular, the Exchange does not believe the $5,000 fee will discourage any firm from seeking specialist privilege in options on OTC stocks.

As the foregoing rule change is concerned solely with the administration of the self-regulatory organization, it has become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

**Jonathan G. Katz,**

*Secretary.*

August 2, 1988.

[FR Doc. 88-17977 Filed 8-8-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Each review involves, among other things, determining whether the stock meets the eligibility criteria for underlying securities, as set forth in PHLX Rule 1009.

[2] 17 CFR 200.30-3(a)(12) (1986).

## DEPARTMENT OF STATE

[Public Notice CM-8/12067]

## Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on the Carriage of Dangerous Goods; Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on August 25, 1988 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593.

The purpose of this meeting is to discuss the upcoming International Maritime Organization (IMO) Forty-first Session of the Subcommittee on the Carriage of Dangerous Goods and associated agenda items—

—The International Maritime Dangerous Goods (IMDG) Code:
  —Amendments to the IMDG Code,
  —Implementation of the IMDG Code,
  —Carriage of dangerous goods on short sea voyages,
  —Revision of Class 4—Classes 4.1, 4.2, and 4.3,
  —Revision of Class 2—Gases, and
  —Revision of Class 5.2—Organic Peroxides.
—Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods (EmS) and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).
—Intermediate bulk containers (IBCs) for dangerous goods.
—Portable tanks and road tank vehicles for dangerous goods.
—Inclusion of provisions to cover the marine pollution aspects in the IMDG Code.
—Revision of the list of substances annexed to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973.
—Safety aspects of section 2 on search and recovery of packaged goods lost at sea of the Manual on Chemical Pollution.

—Requirements for the carriage of irradiated nuclear fuel in purpose-built and non-purpose-built ships.
—Development of guidelines to ensure the reporting to the Organization of incidents involving dangerous goods on board ship or in a port area.
—Revision of MSC/Circ. 360/Rev. 1.
—Relations with other organizations.
—Carriage of dangerous goods on vehicle decks of passenger ships.
—Any other business.

Members of the public may attend up to the seating capacity of the room. For further information contact Lieutenant Commander Phillip C. Olenik, U.S. Coast Guard Headquarters (G–MTH–1), 2100 2nd Street SW., Washington, DC 20593. Telephone: (202) 267–1577.

Date: July 28, 1988.

**Thomas J. Wajda,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 88–17881 Filed 8–8–88; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[AC No. 121–XX]**

### Proposed Advisory Circular on Training on Protective Breathing Equipment and Fire Control

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for comments on proposed Advisory Circular (AC) 121–XX, Training on Protective Breathing Equipment and Fire Control.

**SUMMARY:** Proposed AC 121–XX is intended to provide information regarding crewmember training on protective breathing equipment activation and fire retardant reaction with fire. The AC provides specific information regarding a recommended training curriculum and provides examples of classroom activities and methods of simulation.

**DATE:** Comments must be received on or before September 8, 1988.

**ADDRESS:** Send all comments and request for copies of the proposed AC to: Federal Aviation Administration (Attention: AFS–224), Office of Flight Standards, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Donell Pollard (AFS–224) at the above address; telephone (202) 267–8094 (7:30 a.m. till 3:30 p.m.).

**SUPPLEMENTARY INFORMATION:** The guidance material contained in this AC provides guidance regarding Amendment 121–193 (52 FR 20950; June 3, 1987) which amends FAR Section 121.417.

Issued in Washington, DC, on July 26, 1988.

**D.C. Beaudette,**

*Acting Director of Flight Standards.*

[FR Doc. 88–17873 Filed 8–8–88; 8:45 am]

BILLING CODE 4910–13–M

### Federal Highway Administration

### Environmental Impact Statement; Carver and Hennepin Counties, MN

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Carver and Hennepin Counties, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** Alan J. Friesen, District Engineer, Federal Highway Administration, Suite 490, Metro Square Building, St. Paul, Minnesota 55101, Telephone: (612) 290–3236.

**SUPPLEMENTARY INFORMATION:** The Federal Highway Administration, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve U.S. Highway 212, between Cologne, Minnesota in Carver County and the Jct. of I–494 in Eden Prairie, Hennepin County. The length of the proposed project is approximately 17 miles depending on the alternatives selected.

A draft Environmental Impact Statement (DEIS) was prepared in 1974 and is not considered valid because of additional land development in the corridor and changes in the environmental rules and regulations. A scoping document was prepared and circulated in February 1980 and a Notice of Intent to prepare a DEIS was published in the **Federal Register** on January 31, 1980.

Scoping meetings were held in November and December 1979. The project became inactive in 1981 and was reactivated in August 1983. Because of this delay, a draft study outline was prepared and circulated for comments in January 1986. A public meeting was held on February 26, 1986 and a comment period for review and to receive mail-in comments extended from February 10, 1986 through March 12, 1986. A final study outline providing information about the project including potential alternatives and their impacts was prepared and distributed to interested parties and agencies in June 1986.

As a result of these meetings and additional public involvement, the proposed alternatives from the original scoping document were retained and will be studied in the DEIS. No additional formal scoping meetings are anticipated.

A public hearing on the Draft Environmental Impact Statement will be held. The draft EIS will be made available for public and agency review and comment prior to the public hearing.

The proposed facility will be a four lane divided at-grade expressway between Cologne, Minnesota and the proposed intersection with County Road 140 in Carver County. Between County Road 140 in Carver County and I–494 in Eden Prairie, Hennepin County, it will be proposed as a divided freeway facility.

In addition to the no-build alternative and the transportation system management alternative, location alternatives will be discussed in detail in the draft EIS. These will be identified as the Residential, Mitchell Lake, and System "D" alternatives between I–494 and County Road 4 in Eden Prairie, and the North and South Lake Riley alternatives between County Road 4 and County Road 17 near Chaska. West of County Road 17 to County Road 147, only one new alignment is proposed. West of County Road 147 to Cologne, new T.H. 212 will follow existing T.H. 212 with only minor alignment shifts. Other alternatives were dismissed during the scoping process and will only be briefly discussed in the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on July 27, 1988.

**Alan Friesen,**

*District Engineer, St. Paul, Minnesota.*

[FR Doc. 88–17932 Filed 8–8–88; 8:45 am]

BILLING CODE 4910–22–M

VOL 53 ISS 153 AUG 9 1988 UMI

**Maritime Administration**

## Inventory of U.S.-Flag Launch Barges

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Inventory of Launch Barges, reported as of August 4, 1988.

**SUMMARY:** Pursuant to Section 1(b)(3) of Pub. L. No. 100–329, enacted June 7, 1988, the following updated inventory of U.S.-flag launch barges that have launch capacity of less than 12,000 long tons and are qualified to engage in the coastwise trade, reported as of August 4, 1988, is being published. Also being published are names and addresses of the persons to whom inquiries concerning such vessels may be made. The inventory will be updated and republished periodically.

**EFFECTIVE DATE:** August 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ronald Poulsen, Office of the Maritime Administrator, 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** An initial inventory of U.S.-flag launch barges reported as of March 2, 1988 was published in the June 27, 1988 **Federal Register**, together with a separate listing of barges owned by Crowley Maritime Corporation that were represented to be readily susceptible of conversion to launch barge use. Comments were invited on the completeness and accuracy of the March 2, 1988 inventory.

Comments were received from Crowley Maritime Corporation, Exxon Company, USA and David P. Stang, attorney on behalf of McDermott Marine Construction Company.

Crowley and Mr. Stang indicated that the listing included some barges with a launch capacity of greater than 12,000 long tons and some that are not coastwise-qualified, noting that the statutory mandate addresses only launch barges of less than 12,000 long tons that are qualified to engage in the coastwise trade. The barges in question were included in the initial inventory for informational purposes because it was believed useful to have generally available a listing of all known U.S.-flag launch barges. That objective having been accomplished and no additional entries having been brought to our attention, the current inventory reflects only barges that meet the foregoing statutory criteria.

Exxon also indicated that the inventory should be limited to barges with a launch capacity of less than 12,000 long tons, but that barges having a capacity greater than 12,000 long tons could be included in an information list that might also include barges which could be U.S.-flagged in the future. Given the statutory mandate and its underlying purpose, the latter suggestion would appear not to serve a useful purpose and has not been incorporated.

Crowley indicated that its barges, which are readily adaptable to launch barge service, should be included in the inventory and not listed separately. Exxon and Mr. Stang objected to including barges in the inventory which are not presently configured as launch barges because such vessels would require extensive modifications and, according to Exxon, "The Maritime Administration would be exceeding its statutory authority under Section 27 of the Merchant Marine Act, 1920 by including vessels which are not presently qualfiied to transport platform jackets."

It has been decided to include the Crowley barges in the inventory. Without passing judgment on either Crowley's representation that those barges can easily be reconfigured or the opponents' representation that extensive modifications would be required, the fact is that the statutory purpose of the inventory is to provide a source from which potential users can determine the "availability" of coastwise-qualified launch barges "of lesser capacity." As noted in the report of the Senate Commerce Committee—

> Potential users have the burden of consulting the list and making inquiries to determine whether a launch barge is "available." The Committee intends that a launch barge of lesser capacity not be deemed to be "available," unless it has been included on the list and is available to perform the transport within the time requirements of the inquiring user. * * * *
>
> S. Rep. No. 100–327, 100th Cong., 2d Sess. 8 (1988).

In our view, that statement militates strongly in favor of including the Crowley coastwise-qualified barges in the inventory, leaving the question of their "availability" to marketplace dictates of the time required for conversion to launch-barge configuration and the potential users' own time requirements.

Accordingly, an updated inventory, as of August 4, 1988, is set forth below. Inquiries concerning "availability" may be addressed as follows:

Babcock & Wilcox:
- Fred Baldwin, Domestic Offshore and Fabrication Operations, McDermott, Inc., 1010 Common Street, New Orleans, LA 70160, 504/587–4411

Brown & Root, Inc.
- B.E. Stallworth, Executive Vice President, Marine Operations, 4100 Clinton Drive, Box 3, Houston, TX 77001, 713/676–3011

Crowley Maritime Corporation
- D.R. Lutz, General Manager, Crowley Constructions, Inc., Berth 22, Pier C, Long Beach, CA 90802, 213/432–6918

MWB, Inc.
- 1225 North Loop West, Suite 1110, Houston, TX 77008

Offshore Pipelines, Inc.
- Thurman Lauret, 14035B Industrial Road, Houston, TX 77015, 713/451–2900.

Approved:

**James E. Saari,**

*Secretary, Maritime Administration.*

BILLING CODE 4910-81-M

REPORTED COASTWISE-QUALIFIED LAUNCH BARGES
WITH LAUNCH CAPACITY LESS THAN 12,000 LONG TONS

| VESSEL NAME | OWNER | BUILT | LENGTH (FT.) | BEAM (FT.) | DEPTH (FT.) | REPORTED GRT ($T.^3$) | REPORTED DWT (L.T.) | APPROX LAUNCH CAPACITY (L.T.) | VOLUME ($FT.^3$) | ESTIMATED FULL LOAD DISPLACE (L.T.) | RATIO DISPLACE/ LAUNCH CAP. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| MWB-403 | MWB, INC | 1979 | 400 | 105 | 25 | 9,561 | 17,954 | 6,300 | 1,050,000 | 23,718 | 3.8 |
| OCEAN LAUNCHER | OFFSHORE PIPELINES, INC. | 1966 | 380 | 100 | " | 8,581 | 12,260 | 8,000 | 950,000 | 21,714 | 3.7 |
| MCDERMOTT OCEANIC NO. 91* | BABCOCK & WILCOX | 1964 | 402 | 90 | 22 | 6,718 | 6,600 | 4,500 | 795,960 | 18,193 | 4.0 |
| INTERMAC 404* | BABCOCK & WILCOX | 1976 | 300 | " | 20 | 3,309 | 8,000 | 4,200 | 540,000 | 12,343 | 4.0 |
| MCDERMOTT TIDELANDS 021* | BABCOCK & WILCOX | 1980 | 240 | 72 | 17 | 2,180 | 4,700 | 2,200 | 293,760 | 6,715 | 2.5 |
| CORDOVA | CROWLEY | 1969 | 400 | 76 | 20 | 5,051 | 8,090 | 4,900 | 531,615 | 10,367 | 2.1 |
| JUNEAU | " | 1970 | " | " | " | " | " | " | " | " | " |

* COASTWISE QUALIFIED, BUT PRESENTLY RESTRICTED TO PROPRIETARY USE UNDER SECTION 27A OF THE MERCHANT MARINE ACT, 1920 (46 APP. U.S.C. SECTION 883-1).

REPORTED COASTWISE-QUALIFIED LAUNCH BARGES
WITH LAUNCH CAPACITY LESS THAN 12,000 LONG TONS

| VESSEL NAME | OWNER | BUILT | LENGTH (FT.) | BEAM (FT.) | DEPTH (FT.) | REPORTED GRT ($T.^3$) | REPORTED DWT (L.T.) | APPROX LAUNCH CAPACITY (L.T.) | VOLUME ($FT.^3$) | ESTIMATED FULL LOAD DISPLACE (L.T.) | RATIO DISPLACE/ LAUNCH CAP. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| KENAI | CROWLEY | 1968 | 400 | 76 | 20 | 5,051 | 8,090 | 4,900 | 531,615 | 10,367 | 2.1 |
| KETCHIKAN | " | 1970 | " | " | " | " | " | " | " | " | " |
| KODIAK | " | 1965 | " | " | " | " | " | " | " | " | " |
| MCKINLEY | " | 1969 | " | " | " | " | " | " | " | " | " |
| NIKISKI | " | 1968 | " | " | " | " | " | " | " | " | " |
| PALMER | " | " | " | " | " | " | " | " | " | " | " |
| MALOLO | " | " | " | " | " | " | " | " | " | " | " |
| ISLA BONITA | " | 1974 | " | 99 | " | 6,643 | 11,290 | 6,600 | 705,810 | 13,732 | " |
| ISLA DEL SOL | " | " | " | " | " | " | " | " | " | " | " |
| ST. THOMAS | " | 1970 | " | " | " | " | " | " | " | " | " |
| BARGE 400 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 406 | " | 1974 | " | " | " | " | " | " | " | " | " |
| BARGE 407 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 408 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 409 | " | " | " | " | " | " | " | " | " | " | " |

REPORTED COASTWISE-QUALIFIED LAUNCH BARGES
WITH LAUNCH CAPACITY LESS THAN 12,000 LONG TONS

| VESSEL NAME | OWNER | BUILT | LENGTH (FT.) | BEAM (FT.) | DEPTH (FT.) | REPORTED GRT ($T.^3$) | REPORTED DWT (L.T.) | APPROX LAUNCH CAPACITY (L.T.) | VOLUME ($FT.^3$) | ESTIMATED FULL LOAD DISPLACE (L.T.) | RATIO DISPLACE/ LAUNCH CAP. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| BARGE 410 | CROWLEY | 1974 | 400 | 99 | 20 | 6,643 | 11,290 | 6,600 | 705,810 | 13,732 | 2.1 |
| BARGE 411 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 414 | " | 1975 | " | " | " | " | " | " | " | " | " |
| BARGE 415 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 416 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 417 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 419 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 420 | " | " | " | " | " | " | " | " | " | " | " |
| LANAI | " | 1976 | " | " | 25 | 8,914 | 15,178 | 8,000 | 864,080 | 18,418 | 2.3 |
| MOLOKAI | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 450-2 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 450-3 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 450-4 | " | " | " | " | " | " | " | " | " | " | " |

REPORTED COASTWISE-QUALIFIED LAUNCH BARGES
WITH LAUNCH CAPACITY LESS THAN 12,000 LONG TONS

| VESSEL NAME | OWNER | BUILT | LENGTH (FT.) | BEAM (FT.) | DEPTH (FT.) | REPORTED GRT ($T.^3$) | REPORTED DWT (L.T.) | APPROX LAUNCH CAPACITY (L.T.) | VOLUME ($FT.^3$) | ESTIMATED FULL LOAD DISPLACE (L.T.) | RATIO DISPLACE/ LAUNCH CAP. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| BARGE 450-6 | CROWLEY | 1981 | 400 | 99 | 25 | 8,914 | 15,178 | 8,000 | 864,080 | 18,418 | 2.3 |
| BARGE 450-7 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 450-8 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 450-9 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 450-10 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 450-11 | " | 1982 | " | " | " | " | " | " | " | " | " |
| BARGE 500-1 | " | " | " | " | 20 | 7,171 | 11,824 | 8,500 | 753,270 | 14,770 | 1.97 |
| BARGE 500-2 | " | 1983 | " | " | " | " | " | " | " | " | " |
| BARGE 500-3 | " | " | " | " | " | " | " | " | " | " | " |
| BARGE 500-4 | " | " | " | " | " | " | " | " | " | " | " |

[FR Doc. 88-18116 Filed 8-8-88; 9:28 am]
BILLING CODE 4910-81-C

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0954.
*Form Number:* 1120–ND.
*Type of Review:* Revision.
*Title:* Return for Nuclear Decommissioning Funds and Certain Related Persons.
*Description:* IRS uses Form 1120–ND to monitor the activities of nuclear decommissioning funds and to collect the tax on income under section 468A as well as taxes on self-dealing by disqualified persons.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 100.
*Estimated Burden Hours Per Response:* 2 hours and 22 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 10,337 hours.

*OMB Number:* 1545–1004.
*Form Number:* 1120 REIT.
*Type of Review:* Revision.
*Title:* U.S. Income Tax Return for Real Estate Investment Trusts.
*Description:* Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 250.
*Estimated Burden Hours Per Response:* 9 hours.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 2,249 hours.

*OMB Number:* 1545–1030.
*Form Number:* None.
*Type of Review:* Revision.
*Title:* Opinion Survey of Taxpayers Contacting IRS Taxpayer Service for 1989.
*Description:* The data collected will be used to determine if the IRS meets the taxpayer's needs in providing assistance on tax related matters, to plan for short and long range assistance programs, and to assess the impact of taxpayer assistance on voluntary compliance. The sample will be selected from taxpayers who have requested assistance from the IRS.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 7,200.
*Estimated Burden Hours Per Response:* 20 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 2,400 hours.
*Clearance Officer:* Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports Management Officer.*

[FR Doc. 88–17968 Filed 8–8–88; 8:45 am]
BILLING CODE 4810–25–M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 153
Tuesday, August 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FARM CREDIT ADMINISTRATION**

Farm Credit Administration Board; Special Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on July 29, 1988, from 6:50 p.m. until such time as the Board concluded its business.

**FOR FURTHER INFORMATION CONTACT:** David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board was closed to the public. The matter considered at the meeting was:

**Closed Session** [1]

1. Update regarding the Federal Land Bank of Jackson, in receivership, and the Federal Land Bank Association, in receivership.

Dated: August 4, 1988.

**David A Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88–17996 Filed 8–5–88; 9:50 am]

BILLING CODE 6705-01-M

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**FARM CREDIT ADMINISTRATION**

Farm Credit Administration; Correction of Sunshine Act Meeting

**SUMMARY:** Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on July 29, 1988 (53 FR 28331) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for August 2, 1988. This notice is to revise the agenda for that meeting to add an item in a closed session.

**FOR FURTHER INFORMATION CONTACT:** David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003 TDD (703) 883–4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, August 2, is revised to include the following item in the closed session:

**Closed Session** [1]

1. Update regarding Federal Land Bank of Jackson, in receivership, and Federal Land Bank Association of Jackson, in receivership.

Dated: August 4, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88–17995 Filed 8–5–88; 9:50 am]

BILLING CODE 6705-01-M

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**FARM CREDIT ADMINISTRATION**

Farm Credit Administration; Correction of Sunshine Act Meeting

**SUMMARY:** Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on July 27, 1988 (53 FR 28331) of the special meeting of the Farm Credit Administration Board (Board) scheduled for July 29, 1988. This notice is to revise the agenda for that meeting to add an item to the closed session.

**FOR FURTHER INFORMATION CONTACT:** David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Friday, July 29, is revised to include the following item in the closed session:

**Closed session** [1]

7. Update regarding Federal Land Bank of Jackson, in receivership, and Federal Land Bank Association of Jackson, in receivership.

Dated: August 4, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88–17994 Filed 8–5–88; 9:50 am]

BILLING CODE 6705-01-M

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of August 8, 15, 22, and 29, 1988.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of August 8**

*Tuesday, August 9*

10:00 a.m.
Briefing on Status of Agreements with OSHA, EPA and FEMA Concerning Jurisdiction Over Non-Radiological Hazards (Public Meeting).

2:00 p.m.
Briefing on Key Licensing Issues Associated with DOE Sponsored Advanced Reactor Designs (Public Meeting).

*Wednesday, August 10*

10:00 a.m.
Briefing on Current Status of Nuclear Materials Transportation (Public Meeting).

*Thursday, August 11*

10:00 a.m.
Briefing on Status, Results, and Implementation of B&W Reassessment (Public Meeting).

2:00 p.m.
Briefing on Standardization of Advanced Reactor Designs (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).
(a) Final Rule on Emergency Preparedness for Fuel Cycle and other Radioactive Material Licensees (Tentative).

**Week of August 15—Tentative**

*Monday, August 15*

2:00 p.m.
Briefing on Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting).

*Tuesday, August 16*

2:00 p.m.
Briefing on Maintenance Workshop (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

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[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8) and (9).

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8) and (9).

**Week of August 22—Tentative**

There are no meetings scheduled for the Week of August 22.

**Week of August 29—Tentative**

There are no meetings scheduled for the Week of August 29.

**Note.**—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)** (301) 492–0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 492–1661.

**William M. Hill, Jr.,**

*Office of the Secretary.*

August 4, 1988.

[FR Doc. 88–18050 Filed 8–5–88; 3:29 pm]

BILLING CODE 7560-01-M

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**UNITED STATES INSTITUTE OF PEACE**

**TIME AND DATE:** 4:00–7:00 p.m., Thursday, August 11, 1988.

**PLACE:** The University Club of Washington, 2nd Floor, 1135 16th Street, NW., Washington, DC.

**STATUS:** Open.

**PURPOSE AND AGENDA:** First of a Public Workshop series scheduled by the growing United States Institute of Peace, "The Sarajevo Fallacy" will address basic questions and fundamental issues of causes of war, deterrence, arms control, and special problems of democracies in waging peace. Patrick Glynn will lead the discussion of his 1987 "Sarajevo Fallacy" article; Commentators are Dr. J. David Singer, Dr. Charles Fairbanks, Mr. Leon Weiseltier, and Col. Harry Summers (USA Ret.).

**CONTACT:** Ms. Aileen C. Hefferren, Telephone (202) 457–1700.

Dated: August 1, 1988.

**Samuel. W. Lewis,**

*President.*

[FR Doc. 88–18078 Filed 8–5–88; 3:52 pm]

BILLING CODE 3155-01-M

# Corrections

Federal Register
Vol. 53, No. 153
Tuesday, August 9, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Children's Hospital-Boston et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

*Correction*

In notice document 88-17149 appearing on page 28679 in the issue of Friday, July 29, 1988, make the following correction:

In the first column, in the first paragraph, in the second line, "section 7(c)" should read "section 6(c)".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Northwestern University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

*Correction*

In notice document 88-17150 beginning on page 28679 in the issue of Friday, July 29, 1988, make the following correction:

On page 28679, in the second column, in the second paragraph, in the fourth line, "VG70-259SE" should read "VG70-250SE".

BILLING CODE 1505-01-D

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### 34 CFR Part 327

### Handicapped Special Studies Program

*Correction*

In rule document 88-16927 beginning on page 28350 in the issue of Wednesday, July 27, 1988, make the following correction:

§ 327.40 [Corrected]

On page 28351, in the third column, in § 327.40(b), in the fourth line, "agencies, others" should read "agencies, and others".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-3423-2]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

*Correction*

In rule document 88-17335 beginning on page 29038 in the issue of Tuesday, August 2, 1988, make the following correction:

### PART 261—[CORRECTED]

On page 29045, in the first column, in the first line,

"Appendix X" should read

"Appendix IX".

BILLING CODE 1505-01-D

federal register

Tuesday
August 9, 1988

Part II

# Administrative Committee of the Federal Register

1 CFR Part 2 et al.

Updates and Changes to Publication Procedures; Proposed Rule

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**ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER**

**1 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21 and 22**

**Updates and Changes to Publication Procedures; Proposed Rule**

**AGENCY:** Administrative Committee of the Federal Register.

**ACTION:** Proposed rule.

**SUMMARY:** The Administrative Committee of the Federal Register (ACFR) proposes to update its regulations for the Office of the Federal Register publication system to clarify certain policies and reflect current procedures. These proposed amendments concern availability of Office of the Federal Register publications, changes to regulations by court order or Act of Congress, procedure and timing of regular schedule, reinstatement of expired regulations, effective dates and time periods, and technical amendments. This action does not represent a change in policy or increase the burdens on agencies or the public.

**DATES:** Comments are due October 11, 1988.

**ADDRESSES:** *Mail:* Legal Services Staff, Office of the Federal Register (NFE), National Archives and Records Administration, Washington, DC 20408.

*Hand Delivered:* Legal Services Staff, Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Frances McDonald or Sandra McLean, (202) 523–4534.

**SUPPLEMENTARY INFORMATION:**

**Availability of Office of the Federal Register Publications**

The Federal Register Act gives the ACFR the authority to regulate the number of copies of Office of the Federal Register (OFR) publications to be distributed without charge to members of the Government for official use and to be made available for purchase by the public. (44 U.S.C. 1506)

The ACFR is proposing to amend its regulations by consolidating all information on the availability of OFR publications in a new Subchapter D consisting of two parts, Parts 11 and 12. Information on subscriptions and official distribution within the Federal Government is presently dispersed throughout Chapter 1, with information located in 1 CFR 3.4, 1 CFR Part 7, 1 CFR 8.8, 1 CFR 9.3, 1 CFR 10.4, and 1 CFR 10.14.

The consolidation of all regulations concerning the availability of OFR publications provides a central, convenient source of information for users or OFR publications. Additionally, future revision of these consolidated regulations is simplified.

Some of the regulations consolidated in Subchapter D are out-of-date. The ACFR, therefore, proposes to revise these regulations. The regulations are also restructured and reworded for consistency. Since several OFR publications are now available in paper, microfiche, and magnetic tape forms, some of the regulations are clarified to identify the specific form to which the text applies. Also, present regulations provide that various OFR publications are distributed in the number needed, without charge to members of the Government for official use. The provision of these copies is based on a written request to the Director of the Federal Register, therefore, this procedure is included when applicable.

The availability of the slip laws and the U.S. Statutes at large is not controlled by the ACFR and therefore information on their availability is not included in the new Part 11. In addition to paper and microfiche, the **Federal Register**, the CFR, and the United States Government Manual, are now available in magnetic tapes. The current prices and availability of these magnetic tapes are added in the new Part 11.

The monthly Federal Register Index and the LSA (List of CFR Sections Affected) are included with each **Federal Register** subscription and each official distribution. Statements to this effect have been added in the new sections 11.2 and 12.1(e). Additionally, the monthly Federal Register Index and LSA (List of CFR Sections Affected) are available as separate subscriptions. A regulation on subscription to the LSA (List of CFR Sections Affected) is added at § 11.8. A regulation on subscription to the monthly Federal Register Index is redesignated from 3.4(b)(8) to § 11.8.

**Regulations Affected by Court Decision or Act of Congress**

The ACFR is interested in receiving comments on a proposed requirement that an agency promptly publish a document in the **Federal Register** when its regulations are rendered null and void, modified, or suspended by a court decision or an Act of Congress. This proposed regulation would satisfy the requirements of the Federal Register Act, (44 U.S.C. 1501 et seq.), help maintain an orderly system of codification, and would be compatible with OFR's plans to fully implement a current updated CFR data base.

The responsibility for keeping agency regulations current and consistent with relevant Acts of Congress and court decisions rests with each agency. Failure of an agency to promptly remove, revise or suspend regulations rendered ineffective by court decision or Act of Congress conflicts with the purposes of the Federal Register Act. This proposed regulation will be consistent with the Federal Register Act which charges the ACFR with regulating the supplementation of the CFR with a view to keeping the CFR as current as practicable. (44 U.S.C. 1510)

The Federal Register Act requires that the CFR contain agency regulations having general applicability and legal effect. Also, agency documents published in the CFR, as amended by documents subsequently published in the daily **Federal Register** are *prima facie* evidence of the text of the documents and of the fact that they are in effect on and after the date of publication. (44 U.S.C. 1510).

If an agency regulation has been modified, suspended or rendered ineffective, by court decision or Act of Congress, the FR/CFR system reflects the change only when the agency submits the change in a document for publication. This proposed rule would formalize the OFR's existing policy of requiring prompt publication of a document in the **Federal Register** when an agency's regulations are rendered ineffective, modified or suspended by a court decision or an Act of Congress. In this way, the affected public will be informed of the current regulations and the FR/CFR system will be kept current in a logical, orderly manner.

A practical consideration is the OFR's plans for a currently updated CFR data base which would increase the efficiency of OFR operations and offer the potential for Federal agencies to gain access to the most current text of the CFR. Changes to regulations would be entered on the CFR data base by the OFR editors. In order to maintain an orderly and current scheme of codification, the OFR editors must be promptly made aware of any nullification, modification, or suspension of an agency regulation by court decision or Act of Congress.

For these reasons, the ACFR proposes to add a new section 1 CFR 8.10 to require that an agency promptly publish a document in the **Federal Register** when its regulations are rendered null and void, modified or suspended by a court decision or an Act of Congress.

**Procedure and Timing for Regular Schedule**

The Federal Register Act of 1935 provides for an official publication called the **Federal Register** in which all rules and regulations (of a Federal agency) shall systematically and uniformly be published. Under that Act, the Administrative Committee of the Federal Register (ACFR) is charged with regulating the "manner and form" in which the **Federal Register** shall be printed. (44 U.S.C. 1506(3)).

The ACFR provided for a regular schedule for **Federal Register** publication in 1 CFR 17.2 Section 17.2(a) presently provides that receipt of a document by the OFR in the ordinary course of business (8:45 a.m.–5:15 p.m.) is considered to be a request for publication on the regular schedule, that is, 3 working days later.

Before a document can be scheduled for publication, it must be reviewed to ensure that it meets publication requirements set out in 1 CFR Chapters I and II. When documents are submitted late in the afternoon, the amount of time available for processing is severely decreased. As long as the number of documents submitted late in the day was small, this did not pose a problem for the printing and overall production of the **Federal Register**. Experience now shows, however, that so many documents are being submitted late in the afternoon that assigning the 3 day publication schedule for documents received late in the day is not practical and does not allow efficient use of editorial and printing staff resources.

This proposed rule would change the deadline for receiving documents for publication on the regular 3 day schedule to 2:00 p.m. Documents received after 2:00 p.m. would receive the next working day's regular publication schedule. The 2:00 p.m. deadline would greatly improve the situation created by a large number of documents submitted late in the afternoon and allow for a more efficient production process.

While the Administrative Committee recognizes that requiring receipt of documents by 2:00 p.m. to qualify for OFR's regular schedule may require certain agency administrative adjustments, it believes that the overall benefits justify this change.

The ACFR has not provided in regulations for a regular schedule for Sunshine Act documents in the past, although the OFR has historically afforded these documents an expedited schedule. This proposed rule would formalize the OFR's longstanding policy of assigning a two day schedule for each correctly submitted notice of meeting issued under the "Government in the Sunshine Act" (5 U.S.C. 522b(e)(3)). In accordance with the OFR's existing policy, each Sunshine Act document received before 4:00 p.m. is scheduled to be published two working days later. Each notice received after 4:00 p.m. is scheduled to be published three working days later.

Sunshine Act documents are published in a separate section of the **Federal Register** under simplified formatting requirements. This simplified format allows an agency to present statutorily required information in a clear and efficient manner while providing public notice as quickly as possible. The OFR's abbreviated two day schedule is available because the simple, standardized format permits quicker processing.

**Reinstatement of Expired Regulations**

OFR has received requests from agencies seeking to extend the effective dates of rules after their expiration but prior to the annual revision of that agency's CFR title. Agencies have proposed that they should be permitted to reinstate rules by publishing a document in the **Federal Register** that would retroactively extend the effective date instead of promulgating newly effective rules in full text.

The ACFR take the position this practice may not satisfy the legal requirements for rulemaking, is not conducive to maintaining an orderly system of codification, and is not compatible with OFR's plans to fully implement a currently updated CFR data base. Therefore, OFR proposes to amend its regulations by adding a regulation delineating the process by which expired material should be reinstated.

Retroactive reinstatement of lapsed rules is also inconsistent with the Federal Register Act. 44 U.S.C. 1510(a) defines the CFR as a codification of documents having general applicability and legal effect. Once a regulation is superseded, revoked or expired, it lacks legal status as a viable section of the CFR and neither the regulation nor its effective date is eligible for amendment.

The Federal Register Act obliges the ACFR to maintain an orderly scheme of codification. Logical, orderly development requires that a systematic approach be employed in which expired regulations are removed and are reinstated only by means of complete republication.

Furthermore, the practice of permitting lapsed regulations to be received retroactively would seem to run afoul of the Administrative Procedure Act (APA), 5 U.S.C. et seq. Such a shortcut to rulemaking does not allow interested persons to participate in the regulatory process. The APA requires that agencies provide notice of rulemaking by means of publication in the **Federal Register** and provide an opportunity for submission of comments (5 U.S.C. 553). In addition, a recent court decision has called into question the legality of retroactive regulations as infringements of the right to due process of law. *Mason General Hospital v. Secretary of the Department of Health and Human Services*, 809 F. 2d 1220 (6th Cir. 1987).

In keeping the CFR data base current, obsolute regulations may be erased from the CFR data base on the day of expiration. To restore this data, agencies should republish the full text in the **Federal Register.**

For these reasons, the ACFR proposes to amend its regulations by adding a new 1 CFR 18.16 to require that expired regulations may only be reinstated by publishing newly effective rules in full text in the **Federal Register.**

**Effective Dates and Time Periods**

In 1 CFR 18.17, paragraph (a) is revised in accordance with the OFR's current practice, to reflect the fact that many agenices now rely on computed dates. The OFR no longer expresses a preference for documents setting forth dates certain over documents setting forth time periods measured by a certain number of days after publication.

The ACFR is also interested in receiving comments on a new paragraph (c) that is being considered, which would require an agency to promptly publish a document in the **Federal Register** announcing a new effective date in the event an Act of Congress or court order establishes or changes the effective date of an agency's regulation. The ACFR holds that this regulation would satisfy the legal requirements for rulemaking, relieve a presently existing burden on the public, help maintain an orderly system of codification, and be compatible with OFR's plans to fully implement a currently maintained data base.

The responsibility for keeping agency regulations current and consistent with relevant Acts of Congress and court orders rests with each agency. The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., requires that agencies provide notice of rulemaking by means of publication in the **Federal Register.** The ACFR takes the position that notice of a change to a regulation's effective date is an integral element of any rulemaking. Therefore, any change of an effective date due to Act of Congress or

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court order should be published in the **Federal Register.**

The OFR has received agency rulemaking documents that contained effective dates dependent upon Congressional action. Additionally, court orders occasionally establish or change the effective date of an agency's regulation. In either of these instances, the public is only made aware of the changes in effective dates in a timely, convenient manner, if the agency publishes a **Federal Register** document. Clearly the public has an interest in knowing the date on which compliance with agency regulations becomes mandatory. In most cases, the public can rely on the FR/CFR system to supply the effective date for any regulation.

In the past, the OFR has received a few agency documents, which contained both an effective date dependent upon Congressional action and language to the effect that persons interested in the effective date of the regulations, should call the agency's contact person. Such an added burden upon the regulated public is unhelpful and unnecessary when Federal Register publication is available and required as the source of legal notice of rulemaking by the APA.

Furthermore, a practical consideration includes the burden such a vague effective date places on OFR editors updating the annual CFR volumes. When agency documents refer the public to the agency for a regulation's effective date, OFR editors must call the agency to discover the status of each such regulation prior to updating the yearly revision of the CFR volumes. Thus, the OFR as well as the public, must go outside the FR/CFR system to discover the current status of these regulations.

A second consideration is the OFR's goal to improve Federal agencies' access to the most current text of the CFR. In order to implement this goal and maintain an orderly scheme of codification, the OFR editors must know the effective date of each regulation.

For these reasons, the ACFR proposes to amend 1 CFR 18.17 by adding a new paragraph (c) to require that an agency promptly publish a document in the **Federal Register** announcing a new effective date in the event an Act of Congress or court order establishes or changes the effective date of an agency regulation.

**Updating Regulations**

Some of the regulations in 1 CFR are simply out-of-date. The ACFR, therefore, proposes to remove or amend these regulations to reflect current publication procedures.

The ACFR proposes to make a nomenclature change in 1 CFR 2.3. The change corrects the name of the OFR's parent agency to the National Archives and Records Administration.

Some of the regulations in 1 CFR are gender specific. Sections that contain gender specific terminology, 1 CFR 2.4, 1 CFR 5.3, 1 CFR 9.1, 1 CFR 16.2, 1 CFR 16.3, 1 CFR 16.4, 1 CFR 17.4, 1 CFR 18.7, 1 CFR 20.1, 1 CFR 21.14, and 1 CFR 21.42 are amended to eliminate gender specification.

The title of "The United States Government Manual" is corrected in 1 CFR 2.5, 1 CFR 9.1, the Part heading of 1 CFR Part 20, and 1 CFR 20.1. Also, the "Federal Register Index" and the "LSA (List of CFR Sections Affected)" are added to the list of publications in paragraph (c) of 1 CFR 2.5

The ACFR makes minor technical changes to 1 CFR 3.2 and to the section heading of 1 CFR 3.3.

The regulations at 1 CFR 5.2 and 5.3 are clarified by adding the phrase "filed for public inspection" in place of the word "filed" in accordance with the language and content of 44 U.S.C. 1503. 1 CFR 5.6 is also clarified.

The categories of documents listed in 1 CFR 5.9 are clarified and expanded when necessary to reflect the current publication requirements of the OFR.

In 1 CFR 6.5, the term "index-digests" is changed to "indexes, digests" and the section is clarified. The OFR publishes both indexes and digests, but not index-digests.

The term "general applicability and current or future effect" is changed to "general applicability and legal effect" in 1 CFR 8.1. This change adopts the language used in 44 U.S.C. 1505 and is consistent with the ACFR's language in 1 CFR 5.2.

The language in paragraph (c) of 1 CFR 8.3 is clarified.

The Code of Federal Regulations Index now contains the parallel tables of authorities and rules described in 1 CFR 8.5. The ACFR proposes to update and clarify this section to reflect current practice.

The ACFR is clarifying the section heading of 1 CFR 15.4. This section's text pertains to the reproduction and certification of copies of acts and documents.

The ACFR is removing 1 CFR 15.5. Information on the availability of OFR publications controlled by the ACFR has been consolidated in the new Subchapter D. The availability of the slip laws and the U.S. Statutes at Large is not controlled by the ACFR and therefore, reference to their availability is removed.

An addition to 1 CFR 16.2 provides that agency liaison officers shall be available to discuss documents submitted for publication with the OFR editors. This provision emphasizes the importance the OFR places on this aspect of the liaison officer's duties.

The word "agency" is added to the text for identification purposes in 1 CFR 16.2, 16.3, and 16.4.

The OFR requires each agency requesting publication on the emergency schedule to submit its request by letter. Therefore, 1 CFR 17.4 is revised by removing the phrase "if time permits".

The services provided in 1 CFR 17.5 in conjunction with the transmittal of documents by telecommunication are no longer needed due to the availability of expedited mail services. Therefore, this section is removed.

The term "unusual tabulations" in 1 CFR 17.6, is changed to "unusual or lengthy tables". Additionally, a provision that the OFR staff will notify an agency if its document must be assigned to a deferred schedule is added to § 17.6 to reflect the OFR's current notification procedure.

The regulation on submission of an original document and copies at 1 CFR 18.1 needs clarification and correction. The provision for documents printed on both sides in § 18.1 does not reflect the current OFR practice. The ACFR proposes to amend section 18.1 to require that if an agency submits a document printed on both sides, one of the copies sent by the agency must be a collated, single-sided copy. Additionally, due to the availability of expedited mail services, paragraph (b) is out-of-date and is removed. The footnote to 1 CFR 18.1 is revised and updated. The footnote's reference to a 1972 document is removed due to its age.

The Director of the Federal Register's policy on combined category documents is clarified in the proposed revision of 1 CFR 18.2.

Some of the regulations in 1 CFR include the term "rulemaking" as two words. The sections in the regulations that have rulemaking printed as two words, 1 CFR 18.2, 1 CFR 18.4, the Part heading and table of contents of Part 22, the undesignated Subpart heading above 1 CFR 22.5, 1 CFR 22.5, and 1 CFR 22.7 are revised to a one word spelling.

In 1 CFR 18.3, a new paragraph (c) is added to clarify that receipt dates of documents are determined at the time a signed original and clear and legible copies are received. Additionally, the ACFR proposes to amend section 18.3(a) by removing the obsolete option of filing with the Administrative Committee.

A revision of 1 CFR 18.4 clarifies the OFR's format requirements. Language is added to reflect the fact that the OFR does not accept press releases for publication in the **Federal Register.**

The ACFR proposes to revise and make minor technical changes to 1 CFR 18.5. Obsolete copying procedures are deleted and paragraph (c) is revised and redesignated more appropriately as 1 CFR 18.3(c).

An existing incomplete sentence is revised in 1 CFR 18.6.

The ACFR revises 1 CFR 18.9 to require that documents conform to the current edition of the U.S. Government Printing Office Style Manual in all matters of style.

Material on forms is included in 1 CFR 18.10. Obsolete material in § 18.10 is removed and a new provision added to provide that documents containing tabular material may be assigned to the deferred publication schedule. The inclusion of unusual or lengthy tables in a document occasionally necessitates a deferred schedule as set forth in 1 CFR 17.6.

The ACFR proposes to remove 1 CFR 18.11 because it does not reflect the OFR's current practice.

The language in 1 CFR 18.12 is revised and simplified.

Material reflecting the OFR's current procedures for the correction of errors in documents is included in 1 CFR 18.13. A new paragraph (b) is added reflecting the OFR's procedures for filing for public inspection and ultimate retention of revoking or correcting letters.

The ACFR proposes to remove 1 CFR 18.14 because it does not reflect the OFR's current procedures for correction of errors in documents.

The ACFR proposes to remove superannuated material from 1 CFR 18.20. Provisions for agency actions by December 31, 1981 and April 1, 1982 are no longer current and are removed.

Part 19, which is based upon two Executive Orders, has been amended by E.O. 12080. The ACFR proposes to revise the current authority citation for Part 19 and 1 CFR 19.4 to reflect the addition of this Executive Order. The ACFR also proposes to add an informational footnote on the availability of the publication "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations" to 1 CFR 19.1.

The text of 1 CFR 20.1 is restructured.

In 1 CFR 20.3, the ACFR proposes to remove the language requiring submission on charts in duplicate and to clarify other language in this section. It is not the OFR's current practice to require submission of charts in duplicate.

To avoid unnecessary duplication, a phrase is added to 1 CFR 20.4 providing that descriptions of administrative units common to most agencies will not be accepted for publication in The United States Government Manual.

In order to reflect current OFR procedures, it is proposed that 1 CFR 21.1 be revised to require each agency that prepares a document subject to codification to include words of issuance and amendatory language describing the precise relationship of the new provisions to the CFR.

The ACFR proposes to remove 1 CFR 21.4 and 1 CFR 21.15. Neither section reflects the OFR's current procedures.

It is the practice of the OFR to accept an agency document that amends more than one title, or more than one chapter of the CFR. Therefore, the ACFR proposes to remove 1 CFR 21.5.

The text of 1 CFR 21.6 is restructured and language is added to clarify the OFR's requirement that agencies must notify the OFR of the expiration of codified material.

The ACFR proposes to add a new paragraph (c) to 1 CFR 21.8 to clarify that chapter and subchapter assignments are made by the OFR, not by the agency.

In proposed 1 CFR 21.11, the standard organization of the Code of Federal Regulations is revised to include a new example of paragraph designations and a provision that any deviation from the standard designations must be approved in advance by the OFR.

The reservation of numbers at the end of related parts or sections to allow for future expansion is an agency option. Therefore, the ACFR proposes to revise the obsolete requirement for agency reservation of numbers at 1 CFR 21.12 and makes the reservation of numbers optional.

The OFR strongly discourages deviation from the standard organization of the Code of Federal Regulations described at 1 CFR 21.11. The ACFR proposes to remove 1 CFR 21.13 because it is not consistent with current OFR guidance to agencies.

The table of contents in a document must list appendix headings to the part or subpart in addition to headings for the subparts, undesignated center headings and sections in the part as described in 1 CFR 21.18. The ACFR proposes to update 1 CFR 21.18 by adding appendix headings to the part or subpart to the list of items that shall appear in the table of contents. This revision reflects the OFR's current practice.

The ACFR proposes to remove 1 CFR 21.22. The OFR's Document Drafting Handbook contains guidance for agencies that need to reference between or within titles. This functional handbook is the proper source of information and technical instruction for agencies on referencing between or within titles. The ACFR, therefore, does not need to regulate this procedure.

The regulation concerning placing and amending authority citations, 1 CFR 21.43, is clarified and corrected to reflect the current style used in publishing the **Federal Register.**

The ACFR also clarifies 1 CFR 21.45.

The examples in 1 CFR 21.52 are revised to reflect the OFR's format for authority citations.

It is no longer necessary to place the CFR citation referred to in 1 CFR 22.6 in brackets. Obsolete language requiring the use of brackets is removed.

**Procedural Matters**

This is not a major rule as defined by Executive Order 12291. The rule will have no impact on small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 et. seq.).

**List of Subjects in 1 CFR, Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21 and 22**

Administrative practice and procedure, Government publications.

**Redesignation Table**

| Old section | New section |
|---|---|
| | Parts 11–12 (Subchapter D). |
| 3.4(a) | 11.1. |
| 3.4(b) introductory text | Removed. |
| 3.4(b)(1) | Removed. |
| 3.4(b)(2) | Removed. |
| 3.4(b)(3) | 11.2. |
| 3.4(b)(4) | 11.3. |
| 3.4(b)(5) | 11.4. |
| 3.4(b)(6) | 11.5. |
| 3.4(b)(7) | 11.6. |
| 3.4(b)(8) | 11.7. |
| 7.1 | 12.1(a). |
| 7.4 | 12.1(b). |
| 7.5 | 12.1(c). |
| 7.6 | 12.1(d). |
| 8.8 | 12.2. |
| 9.3(a) | 12.3(a). |
| 9.3(b) | 12.3 (b) and (c). |
| 10.4 | 12.4. |
| 10.14 | 12.5. |
| Parts 15–22 (Subchapter D). | Parts 15–22 (Subchapter E). |
| 15.5 | Removed. |
| 17.5 | Removed. |
| 18.1(a) | 18.1. |
| 18.1(b) | Removed. |
| 18.5(a) | 18.5. |
| 18.5(b) | Removed. |
| 18.5(c) | 18.3(c). |
| 18.9 introductory text and (a). | 18.9. |

| Old section | New section |
|---|---|
| 18.9(b) | Removed. |
| 18.9(c) | Removed. |
| 18.10(a) | Removed. |
| 18.10(b) | 18.10(a). |
| 18.10(c) | Removed. |
| 18.11 | Removed. |
| 18.14 | Removed. |
| 18.20(a) | Removed. |
| 18.20(b) | 18.20(a). |
| 18.20(c) | 18.20(b). |
| 20.1 introductory text | 20.1(a). |
| 20.1(a) | 20.1(a)(1). |
| 20.1(b) | 20.1(a)(2). |
| 20.1(c) | 20.1(a)(3). |
| 20.1(d) | 20.1(a)(4). |
| 20.1 final undesignated paragraph. | 20.1(b). |
| 20.4 | 20.4 (a) and (b). |
| 21.4 | Removed. |
| 21.5 | Removed. |
| 21.11(a) | 21.11(a)(1). |
| 21.11(b) | 21.11(a)(2). |
| 21.11(c) | 21.11(a)(3). |
| 21.11(d) | 21.11(a)(4). |
| 21.11(e) | 21.11(a)(5). |
| 21.11(f) | 21.11(a)(6). |
| 21.11(g) | 21.11(a)(7). |
| 21.11(h) | 21.11(a)(8). |
| 21.13 | Removed. |
| 21.15 | Removed. |
| 21.22 | Removed. |

For the reasons set out in the preamble, Title 1, Chapter 1 of the Code of Federal Regulations is amended as follows:

## PART 2—GENERAL INFORMATION

1. The authority citation for Part 2 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189; 1 U.S.C. 112; 1 U.S.C. 113.

### § 2.3 [Amended]

2. In § 2.3(a) remove the words "Service of the General Services."

In § 2.3(c) remove the word "Service" and add, in its place, the word "Administration".

### § 2.4 [Amended]

3. In § 2.4(b) remove the word "his" and add, in its place, the words "the Director's".

4. Section 2.5 is amended by revising paragraph (c) to read as follows:

### § 2.5 Publication of statutes, regulations, and related documents.

* * * * *

(c) Based on source materials that are officially related to the acts and documents filed under paragraph (a) of this section, the Office also publishes "The United States Government Manual", the "Public Papers of the Presidents of the United States", the "Weekly Compilation of Presidential Documents," the "Federal Register Index," and the "LSA (List of CFR Sections Affected)".

## PART 3—SERVICES TO THE PUBLIC

1. The authority citation for Part 3 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

### § 3.2 [Amended]

2. In § 3.2(a) remove the word "Current"; and remove the figure "8401" and add, in its place, the figure "8301".

In § 3.2(d) remove the word "Manual, typewritten, or other copies" and add, in their place, the word "Photocopies".

3. Section 3.3 is amended by revising the section heading to read as follows:

### § 3.3 Reproduction and certification of copies of acts and documents.

* * * * *

### § 3.4 [Removed]

4. Section 3.4 is removed.

## PART 5—GENERAL

1. The authority citation for Part 5 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 5.2 is amended by revising the section heading and the introductory text to read as follows:

### § 5.2 Documents required to be filed for public inspection and published.

The following documents are required to be filed for public inspection with the Office of the Federal Register and published in the **Federal Register**:

* * * * *

3. Section 5.3 is revised to read as follows:

### § 5.3 Publication of other documents.

Whenever the Director of the Federal Register considers that publication of a document not covered by § 5.2 would be in the public interest, the Director may allow that document to be filed for public inspection with the Office of the Federal Register and published in the **Federal Register**.

4. Section 5.6 is revised to read as follows:

### § 5.6 Daily publication.

There shall be an edition of the **Federal Register** published for each official Federal working day.

5. Section 5.9 is amended by removing the comma and changing "each" after the word "and" to "any" in paragraph (a) and revising paragraphs (b), (c), and (d) to read as follows:

### § 5.9 Categories of documents.

* * * * *

(b) *Rules and regulations.* Containing each document having general applicability and legal effect, except those covered by paragraph (a) of this section. This category includes documents subject to codification, general policy statements, interpretations of agency regulations, statements of organization and function, and documents that affect other documents previously published in the rules and regulations section.

(c) *Proposed rules.* Containing each notice of proposed rulemaking submitted pursuant to § 553 of Title 5, United States Code, or any other law, which if promulgated as a rule, would have general applicability and legal effect. This category includes documents that suggest changes to regulations in the Code of Federal Regulations, begin a rulemaking proceeding, and affect or relate to other documents previously published in the proposed rules section.

(d) *Notices.* Containing miscellaneous documents applicable to the public and not covered by paragraphs (a), (b), and (c) of this section. This category includes announcements of meetings and other information of public interest.

## PART 6—INDEXES AND ANCILLARIES

1. The authority citation for Part 6 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 6.5 is revised to read as follows:

### § 6.5 Indexes, digests, and guides.

(a) The Director of the Federal Register may order the preparation and publication of indexes, digests, and similar guides, based on laws, Presidential documents, regulatory documents, and notice materials published by the Office, which will serve users of the **Federal Register**. Indexes, digests, and similar guides will be published yearly or at other intervals as necessary to keep them current and useful.

(b) Each index, digest, and guide is considered to be a special edition of the **Federal Register** whenever the public need requires special printing or special binding in substantial numbers.

## PART 7—[REMOVED]

1. Part 7 is removed.

## PART 8—CODE OF FEDERAL REGULATIONS

1. The authority citation for Part 8 continues to read as follows:

**Authority:** 44 U.S.C. 1506, 1510; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 8.1 [Amended]**

2. In § 8.1(a) remove the words "current or future" and add, in their place, the word "legal".

**§ 8.3 [Amended]**

3. Section 8.3(c) is amended by adding the words "as a codified regulations" after the word "published".

4. Section 8.5 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 8.5 Ancillaries.**

* * * * *

(a) *Parallel tables of statutory authorities and rules.* In the Code of Federal Regulations Index or at such other place as the Director of the Federal Register considers appropriate, numerical lists of all sections of the current edition of the United States Code (except section 301 of Title 5) which are cited by issuing agencies as rulemaking authority for currently effective regulations in the Code of Federal Regulations. The lists shall be arranged in the order of the titles and sections of the United States Code with parallel citations to the pertinent titles and parts of the Code of Federal Regulations.

(b) *Parallel tables of Presidential documents and agency rules.* In the Code of Federal Regulations Index, or at such other place as the Director of the Federal Register considers appropriate, tables of proclamations, Executive orders, and similar Presidential documents which are cited as rulemaking authority in currently effective regulations in the Code of Federal Regulations.

(c) *List of CFR sections affected.* Following the text of each Code of Federal Regulations volume, a numerical list of sections which are affected by documents published in the **Federal Register**. (Separate volumes, "List of Sections Affected, 1949–1963" and "List of CFR Sections Affected, 1964–1972" list all sections of the Code which have been affected by documents published during the period January 1, 1949 to December 31, 1963 and January 1, 1964 to December 31, 1972 respectively.) Listings shall refer to **Federal Register** pages and shall be designed to enable the user of the Code to find the precise text that was in effect on a given date in the period covered.

**§ 8.8 [Removed]**

5. Section 8.8 is removed.

6. Section 8.10 is added to read as follows:

**§ 8.10 Regulations affected by court decision or Act of Congress.**

(a) If an agency's regulations are adversely affected on a temporary basis by a court decision, the agency shall immediately publish in the **Federal Register** a document notifying the public of the litigation and its effect.

(b) If an agency's regulations are permanently affected by being struck down in whole or in part by a court decision, the agency shall immediately publish in the **Federal Register** a document that details that litigation and its effect on the regulations pursuant to 44 U.S.C. 1510.

(c) If an agency's regulations are modified, suspended or rendered ineffective by an Act of Congress the agency shall immediately publish in the **Federal Register** a document notifying the public of the Act of Congress and its effect on the regulations pursuant to 44 U.S.C. 1510.

## PART 9—THE UNITED STATES GOVERNMENT MANUAL

1. The part heading is revised to read as shown above.

2. The authority citation for Part 9 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

3. Section 9.1 is revised to read as follows:

**§ 9.1 Publication required.**

The Director of the Federal Register shall separately publish annually or at times designated by the Administrative Committee of the Federal Register a special edition of the **Federal Register** called "The United States Government Manual" or any other title that the Administrative Committee of the Federal Register considers appropriate. The Director of the Federal Register may issue special supplements to the Manual when such supplementation is considered to be in the public interest.

**§ 9.3 [Removed]**

4. Section 9.3 is removed.

## PART 10—PRESIDENTIAL PAPERS

1. The authority citation for Part 10 is revised to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 10.4 [Removed]**

2. Section 10.4 is removed.

**§ 10.14 [Removed]**

3. Section 10.14 is removed.

## Subchapter D—[Redesignated as Subchapter E]

1. Subchapter D consisting of Parts 15 through 22, is redesignated as Subchapter E and new Subchapter D, consisting of Parts 11 and 12, is added to read as follows:

## SUBCHAPTER D—AVAILABILITY OF OFFICE OF THE FEDERAL REGISTER PUBLICATIONS

## PART 11—SUBSCRIPTIONS

Sec.
11.1 Subscription by the public.
11.2 Federal Register.
11.3 Code of Federal Regulations.
11.4 The United States Government Manual
11.5 Public Papers of the Presidents of the United States.
11.6 Weekly Compilation of Presidential Documents.
11.7 Federal Register Index.
11.8 LSA (List of CFR Sections Affected).

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 11.1 Subscription by the public.**

The publications described in § 2.5 of this chapter are printed by the Government Printing Office and are sold by the Superintendent of Documents, Government Printing Office, Washington, DC 20402. All fees are payable in advance to the Superintendent of Documents, Government Printing Office. They are not available for free distribution to the public.

**§ 11.2 Federal Register.**

Daily issues, including the monthly Federal Register Index and the LSA (List of CFR Sections Affected), will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. Limited quantities of current or recent copies may be obtained for $1.50 per copy in paper or microfiche form, or $175 per magnetic tape.

**§ 11.3 Code of Federal Regulations.**

A complete set will be furnished by mail to subscribers for $620 per year for the bound, paper edition; $188 per year for the microfiche edition; or $21,750 per year for the magnetic tape. Individual copies of the bound, paper edition of the Code volumes are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual volume in microfiche form is $2.00 per copy, or $125 per magnetic tape.

**§ 11.4 The United States Government Manual.**

Copies of the bound, paper edition of the Manual are sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of the magnetic tape is $125 per tape.

**§ 11.5 Public Paper of the Presidents of the United States.**

Copies of annual clothbound volumes are sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee.

**§ 11.6 Weekly Compilation of Presidential Documents.**

Copies will be furnished to subscribers in paper form for $96 per year by first-class mail or $55 per year by non-priority mail. The price of an individual copy in paper form, is $2.00.

**§ 11.7 Federal Register Index.**

The annual subscription price for the monthly Federal Register Index, purchased separately, in paper form, is $19. Individual copies in paper form are $1.50 per copy.

**§ 11.8 LSA (List of CFR Sections Affected).**

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $21. Individual copies in paper form are $1.50 per copy.

## PART 12—OFFICIAL DISTRIBUTION WITHIN FEDERAL GOVERNMENT

Sec.
12.1 Federal Register.
12.2 Code of Federal Regulations.
12.3 The United States Government Manual.
12.4 Weekly Compilation of Presidential Documents.
12.5 Public Papers of the Presidents of the United States.

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 12.1 Federal Register.**

(a) Copies of the daily **Federal Register** in paper or microfiche form shall be made available to the following without charge:

(1) *Members of Congress.* To each Senator and each Member of the House of Representatives not more than five copies of each daily issue based on a written request to the Director of the Federal Register.

(2) *Congressional committees.* To each committee of the Senate and the House of Representatives the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* To the Supreme Court the number of copies needed for official use based on a written request to the Director of the Federal Register.

(4) *Other courts.* To other constitutional or legislative courts of the United States the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* To each Federal executive agency the number of copies needed for official use based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under section 16.1 of this chapter, to the Director of the Federal Register.

(b) Requisitions for quantity overruns of specific issues to be paid for by the agency are available as follows:

(1) To meet its needs for special distribution of the **Federal Register** in substantial quantity, any agency may request an overrun of a specific issue.

(2) An advance printing and binding requisition on Standard Form 1 must be submitted by the agency directly to the Government Printing Office, to be received not later than 12 noon on the working day before publication.

(c) Requisitions for quantity overruns of separate part issues to be paid for by the agency are available as follows:

(1) Whenever it is determined by the Director of the Federal Register to be in the public interest, one or more documents may be published as a separate part (e.g., Part II, Part III) of the **Federal Register**.

(2) Advance arrangements for this service must be made with the Office of the Federal Register.

(3) Any agency may request an overrun of such a separate part by submitting an advance printing and binding requisition on Standard Form 1 directly to the Government Printing Office, to be received not later than 12 noon on the working day before the publication date.

(d) An agency may order limited quantities of extra copies of a specific issue of the **Federal Register** for official use, from the Superintendent of Documents, to be paid for by that agency.

(e) Copies of the Federal Register Index and LSA (List of CFR Sections Affected) are included with each **Federal Register** official distribution.

**§ 12.2 Code of Federal Regulations.**

(a) Copies of the Code of Federal Regulations in paper or microfiche form shall be made available to the following without charge:

(1) *Congressional committees.* To each committee of the Senate and House of Representatives the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(2) *Supreme Court.* To the Supreme Court the number of copies needed for official use based on a written request to the Director of the Federal Register.

(3) *Other courts.* To other constitutional and legislative courts of the United States the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(4) *Executive agencies.* To each Federal executive agency the number of copies needed for official use, not to exceed 300 copies of individual titles per agency, based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under section 16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of selected units of the Code, at cost, for official use, by submission, before the press run, of a printing and binding requisition to the Government Printing Office on Standard From 1.

(c) After the press run, each request for extra copies of selected units of the Code must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

**§ 12.3 The United States Government Manual.**

(a) Copies of The United States Government Manual shall be made available to the following without charge:

(1) *Members of Congress.* To each Senator and each Member of the House of Representaitves twelve copies.

(2) *Congressional committees.* To each committee of the Senate and House of Representatives the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* To the Supreme Court not more than 18 copies based on a written request to the Director of the Federal Register.

(4) *Other courts.* To other constitutional and legislative courts of the United States one copy based on a written request from the Director of the

Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* To each head of a Federal executive agency and each liaison officer designated under §§ 16.1 or 20.1 of this chapter, one copy.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of the Manual, at cost, for official use, by submission, before the press run, of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(c) After the press run, each request for extra copies of the Manual must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

**§ 12.4 Weekly Compilation of Presidential Documents.**

(a) Copies of the Weekly Compilation of Presidential Documents shall be made available to the following without charge:

(1) *Members of Congress.* To each Senator and each Member of the House of Representatives the number of copies needed for official use based on a written request to the Director of the Federal Register.

(2) *Congressional committees.* To each committee of the Senate and the House of Representatives the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* To the Supreme Court the number of copies needed for official use based on a written request to the Director of the Federal Register.

(4) *Other courts.* To other constitutional and legislative courts of the United States the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* To each Federal executive agency the number of copies needed for official use based on a written request from the agency Federal Register authorizing officer, or the alternate designated under section 16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of selected issues of the Weekly Compilation of Presidential Documents, at cost, for official use, by submission, before the press run, of a printing and binding requisition to the Government Printing Office on a Standard Form 1.

(c) After the press run, each request for extra copies of selected issues must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

**§ 12.5 Public Papers of the Presidents of the United States.**

(a) Copies of the Public Papers of the Presidents of the United States shall be made available to the following without charge:

(1) *Members of Congress.* To each Senator and each Member of the House of Representatives one copy of each annual publication published during the Member's term in office based on a written request to the Director of the Federal Register.

(2) *Supreme Court.* To the Supreme Court not more than 12 copies of each publication based on a written request to the Director of the Federal Register.

(3) *Executive agencies.* To each head of a Federal executive agency one copy of each annual publication based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under section 16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies, at cost, for official use, by submission before the press run, of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(c) After the press run, each request for extra copies must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

## PART 15—SERVICES TO FEDERAL AGENCIES

1. The authority citation for Part 15 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 15.4 is amended by revising the section heading to read as follows:

**§ 15.4 Reproduction and certification of copies of acts and documents.**

* * * * *

**§ 15.5 [Removed]**

3. Section 15.5 is removed.

## PART 16—AGENCY REPRESENTATIVES

1. The authority citation for Part 16 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 16.2 is revised to read as follows:

**§ 16.2 Liaison duties.**

Each agency liaison officer shall—

(a) Represent the agency in all matters relating to the submission of documents to the Office of the Federal Register, and respecting general compliance with this chapter;

(b) Be responsible for the effective distribution and use within the agency of Federal Register information on document drafting and publication assistance authorized by § 15.10 of this chapter;

(c) Promote the agency's participation in the technical instruction authorized by § 15.10 of this chapter; and

(d) Be available to discuss documents submitted for publication with the editors of the **Federal Register.**

3. Section 16.3 is revised to read as follows:

**§ 16.3 Certifying duties.**

The agency certifying officer is responsible for attaching the required number of true copies of each original document submitted by the agency to the Office of the Federal Register and for making the certification required by §§ 18.5 and 18.6 of this chapter.

4. Section 16.4 is revised to read as follows:

**§ 16.4 Authorizing duties.**

The agency authorizing officer is responsible for furnishing, to the Director of the Federal Register, a current mailing list of officers or employees of the agency who are authorized to receive the **Federal Register**, the Code of Federal Regulations, and the Weekly Compilation of Presidential Documents for official use.

## PART 17—PUBLICATION SCHEDULES

1. The authority citation for Part 17 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 17.2 is revised to read as follows:

**§ 17.2 Procedure and timing for regular schedule.**

(a) Except as provided in paragraph (c) of this section, each document received by 2:00 P.M. which meets the requirements of this chapter shall be assigned to the regular schedule unless the issuing agency makes special arrangements otherwise, or the Office determines that the document requires a deferred schedule (See 1 CFR 17.6). Receipt of a document by 2:00 p.m. is considered to be a request for publication on the regular schedule. Documents received after 2:00 p.m.

which meet the requirements of this chapter shall be assigned to the next working day's regular schedule.

(b) The regular schedule for publication is as follows:

| Received before 2:00 p.m. | Filed | Published |
|---|---|---|
| Monday | Wednesday | Thursday |
| Tuesday | Thursday | Friday |
| Wednesday | Friday | Monday |
| Thursday | Monday | Tuesday |
| Friday | Tuesday | Wednesday |

Where a legal Federal holiday intervenes, one additional work day is added.

(c) Each notice of meeting issued under the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)) is scheduled for immediate public inspection.

(1) Each notice received before 4:00 p.m. is scheduled to be published two working days later.

(2) Each notice received after 4:00 p.m. is scheduled to be published three working days later.

Section 17.4 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 17.4 Procedure and timing for emergency schedule.**

(a) Each agency requesting publication on the emergency schedule shall briefly describe the emergency and the benefits to be attributed to immediate publication in the **Federal Register**. The request must be made by letter.

(b) The Director of the Federal Register shall assign a document to the emergency schedule whenever the Director concurs with a request for that action and it is feasible.

* * * * *

**§ 17.5 [Removed]**

4. Section 17.5 is removed.

5. Section 17.6 is amended by removing the word "tabulations" from paragraph (a) and by adding the words "or lengthy tables" in its place and by adding a paragraph (c) to read as follows:

**§ 17.6 Criteria.**

* * * * *

(c) The Office of the Federal Register staff will notify the agency if its documents must be assigned to a deferred schedule.

## PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

1. The authority citation for Part 18 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 18.1 is revised to read as follows:

**§ 18.1 Original and copies required.**

Except as provided in § 19.2 of this subchapter for Executive orders and proclamations, each agency submitting a document to be filed and published in the **Federal Register** shall send an original and two duplicate originals or certified copies.[1] However, if the document is printed or processed on both sides, one of the copies sent by the agency must be a collated, single-sided copy.

3. Section 18.2 is revised to read as follows:

**§ 18.2 Prohibition on combined category documents.**

(a) The Director of the Federal Register will not accept a document for filing and publication if it combines material that must appear under more than one category in the **Federal Register**. For example, a document may not contain both rulemaking and notice of proposed rulemaking material.

(b) Where two related documents in different categories are to be published in the same **Federal Register** issue, the agency may insert a cross-reference in each document.

4. Section 18.3 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 18.3 Submission of documents and letters of transmittal.**

(a) Each document authorized or required by law to be filed with the Office of the Federal Register and published in the **Federal Register** shall be sent to the Director of the Federal Register.

* * * * *

(c) Receipt dates are determined at the time a signed original and clear and legible copies are received.

5. Section 18.4 is revised to read as follows:

**§ 18.4 Form of document.**

(a) Except as provided in paragraph (b) of this section, to be eligible for filing and publication in the **Federal Register**, a document must be typewritten on white bond paper approximately 8½ by 11 inches in size, double spaced, with left-hand margin of approximately 1½ inches and a right-hand margin and margins at top and bottom of approximately 1 inch.

[1] Agencies with computer processed data are urged to consult with the Office of the Federal Register staff about possible use of the data in the publication process.

(b) A printed or processed document may be accepted for filing and publication if it is on bond or similar quality paper, legible, and free of adhesive or correction tape.

(c) A document in the form of a letter or press release may not be accepted for filing or publication in the rules and regulations, proposed rules, or notices categories of the **Federal Register**.

6. Section 18.5 is revised to read as follows:

**§ 18.5 Certified copies.**

The certified copies or duplicate originals of each document must be submitted with the original. Each copy of duplicate must be entirely clear and legible.

7. Section 18.6 is revised to read as follows:

**§ 18.6 Form of certification.**

Each copy of each document submitted for filing and publication, except a Presidential document or a duplicate original, must be certified as follows:

(Certified to be a true copy of the original)

The certification must be signed by a certifying officer designated under section 16.1 of this chapter.

**§ 18.7 [Amended]**

8. In § 18.7 in the first sentence, remove the word "his" and add, in its place, the word "the". In the second sentence, remove the word "may" and add, in its place, the word "will".

9. Section 18.9 is revised to read as follows:

**§ 18.9 Style.**

Each document submitted by an agency for filing and publication shall conform to the current edition of the U.S. Government Printing Office Style Manual in punctuation, capitalization, spelling, and other matters of style.

10. Section 18.10 is revised to read as follows:

**§ 18.10 Illustrations, tabular material, and forms.**

(a) If it is necessary to publish a form or illustration, a clear and legible reproduction of an original form or illustration, approximately 8½ by 11 inches, shall be included in the original document and each certified copy.

(b) A document that includes tabular material may be assigned to the deferred publication schedule. See § 17.6.

**§ 18.11 [Removed]**

11. Section 18.11 is removed.

12. Section 18.12 is amended by revising the last sentence of paragraph (b) and the introductory text of paragraph (c) to read as follows:

**§ 18.12 Preamble requirements.**

* * * * *

(b) * * *

(See paragraph (c) of this section)

(c) The agency may include the following information in the preamble, as applicable:

* * * * *

13. Section 18.13 is revised to read as follows:

**§ 18.13 Withdrawal or correction of filed documents.**

(a) A document that has been filed with the Office of the Federal Register and placed on public inspection as required by this chapter, may be withdrawn from publication or corrected by the submitting agency only by a timely letter revoking or correcting that document, signed by a duly authorized representative of the agency.

(b) Both the originally filed document and the revoking or correcting letter shall remain on file. The original document and the revoking or correcting letter will be retained by the Office of the Federal Register after the public inspection period expires.

**§ 18.14 [Removed]**

14. Section 18.14 is removed.

15. Section 18.16 is added to read as follows:

**§ 18.16 Reinstatement of expired regulations.**

Agencies may reinstate expired regulations only by republishing the regulations in full text in the **Federal Register**.

16. Section 18.17 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 18.17 Effective dates and time periods.**

(a) Each document submitted for publication in the **Federal Register** should either set forth a date certain or a time period measured by a certain number of days after publication in the **Federal Register**. When a document sets forth a time period measured by a certain number of days after publication, Office of the Federal Register staff will compute the date to be inserted in the document as set forth in paragraph (b) of this section.

* * * * *

(c) In the event an Act of Congress or court order establishes or changes the effective date of an agency's regulation, the issuing agency shall promptly publish a document in the **Federal Register** announcing the new effective date.

**§ 18.20 [Amended]**

17. Section 18.20 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b), and amending newly redesignated paragraph (a) introductory text by removing the phrase "Beginning April 1, 1982,".

## PART 19—EXECUTIVE ORDERS AND PRESIDENTIAL PROCLAMATIONS

1. The authority citation for Part 19 is revised to read as follows:

**Authority:** Secs. 1 to 6 of E.O. 11030, 27 FR 5847, 3 CFR, 1959–1963 Comp., p. 610; E.O. 11354, 32 FR 7695, 3 CFR, 1966–1970 Comp., p. 652; and E.O. 12080, 43 FR 42235, 3 CFR, 1978 Comp., p. 224.

**§ 19.1 [Amended]**

2. Section 19.1(e) is amended by adding footnote 2 after the reference to "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations", to read as follows:

3. Section 19.4 is amended by adding the following sentence to the end to read as follows:

**§ 19.4 Proclamations calling for the observance of special days or events.**

* * * * *

Notwithstanding the provisions of § 19.2, the Director shall transmit any approved commemorative proclamations to the President.

## PART 20—HANDLING OF THE UNITED STATES GOVERNMENT MANUAL STATEMENTS

1. The part heading is revised to read as shown above.

2. The authority citation for Part 20 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 20.1 [Amended]**

3. In § 20.1, paragraphs (a) through (d) are redesignated as (a)(1) through (4); the final undesignated paragraph is designated as paragraph (b) and amended by removing the words "his agency's" and adding, in their place, the word "agency"; and the introductory text is designated as paragraph (a) introductory text and amended by capitalizing the word "the" that appears before the words "United States Government Manual."

[2] Available from Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

4. Section 20.3 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 20.3 Organization.**

(a) Information about lines of authority and organization may be reflected in a chart if the chart clearly delineates the agency's organizational structure. Charts must be prepared so as to be perfectly legible when reduced to the size of a Manual page. Charts that do not meet this requirement will not be included in the Manual.

* * * * *

(c) Narrative descriptions of organizational structure or hierarchy that duplicate information conveyed by charts or by list of officials will not be published in the Manual.

5. Section 20.4 is revised to read as follows:

**§ 20.4 Description of program activities.**

(a) Descriptions should clearly state the public purposes that the agency serves, and the programs that carry out those purposes.

(b) Descriptions of the responsibilities of individuals or of administrative units common to most agencies will not be accepted for publication in the Manual.

## PART 21—PREPARATION OF DOCUMENTS SUBJECT TO CODIFICATION

1. The authority citation for Part 21 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 21.1 is amended by revising paragraph (b) to read as follows:

**§ 21.1 Drafting.**

* * * * *

(b) Each agency that prepares a document that is subject to codification shall include words of issuance and amendatory language that precisely describes the relationship of the new provisions to the Code.

**§ 21.4 [Removed]**

3. Section 21.4 is removed.

**§ 21.5 [Removed]**

4. Section 21.5 is removed.

5. Section 21.6 is revised to read as follows:

**§ 21.6 Notice of expiration of codified material.**

Whenever a codified regulation expires after a specified period by its own terms or by law, the issuing agency shall submit a notification by document for publication in the **Federal Register**.

8. Section 21.8 is amended by adding a new paragraph (c) to read as follows:

**§ 21.8 Chapters and subchapters.**

* * * * *

(c) Chapter and subchapter assignments are made by the Office of the Federal Register.

7. Section 21.11 is revised to read as follows:

**§ 21.11 Standard organization of the Code of Federal Regulations.**

(a) The standard organization consists of the following structural units:

(1) Titles, which are numbered consecutively in Arabic throughout the Code.

(2) Subtitles, which are lettered consecutively in capitals throughout the title.

(3) Chapters, which are numbered consecutively in Roman capitals throughout each title.

(4) Subchapters, which are lettered consecutively in capitals throughout the chapter.

(5) Parts, which are numbered in Arabic throughout each title.

(6) Subparts, which are lettered in capitals.

(7) Sections, which are numbered in Arabic throughout each part. A section number includes the number of the part followed by a decimal point and the number of the section. For example, the section number for section 15 of Part 21 is "§ 21.15".

(8) Paragraphs, which are designated as follows:

| | |
|---|---|
| level 1 | (a), (b), (c), etc. |
| level 2 | (1), (2), (3), etc. |
| level 3 | (i), (ii), (iii), etc. |
| level 4 | (A), (B), (C), etc. |
| level 5 | (*1*), (*2*), (*3*), etc. |
| level 6 | (*i*), (*ii*), (*iii*), etc. |

(b) Any deviation from standard Code of Federal Regulations designations must be approved in advance by the Office of the Federal Register.

**§ 21.12 [Amended]**

8. Section 21.12 remove the word "shall" and add, in its place, the word "may".

**§ 21.13 [Removed]**

9. Section 21.13 is removed.

**§ 21.14 [Amended]**

10. In section 21.14 remove the phrase ", in his opinion,".

**§ 21.15 [Removed]**

11. Section 21.15 is removed.

12. Section 21.18 is amended by revising the last sentence to read as follows:

**§ 21.18 Tables of contents.**

* * * It shall also list the headings for the subparts, undesignated center headings, sections in the part, and appendix headings to the part or subpart.

**§ 21.22 [Removed]**

13. Section 21.22 is removed.

**§ 21.42 [Amended]**

14. In § 21.42 remove the word "he" and add, in its place, the words "the Director".

15. Section 21.43 is amended by revising the second sentence of paragraph (b) to read as follows:

**§ 21.43 Placing and amending authority citations.**

* * * * *

(b) * * * The authority citation shall appear at the end of the table of contents for a part or after each subpart heading within the text of a part. * * *

**§ 21.45 [Amended]**

16. In section 21.45 add the word "nonstatutory" before the word "document".

17. Section 21.52 is revised to read as follows:

**§ 21.52 Statutory material.**

(a) *United States Code.* All citations to statutory authority shall include a United States Code citation, where available. Citations to titles of the United States Code, whether or not enacted into positive law, should be cited without Public Law or U.S. Statutes at Large citation. For example:

**Authority:** 10 U.S.C. 501.

(b) Citations to Public Laws and U.S. Statutes at Large are optional when the United States Code is cited.

(1) *Public Laws.* Citations to current public laws shall include reference to the volume and page of the U.S. Statutes at Large to which they have been assigned. For example:

**Authority:** Sec. 5, Pub. L. 89–670, 80 Stat. 935 (49 U.S.C 1654).

(2) *U.S. Statutes at Large.* Citations to the U.S. Statutes at Large shall refer to section, page, and volume. The page number should refer to the page on which the section cited begins. For example:

**Authority:** Sec. 5, Pub. L. 89–670, 80 Stat. 935 (49 U.S.C. 1654); sec. 313, Pub. L. 85–726, 72 Stat. 752 (49 U.S.C. 1354).

**§ 21.53 [Amended]**

18. In section 21.53 add the word "AUTHORITY:" in front of the word "Special".

## PART 22—PREPARATION OF NOTICES AND RULEMAKING PROPOSALS

1. The part heading is revised to read as shown above.

2. The authority citation for Part 22 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

3. The undesignated center heading that appears above § 22.5 is revised to read as follows:

**Notices of Proposed Rulemaking**

**§ 22.5 [Amended]**

4. In § 22.5, introductory text and paragraph (a), the words "rule making" are made one word.

**§ 22.6 [Amended]**

5. In section 22.6 the words "in brackets" are removed and the brackets that appear around the citation, "[1 CFR Part 22]" are also removed.

**§ 22.7 [Amended]**

6. In section 22.7 the words "rule making" are made one word.

By Order of the Committee.

**John E. Byrne,**

*Secretary, Administrative Committee of the Federal Register.*

[FR Doc. 88–17820 Filed 8–8–88; 8:45 am]

BILLING CODE 1505–01–M

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Tuesday
August 9, 1988

Part III

# Environmental Protection Agency

**40 CFR Part 300**

**National Priorities List for Uncontrolled Hazardous Waste Sites; Policy Statements**

VOL 53 ISS 153 AUG 9 1988 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL-3426-6]**

# The National Priorities List for Uncontrolled Hazardous Waste Sites—Additions to Policy for Determining Inability-To-Pay for Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Policy statement for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is requesting comment on a policy relating to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and Executive Order 12316.

CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List (NPL), initially promulgated as Appendix B of the NCP on September 8, 1983, constitutes this list and meets those requirements.

Since the first NPL final rule (48 FR 40658, September 8, 1983), the Agency's policy has been to defer placing sites on the NPL that can be addressed by corrective action under Subtitle C of the Resource Conservation and Recovery Act (RCRA). This notice solicits comment on additional criteria for determining when the owner/operator of a site is considered unable to pay for addressing the contamination at a RCRA-regulated site, and therefore, the site should be proposed for the NPL. Elsewhere in today's **Federal Register**, the Agency is publishing a notice that discusses the policy for determining when RCRA facilities are unwilling to perform corrective action, and therefore, should be proposed for the NPL.

**DATE:** Comments may be submitted on or before October 11, 1988.

**ADDRESSES:** Comments on the inability criteria may be mailed to CERCLA Docket Clerk, Attn: Docket Number NPL-UL; Mail Code WH-548D, Superfund Docket, Room LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please send three copies of comments.

**FOR FURTHER INFORMATION CONTACT:** Nancy Parkinson, RCRA Enforcement Division, Office of Waste Programs Enforcement (WH-527), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone (800) 424-9346 or 382-3000 in the Washington, DC metropolitan area.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. Contents of this Proposed Policy
III. Request for Comment on Inability Criteria

## I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601-9657 (CERCLA or the Act), in response to the dangers of uncontrolled hazardous waste sites; CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act (SARA). To implement CERCLA, the Environmental Protection Agency (EPA or the Agency) promulgated the revised National Oil and Hazardous Substances Contingency Plan (NCP), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to Section 105 of CERCLA and Executive Order 12316. The NCP, further revised by EPA on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases or threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(a)(8)(A) of CERCLA (as amended) requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial or removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions on a short-term or temporary basis (CERCLA Section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy (CERCLA Section 101(24)). The Agency developed the Hazard Ranking System (HRS) to implement CERCLA Section 105(a)(8)(A). The HRS was codified as Appendix A of the NCP on July 16, 1982 (47 FR 31219).

Section 105(a)(8)(B) of CERCLA (as amended) requires that the statutory criteria described in the HRS be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List (NPL). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. An initial NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been amended several times since then. Currently, there are 799 sites on, and 378 sites proposed to, the NPL.

## II. Contents of this Policy

### *A. History of the Policy*

Since the first NPL final rule (48 FR 40658, September 8, 1983), the Agency's policy has been to defer placing on the NPL sites that could be addressed by the corrective action authorities under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Until 1984, the RCRA Subtitle C corrective action authorities were limited to facilities with releases to ground water from surface impoundments, waste piles, land treatment areas, and landfills that received RCRA hazardous waste after July 26, 1982, and did not certify closure prior to January 26, 1983 (i.e., land disposal facilities addressable by an operating or post-closure permit). Sites which met these criteria were placed on the NPL only if they were abandoned, lacked sufficient resources, or RCRA Subtitle C corrective action authorities could not be enforced. Those RCRA facilities where a significant portion of the release appeared to come from a nonregulated land disposal unit were also considered appropriate for listing.

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. HSWA greatly expanded RCRA Subtitle C corrective action authorities as follows:

- Section 3004(u) requires permits issued after the enactment of HSWA to include corrective action for all releases of hazardous waste or constituents from solid waste management units at treatment, storage, or disposal facilities seeking a permit;
- Section 3004(v) requires corrective action to be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner/operator of the facility demonstrates that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action; and
- Section 3008(h) authorizes the Administrator of EPA to issue an order requiring corrective action or such other response measure as deemed necessary to protect human health or the environment whenever it is determined that there is or has been a release of hazardous waste into the environment from a facility with interim status.

Because the expanded Subtitle C corrective action authorities of HSWA allowed EPA to address contamination at non-regulated units of RCRA

facilities, the Agency announced a draft revised policy which provided for the deferral from listing of RCRA sites unless the Agency determined that RCRA corrective action was not likely to succeed or occur promptly, due to factors such as:

- The inability or unwillingness of the owner/operator to pay for addressing the contamination at the site
- Inadequate financial responsibility guarantees to pay for such costs
- EPA or State priorities for addressing RCRA sites (50 FR 14118, April 10, 1985).

The Agency evaluated comments received on the draft policy, and on June 10, 1986 (51 FR 21059), announced its listing and deferral policy for non-Federal RCRA sites.[1] RCRA sites not subject to RCRA Subtitle C corrective action authorities would continue to be on the NPL. Some examples include:

Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the RCRA regulations), and to which the RCRA corrective action authorities cannot be applied;

Sites at which only materials exempted from the statutory or regulatory definition of solid or hazardous waste were managed; and

RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit.

Further, the Agency stated that although sites that could be addressed by RCRA Subtitle C corrective action authorities generally would not be placed on the NPL, RCRA sites subject to corrective action should be listed in certain circumstances if the owners/operators of facilities are either unable or unwilling to take corrective action at sites. The Agency recognized that in such situations, it may be appropriate to place the sites on the NPL in order to make CERCLA funds available, if needed, for remedial action.[2]

[1] At that time, the Agency announced that it would consider at a later date whether this revised policy should apply to Federal facilities. On May 13, 1987 (52 FR 17991), the Agency announced its intent that Federal facilities should continue to be placed on the NPL regardless of their RCRA status.

[2] On June 24, 1988 (53 FR 23978), the Agency identified several other categories of RCRA facilities that are appropriate for the NPL. These facilities include converters, protective filers, non- or late-filers, and facilities with permits for the treatment, storage or disposal of hazardous waste issued prior to enactment of HSWA (where the owner/operator will not voluntarily modify the permit). Although the Agency has authority to compel RCRA corrective action at certain of these facilities (e.g., converters and non- or late-filers), the Agency has decided, for policy reasons, to clean up these sites using its CERCLA authority.

The Agency identified three categories of sites which, although subject to RCRA Subtitle C corrective action authorities, satisfy the unwillingness or inability criteria, and thus should be placed on the NPL:

(1) Facilities owned by persons who are bankrupt;

(2) Facilities that have lost authorization to operate and for which there are indications that the owner/operator has been unwilling to undertake corrective action; and

(3) Facilities that have not lost authorization to operate, but which have a clear history of unwillingness. These situations are determined on a case-by-case basis (51 FR 21054, June 10, 1986).

Also, on June 10, 1986, the Agency solicited comments on the types of sites that may have demonstrated an unwillingness to perform corrective action (51 FR 21111). The Agency suggested that sites meeting the following criteria might be placed on the NPL under the unwillingness category:

(1) Facilities whose owners or operators have not complied adequately with an administrative order, judicial action, or a RCRA permit condition requiring response or corrective action; and

(2) Facilities whose owners or operators have not submitted or implemented an adequate closure plan.

Elsewhere in today's **Federal Register**, the Agency is publishing a notice that discusses the policy for determining when RCRA facilities are unwilling to perform corrective action and therefore, should be proposed for the NPL.

*III. Request for Comment on Inability Criteria*

The Agency is soliciting comment today on that portion of the RCRA policy concerning the inability of an owner/operator to pay for cleaning up a RCRA-regulated site. Under the current policy, the sole financial criterion considered when an RCRA facility is proposed for the NPL is whether the owner/operator has formally invoked the protection of the bankruptcy laws. The Agency is concerned that this criterion may be unduly restrictive. It will not allow listing a site and proceeding with a CERCLA remedial action if an owner/operator has chosen not to invoke the protection of the bankruptcy laws and is willing and able to do some but not all of the cleanup work. Under such circumstances, RCRA authorities would fail to provide for complete cleanup, yet the site could not be placed on the NPL in a timely fashion.

The Agency is considering amending the RCRA policy to include an additional criterion that will allow placing an RCRA-related site on the NPL if the owner/operator is unable to pay for the cleanup proposed by EPA. EPS is also considering the possibility of allowing an RCRA facility that can demonstrate ability to pay to be deferred from the NPL.

*Inability to Pay*

The new inability to pay criterion that EPA is considering involves comparing the cost of the site remedy proposed by EPA with the financial viability of the owner/operator. The comparison (and subsequent listing, if appropriate) would only be made after an RCRA Facility Investigation (RFI) and Corrective Measures Study (CMS) for the facility are completed and an EPA-proposed remedy is publicly available; this would ensure that the cost of cleanup is fairly well established. EPA is proposed to place an RCRA site on the NPL if:

The estimated cost of the EPA-proposed remedy is greater than the tangible net worth of the owner/operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties. *See*, e.g., 40 CFR 265.141(f).

To implement such a policy, the Agency would be required to consider various types of financial information. As a general rule, the Agency is considering relying on publicly available financial information, such as Securities and Exchange Commission 10K or 10Q reports and financial information provided to State and local governments. If the information available from such sources is inadequate, the Agency is considering seeking financial information through the use of CERCLA Section 104(e). Section 104(e)(2)(C) specifically allows EPA to send information request letters relating to a person's ability to pay for or perform a cleanup of the site. EPA is requesting comment on using these sources, as well as comment on the possibility of using other information, such as that available from financial reporting firms such as Dunn & Bradstreet.

EPA believes that a comparison of tangible net worth to the cost of the EPA-proposed remedy represents the best approach, especially if EPA's selection is not appealed and thus takes effect quickly. The Agency recognizes, however, that the owner/operator or a citizen's group may successfully challenge EPA's selection, and a lower cost option—one that the facility could afford to pay—might eventually be

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selected. To accommodate such situations, EPA is soliciting comment on an alternative to the criterion outlined above. Under that alternative EPA would place an RCRA site on the NPL if:

The estimated cost of a) the least expensive remedy considered in the CMS (excluding "no action"), or b) the remedy ultimately selected after any appeals, is greater than the tangible net worth of the owner/operator.

This alternative is more conservative than the first option in that it considers the possibility that the owner/operator might be able to pay for a less costly remedy than that proposed by EPA and that the less costly remedy might eventually be selected. This alternative, however, could delay listing a site until the completion of the appeal process if the remedy proposed by EPA (or a more expensive remedy) is ultimately chosen after an appeal, and the owner/operator is unable to pay for that remedy.

This alternative also excludes the "no-action" remedy from the comparison with tangible net worth. Under the NCP (40 CFR 300.68(f)(1)(v)), the Agency must, in most CERCLA cases, consider a zero-cost, "no action" remedy. RCRA guidance generally requires consideration in the CMS of similar "no-action" remedies. In such cases, the "no-action" remedy would clearly constitute the "least expensive remedy considered"; thus, no sites could be listed on the basis of inability to pay if the "no-action" remedy were considered in the comparison. As a result, the Agency believes it is appropriate to exclude the "no-action" remedy from the comparison with tangible net worth.

*Ability to Pay*

To supplement either of the two alternatives under consideration, EPA believes that it may be appropriate to defer the listing of an RCRA site if an owner/operator demonstrates ability to fund all cleanup costs. Therefore, EPA is proposing to defer placing an RCRA site on the NPL if:

The owner/operator posts a surety bond or letter of credit guaranteeing payment of EPA's proposed remedy.

The Agency requires similar financial instruments for assuring sufficient funds for RCRA site closure and post-closure. See 40 CFR 265.143 (b) and (c).

EPA requests comment on these criteria to determine if a site owner/operator is unable to fund cleanup costs.

Date: August 3, 1988.

**J.W. McGraw,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 88-17926 Filed 8-8-88; 8:45 am]

BILLING CODE 6560-50-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL-3415-7]**

## The National Priorities List for Uncontrolled Hazardous Waste Sites—Criteria for Determining Unwillingness for Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Policy statement.

**SUMMARY:** The Environmental Protection Agency (EPA) is publishing a policy relating to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and Executive Order 12316.

CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List (NPL), initially promulgated as Appendix B of the NCP on September 8, 1983, constitutes this list and meets those requirements.

Since the first NPL final rule (48 FR 40658, September 8, 1983), the Agency's policy has been to defer placing sites on the NPL that can be addressed by corrective action under Subtitle C of the Resource Conservation and Recovery Act (RCRA). This notice today discusses the Agency's policy for determining when such RCRA facilities are unwilling to perform corrective action, and therefore, should be proposed for the NPL. Relevant comments received in response to the June 10, 1986, **Federal Register** notice (51 FR 21109) that requested comment on proposed components of the NPL policy regarding RCRA-related sites will be available for public viewing at the Superfund Docket, Room LG–100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments may be viewed by appointment only, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, phone (800) 424–9346 or 382–3046 in the Washington, DC metropolitan area.

Elsewhere in today's **Federal Register**, the Agency is soliciting comment on additional criteria for determining when the owner/operator of a site is considered unable to pay for addressing the contamination at a RCRA-regulated site, and therefore, the site should be proposed for the NPL.

**EFFECTIVE DATE:** The effective date for this policy shall be September 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Nancy Parkinson, RCRA Enforcement Division, Office of Waste Programs Enforcement (WH–527), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, phone (800) 424–9346 or 382–3000 in the Washington, DC metropolitan area.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. Contents of this Policy
III. Non-Applicability of Revised Unwillingness Criteria to RCRA Sites Currently Proposed for Listing on the NPL
IV. Response to Public Comments
V. Application of Policy to Final NPL Sites

### I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601–9657 (CERCLA or the Act), in response to the dangers of uncontrolled hazardous waste sites; CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act (SARA). To implement CERCLA, the Environmental Protection Agency (EPA or the Agency) promulgated the revised National Oil and Hazardous Substances Contingency Plan (NCP), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to Section 105 of CERCLA and Executive Order 12316. The NCP, further revised by EPA on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases or threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(a)(8)(A) of CERCLA (as amended) requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial or removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions on a short-term or temporary basis (CERCLA Section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy (CERCLA Section 101(24)). The Agency developed the Hazard Ranking System (HRS) to implement CERCLA Section 105(a)(8)(A). The HRS was codified as Appendix A of the NCP on July 16, 1982 (47 FR 31219).

Section 105(a)(8)(B) of CERCLA (as amended) requires that the statutory criteria described in the HRS be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List (NPL). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. An initial NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been amended several times since then. Currently, there are 799 sites on, and 378 sites proposed to, the NPL.

### II. Contents of This Policy

#### *A. History of the Unwillingness Policy*

Since the first NPL final rule (48 FR 40658, September 8, 1983), the Agency's policy has been to defer placing on the NPL sites that could be addressed by the corrective action authorities under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Until 1984, the RCRA Subtitle C corrective action authorities were limited to facilities with releases to ground water from surface impoundments, waste piles, land treatment areas, and landfills that received RCRA hazardous waste after July 26, 1982, and did not certify closure prior to January 26, 1983 (i.e., land disposal facilities addressable by an operating or post-closure permit). Sites which met these criteria were placed on the NPL only if they were abandoned, lacked sufficient resources, or RCRA Subtitle C corrective action authorities could not be enforced. Those RCRA facilities where a significant portion of the release appeared to come from a nonregulated land disposal unit were also considered appropriate for listing.

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. HSWA greatly expanded RCRA Subtitle C corrective action authorities as follows:

- Section 3004(u) requires permits issued after the enactment of HSWA to include corrective action for all releases of hazardous waste or constituents from solid waste management units at treatment, storage, or disposal facilities seeking a permit;
- Section 3004(v) requires corrective action to be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner/operator of the facility demonstrates that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action; and
- Section 3008(h) authorizes the Administrator of EPA to issue an order

requiring corrective action or such other response measure as deemed necessary to protect human health or the environment whenever it is determined that there is or has been a release of hazardous waste into the environment from a facility with interim status.

Because the expanded Subtitle C corrective action authorities of HSWA allowed EPA to address contamination at non-regulated units of RCRA facilities, the Agency announced a draft revised policy which provided for the deferral from listing of RCRA sites unless the Agency determined that RCRA corrective action was not likely to succeed or occur promptly, due to factors such as:

- The inability or unwillingness of the owner/operator to pay for addressing the contamination at the site
- Inadequate financial responsibility guarantees to pay for such costs
- EPA or State priorities for addressing RCRA sites (50 FR 14118, April 10, 1985).

The Agency evaluated comments received on the draft policy, and on June 10, 1986 (51 FR 21059), announced its listing and deferral policy for non-Federal RCRA sites.[1] RCRA sites not subject to RCRA Subtitle C corrective action authorities would continue to be on the NPL. Some examples include:

Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the RCRA regulations), and to which the RCRA corrective action authorities cannot be applied;

Sites at which only materials exempted from the statutory or regulatory definition of solid or hazardous waste were managed; and

RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit.

Further, the Agency stated that although sites that could be addressed by RCRA Subtitle C corrective action authorities generally would not be placed on the NPL, RCRA sites subject to corrective action should be listed in certain circumstances if the owners/operators of facilities are either unable or unwilling to take corrective action at sites. The Agency recognized that in such situations, it may be appropriate to place the sites on the NPL in order to make CERCLA funds available, if needed, for remedial action.[2]

The Agency identified three categories of sites which, although subject to RCRA Subtitle C corrective action authorities, satisfy the unwillingness or inability criteria, and thus should be placed on the NPL:

(1) Facilities owned by persons who are bankrupt;

(2) Facilities that have lost authorization to operate and for which there are indications that the owner/operator has been unwilling to undertake corrective action; and

(3) Facilities that have not lost authorization to operate, but which have a clear history of unwillingness. These situations are determined on a case-by-case basis (51 FR 21054, June 10, 1986).

Also, on June 10, 1986, the Agency solicited comments on the types of sites that may have demonstrated an unwillingness to perform corrective action (51 FR 21111). The Agency suggested that sites meeting the following criteria might be placed on the NPL under the unwillingness category:

(1) Facilities whose owners or operators have not complied adequately with an administrative order, judicial action, or a RCRA permit condition requiring response or corrective action; and

(2) Facilities whose owners or operators have not submitted or implemented an adequate closure plan.

### *B. Revisions to the Unwillingness Policy*

Today, the Agency is announcing its decision on additional criteria to determine unwillingness. As a general matter, the Agency would prefer using available RCRA enforcement or permitting authorities to require corrective action [3] by the owner/operator at RCRA sites because this would help to conserve CERCLA resources for sites where no financially viable owner/operator is available.[4]

However, when the Agency determines that a RCRA facility owner/operator is unwilling to adequately carry out corrective action activities directed by EPA or a State pursuant to an order or permit, there is little assurance that releases will be addressed in a timely or environmentally sound manner under a RCRA order or permit. Therefore, such RCRA facilities should be listed in order to make CERCLA resources available expeditiously. RCRA facilities will be placed on the NPL based on unwillingness when owners/operators are not in compliance with one or more of the following:

- Federal or substantially equivalent State unilateral administrative order requiring corrective action, after the facility owner/operator has exhausted administrative due process rights;
- Federal or substantially equivalent State unilateral administrative order requiring corrective action, if the facility owner/operator did not pursue administrative due process rights within the specified time period;
- Initial Federal or State preliminary injunction or other judicial order requiring corrective action;
- Federal or State RCRA permit condition requiring corrective action after the facility owner/operator has exhausted administrative due process rights; or
- Final Federal or State consent decree or administrative order on consent requiring corrective action, after the exhaustion of any dispute resolution procedures.

For unilateral order authorities which do not expressly provide for administrative due process rights (e.g., RCRA Sections 7003 and 3013 and CERCLA Section 106), or for those instances where the Agency is proceeding with a civil action (e.g., under RCRA Section 3008(h)), an owner/operator who has been issued a preliminary injunction or other judicial order requiring corrective action, and is not in compliance with that order, will be considered unwilling.

These criteria clarify and expand the first of the two unwillingness criteria proposed on June 10, 1986 (51 FR 21111). After reviewing comments, the Agency decided not to consider the second of the two unwillingness criteria proposed on June 10, 1986, which related to the submittal and implementation of closure plans.

The Agency believes that the criteria announced today will provide a more objective and systematic means of determining unwillingness. Furthermore, the criteria respond to concerns that the due process rights of owners and operators should be protected. Using the new criteria, a facility owner/operator will not be declared to be unwilling

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[1] At that time, the Agency announced that it would consider at a later date whether this revised policy should apply to Federal facilities. On May 13, 1987 (52 FR 17991), the Agency announced its intent that Federal facilities should continue to be placed on the NPL regardless of their RCRA status.

[2] On June 24, 1988 (53 FR 23978), the Agency identified several other categories of RCRA facilities that are appropriate for the NPL. These facilities include converters, protective filers, non- or late-filers, and facilities with permits for the treatment, storage or disposal of hazardous waste issued prior to enactment of HSWA (where the owner/operator will not voluntarily modify the permit). Although the Agency has authority to compel RCRA corrective action at certain of these facilities (e.g., converters and non- or late-filers), the Agency has decided, for policy reasons, to clean up these sites using its CERCLA authority.

[3] For purposes of this policy, corrective action may include but not be limited to, interim measures, removal actions, studies and the implementation of corrective measures or remedial actions. An owner/operator's refusal to perform a study for example, may by itself indicate a general unwillingness to take corrective action; however, that determination should not be automatic but should be made in the broader context of the case, taking into account such factors as the extent of studies already done at the site and the reasons for requiring a study.

[4] The Agency may also decide to use CERCLA Sections 104(b) or 106 authorities at RCRA sites in order to obtain cleanup from potentially responsible parties other than the RCRA owner or operator, as appropriate. A site need not be on the NPL to use these authorities; however, a site must be on the NPL for CERCLA-funded remedial actions.

based simply on the issuance of an administrative order, for example. The owner/operator will have the opportunity to pursue administrative appeal rights, and only if the Agency's decision is upheld and the owner/operator still refuses to comply with the order, will the determination of unwillingness be made. Similarly, in a judicial order context, an owner/operator will not be declared to be unwilling until after refusal to comply with an initial judicial order requiring corrective action. The Agency believes that this approach addresses due process concerns while allowing the NPL proposal and promulgation process to continue and any corrective action deemed necessary to get underway without undue delay that could be prejudicial to the protection of human health and the environment.

### III. Non-Applicability of Revised Unwillingness Criteria to RCRA Sites Currently Proposed for the NPL

There are several RCRA facilities that are currently proposed for placement on the NPL, based upon their HRS scores and EPA's determination that the owner/operators were unwilling to take corrective action at the site. For each such site, the Agency made, prior to proposal, a case-by-case determination of the owner/operator's unwillingess to perform corrective action, consistent with the Agency's policy as announced on June 10, 1986, and EPA believes that the sites are appropriate for placement on the NPL.

EPA believes it would be inappropriate to go back and reexamine such already proposed sites based on the revised unwillingness criteria in today's notice for several reasons. First, the revised unwillingness criteria had not yet been announced at the time the currently-proposed sites were evaluated for unwillingess and proposed for NPL listing. Second, the new criteria do not represent a substantive change in EPA's policy of listing unwilling RCRA sites but rather, represent an attempt at developing objective criteria that can be more easily applied and understood. (As noted above, EPA believes that the determination made for the proposed sites still satisfy the Agency's policy and goals.) Third, the Agency recognizes that the Regions and States may, in order to meet the new objective criteria, be required in the future to issue corrective action orders at many RCRA sites before determining if an owner/operator is unwilling, rather than evaluating all evidence on a case-by-case basis; some lead time needs to be allowed for the Regions and States to understand the new criteria and apply them to sites submitted to EPA Headquarters for NPL proposal. A decision to apply the new criteria to already proposed sites could significantly delay the listing and response action at those sites unnecessarily. Thus, the criteria announced today will only be applied to sites proposed after the date of this notice.

### IV. Response to Public Comments

No commenters addressed the Agency's June 10, 1986, request for suggestions on additional categories of RCRA facilities that should not be deferred from listing based on unwillingness to perform corrective action.

Seven commenters provided suggestions on the notice regarding circumstances where the Agency should determine that a facility's owner/operator is unwilling to perform corrective action.

One commenter suggested that failure to reach an agreement regarding corrective action through either an order or permit within a specified amount of time should result in placing a site on the NPL. If a consent order is the mechanism to be used, the goal would be a signed, completed order within the specified time frame. If a permit is the mechanism used, then permit conditions would be agreed upon and the owner/operator would agree to withhold any challenges to those conditions when a permit is issued. Failure to reach agreement by a specified deadline would result in listing.

In response, the Agency recognizes that it is important not to delay cleanup at any sites that are deferred from listing. Setting a specified time frame for reaching an agreement regarding corrective action through a consent order before CERCLA monies would be spent could help achieve that goal.

The Agency is currently developing the guidance for determining when during the enforcement process a deferred RCRA facility should again be considered for the NPL and for a CERCLA-financed remedial investigation/feasibility study (RI/FS). This guidance will set out for the owner/operator a process for the negotiation and appeal of the order, and will specify the point at which the Agency will consider the facility for the NPL and a CERCLA-financed RI/FS. The Agency agrees with the concept that a failure to reach an agreement should result in listing. However, the Agency intends to use a set point in the appeal process to determine unwillingness instead of a set time frame, in consideration of due process appeal rights.

One commenter stated the unwillingness policy puts the owner/operator of a site in the untenable position of stating its inability or unwillingness to comply with the law that may be applicable under RCRA in order to obtain enforcement, cleanup and equitable cost sharing under CERCLA. Where financially sound potentially responsible parties (PRPs) have been identified, notified, and involved, and where activities are underway at a site pursuant to CERCLA, the policy should include a presumption that such activities proceed to completion under CERCLA.

In response, a site need not be on the NPL for CERCLA enforcement authorities to be used, and these authorities can be used to obtain cleanup from PRPs other than the owner or operator, as appropriate. The general intent of this policy is to pursue RCRA and CERCLA enforcement authorities first rather than expending Fund moneys at RCRA sites. The Agency has long maintained that both RCRA and CERCLA authorities can be used to respond at a site (see, for example, the National RCRA Corrective Action Strategy).

Two commenters suggested that the criteria to determine unwillingness clarify that unwillingness to perform corrective action includes unwillingness to comply with State-issued corrective action orders. One commenter suggested that the terms administrative order, judicial action, RCRA permit condition, and adequate closure plan be defined to include analogous actions by authorized States. The other commenter noted that in some situations the lead agency for implementing the cleanup procedures is a State agency, and that unwillingness to comply with an administrative order, judicial action, or permit condition requiring response or corrective action from the State agency is analogous to unwillingness to comply with Federal RCRA authority.

In response, the Agency has decided that unwillingness means noncompliance with State administrative orders requiring corrective action and permit conditions substantially equivalent to those under RCRA. The Agency does not believe that it is necessary to define substantially equivalent in the **Federal Register**. Rather, this term will be further explained in the guidance to this policy.

One commenter suggested an alternative for unwillingness would be to make all "failed" RCRA sites, i.e., those sites where RCRA enforcement may not be able to result in the desired remedy, automatically eligible for the NPL, so as to assure that appropriate remedial actions can be provided.

In response, EPA notes that the process for developing a RCRA corrective action order now provides for Interim Measures, RCRA Facility Investigations, Corrective Measure Studies, and Corrective Measure Implementations. This process is very similar to the development of a remedy under CERCLA, and will most often result in a desired remedy. The Agency believes the current policy, which allows a RCRA site to be placed on the NPL based on inability (i.e., bankruptcy) or unwillingness of the owner/operator to perform corrective action, assures that "failed" RCRA sites can be cleaned up.

One commenter suggested that where a commitment has been made to manage RCRA sites under CERCLA on a regional scale, they should continue to be handled under CERCLA. Specifically, sites that are part of an area where CERCLA funds have been used to begin regional planning and management should not be deferred from the NPL.

In response, the Agency does not agree that sites that are part of an area where CERCLA funds have been used to begin regional planning and management should be a criterion for placing sites on the NPL. The Agency's intent is to first use available enforcement authorities to secure corrective action at RCRA sites rather than expend Fund moneys. RCRA and CERCLA authorities can be used in a consistent manner to address sites on a regional scale. The Agency will, on a case-by-case basis, review the need for a comprehensive oversight strategy in cases requiring integrated CERCLA/RCRA interaction.

One commenter suggested that a RCRA site should be listed if the contamination on the property is the result of past on-site disposal of hazardous substances by a third party that was neither related to nor caused by the operation of the permittee. The commenter believes it is not appropriate to apply RCRA corrective action requirements to the current owner of a site where the basis of RCRA jurisdiction for that site is independent of the contamination caused by pre-existing disposal of hazardous substances by a third party.

In response, EPA notes that the current owner/operator under RCRA is liable for cleanup of contamination existing on the site. 40 CFR 270.72(d) states that, with the exception of financial requirements, all "interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility." Therefore, the Agency does not agree that this should be a criterion for placing RCRA sites on the NPL.

One commenter believed that the mere issuance of an administrative order or the initiation of a judicial action should not serve as a criterion for unwillingness, and the failure to comply with a permit condition was less of a justification. The commenter felt such criteria encouraged a RCRA-regulated party to shift to CERCLA management in order to spread the responsibility to former customers, and to defer actual payment of cleanup costs. The commenter recognized there may be delays in awaiting a determination from an administrative law judge or a court, but that this would not be a problem in emergency situations where the Agency could use its CERCLA removal authorities (or RCRA Section 7003 authorities) without the site being on the NPL.

In response, the Agency agrees that mere issuance of an administrative order or judicial order should not automatically result in a determination of unwillingness. The criteria developed do allow for the exercise of the owner/operator's due process rights before the Agency can make a determination of unwillingness.

One commenter stated the proposed unwillingness criteria were too vague and could result in the addition of so many sites that the CERCLA program would be overwhelmed. The commenter stated that where emergency actions are needed to protect human health and the environment, they could be taken as part of a CERCLA removal action. The commenter stated the Agency should defer listing of sites subject to RCRA regulation or enforcement until final decisions on sites are made. This deferral should apply to RCRA sites that are in litigation as this could be interpreted as an effort to influence the outcome of the case.

In response, the Agency does not believe that the criteria will result in the listing of too many sites. In fact, the Agency believes the NPL/RCRA policy will result in focusing the Agency's CERCLA resources on the most appropriate sites. In addition, the Agency is adding more specificity to the criteria for determining unwillingness in this notice. The criteria for determining unwillingness do allow for the listing of a facility after an initial judicial order requiring corrective action. This criterion may result in the listing of a site currently undergoing litigation. However, the Agency believes this policy is appropriate because it strikes a balance between exercise of the owner/operator's due process rights, and the need to protect human health and the environment. Finally, the decision to use removal authorities is not constrained by these listing criteria, since removals can be conducted on any site.

## V. Application of Policy to Final NPL Sites

On June 10, 1986 (51 FR 21109), the Agency stated its intent to apply the RCRA listing policy to RCRA sites that are already on the final NPL. The Agency invited the owners or operators of facilities on the proposed or final NPL, or other persons, to provide information that would assist EPA in evaluating this draft policy.

Two commenters provided suggestions on items to be considered when applying the RCRA deferral policy to final sites. One commenter provided factors which should be addressed if deletion of final sites on the NPL is considered. The factors include: the length of time the facility has been on the NPL; whether PRPs have been identified; if PRPs have not been identified, can they be; are the PRPs financially sound; have EPA or any PRP taken any actions at the facility under CERCLA, and, if so, what actions; do the size, complexity, and toxicity of the site suggest such a large response cost that CERCLA enforcement will result in a more expeditious, thorough, and cost-effective cleanup; have CERCLA monies been spent, how much, for what purpose, and for how long; will additional CERCLA expenditures be required; will CERCLA monies spent be repaid; have PRPs spent money at the site; were PRP funds spent pursuant to an enforcement order or agreement; are further PRP expenditures expected.

In response, the Agency believes that it could consider many of the factors described by the commenter to determine if the RCRA listing policy should be applied to a site on the final NPL. Factors such as these can be important in determining the extent of CERCLA involvement at a site, and whether the owner/operator of the facility is addressing the contamination at the site through the RCRA corrective action authorities.

Another commenter suggested that the criteria for deleting a final RCRA site from the NPL should not be different from those determining eligibility. Therefore, the commenter felt RCRA-regulated facilities ought to be removed

from the NPL if they no longer meet the criteria for listing, and that to do otherwise would inequitably treat already listed sites in comparison to newly proposed sites.

In response, EPA believes it may be appropriate to apply different criteria to RCRA sites that are on the final NPL, as compared to sites that have merely been proposed. For final NPL sites, the Agency has completed its listing process, CERCLA actions are underway, and the public anticipates CERCLA response. EPA does not believe that applying different criteria to final RCRA sites that may be deleted will cause any significant prejudice to any party.

Finally, the Agency received comments from two RCRA facilities currently on the NPL. Both have signed consent orders to perform a remedial investigation/feasibility study (RI/FS). One commenter indicated the facility did not want to be removed from the NPL because doing so "would only hamper the progress being made there." The other commenter indicated the facility should be allowed to complete the RI/FS currently in progress before deletion from the NPL was considered, not wanting a change in program administration to cause any delay or duplication of work underway.

In response, the Agency agrees that a change in program administration could be disruptive of work at sites where actions have already been begun.

Based on the comments received and discussions within the Agency, EPA intends to apply the RCRA deferral policy prospectively. EPA does not intend to go back and systematically review final RCRA sites on the NPL to determine whether they are being addressed through corrective action under RCRA for purposes of removing them from the final NPL. The Agency believes such a review would be time consuming, thereby detracting from more important work of the CERCLA program, and could disrupt work at sites where CERCLA actions have already begun. However, in certain limited cases where the owner/operator demonstrates that the corrective measures phase is progressing adequately under a Federal RCRA corrective action order, for example, and demonstrates that the technical and compliance schedule requirements of the RCRA order or permit are being met, it may be appropriate to remove the site from the final NPL before the cleanup is complete.

The Agency is currently reviewing how such a policy should be applied. Because the resolution of this issue could have important implications on Agency procedures and resources, EPA plans to discuss criteria for the removal of final RCRA sites in the context of the general NPL deferral policy. This general policy will be discussed in the upcoming revisions to the National Oil and Hazardous Substances Pollution Contingency Plan.

Date: August 3, 1988.

J.W. McGraw,

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 88-17927 Filed 8-8-88; 8:45 am]

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**S.J. Res. 356/Pub. L. 100-380**

To provide for the extension of a temporary prohibition of strikes or lockout with respect to the Chicago and Northwestern Transportation Company labor-management dispute. (Aug. 4, 1988; 102 Stat. 896; 1 page) Price: $1.00

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 1, 204, 205, 211, 212, 214, 216, 223, 233a, 235, 242, and 245**

**[Order No. 1294-88]**

## Marriage Fraud Amendments Regulations

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Immigration Marriage Fraud Amendments of 1986 (Pub. L. 99-639) became effective on November 10, 1986. This act provides for conditional permanent resident status for certain alien spouses, sons and daughters of United States citizens and lawful permanent residents; for the removal of the conditional basis of such residence upon the filing of a joint petition by the conditional resident and the petitioning spouse; and for the termination of an alien's lawful permanent residence for failure to file the necessary petition or for other reasons. This rulemaking creates final regulations necessary for the implementation of the law.

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

**SUPPLEMENTARY INFORMATION:** On January 27, 1988, the Immigration and Naturalization Service ("the Service") published proposed regulations relating to the Immigration Marriage Fraud Amendments of 1986 (IMFA) in the **Federal Register** at 53 FR 2426 and requested that interested parties submit comments on the proposed regulations by February 26, 1988. IMFA, and the proposed regulations relating thereto, deal with a number of aspects of the issue:

First, IMFA creates a conditional basis of lawful permanent residence for aliens obtaining permanent residence within two years of marriage to a United States citizen or lawful permanent resident. It provides that the conditional basis shall be placed on the alien's permanent residence for a period of two years, and establishes a procedure by which the alien may seek removal of the conditions at the end of the two-year period. It further permits the revocation of an alien's permanent resident status under any of three conditions:

(1) If it is determined within the two-year period that the marriage was entered into for the purpose of obtaining an immigration benefit or has been judicially annualled or terminated, or that a fee or other consideration was given for the filing of a petition for an immigration benefit;

(2) If the alien and his/her spouse fail to file a joint petition for removal of the conditional status within the 90 days immediately preceding the second anniversary of the alien's having obtained conditional permanent residence, although such failure may be excused; or

(3) If the petition to remove the conditional basis of the alien's resident status is denied.

Second, section 2(b) of Pub. L. 99-639 provides for the deportation of an alien whose permanent resident status is revoked.

Third, IMFA precludes the approval of a petition filed on behalf of an alien who has conspired to engage in a fraudulent marriage or who has attempted to obtain an immigration benefit on the basis of such marriage.

Fourth, IMFA prevents an alien against whom an administrative or judicial proceeding is pending concerning his or her right to enter or remain in the United States from obtaining an immigrant benefit on the basis of a marriage occurring during such proceedings.

Fifth, IMFA precludes the approval of a spousal immigrant visa petition filed by an alien who obtained permanent residence through marriage unless:

(1) The alien petitioner has been a permanent resident for at least five years; or,

(2) The alien establishes by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading immigration laws; or,

(3) The alien's prior marriage was terminated through the death of his/her spouse.

Sixth, IMFA provides for criminal penalties for individuals who are convicted of having engaged in a fraudulent marriage.

Seventh, IMFA requires that the petitioner and beneficiary of a Petition to Classify Status of Alien Fiance or Fiancee for Issuance of Nonimmigrant Visa (Form I-129F) have met within the two-year period immediately preceding the filing of the petition, unless such requirement is waived.

Eighth, IMFA requires that an alien finance or fiancee of a United States citizen must apply for permanent residence through the normal adjustment procedures contained in section 245 of the Immigration and Nationality Act, as amended (the Act), instead of the automatic procedures formerly contained in section 214(d) of the Act.

Ninth, IMFA creates a new section, 245(d), which precludes an alien who obtained conditional permanent residence as the spouse of a citizen or lawful permanent resident from adjusting status on any other basis. It also precludes an alien who entered the United States as a nonimmigrant under section 101(a)(15)(K) of the Act and failed to marry the citizen petitioner from obtaining permanent residence on any other basis.

In addition to creating new regulations, this rulemaking revises existing regulations, including those sections relating to:

(1) Revocation of visa petitions to allow for revocation of petitions approved contrary to the provisions of IMFA,

(2) Documentary requirements for immigrants to permit the readmission of an otherwise eligible conditional resident,

(3) Reentry permits and refugee travel documents to allow issuance of such documentation to conditional residents,

(4) Admission of aliens to provide procedures for the admission or readmission of conditional residents, and

(5) Deportation proceedings to provide for cancellation of an Order to Show Cause under certain circumstances and to specify the conditions under which an immigration judge shall grant

conditional residence in a deportation hearing.

During the comment period, the Service received a total of sixteen comments from interested parties. Ten comments were received from private law firms or attorney associations, four from Service employees, one from a citizen's group interested in immigration reform and one from a religious denomination. Most commenters chose to comment on several aspects of the regulations. All of the suggestions and opinions submitted by the commenters were carefully reviewed and given full consideration. Many of the comments suggesting minor changes in the rulemaking have been incorporated into the final regulations. The Service appreciates the time and effort devoted by each of the interested parties in this regard. A summary of these comments and the Service response follow (because most people made more than one comment, the total number of comments exceeds the number of commenters):

(1) *Comment:* Three parties wrote to express their disagreement with the basic purpose of IMFA (and, by extension the regulations) and to question the constitutionality of the statute.

*Response:* The Service fully supports IMFA; however, the rulemaking process is not the proper forum to discuss the issues of constitutionality.

(2) *Comment:* Two people wrote that the two forms mentioned in the rulemaking (Forms I–751 and I–752) should be included in 8 CFR 299, and their fees published in 8 CFR 103.1. Three other felt that the Service was remiss in not publishing regulations pertaining to section 212(a)(19), an exclusion ground which was amended by IMFA.

*Response:* The information about the forms will soon be published under a separate rulemaking. When the proposed rulemaking was drafted, the forms had not yet been developed, nor had the fees been determined. The separate rulemaking will reflect that the fee for filing the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (From I–751) will be $35.00, and the fee for filing the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) will be $65.00.

Likewise, the Service will consider publishing a proposed rulemaking relating to section 212(a)(19) of the Act. In so doing, the Service will solicit comments from the public on the proposal.

(3) *Comment:* A number of interested parties requested clarification about the effects of IMFA on the ability of a resident alien to file a relative visa petition for a new spouse within five years of obtaining status through another marriage. Specifically, one asked if the Service could deny a petition based on information in the petitioner's file without affording the petitioner an opportunity to review and rebut the information, and another argued that the standard of proof regarding the nonfraudulent nature of the petitioner's prior marriage (through which status was acquired) is higher in the proposed regulations than in the statute.

*Response:* The first concern is unfounded, since existing regulations at 8 CFR 103.2(b)(2) require that an alien be given an opportunity to review and rebut any derogatory evidence upon which a decision is based and of which the alien is unaware (with the exception of classified information). With regard to the second concern, the language of the regulation has been changed to comport with the statutory language.

(4) *Comment:* Three commenters felt that the regulations do not adequately explain what procedure should be followed by an alien who cannot file the I–751 due to the termination of the marriage through divorce or annulment, or through the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing. Another requested that 8 CFR 216.4(a) be clarified to show that an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) could be filed in lieu of the joint petition (Form I–751) within the 90 days immediately preceding the second anniversary of the date on which the alien obtained conditional permanent resident status.

*Response:* The proper procedure is to file the I–752. The regulations have been revised at § 216.4(a) to clarify this point. 8 CFR 216.4(a) has been clarified as requested.

(5) *Comment:* Three persons wrote that the list of documents which may be submitted in support of the petition or waiver is too restrictive and does not take into account differences in culture, economic status or lifestyle which may affect a couple's ability to document their relationship.

*Response:* Recognizing that cultural, economic and other differences affect the documentation which is available to support the joint petition, the Service did not intend that the list be all inclusive. Accordingly, the regulation allows for the submission of "other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States" (§ 216.4(a)(5)(vi)). However, as with all other applications and petitions, it is the responsibility of the applicant or petitioner to show that the documentation is both relevant and convincing.

(6) *Comment:* Two parties stated that prior to terminating status under the provisions of section 216(b) or 216(c) of the Act, the Service should issue a Notice of Intent to terminate status in all cases, not just those based upon information "which the alien cannot reasonably be expected to have." They reasoned that this will allow the alien an opportunity to rebut the evidence and may prevent the Service from terminating the status of a conditional resident inappropriately.

*Response:* The proposed regulation has been modified to state that the director must allow the alien an opportunity to review and rebut the evidence upon which the termination is based, in accordance with 8 CFR 103.2(b)(2). Although this will normally necessitate a written Notice of Intent to Terminate, the regulation does not preclude situations in which written notification is not needed (e.g., if the alien is the source of the Service's information).

(7) *Comment:* Some commenters wrote concerning the bar to approval of a petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws (section 204(c) of the Act). One writer asked whether there is a time limit or if there is a waiver that may be granted. Another expressed concern that the Service might base denials on information contained in its files without allowing the petitioner an opportunity to review and rebut the information.

*Response:* The law does not provide for either a waiver or an expiration of the bar. The restriction is both permanent and not waivable. As stated earlier, 8 CFR 103.2(b)(2) precludes decisions being based on information which the alien has not had an opportunity to review and rebut.

(8) *Comment:* Several questions arose regarding the requirement in section 204(h) of the Act that an alien who marries while in proceedings reside outside the United States for two years before an immigrant visa petition may be approved in his or her behalf. One writer (although recognizing that the language of the statute is mandatory) urged "the most humanitarian interpretation" of the requirement. Another could not understand whether the two year period began with the alien's departure from the United States

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or with the marriage. Two others felt that the Service should accept petitions during the prohibited period and hold them for approval after the two years has elapsed, arguing that the statute prohibits petitions being approved, not filed. One commenter felt that the provisions of section 204(h) should not apply to marriages occurring after the issuance, but before the service, of the Order to Show Cause. Four others wrote that they should only apply to marriage occurring during the course of the actual hearing before the Executive Office for Immigration Review (EOIR) which includes both the Immigration Judge and the Board of Immigration Appeals, or during judicial review of the decision by the EOIR (i.e., that they should not apply to marriages celebrated during the period from the issuance of the Order to Show Cause to the opening of court by the judge, or from the time of the judge's decision to the alien's departure). Five parties felt that the provisions should only relate to exclusion and deportation proceedings, not rescission proceedings. Five others asked for clarification of the language of the rulemaking whereby the provisions of section 204(h) do not apply if the Order to Show Cause is terminated.

*Response:* The statute does not allow the Service any latitude in determining whether to apply the provisions of section 204(h) of the Act. If an alien marries during proceedings, a petition cannot be approved in his or her behalf until the requirement of two years of residence outside the United States has been met. Since this two year period begins with the alien's departure following the marriage, any period(s) of residence outside the United States prior to the marriage cannot be credited toward this requirement. However, it should be noted that the statute does not require that the alien remain outside the United States continuously for an uninterrupted time period, meaning that the alien could comply with the requirement by completing two or more periods of residency outside the United States as long as the aggregate total of such periods reached two years.

The suggestion that the Service accept petitions prior to the completion of the two year period for approval once the requirement is met must be rejected. The Service has long held that a petition must be approvable at the time that it is filed, not merely at some subsequent time. Allowing a petitioner to file a petition before it is approvable would enable the beneficiary to obtain a priority date to which he is not entitled, thereby giving the beneficiary an unfair advantage over other immigrant visa applicants.

Section 204(h) prohibits the approval of petitions based on marriages celebrated during the period described in section 245(e)(2), which is "the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States," until the alien has completed the foreign residence requirement. This phrase encompasses more than just the period when the matter is pending before an immigration judge, on appeal to the Board of Immigration Appeals or under judicial review. It does not end when the order of the judge becomes final or when the time allotted for appeal or judicial review expires. Had Congress intended that the period described in section 245(e)(2) be limited to the period when the matter was pending before the EOIR or before the courts on judicial review, it would have so stated. Instead, Congress chose the broader concept including all administrative (Service or EOIR) and judicial (the Federal court system) proceedings, including Service proceedings occurring before and after EOIR of judicial proceedings. The application of this broader concept for this purpose in no way affects the long-established application of narrower concepts relating to the finality of orders, periods for judicial review, and so forth.

On the other hand, the Service agrees with those who feel that the period described in section 245(e)(2) does not include rescission proceedings, and references to such proceedings have been removed from the final regulations.

Normally, the departure of an alien from the United States terminates proceedings to exclude or deport the alien; however, the Board of Immigration Appeals has held that under certain situations the departure of an alien does not terminate proceedings (e.g., if the alien merely slips across the border and then reenters surreptitiously). The language of the regulation has been clarified to reflect that a departure which does not terminate the deportation or exclusion proceedings does not terminate the period described in section 245(e)(2) either.

(9) *Comment:* A few comments were received concerning the admission of aliens under the K–1 nonimmigrant category as fiances of U.S. citizens. One religious organization requested that such fiances be admitted for longer than 90 days, as the pre-marital counselling program of that denomination normally lasts at least four months; another commenter suggested that the regulations specify that aliens admitted in this category are authorized to accept employment; a third felt that the Service should preclude the approval of a fiance petition arising out of an "arranged marriage" situation, finding that arranged marriages are "cruel and barbaric" and that permitting them in the regulations encourages fraud; and a fourth felt that district directors should have the authority to approve petitions as a matter of discretion when the petitioner and beneficiary have been precluded from seeing each other for more than two years.

*Response:* The 90 day period for the admission of a K–1 nonimmigrant is set by statute. Although it was previously possible for an alien to adjust under a separate provision of the law if the marriage took place more than 90 days after admission, IMFA now prohibits (by statute) such separate adjustment. Regardless of the benefits of a pre-marital counselling program, the Service cannot allow by regulation that which is precluded by statute.

K–1 nonimmigrants (and their dependent children admitted under the K–2 category) are already authorized to accept employment under 8 CFR 274a.12(a)(6), and it is not necessary to restate that authorization in this rulemaking.

Neither the letter nor the spirit of IMFA precludes fiance relationships based upon arranged marriages. It is therefore beyond the scope and the intent of the rulemaking to prohibit the approval of a fiance petition filed in such cases. It is within the intent of both the statute and the regulations to ensure, to the extent possible, that the marriage has not been arranged in order to circumvent the immigration laws of this country. Accordingly, the discretionary authority of the district director should be exercised to waive the "have met" requirement only when he or she is satisfied that the petitioner and beneficiary are not seeking to enter a fraudulent relationship, and that either all conditions of the arrangements have been complied with (in arranged marriages) or that extreme hardship to the petitioner would result (in other situations).

District directors already have, by statute and regulation, the authority to waive the requirement that the parties have previously met in person (section 3(a)(2) of IMFA and 8 CFR 214.2(k)(2) of this rulemaking). Inherent in this authority is the power to waive the requirement when the parties last met more than two years before the filing of the petition.

(10) *Comment:* One writer pointed out that there are now two sections 216 in the Act, the one created by the Marriage Fraud Amendments and another created by the Immigration Reform and Control Act of 1986 (IRCA). The IRCA section 216 relates to temporary agriculatural workers, commonly referred to as "H–2As".

*Response:* The writer is correct. However, it should also be pointed out that the regulations pertaining to the H–2A program are contained in 8 CFR 214 (not 8 CFR Part 216) and that technical amendments to IRCA have been introduced in Congress which, if enacted, would redesignate the H–2A statutory provisions as section 218 of the Act.

(11) *Comment:* Several parties wrote concerning Service procecdures for termination of the status of a conditional resident and issuance of an Order to Show Cause. Two commenters wrote that in terminating an alien's status pursuant to section 216 of the Act, the Service should not terminate "all rights and privileges thereto (including authorization to accept or continue in employment in this country)" at the same time. Instead, they felt that the Service should allow the alien to continue working until his case has been reviewed by an Immigration Judge in a deportation hearing. Another person believed that the issuance of an Order to Show Cause should not be mandatory in every termination case.

*Response:* The statute provides that the termination of status takes effect when the Attorney General reaches his decision, but that that determination may be reviewed in deportation proceedings. Because the alien's status is terminated, the basis for the alien's employment authorization as a permanent resident must also terminate at the same time. This does not preclude the alien from seeking and being granted employment authorization on another basis, specifically under 8 CFR 274a.12(c)(13) as an alien against whom deportation proceedings have been instituted. Any request for employment authorization on this basis would be adjudicated in accordance with the provisions of that regulation.

The only forum in which an alien may seek review of the Service's decision to terminate his or her status is during a hearing before an immigration judge. For this reason, the regulations provide that the district director shall issue an Order to Show Cause (which initiates the deportation proceeding) whenever an alien's status is terminated. Because of other factors, such as the need for the alien to request employment authorization, the issuance of the Order to Show Cause should normally occur simultaneously with the issuance of the Notice of Termination; however, the Service cannot rule out the possibility that in some cases it may be to the advantage of both the Service and the alien for the issuance of the Order to Show Cause to be delayed.

(12) *Comment:* Believing that some aliens were incorrectly admitted to the United States without conditions between November 1986 and January 1987, one writer was concerned that aliens might be deprived of their status for failure to petition for removal when the alien did not know of the conditional basis of his status or of the requirement to file the petition.

*Response:* Immediately upon enactment of IMFA, the Service notified all ports of entry and all offices adjudicating applications for adjustment of the need to grant status conditionally under the provisions of the law, and of the need to notify the alien of the removal requirements. The Service will also mail written notification to all conditional residents reminding them of the need to seek removal of the conditions. These notifications will be sent to each conditional resident approximately 30 days before the beginning of the 90 day period during which he or she (and the spouse) must file the joint petition. Accordingly, the Service does not anticipate that a large number of aliens will be unaware of their obligations under the law. It should be noted that if an alien establishes that his failure to file the petition on time was for reasons beyond his control, the Service may accept a tardy petition.

(13) *Comment:* Three parties felt that the Service should not require a written request for rescheduling prior to the interview date if an alien and spouse are unable to appear for an interview in connection with the Form I–751. The statute does not require that it be submitted in advance, and the reasons preventing the couple from appearing may not arise until the last minute.

*Response:* The prior notification requirement has been deleted from the regulation. If the alien establishes good cause for rescheduling or waiving the interview, the Service may do so, even if the request is not received in advance. This applies to interviews conducted in conjunction with either the joint petition for removal (Form I–751) or the application for waiver of the requirement to file the joint petition (Form I–752).

(14) *Comment:* Several comments were received concerning the filing of a waiver by an alien whose marriage has been terminated. One writer objected to the use of the phrase "terminated by the alien spouse" in the statute and similar language in the rulemaking, since the judge granting the divorce or annulment is the one who actually terminated the marriage. Another writer felt that the Service should allow the filing of a "good faith and good cause" waiver when the conditional resident was not the party initiating the divorce proceedings. A third commenter wrote that "fundamental fairness and due process require that in *any* instance where a finding has been made by a court of competent jurisdiction regarding actions of a U.S. citizen spouse, that the Service should accept those as fact and not attack them collaterally, save in those instances where compelling circumstances dictate otherwise. Even when the court's determinations are accepted as fact, the Service could still say that even based on these facts, they do not see that the alien was without fault."

*Response:* IMFA states that in order to apply for a "good faith and good cause" waiver, the qualifying marriage must have been "terminated (other than through the death of the spouse) by the alien spouse". This statutory language precludes the Service from granting a waiver when the divorce or annulment proceedings were initiated by the spouse of the conditional resident. For purposes of clarification, the language of the regulation has been modified slightly to show that the alien spouse must be the initiating party in the proceedings, not the terminating authority.

Although the Service will normally give considerable weight to the finding of the divorce court as to grounds for the action, the Service cannot be bound by the findings in all cases. It would simply be too easy for two parties to engage in a fraud marriage scheme involving concocted grounds which are not contested by the respondent. For this reason, the Service must be free to reach its own conclusions regarding the issue of "good cause". Since any decision by the Service on this issue is subject to review by the EOIR and then by the Federal courts, there is no reason to fear that the Service will not give appropriate weight to the findings of the divorce court.

(15) *Comment:* Two commenters wrote about the need for regulations concerning aliens who must be outside the United States during the period in which the joint petition (Form I–751) must be filed or while it is being adjudicated by the Service. One writer pointed out that the Service should provide for the admission of alien commuters (i.e., permanent residents who reside or work in contiguous

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territory and commute to work across the border daily). Another requested clarification regarding procedures to be followed by aliens outside the United States pursuant to military or civilian orders of the United States government.

*Response:* The regulations have been modified to provide that a conditional resident alien (including an alien commuter) may be admitted to the United States with an expired Form I–551 if he is also in possession of a receipt showing that he has filed a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) within the six months immediately preceding the application for admission, provided the joint petition or application is still pending before the Service.

The regulations have also been clarified to explain that an alien travelling outside the country on government orders is deemed to be constructively within the United States for purposes of filing the joint petition.

(16) *Comment:* One commenter asked for clarification of the terms "extreme hardship", "good cause" and "pertinent" as they relate to applications for waivers of the requirement to file the joint petition. Another asked for clarification of the phrase "involved in a conspiracy" as used in 8 CFR 204.1 and of the phrase "within a reasonable time" as used in 8 CFR 212.7(a)(2).

*Response:* The terms and phrases in question are all used in the regulation in accordance with their common, everyday meaning. The modifiers "extreme", "good" and "reasonable" all call for the use of the director's discretion. By their nature, these regulations cannot further restrict that discretion. However, the review procedure (through the Executive Office for Immigration Review and the Federal courts) will safeguard against that discretion being improperly applied.

The phrase "involved in a conspiracy" would only apply to individuals who are found to have participated in the activity. It would not apply, for example, to an individual who introduced two people who later conspired on their own to commit fraud without the knowledge or participation of the first individual.

(17) *Comment:* One commenter requested that the Service explain the consequences if it fails to notify the alien of the requirement to file the petition or if it fails to adjudicate the petition or interview the petitioner within 90 days of its being filed, or within 90 days of the interview. Another requested that the Service provide the attorney of record with a copy of the notification required at or about the beginning of the 90 day filing period.

*Response:* The language of the statute is explicit that the Service "shall provide notice" at the time of the alien's admission and "shall attempt to provide notice" at or about the beginning of the 90 day filing period respecting the requirements to file the petition to remove. The statute further provides that failure of the Service to meet these notification requirements does not relieve the alien of his or her obligations. Likewise, the statute requires that a determination on the merits of the petition be made within 90 days of the interview (unless the interview is waived).

(18) *Comment:* Finally, one writer opposed what he understood as the Service's intent to bar from adjustment of status an alien lawfully admitted to the United States as a conditional permanent resident.

*Response:* The regulatory language comports fully with the provisions of section 245(d) of the Act as amended by section 2(e) and 3(b) of IMFA. Section 245(d) prohibits the adjustment of an alien who is already a (conditional) permanent resident or of an alien who entered the United States as a K–1 or K–2 nonimmigrant (except as the spouse or step-child of the citizen who filed the fiance petition upon which the K–1 or K–2 visa was issued). Perhaps the commenter failed to read the new section 245(d) of the Act, or perhaps he misinterpreted the regulation as prohibiting a conditional resident from becoming a "full" or "non-conditional" permanent resident through the removal of conditions procedure set forth in section 216.

Additional technical amendments are included to correct typographical errors.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under 8 CFR 299.5 which will be published in the near future.

**List of Subjects**

*8 CFR Part 1*

Administrative practice and procedure, Immigration.

*8 CFR Part 204*

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 205*

Administrative practice and procedure, Immigration.

*8 CFR Part 211*

Immigration, Passports and visas, Reporting and recordkeeping requirements.

*8 CFR Part 212*

Administrative practice and procedure, Aliens, Immigration, Passport and visas, Reporting and recordkeeping requirements.

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

*8 CFR Part 216*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 223*

Aliens, Reporting and recordkeeping requirements.

*8 CFR Part 223a*

Immigration, Refugees, Reporting and recordkeeping requirements.

*8 CFR Part 235*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 242*

Administrative practice and procedure, Aliens.

*8 CFR Part 245*

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Title I of Chapter 8 of the Code of Federal Regulations is amended as set forth below.

## PART 1—DEFINITIONS

1. The authority citation for Part 1 is revised to read as follows:

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**Authority:** 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1, new paragraph (o) is added to read as follows:

**§ 1.1 Definitions.**

* * * * *

(o) The term "director" means either district director or regional service center director, unless otherwise specified.

## PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

3. The authority citation for Part 204 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 175, 178, 179, 182, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255.

4. In § 204.1 existing paragraphs (a)(2) through (a)(4) are redesignated (a)(3) through (a)(5), respectively, and a new paragraph (a)(2) is added to read as follows:

**§ 204.1 Petition.**

* * * * *

(2) *Ineligible alien petitioners and beneficiaries*—(i) The Service may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence unless:

(A) A period of five years has elapsed after the date the alien acquired permanent resident status; or

(B) The alien establishes by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained lawful permanent resident status) was not entered into for the purpose of evading the immigration laws; or

(C) The marriage through which the petitioner obtained permanent residence was terminated through the death of the petitioner's spouse.

(ii) In determining whether the petitioner has met the burden of establishing that the marriage through which he or she obtained permanent residence was not entered into for the purpose of evading immigration laws, the director shall take into account such factors as the length of time the petitioner and the prior spouse resided together, the existence of children born of the marriage, joint ownership of assets and assumption of liabilities, the grounds for which the marriage was terminated and other factors which the director may deem relevant. Because section 204(a)(2)(A)(ii) of the Act places the burden on the petitioner to establish "by clear and convincing evidence" that the prior marriage was not entered into for the purpose of evading the immigration laws, failure to meet this standard must result in the denial of the petition; however, such a denial will be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings against the petitioner based upon information gained through the adjudication of the petition, but failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not for the purpose of evading immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition filed within the prohibited period.

(iii) The Service may not approve a visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse, which is based upon a marriage occurring after November 10, 1986 and while the alien is in either exclusion or deportation proceedings, or judicial proceedings relating thereto, until the alien has resided outside the United States for two years after the date of the marriage. The period during which the alien is in such proceedings commences with the issuance of the Order to Show Cause (Form I–221) or the Notice to Applicant for Admission Detained for Hearing before Special Inquiry Officer (Form I–122), and terminates when the alien departs from the United States while an order of deportation is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation under 8 CFR 243.5, or pursuant to an order of exclusion, or when the alien is found not to be excludable or deportable from the United States, or if the order to show cause or Form I–122 is cancelled by the district director or terminated by the immigration judge, Board of Immigration Appeals, or Federal court on judicial review. Any petition filed during this period shall be denied without prejudice to the filing of a new petition once the beneficiary has resided outside the United States for the required period of two years following the marriage. Furthermore, any such denial shall be without prejudice to the reopening of petition proceedings should the beneficiary be found not deportable or excludable from the United States, or if the order to show cause or notice of hearing is cancelled by the district director or terminated by immigration judge, Board of Immigration Appeals or Federal court on judicial review. The beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal petition filed within the prohibited period.

(iv) Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any immigrant visa petition for immigrant visa classification filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

* * * * *

5. In § 204.1, existing paragraphs (d)(2) through (d)(4) are redesignated as (d)(3) through (d)(5), respectively, and a new paragraph (d)(2) is added to read as follows:

**§ 204.1 Petition.**

* * * * *

(d) * * *

(2) *Ineligible beneficiaries.* Section 204(c) of the Act prohibits the approval of an immigrant visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any petition filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 103 of this chapter.

* * * * *

## PART 205—REVOCATION OF APPROVAL OF PETITIONS

6. The authority citation for Part 205 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 175, 178, 179, 180, 182; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a.

7. In § 205.1, a new paragraph (a)(10) is added to read as follows:

**§ 205.1 Automatic revocation.**

(a) * * *

(10) Upon a determination by the Service that it has approved a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under exclusion or deportation proceedings, or judicial proceedings relating thereto, and prior to the beneficiary's having resided outside the United States for at least two years in accordance with section 204(h) of the Act.

* * * * *

## PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

8. The authority citation for Part 211 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 181, 182, 194, 198, 218; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1181, 1182, 1186a, 1203, 1225, 1257.

9. In § 211.1, paragraph (b)(1) is revised to read as follows:

**§ 211.1 Visas.**

* * * * *

(b) * * *

(1) *Alien Registration Receipt Card (Form I–151 or I–551)*—(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, or within six months of that second anniversary if the alien is in possession of a receipt showing that he or she properly filed a Joint Petition for Removal of the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) pursuant to Part 216 of this Chapter, and:

(A) Is returning after a temporary absence abroad not exceeding one year, or

(B) Is an alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman.

(ii) *Alien travelling pursuant to government orders.* An Alien Registration Receipt Card, including an expired Alien Registration Receipt Card issued to a conditional permanent resident may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, and:

(A) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(B) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

* * * * *

## PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

10. The authority citation for Part 212 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 182, 189, 198, 200, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1182b, 1182c, 1184, 1186a, 1225, 1226, 1228, 1252.

11. In § 212.7, paragraph (a) is revised to read as follows:

**§ 212.7 Waiver of certain grounds of excludability.**

(a) *Section 212(h) or (i)*—(1) *Filing procedure—(i) Immigrant visa or fiance(e) nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I–601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 with the director or immigration judge considering the application for adjustment of status.

(2) *Termination of application for lack of prosecution.* An applicant may withdraw the application at any time prior to the final decision, whereupon the case will be closed and the consulate notified. If the applicant fails to prosecute the application within a reasonable time either before or after interview the applicant shall be notified that if he or she fails to prosecute the application within 30 days the case will be closed subject to being reopened at the applicant's request. If no action has been taken within the 30-day period immediately thereafter, the case will be closed and the appropriate consul notified.

(3) *Decision.* If the application is approved the director shall complete Form I–607 for inclusion in the alien's file and shall notify the alien of the decision. If the application is denied the applicant shall be notified of the decision, of the reasons therefor, and of the right to appeal in accordance with Part 103 of this chapter.

(4) *Validity.* A waiver granted under section 212(h) or section 212(i) of the Act shall apply only to those grounds of excludability and to those crimes, events or incidents specified in the application for waiver. Once granted, the waiver shall be valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status, except that any waiver which is granted to an alien who obtains lawful permanent residence on a conditional basis under section 216 of the Act shall automatically terminate concurrently with the termination of such residence pursuant to the provisions of section 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under section 216 of the Act, and no appeal shall lie from the decision to terminate the waiver on this basis. However, if the respondent is found not to be deportable in a deportation proceeding based on the termination, the waiver shall again become effective. Nothing in this subsection shall preclude the director from reconsidering a decision to approve a waiver if the decision is determined to have been made in error.

* * * * *

## PART 214—NONIMMIGRANT CLASSES

12. The authority citation for Part 214 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1186a.

13. In § 214.2, paragraph (k) is revised to read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

* * * * *

(k) *Fiancees and fiances of United States citizens*—(1) *Petition and supporting documents.* To be classified as a fiance or fiancee as defined in section 101(a)(15)(K) of the Act, an alien must be the beneficiary of an approved

visa petition filed on Form I–129F. The petition with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(2) *Requirement that petitioner and beneficiary have met.* The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and beneficiary have met in person.

(3) *Children of beneficiary.* Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her.

(4) *Notification.* The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(5) *Validity.* The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(6) *Adjustment of status from nonimmigrant to immigrant*—(i) *Nonimmigrant visa issued prior to November 10, 1986.* If the beneficiary contracts a valid marriage with the petitioner within 90 days of his or her admission to the United States pursuant to a valid K–1 visa issued prior to November 10, 1986, and the beneficiary and his or her minor children are otherwise admissible, the director shall record their lawful admission for permanent residence as of the date of their filing of an application for adjustment of status to lawful permanent resident (Form I–485). Such residence shall be granted under section 214(d) of the Act as in effect prior to November 10, 1986 and shall not be subject to the conditions of section 216 of the Act.

(ii) *Nonimmigrant visa issued on or after November 10, 1986.* Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K visa issued on or after November 10, 1986, the beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

* * * * *

14. A new Part 216 is added to read as follows:

## PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

Sec.

216.1 Definition of conditional permanent resident.
216.2 Notification requirements.
216.3 Termination of conditional resident status.
216.4 Petition to remove conditional basis of lawful permanent resident status.
216.5 Waiver of requirement to file petition to remove conditions.

**Authority:** 66 Stat. 166, 173, 179, 184, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1154, 1184, 1186a.

### § 216.1 Definition of conditional permanent resident.

A conditional permanent resident is an alien who has been lawfully admitted for permanent residence within the meaning of section 101(a)(20) of the Act, except that a conditional permanent resident is also subject to the conditions and responsibilities set forth in section 216 of the Act and Part 216 of this chapter. Unless otherwise specified, the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to the right to apply for naturalization (if otherwise eligible), the right to file petitions on behalf of qualifying relatives, the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed; the duty to register with the Selective Service System, when required; and the responsibility for complying with all laws and regulations of the United States. All references within this chapter to lawful permanent residents apply equally to conditional permanent residents, unless otherwise specified.

### § 216.2 Notification requirements.

(a) *When alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, the Service shall notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When alien is required to apply for removal of the conditional basis of lawful permanent resident status.* Approximately 90 days before the second anniversary of the date on which the alien obtained conditional permanent residence, the Service should notify the alien a second time of the requirement that the alien and the

petitioning spouse must file a petition to remove the conditional basis of the alien's lawful permanent residence. Such notification shall be mailed to the alien's last known address.

(c) *Effect of failure to provide notification.* Failure of the Service to provide notification as required by either paragraph (a) or (b) of this section does not relieve the alien and the petitioning spouse of the requirement to file a joint petition to remove conditions within the 90 days immediately preceding the second anniversary of the date on which the alien obtained permanent residence.

**§ 216.3 Termination of conditional resident status.**

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) of the Act are true. Prior to issuing the Notice of Termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and of all rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the district director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the district director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with Part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the district director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) of the Act are true.

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the district director determines that the alien obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 242 of the Act.

**§ 216.4 Petition to remove conditional basis of lawful permanent resident status.**

(a) *Filing the petition*—(1) *General procedures.* Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiance/fiancee petition through which the alien obtained permanent residence must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) with the Service. The petition shall be filed within this time period regardless of the amount of physical presence which the alien has accumulated in the United States. Before Form I–751 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b) of this chapter and by documentation as described in paragraph (a)(5) of this section, and it must be properly signed by the alien and the alien's spouse. If the joint petition cannot be filed due to the termination of the marriage through annulment, divorce, or the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing of the petition, the conditional permanent resident may apply for a waiver of the requirement to file the joint petition in accordance with the provisions of § 216.5 of this part.

(2) *Dependent children.* Dependent children of a conditional permanent resident who acquired conditional permanent resident status concurrently with the parent may be included in the joint petition filed by the parent and the parent's petitioning spouse. A child shall be deemed to have acquired conditional residence status concurrently with the parent if the child's residence was acquired on the same date or within 90 days thereafter. Children who cannot be included in a joint petition filed by the parent and parent's petitioning spouse due to the child's not having acquired conditional resident status concurrently with the parent, the death of the parent, or other reasons may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752).

(3) *Jurisdiction.* Form I–751 shall be filed with the director of the regional service center having jurisdiction over the alien's place of residence.

(4) *Physical presence at time of filing.* With the exception of an alien who is outside the United States pursuant to military or civilian orders (including a dependent of a serviceperson or civilian employee who is included on the official orders of that serviceperson or civilian employee), an alien must be physically present in the United States at the time of filing the joint petition. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(5) *Documentation.* Form I–751 shall be accompanied by evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Such evidence may include:

(i) Documentation showing joint ownership of property;

(ii) Lease showing joint tenancy of a common residence;

(iii) Documentation showing commingling of financial resources;

(iv) Birth certificates of children born to the marriage;

(v) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or

(vi) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(6) *Termination of status for failure to file petition.* Failure to properly file Form I–751 or Form I–752 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I–751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I–751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the joint

petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(b) *Interview*—(1) *Authority to waive interview.* The director of the regional service center shall review the Form I–751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director shall forward the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview.* Unless waived, an interview on the Form I–751 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office, files control office or suboffice having jurisdiction over the residence of the joint petitioners.

(3) *Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirements. If the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition.* The director shall adjudicate the petition within 90 days of the date of the interview, unless the interview is waived in accordance with paragraph (b)(1) of this section. In adjudicating the petition the director shall determine whether—

(1) The qualifying marriage was entered into in accordance with the laws of the place where the marriage took place;

(2) The qualifying marriage has been judicially annulled or terminated, other than through the death of a spouse;

(3) The qualifying marriage was entered into for the purpose of procuring permanent residence status for the alien; or

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence.

If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence and issue an order to show cause to initiate deportation proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval.* If the director approves the joint petition he or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate office of the Service for processing for a new Alien Registration Receipt Card (if necessary), at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial.* If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in deportation proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true and that the petition was properly denied.

### § 216.5 Waiver of requirement to file petition to remove conditions.

(a) *General.* A conditional resident alien who is unable to meet the requirements for removal of the conditional basis of his or her permanent residence status may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752), if the alien was not at fault in failing to meet the filing requirement and the conditional resident alien is able to establish that:

(1) Deportation from the United States would result in extreme hardship, or

(2) The marriage upon which his or her status was based was entered into in good faith on the conditional resident alien's part, but the conditional resident sought termination of the marriage for good cause.

(b) *Fee.* Form I–752 shall be accompanied by the appropriate fee required under § 103.7(b) of this Chapter.

(c) *Jurisdiction.* Form I–752 shall be filed with the regional service center director having jurisdiction over the alien's place of residence.

(d) *Interview.* The regional service center director may refer the application to the appropriate district, files control office or suboffice and require that the alien appear for an interview in connection with the application for a waiver. The director shall deny the application and initiate deportation proceedings if the alien fails to appear for the interview as required, unless the alien establishes good cause for such failure and the interview is rescheduled.

(e) *Adjudication of waiver application*—(1) *Application based on claim of hardship.* In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's deportation from the United States, the director shall take into account only those factors which arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any deportation from the United States is likely to result in a certain degree of hardship, and that only in

those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

(2) *Application for waiver based upon the alien's claim that the marriage was entered into in good faith.* In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include—

(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;

(ii) The length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) The grounds for which the marriage was terminated, except that a finding by the court that the petitioning spouse was at fault shall not be deemed to be conclusive evidence that the alien spouse sought termination of the marriage for good cause, nor shall a divorce obtained in an area which does not require the determination of fault be deemed to be evidence that the alien spouse sought termination of the marriage for good cause; or

(iv) Other evidence deemed pertinent by the director.

(f) *Decision.* The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefor, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue an order to show cause placing the alien under deportation proceedings. No appeal shall lie from the decision of the director; however, the alien may seek review of such decision in deportation proceedings.

## PART 223—REENTRY PERMITS

15. The authority citation for Part 223 is revised to read as follows:

**Authority:** 66 Stat. 173, 194, 100 Stat. 3537; 8 U.S.C. 1103, 1186a, 1203.

16. Section 223.2 is revised to read as follows:

### § 223.2 Period of validity.

A reentry permit is valid for a maximum period of two years unless otherwise restricted. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act is not valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained conditional permanent residence) unless and until the conditions have been removed. The period of validity commences on the date of issuance and not on the date the application for the permit was submitted to the Service. A reentry permit cannot be renewed.

## PART 223a—REFUGEE TRAVEL DOCUMENT

17. The authority citation for Part 223a is revised to read as follows:

**Authority:** 66 Stat. 173, 181, 182, 200, 201, 100 Stat. 3537; 8 U.S.C. 1103, 1181, 1182, 1186a, 1225, 1226, 1227, 1251, and Protocol Relating to the Status of Refugees (TIAS 6577).

18. Section 223a.4 is revised to read as follows:

### § 223a.4 Application.

An application for a refugee travel document shall be submitted on Form I–570 at least 45 days prior to the proposed date of departure from the United States. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence and shall be accompanied by Form I–94 or Form I–151 or Form I–551. The applicant shall be notified of the decision on the application. If the application is approved, the refugee travel document shall be issued and the immigration status which may be accorded to the alien upon his or her return to the United States shall be specified therein. Unless the applicant is in the United States as a conditional entrant or lawful permanent resident, the status of "Parolee" shall be specified. If the applicant is in the United States as a conditional entrant, that status shall be specified. If the applicant is a lawful permanent resident, that status shall be specified. If the applicant is a lawful permanent resident subject to the conditions of section 216 of the Act, that status and the conditional basis of that status shall be specified. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of part 103 of this chapter.

19. Section 223a.5(a) is revised to read as follows:

### § 223a.5 Validity of refugee travel document.

(1) *General.* A refugee travel document shall be valid for not more than two years from the date of issuance and shall not be renewable. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act may not be valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained permanent residence) unless and until the conditions have been removed. The document may be used for one or more applications for admission to the United States. It shall have no effect under the immigration laws except to show that during the period of its validity the lawful holder thereof may be accorded the status specified in the refugee travel document upon returning to the United States.

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## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

20. The authority citation for Part 235 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 182, 188, 191, 198, 200, 201, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1183, 1186a, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

21. Section 235.11 is added to read as follows:

### § 235.11 Admission of conditional permanent residents.

(a) *General.* An alien seeking admission to the United States with an immigrant visa as the spouse, son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and the petitioning spouse must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence (Form I–751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien admitted as a lawful permanent resident on a conditional basis if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the

marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional resident alien status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form (I–751) or of an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in Part 211.1(b)(1) of this Chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) of the Act, shall be placed under exclusion proceedings. However, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition is filed jointly by the alien and petitioning spouse and approved by the Service, or if an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) is filed by the alien and approved by the Service.

## PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

22. The authority citation for Part 242 is revised to read as follows:

**Authority:** 66 Stat. 173, 208, 214, 235, 100 Stat. 3537; 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362.

23. In § 242.7, paragraph (a) is revised to read as follows:

**§ 242.7 Cancellation proceedings.**

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause prior to jurisdiction vesting with the Immigration Judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States;

(5) The respondent was placed under proceedings for failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act; or

(6) The Order to Show Cause was improvidently issued.

* * * * *

24. In § 242.17, paragraph (a) is revised to read as follows:

**§ 242.17 Ancillary matters, applications.**

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of Parts 244, 245 and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 of the Act. However, the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status required by section 216(c) of the Act shall be made to the director in accordance with Part 216 of this chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes he meets the eligibility requirements for a waiver of the ground of inadmissibility, he may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes he or she can do so consistently with safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

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## PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

25. The authority citation for Part 245 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218, 100 Stat. 3359; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255 and 1257.

26. In § 245.1 paragraphs (b)(12), (b)(13), (b)(14) and (h) are added to read as follows:

**§ 245.1 Eligibility.**

* * * * *

(b) * * *

(12) Any alien who is already an alien lawfully admitted to the United States for permanent residence on a conditional basis pursuant to section 216 of the Act, regardless of any other quota or non-quota immigrant visa classification for which the alien may otherwise be eligible.

(13) Any alien admitted to the United States as a nonimmigrant fiance as defined in section 101(a)(15)(K) of the Act, unless the alien is applying for adjustment of status based upon a marriage which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of the alien pursuant to § 214.2(k) of this chapter.

(14) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986 and after the issuance of an Order to Show Cause (Form I–221) issued pursuant to Part 242 of this chapter, or after the issuance of a Notice to Alien Detained for Hearing by an Immigration Judge (Form I–122) issued pursuant to Part 235 of this chapter, unless he has resided outside the United States for two years following the marriage. However, this restriction shall no longer apply if the alien is found not to be deportable in deportation proceedings, if

the alien is found to be admissible in exclusion proceedings, or if the Order to Show Cause is cancelled pursuant to § 242.7 of this chapter.

* * * * *

(h) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act) or an alien son or daughter (as defined in section 216(g)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to section 216 of the Act.

27. Section 245.8 is revised to read as follows:

**§ 245.8 Medical examination.**

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical examination by a selected civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status under the provisions of the Act of October 28, 1977, who was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act and who was medically examined when processed for parole by a Service officer in the United States or abroad, unless medical grounds for exclusion existed when the applicant was processed for parole or such grounds presently appear to exist. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a non-immigrant fiance or fiancee of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

Dated: August 4, 1988.

**Edwin Meese III,**

*Attorney General.*

[FR Doc. 88-17999 Filed 8-9-88; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-ASW-24; Amdt. 39-5964]**

## Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires an initial inspection, a repetitive pilot's preflight check, the removal of damaged parts, and a repetitive inspection of the tail rotor transmission/tail boom extension mounting studs on all MDHC Model 369D, E, F, and FF helicopters. This AD is prompted by several reports of tail rotor transmission/tail boom extension mounting studs having failed due to fatigue, which could result in the loss of the tail rotor assembly in flight with subsequent loss of the helicopter.

**EFFECTIVE DATE:** August 24, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1988.

Compliance: As indicated in the body of this AD.

**ADDRESSES:** The applicable service information notice may be obtained from Mr. Barry Hautz, LH3/G35, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-0797.

A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring St., Long Beach, California 90806; telephone (213) 988-5233.

**SUPPLEMENTARY INFORMATION:** There have been reports of the tail rotor transmission/tail boom extension mounting studs having failed due to fatigue. In some cases, a considerable loss of the mounting studs clamping force has occurred which allowed prohibitive amounts of vibratory motion of the tail rotor transmission relative to the tail boom casting. In one documented case, the tail rotor assembly came off in flight. MDHC has issued Mandatory Service Information Notice No. DN-151/EN-39/FN-28, dated October 10, 1987, detailing the inspection requirements.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires: (1) An initial inspection of the studs prior to further flight; (2) a pilot's repetitive preflight visual check of tail rotor transmission/tail boom extension mounting studs and torque paint striping; (3) the removal of all mounting studs which are damaged or deformed; and (4) a repetitive inspection of the torque on each nut at intervals not to exceed 100 hours' time in service on MDHC Model 369D, E, F and FF helicopters.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

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**Adoption of the Amendment**

**PART 39—AIRWORTHINESS DIRECTIVES**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**McDonnell Douglas Helicopter Company (MDHC)** (Hughes Helicopters, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, which have tail rotor transmission/tail boom extension mounting studs Part Number (P/N) MS51992A803-13 or -14 installed (Docket No. 88-ASW-24).

Compliance is required as indicated unless previously accomplished.

(a) To prevent failure of the tail rotar transmission mounting studs (P/N MS51992A803-13 or -14) on MDHC Model 369 D/E helicopters, accomplished the following:

(1) Prior to further flight after the effective date of this AD, conduct an initial inspection of the tail rotor transmission attachment to the tail boom casting for any indications of relative motion between the parts in accordance with MDHC Service Information Notice (SIN) DN-151/EN-39/FN-28, Part I, paragraphs a, b, c, d, and e, dated October 10, 1987

(2) Prior to each flight after the effective date of this AD, check the tail rotor transmission installation for security in accordance with MDHC SIN DN-151/EN-39/FN-28, Part II, paragraph a, dated October 10, 1987 The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

**Note.** The authorized person that performs the check must make an entry as required by § 43.9, and the record must be maintained as required by FAR §§ 91.173, 121.380, or 135.439.

(3) If there are indications of relative motion between the tail rotor transmission and the tail boom casting found by the inspection and check of paragraphs (a)(1) and (a)(2) of this section, prior to further flight, remove the tail rotor transmission and replace all four mounting studs in accordance with MDHC SIN DN-151/EN-39/FN-28, Part III, paragraphs a thru j, dated October 10, 1987

(4) At intervals not to exceed 100 hours' time in service from the last inspection after the effective date of this AD, conduct repetitive inspections of the torque of each mounting nut and reapply torque stripe paint in accordance with MDHC SIN DN-151/EN-39/FN-28, Part IV paragraphs a and b, dated October 10, 1987

(b) To prevent failure of the tail boom extension mounting studs (P/N MS51992A803-13 or -14) on MDHC Model 369 F/FF helicopters, accomplish the following:

(1) Prior to further flight after the effective date of this AD, conduct an initial inspection of the tail boom extension attachment to the tail boom casting for any indications of relative motion between the parts in accordance with MDHC (SIN) DN-151/EN-39/FN-28, Part I, paragraphs a, b, c, d, and e, dated October 10, 1987

(2) Prior to each flight after the effective date of this AD, check the tail boom extension installation for security in accordance with MDHC SIN DN-151/EN-39/FN-28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

**Note.** The authorized person that performs the check must make an entry as required by § 43.9, and the record must be maintained as required by FAR §§ 91.173, 121.380, or 135.439.

(3) If there are indications of relative motion or fretting products between the tail boom casting and the tail boom extension found by the above inspections or checks, prior to further flight, remove tail boom extension and replace all four studs in accordance with MDHC SIN DN-151/EN-39/FN-28, Part III, paragraphs b thru j, dated October 10, 1987.

(4) At intervals not to exceed 100 hours' time in service from the last inspection after the effective date of this AD, conduct repetitive inspections of the torque of each mounting nut and reapply torque stripe paint in accordance with MDHC SIN DN-151/EN-39/FN-28, Part IV, paragraphs a and b, dated October 10, 1987.

(c) An alternate means of compliance which provides an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring St., Long Beach, CA 90806.

(d) In accordance with §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

These inspections and procedures shall be done in accordance with MDHC Mandatory SIN DN-151/EN-39/FN-28, dated October 10, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from MDHC, Attention: Mr. Barry Hautz, LH3/G35, 5000 E. McDowell Road, Mesa, Arizona 85205-9797. A copy may also be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective August 24, 1988.

Issued in Fort Worth, Texas, on June 20, 1988.

**L.B. Andriesen,**

*Acting Director, Southwest Region.*

[FR Doc. 88-17806 Filed 8-9-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 87-ANE-46; Amdt. 39-5943]**

## Airworthiness Directives; Teledyne Continental Motors Models IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB Series Engines Equipped With Air Conditioners

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment supersedes an existing Airworthiness Directive (AD) 87-26-01, which required the removal of the air conditioner compressor drive belt from Teledyne Continental Motors Models IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with an air conditioner. The amendment is needed to return the air conditioner to service in all affected airplanes.

**DATES:** Effective—August 10, 1988.

Compliance—As required in the body of the AD, unless already accomplished.

Comments for inclusion in the docket must be received on or before September 9, 1988.

Incorporation by Reference—Approved by the Director of the Federal Register as of August 10, 1988.

**ADDRESSES:** Comments on the amendment may be mailed in duplicate to, Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87-ANE-46, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Rules Docket Number 87-ANE-46".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Teledyne Continental Motors Service Bulletins (SB's) No. M88-5 and No. M88-6, may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601.

A copy of each SB is contained in Rules Docket Number 87-ANE-46, in the Office of the Reginal Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810..

**SUPPLEMENTARY INFORMATION:** This amendment supersedes Amendment 39-5882 (53 FR 9866; March 28, 1988) AD 87-26-01, which currently requires, as an interim measure, the removal of the air conditioner compressor drive belt on Teledyne Continental Motors Models IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with air conditioners. After issuing Amendment 39-5882, the FAA has determined that Teledyne Continental Motors has redesigned the starter adapter shaftgear which had failed due, in part, to loads imposed by the air conditioner drive belt. The redesigned shaftgear is incorporated in the starter drive assembly provided by Teledyne Continental Motors.

Compliance with AD 87-14-02 (52 FR 36754; October 1, 1987), issued against the starter drive assembly is not required when compliance with this AD is accomplished since both AD's pertain to the same assembly, and this AD requires the replacement of the assembly with the latest design.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less that 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Although this action is in the form of a final rule which involves requirements mandating action and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited to the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-46". The post card will be dated/time stamped and returned to the commenter.

*Conclusion*: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedure of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

**List of Subjects in 14 CFR Part 39**

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. by adding to § 39.13 the following new Airworthiness Directive (AD) which supersedes AD 87-26-01, Amendment 39-5882 (53 FR 9866; March 28, 1988), as follows:

**Teledyne Continental Motors (TCM):** Applies to IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with air conditioners.

Compliance is required as specified in the body of the AD, unless already accomplished.

To prevent possible starter adapter shaftgear assembly failure, accomplish the following:

(a) Before further flight, remove the top engine cowl and gain access to the air conditioner (freon compressor) drive pulley and with a light and mirror, determine if the sheave attach nut is a steel locking type (Reference paragraph II of TCM Service Bulletin (SB) M87-24, dated December 15, 1987).

(1) If the nut is a steel locking type, remove the freon compressor drive belt.

(2) If the nut is castellated, determine via log books and maintenance records that the castellated nut is the original nut and has not been substituted for a steel locking type nut.

(i) If the castellated nut is the original, no further action is required.

(ii) If the castellated nut is not the original, but a substitution for the original installed steel locking type nut, remove the freon compressor drive belt.

(iii) If it cannot be determined that the castellated nut is the original, remove the freon compressor drive belt.

**Note.**—Compliance with paragraph (b) below before further flight, may be accomplished in lieu of paragraph (a) above.

(b) Within the next 25 flight hours, after the effective date of this AD, remove the starter adapter assembly (starter drive assembly) and replace in accordance with the following table:

| Engine model | Replacement starter drive assembly P/N |
|---|---|
| IO-520-BA, BB, IO-550-B | 642087A23R |
| TSIO-520-LB, WB | 642087A22R |
| TSIO-520-BE..... | 642087A24R |
| TSIO-520-UB..... | 646757A4R |

**Note.**—Return the starter drive assembly less drive sheave) to the manufacturer for replacement.

BEST COPY AVAILABLE

(1) Install the replacement assembly in accordance with paragraph 3 of TCM SB M88-5, dated April 4, 1988, and appropriate maintenance manuals.

(2) Install the drive belt and insure proper alignment of the sheaves in accordance with paragraphs 1 through 3 of TCM SB M88-6, dated April 4, 1988.

(c) Replace top engine cowl.

(d) Make appropriate log book entry showing compliance with this AD.

Note.—Compliance with AD 87-14-02 issued against the starter drive assembly is not required when compliance with this AD is accomplished.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

(g) Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Atlanta Aircraft Certification Office, may adjust the compliance time specified in this AD.

Notes.—1. New or rebuilt TSIO-520-BE engines (used on Piper PA46-310P Malibu) shipped from TCM as a replacement engine in conjunction with compliance to AD 87-26-08 (TCM SB M87-25) should not order a replacement starter drive assembly as these engines already have the replacement starter drive assembly installed.

2. Installation of the replacement starter drive assembly on the TSIO-520-BE engine (used on Piper PA46-310P Malibu) does not require engine removal (Piper Aircraft Corporation SB 876B refers to this subject).

TCM SB M88-5, dated April 4, 1988, and TCM SB M88-6, dated April 4, 1988, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. The documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87-ANE-46, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on August 10, 1988.

Issued in Burlington, Massachusetts, on June 23, 1988.

**Timothy P. Forte,**

*Acting Director, New England Region.*

[FR Doc. 88-17807 Filed 8-9-88; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Part 399

[Docket No. 80466-8066]

## Chlorendic Anhydride; Reduction in Export Control

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Export Administration maintains the Commodity Control List (CCL), which lists those items subject to Department of Commerce export controls. Chlorendic anhydride, an organic chemical produced from hexachloropentadiene and maleic anhydride, is currently controlled for national security reasons under Export Control Commodity Number (ECCN) 5799C on the CCL. The chemical nomenclature for chlorendic anhydride is 1, 4, 5, 6, 7, 7 hexachloro-5-norborene-2, 3 dicarboxylic anhydride.

In response to an exporter's petition, the Department of Commerce undertook a review of the rationale for the controls and decided to terminate the control of chlorendic anhydride on the grounds that the availability of this chemical to controlled countries would no longer make a significant contribution to the military potential of those countries. This decision was made in consultation with the Departments of Defense, Energy and State pursuant to section 5(a) of the Export Administration Act of 1979, as amended. This chemical remains subject to export controls to Country Groups S and Z for foreign policy reasons. To implement this decision, this chemical is now being added to 15 CFR 399.2, Supp. No. 1, Interpretation 24, and, as a result, will be covered by ECCN 6799G.

**FOR FURTHER INFORMATION CONTACT:** Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration, (Telephone: (202) 377-5695).

**SUPPLEMENTARY INFORMATION**

### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule removes a burden under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) by eliminating the requirement for a validated license to Country Groups Q, W, Y, the People's Republic of China, and Afghanistan. The reporting requirement for validated licenses has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

### Lists of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

### PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L.

99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

**§ 399.2 [Amended]**

2. In Supplement No. 1 to § 399.2, under Interpretation 24, in the list entitled "Organic Chemicals" add the following chemical in alphabetical order:

Chlorendic anhydride

Dated: July 21, 1988.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 88–18048 Filed 8–9–88; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 154, 157, 260 and 284

**[Docket No. RM87–17–001, Order No. 493–A]**

## Natural Gas Data Collection System

Issued August 1, 1988.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order on rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is granting rehearing in part and denying rehearing in part of Order No. 493 (53 FR 15023 (Apr. 27, 1988)), a final rule requiring natural gas companies to use an electronic medium when filing certain rate filings, certificate and abandonment applications and FERC Forms. This order extends the implementation dates for electronic data submission of certain FERC Forms and stays the implementation of electronic data submission of rate filings and certificate and abandonment applications. This order on rehearing also provides that an implementation conference will be held on September 12 and 13, 1988.

Finally, on July 1, 1988, OMB approved the information collection provisions in Order No. 493. This order on rehearing provides notice of the OMB approval and a list of the OMB control numbers.

**DATES:** This order on rehearing is effective September 1, 1988. The implementation conference will held on September 12–13, 1988.

The implementation date for FERC Form Nos. 8 and 11 is November 30, 1988; for FERC Form No. 16 is April 30, 1989; and for rate, tariff and certificate applications is March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

**SUPPLEMENTARY INFORMATION:** The Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. The full text of this order on rehearing is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa,[1] Charles G. Stalon and Charles A. Trabandt.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting rehearing in part and denying rehearing in part of Order No. 493, a final rule requiring natural gas companies to use an electronic medium when filing certain rate filings, certificate and abandonment applications and FERC Forms.[2] This order extends the implementation dates for electronic data submission of certain FERC Forms and stays the implementation of electronic data submission of rate filings and certificate and abandonment applications. This order on rehearing also provides that an implementation conference will be held on September 12 and 13, 1988.

Finally, on July 1, 1988, OMB approved the information collection provisions in Order No. 493. This order on rehearing provides notice of the OMB approval and a list of the OMB control numbers.

### II. Background

The Commission issued Order No. 493 on April 5, 1988. The final rule amended the Commission's regulations to require that on or after September 30, 1988, rate filings, including the affected tariff sheets, submitted pursuant to § 154.63; certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157; blanket certificate applications under Subpart G of Part 284; and FERC Form Nos. 8, 11 and 16 in Part 260, must be filed on an electronic medium. Additionally, on or after September 30, 1988, the final rule required any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff rate pursuant to § 154.303(e), to make a one-time only filing which submits the company's entire tariff, except for executed service agreements, on an electronic medium. The final rule also required natural gas companies to submit FERC Form Nos. 2, 2A, 14 and 15 on an electronic medium on or after December 30, 1988. The final rule provided a waiver for natural gas companies that do not have any electronic capability to comply with the electronic data submission requirement. The final rule also revised the Commission's confidentiality procedures in § 388.112 to provide procedures for protecting confidential data filed on an electronic medium.

Finally, the rule severed FERC Form No. 591 from this rulemaking docket and established a new docket number RM88–12–000 in which to consider it. This action provided the Commission additional time to address concerns raised by the comments to the proposed FERC Form No. 591.

The Commission granted rehearing for the purpose of further consideration on May 2, 1988.[3] The order granting

[1] Commissioner Sousa resigned effective July 31, 1988; however, he was present and voted on this item at the meeting of July 27, 1988.

[2] 53 FR 15023 (Apr. 27, 1988), III FERC Stats. & Regs. ¶ 30,808 (Apr. 5, 1988); order granting rehearing for the purpose of further consideration and suspending effective date, 53 FR 16058 (May 5, 1988), III FERC Stats. & Regs. ¶ 30,813 (May 2, 1988); order providing new effective date, 53 FR 19283 (May 27, 1988), III FERC Stats. & Regs. ¶ 30,817 (May 19, 1988).

[3] 53 FR 16058 (May 5, 1988), III FERC Stats. & Regs. ¶ 30,813.

rehearing provided applicants filing timely petitions for rehearing an additional period of time to review the record formats for Order No. 493.[4] Additionally, the order suspended the effective date of Order No. 493 until the record formats were available.[5] Seventeen requests for rehearing and twelve supplemental comments were filed.[6] For the reasons provided below, the Commission is granting rehearing in part and denying rehearing in part of Order No. 493, providing certain implementation dates and scheduling the implementation conference.

### III. Notice of OMB Control Numbers

The Paperwork Reduction Act [7] and the Office of Management and Budget's regulations [8] require that OMB approve certain information collection requirements imposed by agency rules. On July 1, 1988, OMB approved the information collection requirements in FERC Form No. 2 under OMB Control No. 1902–0028; FERC Form No. 2A under OMB Control No. 1902–0030; FERC Form No. 8 under OMB Control No. 1902–0026; FERC Form No. 11 under OMB Control No. 1902–0032; FERC Form No. 14 under OMB Control No. 1902–0027; FERC Form No. 15 under OMB Control No. 1902–0037; FERC Form No. 16 under OMB Control No. 1902–0025; FERC Form No. 537 under OMB Control No. 1902–0060; FERC Form No. 542 under OMB Control No. 1902–0070 and FERC Form No. 577 under OMB Control No. 1902–0128. Therefore, Order No. 493 is effective on August 1, 1988. No amendment of OMB Control Numbers in 18 CFR 389.101(b) is required.

### IV. Implementation Issues

#### *A. Timetable for Implementation*

Order No. 493 requires that, on or after September 30, 1988, rate filings, including the affected tariff sheets, submitted pursuant to § 154.63; certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157; blanket certificate applications under Subpart G of Part 284; and FERC Form Nos. 8, 11 and 16 in Part 260, must be filed on an electronic medium. On or after September 30, 1988, any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff rate pursuant to § 154.303(e), must make a one-time only filing which resubmits the company's entire tariff, except for executed service agreements, on an electronic medium. Additionally, on or after December 30, 1988, FERC Form Nos. 2, 2A, 14 and 15 must be submitted on an electronic medium.

A number of applicants for rehearing [9] request the Commission to revise this implementation schedule to reflect a phased-in approach.[10] Specifically, the Interstate Natural Gas Association of America (INGAA) proposes an alternative timetable for implementation of Order No. 493.[11] Alternatively, Natural Gas Pipeline Co. of America requests the Commission to provide a one year transition period. Additionally, INGAA and ANR & CIG propose that the Commission establish a joint FERC/INGAA Task Force to work with the Commission in implementing the order. ANR & CIG also propose a pilot program for testing and processing electronic filings during 1989, before the Commission implements the electronic data submission requirements in Order No. 493.

ANR & CIG argue that the Commission should adopt the formats in Order No. 493 with the modifications and clarifications suggested by the applicants in their petitions for rehearing and supplemental comments and provide that proposed FERC Form No. 591 will not duplicate any information provided pursuant to Order No. 493. They argue that, if the formats proposed in Order No. 493 are modified and clarified, it will no longer be necessary to change or duplicate the formats when and if FERC Form No. 591 is issued. They conclude that, in the event the Commission proceeds with the issuance of FERC Form No. 591, it should require reporting on an electronic medium in Order No. 493 only those forms which are not going to be changed or eliminated by FERC Form No. 591.

Finally, Enron requests the Commission to consider a five year moratorium on any further changes to electronic data submission of the information in the formats in Order No. 493.

The Commission is extending the implementation dates for electronic data submission of certain FERC Forms. The new implementation dates are: FERC Form Nos. 8 and 11, November 30, 1988; and FERC Form No. 16, April 30, 1989. Implementation dates for forms filed annually (FERC Form Nos. 2, 2A, 14 and 15) will not be extended. Additionally, the Commission is staying the implementation dates for the rate and tariff filings and certificate and abandonment applications. Revised record formats for rates, tariffs and certificates will be available on November 30, 1988 and the new implementation date will be March 31, 1989.

The Commission, however, declines to adopt any proposals to limit future action on either the formats covered in Order No. 493 or the format for proposed FERC Form No. 591. The Commission must be able to update its forms and reporting requirements as changes occur in the natural gas industry.[12] The Commission declared in Order No. 493 that it will begin the transition to electronic data submission in Order No. 493 by implementing procedures to computerize the receipt, processing and analysis of a portion of the information that the Commission presently uses to regulate the natural gas industry. At the same time, the Commission provided in Order No. 493 that it will continue to pursue in the new rulemaking docket the proposal to standardize, consolidate and update the information the Commission requires from natural gas companies and to simplify the format in which data is submitted as proposed in FERC Form No. 591.

#### *B. Implementation Conference*

Some of the applicants for rehearing request the Commission to schedule the implementation conference provided in Order No. 493 as soon as possible to

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[4] Supplemental comments were due on or before July 5, 1988.

[5] On May 19, 1988, the Commission issued a notice of availability of record formats and an order providing a new effective date of August 1, 1988. 53 FR 19283 (May 27, 1988), III FERC Stats. & Regs. ¶ 30,817.

[6] The list of applicants for rehearing is attached as Appendix A.

[7] 44 U.S.C. 3501–3520 (1982).

[8] 5 CFR Part 1320 (1988).

[9] *See, e.g.*, ANR Pipeline Co. & Colorado Interstate Gas Co. (ANR & CIG), Arkla, Inc. (Arkla), CNG Transmission Corp. (CNG), Columbia Gas Corporation (Columbia Gas), El Paso Natural Gas Co. (El Paso) Enron Interstate Pipelines (Enron) and Natural Gas Pipeline Co. of America (Natural Gas).

[10] On June 30,1988, ANR & CIG filed a separate motion for an extension of the implementation dates in Order No. 493 for at least 90 days. ANR & CIG argue that this action needs to be taken by the Commission before issuance of an order on rehearing. On July 15, 1988, High Island Offshore System filed an answer in support of ANR & CIG's motion. Additionally, Interstate Natural Gas Association of America (INGAA) and Texas Eastern Transmission Corp. (Texas Eastern) in their supplemental comments requested the Commission to immediately stay the implementation dates pending issuance of an order or rehearing. Since this order extends the implementation dates, the requests have been rendered moot.

[11] A similar timetable was proposed by ANR & CIG. INGAA's timetable was supported by El Paso, Texas Eastern & Algonquin and Transcontinental Gas Pipe Line Corp. (Transco).

[12] For example, the Commission has issued a notice of proposed rulemaking in Docket No. RM88-18-000, proposing to replace the Statement of Financial Position with the Statement of Cash Flows in FERC Form Nos. 1, 1F, 2, 2A and 6.

work through the technical problems associated with the new electronic data submission requirement.[13] An implementation conference will be held on September 12 and 13, 1988. The Commission will issue a separate notice providing details on this conference.

*C. Filing Paper Copies with Electronic Data Submission*

Under Order No. 493, natural gas companies are required to continue filing the traditional number of required paper copies. The Commission noted in Order No. 493 that it will consider in a year reducing the number of paper copies to be filed with the electronic data submission. Applicants argue that filing both electronic data and the traditional paper copies for a year is burdensome and unnecessary.[14] INGAA requests the Commission to allow filings to be submitted in only one of the two media (*i.e.*, paper or electronic) on the date the filing is due with a 30-day grace period to submit duplicate data on the alternate medium. Transco and Enron propose that the Commission should allow natural gas companies to submit each filing first in paper copy format and 30 days later in an electronic medium. According to the applicants, this would allow additional time for uploading the data into a single electronic medium.

The Commission declines to adopt these proposals. The requirement to file paper copies is a transitional requirement that is necessary to ensure a smooth and orderly transition from filing paper copies to filing on an electronic medium. As the Commission and natural gas companies develop procedures to handle electronic data submission, the Commission will be able to reduce the number of paper copies required to be filed. Additionally, the Commission notes that the paper copies must correspond with the data submitted on the electronic medium. If natural gas companies separate the filing of the paper copies and the electronic medium, there is a greater likelihood for discrepancies between the two filings. Once the data are entered on an electronic medium, the Commission believes there will be little hardship in requiring a natural gas company's computer to generate the paper copies. The Commission, therefore, rejects these proposals.

*D. Acceptable Hardware*

Order No. 493 provided a list of electronic media suitable for filing electronically with the Commission. Apple Computer requests the Commission to expand the list of acceptable hardware suitable for electronic data submission. At this time, the Commission cannot accommodate Apple Computer's request. The list of acceptable hardware provided in Order No. 493 represents the types of hardware currently available to the Commission. The Commission notes, however, that as new hardware becomes available and is in general use throughout the Commission, it will expand the list.

*E. Waiver Provision and Potential for Penalties*

Order No. 493 specifically provides that natural gas companies lacking any electronic capability to comply with the electronic data submission requirement may apply for a waiver from the electronic data submission requirement.[15] Order No. 493 also provides that companies denied a waiver will have 30 days from the date of the denial to submit their filings on an electronic medium. Applicants request the Commission to expand this waiver provision to include reasons other than lack of computer capability.[16] For example, ANR & CIG request the Commission to expand the waiver provision to encompass situations where a company requires short-term waivers due to an inability to meet the present implementation schedule, a requirement to make other electronic filings (*i.e.*, the electronic filing requirement for FERC Form No. 592) or an inability to resolve problems with the record formats. Northwest specifically requests the Commission to enlarge the period to comply with the electronic data submission requirement after denial of a waiver pursuant to § 385.2011(e) of the Commission's regulations from 30 days to 120 days. Noting that in most instances a request for waiver will be triggered by a natural gas company's lack of computer capability and by its inability to expeditiously gather the data requested, Northwest argues that the 30-day period will not be long enough.

The Commission declines to adopt these proposals. Enlarging either the standards for granting a waiver or the 30-day time period provided for compliance after denial of a waiver could unduly delay natural gas company efforts to make data submissions on an electronic medium. Natural gas companies that cannot comply in the 30-day period may seek an extension of time to submit their filings. The Commission will review these requests for extensions of time on a case-by-case basis. The Commission anticipates, however, that as natural gas companies make the transition to electronic data submission there will be no problem with the 30-day filing rule after denial of a waiver.

Applicants argue, further, that a natural gas company's good faith efforts to comply with the electronic data submission requirement should suffice as protection from penalties when the filing is in some way deficient.[17] The Commission disagrees. Current regulations permit the rejection of deficient filings.[18] The Commission does not believe that there is a need for a separate standard to reject deficient filings made on an electronic medium. The Commission, therefore, will continue its present practice of rejecting deficient filings based on the standards provided in the Commission's current regulations.

*F. Electronic Data Submission by Local Distribution Companies*

Iowa-Illinois Gas and Electric Company requests the Commission to exclude state-regulated local distribution companies (LDC) from the electronic data submission requirement in Order No. 493. Iowa-Illinois argues that Order No. 493 requires LDC's subject to limited Commission jurisdiction, because of their multistate distribution service areas, to comply with the electronic data submission requirement. According to Iowa-Illinois, this is burdensome. The Commission declines to make this specific exemption. To the extent that LDC's are required to make any of the filings specified in § 385.2011 of the Commission's regulations, these companies will be required to file on an electronic medium. Electronic data submission by all natural gas companies must be uniform to ensure an orderly transition to the filing of all data electronically. To the extent that LDC's are unduly burdened by the electronic data submission requirement, the Commission will consider waivers on a case-by-case basis.

*G. Software Programs*

In Order No. 493, the Commission stated that on July 30, 1988, the Commission would have software available to produce a paper copy for

[13] *See, e.g.*, INGAA and Transco.

[14] *See, e.g.*, ANR & CIG and Natural Gas.

[15] *See* 18 CFR 385.2011(e)(4).

[16] *See, e.g.*, ANR & CIG and Northwest Pipeline Corp. (Northwest).

[17] *See, e.g.*, ANR & CIG, Algonquin Gas Transmission Company (Algonquin), Columbia Gas Transmission Corp. (Columbia Gas), El Paso, INGAA, Natural Gas and Transco.

[18] *See, e.g.*, 18 CFR 154.63(c), 157.8 and 385.2001(b) (1987).

rate filings under §§ 154.63 and 154.303(e) of the Commission's regulations, for certificate and abandonment applications under Subparts A, E and F of Part 157 and Subpart G of Part 284, and for FERC Form Nos. 8, 11 and 16 in Part 260. The Commission also stated that on October 30, 1988, it would have software available to produce a paper copy for FERC Form Nos. 2, 2A, 14 and 15.

Applicants argue that the number and complexity of the record formats require further review and analysis before software development can begin.[19] Applicants argue, further, that the Commission should make its data checking routines public.[20] The Commission does not presently have data edit criteria developed for the record formats. The Commission will make these data edit criteria publicly available when they are developed. The Commission will have its software programs for producing paper copy of the electronic filing available 60 days prior to the implementation date for each filing required in Order No. 493. To the extent the record formats are revised as a result of the technical corrections at the implementation conference in September, revised software programs incorporating these changes will also be available 60 days prior to the implementation date.

The Commission notes, however, that these software programs for report writing and data editing are not interchangeable on all computers without adaptation. The Commission does not make any guarantee, express or implied, as to the accuracy of the Commission's software or data edit criteria on the natural gas company's computer. The Commission's software is provided as public software for the convenience of the natural gas companies. Natural gas companies may be required to make adaptations to the Commission's software and data edit criteria in order to provide a copy of the electronic data submission that can be read by the public. Additionally, the Commission notes that natural gas companies are free to prepare their own programs using the record formats provided by the Commission.

Enron requests the Commission to clarify whether a natural gas company can convert software generated text to an ASCII file for submission to the Commission on PC diskette. The Commission will accept text-only files in ASCII 128 character set as defined in the Federal Information Processing Standards Publication (FIPS Pub. 1–2). To the extent natural gas companies file text-only data on PC diskettes, they may use the ASCII character set.

*H. Use of Mixed Electronic Media for Electronic Data Submission*

Northwest asks the Commission to clarify whether natural gas companies will be allowed to make electronic data submissions in mixed media. Under the Commission's current regulations, natural gas companies are required to use one type of electronic medium for electronic data submission. The Commission will continue to accept only one type of electronic medium for a filing. The Commission believes that use of only one electronic medium decreases the likelihood for discrepancies or missing data. Additionally, the requirement decreases the burden on the Commission to create a complete copy of a natural gas company's electronic filing.

*I. Confidentiality Procedures*

Applicants argue that the Commission should provide specific rules to protect the confidentiality of sensitive data and to assure against unauthorized disclosure.[21] They argue that the confidentiality provisions in Order No. 493 may be inadequate. They argue that the Commission should include a detailed explanation of how the confidentiality of sensitive information will be protected to ensure against unauthorized disclosure of the data by the Commission and the Commission's staff.

In Order No. 493, the Commission amended its confidentiality procedures in § 388.122 to protect confidential data filed on an electronic medium. These procedures are similar to the Commission's current procedures for protecting paper copies containing confidential data. The Commission believes these procedures are sufficient to protect paper copies filed with an electronic medium. The Commission will protect confidential data stored in the Commission's computer data bases in compliance with standards developed by the National Bureau of Standards pursuant to the Computer Security Act of 1987.[22] Additionally, the Commission's record formats provide natural gas companies the capability to indicate whether the information in a record is confidential. The Commission believes these procedures are sufficient to protect confidential information in the Commission's computer data bases.

*J. Procedural Defects*

Applicants argue that Order No. 493 contains fundamental procedural defects, including failure to demonstrate that the present system needs to be changed, failure to provide adequate notice and comment and failure to address comments in the rulemaking docket.[23] According to applicants, the Commission should reissue the final rule with these flaws corrected.

Order No. 493 is a procedural rule revising procedures for reporting information to the Commission. The Commission believes that Order No. 493 is a logical outgrowth of the original, duly noticed rulemaking proposal.[24] The Commission noted in Order No. 493 that a number of natural gas companies in their comments on the notice of proposed rulemaking (NOPR) generally supported the proposal that jurisdictional natural gas companies make all or a part of their rate, certificate and report filings electronically. The Commission concludes, therefore, the Order No. 493 is clearly within the scope of the proposals in the NOPR. The changes made in Order No. 493 were made in response to these comments submitted on the NOPR.

Finally, the Commission notes that most of the comments filed in this rulemaking docket addressed proposed FERC Form No. 591. Based on its review of these comments in Order No. 493, the Commission severed proposed FERC Form No. 591 into a separate rulemaking docket, in Docket No. RM88–12–000. The record pertaining to proposed FERC Form No. 591, including the extensive comments addressing the proposed form, was transferred to the new rulemaking proceeding. The Commission will address those comments when a final rule is issued in that rulemaking docket.

## V. Technical Questions on the Record Formats

The Commission notes that numerous specific technical questions were raised on the record formats for the FERC Forms and the rate and tariff filings and certificate and abandonment applications. The Commission is including as Appendix B to this order on rehearing responses to the technical questions on the FERC Forms record

[19] *See, e.g.*, Columbia Gas and Transco.

[20] *See, e.g.*, INGAA and Transco.

[21] *See, e.g.*, INGAA and Natural Gas.

[22] Public Law No. 101–235 Stat. 1724, codified at 15 U.S.C. 278g–c.

[23] *See, e.g.*, ANR & CIG and Texas Eastern.

[24] *See, e.g.*, South Terminal Corp. v. EPA, 504 F.2d 646, 659 (1st Cir. 1974); BASF Wyandotte Corp. v Costle, 598 F.2d 637, 642 (1st Cir. 1979), *cert. denied sub nom.* Eli Lilly & Co. v. Costle, 444 U.S.C. 1096 (1980) and Small Refiner Lead Task Force v EPA, 705 F.2d 506, 547 (D.C. Cir 1983).

formats. Responses to the technical questions on the rate, tariff, and certificate record formats will be attached to the notice of the implementation conference. Additionally, the Commission will address all these questions at the implementation conference. The Commission notes that, to the extent these technical questions have identified new reporting requirements, the record formats will be revised to delete all such new reporting requirements.

Revised record formats for the FERC Forms incorporating changes and additional corrections identified by Commission staff are now available in the Commission's Public Reference Room. A list of these corrections is attached to this order as Appendix C. The Commission will issue revised record formats for rates, tariffs, and certificates after the implementation conference, incorporating changes in response to both the technical questions raised on rehearing and any further issues identified by natural gas companies during the conference.

**List of Subjects**

*18 CFR Part 154*

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

*18 CFR Part 157*

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 260*

Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 284*

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 154, 157, 260 and 284, Title 18, Chapter I, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

*Acting Secretary.*

## PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982).

**§ 154.1 [Amended]**

2. In § 154.1, paragraphs (b) and (c), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.26 [Amended]**

3. In § 154.26, paragraph (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.31 [Amended]**

4. In § 154.31, paragraphs (a) and (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.32 [Amended]**

5. In § 154.32, paragraphs (a) and (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.34 [Amended]**

6. In § 154.34, paragraphs (a)(i) and (a)(ii), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.61 [Amended]**

7. In § 154.61, the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.62 [Amended]**

8. In § 154.62, the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.63 [Amended]**

9. In § 154.63, paragraphs (b)(1)(iv), (b)(5), (c)(1)(i), (c)(1)(ii), (d)(3) and (e)(4)(i), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.303 [Amended]**

10. In § 154.303, paragraph (e)(1)(ii), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

## PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

11. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

**§ 157.6 [Amended]**

12. In § 157.6, paragraph (a)(1), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.14 [Amended]**

13. In § 157.14, paragraph (a), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.17 [Amended]**

14. In § 157.17, paragraphs (a) and (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.20 [Amended]**

15. In § 157.20, paragraphs (c) and (d), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.205 [Amended]**

16. In § 157.205, paragraph (b)(1), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

## PART 260—STATEMENTS AND REPORTS (SCHEDULES)

17. The authority citation for Part 260 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

**§ 260.3 [Amended]**

18. In § 260.3, paragraphs (b)(1)(i) and (b)(1)(ii), the words "September 30, 1988," are removed and the words "November 30, 1988," are inserted in their place.

**§ 260.11 [Amended]**

19. In § 260.11, paragraphs (b), the words "September 30, 1988," are removed and the words "November 30, 1988," are inserted in their place.

**§ 260.12 [Amended]**

20. In § 260.12, paragraph (b)(1), the words "September 30, 1988," are removed and the words "April 30, 1989" are inserted in their place.

## PART 284—CERTAIN SALES TRANSMISSION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

21. The authority citation for Part 284 continues to read as follows:

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**Authority:** Natural Gas Act, 15 U.S.C. 717–717w (1982) as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 1982; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1979 Comp., p. 142.

**§ 284.22 [Amended]**

22. In § 284.221, paragraph (b)(1), the words "September 30, 1988," are removed and the "March 31, 1989," are inserted in their place.

**Note.**—These Appendices Will Not Be Published in the Code of Federal Regulations.

**Appendix A—Petitions for Rehearing of Order No. 493**

(1) Algonquin Gas Transmission Company [1]
(2) ANR Pipeline Company and Colorado Interstate Gas Company [1]
(3) Apple Computer, Inc. [1]
(4) Arkla, Inc. [1]
(5) Citizens Energy Corporation and Citizen Gas Supply Corporation
(6) CNG Transmission Corporation [1]
(7) Columbia Gas Transmission Corporation [1]
(8) El Paso Natural Gas Company [1]
(9) Enron Interstate Pipelines [1]
(10) Interstate Natural Gas Association of America [1]
(11) Iowa-Illinois Gas and Electric Company
(12) Natural Gas Pipeline Company of America
(13) Northwest Pipeline Corporation [1]
(14) Tennessee Gas Pipeline Company [1]
(15) Texas Eastern Transmission Corporation [1]
(16) Transcontinental Gas Pipe Line Corporation
(17) United Gas Pipe Line Company [1]

**Appendix B—Commission Responses to Technical Questions on the Record Formats for the FERC Forms**

*A. General Technical Questions*

INGAA argues that the Commission should not alter existing reporting requirements. According to INGAA, Order No. 493 changes filing requirements and adds to the reporting burden by asking for detailed and narrow codification of reported information and by imposing rigid standards on reporting gas measurement data. INGAA proposes that data currently reported in uncoded form should remain that way, and that codes should be removed from all formats where they do not exist in current forms. INGAA also proposes that the Commission modify forms to allow other pressure and temperature standards in order to continue current filing conventions. Finally, INGAA proposes that the tariff record format allow pipelines to file them using up to all 255 characters in order to reflect that variations in line length in existing tariffs.

ANR & CIG point out that the Commission is requiring companies to provide buyer/seller codes in FERC Form No. 2. ANR & CIG argue, that these codes are not maintained in a schedule Record ID reference. ANR & CIG propose that these codes should be resequenced as appropriate. ANR & CIG also argue that these codes are not maintained in a number of instances and may not be available.

United argues further that utilization of FERC codes requires conversion from current data to an accurate set of codes number, *i.e.*, DOE/EIA Buyer/Seller codes, FIPS State/County Codes, etc.

Enron specifically argues that the sequencing system in FERC Form No. 2 will be difficult to administer. ANR & CIG point ut that the sequence number is presently required to be sequential at the total file level. ANR &CIG argue this is extremely burdensome in developing files and related footnotes and should be modified to be in sequence at the record level. The sequence number is generated at the schedule/record level—not the file level.

The Commission believes the record format for the forms should duplicate the data elements and level of detail on the current paper copy version. Therefore, the Commission is correcting the record formats in those cases where additional data or detail was incorporated in the record formats. Also, the Commission is deleting the requirement to provide Buyer/Seller Codes for companies other than the respondent, where these codes are not required in the existing form. The Commission does not believe that use of the FIPS numeric code for state indentification is an added burden because it is a one time software conversion. Therefore, the FIPS code should be used when specified in a record format. The Commission is providing a list of the FIPS state codes in Appendix B. Additionally, FIPS state codes are listed in FIPS Pub. 6–3, available from the National Bureau of Standards, Department of Commerce. The Commission is also making reporting of gas measurement date consistent with the temperature and pressure base requirements for each form as it now exists in the paper copy. Finally, applicants should note that if they were not required to file cetain data elements or sechedules on the paper copy filing, then they will not be required to file that data on the electronic filing.

Some of the applicants argue that the sequence and cross referencing of records should be revised.[1] Specifically, they argue that the Commission should change the definition of sequence number to refer to record ID item rather than schedule ID. INGAA proposes an alternative approach to footnotes. For each record that reflects a footnote, INGAA suggests that the record formats include a footnote reference number instead of the current footnote indicator. Northwest, Enron, ANR & CIG and United point out that the footnote records provide space for a ten-position reference number in columns 11 through 20. Northwest points out, that the reference number described in the General Instructions contains thirteen positions including schedule ID, record ID, sequence numer and item location number. Arkla also argues that the handling or footnotes is unnecessarily complicated. Arkla proposes that the number of the footnote should be put in the record rather than the number of the record in the footnote.

The Commission is amending the record formats to provide 13 positions for the reference ID is all footnote records, in accordance with the General Instructions. The Commission has used this footnote formatting method for other forms currently filed on an electronic medium with the Commission. (*See* FERC Form Nos. 542 and 592.) The Commission is also clarifying the definition of sequence number to make it clear that sequence numbers are assigned at the schedule/record level rather than at the file or schedule level.

INGAA argues that the treatment of "not applicable" is not the same across the forms. On those forms where it was omitted, the Commission is adding the "NA" requirement for character data which is not applicable.

Texas Eastern argues that the proposed diskette format in Order No. 493 is different from that of other media allowed and is cumbersome and unwieldy. Texas Eastern argues that extra and unnecessary data manipulation is required to reformat the most popular spreadsheet programs into the required ASCII character code. Texas Eastern recommends that natural gas companies be allowed to adjust the record length to either 240 or 255 bytes as necessary. Texas Eastern and INGAA recommend that the diskette format be modified in order that both tape and diskette formats be indentical.

[1] Indicates applicant filed supplemental comments.

[1] *See, e.g.*, INGAA, El Paso, Tennessee Gas, Transco and United Gas Pipeline Co.

The Commission is accepting filings on tape or diskette in the same format, *i.e.*, applicants may use the fixed-length record formats and data layouts specified in the reporting instructions for diskettes as well as tapes.

According to INGAA, the use of the character "|" as a delimiter is unusual and nonstandard. ANR & CIG argue that vertical bar and comma deliminators should be eliminated from the formats because they are unnecessary and require a substantial amount of effort to be included in the development of the formats. The Commission notes that applicants can avoid using the delimiter "|" reporting the required information in the character positions indicated in each schedule/record.

According to Northwest, the general information records for various schedules require entry of the report date/submittal date defined as the date the document is filed. Northwest argues that it cannot guarantee that the date it expects the filing to be made will be the date the filing is actually made. Northwest proposes that either the definition should be changed to call for a submittal date, the field should be left blank for the Commission to filed in upon receipt of the filing, or the Commission should clarify that a "best efforts" forecast of the actual filing date will be sufficient. The Commission is revising the report date/submittal date fields in the record formats to reflect "date completed", instead of "date submitted".

Northwest also notes that its word processing files contain special formatting characters, such as codes for underlining and centering. Northwest requests the Commission to clarify whether it can leave in these codes to avoid editing of schedules which are primarily text, such as tariff and certificate filings.

The Commission points out that most word processing software has an output mode that is pure ASCII. The Commission will accept text files in ASCII format. No standard convention exists at this time for underlining and centering, bold print, italics, or choice of fonts.

ANR & CIG argue that a standard personal computer spread sheet should be developed by the Commission which could be used by natural gas companies in order to develop the required formats

The Commission is committed to providing software to the natural gas industry which is being written for government use and has utility for the industry. At this time, it is not possible for the Commission to develop software which would be of value only to natural gas companies who are personal computer users.

ANR & CIG argue that the Commission should consider making available the option of filing data on a cartridge. The Commission is modifying the filing instructions to specify that filings can be made on 9-track magnetic tape, on 18-track tape cartridge, or on PC diskette.

ANR & CIG point out that the Commission has suggested that all gas volume data be reported at a pressure of 14.73 psia and a temperature of 60° F. ANR & CIG argue that this is a reporting requirement not previously required by the Commission. According to ANR & CIG, the Commission should be aware that many companies report data at pressures other than 14.73 psia. ANR & CIG argue that companies should be allowed to continue reporting their data as they have done in the past.

The Commission does not agree that this represents a new reporting requirement. The Commission points out that, currenty, FERC Form Nos. 2, 8, 11, 14 and 15, with require volumes to be reported at 60° F and 14.73 psia. Additionally, while FERC Form No. 2A does not explicitly require volumes to be reported at these standards, the determination of who must file is based on volumes computed at 60° F and 14.73 psia. FERC Form No. 18 requires all volumes to be reported in MMcf at 14.73 psia and at 60° F. However, dekatherms may be used if a conversion factor based on average heat content is supplied to allow conversion to Mcf. A new data item—average Btu content per cubic foot—will be added to Schedule R7, Record 01 to provide the conversion capability. Respondents can still report in MMcf or dekatherms in the automated format.

According the ANR & CIG, the record formats do not specifically label the record keys. They argue that key identification would enable recognition of sort sequences and record splits caused by key item breaks. United also suggests that clarification is needed to identify the record keys to ensure the correct sort order/sequence of records prior to the assignment of sequence numbers.

The Commission will identify the record key for each schedule/record and will make it available to interested parties when the edit criteria are available.

ANR & CIG note that, with regard to the tape submittals, record layouts are required to be fixed in length at 255 characters. They argue that it would be more efficient to allow variable length records on large files to free up space allocated to blank filled data items. While many natural gas companies may have the capability to use variable length records, others may not. In addition, the Commission is now permitting the same fixed length formats to be used for both types of diskettes. The Commission believes that this will simplify the reporting burden for most respondents. The Commission, therefore, will not accept variable length records.

ANR & CIG note that for its computers, and possibly other companies' computers, the leading negative sign within numeric items requires special handling. According to ANR & CIG, since the tape is acceptable in EBCDIC format, then the numerics should be acceptable in EBCDIC zoned decimal format. ANR & CIG also note that its computers, and possibly other companies' computers, require that positional decimal points be treated in a specific manner. According to ANR & CIG, an implied decimal placement should be used because this decimal position is specified within the item definition.

The Commission points out that the specifications for reporting numeric data are actually picture or display formats similar to what is used to produce printed output. The numeric data reported on tape/diskette should be written utilizing appropriate picture/display formats so that "." and "-" are recorded as required in the reporting instructions. The Commission will not accept zoned decimal numerics.

According to ANR & CIG, General Instruction 3 requires a sequence number to be assigned to all records. The instruction requires the sequence number to be zero filled. ANR & CIG note that certain personal computer software programs, such as Lotus, do not accommodate this requirement. Therefore, ANR & CIG suggest this requirement be made optional. ANR & CIG point out that this General Instruction is also duplicated under General Instruction 5.

Applicants may file the sequence number as an integer, right justified. However, the footnote reference ID must be constructed as specified in the General Instructions. The sequence number to be concatenated [2] with the schedule ID, record ID, and item location to form the footnote reference, must be a 6-digit character numeric with leading zeroes when required.

ANR & CIG point out that General Instruction 4(c) states: "Report all money items rounded to the nearest

[2] Webster's Dictionary defines this term to mean to connect or link in a series or chain.

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dollar except where noted." According to ANR & CIG, throughout the record formats this requirement is referred to in various ways. ANR & CIG argue that one consistent reference in the general instruction is all that is required. ANR & CIG argue the record formats should refer back to the general instruction. The Commission is correcting the record formats for consistency. Applicants can refer to Appendix C, List of Record Format Corrections, for specific changes.

ANR & CIG argue that General Instructions 4(d) and (e) indicate new volumetric data should be reported. According to ANR & CIG, some of the individual record formats have the same instructions. (*See, e.g.*, item numbers 476 and 477.) ANR & CIG argue that there is no need to have this instruction in two places. The Commission notes that instructions are repeated in some instances for the sake of clarity. It is not clear to the Commission from ANR & CIG's comments what volumetric data is considered "new data".

ARN & CIG point out that the Commission is now requiring that certain schedules designated as working papers be included in the record formats along with the normally filed rate case schedules. They argue that this represents a new requirement. ANR & CIG argue that the Commission should consider whether this new requirement is appropriate.

The Commission believes this is not a new requirement. Certain of the schedules identified in § 154.63(f) are designated as being included in the working papers. If schedules designated as working papers are required to be filed in paper copy for a particular rate filing, they must now be filed on an electronic medium. Schedules which do not have to be included in the paper copy version will not be required in the electronic version either. The Commission will discuss this issue in the implementation conferences. However, the Commission notes that it has not revised the regulations identifying the materials which must be included in a rate filing—just the medium in which they must be filed.

Arkla argues that a glossary is required to assure the use of consistent terminology and the submission of the data desired. Arkla argues that more explicit explanations are required of what goes into each data field and their intended purpose. Additionally, Arkla argues that the Commission must establish edit rules for the acceptance criteria for all fields, including valid values, ranges of values, and types of characters permitted.

The Commission believes this issue is more significant for rate filings. A glossary should not be necessary for data submitted in the forms since the Commission believes that most natural gas companies have enough experience with the forms to understand the meaning of the data requirements. The Commission will make available edit criteria for each form when they are developed. The Commission will review the need for a glossary, data dictionary, edit rules, etc., for rate filings at the implementation conference.

Arkla also argues that the record layouts are not always correct. Arkla believes that in some instances they are overlapping and in others there are not enough positions defined to hold the data. The Commission is correcting overlapping and abbreviated character position errors.

Arkla points out that the proposed record formats require the creation of edited data fields, even though neither Arkla nor Commission personnel create or store them in this way. Arkla believes this is a situation where the systems are currently compatible and need not be changed.

Arkla is correct that the record formats do require picture/display formats which may be different from the way numeric data are stored on Arkla's computer. However, the electronically filed data should be identical to the paper copy filing. The Commission concludes that there is no inconsistency.

Tennessee Gas argues that there are several fields specified as numeric which would be better specified as character. For example, Tennessee Gas notes that in current filings the term "various" is used in many fields that are defined by the new forms as numeric.

The Commission notes that Tennessee Gas does not cite specific examples. However, other applicants have identified certain fields where this problem occurs. The Commission is changing these fields from numeric to character data to permit applicants to report "various." if "various" is the response the applicant wants to make and the field for recording the information remains a numeric field, applicants should include a footnote to the record to explain or provide the "various" information.

United asks how to include/define special symbols on an electronic medium, *i.e.*, square root, approximately equal, etc. The Commission recognizes that it is not possible to include or define special code symbols such as the square root symbol on an electronic medium using the ASCII code set specified. Where it is necessary to use symbols, applicants should utilize a footnote and describe the reported information in the text of the footnote.

United argues that the format of the paper copy reports to be submitted to the Commission is not specifically outlined in the technical specifications. United believes that clarification is needed to specify that the paper copy formats are identical to those currently being submitted.

For the forms, the paper copy formats should reasonably approximate those currently being submitted. An exact duplicate of the form is not required, *i.e.*, labels and data fields should be arranged as they appear on the form, but vertical and horizontal lines are not necessary if the rows and columns are spaced in an easily-readable format. The Commission will defer specifying a paper copy format for rates, tariffs, and certificates until after the implementation conference in September.

*B. FERC Form No. 2*

Enron argues that the electronic transfer formats needlessly require more detail than is currently requested. The Commission notes that Enron does not provide specific examples. However, the Commission is revising the record formats to correspond as closely as possible to the paper copy version of the forms. The list of corrections to the record formats in Appendix C identifies these changes.

Texas Eastern argues that, in FERC Form No. 2, additional or new information is requested at page 264 and at page 160. Texas Eastern argues that the Commission should not alter existing reporting requirements within the existing forms. The Commission is revising the record format for Revenue From Transportation of Gas For Others (FERC Form No. 2, pages 312 and 313) so that Distance Transported is a character field with 4 spaces. This will allow "various" to be entered in an abbreviated form for distance transported by recording "var" as in prior paper copy filings of FERC Form No. 2. The record format for Transmission System Peak Deliveries (FERC Form No. 2, page 518) contains all of the paper copy data elements for this schedule. However, applicants should follow the same procedures for electronic filings as they follow for paper copy filings. If certain data has not been required or reported on the paper copy version, there should be no change for the electronic version.

Enron argues that in General Instruction Number 3A, the blank field indicator is inconsistent and difficult to

follow. ANR & CIG also argue that, in General Instruction 3.(a)(i)(ii), the Commission requires that "not applicable" numeric fields be identified with ".001" or "0" depending on the type of information. ANR & CIG argue that this is confusing and increases data entry time. ANR and CIG recommend that all "not applicable" numeric fields use "0".

The Commission will make the instructions for reporting that a data element is "Not Applicable" to an applicant consistent on all forms. The Commission needs to ensure that a response is made to each required data element in a schedule/record. In so doing, the Commission believes it is necessary to distinguish between a true value of zero and the case where the applicant is stating that there is no information to report. The Commission believes the general instruction is a reasonable approach to the problem. Since this approach is used consistently in all forms, the same source code can be used for all forms.

Enron argues that, in General Instruction Number 3F, the identification of nonapplicable information is extraneous input and of no value. Presently, Enron simply notes "Not Applicable", which it believes should be sufficient. Additionally, ANR & CIG note that General Instruction 3 (F) states, "For any schedules or records that are not applicable to the respondent, state the reasons in the letter of transmittal." ANR & CIG argue that the stating of reasons is a new requirement and should be omitted if it cannot be justified. The Commission is eliminating General Instruction 3F.

Enron argues that in the Balance Sheet, Schedule 54 (Miscellaneous Gas Plant/-Production Properties), the Commission requests information which is redundant and duplicative of the information provided in the Balance Sheet Schedules 10 and 11. The Commission notes that the two items of data required in Schedule F5, Record 54 correspond to the data presently required on line no. 1 on pages 214 and 215 of the paper copy version of Form No. 2 (Ed. 12–87).

Enron argues that, in the Income Statement Section, Schedule 31 (Exploration and Development Expenses), the Commission requests delivery state FIPS codes. According to Enron, this is a needless new requirement of information not provided before. The Commission points out that the FERC Form No. 2 instructions on page 326 presently require subheadings and subtotals for Exploration and Development Costs for each state. While the Commission has not previously required FIPS codes to identify states in the past, the Commission is adopting this means of reporting states in electronic filings. For the sake of consistency, the Commission will retain the requirement to report the state's FIPS Code in the electronic filing.

Enron notes that all of the transportation schedules are requiring path information. According to Enron, Income Account Schedules (8), (34) and (37) are requiring information by each receipt and delivery point. Enron notes that this will require the reporting of miles and volume for each individual path. According to Enron, data is not currently collected or reported in this manner. Enron believes this change will require substantial changes in data collection and needless voluminous documentation. Enron points out that, previously, information of this nature was shown in less detail by contract number. Enron believes that it is difficult or impossible to present the information in the prescribed manner. The Commission does not intend to impose any new information requirement. The Commission points out that this information is currently required on FERC Form No. 2; however, applicants should use the same level of detail for reporting receipt and delivery points on the electronic filing as for previous paper copy filings.

United notes that a different level of detail is required for FERC Form No. 2 data on the electronic format. United points, for example, to Revenue from Transportation of Gas of Others (Schedule F6 Record Code 08), which requires dollars, volumes and miles transported showing receipt and delivery at the state and county level. United points out that it is currently summarized and reported as "various points in Louisiana and Texas," etc. United also points to Schedule F5, Record 21, Investments, which now requires security name, data acquired and date of maturity. Investments (FERC Form No. 2, pages 222 and 223) is Record ID 22, not 21. The instructions on page 222, at 2a, identify each of the items listed by United. The Commission believes there is no increase in the reporting requirement. There may, however, be a difference in what is requested on the paper copy version of the FERC Form No. 2 and the manner in which United actually reports data on investments.

Enron argues that there is new information required in FERC Form No. 2 and other forms that is not in conformance with Generally Accepted Accounting Principles (GAAP). Enron suggests that information required in such forms should track GAAP. Generally Accepted Accounting Principles are not at issue in this rulemaking docket. Enron did not support its statement with specific examples. However, the Commission notes that, after the modifications in this order, the record formats for the electronic filings will contain the same requirements as the paper copy forms.

In Schedule F4, Record ID 06, page 18, ANR and CIG argue that officers' salaries should be considered confidential. The Commission does not consider the data in FERC Form No. 2 to be of a confidential nature. The Commission will not make an exception for officers' salaries.

ANR & CIG argue that, in Schedule F4, Record Id 06, page 50, "Contra Primary Account Affected" cannot be correlated to any field. The Commission is revising Schedule F4, Record 23 to permit reporting of "Contra Primary Account" for each field as necessary, consistent with the paper copy version of FERC Form No. 2.

ANR & CIG note that Schedule F4, Record ID 24 and 25, page 53–56, should be conformed to FASB No. 95. Additionally, United declares that it cannot commit to a time frame when the reporting requirements continue to change. United points out that, under RM88–18–000, the format for protions of FERC Form No. 2 are being revised. As the applicants have noted, the Commission is addressing this issue in RM88–18–000. The Commission anticipates final action in this separate rulemaking docket in the near future. The Commission will revise these formats to reflect action taken in that rulemaking docket at that time.

ANR & CIG argue that, in Schedule F5, Record ID 33, 35, 39, 40, 44 and 45, pages 110–111, 113, 117–119, 124–127, a record for totals and/or subtotals does not exist. The Commission is including totals and subtotals on the record formats consistent with the paper copy version of FERC Form No. 2. The Commission will include totals on the record formats consistent with the paper copy version of FERC Form No. 2.

ANR & CIG note that, in Schedule F6, Record ID 2, pages 148–150, volumes were not previously required. According to ANR & CIG, the Commission should consider whether this information is necessary. Only those volumes required to be reported on the paper copy version of FERC Form No. 2 (*i.e.*, the unshaded entries on FERC Form No. 2, page 301) need to be reproted on the electronic filing. The Commission believes there is no increase in the reporting requirement.

Also, in Schedule F6, Record ID 6, page 157, ANR & CIG note that Btu

content was not previously required, and therefore request that the Commission consider whether this information is necessary. The Commisison points out that, presently, the paper copy version of FERC Form No. 2 requests the Approx. Btu per Cubic Foot for the volume of gas sold. Some companies report the Btu in a footnote or in parentheses after the volume. The Commission concludes that this is not a new reporting requirement.

ANR & CIG note that, in Schedule F6, Record ID 8, page 160, the Commission is requiring companies to provide information by state and county location for transportation contracts. ANR & CIG note that this information is not presently supplied by ANR. The Commission does not intend to impose any new information requirement. The Commission is modifying this schedule/record to be consistent with existing paper copy reporting requirements of FERC Form No. 2.

ANR & CIG note that, in Schedule F6, Record IDs 8 and 37, page 160–161 and 209–210, the Commission needs to clarify how to report multiple delivery points and to explain why this new information is required. Moreover, according to ANR & CIG, the information for miles transported is not easily attainable. The Commission is revising these schedules/records to enable applicants to report the required information as it is currently reported in paper copy form.

ANR & CIG note that, in Schedule F6, Record ID 42, page 217, the Commisison has failed to provide a field for account or subtotal record for the accounts. The Commission is modifying Schedule F6, Record 42 to permit consistent reporting of information in the electronic filing and paper copy reports.

ANR & CIG point out that, in Schedule F7, Record ID 7, page 232, no field is provided for the account or amount charged for outside professional and other consulting services. The Commission points out that this is a text record in free-form format, corresponding to the existing paper copy version.

ANR & CIG note that, in Schedule F7, Record ID 9–13, pages 235–242, the instructions still require a split between old and new gas. According to ANR & CIG, this requirement was removed pursuant to a Commission letter order dated January 14, 1988. The Commission believes this comment refers to a proposed revision to the paper copy version of FERC Form No. 2. Any changes to FERC Form No. 2 as a result of a final rule in other rulemaking dockets will be incorporated in the electronic version.

ANR & CIG argue that, in Schedule F7, Record ID 16, page 249, the Commission needs to clarify how nongas power is to be correlated to the rest of the data provided. ANR & CIG's problem with this schedule is not clear. However, the Commission believes they are asking how the Commission uses data currently requested in FERC Form No. 2, rather than how applicants need to report the required information electronically. The Commission's use of the data reported is not at issue here.

ANR & CIG not at that, in Schedule F7, Record ID 18, page 252, no subtotal is provided for "Gathering and Storage Field" breakdowns. The Commission is revising Schedule F7, Record 18 to be consistent with the paper copy version of FERC Form No. 2.

ANR & CIG argue that the Commission has changed the item numbers for the current FERC Form No. 2. ANR & CIG argue that unless such change can be justified, the Commission should allow the item numbers to remain the same as the current FERC Form No. 2. The Commission does not understand this comment. The item numbers used to identify data elements on the record formats do not match the line numbers on the paper copy version. The Commission believes this is not feasible since item numbers provide a unique reference to a data element whereas line numbers do not.

United points out that it does not have in every case the name from which gas is received or to which it is delivered. According to United, it only has the shipper's name. (*See, e.g.*, Schedule F6, Record 06; Schedule F6, Record 36 and Schedule F6, Record 37.) The Commission points out that there is no receipt/delivery data requested in Schedule F6, Record ID 36. The Instructions on pages 310 and 332 of FERC Form No. 2 corresponding to Record Id's 06 and 37 identify each of the items listed by United. The Commission believes that there is no increase in reporting requirement. There may, however, be a difference in what is requested on the paper copy version of the FERC Form No. 2 and the manner in which United reports data on investments.

United asks how are certifications to be accomplished. United also asks how the contents on an electronic medium can be attested to by outside auditors.

Outside auditors will be required to certify that the paper copy version is correct. The Commission's regulations at § 385.2011(c) require that the letter of transmittal contain a subscription stating that the paper copy contains the same information as the electronic medium. The burden is on the natural gas companies to ensure that data on the electronic medium is the same as data on the paper copy certified to by an outside auditor.

*C. FERC Form No. 8*

United argues that there are no instructions for character fields which do not apply on both FERC Form Nos. 8 and 15. The Commission is revising the General Instructions to specify that "NA" should be recorded in any character field where the data item is not applicable to the applicant.

United argues that there is a contradiction between the general and technical specifications on record codes associated with initial filing. Texas Eastern also argues that Records 3 and 4 (pages 15 and 16) are inconsistent with the General Instructions on page 2, at Section III, second paragraph.

The Commission is correcting the General Instructions at page 2, section III, second paragraph. The Commission is revising that paragraph to state that Records 01 and 02 must be reported each time the form is submitted and Records 03 and 04 are required on the initial report or when changes or additions occur. Natural gas companies that have already filed the paper copy version of FERC Form No. 8 need not refile the "initial" report again on an electronic medium. Also, in Schedule U1, Record 02, the Commission is deleting "Nov. 1 to date" from Item 13, Type of Gas, Codes 5 (Injections) and 6 (Withdrawals).

United notes that co-owner storage information is requested in the record layout, but this information has not been requested in the previous paper copy submittals. Co-owner storage information (Schedule U1, Record 04) and data on underground storage reservoirs (Schedule U1, Record 03) are required only on the initial FERC Form No. 8 report, and when changes or additions are made to information previously reported. Natural gas companies that have filed at least one FERC Form No. 8 should already have filed this information and will not be required to refile the "initial" report on an electronic medium. These record formats should be used, however, by natural gas companies either filing FERC Form No. 8 for the first time, or revising a previous report.

*D. FERC Form No. 11*

Texas Eastern argues that in Record F9–08 (page 26), final field, "Filler" is not contiguous to prior field. The Commission is revising the character positions for the Filler.

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*E. FERC Form No. 15*

Since the Commission is reverting back to the current format for FERC Form No. 15, and allowing it to be used for tape or diskettes, applicants' technical comments on the record formats are moot. The filing instructions for FERC Form No. 15 will be the instructions presently required in the form.

*F. FERC Form No. 16*

Texas Eastern argues that, in Record R7–01 (page 12), character positions of fields from " Data Submitted" and below overlap previous fields. The Commission is correcting the character positions.

United asks whether the paper copy report formats are the same as they were previously? If they are not, what are the new formats? If they are the same, United notes that the paper copies do not match the report formats, contradicting the technical specifications. The Commission notes that United has not indicated specific instances where the paper copies do not match the record formats. However, Commission staff has determined that a schedule/record for reporting detailed information on anticipated new supply was inadvertently omitted. A schedule/record for reporting this information is being added to the FERC Form No. 16 reporting instructions. With this change the electronic filing should be consistent with the paper copy version.

United argues that the column positioning is wrong for Record Codes 01 and 07 (some fields overlap each other in the record layout). The Commission is revising the character position errors in Schedule R7, Records 01 and 07. The corrections are listed in Appendix C.

United believes that there is an incorrect statement on page 2 providing that Schedule R7 should contain, "For one year of actual and projected experience, record Codes 02 through 07." United believes the record codes used for actual and projected experience are 02 through 10. United is correct. The Commission is modifying Section IV of the General Information for FERC Form No. 16, accordingly.

If a data item is not applicable and is a Gas Volume, Gas Cost, or Gas Revenue, United asks whether the numeric value ".001" should be entered in the field for this item rather than leaving it blank. If the item does not contain volumetric data, United argues the value "0" should be entered. The Commission believes that neither of these values match the 1 decimal position format for nonblank entries, requiring a data item to be formatted in two different ways. The Commission is revising the General Instructions to describe more explicity how to report "not applicable" numeric data. United is correct that the Commission is requiring the numeric ".001" to be recorded in any numeric field where the requested data item is not applicable to the applicant and the data item is a volume or revenue item. All other numeric fields which are not applicable to the respondent should have the numeric "0" or "0.0" recorded in the specified character positions. The intention is for the applicant to ensure that any value written to a numeric field is in fact numeric. If necessary, the applicant may want to move the reported information into a character type variable prior to writing the tape to satisfy this requirement.

United notes that this form is filed on either September 1, or April 1, covering a one year period. United points out, however, that the technical specification layouts contain January through December amounts. United asks how will these be processed? The Commission believes that data applicable to a particular month should be placed in the character positions designated for that month regardless of whether the FERC Form No. 16 is filed April 1 or September 1.

Enron argues that, in Schedule 2 (The Supply, Requirements, and Net Deficiency or Surplus Summary—Item Number 24, Basis for Pipeline Requirements), there is a new data request of which Enron has not had sufficient time to determine the degree of difficulty in obtaining this information. The Commission believes this is not a new reporting requirement. The Commission points out that, on page 3 of the current FERC Form No. 16, instructions are provided for entering the "Total Requirements" volume (Schedules I and V, line No. 11), and for indicating how the requirements are determined.

Enron argues that, in Schedule 4 (The Contract and Delivery Volumes by Pipeline Supplier Report), natural gas companies are required to provide buyer-seller codes which have not been supplied previously and do not appear to be needed or useful. The Commission points out that the current FERC Form No. 16 instructions direct the applicant to "Enter seller codes where possible". (*See* FERC Form No. 16 instructions, page 2, Item VI). The Commission, therefore, has provided character positions for seller codes. However, the same guidelines apply—enter the codes where possible.

Enron argues that, in Schedule 7 (Deliveries, Requirements, and Net Deficiency or Surplus by Customer Report—Item Number 93), the County Data has never been requested previously. This report is presently generated from a mainfram computer and the County Data is not currently available. Enron argues that it will be difficult and burdensome to add the county information. Enron requests to the Commission to reconsider whether such information is actually useful or needed. The Commission points out that, on the current paper copy version of FERC Form No. 16, Delivery Point/County information is requested in Column (p) of Schedules IV and VIII. The Commission also notes that there is no specific instruction for identifying delivery points. The electronic record format for these schedules (Schedule R7, Record 07) requests the name of the county where gas is delivered, with no further identification of the delivery point. Delivery Point/County data may not have been reported by Enron previously, but the Commission can find no basis for their claim that it has never been requested.

Enron further asks the Commission to reconsider whether this information is useful or needed. Reconsideration of the data currently required to be reported by the Commission's regulations and on its forms is beyond the scope of this rulemaking docket.

**Appendix C.—Correction Notice; Order No. 493 Record Formats**

This appendix identifies the corrections and revisions to the electronic filing record formats for FERC Form Nos. 2, 2A, 8, 11, 14, 15 and 16. A complete copy of the record formats, as revised by Order No. 493–A, is available from the Commission's electronic bulletin board service—the Commission Issuance Posting System (CIPS)—and on diskettes from the Commission's photocopying contractor in Room 1000, 825 North Capitol Street NE; Washington, DC 20426.

The record formats for rate, tariff, and certificate filings will be discussed at the conferences scheduled on September 12 and 13, 1988. The Commission will reissue corrected record formats for these filings by November 30, 1988.

*General Corrections to Record Formats for All Forms*

1. General Information:

The opening paragraph under "What to Submit" should be revised to:

All data will be submitted on 9-track magnetic computer tape(s), 18-track magnetic computer cartridge(s), or on computer diskette(s).

Delete "9-track" from the first line of paragraph (1) under "What to Submit."

2. General Instructions:

The instruction for the sequence number (Item 3 or 4, refer to form) has been revised to indicate that sequence numbers should be assigned on a schedule/record basis, not on a file or schedule basis, and that sequence numbers should be right justified.

3. Exhibit A:

Item 1, line 1 has been revised to:

All data tapes should be 9-track open reel or 18-track cartridge with American National. . . .

Item 3 should be replaced with:

Recording density may be 1600 BPI (Bits per inch) or 6250 BPI (9-track tape) or 38,000 BPI (18-track tapes).

4. Exhibit B

A new procedure has been inserted after Item #2, which reads as follows:

The information required for this form may be reported on the diskette(s) exactly as specified in the general and specific instructions following the data layout for each schedule/record. Alternatively, the required information may be delimited as specified in Items 4 through 9 of this exhibit B.

Items 3 through 8 have been renumbered 4 through 9.

5. Footnotes

The footnote record has been revised so that the Reference Number is now a 13-character field. Character positions should be revised as follows:

Reference Number: 11–23.

Footnote: 24–155.

Filler: 156–255.

6. State Codes from FIPS Pub. 6–3 are listed on the following page.

### FIPS State Codes

[Reference: Federal Information Processing Standards (FIPS) Publication 6–3]

| State | Code |
|---|---|
| Alabama | 01 |
| Alaska | 02 |
| Arizona | 04 |
| Arkansas | 05 |
| California | 06 |
| Colorado | 08 |
| Connecticut | 09 |
| Delaware | 10 |
| Dist. of Col. | 11 |
| Florida | 12 |
| Georgia | 13 |
| Hawaii | 15 |
| Idaho | 16 |
| Illinois | 17 |
| Indiana | 18 |
| Iowa | 19 |
| Kansas | 20 |
| Kentucky | 21 |
| Louisiana | 22 |
| Maine | 23 |
| Maryland | 24 |
| Massachusetts | 25 |
| Michigan | 26 |
| Minnesota | 27 |
| Mississippi | 28 |
| Missouri | 29 |
| Montana | 30 |
| Nebraska | 31 |
| Nevada | 32 |
| New Hampshire | 33 |
| New Jersey | 34 |
| New Mexico | 36 |
| New York | 36 |

### FIPS State Codes—Continued

[Reference: Federal Information Processing Standards (FIPS) Publication 6–3]

| State | Code |
|---|---|
| North Carolina | 37 |
| North Dakota | 38 |
| Ohio | 39 |
| Oklahoma | 40 |
| Oregon | 41 |
| Pennsylvania | 42 |
| Rhode Island | 44 |
| South Carolina | 45 |
| South Dakota | 46 |
| Tennessee | 47 |
| Texas | 48 |
| Utah | 49 |
| Vermont | 50 |
| Virginia | 51 |
| Washington | 53 |
| West Virginia | 54 |
| Wisconsin | 55 |
| Wyoming | 56 |

Source: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

*FERC Form No. 2*

1. Table of Contents.

New pages have been added after pages 119 and 200. A new table of contents with correct page numbers is included at the end of this section.

2. General Instructions.

Delete Instruction 3(F); reletter Instructions 3(G) through 3(M).

3. Record Formats:

(Note: Page numbers reference the original record formats published with Order 493).

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 10 | 6 | Date of report | Under comments, change "filed" to "prepared". |
| 50 | | Note | Add the following: "Specify contra primary account affected for any item in a footnote." |
| 50 | | Contra primary account affected | Delete this item. |
| 50-52 | 211-228 | All | Decrease each char. pos. by 7. See revised record format for schedule F4, record 23. |
| 52 | | Filler | Change char. pos. to 227-255. |
| 80 | 408 | Date originally included in this account | Change char. pos. to 144-149. |
| 80 | 409 | Date expected to be used in utility service | Change char. pos. to 150-155. |
| 80 | 410 | Balance at end of year | Change char. pos. to 156-167. |
| 80 | | Filler | Change char. pos. to 168-255. |
| 81 | 412 | Date originally included in this account | Change char. pos. to 144-149. |
| 81 | 413 | Date expected to be used in utility service | Change char. pos. to 150-155. |
| 81 | 414 | Balance at end of year | Change char. pos. to 156-167. |
| 81 | | Filler | Change char. pos. to 168-255. |
| 88 | 444 | Total debit or credit items | Change this item to "Total Other Debit or Credit Items". |
| 107 | 547 | Account No | Change char. pos. to 36-42. |
| 107 | 548 | Credit amount | Change char. pos. to 43-54. |
| 107 | 549 | Balance at end of year | Change char. pos. to 55-66. |
| 107 | | Filler | Change char. pos. to 67-255. |
| 110 | Add | Stock code | After sequence number, under character position, add "11"; under data type, add "Numeric"; under comments, add: "Common Stock, Code=1; Prefered Stock, Code=2 Total Common Stock, Code=3; Total Preferred Stock, Code=4". |
| 110-111 | 559a-568 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 33. |
| 113 | | Information reported code | Comments should read: "individual item, code=1; account total, code=2; grand total, code=3". |
| 113 | Add | Account No | Under character position, add "12-18"; Under Data Type, add "Numeric"; Under Comments, add "Specify Account Number Reported". |
| 113 | 573 | Item description | Change char. pos. to 19-150. |
| 113 | 574 | Amount | Change char. pos. to 151-162. |
| 113 | | Filler | Change char. pos. to 163-255. |

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 117 | Add | Account No | Under character position, add "12-18"; under data type, add "Numeric"; under comments, add "Specify Account Number Reported". |
| 117-118 | 585-593 | All | Increase each char. pos. by 7. See revised record format for Schedule F5, Record 39. |
| 118 | | Filler | Change char. pos. to 225-255. |
| 119 | Add | Long-term debt code | Under character position, add "11"; under data type, add "Numeric"; under comments, add: "unamortized debt expense, code=1; unamortized premium on long-term debt, code=2; unamortized discount on long-term debt, code=3; other, code=4". |
| 119 | 593a-601 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 40. |
| 121-122 | | do | Assign item Nos. 608a-608f to items in character positions 11-62. |
| 124 | | Information reported code | Comments should read: "Individual item, code=1; Sub-total, code=2; Grand Total, code=3". |
| 124 | Add | Type of tax | Under character position, add "12"; Under data type, add "numeric; under comments add "Federal Tax, code=1; State Tax, code=2; Other, code=3". |
| 124-125 | 609-616 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 44. |
| 125 | | Filler | Change char. pos. to 229-255. |
| 126 | | Information reported code | Comments should read: "Individual item, code=1; Sub-total, code=2; Grand Total, code=3". |
| 126 | Add | Type of tax | Under character position, add "12"; under data type, add "numeric"; under comments add "Federal Tax, code=1; State Tax, code=2; Other, code=3." |
| 126-127 | 609-624 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 45. |
| 127 | | Filler | Change char. pos. to 241-255. |
| 136 | | Account subdivision code | Under Comments, the text following "code=8;" should be revised to "other facilities, code=9; total, [federal income tax] code=10; total, [state income tax] code=11; total [local income tax] code=12; total (account 281) code=13." |
| 141 | 690 | Narrative descriptor of item reported | Change char. pos. to 123-222. |
| 141 | | Filler | Change char. pos. to 223-255. |
| 142 | Add | Balance at end of year (account 105) | Assign item No. 690a. |
| 142 | Add | Balance at end of year (account 105.1) | Assign item No. 690b. |
| 148 | | Information reported | Revise comments to: "operating revenues, code=1; Mcf of natural gas sold, code=2, (see note 16a)". |
| 150 | Add | Note 16a | See revised Schedule F6, Record 2. |
| 159 | | Note | Change "Specific Instruction Number 15" to "Specific Instruction Number 42". |
| 159 | 760e | Average revenue per Mcf | Revise comments to: "(item 759a÷item 758a)×100; (in cents), format f(7,2)". |
| 160 | 765c | Receipt county | Change item to "Receipt Point Description". |
| 160 | 765c | do | Under comments, after "located", add "or designation of the receipt point on the respondent's pipeline system". |
| 160 | 765f | Delivery county | Change item to "Delivery Point Description". |
| 160 | 765f | do | Under comments, after "Located", add "or designation of the delivery point on the respondent's pipeline system". |
| 161 | 766 | Distance transported | Change char. pos. to 166-175; change data type to character; under comments, revise to "(in miles); if various distances enter 'various'". |
| 161 | 767-771 | All | Increase each char. pos. by 6. See revised record format for schedule F6, record 8. |
| 161 | | Filler | Change char. pos. to 234-255. |
| 162 | | do | Change char. pos. to 124-255. |
| 200 | Add | Information reported code | Under character position, add "11"; under data type, add "numeric"; under comments, add "individual item, code=1; state total, code=2; grand total, code=3". |
| 200 | 1017 | Field | Change char. pos. to 12-46; revise comments to "field name; leave blank for totals". |
| 200 | 1018 | County | Change char. pos. to 47-76; revise comments to "county where major portion of field is located; leave blank for totals". |
| 200 | 1018a-1023 | All | Increase each char. pos. by 21. |
| 200 | | Filler | Change char. pos. to 131-255. |
| 204 | 1037 | Company name | Change char. pos. to 12-56. |
| 204-205 | 1038a-1048 | All | Decrease each char. pos. by 5. |
| 205 | | Filler | Change char. pos. to 246-255. |
| 206 | | Purpose for which gas was used | Change char. pos. to 11 only. |
| 210 | 1059 | Distance transported | Change data type to character; under comments, revise to "(in miles); if various distances enter 'various'". |
| 217 | Add | Information reported code | Under character position, add "11"; under data type, add "numeric"; under comments add "individual item, code=1; subtotal, code=2; total, code=3". |
| 217 | Add | Account No | Under character position, add "12-18"; under data type, add "numeric"; under comments add "specify account number reported". |
| 217 | 1079 | Item reported | Change char. pos. to 19-150. |
| 217 | 1080 | Income deduction or interest charge | Change char. pos. to 151-162. |
| 217 | | Filler | Change char. pos. to 163-255. |
| 221 | 1087 | Amount charged | Change char. pos. to 197-208. |
| 221 | 1088 | Deferred to account 186 | Change char. pos. to 209-220. |
| 221 | 1089 | Contra account | Change char. pos. to 221-227. |
| 221 | 1090 | Amount amortized during year | Change char. pos. to 228-239. |
| 221 | 1091 | Deferred in account 186, end of year | Change char. pos. to 240-251. |

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 221 | ..... | Filler | Change char. pos. to 252–255. |
| 252 | Add | Information reported code | Under char. pos. add "11"; under data type, add "numeric"; under comments, add "individual item, code = 1; subtotal, code = 2; total, code = 3". |
| 252 | 1267 | Field and storage identification | Change char. pos. to 12–143. |
| 252 | 1268 | Total miles of pipe | Change char. pos. to 144–155. |
| 252 | ..... | Filler | Change char. pos. to 156–255. |
| 268 | 1346a | Total 3-day peak curtailments | Change char. pos. to 89–100. |
| 268 | 1351a | Curtailment of others | Change char. pos. to 177–188. |

**4. Additional/replacement pages:**

Replace pages i–vi with new pages i–vi.

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*FERC Form No. 2A*

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Record (47) Gas Plant in Service (Accts. 101, 102, 103, and 106)—Part 8 on page 100 has been deleted. Accordingly, all subsequent record numbers and associated page numbers are decreased by one. A new table of contents with the correct record and page numbers is included at the end of this section.

2. Record Formats:

Item 566–570 from deleted Record (47) will be added to the end of Record (46). The complete corrected Record 46 is reprinted at the end of this section.

Other corrections:

(Note: Page numbers reference the original record formats published with Order 493).

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 4 | | | Under the substitute records column, record numbers 47 and above should be reduced by one. |
| 7 | | | Change "eighty (80)" to "seventy-nine (79)". |
| 47 | 235 | BUT content | Change char. pos. to 12–15. |
| 47 | 236 | Natural gas purchase volume | Change char. pos. to 16–27. |
| 47 | 237 | Natural gas purchase cost | Change char. pos. to 28–39. |
| 48 | 238 | Average cost per Mcf | Change char. pos. to 40–49. |
| 48 | | Filler | Change char. pos. to 50–255. |
| 83 | Note | | At end of note text, add "Specify Contra Primary affected for any item in a footnote". |
| 83 | 443 | Balance—beginning of year | Change char. pos. to 11–22. |
| 83 | 444 | Total credits to retained earnings | Change char. pos. to 23–34. |
| 83 | 445 | Total debits to retained earnings | Change char. pos. to 35–46. |
| 83 | 446 | Balance transferred from income | Change char. pos. to 47–58. |
| 83 | 447 | Total appropriations of retained earnings | Change char. pos. to 59–70. |
| 83 | 448 | Total dividends declared—preferred stock | Change char. pos. to 71–82. |
| 84 | 449 | Total dividends declared—common stock | Change char. pos. to 83–94. |
| 84 | 450 | Unappropriated undistributed subsidiary earnings | Change char. pos. to 95–106. |
| 84 | 451 | Unappropriated retained earnings balance—end of year | Change char. pos. to 107–118. |
| 84 | 452 | Total appropriated retained earnings | Change char. pos. to 119–130. |
| 84 | 453 | Total appropriated retained earnings—amortization reserve, Federal | Change char. pos. to 131–142. |
| 84 | 454 | Total appropriated retained earnings | Change char. pos. to 143–154. |
| 84 | 455 | Total retained earnings | Change char. pos. to 155–166. |
| 84 | 456 | Balance—beginning of year [debit or credit] | Change char. pos. to 167–178. |
| 84 | 457 | Equity in earnings for year—credit | Change char. pos. to 179–190. |
| 84 | 458 | Dividends received—debit (—) | Change char. pos. to 191–202. |
| 85 | 459 | Other charges | Change char. pos. to 203–214. |
| 85 | 460 | Balance—end of year | Change char. pos. to 215–226. |
| 85 | | Filler | Change char. pos. to 227–255. |
| 102 | 582 | Total debit or credit items | Change "Total" to "Other". |
| 159 | | Salary and/or fee | Change char. pos. to 56–62. |
| 159 | | Filler | Change char. pos. to 63–255. |

**3. Additional/Replacement Pages:**

**Replace pages i–iii with new pages i–iii.**

**Replace pages 98–99 with the following new pages 98–99.**

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**(46) Gas Plant in Service (Accounts 101, 102, 103, and 106)—Part 7; SUBSTITUTE SCHEDULE/RECORD**

**Note:** See Exhibit D, Specific Instruction Number 10 for information required in this schedule/record.

| Item No. | Item | Character position | Data type | Comments |
|---|---|---|---|---|
| | Schedule ID | 1–2 | Character | Sch=F8. |
| | Record ID | 3–4 | Numeric | Code=46. |
| | Sequence No. | 5–10 | ....do | Right justified, zero filled, see general instruction 4. |
| | Transaction type | 11 | ....do | Balance at beginning of year, code=1; balance at end of year, code=2; additions, code=3; retirements, code=4; adjustments, code=5; transfers, code=6. |
| | 6. General Plant | | | |
| 553 | Land and land rights | 12–23 | Numeric | [Account 389.] |
| 554 | Structures and improvements | 24–35 | ....do | [Account 390.] |
| 555 | Office furniture and equipment | 36–47 | ....do | [Account 391.] |
| 556 | Transportation equipment | 48–59 | ....do | [Account 392.] |
| 557 | Stores equipment | 60–71 | ....do | [Account 393.] |
| 558 | Tools, shop, and garage equipment | 72–83 | ....do | [Account 394.] |
| 559 | Laboratory equipment | 84–95 | ....do | [Account 395.] |
| 560 | Power operated equipment | 96–107 | ....do | [Account 396.] |
| 561 | Communication equipment | 108–119 | ....do | [Account 397.] |
| 562 | Miscellaneous equipment | 120–131 | ....do | [Account 398.] |
| 563 | Subtotal | 132–143 | ....do | Sum of items 553 throu 562. |
| 564 | Other tangible property | 144–155 | ....do | [Account 399.] |
| 565 | Total general plant | 156–167 | ....do | Sum of items 563 and item 564. |
| 566 | Total (accounts 101 and 106) | 168–179 | ....do | Sum of items 464, 495, 528, 537, 552, and 565. |
| 567 | Gas plant purchased | 180–191 | ....do | See specific instruciton 10, part h. |
| 568 | Gas plant sold (—) | 192–203 | ....do | Do. |
| 569 | Experimental gas plant unclassified | 204–215 | ....do | Amount ($). |
| 570 | Total gas plant in service | 216–227 | ....do | Sum of items 566 thru 569. |
| | Filler | 228–255 | ....do | Blank filled. |

*FERC Form No. 8*

1. General Information:

Part III, When to Submit, paragraph 2 has been revised to:

All information requested in Schedule U1, Records 01 and 02 must be reported each time the form is submitted.

Information requested in Schedule U1, Records 03 and 04 is required only on the initial report. When changes or additions occur to the information initially reported in Scheduled U1, Records 03 and 04, the information should be resubmitted in its entirety.

2. General Instructions:

After Instruction 2A, insert a new 2(B) as follows:

Enter "NA" wherever a character item is not applicable.

Reletter old Instructions 2(B) through 2(H) to Instructions 2(C) through 2(I).

3. Record Formats:

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| Page | Item No. | Item | Correction |
|---|---|---|---|
| 11 | 6 | Date submitted | Change "filed" to "prepared". |
| 13 | 13 | Type of gas | Under comments, delete "Nov 1 to date" from injections, code=5 and withdrawals, code=6. |

*FERC Form No. 11*

1. General Instructions:
After Item 2A, insert a new (B) as follows:

Enter "NA" wherever a character item is not applicable.

Reletter old 2(B) through 2(H) to new 2(C) through 2(I).

2. Record Formats:

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 10 | 6 | Month reported | Change char. pos. to 162–165. |
| 10 | | Date submitted | Change char pos. to 166–171. |
| 10 | | Type of filing reported | Change char. pos. to 172. |
| 10 | | Filler | Change char. pos. to 173–255. |
| 25 | 91 | Volumes of gas purchased from major gas pipelines | Under comments, change "$(000)" to "(MMCF)". |
| 25 | 92 | Volumes of gas purchased from other gas pipelines | Do. |
| 25 | 93 | Volumes of other gas purchases | Do. |
| 25 | 94 | Total volumes of natural gas purchases | Do. |
| 26 | | Filler | Change char. pos. to 210–255. |

*FERC Form No. 14*

1. General Instructions:
After Item 2A, insert a new (B) as follows: Enter "NA" wherever a character item is not applicable.

Reletter old 2(B) through 2(H) to new 2(C) through 2(I).

2. Record Formats:

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 8 | 4 | Date of report | Under Comments, change "filed" to "prepared". |
| 8 | 7 | Contact | Change Char. Pos. to 131–160. |
| 8 | 8 | Title of contact | Change Char. Pos. to 161–175. |
| 8 | 9 | Address of contact | Change Char. Pos. to 176–235. |
| 8 | 10 | Telephone of contact | Change Char. Pos. to 236–245. |
| 8 | | Filler | Change Char. Pos. to 246–255. |
| 9 | 15 | Docket Nos. | Change Char. Pos. to 137–146. |
| 9 | 16 | January peak day | Change Char. Pos. to 147–148. |
| 9 | 17 | January peak quantity | Change Char. Pos. to 149–155. |
| 9 | 18 | January quantity received/shipped (Mcf) | Change Char. Pos. to 156–165. |
| 10 | 19 | January quantity received/shipped (MMBtu) | Change Char. Pos. to 166–175. |
| 10 | 20 | January receipts/costs | Change Char. Pos. to 176–185. |
| 10 | 21 | February peak day | Change Char. Pos. to 186–187. |
| 10 | 22 | February peak quantity | Change Char. Pos. to 188–194. |
| 10 | 23 | February quantity received/shipped (Mcf) | Change Char. Pos. to 195–204. |
| 10 | 24 | February quantity received/shipped (MMBtu) | Change Char. Pos. to 205–214. |
| 10 | 25 | February receipts/costs | Change Char. Pos. to 215–224. |
| 10 | | Filler | Change Char. Pos. to 225–255. |
| 11 | 15 | Docket Nos. | Change Char. Pos. to 11–20. |
| 11 | 26 | March peak day | Change Char. Pos. to 21–22. |
| 11 | 27 | March peak quantity | Change Char. Pos. to 23–29. |
| 11 | 28 | March quantity received/shipped (Mcf) | Change Char. Pos. to 30–39. |
| 11 | 29 | March quantity received/shipped (MMBtu) | Change Char. Pos. to 40–49. |
| 11 | 30 | March receipts/costs | Change Char. Pos. to 50–59. |
| 12 | 31 | April peak day | Change Char. Pos. to 60–61. |
| 12 | 32 | April peak quantity | Change Char. Pos. to 62–68. |
| 12 | 33 | April quantity received/shipped (Mcf) | Change Char. Pos. to 69–78. |
| 12 | 34 | April quantity received/shipped (MMBtu) | Change Char. Pos. to 79–88. |
| 12 | 35 | April receipts/costs | Change Char. Pos. to 89–98. |
| 12 | 36 | May peak day | Change Char. Pos. to 99–100. |
| 12 | 37 | May peak quantity | Change Char. Pos. to 101–107. |
| 12 | 38 | May quantity received/shipped (Mcf) | Change Char. Pos. to 108–117. |
| 12 | 39 | May quantity received/shipped (MMBtu) | Change Char. Pos. to 118–127. |
| 12 | 40 | May receipts/costs | Change Char. Pos. to 128–137. |
| 12 | 41 | June peak day | Change Char. Pos. to 138–139. |
| 13 | 42 | June peak quantity | Change Char. Pos. to 140–146. |
| 13 | 43 | June quantity received/shipped (Mcf) | Change Char. Pos. to 147–156. |
| 13 | 44 | June quantity received/shipped (MMBtu) | Change Char. Pos. to 157–166. |
| 13 | 45 | June receipts/costs | Change Char. Pos. to 167–176. |
| 13 | 46 | July peak day | Change Char. Pos. to 177–178. |
| 13 | 47 | July peak quantity | Change Char. Pos. to 179–185. |
| 13 | 48 | July quantity received/shipped (Mcf) | Change Char. Pos. to 186–195. |
| 13 | 49 | July quantity received/shipped (MMBtu) | Change Char. Pos. to 196–205. |
| 13 | 50 | July receipts/costs | Change Char. Pos. to 206–215. |
| 13 | | Filler | Change Char. Pos. to 216–255. |
| 14 | 15 | Docket Nos. | Change Char. Pos. to 11–20. |

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 14 | 51 | August peak day | Change Char. Pos. to 21–22. |
| 14 | 52 | August peak quantity | Change Char. Pos. to 23–29. |
| 14 | 53 | August quantity received/shipped (Mcf) | Change Char. Pos. to 30–39. |
| 14 | 54 | August quantity received/shipped (MMBtu) | Change Char. Pos. to 40–49. |
| 14 | 55 | August receipts/costs | Change Char. Pos. to 50–59. |
| 15 | 56 | September peak day | Change Char. Pos. to 60–61 |
| 15 | 57 | September peak quantity | Change Char. Pos. to 62–68. |
| 15 | 58 | September quantity received/shipped (Mcf) | Change Char. Pos. to 69–78. |
| 15 | 59 | September quantity received/shipped (MMBtu) | Change Char. Pos. to 79–88. |
| 15 | 60 | September receipts/costs | Change Char. Pos. to 89–98. |
| 15 | 61 | October peak day | Change Char. Pos. to 99–100. |
| 15 | 62 | October peak quantity | Change Char. Pos. to 101–107 |
| 15 | 63 | October quantity received/shipped (Mcf) | Change Char. Pos. to 108–117 |
| 15 | 64 | October quantity received/shipped (MMBtu) | Change Char. Pos. to 118–127 |
| 15 | 65 | October receipts/costs | Change Char. Pos. to 128–137 |
| 15 | 66 | November peak day | Change Char. Pos. to 138–139. |
| 16 | 67 | November peak quantity | Change Char. Pos. to 140–146. |
| 16 | 68 | November quantity received/shipped (Mcf) | Change Char. Pos. to 147–156. |
| 16 | 69 | November quantity received/shipped (MMBtu) | Change Char. Pos. to 157–166. |
| 16 | 70 | November receipts/costs | Change Char. Pos. to 167–176. |
| 16 | 71 | December peak day | Change Char. Pos. to 177–178. |
| 16 | 72 | December peak quantity | Change Char. Pos. to 179–185. |
| 16 | 73 | December quantity received/shipped (Mcf) | Change Char. Pos. to 186–195. |
| 16 | 74 | December quantity received/shipped (MMBtu) | Change Char. Pos. to 196–205. |
| 16 | 75 | December receipts/costs | Change Char. Pos. to 206–215. |
| 16 | ..... | Filler | Change Char. Pos. to 216–255. |
| 17 | ..... | Docket Nos. | Change Char. Pos. to 11–20. |
| 17 | 76 | Total quantity received/shipped (Mcf) | Change Char. Pos. to 21–30. |
| 17 | 77 | Total quantity received/shipped (MMBTU) | Change Char. Pos. to 31–40. |
| 17 | 78 | Total receipts/Costs | Change Char. Pos. to 41–50. |
| 17 | 79 | Annual Weighted Average | Change Char. Pos. to 51–57 |
| 17 | 80 | .....do | Change Char. Pos. to 58–67. |
| 17 | ..... | Filler | Change Char. Pos. to 68–255. |

*FERC Form No. 15*

The record formats from Order No. 493 for Form No. 15 have been deleted. Respondents will continue to file using the previous 9-track magnetic tape format. Respondents may also file on diskette using the same record formats.

*FERC Form No. 16*

1. General Information:

In Part IV, Description of Form, revise "Record 02 through Record 07" to "Record 02 through Record 11" in both (1) and (2).

2. General Instructions:

a. In Item 2(D), change "Schedule R1, Record 01, character positions 80–84" to "Schedule R7, Record 01, character positions 228–231." Change "MDT" to "Mdt"

b. In Item 6, change "Record 11" to "Record 12", where it occurs.

c. A new Item 9D has been added:

D) State Code: Federal Information Processing Standards Publication 6–3 (FIPS Pub 6–3): Counties and County Equivalents of the States of the United States and the District of Columbia. Copies of this publication may be obtained from the National Technical Information Service (NTIS), U. S. Dept. of Commerce, Springfield, Virginia 22161.

3. Specific Instructions:

Item 31 has been added:

31 Anticipated New Supply Volume: Anticipated new supply refers to gas not presently flowing but anticipated to be attached during the projected period. Report the anticipated new supply for each month of the projected period.

4. Record Formats:

A new Record 11 has been added to the Form 16 record formats. This record corresponds to Schedule V, Attachment 1—Anticipated New Supply Sources, on the hardcopy version of Form No. 16. The record code for the footnotes record has been revised from 11 to 12. Records 11 and 12 are reprinted at the end of this section. The list of schedules at page 11 has been modified accordingly.

Other Corrections:

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 11 | ..... | ..... | Insert a new line (11) which reads: (11) The Anticipated New Supply Sources; Renumber old line (11) to (12). |
| 12 | 7 | Date submitted | Change Char. Pos. to 197–202. Under Comments, change "date filed" to "date prepared" |
| 12 | 8 | First Day of actual period covered | Change Char. Pos. to 203–208. |
| 12 | 9 | Last day of actual period covered | Change Char. Pos. to 209–214. |
| 13 | 10 | First day of projected period covered | Change Char. Pos. to 215–220. |
| 13 | 11 | Last day of projected period covered | Change Char. Pos. to 221–226. |
| 13 | 12 | Type of filing reported | Change Char. Pos. to 227 |
| 13 | Add | Conversion factor | Under Character Position, add "228–231"; under Data Type, add "Numeric"; under Comments, add "Enter average Btu content per cubic foot if volumes are reported in Mdt; otherwise, enter 0". |
| 13 | | Filler | Change Char. Pos. to 232–255. |
| 14 | ..... | Month reported | Revise Comments to: (mm); month reported in this record; enter "13" to report annual total data. |
| 17 | ..... | .....do | Revise Comments to: (mm); month reported in this record; enter "13" to report annual total data. |
| 19 | ..... | Deliveries or contract volume | Assign Item No. 48a. |
| 25 | 93 | County | Change "numeric" to "character". |

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| Page | Item No. | Item | Correction |
|---|---|---|---|
| 25 | 94 | Service code | Change Char. Pos. to 55. |
| 25 | 95 | January volume | Change Char. Pos. to 56–64. |
| 25 | 96 | February volume | Change Char. Pos. to 65–73. |
| 25 | 97 | March volume | Change Char. Pos. to 74–82. |
| 25 | 98 | April volume | Change Char. Pos. to 83–91. |
| 26 | 99 | May volume | Change Char. Pos. to 92–100. |
| 26 | 100 | June volume | Change Char. Pos. to 101–109. |
| 26 | 101 | July volume | Change Char. Pos. to 110–118. |
| 26 | 102 | August volume | Change Char. Pos. to 119–127. |
| 26 | 103 | September volume | Change Char. Pos. to 128–136. |
| 26 | 104 | October volume | Change Char. Pos. to 137–145. |
| 26 | 105 | November volume | Change Char. Pos. to 146–154. |
| 26 | 106 | December volume | Change Char. Pos. to 155–163. |
| 26 | 107 | Annual total | Change Char. Pos. to 164–175. |
| 26 | | Filler | Change Char. Pos. to 176–255. |
| 27 | | Customer type | Revise Comments to: Interstate Pipeline, code=1; Non-pipeline Customer, code=2; Total for All Customers for All States, code=3. |
| 28 | | Deliveries or contract volume | Assign Item No. 123a. |

5. Additional/Replacement Pages: Replace page 33 with enclosed new pages 33–35; revise page numbers for pages 34–39 to 36–41.

(11) The Anticipated New Supply Sources.

| Item no. | Item | Character position | Data type | Comments |
|---|---|---|---|---|
| | Schedule ID | 1–2 | character | Sch=R7 |
| | Record ID | 3–4 | numeric | Code=11. |
| | Sequence No | 5–10 | numeric | Right justified, zero filled, see general instruction 3. |
| | Information reported code. | 11 | numeric | Individual anticipated supply source, code=1; total anticipated new supply, code=2. |
| 150 | Field name and/or block No. | 12–51 | character | Enter name of field and/or block number. |
| 151 | Docket No | 52–66 | character | Enter docket number if certificate authority is being sought. |
| 152 | January volume | 67–75 | numeric | (mmcf); see specific instruction 31 |
| 153 | February volume | 76–84 | numeric | Do. |
| 154 | March volume | 85–93 | numeric | Do. |
| 155 | April volume | 94–102 | numeric | Do. |
| 156 | May volume | 103–111 | numeric | Do. |
| 157 | June volume | 112–120 | numeric | Do. |
| 158 | July volume | 121–129 | numeric | Do. |
| 159 | August volume | 130–138 | numeric | Do. |
| 160 | September volume | 139–147 | numeric | Do. |
| 161 | October volume | 148–156 | numeric | Do. |
| 162 | November volume | 157–165 | numeric | Do. |
| 163 | December volume | 166–174 | numeric | Do. |
| 164 | Total annual volume | 175–186 | numeric | Sum of items 152 thru 163. |
| | Filler | 187–255 | character | Blank filled. |

(12) The Footnotes.

| Item no. | Item | Character position | Data type | Comments |
|---|---|---|---|---|
| | Schedule ID | 1–2 | character | Sch=R7 |
| | Record ID | 3–4 | numeric | Code=12. |
| | Sequence No | 5–10 | numeric | Right justified, zero filled, see general instruction 3. |
| | Reference No. | 11–23 | character | Reference item being footnoted; see general instruction 5. |
| | Footnote | 24–155 | character | Enter footnote text, see note 1. |
| | Filler | 156–255 | character | Blank filled. |

**Note 1:** A total of 132 character positions are provided for entering footnote text. If the respondent chooses to enter information in less than the 132 allowed character positions, the information should be left justified and the remainder of the record (line) should be blank filled through character position 255.

[FR Doc. 88-17944 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

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**18 CFR Parts 154, 157, 260, 284, 385 and 388**

**[Docket No. RM87-17-000]**

## Natural Gas Data Collection System; Availability of Software Programs

August 4, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Availability of Software Programs.

**SUMMARY:** This notice provides that, on August 3, 1988, the Commission issued software programs to produce a hard copy printout of FERC Form Nos. 8 (Underground gas storage report) and 11 (Natural gas pipeline company monthly statement), when filed on an electronic medium.

**DATE:** Software programs for FERC Form Nos. 8 and 11 were available on August 3, 1988.

**ADDRESS:** Requests for copies of the software programs and accompanying documentation should be directed to: Public Reference Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, (202) 357-8118.

**FOR FURTHER INFORMATION CONTACT:** Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8995.

**SUPPLEMENTARY INFORMATION:** In Order No. 493 (53 FR 15,023 (Apr. 27, 1988)), the Commission stated that, on July 30, 1988, it would make available to the public software to produce a hard copy printout of certain data filed with the Commission on an electronic medium. These filings included FERC Form Nos. 8, 11, and 16 and rate, tariff and certificate applications.

On August 1, 1988, the Commission issued Order No. 493-A, (44 FERC ¶ 61,202) correcting to the record formats, extending the implementation dates for electronic data submission of FERC Form Nos. 8, 11, and 16, and staying implementation for electronic data submission of rate, tariff, and certificate applications.

Software programs to produce a hard copy printout of FERC Form Nos. 8 and 11, when filed in accordance with the record formats as corrected by Order No. 493-A, are now available. The Commission is revising the software program for FERC Form No. 16 to include a schedule omitted from the original record format. The Commission will release the software program for FERC Form No. 16 in mid-August, 1988. (Order 493-A extended the implementation date for electronic data submission of FERC Form No. 16 from September 30, 1988 to April 30, 1989.) Software programs for rate, tariff and certificate applications will not be available until at least 60 days prior to the implementation date for these filings.

The programming language used for the print software is ANSI 1974 Standard COBOL. The source code is available on hard copy and on diskette from the Commission's Public Reference Branch in Washington, DC. Persons requesting this information, in person or by written request, should refer to: "RM87-17-001: Software Programs for Electronic Data Submission of FERC Form Nos. 8 and 11." Although the software is available without charge, the Commission has a fee for photocopying and a fee of $5.00 per diskette.

Test data for both forms are included on the diskette. The diskette also contains object programs for FERC Form Nos. 8 and 11 which can be executed on an IBM-compatible PC. A copy of the output produced by the software and additional information on the use of this software are contained in documentation provided with the hard copy and the diskette.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18016 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

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**18 C.F.R. Part 271**

**[Docket No. RM86-7-000; Order No. 473]**

## Compression Allowances and Protest Procedures Under NGPA Section 110; Correction

Issued: August 5, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final Rule; Correction Notice.

**SUMMARY:** On June 1, 1988, the Federal Energy Regulatory Commission issued a listing of producer contracts with pipelines where the producers were attempting to collect a delivery allowance pursuant to an "area rate clause," as required by 18 CFR 271.1104(h) (1987). 53 FR 21415 (June 8, 1988). This notice is issued to correct that listing in certain particulars.

On May 2, 1988, Northwest Pipeline Corporation (Northwest) revised its listing. This revision was not included in the listing issued on June 1, 1988. In addition the June 1, 1988 listing incorrectly states that Northwest protested the request for delivery allowances by BelNorth Petroleum Corp., contract date August 14, 1976, FERC rate schedule number 100. Northwest concurs in this request.

The June 1, 1988 listing also incorrectly stated that Mountain Fuel Resources, Inc. (MFR) [1] concurred in all of the Producer requests that were listed. MFR concurred only in BelNorth Petroleum Co. Contract No. 429. The list is corrected to state that MFR protests the remaining producers' claims listed. The MFR and Northwest revised listings are attached.

**DATE:** As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protests must be filed by November 8, 1988.

**ADDRESS:** An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Arthur W. Iler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5275.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this correction notice is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's

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[1] Mountain Fuel Resources, Inc. has changed its name since its initial filing to Questar Pipeline Company

copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Acting Secretary.*

**Mountain Fuel Resource, Inc. (MFR)**

MFR filed the following:

*Producer-Sellers That MFR Believes Are Entitled to the Delivery Allowance*

First Seller

BelNorth Petroleum Co., [Now Enron Oil & Gas Co.], Contract No. 429

*Producer-Seller That MFR Believes Are Not Entitled to the Delivery Allowance*

First Seller

Amoco Production Co., Rate Schedule 507
BelNorth Petroleum Corp. [Now Enron Oil & Gas Co.], Contract Nos. 125 and 429
BHP Petroleum (Americas) Inc., Rate Schedule 123
Champlin Petroleum Co., Rate Schedule 125
Chevron U.S.A., Inc., Rate Schedule 100
Eason Oil Co.
Getty Oil Co. [Now Texaco, Inc.]
Sante Fe Energy Co., Contract No. 290
Southland Royalty Co., Contract No. 256
Southland Royalty Co. & Tom Marsh Inc., Contract No. 172
Superior Oil Co. [Now Mobil Oil Corp.], Contract No. 200

NORTHWEST PIPELINE CORPORATION'S LIST OF FIRST SELLERS AND GAS PURCHASE CONTRACTS FOR WHICH NORTHWEST PROTESTS THE FIRST SELLER'S ASSERTION OF CONTRACTUAL AUTHORITY TO COLLECT DELIVERY ALLOWANCES PURSUANT TO AN AREA RATE CLAUSE

| First seller | Contract date | Rate schedule No. |
|---|---|---|
| **Sept. 14, 1987, List** | | |
| Arco Oil & Gas Co | Oct. 4, 1967 | 604. |
| | June 12, 1967 | 312. |
| BelNorth Petroleum Corp. | Oct 18, 1977 | 30. |
| | July 1, 1980 | 5 and 6. |
| | Oct. 13, 1980 | N/A. |
| | Nov. 26, 1980 | N/A. |
| | Apr. 17, 1981 | 1. |
| BHP Petroleum | Jan. 31, 1975 | 145. |
| Chandler & Simpson | Nov. 21, 1966 | N/A. |
| Chevron U.S.A., Inc | Jan. 27, 1960 | 99 |
| | Dec. 20, 1965 | 108. |
| | July 27, 1973 | 466. |
| | May 30, 1978 | N/A. |
| | Dec. 18, 1978 | N/A. |
| | July 31, 1980 | N/A. |
| | Mar. 16, 1981 | N/A. |
| | Apr. 1, 1983 | 99. |
| Conoco Inc | Aug. 25, 1961 | 408. |

NORTHWEST PIPELINE CORPORATION'S LIST OF FIRST SELLERS AND GAS PURCHASE CONTRACTS FOR WHICH NORTHWEST PROTESTS THE FIRST SELLER'S ASSERTION OF CONTRACTUAL AUTHORITY TO COLLECT DELIVERY ALLOWANCES PURSUANT TO AN AREA RATE CLAUSE—Continued

| First seller | Contract date | Rate schedule No. |
|---|---|---|
| Exxon Co., U.S.A | Aug. 23, 1957 | 210 |
| | Nov. 20, 1961 | 296 |
| Getty Oil Co | Aug. 28, 1980 | 449. |
| Martin Exploration Management. | May 18, 1979 | N/A |
| | Apr. 6, 1982 | N/A. |
| Mobil Oil Corp | June 6, 1972 | 484. |
| Tenneco Oil Co. [1] | Apr. 5, 1965 | 292. |
| | July 28, 1965 | 180. |
| | Feb. 25, 1966 | 198. |
| Quinoco Petroleum Inc.[2] | Jan. 25, 1977 | 19. |
| | Oct. 5, 1977 | 6 |
| | Oct. 12, 1977 | 9. |
| | Oct. 12, 1977 | 17. |
| | Oct. 12, 1977 | 18. |
| | Sept. 27, 1978 | 11. |
| Santa Fe Energy | May 23, 1972 | N/A. |
| | Aug. 2, 1973 | N/A |
| | July 1, 1980 | N/A. |
| **Apr. 28, 1988, Supplement** | | |
| Amoco Production Co | Oct. 23, 1979 | N/A. |
| | Oct. 31, 1980 | N/A. |
| Dorsey Buttram | Mar. 3, 1980 | N/A. |
| George P. Caulkins | Mar. 7, 1960 | N/A. |
| Crest Oil Co | Jan. 20, 1976 | N/A |
| Thomas A. Dugan | Oct. 7, 1966 | N/A. |

[1] Originally reported as Quinoco Petroleum Inc.
[2] Formerly GEO Oil & Gas Co.

NORTHWEST PIPELINE CORPORATION'S LIST OF FIRST SELLERS AND GAS PURCHASE CONTRACTS FOR WHICH NORTHWEST CONCURS WITH THE FIRST SELLER'S ASSERTION OF CONTRACTUAL AUTHORITY TO COLLECT DELIVERY ALLOWANCES PURSUANT TO AN AREA RATE CLAUSE

| First seller | Contract date | Rate schedule No. |
|---|---|---|
| **Sept. 14, 1987, List** | | |
| BelNorth Petroleum Corp. | Aug. 14, 1976 | 100. |
| **Apr. 28, 1988, Supplement** | | |
| Ambra Oil & Gas Co | Nov. 23, 1982 | N/A. |
| Walter J. Fees, Jr | May 3, 1983 | N/A. |

[FR Doc. 88-18108 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 87F-0331]**

## Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(*p*-ethylbenzylidene)sorbitol as a clarifying agent in propylene homopolymer and copolymer articles intended for contact with food. This action is in response to a petition filed by Mitsui Toatsu Chemicals, Inc.

**DATES:** Effective August 10, 1988; objections and requests for a hearing by September 9, 1988.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of November 6, 1987 (52 FR 42728), FDA announced that a food additive petition (FAP 7B4042) had been filed by Mitsui Toatsu Chemicals, Inc., 140 East 45th St., New York, NY 10017, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of bis(*p*-ethylbenzylidene) sorbitol as a clarifying agent in propylene homopolymer and copolymer articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the table in § 178.3295 should be revised as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the

agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 9, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearng is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61

2. Section 178.3295 is amended in the table by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.3295 Clarifying agents for polymers.**

* * * * *

| Substances | Limitations |
|---|---|
| Bis(*p*-ethylbenzylidene) sorbitol (CAS Reg. No. 79072-96-1). | For use only as a clarifying agent at a level not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2, where the copolymers complying with items 3.1 or 3.2 contain not less than 85-weight percent of polymer units derived from propylene, in contact with all food types except alcoholic beverages containing more than 20 percent by weight of alcohol; under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter. |

Dated: July 26, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88-18065 Filed 8-9-88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 24

**[Docket No. R-88-0831; FR-1676]**

### Governmentwide Debarment and Suspension

**AGENCY:** Department of Housing and Urban Development (HUD).

**ACTION:** Final rule; correction.

**SUMMARY:** HUD is correcting errors in the appeal and hearing procedures set forth at § 24.313(b)(2)(ii) which appeared in the **Federal Register** on May 26, 1988 (58 FR 19179).

**FOR FURTHER INFORMATION CONTACT:** Maryiea W Byrd, (202) 755-7200.

**SUPPLEMENTARY INFORMATION:** In its final governmentwide debarment and suspension regulations, HUD inadvertently omitted actions based on civil judgments from its designation of actions where the hearing is limited to an opportunity to submit documentary evidence and written briefs.

The following correction is made to HUD's Governmentwide debarment and suspension regulations published in the **Federal Register** on May 26, 1988 (58 FR 19179).

**§ 24.313 [Corrected]**

1. Section 24.313(b)(2)(ii), 3rd column on page 19184 which reads:

(ii) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

is revised to read as follows:

(ii) Where the action is based solely upon an indictment or conviction, civil judgment, or upon suspension or debarment by another Federal agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

Dated: August 4, 1988.

**Grady J. Norris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 88-17991 Filed 8-9-88; 8:45 am]

BILLING CODE 4210-32-M

## Office of the Secretary

### 24 CFR Part 24

**[Docket No. R-88-831; FR-1676]**

### Debarment, Suspension and Limited Denial of Participation; Contractors and Participants

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim Rule.

**SUMMARY:** On May 26, 1988, the Department of Housing and Urban Development (HUD) adopted a final common rule on debarment and suspension, and certain HUD-specific,

amendments. At that time HUD was unable to adopt certain interim provisions of the common rule because, under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o), the interim provisions were subject to prepublication review by the House and Senate Banking Committees. The statutory prepublication review requirement has now been met, and this rule will conform HUD's debarment procedures to those applicable to other departments and agencies as provided in the earlier-published common rule.

**DATES:** *Effective date:* October 6, 1988, however applicable from October 1, 1988.

*Comment due date:* October 11, 1988.

**ADDRESS:** Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Marylea W. Byrd, Office of General Counsel, Department of Housing and Urban Development, Room 10266, 451 7th Street SW., Washington, DC 20410, (202) 755–7200 [This is not a toll-free number].

**SUPPLEMENTARY INFORMATION:** On May 26, 1988, 24 Federal departments and agencies, including HUD, joined in the publication of a "Final rule and interim final rule" entitled Nonprocurement Debarment and Suspension (53 FR 19161). However, HUD explained in its agency-specific preamble (53 FR 19179), that it would delay offering the interim rule portions of the common rule (as they applied to HUD) for public comment until after completion of prepublication review of these rules by the House and Senate Banking Committees, as required under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o). This document has now completed that required review.

The coverage of the common rule, as proposed, was limited to *domestic* Federal nonprocurement programs. The interim provisions of the May 26, 1988 common rule remove the references to *domestic* nonprocurement programs and follow more closely the exemption set forth in the Executive Order for foreign governments and public international organizations. The sections affected by this change were published on May 26, 1988 by other Federal agencies on an interim final basis. This rule adopts these same provisions for HUD. These sections are: § 24.105(n), (addition of phrase beginning at "except" through the end of the definition); § 24.110(a) (deletion of the word "domestic" from the first introductory sentence only); § 24.110(a)(2)(ii); and § 24.200(c)(2).

Additionally, § 24.200(e)(i) of the HUD version of the final rule as published on May 26, 1988 is amended here by the removal of the phrase "or the purchase of HUD-owned housing units offered for all-cash sale without qualification at public sales." The all-cash sale exception was created on the theory that sanctioned individuals would pose no threat to the Department's Insurance Fund by participating in HUD all-cash sales, since the properties are sold without FHA mortgage insurance. However, following numerous instances of fraud and abuse of the "all-cash sales," exception, as outlined below, the Department is removing this exception to protect the integrity of the Insurance Fund.

In Denver, for example, individuals who have been sanctioned by HUD have purchased HUD properties at "all-cash sales" and have then obtained inflated appraisals before reselling the properties to "straw buyers" who qualified for FHA insurance. Subsequently, these straw buyers defaulted on the mortgages and HUD was required to pay inflated claims out of its FHA Insurance Fund, in addition to absorbing the holding costs of the reacquired properties. As a result of the exception in the current debarment regulations, the Department is unable to prevent future participation by these sanctioned individuals in all-cash public sales.

HUD's Regional Office in Seattle has reported other fraudulent conduct that more closely resembles a form of equity skimming: individuals assume FHA-insured mortgages, maintain the mortgage payments for a period of time, and then stop making payments while continuing to collect rent from tenants. Upon the assumptor's default, the mortgagee forecloses on the property and HUD pays the insurance benefits. The defaulting assumptor then repurchases the mortgaged property from HUD at an "all-cash" public sale, and repeats the cycle by reselling the property to an individual who qualifies for FHA insurance and assumes the indebtedness. This scheme has been carried out in over 40 instances in the Seattle Region.

HUD's Regional Office in Chicago also has reported approximately two dozen incidents during the past two years involving sanctioned individuals who purchased properties from HUD at "all-cash" public sales. Many of these schemes involved inflated appraisals and the use of straw buyers, similar to HUD's experience in Denver The loss to the Department's Insurance Fund averages $20,000–$25,000 per home, in addition to the holding cost incurred by HUD in reacquiring these properties.

Given the manner in which sanctioned individuals have manipulated the "all-cash sales" exception to obtain FHA-insured financing for single-family homes, and the substantial losses experienced by the Insurance Fund, HUD is removing this provision from the excepted transactions listed in the final debarment regulation. This will bring HUD single-family, property disposition standards in line with those of multi-family projects which already prohibit sales to sanctioned individuals.

**Other Matters**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981.

**List of Subjects in 24 CFR Part 24**

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Accordingly, 24 CFR Part 24 is amended as follows:

**PART 24—[AMENDED]**

1. The authority citation for 24 CFR Part 24 continues to read as follows:

**Authority:** Executive Order 12549, (Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

2. By adopting the interim provisions of the governmentwide debarment and suspension common rule as published

on May 26, 1988 (53 FR 19204). These provisions are republished below.

**§ 24.105 Definitions.**

* * * * *

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

* * * * *

**§ 24.110 Coverage.**

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

* * * * *

(2) * * *

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

**§ 24.200 Debarment and suspension.**

* * * * *

(c) * * *

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

3. By revising § 24.200(e)(1) to read as follows:

**§ 24.200 Debarment and suspension.**

* * * * *

(e) *Other exceptions.* (1) Sanctions under this part shall also not preclude the receipt of benefits from the sale of the personal residence of an excluded individual.

* * * * *

Dated: July 7, 1988.

**Carl D. Covitz,**

*Acting Secretary, Department of Housing and Urban Development.*

[FR Doc. 88-18082 Filed 8-9-88; 8:45 am]

BILLING CODE 4210-32-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[FRL-3427-1; FL-013]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Florida: 111(d) Plan for TRS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is today approving the Florida section 111(d) plan for control of total reduced sulfur (TRS) emissions from kraft pulp mills and tall oil plants which was submitted by the Florida Department of Environmental Regulation (FDER) on May 24, 1985, and was proposed for approval on October 28, 1986 (51 FR 39400). This notice, however, does not address the final approval of sections 17-2.600(4)(c)7 and 8, that allow the State to approve alternative emission limits or an alternative new technology without EPA approval. EPA will act to approve or disapprove these provisions in a later notice. This approach, approving the TRS plan while deferring action on the alternative emission limit and alternative new technology provisions, was requested by the FDER on January 8, 1988, in order to expedite the approval of the other portions of the plan. Since the emission limits and other provisions contained in the rules submitted with the TRS plan agree substantially with the emission limits suggested in the EPA guideline document entitled *Kraft Pulping—Control of TRS Emissions From Existing Mills* (EPA-450/2-78-003b), it is appropriate to move forward with the approval of the other rules as submitted. However, to complete its plan, the State is required pursuant to 40 CFR 60.24(e) to submit for EPA's approval individual compliance schedules containing acceptable increments of progress pursuant to 40 CFR 60.21(h); such schedules must meet the public hearing requirements of 40 CFR 60.23 or ones deemed equivalent by the Administrator pursuant to 40 CFR 60.23(g).

At this time, EPA is also approving a plan revision submited by the FDER on June 10, 1986; this revised a portion of the May 1985 submittal (Rule 17-2.980) which provided that the compliance calendar of events for sources subject to the plan would not start until EPA acted to finally approve the plan. Since EPA had not acted to approve the plan within the year following submission of the plan due to complications, Florida elected to start the compliance calendar of events on May 12, 1986. EPA is including this revision in this notice without previous proposal because EPA views it as a noncontroversial amendment to the plan which provides for earlier compliance with the emission limits that would have otherwise occurred due to delays in approving the plan.

Also, on August 14, 1986, The FDER submitted a revision which removed a portion of the original section 17-2.600(4)(c)8 which provided that the section would become inoperative if EPA should fail to approve it at the same time as it approved the other portions of the plan. This revision is duly noted and will be incorporated in the **Federal Register** notice addressing section 17-2.600(4)(c)7 and 8.

**DATES:** This rule will become effective on September 9, 1988.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301-8241.

**FOR FURTHER INFORMATION CONTACT:** Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** In accordance with section 111 of the Clean Air Act, "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for criteria pollutants (those for which National Ambient Air Quality Standards have been published) and noncriteria pollutants. The standards apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

A source in existence prior to the date on which EPA proposed new source performance standards for that

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particular source category is defined as an "existing source." Paragraph (d) of section 111 of the Clean Air Act requires states to develop plans for the control of emissions of the same non-criteria, or designated, pollutants from such "existing" sources. The requirements for such plans are set forth in Subpart B of 40 CFR Part 60. (November 17, 1975; 40 FR 53346). Since total reduced sulfur (TRS) is a designated pollutant, regulated under section 111(d) of the CAA, states are required to develop section 111(d) plans for the control of TRS emissions from existing kraft pulp mills contained in the state.

The TRS compounds regulated under section 111(d) are considered welfare-related pollutants. This means that although their effects are bothersome, they are not health-threatening, and some leeway may be allowed in their control. In other words, although EPA's guideline document (*Kraft Pulping-Control of TRS Emissions from Existing Mills* (EPA–450/2–78–003b)) suggests emission limits, control technologies, etc., limits other than those recommended by EPA may be adopted by the State provided adequate justification is given.

The FDER submitted its section 111(d) plan for control of TRS emissions from kraft pulp mills and tall oil plants on May 24, 1985. This submittal contained certification that adoption of the plan had been preceded by adequate notice and public hearing.

The plan as submitted contains all the elements needed for an approvable section 111(d) plan pursuant to 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the guideline document. This plan submittal included: regulations establishing emission standards for all affected sources along with the adoption of necessary definitions; regulations establishing the definitions; regulations establishing the procedures for the development of individual source compliance schedules to include increments of progress; regulations establishing test methods and procedures for determining compliance with the emission standards; an emission inventory of all designated facilities; regulations establishing procedures for monitoring the status of compliance with emission standards through record-keeping, periodic inspections, and testing; and documentation that the State has legal authority to carry out the plan.

For a more detailed discussion of the Florida TRS plan, please refer to the October 28, 1986, **Federal Register** (51 FR 39400). Further details pertaining to this plan are contained in the Technical Support Document. These documents are available for public inspection at EPA Regional office in Atlanta, Georgia and the Public Information Reference Unit in Washington, DC, whose addresses are listed above.

For the convenience of the reader, the following Florida Administrative Code Rules were revised as a result of the development of the TRS plan:

1. Rule 17–2.100 (Definitions)
2. Rule 17–2.600(4) (Kraft (Sulfate) Pulp Mills and Tall Oil Plants)
3. Rule 17–2.660 (Standards of Performance for New Stationary Sources (NSPS))
4. Rule 17–2.700 (Stationary Point Source Emissions Test Procedures)
5. Rule 17–2.710 (Continuous Monitoring Requirements)
6. Addition of a new part (Part IX) which includes new Rule 17–2.960 (Compliance Schedules for Specific Source Emission Limiting Standards) and 17–2.971 (Compliance Schedules for Continuous Monitoring Requirements).

Rule 17–2.660 was originally approved as part of the Florida state implementation plan (SIP). However, this action should not have been taken since NSPS regulations are not required by section 110 of the Act to be part of a SIP. EPA has no adverse comments on the proposed changes to Rule 17–2.660, and will use the changed version as the basis for future delegations of authority. However, EPA will take no action on the revisions to the Rule.

On October 28, 1986, EPA proposed to approve the Florida TRS plan in its entirety, but identified points in its bubble provisions which the State would have to clarify prior to EPA's final approval. At that time, the public was invited to submit written comments on the proposed action. Three comment submittals were received. However, two of these submittals were in response to points brought out about the bubble provisions. Since the approval of sections 7 and 8 are not being considered in this notice, consideration of the above comments is deferred until EPA addresses the approvability of the plan's bubble provisions. The third comment urged EPA to reconsider its position stated in the proposal notice that "before EPA can approve the Florida TRS plan, Florida must submit for EPA approval compliance schedules containing acceptable increments of progress; such schedules must be subjected to public hearings." EPA agrees with this comment, since advance submittal is not required by 40 CFR 60.24(e). Therefore, EPA is approving the Florida TRS plan prior to the submittal of compliance schedules by the State. However, the State will still need to submit the compliance schedules for EPA approval in order to have a complete plan.

## Final Action

EPA is approving the Florida 111(d) plan for control of total reduced sulfur (TRS) emissions from kraft pulp mills and tall oil plants which was submitted to EPA on May 24, 1985, with the exception of sections 17–2.600(4)(c) 7 and 8, on which EPA is deferring action at this time. The approval of sections 17.2.600(4)(c) 7 and 8 will be addressed in a separate notice at a later date. EPA is also deferring action on a revision to section 17–2.600(4)(c)8 submitted on August 14, 1986, which revised a portion of the May 24, 1985, submittal. This revision will be incorporated in the notice addressing the approval of section 17–2.600(4)(c) 7 and 8. In addition, EPA is approving a revision to Rule 17–2.960 submitted on June 10, 1986, which revised a portion of the May 24, 1985, submittal regarding the start of the compliance calendar of events. EPA's final approval of the Florida TRS plan does not relieve the State of Florida from the requirement pursuant 40 CFR 60.24(e) to submit to EPA for approval individual source compliance schedules containing acceptable increments of progress pursuant to 40 CFR 60.21(h); and these schedules must meet the public hearing requirements of 40 CFR 60.23 or ones deemed equivalent by the Administrator pursuant to 40 CFR 60.23(g).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 62

Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

Date: August 4, 1988.

**Lee M. Thomas**

*Administrator*

## PART 62—[AMENDED]

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**Subpart K—Florida**

1. The authority citation for Part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 62.2350 is amended by adding paragraphs (b)(2) and (c)(2) to read as follows:

**§ 62.2350 Identification of plan.**

* * * * *

(b) * * *

(2) Control of total reduced sulfur (TRS) emissions from existing kraft pulp mills and tall oil plants (both new and existing) submitted on May 24, 1985, and revision submitted on June 10, 1986, by the Florida Department of Environmental Regulation (FDER). No action is taken on sections 17–2.600(4)(c)7 and 8.

(c) * * *

(2) Kraft pulp mills.

3. A new center heading is added and §§ 62.2353 and 62.2354 are added to read as follows:

**Total Reduced Sulfur Emissions From Kraft Pulp Mills and Tall Oil Plants**

**§ 62.2353 Identification of sources.**

The plan applies to existing facilities at the following existing kraft pulp plants and tall oil plants:

(a) Alton Packaging Corporation in Jacksonville
(b) Buckeye Cellulose Corporation in Perry
(c) Champion International Corporation (Formerly St. Regis Paper Company) in Cantonment
(d) Container Corporation of America in Fernandina Beach
(e) Georgia-Pacific Corporation in Palatka
(f) Jacksonville Kraft Paper Company in Jacksonville
(g) St. Joe Paper Company in Port St. Joe
(h) Southwest Forest Industries in Panama City
(i) Arizona Chemical Company (Tall Oil Plant) in Panama City
(j) Sylvachem Corporation (Tall Oil Plant) in Port St. Joe

**§ 62.2354 Compliance schedules.**

The State of Florida has provided that the individual source compliance schedules would be developed and submitted by the affected sources to the State following plan adoption; and that the increments of progress pursuant to 40 CFR 60.21(h) would be specified at that time; this is an acceptable procedure pursuant to 40 CFR 60.24(e)(2). However, the State must submit these schedules to EPA for approval; and these schedules must meet the public hearing requirements of 40 CFR 60.23 or ones deemed equivalent by the Administrator pursuant to 40 CFR 60.23(g).

[FR Doc. 88–18033 Filed 8–9–88; 8:45 am]
BILLING CODE 6560–50–M

**40 CFR Part 180**

**[OPP–00267; FRL–3425–2]**

**Pesticide Tolerances for Ethoprop; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This correction document adds the entry for pineapples that was inadvertently dropped from 40 CFR 180.262 in a 1975 revision of the section and from subsequent yearly revisions of the Code of Federal Regulations (CFR).

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Critchlow, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2262.

**SUPPLEMENTARY INFORMATION:** EPA issued § 180.262 *O-Ethyl S,S-dipropylphosphorodithioate; tolerances for residues* in the **Federal Register** of October 18, 1972 (37 FR 21996), and included in the listings of raw agricultural commodities was pineapples with a tolerance of 0.02 part per million (ppm). In the **Federal Register** of June 23, 1975 (40 FR 26275), EPA revised the chemical name in the section heading to read "Ethoprop," the accepted common chemical name, and added entries for the raw agricultural commodities (RAC) cucumbers, lima beans, potatoes, and snap beans, and set out the section as amended in its entirety. The listing for pineapples was inadvertently omitted from the section in this revision and was inadvertently omitted from subsequent yearly editions of the CFR.

In the **Federal Register** of November 24, 1982 (47 FR 53004), EPA amended § 180.262 by adding the RAC mushrooms and reissuing the listing of commodities in the section in tabular format.

EPA is correcting the error of omitting pineapples from the 1975 revision of § 180.262 (40 FR 26275; June 23, 1975) and subsequent yearly revisions of the CFR by adding and alphabetically inserting the listing for pineapples with a tolerance of 0.02 (N) as follows:

**§ 180.262 Ethoprop; tolerances for residues.**

* * * * *

| Commodities | Parts per mission |
|---|---|
| * * * * | * |
| Pineapples | 0.02 (N) |
| * * * * | * |

**Authority:** 21 U.S.C. 346a.

Dated: July 26, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 88–17568 Filed 8–9–88; 8:45 am]
BILLING CODE 6560–50–M

**40 CFR Part 180**

**[OPP–00266; FRL–3425–1]**

**Pesticide Tolerances For Inorganic Bromides Resulting From Fumigation With Methyl Bromide; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This correction document adds the entry for wheat that was inadvertently dropped from 40 CFR 180.123 when its list of commodities was reissued in tabular form.

**DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jeff Kempter, Product Manager (PM) 32, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–3964.

**SUPPLEMENTARY INFORMATION:** EPA issued § 180.123 *Inorganic bromides resulting from fumigation with methyl bromide; tolerances for residues* in the **Federal Register** of November 25, 1971 (36 FR 22540), and included in the listings of raw agricultural commodities was wheat with a tolerance of 50 parts per million (ppm). In the **Federal Register** of May 4, 1983 (48 FR 20052), EPA revised the listing into a tabular format, and the revised listing inadvertently omitted the entry for wheat. This document corrects that error by adding in alphabetical order the entry for wheat at 50 ppm as follows:

**§ 180.123 Inorganic bromides resulting from fumigation with methyl bromide; tolerances for residues.**

* * * * *

| Commodities | Parts per million |
|---|---|
| . . . . . | |
| Wheat | 50.0 |

Authority: 21 U.S.C. 346a.

Dated: July 26, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 88-17589 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 272**

**[FRL-3426-8]**

## New Jersey; Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** New Jersey has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New Jersey's application and has made a decision, subject to public review and comment, that New Jersey's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New Jersey's hazardous waste program revisions. New Jersey's application for program revision is available for public review and comment.

**DATES:** Final authorization for New Jersey shall be effective October 9, 1988 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New Jersey's program revision application must be received by the close of business September 9, 1988.

**ADDRESSES:** Copies of New Jersey's program revision application are available 8:00–4:30 at the following addresses for inspection and copying: New Jersey Department of Environmental Protection, Bureau of Regulation, Classification and Technical Assistance, 401 East State Street, Fifth Floor, Trenton, New Jersey 08625; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC, 20460, Phone 202/382–5926; U.S. EPA Region II, Library, Room 402, 26 Federal Plaza, New York, New York, 10278, Phone 212/264–2881; U.S. EPA Region II, Field Office Library, Edison, New Jersey, 08837, Phone 201/321–6762. Written comments should be sent to Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 26 Federal Plaza, Room 1011, New York, New York, 10278.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Becker, Hazardous Waste Programs Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 907, New York, New York, 10278, 212/264–6158.

**SUPPLEMENTARY INFORMATION:**

### *A. Background*

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutorty or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

### *B. New Jersey*

New Jersey initially received final authorization on February 21, 1985. On November 24, 1987, New Jersey submitted a program revision application for additional program approvals. On March 21, 1988 and April 18, 1988 New Jersey submitted errata sheets, or addendums to its November 24, 1987 application. These errata sheets make changes to and are therefore part of New Jersey's application. Today, New Jersey is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed New Jersey's application, and has made an immediate final decision that New Jersey's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New Jersey. The public may submit written comments on EPA's immediate final decision up until September 9, 1988. Copies of New Jersey's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of New Jersey's program revision shall become effective 60 days after the date of publication of this notice unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will notify the State and within sixty (60) days after the date of the publication of this notice will publish in the **Federal Register** either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

New Jersey's program revison covers the following federal provisions:

*Non-HSWA Requirements*

- Interim Status Standards Applicability (48 FR 52718, November 22, 1983).
- Chlorinated Aliphatic Hydrocarbon Listing (49 FR 5308, February 10, 1984).
- National Uniform Manifest (49 FR 10490, March 20, 1984).
- Listing of Warfarin and Zinc Phosphide (49 FR 19922, May 10, 1984).

*Non-HSWA Cluster I*

- Exclusion of Household Hazardous Waste (49 FR 44980, November 13, 1984).
- Interim Status Standards Applicability (49 FR 46095, November 21, 1984).

*HSWA Cluster I*

- HSWA codification (50 FR 28702, July 15, 1985).

—Small Quantity Generators

—Delisting

- Listing of TDI, TDA and DNT (50 FR 42936, October 23, 1985).
- Small Quantity Generators (51 FR 10174, March 24, 1986).

New Jersey is in the process of correcting minor discrepancies, that exist in two of the above rules. The discrepancies are non-substantive and do not impact the authorization decision. New Jersey's National Uniform Manifest regulation will be corrected at: (1) N.J.A.C. 7:26—7.3(a) to clarify the requirement to use the instructions on the back of the manifest form; and (2) N.J.A.C. 7:26—7.4(g) to clarify items to be included in annual reports. New Jersey has also proposed an amendment to its small quantity generators rule to

bring the references to Sections of 40 CFR at N.J.A.C. 7:26—8.3(f)3 into line with current citations. This will be accomplished by July 30, 1988. New Jersey is not authorized nor seeking to be authorized to operate the Federal program on Indian lands. This authority shall remain with U.S. EPA.

New Jersey is not seeking or receiving authorization for its waste oil regulations which are broader in scope than the Federal regulations. New Jersey's waste oil regulations and any other New Jersey regulations which do not correspond to the provisions for which New Jersey is seeking authorization are included in the November 24, 1987 program revision application solely for informational purposes.

### C. Decision

I conclude that New Jersey's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New Jersey is granted final authorization to operate its hazardous waste program as revised. New Jersey now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. New Jersey also has primary enforcement responsibilities for the program revision provisions, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

### Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Jersey's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 30, 1988.

**Christopher J. Daggett,**

*Regional Administrator*

[FR Doc. 88-18032 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

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### 40 CFR Part 261

**[SW-FRL-3427-2]**

## Hazardous Waste Management System: Identification and Listing of Hazardous Waste, Final Denials

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is announcing its decision to deny the petitions submitted by seven petitioners to exclude their wastes from the hazardous waste lists contained in 40 CFR Part 261. This action responds to delisting petitions received by the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. These petitions are being denied because they are incomplete (i.e., the Agency does not have sufficient information to determine the hazardous or non-hazardous nature of the waste) despite several requests by the Agency for this information. The effect of this action is that all of these wastes must continue to be handled as hazardous wastes in accordance with 40 CFR Parts 260 through 268, and Parts 270, 271, and 124.

**EFFECTIVE DATE:** August 10, 1988.

**ADDRESSES:** The RCRA regulatory docket for these final petition denials is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-07DF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information on this notice, contact Mr. Scott Maid, Office off Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is non-hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes.

The Agency requires certain information in order to fully evaluate whether the petitioned waste is hazardous. If a petitioner's initial submission is not complete, the Agency will request the petitioner to submit the needed data. Acquisition and analysis of this additional information is necessary before a tentative determination (i.e., a proposal to exclude or deny a petition) can be made for the petitioned wastes. Most of this information is requested because of the changed requirements in the Hazardous and Solid Waste Amendments (HSWA) of 1984 (i.e., the Agency now must consider all factors that may cause the waste to be hazardous, including additional constituents, if there is a reasonable basis to believe that these factors could cause the waste to be hazardous).

If adequate data are not received in a timely manner, the Agency will remove petitions from the petition review process. On March 3, 1988, EPA published a notice that, among other items, discussed the Agency's policy to dismiss by letter delisting petitions that are still incomplete six months after an Agency request for additional

information. See 53 FR 6822. Facilities whose petitions are dismissed are notified in writing that their petition files are closed; however, these facilities have the option to re-petition the Agency when the required information is obtained. Because the Agency had already proposed to deny the seven petitions discussed in today's notice and had received comments on six of the seven petitions, these petitions are being finally denied rather than dismissed, so that the Agency can respond to the submitted comments.

## II. Disposition of Delisting Petitions

### *1. Proposed Denials*

EPA proposed to deny a number of petitions to exclude certain wastes from the hazardous waste lists on November 20, 1985 (see 50 FR 47763–47765) and January 30, 1987 (see FR 3029–3031). The proposed denials in November 1985 included Texaco U.S.A., located in Port Neches, Texas; Texaco Incorporated, located in El Paso, Texas; Standard Oil Company, located in Lima, Ohio; Standard Oil Company, located in Oregon, Ohio; Chevron U.S.A., Incorporated, located in Kenai, Alaska; and Union Oil Company of California, located in Nederland, Texas.[1] The denial proposed in January 1987 included Bloomfield Refining Company (formerly Plateau, Incorporated), located in Bloomfield, New Mexico.[2]

On April 9, 1986, the Agency announced that it was deferring its final decisions on several petitions proposed for denial on November 20, 1985 because comments or additional information received in response to the proposed denials were still under review. See 51 FR 12148–12152, April 9, 1986. Today's notice presents the Agency's response to these comments and discusses the review of the additional information received.

In the case of the petitions discussed in today's notice, the Agency provided a number of opportunities for these petitioners to submit the requested information, including written requests for specific information necessary for the Agency to consider the petition complete. In addition, the Agency published a notice in the **Federal Register** of its intent to collect this information. See 49 FR 4802–4803, February 8, 1984. The proposed denial notices, published on November 20, 1985 and January 30, 1987, provided yet another notification that the information was required and another 30-day opportunity to submit the additional information.

In most cases, prior to the proposed denials the Agency had not heard from these petitioners in over a year; in some cases, it had been almost two years. The Agency believes that these petitioners have had adequate time to provide the requested information. The Agency therefore, is making final its decision to deny exclusion to these seven petitioners because the additional information has not been provided within a reasonable period of time. A detailed description of the requests for additional information is included in the RCRA regulatory docket for this final rule.

### *2. Agency's Response to Public Comments*

Six of the petitioners included in today's denial submitted comments or additional information as a result of the proposed denial on November 20, 1985. One petitioner did not submit comments or additional information after their petition was proposed for denial on January 30, 1987.

#### Chevron U.S.A.

On February 7, 1986, Chevron U.S.A. submitted additional information in support of its delisting petition. The Agency has completed its review of the information submitted by this petitioner. Based on this review, the Agency has determined that the petition is still incomplete. Information which was requested, but has not been received, includes: total constituent analyses for certain hazardous constituents on a minimum of four representative samples; information concerning the potential corrosivity, reactivity, and ignitability of the waste; the amount of sludge produced per year; and descriptions of the waste treatment process and the sampling methodology employed. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance Manual*, U.S. Environmental Protection Agency, Office of Solid Waste, (EPA/530–SW–85–003), April 1985. The information is necessary to evaluate Chevron's waste. The Agency, therefore, is making final its decision to deny Chevron U.S.A.'s petition as incomplete.

It should be noted that Chevron U.S.A. included volatile organic analysis data from one sample of the waste as part of the additional information submitted. The Agency evaluated these data using the Organic Leachate Model (OLM) and the VHS (vertical and horizontal spread) model. See 51 FR 41082, November 13, 1986, and 50 FR 48896, November 27, 1985 for a detailed description of the models and their parameters. The concentrations of two hazardous constituents, benzene and methylene chloride, failed the OLM/VHS model analysis. Although not used as a basis for today's denial decision for lack of information, these data would support a denial decision on technical grounds.

#### Union Oil Company of California

One commenter, representing Union Oil, argued that the Agency continually changed its data requirements for delisting petitioners. The commenter stated that petitioners were waiting for promulgation of the delisting procedure to determine that data gaps existed in their petitions. The Agency acknowledges that, as a result of HSWA and as the Agency gained experience in evaluating petitions, there were some changes over time in the information requested from petroleum refinery petitioners. However, the modified (and current) list of constituents for which EPA recommends analysis for petroleum refining wastes was published in *Petitions to Delist Hazardous Wastes—A Guidance Manual* in April 1985, prior to the proposed denial on November 20, 1985. The April 9, 1986 **Federal Register** notice, in which a decision relating to Union Oil's petition was deferred, also contained reference to the Guidance Manual's list of constituents for refineries. This guidance has not changed in three years and the petitioner has still not supplied all of the information necessary to complete its petition.

The commenter also questioned EPA's ability to evaluate any additional data in the absence of a delisting model. The fact that the Agency has yet to promulgate fate and transport models as rulemaking criteria, however, does not relieve the petitioner of the legal requirement to provide the requested data. Delisting regulations and guidance at the time of the petition and through

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[1] In that same **Federal Register** notice, the Agency also proposed to deny exclusion of specific wastes generated by 61 other petitioning facilities. See 50 FR 47763–47765, November 20, 1985. Of these 61 other petitioners, 45 were denied final exclusion in previous **Federal Register** notices; 14 petitions have either been withdrawn or considered moot; and two petitions, for which additional information was submitted, are still under review and will be addressed in a future **Federal Register**. Today's notice announces the Agency's final delisting decisions for six of the 67 petitions proposed for denial on November 20, 1985.

[2] In that same **Federal Register** notice, the Agency also proposed to deny exclusion of specific wastes generated by six other petitioning facilities. See 52 FR 3029–3031, January 30, 1987. Of these six other petitioners, two were denied final exclusions in a previous **Federal Register** notice; three petitions have been withdrawn; and one petition is still under review and will be addressed in a future **Federal Register** notice.

the present have outlined information needed to make decisions on petitions. The Agency has repeatedly used such information to evaluate the hazards posed by specific wastestreams. Moreover, since the petition was proposed to be denied, the Agency has developed more sophisticated methods of evaluating such information, including the use, in particular delisting rules, of two fate and transport models (*i.e.*, the VHS model and the Land Treatment Model) and the Organic Leachate Model which predicts the potential mobility of organic constituents. See 50 FR 48896, Appendix, November 27, 1985; 50 FR 41094, November 27, 1986; and 51 FR 41084, November 13, 1986.

Union Oil did submit additional information during the comment period in response to the proposal denial. However, not all of the information required to complete its petition was provided. Specifically, Union Oil and not provide information necessary to evaluate the petitioned slop oil emulsion solids and residues generated from the treatment of these solids. Information which was requested, but has not been received includes: oil and grease analysis results; total constituents and leachate analyses for metals; organic constituent analyses; and ignitability analysis results. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance Manual.* The information is necessary to evaluate Union Oil's wastes. The Agency, therefore, still does not have sufficient information to characterize fully these two petitioned wastes nor to make a decision about whether these wastes should be delisted. The Agency, therefore, is making final its decision to deny Union Oil's petition for their slop oil emulsion solids and residues generated from the treatment of these solids.

The Agency plans to address in a future **Federal Register** notice Union Oil's petition for API separator sludges and sludges contained in an on-site impoundment about which Union Oil submitted additional information. Today's decision covers only the petitioned slop oil emulsion solids and residues generated from the treatment of these solids.

Standard Oil Company

One commenter, representing the Standard Oil facilities, felt that EPA had requested data for an unreasonably broad spectrum of compounds. Standard Oil also stated that EPA had given no indication of how the data would be evaluated. The commenter also requested the right to submit in the future additional data supporting delisting of the wastes described in the pending petitions or for any other wastestreams.

In regard to the first comment, the Agency reduced the list of hazardous constituents for which data were originally requested. As previously discussed, the current list of recommended constituents for analysis of petroleum refinery wastes was published in the Guidance Manual in April 1985. The April 9, 1986 **Federal Register** notice, in which a decision relating to Standard Oil's petitions was deferred, also contained reference to the Guidance Manual's list of constituents for refineries. The Agency currently requests all petitioning petroleum refineries to submit analytical data for the constituents on this list and for any other factors or constituents that may cause the waste to be hazardous. Each of the constituents for which the Agency requests analytical data from petitioning petroleum refineries was selected based on: (1) Available data describing the use of the compounds in the industry; (2) the actual presence of these constituents in wastes or feedstock based on analytical data; and (3) reference documents which have identified the constituents as typically present or suspected in refinery wastes. The Agency, furthermore, made available to the public the rationale behind the compilation of this list of hazardous inorganic and organic constituents suspected to be present in refinery wastes.[3] The Agency believes that these constituents are likely to be present in Standard Oil's waste, and thus believes it necessary to obtain information about the concentration of these constituents to evaluate Standard Oil's waste. The petitioners have neither submitted any specific comments on this list or the rationale, nor provided the necessary information to complete their petitions.

The second comment, regarding the absence of a promulgated methodology used to evaluate petitions, was addressed above in response to Union Oil's comments. In response to the third comment, the Agency notes that petitioners have always had the right to submit any supporting data for their petitions. In the April 9, 1986 **Federal Register** notice, the Agency deferred its decision on Standard Oil's petitions to allow additional time for submittal of information to complete the petitions. Standard Oil has had more than a sufficient amount of time to submit supporting data and has chosen not to do so. Information which was requested from both facilities, but has not been received, includes: oil and grease analysis results; total constituent analyses for inorganics; organic constituent analyses; and results from the Oily Waste EP toxicity test if the oil and grease content of the petitioned wastes exceeded one percent. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance Manual.* The information is necessary to evaluate Standard Oil's waste. The Agency, therefore, is denying Standard Oil's two petitions as incomplete. As a result, any additional data sent in by the petitioners should be submitted as part of new delisting petitions for their wastes.

Texaco U.S.A. and Texaco Incorporated

Another commenter, representing the Texaco facilities, claimed that the Agency did not provide notice and the opportunity for comment on additional factors which would have caused their wastes to be hazardous pursuant to section 222 of the Hazardous and Solid Waste Amendments of 1984. The Agency agrees that the commenter did not originally have the opportunity to comment on additional factors, analysis of which were required by the statute. The Agency, however, deferred final decisions on a number of petroleum refinery petitions and published subsequent notices on October 24, 1986 and December 19, 1986. Even if EPA were required to provide the petitioners an opportunity to comment on EPA's justification for considering additional constituents, as required by statute, in petroleum refinery wastes, these subsequent notices provided such opportunity.[4] The Texaco facilities did not provide comments on EPA's justification for requesting analytical data on additional constituents, nor did they provide the required information to make their petitions complete. Information which was requested from both facilities, but has not been received, includes: Oil and grease analysis results; total constituent analyses for inorganics; organic constituent analyses; and results from the Oily Waste EP toxicity test if the oil and grease content of the petitioned wastes exceeded one percent. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance*

[3] See Notice of Availability and Request for Comment, 51 FR 37767 October 24, 1986. See also Extension of Public Comment Period for Notice of Availability and Request for Comment, 51 FR 45485, December 19, 1986.

[4] See footnote 3.

*Manual.* This information is necessary to evaluate Texaco's waste. The Agency, therefore, is denying Texaco's two petitions as incomplete.

Bloomfield Refining Company

No comments were received regarding the January 30, 1987 proposed denial for Bloomfield Refining, nor did the petitioner provide the information necessary to complete its petition. Information which was requested, but has not been received, includes: oil and grease analysis results; total constituent analyses for inorganics; organic constituent analyses; results from the Oily Waste EP toxicity test if the oil and grease content of the waste exceeds one percent; a demonstration that the waste does not exhibit the characteristics of ignitability, reactivity, or corrosivity, and estimates of the annual quantity of waste generated and the quantity of waste in an on-site pond. The information is necessary to evaluate Bloomfield's waste. The Agency, therefore, is denying Bloomfield Refining's petition as incomplete.

*3. Final Agency Decision*

The Agency is announcing today the final denial of the seven petitions discussed in today's notice: Texaco U.S.A., in Port Neches, Texas; Texaco Incorporated, in El Paso, Texas; Standard Oil Company, in Lima, Ohio; Standard Oil Company, in Oregon, Ohio; Chevron U.S.A., Incorporated, in Kenai, Alaska; Union Oil Company of California, in Nederland, Texas; and Bloomfield Refining Company, in Bloomfield, New Mexico. In all these cases, the petitioners have not submitted the information necessary to complete their petitions and to permit the Agency to evaluate their wastes. The effect of this rule is that all of the petitioned wastes must continue to be handled as hazardous waste in accordance with 40 CFR Parts 260 through 268, and Parts 270, 271, and 124.

## III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule does not change the existing requirements for these petitioners. The petitioners have been obligated to manage their wastes as hazardous before and during the Agency's review of these petitions. This rule, therefore, should be effective immediately for these petitioners. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

## IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The denial of these petitions does not impose an economic burden on these facilities because prior to submitting and during the review of these petitions these facilities should have continued to handle their wastes as hazardous. The denial of their petitions means that they are to continue managing their wastes as hazardous in the manner in which they have been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This final rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

## V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities because its effect will not change the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

## VI. List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

**Authority:** Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: August 2, 1988.

**J.W. McGraw,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 88–18034 Filed 8–9–88; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 32**

**[CC Docket 87–135; FCC 88–220]**

## Common Carrier Services; Revision of the Uniform System of Accounts for Telecommunications Companies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has decided to raise the expense limit to $500 for certain central office equipment (limited to company-used tools and equipment), furniture and office equipment, other communications equipment, and vehicles and other work equipment which are currently subject to a $200 expense limit. The Commission also decided not to establish a uniform amortization period for embedded individual items capitalized before this change in expense limitation. The Commission believes that the $200 expense limitation established six years ago is far too low.

**EFFECTIVE DATE:** This rule change will become effective for all carriers no later than January 1, 1989. However, carriers will be permitted to adopt the new limit as early as January 1, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Virginia Brockington or John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* adopted June 28, 1988, and released July 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

## Summary of Report and Order

The Commission initiated a rulemaking proceeding based on comments it received as a result of a petition filed by the American Telephone and Telegraph Company for a partial waiver of the commission's accounting rules. They request permission to expense the cost of

individual items if equipment costing $500 less and to amortize the previously capitalized, undepreciated investment in such items over a three-year period commencing January 1, 1986.

In the Notice of Proposed Rulemaking (NPRM) released on May 14, 1987, the Commission proposed an amendment of its accounting rules that would permit telecommunications common carriers to expense certain individual items of equipment costing $500 or less. The NPRM applied to individual items of equipment currently subject to a $200 expense limit. This includes items that, absent the expense limit, would be recorded in accounts provided for central office equipment (limited to company-used tools and equipment), furniture and office equipment, other communications equipment, and vehicles and other work equipment. Also, the Commission proposed amortization of the embedded balance of this equipment and requested estimates of the revenue requirement impacts for three-year, four-year, and five-year amortization periods. The Commission noted that if revenue requirement impacts of the proposed changes were undesirable, the Commission would consider either limiting the increase to furniture items or amending continuing property record requirements.

The Commission has decided to raise the expense limit to $500 for all the items under consideration which are currently subject to a $200 expense limit. In addition, the Commission has decided not to establish a uniform amortization period for embedded individual items capitalized before this change in expense limit. Instead it will handle any changes in depreciation related to those items through established mechanisms for capital recovery. Further, the Commission has decided that the continuing property record requirements will remain unchanged and in effect for all embedded items capitalized prior to the adoption of the new expense limit and for all items which are required to be capitalized subsequent to the change in expense limit the Commission adopted in this rulemaking.

### Ordering Clause

Accordingly, it is ordered, that under the authority contained in Sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 220, Part 32, Uniform System of Accounts for Telecommunications Companies of the Commission's Rules is amended as shown in Appendix B effective January 1, 1989. Implementation in 1988 will be permitted.

**List of Subjects in 47 CFR Part 32**

Uniform System of Accounts for Telecommunications Companies.

**H. Walker Feaster III,**

*Acting Secretary.*

## PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 reads as follows:

**AUTHORITY:** 47 U.S.C. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220 unless otherwise noted.

2. Section 32.2000 is amended by revising paragraph (a)(4) to read as follows:

**§ 32.2000 Instructions for telecommunications plant accounts.**

* * * * *

(a) * * *

(4) The cost of individual items if equipment, classifiable to Accounts 2112, Motor Vehicles; 2113, Aircraft; 2114, Special Purpose Vehicles, 2115, Garage Work Equipment; 2116, Other Work Equipment; 2122, Furniture; 2123 Office Equipment; and 2124, General Purpose Computers, costing $500 or less or having a life less than one year shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

* * * * *

[FR Doc. 88-18011 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 69**

**[CC Dockets 78-72, 80-286]**

### Access Charges

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects errors contained in the Final Rule with request for comments, published at 53 FR 28394 on July 28, 1988, in this proceeding concerning Access Charges.

**DATES:** See "Supplementary Information" section of this document.

**FOR FURTHER INFORMATION CONTACT:** Diane Cornell, (202) 632-9342.

**SUPPLEMENTARY INFORMATION:** Errors contained in the Memorandum Opinion and Order on Reconsideration, as published in the **Federal Register**, are corrected as follows:

(1) In the third column on page 28394, the caption of the action should read: "Memorandum Opinion and Order on Reconsideration and Order Inviting Comments".

(2) On page 28395, in the last two lines of paragraph 4 in the first column, the comment/reply comment dates should read: August 29, 1988 and September 28, 1988, respectively.

(3) In paragraph 9 on the same page, the effective date should read: August 29, 1988.

(4) In paragraph 11 on the same page, the references to August 26, 1988 and September 23, 1988 should be corrected to read: August 29, 1988 and September 28, 1988, respectively.

(5) Finally, on the same page, in § 69.2, Definitions, the paragraph designators (hh) through (kk) are corrected to read: (t) through (w), respectively.

Federal Communcations Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-18093 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 94**

**[PR Docket No. 87-5; RM-5206, 5362, 5178, 5383]**

### Amendment of Part 94 to Permit Intrasystem Communications Among Multiple Address System Master Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for reconsideration order granting extension of time for replies to oppositions.

**SUMMARY:** The Commission has adopted an Order granting the motion for Extension of Time to file a reply to the oppositions to the petitions for reconsideration filed by Digital Radio Networks, Inc.

**DATE:** Reply comments to the oppositions are due by July 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rudolfo Baca, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2444.

**SUPPLEMENTARY INFORMATION:** The petition for reconsideration was published on June 2, 1988 at 53 FR 20170.

In the Matter of Amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies, RM-5206; Amendment of § 94.65(a)(1) of the Rules to Revise Footnote 3 in the Frequency Table to Make the Frequencies Available for use

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by any Part 94 Eligible, RM–5362; Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) Footnote 3 of the Rules to Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625–952.8375 MHz Band; RM–5178; Amendment of Part 94 of the Rules to Permit Intrasystem Communications Among Multiple Address System Master Stations, RM–5383.

**Order**

Adopted: July 06, 1988.

Released: July 07, 1988.

By the Chief, Private Radio Bureau.

1. The Commission has before it a Motion for Extension of Time filed by Digital Radio Networks, Inc. (Digital). Digital requests additional time to file a reply to various oppositions to its petition seeking reconsideration of our Report and Order in the above-captioned proceeding. Digital represents that none of the entities that filed oppositions to its petition for reconsideration object to the instant request for a brief extension of time.

2. Upon review of the submissions of counsel and the record in this proceeding, we conclude that the complex technical nature of the issues on reconsideration warrants a brief extension of time to reply to the oppositions. No party will be prejudiced by this action.

3. Therefore, pursuant to §§ 0.331 and 1.46 of our Rules, 47 CFR 0.331 & 1.46, it is hereby ordered that Digital's Motion for Extension is granted.

4. It is further ordered that all replies to the oppositions to the petition for reconsideration shall be filed by the close of business, Thursday, July 7, 1988.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

[FR Doc. 88–18094 Filed 8–9–88; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### 47 CFR Part 300

### Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management

**AGENCY:** National Telecommunications and Information Administration (NTIA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule gives notice of current revisions to the May 1986 Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) that have been published and forwarded to all holders of the manual. The revisions cover the changes in various government policies relating to the United States Government use of the radio frequency spectrum. These changes have been adopted by the Interdepartment Radio Advisory Committee (IRAC) and approved by the National Telecommunications and Information Administration.

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Edwin E. Dinkle, National Telecommunications and Information Administration, Department of Commerce, Room H1605, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 377–0599.

**SUPPLEMENTARY INFORMATION:** The President by Reorganization Plan No. 1 of 1977 and Executive Order 12046 of March 27, 1978, delegated to the Secretary of Commerce authority to act for the President or under the President's authority in the discharge of certain Presidential telecommunication functions under the Communications Act of 1934, as amended, and the Communications Satellite Act of 1962.

The Secretary of Commerce has delegated this Presidential authority to the Assistant Secretary of Commerce for Communications and Information (the Assistant Secretary). The Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) is issued by the Assistant Secretary, and is specifically designed to detail the Assistant Secretary's frequency management responsibilities.

**List of Subjects in 47 CFR Part 300**

Incorporation by reference, Radio Telecommunications.

For the reasons set out in the preamble, Title 47, Chapter III, Part 300 of the Code of Federal Regulations is amended as set forth below.

**PART 300—[AMENDED]**

1. The authority citation for Part 300 continues to read as follows:

**Authority:** E.O. 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., P. 158.

2. Section 300.1(b) is revised to read as follows:

**§ 300.1 Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.**

* * * * *

(b) The Federal agencies shall meet the requirements set forth in the May 1986 edition of the NTIA Manual, as amended by revisions dated May 1988 which is incorporated by reference with the approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

* * * * *

**Richard D. Parlow,**

*Associate Administrator, Office of Spectrum Management.*

[FR Doc. 88–17896 Filed 8–9–88; 8:45 am]

BILLING CODE 3251–09–M

# Proposed Rules

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 213, 359, and 536**

**Removal From the Senior Executive Service**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations, covering certain removals from the Senior Executive Service (SES). OPM issued interim regulations on July 31, 1979, to implement the provisions of the Civil Service Reform Act. These proposed regulations would implement laws enacted since 1979 and take into account comments on the interim regulations. The regulations would provide for the removal of a career appointee from the SES (1) during the probationary period; (2) for less than fully successful executive performance; or (3) as a result of reduction in force. In addition, these regulations would provide for the placement in other personnel systems of certain career appointees who are removed from the SES. The regulations also would cover the removal of noncareer and limited SES appointees, and reemployed annuitants holding any type of SES appointment. Note that disciplinary removals of career SES appointees who have completed the SES probationary period are covered in 5 CFR Part 752, Subpart F.

**DATE:** Written comments will be considered if received no later than October 11, 1988.

**ADDRESS:** Send or deliver written comments to the Director, Office of Executive Personnel, OEA, Room 6R48, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Neal Harwood, (202) 632–4625.

**SUPPLEMENTARY INFORMATION:** On July 31, 1979, OPM published an interim rule (44 FR 44815) that implemented subchapter V of chapter 35 of title 5, United States Code, by adding a new Part 359 to the civil service regulations.

The comment period, which was 60 days from the date of publication, ended on October 1, 1979. The only written comment that OPM received discussed the need for additional guidance to agencies on taking actions under Part 359. OPM also received a number of phone inquiries regarding specific provisions.

Before final regulations could be issued, Pub. L. 95–454 was amended by Pub. L. 97–35 of August 13, 1981; Pub. L. 97–346 of October 15, 1982; and Pub. L. 98–615 of November 8, 1984. These regulations would implement the provisions of the new laws and take into account questions and comments on the current regulations.

**Removal of Career Appointees During Probation (Part 359, Subpart D)**

In response to a frequently asked question, OPM has amended the regulations at § 359.402(b) to show that it is not mandatory for an agency to give an employee a formal unsatisfactory rating under the agency's performance appraisal system before it can remove a probationer for unacceptable performance.

One agency suggested that, in light of the definition of "employee" in 5 U.S.C. 7541(1)(B), the regulations state that a career SES appointee who was covered under 5 U.S.C. 7511 immediately before appointment to the SES continues to retain adverse action coverage under 5 U.S.C. 7543 after appointment. This suggestion was adopted at § 359.403(a)(2).

Several agencies called attention to the need for a provision that would enable an agency to proceed with a removal action during the 120 days following the appointment of a new agency head or a new noncareer supervisor when there is reasonable cause to believe that the probationer has committed a crime for which a sentence of imprisonment can be imposed or when the circumstances are such that retention of the probationer may cause injury, result in property damage, or reflect unfavorably on the Federal service. Part 752, Subpart F, which covers adverse actions against SES career appointees who have completed probation, provides for emergency action under the above mentioned circumstances. Since there is no practical or legal reason why probationers should be afforded more protections than those granted to appointees who have completed probation, OPM adopted the suggestion and added the emergency action provision to § 359.406(b).

Public Law 97–35 included a number of provisions on the SES affecting probationers. It was the first legislation to establish an authority on reduction-in-force (RIF) actions in the SES, and the removal of a probationer under RIF has been added in § 359.405.

Public Law 97–35 also revised the standard, in 5 U.S.C. 7543, that governs the removal of a post-probationer from the SES for disciplinary reasons. The revised standard read "misconduct, neglect of duty or malfeasance." Subsequently, Pub. L. 98–615 clarified the cause of action standard to expressly include "failure to accept a directed reassignment or to accompany a position in a tranfer of function." As indicated above, certain probationers are subject to the requirements of 5 U.S.C. 7543. Since a uniform cause of action standard should be applicable for all disciplinary actions in the SES, OPM has amended the standard for taking disciplinary action against probationers under § 359.403 to be consistent with the change in 5 U.S.C. 7543. Further, since post-probationers who are removed under 5 U.S.C. 7543 are not entitled to fallback to GS–15, there are no fallback rights given to probationers removed for disciplinary reasons.

**Removal of Career Appointees for Less Than Fully Successful Executive Performance (Part 359, Subpart E)**

Several agencies have expressed a need for some modification or clarification of the provisions governing the removal of a post-probationer for less than fully successful executive performance. In response, OPM has made the following changes in Subpart E.

(1) The conditions requiring mandatory removal are clarified in § 359.501(d).

(2) The authority of an agency to remove an employee based on a formal summary rating when the appraisal period has been shortened is clarified in § 359.501(d) by dropping the term "annual" in conjunction with mandatory

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removals based on two less than fully successful ratings. In accordance with 5 U.S.C. 4315(b)(1)(D), an appraisal period "may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance." Because the term "annual" rating was used in the interim regulations, however, it was not clear whether a rating based on a shortened appraisal period was to be considered a final rating for removal purposes. It is apparent, nevertheless, that the intent of the law was to allow removal; otherwise, there would be no reason to provide for the shortened period. The period, of course, must meet any minimum requirements established by OPM and the agency performance appraisal plan. Further, the rating must meet all other requirements of law and regulations, including opportunity for higher-level review and a recommendation by the Perfoormance Review Board.

(3) A provision for the optional use of a supplementary notice to advise a post-probationer of the position to which he or she will be assigned is added at § 359.502(a)(2). The supplementary notice must be issued at least 10 days before the effective date of the removal action. The change will permit an agency to initiate a removal action for performance reasons while the placement decision is being made final.

**Removal of Career Appointees as a Result of Reduction in Force (Part 359, Subpart F)**

As noted above, Pub. L. 97–35 of August 13, 1981, provided for the first time specific statutory authority (5 U.S.C. 3595) for RIFs in the SES. It included provisions on placement assistance by OPM and on appeal rights to the Merit System Protection Board. It was amended by Pub. L. 97–346 of October 15, 1982, and then again by Pub. L. 98–615 of November 8, 1984. The major changes in the latest amendments were (1) to reduce the OPM placement period from 120 to 45 days for appointees who had completed the probationery period; (2) to delete the 30-day notification to the Congress for certain appointees; (3) to provide "fallback" to no lower than GS–15 with saved pay for appointees who could not be placed elsewhere in the SES; (4) to restrict appeal rights to the Merit Systems Protection Board to agency competitive procedures. The "fallback" provisions are covered in Subpart G. The other provisions are covered under Subpart F, as discussed below.

The regulations require that an agency issue written procedures before initiating a RIF action. After the procedures are issued, agencies are required to provide OPM a copy so that OPM can maintain a clearinghouse of RIF plans.

The regulations make it clear that all career appointees, including those serving a probationary period, are subject to RIF competitive procedures. (A reemployed annuitant, however, serving under a career appointment is excluded from coverage.) The competitive procedures must be based primarily on performance.

Career appointees who have completed the SES probationary period, or who were not required to serve one, are entitled to be placed in another SES position in their agency for which they qualify. If there is no such position, the agency head certifies the appointee to OPM for placement assistance. OPM has 45 days in which to try to place the appointee in an SES position. The OPM placement program will take into account the congressional section analysis for Pub. L. 98–615, which states, "It is hoped the new placement program would be more of a cooperative effort than the current placement program. OPM is to design this placement program to minimize the disruption of recruitment of vacancies in other agencies."

The regulations provide that agencies shall respond to any referral within the time period prescribed by OPM. To assist individuals in the shortened placement period and to minimize for agencies the time vacancies may be "frozen," the response time will normally be 5 workdays. As provided in law, the head of the agency has the authority to determine whether an individual is qualified for a vacancy. Nevertheless, the regulations provide authority for OPM to take corrective action if an agency fails to provide bona fide consideration.

The regulations provide a minimum 45-day RIF notice before removal from the SES for career appointees who have completed their probationary period. This means the notice normally should be issued no later than the date when an appointee is referred to OPM for placement assistance. A second notice may be needed to provide a specific removal date if the individual cannot be placed in the SES.

If the appointee cannot be placed in the SES, or declines a placement offer, the appointee is entitled to fallback rights at no lower than GS–15, as discussed under Subpart G. (An individual is entitled to discontinued service retirement in lieu of fallback if the age and service requirements for such retirement are met.)

Pub. L. 98–615 also amended 5 U.S.C. 3595 to provide that career appointees affected by a transfer of function between agencies should have rights similar to those of employees in the competitive service. In the competitive service, employees are entitled to transfer with their function to the gaining agency if they would otherwise be subject to a RIF in the losing agency. (Part 351, Subpart D.) A similar provision was adopted for the SES in § 359.608.

**Guaranteed Placement (Part 213, Section 3202; Part 359, Subpart G; Part 536, Subpart A)**

Under the CSRA, guaranteed placement outside the SES as provided only for certain employees removed during their probationary period and for post-probationers removed for performance reasons. Public Law 98–615 amended 5 U.S.C. 3594 to provide fallback rights also for career appointees in a RIF action who have completed the probationary period, or did not have to serve one. Formerly, removal was from the civil service entirely. Now, an appointee affected by a RIF will be entitled to fallback if during the 45-day OPM placement period the appointee declines a placement offer in another SES position or cannot be placed in another SES position. (An appointee may accept fallback to GS–15 before the end of 45-day placement period if he voluntarily accepts the action in writing.)

The provisions in law governing fallback in a RIF are the same as those governing fallback when removal is for less than fully successful performance. The regulations, therefore, are also the same. Thus, the appointee is entitled to be placed in a continuing position at no lower than GS–15; the placement action may not cause the separation or reduction in grade of any other individual; and the appointee is entitled to saved pay.

As far as saved pay is concerned, since 5 U.S.C. 3594 now specifically provides pay retention (but not grade retention) in SES RIF, the regulatory provisions to be followed are those in Part 359, not the grade and pay retention provisions in Part 536, which were previously applicable. OPM is amending 5 CFR 536.105 to exclude SES members from grade retention under Part 536 in all instances and from pay retention under Part 536 when an individual is receiving pay retention under 5 U.S.C. 3594. The regulations continue to permit agencies to exercise their discretionary

authority, however, under 5 CFR 536.104(b) to grant pay retention in RIF situations when the individual is not entitled to pay retention under 5 U.S.C. 3594, e.g., when the individual voluntarily accepts a GS–15 position following receipt of a general RIF notice or a notice of position abolishment.

It should be noted that in RIF situations, if the affected executive cannot be placed in the SES, it is the agency conducting the RIF that is responsible for placing the appointee in a GS–15 or higher position within the agency or arranging a transfer to such a position in another agency. However, any transfer must be mutually acceptable to the appointee and the gaining agency.

If the agency conducting the RIF is being terminated and there is no transfer of function, employment of SES members ceases upon the termination date unless Congress have provided in legislation for mandatory placement in another agency following termination or the members have obtained positions elsewhere under SES RIF placement procedures.

If the agency conducting the RIF will remain in existence, but has no vacant position currently available at GS–15 or above for which the individual qualifies and cannot make a placement in another agency, the agency still must create a position to permit the fallback. The agency should then continue its efforts to find an appropriate position for the individual either internally or in another agency. If that does not prove possible, only then can the agency conduct a further RIF action. Such an action may not be taken within three months of the removal from the SES. That is the same period provided in Part 351 (5 CFR 351.701(a)) as the minimum length of time a position must last when an employee is assigned to another position under RIF procedures outside the SES.

It should be noted that the congressional section analysis for Pub. L. 98–615 states that although appointees are entitled to placement following a RIF within the SES, this entitlement does not apply for subsequent RIFs outside the SES. Such subsequent actions would be subject to the regulations in Part 351 of this chapter.

There is the question of the tenure of the appointment outside the SES to be given a post-probationer who does not have reinstatement rights in the competitive service. In the situation, the individual must be placed in a position in the excepted service. Two cases are involved here. The first case involves an individual who came to the SES from an excepted service appointment, e.g., Schedule A, B, or C, or an agency excepted appointment authority. In that case the individual could return to his or her former appointment (e.g., as SES attorney who had come from a GS–15 Schedule A appointment could return to that appointment). The second case involves an individual who has not been in the civil service prior to the SES appointment. In that case, unless there was an existing excepted appointment authority that could be used, OPM has been approving special, single agency Schedule B authorities. By amendment of Part 213, OPM would provide a government-wide Schedule B authority to cover this situation.

**Furloughs in the Senior Executive Service (Part 359, Subpart H)**

Public Law 98–615 established for the first time in statute specific provisions on furlough in the SES under 5 U.S.C. 3595a. These provisions define furloughs, state that career SES appointees may be furloughed only under regulations issued by OPM, and provide an appeal right for career appointees to the Merit Systems Protection Board.

OPM earlier issued furlough regulations in Part 359, Subpart H, for career SES appointees based on its general authority to regulate for the SES (48 FR 11925, March 2, 1983). Those regulations include the provisions that were incorporated in 5 U.S.C. 3595a. Therefore, no new regulations are necessary; and agencies should continue to apply the current regulations in Subpart H.

**Removal of Noncareer and Limited Appointees and Reemployed Annuitants (Part 359, Subpart I)**

This subpart, issued in the interim regulations as Subpart F, would be renumbered as Subpart I and retitled. It continues earlier coverage of noncareer, limited term, and limited emergency appointees (except for certain limited appointees who would be covered by 5 CFR Part 752, Subpart F, under proposed regulations issued May 30, 1986). It also adds coverage of reemployed annuitants with career appointments.

A reemployed annuitant serves at the will of the appointing authority. Thus, a reemployed annuitant who is serving under an SES career appointment is not entitled to the protections afforded by Subparts D, E, F, and G; and removal procedures are to be governed by Subpart I.

In summary, a new section is added to Part 213 to provide a Schedule B appointment authority for SES performance and RIF fallback when an individual does not have reinstatement eligibility in the competitive service; Part 536 is revised to exclude SES members from grade retention coverage in all instances and from pay retention coverage when they are entitled to pay retention under 5 U.S.C. 3594; and Part 359 is amended as follows:

(a) Subpart A, which repeated the pertinent sections of title 5, United States Code, is revoked and reserved for future use.

(b) In Subpart B, an addition to § 359.202 defines "reemployed annuitant."

(c) In Subpart D, (1) an addition to § 359.402 clarifies the basis for an action to remove a probationer for unsatisfactory performance; (2) the cause of action standard in § 359.403 for removal of probationers is revised to agree with the standard in Part 752, Subpart F; (3) pertinent references to 5 U.S.C. 7511 are added to §§ 359.403 and 359.404; (4) a new § 359.405 is added to regulate the removal of probationers from the SES under a RIF; (5) provisions for emergency action under specific circumstances are added to § 359.406 as an exception to the 120-day moratorium on removals following the appointment of a new agency head or noncareer supervisor; and (6) another addition to § 359.406 makes it clear that the imposition of a 120-day moratorium on removals does not extend the probationary period.

(d) In Subpart E, (1) the conditions requiring mandatory removal for performance from the SES as set forth in § 359.501 are clarified; (2) the notice requirements under § 359.502(a) are amended to permit an agency to use a supplementary notice to advise a post-probationer of his or her placement outside the SES; and (3) the former § 359.505 on appeals is renumbered § 359.504.

(e) The former Subpart F is renumbered as Subpart I. The new Subpart F covers removal of career appointees in a RIF.

(f) In Subpart G, placement rights are added for RIF actions.

(g) The new Subpart I covers removal of noncareer and limited appointees, as well as reemployed annuitants.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

**List of Subjects**

*5 CFR Part 213*

Government employees.

*5 CFR Part 359*

Government employees.

*5 CFR Part 536*

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
**Constance Horner,**
*Director.*

Accordingly, OPM is proposing to amend 5 CFR Parts 213, 359 and 536 as follows:

## PART 213—EXCEPTED SERVICE

1. The authority for Part 213 continues to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp. p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 94–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, and 8337(h).

2. Section 213.3202(m) is added to read as follows:

**§ 213.3202 Entire executive civil service.**

* * * * *

(m) Positions filled by (1) appointment at grades GS–15 and above, or equivalent, of individuals who:

(i) Were former career appointees in the Senior Executive Service (SES);

(ii) Have completed the SES probationary period;

(iii) Have been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iv) Are entitled to be placed in another civil service position under 5 U.S.C. 3594(b); or

(2) Reassignment, promotion, or demotion within the same agency of individuals originallly appointed under this authority.

## PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

3. The authority citation for Part 359 is revised to read as follows:

**Authority:** 5 U.S.C. 1302 and 3596, unless otherwise noted.

4. Subpart A is removed and reserved, Subparts B and D through G are revised, and Subpart I is added to read as follows:

**Subpart A—[Reserved]**

**Subpart B—General Provisions**

Sec.
359.201 Regulatory requirements.
359.202 Definitions.
* * * * *

**Subpart D—Removal of Career Appointees During Probation**

359.401 General exclusions.
359.402 Removal: Unacceptable performance.
359.403 Removal: Conduct.
359.404 Removal: Conditions arising before appointment.
359.405 Removal: Reduction in force.
359.406 Restrictions.
359.407 Appeals.

**Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance**

359.501 Causes.
359.502 Procedures.
359.503 Restrictions.
359.504 Appeals.

**Subpart F—Removal of Career Appointees as a Result of Reduction in Force**

359.601 General.
359.602 Agency reductions in force.
359.603 OPM priority placement.
359.604 Removal from the SES and placement rights outside the SES.
359.605 Notice requirements.
359.606 Appeal rights.
359.607 Records.
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**Subpart A—[Reserved]**

**Subpart B—General Provisions**

**§ 359.201 Regulatory requirements.**

This part contains the regulations of the Office of Personnel Management (OPM) that implement subchapter 35 of title 5, United States Code, on the Senior Executive Service (SES).

**§ 359.202 Definitions.**

"Agency," "Senior Executive Service position," "senior executive," "career appointee," "limited emergency appointee," "limited term appointee," "noncareer appointee," "career reserved position," and "general position" are defined in 5 U.S.C. 3132(a).

"Probation" and "probationary period" mean the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the SES.

"Reemployed annuitant" means an individual who is receiving an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System on the basis of his or her former Federal service. A reemployed annuitant serves at the pleasure of the appointing authority.

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**Subpart D—Removal of Career Appointees During Probation**

**§ 359.401 General exclusions.**

This subpart does not apply to the removal of a career appointee during probation when—

(a) The action is initiated under 5 U.S.C. 1206(g) or 5 U.S.C. 7542; or

(b) The appointee is a reemployed annuitant.

**§ 359.402 Removal: Unacceptable performance.**

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period for unacceptable executive performance.

(b) *Basis for action.* A removal under this section may, but need not, be based upon a final unsatisfactory rating under the agency's performance appraisal system established under subchapter II of chapter 43 of title 5, United States Code.

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the agency's conclusions as to the inadequacies of the appointee's executive performance;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(3) Show the effective date of the action.

**§ 359.403 Removal: Conduct.**

(a) *Coverage.* (1) Except as provided in paragraph (a)(2), this section covers the removal of a career appointee from the SES during the probationary period for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(2) This section does not apply when the appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter

(b) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the basis for the removal action (inlcuding the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved); and

(2) Show the effective date of the action.

**§ 359.404 Removal: Conditions arising before appointment.**

(a) *Coverage.* (1) Except as provided in paragraph (a)(2), this section covers the removal of a career appointee from the SES during the probationary period when the action is based in whole or in part on conditions arising before the appointment.

(2) This section does not aply when the career appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter.

(b) *Procedures.* (1) The agency shall give the appointee an advance written notice stating the specific reasons for the removal.

(2) The appointee shall be given a reasonable time to reply.

(3) The agency shall give the appointee a written decision showing the reasons for the action and the effective date. The decision shall be given to the appointee at or before the time the action will be made effective.

**§ 359.405 Removal: Reduction in force.**

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period under a reduction in force.

(b) *Basis for action.* The appointee must have been identified for removal from the SES under competitive procedures established by the agency in accordance with the requirements of 5 U.S.C. 3595(a). Removal action shall be taken under 5 U.S.C. 3592(a).

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(2) Show the effective date of the action.

**§ 359.406 Restrictions.**

(a) Removal from the SES under §§ 359.402 through 359.404 may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(b) The restrictions in paragraph (a) of this section do not apply—

(1) When the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(2) To a disciplinary action initiated before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(3) To a disciplinary action when there is a reasonable cause to believe that the career appointee has committed a crime for which a sentence of imprisonment can be imposed; or

(4) To a disciplinary action when the circumstances are such that retention of the career appointee—

(i) May be injurious to the appointee, his or her fellow workers, or the general public;

(ii) May result in damage to Government property; or

(iii) May, because of the nature of the appointee's offense, reflect unfavorably on the public perception of the Federal service.

(c) The following procedures must be observed when an agency invokes an exception to the 120-day restriction under paragraph (b)(3) or (b)(4) of this section:

(1) The agency shall inlcude in the notice the reasons for invoking the exception.

(2) The appointee shall be given a reasonable time, but no less than 7 days, to respond regarding the propriety of the use of the exception.

(3) The agency shall give the appointee a notice of decision on the propriety of the use of the exception at or before the time the action will be effective.

(4) When circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time as necessary to effect the action.

(d) The imposition of the 120-day moratorium does not extend the probationary period.

**§ 359.407 Appeals.**

(a) Removal under §§ 359.402, 359.403, oir 359.404 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) Removal under § 359.405 is appealable to the Merit Systems Protection Board under 5 U.S.C. 7701 as to whether the reduction in force complies with the competitive procedures required under 5 U.S.C. 3595(a).

## Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

**§ 359.501 Causes.**

(a) *Employees covered.* (1) Except as provided for in paragraph (a)(2) of this section, this subpart covers—

(i) A career appointee who has completed the probationary period in the SES; and

(ii) A career appointee who is not required to serve a probationary period in the SES.

(2) This subpart does not cover a career appointee who is serving as a reemployed annuitant.

(b) *Evaluation of executive performance.* (1) The agency shall appraise the performance of each career appointee in accordance with a performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code.

(2) As used in this subpart, "final rating" refers to the rating of record made by the appointing authority in accordance with the requirements of 5 U.S.C. 4314(c)(3) and subpart C of 5 CFR Part 430.

(c) *Optional removal from the SES.* The agency may remove a career appointee from the SES after the appointee has been given one final rating of unsatisfactory under the agency's performance appraisal system.

(d) *Mandatory removal from the SES.* The agency must remove a career appointee from the SES after—

(1) The appointee has been given two final ratings of unsatisfactory under the SES performance appraisal system within 5 consecutive years; or

(2) The appointee has been given two final ratings of less than fully successful

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(unsatisfactory or minimally satisfactory) under the SES performance appraisal system within 3 consecutive years.

**§ 359.502 Procedures.**

(a) *Notice.* The agency shall notify the career appointee in writing at least 30 calendar days before the effective date of the action. The notice shall advise the appointee of—

(1) The basis for the action;

(2) The appointee's placement rights under subpart G of this part—the position to which the appointee will be assigned shall be identified either in this advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action;

(3) The appointee's right to request an informal hearing from the Merit Systems Protection Board;

(4) The effective date of the action; and

(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h).

(b) *Informal hearing.* (1) A career appointee being removed from the SES under this section shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board. The appointee shall submit the request for an informal hearing to the Merit Systems Protection Board. This request may be made at any time after the appointee has received the notice described in paragraph (a) of this section, but no later than 15 days before the effective date of action. The informal hearing shall be conducted in accordance with the regulations and procedures established by the Merit Systems Protection Board. See 5 CFR 1201.141, Right to hearing, and 1201.142, Hearing procedures; referral of the record.

(2) Neither the granting nor the conduct of this informal hearing shall provide a basis for appeal to the Merit Systems Protection Board under 5 U.S.C. 7701. The removal action need not be delayed because of the granting of such informal hearing.

**§ 359.503 Restrictions.**

(a) Removal from the SES under § 359.501(d)(2) may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(c) This restriction does not apply when the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee.

**§ 359.504 Appeals.**

An action taken under § 359.501 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

## Subpart F—Removal of Career Appointees as a Result of Reduction in Force

**§ 359.601 General.**

(a) *Coverage.* (1) This subpart sets forth the conditions under which an agency may remove a career appointee from the SES as a result of a reduction in force. It also sets forth OPM placement authority in a reduction in force.

(2) This subpart does not apply if the appointee is a reemployed annuitant.

(b) *Definitions.* (1) "Probationary period" is defined in § 359.202 of this part.

(2) "Reduction in force" is defined in 5 U.S.C. 3595(d) as including "the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor."

(c) *Agency procedures.* Agencies must have issued written procedures before conducting a reduction in force. A copy of the procedures shall be provided OPM upon issuance.

**§ 359.602 Agency reductions in force.**

(a) *Competitive procedures.* (1) This paragraph applies to all SES career appointees in the agency, including appointees serving a probationary period.

(2) An agency shall establish competitive procedures in writing to determine who will be removed from the SES in any reduction in force of career appointees within that agency. Such competitive procedures shall be based primarily on performance.

(b) *Placement within the agency.* (1) This paragraph applies to SES career appointees who have completed their probationary period, or were not required to serve a probationary period, and who have been identified for reduction in force under paragraph (a) of this section.

(2) A career appointee is entitled to be offered any vacant SES position in the agency for which the appointee meets the qualifications requirements. If there is more than one vacancy, the agency has the option of which position to offer the appointee.

**§ 359.603 OPM priority placement.**

(a) *Agency certification.* (1) If there is no vacant SES position within the agency for which an appointee under § 359.602(b) is qualified, the agency head, or the acting agency head in the absence of the agency head, shall certify to OPM in writing that no such position is available. This certification may not be delegated below the agency head level.

(2) The 45-day period during which OPM will attempt to place the appointee begins on the day the certification is acknowledged by OPM.

(3) It is the continuing responsibility of an agency that has a surplus career appointee to place the appointee in any vacant SES position in the agency for which the appointee is qualified, even after the appointee is certified to OPM.

(b) *OPM authority.* As provided by 5 U.S.C. 3595(b)(3), OPM may require an agency to take any action that OPM considers necessary to carry out a placement.

(c) *OPM referrals.* (1) OPM may formally refer a career appointee to an agency for a specific SES vacancy or general priority consideration. Such referrals may not become a part of the regular competitive staffing process. Career appointees referred must be considered by the agency for a noncompetitive SES appointment.

(2) Any objection by the agency to the qualifications of the appointee must be based on the technical qualifications in the standard for the position. An agency may not rely solely on lack of agency-specific experience for an objection based on lack of technical qualifications if the appointee is otherwise qualified.

(d) *Agency response.* (1) In order to expedite placement of surplus career appointees, an agency shall respond to an OPM referral within the time period prescribed by OPM.

(2) If an agency fails to place a referred career appointee in an SES

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position because of objection to the appointee's qualifications or because of any other reason, the agency response must be in writing and must be signed by the agency head, or the acting agency head in the absence of the agency head. The response may not be delegated below the agency head level.

(e) *Corrective action.* If an agency fails to provide bona fide priority consideration, OPM may order appropriate corrective action.

(f) *Declination by employee.* A career appointee who declines a reasonable offer of placement may be removed from the SES.

**§ 359.604 Removal from the SES and placement rights outside the SES.**

(a) If a probationary appointee is identified for reduction in force under § 359.602(a), removal action is taken under § 359.405. Placement rights outside the SES are covered under subpart G of this part.

(b) If a career appointee who has completed the probationary period, or who did not have to serve one, is identified for reduction in force under § 359.602(a) and is not placed elsewhere in the SES under § 359.602(b) or § 359.603, or declines a placement offer under § 359.603, removal action is taken under § 359.604(b). Placement rights outside the SES ARE covered under subpart G of this part.

**§ 359.605 Notice requirements.**

(a) Each career appointee subject to removal under § 359.604(b) is entitled to a specific, written notice at least 45 calendar days before the effective date of the removal.

(b) The notice shall state, as a minimum—

(1) The action to be taken and its prospective effective date;

(2) The place where the career appointee may inspect the regulations and records pertinent to the action;

(3) Placement rights within the agency and through OPM; and

(4) The career appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal should be sent.

**§ 359.606 Appeal rights.**

A career appointee may appeal to the Merit Systems Protection Board as to whether the reduction in force complies with the competitive procedures in § 359.603.

**§ 359.607 Records.**

Each agency shall maintain current records needed to determine the retention standing of its competing appointees. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's situation. The agency shall preserve intact all registers and records relating to a reduction-in-force action for at least 2 years from the effective date of the action.

**§ 359.608 Transfer of function.**

(a) "Transfer of function" means the transfer of the performance of a continuing function from one agency to one or more other agencies.

(b) A career appointee is entitled to accompany his or her function to the new agency without any change in tenure if the alternative is removal from the SES in the current agency under reduction in force.

## Subpart G—Guaranteed Placement

**§ 359.701 Coverage.**

This subpart covers career appointees, other than reemployed annuitants, who are removed from the SES—

(a) During the probationary period for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under § 359.403, § 359.404, or Part 752, Subpart F, of this chapter, if at the time of appointment to the SES the individual held a career or career-conditional appointment or an appointment of equivalent tenure, as determined by OPM. An appointment of equivalent tenure is considered to be an appointment in the excepted service other than an appointment—

(1) To a Schedule C position established under Part 213 of this chapter;

(2) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(3) To a position that meets the same criteria as a Schedule C position or a position authorized to be filled by noncareer executive assignment; or

(4) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) For less than fully successful executive performance if the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

(c) As the result of a reduction in force if the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

**§ 359.702 Placement rights.**

(a) An appointee coverd by this subpart is entitled to be placed in a vacant civil service position (other than an SES position) in any agency that is—

(1) A continuing position at GS–15 or above, or equivalent, that will last at least three months; and

(2) A position for which the appointee meets the qualifications requirements.

(b) A probationary appointee, or a nonprobationary appointee who at the time of appointment to the SES held a career or career-conditional appointment (or an appointment of equivalent tenure, as defined in § 359.701(a)), is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the SES. This tenure requirement does not apply—

(1) If the agency taking the removal action does not have a position of equivalent tenure for which the appointee meets the qualifications requirements; or

(2) If the appointee is willing to accept a position having a different tenure.

**§ 359.703 Responsibility for placement.**

The agency taking a removal action under this subpart is responsible for placing the appointee in an appropriate position within this agency, or for arranging a transfer to an appropriate position in another agency. Any transfer must be mutually acceptable to the appointee and the gaining agency.

**§ 359.704 Restrictions.**

Placement of an appointee under this subpart shall not cause the separation or reduction in grade of any other employee.

**§ 359.705 Pay.**

(a) An appointee placed under this subpart shall be entitled to receive basic pay at the highest of—

(1) The rate of basic pay in effect for the position in which the appointee is being placed:

(2) The rate of basic pay currently in effect for the position that the appointee held in the civil service immediately before being appointed to the SES; or

(3) The rate of basic pay in effect for the appointee immediately before removal from the SES.

(b) An employee receiving basic pay under paragraph (a)(2) or (a)(3) of this section shall have future pay adjusted in accordance with 5 U.S.C. 3594(c)(2).

## Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

**§ 359.901 Coverage.**

(a) This subpart covers the removal from the SES of —

(1) A noncareer appointee:

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(2) A limited emergency or a limited term appointee; and

(3) A reemployed annuitant holding any type of appointment under the SES.

(b) Coverage does not include, however, a limited emergency or a limited term appointee who is being removed for disciplinary reasons and who is covered by 5 CFR 752.601(c)(2).

**§ 359.902 Conditions of removal.**

(a) *Authority.* The agency may remove an appointee subject to this subpart at any time.

(b) *Notice.* The agency shall notify the appointee in writing before the effective date of the removal.

(c) *Placement rights.* An appointee covered by this subpart is not entitled to the placement rights provided for career appointees under Subpart G of this part.

(d) *Appeals.* Actions taken under this subpart are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

## PART 536—GRADE AND PAY RETENTION

5. The authority citation for Part 536 is revised to read as follows, and the authority citation following § 536.307 is removed:

**Authority:** 5 U.S.C. 5361–5366; Section 536.307 is also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

6. Section 536.105 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 536.105 Exclusions.**

(a) Grade and pay retention shall not apply to an employee who—

(1) Moves from a position that is not in an agency as defined in 5 U.S.C. 5102;

(2) Is identified under 5 U.S.C. 2105(c), except prevailing rate employees included under 5 U.S.C. 5361;

(3) Is reduced in grade or pay for personal cause or at the employee's request;

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position; or

(5) Is entitled to receive basic pay under 5 U.S.C. 3594(c) because of removal from the Senior Executive Service and placement in a civil service position (other than a Senior Executive Service position) under 5 U.S.C. 3594(b)(2).

* * * * *

(c) Grade retention under § 536.103(a)(1) or (b) shall not apply to a member of the Senior Executive Service who is placed in a position in a covered pay schedule.

[FR Doc. 88–18019 Filed 8–9–88; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Parts 1405 and 1421

### Loans, Purchases and Other Operations; Grains and Similarly Handled Commodities

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend 7 CFR Part 1421 to set forth the determinations by the Commodity Credit Corporation with respect to whether certain price support loans could be extended by producers. These amendments would provide commodity market stability and provide affected producers with notice of the Corporation's determinations. This proposed rule would also amend 7 CFR Part 1405 to provide that the Commodity Credit Corporation would not be subject to the provisions of the July 20, 1971 Statement of Policy issued by the Secretary of Agriculture with respect to the manner in which agencies of the Department of Agriculture conduct decision-making activities. This amendment would enhance the administration of Commodity Credit Corporation programs and activities.

**DATE:** With respect to the proposed amendments set forth in 7 CFR Part 1421, comments must be received by August 25, 1988. With respect to the proposed amendments set forth at 7 CFR Part 1405, comments must be received by September 9, 1988.

**ADDRESS:** Send comments to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule is available on request from Thomas VonGarlem at this address.

**FOR FURTHER INFORMATION CONTACT:** Thomas VonGarlem (202) 447–6761.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule. Therefore, the Regulatory Flexibility Act is not applicable.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

### Background

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. *See* 7 CFR 1421.1–32 for feed grain, rice, soybean and wheat price support loans and purchase agreements. (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act, CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred

to as Farmer-Owned Reserve (FOR) Loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740–54 (53 FR 11239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 401 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1,259 million bushels are in the FOR feed grain reserve and corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949 Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, would forfeit the loan collateral to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Charter Act, as amended. The terms and conditions of the loan are set forth in the loan agreement. See 7 CFR 1421.900–917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain other loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court for the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 *et seq.* Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notice which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculture on July 20, 1971 (*See* 36 FR 13804) which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since propsioed rule making actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments are requested with respect to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months.

Section 1421.6 would also be amended to provide that 1985 and 1986 crop loans of wheat, barley, oats, and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year.

This proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide that 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

As set forth in CCC's Notice of Proposed Determination published on July 7, 1988 (53 FR 25,518), which requested comments concerning entry of 1988 crops into the FOR, FOR quantities of both wheat and feed grains are currently in excess of the statutory minimum levels.

The January and March 1988 determinations were initially based upon expected 1988 normal crop production and existing and projected market conditions. Based upon these factors, CCC determined to allow extensions of only certain crop year loans. However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been affected by the severe drought conditions which exist throughout major agricultural producing regions of the United States. For example, the 1988 corn production was estimated on May 10, 1988 to be 7,300 billion bushels. As of July 12, 1988 this estimate was revised downward by 28.8 percent to 5,200 billion bushels due to the effects of the drought. This feed grain production reduction, when considered with the reduction in other feed supplies such as hay, has caused significant increases in feed prices for livestock producers and has also resulted in the unavailability of sufficient quantities of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks and will, therefore, adversely affect the income of these producers. In addition, the loss of production of wheat due to the drought coupled with an expansion of export markets has resulted in a continued strong demand for U.S. wheat.

This proposed rule would also amend the regulations at 7 CFR 1421.900–917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

> The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agricultural Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing

a matured grain reserve loan as collateral for a loan obtained under the new program.

50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, this proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Special Producer Storage Loans will not be extended.

Accordingly, in order to ensure that sufficient quantities of grain are available at reasonable prices to livestock and poultry producers as well as other users of grain CCC proposes that producers be permitted the extension of only certain crop year loans. The affected quantities of outstanding CCC loan collateral as of July 27, 1988 are as follows:

| Program crop year | Wheat | Corn | Sorghum | Barley | Oats | Soybeans |
|---|---|---|---|---|---|---|
| | | | | | | Millions of bushels |
| Regular Loans: | | | | | | |
| 1987 | 39 | 790 | 38 | 19 | 0 | 72 |
| 1985 | 6 | 81* | 4* | 2 | 0 | 3 |
| 1986 | 29 | 481* | 30* | 14 | 0 | 9 |
| Farmer-Owned Reserve (for loans): | | | | | | |
| 1983 & Prior | 170 | 0 | 0 | 3 | 0 | ..... |
| 1984 | 73* | 306* | 11* | 15* | 0* | ..... |
| 1985 | 159 | 833 | 44 | 34 | 0 | ..... |
| Special Producer Storage (SPSL) Loans | 0 | 120 | 18 | 26 | 1 | ..... |

(Asterisks denote loans which would be available for extension)

The proposed rule would also amend 7 CFR Part 1405 to provide that the Commodity Credit Corporation would not be subject to the provisions of the July 20, 1971 Statement of Policy issued by the Secretary of Agriculture. This Statement of Policy with respect to the manner in which agencies of the Department of Agriculture conduct decision-making activities has been the subject of litigation involving CCC. The majority of CCC's actions are market sensitive and must be taken expeditiously taking into consideration existing and projected market conditions and variable factors such as weather. This is most evident from the actions which CCC has had to take during 1988 due to effects of severe drought conditions. Accordingly, it is proposed that CCC be exempt from the application of the July 20, 1971 Statement of Policy. This action would be consistent with recent Congressional actions which have specifically required that certain CCC functions be undertaken without regard to such directive. *See, for example* section 1017 of the Food Security Act of 1985, as amended, and section 1108(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985. Accordingly, this proposed rule would amend 7 CFR Part 1405 to provide that CCC and CCC related activities would not be subject to the provisions of the July 24, 1971 Statement of Policy.

On July 29, 1988, the Secretary of Agriculture announced that producers with CCC price support loans which matured on July 31, 1988 could extend such loans until August 31, 1988. Therefore, many producers with these loans, as well as persons who currently desire to purchase grain, will be making marketing decisions on the basis that such loans are extended until only August 31, 1988. Accordingly, in order to provide for commodity market stability, it has been determined that a final decision on the proposed amendments to 7 CFR Part 1421 must be made prior to August 31, 1988. Accordingly, the comments for this portion of the proposed rule must be received by August 25, 1988. Comments with respect to the proposed amendment to 7 CFR Part 1405 must be received by September 9, 1988. CCC intends that the final rule will be effective on the date of publication.

**List of Subjects**

*7 CFR Part 1421*

Grains, Loan programs/agriculture, Price support programs, Warehouses.

*7 CFR Part 1405*

Feed grain, Rice, Upland and extra long staple cotton, Wheat and related programs, Grains, Loan programs/agriculture, Price support programs, Warehouses, Commodity certificates, In-Kind Payments, Other forms of payment.

Accordingly, Title 7 of the Code of Federal Regulations is proposed to be amended to read as follows:

**PART 1421—[AMENDED]**

1. The authority citation for Part 1421 continues to read as follows:

**Authority:** Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1972 (15 U.S.C. 714b and 714c); sections 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 92 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446, 1447, 1421, 1423, and 1425).

2. 7 CFR 1421.6 is amended by revising paragraph (a)(1)(i) and adding paragraph (c) to read as follows:

**§ 1421.6 Maturity and expiration dates.**

(a) * * *

(1) * * *

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made; and

* * * * *

(c) *Extension of loans.* (1) Notwithstanding any other provision of this Part, all 1987 and prior crop year loans which have been made available to eligible producers in accordance with the provisions of this Part shall not be extended upon maturity except that 1985 and 1986 crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year.

(2) With respect to all commodities, 1988 and subsequent crop year loans may not be extended upon maturity.

3. 7 CFR 1421.741 is revised to read as follows:

**§ 1421.741 Length of reserve agreements.**

The length of reserve agreements shall be determined and announced by the Executive Vice President, CCC, based upon market conditions which exist at the time such agreements are executed by CCC. Such agreements may be extended by CCC, at the producer's option, upon maturity if CCC determines that an extension is warranted based upon existing market conditions. 1983 and prior crop year loans may not be extended. 1984 crop year loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year. Producers having 1984 and 1985 crop year loans will be notified by mail of any extension or additional extension option which may be made available by CCC. Determinations with respect to the entry of eligible grain from other crop years into the Grain Reserve Program will be announced by CCC by the publication of a final notice of determination in the **Federal Register.**

4. 7 CFR 1421.900 is revised to read as follows:

**§ 1421.900 General statement.**

Special Producer Storage Loan Program loans shall not be extended upon maturity.

**§§ 1421.901 through 1421.917 [Removed]**

5. 7 CFR 1421.901 through 1421.917 are removed.

**PART 1405—[AMENDED]**

6. The authority citation for Part 1405 is revised to read as follows:

**Authority:** Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072, (15 U.S.C. 714b and 714c).

7. A new § 1405.3 is added to read as follows:

**§ 1405.3 Rulemaking activity of the Commodity Credit Corporation.**

The Statement of Policy issued by the Secretary of Agriculture on July 20, 1971 (36 FR 13,804) shall not be applicable in any manner with respect to any Commodity Credit Corporation activity, any action related to a Commodity Credit Corporation activity and any activity which involves the expenditure or use of CCC funds or assets.

Signed at Washington, DC, on August 8, 1988.

**Richard E. Lyng,**

*Secretary of Agriculture, Chairman, Commodity Credit Corporation.*

[FR Doc. 88-16160 Filed 8-8-88; 1:55 pm]

BILLING CODE 3410-05-M

## FARM CREDIT ADMINISTRATION

## 12 CFR Part 615

## Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

**AGENCY:** Farm Credit Administration.

**ACTION:** Resolicitation of Comments.

**SUMMARY:** On May 12, 1988, the Farm Credit Administration (FCA) published for comment a proposed amendment to Subpart H of 12 CFR Part 615 that would establish minimum permanent capital standards for Farm Credit System (System) institutions that would be phased in over a 5-year period (53 FR 16948). A public hearing on the proposed rule was held on June 9, 1988 and the comment period closed on June 10, 1988. After reviewing the proposal in light of the written comments and the testimony received at the public hearing, the FCA has determined that additional comment is needed on several issues. The FCA solicits additional comments on alternative methods of eliminating double-counted capital and on a regulatory forbearance plan under consideration for incorporation into the final rule.

**DATE:** Written comments must be submitted on or before August 31, 1988.

**ADDRESSES:** Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4402,

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On May 12, 1988, the Farm Credit Administration published for comment proposed regulations (53 FR 16948) that would establish minimum permanent capital standards for System institutions. The proposed regulations would implement section 301(a) of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233, which directs the FCA to issue regulations under section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 et seq., establishing minimum permanent capital standards expressed as a ratio of capital to assets that take into account relative risk factors. The proposed regulation would provide for a relative weighting of assets on the basis of risk and would establish a minimum ratio of permanent capital to risk-weighted assets of 7 percent that would be phased in over a period of 5 years. A public hearing was held on June 9, 1988 and the comment period closed June 10, 1988.

In the proposed regulation, the FCA proposed to require that double-duty dollars or double-counted capital be eliminated before computing the permanent capital ratios. Double-counted capital results from the ownership interest of one Farm Credit institution in another and the distribution of earnings of the owned institution in the form of its equities, for which there is no secondary market, rather than in cash. Between associations that are direct lenders and their funding banks, the proposed regulation would eliminate the double-counted capital at the bank level and count it at the direct lender level. Two alternative methods for eliminating double-counted capital between direct lenders and their funding banks were described in the preamble and the FCA solicited comments on whether the proposed approach or one of the two alternative approaches would be more appropriate. Comments were received from 143 organizations and individuals, most of them Farm Credit institutions, but only four comments specifically addressed the alternative methods of eliminating double-counted capital. However, these four comments stimulated additional discussion of the alternative options within the FCA. In view of the importance of this issue and the small number of comments received, the FCA solicits additional comments on the alternative options in light of the considerations described below under "Double-counted capital."

The majority of System institutions that commented though that a 7 percent risk-adjusted permanent capital ratio would be difficult for many institutions to reach in 5 years, especially since borrower stock protected by section 4.9A of the 1971 Act, as amended, which

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cannot be counted as permanent capital, currently constitutes most of their capital. While the protected borrower stock will decrease as loans are paid off and will be gradually replaced with borrower stock that is at risk and can be counted as permanent capital, protected stock will comprise a relatively large percentage of the institutions' total capital in the early years of the phase-in. Many of these commenters requested some type of regulatory forbearance plan that would protect institutions that do not meet the minimum permanent capital standards (including interim standards) from regulatory enforcement action if they are making a good faith effort to reach the standards and are making reasonable progress toward their goal. Several forbearance plans were suggested. The FCA was persuaded that some type of regulatory forbearance plan similar to one suggested by one of the commenters would be appropriate and solicits comments on a forbearance plan that the FCA is considering incorporating in the final regulation. (See discussion below.)

**Double-Counted Capital**

The proposed regulation eliminated the double-counted capital between a direct lender institution and its funding bank by requiring the bank to deduct from permanent capital an amount equal to the investment of the direct lender in the funding bank, after the elimination of any reciprocal holdings. A number of commenters pointed out that when the investment amount is offset by protected stock (which cannot be counted as permanent capital), a double deduction results if the investment amount is not first reduced by the amount of protected stock before a deduction is made from permanent capital. The double deduction that results from the failure to offset the institution's protected stock against the amount of investment in another System institution before deducing such amount from permanent capital was an unintended result. The FCA intends to revise § 615.5210(d) (2) and (3) of the proposed regulation to allow an offset of the investment against protected stock before a deduction from permanent capital is made.

In the preamble to the proposed regulation, the FCA invited comments on two alternative options for eliminating double-counted capital between direct lenders and their funding banks. One was to eliminate 75 percent of the capital at the bank level and 25 percent at the direct lender level. This approach would have the effect of counting 25 percent of the capital at the bank level and 75 percent at the direct lender level (25/75 option). The second option was to eliminate double-counted capital at the direct lender level by deducting from the direct lender's capital the amount of its investment in the funding bank (owned funds approach).

Only four comments were received, but the comments were thoughtful and stimulated additional discussion of the alternative options. Two supported the approach taken in the proposed regulation and two supported the owned funds approach.

The commenters supporting the proposed approach cited several reasons for their support: (1) All asset risk to the association's equity lies in the farmer's debt; (2) the borrower's stock relies directly on the association's investment in the Farm Credit Bank (FCB) to maintain its value; (3) if production credit associations (PCAs) were not permitted to have value for their investment in the FCB, all capital would have to be built from the farmer's pocket in the form of higher interest rates, which would drive away the best customers; (4) the farmers paid for the association's investment in the FCB and should be permitted to directly utilize the benefit through counting such investment as permanent capital; and (5) the direct lender is the level of primary risk and should utilize the investment as permanent capital.

The commenters supporting the owned funds approach, which would eliminate the double-counted capital at the association level, thought that the banks should approach a true discount and contract service position, which requires little capital, and asserted that the rigth place to capitalize the System is at the association level. One commenter urged that all stock presently held in the bank be dispersed to the associations and held as unallocated reserves, as an account made up of "good hard cash" is the best method of capitalizing any business, but noted that such a transfer would create tax responsibilities and would necessitate allowing any liability to be amortized over a period of years. Another commenter stated that the recent one-time required stock purchase in the Farm Credit System Financial Assistance Corporation (FAC) demonstrated that such an assessment can be very damaging when an institution carries capital on its books to which it has no access. (The FCA assumed the commenter had reference to the fact that much of the institution's capital is invested in bank equities, which can be retired only at the discretion of the bank's board. The commenter argued that such an assessment would significantly reduce or wipe out the institution's owned funds or "good hard cash" and leave only capital that is invested in these non-earning, illiquid assets.) The commenter also stated that the bank and the association should each have capital which each is free to use as necessary to protect its respective interests.

As the FCA considered these comments, it became apparent that the premise of the proposed regulation needed to be reexamined. The approach embodied in the regulation as proposed was based on the assumption that the double-counted capital should be counted where the primary risk resides. The FCA continues to believe that there should be sufficient capital at the level of the primary risk, but believes that it is also important that such capital be accessible at the discretion of the institution's board of directors to permit it to act as a stand-alone institution without undue dependence on the bank. If all of the double-counted capital were to be counted at the direct lender level, the direct lender's capital may appear to be adequate on its balance sheet. However, the reality is that the direct lender cannot access the double-counted portion of the capital without the permission of the bank, because the direct lender's capital is offset by investment in bank equities, which are retirable only at the discretion of the bank's board. The approach of the proposed regulation may not provide the maximum incentive for the downstreaming cash to the direct lender so that thee would be accessible capital at the level of primary risk. Thus, the proposed regulation may encourage the continued dependence of the direct lender associations on the funding banks, because it would allow the direct lenders to use the double-counted capital to meet their capital requirements even though the "good hard cash" is held at the bank level. Furthermore, as written, the proposed regulation would not allow a bank to be capitalized by its owners, as the entire investment of the direct lender would be deducted from the capital of the bank. This would require the bank to capitalize itself solely from earnings or from the sale of nonvoting equities to persons other than borrowers.

**Owned Funds Approach**

In light of these considerations, the owned funds approach to eliminating double-counted capital may be a preferable approach to provide the best

measure of the adequacy of the institution's accessible capital. Further, this approach may best promote the autonomy of System institutions in protecting their operational interests by encouraging the accumulation of appropriate levels of accessible capital in each institution. The owned funds approach would require the direct lender to exclude from its total capital and assets an amount equal to its investment in the bank. This would initially leave some direct lenders with negative permanent capital. However, since the proposed interim minimum capital standards would be determined by reference to a beginning permanent capital ratio computed as of December 31, 1987, and calculated after the elimination of double-counted capital, the institutions should have no more difficulty in meeting such standards in the early years when most borrower stock cannot be counted, than under the May 12, 1988 proposed regulation. It is true that if the bank were to continue distributing its earnings in allocated equities rather than cash, the owned funds approach would likely mean that it would take longer for most direct lenders to reach the 7 percent standard. However, if such a proposal is adopted, the proposed forbearance plan, which is based on specified increases in the permanent capital ratio, should allay concens about increased potential for enforcement actions under the owned funds approach. Furthermore, because the permanent capital ratios of the direct lender would likely be lower and the bank levels higher than needed to meet their respective minimum permanent capital standards, there would appear to be a strong incentive for banks to distribute their earnings in cash and/or to retire some of the allocated equities owned by the direct lenders. This would make possible larger year-to-year increases in the direct lender's permanent capital ratio than would otherwise be the case and would ultimately have the effect of assuring that accessible capital is available at the direct lender level where the primary risk resides.

**May 12, 1988 Proposal**

On the other hand, there are substantial arguments for the approach of the regulation proposed on May 12, 1988. While the owned funds approach may provide the maximim incentive for the accumulation of "good hard cash" at the association level, there are other considerations which argue for accumulating the "good hard cash" at the bank level. For instance, the banks are jointly and severally liable on consolidated Systemwide obligations and have significant capital requirements of their own. Although the Farm Credit Banks, under proposed regulations approved by the FCA on July 29, 1988, would be able, subject to FCA approval, to make capital calls on their owners as necessary to honor their joint and several obligations or to meet their capital requirements, it may be preferable for each institution to have sufficient capital readily available to give investors confidence in the ability of the banks to honor such obligations. Furthermore, the bank is empowered to assist financially troubled associations and has historically be their first line of defense in troubled times. Accumulating earnings at the bank level would assure that the FCB continues to be adequately capitalized to respond to such emergencies. And finally, although the approach of the proposed regulation does not provide maximum incentive for downstreaming of "good hard cash" to the association, so that associations have ready access to their capital, it does provide some incentive, since even under the proposed regulations many banks will have excess capital. The approach of the proposed regulation offers less of an incentive than would be provided by the owned funds approach. However, the proposed approach may be less disruptive than the owned funds approach, which would have an immediate adverse impact on the permanent capital position of the direct lenders and make it difficult for many of them to meet the 7 percent minimum permanent capital standard within 5 years unless significant amounts of cash is downstreamed from the bank.

**Purchased v. Distributed Equities**

Yet another option for eliminating double-counted capital, and possible a middle ground between the owned funds approach and the approach of the proposed regulation, would be to make a distinction between the bank equities that have been purchased by associations and those that have been distributed to the association as earnings. For the purpose of computing each institution's permanent capital ratio, this option would require those investments by direct lenders in an FCB that result from distributions of earnings from the FCB to the direct lender to be deducted from the total capital of the FCB. All other investments by direct lenders in an FCB would be counted by the FCB as permanent capital and deducted from the total capital of the direct lender. The effect of this approach would be to consider, for the purpose of computing the permanent capital ratios, that all earnings distributions from the FCB to its direct-lender owners have been in cash (whether or not that is the case) and to consider all other equities as equities that have been purchased by the direct lender with cash. Therefore, the FCB would count the investment made by its direct-lender owners as permanent capital and the direct lender would count distributions of earnings from the bank in its permanent capital. Thus, the amount of double-counted capital that would be counted at each institution would not be a prescribed percentage, but would vary with the particular circumstances of the institution.

The FCA is reconsidering the approach to eliminating double-counted capital set forth the proposed regulation and invites further comment on the two alternative options described in the proposed regulation, in particular, the owned funds approach. In addition, the FCA invites comment on whether the distinction between purchased equities and equities obtained through the payment of patronage would provide an appropriate basis for allocating double-counted capital.

In order to obtain meaningful comment, certain clarifications requested by the commenters should be made.

**Investment Exclusion**

A number of commenters noted that the proposed regulation makes no provision for the deletion of the investment from the asset base when a corresponding amount is deducted from the institution's capital. Where the deduction from capital is made from the investing institution, the result is to require the institution to capitalize the investment even though the offsetting amount of capital has been deducted, resulting in an effective capitalization rate of more than 100 percent. This situation occurs for the owners of the Leasing Corporation and for the investing institution in a participation relationship. These comments argued that the investment should be excluded form the asset base as well. Some commenters argued that a similar exclusion should be made in the elimination of double-counted capital between the FCB and its direct-lender owners, even though the capital deduction is not made in the investing institution.

The FCA agrees that where a deduction of an investment amount from capital is required in the owner institution to eliminate double-counted capital, it is appropriate to exclude the investment from the assets of the owner institution, to avoid the result described above. Such an exclusion would be

allowed in the elimination of double-counted capital between the Leasing Corporation and its owners and between participating institutions. If the owned funds approach were to be adopted, such an exclusion would also be appropriate. However, where a deduction of an investment amount is required to be deducted from the owned institution (FCB), there is no offsetting investment to deduct. Rather the investment is reflected in the assets of the owner institution (direct lender), which should be capitalized. Accordingly, under the approach of the proposed regulation to eliminating double-counted capital between the direct lender and the FCB, no such exclusion would be made. Under the options that would split the double-counted capital between the bank and the direct lender, the asset would be excluded only to the extent that an offsetting amount of capital is excluded in the same institution.

**Generally Accepted Accounting Principles**

The 1987 Act and the proposed regulation require the permanent capital standards to be applied to financial statements prepared in accordance with generally accepted accounting principles (GAAP). As a result, several clarifications requested by commenters require no change to the proposed regulation. For example, the GAAP requirement would mean that assets should be net of the allowance for losses and depreciation before computing the permanent capital ratio and that the financial statements would reflect a GAAP-based reserve for PCAs rather than a statutory reserve of 3½ percent. No furher clarification in the regulation is necessary. Commenters also asked the FCA to clarify whether the statutory modification of GAAP in section 6.9(e)(3)(d) of the 1971 Act, as amended, would be deemed to modify the requirement to use GAAP-based statements in computing the permanent capital ratios. This section states that institutions would not be required to record a pro rata share of the obligations of the FAC until their maturity, even though under GAAP they would be required to do so. The FCA believes it appropriate to read the statutory modification in section 6.9(e)(3)(d) into section 301 of the 1987 Act and intends to clarify the final regulation accordingly.

**Regulatory Forbearance**

Many of the System institutions that commented on the proposed regulation asserted that they would be unable to reach the 7 percent standard by 1993, citing interest rate increases and returns on assets that would be required and that were deemed to be uncompetitive and unrealistic. Many commenters suggested that the phase-in should be longer and/or non-linear and/or more flexible, since the starting point is a historic low and the minimum permanent capital standard higher than that for their competitors, commercial lenders. Many commenters pointed out factors that would make reaching even the interim standards difficult in the early years: (1) One-time events occurring in 1988, such as the required stock purchase in the Farm Credit System Financial Assistance Corporation reallocation of loss-sharing accruals for some institutions, and PCA allowance for loss adjustments required by tax law changes; (2) continued high average System debt costs and the lingering effects of nonaccrual loans; and (3) the high percentage of statutorily protected borrower stock in the early years. A non-linear phase-in was often suggested to take into account these factors and to allow for the compounding effect of earnings. Several legislators who commented asserted that Congress did not intend standards to be so high that most institutions would be in violation the first year.

A number of alternative phase-in plans were suggested. A back-loaded, non-linear phase-in, which requires little or no increase in permanent capital ratios during the first and second year and increasing in the third through the fifth year was the alternative most often suggested. However, a number of commenters suggested extending the phase-in over a longer period, from 10 to 15 years. Several commenters suggested requiring 3 to 5 percent by 1992, with some higher figure, 6 to 7 percent, to be achieved in 10 to 15 years. One commenter suggested that institutions be allowed to set their own phase-in standards. Another suggested that the FCA establish regulatory oversight on the basis of an institution-by-institution evaluation. Establishing subcategories of institutions by financial condition, with appropriate interim standards for each, was also suggested.

FCA enforcement of its capital standards during the phase-in period appeared to be a primary concern of those who commented on the phase-in. While some commenters supported enforcement during the phase-in period, which the 1987 Act appears to contemplate, two senators wrote in opposition to enforcement during the phase-in period. Other commenters proposed that FCA develop a formal regulatory forbearance plan that would provide a "safe harbor" for institutions that are making reasonable progress toward meeting their minimum permanent capital standards. Some suggested that the granting of forbearance be based on a specified minimum return on assets and others suggested a specified increase in the permanent capital ratio as a basis. Several commenters expressed concern that failure to attain the interim standard would automatically result in enforcement action, including draconian measures such as forced merger and liquidation, despite the FCA's assurance in the preamble of the proposed regulation that it would take into account the good faith efforts and reasonable progress of System institutions in determining whether an enforcement action is appropriate. Other commenters, while not expressing such a concern, appeared to assume such a result.

In response to the concerns expressed by the commenters, the FCA is considering incorporating into the final capital adequacy regulation forbearance criteria based on an annual increase in an institution's permanent capital ratio, which, if met, would ensure that no enforcement action based solely on failure to meet the minimum permanent capital standards would be taken. However, all institutions would continue to be required to meet their minimum permanent capital standards (including the interim standards) before any earnings could be distributed or stock retired. Under the plan contemplated, an institution would be exempt from regulatory enforcement action imposed solely for failure to meet its minimum permanent capital standards if during each year from 1989 through 1993 it maintained its permanent capital ratio at or above the average permanent capital ratio for the previous year plus a specified increase.

Under the plan contemplated, the forbearance criterion for 1989 would be the institution's permanent capital ratio as of December 31, 1987. For succeeding years, the forbearance criteria would be determined by adding a specified forbearance increment to the prior year's average permanent capital ratio. These increments would be as follows:

| Computation year | Forbearance increment |
|---|---|
| 1990 | 50 basis points. |
| 1991 | 75 basis points. |
| 1992 | 75 basis points. |
| 1993 | 100 basis points. |

The FCA is considering whether the forbearance plan should be extended beyond 1993 and solicits comments on this issue.

The average permanent capital ratio for an institution would be computed by summing the adjusted permanent capital balances computed from each closing statement for that year (numerator) and dividing by the total of the risk-adjusted assets (denominator) computed from each closing statement for that year. For the purpose of commenting, respondents should assume that until 1991, the average would be computed using averages of monthend balances, and that beginning in 1991, the average would be computed using averages of daily balances.

If an institution maintains its permanent capital ratio throughout a given year at or above its prior year's average plus the forbearance increment, it would be exempt from enforcement action solely for failure to meet its interim minimum permanent capital standard for that year. For example, if the average permanent capital ratio for an institution for 1990 were 3.80 percent, the institution would meet its forbearance criterion if it were to maintain its permanent capital ratio at or above 4.55 (3.8 plus .75) during 1991. The contemplated plan would require the institution to meet this criterion at all times during the year. The forbearance plan would benefit primarily institutions that have starting permanent capital ratios of less than 5 percent, since at that point, the forbearance criteria would be higher than the interim minimum standard.

The forbearance standard in no way precludes the FCA from taking enforcement action for other unsafe or unsound practices, for non-compliance with statute or regulations, or any other action authorized by law.

The FCA invites comment on the forbearance plan. The FCA is considering whether the phase-in for the interim minimum permanent capital standards should be nonlinear, but the purposes of commenting on the forbearance proposal, commenters should assume that the phase-in is linear. Since there is no requirement for an increase in the permanent capital ratio in 1989, the increment which must be added to the December 31, 1987 permanent capital ratio to determine the interim permanent capital standard would be, for a linear phase-in, 25 percent per year. For the purpose of commenting on the forbearance plan, commenters should assume that: (1) The minimum permanent capital standard is 7 percent; (2) the interim standards will begin in 1989 (when they will require institutions to match the December 31, 1987 starting ratio); (3) the interim permanent capital standard for 1990 through 1993 will be 25, 50, 75 and 100 percent, respectively of the difference between 7 percent and the starting ratio.

**Authority:** 12 U.S.C. 2154, 2243, 2252, section 310(a) of Pub.L. 100-233.

Date: August 4, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board*

[FR Doc. 88-17993 Filed 8-9-88; 8:45 am]

BILLING CODE 6705-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 22, 90

**[General Docket 88-96]**

### Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of time for reply comments.

**SUMMARY:** This action grants in part a Motion for Extension of Time filed by the Puerto Rico Telephone Company (PRTC). PRTC requested a 30 day extension of time for parties to file replies to comments filed in response to the *Notice of Proposed Rule Making* in this proceeding (53 FR 17082, 05/13/88). PRTC stated that an extension was necessary due to the large volume of material filed in the comments. The Commission concurs that an extension is desirable, but believes that an additional 30 days is excessive. The *Order*, therefore, grants a 15 day extension.

**DATE:** Reply comments are now due August 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Julius Knapp, telephone (202) 653-8108 or Rodney Small, telephone (202) 653-8116.

Federal Communications Commission.

**Thomas P. Stanley,**

*Chief Engineer*

[FR Doc. 88-18010 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Parts 2 and 80

**[GEN Docket No. 88-372; FCC 88-246]**

### Automated Maritime Telecommunications Systems (AMTS)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** This document proposes to change rules applicable to Automated Maritime Telecommunications Systems (AMTS), an automated, integrated communications system for vessels to use as they move along an entire river system. The changes proposed are to treat all AMTS channels on an equal basis for purposes of ensuring against interference to television broadcasting, to expand the geographic area of the service to make it available nationwide, to delete a requirement that a system cover at least 60% of a waterway in favor of a more flexible approach and to license AMTS operators as systems including the users and to eliminate individual licenses for ship users. These proposals are intended to make AMTS available in more areas.

**DATES:** Comments are due on or before September 26, 1988. Reply comments are due on or before October 11, 1988.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Carol Fox Foelak, Private Radio Bureau, (202) 632-7197.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, GEN Docket No. 88-372 adopted July 20, 1988, and released August 4, 1988). The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC dockets branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., 140, Washington, DC., 20037.

**Summary of Notice of Proposed Rule making**

An AMTS provides automated voice and data communications for tugs and barges along an entire river system. The FCC established the AMTS in 1981 to serve the Mississippi River System. The FCC expanded it to the Gulf Intracoastal Waterway in 1982 and the Gulf of Mexico in 1984, but said then it was prudent to evaluate an operating system before extending AMTS nationwide.

The AMTS band (216–220 MHz) is adjacent to TV channel 13 (210–216 MHz) and the FCC has rules to forestall the possibility of interference to TV reception. Of the four AMTS channel Groups, A, B, C and D, the rules presently prohibit the use of Groups C and D, which are closer to channel 13 than Groups A and B, within 105 miles of a channel 13 station.

The FCC noted that an AMTS system had been operating for over a year on the Mississippi River and stated that it was time to explore the benefits of AMTS nationwide. It also proposed to treat the Group C and D channels on the same basis as the Group A and B channels, that is, to require that applicants design systems to avoid interference to TV and, should interference occur in spite of this precaution, to eliminate it or cease operating the offending station within 90 days. It also proposed to delete or change a requirement that an AMTS system cover 60% of a navigable waterway to permit greater flexibility in the design of systems to offer coverage over marine shipping routes.

Currently the FCC licenses the AMTS operator and the ship users individually. It proposed to license only the operator, as a system, and eliminate licensing the ship users individually. Thus a ship could begin service as soon as it had a service agreement with the AMTS licensee, without having to obtain an FCC license itself.

**Ordering Clauses**

This is a non-restricted note and comment rule making proceeding. *See* § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permisssible *ex parte* contacts.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rules make additional frequencies available to maritime users in the U.S. A negative impact is not expected for any entity. An increase in the communications services available to the maritime industry would result.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

Authority for issuance of this notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 26, 1988 and reply comments on or before October 11, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

A copy of this Notice of Proposed Rule Making will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

**Proposed Rules**

Parts 2 and 80 of Chapter I of Title 47 the the Code of Federal Regulations would be amended as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

**§ 2.106 [Amended]**

2. Section 2.106, the Table of Frequency Allocations, is amended by removing footnote NG 121 from column 5 of the 216–220 MHz band and by removing the text of the footnote at the end of the table, *§ 2.106 Table of Frequency Allocations.*

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

**§ 80.215 [Amended]**

2. Section 80.215(h) is amended by removing paragraph (h)(5) and renumbering the remaining paragraphs.

**§ 80.385 [Amended]**

3. Section 80.385(a) is amended by removing the second sentence in paragraph (a)(2).

**§ 80.475 [Amended]**

4. Section 80.475 is amended by removing paragraph (a) and the first two sentences of paragraph (b), and redesignating the current paragraphs (b) and (c) as new paragraphs (a) and (b), respectively.

**§ 80.29 [Amended]**

5. Section 80.29(a) is amended by adding one additional entry at the end of the table, as follows:

| Type of change | Required action |
|---|---|
| • • • • • | |
| Increased number of mobiles (AMTS). | Written notice to the Commission. |

**§ 80.1169 [Removed and Reserved]**

6. Section 80.1169 is removed and reserved.

7. A new § 80.54 is added as follows:

**§ 80.54 Automated Maritime Telecommunications System (AMTS)—System licensing.**

AMTS licensees will be issued blanket authority for a system of coast stations and mobile units (subscribers). AMTS applicants will specify the maximum number of mobile units to be placed in operation during the license period.

[FR Doc. 88–18006 Filed 8–9–88; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 88–367, RM–6221]**

## Radio Broadcasting Services; Selma, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Holder Communications Corp., licensee of Station WTUN(FM), Channel 261A, Selma, Alabama, seeking the substitution of Channel 261C2 for Channel 261A and modification of its license accordingly. Reference coordinates utilized for this proposal are those of the petitioner's presently licensed site at 32–26–02 and 87–00–40.

**DATES:** Comments must be filed on or before September 22, 1988, and reply comments on or before October 7, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John B. Kenkel, Esq., Kenkel, Barnard & Edmundson, 1220–19th St., NW., # 202, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–367, adopted June 29, 1988, and released August 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–18095 Filed 8–9–88; 8:45 am]

BILLING CODE 6712–01–M

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 14**

## Humane and Healthful Transport of Wild Mammals and Birds to the United States

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Fish and Wildlife Service announces its intention to propose amendments to the regulations governing the humane and healthful transport of wild mammals and birds to the United States (50 CFR 14.101–204). Details are provided of those provisions of the existing regulations believed to be in need of clarification or revision. All interested persons are invited to contribute recommendations to be incorporated into a proposed rule.

**DATE:** Comments on this notice will be accepted until September 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329, telephone (202) 343–4963.

**SUPPLEMENTARY INFORMATION:** In response to the Lacey Act Amendments of 1981, the Service proposed on December 4, 1985 (50 FR 49749) to adopt a rule governing the humane and healthful transportation of wild mammals and birds to the U.S. The proposal was based in large part on regulations (9 CFR Part 3) published by the Animal and Plant Health Inspection Service (APHIS) to implement the Animal Welfare Act (AWA) and the Live Animal Regulations of the International Air Transport Association (IATA).

The Service published a final rule on November 10, 1987 (52 FR 43278). After publication of the rule, the Service received additional comments from affected members of the public maintaining that some of its provisions were not clear, were unreasonable, or could actually result in inhumane shipment conditions. The rule was to have taken effect on February 8, 1988, but because of the substantial controversy surrounding it, the Service delayed the effective date until August 1, 1988.

In response to a lawsuit, however, a preliminary injunction order issued on April 18, 1988, by the United States District Court for the District of Columbia ruled that delay of the effective date was without good cause. Consequently, the rule published in November remains in force and is effective as of February 8, 1988, as required by the Court Order. A notice announcing implementation of the rule was published on April 27, 1988 (53 FR 15041), and a notice of the Service's enforcement policy for the regulations was published on May 23, 1988 (53 FR 18287).

The Service continues to believe that certain provisions of the rule as it now stands require clarification or revision and intends to propose such revisions as are found to be necessary as soon as possible. The Service is now gathering information from all available sources to identify any needed clarifications or amendments. As an aid in this process, an analysis is presented below of issues that have been raised concerning the rule in light of the comments received. The analysis is presented in the order of the numbered paragraphs of the final rule. For each issue identified, the analysis indicates provisions of the proposed and final rules touching on it, summarizes remaining concerns, and provides a potential approach to resolutions.

**Authority:** Pub. L. 97–79 (95 Stat. 1073).

### Preliminary Analysis of Issues

*Section 14.102 Definitions.*

Carrier

*Proposed rule*: " * * * any person . . . transporting wild animals or birds for hire."

*Final rule*: " * * * for hire, commercial purposes, or for exhibition."

*Remaining concern*: In response to the proposal, a circus representative requested exemption for circuses that already comply with rules applying to interstate transport adopted under the Animal Welfare Act (AWA); without explanation, the final rule appears to have definitely included circuses. The circus argues that it is already subject to AWA rules and that some requirements of the new rule, e.g. that elephants be maintained in individual enclosures, are inappropriate for circus animals.

*Potential approach*: Examine rules implementing AWA an ensure consistency of provisions so that shippers are not subject to contradictory standards under the two sets of requirements.

Injured

*Proposed rule*: Undefined.

*Final Rule*: Undefined.

*Remaining concern*: Because the rule specifies special certification for transport of injured animals, one respondent requested that the term be defined.

*Potential approach*: Explain in preamble or develop a definition.

Normal Rigors of Transportation

*Proposed rule:* Undefined, but animals must be certified able to withstand such rigors.

*Final rule:* "Established level or pattern of well-being as affected by the stress of transportation."

*Remaining concern:* Definition is unclear.

*Potential approach:* Clarify definition.

Noxious Machinery

*Proposed rule:* Not defined or addressed.

*Final rule:* Not defined, but animals are required to be protected from harassment by noxious machinery.

*Remaining concern:* Respondents are concerned that they will be cited for violation of a vague standard.

*Potential approach:* Either decide what constitutes noxious machinery and define it, or delete the word "noxious" and simply prohibit harassment by machinery. In the latter case, consider defining or otherwise explaining the meaning of "harassment."

Obvious Distress

*Proposed rule:* Not defined, but the carrier is required to observe whether animals are in "obvious distress."

*Final rule:* Similar requirements; information describing obvious signs of distress required to be attached to enclosure.

*Remaining concern:* Respondents maintain that signs of distress may not be obvious, particularly to untrained airline personnel.

*Potential approach:* Make clear by explaining in the preamble that description of signs of distress is required only to the extent that they are obvious and well known.

Physical Trauma

*Proposed rule:* Carrier is required to exercise care to avoid handling animals in such a manner as to cause physical trauma.

*Final rule:* Unchanged.

*Remaining concern:* Respondent requests a definition.

*Potential approach.* Retain the provision as is; "physical trauma" has a clear enough meaning not to need a definition, and the requirement is only that care be exercised, not that all trauma be avoided.

Primary Conveyance

*Proposed rule:* Sets requirements for conditions in a primary conveyance, defined as "* * * instrumentality for the main method of transportation * * *"

*Final rule:* Unchanged.

*Remaining concern.* Respondents question which is the primary conveyance when, e.g. cargo travels 200 miles in 8 hours by truck, and then 2000 miles in 5 hours by airplane.

*Potential approach:* Explain in preamble that intention is to include any conveyance along the journey that moves cargo for a significant distance, so that there may be several "primary conveyances" employed in the course of a given shipment. Also consider modifying the definition to make it clearer.

Psychological Trauma

*Proposed rule:* Required carrier to exercise care to avoid causing emotional trauma.

*Final rule:* Substituted "psychological" for "emotional" and defined psychological trauma as "* * * an episode that creates substantial and lasting damage to the behavioral development of an individual." Required in § 14.109(d) that care be exercised to avoid handling a primary enclosure in such a manner as to cause psychological trauma to animals. Required in § 14.112 that carriers not permit animals to be subjected to psychological trauma during transit.

*Remaining concern:* Respondents indicate that the definition is too vague and subjective to be enforced.

*Potential approach:* Retain provision in § 14.109 (d), where the meaning of the provision is clear in context. Delete the requirement from § 14.112, where it is vague. Also consider rewording the definition to make it clearer.

Sufficient Air

*Proposed rule:* Does not define, but requires that animals be provided sufficient air for normal breathing.

*Final rule:* Essentially unchanged.

*Remaining concern:* Respondent requests a definition of the term.

*Potential approach:* Explain in the preamble that sufficiency will be determined empirically, i.e. if animals show evidence of respiratory stress or suffocation, air was not sufficient. Continue to require shippers and carriers to ensure ventilation sufficient to prevent respiratory distress or suffocation, since lack of ventilation is probably the greatest cause of mortality in wildlife shipments.

Wildlife/Wild Animal

*Proposed rule:* Contains no definition, but provides a partial explanation in its preamble.

*Final rule:* Preamble notes a comment requesting a definition and refers readers to 50 CFR 10.12, which defines "wildlife" but not "wild animal."

*Remaining concern:* Respondents continue to request a definition.

*Potential approach:* Provide a clear definition.

*Section 14.104*

Requirement for English Translations

*Proposed rule:* Provided that any required certificate in a foreign language be accompanied by an English translation.

*Final rule:* Essentially unchanged.

*Remaining concern:* A representative of the pet industry requests that a requirement similar to that in 9 CFR 92.2(c)(3)(i) be substituted; i e that translation be provided at the importer's expense, but that it not necessarily accompany the shipment.

*Potential approach:* Continue to require that English translation of documents needed to perform inspection accompany shipment. Consider specifying what would constitute minimum adequate documentation.

*Section 14.105*

Veterinarian's Certificate

*Proposed rule:* Required inspection by a "salaried veterinary officer" from the government of the country of origin.

*Final rule:* Required examination by a "qualified veterinarian" authorized by the government of the country of origin.

*Remaining concern:* Carriers believe themselves unable to guarantee the qualifications of an examining veterinarian.

*Potential approach:* Require that a veterinarian be officially certified by the country of origin; explain in the preamble that verification of such certification by the carrier is all that is required and that carriers will not be expected to judge competence.

*Section 14.105(b)*

Attendants for Sick or Injured Animals

*Proposed rule:* No provisions.

*Final rule:* Required that a sick or injured animal be accompanied by an attendant.

*Remaining concern:* A representative of the pet industry maintains that injured animals can be safely shipped without attendants.

*Potential approach.* Maintain present requirement, inasmuch as the rule is only intended to allow import for medical treatment, or allow transport without an attendant when one is certified not to be necessary by the inspecting veterinarian.

*Section 14.105(c)*

Time of Tender

*Proposed rule:* Required that animals be delivered to carrier no more than 6 hours before scheduled departure in order to reduce overall length of time in transit and consequently reduce stress.

*Final rule.* Required that animals be delivered not less than 6, but not more than 10, hours before scheduled departure; presented the new arrangement as an attempt to increase the flexibility of the requirement.

*Remaining concern:* While the proposed rule set an upper limit on the time an animal could spend in a holding facility, the final version sets both upper and lower limits. The lower limit is widely perceived as far too long to be humane or even practical. Comments maintain that 2 hours before departure is a customary and reasonable standard

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for consignment to a carrier. The 6-hour minimum time limit also severely limits the ability to ship at optimum times of day (especially early in the morning, an ideal time in tropical areas), since holding facilities may not be open overnight. If more than one carrier is involved, problems of connections arise, and overall transport time may become unreasonably long.

*Potential approach:* Consider making the upper limit longer than the originally proposed 6 hours (e.g. 8 hours) if necessary to increase flexibility. Eliminate the lower limit entirely or reduce it to sufficient time (e.g. 1–2 hours) to ensure that shipments are not rushed through terminals without an opportunity for the shipper to pass along instructions, etc. Also consider allowing exceptions to upper limit where appropriate holding facilities are available.

*Section 14.106(a)(6)*

Size of Spacer Bars on Enclosures

*Proposed rule:* Required spacer bars 1.9 or 2.5 cm (¾ or 1 inch) wide on outside of primary enclosures.

*Final rule:* Required that a spacer bar be "* * * 10% of the longest dimension of the wall * * * to which it is attached." and that bars "* * * increase proportionally with the increase in number of animals * * *" when more than one animal is placed within an enclosure.

*Remaining concern:* The requirement for proportionality to the number of animals results in impracticably large and destabilizing spacer bars on enclosures containing more than a few animals.

*Potential approach:* Retain a version of the percentage formula with upper and lower dimension limits. Delete the proportionality requirement, but continue to require increased spacer size within an upper limit where several animals are contained within an enclosure.

*Section 14.106(c)*

Cage Paper for Birds

*Proposed rule:* Required that enclosures for birds contain absorbent litter.

*Final rule:* Responding to comments that litter would pose a danger to birds, required instead a lining of "unsoiled paper."

*Remaining concern:* No need has been stated for paper lining. Birds such as macaws would probably shred paper if it were provided.

*Potential approach:* Consider deleting the requirement, or modifying it to specify that a lining of non-dispersible absorbent material be provided.

*Section 14.106(e)*

Marking of Primary Enclosures

*Proposed rule:* Required markings in lettering 2.5 cm (1 inch) high to indicate that the enclosure contains animals and which side is the top.

*Final rule:* Essentially unchanged.

*Remaining concern:* Shippers complain that lettering size is too large and may not fit on some enclosures. More serious is the indication that the required marking is inconsistent with existing international standards, and that writing "this side up" on the side of an enclosure, as required by the rule, could result in its being stowed on its side.

*Potential approach:* Retain the lettering size, which appears reasonable to assure legibility; adopt international marking standards to indicate orientation of enclosure.

*Section 14.106(f)*

Attachment of Documents to Crates

*Proposed rule:* Required shipping documents to be attached to the outside of a primary enclosure.

*Final rule:* Specified that *copies* of shipping documents be attached to the enclosure.

*Remaining concern:* Shippers and carriers indicate that documents are increasingly being transferred electronically, rendering this requirement impractical. A question has been raised concerning how the requirement contributes to the goal of the regulations.

*Potential approach:* Examine the need for attaching copies of shipping documents; consider requiring only copies of documents of importance to assure humane and healthful shipment, such as those indicating names and addresses of consignor and consignee, species of animals, and date shipment originated.

*Section 14.106(g)*

Requirement That Birds Be Provided a Food Container

*Proposed rule:* Required that a flange-sided food trough be provided in a primary enclosure for birds.

*Final rule:* Essentially unchanged.

*Remaining concern:* Comments indicate that, for some species, seed scattered on the bottom of the enclosure may be more appropriate.

*Potential approach:* Consider allowing seed to be scattered on the bottom of the enclosure when shown to be appropriate for a given species.

Wood Float in Water Trough

*Proposed rule:* Required a flange-sided water trough in enclosure with birds.

*Final rule:* Responding to comments that open water troughs would pose a danger of wetting or drowning for birds adopted an IATA recommendation that a perforated wooden plate be floated in the trough.

*Remaining concern:* Respondents maintain that birds' beaks can become lodged in the perforations or between the float and the side of the trough, causing suffocation or drowning.

*Potential approach:* Several alternatives are available, such as allowing a foam or sponge insert in the trough.

*Section 14.107(d)*

Stowage for Easy Removal

*Proposed rule:* Required that enclosures be stowed so that animals are easily removable in case of emergency.

*Final rule:* Required that *enclosures be easily removable.*

*Remaining concern:* Shippers and carriers maintain that this requirement unreasonably constrains the need to stow cargo so that an airplane is balanced, etc. The requirement also appears to be contrary to the "first-on, last-off" requirement in § 14.109(g).

*Potential approach.* Review the need for such a requirement in light of the considerations advanced by carriers.

*Section 14.108(b)*

Potable Water

*Proposed rule:* Requires that animals be provided potable water.

*Final rule:* Essentially unchanged.

*Remaining concern:* Respondents advise that "potable" has an accepted meaning pertaining to suitability for human consumption that may be inconsistent with the needs of some animals.

*Potential approach:* Consider replacing "potable" with another appropriate term, such as "suitable for drinking." Explain in the preamble that water is to be clean and free of toxic substances or disease-causing organisims.

*Section 14.108(e)*

USDA Restrictions on Import of Fresh Food

*Proposed rule* Required the carrier to follow instructions provided by the shipper as to feeding during shipment.

*Final rule:* Required the shipper to provide food to accompany the shipment.

*Remaining concern:* U.S. Department of Agriculture (USDA) regulations require that food accompanying a shipment entering the U.S. be removed from the enclosure and destroyed.

*Potential approach:* Consider the need to ensure that food is replaced for any subsequent shipment within the U.S.

*Section 14.109(a)*

Observation Every 4 Hours

*Proposed rule:* Required that carrier inspect animals at least every 4 hours while in transit if they are in an accessible cargo area.

*Final rule:* Essentially unchanged.

*Remaining concern:* The benefit of having inexperienced cargo handlers inspect shipments of live animals has been strongly challenged. Comments maintain that any inspection by untrained personnel would be more likely to cause stress to animals than to do any good. The requirement could also lead to otherwise unnecessary unloading for inspection and lengthen transit time.

*Potential approach:* Continue to require inspection every 4 hours when cargo is accessible, but specify that inspection is to extend only to verification of acceptable temperature, integrity of enclosures, and adequacy of ventilation (i.e. Has the load shifted in such a way as to block vents?). Explain in the preamble that carrier personnel are not expected or encouraged to peer into enclosures, and that enclosures are not to be off-loaded at intermediate stops for purposes of inspection.

*Section 14.109(c)*

Pressurization Requirement

*Proposed rule:* Contained no requirement for cargo area pressurization.

*Final rule:* Requires, without explanation in preamble, that carrier maintain pressure equivalent to a maximum altitude of 8000 feet in cargo space.

*Remaining concern:* Respondents advise that aircraft cargo holds may not be pressurized and that some animals may be comfortable at pressures equivalent to higher altitudes. At any rate, a substantive new requirement was added without explanation or an opportunity for comment.

*Potential approach:* Consider changing prescribed altitude equivalence limit, considering pressurization implicit in the requirement for adequate ventilation, or allowing exceptions to the limit for animals that would not be harmed by lower pressure.

*Section 14.109(f)*

Prohibition Against Olfactory Contact

*Proposed rule:* No provision.

*Final rule:* Required that incompatible animals be maintained so that they are not in olfacory contact.

*Remaining concern:* Olfactory abilities for many animals may be difficult to determine and thus the requirement may be unenforceable.

*Potential approach:* Delete the requirement, or retain it only for instances where it is enforceable.

*Section 14.109(g)*

First-on, Last-off Loading

*Proposed rule:* No provision in proposal.

*Final rule:* "Unless prevented by normal aircraft loading procedures * * *" animals must be first loaded and last unloaded cargo, to reduce stress from unloading at intermediate stops.

*Remaining concern:* Shippers generally recommend exactly the reverse in order to reduce amount of time animals spend in cargo holds and to avoid the possibility of animal crates being crushed or stifled by later-loaded cargo. In any event, the requirement is easily circumvented by development of "aircraft loading procedures."

*Potential approach:* Delete the requirement; encourage minimizing intermediate off-loading by other means.

*Section 14.112*

Burden of Proof for "Harm"

*Proposed rule:* No provision.

*Final rule:* Required that a carrier not permit animals to be harmed physically or psychologically by exposure to inappropriate conditions. This provision was designed to encourage use of automatic monitoring devices.

*Remaining concern:* Shippers and carriers express uncertainty regarding the extent of their liability. The rule allows evidence of adherence to temperature, pressure, and ventilation standards to satisfy the requirement. However, monitoring equipment attached to the hull of an airplane requires Federal Aviation Administration certification, and personal monitoring of a cargo hold may not be possible. In addition, it is unclear how one might demonstrate compliance with the standard for adequate ventilation by reference to a monitoring device.

*Potential approach:* Determine the feasibility of monitoring conditions in transit.

*Section 14.121(b)*

Tuberculosis Test

*Proposed rule:* No requirement.

*Final rule:* Without explanation in preamble, requires a negative tuberculosis test for import of any old-world primate.

*Remaining concern:* It is not clear that such a test has any relation to the primary purposes of the rule; it is also a substantive provision added to the final rule without an opportunity for public comment. Respondents maintain that the rate of "false positives" and "false negatives" for this test is high and that testing before shipment may interfere with post-shipment testing that is now routine.

*Potential approach:* Delete the requirement unless its usefulness and necessity can be supported.

*Sections 14.122(a), 14.142(b), 14.152(c), 14.172(b)*

Number of Primates, Ungulates, Small Mammals, or Bats Allowed Per Primary Enclosure

*Proposed rule:* Provided density guidelines for small mammals, but these only applied to rodents; other groups were generally limited to one per enclosure, with exceptions for mated or habituated pairs and mothers with young.

*Final rule:* Revised the density guidelines, but still applied them only to rodents; essentially maintained the other limits, but allowed a mother with young to be transported only for medical reasons.

*Remaining concern:* Comments maintain that certain small mammals, including smaller ungulates, primates, and bats, may be safely transported in groups of more than two, and that transport in groups may even have a calming effect for some species.

*Potential approach:* Consider the reasonableness of allowing greater numbers of certain kinds of animals per enclosure when this would contribute to more humane conditions.

*Section 14.124 (b)*

Separation of Primates in Conveyance

*Proposed rule:* Required that care be taken to keep primate species separate in primary conveyance in order to minimize the risk of spreading disease from one species to another.

*Final rule:* Unchanged.

*Remaining concern:* A comment maintains that the requirement is

unnecessarily restrictive, and that there is no evidence of spread of disease between species in cargo hold.

*Potential approach:* Consider necessity for retaining this provision in light of behavioral characteristics of primates and susceptibility to cross-species infection.

*Section 14.133(a)*

Frequency of Feeding for Marine Mammals

*Proposed rule:* Required that marine mammals not be transported for more than 36 hours without being fed.

*Final rule:* Unchanged.

*Remaining concern:* A comment indicates that pinnipeds are adapted to fasting for much longer periods, and that the presence of spoiled food may pose a greater danger than does the lack of feeding.

*Potential approach:* Retain provisions inasmuch as an attendant is required to accompany such shipments and would be able to remove spoiled food.

*Section 14.142(e)*

Required Water Tray for Ungulates

*Proposed rule:* No provision.

*Final rule:* Required that the primary enclosure of an ungulate have a water trough that may be "* * * slipped into the crate through a shallow trap door." and "* * * securely hung on the outside of the * * * enclosure * * *"

*Remaining concern:* This is a potentially significant change that is unexplained in the preamble and difficult to interpret. One comment indicates that such a trough arrangement would be hazardous to the animal in the enclosure.

*Potential approach:* Re-evaluate the need for this provision; consider clarifying or amending, so that trough would not be on floor of enclosure and hazardous to the animal.

*Section 14.143*

Common Temperature Requirements for Elephants and Ungulates

*Proposed rule:* Grouped elephants with ungulates for purposes of setting temperature standards.

*Final rule:* Unchanged.

*Remaining concern:* One comment indicates that it is inappropriate to apply common temperature requirements to elephants and ungulates, because the former have efficient thermoregulation by means of their ears, and the latter are notoriously prone to overheating.

*Potential approach:* Consider separating standards for elephants from those of ungulates.

*Section 14.182(b)*

Requirement for Perches

*Proposed rule:* Required that perches be provided for birds that rest by perching.

*Final rule:* No change.

*Remaining concern:* Comments indicate that birds are often shipped in enclosures without perches, that this is safe, and that perches may pose a danger of injury. Nevertheless, IATA regulations also require perches.

*Potential approach:* Determine whether requirement for perches should be modified.

*Sections 14.182(c), 14.192(c)*

Sufficient Space for Birds to Stretch Wings

*Proposed rule:* Required that enclosures for parrots, pigeons, and passerines be large enough so that birds can perch and spread wings without touching neighbors and turn around on perches. Enclosures for raptors were required to be large enough for them to turn around on perches, but not fully extend wings.

*Final rule:* Required that perching birds be allowed sufficient room to "* * * stretch each wing [unclear what this means] without contact with another bird," but not to fly. Raptors are required to have sufficient room to stretch wings without injury.

*Remaining concern:* The final rule is ambiguous and possibly contradictory, in that some birds will fly if given sufficient room to stretch their wings. In addition, comments point out that birds may travel more safely if restricted to more confining enclosures.

*Potential approach:* Clarify the ambiguous or contradictory language; consider adopting IATA standards, which require sufficient room for all birds to perch simultaneously and for raptors to turn around, but not stretch wings fully; or develop another approach to ensuring adequate space within enclosures.

*Section 14.182(e)*

Prohibition Against Mixing Species of Birds

*Proposed rule:* Prohibited more than one species of bird being transported in the same primary enclosure.

*Final rule:* Essentially unchanged.

*Remaining concern:* Respondents maintain that certain bird species may be safely shipped in mixed groups.

*Potential approach:* Retain provision unless a list of species compatible with one another can be developed.

**Additional Issues**

In addition to those discussed above, the following issues that are not conveniently referable to specific paragraphs of the rule have been raised in comments received or in the course of the Service's analysis:

Allocable Temperature Ranges

*Proposed rule:* Temperature standards for mammals were adapted from regulations implementing the Animal Welfare Act (9 CFR Subchapter A) standards for birds were developed in consultation with APHIS and aviculturists.

*Final rule:* Allowable temperatures were generally lowered by 5°-15° F (2.8° -8.4° c).

*Remaining concern:* Adherence to the temperature requirements of the final rule could effectively prohibit exportation from certain tropical areas for much of the year without a clearly demonstrated need to do so. In addition, the allowable temperature ranges for some animals (e.g. elephants) may be well below those to which the animals are normally accustomed, and may actually pose a threat of hypothermia in some cases.

*Potential approach:* Solicit expert advice and consult sources to develop appropriate temperature ranges.

Need for Restraints for Some Birds

*Proposed rule:* Not addressed.

*Final rule:* Not addressed.

*Remaining concern:* Comments indicate that it is common practice to ship some birds, e.g. flamingos, with their wings wrapped in cloth to prevent injury.

*Potential approach:* Explicitly incorporate IATA standards, which already provide for this practice.

Codification

*Proposed rule:* Established separate sets of regulations for each group of animals.

*Final rule:* Gathered common requirements for all groups in one place, then provided more specific specifications for each group. Within each set of specifications, it required compliance as well with the general provisions, but located this requirement within a numbered paragraph titled "Consignment to carrier for transport."

*Remaining concern:* The location of the requirement to comply with the general provisions renders it ambiguous and possibly unenforceable.

*Potential approach:* Relocate the requirement in its own paragraph with a title such as "Other applicable provisions."

In formulating a proposal to amend its regulations, the Service welcomes comments and recommendations concerning the issues identified above. The Service will also directly contact persons with technical qualifications in animal care, veterinary science, and transportation to contribute to proposed amendments. Information is particularly sought concerning provisions in need of amendment that may have been overlooked in the preliminary analysis or potential approaches to resolving issues that appear to be inappropriate.

**Author**

The principal author of this notice is Dr. John J. Fay, Division of Endangered Species and Habitat Conservation, 500 Broyhill, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone 703/235–1975.

Date: July 20, 1988.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88–17781 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600, 601, 604, and 605

[Docket No. 80225–8025]

### Style Guide, Regional Fishery Management Councils, Other Applicable Law, Guidelines for Council Operations and Administration

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Secretary of Commerce extends from August 9, 1988, to September 1, 1988, the comment period for the proposed rule, published at 53 FR 21863, June 10, 1988, revising regulations and guidelines concerning the operation of Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

This extension of the comment period is to allow time for the Councils to complete the review and summary of individual and consensus positions discussed at the Council Chairmen's meeting held at Homer, Alaska on July 29–30, 1988. All public comments received by Sepetmber 1, 1988 will be considered.

**DATE:** Public comment period extended from August 9, 1988, to September 1, 1988.

**ADDRESS:** Send comments to Richard H. Schaefer, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, telephone (202) 673–5263.

**SUPPLEMENTARY INFORMATION:** Section 302(f)(6) of the Magnuson Act requires each Council to determine its organization, and prescribe its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce. The proposed rule includes the uniform standards governing the operations of the Councils, implements parts of Title I of Pub. L. 99–659 which amends the Magnuson Act, clarifies instructions of the Secretary of Commerce on other statutory and regulatory requirements affecting the Councils, and adjusts the fishery management planning and development procedures in line with recommendations of two fishery management studies commissioned by NOAA in 1985 and 1986.

Section 302(k) of the Magnuson Act requires the disclosure by Council nominees, appointees, voting members, and Executive Directors of certain financial interests, and that these disclosures be made in accordance with such procedures, and at such times, as the Secretary prescribes by regulation. Section 601.37 of this proposed rule addresses these financial disclosure requirements and will therefore be published as an interim final rule without regard to this extension of the comment period to permit the filing of such required disclosures as soon as possible. However, comments will continue to be accepted on § 601.37 until September 1.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 5, 1988.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 88–18076 Filed 8–5–88; 4:36 pm]

BILLING CODE 3510–22–M

VOL 53 ISS 154 AG 10 1988 UMI

# Notices

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

August 5, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

• Agriculture Marketing Service
Tobacco Reports
TB–26 & TB–39
Quarterly
Business or other for-profit; Small businesses or organizations; 700 responses; 650 hours
Larry L. Crabtree (202) 447–3489

• National Agricultural Statistics Service
Sugar Market Statistics
Quarterly
Businesses or other for-profit; 312 responses; 314 hours
Larry Gambrell (202) 447–7737

• Agricultural Marketing Service
Almonds Grown in California: Marketing Order 981
Almond Board of California forms
Recordkeeping; On occasion; Monthly; Other: Semi-monthly
Businesses or other for-profit; 5662 responses; 4951 hours
Virginia M. Olson (202) 447–5057

• Agricultural Marketing Service
Walnuts Grown in California Marketing Order No. 984
Recordkeeping; On occasion; Monthly; Annually
Businesses or other for-profit; 29,821 responses; 62,418 hours
Virginia Olson (202) 447–5057

**Revision**

• Food and Nutrition Service
Affidavit of Returned or Exchange of Food Coupons
Form FNS–135
Recordkeeping; On occasion
State or local governments; 63,626 responses; 17,408 hours
Paul Jones (703) 756–3385

• Agricultural Marketing Service
Navel Oranges Grown in Arizona and Designated Part of California—Marketing Order No. 907
Recordkeeping; On occasion; Weekly; Annually; Biennially
Farms: Businesses or other for-profit; Small businesses or organizations; 174,376 responses; 22,533 hours
Virginia M. Olson (202) 447–5057

**Reinstatement**

Economic Research Service
Cost of Producing Sugarcane and Processing Sugarcane and Sugarbeets
Other: Every 4 to 6 years
Farms; Small businesses or organizations; 92 responses; 92 hours
Luigi Angelo (202) 786–1889

**Donald E. Hulcher,**
*Acting Departmental Clearance Officer.*
[FR Doc. 88–18091 Filed 8–9–88; 8:45 am]
BILLING CODE 3410–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments; Carnegie–Mellon University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

*Docket Number:* 88–048R. *Applicant:* Carnegie-Mellon University, Mellon Institute, 4400 Fifth Avenue, Pittsburgh, PA 15213. *Instrument:* Crystal Growth Furnace. *Manufacturer:* Crystalox, Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of January 22, 1988.

*Docket Number:* 88–121R. *Applicant:* Marine Science Program, University of North Carolina, CB 3300 12–5 Venable Hall, Chapel Hill, NC 27599. *Instrument:* Five Radon Gas Detectors, Model PMT–TEL. *Manufacturer:* Pylon Electronics, Canada. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

*Docket Number:* 88–223. *Applicant:* University of Delaware, Newark, DE 19716. *Instrument:* Electron Microscope with Accessories, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used to investigate structural parameters of permeability in the wall of blood capillaries. Of particular

importance is the vesicular system in the endothelial cells comprising the capillary wall. In addition, the instrument will be used in a graduate level laboratory course entitled "Techniques in Electron Microscopy" (B617) and an undergraduate level course (B 471) in a B.S. program in Biotechnology. The objectives of these courses are training students in the preparation of biological specimens for transmission and scanning electron microscopy, recording of electron images and interpretation of ultrastructural features. *Application Received by Commissioner of Customs:* July 18, 1988.

*Docket Number:* 88–224. *Applicant:* Beth Israel Hospital, 330 Brookline Ave., Boston, MA 02215. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* Study of the ultrastructural features of human and experimental animal tissues in a variety of research projects including but not limited to the following:

1. Basophil/mast cell function,
2. Role of mast cells in inflammation and immunity,
3. Biology of solid tumor growth,
4. Human eosinophils—mechanisms of function in allergy,
5. Structure-function relationships in the alimentary tract,
6. Cytoplasmic lipid bodies of inflammatory cells,
7. Pathogenesis of tumor stroma generation,
8. Biochemical relationships of basophils and eosinophils,
9. Pathogenesis of ileal pouch inflammation and,
10. Regulation and significance of mast cell heterogeneity.

*Application Received by Commissioner of Customs:* July 18, 1988.

*Docket Number:* 88–225. *Applicant:* National Bureau of Standards, B/306 Metrology Bldg., Gaithersburg, MD 20899. *Instrument:* FTI Spectrophotometer System, Model DA3.16. *Manufacturer:* BOMEM, Inc., Canada. *Intended Use:* Study of the scattering in reflection properties of materials for NBS and the United States Air Force. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–227. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Gas Isotope Ratio Mass Spectrometer. *Manufacturer:* CJS Sciences, Ltd., U.K. *Intended Use:* This instrument will be used to make high precision (0.0025) measurements of $^{2}H/^{1}H$, $^{13}C/^{12}C$, $^{15}N/^{14}N$, $^{18}O/^{16}O$, and $^{34}S/^{32}S$ ratios in natural organic and inorganic materials in order to study the movement of energy, water, and nutrients through rangeland ecosystems. The materials to be analyzed in these studies include plant tissues (e.g. leaves, stems, roots), animal tissues and excreta, soil organic carbon and carbonates, inorganic and organic soil nitrogen compounds, environmental water (from plant and animal tissues, soils, rainfall, rivers and lakes), and organic and inorganic sulfur compounds present in soils and plants. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–228. *Applicant:* University of Kentucky, Sanders-Brown Center on Aging, 101 Sanders-Brown Bldg., 800 S. Limestone, Lexington, KY 40536–0230. *Instrument:* Electron Microscope with Accessories, Model EM 902PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used to study the brains from patients with Alzheimer's disease and other central nervous system degenerative diseases. In addition, it will be used to study aging in other human tissues and tissues from experimental animals. The materials to be investigated will be autopsied neocortex, hippocampus, amygdala or peripheral nerves and biopsied nercortex or peripheral nerves. The overall major objective of the investigations is to define the alterations in the nervous system with aging. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–229. *Applicant:* University of Virginia, Department of Pathology, Box 214, Medical Center, Charlottesville, VA 22908. *Instrument:* Electron Microscope with Accessories, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for studies of plasma membranes of mammalian cells and artificially constructed cell membranes. These studies will include investigation of the organization of glycosphinogolipid in liposomal systems and plasma membranes. In addition, the instrument will be used in graduate training in Pathology and Cell Biology. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–230. *Applicant:* University of Kentucky, Department of Anatomy and Neurobiology, MS209 Medical Center, 800 Rose Street, Lexington, KY 40536–0084. *Instrument:* Electron Microscope, Model H–700–3T. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* The instrument will be used to investigate the mechanisms that the central nervous system utilizes to control the cardiovascular and respiratory systems, the aging process of the brain, the effects of cigarette smoking on the lungs, the localization of hormones in the brain, and the permeability of the blood vessels in the brain that have no blood brain barrier. The experiments are centered around the morphological basis for functional phenomena. In addition, the instrument will be used in the course Anatomy 662 Ultrastructural Anatomy which is intended to acquaint the student with the theory and techniques of electron microscopy using both the transmission electron microscope and the scanning electron microscope. *Application Received by Commissioner of Customs:* July 20, 1988.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88–18017 Filed 8–9–88; 8:45 am]

BILLING CODE 3510–DS–M

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## Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Department of Energy et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Decision:* Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

*Reasons:* Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

*Docket Number:* 88–309. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, Argonne, IL 60439–4812. *Instrument:* Stopped-Flow Spectrophotometer, Model SU–40A. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Denial Without Prejudice to Resubmission:* February 19, 1988.

*Docket Number:* 87–227. *Applicant:* American Red Cross, Detroit, MI 48232. *Instrument:* Rapid Kinetic Accessory, SFA–11. *Manufacturer:* Hi-Tech, United Kingdom. *Denial Without Prejudice to Resubmission:* May 12, 1988.

*Docket Number:* 87–253. *Applicant:* Boston University, Boston, MA 02215. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Denial*

*Without Prejudice to Resubmission:* May 12, 1988.

*Docket Number:* 87-278. *Applicant:* George Mason University, Fairfax, VA 22030. *Instrument:* Rapid Kinetics Accessory for UV/Vis Spectrophotometer, Model SFA-11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Denial Without Prejudice to Resubmission:* May 12, 1988.

*Docket Number:* 88-047. *Applicant:* Florida State University, Talahassee, FL 32308. *Instrument:* Arc Melter. *Manufacturer:* Edmund Buhler, West Germany. *Denial Without Prejudice to Resubmission:* May 3, 1988.

*Docket Number:* 88-079. *Applicant:* Northwestern University, Evanston, IL 60208. *Instrument:* Stopped-Flow Apparatus, Model SF 1A. *Manufacturer:* Tri-Tech Dynamic Instruments, Canada. *Denial Without Prejudice to Resubmission:* May 3, 1988.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-18018 Filed 8-9-88; 8:45 am]

BILLING CODE 3510-DS-M

## National Technical Information Service

### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pan-Data Systems, Inc, having a place of business in Rockville, MD, an exclusive right in the United States and certain foreign countries under the rights of the United States of America to manufacture, use, and sell products embodied in the invention entitled "Virus Isolation and Viral Production of HBLV", U.S. Patent Application 6-901,602. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 88-18114 Filed 8-9-88; 8:45 am]

BILLING CODE 3510-04-M

### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Toyo Cloth Company, Ltd., having a place of business at Osaka, Japan, an exclusive right in Japan to practice the invention embodied in International Application Number PCT/US87/01472, "Temperature Adaptable Textile Fibers and Method of Preparing Same"; provided, however, such right shall not exclude companies domiciled in the United States. The patent rights in this intervention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 88-18115 Filed 8-9-88; 8:45 am]

BILLING CODE 3510-04-M

### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Sterling International Inc., having a place of business in Veradale, Washington, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,600,581, "Synthetic Pheromones for the Spined Soldier Bug." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS, receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 88-18036 Filed 8-9-88; 8:45 am]

BILLING CODE 3510-04-M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange Proposed Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contract.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") previously published in the Federal Register a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Morgan Stanley Capital International EAFE (Europe, Australia and Far East) stock index. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

**DATE:** Comments must be received on or before August 25, 1988.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME EAFE Stock Index futures contract.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

BEST COPY AVAILABLE

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**SUPPLEMENTARY INFORMATION:** On September 11, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the EAFE Stock Index futures contract (51 FR 34404). On January 4, March 25, and May 27, 1988, the Commission republished in the **Federal Register**, for 30-day, 15-day and 15-day comment periods, respectively, notices of availability of this contract's proposed terms and conditions (53 FR 64, 53 FR 9798 and 53 FR 19322). In an August 2, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW. Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 5, 1988.

**Paula A. Tosini,**

*Director, Division of Economic Analysis.*

[FR Doc. 88–18071 Filed 8–9–88; 8:45 am]

BILLING CODE 6351-01-M

## Citrus Associates of the New York Cotton Exchange; Proposed Amendments Relating to the Frozen Concentrated Orange Juice Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract market rule changes.

**SUMMARY:** The Citrus Associates of the New York Cotton Exchange ("CANYCE" or "Exchange") has submitted a proposal to amend its frozen concentrated orange juice ("FCOJ") futures contract. The proposed amendments will provide that Exchange-licensed tank storage facility operators must load-out FCOJ against all shipping certificates tendered by their holders no later than 40 business days after the date of demand. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

**DATE:** Comments must be received on or before September 9, 1988.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CANYCE FCOJ futures contract.

**FOR FURTHER INFORMATION CONTACT:** Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission 2033 K Street, NW., Washington, DC 20581 (202) 254–7303.

**SUPPLEMENTARY INFORMATION:**

The FCOJ contract's current rules mandate that operators of Exchange-licensed tank facilities must load-out FCOJ promptly upon demand by a holder of a single shipping certificate within a reasonable period following such demand in accordance with industry practice, but not later than 10 calendar days from the date of demand. The current terms of the contract also provide that if the holder of a certificate holds other such certificates issued by the same facility and demands the load-out of FCOJ against more than one certificate on the same date, the tank storage facility operator is required to execute delivery within a reasonable period in accordance with industry practice. Currently, the contract's rules do not specify a precise period of time within which FCOJ must be loaded-out in cases where a shipping certificate holder demands load-out against more than one certificate on the same date.

Under the proposed amendments, a tank storage facility operator making delivery of FCOJ to a holder of one or more certificates would be required to load-out the FCOJ for shipment commencing no later than 10 calendar days and ending no later than 40 business days after the date of demand by the holder. The proposed amendments also would specify that a tank facility operator must use its best efforts to make prompt deliveries in a fair and equitable manner, including the making of reasonable, interim, prorata deliveries to satisfy outstanding demands by certificate holders who demand the load-out of FCOJ against two or more certificates. The Exchange indicates that, following Commission approval, the amended rules would be made effective with respect to all shipping certificates outstanding on the effective date and all new shipping certificates issued for delivery on the contract thereafter.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures, Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on August 4, 1988.

**Paula A. Tosini,**

*Director, Division of Economic Analysis.*

[FR Doc. 88-18003 Filed 8-9-88; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on August 25-26, 1988 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the potential for achieveing US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 88-18047 Filed 8-9-88; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Air Force

### Performance Review Board; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

**Office of the Secretary of the Air Force**

Mr. Gary W. Amlin
Mr. Frank J. Colson

*Air Staff*

BG Robert M. Alexander
MG Charles G. Boyd
BG Shirley M. Carpenter

*Air Force Systems Command*

MG David J. Teal

*Air Force Logistics Command*

MG Lewis G. Curtis
Mr. Olin A. Howard
Mr. Edward J. Riojas, Jr.
MG Joseph K. Spiers

*Others*

Mr. John M. Ledden

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-18046 Filed 8-9-88; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF ENERGY

### Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

*Name:* Advisory Committee on Nuclear Facility Safety.

*Date & Time:* Tuesday, August 30, 1988, 8:00 a.m. to 6:00 p.m., Wednesday, August 31, 1988, 8:00 a.m. to 1:00 p.m.

*Place:* U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585.

*Contact:* Wallace R. Kornack, Executive Director, ACNFS, S-3, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586-1770.

*Purpose of the Committee:* The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

**Tentative Agenda**

*August 30, 1988*

- Subcommittee Reports and Discussion.
- Presentation on Safety Objectives.
- Noon to 1:00 p.m.—Lunch.
- National Academy of Science Report.
- Presentations on Selected Issues.
- Agenda for the Next Committee Meeting.
- 5:30-6:00 p.m. Public Comment.

*August 31, 1988*

- Presentations on Defense Program Facilities.
- 12:00-1:00 p.m. Public Comment.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 5, 1988.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 88-18077 Filed 8-9-88; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

**[Docket No. RP88-184-002]**

### El Paso Natural Gas Co.; Compliance Filing

August 8, 1988.

Take notice that on August 1, 1988, pursuant to the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") submitted a filing compliance with the Commission's order issued June 30, 1988 at Docket No. RP88-184-000.

El Paso states that the June 30 order, among other things, conditionally accepted, and suspended until El Paso accepts a blanket certificate under Subpart G of Part 284, or December 1, 1988, whichever is earlier, subject to refund, certain tariff sheets filed June 1, 1988 pursuant to Section 4 of the Natural Gas Act, Part 154 of the Regulations and Order No. 500. Such tendered tariff sheets served to establish the procedures by which El Paso will recover from its customers, as prescribed by Order No. 500, a portion of the payments to its natural gas suppliers made in settlement of claims arising under its gas purchase agreement or to terminate or suspend such agreements (referred to herein as "buyout" or "buydown" payments or costs). Ordering paragraphs (B), (C) and (D) directed El Paso to file revised tariff sheets and certain supporting data and information within thirty (30) days of the issuance of the order. Accordingly, El Paso tendered for filing and acceptance the revised tariff sheets to its FERC Gas Tariff along with the supporting data and information.

El Paso states that concurrently El Paso filed a request for rehearing of the Commission's June 30, 1988 order at Docket No. RP88–184–000. Although El Paso is complying with such order in this filing, El Paso believes its filing of June 1, 1988 was correct with regard to the issues and for the reasons set forth in the referenced request for rehearing and reserves the right to refile its rates and/or tariff provisions based upon the outcome of such request for rehearing.

El Paso also states that in accordance with ordering paragraph (B), El Paso, by this filing, informs the Commission of its election to use the equitable sharing method to collect buyout or buydown costs as opposed to the commodity method or the direct billing method. El Paso further agreed to withdraw its pending litigation regarding its proposal to direct bill buyout or buydown costs at Docket No. RP87–16–000 on or before the date the tariff sheets filed become effective.

El Paso further states that ordering paragraph (C)(2) of the Commission's order directed El Paso to include in its filing only costs which it estimates it will actually pay by March 1, 1989, or for which it estimates it will by that time incur a written obligation to pay, subject to adjustment to reflect actual payments and written obligations. El Paso has not reflected any estimates in its compliance filing but has included only actual buyout and buydown costs paid or for which there is a written obligation to pay as of July 25, 1988. On or about December 31, 1988, El Paso intends to file to adjust the rates and charges reflected on the attached tariff sheets as necessary to reflect such buyout and buydown costs which it will actually have paid or as to which it will have made a commitment to pay as of the date of such filing, together with such additional costs as it estimates it will pay during the following nine-month period.

El Paso states that it has complied with all of the directives contained in ordering paragraphs (C) and (D)(b) by submitting revised tariff sheets and certain supporting data and information regarding (i) allocation of costs, (ii) costs eligible for recovery and amortization, (iii) base period sales and (iv) an explanation of the basis for El Paso's choice of base and deficiency period years.

El Paso states that ordering paragraph (D) directs it to file with the Commission certain supporting data and information to support the proposal. Ordering paragraph (D)(a), requires El Paso to submit the complete background information concering El Paso's settlements, including schedules which show amounts paid, dates paid, amounts committed to be paid, copies of the settlements together with explanations of the relief, both past and future, which El Paso has received under each settlement, and copies or summaries of the contracts affected. El Paso states that it is submitting concurrently, under separate cover letter, such information and data for which El Paso has requested confidential treatment. In compliance with of ordering paragraph (D)(c), El Paso included a verification statement that the amounts claimed are solely for settlement of El Paso's take-or-pay disputes with producers, and not for settlement of disputes not related to take-or-pay.

El Paso states that a copy of the compliance filing has been served upon all parties of record in Docket No. RP88–184–000 and, otherwise, upon all parties served with a copy of El Paso's June 1, 1988 filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18098 Filed 8–9–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–136–001]**

## El Paso Natural Gas Co.; Tariff Filing

August 5, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on July 29, 1988, tendered for filing pursuant to Part 154 of the Federal Energy Rgaulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with the directives set forth in the Commission's letter order dated June 30, 1988 at Docket Nos. TA88–4–33–000 and RP88–136–000, Third Revised Sheet No. 354 to El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that on April 29, 1988 at Docket No. RP88–136–000, it filed in compliance with § 154.303(c)(2) of the Commission's Regulations its election to continue to recover purchased gas costs via the Commission's PGA clause option and revised its Purchase Gas Cost Adjustment Provision of the General Terms and Conditions contained in its First Revised Volume No. 1 Tariff in accordance with the requirements set forth in the Commission's Order No. 483, *et seq.*, issued at Docket No. RM86–14–000, *et al.*, (El Paso's Docket No. RP88–136–000) the Commission accepted and suspended EL Paso's revised PGA tariff sheets, permitting the filing to become effective June 1, 1988, subject to refund and subject to further review. By letter order dated June 30, 1988 at Docket Nos. TA88–4–33–000 and RP88–136–000 the Commission directed El Paso to make certain minor corrections to such revised sheets.

Accordingly, El Paso submitted in compliance with the Commission's directive, Third Revised Sheet No. 354 with the changes specified by the Commission. El Paso requested that the tendered tariff sheet become effective June 1, 1988, the date the Commission initially approved El Paso's revised PGA clause.

Copies of the filing were served upon all interestate pipeline system sales customers of El Paso and all intersted state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.221 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18099 Filed 8–9–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. SA88–15–000]**

## Hawkeye Oil and Gas Corp.; Petition for Adjustment

Issued August 8, 1988.

Take notice that on July 25, 1988, Hawkeye Oil and Gas Corporation (Hawkeye) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requesting relief from its Btu refund obligation under Order No. 399. Hawkeye requests the Commission to waive its refund obligation to Natural Gas Pipeline Company of America for $4693.10. Hawkeye states that it had a $53,657.00 loss for the tax year July 1, 1986 to June 30, 1987, and thus is unable to make the refund.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18100 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-225-000]**

## Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

August 8, 1988.

Take notice that on July 29, 1988, Inter-City Minnesota Pipelines Ltd., Inc., 245 Yorkland Boulevard, North York, Ontario, Canada MJ2 1R1, tendered for filing revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective August 1, 1988:

*Original Volume No. 1*

First Revised Sheet No. 55
Third Revised Sheet No. 56
Second Revised Sheet No. 56-A
Original Sheet No. 56-B
Third Revised Sheet No. 57
Third Revised Sheet No. 58
Original Sheet No. 58-A
Fourth Revised Sheet No. 59
Fifth Revised Sheet No. 60
Sixth Revised Sheet No. 61
Third Revised Sheet No. 61-C
Second Revised Sheet No. 61-D
Third Revised Sheet No. 62
Fourth Revised Sheet No. 63
Second Revised Sheet No. 64
Second Revised Sheet No. 65

Inter-City states that pursuant to Commission Order Nos. 483 and 483-A it is revising the Purchased Gas Adjustment clause of its tariff, Article 18 of the General Terms and Conditions to conform to §§ 154.301 through 154.310 of the Commission's Regulations. Inter-City indicates that the filing contains only a revised PGA clause and does not include a rate change.

Inter-City states that the revised PGA clause provides for it to file an annual PGA to be effective November 1st and quarterly PGA's to be effective February 1, May 1, and August 1, and interim PGA filings. The filing also provides for supplier refunds, and assessment of past performance.

Inter-City requests waiver of the Commission's Regulations to permit these sheets to become effective on August 1, 1988 on less than 30-days notice. Inter-City also requests waiver of the Commission's Regulations to permit it to file the support schedules on hard copy.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois Cashell,**

*Acting Secretary.*

[FR Doc. 88-18101 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ88-2-53-000]**

## K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 5, 1988.

Take notice that K N Energy, Inc., on August 2, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 pursuant to Order No. 483 and 483-A to be effective September 1, 1988. The filing proposes changes in K N's FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in accordance with K N's PGA clause. The proposed rate changes would increase the commodity rate under each of K N's jurisdictional rate schedules by 5.47¢ per Mcf.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 15,1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18102 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. SA88-14-000]**

## Palmco Management Co.; Petition for Adjustment

Issued August 8, 1988.

Take notice that on July 19, 1988, Palmco Management Co. (Palmco) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requesting relief from its Btu refund obligation under Order No. 399. Palmco requests the Commission to waive its obligation to Houston Pipeline Company for refunds attributable to payments previously made by Palmco to working and royalty interest owners. Palmco states that it was the operator of the properties from which sales were made that gave rise to the refund obligation, but that it did not own any interest in the properties. Palmco states that it has made diligent efforts to collect the refunds owed by the working and royalty interest owners, but that some of the amounts owed under Order No. 399 are uncollectible.

The procedure applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment

proceeding must file a motion to intervene in accordance with the provisions of Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18103 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. GP88-13-000]**

## Oklahoma Corporation Commission; Preliminary Finding

Issued August 4, 1988.

On various dates in 1980 through 1986, the Oklahoma Corporation Commission (Oklahoma) notified the Commission that it had made affirmative determinations under section 503 of the Natural Gas Policy Act of 1978 (NGPA) concerning gas from 19 wells operated by 14 different producers. Under section 503(a) of the NGPA, when a jurisdictional state or federal agency makes a well category determination, that agency is required to provide the Commission with notice of the determination. Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by substantial evidence in the record upon which the determination was made.

The Commission has established filing requirements for applications for well category determinations, which specify for each type of determination the minimum information that an applicant must file with the jurisdictional agency to support an affirmative determination. The Commission has also specified the information required to be included with the jurisdictional agency's notice to this Commission of its determinations. Under § 274.104 of the regulations the notice must include a copy of the application, all information required by § 274.201–208 of the regulations to be filed with the jurisdictional agency, and an explanatory statement which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

If the Commission had taken no action with respect to the notices, they would have become final after 45 days under § 275.202(a) of the regulations. However, the Commission advised Oklahoma and each applicant that the notices were incomplete, lacking either sufficient explanation of the basis for each determination or sufficient information to complete the application. Despite these and other requests for necessary additional information, Oklahoma has not provided it.[1] As a result, none of the determinations has become final because § 275.202(b) of the regulations provides that the 45 day period for Commission review does not begin if the Commission notifies the jurisidictional agency, the purchaser, and all parties that the notice is deficient. The Appendix of this notice summarizes each determination and its deficiency.

Under § 275.202(a), the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by Oklahoma are not supported by substantial evidence in the record upon which the determinations were made. Any state or federal agency or any person may, within 30 days after issuance of a preliminary finding, submit written comments and may request an informal conference with the Commission pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after issuance of the preliminary finding.

By direction of the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

[1] On July 22, 1987, the Commission sent a follow-up letter to Oklahoma and the applicants advising that the Commission might reverse the determinations if the required information was not received and that refunds might be required if that occurred.

APPENDIX.—OKLAHOMA INCOMPLETE NOTICES OF DETERMINATION

| Applicant | Well name | FERC No. JD | OK cause U.S. No. | Initial FERC letter | NGPA section | Deficiency in record | Purchaser |
|---|---|---|---|---|---|---|---|
| Doak Oil, Inc | Plumber No. 1. | 80-44585 | 03774 | Aug. 14, 1980 | 102 | Lacks sufficient geological evidence concerning reservoir boundaries. | Diamond 'S' Gas Systems, Inc. |
| Amarex, Inc | Nichols-Gregory No. 1. | 81-17268 | 06615 | Mar. 23, 1981 | 102 | Lacks evidence refuting Behind-the-Pipe Exclusion. | Oklahoma Natural Gas Co.; Panhandle Eastern Pipe Line Co. |
| Sun Exploration and Production Co. | Wright No. 2. | 82-28271 | 17790 | June 3, 1982 | 107 | Indicates that completion is above 15,000 feet. | Panhandle Eastern Pipe Line Co.; KN Energy, Inc. |
| Hazelwood Production and Exploration Co. | Rist "A" No. 1. | 83-32812 | 19336 | June 2, 1983 | 103 | Indicates that the well is an old well | Aminoil U.S.A. Inc. |
| Arrington Properties, Inc. | Hardy No. 1. | 84-10837 | 21681 | Jan. 19, 1984 | 102 | Oath statement conflicts with well history evidence. | Arco Oil & Gas Co. |
| Do | Hess No. 1 | 84-10838 | 21680 | do | 102 | do | Do. |
| Do | Berry No. 1 | 84-10839 | 21676 | do | 102 | do | Do. |
| Earth Energy Resources, Inc. | Headquarters No. 1. | 84-13419 | 22932 | Feb. 10, 1984 | 102 | Oath statement conflicts with geological evidence. | (Unknown). |
| HG&G, Inc | Trindle No. 1. | 84-34245 | 22320 | July 19, 1984 | 102 | Lacks sufficient geological evidence | Phillips Petroleum Co. |
| Do | Brodel No. 1-9. | 84-34246 | 22321 | do | 102 | do | Do. |
| Do | Leo Vogt No. 1-14. | 84-34247 | 22322 | do | 102 | do | Do. |
| Mustang Production Co. | Moon No. 1-32. | 85-27996 | 31049 | June 6, 1985 | 108 | Indicates too much production during qualifying period. | Oklahoma Gas and Electric Co. |
| K&A Oil Corp | Wilson No. 1. | 86-11267 | 32543 | Feb. 28, 1986 | 102 | Lacks Oklahoma determination order. | Phillips Petroleum Co. |

APPENDIX.—OKLAHOMA INCOMPLETE NOTICES OF DETERMINATION—Continued

| Applicant | Well name | FERC No. JD | OK cause U.S. No. | Initial FERC letter | NGPA section | Deficiency in record | Purchaser |
|---|---|---|---|---|---|---|---|
| Harper Oil Co | Parmenter No. 1 | 86-11681 | 33894 | Mar. 13, 1986 | 102 | Indicates that a marker well is within 2.5 miles. | Do. |
| Leonoco, Inc | Hurst No. 25-1 | 86-15790 | 34156 | April 7, 1986 | 103 | Indicates that the well is an old well | Union Texas Petroleum Corp. |
| HG&G, Inc | Harry Trindle No. 1-31 | 86-16990 | 33317 | April 25, 1986 | 102 | Lacks sufficient geological evidence | Phillips Petroleum Co. |
| Robert P Lammerts | Rice No. 1 | 86-27841 | 25895 | Aug. 11, 1986 | 102 | Lacks evidence refuting the Behind-the-Pipe Exclusion. | Do. |
| Anson Corp | Sprowls No. 3-28. | 86-31433 | 35974 | Sept. 29, 1986 | 102 | Lacks correct oath statement | El Paso Natural Gas. Co. |
| Jolen Operating Co | Barby A-12 No. 6. | 86-33537 | 32346 | Nov. 3, 1986 | 102 | Oath staement conflicts with well history evidence. | ANR Gathering Co. |

[FR Doc. 88-18107 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. RP88-88-004]**

## Panhandle Eastern Pipe Line Co; Tariff Filing

August 5, 1988.

Take notice that on August 1, 1988 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 32-BU.1
Substitute First Revised Sheet No. 32-BW

The proposed effective date of these revised tariff sheets is April 1, 1988.

Panhandle states that these revised tariff sheets are being refiled in accordance with Ordering Paragraph (B) of the Commission's Order Granting Rehearing in Part and Denying Rehearing in Part issued June 24, 1988.

Copies of this letter and enclosures are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**
*Acting Secretary.*
[FR Doc. 88-18104 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. RP88-229-000]**

## Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 5, 1988.

Take notice that on August 1, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective September 1, 1988:

Second Revised Sheet No. 4B.1
Second Revised Sheet No. 4B.2
Second Revised Sheet No. 4B.3

Southern states that the proposed tariff sheets are being filed to flow through to Southern's firm jurisdictional sales customers the byt-out and buy-down charges allocated to Southern by United Gas Pipeline Company pursuant to its Order No. 500 filed in RP88-27.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before August 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**
*Acting Secretary.*
[FR Doc. 88-18105 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

**[Docket Nos. RP88-156-002 and TQ88-1-49-002]**

## Williston Basin Interstate Pipeline Co.; Tariff Change

August 5, 1988.

Take notice that on August 1, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets effective June 1, 1988.

**First Revised Volume No. 1**

Substitute Third Revised Sheet No. 91
Substitute Second Revised Sheet No. 94
Original Sheet No. 94A
Substitute Original Sheet No. 95A
Substitute Second Revised Sheet No. 96
Substitute Third Revised Sheet No. 97
Substitute Original Sheet No. 97A
Original Sheet No. 97B
Substitute Second Revised Sheet No. 98
Substitute Second Revised Sheet No. 98A

Williston Basin states that these revised tariff sheets are filed pursuant to a Letter Order issued by the Director of the Office of Pipeline and Producer Regulation on July 1, 1988, with respect to Williston Basin's Purchased Gas Cost Adjustment filing (PGA) of May 2, 1988, to bring Williston Basin's PGA clause into compliance with Order Nos. 483 and 483-A.

Copies of this compliance filing were served upon Williston Basin's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection. All motions to intervene or protests are due on or before August 12, 1988.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18106 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-180785; FRL-3427-4**

### Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 21 States listed below and a crisis exemption initiated by the California Department of Food and Agriculture. These exemptions, issued during the month of May, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific and crisis exemption for its effective date.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Enviromental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806)

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Arkansas Department of Agriculture for the use of sethoxydim on green beans to control Johnson grass; May 25, 1988, to June 30, 1988. (Robert Forrest)

2. Arkansas State Plant Board for the use of bromoxynil on rice to control broadleaf weeds; May 6, 1988, to August 1, 1988. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of avermectin $B_1$ on pears to control two-spotted spider mites and European red mites; May 18, 1988, to October 31, 1988. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of fosetyl-al (Aliette) for leaf lettuce and head lettuce to control downy mildew; May 25, 1988, to December 31, 1988. California had initiated a crisis exemption for this use. (Gene Asbury)

5. California Department of Food and Agriculture for the use of hexakis on watermelons to control spider mites; May 25, 1988, to September 30, 1988. (Robert Forrest)

6. Colorado Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 15, 1988, to August 15, 1988. (Gene Asbury)

7. Idaho Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 16, 1988, to September 15, 1988. (Gene Asbury)

8. Louisiana Department of Agriculture for the use of bromoxynil on rice to control broadleaf weeds; May 6, 1988, to August 1, 1988. (Jim Tompkins)

9. Maryland Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to September 15, 1988. (Gene Asbury)

10. Michigan Department of Agriculture for the use of a carboxin mixture (Pro-Gro Dust Seed Fungicide) on onion seedlings to control onion smut disease; May 1, 1988, to April 30, 1989. (Gene Asbury)

11. Michigan Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to September 30, 1988. (Gene Asbury)

12. Minnesota Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; May 25, 1988, to August 31, 1988. (Robert Forrest)

13. Mississippi Department of Agriculture and Commerce for the use of bromoxynil on rice to control broadleaf weeds; May 6, 1988, to August 1, 1988. (Jim Tompkins)

14. Missouri Department of Agriculture for the use of imazethapyr (Pursuit) on southern peas to control puncture vines; May 13, 1988, to July 15, 1988. (Robert Forrest)

15. Montana Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; May 24, 1988, to August 30, 1988. (Libby Pemberton)

16. New Jersey Department of Environmental Protection for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to October 31, 1988. (Gene Asbury)

17. New York Department of Environmental Conservation for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to October 15, 1988. (Gene Asbury)

18. Nevada Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 16, 1988, to August 15, 1988. (Gene Asbury)

19. North Dakota Department of Agriculture for the use of Tiller Herbicide on hard red spring wheat to control green and yellow foxtail; May 15, 1988, to July 15, 1988. (Gene Asbury)

20. North Dakota Department of Agriculture for the use terbufos on rape and mustard seed to control flea beetles; May 17, 1988, to October 15, 1988. (Robert Forrest)

21. Oregon Department of Agriculture for the use of avermectin $B_1$ on pears to control two-spotted spider mites, yellow spider mites, and McDaniel spider mites; May 6, 1988, to September 1, 1988. A notice of receipt was published in the **Federal Register** of March 9, 1988 (53 FR 7569); no comments were received. The exemption was granted on the basis that there are not registered alternative pesticides which will provide adequate control of these pests on pears. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $4.5 million. Combined residues of avermectin $B1_a$ and its delta 8,9 isomer are not likely to exceed 0.025 ppm in or on pears as a result of the proposed use. This residue level can be toxicologically supported and will not pose a threat to the public health. This use will increase the percent of total U.S. population ADI by 2.6%, raising it to 34.7% (based on all current uses). The lowest MOS for all uses is 333. The proposed use should not pose an unreasonable hazard to the environment or endangered species. (Libby Pemberton)

22. Oregon Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; May 24, 1988, to August 30, 1988. (Libby Pemberton)

23. Oregon Department of Agriculture for the use of sethoxydim on green peas to control barnyard grass and annual

grasses; May 25, 1988, to July 1, 1988. (Gene Asbury)

24. Oregon Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 16, 1988, to August 30, 1988. (Gene Asbury)

25. Pennsylvania Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to October 31, 1988. (Gene Asbury)

26. Rhode Island Department of Environmental Management for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 15, 1988, to September 15, 1988. (Gene Asbury)

27. Tennessee Department of Agriculture for the use of sethoxydim on snap beans to control Johnson grass; May 27, 1988, to July 31, 1988. (Robert Forrest)

28. Washington Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; May 24, 1988, to August 30, 1988. (Libby Pemberton)

29. Washington Department of Agriculture for the use of avermectin $B_1$ on pears to control two-spotted spider mites, McDaniel spider mites, and European red mites; May 6, 1988, to September 1, 1988. A notice of receipt was published in the **Federal Register** of April 16, 1988 (53 FR 11337); no comments were received. The exemption was granted on the basis that there are no registered alternative pesticides which will provide adequate control of these pests on pears. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $12.6 million. Combined residues of avermectin $B1_a$ and its delta 8,9 isomer are not likely to exceed 0.025 ppm in or on pears as a result of the proposed use. This residue level can be toxicologically supported and will not pose a threat to the public health. This use will increase the percent of total U.S. population ADI by 2.6%, raising it to 34.7% (based on all current uses). The lowest MOS for all uses is 333. The proposed use should not pose an unreasonable hazard to the environment or endangered species. (Libby Pemberton)

30. Washington Department of Agriculture for the use of permethrin on raspberries to control weevils; May 18, 1988, to August 15, 1988. (Donald Stubbs)

31. Washington Department of Agriculture for the use sethoxydim on green peas to control barnyard grass and annual rye grass; May 25, 1988, to July 1, 1988. (Gene Asbury)

32. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on snap beans to control wild proso millet, volunteer corn, and quackgrass; May 25, 1988, to August 31, 1988. (Robert Forrest)

A crisis exemption was initiated by the California Department of Food and Agriculture on May 13, 1988, for the use fosetyl-al (Aliette) on leaf and head lettus to control downy mildew. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. (Gene Asbury)

**Authority:** 7 U.S.C. 136.)

Dated: August 1, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 88-18031 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3427-3]

## Water Pollution Control; Final Determination of the Assistant Administrator for Water Concerning Three Wetland Properties Owned by Henry Rem Estate, Marion Becker, et al. and Senior Corporation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of decision to restrict the designation of wetlands owned by Henry Rem Estate, Marion Becker, et al. and Senior Corporation as discharge sites for rockplowing, in East Everglades, Dade County, Florida.

**SUMMARY:** This is notice of EPA's final determination pursuant to section 404(c) of the Clean Water Act to restrict the designation of three separately-owned wetland properties totaling 432 acres as discharge sites for rockplowing based upon a finding that this activity would result in unacceptable adverse effects to wildlife.

**EFFECTIVE DATE:** The effective date of the final determination is June 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles K. Stark, Jr., Office of Wetlands Protection, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8796

Copies of EPA's final determination are available for inspection in the Public Information Reference Unit, EPA Library, Room M 2904, 401 M Street SW., Washington, DC 20460 and the Marine and Estuarine Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

**SUPPLEMENTARY INFORMATION:** Under section 404(c) of the Clean Water Act, the Administrator of EPA has has the authority to prohibit or restrict the use of a site as a disposal site for dredged or fill material, after notice and opportunity for public hearing, whenever he or she determines that such disposal will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Responsibility for 404(c) determinations has been formally delegated to the Assistant Administrator for Water, who is EPA's national section 404 program manager.

This section 404(c) action addresses proposed and anticipated rockplowing activities in three separately-owned wetland properties totaling 432 acres in East Everglades, Date County, Florida. The first property is a 60 acre tract owned by Henry Rem Estate (the Rem site) which is located in the western quarter of Section 5, Township 56 South, Range 38 East, about one mile south of SW 168th Street (Richmond Drive) and about 1.8 miles west of the L-31N canal and levee. The second property is another 60 acre tract owned by Mrs. Marion Becker, Mrs. Bilba Burke, Mr. Paul Yanowitz, Mr. Euval S. Barrekette and Mr. Irving Sonneshein (the Becker site) which is located adjacent to and east of the Rem site, in section 5, Township 56 South, Range 38 East. The third property is actually three separate wetland tracts totaling 312 acres owned by Senior Corporation (the Senior Corp. site) which lie about 2.5 miles south of the Rem and Becker sites and extend along SW 232nd Avenue and south to SW 304th Street. The first tract is comprised of approximately 132 acres of wetlands within Section 7, Township 57 South, Range 38 East; the second tract is comprised of approximately 150 acres of wetlands within Section 30, Township 56 South, Range 38 East; and the third tract, comprised of approximately 30 acres of wetlands, is located within Section 6, Township 57 South, Range 38 East.

Rockplowing is a process in which a bulldozer is used to drag a multitoothed plow-like implement to break up and crush surface rock to prepare an area for agriculture. The wetlands at issue overlie a porous limestone strata which would have to be rockplowed to facilitate agriculture. Rockplowing these wetlands would eliminate their irregular surface and associated wetland vegetation.

At the time the Regional Administrator initiated the 404(c) action, property owners of the Senior Corp. site and the Rem site were actively pursuing permits from the Army Corps of Engineers (Corps) to rockplow. The Corps had announced its intention to

issue a section 404 CWA permit authorizing rockplowing on the Rem site and was in the process of preparing documentation for a permit decision concerning rockplowing on the Senior Corp. site. Property owners of the Becker site had not yet applied for a permit to rockplow. However, EPA Region IV felt that the Corps, in the supporting documentation for the permit to be issued to Henry Rem Estate, had predisposed itself to issuing a permit authorizing rockplowing on the Becker tract (the documentation implied that the Corps may issue a permit for rockplowing this site, if applied for, because its juxtaposition to adjacent agricultural areas was similar to that of the Rem site). EPA Region IV concluded that because the Rem, Becker and Senior Corp. sites are ecologically similar portions of the East Everglades wetlands complex, and rockplowing would be or had a high probability to be authorized on those sites and would result in similar unacceptable adverse environmental effects, this 404(c) action should include all three properties.

On February 16, 1988, EPA Headquarters received the administrative record and the Regional Administrator's recommended determination (dated February 9, 1988) to prohibit the specification of the Rem, Becker and Senior Corp. sites as discharge sites for rockplowing. The recommended determination was based upon a finding that rockplowing these sites would result in unacceptable adverse effects on fishery areas (including spawning and breeding areas for forage fish), wildlife and recreational areas.

EPA Headquarters considered the record in this case, including public comments, information received during Region IV's public hearing, and information provided by other agencies, organizations and knowledgeable individuals. I consulted with representatives of Senior Corp. (Representatives of the other property owners did not take advantage of EPA's offer for consultation at that point.) Based upon this review, I determined that rockplowing the Rem, Becker or Senior Corp. sites would result in unacceptable adverse effects to wildlife.

EPA's review revealed that the Rem, Becker and Senior Corp. sites provide diverse habitat that satisfies the habitat needs of a diverse wildlife population. The review also revealed that these sites also provide and essential wetland habitat component of, and provide habitat diversity for, the south Florida ecosystem. Wildlife habitat is regarded as continuous within East Everglades and Everglades National Park with mobile wildlife species moving freely between these areas to satisfy their habitat requirements. Many of these species for which the Rem, Becker and Senior Corp. sites provide essential habitat needs have suffered population declines due in whole or in part to the loss and/or alteration of habitat, which in a number of instances resulted in their listing as endangered, threatened or of special concern by the U.S. Department of Interior, State of Florida and/or the Florida Committee on Rare and Endangered Biota. EPA's review also revealed that there have been significant cumulative losses of the type of wetlands found on the Rem, Becker and Senior Corp. sites, that these losses have been linked to the decline of some species in this region and that rockplowing these sites would aggravate the effect of these losses.

I concluded that the Rem, Becker and Senior Corp. sites provide important wildlife habitat from a site specific and cumulative standpoint and, therefore, that rockplowing these sites would result in unacceptable adverse effects to wildlife for the purposes of Section 404(c) of the Clean Water Act. Therefore, under the authority delegated to me by the Administrator of EPA, I restricted the designation of the Rem, Becker and Senior Corp. sites as discharge sites for rockplowing. EPA's 404(c) action is based on the impacts of rockplowing and prohibits this activity on these sites. It does not address potential filling activities in support of less consumptive unless of these sites.

Dated: July 28, 1988.

**Rebecca W. Hanmer,**

*Acting Assistant Administrator for Water*

[FR Doc. 88-18035 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### National Security and Emergency Preparedness Advisory Committee and Emergency Broadcast Advisory Committee; Renewal

In accordance with the GSA Final Rule on Federal advisory committee management, 41 CFR Part 101-6 § 101-6.1015, the Federal Communications Commission is giving official notice on the renewal of the following advisory committees:

The National Security and Emergency Preparedness Advisory Committee (NSEPAC)

and

The Emergency Broadcast System Advisory Committee (EBSAC)

The General Services Administration, Committee Management Secretariat, has approved the renewal of these Committees, effective July 15, 1988, for a period of two years.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-18092 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Naguabo Broadcasting Co.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city, and state | File No. | MM Docket No |
|---|---|---|
| A. Francisco Resto Torres d/b/a Naguabo Broadcasting Company; Naguabo, PR. | BPH-861023MA | 88-343 |
| B. Cesar D. Gonzalez; Naguabo, PR. | BPH-861027MA | |
| C. Victelio R. Martinez d/b/a Eastern Broadcasting; Naguabo, PR. | BPH-861027MB | |
| D. Jorge G. Blanco Galdo; Naguabo, PR. | BPH-861027ME | |
| E. Reyes Ruiz Rivera; Naguabo, PR. | BPH-861027MF | |
| F. Hector Negroni Cartagena; Naguabo, PR | BPH-861027MH | |
| G. Efrain Archilla-Diez; Naguabo, PR | BPH-861027MI | |
| H. Naguabo Broadcast Group, Inc., Naguabo, PR | BPH-861027MJ | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. (See Appendix). (See Appendix)
2. Air Hazard, B,C,F
3. Comparative, All Applicants
4. Ultimate, All Applicants

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

**Appendix**

*Additional Issue Paragraph*

1. (a) To determine whether the proposals of A (NBC), D (Galdo), E (Rivera), G (Archilla-Diez) and H (Group) are consistent with the minimum separation requirements of section 73.207 of the Commission's Rules; (b) to determine whether the proposals of B (Gonzalez), C (Eastern), D (Galdo) and F (Cartagena) would provide coverage of the city sought to be served, as required by section 73.315(a) of the Commission's Rules; and (c) in light of (a) and (b) above, whether circumstances warrant waivers of the appropriate rule sections.

[FR Doc. 88–18096 Filed 8–9–88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOME LOAN BANK BOARD

**[No. 88–651]**

### Annual Report of Trust Assets

Date: August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Annual Report of Trust Assets" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This report provides details concerning the scope and amount of trust activities of the financial institutions. The Board estimates that each response will require 2.2 hours.

**DATE:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board. Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** Larry A. Clark, Office of Regulatory Activities, 202–778–2666, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88–18059 Filed 8–9–88; 8:45 am]

BILLING CODE 6720-01-M

**[No. 88–652]**

### Application for Approval To Increase Total Liabilities

August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Application for Approval to Increase Total Liabilities" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

These applications will show whether an institution's growth plan has been prudently formulated, and that the institution's capital, operations and financial strength will support the growth plan. Each response will require 8 hours to complete.

**DATE:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** Francis Raue, Office of Regulatory Policy, Oversight and Supervision, 202–778–2517, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88–18060 Filed 8–9–88; 8:45 am]

BILLING CODE 6720-01-M

**[No. 88–653]**

### Annual Disclosure Report

Date: August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Annual Disclosure Report" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

These reports will make available to the Bank Board and institution's members an annual disclosure on transactions in which affiliated persons (including the offices or members of the board of directors) have a material interest. Each response will require 40 hours to complete.

**DATE:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and

supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–377–6933.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Albinson, Office of Regulatory Policy, Oversight and Suprvision 202–778–2576, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18061 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

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**[No. 88–654]**

### Application for Membership and Subscription to Stock in the Federal Home Loan Bank Board

Date: August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, (Application for Membership and Subscription to Stock in the Federal Home Loan Bank Board) to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Charter 35).

This report provides financial and/or statistical information to determine if membership in the Federal Home Loan Bank System may be authorized in accordance with existing statutory and regulatory criteria. The Board estimates that each response will require 2 hours to complete.

**DATES:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** John Wilson, Office of District Banks, 377–7217, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88–18062 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

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### The American Federal Savings & Loan Association, Anadarko, OK; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for The American Federal Savings and Loan Association, Anadarko, Oklahoma, on July 28, 1988.

Dated: August 3, 1988.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18063 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–10–M

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### Universal Savings Association, a Federal Savings & Loan Association, Chickasha, OK; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Universal Savings Association, a Federal Savings and Loan Association, Chickasha, Oklahoma, on July 28, 1988.

Dated: August 3, 1988.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18064 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

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## FEDERAL MARITIME COMMISSION

### Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on August 1, 1988, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

*Agreement No.:* 201–002631–007.

*Title:* New Orleans Steamship Association Assessment Agreement.

*Parties:*

New Orleans Steamship Association
International Longshoremen's Association, AFL–CIO.

*Synopsis:* The agreement provides that effective June 1, 1988, the obligation of the Employers under the Guaranteed Annual Income Plan to make contributions to fund such plan is suspended. Contributions shall continue to be made by Employers for work performed prior to June 1, 1988.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: August 5, 1988.

[FR Doc. 88–18075 Filed 8–9–88; 8:45 am]

BILLING CODE 6730–01–M

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### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203–010459–003.

*Title:* Joint Feeder Vessel Cooperative Working Arrangement.

*Parties:*

American President Lines, Ltd.
Sea-Land Service, Inc.

*Synopsis:* The proposed amendment would extend the termination date of the agreement through December 31, 1988. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: August 5, 1988.

[FR Doc. 88-18089 Filed 8-9-88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

Auguat 4, 1988.

### Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

*Final approval under OMB delegated authority of the extension, with revision, of the following:*

1. Report title: Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Reports of Deposits.

Agency form number: FR 2900; FR 2950/51; and FR 2000/2001.

OMB Docket number: 7100-0087.

Frequency: Weekly, Quarterly, Daily—dependent upon report.

Reporters: epository institutions.

Annual reporting hours: 2,557,114.

| Report | Estimated No. of responses | Estimated hours per response |
|---|---|---|
| FR 2900 | [1] 9,890 | 1 to 12 (4.52 avg.). |
| | [2] 6,985 | 1 to 12 (4.52 avg.). |
| FR 2950/2951 | [1] 744 | .2 to 5 (1.00 avg.). |
| | [2] 3 | .2 to 5 (1.00 avg.). |
| FR 2000 | 186 | .3 to 2.4 (.84 avg.). |
| FR 2001 | 540 | .3 to 3 (.96 avg.). |

[1] Weekly.
[2] Quarterly.

Small businesses are affected.

General description of requirements:

This information collection is mandatory (12 U.S.C. 248(a), 461, 3105) and is given confidential treatment (5 U.S.C. 552 b(4) and b(8).

This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements (FR 2900); Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, 2951); and selected items on the 2900 in advance from samples of commercial banks on a daily basis (FR 2000) and on a weekly basis (FR 2001). An increase in the deposit cutoff used to determine weekly versus quarterly FR 2900 reporting has been approved. Under normal indexing procedures, the cutoff rises from $28.6 million to $30.0 million; with this action, the cutoff will be raised even further, to $40.0 million. In addition, the total number of items collected on the FR 2900, 2000, and 2001 reports will be reduced by two items. Information provided by these reports is used for administering Regulation D—Reserve Requirements of Depository Institutions; or for constructing, analyzing, and controlling the monetary and reserves aggregates, or both.

2. Report title: Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities and Annual Report of Total Deposits and Reservable Liabilities.

Agency form number: FR 2910q; FR 2910a.

OMB Docket number: OMB No. 7100-0175.

Frequency: Quarterly; Annually.

Reports: Depository institutions.

Annual reporting hours: 6,255.

| Report | Estimated No. of responses | Estimated hours per response |
|---|---|---|
| FR 2910q | 625 | 2.00 |
| FR 2910a | 6,274 | .20 |

Small businesses are affected.

General description of requirements:

This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552 b(4) and b(8)).

These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and Agreement Corporations) that are fully exempt from reserve requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions. An increase has been approved in the deposit cutoff used to determine quarterly FR 2910q versus annual FR 2910a reporting. Under normal indexing procedures, the cutoff rises from $28.6 million to $30.0 million; with this action, the cutoff will be raised even further, to $40.0 million.

*Final approval under OMB delegated authority of the extension, without revision, of the following report:*

1. Report title: Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.

Agency form number: FR 2930; FR 2930a.

OMB Docket number: OMB No. 7100-0088.

Frequency: Annually.

Reporters: Depository institutions.

Annual reporting hours: 42.

Estimated No. of Responses: 168.

Estimated hours per response: .25.

Small businesses are affected.

General description of requirements:

This information collection is mandatory (12 U.S.C. 248(a), 461) and is given confidential treatment (5 U.S.C. 552 b(4) and b(8)).

This report provides information on the allocation of the low reserve tranche and reservable liabilities exemption among particular offices of those families of institutions that have offices located in more than one state or Federal Reserve district, which submit separate deposits reports instead of one single, nationally aggregated report. These data are needed for the calculation of required reserves.

Board of Governors of the Federal Reserve System, August 4, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88-18005 Filed 8-9-88; 8:45 am]

BILLING CODE 6210-01-M

**First Bank System, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company**

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire at least 88.55 percent of the voting shares of Central Bancorporation, Inc., Denver, Colorado, and thereby indirectly acquire The Academy Boulevard Bank, d/b/a Central Bank of Academy Boulevard, Colorado Springs, Colorado; Central Bank of Chapel Hills, N.A., Colorado Springs, Colorado; The Central Colorado Bank, d/b/a Central Bank of Colorado Springs, Colorado Springs, Colorado; Central Bank of Garden of the Gods, N.A., Colorado Springs, Colorado; Central Bank of Pueblo, N.A., Pueblo, Colorado; The First National Bank of Rocky Ford, Rock Ford, Colorado; Central Bank of Grand Junction, N.A., Grand Junction, Colorado; Central Bank of Craig, N.A., Craig, Colorado; Peoples Bank of Arapahoe County, d/b/a Central Bank of Aurora, Aurora, Colorado; Central Bank of Chatfield, Jefferson County, Colorado; Central Bank of Centennial, N.A., Littleton, Colorado; Central Bank of Inverness, N.A., Englewood, Colorado; Central Bank of Glenwood Springs, N.A., Glenwood Springs, Colorado; Central Bank of Aspen, N.A., Aspen, Colorado; Central Bank of Greeley, Greeley, Colorado; Broomfield State Bank, d/b/a Central Bank of Broomfield, Broomfield, Colorado; North Denver Bank, d/b/a Central Bank of North Denver, Denver, Colorado; Central Bank of Westminister, N.A., Westminister, Colorado; and Central Bank of Denver, Denver, Colorado.

In connection with this application, Applicant also proposes to acquire Central Bancorporation Life Insurance Company, Denver, Colorado, and thereby engage in underwriting credit life insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Colorado.

Board of Governors of the Federal Reserve System, August 4, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18006 Filed 8-9-88; 8:45 am]

BILLING CODE 6210-01-M

**Mason City National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mason City National Bancorp, Inc.*, Mason City, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Mason City National Bank, Mason City, Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Worthington Bancshares, Inc.*, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Worthington State Bank, Worthington, Indiana.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Frandsen Financial Corporation*, Luck, Wisconsin; to acquire 100 percent of the voting shares of First State Bank, Braham, Minnesota.

2. *Frandsen Financial Corporation*, Luck, Wisconsin; to acquire 100 percent of the voting shares of Lakeside State Bank, Isle, Minnesota.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Kolob Investment Company*, Springville, Utah; to become a bank holding company by acquiring 34.1 percent of the voting shares of M.O. Packard Investment Company, Springville, Utah, and thereby indirectly acquire Central Bank and Trust Company, Springville, Utah.

2. *Washington Commercial Bancorp*, Redmond Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Redmond National Bank, Redmond, Washington, a

de novo bank. Comments on this application must be received by August 31, 1988.

Board of Governors of the Federal Reserve System, August 4, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18007 Filed 8-9-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

**[Announcement Number 904]**

### Cooperative Agreements for Acquired Immunodeficiency Syndrome National Organization and Consortiums Information and Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1989

#### Introduction

The Centers for Disease Control (CDC), announce the availability of Fiscal Year 1989 Cooperative Agreement funds to support information and education programs about Acquired Immunodeficiency Syndrome (AIDS) carried out by national non-profit organizations and/or consortiums.

#### Authorizing Legislation

This program is authorized under the Public Health Service Act: Section 301(a) (42 U.S.C. 241), and Section 318, (42 U.S.C. 247c) as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

#### Background

AIDS constitutes a significant threat to the health of all people in the United States. Although the vast majority of AIDS cases have occurred among homosexual and bisexual men (70%) and intravenous drug abusers (19%), Human Immunodeficiency Virus (HIV) infection can be transmitted through heterosexual practices (from man to woman or woman to man) and perinatally (from infected mother to newborn child). An estimated 1–1.5 million Americans already are infected with the virus and cases resulting from heterosexual transmission of the virus are expected to increase. The only means currently available to control the epidemic is through effective education about the behaviors that spread the virus from an infected person to an uninfected person, the consequences of infection, and how to prevent becoming infected.

To help prevent the spread of HIV infection CDC proposes to support national organizations and consortiums in developing and implementing national AIDS health education/risk-reduction programs. These national organizations and consortiums must have established communication links with both their constituent communities and with the general public.

#### Program Purpose

The purpose of the proposed program is: (1) To assist appropriate national organizations, associations, consortiums and/or professional groups that have existing organizational capacities to carry out on a national basis, immediate, as well as long-term actions to provide HIV/AIDS education/risk-reduction projects targeted to the needs of their constituencies; (2) to support activities on a national or regional basis which will complement and supplement State and local efforts to inform and educate the public at risk of HIV infection; (3) to encourage alternative national approaches to health education and risk-reduction which are sensitive and appropriate to the needs of specific target populations; (4) to educate and involve greater numbers of national organizations and to stimulate the development of appropriate consortiums in HIV/AIDS information/education activities; (5) to assure coordination of these activities with education and prevention efforts of State and local health departments; and (6) to identify existing HIV/AIDS information/education needs, and address these needs through resources not currently involved in AIDS prevention.

#### Eligibility Requirements

Applications may be submitted by a single organization or a group of two or more organizations. If two or more organizations combine to submit an application, one must be designated as the primary recipient of the award. That organization shall have primary responsibility for submission of the application, and any subsequent award, with appropriate subcontract arrangements with participating organizations. The Project Director must be an employee of the applicant organization. The application must describe in full detail all such planned arrangements.

An eligible applicant organization will be of one of the following two types:

1. An established *national non-profit organization* which may be health, education, social service, professional, or voluntary; which has the capacity and organizational experience to implement and manage programs of national scope; and which demonstrates the capacity to operate and centrally administer a coordinated HIV/AIDS information/education/risk-reduction program or network on a national basis; *OR*

2. An established or newly formed *national non-profit consortia or group of organizations* which brings together a range of capabilities of national scope, and which demonstrate a capacity to operate and centrally administer a regionally or nationally coordinated AIDS information/education program.

#### Availability of Funds

Approximately $1,000,000 will be available in Fiscal Year 1989 to fund approximately 8–12 cooperative agreements under this announcement. It is expected that the range of awards will be between $25,000 and $150,000.

It is expected that the initial awards will be made on or about November 15, 1988, and will be initially funded for a 12-month budget period, with a project period of up to 5 years.

Organizations and consortia may submit more than one application under this program, but no specific organization or consortium member will receive more than one award each through this program.

#### Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, their training, travel, equipment, supplies and services, including contractual services (i.e., contracts with community organizations) directly related to planning, organizing, and conducting the AIDS Information/Education Program described in this announcement.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk-reduction education efforts, if approved in accordance with the CDC guidance document titled CONTENT AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS IN CENTERS FOR DISEASE CONTROL ASSISTANCE PROGRAMS (JANUARY 1988), as published in the **Federal Register** (53 FR 6034, February 29, 1988).

#### Purpose/Cooperative Activities/Other Requirements and Information

*A. Purpose*

Consideration will be given to national projects directed toward the general population or toward one or more of the target populations identified

below. Proposed projects should include one or more of the following activities:

(1) Development and implementation of information and education/risk-reduction programs on HIV/AIDS directed at their membership, affiliates, employees, constituents, etc. These efforts should emphasize activities which demonstrate knowledge about and which are sensitive to either specific target groups; such as high-risk individuals, disadvantaged women, young adults, health care employees, racial and ethnic minorities or the general public.

(2) Development and operation of HIV/AIDS informational/educational programs between recipient organization(s), other interested organizations, and/or membership affiliates, employees, constituents, etc., with special emphasis on those organizations with current limited involvement in HIV/AIDS education.

(3) Development and implementation of information/education/risk-reduction demonstration programs at the State and local level(s) by affiliate organizations. These demonstration programs must be coordinated with appropriate State and local AIDS Coordinators and Programs and specifically address gaps in existing State and Local Program Activities.

(4) Development of information, training and/or technical assistance to member affiliates; and creative and effective application of available resources to address public health problems which will positively affect HIV/AIDS morbidity and mortality. The CDC has established grants and cooperative agreements with many official State and local health agencies, as well as other public and private entities for HIV/AIDS prevention programs, and envisions that applicants' proposed programs will complement and be coordinated with these agencies' programs.

*B. Cooperative Activities*

1. Recipient Activities

a. Establish programs to increase the number of national organizations and coalitions providing effective AIDS education, or stimulate the development or expansion of the number of organizations collaborating to deliver effective AIDS information and education programs to the public or to specific populations at increased risk of becoming infected. Programs must have time-framed, measurable and realistic objectives and should have plans to monitor the levels of AIDS-related knowledge, attitudes, beliefs and behaviors among targeted populations.

b. Collaborate with State and local health agencies in carrying out HIV/AIDS health education/risk-reduction programs and in planning, implementing, and evaluating effective AIDS education including:

(1) Providing consultation and technical assistance to affiliates/constituents, etc., during the planning and development phases of the program;

(2) Developing, selecting, and reviewing educational materials used by the program;

(3) Providing logistical and technical support (e.g., arranging to have AIDS experts available for program workshop, meetings, conferences, etc.) to facilitate the implementation and evaluation of the program; and

(4) Ensuring a close coordination of this initiative with the State or local AIDS health education/risk-reduction Program.

c. Assess program progress in achieving objectives and in carrying out activities.

d. Participate in sharing HIV/AIDS program descriptions, progress reports, and educational materials through the Centers for Disease Control National Information Clearinghouse database and in utilizing the database to avoid duplication of efforts.

e. Participate in CDC-sponsored conferences dealing with program activities.

2. CDC Activities

a. Provide technical assistance and guidance in the planning and implementation of programs.

b. Assist in the identification and acquisition of appropriate educational materials to be used in the program; examples: clearinghouse, hotlines, campaign materials, etc.

c. Provide technical assistance in the development and implementation of evaluation efforts for the program.

d. Provide access to the National AIDS Clearinghouse's database of AIDS programs and materials.

**Review and Evaluation Criteria**

1. *Knowledge of Target Population:* (15%)
2. *Proposed Program:* (30%)
3. *Applicant Capability and Coordination Efforts:* (35%)
4. *Evaluation Design:* (10%)
5. *Program Personnel:* (10%)
6. *Program Budget:* NOT SCORED

**Application and Submission Deadline**

The original and two (2) copies of the application (PHS 5161–1, revised 3/86) must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, GA, 30305, on or before September 26, 1988.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(A) Received on or before the deadline date.

(B) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1A. or B. are considered late applications. Late applications will not be considered in the current competition, and will be returned to the applicant.

**Other Requirements**

Applications are not subject to review as governed by Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

**Availability of Complete Program Description and Application Assistance**

A full description of the program, including criteria for review of applications, application format, application procedures, copies of application forms PHS 5161–1, and other materials may be obtained from Terry Maricle, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 842–6511.

Announcement Number 904, "Cooperative Agreements for Acquired Immunodeficiency Syndrome National Organization and Consortiums Information and Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1989," must be referenced in all requests for information pertaining to these projects.

Technical Information may be obtained from Beverly Schwartz, National AIDS Information and Education Program, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639–2384.

Dated: August 3, 1988.

**Robert L. Foster,**

*Acting Director, Office of Program Support Centers for Disease Control.*

[FR Doc. 88–18029 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–18–M

**Food and Drug Administration**

**[Docket No. 88M-0263]**

## Bunnell, Inc.; Premarket Approval of Model 203 Life Pulse High Frequency Ventilator

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Bunnell, Inc., Salt Lake City, UT, for premarket approval, under the Medical Device Amendments of 1976, of the Model 203 Life Pulse High Frequency Ventilator. After reviewing the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by September 9, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** E. Carolyn Derrer, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

**SUPPLEMENTARY INFORMATION:** On May 21, 1986, Bunnell, Inc., Salt Lake City, UT 84115, submitted to CDRH an application for premarket approval of the Model 203 Life Pulse High Frequency Ventilator, which is indicated for use in ventilating critically ill infants with respiratory distress syndrome complicated by pulmonary air leaks, who are, in the opinion of their physicians, failing on conventional ventilation. All other uses of the Model 203 Life Pulse High Frequency Ventilator remain investigational.

On November 21, 1986, the Anesthesiology and Respiratory Therapy Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. The panel, however, noted a lack of data supporting the use of this device at frequencies greater than 660 breaths per minutes. As a result, the applicant has modified the device by limiting the maxmium frequency to 660 breaths per minute. The panel also recommended that the applicant provide additional information to support the correct use of the device, more concise instructions for use, and long-term follow-up data to examine the incidence of residual pulmonary pathology. This additional information has been submitted by the applicant. CDRH concurred with the recommendation of the Anesthesiology and Resipiratory Therapy Devices Panel, In addition, CDRH recommended that the maximum peak inspiratory pressure be limited to 50 centimeters of water and that the maximum inspiratory: expiratory ratio be limited to 0.035 seconds. The applicant has modified the Model 203 Life Pulse High Frequency Ventilator accordingly. On June 30, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact E. Carolyn Derrer (HFZ-430), address above.

### Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 9, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 3, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88-18068 Filed 8-9-88; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 88M-0266]**

## Sonocare, Inc.; Premarket Approval of Model CST-100 Therapeutic Ultrasound System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Sonocare, Inc., Upper Saddle River, NJ, for for premarket approval, under the Medical Device Amendments of 1976, of the Model CST-100 Therapeutic Ultrasound System. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by Septebmer 9, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

**SUPPLEMENTARY INFORMATION:** On January 21, 1987, Sonocare, Inc., Upper Saddle River, NJ 07458, submitted to CDRH an application for premarket approval of the Model CST–100 Therapeutic Ultrasound System. The Model CST–100 Therapeutic Ultrasound System is a device that produces a focused high intensity ultrasound beam and is indicated for the treatmnent of refractory glaucoma.

On May 28, 1987, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On June 30, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–460), address above.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 9, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 3, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–18067 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 88M–0264]**

## Trimedyne, Inc.; Premarket Approval or the Spectraprobe-PLR™ Catheter and Model 900 Optilase™ Contract Laser Source System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Trimedyne, Inc., Santa Ana, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Spectraprobe-PLR™ Catheter and Model 900 Optilase™ Contract Laser Source System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by September 9, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Brad C. Astor, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7371.

**SUPPLEMENTARY INFORMATION:** On November 6, 1987, Trimedyne, Inc., Santa Ana, CA 92705, submitted to CDRH an application for premarket approval of the Spectraprobe-PLR™ Catheter and Model 900 Optilase™ Contract Laser Source System. This device is indicated for use via surgical cutdown or percutaneous introduction as the sole therapeutic procedure, as an adjunct to balloon dilatation or as an adjunct to peripheral vascular surgery (i.e., bypass graft surgery) for the treatment of total occlusions or stenoses in the iliac, femoral, popliteal, and tibial arteries.

On March 11, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 30, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Brad C. Astor (HFZ–450), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's

action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 9, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 3, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–18069 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–01–M

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## Health Resources and Services Administration

### Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1988:

Name: National Advisory Committee on Rural Health

Date and Time: September 19–21, 1988, 8:30 a.m.

Place: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, Financing, research, development and administration of health care service in rural areas.

Agenda: The meeting will tentatively include welcome and opening remarks; Department perspective; the Congressional perspective; the role of the Committee; a Press Conference; the Public Health perspective; public comments/testimony; perspectives of the Health Resources and Service Administration Bureau; and development of an action plan for the Committee's operation.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in providing testimony during the public comments segment of the agenda on September 19, should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 88–18070 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–15–M

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## Public Health Service

### Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently in pertinent part at 51 FR 27916, August 4, 1986), is amended to reflect the establishment of the Division of Special Populations Program Development in the Bureau of Health Care Delivery and Assistance, within the Health Resources and Services Administration (HRSA).

*Under HB–10, Organization and Functions,* amend the functional statement for the *Bureau of Health Care Delivery and Assistance (HBC)* by adding the following after the functional statement for the *Division of Federal Occupational and Beneficiary Health Services (HBCA):*

*Division of Special Population Development (HBCB).* This division researches issues and develops program plans which identify health care needs of special population groups. Such research may include issues related to: (1) The health care of the homeless, substance abusers, the elderly, and victims of AIDS and Alzheimer's Disease; perinatal and other infant mortality reduction programs; home health services, environmental, occupational, and rural health, etc., (2) coordinates the identification of issues and establishes Agency/Bureau priorities with the Division of Primary Care Services; (3) directs nationwide efforts to coordinate health care needs of special populations and encourages State and local assistance in meeting needs; (4) provides guidance and direction in the development of health care partnerships and networks and coordinates the management plans with regional offices, other Federal programs, and State and private organizations; (5) develops guidance materials and implements plans to meet needs of identified areas; (6) coordinates health needs of special populations with the Division of Primary Care Services ensuring that funds are allocated according to Bureau priorities and legislative intent; (7) develops, conducts, and evaluates demonstration projects utilizing data collected as a base line for the integration of primary care systems or expanding existing health care networks; and (8) provides technical assistance in the interaction of community based systems.

This establishment is effective upon date of signature.

Date: August 4, 1988.

**Wilford J. Forbush,**

*Director, Office of Management.*

[FR Doc. 88–18084 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–15–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–88–1841]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of house needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 3, 1988.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* National Survey of Shelters for the Homeless.
*Office:* Policy Development and Research.
*Description of the Need for the Information and its Proposed Use:* This survey is intended to provide information about the Nation's system of shelters for the homeless, including the number of shelter facilities and beds, amenities and services available, rules and regulations, and the characteristics of shelter occupants. The information is needed for purposes of policy development and program administration, as well as for more general use by other Federal agencies, the Congress, and the general public.
*Form Number:* None.
*Respondents:* Non-profit institutions and state or local governments.
*Frequency of Submission:* One-time.
*Reporting Burden:*

| Number of respondents | Frequency of response | Hours per response | Burden hours |
|---|---|---|---|
| 200 | 1 | .50 | 100 |

*Total Estimated Burden Hours:* 100
*Status:* New
*Contact:*
Terry Connell, HUD, (202) 755–5541
John Allison, OMB, (202) 395–6880

Date: August 3, 1988.

Supporting Statement for OMB Review

Survey of Shelters for Homeless Persons

Contract No. HC–5772

Task Order No. 3

Dr. Martin Abravanel, Director and Governmental Technical Representative
Dr. Terrance Connell, Governmental Technical Monitor, Division of Policy Studies, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Washington, DC 20410
Dr. Garrett Moran, Task Order Manager, Westat, Inc., 1650 Research Boulevard, Rockville, Maryland 20850

August 2, 1988.

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1. Justification

*A. Need for Data Collection*

The Housing and Community Development Act of 1970, section 501, authorizes the Secretary of Housing and Urban Development (HUD) to undertake such programs of research, studies, testing and demonstrations relating to the mission and programs of the Department as he determines to be necessary and appropriate. Under this authorization, the Division of Policy Studies has been assigned the responsibility of studying shelters for the homeless.

On July 22, 1987 the Stewart B. McKinney Homeless Assistance Act was signed into law. The amount appropriated for the McKinney programs administered by HUD was $195 million in FY 1987. An additional $280 million was authorized for FY 1988, of which $73 million has been appropriated. The HUD programs include grants to state, county, and local governments to renovate and operate homeless facilities; funds to public agencies and private non-profit organizations to develop innovative

approaches to providing "transitional" housing to move capable homeless persons to independent living; funds to states for long-term housing for handicapped homeless; and additional funding for rehabilitation of single room occupancy dwellings for priority use by the homeless.

As these programs begin, it is important for the Department to understand the present and potential role of the HUD McKinney Act programs with respect to how shelters for the homeless address homeless issues. Since the programs have just begun, it is not possible to obtain in-depth evaluation results at this time. OMB, Congress, various HUD offices, and organizations addressing homeless issues, however, have a major interest in whatever preliminary information can be obtained over the next few months. Therefore, the Division of Policy Studies in the Office of Policy Development and Research (PD&R) will study the role of the HUD McKinney Act programs in the context of the ability of a community to provide appropriate shelter and services to the homeless.

Little is known about the impact and adequacy of such policies and expenditures, the characteristics of the homeless who have been helped by them, nor the extent to which they supplement private efforts to provide shelter for the homeless.

*B. Purpose of Data Collection*

A telephone survey of a national sample of shelter managers and shelter voucher program managers is proposed in order to obtain information on the operation and funding of the shelters and voucher programs, and the characteristics of those who use them.

Most shelters are operated by private groups, but as noted in the preceding section, considerable Federal funds have been allocated to support their operation. Voucher programs rely on a combination of funding sources. The survey would gather data on the cost of providing accommodation for the homeless and the source of funds for different types of shelters (Federal, state, local government, and private).

Information will be gathered on demographic characteristics, extent of shelter use, employment, mental health and alcohol/drug abuse.

In order to assess the extent to which shelters are meeting existing needs, the survey will obtain statistics on shelter capacities, occupancy and turnaway rates. Eligibility criteria and availability of additional support services will also be examined for shelters and voucher programs.

*C. Existing Information*

Early references to shelter policies, funding, and user characteristics can be found in "A Report to the Secretary on the Homeless and Emergency Shelters." [1] More recent references include the Congressional Hearing that was held in support of the McKinney Act: "Urgent Relief for the Homeless Act" [2]; and other Congressional Hearings such as: "Homelessness in America" [3]; "Homelessness in America—1988" [4]; "The Crisis in Homelessness: Effects on Children and Families" [5]; and "Effect of Our Nation's Housing Policy on Homelessness." [6] There have been few national probability samples of shelters that will allow generalizations to be made about the national situation. In 1984, HUD commissioned the first national sample of shelters and this will be a follow-up to that study.

*D. Efforts to Identify Duplication*

Discussions with HUD staff, and an extensive search of the literature both within the government and in the private sector, have revealed no comparable nationwide studies or surveys of the shelter situation that have been conducted within the last four years.

The study that is most similar to that proposed here is a national Food and Nutrition Survey conducted for the Department of Agriculture under OMB clearance number 0584–0360. This survey focused on meals served to the homeless in soup kitchens and to a lesser extent meals served in shelters. Only twenty cities were included in this survey. It would not be possible to produce national estimates on the variables of interest for our proposed survey from the data gathered by the Department of Agriculture survey.

*E. Consideration of Alternatives*

Consideration of alternative means of collecting the required data was given. For the following reasons the current plan of research was retained.

- The current plan of research maximizes comparability with the 1984 study, thus allowing examination of trends over time.
- The proposed survey will provide national estimates of shelter provision, while localized studies would not.
- A telephone survey is an economical means of gathering national data.

**2. Description of Information Collected**

*A. Universe and Sampling Methods*

Frame Creation

The shelter survey will use a two-stage sample design; first selecting a sample of counties or central cities, then selecting a subsample among the shelters located in those jurisdictions. The frame of counties and central cities will come from the Census Bureau's City/County Databook from the 1980 Census.

No complete listing of shelters throughout the country is available. Therefore, for each selected primary sampling unit (county/central city) the contractor will review the Comprehensive Homeless Assistance Plan (CHAP) and any other available secondary sources of information on shelters in that jurisdiction. Some phone conversations may be made to CHAP authors or other relevant governmental and private sector agencies (including homeless referral centers) knowledgeable about area homeless shelters. From those sources, lists of all shelters serving the homeless, and their number of beds, will be compiled for the eligible first-stage communities.

The most applicable SIC codes for shelters for the homeless are 8399—Social Services Not Elsewhere Classified or 9531—Housing Programs.

Definition of Eligible First-Stage Communities

All counties in the United States with a population of 25,000 or more will be eligible for this survey. If a county contains an SMSA central city with a population greater than 250,000, the central city will be sampled separately

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[1] U.S. Department of Housing and Urban Development, *A Report to the Secretary on the Homeless and Emergency Shelters*, 1984, Washington, D.C.: U.S. Government Printing Office.

[2] "Urgent Relief for the Homeless Act": hearing before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, One-hundredth Congress, first session, on H.R. 558, February 4, 1987.

[3] "Homelessness in America": hearing before the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs, United States Senate, One hundredth Congress, first session, January 29, 1987.

[4] "Homelessness in America—1988": hearing before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, One-hundredth Congress, second session, January 26, 1988.

[5] "The crisis in homelessness: effects on children and families": hearing before the Select Committee on Children, Youth, and Families, House of Representatives, One hundredth Congress, first session, hearing held in Washington, DC, February 24, 1987.

[6] "Effect of our nation's housing policy on homelessness": hearing before the Ad Hoc Task Force on the Homeless and Housing of the Committee on the Budget, House of Representatives, One Hundredth Congress, first session, January 21, 1988.

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to insure adequate representation in the sample. The remaining portion of a county that contains an eligible SMSA central city will itself be eligible for selection, if the non-central city population exceeds 25,000.

Definition of Eligible Homeless Shelters

All shelters for the homeless and voucher programs that provide shelter to the homeless are eligible for inclusion in the survey, with the exception of:

- Shelters or programs open less than 30 days during the past 12 months;
- Shelters used exclusively for juvenile runaways;
- Hospitals;
- Prisons; and
- Detoxification centers located outside of a shelter.

Specifically included in the survey are:

- Shelters for adult men or women;
- Shelters for families;
- Shelters for battered women;
- Transitional housing;
- Boarding houses, welfare hotels, and single room occupancy (SRO) hotels primarily or exclusively used by the homeless that accept direct client payment;
- Other shelters used to house the homeless; and
- Commercial lodging providers that serve the homeless through voucher programs and contractual arrangements.

Sample Selection Methodology

Sixty five first-stage units (counties/central cities) will be selected with probabilities proportional to size (PPS). The size measure will be the maximum of the number of renters or 20 percent of the total population. Number of renters is considered in calculating the measure of size because it is likely to be more highly correlated with the presence of shelters for the homeless than is general population size. This correlation results from the tendency of the homeless to gather in more urban, densely populated areas where most renters are likely to be found. There may, however, be some very large suburban counties with very small rental populations. To prevent such counties from being excluded, and to control the variation in sampling weights, general population size is also factored into the calculation of the measure of size. This approach should increase the accuracy of the survey estimates. (Nationally, about one-third of all households are renters.)

Two hundred second-stage units (shelters and voucher programs) will be selected with probability inversely proportional to their first-stage unit's probability of selection, and all shelters and voucher programs thought to exceed a specified size will be selected with certainty. There will be at least two additional size strata, with those in the larger stratum having a higher probability of selection than the smallest size shelters or programs. This procedure will ensure adequate representation of shelters which provide services to the greatest number of homeless. It will also provide, to the extent possible, an equally weighted sample of shelters within these three size strata. This will maximize the precision of the estimates.

*B. Information Collection Procedures*

After receipt of final information collection clearance, trained telephone interviewers will contact managers of approximately 200 shelters or voucher programs for the homeless in 65 cities or counties nationwide. Shelters and voucher programs will be sampled from a universe developed by reviewing CHAPs, other existing documentation, and lists obtained from the local areas. Interviewers will be trained to first identify the manager in order to conduct the interview. Once contacted, interviewers will ask managers questions to determine shelter or program characteristics, characteristics of those served, capacity, and extent of use.

Interviewers selected for this survey will have all undergone a rigorous and carefully planned training program that covers general techniques of interviewing as well as a session specifically designed to familiarize them with and enable them to administer the Survey of Shelters for the Homeless.

*C. Pre-Testing*

During the month of August 1988, project staff will pretest this questionnaire with no more than nine shelter managers in cities not included in the sample. This pretesting and subsequent review may result in revisions to the draft questionnaire.

*D. Expected Response Rate*

A very high response rate (90% or more) is anticipated in this survey. This response rate is anticipated based on the 95 percent response rate achieved in the 1984 suvey. A high response rate was achieved across strata in 1984, and it is anticipated that similar rates will be achieved in this survey. Oversampling will be provided to allow for nonresponse and out-of-scope shelters (e.g., shelter no longer exists).

For a sample size of 200 and an estimated proportion of 50 percent, the 95 percent confidence interval, excluding design effects, is 50 ± 6.9 percent. At an estimated proportion of 10 percent, the corresponding 95 percent confidence interval is 10 ± 4.2 percent, excluding design effects.

*E. Sampling Statisticians*

The sampling approach for this survey was designed by David Marker and David Morganstein, sampling statisticians with Westat, Inc., and was implemented under their supervision.

Telephone numbers are as follows:
David Marker (301) 251–1500
David Morganstein, (301) 251–1500

*F. Confidentiality Provisions*

To ensure that the data collected are processed in a confidential manner, a set of standard procedures will be followed:

- All project staff will sign an assurance of confidentiality.
- Employees will keep completely confidential the names of all shelter respondents, all information or opinions collected in the course of interviews, and any information about respondents learned incidentally.
- Survey data containing personal identifiers will be kept in a locked container when not being used each working day in routine survey activities. Reasonable caution will be exercised in limiting access to survey data only to persons working on the project who have been instructed in the applicable confidentiality requirements for the project.
- The project director and survey manager will be responsible for ensuring that all personnel involved in handling survey data on the project are instructed in these procedures, have signed the pledge, and comply with these procedures throughout the period of survey performance.
- Special handling instructions not only will demand enforcement of the confidentiality of received questionnaires, but will assure strict control of questionnaire whereabouts.

To assure respondents of the confidentiality of the data collected, interviewers will read the following statement before beginning each interview:

> Before I begin I'd like to inform you that your response is voluntary and the information you provide will be treated as confidential and will only be used in combination with other responses in statistical reports. No information other than city name will be published or released that identifies individual respondents or shelters with their responses.

To ensure that the data will not be used in an inappropriate or unauthorized manner while in the care

of the contractors, standard confidentiality procedures will also be used. All the necessary information and documents relating to computer data files will be kept in a file accessible only by project analysts under the supervision of the project director. Final analysis and reporting of the data will not contain identifying information such as name, address, or telephone number.

*C. Remuneration*

No remuneration of any kind is being offered to any respondents to the proposed survey.

*H. Tabulation and Publication*

Tabulation

The data collected by telephone interview will be coded, key entered, and cleaned by the contractor. The resulting data file will be computer-processed by standard statistical software packages.

A set of frequency distributions on all collected items will be made. A critical examination of the quality of the data shall be prepared and sumbitted. It will include comment on accuracy, validity, response rates, extent of missing data, and known and potential biases. The contractor will also provide a report that explains the methodology, identifies the number of responses and relative precents, and details the work performed under the contract, including data and procedural recommendations.

Publication

HUD will use contractor provided information and additional tabulations produced by HUD analysts in preparing a report on homeless shelters.

**3. Time Schedule**

The contract for the survey of shelters for the homeless was awarded in June 1988 and is expected to be completed before the end of 1988. It is anticipated that interviews will be conducted in the August 22nd to September 5th time period, assuming extensive modifications are not required following pretesting, OMB and HUD reviews, and the instrument approval process. Delivery of data file and documentation is expected approximately three weeks after completion of interviews.

**4. Outside Consultation**

*A. Public Contacts*

In addition to talking to members of various offices within HUD, the contractor has discussed the issues with shelter managers and others concerned with problems of homelessness to determine what information is readily available and the terminology and units of measure commonly used.

*B. Identity of Informaiton Collectors*

Telephone survey data will be collected by employees of Westat, Inc., 1650 Research Blvd., Rockville, MD 20850.

**5. Respondents Burden**

The total respondent burden for this one-time data collection is 100 hours based on 200 respondents at one-half hour each. No special record keeping is required. Nearly all responses can be made by recall. A few questions involve referral to readily available statistics on numbers of clients using shelter. There is very little variation in burden from one respondent to another since there are very few skip patterns, all of which are short.

**6. Sensitive Questions**

None of the questions deal with sensitive matters.

**7. Cost to the Federal Government**

The total cost of the proposed data collection to the Federal Government will be approximately $55,000. This includes the cost of the sampling activities, developing the survey instrument, collecting data by telephone, and providing frequency distributions and an edited data set on floppy diskette.

**8. Item Justification**

*A. Overview*

The following section provides a description of questionnaire items in the Survey of Shelters for the Homeless and a justification of the means by which each of the questions support the overall research plan. Groupings include: General shelter characteristics; eligibility and rules; characteristics of users; manpower and cost; and administrative problems.

The questionnaire is designed to capture such information as capacity, services provided, facilities included, extent of use, and staffing. Questions will also focus on the type of person most likely to use a shelter. These characteristics include sex, family status, mental illness, employment, and other problems.

*B. Shelter Characteristics*

Questions under this heading will provide general information about the characteristics of the shelter. To determine these, the following questions are included:

SH1–VP5. Cost to homeless person of using shelter—differentiation between voucher and contract programs, and services provided by both.
1. Age of shelter.
2–2a. Usage availability of shelter–year-round.
3. Client referral sources.
4–5. Extent of use, and average daily occupancy.
6–6c. Capacity and overflow practices.
8. Style of accommodation.
12. Services and facilities included.

*C. Eligiblity Requirements and Rules*

These questions will derive information about who is eligible to use the shelter, what conditions influence continued use, and what rules must be followed.

7–7f. Eligibility.
9–9c. Maximum nights allowed to stay/use shelter.
10–11. Rules.

*D. Characteristics of Users*

Previous research suggests that the homeless are comprised of several very diverse groups. These questions are administered to focus on the type of person who currently uses and needs the shelter to ascertain any significant changes in the kinds of people who have become homeless over the past few years.

7–7f. Characteristics of users (sex, family status, race, age, employment, social problems like alcoholism, drug abuse, mental health, and duration of homelessness).

*E. Manpower and Cost*

These questions will provide necessary information about cost of operating the shelters and who is bearing them.

13–15. Staff hours worked, both volunteer and paid.
16. Operating budget.
17–17a. Source of funds.

*F. Administrative Problems*

Questions 18–18a ask about any hindrances to the operation of the shelter that may result from any city, state or federal agency such as zoning restrictions.

*G. Expression of Appreciation and Address Request*

Question 19 offers the respondent a copy of the HUD report on homelessness and Question 20 verifies the shelter's address.

**Appendix A**

BILLING CODE 4210-01-M

OMB No.: ____-
Expires: __-__-

Department of Housing and Urban Development
National Survey of Homeless Shelters
Telephone Questionnaire

**DRAFT**
August 2, 1988

TO SWITCHBOARD - IF NO CONTACT NAME AVAILABLE:

Hello, my name is _____ and I'm calling on behalf of the U.S. Department of Housing & Urban Development. May I have the name of the shelter Director/Manager please?
**[RECORD NAME ON RESPONDENT INFORMATION SHEET (RIS)]**

TO SHELTER MANAGER:

Hello, may I speak to _____, the manager of the SHELTER/PROGRAM. Hello, my name is _____. I am with Westat, a national survey research firm. We are conducting a national survey of shelters for the homeless for the Federal Department of Housing and Urban Development. The purpose of the survey is to collect some information about shelters and the homeless who uses them.

CONFIDENTIALITY PLEDGE

Before I begin I'd like to inform you that your response is voluntary. The information you provide will be treated as confidential and will only be used in combination with other responses in statistical reports. No information other than city name will be published or released that identifies individual respondents or shelters with their responses.

**[IF RESPONDENT IS A VOUCHER PROGRAM THEN SKIP TO PAGE 3. IF RESPONDENT IS A SHELTER MANAGER, GO ON TO PAGE 2.]**

We are aware that some shelters are operated solely as a community service, while others provide lodging only in return for financial reimbursement.

S1. Does your shelter require vouchers in return for providing lodging to homeless people?
(CIRCLE ONE)

1 Yes --> **[COMPLETE S1a. AND S2. THEN TERMINATE INTERVIEW]**

2 No --> **[CONTINUE WITH S2.]**

S1a. What agency(s) distributes the vouchers you accept?

_____

_____

S2. Do you have a contract or a comparable arrangement for payment by a third party for beds provided to the homeless? Payment might be by a government agency, religious group, or other organization.
(CIRCLE ONE)

1 Yes --> **[COMPLETE S2a. THEN TERMINATE INTERVIEW]**

2 No --> **[IF S1 WAS ALSO NO, THEN PROCEED WITH INTERVIEW. IF S1 WAS YES, THEN TERMINATE INTERVIEW]**

S2a. With what organization(s) do you have this contract?

_____

_____

**[TERMINATION DUE TO INELIGIBILITY]:** We will be interviewing voucher providers and contracting organizations about all of the services they offer. For this reason, we don't need to obtain any more information about your facility. Thank you for your time and cooperation.

**[ELIGIBLE SHELTERS/PROGRAMS CONTINUE HERE]** During this interview I'd like to get information about the people served by your SHELTER/PROGRAM in the past year, and how much it cost to run that service. If you have any records on these issues, it would be helpful if you could pull them out now, and refer to them whenever you need to.

**[SHELTER PROCEED WITH SH1--VOUCHER PROGRAMS SKIP TO VP1]**

SH1. Does your shelter require homeless people to pay for their lodging?
(CIRCLE ONE)

1 Yes --> **[CONTINUE WITH SH1a.]**

2 No --> **[SKIP TO 2.]**

SH1a. How much do you charge a homeless person for a nights lodging? And is the charge based on a sliding scale, a fixed fee, or a voluntary contribution?
(CIRCLE ONE)

1 Sliding Scale --> (INDICATE SCALE RANGE)

$[ ][ ].[ ][ ] Minimum $[ ][ ].[ ][ ] Maximum

2 Fixed Fee --> $[ ][ ].[ ][ ] Per Night

3 Voluntary Contributions

4 Other: _____

**[VP QUESTIONS FOR VOUCHER OR CONTRACT PROGRAMS ONLY]**

VP1. Does your organization administer a voucher program, a shelter provision contract program, or both?
(CIRCLE ONE)

1 Voucher program

2 Shelter contract program

3 Both Voucher and Contract programs

4 Other: _____



VP2. How many hotels, boarding houses, or other lodging providers participate in the voucher/contract program?

| Number | |
|---|---|
| [ ][ ][ ][ ] | Voucher facilities |
| [ ][ ][ ][ ] | Contract facilities |

VP3. I'd like to find out how much is usually spent for a night's lodging under this program. Do you serve individuals, families, or both?
(CIRCLE ONE)

1 Individuals Only

2 Families Only

3 Both Individuals and Families

VP4. Do you pay a single fixed rate to house an INDIVIDUAL/FAMILY/(OR BOTH) for a night, or do the costs vary across facilities? How much does it cost? **[IF FAMILY, INSTRUCT THEM TO ESTIMATE BASED ON A FAMILY OF FOUR]**

| | Fixed | Low | High |
|---|---|---|---|
| Individual | $[ ][ ][ ][ ] | $[ ][ ][ ][ ] | $[ ][ ][ ][ ] |
| Family | $[ ][ ][ ][ ] | $[ ][ ][ ][ ] | $[ ][ ][ ][ ] |

VP5. **[FOR VOUCHER PROGRAMS ONLY--SKIP TO QUESTION 1 IF THE RESPONDENT IS A CONTRACT PROGRAM]** What percent of the vouchers your progran distributes to homeless persons are subsequently used?

[ ][ ][ ] Percent --> **[GO TO VP5a. IF LESS THAN 100%. ELSE SKIP TO 1.]**

VP5a. Do you know what accounts for the fact that not all of the vouchers are used?
(CIRCLE ONE)

1 Bed space not available

2 Other: _____

_____

1 In what year did your SHELTER/PROGRAM first open? **[IF THE ORGANIZATION OPERATES MORE THAN ONE FACILITY, ASK THIS QUESTION ONLY WITH RESPECT TO FACILITY NAMED ON THE RESPONDENT INFORMATION SHEET (RIS)]**

1 9 ☐ ☐ Year

2. Does your SHELTER/PROGRAM provide lodging 365 nights per year?
(CIRCLE ONE)

1 Yes --> (SKIP TO QUESTION 3.)

2 No --> (GO ON TO QUESTION 2a.)

2a. When is your SHELTER/PROGRAM closed?
(CIRCLE MONTHS AND DAYS WHEN PROGRAM IS CLOSED)

SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG

MON TUE WED THUR FRI SAT SUN

Other: _____

_____

3. Of the people who used your shelter on an average night, what percentage would you say were referred to you from each of the following sources? **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR PERCENTS]**

| Pct. | |
|---|---|
| ☐☐☐ | Self referral/Drop in |
| ☐☐☐ | Referred by another shelter |
| ☐☐☐ | Referred by centralized Referral Center |
| ☐☐☐ | Other: _____ |

4. Between September of 1987 and August 1988, what was the average number of people your SHELTER/PROGRAM served per night? **[IF ONLY OPEN PART YEAR, BASE AVERAGE ON THE TIME OPEN]**

☐☐,☐☐☐ Average daily occupancy
**[RECORD ANSWER HERE AND IN QUESTION 7]**



5. For the series of questions that follows, whenever I mention the past year I'll be referring to this period between September of 1987 and August 1988. During this year, which season produced the highest occupancy?

FALL WINTER SPRING SUMMER

6. What is the maximum number of people your SHELTER/PROGRAM can accommodate overnight in beds or cots?

☐☐,☐☐☐ People ☐ Unlimited
**[IF UNLIMITED, THEN SKIP TO 7.]**

6a. How many nights during this year were all of your available beds or cots occupied?

☐☐☐ Nights **[SKIP TO 7. IF ZERO NIGHTS]**
☐ Every Night SHELTER/PROGRAM operated

6b. On a typical night when all of your available beds or cots were occupied, how many people:

| People | |
|---|---|
| ☐☐☐☐ | Slept in chairs/floor in your shelter? |
| ☐☐☐☐ | Were referred to alternate shelters? |
| ☐☐☐☐ | Were turned away without referral? |

6c. **[ASK ONLY IF THERE WERE REFERRALS OR TURN AWAYS IN 6b.]** Do you know what happens to those you refer elsewhere or turn away?
(CIRCLE ONE)

1 Don't Know

2 Most find other shelter

3 Most remain on the street

4 Other: _____

7. I'd like to get a clear picture of the kind of people that are served by your SHELTER/PROGRAM. I'm going to ask you a whole series of questions about different characteristics of the people served by your SHELTER/PROGRAM. Throughout these questions I'd like you to think of the people you served during an average night this year. Earlier you told me that you served

[ ][ ], [ ][ ][ ] **[RECORD ANSWER TO QUESTION 4 HERE]**

people on an average night. I'd like you to think of those people and their characteristics during these questions. Let's start with their sex and family makeup. How many were from each of the following groups **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**:

**[THROUGHOUT QUESTION 7, WHEN AN ANSWER IS ZERO, PROMPT WITH "IS THIS GROUP INELIGIBLE FOR SERVICE BY YOUR SHELTER/PROGRAM?" IF YES, CODE AN "X" IN LEFT-MOST BOX FOR THAT RESPONSE. ACCEPT NUMBERS OR PERCENTS, CIRCLING "NUMB" OR "PCT." IN TOP BOX]**

| Numb/Pct. | |
|---|---|
| | Unaccompanied Men |
| | Unaccompanied Women |
| | People who are in single parent families with children |
| | People who are in two parent families with children |
| | People together as adult couples without children |
| | Unaccompanied youth under 18 |



7a. I'd also like to get an idea of the ages of those served. If I break the age range into five groups: Under 18; 18 to 30; 30 to 50; 50 to 65; and Over 65; could you give me your best estimate of the number of those you serve that fit into each of these groups.

| Numb/Pct. | |
|---|---|
| | Under 18 |
| | Between 18 and 30 |
| | Between 30 and 50 |
| | Between 50 and 65 |
| | Over 65 |

7b. And what number would you say are of these different racial and ethnic groups? **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Numb/Pct. | |
|---|---|
| | Black |
| | White Non-Hispanic |
| | Hispanic |
| | Asian |
| | American Indian |
| | Other |

7c. I'd like to ask about employment or other sources of cash income now, so please only give me numbers for the adults you serve. And let me remind you that I would like this answered about the people you serve on an average night. How many of those using your SHELTER/PROGRAM would you say are: **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Numb/Pct. | |
|---|---|
| | Employed at least one half time |
| | Without any regular source of income |
| | Recipients of Welfare, a pension, or other non-wage payments (excluding food stamps and other non-cash in-kind benefits) |
| | Other: _____ |

7d. Among the people you served on an average night this year, how many would you say had been homeless for more than three (3) months?

| Numb/Pct. | |
|---|---|
| | More than three months |

7e. Are most of those you serve from your local area, or do they come from somewhere else? What number are: **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Numb/Pct. | |
|---|---|
| | Local for 1 year or more |
| | Not local |



7f. Now I'd like to ask about the kind of problems the people you serve have? I understand that one person might have more than one of these problems, so I'd like you to tell me the number who have each of these problems. For this question too, I'd like you to think only of the adults, not the children. How many adults have the problem of:

| Numb/Pct. | |
|---|---|
| | Domestic violence/battering |
| | Diagnosis of AIDS or AIDS Related Complex (ARC) |
| | Other physical disability |
| | Mental Illness |
| | Alcoholism |
| | Drug Abuse |
| | **Now I recognize that you will already have included these people in the groups above, but I would like to get a separate count here too. How many adults have the combined problems of** Mental Illness AND Drug or Alcohol Abuse |
| | Other: _____ |

8. I'd like to ask about the arrangement of bed space in your SHELTER/PROGRAM. How many rooms of the following types do you have: **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Rooms | |
|---|---|
| | Private rooms for individuals or families |
| | Rooms with 2 to 4 beds **[EXCLUSIVE OF FIRST GROUP]** |
| | Rooms with 5 to 10 beds |
| | Rooms with 11 to 20 beds |
| | Rooms with more than 20 beds |

9. Do you have a standard policy on the number of nights an individual can use your SHELTER/PROGRAM?

1 Yes --> (GO ON TO QUESTION 9a.)

2 No --> (SKIP TO QUESTION 10.)

9a. What is your policy?
(Circle One)

[ ][ ][ ] Nights stay per — NA WEEK MONTH YEAR

[ ][ ][ ] Nights intervening interval — CONSECUTIVE APPLICATION

Other: _____

_____

9b. Why did you adopt this policy?
(Circle All That Apply)

1 Because of limited staff/funds

2 To serve more people

3 Other: _____

_____

9c. On an average night this year, how many people had to move on to a new shelter because they had stayed at your shelter for the maximum time allowed by your policy?

[ ][ ][ ] People



10. Many SHELTER/PROGRAMs have rules for people who stay at the SHELTER/PROGRAM. I'd like to get some information about your rules. Can people stay at your shelter all day?

1 Yes --> (SKIP TO QUESTION 11.)

2 No --> (GO ON TO QUESTION 10a.)

3 Yes if they are sick, or under other special circumstances (GO ON TO QUESTION 10a.)
Explain: _____

10a. What time of day must (they/those who must leave) be outside of the shelter?

From: [ ][ ]:[ ][ ] AM/PM To: [ ][ ]:[ ][ ] AM/PM

10b. Why do you have this policy?

_____

_____
(Circle All That Apply)

1 We don't have the staff/funds to allow them to stay

2 We have to use the space for some other purpose

11. Are those using your SHELTER/PROGRAM required to:

Y N Receive counseling or meet with a case worker regularly?

Y N Perform chores?

Y N Attend religious services?

Y N Are there other requirements?
Specify: _____

12. I am going to list some services or amenities that some homeless SHELTER/PROGRAMs provide to those they serve. I would like you to tell me if any of these services are routinely provided to those you serve. And if the service is routinely provided, I'd like to know if it is provided by your own staff (including volunteers) of your SHELTER/PROGRAM or by others?

| Provided | | Own Staff | | Service or Amenity |
|---|---|---|---|---|
| Y | N | Y | N | Full breakfast |
| Y | N | Y | N | Lunch |
| Y | N | Y | N | Dinner |
| Y | N | Y | N | Laundry facilities |
| Y | N | Y | N | Clothing |
| Y | N | Y | N | Mail receiving |
| Y | N | Y | N | Storage of personal items |
| Y | N | Y | N | Financial management assistance |
| Y | N | Y | N | Employment training/job location help |
| Y | N | Y | N | Help in finding permanent housing |
| Y | N | Y | N | Health care services |
| Y | N | Y | N | Mental health services |
| Y | N | Y | N | Substance abuse services (inc. alcohol) |
| Y | N | Y | N | Assistance in obtaining entitlements |
| Y | N | Y | N | Child care |
| Y | N | Y | N | Legal services |
| Y | N | Y | N | Transportation assistance |
| Y | N | Y | N | Case Management |
| Y | N | Y | N | Other: _____ |
| Y | N | Y | N | Other: _____ |



13. How many full time paid staff do you have?

☐☐☐ Paid Full Time Staff

13a. How many paid part time staff do you have, and, on average, how many hours do they work per week?

☐☐☐ Paid Part Time Staff ☐☐ Average hours per week

14. How many volunteer staff do you have, and how many hours do they work per week? [READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]

| Vols. | |
|---|---|
| ☐☐☐ | Number working more than 30 hours per week? |
| ☐☐☐ | Number working 20 to 30 hours per week? |
| ☐☐☐ | Number working 5 to 19 hours per week? |
| ☐☐☐ | Number working less than 5 hours per week? |

15. Of your total staff hours, paid and volunteer, what percent would you estimate are used for training, counseling, or providing similar services to your clients? [SIMILAR SERVICES WOULD INCLUDE FINANCIAL MANAGEMENT ASSISTANCE, EMPLOYMENT TRAINING, PERMANENT HOUSING ASSIST., ENTITLEMENT ASSIST., LEGAL SERVICES, AND CASE MANAGEMENT.]

☐☐☐ Percent of staff hours

16. What is the total annual budget for running your SHELTER/PROGRAM?

$☐☐,☐☐☐,☐☐☐ Total annual cost

17. I'd like you to divide your income into two types--Government sources and Private sources. Please tell me how much money your SHELTER/PROGRAM received from each during your last full fiscal year, or if it is easier for you, what percent of your total funding is from each? Altogether, how much of your budget for the last full fiscal year came from government sources? From private sources?

$ ☐☐,☐☐☐,☐☐☐ Government ☐☐☐ %

$ ☐☐,☐☐☐,☐☐☐ Private ☐☐☐ %

17a. **[SKIP TO 18 IF THEY RECEIVED NO GOVERNMENT FUNDS]** Now I'm going to read off a list of government programs that sometimes help to support programs for the homeless. Please tell me if your SHELTER/PROGRAM got any money from each program during your last fiscal year, or indicate if you don't know.

| | | | |
|---|---|---|---|
| Y | N | DK | Federal Emergency Management Agency (FEMA) |
| Y | N | DK | Emergency Shelter Grants (ESG) |
| Y | N | DK | Community Development Block Grants CDBG) |
| Y | N | DK | Community Services Block Grants (CSBG) |
| Y | N | DK | Other Federal sources |
| Y | N | DK | State sources |
| Y | N | DK | Local sources |

18. Have you been hindered by any city, state or Federal agency regulation such as zoning or other regulation?

1 Yes --> (GO ON TO QUESTION 18a.)

2 No --> (GO ON TO QUESTION 19.)

18a. Please describe the problem(s)?

_____

_____

_____



[FR Doc. 88-17966 Filed 8-9-88; 8:45 am]
BILLING CODE 4210-01-C

19. I appreciate your cooperation in this survey. If you would like, we will arrange for HUD to send you their report on SHELTER/PROGRAMs for the homeless in the U.S. Would you like to receive a copy of this report? (CIRCLE ONE)

1 Yes --> **[CONTINUE WITH 20]**

2 No --> **[GO TO THANK YOU]**

20. May I verify your SHELTER/PROGRAM name and have your mailing address?

_____

_____

_____

_____

Thank you again for taking the time to answer my questions. Your cooperation is appreciated.

Fish and Wildlife Service

**Processing of Application From the Cincinnati Zoo for Import of a Giant Panda**

**SUMMARY:** On June 24, 1988, the Fish and Wildlife Service (Service) announced its intent to develop any necessary new policies or guidelines relating to the evaluation of further permit applications for import of giant pandas (*Ailuropoda melanoleuca*) for temporary exhibition purposes (53 FR 23847). That notice temporarily suspended review and processing of new applications pending completion of an evalaution of the situation and development of any necessary new guidance or policy. On June 1, 1988, an application in final form was received from the Cincinnati Zoo to import one male giant panda from the London Zoo and then to re-export it to Mexico for breeding purposes. No processing of the application has been done, in accordance with the sense of the June 24 notice cited above. The Service now intends to make an exception to its suspension notice and process this application form the Cincinnati Zoo to a final decision to issue or deny a permit while it continues to develop any necessary new panda guidance.

**DATES:** Public comment on this notice will be accepted on or before August 22, 1988, with regard to the Cincinnati Zoo application.

**ADDRESS:** Comments may be submitted to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329.

**FOR FURTHER INFORMATION CONTACT:** R.K. Robinson, Chief, Branch of Permits, at the address above, telephone (202) 343–4955.

**SUPPLEMENTARY INFORMATION:** On June 1, 1988, an amended application to import one male giant panda from the London Zoo and subsequently to reexport it to the Chapultepec Zoo in Mexico City for breeding purposes was received from the Cincinnati Zoo, Cincinnati, Ohio. The animal is entitled to the captive-held exemption from permitting requirements (popularly known as the "pre-Act" exemption) under section 9(b)(1) of the Endangered Species Act (Act) and 50 CFR 17.4. It was acquired by the London Zoo prior to January 23, 1984, the date the species was listed as endangered under the Act, and has not been held in the course of a commercial activity on or since that date. Therefore, the 30-day public comment notice of an application for a permit mandated by section 10(c) of the Act is not required in this case.

Because the animal was acquired by the London Zoo prior to December 6, 1983, the date the species was listed under the Convention on International Trade in Endangered Species (Convention) it is also entitled to a "pre-Convention" exemption. An Appendix I import permit under the Convention (50 CFR 23.15) will be required, however, because the United Kingdom has indicated its intention to honor the Secretariat's recommendation that Convention permits be required for pre-Convention giant pandas.

To date, all applications have been to import a pair of pandas for temporary exhibition only. In the Cincinnati application, the panda proposed for import is a solitary male that had previously been permanently removed from China and proceeds of the exhibition would be used to expand and improve existing panda facilities at the Chapultepec Zoo. Without these facilities, the zoo would be unable to accept and utilize the animal. Any remaining revenues would fund specific projects aimed at benefitting panda conservation. The ultimate goal of the transaction is to place a male panda in a breeding situation at a zoo having unmated female pandas. The Chapultepec Zoo has had the best captive breeding record of any facility outside China. According to information recently provided to the Service, four surviving young have been produced, but the breeding male recently died. The zoo now has three females of, or approaching, breeding age with no male suitable to continue the breeding program.

Because the ultimate intent of this permit request is to move a male to a breeding situation with unmated females in Mexico, the Service has determined that processing this application will not be contrary to the purpose of the previously announced suspension of processing, and requests all comments be submitted within 10 days as indicated above.

The Director of the Fish and Wildlife Service has authorized publication of this notice.

Dated: August 15, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.*

[FR Doc. 88-78111 Filed 8-9-88; 8:45 am]

BILLING CODE 4310-55-M

**Receipt of Application for Permit**

The public is invited to comment on the following amendment of application for permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

*Applicant*

Name: Chicago Zoological Society, Brookfield Zoo, 3300 Golf Road, Brookfield, IL 60513

File no. PRT–728111

*Type of Permit:* Scientific Research.

*Name of Animals:* Walrus (*Odobenus rosmarus*); one.

*Summary of Activity To Be Authorized:* The applicant proposes to import this animal from the Copenhagen Zoo, Denmark, for scientific research purposes.

*Source of Marine Mammals for Research:* Copenhagen Zoo; animal removed from wild in USSR in 1983.

*Period of Activity:* One year.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submited to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 "K" Street NW., Washington, DC.

Dated: August 5, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 88-18112 Filed 8-9-88; 8:45 am]

BILLING CODE 4310-55-M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[UT-020-08-4322-12]**

**Salt Lake District; Advisory Board Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on September 13, 1988. The meeting will begin at 9:00 a.m. at the Salt Lake District, Bureau of Land Management Office at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to: (1) Introduce new Board members; (2) Organize the new Board; (3) Review 1988, 8100 range improvement projects; (4) Review 1988, 7121 range improvement work; (5) Review proposed 1989, 8100 and 7121 range improvement projects; (6) Review the Bureau's sub-leasing policy; and (7) be given a report on the Bureau's Range Stewardship Program.

The meeting is open to the public and interested persons may make oral statements at the meeting between 10:00 a.m. and 10:30 a.m., or file a written statement for the Board's consideration.

Persons wishing to make statements to the Board are requested to contact Glade Anderson at (801) 524–5348 prior to September 2, so that adequate time can be included on the agenda.

**FOR FURTHER INFORMATION CONTACT:** Glade Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–5348.

**Deane H. Zeller,**

*Salt Lake District Manager.*

[FR Doc. 88–18030 Filed 8–9–88; 8:45 am]

BILLING CODE 4310-DQ-M

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**[WY–920–08–4111–15; W–63030]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 2, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–63030 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–63030 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88–18000 Filed 8–9–88; 8:45 am]

BILLING CODE 4310-22-M

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**[WY–920–08–4111–15; W–77460]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 2, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–77460 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–77460 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88–18001 Filed 8–9–88; 8:45 am]

BILLING CODE 4310-22-M

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**[WY–920–08–4111–15; W–99140]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 2, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–99140 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–99140 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88–18002 Filed 8–9–88; 8:45 am]

BILLING CODE 4310-22-M

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# INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701–TA–296 (Preliminary) and Investigation No. 731–TA–420 (Preliminary)]**

## Certain Steel Wheels From Brazil

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–296 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of steel wheels,[1]

[1] For purposes of these investigations, the term "steel wheels" is defined as steel wheels (assembled or unassembled), designed to be mounted with pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and designed for use on passenger automobiles and light trucks in Gross Vehicle Weight (GVW) classifications 1, 2, and 3 (the trucks

Continued

provided for in item 692.32 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Government of Brazil.

The Commission hereby also gives notice of the institution of preliminary antidumping investigation No. 731–TA–420 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of steel wheels that are alleged to be sold in the United States at less than fair value.

As provided in sections 703(a) and 733(a), respectively, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by September 12, 1988.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** July 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Judith Zeck (202–252–1199), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

**SUPPLEMENTARY INFORMATION:**

**Background**

These investigations are being instituted in response to a petition filed on July 29, 1988, by The Kelsey-Hayes Co., Romulus, MI.

**Participation in the investigations**

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service list**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 2073.), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Conference**

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 19, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Judith Zeck (202–252–1199) not later than August 17, 1988, to arrange for their appearance. Parties in support of the imposition of countervailing/antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

**Written submissions**

Any person may submit to the Commission on or before August 23, 1988 a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

**Kenneth R. Mason,**

*Secretary*

Issued: August 2, 1988.

[FR Doc. 88–18110 Filed 8–9–88; 8:45 am]

BILLING CODE 7020–02–M

covered by classes 1, 2, and 3, are, generally, light trucks, for example pickup trucks, panel vans and mini-vans with gross vehicle weights of form under 6,000 lbs. up to 14,000 lbs.), as provided for in items 692.3230 of the *Tariff Schedules of the United States Annotated* (1987) (*TSUSA*); they are provided for in subheading 8708.70.80 of the proposed Harmonized Tariff Schedules of the United States (USITC Pub. 2030).

[332–256]

## The Western U.S. Steel Market: Analysis of Market Conditions and Assessment of the Economic Effects of the Voluntary Restraint Agreements on Steel-Producing and Steel-Consuming Industries

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of hearing.

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Avery, Minerals and Metals Division, Office of Industries, U.S. International Trade Commission, Washington, Dc 20436 (telephone 202–252–1429).

**Background And Scope Of Investigation**

The Commission instituted investigation No. 332–256 on the Western U.S. steel market under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), following receipt of a letter on July 7, 1988 from the Chairman of the Committee on Ways and Means, United States House of Representatives. As requested, the study will analyze market conditions and assess the economic effects of the voluntary restraint agreements on steel-producing and steel-consuming industries in the Western region.

As requested by the Committee, the Commission, in assessing market conditions and the effects of the voluntary restraint agreements (VRA's), will address the following issues:

(1) Structural changes which have occurred in the Western steel industry in recent years, including developments in Western States' capacity to produce the steel products subject to the investigation (see list below);

(2) Consumption of steel mill products in the Western region;

(3) Patterns of supply to the Western region (i.e., the changes in market share of imports from both VRA and non-VRA countries, Western regional production, and nonregional U.S. production in the market);

(4) Factors limiting the use of domestically-produced steel manufactured outside the Western region, including industry transportation costs relative to other regions;

(5) Factors affecting the importation cost of steel produced in foreign mills, including foreign inland freight and port costs, ocean freight and insurance, and U.S. port costs and other importation expenses;

(6) Issues affecting the Western steel market with respect to steel imports from non-VRA countries, including the impact of steel exported from VRA countries to non-VRA countries for further manufacture and reexport to the Western U.S. market; and

(7) The economic implications of continued import restraints on producers of steel products subject to the VRA's and selected major steel-consuming industries in the Western region.

In addition, as requested by the Committee, to the extent feasible, the investigation will provide product by product market information on a nonconfidential basis, as follows: Semifinished steel, plates, sheets and strip, bars, wire rods, wire and wire products, structural shapes and units, rails and railway products, and pipes and tubes. The Western region is defined to include Califoraia, Oregon, Washington, Idaho, Utah, Nevada, Arizona, New Mexico, Colorado, Wyoming, Alaska, and Hawaii.

The Committee has requested that the Commission furnish its report to the Committee on or before March 31, 1989.

**Public Hearing**

A public hearing in connection with this investigation will be held in the Hearing Room of the International Trade Commission, 500 E Street SW., Washington, DC 20436, on October 25, 1988, at 9:30 a.m. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than noon, October 18, 1988. Prehearing briefs (original and 14 copies) should be filed not later than noon, October 19, 1988. Post-hearing briefs are required by November 17, 1988.

**Written Submissions**

Interested persons are invited to submit written statements concerning the investigation in lieu of or in addition to appearing at the hearing. Written statements should be received by the close of business on November 17, 1988. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1809.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: August 5, 1988.

[FR Doc. 88–18109 Filed 8–9–88; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31295]**

### Service on the Delaware and Hudson Railway Co.

**[Directed Service Order No. 1504]**

### The New York, Susquehanna and Western Railway Corp.—Directed Service—the Delaware and Hudson Railway Co.; Supplemental Order No. 2

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Directed Service Order No. 1504, Supplemental Order No. 2.

**SUMMARY:** The Commission is extending for 10 days the authority for The New York, Susquehanna and Western Railway Corporation (NYS&W) to act as a directed rail carrier without federal subsidy or compensation under 49 U.S.C. 11125 over the lines of the Delaware and Hudson Railway Company (D&H), and in doing so the use D&H equipment (under a private compensation agreement), pending its consideration of comments the Commission recently requested.

**EFFECTIVE DATE:** Supplemental Order No. 2 shall be effective on August 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 275–7245 or Bernard Gaillard (202) 275–7849.

(TDD for hearing impaired: (202) 275–1721)

**SUPPLEMENTARY INFORMATION:** In a notice served July 20, 1988 (53 FR 27773, July 22, 1988), the Commission sought comment from affected parties, including localities and States (including the D&H trustee in bankruptcy), on several issues concerning service over the D&H system. The date set for filing comments was August 1, 1988. NYS&W's authorization to provide service on the D&H system is due to expire August 7, 1988. In order to prevent interruption of rail service on the D&H system while the Commission considers the comments, NYS&W authorization to provide service will be extended for 10 days.

This notice will be served on all parties to this proceeding including those listed in our June 22, 1988 decision, as well as the trustee in bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88–2427).

This action will not significantly affect either the quality of the human environment or energy conservation.

*It is ordered*

1. NYS&W is authorized for an additional 10 days to continue to operate D&H's lines under the conditions previously established.

2. This decision and order shall be effective on August 7, 1988.

Decided: August 4, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Vice Chairman Andre and Commissioner Sterrett did not participate.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–18039 Filed 8–9–88; 8:45 am]

BILLING CODE 7035-01-M

**[Docket No. AB–290 (Sub-15X)]**

### Exemption; Norfolk and Western Railway Co.—Abandonment Exemption—Between Connersville and Beesons, IN

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.8-mile line of railroad between milepost 0.0 near Connersville, Fayette

County, IN and milepost 4.8 at Beesons, Wayne County, IN.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 9, 1988, unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 22, 1988 and petitions for reconsideration, including environmental energy and public use concerns, must be filed by August 30, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 15, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 28, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–17549 Filed 8–9–88; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act; Central Valley Water Reclamation Facility Board et al.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on July 15, 1988 a proposed Consent Decree in *United States v. Central Valley Water Reclamation Facility Board, et al.*, Civil No. 87C–0522W was lodged with the United States District Court for the District of Utah. The proposed Consent Decree concerns violations by the Central Valley Water Reclamation Facility Board and its member entities of their National Pollutant Discharge Elimination System (NPDES) permits required by the Federal water Pollution Control Act, 33 U.S.C. 1319. The violations include the exceeding of effluent limitations, bypassing, and failing to develop and implement pretreatment programs. The proposed Concent Decree imposes a civil penalty totaling four hundred and fifty thousand ($450,000) dollars.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Central Valley Water Reclamation Facility Board, et al.*, DJ Ref. 90–5–1–1–2602.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 350 South Main Street, Salt Lake City, Utah 84101 and at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, One Denver Place, Denver, Co 80202–2405 and at the Environmental Enforcement Section, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–17997 Filed 8–9–88; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. City Industries et al.

In accordance with Department policy, 28 CFR 50.7 and section 122(i) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99–499, 100 Stat 1613 (1986), notice is hereby given that on July 7, 1988, a proposed Consent Decree in *United states* v. *City Industries, et al.* Civil Action No. 87–472–CIV–ORL–18 was lodged with the United States District Court for the Middle District of Florida.

According to this Consent Decree the defendants will pay the government $502,245.00. This is in compensation for response costs associated with the surface cleanup of a hazardous waste facility known as the city Chemical Company/City Industries Site located in Orlando, Florida.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addessed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City Industries, et al.*, D.O.J. number 90–11–3–5.

The proposed Consent Decree may be examined at the office of the United States Attorney, Fourth Floor, 500 Zack

Street, Tampa, Florida 33602. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of justice, 6th and Pennsylvania Avenue, NW., Washington, DC 20530.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17998 Filed 8-9-88; 8:45am]

BILLING CODE 4410-01-M

## Office of Juvenile and Delinquency Prevention

### Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

**ACTION:** Notice of meeting.

The thrid quarterly meeting for the 1988 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on September 28, 1988, from 9:00 a.m. until 12:30 p.m. The meeting will take place at the Department of Health and Human Services, Hubert H. Humphrey Building, Main Auditorium, 200 Independence Avenue SW., Washington, DC

This meeting of the Coordinating Council will address the topic "The Human Immunodeficiency Virus Epidemic: Implications for the Juvenile Justice System." The agenda will include presentations on the HIV epidemic and high risk youth.

Individuals and organizations concerned with this issue are encouraged to attend this meeting. Because of limited seating, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655 to reserve seating. Requests will be received until space is filled or until 4:00 p.m. on September 19, 1988, whichever occurs first.

Dated: August 4, 1988.

Approved:

**Verne L. Speirs,**

*Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 88-18049 Filed 8-9-88; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Allied-Signal, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 22, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 22, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 1st day of August 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner: Union/workers/firm— | Location | Date received | Date of petition | Petition No: | Articles produced |
|---|---|---|---|---|---|
| Allied-Signal Inc. (Company) | Edison, NJ | 8/1/88 | 7/20/88 | 20,841 | Halon filled compounds. |
| Bennett Petroleum Corp. (Company) | Denver, CO | 8/1/88 | 7/19/88 | 20,842 | Oil, gas and related products. |
| DeRossi & Son Co. (ACTWU) | Vineland, NJ | 8/1/88 | 7/22/88 | 20,843 | Uniforms. |
| From Here to Maternity (ILGWU) | Philadelphia, PA | 8/1/88 | 7/18/88 | 20,844 | Maternity dresses. |
| General Motors Corp., Major Stamping Facility; Plant #14 (workers). | Pontiac, MI | 8/1/88 | 6/29/88 | 20,845 | Stampings. |
| Iselle Mfg. Co., (workers) | Philadelphia, PA | 8/1/88 | 7/18/88 | 20,846 | Ladies skirts, tops and pants. |
| Joy Technologies, Inc., Plants #1&2, (workers) | Franklin & Reno, PA | 8/1/88 | 7/17/88 | 20,847 | Mining machinery. |
| NCR Comten, Inc., (workers) | Minneapolis, MN | 8/1/88 | 7/17/88 | 20,848 | Data communications. |
| Paradyne Products (ILGWU) | Paterson, NJ | 8/1/88 | 7/14/88 | 20,849 | Ladies' and misses dresses. |
| Phoenix Glass (UPGWU) | Monaca, PA | 8/1/88 | 7/18/88 | 20,850 | Security guarding services. |
| Robyn Enterprises, Inc. (ACTWU) | Philadelphia, PA | 8/1/88 | 7/18/88 | 20,851 | Skirts, slacks and shorts. |
| Rose Dress (ILGWU) | Garfield, NJ | 8/1/88 | 7/14/88 | 20,852 | Ladies' dresses. |
| Stranahan Foil (GCAWA) | South Hackensack, NJ. | 8/1/88 | 7/21/88 | 20,853 | Packing materials. |

[FR Doc. 88-18022 Filed 8-9-88; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-20,583]

**General Electric Co., General Electric Lighting, Incandescent Production Department, Austintown, OH; Affirmative Determination and Setting Aside a Negative Determination**

On May 6, 1988, the Department denied trade adjustment assistance to workers and former workers at the General Electric Company, General Electric Lighting, Incandescent Production Department, Austintown, Ohio. The denial notice was published in the Federal Register on May 17, 1988 (53 FR 17514).

After reexaming the investigative file on the subject negative determination, the Department, on its own motion, set aside that part of the determination concerning the light bulb packaging operations at the Austintown plant. The Department has determined that workers engaged in light bulb packaging were adversely affected by the transfer of some packaging operations to overseas locations and increased company imports of packaged light bulbs.

**Conclusion**

After reexamining the investigative files, it is concluded that increased imports of articles like or directly competitive with packaged light bulbs produced at General Electric Company, Austintown, Ohio contributed importantly to the decline in production and to the total or partial separation of workers and former workers of the Incandescent Production Department of General Electric Company, Austintown, Ohio. In accordance with provisions of the Trade Act of 1974, I make the following revised determination:

All workers engaged in employment related to the packaging of light bulbs at General Electric Company Austintown, Ohio who became totally or partially separated from employment on or after October 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

The Department's negative determination for all other workers at General Electric Company's Austintown, Ohio plant is affirmed.

Signed at Washington, DC, this 29th day of July 1988.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88-18023 Filed 8-9-88; 8:45 am]

BILLING CODE 4510-30-M

**Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Hialeah Industries, Inc., et al.**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 18, 1988–July 22, 1988 and July 25, 1988–July 29, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-20,666; Hialeah Industries, Inc., Miami Lakes, FL*

*TA-W-20,685; Champion Lighting, Inc., Hialeah, FL*

*TA-W-20,692; Stackpole Carbon Co., St. Marys, PA*

*TA-W-20,700; Diamond Power Specialty Co., Lancaster, OH*

*TA-W-20,706; Omnisport, Inc., Woonsocket, RI*

*TA-W-20,708; Presswell Records Mfg. Co., Ancora, NJ*

*TA-W-20,702; General Electric Co., G.E. Aircraft Engines, Evendale, OH*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA-W-20,689; Key Tronic Corp., Research and Administration Bldg., Spokane, WA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-20,698; Cornelison Engine Maintenance Co., Seminole, OK*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-20,697; Chicago Pneumatic Tool Co., Office Personnel Utica, NY*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-20,713; Core Laboratories, Irving, TX*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-20,699; Commercial Testing and Engineering Co., Charleroi, PA*

The workers' firm does not produce an article as required under certification under section 222 of the Trade Act of 1974.

*TA-W-20,710; Whitney Supply Co., Tulsa, OK*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

**Affirmative Determinations**

*TA-W-20,694; Philips Consumer Electronics Corp., Greenville, TN*

A certification was issued covering all workers separated on or after May 6, 1987.

*TA-W-20,691; Oxnard Frozen Foods Cooperative, Oxnard, CA*

A certification was issued covering all workers separated on or after May 10, 1987.

*TA-W-20,707; Oomphies, Inc., Lawrence, MA*

A certification was issued covering all workers separated on or after May 20, 1987.

*TA-W-20,718; Spun Steel, Inc., Corinth, MS*

A certification was issued covering all workers separated on or after May 1, 1988.

*TA-W-20,732; Carter Footwear, Wilkes Barre, PA*

A certification was issued covering all workers of the Stitching and Fitting Dept. of Carter Footwear, Wilkes Barre, PA engaged in the production of injection molded fabric footwear separated on or after April 3, 1988.

*TA-W-20,693; Transfer Machine, Inc., Troy, MI*

A certification was issued covering all workers separated on or after May 10, 1987.

*TA-W-20,684; Altair International, Inc., (Plant #7), Mt. Clemens, MI*

A certification was issued covering all workers separated on or after May 3, 1987.

*TA-W-20,709; Westwood Lighting Corp., Inc., Paterson, NJ*

A certification was issued covering all workers separated on or after May 13, 1987.

*TA-W-20,696; Bentley Industries, Inc., Evans City, PA*

A certification was issued covering all workers separated on or after May 6, 1987.

*TA-W-20,704; Jaton Corp., Boston, MA*

A certification was issued covering all workers separated on or after May 16, 1987.

*TA-W-20,687; J.T. Sportswear Inc., Quincy, MA*

A certification was issued covering all workers separated on or after May 23, 1987 and before May 8, 1988.

*TA-W-20,730; Z Sportswear, Limited, Boston, MA*

A certification was issued covering all workers separated on or after June 13, 1987 and before June 20, 1988.

I hereby certify that the aforementioned determinations were issued during the period July 18, 1988–July 22, 1988 and July 25, 1988–July 29, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 2, 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 88-18021 Filed 8-9-88; 8:45 am]

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**[TA-W-20,537]**

## Parsons Footwear, Inc., Parsons, WV; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 26, 1988 applicable to all workers in the stitching department engaged in the production of fabric footwear of Parsons Footwear, Inc., Parsons, West Virginia. The Certification was published in the **Federal Register** on May 10, 1988 (53 Fr 16599).

In order to clarify the subject determination the Department is amending the certification to show clearly that only those workers in the stitching department at Parsons Footwear, Inc., in Parsons, West Virginia are covered and all other workers are denied eligibility to apply for adjustment assistance.

The amended notice applicable to TA-W-20,537 is hereby issued as follows:

All workers in the stitching department engaged in the production of fabric footwear of Parson Footwear, Incorporated, Parsons, West Virginia who become totally or partially separated from employment on or after June 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that all other workers at Parsons Footwear, Incorporated, Parsons, West Virginia are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of August 1988.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88-18020 Filed 8-9-88; 8:45 am]

BILLING CODE 4510-30-M

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-416**

## Mississippi Power & Light Co., Systems Energy Resources, Inc. and South Mississippi Electric Power Association; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 46 to Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, Systems Energy Resources, Inc., and South Mississippi Electric Power Association, which revised the Technical Specifications for the operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amemdment is effective as of the date of issuance.

The amendment changes the onsite diesel generator test schedule in the Technical Specifications by changing the criterion for more frequent testing.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 2, 1988 (53 FR 15609). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 8, 1988, as supplemental June 21, 1988, (2) Amendment No. 46 to License No. NPF-29, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the George M. McLendon Library, Hinds Junior College, Main Street, Raymond, Mississippi 39154. A copy of items (2) and (3) may be obtained upon request, addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 1st day of August, 1988.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, Project Directorate II-I, Divisions of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-18051 Filed 8-9-88; 8:45 am]

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**[Docket No. 50-244]**

## Rochester Gas and Electric Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License No. DRP–18, issued to the Rochester Gas and Electric Corporation (the licensee), for operation of the R.E. Ginna Nuclear Power Plant, located in Wayne County, New York.

The proposed amendment would modify the Technical Specifications to reflect testing requirements for snubbers that ensure structural integrity of systems following a seismic or other event initiating dynamic loads.

The licensee's application, dated July 24, 1987 was supplemented on May 4, 1988 and June 21, 1988.

Prior to the issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 9, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the oportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harry Voigt Esq., LeBoeuf, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue NW., Washington, DC 20036, attorney for the licensee.

Nontimely fillings of petitions, for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice of public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 24, 1987 as supplemented on May 4, 1988 and June 21, 1988, which is available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 4th day of August, 1988.

For the Nuclear Regulatory Commission.

**Daniel McDonald,**

*Acting Director, Project Directorate I–3, Division of Reactor Projects I/II.*

[FR Doc. 88–18052 Filed 8–9–88; 8:45 am]

BILLING CODE 7590–01–M

## Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 16, 1988 through July 29, 1988. The last biweekly notice was published on July 27, 1988 (53 FR 28282).

**NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216 Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland 20814 from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 9, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

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for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3 Maricopa County, Arizona**

*Date of amendment request:* March 16, 1988, as supplemented by letter dated July 6, 1988.

*Description of amendment request:* The proposed amendment consists of changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41, NPF-51 and NPF-74 for PVNGS Units 1, 2 and 3).

The proposed change will revise Surveillance Requirement 4.5.2.h which specifies flow requirements that the Low Pressure Safety Injection (LPSI) subsystem must meet during flow balance testing. The current requirement states that each LPSI injection loop must be capable of delivering a total flow equal to 4900 ± 100 gpm and that each injection leg shall be within 100 gpm of the other. The proposed change will revise the total injection loop flow to 4800 ± 200 gpm and the injection leg maximum deviation to 200 gpm.

*Basis for Proposed No Significant Hazards Consideration Determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have provided a discussion of the proposed changes they as relate to these standards; the discussion is presented below.

*Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated*

The proposed amendments involve revising the acceptance criteria for the LPSI flow balance test of Surveillance Requirement 4.5.2.h. The LPSI subsystem is used, in conjunction with the other ECCS subsystems and the Safety Injection Tanks (SITs), to provide sufficient core cooling flow during postulated Loss of Coolant Accidents (LOCAs). This change to the LPSI flowrates has no impact on the probability of occurrence of a LOCA event or any other design basis accident. Additionally, the proposed Technical Specification change will not increase the consequences of any accident previously evaluated in the FSAR. The design basis accident most impacted by the revised LPSI flowrates is the large break LOCA. The most limiting large break LOCA is the double ended guillotine break of a Reactor Coolant Pump (RCP) discharge line. An evaluation was performed to determine the effects of the LPSI flowrate changes on this limiting event. It was determined that the flowrate changes would not impact the event consequences since the reduced flow is still sufficient to keep the reactor vessel downcomer annulus full following discharge of the SITs. Therefore, this proposed Technical Specification amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated*

The proposed Technical Specification amendments will not create the possibility of a new or different kind of accident from any accident previously analyzed. The change only allows for a slightly larger variation in LPSI flowrate to account for the variability of throttle valve positions. The LPSI pumps are the only equipment impacted by this proposed amendment. With the change, the LPSI pumps will still be operated within their design envelope. Therefore, the change will not create the possibility of a new or different kind of accident.

*Standard 3 - Involve a Significant Reduction in a Margin of Safety*

The proposed Technical Specification amendments will not involve a significant reduction in a margin of safety. Technical Specification bases section 3/4.5.2 states that, "Maintenance of proper flow resistance and pressure drop in the piping system to each injection point is necessary to: (1) prevent total pump flow from exceeding runout conditions when the system is in its minimum resistance configuration, (2) provide the proper flow split between injection points in accordance with the assumptions used in the ECCS-LOCA analyses, and (3) provide an acceptable level of total ECCS flow to all injection points equal to or above that assumed in the ECCS-LOCA analyses." These bases requirements are satisfied for the proposed amendment as follows: (1) pump runout conditions are prevented by maintaining the maximum LPSI flowrate, allowed by Technical Specifications, at 5000 gpm, (2 and 3) the proposed amendment was evaluated against the existing ECCS-LOCA analyses and it was determined that the LPSI flowrate change will not adversely impact the analysis results.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

*Attorney for licensees:* Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 58007.

*NRC Project Director:* George W. Knighton

**Arkansas Power and Light Company, Docket Nos. 45-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas**

*Date of amendment request:* July 1, 1988

*Description of amendment request:* The proposed amendment would revise Facility Operating License Nos. DPR-51 and NPF-6 for Arkansas Nuclear One, Units 1 and 2 (ANO-1&2) to authorize Systems Energy Resources, Incorporated (SERI) to act on behalf of Arkansas Power and Light (AP&L), with responsibility for and control over the physical construction, operation, and maintenance of the facility. This action is proposed in conjunction with SERI becoming the operator of Waterford Steam Electric Station, Unit 3 as well as continuing as operator and owner of Grand Gulf Units, 1 and 2.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility

in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, (3) involve a significant reduction in a margin of safety. AP&L has evaluated the proposed change to Facility Operating Licenses DPR-51 and NPF-6 and has determined the following.

SERI presently owns and operates Grand Gulf. The employees of AP&L presently engaged in the operation of ANO-1&2 will become employees of SERI. The organizational structure of SERI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility.

As a result of the proposed amendment, there will not be physical changes to the facility, and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of SERI, the quality assurance program, security plan, and training program are unaffected. With regard to emergency plans, certain physical and personnel resources, limited to support in administrative areas but not inclusive of decision making authority, will continue to be provided by AP&L in support of these activities. The licensee states that decisional responsibilities related to accident recognition and classification, mitigation and corrective actions, radiological assessment and protective action recommendations and coordination with state and local authorities will rest with SERI personnel. AP&L corporate management will provide direction to other non-nuclear AP&L facilities for support to ANO-1&2. Operating agreements will ensure continued compliance with among others, General Design Criterion 17 of Appendix A to 10 CFR Part 50 on Electrical Power Systems. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The design and design bases of ANO-1&2 remain the same. Therefore, the current plant safety analyses remain complete and accurate in addressing the licensing basis events and analyzing plant response and consequences. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendment. With the exception of administrative changes to reflect the role of SERI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

Plant safety margins are established for and reflected in Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these or any other margins. The proposed amendment therefore will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation and agrees with the conclusions. Therefore, based on the above, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

*Local Public Document Room Location:* Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

*NRC Project Director:* Jose A. Calvo

**Commonwealth Edison Company, Docket Nos. STN 50-237 and STN 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois**

*Date of application for amendment request:* March 16, 1988

*Description of amendment request:* The proposed amendment would clarify the applicability of the containment oxygen concentration and drywell torus differential pressure Limiting Conditions of Operation (LCO) and Surveillance Requirements. The changes that are described in this proposed amendment are intended to provide a clear action statement should the oxygen concentration or torus drywell differential pressure LCOs be exceeded. The action statement would provide 24 hours to either restore the LCO or be in startup/hot standby in the subsequent 6 hours and cold shutdown in the following 24 hours. There are several administrative changes associated with this amendment where the affected oxygen concentration or torus drywell differential pressure Technical Specifications have been renumbered as a result of this change. Finally, several changes have been made to the Technical Specification and/or Bases for clarification. These changes, as well as the numbering changes, are considered to be administrative in nature.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Commonwealth Edison has evaluated this proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria of 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility, in accordance with the proposed amendment, would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) Power operation is presently permitted with containment oxygen concentration greater than 4% for only 24 hours subsequent to going to run and 24 hours prior to a reactor shutdown. The change permits 24 hours of power operation with the primary containment deinerted unrelated to reactor startup or shutdown to allow personnel to enter the drywell at power. Drywell entries are made to identify any water leakage, affect minor repairs and enable equipment lubrication. Drywell entries other than during startup are rare. The change in time that the drywell will not be inerted during power operation allowed by this proposed change is small. Additionally, there are currently several other Mark I BWRs that are licensed for operation with a deinerted containment for periods greater than 24 hours.

Power operation is presently permitted with drywell or torus differential pressure less and 1 psid for only 24 hours subsequent to going to run and 24 hours prior to a reactor shutdown. The change permits 24 hours of power operation without 1 psi differential pressure unrelated to reactor startup or shutdown to allow personnel to enter the drywell as power. There is

no change in consequences of relaxing the 1 psi differential pressure because the torus was analyzed for 0.0 psi presure differential as part of the MARK I Containment Short Term Program and was found to meet the NRC staffs' acceptance criteria.

Therefore, these changes do not significantly increase the probability or consequences of previously evaluated accidents.

(b) The other changes to the Technical Specifications include the renumbering of other inter-related portions of the Technical Specifications (which were affected by the proposed change) or are changes that are being sought for clarification purposes. These changes are considered to be administrative in nature.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

(a) The effects of short-term deinerting have been analyzed in the FSAR. Additionally, the torus was analyzed for 0.0 psi drywell to torus differential pressure as part of the Mark I Containment Short Term Program and was found to meet the NRC staffs' acceptance criteria.

Consequently, the possibility of creating a new or different kind of accident from any accident previously evaluated is unchanged.

(b) The other types of changes noted in the proposed amendment are administrative in nature.

(3) Involve a significant reduction in the margin of safety because:

(a) FSAR analyses have shown that for design basis accidents, the long term combustible gas control system (ACAD/CAM) can prevent a combustible gas mixture of 4% hydrogen even with a deinerted containment. Therefore, peak containment pressure is bounded by the FSAR LOCA analysis. The margin of safety for the torus drywell differential pressure is not degraded as a result of this change because the torus was analyzed for 0.0 psi drywell to torus differential pressure as part of the Mark I Containment Short Term Program and was found to meet the NRC staffs' acceptance criteria. Therefore, the pressure suppression is maintained and the changes do not reduce the margin of safety.

(b) These changes are administrative and therefore do not impact the margin of safety.

Therefore, since the proposed license amendment satisfies the criteria specified in 10 CFR 50.92, Commonwealth Edison has determined that a no significant hazards consideration exist for these items.

The staff has reviewed Commonwealth Edison's no significant hazards analysis and concurs with its conclusions. Therefore, the staff proposes to determine that the requested changes do no involve a significant hazards consideration.

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

*NRC Project Director:* Daniel R. Muller

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois**

*Date of application for amendment request:* June 20, 1988

*Description of amendment request:* The amendment would make changes to the Dresden Nuclear Power Station Units 2 and 3 Technical Specifications to reflect instrumentation enhancements for post-accident monitoring completed by the licensee as per guidance contained in Regulatory Guide 1.97 and NUREG-0737 Supplement 1 requirements.

The proposed revision to the Technical Specifications for Dresden Units 2 and 3 involves changing ranges and panel locations for various types of instrumentation associated with post-accident and containment monitoring. The changes which are described below, primarily affect Tables 3.2.6, 4.2.1 and 4.2.4 and also Sections 3.7/4.7 of the Technical Specifications.

(1) The drywell temperature readout location is changed from a back panel to a front panel in the control room.

(2) The drywell pressure range for the +70 mid-range pressure transmitter is changed from "0-75 psig" to "-5 to 70 psig".

(3) A redundant wide range reactor vessel pressure indicator has been added on panel 902(3)-3.

(4) A wide range reactor vessel level pen indicator has been placed on a 902(3)-5 recorder which receives its input from one of the existing wide range level channels.

(5) The torus water level sight glass range is changed from "18" to "40" inches. Also the two narrow ranges "-25 to +25 inches" and "-7 to +3 inches" are being combined to form one range, "20 to +20 inches".

In addition several administrative changes have been included in the requested amendment.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application as follows:

(1) The proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated because the changes reflect the addition of instrumentation which serves similar purposes as existing instrumentation. Where ranges have been slightly modified, the parameter will continue to be monitored in a range that covers its design operating span. Panel locations for the instruments are listed in the Technical Specification tables for informational purposes so that updating the list to reflect additions or relocations (which increase redundancy or serve to enhance visibility for the operator, respectively) has no detrimental impact on accident probability or consequences. Similarly, clarifications or corrections of typographical errors are administrative changes which improve Technical Specification reliability and therefore can have no detrimental impact.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because changing the Technical Specifications to reflect improved instrument ranges, redundancy, or visibility does not affect or change design operating limits or protective setpoints. The new ranges and panel changes continue to allow the parameters to be monitored during a post-accident situation or during normal operation. No new or different modes of operation are allowed by these changes or the proposed administrative changes. Nor will they affect any systems or equipment which could initiate an accident.

(3) The proposed changes do not involve a significant reduction in a margin of safety because in no instance do these range changes, panel changes or administrative changes affect the Technical Specification safety limits.

The design operating limits and/or set points are sufficiently contained within the new ranges. Additionally, the range changes have no effect on the functional test or calibration frequencies required by these Technical Specification tables. All parameters will continue to be monitored as currently required.

The staff has reviewed the licensee's no significant hazards analysis given above. Based on this review, the staff proposes to determine that the proposed amendments meet the three 10 CFR 50.92(c) standards and do not involve a significant hazards consideration.

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

*NRC Project Director:* Daniel R. Muller

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* June 24, 1988

*Description of amendment request:* This proposed license amendment would modify the Fermi-2 Technical Specifications (TSs) to remove the organization charts following the guidance provided in the Commission's Generic Letter 88-06. The proposed amendment would also make various administrative changes to Section 6.0 of the TSs.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a). The Commission's staff has reviewed the licensee's evaluation and agrees with it. The licensee concluded that:

(1) The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because, as stated in Generic Letter 88-06, those requirements necessary for safe operation have been retained in the TSs. The changes do not eliminate or alter the functions previously reviewed.

(2) The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the plant operation and design are not affected by the change. The changes create no new accident mode.

(3) The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because, as stated in Generic Letter 88-06 and in (1) above, requirements necessary for safe plant operation have been retained in the TSs. Further, the changes are consistent with the requirements established in previous organizational evaluations.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Attorney for licensee:* John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

*NRC Project Director:* Martin J. Virgilio.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* May 9, 1988

*Description of amendment request:* The proposed amendments would make five changes to the Technical Specifications (TS) related to the determination of reactor trip setpoints for Overtemperature delta-T and Overpower delta-T. Change 1 would restate the equation in Note (1) of Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints" in an algebraically equivalent form to express the Overtemperature delta-T setpoint condition in terms of the percent of full power delta-T rather than in terms of the absolute value of the indicated delta-T between the hot and cold legs. Change 2 would be a similar restatement of the equation in Note (2) of Table 2.2-1 for the Overpower delta-T. Change 3 would revise Surveillance Requirement 4.2.3.5 to state that the RCS total flow rate shall be determined by precision heat balance measurement at the beginning of each fuel cycle rather than at least once per 18 months. Change 4 would add Note (15) pertaining to the Overtemperature delta-T and Overpower delta-T items in Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements." Note (15) would state: "Overtemperature setpoint, overpower setpoint, and Tavg channels require an 18 months channel calibration. Calibration of the delta-T channels is required at the beginning of each cycle upon completion of the precision heat balance of Surveillance 4.2.3.5. RCS loop delta-T values shall be determined by precision heat balance measurement at the beginning of each cycle in conjunction with Surveillance 4.2.3.5." Change 5 would change action Statement 7 in Table 3.3-1, "Reactor Trip System Instrumentation," from "Delete" to "Deleted."

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Changes 1 and 2 restate the setpoint equations for Overtemperature delta-T and Overpower delta-T, but do not involve any technical changes to the equations themselves (i.e., both sides of the equations are divided by the same factor, delta-$T_o$). The changes make it clearer that the reactor trip setpoints are expressed in terms relative to the delta-T values at full power (i.e., delta-$T_o$), so as to be consistent with the manner in which delta-T is indicated by the plant instrumentation. Since these amendments involve no changes to plant equipment, setpoints, operating limits, or procedures, they have no adverse effect on any accident or safety margins, and they meet the three 10 CFR 50.92(c) standards stated above.

Proposed Change 3 requires the determination of RCS total flow rate and delta-T at full power by precision heat balance measurements at the beginning of each fuel cycle. The licensee has observed that actual values of RCS flow and delta-T differ from one fuel cycle to the next. It is, therefore, desirable to perform the precision heat balance measurements as soon as possible after reaching full power in a new fuel cycle, rather than performing them every 18 months as presently required. Because the time interval between measurements is shortened, the revised TS is more restrictive. Until the cycle-specific full power value for each loop's delta-T is

determined, the licensee ensures the conservative overprediction of reactor power by setting the full power delta-T reading to be 1° F lower than for the previous cycle.

The proposed Change 3 is more appropriate because it requires the performance of the precision heat balance measurements at a time (beginning of a cycle) when they would be most likely to detect a change in RCS flow and full power delta-T. There are no changes to plant procedures or hardware. Therefore, Change 3 does not involve a significant increase in the probability or consequences of an accident previously evaluated, nor create the possibility of a new or different accident from any accident previously evaluated. Change 3 also does not involve a significant reduction in a margin of safety because it does not relax existing requirements; rather, it is more conservative and restrictive, because the current specifications do not specifically require rescaling at the beginning of each fuel cycle or if more than one cycle occurs within an 18 month span.

Change 4 requires the period for calibration of all of the delta-T instrumentation channels to be at the beginning of each cycle after completion of the precision heat balance measurements. As with the Change 3 measurements, it is desirable to perform these calibrations at the beginning of a cycle, rather than every 18 months as presently required, because actual values of delta-T at full power have been observed to differ from one cycle to the next. The channel calibrations and the precision heat balance measurements at the beginning of a cycle ensure that the assumptions in the safety analysis remain valid. Calibration of the delta-T channels to the new full power values should only be necessary at the beginning of each cycle, as the licensee expects that all drifts and fluctuations over the course of a cycle should remain within the allowances assumed in the safety analysis for that cycle.

Like Change 3, proposed Change 4 is more appropriate and more conservative, and meets the three standards of 10 CFR 50.92(c) for the same reasons as given above for Change 3.

Change 5 is intended to correct Action Statement 7 to state that it has been "deleted" from Table 3.3-1. This change is purely administrative and involves no safety concerns. The Commission has provided examples of amendments likely to involve no significant hazards considerations (51 FR 7144). One example of this type is (i), "A purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature." This example applies to the proposed Change 5.

On the basis of the above considerations the Commission proposes to determine that the proposed amendments would involve no significant hazards considerations.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* June 24, 1988

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) by deleting inappropriate surveillance requirements 4.4.3.3 and 4.4.4.3 which regard manual transfer from normal to emergency power supplies for the pressurizer heaters, the power-operated relief valves (PORVs), and the PORV block valves.

*Basis for proposed no significant hazards consideration determination:* TS 4.4.3.3 requires the emergency power supply for the pressurizer heaters to be demonstrated operable periodically by manually transferring power from the normal to the emergency power supply and energizing the heaters. Similarly, TS 4.4.4.3 requires the emergency power supply for the PORVs and block valves to be demonstrated operable periodically by manually transferring motive and control power from the normal to the emergency power supply and operating the valves through a complete cycle of full travel. These requirements are unnecessary and inappropriate because each of these components is permanently connected to an emergency power source. The NRC has previously reviewed the designs for power supply to these components and has found them to be acceptable.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Because the components are permanently connected to essential power, the function of these components is unaffected by deletion of the surveillance requirement, and the change, therefore, would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that the proposed amendments would involve no significant hazards considerations.

Additional changes proposed by the licensee's letter of June 24, 1988, are outside the scope of this notice.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania**

*Date of amendment request:* June 22, 1988

*Description of amendment request:* The proposed amendment would revise the allowable pressurizer and main steam safety valve setpoint tolerance from ±1% to +1%, -3%. The current ±1% safety valve tolerance will be retained for valve testing and adjusting; however a tolerance of +1%, -3% would allow more flexibility during plant operation and potentially reduce the number of licensee event reports (LERs) that result when valve setpoints are found outside of the tolerance. The new tolerances would provide a wider allowable range to accommodate setpoint drift without compromising the analyzed safety valve relief capability. The proposed changes would be similar to those approved in Amendment No. 115 for Beaver Valley Unit 1.

The essential function of the safety valves is the protection of the primary and secondary systems from

overpressure. If the proposed amendment is issued, the safety margin would remain unchanged since the upper limit (+1%) where the valve will open would remain unchanged. The reduced limit of the lower tolerance, however, would reduce the frequency of valves found outside the specified range, thus resulting in reduced worker radiological exposure associated with valve testing and adjusting.

*Basis for proposed no significant hazards consideration determination:* The primary and secondary coolant overpressure limits are not changed by the proposed amendment since the upper limits of pressure will still be maintained by safety valve settings of +1%. Furthermore, during testing, the valves will be adjusted to a tolerance of ±1%. The less restrictive tolerance of +1%, -3% mainly serves to provide operational flexibility and to reduce the number of LERs. Since parameters that could affect safety would not be changed, the proposed amendment would not increase the probability of occurrence or the consequences of accidents previously evaluated. Since no hardware modifications or changes in operation procedures would be made, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. The safety margin is controlled by the upper tolerance limit, which is not changed; therefore, there is no decrease in the safety margin.

On the basis of the above discussion, the staff proposes to determine that the amendment involves no significant hazard consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of amendment request:* June 22, 1988

*Description of amendment request:* The proposed amendment would revise the source range channels surveillance requirements of Table 4.3-1 for both the Unit 1 and Unit 2 Technical Specifications. As currently written, an inconsistency exists between Table 3.3-1 and Table 4.3-1. Table 3.3-1 requires the source range trip channels to be operable in Modes 2, 3, 4 and 5. However, Table 4.3-1 only requires source range trip channels surveillance in Mode 2, and Modes 3, 4 and 5 with the reactor trip breakers closed. This erroneously implies that no surveillance is required on the source range channels with the reactor trip breakers open. The proposed amendment would correct the error in both units' Technical Specifications, and is thus a purely administrative change.

The proposed amendment also corrects typographical errors in Table 3.3.1 in the Unit 2 Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of these, Example (i), involving no significant hazards considerations is "A purely administrative change to technical specifications." The requested amendment involves changes that all match this example. Accordingly, the staff proposes to determine that this change does not involve a significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of amendment request:* June 27, 1988

*Description of amendment request:* The proposed amendment would result in the following changes to the Technical Specifications (TS):

(a) The Unit 1 surveillance frequency for Table 4.3-1 Item 19, Safety Injection Input from ESF, would be changed from monthly to every refueling for clarification of the required instrumentation testing frequency. The current TS already specifies such frequency but in an indirect way. The proposed change would only clarify an existing requirement, and is not a change in substance.

(b) Table 3.3-3, 3.3-4, 3.3-5 and 4.3-2 of both units' TS would be modified to delete one of the auxiliary feedwater actuation signals (turbine-driven pump discharge pressure low with steam valve open). The current TSs provide an exhaustive listing of all the actuation signals for the auxiliary feedwater system. The licensee stated that the subject signal only serves as backup and has not been credited in safety analyses, and proposes to delete its requirements from the above tables.

(c) Surveillance requirement 4.4.1.3.1 of both units' TS would be revised to eliminate the requirement to test the residual heat removal (RHR) pumps on recirculation. The requirements of pump testing under normal system configuration in accordance with Specification 4.0.5 would remain and should serve to assure operability of the RHR pumps. The licensee stated that testing the pumps on recirculation causes high vibration levels and therefore unnecessary pump degradation.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, of (3) involve a significant reduction in a margin of safety.

As stated above, the proposed amendment affects only certain surveillance, and testing requirements of the units. These changes do not adversely affect the current capability of the plant systems. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed amendment does not lead to or follow any equipment or design change. Thus, no adverse safety considerations are introduced by the change. Therefore, the probability of an accident or a malfunction of a different type than previously evaluated would not be created.

This proposed amendment will not affect the assumptions or consequences of any safety analysis presented in the FSAR. Therefore, the change will not involve a significant reduction in a margin of safety.

Accordingly, the staff proposes to determine that this change does not involve a significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library,

663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of amendment requests:* June 23, 1988

*Description of amendment requests:* The St. Lucie Plant Technical Specifications (TS) currently require the Florida Power and Light Company (the licensee) to determine containment leakage rates by using the methodology and provisions of ANSI N45.4-1972 (TS 4.6.1.2). This standard provides for one of two acceptable methods for leakage rate testing: the Total Time method and the Point-to-Point method. Advances in leakage rate testing subsequent to the issuance of ANSI N45.4-1972 have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. The Mass Point method is described in ANSI/ANS 56.8-1981, "Containment System Leakage Testing Requirements," and is considered to be more accurate in determining containment leakage rates.

The proposed amendments would modify TS 4.6.1.2, "Containment Leakage" for the St. Lucie Plant, Unit Nos. 1 and 2. The requirement to use ANSI N45.4-1972 would be deleted, and the use of the Mass-Point method would be authorized. In addition, the Bases statements would be changed accordingly.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendments against the standards provided above and has made the following determination:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Removing the reference to ANSI Standard N45.4-1972 will allow more current methods to be used in determining the manner in which the leakage rate test data are analyzed and evaluated. Since the acceptability of the containment leakage rate data will continue to be analyzed by the use of accepted methodologies, and since no change in acceptance criteria is proposed, the probability or consequences of an accident previously evaluated will not increase.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No changes to plant operation or surveillance acceptance criteria are requested in this proposed license amendment. The acceptability of leakage rate test data results will remain unchanged. NRC-approved methods of leakage rate testing are satisfactory methods and the Mass Point method is recognized as an improved alternate method of calculating containment leakage rates.

There are no new failure modes associated with this change and therefore, the possibility of a new or different kind of accident will not be created.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

This proposed amendment includes Surveillance Requirement methodology changes and there is no impact on the reactor containment or leakage rate acceptability limits. The improved analytical methodology provides an additional method for verifying that the containment integrity and containment design leakage rates would be maintained under accident conditions. Therefore, there is no reduction in a margin of safety as a result of this proposed license amendment.

Based on the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has made a preliminary review of the licensee's analyses of the proposed changes and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazard consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia**

*Date of amendment request:* June 20, 1988

*Description of amendment request:* The amendment would modify the Technical Specifications (TS) for Hatch Unit 1 to: (1) add Average Planar Linear Heat Generation Rate (APLHGR) limits for new General Electric (GE) GE 8x8EB fuel and Advanced Nuclear Fuels (ANF) 9x9 Lead Fuel Assemblies (LFAs); (2) add a Linear Heat Generation Rate (LHGR) limit for the GE 8x8 EB fuel; and (3) revise the Minimum Critical Power Ratio (MCPR) and flow-dependent APLHGR limit multiplier ($MAPFAC_F$) figures to show their applicability to the new fuel types and to remove obsolete information regarding fuel types that are no longer used at the plant.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee states that:

The proposed APLHGR and LHGR limits for GE8x8EB fuel type BD296A were evaluated by GE using NRC-approved methods documented in the "General Electric Standard Application for Reactor Fuel," NEDE-24011-P-A-8 (GESTAR-II). Compliance with those limits will ensure that BD296A fuel meets specified acceptable fuel design limits in the Unit 1 reactor. All fuel safety design bases in the Plant Hatch Unit 1 Final Safety Analysis Report (FSAR) are met by GE8x8EB fuel. The proposed APLHGR limit for BD 296 A fuel were calculated using SAFER/GESTR-LOCA which demonstrated that the power level of GE8x8EB fuel types operating in the Unit 1 core will not be limited by LOCA considerations so long as approved LHGR limits are met. The proposed LHGR limit for the GE8x8EB

fuel in conjunction with the proposed APLHGR limit will ensure that the specified acceptable fuel mechanical design limits given in GESTAR-II are met.

The 9x9 lead fuel assemblies have been evaluated by ANF for use in the Hatch reactors. These fuel assemblies were designed to be neutronically similar to the GE B/P8DRB284H fuel such that the existing APLHGR limit (when properly adjusted to account for the different number of rods) and MCPR thermal limits for B/P8DRB284H fuel will be applicable to them as well. The ANF 9x9 fuel assemblies were previously approved by the NRC for use in Hatch Unit 2.

A revision to the existing MAPFAC$_F$ figure (Figure 3.11-1, Sheet 8) is proposed to indicate that the limits are applicable to all fuel types in use at Plant Hatch, as well as the proposed GE8x8EB fuel and the 9x9 LFAs. Coefficients on Figure 3.11-1, Sheet 8 which refer to the older 7x7, 8x8, and 8x8R fuel types are deleted because these fuel types are no longer in use at Plant Hatch. Therefore, to simplify the Technical Specifications, all fuel type labels will be deleted from the MAPFAC$_F$ figure.

Since the 7x7 fuel type is no longer in use at Plant Hatch, references to this older fuel type are deleted in Specifications 3/4 11.B, 3/4 11.C, and the corresponding Bases. Figures 3.11-2 and 3.11-5, which apply specifically to 7x7 fuel, are also deleted.

The proposed changes do not involve a significant hazards consideration for the following reasons:

1. Use of GE8x8EB fuel and ANF 9x9 LFAs does not involve a significant increase in the probability of an accident previously evaluated, because no significant changes in plant design or procedures will occur as a result of this change. Any future core designs made possible by the proposed change either have been or will be evaluated, using NRC-approved methods, and shown to meet the approved acceptance criteria for analysis of the limiting accidents previously evaluated. Therefore, the consequences of an accident would not be significantly increased as a result of the use of the new fuel types.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed, because no change in plant design or operation is involved, except for relatively minor changes in the fuel design.

The GE and ANF fuel types proposed for use in Unit 1 have been generically reviewed and approved by the USNRC. The impact of the new fuel types has been evaluated against the relevant safety analyses on a generic and Plant Hatch-specific basis. In addition, the specific nuclear designs addressed by the proposed change are sufficiently similar to approved nuclear designs being used at other BWR-4 plants. The possibility of a new kind of accident is not created.

3. The proposed change does not involve a significant reduction in the margin of safety for the same reasons stated in Item 1 above.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

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*NRC Project Director:* David B. Matthews

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia**

*Date of amendment request:* July 11, 1988

*Description of amendment request:* This amendment would modify the Technical Specification (TS) requirements regarding the secondary containment boundary, as follows: (1) A normal secondary containment boundary as now specified in the TS would be maintained during most plant conditions, but a modified secondary containment boundary would be authorized while the unit is shutdown, provided certain conditions are met; and (2) the change also would make several editorial corrections to the TS.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following information in support of the requested changes:

*Proposed Change 1:*

Planning and scheduling maintenance work during Unit 1 refueling outages is a difficult task due to the inability to perform simultaneous work on the Unit 1 main steam isolation valves (MSIVs) and the Unit 1 turbine stop valves without breaching secondary containment integrity. The normal Unit 1 secondary containment boundary includes the Unit 1 reactor building area below the refueling floor and the common Units 1 and 2 area above the refueling floor. Therefore, simultaneous work on both groups of valves could introduce a leakage path through the reactor building, and consequently, secondary containment. This change will revise the Plant Hatch Unit 1 Technical Specifications pertaining to secondary containment boundary requirements. The change will establish two modes of secondary containment to facilitate activities during outage situations. A "normal" secondary containment mode will be maintained during most plant conditions, and a "modified" secondary containment configuration may be established if certain conditions are met while the unit is shutdown. Specifically, this proposed change will modify Limiting Conditions for Operation Specifications 3.7.C.1 and 3.7.C.2, the associated surveillance requirements (Specifications 4.7.C.1 and 4.7.C.2), the Design Features Section 5.0.D.2 and the applicable bases.

Similar temporary changes were approved by the Nuclear Regulatory Commission (NRC) with the issuance of Amendment 91 to the Unit 1 Technical Specifications. That amendment provided a temporary revision to the secondary containment related Technical Specifications during the 1982 refueling outage to permit major modification work associated with the Mark I Containment Long-Term Program. The intent of the change described herein is to permanently implement the temporary changes contained in Amendment 91.

Proposed Change 1 does not involve a significant hazards consideration for the following reasons:

1. It does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the basic function of the Unit 1 secondary containment

system, which is to maintain a 1/4-inch negative pressure on the common Unit 1 and Unit 2 area above the refueling floor, remains unchanged in the modified configuration. Therefore, refueling activities and Unit 2 reactor operation are permitted to continue without invoking a limiting condition for operation (LCO).

2. It does not create the possibility of a new or different kind of accident from any previously evaluated, because the modified configuration will exclude the Unit 1 reactor building area below the refueling floor and Standby Gas Treatment System (SGTS) suction to that area so that secondary containment integrity in the common area above the refueling floor can be maintained. This condition is permissible only under conditions specified by 3.7.C.2, since Unit 1 activities that may lead to a postulated release of radioactivity during a Unit 1 refueling outage will be confined to the common refueling floor area. Therefore, under certain conditions, SGTS service is not required in the Unit 1 reactor building area below the refueling floor.

3. The proposed change does not involve a reduction in the margin of safety, because secondary containment integrity for the modified configuration will continue to maintain the capability to obtain a 1/4-inch water gauge negative pressure in secondary containment. Therefore, the radiological consequences to the environment following a postulated refueling accident are not increased.

*Proposed Change 2*

Existing Technical Specifications 4.7.C.1.a and 4.7.C.2.a require that a preoperational secondary containment capability test be conducted. The word "preoperational" conveys a preoperating license condition carry-over which is not intended. By deleting the word "preoperational" from both specifications, confusion will be eliminated.

Specification 4.7.C.1.b, page 3.7-13, should be deleted since the identical material is stated on page 3.7-12.

Specifications 3.7.C.2 and 4.7.C.2, page 3.7-13, are numbered incorrectly. They should be numbered 3.7.C.3 and 4.7.C.3, respectively, since Specifications 3.7.C.2 and 4.7.C.2 are properly located on page 3.7-12a. These numbering errors were inadvertently introduced when the Plant Hatch Unit 1 Technical Specifications Amendment No. 100 was issued.

Since these changes are editorial in nature, they do not involve a significant increase in the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident from any previously evaluated, nor involve a reduction in the margin of safety.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

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*NRC Project Director:* David B. Matthews

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* May 13, 1988

*Description of amendment request:* The amendment would modify the Technical Specifications (TS) for Units 1 and 2 as follows: (1) For each unit, the existing requirements to maintain suppression pool temperature at or below 95° F, to initiate pool cooling if the temperature exceeds 95° F, and to shut down the reactor if the pool temperature cannot be restored to 95° F within a 24-hour period would be deleted and replaced by a requirement that suppression pool cooling be initiated if the pool temperature reaches 100° F. The existing TS requirements to scram the reactor when the pool temperature reaches 110° F and to depressurize the reactor vessel when the pool temperature reaches 120° F remain unchanged. (2) The Unit 2 TS would be modified to delete references to the water volume in the suppression pool.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's May 13, 1988, submittal provided an evaluation of the proposed changes with respect to these three standards.

*Basis for Proposed Change 1:*

Historically, the suppression pool temperature limit has been chosen based upon the maximum expected service water temperature. For most BWRs, this limit is in the range of 90° F to 95° F. For Plant Hatch, the limit is 95° F. Many licensing analyses use this pool temperature as the initial condition. Generic evaluations performed for the Boiling Water Reactor Owners Group (BWROG) suppression pool temperature limit (SPTL) Committee show that the normal suppression pool temperature limit for BWRs with Mark I containments can be raised to 110° F with no adverse impact on plant safety. A proprietary General Electric report, EAS-19-0388, provided as an enclosure to the licensee's May 13, 1988 submittal, discusses the impact of raising the pool temperature on the existing Plant Hatch safety analyses. These evaluations include assessment of Anticipated Transients Without Scram (ATWS) events and Emergency Procedure Guidelines (EPGs), even though these areas are beyond the historical design basis of the plant.

The GE report, EAS-19-0388, details the results of the Plant Hatch evaluations and provides the technical bases for the proposed Technical Specification changes. The evaluations consider the effect of the proposed changes on safety relief valve (SRV) loads, containment response, and emergency core cooling system (ECCS) performance and show that the changes are acceptable.

1. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, because applicable accident analyses that could be impacted by raising the suppression pool operating limit have been examined and found to be acceptable. The scram and depressurization limits are unchanged.

2. The possibility of a different kind of accident from any analyzed previously is not created by these changes, since the proposed changes would only revise an operating limit on permissible pool temperature. This change does not involve the potential for a new accident type, since plant design and function are unchanged.

3. Margins of safety are not significantly reduced by these changes,

because the impact of the proposed pool temperature has been evaluated relative to safety analyses (GE report EAS-19-0888), and margins have been shown to be insignificantly impacted. Sufficient heat capacity remains in the suppression pool for complete condensation of decay and sensible heat following an accident or reactor shutdown.

*Basis for Proposed Change 2:*

The proposed change to the Unit 2 Technical Specifications deleting references to suppression pool water volume is editorial, since water level monitoring will still be required. Obviously, the actual volume of water was never monitored; required water levels correspond to a fixed water volume unless substantial modifications to the submerged portion of the torus are performed. When such modifications are performed (e.g. the Mark I Containment Long Term Program), the impact of the changes on relevant safety evaluations are assessed.

The deletion of the references to the suppression pool water volume are editorial in nature and have no impact on plant safety. The required suppression pool water levels remain unchanged. The deletion is consistent with the "Examples of Amendments that are considered Not Likely to Involve Significant Hazards Considerations," listed on page 14870 of the April 16, 1983, issue of the Federal Register.

The staff has considered the proposed changes and agrees with the license's evaluations with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

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**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* June 20, 1988

*Description of amendment request:* The amendments would modify the Technical Specifications for both Unit 1 and Unit 2 to delete all references to the main control room (MCR) chlorine detectors and to automatic isolation of the main control room environmental control system (MCRECS) on high chlorine level.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's June 20, 1988 submittal provided the following evaluation of the proposed changes with respect to these three standards:

*Bases for Proposed Change:*

The MCRECS for Units 1 and 2 limits the amount of chlorine entering the common MCR in the event of a chlorine tank rupture (Reference the Unit 2 Final Safety Analysis Report). The current Plant Hatch design basis includes the tank rupture of two 1-ton cylinders of chlorine gas. The current design basis of the chlorine detectors is to provide a signal for the automatic isolation of the MCR outside air intake dampers before the concentration of chlorine reaches a hazardous level inside the MCR.

A Plant Design Change Request is being prepared to: (1) remove all chlorine cylinders from the site, (2) replace the present chlorination system with a sodium hypochlorination system, and (3) eliminate the automatic isolation mode of the MCRECS, including the MCR chlorine detectors. Once all the chlorine tanks have been emptied, the threat to MCR habitability, resulting from chlorine release, will be eliminated.

Following the proposed change, no gaseous chlorine will be stored or used on site. Both the circulating water (CW) and the residual heat removal service water (RHRSW)/plant service water (PSW) systems will be treated with sodium hypochlorite. Likewise, the sanitary water and plant sewage systems will be treated by an alternative method.

The proposed change to delete the onsite storage of gaseous chlorine effectively eliminates the need for automatic isolation of the MCR, since the isolation process is actuated only by chlorine detection. Therefore, there is no need for the MCR chlorine detectors to remain in service.

*Basis for No Significant Hazards Consideration Determination:*

The proposed amendment does not involve a significant hazards consideration for the following reasons:

1. The change does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated, because removal of chlorine cylinders presently stored on site will eliminate the risk of a chlorine release to MCR operators.

2. The change does not create the possibility of a new or different kind of accident from any previously evaluated, because the removal of onsite chlorine eliminates the need for automatic isolation of the MCR due to chlorine release. The sodium hypochlorite tanks will be located in a safety dike in the chlorination building. Even in the event of tank rupture, no toxic vapors will be released, and consequently, a threat to MCR operators will not exist.

3. The margin of safety is not reduced significantly by the proposed change since the proposed change obviates a potential accident scenario.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

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*NRC Project Director:* David B. Matthews

**Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., (the licensees), Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* February 23, 1988, as supplemented March 30, 1988

*Description of amendment request:* This proposed amendment would revise Technical Specification Figure 6.2.2-1 and Sections 6.3.1 and 6.5.1.2 concerning the Clinton Power Station onsite

organizational structure. The proposed changes are the result of a proposed organizational restructuring by the licensee.

This amendment includes proposed changes to Figure 6.2.2-1, "Unit Onsite Organization," Specification 6.3.1, "Unit Staff Qualifications," and Specification 6.5.1.2, "Facility Review Group (FRG) Composition." The following changes are proposed to the onsite organizational structure:

—The position of Technical Advisor to the Plant Manager is no longer justified and should be deleted.
—The position of Director-Plant Radiation Protection should be retitled Assistant Manager-Plant Radiation Protection.
—The position of Director-Plant Technical should be retitled Assistant Manager-Plant Technical.
—The positions of Supervisor-Chemistry and Supervisor-Radwaste should report to the Assistant Manager-Plant Technical.
—The positions of Supervisor-Computer and Supervisor-Systems should be transferred to the Nuclear Station Engineering department and are no longer a part of the Unit Onsite Organization.
—The position of Assistant Supervisor-Plant Support Services should be established and the position of Administrative Supervisor should be deleted.
—The position of Supervisor-Industrial Safety should report to the Supervisor-Plant Support Services.
—A note should be added to the position of Assistant Manager - Plant Operations to indicate that this position requires the individual to have had a CPS SRO license.

The position of Director-Plant Radiation Protection should be changed to Assistant Manager-Plant Radiation Protection in Specification 6.3.1. The positions of Director-Plant Technical and Director-Plant Radiation Protection should be changed to Assistant Manager-Plant Technical and Assistant Manager-Plant Radiation Protection in Specification 6.5.1.2.

*Basis for Proposed No Significant Hazards Consideration Determination:* The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is an administrative change that does not affect current accident analyses.

The proposed changes to Figure 6.2.2-1 and Sections 6.3.1 and 6.5.1.2 are administrative changes that clarify but do not change the intent of the Specifications. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes are administrative changes only and thus do not involve any design changes, new requirements, or new modes of operation.

The proposed changes do not involve a significant reduction in a margin of safety. The intent of the existing Technical Specification requirements would remain unchanged. The proposed changes to Figure 6.2.2-1 and Sections 6.3.1 and 6.5.1.2 are administrative changes that do not affect a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

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*NRC Project Director:* Daniel R. Muller

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* July 1, 1988

*Description of amendment request:* The proposed amendment would revise *Facility Operating License No.* NPF-38 for Waterford 3 to authorize Systems Energy Resources, Incorporated (SERI) to act on behalf of Louisiana Power and Light (LP&L), with responsibility for and control over the physical construction, operation, and maintenance of the facility. This action is proposed in conjunction with SERI becoming the operator of Arkansas Nuclear One, Units 1 and 2 as well as continuing as operator and owner of Grand Gulf Units, 1 and 2.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, (3) involve a significant reduction in a margin of safety. LP&L has evaluated the proposed change to Facility Operating License NPF-38 and has determined the following.

SERI presently owns and operates Grand Gulf. The employees of LP&L presently engaged in the operation of Waterford 3 will become employees of SERI. The organizational structure of SERI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility.

As a result of the proposed amendment, there will not be physical changes to the facility, and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of SERI, the quality assurance program, security plan, and training program are unaffected. With regard to emergency plans, certain physical and personnel resources, limited to support in administrative areas but not inclusive of decision making authority, will continue to be provided by LP&L in support of these activities. The licensee states that decisional responsibilities related to accident recognition and classification, mitigation and corrective actions, radiological assessment and protective action recommendations and coordination with state and local authorities will rest with SERI personnel. LP&L corporate management will provide direction to other non-nuclear LP&L facilities for support to Waterford 3. Operating agreements will ensure continued compliance with among others, General Design Criterion 17 of Appendix A to 10 CFR Part 50 on Electrical Power Systems. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The design and design bases of Waterford 3 remain the same. Therefore, the current plant safety analyses remain complete and accurate in addressing the

licensing basis events and analyzing plant response and consequences. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendment. With the exception of administrative changes to reflect the role of SERI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

Plant safety margins are established for and reflected in Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these or any other margins. The proposed amendment therefore will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation and agrees with the conclusions. Therefore, based on the above, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

*Local Public Document Room Location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

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*NRC Project Director:* Jose A. Calvo

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* July 18, 1988

*Description of amendment request:* The proposed amendment would change the Technical Specifications to allow 4.10 weight percent U-235 enriched fuel to be stored in the spent fuel pool, new fuel storage vault, and containment temporary storage racks. This request relates directly to the previous request dated June 24, 1986 as noticed on September 11, 1986 (51 FR 32381).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee's June 24, 1986 request included, among other things, increasing the level of enrichment for the fuel storage areas to 4.10 weight percent U-235. The licensee was requested at that time to accept an enrichment of 4.0 weight percent because the assessment of the generic environmental impact of increased enrichments on the fuel cycle and fuel transportation outlined in Tables S-3 of 10 CFR Part 51 and S-4 of 10 CFR Part 52 was not complete. The June 24, 1986 request was therefore noticed on September 11, 1986 (51 FR 32381) with a limit of 4.0 weight percent U-235.

The notice published in the **Federal Register** on February 29, 1988 (53 FR 6054), states that the NRC environmental assessment of extended burnup fuel is complete and that environmental impacts summarized in Tables S-3 of 10 CFR Part 51 and S-4 of 10 CFR Part 52 bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and enrichments up to 5.0 weight percent U-235. This bounds the licensee's request for enrichments up to 4.1 weight percent U-235 for burnups up to 60 Gwd/MtU. As such, the licensee is requesting their original request and analyses be accepted.

In license amendment number 7 issued on October 16, 1986, the NRC performed a safety evaluation for increasing the level of enrichment for the fuel storage areas to 4.10 weight percent U-235 and found all analyses and proposed changes acceptable. The amendment was issued at 4.0 weight percent but the findings of 4.10 weight percent remain valid and support the following determination of no significant hazards consideration.

The calculated K-eff values, including uncertainties, indicate that the fuel storage configurations are substantially sub-critical, and the probability of a criticality event in these areas is not significantly increased. No physical change is being made to the storage areas. Since a criticality event is demonstrated to be unfeasible, there is no increased consequences for such a postulated event. The change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not introduce any physical changes being made to the facility and will not change how the facility is operated. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee's June 1986 request resulted in the approval to raise the fuel enrichment level from 3.7 to 4.0 weight percent but the evaluation for that change found that 4.10 weight percent was acceptable and within the established criteria. The licensee's current request is to amend the Technical Specification to the previous acceptable level of 4.10 weight percent. The decrease in safety margin from 3.7 to 4.0 weight percent was previously found not to be significant and this is borne out by the NRC safety evaluation to 4.10 weight percent. The proposed change does not involve a significant reduction in a margin of safety.

Based on the above considerations, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

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*NRC Project Director:* Jose A. Calvo

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* June 21, 1988

*Description of amendment request:* The amendment would eliminate daily functional tests of the rod pattern control system setpoints, retaining the tests to be performed monthly during operation and prior to startup. Additionally, the applicable operational conditions would be changed for the high power setpoint (HPSP) from operational condition 1 to the time when thermal power is at or above the low power setpoint (LPSP).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

System Energy Resources, Inc. (SERI) has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change.

a. The functional tests performed since commercial operation, approximately 735 for each channel ([greater than] 2900 total surveillances), were reviewed with no identified as found failures. Additionally, as found trip setpoints were reviewed for drift and were found to show negligible drive over a three month period between channel calibrations. This confirms the reliability of the LPSP and HPSP trip units and supports the change to their frequency of functional testing to 31 days consistent with other identical trip units. The reliability of the system is adequately assured by the performance of the Channel Functional Tests prior to startup and monthly thereafter for the LPSP and HPSP. Other Rosemount Trip units are surveyed at a monthly frequency with acceptable performance results. SERI has addressed the effect on reliability of channel functional testing frequency for identical trip units in the Reactor Protection System. Specifically, it has been demonstrated that there is no change in the Reactor Protection System reliability when the testing of these trip units is performed more frequently than monthly.

This change does not involve a design change or physical change to the plant. Therefore, the revised surveillance frequency will not effect (sic) the consequences of an accident previously analyzed. Failure of these instruments due to the revised frequency of surveillance (which is not postulated) would have no effect on the probability of an uncoupled rod drop or an operator error leading to a rod withdrawal error. No other safety analyses as discussed in UFSAR Chapters 6 and 15 would be affected.

b. The change to the mode applicability of the HPSP is based on actual system design. Below 70% power, the HPSP does not function and is not required to function. Eliminating operability and surveillance requirements for the HPSP below the Low Power Setpoint cannot pose any changes in accident assumptions or sequence of events.

c. Thus, there is no increase in the probability or consequences of any accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. The function of the system is unaffected by the elimination of daily functional tests. There have been no as found failures in the previous 2900+ functional tests of these channels' trip units and negligible observed trip setpoint drift over the surveillance intervals being proposed. Proper system operation will be assured by monthly functional tests consistent with testing frequencies for identical trip units in other applications required by Technical Specifications. Additionally, this change does not involve a design change or physical change and therefore, does not change the system function or operation as previously described in the GGNS UFSAR.

b. The change to the mode applicability of the HPSP is consistent with system design and function. The HPSP actuates at or before 70% power and functions to implement more stringent controls on rod withdrawal than operation below the HPSP but above the LPSP. Requiring HPSP operability prior to reaching or exceeding the Low Power Setpoint ensures proper functioning when required without unnecessary restrictions, therefore maintaining the overall system operation as assumed in the UFSAR.

c. Thus, no new or different accident scenario is introduced by this revised frequency of surveillance and clarification of applicability.

3. This change would not involve a significant reduction in the margin of safety.

a. The margin of safety remains unaffected by the elimination of the daily functional test. The LPSP and HPSP setpoints remain unchanged, there have been no as found failures in the previous 2900+ functional tests of these channels' trip units and negligible observed drift over the surveillance intervals being proposed. The reliability of the system will be adequately assured by the performance of the Channel Functional Tests prior to startup and monthly thereafter. This is consistent with the proven reliabilities of identical trip units in other applications required by Technical Specifications.

b. The change to the applicability of the HPSP will still ensure it is required to be operable prior to its assumed operation in UFSAR analyses.

c. Thus, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Elinor G. Adensam

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* July 12, 1988

*Description of amendment request:* The amendment would delete a shower and drying area room from Technical Specification (TS) Table 3.3.7.9-1, "Fire Detection Instrumentation" because the control building locker room will be enlarged by removing the walls separating the two rooms.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

System Energy Resources, Inc. (SERI) has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. Removal of non-fire rated interior masonry walls to incorporate Room OC506 in to Room OC514 does not alter any of the precursors of any fires previously evaluated for the affected rooms. The proposed change does not alter any plant fire protection features or functions.

b. The locker room enlargement does not result in the addition, removal or relocation of any fire detection instrumentation for detection Zone 1-19 or any fire rated barriers. The level of smoke detection capability will not be reduced by the design change. Also, since the walls being removed are not fire rated, there will be no change in any existing fire rated barriers when Rooms OC506 and OC505 are incorporated into Room OC514. The room modifications do not affect any fire area boundaries as described in the Fire Hazards Analysis. This proposed Technical

Specification change assigns a new room number to existing plant space.

c. Therefore, there is no increase in the probability or consequences of a previously analyzed accident due to this change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. No new equipment is introduced into the plant and no changes to setpoints or operating modes are proposed. This change involves the assignment of a new room number to existing plant space due to the removal of non-fire walls incorporating Room OC506 into Room OC514. The walls to be removed only serve to divide living space and provide no other function.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. This change assigns a new room number to existing plant space. There are no changes to plant equipment or operational setpoints. The room modifications do not affect any fire area boundaries. The minimum number of smoke detection instruments required to be operable will not be reduced and no building spaces previously provided with detection will have detection capability reduced.

b. Therefore, this proposed change will not reduce the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Elinor G. Adensam

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* July 15, 1988

*Description of amendment request:* The amendment would change the Technical Specifications by changing the position of one of the nine members on the Plant Safety Review Committee (PSRC) from Technical Support Superintendent to Manager, Performance and System Engineering. This change is necessitated by a change of the unit organization to consolidate certain engineering personnel and functions.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

System Energy Resources, Inc. (SERI) has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. This realignment of the plant staff engineering groups will have no negative effect on plant design or operation because P&SE [Performance & System Engineering] will actively look for ways to improve the performance of specific systems and components, as well as overall plant performance. With responsibility and accountability being assigned for designated plant systems, components, and programs, the knowledge of specific systems will be enhanced. The same level of expertise applied to the PSRC review function will exist with the approval of the proposed change. Since essentially the same representation will exist there will be no loss in PSRC effectiveness.

b. Therefore, there is no increase in the probability or consequences of previously analyzed accidents due to the proposed change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. Since there is no loss in PSRC effectiveness, the proposed change is administrative in nature. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. The same level and quality of PSRC review is maintained and unaltered by this proposed change.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. There will be no physical changes to the plant equipment, setpoints or operating modes as a result of the proposed change. This administrative change maintains the level and quality of PSRC review by maintaining essentially the same level of expertise applied to the PSRC review function.

b. Therefore, this proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Elinor G. Adensam

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* June 21, 1988

*Description of amendment request:* The proposed amendment would change Millstone Unit 3 Technical Specification (TS) 3/4.7.14, "Air Temperature Monitoring," to redefine the temperature zones inside containment and establish temperature limits for these zones.

*Basis for proposed no significant hazards consideration determination:* License condition 2.C(3) in the Millstone Unit 3 Operating License NPF-49 requires that, "Prior to start-up following the first refueling outage, the qualified life of electrical equipment within the scope of 10 CFR 50.49 located inside containment shall be recalculated based on the actual temperature monitored inside containment during the first cycle of operation." License Condition 2.C(3) was satisfied by the licensee by submittal of a report dated January 21, 1988. The June 21, 1988 application would incorporate the conclusion of the January 21, 1988 report into TS 3/4.7.14 which contains temperature limits, and associated remedial requirements, and Surveillance Requirements, for various plant areas that contain temperature sensitive, safety related, electrical equipment. Exceeding the temperature limits of TS 3/4.7.14 could affect the qualified lifetime of safety-related electrical equipment as defined in 10 CFR 50.49, "Environmental qualification

of electric equipment important to safety for nuclear power plants."

At the present time, TS 3/4.7.14 defines two temperature zones within containment: (1) Zone C-01, "Inside Crane Wall - All Elevations," and (2) Zone C-02, "Outside Crane Wall - All Elevations." Both C-01 and C-02 have temperature limits of 120° F. The proposed change to TS 3/4.7.14 would establish four containment temperature zones, containing equipment presently located in Zones C-01 and C-02, as follows:

- CS-01, "Inside Crane Wall - all elevations except CS-03 and CS-04"
- CS-02, "Outside Crane Wall - all elevations"
- CS-03, "Pressurizer Cubicle - all elevations"
- CS-04, "Inside Crane Wall - elevation 51' 4" except CS-03 and steam generator enclosures"

Temperature limits for Zones C-01, C-02, and C-04 would be 120° F. The temperature limit for Zone C-03 would be 130° F. The licensee has recalculated the qualified lifetime of safety related electrical equipment in Zone C-03 with acceptable results as described in the licensee's submittal dated January 21, 1988.

The proposed change to TS 3/4.7.14 would not involve a significant increase in the probability of an accident previously evaluated since no change in plant equipment or operating modes are being undertaken. With regard to the consequences of accidents previously evaluated, the licensee's calculations show that the proposed temperature limits for proposed Zones C-01 through C-04 will assure continued reliability for electrical equipment which is credited for operation in existing safety analyses. In addition, since safety related equipment in proposed Zones C-01 through C-04 will continue to operate reliably, no new or different kind of accident will be credited. Finally, since no changes in the safety analyses will result from the proposed change to the TS, no reduction in safety margins will occur.

Accordingly, based upon the above evaluation, the NRC staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania**

*Date of amendment request:* December 15, 1987

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications reflecting revision to the load profiles for 250 V DC battery banks 1D650 and 1D680.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its December 15, 1987 submittal:

The proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. FSAR Section 8.3.2.1.1.4 states the station batteries have sufficient capacity without the charger, to independently supply the required loads for four hours. The Technical Specifications require the batteries be surveilled to dummy loads which are greater than the design loads. A calculation has been performed by our engineering department which verifies the batteries have adequate capacity to power the actual loads on the 250V DC system with all required margin accounted for;

(2) Create the possibility of a new or different kind of accident from any previously evaluated. As stated in Part (1), the batteries have sufficient capacity to power the actual battery loads thus enabling them to perform their intended function. Any postulated accident resulting from this change is bounded by previous analysis (Therefore, no new accidents of concern are created); (and)

(3) Involve a significant reduction in the margin of safety. In accordance with IEEE-485, the rated battery capacity included the margin which allows replacement of the battery when its capacity has decreased to 80% of its rated capacity (100% design load). This margin is maintained and was factored into the calculation referred to in Part (1). There is a decrease in the margin between the Technical Specification load profile and the actual battery capacity due to this proposal. However, this change is insignificant because it has not reached the point where it impacts the margin between actual battery capacity and rated capacity.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania**

*Date of amendment request:* June 3, 1988

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications requirements for the Reactor Vessel Material Surveillance Withdrawal Schedule, and Material Surveillance Lead Factor Ratio. The changes to Reactor Vessel Material Surveillance Withdrawal Schedule reflect compliance with the latest revision of 10 CFR 50, Appendix H and ASTM Standard E-185-82. The revision to the Lead Factor Ratio conforms to the SSES Unit 2 Technical Specifications requirements.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's revised request and concurs with the following basis and conclusion provided by the licensee in its June 3, 1988 submittal.

The proposed changes do not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated. Both the revised lead factor and surveillance capsule withdrawal schedule are used only to monitor station operation and do not impact on station accidents. Also, the location of the capsules and analyses performed on them will remain the same with this proposed Tech Spec change;

II. Create the possibility of a new or different kind of accident from any accident previously evaluated. These changes only affect withdrawal schedule and the lead factor and do not propose any physical changes to the reactor vessel wall. Also, the location of the capsules and attachment to the vessel wall will remain the same with this Tech Spec change; (and)

III. Reduce the margin of plant safety. The lead factor now falls within the acceptable range stated in ASTM E-185-82 and the revised capsule withdrawal schedule is more conservative (than) the original schedule. Based on this, no significant reduction in any safety margin will occur due to this change.

Accordingly, the Commission has determined that the proposed amendments involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* December 18, 1987

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Units 1 and 2 Technical Specifications as follows:

1. correction of errors in the nomenclature to make the Technical Specifications consistent with the facility drawings;

2. deletion of redundant information which was introduced in the Technical Specification due to an error in the Unit 1 Amendment No. 55; and

3. a change in the organizational nomenclature to reflect the realignment of the licensee's licensing organization.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and finds that the proposed changes:

(1) Do not involve a significant increase in the probability or consequences of an accident previously evaluated because all changes listed in the description of the request are either corrections of nomenclature errors, deletion of redundant information, or administrative changes reflecting organizational realignment. They have no impact on the previously evaluated accidents;

(2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes will have no impact on the operation of the facility as it relates to potential accidents; and

(3) Do not involve a significant reduction in a margin of safety because the changes do not affect the safety margins of the plant and its systems.

Based on the above review, the staff concludes that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* February 24, 1988 as revised June 10, 1988

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Units 1 and 2 Technical Specifications by removing the onsite and offsite organization charts from the administrative control requirements in accordance with the guidance of the NRC Generic Letter 88-01, and make some changes to the nomenclature of Section 6.8.2.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The staff has reviewed the licensee's February 24, 1988 submittal as revised by letter dated June 10, 1988 and the staff finds that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter 13 of the Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) governs changes to organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is the licensee's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation. The proposed changes to Section 6.8.2 are changes of nomenclature only.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes are administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because the licensee, through its Quality Assurance programs, its commitment to maintain only

qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization charts from the Technical Specifications and changes in the nomenclature of Section 6.8.2 will not affect the margin of safety.

Accordingly, the Commission proposes to determine that the proposed changes involve a no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado**

*Date of amendment request:* February 5, 1988 as supplemented June 23, 1988.

*Description of amendment request:* The amendment would make certain changes to Section 7 of the Technical Specifications, concerning Administrative Controls. The proposed changes reflect organizational changes to the NRC, the licensee, and the Plant Operations Review Committee.

*Basis for proposed no significant hazards consideration determination:* The licensee has analyzed the proposed amendment request for significant hazards consideration using the standards in Title 10, Code of Federal Regulation, Part 50.92. The licensee has concluded that the proposed amendment request involves no significant hazards consideration, based on the following analysis:

The proposed changes to Section 7 and Figures 7.1-1 and 7.1-2 are evaluated as follows:

The position of Superintendent of Training has been eliminated. The Nuclear Training Organization will now report to the new position of Nuclear Training Manager who will report directly to the Vice President of Nuclear Operations. This change is administrative only and the Training Program will continue to meet or exceed the requirements of Section 5.5 of ANSI 18.1 - 1971 and Appendix "A" of 10 CFR Part 55.

Specification AC 7.1.2.1 (PORC Membership). The proposed changes to this section will eliminate four persons from membership of the PORC. This action is in response to the NRC's request for additional information, NRC letter Heitner to Williams, dated December 5, 1986. In addition to lowering committee membership from the existing 14 members to the proposed 10 members, the following steps have been taken to ensure that continuity of members is retained from one meeting to the next meeting:

1. Fewer PORC meetings - one per week versus one per day or three per week.
2. A training program for all PORC members (including alternates) has been instituted.
3. All PORC members (including alternates) have successfully completed the training program.
4. Only those personnel designated by name (PSC Interoffice Memo) are eligible to serve on the PORC.
5. 90% of all PORC meetings are chaired by the Chairman.

Specification AC 7.1.2.1 (PORC Membership). The title of Shift Supervisor Administration has been changed to Administrative Shift Supervisor. There is no significant change to the responsibilities/functions associated with this position.

Specification AC 7.1.2.2 (Alternates) has been revised to clarify that no more than two alternate members shall participate "as voting members" in PORC activities at any one time. The proposed change is consistent with the guidance provided in the Standard Technical Specifications (STS).

Specification AC 7.1.2.3 (Meeting Frequency) has been revised to allow the "designated alternate" PORC Chairman to convene PORC meetings. The proposed change is consistent with the guidance provided in the STS.

Specification AC 7.1.2.5.a (Responsibilities) has been revised to add Specification "7.4(d)" which was inadvertently omitted in a previous Technical Specification submittal. The proposed change is consistent with procedure reviews presently performed by PORC.

Specification AC 7.1.3.2 (NFSC Membership) has been revised to indicate that consultants will be appointed "in writing by the Vice President, Nuclear Operations". This clarification is consistent with Specification AC 7.1.3.3 and 7.1.3.4 for appointing Alternate Members and Chairman/Alternate Chairman, respectively.

Figures 7.1-1 and 7.1-2 have been updated to reflect the above described organization and the words "Fort St. Vrain" eliminated for consistency.

Specification AC 7.4.a.1 is revised to delete an incorrect reference to Regulatory Guide 1.33 and add Safety Guide 33, November 1972. Regulatory Guide 1.33 did not exist in November 1972.

Specifications AC 7.4.b and 7.4.c have been revised to allow for certain procedure reviews to be performed by the PORC, "or a subcommittee thereof", prior to the PORC review required in Specification AC 7.1.2.5.a. This proposed change will relieve the PORC of some of the in-depth procedure reviews and allow more time to be spent on other issues, thereby enhancing overall PORC continuity while maintaining the quality of procedure reviews. The procedure will then be approved by the "appropriate management" personnel (previously, "appropriate Manager"). The PSC management structure is such that the appropriate approver may be a vice president, manager, or superintendent. This change is for clarification only and will have no affect on the level of review the procedure receives.

The proposed change to Specification AC 7.5.1.c (Monthly Operations Report) updates the address in accordance with NUREG-0325, dated February 8, 1987. Reference to the Director, Office of Inspection and Enforcement has been eliminated to reflect recent USNRC organizational changes.

Based on the above, Public Service Company of Colorado concludes the operation of Fort St. Vrain in accordance with the proposed changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Therefore, this change will not create an undue risk to the health and safety of the public.

Based on the above evaluation, the licensee has concluded that operation of Fort St. Vrain in accordance with the proposed changes will involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado

*Attorney for licensee:* Byrant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201-0840

*NRC Project Director:* Jose A. Calvo

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina**

*Dates of amendment request:* July 6, 1987, as supplemented May 16, 1988

*Description of amendment request:* The July 6, 1987 submittal proposed to revise Technical Specification (TS) Sections 6.2, "Organization," and 6.4, "Training." This revision proposed to delete the organization charts from the Technical Specifications and to revise the retraining and replacement program. The July 6, 1987 submittal was noticed in the **Federal Register** on September 9, 1987 (52 FR 34019). On March 22, 1988 Generic Letter 88-06, "Removal of Organization Charts from Technical Specifications Administrative Control Requirements," was issued by the Commission. As a result of the issuance of this Generic Letter the licensee

modified their proposed amendment request in their May 16, 1988 submittal. Specifically, a new section, 6.2.1 "Offsite and Onsite Organizations", was added.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the addition of the "Onsite and Offsite Organization" Section to the Technical Specifications does not affect the Significant Hazards Determination presented in the July 6, 1987 submittal.

The staff has reviewed the May 16, 1988 submittal and has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because addition of the Onsite and Offsite Organization to the Technical Specification does not affect plant operation in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The addition of the Onsite and Offsite Organization Section to the Technical Specification provides additional support to safety by defining the lines of authority, responsibility and communication. The proposed amendment does not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

*NRC Project Director:* Elinor G. Adensam

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina**

*Dates of amendment request:* May 20, 1988; June 20, 1988; and July 8, 1988.

*Description of amendment request:* On May 20, 1988, the licensee proposed an amendment to revise numerous sections of the Technical Specifications (TS) in support of refueling and operating the Virgil C. Summer Nuclear Station, Unit No. 1 (Summer Station or VCSNS) with the VANTAGE 5 (V-5) improved fuel design. Presently, the Summer Station is operating with a Westinghouse 17X17 low parasitic fuel core. On June 20, 1988, the licensee modified their May 20, 1988 submittal to reflect an average coolant temperature ($T_{ave}$) of 587.4° F. The Technical Specifications affected by this change, TS Figures 2.1-1 and 3.2-2 and TS Tables 2.1-1, 2.2-1, and 3.2-1, were replaced in the June 20, 1988 submittal. On July 8, 1988, the licensee revised the May 20, 1988 submittal of TS 3.1.2.6 and proposed a new change to TS 3.1.2.5, "Borated Water Services-Shutdown." The July 8, 1988 changes were proposed to make allowances for the amount of borated water which is unavailable for injection and which was not accounted for in the May 20, 1988 submittal.

The proposed amendment would change the Technical Specifications to support the Cycle 5 core reload to permit operation with the V-5 fuel assemblies, in addition to the Westinghouse Low Parasitic (LOPAR) assemblies remaining in the core from Cycle 4 and subsequent operating cycles with up to a full core of V-5 fuel. Design features of the V-5 fuel include assemblies with up to approximately 4.25 weight percent U-235, axial blankets, integral fuel burnable absorbers, intermediate flow mixers, reconstitutable top nozzles, and extended burnup capability. A debris filter bottom nozzle (DFBN) will be introduced to replace the standard V-5 bottom nozzle to reduce the possibility of fuel rod damage due to debris-induced fretting. Changes to the Technical Specifications are required due to the use of the V-5 fuel and use of the following analytical methods and assumptions:

(1) The Improved Thermal Design Procedure (ITDP);

(2) The WRB-1 and WRB-2 departure from nucleate boiling (DNB) correlations;

(3) The BASH large break loss-of-coolant accident (LOCA) model;

(4) The NOTRUMP small break LOCA model;

(5) The ANSI/ANS 5.1-1979 decay heat model for non-LOCA accidents and transients;

(6) Relaxed Axial Offset Control (RAOC);

(7) $F_Q(z)$ Surveillance; and

(8) Analysis baseline changes as outlined in the May 20, 1988 submittal.

As a result of the above, changes to the following Technical Specifications are proposed:

(1) Core Safety Limits (TS 2.1.1, Figure 2.1-1);

(2) Reactor Coolant Flow Allowable Values (TS 3/4.2.3);

(3) Overtemperature delta T Reactor Trip Setpoints (Table 2.2-1);

(4) Overpower delta T Reactor Trip Setpoints (Table 2.2-1);

(5) Shutdown Margin for Modes 3, 4, and 5 (Figure 3.1-3);

(6) Moderator Temperature Coefficient (TS 3/4.1.1.3);

(7) Rod Drop Time (TS 3.1.3.4);

(8) Axial Flux Difference (TS 3/4.2.1);

(9) Heat Flux Hot Channel Factor - $F_Q(z)$ (TS 3/4.2.2, Figure 3.2-2, TS 4.10.2);

(10) Nuclear Enthalpy Rise Hot Channel Factor - $F_{delta\ H}$ (TS 3/4.2.3, Figure 3.2-3);

(11) DNB Parameters (Table 3.2-1);

(12) Reactor Trip(s) Response Time (Table 3.3-2);

(13) ECCS Accumulator Water Volume Range (TS 3.5.1);

(14) Borated Water Sources-Shutdown (TS 3.1.2.5);

(15) Borated Water Sources for Modes 1-4 (TS 3.1.2.6);

(16) Reactor Trip System Instrumentation (Table 2.2-1);

(17) Allowances for Determination of Operability (Table 2.2-1); and

(18) Charging Pump Flow Balance Surveillance (TS 4.5.2).

Also, Figure 3.2-1, Axial Flux Limits as a Function of Rated Thermal Power is proposed to be deleted.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes associated with the

transition to V-5 fuel against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. The licensee has concluded that the proposed changes do not involve any significant hazard because:

a. The probability or consequences of an accident previously evaluated is not significantly increased.

The V-5 reload fuel assemblies are mechanically and hydraulically compatible with the current LOPAR fuel assemblies, control rods and reactor internals interfaces. Also, implementation of V-5 does not cause a significant change in the physics characteristics of the VCSNS cores beyond the normal range of variation seen from cycle to cycle. Thus, both fuel types satisfy the design basis for the VCSNS as proposed for this amendment.

Thimble plug removal has a negligible impact on the system and component structural adequacy but does cause core bypass flow to increase. The revised core thermal-hydraulic design and safety analysis, however, show that the DNB penalty due to removal of the thimble plug is more than offset by the increase in DNB margin resulting from the use of the ITDP and V-5 fuel.

The proposed changes have been assessed from a core design and safety analysis standpoint. No increase in the probability of occurrence of any accident was identified but an extensive reanalysis, as described in the Transition Safety Evaluation, was required to demonstrate compliance to the revised VCSNS Technical Specifications. These reanalyses applied methods which have been previously found acceptable by the NRC. The results, which include transition core effects, show changes in consequences of accidents previously analyzed. However, the results are all clearly within pertinent acceptance criteria and demonstrate the plant's capability to operate safely at 100% power. Thus, it is concluded that there is no significant increase in the consequences of an accident previously evaluated.

b. The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created.

These proposed changes do not significantly effect the overall method and manner of VCSNS operation and can be accommodated without compromising the performance or qualification of safety-related equipment. Thus, the creation of a new or different kind of accident from any previously evaluated accident is not considered a possibility.

c. The margins (sic) of safety as defined in the bases for Technical Specifications is not significantly reduced.

The evaluations and analyses described herein show some changes in the consequences of previously analyzed accidents. In some cases, an increase in event consequences occurs and may reduce margin. However, in all cases, the results of the changes are clearly within all pertinent design and safety acceptance criteria. Thus, there is no significant reduction in the margin of safety as a result of the proposed changes.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. The staff has concluded that while the margins have been reduced and event consequences have been increased, these impacts are insignificant because: (1) the core reload uses V-5 fuel which is not significantly different from previous cores at the Summer Station; (2) the changes to the Technical Specifications are as a result of the core reload and not because of any significant change made to the acceptance criteria for Technical Specifications; and (3) the analytical methods used in the required reload analysis have been previously found acceptable by the NRC. Therefore, the staff agrees with the conclusion of the licensee's determination. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

*NRC Project Director:* Elinor G. Adensam

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment requests:* May 31, 1988 (TS 240)

*Description of amendment requests:* The proposed amendment would modify the Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 Technical Specifications (TS), by revising the following TS definitions:

1. Definitions 1.0.M, 1.0.M.1, 1.0.M.2, 1.0.M.3, and 1.0.M.4, Mode of Operation, are changed to:

a. Directly link the mode of operation to the position of the reactor mode switch.

b. Permit the position of the reactor mode switch to be temporarily changed for performance of a test or other operation while the unit does not change its mode of operation.

c. Make these definitions applicable only when there is fuel in the reactor. The unit would be considered not to be in any defined mode of operation or operational condition without fuel in the reactor vessel.

d. Delete extraneous information which describes the selection functions of the reactor mode switch. Specify exceptions to the definitions of modes of operation and operational conditions relative to the reactor mode switch position.

2. Definition 1.0.S, Core Alterations, is changed to:

a. Specify the specific core components whose addition, removal, relocation, or movement within the reactor vessel constitutes a core alteration.

b. Specify that handling of these core components only constitutes core alteration when there is fuel in the reactor vessel.

c. Permit a core alteration to be completed as necessary to leave the unit in a safe, conservative condition when suspension of the core alteration is required.

3. Definitions 1.0.H, 1.0.I, 1.0.J, 1.0.K, 1.0.L, and 1.0.X are changed to make these definitions consistent with the definitions of 1.0.M., 1.0.M.1, 1.0.M.2, 1.0.M.3, and 1.0.M.4 which link the mode of operation directly to the reactor mode switch position, and improve the clarity and consistency of these definitions.

a. A new definition is added which defines startup as "The withdrawing of control rods to make the reactor critical."

b. Administrative changes are made to the limiting conditions and surveillance requirements to invoke the terms defined in a concise manner.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated or (3) involve a significant reduction in a margin of safety.

1. The proposed changes do not result in a change in the plant configuration. Rather they attempt to apply a cohesive set of definitions and reference them throughout the body of the technical specifications. Since the proposed change does not affect the manner in which the plant was designed to operate.

there is not an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not affect normal or emergency operating procedures for the plant. These changes are mostly administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes actually increase the overall safety of the plant by explicitly defining phrases in the technical specifications that were previously open to interpretation.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Assistant Director:* Suzanne Black

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment requests:* September 14, 1987 (TS 87-38)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) proposes to change Table 3.3-5 of the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS). The proposed change will add requirements to the response time test of the containment ventilation isolation function when initiated by a high containment pressure signal or a low pressurizer pressure signal.

*Basis for proposed no significant hazards consideration determination:* In its submittal, TVA provided the following reason for the proposed change:

Section 15.4.1.1.5 of the SQN Final Safety Analysis Report (FSAR) describes the effect of containment purging on the Loss of Coolant Accident (LOCA) analysis. This analysis assumes that containment purge is isolated 5.5 seconds after the postulated break. The analysis also assumes 6.5 seconds for the isolation of the upper and lower containment air radiation monitors. These assumptions are currently verified by response time testing, but not as a requirement of Technical Specification [TS] 3.3.2.1.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided in its application the following analysis:

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on the the criteria established in 10 CFR 50.92c. Operation of SQN in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change adds requirements for response time testing of the containment ventilation isolation function. This testing is currently performed, but not as a requirement of TS 3.3.2.1. By requiring the response time testing of the isolation function, the plant is ensured of being bounded by the accident analysis.

2. Create the possibility of a new or different kind of accident from any accident previously evaulated. The addition of the requirement for response time testing of the containment ventilation isolation ensures that SQN is bounded by its FSAR accident analysis. Since the response time testing is presently performed, the requirement does not change the function or operation of the equipment.

3. Involve a significant reduction in a margin of safety. The proposed testing requirement will be used to ensure that the testing presently performed continues to be conducted. By performing the response time test of the containmemt ventilation isolation function, the current margins of safety for the plant are verified.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Assistant Director:* Suzanne Black

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendments requests:* July 25, 1988 (TS 88-09)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Unit 1 Technical Specifications (TS). The change is to revise Table 3.6-1, "Bypass Leakage Paths to the Auxiliary Building," to add four potential bypass leakage paths associated with the penetrations for the hydrogen analyzer system.

*Basis for proposed no significant hazards consideration determination:* In its amendment request, TVA provided the following discussion on the proposed change:

During the review of a design change notice (DCN) issued to enhance the hydrogen analyzer calibration process, it was discovered that the current system design contained a potential pathway for the release of radionuclides to the environment following a postulated loss of coolant accident (LOCA). Previously, the hydrogen analyzer system was considered a closed system with respect to containment isolation.

This proposed technical specification change is needed for unit 1 to identify the bypass leakage paths to the Auxiliary Building. Inclusion of these potential leakage paths in table 3.6-1 of the unit 1 technical specifications ensures that these bypass leakage paths are tested in accordance with 10 CFR 50, Appendix J, and specification 3.6.1.2. This change is similar to a previously approved technical specification change (87-46) for unit 2 that was submitted to NRC on March 1, 1988.

Modifications to the unit 1 hydrogen analyzer system are being performed to eliminate the potential bypass leakage to the environment. In order to comply with specification 3.6.4.1 for operable hydrogen analyzers, the unit 1 modifications will be completed before entering mode 2. These deficiencies were also reported to NRC in Licensee Event Report (LER) 327/87077.

The Commission has provided Standards for determining whether a significant hazards determination exists in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the hydrogen analyzer system bypass penetrations to table 3.6-1 ensures that the penetrations are properly tested in accordance with [TS] surveillance requirement 4.6.1.2.e. This testing does not affect the probability or consequences of previously evaluated accidents. The hydrogen analyzer system is not required to mitigate design basis events but is used to provide post-LOCA [post-Loss-of-Coolant Accident] information to the operator in

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compliance with NUREG-0737. The hydrogen analyzer system does not contribute to the probability of leakage paths from containment to the environment. The remaining potential bypass leakage paths are into the ABSCE [Auxiliary Building Secondary Containment Enclosure] and are included in table 3.6-1 as such. Eliminating the leakage paths to the environment will decrease the consequences of an accident. The offsite dose analysis of record (Final Safety Analysis Report, section 15.5.3) is not affected by moving the potential release point of the hydrogen analyzer system from the annulus to the ABSCE. This is because the total primary containment leakage remains unchanged, as do the assumptions that 75 percent of the leakage is to the annulus and 25 percent of the leakage is to the Auxiliary Building. The change in potential release points only changes the allowable leakage for each individual penetration. The change does not impact systems or components used to mitigate postulated accidents. The probability or consequences of previously evaluated accidents has not been altered.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The inclusion of the hydrogen analyzer system bypass penetrations in table 3.6-1 identifies the penetrations as being within the scope of surveillance requirement 4.6.1.2.e. The leak rate testing required by this surveillance does not create the possibility of a new type of accident. The changes made to the hydrogen analyzer system do not affect the function or operation of the system. The changes are made to eliminate potential leakage paths from containment to the environment. The change does not adversely affect other systems; therefore, no new accident scenarios are created.

(3) Involve a significant reduction in a margin of safety. The proposed change ensures that the hydrogen analyzer system bypass penetrations are routinely tested under the requirements of surveillance requirement 4.6.1.2.e. This testing ensures that the plant is bounded by the offsite dose analysis of record. As described above, the offsite dose analysis of record is not affected by the proposed change; and the margin of safety as defined by the technical specification bases is not changed. The modifications to the hydrogen analyzer system eliminate a potential bypass leakage path to the environment and bring the system into compliance with containment isolation requirements. Any leakage will be into the ABSCE where it is processed by ABGTS [Auxiliary Building Gas Treatment System]. The technical specification change is made to reflect the potential bypass leakage paths to the Auxiliary Building. Because the potential for unprocessed bypass leakage is eliminated, the actual margin of safety is increased.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

*Attorney for Licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Assistant Director:* Suzanne Black

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.**

*Date of application for amendments:* May 10, 1988, superceded May 26, 1988.

*Description of amendments:* The amendments revise the corporate management position title from Senior Vice President to Vice President-Nuclear throughout Section 6, Administrative Contols. It also deletes the requirement to forward certain items to the Senior Vice President, now the Vice President-Nuclear.

*Date of issuance:* July 18, 1988

*Effective date:* July 18, 1988

*Amendment Nos.:* 78, 70

*Facility Operating License Nos. NPF-2 and NPF-8.* Amendments revise the Technical Specifications.

*Date of initial notice in* Federal Register: June 15, 1988 (53 FR 22398) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* George S. Houston Memorial Library, 212 W. Burdesbaw Street, Dothan, Alabama 36303

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois**

*Date of application for amendments:* June 22, 1988, supplemented July 14, 1988 and July 18, 1988.

*Brief description of amendments:* These amendments revise 3.7.5.e.(2) of the Technical Specification Action Statement concerning the ultimate heat sink to state that the provisions of Technical Specification 3.0.4 are not applicable.

*Date of issuance:* July 21, 1988

*Effective date:* July 21, 1988

*Amendment Nos.:* 20, 20

*Facility Operating License Nos. NPF-37 and NPF-66.* Amendments revised the Technical Specification.

*Public comments requested as to proposed no significant hazards consideration:* Yes

*Date of initial notice in* Federal Register: July 8, 1988 (53 FR 25710). The initial Federal Register notice provided a 30-day opportunity for requests for hearing on the amendment and for public comments on the Commission's proposed no significant hazards consideration determination. It noted that if emergency circumstances

occurred, the Commission may issue the amendment before the expiration of the 30-day period, provided it made a final no significant hazards consideration determination. Such circumstances have occurred and the Commission has made such a final determination and has issued the amendment. If any requests for hearing submitted before August 8, 1988 are granted, the hearing will be held after issuance of the amendment. August 8, 1988 is the end of the 30-day period provided in the initial notice for submission of hearing requests.

*Comments Received:* No

The Commission's related evaluation of the amendment, finding of emergency circumstances, final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 21, 1988.

*Attorney for licensee:* Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

*Date of application for amendments:* January 18, 1988

*Brief description of amendments:* These amendments revise the Technical Specifications to: (1) change the shutdown and reporting requirements resulting from high specific activity of the reactor coolant; (2) change the curve on page 3/4 4-40 to more conservative cold overpressure protection systems setpoints; (3) allow other indications, in addition to the absence of alarms, to be used to verify accumulator borated water level and nitrogen cover pressure; (4) correct typographical errors on Byron pages 3/4 6-23 and 3/4 7-14; (5) make Table 5.7-1 consistent with the FSAR and Section XI of the ASME code; and (6) correct and update the titles of various management personnel, and clarify the authority of some Quality Assurance personnel.

*Date of issuance:* July 27, 1988

*Effective Date:* July 27, 1988

*Amendment Nos.:* 21, 21 for Byron, 10, 10 Braidwood

*Facility Operating Licenses Nos. NPF-37, NPF-66, NPF-72, and NPF-77* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 6, 1988 (53 FR 11367). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units No. 2 and 3, Grundy County, Illinois**

*Date of application for amendments:* November 26, 1986 and January 14, 1988

*Brief description of amendments:* This amendment modified paragraph 3.I of Provisional Operating License DPR-19 for Dresden Unit 2 and paragraph 3.H of Facility Operating License DPR-25 for Dresden Unit 3 to require compliance with the revised Physical Security Plan. This plan was updated to conform to the latest requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

*Date of issuance:* July 22, 1988

*Effective date:* July 22, 1988

*Amendment Nos.:* 99, 95

*Provisional Operating License No. DPR-19 and Facility Operating License No. DPR-25:* This amendment revised the license.

*Date of initial notice in* **Federal Register:** May 4, 1988 (53 FR 15907). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1988

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of application for amendment:* November 19, 1987

*Brief description of amendment:* This amendment revises the Fermi-2 Technical Specifications to correct errors in Section 3/4.8.4.5, "Standby Liquid Control System Associated Isolation Devices," by deleting from Table 3.8.4.5-1 the specification of two circuit breaker positions that do not exist in the plant. The breakers that perform the isolation function are still in the Table.

*Date of issuance:* July 27, 1988

*Effective date:* July 27, 1988

*Amendment No.:* 22

*Facility Operating License No. NPF-43.* The amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 9, 1988 (53 FR 7589) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* June 29, 1987, as supplemented December 4, 1987, and April 1, 1988.

*Brief description of amendments:* The amendments modified Technical Specification Table 4.3-1 "Reactor Trip System Instrumentation Surveillance Requirements" to delete the requirements to test the reactor coolant flow rate in the bypass loops in which Resistance Temperature Detectors are installed to measure the hot leg and cold leg temperatures.

*Date of issuance:* July 27, 1988

*Effective date:* July 27, 1988

*Amendment Nos.:* 49 and 42

*Facility Operating License Nos. NPF-35 and NPF-52.* Amendments revised the Technical Specifications.

*Dates of initial notices in* **Federal Register:** December 30, 1987 (52 FR 49223) and May 18, 1988 (53 FR 17788) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* February 15, 1988

*Brief description of amendments:* The amendments modified the Technical Specifications to permit separation of the diesel generator 24 hour test run and the hot restart with Full Engineered Safety features load test.

*Date of issuance:* July 28, 1988

*Effective date:* July 28, 1988

*Amendment Nos.:* 51 and 44

*Facility Operating License Nos. NPF-35 and NPF-52.* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: May 18, 1988 (53 FR 17789) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* May 6, 1988

*Brief description of amendments:* The amendments changed the Technical Specifications by extending application of "F-star" steam generator tube plugging criterion for the life of the plants.

*Date of issuance:* July 19, 1988

*Effective date:* July 19, 1988

*Amendment Nos.:* 89 and 70

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 15, 1988 (53 FR 22400) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application of amendments:* February 22, 1988

*Brief description of amendments:* The amendments changed Technical Specifications (TS) 3.0.4, 4.0.3, 4.0.4, and 3.0/4.0 bases statements in response to the Commission's Generic Letter No. 87-09 on this subject entitled, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The amendments also upgraded the Unit 1 TS for TS 3.0.1, 3.0.2, and 3.0.3 to STS content.

*Date of Issuance:* July 19, 1988

*Effective Date:* July 19, 1988

*Amendment Nos.:* 98 and 33

*Facility Operating License Nos. DPR-67 and NPF-16:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 23, 1988 (53 FR 9503) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1988

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

**Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida**

*Date of application for amendments:* January 16, 1987, as superseded April 5, 1988

*Brief description of amendments:* The amendments revised the refueling shutdown margin from 10 to 5 percent (delta k)/k, corrected a typographical error and made an administrative change to the Turkey Point Technical Specifications.

*Date of issuance:* July 18, 1988

*Effective date:* July 18, 1988

*Amendment Nos.* 132 and 126

*Facility Operating Licenses Nos. DPR-31 and DPR-41:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 15, 1988 (53 FR 22401) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

**Illinois Power Company, Soyland Power Cooperative, Inc., and Illinois Power Cooperative, Inc. Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* December 1, 1986, October 1, 1987, and November 30, 1987.

*Brief description of amendment:* The amendment modified paragraph 2.E of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

*Date of issuance:* July 26, 1988

*Effective date:* July 26, 1988

*Amendment No.:* 3

*Facility Operating License No. NPF-62.* This amendment revised the license.

*Date of initial notice in* Federal Register: May 4, 1988 (53 FR 15919) The Commission's related evaluation of the amendment is contained in a letter to the Illinois Power Company, et al, dated July 26, 1988 and a Safeguards Evaluation Report dated July 26, 1988

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* January 28, 1988 as supplemented May 20, 1988

*Brief description of amendment:* The amendment revised the Technical Specifications by deleting the operability and surveillance requirements for the Log Power Channels at power levels above 1.0E-4% of Rated Thermal Power and adds the requirement to perform surveillance requirements and operability upon reinstatement of the Log Power Level Trip.

*Date of issuance:* July 19, 1988

*Effective date:* July 19, 1988

*Amendment No.:* 40

*Facility Operating License No. NPF-38.* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 15, 1988 (53 FR 22402) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* May 20, 1988.

*Brief description of amendment:* The amendment revised the Technical Specifications by removing the organizational charts from Section 6 in accordance with the guidance provided in Generic Letter 88-06 dated March 22, 1988. This action supersedes the licensee's request dated December 23, 1987 and as noticed on April 6, 1988 (53 FR 11373).

*Date of issuance:* July 19, 1988
*Effective date:* July 19, 1988
*Amendment No.:* 41
*Facility Operating License No. NPF-38.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22404). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1988.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Dates of application for amendment:* May 2, 1988, as revised June 3, 1988
*Brief description of amendment:* The amendment changes the Technical Specifications by replacing Figure 6.2.2-1, "Offsite Organization," and Figure 6.2.2-1, "Unit Organization," with requirements that capture the essential aspects of the organization structure that are defined by these figures.
*Date of issuance:* July 29, 1988
*Effective date:* July 29, 1988
*Amendment No.* 45
*Facility Operating License No. NPF-29.* This amendment revises the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 29, 1988 at 53 FR 24513. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1988.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Dates of application for amendment:* May 2, 1988, as revised June 3, 1988
*Brief description of amendment:* The amendment changes the Technical Specifications by replacing Figure 6.2.2-1, "Offsite Organization," and Figure 6.2.2-1, "Unit Organization," with requirements that capture the essential aspects of the organization structure that are defined by these figures.
*Date of issuance:* July 29, 1988
*Effective date:* July 29, 1988
*Amendment No.* 45
*Facility Operating License No. NPF-29.* This amendment revises the Technical Specifications and/or License.
*Date of initial notice in* **Federal Register:** June 29, 1988 at 53 FR 24513. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1988.
*No significant hazards consideration comments received:* No
*Local Public Document Room Location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York**

*Date of application for amendment:* April 28, 1988
*Brief description of amendment:* Revise Technical Specification Table 3.3.9-2 to reduce the allowable value for the Feedwater System/Main Turbine Trip System Reactor Water Level - High Level 8 from less than or equal to 209.3 inches to less than or equal to 203.8 inches.
*Date of issuance:* July 25, 1988
*Effective date:* July 25, 1988
*Amendment No.:* 7
*Facility Operating License No. NPF-69:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22403). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 1988.
*No Significant hazards consideration comments received:* No
*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* January 20, 1987 as supplemented on February 26, 1988.
*Brief description of amendments:* These amendments modified the Technical Specifications (TS) in the areas of: (a) the surveillance requirements for primary coolant sample analysis, and (b) the definition of surveillance frequency for the diesel generators.
*Date of issuance:* July 18, 1988
*Effective date:* July 18, 1988
*Amendments Nos.:* 133 and 136
*Facility Operating License Nos. DPR-44 and DPR-56:* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** March 25, 1987 (52 FR 9579) The supplemental letter provided supporting information requested by the staff and made no change to the original amendment request. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1988.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of application for amendments:* June 1, 1988 (TS 245-T)
*Brief description of amendments:* The amendments modify the technical specifications by changing the operability requirements for the Standby Gas Treatment System and the Control Room Emergency Ventilation System to allow system modifications and maintenance needed for restart to proceed in parallel with the fuel inspection and reconstitution program currently in progress.
*Date of issuance:* July 20, 1988
*Effective date:* July 20, 1988, and shall be implemented within 60 days
*Amendments Nos.:* 151, 147, 122
*Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22407) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 1988
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.
*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.
*NRC Assistant Director:* Suzanne Black

**The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of application for amendment:* October 2, 1987

*Brief description of amendment:* This amendment revised Section 4.2.1(2) of the EPP to reflect changes in the sampling procedure for *Corbicula* from areas adjacent to the Perry intake and discharge structures to sampling of sediments in the Perry raw water systems. The sampling procedures at the Eastlake Power Plant to determine the presence of *Corbicula* are also revised.

*Date of issuance:* July 20, 1988

*Effective date:* July 20, 1988

*Amendment No.* 15

*Facility Operating License No. NPF-58.* This amendment revised the Environmental Protection Plan, Appendix B to the license.

*Date of initial notice in* **Federal Register:** March 9, 1988 (53 FR 7604) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1988 and an Environmental Assessment dated July 8, 1988 (53 FR 27248 July 19, 1988).

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

**Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* September 17, 1987

*Brief description of amendment:* The amendment revised Technical Specification Figure 6.2-1 to reflect the removal of the Manager Nuclear Operations Support position and the name change of the Procurement and Materials Management Division in the Operating Corporation Organization, as well as the removal of unnecessary detail from Figure 6.2-1.

*Date of Issuance:* July 15, 1988

*Effective date:* July 15, 1988

*Amendment No.:* 17

*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 4, 1987 (52 FR 42373) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 9, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* July 15 and 19, 1988, as supplemented July 21, 1988

*Brief description of amendments:* The amendments corrected Technical Specification 4.8.1.1.2.e.6(c) to recognize that four, rather than three, diesel generator trips are not automatically bypassed during tests simulating a loss-of-offsite power in conjunction with an engineered safety features actuation test signal.

*Date of issuance:* July 22, 1988

*Effective date:* July 15, 1988

*Amendment Nos.:* 90 and 71

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* No

The Commission's related evaluation is contained in a Safety Evaluation dated July 22, 1988.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*NRC Project Director:* David B. Matthews

Dated at Rockville, Maryland, this 2nd day of August, 1988.

For the Nuclear Regulatory Commission

**Steven A. Varga,**

*Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[Doc. 88-17938 Filed 8-9-88; 8:45 am]

BILLING CODE 7590-01-D

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**[Docket Nos. 50-327 And 50-328; License Nos. DPR-77 And DPR-79]**

**Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Issuance of Director's Decision**

Notice is hereby given that the Director, Office of Special Projects, has taken action with regard to Petition for Action under 10 CFR 2.206 received from Mr. Albert Bates, on behalf of certain named individuals, dated March 24, 1988, with respect to the Sequoyah Nuclear Plant. The Petition requested that the Commission issue an immediate emergency order suspending full power operation of the facility until remedial action can be taken. The Petition asserted as grounds for this request that the licensee has failed to meet the requirements of Regulatory Guides 1.9 and 1.108 with respect to the capacity margin and performance testing of the Emergency Diesel Generator (EDG) system.

By letter dated March 28, 1988, the Director of the Office of Special Projects denied the Petitioner's request for emergency action and notified the Petitioner that a decision would be issued regarding the Petitioner's technical concerns. The staff has now completed its evaluation of these

concerns and the Director of the Office of Special Projects has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR § 2.206," (DD–88–12) which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's Regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 3rd day of August, 1988.

For the Nuclear Regulatory Commission.

**James G. Partlow,**

*Director, Office of Special Projects.*

[FR Doc. 88–18055 Filed 8–9–88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50–361 and 50–362]**

### Southern California Edison Co., et al.; Issuance of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 64 to Facility Operating License No. NPF–10 and Amendment No. 53 to Facility Operating License No. NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendment was effective as of the date of issuance.

These amendments revise a number of Technical Specifications (TS), and are in partial response to applications for amendments designated as PCN–231, 233 and 234. The Technical Specifications that are changed by each PCN are as follows: PCN–231—Figure 3.1–2 of TS 3/4.1.3.6, "Regulating CEA Insertion Limits"; PCN–233—TS 3/4.10.2, "Group Height, Insertion and Power Distribution Limits," and Tables 2.2–1 and 3.3–1; and PCN–234—TS 3/4.5.1, "Safety Injection Tanks."

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on March 31, 1988 (53 FR 10452). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The applications for amendments dated December 14, 1987 and supplemental letters dated April 14 and May 6, 1988, (2) Amendment No. 64 to License No. NPF–10 and Amendment No. 53 to License No. NPF–15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 3rd day of August 1988.

For The Nuclear Regulatory Commission.

**D.E. Hickman,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–18053 Filed 8–9–88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50–361/362]**

### Southern California Edison Co. et al; Partial Denial of Amendments to Facility Operating Licenses and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied part of a request by Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (licensees) for amendments to Facility Operating License Nos. NPF–10 and NPF–15, issued to the licensees, for operating of the San Onofre Nuclear Generating Stateion (SONGS), Units 2 and 3, located in San Diego County, California. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on March 31, 1988 >(53 FR 10452).

The amendments, as proposed by the licensees, would revise Technical Specification (TS) Surveillance Requirement 4.3.3.2(a) by changing the frequency of performance of the Incore Detection System Channel Chech from 7 days to 31 Effective Full Power Days. The proposed change would allow verification of incore detector operability to be performed in conjunction with other routine surveillances.

The staff finds that there are plant-unique characteristics of SONGS 2 or 3 which would justify deviation from the Incore Detection System Operability Requirements specified in the Standard Technical Specifications. In addition, the staff does not consider the reported error introduced by a single soft (undetected) detector failure to be insignificant. The degree of compromise to measurement quality which is acceptable is a judgment which should be considered generically.

By September 9, 1988, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary for the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service, Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, and Orrick, Herrington & Sutcliff, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

For further details with respect to this action, see: (1) The application for amendments dated December 14, 1987, and (2) the Commission's Notification of Denial forwarded to the licensees by letter dated April 19, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC,

and at the General Library, University of California at Irvine, Irvine, California 92713. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 3rd day of August 1988.

For the Nuclear Regulatory Commission.

**Donald E. Hickman,**

*Project Manager, Project Director V, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88-18054 Filed 8-9-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

*Agency Clearance Officer:* Kenneth A. Fogash (202) 272-2124.

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

*New*

Revised Proposed Rule 11a-3

File No. 270—321

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501, *et seq.* ], the Securities and Exchange Commission has submitted for OMB approval revised proposed Rule 11a-3 under the Investment Company Act of 1940 [15 U.S.C. 80a, *et seq.*].

Revised proposed Rule 11a-3 would allow certain open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same group of funds.

Revised proposed Rule 11a-3 would add an estimated annual burden of two hours per open-end investment company that chose to rely on the rule. If all open-end investment companies relied on the rule, then the total annual burden is estimated to be 4,900 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-60004, and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

July 29, 1988.

[FR Doc. 88-18041 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

**[Rel. No. IC-16515; 812-7040]**

### Imperial Portfolios, Inc.; Application

August 4, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Imperial Portfolios, Inc. (the "Fund").

*Relevant 1940 Act Sections:* Exemption requested under Section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1 promulgated thereunder.

*Summary of Application:* Applicant seeks an order to permit the Fund to impose a contingent deferred sales charge ("CDSC") on certain redemptions of shares of its High Yield Institutional Fund and other existing and subsequently created series of the Fund.

*Filing Date:* The application was filed on May 26, 1988. An amendment, the substance of which has been set forth in a letter to the Commission, dated August 3, 1988, and which thus is included herein, will be filed during the notice period.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 29, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 9275 Sky Park Court, San Diego, California 92123, Attention: Robert W. Blanchard, Esq.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chretien-Dar, Law Clerk, (202) 272-3022 or Curtis R. Hilliard, Special Counsel at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicant's Representations

1. The Fund is a series company registered as an open-end management investment company under the 1940 Act and is organized as a Maryland corporation. On April 12, 1988, the Fund filed a post-effective amendment to its registration statement under the Securities Act of 1933 and the Investment Company Act of 1940. The Fund proposes to commence a public offering of the shares of the High Yield Institutional Fund ("Institutional Fund") upon the effectiveness of a post-effective amendment amending such post-effective amendment. The Fund requests that the order, if granted, apply to any future series of the Fund that imposes a contingent deferred sales charge under the same circumstances described herein.

2. The Fund's principal underwriter and distributor is First Imperial Investor Services, Inc. ("Principal Underwriter"). Caywood-Christian Capital Management, Inc. is the Fund's investment adviser for the Institutional Fund.

3. Applicant proposes to offer the shares of the Institutional Fund with a maximum front-end sales charge ("FESC") of 1.25% of the offering price. In addition, a contingent deferred sales charge ("CDSC") will be imposed on certain redemptions of shares of the Institutional Fund. The amount of the CDSC imposed, if any, will depend on the period of time that the shares being redeemed have been held by the redeeming shareholder. The CDSC will be two percent of the amount redeemed for shares held less than six months; one percent for shares held less than a year; .75 percent for shares held less than two years; .50 percent for shares held less than three years; and .25 percent for shares held less than four years. No charge will be assessed on shares being redeemed after four years or on shares

acquired through the reinvestment of dividends or distributions. Furthermore, no charge will be imposed on the amount of redemption proceeds equal to the increase, if any, in the net asset value of the shares over the net asset value of the shares at the time of purchase. Shares redeemed will be first charged against: 1. shares held over four years; 2. shares acquired through the reinvestment of dividends or distributions; 3. shares representing any increase in net asset value over such value of the shares at time of purchase; and 4. shares purchased less than four years prior to the date of redemption. The proceeds of the CDSC will be paid to the Principal Underwriter.

4. The Fund does not propose to waive the CDSC under any circumstances, because the circumstances under which waivers typically are given to shareholders, such as (i) the death or disability of the shareholder or (ii) distributions from retirement plans, are not applicable to the institutional investors to whom shares of the Institutional Fund will be offered.

5. The fund proposes to finance distribution expenses for the Institutional Fund under a distribution plan adopted pursuant to Rule 12b–1 under the 1940 Act ("Plan"). The distribution fees will be paid to the Principal Underwriter to reimburse the Principal Underwriter for expenses directly or indirectly incurred in the distribution of shares and the administration of shareholder accounts. The Principal Underwriter may pay maintenance fees to selected dealers who have entered into a sales agreement with the Principal Underwriter. In the review of the Plan pursuant to 12b–1 under the 1940 Act, the board of directors of the Fund will consider the use by the Principal Underwriter of revenues raised by the CDSC and the front-end sales charge.

6. The FESC together with the CDSC and any maintenance fees paid under the Plan will not exceed the maximum sales charge permitted under the rules of the National Association of Securities Dealers.

**Applicant's Legal Conclusions**

1. The exemptions requested are appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Investors will have the advantages of reduced transaction costs on their investments in shares of the Institutional Fund as a result of the CDSC because the Fund will be able to charge a low FESC. The CDSC will permit more of the offering price to be invested in shares of the Institutional Fund.

2. In addition, the CDSC is appropriate as a means of compensating for maintenance fees and other expenses of distribution and shareholder account administration that would have been paid under the Plan had the early redemption of shares not occurred. The payment of maintenance fees permits the Fund to pay commissions over a four year period instead of a lump sum commission at the time of sale. However, the early redemption of shares precludes the Principal Underwriter or selected dealer who sold such shares from receiving such maintenance fees. The CDSC is intended to compensate the Principal Underwriter for the loss of such maintenance fees. All or a portion of the CDSC may be reallowed to the selected dealer who sold the shares redeemed. In addition to foreshortening the period for which maintenance fees are paid, the redemption of shares reduces the base on which the distribution fees of the Plan are calculated, and early redemption prevents the recovery of expenses through payments under the Plan. By imposing a lump sum payment in the form of a CDSC to the redeeming shareholder, these expenses can be recovered. The amount, computation and timing of the CDSC are designed to promote fair treatment of all shareholders.

**Applicant's Conditions**

If the requested order is granted, Applicant agrees to the following condition:

1. Applicant will comply with the provisions of Rule 12b–1 under the 1940 Act and as it may be amended from time to time.

2. In its periodic review of the Plan pursuant to Rule 12b–1 under the 1940 Act, the board of directors of the Fund will consider the use by the Principal Underwriter of revenues raised by the CDSC and FESC. In this regard, the board will consider the extent to which expenses incurred in the promotion of sales of shares have been offset through payments under such Plan and the receipt of CDSC and FESC.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–18088 Filed 8–9–88; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 35–24688]**

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

August 4, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 29, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Northeast Utilities et al. (70–7304)**

Northeast Utilities ("Northeast"), a registered holding company, and its subsidiaries, Western Massachusetts Electric Company ("WMECO") and The Quinnehtuk Company ("Quinnehtuk"), each located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("NUSCO"), The Rocky River Realty Company ("Rocky River"), and Northeast Nuclear Energy Company ("NNECO"), each located at Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("Holyoke"), located at Canal Street, Holyoke, Massachusetts 01040, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) promulgated thereunder.

By order dated December 24, 1986 (HCAR No. 24282), Northeast, CL&P,

WMECO, Quinnetuk, NUSCO, Rocky River, and NNECO were authorized, in relevant part, to participate in the Northeast system money pool ("Money Pool") through December 31, 1988. Northeast was authorized to make short-term borrowings of up to $60 million aggregate amount at any one time outstanding to be evidenced by notes issued to banks or to a dealer in commercial paper, to make open account advances to its subsidiary companies and to participate in the Money Pool only insofar as it has funds available for lending through the Money Pool. Northeast now proposes to amend its application-declaration to permit it to effect external borrowings from commercial banks and other lending institutions for the additional purpose of providing funds through the Money Pool to certain Money Pool participants. Only NUSCO, NNECO, Rocky River and Quinnehtuk will be eligible to borrow through the Money Pool the proceeds of Northeast's external borrowings. The funds derived by Northeast from short-term borrowings authorized by the Commission will be applied, together with other funds available to Northeast, to the making of capital contributions or open account advances to its subsidiary companies, and for the purpose of providing excess funds to the Money Pool and of making loans through the Money Pool to NUSCO, NNECO, Rocky River and Quinnehtuk.

Loans from the proceeds of extenal borrowings by Northeast will bear interest at the same rate paid by Northeast on its borrowings, and no such loans may be prepaid if that would cause Northeast to incur additional costs, unless Northeast is made whole for such additional costs.

**Columbia Gas System, Inc., et al. (70–7437)**

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and certain of its subsidiaries, Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of New York, Inc., Columbia Gas of Virginia, Inc., Columbia Gas of Maryland, Inc., and Lynchburg Gas Company ("Lynchburg"), all located at 200 Civic Center Drive, Columbua, Ohio 43215, and Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027, Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77027, Columbia Gas Development of Canada LTD., 639–5th Avenue, SW., Calgary, Alberta, Canada T2P 0M9, and Commonwealth Gas Pipeline Corporation, Commonwealth Gas Services, Inc., Commonwealth Propane, Inc., all located at 800 Moorefield Park Drive, Richmond, Virginia 23236, and Columbia Gas System Service Corporation, Columbia LNG Corporation, Columbia Hydrocarbon Corporation, Columbia Alaskan Gas Transmission Corporation, Columbia Coal Gasification Corporation, The Inland Gas Company, Inc., Tristar Ventures Corporation, all located at 20 Montchanin Road, Wilmington, Delaware 19807, and Big Marsh Oil Company, Columbia Natural Resources, Inc., both located at 1700 MacCorkle Avenue, SW., Charleston, West Virginia 25314 ("Subsidiaries"), have filed a post-effective amendment to the application-declaration in this matter pursuant to sections 6(b), 9, 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By prior Commission order herein (HCAR No. 24541, December 23, 1987), Columbia was authorized to provide long and short-term financing to its Subsidiaries through the issuance of installment promissory notes and the sale of common stock by the Subsidiaries to Columbia, and through advances on open account or through an intrasystem money pool. By that same order, Columbia was authorized through December 31, 1989, among other things, to borrow up to $500 million from a group of commercial banks under a short-term credit agreement. Since that order, Columbia has acquired Lynchburg (HCAR No. 24599, March 15, 1988).

Columbia proposes to incorporate Lynchburg into its Subsidiary financing arrangements to provide Lynchburg with financing for the period of 1988–1989. To partially fund Lynchburg's $3,200,000 capital program, Columbia and Lynchburg proposes to purchase from Lynchburg up to $1 million principal amount of installment promissory notes. These loans would have the same terms and conditions as previously approved by the Commission for the other Subsidiaries. Lynchburg's short-term requirements through 1989 are estimated to be up to $3,500,000. Columbia and Lynchburg propose to fund these requirements, first, through open account advances, or second, through Intrasystem Money Pool borrowings both on the same terms and conditions previously approved for the other Subsidiaries.

Columbia also proposes to replace the existing $500 million short-term credit agreement with a new $500 million Credit Facility ("Facility"). The Facility will provide a form of note for the amount of each participating bank's commitment, including Morgan Guaranty Trust Company of New York, as agent, and will permit repayment and reborrowing throughout the renewable 365-day term of the agreement, expected to be executed on or about September 30, 1988. The notes will bear interest at Columbia's option at one of the following rates: the fluctuating Prime Rate; the Adjusted Certificate of Deposit Rate ("CD") plus ½%; or the Adjusted London Interbank Offered Rate ("LIBOR") plus ⅜%. The maturities on the notes will be: up to 30 days for Prime Rate loans; 30, 60, 90 or 180 days for CD loans; and 1, 2, 3 or 6 months on LIBOR loans. In addition, an annual commitment fee of ¼% times the amount of the undrawn portion of the commitment will be paid to the participating banks.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

**Jonathan G. Katz,**

*Secretary*

[FR Doc. 88–18040 Filed 8–9–88; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Government Income Fund Inc.
Common Stock, $.01 Par Value (File No. 7–3658)
Anchor Glass Container Corp.
Common Stock, $.01 Par Value (File No. 7–3659)
Angell Real Estate Co.
Common Stock, $01 Par Value (File No. 7–3660)
Atlanta Gas & Light Co.
Common Stock, $5 Par Value (File No 7–3661)
Blue Arrow PLC
American Depository Shares, No Par Value (File No. 7–3662)
Calfed Income Partners, L.P.
Depository Units, No Par Value (File No. 7–3663)
Crystal Oil Corp.
Common Stock, $.01 Par Value (File No. 7–3664)
Cyclops Corp.

Common Stock, $1 Par Value (File No. 7–3665)
Central Louisiana Electric, Inc.
Common Stock, $4 Par Value (File No. 7–3666)
CML Group Inc.
Common Stock, $.10 Par Value (File No. 7–3667)
CoastAmerica Corp.
Common Stock, $.01 Par Value (File No. 7–3668)
Convertible Holdings Inc.
Common Stock, $.10 Par Value (File No. 7–3669)
Davis Water & Waste Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3670)
Fedders Corp.
$1.75 Cumulative Convertible Exchange Preferred $1 Par Value (File No. 3671)
First Fidelity Bancorp
$2.15 Cumulative Convertible B Preferred $1 Par Value (File No. 3672)
First Republic Bancorp
Class A, $1 Par Value (File No. 7–3673)
First Boston Strategic Income Fund Inc.
Common Stock, $.001 Par Value (File No. 7–3674)
Freeport McMoran Cooper Inc.
Class A, $.10 Par Value (File No. 7–3675)
Freeport McMoran Gold Co.
Common Stock, $.10 Par Value (File No. 7–3676)
Grace (W.R.) & Co. (Holding Co.)
Common Stock, $1 Par Value (File No. 7–3677)
Hills Department Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–3678)
Hanson Trust PLC
Warrants, Purchase 1 ADS at $18 (File No. 7–3679)
La-Z Boy Chair Co.
Common Stock, $1 Par Value (File No. 7–3680)
Lincoln National Convertible Securities Fund Inc.
Common Stock, $.001 Par Value (File No. 7–3681)
MAI Basic Four Inc.
Common Stock, $.25 Par Value (File No. 7–3682)
Michigan Consolidated Gas Co.
Common Stock, No Par Value (File No. 7–3683)
Monarch Capital Corp.
Common Stock, $1 Par Value (File No. 7–3684)
Morgan Products Ltd.
Common Stock, $.10 Par Value (File No. 7–3685)
National Fuel Gas Co., N.J.
Common Stock, No Par Value (File No. 7–3686)
Nuveen Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7–3687)
National Heritage Inc.
Common Stock, $.01 Par Value (File No. 7–3688)
Nova Corp. of Alberta
Common Stock, No Par Value (File No. 7–3689)
Plains Petroleum Co.
Common Stock, $.01 Par Value (File No. 7–3690)
PSI Holdings Inc.
Common Stock, No Par Value (File No. 7–3691)
R.B. Industries Inc.
Common Stock, No Par Value (File No. 7–3692)
Sahara Casino Partners, L.P.
Depository Units, No Par Value (File No. 7–3693)
Savin Corp.
Convertible Preferred B, $.80 Par Value (File No. 7–3694)
Savis Corp.
Convertible Preferred D, $.10 Par Value (File No. 7–3695)
SCECORP (Holding Co.)
Common Stock, $4.16 Par Value (File No. 7–3696)
SCOR U.S. Corp.
Common Stock, $.30 Par Value (File No. 7–3697)
System Integrators Inc.
Common Stock, No Par Value (File No. 7–3698)
Texas Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3699)
Thor Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–3700)
USG Corp.
Common Stock, $4 Par Value (File No. 7–3701)
American Shared Hospital Services
Common Stock, No Par Value (File No. 7–3702)
Arctic Alaska Fisheries Corp.
Common Stock, $.01 Par Value (File No. 7–3703)
First Wyoming Bankcorp.
Common Stock, No Par Value (File No. 7–3704)
Grangers Exploration Ltd.
Common Stock, No Par Value (File No. 7–3705)
Howtek Inc.
Common Stock, $.01 Par Value (File No. 7–3706)
Hudson Foods Corp.
Class A, $.01 Par Value (File No. 7–3707)
Pauley Petroleum Inc.
Common Stock, $1 Par Value (File No. 7–3708)
Pegasus Gold Inc.
Common Stock, No Par Value (File No. 7–3709)
Riser Foods Inc.
Class A, No Par Value (File No. 7–3710)
TRC Co., Inc.
Common Stock, $.10 Par Value (File No. 7–3711)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–18042 Filed 8–9–88; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Bond International Gold, Inc.
Ordinary Shares, $.01 Par Value (File No. 7–3721)
Wyse Technology
Common Stock, No Par Value (File No. 7–3722)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three

copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges prusuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-18043 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

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**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.**

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

CityTrust Bancorp, Inc.
Common Stock, $2.50 Par Value (File No. 7-3642)
Federal Home Loan Mortgage Corp.
Preferred Stock, $10 Par Value (File No. 7-3643)
Affiliated Publications, Inc.
Series A Common Stock, $.01 Par Value (File No. 7-3644)
Spring Industries, Inc.
Class A Common Stock, $.50 Par Value (File No. 7-3645)
Blackestone Income Trust (The)
Common Stock, $.01 Par Value (File No. 7-3646)
Colonial Intermediate High Income Fund
Shares of Beneficial Interest, No Par Value (File No. 7-3647)
Emerald Mortgage Investments Corporation
Common Stock, $.01 Par Value (File No. 7-3648)
Kemper Intermediate Government Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-3649)
MFS Multimarket Total Return Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3650)
Nuveen Premium Income Municipal Fund Inc.
Common Stock, $.01 Par Value (File No. 7-3651)
Warner Computer Systems Inc.
Common Stock, $.01 Par Value (File No. 7-3652)
Amcast Industrial Corp.
Common Stock, No Par Value (File No. 7-3653)
Comprehensive Care Corp.
Common Stock, $.01 Par Value (File No. 7-3654)
Diagnostic Products Corp.
Common Stock, No Par Value (File No. 7-3655)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-18044 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

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**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.**

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Burlington Resources, Inc.
Common Stock, $.01 Par Value (File No. 7-3638)
Minnesota Power & Light Company
Common Stock, No Par Value (File No. 7-3639)
PAR Technology Corporation
Common Stock, $.02 Par Value (File No. 7-3640)
Spain Fund, Inc.
Common Stock, $1 Par Value (File No. 7-3641)
Comprehensive Care Corporation
Common Stock, $.10 Par Value (File No. 7-3656)
Oregon Steel Mills, Inc.
Common Stock, $.01 Par Value (File No. 7-3657)
Chaparral Steel Company
Common Stock, $.10 Par Value (File No. 7-3712)
Freeport-McMoran Copper Company, Inc.
Class A Common Stock, $.10 Par Value (File No. 7-3713)
Bank of New England Corporation
Common Stock, $5 Par Value (File No. 7-3714)
Dixon Ticonderoga Company
Common Stock, $1 Par Value (File No. 7-3715)
Hawaiian Electric Industries, Inc.
Common Stock, $3.33 ⅓ Par Value (File No. 7-3716)
Symbol Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7-3717)
Wheeling-Pittsburg Steel Corporation
$5 Cumulative Preferred (File No. 7-3718)
Wheeling-Pittsburg Steel Corporation
6% Prior Preferred (File No. 7-3719)
Wyse Technology
Common Stock, No Par Value (File No. 7-3720)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-18045 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted on or before September 9, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416. Telephone: (202) 653–8538

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–7340

*Title:* A Survey of Innovative Activity
*Form Nos.:* Survey
*Frequency:* On occasion
*Description of Respondents:* The survey provides information which will enable the Office of Advocacy to broaden its innovation base. It will be a random sampling distributed equally among five divisions: construction; manufacturing; transportation and utilities; finance, insurance and real estate; and services.
*Annual Responses:* 3,855
*Annual Burden Hours:* 767.5

*Title:* Business Development Publication Survey
*Form Nos.:* Questionnaire
*Frequency:* On occassion
*Description of Respondents:* The survey provides information that will allow the SBA to evaluate its Business Development Publications on a continuing basis.
*Annual Responses:* 24,000
*Annual Burden Hours:* 4,000

*Title:* Procurement Automated Source System Company
*Form No.:* SBA 1167
*Frequency:* On occasion
*Description of Respondents:* The Small Business Act, as amended, requires productive facilities of small business concerns and to coordinate the most effective utilization of their productive capacity.
*Annual Responses:* 40,000
*Annual Burden Hours:* 6,700.

**William A. Cline,**
*Chief, Administrative Information Branch.*

[FR Doc. 88–18014 Filed 8–9–88; 8:45 am]
BILLING CODE 8025–01–M

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**[Application No. 04/04–7246]**

### Business Capital Investment Co., Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Business Capital Investment Company, Inc., 327 South Road, High Point, North Carolina 27280 for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.*).

The proposed officers, directors and shareholders of the Applicant are as follows:

| Name | Title or relationship | Percentage of shares owned |
|---|---|---|
| John Chung-San Lee, 1903 Candelar Drive, High Point, North Carolina 27260 | President, Director | 100 |
| Judy Wang Lee, 1903 Candelar Drive, High Point, North Carolina 27260 | Vice President, Director | — |
| Wayne C. Curry, 604 Blanton Place, Greensboro, North Carolina | Secretary/Treasurer | — |
| Christopher S. Liu, 42 Saddle Rock Drive, Poughkeepsie, New York 12603 | General Manager | — |

The Applicant, a North Carolina corporation, will begin operations with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the States of North Carolina and South Carolina.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice if further given that any person may not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the High Point, North Carolina area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 4, 1988.

**Robert G. Lineberry,**
*Deputy Associate Administrator for Investment.*

[FR Doc. 88–18056 Filed 8–9–88; 8:45 am]
BILLING CODE 8025–01–M

[Application No. 06/06-0297]

**UNCO Ventures, Inc.; Application for License to Operate as a Small Business Investment Co.**

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by UNCO Ventures, Inc. (Applicant), 7th Floor, 909 Fannin Street, Houston, Texas 77010–1060, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1988)).

The officers, directors and sole shareholders of the Applicant are:

*Name and Title*

John Gatti, 3678 Hidden Dr. #602, San Antonio, Texas 78217, President, Director

Kevin E. Moyles, 5010 Grove West Blvd., Stafford, Texas 77477, Vice President, Treasurer, Secretary

Harlon E. Martin, Jr., 1105 Wickersham, Houston, Texas 77042, Independent contractor

Larrie A. Weil, 4407 University Blvd., Dallas, Texas 75205, Director

Michael E. Gibbons, 18209 Sandy Grove, Nassau Bay, Texas 77058, Director

Underwood, Neuhaus & Co. Incorporated, 7th Floor, 909 Fannin Street, Houston, Texas 77010–1060, Sole Shareholder of Record

Underwood, Neuhaus, & Co. is a wholly-owned subsidiary of Franklin Financial Services, Inc., which is wholly-owned by Franklin Savings Association. Franklin Savings Corporation, One Franklin Plaza, Ottawa, Kansas 66067, owns 95 percent of Franklin Savings Association. The only more-than-ten percent shareholder of Franklin Savings Corporation is Ernest M. Fleischer, 1240 Huntington Road, Kansas City, Missouri 64113.

The Applicant, a Delaware corporation, will begin operations with a capitalization of $3,000,000 and will conduct its operations principally in the State of Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in the Houston, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

Dated: August 3, 1988.

[FR Doc. 88-18075 Filed 8-9-88; 8:45 am]

BILLING CODE 8025-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Determination in Compliance With Section 109 of Public Law 100-202**

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative has made the following determination in compliance with the requirements of section 109 of the continuing resolution on the Fiscal Year 1988 budget, H.J. Res. 395 (P.L. 100–202, 101 Stat. 1329).

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Beverly Vaughan, Director for International Government Procurement Trade Policy, Office of the U.S. Trade Representative ("USTR"), (202) 395–7305. Written comments or submissions from interested parties or the public may be directed to the United States Trade Representative, 600 17th St. NW., Washington, DC 20506. Commenters should state the nature of their interest and should discuss the reasons and evidence for any proposed finding of discrimination. Business confidential material submitted in accordance with the provisions of 15 CFR 2003.6 will be accorded confidential treatment.

**Discussion:**

The continuing resolution of the Fiscal Year 1988 Budget, H.J. Res. 395, was signed and enacted as Pul. L. 100–202 on Dec. 22, 1987. Section 109(a) of Pub. L. 100–202 sets forth certain requirements and prohibitions applicable to Federal public works procurement. Section 109(c) requires the USTR to maintain a list of certain foreign countries ("Section 109 List"). This list was published initially on December 30, 1987 (52 FR 49244). It included Japan, as required by section 109(a), but included no other countries at that time.

Section 109(b) provides that not later than 30 days after enactment of Pub. L. 100–202, the USTR shall determine whether other foreign countries deny fair and equitable market opportunities for products and services of the United States in bidding and procurement for certain construction projects. The relevant such projects are those that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country. If a foreign country is found to deny such opportunities, the USTR must then include that country on the Section 109 List.

In making his determination under section 109(b), the USTR is required to take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information or evidence as is available concerning discrimination in construction projects against United States products and services. The legislative history of section 109 directs the USTR to pay special attention to information which is supplied either informally or formally by U.S. architecture, construction, and engineering companies.

In compliance with the 30 day requirement described above, the USTR issued a second notice on January 21, 1988 (53 FR 2140) stating that on the basis of the information available to us in the short time between enactment of Pub. L. 100–202 and that date, including information submitted to us by construction industry associations and United States Construction companies active in international construction, sufficient information was not available to permit the USTR to make a board, formal determination with respect to any other foreign country that such country is denying such fair and equitable market opportunities. We also announced that the USTR will add to the Section 109 List at any time if sufficient information indicates that any country is denying such fair and equitable market opportunities.

Since the enactement of Pub. L. 100–202, we have gathered such information as is available and received public comment from interested parties on foreign government procurement practices in public construction projects in foreign countries. In the course of our review implementing this law, information concerning the legal framework for foreign government procurement policies in the construction field has been obtained. While it shows that many objectionable policies do exist within the legal framework of

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other countries, comments received from interested parties concerning the real market experiences of U.S. suppliers within those frameworks in foreign countries have not produced any recommendation that action with regard to specific countries be taken under section 109(c). Therefore, the list published on December 30, 1987, at FR 49244 will remain in effect as the Section 109 List.

In our ongoing efforts to comply with the requirements of Pub. L. 100–202, the USTR will continue to review information submitted by interested parties regarding experiences in the market place which indicate that any specific foreign country should be reexamined for addition to the Section 109 List. Any further changes to the list will be published in the **Federal Register** as decisions are taken by the USTR.

**Sandra Kristoff,**

*Executive Director for Policy Coordination Chairwoman, Trade Policy Staff Committee.*

[FR Doc. 88–18027 Filed 8–9–88; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD 88–060]**

### Towing Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Personnel Safety and Workplace Standards will meet on August 24, 1988 in Room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. The agenda for the meeting follows:

(a) Programs for Chemical Drug and Alcohol Testing for Commercial Vessel Personnel (as published in the **Federal Register** on July 8, 1988—FR 25–926).

Attendance is open to the public.

Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2420, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–0449.

Dated: August 4, 1988.

**R.J. Asaro,**

*Commander, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.*

[FR Doc. 88–18072 Filed 8–9–88; 8:45 am]

BILLING CODE 4910–14–M

## Maritime Administration

### Change of Name of Approved Trustee

Notice is hereby given that effective June 6, 1987, InterFirst Bank Houston, N.A., Houston, Texas, was merged with and into RepublicBank, Houston, Texas, under the Charter of the latter and under the title First Republic Bank Houston, N.A.

Dated: August 4, 1988.

By Order of the Maritime Administrator.

**James E. Saari,**

*Secretary.*

[FR Doc. 88–18117 Filed 8–9–88; 8:45 am]

BILLING CODE 4910–81–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 5, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number*: 1545–0173.
*Form Number*: 4563.
*Type of Review*: Revision.
*Title*: Exclusion of Income for Residents of American. Samoa.
*Description*: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.
*Respondents*: Individuals and households.
*Estimated Number of Respondents*: 100.
*Estimated Burden Hours Per Response*: 25 minutes.
*Frequency of Response*: Annually.
*Estimated Total Reporting Burden*: 41 hours.
*Clearance Officer*: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer*: Milo Sunderhauf, (202) 395–6880, Office of Mangement and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88–18085 Filed 8–9–88; 8:45 am]

BILLING CODE 4810–25–M

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**U.S. Customs Service**

*OMB Number:* 1515–0110.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Declaration by Person Who Processed Goods Abroad.
*Description:* This declaration is needed to insure duty free entry of articles which were exported for processing and brought back into the U.S.
*Estimated Number of Respondents:* 730.
*Estimated Burden Hours Per Response:* 15 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 2,260.
*Clearance Officer:* B.J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88-18086 Filed 8-9-88; 8:45 am]

BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545-0960.
*Form Number:* 1041S.
*Type of Review:* Revision.
*Title:* U.S. Fiduciary Income Tax Return for Nontaxable Simple Trusts.
*Description:* Internal Revenue Code section 6012 requires that an annual income tax return be filed for trusts. Data is used to determine that the trusts and beneficiaries filed the proper returns and paid the correct tax.
*Respondents:* Individuals and households, Businesses or other for-profit.
*Estimated Number of Respondents:* 25,000.
*Estimated Burden Hours Per Response:* 48 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 20,083 hours.
*OMB Number:* 1545-0986.
*Form Number:* 1120-DF.
*Type of Review:* Revision.
*Title:* U.S. Income Tax Return for Designated Settlement Funds (Under section 468B).
*Description:* IRS uses Form 1120-DF to monitor the activities of designated settlement funds and to collect the tax on income under section 468B.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 10.
*Estimated Burden Hours Per Response:* 2 hours and 49 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 281 hours.
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88-18087 Filed 8-9-88; 8:45 am]

BILLING CODE 4810-25-M

### Internal Revenue Service

## Tax Counseling for the Elderly; Availability of Application Packages

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Availability of application packages.

**SUMMARY:** This document provides notice of the availability of Application Packages for the 1989 Tax Counseling for the Elderly Program.

**DATE:** Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1989 Tax Counseling for the Elderly Program is September 9, 1988.

**ADDRESS:** Application Packages may be requested by contacting: Internal Revenue Service, Tax Counseling for the Elderly Program, Taxpayer Service Division, TR:T:I, Room 7215, 1111 Constitution Ave., NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marion Butler, Taxpayer Service Division, TR:T:I, Room 7215, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 566-4904. This telephone number is not toll-free.

**SUPPLEMENTARY INFORMATION:** Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978 (92 Stat. 2810). Regulations were published in the **Federal Register** at 44 FR 72113 of December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private of public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Applications are being solicited before the FY 1989 budget has been approved and, therefore, cooperative agreeements will be entered into subject to funds being appropriated. Subject to funding, volunteers may receive reimbursement for expenses incurred in training and in providing tax return assistance, and sponsoring agencies and organizations may receive reimbursement for administrative expenses. The Tax Counseling for the Elderly Program is referenced in the Catalog of Federal Domestic Assistance in § 21.006.

**Neil Patton,**

*Chief, Taxpayer Information and Education Branch.*

[FR Doc. 88-18073 Filed 8-9-88; 8:45 am]

BILLING CODE 4830-01-M

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# Sunshine Act Meetings

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** Tuesday, August 9, 1988, time—See Below*.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:**

**MATTERS TO BE CONSIDERED:**

**Open to the Public**

*1. Voluntary Standards Policy—Proposed Amendment*

The Commission will consider amendments to the Commission's regulations (16 CFR 1031 and 1032) concerning staff participation in voluntary standards activities.

*2. Hair Dryer Voluntary Standard*

The staff will brief the Commission on the monitoring of the hair dryer voluntary standard.

**Closed to the Public**

*3. Enforcement Matter OS #3926*

The staff will brief the Commission on issues related to enforcement matter OS #3926.

*This meeting will start at the conclusion of the Oral Presentation on the Lawn Darts Notice of Proposed Rulemaking. The oral presentation is scheduled to begin at 10:00 a.m.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301–492–6800.

**Sheldon D. Butts,**
*Deputy Secretary.*
August 2, 1988.

[FR Doc. 88–18199 Filed 8–8–88; 3:35 pm]
BILLING CODE 6355–01–M

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**FEDERAL COMMUNICATIONS COMMISSION**

August 4, 1988.

**Deletion Of Agenda Item From August 4th Open Meeting**

The following item has been deleted from the list of agenda items scheduled for consideration at the August 4, 1988, Open Meeting and previously listed in the Commission's Notice of July 28, 1988.

**Agenda, Item No., and Subject**

Mass Media—5—Title: In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service: Review of Technical and Operational Requirements: Part 73–E, Television Broadcast Stations; Reevaluation of the UHF Television Channel and Distance Separation Requirements of Part 73 of the Commission's Rules. Summary: The Commission will consider further action in this proceeding on the technical, economic, legal, and policy issues relating to authorizing and establishing an advanced television system for terrestrial broadcasting.

Additional information concerning this item may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.
**H. Walker Feaster III,**
*Acting Secretary.*

Issued: August 4, 1988.

[FR Doc. 88–18097 Filed 8–5–88; 4:58 pm]
BILLING CODE 6712–01–M

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**FEDERAL ELECTION COMMISSION**

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, August 11, 1988 10:00 a.m.

**THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:** FY 1990 Budget Discussion.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**
*Secretary of the Commission.*

[FR Doc. 88–18198 Filed 8–8–88; 3:13 pm]
BILLING CODE 6715–01–M

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**FEDERAL HOME LOAN BANK BOARD**

**TIME AND DATE:** 4:00 p.m., August 9, 1988.

**PLACE:** 1700 G St., NW., Washington, DC, 6th Floor Board Room.

**STATUS:** Open Meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Martha Gravlee.

**MATTERS TO BE CONSIDERED:** Depositor Preference.

**Nadine Y. Washington,**
*Assistant Secretary.*

[FR Doc. 88–18127 Filed 8–8–88; 10:40 pm]
BILLING CODE 6720–01–M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 12:00 noon, Monday, August 15, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 5, 1988.
**James McAfee,**
*Associate Secretary of the Board.*

[FR Doc. 88–18128 Filed 8–8–88; 11:20 am]
BILLING CODE 6210–01–M

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**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Thursday, August 18, 1988 at 2:30 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   a. Certain Patented and Trademarked Chemiluminescent Compositions, Components Thereof and Methods of Using the Same (Docket Number 1457).
   b. Certain Track Lighting Systems and Components Thereof (Docket Number 1458).
5. Any items left over from previous agenda.

**CONTACT PERSONS FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252–1000.

**Kenneth R. Mason,**
*Secretary.*
August 5, 1988.

[FR Doc. 88–18119 Filed 8–8–88; 10:34 am]
BILLING CODE 7020–02–M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 15, 1988.

A closed meeting will be held on Monday, August 15, 1988, at 1:00 p.m. An open meeting will be held on Monday, August 15, 1988, at 2:00 p.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the item listed for the closed meeting in closed session.

The subject matters of the closed meeting scheduled for Monday, August 15, 1988, at 1:00 p.m., will be:

FOIA Appeal
*Amicus* participation.

This subject matter of the open meeting scheduled for Monday, August 15, 1988, at 2:00 p.m., will be:

Consideration of whether to adopt Rule 10b–21 under the Securities Exchange Act of 1934. Rule 10b–21 prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement or Form 1–A relating to the same class of equity securities is filed and ending at the time that sales may be made in the offering, from covering such short sales with offered securities purchased from an underwriter or broker or dealer participating in the offering of such securities. For further information, please contact Ivette Lopez at (202) 272–2848.

At times changes in Commission priorities require alteration in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272–2467.

**Jonathan G. Katz,**

*Secretary.*

August 5, 1988.

[FR Doc. 88–18155 Filed 8–8–88; 1:36 pm]

BILLING CODE 8010–01–M

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# Corrections

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 301

[LR-133-86]

### Proposed Rulemaking; Returns Relating to Persons Receiving Contracts From Federal Executive Agencies

*Correction*

In proposed rule document 88-17134 beginning on page 28669 in the issue of Friday, July 29, 1988, make the following corrections:

1. On page 28670, in the first column, in the eighth line from the bottom, "property" was misspelled".

**§ 1.6050M-1 [Corrected]**

2. On page 28671, in the first column, in § 1.6050M-1(a)(2), in the third line, "flies" should read "files".

3. On the same page, in the second column, in § 1.6050M-1(b)(2)(ii)(D), in the third line, "lessee" was misspelled.

4. On the same page, in the same column, in § 1.6050M-1(b)(2)(iii), after the eleventh line add "SBA and shall be treated as a contract of the".

5. On the same page, in the third column, in § 1.6050M-1(b)(2)(iv)(B), in the first line "automated" should read "Automated".

6. On the same page, in the same column, in § 1.6050M-1(b)(2)(iv)(C), in the second line after "by the Veterans Administration"the text beginning with "on" should be flushed to the left-hand margin.

7. On page 28672, in the first column, in § 1.6050M-1(d)(1), the fifth line should read "Federal executive agency entered into on or".

BILLING CODE 1505-01-D

federal register

Wednesday
August 10, 1988

Part II

# Department of Transportation

**Office of the Secretary**

**48 CFR Part 1246**

**Use of Warranties in Major System Acquisitions; Final Rule**

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VOL 53 ISS 154 AG 10 1988 UMI



**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**48 CFR Part 1246**

**[Docket 45415; Amendment No. 1246-1]**
**RIN 2105-AB15**

## Use of Warranties in Major System Acquisitions

**AGENCY:** Office of the Secretary, DOT.
**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, the amendments to the Department's Transportation Acquisition Regulation (TAR) which were published as a proposed rulemaking in the **Federal Register** on February 4, 1988 (53 FR 3222). This rule amends the Department's TAR to include policy and procedures for use of warranties in major system acquisitions of the United States Coast Guard (USCG) and to provide additional guidance for use of warranties in all other Department of Transportation (DOT) contracts. The establishment of policy and procedures for use of warranties in major system acquisitions by the Coast Guard is required by the Department of Transportation Appropriation Act of 1986, (Pub. L. 99-190) (10 U.S.C. 2304 note), and would serve as additional guidance with respect to major system acquisitions for all other DOT administrations.

**EFFECTIVE DATE:** September 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jim McNulty at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366-4271.

**SUPPLEMENTARY INFORMATION:** Two parties submitted comments. As a result of these comments, this final rule incorporates a number of changes to the rule as published on February 4, 1988. The comments received and our response to each are discussed in detail below. Comments were received from Metro-Dade Transit Agency of Miami, Florida, and from the Chief, Procurement Management Division, U.S. Coast Guard. The comments are discussed in detail below.

### The Comments

*Comments From Metro-Dade Transit Agency*

1. TAR 1246.701, Definitions—Metro-Dade suggested that the definitions of "Acceptance", "Correction", and "Warranty" should be included in this subpart by reference to FAR 46.701.

*Response:* This suggestion was not adopted because these terms are defined at Federal Acquisition Regulation (FAR) section 46.701. Adoption would violate the Office of Management and Budget's (OMB) policy that the agency regulations for supplementing the FAR not duplicate information already contained in the FAR.

2. With respect to TAR 1246.703, Criteria for Use of Warranties—In the acquisition of most major systems, Metro-Dade stated: "There are several system components which are subject to normal trade warranties and cost involved will be the same regardless of whether or not a warranty is included. The contract language should ensure that the Government does not pay additional sums for these trade warranties and also does not reduce the coverage provided by including either specific or general warranty language applicable to those components. Since these trade warranties can extend far beyond the completion of the contract, the Government should make further provision to require the Contractor to have these warranties executed in writing for the benefit of the Government and/or that the Contractor will enforce all warranties for the benefit of the Government if directed by the Contracting Officer (see contract language in FAR 52.246-21(g))."

*Response:* This suggestion was not adopted because the proposed rule already covers this subject adequately at 1246.770-1(a), which states: "For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained (see FAR 46.703(d)), and the contractor shall warrant that all systems or components delivered under the contract will be free from defects in material and workmanship at the time of acceptance or delivery as specified in the contract." Metro-Dade's comment indicates that TAR section 1246.770, Use of warranties in major system acquisitions by Coast Guard, may require clarification if changes are made to 1246.703 as they suggest. The suggestions were not adopted, however, we are changing the second sentence of this section for clarifications purposes, to read: "Other administrations within the Department may use these procedures as guidelines for major system acquisitions."

No change was made with respect to the issue of paying excessive costs for commercial warranties because: (1) In a competitive situation the contract price will be driven by such competition and a contractor would have little motive to overcharge for warranties; and (2) in situations of other than full and open competition, the process of obtaining certified cost or pricing data and negotiating a fair and reasonable price is adequate to ensure that only reasonable warranty costs are paid.

Metro-Dade's recommendation to include language in the TAR to indicate that "the contract language set forth in FAR 52.246-21(g), may be used in any Major Systems Acquisition," was not incorporated because to do so would be redundant to the FAR, and violate the OMB policy which prohibits such redundancy.

3. Metro-Dade recommends that TAR 1246.706, Warranty Terms and Conditions, be changed to require that the "beginning" as well as the "end" of the warranty period be defined contractually. Metro-Dade believes that it is often more difficult to identify what begins the warranty period, and that the need to clarify the terms of the warranty on key equipment in long-term contracts with multiple completion milestones is essential. The commenter recommends that this section require definition of warranty start criteria, duration, ending, and cause for automatic extension.

*Response:* We concur with this recommendation, and have revised paragraph (a)(9) of TAR section 1246.706, Warranty Terms and Conditions, accordingly.

### Executive Order 12291

Under OMB Bulletin No. 85-7, the Director, Office of Management and Budget, withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This final rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

### Executive Order 12612

This rule does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment pursuant to Executive Order 12612.

**National Environmental Policy Act**

DOT has concluded that promulgation of this rule does not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

**Regulatory Flexibility Act**

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not significantly change the current procedures of FAR Subpart 46.7, which already authorize contracting officers to require warranties in contracts. The few small entities that are affected will be reimbursed for providing warranties as part of the contract price or cost considerations.

**Paperwork Reduction Act**

There are no requirements for collection of information contained in this rule.

**Administrative Procedure Act**

Section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) exempts rules relating to public contracts from the prior notice and comment procedures normally required for informal rulemaking. However, the FAR provides that views of agencies and non-government parties must be considered in formulating acquisition policies and procedures on proposed significant revisions (FAR Subpart 1.5). The Department has determined that this rule does not represent a significant rule; however, a 45-day comment period was provided, and all the comments received have been considered.

**List of Subjects in 48 CFR Part 46**

Government contracts, Federal Procurement Regulations.

This final rule is issued under the delegation of authority in 49 CFR 1.59 (q).

Issued in Washington, DC, on August 4, 1988.

**Melissa J. Allen,**

*(Acting) Assistant Secretary for Administration.*

Accordingly, 48 CFR Part 1246 is amended to read as follows:

## PART 1246—[AMENDED]

1. The authority citation is revised to read as follows:

**Authority:** 40 U.S.C. 486(c); Pub. L. 99-190 (10 U.S.C. 2304 note); 48 CFR 1.301; 49 CFR 1.59.

2. Subpart 1246.7 is revised to read as follows:

**Subpart 1246.7—Warranties**

1246.701 Definitions.
1246.702 General.
1246.703 Criteria for use of warranties.
1246.704 Authority for use of warranties.
1246.705 Limitations.
1246.706 Warranty terms and conditions.
1246.770 Use of warranties in major system acquisitions by Coast Guard.
1246.770-1 Policy.
1246.770-2 Tailoring warranty terms and conditions.
1246.770-3 Warranties on government-furnished property.
1246.771 Cost benefit analysis.
1246.772 Waiver and notification procedures.

## Subpart 1246.7—Warranties

**1246.701 Definitions.**

"At no additional cost to the United States," as used in this subpart, means at no increase in price for firm-fixed-price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see FAR 46.707) or at no increase in estimated cost/or fee for cost-reimbursement contracts.

"Defect," as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

"Design and manufacturing requirements," as used in this subpart, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

"Major system," as used in this subpart, means a system or major subsystem used directly by the agency to carry out its mission(s), as defined by DOT Order 4200.14B, Major Systems Acquisition Review and Approval. This term does not include related support equipment, such as ground-handling equipment, training devices and accessories thereto; unless an effective warranty for the system would require inclusion of such items. This term does not include commercial items sold in substantial quantities to the general public as described in FAR 15.804-3(c).

"Performance requirements," as used in this subpart, means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

"Prime contractor," as used in this subpart, means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

**1246.702 General.**

In addition to the considerations outlined in FAR 46.702, the following areas should be addressed by all DOT administrations in relation to the use of warranties in DOT contracts:

(a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by FAR Part 7 as implemented by DOT Order 4200.14B, Major Systems Acquisition Review and Approval.

(b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.

(c) Each administration within DOT shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and accumulate data relative to warranty costs. Each administration shall make an annual report to the Director of Acquisition and Grant Management, on warranty related costs and enforcement experience, no later than 60 days after the end of each fiscal year.

**1246.703 Criteria for use of warranties.**

(a) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by FAR 46.703 for all DOT administrations. Contracting officers should negotiate a warranty that meets or exceeds the requirements of section 1246.706 of this part where such warranty is advantageous and conforms to Departmental policy.

(b) The use of warranties in the procurement of major systems by the United States Coast Guard is mandatory, unless a waiver is authorized. The use of warranties in major system acquisitions by DOT administrations other than the Coast Guard is voluntary.

(c) Warranties should be obtained only when they are cost beneficial. In order to determine whether use of a warranty would be cost beneficial, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs, and the contract file documented accordingly. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties for similar supplies or services.

**1246.704 Authority for use of warranties.**

(a) For any contract entered into by an operating administrations, other than a contract entered into by the Coast Guard for major system acquisitions, the contracting officer shall determine if a warranty clause is appropriate in accordance with 1246.703(c), prior to solicitation of a requirement. If a warranty is determined to be appropriate, he/she shall document the reason for inclusion of a warranty and identify the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply, and shall address why the warranty is appropriate under the criteria set forth in FAR 46.703. For DOT administration, other than the Coast Guard, the policy and procedures set forth in section 1246.770 of this part for use of warranties in major system acquisitions may be used as a guideline.

(b) Authority for use of warranties in the procurement of major systems by the Coast Guard is stated in section 1246.703 of this part. The policy and procedures on warranties set forth in section 1246.770 of this part are mandatory for Coast Guard. The Coast Guard shall use the procedure set forth in paragraph (a) above for including a warranty in procurements other than major system acquisitions.

**1246.705 Limitations.**

In addition to limitations set forth in FAR 46.705, the following restrictions are applicable to all DOT contracts:

(a) The Coast Guard is the only DOT administration which is authorized to include warranties in cost-reimbursement contracts for the production of major systems as required by 1246.770 of this part.

(b) Any written warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in section 1246.770–3 of this part.

(c) Any written warranty obtained shall specifically exclude coverage of combat damage.

**1246.706 Warranty terms and conditions.**

(a) In addition to those items set forth in FAR 46.706, the contracting officer, in developing the warranty terms and conditions, shall consider the following subjects, and where appropriate and cost beneficial shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing, and/or

(ii) An identified specification or revision thereof;

(3) Require that the system conforms with the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible.

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition, any DOT contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor be paid at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

**1246.770 Use of warranties in major system acquisitions by Coast Guard.**

Subsections 1246.770–1 through 1246.770–3 set forth policy and procedures for the Coast Guard to use in obtaining warranties from prime contractors when contracting for the production of a major system. Other administrations within the Department may use these procedures as guidelines for major system acquisitions.

**1246.770–1 Policy.**

The Coast Guard shall include written warranties in all contracts with prime contractors for major system acquisitions. When drafting warranty provisions for major system acquisitions, the items listed at 1246.706 should be considered. The warranties shall meet the following requirements (as well as those specified at 1246.771):

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with FAR 46.703(d) and 46.710.

(b) For systems or components provided in accordance with either design or performance requirements as specified in the contract or any modification to that contract, a written warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) above shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the United States, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract,

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(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(3) Equitably reduce the contract price.

(d) Any written warranty shall specifically exclude coverage of combat damage.

**1246.770–2 Tailoring warranty terms and conditions.**

As the objectives and circumstances vary considerably among major system acquisition programs, contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section (see FAR 46.706). Contracting officers for major system acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system). It is the Department's policy not to include in warranty clauses any terms that require contractor liability for loss, damage or injury to third parties.

**1246.770–3 Warranties on government-furnished property.**

A prime contractor for a major system acquisition shall not be required to provide the warranties specified in section 1246.770–2 of this part on any property furnished to that contractor by the United States except for defects in installation, and installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

**1246.771 Cost benefit analysis.**

It is the Department's policy to obtain warranties for a major system acquisition only when they are cost beneficial in accordance with 1246.703(c). If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated under section 1246.772 of this part.

**1246.772 Waiver and notification procedures.**

The Secretary of Transportation may waive the requirement for a written warranty for Coast Guard major acquisition systems when such waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. Waivers may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive the warranty requirement and the reasons supporting such a determination prior to granting the waiver. The written request for Secretarial waiver of the warranty requirement shall include, at a minimum:

(a) A brief description of the major system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(b) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(c) All documentation supporting the request for waiver, such as a cost-benefit analysis.

All waivers shall be forwarded via the Office of Acquisition and Grants Management for submission to the Secretary. The Coast Guard shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation, for use in answering inquiries.

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Part III

# Department of Education

34 CFR Part 675

College Work-Study and Job Location and Development Programs; Final Regulations

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**DEPARTMENT OF EDUCATION**

**34 CFR Part 675**

**College Work-Study and Job Location and Development Programs**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations for the College Work-Study (CWS) program. This program is authorized by the Higher Education Act of 1965 (HEA). These regulations will reduce administrative burden and provide institutions with greater flexibility in administering the College Work-Study Program.

**EFFECTIVE DATE:** Section 675.19 (published December 1, 1987) as amended by this regulation takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Margaret O. Henry or Kathy S. Gause, U.S. Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, (Regional Office Building 3, Room 4018), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732-4490.

**SUPPLEMENTARY INFORMATION:** The General Accounting Office (GAO) conducted a review of the College Work-Study program from July through December of 1982. The purpose of the review was to assess how well the program was being administered at selected colleges and universities. The review involved five institutions. The GAO found three areas in which some of the schools did not administer the program effectively: Failure to monitor class and work schedule conflicts, failure to resolve deficiencies in CWS timekeeping and payroll practices, and instances where students were not productively employed or adequately supervised. As a result of their review, the GAO published a report entitled, "Review of Institutional Management of the Federal College Work-Study Program."

The Secretary believed it was necessary to emphasize the schools' need to increase their monitoring of students' reported work hours and improve the adequacy of timekeeping and payroll practices. The existing regulations required an institution to maintain a time record showing the cumulative hours each student worked. On February 27, 1985 the Secretary published a Notice of Proposed Rulemaking (NPRM) in the Federal Register, 50 FR 8050-8086, that proposed to require institutions to maintain time records, for students paid on an hourly basis, which show the hours each student worked in clock time sequence. These records would show the specific times each student worked. Many of the commenters who responded expressed concern over the administrative burden associated with this proposal.

Based on comments received regarding the administrative burden associated with the proposal, the Secretary modified the provision in the final regulations published in the Federal Register of December 1, 1987, 52 FR 45738-45782. In order to complement existing payroll processes, the final regulations provided that the time record certification must contain, or be supported by, time records in clock time sequence. Institutions would not be required to implement a "punch in and out" procedure; however, time records must show the specific time each student worked each day.

While conducting a final review of the regulations for approval of recordkeeping and paperwork burden requirements, the Office of Management and Budget received additional public comments regarding the requirement that expressed concern over both the administrative burden associated with this provision and the need for it. OMB reviewed the GAO's report and concluded that the report was not extensive enough to warrant this mandatory change in institutional timekeeping practices. OMB also concluded that restricting an institution to only one method of maintaining its timekeeping and payroll records was burdensome and would adversely affect those institutions that would be required to reprogram payroll systems, thus leading to delays in the delivery of student aid. Based on its findings, OMB withheld approval of the burden and recordkeeping requirements contained in § 675.19 of the December 1, 1987 regulations. Consequently, when other sections of the regulations became effective on February 3, 1988, the Secretary agreed to modify § 675.19 and subsequently issue new regulations.

These final regulations amend § 675.19 of the December 1 regulations by incorporating the suggestion that institutions be allowed the option of maintaining time records in clock time sequence, or records which show the total hours worked per day. This revision is intended to reduce administrative burden and improve the timeliness of financial aid delivery without diminishing the effort to improve the adequacy of timekeeping and payroll practices. Although the Secretary is revising the regulations, the institution continues to be responsible for ensuring that CWS students work and earn the amount being paid, and that the work is performed in a satisfactory manner.

The public was invited to comment when the Notice of Proposed Rulemaking (NPRM) was published on February 26, 1985. The Office of Management and Budget did not approve § 675.19, therefore this section did not become effective on February 3, 1988 as did all other sections contained in the December 1, 1987 regulations. The publication of these amendments to § 675.19 as a final regulation is part of the same rulemaking process begun by the publication of the February 1985 NPRM for the College Work-Study program.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

**Assessment of Educational Impact**

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is also being gathered by other agencies or authorities of the United States.

**List of Subjects in 34 CFR Part 675**

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: College Work-Study Program, 84.033)

Dated: June 29, 1988.

**William J. Bennett,**

*Secretary of Education.*

The Secretary amends Part 675 of Title 34 of the Code of Federal Regulations as follows:

## PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

1. The authority citation for Part 675 is revised to read as follows:

**Authority:** 42 U.S.C. 2751–2756a, unless otherwise noted.

2. Section 675.19 is amended by revising the last sentence of paragraph (b)(2)(i) to read as follows:

**§ 675.19 Fiscal procedures and records.**

* * * * *

(b) * * *

(2) * * *

(i) * * * The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

* * * * *

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Part IV

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Parts 50, 58, 575 and 576**
**Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act; Final Rule**

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Parts 50, 58, 575 and 576**

**[Docket No. R-88-1359; FR-2387]**

## Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Emergency Shelter Grants Program established by the Stewart B. McKinney Homeless Assistance Act. The program authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, and for the payment of certain operating expenses and essential social service expenses in connection with emergency shelter for the homeless.

The purpose of the program is to help improve the quality of emergency shelters for the homeless, to make available additional emergency shelters, and to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, so that these individuals have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance they need to improve their situations.

**EFFECTIVE DATE:** October 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. Hearing or speech impaired individuals may call HUD's TDD number: (202) 426-0015. (These are not toll-free telephone numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

On December 17, 1986, the Department published a proposed rule and program requirements (51 FR 45278) implementing the Emergency Shelter Grants ("ESG") program contained in Title V, Part C of HUD's appropriation act for the 1987 fiscal year (H.R. 5313).[1] A final rule published on October 19, 1987 (52 FR 38864) replaced the 1986 proposed rule and program requirements and continues to govern the use and reallocation of funds appropriated for the 1986 ESG program.

On July 22, 1987, President Reagan approved the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77) (the "McKinney Act") reauthorizing with amendment the Emergency Shelter Grants program.[2] A proposed rule for the 1987 ESG program was published on November 6, 1987 (52 FR 42864). Under section 416(a) of the McKinney Act, HUD is required to operate the 1987 ESG program (and, thereafter, the ongoing ESG program) in accordance with the 1986 requirements until this final rule takes effect.

However, because the Department perceived that certain McKinney Act provisions required immediate implementation, a series of notices was published in the **Federal Register**. On August 14, 1987, the Department published a notice (52 FR 30628) implementing the Comprehensive Plan requirements contained in Subtitle A of the McKinney Act. On September 4, 1987, the Department published a notice (52 FR 33790) identifying the McKinney Act provisions that it intended to implement immediately, as well as those that would take effect under the final rule. Finally, on October 19, 1987, the Department published a notice (52 FR 38864) implementing the authority to waive the 15% limitation on essential services by units of local government.

### Discussion of Public Comments and Changes Made in the Final Rule

The Department received six public comments in response to its November 6, 1987 proposed rule. There follows a discussion of these comments and a review of the changes made in the final rule, both in response to public comments and to internal departmental initiatives.

[1] Sec. 101(g), Pub. L. 99-500 (approved October 18, 1986), Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986). For ease of reference, this rule refers to the Emergency Shelter Grants program established by the Homeless Housing Act of 1986 as the "1986 ESG program."

[2] For ease of reference, this rule refers to the Emergency Shelter Grants program authorized by the McKinney Act as the "1987 ESG program."

#### *Restriction on the Use of Grant Amounts with Respect to Buildings Owned by Primarily Religious Organziations*

In the final rule for the 1986 ESG program published on October 19, 1987, HUD modified its original ban on the use of grant funds to "renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities." The Department determined that the use of ESG funds for such capital improvements would be constitutionally permissible under certain conditions. One of these conditions required that the building (or portion of the building) to be improved with ESG funds be leased to a wholly secular entity, although the lessee could enter into a management contract authorizing the lessor religious organization to operate the facility.

The Department believes that this construct strikes a careful balance between avoiding constitutionally impermissible assistance to religious entities on the one hand, and allowing Emergency Shelter Grant funds to be used to renovate, rehabilitate or convert buildings owned by primarily religious organizations. This belief is supported by the fact that only three comments were received when this approach to the issue was again used in the proposed McKinney Act ESG rule published on November 6, 1987.

Moreover, one of these commenters—the Baptist Joint Committee on Public Affairs (BJCPA)—*opposed* relaxing the provisions that now enable religious organizations to undertake capital improvements under the ESG program. The BJCPA was particularly critical of § 576.21(c)(2), which provides that grant amounts may be used for the rehabilitation or renovation of buildings owned by primarily religious organizations only if "the building (or portion thereof) that is to be improved with the grant amounts has been leased to an existing or newly established, wholly secular entity."

The BJCPA contends that the words "(or portion thereof)" authorize the use of Federal funds for capital improvements of mixed-use facilities. It asserts that while it might be constitutionally permissible to use public funds to renovate a separate building that is religiously owned but wholly dedicated to a secular purpose, a mixed-use facility with a lessor religious organization operating the shelter "makes a mockery of the First Amendment's prohibition against government programs which directly and immediately advance religion."

Conversely, New Castle County in the State of Delaware objected to the requirement contained in the proposed rule that a secular entity must be established before grant amounts can be used to renovate, rehabilitate or convert a building owned by a primarily religious organization. It argued that a secular entity is not constitutionally required, and that adequate First Amendment protection can be provided by requiring an agreement between the grantee or State recipient and the nonprofit recipient, stipulating that the premises are to be used solely for secular purposes.

The City of Indianapolis also criticized the proposed capital improvement restrictions as they pertain to primarily religious organizations. It urged that the restrictions be made "more flexible" to allow "more discretion on the part of local officials" to determine whether use of the funds by a religious organization violates the constitutional mandate for separation of Church and State.

As previously discussed, the Department has undertaken an exhaustive constitutional analysis regarding the proper nature and scope of the capital improvement restrictions contained in the ESG program. It is the Department's view that the requirements established in this rule provide sufficient safeguards against providing impermissible assistance to religious organizations (*e.g.*, through the establishment of a wholly secular entity to receive the benefit of the ESG capital improvement funds, with any residual value of improvements reverting back to the original grantee if the property is not maintained as an emergency shelter for at least the useful life of the improvements), while still enabling religious organizations to respond to the urgent need for homeless shelters. Consequently, the Department has adopted the proposed requirements of § 576.21(c)(2) without modification.

*Continued Use Requirements*

Three comments were received opposing the continued use requirements established under §576.73 of the proposed rule. The City of Portland objected to the proposed requirement that any building in which ESG amounts are used to undertake activities described at §576.21(a)(3) (*i.e.*, maintenance, operation costs, insurance, utilities, furnishings) must be maintained as a shelter for the homeless for not less than three years. This objection was based on the assertion that Federal subsidy programs have historically required continued use requirements only as a condition of capital expenditures, and not for purposes of operating subsidies.

A similar view was expressed by New Castle County, which commented that while the use of ESG funds for major rehabilitation or conversion should invoke the 10-year use requirement specified in §576.73, the activities listed at §576.21(a)(3) should not trigger any use requirement, since they do not constitute "a direct improvement to the shelter's physical plant." New Castle would require, instead, that the grantee provide comparable living space (either in the existing shelter or in some other facility) for the applicable regulatory period.

On the other hand, the Minnesota Department of Jobs and Training (MDJ&T) objected to such language when included at § 576.51(b)(2)(iv)(A) for emergency shelters located in commercial facilities. Under that provision, the grantee (or State or nonprofit recipient) is required to execute an agreement with the provider of the commercial space that comparable living space will be available for use as an emergency shelter in the facility for at least the applicable period specified in § 576.73. The MDJ&T contended that such a requirement is unreasonable, given the fluctuating demand for the housing, and should not be made applicable to commercial facilities.

Section 415(c) of the McKinney Act provides that:

> Each recipient shall certify to the Secretary that * * * it will *maintain any building for which assistance is used* under this subtitle as a shelter for homeless individuals for not less than a 3-year period or for not less than a 10-year period if such assistance is used for the major rehabilitation or conversion of such building * * * (Emphasis added).

Upon reconsideration, the Department has determined that this statutory language triggers a use requirement only for ESG activities that involve capital improvements to the shelter facility (*see* § 576.21(a)(1) of this final rule). Specifically, a statutory three-year use requirement would be imposed whenever ESG funds are used to renovate a building for use as an emergency shelter. A 10-year use requirement would apply whenever ESG grant funds are used to undertake the major rehabilitation or conversion of a building for use as an emergency shelter.

The Department will continue its policy to exempt from any use requirement the provision of essential services under § 576.21(a)(2).

While HUD has determined that the use requirements under the McKinney Act are limited to activities involving capital improvements, it is imposing a *regulatory* (rather than statutorily mandated) three-year use requirement on the leasing of commercial facilities to provide emergency shelter. Under § 576.51(a)(2)(iv), emergency shelters located in commercial facilities must be rented for a period of at least three years (either the identical space, or comparable rooms). In the event of a dramatic and unforeseen shortage in the availability of emergency shelters (i.e., in the case of a natural disaster), the grantee or recipient may apply to HUD for a waiver of the three-year use requirement. However, it should be noted that where ESG grant funds are used for the renovation, major rehabilitation or conversion of hotel or motel space to facilitate its use as an emergency shelter, the three- or ten-year (as applicable) *statutory* use requirement under § 576.73 continues to apply.

For activities under § 576.21(a)(3), other than the leasing of commercial facilities, the Department is imposing a *regulatory* one-year use requirement in place of the three-year requirement included under the proposed rule. The Department's intent in imposing this one-year requirement is to provide consistency and continuity in the provision of emergency shelter services to the homeless.

The MDJ&T commented that the definition of "emergency shelter" contained in the proposed rule—with its emphasis on providing temporary shelter for the homeless—is at odds with the practice in Minnesota of using ESG funds "to rehabilitate permanent housing." The Department believes that there is no inconsistency between the definition of emergency shelter provided in the proposed rule and the fact that permanent housing is being rehabilitated under the program. The ESG program is intended to provide temporary shelter for the homeless, without any requirement that the shelter itself be of a temporary nature. In fact, the continued use requirements established in this rule are designed to ensure a certain degree of continuity and permanency in the provision of shelter services to the homeless. As a result, the Department has retained the definition of "emergency shelter" without modification.

The MDJ&T also requested that the term "obligated" be clarified in the final rule to indicate that a grant award by a unit of local government to a private nonprofit organization under a written agreement *requires payment from the grant amount.* Since the proposed definition of "obligated" incorporated

similar language with respect to grantees and State recipients that undertake certain types of actions (*e.g.*, place orders, award contracts, etc.) the Department has made the requested clarification at § 576.3 of this final rule.

With regard to the limitation on units of local government to provide essential services (§ 576.21(a)(2)(i)(B)), MDJ&T requested a modification of the current standard. It contended that the proper standard should be whether there is a quantifiable increase in the level of a service beyond that provided by the unit of government during the 12 calendar months immediately before it received *initial* grant amounts. This modification was urged on the basis that it would be unreasonable to expect an increase in essential services above that attributable to ESG funding. The Department agrees with, and has adopted, this suggestion.

The New York State Department of Social Services (NYS) asserted that the rule is ambiguous as to whether the 15 percent limitation applies strictly to units of local government, or whether no more than 15 percent of the entire State allocation can be used to provide essential services without the State requesting a waiver. The Department wishes to clarify that the 15 percent limitation applies to the *total* of each grant amount provided to a unit of general local government. It is not necessary, in each instance, that an award by a unit of local government to a nonprofit recipient comply with the 15 percent limitation. Consequently, although there is no direct limitation on a nonprofit recipient's use of grant amounts for essential services, a unit of local government may have to impose such restrictions on one or more of its nonprofit recipients to ensure that the unit of local government is itself in compliance with the 15 percent limitation.

NYS also objected to the proposed rule's prohibition on the use of ESG funds for the acquisition or construction of emergency shelters, and urged that proposed new construction not exceeding a 25 percent increase in square footage be considered an eligible expense under the program. In light of the fact that the McKinney Act does not provide for ESG grant funds to be used for acquisition or construction expenses, the Department does not have the discretion to modify this aspect of the rule. However, it should be noted that the definition of "rehabilitation" (§ 576.3 of this final rule) includes additions to existing buildings when such additions are incidental to the rehabilitation of the building.

With regard to the requirement under § 576.23 that a State make available its ESG formula allocation to units of local government in the State, the MDJ&T commented that Minnesota has found it extremely difficult to carry out this obligation. It asserted that because of the scattered migrant and farmworker population across some 57 counties, Minnesota was experiencing considerable difficulty in making ESG funds available to this segment of the homeless population. MDJ&T requested a waiver of the requirement so that the State of Minnesota could contract directly with farmworker organizations. While the Department appreciates the additional burden involved where a State is required to deal with a highly dispersed homeless population, the requirement that a State make available its ESG allocation to units of local government is statutory and, as such, is not subject to waiver by HUD.

New Castle County urged the Department to require States to notify each unit of local government of the availability of ESG funds. The Department did not adopt this suggestion, since administrative funds are not provided under the ESG program to reimburse States for this expenditure. The Department is aware, however, that States have made substantial efforts to advertise the availability of ESG funds, and believes that discretionary activity of this kind should be encouraged.

New Castle County also suggested a modification of the proposed requirement at § 576.31(a)(2) that ESG reallocated funds can only be made available to units of local government that are non-formula cities and counties, and to private nonprofit organizations, if the jurisdiction in which the proposed activities are to be located has a Comprehensive Homeless Assistance Plan (CHAP). The suggested language would require a CHAP for "* * * the jurisdiction in which the proposed activities are to be located or the service area of the proposed location * * *".

The Department has instead adopted a modification of this suggested language. Under Subpart A of the McKinney Act (dealing with CHAP requirements), section 401(f) refers to a CHAP certification "* * * for the jurisdiction to be served by the proposed activities * * *". In this final rule, §§ 576.31(a)(2) and 576.51(b)(2)(i) have been modified to parallel this statutory language. This rule will require the following: (1) A State, formula city or county, or Territory that is applying for ESG funding for the proposed activities would provide the CHAP certification that the proposed activities are consistent with the Plan; (2) in the case of a formula city or county, there must be an additional certification that before any of the grant funds are used for an activity conducted outside the applicant's jurisdiction, the applicant will secure and provide to HUD a certification that the proposed activities are consistent with the CHAP submitted by one of the following: (i) If the activity is conducted within the boundaries of a city or urban county having its own CHAP, then a certification from the appropriate official of that jurisdiction; or (ii) if the activity is not conducted within a unit of local government having its own CHAP, a certification from the appropriate State official.

Another comment concerning the CHAP was NYS' request that all entities receiving direct entitlements under the ESG program be required to submit their CHAPS to the State for purposes of certifying consistency with the State CHAP. The Department has not adopted this suggestion. The emergency nature of the ESG program clearly dictates that funds be allocated as expeditiously as possible, as evidenced by McKinney's 30-day mandatory review period. To require formula cities and counties to submit their CHAPS for review to the State, as well as to the local HUD field office, would be inconsistent with the legislative intent reflected in the McKinney Act and, consequently, has not been adopted in this rule.

New Castle County suggested that certifications of CHAP consistency that are submitted to local HUD field offices under § 576.51(c) (substantial changes in the proposed use of ESG funds), provide for a 30-day review period. If, at the expiration of the 30-day review period, HUD fails to respond to the certification, it should be considered approved. The Department believes that this suggestion is consistent with the legislative intent to expedite the use of ESG funds and has made the necessary revisions in this final rule.

The MDJ&T objected to the requirement under § 576.51(b)(2)(ii) of the proposed rule that a State must describe the sources and amounts of matching supplemental funds in its interim report. Its objection was based on the fact that nonprofit recipients, which may provide supplemental matching funds, may not have "drawn down" available ESG funds at the time the State is required to submit its interim report. This comment misconstrues the matching supplemental funds requirement. Initially, it should be noted that it is not required under the ESG program that matching funds be provided by a nonprofit recipient. When

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the grantee is a State, the matching funds may be provided by the State's own resources, or through funds provided by a State recipient. Matching funds can also include amounts spent on activities that are ineligible under the ESG program, such as expenditures for building acquisition or staff costs related to operating an emergency shelter. Consequently, it is not necessary that the nonprofit recipient have "drawn down" ESG grant funds at the time the State is required to submit its interim report and, accordingly, the Department has retained the proposed requirement without amendment.

The 65-day deadline for States to make ESG grant funds available to their State recipients (under § 576.55(a) of the proposed rule) was objected to by NYS on the basis that it failed to take into account the competitive application process used to obligate the funds. The Department disagrees. It is imperative that ESG funds be obligated as rapidly as possible. The Department's experience has been that the 65-day deadline is reasonable, and that most States are able to comply with it. If a situation arises in which a grantee believes that complying with the 65-day deadline is impossible, it should request a waiver of the requirement under § 576.5 of this final rule.

The MDJ&T requested that the criteria listed under § 576.55(a)(2) for determining when a State recipient has timely obligated ESG grant amounts should also be specified for ESG funds expended by a third party (*e.g.*, one other than the initial State recipient). The Department believes that this commenter has misconstrued the requirement to obligate grant funds under this provision. Section 576.55(a)(2) requires that *"[E]ach State recipient* must have all grant amounts obligated within 180 days of the date on which the State made the grant amounts available to it". (Emphasis added). The 180-day obligation deadline does not attach to third parties that receive ESG grant funds from the State recipient. Consequently, there is no need to specify criteria establishing when the third party has obligated its ESG grant funds.

New Castle County urged that lead based paint removal under § 576.76(c) of the proposed rule be considered an eligible expense, regardless of whether ESG funds are being used to otherwise renovate, rehabilitate, or convert a particular room. It bears noting that the Department has always considered the abatement of lead based paint to be an eligible rehabilitation activity under § 576.21(a)(1), so long as the relevant use requirements under § 576.73 are satisfied.

Section 576.83 of the proposed rule authorizes the payment to a grantee of an initial capital advance for 30 days' cash needs, or an advance of $5,000, whichever is greater. Thereafter, the grantee is reimbursed for the amount of its actual cash disbursement needs. NYS commented that because of the shortage of working capital (particularly in the case of nonprofits), each grantee should be given a 25 percent advance against which claims can be submitted when goods or services are received. This suggestion was not adopted because it would be inconsistent with the U.S. Treasury Department requirements (see Fiscal Requirements Manual § 6–2075.20) which normally require a working capital advance to cover cash requirements for a period not to exceed 30 days.

New Castle County expressed concern over the timing of the annual performance report (§ 576.85(b)(2)) which, under the proposed rule, must be submitted no later than 30 days after the December 31 cutoff date. This commenter cited two alternative reporting dates: (1) Allowing the ESG grant year to coincide with the local fiscal year; or (2) allowing the annual reporting period to coincide with the grantee's CDBG reporting period. The Department has not adopted either of these alternative dates for submission of the annual performance report. It is anticipated that the date established in the 1987 proposed rule will provide a uniform reporting cycle that will enable HUD to report to Congress on the progress of the ESG program in meeting the needs of the homeless.

Finally, the U.S. Department of Justice provided comments to HUD on rule provisions related to persons with handicaps. The phrases "handicapped individual" and "transitional housing for the mentally ill" have been revised in this final rule to read "individuals with a handicap" and "persons with mental illness", respectively.

**Other Regulatory Changes**

On its own initiative, the Department wishes to make the following clarifications or changes in this final rule implementing the 1987 ESG program.

Under § 576.21(c)(2), grant amounts may not be used to renovate, rehabilitate or convert buildings owned by primarily religious organizations unless the lessor of the building enters into a binding agreement requiring the lessee to retain the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements. In the event this requirement is not satisfied, the lessor is obligated to pay the lessee an amount equal to the residual value of the improvements. Under paragraph (vii) of this section, the lessee must remit this amount to the original grantee from which the ESG amounts were derived. The Department wishes to clarify that, following the close of the ESG grant period, these funds are to be used to alleviate homelessness in the original grantee's jurisdiction (i.e. to "further the objectives of this part"), but that it is not necessary that the grant funds be used in conformance with the requirements of the ESG program. This language has been included at § 576.21(c)(2)(vii) of the final rule.

The Department has modified the proposed requirement at § 576.43(b) that any allocation to a metropolitan city or urban county of less than .05 percent of the amounts appropriated for the ESG program *for any fiscal year*, would be added to the allocation for the State in which the city or county is located. The revised language provides that reallocation will occur whenever there is an allocation to a metropolitan city or urban county of less than .05 percent of each appropriation under the ESG program in any fiscal year. This revision more accurately reflects the actual allocation of ESG program funds, which is initiated upon the appropriation of funding under the program and *not* necessarily at the conclusion of the fiscal year.

In § 576.85, the Department has changed the period for a State to submit its interim performance report from 90 days from the date of a State's distribution of funds to its recipients, to 30 days. HUD does not believe that there is any advantage in providing an additional two months for the State to submit its interim report, and that it would be better to coincide the time allowed for submission of the interim performance report with that of the annual performance report under paragraph (b)(2).

In addition, while the Department retained the proposed timing for submission of the annual performance report under § 576.85(b)(2), the provision has been modified to state that the final report is to be submitted 90 days after all ESG funds are expended and all activities are completed.

This final rule includes clarifying language to indicate that staff costs related to providing essential services are eligible ESG expenses under § 576.21(a)(2). (It should be noted, however, that the regulation already provides that staff costs related to the

*operation* of the shelter under § 576.21(a)(3) are *not* eligible expenses.) This raises the issue whether a prorated portion of a staff member's salary can be considered an eligible expense if the staff member is providing an eligible activity, such as maintenance or an essential service. For example, if a shelter operator provides transportation for shelter residents by driving the shelter's van, can that portion of his or her time spent on this transportation service be considered an eligible expense? The answer to this question is "no". The payment of a shelter staff member's salary—whether or not a portion of the staff member's time is devoted to providing an eligible activity—should not be considered an eligible expense. Because the Department believes that, in most shelters, the operator typically provides a variety of services and functions, to determine otherwise would compromise the statutory prohibition.

Finally, for the sake of clarity, the Department is modifying the language of § 576.21(a)(2)(ii) relating to the 15 percent limitation on the provision of essential services by units of local government. Clarifying language has also been added to § 576.21(b)(i) relating to waiver of the 15 percent limitation. These clarifications are intended to reflect the following: No more than 15 percent of the *total* of each grant amount provided to a unit of local government can be used to provide essential services under the ESG program. However, a unit of local government is not required to comply with the 15 percent limitation with regard to each grant amount provided to a nonprofit recipient, so long as the limitation is observed for the total grant award. Furthermore, the 15 percent limitation may be waived if the unit of local government is able to demonstrate that:

(1) Activities other than essential services (*e.g.*, renovation, major rehabilitation and conversion activities under § 576.21(a)(1), and operating expenses under § 576.21(a)(3)) are already being adequately provided by the unit of government through private or public resources. These resources may include that portion of each ESG grant amount provided to the unit of local government under this part for which a waiver is not being requested; and

(2) The amount that the unit of local government proposes to use for essential services—and that exceeds the 15% limitation—cannot practicably be used for eligible ESG activities other than essential services.

The following example is illustrative: Assume that a unit of general local government has $100,000 in emergency shelter grant amounts and wishes to spend 20 percent of this amount ($20,000) on essential services. The unit of government is free under section 414(a)(2)(B) of the McKinney Act to spend 15 percent ($15,000) on essential services, so that this amount is automatically excluded from any waiver determination. To qualify for a waiver for the additional $5,000 that the unit of government proposes to use for essential services, it must demonstrate to HUD that:

Other shelter grant activities under § 576.21(a)(1) and (a)(3) are already adequately provided from public and private resources (which resources may include that portion of each ESG grant amount provided to a unit of local government under this part for which a waiver is not being requested—$85,000); and

(2) The $5,000 cannot practicably be expended for activities other than essential services.

Waiver requests from units of general local government receiving grant amounts from a State would first have to be forwarded to the State. The State would be required promptly to forward all such requests to HUD, together with any recommendations or other comments the State may have. This would give States an opportunity to give HUD the benefit of their views on their recipients' requests for waiver, while ensuring that State recipients' requests will receive full and prompt attention by the Department.

*Lead-Based Paint*

Section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the Lead-Based Paint Poisoning Prevention Act, and mandated that HUD publish a final rule amending the Department's lead-based paint standards at 24 CFR Part 35. On June 6, 1988, the Department published this final rule in accordance with the statutory mandate (53 FR 20790).

The primary changes resulting from the 1987 Housing Act are: (1) A uniform requirement that lead-based paint standards apply to all housing constructed before 1978; and (2) that the definition of "applicable surfaces" be uniformly expanded to include all interior and exterior surfaces.

The revised lead-based paint standards affect the 1986 and 1987 ESG programs in the following manner. For purposes of the 1986 ESG program, HUD's October 19, 1987 final rule (52 FR 38864) adopted, by cross-reference, the lead-based paint requirements contained in 24 CFR Part 35. As a result, the revised lead-based paint standards under Part 35 will apply automatically to all 1986 ESG program funds.

Similarly, the 1987 ESG program (and, thereafter, the ongoing ESG program) incorporates by cross-reference the lead-based paint provisions contained in Part 35, with two additional requirements (both of these requirements were contained in the Department's proposed 1987 ESG rule). These additional provisions relate to inspection and abatement of defective lead-based paint surfaces and require that the grantee (or in the case of States, the State recipient): (1) Undertake treatment of defective paint surfaces before final inspection and approval of any renovation, rehabilitation or conversion activity under the ESG program; and (2) take appropriate action to protect shelter occupants from the hazards associated with lead-based paint abatement procedures.

*Nondiscrimination*

Two of the nondiscrimination requirements with which use of emergency shelter grants must comply as provided in § 576.79(a) are Title VIII of the Civil Rights Act of 1968 and Executive Order 11063, which prohibit discrimination in housing on the basis of race, color, religion, sex, or national origin. It may well be that some emergency shelters assisted under this program are not actually covered under these authorities. The prohibitions against discrimination in Title VIII relate only to a "dwelling", which is defined in section 802(b) of that Act to mean, in part, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families * * *" (the word "family" includes a single individual). Judicial interpretations (e.g., *United States* v. *Hughes Memorial Home*, 396 F. Supp. 544 (W.D. Va. 1975)) regarding whether a temporary residence is a "dwelling" within the meaning of Title VIII appear to turn on whether the occupant of a place intend to remain for a substantial period of time or whether the place is rather one of temporary sojourn or transit visit. A similar issue arises under Executive Order 11063, which covers certain "housing and related facilities". Since the operation and usage of emergency shelters may vary greatly across the nation, it seemed prudent to deem these authorities generally applicable to shelter assisted under this program.

In any event, under § 576.79(a), all such shelters are subject to the Federal statutory prohibitions against

discrimination with respect to race, color, national origin, age, sex and handicap in programs involving Federal financial assistance. Consistent with the statutory intent of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, the Department has included in this final rule a requirement at § 576.79(a)(6) that the ESG grantee (or in the case of a State, the State recipient) make known that emergency shelter facilities and services are available to all on a nondiscriminatory basis. Where the procedures that a grantee (or State recipient) intends to use are unlikely to reach persons of any particular race, color, religion, age, sex or national origin within its service area who may qualify for ESG services, the grantee (or recipient) is required to establish additional procedures to ensure that these persons are made aware of the availability of the facilities and services.

Under § 576.79(a)(2), all shelters covered by this part must comply with the prohibitions against discrimination against otherwise qualified individuals with a handicap under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations to be codified at 24 CFR Part 8 (53 FR 20215, June 12, 1988). Subpart C of 24 CFR Part 8 sets forth detailed program accessibility requirements for both housing and non-housing facilities. The Department believes that shelters are "housing facilities" within the meaning of 24 CFR Part 8. Accordingly, 24 CFR 8.22 (New Construction—housing facilities), § 8.23 (Alterations of existing housing facilities) and § 8.24 (Existing housing programs) apply to grantees in the emergency shelter grants program. Specifically, 24 CFR 8.22 and 8.23 require that a percentage of newly constructed and substantially altered "dwelling units" be readily accessible to and usable by individuals with handicaps. In addition, 24 CFR 8.23(b) requires that, to the maximum extent feasible, alterations to "dwelling units" be made readily accessible to, and usable by, individuals with handicaps. Since shelters may or may not be regarded as "dwelling units", the second sentence of § 576.79(a)(2) states that, for purposes of the ESG program, the term "dwelling units" in 24 CFR Part 8 includes sleeping accommodations. In addition, grantees (or the State recipient) under 24 CFR 8.6(d) must adopt and implement procedures to make available to interested persons information concerning the existence and location of services and facilities which are accessible to individuals with handicaps.

*Environmental Requirements and Site Selection*

Section 576.51(b)(2)(vi) of this final rule requires that HUD conduct an environmental review of the specific project activities proposed by an applicant before the grantee can be authorized to undertake these activities. On the basis of an application from a State or formula grantee, HUD will make a conditional grant. The "condition", while assuring the availability of funds to applicants, requires applicants to provide HUD with specific information on the nature and location of proposed activities. This information will assist HUD in conducting its environmental review, so that the Department can evaluate the effect of the grantee's proposed activities and to, thereafter, authorize the grantee to proceed with its proposed activities.

This requirement reflects the Department's determination that proposed program activities are subject to the National Environmental Policy Act (NEPA). The proposed ESG rule contemplated that the NEPA exemption provided by the Council on Environmental Quality (CEQ) for the ESG program under the Homeless Housing Act of 1986 would be continued. This exemption was approved by the CEQ on the basis of statutory conflict, since the 1986 Act imposed time limitations that precluded compliance with NEPA. HUD has determined that the restrictions imposed by the 1986 Homeless Housing Act on the ESG program no longer pertain. In the absence of statutory conflict, NEPA and CEQ's implementing regulations apply, and it is HUD's responsibility to conduct the required review in accordance with 24 CFR Part 50. The HUD review may rely on NEPA provisions for "categorical exclusions", although HUD must complete an "environmental assessment" for proposed activities that are not totally excluded, or otherwise present environmental site problems.

While this change in the environmental procedures for the Emergency Shelter Grant Program would appear to have the effect of delaying the provision of assistance, HUD does not expect that result will occur. The $8 million appropriated for FY 1988 for Emergency Shelter Grants has already been awarded and therefore will not be delayed by these procedures. Emergency Shelter Grants for FY 1989 are expected to be governed by revised environmental procedures included in both the pending House and Senate amendments to the McKinney Act. These amendments call for responsibility for environmental reviews to be delegated to the grantee, as provided in the Community Development Block Grant program. Such a delegation of responsibility would permit grantees to undertake most Emergency Shelter Grant program activities without delay.

Second, with respect to NEPA and program objectives, § 576.53(c)(2) provides that HUD will not approve funds for any program whose activities would result in significant impact on the human environment. Such approval would constitute a "major Federal action" and require HUD to prepare an environmental impact statement (EIS). HUD has determined that the length of time required to prepare an EIS would run counter to the objective of timely delivery of ESG Program services and activities. Where significant impact would result, HUD expects the applicant to select different activities or a different location that HUD may determine not to have such an impact. This assures the State or formula grantee of its fund allocation while assuring the environmental quality of its program.

Third, with respect to environmental authorities other than NEPA, HUD has determined that its environmental review must take into account all the related authorities cited at 24 CFR 50.4. This has led to the following changes in this final rule:

1. The final rule does not contain the provisions for an environmental assurance by applicants that was contained in the proposed ESG rule at § 576.51(b)(3)(i).

2. Under the environmental assurance, applicants certified to HUD that they would avoid sites with certain environmental problems (specifically, historic properties and floodplains) and that activities would not be inconsistent with the State's Coastal Zone Management Plan (where applicable). HUD has determined that the listed environmental resources included only the most common resources, but did not list all the resources and authorities cited in 24 CFR 50.4. Accordingly, the final rule contemplates that, in conducting its environmental review, HUD will take account of all the authorities cited under this provision.

3. The final rule deletes § 576.79(k) of the proposed rule, "Conformance with HUD environmental standards." These standards, issued under 24 CFR Part 51, are included in the authorities of 24 CFR 50.4 and so automatically are covered in HUD's environmental review. Separate

listing as an "other requirement" therefore is unnecessary.

These changes are predicated upon the Department's determination that environmental review, both under NEPA and the related authorities of Part 50.4, is a responsibility best retained under direct HUD control, and that these reviews should not be delegated to ESG grantees. Similarly, an asurance by an ESG applicant that it will avoid impact on certain environmental resources calls for a determination that HUD, not the applicant, should make under the applicable environmental regulations. Thus, the determination as to whether proposed activities will have a significant impact on the environment is a HUD determination, and the necessary changes are made in this final rule.

Fourth, HUD has deleted from the final rule the provisions that were contained in the proposed rule at § 576.53(f). The provision allowed HUD to authorize formula grantees and State recipients to incur costs at their own risk prior to HUD's approval of the grant. HUD has determined that such a provision would violate legal requirements for prior environmental review, and that preapproved activities and expenditures would limit the consideration of alternatives and entail the possibility of irreversible impacts on the environment even if HUD, after environmental review, decided not to approve the activities or their location.

Fifth, as part of this rule-making, HUD is amending for immediate effect its environmental regulations, 24 CFR Part 50 and 58. These changes simply add to the previous list of NEPA-related categorically excluded activities. The new exclusions reflect certain activities under the ESG program and other homeless assistance programs which HUD believes lack potential effect on the human environment. Specifically, these activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites.

The amendment to Part 58 recognizes that many communities also invest their Community Development Block Grant funds in shelter activity. As the use of CDBG funds is subject to environmental review by the community under Part 58, this amendment will assure consistency with Part 50 while enabling communities to undertake and utilize Part 58 environmental reviews for the CDBG program which HUD may also accept for purposes of the ESG program. This is particularly advantageous to local planning efforts, and implicitly recognizes that under Part 50 HUD may accept a prior adequate environmental review undertaken in another program.

*Displacement*

An ESG grantee or State or nonprofit recipient is prohibited from expending grant funds for any activities that would result in the displacement of persons or businesses. The requirements of the Uniform Relocation Act (as proposed to be revised) will govern any unanticipated or unavoidable displacement occurring after initial approval of the ESG application.

**Other Matters**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, because most statutorily eligible grantees and State recipients are relatively larger cities, urban counties, or States. In addition, the grant amounts to be made available to any ultimate user of a grant are relatively small.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502), and assigned OMB control number 2506–0089.

This rule was listed as item number 999 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13858) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number for the Emergency Shelter Grants Program is CFDA No. 14.231.

**List of Subjects**

*24 CFR Part 50*

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

*24 CFR Part 58*

Environmental assessments, Environmental impact statements, Community Development Block Grant Program, Environmental policies and review procedures.

*24 CFR Part 575*

Grant programs—Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

*24 CFR Part 576*

Grant programs—Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 50 as follows:

## PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for 24 CFR Part 50 continues to read as follows:

**Authority:** Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 50.20 is revised by adding a new paragraph (o), to read as follows:

**§ 50.20 Categorical exclusions.**

* * * * *

(o) The following supportive services, maintenance and administrative activities *under all HUD programs which support shelter or housing for the homeless*: The provision of physical or mental health, substance abuse, social, educational or counseling services; the provision of meals or food; the payment of rent, utility, maintenance or administrative costs; and similar activities that do not involve physical change to buildings or sites.

## PART 58—ENVIRONMENTAL REVIEW PROCEDURES COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT BLOCK GRANT PROGRAMS

3. The authority citation for 24 CFR Part 58 is revised to read as follows:

**Authority:** Sec. 7(d) of the Department of HUD Act (421 U.S.C. 3535(d)); sec. 104(g) of title I, Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) as amended; sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) as amended; secs. 17(i) (1) and (2) of the United States Housing Act of 1937 (42 U.S.C. 1437o(i) (1) and (2)); Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

4. Section 58.35 is amended by adding a new paragraph (a)(6), to read as follows:

**§ 58.35 Categorically excluded activities.**

(a) * * *

(6) The following service, maintenance and administrative activities, to the extent eligible, *which are undertaken to support housing and shelter programs for the homeless*: The provision of physical or mental health, substance abuse, social, educational, or counseling services; the provision of meals or food; the payment of rent, utility, maintenance or administrative costs; and similar activities that do not use grant funds for making physical changes to buildings or sites.

5. 24 CFR Part 575 is amended, and a new 24 CFR Part 576 is added to read as follows.

6. The part heading of 24 CFR Part 575 is revised to read as follows:

## PART 575—EMERGENCY SHELTER GRANTS PROGRAM: HOMELESS HOUSING ACT OF 1986

7. The authority citation for 24 CFR Part 575 is revised to read as follows:

**Authority:** Sec. 525(a) of the Homeless Housing Act of 1986 (sec. 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 575.1, paragraph (a) is revised to read as follows:

**§ 575.1 Applicability and purpose.**

(a) *General.* This part implements the Emergency Shelter Grants program contained in the Homeless Housing Act of 1986 (section 101(g), (Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986)). The program authorizes the Secretary of Housing and Urban Development to make grants to States, units of general local government, and private nonprofit organizations, for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless. The Emergency Shelter Grants program authorized by Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act is contained in 24 CFR Part 576.

9. A new 24 CFR Part 576 is added, to read as follows:

## PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

### Subpart A—General

Sec.
576.1 Applicability and purpose.
576.3 Definitions.
576.5 Waivers.

### Subpart B—Eligible Activities

576.21 Eligible activities and ineligible activities.
576.23 Who may carry out eligible activities.

### Subpart C—Comprehensive Homeless Assistance Plan

576.31 Comprehensive Homeless Assistance Plan.

### Subpart D—Allocations

576.41 Overall allocation of grant amounts.
576.43 Allocation of grant amounts to States, metropolitan cities, and urban counties.
576.45 Allocation of grant amounts to Territories.

### Subpart E—Award and Use of Grant Amounts

576.51 Application requirements.
576.53 Review and approval of applications.
576.55 Deadlines for using grant amounts.

### Subpart F—Reallocations

576.61 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; formula cities and counties.
576.63 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; States.
576.65 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; Territories.
576.67 Reallocation of grant amounts; returned or unused amounts.

### Subpart G—Program Requirements

576.71 Matching funds.
576.73 Use as an emergency shelter.
576.75 Building standards.
576.77 Assistance to the homeless.
576.79 Other Federal requirements.

### Subpart H—Grant Administration

576.81 Responsibility for grant administration.
576.83 Method of payment.
576.85 Performance reports.
576.87 Recordkeeping.
576.89 Sanctions.
Appendix to Part 576 Reallocation of Grant Funds.

**Authority:** Sec. 416 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### Subpart A—General

**§ 576.1 Applicability and purpose.**

(a) *General.* This part implements the Emergency Shelter Grants program contained in Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987). The program authorizes the Secretary of Housing and Urban Development to make grants to States and units of general local government (and to private nonprofit organizations providing assistance to homeless individuals in the case of grants made with reallocated amounts) for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless. The Emergency Shelter Grants program authorized by the Homeless Housing Act of 1986 is contained in 24 CFR Part 575.

(b) *Purpose.* The program is designed to help improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing certain essential social services to homeless individuals, so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other kinds of assistance they need to improve their situations.

**§ 576.3 Definitions.**

*Comprehensive Homeless Assistance Plan* or *Comprehensive Plan* means the Comprehensive Homeless Assistance

Plan established by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

*Conversion* means a change in the use of a building to an emergency shelter for the homeless under this part, where the cost of conversion and any rehabilitation costs exceed 75 percent of the value of the building before conversion.

*Emergency shelter* means any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

*Emergency shelter grant amounts* or *grant amounts* mean grant amounts made available under this part.

*Formula city or county* means a metropolitan city or urban county that is eligible to receive an allocation of grant amounts under § 576.43.

*Grantee* means the entity that executes a grant agreement with HUD under this part. For purposes of this part, grantee is (a) any State, metropolitan city, or urban county that receives a grant allocation under § 576.43; (b) any Territory that receives a grant allocation under § 576.45; and (c) any State, Territory, unit of general local government, or private nonprofit organization that receives a grant based on a reallocation under Subpart F.

*Homeless* means:

(a) An individual or family which lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family which has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for persons with mental illness);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State Law.

*HUD* means the Department of Housing and Urban Development.

*Major rehabilitation* means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

*Metropolitan city* means a city that was classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fical year for which emergency shelter grant amounts are made available.

*Nonprofit recipient* means any private nonprofit organization providing assistance to the homeless, to which a unit of general local government distributes emergency shelter grant amounts.

*Obligated* means that the grantee or State recipient, as appropriate, has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts that are awarded by a written agreement by a unit of general local government that require payment from the grant amount to a private nonprofit organization providing assistance to the homeless are obligated.

*Private nonprofit organization* means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 which (a) is exempt from taxation under Subtitle A of the Code; (b) has an accounting system and a voluntary board; and (c) practices nondiscrimination in the provision of assistance.

*Rehabilitation* means labor, materials, tools, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

*Renovation* means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

*State* means each of the several States and the Commonwealth of Puerto Rico.

*Territory* means each of the following: The Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

*State recipient* means any unit of general local government to which a State makes available emergency shelter grant amounts.

*Unit of general local government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

*Urban county* means a county that was classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

*Value of the building* means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee or the State recipient.

### § 576.5 Waivers.

The Secretary of HUD may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of the Emergency Shelter Grants Program under this part.

## Subpart B—Eligible Activities

### § 576.21 Eligible and ineligible activities.

(a) *Eligible activities.* Emergency shelter grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless.

(1) Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless.

(2) Provision of essential services, including (but not limited to) services concerned with employment, physical health, mental health, substance abuse, education, or food, including the staff salary necessary to provide such services. Grant amounts provided to a unit of general local government may be used to provide an essential service only if—

(i) The service is:

(A) A new service or

(B) A quantifiable increase in the level of a service above that which the unit of general local government provided with local funds during the 12 calendar months immediately before it received initial grant amounts; and

(ii) Not more than 15 percent of the total of each grant amount provided to a unit of general local government is used for these services (whether or not the unit of local government provides some or all of these grant funds to a nonprofit recipient).

(3) Payment of maintenance, operation (including rent, but excluding staff), insurance, utilities, and furnishings.

(b) *Waiver of limit on essential services.* (1) HUD may waive the 15 percent limitation on the use of grant amounts for essential services in paragraph (a)(2)(ii) of this section, if the unit of general local government demonstrates to HUD that:

(i) Activities other than essential services are adequately provided from other private or public resources (which

resources may include that portion of each grant amount provided to the unit of government under this part for which a waiver is not being requested); and

(ii) The amount that is in excess of 15 percent of each grant amount that the unit of government proposes to use for essential services (and for which a waiver is requested), cannot practically be used for eligible activities other than essential services.

(2) Waiver requests from State recipients under this paragraph (b) must first be sent to the State. The State must promptly send the requests to HUD, together with any comments or recommendations the State may have on them.

(c) *Ineligible activities.* (1) Emergency shelter grant amounts may not be used for activities other than those authorized under paragraphs (a) and (b) of this section. For example, grant amounts may not be used for:

(i) Acquisition or construction of an emergency shelter for the homeless;

(ii) The costs of staff involved in operating the shelter; or

(iii) Rehabilitation services performed by the staff of a grantee or recipient, such as preparation of work specifications, loan processing, or inspections.

(2) Grant amounts may not be used to renovate, rehabilitate, or convert buildings owned by primary religious organizations or entities, unless the following conditions are met:

(i) The building (or portion thereof) that is to be improved with the grant amounts has been leased to an existing or newly established, wholly secular entity (which may be an entity established by the religious organization);

(ii) The HUD assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes, and will be available to all persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent for the premises, as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to, and paid for by, the lessor; and

(vi) The lessor enters into a binding agreement that, unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements.

(vii) The lessee must remit the amount referred to in paragraph (c)(2)(vi) of this section to the original grantee from which the amounts used to renovate, rehabilitate, or convert the building under this paragraph (c)(2) were derived: *e.g.*, if the amounts used under this paragraph initially were made available to a State or to a unit of general local government as a formula allocation (§ 576.43) or a reallocation (Subpart F), the amount that the lessor provides to the lessee must be remitted to the State or unit of general local government, as appropriate. While the original grantee is expected to use this amount to alleviate homelessness in the original grantee's jurisdiction, there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part. If, however, a private nonprofit organization is the lessee as well as the grantee, the organization must remit the amount referred to in paragraph (c)(2)(vi) of this section to HUD.

(viii) The lessee may also enter into a management contract authorizing the lessor religious organization to operate the facility, including the provision of essential services, in carrying out the secular purpose. In such case, the religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences pursuant to conditions prescribed by HUD.

(Approved by the Office of Management and Budget under control 2506–0089.)

### § 576.23 Who may carry out eligible activities.

(a) *Grantees and State recipients.* All grantees (except States) and State recipients may carry out activities with emergency shelter grant amounts. All of a State's formula allocation must be made available to units of general local government in the State, which may include formula cities or counties, whether or not such cities or counties receive grant amounts directly from HUD.

(b) *Nonprofit recipients.* Units of general local government—both grantees and State recipients—may distribute all or part of their grant amounts to nonprofit recipients to be used for emergency shelter grant activities.

(Approved by the Office of Management and Budget under control number 2506–0089.)

## Subpart C—Comprehensive Homeless Assistance Plan

### § 576.31 Comprehensive Homeless Assistance Plan.

(a) *Prohibition of assistance.* (1) Grant amounts may be made available to the following jurisdictions, only if they have a HUD-approved Comprehensive Plan:

(i) States, for allocations under § 576.43 and reallocations under §§ 576.61, 576.63, and 576.67.

(ii) Formula cities and counties, for allocations under § 576.43 and reallocations under §§ 576.63 and 576.67; and

(iii) Territories, for allocations under § 576.45 and reallocations under §§ 576.65 and 576.67.

(2) Reallocation amounts may be made available under § 576.67 to units of general local government that are not formula cities and counties, and to private nonprofit organizations, only if the area that would be served by the proposed activities is covered by an approved Comprehensive Plan, as outlined below: For units of general local government, the State must have an approved Plan; for nonprofit organizations, if the proposed activities are to serve a formula city or county or Territory, the city, county or Territory must have an approved Plan; if the proposed activities are not to serve such city or county, the State or Territory must have an approved plan.

(3) Grant amounts may not be made available to, or within the jurisdiction of, any State or forumla city or county that does not annually—

(i) Review its progress in carrying out its Comprehensive Plan and

(ii) Report the results of the review to HUD.

(b) *Notification of Plan requirements.* HUD will publish the requirements that pertain to the Comprehensive Plan (including the progress review and report specified in paragraph (a)(3) of this section and Plan amendments referred to in § 576.53(c)) in the **Federal Register** as necessary. Prospective grantees should familiarize themselves with these requirements. HUD will also provide notice of the Plan's requirements when HUD notifies prospective grantees of their grant allocations under subpart D or the availability of reallocation amounts under subpart F.

(c) *Reallocations.* Sections 576.61, 576.63, and 576.65 govern the reallocation of grant amounts initially allocated to a State or a formula city or county under § 576.43, or to a Territory under § 576.45, if the jurisdiction does not obtain approval of its Plan within

the time periods specified in those sections.

## Subpart D—Allocations

### § 576.41 Overall allocation of grant amounts.

(a) *Territories.* HUD will set aside for allocation to the Territories under § 576.45 an amount equal to 0.2 percent of the total amount of each appropriation under this part in any fiscal year.

(b) *States, metropolitan cities and urban counties.* HUD will allocate the amounts that remain after the set-aside to Territories under paragraph (a) of this section to States, metropolitan cities, and urban counties under § 576.43.

### § 576.43 Allocation of grant amounts to States, metropolitan cities, and urban counties.

(a) *Calculation of allocations.* In determining the amount of the allocation for each State, metropolitan city, and urban county, HUD will provide that the percentage of the total amount available for allocation to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to such State, metropolitan city, or urban county.

(b) *Reallocation to State.* Except as othewise provided by law, if an allocation to a metropolitan city or urban county would be less than .05 percent of each appropriation under this part in any fiscal year, the amount is added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount.* HUD will notify in writing each State, metropolitan city, and urban county that is eligible to receive an allocation under this section, of the amount of its allocation.

### § 576.45 Allocation of grant amounts to Territories.

(a) *Each Territory.* HUD will allocate amounts set aside for Territories under § 576.41 to each Territory, based upon its proportionate share of the total population of all Territories.

(b) *Notification of allocation amount.* HUD will notify each Territory of the amount of its allocation under this section.

## Subpart E—Award and Use of Grant Amounts

### § 576.51 Application requirements.

(a) *Application deadlines.* To receive grant amounts, a State or formula city or county that elects to receive an emergency shelter grant on the basis of an allocation under § 576.43, and a Territory that elects to receive an emergency shelter grant on the basis of an allocation under § 576.45, must submit an application that meets the requirements of paragraph (b) of this section. The application must be submitted to the responsible HUD field office, no later than 45 days after the date of the notification to the State, city or county, or the Territory, of its grant allocation, as provided by § 576.43(c) or § 576.45(b), respectively.

(b) *Application.* The application must contain:

(1) A Standard Form 424. Item (7) of Standard Form 424 must contain a description of the proposed use of the emergency shelter grant amounts. In the case of a formula city or county, or a Territory, the proposed use must be identified for each of the three categories of eligible activities under §§ 576.21 (a)(1), (a)(2), and (a)(3). In the case of a State, the proposed use must identify:

(i) How the State intends to implement the requirement in § 576.23(a) that the grant be made available to units of general local government in the State, or

(ii) The specific units of general local government in the State that will receive the grant.

(2) The following certifications and assurances:

(i) A certification by the public official responsible for submitting the Comprehensive Plan for the State, formula city or county, or Territory that is applying for ESG funding for the proposed activities that the activities are consistent with the Plan. In the case of a formula city or county, there must be an additional certification that before any of the grant funds are used for an activity conducted outside the applicant's jurisdiction, the applicant will secure and provide to HUD a certification that the activity is consistent with the CHAP submitted by the following jurisdiction, as applicable:

(A) If the activity is conducted within the boundaries of a city or urban county having its own CHAP, then a certification from its appropriate official of that jurisdiction; or

(B) If the activity is not conducted within a unit of local government having its own CHAP, then a certification from the appropriate State official.

(ii) A certification that the State, formula city or county, or Territory will provide the matching supplemental funds required by § 576.71. The certification must describe the sources and amounts of the supplemental funds. A State's matching supplemental funds certification is to be submitted with its interim performance report, as provided by § 576.85.

(iii) A certification that the formula city or county, or Territory, will comply, and that the State will ensure that its State recipients comply, with:

(A) The requirements of § 576.73 concerning the continued use of buildings, for which emergency shelter grant amounts are used, as emergency shelter for the homeless;

(B) The building standards requirements of § 576.75; and

(C) The requirements of § 576.77 concerning assistance to the homeless.

(iv) If grant amounts are proposed to be used to provide emergency shelter for the homeless in hotels or motels, or other commercial facilities providing transient housing, a certification from the State, metropolitan city, or urban county that:

(A) The grantee, or State recipient or nonprofit recipient (as appropriate), has executed (or will execute) an agreement with the provider of such housing that comparable living space (in terms of quality, available amenities, and square footage) will be rented in the facility for use as an emergency shelter for not less than a three-year period as calculated under § 576.73(b);

(B) Leases negotiated between the grantee, or State recipient or nonprofit recipient (as appropriate), and providers of such housing provide (or will provide) that the living space will be rented at substantially less than the daily room rate otherwise charged by the facility; and

(C) The grantee, or State recipient or nonprofit recipient (as appropriate), has considered using other facilities as emergency shelter, and has determined that use of the facilities referred to in this paragraph (b)(2)(iv) provides the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction.

(v) A certification that the formula city or county, or Territory, will conduct its emergency shelter grant activities under this part, and that the State or unit of general local government (as appropriate) will ensure that State recipients or nonprofit recipients conduct their activities under this part, in conformity with the nondiscrimination and equal opportunity requirements contained in § 576.79(a) and the other requirements of this part and of other applicable Federal law.

(vi) An assurance by the State, formula city, county or Territory that neither the grantee nor recipient will undertake, or

commit funds to, any activities to be funded under this part until:

(A) The grantee transmits to HUD a description of the proposed activities and of any properties to be renovated, rehabilitated or converted, including their location, and an identification of any environmental conditions that may require particular consideration;

(B) HUD either completes an environmental review of the proposed activities, properties and locations or, pursuant to 24 CFR Part 50, accepts an adequate and relevant prior review completed for another HUD program or project under 24 CFR Parts 50 or 58, and thereafter authorizes the grantee to proceed, in accordance with any mitigation requirements; and

(C) An assurance by the State, formula city, county or Territory that if, subsequent to HUD authorization to proceed on the basis of environmental review and mitigation requirements, the nature or location of funded activities changes, HUD will be so advised in the same manner as provided in § 576.51(b)(2)(vi)(A).

(vii) A certification by the State, formula city or county, or Territory that the submission of the application required by this paragraph (b) is authorized under applicable provisions of law, and that the grantee possesses the legal authority to carry out emergency shelter grant activities in accordance with the provisions of this part.

(c) *Substantial change in proposed use of funds.* (1) If at any time after submission of an application under this section, there is a substantial change in the proposed use of funds, there must be submitted to the responsible HUD field office a certification (as required by paragraph (b)(2)(i) of this section) that the proposed use of funds is consistent with the applicable Comprehensive Homeless Assistance Plan. The certification will be approved as expeditiously as possible, and will be deemed approved 30 days after HUD receives it unless, notification is provided by HUD within that period that the certification is not approved, and the basis for the denial of approval. ESG funds may not be obligated by a grantee or by a nonprofit recipient for the revised proposed use of funds until HUD accepts the new certification;

(2) In the case of a State, a State may not obligate funds until the revised proposed use of grant funds has been approved by HUD; and

(3) Submission of the certification under this paragraph (c) may require amendment of the applicable Comprehensive Homeless Assistance Plan. Requirements for Plan amendments may be found in the notification that HUD provides for Plans. (See § 576.31(b)).

(Approved by the Office of Management and Budget under control number 2506-0089.)

**§ 576.53 Review and approval of applications.**

(a) *Time for approval.* An application from a State, formula city or county, or Territory will be processed and approved as expeditiously as possible, and will be deemed approved 30 days after HUD receives it, unless within that period HUD notifies the applicant that the application is not approved.

(b) *Review of applications.* HUD will approve an application, unless it determines that the application:

(1) Was not received or postmarked within the time period specified in § 576.51(a);

(2) Does not contain the items required by § 576.51(b); or

(3) Does not otherwise comply with the requirements of this part or of other Federal law.

(c) *Conditional grant.* HUD may make a conditional grant restricting the obligation and use of emergency shelter grant amounts. Conditional grants may be made:

(1) Where there is substantial evidence that there has been, or there will be, a failure to meet the requirements of this part. In such a case, the reason for the conditional grant, the action necessary to remove the condition, and the deadline for taking those actions will be specified. Failure to satisfy the condition may result in imposition of a sanction under § 576.89, or in any other action authorized under applicable Federal law.

(2) Where HUD determines that the application itself does not include evidence of an acceptable prior environmental review or specific descriptions, as defined at § 576.51(b)(2)(vi), HUD will condition the grant so that activities shall not commence until HUD completes environmental review requirements and, on the basis of such review and needed mitigation measures, authorizes the grantee to proceed.

(3) In no case will HUD authorize the use of grant funds for activities, properties or locations that would result in unavoidable significant impact on the human environment, as determined by HUD environmental review; but in the event of such a determination, HUD will advise the State or formula grantee so that the grantee may select an alternative that may be found after HUD review to be without significant impact.

(d) *Grant agreement.* The grant will be made by means of a grant agreeement executed by HUD and the grantee.

(e) *Reallocation amounts.* Any emergency shelter grant amounts that are under § 576.51(a) or (2) an application disapproval under paragraph (b) of this section will be reallocated under § 576.67.

**§ 576.55 Deadlines for using grant amounts.**

(a) *States and State recipients.* (1) Each State must make available to its State recipients all emergency shelter grant amounts that it was allocated under § 576.43, within 65 days of the date of the grant award by HUD.

(2) Each State recipient must have all its grant amounts obligated (as that term is defined at § 576.3) within 180 days of the date on which the State made the grant amounts available to it. Funds to be expended by the State recipient itself (not through a third party) for the provision of assistance to the homeless will be considered to have met this timing requirement, if the recipient:

(i) Budgets the funds for a stated eligible activity;

(ii) Makes initial expenditures for the eligible activity within 180 days of the date on which the State made the grant amounts available to the recipient; and

(iii) Expends all funds for the budgeted activity within one year of the date on which the State made the grant amounts available to the recipient.

(b) *Formula cities and counties, and Territories.* Each formula city and county, and each Territory, must have all grant amounts that it was allocated under § 576.43 or § 576.45 obligated by 180 days of the date of the grant award by HUD. Funds to be expended by the formula city or county, or Territory, itself (not through a third party) for the provision of assistance to the homeless will be considered to have met this timing requirement, if the jurisdiction:

(i) Budgets the funds for a stated eligible activity;

(ii) Makes initial expenditures within 180 days of the date of the grant award by HUD; and

(iii) Expends all funds for the budgeted activity within one year of the date of the grant award by HUD.

(c) *Reallocation amounts.* (1) Any emergency shelter grant amounts that are not made available or obligated within the time periods specified in paragraphs (a)(1) (State distributions to State recipients) or (b) (formula city or county or Territory allocation) of this section, respectively, will be reallocated under § 576.67.

(2) The State must recapture any grant amounts that a State recipient does not obligate within the time period specified in paragraph (a)(2) (State recipients) of this section. The State, at its option, must make these grant amounts and other amounts returned to the State (except amounts referred to in § 576.21(c)(2)(vii)) available as soon as practicable to other units of general local government for use within the time period specified in paragraph (a)(2) of this section, or to HUD for reallocation under § 576.67.

## Subpart F—Reallocations

### § 576.61 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; formula cities and counties.

(a) *Applicability.* This section applies where a formula city or county fails to obtain approval of its Comprehensive Plan within 90 days of the date upon which amounts under this part first become available for allocation under § 576.43 in any fiscal year.

(b) *Grantee.* HUD will make available the amounts that a city or county referred to in paragraph (a) of this section would have received to the State in which the city or county is located.

(c) *Notification of fund availability.* The responsible HUD field office will promptly notify the State of the availability of any reallocation amounts under this section.

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the State must:

(1) Execute a grant agreement with HUD to receive grant amounts allocated to the State under § 576.43 for the fiscal year for which the amounts to be reallocated were initially made available.

(2) If necessary, submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must (to the extent necessary) meet the requirements of § 576.51(b), and must be submitted to the responsible HUD field office no later than 30 days after notification is given to the State under paragraph (c) of this section.

(e) *Review and approval.* (1) Section 576.53 (except paragraph (e)) governs the review and approval of application amendments under this section.

(2) HUD will endeavor to make grant awards within 30 days of the application amendment deadline, or as soon thereafter as practicable.

(f) *Deadlines for using reallocated grant amounts.* Section 576.55 governs the use of amounts reallocated under this section.

(g) *Amounts that cannot be reallocated.* Any grant amounts that cannot be reallocated to a State under this section will be reallocated to formula cities and counties located in the State and then to other States and Territories, as provided by § 576.63. Amounts that are reallocated under this section, but that are returned or unused, will be reallocated under § 576.67.

### § 576.63 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; States.

(a) *Applicability.* This section applies where:

(1) A State fails to obtain approval of its Comprehensive Plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year; or

(2) Grant amounts cannot be reallocated to a State under § 576.61.

(b) *Grantees.* HUD will reallocate the amounts that a State referred to in paragraph (a) of this section would have received, first, to formula cities and counties located in the State that demonstrate extraordinary need or large numbers of homeless individuals and if grant amount remain, then to other States and Territories that meet this criterion.

(c) *Notification of fund availability.* HUD will make reallocations under this section by direct notification or Federal Register Notice that will set forth the terms and conditions under which grant amounts under this section are to be reallocated and grant awards made.

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the formula city or county, or State or Territory, must:

(1) Submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must meet—

(i) To the extent necessary, the requirements of § 576.51(b) and

(ii) Such additional requirements as HUD may specify in the notification under paragraph (c) of this section. The amendment must be submitted to the responsible HUD field office no later than 30 days after such notification is given.

(2) Execute a grant agreement with HUD to receive grant amounts allocated under § 576.43 or § 576.45 (as appropriate) for the fiscal year for which the amounts to be reallocated were initially made available.

(e) *Review and approval.* (1) Section 576.53 (except paragraph (e)), and such additional requirements as HUD may specify in the notification under paragraph (c) of this section, govern the review and approval of application amendments under this section. HUD will rank the amendments and make grant awards under this section on the basis of the following factors:

(i) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(ii) The extent to which the proposed activities address this need; and

(iii) The ability of the grantee to carry out the proposed activities promptly.

(2) HUD will endeavor to make grant awards within 30 days of the application amendment deadline, or as soon thereafter as practicable.

(f) *Grant amounts.* HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application amendment, based on competing demand for grant amounts and the extent to which the respective activities address the needs of the homeless.

(g) *Deadlines for using reallocated grant amounts.* Section 576.55 governs the use of amounts reallocated under this section.

(h) *Amounts that are not reallocated.* Any grant amounts that are not reallocated under this section, or that are reallocated, but are unused, will be reallocated under § 576.67(d). Any amounts that are reallocated, but are returned, will be reallocated under § 576.67(c).

### § 576.65 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; Territories.

(a) *Applicability.* This section applies where a Territory fails to obtain approval of its Comprehensive Plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year.

(b) *Grantees.* HUD will make available the amounts that a Territory referred to in paragraph (a) of this section would have received to other Territories that demonstrate extraordinary need or large numbers of homeless individuals.

(c) *Notification of fund availability.* The responsible HUD field office will promptly notify each Territory of the availability of any reallocation amounts under this section, and will indicate the terms and conditions under which such amounts are to be made available and grant awards made.

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the Territory must:

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(1) Execute a grant agreement with HUD to receive grant amounts allocated under § 576.45 for the fiscal year for which the amounts to be reallocated were initially made available.

(2) If necessary, submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must meet—

(i) To the extent necessary, the requirements of § 576.51(b) and

(ii) Such additional requirements as HUD may specify in the notification under paragraph (c) of this section.

The amendment must be submitted to the responsible HUD field office no later than 30 days after such notification is given.

(e) *Review and approval.* (1) Section 576.53 (except paragraph (e)) governs the review and approval of application amendments under this section. HUD will rank the amendments and make grant awards under this section on the basis of the following factors:

(i) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(ii) The extent to which the proposed activities address this need; and

(iii) The ability of the grantee to carry out the proposed activities promptly.

(2) HUD will endeavor to make grant awards within 30 days of the application amendment deadline or as soon thereafter as practicable.

(f) *Grant amounts.* HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application amendment, based on competing demand for grant amounts and the extent to which the respective activities address the needs of the homeless.

(g) *Deadlines for using reallocated grant amounts.* Section 576.55 governs the use of amounts reallocated under this section.

(h) *Amounts that are not reallocated.* Any grant amounts that are not reallocated under this section, or that are reallocated, but are unused, will be reallocated under § 576.67(d). Amounts that are allocated, but are returned, will be reallocated under § 576.67(c).

### § 576.67 Reallocation of grant amounts; returned or unused amounts.

(a) *General.* From time to time, HUD will reallocate emergency shelter grant amounts that are returned or unused, as those terms are defined in paragraph (f) of this section. HUD will make reallocations under this section by direct notification or **Federal Register** Notice that will set forth the terms and conditions under which the grant amounts are to be reallocated and grant awards are to be made.

(b) *FEMA boards.* HUD may use State and local boards established under the Emergency Food and Shelter Program administered by the Federal Emergency Management Agency, as a resource to identify potential applicants for reallocated grant amounts.

(c) *Reallocation—returned grant amounts.* (1) States and formula cities and counties. HUD will endeavor to reallocate returned emergency shelter grant amounts that were initially allocated under § 576.43 to a State or a formula city or county, for use within the same jurisdiction. Reallocation of these grant amounts is subject to the following requirements:

(i) Returned grant amounts that were allocated to a State will be made available (A) first, to units of general local government within the State and (B) if grant amounts remain, then to other States.

(ii) Returned grant amounts that were allocated to a formula city or county will be made available—

(A) First, for use in the city or county, to units of general local government that are authorized under applicable law to carry out activities serving the homeless in the jurisdiction;

(B) If grant amounts remain, then to the State in which the city or county is located;

(C) If grant amounts remain, to units of general local government in the State; and

(D) If grant amounts remain, to other States.

(2) *Territories.* Returned grant amounts that were allocated to a Territory will be made available—

(i) First, to other Territories and

(ii) If grant amounts remain, then to States.

(3) *Further reallocation: States, formula cities and counties, and Territories.* Any grant amounts that—

(i) Remain after applying the preceding provisions of this paragraph (c), or

(ii) Are returned to HUD after reallocation under such provisions, will be further reallocated under paragraph (d) of this section.

(4) *Other grantees.* Returned grant amounts that were initially made available to private nonprofit organizations, units of general local government and States under paragraph (d) of this section will be made available under that paragraph.

(5) The responsible HUD field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications, and will set out other terms and conditions relating to grant awards, consistent with this part. The announcement will specify the application documents to be submitted, which include:

(i) A Standard Form 424;

(ii) Certifications required at § 576.51(b)(2)(iv); and

(iii) Other certifications and assurances similar to those required from a formula city or county, or a Territory, under §§ 576.51(b) (2), (3) and (4), as appropriate.

(6) The responsible HUD field office may establish maximum grant amounts, considering the grant amounts available, and will rank the applications using the criteria in paragraph (e) of this section.

(7) HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on competing demands for grant amounts and the extent to which the respective activities address the needs of the homeless.

(8) HUD will endeavor to make grant awards within 30 days of the application deadline or as soon thereafter as practicable.

(d) *Reallocation—unused grant amounts.* Unused grant amounts will be available, in HUD's discretion, for reallocation from time to time to:

(1) Units of general local government and States demonstrating extraordinary need or large numbers of homeless individuals; and

(2) Private nonprofit organizations providing assistance to the homeless.

(e) *Selection criteria.* HUD will award grants under paragraphs (c) and (d) of this section based on consideration of the following criteria:

(1) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(2) The extent to which the proposed activities address this need; and

(3) The ability of the grantee to carry out the proposed activities promptly.

(f) *When grant amounts are returned or unused.* (1) For purposes of this section, emergency shelter grant amounts are considered "returned" when they become available for reallocation because a grantee does not execute a grant agreement with HUD for them, *e.g.*, when a grantee for which an allocation is made under § 576.43 or § 576.45 fails to meet the application deadlines under § 576.51(a), or has its application disapproved under § 576.53(b), or approved with a reduced grant amount in accordance with §576.89.

(2) For purposes of this section, emergency shelter grant amounts are considered "unused" (i.e., Federal deobligation) when they become available for reallocation by HUD after

a grantee has executed a grant agreement with HUD for them: *e.g.*, where—

(i) A State fails to make its grant amounts available to State recipients within the time period specified in § 576.55(a)(1);

(ii) A formula city or county fails to obligate grant amounts within the time specified in § 576.55(b);

(iii) A State recaptures grant amounts from a State recipient and makes them available to HUD as provided in § 576.55(c)(2);

(iv) Grant amounts become available as a result of imposition of a sanction (other than a reduction of grant amounts) under § 576.89 or the close-out of a grant; or

(v) A grantee referred to in paragraph (b) of this section fails to obligate grant amounts within the time period specified in its grant agreement.

Amounts that remain after reallocation under § 576.63, § 576.65, or § 576.67(c) are considered unused for purposes of this section.

## Subpart G—Program Requirements

### § 576.71 Matching funds.

(a) *General.* Each grantee must supplement its emergency shelter grant amounts with an equal amount of funds from sources other than under this part. These funds must be provided after the date of the grant award to the grantee. Funds used to match a previous emergency shelter grant award may not be used to match a subseqyent grant award under this part. A grantee may comply with this requirement by providing the supplemental funds itself, or through supplemental funds or voluntary efforts provided by any State recipient or nonprofit recipient (as appropriate).

(b) *Calculating the matching amount.* In calculating the amount of supplemental funds, there may be included the value of any donated material or building; the value of any lease on a building; any salary paid to staff of the grantee or to any State recipient or nonprofit recipient (as appropriate) in carrying out the emergency shelter program; and the time and services contributed by volunteers to carry out the emergency shelter program, determined at the rate of $5 per hour. For purposes of this paragraph (b), the grantee will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish a fair market value.

### § 576.73 Use as an emergency shelter.

(a)(1) *General.* Any building for which emergency shelter grant amounts are used for one or more of the eligible activities described in §§ 576.21(a)(1) must be maintained as a shelter for the homeless for not less than a three-year period, or for not less than a 10-year period, if the grant amounts are used for major rehabilitation or conversion of the building.

(2) Using emergency shelter grant amounts for eligible activities described in § 576.21(a)(2) does not trigger either the three- or 10-year period.

(3) Using emergency shelter grant amounts for the leasing of commercial facilities under § 576.21(a)(3) to provide emergency shelter requires that the commercial facilities be maintained as a shelter for the homeless for not less than a three-year period.

(4) For all other eligible activities described at § 576.21(a)(3), the building for which ESG grant amounts are used must be maintained as a shelter for the homeless for not less than a one-year period.

(b) *Calculating the applicable period.* The one-, three- and 10-year periods referred to in paragraph (a) of this section begin to run:

(1) In the case of a building that was not operated as an emergency shelter for the homeless before receipt of grant amounts under this part, on the date of initial occupancy as an emergency shelter for the homeless.

(2) In the case of a building that was operated as an emergency shelter before receipt of grant amounts under this part, on the date that grant amounts are first obligated for the shelter.

### § 576.75 Building standards.

Any building for which emergency shelter grant amounts are used for renovation, conversion, or major rehabilitation must meet local government safety and sanitation standards.

### § 576.77 Assistance to the homeless.

Homeless individuals and families must be given assistance in obtaining:

(a) Appropriate supportive services, including permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(b) Other Federal, State, local, and private assistance available for such individuals.

### § 576.79 Other Federal requirements.

Use of emergency shelter grant amounts must comply with the following additional requirements:

(a) *Nondiscrimination and Equal Opportunity.* (1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146 and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8. For purposes of the emergency shelter grants program, the term "dwelling units" in 24 CFR Part 8 shall include sleeping accommodations.

(3) The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (see § 570.607(b) of this Chapter);

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this part; and

(6) The requirement that the grantee (or in the case of States, the State recipient) make known that use of the facilities and services is available to all on a nondiscriminatory basis. Where the procedures that a grantee or recipient intends to use to make known the availability of such facilities and services are unlikely to reach persons of any particular race, color, religion, sex, age or national origin within their service area who may qualify for them, the recipient or grantee must establish additional procedures that will ensure that these persons are made aware of the facilities and services. Grantees and recipients must also adopt and implement procedures designed to make available to interested persons information concerning the existence and location of services and facilities that are accessible to persons with a handicap.

(b) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of 24 CFR Part 85 (codified pursuant to OMB Circular No. A–102),

and OMB Circular No. A-87,[1] as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, and Nos. A-110 and A-122[1] as they relate to the acceptance and use of emergency shelter grant amounts by private nonprofit organizations.

(c) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35. In addition, the grantee (or in the case of States, the State recipient) must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces:

(1) Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and

(2) Appropriate action must be taken to protect shelter occupants from the hazards associated with lead-based paint abatement procedures.

(d) *Conflicts of interest.* In addition to conflicts of interest requirements in OMB Circulars A-102 and A-110,[1] no person-

(1)(i) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient ( or of any designated public agency) that receives emergency shelter grant amounts and

(ii) Who exercises or has exercised any functions or responsibilities with respect to assisted activities, or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a pesonal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

HUD may grant an exception to this exclusion as provided in §§ 570.611(d) and (e) of this chapter.

(e) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(f) *Flood Insurance.* No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part, other than by grant amounts allocated to States under § 576.43, may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1)(i) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or

(ii) Less than a year has passed since FEMA notification regarding such hazards; and

(2) The grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(g) *Coastal Barriers.* In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

(h) *Audit.* The financial management system used by a State or unit of general local government that is a grantee or State recipient must provide for audits in accordance with 24 CFR Part 44. A private nonprofit organization is subject to the audit requirements of OMB Circular A-110.[1]

(i) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR Part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3.

(j) *Displacement.* A grantee or State or nonprofit recipient may not expend ESG grant funds for any activities that would result in the displacement of persons or businesses.

## Subpart H—Grant Administration

### § 576.81 Responsibility for grant administration.

Grantees are responsible for ensuring that emergency shelter grant amounts are administered in accordance with the requirements of this part and other applicable laws. In the case of States making grant amounts available to State recipients, and in the case of units of general local government distributing grant amounts to nonprofit recipients, the States and the units of local government are responsible for ensuring that their respective recipients carry out the recipients' emergency shelter grant programs in compliance with all applicable requirements.

### § 576.83 Method of payment.

Payments are made to a grantee upon its request, and may include a working capital advance for 30 days' cash needs or an advance of $5,000, whichever is greater. Thereafter, the grantee will be reimbursed for the amount of its actual cash disbursement needs. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30-day period in payment of eligible activity costs. Payments with respect to grants of $120,000, or more, will be made by letter of credit, if the grantee meets the requirements of OMB Circular A-102.[1]

### § 576.85 Performance reports.

(a) *Interim performance report.*—(1) *Timing of report.* (i) A formula city or county, or Territory, must submit its interim performance report to HUD no later than 30 days after the end of the 180-day period allowed for the obligation of grant amounts under § 576.55(b), or 30 days after the date when all grant amounts are obligated, whichever comes first.

(ii) A State must submit its interim performance report not later than *30 days* from the date of the State's distribution of funds to its State recipients; except that where the responsible field office grants a State an extension of the 65-day deadline for obligating its grant funds under § 576.55(a)(1) a corresponding extension for filing of the interim report will automatically be granted.

(iii) A grantee referred to in § 576.67, Reallocation of funds, must submit its interim performance report to HUD within the period specified in its grant agreement.

(2) *Report content.* (i) In the case of a grantee other than a State, the interim performance report must contain information on the amount of funds obligated for each of the three categories of eligible activities described in §§ 576.21(a)(1), (2), and (3).

(ii) A State interim performance report must provide this information for each State recipient.

(3) *Matching funds certification.* A State must submit with its interim performance report the matching funds certification required by § 576.51(b)(2)(ii).

(b) *Annual performance report.*—(1) *Report content.* A grantee other than a State must provide HUD with an annual performance report on the obligation and expenditure of funds for each of the

[1] OMB Circulars referenced in this section are available at the Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

three categories of eligible activities described in §§ 576.21(a)(1), (2), and (3). A State must provide this information for each State recipient.

(2) *Timing of report.* The initial annual performance report is required for the period ending December 31 following the submission of the interim report, and is due no later than 30 days after December 31. A grantee must continue to submit this report annually until all emergency shelter grant amounts are reported as expended, except that the final report is to be submitted 90 days after all ESG funds are expended and all activities are completed.

(Approved by the Office of Management and Budget under control number 2506-0089.)

**§ 576.87 Recordkeeping.**

Each grantee must ensure that records are maintained as necessary to document compliance with the provisions of this part.

(Approved by the Office of Management and Budget under control number 2506-0089.)

**§ 576.89 Sanctions.**

(a) *HUD sanctions.* If HUD determines that a grantee is not complying with the requirements of this Part or of other applicable Federal law, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Condition a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

(b) *State sanctions.* If a State determines that a State recipient is not complying with the requirements of this Part or other applicable Federal laws, the State must take appropriate actions, which may include the actions described in paragraph (a) of this section. Any grant amounts that become available to a State as a result of a sanction under this section must, at the option of the State, be made available (as soon as practicable) to other units of general local government located in the State for use within the time periods specified in § 576.55(a)(2), or to HUD for reallocation under § 576.67(d).

(c) *Reallocations.* Any grant amounts that become available to HUD as a result of the imposition of a sanction under this section will be reallocated under § 576.67(d).

**Appendix to Part 576—Reallocation of Grant Funds**

| | Reallocating event | Reallocation grantee | Reallocated amounts not awarded | Reallocated amounts awarded, but returned [1] | Reallocated amounts awarded, but unused [2] |
|---|---|---|---|---|---|
| § 576.61 | Formula city or county fails to obtain CHAP approval. | State in which city or county located. | Reallocate to formula cities and counties and States and Territories under § 576.63. | Reallocate under § 576.67(c) | Reallocate under § 576.67(d). |
| § 576.63 | State fails to obtain CHAP approval. | First, formula cities and counties in State; and if grant amounts remain, other States and Territories. | Reallocate under § 576.67(d) | Reallocate under § 576.67(c) | Reallocate under § 576.67(d). |
| § 576.65 | Territory fails to obtain CHAP approval. | Other Territories | Reallocate under § 576.67(d) | Reallocate under § 576.67(c) | Reallocate under § 576.67(d). |
| § 576.67(c)(1)(i) | "Returned" amounts—State. | First, units of general local government in the State; if grant amounts remain, then other States. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |

| | Reallocating event | Reallocation grantee | Reallocated amounts not awarded | Reallocated amounts awarded, but returned [1] | Reallocated amounts awarded, but unused [2] |
|---|---|---|---|---|---|
| § 576.67(c)(1)(ii) | "Returned" amounts—formula cities and counties. | First, units of general local government to carry out homeless activities in city or county; if amounts remain, then the State in which the city or county located; if amounts remain, then units of general local government in the States and if amounts remain, other States. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |
| § 576.67(c)(2) | Returned amounts—Territories. | First, other Territories; if grants remain, then States. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |
| § 576.67(c)(4) | Returned amounts—reallocation grantees under § 576.67(d). | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |
| § 576.67(d) | "Unused" amounts | Units of general local government, Sates and private nonprofits. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |

[1] As provided in § 576.67(f), emergency shelter grant amounts are considered "returned" when they become available for reallocation because a grantee does not execute a grant agreement with HUD for them, *e.g.*, when a grantee for which an allocation is made under § 576.43 fails to meet the application deadlines under § 576.51(a), or has its application disapproved under § 576.53(b) or approved with a reduced grant amount in accordance with § 576.89.

[2] As provided in §§ 576.67(d), grant amounts are considered "unused" when they become available for reallocation by HUD after a grantee has executed a grant agreement with HUD for them: *E.g.*, where (i) a State fails to make its grant amounts available to State recipients within the time period specified in § 576.55(a)(1); (ii) a formula city or county fails to obligate grant amounts within the time specified in § 576.55(b); (iii) a State recaptures grant amounts from a State recipient and makes them available to HUD as provided in § 576.55(c)(2); (iv) grant amounts become available as a result of imposition of a sanction (other than a reduction of grant amounts) under § 576.89 or the close-out of a grant; or (v) a grantee referred to in paragraph (b) of this section fails to obligate grant amounts within the time period specified in its grant agreement.

Date: July 18, 1988.

**Nancy C. Silvers,**

*Acting General Deputy Assistant Secretary for Community Planning and Development.*

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Part V

# Department of Housing and Urban Development

**24 CFR Parts 905, 941, 965, and 968**
**Preemption of Certain State-Determined Prevailing Wage Rates Applicable to Public Housing Projects; Final Rule**

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 905, 941, 965, and 968**

**[Docket No. R-88-1353, FR -2231]**

## Office of the Assistant Secretary for Public and Indian Housing; Preemption of Certain State-Determined Prevailing Wage Rates Applicable to Public Housing Projects

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule preempts any prevailing wage rate that is determined under State law and would otherwise be applicable to an employee in any trade employed on a public or Indian housing project whenever the State wage rate exceeds the corresponding Federally-determined prevailing wage rate. Specifically, the rule requires bid documents and contracts let by the HUD-assisted public housing agency or Indian housing authority for the project to contain a statement that any State rate that exceeds the corresponding Federal rate is inapplicable and shall not be enforced. In addition, the public housing agency or Indian housing authority shall not be required to pay the higher State wage rates to its own employees who may be engaged on the project. The rule prohibits enforcement of the State requirements regarding higher State rates on the project. The rule also preempts wage rates that are determined to be prevailing under Indian tribal law and exceed the applicable Federal wage rates. The rule will restrain the costs of operation of the public housing program and will enable the Federal government to make the most effective use of limited budget resources.

**EFFECTIVE DATE:** October 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** Justin L. Logsdon, Assistant to the Secretary for Labor Relations, Room 7106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5370. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On October 21, 1987, HUD published in the **Federal Register** (52 FR 39233) a Notice of Proposed Rulemaking to amend portions of 24 CFR Parts 905, 941, 965, and 968. This rule proposed to preempt the application and enforcement of prevailing wage rates determined under State law on projects assisted by HUD under the United States Housing Act of 1937, as amended (USHA), whenever the State wage rate exceeded the corresponding Federally-determined prevailing wage rate for that trade. (Under section 12 of the USHA, the Federal prevailing wage rate is determined either by the U.S. Department of Labor pursuant to the Davis-Bacon Act, in the case of project development, or by HUD in the case of project operation). Under the proposal, a State or local wage rate would not apply to a project if the State- or locally-determined rate for a trade to be used on the project exceeded the corresponding Federally-determined rate. Any bid documents for project work that would otherwise be subject to State law requiring payment of State- or locally-determined prevailing wage rates would be required to contain a statement that whenever any State- or locally-determined rate exceeds the corresponding Federally-determined wage rate, the State- or locally-determined rate is inapplicable to the contract and shall not be enforced. In addition, the PHA or IHA would not be required to pay its own employees engaged on the project at higher State wage rates. The rule also proposed to prohibit enforcement of such rates against contractors or subcontractors and PHAs or IHAs. Because HUD-determined prevailing wage rates are limited in all cases to basic hourly rates without consideration of fringe benefits, the rule proposed to provide that fringe benefits determined under State law would be excluded from the comparison with the HUD-determined wage rate; in that situation, preemption of the entire State-determined rate (both fringe benefits and the basic hourly rate) would occur if the basic hourly rate determined under State law, exclusive of fringe benefits, exceeded the HUD-determined rate. The rule also proposed to apply to IHAs and to tribal prevailing wage laws.

### Discussion of Public Comments and Changes Made in the Final Rule

HUD received 81 comments in response to the proposed rule, including 55 comments generally supporting the issuance of a preemption rule, 23 opposing the rule, and 3 that did not express a clear position supporting or opposing the rule. The comments included 49 from housing authorities, 10 directly from labor organizations or their counsel (in addition to other labor organization comments forwarded with Congressional comments), 7 from Congressional representatives, 5 from States or State agencies or officials, and several from trade, redevelopment and other organizations.

### Cost Savings

A large number of comments concerned the question of whether the rule would result in cost savings in construction and rehabilitation and/or the ability to perform work on a greater number of units with the same amount of Federal funds. For example, one labor organization commented that it appeared HUD lacks any real evidence supporting its conclusion that it is necessary to preempt higher State-determined prevailing wage rates, since the fact that some State rates are higher does not prove that labor costs on such projects are higher or that the costs of such projects are higher than they might otherwise be. A state law department commented that evidence of higher State-determined wage rates alone does not lead logically to HUD's conclusion about the effect of these rates on the cost or number of lower income housing units. Another labor organization asserted that HUD ignored the findings of three of its own investigations, two by the Office of Inspector General finding a direct correlation between prevailing wage requirement violations and poor quality construction due to use of inexperienced and unskilled workers, and one by its Office of Program Planning and Evaluation finding a low correlation between average wage rates and average dwelling costs on a sample of Indian housing projects.

HUD rejects the notion that wage rates, which may constitute one-third or more of the total cost of rehabilitation work, can be increased as much as 50 to 100 percent (depending on location, job classifications, and nature of work), without affecting overall project cost or the amount of renovation work performed. Indirect confirmation of this is found in the comment of a labor organization, which objected to the proposed rule for the following reason:

> Where the federal Davis-Bacon or HUD rates are substantially lower than the wage rates contained in collective bargaining agreements contractors who are parties to such agreements would be competitively disadvantaged in obtaining work on federally funded housing projects. This will result in a deprivation of work for employees covered by collective bargaining agreements and will undermine the wage and benefit standards in the locality.

Moreover, at least 18 PHAs commented that the proposed rule preempting higher State wage rates would result in cost savings. For example, three California PHAs commented that the rule could, in some cases, reduce the cost of new construction and modernization under the Comprehensive Improvement

Assistance Program (CIAP) by 15 to 30 percent, and that cost savings in labor would directly translate into either more units being modernized or constructed within the same budget amounts or improvements in the materials used and a longer life for the units, with less operating costs. A PHA in New York State commented that:

> Our comparisons of State and Davis-Bacon wage rates as applicable to our rehabilitation, modernization and new development projects indicate that the State rates exceed the Federal rates by a substantial percentage and, in many cases, would have permitted us to accomplish only half of our original project scope. This would obviously undermine our efforts to meet the needs of the low-income and homeless people in our area. Furthermore, it would be counter productive to our attempts to stretch the ever-diminishing dollars we have to work with.
>
> Mandatory use of State wage rates would increase the overall cost of our competitively bid projects to the point of making them unfeasible within the limits of our budget. The end result would be diminished decent, safe and sanitary housing opportunities for the people we serve.

Another PHA in New York State noted that New York State rates had substantial impact on the PHA's "residential" work (generally, residential buildings of four stories or less) but very little impact on "commercial" (residential high rise) work. The authority cited a heating system replacement project which fit both HUD's and the State's respective definitions of "residential" work and was first bid with Federal "residential" rates; however, after a lawsuit in State court, the project was required to be rebid with State rates. Because of New York's methodology for determining wage rates, the new rates deemed applicable by the court and the State in the absence of a separate collectively bargained "residential" rate were actually the higher "commercial" rates, which were merely labeled as "residential". The PHA reported that the following changes were made in the project when it was rebid:

> The scope of project was then completely downgraded to offset the anticipated increase in labor costs. Some of the changes included the elimination of thermostatic valves on convectors, lesser quality convectors, a decrease from cast iron to copper piping, the encapsulation of asbestos rather than its complete removal, etc. An estimated $800,000 of work and product quality was cut from the project. The second bids totaled $4,667,000—an increase of $56,000—in spite of the cost containment measures. Thus, the wage rate issue cost the Housing Authority and HUD about 19% in lost improvements for public housing.

Nine PHAs commented that additional indirect cost savings would be achieved by eliminating administrative burdens associated with applying State rates to projects.

A trade association comment included examples of higher State wage rates leading to overall higher bid costs, including the statement of a member contractor in California, operating in the Sacramento, Los Angeles and San Francisco areas, that California State rates were 10 to 20 percent higher than Federal rates and that such wage differentials would increase the contractor's total job cost by 3 to 4 percent, which would be reflected in its bid prices.

Also, in recent Buffalo, New York federal court litigation challenging HUD's refusal to apply state rates, and expert witness for the plaintiff unions admitted, on the basis of certain HUD-verified assumptions, that HUD's annual Comprehensive Improvement Assistance Program (CIAP) costs in the State would increase by 28 percent or $30,200,000; HUD's witnesses calculated the amount at about $50,000,000. In other words, using all available funds, HUD's main program for rehabilitating public housing in New York would have to be slashed by more than one quarter if State rates are imposed on PHA projects there.

With respect to the labor organization comments concerning HUD's own studies, two HUD Inspector General reports (Internal Audit: Monitoring and Enforcement of Labor Standards, Region IX, 85–SF–179–0003, January 16, 1985; National Audit Report: Monitoring and Enforcement of Labor Standards, 86–TS–179–005, November 6, 1985) stated that there is a correlation between labor standards violations and construction deficiencies in the jurisdication of some Regional Offices. The contractors cited in these reports failed to pay federally-determined prevailing wage rates. The simple response is that these studies provide no support for the contention that poor quality construction is linked to failure to pay State-imposed wage rates that exceed federally required levels, since the reports concerned only violations of Federal labor standards.

The labor organization also mentioned a HUD Office of Program Planning and Evaluation study ("Evaluation of the High Cost of Indian Housing", December 1979), which it said indicated a low correlation between average wage rates and dwelling construction costs. This analysis involved wage rates for projects on 20 reservations. While this report did not find a correlation between wage rates and overall costs for those projects with the highest wage rates, it did find some correlation between wage rates and project costs for the remaining three quarters of the sample with lower wage rates. In any event, the sample—restricted to a few Indian Housing Authorities a decade ago—is wholly insufficient to support a conclusion that high wage rates do not affect construction costs in light of the recent, already recited evidence to the contrary.

Other comments relating to the overall cost of a project referred to HUD's suggestion that imposition of higher State rates could result in a cutback by contractors in the cost or quality of equipment and supplies, resulting in poorer quality work. One of the comments, received from a labor organization, suggested that HUD's hypothesis was without factual support and asserted that the quality of work is largely dependent on the workers' skill and training, which would be lacking at the wage rates applying after preemption of State rates. Another labor organization commented that the contract will specify the standards of materials required, precluding substitution of lesser quality by the contractor.

HUD's discussion, in the preamble to the proposed rule, of the possibility of cutbacks in the cost or quality of materials and supplies due to higher State wage rates indicated that this possibility was less likely than that higher bids must be accepted for the work. Nevertheless, HUD believes that the quality of the work is dependent on the skill and workmanship of the workers—*as well as* the quality of materials. The comment of the New York State PHA quoted above regarding cutbacks in quality of materials and quality of work to be performed is an example—albeit reflected in revised specifications rather than initiated by a contractor—of lesser quality work resulting from imposition of higher State wage rates. Moreover, the labor organizations' comments, along with two other comments asserting that preemption would result in shoddy workmanship due to substandard wages, essentially suggest that the Federally-determined wage rates (HUD-determined or Davis-Bacon rates), are insufficient to protect against unskilled "bargain basement" workers or resulting poor quality work, not only in the handful of States with higher applicable State rates, but also in the overwhelming majority of States where Federal rates exeed (or apply in the absence of) State-determined rates. HUD rejects this assertion as without foundation since the Federally-

determined rates are required by law to reflect rates prevailing in the locality.

**Accuracy of Federal and State Rates**

Other comments suggested that HUD and/or Davis-Bacon wage rates are inaccurate or too low. Two comments suggested that preemption of rates determined under State law would undermine the labor market; another comment suggested that the rule was not in the best interest of the worker and would result in workers on PHA projects becoming low-income earners. HUD rejects these comments because both types of Federal wage rates are required by law to reflect the wage rates prevailing in the locality. Moreover, appeal procedures are available to challenge Davis-Bacon rates determined by the Department of Labor for project development, as well as those determined by HUD for project operation. Workers and other interested persons, including contractors and labor organizations, may request that DOL reconsider a Davis-Bacon wage determination. Formal appeals may be submitted to the Administrator, Wage and Hour Division. 29 CFR 1.8. The Administrator's decisions may be appealed to the Department of Labor's Wage Appeals Board. 29 CFR 1.9. HUD-determined wage rates may also be appealed, first to the Regional or Field Office, and then to the Assistant to the Secretary for Labor Relations in Washington, DC.

On the other hand, comments from PHAs in New York and California stated that certain of the State determined wage rates were excessive and unrealistic.

HUD notes that State laws vary in their methodology for determining the "prevailing" wage rate. One recent study characterized that variation among these laws as follows:

> State prevailing wage laws are highly dissimilar. They are alike only in that all of them set some level of super-minimum wage rates for construction workers on public works. Even those state prevailing wage laws patterned on the federal Davis-Bacon Act usually contain concepts, definitions, procedures, or rules so changed from the original that no standard form can be said to exist. The thirty-five little Davis-Bacon acts (those of thirty-four states plus that of the District of Columbia) are all effectively different, tied together by little more than a common name. [A. Thieblot, Jr., *Prevailing Wage Legislation: The Davis-Bacon Act, State "Little Davis-Bacon" Acts, the Walsh-Healey Act, and The Service Contract Act* 137 (Labor Relations and Public Policy Series No. 27, University of Pennsylvania 1986).]

The methodology mandated by the New York State labor law, in particular, varies from the DOL methodology for determining Davis-Bacon wage rates in ways that tend to result in State-determined wage rates that are higher than the Davis-Bacon rates. As amended in 1983, section 220 of the New York State Labor Law defines "prevailing rate of wage" as:

> the rate of wage paid in the locality, as hereinafter defined, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed. The prevailing rate of wage shall be annually determined * * * In the event that it is determined after a contest, as provided in subdivision six of this section, that less than thirty percent of the workers, laborers or mechanics in a particular trade or occupation in the locality where the work is being performed receive a collectively bargained rate of wage, then the average wage paid to such workers, laborers or mechanics in the same trade or occupation in the locality for the twelve-month period preceding the fiscal officer's annual determination shall be the prevailing rate of wage. Laborers, workers or mechanics for whom a prevailing rate of wage is to be determined shall not be considered in determining such prevailing wage. [NY Lab. law § 220, subdivision 5a (McKinney)]

Only employers may contest a wage determination:

> An employer may contest a determination by the fiscal officer under paragraphs a and c of subdivision five of this section. The employer must allege and prove by competent evidence, that the actual percentage of workers, laborers and mechanics is below the required thirty per centum and during the pendency of any such contest and until final determination thereof, the work in question shall proceed under the rate established by the fiscal officer. [*Id.* subdivision 6]

As a result of the 1983 amendments, the following differences in methodology between New York State and Davis-Bacon wage rates tend to result in higher State-determined wage rates:

1. New York State establishes as prevailing the rates paid to 30 percent of the workers in the trade in the locality if they are subject to collective bargaining agreements, although the remaining 70 percent of the workers may be receiving lower wage rates. In contrast, the majority of the workers in a trade must be paid at the same rate in order to establish that rate as prevailing for Federal Davis-Bacon purposes; if the same wage rate is not paid to a majority, the Davis-Bacon prevailing wage is the average of the wages paid, weighted by the total employed in the trade. 29 CFR 1.2(a)(1).

2. The New York law does not require a survey to determine whether the collective bargaining agreements considered by the State actually cover at least 30 percent of the workers in the trade, nor does it specify the methodology by which such a survey would be conducted; rather, it places the burden on employers to individually challenge wage determinations. Accordingly, it is likely that New York State determinations may represent collectively bargained wage rates paid to *less* than 30 percent of the employees in the locality.

3. In the absence of a separate collectively bargained wage rate for "residential" structures (apartment buildings of up to four stories) in areas where there is little or no union activity on this type of construction, the State will require payment of the higher collectively bargained "building" wage rates, although Davis-Bacon wage determinations, as a result of a survey of local rates and practices, would recognize separate "residential" wage rates as prevailing for such structures.

For these reasons, the New York statute mandates wages that bear little resemblance to rates determined by the Federal government to prevail in areas where a small percentage of workers in a given trade are subject to collective bargaining agreements.

HUD received two comments concerning Alaska, one suggesting that the preemption rule would have a devastating effect due to the high cost of living and high unemployment there, and the other requesting special consideration for Alaska because of its significantly higher cost of living and correspondingly higher State wage rates. As noted above, however, Federal wage rates are required by law to reflect the wage rates already prevailing in the locality. Accordingly, the final rule does not include any special provisions for Alaska.

The Massachusetts Secretary of Labor and Commissioner of Labor and Industries filed a comment opposing the proposed rule. However, the rule will have no effect upon Massachusetts, because that State's highest court has ruled that, in enacting the State prevailing wage law, the legislature did not intend that it apply to federally funded public housing projects. *Commissioner of Labor v. Boston Housing Authority*, 345 Mass. 406, 188 N.E.2d 150 (1963).

**Authority to Preempt**

Several comments addressed HUD's authority for preempting the application of State prevailing wage rates on HUD-

assisted PHA projects. A few comments suggested that there is no Congressional intent to preempt State prevailing wage laws or that there is Congressional intent not to preempt those laws. Several comments cited the provision in section 12 of the USHA requiring payment of "not less than" the Federal rates as evidence that the Federal rates are a minimum only; two comments suggested that an amendment to the USHA in 1949 that for the first time added the "not less than" language was significant in that it incorporated the "fundamental" Davis-Bacon concept that the Federal wages are a floor rather than a ceiling. These comments further suggest that the statutory purpose of the USHA is not frustrated by the imposition of higher State wage rates. Specifically, they state that nothing in the USHA suggests Congress intended its statutory purpose to be accomplished at the expense of locally prevailing wage standards; rather, Congress expressly provided that laborers and mechanics on HUD-assisted PHA development and operation are entitled to the local prevailing rate. The comments also refer to the States' long and deep statutory concern about payment of prevailing wages.

A discussion of the legal basis for preemption of higher State-determined prevailing wage rates on HUD-assisted PHA projects was set out in the preamble to the proposed rule and need not be repeated in detail here. HUD's determination to preempt higher State wage rates is made under its responsibility to carry out the Congressional purpose of the USHA as a whole, and is based on its determination that the imposition of higher State rates on public and Indian housing projects assisted under the Act conflicts with the Act. The overall purpose of HUD's assistance under the Act is to maintain the lower income character of public and Indian housing projects and assure that they continue to be available to serve lower income families. *See, e.g.*, USHA, sections 5, 9 and 14. The Act also declares that it is the policy of the United States to employ its funds and credit, as provided in the Act, to assist the States and their political subdivisions to "remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income" and, consistent with the objectives of the Act, to vest in local PHAs the maximum amount of responsibility in the administration of their housing programs. USHA, section 2. The imposition on a project of State wage rates that exceed the Federally-determined prevailing wage rates establishes an excessive wage floor, and these higher wage costs must ultimately be funded with HUD assistance through the acceptance of higher bids or proposals or payment of higher wages to PHA or IHA employees. Since Federal funds are limited, the number of lower income housing units to be constructed, maintained, modernized or repaired is lowered, thus frustrating the purpose of the Act. Another effect of the imposition of higher State wage rates can be to force a cutback in the cost and quality of materials and supplies because of the greater proportion of project costs required for the labor component, a result equally inimical to the purposes of the USHA. Finally, in providing for locally prevailing wage rates, Congress in section 12 of the Act specifically requires a determination or adoption by the *Federal* government of rates reflecting the locally prevailing practice.

To summarize, HUD's basis for preempting State prevailing wage laws is that application of the State laws conflicts with the requirements of the Act and stands as an obstacle to the execution of the purposes and objectives of the Act. HUD does not preempt simply because the State laws impose some additional costs on PHA/IHA projects. Rather, HUD has determined that the aggregate impact of the substantial increase in expenditures resulting from application of such laws seriously impairs the Department in discharging its statutory responsibility to provide and maintain lower income housing.

In specific response to the above comments, HUD agrees that Congress did not intend its statutory purpose to be accomplished at the expense of locally prevailing labor standards and that Congress explicitly provided for such standards. However, Congress' provision in section 12 of the USHA for wages meeting such standards specifically requires a determination or adoption by the *Federal* government of rates reflecting the locally prevailing practice. Adoption of the rule preempting higher State rates clearly leaves in place the protection of locally prevailing wage standards, determined or adopted by the respective Federal agencies as Congress required.

While there is evidence that Congress in the Davis-Bacon Act and related provisions intended to permit employers (whether as the result of negotiations or voluntarily) to pay higher than the Federally determined wage rates, HUD is aware of no legislative history indicating that Congress intended for the States to be free to compel the payment of such higher rates in Federally-funded PHA/IHA projects. Congressman Bacon of New York, the Davis-Bacon Act's sponsor in the House, stated that the Act

> does not put the Government in the position of price fixing or of anticipating wage levels * * *. It leaves that to employer and employee, where it belongs. [74 Cong. Rec. at 6511, February 28, 1931]

Thus, to construe the statute as permitting State-compelled higher rates would not only undercut Congress' grant of express authority to the Federal government to determine prevailing wage rates, but would also interfere with private bargaining which can result in rates higher than the Federally-determined minimum and lower than the State-mandated rate.

HUD recognizes that some States may have long evidenced a statutory concern about payment of prevailing wages. However, the relative importance to a State of its own law is not material when the state law conflicts with Federal law. See *Felder v. Casey*, 56 USLW 4689, 4791 (1988). In any event, this rule preempts only those State prevailing wage rates that certain States have made applicable to PHA/IHA projects receiving HUD assistance, and only to the extent that any of the rates for specific trades on a project exceed the corresponding Federal wage rates. The rule is narrowly drawn to eliminate the conflict with the USHA that is posed by State mandating of higher wage floors. States remain free to impose as well as enforce on HUD-assisted PHA/IHA projects those State rates that are equal to or lower than the corresponding Federal wage rates; more importantly, the rule in no way affects the States' ability to enforce their own State-mandated wage rates on the vast majority of State public works projects that is the subject of the States' traditional concern—*i.e.*, every "public work" except Federally-funded PHA/IHA projects.

Related to the matter of the States' concern with setting wage rates is the concept of federalism, which two comments from labor organizations suggest runs counter to the proposed rule. The comments point out the Supreme Court's affirmation of the value of permitting each State to be its own "laboratory for experimentation", and one of the comments cites several Federal labor standards statutes that explicitly permit or acknowledge the authority of the States to enact and enforce equivalent or higher standards. The comment also cites the Tenth Amendment to the Constitution ("The

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powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

The concept of federalism is integral to, and not apart from, the determination of a Federal agency's authority to preempt state law in carrying out its responsibility to implement a Federal law that was within the U.S. Congress's constitutional authority to enact. Thus the legal basis upon which HUD relies in preempting higher State wage takes the concept of federalism into account in determining the permissible scope of preemption. The Supreme Court, in *Lawrence County v. Lead-Deadwood School District No. 40–1*, 469 U.S. 256 (1985), upheld the preemption of a State statute where a Federal statute provided that a local government recipient of Federal payments in lieu of taxes "may use the payment for any governmental puprose"; the State statute held to be preempted required local governments to distribute payments in lieu of taxes in the same way they distribute general tax revenues, likely resulting in a windfall for entities such as schools that were already fully funded by local revenues. In determining that the statute was preempted, the Supreme Court rejected "federalism" arguments opposing Federal intrusion into a State's efforts to provide fiscal guidance to its subdivisions, and noted that under the Spending Clause of the Constitution, Congress may impose conditions on the receipt of Federal funds absent some independent constitutional bar. There is no area in which the State's police and health-and-welfare authority is greater than in connection with its schools, or in which its core government functions are greater than in providing fiscal direction to its local governmental subdivisions. Nonetheless, in *Lead-Deadwood*, the Supreme Court determined that a State law mandating the manner of revenue allocation by its subdivisions, and clearly designed, from the State's perspective, to benefit school systems in counties receiving aid in lieu of taxes, was preempted. Thus, even if wage and hour standards are viewed as areas of traditional State concern, the result in *Lead-Deadwood* indicates this matters not in considering whether the Federal goal of providing an adequate supply of lower-income housing would be frustrated by imposition of higher State wage rates, or in determining that Federal preemption is a legitimate response to such frustration.

HUD notes that the fact that Congress has, in other labor standards statutes, permitted a State to enact or enforce equal or stricter standards does not suggest that the same applies to the USHA, where Congress has *not* provided for higher State wage rates. Congress' principal purpose in enacting the USHA was to remedy an acute shortage of decent, safe and sanitary lower income housing, maintain the lower income character of PHA and IHA projects and assure their continued availability to serve lower income families. Application of State-compelled wage rates would clearly frustrate this purpose.

A State agency comment questioned HUD's authority to override State wage and hour laws by regulation. As discussed in the preamble to the proposed rule, HUD's preemption in the narrow circumstances set out in the rule is authorized where State law stands as an obstacle to the accomplishment and execution of the purposes of the USHA, and in those circumstances the U.S. Supreme Court has indicated that Federal regulations have no less preemptive effect than Federal statutes, regardless of express Congressional authorization to displace State law.

Another State agency commenting in opposition to the proposed rule cited Congress' desire to preserve as much local autonomy as possible, as evidenced by the statement in section 2 of the USHA that one of the Act's purposes was "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs" (42 U.S.C. 1437) and by a 1949 Senate report stating that "the primary responsibility for the provision of low rent housing is in the hands of the various localities" with a limited Federal role.

Vesting of the maximum amount of responsibility in PHAs is unquestionably one of the policies of the Act. Contrary to the comment, however, this Congressional policy supports, rather than conflicts with, the preemption of State-mandated wage rates, which *furthers* the goal of local autonomy. Moreover, the overwhelmingly favorable comments from PHAs support this view. Preemption under the proposed rule would *eliminate* requirements imposed by the State on the local PHA/IHA. One PHA in New York State commented that "[t]his proposed rule should be considered as an additional step towards decontrol [of PHAs]." Another commented that while, from their observation, the difference in wage scales was minimal, these mandates have caused serious and controversial negotiations with contractors, delays in getting programs started and an "overall nuisance" in the bidding process. In any event, HUD notes that the policy of vesting the maximum amount of responsibility in local PHAs is established by section 2 of the USHA only to the extent "consistent with the objectives of this Act." There is no conflict with this policy in a rule which preempts State requirements that are inconsistent with the stated goal of remedying the acute shortage of lower income housing.

One State agency commented that under the law of the State, the agency is required to bring suit to enjoin the award of a contract, or any further work or payments thereunder where the contract is already awarded, if a public authority has not included a schedule of the (State) prevailing wages in its contracts for public works. The State agency suggested that the proposed rule would therefore lead to an expensive and time-consuming legal battle that would defeat HUD's objectives by causing delays and additional legal costs. HUD notes that the rule does not direct the PHA/IHA to physically exclude State wage rates from the contract; the contract must, however, indicate that any State rates that exceed the Federal rates are inapplicable to the contract and unenforceable. Assuming, however, that the State law would still otherwise require some State legal enforcement action in these circumstances, the rule would prohibit enforcement of preempted State requirements whether or not they were included in the contract. There shoyld not be any expensive and time-consuming State challenges because the rule would preempt any State law that would require legal action or other enforcement of the higher State rates, as a matter of law, thereby eliminating the asserted duty under State law to bring suit to enjoin contract award or work or payments under the contract.

A labor organization comment asserted that HUD does not allege an inherent conflict between the Federal and State laws in question, but rather a conflict by virtue of the manner in which the prevailing wage provisions of the respective statutes are interpreted and applied, and that the labor organization knew of no reported case involving preemption on the grounds that the respective regulatory schemes were not harmonious under the particular facts of a specific case. As indicated above, HUD believes there is an inherent conflict here between the Federal and State laws. Moreover, HUD notes that this comment cites no case suggesting that preemption is warranted only where an obstacle to the

accomplishment of the Federal statutory purpose is "inherent" in the State and Federal laws, but is unwarranted where the same obstacle results from the manner in which the respective statutes are interpreted and applied. In fact, a recent Supreme Court case repeats the established rule that preemption may be based upon the *effect* a State law, neutral on its face, has upon a Federal objective. *Felder* v. *Casey*, 56 USLW 4689 (1988). The effect of State laws that prescribe higher-than-Federal wage rates is to divert funds from the provision or maintenance of a greater number of lower income housing units to the payment of higher wages and thus obstruct the Federal objective.

**Effect on Competition**

Several comments concerned the proposed rule's effect on competition. The Chief Counsel for Advocacy of U.S. Small Business Administration commented that if HUD believes the impact of the rule is not expected to be significant in terms of both the number of small entities affected and the magnitude of the expected savings, HUD's Regulatory Flexibility Act certification accompanying the final rule should at least recognize that the changes brought about by the rule will clearly be beneficial to small businesses. The Chief Counsel stated that regulatory reform which reduces disparities caused by artificially inflated wage determinations can reasonably be expected to encourage greater small business participation in bidding on PHA projects, since many small firms have foregone bidding on public projects because of dislike for having to maintain a two-tier wage system with "higher wages for regulated projects and competitive wages on private projects". A trade association commented that the proposed rule is a step toward making the procurement process more competitive and would encourage more subcontractors, the overwhelming majority of which are small businesses, to take part. Another trade association commented that individual state laws are creating determinations of "prevailing" wages that are not true ongoing wages in a locality, and that such laws discriminate against small contractors because they are unable to compete with the capabilities and resources of larger firms to comply with such "inflated" rates and their paperwork requirements. Five PHAs also indicated that the proposed rule would stimulate competition. On the other hand, as noted earlier, a labor organization in New York State commented that the proposed rule would have an adverse effect on competition in bidding on PHA work by effectively precluding contractors that are parties to collective bargaining agreements from competitive bidding for such work, since in general the wage rate determined under New York law is the collectively bargained rate.

HUD recognizes that when a State law designates a collectively bargained wage rate as prevailing in a locality and the Federal government determines that a lower wage rate prevails, some contractors that are contractually bound to pay at the level of the State-determined wage rates would be competitively disadvantaged, since their labor costs would be reflected in an overall higher bid on the job, as the comment of the New York labor organization suggests. This may be an unavoidable effect on preempting State laws that would otherwise require HUD to fund excessive wage floors through the acceptance of higher bids or proposals for PHA work. In any event, the other comments cited support HUD's conclusion that the overall effect of the rule would be to increase competition because it would lead to a net increase in the number of firms willing to bid on PHA/IHA work at the Federally determined wage rates once higher State wage rates are preempted.

**Proposals for Alternatives and Modifications to the Proposed Rule**

Several comments suggested modifications or alternatives to the proposed rule or requested clarifications of the rule. Several PHAs in California and a regional association commented that the final rule should clarify whether or not Department of Labor (DOL) wage rates include fringe benefits, and the effect of these benefits upon the issued wage rate, *i.e.*, whether their value is in addition to, apart from, or to be subtracted from the Davis-Bacon wage rate.

In the context of this rule, DOL wage rates are the "Davis-Bacon" wage rates. Davis-Bacon wage rates include fringe benefits where DOL determines that more than 50 percent of the employees in the craft in the locality receive fringe benefits; in other areas Davis-Bacon wage rates do not include any fringe benefits and reflect only the prevailing basic hourly rate. See, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Davis-Bacon Construction Wage Determinations Manual of Operations* 63–65 (1986). Davis-Bacon wage rates that include fringe benefits so indicate and Federal law and regulations require that the fringe benefits must be provided or the hourly monetary equivalent listed in the DOL wage determination must be added to the basic hourly rate paid to the workers. HUD believes it is unnecessary for the final rule to include this explanation of what Davis-Bacon/DOL rates contain, however, because each DOL wage decision itself indicates whether fringe benefits are included in the wages that must be paid. As the proposed rule and its preamble indicated, State wage rates would be preempted on work that is subject to Davis-Bacon wage rates if the total State wage rate—including fringe benefits, if any, as well as basic hourly rate—exceeds the total DOL wage rate—including fringe benefits, if any, and basic hourly rate. The final rule has not been changed in this regard. Thus, where a State rate includes fringe benefits and the DOL rate does not (because DOL has determined that fringe benefits do not prevail for that trade in that locality), the total State rate including fringe benefits will be compared to the basic hourly rate determined by DOL to be prevailing, and will be preempted if it exceeds the DOL rate.

The same PHAs also commented that the issue of wage rates for apprentices and the ratio of apprentices to journeymen should also be addressed in the final rule. In addition, a New York State PHA commented that HUD, in conjunction with DOL and the Equal Employment Opportunity Commission, should consider preemption of New York State Labor Law section 220 to the extent that it precludes the payment of lower-than-journeyman State-determined wage rates to trainees enrolled under Federally-approved trainee programs. The PHA cited the case of *Monarch Electrical Contracting Corporation v. Roberts*, 510 N.E.2d 795, 517 NYS.2d 711, 70 NY2d 91 (NY Ct. of App. 1987), in which the Court of Appeals of New York held that section 220 recognized only two categories of workers—journeymen and State-registered apprentices—thus precluding payment of apprentice-level wage rates to trainees notwithstanding their participation in a U.S. DOL-registered trainee program. The court in that case indicated that the trainee program was functionally equivalent to an apprenticeship program but was designed in its entrance requirements to promote minority group participation, and invited the legislature to reexamine section 220, noting that its application "unexpectedly frustrates the very important policy of reducing discrimination in the workplace."

Apprentice and trainee wage rates and the allowable ratio of apprentices or

trainees to journeymen are not set out in Davis-Bacon wage determinations; they are set out in the apprenticeship program approved by the DOL Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau, or in the trainee program certified by the DOL Employment and Training Administration, although States may also legislate ratios. Apprentice and trainee wage rates are generally expressed as percentages of the DOL determined (journeymen) Davis-Bacon rate. The proposed rule did not address the issue of apprentice or trainee ratios because HUD did not intend to preempt State non-wage labor standards. In any event, HUD does not view as a significant difficulty the possibility that a State-legislated ratio might allow a lower proportion of apprentices or trainees than the relevant apprenticeship or trainee program. Accordingly, the final rule is unchanged in this regard.

With regard to the wage rates of apprentices and trainees, the final rule has been clarified in response to the above comments by referring explicitly to wage rates for apprentices and trainees under approved programs (in addition to the DOL-determined rates) on work that is subject to Davis-Bacon wage rates.

One PHA requested clarification as to whether other funds used in the development or operation of a public housing project, such as Community Development Block Grant, Emergency Shelter Grant or other HUD program funds, Farmers Home Administration funds, or State and local funds, would be subject to the preemption rule.

HUD does not intend that higher State wage rates be preempted unless the work in question is assisted in whole or in part with assistance for lower income public housing under the USHA. Thus, for example, modernization work funded in part with CIAP funds under section 14 of the USHA and in part with State funds would be subject to the preemption provisions of the rule; however, HUD does not intend that work on HUD-assisted public housing would be subject to preemption of State wage rates if the work in question is assisted entirely by, *e.g.*, State funds, Community Development Block Grant funds, or private donations. Accordingly, in those parts of the regulations that otherwise cover work that may receive no HUD assistance for public housing under the USHA (Parts 905 and 965), the final rule has been revised to exclude such non-USHA assisted work from the preemption provisions; no revision has been made in this regard to the final rule provisions in Parts 941 and 968, since those parts only cover work that is at least partially assisted with USHA assistance for public housing. HUD notes that section 12 of the USHA requires the payment of at least HUD-determined rates in the operation of the project and Davis-Bacon rates in the development of the project, without regard to the source of funds for the specific work involved.

The same PHA suggested that all HUD programs be subject to the preemption rule, and that the Community Development Block Grant and Emergency Shelter Grant programs were also intended to be administered in an efficient and economical answer to assure assistance to the greatest number of low income families. HUD has not adopted this suggestion because it is beyond the scope of this rulemaking, which is limited to work on public housing projects that are receiving assistance under the public housing programs of the USHA.

Two New York State PHAs commented that the rule should be expanded to preempt New York State Housing Law section 32, which requires the compensation fixed by the PHA for its officers, agents and employees to be approved by the local legislative body. The argument for such preemption was that some local governments may not be willing to approve salaries guaranteeing the best qualified workers.

HUD presumes that section 32 is intended to govern compensation for executive and administrative PHA personnel rather than laborers and mechanics who may be subject to the New York State prevailing wage law. The issue of compensation for executive and administrative personnel is outside the scope of this rule. HUD notes that such compensation has long been addressed by a provision in the Annual Contributions Contract between HUD and a PHA, which requires adoption of a statement of personnel policies, including salary and wage rates, that are comparable with pertinent local public practice.

One PHA commented that if the proposed rule is adopted, HUD must take into consideration local market conditions, trends, and adjustments in States with prevailing wage statutes in order to compete with trades that might be drawn away as a result of a higher wage scale in a specific trade. Another PHA, while supporting the rule, suggested the possibility of not receiving an adequate number of well qualified bidders on construction projects due to lower wage rates. HUD believes no modification to the proposed rule is warranted in this regard for two reasons. First, adoption of the rule leaves Federal wage rates, which are by definition a determination of the prevailing wage rates, applicable to PHA work. Second, this rule does not impose a cap on what PHAs or contractors may choose to pay their employees.

A housing and redevelopment association proposed several modifications to the rule. First, the association stated that various pressures could force PHAs to continue to pay (higher) State determined rates even with preemption in place, *e.g.*, because city and State funds will also be used on the project or because contracts and workers could be lost to competition with local government's housing construction or modernization. The association suggested that in these situations, PHAs should be provided a special waiver or an assurance that HUD will allow the costs of paying the State wages.

HUD believes no modification to this rule to include a special waiver is necessary. A State law that requires State-determined prevailing wage rates on public housing projects in general applies with no less force when solely Federal funds are used than when a mixture of Federal and State or city funds is used to carry out specific work on a HUD-assisted project, and the preemptive force of this rule is the same in both cases. However, neither the prevailing wage provisions of section 12 of the USHA nor this rule precludes a PHA (or its contractors) from paying rates higher than the Federally-determined prevailing wage for the locality.

For purposes of clarifying this point, HUD has decided to add provisions to the rule to state explicitly that the rule will not affect the applicability of wage rates established in collective bargaining agreements where the rates equal or exceed the Federal wage rate, nor does the rule impose a ceiling on wage rates the PHA or IHA or its contractors or subcontractors may choose to pay independent of State law. With regard to HUD allowance of the costs of paying the State wages, HUD budgetary review is not governed by this rule; PHA and IHA operating budgets are reviewed in accordance with outstanding instructions, and the provision added to this final rule does not imply automatic HUD allowance of all wage expenses.

Second, the association, noting that PHAs and IHAs would not be required to pay their own employees at the higher State rates, asserts that the rule could

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create personnel problems for employers which would be "forced to reduce salaries of employees if in fact they begin to pay the lower [Federal] wage rate to others in the same classification." The association suggests grandfathering current employees into this rule change. HUD has not adopted this suggestion. While the rule would make higher State wage rates no longer mandatory or enforceable, nothing in the rule legally "forces" PHAs or IHAs to reduce wages to no more than the Federal prevailing wage level, nor does HUD have any general administrative policy that would force such a result.

Finally, the association commented that it strongly supported the statement in the preamble to the proposed rule that applicability of wage rates established in collective bargaining agreements with a PHA or its contractors will not be affected by the rule, regardless of whether those rates equal or exceed rates determined under State or Federal law; however, the association urged that this provision be spelled out in the rule itself and clarified to state that: (1) It pertains to any current or future agreements and (2) under such circumstances, HUD will recognize cost differences between State and Federal requirements as an eligible expenditure.

As discussed above, in response to this comment and another of the association's comments, HUD has decided to incorporate a provision into each of the sections of the rule to the effect that the rule shall not affect the applicability of wage rates established in collective bargaining agreements with a PHA or IHA or its contractors or subcontractors where such wage rates exceed the applicable Federal wage rate. HUD believes it is clear that these provisions pertain to current and future agreements. HUD has also added a clause indicating that the rule does not impose a ceiling on wages the PHA or IHA or its contractors or subcontractors may choose to pay independent of State law; this provision would apply in the absence of collectively bargained wage rates. As to recognition of eligible expenditures, that issue (which appears limited to wages paid by PHAs and IHAs to their own employees) is not the subject of the regulation sections added by this rule. In any event, the proper measure of costs for which the association requests recognition is not the difference between State and Federal rates, but the actual difference between the collectively bargained rates and the Federal rates. However, the Department is not willing to commit unconditionally to recognize such cost differences as an eligible expenditure in all cases.

A New York State PHA commented that the rule should be amended to apply a residential wage rate to all housing projects and that such rate should be issued by DOL. HUD cannot adopt either suggestion in this rule. First, the application of residential rates (as opposed to "building" rates) under the Davis-Bacon related acts, which is generally limited to work on residential structures of up to four stories, is a matter for determination by DOL and not HUD. Second, Section 12 of the USHA gives HUD, rather than DOL, the authority to determine prevailing wage rates for work involved in the operation of a public housing project (including routine and non-routine maintenance work), as opposed to development of the project which is subject to Davis-Bacon rates.

A Washington State PHA commented that PHAs need to be exempted from the State prevailing wage law, since without a complete exclusion the State rates must be requested and included in the bid documents, the contractor must accurately distinguish among the wage exhibits that which will apply, and the general contractor must submit for itself and its subcontractors "Intent to Pay Prevailing Wages" documents and "Affidavits of Wages Paid" at $12.50 each payable by the PHA. HUD has not adopted this suggestion because HUD does not view inclusion of State-determined prevailing rates that are equal to or lower than Federal wage rates as an obstacle to the purposes of the USHA; accordingly, HUD does not view State monitoring and enforcement of such State rates as in conflict with the USHA. However, HUD notes that the rule provides that State prevailing rates may not be enforced against contractors or subcontractors. To the extent that the State rates on a project exceed the corresponding Federal rates, HUD takes the position that it would be contrary to this provision in the rule for a State to require a contractor to submit a statement that it intends to pay the higher State rate.

**Comparison of Certain State Wage Rates to Federally-Determined Wage Rates**

The preamble to the proposed rule did not provide examples of the differences between Federally-determined prevailing wage rates and State-determined wage rates in the State of Washington. However, HUD has now had an opportunity to develop information regarding these differences in Washington State. For five common trade classifications in three principal counties, the following chart shows the differences between HUD-determined, Davis-Bacon, and State-determined wage rates which would be applied to residential (up to four story) construction, and indicates the percentage difference between Davis-Bacon and State rates (Column 4) and HUD-determined and State rates (Column 5):

| Trade | HUD rates[1] (1) | Davis-Bacon rates (2) | State rates (3) | Percentage by which State rates exceed Davis-Bacon rates (4) | Percentage by which State basic hourly rates exceed HUD rates[2] (5) |
|---|---|---|---|---|---|
| King County: | | | | | |
| Bricklayers | $13.95 | $12.48 | $21.73 | +74.1 | +33.0 |
| Carpenters | 13.95 | 13.66 | 13.30 | −2.6 | −4.7 |
| Electricians | 13.95 | 11.505 | 15.08 | +31.1 | −5.0 |
| Painters | 11.20 | 11.02 | 14.66 | +33.0 | +30.9 |
| Plumbers | 13.95 | 12.70 | 14.12 | +11.2 | −23.9 |
| Pierce County: | | | | | |
| Carpenters | 12.38 | 16.45 | 12.56 | −23.6 | +1.5 |
| Cement Masons | 12.38 | 12.89 | 21.86 | +69.6 | +48.7 |
| Electricians | 12.38 | 13.38 | 21.64 | +61.7 | +51.1 |
| Painters | 11.085 | 11.87 | 12.50 | +5.3 | +12.8 |
| Plumbers | 12.38 | 11.24 | 14.12 | +25.6 | −14.2 |
| Spokane County: | | | | | |
| Carpenters | 12.16 | 13.29 | 11.36 | −14.5 | −6.6 |
| Cement Masons | 12.16 | 13.58 | 19.92 | +46.7 | +30.9 |

| Trade | HUD rates[1] (1) | Davis-Bacon rates (2) | State rates (3) | Percentage by which State rates exceed Davis-Bacon rates (4) | Percentage by which State basic hourly rates exceed HUD rates[2] (5) |
|---|---|---|---|---|---|
| Electricians | 12.16 | 10.61 | 21.93 | +106.7 | +48.0 |
| Painters | 9.91 | 9.57 | 9.55 | −0.2 | −3.6 |
| Plumbers | 12.16 | 12.20 | 11.72 | −3.9 | −23.7 |

[1] Wage rates assigned to classifications through conformance based on position descriptions.
[2] Some State-determined wage rates include fringe benefits as well as basic hourly rates. Since HUD rates do not include fringe benefits, this column compares the State rates in Column 3 less any fringe benefits determined as part of the State rate, to HUD rates. This methodology was also incorporated in the proposed rule for purposes of determining whether preemption of State-determined wage rates would occur on work that is subject to HUD-determined wage rates, and has been adopted in the final rule as well.

*Data Sources: (As in effect May 2, 1988, except for HUD rates in Pierce County, which became effective July 1, 1988):*
HUD Maintenance Wage Rate Schedules (Seattle, Pierce County, Spokane).
U.S. Department of Labor Wage Decisions WA 88–4 (King County), 88–WA–0024 (Pierce County), 87–WA–0156 (Spokane County).
State of Washington Prevailing Minimum Hourly Wage Rates.

HUD has also updated its information regarding the extent to which rates determined by the State of California exceed Federally-determined wage rates in certain counties. The updated information, showing wage rates in effect as of March 1, 1988, covers a number of common trade classifications for PHA projects in three California urban counties—Sacramento, San Diego and San Francisco Counties:

| Trade | HUD rates[3] (1) | Davis-Bacon rates (2) | State rates (3) | Percentage by which State rates exceed Davis-Bacon rates (4) | Percentage by which State basic hourly rates exceed HUD rates[4, 6] (5) |
|---|---|---|---|---|---|
| Sacramento County: | | | | | |
| Bricklayer | $12.52 | $31.05 | $23.96 | −22.8 | +56.9 |
| Carpenter | 12.52 | 25.995 | 26.47 | +1.8 | +52.4 |
| Cement Mason | 12.52 | 25.12 | 25.09 | −0.1 | +51.0 |
| Drywall Hanger | 12.52 | 26.485 | 27.47 | +3.6 | +56.4 |
| Electrician | 12.52 | 22.75 | 20.55 | −9.7 | +37.8 |
| Laborer (Gen.) | 7.40 | 22.32 | 22.12 | −0.9 | +119.0 |
| Painter | 12.52 | 22.04 | 23.14 | +5.0 | +41.1 |
| Plasterer | 12.52 | 25.56 | 25.55 | 0 | +37.8 |
| Plumber | 12.52 | 29.37 | 28.84 | −26.8 | +32.6 |
| PEO (Group 1) | NA | 33.87 | 33.87 | 0 | NA |
| San Diego County: | | | | | |
| Bricklayer | NA | 23.45 | 23.95 | +2.1 | NA |
| Carpenter | 10.85 | 19.54 | 25.60 | +31.0 | +83.4 |
| Cement Mason | NA | 24.23 | 24.23 | 0 | NA |
| Drywall Hanger | 10.85 | 20.28 | 23.65 | +16.6 | +79.2 |
| Electrician | 10.85 | 15.48 | 23.53 | +52.0 | +79.3 |
| Laborer (Gen.) | 9.52 | 22.24 | 22.59 | +1.6 | +61.6 |
| Painter | 9.52 | 23.04 | 25.13 | +9.1 | +106.6 |
| Plasterer | 10.85 | 19.96 | 23.21 | +16.3 | +59.2 |
| Plumber | 10.85 | 30.90 | 30.30 | −1.9 | +125.0 |
| PEO (Group 1) | NA | 26.80 | 26.79 | 0 | NA |
| San Francisco County: | | | | | |
| Carpenter | 19.95 | 27.48 | 29.10 | +5.9 | +8.8 |
| Cement Mason | 19.95 | 25.12 | 25.09 | −0.1 | −5.2 |
| Drywall Hanger | 19.95 | 28.615 | 29.60 | +3.3 | +8.8 |
| Electrician | 21.54 | 35.57 | 36.67 | +3 | +22.6 |
| Laborer (Gen.) | 14.33 | 23.32 | 23.12 | −0.9 | +20.1 |
| Painter | 18.55 | 25.46 | 28.51 | +10.7 | +24.1 |
| Plasterer | 18.55 | 30.96 | 31.48 | +1.7 | +22.2 |
| Plumber | 21.75 | 43.51 | 42.40 | −2.6 | +23.4 |
| PEO (Group 1) | NA | 33.87 | 33.87 | 0 | NA |

[3] Wage rates assigned to construction classifications through conformance based on position descriptions.
[4] See footnote 2.
[5] Wage rates assigned to Bricklayer, Cement Mason, Drywall Hanger and Plasterer based on conformance.
[6] See footnote 2.

*Data Sources: (as in effect on March 1, 1988):*
HUD Maintenance Wage Rate Schedules (Sacramento, and San Francisco and San Diego Counties).
U.S. Department of Labor General Wage Determinations CA88–1/2 (San Diego County) and CA88–4/2 (Sacramento and Francisco Counties).
State of California General Prevailing Wage Determination (Statewide).

These data are presented as a further indication that in some cases, State-determined wage rates substantially exceed the Federally-determined prevailing wage rates that would be applicable work to PHA projects.

**Cross References**

As a technical matter and for ease of reference, the Department has

determined to cross-reference the new paragraph § 941.503(d) and § 968.19, respectively, by adding an additional sentence at the end of existing paragraph (d) (Prevailing wages) of § 941.208 and a new paragraph (4) to paragraph (h) (Wage rates) of § 968.9.

**Other Matters**

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule could affect the wage rates payable by small business construction firms, or the competitive position of such firms that choose to continue to pay higher wage rates that would no longer be required; it is also expected to result in a net increase in the number of small businesses bidding for work on PHA projects and therefore is expected to be beneficial to small businesses. However, it would only affect firms bidding on certain PHA and IHA projects in the small number of States with applicable rates exceeding the corresponding Federal rates, and contracts for work on such PHA and IHA projects would generally comprise only a part of the firms' total business.

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as Sequence Number 1037 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Parts 905, 941, 965, and 968**

Energy conservation, Grant programs: Housing and community development, Grant programs: Indians, Home ownership, Indians, Loan programs: Housing and community development, Loan programs: Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, 24 CFR Parts 905, 941, 965 and 968 are amended as follows:

## PART 905—INDIAN HOUSING

1. The citation of authority for Part 905 continues to read as follows:

**Authority:** Secs. 3, 4, 5, 6, 9, 11, 12, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) is added to § 905.211, as follows:

**§ 905.211 Contracts in connection with development.**

* * * * *

(d)(1) A prevailing wage rate determined under State or tribal law shall be inapplicable to the development of a Project whenever:

(i) The development of the Project: (A) Is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and (B) is assisted with funds for lower income public housing under the Act; and

(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State or tribal law to be prevailing with respect to an employee in any trade employed in the development of a Project exceeds: (A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade, (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for development of the Project shall include a statement that any prevailing wage rate determined under State or tribal law to be prevailing with respect to an employee in any trade employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade,

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The IHA itself shall not be required to pay any prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the Project; and

(iii) No prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the development of the Project.

(3) Nothing in this paragraph (d) shall affect the applicability of any wage rate established in a collective bargaining agreement with an IHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable prevailing wage rate determined by the Secretary of Labor or an applicable apprentice or trainee wage rate based thereon, nor does this paragraph (d) impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.

(4) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

3. A new § 905.314 is added, as follows:

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**§ 905.314 Preemption of State or tribal prevailing wage requirements.**

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to a contract or IHA-performed work item for the maintenance or improvement of a Project whenever:

(1) The contract or work item: (i) Is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and (ii) is assisted with funds for lower income public housing under the Act; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the maintenance or improvement of a Project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276 *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for maintenance or improvement of the Project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to any employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds:

(A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq*) to be prevailing in the locality with respect to such trade;

(B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or

(C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the work item for maintenance or improvement of the Project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the contract or IHA-performed work item for maintenance or improvement of the Project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with an IHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2), nor does this section impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

## PART 941—PUBLIC HOUSING DEVELOPMENT

4. The citation of authority for Part 941 continues to read as follows:

**Authority:** Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 941.208, paragraph (d) is revised to read as follows:

**§ 941.208 Other Federal requirements.**

* * * * *

(d) *Prevailing wages.* Participation in this program requires that not less than the wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276) shall be paid to all laborers and mechanics employed in the development of a project. All architects, technical engineers, draftsmen and technicians shall be paid not less than the wages prevailing in the locality as determined or adopted by HUD (42 U.S.C. 1437j). Prevailing wages determined under State law are inapplicable under the circumstances set out in § 941.503(d).

6. A new paragraph (d) is added to § 941.503, as follows:

**§ 941.503 Construction requirements.**

* * * * *

(d)(1) A prevailing wage rate determined under State law shall be inapplicable to the development of a project whenever:

(i) The development of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State law to be prevailing with respect to an employee in any trade employed in the development of a project exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade,

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with

the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in an DOL-certified trainee program.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development of the project shall include a statement that any prevailing wage rate determined under State law to be prevailing with respect to an employee in any trade employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade,

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The PHA itself shall not be required to pay any prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the project; and

(iii) No prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the development of the project.

(3) Nothing in this paragraph (d) shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable prevailing wage rate determined by the Secretary of Labor or an applicable apprentice or trainee wage rate based thereon, nor does this paragraph (d) impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(4) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988.

## PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

7. The citation of authority for Part 965 continues to read as follows:

**Authority:** Secs. 2, 3, 6, and 9, U.S. Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart H is also issued under Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846).

8. A new Subpart A, consisting of § 965.101 is added as follows:

### Subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation of Projects

#### § 965.101 Preemption of State prevailing wage requirements with respect to maintenance and operation of projects.

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to a contract or PHA-performed work item for the maintenance and operation (including modernization) of a project whenever:

(1) The contract or work item: (i) Is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing and (ii) is assisted with funds for lower income public housing under the U.S. Housing Act of 1937, as amended; and

(2) The wage rate determined under State law to be prevailing with respect to an employee in any trade or position employed in the maintenance and operation of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for maintenance and operation of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds: (A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) to any of its own employees who

may be engaged in the work item for maintenance and operation of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the contract or PHA-performed work item for maintenance and operation of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2), nor does this section impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988.

## PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

9. The citation of authority for Part 968 continues to read as follows:

**Authority:** Secs. 6 and 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437d and 1437*l*), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. A new paragraph (h)(4) is added to § 968.9, as follows:

### § 968.9 Other program requirements.

* * * * *

(h) * * *

(4) Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set out in § 968.19.

* * * * *

11. A new § 968.19 is added, as follows:

### § 968.19 Preemption of State or tribal prevailing wage requirements.

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to the modernization of a project whenever:

(1) The modernization of the project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) In the case of non-routine maintenance, the wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA or IHA and any contract executed by the PHA or IHA for modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds (A) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA or IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced against the PHA or IHA or any of its contractors or subcontractors with respect to employees engaged in the modernization of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or IHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2), nor does this section impose a ceiling on wage rates a PHA or IHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA or IHA on or after October 6, 1988.

Dated: August 2, 1988.

**James E. Baugh,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

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Wednesday
August 10, 1988

Part VI

# Environmental Protection Agency

**40 CFR Part 52**

**Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Final Rules and Notice of Proposed Rulemaking**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL-3427-5]**

## Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Pima County Carbon Monoxide Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice announces EPA's final action to approve revisions submitted by the State of Arizona on October 5, 1987; January 6, 1988; and March 23, 1988 to the carbon monoxide (CO) state implementation plan (SIP) for the Tucson CO Planning Area (Pima County). This action is based on EPA's conclusion that the control measures and attainment demonstration submitted with the plan meet the requirements of section 110 and Part D of the Clean Air Act and strengthen the existing SIP. EPA believes that the Pima CO plan includes a persuasive demonstration of timely attainment of the CO standard using all reasonably available control measures. EPA is also approving the 1986 and 1987 inspection and maintenance (I/M) legislation for both Pima and Maricopa Counties. EPA is also approving Pima County's new source review (NSR) regulations adopted on July 16, 1985 and NSR commitments consistent with EPA requirements submitted by the State of Arizona on July 22, 1988. With the full approval of the Pima SIP, EPA is lifting the construction ban on major new stationary sources and major modifications of CO sources imposed on September 23, 1986 (51 FR 33746).

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Wallace Woo, Chief, State Liaison Section (A-2-2), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634.

**SUPPLEMENTARY INFORMATION:**

### I. Background

A brief background of the Clean Air Act (CAA or the Act) and the history of the Pima County SIP is provided here. For a more comprehensive discussion of the relevant requirements of the CAA and EPA's regulatory actions on the Pima SIP, see the proposed approval of the SIP revision for Pima County (53 FR 14818, April 26, 1988).

The CAA amendments of 1977 required states to revise their state implementation plans by certain times for all areas that had not then attained the National Ambient Air Quality Standards (NAAQS). Part D of the CAA allowed "nonattainment" areas to provide for attainment by no later than December 31, 1982, with the addition that certain areas, in which it was "not possible," despite implementation of all reasonably available control measures, to meet that deadline for ozone and/or CO attainment demonstration, could apply for a further extension to December 31, 1987.

A large portion of Pima County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970). The State submitted Pima County's initial nonattainment area plan for CO in 1978. On May 24, 1982, the State submitted a request to EPA to extend the CO attainment date in Pima County to December 31, 1987.

On July 7, 1982 (47 FR 29532), EPA took final action to approve the 1978 SIP revision on the condition that the State submit revised regulations for Pima County to meet EPA's NSR requirements. On February 3, 1984, the State submitted proposed revisions to the 1978 CO plan, including an evaluation of control options for the county, adjustments to the baseline and projected data assumptions, and a new section relating to "hotspot" control. On March 1, 1985 (50 FR 8346), EPA proposed to approve and incorporate into the SIP the CO control measures submitted by the State in 1984 but deferred action on whether the attainment demonstration and new measures met the requirements of Part D.

On July 16, 1985, the Pima County Health Department (PCHD) adopted new NSR regulations and on May 9, 1986 (51 FR 17210), EPA proposed to approve the Pima rules if the State and the PCHD submitted additional revisions to their rules to remedy certain deficiencies.

On January 27, 1986 (51 FR 3346), EPA proposed (1) to find that the Pima County CO plan, as revised in 1984, did not demonstrate attainment of the CO standard as expeditiously as practicable as required by section 172 of the CAA, and (2) based on that finding, to impose a moratorium under section 110(a)(2)(I) of the CAA on major new construction and major modifications of stationary sources of CO in the Tucson CO Air Planning Area. In the same notice, EPA also proposed to deny the State's request for an attainment date extension to December 31, 1987. On September 23, 1986 (51 FR 33746), EPA published a final notice disapproving the CO plans for both the Maricopa and Pima Counties nonattainment areas and imposed the section 110(a)(2)(I) construction ban on major new sources and major modifications to sources of CO in the two areas. In this final notice, EPA did not take action on the State's attainment date extension request.

On August 10, 1987, the U.S. District Court for the District of Arizona ordered EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the CAA for CO in the Maricopa and Pima Counties nonattainment areas. The Court found that EPA's duty to promulgate a FIP arose when EPA found that the State plans were inadequate. The Court Order is the result of a citizen suit brought against EPA on April 8, 1985, by the Arizona Center for Law in the Public Interest (ACLPI).

On January 6, 1988, the State submitted to EPA the final Pima CO plan. The plan contains commitments to implement control measures by the five jurisdictions in the Pima County nonattainment area and demonstrates attainment of the CO standard by early 1990. Attainment is demonstrated with the Federal Motor Vehicle Control Program (FMVCP), the State's I/M program, existing traffic flow improvements, and programmed roadway improvements. On April 26, 1988 (53 FR 14818), EPA proposed to approve the control measures adopted by the State and local jurisdictions. Because the SIP submittal demonstrates the attainment and maintenance of the CO standard within the timeframe that EPA believes applies after 1987 by virtue of the unique circumstances of the Pima County area, EPA concluded that a FIP for Pima County would not be necessary.

### II. Plan Approval

The Pima CO plan provides for attainment of the CO standard with reasonably available control measures in 1990. The mass transit expansion and other control measures adopted by Pima County jurisdictions, as well as the I/M program approved today, and the FMVCP, will result in attainment of the standard in 1990 and maintenance consistent with the ten-year maintenance period described in EPA's November 24, 1987 proposal on post-1987 planning. In a separate section of today's **Federal Register**, EPA is proposing to approve the recently passed State oxygenated fuels program and the locally adopted travel reduction ordinances as additional measures in the Pima CO SIP. Although these new measures will not by themselves be

sufficient to advance the 1990 attainment date, they will provide extra assurances that Pima County will attain the CO standard in 1990 and maintain it thereafter. The measures that EPA is proposing to approve today will also serve the function of a contingency provision EPA might otherwise require to insure that additional reductions would be forthcoming in the event of unanticipated shortfalls in planned emission reductions.

*Inspection and Maintenance Program*

In the April 26, 1988 NPRM for this notice, EPA proposed to approve the following I/M program rules which were submitted as SIP revisions by the State on October 5, 1987: R9–3–1001 Definitions; R9–3–1003 Vehicles to be inspected by the mandatory vehicular emissions inspections program; R9–3–1005 Time of inspection; R9–3–1006 Emissions test procedure; R9–3–1008 Procedure for issuing certificates of waiver; R9–3–1009 Tampering repair requirements; R9–3–1010 Low emissions tune-up; R9–3–1011 Vehicle inspection report; R9–3–1013 Reinspections; R9–3–1016 Licensing of inspectors; R9–3–1018 Certificate of inspection; R9–3–1019 Fleet station procedures and permits; R9–3–1025 Inspection of state stations; R9–3–1026 Inspection of fleet stations; R9–3–1027 Registration of emission analyzers and opacity meters; R9–3–1028 Certification of users of registered analyzers and analyzer repair persons; R9–3–1030 Visible emissions: Mobile sources; and R9–3–1031 Standards for evaluating aftermarket catalytic converters. No comments from the public regarding the proposed approval of these rules were received. These revisions to the I/M program substantially enhance the program's effectiveness; therefore, EPA takes final action to approve these rules as part of the Arizona SIP for both Maricopa and Pima Counties.

In the NPRM, EPA also proposed to approve the following portions of 1987 Arizona State legislation (Senate Bill 1360), submitted as a SIP revision on March 23, 1988: Section 6: ARS 15–1444–C(added); Section 7: ARS 15–1627–F(added); Section 21: ARS 49–542–A(amended); Section 21: ARS 49–542–E(added); Section 21: ARS 49–542–J.3.(b)(amended); and Section 23: ARS 49–550–E(added). No comments from the public were received regarding this proposal. Because this legislation further enhances the Arizona I/M program, EPA takes final action to approve these revisions to the I/M program as part of the Arizona SIP for both Maricopa and Pima Counties.

As noted in the NPRM, EPA is allowing credit for Senate Bill 1360 emission reductions based upon the legislation, because the legislation provides specific and enforceable amendments to the State's I/M program. The State is expected to submit to EPA as a SIP revision changes to the State's regulations conforming to the legislation. These regulations will be approved in a separate **Federal Register** action.

*New Source Review Rules*

In the proposal for today's notice, EPA indicated that it was reviewing Pima's NSR rules to determine whether they could be approved in their current form in light of the deficiencies noted in EPA's May 9, 1986, proposal to approve the NSR rules (51 FR 17210). The May 9, 1986, **Federal Register** notice also identified deficiencies in the State's NSR rules, which had been proposed for approval on November 12, 1981 (46 FR 55714). EPA has concluded that the NSR rules for Pima County and the State of Arizona can now be fully approved based upon commitments by Pima County and the State of Arizona to implement their NSR rules consistent with EPA's requirements. EPA has determined that the rules as written are adequate to meet the requirements of 40 CFR 51.165(a) if certain ambiguous provisions are always interpreted consistent with EPA's requirements. The State submitted a letter for the State on June 1, 1988, and a letter for Pima County on July 22, 1988, making all of the necessary commitments. These commitment letters, which are appended to the TSD for this notice, concern stack heights, temporary sources, growth allowances, net emission decreases, reasonable further progress, volatile organic compounds, stationary sources, allowable offsets, permittee responsibility and visibility protection. Both commitment letters have been forwarded to the Office of the Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable components of the Pima CO SIP. As such they are federally enforceable against both Pima County and the State of Arizona under sections 113 and 304 of the Act. The commitments are also enforceable through citizen suit under section 304 of the Act.

*Approval of Arizona H.B. 2206*

In a separate section of today's **Federal Register**, EPA is taking final action to approve SIP revisions that provide for attainment and maintenance of the carbon monoxide standard in Maricopa County and provide additional assurance of maintenance in Pima County. Two specific measures, the loaded-mode inspection and maintenance testing program and the voluntary no-drive-day program, are State mandated programs developed as SIP revisions in Arizona H.B. 2206 and submitted to EPA on July 18, 1988. A brief description of how these measures apply in Pima County follows.

A. Loaded-Mode Inspection and Maintenance Testing

Currently the Arizona I/M program passes or fails vehicles based on their exhaust emission concentrations under curb idle conditions. Section 18 of H.B. 2206 amends section 49–542 F of the Arizona Revised Statutes, to require beginning on January 1, 1989, that 1981 and newer vehicles pass both curb-idle mode and loaded-mode emissions tests. Fleet operators who have obtained a permit to test their own vehicles are allowed to substitute a 2500 revolutions-per-minute mode for the loaded-mode portion of the test to avoid the need for dynamometers at the fleet operators test sites.

EPA has calculated the expected incremental benefit of loaded testing using MOBILE3 which contains EPA's standard estimates of the I/M reductions for both idle and loaded-plus-idle testing. Inputs for average speed, registration mix, tampering/misfueling rates, and I/M stringency were those recommended by the Arizona Department of Environmental Quality (ADEQ) as being representative for Phoenix. Inputs specific to Tucson would be only slightly different and the effect on the resulting CO credit would be small. The incremental CO reduction from loaded-mode testing was calculated by EPA to be 4.0 percent in December 1991. A more complete discussion of factors related to this calculation is contained in the technical support document (TSD) for the Maricopa County CO plan approval.

B. Voluntary No-Drive-Day Program

In its proposal on the Maricopa SIP on May 16, 1988, EPA listed three criteria for approving voluntary no-drive-day programs for emissions reduction credit. These criteria are assurance of adequate annual funding, the existence of an institutional framework meeting the requirements of CAA section 172(b)(10), and the development of a monitoring program to assess and verify the impact of the program.

H.B. 2206 in section 17 requires a County with a population of more than 400,000 (effectively Pima and Maricopa Counties) to institute a voluntary no-drive-day program. With the County

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having clear responsibility for implementation, the program meets the institutional requirements of CAA section 172(b)(10). H.B. 2206 also requires the ADEQ to fund the voluntary no-drive-day programs from the Air Quality Fund; therefore, long-term funding of the program is assured. Based on the legislation meeting the first two criteria, EPA is approving the voluntary no-drive-day program as part of a CO maintenance program in Pina County. Because a monitoring protocol to assess and verify the impact of the program is still lacking, EPA is not at this time proposing to approve a specific emission reduction credit for the program. Before EPA can approve a specific emission reduction credit for this measure, the State must submit a monitoring protocol for the program and any supporting documentation on the effectiveness of such a program in Pima County. Should the State submit this information, EPA will at that time revisit the issue of an emission reduction credit in the Pima SIP for a voluntary no-drive-day program.

### III. Response To Comments

EPA received letters from four commenters in response to its proposed approval of the Pima CO SIP. The legal issues raised by the ACLPI are addressed below. A summary of and complete responses to all comments can be found in the TSD for this notice.

ACLPI commented that the attainment date for the Pima area should not be three years from the date of SIP approval. ACLPI argued that after passage of the statutory Part D attainment dates, EPA should interpret the Act as requiring attainment at the soonest time, essentially without regard to practicalities, in order to implement Congressional intent in setting the original deadlines. As EPA has previously explained in full, EPA believes that after December 31, 1987, a SIP needs to demonstrate attainment no more quickly than as expeditiously as practicable but by certain fixed dates. See EPA's proposed post-1987 attainment policy, 52 FR 45044, 45049 (November 24, 1987); the proposal for today's action, 53 FR 14818, 14819 (April 26, 1988); and EPA's proposed SIP for Maricopa County, 53 FR 17378, 17381 (May 16, 1988) for a full discussion of EPA's legal interpretation.

If EPA were to accept ACLPI's position that post-1987 planning should provide for attainment at the soonest time, many post-1987 nonattainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no drive restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 nonattainment situation now being faced, would have required this result, even after passage of the Part D dates. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" requirement to be still in place, albeit bounded in situations, such as that of Pima County, by fixed attainment deadlines.

ACLPI cites *American Lung Association* v. *Kean*, 18 *Envtl. L.Rptr.* 20317 (D.N.J. 1987), in support of its position. ACLPI misinterprets that case. That case in fact interprets the Act to require "SIP implementation 'as expeditiously as *practicable*' after December 31, 1987." *American Lung Association*, Id. at 20317 (emphasis added). The case does not require SIP implementation more rapidly than practicable and does not set any outside date for attainment in the event no near term date is practicable. This case is therefore consistent with EPA's position; indeed, the "as expeditiously as practicable" formulation would actually allow for a much longer attainment period in very severe nonattainment areas.

The Pima County SIP which EPA is approving today provides for attainment in early 1990, little more than 2 years after SIP approval. EPA believes that this is as expeditious as practicable and well within any outside attainment date derived from sections 110(a)(2)(A) and 110(e).

ACLPI commented that the Pima CO SIP does not provide for implementation of all reasonably available control measures as required by section 172(b)(2) of the Act. EPA has long interpreted section 172(b)(2) as requiring implementation of only those available controls necessary to provide for attainment by the applicable attainment date. This is because it would not be reasonable to require states to implement measures that, although technologically available, would not materially advance an area's attainment date. *See* EPA's General Preamble on Part D SIP preparation, 44 FR 20372, 20375 (April 4, 1979).

The Pima CO SIP provides for attainment in 1990. EPA does not believe that any combination of available controls would advance that attainment date. EPA notes that the Arizona Legislature recently passed a bill requiring the use of oxygenated fuels in Pima County during the winter CO season as well as loaded-mode testing for the existing I/M program. EPA is proposing to approve the oxygenated fuels program and approving the loaded-mode I/M testing as components of the Pima CO SIP in separate sections of today's **Federal Register**. Although the measures will not advance the attainment date for Pima County, EPA believes that they will provide additional assurance that Pima will attain the CO standard in 1990 and maintain it thereafter.

ACLPI commented that EPA could not approve the Pima CO SIP and lift the construction ban in Pima County so long as the plan lacks an approvable NSR component. EPA has reviewed the Pima NSR program and has determined that it can be fully approved based upon Pima County's and the State of Arizona's commitments to interpret the regulation consistent with EPA's requirements. The State submitted a letter for the State on June 1, 1988, and a letter from Pima County on July 22, 1988, making the necessary commitments. These commitment letters, which have been appended to the TSD for this notice, have been forwarded to the Office of Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable components of the Pima CO SIP. As such they are enforceable against Pima County and the State of Arizona under sections 113 and 304 of the CAA, and will effectively control any court's interpretation of the State's and County's intent under the NSR rules.

ACLPI also commented that the Pima CO plan does not meet the requirement of section 172(b)(11)(A) that the NSR program require a demonstration that the benefits of a proposed source significantly outweigh the environmental and social costs imposed by the source. Section 172(b)(11)(A) technically does not apply at all to Pima County. The section only applies by its own terms to areas that received attainment date extensions to 1987. EPA has stated, however, that generally SIPs for areas that failed to attain in 1982 as planned would have to meet all requirements applicable to extension areas in order to demonstrate timely attainment. *See* "Guidance Document for Correction of Part D SIPs for Nonattainment Areas," January 27, 1984. The Arizona NSR program does require a demonstration that the benefits of a proposed project outweigh the project's environmental costs. EPA concludes that with that provision Arizona's NSR program adequately complies with EPA's policy that nonextension areas that failed to attain generally meet the

Part D requirements for extension areas to demonstrate attainment.

ACLPI commented that EPA should be including trip reduction ordinances in the Pima CO SIP. Since the proposal on this action, EPA has received a formal SIP submittal from Arizona requesting approval of travel reduction ordinances adopted by the various Pima County local jurisdictions. EPA is proposing to approve these measures in a separate section of today's **Federal Register** as additional assurances that Pima County will attain the CO standard in 1990 and maintain it thereafter.

ACLPI commented that the Pima CO plan did not contain adequate contingency provisions. In its 1981 guidance on CO SIP preparation EPA required Part D SIPs to contain contingency measures to compensate for unanticipated shortfalls in planned emission reductions. As previously mentioned, the Arizona Legislature recently passed an oxygenated fuels program, a loaded-mode I/M testing requirement and voluntary no-drive-day program applicable to Pima. In separate notices in today's **Federal Register** EPA is approving the loaded-mode and voluntary no-drive-day measures, and proposing to approve the oxygenated fuels program and the travel reduction ordinances adopted by the Pima County local jurisdictions. These measures will together provide significant additional emission reductions in Pima County that will be available to compensate for any unanticipated shortfalls in planned emission reductions. These measures which have already been adopted will adequately serve the function of the contingency provisions EPA contemplated in 1981.

## IV. Summary of Final Action

EPA is today taking final action to approve the Pima CO plan submitted to EPA on January 6, 1988. The plan provides for attainment of the CO standard with reasonably available control measures in 1990. The revised I/M regulations, the FMVCP and other control measures adopted by Pima County jurisdictions will result in attainment of the standard in 1990 and maintenance consistent with the ten-year maintenance period described in EPA's November 24, 1987 proposal on post-1987 planning.

EPA is taking final action on Pima County's NSR regulations, originally proposed for approval on May 9, 1986 (51 FR 17210). The original NSR submittal, together with implementation commitments by Pima County and the State of Arizona, meet the requirement of 40 CFR 51.165(a).

EPA is also proposing today, in a separate **Federal Register** notice, to approve two additional CO control measures recently submitted by the State for incorporation into the Pima maintenance plan. The first measure includes submittal of the travel reduction ordinance regulations adopted by Pima County jurisdictions as part of the CO plan. The second is an oxygenated fuels program mandated in Arizona H.B. 2206. In addition, in a separate notice for Maricopa County, EPA is approving two programs in H.B. 2206 that will affect Pima County. The first program is a loaded-mode I/M requirement and the second is a voluntary no-drive-day program. EPA believes these additional measures will provide further emissions reductions to strengthen the maintenance plan.

As described above, the attainment and maintenance demonstration in the Pima CO plan meets all EPA and CAA Part D criteria, including the proposed post-1987 policy, which would require a maintenance demonstration of 10 years from the SIP due date. Based on this finding, EPA also takes final action today to fully approve the Pima SIP as meeting all requirements of section 110 and 172 of the Clean Air Act and therefore lifts the moratorium under section 110(a)(2)(I) of the CAA on major new construction and major modification of stationary sources of CO in the Tucson CO Air Planning Area.

## V. Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the **Federal Register** on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

Date: August 4, 1988.

**Lee M. Thomas,**

*Administrator.*

Subpart D of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401—7642.

2. Section 52.120 is amended by adding paragraphs (c)(54)(i) (D) and (E), (56)(i)(B), (58), (59), (60), (61), (62), (64) and (66) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(54) * * *

(i) * * *

(D) New or amended rules R9–3–302 (paragraphs A–H); and R9–3–303 (paragraphs A to C and E to I), adopted on May 26, 1982.

(E) Previously approved and now removed (without replacement) rule R9–3–101, No. 46.

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(56) * * *

(i) * * *

(B) New or amended rules R9–3–101, Nos. 135 and 157, adopted on September 19, 1983.

(57) [Reserved]

(58) The following amendments to the plan were submitted by the Governor's designee on October 18, 1985.

(i) Incorporation by Reference.

(A) Pima County Health Department.

(*1*) New or amended regulations: Regulation 16: Rule 166; Regulation 17: Rule 171 and 175; Regulation 20: Rule 202; Regulation 37: Rules 371, 372, 373, Figure 371–A, Figure 371–C, and Figure 372; and Regulation 38, Rule 381, A1, 2, 3, 4, 5, and B, adopted on December 6, 1983.

(59) The following amendments to the plan were submitted by the Governor's designee on October 24, 1985.

(i) Incorporation by Reference.

(A) Arizona Department of Health Services.

(*1*) New or amended rule R9–3–303, adopted on September 28, 1984.

(60) The following amendments to the plan were submitted by the Governor's designee on October 5, 1987.

(i) Incorporation by Reference.

(A) Arizona Department of Health Services.

(*1*) New or amended rules R9–3–1001 (Nos. 8, 25, 33, 34, 38, 39, 40, and 43, No.

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8), R9–3–1003, R9–3–1005, R9–3–1006, R9–3–1008, R9–3–1009, R9–3–1010, R9–3–1011, R9–3–1013, R9–3–1016, R9–3–1018, R9–3–1019, R9–3–1025, R9–3–1026, R9–3–1027, R9–3–1028, R9–3–1030, and R9–3–1031, adopted on December 23, 1986.

(2) Previously approved and now removed (without replacement), Rule R9–3–1014.

(61) The following amendments to the plan were submitted by the Governor's designee on January 6, 1988.

(i) Incorporation by reference.

(A) The 1987 Carbon Monoxide State Implementation Plan Revision for the Tucson Air Planning Area adopted on October 21, 1987.

(62) The following amendments to the plan were submitted by the Governor's designee on March 23, 1988.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(1) Senate Bill 1360: Section 6: ARS 15–1444–C (added), Section 7: QRS 15–1627–F (added), Section 21: ARS 49–542–A (amended, Section 21: ARS 49–542–E (added), Section 21: ARS 49–542–J.3.(b) (amended), and Section 23: ARS 49–550–E (added), adopted on May 22, 1987.

(63) [Reserved]

(64) The following amendments to the plan were submitted by the Governor's designee on June 1, 1988.

(i) Incorporation by Reference.

(A) Letter from the Arizona Department of Environmental Quality, dated June 1, 1988, committing to administer the provisions of the Federal New Source Review regulations consistent with EPA's requirements. The commitments apply to the issuance of, or revision to, permits for any source which is a major stationary source or major modification as defined in 40 Code of Federal Regulations, Part 51, Subpart I.

(65) [Reserved]

(66) The following amendments to the plan were submitted by the Governor's designee on July 22, 1988.

(i) Incorporation by Reference.

(A) Letter from the Pima County Health Department, Office of Environmental Quality, dated April 24, 1988 committing to administer the New Source Review provisions of their regulations consistent with EPA's requirements. The commitments apply to the issuance of, or revision to, permits for any source which is a major stationary source of major modification as defined in 40 Code of Federal Regulations, Part 51, Subpart I.

**§ 52.124 [Amended]**

3. Section 52.124 is amended by removing paragraph (a)(2).

[FR Doc. 88–18081 Filed 8–9–88; 9:46 am]
BILLING CODE 6560–50–M

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**40 CFR PART 52**

**[FRL–3427–6]**

## Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Maricopa County Carbon Monoxide Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice announces EPA's final action to approve revisions to the carbon monoxide (CO) state implementation plan (SIP) for the Maricopa County (Phoenix) CO nonattainment area that were submitted by the State of Arizona on October 5, 1987, and July 18 and 22, 1988. In its May 16, 1988, notice of proposed rulemaking (NPRM) (52 FR 17379), EPA proposed to approve certain control measures in the 1987 Maricopa CO plan; however, those measures did not by themselves provide sufficient emission reductions to demonstrate timely attainment of the CO standard in Maricopa County. In response to the plan's failure to demonstrate timely attainment and to an order by the U.S. District Court for the District of Arizona, EPA also proposed in the same notice to promulgate a federal implementation plan (FIP) for Maricopa County. This proposed FIP contained two measures—an oxygenated fuels program for motor vehicles and an employer-based trip reduction program—which together with the proposed SIP measures would have provided sufficient emission reductions to demonstrate attainment by December 31, 1991. As fully discussed in the May 16 proposal and later in this notice, EPA believes that the December 31, 1991 date is the latest date by which an approvable Arizona SIP may demonstrate attainment under the Clean Air Act and EPA's own policies in light of the possibility of attainment by then without the use of draconian measures.

In June, 1988, the Arizona State Legislature passed House Bill 2206 which contains a state-run oxygenated fuels program, a travel reduction program, a loaded-mode testing requirement for the State's inspection and maintenance (I/M) program, and other measures. Two of those measures, the loaded-mode I/M test requirement and the voluntary no-drive-day program apply to both Maricopa and Pima Counties. On July 18 and 22, 1988, the State submitted portions of H.B. 2206 and a persuasive demonstration that the measures in the bill along with the SIP measures proposed for emission reduction credit by EPA on May 16 will lead to attainment of the CO standards in Maricopa by December 31, 1991. In its May 16 notice, EPA had proposed in advance to approve the measures similar to those in H.B. 2206 if the State adopted and submitted them to EPA prior to August 10, 1988. Today, EPA takes final action to approve the SIP Submittals received by EPA on October 5, 1987, and July 18 and 22, 1988. EPA takes this action based on its conclusion that the control measures and the attainment demonstration fully meet the requirements of section 110 and Part D of the Clean Air Act (CAA or the Act). EPA is also taking final action to approve the Maricopa County New Source Review (NSR) regulations proposed for approval on July 3, 1983 (48 FR 34293).

With its full approval of the Maricopa SIP, EPA is withdrawing its proposed FIP and the proposal to impose highway funding restrictions under CAA section 176(a) which were proposed on May 16, 1988. In addition, EPA is lifting, effective today, the section 110(a)(2)(I) construction ban on major new or modified sources of CO that it imposed on September 23, 1986 (51 FR 33746).

**EFFECTIVE DATE:** August 10, 1988.

**ADDRESSES:** Copies of the submitted SIP revisions and EPA's technical support document (TSD) for this rulemaking are available for public inspection during normal working hours at the following addresses:

Environmental Protection Agency, Region 9, State Liaison Section, A–2–2, Air Management Division, 215 Fremont Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Air Quality, 2005 N. Central Avenue, Sixth Floor, Phoenix, Arizona 85004

Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007

**FOR FURTHER INFORMATION CONTACT:** Wallace D. Woo, Chief, State Liaison Section (A–2–2), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7634, FTS: 454–7634

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The CAA amendments of 1977 required States to revise their SIPs by certain times for all areas that had not then attained the National Ambient Air Quality Standards (NAAQS). Generally, the States containing these designated "nonattainment areas" had to submit revised SIPs by January 1, 1979. The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or CO to no later than December 31, 1987, was available under section 172 if the State could demonstrate as part of its 1979 SIP revision that attainment by the end of 1982 was not possible, despite the implementation of all reasonably available control measures. For areas that received an attainment date extension from EPA, States were required to submit to EPA by July 1, 1982, an additional SIP revision that provided for attainment no later than December 31, 1987, and that complied with all other requirements of Part D of the CAA.

*A. Maricopa SIP Disapproval*

Maricopa County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970), and the State submitted Maricopa County's initial nonattainment area plan for CO in 1979 and 1980. On October 30, 1980, the State submitted a request to EPA to extend the CO attainment date in Maricopa County to December 31, 1987. EPA proposed to approve the extension request on February 5, 1982 (47 FR 5439).

On May 5, 1982 (47 FR 19826), EPA took final action to approve the 1979 SIP revision on the condition that the State submit revised regulations for Maricopa County to meet the Act's NSR requirements. On June 3, 1982, and March 4, 1983, the State submitted NSR regulations for Maricopa County. On July 3, 1983 (48 FR 34293), EPA proposed to approve the Maricopa NSR rules with one exception and certain understandings.

Beyond establishing the NSR condition, EPA, in its final action on the 1979 CO plan, found that the plan was not adequate to bring about attainment by the end of 1982. EPA premised its limited approval of the plan on the expectation that (1) the Agency would take final action to grant the State's request for an attainment date extension to December 31, 1987, and (2) the State would submit another plan revision which would provide for attainment by that date. The State submitted a plan purporting to meet this requirement on October 26, 1982.

On January 27, 1986 (51 FR 3343), EPA proposed to disapprove the revised Maricopa plan and impose the section 110(a)(2)(I) construction ban because the State had not adequately demonstrated that the plan would provide for timely attainment of the standard.

On September 23, 1986 (51 FR 33746), EPA published a final notice disapproving the CO plans for both the Maricopa and Pima Counties nonattainment areas and imposing the section 110(a)(2)(I) construction ban on major new sources and major modifications to existing sources of CO in the two areas. As explained fully in the September 23, 1986 notice, EPA determined that it was not necessary to take final action on the State's attainment date extension request.

*B. U.S. District Court Order*

On August 10, 1987, the U.S. District Court for the District of Arizona ordered EPA to promulgate a FIP under section 110(c) of the Act for CO in the Maricopa and Pima Counties nonattainment areas. The Court found that EPA's duty to promulgate a FIP arose when EPA found the State plans were inadequate. The Court Order is the result of a citizen suit brought against EPA on April 8, 1985, by the Arizona Center for Law in the Public Interest (ACLPI). The timeframe specified in the Court Order for EPA to promulgate a FIP was six months following either the formal submittal of the Pima CO plan or September 30, 1987, whichever came first. *McCarthy* v. *Thomas*, D. Ariz. No. CIV–85–34–TUC–1WDB (slip op., Aug. 10, 1987). The Court left open the possibility that EPA could file a motion after January 1, 1988, requesting an extension of the time period for FIP promulgation if necessary.

On March 14, 1988, EPA moved the Court to extend the period for EPA to promulgate a FIP for the Maricopa and Pima areas. On April 19, 1988, the Court issued an Order requiring EPA to propose a FIP for Maricopa County no later than May 13, 1988, hold public hearings on the proposal no later than June 10, 1988, close the public comment period following the hearing by July 11, 1988, and promulgate a FIP for Maricopa County no later than August 10, 1988. The Court also ordered that the same schedule for FIP promulgation shall apply for Pima County if EPA did not accept the Pima County SIP. On July 19, 1988, EPA moved the Court to amend its Order to specifically allow EPA to approve Arizona's SIP for Maricopa County by August 10, 1988. The Court granted EPA's motion on July 20, 1988.

EPA outlined its intended approach to comply with the Court Order to promulgate a FIP for Maricopa and Pima Counties in an advance notice of proposed rulemaking (ANPRM) (51 FR 45466) published on November 30, 1987. In the ANPRM, EPA explained that, to promulgate a FIP for these two areas, EPA must select control measures that fill whatever gaps are left by approved portions of the State plans. The ANPRM also discussed the Maricopa County CO plan that had been submitted as a SIP revision by the State on October 5, 1987. The plan indicated that the area could attain the CO standard as early as 1990 and in any event by 1995 if the recommended control strategy in the SIP (including an oxygenated fuels program for motor vehicles, winter daylight, savings time, and an employer-based trip reduction ordinance) were fully adopted and implemented.

The Maricopa plan claimed credit, both implicitly and explicitly, for the Arizona vehicle inspection and maintenance (I/M) program as expanded through 1987. On April 26, 1988, in a **Federal Register** notice on the revised Pima CO plan, EPA proposed to approve the improvements to the State's I/M program as adopted by the Arizona State Legislature in 1985, 1986, and 1987. (51 FR 14818). The revised Maricopa plan also assumed credit for the following additional control measures: Transit and ridesharing improvements, expanded facilities to encourage increased pedestrian and bicycle trips, alternative work hours, alternative fuels for vehicle fleets, alternative-fueled transit vehicle purchase, and a voluntary no-drive-day program. On May 16, 1988 (53 FR 17379), EPA proposed to approve and assign emissions reduction credits to all of these measures except for the alternative fuels for vehicle fleets and the voluntary no-drive-day program. However, the creditable measures in the revised plan did not by themselves provide sufficient emissions reductions to demonstrate attainment of the CO standard. Therefore, EPA also proposed to promulgate the two control measures for Maricopa County identified in the ANPRM—an oxygenated fuels program and an employer-based trip reduction program—as technologically available elements of a FIP that would provide the emission reductions necessary for attainment.

*C. Proposed FIP*

As fully described in the May 16, 1988 notice, EPA's evaluation of the air quality modeling analysis in the SIP submittal prepared by the Maricopa Association of Governments (MAG) shows that a 22.0 percent reduction in the 1991 baseline CO emissions is

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needed to demonstrate attainment of the 8-hour CO standard by December 31, 1991. (The applicable attainment date for the Maricopa plan is described in detail in the proposed rulemaking and is summarized later in this notice.) The MAG plan provided an approvable emission reduction of 3.9 percent by the end of 1991 leaving a shortfall of 18.1 percent in the emission reductions needed for attainment To fill that shortfall, EPA proposed two federal control measures—an employer alternative modes incentives program and an oxygenated fuels program—which, together with the approvable SIP measures, would provide at least a 22.0 percent reduction in CO emissions by the end of 1991.

The proposed oxygenated fuels program required an equivalent oxygen content level of 2.57 percent in motor vehicle fuels sold in the Maricopa area in the winter CO season. October 1 through March 31. Oxygenated fuel blends, in the form of aliphatic alcohols and/or ethers which are currently on the market and available to the Maricopa area, include methyl-tertiary-butyl-ether (MTBE), ethanol (gasohol) and methanol/cosolvent blends The effect of these blends in gasoline is to cause motor vehicle engines to run leaner thereby reducing emissions of carbon monoxide In the May 16, 1988 notice, EPA noted that the equivalent oxygen content requirement could change in the final rulemaking depending upon the combination of control measures selected for promulgation and on whether the State adopted any additional control measures EPA also solicited comments on whether the proposed trip reduction regulation should be replaced by a higher average oxygen content level in the oxygenated fuels program.

The proposed employer alternative modes incentive program required that each employer of 100 or more employees at a worksite in the nonattainment area develop and offer to its employees alternative transportation mode incentives These incentives would be designed to reduce the number of single occupant-vehicle (SOV) commute trips to the employer's worksite The proposed trip reduction goal was a 5 percent reduction in SOV commute trips in the first year and an additional 5 percent in the second year EPA's proposed program was designed to regulate the same group of employers at the same trip reduction level as the MAG model trip reduction ordinance (described fully in the May 16, 1988 notice) EPA estimated that the MAG model or EPA's proposed regulation, if fully implemented, could reduce CO emissions by 1.8 percent by the end of 1991

In the May 16, 1988 proposal, EPA recognized the possibility that Arizona would adopt and submit as a SIP revision additional CO control measures prior to final promulgation by EPA of the proposed FIP measures. EPA proposed to modify the final FIP if additional controls were submitted and EPA determined that they were approvable for CO emission reduction credit The purpose of the modification would be to rely as much as possible on State controls rather than federal controls and to promulgate only as much federal control as needed to satisfy the Act's attainment date requirements. EPA proposed that if the revised SIP achieved 22.0 percent or more emission reductions, and EPA approved it, EPA would not promulgate any FIP.

EPA noted that the Arizona State Legislature was considering several bills that would establish oxygenated fuels programs in Maricopa County and was proposing legislation to improve the State I/M program through the addition of a loaded-mode testing requirement and to require a trip reduction program in Maricopa County. In its proposed notice, EPA evaluated the various carbon monoxide control measures then under consideration by the Arizona State Legislature and indicated which measures EPA would approve if adopted and submitted as SIP revisions

The May 16, 1988 proposal provided that if a legally enforceable trip reduction ordance was adopted by the State, County, or local governments which was substantially equivalent to the MAG model ordinance and the proposed federal trip reduction regulation and which covered all or virtually all employers of more than 100 persons in the CO nonattainment area, then EPA would not finalize its own trip reduction regulation The notice also stated that EPA might go directly to final approval of the loaded-mode I/M testing requirement then being considered by the Arizona Legislature Finally, in order to lay the procedural foundation for EPA to take action on any new oxygenated fuels legislation with as little delay as possible, EPA proposed the methods and assumptions that it would use in approving or disapproving such new legislation and in assigning CO emission reduction credit to it

*D Dates for Attainment and Maintenance of the CO Standard*

The May 16, 1988 notice describes in detail the legal requirements applicable to any FIP that EPA would promulgate for the Maricopa area in light of its unique characteristics. In general those requirements would also apply to any SIP submitted for the area Specifically EPA concluded that the FIP as well as any SIP approved by EPA, must meet the requirements of both section 110 and Part D of the CAA. EPA also interpreted those requirements to determine how they apply to implementation plans for this area after December 31, 1987 the latest attainment date expressly identified in the CAA. That date is the planning date for areas that received EPA's approval of an extension beyond the otherwise applicable planning date December 31, 1982. See section 172(a) The Maricopa area has not received EPA's approval of such an extension However, since the later date, December 31, 1987, has now elapsed as well, the discussion below analyzes both dates similarly—as elapsed Part D dates

As explained in EPA's policy on post-1987 attainment planning proposed on November 24, 1987 (52 FR 45044), since it will be physically impossible after 1987 for EPA to plan for these areas to attain by the elapsed dates in Part D, EPA intends to interpret the requirement to plan for attainment by those dates as a legal impossibility. EPA believes that Congress would have intended EPA in such circumstances to select, in place of the elapsed dates, a subsequent date consistent with the general principles of the CAA and Part D. *See Chevron, U.S.A v N.R.D.C.*, 467 U.S 837 (1984)

Although it is not clear what subsequent date Congress would have intended in these circumstances, the history of the CAA's planning requirements suggests that Congress would have provided EPA (and these areas) an additional period analogous to the 3- and 5-year periods set forth in section 110(a)(2)(A) and section 110(e), respectively When Congress in 1977 directed EPA to initiate a new round of planning for areas that have failed earlier to produce adequate plans meeting the section 110 requirements, it created new planning periods comparable to the section 110 periods (3/5 years from EPA's approval of the state plan), rather than shortening those periods and thereby demanding plans for immediate attainment Section 172(a)(1) required the SIPs for non extension areas to provide for attainment by the end of 1982, four years from the date these submittals were due (January 1 1979) (See section 129(c)) To be sure, Congress provided a much longer attainment period for extension areas. From January 1, 1979 to December 31 1987 approximately nine years from the date the initial Part D SIPs were due But it set up two planning periods for

these areas—one to apply all "reasonably available" measures and a second to supplement those measures Since most reasonably available measures should already have been implemented in the Maricopa area by now, EPA regards post-1987 planning for the area as comparable to the planning during the second Part D period. That period spanned from the July 1982 submittal date (see section 129(c)) to the end of 1987 a period roughly consistent with the 3- and 5-year periods in section 110. Thus, although sections 110(a)(2) and (e) do not literally apply to the Maricopa area, EPA will use them (absent considerations of impossibility) as the best indicators of the attainment periods Congress would have intended to apply to plans for these areas after passage of the Part D dates.[1]

Section 110(a)(2) requires implementation plans to provide for attainment as expeditiously as practicable but no later than 3 years from EPA's approval of an adequate plan. Section 110(e) allows the EPA Administrator to grant a 2-year extension of the attainment date (beyond the 3-year period in section 110(a)(2)(A)) only if:

(A) One or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plans which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and

(B) The State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved

Applying these attainment deadlines to the Maricopa area, the plan must demonstrate attainment as expeditiously as practicable but in no case later than 1991 (assuming plan approval in 1988), unless even with the application of reasonably available alternative means attainment cannot be achieved within that period. For the reasons described below and later in this notice, EPA is approving the State's plan for the Maricopa area which now includes two creditable measures originally proposed as FIP measures—an employer-based trip reduction program and an oxygenated fuels program—and an additional creditable measure, loaded-mode I/M testing, that will bring about attainment of the CO standard by December 31, 1991 in the area

EPA believes that a trip reduction program, an oxygenated fuels program, and a loaded-mode I/M testing program are technologically available measures that would produce enough emissions reductions in combination to bring about attainment by December 31, 1991. However, EPA does not believe that any combination of available, practicable measures exists which could provide for attainment in the Maricopa area before the end of 1991. It is true that a very stringent oxygenated fuels program could theoretically advance the attainment date to 1990, but EPA cannot now conclude that any oxygenated fuels program is definitely practicable for application in the Maricopa area due to numerous outstanding questions concerning market penetration, fuel availability compliance monitoring, and consumer reaction to such a program. EPA is approving the oxygenated fuels program described later only because it is necessary to provide for attainment by end of 1991. Consequently EPA does not believe that any practicable measures exist which could achieve attainment in the Maricopa area before the end of 1991

On the other hand, EPA can also not make the conclusion, necessary to support a two-year attainment date extension under section 110(e), that a trip reduction program, an oxygenated fuels program and a loaded-mode I/M testing requirement are clearly not reasonably available alternatives measures. Oxygenated fuels are technologically available and EPA believes that, although there are numerous and significant outstanding questions concerning the program, they may well not prove to be significant obstacles to successful implementation of the program. Similarly a trip reduction program is in place in some California localities and thus, despite potential employer resistance, it appears reasonably available for the Phoenix area as well. Finally the loaded-mode testing requirement also appears reasonably available for Phoenix

Therefore, EPA is approving a trip reduction program, an oxygenated fuels program, and a loaded-mode I/M testing requirement for the Maricopa area because the programs are technologically available measures that are necessary to bring the area into attainment by the end of 1991 And, beyond that, as proposed, EPA does not believe it is appropriate to invoke the two-year extension provided in section 110(e).

EPA s approval of the SIP for Maricopa is consistent with outstanding agency guidance on CO SIP preparation. In an April 4, 1979 notice (44 FR 20372), EPA published criteria for approval of the Part D SIP revisions that the Act required states to submit in 1979 On January 22, 1981 (46 FR 7182), EPA published criteria for evaluating the supplemental SIP revisions for extension areas due in mid-1982.

Section 110(a)(2) requires a plan to provide not only for timely attainment of the NAAQS but also for maintenance of the standards thereafter The SIP for the Maricopa area is based on the modeling and emission projections prepared by MAG as part of its SIP submittal. The MAP plan projects emissions only through 1995; however, the projections demonstrate that the proposed SIP will continue to provide for maintenance of the CO NAAQS at least through 1995 EPA s proposed policy on post-1987 planning would require post-1987 SIPs to include a demonstration of maintenance for a period of ten years following the time of SIP submittal. As applied to the Maricopa SIP it would require a maintenance demonstration through 1998. Based on available data and its own projections based on the MAG plan, EPA concludes that with the SIP approved today the Maricopa area will attain and maintain the CO NAAQS through at least 1998. EPA recognizes that the phase- out of the CO reduction benefits of the Federal Motor Vehicle Emission Control Program and population growth and associated increases in vehicle miles traveled may cause CO levels to rise in the Maricopa area in the late 1990s EPA will continue to gather the necessary data to monitor the continuing validity of this

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[1] Certain important qualifications apply to this analysis. First, EPA is here dealing with a situation in which attainment within 3 years is a practical possibility given the size of the nonattainment problem and the measures that the state has submitted. EPA currently has rulemaking and policy proposals outstanding which raise the question of whether EPA must disapprove a SIP and thereby trigger a construction ban, even where a state has failed to submit measures that would provide for attainment within 3 or 5 years *and* where attainment by means of any measures would be impossible as a practical matter See 52 FR 26404 (July 14, 1987 and 52 FR 45044 (November 24, 1987) Thus EPA has yet to decide in final form what the role of impossibility is under the Act for the purpose of approval or disapproval of SIPs.

Second, EPA is not deciding in this notice of final action what its obligations under section 110(c) to promulgate a federal implementation plan are Again, the role of the doctrine of impossibility is uncertain Further, it is uncertain in any event that EPA must promulgate a FIP that provides for attainment by a near term fixed date. EPA currently is exploring these issues in connection with the ozone and CO SIPs for certain areas in California including the South Coast Air Quality Management District EPA does not intend by means of the discussion and analysis in this notice to express a final view on these issues.

maintenance determination beyond 1995.

*E. Lifting of Construction Ban and Withdrawal of Proposed 176(a) Sanctions*

Section 110(a)(2)(I) of the CAA and EPA's regulation at 40 CFR 52.24 impose a ban on the construction of major new or modified stationary sources of CO until such time as a state plan meeting the requirements of Part D is approved by the Administrator. Accordingly, EPA imposed the construction ban upon disapproval of the SIP on September 23, 1986. Since EPA has now determined that the SIP submitted by Arizona meets the requirements of section 110 and Part D of the CAA and will result in attainment of the CO standard as expeditiously as practicable in 1991, EPA is taking final action to approve the SIP for Maricopa County and lift the construction ban originally imposed on September 23, 1986.

In the May 16, 1988 notice, EPA proposed that, if Arizona did not supplement the Maricopa plan with the measures to demonstrate expeditious attainment, EPA would make a final finding that the State is not making reasonable efforts to submit an adequate Part D plan and, upon making such a final finding, would impose the federal highway finding restriction of section 176(a). Since Arizona has submitted additional CO control measures which EPA has determined meet the requirements of Part D of the CAA, EPA can no longer make this finding and therefore withdraws its proposal on this issue.

*F. Finding under Section 211(c)(4)(C)*

EPA believes that Arizona is authorized under the Clean Air Act to prescribe and enforce the oxygenated fuels program EPA is approving today. As fully explained in the May 16, 1988 NPRM at 17412–3, EPA interprets section 211(c)(4)(A) to allow state regulation of motor vehicle fuels or fuel additives unless there has been federal pre-emption. Under section 211(c)(4)(A) pre-emption of state regulation of a fuel occurs (i) if EPA has found that no fuel-related control or prohibition is necessary for that fuel or additive and has published such finding in the **Federal Register**, or (ii) if EPA has prescribed by regulation under section 211(c)(i) a control or prohibition applicable to the fuel or fuel-additive regulated by the state that is different from the state control or prohibition. The Agency wants to stress that it does not believe that either form of pre-emption has occurred in this case.

First, EPA has not made the finding that no fuel-related control or prohibition is necessary and clearly has not published any such finding in the **Federal Register.**

Second, EPA does not believe that it has prescribed the type of fuel control contemplated in section 211(c)(4)(A)(ii). EPA believes the reference in that section to "a control or prohibition applicable to such fuel or fuel additive" prescribed by the Administrator was intended to include only the same type of fuel control that the regulation in question is attempting to prescribe. Under this approach, section 211(c)(4)(A)'s prohibition of the adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control as at issue in the case at hand—in this case controls on the oxygen content of fuels. Since EPA has not prescribed any control on the oxygen content of any fuel by section 211(c) rulemaking,[2] the Agency believes that the pre-emption described in section 211(c)(4)(A)(ii) has not occurred. As a result, Arizona is free to adopt its own oxygen content controls and EPA is free to approve a SIP which includes such controls. Under these circumstances, EPA may approve such controls without making the special finding described in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) allows, where pre-emption has occurred, state fuel-related controls to be approved into a SIP if EPA finds such controls are "necessary" to achieve the standard the SIP implements. In this case a finding under section 211(c)(4)(C) is not required because pre-emption has not occurred.

Even if pre-emption has occurred, however, EPA believes that it may still approve certain types of state provisions for limits on oxygen content because the Agency can make the finding under section 211(c)(4)(C), which would authorize approval and, thus, eliminate the pre-emption problem. In the May 16, 1988 notice, EPA proposed to make such a finding as to provisions concerning oxygen content and today makes this finding final as to the oxygenated-fuel provisions in H.B. 2206. Section 211(c)(4)(C) authorizes EPA to approve into a SIP a state-adopted fuel control measure that has otherwise been pre-empted by EPA action, if EPA finds that the state control "is necessary to achieve the standard" that the SIP implements. As explained in the May 16, 1988 proposal, EPA interprets the language to require the Agency to find that the fuel control requirement is essential to achieve timely attainment of the standard. EPA believes that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable.

As explained in the proposal at 17413, EPA believes that reductions achievable by an oxygenated fuels program are essential to bring about timely attainment in the Maricopa CO nonattainment area, because no other measures short of severe draconian controls are available to achieve attainment by the end of 1991. Short of such severe alternatives, only an oxygenated fuels program, supplemented by other measures like loaded-mode I/M testing and travel reduction ordinances, can provide the 22 percent CO reduction necessary for attainment in 1991 without unacceptable socioeconomic impacts. In order to lay the procedural foundation for final approval of new legislation, EPA listed several conditions or restrictions on its proposed finding that an oxygenated fuels program is "necessary" within the meaning of section 211(c)(4)(C). EPA believes that H.B. 2206 meets those conditions. At proposal the Agency indicated that some of the bills then before the Arizona legislature contained elements that exceeded the requirements for timely attainment. EPA then solicited comment on whether, if some elements in the final legislation exceeded the minimum program necessary for timely attainment, the Agency should treat those elements as separable from the remainder of the program and withhold the "necessity" finding for them. 53 FR 17413–17414.

EPA has examined H.B. 2206 and believes that two elements of the legislation, if viewed in isolation from the remainder, arguably require reductions beyond the minimum that would produce timely attainment. First, the averaging requirement of section 41–2124 might, if triggered, produce more CO reduction in the January through March period than is strictly needed for timely attainment. Second, the set-aside authority of sections 78–2071 through 78–2708 might, if exercised, make it possible for more fuel to be blended to higher oxygen levels than might otherwise be the case.

In light of the process that led to the State's enactment of H.B. 2206, however, EPA has concluded that these two

[2] EPA has estimated limits on oxygen content for certain new fuels that have been granted waivers under section 211(f) of the Act for introduction into commerce, but has taken no such action under section 211(c).

elements must be viewed as integral parts of the legislation adopted by Arizona and that, because the legislation consists primarily of elements essential to timely attainment, EPA should find the legislation as a whole "necessary" to achieve the CO standard. A review of the legislative activity leading to the enactment of the law demonstrates that the final legislation reflects a balance aimed at assuring the widest possible availability of alternative types of oxygenated fuels in the Maricopa County petroleum market. In fact, the Agency believes that a primary reason that the legislature successfully formulated the necessary oxygenated fuels program is that it was able to reach a consensus ensuring the introduction of a significant amount of fuels with alcohol into the area. Because both of the program elements described above appear to have been adopted for the purpose of meeting this alcohol-related goal, and since that goal itself seems to have been critical to enactment of the legislation as a whole, EPA believes it would be inappropriate to conclude that those elements were not themselves "necessary" to achieve the standard, within the meaning of section 211(a)(4)(C).[3] Indeed, to withhold the "necessity" finding from those two elements would reflect a misunderstanding of the process that led to the enactment of H.B. 2206. For these reasons, EPA finds that the oxygenated fuels program as a whole contained in H.B. 2206 is "necessary to achieve attainment" of the CO standard in the Maricopa nonattainment area.

## II. Evaluation of State SIP Submittals

On October 5, 1987, the State of Arizona submitted the MAG 1987 Carbon Monoxide Plan for the Maricopa County Area and parts of Arizona Senate Bill 1360 as revisions to the SIP. On May 16, 1988, EPA explicitly proposed to assign specific emission reduction credits to several of the measures in the plan and the bill. EPA also proposed to approve the resolutions of commitment in the SIP to implement control measures which were passed by the jurisdictions in Maricopa County as well as other State and local agencies.

On July 18, 1988, the State submitted portions of Arizona H.B. 2206 and on July 22, 1988, the State submitted additional portions of H.B. 2206 as well as a demonstration that the measures in the 1987 SIP submittal combined with measures in the new submittals provide for attainment of the CO standard in Maricopa County by the end of 1991. Also accompanying the July 22, 1988 SIP submittal were workplans from agencies having responsibility for implementing parts of H.B. 2206. These workplans express each agency's intent to carry out the legislation and are included in the technical support document (TSD) for this notice.

Immediately following is a more detailed evaluation of the measures in the SIP submittals. Table 1 is a complete list of the measures for which EPA today is approving specific emission reduction credits.

TABLE 1.—CONTROL MEASURES BEING APPROVED FOR SPECIFIC EMISSION REDUCTION CREDITS

[In percent]

| Measure | Emission reduction | |
|---|---|---|
| | 1991 | 1995 |
| **1987 SIP Submittal** | | |
| 1987 I/M legislation | 2.1 | 1.8 |
| Short-range transit improvements | .1 | .1 |
| Expanded MAG regional ridesharing program | .3 | .5 |
| High-occupancy-vehicle lanes on freeways | NA | .3 |
| Freeway surveillance, ramp, metering, and signage | NA | .1 |
| Increased bicycle use | .2 | .2 |
| Pedestrian travel | .1 | .1 |
| Conversion of buses to alternative fuels | .1 | .3 |
| Alternative work hours | 1.1 | 1.0 |
| **1988 SIP Submittals** | | |
| Oxygenated fuels: | | |
| Sun waiver approved [1] | 16.20 | 15.35 |
| Sun waiver denied | 14.28 | 13.17 |
| Loaded-mode I/M testing | 4.0 | 5.9 |
| Travel reduction program | 1.8 | 2.1 |
| Total: | | |
| Sun waiver approved | 24.1 | 25.7 |
| Sun waiver denied | 22.3 | 23.8 |

[1] Sun Refining Marketing Company waiver request to EPA to add 15 percent MTBE by volume to unleaded fuel.

### *A. Control Measure Evaluation*

#### Measures in the 1987 SIP Submittal

The MAG recommended a list of 45 transportation and mobile source control measures for inclusion in its final carbon monoxide plan. These measures included expansion of the I/M program boundaries, improvements to transit and ridesharing programs, trip reduction ordinances, public awareness programs, a voluntary no-drive-day program, parking management, high-occupancy-vehicle (HOV) facilities, traffic flow improvements, pedestrian and bicycle travel amenities, alternative fuels, alternative work hours, changes in land use policies, winter daylight savings time, and miscellaneous other measures. A complete list of these measures can be found in the TSD.

In 1987, the Arizona State Legislature passed S.B. 1360. This legislation required, among other things, enhancements to the State I/M program, alternative workhours for public employees, and purchase of only clean-fuel buses by public agencies after January 1990. Emission reduction credits for these measures were taken in the MAG plan.

The State submitted the final MAG CO plan and S.B. 1360 to EPA as revisions to the Arizona CO SIP on October 5, 1987. Included in this SIP submittal are resolutions passed by the MAG member jurisdictions that contained commitments to implement measures in the MAG plan. Resolutions or letters of commitments are also included from the MAG Regional Council, the Phoenix Metropolition Chamber of Commerce, the Regional Public Transportation Authoirty (RPTA), the Arizona Department of Transportation, and the two local Air Force Bases. EPA is taking action today to incorporate these resolutions as part of the Maricopa SIP.

From its review of the specific commitments in the plan as well as actions of the State Legislature, EPA proposed on May 16, 1988 to credit nine measures as part of the Arizona SIP. These measures are the I/M program enhancements in S.B. 1360,[4] short-range transit improvements, expanded ridesharing, HOV lanes, freeway flow improvements, increased bicycle and pedestrian travel, conversion of buses to alternative fuels, and alternative workhours. EPA today is taking action to grant these measures the emission reduction credits listed in Table 1. More detailed information on EPA's reasoning for and the State's commitments to each of these measures is discussed in the TSD.

The cities, towns, and the County of Maricopa also made commitments to other measures (for example: Traffic flow improvements, educational programs, and city/county employee programs) that will contribute to reductions in ambient carbon monoxide concentrations. Unfortunately, due to the nature of many of these measures and their often very small emission reductions, specific emission reduction estimates were impossible to calculate. While not granting specific emission reduction credits for these measures,

[3] The Agency might have concluded otherwise if the bill had consisted primarily of elements not technically necessary for attainment, but H.B. 2206 is not that case.

[4] EPA is taking final action to approve these provisions in its final action on the Pima CO SIP elsewhere in today's **Federal Register**.

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EPA is today incorporating these commitments into the Maricopa SIP.

Measures in the 1988 SIP Submittals

In June of this year, the State Legislature passed H.B. 2206. This bill contains the authority or requirements for an oxygenated fuels program, loaded-mode I/M testing, a voluntary no-drive-day program in both Pima and Maricopa Counties, and a travel reduction program in Maricopa County only. On July 18 and 22, 1988, the State submitted portions of the adopted bill to EPA as a revision to both the Maricopa and Pima portions of the Arizona CO SIP. Accompanying the July 22 SIP submittal were workplans from each of the agencies charged with implementing a program or part of a program under H.B. 2206. These workplans clarify each agency's responsibilities and intents on implementing the provisions of the bill and are included as attachments to the TSD. Below is a short description of each of the control measures in H.B. 2206.

*1. Oxygenated Fuels Program.* H.B. 2206 establishes an oxygenated fuels program for the CO nonattainment area of Maricopa County. New Section 41–2123 A, Arizona Revised Statutes, sets the required oxygen content of leaded fuel at 2.4 to 3.7 percent by weight. Unleaded fuel is prohibited from containing less than 1.9 percent oxygen or more oxygen than allowed by the provisions of an EPA waiver under section 211(f) of the CAA, i.e., currently a maximum of 3.7 percent. These restrictions apply from and after September 30 of one year through March 31 of the next year, beginning in the fall of 1989. Section 41–2123 B provides that if the Sun Refining and Marketing Company's request for a waiver for 15 percent by volume MTBE in unleaded gasoline (53 FR 11701 (April 8, 1988) is approved by EPA, the oxygen limits will instead be 2.3 to 3.7 percent for both leaded and unleaded gasoline.

New section 41–2124 directs the Arizona Department of Transportation (ADOT) to enforce a higher oxygen content requirement from January 1 through March 31, if marketing data for the preceding October and November indicate that less than 10 percent of fuel sold contained 3.2 to 3.7 percent oxygen. The higher oxygen requirement would be enforced through averaging over the three month period. The oxygen requirement is to be set by ADOT to ensure that 18 percent of all fuel sold contains between 3.2 and 3.7 percent oxygen. The averaging requirement apparently would not supersede the requirement that each quantity of fuel sold also meet the required minimum and maximum oxygen limits in section 41–2123 A or B.

New sections 28–2701 through 28–2708 establish authority for the Governor to implement a set-aside program that effectively insures the availability of gasoline suitable for blending with alcohol, if the ADOT determines a shortage of such unblended gasoline exists during the mandatory oxygenated fuels period.

Only the requirements of section 41–2123 A and B can be credited with CO emission reductions. The averaging requirement of section 41–2124 would, if triggered, produce additional CO reduction but only in the January through March period. However, EPA has no assurance that this requirement would in fact be triggered. The set-aside authority of sections 28–2071 through 28–2708 would, if exercised, make it possible for more fuel to be blended to higher oxygen levels associated with alcohol-based blends than might otherwise be the case with other gasoline blends. The Governor has the discretionary authority, however, to declare a shortage and order the set-aside program into operation. Even if ordered, EPA has received no information with which to estimate the degree of alcohol blending during the entire compliance period, as discussed later in this section.

Before presenting EPA's analysis of the Maricopa County program, it should be noted that a detailed description of oxygenated fuels and their effect on motor vehicle emissions is contained in EPA's NPRM of May 16, 1988 (58 FR 17378). Also, the overall methodology and assumptions for evaluating the CO effects of the oxygen content limits specified in section 41–2123 A or B were proposed at 17410 of that same **Federal Register** notice and clarified by a memo from Phil Lorang, Office of Mobile Sources, EPA, to Wallace Woo, EPA Region 9 (June 22, 1988). The details of the methodology are contained in the TSD for this action and will not be repeated here. The interested reader is instead referred to that document. However, the basic elements of EPA's evaluation are briefly described below.

The EPA report, "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," January 29, 1988, EPA –AA–TSS–PA–87–4, is the basis for the calculation of CO emission reductions. The guidance in this report is supplemented with the following information and assumptions, which pertain to the specific program contained in H.B. 2206.

In response to the mandate which specifies different oxygen levels for specific grades of gasoline, EPA assumes that catalyst vehicles will use unleaded gasoline and that vehicles manufactured without a catalyst will use leaded fuel with an allowance for the voluntary use of unleaded fuel. EPA also assumes that, in the near term, no switching between leaded and unleaded gasoline will occur due to changes in relative price or consumer desire to use or avoid one type or level of oxygenate. Regarding the actual oxyen content, EPA assumes that the minimum oxygen content for all grades of gasoline will be met using MTBE with a 0.1 percent oxygen safety margin.[5] This assumption is based on a workplan for implementation of H.B. 2206 contained in Appendix B.2 of the SIP Addendum which indicates an intent by the Arizona Department of Weights and Measures (ADWM) to allow no enforcement tolerance for oxygen content so that refiners must blend to a slightly higher oxygen level to allow for measurement variability. Additionally, no major oil company, other sizable gasoline marketer, or other investor indicated in comments on EPA's NPRM that it will definitely purchase and import via pipeline from California oxygen-free gasoline for resale to distributors for use in alcohol blending. Thus, EPA is conservatively assuming that no alcohol blends will be sold in the Phoenix area for the purposes of assigning emission reduction credits to the program. Therefore, if the Sun waiver is not approved, leaded fuel is expected to contain a level of MTBE which produces 2.5 percent oxygen content by weight and unleaded fuel is expected to contain a level of MTBE which produces 2.0 percent oxygen by weight. If the Sun waiver is approved, EPA assumes that all fuel will contain a level of MTBE which produces 2.4 percent oxygen by weight, i.e., about 13.2 percent MTBE by volume depending on the density of individual batches of gasoline used in blending.

With respect to enforcement of the State's program, as noted above, the ADWM has developed a workplan for implementation of H.B. 2206 which contains enforcement provisions. Further, H.B. 2206 appropriates

[5] EPA originally assumed leaded fuel would be blended with ethanol blends. However, the "substantially similar" restriction of section 211 of the Clean Air Act does not apply to leaded fuel, so MTBE can legally be used at any levels. The Agency finds the current MTBE assumption is more realistic and more conservative regarding emission benefits. See the TSD for details.

resources to the Department for this purpose.

Given the information and assumptions delineated above, the fleet average CO emission reduction would be 14.28 percent on December 31, 1991 if the Sun waiver is not approved. If the waiver is approved, the CO reduction would be 16.20 percent on that date.

The actual CO reduction in Maricopa County may be higher, but not assuredly so. If a 10 percent market share for alcohol blends is in fact achieved throughout the six-month mandate period, the 3.4 to 3.7 percent oxygen content by weight normally associated with such fuel would provide greater CO benefits than the smaller values assumed by EPA for MTBE blends. For example, if the Sun waiver is approved and a 10 percent alcohol blend market share actually occurs throughout the six-month period, the fleet CO reduction in December 1991 would be 16.7 percent. However, EPA has no evidence that this will in fact occur for the entire compliance period, so this estimate is provided for illustration only, and is not part of the basis for SIP approval.

*2. Loaded-Mode Inspection and Maintenance Testing.* Currently the Arizona I/M program passes or fails vehicles based on their exhaust emission concentrations under curb-idle conditions. Section 18 of H.B. 2206 amends Section 49–542 F of the Arizona Revised Statutes, to require, beginning on January 1, 1989, that 1981 and newer vehicles pass both a curb-idle mode and a loaded-mode emissions test (i.e., a test conducted while a vehicle is operating under load on a dynamometer to simulate actual driving conditions). To avoid the need for dynamometers at the fleet operators' test sites fleet operators who have obtained a permit to test their own vehicles are allowed to substitute a 2500 revolutions per minute mode for the loaded-mode portion of the test.

EPA has calculated the expected incremental benefit of loaded-mode testing using MOBILE3 which contains EPA's standard estimates of the I/M reductions for both idle and loaded-plus-idle testing. Inputs for average speed, registration mix, tampering/misfueling rates, and I/M stringency were those recommended by the Arizona Department of Environmental Quality as being representative for Phoenix. The incremental CO reductions from loaded-mode testing were calculated by EPA to be 4.0 percent in 1991 and 5.9 percent in 1995.[6] A more complete discussion of factors related to this calculation is contained in the TSD.

The May 16, 1988 NPRM stated that EPA might go directly to final approval of the loaded-mode testing requirement then being considered by the Arizona legislature. EPA is today approving the loaded-mode testing requirement, for both Maricopa and Pima Counties, as part of the Arizona CO SIP.

*3. Travel Reduction Program.* H.B. 2206 establishes a travel reduction program (TRP) in the nonattainment area of Maricopa County, which is very similar to the Pima County Travel Reduction Ordinance. The legislation appoints Maricopa County as the implementing and enforcing agency and provides funding for implementation through the State Air Quality Fund.

The TRP requires all employers of 100 or more full-time equivalent employees at a worksite to appoint a transportation coordinator, distribute information on alternative transportation modes to their employees, participate in surveys of alternative-mode usage of their employees, and develop a travel reduction plan. The travel reduction goals in the program are a 5 percent reduction in single-occupant vehicle trips to each major employer's worksite in the first year and an additional 5 percent in the second year. Travel reduction goals in the third and subsequent years are to be set by the MAG and enacted by County ordinance.

Under the TRP, major responsibility for overseeing the implementation of the program is held by the travel reduction program regional task force. This task force, the exact composition of which is to be decided by the Maricopa Board of Supervisors, may have representatives of major employers, development owners, Maricopa County jurisdictions, and public interest groups. Duties of the task force include reviewing surveys and travel reduction plans and requiring employers to revise unapprovable and/or inadequate plans. The task force is also responsible for recommending that enforcement actions be initiated. The task force makes recommendations to the existing County Air Quality Advisory Committee, a volunteer committee which currently provides recommendations to the Maricopa Board of Supervisors on air quality rules and regulations.

Violations of the TRP are punishable by civil penalties of up to $350 per day. Violations include failure to designate a transportation coordinator, to disseminate information, to submit an approvable trip reduction plan, or to implement such a plan. Failure of a major employer to achieve the goal is not considered a violation of the TRP although it does trigger mandatory and specific revisions to the employer's travel reduction plan.

In a letter dated July 22, 1988, the County outlined its expected budget and staffing for implementing the TRP as well as a schedule for working with employers. Staffing for the program will be located in the Bureau of Air Quality Control with additional contracted services from the Regional Transportation Authority. The County is currently scheduled to provide major employers with survey forms by the second week of February 1989. After that, the County will provide major employers with survey forms as soon as the provisions of H.B. 2206 allow.

In overall concept the TRP is similar to the proposed Federal trip reduction regulation and the MAG model trip reduction ordinance discussed at length in the proposal for today's notice. The requirements in all three apply to employers with more than 100 employees at a worksite and include the appointment of an employer transportation coordinator, the annual dissemination of information on alternative transportation modes to employees, annual surveys of employee commute modes, and the annual preparation, submittal, and implementation of a trip reduction plan that includes a report on the current year's program. The trip reduction goals are the same in all three programs. All three enforce on the failure of an employer to meet the requirements listed above. While EPA did propose in its trip reduction regulation to enforce on failure to meet the goal, the MAG model and the TRP do not. The TRP does require, however, that employers who have failed to meet the annual travel reduction goal implement a specified number of travel reduction strategies. This automatic trigger functions similarly to enforcement of the goal. (See the subsection "Trip/Travel Reduction Program" under the Response to Comment section of this notice for more information.)

In its May 16 notice, EPA proposed to grant an emission reduction credit of 1.8 percent in 1991 to the MAG model trip reduction ordinance and calculated the same emission credit for its own proposed regulation. Because the TRP

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[6] In a subsequent **Federal Register** notice, EPA plans to propose to amend the existing loaded-mode test procedure contained in 40 CFR Part 85, Subpart W. The proposed changes will eliminate discrepancies between Arizona's loaded-mode testing protocol and EPA's requirements, thereby ensuring continued performance warranty coverage for potentially affected consumers. The minor revisions presently being contemplated do not change the CO benefit being credited to Arizona's loaded-mode testing requirement and, therefore, the amendment is not an issue in today's action.

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covers the same employers at the same trip reduction goal as both the MAG model and the federal regulation, EPA is granting a 1991 emission reduction credit of 1.8 percent to the program.

*4. Voluntary No-Drive-Day Program.* In its 1987 SIP submittal, MAG and the State took a substantial emission reduction credit for a voluntary no-drive-day program in Maricopa County. As described in that SIP submittal, the program was a joint undertaking of the Phoenix Metropolitan Chamber of Commerce, the Regional Public Transportation Authority, and the Arizona Office of Energy. The SIP submittal, however, contained no long-term funding commitment for the program. EPA's review of the proposed voluntary no-drive-day program raised three concerns, and in May 1988, EPA proposed not to approve the program as part of the SIP. The three concerns were assurance of adequate annual funding, the existence of an institutional framework meeting the requirements of CAA section 172(b)(10), and the development of a monitoring program to assess and verify the impact of the program.

H.B. 2206 in section 17 requires a County with a population of more than 400,000 (effectively Pima and Maricopa Counties) to institute a voluntary no-drive-day program. With the County having clear responsibility for implementation, the program meets the institutional requirements of CAA section 172(b)(10). H.R. 2206 also requires the DEQ to fund the voluntary no-drive-day programs from the Air Quality Fund; therefore, long-term funding of the program is assured. Based on these two changes, EPA is approving the voluntary no-drive-day program as part of the SIP for both Maricopa and Pima Counties; however, because a monitoring protocol to assess and verify the impact of the program is still lacking, EPA is not at this time approving a specific emission reduction credit for the program. Before EPA can approve a specific emission reduction credit for this measure, the State must submit a monitoring protocol for the program and any supporting documentation on the effectiveness of such a program in Maricopa or Pima County. Should the State submit this information, EPA will at that time revisit the issue of an emission reduction credit in the Maricopa SIP for a voluntary no-drive-day program.

*5. Other Measures.* In addition to the voluntary no-drive-day measure, EPA is also approving as part of the SIP, but without allotting emission reductions credit, the public education program for oxygenated fuels, incentives for the use of compressed natural gas in vehicle fleets, allocation of moneys rom the Air Quality Fund for public transit projects and encouragement of vanpools for County and State employees. H.B. 2206 provides the legislative authority for these programs and specifically allocates moneys from the Air Quality Fund to the agencies which will implement them. H.B. 2206 allows subsidies, in the form of payment to third-party companies and tax deductions, as incentives for County, State and private employers, respectively, to encourage the use of vanpools for employees. Although the emission reduction impacts for these measures has not been determined, EPA believes these measures support the attainment and maintenance demonstrations in the SIP and demonstrate the wide range of efforts the State has taken to improve CO in Maricopa County.

*6. New Source Review.* On June 1, 1988, the State submitted a letter from itself, and on July 22, 1988, the State submitted a letter from Maricopa County. These letters make certain commitments regarding implementation of the State and Maricopa NSR rules pursuant to the understandings in EPA's 1983 proposed approval of those rules. Based upon these letters, EPA is taking final action to approve the Maricopa NSR rules and, elsewhere in the **Federal Register** today, EPA is taking final action to approve the State NSR rules. These commitment letters, which are appended to the technical support document for this notice, concern stack heights, temporary sources, growth allowances, net emission decreases, reasonable further progress, volatile organic compounds, stationary sources, allowable offsets, permittee responsibility, and visibility protection. Both letters have been forwarded to the Office of the Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable components of the Maricopa CO SIP. As such they are federally enforceable against both Maricopa County and the State of Arizona under sections 113 and 304 of the Act. The commitments are also enforceable through citizen suit under section 304 of the Act.

*B. Demonstration of Attainment, Maintenance and RFP*

In its May 16, 1988 NPRM, EPA concluded that any approvable SIP submitted by the State must demonstrate attainment of the CO standard by December 31, 1991. EPA's evaluation of the air quality analysis in the MAG plan indicates that a 22.0 percent reduction in the 1991 baseline CO emissions is needed to demonstrate attainment of the 8-hour CO NAAQS by December 31, 1991.

Table 1 is a list of the control measures which were submitted by the State and to which EPA is granting specific emission reductions credit in this notice. EPA calculates that these measures will reduce CO emissions by 22.3 percent in 1991 if the Sun Waiver is denied and 24.1 percent in 1991 if the Sun Waiver is approved. These reductions are sufficient to reduce the ambient CO concentrations in Maricopa County to below the NAAQS by the end of 1991. If the Sun Waiver is approved, EPA projects that attainment will be achieved by mid 1991. In Table 1, the total emission reductions are not a sum of the individual emission reductions because measures that control tailpipe emissions (e.g. oxygenated fuels, and the I/M program) reduce the emission reduction impact of measures which control VMT (transit, and the travel reduction program).

EPA has concluded that a demonstration of maintenance for 10 years after the date of approval is sufficient for the Maricopa SIP. Because the Maricopa plan does not provide modeling results past 1995, EPA has used available data to forecast the expected ambient air quality from the latest date in the plan, 1995, to 1998.

The major factor influencing CO air quality in Maricopa is mobile sources. Using VMT growth projections and the expected reductions from the FMVCP, EPA estimates that the second maximum concentration at the design monitor would be 10.0 ppm in 1998 assuming reductions from only the FMVCP, the State's I/M program (including loaded-mode testing and the 1987 legislation), and the freeway build-out. A 10.0 ppm reading would require a reduction of 10.3 percent in CO emissions from other SIP measures in order to show continued maintenance with the 9.0 ppm CO NAAQS. The oxygenated fuels program alone will achieve a 12.46 percent reduction (assuming the Sun Waiver is denied) in 1998. This reduction is sufficient by itself to show continued maintenance. Because the estimates of the emission reductions from other measures rely on State-performed modeling which is unavailable for the period after 1995, the 1998 impacts of the other measures in the SIP cannot be determined; however, these measures will continue to provide additional emission reductions through 1998.

Section 172 of the CAA requires that state implementation plans demonstrate

reasonable further progress (RFP). RFP is defined in section 171(1) as "annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval * * * and regular reductions thereafter) * * *". During the CO season of 1988/89, the 1987 I/M program, loaded-mode I/M testing (scheduled to begin January 1, 1989), short-range transit improvements, regional ridesharing, bicycle and pedestrian improvements, and alternative work hours will provide emission reductions. In addition, a voluntary no-drive-day program and the voluntary introduction of oxygenated fuels may also provide emission reductions during this season.

During the 1989/90 CO season, the above measures as well as the then mandatory oxygenated fuels program, and the initiation of the travel reduction program will provide increasing emission reductions. In fact during this season, less than fourteen months after today's approval, the mandatory oxygenated fuels program will provide the majority of the emission reductions needed for attainment by the end of 1991. In 1990/91, higher goals in the travel reduction program will continue to reduce ambient CO concentrations. By the 1991/92 season, the projected date of attainment, the complete control strategy will provide sufficient emission reduction to demonstrate attainment.

Even without these SIP measures, the modeling performed for the plan demonstrates that considerable progress will be achieved in reducing emissions in Maricopa County with only the "baseline" measures—FMVCP, the pre-1987 I/M program, and the freeway build-out—despite high growth rates in VMT. The modeling shows that a 34 percent reduction in emissions was needed to demonstrate attainment in 1987, 25.6 percent is needed to demonstrate in 1990, and 22.0 percent in 1991. In addition, H.B. 2206 requires that the oxygenated fuels program, the travel reduction program, and the loaded-mode testing start in 1989—more than two years before the date of attainment. Finally, the majority of the other SIP commitments specifically listed in Table 1 are already being implemented and are providing emission reductions. All these factors provide sufficient evidence that the plan demonstrates RFP and meets the requirement for "substantial reductions in the early years."

## III. Response to Comments

EPA received a considerable number of comments in response to its May 16 NPRM. Comments were made both in writing and at a June 10, 1988, public hearing in Maricopa County. The majority of the comments received dealt specifically with the two federal measures that EPA proposed to promulgate in its FIP. Most of these comments are made moot by EPA's action today to withdraw the FIP in preference to the State plan. However, some of the comments received address the SIP submittals or bear on EPA's finding that the SIP is fully approvable under section 110 and Part D of the CAA. EPA's response to those comments are given below. A summary of pertinent comments received on the May 16 notice can be found in the technical support document for this rulemaking.

### *A. Legal Issues*

#### Attainment Date

The ACLPI commented that the attainment date for the Maricopa area should not be three years from the date of SIP approval. ACLPI argued that after passage of the statutory Part D attainment dates, EPA should interpret the Act as requiring attainment at the soonest time, essentially without regard to practicalities in order to implement Congressional intent in setting the original deadlines. As EPA previously explained in full, EPA believes that after December 31, 1987, a SIP needs to demonstrate attainment no more quickly than as "expeditiously as practicable" but by certain fixed dates. See EPA's proposed post-1987 attainment policy, 52 FR 45044, 45049 (November 24, 1987), and the proposal for today's action, 53 FR 17378, 17381 (May 16, 1988), for a full discussion of EPA's legal interpretation.

If EPA were to adopt ACLPI's position that post-1987 planning should provide for attainment at the soonest time, many post-1987 nonattainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no-drive restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 nonattainment situation now being faced, would have required such a result, even after passage of the Part D dates. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" requirement to be still in place, albeit bounded in situations, such as that of Maricopa County, by fixed attainment deadlines.

ACLPI cites *American Lung Association* v. *Kean*, 18 Envtl. L.Rptr. 20317(D.N.J. 1987), in support of its position. ACLPI misinterprets that case. That case in fact interprets the Act to require "SIP implementation 'as expeditiously as *practicable*' after December 31, 1987." *American Lung Association*, id. at 20317 (emphasis added). The case does not require SIP implementation more rapidly than practicable and does not set any outside date for attainment in the event no near term date is practicable. This case is therefore consistent with EPA's position: indeed, the "as expeditiously as practicable" formulation would actually allow for a much longer attainment period in very severe nonattainment areas.

The Maricopa County SIP that EPA is approving today provides for attainment by 1991. EPA believes that this is the appropriate attainment date for the area in light of the Agency's conclusion that no measures beyond those already included in the Maricopa SIP are both practicable and would advance that attainment date. ACLPI suggests a number of measures that it believes are available that together might advance the attainment date for the Maricopa area. EPA cannot now conclude that any of these measures are both practicable and sufficient to materially advance the attainment date.

Specifically, ACLPI suggests an immediate, major expansion of the transit system, a rigorous program of parking controls, exclusive bus lanes, winter daylight savings time, mandatory no-drive days, and a statewide I/M program. The Maricopa SIP already contains some measures for expanded mass transit and HOV lanes. EPA does not believe there are grounds to conclude that the substantial expansion of the transit system that would be necessary to advance the attainment date from 1991 could practicably be implemented in the short time between now and the end of 1990. EPA cannot require a state to observe winter daylight savings time since authority to establish or regulate daylight savings time is reserved to the U.S. Department of Transportation's (USDOT) Office of General Counsel under the 1966 Uniform Time Act. EPA believes that any program to create parking controls, mandatory no-drive-days and exclusive bus lanes could not materially advance the attainment date, unless it were so stringent as to create the type of public uproar that EPA faced when it promulgated such measures in FIPs in the 1970s. In light of that experience, EPA cannot conclude that such stringent programs would be practicable to implement. Beyond that, the Maricopa SIP already contains the most stringent I/M program in the country, and it has

recently been expanded to include a loaded-mode testing feature. Although further expansion of the program might be practicable, EPA cannot conclude from its experience with other states' less stringent programs that a significant expansion in Arizona's tough program is certainly practicable. Therefore, EPA believes that the 1991 date derived by analogy to sections 110(a)(2)(A) and 110(e) is the appropriate attainment date for the Maricopa area.

Reasonable Further Progress

ACLPI commented that the proposed plan did not provide for reasonable further progress towards attainment. EPA does not agree. The expanded I/M program, transit improvements, ridesharing program, increased bicycle and pedestrian travel, fleet conversions, alternative work hours, trip reduction ordinances and the FMVCP will together provide measurable emissions reductions throughout 1989 and 1990. It is true that the bulk of the emissions reductions will result from the oxygenated fuels program, which will only be voluntary in the 1988/89 CO season. However, EPA expects that the voluntary program will still provide some reductions in 1988/89 season and sizable emissions reductions will result from the mandatory program beginning in the 1989/90 CO season. Together these measures provide for reasonable further progress towards attainment.

Reasonably Available Control Measures

ACLPI commented that the Maricopa CO SIP does not provide for implementation of all reasonably available control measures (RACM) as required by section 172(b)(2) of the Act. ACLPI specifically refers to transit improvements and parking controls as reasonably available measures.

EPA has long interpreted section 172(b)(2) as requiring implementation of only those available controls necessary to provide for attainment by the applicable attainment date. This is because it would not be reasonable to require states to implement measures that, although technologically available, would not materially advance an area's attainment date. See EPA's General Preamble on Part D SIP preparation, 44 FR 20372, 20375 (April 4, 1979).

As explained above, EPA does not believe it has grounds to conclude that any combination of clearly praticable measures would provide for attainment in the Maricopa area before 1991. EPA believes that the approvable measures in the Marcicopa SIP provide for attainment as expeditiously as practicable and that therefore any additional potentially available measures would not be necessary to achieve timely attainment and consequently would not be required as RACM.

Maintenance

Two commenters addressed the issue of maintenance of the CO standard. ACLPI commented that the maintenance demonstration in the Maricopa plan is inadequate because it is not supported by the record and does not cover a sufficiently long period of time. EPA disagrees. The maintenance demonstration is based on the modeling and emissions projections in the MAG plan and EPA's own projections based on the data in the MAG plan. These projections indicate that the Maricopa area will maintain the CO standard until at least 1998. This demonstration covers the ten-year time period which EPA proposed as appropriate for a maintenance demonstration in its proposed post-1987 CO/Ozone policy. ACLPI commented that a maintenance demonstration should not be limited to ten years but should instead extend to the limit of technical feasibility. On the other hand, the USDOT commented that EPA should not apply the maintenance requirements of its proposed post-1987 policy to any areas until the Agency has finalized the policy. EPA believes that given these conflicting public comments the use of a ten-year maintenance demonstration is appropriate. Although the post-1987 policy is not yet final, EPA believes that projections extending ten years are technically reliable and provide a manageable planning period. Projections beyond that period become too speculative to be reliable.

Moreover, although the Act requires SIPs to contain a demonstration of maintenance of the standards, the Act nowhere indicates the length of time such demonstrations should cover.

Where the statute is unclear, EPA must fill any gaps using a rule of reasonableness. *See Chevron v. NRDC*, 467 U.S. 837 (1984). As reflected in the proposed post-1987 policy, and because projections of source growth and emissions reductions beyond ten years are too speculative, EPA has determined that a ten-year period is a reasonable period for a maintenance demonstration in Maricopa County and that requiring a demonstration extending more than ten years would not be reasonable.

In supplemental comments ACLPI pointed to 40 CFR 51.42 in support of its assertion that at least a 20-year maintenance demonstration would be appropriate. That provision is part of EPA's 1975 maintenance program. The entire program, however, has been effectively superseded by the 1977 CAA amendments and creation of Part D and the section 107 nonattainment area designations. The reference to maintenance in Part D (section 172) and the entire planning scheme in Part D were created in light of the failures of the 1970's efforts to produce sound state plans. They were not intended as a ratification of EPA's approach to these issues in the previous years. While in 1975 EPA apparently believed that a 20-year maintenance demonstration would be desirable and feasible, EPA now views the issues differently. Upon subsequent reflection, in light of the Agency's post-1977 experience with computer models for projecting mobile source emissions and with the inaccurate growth projections in the initial round of Part D SIPs, EPA currently concludes that projections beyond 10 years are simply too speculative. The Agency's recent conclusions are reflected in the proposed post-1987 policy. For these reasons, EPA believes at this time that a maintenance demonstration through 1998 is adequate for the Maricopa area.

Finally EPA notes that the Maricopa SIP which EPA is approving today includes several recently-adopted meaures to which EPA had not assigned emission reduction credit in the proposal for this action. These are the voluntary no-drive-day program and the requirement under the oxygenated fuels program for a specific market share of alcohol blends. EPA is not relying upon any reductions from these new measures to bring about attainment. However, the emission reductions from these measures will be available as additional assurances that the Maricopa area will continue to maintain the CO standard into the future.

New Source Review (NSR)

ACLPI commented that EPA could not approve the Maricopa CO SIP and lift the construction ban in Maricopa County so long as the plan lacks an approvable NSR component. EPA has reviewed the Maricopa NSR program and has determined that it can be fully approved based upon Maricopa County's and the State of Arizona's commitments to interpret the regulation consistent with EPA's requirements. The State submitted a letter from itself on June 1, 1988, and a letter from Maricopa County on July 22, 1988, which make the necessary commitments. These commitment letters, which have been appended to the TSD for this notice, have been forwarded to the Office of Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable component

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of the Maricopa CO SIP. As such are enforceable against Maricopa County and the State of Arizona under sections 113 and 304 of the Act and will effectively control any court's interpretation of the State's and County's intent under the NSR rules.

ACLPI also commented that the Maricopa CO plan does not meet the requirement of section 172(b)(11)(A) that the NSR program require a demonstration that the benefits of a proposed source significantly outweigh the environmental and social costs imposed by the source. Section 172(b)(11)(A) technically does not apply at all to Maricopa. The section only applies by its own terms to areas that received attainment date extensions to 1987. EPA has stated, however, that generally SIPs for areas that failed to attain in 1982 as planned would have to meet all requirements applicable to extension areas in order to demonstrate timely attainment. See Guidance Document for Correction of Part D SIPs for Nonattainment Areas, January 27, 1984. The Arizona NSR program does require a demonstration that the benefits of a proposed project outweigh the project's environmental costs. EPA concludes that with that provision Arizona's NSR program adequately complies with EPA's policy that non-extension areas that failed to attain generally meet the Part D requirements for extension areas to demonstrate attainment.

Contingency Plan

ACLPI commented that the Maricopa plan does not include adequate contingency provisions. The ACLPI also commented that EPA should adopt a contingency plan because of uncertainty of emission reduction estimates and should ensure that it is legally enforceable and self-implementing. In its 1981 guidance on SIP preparation, EPA indicated that all Part D SIPs should contain contingency measures to compensate for unanticipated shortfalls in planned emission reductions. Although not directly required by the CAA, EPA believed that such measures would be appropriate to provide assurance that an area would achieve timely attainment. It is true that the contingency provisions in the Maricopa SIP are not extensive. However, as mentioned above, the recently adopted Arizona legislation mandates two measures that EPA had not previously included in the Maricopa attainment demonstration. These measures are a requirement for a minimum market share of alcohol blends and the voluntary no-drive-day program. Although EPA cannot assign specific emission reduction credits to these programs as part of this final action, they can result in additional emission reductions beyond those necessary to achieve timely attainment and may offset unanticipated shortfalls in planned emission reductions. These measures, which have already been adopted, will adequately serve the function of the contingency provisions EPA contemplated in 1981 in conjunction with the contingency measures in the MAG plan.

Conformity Provisions

Two commenters addressed the plan's conformity provisions. (See discussion of section 176(c) and conformity generally in the May 16, 1988 proposal.) ACLPI commented that the provisions were inadequate, presumably because they failed to fully meet EPA's 1981 guidance establishing criteria for approval of 1982 plan revisions as indicated in the proposal, and therefore EPA should promulgate conformity provisions. On the other hand, USDOT commented that EPA should not require that the Maricopa plan contain the conformity provisions outlined in either the proposed post-1987 policy of EPA's April 1, 1980, ANPRM on conformity requirements. USDOT claims transportation actions are excluded from the 1980 ANPRM because of the June 12, 1980, USDOT/EPA agreement and that they also excluded from the proposed post-1987 policy.

Compliance with section 176(c) of the Act concerning conformity is primarily the responsibility of the various federal agencies and metropolitan planning organizations approving or funding projects. EPA's policy is to require conformity requirements in SIPs as needed to protect the air quality standards. The control measures in the Maricopa SIP are basically all transportation related measures. The conformity provisions in the Maricopa SIP are adequate to insure compliance with section 176(c) in Maricopa County. EPA will continue to work with Maricopa County to incorporate additional conformity procedures and criteria consistent with all outstanding EPA guidance as appropriate in light of the Agency's conclusions on conformity issues in its final post-1987 ozone/CO policy when it is published. See 52 FR 45044 (November 24, 1987).

Highway Funding Sanctions

Several commenters addressed the proposed funding sanctions. ACLPI strongly supported the termination of highway assistance, while USDOT asserted that section 176(a) highway funding sanctions are not available at all in the period beyond 1987. Several local agencies and the State opposed the imposition of sanctions because they believe the State was making reasonable efforts to develop an approvable SIP. Since EPA is today approving the Maricopa CO SIP, the Agency is withdrawing its proposal to impose funding sanctions; therefore, these comments are moot.

*B. Oxygenated Fuels*

The Agency's oxygenated fuels proposal included a description of the assumptions and methods that EPA intended to use in evaluating the specific elements of any subsequently adopted State program. Several comments were received on this methodology, although significantly more general comments were received on the federal proposal. Of these, the only comments that appear directly relevant to the approvability of the SIP pertain to the proposed October 1989 implementation date of the fuels program, which was both originally proposed by EPA and chosen by Arizona. The basic question to be resolved is whether the effective date represents progress toward attainment as expeditiously as practicable.

In evaluating this issue, EPA finds it particularly important to note that the State's program will likely result in the oxygen content of all gasoline in the Maricopa County nonattainment area being substantially above the levels found in conventional fuels during the mandatory compliance period. This could result in a significant amount of new facilities being added to the Phoenix petroleum terminal, or to refineries servicing the area, to produce the requisite oxygenated fules, i.e., the blending of MTBE and/or alcohol with gasoline. Such a situation is not dissimilar to that expected under the federal proposal, which prompted EPA to orignially select, and most commenters to support, the October 1989 implementation date. Furthermore, many commenters pointed out the importance of instituting an oxygenated fuels program that minimizes the risk for fuel supply disruptions, prevents unnecessary price increases, and has a high degree of public acceptance. EPA concurs and believes that the approximately one year leadtime afforded by the October 1989 date should be adequate to achieve these goals. On the other hand, the available information does not provide an adequate basis to conclude that a significant acceleration in the date is possible without jeopordizing these objectives. Therefore, the effective date

for Arizona's oxygenated fuels program appears reasonable to allow for the orderly transition from conventional to oxygenated gasolines.

The remaining comments primarily related to EPA's January 1988 guidance for calculating CO reduction benefits from alternative fuels, or to concerns associated with the relatively high average oxygen content and likely large market share for alcohol blends under the federal proposal. The comments pertaining to the Agency's emission reduction methodology for oxygenated fuels will be considered in a separate action, along with other information that has become available since the guidance was formulated. These comments do not call into question EPA's action on the SIP, primarily because the suggested revisions to the guidance would likely increase the estimated CO benefits for the program contained in the SIP. The comments pertaining to the relatively high oxygen content of EPA's proposal are also not directly relevant to the SIP, because the State program has less stringent oxygen requirements. As a result, the Agency expects that the majority of gasoline sold in Phoenix during the wintertime compliance period will contain MTBE, which is widely regarded as a fully satisfactory oxygenating compound.

A more complete discussion of these and other comments is contained in the TSD for today's action.

*C. Trip/Travel Reduction Programs*

EPA received a number of comments on the proposed federal trip reduction regulation and the State travel reduction program. These comments fell into one of three categories. The first category are positions and support for those positions on whether EPA should promulgate in its FIP a more stringent oxygenated fuels program in lieu of a federal trip reduction regulation. EPA had specifically asked in its proposal for comments on this issue. The second category are comments on specific aspects of the proposed federal regulation such as area of coverage and whether enforcement under CAA section 113 is appropriate for such a regulation. The final category are comments that deal with aspects of the State's travel reduction program.

Because EPA is promulgating neither a trip reduction regulation nor an oxygenated fuels program, issues raised on trip reduction regulation versus higher oxygen levels are moot as are issues on specific aspects of the federal regulation. The final category of comments bear on EPA's ability to approve the State's travel reduction legislation under section 172 and are addressed below.

ACLPI stated in its comments that the State's legislation failed in two ways to meet the section 172(b)(10) criteria that—as ACLPI writes—"all control measures be supported by legally enforceable requirements, schedules and timetables for compliance."

ACLPI claims that H.B. 2206, which contains the travel reduction program, does not set dates by which employers' travel reduction plans must be submitted. While EPA agrees that the legislation does not set specific dates on which the requirements of the program must be met by major employers, EPA disagrees, with the implication that there is no enforceable schedule in the travel reduction program. In section 49–588, each major employer is required to prepare and submit a travel reduction plan in each year of the regional program. By definition (see section 49–581(16)), the regional program is to begin in January 1989. Taken together, this language requires that every employer who is a major employer in 1989 prepare and submit a travel reduction plan by the end of 1989. While the legislation does give the County great discretion on the exact date travel reduction plans must be submitted, it does constrain the overall timeframe therefore does not pose an issue under the CAA section 172(b)(10) requirement for schedules and timetables for compliance. In addition, a letter from Maricopa County submitted with the July 25, 1988 SIP submittal indicates that the County will begin the program as soon as H.B. 2206 allows, i.e., January 1, 1989.

ACLPI further commented that because there were no sanctions against employers for failure to achieve the trip reduction goal, the trip reduction program fails to meet the requirement that all control measures be supported by "legally enforceable requirements." EPA disagrees. In a very real sense the TRP does impose sanctions against employers failing to achieve the goal. The TRP requires any major employer who fails to meet the annual trip reduction goal to implement a specific number of trip reduction strategies: Two in the first year of the regional program, three in the second, and, in the third and subsequent years, the strategies specified by the TRP Task Force. This process of triggering an automatic and specific revision to the travel reduction plan deprives an employer of a good part of its discretion under the program and represents a powerful incentive for employers to achieve the goals. Failure to revise the plan or to implement the required strategies would trigger the enforcement process in the TRP, which in turn will itself be enforceable by citizens and the Administrator under sections 304 and 113 of the CAA. EPA therefore believes that the TRP meets the Act's requirement concerning legal enforceability.

*D. Other Comments*

EPA received three comments regarding the benefits to be obtained from the State's I/M program. In the NPRM, EPA noted that the State had made an adjustment to the I/M credits in its modeling. This adjustment was to freeze the I/M benefits for vehicles which had been in the I/M program for more than five years. EPA stated in the NPRM that this adjustment was inconsistent with accepted use of MOBILE3 and, further, that the State did not provide EPA with any data showing that such effect occurs in either the Arizona I/M program or other I/M programs in the Country. EPA, therefore, recalculated the emission reductions needed for attainment excluding this adjustment. Excluding the adjustment lowered the percent reduction needed to attain the CO standards in 1991.

EPA received three comments regarding its recalculation of the I/M benefit. The State and MAG commented that MOBILE3 has always grossly underestimated CO concentrations in Maricopa County and that the State's modeling, though still underestimating CO concentrations, has proven to be considerably more accurate. ACLPI commented that because the I/M program has been operated exclusively by the State for more than a decade, EPA is not in the position to question the State's conclusions regarding the emission reductions achievable by that program.

The State has not provided any emissions data to support the accuracy of freezing I/M benefits after a vehicle has been in the program five years. MOBILE3, the mobile source emission factor model—including the routines to calculate I/M credits—was developed by EPA after extensive public input. In the face of no State data to support its contention that MOBILE3 underestimates CO concentrations in Maricopa County, EPA must stay with its publicly debated policy on the use of MOBILE3 when determining the minimum reductions needed for attainment. However, the State is free to base its own planning on the higher emission reduction targets derived from its assumptions about I/M benefits. EPA encourages them to do so; however, in determining the approvability of the attainment demonstration in the

Maricopa SIP, EPA will rely on its policy on calculating I/M benefits.

In supplementary comments, ACLPI gave new vehicle miles traveled (VMT) numbers for Maricopa County which are higher than the numbers in the Maricopa plan. ACLPI commented that because the SIP underestimates the VMT numbers, EPA should disapprove the attainment demonstration in the SIP and adopt additional FIP measures to address the increased emissions from the VMT growth.

The simple existence of higher VMT numbers does not lead to the conclusion that the attainment demonstration in the MAG plan is inadequate and that additional FIP or SIP control measures are needed. The VMT numbers supplied by ACLPI show a substantial increase in baseline (1985) VMT numbers. Changes in the baseline data affect the model evaluation and thus the future-year modeling and the emission reduction needed for attainment in unpredictable ways. Depending on the spatial distribution of the VMT and the effect on regional speeds, the emission reduction needed for attainment could increase, decrease or remain the same. Simply stated, the effect on the attainment number of the VMT increases presented by ACLPI is indeterminate lacking a completely new modeling exercise.

Given that this new VMT data has appeared near the conclusion of the current SIP planning process and the data's impact on the SIP is indeterminate, the issue faced by EPA is what is the most appropriate use of this new data. When determining the emission reductions needed for attainment, the State and MAG did use the most current data then available. After completing the modeling in the spring of 1987, the State did revise the modeling results to reflect higher VMT figures that had then just become available. The State has now submitted its complete plan which includes an adopted control strategy sufficient to demonstrate attainment using the best data available when the control strategy was developed. In this situation, EPA believes the most appropriate response to this new growth data is not to delay approval of the SIP but rather to use the new data in the next round of planning as the State is already planning to do.

In its comment regarding the CO plan attainment demonstration, ACLPI states that the model is based on an unrepresentative design value. ACLPI cites 1984 monitored values of 20 ppm (high) and 19 ppm (2nd. high) from the West Indian School microscale site as the values which should have been considered for the design day.

When a design value is selected from a multi-year data base, EPA policy dictates that the second-highest concentration be used as the design value on which to base a CO SIP. In the MAG CO plan, a 1985 monitored value of 18.5 ppm was used as the design value. This value is essentially the same as using the second-high 1984 value of 19 ppm, although it must be noted this is not the reason for its selection. The State, in agreement with EPA, decided upon the Urban Airshed Model for modeling the SIP control strategy and initiated an intensive air quality and meteorological sampling program to acquire the data necessary to provide the inputs to the model. The design value was selected by the State from this 1985 data base as being the most representative value on which to model a control strategy. EPA agrees with the State's judgment about the representativeness of the 1985 data.

## IV. Summary of Final Action

In todays's notice, EPA is taking final action to approve the revisions to the carbon monoxide state implementation plan for the Maricopa nonattainment area which were submitted by the State of Arizona on October 5, 1987, and July 18 and 22, 1988. Specifically, EPA is approving and incorporating by reference into the SIP the *MAG 1987 Carbon Monoxide Plan for the Maricopa County Area* (including the resolutions of commitments contained in that plan) and portions of Arizona S.B. 1360 and H.B. 2206. In addition, EPA is approving specific emission reduction credits for the following measures: The 1987 I/M program improvements, short-range transit improvements, expanded ridesharing, HOV lanes, freeway flow improvements, increased bicycle usage, pedestrian travel improvements, conversion of buses to alternative fuels, alternative work hours, oxygenated fuels program, loaded-mode I/M testing (which also applies to both Maricopa and Pima Counties), and a travel reduction program. The specific emission reduction credits for these measures are listed in Table 1 of this notice. EPA is also approving as part of the SIP, but without emission reduction credits, the voluntary no-drive-day program (which applies to both Maricopa and Pima Counties), the minimum gasohol market share requirment, public education programs for oxygenated fuels, incentives for the use of compressed natural gas in vehicle fleets, public transit projects, programs to encourage the use of vanpools for County, State and private employees, and allocation of monies from the State's Air Quality Fund to fund several of these programs. Finally, EPA is approving the Maricopa County NSR regulations.

EPA's evaluation of the control strategy submitted by the State shows that these measures will provide sufficient emission reductions to attain the CO standards in Maricopa County by December 31, 1991, maintain the standards until after 1998, and provide RFP between plan approval and attainment. Therefore, EPA is today approving the State's demonstration of attainment.

With these actions, EPA is approving the Maricopa portion of the Arizona CO SIP as fully meeting the requirements of section 110 and Part D of the CAA. With this full approval, EPA is withdrawing the federal implementation plan that it proposed on May 16, 1988. EPA is also lifting the CAA section 110(a)(2)(I) construction ban imposed in Maricopa County on September 23, 1986, and withdrawing its May 16, 1988, proposal to impose highway funding restrictions under section 176(a).

## VII. Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the **Federal Register** on July 1, 1982.

**Authority:** 42 U.S.C. 7401–7642.

**Lee M. Thomas,**

*Administrator.*

Date: August 4, 1988.

Subpart D of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

## Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

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2. Section 52.120 is amended by adding paragraphs (c)(55), (57), (60)(i)(B), (62)(i)(A)(*2*), (65), and (66)(i)(B) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(55) The following amendments to the plan were submitted by the Governor's designee on March 4, 1983.

(i) Incorporation by Reference.

(A) Maricopa County Health Department, Bureau of Air Quality Control.

(*1*) New or amended rule 21.0: A–C, D.1. a–d, and E adopted on October 25, 1982.

* * * * *

(57) The following amendments to the plan were submitted by the Governor's designee on April 17, 1985.

(i) Incorporation by Reference.

(A) Maricopa County Health Department, Bureau of Air Quality Control.

(*1*) New or amended regulations: rule 21.0: D.1., D.1.e, f, and g adopted on July 9, 1984.

* * * * *

(60) * * *

(i) * * *

(B) The Maricopa Association of Governments (MAG) 1987 Carbon Monoxide (CO) Plan for the Maricopa County Area, MAG CO Plan Commitments for Implementation, and Appendix A through E, Exhibit 4, Exhibit D, adopted on July 10, 1987.

(62) * * *

(i) * * *

(A) * * *

(*2*) Senate Bill 1360: Section 2: ARS 9–500.03 (added), Section 14: ARS 41–796.01 (added); Section 17: 49–454 (added), Section 18: 49–474.01 (added), and Section 25: ARS 49–571 (added), adopted on May 22, 1987.

(63) [Reserved]

(64) * * *

(65) The following amendments to the plan were submitted by the Governor's designee on July 18, 1988.

(i) Incorporation by Reference.

(A) Arizona Revised Statutes.

(*1*) House Bill 2206, Section 2: ARS 15–1627 (amended); Section 6: Title 28, ARS Chapter 22, Article 1, ARS 28–2701, ARS 28–2702, ARS 28–2703, ARS 28–2704, and ARS 28–2705 (added); Section 7: ARS 41.101.03 (amended); Section 9: ARS 41–2065 (amended); Section 10: ARS 41–2066 (amended); Section 11: ARS 41–2083 (amended); Section 13: Title 41, Chapter 15, Article 6, ARS 41–2121: Nos. 1, 3, 4, 5, 6, 7, 8, and 9, ARS 41–2122, ARS 41–2123, ARS 41–2124 (added); Section 15: Title 49, Chapter 3, Article 1, ARS 49–403 to 49–406 (added); Section 17: Title 49, Chapter 3, Article 3, ARS 49–506 (added); Section 18: ARS 49–542 (amended); Section 19: ARS 49–550 (amended); Section 20: ARS 49–551 (amended); Section 21: Title 49, Chapter 3, Article 5, ARS 49–553 (added), Section 22: ARS 49–571 (amended); Section 23: Title 49, Chapter 3, Article 8, ARS 49–581, ARs 49–582, ARS 49–583, ARS 49–584, ARS 49–585, ARS 49–586, ARS 49–588, ARS 49–590, and ARS 49–593 (added); Section 25: Definition of major employer, Section 27: Appropriations; Section 29: Delayed effective dates, adopted on June 28, 1988.

(66) * * *

(i) * * *

(B) Letter from Maricopa County Department of Health Services, Division of Public Health, dated April 28, 1988 and submitted to EPA by the Arizona Department of Environmental Quality July 25, 1988, committing to administer the New Source Review provisions of their regulations, consistent with EPA's requirements. These commitments apply to the issuance of, or revision to, permits for any source which is a major stationary source or major modification as defined in the Code of Federal Regulations, Part 51, Subpart I.

(C) Addendum to MAG 1987 Carbon Monoxide Plan for the Maricopa County Nonattainment Area, July 21, 1988 (supplemental information related to the SIP revision of July 18, 1988).

* * * * *

**§ 52.124 [Removed]**

3. Section 52.124(a)(1) is removed and the section is reserved.

[FR Doc. 88–18079 Filed 8–9–88; 9:46 am]
BILLING CODE 6560–50–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL-3427-7]**

## Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Pima County Carbon Monoxide Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice announces EPA's proposed action to approve the state implementation plan (SIP) revisions submitted by Arizona on May 26 and July 18, 1988, to its carbon monoxide (CO) plan for the Tucson CO Planning Area (Pima County). EPA is today proposing to approve the recently passed State oxygenated fuels program and the travel reduction ordinances adopted by Pima County jurisdictions as additional measures for the Pima CO SIP. This proposal is based on EPA's conclusion that these additional measures will strengthen the maintenance demonstration of the CO standard consistent with the ten-year maintenance period described in EPA's November 24, 1987 (52 FR 45044) proposal on post-1987 ozone/CO planning.

**DATE:** Comments must be submitted to EPA at the address below by September 9, 1988.

**ADDRESSES:** Comments on this proposal should be sent to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: State Liaison Section, A-2-2, Air Management Division.

Copies of the submitted plan and EPA's technical support document (TSD) are available for public inspection during normal working hours at the following addresses:

Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, State Liaison Section (A-2-2), Air Management Division

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, 6th Floor, Phoenix, AZ 85004

Pima Association of Governments, 177 North Church Street, 4th Floor, Tucson, AZ 85701

**FOR FURTHER INFORMATION CONTACT:** Wallace Woo, Chief, State Liaison Section, (A-2-2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a separate section of today's **Federal Register**, EPA is taking final action to approve SIP revisions that provide for attainment of the carbon monoxide standard in Pima County in 1990 and maintenance of that standard through 1998. EPA is proposing in this notice to approve the recently passed State oxygenated fuels program and the locally-adopted travel reduction ordinances as additional measures in the Pima CO SIP. Although these new measures will not by themselves be sufficient to advance the 1990 attainment date, they will provide extra assurances that Pima County will attain the CO standard in 1990 and maintain it thereafter. The demonstration of maintenance is consistent with the ten-year period described in EPA's November 24, 1987 proposal on post-1987 ozone/CO planning. Projections of maintenance beyond ten years would be too speculative to be reliable.

The measures that EPA is proposing to approve today will also serve the function of a contingency provision EPA might otherwise require to insure that additional reductions would be forthcoming in the event of unanticipated shortfalls in planned emission reductions. In its original guidance on preparation of SIPS for areas receiving attainment date extensions to 1987, EPA called for such contingency provisions as a component of an approvable attainment demonstration. See 46 FR 7182 (January 22, 1981). EPA subsequently indicated that areas such as Pima County that had not obtained an attainment date extension but failed to attain by 1982 would generally have to meet all of the requirements for extension areas in order to demonstrate timely attainment. See Guidance Document for Correction of Part D SIPs for Nonattainment Areas, January 27, 1984. The measures in today's proposal have already been adopted and will provide significant additional emission reductions beyond in the CO SIP that EPA is approving elsewhere in this **Federal Register**. These additional reductions will be available to compensate for any unanticipated shortfalls in planned emission reductions and will thus serve the purpose of the contingency provisions EPA contemplated in 1981.

### II. EPA Evaluation

*Travel Reduction Ordinances*

In March and April 1988, all five jurisdictions in the Pima County nonattainment area (Pima County, Tucson, South Tucson, Marana, and Oro Valley) individually adopted the travel reduction ordinance (TRO) developed by the Pima Association of Governments (PAG). Authority for local jurisdictions to adopt and enforce TROs was provided in S.B. 1360 and reconfirmed in H.B. 2206. In addition to adopting the TRO, each of the five jurisdictions signed an intergovernmental agreement (IGA) to jointly implement the individual ordinances through PAG. The State submitted the adopted TRO and IGA to EPA as a revision to the Pima County portion of the Arizona Carbon Monoxide SIP on May 26, 1988.

The model TRO requires all employers of 100 or more fulltime equivalent employees at a worksite to distribute information on alternative transportation modes to their employees, participate in surveys of the alternative-modes usage of their employees, and develop a travel reduction plan. The travel reduction goals in the ordinance are a 15 percent employee participation rate in the first year of the regional program, 20 percent in the second, 25 percent in the third, and additional 1 percent increases in the participation rate in each of subsequent years until a 40 percent participation rate is achieved. Alternatively, after a 25 percent employees participation rate is achieved, an employer can demonstrate an annual reduction of 1.5 percent in the average annual vehicle miles traveled per employee.

Under the IGA, the TRO will be implemented by the Pima Assocation of Governments. While a committee within PAG will recommend enforcement actions, actual enforcement powers are retained by the individual jurisdictions. All parties to the IGA have agreed to fund the travel reduction program at PAG and have already allocated funds for the program's first six months. In addition, the 1988 Air Quality Legislation (H.B. 2206) passed by the Arizona Legislation in June 1988, requires the Director of the Department of Environmental Quality to grant funds from the Air Quality Fund to local jurisdictions or regional planning agencies to implement TROs.

Additional details on the TRO and IGA can be found in the technical support document (TSD) for this notice.

*Oxygenated Fuels Program*

H.B. 2206 establishes an oxygenated fuels program for the CO nonattainment area of Pima County. The program is composed of three basic parts. First, a new section 41-2125 A of the Arizona

Revised Statutes sets the required oxygen content of leaded or unleaded gasoline at 1.8 to 3.7 percent by weight. This requirement applies from and after September 30 through March 31, beginning in the Fall of 1990. Second, a new section 41–2125 B of the Arizona Revised Statutes advances the effective date of the Pima County requirement by one year (to start in the Fall of 1989), if a CO exceedance occurs between October 1988 and March 1989, or if the Pima County Board of Supervisors and Tucson City Council join in adopting the earlier effective date by March 31, 1989. Third, and finally, new sections 28–2701 through 28–2708 of the Arizona Revised Statutes enable the Governor to implement a State set-aside program that effectively insures the availability of gasoline suitable for blending with alcohol, if the Department of Transportation determines a shortage of such unblended gasoline exists for compliance with the mandatory oxygenated fuels period.

Of the above three elements, EPA can grant CO emission reduction credits only to the requirements of the new section 41–2125 A. The possibility of advancing the effective date of the program is not a maintenance related issue, and is not pertinent to this proposal. The set-aside authority of sections 28–2701 through 28–2708 would, if exercised, make it possible for more fuel to be blended to higher oxygen levels associated with alcohol-based blends than might otherwise be the case with other gasoline blends, but the Governor has discretion to declare a shortage and order the set-aside program into operation. Even if ordered, EPA has received no information with which to estimate the degree of ethanol blending during the entire compliance period, as discussed further below.

Before presenting EPA's analysis of the Pima County program, it should be noted that a detailed description of oxygenated fuels and their effect on motor vehicle emissions is contained in EPA's Notice of Proposed Rulemaking (NPRM) on the Maricopa Federal Implementation Plan (FIP), of May 16, 1988 (53 FR 17378). Also, the methodology and assumptions for evaluating the CO effects of the oxygen content limits specified in section 41–2125 A were prososed at 17410 of that same **Federal Register** notice and clarified by a memo from Phil Lorang, Office of Mobile Sources, EPA, to Wallace Woo, EPA Region 9 (June 22, 1988). The details of this methodology are contained in the draft technical support document for this action, and will not be repeated here. The interested reader is instead referred to that document. However, the basic elements of EPA's evaluation are briefly described below.

The EPA report, "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," January 29, 1988, EPA–AS–TSS–PA–87–4, is the basis for the calculation of CO emission reductions. The guidance in this report is supplemented with the following information and assumptions. For any grade of gasoline for which the minimum oxygen content is 1.8 percent by weight, EPA will assume that all fuel sold of that grade is on average 1.9 percent oxygen (or 10.45 percent MTBE by volume). This assumption is based on the plan for implementation of H.R. 2206 contained in the addendum to the Maricopa County CO plan which indicates an intent by the Department of Weights and Measures to allow no enforcement tolerance for oxygen content, so that refiners must blend to a slightly higher oxygen level to allow for measurement variability. Additionally, no ethanol blends are currently marketed in Pima County and no major oil company, other sizable gasoline marketer, or other investor indicated in comments on EPA's NPRM for Maricopa that it will definitely purchase and import via pipeline or truck transport oxygen-free gasoline for resale to distributors for use in ethanol blending. Therefore, EPA is assuming that no ethanol blends will be sold in Pima County. Further, the workplan referred to above also contains a commitment by the Arizona Department of Weights and Measures to enforce the oxygenated fuels requirements and H.B. 2206 appropriates resources to the Department for this purpose.

Given the information and assumptions delineated above, EPA is assuming that all fuel sold in the Pima County nonattainment area will contain a level of MTBE which produces 1.9 percent oxygen by weight, i.e., about 10.45 percent MTBE by volume depending on the density of individual batches of gasoline used in blending. These assumptions result in a fleet CO emission reduction on December 31, 1991, of 12.83 percent.

The actual CO reduction in Pima County may be higher, but not assuredly so. If ethanol blends are marketed in the area, the 3.4 to 3.7 percent oxygen by weight that is normally associated with the gasoline would provide greater benefits than the 1.9 percent oxygen by weight assumed by EPA for MTBE blends. Also, some or all of the leaded fuel supplied to Tucson through the pipeline from Texas refineries may be blended with MTBE to comply with the higher oxygen levels applicable to the Phoenix area under the provisions of H.B. 2206. However, EPA has no assurance that either of these events will occur and thus can not assign emission reduction credit to either measure.

EPA believes that Arizona is authorized under the Clean Air Act to prescribe and enforce the oxygenated fuels program proposed for approval today. As fully explained in the May 16, 1988 NPRM at 17412–3, EPA interprets section 211(c)(4)(A) to allow state regulation of motor vehicle fuels or fuel additives unless there has been federal pre-emption. Under section 211(c)(4)(A) pre-emption of state regulation of a fuel occurs (i) if EPA has found that no fuel related control or prohibition is necessary for that fuel or additive and has published such finding in the **Federal Register**, or (ii) if EPA has prescribed by regulation under section 211(c)(1) a control or prohibition applicable to the fuel or fuel-additive regulated by the state that is different from the state control or prohibition. The Agency wants to stress that it does not believe that either form of pre-emption has occurred in this case.

First, EPA has not made the finding that no fuel-related control or prohibition is necessary; and clearly has not published any such finding in the **Federal Register**.

Second, EPA does not believe that it has prescribed the type of fuel control contemplated in section 211(c)(4)(A)(ii). EPA believes the reference in that section to "a control or prohibition applicable to such fuel or fuel additive" prescribed by the Administrator was intended to include only the same type of fuel control that the regulation in question is attempting to prescribe. Under this approach, section 211(c)(4)(A)'s prohibition of the adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control as at issue in the case at hand—in this case controls on the oxygen content of fuels. Since EPA has not prescribed any control on the oxygen content of any fuel by section 211(c) rule making,[1] the Agency believes that the pre-emption described in section 211(c)(4)(A)(ii) has not occurred and that Arizona is free to

[1] EPA has established limits on oxygen content for certain new fuels that have been granted waivers under section 211(f) of the Act for introduction into commerce, but has taken no such action under section 211(c).

adopt is own oxygen content controls and EPA is free to approve a SIP which includes such controls. Under these circumstances, EPA may approve such controls without making the special finding described in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) allows, where pre-emption has occurred, state fuel-related controls to be approved into a SIP if EPA finds such controls are "necessary" to achieve the standard the SIP implements. In this case a finding under section 211(c)(4)(C) is not required because pre-emption has not occurred.

### III. Summary of Proposed Action

EPA is proposing to approve the oxygenated fuels program provision of Arizona House Bill 2206 as a revision to the Pima County portion of the Arizona Carbon Monoxide SIP. EPA is also proposing to approve as revisions to the SIP the travel reduction ordinances adopted by five local jurisdictions in Pima County as well as the intergovernmental agreement signed by these jurisdictions to implement the ordinances. Although these measures are not essential for the State to demonstrate attainment and maintenance of the CO standard in Pima County, EPA is making this proposal because these measures both strengthen the SIP and serve as contingency measures.

### IV. Regulatory Process

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. Final approval of these SIP revisions would merely approve requirements that the State has already adopted (See 46 FR 8706).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401–7642.

Date: August 3, 1988.

**Daniel W. McGovern,**

*Regional Administrator.*

[FR Doc. 88–18080 Filed 8–9–88; 9:46 am]

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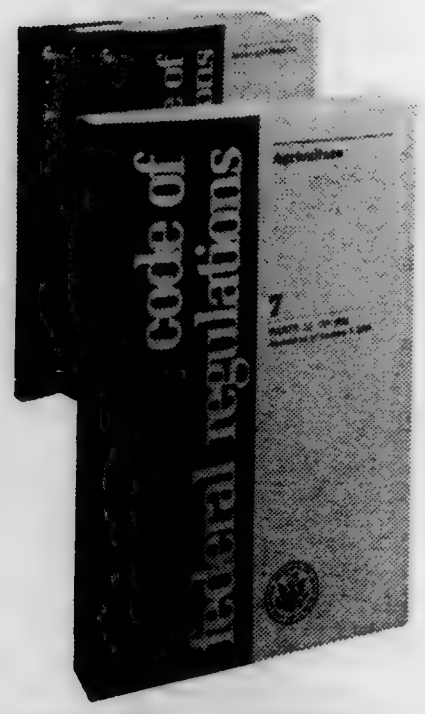


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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1230**

**[No. LS-88-035]**

## Pork Promotion, Research, and Consumer Information Program; Amendments to the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to amend the Pork Promotion, Research, and Consumer Information Order as proposed in the June 10, 1988, **Federal Register** to (1) require market agencies, which sell on behalf of a producer porcine animals used for breeding, to collect assessments on such animals and remit them to the National Pork Board; (2) modify the requirements for annual reports from organizations receiving funds distributed by the National Pork Board; (3) require the use of USDA data to determine the number of pork producers in each State when nominating producers by petition to the National Pork Producers Delegate Body; and (4) make a minor editorial change for clarification. These amendments clarify the intent of the Order, improve assessment collection procedures, and facilitate preparation and submission of reports.

**DATE:** Effective August 11, 1988.

**ADDRESS:** Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610–S, Post Office Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch 202/447–2650.

**SUPPLEMENTARY INFORMATION:** This action reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action was also reviewed under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* This final rule (1) requires market agencies to collect assessments on porcine animals classed as breeding stock and remit them to the Board; (2) permits State pork producer associations receiving less than $10,000 in assessments annually to submit unaudited annual financial statements to the Board; (3) specifies that the latest available USDA data will be used by the Department in determining the number of pork producers in each State for the purpose of nominating producers to the National Pork Producers Delegate Body; and (4) makes a clarifying editorial change in § 1230.58.

Most market agencies, i.e., livestock auction markets, commission firms who sell livestock on behalf of producers, would be classified as small businesses under the RFA.

Since the same form currently used by market agencies in reporting and remitting assessments to the Board on feeder pigs and slaughter hogs sold on behalf of producers will be used for breeding stock, this requirement to collect and remit assessments on breeding stock will not appreciably increase market agencies reporting and recordkeeping. Most of the breeding stock are sold through private sales in which the producer (seller) is required to remit the assessment, so the additional collection and remittance activity for market agencies will be minimal.

Modifying the requirements that annual financial reports for State pork producer associations be prepared by a certified public accountant will reduce the cost of reporting for State pork producer associations receiving less than $10,000 in annual assessments. The cost savings will make increased funding available for financing promotion and research programs. Requiring the use of USDA data in connection with the National Pork Producers Delegate Body will not have any economic impact upon small entities. The data have been used by the Department to verify nominations of producers by petition as necessary during the Delegate Body nomination process since the Order was implemented.

For these reasons, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic effect on a substantial number of small entities.

The information collection requirements contained in the provisions of the Pork Promotion, Research, and Consumer Information Order revised by this final rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB control number 0851–0151.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383), and assessments began on November 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.25 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories: (1) Feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs and slaughter hogs shall collect an assessment on these animals if assessments are due. The Order further stipulates that for the purpose of collecting and remitting assessments, persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order. Under that section, purchasers of porcine animals are required to collect assessments from producers upon the sale of porcine animals, if an assessment is due, and

remit such assessment to the Board by the 10th day of the month following the month in which porcine animals were marketed. In § 1230.71(b)(1) of the Order, a purchaser is any person buying feeder pigs or market hogs; and, for purposes of collection and remittance of assessments, any person engaged as a commission merchant, an auction market, or livetock market in the business of receiving porcine animals for sale on commission for or on behalf of a producer is a purchaser. That section did not provide for collection and remittance of assessments on breeding stock sold for or on behalf of a producer by a purchaser who is a commission merchant, auction market, or similar market agency. The Order does specify that producers remit assessments due on breeding stock upon sale. Even though most porcine animals marketed annually as breeding stock are sold through private sales, some producers market porcine animals used as breeding stock through market agencies. Therefore, to bring uniformity and consistency to the Order language for collecting and remitting assessments on all porcine animals sold through a market agency, § 1230.71 is revised to specify that those purchasers who are commission merchants, auction markets, or similar market agencies in the business of selling porcine animals for or on behalf of producers collect and remit assessments on such animals sold as breeding stock. Producers selling breeding stock through private sales will continue to remit assessments upon sale of such porcine animals.

Section 1230.74(b) of the Order requires that organizations receiving distributions of funds from the Board shall furnish the Board with an annual report prepared by a certified public accountant (CPA) of all funds distributed to such organizations. State pork producer associations receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72 (a) and (b). As a result, these State associations are subject to this CPA audit provision of the Order. However, some of the smaller State pork producer associations receive relatively small amounts of assessments, and the cost of an annual report prepared by a CPA could represent a significant proportion of their total annual assessments. There were 45 State pork producer associations which received distributed assessments in 1987. The amount of annual assessments distributed ranged from less than $1,000 to more than $970,000. Thirteen States received less than $10,000, and four of those States received less than $2,000. To minimize the cost of annual financial reports for the smaller States, the National Pork Board recommended that any State pork producer association receiving less than $10,000 in distributed assessments annually be exempted from the required annual report prepared by a CPA and instead be permitted to submit to the Board an unaudited financial statement prepared by or for the association. Such unaudited financial statements would be certified by at least two members of the association. Additionally, each such State pork producer association would have to submit a CPA-audited annual financial statement at least once every 5 years or more frequently if the Board or the Secretary deemed it to be necessary. States receiving less than $2,000 in distributed assessments will be audited by the Board once every 5 years in lieu of the annual financial statement prepared by a CPA every 5 years. Section 1230.74 (Prohibited use of distributed assessments) has been amended to include these provisions. Additionally, § 1230.74(b) is amended to specify that the annual report from State pork producer associations is a financial statement which is audited rather than prepared by a CPA.

It was also proposed that the latest available published USDA data be used to determine the number of pork producers in a State for purposes of determining the number of pork producer signatures needed for nominations of pork producers to the National Pork Producers Delegate Body by written petition. The Delegate Body is appointed each year by the Secretary from pork producers who are nominated by State pork producer associations or who are nominated by written petition. Members are appointed for a 1-year term. Under § 1230.32(b)(2), pork producers in a State may be nominated for appointment to the Delegate Body by written petition signed by 100 producers in that State or by 5 percent of the producers in that State, whichever number is less.

In the 1987 and 1988 nominations and appointments to the Delegate Body, the Department used, when necessary, data contained in the latest available issue of the "Hogs and Pigs" report prepared by USDA's Agricultural Statistics Board, National Agricultural Statistics Service, to determine the number of pork producer signatures needed. That report enumerates the number of farming operations with hogs in each State for a calendar year. Section 1230.32(b)(2) has been amended to require that the number of pork producers in a State will be determined by the Department based on such latest available information.

This rule also makes an editorial change in § 1230.58(g) which delineates the powers and duties of the National Pork Board. The phrase, "To appoint or employ such persons as staff * * *," in that section has been revised to read, "To appoint or employ staff persons * * *." This change in the wording of this phrase eliminates the ambiguity in paragraph (g) but does not change the Board's powers conferred in that subsection.

The proposed rule requested comments from interested persons by July 11, 1988. The Department received 14 comments—one from an individual pork producer; one from the National Pork Board; one from a national pork producer organization; and 11 from State pork producer associations. The individual commentor expressed opposition to the Order but did not address the proposed changes. The other 13 commentors were in favor of the proposed changes and most expressed the opinion that the proposed changes would clarify the intent of the Order and facilitate more efficient collection of assessments and preparation and submission of reports.

It is found that good cause exists for not postponing the effective date of these revisions until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The amendments clarify the intent of the Order, improve assessment collection procedures, and facilitate the preparation and submission of reports. As such, these changes should be implemented as soon as possible. These changes do not require additional time for compliance with the amended provisions. Further, all the comments received specifically addressing the proposed changes were in support of such changes. Accordingly, these changes should become effective upon publication.

**List of Subjects in 7 CFR Part 1230**

Administrative Practice and Procedure, Advertising, Agricultural Research, Marketing Agreement, Meat and Meat Products, Pork and Pork Products.

For reasons set forth in the preamble, 7 CFR, Part 1230, is amended as set forth below:

## PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

**Authority:** 7 U.S.C. 4801–4819.

2. Revise § 1230.32(b)(2) to read as follows:

**§ 1230.32 Conduct of election.**

* * * * *

(b) * * *

(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with porcine animals.

* * * * *

3. Revise § 1230.58(g) to read as follows:

**§ 1230.58 Powers and duties of the Board.**

* * * * *

(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

* * * * *

4. Section 1230.71(b)(2), (b)(3), and (b)(4) are redesignated as (b)(3), (b)(4), and (b)(5), respectively, and a new (b)(2) added to read as follows:

**§ 1230.71 [Amended]**

* * * * *

(b) * * *

(2) Assessments on porcine animals raised as breeding stock which are sold by a commission merchant, auction, market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be collected and remitted by the commission merchant, auction market, or livestock market selling such porcine animals.

* * * * *

5. Section 1230.74(b) is revised and a new (c) is added to read as follows:

**§ 1230.74 Prohibited use of distributed assessments.**

* * * * *

(b) Except as provided for in paragraph (c) of this section, organizations receiving distributions of assessments from the Board shall furnish the Board with an annual financial statement audited by a certified public accountant of all funds distributed to such organization pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

(c) State pork producer associations as defined in § 1230.25 receiving distributions of assessments pursuant to § 1230.72 which receive less than $10,000 in assessments annually may satisfy the requirements of paragraph (b) of the section above by providing unaudited annual financial statements to the Board prepared by State association staff members or individuals who prepare annual financial statements for the State association provided that such financial statements are attested to and certified by two members of the State associations. Notwithstanding any provisions herein to the contrary, State associations receiving less than $10,000 in distributed assessments annually, which submit unaudited annual financial statements to the Board, shall be required to submit an annual financial statement audited by a certified public accountant at lease once every 5 years or more frequently if deemed necessary by the Board or the Secretary. If State pork producer associations receive less than $2,000 in distributed assessments annually, the Board may elect to conduct its own audit of those State associations annual financial statements every 5 years in lieu of the required financial statements.

Done at Washington, DC, on August 3, 1988.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 88-17917 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Part 1942

### Industrial Development Grants

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends the Agency's policies and procedures governing the administration of Industrial Development Grants. This action is necessary to comply with the Omnibus Budget Reconciliation Act of 1987 and the continuing resolution for 1988, which allows private nonprofit organizations to participate with public agencies as grant recipients and expands the use of grant funds to include the financing of small emerging rural businesses. The net effect of this action will result in enterprise development and job creation in distressed rural communities.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Frederick R. Young, Branch Chief, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250; Telephone: (202) 383-9699.

**SUPPLEMENTARY INFORMATION:**

### Classification

This action has been reviewed under USDA procedures established in Department Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Public reporting burden for this collection of information is estimated to vary from 30 minutes to 40 hours per response, with an average of 2 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

### Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have a significant economic impact on a substantial number of small entities, because the action, will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

**Program Affected**

This program, Industrial Development Grants, is listed in the Catalog of Federal Domestic Assistance under Number 10.424. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1901–J.

**Comments**

A proposed rule was published in the **Federal Register** (53 FR 17953) on May 19, 1988, and invited comments for 30 days ending June 20, 1988. Four comments were received by the close of business on June 20, 1988. The comments were considered in developing the final rule. The following is a discussion of comments received:

One respondent commented that it is not clear that the establishment of a revolving fund is an eligible grant purpose under § 1942.306. The Agency reviewed this comment and determined that the term "finance" in this section means that grant funds may be used by an approved Grantee to make loans to develop private business enterprises. This is the establishment of a revolving loan fund. Therefore, the Agency does not feel further clarification is necessary in this particular section.

One respondent commented that priority ranking/scoring should not be an appealable item. The Agency reviewed this comment and determined that priority ranking of an application requires judgment in the analysis of some of the ranking factors. Since judgment enters into the decision making process, the Agency feels this item must continue to be an appealable item and, therefore, no change is necessary.

One respondent commented the Agency should change the proposed rule to (1) establish how long a priority scoring is valid, and (2) to subject preapplications/applications to a second ranking when all information is not received in a given time period. The Agency reviewed this comment and determined that priority scoring does not have an adverse affect on an application until a State or the National Office is making a determination of projects to be funded in a funding cycle. Priority ranking is only utilized during the selection for funding process. If applicants are not processing an application in a timely manner, there are administrative remedies available which enable the approval official to terminate grant processing. Therefore, the Agency has made no change in this provision.

Two respondents indicated that the proposed § 1942.305(b)(3)(iii) provided grant selection priority points for experience in administering a rural economic development program and stated that few units of general purpose local governments have experience in administering a rural economic development program. One of these respondents also indicated that our proposal was unclear as to whether FmHA would give points for successful experience or unsuccessful experience. FmHA is revising this section to clarify that the experience should be successful to receive points in this area.

One of the respondents also commented that the requirement to provide past experience information with the application as proposed in § 1942.311(a)(2) was also biased against units of general purpose local governments.

The Agency feels that to succesfully carry out the grant purposes of this program, several factors must be considered, as set forth under the selection priorities. Successful experience is one of several areas FmHA will consider in rating applications. The Agency does not feel that these requirements are biased against general purpose local governments.

A respondent indicated that under §1942.305(b)(3)(v) concerning grant selection priority points, the criteria for discretionary points is unclear. The proposed rule reflects that in certain cases FmHA may assign points in addition to those set forth in §1942.305(b)(3)(i) through (iv). Examples of those certain cases when FmHA may assign discretionary points are set forth in §1942.305(b)(3)(v) are: Geographic distribution of funds, substantial employment improvement, or mitigation of economic distress of a community. FmHA has determined that the criteria are sufficiently clear. The Agency, however is changing the responsibility for granting discretionary points from the State Director to the Administrator.

Two respondents suggested eliminating the proposal of granting selection priority points to applicants that are units of general purpose government. This suggestion is being adopted.

One respondent commented that proposed §1942.305(b)(3)(iii) was unclear as to who determines if experience is adequate to grant selection priority points. The Agency has determined that the regulation clearly states that the State Director will rate applications and, therefore, feels further clarification is unnecessary. The Agency, however, is changing the cited section to read, "successful experience" rather than "substantial experience."

One respondent felt that in the proposed §1942.305(b)(3)(iii), the granting of selection priority points to applicants located in communities under 25,000 population would exclude clearly rural areas. The use of population density was suggested. The policy of using population rather than population density is legislatively mandated and the Agency cannot administratively change this policy.

Two respondents feel that the proposal of allocating funds to the states be eliminated because of the limited funds available to the program. One of these respondents also suggested transferring all the responsibilities of rating applications to the National Office. The Agency is partially adopting this suggestion by transferring the responsiblity of assigning discretionary points to the Administrator. The Agency is also modifying the proposed rule to eliminate allocation of funds to the states.

One respondent felt a definition of industrial or business sites is needed. The Agency feels that these are commonly used terms in the industry and clarification is not needed.

One respondent suggested expanding the use of technical assistance for proposed Grantee projects to include local entities who would identify potential in a modified rural business incubator approach. The Agency feels that this is beyond the intent of the law.

The Agency is adopting the proposed rule with the following changes:

The Agency has changed the proposed rule under §1942.305(b)(2) to remove the policy of allocating funds to the States. The proposal to allocate funds is considered impractical considering the limited funds available to the program.

The Agency has changed the proposed rule under §1942.305(b)(3) to transfer from the State Directors to the Administrator, the responsibility of granting discretionary points to applications. This was determined necessary to obtain geographic distribution of the funds.

The Agency has changed the proposed rule under Section §1942.305(b)(3)(ii)(B) to refer to the Community Services Block Grant Act (42 U.S.C. 9902 (2)). This section under the proposed rule referred to Office of Management and Budget under section 624 of EO Act of 1964. This change is necessary to be consistent with other FmHA Community Programs. This information is presently available in FmHA Offices.

Section §1942.305(b)(3)(iii) is changed to modify the experience requirement to limit the granting of selection priority points to those applicants with successful experience is administering a rural economic development program. This action is needed to avoid the situation of granting ranking points to an applicant with unsuccessful experience.

The Agency has changed the proposed rule under §1942.305(b)(3)(iv) to remove the policy of considering extra selection priority points when grant funds will be used to develop industrial or business sites and for applicants that are units of general purpose local government. This action was necessary to remove potential advantage for specific types of grant activity or specific activity.

The Agency changed the proposed rule under §1942.315 to remove a requirement for a grant agreement and to state funds are expended for authorized purposes, and that the terms and requirements as prescribed in Parts 3015 and 3016 of 7 CFR must be complied with. This action is necessary to further clarify and eliminate duplication of presently published requirements.

This final rule contains minor changes to 7 CFR Part 1942–G as listed in the above summary of primary changes. These changes are items of internal management only and do not impact on the public.

**List of Subjects in 7 CFR Part 1942**

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

According, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

## PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 is revised to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart G—Industrial Development Grants

2. Section 1942.301 is revised to read as follows:

**§ 1942.301 Purpose.**

This subpart outlines Farmers Home Administration (FmHA) policies and authorizations and sets forth procedures for making grants to finance and facilitate development of private business enterprises.

3. Section 1942.302 is revised to read as follows:

**§ 1942.302 Policy.**

(a) The grant program will be used to support the development of small and emerging private business enterprises in rural areas.

(b) FmHA officials will maintain liaison with officials of other federal, state, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) FmHA officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this Subpart are also to be considered for use of Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of FmHA County and District Offices.

4. Section 1942.304 is amended by revising paragraph (a) and adding paragraphs (f), (g), and (h) to read as follows:

**§ 1942.304 Definitions.**

(a) *Industrial Development (ID) grants.* Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA funds under authority of the Consolidated Farm and Rural Development Act, as amended, section 310B (7 U.S.C. 1932).

* * * * *

(f) *Technical Assistance.* A function performed for the benefit of a grantee project and is a problem solving activity such as market research, product and/or service improvement, feasibility study, etc.

(g) *Project.* The result of the use of program funds, i.e., a facility, whether constructed by the applicant or a third party from a loan or grant made with grant funds; technical assistance; startup operating costs or working capital. A party from a loan or grant made with grant funds; technical assistance; startup operating costs or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of Intergovernmental and Environmental Review under § 1942.310 paragraphs (b) and (c), as well as the specific uses of the revolving funds.

(h) *Small and emerging private business enterprise.* Generally any private business which will employ 50 or less new employees and has less than $1.0 million in projected gross revenues and has or will utilize technological innovation and commercialization of (i) new products that can be used in rural areas and (ii) new processes that can be used in such production.

5. Section 1942.305 is amended by revising paragraphs (a)(1) and (b) to read as follows:

**§ 1942.305 Eligibility and priority.**

(a) *Eligibility.* (1) ID grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include states, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas. The State Director will proceed as follows in rural area determinations: When the FmHA State Director determines an area to be urbanized or urbanizing, the State Director must then determine the population density per square mile. If the area appears to be eligible, the State Director will request the National Office to provide the correct density figure. All such density determinations will be made on the basis of minor civil division or census county division as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries of land set aside for such purposes will be excluded.

* * * * *

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, FmHA officials must consider the priority items met be each application and the degree to which those priorities are met, and apply good judgment.

(1) *Applications.* The application and supporting information submitted with it will be considered in determining the proposed project's priority for available funds.

(2) *State Office review.* All applications will be reviewed and scored for funding priority. The State Director will request funds from the National Office. Such requests will be considered along with all others on hand. If an application cannot be funded, the State Director will be notified. Eligible applicants that cannot

be funded should be advised by the State Director that funds are not available, and requested to advise whether they wish to have their application maintained in an active file for future consideration.

(3) *Selection priorities.* The priorities described below will be used by the State Director to rate applications. Points will be distributed as indicated in paragraphs (b)(3) (i) through (iv) of this section. A copy of the score sheet should be placed in the case file for future reference.

(i) *Population.* Proposed project(s) will primarily be located in a community of under 25,000 population—10 points.

(ii) *Economic conditions.*

(A) Proposed project(s) will primarily be located in areas where the unemployment rate (*1*) exceeds the State rate by 25% or more—20 points, (*2*) exceeds the State rate by less than 25%—10 points, (*3*) is equal to or less than the State rate—0 points.

(B) Proposed project(s) will primarily be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) for a family of 4 for the State is: (*1*) Less than poverty line—25 points, (*2*) more than poverty line but less than 85% of State MHI—15 points, (*3*) between 85% and 100% of State MHI—10 points, (*4*) equal or greater than State MHI—0 points.

(iii) *Experience.* Applicant has successful experience in administering a rural economic development program—15 points.

(iv) *Other.*

(A) Applicant has industry or business committed to locate in the sites—25 points.

(B) Grant request contains evidence of substantial commitment of funds from nonfederal sources for proposed projects—25 points.

(v) *Discretionary.* In certain cases the Administrator may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification from the State Director which will be based on factors such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations.

6. Section 1942.306 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1942.306 Purposes of grants.**

(a) Grant funds may be used to finance and develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

(1) Acquisition and development of land, easements and rights-of-way.

(2) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities.

(3) Startup operating cost and working capital.

(4) Technical assistance for proposed grantee projects.

(5) Reasonable fees and charges for professional services necessary for the planning and development of the project including packaging. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations.

(6) Refinancing of debts exclusive of interest incurred by or on behalf of an association before an application for a grant when all of the following exist:

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the grant, and

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the existing debt.

(b) Grants may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

* * * * *

7. Section 1942.307 is revised to read as follows:

**§ 1942.307 Limitations on use of grant funds.**

(a) Funds will not be used:

(1) To produce agricultural products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries or timber operations.

(2) To finance comprehensive areawide type planning. This does not preclude the use of grant funds for planning for a given project.

(3) For loans by grantees when the rates, terms and charges for those loans are not reasonable or would be for purposes not eligible under § 1942.306 of this subpart.

(b) Funds will not be used for any project which will require more than $500,000 in FmHA grant funds available under this subpart.

(c) At least 51 percent of the outstanding interest in the project has membership or is owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

8. Section 1942.310 is amended by revising paragraphs (b) and (d); removing paragraph (e); redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g); and by adding new paragraphs (h) and (i) to read as follows:

**§ 1942.310 Other considerations.**

* * * * *

(b) *Environmental requirements.* (1) *General applicability.* Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this Subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Although the purpose of the grant program established by this Subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest lands, prime rangelands, wetlands and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance.* The application for a technical assistance project is generally excluded from FmHA's environmental review process by § 1940.310(e)(1) of Subpart G of Part 1940 of this Chapter. However, as further specified in § 1940.330 of Subpart G of Part 1940 of this Chapter, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for Direct Construction Project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed under the applicable requirements of Subpart G of Part 1940 of this Chapter.

(4) *Applications for Grants to Provide Financial Assistance to Third Party Recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940–

20, "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. FmHA will review the preapplication, supporting materials and any required Forms FmHA 1940–20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because FmHA's approval of this type of grant application does not constitute FmHA's commitment to the use of grant funds for any identified third party projects (see § 1942.316 of this Subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this Chapter, prior to FmHA providing its consent to the grantee to assist the third party project.

(5) *Combined Applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply.

(i) The proposed direct construction project(s) will be reviewed under the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to thrid parties will be reviewed and processed under the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

* * * * *

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this Subpart will be administered under and are subject to 7 CFR 3015 and 7 CFR 3016, as appropriate, and established FmHA guidelines.

* * * * *

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements.* Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by FmHA, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

9. Section 1942.311 is amended by removing paragraph (b) and redesignating paragraph (c) as (b), and by revising paragraph (a) to read as follows:

**§ 1942.311 Application processing.**

(a) *Preapplications and applications.* (1) The application review and approval procedures outlined in § 1942.2 of Subpart A of Part 1942 of this Chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. If the application is for the development of facilities, the applicant shall use Form AD–624, "Application for Federal Assistance (for Construction Programs)." If the application is for the financing of facilities, the applicant shall use Form AD–623 "Application for Federal Assistance (NonConstruction Programs)."

(2) Applications which propose to establish revolving loan programs shall contain detail on the applicant's experience operating a revolving loan program, proposed projects to be funded from the revolving fund, applicant's financial ability to administer a revolving fund, need for a revolving fund, and other funds available to leverage funds made available under this program.

(3) Each application for assistance will be carefully reviewed in accordance with the priorities established in § 1942.305(b)(3) of this Subpart. A priority rating will be assigned to each application. Applications selected for funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit FmHA to complete a thorough priority rating.

* * * * *

**§§ 1942.312 and 1942.313 [Removed and Reserved]**

10. Sections 1942.312 and 1942.313 are removed and reserved.

11. Section 1942.314 is added and reads as follows:

**§ 1942.314 Scope of Work.**

For applications involving a loan to a third party, the applicant shall develop a Scope of Work. As a minimum the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made.

(d) How the grant purposes will be accomplished.

12. Section 1942.315 is amended by revising paragraph (b) to read as follows:

**§ 1942.315 Docket preparation and Letter of Conditions.**

(b) The State Director or the State Director's designated representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in Parts 3015 and 3016 of 7 CFR are complied with. The Letter of Conditions will be addressed to the applicant, signed by the State Director or other designated FmHA representative, and mailed or handed to appropriate applicant officials. Each Letter of Conditions will contain the following paragraphs.

"This letter established conditions which must be understood and agreed to by you before further consideration may be given to the application."

"This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed $_____."

"Please complete and return the attached Form FmHA 442–46,'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application."

Other items in the Letter of Conditions should include those relative to: Maximum amount of grant, contributions, interim financing, final plans and specifications, construction contract documents and bidding, required project audit, evidence of compliance with all applicable Federal, State, and local requirements, closing instructions, DOL certifications, compliance with any required environmental mitigation measures, and

other requirements including those of Regional Commissions when a grant is being made by a Regional Commission.

13. Section 1942.316 is amended by revising the heading and paragraph (c) to read as follows:

**§ 1942.316 Grant approval, fund obligation and third party financial assistance.**

* * * * *

(c) *Third party financial assistance.* Approval of a grant to an applicant who will use grant funds to provide financial assistance to a third party does not constitute approval of the projects financed by the grantee. The review, approval and disbursement of funds for specific projects financed by grantees will be completed in accordance with applicable sections of this Subpart.

14. Sections 1942.317, 1942.318, 1942.319, and 1942.320 are removed and reserved.

**§§ 1942.317, 1942.318, 1942.319, and 1942.320 [Removed and Reserved]**

**§ 1942.322 [Removed and Reserved]**

15. Section 1942.322 is removed and reserved.

**§ 1942.350 [Redesignated as § 1942.349]**

16. Section 1942.350 is redesignated as § 1942.349 and is revised to read as follows:

**1942.349 Forms, guides, and attachments.**

Exhibit A of Subpart H of Part of 1942 of this Chapter, Guides 1 and 2 of this Subpart, Attachment 1 and Forms referenced (all available in any FmHA office) are for use in administering ID Grants.

17. New § 1942.350 is added to read as follows:

**§ 1942.350 OMB control number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0132. In accordance with 5 CFR Part 1320 summarized below is the annualized public reporting burden for this regulation.

7 CFR 1942–G INDUSTRIAL DEVELOPMENT GRANTS—JULY 1988

| Section of regulations (A) | Title (B) | Form No. if any (C) | Estimated No. of respondents (D) | Reports filed annually (E) | Total annual responses (d) x (e) (F) | Estimated No. of man-hrs. per response (G) | Estimated total man hours (f) x (g) (H) |
|---|---|---|---|---|---|---|---|
| **Reporting Requirements—Forms Approved Under Other OMB Numbers** | | | | | | | |
| 1942.310(b)(4) | Request for Environmental Information. | 1940–20 (0575–0029). | | | | | |
| 1942.310(c)(1)(ii) | Certificate of Non Relocation and Market Capacity Information Report. | 449–22 (0575–0029). | | | | | |
| 1942.311(a) | Application for Federal Assistance (for Construction Programs). | AD–624 (0348–0006). | 25 | On occasion | 25 | 1 | 25 |
| 1942.311(a) | Application for Federal Assistance (for Non Construction Programs). | AD–623 (0348–0006). | 5 | On occasion | 5 | 1 | 5 |
| 1942.315(b) | Letter of Intent to meet Conditions. | FmHA 442–46 (0575–0015). | | | | | |
| Attachment 1, Sec. A II B | Preapplication for Federal Assistance. | AD–621 (0348–0006). | 40 | On occasion | 40 | 1 | 40 |
| Attachment 1 | Equal Opportunity Agreement | FmHA 400–1 (0575–0018). | | | | | |
| Attachment 1 | Assurance Agreement | FmHA 400–4 (0575–0018). | | | | | |
| Attachment 1, Sec. A II I (a) | Request for Advance or Reimbursement. | SF–270 (0348–0006). | 30 | 12 | 360 | 1 | 360 |
| Attachment 1, Sec. A II J | Financial Status Report | SF–269 (0348–0006). | 30 | 4 | 120 | 1.5 | 180 |
| Attachment 1, Sec. A II J | Federal Cash Transaction Report | SF–272 (0348–0006). | 30 | 12 | 360 | 1.5 | 540 |
| **Reporting Requirements—No Forms** | | | | | | | |
| 1942.310 (b) 4 | Plan to Provide Financial Assist. to Third Parties. | Written | 10 | On occasion | 10 | 16 | 160 |
| 1942.311(a)(2) and Attachment 1, Sec. A II 2. | Brief Narrative | Written | 40 | On occasion | 40 | 4 | 160 |
| 1942.314 Attachment 1, Sec. A II B. | Scope of Work | Written | 10 | On occasion | 10 | 40 | 400 |
| Attachment 1, Sec. A II A | Intergovernmental Consultations | Written | 40 | On occasion | 40 | 2 | 80 |
| Attachment 1, Sec. A II E | Appraisal Report | Written | 5 | On occasion | 5 | 4 | 20 |
| Attachment 1, Sec. A II H 4 | Request for Appeal | Letter | 10 | On occasion | 10 | 0.5 | 5 |
| Attachment 1, Sec. A II I (b) | Evidence of Fidelity Bond Insurance. | Policy | 15 | On occasion | 15 | 1 | 15 |

7 CFR 1942-G INDUSTRIAL DEVELOPMENT GRANTS—JULY 1988—Continued

| Section of regulations (A) | Title (B) | Form No. if any (C) | Estimated No. of respondents (D) | Reports filed annually (E) | Total annual responses (d) x (e) (F) | Estimated No. of man-hrs. per response (G) | Estimated total man hours (f) x (g) (H) |
|---|---|---|---|---|---|---|---|
| Attachment 1, Sec. A II 1 | Project Performance Report | Written | 15 | On occasion | 60 | 2 | 120 |
| Attachment 1, Sec. A II K | Audit Report | Written | 30 | On occasion | 30 | 6 | 180 |
| | | Record Keeping Requirements | | | | | |
| Attachment 1, Sec. B III H | Financial Records | Records | 30 | | | 1 | 30 |
| Attachment 1, Sec. B III (A) (3) | Property Records | Records | 30 | | | 3 | 90 |
| | xx | xx | | xx | [1] 1,135 | | [2] 2,390 |

[1] Docket totals.
[2] Total hours.

18. Exhibits A and B to Subpart G of Part 1942 are removed.

Dated: July 20, 1988.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 88-18211 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-07-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 510a

[No. 88-646]

### Use of Penalty Mail in the Location and Recovery of Missing Children

Date: August 1, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** In response to Congressional legislation, the Federal Home Loan Bank Board ("Board") is amending its regulation authorizing the use of official United States Government mail franked for Board use ("penalty mail") to assist in the recovery of missing children.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Szlenker, Attorney, Office of General Counsel, (202) 377-6664, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** On August 9, 1985, Congress enacted Pub. L. 99-87, which added a new section 3220 to title 39, United States Code. That provision authorized federal agencies to place photographs and biographical data of missing children on penalty mail in accordance with guidelines promulgated by the Department of Justice. Section 5 of Pub. L. No. 99-87 (*See* 39 U.S.C. 3220 n. "Termination Date" (Supp. III 1985)), stated that this authorization would expire two and one-half years after its enactment. The Board regulations implementing 39 U.S.C. 3320 therefore stated that they would terminate on February 9, 1988, in accordance with the terms of the statute. However, on December 22, 1987, Congress amended Pub. L. No. 99-87 to provide that the use of missing children photographs and biographical data on penalty mail would be continued until December 31, 1992. The amendment, at section 627(a) of the Treasury, Postal Service and General Government Appropriations Act of 1988, was enacted as part of House Joint Resolution No. 395, Continuing Appropriations, Fiscal Year 1988, Pub. L. No. 100-202, section 101(m), 101 Stat. 1329, 1329-430 (1987). Consequently, the Board is amending 12 CFR 510a.6 to provide that the Board's use of penalty mail in the location of missing children shall continue until December 31, 1992.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because this amendment relates to Board procedure and practice, notice and public procedure are unnecessary, as is the 30 day delay of the effective date.

**List of Subjects in 12 CFR Part 510a**

Missing children, Penalty mail, Reporting and record keeping requirements.

Accordingly, the Board hereby amends Part 510a, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER A—GENERAL**

**PART 510a—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN**

1. The authority citation for Part 510a continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Sec. 1, 99 Stat. 290, as amended (39 U.S.C. 3220); Reorg. Plan No. 3 of 1947, 3 CFR, 1943-1948 Comp., p. 1071.

2. Revise § 510a.6 to read as follows:

**§ 510a.6 Expiration date.**

This part is effective May 8, 1987, and shall cease to be effective upon the close of the Board's business on December 31, 1992.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88-18058 Filed 8-10-88; 8:45 am]

BILLING CODE 6720-01-M

### 12 CFR Part 524

[No. 88-645]

### Operations of the Banks

Date: August 1, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is amending its regulation pertaining to the preparation and submission of budgets by the Federal Home Loan Banks ("Banks"). The Board is removing the requirement that a Bank submit a certificate of compliance to the Board along with its budget. This will remove a requirement which the Board feels is no longer necessary.

**EFFECTIVE DATE:** The regulation is effective August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** William Carey, Director, Bank Liaison Division, Office of District Banks, (202) 377-6656; or Charles Szlenker, Attorney, Office of General Counsel, (202) 377-6664, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** 12 CFR 524.6 requires each Federal Home Loan

Bank to submit, concurrently with its budget, a certificate of compliance signed by the Bank's president stating that the Bank has complied with the provisions of Subchapter B of the Board's regulations (12 CFR Parts 521–535). Beginning in 1979, the Board instituted an alternative method of ascertaining a Bank's compliance with Board regulations, policies, and rules, including those in Subchapter B, through establishment of internal auditors and uniform charters for Bank audit committees. Board Res. No. 86–329 (April 1, 1986). These charters require the Banks to submit periodic internal audit reports to the Board. These reports must include evidence of the Banks' compliance with laws, regulations, policies, plans, procedures, ethical standards, and public responsibilities.

Furthermore, the Banks' audit committees and internal auditors coordinate the investigations for conflict of interest or unethical conduct at the Banks with the Board's Office of Inspector General. These Bank internal audits must conform with auditing standards promulgated by the American Institute of Certified Public Accountants, Generally Accepted Accounting Standards, and the U.S. Comptroller General's standards for audits of government organizations.

The information received by the Board in these periodic audit reports eliminates the need for a certificate of compliance from each Bank's president. Consequently, the Board is amending § 524.6 to remove entirely the requirement for the submission of a certificate of compliance to the Board.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that this amendment makes no substantial change in the Board's policy regarding Bank compliance with Board regulations, policies, and directives. The Banks, through their audit reports, must continue to certify their compliance with appropriate laws, regulations, directives, and rules. This regulation relieves Banks from the requirement to submit a document that the Board no longer finds necessary.

The Board finds that this regulation relieves a previous restriction. Consequently, the Board finds that public notice is not required, and the 30-day delay of the effective date of this amendment is also unnecessary. Accordingly, this amendment will be effective upon publication in the **Federal Register**.

**List of Subjects in 12 CFR Part 524**

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Board hereby amends Part 524, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM**

**PART 524—OPERATIONS OF THE BANKS**

1. The authority citation for Part 524 continues to read as follows:

**Authority:** Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 12, 47 Stat. 735, as amended (12 U.S.C. 1432); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

**§ 524.6 [Amended]**

2. Amend section 524.6 by removing the phrase "and certification of compliance of this subchapter signed by the Bank President" from the first sentence.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18057 Filed 8–10–88; 8:45 am]

BILLING CODE 6720–01–M

**TENNESSEE VALLEY AUTHORITY**

**18 CFR Part 1301**

**Privacy Act**

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Final rule.

**SUMMARY:** This rule redesignates the positions responsible for handling and determining administrative appeals under the Privacy Act to reflect TVA organizational changes. This rule also updates the list of published TVA system of records notices and the days on which TVA offices are closed and revises the form of certain legal citations contained in the exemption provisions. A paragraph dealing with an information source within TVA regarding amendment of records has been deleted since information regarding amendment of records is readily available in the TVA Administrative Release System. This rule was not published in proposed form since it relates to agency organization, procedure, and practice. Since this rule is nonsubstantive, it is being made effective immediately.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Brewer, 615–751–2520.

**List of Subjects in 18 CFR Part 1301**

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, Title 18, Chaper XIII of the Code of Federal Regulations is amended as follows:

**PART 1301—PROCEDURES**

1. The authority citation for Part 1301 continues to read as follows:

**Authority:** 48 Stat. 58, as amended; 16 U.S.C. 831–831dd, unless otherwise noted.

2. Section 1301.12 is amended by revising paragraphs (d) and (f) to read as follows:

**§ 1301.12 Definitions**

* * * * *

(d) The term "TVA system notice" means a notice of a TVA system published in the **Federal Register** pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Record System—TVA.
Personnel Files—TVA.
Cooperative Training Program for Construction Craftsmen—TVA.
Demonstration Farm Records—TVA.
Discrimination Complaint Files—TVA.
Employee Accident Information System—TVA.
Employee Accounts Receivable—TVA.
Employee Alleged Misconduct Investigatory Files—TVA.
Medical Record System—TVA.
Employee Statement of Employment and Financial Interests—TVA.
Payroll Records—TVA.
Employee Travel Advance Records—TVA.
Employment Applicant Files—TVA.
Grievance Records—TVA.
Land Between The Lakes Hunter Records—TVA.
Land Between The Lakes Register of Law Violations—TVA.
Employee Supplementary Vacancy Announcement Records—TVA.
Consultant and Personal Service Contractor Records—TVA.
Nuclear Quality Assurance Personnel Records—TVA.
Questionnaire-Farms in Vicinity of Proposed Nuclear Power Plant—TVA.
Radiation Dosimetry Personnel Monitoring Records—TVA.
Reforestation, Erosion control, and Plantation Case History Records—TVA.
Retirement System Records—TVA.
Test Demonstration Farm Records—TVA.
Woodland Resource Analysis Program Input Data—TVA.
Electricity Use, Rate, and Service Study Records—TVA.
Land Between The Lakes Mailing Lists—TVA.
OIG Investigative Records—TVA.
Call Detail Records—TVA.

Office of Nuclear Power Call Detail Records—TVA.
Project/Tract Files—TVA.
* * * * *

(f) The term "reviewing official" means TVA's Vice President, Human Resources, or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;
* * * * *

3. Section 1301.14 is amended by revising the third sentence of paragraph (g) to read as follows:

**§ 1301.14 Times, places, and requirements for identification of individuals making requests.**
* * * * *

(g) * * * Offices are closed on Saturdays, Sundays, and the following holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

**§ 1301.17 [Amended]**

4. In § 1301.17, paragraph (d) is removed and paragraph (e) is redesignated as paragraph (d).

5. Section 1301.19 is amended by revising the second sentence of paragraph (a) introductory text to read as follows:

**§ 1301.19 Appeals on initial adverse agency determination on correction or amendment.**

(a) * * * An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend the record and is taken by delivering a written notice of appeal to the Vice President, Human Resources, Tennessee Valley Authority, Knoxville, Tennessee 37902. * * *
* * * * *

6. Section 1301.23 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 1301.23 General exemptions.**
* * * * *

(b) The TVA system "Land Between The Lakes Register of Law Violations—TVA" is exempted from subsections (c)(3), (4); (d); (e)(1), (2), (3), (4)(G), (4)(H), (4)(I), (5); (f); (g); and (h) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (j)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act). * * *

7. Section 1301.24 is amended by revising the first sentence of paragraph (a), paragraph (b)(1), and paragraph (c)(1) to read as follows:

**§ 1301.24 Specific exemptions.**

(a) The TVA system "Employee Alleged Misconduct Investigatory Files—TVA" is exempted from subsections (c)(3); (d); (e)(1), (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (k)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act). * * *

(b)(1) The TVA systems "Apprentice Training Record System—TVA," "Consultant and Personal Service Contractor Records—TVA," "Cooperative Training Program for Construction Craftsmen—TVA," "Employment Applicant Files—TVA," "Personnel Files—TVA," and "Nuclear Quality Assurance Personnel Records—TVA" are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. These TVA systems are exempted pursuant to section (k)(5) of 5 U.S.C. 552a (section 3 of the Privacy Act).
* * * * *

(c)(1) The TVA systems "Apprentice Training Record System—TVA," "Consultant and Personal Service Contractor Records—TVA," "Cooperative Training Program for Construction Craftsmen—TVA," "Employment Applicant Files—TVA," and "Personnel Files—TVA," are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. These systems are exempted pursuant to section (k)(6) of 5 U.S.C. 552a (section 3 of the Privacy Act).
* * * * *

John W. Thompson,
*Vice President, Services.*

[FR Doc. 88-18169 Filed 8-10-88; 8:45 am]
BILLING CODE 8120-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### 32 CFR Part 838

### Air Force Systems Command Contractor Performance Assessment

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Final Rule.

**SUMMARY:** This part sets policy, assigns responsibilities, and provides procedures for systematically assessing contractor performance on current contracts. The Contractor Performance Assessment Reporting System (CPARS) will assess contractor performance on current AFSC contracts for use in future contact award decisions. These assessments will be prepared by AFSC program directors and forwarded to the contractor for review and comment. This part is limited in scope to contracts for concept demonstration and validation, full-scale development, or full-rate production and deployment efforts. Laboratory (science and technology programs), service, and operations and maintenance efforts are not included.

**EFFECTIVE DATE:** September 1, 1988.

**ADDRESS:** HQ AFSC/PKCP, Andrews AFB, DC 20334/5000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Wright, telephone (301) 981-4022.

**SUPPLEMENTARY INFORMATION:** On March 23, 1988, the Air Force published a proposed rule on contractor performance assessment (53 FR 9455). A number of comments were received that resulted in changes throughout the document. Summarized below are the general and specific comments received and actions taken.

a. *Comment:* It can be difficult to apply objective perspectives to complex issues. There is little incentive for program managers to comment objectively on possible actions by the government or its consultants that may have adversely affected contractor performance.

*Response:* The CPAR was structured with a check and balance system to gain an objective assessment. Both the government and contractor perspectives are captured. In addition, each assessment is reviewed by a management level above the program manager to ensure the assessment is based on objective data. The rule has been amended to discuss the checks and balances of the system (§838.1(c)) and revised to require the assessments be based on objective facts.

b. *Comment:* Revise the program phase terminology used to be consistent with the more commonly used terminology within DOD Directive 5000.1. Revise R&D terminology to correlate with new science and technology program.

*Response:* Throughout the rule the terminology has been revised as requested.

c. *Comment:* The CPAR assessment should be completed by either the program manager or director. In some situations, the program director is a general officer and could serve as the reviewing official.

*Response:* Throughout the rule "or program manager" has been added after "program director."

d. *Comment:* Clarify the difference between the initial CPAR assessment (§838.5) and the initial assessment sent to the contractor (§838.6). Revise the instructions to have the program director sign his or her assessment when it is final and ready to be sent to the reviewing official.

*Response:* The rule has been clarified to distinguish between the initial CPAR assessments to be completed between 180 and 360 days after contract award and the "preliminary" assessments that the program director or manager sends to the contractor. In addition, the timing of the program director or manager's signature on the form has been delayed until after it has been reviewed by the contractor.

e. *Comment:* The entire CPAR assesses "contract" performance. Why do you have a separate assessment block on the form for "contracts?" Recommend deleting such a category and have the subitems "cost performance" and "management responsiveness" become primary items.

*Response:* The "contracts" item has been deleted. Throughout §838.10 the numbering of items and placement of guidance has been rearranged.

f. In addition to the comments and changes addressed above, editing changes were made and appropriate regulatory references were added throughout the rule for clarification purposes.

g. *Comment:* Section 838.2(a). This rule should not apply to Air Force Contract Management Division (AFCMD) since their only buying activity is Kirtland Contracting Center (KCC). KCC primarily supports the laboratories on base and only has a few weapons systems acquisitions.

*Response:* AFCMD deleted.

h. *Comment:* Section 838.2(b). Eliminate the encouragement to "broaden the application of CPARs to additional contract efforts and contractors for (field activity) own use." Recommend that at least until a successful command-wide CPAR implementation has been launched and a usage culture established, such local utilization be prohibited to preclude potential abuse or bifurcation of the main purpose.

*Response:* Guidance revised to discourage broadening the application of CPARs and requires a high approval level for such actions (i.e., AFSC/CV). These requests will be closely monitored by the OPR, HQ AFSC/PK.

i. *Comment:* Section 838.4(a). Revise office symbol for receipt of local supplements to HQ AFSC/SD. They are responsible for maintaining the rule and should be the recipient.

*Response:* Revised as requested.

j. *Comment:* Section 838.5(a). Delete guidance concerning contracts in existence when the system is initiated. This guidance is needed on a one time basis and should be included in the implementation transmittal letter.

*Response:* Deleted as requested.

k. *Comment:* Section 838.5(b) Recommend allowing contractors an opportunity to request their CPARs be updated if a significant change in performance has occurred.

*Response:* Amended to address such a contractor's request.

l. *Comment:* Section 838.5(b) and (c). Clarify the period of performance to be covered by the intermediate and final CPARs.

*Response:* Revised to clarify that both the intermediate and final CPARs are limited to contractor performance occurring after the preceding CPAR. The final is not a summary of the entire contract effort.

m. *Comment:* Section 838.6(c). Recommend that all CPAR ratings be discussed in face-to-face meetings.

*Response:* Section 838.6(c) has been revised to "strongly recommend" face-to-face meetings. Making this requirement mandatory was not deemed practical.

n. *Comment:* Section 838.6(c)(4) and (e). Clarify when the 30 day time limit begins. Recommend a 90 day contractor response time and a ten page limit.

*Response:* Clarified to state that comments are due 30 days from the date of the transmittal letter and that comments received after the 30 day period should not be incorporated into the final CPAR. The additional time and space requested for contractor response would result in a lengthy process (150 days to complete) which produces an unmanageably large report. The goal is a clear and concise report.

o. *Comment:* Section 838.9. The matter of confidentiality of the CPAR data relating to contractor performance is very important. Examination of the FOIA releasability issue is strongly recommended.

*Response:* AFSC is equally concerned about the protection of the sensitive and confidential data gathered on the CPAR. The rule discusses at length the requirements for internal and external protection of the data. Each FOIA request must be reviewed on a case-by-case basis; however, the rule has been amended to establish a central focal point for the command (HQ AFSC/PK) to consider and review CPAR FOIA requests.

p. *Comment:* Section 838.9(b). The requirement for a letter, signed by the company CEO, to obtain one's own CPAR data is unduly restrictive for large multi-business companies. Provisions should be made for delegating such access authority to contractor's representatives who have commitment authority such as divisional general managers, vice presidents of contract management, etc.

*Response:* Revised to allow CEOs to designate other corporate approval officials.

q. *Comment:* Section 838.10(a) Item 1. Recommend adding the Defense Activity Address Directory Code to clearly identify the contractor.

*Response:* Added.

r. *Comment:* Section 838.10(h) Item 10. Recommend segregating the contract specific description from the overall program description block. Additional space should be provided for the contract effort description. Detailed descriptions of both the program and contract effort will assist the source selection teams in their task of determining if the work assessed by the CPAR is relevant to their source selection.

*Response:* Revised as requested. This resulted in a renumbering of items in § 838.10.

s. *Comment:* Sections 838.10(i)(1) and (i)(3)(i)(C). Will subcontract actions highlighted by the program manager or the prime contractor be reflected in the subcontractors CPAR file? Please clarify.

*Response:* No. The subcontractor actions are only highlighted in the narrative section of the form when they significantly affect the overall contract performance. While the program manager must consider the effects of good or bad performance by a subcontractor, the prime contractor still remains responsible for overall contract performance. Subcontractor performance, per se, will not be assessed; however, the prime's ability to

manage subcontracts (i.e, item 14h subcontract management) will be assessed.

t. *Comment:* Section 838.10(i)(3)(v)(B) Item 11E–2. The management responsiveness area inappropriately evaluates the contractor's "willingness to negotiate fair and reasonable prices and terms and conditions." This appears to be a punitive evaluation against any contractor who would take exception to the government's offered position and would lend itself to a subjective evaluation. Recommend deletion of such a description.

*Response:* Deleted.

The Department of the Air Force has determined that this is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 Pub. L. 96–511).

A list of contractors in CPAR data base, a list of CPAR focal points, and a copy of AFSC Form 125 can be obtained from Ms. Susan Wright at the address shown above.

**List of Subjects in 32 CFR Part 838**

Government contracts.

Therefore, 32 CFR is amended by adding Part 838 to read as follows:

## PART 838—AIR FORCE SYSTEMS COMMAND CONTRACTOR PERFORMANCE ASSESSMENT

Sec.

**Subpart A—Air Force Systems Command Policy**

838.1 Purpose of Contractor Performance Assessment Reporting System (CPARS).
838.2 Applicability and scope.

**Subpart B—Responsibilities Assigned**

838.3 HQ AFSC responsibilities.
838.4 Field activity responsibilities.

**Subpart C—CPAR Procedures**

838.5 Frequency of reporting.
838.6 CPAR processing.
838.7 CPAR focal point.
838.8 AFSC Source Selection Offerors Report (RCS: SYS–PKC(A)8801).
838.9 CPAR markings and protection.
838.10 Instructions for completing AFSC Form 125, Contractor Performance Assessment Report (CPAR).

**Authority:** 10 U.S.C. 2305(a)(3).

**Note:** Part 807 of this chapter states Air Force procedures for issuing publications and forms to private citizens, organizations and commercial activities.

### Subpart A—Air Force Systems Command Policy

#### § 838.1 Purpose of Contractor Performance Assessment Reporting System (CPARS).

(a) The sole purpose of CPARS is to provide program management input for a command-wide performance data base for use in AFSC source selections (AFR 70–15 and AFR 70–30 discuss source selection policy and procedures). Performance assessments will be used as an aid in awarding contracts to contractors that consistently produce quality products that conform to requirements within contract schedule and cost. The CPAR can be used to effectively communicate contractor strengths and weaknesses to source selection officials. The CPAR will not be used for any purpose other than the one in this paragraph.

(b) The CPAR assesses a contractor's positive and negative performance on a given contract during a specific period of time. Each assessment must be based on objective facts and be supportable by program and contract management data, such as cost performance reports, technical interchange meetings, financial solvency assessments, production management reviews, contractor operations reviews, functional performance evaluations and earned contract incentives. Subjective assessments concerning the causes or ramifications of the contractor's performance should be provided; however, speculation or conjecture should not be included.

(c) The CPAR assessment process is designed with a series of checks and balances to facilitate the objective and consistent evaluation of contractor performance. Both government and contractor program management perspectives are captured on the form. The assessment is reviewed by a level of management above the program director or manager to ensure consistency with other CPAR evaluations throughout the product division and other internal reviews and evaluations of the program, such as command assessment reviews (CAR) and program assessment reviews (PAR).

#### § 838.2 Applicability and scope.

(a) This part applies to Air Force Systems Command (AFSC) Armament Division, Aeronautical Systems Division, Ballistic Missile Office, Electronic Systems Division, and Space Division. The CPAR is limited to contracts for concept demonstration and validation, full-scale development (FSD), or full-rate production and deployment efforts. Laboratory (science and technology programs), service, and operations and maintenance efforts are not included. A CPAR must be completed on all such contracts over $5 million (face value, excluding unexercised options) with any division or subsidiary of the contractors. When a single contract instrument requires segregation of costs for combining FSD and production efforts or containing multiple productions lots, an individual CPAR may be completed for each segment of work.

(b) Broadening the application of CPARs by a local activity to additional contract efforts and contractors requires AFSC/CV approval before implementation.

### Subpart B—Responsibilities Assigned

#### § 838.3 HQ AFSC responsibilities.

(a) Deputy Chief of Staff, Systems (HQ AFSC/SD) ensures that the overall management and control of the CPARs is consistent with this part. Formulating and updating this part is a joint responsibility of HQ AFSC/SD and Deputy Chief of Staff, Contracting (HQ AFSC/PK).

(b) HQ AFSC/PK is responsible for maintaining the list of contractors.

#### § 838.4 Field activity responsibilities.

The commander or vice commander of each of the applicable field activities:

(a) Establishes procedures to implement this part. (Submit one copy of local supplements to HQ AFSC/SD).

(b) Establishes a CPAR focal point. This focal point is responsible for the collection, control, storage, and distribution of CPARs prepared at the field activity.

(c) Ensures timely completion of CPARs by program directors or managers.

(d) Ensures timely review of CPARs by local reviewing officials.

(e) Ensures submission of AFSC Source Selection Offerors Report (§ 838.8).

### Subpart C—CPAR Procedures

#### § 838.5 Frequency of reporting.

(a) For new contracts, an initial CPAR will be completed between 180 days and 365 days after contract award. Instructions for completing a CPAR are in § 838.10.

(b) An intermediate CPAR will be completed on an annual basis for the entire period of performance of the contract. More frequent reporting is required when the program director or manager is aware of a change in performance that significantly alters the assessment of the contractor or when a

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change in program directors or managers occurs. Contractors may request that the CPAR be updated by the program office if a significant change in performance has occurred. Generally, no more than two CPARs a year should be prepared. An intermediate CPAR is limited to contractor performance occurring after the preceding CPAR. To improve efficiency in preparing the CPAR, it is recommended that the CPAR be completed together with other reviews (for example, PARs, CARs, award fee determinations, major program events, or program milestones).

(c) A final CPAR will be completed upon contract termination or within six months following the delivery of the final major end item on contract. The final CPAR is limited to the contractor performance occuring after the preceding CPAR.

**§ 838.6 CPAR processing.**

Each CPAR is completed, reviewed, coordinated, and approved within AFSC. Contractor organizations will be given an opportunity to review and comment on the program director's or manager's preliminary assessment. The CPAR review and approval process is as follows:

(a) The project manager or engineer responsible for the contract being reviewed prepares the preliminary documentation and assessment in coordination with the project team. This assessment should be based on multifunctional input. Support contractors, such as system engineering and technical assistance or federal contract research center contractors, may provide input as project team members but are not allowed access to completed CPARs unless specifically authorized in support of a source selection. The project manager or engineer must ensure that all CPAR documentation and forms are marked "For Official Use Only/Source Selection Sensitive" according to Part 806 of this chapter and chapter 4 of AFR 70–15.

(b) The program director or manager responsible for the overall program reviews and transmits the preliminary CPAR to the contractor. The program director or manager must not sign at item 17 until just before submitting the final assessment to the product division reviewing official. Program director or manager narrative remarks are limited to item 16 plus one additional single-spaced typewritten page.

(c) The program director or manager will retain a copy of the preliminary CPAR and transmit the original to his or her counterpart within the contractor's organization. Face-to-face meetings with contractor management to discuss preliminary CPAR ratings are strongly recommended. The transmittal letter must provide the following guidance to the contractor.

(1) Protect the preliminary CPAR as a source selection sensitive document.

(2) Strictly control access to the preliminary CPAR within the contractor organization.

(3) Do not release the preliminary CPAR to persons or entities outside contractor control. Do not use the preliminary CPAR data for advertising, promotional material, preaward surveys, proposal submittals, production readiness reviews, or other similar purposes.

(4) Responses are optional; if provided, they are due within 30 days of the date of the transmittal letter and are limited to item 18 plus one additional single-spaced typewritten page. This page limit will be strictly enforced. Additional pages will not be reviewed or included in the CPAR data base. Contractor comments received after the 30 day response period may not be included in the final CPAR.

(5) Focus comments on the objective portion of the program director's or manager's narrative and provide views on causes and ramifications of the assessed performance.

(d) After receiving and reviewing the contractor comments, the program director or manager may revise the preliminary assessment. Revised assessments must be recorded on a new CPAR form that will be attached to the original. Complete items 1 through 5 and mark item 12 "Revision to CPAR for period (insert period covered by report)." Indicate revised ratings in items 14 or 15 and explain the reasons for the changes made in item 16.

(e) After receiving contractor comments or 30 days from the date of the transmittal letter to the contractor, whichever occurs first, the program director or manager will sign item 17 and send the CPAR to the product division reviewing official for review and signature according to local procedures. The product division reviewing official must be at least one level above the program director or manager.

(f) After the CPAR is completed, the program director or manager will send the CPAR and all attachments to the CPAR focal point for input into the command-wide data base. No copies of the final CPAR will remain on file at the program office. Working papers associated with CPAR evaluations may be retained but must be protected "For Official Use Only/Source Selection Sensitive."

(g) All records created under this part will be retained and disposed of according to AFR 12–50.

**§ 838.7 CPAR focal point.**

Each local activity CPAR focal point will keep original CPARs and all attachments in separate files for each corporation. Each corporate file will contain separate files for divisions and subsidiaries. Each CPAR will be retained for 5 years, unless the program director or manager requests a longer retention period. For example, a long development program may necessitate longer retention to reflect contractor performance on the entire program. Distribution of CPARs within AFSC will only be made from one field activity CPAR focal point to another. Source selection team members must contact their local CPAR focal point for all appropriate CPARs.

**§ 838.8 AFSC Source Selection Offerors Report (RCS: SY5–PKC(A)8801).**

To keep the CPAR data base current and reflect the contractors that AFSC evaluates during source selection, an annual listing of offerors is required. The listing must:

(a) Reflect offerors on concept demonstration and validation, full-scale development or full-rate production and deployment source selections over $5 million (face award value, including options) that were completed during the previous fiscal year.

(b) State the name and address of the contractor division or subsidiary. Identify the parent corporation, if applicable. State number of times contractor submitted proposals.

(c) Identify additional contractors recommended for inclusion in the data base, along with a brief justification.

(d) Be submitted to HQ AFSC/PKC annually by October 31.

**§ 838.9 CPAR markings and protection.**

All CPAR forms and attachments will be marked "For Official Use Only/ Source Selection Sensitive." CPARs have the unique characteristic of always being predecisional in nature. They will always be source selection sensitive because they will be in constant use to support ongoing source selections. This predecisional nature of the CPAR is a basis for selections. This predecisional nature of the CPAR is a basis for requiring that the CPAR data base be protected from unauthorized disclosure to personnel or entities outside the source selection process. It must be noted, however, that CPARs may also contain information that is proprietary to the contractor that is the subject of

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the report. Information contained on the CPAR such as trade secrets and confidential commercial or financial data, obtained form the contractor in confidence, must be protected from unauthorized disclosure. Additionally, CPARs may contain valuable government generated commercial information that will be used in the award of government contracts. Such commercially valuable government-generated information must be protected from unauthorized disclosure. Based on the confidential nature of the CPAR, the following guidance applies to protection both internal and external to the government.

(a) *Internal government protection.* CPARs must be treated as source selection sensitive at all times. The flow of CPARs throughout AFSC in support of source selections will be controlled by the CPAR focal points and transmitted only from one CPAR focal point to another (see AFSC Supplement 1 to AFR 70–15 and AFSC Supplement 1 to AFR 70–30). Outside of use in an instant source selection, information contained on the CPARs must be protected in the same manner as information contained in completed source selection files (see AFRs 70–15 and 70–30). Information contained on the CPAR may not be used to support preaward surveys, debarment proceedings or any other internal government reviews.

(b) *External government protection.* Due to the sensitive and confidential nature of the CPARs, disclosure of CPAR data to contractors or others outside the government is not authorized. An exception to this rule is for the contractor who is the subject of the CPAR. In this situation, access to review the completed CPAR will be granted by the CPAR focal point if the contractor personnel requesting access have a letter signed by their corporate chief executive officer (CEO) or authorized designee (for example, general manager or division vice-president) granting disclosure to that individual. When the CEO has designated other corporate approval officials, both the CEO designation letter and CPAR access letter signed by the CEO designee must be presented to the CPAR focal point. Copies of the final CPAR are not allowed to be made or retained by the contractor's representative. Such limited and controlled access by the contractor's representative will not inhibit candid agency decision making. This access is needed to ensure the accuracy of changes made to the CPAR after the contractor's initial review.

**Note:** During the source selection discussion process, the contractor will be notified of relevant past performance data, derived from a CPAR or other sources, that requires clarification or could lead to a negative rating. See AFSC Supplement 1 to AFR 70–15 and AFSC Supplement 1 to AFR 70–30.

On those rare occasions when a Freedom of Information Act (FOIA) request is received for CPAR release, process the request through FOIA channels to HQ AFSC/DAQDI for review and consideration by HQ AFSC/PK.

**§ 838.10 Instructions for completing AFSC Form 125, Contractor Performance Assessment Report (CPAR).**

Type all information on the form. No handwritten CPARs will be accepted by the CPAR focal points for inclusion into the AFSC data base.

(a) *Item 1:* State the name and address of the division or subsidiary of the contractor performing the contract. Identify the parent corporation (no address required). Identify the contractor Department of Defense Activity Address Directory code. (DODAAD).

(b) *Items 2–6:* Initial, intermediate or final report. Period covered by report. Contract Number. Product Division. Location of contract performance (if not in item 1).

(c) *Item 7:* State current contract period of performance including any authorized extensions, such as options, that have been exercised.

(d) *Item 8:* State the current percent complete of the contract. If cost performance reports (CPR) or cost/schedule status reports (C/SSR) data is available, calculate percent complete by dividing cumulative budgeted cost of work performed (BCWP) by contract budget base (CBB) (less management reserve) and multiplying by 100. CBB is the sum of negotiated cost plus estimated cost of authorized undefinitized work. If CPR or CSSR data is not available, estimate percent complete by dividing the number of months elapsed by total number of months in contract period of performance and multiplying by 100.

(e) *Item 9:* State the current face value of contract. For incentive contracts, state target value.

(f) *Item 10:* Identify the basis of award: Competitive, Follow-on to Competition, or Noncompetitive.

(g) *Item 11:* Identify the contract type. For mixed contract types, check the predominate contract type and identify the other contract type in the "mixed" category.

(h) *Item 12:* Provide a short descriptive narrative of the program. Spell out all abbreviations. Identify overall program phase and production lot (for example, concept development, full-scale development, low-rate initial production, or full-rate production (lot 2). For major weapon systems, identify DODD 5000.1 milestone phases.

(i) *Item 13:* Provide a short description of the contract effort that identifies key technologies, components, subsystems, and requirements. Describe the effort in enough detail to assist the source selection team members who will screen the CPAR to determine efforts that are relevant to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort.

(j) *Item 14:* Evaluation areas.

(1) *Introduction.* In preparing the CPAR, the program director or manager should strive for consistency between the ratings used for the areas of evaluation on this form and the similar areas used for the PAR, CAR, program director assessment report (PDAR), or program manager assessment report (PMAR). The major difference is the CPAR assesses a contractor's performance on an individual contract while the PAR, CAR, PDAR and PMAR assess the overall program. A blue rating has been added to denote exceptional performance which is not found in the other assessments. This new rating is added because recognition of exceptional ability is important in the source selection process. Each area assessment must be based on objective data that will be provided in item 16. Facts to support specific areas of evaluation should be obtained from the government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, contracting, contract administration, manufacturing, quality, and logistics. The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor met an extremely tight schedule, a blue (exceptional) assessment may be given in recognition of the inherent schedule risk. The CPAR is designed to assess prime contractor performance. However, in those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in item 16. Many of the evaluation areas in item 14 represent groupings of diverse

elements. The program director or manager should consider each element and use the area rating to highlight significant issues. For example, product assurance (item 14d) could be rated marginal if quality is a problem even though other elements within the product assurance definition were satisfactory.

(2) *Evaluation colors*—(i) *Blue—Exceptional.* Indicates performance clearly exceeds contractual requirements. The area of evaluation contains few minor problems for which corrective actions appear highly effective. In the cost performance area, blue indicates a positive cost variance.

(ii) *Green—Satisfactory.* Indicates performance clearly meets contractual requirements. The area of evaluation contains some minor problems for which the corrective actions appear satisfactory. In the cost performance area, green indicates no cost variance or a negative cost variance greater than zero but less than or equal to 5 percent.

(iii) *Yellow—Marginal.* Indicates performance meets contractual requirements. The area of evaluation contains a serious problem for which corrective actions have not yet been identified, appear only marginally effective, or have not been fully implemented. In the cost performance area, yellow indicates a negative cost variance greater than 5 percent but less than or equal to 15 percent.

(iv) *Red—Unsatisfactory.* Indicates the contractor is in danger of not being able to satisfy contractual requirements and recovery is not likely in a timely manner. The area of evaluation contains serious problems for which the corrective actions appear ineffective. In the cost performance area, red indicates a negative cost variance greater than 15 percent.

(3) *Arrows.* Upward or downward arrows may be used to indicate an improving or worsening trend insufficient to change the assessment status.

(4) *NA.* Areas not applicable to a particular contract.

(k) *Item 14A: Product/system performance.* This item must be scored separately. Evaluate the extent to which the contractor is meeting overall product or system performance in terms of the contract requirements, including but not limited to the statement of work, specifications, contract data requirement lists, and significant special contract clauses.

(1) *Item 14A–1: Engineering design/support.* Evaluate the contractor's engineering design capability and engineering resource support. Consider the amount and quality of engineering resources devoted to supporting the contract effort.

(2) *Item 14A–2: Software development.* Evaluate the extent to which the contractor is meeting the software development, modification, or maintenance contract requirements or a government-approved software development plan. Consider the amount and quality of software development resources devoted to support the contract effort.

(l) *Item 14B: Schedule.* Evaluate the contractor's adherence to the contract schedule. Identify in item 16 the major milestones, deliverable items, or significant data items which contribute to the schedule evaluation. The short narrative explanation in item 16 should address significance of items, discuss causes, and evaluate effectiveness of contractor corrective actions. If CPR or C/SSR data are available and the schedule variance exceeds 15 percent (positive or negative), briefly discuss in item 16 the significance of this variance for the contract effort. Cumulative schedule variance in dollars is defined as budgeted cost of work performed (BCWP) minus budgeted cost of work scheduled (BCWS)— Percent schedule variance is defined as ((BCWP–BCWS)/BCWS) x 100.

(m) *Item 14C: Cost performance.* If CPR or C/SSR data are available, evaluate current cost variance if the contract is greater than 10 percent complete. Put the current percent variance and government estimate at completion in item 15 and give a short narrative explanation of causes and contractor-proposed solutions in item 16. Calculations. See item 8 to calculate percent complete. Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, Column 6 of the C/SSR) by cumulative BCWP and multiplying by 100. Compute completion cost variance percentage by dividing CBB less government's estimate at completion by CBB and multiplying by 100. The CBB must be the current budget base against which the contractor is performing (including formally established overtarget baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in item 16 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost performance in terms of the revised baseline and reference the CPAR which described the baseline adjustment. For example: "The contract baseline was formally adjusted on (date). See CPAR for (period covered by CPAR) for an explanation." If CPR data or C/SSR data are not available, evaluate contractor cost management. Is the contractor experiencing cost growth? Underrun? Provide a short narrative explanation in item 16 of causes and the contractor's proposed solutions.

(n) *Item 14D: Product assurance.* Product Assurance is the collection of disciplines needed to design, test, and manufacture systems or equipment meeting specified requirements and suitable for intended use. The product assurance assessment evaluates adequacy of contractor organization, resources planning, design, manufacturing and test actions to meet system or equipment reliability, maintainability cost, and quality requirements with minimum risk.

(o) *Item 14E: Test and evaluation.* Evaluate the adequacy of the contractor's performance in planning, supporting, conducting, and assessing the inhouse and independent test and evaluation programs.

(p) *Item 14F: ILS program.* Evaluate the adequacy of the contractor's performance in accomplishing integrated logistics support (ILS) program tasks and in performing logistics support analysis (LSA) activities. The nine ILS element groupings are maintenance planning; manpower and personnel; supply support; support equipment; technical data; training and support; computer resources support; facilities, packaging, handling, storage, and transportation; and design interface.

(q) *Item 14G: Management responsiveness.* Evaluate the adequacy of the contractor's responsiveness. Address issues such as the timeliness and quality of problem identification, corrective action plans, and proposal submittals.

(r) *Item 14H: Subcontract management.* Evaluate the contractor's effort devoted to managing subcontracts. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contract performance.

(s) *Item 14I: Other.* Specify any additional evaluation areas that are unique to the contract. If the contract contains an award fee, enter "award fee" in this item and list all the award fee percentages earned during the evaluation period under "N/A."

(t) *Item 15: Variances.* If CPR or C/SSR data are available, identify the cumulative cost variance to date (percent); the government's cost estimate at completion (percent); and the cumulative schedule variance

(percent). See item 14B and 14C for calculations.

(u) *Item 16: Program manager/director's narrative.* A short, factual narrative statement is required for all assessments regardless of color rating. Cross-reference the comments in item 16 to rated evaluation areas in item 14. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the former underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include Air Force Operational Test and Evaluation Center operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations.

(v) *Item 17: Program manager/director signature block.* This is signed after contractor review and just prior to sending it to product division review official.

(w) *Item 18: Contractor comments (contractor's option).* See § 838.6(c) for guidance on sending the CPAR to the contractor for review and comment.

(x) *Item 19: Contractor representative signature block.*

(y) *Item 20: Review by product division reviewing official.* The reviewing official must be at least one level above the program director or manager. This individual will be designated by local procedures.

(z) *Item 21: Product division reviewing official signature block.*

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-18130 Filed 8-10-88; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 1

[CGD 88-051]

## Delegation of Authority Under the Comprehensive Environmental Response, Compensation and Liability Act CERCLA as Amended by the Superfund Amendments and Reauthorization Act

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** These rules delegate authority to Coast Guard Officials to perform pollution response functions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). These laws provide authority to respond to releases of hazardous substances, pollutants, and contaminants into the environment. The delegations will allow field commands to respond rapidly to releases from vessels and facilities in the coastal zone.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Dan R. Williamson (202-267-0434).

**SUPPLEMENTARY INFORMATION:** Since these rules relate to agency management, procedure, and practice, a notice and comment are unnecessary and they may be made effective upon publication in the **Federal Register**.

CERCLA (Pub. L. 96-510; 94 Stat. 2767; 42 U.S.C. 9601) provides authority to respond to releases of hazardous substances, pollutants, and contaminants into the environment. In 1981 the President delegated to the Secretary of Transportation the authority under CERCLA to respond to releases in the coastal zone (E.O. 12316) including all U.S. waters subject to the tide, U.S. waters of the Great Lakes, and specified ports and harbors on inland rivers. The Secretary of Transportation redelegated to the Commandant authority under CERCLA to respond to releases and threats of releases from vessels and to take immediate removal action at facilities other than hazardous waste management facilities. The Commandant, in turn, delegated certain of these response functions to each District Commander and predesignated on-scene commander.

CERCLA was amended by SARA on October 17, 1986, Executive Order 12580 revoked Executive Order 12316 and delegated the President's functions under CERCLA, as amended, to the heads of various Executive Branch departments and agencies, including the Secretary of Transportation. The Secretary of Transportation has redelegated certain functions to the Commandant, U.S. Coast Guard (see 49 CFR 1.46(ff) and (gg), 52 FR 47007). This notice further delegates certain response functions in 49 CFR 1.46(ff) and (gg) to designated Coast Guard officials.

The delegation of response functions in this notice modifies the previous delegation in two principal respects. The first modification relates to the establishment of the Maintenance and Logistic Commands (MLC's) within the Coast Guard. Contracting related functions which were previously delegated to the District Commanders are now delegated to MLC's. The second modification relates to the enactment of the SARA amendments to CERCLA. Those amendments create a number of new functions which are ancillary to the CERCLA response functions. The new functions are delegated to the District Commanders and On-Scene Coordinators as adjuncts to the basic response functions which are delegated to them.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations [Government agencies], Freedom of Information, Penalties.

In consideration of the foregoing, Title 33 Code of Federal Regulations, is amended as follows:

## PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 14 U.S.C. 633; 49 CFR 1.45(b), 1.46; § 1.01-70 also issued under the authority of E.O. 12580, 52 FR 2923.

2. Section 1.01-70 is revised to read as follows:

### § 1.01-70 CERCLA delegations.

(a) For the purpose of this section, the definitions in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), apply. The Act, as amended, is referred to in this section as CERCLA.

(b) The Chief, Office of Marine Safety, Security and Environmental Protection (G-M) is delegated authority to take remedial action involving vessels under section 104 of CERCLA.

(c) Each Maintenance and Logistics Commander is delegated contract authority, consistent with each memorandum of understanding between the Coast Guard and the Environmental Protection Agency regarding CERCLA funding mechanisms, for the purpose of carrying out response actions pursuant to CERCLA sections 104(a), 104(b), 104(f), 104(g), 105(f), and 122.

(d) Each district commander is delegated authority as follows:

(1) Authority, pursuant to CERCLA section 106(a), to determine an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, and to secure such relief as may be necessary to abate such danger or threat through the United States attorney of the district in which the threat occurs.

(2) Authority, pursuant to CERCLA section 109, relating to violations of sections 103 (a) and (b) pertaining to notification requirements, and section 122 pertaining to administrative orders and consent decrees.

(e) Subject to the provisions of Executive Order 12580, 49 CFR 1.46 (ff) and (gg), and paragraph (g) of this section, each Coast Guard official, predesignated as an On-Scene Coordinator, is delegated authority as follows:

(1) Authority, pursuant to CERCLA sections 104(a), 104(b), 104(c) and consistent with the National Contingency Plan, to remove or arrange for the removal of releases and threatened releases of hazardous substances, and of pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare.

(2) Authority, pursuant to CERCLA section 104(i)(11), to take such steps as may be necessary to reduce exposure that presents a significant risk to human health, and to eliminate or substantially mitigate that significant risk to human health.

(3) Authority, pursuant to CERCLA section 106(a), to issue orders to protect the public health and welfare and the environment whenever that official determines that a release or threatened release of a hazardous substance from a facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

(4) Authority, pursuant to CERCLA section 104(e), except section 104(e)(7)(C), to enter establishments or other places where hazardous substances are or have been generated, stored, treated, disposed of, or transported from to inspect and obtain records, reports, samples and information in support of the response functions delegated in paragraphs (d), (e)(1), (e)(2), and (e)(3) of this section.

(5) Authority, pursuant to CERCLA section 122, to enter into an agreement with any person (including the owner or operator of the vessel or facility from which a release or substantial threat of release emanates, or any other potential responsible person), to perform any response action, provided that such action will be done properly by such person.

(f) Except for the authority granted in paragraphs (d)(1) and (e)(1) of this section, each Coast Guard official to whom authority is granted in this section may redelegate and authorize successive redelegations of that authority. The authority granted in paragraph (e)(3) of this section may only be redelegated to commissioned officers.

(g) The response authority described in paragraph (e)(1) of this section does not include authority to—

(1) Summarily remove or destroy a vessel; or

(2) Take any other action that constitutes intervention under CERCLA, the Intervention on the High Seas Act (33 U.S.C. 1471 *et. seq.*), or other applicable laws. "Intervention" means any detrimental action taken against the interest of a vessel or its cargo without the consent of the vessel's owner or operator.

Dated: August 2, 1988.

**P.A. Yost,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 88-18223 Filed 8-10-88; 8:45 am]

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**33 CFR Part 117**

**[CGD7-88-06]**

## Drawbridge Operation Regulations; Great Canal, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the Tortoise Island Homeowners Association, the Coast Guard is changing the regulations governing the Tortoise Island drawbridge by requiring that advance notice of opening be given during certain periods. This change is being made because of a lack of requests to open the bridge at night. This action will relieve the bridgeowner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, at (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** On May 6, 1988, the Coast Guard published proposed rule (53 FR 16292) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated May 20, 1988. In each notice, interested persons were given until June 20, 1988 to submit comments.

### Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

### Discussion of Comments

Seven comments were received. Four supported the proposal with one suggestion that a radio be installed on the bridge for easier communication. The bridge operator and the Tortoise Island Gatehouse are both equipped with radio telephones monitoring channels 13 and 16. Other supporters suggested that this bridge should have the same operating hours as the downstream Mathers Bridge across the Banana River at Indian Harbor Beach. The operating hours will be the same, with full time bridge tender service available on Friday and Saturday evenings and evenings preceding federal holidays. Three objections were received citing the possible adverse impact on waterway users. The Coast Guard has carefully considered these comments. Since the bridge opened only 12 times at night during a recent 9 month study, these objections are not considered valid. The final rule is, therefore, unchanged from the proposed rule published on May 6, 1988, except for minor editorial revisions needed to clarify the exact hours during which advance notice is required.

### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the waterway is infrequently used at night. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1.The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.285 is added to read as follows:

**§ 117.285 Great Canal.**

The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 15 minutes notice is given.

Dated: July 29, 1988.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 88–18222 Filed 8–10–88; 8:45 am]

BILLING CODE 4910–14–M

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## 33 CFR Part 165

**[COTP Hampton Roads, Regulation 88–41]**

## Safety Zone Regulation; Chesapeake Bay, off Fort Story, Virginia Beach, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard Marine Safety Office, Hampton Roads, VA is establishing a safety zone around a U.S. Navy offshore-onshore exercise in the area of the Chesapeake Bay off Fort Story in Virgina Beach, VA. The exercise is scheduled to begin August 14, 1988 and end August 30, 1988. The safety zone is needed to minimize the risk of collison between Naval exercise transfer hoses/vessels/equipment and other vessels. The area of this exercise is not in a main channel and not travelled by deep draft marine traffic. Consequently, the economic impact of this proposal should be minimal.

**EFFECTIVE DATE:** This regulation is effective from 7:00 a.m., e.d.s.t., August 14, 1988 to 7:00 p.m., e.d.s.t., August 30, 1988, unless sooner terminated by the Captain of the Port, Hampton Roads, VA.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M.W. Carr, Port Operations Department, Coast Guard Marine Safety Office, Hampton Roads, 200 Granby Street, Norfolk, VA 23510–1888 at (804) 441–3284.

**SUPPLEMENTARY INFORMATION:** On August 1, 1988 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 28890). Interested persons were requested to submit comments. No comments were received, therefore these regulations are being published without change.

### Drafting Information

The drafters of these regulations are Lieutenant M. W. Carr, project officer, and Captain Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

### Discussion of Comments

No comments were submitted. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The economic impact should be minimal because the exercise area will not be in a main channel or in an area ordinarily travelled by deep draft traffic. In addition, the safety zone will be in a Naval restricted area regulated under 33 CFR 207.158 and vessels are prohibited from anchoring, trawling, crabbing, fishing, and dragging in this area. It is expected that recreational boaters and commercial fisherman in transit to or from the Atlantic Ocean will be the only persons affected by this safety zone and they will have to make only a small detour around the exercise area during the period the safety zone is in effect.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

### Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.T0540 is added to read as follows:

**§ 165.T0540 Safety Zone: Chesapeake Bay, off Fort Story, Virginia Beach, VA**

(a) *Location:* The following areas are a safety zone: The waters within 250 yards of any offshore-onshore transfer hoses used or to be used during a seawater transfer exercise between the USNS OSPREY and the adjacent shoreline at Fort Story, Virginia Beach, VA; the USNS OSPREY; and any other vessels, buoys, moorings, and equipment associated with the deployment, retrieval, or marking of the offshore-onshore transfer hoses. (The USNS OSPREY is anchored at a position at approximately latitude 36°56.7' North, longitude 076°01.8' West.)

(b) *Regulations:* Except for participants in the joint Navy/Army multi-ship amphibious exercise, no person or vessel may enter or remain in the safety zone without the permission of the Captain of the Port or one of his designated representatives.

(c) *Effective dates:* This regulation is effective during periods when the offshore-onshore transfer hoses are being deployed and retrieved by the USNS OSPREY, between 7:00 a.m., e.d.s.t., on August 14, 1988, until 7:00 p.m., e.d.s.t., on August 30, 1988. The actual times that the safety zone will be in effect will be announced by marine broadcast Notice to Mariners.

Dated: August 8, 1988.

**E.K. Johnson,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 88–18224 Filed 8–10–88; 8:45 am]

BILLING CODE 4910–14–M

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## VETERANS ADMINISTRATION

## 38 CFR Part 4

## Evaluations of Diplopia (Double Vision)

**AGENCY:** Veterans Administration.

**ACTION:** Final rule.

**SUMMARY:** The Veterans Administration (VA) has amended its Schedule for Rating Disabilities to provide a new method for evaluating the degree of disability caused by diplopia (double vision). The amendment is necessary for compatibility between evaluation methods and new testing techniques. The effect of the amendment will be to provide VA adjudication personnel with an appropriate method for evaluating the results of the new testing techniques.

**EFFECTIVE DATE:** This change is effective September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810

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Vermont Avenue, NW., Washington, DC 20420 (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** On pages 32318–21 of the **Federal Register** of August 27, 1987, the VA published proposed regulatory amendments on the evaluation of diplopia. Interested persons were invited to submit comments, suggestions or objections by September 28, 1987. It was also necessary to publish a correction to the original proposal which appeared on page 35610 of the **Federal Register** of September 22, 1987.

Comments were received from the American Optometric Association, Indiana University School of Optometry and the Veterans of Foreign Wars of the United States. The comments were generally favorable although a few suggestions were made.

One commenter suggested that the VA closely follow the impact of these changes on disability ratings to ensure that veterans were neither overrated nor underrated based solely on these changes. Although the VA does not plan to reevaluate all veterans rated for diplopia, we do intend to periodically check for trends in evaluation levels which may indicate the need for further adjustment of the schedule.

Another commenter did not agree with our rating of diplopia in various gazes in accordance with equivalent visual acuities and, in any event, suggested equivalent decimal units instead of fractions. When rating disability due to diplopia, contraction of visual field or visual acuity, the VA uses figures for visual acuity as a common reference point for establishing the level of visual impairment. This system of equivalent visual acuity is well-understood by our rating specialists and we do not believe that changing to an alternate method is necessary or appropriate.

The third commenter objected to the proposed evaluation method as conforming to that recommended by the American Medical Association which was more restrictive (conservative) than the former rating schedule. The commenter proposed an alternative evaluation method which essentially increased all of the VA's proposed evaluations without offering any evidence to support the changes. We cannot agree with the suggested alternative evaluations in the absence of such supporting evidence although we would be happy to review any such material to see if additional refinement should be proposed in the future.

The same commenter suggested that a minimum rating of 30 percent be assigned when an eye patch is medically indicated to correct diplopia since it was equivalent to loss of use of an eye. The commenter also applauded the assignment of an equivalent visual acuity of 5/200 for diplopia in the downward gaze from 21 to 30 degrees but noted that the Goldmann Perimeter Chart was wrong.

As a matter of fact, it was the Goldmann Perimeter Chart that was correct and the table of equivalent visual acuities that was wrong. This was corrected on September 22, 1987, as noted above, when the equivalent visual acuity was corrected to read 15/200.

The wearing of an eye patch is an artificial and temporary means for improving a visual problem. As such it cannot be the basis for assigning a permanent increase in evaluation. It is a rule of long-standing in the VA rating schedule (38 CFR 4.77) that diplopia which is only occasional or correctable is not considered a disability.

These amendments are adopted as proposed. We appreciate the interest expressed by each commenter.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulations, the VA has determined that this amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.

**List of Subjects in 38 CFR Part 4**

Handicapped, Pensions, Veterans.

Approved: July 21, 1988.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 4, *Schedule for Rating Disabilities,* is amended as follows

**PART 4—[AMENDED]**

1. The authority citation of Part 4 continues to read:

**Authority:** 72 Stat. 1125; 38 U.S.C. 355.

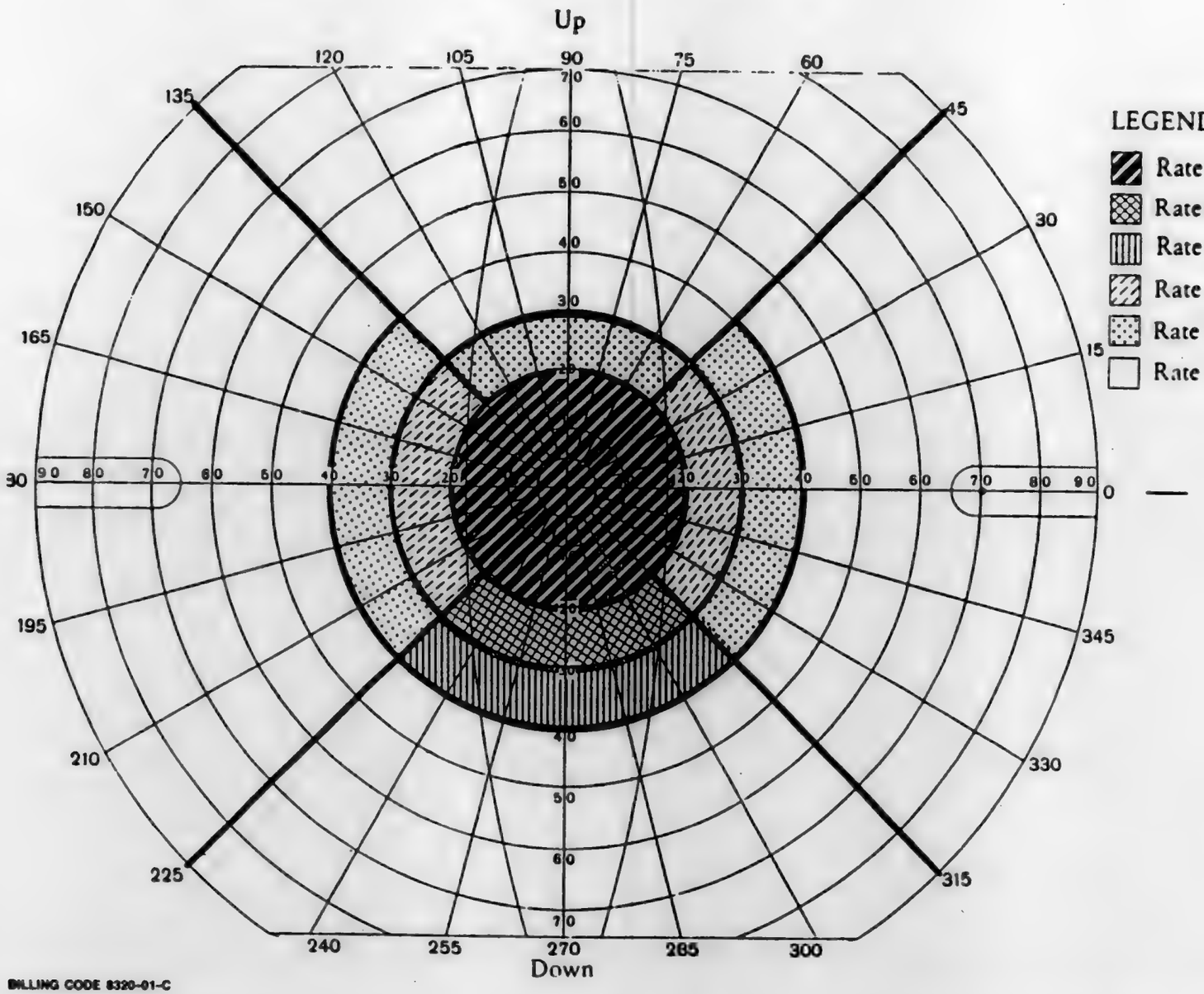
2. Section 4.77 is revised to read as follows:

**§ 4.77 Examination of muscle function.**

The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann Perimeter Chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20 ° or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does not exist within 40 ° in the lateral or downward quadrants, or within 30 ° in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

BILLING CODE 8320-01-M

## Figure 2
## (Goldmann Perimeter Chart)




BILLING CODE 8320-01-C

3. In § 4.84a, the chart entitled "Ratings for Impairment of Muscle Function" is revised to read as follows:

6090 Diplopia (double vision).

| Degree of Diplopia | Equivalent visual acuity |
|---|---|
| (a) Central 20 ° | 5/200 |
| (b) 21 ° to 30 ° | |
| (1) Down | 15/200 |
| (2) Lateral | 20/100 |
| (3) Up | 20/70 |
| (c) 31 ° to 40 ° | |
| (1) Down | 20/200 |
| (2) Lateral | 20/70 |
| (3) Up | 20/40 |

Notes.—(1) Correct diagnosis reflecting disease or injury should be cited.

(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.

(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.

(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

[FR Doc. 88-18013 Filed 8-10-88; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6686

[ID-943-08-4220-10; I-23990]

### Withdrawal of Public Land for Crooked River Fish Hatchery; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws 12.28 acres of National Forest System Land from surface entry and mining for a period of 50 years for the Corps of Engineers to protect the proposed Crooked River Fish Hatchery. The lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described National Forest system lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch.2), but not from leasing under the mineral leasing laws to protect the Corps of Engineers Crooked River Fish Hatchery;

**Boise Meridian—Nezperce National Forest**

*Parcel 1—Adult Facility*

A parcel of land lying in unsurveyed Section 25, Township 29 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, being more particularly described as follows:

Commencing at the northwest corner of Section 30, Township 29 North, Range 8 East of the Boise Meridian; thence South 0°16'39" West, a distance of 2,879.37 feet to the POINT OF BEGINNING: thence South 3°14'35" East, a distance of 370.26 feet; thence WEST, a distance of 215 feet; thence SOUTH, a distance of 460 feet; thence North 67°14'57" West, a distance of 168.06 feet; thence North 51°50'34" West, a distance of 69.02 feet; thence North 9°27'44" West, a distance of 91.24 feet; thence North 30°15'23" East, a distance of 138.92 feet; thence North 52°25'53" East, a distance of 82.01 feet; thence North 3°34'35" West, a distance of 80.16 feet; thence North 23° 44'58" West, a distance of 136.56 feet; thence North 4°45'49" West, a distance of 120.42 feet; thence North 71°20'08" East, a distance of 389.54 feet to the point of beginning.

The parcel of land above described contains 4.34 acres, more or less.

*Parcel 2—Freezer Site*

A parcel of land located on the left (west) bank of the Crooked River, westerly of County Road No. 121, in the projected northeast quarter of unsurveyed Section 36, Township 28 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Commencing at a U.S. Army Corps of Engineers Survey Monument marked "85-95-1," the local grid coordinates of said monument being y, North 13,096.82 feet and x, East 12,311.12 feet; thence South 89°34'04" West, a distance of 189.13 feet to the POINT OF BEGINNING; thence EAST, a distance of 80 feet; thence SOUTH, a distance of 50 feet; thence WEST, a distance of 80 feet; thence NORTH, a distance of 50 feet to the point of beginning.

There is *Excepted* therefrom all that part of the above described parcel 2 lying within the right-of-way of said County Road No. 121.

The parcel of land above described contains 0.09 of an acre, more or less.

*Parcel 3—Acclimation Facility*

A parcel of land located on the left (west) bank of the Crooked River, easterly of Forest Road No. 233 (County Road No. 121), north of the Orogrande Landing Strip, in the projected northwest quarter of unsurveyed Section 30, Township 28 North, Range 8 east of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Beginning at a point, which is located on north (downstream) end of the Orogrande Landing Strip. Said point is a U.S. Army Corps of Engineers monument marked "86-26-3," the local grid coordinates of said monument being Y, North 16,131.327 feet X, East 14,137.709 feet; thence south 61°31'33" East, a distance of 139.12 feet to a point lying on the thread of the stream on the Crooked River; thence North 1°19'56" East, a distance of 86.02 feet to a point lying on the thread of the stream of said river; thence North 24°26'38" East, a distance of 24.17 feet to a point lying on the thread of the stream of said river; thence North 44°01'04" East, a distance of 495.05 feet to a point lying on the thread of the stream of said river; thence North 22°46'57" East, a distance of 54.23 feet to a point lying on the thread of the stream of said river; thence North 0°47'45" West, a distance of 72.01 feet to a point lying on the thread of the stream of said river; thence North 16°27'36" West, a distance of 91.76 feet to a point lying on the thread of the stream of said river; thence North 3°54'02" East, a distance of 44.10 feet to a point lying on the thread of the stream of said river; thence North 7°55'58" East, a distance of 123.18 feet to a point lying on the thread of the stream of said river; thence South 90°00'00" West, a distance of 455.00 feet to a point lying on the Easterly edge of Forest Road No. 233 (County Road No. 122); thence South 35°40'07" West, a distance of 152.63 feet to a point lying on the Easterly edge of said road; thence South 20°22'35" West, a distance of 37.34 feet to a point lying on the Easterly edge of said road; thence South 1°35'28" West, a distance of 36.01 feet to a point lying on the Easterly edge of said road; thence South 11°40'25" East, a distance of 123.56 feet to a point lying on the Easterly edge of said road; thence South 8°07'48" East, a distance of 77.78 feet to a point lying on the Easterly edge of said road; thence South 2°07'16" West, a distance of 81.06 feet to a point lying on the Easterly edge of said road; thence South 4°14'11" West, a distance of 54.15 feet to a point lying on the Easterly edge of said road; thence South 17°02'16" West, a distance of 64.85 feet to a point lying on the Easterly edge of said road; thence South 30°06'49" West, a distance of 57.80 feet to a point lying on the Easterly edge of said road; thence South 40°21'52" West, a distance of 26.25 feet to a point lying on the Easterly edge of said road; thence South 24°28'11" West, a distance of 51.56 feet to a point lying on the Easterly edge of said road; thence South 61°31'33" East, a distance of 140.00 feet to the point of beginning.

There is *Excepted* therefrom all that part of the above described Parcel 3 lying within the right-of-way of said Forest Road No. 233 (County Road No. 122).

The parcel of land above described contains 7.85 acres, more or less.

The three areas described aggregate 12.28 acres in Idaho County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

August 1, 1988.

**J. Steven Griles,**

*Assistant Secretary of the Interior.*

[FR Doc. 88-18161 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GG-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 7

**[OST Docket No. 43466, Part 7—Reissuance]**

**RIN 2105-AA05**

## Public Availability of Information; Freedom of Information Act Regulations

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice revises and reissues the Department of Transportation's regulations in 49 CFR Part 7 implementing the Freedom of Information Act (FOIA—5 U.S.C 552). This is a complete revision of the regulations and includes changes necessary to implement the Freedom of Information Reform Act of 1986, the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, and, to some extent, changes necessary to meet requirements of Executive Order 12600, which imposes new requirements on government agencies with respect to the processing of requests under the FOIA for confidential business information. Revisions and additions to the regulations also take into account organizational changes since the last revision in 1975.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rebecca H. Lima, Chief, Freedom of Information Act Division, Office of the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, 202-366-4542.

**SUPPLEMENTARY INFORMATION:** No major revision of the Department of Transportation's regulations implementing the FOIA has been made since they were promulgated in 1975 (40 FR 7915, February 24, 1975). In the interim, a need has developed for more precise criteria to be used in processing FOIA requests and FOIA appeals; for codification of procedures used informally by the Department for notifying a submitter of confidential commercial or financial records of a request for these documents; and for additional appendices detailing procedures used by the Maritime Administration and the Research and Special Programs Administration, respectively, for the disclosure of information to the public. In addition, when the FOIA was amended by The Freedom of Information Reform Act of 1986 (Pub. L. 99-570, sections 1801-1804), substantial further revisions to parts of the regulations dealing with fees and fee waivers became necessary. Finally, the issuance of Executive Order 12600 (52 FR 23781, June 25, 1987), made it necessary for the Department to modify its proposed regulations pertaining to the processing of requests for confidential commercial information. Proposed regulations to respond to many of the needs for change were published in the **Federal Register** on October 17, 1985 (50 FR 42049). Additional proposed regulations were published in the **Federal Register** on November 6, 1987 (52 FR 42688). The final regulations have been changed in response to comments received concerning the two notices of proposed rulemaking.

Regarding appeals, the Department is reducing from 60 to 30 days the period in which an appeal must be submitted. When a denial is issued, the subject records are retained by the responsible FOIA officer until the appeal period expires, longer if there is an appeal, and much longer still if the appeal is denied. This retention is costly; as the number of FOIA requests has increased, the cost has become too burdensome. In our experience, it is not unreasonable to expect a requester to submit an appeal within 30 days.

### Discussion of Comments

The Department received three sets of public comments in response to the notice of proposed rulemaking published on October 17, 1985 (first NPRM), and two sets of public comments in response to the supplemental notice of proposed rulemaking published on November 6, 1987 (second NPRM).

In response to the first NPRM, the Freedom of Information Clearinghouse (FOIC) objected on the general grounds that the proposed changes were unnecessary and had not been adequately justified. The Department disagrees. It is the Department's view that the preamble to the first NPRM included an adequate explanation and justification for the changes then proposed. In any event, in light of the enactment of The Freedom of Information Reform Act of 1986 and the issuance of Executive Order 12600, it is clear now that substantial changes in the Department's FOIA regulations are essential.

In specific comments concerning the first NPRM, FOIC objected to the proposed procedures for processing requests for business information, proposed § 7.57, for three reasons. First, FOIC said it is unclear when the notice and objection procedures apply. The Department agrees that some clarification is needed and has revised the first sentence of proposed § 7.57(a) to make it clear when the procedures apply. The wording of the final regulation also more closely conforms to that of Executive Order 12600.

The second objection by FOIC to proposed § 7.57 is that the procedures unnecessarily burden requesters by delaying the agency response. To meet this concern, FOIC recommends that the regulations of the National Highway Traffic Safety Administration (NHTSA), 49 CFR Part 512, be adopted for use throughout the Department. Under these regulations, a submitter must identify confidential information and justify confidentiality claims at the time the information is submitted to NHTSA. The Department does not anticipate that any significant delays will result from the codification of the business notification procedures. Procedures similar to those in proposed § 7.57 of the regulations have been used informally by the Department for some time. Also, while the NHTSA regulation has worked well, we are not prepared to adopt it for use by the entire Department. A significant portion of the business information submitted to NHTSA is from regulated parties such as automobile and tire manufacturers, and repeated dealings between NHTSA and members of regulated industries have demonstrated the value of pre-marking information and providing accompanying justifications in aid of evaluation of confidentiality claims. On the other hand, it is not clear that this approach would work as well throughout the Department. Since a significant amount of business information submitted to the

Department never is the subject of an FOIA request, the imposition of a general requirement that submitters assert and justify a claim for confidential treatment concurrent with the submission of business information could produce an unjustified and costly burden on many members of the public and on the Department. The Department will, however, continue to evaluate this FOIC recommendation as further changes to § 7.57 are considered pursuant to Executive Order 12600.

Finally, FOIC points out that the proposed business information procedures of § 7.57 do not provide requesters the same notice of agency decisions that they provide submitters. In response to Executive Order 12600, the Department has changed the proposed regulation to provide notice similar to that recommended by FOIC. The regulation does not, however, require that the requester be provided the same information that the submitter receives. Such a procedure would defeat the purpose of the business notification procedure in many cases by providing the requester with confidential commercial information before the submitter has had any opportunity to object.

Specific objections to proposed provisions pertaining to fees and fee waivers published in the first NPRM were also submitted by FOIC. These objections have been overtaken by events and are now moot. The second NPRM, published in response to the Freedom of Information Reform Act of 1986 and guidelines provided to agencies by the Office of Management and Budget (OMB) and the Department of Justice, significantly changed the proposed fee payment and fee waiver provisions to which FOIC objected.

In its comments submitted in response to the first NPRM, the Center for Auto Safety (CAS) said the proposed changes would blunt the acquisition of important consumer information from the Department and its operating elements by dramatically lowering the free-of-charge threshold, by increasing the per page copy charge by 400% and by establishing a 26% surcharge for fringe benefits. As noted above, comments concerning proposed changes in fees and fee waivers as published in the first NPRM have been overtaken by events. Under the revised regulations, consumers generally will have much greater access to information without having to pay a fee. The standard fee for photocopying has been revised downward from the earlier proposal of 20 cents per page to 10 cents per page (a charge consistent with the figures submitted by CAS in its comments on the first NPRM), and the proposed surcharge for benefits has been lowered to 16% in accordance with uniform guidelines provided to agencies by OMB.

CAS also expressed concern that five changes proposed in the first NPRM were subtle attempts by the Department to make it more difficult for the public to gain access to information. Specifically, CAS noted that: (1) Proposed §§ 7.21 and 7.23 would delete the requirement for immediate notice to a requester of initial and final determinations; (2) proposed § 7.25 would change "date on which a determination is expected to be dispatched" to "date on which a determination is expected to be made"; (3) proposed § 7.53(d) would impose a positive duty on the requester to provide a detailed description of a requested record, whereas the current regulation uses the word "should" in this regard; (4) the proposed elimination of the provision for an administrative appeal where a requested record has not been made available would eliminate an important intra-agency check against dilatory personnel practices; and (5) the reference in proposed § 7.13 to information that the agency "wants to withhold" suggests a departure from the longstanding policy expressed in § 7.3 favoring maximum disclosure.

In proposing the changes to which CAS objected, the Department did not intend to make it more difficult for members of the public to obtain access to information, nor does the Department agree that the proposed changes would cause that effect. There is no necessity that the regulations include a requirement for immediate notice to a requester concerning an initial determination, since such notice is specifically required by the FOIA. Also, while not specifically required by the FOIA, such notice clearly is intended with respect to a final determination as well. Nevertheless, the final regulations will make it clear that immediate notice to a requester is required with respect to both an initial and final determination. The Department agrees that the regulation should require that the requester be notified of the "date on which a determination is expected to be dispatched" rather than the "date on which a determination is expected to be made." As CAS correctly observed, "dispatched" is used in the statute. The Department also agrees that the wording of proposed § 7.13, and proposed § 7.53(d) and § 7.81(c) could cause confusion. Accordingly, these provisions have been changed in the final regulations to meet the concerns expressed by CAS.

CAS also stated that the proposed regulation may unlawfully alter and undercut the NHTSA regulation in 49 CFR Part 512, since it does not make it clear that 49 CFR Part 512 is the exclusive procedure for use in relation to information submitted to NHTSA. Proposed § 7.57 has been changed to clarify this.

An individual who submitted comments on the first NPRM generally supported the proposed changes as a vast improvement over the existing regulations. He recommended, however, that proposed § 7.53(a) be modified to eliminate the positive obligation to mark an envelope to show that it contains an FOIA request, that proposed § 7.95(a) be revised to take into account the differences between military pay and civilian pay and fringe benefits and that the wording of the fee schedule be clarified relative to charges for certified copies of documents. The Department agrees with the recommendation concerning proposed § 7.53(a). Accordingly, "must" in proposed § 7.53(a)(2), (3), and (4) has been replaced with "should" in the final regulations. For similar reasons, "shall" in proposed § 7.53(d) has in two places been changed to "should", and "must" in proposed § 7.81(e) (redesignated § 7.81(d) in the final regulations) has in two places been changed to "should." The final regulations have also been changed to take into account the differences between military pay and civilian pay and benefits. The Department does not agree that clarification is necessary with respect to fees charged for certified copies. This provision, as proposed, has been applied by the Department without difficulty for many years.

Comments on the second NPRM were submitted by The Reporters Committee for Freedom of the Press (RCFP) and jointly by Public Citizen Litigation Group (PCLG) and Freedom of Information Clearinghouse (FOIC). In general, RCFP urged the Department to reexamine and change its proposals concerning fee waiver and advance payment and to change its proposed business notification procedures to allow compliance with the time limitations of the FOIA.

Specifically, RCFP recommended that the Department merely reiterate the language of the statute concerning waiver of fees, and not include in its regulations the fee waiver guidelines developed by the Department of Justice. RCFP also states that the proposed procedures for waiver of fees would

violate the Paperwork Reduction Act by requiring requesters to write separate proofs of entitlement to fee waiver or reduction. Further, according to RCFP, the proposed fee waiver provisions do not consider the legitimacy of the public's interest in monitoring the Department's activities as a criterion for granting a public interest fee waiver; appearing instead to consider quantity of interest, magnitude of dissemination, and a host of other irrelevant criteria. The Department disagrees. Although the statutory standard for fee waivers is included in the final regulations, the Department also believes that the guidelines developed by the Department of Justice will be helpful when applying the general language of the statute to specific circumstances. For that reason, the guidelines are included in the final regulations.

The Department does not agree that its proposed procedures are in conflict with the Paperwork Reduction Act. Since that statute relates to information collection methods calling for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, it is inapplicable to the procedures prescribed in the Department's FOIA regulations. The Department also disagrees that its proposed fee waiver provisions fail to consider the legitimacy of the public's interest in monitoring its activities. The Department's proposed regulations reiterate the statute as the basic criterion for fee waivers or reductions. Additional factors also are stated that can be of assistance in applying the statute. Consideration of other factors is not precluded by the regulations.

RCFP states that the proposed provisions for advance payment of fees will interfere with prompt provision of information to media requesters, because media requesters who had not established a record of timely payment before adoption of these regulations would need to await the assessment and mailing of a bill, return payment and await still other bureaucratic processes for recording payment and certifying release. RCFP also notes that there is no showing the requesters, particularly media requesters, have in the past failed to pay the Department fees. The basis for this comment by RCFP is not clear. Under the proposed regulations, media requesters rarely will be liable for any fees because of statutory fee limitations. Moreover, they frequently will be entitled to a waiver or reduction of any fees for which they could otherwise be liable. Advance payment, i.e., payment before work is commenced or continued on a request, may be required under the Department's proposed regulations only if allowable charges are likely to exceed $250 or the requester has failed promptly to pay fees for a prior FOIA request. These are both circumstances under which the FOIA clearly authorizes agencies to require advance payment of fees. It may be that the RCFP comment is in reference to the provisions in the proposed regulations that permit the collection of fees before the requested records are duplicated or delivered. If so, the Department does not agree that these are requirements for advance payment of fees as that term is used in the FOIA. The Department informally adopted internal procedures some time ago whereby a bill for any fees due is included in the initial determination letter and copies of requested records are either enclosed with the determination letter or dispatched immediately upon receipt of payment. This procedure has worked extremely well, and has significantly reduced the need for repeat billings and collection activities. The Department does not anticipate that the inclusion of this procedure in the final regulations will unnecessarily delay the delivery of documents to requesters.

RCFP urged the Department to modify its proposed regulations for notifying submitters of confidential commercial information to make it clear that the procedures do not obviate the agency's obligation to respond to the requester within 10 working days. The Department believes that proposed § 7.57 as published in the first NPRM was clear with respect to this issue. Nevertheless, proposed § 7.57 has been changed to conform to the language of Executive Order 12600.

In joint comments, PCLG and FOIC said agencies must engage in full notice and comment rulemaking with respect to fees and fee waiver provisions, should not adopt all of the fee guidelines developed by OMB and should reject the guidelines concerning fees waivers developed by the Department of Justice. The Department believes that the notice and opportunity for comment that has been provided with respect to fees and fee waivers is adequate. Although the Department's proposed regulations did not specifically include some of the guidance concerning fees that was developed by OMB, such as the definitions of "commercial use request", "educational institution" and "representative of the news media" which PCLG and FOIC urged the Department to reject, the public is hereby given notice that the Department will consider relevant OMB guidance, including definitions, when necessary to determine the fees applicable to an FOIA request. The Department does not agree with PCLG and FOIC that in authorizing two hours of free search time Congress must have intended that agencies provide a requester with two hours of free computer operation time when requested information is maintained in an automated data system. It is the Department's view that the definition developed by OMB for use in computing fees for computer search time is reasonable and is consistent with the intent of the Congress. Accordingly, the Department has included that definition in its final regulations. The Department also disagrees that the fee waiver guidelines developed by the Department of Justice should be rejected in favor of those recommended by PCLG and FOIC. As indicated elsewhere in the discussion of comments, the Department will rely upon the statute as the primary guide when deciding whether a waiver or reduction of fees is required or appropriate. However, the guidelines developed by the Department of Justice have been included in the final regulation because the Department believes they will help when applying the statute. Consideration of other factors such as those recommended by PCLG and FOIC is not, however, precluded by the Department's final regulations.

In specific comments, PCLG and FOIC objected to the statement in proposed § 7.97(e) that a waiver or reduction of the fees that would otherwise be applicable to a particular request is a discretionary determination on the part of the official(s) having initial denial authority. They state that fee waivers or reductions are mandatory when the statutory standard is met. The Department agrees that the statute imposes a positive obligation to waive or reduce fees when the statutory standard is met, and that the sentence to which PCLG and FOIC objected could be misinterpreted. The Department also finds upon further review that the sentence objected to is not necessary. Accordingly, it has been deleted from the final regulations.

PCLG and FOIC also said that the provisions for advance payment of fees in proposed § 7.93(e) allow the agency to require advance payments where there is no history of payment for a particular requester, which goes beyond what the statute permits. The Department disagrees. The FOIA permits agencies to require advance payment of fees if: (1) The requester has previously failed to pay fees in a timely fashion, or (2) the

agency has determined that the fee will exceed $250. Proposed § 7.93(e) applies to the second situation only. Under those circumstances, the FOIA authorizes the Department to require all requesters to pay fees in advance. However, the Department has decided not to adopt such a policy because it would unnecessarily delay the release of records to requesters who have a history of prompt payment of FOIA fees. Under proposed § 7.93(e), advance payment may be required only if the Department has determined that the fees will exceed $250 and the requester has no history of payment. This is clearly permissible under the FOIA.

PCLG and FOIC also objected to the Department's proposal to impose search charges even when no documents are found or released. They state that this will intimidate requesters from making legitimate requests, and that Congress never intended or anticipated that fees would be charged where no documents were found or released. The Department disagrees. Specific fee limitations in the FOIA reduce the likelihood that requesters will be intimidated when considering submission of legitimate requests. Also, the Department's regulations are designed to ensure that a requester is informed in advance of anticipated fees and given an opportunity to discuss the request with knowledgeable persons who may be able to help avoid a needless search or a search that is too broad. The FOIA specifically authorizes agencies to charge search fees and, in limited circumstances, review charges. Congress undoubtedly was aware that some agency searches will disclose no responsive records, and that even if responsive records are found they may be withheld if exempt. Therefore, it is the Department's view that if Congress had intended to permit agencies to charge only for successful searches that result in the release of documents this limitation would have been clearly set out in the statute, as were several other fee limitations. Accordingly, the proposed provisions concerning search fees have not been changed in the final regulations.

In addition to the changes discussed above, the final regulations have been changed to correct minor errors in citations and office addresses and to bring the language of the regulations into conformity with that of statutes revised while the rulemaking project was pending. Minor editorial changes also were made.

### Regulatory Evaluation

The Department has determined that this rule is not a major rule under Executive Order 12291 because it would have an economic impact of less than $10 million. However, this rule is significant under the Department's Regulatory Policies and Procedures [44 FR 11034, February 26, 1979] since it concerns a matter in which there is a substantial public interest or controversy. The Department has also determined that the expected economic impact of the rule is so minimal that a full regulatory evaluation is unwarranted. For this reason, I certify that, under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This Department has no reason to believe that small entities, in particular, would be seriously affected by this rule.

### List of Subjects in 49 CFR Part 7

Freedom of information, Administrative practice and procedure, Records.

Issued in Washington, DC, on August 1, 1988.

**Jim Burnley,**

*Secretary of Transportation.*

In consideration of the foregoing, 49 CFR Part 7 is revised to read as follows:

## PART 7—PUBLIC AVAILABILITY OF INFORMATION

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7.1 Applicability.
7.3 Policy.
7.5 Definitions.

### Subpart B—General

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7.13 Records containing both available and unavailable information.
7.15 Protection of records.

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### Subpart D—Publication in the Federal Register

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### Subpart E—Availability of Opinions, Orders, Staff Manuals, Statements of Policy and Interpretations; Indices

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7.93 Payment of fees.
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Appendix A—Office of The Secretary
Appendix B—United States Coast Guard
Appendix C—Federal Aviation Administration
Appendix D—Federal Highway Administration
Appendix E—Federal Railroad Administration
Appendix F—National Highway Traffic Safety Administration
Appendix G—Urban Mass Transportation Administration
Appendix H—Saint Lawrence Seaway Development Corporation
Appendix I—Maritime Administration
Appendix J—Research and Special Programs Administration

**Authority:** 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322.

### Subpart A—Applicability and Policy

#### § 7.1 Applicability.

(a) This part implements section 552 of Title 5, United States Code, and prescribes rules governing the availability to the public of records of the Department of Transportation.

(b) Subpart G of this part describes the records that are not required to be disclosed under this part.

(c) Appendices A through J of this part:

(1) Describe the places and the times at which records will be available for inspection and copying;

(2) Define the kinds of records located at each facility;

(3) Identify the location of the indices to such records; and

(4) Identify the officials having authority to deny requests for disclosure of records under this part.

(d) The Assistant Secretary for Public Affairs may amend Appendix A to this part to reflect any changes in the items covered by that appendix. The head of an operating element concerned may amend the appendix applicable to that element to reflect any changes in the items covered by that appendix.

(e) This part applies only to records that exist as of the date of receipt of the request by the appropriate office, in accordance with section 7.53. The Department is not required to create, compile or procure a record solely for the purpose of making it available under this part.

(f) Indices are maintained to reflect all records subject to Subpart E of this part, and are available for public inspection and copying as provided in Appendices A through J to this part.

### § 7.3 Policy.

In implementing section 552 of Title 5, United States Code, it is the policy of the Department of Transportation to make information available to the public to the greatest extent possible in keeping with the spirit of that section. Therefore, all records of the Department, except those that the Department specifically determines must not be disclosed in the interest of national defense or foreign policy, for the protection of private rights and commercial interests or for the efficient conduct of public business to the extent permitted by the Freedom of Information Act, are declared to be available for public inspection and copying as provided in this part. Each officer and employee of the Department is directed to cooperate to this end and to make records available to the public promptly and to the fullest extent consistent with this policy. A record may not be withheld from the public solely because its release might suggest administrative error or embarrass an officer or employee of the Department.

### § 7.5 Definitions.

As used herein, unless the context requires otherwise:

"Administrator" means the head of each operating element of the Department and includes the Commandant of the Coast Guard.

"Department" or "DOT" means the Department of Transportation, including the Office of the Secretary and the following operating elements:

(a) The United States Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The National Highway Traffic Safety Administration.

(f) The Urban Mass Transportation Administration.

(g) The Saint Lawrence Seaway Development Corporation.

(h) The Maritime Administration.

(i) The Research and Special Programs Administration.

"Record" includes any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer. However, the term does not include uncirculated personal notes, papers and other documents created and retained solely for the personal convenience of Departmental personnel and over which the agency exercises no control. If a request is made for a personal record of a DOT official or employee, that request is denied, since it is not within the Department's authority to disclose such records and the Freedom of Information Act does not apply to them. However, until the requester's appeal and litigation rights expire, DOT retains a copy of such records for the benefit of any reviewing court. This retention does not constitute control as that term is used here.

"Secretary" means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

## Subpart B—General

### § 7.11 Administration of part.

Except as provided in Subpart H of this part, authority to administer this part in connection with the records of the Office of the Secretary (including the Office of the Inspector General) and to issue determinations with respect to initial requests for such records under this part is delegated to the Assistant Secretary for Public Affairs. Authority to administer this part in connection with records of each operating element is delegated to each Administrator, who may redelegate to officers of that element the authority to administer this part in connection with defined groups of records. However, each Administrator may redelegate the duties under Subpart H of this part to consider appeals of initial denials of requests for records only to his or her deputy or to not more then one other officer who reports directly to the Administrator and who is located at the headquarters of that operating element.

### § 7.13 Records containing both available and unavailable information.

If a record contains information that the Department determines cannot be disclosed, but also contains reasonably segregable information that may not be withheld, the latter information shall be made available.

### § 7.15 Protection of records.

(a) No person may, without permission, remove any record made available to him or her for inspection and copying under this part from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate or destroy, in whole or in part, such a record.

(b) Section 641 of Title 18 of the United States Code provides, in pertinent part, for criminal penalties for embezzlement or theft of government records.

(c) Section 2071 of Title 18 of the United States Code provides, in pertinent part, for criminal penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate or destroy, government records.

## Subpart C—Time Limits

### § 7.21 Initial determination.

An initial determination whether to release a record requested pursuant to Subpart F shall be made within ten working days after the request is received by the appropriate office in accordance with section 7.53, except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination. If the determination is to grant this request, the desired record shall be made available as promptly as possible. If the determination is to deny the request the person making the request shall be notified in writing, at the same time he or she is notified of such determination, of the reason for the determination; the right of such person to appeal the determination; and the name and title of each person responsible for the initial determination to deny the request.

### § 7.23 Final determination.

A determination with respect to any appeal made pursuant to § 7.81 shall be

made within twenty working days after receipt of such appeal except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination, pursuant to § 7.81.

**§ 7.25 Extension.**

In unusual circumstances as specified in this section, the time limits prescribed in § 7.21 and § 7.23 may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice may not specify a date that would result in a cumulative extension of more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with any other agency or DOT operating element having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

## Subpart D—Publication in Federal Register

**§ 7.31 Applicability.**

This subpart implements section 552(a)(1) of Title 5, United States Code, and prescribes rules governing the publication in the **Federal Register** of the following:

(a) Descriptions of the organization of the Department, including its operating elements and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or requests or obtain decisions;

(b) Statements of the general course and methods by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applibability formulated and adopted by the Department; and

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

**§ 7.33 Publication required.**

(a) *General.* The material described in § 7.31 shall be published in the **Federal Register.** For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the **Federal Register** if it has been incorporated by reference therein with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that a person has actual and timely notice of the terms thereof, no person may in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the **Federal Register**, but not so published.

## Subpart E—Availability of Opinions, Orders, Staff Manuals, Statements of Policy and Interpretations; Indices

**§ 7.41 Applicability.**

(a) This subpart implements section 552(a)(2) of Title 5, United States Code. It prescribes the rules governing the availability, for public inspection and copying, of the following:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under the authority of the Department, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines and procedures for Departmental inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes. Indices of materials listed in this paragraph shall be maintained as specified in Appendices A–J of this part.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.45, may not be cited, relied on, or used as precedent by the Department to adversely affect any member of the public unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of that material.

(c) This subpart does not apply to material that is published in the **Federal Register** or is covered by Subpart G of this part.

**§ 7.43 Deletion of identifying detail.**

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details shall be deleted from any record covered by Subpart E of this part that is published or made available for inspection. A full explanation of the justification for the deletion shall accompany the record published or made available for inspection.

**§ 7.45 Access to materials and indices.**

(a) Except as provided in paragraph (b) of this section, material listed in § 7.41(a) shall be made available for inspection and copying by any member of the public at document inspection facilities of the Department. The index of materials available at each facility shall be published in the **Federal Register** quarterly and shall also be located at the facility. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the operating element of which it is a part.

(b) The material listed in § 7.41(a) that is published and offered for sale shall be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at any document inspection facility maintained by the Office of the Secretary or an operating element, whichever is concerned.

**§ 7.47 Index of public materials.**

The index of material subject to public inspection and copying under this

subpart shall cover all material issued, adopted, or promulgated after July 4, 1967; however, earlier material may be included in the index to the extent practicable. Each index shall contain instructions on how to use it.

**§ 7.49 Copies.**

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the office indicated in § 7.53. Copies will be certified upon request and payment of the fee prescribed in § 7.95(f).

## Subpart F—Availability of Reasonably Described Records

**§ 7.51 Applicability.**

This subpart implements section 552(a)(3) of Title 5, United States Code, and prescribes the regulations governing public inspection and copying of reasonably described records.

**§ 7.53 Public availability of records.**

(a) Each person desiring access to or a copy of a record covered by this subpart shall comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request should indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent should be prominently marked: "FOIA."

(4) The request should be addressed to the appropriate office as set forth in paragraph (c) of this section.

(b) If the requirements of paragraph (a) of this section are not met, treatment of the request will be at the discretion of the agency. The ten-day time limit described in § 7.21 shall not start to run until the request has been identified, or would have been identified with the exercise of due diligence, by an employee of the Department as a request pursuant to the Freedom of Information Act and has been received by the office to which it should have been originally sent.

(c) Each person desiring access to or a copy of a record covered by this subpart that is located in the Office of the Secretary shall make a written request to the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Each person desiring access to or a copy of a record covered by this subpart that is located in an operating element shall make a written request to that element at the address set forth in the applicable appendix to this part. It the person making the request does not know where in the Department the record is located, he or she may make inquiry of the Assistant Secretary for Public Affairs as to its location.

(d) Each request should describe the particular record to the fullest extent possible. The request should describe the subject matter of the record, and, if known, indicate the date when it was made, the place where it was made, and the person or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office shall notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this subpart shall be made available for inspection and copying during regular business hours at the place where it is located, or photocopying may be arranged with the copied materials being mailed to the requester upon payment of the appropriate fee. Original records ordinarily will be copied except in those instances where, in the Department's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. In these instances, copying of the original would not be in the public interest. In any event, original records will not be released from custody.

(f) If a requested record is known not to exist in the files of the agency, or to have been destroyed or otherwise disposed of, the requester shall be so notified.

(g) Fees will be determined in accordance with Subpart I and the applicable appendix or appendices to this Part.

(h) Notwithstanding paragraphs (a) through (g) of this section, informational material, such as news releases, pamphlets and other materials of that nature that are ordinarily made available to the public as a part of any information program of the Government will be available upon oral or written request. There will be no fee for individual copies of that material so long as they are in supply. In addition, the Department will continue to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

**§ 7.55 Request for records of concern to more than one Government organization.**

(a) If the release of a record covered by this subpart would be of concern to both this Department and another Federal agency, the determination as to release will be made only after consultation with the other interested agency.

(b) If the release of the record covered by this subpart would be of concern to both this Department and a State or local government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by the Department only after consultation with the other interested State or local government or foreign government.

(c) Whenever a request is made for: (1) A record containing information that has been classified by another Federal agency or that may be eligible for classification by such an agency; or (2) a record containing information that relates to an investigation of a possible violation of criminal law or to a law enforcement proceeding and that was generated or originated by another Federal agency, the Office of the Secretary or the responsible operating element, whichever the case be, shall refer the request, or the portion thereof that pertains to the record in question, to the originating agency for a releasability determination. The requester shall be notified of the referral and informed of the name and address of the agency to which the request, or portion thereof, has been referred, unless such notification might jeopardize a law enforcement proceeding or have an adverse effect on national security matters.

**§ 7.57 Request for business information submitted by a private party.**

(a) If a request is received for information which has been designated by the submitted as confidential commercial information, or which the Department has some other reason to believe may contain trade secrets or other commercial or finanical information of the type described in section 7.69 of Subpart G, the submitter of such information shall, except as is provided in paragraphs (c) and (d) of this section, be notified expeditiously and asked to submit any written objections to release. At the same time, the requester shall be notified that notice and an opportunity to comment are being provided to the submitter. The submitter shall, to the extent permitted by law, be afforded a reasonable period of time within which to provide a detailed statement of any such objections. The submitter's statement shall specify all grounds for withholding any of the information. The burden shall be on the submitter to identify all information for which exempt treatment is sought and to persuade the agency

that the information should not be disclosed.

(b) The Office of the Secretary or the responsible operating element, whichever the case may be, shall, to the extent permitted by law, consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision is made to disclose the business information over the objection of a submitter, the office responsible for the decision shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not substained;

(2) A description of the business information to be disclosed; and

(3) A specific disclosures date. Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. At the same time the submitter is notified, the requester shall be notified of the decision to disclose information.

(c) The notice requirements of this section shall not apply if:

(1) The office responsible for the decision determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section shall not apply in the case of:

(1) Business information submitted to the National Highway Traffic Safety Administration.

(2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 39 of the Rules of Practice (14 CFR 302.39), and in Aviation Economic Proceedings.

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Office of the Secretary or the responsible operating element, whichever the case may be, shall promptly notify the submitter.

## Subpart G—Exemptions

### § 7.61 Applicability.

This subpart implements section 552(b) of Title 5, United States Code, which exempts certain records from the public disclosure requirements of section 552(a). The Department will, however, release a record authorized to be withheld under §§ 7.65 through 7.79 unless it determines that the release of that record would be inconsistent with a purpose of the section concerned. Examples given in §§ 7.63 through 7.79 of records included within a particular statutory exemption are only illustrative and do not define all types of records covered by the exemption.

### § 7.63 Records relating to matters that are required by Executive Order to be kept secret.

Records relating to matters that are specifically authorized to be kept secret in the interest of national defense or foreign policy shall be exempt from public disclosure. Records exempt under this provision include but are not limited to those within the scope of the following, and any further amendment of any of them, but only to the extent that the records are in fact properly classified pursuant to such Executive Order. These records shall not be made available for public inspection.

(a) Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166);

(b) Executive Order 12065 of June 28, 1978, as as amended, (3 CFR, 1978 Comp., p. 190);

(c) Executive Order 11652 of March 8, 1972 (3 CFR, 1971–1975 Comp., p. 678);

(d) Executive Order 10865 of February 20, 1960 (3 CFR, 1959–1963 Comp., p. 398);

(e) Executive Order 10501 of November 5, 1953 (3 CFR, 1949–1953 Comp., p. 979); and

(f) Executive Order 10104 of February 1, 1950 (3 CFR, 1949–1953 Comp., p. 298).

### § 7.65 Records related solely to internal personnel rules and practices.

(a) Records related solely to internal personnel rules and practices that are within the statutory exemption include memoranda pertaining to personnel matters such as staffing policies and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees, and management plans, records, or proposals involving labor-management relationships. Also included within the statutory exemption are staff manuals or instructions concerning predominantly internal operating rules, practices, guidelines, procedures, and administrative data and handling instructions for Departmental personnel such as inspectors, investigators, examiners, auditors, and negotiators.

(b) The purpose of this section is to authorize the protection of those records in which there is slight public interest or which, if released, would substantially impair the performance of duties of Departmental employees or significantly risk circumvention of agency regulations or statutes.

### § 7.67 Records exempted from disclosure by statute.

(a) Records relating to matters that are specifically exempted from disclosure by statute (other than section 552(b) of Title 5, United States Code) include, but are not limited to, those covered by the following:

(1) Section 3771 of Title 18, United States Code, in conjunction with Rule 6(e) of the Federal Rules of Criminal Procedure, protecting grand jury material.

(2) Section 106 of the Highway Safety Act of 1966 (Pub. L. 89–564, 80 Stat. 731), protecting information identifying individuals who are the subject of highway traffic accident investigations.

(3) Section 206(c)(1) of the National Driver Register Act of 1982 (23 U.S.C. 401 (note)) and the National Driver Register Act, Pub. L. 86–660, as amended (23 U.S.C. 313 (note)), protecting information concerning individuals included in reports of State driver licensing officials to the Department.

(4) Section 3315(b) of Title 46, United States Code, protecting the source of reports of defects and imperfections of vessels.

(5) Section 7319 of Title 46, United States Code, protecting the names, addresses, and next of kin of merchant seamen and entries made in records pertaining to merchant seamen.

(6) Section 10311(d) of Title 46, United States Code, protecting records of the discharge of merchant seamen.

(7) Section 1173(c)(1)(D)(3) of Title 46, United States Code, protecting wage and benefit cost data for employees covered by collective-bargaining agreements for vessels receiving operating-differential subsidy payments.

(8) Section 1173(d) of Title 46, United States Code, protecting certain foreign wage cost computations associated with the operation of foreign vessels.

(9) Section 6102 of Title 46, United States Code, protecting information derived from boating safety accident reports compiled by a State.

(10) Section 316(d)(2) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1357(d)(2)), protecting information obtained or generated in the conduct of research and development of systems and procedures to protect persons and property aboard aircraft.

(11) Section 902(f) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(f)), relating to information obtained by examining the accounts, records, or memoranda of an air carrier.

(12) Section 1001 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1481), so far as it relates to the secrecy of acts and proceedings when requested on grounds of national defense.

(13) Section 1104 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1504), protecting information, which, if disclosed, would prejudice the formulation and presentation of positions of the United States in international aviation negotiations or adversely affect the competitive position of any United States air carrier in foreign air transportation.

**§ 7.69 Trade secrets and commercial or financial information obtained from a person and privileged or confidential.**

(a) Trade secrets and commercial or financial information obtained from a person and privileged or confidential are within this statutory exemption. This includes:

(1) Commercial or financial information which, if disclosed, is likely to cause substantial harm to the competitive position of the submitter of the requested information;

(2) Commercial or financial information which if disclosed, is likely to impair the Government's ability to obtain necessary information in the future through purely voluntary cooperation;

(3) Commercial or financial information customarily subjected to an attorney-client or similar evidentiary privilege; or

(4) Information that constitutes a trade secret.

(5) Commercial or financial information which, if disclosed, would impair any other identifiable government interest or hinder agency officials in carrying out their mandate.

(b) The purpose of this section is to exempt from mandatory disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential. This section assures the confidentiality of trade secrets and commercial or financial information obtained by the Department through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. In any case in which the Department has obligated itself not to disclose trade secrets and commercial or financial information it receives, this section indicates the Department's intention to honor that obligation to the extent permitted by law. In addition, this section recognizes that certain materials, such as research data and materials, formulae, designs, and architectural drawings, have significance as items of property acquired, in many cases, at public expense. Such material may be treated as exempt from mandatory disclosure in any case in which similar proprietary material in private hands would be held in confidence. To the extent feasible, any person submitting information to the Department which may qualify for this exemption should request that the information not be disclosed.

**§7.71 Intragovernmental exchanges.**

(a) Any record prepared by a Government officer or employee (including those prepared by a consultant or advisory body) for internal Government use is within the statutory exemption to the extent it contains:

(1) Opinions, advice, deliberations, or recommendations made in the course of developing official action by the Government, but not actually made a part of that official action.

(2) Confidential communications between a Government attorney or an attorney acting on behalf of the Government and his or her client relating to a legal matter for which the client has sought professional advice.

(3) Information prepared by a Government attorney or an attorney acting on behalf of the Government in anticipation of litigation.

(4) Confidential commercial information generated by the Government where disclosure of such information would prejudice the Government's bargaining position in commercial transactions.

Examples of records covered by this section include staff memoranda containing advice, opinions, recommendations, suggestions, or exchanges of views, preliminary to final agency decision or action, with the exception of factual information, unless such information is inextricably intertwined with deliberative material; draft documents such as draft versions of audit reports prepared by the Office of Inspector General; appraisals of property to be condemned by the Government; legal opinions and/or advice rendered by a Government attorney or an attorney acting on behalf of the Government and based on information communicated in confidence by the client; memoranda and other documents prepared by a Government attorney or an attorney acting on behalf of the Government setting forth strategy with regard to pending or probable future litigation and not otherwise made a matter of public record in a particular legal proceeding; and material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly decisionmaking by the Department.

(b) The purpose of this section is to protect internal records that are not routinely available by law to another party in litigation with the Government.

**§ 7.73 Protection of personal privacy.**

(a) Any of the following personnel, medical or similar records are within the statutory exemption if disclosure would result in a clearly unwarranted invasion of personal privacy:

(1) Personnel and background records personal to any officer or employee of the Department, or other person, including his or her residential address.

(2) Medical histories and medical records concerning individuals, including applicants for licenses.

(3) Any other detailed record containing personal information identifiable with a particular person.

(b) The purpose of this section is to provide a proper balance between the protection of personal privacy and the preservation of the public's right to Department information by authorizing the protection of intimate details of a personal nature which, if released, might unjustifiably invade an individual's privacy.

**§ 7.75 Records or information compiled for law enforcement purposes.**

(a) Files compiled for law enforcement purposes by the Department or any other Federal, State, or local agency, including those files compiled for the enforcement of regulations, are within the statutory exemption to the extent that production of such records or information could reasonably be expected to interfere with enforcement proceedings; would deprive a person of a right to a fair trial or an impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to disclose the identity of a confidential source and, in the case of a record compiled for a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or could reasonably be expected to

endanger the life or physical safety of any individual.

(b) The purpose of this section is to protect law enforcement files from premature disclosure, including files prepared in connection with related judicial or administrative proceedings. It includes the enforcement not only of criminal statutes but all kinds of laws and regulations.

**§ 7.77 Reports of financial institutions.**

Any material contained in or related to any examination, operating, or condition report prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions is within the statutory exemption.

**§ 7.79 Geological and geophysical information.**

Any geological or geophysical information and data (including maps) concerning wells is within the statutory exemption.

## Subpart H—Procedures for Appealing Decisions Not To Disclose Records and/or Waive Fees

**§ 7.81 General.**

(a) Each officer or employee of the Department who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, shall give a written statement of the reasons for that determination to the person making the request; and indicate the names and titles or positions of each person responsible for the initial determination not to comply with such request, and the availability of an appeal within the Department.

(b) When a request for waiver of fees, pursuant to § 7.97(c) of this part, has been denied in whole or in part, the requester may appeal the denial.

(c) Any person to whom a record has not been made available within the time limits established by Subpart C and any person who has been given a determination pursuant to paragraph (a) of this section that a record he or she requested will not be disclosed may appeal to the head of the operating element concerned or, in the case of the Office of the Secretary, to the General Counsel of the Department. Any person who has not received an initial determination on his or her request within the time limits established by Subpart C can seek immediate judicial review. Judicial review may be sought without the need to submit first an administrative appeal. Judicial review may be sought in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the records are located, or in the District of Columbia. A determination that a record will not be disclosed and/or that a request for a fee waiver or reduction will not be granted does not constitute final agency action for the purpose of judicial review unless:

(1) It was made by the head of the operating element concerned (or his or her designee), or the General Counsel, as the case may be; or

(2) The applicable time limit has passed without a determination on the initial request or the appeal, as the case may be, having been made.

(d) Each appeal must be made in writing within thirty days from the date of receipt of the original denial and should include all information and arguments relied upon by the person making the request. Such letter should indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the appeal is sent should be prominently marked: "FOIA Appeal." If these requirements are not met, the twenty-day limit described in § 7.23 will not begin to run until the appeal has been identified, or would have been identified with the exercise of due diligence, by an employee of the Department as an appeal under the Freedom of Information Act and has been received, or should have been received, by the appropriate office.

(e) Whenever the head of the operating element concerned, or the General Counsel, as the case may be, determines it to be necessary, he or she may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the head of the operating element concerned, or the General Counsel, as the case may be, as to the availability of the record or the appropriateness of a fee waiver or reduction constitutes final agency action for the purpose of judicial review.

(f) The decision of the head of the operating element concerned, or the General Counsel, as the case may be, not to disclose a record under this part or not to grant a request for a fee waiver or reduction is considered to be a denial by the Secretary for the purpose of section 552(a)(4)(B) of title 5, United States Code.

(g) Any final determination by the head of an operating element or his or her delegee identified in Appendices B through J of this part, not to disclose a record under this part, or not to grant a request for a fee waiver or reduction, is subject to concurrence by the General Counsel or his or her designee.

(h) Upon a determination that an appeal will be denied, the requester shall be informed in writing of the reasons for the denial of the request, and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

## Subpart I—Fees

**§ 7.91 General.**

(a) This subpart prescribes fees for services performed for the public under Subparts E and F of this part by the Department.

(b) All terms defined by the Freedom of Information Act apply to this subpart, and the term "hourly rate" means the actual hourly base pay for a civilian employee or, for members of the Coast Guard, the equivalent hourly pay rate computed using a 40 hour week and the member's normal basic pay and allowances.

(c) This subpart applies to all employees of the Department, including those of non-appropriated fund activities of the United States Coast Guard and the Maritime Administration.

(d) This subpart does not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by the Department in payment of the cost of such work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

(e) This subpart does not apply to requests from record subjects for records about themselves filed in Departmental systems of records. Fees for such requests are to be determined in accordance with the Privacy Act of 1974, as implemented by Department of Transportation regulations (49 CFR Part 10).

**§ 7.93 Payment of fees.**

(a) The fees prescribed in this subpart may be paid by check, draft, or money order, payable to the Treasury of the United States. However, in the case of the Saint Lawrence Seaway Development Corporation, all fees

resulting from a request to that operating element shall be made payable to the Saint Lawrence Seaway Development Corporation.

(b) Charges may be assessed by the Department for time spent searching for requested records even if the search fails to locate the records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, the Department may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When it is estimated that the search charges, review charges, duplication fees or any combination of fees that could be charged to the requester will likely exceed $25, the requester shall be notified of the estimated amount of the fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. The notice shall also inform the requester how to consult with appropriate Departmental officials with the object of reformulating the request to meet his or her needs at a lower cost.

(d) Payment of fees may be required by the Department prior to actual duplication of delivery of any releasable records to a requester. However, advance payment of fees, i.e., payment before work is commenced or continued on a request, may not be required unless:

(1) Allowable charges that a requester may be required to pay are likely to exceed $250; or

(2) The requester has failed to pay within 30 days of the billing date fees charged for a previous FOIA request.

(e) When paragraph (d)(1) of this section applies, the requester shall be notified of the likely cost and, where he or she has a history of prompt payment of FOIA fees, requested to furnish satisfactory assurance of full payment. Where no history of payment exists, the requester may be required to make advance payment of any amount up to the full estimated charges.

(f) When paragraph (d)(2) of this section applies, the requester shall be required to demonstrate that the fee has, in fact, been paid or to pay the full amount owed, including any applicable interest, late handling charges and penalty charges as discussed below. The requester shall also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

(g) The Department will assess interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requester. Interest will accrue from the date of the notice of amount due and will be at the rate prescribed in section 3717 of Title 31, U.S.C. Receipt by the Department of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing will stay the accrual of interest, even if the payment has not been processed.

(h) If payment of fees charged is not received within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, an administrative charge will be assessed by the Department to cover the cost of processing and handling the delinquent claim. In addition, a penalty charge will be applied with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, other steps permitted by federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, will be utilized by the Department to encourage payment of amounts overdue.

(i) In any instance where the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to break down a single FOIA request into a series of requests for the sole purpose of evading the payment of otherwise applicable fees, the Department will aggregate the requests and determine the applicable fees on the basis of the aggregation.

(j) Notwithstanding any other provision of this subpart, when the total amount of fees that could be charged for a particular request (or aggregation of requests) under Subpart F, after taking into account all services which must be provided at no charge or at a reduced charge, is less than $10.00 the Department will not make any charge for fees.

**§ 7.95 Fee schedule.**

(a) The standard fee for a manual search to locate a record requested under Subpart F of this part, including making it available for inspection, will be determined by multiplying each searcher's hourly rate plus 16 percent by the time spent conducting the search.

(b) The standard fee for a computer search for a record requested under Subpart F of this part is the actual cost. This includes the cost of operating the central processing unit (CPU) for the time directly attributable to searching for records responsive to a FOIA request and the operator/programmer salary (hourly rate plus 16 percent) costs apportionable to the search.

(c) The standard fee for review of records requested under Subpart F of this part is the reviewer's hourly rate plus 16 percent multiplied by the time he or she spent determining whether the requested records are exempt from mandatory disclosure.

(d) The standard fee for duplication of a record requested under Subpart F of this part is determined as follows:

(1) Per copy of each page (not larger than 8½×14 inches) reproduced by photocopy or similar methods (includes costs of personnel and equipment), $0.10.

(2) Per copy prepared by computer, such as tapes or printout, Actual costs, including operator time.

(3) Per copy prepared by any other method of duplication, Actual direct cost of production.

(e) Depending upon the category of requester, and the use for which the records are requested, in some cases the fees computed in accordance with the above standard fee schedule must either be reduced or not charged, as prescribed by other provisions of this subpart.

(f) The following special services not required by the FOIA may be made available upon request, at the stated fees:

Certified copies of documents, with Department of Transportation or operating element seal (where authorized), $4.00, or true copy, without seal, $2.00.

**§ 7.97 Services performed without charge or at a reduced charge.**

(a) No fee is to be charged to any requester making a request under Subpart F for the first two hours of search time unless the records are requested for commercial use. For purposes of this subpart, when a computer search is required two hours of search time will be considered spent when the hourly costs of operating the central processing unit used to perform the search added to the computer operator's salary cost (hourly rate plus 16 per cent) equals two hours of the computer operator's salary costs (hourly rate plus 16 percent).

(b) No fee is to be charged for any time spent searching for a record requested under Subpart F if the records are not for commercial use and the requester is a representative of the news media, an educational institution whose purpose is scholarly research, or a non-commercial scientific institution whose purpose is scientific research.

(c) No fee is to be charged for duplication of the first 100 pages (standard paper, not larger than 8½×14 inches) of records provided to any requester in response to a request under Subpart F unless the records are requested for commercial use.

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(d) No fee is to be charged to any requester for review of a record requested under Subpart F to determine whether it is exempt from disclosure unless the records are requested for commercial use. A review charge may not be charged except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. A review charge may not be assessed for review at the administrative appeal level. When records or portions of records withheld in full under an exemption which is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(e) Documents will be furnished without charge or at a reduced charge if the Assistant Secretary for Public Affairs, or his or her designee, or official(s) having initial denial authority, as the case may be, determine that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(f) Factors to be considered by officials of the Department authorized to determined whether a waiver or reduction of fees will be granted include:

(1) Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal government operations or activities;

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requester.

**§ 7.99 Transcripts.**

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits the Department to handle the reproduction of further copies, Subpart I applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

**§ 7.101 Copyrighted material.**

Unless approval is secured from the copyright holder, the Department will not reproduce or otherwise disseminate a copy of a copyrighted work to a requester under the FOIA. However, the Department will make arrangements to enable a requester to review the copyrighted work at a Departmental facility.

**§ 7.103 Alternative sources of information.**

In the interest of making documents of general interest publicly available at as low a cost as possible, alternative sources shall be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; the U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or the National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743–3701.

**Appendix A—Office of The Secretary**

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Office of the Secretary (OST); the kinds of records that are available for public inspection and copying at the facility; and the procedures by which members of the public may make requests for records.

2. *Document Inspection Facilities.* The document inspection facility for records of the Office of the Secretary other than those required to be filed in connection with docketed aviation economic matters is maintained by the Office of the Assistant Secretary for Public Affairs, Suite 9421 of the Headquarters Building, located at 400 Seventh Street, SW., Washington, DC 20590. This facility is open to the public from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except legal public holidays and other special closings. The document inspection facility for documents required to be filed in connection with docketed aviation economic matters is maintained by the Documentary Services Division, Office of the General Counsel, Suite 4107 of the Headquarters Building. This facility is open to the public from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except legal public holidays and other special closings.

3. *Records available through the document inspection facilities.* The following records are available through the document inspection facilities:

(a) Any material issued by the Office of the Secretary and published in the **Federal Register**, including regulations.

(b) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued by the Office of the Secretary.

(c) Any policy or interpretation issued by the Office of the Secretary, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued by the Office of the Secretary, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) Formal pleadings filed in connection with docketed aviation economic proceedings, including applications, complaints, motions, petitions, answers, comments and replies.

(f) *DOT Orders.* DOT orders that are issued by the Department and used primarily to promulgate internal DOT policy, instructions, and general guidance.

(g) *DOT Notices.* DOT notices that are issued by the Department and contain short-term instructions or information that is scheduled to remain in effect for fewer than 90 days or for a predetermined period of time normally not to exceed one year.

(h) *OST Orders.* OST orders that are issued by the Office of the Secretary (OST) and used primarily to promulgate internal OST policy, instructions, and general guidance.

(i) *OST Notices.* OST notices that are issued by the Office of the Secretary and contain short-term instructions or information which is expected to remain in effect for fewer than 90 days or for a

predetermined period of time normally not to excees one year.

4. *Requests for records under Subpart F of this part.* Each person desiring to inspect an OST record, or to obtain a copy thereof, should submit a written request to the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. If it is unknown where in DOT the record(s) sought may be found, the request may be submitted to the Assistant Secretary for Public Affairs, who will ensure the appropriate processing.

5. *The official having authority to make determinations on requests,* pursuant to the Freedom of Information Act, is limited to the Assistant Secretary for Public Affairs or his or her designee.

6. *Reconsideration of determinations not to disclose records and to deny fee waivers.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the General Counsel, U.S. Department of Transportation, for reconsideration of that determination. The decision of the General Counsel is administratively final.

**Appendix B—United States Coast Guard**

*1. General.*

This appendix describes the document inspection facilities of the U.S. Coast Guard, the kinds of records that are available for public inspection and copying at those facilities, and the procedures by which members of the public may make requests for identifiable records.

*2. Document Inspection Facilities*

The document inspection facilities are located at the offices of the Commandant and District Commanders. The address for each of these facilities is set forth below. They are open to the public Monday through Friday during the hours specified, except for legal public holidays and other special closings. The States or regions within the jurisdiction of each District are also provided.

Commandant (G–TIS), U.S. Coast Guard, Washington, DC 20593. The facility is located at Coast Guard Headquarters, Management Analysis Division, 2100 Second Street SW., Washington, DC 20593. 7:00 a.m.–3:30 p.m. ET.

Commander, First Coast Guard District, Coast Guard Building, 408 Atlantic Building, Boston, MA 02210. 8:00 a.m.–4:30 p.m. ET. (Maine, Massachusetts, Connecticut, New Hampshire, Rhode Island, Vermont, New Jersey (northeastern), and New York (eastern).

Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103. 8:45 a.m.–5:15 p.m. CT. (Alabama (northern), Arkansas, Colorado, Illinois (parts), Indiana (parts), Iowa, Kansas, Kentucky, Minnesota (parts), Mississippi (northern), Missouri, Nebraska, North Dakota, Ohio (parts), Oklahoma, Pennsylvania (western), South Dakota, Tennessee, West Virginia, Wisconsin (western), and Wyoming)

Commander, Fifth Coast Guard District, Federal Office Building, 431 Crawford Street, Portsmouth, Virginia 23705. 8:00 a.m.–4:30 p.m. ET. (Maryland, North Carolina, Virginia, New Jersey (southwestern), Delaware, Pennsylvania (eastern), and the District of Columbia.

Commander, Seventh Coast Guard District, Federal Building, Room 1018, 51 SW. First Avenue, Miami, FL 33130. 8:00 a.m.–4:30 p.m. ET. (Florida (parts), Georgia (parts), South Carolina, and Puerto Rico)

Commander, Eighth Coast Guard District, 500 Camp Street, New Orleans, LA 70130. 7:45 a.m.–4:15 p.m. CT. (Alabama (parts), Florida (northeastern), Georgia (southeastern), Louisiana, Mississippi (parts), New Mexico, and Texas)

Commander, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199. 7:30 a.m.–4:00 p.m. ET. (Illinois (northeastern), Indiana (northern), Michigan, Minnesota (northern), New York (northwestern), Ohio (northern), Pennsylvania (northeastern), Wisconsin (eastern))

Commander, Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90882. 8:00 a.m.–4:30 p.m. PT. (Arizona, California, Nevada, and Utah)

Commander, Thirteenth Coast Guard District, Federal Building, Room 3590, 915 Second Avenue, Seattle, WA 98174. 7:45 a.m.–4:15 p.m. PT. (Idaho, Montana, Oregon, and Washington)

Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, HI 96850. 6:30 a.m.–3:00 p.m. Hawaii—Aleutian Standard Time. (Hawaii)

Commander, Seventeenth Coast Guard District, Federal Building, 709 West 9th Street, Post Office Box 3–5000, Juneau, AK 99802. 8:00 a.m.–4:00 p.m. Alaska Time. (Alaska)

*3. Records Available at Document Inspection Facilities*

(a) The following records are available at any U.S. Coast Guard document inspection facility:

(1) Final opinions and orders made in the adjudication of cases by the Commandant, U.S. Coast Guard.

(2) U.S. Coast Guard numbered publications that affect any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(b) Opinions and orders of administrative law judges are available at the document inspection facility of the Office of the Commandant and the district in which the administrative law judge is located.

(c) Policies and interpretations issued within the U.S. Coast Guard (including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation) are available at the document inspection facility of the Office of the Commandant.

(d) An index of the records located at each facility is maintained at that facility.

(e) The records and the index may be inspected at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

*4. Requests for Records Under Subpart F of this Part*

Each person desiring to inspect a record, or obtain a copy thereof, should submit the request in writing to the U.S. Coast Guard office at which such record is located. The addresses of the Commandant and District Commanders are listed in section 2 of this Appendix. If the office at which the record is located is unknown, the request may be submitted to the Office of the Commandant at the address listed in section 2 of this Appendix. The following gives illustrations of types of records and specifies where requests for such records are appropriately addressed:

(a) Examples of records for which requests may properly be made to either the Office of the Commandant, U.S. Coast Guard or office of the appropriate District Commander include the following:

(1) Marine Casualty investigative records.

(2) Records of certificates and licenses issued.

(3) Merchant vessel inspection records.

(4) Records of merchant vessel documentation and recording of sales and other dispositions.

(5) Records of U.S. Coast Guard property and contracts.

(b) Examples of records for which requests may properly be made only to the Office of the Commandant, U.S. Coast Guard, include the following:

(1) Central files of merchant seamen.

(2) Merchant vessel shipping articles.

(3) Merchant vessel equipment approvals.
(4) Merchant Marine Council proceedings.
(5) Great Lakes pilotage records.
(6) Central files of U.S. Coast Guard personnel.
(7) U.S. Coast Guard courts-martial records.
(8) U.S. Coast Guard vessel and shore station log books more than one year old on January 1 of the year in which the request is made.

(c) Examples of records for which requests may properly be made only to the appropriate District Commander include the following:
(1) Navigation and vessel inspection penalty action records.
(2) Search and rescue reports.
(3) Coast Guard vessel and shore station log books for the current calendar year and the calendar year immediately preceding the current year.
(4) Port safety and waterfront facility records.
(5) Aids to navigation records.
(6) Merchant vessel logbooks.
(7) Shipyard and factory inspection records.

*5. Officials Having Initial Authority to Deny Requests.*

The following officials have authority to make initial determinations to deny requests for records:
(a) Field commanders.
(1) Commander, Atlantic Area.
(2) Commander, Pacific Area.
(3) Commander, First Coast Guard District.
(4) Commander, Second Coast Guard District.
(5) Commander, Fifth Coast Guard District.
(6) Commander, Seventh Coast Guard District.
(7) Commander, Eighth Coast Guard District.
(8) Commander, Ninth Coast Guard District.
(9) Commander, Eleventh Coast Guard District.
(10) Commander, Thirteenth Coast Guard District.
(11) Commander, Fourteenth Coast Guard District.
(12) Commander, Seventeenth Coast Guard District.
(13) Commander, Maintenance and Logistics Command Atlantic.
(14) Commander, Maintenance and Logistics Command Pacific.
(15) Superintendent, U.S. Coast Guard Academy.
(16) Commanding Officer, Coast Guard Yard.
(17) Commanding Officer, Coast Guard Training Center Cape May.
(18) Commanding Officer, Coast Guard Reserve Training Center.
(19) Commanding Officer, Coast Guard Pay and Personnel Center.
(b) Headquarters officials concerning records within their office.
(1) Chief, Plans and Evaluation Division (for records located within the office of the Commandant, Chief of Staff, special staff divisions or when a request involves records located in two or more offices).
(2) Chief, Office of Acquisition.
(3) Chief, Office of Boating, Public and Consumer Affairs.
(4) Chief, Office of Comptroller.
(5) Chief, Office of Civil Rights.
(6) Chief, Office of Health Services.
(7) Chief, General Law Division (for records in the office of the Chief Counsel).
(8) Chief, Office of Marine Safety, Security and Environmental Protection.
(9) Chief, Office of Navigation.
(10) Chief, Office of Operations.
(11) Chief, Office of Personnel.
(12) Chief, Office of Readiness and Reserve.
(13) Chief, Office of Command, Control and Communications.

*6. Reconsideration of Determinations Not to Disclose Records and to Deny Fee Waivers.*

Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for the waiver or reduction of a processing fee has been denied, may apply, in writing, to the Commandant (G–TIS), U.S. Coast Guard, for reconsideration of that determination. The decision of the Commandant or his or her designee is administratively final.

## Appendix C—Federal Aviation Administration

*1. General*

This appendix describes the document inspection facilities of the Federal Aviation Administration (FAA), the kinds of records that are available for public inspection and copying at those facilities, and the procedures by which members of the public may make requests for identifiable records.

*2. Document Inspection Facilities*

Document inspection facilities are maintained at FAA Headquarters, each FAA regional office, the Aeronautical Center, and the FAA Technical Center. The document inspection facility for the European Office is located at FAA Headquarters. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, during local times specified in the following listings. The States within the jurisdictional area of each FAA Regional Office are also listed in parentheses.

FAA Headquarters, 800 Independence Avenue, SW., Washington, DC 20591. 8:30 a.m.–5:00 p.m. ET.
Alaska Region, 701 C Street, Box 14, Anchorage, AK 99513. 7:30 a.m.–4:00 p.m. Alaska Time (Alaska)
Central Region, 601 East 12th Street, Kansas City, Missouri 64106. 7:30 a.m.–4:00 p.m. CT. (Iowa, Kansas, Missouri, and Nebraska)
Eastern Region, Fitzgerald Federal Bldg., JFK International Airport, Jamaica, NY 11430. 8:00 a.m–4:30 p.m. ET. (District of Columbia, Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, and West Virginia)
Great Lakes Region, O'Hare Lake Office Center, 2300 East Devon Street, Des Plaines, Ill. 60018. 7:30–4:00 p.m. CT. (Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin)
New England Region, 12 New England Executive Park, Burlington, MA (Mailing Address: Post Office Box 510, Burlington, MA 01803). 8:00 a.m.–4:00 p.m. ET. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle WA 98168. 7:30 a.m.–4:00 p.m. PT. (Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming)
Southern Region, 3400 Norman Berry Drive, East Point, GA (Mailing Address: Post Office Box 20636, Atlanta, GA 30320). 8:00 a.m.–4:30 p.m. ET. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and Virgin Islands.
Southwest Region, 4400 Blue Mound Road, Fort Worth, TX (Mailing Address: Fort Worth, TX 76193–0041). 8:00 a.m.–4:30 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)
Western Pacific Region, 15000 Aviation Boulevard, Hawthorne, CA (Mailing Address: Post Office Box 92007, World-Way Postal Center, Los Angeles, CA 90009). 7:30 a.m.–4:00 p.m. PT. (Arizona, California, Hawaii, and Nevada)
Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard (Mailing Address: Post Office Box 25082), Oklahoma City, OK 73125. 8:00 a.m.–4:30 p.m. CT.
FAA Technical Center, Atlantic City Airport, Atlantic City, NJ 08405. 8:00 a.m.–4:30 p.m. ET.

*3. Records Available at Document Inspection Facilities*

(a) The following records under Subpart E of this part are available at FAA document inspection facilities:
(1) Final opinions and orders made in the adjudication of cases by the

Administrator, FAA, or his/her designee.

(2) Policies and interpretations, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation. All such policies and interpretations made by the Administrator, Deputy Administrator, Associate Administrators, directors, and heads of offices are available at the FAA Headquarters document inspection facility; only those policies and interpretations made by the Administrator, Deputy Administrator; and the regional or center director concerned are available at regional and center document inspection facilities.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. Such documents are available at the inspection facility of the organizational unit which has issued them.

(b) An index of the records located at each document inspection facility is maintained at that facility.

(c) The records and the index may be inspected, without charge, at the facility. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

*4. Requests for Reasonably Described Records Under Subpart F of this part*

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Assistant Administrator for Public Affairs, FAA Headquarters, or the director of the region or center in which it is located. The addresses of FAA Headquarters and the Regions and Centers are listed in paragraph 2 of this Appendix. If the location of the record is not known, the request may be submitted to the Assistant Administrator for Public Affairs, FAA Headquarters. The following list gives illustrations of types of records and where they might be located:

(a) Records pertaining to the issue, amendment, suspension or revocation of certificates, permits, authorizations, and approvals, such as:

(1) Airman certificates and ratings for pilots, flight instructors, flight navigators, flight engineers, aircraft dispatchers, mechanics, repairmen, air traffic control operators, and parachute riggers and ground instructor certificates are maintained at the Mike Monroney Aeronautical Center.

(2) Aircraft registration certificates and airworthiness certificates are maintained at the Aeronautical Center.

(3) Aircraft type certificates and production certificates are maintained at the regional office within which the issuance was made.

(4) Ferry permits and special flight authorizations are maintained at the district office of the region within which the issuance was made.

(5) Air carrier operating certificates, commercial operator certificates, agricultural aircraft operator certificates, repair station certificates, parachute loft certificates, pilot school certificates, and mechanic school certificates are maintained at the district office of the region within which the certification was taken.

(b) Records of designations of representatives of the Administrator are located at FAA Headquarters.

(c) Records relating to Federal-aid airport grants are located at the regional office within which the grant was made.

(d) Records of approvals of navigational facilities under Federal Aviation Regulations (FAR) Part 171 are located at the regional office within which the approval was issued.

(e) Records relating to civil penalty actions and seizure of aircraft are located at the regional office within which the action was taken.

*5. Reconsideration of Determinations Not to Disclose Records and to Deny Fee Waivers*

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing to the Assistant Administrator for Public Affairs, FAA, for reconsideration of that determination. The decision of the Assistant Administrator for Public Affairs is administratively final.

**Appendix D—Federal Highway Administration**

*1. General*

This appendix describes the location and hours of operation of the document inspection facilities of the Federal Highway Administration (FHWA); the kinds of records that are available for public inspection and copying at these facilities; and the procedures by which members of the public may make requests for records.

*2. Document Inspection Facilities*

Document inspection facilities are maintained at the Federal Highway Administration Headquarters, each regional office, and each division office. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, during regular working hours, which are included parenthetically after each address below. Written requests for information should be sent to the appropriate office and the envelope in which the request is sent should be prominently marked with the letters "FOIA."

**Washington Headquarters**

FOIA Program Officer (HMS–10), Federal Highway Administration, 400 Seventh Street, SW., Room 4428, Washington, DC 20590. 7:45 a.m.–4:15 p.m. ET.

**Regional Offices**

Regional Federal Highway Administrator, Region 1, Federal Highway Administration, Clinton Avenue and North Pearl Street, Room 719, Albany, NY 12207. 7:30 a.m.–4:00 p.m. ET. (New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, Maine, Puerto Rico, Virgin Islands)

Regional Federal Highway Administrator, Region 3, Federal Highway Administration, 31 Hopkins Plaza, Room 1633, Baltimore, MD 21201. 7:45 a.m.–4:15 p.m. ET. (Maryland, Virginia, Delaware, District of Columbia, Pennsylvania, West Virginia)

Regional Federal Highway Administrator, Region 4, Federal Highway Administration, 1720 Peachtree Road, NW., Suite 200, Atlanta, GA 30367. 7:45 a.m.–4:15 p.m. ET. (Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, North Carolina, South Carolina)

Regional Federal Highway Administrator, Region 5, Federal Highway Administration, 18209 Dixie Highway, Homewood, IL 60430–2294. 7:30 a.m.–4:15 p.m. CT. (Illinois, Indiana, Ohio, Michigan Wisconsin, Minnesota)

Regional Federal Highway Administrator, Region 6, Federal Highway Administration, 819 Taylor Street, Fort Worth, TX 76102. 8:00 a.m.–4:30 p.m. CT. (Texas, Louisiana, Arkansas, Oklahoma, New Mexico)

Regional Federal Highway Administrator, Region 7, Federal Highway Administration, 6301 Rockhill Road, P.O. Box 419715, Kansas City, MO 64141. 7:45 a.m.–4:15 p.m. CT. (Missouri, Iowa, Kansas, Nebraska)

Regional Federal Highway Administrator, Region 8, Federal Highway Administration, 555 Zang Street, Room 400, Lakewood, CO 80228. 7:45 a.m.–4:15 p.m. MT. (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota)

Regional Federal Highway Administrator, Region 9, Federal Highway Administration, 211 Main Street, Room 1100, San Francisco, CA 94105. 7:45 a.m.–4:15 p.m. PT. (California, Arizona, Nevada, Hawaii, American Samoa, Guam)

Regional Federal Highway Administrator, Region 10, Federal Highway Administration, Mohawk Building, Room 312, 708 SW Third Avenue, Portland, OR 97204. 7:00 a.m.–5:00 p.m. PT. (Oregon, Idaho, Washington, Alaska)

**Division Offices**

Alabama, 441 High Street, Montgomery, AL 36104–4684. 7:45 a.m.–4:30 p.m. CT.
Alaska, Federal Building, 709 West Ninth Street, Room 851, P.O. Box 21648, Juneau, AK 99802–1648. 7:30 a.m.–5:00 p.m. Alaska Time.
Arizona, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004. 7:30 a.m.–4:15 p.m. MT.
Arkansas, Room 3128, Federal Office Building, 700 West Capitol Avenue, Little Rock, AR 72201–3298. 7:45 a.m.–4:15 p.m. CT.
California, Federal Building, Second Floor, 801 I Street, Sacramento, CA 95814. 7:45 a.m.–4:30 p.m. PT.
Colorado, 555 Zang Street, Room 250, Lakewood, CO 80228. 7:45 a.m.–4:15 p.m. MT.
Connecticut, Abraham A. Ribicoff Federal Building, 450 Main Street, Room 635, Hartford, CT 06103. 7:30 a.m.–4:00 p.m. ET.
Delaware, Federal Office Building, Room 2101, 300 South New Street, Dover, DE 19901–6726. 7:45 a.m.–4:15 p.m. ET.
District of Columbia, Nassif Building, Room 6320, 400 Seventh Street, SW., Washington, DC 20590. 7:30 a.m.–4:00 p.m. ET.
Florida, 227 North Bronough Street, Room 2015, Tallahassee, FL 32301. 7:30 a.m.–4:00 p.m. ET.
Georgia, Suite 300, 1720 Peachtree Road, NW., Atlanta, GA 30367. 7:00 a.m.–4:00 p.m. ET.
Hawaii, Prince Jonah Kuhio Kalanianaole Federal Building, 300 Ala Moana Boulevard, Room 3202, Honolulu, HI 96850. (Duty Hours) 7:30 a.m.–4:00 p.m. HST.
Idaho, 3010 W. State Street, Boise, ID 83703. 7:30 a.m.–4:30 p.m. MT.
Illinois, 320 West Washington Street, Room 700, Springfield, IL 62701. 7:30 a.m.–4:15 p.m. CT.
Indiana, 575 N. Pennsylvania Street, Room 254, Indianapolis, IN 46204. 7:30 a.m.–4:00 p.m. Eastern Standard Time.
Iowa, 105 Sixth Street, Ames, IA 50010. 7:45 a.m.–4:30 p.m. CT. Mailing address: P.O. Box 627.
Kansas, 444 SE Quincy Street, Room 240, Topeka, KA 66683. 7:45 a.m.–4:15 p.m. CT.
Kentucky, John C. Watts Federal Building and U.S. Courthouse, 330 West Broadway, Frankfort, KY 40602. 8:00 a.m.–4:45 p.m. ET. Mailing address: P.O. Box 536.
Louisiana, Federal Building, Room 239, 750 Florida Street, Baton Rouge, LA 70801. 7:30 a.m.–4:00 p.m. CT. Mailing address: P.O. Box 3929, Baton Rouge, LA 70821.
Maine, Edmund S. Muskie Federal Building, U.S. Post Office, Room 614, 40 Western Avenue, Augusta, ME 04330. 7:30 a.m.–4:00 p.m. ET.
Maryland, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, MD 21211. 7:45 a.m.–4:15 p.m. ET.
Massachusetts, Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge, MA 02142. 7:45 a.m.–4:15 p.m. ET.
Michigan, Federal Building, 315 West Allegan Street, P.O. Box 10147, Room 211, Lansing, MI 48901. 8:00 a.m.–4:45 p.m. ET.
Minnesota, Metro Square Building, Suite 490, Seventh & Robert Streets, St. Paul, MN 55101. 7:30 a.m.–4:00 p.m. CT.
Mississippi, 666 North Street, Suite 105, Jackson, MS 39202–3199. 7:45 a.m.–4:15 p.m. CT.
Missouri, 209 Adams Street, Jefferson City, MO 65102. 7:45 a.m.–4:15 p.m. CT. Mailing address: P.O. Box 1787.
Montana, Federal Office Building, 301 South Park, Drawer 10056, Helena, MT 59626–0056. 7:30 a.m.–4:00 p.m. MT.
Nebraska, Federal Building, Room 487, 100 Centennial Mall North, Lincoln, NE 68508–3851. 7:45 a.m.–4:15 p.m. CT.
Nevada, 1535 Hot Springs Road, Suite 100, Carson City, NV 89701–0802. 7:45 a.m.–4:30 p.m. PT.
New Hampshire, Federal Building, 55 Pleasant Street, Room 219, Concord, NH 03301. 7:30 a.m.–4:00 p.m. EST.
New Jersey, Suburban Square Building, 25 Scotch Road, Second Floor, Trenton, NJ 08628–2585. 8:00 a.m.–4:30 p.m. ET.
New Mexico, 117 U.S. Court House, Post Office Box 1088, Santa Fe, NM 87504. 7:30 a.m.–4:00 p.m. MT.
New York, Leo W. O'Brien Federal Building, Ninth Floor, Clinton Avenue and North Pearl Street, Albany, NY 12207. 7:30 a.m.–4:00 p.m. ET.
North Carolina, 310 New Bern Avenue, P.O. Box 26806, Raleigh, NC 27611. 7:45 a.m.–4:15 p.m. ET.
North Dakota, Federal Building, P.O. Box 1755, Bismarck, ND 58502. 7:45 a.m.–4:30 p.m. CT.
Ohio, 200 North High Street, Room 328, Columbus, OH 43215 7:30 a.m.–4:15 p.m. ET.
Oklahoma, Federal Office Building, Room 454, 200 N.W. Fifth Street, Oklahoma City, OK 73102. 8:00 a.m.–4:30 p.m. CT.
Oregon, The Equitable Center, Suite 100, 530 Center Street, NE., Salem, OR 97301. 7:45 a.m.–4:30 p.m. PT.
Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108. 8:00 a.m.–4:30 p.m. ET. Mailing address: P.O. Box 1086.
Puerto Rico, Office Number 150, U.S. Courthouse and Federal Building, Carlos Chardon Street, Hato Rey, PR 00918. 7:30 a.m.–4:00 p.m. Atlantic Standard Time.
Rhode Island, 380 Westminster Mall, Fifth Floor, Providence, RI 02903. 7:45 a.m.–4:15 p.m. ET.
South Carolina, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 758, Columbia, SC 29201. 7:45 a.m.–4:15 p.m. ET.
South Dakota, P.O. Box 700, Federal Office Building, Pierre, SD 57501. 8:00 a.m.–4:30 p.m. CT.
Tennessee, Federal Building, U.S. Courthouse, 801 Broadway, Room A–926, Nashville, TN 37203. 8:00 a.m.–4:30 p.m. CT.
Texas, Room 826, Federal Office Building, 300 East Eighth Street, Austin, TX 78701. 7:30 a.m.–4:15 p.m. CT.
Utah, Federal Building, 125 South State Street, Salt Lake City, UT 84111. 7:45 a.m.–4:30 p.m. MT.
Vermont, Federal Building, Montpelier, VT 05602. 7:30 a.m.–4:30 p.m. ET. Mailing address: P.O. Box 568.
Virginia, Federal Building, Tenth Floor, 400 North Eighth Street, Richmond, VA 23240. 7:45 a.m.–4:15 p.m. ET.
Virgin Islands, U.S. Federal Building and Courthouse, Room 261, Charlotte Amalie, St. Thomas, Virgin Islands 00801. Time: 8:30–12:30 AST.
Washington, Evergreen Plaza, 711 South Capitol Way, Suite 501, Olympia, WA 98501. 7:30 a.m.–4:30 p.m. PT.
West Virginia, 550 Eagan Street, Suite 300 Charleston, WV 25301. 8:00 a.m.–4:30 p.m. ET.
Wisconsin, 4502 Vernon Boulevard, Madison, WI 53705–4905. 7:30 a.m.–4:15 p.m. CT.
Wyoming, 916 Evans Avenue, P.O. Box 1127, Cheyenne, WY 82003. 7:45 a.m.–4:30 p.m. MT.

**Direct Federal Divisions**

Division Engineer, Eastern Direct Federal Division, 1000 North Glebe Road, Arlington, VA 22201. 7:45 a.m.—4:15 p.m. ET.
Division Engineer, Central Federal Division, P.O. Box 25246, Denver, CO 80225. 7:45 a.m.—4:15 p.m. MT.
Division Engineer, Western Direct Federal Division, 610 East Fifth Street, Vancouver, WA 98661. 8:00 a.m.—4:30 p.m. PT.

*3. Records Available Through Document Inspection Facilities.*

(a) The following records are available through the FHWA Headquarters document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Federal Highway Administration;

(2) Any policy or interpretation issued by the Federal Highway Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can

reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(b) The following records are available through all Federal Highway Administration document inspection facilities:

(1) *FHWA Orders.* These orders are issued by the Federal Highway Administration and used primarily to promulgate internal policy, instructions, and general guidance.

(2) *FHWA Notices.* These notices aare issued by the Federal Highway Administration and contain short term instructions or information which is expected to remain in effect for a predetermined period of time normally not to exceed one year.

(3) *FHWA Bulletins.* These bulletins are issued by the Federal Highway Administration and are used to promulgate one time announcements or transmit reports, publications, and other similar material.

(4) *FHWA/NHTSA Orders.* These are orders issued jointly by the Federal Highway Administration and the National Highway Traffic Safety Administration and contain policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Programs.

(5) *Technical Advisories.* These contain permanent or long-lasting detailed techniques or technical material that is advisory in nature.

(6) *FHWA Manuals.* These manuals are issued by the Federal Highway Administration and contain detailed procedures relating to policies and program responsibilities. They include the following:

(i) Federal-Aid Highway Program Manual. This Manual contains policies, procedures, standards, and guides relating to the administration of the Federal Aid Highway Program and the Direct Federal Construction Program.

(ii) Labor Compliance Manual.

(iii) Civil Rights-Equal Opportunity Manual.

(iv) Highway Planning Program Manual.

(v) Motor Carrier Safety Manual.

(vi) Highway Safety Program Manual.

(vii) Manual on Uniform Traffic Control Devices.

(viii) Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects FP–85, 1985.

(ix) FP–79 Construction Manual.

(x) Emergency Relief Disaster Assistance Manual.

These Manuals contain details of compliance programs, accident investigations, enforcement programs, and interpretations.

(7) *Highway Safety Standards.* These highway related standards, issued by the Federal Highway Administration, apply to the aspect of State highway safety programs for which responsibility resides in the Federal Highway Administration under the Highway Safety Act of 1966 and delegations of authority by the Secretary of Transportation.

(8) Motor Carrier Safety Administrative Rulings.

(9) Motor Carrier Safety Waivers From Regulations (including Handicapped Driver Waiver Program).

(10) Indices for the above records.

*4. Requests for Records Under Subpart F of this Part*

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request, in writing to the appropriate Federal Highway Administration official at the address listed in paragraph 2 above. If it is unknown where in FHWA the record(s) sought may be found, the request may be submitted to the FOIA Program Officer, at the address given in paragraph 2 above. Each request is subject to the appropriate fee prescribed in Subpart I of this part.

*5. Determinations Not To Disclose Records*

The FOIA Program Officer in Washington Headquarters is the only official authorized to deny requests for the disclosure of records for any Federal Highway Administration element, both headquarters and field.

*6. Reconsideration of Determinations Not To Disclose Records and To Deny Fee Waivers*

Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for a fee waiver or reduction will not be granted, may appeal, in writing, to the Associate Administrator for Administration, Federal Highway Administration, 400 Seventh Street SW., Washington, DC. 20590, for reconsideration of the determination. The decision of the Associate Administrator for Administration is administratively final.

**Appendix E—Federal Railroad Administration**

*1. General.*

This appendix describes the document inspection facility of the Federal Railroad Administration, the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for identifiable records.

*2. Document Inspection Facility*

The document inspection facility is maintained by the Executive Director of the Federal Railroad Administration, Room 8212, 400 Seventh Street, SW., Washington, DC 20590. This facility is open to the public 8:30 a.m. to 5:00 p.m., ET, Monday through Friday, except for legal public holidays and other special closings.

*3. Records Available at the Document Inspection Facility*

The following records are maintained at the document inpsection facility:

(a) Any material issued by the Federal Railroad Administration and published in the **Federal Register**, including regulations.

(b) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Federal Railroad Administration. Included are opinions and orders issued under the Safety Appliance Act, Hours of Service Act, Locomotive Inspection Act, Accident Reports Act, and the Federal Railroad Safety Act of 1970.

(c) Any policy or interpretation issued within the Federal Railroad Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Subject to § 7.41(a)(3) of this part, any administrative staff manual or instruction to staff, issued by the Federal Railroad Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) Public notice of pending administrative actions.

(f) Office of Safety Annual Report.

(g) Accident/Incident Bulletin.

(h) Rail-Highway Grade-Crossing Bulletin.

(i) Summary of accidents investigated by the Federal Railroad Administration.

(j) Certain railroad employee fatalities investigated by the Federal Railroad Administration.

(k) Subject to § 7.69 of this part, documents related to loans, loan guarantees, or grant programs

conducted by the Federal Railroad Administration.

(l) An index to the material described in (a) through (d). The records and the index may be inspected at the facility without charge. Copies of records may be obtained upon payment of fees prescribed in Subpart I of this part.

*4. Requests for Identifiable Records Under Subpart F of this Part*

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Executive Director, Federal Railroad Administration, Room 8212, 400 Seventh Street, SW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Requester will be notified when it is estimated that the fee will likely exceed $25. Prepayment may be required before delivery is made.

*5. Reconsideration of Department Not To Disclose Records and To Deny Fee Waivers.*

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Federal Railroad Administrator, 400 Seventh Street, SW., Washington, DC 20590 for reconsideration of that determination. The decision of the Federal Railroad Administrator is administratively final.

**Appendix F—National Highway Traffic Safety Administration**

1. *General.* This appendix describes the document inspection facilities of the National Highway Traffic Safety Administration (NHTSA), the kinds of records that are available for inspection and copying at these facilities, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facilities.* Document inspection facilities are maintained for NHTSA Headquarters and each NHTSA regional office. Unless otherwise noted, these facilities, which are located at the following addresses, are open to the public from 7:45 a.m. to 4:15 p.m. local time, Monday through Friday, except legal public holidays and other special closings.

**Washington Headquarters**

National Highway Traffic Safety Administration, Technical Reference Division, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

National Highway Traffic Safety Administration, Technical Reference Division, Docket Section Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Material covered by paragraph 3(a)(8) of this Appendix only). Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

National Highway Traffic Safety Administration, Office of Management and Data Systems (OMDS), Room 5238, 400 Seventh Street, SW., Washington, DC 20590. (Material covered by paragraphs 3(a) (9) and (10) of this Appendix only). Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

**Regional Offices**

Region I—Regional Administrator, NHTSA, Transportation Systems Center, Kendall Square, Code 903, Cambridge, MA 02142. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Region II—Regional Administrator, NHTSA, 222 Mamaroneck Avenue, Suite 204, White Plains, New York 10605. (New York, New Jersey, Puerto Rico, and Virgin Islands)

Region III—Regional Administrator, NHTSA, Airport Plaza Building, 793 Elkridge Landing Road, Room D–203, Linthicum, MD 21090. Hours of operation are 8:00 a.m. to 4:30 p.m. ET. (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia)

Region IV—Regional Administrator, NHTSA, Suite 501, 1720 Peachtree Road, NW., Atlanta, GA 30309. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)

Region V—Regional Administrator, NHTSA, 18209 Dixie Highway, Homewood, IL 60430. Hours of operation are 8:00 a.m. to 4:30 p.m. CT. (Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin)

Region VI—Regional Administrator, NHTSA, Room 8A38, 819 Taylor Street, Fort Worth, TX 76102. Hours of operation are 8:00 a.m. to 4:30 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Region VII—Regional Administrator, NHTSA, P.O. Box 412515, Kansas City, MO 64141. (Iowa, Kansas, Missouri, and Nebraska)

Region VIII—Regional Administrator, NHTSA, 555 Zang Street, Fourth Floor, Denver, CO 80228. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)

Region IX—Regional Administrator, NHTSA, 211 Main Street, Suite 1000, San Francisco, CA 94105. (American Samoa, Arizona, California, Guam, Hawaii, and Nevada)

Region X—Regional Administrator, NHTSA, 3140 Jackson Federal Building, Seattle, Washington 98174. Hours of operation are 8:00 a.m. to 4:30 p.m. PT. (Alaska, Idaho, Oregon, and Washington)

*3. Records Available at Document Inspection Facilities*

(a) Certain documents not in the custody of the document inspection facility (for example, current defect investigations) may be reviewed there, but only if they are requested in advance. The following records are available at the NHTSA Headquarters document inspection facility:

(1) Final opinions and orders made in the adjudication of cases and issued by the National Highway Traffic Safety Administration.

(2) NHTSA test reports that assess manufacturer's compliance with Federal Motor Vehicle Safety Standards.

(3) Investigative reports concerning compliance with standards and possible safety-related defects.

(4) Summaries and detailed reports of motor vehicle recall campaigns.

(5) Consumers' complaint letters regarding motor vehicles.

(6) Contractors' technical reports documenting the results of research performed for NHTSA pursuant to contract.

(7) Multidisciplinary case studies on the causes of selected motor vehicle accidents.

(8) Rulemaking actions including comments and informal interpretations and opinions concerning provisions of the National Traffic and Motor Vehicle Safety Act of 1966, the Motor Vehicle Information and Cost Savings Act and the Highway Safety Act and regulations and standards issued thereunder which have been given to members of the public by National Highway Traffic Safety Administration officials.

(9) *NHTSA Orders.* These orders are issued by the National Highway Traffic Safety Administration and contain policy, instructions, and general procedures.

(10) *NHTSA Notices.* These notices are issued by the National Highway Traffic Safety Administration and transmit one-time or short-term announcements or temporary directives (1 year or less).

(b) The following records are available at all NHTSA document inspection facilities:

(1) *Motor Vehicle Safety Standards.* These standards, issued by the National Highway Traffic Safety Administration, apply to new motor vehicles and equipment thereon.

(2) *Highway Safety Standards.* These standards, issued by the National Highway Traffic Safety Administration, apply to State highway safety programs.

(3) *State Highway Programs.* Reports on State highway programs presenting the proposed implementation of Federal Highway Standards on an annual and long-range basis. These reports are available at the NHTSA Headquarters document inspection facility and the appropriate Regional Administrator's Office.

*4. Requests for records under Subpart F of this part.* Persons wishing to inspect

a record, or to obtain a copy thereof, should submit a request in writing to the NHTSA facility in which such record is located. If the records are located at Washington Headquarters, requests should be sent to Director, Executive Secretariat, NHTSA, Room 5221, 400 Seventh Street, SW., Washington, DC 20590. If the records are located in a regional office, requests should be sent to the appropriate inspection facility.

5. *Reconsideration of determinations not to disclose records and to deny fee waivers.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal in writing, to the Associate Administrator for Administration, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

6. The fee for a search for a record or records identified by class or subject is pursuant to § 7.95 of this part.

**Appendix G—Urban Mass Transportation Administration**

*1. General*

This appendix describes the document inspection facilities of the Urban Mass Transportation Administration (UMTA), the kind of records that are available for public inspection and copying at these facilities, and the procedures by which members of the public may make requests for identifiable records.

*2. Document Inspection Facilities*

Document inspection facilities are maintained at the Urban Mass Transportation Administration Headquarters and each UMTA regional office. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, at the prescribed times and locations:

**Washington Headquarters**

Urban Mass Transportation Administration, Office of Public Affairs, Room 9314, 400 Seventh Street, SW., Washington, DC 20590. (Working hours—8:30 a.m.–5:00 p.m. ET).

**Regional Offices**

Region I—Regional Administrator, UMTA, Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142. 8:30 a.m.–5:00 p.m. ET. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Region II—Regional Administrator, UMTA, 26 Federal Plaza, Suite 14–110, New York, NY 10278. 8:30 a.m.–5:00 p.m. ET. (New Jersey and New York)

Region III—Regional Administrator, UMTA, 841 Chestnut Street, Suite 714, Philadelphia, PA 19107. 8:00 a.m.–5:00 p.m. ET. (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia)

Region IV—Regional Administrator, UMTA, 1720 Peachtree Road, NW., Suite 400, Atlanta, GA 30309. 8:30 a.m.–5:00 p.m. ET. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Puerto Rico)

Region V—Regional Administrator, UMTA, 300 S. Wacker Drive, Suite 1720, Chicago, IL 60606. 8:30 a.m.–5:00 p.m. CT. (Illinois, Indiana, Michigan, Ohio, and Wisconsin)

Region VI—Regional Administrator, UMTA, 819 Taylor Street, Suite 9A32, Ft. Worth, TX 76102. 8:00 a.m.–5:00 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Region VII—Regional Administrator, UMTA, 6301 Rockhill Road, Suite 100, Kansas City, MO 64131. 8:30 a.m.–5:00 p.m. CT. (Iowa, Kansas, Missouri, and Nebraska)

Region VIII—Regional Administrator, UMTA, 1050 17th Street, Suite 1822 Prudential Plaza, Denver, CO 80265. 8:30 a.m.–5:00 p.m. MT. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)

Region IX—Regional Administrator, UMTA, 211 Main Street, Room 1160, San Francisco, CA 94105. 8:30 a.m.–5:00 p.m. PT. (Nevada, California, Arizona, Hawaii, and Guam)

Region X—Regional Administrator, UMTA, 915 Second Avenue, Suite 3142, Seattle, WA 98174. 8:00 a.m.–4:30 p.m. PT. (Alaska, Idaho, Oregon, and Washington)

*3. Records Available at the Document Inspection Facilities*

The following records are located at the document inspection facilities:

(a) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued by the Office of the Secretary.

(b) Any policy or interpretation issued by the Urban Mass Transportation Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(c) Any administrative staff manual or instruction to staff, issued by the Urban Mass Transportation Administration that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(d) An index to, and copies of, the internal and external directives of the Urban Mass Transportation Administration. The records and the index may be inspected without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

(e) Any proposed or final regulation issued by the Urban Mass Transportation Administration and any docket materials regarding these regulations. Public dockets for rulemakings are kept by the Docket Clerk, Room 9223, and are available for public inspection and copying.

*4. Requests for Identifiable Records Under Subpart F of This Part*

Each person desiring to inspect a record or to obtain a copy thereof, should submit the request in writing to the Director of Public Affairs, Urban Mass Transportation Administration, Room 9314, Department of Transportation Building (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred, as provided in 49 CFR Part 7. The requester may stipulate a maximum fee which he or she will pay. Prepayment may be required if authorized by 49 CFR Part 7.

*5. Reconsideration of Determinations Not To Disclose Records and To Deny Fee Waivers*

Any person who has been notified that a record or part of a record will not be disclosed or that a request or a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Deputy Administrator, Urban Mass Transportation Administration, Room 9328, 400 Seventh Street, SW., Washington, DC 20590, for reconsideration of that determination. The decision of the Deputy Administrator is administratively final.

**Appendix H—Saint Lawrence Seaway Development Corporation**

1. *General.* This appendix describes the document inspection facility of the Saint Lawrence Seaway Development Corporation, the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facility.* The document inspection facility of the Saint Lawrence Seaway Development Corporation is maintained at its operations headquarters building in Massena, New York. This facility is open to the public during regular working hours (8:00 a.m. to 4:30 p.m. ET).

3. *Records available at the document inspection facility.* The following

records are maintained at the document inspection facility:

(a) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Saint Lawrence Seaway Development Corporation.

(b) Any policy or interpretation issued by the Saint Lawrence Seaway Development Corporation, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(c) Any Administrative staff manual or instruction to staff, issued by the Saint Lawrence Seaway Development Corporation, that affects any member of the public, including the prescribing of any standard, procedure or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(d) An index to the material described in (a) through (c). The records and the index may be inspected at the facility without charge. Copies of records may be obtained upon payment of fee prescribed in Subpart I of this part.

4. *Requests for identifiable records under Subpart F of this part.* Each person desiring to inspect a record, or to obtain a copy thereof should submit a request in writing to the Comptroller, Office of Finance/Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662.

5. Any person who has been notified that a record will not be disclosed; and any person who has been notified that his or her request for a fee waiver, in whole or in part, cannot be granted, may apply, in writing, to the Administrator, Saint Lawrence Seaway Development Corporation, Post Office Box 44090, Washington, DC 20026-4090, for reconsideration of the request. The decision of the Administrator is administratively final.

**Appendix I—Maritime Administration**

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Maritime Administration (MARAD), the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for reasonably described records.

2. *Document inspection facility.* The document inspection facility for MARAD is maintained in Room 7300 of the Department of Transportation Building, 400 Seventh Street SW., Washington, DC 20590. The facility is open to the public between 9:30 a.m. and 4:30 p.m. eastern time, Monday through Friday, except legal public holidays and other special closings.

3. *Records available at the document inspection facility.* The following records are maintained at the document inspection facility:

(a) Any material issued by MARAD and published in the **Federal Register**, including regulations, for the most recent five years.

(b) Opinions, decisions, and orders of the Maritime Administrator/MARAD and of the Maritime Subsidy Board (including concurrences and dissents, if any).

(c) Any policy or interpretation issued by MARAD, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued by MARAD, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public as described in Subpart E of this part.

(e) An index of the records described in (b) through (d).

4. *Requests for reasonably described records under Subpart F of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Freedom of Information Officer, Maritime Administration, Room 7300, 400 Seventh Street, NW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Prepayment may be required before delivery is made. The requester may stipulate a maximum fee which he or she will pay.

5. The official having authority to make determinations on requests, pursuant to the Freedom of Information Act, is the Freedom of Information Officer or an appropriate designee.

6. *Appeal of determination not to disclose records and/or waive fees.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal in writing to the Maritime Administrator, Maritime Administration, Room 7206, 400 Seventh Street, SW., Washington, DC 20590. The decision of the Maritime Administrator is administratively final.

**Appendix J—Research and Special Programs Administration**

*1. General*

This appendix describes the document inspection facilities of the Research and Special Programs Administration (RSPA), the kinds of records that are available for inspection and copying at these facilities, and the procedures by which members of the public may make requests for reasonably described records.

*2. Document Inspection Facilities*

Document inspection facilities are maintained at the RSPA Headquarters Office, the Office of Hazardous Materials Transportation (OHMT), the Office of Pipeline Safety (OPS), the Office of Aviation Information Management (OAIM), and the Transportation Systems Center (TSC) in Cambridge, Massachusetts. These facilities are open to the public from 9:00 a.m. to 4:30 p.m. ET, Monday through Friday, except legal public holidays and other special closings, at the following locations:

**RSPA Headquarters**

Freedom of Information Officer, Research and Special Programs Administration, Room 8406, 400 Seventh Street, SW., Washington, DC 20590.

*Office of Hazardous Materials Transportation*, DHM-50, Room 8424, 400 Seventh Street, SW., Washington, DC 20590.

*Office of Pipeline Safety*, DPS-1, Room 8417, 400 Seventh Street, SW., Washington, DC 20590.

**Office of Aviation Information Management**

Chief of Data Services Branch, Data Requirements and Public Reports Division, Room 4201, 400 Seventh Street, SW., Washington, DC 20590.

**Transportation Systems Center**

Public Information Officer, Transportation Systems Center, 55 Broadway, Kendall Square, Cambridge, MA 02142.

*3. Records Available Through Document Inspection Facilities*

(a) The following records are available through the RSPA Headquarters document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the

Research and Special Programs Administration.

(2) Any policy or interpretation issued by the Research and Special Programs Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff, issued by the Research and Special Programs Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(4) *RSPA Orders.* RSPA orders are issued by the Research and Special Programs Administration and are used primarily to promulgate internal RSPA policy, instructions, and general guidance.

(5) *RSPA Notices.* RSPA notices are issued by the Research and Special Programs Administration and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(6) Indices to the material described in (1) through (5).

(b) The following records are available through the Materials Transportation Bureau document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Materials Transportation Bureau.

(2) Any policy or interpretation issued by the Research and Special Programs Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff, issued by the Materials Transportation Bureau, that affects any member of the public including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(4) Indices to the material described in (1) through (3).

(c) The following records are available through the Data Services Branch of the Office of Aviation Information Management's inspection facility:

(1) Air Carrier Forms 41, 183, 217, 251, 291, 298–R, 298C, ICAO Supplemental Reports and ER–586 and Origination and Destination outputs which are maintained as a data base and reference source.

(d) The following records are available through the Transportation Systems Center document inspection facility:

(1) *RSPA Orders.* (Described in paragraph (a)(4) above).

(2) *RSPA Notices.* (Described in paragraph (a)(5) above).

(3) *TSC Orders.* TSC orders are issued by the Transportation Systems Center and are used primarily to promulgate internal TSC policy, instructions, and general guidance.

(4) *TSC Notices.* TSC notices are issued by the Transportation Systems Center and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(5) Indices to the material described in (1) through (4).

(d) The records and the indexes may be inspected at each facility without charge. A prepayment of fees may be required before copies of records may be obtained, as described in Subpart I this part.

*4. Requests for Records Under Subpart F of this Part*

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the appropriate RSPA document inspection facility as identified in paragraph 2 of this Appendix. Should that facility not have custody of the record, it will forward the request to the appropriate office. If the location of the record is not known, the request should be submitted to the Freedom of Information Officer, RSPA Headquarters, and that official will forward the request to the appropriate office. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Prepayment may be required before delivery is made. The requester may stipulate a maximum fee which he or she will pay.

*5. Reconsideration of Determination not to Disclose Records and to Deny Fee Waivers*

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Research and Special Programs Administrator, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, for a reconsideration of the determination. The decision of the Administrator is administratively final.

[FR Doc. 88–17962 Filed 8–10–88; 8:45 am]
BILLING CODE 4910–62–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 661

[Docket No. 80629–8129]

### Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of approval of an amendment to a fishery management plan.

**SUMMARY:** NOAA announces the approval of Amendment 8 to the Fishery Management Plan for Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California (FMP). The amendment addresses issues of habitat and vessel access. The amendment is intended to conform with changes in the Magnuson Fishery Conservation and Management Act which were implemented in 1986.

**EFFECTIVE DATE:** August 8, 1988.

**ADDRESSES:** Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director (Director, Northwest Region NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070).

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson, 206–526–6140, or Rodney R. McInnis, 213–514–6199.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Pacific Fishery Management Council (Council), and approved by the Secretary of Commerce (Secretary) on March 2, 1978. Since then, the FMP has been amended seven times

with implementing regulations at 50 CFR Part 661.

A 1986 amendment (Pub. L. 99-659) to the Magnuson Act requires that any FMP amendment occurring after January 1, 1987, must (1) include readily available information regarding the significance of habitat to the fishery and assessment of the effects that changes to that habitat may have upon the fishery; and (2) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of vessels.

Under that Magnuson Act amendment, Amendment 8 to the FMP includes (1) a description of habitat to be appended to the FMP, and (2) a statement that the issue of temporary access by vessels denied harvest opportunity by unsafe weather or ocean conditions was considered and that no regulatory changes are needed to meet the Magnuson Act mandate.

The Council submitted Amendment 8 for review by the Secretary of Commerce of February 1, 1988. The Secretary filed a Notice of Availability (53 FR 3225, February 4, 1988), announcing a public comment period until March 31, 1988.

One comment was received from the U.S. Coast Guard.

*Comment:* The U.S. Coast Guard stated its preference for an option which would have codified the Council's current practice of preseason and inseason consideration of vessel safety/access issues and consulting with the U.S. Coast Guard. This option would modify the FMP to specify adverse weather and ocean conditions as an example of "other factors as appropriate" on the list of factors taken into account when making inseason adjustments to management measures, and require formal consultation with the U.S. Coast Guard in the inseason management process if ocean conditions were potentially dangerous to salmon fishing vessels. The U.S. Coast Guard stated that the inseason management process under this option should be followed for all season openings, not just those short seasons to catch remnant quotas.

*Response:* Although the Council did not choose this option, NOAA believes that the concerns of the U.S. Coast Guard are adequately addressed under current practices for preseason and inseason management, codifying such procedures is not necessary, and the Council will continue to seek advice of the U.S. Coast Guard on vessel safety/access considerations. Weather and ocean conditions as they affect vessel safety/access have been accounted for in setting past inseason management actions where appropriate. Furthermore, delaying a scheduled opening due to inclement weather is possible under current procedures, although such a determination is complex involving elements of uncertainty and harvest allocation as well as safety.

Amendment 8 has no implementing regulations. For this reason, a regulatory impact review/regulatory flexibility analysis, normally required by the Regulatory Flexibility Act and Executive Order 12291, was not prepared. The Paperwork Reduction Act does not apply since neither an information collection nor a record-keeping requirement is included in the amendment.

NOAA determined that the amendment is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, California, and the San Francisco Bay Conservation and Development Commission. None of the States disagreed with this determination.

An environmental assessment (EA) prepared by the Council concluded that neither approval nor disapproval of any option presented in the amendment would significantly affect the quality of the human environment in a way that has not already been contemplated in the supplemental environmental impact statement for the FMP. Based upon the EA, the Assistant Administrator for Fisheries determined that this amendment would not significantly affect the quality of the human environment as defined under the National Environmental Policy Act.

The Secretary approved Amendment 8 on May 5, 1988, and determined that it is consistent with the Magnuson Act and other applicable law. Therefore, NOAA issues this notice announcing approval of Amendment 8 to the FMP.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 8, 1988.

**James W. Brennan,**

*Assistant Administrator For Fisheries, National Marine Fisheries Service.*

[FR Doc. 88-18215 Filed 8-8-88; 5:02 pm]

BILLING CODE 3510-22-M

**50 CFR Part 661**

**[Docket No. 80482-8082]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of inseason adjustment.

**SUMMARY:** NOAA announces the rescission of a scheduled 3-day closure of the ocean commercial salmon fishery within the exclusive economic zone (EEZ) between Cape Falcon, Oregon, and Horse Mountain, California, which was to have occurred upon the projected attainment of 85 percent of the coho salmon quota for the area south of Cape Falcon, as stated in the preseason announcement of 1988 management measures. The scheduled 3-day closure was developed in anticipation of a high-effort fishery; it would have provided time for the Pacific Fishery Management Council's Salmon Technical Team to assess landings and determine if enough fish remained in the quota to warrant additional fishing. However, because commercial fishing effort between Cape Falcon and the Orford Reef Red Buoy, Oregon, is being assessed in a timely fashion and is currently lower than preseason predictions, the Director, Northwest Region, NMFS (Regional Director), has determined that a closure to assess data is unnecessary and would unjustifiably disrupt the commercial salmon fishing season in the area. This action is intended to maximize the harvest of coho salmon in this area without exceeding the ocean share of coho salmon allocated to the commercial fishery.

**EFFECTIVE DATE:** Rescission of the required 3-day closure to ocean commercial salmon fishing in the EEZ in the area which remains open between Cape Falcon, Oregon, and Horse Mountain California, upon the projected attainment of 85 percent of the coho salmon quota for the area south of Cape Falcon is effective on August 8, 1988. Comments on this adjustment will be received through August 23, 1988.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is

available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 commercial fishery from Cape Falcon, Oregon, to Horse Mountain, California, is required by the 1988 regulations to close for 3 days to allow assessment of landings and projection of the remaining all-species fishing period when the Salmon Technical Team estimates that 85 percent of the coho salmon quota for the area south of Cape Falcon has been reached (53 FR 16007). Currently, only the area from Cape Falcon to the Orford Reef Red Buoy, Oregon, is open to commercial salmon fishing. The area between Humbug Mountain, Oregon, and Punta Gorda, California, closed on June 7, 1988 (53 FR 22000, June 13, 1988).

It was anticipated preseason that harvest in the commercial fishery in the affected area would occur rapidly with high fishing effort, thus necessitating a 3-day closed period when 85 percent of the coho salmon quota was reached to allow assessment of landing data and projection of the amount of fishing time remaining. However, commercial fishing effort between Cape Falcon and Orford Reef Red Buoy is currently lower than preseason predictions, and landing data are being assessed in a timely manner. Therefore, the scheduled 3-day closure is no longer necessary to bring data up to date.

Consequently, NOAA issues this notice to rescind the scheduled 3-day closure of the EEZ in that area which remains open between Cape Falcon, Oregon, and Horse Mountain, California, to ocean commercial salmon fishing upon the projected attainment of 85 percent of the coho salmon quota for the total area south of Cape Falcon. This notice is effective [insert date of filing for public inspection with the Office of the Federal Register]. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding the rescission of the required 3-day closure of the commercial fishery between Cape Falcon and the Orford Reef Red Buoy. The State of Oregon also will rescind the 3-day closure of the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action.

Because of the need for immediate action to prevent unnecessary closure of the fishery, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 23, 1988.

Federal regulations at 50 CFR 661.21(b)(1)(i) authorize the modification of fishing seasons if certain findings are made as described in the appendix to 50 CFR Part 661, section III.B. Accordingly, the Regional Director has determined this inseason adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated fishing rights, and the ocean allocation scheme in the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California. This inseason adjustment is based on consideration of the total allowable impact limitation for coho salmon south of Cape Falcon, Oregon, the amount of commercial and recreational catch of coho salmon in the area to date, and the amount of commercial fishing effort in the area to date.

Other Matters

This section is authorized by 50 CFR 661.21(b)(1)(i) and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** August 8, 1988.

**Joe P. Clem,**

*Acting Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–18214 Filed 8–8–88; 4:50 pm]

BILLING CODE 3510-22-M

VOL 53 ISS 155 11 1988 AG UMI



# Proposed Rules

Federal Register
Vol. 53, No. 155
Thursday, August 11, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 920

### California Kiwifruit; Proposed Increase in Expenses

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase and revise the authorized expenses under Marketing Order 920 for the 1988–89 fiscal period. Amending this budget would allow the Kiwifruit Administrative Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

**DATE:** Comments must be received by August 22, 1988.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–5610.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit under this marketing order, and approximately 1225 California kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year apply to all assessable kiwifruit handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of kiwifruit. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Kiwifruit Administrative Committee (KAC) met on July 12, 1988 and revised the budget for the fiscal period which began August 1, 1988. The amended budget would total $129,025 instead of the currently approved $112,618. The amended budget would revise several major expense items, including an increase in field staff salaries from $29,650 to $41,010, and an increase in the pension plan from $2,860 to $5,337. Also, an additional $5,000 was recommended for the purchase of microwave ovens and digital scales, to be used by the field staff to demonstrate a new method of measuring kiwifruit maturity. It would be useful to introduce the testing procedure to the handlers now, since it is under consideration as a future regulatory requirement.

The assessment rate of $.0125 is unchanged and the same as last year. Projected shipments of 8.7 million trays would yield $108,750 in assessment income. This income, when added to approximately $20,000 from the reserve, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

### List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.204 is revised to read as follows:

**§ 920.204 Expenses and assessment rate.**

Expenses of $129,025 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0125 per 7½ pound tray or equivalent is established for the fiscal year ending July 31, 1989. Unexpected funds may be carried over as a reserve.

Dated: August 8, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–18207 Filed 8–10–88; 8:45 am]

BILLING CODE 3410–02–M

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## 7 CFR Part 1065

**[DA–88–116]**

## Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed temporary revision of rule.

**SUMMARY:** This notice invites written comments on a proposal to revise temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would reduce for September 1988 through March 1989 the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status. The limits on the amount of milk not needed for fluid (bottling) use that may by moved directly from farms to nonpool manufacturing plants and still be priced under the order would also be revised temporarily, from 40 percent to 60 percent, for the same period. The action was requested by a cooperative which operates pool supply plants and represents a significant number of producers whose milk is pooled under the order. The cooperative states that the temporary revisions are needed to maintain the pool status of producers historically associated with the Nebraska-Western Iowa order and to prevent uneconomic movements of milk.

**DATE:** Comments are due no later than August 26, 1988.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of September 1988 through March 1989.

All persons who desire to submit written data, views or arguments about the proposed revisions should send two copies of their views to the USDA/AMS/Dairy Divison, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**.

The comments that are sent will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1065.7(b) and the diversion limits set forth in § 1065.13(d). The revisions would be applicable for the months of September 1988 through March 1989. The specific revisions would reduce the supply plant shipping percentage for the months of September 1988 through March 1989 by 10 percentage points from the present 40 percent to 30 percent. For the same period, the diversion limits on producer milk would be increased by 20 percentage points, from 40 percent to 60 percent.

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. Similarly, § 1065.13(d) allows the Director of the Dairy Division to increase or decrease the diversion limitation percentages by up to 20 percentage points during any month. These provisions help to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc. (AMPI), a cooperative association operating supply plants historically pooled under the Nebraska-Western Iowa order and representing producers supplying a significant portion of the producer milk pooled under the order, requested that for the months of September 1988 through March 1989, the supply plant shipping percentage requirement be reduced by 10 percentage points and the diversion limit on producer milk be increased by 20 percentage points.

The cooperative states that producer milk pooled under the Nebraska-Western Iowa order during the first six months of 1988 is 13.4 percent above the same period of 1987, while Class I sales for the same time period are virtually identical.

Given the present combination of production increases combined with static Class I sales, AMPI estimates that the percentage of producer milk used in Class I during the months of September 1988 through March 1989 is unlikely to be more than 35 percent. AMPI states that a 35-percent level of Class I utilization would make it difficult to justify a requirement that 60 percent of producer milk be moved to pool plants. According to the cooperative, such a requirement would involve delivering milk to pool plants, then pumping it back out into trucks that would haul it to

nonpool plants where the milk could be used.

Because of the expected relationship between milk production and the Class I needs of the market, AMPI states that 60 percent would be a more appropriate limit on diversions of producer milk to nonpool plants than 40 percent, and that 30 percent would be a more appropriate shipping requirement for pool supply plants than 40 percent. According to the cooperative, the requested temporary revisions would allow AMPI to avoid engaging in uneconomic and inefficient milk movements in order to maintain the pool status of the milk of its members who have historically supplied the fluid needs of the Nebraska-Western Iowa marketing area.

Therefore, it may be appropriate to relax the aforementioned provisions of §§ 1065.7(b) and 1065.13(d) for the months of September 1988 through March 1989 to prevent uneconomic shipments of milk, and to assure that dairy farmers long associated with the fluid milk market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

**List of Subjects in 7 CFR Part 1065**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

**Authority:** (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on August 8, 1988.

**W.H. Blanchard,**

*Acting Director, Dairy Division.*

[FR Doc. 88–18210 Filed 8–10–88; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 1079**

**[DA–88–115]**

## Milk in the Iowa Marketing Area; Proposed Temporary Revision of Shipping Percentage

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed temporary revision of rule.

**SUMMARY:** This notice invites written comments on a proposal to relax temporarily certain provisions of the Iowa Federal milk order. The proposed action would relax for September through November 1988 the supply plant shipping requirements. This action was requested by the operator of a pool supply plant who ships milk to distributing plants regulated by the order.

**DATE:** Comments are due on or before August 18, 1988.

**ADDRESS:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. The action would lessen the regulatory impact on certain milk handlers and would tend to ensure that the market would be adequately supplied with milk for fluid use with a small proportion of milk shipments from pool supply plants.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1079.7(b)(1) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area, 7 CFR Part 1079, is being considered for the month of September, October and November 1988.

All persons who want to send written data, views or arguments about the proposed revision should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1988 in the temporary revision period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The provisions proposed to be temporarily revised are the supply plant shipping percentages for the months of September, October and November 1988. The proposed action would reduce the shipping requirement 10 percentage points from the present 35 percent to 25 percent.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested this action in order to prevent uneconomic shipments of milk during September, October and November 1988. Beatrice said that the market's producer milk receipts showed an increase each month over the same month of 1987. The monthly increases for this period cited by Beatrice were less than 1.0 percent for April, about 2.5 for May and 3.3 for June. Beatrice indicated that receipts at their supply plant increased for this same period by 2.7, 1.4 and 3.3 percent and that they expect their receipts for the balance of 1988 to continue this trend. Beatrice also indicated that without a downward revision in the supply plant shipping standards, it would have to uneconomically backhaul approximately 2.8 to 3.2 million pounds of milk per month in order to pool this milk.

The petitioner stated that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement to a 25-percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

Concurrently issued with this proposed action is a proposed suspension of a portion of the diversion limitation provisions for the same period. Associated Milk Producers, Inc., requested the suspension citing similar supply-demand conditions in the market.

**List of Subjects in 7 CFR Part 1079**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on August 8, 1988.

W.H. Blanchard,

*Acting Director, Dairy Division.*

[FR Doc. 88-18209 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 1079**

**[DA-88-117]**

## Milk in the Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal to suspend for the months of September through November 1988 a portion of the Iowa Federal milk marketing order. The proposed suspension would increase the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. A cooperative association requested the suspension in order to maintain pool status for the milk of its member producers without incurring costs for hauling and handling milk that would otherwise be unnecessary.

**DATE:** Comments are due on or before August 18, 1988.

**ADDRESS:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for September through November 1988:

In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each such paragraph.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1988 in the suspension period, if this is found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

### Statement of Consideration

The proposed suspension would allow more than 50 percent of a handler's producer milk receipts to be moved directly from farms to nonpool plants (diverted) and still be priced under the order during the months of September, October, and November 1988. The proposal was submitted by Associated Milk Producers, Inc. (AMPI), a cooperative association of producers. AMPI maintains that the diversion limits need to be relaxed in order to avoid the costs associated with receiving and transferring milk merely to keep it pooled.

In support of its proposal, AMPI points out that production increased for the first six months of 1988 relative to the Class I use level. January through June milk production increased approximately 4.1 percent from a year earlier, while Class I sales remain at the 1987 level of about 27 percent of production. The cooperative projects that during the fall months, only about 30 percent of the market's milk supply will be needed for Class I use. Thus, the cooperative believes that the suspension would enable them to move the other 70 percent in the most economical manner to processing facilities. This, they say, would avoid the pumping of milk into their supply plant and the subsequent transfer to a nonpool manufacturing plant.

The Iowa order provides that up to 50 percent of a handler's producer milk supply may be diverted to nonpool plants each month during September through November. It is assumed that the other 50 percent of the milk supply will be needed to meet the market's demand for milk at bottling plants. AMPI expects, however, that because milk supplies are increasing relative to demand, the 50-percent diversion allowance will be inadequate to efficiently dispose of milk supplies associated with the market, but not needed at fluid milk plants.

The cooperate notes that if such reserve supplies cannot be pooled through the diversion provisions of the order, the only alternative is to first receive the milk at pool plants and then reload it and haul it to nonpool plants. This, according to AMPI, results in handling and hauling costs that can be avoided if the milk is pooled by diversion, and in additional pumping of milk, which adversely affects milk quality.

Simultaneously issued with this proposed suspension is a proposed temporary relaxation of the supply plant shipping standard from 35 to 25 percent for this same period requested by Beatrice Cheese, Inc. Beatrice cited similar supply-demand conditions in the market.

If the 50-percent diversion limit is suspended, a cooperative association would be able to divert up to 70 percent of its producer milk supplies. The relaxation of the supply plant shipping standard from 35 to 25 percent, if granted, would allow the operator of a pool supply plant to divert up to 70 percent of the plant's producer milk supply. Pool distributing plants, because of other pooling standards, would be able to divert up to 60 percent of the plant's producer milk supply.

### List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on August 5, 1988.

L.P. Massaro,

*Acting Administrator.*

[FR Doc. 88-18208 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

VOL 53 ISS 155 AUG 11 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-31, Notice No. SC-88-5-NM]

## Special Conditions; Cessna Aircraft Company Model 560 Airplane

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Cessna Aircraft Company Model 560 airplane. This airplane will have an unusually high operating altitude (45,000 feet) when compared to the state of technology envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

**DATE:** Comments must be received on or before September 12, 1988.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-31, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-31. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Lium, Aerospance Engineer, Regulations Branch, ANM-114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431-2118.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-31." The postcard will be date/time stamped and returned to the commenter.

### Background

On June 15, 1987, Cessna Aircraft Company applied for an amendment to their type certificate No. A22CE to include their new Model 560 airplane. The Model 560, which is a derivative of the Model S550 currently approved under Type Certificate No. A22CE, is slightly larger, with a 20-inch fuselage stretch, different engines, increased horizontal tail size, increased operating weights and speeds, and an increase in operating altitude from 43,000 feet to 45,000 feet.

Under the provisions of § 21.101, Cessna Aircraft Company must show that the Model 560 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE, or the applicable regulations in effect on the date of application for the Model 560. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A22CE are as follows: Part 25 of the Federal Aviation Regulations, effective February 1, 1965, including Amendments 25-1 through 25-17; except §§ 25.251(e), 25.934, and 25.1091(d)(2), as amended through Amendment 25-23; §§ 25.787, 25.789, 25.791, 25.853, 25.855, 25.857, and 25.1359, as amended through Amendment 25-32; §§ 25.1385(c) and 25.1401, as amended through Amendment 25.40; § 25.1303(a)(2) as amended through Amendment 25-43; Special Conditions 25-25-CE-4; Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended at the time of certification; and SFAR 27, effective February 1, 1974, as amended at the time of certification. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 560 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model 560 must comply with the noise certification requirements of Part 36 and the engine requirements of Special Federal Aviation Regulation (SFAR) 27.

### Novel or Unusual Design Features

The model 560 will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 45,000 feet.

The FAA policy is to apply special conditions to Part 25 transports when the certificated altitude exceeds the capability of the oxygen system (in this case, the passenger system.) This has been the case for the early Learjet, Lockheed Jetstar, Aero Jet Commander, Cessna 650, and the Israel Aircraft Industries Model 1125 Westwind Astra. The special conditions for the Westwind Astra are considered the most applicable to the Cessna Model 560 and its proposed operation. They are therefore used as the basis for the proposed special conditions.

Damage tolerance methods are proposed to be used to assure vessel integrity while operating at the higher altitudes, in lieu of the 1/2-bay crack requirement used in some previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, Amendment 25-54. The cabin altitude after failure may not exceed the cabin altitude/time curve limits shown in Figures 3 and 4. Continuous flow passenger oxygen equipment is certified for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of

passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition proposed therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

**Conclusion**

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Parts 21 and 25**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Aircraft Company Model 560 series airplane:

1. The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1561(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

2. *Operation to 45,000 feet.*

a. *Pressure Vessel Integrity.*

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph d (Pressurization ) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a large opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

b. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

c. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

d. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, which produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame conditions must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs d1 and d2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

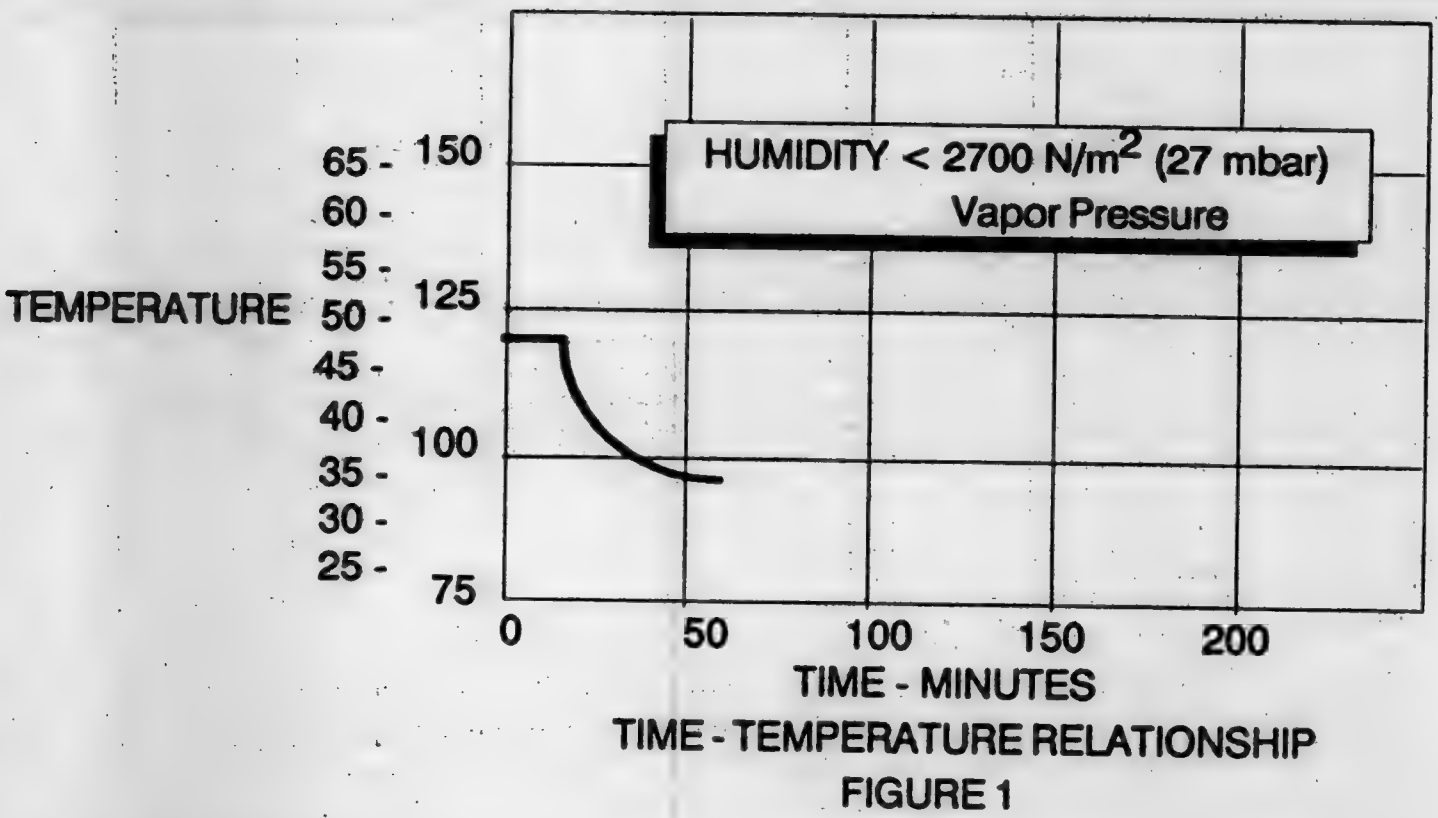
**Note.**—For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

e. *Oxygen equipment and supply.*

1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

BILLING CODE 4910-13-M




TIME - TEMPERATURE RELATIONSHIP

FIGURE 1

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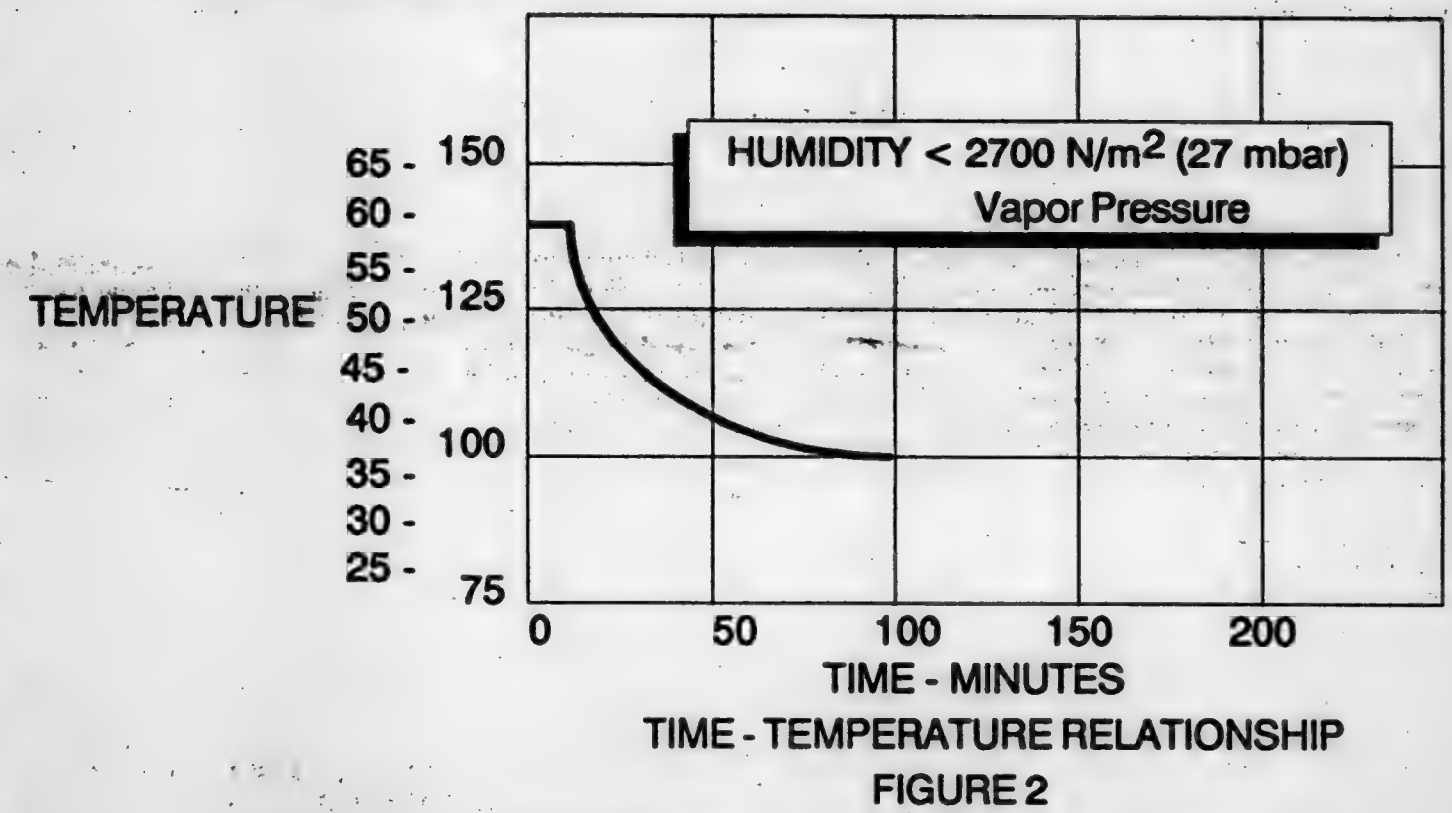


TIME - TEMPERATURE RELATIONSHIP

FIGURE 2

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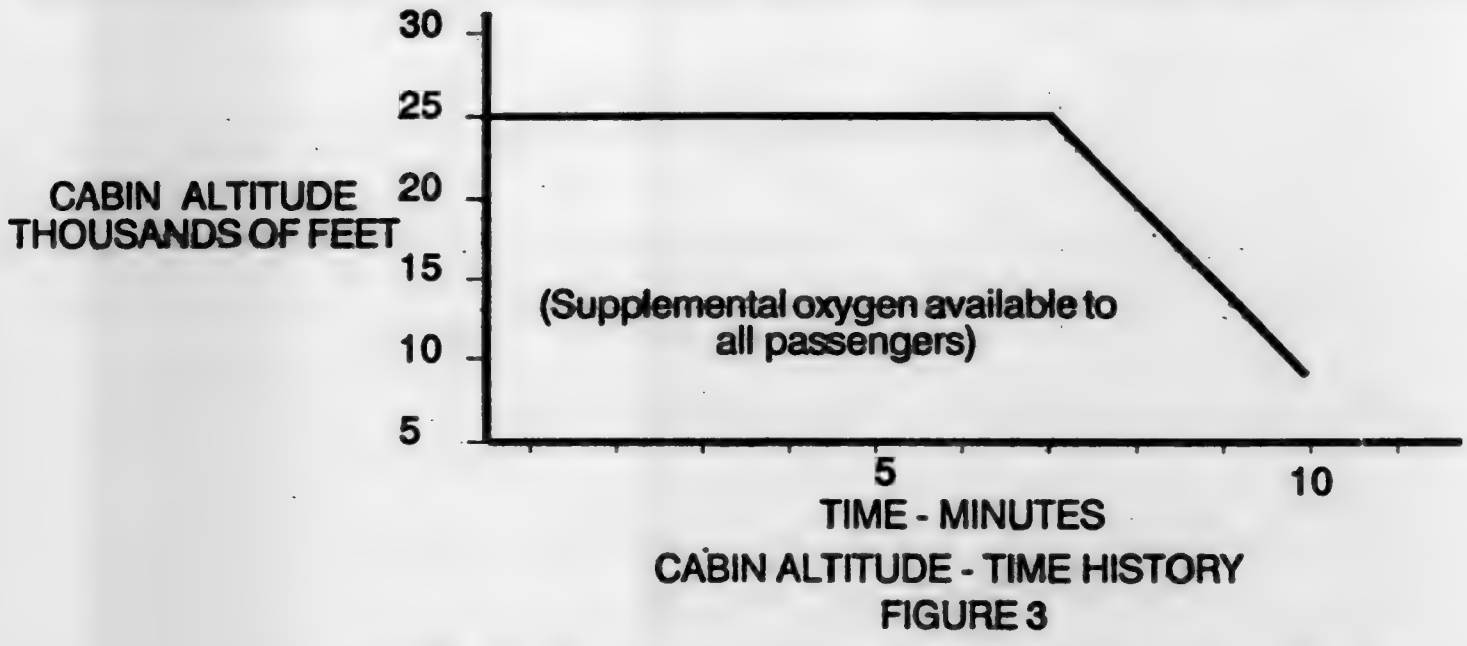


CABIN ALTITUDE - TIME HISTORY
FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

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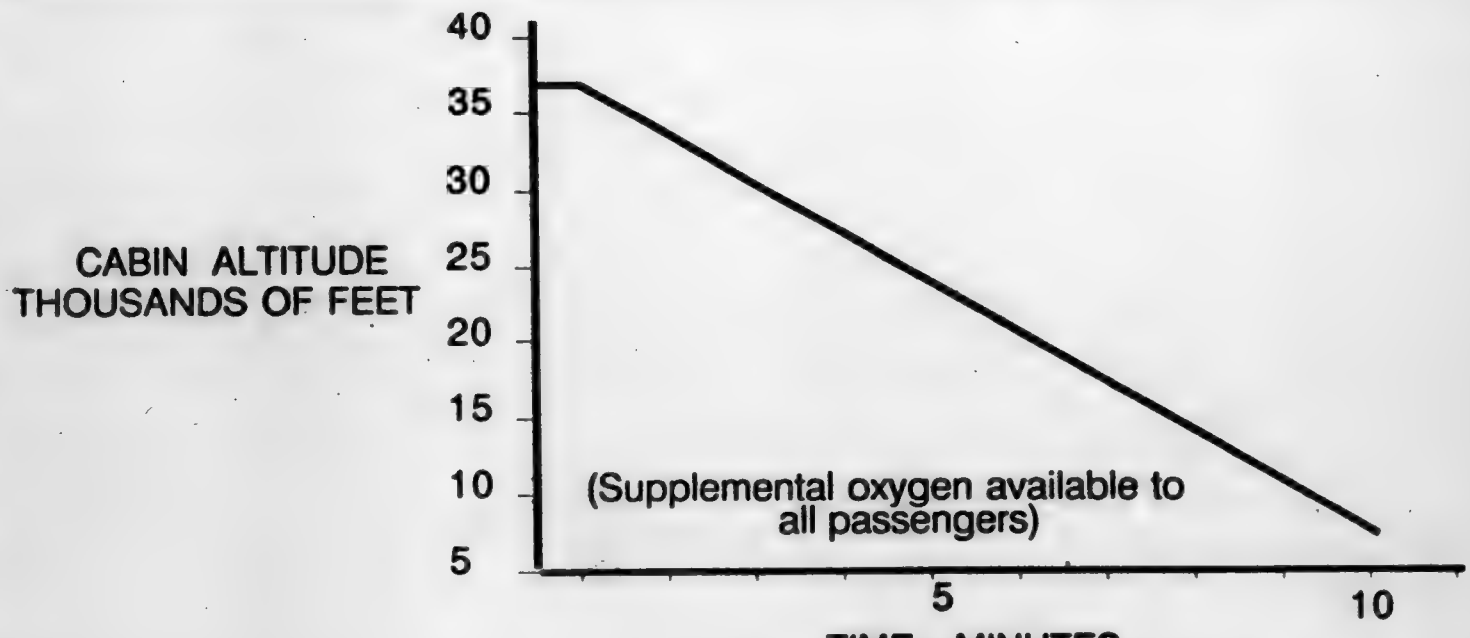


CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910-13-C

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Issued in Washington DC, on August 2, 1988.

**M.C. Beard,**

*Director of Airworthiness.*

[FR Doc. 88-18122 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-ANM-13]**

## Proposed Establishment of VOR Federal Airway V-593, Colorado

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to designate a new Federal Airway V-593 between Denver, CO, and Pueblo, CO. The arrival fix over Kiowa, CO, produces congestion in that area for traffic landing at Denver. This action would add a new airway that bypasses Kiowa for a direct route to the Denver terminal area, reduce delays and shorten the distance by nine miles.

**DATES:** Comments must be received on or before September 26, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 88-ANM-13, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate new VOR Federal Airway V-593 located in the vicinity of Denver, CO. We have identified the need for an airway to support procedures for the arrival traffic flow from the south. Presently, low and high altitude arrivals mix at Kiowa, CO, VORTAC, producing delays. This new airway would bypass Kiowa and shorten the route to the Denver terminal area by nine miles. This action would reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-593 [New]**

From Pueblo, CO, INT Pueblo 004°T(351°M) and Denver, CO, 147°T(135°M) radials; to Denver.

Issued in Washington, DC, on August 4, 1988.

**Shelomo Wugalter,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 88-18124 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 73**

**[Airspace Docket No. 88-ACE-8]**

## Proposed Change to Times of Designation for Restricted Areas R-3601A and R-3601B Brookville, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to increase the published times of designation for Restricted Areas R–3601A and R–3601B Brookville, KS. Increased training requirements have resulted in expanded use of these areas through daily activation of the currently published "other times by NOTAM" provision. This proposed action would revise the published times to reflect actual current usage and negate the need for issuing daily Notice to Airmen (NOTAM).

**DATE:** Comments must be received on or before September 26, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 88–ACE–8, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9253.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Send comments on environmental and land use aspects to: Headquarters, ANG SC/DEV, Mail Stop 18, Andrews AFB, MD 20331. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ACE–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any peson may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communicatioins must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to expand the published times of designation for Restricted Areas R–3601A and R–3601B Brookville, KS, in order to more accurately indicate the actual times of use for these areas. The military has incrased their use of these areas beyond the core hours listed for R–3601A and R–3601B. Because of this expanded operation, the user is required to modify the times of use everyday by issuance of a Notice to Airmen (NOTAM). This proposal would update the published times of use shown on aeronatucial charts and delete the need for daily NOTAM's. Section 73.36 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economc impact on a substantial number of smal entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

### § 73.36 [Amended]

2. Section 73.36 is amended as follows:

**R–3601A Brookville, KS [Amended]**

By removing the present time of designation and substituting the following: Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance.

**R–3601B Brookville, KS [Amended]**

By removing the present time of designation and substituting the following: Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance.

Issued in Washington, DC, on August 4, 1988.

**Temple H. Johnson, Jr.,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 88–18123 Filed 8–10–88; 8:45 am]

BILLING CODE 4910–13–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 270

[Rel. No. IC–16504; File No. S7–15–88]

### Offers of Exchange Involving Registered Open-End Investment Companies and Unit Investment Trusts

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Revised proposed rule and request for comment.

**SUMMARY:** The Commission is publishing for public comment a revised rule proposal that would permit a mutual fund or its principal underwriter to make certain exchange offers to its own shareholders or to shareholders of another fund in the same group of funds. The Commission makes this proposal because of the numerous applications that have been filed with the Commission regarding mutual fund exchanges. The revised proposed rule is intended to set forth the Commission's standards for most such exchanges and reduce signficantly the burden on the mutual fund industry of filing applications.

The Commission is also seeking additional comment on a proposed rule that was previously issued for comment and that would permit a unit investment trust or its sponsor to make certain exchange offers to unitholders of the same trust or to unitholders of another unit investment trust having the same sponsor. The commenters on the original proposal raised several issues. The Commission now seeks comment on alternatives to the proposal and on what further steps it should take in this area.

Finally, the Commission is considering whether to propose amendments to an existing rule that permits certain insurance company separate accounts to make offers of exchange. Such amendments are being considered because issues now under consideration in the mutual fund and unit investment trust exchange areas also apply to separate accounts. The Commission is requesting comment on insurance considerations relevant to the questions of whether and how amendments to rule 11a–2 should be implemented.

**DATE:** Comments must be received on or before October 11, 1988.

**ADDRESS:** Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7–15–88. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Brian M. Kaplowitz, Chief, or Brian P. Kindelan, Special Counsel, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is asking for public comment on a revision of proposed rule 11a–3 and for additional public comment on proposed rule 11c–1, both under section 11(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*) (the "Act"). Additionally, the Commission is asking for public comment on certain matters pertaining to whether, and, if so, how, rule 11a–2 (17 CFR 270.11a–2) under section 11 of the Act (15 U.S.C. 80a–11) should be amended.

## Executive Summary

In December 1986, the Commission proposed rules 11a–3 and 11c–1, which would permit certain exchange offers by registered open-end management investment companies ("mutual funds" or "funds") and unit investment trusts ("UITs"), other than registered separate accounts.[1] The six commenters on the proposals generally supported the initiative taken by the Commission, but argued that certain provisions of the proposed rules should be modified or eliminated. As discussed below, revised proposed rule 11a–3 reflects the comments received, as well as developments occurring after issuance of the proposal.

Revised proposed rule 11a–3 would permit, subject to specified conditions, a mutual fund or its principal underwriter to make exchange offers to that fund's shareholders (*e.g.*, in the case of a series company) or to shareholders of another fund in the same group of funds. As in the initial proposal, the revised proposed rule would permit the imposition of an administrative fee and a sales load on the "acquired security" at the time of an exchange.[2] In addition, also like the initial proposal, revised proposed rule 11a–3 would permit a deferred sales load on the acquired security. For purposes of calculating any sales load imposed on the acquired security, both proposals would require that an exchanging shareholder receive credit for any sales load previously paid on the exchanged security and, in the case of an acquired security subject to a contingent deferred sales load, for the length of time the shareholder held the exchanged security.[3] Both proposals would also require disclosure of any administrative fee in the prospectus of the offering company and in certain sales literature and advertising.

The revised proposal contains several changes from the initial proposal. First, the revised proposed rule states that an offering company that has previously made an exchange offer cannot rely on the rule to change the terms of such prior offer unless that company's prospectus had disclosed, at all times the offer was outstanding, that the offer was subject to termination and that its terms were subject to change, unless the only effect of the change is to reduce or eliminate a charge payable at the time of the exchange. Second, the revised proposal would define the term "administrative fee" and permit the imposition of a redemption fee on the exchanged security at the time of an exchange. The intention to impose a redemption fee would also have to be disclosed in certain sales literature and advertising. Third, the revised proposed rule would expressly prohibit the imposition of a deferred sales load on the exchanged security at the time of an exchange. Such a prohibition was merely implicit in the original proposal. Fourth, the revised proposal would expand and relabel the "family of funds" concept contained in the original proposal. Fifth, the revised proposed rule would require any offering company that reserves the right to change the terms of or terminate its exchange offer to disclose in its prospectus and in certain advertising and sales literature that the offer may be terminated and that its terms are subject to change. Finally, the revised version would require that shareholders by given prior notice of any material amendment to the terms of an exchange offer, unless the only effect of the amendment is to reduce or eliminate a charge payable at the time of the exchange.

Reproposed rule 11a–3 would be prospective in effect and is intended to set forth for the entire fund industry the Commissions standards for approval of exchange offers at other than relative net asset value. Therefore, when adopted, rule 11a–3 will supersede all prior Commission orders that approved exchange offers at other than relative net asset value. Recipients of such prior orders should avail themselves of the

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[1] *See* Investment Company Act Rel. No. 15494 (Dec. 23, 1986) [51 FR 47260, Dec. 31, 1986] ("proposing release").

[2] The introductory language in the revised proposal has been modified to clarify that the rule is intended to permit only the imposition of certain charges at the time of an exchange, and not to approve all of the other terms of an exchange offer.

The "acquired security" is the security of the offering company that an investor acquired in an exchange. *See* revised proposal rule 11a–3(a). "Sales load" is defined in section 2(a)(35) of the Act [15 U.S.C. 80a–2(a)(35)]

[3] Revised proposed rule 11a–3(c)(3) would define the term "exchanged security" to include the security actually exchanged under an exchange offer, and any security previously exchanged for the security actually exchanged or for any of its predecessors.

comment process on rule 11a–3, if they so desire.

The Commission is also requesting additional public comment on proposed rule 11c–1. Proposed rule 11c–1 would permit, subject to certian conditions, a UIT or its sponsor to make certain exchange offers to unitholders of the same trust or another UIT having the same sponsor. Because of concerns raised by the commenters, the Commission is requesting additional comment on whether and how it should proceed with a rulemaking initiative in this area.

Finally, the Commission is considering whether to propose amendments to rule 11a–2, which permits, under certain conditions, offers of exchange by registered separate accounts. The Commissionis asking for public comment on insurance considerations relevant to proposing amendments to the rule.

**Background**

Section 11(a) of the Act provides that unless an exchange offer made by a mutual fund or its principal underwriter to the fund's own shareholders, or to the shareholders of another mutual fund, is made on the basis of the relative net asset values of the shares to be exchanged, the terms of the offer must first be approved by the Commission or comply with any rules that the Commission may have prescribed. Section 11(c), by reference to section 11(a), provides that the terms of *any* exchange offer involving the securities of a UIT must first be approved by the Commission or comply with any rules that the Commisson may have prescribed.

The legislative history of section 11 and the reasons for proposing rules 11a–3 and 11c–1 are discussed thoroughly in Investment Company Act Release No. 15494 (December 23, 1986) (the "proposing release"), and will not be repeated here. In brief, proposed rule 11a–3 would have permitted a mutual fund or its principal underwriter to make certian exchange offers to that fund's shareholders or to shareholders of another fund in the same family of funds. Proposed rule 11c–1 would have permitted a UIT or its sponsor to make certian exchange offers to unitholders of the same UIT or to unitholders of another UIT having the same sponsor.

In response to proposed rule 11a–3, five of the six commenters generally expressed support for the initiative, but argued that certian provisions should be modified or clarified.[4] Moreover, other developments have come to light that indicate a need for modification of the original proposal. Specifically, some fund families that have a liberal exchange policy may experience a heavy volume of exchanges to the detriment of shareholders remaining in certain funds. Excessive exchange activity may increase fund expenses [5] and force portfolio managers to maintain a large cash position to meet possible redemptions due to exchanges.[6] Recently, several funds have imposed new restrictions on their exchange privileges and other funds may follow suit.

The imposition of restrictions on existing exchange privileges, however, raises its own set of problems. While such restrictions may benefit investors who seldom, if ever, use exchange privileges, they may be unfair to those investors who bought shares in reliance on unlimited or free exchange privileges.[7]

Also, in some applications received after the proposal of rule 11a–3, applicants have sought permission to calculate the amount of a contingent deferred sales load ("CDSL") imposed at the time an acquired security is redeemed in a manner that differs from that described in the vast majority of the applications received prior to the proposal.[8] Under almost all of the orders issued before proposed rule 11a–3, any CDSL on the acquired security is calculated as if the acquired security were held from the date on which the exchanged security was acquired.[9] Recently, however, where the exchanged security was subject to a CDSL that would be deferred until redemption of the acquired security, and the acquired security was itself subject to neither a front-end sales load nor a CDSL, applicants have sought and received permission to exclude the time period during which the acquired security was held when calculating the CDSL charged when the acquired security was redeemed.[10] In light of these recent orders, and the other developments discussed above, the Commission has decided to repropose rule 11a–3.

Regarding proposed rule 11c–1, two commenters argued that it would be unworkable and a significant departure from the prior orders. As discussed in more detail below, however, the commenters failed to suggest an alternative approach that would address adequately the concerns reflected in the legislative history of section 11. Therefore, the Commission has decided to seek additional comment on the proposed rule before taking further action.

The Commission adopted rule 11a–2 in 1983 to permit certain exchange offers by registered separate accounts.[11] The rule defines who may make and receive those exchange offers, and permits the offering account to charge an administrative fee and, under certain conditions, a sales load at the time of an exchange. The Commission generally believes that, to promote competitive equality among investment company products, insurance company separate accounts and mutual funds should be subject to the same legal requirements

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[4] In addition to the comment letters received, a representative of one of the commenters met with several representatives of the Commission's Division of Investment Management. A memorandum submitted by the commenter after that meeting and a staff memorandum discussing the meeting were placed in the public comment file on the proposed rules.

[5] For example, funds may be required to liquidate assets, thereby incurring brokerage commissions. *See* discussion of redemption fees, *infra*, at notes 37–45 and accompany text.

[6] *See Managers Closely Watch Redemptions*, Wall St. J., Oct. 27, 1987, at 41, col. 1; *Fidelity Sector Funds Sustain Big Hits*, Wall St. J., Oct. 23, 1987, at 45, col. 1.

[7] *See Some Funds Act To Discouroge Phone Switches*, Wall St. J., Feb. 8, 1988, at 27, col. 3; *Fidelity Curbs Switching in Sector Funds*, Wall St. J., Apr. 13, 1987, at 45, col. 1.

[8] A CDSL is a sales load that is paid by the shareholder at the time fund shares are redeemed and the amount of which varies with the length of time the redeemed shares were held. The CDSL may be eliminated entirely if redemption does not occur before a specified period of time. For instance, a typical CDSL might consist of a five percent charge on redemptions of shares made within one year of purchase. In each successive year, the percentage of the sales load would be reduced by one percent, with the result that a redemption of shares that had been held for more than five years would not be subject to any sales load.

[9] *See, e.g.*, Freedom Investment Trust, et al., Investment Company Act Rel. Nos. 15075 (Apr. 28, 1986) (51 FR 16602, May 5, 1986) (notice of application) and 15118 (May 28, 1986) (order). Proposed rule 11a–3(a)(3) would have required such tacking of the time an investor held both the exchanged and the acquired securities for purposes of calculating the CDSL on the acquired security.

[10] *See, e.g.*, Tucker Anthony Mutual Fund, et al., Investment Company Act Rel. Nos. 15708 (Apr. 28, 1987) (52 FR 16474, May 5, 1987) (notice of application) and 15745 (May 19, 1987) (order). *See also* notes 33–36, *infra*, and accompanying text.

[11] *See* Investment Company Act Rel. No. 13407 (July 28, 1983) (48 FR 3643, Aug. 10, 1983) (adopting release for rule 11a–2).

Section 1(a)(37) of the Act (15 U.S.C. 80a–2(a)(37)) defines "separate account" as "an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not related, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company." "Separate account" is similarly defined in rule 0–1(e) under the Act (17 CFR 270.0–1(e)) for purposes of the availability of certain exemptive rules, including rule 11a–2.

in the exchange offer area. If revised proposed rule 11a–3 is adopted, therefore, the Commission intends to consider whether to propose amendments to rule 11a–2 so that, to the extent possible, the two rules will contain similar provisions. the Commission is now asking for comment on insurance considerations relevant to amending rule 11a–2.

**Discussion**

*A. Revised Proposed Rule 11a–3*

This section discusses provisions in the revised proposed rule that reflect changes from the initial proposal, as well as provisions that have been left unchanged.

1. Effect of Revised Proposed Rule on Prior Orders

In conjunction with the proposing release, the Commission issued a notice proposing to amend fifty orders previously issued under the Act (the "prior orders") to conform the prior orders to the proposed rule, when adopted.[12] The prior orders approve exchanges between mutual funds where an administrative or other processing fee is imposed. The notice stated that "[a]ny interested person may request a hearing on amendment of a particular Prior Order or ask to be notified if a hearing is ordered." The Commission received responses covering six of the prior orders.

The Commission has determined that it is not necessary to give individual hearings to the holders of the prior orders or to any other person. There is no need for such hearings because the reproposed rule would be prospective in effect and is intended to set forth for the entire industry the Commission's standards for approval of exchange offers at other than relative net asset value. Moreover, all of the rule's provisions would apply, not just those governing disclosure of administrative fees. Recipients of prior orders may make their views known in the context of the comment process that accompanies Commission rulemaking, and those views will be given due consideration.[13] Similarly, holders of orders not involving administrative fees (*e.g.*, any other type of order regarding an exchange at other than relative net asset value) should avail themselves of the comment process, if they so desire.[14]

2. Funds That May Rely on the Rule

Revised proposed rule 11a–3 would provide specifically that any offering company that has previously made an offer of exchange cannot rely on the rule to amend the terms of such prior offer unless the prospectus of the offering company had disclosed, at all times the offer was outstanding, that the offer was subject to termination and its terms were subject to change.[15] Revised proposed rule 11a–3 is intended to provide generic relief from section 11 for many exchange offers made at other than relative net asset value. Conditioning use of the rule on prior prospectus disclosure recognizes that some funds with existing exchange privileges previously used those privileges in marketing fund shares, but may now wish to rely on the rule to change the privileges so as to restrict effectively their use. For example, such a fund may seek to impose an administrative charge or redemption fee on an exchange, or increase an administrative charge permitted by a prior order. Such changes may raise questions of fairness with respect to those shareholders who bought (and held) shares of the fund based, in part, on the existing terms of an exchange privilege. The degree of unfairness, in turn, depends partially on the past prospectus disclosure and marketing of funds with such privileges.[16] At least where there has been prior prospectus disclosure that an exchange privilege may change there is some notice to investors.[17] Accordingly, such past disclosure is a precondition to use of the rule.[18]

The Commission seeks comment, however, on whether it is necessary and appropriate that final rule 11a–3 state that if the appropriate prospectus disclosure was made at or before the time any investor acquired all of his shares, then the fund could rely on the rule as to that shareholder to amend an exchange offer. Alternatively, the Commission seeks comment on whether it is necessary and appropriate that final rule 11a–3 state that if the prospectus disclosure was made for a particular number of years (*e.g.*, 2, 5, of 10 years), then the fund could rely on the rule to amend an exchange offer.

3. Calculating the Sales Load Differential

Revised proposed rule 11a–3 would permit exchanges of mutual fund shares on the basis of the relative net asset values of the securities to be exchanged plus the imposition of a sales load on the acquired security.[19] Paragraph (a)(3) of the revised proposed rule would limit any sales load charged on the acquired security to a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of all sales loads previously paid on the exchanged security (the "sales load differential").[20] Additionally, paragraph (a)(3) of the revised proposal would limit any sales load charged upon redemption of the acquired security, that is solely the result of a deferred sales load imposed on the exchanged security, to a rate that is no greater than the excess, if any, of

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[12] *See* Investment Company Act Rel. No. 15546 (Jan. 20, 1987) [52 FR 2966, Jan. 29, 1987].

[13] *But cf.* section 40(a) of the Act [15 U.S.C. 80a–39(a)] (the procedure for the issuance of orders under the Act contemplates the opportunity for hearings on an individual basis).

[14] Orders issued since the initial proposal have all been conditioned specifically on compliance with rule 11a–3, when and if adopted.

[15] Paragraph (a)(1) would provide an exception to the prior disclosure requirement where the only effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange.

[16] *See* notes 60–64, *infra*, and accompanying text.

[17] The Commission is not requiring that funds use any particular language for the necessary disclosure, but such disclosure should be clear and unambiguous.

[18] Once rule 11a–3 is adopted, any fund that (i) proposes to restrict materially the terms of an exchange offer, (ii) would require an order under section 11 after such amendment, and (iii) is unable to rely on rule 11a–3, would be required to obtain an individual order (or an amended order, as appropriate) prior to changing the terms of the offer. In reviewing applications from such funds, the staff would use rule 11a–3, as adopted, as a guideline. The Commission would expect applicants to comply, to the extent possible, with the terms of rule 11a–3 and to demonstrate either that existing shareholders who were not on notice that the terms of the offer could change would not be harmed by the amendment, or that the application includes conditions designed to mitigate any harm suffered by such shareholders. Such conditions could include (i) permitting existing shareholders who were not on notice to continue to exchange their shares under the original terms of the exchange offer, (ii) allowing such shareholders to redeem their shares within a specified period of time without payment of any redemption fee or deferred sales load that would otherwise be applicable, or (iii) allowing such shareholders to redeem their shares and receive a total or partial refund of any front-end sales load previously paid.

[19] As initially proposed, rule 11a–3(a) would have permitted the imposition of "a nominal administrative fee or a sales load". Three commenters asked that the final rule clearly state that it permits both a nominal administrative fee and a sales load to be charged. The revised proposed rule would permit either or both of these charges and would also permit the imposition of a redemption fee at the time of an exchange. In response to the commenters, revised proposed rule 11a–3 specifically states that any combination of the permitted charges may be imposed.

[20] Thus, paragraph (a)(3) would permit a sales load to be charged on the acquired security only if the percentage rate of the sales load otherwise applicable to that security exceeds the combined percentage rates of *all* sales loads previously paid by the shareholder on the exchanged security.

the applicable rate of such sales load, calculated in accordance with paragraph (a)(5) of the rule, over the total rate of all sales loads previously paid on the acquired security.

The proposed rule would have also used a sales load differential approach to limit the maximum sales load that could be charged on the acquired security. However, the proposal did not specify whether the offering company should calculate the differential by reference to the difference between the *rates* of the sales loads or the difference between the *amounts* of the sales loads. One commenter pointed out that the prevailing industry practice is to calculate the differential by referring to the rates, rather than to the amounts. The same commenter also pointed out that rule 11a–2, relating to offers of exchange involving insurance company separate accounts, permits the sales load differential to be calculated by reference to the difference in rates.[21] Thus, the revised proposal is intended to bring the proposed rule into conformance with both rule 11a–2 and current industry practice.[22]

The proposal did not specifically address the situation where the exchanged security is subject to a deferred sales load and the acquired security is subject to a front-end sales load. The revised proposal would permit the imposition of the front-end sales load at the time of exchange, but the deferred sales load for the security originally purchased (*i.e.* the exchanged security) could not be imposed until the shareholder redeems the acquired security. The proviso to paragraph (a)(3) would provide that, where a deferred sales load imposed at the time the acquired security is redeemed is solely the result of a deferred sales load imposed on the exchanged security, the rate of such sales load may not exceed a sales load differential calculated using the total rate of all sales loads previously paid on the acquired security. The crediting of any front-end sales load on the acquired security, when determining the amount of the original deferred load that is still owed, is consistent with the other aspects of the revised proposal and with the purposes of section 11.

Finally, where a shareholder exchanges less than all of his securities, revised proposed rule 11a–3 would provide that in calculating any sales load charged on the acquired security, the security upon which the highest sales load rate was previously paid should be deemed exchanged first. An order of redemption provision is necessary because of the high degree of control that a fund may have over the order in which shares are redeemed upon an exchange, and the fact that a fund's principal underwriter may benefit if shares are redeemed in an order that results in a higher sales load.[23]

4. Deferred Sales Load on the Exchanged Security

Revised proposed rule 11a–3 would prohibit specifically the imposition of a deferred sales load on any exchanged security at the time of an exchange.[24] Permitting a deferred sales load to be imposed at the time of an exchange could raise problems of the type with which section 11 is concerned. Even if a shareholder received credit for paying such a sales load against any sales load otherwise payable on the acquired security, there may be an enhanced incentive to engage in switching. Inducing an exchange would trigger payment of a deferred sales load, thereby permitting the fund's principal underwriter to receive payment of a sales load earlier than would otherwise be the case. Moreover, there would appear to be no corresponding benefit to the shareholder from the accelerated payment of the sales load.[25]

Rule 11a–3, as originally proposed, would not have authorized the imposition of a deferred sales load on the exchange security. This lack of authorization was the result of several prior orders in which the applicants represented that such a deferred sales load would not be imposed.[26] However, the commenters on the proposed rule generally favored permitting a deferred sales load to be imposed on the exchanged security and urged the Commission to clarify this aspect of the proposal.

In support of their position, the commenters argued that there is no reason to prohibit the imposition of a deferred sales load on the exchanged security, as long as the shareholder receives credit for that load against any sales load otherwise payable on the acquired security.[27] They also argued that imposing a deferred sales load at the time of an exchange, rather than upon the ultimate redemption of the acquired security, would ease the administrative and recordkeeping burden of the funds involved in the exchange.[28] Further, the commenters maintained that, if no deferred sales load was permitted at the time of an exchange, an investor could easily avoid paying a deferred sales load simply by exchanging securities subject to such a load for shares of a "no-load" fund, and then redeeming the shares of the "no-load" fund. Finally, one commenter argued that it would be unfair to prohibit mutual funds from imposing a deferred sales load on the exchanged security when rule 11a–2 permits certain registered separate accounts to do so.

The commenters' arguments in favor of permitting a deferred sales load to be charged on the exchanged security at the time of an exchange are

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[21] *See, e.g.*, rule 11a–2(c)(1).

[22] Of course, this change is based on the assumption that the maximum sales load rates of the exchanged and acquired securities are expressed in the same terms, *e.g.*, as a percentage of the public offering price or as a percentage of the net amount invested. If the maximum sales loads are not generally calculated using comparable rates, the sales load differential would have to be calculated by first expressing both rates in a similar manner.

Consistent with the change reflected in paragraph (a)(3) of the revised proposed rule, paragraph (a)(11)(i) also has been amended to specify that where a securityholder exchanges less than all of his securities, the security that is deemed exchanged first should be determined by reference to the security upon which the highest sales load *rate* was previously paid.

[23] Under both the initial and the revised proposals, where the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security would be deemed to have been sold with a sales load equal to the sales load previously paid on the security on which the dividend was paid or distribution made. One commenter suggested that rule 11a–3 should require that any exchanged security acquired through reinvestment of a dividend or capital gains distribution would not be subject to any sales load upon an exchange. The Commission seeks specific comment on whether final rule 11a–3 should require that any share acquired through such reinvestment not be subject to any sales load upon any exchange. It should be noted that the revised proposal would not preclude such a waiver of sales load on those shares.

[24] The definition of "deferred sales load" in the revised proposal differs slightly from that in the proposal. The definition was revised only to track section 2(a)(35) of the Act [15 U.S.C. 80a–2(a)(35)] and is not intended to have any substantive effect on the rule.

[25] In falling market, a principal underwriter could have an even greater incentive to induce an exchange because of CDSL is generally calculated based on a percentage of the lesser of the original purchase price or current net asset value. Thus, the exchange would affect the amount, not just the timing, of the deferred sales load.

[26] *See, e.g.*, Freedon Investment Trust, Investment Company Act Rel. Nos. 15075 (Apr. 28, 1986) [51 FR 16602, May 5, 1986] (notice of application) and 15118 (May 28, 1986) (order); MetLife-State Street Investment Trust, et al., Investment Comany Act Rel. Nos. 14940 Feb. 13, 1986 [51 FR 6338, Feb. 21, 1986] (notice of application) and 14986 (Mar. 13, 1986) (order).

[27] One commenter pointed out that paragraph (a)(2) of proposed rule 11a–3 would have literally required such a credit.

[28] One commenter maintained that transferring shareholder records between funds with different transfer agents places a heavy administrative burden on the funds involved.

unpersuasive for several reasons. First, as discussed above, merely given a credit for a deferred sales load imposed at the time of an exchange does not eliminate the potential for switching.

Second, it is not necessary true that, as argued, if a deferred sales load could not be imposed, investors could easily avoid paying any sales load by exchanging into a "no-load" fund. Neither the initial nor the revised proposal would prohibit any deferred sales load to which the exchanged security was subject to be imposed when the investor redeems the acquired security.[29] This is true even where the acquired security is not otherwise subject to a sales load.[30] Therefore, an investor could not avoid paying a deferred sales load unless the offering company has structured the offer of exchange to permit such a practice.

Third, in response to the argument that rule 11a–3 should permit the imposition of a deferred sales load on an exchanged security because certain insurance company separate accounts are permitted to do so, the Commission wishes to point out that rule 11a–2 does not permit separate accounts to impose a deferred sales load on the exchanged security at the time of the exchange.[31]

Finally, while permitting the imposition of a deferred sales load at the time of exchange may ease somewhat the administrative and recordkeeping burden on the funds involved in an exchange, almost none of the applicants for approval of exchange offers under section 11(a) have sought permission to impose such a sales load.[32] Therefore, the experience of the Commission in processing applications in this area would appear to indicate that any added administrative burden has not dissuaded the vast majority of funds from waiving or postponing payment of a deferred sales load when fund shares are exchanged.

5. Tolling and CDSLs

Where an exchanged security is subject to a CDSL, paragraph (a)(5) of the revised proposed rule would permit, under certain conditions, the imposition of that CDSL on redemption of the acquired security to be calculated in a manner that would not give the investor credit for the time the acquired security was held. This "tolling" of the time during which the investor held the acquired security would be permitted only where the acquired security is not itself subject to any sales load and the issuer of the acquired security has not adopted a plan of distribution in accordance with rule 12b–1 under the Act [17 CFR 270.12b–1] (a "12b–1 plan").[33]

Proposed rule 11a–3 did not permit tolling of the time used in calculating a CDSL, and the commenters did not address the issue. The Commission has, however, permitted tolling in a few orders issued after the rule proposal.[34] In most cases, both funds involved in the exchange make payments for distribution out of fund assets under a 12b–1 plan, although the rate of payment under the acquired fund's 12b–1 plan is substantially lower than the rate under the exchanged fund's plan.[35]

Given the nature of CDSLs, *i.e.* that amounts paid through a 12b–1 plan are reflected in the reduction of a CDSL over time, the Commission now believes that tolling would be inappropriate where the acquired shares are subject to a 12b–1 plan. Where a shareholder is making *any* payments for distribution through a 12b–1 plan, those payments should be reflected in a commensurate reduction of the CDSL owed. Because tolling would prevent a shareholder from receiving credit for the 12b–1 payments made while holding the acquired shares, the revised proposed rule would permit tolling only where the acquired shares are subject to no sales loads and the issuer of the acquired shares does not have in effect a 12b–1 plan.[36]

6. Redemption and Administrative Fees

Revised proposed rule 11a–3 would permit the imposition of a redemption fee and an administrative fee at the time of an exchange. The revised proposed rule would define both "redemption fee" and "administrative fee," and would require that each be uniformly applied to all offerees of the class specified.[37]

The commenters devoted considerable attention to the provisions of the original proposal dealing with redemption fees and administrative

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[29] Although revised proposed rule 11a–3 would not prohibit that practice, it should be noted that paragraph (a)(5), with a limited exception, would require that any sales load imposed upon redemption of the acquired security be calculated as if the holder of the acquired security held it from the date on which he became the holder of the exchanged security. *See* notes 33–36, *infra*, and accompanying text. Therefore, if payment of a CDSL on the exchange security occurs when the acquired security is redeemed, the shareholder must be given full credit for both the time the exchanged security was held and the time the acquired security was held.

[30] For example, suppose a shareholder initially purchases shares of a fund subject to a CDSL ("Fund A"). He then exchanges those shares for shares of a no-load fund ("Fund B"), without the imposition of any CDSL at the time of the exchange. Upon the subsequent redemption from Fund B, such shares would be subject to the CDSL of Fund A. Unless the limited exception contained in the proviso to paragraph (a)(5) of the revised proposal were applicable, for purposes of calculating that charge, the shareholder's holding period would be deemed to include the entire period during which shares of both funds were held by the shareholder. This treatment is consistent with most orders. *See, e.g.*, Eaton Vance California Municipals Trust, et al., Investment Company Act Rel. Nos. 15829 (June 26, 1987) [52 FR 25105, July 2, 1987] (notice of application) and 15893 (July 24, 1987) (order).

[31] The proposing release for rule 11a–2 stated: "[T]he proposed rule does not permit a contingent derferred sales load to be imposed upon the redemption of the exchanged security in connection with the exchange offer." Investment Company Act Rel. No. 12675 (Sept. 20, 1982) [47 FR 42374, Sept. 27, 1982] at n. 17. Revised proposed rule 11a–3's prohibition of the imposition of a deferred sales load on an exchanged security at the time of an exchange would help promote competitive equality between mutual funds and insurance company separate accounts. *See* note 82, *infra*, and accompanying text.

[32] *But see* Hutton Investment Series, Inc., et al., Investment Company Act Rel. Nos. 15797 (June 11, 1987) [52 FR 23234, June 18, 1987] (notice of application) and 15855 (July 2, 1987) (order); Criterion Special Series, Inc., et al., Investment Company Act Rel. Nos. 16009 (Sept. 28, 1987) [52 FR 37234, Oct. 5, 1987] (notice of application) and 16073 (Oct 23, 1987) (order). Those two orders, which permit the imposition of a CDSL at the time of certain exchanges, will be superseded upon adoption of final rule 11a–3. *See* notes 12–14, *supra*, and accompanying text.

[33] Rule 12b–1 permits registered open-end investment companies to use fund assets to finance the distribution of fund shares, provided that certain procedural and substantive conditions designed to protect the interests of shareholders are satisfied. It should be noted that the Commission recently proposed amendments to rule 12b–1. *See* Investment Company Act Rel. No. 16431 (June 13, 1988) [53 FR 23258, June 21, 1988].

[34] It should be noted that one order issued prior to proposed rule 11a–3 permit tolling. *See* Prudential-Bache Adjustable Rate preferred Stock Fund, Inc., et al., Investment Company Act Rel. Nos. 14883 (Dec. 20, 1985) [50 FR 53412, Dec. 31, 1985] (notice of application) and 14902 (Jan. 16, 1986) (order).

[35] *See, e.g.*, The Equitable Funds, et al., Investment Company Act Rel. Nos. 15931 (Aug. 14, 1987) [52 FR 31460, Aug. 20, 1987] (notice of application) and 15988 (Sept. 8, 1987) (order). *But see* EBI Series Trust, et al., Investment Company Act Rel. No. 16239 (Jan. 20, 1988) [53 FR 3097, Feb. 3, 1988] (notice of application) and 16283 (Feb. 23, 1988) (order) (tolling where acquired fund has no 12b–1 plan). The orders issued after the proposal of rule 11a–3 that permit tolling are conditioned on compliance with rule 11a–3, when and if adopted. If the tolling provision is adopted as set out in the revised proposal, then funds relying on these orders would have to limit tolling in the manner described in the rule. Also, the holder of any order issued prior to proposed rule 11a–3 that permitted tolling in a manner other than that permitted in final rule 11a–3 would also have to comply with the final rule. *See* notes 12–14, *supra*, and accompanying text.

[36] Until the rule is adopted in final form, applications for approval under section 11(a) that include tolling provisions will be processed and granted by delegated authority only if the acquired security is not subject to a 12b–1 plan. Additionally, these and other section 11(a) applications will be conditioned on the terms of the exchange offer being conformed to the requirements of rule 11a–3, when adopted in final form.

[37] Paragraph (c)(1) of the revised proposed rule defines "administrative fee" and paragraph (c)(5) defines "redemption fee".

fees.[38] Specifically, three commenters objected to the provision in proposed rule 11a–3 that would have prohibited the imposition of a redemption fee on the exchanged security.[39] That provision had been based on the Commission's understanding that a portion of the administrative fee typically charged on exchanges is used to reimburse the fund from which a shareholder exchanges for the cost incurred by the fund in redeeming the exchanged shares.[40] However, commenters maintained that the nominal administrative fee permitted by the proposed rule would be insufficient to both cover the administrative costs of the exchange and reimburse the fund and the shareholders remaining in the fund after an exchange for the costs of redeeming the exchanged shares.

An exchange can, for some purposes, be characterized as a redemption of one fund's shares and a purchase of another fund's shares. There is some merit to the argument that where a fund ordinarily imposes a redemption fee to cover the costs of redeeming fund shares, no distinction should be made between redemptions pursuant to an offer of exchange and other redemptions. Therefore, revised proposed rule 11a–3 would permit the imposition of a redemption fee or any scheduled variation thereof on the exchanged security if the fund otherwise imposes such a fee on redemptions of fund shares.[41] The revised proposed rule would define a "redemption fee" as any fee that is paid to the fund and is reasonably intended[42] to compensate the fund for its expenses incident to redemption of fund shares.[43]

Revised proposed rule 11a–3 also defines "redemption fee" to be any fee other than a sales load (as defined in section 2(a)(35) of the Act) or deferred sales load (as defined in paragraph (c)(2) of the rule). This definition has been included in the revised proposed rule in response to certain comments received on proposed rule 11a–3. Those comments referred to "redemption fees" that are used to pay for distribution activities.[44]

It is axiomatic that fund charges should be clearly disclosed and properly labelled. If a fee is charged upon redemption and is paid to a fund to offset the costs of redeeming fund shares, that charge is a redemption fee. On the other hand, if a fee is charged upon redemption, but is paid to the fund's principal underwriter to cover fund distribution expenses, that fee is a deferred sales load.[45]

For the reasons just discussed, the revised proposal would also exclude sales loads and deferred sales loads from the rule's definition of "administrative fee." In addition, the definition would exclude redemption fees. This exclusion reflects the view of the Commission that the costs covered by an administrative fee and those covered by a redemption fee should be mutually exclusive. This distinction is intended to prevent an exchanging shareholder from being charged twice for the same expenses.

There was no definition of "administrative fee" in the original proposal. The proposal would have permitted the imposition of a "nominal administrative fee" at the time of an exchange, but did not define that term. One commenter stated that the meaning of "nominal administrative fee" was unclear. Also, the term "nominal administrative fee" could have been interpreted to mean any "stated" amount. This might have led to very large charges upon exchanges which, in turn, would have created the incentives for switching with which section 11 is concerned. Therefore, the Commission has decided to define clearly the extent of a permissible administrative fee in the revised proposed rule.

The revised proposal would define "administrative fee" to mean any fee reasonably intended to cover the costs incurred in connection with exchanges. For example, that standard could be satisfied if the fee schedule is unlikely to result in the average investor paying more than the actual cost of an exchange incurred by the transfer agent.[46] Alternatively, the revised proposed rule would permit an administrative fee that is "nominal," as that term is most commonly understood.[47] Thus, the nominal standard is intended to minimize any incentive for switching and should be construed accordingly.

### 7. Disclosure and Advertising

As revised, proposed rule 11a–3 would require that the prospectus of the offering company disclose the *amount* of any administrative fee that would be imposed on an exchange.[48] The revised

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[38] Four of the five comment letters received by the Commission on proposed rule 11a–3 discussed the administrative and redemption fee provisions.

[39] *See* paragraph (a)(4) of proposed rule 11a–3.

[40] At least one recipient of a section 11 order represented in its application that the administrative fee imposed would defray the costs of redeeming the exchanged security. *See* File No. 812–6227 (amended application of Principal World Fund, Inc., et al.); *see also* Investment Company Act Rel. Nos. 15018 (Mar. 27, 1986) [51 FR 11381, Apr. 2, 1986] (notice of application) and 15071 (Apr. 24, 1986) (order).

[41] The revised version of the proposed rule would prohibit specifically the imposition of any redemption fee on the exchanged security that would exceed the redemption fee applicable to a redemption in the absence of an exchange. *See* discussion of the disclosure requirement for redemption fees at notes 48–49, *infra*, and accompanying text.

[42] It should be noted that the proposed definition of "redemption fee" would not require that such fees equal precisely the costs of redeeming fund shares.

[43] When fund shares are redeemed, the fund may incur certain costs, such as brokerage expenses, in liquidating sufficient fund assets to pay the redeeming shareholder his proportionate share of fund assets. To prevent the burden of these costs from being borne by those fund shareholders that continue to hold their shares, many funds have imposed redemption fees. Such fees are typically paid by a redeeming shareholder to the fund itself.

The imposition of any charge or fee upon the redemption of fund shares raises serious questions because the shareholder's right of redemption is fundamental to the concept of an open-end investment company. A fee payable upon redemption may take the securities issued by the fund outside the definition of a "redeemable security" in section 2(a)(32) of the Act [15 U.S.C. 80a–2(a)(32)]. That section requires that the holder of such securities be entitled to receive "approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." The staff of the Division of Investment Management, however, has taken the position that it would not consider redemption fees to violate section 2(a)(32) of the Act if the fees do not exceed two percent of the value of the shares redeemed. *See* John P. Reilly (pub. avail. July 12, 1979).

[44] Such fees would fall within the revised proposal's definition of "deferred sales load" and would be treated as such.

[45] As noted above, revised proposed rule 11a–3(a)(4) would not permit the imposition of a deferred sales load on the exchanged security at the time of an exchange.

The Commission has required funds wishing to impose deferred sales loads, specifically CDSLs, to obtain exemptive relief from sections 2(a)(32), 2(a)(35), and 22(c) of the Act and from rule 22c–1 thereunder. *See, e.g.*, E.F. Hutton Investment Services, Inc., Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order); Freedom Investment Trust, Investment Company Act Rel. Nos. 14707 (Sept. 5, 1985) [50 FR 37103, Sept. 11, 1985] (notice of application) and 14742 (Sept. 30, 1985) (order). It should also be noted that a fund that imposes any deferred sales load may not hold itself out as a "no-load" fund. *See* Investment Company Act Rel. No. 13408 (Feb. 28, 1983) [48 FR 9532, Mar. 7, 1983] (proposal of rule 6c–8 under the Act) at n.6.

[46] Paragraph (c)(1)(i) of the revised proposal contains a requirement that those offering companies that impose an administrative fee based on a cost standard maintain and preserve records of any determination of the costs incurred in connection with an exchange.

[47] The Division of Investment Management has stated that it would not recomend enforcement action to the Commission if a fund offered a no-load exchange privilege subject only to an administrative fee not exceeding $5.00. *See* Chase Fund of Boston (pub. avail. July 28, 1980). The Chase Fund of Boston letter should not be construed to cover any fee exceeding $5.00. The Commission, consistent with that position, would consider any fee not exceeding $5.00 (or more, as adjusted for inflation) to be "nominal."

[48] Since the amount of any redemption fee imposed on shares being exchanged would be

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proposed rule would also require that any sales literature that mentions the existence of the exchange offer also disclose the *amount* of any administrative fee or redemption fee that would be imposed at the time of an exchange. In addition, the revised proposed rule would require that any advertising that mentions the existence of the exchange privilege also disclose the *existence* of any administrative fee or redemption fee that would be imposed on an exchange. If an offering company reserves the right to change the terms of or terminate an exchange offer, revised proposed rule 11a–3 would also require disclosure of that fact in the prospectus of the offering company and in any sales literature and advertising that mentions the existence of the exchange offer.

Proposed rule 11a–3 would have simply required disclosure of any administrative fee in the prospectus of the offering company and in any sales literature or advertising that described the exchange offer. One commenter expressly supported the administrative fee disclosure provisions of the proposed rule. Another commenter maintained that, if an administrative fee is "nominal", funds should not be required to disclose either the existence or the amount of the fee in their advertising and sales literature.[49] However, that commenter also stated that, if the proposed disclosure requirements are retained, the Commission should clarify that it is enough to include *either* the existence or the amount of the fee in advertising and sales literature. A third commenter asked that the final version of the rule clarify whether advertising and sales literature would have to disclose the amount of any administrative fee, or merely the existence of such a fee.[50]

The existence of an exchange offer may be an important factor in an investor's decision to purchase fund shares. Therefore, the prospectus of the offering company and any advertisement or sales literature that mentions the existence of an exchange offer should include disclosure regarding the administrative or redemption fees that will be imposed at the time of an exchange.

The Commission has drafted revised proposed rule 11a–3 to require that the *amount* of any administrative fee be disclosed in the prospectus of the offering company. In addition, unlike the original proposal, the revised proposal would require that any sales literature that mentions the existence of an exchange offer also discloses the amount of any administrative fee or redemption fee that would be imposed at the time of an exchange. The revised proposal also would require that any advertising that mentions the existence of the exchange offer also discloses the *existence* of any administrative fee or redemption fee that would be imposed at the time of an exchange. Disclosure in advertising and sales literature that charges may be imposed at the time of an exchange should put an investor on notice. If the investor wants additional information regarding such charges before deciding whether to purchase fund shares, that information would be available in the prospectus of the offering company or in the prospectus of the issuer of the exchanged security.

Finally, unlike the original proposal, the revised proposal also would require that, where an offering company reserves the right to change the terms of or terminate its exchange offer, the prospectus of the offering company and any sales literature or advertising that mentions the existence of the exchange offer also disclose that the exchange offer is subject to termination and that its terms are subject to change. This provision is intended to put prospective shareholders on notice that an exchange offer can be terminated or its terms changed.

8. Offerees

Any fund that can rely on the revised proposed rule would be permitted to make an exchange offer to a shareholder of that fund [51] or of another fund within the same group of investment companies. Paragraph (c)(4) of the revised proposed rule would define "group of investment companies" to mean any two or more funds that have a common investment adviser or principal underwriter, or whose investment advisers or principal underwriters are under common control, and that hold themselves out to investors as related funds for purposes of investment and investor services.

The provisions of the revised proposal relating to the scope of the offerees of an exchange offer are identical to those included in the rule as initially proposed, with one significant exception. The proposed rule would have defined the term "family of investment companies" to include only two or more registered open-end investment companies that have the same investment adviser or principal underwriter and that hold themselves out as related companies for purposes of investment and investor services. This definition was based on the "family of investment companies" concept used in

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disclosed in the prospectus of the fund that issued the exchange security, it appears unnecessary to require such disclosure also in the prospectus of the offering company.

It should be noted that the Commission has recently amended Form N–1A, the registration form for mutual funds, to require that all fund expenses, including sales loads redemption fees and administrative fees, be included in a table located near the front of the prospectus (the "fee table"). *See* Investment Company Act Rel. No. 16244 (Feb. 1, 1988) [53 FR 3192, Feb. 4, 1988]. Of course, any fee or load imposed at the time of an exchange must be disclosed in the fee table.

[49] The commenter suggested that, rather than require disclosure of any administrative fee, the adopting release should only suggest that the issue of whether to disclose a certain fee should be considered by funds and the National Association of Securities Dealers ("NASD") in its review of fund advertising. *See* NASD Rules of Fair Practice, sections 35 (c) and (e).

[50] Any offer of exchange subject only to an administrative fee (and not to any sales loads) would still be required to comply with proposed rule 11a–3. Some funds that make exchange offers with an administrative fee have not obtained individual orders, apparently in reliance on the position taken by the staff of the Division of Investment Management in the Chase Fund of Boston letter. *See* note 47, *supra*. However, the staff's position was not intended as a statement of Commission policy or as an interpretation of section 11. Because revised proposed rule 11a–3 would permit funds to make offers of exchange without obtaining individual orders, the Commission sees no reason to continue the distinction drawn in the Chase Fund of Boston letter. Therefore, after the effective date of rule 11a–3, the Chase Fund of Boston letter will be withdrawn and funds relying on that letter (or other funds with a no-load offer of exchange subject to an administrative fee) will be required to bring their exchange offer arrangements into compliance with the provisions of the rule. Before rule 11a–3 becomes effective, however, a fund can rely on the Chase Fund of Boston letter only if it imposes an administrative fee of no more than $5.00.

[51] By allowing exchange offers to be made to other shareholders within the offering company, the revised proposed rule is intended to cover exchanges between series of the same company. The Commission has granted several orders under section 11 involving series companies. *See, e.g.*, Industrial Series Trust, Investment Company Act Rel. Nos. 15043 (Apr. 7, 1986) [51 FR 12755, Apr. 15, 1986] (notice of application) and 15088 (May 6, 1986) (order); Shearson Lehman Special Portfolios, Investment Company Act Rel. Nos. 14957 (Feb. 25, 1986) [51 FR 7510, Mar. 4, 1986] (notice of application) and 15005 (Mar. 19, 1986) (order). The Commission finds no reason to distinguish between a group of investment companies and separate series of a single investment company with respect to exchange offers. *See* discussion of former section 11(b)(2) in the proposing release at note 3. It should be noted that the Commission has treated the separate series of a series fund as separate investment companies for purposes of applying other rules under the Act. The theory behind this treatment is that, for all practical purposes, the individual series of a series fund are separate investment companies, each with a different group of shareholders holding interests in a segregated portfolio. *See, e.g.*, Investment Company Act Rel. No. 16431 (June 13, 1988) [53 FR 23258, June 21, 1988] (proposal of amendments to rule 12b–1 under the Act) at nn.202–208; Investment Company Act Rel. No. 14036 (July 13, 1984) [49 FR 29382, July 20, 1984] (adopting release for revision of rule 12d3–1 under the Act [17 CFR 270.12d3–1]); Investment Company Act Rel. No. 11676 (Mar. 10, 1981) [46 FR 17011, Mar. 17, 1981] (adopting release for amendment to rule 17a–7 under the Act [17 CFR 270.17a–7]) at n.1.

Form N–SAR [17 CFR 274.101], the periodic reporting form for registered investment companies.[52] Two commenters argued that the Commission should broaden the scope of the rule beyond the N–SAR family of fund concept. Specifically, one commenter called for amending the definition of "family of investment companies" to include companies with affiliated investment advisers or principal underwriters.[53]

In response to the comments received, and in light of several orders that have been granted permitting offers of exchange between funds that do not have the same investment adviser or principal underwriter,[54] the revised proposal has been modified to permit a broader scope of offerees. Specifically, the revised proposed rule would permit exchange offers to shareholders of other funds in the same "group of investment companies." This term, which has been changed from the proposal to avoid confusion with the "family" of investment companies concept in Form N–SAR, would be defined to include two or more funds whose investment advisers or principal underwriters are under common control,[55] and that hold themselves out as related companies for purposes of investment and investor services.[56]

While the revised proposed rule does not broaden the scope of permissible offerees to the extent advocated by one of the commenters, it would cover the vast majority of the applications that have been received and granted to date. Given the relative inexperience of the Commission and staff in dealing with exchange offers that fall outside the umbrella of common control embodied in the revised proposal, the Commission believes such exchange offers should continue to be dealt with on a case-by-case basis in the context of individual applications for approval of exchange offers.

[52] *See* Form N–SAR, General Instructions, Part G.

[53] The commenter analogized to rule 17a–7 under the Act, which exempts from section 17(a) of the Act [15 U.S.C. 80a–17(a)] certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

[54] *See, e.g.*, The Equitable Funds, et al., Investment Company Act Rel. Nos. 15931 (Aug. 14, 1987) [52 FR 31460, Aug. 20, 1987] (notice of application) and 15988 (Sept. 8, 1987) (order).

[55] For example, if one fund's investment adviser is under common control with another fund's principal underwriter, the two funds would be considered to be part of the same group of investment companies. *See* section 2(a)(9) under the Act [15 U.S.C. 80a–2(a)(9)] for the definition of "control."

[56] We note that the "holding out" portion of this definition would likely be satisfied whenever two or more funds provide jointly services to shareholders in addition to an exchange privilege.

9. Minimum Holding Period

Paragraph (b) of revised proposed rule 11a–3 would permit the offering company to require an exchanging shareholder to have held the exchanged security for a minimum period of time where either no sales load is imposed on the acquired security or the sales load imposed is less than the sales load differential. While this provision is identical to that originally proposed, the Commission specifically requested comment in the proposing release on whether rule 11a–3 should require a minimum holding period. Two commenters supported keeping the minimum holding period permissive, and two other commenters suggested deleting the entire provision. The Commission believes that the decision to establish a minimum holding period is better left to the business judgment of the offering company. However, the Commission also believes that, to avoid confusion, the permissive holding period provision should remain part of the rule text.[57]

10. Amending the Terms of an Exchange Offer

Some fund families that offer investors liberal exchange privileges may experience heavy switching.[58] Because exchanges, like other redemptions, may require that fund assets be liquidated, less active investors could be unfairly burdened with the costs, including brokerage fees, that heavy switching may cause. Additionally, a large volume of exchanges may make it more difficult for the portfolio manager of a fund to maintain both a targeted investment strategy and sufficient liquidity to meet anticipated redemptions.

While exchange privilege provide investors with desirable flexibility, the board of directors of each fund should monitor carefully the fund's involvement in such a privilege for any detrimental effect on the fund's portfolio and shareholders who remain in the fund. If the board decides that it should limit or discourage the use of an exchange privilege, directors should consider options that would minimize any harmful consequences of an exchange privilege. Directors also should consider questions of fairness to shareholders who may have bought fund shares in reliance on the existing exchange privilege.

Some funds have already amended the terms of their exchange offers and the Commission anticipates more will do so.[59] Although such amendments, as just discussed, may be advisable, they may raise questions of fairness to those shareholders who may have bought (or be holding) shares of a particular fund based in part on an existing exchange privilege.[60] Therefore, paragraph (a)(10) of the revised proposed rule would require that prominent notice of any material change [61] be given to any holder of a security subject to the exchange offer at least sixty days prior to the effective date of the change.[62] Shareholders would, therefore, be given sixty days before the effective date of the change in which to make one or more exchanges under the terms then in effect or to redeem their shares altogether.[63] The Commission also

[57] One commenter suggested that the final rule include a provision stating that an offer of exchange made under rule 11a–3 may include other conditions that are not inconsistent with the provisions of the rule. The Commission believes that such a provision is neither necessary nor appropriate.

[58] *See, e.g., Fidelity Investments Keeps It in Family During Crash*, Wall St. J., Oct. 23, 1987, at 6, col. 1; *Fidelity Sector Funds Sustain Big Hits*, Wall St. J., Oct. 23, 1987 at 45, col. 1. Many of the exchanges that occur within fund families result from the advice given by market timing newsletter and services. Recommendations by such services can result in a large number of investors exercising an exchange privilege simultaneously. *See, e.g., Market Timing Services Enter Bond Field*, Wall St. J., May 1, 1987 at 36, col. 3; *Funds Keeping It in the Family*, N.Y. Times, Sept. 16, 1986, at C4, col. 2.

[59] *See, e.g., Some Funds Act To Discourage Phone Switches*, Wall St., J., Feb. 8, 1988 at 27 col. 3; *Fidelity Curbs Switching in Sector Funds*, Wall St. J., Apr. 13, 1987 at 45 col. 1; *The Itch to Switch*, Financial World, Feb. 24, 1987 at 35.

[60] As discussed above, these fairness questions would also be addressed by providing that any offering company that had previously made an offer of exchange could not rely on the rule to amend the terms of such prior offer unless that fund had made certain prospectus disclosure (*see* notes 15–18, *supra*, and accompanying text), and by requiring specific advertising, sales literature and prospectus disclosure whenever a fund relying on the rule reserves the right to change or terminate an exchange offer. *See* notes 46–50, *supra*, and accompanying text.

[61] Paragraph (a)(10) would provide an exemption from the notice requirement where the only material effect of an amendment would be to reduce or eliminate an administrative fee, sales load or redemption fee that would be payable at the time of an exchange. Because such an amendment would clearly benefit existing shareholders, prior notice is considered to be unnecessary.

[62] The notice period would be deemed to run from the date notice of the change is mailed or otherwise delivered to the shareholders. The Commission anticipates that the costs of giving such notice would be borne by the fund's principal underwriter or investment adviser.

[63] Under this provision, any person who owns shares sixty days before the effective date of the change in terms, as well as any person who becomes a shareholder within that sixty day period, would be able to make one or more exchanges, or redeem altogether, under the terms then in effect.

requests specific comment on whether the final version of rule 11a–3 should also require that where a fund is to amend materially or discontinue an exchange privilege, it must allow shareholders sixty days to redeem out of the fund without the imposition of any CDSL or redemption fee that would otherwise be imposed and to receive a refund of any front-end sales load previously paid.

Paragraph (a)(10) is intended to prevent any unfairness that may arise should a fund change the terms of its exchange privilege long after shareholders have purchased shares in reliance on the prior terms of the exchange privilege.[64] The cautionary effect of any disclosure concerning the possibility of change would fade over time, while the shareholder may be investing additional amounts in the fund.

*B. Proposed Rule 11c–1*

1. The Proposal

Proposed rule 11c–1 would have permitted a registered UIT or its sponsor (collectively, "the offering trust") to make an exchange offer without prior Commission approval to unitholders of the same UIT or to unitholders of another UIT having the same sponsor, provided certain conditions were met. Rather than simply codifying the existing orders, which typically permit offering trusts to impose a fixed "reduced sales charge" of $15 per unit (or about 1.5% of the public offering price) on each exchange,[65] proposed rule 11c–1 would have permitted an offering trust to charge a sales load on the acquired unit no greater than the excess, if any, of the sales load applicable to the acquired unit in the absence of an exchange over any sales load previously paid on the exchange unit. Additionally, although proposed rule 11c–1 would not have permitted the imposition of an administrative fee at the time of an exchange, the proposing release specifically sought comment on whether the final version of the rule should include an administrative fee provision. Finally, the proposing release specifically sought comment on whether the final version of the rule should extend approval to exchange offers made to holders of units that have a different sponsor.[66]

2. Commenter Criticism of Proposed Rule 11c–1

While the commenters supported in principal the Commission's attempt to formulate a rule covering UIT exchange offers, two commenters criticized the use of the sales load differential approach as a departure from the existing orders and as unworkable. Specifically, the commenters argued that the proposal would seldom permit the imposition of a sales load on exchanges because most exchanges occur between series with the same sales load rate. Also, one commenter asserted that an offering trust would often be unable to determine the sales load previously paid on an exchanged unit. According to the commenter, the difficulty in tracking the sales loads previously paid over a series of exchanges relates to the fact that units may be sold by and purchased from someone other than the sponsor, and transfer agents generally do not maintain data on sales loads paid by unitholders.

The commenters also claimed that a sales load differential would not compensate sponsors for the expense and the risk of maintaining a secondary market for units.[67] Moreover, it was argued that the differential would not compensate the registered representatives who continually assess the financial and tax position of unitholders. Two commenters stated that, even if the final version of the rule permitted the imposition of an administrative fee at the time of an exchange, as in proposed rule 11a–3, the proceeds from that fee would be inadequate to defray the costs of an exchange option. In sum, the commenters maintained that, under the proposed sales load differential provision, exchange privileges would be uneconomical to offer. Therefore, UITs would either not have exchange privileges or would continue to apply for an order to charge a fixed reduced sales load on exchanges.

Regarding the scope of permissible offerees under proposed rule 11c–1, one commenter stated that there was no policy reason for the limitations included in the proposed rule, and asked that the Commission reconsider its position.[68] A second commenter believed that the rule should be expanded to cover exchanges between UITs that do not have a common sponsor and exchanges from mutual funds to UITs.[69]

As discussed in the proposing release, the Commission has issued six orders permitting, under certain conditions, applicants to make a type of exchange offer known as a "conversion offer" to holders of units that have a different sponsor.[70] Because there have been few applications involving coversion offers, there is no need at this time to include such offers in a generic rule. In addition, with limited experience in processing applications involving exchanges between mutual funds and UITs, the Commission believes that it would be inappropriate to include such exchanges within the coverage of proposed rule 11c–1.[71]

3. Suggested Alternatives to Proposed Rule 11c–1

The commenters suggested two alternative approaches to the sales load differential provisions of proposed rule 11c–1: (i) codify the existing orders, permitting the imposition of a fixed "reduced sales load"; or (ii) permit the imposition of a sales load at the time of an exchange if it is less than the sales load that would be imposed on a direct

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[64] The notice requirement of paragraph (a)(10) would also apply to the situation where a fund that currently makes an offer of exchange intends to amend the terms of the exchange offer in such a way that after the amendment, it will need to rely on rule 11a-3. In such a case, the fund would be required to comply with the rule's notice and other requirements. This assumes that the fund had made the necessary prospectus disclosure; otherwise, it would need an order.

Of course, any material change in the terms of an exchange offer would also be a material event requiring the amendment of a fund's registration statement or a supplement to the prospectus. *See* rules 485 [17 CFR 230.485] and 497(d) [17 CFR 230.497(d)] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*]. Similarly, it would be misleading for a fund's advertising and sales literature to continue to describe the terms of an exchange offer once the decision to amend those terms has been made. *See* section 34(b) of the Act [15 U.S.C. 80a–34(b)].

[65] *See, e.g.*, Dean Witter Reynolds Inc., et al., Investment Company Act Rel. Nos. 13654 (Dec. 2, 1983) [48 FR 55224, Dec. 9, 1983] (Notice of application) and 13702 (Jan. 6, 1984) (order).

[66] *See* proposing release at note 33.

[67] It should be noted that sponsors are not required to maintain a secondary market for their units, but do so to offer a more attractive product to investors and to avoid redemptions that could cause a trust to shrink in size.

[68] Proposed rule 11c–1 would allow a registered UIT or its sponsor to make an exchange offer to unitholders of the same trust or to unitholders of a UIT having the same sponsor. The commenter did not explain why the scope of the rule should be extended or state what additional offerees should be included.

The Commission seeks comment on whether it is necessary for rule 11c–1 to cover exchange offers made to unitholders of the same series as the offering trust.

[69] Beyond referring to the prior orders, the commenter did not suggest any conditions for a rule to cover such exchanges.

[70] *See e.g.*, Dean Witter Reynolds, Inc., et al., Investment Company Act Rel. Nos. 14934 (Feb. 2, 1986) [51 FR 6058, Feb. 19, 1986] (notice of application) and 14987 (Mar. 13, 1986) (order); Merrill Lynch, Pierce, Fenner & Smith Inc., et al., Investment Company Act Rel. Nos. 14684 (Aug. 19, 1985) [50 FR 34563, Aug. 26, 1985] (notice of application) and 14717 (Sept. 12, 1985) (order).

[71] The Commission will continue to process applications involving proposed exchanges between UITs and open-end companies and monitor the need for a rule to cover such exchanges.

purchase of the acquired unit. For the reasons stated below, neither of these alternatives is acceptable.

With respect to codification of the prior orders, the Commission notes that such orders have been granted on a case-by-case basis and permit fixed levels of sales loads at the time of an exchange.[72] The level of the fixed sales load in each case has been established by the applicant as part of a specific representation made in the application for an order. Codification of these orders would require the Commission to establish a maximum allowable sales load that could be charged at the time of an exchange. Consequently, the Commission would prefer not to codify the prior orders in a rule in this area.[73]

The second suggested approach, *i.e.* that the rule permit the imposition of any sales load that is less than the sales load applicable to a direct purchase of the acquired unit, is even less acceptable. The commenter that suggested this approach stated that the sponsor would set the amount of the reduced load to reflect the savings in selling costs on exchanges. The commenter argued that such an approach would provide the greatest flexibility, consistent with rule 22d–1 under the Act [17 CFR 270.22d–1],[74] to allow the marketplace to determine the appropriate sales load structure. Moreover, the commenter believed that the suitability requirements of the Rules of Fair Practice of the National Association of Securities Dealers (NASD) [75] have minimized the danger of a sales representative switching an investor between trusts for the primary purpose of exacting additional sales loads.

The arguments made by the commenter in support of the second alternative do not warrant including the suggested provision in proposed rule 11c–1. The legislative history of section 11(c) reflects a strong Congressional judgment that UIT investors are particularly vulnerable to switching abuses.[76] Section 11(c) of the Act was enacted to address these abuses by requiring that *any* exchange offer involving the securities of a UIT, including exchanges at relative net asset value, receive prior Commission approval or comply with rules adopted by the Commission. In light of the specific intent behind section 11(c), the Commission can grant an order or adopt a rule permitting UIT exchange offers only if the order or rule specifically addresses, and seeks to prevent, the switching abuses detailed in the legislative history. Consequently, the second alternative must be assessed on the basis of whether it would include appropriate safeguards to minimize effectively the financial incentive to switch investors or otherwise address the Congressional concerns that led to the adoption of section 11(c).

The only safeguard suggested by the commenter was that the amount of the sales load charged at the time of an exchange could be required to "reflect a reasonable estimate of the savings in selling costs for exchange transactions, similar to the provisions of rule 22d–1(f) before it was amended."[77] This restriction would not provide an effective means of reducing the financial incentive to switch investors among UITs. The standard embodied in former rule 22d–1(f) was designed to provide funds with a degree of flexibility to charge a lower sales load to particular classes of investors, and was deemed to address adequately the Congressional concerns that had led to the inclusion of section 22(d) in the Act [15 U.S.C. 80a–22(d)]. However, the rule 22d–1(f) standard would do little to minimize the risk of switching abuses because it would permit the level of the sales load to be established by the sponsor of the UIT, who would be an interested party and potential recipient of the sales load proceeds. Consequently, rather than providing a protection against switching abuses, the suggested alternative would place decisions as to the appropriate level of sales load to be imposed on an exchange in the hands of the party that has historically borne responsibility for the abuses that led to the enactment of section 11.[78]

The support of the second alternative, the commenter also argued that the switching abuses that led to the enactment of section 11(c) "have long since been minimized by the NASD Rules of Fair Practice." The Commission acknowledges that switching abuses could place a broker-dealer that is a member of the NASD in violation of the NASD's suitability requirements, and that those requirements may therefore deter such persons from engaging in switching.[79] However, the existence of the NASD rules does not reduce the potential for abuse in this area to the point where a rule under section 11(c) does not need to include provisions designed to minimize the risk of abuse.

4. Request for Comment

In light of (i) the commenters' beliefs that proposed rule 11c–1 fails to provide for adequate compensation of sponsors for maintaining a secondary market, (ii), the constraints of section 11, and (iii) the problems presented by the alternative approaches suggested by the commenters, the Commission has decided not to take further action on proposed rule 11c–1 at this time.[80] Instead, the Commission is requesting additional public comment on how to proceed in the area of offers of exchange involving UITs. Specifically, the Commission seeks comment on the following:

(i) If the Commission should go forward with rule 11c–1, whether a sales load provision can be drafted both to minimize the problems that led to the adoption of section 11(c) and to provide for adequate compensation to sponsors

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[72] The Commission has permitted holders of orders to impose a reduced sales load so that sponsors can be compensated for secondary market activities and, in part, because the additional sales load that was requested, $15 per $1,000 unit exchanged was a relatively small amount.

[73] For example, applicants have typically represented that a "reduced sales load" permits a sponsor to pass on to a unitholder the cost savings resulting from reductions in time and expense related to advice, financial planning and operational expense required to sell the units acquired under an exchange privilege.

[74] Rule 22d–1 permits the sale of investment company securities at prices that reflect scheduled variations in, or elimination of, the sales load.

[75] *See* NASD Rules of Fair Practice, Article III, § 2.

[76] *See* S. Rep. 1775, 76th Cong., 3d Sess., 7–8 (1940); Investment Trust Study, "Fixed and Semifixed Investment Trusts", 181–82, 209–30 and Appendix Q (1940).

[77] Rule 22d–1 was amended in Investment Company Act Rel. No. 14390 (Feb 22, 1985) [50 FR 7909, Feb. 27, 1985]. Prior to the amendment of the rule, paragraph (f) provided an exemption from section 22(d) of the Act to permit reduction or elimination of a sales load with respect to a sale of redeemable securities to, *inter alia*, employee benefit plans not qualified under section 401 of the Internal Revenue Code, as long as the non-qualified plans satisfied uniform criteria relating to the realization of economies of scale on sales effort and sales related expense selected by the issuer and described in the prospectus.

[78] The commenter that suggesed this approach also stated that the level of sales load would be governed by market forces. None of the commenters presented emprical data to the Commission on the existence of retail price competition in the UIT industry. It should be noted that the redeemable securities of a UIT are subject to the retail price maintenance provisions of section 22(d), which may prevent the development of effective retail price competition. *See generally Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth*, H.R. Rep. No. 2337, 89th Cong., 2d Sess., at 206–09, 218–21 (1966). In any event, the commenter's argument still ignores the history of section 11(c).

[79] Art. III, section 2 of the NASD Rules of Fair Practice states:

In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

[80] The Commission will, of course, continue to process applications under section 11 for exchange offers involving UITs.

for the costs of maintaining a secondary market;

(ii) If the Commission should go forward with rule 11c–1, whether the rule should include provisions such as those included in revised proposed rule 11a–3;[81] and

(iii) Whether a rule relating to UIT exchange offers is impracticable and the Commission should simply continue to consider applications on a case by case basis.

*C. Request for Comment on Rule 11a–2.*

In light of revised proposed rule 11a–3, the Commission believes that it is appropriate to reexamine the provisions of rule 11a–2 to determine whether there are reasons to distinguish between mutual funds and insurance company separate accounts in the exchange offer area. As a matter of general policy, separate accounts should be subject to the same requirements as mutual funds, absent a compelling need under the Act arising from the special nature of the insurance product.[82] The Commission will consider whether to propose amendments to rule 11a–2 to provide that exchange offers by registered insurance company separate accounts are subject to the same or similar conditions as exchange offers by mutual funds. Therefore, the Commission requests comment relating to the possible proposal of amendments to rule 11a–2 to better protect separate account investors and facilities competitive equality among investment company products in the exchange offer area. Specifically, commenters focus on whether there are insurance or other considerations that may make it inappropriate for any other provisions of revised proposed rule 11a–3 to be incorporated into rule 11a–2. The Commission will, of course, consider all comments and suggestions in developing any rule proposal in this area.

**Cost Benefit of Proposed Action**

Revised proposed rule 11a–3 would not impose any signficant additional burdens on mutual funds and would reduce the costs that they would incur by eliminating the need to file many applications. Mutual funds, advising or principal underwriters may incur some costs in complying with the disclosure and notice provisions of the revised proposed rule. The costs related to the notice requirement could be minimized by simply including the notice on a separate document with one of the mailings to shareholders that funds make to comply with the federal securities and the rules thereunder, or for other purposes. The revised proposed rule will also require offering companies that impose administrative fees on exchanges based on a cost standard to maintain records with respect to the actual costs incurred in connection with exchanges. The Commission would benefit from the revised proposal because its staff would have to review few applications requesting orders in this area. Comments are requested, however, on these matters and on the costs or benefits of any other aspect of the proposed action.

**Summary of Initial Regulatory Flexibility Analysis**

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding revised proposed rule 11a–3. The Analysis explains that revised proposed rule 11a–3 would permit certain offers of exchange between mutual funds. It states that the revised proposed rule is intended to protect investors from the abuses that led to the enactment of section 11, and to reduce significantly the number of applications filed with the Commission regarding exchange offers. The Analysis indicates that the revised proposed rule contains no reporting requirements. The revised proposed rule would require any offering company that imposes an administrative fee on an exchange based on a cost standard, to maintain records with respect to the actual costs incurred in connection with its exchanges. Any offering company, however, that elected to impose no more than a nominal administrative fee would be free of the recordkeeping requirement. The revised proposed rule would require prospectus, advertising and sales literature disclosure regarding any charges imposed at the time of an exchange and notice to shareholders if the terms of an exchange offer are to be amended materially. These disclosures might impose costs on fund advisers or principal underwriters, although the additional disclosure required is minimal. However, such costs could be minimized by including the notice in a separate document with one of the mailings to shareholders that funds make to comply with the federal securities laws and the rules thereunder, or for other purposes. To the extent that the proposed rule would eliminate the need for mutual funds to file applications seeking orders under section 11, it will reduce the costs incurred by smaller entities in preparing and filing applications. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Brian P. Kindelan, Esq., Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**Paperwork Reduction Act**

The notice information required by revised proposed rule 11a–3 has been submitted to the Office of Management and Budget.

**List of Subjects in 17 CFR Part 270**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Reproposed Rule and Proposed Rule**

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as shown.

1. The Authority citation for Part 270 continues to read as follows:

**Authority:** Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80a–39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted. * * * Section 270.11a–3 is also issued under Secs. 6(c) [15 U.S.C. 80a–6(c)] and 11(a) [15 U.S.C. 80a–11(a)].

2. By adding § 270.11a–3 to read as follows:

**§ 270.11a–3 Offers of exchange by open-end investment companies other than separate accounts.**

(a) Notwithstanding section 11(a) of the Act [15 U.S.C. 80a–11(a)], a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof (collectively, the "offering company") may, in connection with an offer to the holder of a security of that company or of another open-end investment company within the same group of investment companies as the offering company to exchange that security (the "exchanged security") for a security of the offering company (the "acquired security"), cause a securityholder to be charged a sales load on the acquired security, a redemption fee, or an administrative fee, or any combination of the foregoing, *Provided that:*

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[81] *See, e.g.*, notes 48–50 and 61–64, *supra*, and accompanying text.

[82] The Commission has stated that "[m]anagement investment companies funding vairable insurance products should be subject to the same procedural requirements as other management investment companies, absent a compelling need under the Act for special regulation arising from the nature of the insurance product." Investment Company Act Rel. No. 15586 (Feb. 26, 1987) [52 FR 7166, Mar. 9, 1987] (reproposal of rule 26a–3 [17 CFR 270.26a–3]).

(1) Any offering company that has previously made an offer of exchange cannot rely on this section to amend such prior offer unless the offering company's prospectus had disclosed, at all times during which the prior offer was outstanding, that the offer was subject to termination and its terms were subject to change, *Provided that:* no such disclosure need have been given where the only effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange;

(2) Any administrative fee or scheduled variation thereof is applied uniformly to all offerees of the class specified;

(3) Any sales load charged with respect to the acquired security is a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of any sales loads previously paid on the exchanged security, *Provided that:* the percentage rate of any sales load charged when the acquired security is redeemed, that is solely the result of a deferred sales load imposed on the exchanged security, may be no greater than the excess, if any, of the applicable rate of such sales load, calculated in accordance with paragraph (a)(5) of this section, over the total rate of all sales loads previously paid on the acquired security;

(4) No deferred sales load is imposed on the exchanged security at the time of an exchange;

(5) Any deferred sales load charged at the time the acquired security is redeemed is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security, *Provided that:* the time period during which the acquired security is held need not be included when the amount of the deferred sales load is calculated, if the deferred sales load is solely the result of a sales load imposed on the exchanged security, no other sales loads, including deferred sales loads, are imposed with respect to the acquired security, and the offering company does not have in effect a plan of distribution adopted in accordance with rule 12b–1 under the Act [17 CFR 270.12b–1];

(6) Any redemption fee charged with respect to the exchanged security or any scheduled variation thereof

(i) Is applied uniformly to all offerees of the class specified, and

(ii) Does not exceed the redemption fee applicable to a redemption of the exchanged security in the absence of an exchange;

(7) The prospectus of the offering company discloses

(i) The amount of any administrative fee imposed on an exchange transaction for its securities, as well as the amount of any administrative fee imposed on its securityholders to acquire the securities of other investment companies in an exchange transaction, and

(ii) If the offering company reserves the right to change the terms of or terminate an exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(8) Any sales literature that mentions the existence of the exchange offer also discloses

(i) The amount of any administrative fee or redemption fee that would be imposed at the time of an exchange, and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(9) Any advertising that mentions the existence of the exchange offer also discloses

(i) The existence of any administrative fee or redemption fee that would be imposed at the time of an exchange, and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(10) Whenever an exchange offer is to be terminated or its terms are to be amended materially, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least sixty days prior to the date of termination or the effective date of the amendment, *Provided that:* no such notice need to be given where the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange; and

(11) In calculating any sales load charged with respect to the acquired security:

(i) Where a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid its deemed exchanged first; and

(ii) Where the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security is deemed to have been solid with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or distribution made.

(b) Where either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (a)(3) of this section, the offering company may require the exchanging securityholder to have held the exchanged security for a minimum period of time previously established by the offering company and applied uniformly to all offerees of the class specified.

(c) For purposes of this rule:

(1) "Administrative fee" means any fee, other than a sales load, deferred sales load or redemption fee, that is

(i) Reasonably intended to cover the costs incurred in connection with exchanges, *Provided that:* the offering company will maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act [15 U.S.C. 80a–30(b)] as if such records were records required to be maintained under rules adopted under section 31(a) of the Act [15 U.S.C. 80a–30(a)]; or

(ii) A nominal fee as defined in paragraph (c)(6) of this section;

(2) "Deferred sales load" means any amount properly chargeable to sales or promotional activities that is or may be deducted upon redemption of all or a portion of a securityholder's interest in an open-end investment company;

(3) "Exchanged security" means (i) the security actually exchanged pursuant to an exchange offer and (ii) any security exchanged for such security or for any of its predecessors;

(4) "Group of investment companies" means any two or more registered open-end investment companies that have a common investment adviser or principal underwriter or whose investment advisers or principal underwriters are under common control, and that hold themselves out to investors as related companies for purposes of investment and investor services;

(5) "Redemption fee" means any fee, other than a sales load, deferred sales load or administrative fee, that is paid to the fund and is reasonably intended to compensate the fund for expenses incident to redemption of fund shares; and

(6) "Nominal" means slight or *de minimis.*

3. By adding § 270.11c–1 to read as follows:

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**§ 270.11c-1 Exemption from section 11(c) for certain offers of exchange.**

(a) Notwithstanding section 11(c) of the Act [15 U.S.C. 80a–11(c)], a registered unit investment trust (other than a registered separate account) or any sponsor or principal underwriter thereof (collectively, the "offering trust") may make or cause to be made an offer to the holder of a unit of the same series or another series of the offering trust, or of any other registered unit investment trust having the same sponsor or sponsors as the offering trust to exchange that unit for a unit of the offering trust (the "acquired unit") on the basis of the relative net asset values of the respective units to be exchanged except that the unitholder may be charged a sales load; *Provided, that,* any sales load charged with respect to the acquired unit is no greater than the excess, if any, of the sales load applicable to the acquired unit in the absence of an exchange over any sales load previously paid on the exchanged unit.

(b) Where either no sales load is imposed on the acquired unit or the sales load imposed is less than the maximum allowed by paragraph (a) of this section, the offering trust may require the exchanging unitholder to have the exchanged unit for a minimum period of time previously established by the offering trust and uniformly applied to all offerees of the class specified.

(c) For purposes of this rule:

(1) "Exchanged unit" means (i) the unit actually exchanged pursuant to an exchange offer and (ii) any unit previously exchanged for such unit or for any of its predecessors; and

(2) In calculating any sales load charged with respect to the acquired unit, where a unitholder exchanges less than all of his units, the units upon which the highest sales load was previously paid is deemed exchanged first.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

July 29, 1988.

[FR. Doc. 88–18151 Filed 8–10–88; 8:45 am]

BILLING CODE 8010-01-M

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 134**

**Country of Origin Marking of Fruit Juice Containers; Extension of Time for Comments**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice extends the period of time within which interested members of the public may submit comments concerning the Customs Service's interpretation of country of origin marking rules as they are applied to containers of fruit juice made with imported juice concentrate. Customs is reconsidering the merits of major supplier marking for such fruit juice containers. Major supplier marking stipulates that if a processor obtains 75 percent or more of its imported concentrate from one source country, only that source country need be disclosed. Otherwise, if no single source accounts for 75 percent or more of the concentrate, then all source countries must be disclosed. Customs is now determining whether major supplier marking provides the level of information to consumers that was contemplated by the country of origin marking laws, as codified in the Tariff Act of 1930, as amended. A notice inviting the public to comment on Customs reconsideration of major supplier marking for fruit juice containers was published in the Federal Register on June 7, 1988 (53 FR 20669), and comments were to have been received on or before August 8, 1988. Customs has received several requests to extend the period of time for comments. The requesters state additional time is necessary to prepare reasonably responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is being extended for two weeks.

**DATE:** Comments are requested on or before August 22, 1988.

**ADDRESS:** Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

**FOR FURTHER INFORMATION CONTACT:** John Doyle, Commercial Rulings Division (202–566–5765).

Dated: August 5, 1988.

**Harvey B. Fox,**

*Acting Deputy Assistant Commissioner, Office of Commercial Operations.*

[FR Doc. 88–18243 Filed 8–9–88; 11:48 am]

BILLING CODE 4820-02-M

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**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 20, 75, and 77**

**Electric Mine Lamps Other Than Standard Cap Lamps; Certified and Qualified Persons; Automatic Warning Devices on Mobile Equipment; Public Hearing**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) will hold a public hearing on its proposed rules for electric mine lamps other than standard cap lamps, certified and qualified persons, and automatic warning devices on surface mobile equipment. The hearing will be held in Pittsburgh, Pennsylvania, and will cover the major issues raised by comments submitted in response to the proposed rules.

**DATES:** All requests to make oral presentations for the record should be submitted at least five days prior to the hearing date. Immediately before hearing, any unallotted time will be made available to persons making later requests.

The public hearing will be held on August 30, 1988, beginning at 9:00 a.m.

**ADDRESSES:** The hearing will be held at the following location: Pittsburgh Green Tree Marriott, 101 Marriott Drive, Birch Room, Pittsburgh, Pennsylvania 15205.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235–1910.

**SUPPLEMENTARY INFORMATION:** On April 13, 1988, MSHA published proposed rules to revise existing standards for the investigation and approval of mine lamps that will meet the design, construction and test requirements in Part 20 of Title 30 of the Code of Federal Regulations (53 FR 12250); revise existing standards for temporary qualification or certification of persons at underground and surface coal mines (53 FR 12252),and revise existing standards that require certain surface mobile equipment, such as front-end loaders, forklifts, tractors, and graders, to be equipped with an automatic

warning device which gives an audible alarm when the equipment is operated in reverse (53 FR 12253).

The written comment period for these proposed rules ended on July 15, 1988. In the comments on the proposed rules, MSHA received requests for a public hearing. The purpose of the public hearing is to receive relevant comments and respond to questions about the proposed rules. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

The proceeding will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearing for rebuttal statements. A verbatim transcript of the proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be made available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until September 30, 1988.

**Issues**

Commenters questioned a number of provisions contained in the proposals. However, some portions of the rules raised issues of particular concern, which are discussed below. MSHA will specifically address these issues at the public hearing and solicit comments on them in addition to any other aspects of the proposed rules.

*A. Electric Mine Lamps Other Standard Cap Lamps*

This proposal would allow MSHA to approve electric lamps and flashlights that incorporate technology for which the requirements of Part 20 are not applicable, if the Agency determines by testing that the electric lamps or flashlights perform as safely as those which meet the requirements of 30 CFR Part 20. The proposal includes a provision in § 20.8(a)(1) which would allow MSHA to investigate and approve lamps that are designed and constructed to prevent bulb breakage, thus preventing exposure of the filament and possible ignition of an explosive atmosphere. Commenters are concerned that the proposal does not include performance-oriented criteria and that it does not specify the parameters and purposes of the test to be performed. One commenter is opposed to the concept of allowing the applicant or third party to perform the tests and procedures for the approval process under 30 CFR Part 7.

*B. Certified and Qualified Persons*

Certain MSHA regulations require persons working in coal mines to be qualified or certified to perform certain tasks such as making ventilation examinations or operating personnel hoists. The existing rule requires mine operators to submit certification and qualification applications to MSHA every six months for recertification. The proposed rule would affect temporary qualification and certification of mine foremen, assistant mine foremen, preshift examiners and hoist operators. It would delete the existing six-month limitation and would permit such persons to be certified or qualified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed by the same coal mine or by the same independent contractor. Commenters generally agreed that the need for re-application for certification or qualification every six months is unnecessary and could be eliminated without affecting safety and health. Several commenters suggested that all coal mines operated by the same company within the same State be considered "the same coal mine." Commenters also suggested that a person's certification or qualification should remain valid for any mine, company, or State that chooses to honor the certification, as long as the person has continued to satisfy all requirements necessary to keep the certification valid. In support of this position, commenters stated that the experience requirements for certification are the same regardless of the mine or company at which the person is employed, or the State in which application for certification is made.

Some commenters suggested changes beyond the stated scope of the proposal. For example, some commenters suggested that the reference in Part 77 to competence in testing for oxygen deficiency with a flame safety lamp be revised to address any device approved for such purpose by MSHA.

Another commenter suggested establishing a six-month apprentice program; requiring a minimum of five years of mining experience with two years experience on a coal producing section; providing for an annual eight-hour refresher training course for certified persons; and setting procedures for withdrawal of certification, including the creation of a Board of Appeals in each MSHA district. One commenter suggested that the one year experience required prior to application, for the hoisting engineer, would more appropriately be spent as an apprentice to a qualified hoisting engineer with the last six months of that period spent training in the operation of the hoist while under the supervision of a qualified hoisting engineer. Several commenters suggested deleting the prior experience requirement that the person has held the position of mine foreman, assistant mine foreman, preshift examiner, or hoisting engineer for a period of six months immediately preceding the filing of the application. In support of this position, commenters stated that it is not realistic for a person to obtain experience in a position for which the person is not qualified without first receiving the necessary certification required to fulfill the position. To do so would place such person in violation of the rule.

*C. Mobile Equipment; Automatic Warning Devices*

The proposal would modify the existing rule for backup alarms by allowing an exception for pickup trucks where the driver has an unobstructed rear view. One commenter suggested that pickup trucks should not be excluded. In support of this position, the commenter stated that pickup trucks are normally used to transport supplies and parts from one location to another at surface mines, and that many of these items are large enough to obstruct the operator's rear view. Another commenter suggested that pickup trucks should only be excluded if they are equipped with functioning backup lights.

The proposal would also allow for alternatives to traditional backup alarms such as discriminating backup alarms and the use of a strobe light instead of an audible alarm when mobile equipment is operated at night. Commenters expressed concern that there are too many operational problems with the new devices and that they should not be incorporated into the standard. One commenter stated that strobe lights only be used in conjunction

with alarms. The commenter suggested that the strobe light be of a distinct color so it can be differentiated from other strobe lights that may be used, and that the device be capable of warning for at least 100 feet from the vehicle to assure that the persons in danger would have ample response time.

Date: August 5, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Health.*

[FR Doc. 88-18146 Filed 8-10-88; 8:45 am]

BILLING CODE 4510-43-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD8-88-13]**

### Drawbridge Operation Regulations; St. Marks River, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Florida Department of Transportation, the Coast Guard is considering a change to the regulation governing the operation of the bascule span bridge on U.S. Highway 98 (SR 30) over the St. Marks River, mile 9.0, at Newport, Wakulla County, Florida, by permitting the draw to remain closed to navigation at all times. Presently the draw opens on call with 48 hours advance notice. This proposal is being made because of the absence of significant navigation on the waterway. That is, the bridge has been opened only three times in the past ten years for passage of marine traffic. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation, with substantial savings to the taxpayers.

**DATE:** Comments must be received on or before September 26, 1988.

**ADDRESS:** Comments should be mailed to Commander (ob), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965..

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

**Drafting Information**

The drafters of this notice are John Wachter, project officer, and Commander J.A. Unzicker, project attorney.

**Discussion of Proposed Regulation**

Vertical clearance of the bridge in the closed position is 9 feet above mean high tide and 11 feet above mean low tide. Navigation requiring bridge openings is practically non-existent, since only three boats have passed through the bridge in the past ten years. These three boats were recreational sailing vessels. There is no commercial navigation on the waterway. In order to determine if there was excessive opposition to this proposed permanent closure, the Florida Department of Transportation advertised its intentions in the official newspaper of record in Wakulla County and conducted a public hearing. Only one person attended the public hearing, other than those highway department officials conducting the hearing. The individual, an owner of land located upstream of the bridge, objected that closure of the bridge will subtract from the value of his property. He does not own a boat that requires an opening of the draw.

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that there have been but three requests for openings in the past ten years by recreational boaters, and there have been no requests for openings by commercial navigation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulation**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; and 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.327 is revised to read as follows:

**§ 117.327 St. Marks River.**

The draw of the US98-S30 bridge, mile 9.0 at Newport, need not be opened for the passage of vessels.

Dated: August 1, 1988.

**W.F. Merlin,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 88-18225 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-14-M

## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Use of Educational Assistance Benefits as a Part of a Vocational Rehabilitation Program

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendment.

**SUMMARY:** The Department of Defense Authorization Act, 1985, established an educational assistance program under Chapter 30, Title 38, United States Code. One of the law's provisions allows an otherwise eligible veteran to elect payment at the rates provided under this program for training which the veteran is pursuing as a part of a vocational rehabilitation program. The Veterans Administration (VA) is proposing to implement this provision of the law.

**DATES:** Comments must be received on or before September 12, 1988. Comments will be available for public inspection until September 20, 1988. It is proposed

to make these amendments effective October 19, 1984, the date upon which the program authorized under Chapter 30, Title 38, United States Code became effective.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until September 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, Rehabilitation Consultant, Policy and Program Development (226A), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2886.

**SUPPLEMENTARY INFORMATION:** The Veterans Administration provides vocational rehabilitation for eligible service-disabled veterans under the provisions of Chapter 31, Title 38, United States Code.

The Department of Defense Authorization Act, 1985, establishes a new educational assistance program for persons entering the Armed Forces on or after July 1, 1985. One of the provisions of this educational assistance program allows veterans who are eligible under both the new educational assistance program (Chapter 30) and the vocational rehabilitation program (Chapter 31) to elect payment at the rate paid under Chapter 30 for training which the veteran is pursuing as a part of his or her vocational rehabilitation program. A similar provision exists with regard to the educational assistance program authorized under Chapter 34, Title 38, United States Code. The VA proposes to implement the Chapter 30 provision by amending § 21.264 and related sections which allow eligible veterans to receive payment at the rates paid under Chapter 34 as a part of a vocational rehabilitation program under Chapter 31.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented. The VA proposes to make these regulations retroactively effective. These are interpretive rules which implement statutory changes. Morever, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactive to the date the educational assistance program authorized under Pub. L. 98-525 becomes effective. A delayed effective date would be contrary to statutory design, would complicate implementation of these provisions of law, and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. The reasons for this certification are that the proposed regulations simply implement and interpret statutory provisions. These changes only concern the eligibility and participation of individual veterans under the vocational rehabilitation program.

(The Catalog of Federal Domestic Assistance Number is 64.116)

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 25, 1988.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 21 is proposed to be amended as set forth below:

**PART 21—[AMENDED]**

1. Section 21.22 is amended by revising paragraph (a) introductory text and the authority citation following paragraph (a)(2), to read as follows:

**§ 21.22 Nonduplication—Federal programs.**

(a) *Allowances.* A service-disabled veteran who is eligible for benefits under Chapter 31, may not receive a subsistence allowance or elect payment of an allowance at the educational assistance rate under Chapter 30 or Chapter 34 pursuant to § 21.264 if the veteran:

* * * * *

(Authority: 38 U.S.C. 1781; Pub. L. 98-525)

* * * * *

2. Section 21.78 is amended by revising paragraph (b)(3), (b)(4) introductory text, (b)(4)(ii) and the authority citation, to read as follows:

**§21.78 Approving more than 48 months of rehabilitations.**

* * * * *

(b) * * *

(3) The veteran previously used education benefit entitlement under other programs administered by the VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all VA education programs, under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.

(Authority: 38 U.S.C. 1795)

(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 or Chapter 34 educational assistance rate. The 48 month limitation may be exceeded only:

* * * * *

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement or 45 month limitation on Chapter 34 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31.

(Authority: 38 U.S.C. 1413, 1795; Pub. L. 98-525)

3. Section 21.148 is amended by revising paragraph (d) to read as follows:

**§ 21.148 Tutorial assistance.**

* * * * *

(d) *Payment at the Chapter 30 or Chapter 34 rate.* If a veteran has elected payment at the educational assistance rate payable under Chapter 30 or Chapter 34, he or she may be provided individualized tutorial assistance under provision of Chapter 31. (See § 21.334.)

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

4. Section 21.254 is amended by revising paragraph (b)(1) and the authority citation following paragraph (b)(4), to read as follows:

**§ 21.254 Supportive services.**

* * * * *

(b) * * *

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(1) Subsistence allowance, or payment of an allowance at the educational assistance rate paid under Chapter 30 or Chapter 34 for similar training;

* * * * *

(Authority: 38 U.S.C. 1504(a), 1508(f); Pub. L. 98–525)

* * * * *

5. Section 21.256 is amended by revising paragraph (e)(2) and adding an authority citation, to read as follows:

**§ 21.256 Incentives for employers.**

* * * * *

(e) * * *

(2) Notwithstanding any other provisions of these regulations, if the program in which the veteran is participating meets the criteria for approval of on-job training under Chapter 30 or Chapter 34, the veteran may be paid educational assistance under Chapter 30 or Chapter 34 to the extent that he or she has remaining eligibility and entitlement under Chapter 30 or Chapter 34. (See § 21.264)

(Authority: 38 U.S.C. 1508(f), 1516(b); Pub. L. 98–525)

* * * * *

6. Section 21.260 is amended by revising paragraph (a) and the authority citation, to read as follows:

**§ 21.260 Subsistence allowance.**

(a) *General.* A veteran in a rehabilitation program under Chapter 31 will receive a monthly subsistence allowance at the rates specified in paragraph (b) of this section, unless he or she has elected to receive payment at the rate of the monthly educational assistance allowance payable under Chapter 30 or Chapter 34 for similar training. See § 21.264 of this part for election of payment at the Chapter 30 or Chapter 34 rate, § 21.4136 of this part for payment at Chapter 34 rates, and §§ 21.7136, 21.7137, and 21.7138 of this part for payment at Chapter 30 rates.

(Authority: 38 U.S.C. 1508(a), 1508(a), 1508(f); Pub. L. 98–525)

* * * * *

7. Section 21.264 is amended by revising the section heading, paragraph (a) introductory text, (a)(1), (a)(2), the authority citation following paragraph (a)(3), (b)(1) and the authority citation following paragraph (b)(3), (c) introductory text and the authority citation following paragraph (c)(3)(iii), (d) and the authority citation, to read as follows:

**§ 21.264 Election of payment at the Chapter 30 or Chapter 34 educational assistance rate.**

(a) *Eligibility.* A veteran who applies for and is found entitled to training or education under Chapter 31, may elect to receive payment at the educational allowance rate and other assistance furnished under Chapter 30 or Chapter 34, for similar training in lieu of a subsistence allowance, provided the following criteria are met:

(1) The veteran has remaining eligibility for, and entitlement to educational assistance under Chapter 30 or Chapter 34;

(2) The veteran enrolls in a program of education or training approved for benefits under Chapter 30 or Chapter 34;

* * * * *

(Authority: 38 U.S.C. 1508(f); Pub. L. 98–525)

(b) * * *

(1) Chapter 30 or Chapter 34 eligibility or entitlement ends earlier;

* * * * *

(Authority: 38 U.S.C. 1508(f); Pub. L. 98–525)

(c) *Services precluded.* A veteran entitled to vocational rehabilitation training or education who elects payment at the educational assistance rate payable under Chapter 30 and Chapter 34 shall be provided the same training and rehabilitation services as other veterans under Chapter 31, but may not be provided:

* * * * *

(Authority: 38 U.S.C. 1508(f); Pub. L. 98–525)

(d) *Chapter 30 or Chapter 34 provisions applicable.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance rate must meet the same terms and conditions as other veterans pursuing similar training under these programs.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98–525)

8. Section 21.268 is amended by revising paragraph (b), to read as follows:

**§ 21.268 Employment adjustment allowance.**

* * * * *

(b) *Reelection of subsistence allowance.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance allowance rate may be paid an employment adjustment allowance only if he or she reelects subsistence allowance to become effective not later than the day following completion of the period of rehabilitation to the point of employability.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98–525)

* * * * *

9. Section 21.272 is amended by revising paragraph (b)(1) and adding an authority citation following paragraph (b)(3), to read as follows:

**§ 21.272 Veteran-student services.**

* * * * *

(b) * * *

(1) Need of the veteran to augment the subsistence allowance or payment made by the Chapter 30 or Chapter 34 rate;

* * * * *

(Authority: 38 U.S.C. 1504(a)(4), 1508(f), 1685; Pub. L. 98–525)

* * * * *

10. Section 21.276 is amended by revising paragraphs (d), (e), and (g), to read as follows:

**§ 21.276 Incarcerated veterans.**

* * * * *

(d) *Halfway house.* A subsistence allowance may be paid to a veteran pursuing a rehabilitation program while residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program.

(Authority: 38 U.S.C. 1508(a))

(e) *Work-release program.* A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.

* * * * *

(g) *Payment of allowance at the rates paid under Chapter 30 or Chapter 34.* A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 or Chapter 34 shall be paid in accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(f), 1780(a); Pub. L. 98–525)

* * * * *

11. Section 21.320 is amended by revising paragraph (b)(3) and the authority citation, and paragraph (d)(3) and the authority citation, to read as follows:

**§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.**

* * * * *

(b) * * *

(3) The veteran elects payment at the educational assistance allowance rate, in which case the commencing date of payment is determined under provisions applicable to commencement of payment under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98–525)

* * * * *

(d) * * *

(3) A veteran has elected payment at the educational assistance rate paid under Chapter 30 or Chapter 34. The ending date of the award is determined under regulations applicable to termination of training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1506(a), 1506(f); Pub. L. 98–525)

12. Section 21.330 is amended by revising paragraph (a) and the authority citation, to read as follows:

**§ 21.330 Apportionment.**

(a) *General.* Where in order, the VA will apportion subsistence allowance in accordance with § 3.451 of this title, subject to the limitations of § 3.458 of this title. If the veteran is in receipt of benefits at the Chapter 34 rate, apportionments shall be in accordance with § 21.4140 of this part. If the veteran is in receipt of benefits at the Chapter 30 rate, the VA will not apportion these benefits.

(Authority: 38 U.S.C. 3107(c); Pub. L. 98–525)

* * * * *

13. Section 21.334 is amended by revising the section heading, paragraph (a) and the authority citation, (b) introductory text, (b)(1), the authority citation following paragraph (b)(2), (c) introductory text, (c)(2), (c)(3), the authority citation following paragraph (c)(4), (d)(1), (d)(2) and the authority citation, and by adding paragraph (e), to read as follows:

**§ 21.334 Election of payment at the Chapter 30 or Chapter 34 rate.**

(a) *Election.* When the veteran elects payment of an allowance at the Chapter 30 or Chapter 34 rate, the effective dates for commencement, reduction, and terminaton of the allowance shall be in accordance with §§ 21.4130 through 21.4135 and § 21.1042(a)(2) of this part under Chapter 34, and §§ 21.7130 through 21.7135 and § 21.70509(a) of this part under Chapter 30.

(Authority: 38 U.S.C. 1506(f), 1780; Pub. L. 98–525)

(b) *Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into a rehabilitation program.* Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into training is permissible under provisions of § 21.264 (a) and (b). The effective date of the election is the latest of the following dates:

(1) The commencing date determined under the provisions of § 21.4131 of this part in the case of a veteran who has elected payment at the Chapter 34 rate or determined under § 21.7131 of this part in the case of a veteran who has elected payment at the Chapter 30 rate; or

* * * * *

(Authority: 38 U.S.C. 1506(f); Pub. L. 98–525)

(c) *Reelection of subsistence allowance subsequent to induction.* If a veteran reelects subsistence allowance under provisions of § 21.264(b) of this part, the effective date of the change is earliest of the following:

* * * * *

(2) The veteran's Chapter 30 or Chapter 34 delimiting date;

(3) The day after exhaustion of Chapter 30 or Chapter 34 entitlement; or

* * * * *

(Authority: 38 U.S.C. 1506(f); Publ. L. 98–525)

(d) * * *

(1) *Payment at the Chapter 30 or Chapter 34 rate.* If an otherwise eligible veteran elects payment at the Chapter 30 or Chapter 34 rate during a period between periods of instruction, the effective date of the election shall be the first day of the next period of instruction.

(2) *Subsistence allowance.* If an otherwise eligible veteran reelects subsistence allowance during leave or between periods of instruction following election of payment at the Chapter 30 and Chapter 34 rate, the effective date of the change will be the date of the reelection or the beginning of the next period of training, whichever is to the veteran's benefit.

(Authority: 38 U.S.C. 1506(f), Pub. L. 98–525)

(e) *Effect of Chapter 34 program termination.* (1) Since Chapter 34 benefits are not payable beyond December 31, 1989, any previous election of benefits at that rate is terminated as of that date;

(2) A veteran entitled to Chapter 30 benefits based on his or her Chapter 34 eligibility as of December 31, 1989, and whose election of Chapter 34 benefits is terminated as of that date under paragraph (1) must, if the individual desires payment at the Chapter 30 rate, elect such payment.

(Authority: 38 U.S.C. 1411(a); Pub. L. 98–525)

14. Section 21.340 is amended by revising paragraph (c) and the authority citation, to read as follows:

**§ 21.340 Introduction.**

* * * * *

(c) *Election of benefits at the Chapter 30 or Chapter 34 rate.* If a veteran elects to receive an allowance paid at the Chapter 30 or Chapter 34 rate, the effect of absences is determined in the same manner as provided in §§ 21.424 and 21.4205 of this part for Chapter 34 or §§ 21.7139 and 21.7154 of this part for Chapter 30.

(Authority: 38 U.S.C. 1506(f), 1510; Pub. L. 98–525)

[FR Doc. 88–18012 Filed 8–10–88; 8:45 am]
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 433

### [BQC–59–P]

## Medicaid Program; Medicaid Management Information System: Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

**AGENCY:** Health Care Financing Administration (HCFA), DHHS.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing a number of revisions to regulations concerning mechanized claims processing and information retrieval systems ("system" or "systems"). We would revise definitions to show that we will make available Federal funding at 75 and 90 percent of State Medicaid agency expenditures only for HCFA-required (or core) subsystems of the system and for HCFA-required changes to that core system. A major result of these changes is that we would discontinue 75 and 90 percent funding for eligibility determination systems because they do not meet the definition of core subsystems of "mechanized claims processing and information retrieval system." We would delete the definition of "enhancement," as we propose to discontinue 75 percent funding for enhancements except those required by HCFA.

We would also conform our regulations to changes made by sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272), which involve technical changes. One change affects the frequency and scope of our system reviews, and another involves the date by which States that are not exempt by law must have an operating system.

**DATE:** To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on October 11, 1988.

**ADDRESSES:** Address comments in writing to Administrator, Health Care

Financing Administration, Department of Health and Human Services, Attention: BQC–59–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BQC–59–P. Comments will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., (202–245–7890).

**FOR FURTHER INFORMATION CONTACT:** Guy L. Harriman, 301–966–3292.

**SUPPLEMENTARY INFORMATION:**

## A. Background

*Basis of the System*

A Medicaid management information system (commonly known as the MMIS) is a mechanized system ("system") of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system, originally authorized by section 1903(a)(3) of the Act, is used to process Medicaid claims and to retrieve and produce utilization data and management information about medical care and services furnished to recipients. Each State (with some exceptions) is required by section 1903(r) of the Act to have in place an operational and approved system or be subject to reductions of Federal financial participation (FFP).

Section 1903(a)(3) of the Act authorizes FFP at 90 percent of the sums a State Medicaid agency expends for the design, development, or installation of a mechanized claims processing and information retrieval system that the Secretary determines is likely to provide more efficient, economical and effective administration of the program and at 75 percent for the operation of these systems. (Hereafter, we will refer to 90 percent and 75 percent FFP as "enhanced" FFP since it is greater than the 50 percent FFP authorized for most Medicaid administrative expenses.)

*Current Regulations*

Our regulations concerning mechanized claims processing and information retrieval systems are at 42 CFR Part 433, Subpart C. Section 433.111 lists terms used in obtaining initial approval or making changes to the system; the terms are defined at 45 CFR 95.605. A State agency's system must comply with the requirements in § 433.112 through § 433.122, before the agency may obtain enhanced funding. These sections discuss the availability of enhanced FFP, identify the conditions a system must meet for approval or reapproval and specify that an agency must meet HCFA-determined system requirements and performance standards if it is to continue to receive enhanced funding. Section 433.123 describes procedures we follow to ensure that we inform interested parties adequately before we make changes in conditions of approval or reapproval and in system requirements for systems eligible for enhanced funding.

The general HHS requirements for approval of advanced planning documents (APDs) are found at 45 CFR Part 95, Subpart F, which prescribe the conditions under which HHS will approve FFP at applicable rates for costs of automatic data processing for the Medicaid program and for the Aid to Families with Dependent Children (AFDC) and the Child Support Enforcement program (titles IV–A and IV–D respectively). On December 18, 1986, HHS amended 45 CFR Part 95, Subpart F to simplify and make those regulations consistent, to the maximum extent possible, with regulations governing availability of FFP at the enhanced matching rate for computerized systems that support programs under titles IV–A, IV–D and XIX (51 FR 45321). At the same time, HHS revised 42 CFR 433.111 by removing the content of the definitions of all the terms found there previously (except that of "mechanized claims processing and information retrieval system") and cross-referring the reader to 45 CFR 95.605 for definitions of the other terms. The term "improvement" was replaced by "enhancement" in §§ 433.111 and 433.112.

## B. Proposed Changes to Regulations

Under current policy based on HCFA regulations at § 433.112 and at 45 CFR Part 95, Subpart F, we pay 90 percent FFP for the design, development, installation or enhancement of a mechanized claims processing and information retrieval system based on an APD approved by HCFA. Under the proposed rule we would approve an APD as being likely to provide more efficient, economical and effective administration of the State plan only for a mechanized claims processing and information retrieval system that consists of the required, or core, subsystems of that system, which we describe in Part 11 of the State Medicaid Manual. There are currently six required core subsystems: The Recipient, Provider, Claims Processing, Reference File, Surveillance and Utilization Review, and the Management and Administrative Reporting subsystems.

1. "Mechanized claims processing and information retrieval system"

We propose to revise the current definition of "mechanized claims processing and information retrieval system" in 42 CFR 433.111 so that it consists of the HCRA-required, or core, subsystems specified in the State Medicaid Manual. If a State were to initiate changes to its system as likely to provide more efficient, economical and effective administration of the State plan and HCFA approved them, the changes would be funded at the regular matching rate of 50 percent in accordance with § 433.15(b)(7) and 45 CFR Part 95, Subpart F.

Under the revised definition, "mechanized claims processing and information retrieval system" would be the six Statewide core subsystems of software and hardware used (1) to process claims by providers of medical care and services for items and services furnished to eligible recipients under the Medicaid program and (2) to retrieve and produce service utilization and management information that is required by the Medicaid single State agency and Federal government for Medicaid program administration and audit purposes. The system would be used to process claims only for items and services covered under the State plan.

2. Enhancements

We also propose to delete the term "enhancement" found in § 433.111. Neither the term "enhancement" nor "improvement", as enhancement was formerly called, appears in the statute. Under our proposal, we would fund only HCFA-approved core systems and subsystems and HCFA-required changes at the enhanced funding rates. Conversely, any modification suggested by a State that is not approved by HCFA as a core system requirement would not be viewed by HCFA as an "improvement" for purposes of enhanced FFP.

Under this proposal, the only changes for which we would allow 75 or 90 percent funding are HCFA-required changes to the required core system or subsystems. Any other system design and development changes that are approved would be funded at the regular

50 percent matching rate. (Although HHS defines "enhancements" for Medicaid in 45 CFR 95.605, the definition does not require Medicaid to pay for enhancements. It merely makes consistent the definition and term from program to program.)

Congress added section 1903(a)(3) of the Act to authorize enhanced FFP for mechanized claims processing and information retrieval systems that the Secretary determines are likely to provide more efficient, economical and effective administration of the State plan. Congress expected the savings from improved administrative efficiency to more than offset the cost of implementing the provision. (H.R. Rep. No. 92–231, 92nd Cong., 1st Sess. 103–104 (1971))

Once these proposed regulations are made final, we would not provide enhanced FFP for any system or subsystem that does not meet the above definition of mechanized claims processing and information retrieval system. Therefore, under § 433.112, we would approve 90 percent FFP only when the requirements published in the **Federal Register** and in Part 11 of the State Medicaid Manual for the system being designed, developed, or installed are met. Approval of a system for 75 percent FFP for operation would continue to depend on that system meeting the published requirements as required by § 433.116. We reaffirm our policy that 75 percent FFP is available only for costs directly attributable to approved systems.

The purpose of the proposed amendment is to avoid the waste of effort expended in preparing an APD or procurement for which we would disapprove enhanced FFP. Currently, we receive APDs for system projects and procurements that we would not fund (at an enhanced rate) under the proposed change, such as eligibility determination systems or State-initiated changes.

3. We also propose to revise § 433.112(a) to read as it did from July 30, 1985 to December 18, 1986, except that it would not include the term "improvement". When this section was revised on December 18, 1986, the language that was in the Code of Federal Regulations before July 30, 1985 was inadvertently used. Since there was no intention to change the substance of this pargraph in December, 1986, we would restore the earlier language.

4. We are also proposing to change the references in the regulations from "MMIS" (which appear in §§ 433.121 and 433.131), to "system," which is the short form for the term "mechanized claims processing and information retrieval system" and is currently in use in all sections in Part 433, Subpart C except § 433.131. We have not defined "MMIS" in regulations and would make the change for consistency.

**C. Proposed Revisions to Implement Pub. L. 99–272**

We also propose revising our regulations to implement sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act of 1935 (COBRA) (Pub. L. 99–272), as enacted April 7, 1986.

Section 9503(b)(2)(A) of the COBRA amends section 1903(r)(4)(A) of the Act by requiring the Secretary to review each approved system at least once every three years, instead of once a year. Section 9503(b)(2)(B) amends section 1903(r)(4)(A) of the Act to permit the Secretary, at his discretion, to review either the entire system of a given State agency or only those standards, system requirements and other conditions demonstrating weakness in previous reviews.

Section 9518 of the COBRA amends section 1903(r)(1)(B) of the Act so that State agencies must have had an approved system no later than September 30, 1985, instead of September 30, 1982. The amendment applies to payment made under section 1903(a) of the Act for calendar quarters beginning on or after October 1, 1982.

We would revise § 433.119, Conditions for yearly approval; notice of decision, to show that we would review each system operation at least once every three years and to indicate that we would not have to review the entire system but we would, at a minimum, have to review parts of the system operation that showed weaknesses in the previous review.

We would revise § 433.122 to delete the references to "yearly" review.

We propose to revise § 433.113, Reduction of FFP for failure to operate a system and obtain initial approval, to change the deadline by which an agency must have an approved system to September 30, 1985.

**D. Funding for Optional Systems and Subsystems**

Many State agencies receive enhanced funding for system applications for third party liability (TPL), which are integrated with the core system or subsystem, or for an eligibility determination system, or both.

*1. Third Party Liability*

We interpret section 9503(a) of COBRA as requiring State Medicaid agencies to have an approved plan of action for TPL and to use the system to carry out the plan of action. We currently require the COBRA-mandated statutory TPL changes as part of the core system by regulation (42 CFR 433.112(b)(2)). If these requirements are not currently part of the system approved for enhanced matching, they should be implemented as HCFA requirements to all approved systems for which enhanced matching is claimed. Performance of the system in meeting these requirements will continue to be monitored by the system reapproval review required by section 1903(r)(4) of the Act. The TPL plan required by COBRA will also be monitored as part of this approval review within the limits of system requirements and performance standards (Sections 1903(r)(4) requires us to reduce FFP for the disapproved system if performance standards are not met.) No new system requirements or performance standards are need to implement COBRA. If system modifications are required in some States to meet COBRA requirements, we will continue to make enhanced FFP available for modifications to those TPL systems that are part of the required core system. We are publishing a separate regulation concerning the TPL plan requirements of COBRA. (See 52 FR 6350, March 3, 1987, for the proposed rule, State Plan Requirements for TPL Collections.)

*2. Eligibility determination systems*

a. Background

Eligibility of many Medicaid applicants and recipients is determined by an agency other than the State Medicaid agency. Under section 1902(a)(10)(A)(i)(I) of the Act, States must provide Medicaid to all recipients of AFDC benefits (administered under the auspices of the Family Services Administration) and certain individuals who are deemed to be recipients of AFDC. Therefore, the determination of Medicaid eligibility for these individuals is made by the State's AFDC agency.

Under sections 1902(a)(10)(A)(i)(II) and 1902(f) of the Act, States have the option of providing Medicaid to all recipients of Supplemental Security Income (SSI) (cash benefits to aged, blind, and disabled individuals) or to use more restrictive requirements of eligiblity than SSI for determinations of Medicaid eligibility for aged, blind, and disabled individuals. Fourteen States have elected to use more restrictive requirements for Medicaid eligibility for the aged, blind, and disabled, and therefore the State Medicaid agency makes the eligibility determination. Five

States use SSI criteria for the determination of Medicaid eligibility and require recipients of SSI to file a Medicaid application with the State Medicaid agency. (These five States must provide Medicaid to all recipients of SSI who file for Medicaid.) The remaining States have entered into an agreement with the Social Security Administration (SSA) to determine Medicaid eligiblity for aged, blind, and disabled individuals. In these States, SSA provides the State Medicaid agency with information on the current eligibility status of all applicants and recipients of SSI benefits.

There are additional groups of individuals that States are required to cover under their Medicaid plan—for example, qualified pregnant women and children under age eight and individuals who lose eligibility for SSI benefits because of a cost-of-living increase in Social Security benefits. Three are also groups of individuals that States may elect to cover under the Medicaid plans—for example, the medically needy and recipients of optional State supplements. The State Medicaid agency may make Medicaid eligibility determinations for these individuals or amy enter into an agreement with another agency to make the determinations.

The amount of work involved in making Medicaid eligibility determinations for individuals other than AFDC and SSI recipients can vary from minimal, where Medicaid eligibility requirements differ from the cash assistance programs' requirements by only one or two criteria, to complex, where the Medicaid program's medically needy criteria are far more restrictive than criteria for welfare payments. In all cases, the eligibility determination is derived from a cash welfare-assistance determination; the Medicaid agency does not determine eligibility as a totally separate process from the cash welfare eligibility determination. As a result, in States where the Medicaid agency has an eligibility determination system, the system is integrated as a multi-program (AFDC, Food Stamps, Medicaid and other welfare programs) system. Most States are in the process of developing integrated systems. Medicaid pays its allocated share of the costs of the integrated system.

During the mid-1970's, a number of dramatic systems improvements supported a decision increasing the availability of enhanced funding. In one State, once a mechanized claims processing and information retrieval system was installed, there were Medicaid savings of approximately $25 million in the first three months and $100 million in the first year. Consequently, HCFA recognized some costs that benefited the operation of the mechanized claims processing and information retrieval system as reimbursable at enhanced rates of FFP and that were likely to provide more efficient, economical and effective administration of the State plan.

A similar line of reasoning applied to eligibility determination systems. Large sums of money depend on the accuracy and timeliness of eligibility determinations. Therefore, a system that enhances the accuracy and timeliness of eligibility determinations benefits the program. The first eligibility determination system was primarily installed to benefit a State Medicaid program, and a large proportion (40 percent of the installation and 30 percent of the operation) of the cost of this particular system was allocated to Medicaid, and the remainder to other welfare programs. Other States began to request enhanced funding for Medicaid eligibility determination systems, and we supplied it but our allocation was smaller. Some improvement in accuracy and timeliness of claims processing of provider claims resulted.

Since 1977, HCFA has made available 90 percent FFP for the design, development, installation or improvement of eligibility determination systems, subject to approved APDs, and 75 percent FFP for the subsequent operation of these systems, on the basis that applications for eligibility were "claims" and that a system processing these "claims" was a part of the mechanized claims processing and information retrieval system.

In 1981, section 403(a)(3)(B) of the Act, which refers to AFDC, as added by section 406 of Pub. L. 96–265, requires the Secretary to provide 90 percent FFP for the design, development and installation of a mechanized eligibility determination system that meets the requirements of section 402(a)(30) of the Act. In addition, the section requires the Secretary to determine that the systems are "likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of State plans approved under title XIX . . ." SSA published an interim final rule (45 CFR 205.35 through 205.38) on September 30, 1981 (45 FR 47784) to implement this provision, and a final rule on April 17, 1986 (51 FR 13001). The 90 percent FFP has been available for quarters beginning on and after July 1, 1981.

b. Proposal

Eligibility determination systems would no longer be eligible for any enhanced FFP for Medicaid purposes under the proposed definition of mechanized claims processing and information retrieval systems, since enhanced FFP would be available only for costs directly attributable to approved Medicaid systems. Because eligibility determination systems would not be used to process claims by "providers of medical care and services for the medical care and services furnished to the recipients", we would not require their implementation or operation, as part of the core subsystems.

AFDC agencies now may receive 90 percent FFP for implementing eligibility determination systems, giving those agencies considerable incentive, because of the cost and benefits, to implement a system. A State Medicaid agency's involvement in eligibility determinations is minimal (either because AFDC or SSI makes the determination—by law or under contract—or because the determination is derived from eligibility for AFDC or SSI), and not adequate in terms of cost and benefits to justify defining mechanized claims processing and information retrieval system to cover implementation or operation of eligibility determination systems.

In addition, Congress purposely required that 90 percent FFP be made available for AFDC eligibility determination systems by adding section 403(a)(3)(B) of tha Act, effective July 1, 1981, and did not do so for Medicaid. Any incentive provided by partial title XIX enhanced funding before 1981 has been superseded by the explicit funding authority under section 403(a)(3) of the Act. This authority has encouraged 44 States to design eligibility determination systems, principally with title IV funding. Because there is no explicit statutory funding authority under title XIX, HCFA is not required to make enhanced FFP available for eligibility determination systems and there is no further need to do do.

c. FFP for an Eligibility Determination System

We propose that, in order to receive any FFP for Medicaid purposes for an eligibility determination system after the effective date of the final rule, a State agency would have to submit an APD in accordance with the requirements of 45 CFR Part 95, Subpart F, for funding.

Once we approve the APD, the State agency would receive 50 percent FFP for administrative costs under section 1903(a)(7) of the Act for the system's design, development, installation, and operation.

A State Medicaid agency with a currently approved APD for a mechanized eligibility determination system would receive Medicaid enhanced funding at 90 percent under paragraph 1903(a)(3)(A) until the effective date of the final version of these regulations. Once the final version is effective, all Medicaid enhanced funding would terminate and Medicaid funding for operation of mechanized eligibility determination and information retrieval systems would be at the 50 percent rate under section 1903(a)(7) of the Act. Any APDs approved by HCFA for eligibility determination systems after the effective date of the final rule would be funded at the 50 percent rate. Eligibility determination system operations being funded at the enhanced operations rate of 75 percent before the effective date of the final regulation would be funded by HCFA at the 50 percent rate after the effective date.

We propose to add a paragraph to § 433.112 to exclude eligibility determination systems specifically from funding at enhanced rates.

**E. Regulatory Impact Statement**

*1. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule".

A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are currently 45 States that have approved core systems in place. These States would not receive enhanced FFP for those parts of their systems that do not fit the proposed definition of "mechanized claims processing and information retrieval system". We expect some of these States to bear an increased share of data processing costs. However, this would not be a major cost increase for affected States nor would it meet any of the other criteria for major rules. Therefore, a regulatory impact analysis is not required.

*2. Regulatory Flexibility Act*

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. Under the RFA, States are not considered small entities. Therefore, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities, and we have not prepared an initial regulatory flexibility analysis.

Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 *et seq.*).

**F. Response to Comments**

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

**G. List of Subjects in 42 CFR Part 433**

Administrative practice and procedure, Assignment of Rights, Claims, Contracts (Agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems, Medicaid, State fiscal administration, Third party liability.

42 CFR Part 433, Subpart C is amended as set forth below:

## PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for Part 433, Subpart C continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Part 433 is amended by revising the titles of §§ 433.112, 433.120, and 433.121 as follows:

* * * * *

**Subpart C—Mechanized Claims Processing and Information Retrieval Systems**

* * * * *

433.112 FFP for design, development, or installation of mechanized claims processing and information retrieval systems.

* * * * *

433.120 Procedures for reduction of FFP after reapproval review.

433.121 Reconsideration of the decision to reduce FFP after the review.

* * * * *

3. In § 433.111 paragraphs (a) and (b) are revised to read as follows:

**§ 433.111 Definitions.**

For purposes of this section:

(a) The following terms are defined at 45 CFR Part 95, Subpart F § 95.605:

"Advance Planning Document"; "Design" or "System Design"; "Development"; "Hardware"; "Installation"; "Operation"; and, "Software".

(b) "Mechanized claims processing and information retrieval system" or "system" means the system of software and hardware used to process Medicaid claims from providers of medical care and services for the medical care and services furnished to recipients under the medical assistance program and to retrieve and produce service utilization and management information required by the Medicaid single State agency and Federal government for program administration and audit purposes. The system consists of (1) required subsystems specified in the State Medicaid Manual; and (2) HCFA-required changes to the required system or subsystem that are published in accordance with § 433.123 of this subpart and specified in the State Medicaid Manual.

* * * * *

4. In § 433.112, the title and paragraph (a) are revised, the introductory language of paragraph (b) is republished for the convenience of the reader, paragraph (b)(6) is revised, and paragraph (c) is added to read as follows:

**§ 433.112 FFP for design, development, or installation of mechanized claims processing and information retrieval systems.**

(a) FFP is available at the 90 percent rate in State expenditures for the design development, or installation of a mechanized claims processing and information retrieval system only if the APD is approved by HCFA prior to the State's expenditures of funds for these purposes.

(b) HCFA will approve the system described in the APD if the following conditions are met:

* * * * *

(6) The Department has a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use, for Federal government purposes, software, modifications to software, and documentation that is designed, developed, or installed with 90 percent FFP.

* * * * *

(c) Eligibility determination systems are not eligible for either 90 percent or 75 percent FFP under this subpart.

* * * * *

5. In § 433.113, the introductory language of paragraph (a) is republished for the convenience of the reader and paragraph (a)(2) is revised as follows:

**§ 433.113 Reduction of FFP for failure to operate a system and obtain initial approval.**

(a) Except as waived under § 433.130 or 433.131, FFP will be reduced as specified in paragraph (b) of this section unless the Medicaid agency has in continuous operation a mechanized claims processing and information retrieval sysem that meets the following conditions:

* * * * *

(2) The system is operational by September 30, 1985; and

* * * * *

6. Section 433.119 is revised as follows:

**§ 433.119 Conditions for reapproval; notice of decision.**

(a) HCFA will review at least once every three years each system operation initially approved under § 433.114 and reapprove it for FFP at 75 percent of expenditures if the following conditions are met:

(1) The system meets the conditions of § 433.112(b) (1), (3), (4), and (7) through (9).

(2) The system meets the conditions of § 433.116(d) through (h).

(3) The system meets the performance standards for reapproval and the system requirements in Part 11 of the State Medicaid Manual as periodically amended.

(b) HCFA may review an entire system operation or focus its review on parts of the operation. However, at a minimum, HCFA will review standards, system requirements and other conditions of reapproval that have demonstrated weaknesses in a previous review or reviews.

(c) HCFA will issue to each Medicaid agency, by the end of the first quarter after the fiscal year of the review, a written notice informing the agency whether its system is reapproved or disapproved. If the system is disapproved, the notice will also include—

(1) HCFA's decision to reduce FFP for system operations, and the percentage to which it is reduced, beginning with the next calendar quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

7. Section 433.120 is amended by revising the title and paragraph (a) to read as follows:

**§ 433.120 Procedures for reduction of FFP after reapproval review.**

(a) If HCFA determines after the reapproval review that the system no longer meets the conditions of reapproval in § 433.119, HCFA will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

* * * * *

(8) Section 433.121 is amended by revising the title and paragraph (a) to read as follows:

**§ 433.121 Reconsideration of the decision to reduce FFP after the reapproval review.**

(a) The agency may appeal to the Departmental Grant Appeals Board, under 45 CFR Part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's system. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(4)(B) of the Act.

* * * * *

9. Section 433.122 is revised as follows:

**§ 433.122 Reapproval of a disapproved system.**

When FFP has been reduced under § 433.120(a), and HCFA determines upon subsequent review that the system meets all current performance standards, system requirements and other conditions of reapproval, the following provisions apply:

(a) HCFA will resume FFP in expenditures for system operations at the 75 percent level beginning with the quarter following the review determination that the system again meets the conditions of reapproval.

(b) HCFA may retroactively waive a reduction of FFP in expenditures for system operations if HCFA determines that the waiver could improve the administration of the State Medicaid plan. However, HCFA cannot waive this reduction for any quarter immediately preceding the quarter in which HCFA issues the determination (as part of the review process) stating that the system is reapproved.

**§ 433.131 [Amended]**

10. Section 433.131 is amended by replacing the term "MMIS" with the word "system".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: March 8, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: June 6, 1988.

**Otis B. Bowen,**

*Secretary.*

[FR Doc. 88-18149 Filed 8-10-88; 8:45 am]

BILLING CODE 4120-01-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 611, 672 and 675

### Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), Commerce.

**ACTION:** Notice of availability of amendments to the fishery management plans and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 12 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Area and Amendment 17 to the FMP for Groundfish of the Gulf of Alaska for Secretarial review and is requesting comments from the public. Copies of the amendments may be obtained from the address below.

**DATE:** Comments on the plan amendments should be submitted on or before October 6, 1988.

**ADDRESSES:** All comments should be sent to James Brooks, Acting Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802.

Copies of the amendments, the environmental assessment and the regulatory impact review and initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** Jay J.C. Ginter or Ronald J. Berg (NMFS, Alaska Region), 907–586–7230.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 12 will make the following changes to the Bering Sea and Aleutian Islands FMP: (1) Require all floating processors receiving groundfish caught in the exclusive economic zone (EEZ) to obtain Federal permits and report catch weekly; (2) establish an administrative framework procedure for setting joint venture and foreign prohibited species catch limits for groundfish species that are fully U.S. utilized; (3) incorporate a technical change by removing the July 1 deadline for the annual Resource Assessment Document; and (4) require a separate category for rock sole in the annual specifications of total allowable catch.

Amendment 17 to the Gulf of Alaska FMP will modify the FMP and implementing regulations regarding floating processor permit/reporting requirements in the same way as described above in (1) for the Bering Sea and Aleutian Islands FMP.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 15 days.

**List of Subjects**

*50 CFR Part 611*

Fisheries, Foreign fishing.

*50 CFR Part 672 and 675*

Fisheries, Reporting and recordkeeping requirements.

Dated: August 8, 1988.

**Joe P. Clem,**

*Acting Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–18213 Filed 8–8–88; 4:58 pm]

BILLING CODE 3510–22–M

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# Notices

Federal Register
Vol. 53, No. 155
Thursday, August 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Amendment to the Caribbean Land and Resource Management Plan, Caribbean National Forest

**AGENCY:** Forest Services, USDA.

**ACTION:** Change in availability date of draft and final supplements to final environmental impact statement.

**SUMMARY:** This notice revises the availability dates of the Draft and Final Supplements to the Final Environmental Impact Statement on the Caribbean National Forest Land and Resource Management Plan filed in February 1986.

**DATES:** The Draft Supplement to the Final Environmental Impact Statement will be available in December 1988 as opposed to the June 1988 date published in the December 8, 1987, **Federal Register**, Volume 52, page 46515. The Final Supplement to the Final Enviornmental Impact Statement will be available in June 1989 as opposed to the December 1988 date published.

**FOR FURTHER INFORMATION CONTACT:** Bernie Rios, Forest Supervisor, Caribbean National Forest, Call Box 25000, Rio Piedras, Puerto Rico 00928–2500.

Date: August 4, 1988.

**Robert B. Erickson,**

*Deputy Regional Forest.*

[FR Doc. 88–18129 Filed 8–10–88; 8:45 am]

BILLING CODE 3410-11-M

### Base Indexes for 9 Timber Species

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; adoption of adjusted lumber base price indexes.

**SUMMARY:** The Forest Service hereby gives final notice of its intent to adjust lumber base price indexes for certain species of Western timber. The need for adjustment arises from modifications to index logs released by the Western Wood Products Association. Adjustments for each of the 9 affected species are displayed in Table I.

**EFFECTIVE DATE:** New indexes become effective upon publication of July data by the Western Wood Products Association, which should occur during the first 10 days of August 1988.

**FOR FURTHER INFORMATION CONTACT:** Jim Pharo, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, or call (202) 475–3756.

**SUPPLEMENTARY INFORMATION:** On April 7, 1988 (53 FR 11527) the Forest Service gave notice of its intent to adjust the base price indexes for 9 species of Western timber. These indexes, published monthly by the Western Wood Products Association (WWPA), are derived by dividing total volume sold by timber species and grade into the total dollars received for the timber products. WWPA provides average monthly estimates of sawtimber value according to industry manufacturing practice.

The WWPA monitors index logs by comparing monthly receipts with monthly lumber price indexes. The Forest Service audits WWPA lumber price index procedures to ensure they properly reflect market end product and timber selling prices. Lumber price indexes are used by Government agencies to appraise public timber offered for sale and to adjust stumpage rates for timber already under contract. Sales with stumpage rate adjustments in their contract are called "escalated sales." Index log changes require adjustments of the base index in escalated sales.

The Western Wood Products Association will replace current index logs for Pacific Northwest Douglas Fir and Hem-Fir, Coast Inland North Ponderosa Pine, Rocky Mountain Ponderosa Pine, Idaho White Pine, Sugar Pine, White Fir, Inland Dry Douglas Fir-Larch, and White Woods with new indexes based upon 1985–1986 product recovery studies.

No responses were received during the comment period. Late responses received after the comment period requested a separate Douglas Fir index for northern California sales.

At this time the Agency is not prepared to make such an adjustment. Accordingly, the Inland North Douglas Fir—Larch index will continue to apply to northern California sales. The agency will continue to consider whether a separate index is appropriate for northern California and will publish a separate proposal on this topic in the **Federal Register** at a later date.

**Replacement Index Implementation**

The Forest Service is adopting the new adjustment factors as proposed on April 7. The 24-month period, January 1986 through December 1987, is appropriate to establish adjustments for replacing old base indexes in existing contracts with new, 1985–1986 base indexes. Adjustments to old base indexes, using the appropriate factor from Table I, will be applied as follows:

**New Base Index = (Present Contract Base Index Plus the Appropriate Adjustment Factor from Table I)**

Transitions will be made to the new base index for the third quarter of calendar year 1988. New sale offerings advertised after November 4, 1988 will use the new base index. Holders of existing contracts are being notified of these changes in writing by the appropriate Forest Service official.

Date: July 28, 1988.

**George M. Leonard**

*Associate Chief.*

TABLE I:—24-MONTH INDEX ADJUSTMENT FACTORS

[To be implemented by USDA, Forest Service]

| Species/index log basis/adjustment factor | Thousands of board feet | Value in dollars | Dollars per thousand board feet |
|---|---|---|---|
| Pacific Northwest Coast Douglas Fir: | | | |
| 1985–86 basis | 8,439,360 | $1,923,278,004 | $227.89 |
| 1978–79 basis | 8,439,360 | 2,034,658,905 | −241.09 |
| Adjustment factor | | | −13.20 |
| Pacific Northwest Hem-Fir: | | | |
| 1985–86 basis | 2,343,260 | 493,801,956 | 210.73 |
| 1978–79 basis | 2,343,260 | 489,193,583 | −206.77 |
| Adjustment factor | | | +1.96 |
| Coast Inland North Ponderosa Pine: | | | |
| 1985–86 basis | 5,122,197 | 2,236,991,347 | 436.73 |
| 1975–76 basis | 4,584,303 | 1,978,254,402 | −422.32 |
| Adjustment factor | | | +14.41 |
| Rocky Mountain Ponderosa Pine: | | | |
| 1985–86 basis | 1,302,474 | 394,948,330 | 303.23 |
| 1975–76 basis | 1,142,160 | 370,043,225 | −323.99 |
| Adjustment factor | | | −20.76 |
| Idaho White Pine: | | | |
| 1985–86 basis | 209,421 | 95,176,536 | 454.48 |
| 1971 basis | 194,732 | 79,530,799 | −408.93 |
| Adjustment factor | | | +45.55 |
| Sugar Pine: | | | |
| 1985–86 basis | 2,580,651 | 1,370,920,000 | 531.23 |
| 1977–78 basis | 2,414,162 | 1,353,564,987 | −560.68 |
| Adjustment factor | | | −29.45 |
| White Fir: | | | |
| 1985–86 basis | 3,215,983 | 696,788,867 | 217.29 |
| 1971 basis | 2,532,547 | 544,643,429 | −215.06 |
| Adjustment factor | | | +2.23 |
| Inland North Douglas Fir—Larch: | | | |
| 1985–86 basis | 3,421,402 | 743,708,440 | 217.37 |
| 1971 basis | 3,349,241 | 743,921,517 | −222.12 |
| Adjustment factor | | | −4.75 |
| White Woods: | | | |
| 1985–86 basis | 2,324,474 | 506,158,934 | 218.61 |
| 1974–75 basis | 2,198,589 | 458,013,525 | −208.32 |
| Adjustment factor | | | +10.29 |

[FR Doc. 88–18212 Filed 8–10–88; 8:45 am]
BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–588–028]

### Roller Chain, Other Than Bicycle, From Japan; Tentative Determination To Revoke Antidumping Finding in Part

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of tentative determination to revoke antidumping finding in part.

**SUMMARY:** The Department of Commerce has tentatively determined to revoke in part the antidumping finding on roller chain, other than bicycle, from Japan with respect to two manufacturers.

Interested parties are invited to comment on this tentative determination to revoke in part.

**EFFECTIVE DATE:** April 1, 1983.

**FOR FURTHER INFORMATION CONTACT:** Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 13, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 18004) the final results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9926, April 12, 1973). In those results the Department announced its intent to publish separately a tentative determination to revoke the antidumping finding in part with respect to several Japanese firms.

#### Tentative Determination To Revoke in Part

Daido Kogyo Co., Ltd. and Enuma Chain Manufacturing Co., Ltd. requested in writing a revocation of the finding. The Department has concluded that sales by these firms were made at not less than fair value for the period from April 1, 1981 through March 31, 1983. As provided for in § 353.54(e) of the Commerce Regulations, these firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written

agreement. Therefore, we tentatively determine to revoke the antidumping finding on roller chain, other than bicycle, from Japan with regard to Daido Kogyo Co., Ltd. and Enuma Chain Manufacturing Co., Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of roller chain, other than bicycle, manufactured by Daido Kogyo Co., Ltd. or Enuma Chain Manufacturing Co., Ltd. and entered, or withdrawn from warehouse, for consumption on or after April 1, 1983.

This tentative determination to revoke in part is not necessarily indicative of the Department's final decision on revocation. That decision will be reached only after careful consideration of all relevant information during the course of an administrative review of a more recent period.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs are rebuttals to written comments, limited to issues raised in those comments. Rebuttal briefs may be filed not later than 32 days after the date of publication. The Department will publish the results of its analysis of any such comments or hearing.

This tentative determination to revoke in part and notice are in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675(c)) and 19 CFR 353.54.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: August 3, 1988.

[FR Doc. 88-18205 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will convene a public meeting on August 19, 1988, at 3 p.m., at the Council's office (address below), to discuss issues related to the Committee's regular administrative operations.

**FOR FURTHER INFORMATION CONTACT:** The Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918-2577; (809) 753-4926.

Date: August 5,1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-18217 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-22-M

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Select Group (GSG) will convene a public meeting on August 23, 1988, at 8 a.m., at the Pacific Marine Fisheries Commission, Conference Room, Suite 1C, 2075 SW. First Avenue, Portland, OR, to address the issue of sablefish allocation and the development of management alternatives for the 1989 sablefish fisheries. The GSG will review available data pertaining to catch, fish abundance, and economics of the various fisheries, and review options presented by GSG members and the public. The public meeting will adjourn on August 24.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221-6352.

Date: August 5, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-18218 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-22-M

### South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council, its Committees, and its Habitat and Environmental Protection Advisory Panel will convene public meetings at the South Atlantic Fishery Management Council's office (address below), as follows:

*South Atlantic Council and its Committees*—will convene August 29, 1988, to discuss red drum, king and Spanish mackerel, large pelagics, law enforcement, and other fishery management business. Also during the Council's public meeting, elections will be conducted for chairman and vice-chairman for the coming year, and a closed session (not open to the public) will be convened to discuss personnel matters. The public meeting will adjourn on September 1, 1988. A detailed agenda will be available to the public on or about August 12. For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council (address below). *Habitat and Environmental Protection Advisory Panel*—The South Atlantic Council will convene a public meeting on August 16, 1988, at 1 p.m., of its Habitat and Environmental Protection Advisory Panel. This will be the first meeting of this panel and will serve as an orientation and organizational meeting. Panel members will also discuss existing and/or anticipated habitat problems of their individual states, as well as of the South Atlantic region. The public meeting will recess at 5 p.m., reconvene on August 17 at 8:30 a.m., and adjourn at 12:30 p.m. A detailed agenda will be available to the public on or about August 3. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: August 5, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-18219 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-22-M

### North Pacific Fishery Management Council; Notice of a Call For Proposals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

The North Pacific Fishery Management Council (Council) invites proposals for regulation of the halibut fishery off Alaska. The Council has established an annual amendment cycle in close coordination with the International Pacific Halibut Commission (IPHC) and will be responsible for socioeconomic and allocative decisions affecting the fishery. The IPHC will continue its responsibility for biological and conservation management decisions, including setting quotas and seasons.

At its September 26-30, 1988, meeting at the Anchorage Sheraton Hotel, the Council will review proposals submitted in response to this call. Final action will be taken at the December 5-9, 1988, Council meeting in Anchorage.

Proposals should include the following: A brief statement of the proposal, objectives of the proposal, justification for Council action, foreseeable impacts of the proposal, supporting data, and other relevant information. Proposals should be submitted by September 15, 1988, to the North Pacific Fishery Management Council at the address below. Proposal forms with additional information are available from the Council office.

**FOR FURTHER INFORMATION CONTACT:** Ron Miller, Special Advisor, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; (907) 271–2809.

Dated: August 8, 1988.

**Joe P. Clem,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–18216 Filed 8–10–88; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Negotiated Settlement for Certain Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

August 5, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

Authority: Executive Order 11651 of march 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 23, 1982, as amended.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

**SUPPLEMENTARY INFORMATION:** On April 19, 1988, a notice was published in the **Federal Register** (53 FR 12803) announcing that the Government of the United States had requested consultations with the Government of Hong Kong with respect to stable artificial fabric in Category 611.

The purpose of this notice is to announce that consultations were held June 16–17, 1988 on Category 611 and a limit of 5,581,287 square yards was established for 1988.

A copy of the current agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–18174 Filed 8–10–88; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a one year extension of a currently approved information collection concerning Rights in Data and Copyrights.

**ADDRESS:** Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

**SUPPLEMENTARY INFORMATION:** a. *Purpose:* Rights in Data and Copyrights is a regulation which concerns the rights of the Government and organizations with which the Government contracts to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to ensure that data developed with public funds is available to the public.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 1,100; responses per respondent, 1; total annual responses 1,100; hours per response, 2.7 and total burden hours, 2,970.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, 9,000; hours per recordkeeper, 3; and total recordkeeping burden hours, 27,000.

*Obtaining Copies of Proposals:* Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights.

Dated: August 1, 1988.

**Margaret A. Willis,**

*FAR Secretariat.*

[FR Doc. 88–18131 Filed 8–10–88; 8:45 am]

BILLING CODE 6820-61-M

## Department of the Army

### Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Yakima Firing Center (YFC) Land Acquisition; I Corps and Fort Lewis; Fort Lewis, WA

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** 1. *Proposed Action.* Due to advances in weapons systems technology and the associated doctrinal and tactical employment techniques, the Army requires larger expanses of land for troop exercises. At present, YFC does not contain sufficient land for effective live fire gunnery and maneuver training areas. An EIS has been developed to address these needs. Department of the Army is considering changing the structure of the 9th Infantry Division (MTZ), which is currently a Motorized Division. One of the potential force structure scenarios calls for converting this Motorized Division into a Mechanized Division. The Army will produce a Supplemental EIS (SEIS) to assess the impact of these possible changes in structure on YFC.

2. *Alternatives.* Alternatives to the proposed expansion of YFC will be examined in the SEIS. A river crossing site is being examined with the expressed purpose of selecting sites which will minimize adverse environmental impacts while meeting the needs of the units for a training site.

*Point of Contact:* Additional information about the proposed action and Supplemental EIS can be obtained by contacting the Fort Lewis Public

Affairs Office: Mr. George Polich, Deputy Public Affairs Officer, HQ, I Corps and Fort Lewis, ATTN: AFZH-PO, Fort Lewis, WA 98433-5000, Telephone: (206) 967-5014.

Dated: August 8, 1988.

Lewis D. Walker,

*Deputy for Environment, Safety and Occupational Health OASA(I&L).*

[FR Doc. 88-18156 Filed 8-10-88; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2441-006 et al.]

### Hydroelectric Applications (City of Norwich Dept. of Public Utilities et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Amendment to License.

b. *Project No.:* 2441-006.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* City of Norwich Department of Public Utilities.

e. *Name of Project:* Greenville Dam Project.

f. *Location:* New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. Richard DesRoches, City of Norwich Department of Public Utilities, 34 Court House Service, Norwich, CT 06360, (203) 887-2555

Mary A. Heckman, P.C., Lielbriedis, Miller, Balis, & O'Neill, 1101 14th Street, NW., Suite 1400, Washington, DC 20001, (202) 789-1450

i. *FERC Contact:* Mr. John P. Warner, (202) 376-9045.

j. *Comment Date:* September 16, 1988.

k. *Description of Project:* The City of Norwich Department of Public Utilities (licensee) proposes to amend the license to construct upstream and downstream fish passage facilities at the Greenville Dam on the Shetucket River. The proposed facilities include a denil fish ladder, fish screen and bypass sluice with provisions for future installation of a fish lift. The licensee proposes to modify project operation to release a 250 cubic feet per second minimum flow to the bypass reach. The licensee also proposes to extend the term of the license for 20 years, until April 1, 2012.

l. *Purpose of Project:* The proposed fish passage facilities would allow for the restoration of anadromous fish to the Thames River Basin including the Shetucket River. The proposed license term extension would allow for the funding of the proposed facilities and operational charges.

m. This notice also consists of the following standard paragraphs: B, C, & D2.

2 a. *Type of Application:* Amendment to License.

b. *Project No.:* 2508-000.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* City of Norwich Department of Public Utilities.

e. *Name of Project:* Tenth Street Station.

f. *Location:* New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. Richard DesRoches, City of Norwich Department of Public Utilities, 34 Court House Service, Norwich, CT 06360, (203) 887-2555

Mary A. Heckman, P.C., Lielbriedis, Miller, Balis, & O'Neill, 1101 14th Street, NW., Suite 1400, Washington, DC 20001, (202) 789-1450

i. *FERC Contact:* Mr. John P. Warner, (202) 376-9045.

j. *Comment Date:* September 16, 1988.

k. *Description of Project:* The City of Norwich Department of Public Utilities (licensee) proposes to amend the license to extend the term of the license for 20 years, until April 1, 2012.

l. *Purpose of Project:* The proposed license term extension would allow for the funding of upstream and downstream fish passage facilities, and the release of a 250 cubic feet per second minimum byass flow from the Greenville Dam Project, FERC No. 2441.

m. This notice also consists of the following standard paragraphs: B, C, & D2.

3 a. *Type of Filing:* Transfer of License.

b. *Project No:* 4669-007.

c. *Date:* July 11, 1988.

d. *Applicants:* John L. Symons and Rancho Riata Hydro Partners, Inc.

e. *Name of Project:* Rancho Riata Project.

f. *Location:* On Bishop Creek near the town of Bishop, in Inyo County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:*

John H. Tait, Chief Executive Officer, Rancho Riata Hydro Partners, Inc., 5330 Primrose Drive, Suite 119, Fair Oaks, CA 95628, (916) 966-5141

John L. Symons, 2800 Audrey Lane, Bishop, CA 93514, (619) 873-4447

i. *FERC Contact:* Thomas Dean, (202) 376-9562.

j. *Comment Date:* September 15, 1988.

k. Description of Application: John L. Symons (transferor) proposes to transfer hs license issued on January 20, 1988, to Rancho Riata Hydro Partners, Inc. (transferee) in order to facilitate the financing of the licensed project. The transferee is a corporation organized under the General Corporation Law of California. The transferee states that it will comply with all applicable State laws as required by section 9(b) of the Federal Power Act.

l. This notice also consists of the following standard paragraphs: B and C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

4 a. *Type of Application:* Major License (Over 5 MW).

b. *Project No:* 8144-003.

c. *Date Filed:* August 28, 1987.

d. *Applicant:* Amador County.

e. *Name of Project:* Devils Nose/Cross County.

f. *Location:* On the North Fork and main stem of the Mokelumne River, within the El Dorado and Stanislaus National Forests and lands administered by the Bureau of Land Management, in Amador and Calaveras Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Contact Person:* Roderick E. Schuler, Director, Water Resources, Amador County, 108 Court Street, Jackson, CA 95642 (209) 223-6394.

i. *FERC Contact:* Hector M. Perez, (202) 376-1669.

j. *Comment Date:* September 30, 1988.

k. Description of Project: The proposed Devil's Nose development would consist of: (1) A 47-foot-high concrete-faced rockfill dam with a crest elevation of 3,070 feet; (2) an ungated ogee spillway located on the right abutment with a crest elevation of 3,030 feet; (3) a reservoir with a usable storage capacity of 136,713 acre-feet and a surface area of 1,056 acres at a normal maximum pool elevation of 3,030 feet; (4) a 2,280-foot-long, 28-foot-diameter horseshoe-shaped tunnel through the right abutment and under the spillway for construction diversion and then for outlet flow releases; (5) a 24-inch-diameter steel penstock conveying minimum flow releases along the outlet tunnel invert; (6) A 35-foot by 30-foot-long auxiliary powerhouse at elevation

2,600 feet containing a 1.2-MW turbine generator unit; (7) a 50-foot-long tailrace discharging into North Fork Mokelumne River; (8) a 12,000-foot-long, 12-foot-diameter power tunnel bifurcating from the main outlet and connecting to a 375-foot-long, 8-foot-diameter penstock; (9) a 65-foot by 75-foot concrete powerhouse at elevation 2,315 feet containing a 41-MW Francis turbine-generator unit; (10) a 50-foot-long tailrace discharging into the Tiger Creek afterbay; (11) A 3.1-mile-long, 4.16-kV transmission line from the auxiliary powerhouse to the main powerhouse substation and a 0.2-mile-long, 230-kV transmission tie-in to the Pacific Gas and Electric Company's (PG&E) Tiger Creek powerhouse substation; and (12) appurtenant facilities. The applicant estimates an average annual generation of 80.19 GWh. The estimated cost of the Devil's Nose development is $183,371,000.

The proposed Cross County development would consist of: (1) A gated intake structure with trashracks diverting water from the Tiger Creek afterbay; (2) a 59,000-foot-long, 12-foot-diameter power tunnel with a 540-foot-long, 15-foot-diameter surge shaft; (3) a 4,600-foot-long, 7.5-foot-diameter steel penstock; (4) a 58-foot by 76.5-foot concrete powerhouse at elevation 677 feet containing a 79.0-MW Pelton turbine-generator unit; (5) a 80-foot-long tailrace channel discharging into North Fork Mokelumne River; (6) A 0.5-mile-long, 230-kV transmission line connecting to the PG&E Electra Powerhouse substation; and (7) appurtenant facilities. The applicant estimates an average annual generation of 114.28 GWh. the estimated cost of the Cross County development is $94,344,000.

The total power output from both developments would be sold to PG&E.

l. This notice also consists of the following standard paragraphs A3, A9, B, and C.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–10603–000.

c. *Date Filed:* May 10, 1988.

d. *Applicant:* Wolverine Power Corporation.

e. *Name of Project:* Smallwood Hydro Project.

f. *Location:* On the Tittabawassee River in Gladwin County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:*

Mr. Carl Schilling, P.O. Box 689, 1600 Center Ave., Bay City, MI 48707, (517) 893–5995

Mr. Louis Rosenman, 1333 New Hampshire Ave., NW., Suite 1100, Wash., DC 20036, (202) 457–7500

i. *FERC Contact:* Ed Lee, (202) 376–9116.

j. *Comment Date:* October 3, 1988.

k. *Description of Project:* The existing project consists of: (1) A masonary dam approximately 1,025-foot-long and 28-foot-high; (2) a 500-acre reservoir having a storage capacity of 6,000 acre-feet; (3) a reinforced concrete powerhouse integral with the dam and housing one 1.2-MW generator with an average annual generation of 2,650 MWh; (4) a circuit breaker bus that feeds to a bank of transformers owned by the Applicant; and (5) appurtenant facilities. The Applicant estimates the cost of the work to be performed under the preliminary permit would be $45,000. All project works and lands are owned by the Applicant.

l. *Purpose of Project:* The generated power is sold by the Applicant to Consumers Power Company.

m. This notice consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10604–000.

c. *Date Filed:* May 11, 1988.

d. *Applicant:* City of Boulder.

e. *Name of Project:* Boulder III.

f. *Location:* On the Silver Lake, Island Lake, Tripple Lakes (Nos. 1–3), Lake Albion, Green Lakes (Nos. 1–5), Lakewood Reservoir, North Boulder Creek, and unnamed lakes and streams within the North Boulder Basin Watershed, in Boulder County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Eva June Busse, Hydro Projects Manager, City of Boulder, P.O. Box 791, Boulder, CO 80306, (303) 441–3205.

i. *FERC Contact:* Héctor Pérez, (202) 376–1669.

j. *Comment Date:* October 3, 1988.

k. *Description of Project:* The city of Boulder proposes to study the feasibility of developing hydropower potential of its municipal water supply system within the North Boulder Basin Watershed by retrofitting its existing water transmission facilities with electrical generation equipment. Project energy would be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Request for an Extension of Term of License.

b. *Project No.:* 2543–012.

c. *Date Filed:* September 26, 1985.

d. *Applicant:* The Montana Power Company.

e. *Name of Project:* Milltown Dam Hydroelectric Project.

f. *Location:* On the Clark Fork River, near Milltown, Missoula County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* G. Howard Van Noy, 40 East Broadway, Butte, MT 59701, (406) 723–5421.

i. *FERC Contact:* Ed Melisky, (202) 376–9255.

j. *Comment Date:* September 16, 1988.

k. *Description of Request:* In an application for amendment of license filed with the Commission on September 26, 1985, the Montana Power Company (licensee) requested that the Commission extend the term of the license for the Milltown Dam Hydroelectric Project. The license, which was issued on June 3, 1968, had a termination date of December 31, 1993. The licensee requests that the Commission change that termination date to December 31, 2015. This notice is being issued to inform interested parties that the Commission will now consider the licensee's request to extend the term of the license.

l. This notice also consists of the following standard paragraphs: B, C, & D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10081–000.

c. *Date Filed:* September 12, 1986.

d. *Applicant:* County of Tuolumne and Turlock Irrigation District.

e. *Name of Project:* Clavey River Project.

f. *Location:* On the Clavey River, near the town of Sonora, within the Stanislaus National Forest, in Tuolumne County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John S. Mills, Project Director, Tuolumne County Administration Center, 2 South Green Street, Sonora, CA 95370, (209) 533–5700.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 30, 1988.

k. *Competing Application:* Project No. 9990–000, Date Filed: May 9, 1986.

l. Description of Project: The proposed project would consist of: (1) A 400-foot-high, 1,500-foot-long dam with a crest elevation of 4,390 feet msl; (2) a reservoir with a gross storage capacity of 90,000 acre-feet and a surface area of 600 acres at elevation 4,370 feet msl; (3) a 100-foot-high, 300-foot-long

reregulating dam with a crest elevation of 1,390 feet msl; (4) a reregulating reservoir with a gross storage capacity of 400 acre-feet and a surface area of 12 acres at elevation 1,370 feet msl; (5) a 15-foot-high, 100-foot-long Hull Creek diversion dam with a crest elevation of 4,400 feet msl; (6) a 15-foot-high, 200-foot-long Reed Creek diversion dam with a crest elevation of 4,900 feet msl; (7) an 8-foot-diameter, 0.7-mile-long Hull Creek diversion tunnel; (8) an 8-foot-diameter, 1-mile-long Reed Creek diversion tunnel; (9) an 11-foot-diameter, 46,000-foot-long unlined penstock; (10) a 9-foot-diameter 8,600-foot-long lined penstock; (11) a powerhouse containing 2 generating units with a combined capacity of 120 MW operating under a head of 3,000 feet; and (12) a 45-mile-long, 230-kV transmission line.

The applicant estimates the average annual energy production to be 300 GWh. The approximate cost of the studies under the permit would be $1,200,000.

m. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

n. This notice also consists of the following standard paragraphs: A10, B & C.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 1473–004.

c. *Date Filed:* April 29, 1988.

d. *Applicant:* Montana Power Company (Licensee) and Granite County, Montana (Transferee).

e. *Name of Project:* Flint Creek.

f. *Location:* At Georgetown Lake within the Deerlodge National Forest near Anaconda in Deer Lodge and Granite Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Larry Thompson, 40 East Broadway Street, Butte, MT 59701, (406) 723–5421.

i. *FERC Contact:* Julie Bernt, (202) 376–1936.

j. *Comment Date:* September 19, 1988.

k. *Description of Project:* The original Flint Creek development was started in 1890 and full-time operation was begun by the Montana Water, Electric Power and Mining Company in 1901. On January 25, 1940, Montana Power Company received a license to operate the project. Montana Power Company proposes to transfer the license to Granite County, Montana, and is not interested in obtaining a new license for the site.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C (except for notice of intent to file competing applications and competing application filings which are not applicable to transfer of license applications).

a. *Type of Application:* Amendment to License.

b. *Project No.:* 2508–000.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* City of Norwich Department of Public Utilities.

e. *Name of Project:* Tenth Street Station.

f. *Location:* New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:*

Mr. Richard DesRoches, City of Norwich Department of Public Utilities, 34 Court House Service, Norwich, CT 06360, (203) 887–2555

Mary A. Heckman, P.C., Lielbriedis, Miller, Balis, O'Neill, 1101 14th Street, NW., Suite 1400, Washington, DC 20001, (202) 789–1450

i. *FERC Contact:* Mr. John P. Warner, (202) 376–9045.

j. *Comment Date:* September 16, 1988.

k. *Description of Project:* The City of Norwich Department of Public Utilities (licensee) proposed to amend the license to extend the term of the license for 20 years, until April 1, 2012.

l. *Purpose of Project:* The proposed license term extension would allow for the funding of upstream and downstream fish passage facilities, and the release of a 250 cubic feet per second minimum bypass flow from the Greenville Dam Project, FERC No. 2441.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

11 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10618–000.

c. *Date Filed:* June 16, 1988.

d. *Applicant:* Monterey County Flood Control and Water Conservation District.

e. *Name of Project:* San Antonio Hydroelectric Project.

f. *Location:* On the San Antonio River in Monterey County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William F. Hurst, Monterey County Flood Control and Waterr Conservation District, 855 East Laurel Drive, Building G, Salinas, California 93905, (408) 424–0868.

i. *FERC Contact:* Nanzo Coley, (202) 376–9416.

j. *Comment Date:* Septermber 28, 1988.

k. *Competing Application:* Project No. *10581–000.* Date Filed: *April 24, 1988.* Due Date: *September 28, 1988.*

l. *Description of Project:* The existing San Antonio dam is owned by the applicant. The proposed project would consist of: (1) An existing dam tht is 217 feet high and 1,470 feet long; (2) an exiting reservoir with a surface area of 5,720 acres and a storage capacity of 325,000 acre-feet at elevation 780 feet m.s.l.; (3) an existing 24-foot-diameter by 1,300-foot-long penstock; (4) a proposed 48-foot-diameter by 150-foot-long penstock; (5) a proposed powerhouse containing three generating units rated at 500 KW each; (6) a proposed 20-foot-wide by 30-foot-long tailrace; (7) a proposed 21 KV transmission line; and (8) appurtenant facilities. The estimated average annual energy output for the project is 4,000,000 KWH. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000.

m. *Purpose of Project:* Energy produced at the project would be sold to Pacific Power and Electric Company.

n. This notice also consists of the following standard Paragraphs: A8, A9, A10, B, C, and D2.

12 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10625–000.

c. *Date Filed:* July 11, 1988.

d. *Applicant:* Kittitas Reclamation District.

e. *Name of Project:* Taneum Chute Hydroelectric.

f. *Location:* At the Taneum Chute on U.S. Bureau of Reclamation land in Kittitas County, Washington. T19N, R17E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. LeMoyne C. Henderson, Kittitas Reclamation District, P.O. Box 276, Ellensburg, WA 98926, (509) 925–6158.

i. *FERC Contact:* Mr. James Hunter, (202) 376–1943.

j. *Comment Date:* October 5, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake at elevation 2,109 feet on the South Branch Canal; (2) a 42-inch-diameter, 1,300-foot-long steel penstock; (3) a 24-foot-wide, 40-foot-long metal powerhouse adjacent to the Taneum Chute stilling basin, containing 4 identical generating units with a total rated capacity of 760 kW, producing an average annual output of 1.86 GWH; (4)

a tailrace discharging into the stilling basin at elevation 1,905 feet; and (5) a 1,500-foot-long, 33-kV transmission line connecting to the existing Puget Power transmission system. The estimated cost of permit activities is $18,500.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard Paragraphs: A5, A7, A9, A10, B, C, and D2.

**Standard Paragraphs**

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the intitial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 8, 1988.

Washington, DC.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18148 Filed 8–10–88; 8:45 am]

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**[Docket Nos. ES88–49–000 et al.]**

## Electric Rate, Small Power Production, and Interlocking Directorate Filings; Centel Corp. et al.

Take notice that the following filings have been made with the Commission:

### 1. Centel Corporation

[Docket No. ES88–49–000]

August 5, 1988.

Take notice that on August 1, 1988, Centel Corporation filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authority to extend to not later than December 31, 1991, the final maturity date of short-term indebtedness to be issued not later than December 31, 1990, in an aggregate principal amount at any one time outstanding of $750 million.

*Comment date:* August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

### 2. LUZ Solar Partners VIII, Ltd.

[Docket No. QF88–470–000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners VIII, Ltd. (Applicant), a California Limited Partnership, c/o LUZ

Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in March 1989.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**3. LUZ Solar Partners IX, Ltd.**

[Docket No. QF88-472-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners IX, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1989.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**4. Tamal Suffolk North**

[Docket No. QF88-464-000]

August 8, 1988.

On July 26, 1988, Tamal Suffolk North (Applicant), of Tamal Suffolk North, 80 E. Sir Francis Drake Blvd., Suite 2A, Larkspur, CA 94939 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 366 Sheep Pasture Road, Port Jefferson Station, New York, New York 11777. The facility will consist of internal combustion engines fueled by low Btu gas derived from wood waste. The electric power production capacity will be 14 megawatts. Natural gas and diesel oil will be used for startup and backup operations and as pilot fuel.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**5. LUZ Solar Partners X, Ltd.**

[Docket No. QF88-469-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners X, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electic power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1990.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**6. LUZ Solar Partners XI, Ltd.**

[Docket No. QF88-468-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners XI, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electic utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1991.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**7. LUZ Solar Partners XII, Ltd.**

[Docket No. QF88-471-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners XII, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1992.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**8. Toledo Edison Company**

[Docket No. ER88-541-000]

August 8, 1988.

Take notice that on July 29, 1988, Toledo Edison Company (Toledo Edison) tendered for filing the Fifth Adendum to the Municipal Resale Service Rate Agreement between Toledo Edison and American Municipal Power-Ohio, Inc. (AMP-Ohio). Toledo Edison states that the Fifth Addendum to the Municipal Resale Service Rate Agreement provides for an increase in charges to AMP-Ohio of approximately $464,000 annually.

Toledo Edison states that such increase is consistent with the provisions of the Municipal Resale Service Rate Agreement and has been agreed upon by AMP-Ohio. Toledo Edison requests waiver of the Commission's regulations in order to permit the proposed rate increase to become effective on July 1, 1988.

*Comment date:* August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

**9. Ohio Edison Company**

[Docket No. ER88-544-000]

August 8, 1988.

Take notice that on August 1, 1988, Ohio Edison Company (Ohio Edison) tendered for filing proposed rates for Full or Partial Requirements Service to twenty-one municipal wholesale customers or to American Municipal Power-Ohio, Inc. (AMP-Ohio) on their behalf, said customers currently taking service through American Municipal Power-Ohio, Inc. (AMP-Ohio) under FERC Rate Schedule No. 150. Ohio Edison also proposes a separate rate for Transmission Service to AMP-Ohio to replace Amendment No. 2 to the Energy Supply Agreement. This filing is pursuant to Article III of the Settlement Agreement among the Company, AMP-Ohio, and the municipal wholesale customers of Ohio Edison (WCOE), as approved by the Commission on March 23, 1984 in Case No. ER80-454, et al., 26 FERC Sec. 61,359, as interpreted by the Commission Order of May 26, 1988 in Docket No. ER88-329-000, 43 FERC ¶ 61,316.

Ohio Edison states that the proposed changes would result in increased revenues of $18.2 million for Partial Requirements Service to jurisdictional customers based upon data for the twelve month period ending December 31, 1988 as filed herein. The proposed rate for third party Transmission Service results in decrease of $13,039 for the same time period.

Ohio Edison proposed an effective date of October 1, 1988.

Ohio Edison further states that the reason for the proposed increase is that rates for service to AMP-Ohio on behalf of municipal wholesale customers are no longer just and reasonable, being below the cost of providing service to these customers, inadequate to provide a basis for attracting capital on reasonable terms, and inadequate to provide a return on new generating facilities added in part of serve wholesale customers.

According to Ohio Edison, copies of the filing were served on the Company's jurisdictional customers affected by the proposed changes and the Public Utilities Commission of Ohio.

*Comment date:* August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

**10. Public Service Company of New Mexico**

[Docket No. ER88-542-000]

August 8, 1988.

Take notice that on July 29, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Letter of Principles between PNM and Western Area Power Administration (Western) modifying two transmission service contracts between PNM and Western entered into respectively in 1962 and 1978. These two transmission service contracts are also tendered for filing, as are certain letter agreements entered into by PNM and Western in connection with such transmission service contracts. Under the Letter of Principles, Western will provide 50 MW of firm transmission service for PNM between the Westwing and Four Corners points of interconnection. The Letter of Principles also increases the rate for firm transmission service Western pays PNM to $3.00/kw-month (as reduced by certain agreed modifications), and allows PNM to provide additional firm transmission service for Western on a seasonal basis.

PNM requests waiver of the Commission's notice requirements to permit the Letter of Principles, the two transmission contracts and the associated letter agreements to become effective upon their respective effective dates as agreed to by the parties.

Copies of the filing have been served upon Western and the New Mexico Public Service Commission.

*Comment date:* August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

**11. Pennsylvania Power & Light Company**

[Docket No. ER88-545-000]

August 8, 1988.

Take notice that on August 1, 1988, Pennsylvania Power & Light Company (PP&L) tendered for filing proposed changes in its Rate Schedule FERC Nos. 28, 32, 45, 50, 51, 54, 56, 57, 58, 63, 69, 70, 71, 79, 86, 88, 90, and 61 applicable to the Boroughs of Watsontown, Duncannon, Blakely, Weatherly, Schuylkill Haven, Perkasie, St. Clair, Catawissa, Ephrata, Lehighton, Hatfield, Mifflinburn, Quakertown, Kutztown, Olyphant, Lansdale, and to Sullivan County REA and Citizens' Electric Company of Lewisburg, respectively. The proposed changes would increase revenues from jurisdictional sales and service by $3,498,829 or 9.7%, based on the 12-month period ending December 31, 1988.

The proposed increase is required by the increase in the cost of providing

service to said jurisdictional customers which PP&L has experienced since the base rates of these customers became effective on January 1, 1986. These base rates became applicable to Sullivan County REA on February 4, 1986.

Copies of the filing were served upon PP&L's jurisdictional customers named above and upon the Pennsylvania Public Utility Commission.

*Comment date*: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

**12. Arkansas Power and Light Company**

[Docket No. ER88-546-000]

August 8, 1988.

Take notice that on August 1, 1988, Arkansas Power and Light Company (Company) tendered for filing revised Rate Schedule M33A for the period beginning September 1, 1988.

The Company states that Rate Schedule M33A requires the filing of annual revision to reflect the true-up to actual costs for the preceding year and also to reflect estimated charges for the period beginning September 1 of the current year.

Copies of this filing have been sent to the wholesale customer affected by the filing and the Arkansas Public Service Commission.

*Comment date*: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

**13. Public Service Company of New Mexico**

[Docket No. ER88-543-000]

August 8, 1988.

Take notice that on July 29, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Transmission Principles Letter of Agreement between PNM and El Paso Electric Company (EPE). The Letter Agreement amends Service Schedule G to the PNM-EPE Interconnection Agreement, and provides that until the earlier of the end of 1990 or the in-service date of a planned transmission line, PNM will make available to EPE up to 100 MW of firm transmission service and up to 72 MW of supplemental transmission service.

Copies of the filing have been served upon EPE and the New Mexico Public Service Commission.

*Comment date*: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18197 Filed 8-10-88; 8:45 am]

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**[Docket Nos. CP88-586-000 et al.]**

**Natural Gas Certificate Filings; ANR Pipeline Co. et al.**

Take notice that the following filings have been made with the Commission.

**1. ANR Pipeline company**

[Docket No. CP88-586-000]

August 4, 1988.

Take notice that on July 15, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-586-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to provide firm natural gas sales service to the City of Havensville, Kansas (Havensville), a new customer, and incident thereto to construct and operate certain facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the firm sales service to Havensville, of 200 dt of contract demand and 15,000 dt of annual contract quantity, would be rendered by ANR under its Rate Schedule SGS-1 and that the agreement would take effect upon the date of first delivery, the primary period ending October 31, 2003. ANR states further that, in order to accomplish the delivery of natural gas to Havensville, it would construct and operate the measurement facilities within the boundaries of the previously certificated Havensville Compressor Station facilities located in Pottawatomie, Kansas. Cost of these facilities is estimated at $68,440, it is stated.

*Comment date:* August 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

**2. Northern Natural Gas Company, Division of Enron Corporation**

[Docket No. CP8-627-000]

August 4, 1988.

Take notice that on July 25, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-627-000, a prior notice request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Riata Energy (Riata), a producer of natural gas, under the certificate issued in Docket No. CP86-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 700 MMBtu of natural gas per day, pursuant to a July 8, 1988, agreement between Northern and Riata. Northern would provide the service to Riata under the provisions of its Rate Schedule IT-1, it is indicated. Northern states that the average and annual quantities would be 525 MMBtu and 255,500 MMBtu, respectively.

*Comment date:* September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

**3. High Island Offshore System**

[Docket No. CP75-104-054]

August 4, 1988.

Take notice that on July 21, 1988, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed a petition to amend in Docket No. CP75-104-054 pursuant to section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity issued in Docket No. CP75-104 so as to delete the biennial cost-of-service study condition set forth therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On November 29, 1976, HIOS filed its schedule of proposed permanent transporation rates pursuant to Ordering Paragraph (A) of the Commission's Order on Rehearing issued on July 30, 1976, in Docket No. CP75-104. In that filing HIOS proposed, *inter alia*, an "interim" transportation rate to be effective during the build-up period. Following a series of informal conferences the Commission Staff concuded that an "interim" rate for

HIOS would comport with the pubic interest if subjected to several terms and conditions, one of which was that HIOS would submit a cost-of-service study every two years to justify the continuance of its then effective rates or to provide a basis for an increase or decrease in such rates as justified by the cost-of-service

On December 6, 1977, the Commission issued an order approving the HIOS "interim" rate for which HIOS filed a petition to amend the original certificate on Augut 10, 1977, upon the condition that HIOS file a cost-of-service study every two years. The biennial rate provision, as thus imposed, has never been changed.

HIOS states that the Commission has never legally justified the imposition of the biennial rate review condition on HIOS and therefore it appears that, if not illegal, it is certainly discriminatory when compared to more recent decisions of the Commission which have either provided for a single two-year review or a review every three years.

*Comment date:* August 25, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**4. Natural Gas Pipeline Company of America**

[Docket Nos. CP88-291-003 and RP88-209-001]

August 4, 1988.

Take notice that on July 29, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, submitted Second Revised Sheet No. 24, Original Sheet No. 24A and First Revised Sheet No. 25 as part of its FERC Gas Tariff, First Revised Volume No. 1A. The proposed tariff sheets specify procedures to be followed in determining whether capacity is available to grant requests for firm transportation. This filing is not intended to affect any requests for firm capacity granted prior to the effective date thereof.

Natural states that this filing is being tendered pursuant to the terms of a Revised Addendum, filed on June 23, 1988, as an agreed supplement modifying the Stipulation and Agreement (Settlement) that was filed in Docket No. CP88-291 on May 19, 1988. Natural states further that this filing will be void and of no effect unless a Gas Supply Charge is implemented pursuant to that Settlement.

Natural requests the consolidation of the instant filing with its section 4 proceeding at Docket No. RP88-209 and permission to supplement its Statement P in support hereof. Natural further requests any required waivers of the Commission's Regulations to allow the tendered tariff sheets to become effective on the first day of the month succeeding the first date on which both of the following have occurred: (i) A Gas Supply Charge has been implemented pursuant to the Settlement; and (ii) the Commission has issued a final order approving the rates in the consolidated proceeding.

Natural states that a copy of its filing has been mailed to its jurisdictional customers, interested state regulatory agencies and all parties on the official service list in Docket Nos. CP88-291 and RP88-209.

*Comments date:* August 11, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

**5. Questar Pipeline Company**

[Docket No. CP88-650-000]

August 4, 1988.

Take notice that on August 1, 1988, as supplemented on August 3, 1988, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah, 84147, filed an application in Docket No. CP88-650-000 authorizing the transportation of natural gas pursuant to § 284.221 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar states that it comply with the conditions set forth in paragraph (c) of § 284.221 of the Commission's Regulations.

Questar indicates that until October 1, 1988, it would use the rates established in Questar's competed rate proceeding in Docket No. RP86-7. Questar states that on that date, rates and charges and appropriate units of service proposed in Docket No. RP88-93-000 would be used pending the outcome of that proceeding. Questar also indicates it would perform its open-access transportation service pursuant to the terms and conditions established in Docket Nos. RP86-87-000 and RP86-87-001, proceedings Questar indicates that are still pending before the Commission.

*Comment date:* August 19, 1988, in accordance with Standard Paragraph F at the end of the notice.

**6. Tennessee Gas Pipeline Company**

[Docket No. CP88-596-000]

August 5, 1988.

Take notice that on July 20, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-596-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide a transportation service for Texaco Marketing, Inc. (Texaco), a marketer, under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated June 22, 1988, and an amendment dated June 24, 1988, it proposes to transport natural gas for Texaco from various receipt points located in offshore Louisiana and in the States of Louisiana and Texas to various delivery points off Tennessee's system located in multiple states.

The Applicant further states that the peak day quantities would be 80,000 dekatherms, average daily quantities 2,000 dekaterms, and annual quantities would be 730,000 dekatherms. Service under § 284.223(a) commenced June 26, 1988, as reported in Docket No. ST88-4706 (filed July 14, 1988).

*Comment date:* September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

**7. High Island Offshore System**

[Docket No. CP88-621-000]

August 5, 1988.

Take notice that on July 22, 1988, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-621-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport natural gas, on an interruptible basis, for TXG Gas Marketing Company (TXG Marketing), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS states that it has entered into two gas transportation agreements dated June 21, 1988, to provide, on an interruptible basis, transportation of up to a maximum daily quantity of 160,000 Mcf as long-haul gas and a maximum daily quantity of 10,000 Mcf as short haul gas for TXG Marketing for a primary term of two years for each transportation agreement and continuing year to year thereafter. HIOS states that the gas for the long-haul transportation would be received at various receipt points located along HIOS system in the High Island Area, offshore Texas. The gas for the short haul transportation will be received at two (2) receipt points along the HIOS system it is stated. HIOS proposes to transport the long-haul gas

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to an existing interconnection of ANR Pipeline Company (ANR) or U-T Offshore System (U-TOS) in Block 167, West Cameron Area, offshore Louisiana or Stingray Pipeline Company in Block A-330, High Island Area, offshore Texas and to transport the short-haul gas to an existing interconnection of ANR or U-TOS in Block 167, West Cameron Area, offshore Louisiana.

HIOS proposes to charge TXG Marketing 9.69 cents per Mcf for the long-haul transportation and 4.90 cents per Mcf for the short-haul transportation under its Rate Schedule IT for Interruptible Transportation Service.

*Comment date:* August 25, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**8. Northwest Pipeline Corporation**

[Docket No. CP88-578-016]

August 5, 1988.

Take notice that on August 1, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 38
Second Revised Sheet No. 39
Third Revised Sheet No. 40
Third Revised Sheet No. 41
Third Revised Sheet No. 42
Second Revised Sheet No. 211
Second Revised Sheet No. 212
Second Revised Sheet No. 213
Second Revised Sheet No. 213-A

Northwest states that these tariff sheets were filed for the purpose of modifying sections 1, 2 and 6 of Northwest's Rate Schedule LS-1 and the related Form of Service Agreement pursuant to Commission orders issued January 19 and May 31, 1988, as well as Northwest's compliance filing of June 10, 1988. Northwest states that such revisions will enable any party to contract for storage service in Northwest's liquified natural gas (LNG) facility at Plymouth, Washington. The currently available capacity at the LNG facility will be made available to any party on a first-come, first-served basis. Northwest has requested an effective date of September 1, 1988.

A copy of this filing is being served on all affected customers and affected state commissions.

*Comment date:* August 19, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**9. Tarpon Transmission Company**

[Docket No. CP88-634-000]

August 5, 1988.

Take notice that on July 27, 1988, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-634-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texican Natural Gas Company (Texican), a marketer, under its blanket certificate issued in Docket No. CP88-89-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Tarpon states that it proposes to transport natural gas from points of receipt located in Eugene Island Area, Blocks 380 and 381, offshore Louisiana to a point of delivery located in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana.

Tarpon further states that the maximum daily and annual quantities that it would transport for Texican would be 27,800 MMBtu equivalent and 1,460,000 MMBty equivalent, respectively.

Tarpon indicates that in Docket No. ST88-4770-000, filed with the Commission on July 18, 1988, it reported that transportation service for Texican commenced July 15, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

*Comment date:* September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

**10. Natural Gas Pipeline Company of America**

[Docket No. CP88-644-000]

August 5, 1988.

Take notice that on July 29, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-644-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (EGM), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 200,000 MMBtu of gas on a peak day (and any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) and 36,500,000 MMBtu on an annual basis for EGM. It is stated that Natural would receive the gas for EGM's account at various existing receipt points in Oklahoma, Texas, offshore Texas, Louisiana, offshore Louisiana, New Mexico, Kansas, Iowa, Arkansas and Nebraska and would deliver equivalent amounts of gas in Oklahoma, Iowa, Illinois, Arkansas, Kansas, Texas and Louisiana. It is asserted that the transportation service would be affected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced June 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

*Comment date:* September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

**11. Tennessee Gas Pipeline Company**

[Docket No. CP88-610-000]

August 5, 1988.

Take notice that on July 21, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-610-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for North Atlantic Utilities (North Atlantic), a marketer under the certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated June 22, 1988, it proposes to transport natural gas for North Atlantic from various receipt points located offshore Louisiana and in the States of Louisiana, New York, and Texas to various delivery points off Tennessee's system points located in multiple states.

Tennessee further states that the peak day quantities would be 10,000 dekatherms, the average daily quantities would be 203 dekatherms and that the annual quantities would be 74,095 dekatherms. Service under § 284.223(a) commenced June 25, 1988 as reported in Docket No. ST88-4709.

*Comment date:* September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

**12. United Gas Pipe Line Company**

[Docket No. CP88-633-000]

August 5, 1988.

Take notice that on July 27, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request pursuant to §§ 157.205 and 284.223 in Docket No. CP88-633-000, to provide interruptible transportation service on behalf of Texaco Gas Marketing, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, as set out more fully in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1-21-(1673), dated June 15, 1988, proposes to transport a maximum daily quantity of 41,200 MMBtu, and that service commenced July 1, 1988, as reported in Docket No. ST88-4771, pursuant to § 284.223(a) of the Commission's Regulations.

*Comment date:* September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

**13. Gas Transport, Inc.**

[Docket No. CP88-631-000]

August 5, 1988.

Take notice that on July 26, 1988, Gas Transport, Inc. (Gas Transport), 109 North Broad Street, Lancaster, Ohio 43130, filed in Docket No. CP88-631-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Borg-Warner Chemicals, Inc. (Borg-Warner) under Gas Transport's blanket certificate issued in Docket No. CP86-291-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Gas Transport states that it proposes to transport natural gas on behalf of Borg-Warner from a receipt point at Rainbow Station, Ohio, or other points of connection with Columbia Gas Transmission Corporation, to a delivery point at the Parkersburg, West Virginia, interconnection with Hope Gas, Inc., who would make final delivery to Borg-Warner. Gas Transport states that it would transport on an average day, 3,500 MMBtu and an annual volume of 2,190,000 MMBtu.

*Comment date:* September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18182 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA89-1-32-000]**

**Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment Pursuant to Order Nos. 483 and 483-A**

August 9, 1988.

Take notice that Colorado Interstate Gas Company (CIG) on August 1, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement its first annual purchased gas adjustment under the provisions of Order Nos. 483 and 483-A. The proposed tariff sheets are to be effective October 1, 1988.

CIG states that the revised tariff sheets reflect a demand rate decrease of $1.48, and a commodity rate decrease of 2.07¢ for the G-1, P-1, PR-1, H-1, PS-1 and F-1 Rate Schedules, and a decrease of 14.22¢ for the one-part rates under Rate Schedule SG-1. The commodity rate change reflects a decrease of 4.41¢ in CIGs projected cost of gas and an increase of 2.34¢ in CIG's surcharge rate effective October 1, 1988. These decreases are based upon a comparison with the rates filed by CIG on April 28, 1988 in Docket No. RP88-126, which rates were accepted by Commission order of May 25, 1988.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18184 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-1-21-026]

**Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

August 9, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 29, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective September 1, 1988:

One hundred and twenty-eighth Revised Sheet No. 16

Columbia states that the revised tariff sheet is submitted to eliminate the 12-month negative Benchmark Surcharge of 26.61¢ per Dth as authorized by Article II of the April 4, 1985 Stipulation and Agreement (Stipulation) in Docket No. TA82-1-21-001, *et al.*

Columbia states that in accordance with the Stipulation, it filed for a 12-month negative commodity surcharge to become effective Sept. 1, 1987, to return to its customers 50% of a decrease in gas costs attributable to the twelve-month period ended March 31, 1987, plus interest, in accordance with the procedures set forth in Appendix B to the Stipulation. Since the referenced twelve-month surcharge period expires on August 31, 1988, Columbia is making the instant filing to remove the negative surcharge from its rates.

Columbia states that pursuant to Appendix B of the Stipulation, within 90 days after Sept. 1, 1988, Columbia will file with the Commission and provide the parties a report showing under-amortization or over-amortization of the decrease in gas costs attributable to the subject Benchmark period. Columbia shall credit or debit the balance to Account No. 191.

Copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. TA82-1-21-0001, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18185 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP88-226-000]

**Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

August 8, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on July 29, 1988, the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on August 1, 1988:

Original Sheet No. 6B
Fourth Revised Sheet No. 210
Original Sheet No. 262
Original Sheet No. 263

ESNG states that such proposed changes are being filed pursuant to Order No. 500 to recover take-or-pay fixed charges which its pipeline suppliers bill to ESNG. As a downstream pipeline, ESNG proposes to recover such costs on an as-billed basis, pursuant to § 2.104(e) of the Commission's General Policy and Interpretations.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18186 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-193-001]

**Midwestern Gas Transmission Co.; Filing**

August 8, 1988.

Take notice that on August 1, 1988, Midwestern Gas Transmission Company (Midwestern) filed the following tariff sheets to amend Volume 1 of its FERC Gas Tariff, to be effective July 1, 1988:

First Revised Sheet No. 192
First Revised Sheet No. 193

Midwestern states that this filing complies with the July 15, 1988, Commission Order in Docket No. RP88-193. Midwestern has filed Revised Sheet No. 192 to eliminate reference to a special notice period before the effective date of the initial demand surcharge, and Revised Sheet No. 193 to provide for direct billing of former customers only if they were receiving, or had certificate authorization to receive, service on July 1, 1988.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18187 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ88-1-25-000]

**Mississippi River Transmission Corp.; Rate Change Filing**

August 8, 1988.

Take notice that on August 1, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

| Tariff sheet | Proposed effective date |
|---|---|
| Twenty-Fourth Revised Sheet No. 4. | Sept. 1, 1988. |
| Substitute Ninth Revised Sheet No. 4A. | June 1, 1988. |
| Substitute Fifth Revised Sheet No. 43. | Do. |
| Substitute Fourth Revised Sheet No. 44. | Do. |
| Substitute Fourth Revised Sheet No. 46. | Do. |
| Substitute Fourth Revised Sheet No. 51. | Do. |
| Substitute Fifth Revised Sheet No. 54. | Do. |
| Original Sheet No. 54A | Do. |
| Substitute Third Revised Sheet No. 58. | Do. |

MRT states the filing is being submitted pursuant to the Purchased Gas Cost Adjustment (PGA) Clause of its tariff to track pipeline and producer cost changes, and to recover gas costs which have accumulated in its Unrecovered Purchase Gas Cost Account. MRT states the filing reflects a decrease under Rate Schedule CD–1 of 61.5 cents per Mcf in Demand Charge D–1, a decrease of 15.79 cents per Mcf in the Demand Charge D–2, and a commodity rate increase of 45.98 cents per Mcf. The single part rate under Rate Schedule SGS–1 reflects an overall increase of 24.24 cents per Mcf. The overall cost impact of such rate changes, when applied to quarterly jurisdictional billing determinants, is an increase of $6.0 million.

MRT states that the current adjustments contained in Twenty-Fourth Revised Sheet No. 4 have been calculated on the basis of the "Secondary Rates" which may become effective on October 1, 1988, by United Gas Pipe Line Company (United) one of MRT's pipeline suppliers. By Order issued April 29, 1988, at Docket No. RP88–92–000, United's "Primary Rates" were suspended until October 1, 1988, subject to the condition that United place into effect its Secondary Rates in the event that certain of United's pipeline customers have not abandoned their purchases from United as of that date. Inasmuch as those pipeline customers have not yet abandoned their purchases from United, MRT has based the instant filing upon the assumption that United will place its Secondary Rates (resubmitted on June 13, 1988, at Docket No. RP88–92–000) into effect on October 1, 1988.

MRT states Substitute Ninth Revised Sheet No. 4A reflects the correction of a typographical error related to the monthly direct bill take-or-pay amount for Laclede Gas Company, which was originally filed on July 5, 1988 in Docket No. TA88–3–25.

MRT states by letter order dated July 1, 1988 in Docket No. RP88–146, the Commission directed MRT to refile certain tariff sheets in order to bring such sheets into compliance with Commission Order Nos. 483 and 483–A. The remaining tariff sheets listed above are being filed in compliance with the Commission's order and reflect the necessary revisions.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18188 Filed 8–10–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ88–2–26–000]**

## Natural Gas Pipeline Co. of America; Changes in Rates

August 8, 1988.

Take notice that on August 1, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective September 1, 1988.

Substitute Seventy-fifth Revised Sheet No. 5

Substitute Fortieth Revised Sheet No. 5A

Natural states the purpose of the instant filing is to implement Natural's quarterly PGA unit rate adjustment calculated pursuant to section 18 of the General Terms and Conditions of Natural's Tariff.

Natural states the overall effect of the quarterly adjustment when compared to Natural's last quarterly PGA filing in Docket TQ88–1–26–000 effective June 1, 1988, is an increase in the DMQ–1 commodity charge of 10.68¢, a decrease in the DMQ–1 demand charge of $.02 and an increase in the DMQ–1 entitlement charge of $.0026. Appropriate adjustments have been made with respect to Natural's other rate schedules. This change in rates will produce an increase in revenues of approximately $10.6 million based upon sales volumes projected for the quarterly period September 1, 1988 through November 30, 1988.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211. All such motions or protests must be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the approprite action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18189 Filed 8–10–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. GP88–19–000]**

## Natural Gas Pipeline Co.; Producer Filing To Collect Compression Allowance Pursuant to Order No. 473 [1]

Issued August 8, 1988.

Take notice that on May 3, 1988, Exxon Corporation (Exxon) filed, pursuant to Rule 211 of the Commission's Rules of Practice and Procedure [2] and § 271.1104(h)(4)(ii) of the Commission's regulations,[3] a protest concerning its contractual authority to collect compression allowances pursuant to certain area rate clauses in its gas sales agreements with Natural Gas Pipeline Company of America (NGPL).

Exxon states that pursuant to contracts that were filed as FERC Rate

[1] Compression Allowances and Protest Procedures Under NGPA section 110, 52 FR 21,600 (June 9, 1987), FERC Statutes and Regulations, Regulations Preambles ¶ 30,747; *Order on rehearing*, Order No. 473–A, 53 FR 2,828 (Feb. 2, 1988), FERC Statutes and Regulations, Regulations Preambles ¶ 30,788.

[2] 18 CFR 385.211 (1987).

[3] 18 CFR 271.1104(h)(4)(ii) (1987).

Schedules 352 and 380 (which have since been replaced) Exxon is entitled to receive compression allowances. Exxon states that it has provided both intrinsic and extrinsic evidence which demonstrates that Exxon and NGPL specifically intended, through the provisions of an area rate clause, for Exxon to receive the highest price allowed by any governmental authority for the quality of gas involved and that such language encompassed, *inter alia*, compression allowances. Exxon states that NGPL knew of the broad intent included in the subject contracts. Exxon further states that the contract language and the extrinsic evidence that it has provided in its protest is sufficient to overcome the presumption against contractual authority to collect compression allowances and that the matter therefore requires an evidentiary hearing.

Pursuant to § 271.1104(h)(4), any person may file a protest to Exxon's claim of contractual authority. Such protests must be filed, within 90 days of publication of this notice in the **Federal Register**, with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18183 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-227-000]**

## Paiute Pipeline Co.; Change in Rates and Proposed Tariff Filings

August 8, 1988.

Take notice that on August 1, 1988, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations thereunder, tendered for filing a notice of change in rates (and certain identified tariff provisions) for natural gas service rendered to jurisdictional customers served under Original Volume No. 1 of Paiute's FERC Gas Tariff. Paiute also tendered proposed rates and tariff sheets to be applicable to the transportation of natural gas in interstate commerce under Order Nos. 436/500 and the regulations adopted therein.

Paiute states that in order to implement the notice of change in rates and the terms and conditions governing transportation services, Paiute tendered for filing and acceptance certain tariff sheets.

Paiute proposes to make the tendered tariff sheets and the change in rates effective on September 1, 1988.

Paiute states that it is a wholly-owned subsidiary of Southwest Gas Corporation (Southwest). Paiute further states that by order issued May 17, 1988 in Docket No. CP87-309-000, the Commission authorized Paiute to: (1) Acquire and operate the certificated interstate natural gas facilities previously owned and operated by Southwest, (2) render interstate sales services in accordance with outstanding certificates of public convenience and necessity previously issued to Southwest, and (3) and make sales of natural gas in interstate commerce to Southwest-Northern Nevada and Southwest-Northern California for resale.

Paiute states that its acquisition of Southwest's jurisdictional facilities has now been consummated, and Paiute is commencing operations on August 1, 1988. Paiute further states that consistent with the undertaking set forth in the Offer of Settlement filed by Paiute and Southwest in Docket No. CP87-309-000 on February 10, 1988 (Settlement Offer), it is submitting a general rate change filing in the instant proceeding pursuant to Section 4 of the Natural Gas Act, and is resubmitting the transportation rate shedules, general terms and conditions, and forms of service agreement that were part of its proposed tariff in the Settlement Offer, as modified to comply with the Commission's May 17, 1988 order in Docket No. CP87-309-000, and with certain other modifications as described in the filing.

Paiute states that based upon the test period cost of service and projected sales and transportation quantities employed in its filing, Paiute projects a deficiency of approximately $5, 364, 249 in annual revenues from jurisdictional sales and transportation services at current rates. Paiute is therefore proposing to increase rates for natural gas sales services rendered to jurisdictional customers and to establish rates for jurisdictional transportation services in an amount that is sufficient to eliminate the revenue deficiency and recover the full cost of service reflected in its filing.

Paiute asserts that in Docket No. CP87-309-000, it had requested that the Commission issue it a blanket certificate under § 284.221 of the Commission's Regulations to transport natural gas in interstate commerce on an open access basis in accordance with the principles adopted in Order Nos. 436/500. Paiute states that in view of its submission in this proceeding of proposed transportation rates and revised transportation tariff sheets in compliance with the Commission's May 17, 1988 order, Paiute renews its request that the Commission issue it a blanket certificate under § 284.221 of the Commission's Regulations.

Further, Paiute states that it is providing an "open season" period from August 1, 1988 through August 31, 1988 for receiving requests for transportation service. According to Paiute, all completed requests for transportation service that are received by Paiute during the "open season' period will be treated as having been received at the same time for purposes of determining priority of service status. Paiute indicates that in order to be deemed as complete, a request for transportation service must conform to the requirements set forth in its proposed transportation tariff sheets filed in this proceeding, but Paiute further indicates that it will provide an opportunity, shortly before commencing transportation services, for persons who submit requests for transportation service during the "open season" period to modify their request so as to conform their requests to actual supply arrangements then available to them.

Paiute requests waiver of § 154.63(e)(ii) of the Commission's Regulations, as necessary, to permit the inclusion in the rate base of facilities not yet placed in service. Paiute also requests that waiver be granted of all applicable rules and regulations as may be necessary so as to implement the tendered tariff sheets and proposed rates effective September 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before Aug. 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18190 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-28-000]

## Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

August 8, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Fifth Revised Sheet No. 3–A
Forty-Second Revised Sheet No. 3–B

The proposed effective date of these revised tariff sheets is September 1, 1988.

Panhandle states that these revised tariff sheets reflect a commodity rate decrease of (13.99¢) per Dt, which includes:

(1) A (14.28¢) per Dt decrease in the projected purchased gas cost component; and

(2) A 0.29¢ per Dt increase pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith also reflect the following changes to Panhandle's $D_1$ and $D_2$ demand rates:

(1) A decrease of ($0.14) for $D_1$ pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) A decrease of ($0.01) for $D_1$ and no change for $D_2$ to reflect a decrease in the § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline supplier demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) and section 22 (ANGTS Transportation Clause) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective September 1, 1988.

Panhandle states that copies of its filing has been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18191 Filed 8–10–88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA89-1-38-000]

## Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

August 9, 1988.

Take notice that on August 2, 1988, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Forty-fourth Revised Sheet No. PGA–1 to its FERC Gas Tariff and FERC Form No. 542–PGA pursuant to section 4 of the Natural Gas Act and 18 CFR 154.305. The proposed changes would increase revenues from jurisdictional sales and service by $90.110 for the three month period October 1, 1988–December 31, 1988.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All motions to intervene or protests are due on or before August 29, 1988.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18192 Filed 8–10–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-013]

## Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 8, 1988.

Take notice that on August 3, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective June 1, 1988:

Fourth Revised Sheet No. 30Y
Fourth Revised Sheet No. 30QQ
Second Revised Sheet No. 45R.20
Second Revised Sheet No. 53I.40
Second Revised Sheet No. 53I.56

and Substitute Third Revised Sheet No. 45R.24 to be effective December 1, 1987.

Southern states that on July 19, 1988, the Commission issued its Order Accepting Compliance Filing Subject to Conditions (Order) in which the Commission addressed a compliance filing tendered by Southern in this docket on June 6, 1988, and directed Southern to file revised tariff sheets in accordance with the discussion therein within 15 days of such Order. Accordingly, Southern has submitted certain of the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987, and June 1, 1988, as indicated above.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list complied in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18193 Filed 8–10–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-228-000]

## Tennessee Gas Pipeline Co.; Filing of Changes in Rates

August 8, 1988.

Take notice that on August 1, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing certain changes in its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, to be effective September 1, 1988.

Tennessee states that the changes will increase revenues from jurisdictional sales and services by $190,076,955. Tennessee states, however, that the revised rates shown in its filing reflect a return on equity that is considerably less than the return that Tennessee demonstrates is necessary to adequately compensate it for the risks of operating in today's competitive markets and regulatory environment.

Tennessee states that this rate increase is necessitated by, among other things, an increase in gas plant and related expenses, an increase in costs to operate and maintain its pipeline and a decline in system sales volumes. Tennessee also states that its filing institutes seasonal sales and interruptible transportation rates, separate rates for transportation in its principal gas supply area, and rates for long haul transportation outside of the gas supply area based on mileage of haul to each of Tennessee's six sales zones.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18194 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-56-000]

## Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

August 8, 1988.

Take notice that Valero Interstate Transmission Company ("Vitco"), on August 1, 1988 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost rates pursuant to such provisions:

*FERC Gas Tariff, Original Volume No. 1*

8th Revised Sheet No. 14.2

*FERC Gas Tariff, Original Volume No. 2*

13th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

Vitco states the change in rates to Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas costs of $.1965 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $.2212 per MMBtu.

The proposed effective date for the above filing is September 1, 1988. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with ¶¶ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18195 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-32-012

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 8, 1988.

Take notice that Williams Natural Gas Company (WNG) on August 3, 1988, tendered for filing tariff sheets pursuant to Article II, section 8 of the Revised Stipulation and Agreement in Docket Nos. RP86-32, *et al*, as finally approved and clarified by order issued July 5, 1988. These tariff sheets which are listed in Attachment A reflect all changes to Volume No. 1 which have been filed and approved by the Commission since January 4, 1988 when proposed tariff sheets were submitted with the Revised Stipulation and Agreement. In compliance with the Commission's letter order of July 19, 1988 in Docket Nos. RP86-032-010 and 011, WNG has amended Sheet No. 6 to eliminate the rate differential charge to Kansas Cities. WNG also made changes in pagination in this filing. Additionally, the Index of Purchasers contained in Original Volume No. 1 has been added. Certain modifications to Article 21 of WNG's General Terms and Conditions which were filed on July 27, 1988 as ordered by the Commission in a letter order dated July 1, 1988 in Docket No. RP88-139-000 are reflected in these refiled tariff sheets. No other changes have been made from the tariff sheets filed on June 29, 1988.

WNG states that the effective date for these tariff sheets is July 20, 1988 with the exception of Revised Sixth Revised Sheet No. 6. When WNG filed tariff sheets on June 29, WNG proposed that the effective date be the later of July 1, 1988 or the date on which WNG accepted the open-access blanket certificate in Docket No. CP86-631-001. On July 20, 1988, WNG accepted the open-access blanket certificate.

WNG is also filing Revised Sixth Revised Sheet No. 6 to be effective August 1, 1988. Sixth Revised Sheet No. 6 was filed in Docket No TQ88-2-88 and is being revised pursuant to the Commission's letter order of July 19, 1988 to eliminate the rate differential charge to Kansas Cities.

WNG states that copies of its filing were served on all jurisdictional customers and intersted state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street NE., Washington DC 20426, in accordance with § 385.211, 385.214 of the commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18196 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[PF-501; FRI-3428-6]**

### E.I. du Pont de Nemours & Co., Inc.; Amended Pesticide Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the filing of an amended petition by E.I. Du Pont de Nemours & Co., Inc., for food additive petition (FAP) 5H5449 for the fungicide bis(4-fluorophenyl)methyl (1*H*1,2.4,-triazol-l-ylmethly) silane in or on the raw agricultural commodity apple pomace.

**DATE:** Comments by September 12, 1988.

**ADDRESS:**

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 200, CM # 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2690.

**SUPPLEMENTARY INFORMATION:** EPA issued notice of FAP 5H5449 in the **Federal Register** of December 12, 1984 (49 FR 48374), which announced that E.I. Du Pont De Nemours & Co., Inc., Walker's Mill, Barley Mill Plaza, Wilmington, DE 19898, proposed amending 21 CFR Part 561 by establishing a regulation permitting residues of the fungicide bis(4-fluorophenyl)methyl(1*H*-1,2,4-triazol-l-ylmethyl) silane in or on apple pomace at 1.5 ppm.

In the **Federal Register** of March 19, 1986 (51 FR 9514), EPA issued a notice of an amendment to the petition that revised the chemical name to read "1=[[Bis(4-fluorophenyl) methylsilyl] methyl]-1*H*-1,2,4-triazole."

EPA is issuing notice of further amendment to FAP 5H5449, which is proposing to establish a tolerance of 3.0 parts per million of the fungicide bis(4-fluorophenyl)methyl (1*H*-1,2,4,-triazol-l-ylmethyl) silane in or on apple pomace.

**Authority:** 21 U.S.C. 346a.

Dated: August 4, 1988.

**Edwin F. Tinsworth,**

*Registration Division, Office of Pesticide Programs.*

[FR Doc. 88-18291 Filed 8-10-88; 8:45 am]

BILLING CODE 6560-50-M

## FARM CREDIT ADMINISTRATION

### Order Amending Order Appointing Receiver of the Federal Land Bank of Jackson, MS and Federal Land Bank Association of Jackson, MS

**ACTION:** Notice.

**SUMMARY:** On August 4, 1988, the Order Appointing Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi, dated May 20, 1988 (53 FR 18812, May 24, 1988), was amended to substitute Larry G. Koch for Ronald E. Watkins as signatory agent for REW Enterprises, Inc., Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi. The amended Order authorizes Larry G. Koch to sign any and all documents on behalf of the Receiver and to delegate signatory authority to any employee of the Institutions-in-receivership.

Dated: August 8, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-18204 Filed 8-10-88; 8:45 am]

BILLING CODE 6705-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.*: 213-010601-006.

*Title*: Sailing Agreement by and among Neptune Orient Lines, Ltd., Orient Overseas Container Line, Inc., Yamashita-Shinnihon Steamship Co., Ltd. and Nippon Liner System, Ltd.

*Parties*:

Neptune Orient Lines, Ltd.
Orient Overseas Container Line, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

*Synopsis*: The proposed modification would add Nippon Liner System, Ltd. as a member of the agreement's Pacific service in palce of Yamashita-Shinnihon Steamship Co., Ltd. The parties have requested a shortened review period.

*Agreement No.*: 203-010894-002.

*Title*: Australia-United States Discussion Agreement.

*Parties*:

Columbus Line
ABC Containerline N.V.
Associated Container Transportation (Australia) Ltd. (Pace Line)
Shipping Corporation of New Zealand
Pacific Australia Direct Line

*Synopsis*: The proposed modification would delete Pacific Australia Direct Line as a party to the agreement and would reflect a change in the name of the Shipping Corporation of New

Zealand Limited to Australia-New Zealand Direct Line.

*Agreement No.*: 202–011207.

*Title*: Turkey/United States Atlantic and Gulf Rate Agreement.

*Parties*:

Farrell Lines, Inc.
Lykes Bros. Steamship Co., Inc.
Pharos Lines, S.A.

*Synopsis*: The proposed agreement would permit the parties to agree upon and publish joint rates, terms and conditions for the movement of cargo from ports and points in Turkey to U.S. Atlantic and Gulf Coast ports and inland and coastal points.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: August 8, 1988.

[FR Doc. 88–18202 Filed 8–10–88; 8:45 am]

BILLING CODE 6730-01-M

## Department of Health and Human Services

### Public Health Service

### National Commission on Orphan Diseases; Public Meeting

**AGENCY:** Office of the Assistant Secretary for Health.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting of the National Commission on Orphan Diseases scheduled on August 18, 19, and 20, 1988.

**DATE:** Date, time and place: Open Public Meeting, August 18, 1988, 9:00 a.m.–4:00 p.m., August 19 and 20, 1988, 8:30 a.m.–5:00 p.m.; Open Public Session, August 18, 1988, 4:00 p.m.–5:00 p.m.; August 18 and 19, Wilson Hall, 3rd floor, Bldg. 1, Center Drive, NIH Campus, Bethesda, MD 20892; August 20, Old Georgetown Room, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814. The entire meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Written requests to participate in the Open Public Session should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Park Building, Room 1–20, Rockville, MD 20857, 301–443–6156.

*Agenda: Open Public Session*

Interested persons may present data, information or views, orally or in writing, on issues pending before the Commission or on any of the duties and responsibilities of the Commission on August 18 from 4 p.m. to 5 p.m. Those desiring to make oral presentations should notify the contact person before August 16, 1988 and submit a brief statement of the information they wish to present to the Commission. The request should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the open public session who does not request prior approval to speak may make an oral presentation at the conclusion of the session, if time permits, at the chairperson's discretion.

*Agenda: Open Commission Meeting*

The Commission will review the reports on product and professional liability issues and the peer review process. The Commission will also review results of the surveys of rare disease research activities of Federal agencies, foundations, voluntary organizations and pharmaceutical manufacturers and the results of the telephone surveys of physicians, biomedical researchers, and patients with rare diseases. In addition, the Commission will formulate recommendations to be included in its final report to Congress.

**SUPPLEMENTARY INFORMATION:** The Commission meeting will be conducted in accordance with the agenda published in this **Federal Register** notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items to be discussed in the open meeting may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information from the contact person. In addition, summary minutes of the meeting will be available upon request from the contact person.

This notice is issued under 10(a)(1) and (2) of the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I).

Dated: August 5, 1988.

**Robert E. Windom,**

*Assistant Secretary for Health.*

[FR Doc. 88–18150 Filed 8–10–88; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–88–1842]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement, and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**AUTHORITY:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 5, 1988.

**David S. Cristy,**

*Deputy Director, Information Policy and Management Division.*

*Proposal:* Community Development Block Grants: Relocation, Displacement, and Acquisition (FR-2474)

*Office:* Community Planning and Development

*Description of the Need for the Information and its Proposed Use:* This rule implements section 509 of the Housing and Community Development Act of 1987 which adds new requirements to sections 104(d) and 104(k) of the Housing and Community Act of 1974. The information collection establishes consistent relocation, displacement, and acquisition policies and requirements applicable to the Community Development Block Grant Programs and the Urban Development Action Grant Programs.

*Form Number:* None.

*Respondents:* State or Local Governments

*Frequency of submission:* On Occasion

*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Grantees application | 50 | | 1 | | 40 | | 2,000 |
| Recordkeeping | 1,200 | | 1 | | 7.66 | | 9,200 |

Total Estimated Burden Hours: 11,200

Status: New

Contact: Harold J. Huecker, HUD, (202) 755-6336; John Allison, OMB, (202) 395-6880

Date: August 5, 1988.

[FR Doc. 88-18120 Filed 8-10-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-88-884]

## Office of the Regional Administrator—Regional Housing Commissioner; Acting Manager, Region IV (Atlanta) Designation for Columbia Office

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation.

**SUMMARY:** Updates the designation of officials who may serve as Acting Manager for the Columbia Office.

**EFFECTIVE DATE:** June 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

### Designation of Acting Manager for Columbia Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Director, Housing Management Division
3. Director, Community Planning and Development Division
4. Chief Counsel
5. Director, Housing Development Division
6. Director, Fair Housing and Equal Opportunity Division

This designation supersedes the designation effective May 13, 1988, (53 FR 22389, June 15, 1988).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971).

This designation shall be effective as of June 28, 1988.

**Ted B. Freeman,**

*Manager, Columbia Office.*

**Raymond A. Harris,**

*Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.*

[FR Doc. 88-18121 Filed 8-10-88; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

## DEPARTMENT OF AGRICULTURE

### Forest Service

[CO-010-08-7150-09 ZCKH]

## Supplemental Draft Environmental Impact Statement for the Rock Creek/Muddy Creek Reservoir, CO

**AGENCY:** Bureau of Land Management, Interior and Forest Service, USDA.

**ACTION:** Notice of availability of the Supplemental Draft Environmental Impact Statement (SDEIS) for the Rock Creek/Muddy Creek Reservoir and Plan amendments to the Kremmling Resource Management Plan (RMP), Routt National Forest Land and Resource Management Plan (Forest Plan).

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management and the Forest Service have prepared a Supplemental Draft Environmental Impact Statement for the proposed Rock Creek and Muddy Creek reservoir.

**DATE:** Written comments on the Supplemental DEIS will be accepted up to and including November 25, 1988.

**ADDRESS:** Written comments on the proposals in the document should be addressed to: David Atkins, Area Manager, Bureau of Land Management, Kremmling Resource Area, P.O. Box 68, Kremmling, Colorado 80459 or Jerry E. Schmidt, Forest Supervisor, Routt National Forest, 29587 West U.S. 40, Suite 20, Steamboat Springs, Colorado 80487.

**FOR FURTHER INFORMATION CONTACT:** David Harr, Bureau of Land Management, Kremmling Resource Area, P.O. Box 68, Kremmling, Colorado 80459; Telephone (303) 724-3437 or Ray George, Forest Service, Yampa Ranger District, P.O. Box 7, Yampa, Colorado 80483; Telephone (303) 638-4516.

**SUPPLEMENTARY INFORMATION:** This Supplemental DEIS describes and analyzes the environmental impacts for a proposal from the Colorado River Water Conservation District (CRWCD) to construct and operate a reservoir on Rock Creek, located on the Yampa Ranger District of the Routt National Forest, Routt County, Colorado with an alternative site on Muddy Creek, located on public lands administered by the

Kremmling Resource Area of the Craig District, Bureau of Land Management, Grand County, Colorado. The SDEIS also documents the need to amend the Kremmling Resource Management Plan or the Routt National Forest Land and Resource Management Plan. The SDEIS also serves as the environmental documentation required by the Bureau of Reclamation to execute an agreement which would provide for water exchanges between the proposed new reservoir and Green Mountain Reservoir.

The alternatives considered in the SDEIS include:

No Action
Rock Creek
Muddy Creek

Availability: Single copies of the Supplemental DEIS are available from the Kremmling Resource Area Office, P.O. Box 68, Kremmling, Colorado 80459; and the Yampa Ranger District Office, P.O. Box 7, Yampa, Colorado 80483.

Public hearings to receive oral and/or written comments on the proposed project will be held at 7:00 p.m. at the following locations:

October 3, 1988
Denver, CO—Denver Botanical Garden
October 4, 1988
Kremmling, CO—Grand County Fairgrounds Extension Building
October 5, 1988
Oak Creek, CO—Oak Creek High School
October 6, 1988
Grand Junction, CO—BLM District Office

The Corps of Engineers, Sacramento District will participate in these public hearings with respect to their authority under section 404 of the Clean Water Act.

Date: August 2, 1988.

**Gary E. Cargill,**

*Regional Forester.*

**Neil F. Morck,**

*State Director.*

[FR Doc. 88-18134 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-JB/3410-11-M

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## Bureau of Land Management

**[AK-964-4213-15; F-14852-A]**

### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Dot Lake Native Corporation for approximately 1,090 acres. The lands involved are in the vicinity of Dot Lake, Alaska.

**Copper River Meridian, Alaska**

T. 22 N., R. 7 E.,

Those portions of Tract A more particularly described as (protracted):

Sec. 28, SW¼NE¼NW¼, E½SW¼NW¼, NW¼SE¼NW¼, W½NE¼SW¼, E½NW¼SW¼, SE¼SW¼, W½SW¼SE¼;
Sec. 31, S½;
Sec. 32, NE¼, S½;
Sec. 33, W½NW¼NE¼, NW¼SW¼NE¼, NE¼NW¼, S½NW¼, excluding U.S. Survey No. 4290.

Containing approximately 1,000 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 12, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Stanley H. Bronczyk,**

*Chief, Branch of Doyon Adjudication.*

[FR Doc. 88-18132 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-SA-M

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**[AK-4213-15; F-14852-A; F-14852-B]**

### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Dot Lake Native Corporation for approximately 30 acres. The lands involved are in the vicinity of Dot Lake, Alaska.

Lot 6, U.S. Survey No. 4285, Alaska, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.

Containing approximately 0.7 acres.

U.S. Survey No. 4300, Alaska, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet of the centerline.

Containing approximately 2 acres.

**Copper River Meridian, Alaska**

T. 21 N., R. 7 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 2 and 3, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey No. 4287;
Sec. 11, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey No. 4300;
Secs. 12 and 13, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.

Containing approximately 6 acres.

T. 22 N., R. 7 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 19 and 20, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.
Sec. 27, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey No. 4325;
Sec. 28, NE¼, E½E½NE¼, NW¼NE¼, W½SW¼NW¼, SW¼SE¼NW¼, N½SE¼, SE¼SE¼, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline;
Sec. 29, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline;
Sec. 34, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey Nos. 4325 and 6889.

Containing approximately 10 acres.

T. 21 N., R. 8 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 18, 19, and 20, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline;

Sec. 29, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-80755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline;
Secs. 32 and 33, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-80755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.

Containing approximately 11 acres.

Aggregating approximately 30 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the TUNDRA TIMES. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 12, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Stanley H. Bronczyk,**

*Chief, Branch of Doyon Adjudication.*

[FR Doc. 88-18133 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-JA-M

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**[CO-050-4333-8]**

## Notice of Plant Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Planning amendment; draft Arkansas River recreation management plan and environmental analysis.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management, U.S. Department of Interior, has prepared a draft plan amendment/environmental assessment which addresses new issues and concerns regarding recreation management. The area invovled lies along the Arkansas River corridor between Leadville and Pueblo, Colorado. This document called the Arkansas River Recreation Management Plan proposes to amend the existing Royal Gorge Management Framework Plan. During November and December, 1987, nine public scoping meetings were held to receive public reaction to a proposal that the Colorado Division of Parks and Outdoor Recreation be given authority to manage river related recreation on BLM administered public lands along the Arkansas River. All comments, opinions and concerns received during the scoping meetings or by mail following the meeting has been recorded, analyzed and made a part of the formal record. The substantive information has been used during development of the plan. The draft Arkansas River Recreation Management Plan which includes the Colorado Division of Parks and Outdoor Recreation proposal and three other alternatives will be available for public review and comment from August 15 thru September 30, 1988.

**FOR FURTHER INFORMATION CONTACT:** A copy of the plan maybe reviewed or obtained in person or by mail after August 15, 1988, from the Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, 3170 East Main, Canon City, Colorado, 81212, (719) 275-0631 and other locations listed below:

Colorado Division of Parks and Outdoor Recreation, 1313 Sherman Street, Room 618, Denver, Colorado 80203, (303) 866-2771.

Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, (303) 236-1721.

**DATES:** Written comments on the document should be submitted by September 30, 1988 to Area Manager, Bureau of Land Management, Royal Gorge Resource Area, at the same address shown above.

Public hearings have been scheduled at 2 p.m. and 7 p.m. on the following days:

September 7, 1988, Ramada Inn., NW, I-70 Service Road North, Wheat Ridge, Colorado. (located at the intersection of I-70 and Kipling Street.)

September 12, 1988, Fremont County Court House Auditorium, 600 Macon Avenue, Canon City, Colorado.

September 16, 1988, Buena Vista Community Building, 715 E. Main Street, Buena Vista, Colorado. An informal open house to answer any questions from the public will begin 1 hour before each hearing. Requests to present oral statements at the public hearings should be received in the Royal Gorge Resource Area Office, P.O. Box 311, Canon City, Colorado 81212, 2 days prior to the meeting. Requests should identify the organization represented and should be singed by the prospective speaker. The cut-off date is necessary so a list of speakers can be available on the day of the public hearing.

**Stuart L. Freer,**

*Associate District Manager.*

[FR Doc. 88-18135 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-JB-M

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**[AA-340-08-4333-02]**

## Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

*Title:* Special Recreation Application and Permit Form, 43 CFR Part 8372.

*OMB Approval Number:* 1004-0119.

*Abstract:* Respondents supply identifying information and data on proposed commercial, competitive, or individual recreational use, respectively, when required, to determine eligibility for a permit. This information allows the Bureau of Land Management (BLM) to authorize requested use and determine appropriate fees. This information will also be used to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

*Bureau Form Number:* 8370-1.

*Frequency:* Annually at selected recreation areas and sites.

*Description of Respondents:* Recreation visitors to areas of the public lands and related waters where special recreation permits are required.

*Estimated Completion Time:* 27 minutes.

*Annual Responses:* 6,000.

*Annual Burden Hours:* 1,000.

*Bureau Clearance Officer:* Rick Iovaine, 202-653-8853.

Date: July 22, 1988.

**Dean Stepanek,**

*Assistant Director—Land and Renewable Resources.*

[FR Doc. 88-18162 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-84-M

[ID-010-08-4410-08]

## Proposed Area of Critical Environmental Concern Designation; Salmon Falls Creek Canyon, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Area of Critical Environmental Concern (ACEC) designation.

**SUMMARY:** The Boise District, Bureau of Land Management (BLM), has prepared a draft amendment to the Jarbidge Resource Management Plan (RMP) and the Twin Falls Management Framework Plan (MFP). The draft amendment includes a proposal to designate a 30-mile stretch of Salmon Falls Creek Canyon as an ACEC. This notice is issued pursuant to 43 CFR 1610.7–2(b), which provides for a 60-day public comment period on any proposed ACEC designation.

**DATE:** The comment period will be open until October 11, 1988.

**ADDRESS:** Written comments may be submitted to the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Gary Carson, Jarbidge Resource Area Manager, or Terry Costello, Chief, Planning and Environmental Assistance Staff, at the above address or call (208) 334–1582.

**SUPPLEMENTARY INFORMATION:** Approval of the land use plan amendment would constitute formal designation of the proposed Salmon Falls Creek Canyon ACEC. Salmon Falls Creek forms a boundary between the Boise and Burley BLM districts; therefore, the ACEC would lie partially within each district. The proposed ACEC extends along Salmon Falls Creek, between the canyon rims, from Salmon Falls Dam on the south and the Balanced Rock road on the north. It would include approximately 3,000 acres of public lands presently identified in the Twin Falls MFP (Burley District) for protection as the Salmon Falls Creek Natural Area, and approximately 2,947 acres of public lands presently identified in the Jarbidge RMP for protection as an Outstanding Natural Area. BLM Manual guidance (1623.31A1) states that any Outstanding Natural Area is to be evaluated as an ACEC, following RMP procedures. This proposed land use plan amendment fulfills that requirement.

Designation of the ACEC would not be expected to result in any changes in management of the area, but would merely continue existing land use decisions to protect the area's natural and primitive characteristics. Specifically, the proposed ACEC would be subject to the following resource use limitations: (1) Exclude livestock grazing, (2) avoid all utility right-of-way, (3) close the area to agricultural entry, (4) close the area to all motorized vehicles, and (5) restrict all mechanized fire suppression equipment from the canyon. The entire proposed ACEC would continue to be managed for its natural and scenic values.

**Gene L. Schloemer,**

*Associate District Manager.*

[FR Doc. 88–18163 Filed 8–10–88; 8:45 am]

BILLING CODE 4310–GG–M

[AZ-020-08-4321-01; A 23376]

## Realty Action; Exchange of Public Lands; Apache County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction notice.

The notice of realty action published on July 6, 1988 in **Federal Register** document 88–15107 is corrected as follows:

Page 25388, column 1, line 37 should read T. 18 N., R. 20 E.

**Herman L. Kast,**

*Acting District Manager.*

Date: August 3, 1988.

[FR Doc. 88–18164 Filed 8–10–88; 8:45 am]

BILLING CODE 4310–32–M

[NV-020-4333-12]

## Camping Stay Limits on Public Lands Within the Winnemucca District, WA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Camping stay limits on public lands within the Winnemucca District.

**SUMMARY:** Person(s) may occupy a site or multiple sites within a five (5) mile radius on public lands not closed or otherwise restricted to camping within the Winnemucca District for a total period of not more than fourteen (14) days during any twenty-eight (28) day period. Following the fourteen (14) day period, persons may not relocate within a distance of five (5) miles of the site that was previously occupied until completion of the twenty-eight (28) day period. The fourteen (14) day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give permission for extension of the fourteen day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Winnemucca District for a period of more than seventy-two (72) hours without written permission from the authorized officer.

**DATE:** This camping stay limit will be effective August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nevada 89445, telephone (702) 623–3676.

**SUPPLEMENTARY INFORMATION:** This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Winnemucca District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

Authority for this stay limit is contained in CFR Title 43, Chapter II, Part 8365, Subparts 8365.1–2, 8365.1–6 and 8365.2–3.

**Robert Neary,**

*Acting District Manager.*

Dated: August 1, 1988.

[FR Doc. 88–18165 Filed 8–10–88; 8:45 am]

BILLING CODE 4310–HC–M

[NM-940-08-4520-12]

## New Mexico; Filing of Plat of Survey

July 29, 1988.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on July 29, 1988.

A survey representing Mineral Survey No. 2320, the Wild Bill Mine, in the Pinos Altos Mining District, New Mexico Principal Meridian, New Mexico.

The survey was requested by the Thomas A. McDermott, claimant.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

**John P. Bennett,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 88–18166 Filed 8–10–88; 8:45 am]

BILLING CODE 4310–FB–M

[ID-943-08-4220-11; I-15356 et al]

## Proposed Continuation of Withdrawal; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes that 480 acres of land withdrawn for Public Water Reserve Nos. 107 and 28, continue for an additional 20 years. The water involved would remain withdrawn and the lands would remain closed to surface entry, but would be opened to nonmetalliferous mining through this action. The lands have been and will continue to be open to the mineral leasing laws and the location of metalliferous minerals.

**DATE:** Comments should be received by October 26, 1988.

**ADDRESS:** Comments should be sent to, Idaho State Director, Bureau of Land Management, 3380 Americana Terrace Boise, Idaho 83706.

**FOR FURTHER INFORMATION CONTACT:** Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The Bureau of Land Management proposes that the existing land withdrawals made by the Executive Orders dated May 31, 1915, and April 17, 1926, and further designated by Secretarial Order of Interpretation No. 160, dated April 8, 1932; Secretarial Order of Interpretation 131, dated June 5, 1930; Secretarial Order of Interpretation No. 125, dated March 15, 1930; BLM Order of Interpretation dated May 26, 1955, and Secretarial Order of Interpretation No. 175, dated January 23, 1933, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, on the following-described land:

**Boise Meridian, Idaho**

(I–15356)

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 160
T. 8 S., R. 38 E.
Sec. 24, SW¼SW¼.

(I–15370)

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 175
T. 8 S., R. 38 E.
Sec. 24, NW¼SW¼.

(I–15358)

Public Water Reserve No. 107
BLM Order of Interpretation
T. 8 N. R. 28 E.
Sec. 8, E½SE¼;
Sec. 23, NE¼.

(I–15357)

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 125
T. 2 N., R. 24 E.
Sec. 28, NW¼NE¼.

(I–14544A)

Public Water Reserve No. 28
Executive Order dated May 31, 1915
T. 6 S., R. 35 E.
Sec. 33, SE¼NE¼.

(I–15377)

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 131
T. 7 S., R. 36 E.
Sec. 9, SW¼NW¼, NW¼SW¼.

The areas described aggregate 480 acres in Bannock, Caribou, and Butte Counties.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of nonmetalliferous minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to nonmetalliferous mining location through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

**William E. Ireland,**

*Chief, Realty Operations Section.*

Dated: August 4, 1988.

[FR Doc. 88–18167 Filed 8–10–88; 8:45 am]

BILLING CODE 4310-GG-M

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[CO–050–4322–02]

## Canon City District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 10 a.m. Friday, September 23, 1988, at the District Office of the Bureau of Land Management, 3170 East Main Street, Canon City, Colorado. The purpose of this meeting will be:

1. Introduced of new members of the Board.
2. Election of Board officers.
3. Prioritization of Range Improvement projects.
4. Initiate, conducted and settle business pertaining to the expenditure of Range Betterment Funds.
5. Update Board on status of ongoing resource management planning efforts.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

**FOR FURTHER INFORMATION CONTACT:** Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275–0631. .

**Stuart L. Freer,**

*Associate District Manager.*

[FR Doc. 88–18136 Filed 8–10–88; 8:45 am]

BILLING CODE 4310-JB-M

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[NM–030–08–4341–02]

## Las Cruces District Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the Las Cruces District Advisory Council will be held September 13, 1988, in the Aspen West Room, Mesilla Valley Inn, 901 Avenida de Mesilla, Las Cruces, New Mexico. The meeting will begin at 10:00 a.m. There will be an opportunity for public comment at 1:30 p.m. It is expected the meeting will adjourn by 3:30 p.m. The following topics are on the agenda: Approval of previous minutes, discussion of hazardous waste management, update on District planning efforts, update on District exchanges, and Boots and Saddles Trail legislation discussion.

**ADDRESS:** Aspen West Room, Mesilla Valley Inn, 901 Avenida de Mesilla, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** H. James Fox, District Manager, Las Cruces District Office, Bureau of Land

Management, 1800 Marquess Street, Las Cruces, New Mexico 88005 or at (505) 525–8228.

**SUPPLEMENTARY INFORMATION:** The Council is authorized by the Federal Land Policy and Management Act and chartered by the Secretary of the Interior to provide citizen advice to the District Manager on matters relating to the management of public lands and resources.

**Robert R. Calkins,**

*Acting District Manager, August 2, 1988.*

[FR Doc. 88–18137 Filed 8–10–88; 8:45 am]

BILLING CODE 4310–FB–M

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**[AZ–920–08–4212–14; A–21218]**

## Conveyance of Public Land; La Paz County, AZ

August 5, 1988.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the conveyance of public land to La Paz County.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713, 1719), La Paz County has purchased by noncompetitive direct sale, at the fair market value of $44,000, plus $50.00 for the purchase of the mineral estate, the following described land:

**Gila and Salt River Meridian, Arizona**

T. 7 N., R. 19 W.,
Sec. 13, SW¼.

The area described contains 160.00 acres in La Paz County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of land out of Federal ownership.

**Marsha Luke,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 88–18138 Filed 8–10–88; 8:45 am]

BILLING CODE 4310–32–M

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**[OR–050–4212–11: GP8–217; OR–44210]**

## Realty Action; Recreation and Public Purposes Lease in Deschutes County, OR

August 4, 1988.

**AGENCY:** Bureau of Land Management, Interior.

The following described lands have been examined and found to be suitable for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*).

**T. 17 S., R. 14 E., W.M. Deschutes County, Oregon**

Section 35: W½ SW¼ NW¼ NW¼..... 5 ac.

These lands are being offered to the Deschutes County Department of Public Works for operation of a solid waste transfer station. The lease term would be five years subject to renewal until such time as the classification can be changed and conveyance made to Deschutes County.

The site is adjacent and west of the existing R&PP lease authorizing the Alfalfa Landfill which will be closed and reclaimed.

The transfer station would provide the community with a site for disposal of solid waste which would then be hauled to the Knott Landfill near Bend.

Waste material would not be disposed on or under public lands.

This Decision/Notice is based on the following:

(1) The lands have been found to be valuable for public pruposes and are currently classified for R&PP.

(2) The land is not of National Significance and not essential to any Bureau of Land Management program.

(3) The proposed use is in conformance with BLM, STATE and LOCAL Land Use Planning.

(4) The proposed action will not have significant or controversial environmental effects.

(5) The proposed use of these lands will provide a service to the community and deter unauthorized dumping on public lands.

(6) This lease of land to Deschutes County is in conformance with the policy established by the Secretary of Interior to provide needed lands for community development.

The granting of the lease will not be adverse to any known public or private interest. The lease will be subject to the following terms and conditions:

(1) Operation of the transfer station will be conducted in accordance with standards established by the State Department of Environmental Quality.

(2) Waste material shall not be deposited on or under public land.

(3) The lessee is prohibited from accepting hazardous waste or substances as defined in ORS 466.005, RCRA (42 USCA 6903) and CERCLA (42 USCA 9601).

(4) Any prohibited wastes discovered at the transfer site shall be immediately removed and transported to a disposal site authorized to accept such waste. In the event hazardous wastes are discovered, the lessee shall notify the Authorized Officer. Hazardous wastes must be removed from the site within 48 hours, unless otherwise approved by BLM.

The previous classification of the lands for lease to Deschutes County, under the provisions of the above cited authority has segregated them from all other types of appropriation, including locations under the mining laws, except as applicable under the Mineral Leasing Laws.

Detailed information concerning this application, including the field reports and environmental assessment, are available for review at the Prineville District Office, P.O. Box 550, Prineville, OR 97754.

Petition for classification OR–44210 is approved as to the land described above.

Dated: August 4, 1988.

**Donald L. Smith,**

*Acting District Manager, Prineville, District Office.*

[FR Doc. 88–18139 Filed 8–10–88; 8:45 am]

BILLING CODE 4310–33–M

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**[ES–940–08–4520–13; ES–039019, Group 22]**

## Filing of Plats of Dependent Resurvey, Subdivisions of Sections and Survey of the Rend Lake Acquisition Boundary; Illinois

August 3, 1988.

1. The plat, in six sheets, of the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 4, 5, 7, 8, 17, 18, 19, 30 and 31, and the Rend Lake acquisition boundary, Township 5 South, Range 3 East, Third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 19, 1988.

2. The dependent resurvey and survey was made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 19, 1988.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Lane J. Bouman,**

*Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 88-18140 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GJ-M

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**[ES-940-08-4520-13; ES-039020, Group 98]**

## Filing of Plat of Survey of an Island; Michigan

August 4, 1988.

1. On August 3, 1988, the plat representing the survey of an island in Straits Lake, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on September 19, 1988.

The tract shown below describes the island omitted from the original survey.

**Michigan Meridian, Michigan**

T. 44 N., R. 18 W.

Tract 37.

2. The island described above is separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

3. Tract 37 rises approximately 24 feet above the ordinary high water mark of Straits Lake and is composed of sandy woodland soil. Tree species consist of white pine, red pine, hemlock, birch, cedar, maple and alder.

4. The present water level of the lake compares favorably with that of the original meander line, therefore, the elevation and upland character of the island along with the depth and width of the channel between the upland and the island are considered evidence that the island did exist in 1837, the year Michigan was admitted into the Union.

5. Tract 37 is more than 50 percent upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). Therefore, the island is held to be public land.

6. Except for valid existing rights, this island will not be subject to application, petition, location, or selection under any public law until September 19, 1988.

7. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Bureau of Land Management, Eastern States Office, prior to 7:30 a.m., September 19, 1988.

8. All inquiries concerning the color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, after September 19, 1988.

9. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Lane J. Bouman,**

*Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 88-18141 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GJ-M

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## Fish and Wildlife Service

### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-726734

Applicant: Steve Martin, Acton, CA.

The applicant requests a permit to export five captive-born wolves to Burnaby, British Columbia, Canada, for the purpose of educating to public about the conservation needs of the species. The wolves will then be returned to the U.S.

PRT-729898

Applicant: Kansas City Zoological Gardens, Kansas City, MO.

The applicant requests a permit to import one male captive born maned wolf (*Chysocyan brachyurus*) from Halle Zoo, Halle, East Germany for enhancement of propagation and survial of the species.

Applicant: National Zoological Society, Washington, DC.

The applicant requests a permit to import up to 30 captive born golden lion tamarins (*Leontopithecus rosalia*) from various institutions for physical examinations, marking, radio-tagging and re-exportation to Brazil for reintroduction to the wild as part of a golden lion tamarin conservation program that will enhance the propagation and survival of the species in the wild. The permits requested are listed below:

—Import 2 males, 4 females and young tamarins from Skansen Zoo, Stockholm, Sweden (PRT-729917).

—Import 1 male, 3 females and young tamarins from Frankfurt Zoological Garden, Frankfurt, Federal Republic of Germany (PRT-729918).

—Import 3 males, 3 females and young tamarins from Penscynor Wildlife Park, Clifrew, Wales (PRT-729919).

—Import 3 males, 4 females and young tamarins from Marwell Zoological Park, Colden Common, England (PRT-729920).

PRT-729899

Applicant: Donald Rogers, Darien, NY.

The applicant requests a permit to purchase 3 males and 3 females captive-born Laysan ducks (*Anas laysanensis*) from Ed Jordan, Cape Elizabeth, ME for enhancement of propagation and survival of the species.

PRT-730081

Applicant: Ken Wynne, Anchorage, AK.

The applicant requests a permit to import one male sport-hunted bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd of V.L. Pringle, Huntley Glen, Bedford, Cape Province, Republic of South Africa for enhancement of propagation.

PRT-728131

Applicant: Peter Pritchard, Maitland, FL.

The applicant requests a permit to import salvaged specimens of turtles and tortoises (Order Testudines) found dead, including specimens killed by local inhabitants for food or other purposes, in countries worldwide for the purpose of scientific research. The salvaged material will be incorporated into the applicant's collection and made available to researchers.

PRT-730091

Applicant: Duane Patrick, Bradford, TN.

The applicant requests a permit to purchase two pair of Hawaiian geese (=nene) *Nesochen* (=*Branta*) *sandvicensis* born is captivity from Doug Hopp, Sparta, Wisconsin, for enhancement of survival and propagation of the species.

PRT-730094

Applicant: Barney Lewis, Meridian, ID.

The applicant requests a permit to import two pair of captive born Chinese monal pheasants (*Lophophorus lhuysii*) from Bert Willemsen, Surrey, Canada, for enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: August 3, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 88-18179 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-AN-M

## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The collecction of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting documentation may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the collection of information should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340; with copies to Gerald Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091.

*Title:* Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur, 30 CFR Part 282.

*OMB Approval Number:* N/A.

*Abstract:* Under the proposed rule, respondents will provide certain information to the Minerals Management Service (MMS) concerning mining operations in the Outer Continental Shelf (OCS) for minerals other than oil, gas, and sulphur. The MMS will use this information to ascertain that Federal OCS lessess and/or holders of a right of use and easement are complying with the rules governing OCS mining operations contained in proposed 30 CFR Part 282.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Description of Respondents:* Federal OCS lessees and/or holders of a right of use and easement.

*Estimated Completion Time:* 13.3.

*Annual Responses:* 15.

*Annual Burden Hours:* 201.

*Bureau Clearance Officer:* Dorothy Christopher, (703) 435-6213.

Date: July 19, 1988.

**Richard B. Krahl,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 88-18168 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-MR-M

### Development Operations Coordination Document; Brooklyn Union Exploration Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Brooklyn Union Exploration Company, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5197, Block 280, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on August 5, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 5, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-18142 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31302]**

### Norfolk Southern Corp. and Lamberts Point Barge Co., Inc.—Joint Petition for Declaratory Order

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Petition filing, and institution of proceeding.

**SUMMARY:** Norfolk Southern Corporation (NS) and Lamberts Point Barge Company, Inc. (LPB) filed a joint petition for a declaratory order under 5 U.S.C. 554(e) seeking a Commission determination that NS's controlling interest in LPB and, in turn, LPB's ownership of a vessel leased under a "demise" or "bareboat" charter will not violate provisions of the Panama Canal Act, 49 U.S.C. 11321.

**DATES:** An original and 10 copies of comments must be filed by August 31, 1988. A copy of comments must be served on joint petitioners' representative at the address below. An original and 10 copies of joint petitioners' replies to comments must be filed by September 20, 1988. Joint

petitioner must serve their replies on all parties who file comments.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31301 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Joint petitioners' representative: F. Blair Wimbush, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

The joint petition may be inspected at the Commission's headquarters in Washington, DC. Copies are also available from joint petitioners' counsel, F. Blair Wimbush, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7345.

[TDD for hearing impaired: (202) 275–1721].

**SUPPLEMENTARY INFORMATION:** NS owns LPD and two Class I railroads. LPB owns an ocean-going barge, *Thoroughbred Topper*, (the Vessel) which is leased under demise charter to Gulfcoast Transit Company (Charterer) for a term of 1-year and with a provision for two 1-year renewals. The demise charter provides that LPB retains legal title but grants Charterer exclusive possession, control and use of the Vessel subject to a restriction that Charterer may not use the Vessel for movement over any route that might violate section 11321.

Petitioners seek the declaratory order so that they may remove this restriction in the lease. They maintain that it would improve Charterer's flexibility in using the Vessel if the Commission were to declare that petitioners' interest in the Vessel as demised to Charterer does not violate section 11321 regardless of the routes used. NS asserts that its interest in LPB, and LPB's ownership of a vessel subject to a demise charter are so far removed from the conduct of the business in which the Vessel is used that neither NS nor LPB can possibly reduce competition over any water route, because NS cannot control the services or prices offered by the demise Charterer. According to petitioners, there is no opportunity under the demise charter for petitioners to use the Vessel to undermine barge operators or to interfere with barge transportation in any way. Petitioners concede that removal of the route restriction could allow petitioners and the Vessel to compete for the same traffic but, they argue, permitting the Vessel to operate over any route would be in the public interest and not reduce competition. Petitioners maintain that, if the route restrictions are removed, competition by ocean-going barges will be increased by the potential operation of a new entrant in the market as Charterer could compete for the trade between particular points that it is now prevented from handling.

Dated: August 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–18038 Filed 8–10–88; 8:45 am]

BILLING CODE 7035–01–M

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**[Docket No. AB–167 (Sub–No. 1089X)]**

## Exemption; Consolidated Rail Corp.—Abandonment Exemption—Lycoming and Tioga Counties, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 62.2-mile line of railroad between the Jersey Shore Block Limit Station (approximately milepost 168.1) and the north side of Undergrade Bridge No. 105.9 over Marsh Creek (approximately mile post 105.9), in Lycoming and Tioga Counties, PA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 14, 1988, (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 115.27(c)(2) [2] must be filed by August 22, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 30, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles E. Mechem, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environment assessment (EA). SEE will serve the EA on all parties by August 15, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–18037 Filed 8–10–88; 8:45 am]

BILLING CODE 7035–01–M

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**[Finance Docket No. 31259 [1]]**

## Central Vermont Railway, Inc.; Petition for Exemption; Acquisition and Operation of Certain Interests in Rail Lines From the National Railroad Passenger Corp.

**AGENCY:** Interstate Commerce Commission.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[1] Related to Finance Docket No. 31250, *National Railroad Passenger Corporation—Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire.*

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, the acquisition and operation by Central Vermont Railway, Inc. (CV) of a 48.8-mile railroad line and related interests in New Hampshire and Vermont acquired by the National Railroad Passenger Corporation (Amtrak) from the Boston and Maine Corporation (B&M) in Finance Docket No. 31250 pursuant to an application under section 402(d) of the Rail Passenger Service Act, 45 U.S.C. 562(d), for conveyance of the Connecticut River Line and certain other property interests belonging to B&M, so that Amtrak may resume its Montrealer passenger service over that line. CV's exemption is subject to historic and employee protective conditions, and CV is further responsible for all labor protection expenses arising from the transaction in Finance Docket No. 31250.

**DATES:** The exemption will be effective on August 12, 1988. Petitions for reconsideration must be filed by August 31, 1988.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31259 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Robert P. vom Eigen, Hopkins, Sutter, Hamel & Park, 888 Sixteenth Street, NW., Washington, DC 20006

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's consolidated decision in this and F.D. 31250. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup for Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: August 4, 1988

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Chairman Gradison dissented with a separate expression. Vice Chairman Andre was absent and did not participate.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–18159 Filed 8–10–88; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Final Report

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Advisory committee final report and notice of further agency action.

**SUMMARY:** This notice announces the availability of the final report of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines, and provides information of further agency action based on the Advisory Committee recommendations contained in the report.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235–1910.

**SUPPLEMENTARY INFORMATION:** Pursuant to the requirements contained in section 101(a)(1) of the Federal Mine Safety and Health Act of 1977, the Mine Safety and Health Administration (MSHA) Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines has issued its final report to the Secretary of Labor. This report is available to interested members of the public. Copies of the report may be obtained upon request to Mr. Wayne Veneman, Office of Information and Public Affairs, Room 601, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235–1452.

The Advisory Committee was established by the Secretary of Labor and chartered pursuant to the provisions of the Federal Advisory Committee Act and the Federal Mine Safety and Health Act of 1977. As required by this charter, the Advisory Committee issued its final report to the Secretary in July 1988. The Report provides a set of recommendations on approval regulations, and health and safety standards related to the use of diesel-powered equipment in underground coal mines.

Pursuant to the requirements of section 101(a)(2) of the Federal Mine Safety and Health Act of 1977, MSHA will carefully review the report and develop a proposed rule which will address each of the recommendations made by the Advisory Committee. The Agency expects to issue its proposed rule in December 1988.

Signed at Arlington, Virginia, this 5th day of August, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88–18147 Filed 8–10–88; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted by September 12, 1988.

**ADDRESSES:** Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests a review of the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h)

*Title:* Challenge III Grant Application Guidelines for FY 1990.

*Frequency of Collection:* One-time.

*Respondents:* State or local governments; Non-profit institutions.

*Use:* Guideline instructions and applications elicit relevant information from non-profit organizations and State and local arts agencies that apply for funding under specific Challenge III program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

*Estimated Number of Respondents:* 150.

*Average Burden Hours per Response:* 80.

*Total Estimated Burden:* 12,000.

**Murray R. Welsh,**

*Director, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 88-18157 Filed 8-10-88; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-400]**

### Carolina Power & Light Co., et al., Shearon Harris Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-63 to the Carolina Power & Light Company (CP&L or the licensee), for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake and Chatham Counties, North Carolina.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's applications dated February 1 and February 8, 1988, and previous submittals dated May 26, and November 2, 1987.

*The Need for the Proposed Action*

The proposed changes are needed so that the licensee can use higher enrichment fuel, and provides the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.2 weight percent and the license would expect the fuel to be irradiated to levels above 33 gigwatt days per metric ton (GWD/MT) but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the attached staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Shearon Harris Nuclear Power Plant, Units 1 and 2," dated October 1983.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 1, and February 8, 1988, and submittals May 26 and November 2, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Rockville, Maryland, this 3rd day of August 1988.

For the Nuclear Regulatory Commission.

**Edward A. Reeves,**

*Acting Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

**NRC Assessment of the Environmental Effects of Transportation Resulting From Extended Fuel Enrichment and Irradiation**

*Introduction*

Several Licensees of light water reactors (LWRs) have submitted proposed license amendments to permit use of enriched fuel in excess of four (4) weight-percent uranium-235 and to extend fuel irradiation from the current limit of 33 Gigawatt Days/Metric Ton (GWD/MT) up to 60 GWD/MT. It is anticipated that, in time, almost all licensees of light water reactors will request approval to adopt increases in

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irradiation levels and fuel enrichment. Paragraph (b) of 10 CFR 51.52 states, among other things, that the reactors using fuel enrichment greater than 4 weight-percent uranium-235 or where fuel irradiation exceeds 33 GWD/MT, the licensee shall provide a full description and detailed analysis of the environmental effects to transportation of fuel and wastes to and from the reactor, including values for the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport. The Statement shall indicate that the values determined by the analysis represent the contribution of such effects to the environmental costs of licensing the reactor.

With respect to the issue, the staff published a Notice of Environmental Assessment and Finding of No Significant Impact for extended burnup fuel use in Commercial LWRs in the **Federal Register** (53 FR 6040), dated February 29, 1988. In the above cited notice, the staff concluded that the environmental impacts summarized in Table S-4 of 10 CFR 51.52 for the burnup level of 33 GWD/MT are conservative and bound the corresponding impacts for burnup level up to 60 GWD/MT and uranium-235 enrichments up to five percent by weight. The staff also concluded that there are no significant adverse radiological or non-radiological impacts associated with the use of extended fuel burnup and/or increased enrichment, and that this use will not significantly affect the quality of the human environment. Moreover, pursuant to 10 CFR 51.31, the Commission determined that an environmental impact statement need not be prepared for this action.

The Staff is in the process of revising the regulations at 10 CFR 51.52 to reflect the findings published in the above cited **Federal Register** Notice. In the interim, in connection with its review of proposed license amendments to permit use of fuel enriched with uranium 235 in excess of 4 percent and up to 5 percent by weight and irradiated to levels above 33 GWD/MT and up to 60 GWD/MT, and pursuant to 10 CFR 51.52(b), the staff proposes to accept the following analysis of the environmental effects of the transportatio of such fuel and waste until such time as the revision to the rule is issued.

**Environmental Impacts of Transportation**

In evaluating the environmental impacts of the use of extended irradiation of high enrichment, fuel, the Commission has relied upon the following four studies dealing with the transportation impacts:

(1) Pacific Northwest Laboratories' report NUREG/CR-5009, "Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors," dated February 1988, prepared for the Nuclear Regulatory Commission;

(2) Nuclear Regulatory Commission's report WASH-1238, "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants, dated December 1972;

(3) Envirosphere Company Report AIF/NE SP-032, "The Environmental Consequences of Higher Fuel Burnup," dated June 1985, prepared for National Environmental Studies Project (NESP) and the Atomic Industrial Forum, Inc.,a with the participation of the Commission's staff; and

(4) Sandia National Laboratories (SNL) Draft Report NUREG/CR-2325, "The Transportation of Radiactive Material (RAM) To and From U.S. Nuclear Power Plants," dated December 1983.

All four studies present the results of evaluation of transportation impacts for postulated traffic models. The results are presented for traffic density, radiological occupational risks, radiological public risks of normal transportation, and risks of transportation accidents. The Pacific Northwest Laboratories (PNL) report and the Envirosphere Company report present the environmental impacts for fuel irradiation levels extending up to 60 GWD/MT and enrichments up to 5 weight percent uranium-235. The PNL results appear to have been derived from the analysis presented in the NESP report.

Table I summarizes the results of traffic densities for transportation of fresh fuel, spent fuel, and other solid waste by truck, rail and barge used in the four studies.

TABLE I.—TRAFFIC DENSITIES SHIPMENTS PER REACTOR YEAR

| Transportation mode | NUREG/CR-5009 (PNL) | | NESP-032 | | WASH-1238 | SNL [1] |
|---|---|---|---|---|---|---|
| | 33 GWD/MT | 60 GWD/MT | 33 GWD/MT | 60 GWD/MT | 33 GWD/MT | 33 GWD/MT |
| TRUCK | 112 | 92 | 112 | 92 | 112 | 122 |
| RAIL | 10 | 6 | 10 | 6 | 10 | 2.3 |
| BARGE | 5 | 3 | 5 | 3 | ..... | ..... |

[1] The report does not clearly state the assumptions regarding fuel enrichment and irradiation levels. However, since Table S-4 in 10 CFR 51.52 is based on 33 GWD/MT, the staff has assumed that SNL analysis must be based on the assumptions contained in 10 CFR 51.52, Table S-4.

The comparison of the results of traffic density analysis shows that there is a reasonable good correlation between the total number of shipments shown in SNL results and that shown in other reports for 33 GWD/MT. Both the PNL study and the NESP study show that there will be a reduction in the total number of shipments (fresh fuel, spent fuel, and low level wastes) when higher levels of irradiation (60 GWD/MT) are assumed. Such high irradiation levels may require that fuel enrichment be increased up to a maximum of 5 weight percent. The reduction in the shipments is due to the fact that there will be fewer outages for fuel reloads resulting in reduced fuel shipments to the reactor and reduced spent fuel shipments from the reactor. However, there will be an increase in the shipment of low level solid wastes. Even when this increase in low level waste shipment is included with the shipment of fresh fuel and spent fuel, the total shipments for higher irradiation (60 GWD/MT) are still somewhat reduced from those at 33 GWD/MT. As a result of the reduction in number of shipments, there should be some reduction in the estimated number of persons exposed. There should also be no significant change in heat generated per irradiated fuel cask and the weight restriction for transporting vehicle.

The discharged spent fuel at higher irradiation (60 GWD/MT) will have more long lived radionuclides per unit mass compared with the spent fuel irradiated at 30 GWD/MT. However, there is a smaller amount of annual spent fuel discharged. Since each spent

fuel package will meet the surface radiation level limits imposed by the transportation regulations and there are fewer packages being shipped, there will be an overall reduction in the impacts of normal transportation of spent fuel at higher irridiation levels. However, the normal transportation impacts of low level wastes will increase with increased irradiation level. This is due to the fact that slight increases in cooling water activity could occur through increased inventory and gap release fraction. Because this activity would need to be removed to keep cooling water activity within licensed technical specification limits, a small increase in the quantity of low level wastes is estimated to occur. Both NUREG/CR–5009 and NESP–0032 conservatively assume a 20% increase in solid waste at 60 GWD/MT irradiation. Table II summarizes the combined environmental impacts of normal transportation of spent fuel, low level waste and new fuel activities at 33 GWD/MT and 60 GWD/MT as presented in NUREG/CR–5009 and NESP–032.

TABLE II.—NORMAL TRANSPORTATION RADIOLOGICAL EXPOSURE RISK PERSON REM/REACTOR YEAR

| Exposure type | NUREG/CR–5009 (PLN) | | NESP–032 | |
|---|---|---|---|---|
| | 33 GWD/MT | 60 GWD/MT | 33 GWD/MT | 60 GWD/MT |
| Occupational | 4.2 [1] | 3 | 4.2 | 3 |
| General Public | 3.2 [1] | 2.5 | 3.2 | 2.0 |
| Total (Normal Transportation Exposures) | 7.4 | 5.5 | 7.4 | 5.0 |

[1] These values are identical to the rounded off values reported in Table S–4 of 10 CFR 51.52, and form the basis of the Commission's determination of no significant adverse environmental impacts of transportation of fuel and wastes to and from nuclear reactor sites.

The above results show that there is in fact an overall reduction in the radiological impacts of normal transportation (the calculated impacts are lower than the values reported in Table S–4).

Environmental impacts also result from transportation accidents. The extended irradiation of fuel will result in an increase in the actinide and fission product inventory in the fuel. Since the spent fuel in transported after an extended storage at the site (5 years), only the long lived fission products and antinides would remain to contribute to the risk. The PNL analysis shows that the overall effect of a higher inventory of antinides and long lived fission products would be to increase the projected dose in the event of an accident involving spent fuel by a factor of about 2.7, when irradiation is increased from 33 GWD/MT to 60 GWD/MT. However, because the increased irradiation will correspondingly decrease the amount of the spent fuel discharged, the probability of a transportation accident will be reduced by an amount roughly equal to the ratio of irradiation levels. The overall effect of the increase in irradiation to 60 GWD/MT would be to increase the radiological risk of spent fuel transportation accidents by about 50%.

As stated earlier, the amount of low level waste is conservatively assumed to increase by about 20% when irradiation levels are increased to 60 GWD/MT. No significant change in composition of low level wastes is expected. Therefore, the transportation accident risks of low level waste shipment would increase by 20%. The transportation risk associated with new fuel shipments would decrease as shipments decreased due to extended burnup.

Although Table S–4 indicates that the radiological risk of accidents is small and not capable of quantification, the radiological risks of transportation accidents were calculated in NUREG/CR–2325. For the 1985 transportation model, the SNL calculated radiological risk of 1.8 person-rem/reactor year. The staff has conservatively assumed from the PNL analyses that the higher irradiation (60 GWD/MT) would result in a 50 percent increase in radiological risks due to transportation of all kinds of radioactive waste (even though for low level waste the increase in expected to be 20% or less and for new fuel the risk would decrease with the assumption). SNL calculated risk of 1.8 person-rem/reactor year could increase to 2.7 person-rem/reactor year at 60 GWD/MT irradiation level. When accident risks at 33 GWD/MT (SNL value) and 60 GWD/MT (Scaled SNL value) are added to normal impacts (PNL and NESP–032 value in Table II), the overall radiological risks at higher irradiation levels are still lower than the risks at 33 GWD/MT irradiation levels. This is shown on Table III.

The analyses presented in NESP–032 show that the radiological environmental impacts of transportation accidents are small at 33 GWD/MT and remain small at 60 GWD/MT. The NESP–032 finding is consistent with finding in WASH–1238 and the results summarized in Table S–4 of 10 CFR 51.52.

TABLE III.—TRANSPORTATION RADIOLOGICAL EXPOSURE RISK PERSON REM/REACTOR YEAR

| | NUREG/CR–5009 (PNL) | | NESP–032 | |
|---|---|---|---|---|
| | 33 GWD/MT | 60 GWD/MT | 33 GWD/MT | 60 GWD/MT |
| Normal Transportation Exposures | 7.4 | 5.5 | 7.4 | 5.0 |
| Accident Exposures (from SNL) | 1.8 | 2.7 | 1.8 | 2.7 |
| | 9.2 | 8.2 | 9.2 | 7.7 |

The non-radiological impacts of transportation accidents are presented in Table S-4 as follows:

(a) 1 fatality in 100 reactor years.

(b) 1 non-fatal injury in 10 reactor years.

(c) $475 property damage per reactor year.

As seen in Table 1, the overall shipments of fresh fuel, spent fuel, and low level waste are slightly reduced. Therefore, the likelihood of an accident would decrease with the decreased number of shipments, while the non-radiological consequences of transportation accidents would remain unchanged.

In summary, the environmental impacts of extended irradiation up to 60 GWD/MT and increased enrichment up to 5 weight percent are bounded by the impacts reproted in Table S-4 of 10 CFR Part 51. Table IV shows the summary of the comparison of impacts. Table IV also supports the staff's conclusions concerning transportation impacts in the **Federal Register** Notice 53 FR 6040.

TABLE IV.—SUMMARY COMPARISON OF TRANSPORTATION IMPACTS

| | Table S-4 | 60 GWD/MT and up to 5 percent enrichment |
|---|---|---|
| Traffic Density | | |
| Truck | Less than 1 per day. | No increase. |
| Rail | Less than 3 per month. | No increase. |
| Radiological Risk—Person REM per year: | | |
| Normal Transportation. | 7 | 5.0–5.5 |
| Accidents | 1.8 | 2.7 |
| Total | 8.8 | 7.7–8.2 |
| Non-Radiological Risk. | 1 Fatality/100 Reactor Years. | No increase. |
| | 1 Non-Fatal Injury/10 Reactor Yeras. | No increase. |
| | $475 Property Damage/ Reactor Year. | No increase. |

The above evaluation sets forth the changes resulting from increased enrichment (up to 5 weight percent) and extended irradiation (up to 60 GWD/MT), in the environmental impacts of transportation of fuel and wastes to and from the light water ractors set forth in Table S-4, 10 CFR Part 51. The values set forth in this detailed analysis represent the contribution of the environmental effects of transportation of fuel enriched with uranium 235 above 4 weight percent and up to 5 weight percent, and irradiated to levels above 33 GWD/MT and up to 60 GWD/MT to the environmental costs of operating the reactors. As shown above, the environmental cost contributions of the stated increases in fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4, as set out in 10 CFR 51.52(c).

Dated: July 7, 1988.

[FR Doc. 88-18175 Filed 8-10-88; 8:45 am]
BILLING CODE 7590-01-M

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**[Docket No. 50-341]**

## Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi-2 located in Monroe County, Michigan.

### Environmental Assessment

*Identification of Proposed Action*

The Proposed amendment would revise provisions in the Fermi-2 Technical Specifications (TSs) relating to the Standby Gas Treatment System (SGTS) Radiation Monitors and the Containment High Range Radiation Monitor.

*The Need for the Proposed Action*

The proposed changes to the TSs are required in order to remove the potential for an unmonitored release for fission products from the plant and to revise Action Statement 81 to make it consistent with NRC Generic Letter 83-36.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed revision would require a minimum of two channels, instead of one, of the SGTS Radiation Monitors to be operable to ensure that appropriate compensatory actions are taken to preclude conditions which have the potential for allowing unmonitored releases of noble gases. In addition, the proposed amendment would (1) revise the associated Action Statement 81 in Table 3.3.7.5-1 for the SGTS Radiation Monitors and Containment High Range Radiation Monitor to extend the time period before the licensees are required to submit a Special Report to the Commission (pursuant to 6.9.2 of the TSs) as recommended by NRC Generic Letter 83-36; and (2) make appropriate changes in the TS Bases for Accident Monitoring Instrumentation as a result of the changes. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TSs involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 10, 1988 (53 FR 7819). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternatives to the Proposed Action*

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This may increase the environmental impacts attributed to the facility due to allowing the potential for unmonitored releases from the facility.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to

Operation of Fermi-2," dated August 1981.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated November 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 5th day of August 1988.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Director, Project Directorate III–1, Division of Reactor Projects–III, IV, V and Special Projects.*

[FR Doc. 88–18176 Filed 8–10–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–461]**

## Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

**Environmental Assessment**

*Identification of Proposed Action*

In general, the proposed license amendment would revise Technical Specification (TS) Section 4.8.2.1.d.2.b in order to accurately reflect the 4-hour Division II battery emergency loading profile. The licensees proposed to increase the emergency loading profile of the Division II battery by 10 amperes. This increases the first, second, and third periods of the battery emergency loading profile to 462 amperes, 296 amperes, and 108 amperes, respectively.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

*The Need for the Proposed Action*

Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF–62 in order to accurately reflect the 4-hour Division II battery emergency loading profile.

The purpose of this profile is to define the level of loading in amperes that the battery would have to supply for a specific time period during an emergency condition with the battery charger inoperable. The Technical Specification requires a demonstration once every 18 months during shutdown that the battery can supply a dummy load of that profile or that it can supply the actual emergency loads.

A review conducted by the licensees determined that a Division II load (Fire Protection distribution panel) was not considered for this profile during a previous plant modification review. The proposed Technical Specification change therefore increases the emergency loading profile of the Division II battery by 10 amperes. This increases the first, second, and third periods of battery emergency loading profile to 462 amperes, 296 amperes, and 108 amperes, respectively.

*Environmental Impacts of the Proposed Action*

The licensees stated that the battery capacity has been evaluated using the new loading profile to ensure its capability of supporting required design basis accident loads. The staff has determined that the change in battery load is not significant in comparison to the battery capacity and that the batteries are capable of supplying the new loads now and at the end of their twenty year life per IEE 485.

Based on the relatively small increase in battery loading and the battery's capability of supplying the new loads, the staff concludes that the Division II battery will continue to provide its original 4-hour endurance under the new emergency loading profile.

The Commission has determined that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, and for proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environment impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable".

*Alternative to the Proposed Actions*

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Comission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this Environmental Assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

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[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

Dated at Rockville, Maryland, this 4th day of August 1988.

For the Nuclear Regulatory Commission.

**Leonard N. Olshan,**

*Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V and Special Projects.*

[FR Doc. 88–18177 Filed 8–10–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–271]**

### Vermont Yankee Nuclear Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 105 to Facility Operating License No. DPR–28 issued to Vermont Yankee Nuclear Power Corporation (the licensee), which revised the Technical Specifications for operation of the Vermont Yankee Nuclear Power Station located in Vernon, Vermont. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications to reflect new limiting conditions of operation and surveillance requirements for the automatic depressurization system in response to NUREG–0737, Item II.K.3.18.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 3, 1988 (53 FR 6889). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendment dated November 30, 1987 and clarifying information dated January 20, 1988 and April 13, 1988, (2) Amendment No. 105 to License No. DPR–28, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Brooks Memorial Library, 244 Main Street, Brattleboro, Vermont 05301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this August 4, 1988.

For the Nuclear Regulatory Commission.

**Vernon L. Rooney,**

*Project Manager, Project Directorate I–3, Division of Reactor Projects, I/II.*

[FR Doc. 88–18178 Filed 8–10–88; 8:45 am]

BILLING CODE 7590–01–M

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## POSTAL RATE COMMISSION

### Powder Springs, TN 37848, Boyd Kitts, et al., Petitioners; Order Accepting Appeal and Establishing Procedural Schedule

**[Order No. 793; Docket No. A88–4]**

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc, III.

Issued August 4, 1988.

*Docket Number:* A88–4.

*Name of Affected Post Office:* Powder Springs, Tennessee 37848.

*Name(s) of Petitioner(s):* Boyd Kitts and others.

*Type of Determination:* Consolidation.

*Date of Filing of Appeal Papers:* July 29, 1988.

*Categories of Issues Apparently Raised:*

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

*The Commission orders:*

(A) The record in this appeal shall be filed on or before August 15, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Charles L. Clapp,**

*Secretary.*

**Appendix—Powder Springs, Tennessee 37848, Docket No. A88–4**

July 29, 1988—Filing of Petition
August 4, 1988—Notice and Order of Filing of Appeal
August 23, 1988—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)]
September 2, 1988—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)]
September 22, 1988—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
October 7, 1988—(1) Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)]
October 14, 1988—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]
November 26, 1988—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 88–18143 Filed 8–10–88; 8:45 am]

BILLING CODE 7715–01–M

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## RAILROAD RETIREMENT BOARD

### Computer Matching Program; USDA Food Stamp Program Recipient Records-RRB Retirement and Survivor Benefit Records

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice.

**SUMMARY:** The Railroad Retirement Board (RRB) hereby gives notice that it is proposing to conduct a matching program with the United States Department of Agriculture—OIG (USDA–OIG). The match will compare the USDA–OIG Food Stamp Program recipient files with the RRB's master file of retirement and survivor beneficiaries. The purpose of the match is to provide the USDA–OIG with railroad retirement and survivor benefit data for persons who are in receipt of both USDA–OIG Food Stamp Program benefits and railroad retirement or survivor benefits. The goals of the matching program are to adjust the award of USDA–OIG benefits if RRB benefits were not reported or were incorrectly or

incompletely reported and to recoup the amount of any overpayments resulting from payment of USDA–OIG benefits in excess of entitlement.

As prescribed by the OMB Revised Guidelines for the Conduct of Matching Programs, published at 47 FR 21656–58 (May 19, 1982), the text of the matching program report follows. In accordance with these guidelines, copies of this report have been sent to OMB, the Speaker of the House, and the President of the Senate

**FOR FURTHER INFORMATION CONTACT:** LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Telephone (312) 751–4548.

Dated: July 26, 1988.

By authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

**Report of Matching Program: Food Stamp Program Recipient Records/ Railroad Retirement Board Retirement and Survivor Benefit Records**

*A. Authority*

38 U.S.C. 3006.

*B. Description of the Matching Program*

1. *Organizations Involved:* The involved components are the Railroad Retirement Board (RRB) and the Department of Agriculture—Office of Inspector General (USDA–OIG).

2. *Purpose:* Food Stamp Program (FSP) benefits are payable at a rate prescribed by law but subject to reduction by the amount of monthly income of the recipient. Benefits paid under the Railroad Retirement Act are considered as income for the purposes of reducing the amount of these FSP benefits. The purpose of the matching program is to identify FSP recipients who are also receiving railroad retirement or survivor benefits and to furnish, for such dual beneficiaries, the amount of the RRB retirement or survivor benefits that they are receiving. The goals of the matching program are to adjust the award of FSP benefits if RRB benefits were not reported or were incorrectly or incompletely reported and to recoup the amount of any overpayments resulting from payment of FSP benefits in excess of entitlement. .

3. *Procedures:* The USDA–OIG will furnish the RRB with an extract file from the FSP files. An extract record will be prepared for each person who is receiving FSP benefits. The extract file will be sorted into social security number (SSN) sequence and mailed to the RRB.

The RRB will match USDA–OIG's extract file against its research records of retirement and survivor benefits. The match will be on SSN solely. For each hit, the RRB will furnish USDA–OIG with the total amount of RRB monthly benefits paid. In the event an individual is receiving benefits on more than one RRB account, the amount will be combined into a single amount for transmittal to USDA–OIG. The RRB amount to be transmitted will be the amount paid after all permanent reductions have been made (e.g., age, SSA benefit, actuarial adjustment) but before any temporary deductions have been made (e.g., partial withholding for excess earnings, withholding for income tax, SMI premiums). The RRB benefit amount on hits will be entered in the USDA–OIG extract tape, which will be returned to the USDA–OIG.

The USDA–OIG will process RRB data as follows: (a) For FSP recipients on whom receipt of RRB benefits is already a matter of record with the FSP, and FSP will enter the amount of RRB benefits on its records to reflect the amount of such benefits which the RRB has furnished; however, for each FSP beneficiary whose verified RRB benefit amount differs from that on FSP records, the FSP will advise its beneficiary of the amount of RRB payments reported to the FSP by the RRB and of any proposed award adjustment before adjusting any FSP benefit. If a FSP recipient disputes the amount or effective date of RRB benefits, the FSP shall contact the RRB for verification. The FSP will provide the beneficiary with the exact amount of RRB benefits furnished so that the beneficiary can dispute any discrepancy; and (b) For FSP recipients on whom receipt of RRB benefits is *not* already a matter of record with the FSP, the FSP shall contact the RRB for verification. With respect to any award action which the FSP intends to take regarding any beneficiary covered by the procedures outlined above, the FSP shall comply with due process provisions of applicable law prior to making any adjustments in FSP benefits based on information furnished by the RRB.

*C. Records To Be Matched*

RRB will match its research retirement and survivor master files with the USDA–OIG extract file of FSP recipients. The RRB research retirement and survivor master files are covered by Privacy Act systems of records RRB–25 and RRB–26, which were last publish in their entirety at 42 FR 4783–84 dated September 20, 1977. The USDA–OIG's FSP files are covered by Privacy Act system of records Audit Information System USDA–OIG–6, which was last published in its entirety at 50 FR 50814–50819 dated December 12, 1985.

*D. Period of the Match*

it is expected that the first match will take place at the earliest mutually agreeable time. Subsequent matches will take place after each scheduled legislative increase in RRB benefits. Such increases are anticipated to occur on an annual basis. Thus the matching program is expected to be an annual one; however, legislative changes could result in less or more frequent matches.

*E. Security Safeguards*

The RRB will maintain such administrative, technical, and physical security safeguards for the USDA–OIG file while in the possession of the RRB as it does for its own files: Records are maintained in areas not accessible to the public and are not permitted to be removed from headquarters without authorization. All magnetic tapes not in use or not in security storage are housed in a tape library room that is locked during off-duty hours and to which access is restricted. Access to the computer room is also restricted and is locked during off-duty hours. These same safeguards will apply to the USDA–OIG extract file while it is in the possession of the RRB.

The USDA–OIG security safeguards for RRB information on "hit individuals" furnished to the USDA–OIG shall be the same as for other personal information in this system of records.

*F. Disposition of Records*

The USDA–OIG extract tape will be returned to the USDA–OIG within 30 days after each match is completed. Information extracted from RRB files regarding "hits" will be incorporated into USDA–OIG Privacy Act system of records and will be disposed of according to established record retention schedules for such records.

*G. Other Comments*

1. *Background of the Match:* Previous audits of the FSP have determined that some recipients do not fully report their sources and amounts of income to the FSP. As a result, those recipients receive FSP benefits to which they are not entitled. The USDA–OIG initiated this computer match to determine if FSP recipients who are also in receipt of RRB benefits are correctly reporting their FSP benefits.

2. *Routing Uses:* The RRB will publish in the **Federal Register** a proposed routine use for its Privacy Act systems of records RRB–25 and RRB–26 that will permit disclosure of benefit information from these systems to the USDA–OIG. Likewise, the USDA–OIG will publish in the **Federal Register** a proposed routine

use for its Privacy Act system of records Audit Information System, USDA–OIG–6, that will permit disclosure of identifying information from this system to the RRB. The proposed match will not begin until the Privacy Act requirements governing routine uses have been met: namely, that the public be given 30 days in which to comment on the proposed routine use before it is effective, and, if comments are received, that the agency take them into consideration before making any disclosures pursuant to the routine uses.

3. *RRB Use Of USDA–OIG's Extract File:* The RRB will use the USDA–OIG extract file only to match with the RRB files agreed to; it will not use the USDA–OIG file to extract information concerning "non-hit" individuals for any purpose; and it will not duplicate the file, produce hard copy from it, or disseminate it within or outside the agency unless specifically authorized in each instance by the USDA–OIG.

[FR Doc. 88–17451 Filed 8–10–88; 8:45 am]
BILLING CODE 7035-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–25966; File No. SR–MSE–88–3]**

### Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Amendments to Rules Authorizing Odd-Lot Differentials

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted on April 4, 1988 proposed amendments to is rules governing price differentials on odd-lot trades. The proposal also details the changed pricing and execution procedures of various odd-lot orders.

Notice of the proposed amendments to odd-lot executions was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25633; May 2, 1988) and by publication in the **Federal Register** (53 FR 164485; May 9, 1988). No comments were received with respect to the proposed amendments.

The proposal removes the authority of the Exchange's Committee on Floor Procedure to designate an odd-lot differential,[3] thereby eliminating the differential previously imposed on customer odd-lot orders. Amended MSE Rule 1 of Article XXXI would no longer authorize the designation of an odd-lot differential by the Committee on Floor Procedure, and, accordingly, MSE Rule 7 of Article XXXI, which has allowed odd-lot dealers to charge a differential, is withdrawn under the proposal.

The proposal also explains the changed pricing procedures of a variety of odd-lot orders, all of which eliminate the odd-lot differential.[4] Odd-lot market orders in MSE exclusive issues will be executed at the best available bid or ask price of a round lot in effect at the time the order is presented. With respect to certain designated MSE dually traded issues: (i) Odd-lot market orders will be executed at the best available quotation disseminated pursuant to Commission Rule 11Ac1–1, the "Quote Rule"; [5] (ii) the odd-lot portion of an order involving a round lot will be based on the round lot, regardless of where the round lot is executed; and (iii) in trading halt situations, odd-lot market orders will be executed based on the primary exchange market's reopening price.

More generally, an odd-lot market will be executed at the current round lot bid or ask price. Stop orders to buy (sell) will become market orders when a round lot transaction takes place at or above (below) the stop price, and the order must be filled at the price of the next transaction. Buy limit orders (or long sell limit orders) shall be executed at the limit price, only after there has been a round lot transaction in the primary market at a price below (above) the limit price. Again, none of these odd-lot orders will be charged a differential under the proposal.

The Commission believes that the proposal is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and, more specifically, sections 6(b)(5) and 11a(a)(1)(C)(i) of the Act, in that the amendments will facilitate transactions in securities, add to the maintenance of a free and open market, and provide for more enconomically efficient executions of securities transactions. The Commission finds that the proposed amendments to MSE Rules 1 and 10 of Article XXXI, and the withdrawl of MSE Rule 7 of Article XXXI, will simplify the pricing and execution of odd-lot orders, and that the elimination of the differential on all such transactions will result in the execution of customer orders at prices more representative of market interests, and with lower transaction costs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Jonathan G. Katz,**
*Secretary.*

Dated: August 4, 1988.

[FR Doc. 88–18152 Filed 8–10–88; 8:45 am]
BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The differential is the charge, usually ⅛ of a point, that dealers add to odd-lot purchases and subtract from odd-lot sales. For example, if a customer placed an odd-lot market order to buy a stock quoted at 20 by 20¼ the execution would occur at 20⅜ (the 20¼, sell quote plus the ⅛ differential), if the market traditionally charged a differential on such orders.

[4] The Commission recently approved a similar rule change proposed by the Philadelphia Stock Exchange ("Phlx"). Although the Phlx rule change is substantially similar to the MSE proposal, the Phlx retained the authority to charge a differential on odd-lot stop limit orders. *See* Securities Exchange Act Release No. 25665 (May 5, 1988), 53 FR 16828 (May 11, 1988).

[5] 17 CFR 240.11Ac1–1.

[6] *See* 17 CFR 200.30–3(a)(44).

## Issuer Delisting; Application To Withdraw From Listing and Registration; Scientific Leasing, Inc. 8¼% Convertible Subordinated Debentures, Due 2003), File No. 1–8433

August 5, 1988.

Scientific Leasing Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

As a result of a merger with LINC Acquisition Corp. all of the Company's equity securities are beneficially owned by The LINC Group, Inc. In addition, the debentures are no longer convertible into common stock but rather into cash only. In view of the fact that there are only 188 record holders of the debentures, trading activity is not substantial and the rights of the debenture holders to convert to common stock has been terminated the Company has determined that the direct and indirect costs and expenses of continued listing on the Amex are no longer justified and delisting is in the best interest of the Company's stockholders.

Any interested person may, on or before August 26, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts

bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-18154 Filed 8-10-88; 8:45 am]

BILLING CODE 8010-01-M

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**Issuer Delisting; Application To Withdraw From Listing and Registration; Warner Computer Systems, Inc. (Common Stock, $.01 Par Value), File No. 1-9228**

August 5, 1988.

Warner Computer Systems, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("Annex"). The Company's common stock was recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 26, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-18153 Filed 8-10-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-16516; 812-7014]**

## The RBB Fund, Inc.; Application

August 5, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* The RBB Fund, Inc. ("Fund") and Planco Financial Services, Inc.

*Relevant 1940 Act Sections:* Exemption requested pursuant to section 6(c) from Sections 18(f)(1), 18(g) and 18(i).

*Summary of Application:* Applicants seek an order to permit the issuance and sale of separate classes of shares representing interests in the same investment portfolio that would be identical in all respects except for class designation and the allocation of certain expenses and voting rights.

*Filing Date:* The application was filed on April 7, 1988, and an amendment thereto was filed on July 12, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 26, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Attn: Edward J. Roach, Treasurer, 103 Springer Building, 3411 Silverside Road, Wilmington, Delaware 19803.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel at (202) 272-3030 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. The Fund is registered under the 1940 Act as an open-end diversified management investment company. Pursuant to its Articles of Incorporation, the Fund has classified its shares of common stock (the "Shares") into fourteen separate classes ("Classes") representing interests in seven investment portfolios ("Portfolios"). The Fund has filed with the Commission a Registration Statement on Form N-1A, as amended, relating to such Classes.

2. Two Classes of Shares of the Fund (the "Cash Preservation Classes") are currently expected to be offered principally to persons who are recipients of insurance policy payments, with one Class representing interests in a money market investment portfolio (the "Money Portfolio") and the second Class representing interests in a tax-free money market portfolio (the "Tax-Free Money Portfolio"). Three Classes of Shares (the "Sansom Street Classes") will be offered to banks (the "Banks") affiliated with PNC Financial Corp on behalf of customers who have authorized investment in the Fund ("Customers"), with one Class representing interests in the Money Portfolio, a second Class representing interests in the Tax-Free Money Portfolio and a third Class representing interests in a Government Obligations Money Market Portfolio (the "Government Obligations Portfolio"). Three Classes of Shares (the "Bedford Classes") will be offered primarily to registered broker/dealers on behalf of their customers, generally as a sweep vehicle for cash balances in customers' brokerage accounts, but may also be purchased directly by investors, with one Class representing interests in the Money Portfolio, a second Class representing interests in the Tax-Free Money Portfolio and a third Class representing interests in the Government Obligations Portfolio. Six additional Classes of the Fund's Shares (the "Safeguard Classes") will be sold primarily to individuals by broker/dealers, with each Class representing interests in a different investment portfolio, four of which represent interests in non-money market

investment portfolios and are to be sold with a sales load, and the remaining two of which represent interests in the Money Portfolio and the Tax-Free Money Portfolio. Applicant's Money Portfolio, Tax-Free Money Portfolio and Government Obligations Portfolio, together with any other Portfolios of the Fund that in the future declares dividends on a daily basis are sometimes referred to as the "Daily Dividend Portfolios".

3. Planco Financial Services, Inc. (the "Distributor") will serve as distributor of the Fund's Shares. Provident Institutional Management Corporation and Provident National Bank ("Provident") serve respectively as the Fund's investment adviser and sub-advisor. Provident and Provident Financial Processing Corporation serve respectively as the Fund's custodian and transfer agent.

4. The Fund has created multiple Classes in a Daily Dividend Portfolio to permit Applicants to market the Fund's Shares to various categories of investors, when all such investors share a common investment goal (compatible with the investment objective and policies of a Daily Dividend Portfolio) but when such investors may best be reached by the Fund through differing marketing channels which involve different levels of expenditures.

5. Except for its class designation and the allocation of certain expenses and voting rights as described below, each Class of Shares in a Daily Dividend Portfolio will be identical in all respects to all other Classes in the same Daily Dividend Portfolio. The differ, however, in that each Class of Shares will be offered in connection with a different Rule 12b–1 Plan adopted by the Fund pursuant to Rule 12b–1 under the Act (the "Plans"). The adoption and implementation of a Plan by one Class will be made independently of, and will not be conditioned upon, the adoption or implementation of a Plan by any other Class. In addition, each Plan will relate only to the Shares of a particular Class.

6. The Sansom Street Classes of a Daily Dividend Portfolio will differ from other Classes in such Portfolio in that the Shares of such Class will be offered in connection with a Shareholder Services Plan (a "Services Plan"). Under each Services Plan, the Fund intends to enter into shareholder servicing agreements ("Servicing Agreements") with the Banks concerning the provision of support services to the Customers. The provision of support services under a Services Plan will augment (and not duplicate) the services that will be provided to a Sansom Street Class by the Fund's adviser, distributor, custodian and transfer agent. Fees paid under Servicing Agreements ("Service Payments") will be borne solely by the Class to which such Servicing Agreements relate.

7. Each Share in a particular Daily Dividend Portfolio, regardless of Class, will represent an equal pro rata interest in the Daily Dividend Portfolio and will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions limitations, qualifications, designations and terms and conditions, except that: (1) Each Class will have different class designations; (2) each Class of shares will bear the Expenses of Applicant's operations which are directly attributable to such Class; and (3) only the holders of the Shares of a Class involved will be entitled to vote on matters pertaining to a Plan of that Class (for example, the adoption, amendment or termination of a Plan) or any other matter affecting only that Class.

8. The net asset value of all outstanding Shares representing interests in the same Daily Dividend Portfolio will be computed on the same days and at the same times and in the same manner. Further, the gross income of a Daily Dividend Portfolio will be allocated on a pro rata basis to each outstanding Share in a Daily Dividend Portfolio regardless of Class.

9. Expenses incurred by the Fund, for example, fees of directors, auditors and legal counsel, not attributable to a Portfolio or a Class, will be charged to the Fund and allocated to the Portfolios on the basis of their relative net assets. Expenses incurred by a Portfolio, such as the fees of an adviser, will be charged to the Poratfolio. Expenses incurred by and attributable to a Class, such as payments to the Distributor pursuant to a Plan adopted by the Fund with respect to a Class, payments under Service Plans, transfer agency expenses (which are a function of the type of account and the services provided to an account) and certain other expenses (collectively, "Class Expenses" will be charged to that Class.

10. Because of the Class Expenses that will be borne by a Class of Shares, the net income of (and dividends payable to) any one Class of a Daily Dividend Portfolio may be different than the net income of another Class of Shares of the same Daily Dividend Portfolio that has different Class Expenses. Dividends paid to each Class of Shares in a Daily Dividend Portfolio will, however, be declared on the same days and at the same times and will be paid monthly, and will be determined in the same manner and paid in the same amounts.

*Applicants' Legal Analysis*

1. Applicants request an exemptive order pursuant to section 6(c) of the 1940 Act to the extent that the proposed issuance and sale of existing and future Classes of Shares representing interests in the Fund's existing and future Daily Dividend Portfolios, including dividends thereon as described above, might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) of the 1940 Act and to be prohibited by section 18(f)(1) of the 1940 Act; and (2) to violate the requirement in section 18(i) of the 1940 Act that every share of stock issued by a registered investment company shall have equal voting rights with every other outstanding voting stock.

2. The Fund's Board of Directors believes that by creating and offering Shares of different Classes as described above, the Fund may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. The Fund's Board of Directors believes further that it would be appropriate for the expenses of a Plan with respect to a Class of Shares to be borne exclusively by that Class, and for the expense of a Services Plan with respect to a Class of Shares to be borne exclusively by that Class, but anticipate that it would be inefficient, and in some instances economically or operationally unfeasible, to organize a separate investment portfolio for each Class of Shares.

3. Applicants assert that the proposed allocation of expenses and voting rights relating to the Plans and relating to other Class Expenses in the manner described will not adversely affect the interests of any shareholders.

4. Applicants assert further that, if the concept of using fund assets embodied in Rule 12b–1 is now joined to the concept of classes within an investment portfolio, it will be possible for a fund to establish different marketing efforts targeting different investor groups with a variety of techniques, in each instance tailoring the level of use of fund assets to no more than that necessary to meet the specific marketing costs of the specific target class. Using different 12b–1 plans for classes in an investment portfolio targeting dissimilar classes of investors would recognize the particular costs attendant on marketing to such varied classes of investors.

5. The Board of Directors will adopt for each Class a separate Plan. Each Plan will be subject to the separate approval of the specific Class using that Plan. Each such Plan will be funded

solely from the assets of the specific Class. In particular, this funding would be structured so that the Plan expenses of a Class could draw only upon the income available to Shares of that Class, thus assuring that no assets of any other Class will be used to enhance distribution of Shares of the Class. This will assure that no Plan will be operated in such a manner as to cause payments under the Plan to subsidize the distribution of the Shares of any other Class of the same daily Dividend Portfolio. (This limitation also assures that the net asset value per share of each Share in the Daily Dividend Portfolio will remain the same as that of every other Share, regardless of Class). A quarterly review of each Plan's expenses for each Daily Dividend Portfolio will be maintained, and will be reviewed by the Board of the Fund. In determining whether to approve or extend any Plan, the Board (including the members of the Board who are not interested persons under Rule 12b–1) will consider certain specific factors set forth in the application.

6. The Board of Directors will also adopt for each of the Sansom Street Classes a separate Services Plan, as referred to above. The expenses of such Services Plan will be paid only from the income available to the Shares of the Class covered by such Services Plan. This will assure that no Services Plan will be operated in such a manner as to cause Service Payments to subsidize the operations of another Class, and will also assure that the net asset value of each Share in a Daily Dividend Portfolio will remain the same, regardless of Class. The expenses of each such Services Plan will be reviewed quarterly by the Fund's Board of Directors. In determining whether to approve or extend any Services Plan, the Board of Directors (including the members of the Board of Directors who are not interested persons of the Fund) will consider the specific factors set forth in the application with respect to approving or continuing a Plan for the specific Class covered by a Services Plan.

7. Accordingly, Applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

**Applicants' Conditions**

If the requested order is granted Applicants expressly consent to be subject to the following conditions:

1. The only difference between each Class of Shares representing interests in the same Daily Dividend Portfolio will relate solely to priorities with respect to: (a) The payment of dividends, and such priority will reflect only the impact of Class Expenses; and (b) voting rights on matters which pertain to Plans and any other matters affecting only that particular Class. In addition, the designation of each Class of Shares in a Daily Dividend Portfolio would be different.

2. The Plan relating to each Class of Shares will be approved and reviewed by the Fund's Board of Directors in accordance with the procedures set forth in Rule 12b–1 (both currently and as that Rule may be modified in the future) and, in addition, will be approved by those shareholders of the Class which are affected in accordance with the Rule. Each Services Plan relating to a Class of Shares will be approved and reviewed by the Fund's Board of Directors in accordance with the procedures set forth in Rule 12b–1 (both currently and as that Rule may be modified in the future). In addition, the Fund's Board of Directors, in approving and reviewing payments to a Bank pursuant to any Services Plan, will conclude in good faith based on information available to it that such expenditures are competitive with those offered in the industry.

3. Dividends paid by the Fund with respect to each Class of Shares in a Daily Dividend Portfolio will be calculated in the same manner, at the same times, and on the same days and will be in the same amount as dividends paid by the Fund with respect to each other Class of Shares in the same Daily Dividend Portfolio, except that Class Expenses of a Class in a Daily Dividend Portfolio will be borne exclusively by that Class.

4. Each prospectus relating to a Class of Shares that is offered in connection with a Services Plan will: (a) Describe all services rendered by Banks under Servicing Agreements with respect to such Shares and the fees payable by the Fund for such services; and (b) state that the beneficial owners of such Shares should read the prospectus in light of the terms governing their accounts.

5. Each Servicing Agreement entered into by Applicant will contain representations by the Bank involved that: (a) The Bank will provide to its Customers a schedule of any fees charged by it to the Customers relating to the investment of their assets in the Class of Shares subject to the Servicing Agreement; (b) the Bank will retain Service Payments only if a Customer has authorized investment in the Fund; and (c) the compensation paid to the Bank under the Servicing Agreement will not be excessive or unreasonable.

6. The Fund will operate a Daily Dividend Portfolio issuing Shares of more than one Class only when and for so long as such Portfolio declares a daily dividend, accrues all Class Expenses daily, and has received an undertaking from the Distributor and each Bank waiving such portion of its compensation under a Plan or Services Plan to the extent necessary to assure that the 12b–1 payment or Services Payment required to be accrued by any Class of Shares on any day does not exceed the income to be accrued to such Class of Shares on that day. In this manner the net asset value per Share for all Shares of a Daily Dividend Portfolio will remain the same.

7. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of Class Expenses in reliance on the exemptive order.

8. If the requested order is granted, the Fund will comply with the provisions of any Rules adopted under section 18 of the 1940 Act, and will comply with all positions of the Division of Investment Management and the Commission with respect to the offering of dual classes of shares by mutual funds set forth in Commission releases, including accounting rules and notices issued with respect to exemptive applications involving dual distribution arrangements comparable to that set forth in the Fund's application which would have a material effect on the Fund's arrangement, and the Fund will immediately take the steps necessary to comply, to the extent applicable.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–18206 Filed 8–10–88; 8:45 am]

BILLING CODE 8010–01–M

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Fitness Determination; Havasu Airlines

**AGENCY:** Department of Transportation.

**ACTION:** Notice of commuter air carrier fitness determination—Order 88–8–23, order to show cause, Docket 45551.

**SUMMARY:** The Department of Transportation is proposing to find that Intercity Airlines, Inc. d/b/a Havasu Airlines continues to be fit, willing, and able to engage in commuter air service

under section 419(c)(2) of the Federal Aviation Act for a period of 180 days.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses in Docket 45551, Documentary Services Division, Room 4107, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2342.

Dated: August 8, 1988.

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 88–18203 Filed 8–10–88; 8:45 am]

BILLING CODE 4910-62-M

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## Federal Aviation Administration

### Proposed Advisory Circular 20–XX; Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Availability of Proposed Advisory Circular 20–XX, and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to protection of aircraft electrical/electronic systems against the indirect effects of lightning. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATE:** Comments must be received on or before December 9, 1988.

**ADDRESS:** Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor, Transport Standards Staff, at the above address, telephone (206) 431–2127.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

A copy of the draft AC may be obtained by contracting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 20–xx and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

**Background**

Concern for the vulnerability of aircraft flight critical and essential systems to atmospheric electricity hazards has increased substantially. Aircraft are currently being and will continue to be certified utilizing an increasing number of electrical and electronic systems. Two primary factors that have contributed to this increased concern are:

1. Increasingly widespread use of sensitive electronics to perform flight critical and essential functions, and

2. The reduced electromagnetic shielding afforded aircraft systems by advanced technology airframe materials.

Atmospheric electricity interaction with an aircraft can result in numerous problems. For the case of lightning, physical damage (direct effects) can result from a lightning attachment to the aircraft. Additional effects may result when the fast changing electromagnetic fields produced by a direct strike couple voltage and current transients into the electrical and electronic equipment or components. These transients can be produced by electromagnetic field penetration into the aircraft interior or by structural IR (current times resistance) voltage rises due to current flow on the aircraft, and are referred to as direct effects.

The trend toward increased reliance on electrical and electronic systems for flight and engine control functions, navigation, and instrumentation requires that effective lightning protection measures be designed and incorporated into these systems. Reliance upon redundancy as a sole means of protection against lightning effects is generally not adequate because the electromagnetic fields and structural IR voltages can interact concurrently with all electrical wiring aboard an aircraft.

Issued in Seattle, Washington, on July 1, 1988.

**Leroy A. Keith,**

*Manager, Aircraft Certification Division, ANM–100.*

[FR Doc. 88–18126 Filed 8–10–88; 8:45 am]

BILLING CODE 4910-13-M

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### Noise Exposure Map Notice, Pal-Waukee Municipal Airport, Wheeling/Prospect Heights, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Pal-Waukee Municipal Airport Commission (operator), and the city of Prospect Heights and Village of Wheeling (co-owners), for Pal-Waukee Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538.

**SUPPLEMENTRY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Pal-Waukee Municipal Airport are in compliance with applicable requirements of Part 150, effective July 26, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may

submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Pal-Waukee Airport Commission (operator), and the City of Prospect Heights and Village of Wheeling (co-owners). The specific maps under consideration are the noise exposure maps: 1987 unabated conditions and 1992 unabated conditions in the submission. The FAA has determined that these maps for Pal-Waukee Municipal Airport are in compliance with applicable requirements. This determination is effective on May 20, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatability program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 260, Des Plaines, Illinois 60018

Pal-Waukee Municipal Airport Commission, Pal-Waukee Airport, Wheeling, Illinois 60090

Village of Wheeling, 255 West Dundee Road, Wheeling, Illinois 60090

City of Prospect Heights, 4 East Camp McDonald Road, Prospect Heights, Illinois 60070

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, on July 26, 1988.

**Stanley Rivers,**

*Acting Regional Administrator, Great Lakes Region.*

[FR Doc. 88-18125 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement; Anne Arundel and Prince George's Counties, MD

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement is being prepared for the proposed widening of MD Route 3 in Anne Arundel and Prince George's Counties, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Mr. Herman Rodrigo, Planning, Research, Environment and Safety Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211 telephone 301/962-4132, and/or Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333-1130.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Maryland State Highway Administration, is preparing a supplemental environmental impact statement to develop an acceptable alternate to widen approximately an eight-mile portion of existing Maryland Route 3 from the Maryland Route 32/I-97 interchange to US. 50/301 (I-68). .

The project was formerly studied as proposed I-297, and a final environmental impact statement EIS (FHWA-MD-EIS-81-02-F) was approved in July 1983. (This section of MD Route 3 will not be designated as part of the Interstate system.) Current and proposed future development within the corridor has changed substantially since the final EIS approval. This development has resulted in a considerable increase in projected design year traffic volumes. The supplemental EIS will address the substantial changes in the project scope necessary to satisfy the increased traffic projections, and the resultant changes in potential impacts.

Environmental concerns of primary importance are residential and business displacements, floodplain and wetland impacts, and impacts to parks and historic sites.

A public meeting to discuss the preliminary alternates will be held. Also, a public hearing will be held after circulation of the supplemental DEIS. A public notice will give the time and place of the public meeting and hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The supplemental DEIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted progams and projects apply to this program.)

**George K. Frick,**

*Acting Division Administrator, Baltimore, Maryland.*

[FR Doc. 88-18144 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

### Environmental Impact Statement; Mitchell County, NC

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Mitchell County, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, Suite 470, 4505 Falls of Neuse Road, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790–2852.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed bypass of Spruce Pine in Mitchell County. The proposed action would be the construction of two-lane facility on four-lane right-of-way, on new location from US 19 to Mimpro. The proposed project is needed to alleviate traffic congestion in downtown Spruce Pine and to provide a safer truck route between US 19 and NC 226. It will shorten travel distance and time by providing an additional crossing of the North Toe River.

Alternatives under consideration include (1) the "no-build", (2) improving the existing facilities and (3) three corridors for construction of a bypass.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and meeting with local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Progam Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: August 4, 1988.

**J. M. Tate,**

*District Engineer, FHWA, Raleigh, North Carolina.*

[FR Doc. 88–18145 Filed 8–10–88; 8:45 am]

BILLING CODE 4910-22-M

## Environmental Impact Statements; Edgecombe-Pitt-Martin Counties, NC

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that environmental impact statements will be prepared for two proposed highway projects in Edgecombe, Pitt, and Martin Counties, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, 4505 Falls of the Neuse Road, Suite 470, Raleigh, North Carolina 27609, Telephone (919) 790–2950.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare two environmental impact statements (EIS) for companion highway projects covering the proposed relocation of US 64 from Tarboro in Edgecombe County to east of Williamston in Martin County. The proposed action consists of the construction of an expressway on new location. One EIS will discuss the proposed relocation of US 64 from US 258 in Tarboro to near SR 1302 west of Robersonville, a distance of approximately 13 miles. The other EIS will discuss the proposed relocation of US 64 from near SR 1302 west of Robersonville to existing US 64 east of Williamston, a distance of approximately 15 miles. The proposed projects are needed to serve traffic demand in the area. They will provide a much needed alternative route for US 64 traffic and will relieve the congestion, delay, and inconvenience currently being experienced along this highway by removing through traffic from the existing facility. The proposed relation of US 64 will bypass the towns of Tarboro, Princeville, and Conetoe in Edgecombe County, Bethel in Pitt County, and Parmele, Robersonville, Everetts, and Williamston in Martin County.

Alternatives under consideration include (1) the "no-build", (2) improving existing US 64, and (3) the construction of an expressway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials will be held in the project area. A corridor public hearing and a design public hearing will be held for each project. Information on the time and location of the public meetings and public hearings will be provided in the local news media. The draft EIS for each project will be available for public and agency review and comment at the time of the corridor public hearing. No formal scoping meeting is planned at this time.

To insure that the full range of issues relating to the proposed action addressed and all significant issues identified, comments and suggestions are invited from all interested parties. The projects will be coordinated to insure that commenting parties and review agencies will be able to review and comment on the documents at the same time. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal progams and activities apply to this program.)

Issued on: July 28, 1988.

**Roy C. Shelton,**

*District Engineer, FHWA Raleigh, North Carolina.*

[FR Doc. 88–18170 Filed 8–10–88; 8:45 am]

BILLING CODE 4910-22-M

## Environmental Impact Statement; Mecklenburg County, NC

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Charlotte, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Max Tate, District Engineer, Federal Highway Administration, 4505 Falls of Neuse Road, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790–2852.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed Charlotte West Outer Loop in Charlotte. The proposed action would be the construction of a multilane divided, controlled access highway on new location from I–77 near the South Carolina state line northward to NC 27. The completed outer belt facilities will provide for circumferential travel and will relieve traffic along the existing inner loop (Eastway Drive and Woodlawn Road). The proposed action is part of the 1983 Charlotte-Mecklenburg Thoroughfare Plan.

Alternatives under consideration include (1) the "no-build", (2) improving the existing facilities and (3) a controlled access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting with neighborhood groups and local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be direct to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 3, 1988.

**Max Tate,**

*District Engineer, FHWA, Raleigh, North Carolina.*

[FR Doc. 88-18171 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

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## Environmental Impact Statement; Newton, Rockdale, Walton and Gwinnett Counties, GA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public of the withdrawal of the October 15, 1987 Notice of Intent to prepare an Environmental Impact Statement for a proposed new location four lane divided highway beginning at I-20 in Newton County and ending at I-85 in Gwinnett County.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. Merida, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road, N.W., Atlanta, Georgia 30367, telephone (404) 347-4750, or Frank L. Danchetz, P.E., State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 699-4401.

**SUPPLEMENTARY INFORMATION:** The Georgia Department of Transportation has suspended project activities on this highway because of funding constraints. If and when project development activities are resumed, a new Notice of Intent will be issued identifying the scope of the project and the proposed early involvement program.

(The Catalog of Federal Domestic Assistance Program Number is 20.250, *Highway Research, Planning and Construction.* Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: August 5, 1988.

**Dennis L. Merida,**

*District Engineer, Federal Highway Administration, Atlanta, Georgia.*

[FR Doc. 88-18172 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

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[FHWA Docket No. MC-88-12]

## Hours of Service of Drivers; Waiver Request; Towing and Recovery Association of America, Inc.

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of request for waiver; request for comments.

**SUMMARY:** In accordance with section 206(f) of the Motor Carrier Safety Act of 1984, 49 U.S.C. App. 2505(f), the FHWA hereby provides notice that it has received, from the Towing and Recovery Association of America, Inc., a request for a waiver of the hours of service requirements of 49 CFR Part 395 for tow truck operators responding to an emergency condition at the request of a law enforcement or emergency response official.

**DATE:** Comments must be received on or before September 12, 1988.

**ADDRESSES:** Submit written signed comments to FHWA Docket No. MC-88-12, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** The Towing and Recovery Association of America, Inc. (TRAA) has requested relief from the hours of service requirements of Part 395, Hours of Service of Drivers, of the FMCSR's for tow truck operators responding to an emergency condition at the request of a law enforcement or emergency response official. Specifically, the TRAA is requesting "an allowance provision within the FMCSR which would permit a tow truck operator to respond to any emergency situation during his[/her] off-duty time, even though he[/she] may not yet have accumulated eight (8) consecutive off-duty hours; provided however, that the driver accumulate at least eight (8) total hours off-duty time before and after the emergency incident(s) before returning to work for his [/her] regular workshift."

The TRAA contends that:

1. The nature of the tow truck business is such that the service is almost always provided on a "call and demand" basis, often under emergency conditions.

2. A tow truck driver responds to an accident at the request of the law enforcement agency or emergency response official in charge at the accident scene.

3. Motor vehicle accidents are fortuitous events; they occur at random times and places, and are of varying degrees of seriousness and complexity.

4. Highway accidents are unforeseen contingencies that cannot be anticipated.

5. Until an accident occurs and a call is received from a law enforcement agency, a towing company has no way of knowing (a) how many tow trucks and drivers will be required, (b) what type vehicles will be required, (c) how far away the emergency scene will be, (d) where the disabled vehicle is to be transported, and (e) how much time will be required to complete the assignment.

6. The normal scheduling practice utilized throughout the Nation is for a tow truck driver to work a regular 8- to 10-hour *day* shift and then be relieved of duty. [Emphasis added]

7. Full staffed nighttime shifts are uncommon due to normally low call volume and the speculative and uncertain nature of accident calls from law enforcement agencies.

8. Off duty, day shift drivers may be called upon to work at night if an accident occurs that requires additional towing/recovery equipment or specially trained recovery personnel.

The FHWA views motor vehicle accidents as unforeseen happenings that cannot be anticipated. Clearing the highways of wrecked or disabled vehicles that impede the flow of traffic clearly enhances public safety on those highways. Responding to the call of a law enforcement or emergency response official in charge at an accident scene serves the interests of highway safety well. To adequately protect life and property, such action should be completed in the shortest possible time and should not be inhibited unnecessarily.

The FHWA is seeking comments from interested parties, especially State law enforcement officials charged with the responsibility of enforcing the hours of service regulations. Further, information is being sought concerning the type of restrictions or limitations that should be placed on such a waiver if granted.

Copies of the petition for waiver have been placed in the public docket identified above. Interested parties may comment on this petition.

(49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.)

Issued on: August 4, 1988.

**Robert E. Farris,**

*Federal Highway Administrator.*

[FR Doc. 88-18156 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

## Research and Special Programs Administration

## Grants and Denials of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT

**ACTION:** Notice of grants and denials of applications for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in June 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letter EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 3330-X | DOT-E 3330 | Babcock & Wilcox Co., Lynchburg, VA. | 49 CFR 173.214(b), 173.214(d) | To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.) |
| 3330-X | DOT-E 3330 | Western Zirconium, Inc., Ogden, UT. | 49 CFR 173.214(b), 173.214(d) | To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.) |
| 3330-X | DOT-E 3330 | Teledyne Wah Chang Albany Corp., Albany, OR. | 49 CFR 173.214(b), 173.214(d) | To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.) |
| 3330-X | DOT-E 3330 | General Electric Co., Schenectady, NY. | 49 CFR 173.214(b), 173.214(d) | To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.) |
| 4453-X | DOT-E 4453 | Kentucky Powder Co., Lexington, KY. | 49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83. | To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1 and 3.) |
| 4453-P | DOT-E 4453 | Cherokee Products, Inc., Jefferson City, TN. | 49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83. | To become a party to exemption 4453 (Modes 1 and 3.) |
| 4453-P | DOT-E 4453 | Northeast Pump Service Corp., Keene, NH. | 49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83. | To become a party to exemption 4453 (Modes 1 and 3.) |
| 4453-P | DOT-E 4453 | Laurel Explosives, East Bernstadt, KY. | 49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83. | To become a party to exemption 4453 (Modes 1 and 3.) |
| 4850-P | DOT-E 4850 | Teledyne McCormick Selph, Hollister, CA. | 49 CFR 173.100(cc), 175.3 | To become a party to exemption 4850 (Modes 1, 2, and 4.) |
| 5022-P | DOT-E 5022 | Hercules, Inc., Magna, UT | 49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1). | To become a party to exemption 5022 (Modes 1 and 2.) |
| 5951-X | DOT-E 5951 | Van Waters & Rogers, Inc., Spartanburg, SC. | 49 CFR 173.314(c) | To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106A580 type tank. (Modes 1 and 2.) |
| 6126-P | DOT-E 6126 | Monsanto Agricultural Co., St. Louis, MO. | 49 CFR 173.253(a) | To become a party to exemption 6126 (Modes 1 and 3.) |
| 6518-X | DOT-E 6518 | Union Carbide Corp., Danbury, CT | 49 CFR 172.101, 172.302, 173.119, 173.134, 173.154. | To authorize shipment of specified pyrophoric liquids and solids, water reactive solid and certain other flammable liquids, in non-DOT specification steel portable tanks or cylinders. (Modes 1 and 3.) |
| 6518-X | DOT-E 6518 | Syntex Chemicals, Inc., Boulder, CO. | 49 CFR 172.101, 172.302, 173.119, 173.134, 173.154. | To authorize shipment of specified pyrophoric liquids and solids, water reactive solid and certain other flammable liquids, in non-DOT specification steel portable tanks or cylinders. (Modes 1 and 3.) |
| 6530-X | DOT-E 6530 | Big Three Industries, Inc., Houston, TX. | 49 CFR 173.302(c) | To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1 and 2.) |
| 6530-X | DOT-E 6530 | FIBA Leasing Co./Mass Oxygen Equipment Co., Inc. Westboro, MA. | 49 CFR 173.302(c) | To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1 and 2.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 6530-P | DOT-E 6530 | SOS Gases, Inc., Kearny, NJ | 49 CFR 173.302(c) | To become a party to exemption 6530 (Modes 1 and 2.) |
| 6538-X | DOT-E 6538 | Pan Products, Inc., Macedonia, OH | 49 CFR 173.304(d)(3)(ii), 178.33 | To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1 and 3) |
| 6538-X | DOT-E 6538 | Optimus, Inc., Bridgeport, CT | 49 CFR 173.304(d)(3)(ii), 178.33 | To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1 and 3) |
| 6543-X | DOT-E 6543 | Airco, The BOC Group, Inc., Murray Hill, NJ. | 49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3. | To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, and 4.) |
| 6543-X | DOT-E 6543 | Union Carbide Corp., Danbury, CT | 49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3. | To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, and 4.) |
| 6765-X | DOT-E 6765 | Bureau of Mines, Amarillo, TX | 49 CFR 173.318(a), 176.76(h)(4) | To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1 and 3.) |
| 6801-P | DOT-E 6801 | Hach Co., Ames, IA | 49 CFR 173.119(a)(7), 173.119(e)(1). | To become a party to exemption 6801 (Modes 1 and 2.) |
| 6874-X | DOT-E 6874 | Harrisons & Crosfield (Pacific), Inc., Emeryville, CA. | 49 CFR 172.101, 173.370(a)(13) | To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, and 3.) |
| 6932-X | DOT-E 6932 | Eurotainer, S.A., Paris, France | 49 CFR 173.264(b)(4) | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydrofluoric acid. (Modes 1 and 3.) |
| 6932-X | DOT-E 6932 | Compagnie des Containers Reservoirs, Paris, France. | 49 CFR 173.264(b)(4) | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydrofluoric acid. (Modes 1 and 3.) |
| 6960-X | DOT-E 6960 | Pepsi-Cola Co., Purchase, NY | 49 CFR Parts 100–199 | To authorize use of DOT Specification and non-DOT specification stainless steel drums, tight-head, with rated capacity not exceeding 55 gallons, for transportation of certain corrosive liquids. (Modes 1, 2, and 3.) |
| 7052-X | DOT-E 7052 | Technical Oil Tool Corp., Houston, TX. | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7052-X | DOT-E 7052 | General Electric Co., Philadelphia, PA. | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7052-X | DOT-E 7052 | Priebe Electronics, Redmond, WA | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7052-X | DOT-E 7052 | Clifton Precision, Springfield, PA | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7052-X | DOT-E 7052 | W.R. Grace & Co., Columbia, MD | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7052-X | DOT-E 7052 | Motorola, Inc., Fort Lauderdale, FL | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7052-X | DOT-E 7052 | Gould, Inc., North Andover, MA | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7052-X | DOT-E 7052 | Singer Co., Belmont, CA | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.) |
| 7259-X | DOT-E 7259 | FMC Corp., Philadelphia, PA | 49 CFR 176.76(g)(5) | To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.) |
| 7259-X | DOT-E 7259 | Stauffer Chemical Co., Westport, CT. | 49 CFR 176.76(g)(5) | To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.) |
| 7259-X | DOT-E 7259 | Monsanto Chemical Co., St. Louis, MO. | 49 CFR 176.76(g)(5) | To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.) |
| 7259-X | DOT-E 7259 | Exxon Chemical Americas, Houston, TX. | 49 CFR 176.76(g)(5) | To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.) |
| 7285-X | DOT-E 7285 | Compagnie des Containers Reservoirs, Paris, France. | 49 CFR 173.315(a) | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, and 3.) |
| 7285-X | DOT-E 7285 | Parisfer S. A. R. L., Paris, France | 49 CFR 173.315(a) | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, 3.) |
| 7526-P | DOT-E 7526 | Soltex Polymer Corp., Deer Park, TX. | 49 CFR 173.134 | To become a party to exemption 7526 (Modes 1 and 3.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 7616-P | DOT-E 7616 | CSX Transportation, Inc., Jacksonville, FL. | 49 172.200(a), CFR 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3. | To become a party to exemption 7616 (Mode 2.) |
| 8013-X | DOT-E 8013 | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.302, 173.304, 175.3 | To authorize use of DOT Specification 4E cylinders, for transportation of certain nonliquefied flammable and nonflammable gases. (Modes 1, 4, and 5.) |
| 8013-X | DOT-E 8013 | Union Carbide Corp., Danbury, CT | 49 CFR 173.302, 173.304, 175.3 | To authorize use of DOT Specification 4E cylinders, for transportation of certain nonliquefied flammable and nonflammable gases. (Modes 1, 4, and 5.) |
| 8037-X | DOT-E 8037 | Mauser Packaging, Ltd., Litchfield, CT. | 49 CFR 173.127, 173.175, 173.184, 178.224. | To authorize manufacture, marking and sale of non-DOT specification fiberboard drums, for shipment of wet nitrocellulose, and lacquer base or lacquer chips, dry. (Modes 1, 2, and 3.) |
| 8059-X | DOT-E 8059 | EFI Corp., d.b.a. EFIC, San Jose, CA. | 49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3. | To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.) |
| 8084-P | DOT-E 8084 | Austin Powder Co., Beachwood, OH. | 49 CFR 173.65(a)(5) | To become a party to exemption 8084 (Modes 1, 2, and 3.) |
| 8125-X | DOT-E 8125 | Compagnie des Containers Reservoirs, Paris, France. | 49 CFR 173.123, 173.315 | To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain flammable and nonflammable gases and flammable liquids. (Modes 1, 2, and 3.) |
| 8196-X | DOT-E 8196 | GCS Container Service, SA, Chiasso, Switzerland. | 49 CFR 173.119, 173.315(a), 178.245. | To authorize use of a non-DOT IMO type 5 specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, and 3.) |
| 8337-X | DOT-E 8337 | Industrial & Municipal Engineering, Inc., Galva, IL. | 49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5. | To authorize manufacture, marking and sale of non-DOT Specification cargo tanks complying with DOT specification MC-307/312 except for bottom outlet valve variation, for shipment of liquid and semi-solid waste material. (Mode 1.) |
| 8387-X | DOT-E 8387 | FMC Corp., Philadephia, PA | 49 CFR 173.266(e) | To authorize transport of hydrogen peroxide in DOT specification MC-312 cargo tank aboard cargo vessel. (Mode 3.) |
| 8426-P | DOT-E 8426 | Containerized Chemical Disposal, Inc., Montclair, CA. | 49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5. | To become a party to exemption 8426 (Mode 1.) |
| 8445-X | DOT-E 8445 | University of Maryland, Baltimore, MD. | 49 CFR Part 173, Subpart D, E, F, H. | To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.) |
| 8445-X | DOT-E 8445 | CECOS International, Inc., Buffalo, NY. | 49 CFR 173, Subpart D, E, F, H | To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.) |
| 8458-X | DOT-E 8458 | E.I. du Pont de Nemours & Co., Inc., Wilmington, DE. | 49 CFR 173.31(c) Table 1, 179.202-12(b). | To authorize conversion of DOT Specification 105A500W or 112A400W tank cars to a DOT Specification 111A100W2 tank car, for transportation of certain corrosive materials and oxidizers. (Mode 2.) |
| 8509-X | DOT-E 8509 | Mobay Corp., Pittsburgh, PA | 49 CFR 173.263(a)(9), 179.201-1 | To authorize use of a safety relief valve in lieu of a safety vent in DOT Specification 111A100W5 tank car tanks, for transportation of hydrochlorice acid. (Mode 2.) |
| 8518-P | DOT-E 8518 | Barnett Trucking, Inc., Fillmore, CA | 49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5. | To become a party to exemption 8518 (Mode 1.) |
| 8569-P | DOT-E 8569 | Allied-Signal Aerospace Co., Torrance, CA. | 49 CFR 172.101 Column 6(b), 173.276, 175.3. | To become a party to exemption 8569 (Modes 1, 3, and 4.) |
| 8760-X | DOT-E 8760 | Barton Solvents, Inc., Des Moines, IA. | 49 CFR 172.328, 172.334(b) | To authorize display of FLAMMABLE placards, showing identification 1993, cargo tanks that have six or more compartments and that are used to ship one or more materials. (Mode 1.) |
| 8812-X | DOT-E 8812 | The Protectoseal Co., Bensenville, IL. | 49 CFR 173.119, 178.89 | To authorize manufacture, marking and sale of non-DOT specification metal drum of five-gallon capacity and comparable to DOT specification 5L, for shipment of certain flammable liquids. (Mode 1.) |
| 8820-X | DOT-E 8820 | SLEMI, Paris, France | 49 CFR 173.315 | To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.) |
| 8820-X | DOT-E 8820 | SLEMI, Paris, France | 49 CFR 173.315 | To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.) |
| 8845-X | DOT-E 8845 | Pro-Log, Denver City, TX | 49 CFR 173.110(c)(1), 173.80(b), 173.80(c). | To authorize transport of charged oil well jet perforating guns with detonators attached. (Modes 1 and 3.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 8850-X | DOT-E 8850 | Hoover Group, Inc., Beatrice, NE | 49 CFR 173, Subpart D, E, F, H, Subpart K. | To authorize manufacture marking and sale of non-DOT specification stainless steel, cubical-shaped container of 70-gallon capacity, for shipment of those liquid hazardous materials for which DOT Specification 5, 5B, 5C or 17E drums are prescribed. (Modes 1, 2, and 3.) |
| 8854-X | DOT-E 8854 | Compagnie des Containers Reservoirs, Paris, France. | 49 CFR 173.264(b)(4) | To authorize use of non-DOT specification IMO Type 5 portable tanks for transportation of anhydrous hydrofluoric acid. (Modes 1, 2, and 3.) |
| 8862-X | DOT-E 8862 | Union Carbide Corp., Danbury, CT | 49 CFR 173.119, 173.124(a)(4), 173.305. | To authorize shipment of propylene oxide and ethylene oxide with an inert gas blanket in a DOT Specification 5P lagged steel drum. (Mode 1.) |
| 8917-P | DOT-E 8917 | Fluor Daniel, Sugar Land, TX | 49 CFR 173.182, 176.400 | To become a party to exemption 8917 (Modes 1, 2, and 3.) |
| 8932-X | DOT-E 8932 | Catalyst Resources, Inc., Elyria, OH. | 49 CFR 173.119(m), 173.221 | To authorize shipment of organic peroxide, in tank motor vehicles complying with DOT Specifications MC-307 and MC-312 cargo tanks. (Mode 1.) |
| 9002-X | DOT-E 9002 | PepsiCo, Inc., Purchase, NY | 49 CFR 178.210-10(a)(2) | To authorize shipment of flavoring components in non-DOT specification fiberboard boxes with inside polyethylene bottles. (Modes 1, 2, and 3.) |
| 9074-X | DOT-E 9074 | U.S. Department of Energy, Washington, DC. | 49 CFR 173.302, 175.3 | To authorize use of non-DOT specification metal, single trip, inside containers, for transportation of a nonflammable gas. (Modes 1, 2, 3, 4, and 5.) |
| 9166-X | DOT-E 9166 | Comptank Corp., Bothwell, Ontario, CN. | 49 CFR 173.119 (a), (m), 173.346(a), 178.340, 178.342, 178.343, Part 173, Subpart F. | To authorize manufacture, marking and sale of cargo tanks manufactured from glass fiber reinforced plastics, for transportation of flammable liquids, corrosive materials and poison B materials. (Mode 1.) |
| 9172-X | DOT-E 9172 | CECOS International, Inc., Buffalo, NY. | 49 CFR 173.245b, 173.365 | To authorize manufacture, marking and sale of non-DOT specification nonreusable fiberboard bulk box made of triple-wall corrugated fiberboard, for shipment of various corrosive and poison B solids. (Mode 1.) |
| 9184-X | DOT-E 9184 | Cyanamid Canada, Inc., East Willowdale, Canada. | 49 CFR 173.178 | To authorize shipment of calcium carbide in polyethylene lined woven polypropylene collapsible bags in truckload or carload lots only. (Modes 1 and 2.) |
| 9211-X | DOT-E 9211 | Maersk Line, Ltd., Madison, NJ | 46 CFR 146.29-35(f) | To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3.) |
| 9211-X | DOT-E 9211 | Waterman Steamship Corp., New Orleans, LA. | 46 CFR 146.29-35(f) | To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3.) |
| 9221-X | DOT-E 9221 | Applied Companies, San Fernando, CA. | 49 CFR 173.302(a)(4), 175.3, 178.44. | To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for shipment of nonflammable gases. (Modes 1, 2, and 4.) |
| 9355-P | DOT-E 9355 | Panasonic Industrial Co., Secaucus, NJ. | 49 CFR Parts 100-177 | To become a party to exemption 9355 (Modes 1, 2, 3, 4, and 5.) |
| 9388-X | DOT-E 9388 | Cominco American, Inc., Spokane, WA. | 49 CFR 173.314(e) | To authorize use of DOT specification tank cars which have had the amount of liquefied gas loaded into the tank measured by a metering device. (Mode 2.) |
| 9502-X | DOT-E 9502 | Callery Chemical Co., Pittsburgh, PA. | 49 CFR 173.302(g) | To authorize use of DOT Specification 3A and 3E cylinders for transportation of diborane and diborane mixtures. (Modes 1, 2, and 3.) |
| 9610-X | DOT-E 9610 | Hercules, Inc., Wilmington, DE | 49 CFR 172.203(a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189. | To authorize transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (Modes 1 and 2.) |
| 9632-X | DOT-E 9632 | Eurotainer S.A., Paris, France | 49 CFR 173.315, 178.245 | to authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, and 3.) |
| 9722-X | DOT-E 9722 | Russell-Stanley Corp., Red Bank, NJ. | 49 CFR 173.266 | To authorize pivaloyl chloride (trimethylacetyle chloride) classed as a corrosive material, as an additional commodity. (Modes 1, 2, and 3.) |
| 9723-P | DOT-E 9723 | Safety Specialists, Inc., Santa Clara, CA. | 49 CFR 177.848(b) | To become a party to exemption 9723 (Mode 1.) |
| 9769-P | DOT-E 9769 | Aqua-Tech, Inc., Port Washington, WI. | 49 CFR 176.83, 177.848 | To become a party to exemption 9769 (Modes 1 and 3.) |
| 9851-X | DOT-E 9851 | Trans World Airlines, Inc., Kansas City, MO. | 49 CFR Parts 100-199 | To authorize transport of insulated dewars containing liquid nitrogen in the cabin of a passenger aircraft under special conditions. (Mode 5.) |
| 9851-P | DOT-E 9851 | Delta Air Lines, Inc., Atlanta, GA | 49 CFR Parts 100-199 | To become a party to exemption 9851 (Mode 5.) |
| 9941-X | DOT-E 9941 | Morton Thiokol, Inc., Huntsville, AL | 49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b). | To authorize transport of rocket motors in a propulsive state with igniters installed. (Mode 1.) |
| 9941-X | DOT-E 9941 | McDonnell Douglas Astronautics Co., Huntington Beach, CA. | 49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b). | To authorize transport of rocket motors in a propulsive state with igniters installed. (Mode 1.) |

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## New Exemptions

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 9874-N | DOT-E 9874 | The Dow Chemical Co., Freeport, TX. | 49 CFR 177.834(i)(3) | To authorize personnel to observe loading and unloading of cargo tanks by viewing video camera monitors in a control center instead of viewing within 25 feet of the cargo tanks. (mode 1) |
| 9900-N | DOT-E 9900 | Natico, Inc., Chicago, IL | 49 CFR 173.217, 178.224-1 | To authorize manufacture, marking and sale of non-DOT specification fibre drums conforming to DOT 21C Specification fibre drums, except the tops or covers are constructed of polyethylene, for shipment of calcium hypochloride, hydrated. (modes 1, 2, 3) |
| 9901-N | DOT-E 9901 | J.T. Baker Inc., Phillipsburg, NJ | 49 CFR 173.268, 173.269 | To authorize shipment of nitric acid, classed as oxidizer or corrosive material, and perchloric acid, classed as oxidizer, in a DOT Specification 12A fiberboard box, with inside glass bottles cushioned and encapsulated by molded polystyrene inserts. (modes 1, 2, 3) |
| 9421-N | DOT-E 9909 | Taylor-Wharton, Division of Harsco Corp., Harrisburg, PA. | 49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37. | To authorize manufacture, marking and sale of a non-DOT specification steel cylinder complying in part with DOT 3AA specification, for transportation of certain flammable and nonflammable gases. (modes 1, 2, 3, 4) |
| 9917-N | DOT-E 9917 | Essex Environmental Industries, Inc., Hurst, TX. | 49 CFR 173.119, 173.125, 173.266, 178.19, 178.253, Part 173, Subpart F. | To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tank, for shipment of corrosive materials, flammable liquids, an oxidizer, or a blasting agent. (modes 1, 2, 3) |
| 9921-N | DOT-E 9921 | Altus Corp., San Jose, CA | 49 CFR 173.206, 173.247 | To authorize shipment of packages containing reserve-activated lithium thionyl chloride battery module. (mode 1) |

## Emergency Exemptions

| Application No. | Exemption No. | Applicant | Regulations(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| EE 7052-X | DOT-E 7052 | Engineered Assemblies Corp., Clifton, NJ. | 49 CFR 172.101, 172.420, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (modes 1, 2, 3, 4) |
| EE 8009-X | DOT-E 8009 | Pressure Transport, Inc., Austin, TX | 49 CFR 172.101, 173.301(d)(2), 173.302(a)(3). | To authorize use of DOT Specification 3AA cylinders made of 4130X steel, for transportation of a compressed natural gas. (mode 1) |
| EE 8450-X | DOT-E 8450 | Atlantic Research Corp., Camden, AR. | 49 CFR 173.92 | To authorize transport of rocket motors without igniters, in non-DOT Specification polyethylene containers. (mode 1) |
| EE 8582-X | DOT-E 8582 | Atchison, Topeka and Santa Fe Railway Co., Chicago, IL. | 49 CFR Parts 100-177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1) |
| EE 8747-X | DOT-E 8747 | Copps Industries, Inc., Menomonee Falls, WI. | 49 CFR 173.245, 173.249, 175.3 | To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined 28/26 gauge DOT Specification 37C80 steel drum of five gallon capacity. (modes 1, 2, 3, 4) |
| EE 8885-X | DOT-E 8885 | Copps Industries, Inc., Menomonee Falls, WI. | 49 CFR 173.245, 173.249, 175.3 | To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a nonhazardous resin mix. (modes 1, 2, 3, 4) |
| EE 9931-X | DOT-E 9931 | American Cyanamid Co., Wayne, NJ. | 49 CFR 179.201-1 | To authorize shipment of nitric acid in a DOT Specification 111A60W7 tank car tank which is equipped with a 45 psi safety valve. (mode 2) |
| EE 9940-X | DOT-E 9940 | G.E. Reuter-Stokes, Twinsburg, OH | 49 CFR 172.400, 173.306, 175.3 | To authorize manufacture, marking and sale of non-DOT specification, metal, single trip, inside containers, described as hermetically sealed electron tube devices. (modes 1, 2, 3, 4) |
| EE 9977-N | DOT-E 9977 | Hercules Aerospace Co., Magna, UT. | 49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b). | To authorize transport of rocket motors in a propulsive state, with igniters installed. (mode 1) |

## Withdrawal Exemptions

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 9922-N | GOEX, Inc., Cleburne, TX | 49 CFR 173.65(a)(4) | To authorize shipment of high explosives, Class A, shaped charges, in DOT Specification 14, 15A, 16 and 19B wooden boxes with a maximum gross weight of 2,000 pounds instead of the present limitation of 140 pounds. (modes 1, 3, 4) |

**Denials**

9120–X—Request by Western Atlas International, Inc. Houston, TX to authorize pressure testing of the pressure vessel at a longer interval, at least every 5 years, than presently prescribed denied June 28, 1988.

9913–N—Request by ETI Explosives Technologies International, Inc. Wilmington, DE to authorize shipment of a new explosive sample to a laboratory for examination, when the amount of the sample to be shipped is increased to fifty pounds in lieu of the prescribed five pounds denied June 2, 1988.

Issued in Washington, DC, on 08–1–1988.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 88–18221 Filed 8–10–88; 8:45 am]

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## UNITED STATES INFORMATION AGENCY

### Bureau of Educational and Cultural Affairs University Affiliations Program: Application Notice for Fiscal Year 1989

Applications for grants from U.S. institutions of higher education are invited under the University Affiliations Program.

Authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256 (Fulbright-Hays Act). The purpose of the Fulbright program is "to enable the government of the United States to increase mutual understanding between the people of the United States and people of other countries."

(Information collection involved in this program has been approved by OMB Action Number 3116–0179, expiration date 11/30/89.)

**Summary**

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) announces the University Affiliations Program which provides one-time only institutional grants to support partnerships between U.S. and non-U.S. institutions of higher education. The goals of the program are to: (1) Foster and strengthen institutional relationships between U.S. and foreign institutions of higher education; and (2) assist institutions to establish new affiliations or develop new programs for existing affiliations not previously funded by USIA's Affiliations Program. The program goals will be accomplished through exchange of faculty and staff between participating U.S. and foreign institutions.

Feasibility studies to plan affiliations and projects focusing on technical assistance will not be considered in this program.

In the U.S., program participation is open to: (a) Accredited U.S. institutions of higher education, including graduate schools, four-year and two-year colleges and universities, and community colleges; consortia of universities (proposals may be submitted by a member institution or an organization with authority to represent the consortium). For consortia of institutions, specific responsibilities of each institution and aspects of proposed program participation should be defined. (b) Independent research institutes applying jointly with universities.

Overseas participation is open to recognized degree-granting institutions of higher education and independent research institutes.

Eligible institutes (U.S. and foreign) are defined as reputable, non-partisan, non-profit, private or public institutions such as think-tanks/research institutions that have produced long/term scholarly research; have published in nationally recognized journals or nationally recognized publications; and have national professional recognition. Exchange projects including research institutes will be considered only if proposed exchanges cannot otherwise take place without USIA assistance, and they include an audience that applicants do not normally reach.

Participating institutions exchange faculty and staff for teaching, lecturing, and research assignments of one month or longer in the humanities, social sciences, education, and communications; maintain their faculty/staff on full salary and benefits institution. Proposals for research only will not be considered.

USIA funds may be used only for international travel costs, modest supplements for maintenance expenses, and up to $1,500 for the purchase of educational materials to be used at and donated to the foreign institution. Institutional overhead is not allowable and all other costs related to the exchange program (including salaries and benefits) must be borne by the participating institutions.

Participants traveling under USIA grant support must be U.S. citizens if representing the U.S. partner institution, and nationals of the country of the foreign partner.

The duration of these one-time only grants is two to three years, and grant amounts range from $50,000 to $60,000 depending upon locality. The total request to USIA, covering eligible expenses of both institutions, may not exceed the maximum allowable for the locality of request, as listed below.

Subject to the availability of funds in Fiscal Year 1989, approximately 25 grants will be available on a competitive basis for specific geographic locations and themes. Awards will reflect Agency priorities and academic considerations. Complete program criteria and application guidelines appear below.

All proposals recommended for funding will be subject to Agency review for conformity to relevant OMB and legal guidelines. Funding of any proposal is subject to the regular procedures, regulations and requirements for Bureau of Educational and Cultural Affairs grants, including review by USIA's Office of General Counsel and submission to the Board of Foreign Scholarships.

USIA also announces a special competition for grants to support exchanges to commemorate the Quincentennial of the discovery of the Americas (see details below).

U.S. institutions should collaborate with their foreign partners on planning and preparing proposals. U.S. institutions are also responsible for the submission of proposals which must reach USIA no later than 5:00 p.m., EST, Wednesday, January 18, 1989.

**Country and Discipline Eligibility**

Because one of the program's purposes is to strengthen ties between the U.S. and many areas of the world, geographic and thematic priorities have also been identified.

**Africa:** Proposals will be considered for any discipline(s) in the *Humanities, Social Sciences, Education and Communications* for all countries listed below; however, special consideration will be given to proposals in any of the fields noted after each country. Applicants should focus on one or two specific fields of interest.

The maximum amount of each grant is *$60,000.*

*List of eligible countries and disciplines:*

*Benin:* Social Sciences.

*Botswana:* Public Administration, Women's Studies, Theory and Practice of Research.

*Burundi:* Project in any eligible discipline.

*Cameroon:* Business Management.

*Congo:* Afro-American Studies, Communications, History/Archeology, Law.

*Ethiopia:* Social Sciences with emphasis on History, Anthropology and Sociology; Management with emphasis on Business Administration, Public Administration and Economics.

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*Ghana:* Library Science, Business Administration, Special Eduction and Science Education.
*Kenya:* Law, Education.
*Lesotho:* Project in any eligible discipline.
*Liberia:* Project in any eligible discipline.
*Mauritius:* Women's Studies.
*Mali:* Project in any eligible discipline.
*Mozambique:* African Studies and Liguistics, International Relations, English Language and Linguistics.
*Niger:* Economics with emphasis on Development Economics.
*Nigeria:* Project in any eligible discipline.
*Rwanda:* Management, Education, Law, Humanities.
*Senegal:* International Relations, Political and Social Science, American Literature, Economics, Teacher Training, Mass Communications.
*Somalia:* Languages, Political Science, Economics, Education, and Agricultural Education.
*South Africa:* Law and Human Rights, Comparative Constitutional Law, Business Management, English Language Teaching, Education.
*Swaziland:* Humanities—Linguistics, Performing Arts/Drama, English, History, Law and Business Administration.
*Tanzania:* Political Science and Public Administration, Development Studies, Economics, History, Education, Languages and Linguistics, Law, Literature, Business Administration including Computer Applications.
*Togo:* Project in any eligible discipline.
*Uganda:* Journalism, Economics & Business, Education.
*Zimbabwe:* Project in any eligible discipline.

**American Republics:** Proposals for the *countries* and *fields* listed below will be considered in 1989. The maximum amount of each grant is *$50,000.*

*List of eligible countries:*
*Argentina:* Economics, History.
*Barbados:* Humanities, Social Sciences, Communications.
*Belize:* Economics, History.
*Boliva:* Education.
*Brazil:* Law.
*Chile:* Humanities, Social Sciences, Communications.
*Colombia:* Law, Communications.
*Dominican Republic:* Economics, History.
*Ecuador:* Economics, History.
*Guyana:* Economics, History.
*Jamaica:* Humanities, Social Sciences, Communications.
*Mexico:* Law.
*Paraguay:* Economics, History.
*Peru:* Economics, History.
*Trinidad and Tobago:* Law.
*Uruguay:* Economics, History.
*Venezuela:* Economics.

**East Asia/Pacific:** Only proposals for the following *countries* or *localities* will be considered in 1989. Proposals will be considered for any discipline(s) in the *Humanities, Social Sciences, Education and Communications* for all countries listed below; however special consideration will be given to proposals in any of the fields noted after each country. The maximum amount of each grant is *$60,000.*

*List of eligible countries and provinces, where applicable:*
*Australia:* Project in any eligible discipline.
*New Zealand:* Project in any eligible discipline.
*Singapore:* Project in any eligible discipline.
*Thailand:* American and/or Thai Studies.
*Pacific Islands:* Humanities, Secondary Education and/or University Administration, Planning and Public Policy.
*Papua New Guinea:* Project in any eligible discipline.
*Philippines* Project in any eligible discipline.
*China:* Constitutional Law, Business Law, and/or Copyright Law, Business Management and Foreign Investment, International Relations. In China only the following provinces are eligible: Heilongjiang, Jilin, Liaoning, Sichuan, Yunan, Guizhou, Guangxi, Xinjiang, Xizang (Tibet), Qinghai, and Gansu.

**Europe:** Proposals will be considered for any discipline(s) in the *Social Sciences* or the *Humanities.* Applicants should focus on one or two specific topics of interest. The maximum amount of each grant is *$50,000.*

*List of eligible countries:*
German Democratic Republic, Poland, Spain, Turkey, USSR.

**Near East/South Asia:** Awards will be considered for proposals in any field(s) in the *Humanities, Social Sciences, Communications, and Education.* Proposals should focus on one or two specific topics of interest. Provided they meet academic review criteria, USIA will give special consideration to proposals received for funding of activities in the underlined locations where there are not currently or never have been active USIA-sponsored affiliations.

Eligible for grants up to *$50,000 maximum* each: Bangladesh; *Bhutan;* Egypt; *Gaza;* India; Israel; *Jordan; Mauritania;* Morocco; *Nepal; Pakistan;* Sri Lanka; *Tunisia;* West Bank; the *Yemen Arab Republic.*

Eligible for grants up to *$60,000 maximum* each: Algeria; *Bahrain; Iraq; Kuwait; Oman; Qatar; Saudi Arabia; Sudan;* Syrian Arab Republic; *United Arab Emirates.*

N.B.: *All proposals for India must be accompanied by proof of approval of the proposed program from the University Grants Commission (UGC) in New Delhi in order to comply with USIA technical review requirements. U.S. institutions are advised to contact Indian partner institutions about this requirement as early as possible, since UGC meetings do not coincide with USIA program deadline. UGC approval must be sought through the Executive Director, U.S. Educational Foundation in India, 12 Hailey Road, New Delhi, India 110001. Tel. 388944 through 388948. Cable USEFI.*

**Special Competition for Exchanges To Commemorate the Quincentennial of the Discovery of the Americas**

USIA also invites applications for a special competition with any country on faculty teaching and/or research projects (up to five grants) which commemorate the Quincentennial of the European discovery of the Americas. Proposals should conform to the general guidelines published in this announcement with the following qualifications:

1. Proposals may be offered in any eligible discipline (social sciences, humanities, education, and communications).

2. The proposal must focus on the discovery of the Americas in 1492, the subsequent colonization of Hispano-America, Brazil or the Caribbean countries, or the European voyages of exploration through 1521.

3. The proposed project should begin no later than fall 1989 and extend through 1992.

4. Eligible foreign partners include appropriate institutions world-wide. Maximum awards for affiliations in each geographic area conform to those stated in the main body of this announcement.

5. Proposals may be for an affiliation between a U.S. institution and one foreign institution as in the regular program, or with two foreign institutions from different geographic areas. For example, a U.S. institution might choose a partner in Latin America and a partner in Europe. In such cases, the maximum award would be $80,000.

**Requirements for Application—University Affiliations Program:**

I. *Eligibility:* Applications on behalf of the collaborating institutions must be

submitted by the U.S. partner. Eligible partner institutions are:

1. U.S.—(a) Accredited institutions of higher education, including graduate schools, four-year and two-year colleges and universities, and community colleges; consortia of universities (proposals may be submitted by a member institution or an organization with authority to represent the consortium).

(b) Independent research institutes applying jointly with universities (defined elsewhere in this announcement).

2. Overseas—Recognized degree-granting institutions of higher education and independent research institutes.

II. *Review Process:* Proposals will be reviewed for technical, academic, and Agency considerations (defined below). Proposals which are technically ineligible (eligibility criteria stated below) will not be forwarded for further review by the academic and Agency review committees.

Proposals must be received by USIA no later than *5:00 p.m. EST, Wednesday, January 18, 1989.*

Upon completion of the technical review, all proposals will be acknowledged, and applicants will be notified in writing of the status of their proposals. There will be a grace period to submit any missing documentation. Technically eligible proposals will be forwarded for academic review. Proposals recommended by independent academic review panels will be further considered by USIA review committees. Agency review committees will evaluate proposals based on specific criteria addressing factors of quality, cost-effectiveness, and overall geographical and program balance.

*Techncial Review Criteria*

To meet technical requirements, proposals must be submitted within deadline; the proposal package must consist of the original proposal and fifteen (15) complete copies, including: A cover sheet with names of both institutions, name of foreign country, U.S. and foreign project directors and their deputies, addresses and telephone numbers of project directors, academic fields(s) of proposed project; proposal abstract (approximately two double-spaced pages); narrative (no more than fifteen double-spaced pages); three-column budget (covering international travel, maintenance, and educational materials; see sample below); bio-sketches of program participants (no more than two double-spaced pages each); required letters of agreeemnt, summary of international linkages (individual consortium members and reseach institutes must meet this requirement); for research institutes—summary of publications.

Proposed projects must be for a period of two or three years, and be in eligible geographic and academic area(s). See detailed requirements below.

*N.B.: U.S. institutions are responsible for assuring complete understanding of and compliance with financial requirements by the foreign partner; and for obtaining the letter of commitment so stating in the specific format described below. No exceptions will be made.*

*Academic Review Criteria*

Proposals are reviewed by independent academic panels (with geographic and discipline expertise) which make recommendations to the Agency based on the following criteria:

1. Soundness of proposal indicating academic quality, as reflected by focused goals and selection of relevant topics and activities, a clear statement of program goals and means to accomplish the goals, detailed description of project with statement of how the proposed project will be implemented and evaluated, etc;

2. Evidence that theme(s) of proposed project fit priority field(s) stated in the announcement;

3. Evidence of strong mutual benefits to the institutions involved in the exchanges and a description of how each institution would benefit;

4. Feasibility of the program plan as it relates to the stated goals and selected topics and activities;

5. Appropriateness of credentials/experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required);

6. Appropriateness of length of exchange visits given project goals;

7. Evidence of strong institutional commitment by participating institutions;

8. Evidence of input from foreign institution;

9. Evidence that the proposed exchanges are likely to achieve the program's overall goal of mutual institutional development;

10. Evidence of mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties;

11. Demonstration that the partnership is likely to continue after the expiration of the USIA grant;

12. If the proposal requests support for an established, active linkage, evidence that the University Affiliations funding would allow for innovation in the exchange relationship; and

**Note:**—Proposals for research only will not be considered.

*Agency Review Criteria*

USIA reviews only those proposals recommended for further consideration by academic review panels. Agency considerations are based on:

1. USIA overseas post assessment, in terms of mutual need and feasibility;

2. Advancement of mutual cultural and political understanding between the countries or geographic areas represented in the partnership;

3. Academic quality, reflected in academic review panels' comments and recommendations;

4. Feasibility of program plan;

5. Promise of long-term impact; and

6. Cost-effectiveness.

III. *Application Procedures*: Applicants must submit one original and fifteen (15) complete copies of their proposals to: University Affiliations Program 1989, United States Information Agency, 301 4th Street, SW., Room 349, Washington, DC 20547.

In order to be eligible for review, the proposal (which constitutes the program application) must include:

1. *Cover Sheet,* described under Technical Review Criteria.

2. *Summary document,* a typed project abstract, approximately two double-spaced pages.

3. *Narrative,* total text not to exceed fifteen typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions and participating departments;

b. A detailed description of the proposed affiliation program including but not limited to: Names and qualifications of designated project directors; roster of program participants for both institutions (for the duration of the proposed project), their qualifications, including language skills; a statement of need for the proposed project (reflecting international, national and institutional considerations); a detailed, specific description of proposed activities, including when, where, and how they will occur, individuals who will carry out activities, departments involved; and the anticipated benefits of the program to participating institutions. A plan for institutional evaluation of the program must also be included.

4. A detailed, *three-column budget* (see sample below) outlining specific expenditures and source(s) from which funds are anticipated. *The only eligible budget items are:*

a. International airfare travel costs for participants (travel must be on U.S. air carriers where available);

b. Compensation (supplements to salary and/or benefits) or modest per diem may be requested for such specific items as housing, food and other maintenance items while in exchange status. Participating universities will be expected to continue full salary and benefits for their own faculty. The maximum amount that may be requested for compensation supplements/per diem may not exceed the rates set by the U.S. Department of State for overseas locations and the Geneal Services Administration (GSA) per diem allowances for U.S. localities. The USIA officers listed in this announcement will supply these rates upon request.

The maximum rates described above are legal limitations only. *Institutions are encouraged, in planning their budgets, to set temporary living allowances at a lower level which can be more easily maintained after the period of USIA funding. U.S. institutions are reminded that in certain cases, restrictions may be placed on the export of salary in other currencies.*

c. Cost of educational materials (for overseas use) up to $1,500 during the life of the grant.

*Required format for budget:*

All proposed expenditures should be individually listed (for the duration of the proposed project), using the format below. Each request for travel should specify round trip cost and destination for each participant per fiscal year. Each maintenance request should specify locality (city), daily rate, and duration of stay for each participant (*not to exceed published Federal government rates*) per fiscal year. Costs for educational materials should not exceed $1,500 for the duration of the grant. Direct costs, in-kind or cash contributions, and applicable overhead costs absorbed by each institution should be included, along with regular salary and benefits, under the column of contributions for each partner:

| | USIA | U.S. Inst. | Foreign Inst. |
|---|---|---|---|
| Year 1 | | | |
| International travel | $X | $X | $X |
| Maintenance costs | $X | $X | $X |
| Salary and benefits | n/a | $X | $X |
| Educational materials | $X | $X | $X |
| Direct or overhead costs (waived) | n/a | $X | $X |
| Year 2 | | | |
| International travel | $X | $X | $X |
| Maintenance costs | $X | $X | $X |
| Salary and benefits | n/a | $X | $X |
| Educational materials | $X | $X | $X |
| Direct or overhead costs (waived) | n/a | $X | $X |
| Year 3 | | | |
| International travel | $X | $X | $X |
| Maintenance costs | $X | $X | $X |
| Salary and benefits | n/a | $X | $X |
| Educational materials | $X | $X | $X |
| Direct or overhead costs (waived) | n/a | $X | $X |
| Totals | $X | $X | $X |

*Ineligible Budget Items for USIA grant support:*

a. Institutional overhead, including postage, telephone or telex expenses;

b. Administrative expenses incurred in connection with the affiliation;

c. Expenses for student exchanges;

d. Domestic travel in host country, e.g., conference attendance, travel to other institutions;

e. Costs for dependents;

f. Conference, seminar or publication costs;

g. Insurance coverage;

h. Any costs for non-U.S. citizens or nationals from the U.S. institution, or non-citizens or non-nationals of the overseas host country or locality.

5. *Appendices,* which should be kept to a minimum, must include:

a. *Bio-sketches* of professional accomplishments of potential U.S. and foreign participants, *not to exceed two pages in length each,* clearly indicating the level of language skills, overseas experience, knowledge of the prospective partner country or area as demonstrated through courses taught, relevant scholarly and non-scholarly travel, citizenship, publications, research/teaching activities, and professional accomplishments in field of specialization. *Lengthy academic vitae should not be submitted.*

b. *Documentation of institutional support* for the proposed affiliation, including a signed letter of endorsement from the U.S. institution's (or consortium members') *president, vice-president, chancellor* or *provost, director,* (for research institute), as well as a signed letter of endorsement from the *president (or equivalent)* of the non-U.S. institution. Both letters must specifically refer to the 1989 University Affiliations Program and commit participating institutions to maintaining their exchange participants on fully salary and benefits during the exchange.

N.B.: A general letter or agreement between the two institutions without reference to this specific program and its financial requirements will not fulfill this requirement.

c. A brief *summary of past and present linkages* at both partner institutions.

(U.S. institutions are reminded that in certain areas, host government clearance/approval must be obtained before any exchange program of this type may be carried out. It is the responsibility of the foreign institutions to seek such approval.)

6. *Deadline:* Complete proposal packages must be received by USIA *no later than* Wednesday, January 18, 1989, 5:00 p.m. EST.

Applicants are responsible for the submission of complete applications. *All* required items should be received by deadline.

7. *Notification:* Successful applicants will be notified on or about June 16, 1989. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries: For questions concerning programming and budget, please contact:

Africa

Dr. Ellen Berelson (E/AEA), Academic Exchanges Division, Africa Branch, (202) 485–7355

American Republics

Ms. Paula Durbin (E/AEL), Academic Exchanges Division, American Republics Branch, (202) 485–7365

East Asia and the Pacific

Mr. Wayne Peterson (E/AEF), Academic Exchanges Division, East Asia/Pacific Branch, (202) 485–7402

Europe

Ms. Pamela Smith (E/AEE), Academic Exchanges Division, Europe Branch, (202) 485–7420

Near East/South Asia

Mr. Michael Graham (E/AEN), Academic Exchanges Division, Near East/South Asia Branch (202) 485–7368

Quincentennial Competition: Contact the relevant Academic Exchanges Branch or Branches.

General Inquiries: Dr. Winnie D. Emoungu Coordinator, University Affiliations Program Office of Academic Programs (202) 485–8489

Dated: August 5, 1988.

**Mark Blitz,**

*Associate Director.*

[FR Doc. 88–18118 Filed 8–10–88; 8:45 am]

BILLING CODE 8230-01-M

# Corrections

Federal Register
Vol. 53, No. 155
Thursday, August 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Availability of the Draft Environmental Impact Statement on the Proposed Area B Expansion of the Big Sky Mine, Rosebud County, Montana (Federal Coal Lease M-15965)

*Correction*

In notice document 88-17358 beginning on page 29091 in the issue of Tuesday, August 2, 1988, make the following correction:

On page 29092, in the first column, in the seventh line, "11020" should read "1020".

BILLING CODE 1505-01-D

## OFFICE OF PERSONNEL MANAGEMENT

### 45 CFR Part 801

### Voting Rights Program

*Correction*

In rule document 88-18026 beginning on page 29894 in the issue of Tuesday, August 9, 1988 make the following correction:

**§ 801.202 [Corrected]**

**Appendix A—[Corrected]**

On page 29895, in the second column, in § 801.202, Appendix A, in the fifth line, "Bruce Motel" should read "Buice Motel".

BILLING CODE 1505-01-D

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August 11, 1988

Part II

# Department of Agriculture

**Farmers Home Administration**

**7 CFR Part 1945**

**Disaster Assistance and Emergency Loan Policies, Procedures and Authorizations; Final Rule**

VOL 53 ISS 155 AG 11 1988 UMI

**DEPARTMENT OF AGRICULTURE**

**Farmers Home Administration**

**7 CFR Part 1945**

**Disaster Assistance and Emergency Loan Policies, Procedures and Authorizations**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) adopts a portion of its proposed rule which was published on January 15, 1987 (52 FR 1706). This action is being taken to provide up to date procedures for processing disaster designations and emergency (EM) loans. This action is needed to enable FmHA to clarify its EM loan regulations and provide certain administrative guidelines to fully comply with the provisions of existing laws and regulations. The intended effect is to facilitate this action to prevent untimely delay in providing EM disaster loan assistance to eligible family farmers in disaster areas declared by the President or designated by the Secretary of Agriculture.

**EFFECTIVE DATE:** August 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Glenn J. Hertzler, Jr., Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, Room 5019, Washington, DC 20250, Telephone: (202) 447–4671.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical region or significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

**Discussion of the Comments**

On January 15, 1987, FmHA published in the **Federal Register** (52 FR 1706) a proposed rule giving interested parties until February 17, 1987, to submit comments. On February 18, 1987, FmHA published a proposed rule in the **Federal Register** (52 FR 4913), extending the comment period to March 19, 1987, upon requests from the public. In response to the proposed rule 168 comments were received from individuals, FmHA employees, special-interest groups, United States Congressmen and State government officials. Fifty-eight of the comments were copies of very similar letters. Some of the letters covered a broad range of subjects. Generally, the comments addressed the general subject matter rather than a specific part of a regulation. Therefore, we will discuss all of the comments which are related to various subjects of this final rule action as follows:

1. Require a positive cash flow and provide guidance for determining family living expenses and a reserve for risk and uncertainties.

The proposed rule added the term "positive cash flow" with the requirement of a reserve for taxes, meeting scheduled payments on all debts, open accounts carryover debts, and a reserve for major repair costs.

The comments expressed concern over these added requirements: the proposed requirements were vague and require clarification regarding what were major repairs, reasonable standard of living, and essential capital purchases or improvements; does the proposal require a reserve for payment of next year's taxes?; FmHA borrowers are not in a strong enough financial position to maintain such reserves; capital reserves based on depreciation are not feasible for FmHA borrowers; and if borrowers could meet these additional requirements, they would not need FmHA credit.

In view of the comments, we have amended the proposed rule to require a feasible plan, rather than a positive cash flow, as defined in § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter. Unlike a positive cash flow, a feasible plan shows the borrower's ability to (a) pay farm operating expenses and taxes due during the crop year; (b) meet scheduled payments on all debts, including open accounts and carryover debts; (c) provide for risk and uncertainties associated with the farming operation; and (d) provide living expenses for the farm family or wages for an entity-type farm operator. This amendment is adopted here to provide uniformity in the FmHA Farmer Program regulations.

We believe these amendments address the major concerns of the comments on this subject.

2. Add more guidance on what is a nonfarm enterprise.

This action would further clarify which enterprises are classified as nonfarm enterprises.

One comment was received on this subject. The comment suggested that the nonfarm enterprise should be located on the farm or adjacent to the farm or be closely associated with the farming operation. Many nonfarm enterprises need a location that is readily accessible to the consumer. Often this needs to be at a location other than the farm if it is to be successful. Therefore, FmHA adopts the proposed amendment.

3. Clarify the EM disaster designation procedure.

The major concern of the comments received on this subject was that a disaster is determined on a county-wide basis rather than on an individual farm-by-farm basis. This is not true. The regulations in § 1945.6(c)(3)(iii)(C) provide that the Secretary has discretion to find that a natural disaster has occurred in a county when as few as a single farmer has suffered a severe production loss from a disaster. Therefore, FmHA does not believe any change to the proposed amendment is needed on this subject. The Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA) pointed out several discrepancies and inconsistencies in the regulations as related to their agencies and FmHA. After direct consultation with these agencies, the proposed rule was amended to correct these discrepancies and inconsistencies in the final rule.

4. Require financial information from all members of an entity and delete the references to principal members.

Presently only principal members are required to submit financial information. A principal member is identified as having either a ten percent interest or more or twenty percent interest or more in the business, depending on the type of loan program.

The proposed rule required all members of an entity to pledge all their assets for the FmHA loan. Also, the proposed rule for EM loans required the sale of non-essential assets and that all members of an entity derive more than 50 percent of their total income from the farming operation. The comments

received strongly objected to these requirements. In consideration of the comments, we have dropped the requirement of pledging all assets and the 50 percent requirement regarding farm income in this final rule. However, to strengthen the test for credit, we will require financial information from all members of the entity as prescribed in Subpart A of Part 1910 of this chapter.

5. Clarify calculations for EM actual loss loans, and prevent duplication of benefits from other agencies.

These revisions are intended to clarify the calculations for EM actual loss loans under FmHA Instruction 1945–D and to prevent duplication of disaster benefits from other Government agencies, such as the Small Business Administration (SBA).

As discussed in item number three above, FEMA and SBA pointed out several discrepancies and inconsistencies as related to their agencies and FmHA. These items are being corrected in this final rule. One comment suggested that when the normal year's production is calculated, all the years that were classified as disaster years should be eliminated from the calculation rather than just one year out of five. The comment indicated that their area had disasters for three of the last five years for peaches. We believe this is an indication that it is a high risk crop and that the disaster years are the norm for the area and that optimum yields should not be used. Therefore, we are not adopting this suggestion.

The program/activity of this action is listed in the catalog of Federal Domestic Assistance under No. 10.404.

For the reasons set forth in the final rule related to notice 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the Scope of Executive Order 12372, which requires intergovernmental consultation with the State and local officials.

The significant changes are as follows:

*PART 1945—EMERGENCY*

Subpart A—Disaster Assistance—General

In addition to the revisions of the proposed rule covered in item 3 under the discussion of comments, this regulation has been revised to cite new definitions of "Major Disaster" and "Presidential Emergency" declarations, provide guidelines for preventing duplication of benefits to EM borrowers by SBA and FmHA, and make editorial changes for clarification. A summary of the changes are as follows:

Section 1945.2 has been partially revised to clarify the purpose for which EM loans will be made available to eligible farmers suffering the effects of disasters.

Section 1945.5 has been made partially revised to add FAC—"Food and Agriculture Council"; change CEB (USDA County Emergency Board) and SEB (USDA State Emergency Board) to LFAC (Local Food and Agriculture Council) and SFAC (State Food and Agriculture Council), respectively; and change SRS to NASS—"State Statistical Office of the USDA National Agricultural Statistics Service."

Section 1945.6 has been partially revised to redefine "farmers," "Major disaster" and "Presidential emergency"; and to include definitions of "Primary county," "contiguous county" and "Disaster area(s)"; and to make editorial changes to the definitions of "Normal year's dollar value" and "Termination date."

Section 1945.18 has been partially revised to reflect the USDA Food and Agriculture Councils and their functions in the disaster designation process, show that ASCS State Executive Directors serve as the Vice Chairpersons for Emergency Programs of the SFACs, and to make reference to FEMA's "disaster application centers" rather than "disaster assistance centers."

Section 1945.19 has been partially revised to clarify how physical loss loans are made available by the FmHA Administrator, and to make proper references to the LFACs, SFACs and the SFAC "Vice" Chairpersons, Emergency Programs, as the sources for assessing and reporting a potential natural disaster(s).

Section 1945.20 (a)(2)(iii) has been revised to require the FmHA State Director to coordinate the issuance of all public announcements on Presidential disaster declarations with FEMA's Public Information Officer; paragraph (b)(2)(i) to make reference to SFAC "Vice" Chairperson; and paragraph (b)(2)(iii) has been revised to require the State Director to provide a list of agricultural commodities produced in the State, giving average yearly prices for three years preceding the disaster, and county average yields for five years preceding the disaster; and proper reference is made to NASS instead of SRS.

Section 1945.21 (b)(5) has been revised to show the weekly reporting requirements of County Supervisors to the FmHA State Director and to FEMA when 408 grants are made available to victims suffering damages and losses to housing and personal property in Presidential major disaster areas.

Section 1945.25 has been revised to show proper references to the SFAC "Vice" Chairperson(s) and FEMA's disaster "application" center(s); and to show that FmHA's "Report of Emergency Loans Made Pertaining to Disasters" will be provided quarterly to FEMA's National Office by the FmHA National Office.

Section 1945.26 has been partially revised to provide guidelines to prevent the duplication of FmHA and SBA disaster loan benefits; and to specify weekly rather than daily reporting to FEMA of EM applications received in Presidential disaster areas; and to submit to FEMA a copy of the final (rather than each) action taken on the EM applications. The reference to the SBA Administrator is corrected to show the Secretary of Agriculture or FmHA Administrator.

Section 1945.28 has been added setting forth the relationship between ASCS and FmHA under their respective disaster programs.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Some of the revisions to the proposed rule are covered in items 3 and 5 in the discussion of comments. Part of the introductory paragraph for § 1945.162 was inadvertently dropped in the proposed rule and is added in this final rule. This is a provision of the Food Security Act of 1985 for controlled substances. The proposed rule for § 1945.163 (b)(6)(i) through (v) was revised in the final rule published in the **Federal Register** on June 1, 1987. This revision was in regard to replacement costs for EM loan physical losses. The proposed rule for § 1945.164 is deleted from this final rule because it has been determined not to be in the best interest of the Government to make EM loans to FmHA employees. A summary of the revisions are as follows:

This regulation has been revised to remove certain provisions which are now obsolete, make editorial changes and clarify EM loan security requirements. This revised instruction includes changes for calculating quality production losses, household content losses, losses to livestock operations, and physical losses to growing crops. It also provides examples on how to calculate losses for informative purposes.

Section 1945.154 has been partially revised to include definitions for farm and home plan, household contents, feasible plan, and irregular payment; make cross reference to § 1924.57 (c)(5) of Subpart B of Part 1924 of this chapter

for definition of a feasible plan; delete definitions of farmer and principal members, stockholders, partners and joint operators; revise definitions of borrower, established farmer, farm, farming enterprise, nonfarm enterprise, partnership, physical loss, and production loss; and to change the abbreviation "EFP" to the correct abbreviation of "EFAP"—Emergency Feed Assistance Program.

Section 1945.155 has been revised to delete reference to an obsolete Memorandum of Understanding between SBA and FmHA.

Section 1945.156 has been partially revised to delete references to principals of entity applicants and establishes uses of monies from sale of non-essential assets.

Section 1945.161 has been partially revised to make editorial changes, and to delete references to principals of entity applicants and the enumerated information required from entity applicants and members of entity applicants.

Section 1945.162 has been partially revised to delete "principal" and clarify the eligibility requirements for an "established farmer" in paragraph (c), change paragraph (g) to coincide with the training and experience requirements of other farm loan regulations, correct the cross-reference of the definition of a "family farm" in paragraph (i), make editorial changes in paragraph (1), and to add paragraph (m).

Section 1945.163 has been partially revised to clarify and renumber paragraphs (a)(1) (i) through (v) to (a)(1) (i) through (iv) to set forth the sources of production records which may be used in sequential order to calculate the applicant's normal yields; provide guidelines and examples on calculation of production losses in paragraph (a)(2); provide guidelines and examples for calculation of replacement cost to essential machinery, equipment and buildings in paragraphs (b)(5), (7) and (8); allow applicants with dwelling losses only the option to apply for either an EM loan or SBA disaster housing loans in paragraph (b)(14); provide guidelines for determining household content losses in paragraph (c); and editorial changes are made in paragraphs (d) and (e).

Section 1945.166 has been partially revised to clarify paragraph (a)(2) and to reduce and clarify the number of purposes for which EM funds may be used in paragraphs (b) and (c).

Section 1945.167 has been partially revised to add paragraphs (b), (j) and (k) and renumber the existing paragraphs accordingly. Paragraph (b) is added to show that priority will be given to the use of EM loan funds to meet the credit needs of FO, OL and SW farm loan applicants; paragraph (f) is revised to reduce the period from 2 years to 1 year for requiring a new appraisal; paragraphs (j) and (k) are added to provide guidelines on how to handle applicants previously indebted to FmHA, and to preclude the making of EM loans on highly erodible land and wetland.

Section 1945.168 has been partially revised in paragraph (b) to stipulate the maximum repayment terms for EM loans based on production and physical losses; to clarify the terms of EM loans advanced for crop and livestock production in paragraphs (b)(1) (ii) and (iii); to delete paragraph (b)(3); and to correct a line omission in paragraph (d).

Section 1945.169 has been partially revised to delete paragraph (a)(3) and to add a new paragraph (a)(3) to allow a junior lien on collateral which secures a guaranteed FmHA loan(s) when an EM loan is being made to an indebted FmHA borrower; paragraph (b) is revised to show the parties responsible for signing the promissory note when an EM loan is made to an individual or entity; a new paragraph (i) is added to prescribe the type of security required when EM loans are made for personal household contents; and the remaining paragraphs are renumbered in sequence with some editorial changes. Paragraph (n) is revised to show that crop insurance is optional and not a requirement for an EM loan(s).

Section 1945.173 (b)(1)(ii) has been partially revised to delete references to continue, through providing additional EM loans, with borrowers who have defaulted on loan agreements by allowing flood or mudslide insurance to lapse and have had new flood or mudslide losses.

Section 1945.180 has been revised to delete paragraphs (a) and (b) and to show in the introductory paragraph a cross-reference to § 1910.4(f) of Subpart A of Part 1910, as the procedures to follow in timely processing of EM applications and County Committee actions.

Section 1945.183 has been partially revised in paragraph (a) to clarify FmHA's relationship with SBA in handling EM applications for disaster housing purposes, and allow weekly instead of daily reports to SBA on all such EM applications received, followed with a copy of the final action taken on the applications, so as to prevent a duplication of benefits; and make certain editorial changes; paragraph (b) is revised to further define the administrative actions to be taken before approving an EM loan(s); and paragraphs (c), (d) and (e) are revised to make editorial changes and to show the process by which County Supervisors will report rejected applicants for EM disaster housing assistance to FEMA.

**List of Subjects in 7 CFR Part 1945**

Agriculture, Disaster assistance, Intergovernmental relations, Loan programs—Agriculture.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended to read as follows:

## PART 1945—EMERGENCY

1. The authority citation for Part 1945 is added to read as follows and the authority citations throughout Part 1945 are removed.

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

2. Subpart A is revised to read as follows:

**Subpart A—Disaster Assistance—General**

Sec.

1945.1 [Reserved]
1945.2 Purpose.
1945.3–1945.4 [Reserved]
1945.5 Abbreviations.
1945.6 Definitions.
1945.7–1945.17 [Reserved]
1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).
1945.19 Reporting potential natural disasters and initial actions.
1945.20 Making EM loans available.
1945.21 Reporting and coordination requirements.
1945.22–1945.24 [Reserved]
1945.25 Relationship between FmHA and FEMA.
1945.26 Relationship between FmHA and SBA.
1945.27 Relationship between FCIC and FmHA.
1945.28 Relationship between ASCS and FmHA.
1945.29 [Reserved]
1945.30 FmHA Emergency Loan Support Teams (ELST).
1945.31 FmHA Emergency Loan Assessment Teams (ELAT).
1945.32–1945.34 [Reserved]
1945.35 Special EM loan training.
1945.36–1945.44 [Reserved]
1945.45 Public information function.
1945.46–1945.50 [Reserved]

### Subpart A—Disaster Assistance—General

### § 1945.1 [Reserved]

### § 1945.2 Purpose.

This subpart describes and explains the types of incidents which can result in an area being determined a disaster area, thereby making qualified farmers in such areas eligible for Farmers Home

Administration (FmHA) Emergency (EM) loans. With respect to natural disasters, it sets forth the responsibility of the Secretary of Agriculture; the factors used in making a natural disaster determination; the relationship between FmHA and the Federal Emergency Management Agency (FEMA); the method for establishing and using Emergency Loan Support Teams (ELST) and Emergency Loan Assessment Teams (ELAT); the training of FmHA personnel; and disaster related public information functions. The natural disaster determinations/notifications made under this subpart do not apply to any program other than the FmHA EM loan program. FmHA's policy is to make EM loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract) as provided by law.

**§§ 1945.3–1945.4 [Reserved]**

**§ 1945.5 Abbreviations.**

The following abbreviations are used in this subpart.

(a) ASCS—Agricultural Stabilization and Conservation Service.

(b) DAR—Damage Assessment Report.

(c) ELAT—Emergency Loan Assessment Team.

(d) ELST—Emergency Loan Support Team.

(e) EM—Emergency.

(f) EOH—USDA Emergency Operations Handbook.

(g) FAC—Food and Agriculture Council.

(h) FCIC—Federal Crop Insurance Corporation.

(i) FCO—Federal Coordinating Officer.

(j) FEMA—Federal Emergency Management Agency.

(k) FmHA—Farmers Home Administration.

(l) LFAC—Local Food and Agriculture Council.

(m) NASS—State Statistical Office of the USDA National Agricultural Statistics Service.

(n) OMB—Office of Management and Budget.

(o) SBA—Small Business Administration.

(p) SFAC—USDA State Food and Agriculture Council.

(q) USDA—United States Department of Agriculture.

**§ 1945.6 Definitions.**

The following definitions are applicable to this subpart:

(a) *Applicant.* The person or entity carrying on the farming operation at the time of the disaster and requesting EM loan assistance from FmHA.

(b) *County.* A local administrative subdivision of a State or a similar political subdivision of the United States.

(1) *Primary county.* A county determined to be a disaster area.

(2) *Contiguous county.* A county that touches a primary county at any point.

(c) *Disaster.* A natural disaster, as determined by the Secretary of Agriculture or the FmHA Administrator, or a major disaster or emergency declared by the President.

(1) *Major disaster.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the "Disaster Relief Act of 1974," above and beyond normal emergency services available from Federal, State and local governments.

(2) *Presidential emergency.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which is of such magnitude that the President makes a declaration requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3) *Natural disaster.* A disaster in any part of the United States in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical property losses and/or severe production losses within a county. Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

(i) Unusual and adverse weather conditions or natural phenomena include such things as:

(A) A major single natural occurrence or event such as a blizzard, cyclone, earthquake, hurricane or tornado.

(B) A single storm, or series of storms, accompanied by severe hail, excessive rain, heavy snow, ice and/or high wind.

(C) An electrical storm.

(D) A severe weather pattern over a period of time which, due to excessive rainfall, unusual lack of rainfall, or periods of high or low temperatures, causes flooding, substantial water damage, drought or freezing, or which results in the spreading and flourishing of insects or pests, or in plant or animal diseases spreading into epidemic proportions, or prevents the control of fire, however caused.

(ii) Severe *physical* property losses are those which the Administrator determines prior to a natural disaster determination by the Secretary, to be severe, and to have caused extensive damage to or destruction of, physical farm property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock, livestock products; poultry; poultry products; growing crops (see § 1945.163(b)(11) of Subpart D of Part 1945 of this chapter); harvested crops, and supplies which, if not repaired or replaced, would make it impossible for farmers affected by the unusual and adverse weather conditions to continue operating their farms on a sound basis.

(iii) Severe *production* losses within a county are those in which either:

(A) The Secretary determines that there has been a reduction countywide of at least 30 percent of the normal year's dollar value of all crops, including hay and pasture, and the crops could not be replanted or replaced with a substitute crop, or

(B) The Secretary determines that there has been a 30 percent loss countywide in the normal year's dollar value of a single enterprise (as defined in § 1945.154(a)(13)(i) of Subpart D of Part 1945 of this chapter); or

(C) The Secretary, after exercising discretion, determines that, although the conditions set forth in § 1945.6(c)(3)(iii)(A) and (B) of this subpart have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances as to warrant a finding that a natural disaster has occurred. In making this determination, the Secretary may request the Administrator to provide for consideration such factors as the nature and extent of production losses; the number of farmers who have sustained qualifying production losses; the number of farmers in that other lenders in the county indicate they will not be in position to finance; whether the losses will cause undue hardship to a certain segment of farmers in the county; whether damage to particular crops has resulted in undue hardship; whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and

the demand for EM loans; and any other factors considered relevant. The Secretary will consider the information set forth in § 1945.6(i) of this subpart in deciding whether a natural disaster has occurred.

(4) *Potential natural disaster.* Unusual and adverse weather conditions or natural phenomena that have caused physical and/or production losses, but which have not yet been examined by the Secretary or the Administrator for consideration as a natural disaster.

(d) *Disaster area(s).* The county(ies) declared/designated as a disaster area for EM loan assistance as a result of disaster related losses. This included counties named as contiguous to those counties declared/designated as disaster areas.

(e) *Farmers.* Individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

(f) *Incidence period.* The specific date or dates during which a disaster occurred.

(g) *National Office.* The Director, Emergency Designation Staff.

(h) *Normal year's dollar value.* The FmHA National Office will determine the normal year's dollar value by establishing a normal year yield and price. Normal year yield will be the average yield of the 5 years immediately preceding the disaster year for each cash crop, including hay and pasture, grown in the county. The price will be the average commodity price for the 36 months immediately preceding the disaster year for each crop. Yields and prices used to establish the value or normal production will be obtained from the NASS. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources. Yields used to establish the disaster year's production will be obtained from DARs which are prepared by the LFACs and SFACs. Prices used to establish the value of disaster year production will be the same as those used to establish normal year values.

(i) *Substantially affected.* A farmer applicant has been substantially affected when there has been a disaster as defined in paragraph (c) of this section, and the applicant has sustained qualifying physical and/or production losses, as defined in § 1945.154(a) of Subpart D of Part 1945 of this chapter.

(j) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date will be 8 months from the date of the disaster declaration/determination/notification.

(k) *United States or State.* Each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§§ 1945.7–1945.17 [Reserved]**

**§ 1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).**

There is a USDA FAC established by the Secretary to serve every State and every County in the United States. The FACs are responsible for reporting the occurrence of and assessing the damage caused by potential disasters, as required to ensure that the Department's disaster programs are implemented when and where needed; to coordinate the Department's EM disaster programs with those of other Federal departments and agencies; and to provide personnel, as needed and requested by FEMA, to help staff disaster application centers in major disaster areas.

(a) *State Food and Agriculture Council (SFAC).* The SFACs are composed of representatives of the several USDA agencies having emergency program responsibilities at the State level. The vice chairpersons, Emergency Programs, of the SFACs are the ASCS State Executive Directors. FmHA State Directors are members of the SFACs.

(b) *Local Food and Agriculture Council (LFAC).* These councils are composed of representatives of the several USDA agencies having available personnel at the County level. The chairpersons of the LFACs, in most cases, are the ASCS County Executive Directors. The FmHA County Supervisors are members of the LFACs.

(c) *FAC policies and procedures.* These policies and procedures are set forth in the USDA Emergency Operations Handbook (EOH), available in any ASCS or FmHA Office.

**§ 1945.19 Reporting potential natural disasters and initial actions.**

(a) *Purpose.* The purpose of reporting potential natural disasters is to provide a systematic procedure for rapid reporting of the occurrence and extent of damage and loss caused by such events which may result in a natural disaster determination.

(b) *Responsibility for assessing and reporting disasters.* USDA SFACs and LFACs representing their members agencies are best qualified at the State and County levels to accomplish the assessment of agricultural production losses resulting from a potential natural disaster. These councils are charged with the responsibility of reporting the occurrence of and assessing the damage caused by disasters and will perform this responsibility under policies and procedures as set forth in the EOH.

(c) *Actions to be taken.* Immediately after the occurrence of a potential natural disaster:

(1) When physical losses only occur, the FmHA County Supervisor will report to the State Director who will advise the Administrator that there has been a potential natural disaster with physical property losses to one or more farmers. *This report must be made to the Administrator within 3 months from the last day of the disaster incidence period. Upon receiving the report, the Administrator will decide whether a natural disaster has occurred. If it has, the Administrator will make EM loans available to any otherwise qualified applicant who has suffered qualifying physical losses. Availability of EM loans assistance under this Administrator action shall be limited to physical losses only.* Notices that EM loans are available will identify the county in which the unusual and adverse weather condition, or natural phenomenon has occurred and also each contiguous county.

(2) When physical and/or production losses occur, the FmHA County Supervisor will report to the LFAC chairperson, as specified in the EOH, all substantial physical property loss, damage or injury and severe production losses that have occurred in the County Office area. The County Supervisor will assist the LFAC in preparing the 24-hour report required in paragraph (c)(3) of this section. If the LFAC has not completed its 24 hour report within two workdays after the occurrence of a potential natural disaster, the County Supervisor will report to the State Director of Form FmHA 1945–27, "Report of Natural Disaster." In urgent situations, the report may be made by telephone, followed by the LFAC report or Form FmHA 1945–27. Either of these reports will be based on information obtained from personal knowledge and from farmers, agricultural and community leaders, and from any other personally contacted reliable source(s). The County Supervisor will convey to the LFAC chairperson all information pertaining to the potential disaster and provide the chairperson with a copy of Form FmHA 1945–27, if prepared.

(3) The LFAC will report the potential natural disaster, in accordance with the EOH, to:

(i) The SFAC, Vice Chairperson; and

(ii) Appropriate County Government representative(s).

(4) The SFAC will provide copies of the LFAC report to:

(i) The USDA Washington Offices of ASCS, FmHA and Office of Intergovernmental Affairs; and

(ii) The State Governor's Emergency Coordinator and the State Department of Agriculture.

(5) The FmHA State Director will inform the National Office of each potential natural disaster as soon as possible and forward to the National Office a copy of the LFAC report or Form FmHA 1945–27, with any attachments, and supplemented with the State Director's comments and recommendations. The State Director must include a statement as to the number of farmers, ranchers, and aquaculture operators affected by the potential natural disaster. In urgent situations, the State Director will report to the National Office, Emergency Designation Staff, by telephone, and immediately thereafter send a written report to the National Office, Emergency Designation Staff. The State Director will continually notify the SFAC Vice Chairperson, Emergency Programs, of any additional information received concerning the potential natural disaster.

(6) When inquiries are received from persons affected by a potential natural disaster, they will be provided the following information:

(i) By the County Office:

(A) The kind of assistance that will be available if the President declares a major disaster or emergency, or if the Secretary determines that a natural disaster has occurred.

(B) Whether or not physical property loss EM loans are available.

(C) That applications for EM loans may be filed for future processing if such loans are made available, or may be filed at a later date after the necessary determinations have been made.

(D) Whether regular FmHA farm loan assistance is available.

(ii) State Office, or the National Office, will furnish the same information as the County Office, or will refer the person to the appropriate County Office.

(7) When inquiries are received from a Governor, a County Governing Body or Indian Tribal Council concerning a potential natural disaster, they will be informed of the procedure for making EM loans available.

(8) The actions required in paragraph (b) of this section will be taken even if the Governor of a State has requested the President to declare a county(ies) a major disaster or Presidential emergency area.

**§ 1945.20 Making EM loans available.**

EM loans will be made available to applicants having qualifying severe physical and/or production losses within a county named by FEMA as eligible for Federal assistance under a major disaster or emergency declaration by the President; or under a natural disaster determination by the Secretary of Agriculture, pursuant to § 1945.6(c)(3)(iii) of this subpart; and to applicants having qualifying severe physical property losses when, prior to action by the President or the Secretary, the FmHA Administrator has determined (pursuant to § 1945.6(c)(3)(ii) of this subpart) that such losses have occurred as a result of a natural disaster. Any determination made by the Secretary or the Administrator, pursuant to this subpart may be revised or reversed upon the receipt of new facts which establish that a change is warranted. FmHA's policy is to make loans to any otherwise qualified applicant. When a county has been designated/declared a disaster area where eligible farmers may qualify for EM loans due to a disaster(s) occurring on or after May 31, 1983, under this section, all other counties contiguous to the eligible county(ies) are also named as areas where EM actual loss loans may be made to applicants whose operations have been substantially affected by the same disaster(s).

(a) *Declaration by the President.* When there is a Presidential major disaster or emergency declaration and FEMA has notified the FmHA National Office, the following actions will be taken:

(1) The National Office will immediately:

(i) Notify the State Director and the Director, Finance Office by telephone and confirm by electronic message. The notification will contain:

(A) The date of the declaration;

(B) The name(s) of the county(ies) determined eligible for Federal disaster assistance;

(C) The type of disaster;

(D) The incidence period for the disaster;

(E) The termination date for accepting applications; and

(F) The disaster declaration number [Examples: Major Disasters, M491; or Presidential Emergency, E061].

(ii) Take the actions required by § 1945.21(a)(1) of this subpart.

(2) The State Director will immediately:

(i) Notify the appropriate County Supervisor(s) to make EM loans available in the declared counties, and confirm this notification by a State supplement containing information listed in paragraphs (a)(1)(i) (A) through (F) of this section.

(ii) Notify the SFAC Vice Chairperson, Emergency Programs, in writing; and

(iii) Prepare the public announcements deemed appropriate to inform the farm community, and coordinate the issuance of such announcements with FEMA's Public Information Officer.

(3) The County Supervisor will immediately upon receiving notification that the county(ies) has been declared a disaster area:

(i) Notify the Chairperson LFAC in writing;

(ii) Make such public announcements as seem appropriate to adequately inform the local farm community;

(iii) Arrange and conduct meetings with local agricultural lenders and agricultural leaders within 10 working days after the disaster declaration date to explain the purpose and the assistance available under the EM loan program; and

(iv) Be available to help staff the FEMA disaster assistance centers, when requested to do so.

(b) *Determination by the Secretary of Agriculture.* When a potential disaster has substantially affected farmers, causing qualifying severe losses and it is requested by a Governor or Indian Tribal Council that there be a determination that a natural disaster has occurred, *the Secretary will acknowledge the request in writing and consider whether a determination should be made, provided the Secretary receives such request in writing within three months of the last day of the occurrence of such potential disaster.* The Governor or Indian Tribal Council should send a copy of the request to the FmHA State Director. When the Secretary finds based on the material received pursuant to this subpart that the conditions of § 1945.6(c)(3)(iii) (A) or (B) have been met, it shall be announced that a natural disaster has occurred. Also, if on finding that the conditions of § 1945.6(c)(3)(iii)(C) of this subpart so warrant, the Secretary may determine that a natural disaster has occurred.

(1) Upon receipt of the Governor's or Indian Tribal Council's request through the Secretary's Office, the FmHA National Office will immediately take the following actions:

(i) Notify the State Director by telephone of the Governor's request.

(ii) Obtain an immediate report from the State Director on whether there have

been severe physical property losses within each of the counties requested by the Governor or Indian Tribal Council.

(iii) Obtain a report from the State Director on production losses.

(2) The State Director will immediately:

(i) Notify the SFAC Vice Chairperson, Emergency Programs, that a DAR is needed, unless the Governor has already made such request to the SFAC Vice Chairperson, in accordance with the EOH for the requested county(ies); and

(ii) Advise the National Office on whether qualifying physical property losses have occurred.

(iii) Review each DAR, as soon as it is available, and forward it to the National Office with written comments on the extent of probable qualifying production losses, and other factors which are recommended for consideration by the Secretary in making determinations under § 1945.6(c)(3) of this subpart. The State Director will also submit to the National Office a list of all agricultural commodities produced in the State, giving the average yearly prices for each commodity for the three years immediately preceding the disaster year; the county average yields for each commodity for the five years immediately preceding the disaster year; and any additional supportive information. Yields and prices data will be used to establish the normal year's production and will be obtained from the USDA National Agricultural Statistics Service (NASS) by the State Director. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources.

(iv) Upon receipt of the Administrator's request for a survey in connection with a request by the Secretary for information needed concerning § 1945.6(c)(3)(iii)(C), expeditiously gather and compile the information requested and submit it to the Administrator with a recommendation. The survey will be conducted in a manner jointly agreed upon by the Administrator and the State Director.

(3) The National Office will:

(i) Immediately use the State Director's report and accompanying price and yield information to analyze and verify losses reported in the DAR(s), along with any other information and comments provided by the State Director.

(ii) Promptly forward a written report to the Secretary, along with supporting information, for use by the Secretary in making a decision on the requested natural disaster determination.

(4) The Secretary will review the results of the survey and determine whether a natural disaster has occurred.

(i) When the Secretary determines that a natural disaster has occurred:

(A) The Administrator will be directed to make EM loans available in the county(ies) named by the Secretary, as provided by law.

(B) The Administrator will notify the State Director, by electronic message, of the Secretary's decision. Such notice *will not* be given to the State Director until the Secretary has notified the Governor or Indian Tribal Council, from whom the natural disaster determination request was received.

(C) The National Office will immediately pursue the same course of action as described in paragraph (a)(1) of this section, except the disaster determination number will be coded S and three numbers (Example S141).

(D) The State Director will immediately pursue the same course of action as described in paragraph (a)(2) of this section.

(E) The County Supervisor will immediately pursue the same course of action as described in paragraph (a)(3) of this section.

(ii) When the Secretary determines that the conditions in § 1945.6(c)(3)(iii)(A) or (B) of this subpart have *not* been met, and decides to consider other factors in accordance with § 1945.6(c)(3)(iii)(C) of this subpart, the Secretary will:

(A) Request the Administrator to provide additional information for consideration through an actual survey of farmers and lending institutions in the county(ies) requested to be determined a natural disaster area.

(B) The Administrator will instruct the State Director to conduct the survey focusing on such factors as:

(*1*) The nature and extent of production losses;

(*2*) The number of farmers who have sustained qualifying production losses;

(*3*) The number of farmers in paragraph (b)(4)(ii)(B)(*2*) of this section that other lenders in the County Office area indicate they will not be in a position to finance;

(*4*) Whether the losses will cause undue hardship to a certain segment of farmers in the county;

(*5*) Whether damage to particular crops has resulted in undue hardship;

(*6*) Whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and

(*7*) Any other factors considered relevant.

(iii) If the Secretary finds that the conditions of § 1945.6(c)(3)(iii) (A) or (B) of this subpart have *not* been met, and decides that the conditions do not warrant a natural disaster finding under § 1945.6(c)(3)(iii)(C) of this subpart, the Governor or Indian Tribal Council and other concerned officials will be notified of this and the reason(s) for the Secretary's conclusions.

(c) *Notification by the FmHA Administrator.* When the Administrator determines that an unusual and adverse weather condition or natural phenomenon has substantially affected farmers, causing qualifying severe *physical losses,* the Administrator will make EM physical loss loans available in the county(ies) identified and notify the State Director by electronic message.

(1) The Administrator, upon notifying the State Director that EM physical loss loans are to be made available, will issue the following:

(i) The Administrator's notification number (Example: N181);

(ii) The incidence period for the natural disaster; and

(iii) The termination date for accepting applications.

(2) The State Director upon receiving written notification by electronic message from the Administrator will notify:

(i) Appropriate County Supervisor(s) to commence processing EM loan applications in appropriate county(ies).

(ii) The SFAC Vice Chairperson, Emergency Programs; and

(iii) The news media with appropriate announcements.

(3) The Administrator will notify the Office of the Secretary of Agriculture of any action taken concerning *physical* property losses. The National Office will also provide the same information to the appropriate Governor or Indian Tribal Council, FEMA, ASCS, SBA and other concerned officials at their request.

(4) Upon notification from the State Director that EM loans are available in a county, the County Supervisor will pursue the course of action described in § 1945.20(a)(3) of this subpart.

(d) *Relationship between Administrator's notification and Secretary's determination.* Both the Administrator and the Secretary can make natural disaster determinations affecting the same county:

(1) When the Administrator has made physical loss loans available pursuant to § 1945.6(c)(3)(ii), and the Secretary later makes production loss loans available pursuant to § 1945.6(c)(3)(iii) on the basis of the same unusual and adverse weather condition or natural

phenomenon, such physical and production losses will be considered to be caused by a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of Subpart D of Part 1945 of this chapter.

(2) When a series of unusual and adverse weather conditions or natural phenomena occur in a county within the same crop year, and it is not possible for the Secretary to assess the damages in order to determine whether the conditions in § 1945.6(c)(3)(iii) have been met until the end of such series or the crop year, a determination that a natural disaster has occurred shall be considered for both physical property and production losses to be due to a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of Subpart D of Part 1945 of this chapter.

(e) *Extension of termination dates for continuing disaster conditions.* When a natural disaster continues beyond the date on which an Administrator's notification or Secretary's determination is made, and when there are continuing losses or damages caused by that disaster, the Administrator will extend the incidence period and the termination date for such specified period as the Administrator finds appropriate, but not in excess of 60 days. The following actions will be taken to obtain an extension:

(1) The County Supervisor will advise the State Director of the conditions for which an extension is requested.

(2) The State Director will make a recommendation to the Administrator on whether an extension should be granted; and

(3) The Administrator will, if the request is granted:

(i) Amend the initial notification/determination (using the same number) by establishing a new incidence period and termination date; and

(ii) Notify the State Director by electronic message.

(f) *Limitations.* When actions are authorized by the Secretary or the Administrator under paragraphs (b) or (c) of this section, such actions will ordinarily be completed within six months after the beginning date of the incidence period of a reported disaster, except when the actions required in paragraph (b)(2) of this section cause a delay beyond the six months period, in which event the actions must be completed within nine months of the beginning date of the incidence period. The Secretary may extend this limitation up to 12 months from the beginning date of the incidence period if there were other exceptional causes for the delay.

**§ 1945.21 Reporting and coordination requirements.**

After EM loans are made available under § 1945.20 of this subpart, the following actions will be taken immediately:

(a) *By the National Office.* The Administrator or a designee will:

(1) Submit weekly reports to the following, informing them of the past week's disaster actions taken by FmHA. If no actions are taken in any particular week, negative reports will be made:

(i) The Secretary of Agriculture or the Secretary's designee;

(ii) The Director of the FmHA Finance Office;

(iii) The FEMA;

(iv) The SBA Central Office;

(v) The ASCS National Office;

(vi) The FCIC National Office;

(vii) The OMB;

(viii) The National Oceanic and Atmospheric Administration; and

(ix) The Office of Governmental and Public Affairs.

(2) The weekly reports will contain the following information:

(i) The date of the declaration/determination/notification;

(ii) The name(s) of any county(ies) in which EM loans are available;

(iii) The nature of the damages and losses; and

(iv) The termination data for accepting EM loan applications.

(b) *By the State Director.*

(1) Notify the appropriate County Supervisor(s) of the:

(i) Name(s) of any county(ies) in which EM loans are available;

(ii) Date of the declaration/determination/notification;

(iii) Disaster number;

(iv) Type of disaster;

(v) Incidence period; and

(vi) Termination date for accepting applications.

(2) Notify the State ASCS Executive Director of the authority to make EM loans. Promptly have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of FmHA Instruction 2000–JJ (available in any FmHA office). Arrive at a mutual understanding as to how ASCS disaster program benefits are to be handled in conjunction with the processing of FmHA EM actual loss loans, so that duplication of benefits for the same losses are not received by disaster victims;

(3) Contact the FCIC Field Operations Office Director to review the Memorandum of Understanding between FCIC and FmHA, Exhibit A of FmHA Instruction 2000–N (available in any FmHA office), and arrive at a mutual understanding as to how FCIC indemnity payments are to be handled in conjunction with the processing of EM actual loss loans so that duplication of benefits for the same losses are not received by disaster victims;

(4) Make appropriate public announcements, including notices in Indian Tribal Council(s) news media. However, if the declaration was by the President, under § 1945.20(a) of this subpart, news releases should be cleared with the FEMA; and

(5) If the FEMA notifies the State Director that an agreement between the State and Federal Government (FEMA) has been made to provide 408 grants in a major disaster area to those suffering damages and losses to housing and personal property, who *are ineligible* for disaster loan assistance through the FmHA and/or SBA, the following actions will be taken:

(i) The State Director will notify the appropriate County Supervisor(s) of the address and phone number of the nearest FEMA office in the Supervisor's area; and

(ii) At the close of business each week, the County Supervisor(s) will forward to the State Director a list of applicants claiming physical losses who *do not qualify for EM* loan assistance, with the reason(s) they do not qualify; and

(iii) The State Director will immediately summarize the information received from the County Supervisors and forward a report to FEMA.

(c) *By the County Supervisor.* (1) Notify the County ASCS Executive Director of the declaration/determination/notification and have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of FmHA Instruction 2000–JJ (available in any FmHA office), to arrive at a mutual understanding as to how ASCS disaster program benefits and other information in ASCS's records will be made available and used in processing EM actual loss loans. Also, the County Supervisor will request that information regarding the availability of EM loans be placed in the ASCS's newsletter;

(2) Notify the County Governing Body, Indian Tribal Council(s), and make

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appropriate public announcements including notices in Indian Tribal Council(s') news media; and

(3) Explain the assistance available under the EM program to agricultural lenders and leaders in the area including Indian agricultural lenders and leaders.

**§§ 1945.22–1945.24 [Reserved]**

**§ 1945.25 Relationship between FmHA and FEMA.**

(a) *General.* When a major disaster or emergency declaration is made by the President, the FEMA is charged with the responsibility for seeing that disaster assistance is made available to disaster victims. Also, FEMA is responsible for coordinating the actions of other Federal agencies who have programs to provide disaster assistance. A Federal Coordinating Officer (FCO) is appointed for each major disaster or emergency to coordinate Federal assistance in the disaster area.

(b) *Before the declaration.* (1) When a request for a major disaster or emergency declaration is made by the Governor of a State, the FEMA through its Regional Director is responsible for obtaining an assessment of the losses and damages to respond to the request.

(2) If the FEMA makes a request for information from FmHA on losses and damages caused by an unusual and adverse weather condition or natural phenomenon, the FEMA representative will be advised to contact the SFAC Vice Chairperson. The EOH provides that the SFAC will request the LFAC to prepare the DAR. State Directors and County Supervisors should cooperate with the SFAC Vice Chairpersons and LFAC Chairpersons in preparing the DARs.

(c) *After the declaration.* When a major disaster has been declared by the President and the FEMA establishes a disaster application center(s) in the local disaster area(s):

(1) The SFAC will be responsible for:

(i) Selecting qualified USDA employees to represent USDA at each center, after consulting with other council members in making the selection. FmHA State Directors will cooperate with the SFAC in seeing that centers are properly staffed.

(ii) Orienting the selected employees on all current USDA disaster programs. FmHA State Directors will cooperate in this orientation to ensure that the USDA representatives at the center(s) are familiarized with the FmHA EM loan program and other FmHA loan programs that could be of assistance to the disaster victims; and

(iii) Informing the FEMA that USDA representatives are available to help at each of the disaster application centers.

(2) The FmHA State Director will be responsible for pursuing the following policy in working with the FEMA and the FCO by:

(i) Authorizing receipt of EM loan applications in the counties named by the FEMA. However, no EM loans can be approved until the National Office has given such notification as prescribed in § 1945.20(a)(1) of this subpart;

(ii) Attending or delegating a representative to attend any meeting(s) called by the FCO to discuss Federal assistance under the disaster declaration; and

(iii) Advising the FCO to contact the SFAC Vice Chairperson, if a request is made by the FCO for FmHA employees to help staff the FEMA's Disaster Application Centers; and

(iv) Advising the FCO that FmHA's "Report of Emergency Loans Made Pertaining to Disasters" will be provided quarterly to FEMA's National Office by the FmHA National Office.

**§ 1945.26 Relationship between FmHA and SBA.**

(a) *General.* Public Law 99–272 made agricultural enterprises ineligible for SBA physical disaster and economic injury loan programs. However, in disaster areas declared by the President or the SBA Administrator, the SBA will continue to accept physical disaster loan applications for losses to dwellings and/or personal household contents, regardless of whether the dwelling is located on a farm or nonfarm tract. It is the policy of USDA and FmHA to cooperate with SBA in the use of each agency's respective loan making authorities, to complement the activities of each other; and to the extent possible, improve the delivery of disaster assistance to the agricultural segment of the country and minimize the potential for duplication of benefits for the same losses from the disaster loan programs administered by the two agencies.

(b) *Preventing duplication of disaster program benefits.* Preventing borrowers from receiving duplicate disaster program benefits will be assured by taking the following precautions:

(1) For all counties named by FEMA under a major disaster or Presidential emergency declaration, the FmHA County Offices will notify the appropriate SBA Disaster Area Office of all EM loan applications received each week, for damage or loss of farm dwellings and/or loss of household contents. Notice will be given by forwarding to SBA a photocopy of the applicant's completed Form FmHA 410–1, "Application for FmHA Services." Block 22 of the form should indicate the purpose for which the loan was requested.

(2) For each application referred to in paragraph (b)(1) of this section, FmHA County Offices will send a copy of each final action taken with EM loan applications to the appropriate SBA Disaster Area Office.

(3) A farm applicant may elect to obtain SBA financing for physical damage or loss to the dwelling and household contents, and separate financing from FmHA to cover damages or losses to the farming operation. Accordingly, applicants who elect to receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA EM loan assistance in disaster areas declared by the President or the Secretary of Agriculture or FmHA Administrator. An EM loan will *not* be approved until it is determined the requirements of § 1945.163(d) of Subpart D of this part will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office, pursuant to paragraph (a)(4)(ii) of § 1945.183 of Subpart D of this part.

(c) *How SBA disaster loans are made available.* SBA disaster loans are available in counties:

(1) Named by the FEMA under a major disaster or emergency declaration by the President; for physical loss and/or economic injury disaster loans.

(2) Declared by the SBA Administrator for physical loss and economic injury disaster loans.

(3) Designated by the Secretary of Agriculture for Agri-dependent businesses.

(d) *Notification of SBA disaster areas.* The SBA Central (National) Office will notify the FmHA National Office when its disaster loan program is made available. The FmHA National Office will notify State Directors, by memorandum, of the SBA disaster areas; and State Directors will notify the appropriate County Supervisor(s) in writing.

**§ 1945.27 Relationship between FCIC and FmHA.**

(a) *General.* Exhibit A of FmHA Instruction 2000–N (available in any FmHA office) is a Memorandum of Understanding between FCIC and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the FCIC and the FmHA by providing encouragement to regular and FmHA EM loan borrowers to use Federal All-Risk Crop Insurance.

where available; assist FmHA borrowers to obtain All-Risk Crop Insurance or other agricultural commodity insurance coverage; and exchange information essential to the elimination of duplicating compensatory disaster benefits from the FCIC and FmHA for the same disaster losses.

(b) *Annual meeting with FCIC.* FmHA State Directors will meet with FCIC Field Operations Office Directors at least once each year to review the Memorandum of Understanding and rededicate their efforts and those of their respective agency employees to comply with the agreements contained in the Memorandum of Understanding.

(c) *Contact after EM actual loss loans are made available.* After each disaster, when EM loans are made available, State Directors are *required* to promptly contact the FCIC Field Operations Office Director to review the Memorandum of Understanding and agree on how each agency will fulfill its responsibilities in dealing with the disaster situation.

(d) *Notification to County Offices.* State Directors *will* provide instructions for actions to be taken by County Supervisors in maintaining a good relationship with FCIC Insurance Representatives.

**§ 1945.28 Relationship between ASCS and FmHA.**

Exhibit A of FmHA Instruction 2000-J] (a copy of which is available in any FmHA office) is a Memorandum of Understanding between ASCS and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the ASCS and the FmHA by coordinating certain ASCS disaster programs with the FmHA EM loan program. It specifically identifies the administrative responsibilities of FmHA County Supervisors and ASCS County Executive Directors concerning disaster benefits.

**§ 1945.29 [Reserved]**

**§ 1945.30 FmHA Emergency Loan Support Teams (ELST).**

(a) *Use of ELSTs.* ELSTs are to be used when a disaster warrants immediate attention by FmHA in implementing the EM loan program. Also, ELSTs are used when unusually large numbers of EM loan applications are received and personnel from other areas are required to be temporarily assigned to assist in rendering prompt service to the affected area(s).

(b) *State Office ELST.* Each State Director shall form an ELST to be deployed, when needed, in areas affected by a major disaster, Presidential emergency, or a natural disaster. ELSTs shall assist the State Directors in expediting the making of EM loans to disaster victims.

(1) State Directors shall use the ELSTs formed in their State(s) and all other FmHA personnel within their State(s), as the need arises, in making EM loans. If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request outside assistance.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing ELSTs from other States to assist in the making of EM loans.

(3) State ELSTs will consist of a team leader and team members, selected by the State Director.

(i) The State ELST can include Farmer Programs Specialists, County and Assistant County Supervisors, Program Review Assistants, County Office Assistants, and County Office Clerks.

(ii) So that no one person or County Office unit bears an unfair burden, State team members will be changed from time to time.

(iii) Team members will provide training in EM loan making and EM loan servicing to all County Office employees.

(iv) District Directors are responsible for notifying the State Director of any need to change a team member within their district.

(4) State ELSTs will be trained as follows:

(i) The National Office will hold training meetings or workshops for ELST leaders as needed; and

(ii) State ELST leaders will be responsible for training and keeping the State team and all other State personnel currently informed on all phases of EM loans.

(5) State Directors will issue a State supplement establishing an ELST for the State(s) under their jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Director, Emergency Designation Staff.

(c) *National Office ELST leaders.* The National Office has established a cadre of ELST team leaders.

(1) National Office team leaders will be used as follows:

(i) Training of FmHA field personnel, other USDA personnel, and temporary personnel in the making of EM loans;

(ii) Assisting State Directors in the organization and expediting of assistance to eligible disaster victims; and

(iii) Leading ELSTs in areas with an unusually large volume of EM loan applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of EM loan processing activities.

**§ 1945.31 EmHA Emergency Loan Assessment Teams (ELAT).**

The State Director will deploy ELATs on a continuing basis to the designated areas to monitor EM loan processing activities in order to minimize loan errors, especially in loss calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and auditors from the Office of Inspector General, if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Office. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure and will forward a copy of the ELAT team leader's report to the Administrator, Attention: Emergency Designation Staff.

**§ 1945.32-1945.34 [Reserved]**

**§ 1945.35 Special EM loan training.**

(a) *General.* When it is evident that a large number of farmers were affected by a widespread disaster in a State, the National Office will send a qualified representative(s) from the Emergency Designation Staff to the State to assist the State Director in conducting a training meeting(s) with State, District and County employees, provided there has not been a recent training meeting in that State.

(b) *Purpose.* A good training program is a must in disaster areas. This program should adequately instruct State and County Office personnel so that when the training is completed they will be well qualified to process EM loans without undue delay. The training

meeting will last two days (16 hours) and include a workshop and a test.

(c) *Objective.* The basic objective of this training program is to keep State and County personnel properly trained in the current methods of processing EM loan applications and EM loan making. This will result in more expeditious service to disaster victims during critical times and minimize erroneous interpretations of regulations by FmHA employees in administering the EM loan program.

(d) *Comprehensive EM loan training package.* A comprehensive EM loan training package has been developed for use by National Office and Staff Office personnel in training all EM loan writers (both regular and temporary employees). This package, including an application kit, will be used for the EM loan training meetings, and any subsequent EM loan training meetings conducted by State or District personnel.

(e) *Funding.* Travel for the two-day session required in paragraph (b) of this section may be funded from a special purpose account with advance approval from the Budget Division. The following information must be provided to the Budget Division when a request is made for these additional travel funds:

(1) Number of sessions.

(2) Categories, by number, of personnel attending each session.

(3) Estimated cost per session.

**§ 1945.36–1945.44 [Reserved]**

**§ 1945.45 Public information function.**

A good public information program is a must in disaster areas. This program should inform farmers and the general public when and where EM loans are available. Also, the information will state the EM loan objectives, eligibility requirements, and type of assistance available. Public information functions will be performed according to Exhibit A of FmHA instruction 2015–A (available in any FmHA office).

**§ 1945.46—1945.50 [Reserved]**

3. Sections 1945.151 through 1945.200 are revised to read as follows:

**Subpart D—Emergency Loan Policies, Procedures and Authorizations**

Sec

1945.151 Introduction
1945.152 Program objectives
1945.153 Loans for citrus grove rehabilitation or reestablishment.
1945.154 Definitions and abbreviations
1945.155 Relationship between FmHA and other federal agencies.
1945.156 The test for credit and certification requirements for availability of credit elsewhere
1945.157–1945.160 [Reserved]
1945.161 Receiving and processing applications.
1945.162 Eligibility requirements.
1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.
1945.164–1945.165 [Reserved]
1945.166 Loan purposes.
1945.167 Loan limitations and special provisions.
1945.168 Rates and terms
1945.169 Security requirements.
1945.170–1945.172 [Reserved]
1945.173 General provisions—compliance requirements.
1945.174 [Reserved]
1945.175 Options, planning, and appraisals.
1945.176–1945.179 [Reserved]
1945.180 County Committee certification.
1945.181 [Reserved]
1945.182 Loan docket preparation.
1945.183 Loan approval or disapproval.
1945.184 [Reserved]
1945.185 Actions after loan approval.
1945.186–1945.187 [Reserved]
1945.188 Chattel lien search.
1945.189 Loan closing.
1945.190 Revision of the use of EM loan funds.
1945.191 [Reserved]
1945.192 Loan servicing.
1945.193–1945.199 [Reserved]
1945.200 OMB control number.

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**Subpart D—Emergency Loan Policies, Procedures and Authorizations**

**§ 1945.151 Introduction.**

(a) *Policy.* This subpart prescribes the policies, procedures, and authorizations of the Farmers Home Administration (FmHA) for making insured emergency (EM) loans to farmers, ranchers, and aquaculture operators (hereinafter referred to as farmers), as provided by law. FmHA's policy is to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract). These regulations apply to applicants/borrowers and FmHA personnel involved in making EM loans.

(b) *Program administration.* The County Supervisor is the local contact person for applicant processing, loan making, and loan servicing activities.

**§ 1945.152 Program objectives.**

The objective of EM loans is to provide financial assistance to cover actual losses sustained by eligible farmers, so that they can return to normal farming operations after sustaining substantial losses as a result of a declared/designated disaster. EM loans are made to assist eligible disaster farm victims rehabilitate and resume their normal operations. This objective will be accomplished through the extension of credit and such supervisory assistance as is determined necessary to achieve the objectives of the loan and protect the Government's interest. Supervisory assistance will be given in accordance with the provisions of Subpart B of Part 1924 of this chapter. The borrower has the responsibility of achieving the objectives of the loan. The borrower accomplishes this by repaying the loan according to the planned repayment schedule, maintaining FmHA security, using loan funds for planned purposes only and following a plan of operation agreed upon with FmHA.

**§ 1945.153 Loans for citrus grove rehabilitation or reestablishment.**

Exhibit D of this subpart, which deals with loans made to operators of citrus groves, modifies some of the provisions contained in this subpart.

**§ 1945.154 Definitions and abbreviations.**

(a) *Definitions.*—(1) *Applicant.* The person or entity conducting the farming operation at the time of the disaster and making a request for EM loan assistance from FmHA.

(2) *Approval official.* An FmHA official who has been delegated loan approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office (see FmHA Instruction 1901–A, Exhibit C).

(3) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. Aquatic organisms are fish (the term "fish" includes any aquatic gilled animal commonly known as "fish," as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a written permit or lease issued to the applicant and the permit or lease must specifically identify the waters to be used solely by the applicant.

(4) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

(5) *Calendar year.* The 12-month period beginning January 1 and ending December 31 of any given year.

(6) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(7) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation and authorized to carry on farming, ranching, or aquaculture operations under the laws of the State(s) in which the entity will operate a farm(s).

(8) *Eligible area.* A county or similar political subdivision in which EM loans are made available.

(9) *Established farmer.* A tenant-operator or owner-operator of a family farm who was actively participating in the operation and management of a farming operation at the time of the disaster, spends a substantial portion of time in carrying out the farming operation, and had planted a crop or had purchased livestock which were on the farm at the time of the disaster. If the applicant is a cooperative, a corporation, a partnership or a joint operation, it must be primarily engaged in farming, *i.e.*, the applicant entity must derive over fifty percent (50%) of its gross income from all sources from its farming operation. The gross farm income figures will be taken from the proposed annual plan or farm budget that will cover the next projected 12-month period (or crop year).

(10) *Family farm.* A farm or ranch as defined in § 1941.4 of Subpart A of Part 1941 of this chapter.

(11) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which are used or will be used in the production of crops or livestock and meet the requirements of paragraph (a)(10) of this section. This includes aquaculture operations which meet the requirements set forth in paragraph (a)(3) of this section and includes nonfarm operations which meet the requirements set forth in paragraph (a)(23) of this section. It also includes a residence which, although physically separate from the farm aceage, is ordinarily treated as a part of the farm in the local community.

(12) *Farm and home plan.* For the purpose of this regulation, any reference to farm and home plan(s) means any farm planning and/or recordkeeping system(s) acceptable to the loan approval official. This includes but is not limited to: Form FmHA 431–2, "Farm and Home Plan;" farm budgets; State University Computerized Farm Planning Systems; etc.

(13) *Farming enterprise.* The business of producing and marketing crops, livestock, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials.

(i) *Single enterprise.* An enterprise which constitutes an integral part of an applicant's total farming operation. Some crops such as corn may be produced as a cash or feed crop. In such cases, the actual acres produced for each purpose for the best 4 of the past 5 years will be used in determining losses for each single enterprise. The following are examples of single enterprises:

(A) All cash field crops;

(B) All cash vegetable crops;

(C) All cash fruit and nut crops;

(D) All feed crops fed to applicant's own livestock. A livestock enterprise must be a basic part of the farming operation in order for feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops;

(E) Beef operations;

(F) Dairy operations;

(G) Hog operations;

(H) Poultry operations;

(I) Aquaculture operations; and

(J) All other operations (*i.e.*, trees grown for timber, etc.)

(ii) *Basic part of a farming operation.* Any single enterprise which normally generates sufficient income to be considered essential to the success of the total family farming operation.

(14) *Fixture.* Generally, an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself.

(15) *Hazard insurance.* Includes coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that which is required by law.

(16) *Household contents.* The essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, etc. Excludes all luxury items including jewelry, furs, antiques, paintings, etc.

(17) *Incidence period.* The specific date(s) during which a disaster occurred.

(18) *Insured loan.* A loan made directly by FmHA as lender from the Agricultural Credit Insurance Fund, and serviced by FmHA personnel.

(19) *Irregular payment schedule.* To schedule the payment of interest in part and/or principal in whole or in part.

(20) *Joint operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

(21) *Majority or controlling interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership, or joint farming operation.

(22) *Market value.* The amount which a willing buyer would pay a willing, but not forced, seller in a completely voluntary sale.

(23) *Nonfarm enterprise.* Any nonfarm business enterprise including recreation which is closely associated with the farming operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as custom farm work on other farms, raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

(24) *Normal year's production.* The normal year's production is the average per acre yield or production per animal unit of the 4 better years out of the 5 years immediately preceding the disaster year.

(25) *Partnership.* An entity consisting of individuals who have agreed to operate a farm. The entity must:

(i) Be recognized as a partnership by the laws of the State(s) in which the entity will operate a family farm:

(iii) Be authorized to own real and/or personal property:

(iii) Be able to incur debts in its own name.

(26) *Physical loss.* Damages to or destruction of physical property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock;

livestock products; harvested crops; supplies; and growing crops and pasture which will be replanted/reestablished. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(27) *Feasible Plan.* A feasible plan is one which meets the requirements of § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter.

(28) *Production loss.* The reduction in normal production, directly attributable to the natural disaster, of yield per acre and/or quality of crops produced, of quantity and/or quality of livestock products produced per animal unit, and of weight gain and/or natural increase in numbers of livestock units. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(29) *Qualifying disaster.* A major disaster, Presidential Emergency, or natural Disaster as defined in Subpart A of this part.

(30) *Qualifying physical loss.* A loss caused by damage to or destruction of physical property that is essential to the successful operation of the farm; and if it is not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis.

(31) *Qualifying production loss.* The production loss an applicant sustained from the disaster that is equivalent to at least a 30 percent loss of normal per acre or per animal production in any single enterprise, which is a basic part of the total farming operation. Losses of livestock increases, *e.g.*, calves, pigs, etc., are considered production losses, *except* when live animals are destroyed. When an animal is killed, lost or solid because of injury or reduced production potential caused by the disaster, it is considered a physical loss. Reductions in the production of livestock and livestock products, or reductions in weight gains of animals due to homegrown feed crop and/or pasture losses, will not be considered production losses when replacement feed is available to purchase, regardless of the cost of that feed (normally production losses to livestock enterprises will be based on feed crop and pasture losses). When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessibility to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production losses. Production losses will be calculated based on the reduction from normal which occurs during the disruption period and the period needed to bring production back up to the normal level.

(32) *Related by blood or marriage.* As used in this subpart, individuals who are related to one another as husband, wife, parent, child, brother or sister.

(33) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

(34) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(35) *Subsequent loans.* Any EM loans processed by the Finance Office after it processed the first EM loan to a borrower. The disaster designation number is not considered in determining whether an EM loan is a subsequent loan.

(36) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted.

For both physical and production losses, the termination date is 8 months from the date of the disaster declaration/determination/notification.

(b) *Abbreviations.* The following abbreviations are used in this subpart:

(1) *ASCS*—Agricultural Stabilization and Conservation Service.

(2) *ECP*—Emergency Conservation Program.

(3) *EFAP*—Emergency Feed Assistance Program.

(4) *EM*—Emergency Loans.

(5) *FCIC*—Federal Crop Insurance Corporation.

(6) *FEMA*—Federal Emergency Management Agency.

(7) *FIA*—Federal Insurance Administration.

(8) *FmHA*—Farmers Home Administration.

(9) *FMI*—Forms Manual Insert.

(10) *INS*—Immigration and Naturalization Service.

(11) *OGC*—Office of the General Counsel.

(12) *SBA*—Small Business Administration.

(13) *UCC*—Uniform Commercial Code.

(14) *USDA*—United States Department of Agriculture.

### § 1945.155 Relationship between FmHA and other federal agencies.

(a) *ASCS and FmHA.* A Memorandum of Understanding between the ASCS and FmHA on disaster assistance pertaining to the exchange of information essential to the elimination of duplicate compensatory benefits from the two participating agencies for the same disaster losses is Exhibit A of FmHA Instruction 2000–JJ (available in any FmHA office).

(b) *FCIC and FmHA.* A Memorandum of Understanding between the FCIC and FmHA pertaining to crop insurance and exchanging information essential to the elimination of duplication of disaster compensatory benefits is Exhibit A of FmHA Instruction 2000–N (available in any FmHA office).

### § 1945.156 The test for credit and certification requirements for availability of credit elsewhere.

(a) *Applicants who certify that other credit is available.* Applicants applying for EM loan assistance who certify they are *able* to obtain sufficient and suitable credit elsewhere to meet their actual farming and family living needs are not eligible for such assistance.

(b) *Applicants who certify that other credit is NOT available.* Applicants who certify they are *not able* to obtain sufficient credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in this paragraph (b).

(1) *Test for credit for individuals and entities.* Applicants must be *unable* to obtain sufficient and suitable credit elsewhere to finance their actual needs at reasonable rates and terms, taken into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the applicant has been getting credit away from the local community where the farming operation is located, such source(s) of credit must also be contacted and considered. The applicant's equity in *all assets,* including, but not limited to, real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining the applicant's ability to obtain such credit from other sources. Also, the applicant must offer to pledge *all assets* as security when requesting credit from other lenders. Cooperatives, corporations, partnerships and joint farming operations and the members, stockholders, partners and joint operators, both individually and collectively, must be unable to provide the required financing from their own

resources or with credit obtained from pledging those resources to other lenders. Form FmHA 1940–36, "Request for Lender's Verification of Loan Application," must be completed (with particular attention that item 2A is completed) and filed in the applicant's County Office case folder; and any additional facts concerning the findings, *in all cases*, must be documented and recorded in the running case record.

(2) *Test for credit certification requirements.* Applicants will certify in writing on the application form, and the County Supervisor *shall* make the determination whether or not adequate and suitable credit is available elsewhere to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. The County Supervisor will consider all such information obtained from other lenders in making the determination, but is required to make an independent decision concerning the applicant's ability to obtain the needed credit elsewhere. Should the County Supervisor determine that the applicant *can* obtain the necessary credit elsewhere to meet actual needs, the applicant will be notified, in writing, that the applicant is *not* eligible for an EM loan(s).

(i) For applicants whose total EM loan(s) request is for $300,000 or less, the following actions will be taken:

(A) Applicants will be required to apply for the credit needed from their normal lender(s) and, if their normal lender(s) is located outside the local community, from at least one agricultural lender in the local community, to determine whether such lender(s) will provide the credit. Form(s) FmHA 1940–36 must be completed by all lending sources contacted, unless an exception is made under the provisions of paragraph (b)(2)(i)(C) of this section. Only when the applicant is not able to obtain a loan, from one or more of the lending sources contacted, will the applicant be considered for an EM loan. If the County Supervisor believes it necessary, the action required in paragraph (b)(2)(ii) of this section will be taken.

(B) When the County Supervisor receives letters or other written evidence, including Form FmHA 1940–36, from a lender(s) indicating that the applicant is unable to obtain satisfactory credit from that source(s), such correspondence will be included in the loan docket.

(C) If it appears from a review of the application that it would be unduly burdensome for the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor is familiar enough with other lenders' farm loan programs to determine that no possibility exists for the applicant to obtain the credit needed from those lenders. When this conclusion is reached, the basis for it will be recorded in the running case record, and further checks will not be necessary. However, when this exception is used, the applicant's normal lender(s) *must be contacted in all cases* and the results of that contact(s) must be well documented in the running case record.

(ii) For applicants whose total EM loan(s) request is for more than $300,000, the following actions will be taken:

(A) Applicants will be required to apply at not fewer than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. In addition, when an applicant has a net worth of $1 million or more and produces evidence that the necessary credit cannot be obtained in the local community, the applicant will be required to contact at least two other lending sources outside the local area. One or more of those lenders contacted must be the applicant's normal lender(s).

(B) Form FmHA 1940–36 must be completed by all lending sources contacted, returned to the County Office and handled in accordance with paragraph (b)(2)(i)(B) of this section.

(C) When the County Supervisor receives Form FmHA 1940–36 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(3) *Use of nonessential assets (both farm and nonfarm) when seeking other credit.* When an EM loan(s) will be made, after other lenders have declined to provide needed credit to the applicant, the County Supervisor *will*, as a condition of loan approval, require the applicant and the owner(s) of the applicant entity to list all assets (both essential and nonessential) setting forth: Why those assets and any income derived from them are needed; and how such assets and the income derived from them will be used for essential family living expenses and for maintaining a sound family farming operation(s). The loan approval official must determine that the applicant's plan for use of *all* assets and the income derived therefrom is acceptable. Any assets not contributing to essential family living expenses and maintenance of a sound family farming operation *will* be considered nonessential; and the applicant and the owner(s) must, as a condition of loan approval, agree to sell the nonessential assets. The proceeds from such sale(s) *will* be used to reduce the amount of EM loan(s) requested, provided the assets can be sold prior to the EM loan(s) closing. If the nonessential asset(s) cannot be sold before loan(s) closing, the ownership interest in those assets *will* be mortgaged and/or assigned to FmHA; and a written agreement prepared and executed, in a manner approved by the OGC, to sell those assets at their present market value, within a specified period not to exceed one year from the date of loan(s) closing. The proceeds from the sale of such assets will be applied as an extra payment on the FmHA loan carrying the lowest interest rate, which is secured by the asset(s) sold.

**§§ 1945.157—1945.160 [Reserved]**

**§ 1945.161 Receiving and processing applications.**

(a) *Applications.* Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

(1) Applications for initial EM loans for each disaster will be received only in areas where EM loans are made available in accordance with Subpart A of Part 1945 of this chapter, and must be postmarked or received in the County Office before the specified 8-month termination date has passed. *These applications must be processed within twelve months after they are filed.*

(2) An applicant conducting a family farming operation in different counties or locations will be considered for only one application, and will file that application in the county in which the farm headquarters is located, unless determined otherwise by the State Director. When the operation is located in more than one State, the State Directors involved will consult and determine which State will process the application and service the loan(s).

(3) Applications may be received and processed from FmHA EM loan borrowers or SBA disaster housing loan borrowers for that portion of the

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maximum EM loan originally authorized, but not requested initially from FmHA or SBA, provided the application is *received within 8 months of the disaster declaration/determination/notification date.*

(4) Applicants who are determined to be *ineligible* for an EM loan may be considered for other types of FmHA farm loans, when appropriate.

(b) *Statement of losses.* Applicant's statements of loss or damage will be obtained in support of their applications by having them complete Form FmHA 1945–22, "Certification of Disaster Losses."

(c) *ASCS verification of farm acreages, production and benefits.* From information obtained on Form FmHA 1945–22, the County Supervisor will send a separate Form FmHA 1945–29, "ASCS Verification of Farm Acreages, Production and Benefits," to the appropriate ASCS County Office for verification of ASCS registered farm(s) that the applicant has certified constituted part of the disaster year's operation. ASCS records of acres of crops planted/grown in the disaster year, actual (proven) yields in the disaster year, ASCS established yields for the disaster year, ASCS emergency payments and the other information requested on that form must be obtained. The use of Form FmHA 1945–29 is optional for EM loans made for physical losses. It is required for EM loans made for production losses on crops covered by ASCS programs.

(d) *Evidence of operation.* If the applicant is a cooperative, corporation, partnership, or joint operation, it will provide evidence that it was operating as a cooperative, corporation, joint operation or partnership at the time the disaster loss occurred, or has changed its form in accordance with § 1945.162(1) of this subpart, after the loss occurred.

**§ 1945.162 Eligibility requirements.**

In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *Test for credit.* Applicants must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(b) *Citizenship.* (1) An individual applicant must be a citizen of the United States (see § 1945.154(a) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District Office. (See Exhibit B of Subpart A of Part 1944 of this chapter.) The completed form will be mailed to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) More than a 50 percent interest in the cooperative, corporation, partnership or joint operation must be owned by United States citizens (see § 1945.154(a) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.

(c) *Established farmer.* An applicant must be an established farmer (as defined in § 1945.154(a) of this subpart). An applicant who conducts the farming operation as an individual must manage the farming operation. At least one stockholder, member, partner or joint operator of an entity applicant must manage the farming operation. One who does not devote full time to the farming operation may be considered the manager provided that person visits the farm at sufficiently frequent intervals to exercise control over the farming operation, makes decisions and gives directions on how the operation(s) should be run, and sees that the operation is being carried on properly. Any applicant that employs an outside full-time hired manager or management service does not qualify as an established farmer, regardless of the number of visits made by the individual applicant or the members, stockholders, partners or joint operators. The following are not considered to be established farmers for EM loan purposes:

(1) An estate or trust; a corporation with over 50 percent of the ownership held by an estate, trust, another corporation, a partnership or a joint operation; a partnership or joint operation with over 50 percent of the ownership held by an estate, trust, corporation, another partnership or another joint operation.

(2) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses through contracts or business arrangements with farmers. However, a grower under contract with an integrator or processor is considered an established farmer even though the applicant operates through a contract arrangement with an integrated processor, provided the operation is not managed by an outside full-time hired manager or management service. Farmers operating through contract may be considered for EM loans for physical losses and production losses. However, eligibility for and the amount of their production losses will be determined from the applicant's share of the agricultural production as set forth the contract.

(d) *Operate in a disaster area.* An applicant for an EM loan must have sustained qualifying losses in an area in which the availability of EM loans for actual losses has been determined in accordance with Subpart A of Part 1945 of this chapter; and must have filed an application before the expiration date. When an applicant's farming operation is located both in a designated county(ies) and a non-designated county(ies) refer to § 1945.163(a)(2)(xx) of this subpart.

(e) *Losses.* An applicant must have suffered qualifying production and/or physical losses to be eligible for an EM loan. Production losses must be to property in which the applicant has an ownership interest or interest in which a security interest can be obtained. Physical losses must be to property in which the applicant has an ownership interest. See § 1945.163 of this subpart

for the methods of determining qualifying losses.

(f) *Legal capacity.* An applicant must possess the legal capacity to contract for the loan.

(g) *Training and experience.* An applicant must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years immediately proceeding the application) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation and have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(h) *Honestly endeavor.* The applicant will honestly endeavor to carry out the undertakings and obligations required of the applicant in connection with the loan.

(i) *Family farm.* The applicant's farm must be a family farm as defined in § 1945.4 of Subpart A of Part 1941 of this chapter. If the applicant was conducting larger than a family farm at the time of the disaster but will be conducting a family farm at the time an EM loan is closed, the applicant meets this eligibility requirement.

(j) *Intent to continue farming.* An applicant must show an intent to continue the operation after the disaster. Those applicants who were required to stop temporarily because of the disaster loss or damage to their operations but intend to continue farming with EM loan assistance meet this requirement.

(k) *EM loan(s) to cooperatives, corporations, joint operations or partnerships.* When an EM loan is made to a cooperative, corporation, partnership or joint operation, only one initial EM loan can be made to the entity constituting the farming operation to cover the losses per disaster. However, an individual member, stockholder, partner, or joint operator may qualify for a separate EM loan to cover losses to a *separate farming operation* which the applicant conducts as an individual on a different farm tract.

(1) If the members, stockholders, partners or joint operators holding a majority interest *are related* by blood or marriage, at least one member, stockholder, partner or joint operator must operate the family farm.

(2) If the members, stockholders, partners or joint operators holding a majority interest *are not related* by blood or marriage, the majority interest holders must operate the family farm.

(3) If an entity applicant has an operator interest in any other farming operation, that farming operation must be no larger than a family farm.

(l) *Change in the form of an applicant.* A change in the form of an applicant between the time of a qualifying loss and the time an EM loan is closed does *not* make the applicant ineligible for EM loan assistance. (Examples of changes in form are as follows: An entity may split into its individual members or into more than one entity; one or more individuals may leave an entity; an individual may incorporate; a partnership may become a joint operation, a corporation, a cooperative, or another partnership; a corporation may become a partnership, a joint operation, a cooperative, or another corporation; a cooperative may become a joint operation, a partnership, a corporation, or another cooperative; a joint operation may become a partnership, a corporation, a cooperative or another joint operation.) Such an applicant is eligible for EM loan assistance subject to *all* of the following limitations and qualifications:

(1) The applicant must meet all FmHA eligibility requirements at the time of loan closing.

(2) The applicant must *not* conduct an operation larger than the operation that was being conducted at the time of the disaster.

(3) In the case of an entity applicant, all of the individuals who have an interest in the entity must have had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster and/or must be heirs of those who had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster. Heirs must have been participating in the operation at the time the disaster occurred and must be engaged in the farming operation at the time of loan approval.

(4) In the case of an individual applicant, that person must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be an heir of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. An heir has to have been participating in the operation at the time the disaster occurred and has to be engaged in the farming operation at the time of loan approval.

(5) To determine the amount of an actual loss loan an applicant may receive, first calculate the actual loss suffered by the operation(s) as it existed at the time of the disaster, in accordance with § 1945.163 of this subpart. Then look at the individual applicant *or* the individual members, stockholders, partners or joint operators of an entity applicant and determine each person's percentage of ownership interest (or interest in which a security interest could be obtained) in the operation as it existed at the time of the disaster. For an entity applicant, add the percentages of all owners who had an interest in the entity that suffered the disaster losses. Multiply the actual loss suffered by the operation as it existed at the time of the disaster by this percentage figure; the result is the amount of actual loss loan the applicant may receive. For example, if one partner withdraws from a four-partner partnership (each person owning a 25% interest), the remaining three partners are eligible for 75 percent of the actual loss suffered by the operation as it existed at the time of the disaster.

**§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.**

Disaster losses will be reported by applicants on Form FmHA 1945–22, "Certification of Disaster Losses," which states the physical and production losses suffered as a result of the declared/designated disaster. The applicant will report, on Form FmHA 1945–22, total acres and actual yields for *all* crops planted and/or grown in the disaster year, and the number of *all* animal units and production per animal unit being maintained at the time of the disaster. This information will come from the applicant's own records or from ASCS records of acres grown and proven actual yields in the disaster year. Applicants will also report their previous 5-year production levels as set forth in paragraph (a) of this section. This form will be completed and submitted to the County Office with the application, as soon as the losses and/or damages can be accurately assessed. The information provided by applicants on Form FmHA 1945–22 will be the primary basis for FmHA's calculation of qualifying losses, eligibility for EM loan(s) based on production losses, and an applicant's maximum amount of EM loan eligibility. Therefore, applicants are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945–22 can be supported by written records. Applicants will be asked to identify on that form any single farming enterprise they consider basic to the success of their total farming operation, and in which they have suffered a disaster loss. When an applicant's certified production loss claims seem

unreasonable, they will be verified and the findings documented. Physical loss claims will be verified by requiring the applicant to furnish evidence of ownership and proof of the property loss or damage. Proof of ownership could be by deeds, mortgages, financial statements, insurance policies, and the like. Proof of the loss or damage could be by the applicant's own pictures, written certification by other persons or, when practical, by visual inspections by FmHA employees.

(a) *Production losses.* (1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 year's production. The applicant *must* select the year to be eliminated. The year selected to be eliminated *must* be the same year for all farm enterprises (i.e., *all* crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. A State supplement will be issued which will be used in connection with paragraph (a)(1)(iii) of this section. The State supplement will contain average production figures provided by the USDA State Crop and Livestock Reporting Service, when available. If those records are not available, the State supplement will contain statistical data on production from similar State or Federal bodies. When this information is available by county, county averages will be used. If available only by State, the State averages will be used throughout the State. In those States where neither a Country nor State average is available for an agricultural commodity(ies), the State Director, with the advice of representatives of other Federal and State agricultural agencies, will establish County or State averages and advise County Offices of these averages in the State supplement. State Directors and Farmer Programs Chiefs in adjoining States will consult with each other before releasing these figures. Applicants will identify, on Form FmHA 1945–22, the production record source(s) to be used in determining the normal year's production for each commodity that was produced on all farms operated by the applicant in the disaster year. Applicants must use the production record source(s) for each crop in the order of priority as follows:

(i) *The applicant's actual reliable farm records or ASCS "actual yields,"* for those years for which they are available. When the ASCS "actual yields" are used, they will be documented on Form FmHA 1945–29. If actual yields are not available for all of the 5 crop year(s), the applicant will first use a combination of actual records which are available and the ASCS established yield(s) for the disaster year, as specified in subparagraph (ii). If ASCS established yields are not available for the disaster year, then the applicant will use a combination of actual records which are available and County or State averages, as specified in paragraph (a)(1)(iii).

(ii) *The ASCS "established yields."* When this production record source is used, the applicant must obtain the information from ASCS and submit it with the application to FmHA. The disaster year established yield, as provided by ASCS for any given crop, will be used as the yield for those years for which actual yields are not available and combined with actual yields to determine the normal year's yields. When there are no actual yields available for any of the 5 years, and there is an ASCS established yield available for the disaster year, the established yield will be considered as the normal year's yield, without any calculations. This production record source will be used only for those years and those commodities for which the applicant's or ASCS actual yields are not available.

(iii) *The County or State average yields.* These average yields will be found in the State supplement mentioned in paragraph (a)(1) of this section. This production record source will be used only for those commodities and those years for which neither the applicant's reliable farm records nor ASCS actual or established yields are available. Only when there are no "actual yields" or "established yields" available will County or State average yields be used. However, County or State average yields may be combined with actual yields when established yields are not available, but County or State average yields will not be combined with established yields when established yields are available for the disaster year.

(iv) When an applicant's production loss is on land being developed and maximum production capacity has not been attained, the State Director will establish normal yields on a case-by-case basis.

(2) FmHA loan official(s) will complete Form FmHA 1945–26, "Calculation of Actual Losses."

(i) In calculating production losses, the same established unit prices will be used for the disaster year and the normal year in computing the dollar value of each enterprise. Unit prices will be established in accordance with paragraph (a)(2)(iv) of this section. In the production loss calculation, those crop production yields and production per animal unit records authorized in paragraphs (a)(1)(i), (ii) and (iii) of this section will be used.

(ii) Information certified on Form FmHA 1945–22 for the disaster year for all single enterprises (as defined in § 1945.154(a)(13)(i) of this subpart), which suffered a loss due to the disaster, will be transposed from Form FmHA 1945–22 to the appropriate places on Form FmHA 1945–26. The FmHA official completing Form FmHA 1945–26 is responsible for veriftying loss information provided by the applicant. Information obtained from ASCS on Form FmHA 1945–29 will be cross checked with information provided by the applicant on form FmHA 1945–22. Whenever there is a discrepancy between an applicant's acreage and/or yield information provided on Form FmHA 1945–22, by the applicant, and the information provided by ASCS on Form FmHA 1945–29, the applicant will be told about the discrepancy and the applicant and the County Supervisor will complete Form FmHA 1945–22 so that it accurately reflects the applicant's average and yield.

(iii) When the applicant's disaster loss is due to a reduction in *quality* with or without a quantity loss, rather than a reduction in *quanity* only, the applicant will be given credit for quality loss by adjusting the actual production yield downward. This will be accomplished by converting the dollar value of the quality loss to a yield reduction equal in value to the quality loss. When a quality adjustment is necessary, the basis used in making the adjustment will be the applicant's *accurate* records of production and sales receipts showing the actual price received and the grade of the commodity for the five years immediately preceding the disaster year. The normal year's quality will be established by eliminating the poorest of the five-year record. The applicant must select the year to be eliminated. The burden of providing this information rests with the applicant.

*Example I:* A farmer has accurate records indicating that the farmer's normal year's production of corn is 100 bushels per acre of No. 2 corn. Due to flooding after the ears were set and mature, the corn was coated with a filmy residue. This resulted in the quality grade being reduced from No. 2 to No. 3. The commodity price established for No. 2 yellow corn was $3.00 per bushel. The farmer, due entirely to a *reduction in quality*, received $1.50 per bushel. Therefore, when computing the disaster loss, the *quantity* produced would be reduced by 50% to reflect the *quality* loss.

| | Established criteria | Disaster year actuals |
|---|---|---|
| Yield | 100 bu/acre | 100 bu/acre |
| Grade quality | No. 2 yellow corn. | No. 3 yellow corn |
| Established price per bushel. | $3.00 | $1.50 (actual received) |

Price per Unit Disaster Year ($1.50) Divided by Price per Unit Normal Year ($3.00) equals Quality Reduction (.5 or 50%)
Quality Reduction × Disaster Year Actual Production = Quality (for loss calculation)
.5 × 100 bushels per acre = 50 bushels per acre
50 bushels per acre will be entered on Form FmHA 1945–26 as the disaster year yield to reflect the quality reduction.

*Example II:* A cotton farmer usually produces No. 2 cotton. In the disaster year, the farmer produced No. 3 cotton and this quality loss resulted in a grade reduction amounting to a dockage of $100.00 per bale (550 lbs.). The farmer's ASCS established yield is 550 lbs. per acre. The farmer produced 600 lbs. per acre in the disaster year. The established price for cotton for the disaster year is $330.00 per bale (.60 cents per pound).

| | Established criteria | Disaster year actuals |
|---|---|---|
| Yield | 550 lbs./acre | 600 lbs./acre |
| Grade | 2 | 3 |
| Price per bale | $330.00 | $230.00 |

$$\frac{230}{330} = .70$$

.70 × 600 = 420 lbs. per acre
420 lbs. per acre would be entered on FmHA Form 1945–26 as the disaster year yield to reflect the quality reduction.

In this example the farmer would not be eligible for an EM loss loan since the farmer suffered only a 24 percent loss.

$$\frac{420 \text{ lbs./acre}}{550 \text{ lbs./acre}} = 76\%$$

The calculations used for a quanity reduction due to quality losses must be documented on Form FmHA 1945–26 or on an attachment to that form.

(iv) The gross dollar value of production losses will be computed for all crops and all livestock enterprises, which were a part of any single enterprise that suffered losses due to the disaster, by calculating the value of the disaster year's production and subtracting that amount from the calculated value of the normal year's production. Unit prices for all agricultural commodities produced commercially in each State will be established on a Statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued not later than *February 15* of each year. These commodity prices will be established by averaging the *monthly market prices of each commodity for the 12-month period preceding the calendar year in which the disaster occurs.* The monthly average market prices report, "Agricultural Prices," prepared by the National Agricultural Statistics Service (NASS), formerly the Statistical Reporting Service (SRS), will be mailed to each State Office from the FmHA National Office the first week of each month for the previous month. This report provides the average monthly prices for *all major* agricultural commodities produced in each State. For major commodities not reported monthly by NASS, State Offices will also be sent the NASS publication, "Crop Values Summary." This publication provides a 3-year history of seasonal average prices, by State and United States average, for all crops of any significance produced in the 48 contiguous States and Hawaii. Prices found in this annual publication, available by February 1 of the year succeeding the year being reported, are to be used as a *guide only* in establishing the annual price list of commodity prices only for those commodities for which the monthly average prices are not reported. State Directors *will* consult with other agricultural agency representatives and other agricultural lenders in the local area; and State Directors and Farmer Program Chiefs in adjoining States *will* consult each other for additional guidance before releasing their commodity price lists. Once established, these prices will not be changed for any EM loan processed under any disaster occurring on or after February 1 of that calendar year through January 31 of the next calendar year. These monthly and annual reports will be retained and used for reference each year when preparing the annual price lists of average commodity prices to be used Statewide for calculating actual production loss values, for all disasters that occur during the ensuing 12-month period.

(v) The amount of actual production loss will be calculated for the single enterprise which is a basic part of the farming operation (see § 1945.154(a)(13) of this subpart) by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source (*i.e.*, crop insurance indemnity payments, ASCS disaster program payments) *for that enterprise*, from the gross dollar amount of production losses for that enterprise as determined in paragraph (a)(2)(iv) of this section.

(vi) Actual losses for tobacco, peanuts and other crops grown under acreage and/or poundage control will not be calculated differently than any other crop; i.e., the calculations must not include the dollar value of carry over surplus poundage from previous year's(s') production or underproduced pounds to be sold or produced in future years. The value of underproduced poundage allotments and quotas must not be subtracted from the loss. Production from all "controlled" crop acres planted in the disaster year, including acreage above the producer's allotments and quotas, will be considered even though the carry-over crop is not eligible for price supports until the next marketing year.

(vii) Actual losses for spring and fall annual crops of the same species will be treated as two separate crop losses and listed separately on Forms FmHA 1945–22 and 1945–26. The crop(s) not affected by the disaster will be considered as having produced a normal year's yield.

(viii) The dollar value of the actual production loss for the single enterprise which is a basic part of the farming operation as designated by the applicant in Item F, Form FmHA 1945–22, will be divided by the previously calculated normal year's gross income for that enterprise. The result should be rounded to the nearest whole number. To illustrate, if the calculation shows a 29.49 percent production loss, round it down to 29 percent. If the calculation shows a 29.50 percent loss round it up to 30 percent. This establishes the percentage reduction in production from normal for that enterprise. If the percentage loss in *any* single enterprise (see § 1945.154(a)(13) of this subpart) which is a basic part of the farming operation equals or exceeds 30 percent, and the applicant is otherwise eligible, EM loan assistance will be considered.

(ix) Once eligibility is established, based on production losses, the total production loss sustained by the applicant, directly attributable to the disaster, is computed by adding the gross dollar amount of production losses of *all* single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source for those enterprises.

(x) The maximum EM loan for production losses is limited to *80 percent* of the total calculated actual

production loss sustained by the applicant.

(xi) Production losses to hayland, pasture and rangeland used for grazing livestock owned by the applicant must be based on the production from only those acres which are utilized in the disaster year. Losses may be calculated by one of three methods when approved by the State Director. The State Director will decide which one of the following three methods will be used throughout the State to calculate losses to pasture and rangeland; and issue a State supplement to this subpart, setting forth the method(s) to be used Statewide.

(A) *The price per acre method.* The price per acre method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year's gross dollar value. To calculate this, multiply *the number of acres available to be grazed for the disaster year by the established rental charge per acre per mongh* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of months grazed per year during the highest 4 out of the 5 preceding years.*

(*2*) Determine the disaster year gross dollar value. To calculate this multiply *the number of acres grazed during the disaster year by the established rental charge per acre per month* (as determined in accordance with paragraph (a)(2)(xi)(A)(*1*) of this section); *by the number of months the livestock were able to be grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(A)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(A)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(B) *The charge per head or animal unit method.* The charge per head or per animal unit method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established rental charge per animal or per animal unit per month* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of months grazed per year during the highest 4 out of the preceding 5 years.*

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established normal rental charge per animal or per animal unit per month* (as determined in accordance with paragraph (a)(2)(xi)(B)(*1*) of this section); by *the number of months grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(B)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(B)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(C) *The forage equivalent method.* The forage equivalent method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, mulitiply *the number of acres grazed during the disaster year by the established price per pound or ton* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of pounds or tons of forage equivalent produced per acre per year during the highest 4 out of the preceding 5 years for forage of the type being used in this calculation.* (The State Office will set forth the forage equivalent values to be used or the methodology to be used to derive this value in a State Supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination).

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of acres grazed during the disaster year by the established price per pound or ton* (this figure is established by the State Director in accordance with paragraph (a)(2)(xi)(C)(*1*) of this section); by *the number of pounds or tons of forage equivalent produced for forage of the type being used in this calculation produced in the disaster year.* (See paragraph (a)(2)(xi)(C)(*1*) of this section for further information.)

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(C)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(C)(*1*) of this section) to determine the value of pasture loss during the disaster year.

(xii) When a crop cannot be planted, an applicant may treat the loss either as a production loss or as a physical loss (see paragraph (b) of this section). When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in this paragraph as follows: Add all income that is derived from the enterprise to the variable and fixed costs which were not incurred because of the disaster. (The cost figures will be derived from current crop enterprise budgets prepared by State Agricultural Extention Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

(xiii) When a crop can be only partially planted due to a disaster *or* when perennial crops (such as fruits or nuts) already growing cannot be produced or harvested due to a disaster, the loss will be considered a production loss. Such loss will be calculated as set out in paragraph (a)(2)(xii) of this section.

(xiv) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945–22 for the disaster year but only if no part of the crop could be harvested and no substitute crop could be planted and harvested. When figuring the actual dollar amount of production losses subtract the normal costs of harvesting and marketing which were not incurred for crops which were completely destroyed by a disaster. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop and the actual yield for the substitute crop on Form FmHA 1945–22. On Form FmHA 1945–28, the dollar value of the substitute crop must be subtracted from the dollar value of the normal year's production.

(xv) Losses to feed crops will be established by determining the normal year's gross dollar value of those crops and substracting the disaster year's gross dollar value of feed crops. The difference establishes the disaster year's gross dollar loss for feed crops. The gross dollar value of feed crops produced is derived by multiplying the number of feed crop acres by the yield per acre by the unit price.

(xvi) When an applicant elects to sell feeder livestock at an earlier date than usual rather than purchase feed to replace that which was lost as a result of the disaster, the difference between what the sale price would have been if the livestock had been fed for the normal period and the disaster year's premature sale price may *not* be claimed as a loss.

(xvii) Eligibility for production losses to livestock enterprises may be based *either* on loss of production in feed crops, including pasture, to be fed to the applicant's own livestock; *or* on loss

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(from normal) of weight gain of the livestock or livestock products produced, but *not both*. The value of feed produced on native rangeland and pasture constitutes a small portion of the total input costs of maintaining a foundation herd of breeding animals and their offspring. Therefore, loan approval officials will calculate production losses to livestock operations based on reductions in animal unit weight gain and natural increase in numbers.

*Example:*

A rancher has accurate records indicating that the rancher's 200 head foundation breeding cow herd produced a normal calf crop average of 85 percent (170 calves) with an average weaned weight of 350 pounds per calf. As a result of a drought, the rancher found it necessary to cull the cow herd by 50 cows over the normal number culled.

The predisaster value of the cows was $600 per head. The rancher received .35¢ per pound for the cull cows, which had an average weight of 1100 pounds.

Additionally, the rancher's calf crop was only 70 calves with an average weight of 240 pounds in the disaster year (DY). Therefore, the rancher would have sustained a physical loss on the cow herd (see § 1945.163(b)(6)(i)(B)) and a production loss on the calf crop.

The established price for calves is .60 per pound.

Calculations:

The rancher's normal year's (NY) calf crop was 85 percent. Since the rancher reduced the breeding herd by 50 cows, an adjustment must be made to determine the calf losses. The reduced herd size is now 150 cows.

150 cows × 85%=128 calves (NY calf crop from a cow herd of 150)

Normal year:

| | | |
|---|---|---|
| 128×.60×350= | $26,880 | NY income |
| 70×.60×240= | $10,080 | DY income |
| | $16,800 | loss |

16,800 divided by 26,880 equals 63% production loss

Additionally, an EM loan may be made based on the physical loss of 50 cows. (See example in § 1945.163(b)(6)(i)(B)).

(xviii) Claims of production losses from the applicant will be verified by FmHA when the applicant's claims appear to be unreasonable.

(xix) Production losses for orchard crops (fruit or nut) will be only for the crop loss due to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(xx) When an applicant's farming operation(s) is conducted in a designated county(ies) and a non-designated county(ies), eligibility will be established based on losses to a single enterprise which constitutes a basic part of the farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's *actual* yields, both in the designated and non-designated counties, will be used to determine losses. Compensatory payments will be subtracted as explained in paragraph (a)(2)(v) of this section when determining eligibility. The amount of the production loss loan will be limited to the production loss sustained in the designated county, *minus* compensatory payments received or to be received for that portion of the farming operation located in the designated county.

(xxi) The County Supervisor will assign normal yields to all unplanted acreage covered by a Payment in Kind (PIK) contract, when calculating crop production losses on Form FmHA 1945–26.

(b) *Physical losses.* (1) In order to qualify for an EM loan(s) for physical losses, the damaged or destroyed physical property must be essential to the successful operation of the farm and if not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis. The financing necessary to recover from the physical loss must be actually needed to permit the applicant to continue the operation.

(2) The claimed value of all physical losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement requested.

(3) Physical loss loan funds can be used to pay for only contracted or hired labor and materials and supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary repair and replacement.

(4) Damage to or destruction of nonessential buildings, structures or other items will not be repaired or replaced with EM physical loss loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for losses to essential farm buildings, structures and other items which need to be repaired or replaced.

(5) The maximum physical loss loan(s) will be determined by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source from the value of all actual physical losses caused by the disaster.

(6) The physical loss for the following items equals the market value at the time of the disaster for items lost, damaged or destroyed by or as a result of the disaster:

(i) Livestock.

(A) Death of an animal(s) caused by the disaster.

(B) Disaster related damage to an animal's(s') health, which has impaired or reduced its normal production capability and its market value. This includes forced reductions of foundation breeding stock caused by the disaster. Physical losses, under these conditions, would be calculated by establishing a dollar value per head, or unit, at the time the disaster occurred, and deducting the reduced dollar value received from the disaster-caused sale of the animals. The difference in the two values would be considered a physical loss. *(THE ANIMALS SOLD MUST BE OVER AND ABOVE THE NUMBERS NORMALLY CULLED EACH YEAR).*

*Example:*

A physical loss would be calculated as follows:

Predisaster market value—50 cows×$600/cow=$30,000

Price received for cull cows—50 cows×1100 lbs.×35¢=$19,250.

Physical loss=$10,750 ($30,000—$19,250)

(ii) Livestock products on hand or stored.

(iii) Harvested crops on hand or stored.

(iv) Supplies on hand.

(v) Essential machinery and equipment.

(7) The actual physical loss for farm dwellings and essential household contents to be used by the operator and existing labor is the amount required to repair or replace the dwelling and/or household contents with a dwelling and/or contents of like standards, size and quality of that being replaced which will meet all applicable code requirements, and which will provide permanent, adequate, decent, safe, sanitary and modest living quarters.

(8) The actual physical loss for farm service buildings and farm real estate other than buildings is the amount required to repair the property or replace it with a building or property of like standards, size, quality and capacity of that being replaced which will meet all applicable code requirements and which will adequately meet the needs of the farming operation.

(9) The actual physical loss for income-producing trees (fruit or nuts) is the cost of removing the damaged or destroyed trees, cleaning debris and preparing the land for replanting, plus the cost of suitable replacement trees

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and other expenses necessary to reestablish income-producing trees. Losses will not be determined by establishing a value for the trees destroyed or damaged. Any salvage value will be deducted from the loss. The applicant may choose to replace the damaged or destroyed trees with a different enterprise and may use actual loss loan funds for that purpose. (See Exhibit D of this subpart for physical loss loans to citrus growers.)

(10) The actual physical loss to trees (grown for timber) will be determined by establishing the value of trees, at the time of the disaster, less any salvage value. This estimate of value must be determined by a recognized forester who will cruise the timber and establish the value of the destroyed and damaged trees. The applicant may choose to replace the damaged tree enterprise with a different enterprise and use the actual loss loan funds for that purpose. Those applicants whose major farming enterprises are other than tree farming, but who have a wood lot that has been damaged, will have their tree losses considered as physical losses in the same manner as set forth for tree farms.

(11) The actual physical loss to growing crops or pasture is the cost of cleaning debris, preparing the land for replanting, seed, fertilizer, and other expenses necessary to *reestablish* the crop(s) or pasture. These costs can exceed the market value of the crop(s) or pasture at the time of the disaster.

(12) When a crop cannot be planted during the disaster year due to the disaster and the applicant chooses to treat the loss as a physical loss, the actual physical loss is limited to the cost of land preparation, other expenses incurred to the date of the disaster for crops that could not be planted, and a pro rata share of the total operation's fixed costs such as rent, taxes, and insurance. The applicant must provide an itemized list of all the claimed expenses incurred in the disaster year for those enterprises for which disaster losses are claimed. This list must be signed by the applicant. The amount of an EM loan cannot exceed the total itemized expenses listed by the applicant.

(13) EM loans will not be made to flood and mudslide victims to repair or replace damaged or destroyed farm dwellings or farm service buildings and their contents in areas where "National Flood Insurance" is available, except as authorized in § 1945.173(b) of this subpart.

(14) When an applicant has *dwelling* losses only, the applicant may apply for either an EM loan or SBA disaster housing loan to restore or replace the dwelling and personal household contents affected by the disaster.

(c) *Personal household content losses (Subtitle B purposes).* (1) In order to qualify for EM loan assistance for this purpose, the damaged or destroyed household property must be essential to the maintenance of the household; and if not repaired or replaced, the farmer would be unable to remain on the property and continue the farming operation on a reasonably sound basis.

(2) The claimed value of all household losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement.

(3) Labor, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary household repairs and replacements.

(4) Damage to or destruction of non-essential household items will not be replaced or repaired with EM loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for those losses.

(5) The maximum EM loan(s) for repair or replacement of personal household contents is $20,000.

(6) The EM loan(s) will be determined by subtracting all insurance claims and other compensation received or to be received for household losses from the cost of repairs or replacement value of the essential household items.

(d) *Compensation for losses.* All financial assistance provided through any disaster relief program and all compensation for disaster losses received from any source by an EM loan applicant will reduce the applicant's loss by the amount of such compensation. All such compensation will be considered in determining the applicant's eligibility for EM loan assistance and the maximum amount of loss loan entitlement. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments *will* be considered as compensation for losses (ASCS Deficiency Payments are not to be considered as compensation).

(e) *Maximum EM loans.* This amount will be limited to the amount necessary to restore the farm to its pre-disaster condition; however, this will not exceed the sum of the maximum production loss (paragraph (a)(2)(x) of this section) and the maximum physical loss (paragraph (b) of this section) or *$500,000*, Whichever is the lesser. Indebted EM loan borrowers can receive additional EM loans based on a subsequent disaster(s), but not to exceed *$500,000* for each additional qualifying disaster. No applicant or individual member of an entity applicant can be liable for more than $500,000 in EM loans per disaster.

**§ 1945.164—1945.165 [Reserved]**

**§ 1945.166 Loan purposes.**

(a) *Policy on use of EM loan funds.* (1) The maximum amount of an EM loan(s), in addition to the limitations contained in § 1945.163(a)(2)(x) and (e) of this subpart, is further limited to the actual dollar loss, or the actual amount of essential family, farm, and nonfarm enterprise credit, whichever is the lesser, that the applicant needs to carry on normal operations. EM loan funds will not be used to finance a nonfarm enterprise, unless the loan is made to an individual applicant *and* such enterprise is needed to support a reasonable standard of living for the family. The use of EM loan funds will be identified in the farm and home plan so that determination can readily be made as to whether such loan(s) was used for authorized purposes and compensated the borrower for all or a portion of the actual dollar loss.

(2) EM loan funds may be used for those purposes described in paragraphs (b) and (c) of this section.

(b) *Real estate (Subtitle A) purposes.* EM loans for real estate purposes may be made to *owner-operators only*. The following are authorized real estate purposes for which EM loan funds may be used:

(1) Any Farm Ownership loan purpose (see Subpart A of Part 1943 of this chapter);

(2) Replace land and/or water resources that cannot be restored due to the disaster;

(3) Establish a new site for farm dwellings and service buildings so that the applicant can relocate outside of a flood or mudslide prone area;

(4) Replace land necessary to restore an effective operation which was liquidated as a result of the disaster before an EM loan could be made.

(5) Refinance secured and unsecured debts, including FmHA debts.

(c) *Operating (Subtitle B) purposes.* EM loans for operating purposes may be made to *owner-operators or tenant-operators*. The following are authorized operating purposes for which EM loan funds may be used:

(1) Any Operating Loan purpose (see Subpart A of Part 1941 of this chapter);

(2) Purchase and repair of essential household contents, and pay essential family living expenses. Entity operations

are not eligible for loan funds to be used for these purposes.

(3) Refinance secured and unsecured operating type debts, in whole or in part, including existing FmHA debts.

(4) Pay reasonable expenses customarily paid when obtaining, planning and closing a loan made for operating purposes, *e.g.*, fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. It is not intended that this paragraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets, including farm and home plans and other FmHA forms used in processing such loans.

**§ 1945.167 Loan limitations and special provisions.**

(a) *EM loans prohibited for losses to crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will *not* be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans based on losses to those crops which could have been insured against the losses, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s).

(b) *Relationship between EM loans and other FmHA loans.* An eligible EM loan applicant's *total* credit needs *will* be first considered through use of EM loan authorities in the maximum amount of entitlement, before other regular (FO, OL, SW) FmHA farmer program loan authorities are considered and used as a means of assisting the applicant/borrower.

(c) *Use of EM loan funds is not authorized for expansion purpose(s) beyond a family size farm.* EM loan funds *will not* be used to expand an applicant's farming, ranching, or aquaculture operation beyond that which constitutes a family size farming/ranching operation(s). This limitation is not intended to prohibit minor changes in crop or livestock enterprises, provided:

(1) Any new or changed crop or livestock system is proven for the area; and

(2) The applicant has the knowledge and ability to manage the changed operation; and

(3) Substantial new or additional capital investment is not required.

EM applicants who operate family farms (as defined in § 1941.4 of Subpart A of Part 1941 of this chapter) may, if eligible, receive regular FmHA farm ownership (FO), and/or operating (OL) loans simultaneously with their initial (EM) loan to help finance their farming operations. If a borrower expands the farming operation beyond a family size farm after receiving an EM loan, no further EM loan assistance will be given even though the borrower may suffer qualifying losses under a new declared/designated/authorized disaster.

(d) *Applicants involved in more than one operation.* Loans to applicants involved in more than one farming operation will be considered so long as the loan limit set out in § 1945.163 (e) of this subpart is not exceeded.

(e) *Refinancing guaranteed loans.* An EM loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

(1) The circumstances causing the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government.

(f) *New appraisals.* New "Appraisal of Real Estate Reports" are not required if the appraisal report in the file is not over one year old, unless the approval official requests a new appraisal report, or unless significant changes in the market value of real estate have occurred in an area within the one-year period. Any changes in the value of real estate or chattel security will be recorded, dated and initialed by the certified appraiser on the appropriate appraisal reports in the file.

(g) *Recordkeeping.* EM borrowers receiving or indebted for EM loans of $100,000 or more are required to keep hard farm records on an approved format or use an accountant or a farm management service computer system as long as they are indebted for EM loans. EM borrowers are required to retain these records for at least three years. (See Subpart B of Part 1924 of this chapter.)

(h) *Disbursement of loan funds.* Loan funds which will not be disbursed for specific purposes at loan closing will *not* be requested in the initial request for funds from the Finance Office. The "Loan Disbursement System" will be used to make funds available when they are actually needed. See § 1945.189 (a)(8) of this subpart for instructions on the use of supervised bank accounts.

(i) *Prohibition on guaranteeing repayment of advances from other credit sources.* FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(j) *Applicants previously indebted to FmHA.* An EM loan will not be approved if the applicant's previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1), Subpart B of Part 1956 of this chapter or if a debt settlement is currently being processed for the applicant in accordance with these regulations or if the applicant's property has been foreclosed on or repossessed by FmHA, unless the applicant's failure to pay the loan indebtedness was the result of circumstances beyond the applicant's control; the conditions which necessitated the debt settlement or release, other then weather hazards, disasters, or price fluctuations have been removed; and the borrower's operations will afford the borrower a reasonable prospect of repaying the loan and meeting other obligations. Prior to approval of the loan, the loan docket and any available case folders, including the County Supervisor's justification for making the loan, will be submitted to the State Office for a determination as to whether the loan should be made. Applicants who are rejected due to debt settlement actions will be sent proper notification as outlined in § 1910.6(b)(1) of Subpart A of Part 1910 of this chapter.

(k) *Highly erodible land and conversion of wetland.* Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands for the production of an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

**§ 1945.168 Rates and terms.**

(a) *Interest rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance.

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life

of the security and the repayment ability of the applicant, as reflected in the completed farm and home plan, when setting the term of each loan. There must be some payment, e.g., an irregular payment, scheduled at least annually. Loans will not be scheduled for terms longer than are justified and supported by the farm and home plan. EM loans based on production losses and/or physical losses to chattels, foundation livestock and other intermediate term capital assets cannot exceed a 20 year payback; and EM loans based on physical losses to real estate, e.g., land, buildings and structures cannot exceed a 40 year payback.

(1) *Operating purposes (Subtitle B).* EM loans made for operating purposes will be scheduled for repayment as follows:

(i) Normally, loans will be scheduled for payment in a period not to exceed 7 years. However, loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term, and the loan(s) can be secured for the longer term. Such longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the farm and home plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the County Office case file.

(ii) Loans made for production expenses under § 1945.166(c) of this subpart, or for payment of bills incurred for such purposes for the operating or crop year being financed, will be scheduled for repayment when the principal income from the year's operations is normally received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than crops that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (iii) of this section.

(iii) Loans made to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be scheduled for repayment when the principal income from the sale of such livestock or livestock products is planned to be received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than the livestock and livestock products that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (ii) of this section.

(iv) When conditions warrant, installments may vary in amount. However, there must be at least a partial interest payment scheduled annually. Also, the final installment will not be larger than the amount which can be expected to be refinanced by other agricultural lenders or be repaid within a rescheduled period of 15 years. The applicant must be advised before the loan is closed that FmHA will review each case at the end of the initial loan term to determine if rescheduling is warranted, and that there is no obligation for FmHA to continue with the borrower after the expiration of the initial loan term.

(2) *Real estate purposes (Subtitle A).* EM loans made for real estate purposes under § 1945.165(b) of this subpart will normally be scheduled for repayment in not to exceed 30 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. A longer term may be approved as warranted, but cannot exceed 40 years. The longer repayment period will be used only when it is evident the applicant will be unable to repay the loan in a shorter period. The reason(s) for giving the longer period must be well documented in the County Office case file.

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

(d) *Graduation.* Borrowers will be required to graduate when FmHA determines they are able to obtain their needed credit from conventional sources. All borrowers will be advised that they will be reviewed for graduation periodically in accordance with the graduation procedure in Subpart F of Part 1951 of this chapter. EM borrowers will be reviewed for graduation three (3) years after their initial loan is made and every two (2) years thereafter, until graduation is achieved or the EM indebtedness is paid in full. Applicants will be advised during loan processing and again at loan closing that they will be required to refinance at any time when other satisfactory credit is available to them, even though their loans have not fully matured.

**§ 1945.169 Security requirements.**

The County Supervisor is responsible for seeing that adequate and proper security is obtained and maintained and that the security instruments have been properly executed and recorded to protect the interest of the Government

(a) *General requirements.* (1) Except for the modifications contained in paragraph (d) of this section, security must be of such a nature and extent that repayment of the loan(s) is assured, considering the applicant's managerial ability, soundness of the operation, and projected earnings. Security for loans may include, but is not limited to the following: Land, buildings, structures, fixtures, furniture, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security may also include assignments of leases or leasehold interests having a mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(2) A lien will not be taken on property that cannot be made subject to a valid lien; nor will a lien be taken on subsistence livestock, household goods, small tools and small equipment such as handtools, power lawn mowers, and other items of like type not needed for security purposes. A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock, other than livestock being fed for market, and the loan is otherwise well secured.

(3) When an EM loan is made to an indebted FmHA guaranteed loan borrower, a junior lien may be taken on the borrower's chattels and real estate which serve as security for the guaranteed FmHA loan(s).

(b) *Personal liability.* The promissory will be signed as follows:

(1) *Individuals.* Only the applicant will sign the note as a borrower. If a cosigner is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal

liability regardless of any State law to the contrary.

(2) *Cooperatives or corporations.* The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

(c) *Personal and corporate guarantees by cosigners.* (1) If a review of all credit factors indicates the need for additional security, the loan approval official may require additional personal and/or corporate guarantees by a cosigner(s), including guarantees from parent, subsidiary or affiliated companies; relatives of the applicant; or any other willing party having equity in mortgageable assets. The loan approval official will require that such guarantees be secured by collateral which has an equity value. Any security referred to in paragraph (a)(1) of this section may be used to secure the guarantees.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 30 days old at time of filing), signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 30 days old at time of filing), certified by an officer of the corporation.

(3) When security is taken under paragraph (c) of this section, if chattels, it will be serviced in accordance with Subpart A of Part 1962 of this chapter; and, if real estate, in accordance with Subpart A of Part 1965 of this chapter.

(d) *Applicant's repayment ability.* When adequate security is not available because of the disaster, the loan approval official will accept as security such collateral as is available, if the following conditions are met:

(1) A portion or all of the security has depreciated in value *due to the disaster;* and

(2) The available security, together with the approval official's confidence in the applicant's repayment ability, is adequate to secure the loan. When considering "repayment ability" as a form of security, the reserve or margin between the balance available for debt repayment shown on the farm and home plan, and the principal and interest scheduled for payment is the "repayment ability" collateral which may be considered in loan making actions when this plan is developed for the typical year. The "typical year" plan must show that the portion of the loan secured by "repayment ability" will be paid back in a reasonable period of time, *i.e.,* the loan balance will be reduced to a fully secured loan within 3 years.

(e) *Life insurance.* If the loan approval official believes it is needed as additional security, life insurance *may* be required for the individual borrower or for the members, stockholders, partners, joint operators, of an entity borrower, listing FmHA as the beneficiary. This life insurance may be decreasing term insurance. A schedule of life insurance available as security for the loan will be included as part of the application.

(f) *Security for operating type purposes.* (1) EM loans made for Subtitle B (operating) purposes will be secured by a first lien on the crop(s) and/or livestock and livestock products being financed with EM loan funds. However, if the applicant does not have sufficient equity to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken to assure that the Government's financial interest will be protected. When the applicant can provide no security other than a first lien on the crop(s) and/or livestock and livestock products to be produced, the amount of the loan will be limited to 75 percent of the planned gross farm income as shown on the Farm and Home Plan based on normal production and prices authorized by the State Director for developing annual farm plans within the State.

(2) The advice of OGC will be obtained on how to perfect a security interest when milk base and grazing permits are taken as security.

(3) General intangibles, accounts receivable, and contract rights may be taken as security for production loss loans made to contract feeders, tenants with share-lease arrangements, or other farmers with similar arrangements.

(g) *Security for real estate type purposes.* EM loans made for Subtitle A (real estate purposes) will be secured by a lien on real estate. However, if the applicant does not have sufficient equity in the real estate to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken.

(h) *Combination of real estate and chattel security.* When chattels are primarily relied upon as security and real estate is taken only as additional security to better protect the Government's interest, only a certification of ownership and verification of equity in real estate is required, if the applicant is an individual. Certification of ownership may be accepted in the form of a notarized affidavit from the applicant stating who is the owner of record of the real estate in question and acknowledging all known debts, with balances owed, against the real estate. Whenever the County Supervisor is uncertain of the ownership of or debts against the real estate security, and for all loans to cooperatives, corporations, partnerships, or joint operations a title search is required.

(i) *Security for personal household contents.* EM loan funds advanced for the purposes authorized in § 1945.163(c)(2) of this subpart will be secured by equity in farm machinery, livestock and/or real estate. Liens will not be taken on basic essential personal property (See § 1945.154(a)(16) of this subpart).

(j) *Purchase contracts.* If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the seller must agree in writing that any insurance proceeds received for real estate losses will be used only to replace or repair the damaged real estate improvements which are essential to the farming operation; or used for other essential real estate improvements; or paid on the EM loan or on any prior real estate indebtedness, including the purchase contract. If necessary, the applicant will negotiate with the seller to arrive at a new contract without any provisions objectionable to FmHA.

(3) If a satisfactory contract for sale cannot be negotiated or the seller refuses to enter into the agreement described in paragraph (j)(2) of this section, the applicant will make every effort to refinance the existing purchase contract. If the applicant cannot obtain refinancing from another source, EM loan funds may be considered to pay off the contract.

(4) If the conditions set out in paragraphs (j) (1), (2) and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA escrow agent or designated attorney certifies on Form FmHA 427–10, "Final Title Opinion", or in separate writing that:

(i) The purchase contract is not subject to summary cancellation on default and does not contain any other provisions which might jeopardize either

the Government's security position or the borrower's ability to repay the loan.

(ii) The seller has agreed, in writing, to give FmHA notice of any breach by the purchaser, and has also agreed to give FmHA the option to rectify the condition(s) which amounts to a breach within thirty days. The thirty days begin to run on the day FmHA receives written notice of the breach.

(k) *Prior liens which may jeopardize the Government's security position.* If any prior liens against real estate offered as security contain future advance provisions or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations of these prior liens and to pay the EM loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government. However, the Government's lien may be subject to the lien of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or calendar year. The County Supervisor will determine if the creditor will be required to execute Form FmHA 441–13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the OGC.

(l) *Circumstances under which advance notice of foreclosure or assignment is required.* When a junior lien on real estate is to be taken as security for a loan in States where a prior lienholder may foreclose the security instrument under power of sale, or otherwise, and extinguish junior liens of private parties without giving junior lienholders actual notice of the foreclosure proceedings, the prior lienholder must agree in writing to give FmHA advance notice of foreclosure or will offer to assign the mortgage to FmHA for the amount of the outstanding debt owed to the prior lienholder.

(m) *Hazard insurance.* Hazard insurance with a standard mortgage clause naming FmHA as beneficiary may be required for every loan made. The minimum amount of insurance required is the lesser of the replacement cost of the property being insured or the amount of the loan. If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate hazard insurance coverage at the time of loan closing, or as of the date materials are delivered to the property, whichever is appropriate. Notwithstanding the requirements of Subpart A of Part 1806 (FmHA Instruction 426.1) of this chapter, when the real estate appraisal report shows that the present market value of the land after deducting the value of buildings shown on the report exceeds the amount of the debt (including the EM loan) and the owner has equity equal to or exceeding the amount of the debt (including the EM loan), real estate property insurance may not be required. However, the applicant will be encouraged to obtain such insurance, if the applicant does not already have it, to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that, when settlement is made, the proceeds of such claims will be used for replacement or repair of buildings, application on debts secured by prior liens, or application on the EM loan.

(n) *Crop insurance.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage *all* borrowers who grow crops to obtain and maintain FCIC crop insurance or multi-peril crop insurance, if it is available.

(1) When EM loan funds are to be used as the primary source of financing for the ensuring year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" will be taken by FmHA, if the primary lender chooses not to do so.

(3) When EM loans are based on physical losses only, and loan funds will be used for annual production expenses the same conditions will prevail as stated in paragraph (n)(1) of this section.

(4) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, notwithstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the dates which each borrowers' crop insurance premium(s) is due. This is in accordance with FmHA Instruction 1905–A, a copy of which is available in any FmHA County Office.

(o) *Indian trust lands.* EM loans which are secured by trust or restricted land will be handled as follows: USDA and the Department of the Interior have agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restrictions against alienation, subject to statues under which they may, with the approval of the Secretary of the Interior, give valid and enforceable mortgages on their land. These statutes include, but are not limited to, the Act of March 29, 1956, (70 Stat. 62). When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under these conditions.

(p) *Unpatented public lands.* See Exhibit A of Subpart A of Part 1943 of this chapter for making EM loans to entrymen on unpatented public lands.

(q) *Taking security instruments.* The taking and filing of security instruments will be in accordance with Subpart B of Part 1941 of this chapter (chattels and crops) and with §§ 1945.169 and 1945.189 of this subpart (real estate). The borrower must have marketable title to the property which secures the loan and FmHA must ascertain that, when the security instruments are filed, no suits are pending or threatened which would adversely affect the interest of the borrower and the Government.

(r) *Assignments and consents.* (1) The value of stock required to be purchased by the Federal Land Bank (FLB) Association borrowers may be added to the recommended market value of real estate, provided:

(i) An assignment can be obtained on the stock; and

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan as long as any FmHA loan is outstanding, or

(B) The stock refund check is made payable to the borrower and FmHA.

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(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of Form FmHA 422–1, "Appraisal Report (Farm Tract)."

(2) An assignment of all or part of the applicant's share of income is required when title to a livestock or crop enterprise is held by a contractor under a written contract or when the enterprise is to be managed by the applicant under a share lease or share agreement. The contract, share lease or share agreement will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement) and so forth, in paragraph (b)(1) of the financing statement. A form approved by OGC will be used to obtain the assignment.

(3) An assignment of income will ordinarily be taken to protect FmHA's interests.

(i) Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used for assignments of real estate security income unless that form is legally inadequate in a particular State, in which case it may be adopted with the approval of the OGC.

(ii) Form FmHA 441–6, "Assignment of Proceeds from the Sale of Products," will be used for products or income in which FmHA does not have a security interest under the UCC. Other forms approved by OGC may be used when this form is not adequate.

(iii) Form FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FmHA has a security interest under the UCC.

(iv) Form FmHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used for products or income, except dairy products, in which FmHA has a security interest under the UCC.

(v) Forms provided by ASCS will be used for assignments of disaster and regular agricultural program payments.

(4) In UCC states, an assignment of income constitutes a security agreement and should be treated accordingly.

**§§ 1945.170–1945.172 [Reserved]**

**§ 1945.173 General provisions—compliance requirements.**

(a) *Scope of operation to be financed.* Only family size farming operations may be financed with EM loans, subject to the eligibility requirements, loan amount ceilings, repayment ability, need, available security, and other provisions of this subpart.

(b) *Flood or mudslide prone areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms where the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

(1) In identified special flood or mudslide prone areas as designated by FEMA, the following policies are applicable for EM loans being made to finance buildings or fixtures and furnishings contained therein.

(i) If flood or mudslide insurance is available and an applicant has not taken such insurance and has suffered flood or mudslide losses, an EM loan may be made only if flood or mudslide insurance is purchased before the EM loan is closed.

(ii) If flood or mudslide insurance is available and an applicant previously received and still is indebted for an EM loan, Rural Housing Disaster (RHD), or SBA disaster loan; and a condition of the loan required the obtaining of flood insurance but the applicant allowed the insurance to lapse; and the applicant had new flood or mudslide losses, the applicant will be considered to be in default on the loan agreement and dealt with accordingly.

(iii) If flood and mudslide insurance is available and an applicant had previously received an EM, RHD, or SBA disaster loan; and a condition of the loan required obtaining flood or mudslide insurance and the applicant paid the loan in full and let the insurance lapse; the applicant will be handled in accordance with paragraph (b)(1)(i) of this section.

(iv) In those areas that have been designated by FEMA as special flood or mudslide hazard areas and flood or mudslide insurance is not available or has been withdrawn by FEMA, an applicant can receive an EM loan provided the farm buildings, including the dwelling, are relocated outside the 100-year flood area.

(v) EM loans to repair or replace farm buildings, including dwellings, must meet the requirements of § 1806.25 (a) or (b) of Subpart B of Part 1806 of this chapter (paragraph V A or B of FmHA Instruction 426.2) as applicable, or be relocated outside the 100-year flood area.

(2) When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, EM loan funds may be used subject to the following:

(i) The Corps of Engineers or the SCS will be consulted concerning:

(A) Likelihood of flooding.

(B) Probability of flooding damage.

(C) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(ii) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with the requirements of Subpart G of Part 1940 of this chapter.

(c) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400–4, "Assurance Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 and Subpart G of Part 1940 of this chapter will apply.

(e) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable requirements.

(f) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 of this chapter apply when EM funds are used involving tracts of less than 25 acres if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(g) *Nondiscrimination requirements.* In accordance with Federal Law, the FmHA will not discriminate against any otherwise qualified applicant on the basis of race, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract), with respect to any aspect of a credit transaction. The policy statement set forth in § 1945.151(a) of this subpart will also apply to credit transactions.

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including its use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Program Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

**§ 1945.174 [Reserved]**

**§ 1945.175 Options, planning and appraisals.**

(a) *Optioning land.* When purchasing real property an applicant is responsible for obtaining options in accordance with the provisions contained in § 1943.25 (a) of Subpart A of Part 1943 of this chapter.

(b) *Planning.* (1) A farm and home plan and Form FmHA 431–4, "Business Analysis-Nonagricultural Enterprise," when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. However, when the EM loan will be for not more than $25,000, Tables A, D, and E of Form FmHA 431–2 may be left blank, and only the totals in Tables G and J should be shown, provided Form FmHA 410–1 is completed and accurately reflects the applicant's current circumstances, and no supervision is planned. The plan *will* show any major items of expenditure and the reason(s) these items are needed. When preparing a plan of operation, it is usually necessary to plan for a capital expenditure reserve during interim years and the typical year. Realistically, this will reflect the depreciating value of machinery, equipment or other essential capital expenditure items, which it is prudent to expect will need to be replaced or require major repair. Also, all recurring and carry-over debts should be considered in a typical year plan. In addition, when all of the loan funds are not to be disbursed at loan closing, a *Monthly Budget* will be prepared showing the specific amount to be disbursed for each associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement system (future advances) or, when determined necessary, through a supervised bank account.

(2) Development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. Also, the provisions of Subpart E of Part 1901 of this chapter will be met in connection with EM loans involving recreational enterprises and the construction of buildings.

(c) *Appraisals.* (1) Real estate appraisals will be completed on Form FmHA 422–1, "Appraisal Report—Farm Tract", or Form FmHA 1922–8, "Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by an FmHA employee authorized to make farm appraisals, when real estate is taken as the primary security for the EM loan. The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922–11, "Appraisal Form for Mineral Rights." Appraisals are not required when:

(i) The amount of EM loan(s) plus any existing FmHA principal indebtedness is $25,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be taken as security, and

(iv) The provisions of paragraph (c)(4) of this section are applicable.

(2) Real estate appraisals will be completed as provided in FmHA Instruction 422.1 (available in any FmHA office). However, the value of assets that secure EM loans associated with a disaster having any portion of its incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals; all of which must be made a part of the file. These appraisals will show:

(i) The asset value on the day before a State Governor's, Indian Tribal Council's, or an FmHA State Director's first EM designation request, which is associated with the naming of one or more counties in a State as a disaster area where eligible farmers may qualify for EM loans; or

(ii) The asset value one year (365 days) before the date set in paragraph (c)(2)(i) of this section.

(A) The following types of real estate offered as collateral for securing EM loans will be appraised at the present market value only;

(*1*) Farm real estate the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section.

(*2*) Real estate "not owned" by the applicant/borrower (for example, a relative if offering real estate as collateral for the proposed EM loan).

(*3*) A single family dwelling located on a nonfarm tract.

(*4*) Other types of real estate such as apartment houses and commercial buildings. The County Supervisor will request the assistance of the State Director in establishing the value of such real estate.

(B) Sales data utilized in the preparation of the necessary appraisals should conform to the dates set forth in paragrpah (c)(2) (i) and (ii) of this section, to ensure a fair market value of the property is established. In addition, it should be confirmed that said sales resulted from reasonable sales efforts and that both the buyer and seller were willing, informed, and knowledgeable parties.

(3) When FLB stock is to be used in establishing the Recommended Market Value (RMV) of the real estate being appraised, see § 1945.169 (r)(1) of this subpart.

(4) When real estate is taken as additional security (for loans in which the primary security is subject to rapid depreciation or is of a high risk nature, such as crops), no appraisal report will be required for the additional security, provided the County Supervisor determines the security is adequate, and records the estimated value in the running case record, shows the date the property was inspected and certifies that in his/her opinion the estimates are correct based on knowledge of the value of the comparable assets in the area.

(5) Chattel appraisals will be completed on Form FmHA 1945–15, "Value Determination Worksheet," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used

as appropriate. The value of assets that secure EM loans associated with a disaster having any portion of the incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals, all of which must be made part of the file. These appraisals will be based on the same information contained in paragraphs (c)(2) (i) and (ii) of this section. Chattels not owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be apprasied at the present market value only. Chattels that the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section will be appraised at the present market value only.

(6) Abbreviated appraisals may be used and loans approved when:

(i) The loan approval official determines that the applicant's equity in the collateral will adequately secure the EM loan(s).

(ii) The abbreviated appraisals are prepared as follows:

(A) For real estate—Form FmHA 422–1, "Appraisal Report-Farm Tract," complete the heading of the report; Part 1, Item A; Part 2; Part 3; Part 6; Part 7 and Part 8. The report will be signed and dated by an FmHA authorized appraiser.

(B) For chattel property—Form FmHA 1945–15 will list, identify and show the value of each chattel item. This form will be completed, as applicable, on all EM loans.

**§§ 1945.176–1945.179 [Reserved]**

**§ 1945.180 County Committee certification.**

The County Committee will certify an applicant's eligibility on Form FmHA 440–2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations. Applications will be processed in accordance with § 1910.4(f) of Subpart A of Part 1910 of this chapter.

**§ 1945.181 [Reserved]**

**§ 1945.182 Loan docket preparation.**

(a) *Processing guide.* See Exhibit A of this subpart for Insured Emergency Loan Processing Guide. When a packager has developed the loan docket the County Supervisor will *fully analyze* the docket to assure it is complete and conforms with this EM loan regulation. The County Supervisor will *reverify calculations* in accordance with § 1945.183(a) and insure that the provisions of § 1945.183 of this subpart are met before a final action is taken on the loan request.

(b) *Form FmHA 1940–1, "Request for Obligation of Funds".* A separate Form FmHA 1940–1 will be prepared for each EM loan which has a different interest rate and/or a different repayment period, as determined in accordance with § 1945.168 (a) and (b) of this subpart. Also, on Form FmHA 1940–1, for EM loans approved for borrowers presently indebted for an EM loan, but having new qualifying losses from a subsequent authorized disaster, the new appropriate disaster authorization number will be shown.

(c) *Promissory note.* A separate promissory note will be prepared for each Form FmHA 1940–1 used in approving and obligating each of the EM loans.

(d) *Lease agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement, which are not clearly reflected on the farm and home plan, will be prepared and made a part of the loan docket.

**§ 1945.183 Loan approval or disapproval.**

(a) *Reverification before approval.* Before an EM loan is approved the following actions must be taken:

(1) A County Office employee will verify information provided by ASCS on all Forms FmHA 1945–29 in accordance with the FMI. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(2) A County Office employee will verify information provided by the Federal Crop Insurance Corporation (FCIC) regarding any insurance benefits which have been paid or will be paid. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(3) All calculations on Form FmHA 1945–22 and Form FmHA 1945–26 will be checked by a County Office clerical employee (either regular or temporary), using a calculator with a paper tape, to assure that mathematical errors are detected. The County Supervisor or designee will make any corrections necessary in the loan docket, when errors are located. The paper tape will be attached to Form FmHA 1945–22 or Form FmHA 1945–26 as appropriate.

(4) To prevent the duplication of benefits, FmHA and SBA have agreed to coordinate their respective EM and disaster loan program activities.

(i) The FmHA County Offices will notify the approrpiate SBA Disaster Area Office of all EM disaster farm dwelling loss loan applications received each week for dwelling and/or household contents.

(ii) For dwelling and/or household content applications, the FmHA County Offices will send a copy of the final action taken to the appropriate SBA Disaster Area Office. Those actions include: Loan approval on Form FmHA 1940–1; notification of application withdrawal; notification of loan denial; confirmation of request for reconsideration or appeal of loan denial; and final determination on an appeal. *Copies of all written communications from FmHA County Offices to the SBA Area Offices will be sent to the State Director, Attention: Chief, Farmer Programs; and the District Director.*

(iii) Applicants who receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA EM loan assistance based on farm losses other than to dwellings. In those cases where an FmHA loan can be approved, FmHA will either reduce the FmHA EM loan by the amount of the SBA loan (which may require SBA to subordinate its lien position(s)), or refinance the SBA loan by using EM loan funds to pay SBA directly. An EM loan will *not* be approved until it is determined that the requirements of § 1945.163(e) of this subpart will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office pursuant to paragraph (a)(4)(ii) of this section.

(b) *Administrative determination and responsibilities.* When the County Committee certification has been made and the reverification has been completed, and before approving the loan, the loan approval official will determine administratively whether:

(1) The County Committee has certified, in writing, that the applicant is eligible.

(2) The applicant has satisfactory tenure arrangements on the farm(s) to be operated.

(3) The proposed farm and home operations of the applicant are reasonably sound, the purposes are authorized, and the EM loan is needed.

(4) The proposed loan(s) shows a positive cash flow based upon a realistic farm and home plan.

(5) The security requirements can be met.

(6) The certification(s) required of the applicant have been made and are a part of the loan docket.

(7) The loan meets all other FmHA requirements

(8) The applicant has access to any additional financing needed to continue the farming operation. In making this determination, consideration will be given to whether the applicant qualifies for OL, FO and SW loan assistance, or for a loan(s) from other creditors with or without a FmHA subordination.

(c) *Loan docket transmittal to the Administrator.* (1) Transmittal memoranda accompanying EM loan dockets requiring National Office review/advice must set forth, as a minimum, the following information:

(i) Proposed loan(s), amount(s), rate(s), of interest, and term(s) of each loan.

(ii) Outstanding FmHA loan(s) balance(s) and the total proposed EM loan(s) indebtedness

(iii) Status of outstanding FmHA loan(s).

(iv) Brief statements regarding:

(A) Cause and type of disaster losses.

(B) Inability to obtain other suitable credit.

(C) Purposes for which loan funds are to be used.

(D) Overall feasibility and soundness of the planned operation.

(E) Property offered as security for the loan(s).

(v) The State Director's specific positive recommendation that the requested actions be approved.

(2) Loan dockets should not be forwarded to the National office for review of any action without the State Director's recommendation.

(d) *Loan approval.* (1) The loan approval official will date, sign and distribute Form FmHA 1940–1 in accordance with the FMI and set forth any special conditions of approval, including any special security requirements, in the appropriate section on Form FmHA 1940–1.

(2) The County Supervisor will complete Part III of Form FmHA 1945–29 and forward the form to the appropriate ASCS county office(s).

(e) *Loan disapproval.* The loan approval official must disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter.

(1) The County Supervisor or loan approval official will notify the applicant by letter of the reason(s) for rejection and will advise the applicant in that letter of appeal rights as set out in Subpart B of Part 1900 of this chapter. The letter will also include any suggestions that could result in favorable action.

(2) The County Supervisor will complete Part III of Form FmHA 1945–29 and forward the form to the appropriate ASCS County Office.

(3) In areas where EM loans are being made under a *major disaster declaration,* and where the FEMA has advised the State Director that Section 408 grants are available, a list of applicants with physical losses, who do not qualify for EM dwelling and/or household content loss loans, will be prepared and sent to the FEMA by County Supervisors at the close of business each week. The State Director will be advised by the FEMA where to send the list and the State Director will so advise the County Supervisors. The list will be prepared in the following format:

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

TO: _____

The following is a list of applicants not qualifying for Farmers Home Administration's Emergency (EM) loans in _____ County during the week ending _____, 19____.

*Name*

Address

County Supervisor

**§ 1945.184 [Reserved]**

**§ 1945.185 Actions after loan approval.**

Loan funds must be provided by the County Office to the applicant(s) within 15 days after loan approval, unless the conditions prescribed in § 1910.6(d) of Subpart A of Part 1910 of this chapter are applicable. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and/or obligation will be cancelled, the County Supervisor will process the cancellation in accordance with the FMI for Form FmHA 1940–10 "Cancellation of U.S. Treasury Check and/or obligation." If a check received in the County Office is to be cancelled, the check will be returned through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951–B (available in any FmHA Office) or, if an office is not using CBS, returned to the Finance Office with an original of Form FmHA 1940–10 (See FmHA Instruction 102.1, a copy of which is available in any FmHA office).

(b) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(c) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan before closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can be readily completed and submitted. In the latter case, a memorandum to that effect will be attached to the revised forms for referral to the Finance Office.

**§§ 1945.186–1945.187 [Reserved]**

**§ 1945.188 Chattel lien search.**

See § 1941.63 of Subpart B of Part 1941 of this chapter for regulations concerning lien searches covering chattels.

**§ 1945.189 Loan closing.**

(a) *Closing loans secured by real estate.*—(1) *General.* Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1).

(2) *Security instruments.* Security instruments referred to in paragraph (a) of this section are real estate mortgages or deeds of trust.

(i) FmHA real estate mortgage or deed or trust Form FmHA 427–1 (State), "Real Estate Mortgage for ____," will be used in *all* cases where real estate is taken as security.

(ii) Promissory note(s) will be prepared and completed at the time of loan closing in accordance with the FMI. If insured Rural Housing (RH) funds are advanced simultaneously with EM funds the RH loan will be evidenced by a separate note on the proper form as provided in Subpart A of Part 1944 of this chapter. However, all notes will be described on the same security instrument(s). When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing.

(iii) When subsequent loans are made, a new security instrument is required

only when the existing instruments do not cover all required security or do not secure the subsequent loan.

(iv) A subsequent loan for any authorized purposes may be made without taking new security instruments when the existing security instruments cover all the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the subsequent loan as for the initial loan. A new security instrument will be taken if any one of these requirements is not met.

(3) *Leaseholds.* Security instruments for loans secured by leaseholds will describe security in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), and the following provisions will also apply:

(i) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

All Borrower's rights, title, and interest in and to the leasehold estate for a term of _____ years beginning on _____, 19____, created and established by a certain lease dated _____, 19____, executed by _____, as lessor(s), recorded on _____, 19____, in Book _____, Page _____ of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(ii) An additional covenant will be inserted in the mortgage to read as follows:

Borrowers will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(iii) A copy of the lease will be made part of the loan docket.

(4) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(i) When the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. When the original is retained by the recording official, a conformed copy, showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder. A conformed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder, or if it is required by a working agreement provision with that lienholder.

(ii) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(5) *Abstracts of Title.* Any abstract of title will be delivered to the borrower and Form FmHA 140–4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), if this has not already been done.

(7) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA employees accept cash for these purposes Form FmHA 440–12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is only for paying fees on behalf of the borrower, and is not accepted as partial payment on a loan.

(8) *Supervised bank accounts.* If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter. Loan funds not to be disbursed for specific purposes at loan closing and not needed within 30 days after closing, will not be requested until they are needed. The "Field Office Terminal System" will be used to request future advances at 30 day intervals or as needed. Only in unusual cases will loan funds be kept in supervised bank accounts for more than 60 days. When such funds are placed in an interest bearing supervised bank account, the interest earned will be applied on the EM loan immediately or used for an authorized EM loan purpose, if the planned EM funds are not sufficient to cover all of the planned items.

(b) *Closing loans secured by chattels and crops.* See Subpart B of Part 1941 of this chapter.

(c) *Loan closing review.* Immediately prior to loan closing, the FmHA official responsible for closing the loan(s) will review the file for compliance with Agency regulations.

### § 1945.190 Revision of the use of EM loan funds.

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds were planned to be used, provided:

(1) The loan, as changed, is within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect either the feasibility of the operation or the Government's interest.

(4) Such a change is approved in advance of the loan funds being used for the new purpose(s).

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State Supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to the repayment will be made in Table K of Form FmHA 431–2 (and, if needed, on Form FmHA 1962–1) and will be initiated by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA 1905–1, "Management System Card—Individual."

### § 1945.191 [Reserved]

### § 1945.192 Loan servicing.

Loans will be serviced under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter.

**§ 1945.193–1945.199 [Reserved]**

**§ 1945.200 OMB control number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0090.

4. Exhibits B and B–1 of this Part 1945, Subpart D are removed and reserved.

5. Exhibit D of Part 1945, Subpart D is amended in paragraph VIII by changing the reference "§ 1945.166(a)" to "§ 1945.168(b)."

**R.R. Vautour,**

*Under Secretary for Small Community and Rural Development.*

Dated: July 4, 1988.

[FR Doc. 88–17846 Filed 8–10–88; 8:45 am]

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Part III

# Department of Agriculture

## Cooperative State Research Service

**7 CFR Part 3400**

**Special Research Grants Program; Administrative Provisions; Notice of Proposed Rulemaking**

VOL 53 ISS 155 AUG 11 1988 UMI

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research Service

### 7 CFR Part 3400

### Special Research Grants Program; Administrative Provisions

**AGENCY:** Cooperative State Research Service, USDA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Cooperative State Research Service (CSRS) proposes to amend its regulations relating to the administration of the Special Research Grants Program conducted under the authority of section 2(c)(1) of the Act of August 4, 1965, as amended (7 U.S.C. 4501(c)(1)). This action is being taken to modify the weight factors associated with the proposal selection criteria on the current Peer Panel Scoring Form under this program. These changes will facilitate the evaluation of applications and the award of project grants.

**DATE:** Comments concerning this proposed amendment are invited from interested individuals and organizations. To be considered in the formulation of a final rule, all relevant material must be received on or before September 12, 1988.

**ADDRESS:** Comments should be sent to Terry J. Pacovsky, Chief, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20251–2200.

**FOR FURTHER INFORMATION CONTACT:** Terry J. Pacovsky at (202) 475–5024.

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been approved under OMB Document No. 0524–0022.

#### Classification

This proposed rule has been reviewed under Executive Order 12291 and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or on geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601).

#### Regulatory Analysis

Not required for this proposed rulemaking.

#### Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

#### Catalog of Federal Domestic Assistance

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### Background and Purpose

Under the authority of section 2(c)(1) of the Act of August 4, 1965, as amended, the Secretary of Agriculture is authorized to make grants to carry out research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the Nation to land-grant colleges and universities, research foundations established by land-grant colleges and universities, State agricultural experiment stations, and to all colleges and universities having a demonstrable capacity in food and agricultural research. The administrative regulations governing grant programs authorized by section 2(c)(1) are proposed to be changed as follows:

*Section 3400.4(a)(2).* CSRS proposes to change the deadline date from date of receipt to date of postmark. This proposed change will give applicants greater certainty with respect to the timeliness of their proposals.

*Section 3400.4(c)(9).* A substantial number of research proposals involve participation by outside individuals or organizations which is not described sufficiently in the proposal. We propose adding the section on collaborative arrangements to facilitate both the technical and administrative review of the proposal by requiring the proposal to clearly identify the performer of each task of the project, the commitment of the party concerned to perform the task, and the proposed recipient of the award.

*Section 3400.4(c)(12).* This subsection is proposed to be revised to prohibit the use of grant funds under this program for the renovation or refurbishment of research spaces; purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility as mandated by section 1409 (a)(2) and (b)(1) of the Food Security Act of 1985 (7 U.S.C 450i).

*Section 3400.4(c)(13)(iii).* CSRS proposes adding the section on laboratory animal care to ensure that uniform care and treatment of laboratory animals is practiced in all research projects supported by USDA.

*Section 3400.10(a).* We propose removing the paragraph that refers to the Federal Advisory Committee Act governing the establishment and operation of peer review groups because this requirement no longer applies to this program (7 U.S.C. 450i).

*Section 3400.15(a).* Several former peer panel members who have evaluated grant proposals under the Special Research Grants Program have written to USDA progam officials stating that certain criteria used in the evaluation process contain higher weight factors than their level of importance merit; consequently, they have suggested that the criteria be combined, revised, or given lower weight factors. By proposing to alter the current weighting system, CSRS hopes to provide a more equitable method of evaluating and ranking research proposals submitted under this program.

#### List of Subjects in 7 CFR Part 3400

Grant programs—agriculture, Grants administration.

For the reasons set out in the preamble, Title 7, Chapter XXXIV, Part 3400 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 3400—[AMENDED]

1. The authority citation for Part 3400 continues to read as follows:

**Authority:** Section 2(h) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(h)).

#### § 3400.2 [Amended]

2. In § 3400.2(j), the word "advise" is revised to read "advice".

3. Section 3400.4 is amended by redesignating paragraphs (c)(9) through (c)(15) as paragraphs (c)(10) through (c)(16), by adding new paragraphs (c)(9) and (c)(13)(iii), and by revising paragraphs (a)(2), (b), the heading of (c)(1), (c)(2), the first sentence of

(c)(11)(ii), the third through last sentences of (c)(12), paragraph (c)(13)(i), the last sentence of (c)(13)(ii), the third sentence of (c)(15), and (c)(16) to read as follows:

**§ 3400.4 How to apply for a grant.**

(a) * * *

(2) Deadline dates for having proposal packages postmarked;

* * * * * *

(b) *Grant Application Kit.* A Grant Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* * * *

(1) *Grant Application.* * * *

(2) *Title of Project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

* * * * * *

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be fully explained and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state which proposer is to receive any resulting grant award, since only one submitting individual, corporation, organization, institution, agency, or other entity can be the recipient of a research project grant under one proposal.

* * * * * *

(11) *Personnel support.* * * *

* * * * * *

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff.

* * *

* * * * * *

(12) *Budget.* * * * A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Grant Application Kit identified under § 3400.4(b) of this part and may be reproduced as needed by proposers. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. *No funds will be awarded for the renovation or refurbishment of research spaces; purchases or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.* All research project grants awarded under this part shall be issued without regard to matching funds or cost sharing.

(13) *Research involving special considerations.* * * *

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification of compliance.

(ii) *Human subjects at risk.* * * * The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification.

(iii) *Laboratory and animal care.* The responsibility for the humane care and treatment of laboratory animals used in any research project supported with grant funds provided by the Department rests with the performing organization. All key personnel identified in a proposal and all endorsing officials of the proposed performing organization are required to comply with the Animal Welfare Act (Pub. L. 89–544, 1966, as amended (Pub. L. 91–579, Pub. L. 94–279, and Pub. L. 99–198, 7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts 1, 2, 3 and 4 pertaining to the care, handling, and treatment of vertebrate animals held or used for research, teaching, or other activities supported by Federal awards. In the case of laboratory animals used or intended for use in CSRS-administered research, the eligible institutions shall adhere to the principles enunciated in the *Guide for the Care and Use of Laboratory Animals*, described in NIH Publication No. 86–23 (Revised 1985), and to the USDA regulations and standards issued under the public laws enunciated above. In case of conflict, the higher standard shall be used. In the event that a project involving laboratory animals is recommended for award, the proposer will be required to submit a statement certifying that the research plan has been reviewed and approved by the appropriate Institutional Animal Care and Use Committee at the proposing organization or institution.

* * * * * *

(15) *Additions to project description.* * * * Each set of such materials must be identified with the title of the research project as it appears in the Grant Application and the name(s) of the principal investigator(s). * * *

(16) *Organizational management information.* Specific management information relating to a proposing individual or organization shall be submitted on a *one-time basis prior to the award of a research project grant* identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section are available upon request from the agency specified in this part.

4. Section 3400.7 is amended by revising paragraph (d)(3) to read as follows:

**§ 3400.7 Use of funds; changes.**

* * * * * *

(d) *Changes in approved budget.* * * *

* * * * * *

(3) involve transfers of amounts previously budgeted for training costs directly related to the research project;

* * * * * *

5. Section 3400.8 is amended by revising the last item to read as follows:

**§ 3400.8 Other Federal statutes and regulations that apply.**

* * * * * *

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

6. Section 3400.10 is revised as follows:

**§ 3400.10 Establishment and operation of peer review groups.**

Subject to § 3400.5, the Secretary will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3400.14.

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7. Section 3400.15 is amended by revising the selection criteria appearing in the peer panel scoring form under paragraph (a) and constructing a revised form as follows:

**§ 3400.15 Review criteria.**

(a) * * *

Peer Panel Scoring Form

* * * * *

II. Selection Criteria:

| | Score 1–10 | Weight factor | Score X weight factor | Comments |
|---|---|---|---|---|
| 1. Overall scientific and technical quality of proposal | | 10 | | |
| 2. Scientific and technical quality of approach | | 10 | | |
| 3. Relevance and importance of proposed research to solution of specific areas of inquiry | | 6 | | |
| 4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment | | 5 | | |

Score _____

Summary Comments _____

* * * * *

Done at Washington, DC, this 4th day of August 1988.

**John Patrick Jordan,**

*Administrator, Cooperative State Research Service.*

[FR Doc. 88–18090 Filed 8–10–88; 8:45 am]

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Thursday
August 11, 1988

Part IV

# Department of Transportation

**Research and Special Programs Administration**

**Department of Energy Application for Inconsistency Ruling Concerning Colorado Nuclear Materials Transportation Act of 1986 and Implementing Regulations; Public Notice and Invitation to Comment**

VOL 53 ISS 155 AUG 11 1988 UMI

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. IRA-44]

### Department of Energy Application for Inconsistency Ruling Concerning Colorado Nuclear Materials Transportation Act of 1986 and Implementing Regulations

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Public notice and invitation to comment.

**SUMMARY:** The United States Department of Energy (DOE) has applied for an administrative ruling determining whether the Colorado Nuclear Materials Transportation Act of 1986 and the regulations issued thereunder are inconsistent with the Hazardous Materials Transportation Act (HMTA), and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

**DATES:** Comments received on or before September 23, 1988, and rebuttal comments received on or before November 10, 1988, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 7th Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-44. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. Lawrence H. Harmon, Director, Transportation Management Division, Office of Defense Waste and Transportation Management, U.S. Department of Energy, Washington, DC 20585 and to Public Utilities Commission, State of Colorado, 1580 Logan St., OL2, Denver, CO 80203, and that fact certified to at the time comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to DOE and the Colorado PUC at the addresses specified in the Federal Register.")

**FOR FURTHER INFORMATION CONTACT:** Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202-366-4362.

**SUPPLEMENTARY INFORMATION:**

#### 1. Background

The HMTA (49 App. U.S.C. 1801 *et seq.*) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

#### 2. The Application for Inconsistency Ruling

On July 25, 1988, Lawrence H. Harmon, Director Transportation Management Division, Office of Defense Waste and Transportation Management, U.S. Department of Energy (DOE), filed an application on behalf of DOE for an inconsistency ruling. That application specifically requested a finding that certain provisions of Colorado's regulations implementing the Colorado Nuclear Materials Transportation Act of 1986 (CNMTA) Article 2.2 of Title 40, Colorado Revised Statutes, 1984 Repl. Vol., as amended, be determined to be inconsistent with the HMTA and the HMR.

DOE alleges that the CNMTA and its implementing regulations apply to carriers transporting through Colorado highway route controlled quantities of radioactive material (HRCQ) as defined in 49 CFR 173.403(1). DOE states that it is the Federal agency responsible for radioactive materials transportation to which the Colorado Regulations pertain under the following applicability language:

> * * * radioactive materials being transported to the waste isolation pilot plant in New Mexico and radioactive materials being transported to any facility provided pursuant to section 135 of the federal 'Nuclear Waste Policy Act of 1982', 42 U.S.C. 10101, *et seq.*, or any repository licensed by the United States Nuclear Regulatory Commission that is used for the permanent, deep, geologic disposal of high-level radioactive waste and spent nuclear fuel.

DOE contends that the Colorado regulations under the CNMTA are inconsistent with the HMR insofar as they impose information and documentation requirements, classify hazardous materials, impose training requirements, specify permit requirements and impose penalties and fees.

With respect to information and documentation requirements, DOE alleges that the following Colorado regulations exceed HMR requirements and, therefore, are inconsistent with the HMR:

(1) *NT-3(a)*, which requires that the telephone number of the Colorado State Patrol (CSP) be carried with the other shipping papers within the cab of every motor vehicle with instructions to the driver or person in charge of the vehicle to call that number in the event of any incident, accident, or breakdown of equipment;

(2) *NT-5(c)(5)*, which requires that the original vehicle inspection report and any subsequent inspection report shall be retained in the vehicle while transporting nuclear materials within the State;

(3) *NT-8(f)*, which requires that each person transporting nuclear material within the State shall carry in the motor vehicle a copy of a nuclear materials transportation permit issued by the Colorado Public Utilities Commission.

(4) Appendix 8–A to the Colorado rules, which requires that the permit applicant supply additional information in order to receive a permit, including:

a. A copy of the company's driver training program, which must describe preparation for mountain driving if the route to be traveled is mountainous;

b. Proof that the applicant has obtained liability insurance required by federal rules;

c. A nuclear incident plan that demonstrates applicant's ability to respond to a nuclear incident, which must include provisions for removal of the vehicle and its cargo, prevention or minimization of releases of radioactivity, and decontamination of the environment; and

d. The carrier's plan for replacement or repair of equipment that has been placed out of service by a Port of Entry or State Patrol officer after inspection or has been inoperative due to mechanical failure or other circumstance.

(5) *NT–9*, which contains prenotification requirements in excess of those required by the HMR.

In addition, DOE asserts that Colorado Rule NT–9 applies the Nuclear Regulatory Commission (NRC) regulation for prenotification of spent fuel shipments, 10 CFR 173.73(f), to all HRCQ shipments—instead of the less restrictive NRC regulation applicable to non-spent fuel HRCQ shipments. The HMR (49 CFR 173.22) incorporates the NRC requirements. DOE contends that Rule NT–9 thereby establishes a classification of hazardous materials that impermissibly differs from that of the HMR.

In the area of training, DOE alleges that Appendix 8–A to the Colorado regulations constitutes an inconsistent training requirement. DOE argues that Appendix 8–A's requirement that each permit applicant supply a copy of the company's driver training program, which must describe preparation for mountain driving if the route to be traveled is mountainous, is inconsistent with 49 CFR 177.825.

Concerning Colorado's permit requirements, DOE argues that they are inconsistent because of their extensive information requirements and their vague and discretionary standards for determining when a permit may be issued. DOE cites the required submission of a nuclear incident plan that demonstrates the applicant's ability to respond to a nuclear incident as an example of a vague standard for permit issuance. DOE further contends that the permit requirements ban transportation of HRCQ in compliance with the HMTA and the HMR unless a permit is obtained and create the likelihood of diversion of transportation to other jurisdictions.

Finally, DOE contends that the Colorado regulations providing for civil penalties for violations of the regulations (Rule NT–4) and providing annual and single-trip permit fees (Rules NT–8 (c) and (e)) are inconsistent insofar as they relate to inconsistent regulations or support an inconsistent permit system.

### 3. Public Comment

Comments should be restricted to the issue of whether the requirements of the CNMTA or its implementing regulations are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, including the text of the CNMTA, the regulations issued thereunder, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

**Alan I. Roberts,**

*Director, Office of Hazardous Materials Transportation.*

Issued in Washington, DC on August 5, 1988.

[FR Doc. 88–18220 Filed 8–10–88; 8:45 am]

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**H.R. 2615/Pub. L. 100-381**

To provide that certain lands shall be in trust for the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California. (Aug. 8, 1988; 102 Stat. 897; 1 page) Price: $1.00

**H.J. Res. 90/Pub. L. 100-382**

To authorize and request the President to call and conduct a White House Conference on Library and Information Services to be held not earlier than September 1, 1989, and not later than September 30, 1991, and for other purposes. (Aug. 8, 1988; 102 Stat. 898; 5 pages) Price: $1.00

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Friday, August 12, 1988

# Presidential Documents

Title 3—

The President

Proclamation 5845 of August 9, 1988

## National Neighborhood Crime Watch Day, 1988

By the President of the United States of America

A Proclamation

Last year, crime left its mark on one in four American homes, a sobering reminder that, despite recent heartening progress against criminals and the causes of crime, particularly drug abuse, much remains to be done to ensure for ourselves and our children the safety of our homes, our neighborhoods, and our communities. It is an unfortunate fact that the scourge of crime continues to occupy the head of the list of national problems crying out for immediate action.

Those who have experienced the pain, the loss, the sense of violation and frustration that accompany crime know that defeating it requires more than tougher laws and surer punishments—though tougher and surer they are. Truly effective law enforcement demands our reliance on one of our great historical strengths as a Nation: the willingness of our people to band freely together, in local communities, in defense of lives, homes, and property.

Local crime watch committees, in cooperation with law enforcement officers and the appropriate government agencies, can make a real difference in crime rates. As McGruff the anti-crime dog, the familiar national symbol of crime prevention, would put it: They take a bite out of crime. But the benefits of such citizen groups do not stop there: Their work teaches children respect for law, reinforces community values, and encourages the kind of individual responsibility that makes for healthy, creative neighborhoods peopled by safer and happier citizens.

The growth of these committees is truly encouraging. Today over 19 million Americans participate in neighborhood watch programs, keeping an eye out for crime near their homes, reporting suspicious activity to the police, and providing escorts to elderly or vulnerable citizens.

And for the last several years, millions of Americans have joined in the highly visible "National Night Out," an evening sponsored by the National Association of Town Watch in which families spend the period from 8 o'clock to 9 o'clock p.m. on their front porch or lawn as a way of saying to potential criminal predators: "You had better think twice, because in this community neighbors look out for each other." This worthwhile event has been extended this year to 10 o'clock.

The Congress, by Senate Joint Resolution 294, has designated August 9, 1988, as "National Neighborhood Crime Watch Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 9, 1988, as National Neighborhood Crime Watch Day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of August, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-18396
Filed 8-10-88; 4:27 pm]
Billing code 3195-01-M

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# Rules and Regulations

Federal Register
Vol. 53, No. 156
Friday, August 12, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 910

[Lemon Reg. 626]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 626 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,000 cartons during the period August 14 through August 20, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 626 (§ 910.926) is effective for the period August 14 through August 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein. .

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The committee met publicly on August 9, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is fairly good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.926 is added to read as follows:

**Note.—** This section will not appear in the Code of Federal Regulations.

**§ 910.926 Lemon Regulation 626.**

The quantity of lemons grown in California and Arizona which may be handled during the period August 14, 1988, through August 20, 1988, is established at 310,000 cartons.

Dated: August 10, 1988.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–18382 Filed 8–11–88; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 171

### Revision of Fee Schedule

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Interim rule.

**SUMMARY:** The NRC is amending its regulations, on an interim basis, to revise the annual charges for licensed power reactors for Fiscal Year 1988 (FY88). The interim rule raises the ceiling on collection of annual fees to an amount that will approximate, but not be less than 45 percent of the Commission's budget. The increase of 12 percent will be apportioned among the licensed power reactors in the same manner as under the current fee schedule regulations. This action is necessary to provide for the timely collection of fees as required by recently enacted legislation.

**EFFECTIVE DATE:** September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lee Hiller, Assistant Controller, U.S. Nuclear Regulatory Commission,

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Washington, DC 20555, telephone (301) 492–7351.

**SUPPLEMENTARY INFORMATION:** On June 27, 1988, the NRC published in the **Federal Register** (53 FR 24077) a proposed rule that would amend its regulations in 10 CFR Parts 170 and 171. This revision is necessary to both update the current fees and to implement recently enacted legislation. The proposed amendments would: Change the hourly rate under Part 170; remove fee ceilings on certain collections under Part 170; charge for each routine and nonroutine inspection; raise the annual fee under Part 171 when necessary, based on the principle that those licensees requiring the greatest expenditure of resources should pay the greatest fee; include collections from the Department of Energy Nuclear Waste Fund in agency collections; remove the application fee and defer recovery of costs for standardized reactor designs, and remove amendment application filing fees for reactors and reactor-related (topical) reports. Most of these proposals are intended to help the NRC meet its statutorily mandated requirement to recover not less than 45 percent of its budget for each of fiscal years 1988 and 1989 through fees and other collections authorized by law. The increase in collections from 33 percent of the NRC's budget to not less than 45 percent is mandated by section 5601 of the Omnibus Budget Reconciliation Act of 1987 (OBRA–Pub. L. 100–203).

In its **Federal Register** notice on proposed amendments to 10 CFR Parts 170 and 171, the Commission requested comments on a second option for recovery of not less than 45 percent of its budget. Under that option, the Commission would not amend 10 CFR Parts 170 and 171 other than to raise the annual fee under 10 CFR Part 171 so that when added to fees collected under 10 CFR Part 170, the Commission would collect not less than 45 percent of its budget in FY88.

Several comments were received which addressed the option. They were divided about equally between those in favor and those opposed. Generally the power reactor community was opposed to the second option on the ground that it increased the annual fee for power reactors without any commensurate sharing of the mandated increase in collections to 45 percent by other licensees and applicants. On the other hand, materials licensees favored the second option for the reason that it did not increase their burden. Two power reactor licensees favored the second option, one of them as an interim measure. The bulk of the power reactor community, in opposing the second option, appeared to be viewing it as a long term option and not as a stopgap measure to meet the immediate statutory directive for collections for fiscal year 1988. In view of the balance of the comments, the Commission will not pursue the second option for fiscal year 1989 and beyond, but will proceed with amendments to both 10 CFR Parts 170 and 171. The comments do not, however, present a persuasive argument for not proceeding with the second option for fiscal year 1988 collections.

Commenters also addressed the issue of refunds for overpayment of annual fees under 10 CFR Part 171. The only comments received were from the power reactor community and are based upon reading the language in section 5601 of OBRA as imposing a 45 percent ceiling on the collections in a fiscal year. In the view of the Commission, reading the 45 percent as a ceiling is contrary to the plain language and clear meaning of the statute which requires that, "in no event shall such percentage be less than a total of 45 percent of such costs in each such fiscal year." Although the statute presents some problems of interpretation, this is not one of them. The 45 percent is clearly a floor, not a ceiling. Accordingly, the provision for refunds is removed in this interim rule. It is the intention of the Commission, however, that collections of fees for fiscal year 1988 should exceed 45 percent by only a trivial amount, if at all.

The NRC is under statutory mandate, which it cannot ignore, to collect approximately, but not less than 45 percent of its budget for FY88. Given the time necessary to review all comments, to publish a final rule, and to send out additional invoices so that collections will be received prior to the end of the fiscal year, the Commission is publishing the second option as an interim rule applicable to FY88, effective 30 days after publication. Because the Commission has received and considered public comments on the two aspects of 10 CFR Part 171 being changed by this interim final rule, there is no need to request further public comment. Accordingly, the rule is being published as a final rule without a separate and independent comment period.

The adjusted invoices based on this interim rule will be sent to licensees on approximately August 15, 1988, after the rule is published in the **Federal Register**. These invoices will be due and payable upon issuance. In accordance with current regulations, interest on the invoices will be waived if the invoices are paid within 30 days of their issuance. Licensees were notified with their April and July quarterly invoices under 10 CFR Part 171 that there would be an additional invoice, based on the new statute, in FY88.

Adoption of the second option for FY88 requires that § 171.15 be amended to reflect collections of not less than 45 percent instead of the current 33 percent ceiling on total fee collections. This interim rule will apply only to FY88 and will be superseded by a final rule after the Commission fully considers comments it received in response to its purposed revision of 10 CFR Parts 170 and 171 published in the **Federal Register** on June 27, 1988. The final rule will apply to fees for FY89.

In order to comply with OBRA, the Commission is required to collect $177 million in FY88. Based on current estimated collections under 10 CFR Part 170 of $41.3 million and anticipated total collections under 10 CFR Part 171 of $99.5 million, the Commission must collect an additional $36.2 million in order to reach the collections objective. Accordingly, the FY88 annual fee adjustment is $350,000 for each licensed power reactor. The annual fees for those plants previously granted a partial exemption for FY88 pursuant to § 171.11 will be increased in a like manner using the percentage rate used for the exemptions. Those plants totally exempted from the annual fee for FY88 are unaffected by this amendment.

The NRC's reading of the 45 percent legislative statute (section 5601 of the Omnibus Budget Reconciliation Act of 1987—Pub. L. 100–203) is that 45 percent does not represent a ceiling. Congress intended collections to be not less than 45 percent of the NRC's budgets for FY88 and FY89. Therefore, actual collections will approximate but be at least 45 percent of the Commission's budget. On this basis, the current refund provision of 10 CFR 171.21 is no longer necessary and is being removed.

### Environmental Impact: Categorical Exclusion

The NRC has determined that this interim rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

### Paperwork Reduction Act Statement

This interim rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork

Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

**Regulatory Analysis**

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) required the NRC, by rule, to establish an annual charge for regulatory services provided to its applicants and licensees, that when added to other amounts collected, equaled up to 33 percent of Commission costs in providing those services. Section 5601 of the Omnibus Budget Reconciliation Act of 1987 requires that the NRC, for the fiscal years 1988 and 1989, increase the moneys collected pursuant to section 7601 and other authority to not less than 45 percent of the Commission's costs. In order to accomplish this statutory requirement, the NRC, as an interim measure, is amending 10 CFR 171.15 (c) and (d) by revising the figure 33 percent to a target of 45 percent.

This interim rule will not have significant impacts on state and local governments and geographical regions; on health, safety, and the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this interim rule.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 650(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this interim rule and, therefore, that a backfit analysis is not required for this interim rule, because this amendment is mandated by 31 U.S.C. 9701 and 7601, Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272, 100 Stat. 146), as amended by section 5601, Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, 101 Stat. 1330).

**List of Subjects in 10 CFR Part 171**

Annual charges, Nuclear power plants and reactors, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 171.

## PART 171—ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

1. The authority citation for Part 171 is revised to read as follows:

**Authority:** Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

**§ 171.15 [Amended]**

2. In § 171.15, paragraph (e) is removed and paragraphs (c) and (d) are amended by revising the percentages specified as "33" and ".33," respectively, to read "45" and ".45."

**§ 171.21 [Removed]**

3. Section 171.21 is removed.

Dated at Rockville, Maryland this 8th day of August 1988.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 88–18284 Filed 8–11–88; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 39**

**[Docket No. 88–ASW–35; Amdt. 39–5995]**

### Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH Model BO–105, BO–105LS, and BK–117 Series Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain MBB Model BO–105, BO–105LS, and BK–117 series helicopters by individual letters. The AD requires initial and recurring inspections for cracks at the junction of the bolt head and shank. The AD was needed to prevent failure of the bolt which could result in possible loss of control of the main rotor blade and subsequent loss of the helicopter.

**DATES:** *Effective Date:* August 26, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 87–09–03, issued May 7, 1987, which contained this amendment.

*Compliance:* As indicated in the body of the AD.

**ADDRESSES:** The applicable service information may be obtained from MBB Helicopter Corporation, P.O. Box 2349, West Chester, Pennsylvania 19380. A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Samuel E. Brodie, Department of Transportation, Rotorcraft Standards Staff, ASW–110, Fort Worth, Texas 76193–0110, telephone (817) 624–5116.

**SUPPLEMENTARY INFORMATION:** On May 7, 1987, priority letter AD No. 87–09–03 was issued and made effective immediately as to all known U.S. owners and operators of certain MBB Model BO–105, BO–105LS, and BK–177 series helicopters. The AD required initial and recurring inspections on main rotor secondary blade bolts. The AD was prompted by the reports of four recent bolt failures.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued May 7, 1987, to all known U.S. owners and operators of certain MBB Model BO–105, BO–105LS, and BK–177 series helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct

an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation Safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Messerschmitt-Bolkow-Blohm GMBH:** Applies to Model BO–105, BO–105LS, and BK–117 series helicopters certificated in any category with main rotor blade secondary bolt P/N's 105–14101.35, 105–14101.79, 105–14101.11, and 105–141021.05 installed.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the secondary main rotor blade retention bolt and possible loss of control or the main rotor blade, accomplish the following:

(a) Inspect all bolts having more than 100 hours' time in service for cracks at the junction of the head and shank using a magnetic particle inspection or a dye penetrant inspection method prior to further flight. If the dye penetrant inspection method is used, bolts with solid film lubricant coating shall have the coating removed in the affected area (to approximately 5 MM below the bolt head) using Scotch Brite or equivalent. Use MEK or equivalent to clean the surface prior to dye checking. Coated crack-free bolts need not be recoated prior to reinstallation.

(b) Inspect bolts with less than 100 hours' time is service in accordance with paragraph (a) prior to accumulating 100 hours' time in service.

(c) If cracks are found, remove bolt from service and replace with an airworthy bolt prior to further flight.

(d) Conduct the inspection of paragraph (a) at intervals not to exceed 100 hours' time in service since last inspection.

(e) Reinstall bolts in accordance with the following instructions. Lubricate crack-free bolts (per MBB Maintenance Manual) with Molykte BR2 (MBB Maintenance Manual item CM–102) or Aeroshell grease #22 (MBB Maintenance Manual item CM–101) and install per the applicable MBB Maintenance Manual with the following exceptions:

(1) Make certain that no lubricant is on the threaded area of the bolt;

(2) Before installing the nut, lightly tap the head of the bolt with a plastic or rubber mallet to seat the bolt in the hole;

(3) Install nut, and torque to 70–90 inch pounds (8–11 Newton meters); and

(4) If required to install cotter pin, back off the nut to next available cotter pin hole, and install cotter pin.

(f) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Aircraft Certification Division, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0100.

(g) Special flight permits may be issued in accordance with Sections 21.197 and 21.199 to operate helicopters to a base for the accomplishment of inspections required by this AD.

This amendment become effective August 26, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 87–09–03, issued May 7, 1987, which contained this amendment.

Issued in Washington, DC, on August 3, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88–18289 Filed 8–11–88; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS PHILIPPINE SEA (CG–58) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** July 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PHILIPPINE SEA (CG–58) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closet possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR Part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. Table Five of § 706.2 is amended by adding the following vessel:

| Vessel | Number | Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i) | Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii) | Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f) | Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i) | Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b) | Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a) | After masthead light less than 1 ship's length aft of forward masthead light. Annex I, sec. (3)(a) | Percentage horizontal separation attained. |
|---|---|---|---|---|---|---|---|---|---|
| USS PHILIPPINE SEA | CG-58 | | | | | | X | X | 38 |

Date: July 29, 1988.
Approved:
**H. Lawrence Garrett, III,**
*Under Secretary of the Navy.*
[FR Doc. 88-18247 Filed 8-11-88; 8:45 am]
BILLING CODE 3810-AE-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[FRL-3419-9]**

## Approval and Promulgation of State Implementation Plans; Colorado; Alfalfa Dehydrator Regulations

**AGENCY:** Environmental Protection Agency (EPA).
**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to Colorado Regulations 1 and 5 concerning existing alfalfa dehydrators which were submitted by the Governor of Colorado on July 29, 1987. The revisions reduce the visible emission limit for alfalfa dehydrators from 40% opacity to 30% opacity. Approval of these revisions, which are expected to reduce emissions of particulate matter from alfalfa dehydrators, provides for Federal enforcement.

**DATES:** This action will be effective on October 11, 1988, unless notice is received by September 12, 1988, that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.
Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Dale M. Wells, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293-1773, (FTS) 564-1773.

**SUPPLEMENTARY INFORMATION:** The Colorado Air Quality Control Commission (AQCC) Regulation 1, and the recently expired Regulation 5, provided that existing alfalfa dehydration plants must operate so as not exceed to 40% opacity. These regulations were revised on January 17, 1985, and extended the 40% opacity exemption until January 1, 1987, at which time Regulation 5 terminated. Existing alfalfa dehydrators then fell under the provisions of Regulation 1. The effect of this would have been to require existing alfalfa dehydrators to meet 20% opacity limits, thus treating existing plants the same as new plants.

On January 15, 1987, the AQCC adopted a revision to the Total Suspended Particulate (TSP) State Implementation Plan (SIP) to extend Regulation 5 and require existing plants to meet a 30% opacity limit. The 30% opacity limit is expected to result in the installation of reasonably available control equipment and other measures in revising the production process in order to minimize emissions. This revision was effective on March 2, 1987. There is only one existing alfalfa dehydrating plant in Colorado; the plant is located in an area which is in attainment of the national ambient air quality standards for particulate matter.

The EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standards. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less ($PM_{10}$). However, at the State's option, EPA will continue to process TSP SIP revisions which were in process at the time the new $PM_{10}$ standard was promulgated. (In the policy published on July 1, 1987 (p. 24679, column 2), EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceding the approval of State Plans specifically aimed at $PM_{10}$.) If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it.

EPA is approving the revisions to Regulations 1 and 5 because, although a 20% opacity limit came into effect when the 40% limit expired, there was no intention on the part of the State to require compliance with the 20% limit. Therefore, the practical result of this revision is to tighten the emission limit to 30% for alfalfa dehydrators. EPA believes these regulations will be helpful in maintaining the area in attainment of the particulate standard.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 11, 1988.

### Final Action

EPA hereby approves the revisions to Regulation 1 and 5 concerning alfalfa dehydrators as part of the Colorado TSP SIP.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a

substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Particulate matter, Incorporation by reference.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Date: July 19, 1988.

**Lee M. Thomas,**

*Administrator.*

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

**Subpart G—Colorado**

2. Section 52.320 is amended by adding paragraph (c)(38) to read as follows:

**§ 52.320 Identification of Plan**

* * * * *

(c) * * *

(38) Revisions to Regulations 1 and 5 to control emissions from alfalfa dehydrators were submitted by the Governor on July 29, 1987.

(i) Incorporation by reference

(A) Section II.A.6 and introductory text of Section III.C.2.a of Regulation 1 and Regulation 5 adopted by the Colorado Air Quality Control Commission on January 15, 1987, effective on March 2, 1987.

[FR Doc. 88–16636 Filed 8–11–88; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 52**

**[FRL–3421–4]**

## Approval and Promulgation of State Implementation Plans; Revisions to Regulation No. 3, Visibility Protection; Colorado

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Final rulemaking.

**SUMMARY:** In this action, EPA is approving the general plan requirements, monitoring strategy, and long-term strategies (LTS) for visibility protection in mandatory Class I Federal areas in a revision to the Colorado Air Quality Control Commission (AQCC) Regulation No. 3 of the Colorado State Implementation Plan (SIP). This action is a result of rulemakings on July 12, 1985, and on November 24, 1987 (52 FR 45132), at which EPA disapproved SIPs of states which failed to comply with the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility LTS). EPA also incorporated these Federal plans and regulations into the SIPs of these states.

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987. Review of the plan indicates that Colorado has met the criteria of 40 CFR 51.302, 51.305, and 51.306, and that these revisions will replace the Federal plans and regulations in the Colorado Visibility SIP.

**DATES:** This action will be effective on October 11, 1988, unless notice is received by September 12, 1988, that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 293–1769, (FTS) 564–1769.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" (hereinafter Class I areas) are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400–81.437.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 CFR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified in 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation, pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate Visibility SIPs. A negotiated Settlement Agreement between EPA and EDF required EPA to propose to incorporate Federal regulations in states where SIPs were deficient with respect to visibility monitoring regulations (40 CFR 51.305). However, the Settlement Agreement allowed each State an opportunity to avoid Federal promulgation if it submitted a SIP by May 6, 1985. Colorado was one of the states that did not meet this deadline. Final promulgation of Federal visibility monitoring regulations for all states (including Colorado) having deficient SIPs was published on July 12, 1985 (49 FR 28544), and became effective August 12, 1985.

The Settlement Agreement between EPA and EDF also required EPA to determine the adequacy of State Visibility SIPs to meet the general plan requirements including implementation control strategies (40 CFR 51.302), integral vista protection (40 CFR 51.302–51.307), and LTS (40 CRR 51.306). The Settlement Agreement required EPA to propose and promulgate Federal Visibility SIPs (hereinafter Federal Implementation Plans (FIPs)) to remedy any deficiencies on a specified schedule. On January 23, 1986 (51 FR 3046), EPA preliminarily determined that the SIPs of 32 states (including Colorado) were deficient with respect to the mentioned visibility provisions.

The EPA and the plaintiffs negotiated revisions to the Settlement Agreement which extended the deadlines for proposing FIPs to remedy the deficiencies. Under this revised Agreement, EPA must propose and promulgate FIPs to address the

deficiencies relating to the general plan requirements and LTS, and can defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal Land Managers (FLMs) have certified to EPA.

On March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIPs of 32 states (including Colorado) for failing to meet the general plan and LTS requirements of 40 CFR 51.302 and 51.306, and to incorporate these Federal regulations into each state's SIP. The states were given the opportunity to avoid promulgation if they submitted SIP revisions to EPA by August 31, 1987.

On November 24, 1987, EPA disapproved SIPs for states (including Colorado) which failed to meet the requirements of 40 CFR 51.302 and 51.306. EPA also incorporated these Federal regulations into the SIPs of these states.

On December 21, 1987, Colorado submitted a SIP revision which added new section XV "Visibility" to Air Pollution Control Commission (APCC) Regulation No. 3. Included in this submittal are plans and regulations which would replace Federal provisions for visibility general plan requirements (40 CFR 51.302), monitoring (40 CFR 51.305), and LTS (40 CFR 51.306).

Colorado has chosen not to protect integral vistas from visibility impairment at this time. A subcommittee has been established to further address this issue and will recommend the need for future action. Colorado's submittal meets the requirements of 40 CFR 51.304.

**Affected Areas**

The following areas in Colorado are Class I areas where visibility is an important value:

Black Canyon of the Gunnison Wilderness
Eagles Nest Wilderness
Flat Tops Wilderness
Great Sand Dunes Wilderness
La Garita Wilderness
Maroon Bells-Snowmass Wilderness
Mesa Verde National Park
Mount Zirkel Wilderness
Rawah Wilderness
Rocky Mountain National Park
Weminuche Wilderness
West Elk Wilderness

**General Plan Requirements**

*A. Requirements*

The visibility regulations provide general plan requirements for the Visibility SIPs. The general plan in 40 CFR 51.302(c) requires that the SIPs include: (1) An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal; (2) emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources; (3) provisions to protect integral vistas; (4) provisions to address any existing impairment certified by the FLM; and (5) an LTS (10 to 15 years) for making reasonable progress toward the national goal.

The Colorado Visibility SIP reiterates these general plan requirements in the "Statement of Basis, Specific Statutory Authority and Purpose" with the exception of "(3) provisions to protect integral vistas". To date, Colorado has chosen not to list integral vistas.

*B. Control Strategies*

The regulations establish the following process for developing control strategies to remedy existing impairment. First, the State or the FLM identifies the Class I areas where visibility impairment exists. The regulations require the states to address in the SIP any impairment which has been certified at least six months prior to SIP submittal. (See 40 CFR 51.302(c)(4).)

In identifying existing facilities which cause or contribute to the visibility impairment, the regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources. Although the FLMs may provide the states with a list of sources suspected of causing any existing impairment in the certification, the responsibility of identifying sources is the State's. (See 45 FR 80086, col. 3 and 40 CFR 51.302(c)(4)(i).)

The State is required to perform a BART analysis for any existing stationary facility which has been identified as causing impairment in a Class I Federal area. The State determines BART on a case-by-case basis taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, the remaining useful life of the source, and the degree of improvement that can be anticipated to result from the use of the controls. The State must adopt emission limitations representing BART which must be installed as expeditiously as practical, but no later than five years for SIP approval. (See 40 CFR 51.302(c)(4).)

The State is not required to adopt emission limitations representing BART if, for example, retrofit controls do not exist or are not anticipated to result in improvements in visibility. (See 45 FR 80087, col. 1.) However, if a source has not been subject to BART because control technologies do not exist and if the Administrator determines that new technologies are available which would more effectively control that pollutant, the State must reanalyze for BART at that time. (See 40 CFR 51.302(c)(4)(v).)

Under 40 CFR 51.303, sources may apply to the Administrator of EPA for exemptions from BART if they can demonstrate that their emissions do not cause "significant" visibility impairment. The concurrence of the State and the FLM must be obtained before an exemption is granted.

The regulations do not specify methods other than visual observation for characterizing visibility impairment. However, if a state is to adequately and timely address existing visibility impairment, a thorough characterization may be necessary. The EPA is aware that it, or states, may find that the impairment cannot be attributed to specific sources and therefore cannot be addressed under the existing visibility regulations. (See 52 FR 7804, Col. 1.)

A thorough characterization is important when a BART analysis is conducted so that the anticipated improvements in visibility may be estimated. The State or EPA may find that the impairment is attributable to minor stationary sources or to emissions from prescription fires. In these cases, the need for a control strategy to remedy the impairment is assessed as part of the LTS rather than BART. (See 52 FR 7804, col. 1.)

The Colorado Visibility SIP, Section XV.D. ("Existing Impairment") and the "Statement of Basis, Specific Authority and Purpose" contains provisions which address the development of control strategies. (A significant amount of detail on the development of Federal control strategies is contained in 52 FR 7802 (March 12, 1987).)

*C. Assessment of Visibility Impairment*

The EPA reviewed the information provided by the Department of Interior (DOI) to determine if impairment (1) appeared to occur in Colorado's Class I areas, and (2) if impairment was a type which may be traceable to specific sources. The information provided by the FLMs indicated that no Class I area in Colorado is experiencing visibility impairment which may be traceable to specific sources.

The EPA is aware that the FLMs may in the future provide additional information on this impairment which would allow EPA or a state to attribute it to a specific source. In such cases, the information would be reviewed under the procedures described above and

addressed in the periodic review of the LTS discussed below.

**Monitoring Strategy**

Under 40 CFR 51.305, all states with visibility protection areas are required to have a monitoring strategy for evaluating visibility in any Class I area by visual observation or other appropriate monitoring techniques. The purposes of this requirement are to generate data for evaluating visibility impairment trends, determine potential impacts on new sources, assess the effectiveness of the visibility protection program, and identify major contribution sources. These purposes can be adequately addressed by determining the background visibility in protection areas and documenting the extent of any visibility impairment that can be attributed by a source or small group of sources.

Visibility impairment is the human perception of the effects of natural or man-made conditions which reduce visual range or contrast, or coloration change. Thus, a visibility monitoring program should identify these effects, as well as differentiate man-made effects from natural conditions. The program could generate various types of data such as reports from human observers, photographs, and/or automated instruments. The minimum data collection technique that 40 CFR 51.305 requires is visual observation. However, other more objective techniques are available. (See "Interim Guidance for Visibility Monitoring", Office of Air Quality Planning and Standards, November 1980 (EPA 450/2–80–082).)

The monitoring strategy in Colorado's SIP for Class I visibility protection is based on meeting four goals: (1) Provide information for new source visibility impact analysis; (2) determine existing conditions in Class I areas and the source(s) of any certified impairment; (3) determine actual effects from the operation of new sources or modifications to major sources on nearby Class I areas; and (4) establish visibility trends in Class I areas in order to evaluate progress toward meeting the national goals of visibility protection.

Colorado will assemble and evaluate any visibility data supplied by the FLMs and collected by the State or any other appropriate source. Colorado's visibility monitoring strategy meets EPA criteria as outlined in 40 CFR 51.305.

**Long-term Strategy**

*A. Requirements*

The regulations require that the LTS be a 10 to 15 year plan for making reasonable progress toward the national goal. The LTS must cover any existing impairment that the FLM certified at least six months before plan submission. A LTS must be developed which covers each Class I area within the State and each Class I area in another state that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The LTS and SIP must provide for the review of the impact of new sources as required by 40 CFR 51.307. The State must consider at a minimum the following six factors in the LTS: (1) Emission reductions due to ongoing air pollution control programs; (2) additional emission limitations and schedules for compliance; (3) measures to mitigate the impacts of construction activities; (4) source retirement and replacement schedules; (5) smoke management (techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes); and (6) enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the LTS.

The State must commit to periodic review of the SIP on a schedule not less frequent than every three years. A periodic report must be developed in consultation with the FLMs and must contain the following: (1) Progress achieved in remedying existing impairment; (2) the ability of the LTS to achieve reasonable progress toward the national goal; (3) any change in visibility conditions since the last report or since plan approval; (4) additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal; (5) the progress achieved in implementing BART and meeting other schedules laid out in the LTS; and (6) the impact of any exemption granted.

*B. Remedies*

The existing visibility regulations are designed to address impairment which can be traced to specific sources. EPA is deferring action on such existing impairment. Therefore, the Federal LTS is limited to the prevention of future impairment. It establishes a mechanism to address any additional impairment which may be certified in the future. Although EPA intends for these discussions to be the Federal remedy, each of the states must develop their own LTS when developing their Visibility SIPs.

1. Ongoing Air Pollution Control Programs

The regulations require that each LTS provide for the review of the potential impact on visibility a new major stationary sources or major modifications in accordance with 40 CFR 51.307. The regulations further require that each SIP contains a discussion of the effect of on-going air pollution control programs on remedying existing and preventing future impairment of visibility. The Colorado Visibility SIP has met this requirement. EPA has proposed to approve the Colorado New Source Review (NSR) program for visibility protection on March 31, 1987 (52 FR 10239). EPA will approve this SIP revision during Spring 1988.

2. Smoke Management Practices

The FLMs have not specifically identified smoke from prescribed fires as a cause of impairment in the Class I areas. Colorado presently has smoke management agreements with the FLMs. Colorado will coordinate with the FLMs to ensure that the best smoke management techniques are employed. The existing agreements may be revised during the periodic LTS review process to ensure that the impacts due to smoke from prescribed burning of visibility in Class I areas are minimized.

3. Future Certifications of Impairment

Under the revised Settlement Agreement, EPA must address existing deficiencies in Visibility SIPs. Thus, EPA has only addressed the certifications of impairment in Class I areas made by the FLMs prior to June 1, 1988. The FLM has not identified impairment in the Class I areas in Colorado.

4. Existing Visibility Impairment

Since the EPA deferred action on the requirements to address existing visibility impairment, discussions related to source impact (such as additional emission limitations, source retirement and replacement, construction activities, and enforceability of emission limitations) are not required in the SIPs at this time. However, Colorado has chosen to establish the mechanism for addressing existing visibility impairment and implementing BART once an existing source(s) has been identified as causing visibility impairment in a Class I area.

The Colorado Visibility SIP includes provisions which address Federal LTS requirements in "Long-term Strategy (LTS)" and in AQCC Regulation XV.F. (LTS). Additional information concerning the Federal LTS

requirements is contained in 52 FR 7802 (March 12, 1987).

**Summary of Action**

The December 21, 1987, submittal by the Governor of Colorado includes a visibility plan to meet the general plan requirements, monitoring strategy, and LTS of 40 CFR 51.302, 51.305, and 51.306 and the criteria discussed in 50 FR 28544 and 52 FR 45132. (See October 23, 1984 (49 FR 42670), and March 12, 1987 (52 FR 7802), for additional information.) The State commits to a review of the Visibility SIP every three years, making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. The submittal will replace the Federal plans and regulations of 40 CFR 51.302, 51.305, and 51.306 in the Colorado SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 11, 1988.

**Final Action**

EPA hereby approves the revisions to the Colorado Visibility SIP for general plan requirements, monitoring strategy, and LTS.

Note: EPA approved the NSR and Prevention of Significant Deterioration (PSD) for certain source categories. The Federal requirements will apply to those sources not covered under the approved Colorado NSR and PSD program. (See 46 FR 21180 (April 30, 1981) and 51 FR 31125 (September 2, 1986).)

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Particulate matter, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 25, 1988.

**Lee M. Thomas,**

*Administrator.*

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart G—Colorado**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.320 is amended by adding paragraph (c)(41) to read as follows:

**§ 52.320 Identification of Plan**

* * * * *

(c) * * *

(41) A revision to the SIP was submitted by the Governor on December 21, 1987, for visibility general plan requirements, monitoring, and long-term strategies.

(i) Incorporation by reference:

(A) Letter dated December 21, 1987, from Governor Roy Romer submitting the Colorado Visibility SIP revision.

(B) The visibility SIP revision, Regulation No. 3, "Regulation requiring an air contaminant emission notice, Emission Permit Fees", section XV, adopted by the Colorado Air Quality Control Commission on November 19, 1987.

**§ 52.344 [Amended]**

3. Section 52.344(c) is removed.

[FR Doc. 88–17112 Filed 8–11–88; 8:45 am]

BILLING CODE 6560–50–M

**40 CFR Parts 152, 153, 156, 158, 162, and 163**

[OPP–30071D; FRL–3427–8]

**Pesticide Registration Procedures; Pesticide Data Requirements; Cross References and Technical Amendments; Effective Date**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rules; Effective date.

**SUMMARY:** This document announces the effective date of two final regulations issued by the Agency on May 4, 1988. As required by section 25(a)(4) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA submitted two final regulations to both Houses of Congress for review prior to their taking effect. The first rule revised pesticide registration procedures and data requirements and policies; the second final rule contained cross-reference revisions and technical amendments pertaining to the first rule. These final rules were published in the Federal Register of May 4, 1988 (53 FR 15952). The minimum 60-day period for Congressional review has ended.

**EFFECTIVE DATE:** The regulation is effective on August 12, 1988.

**FOR FURTHER INFORMATION CONTACT:**
By mail:
Jean Frane, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number:
Room 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–0944).

**SUPPLEMENTARY INFORMATION:** EPA issued a final regulation revising its pesticide registration procedures and modifying the product chemistry data requirements for pesticides. The final rule reorganized and renumbered a variety of pesticide regulations and created a new part in which to locate labeling requirements (which were not revised). In addition, the revision updated and clarified Agency policies pertaining to registration and registered products. A second final rule, issued on the same date, revised cross-references and made technical amendments elsewhere in pesticide regulations.

However, as required by section 25(a)(4) of FIFRA, the final rules could not take effect until they had been submitted to Congress for a period of 60 days of continuous Congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the Congressional

review period would end, the preamble to each final rule stated that EPA would issue a separate **Federal Register** notice after the review period was over announcing the effective date of the regulation. The 60-day period of continuous Congressional session has ended.

Accordingly, the final regulations promulgated on May 4, 1988, are effective on August 12, 1988.

**List of Subjects in 40 CFR Parts 152, 153, 156, 158, 162 and 163**

Administrative practice and procedure, Data requirements, Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: August 4, 1988.

**Victor J. Kimm,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 88-18251 Filed 8-11-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Family Support Administration

### 45 CFR Parts 206 and 233

### Application, Determination of Eligibility and Furnishing Assistance—Public Assistance Programs; Coverage and Conditions of Eligibility in Financial Assistance Programs; Alien Legalization

**AGENCY:** Family Support Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** These final rules implement provisions of the Immigration Reform and Control Act of 1986, Pub. L. 99- 603, as they relate to the eligibility determination requirements of aliens applying for assistance payments under the Aid to Families with Dependent Children (AFDC) program, under title IV-A of the Social Security Act (the Act); and the adult assistance programs for the aged, blind, and disabled under titles I, X, XIV, and XVI (AABD) in Guam, Puerto Rico, and the Virgin Islands.

**EFFECTIVE DATE:** August 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, Family Support Administration, Room B-428, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245-3290.

**SUPPLEMENTARY INFORMATION:** On December 24, 1987, interim final rules were published in the **Federal Register** (52 FR 48687-48689).

**Legalization**

Pursuant to section 245A(h) of the Immigration and Nationality Act (INA), as added by section 201 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, aliens who have continuously resided in the United States illegally since before January 1, 1982, can apply to the Immigration and Naturalization Service (INS) for an adjustment of their immigration status to that of lawful temporary resident. After a period of eighteen months in a temporary resident status, an alien can apply for adjustment to permanent resident status.

If the alien does not appy for such adjustment by the end of the thirty-first month after the alien is granted temporary resident status, or if adjustment is denied, the alien's status as a lawful temporary resident terminates, and the alien returns to an unlawful status.

Section 245A(h) explicitly disqualifies any alien who was granted lawful temporary resident status from eligibility for assistance payment under the AFDC program for a period of 5 years from the effective date of the receipt of such status. This disqualification period is maintained even though the temporary status may be changed to that of permanent status within the 5 year period. Accordingly, 45 CFR 233.50 is revised to indicate that this new group of aliens is temporarily disqualified from AFDC eligibility.

However, temporary resident alien applicants for assistance in the adult categories under Titles I, X, XIV, and XVI (AABD) in Guam, Puerto Rico, and the Virgin Islands are not subject to the disqualification provisions of the statute. Cuban and Haitian entrants, as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96-422, as in effect on April 1, 1983, whose status has been adjusted to that of lawful temporary resident are also not subject to the disqualification provision and, if otherwise eligible, are entitled to assistance.

IRCA section 320 adds new section 210 to the INA to provide for granting lawful temporary resident status and eventually permanent resident status to certain aliens who performed seasonal agricultural work in the United States during a specified period of time. Special agricultural alien workers granted the temporary resident status are also temporarily disqualified for the 5 year period from assistance under the AFDC program; however, they are entitled to assistance, if otherwise eligible, under the adult programs in Guam, Puerto Rico, and the Virgin Islands.

IRCA section 303 adds new section 210 A to the INA to provide for granting lawful temporary resident status to replenishment agricultural workers if the Secretaries of Labor and Agriculture establish a shortage of workers to perform seasonal agricultural services in the United States beginning with fiscal year 1990 and ending with fiscal year 1993. Replenishment agricultural workers granted temporary resident status are also temporarily disqualified for the 5 year period from assistance under the AFDC program, however, they are entitled to assistance, if otherwise eligible, under the adult programs in Guam, Puerto Rico, and the Virgin Islands.

In addition, IRCA section 121 amends section 1137 of the Social Security Act to provide that beginning October 1, 1988, as a condition of an individual's eligibility for assistance under the AFDC, territorial assistance, and Medicaid programs, a State must require an individual to declare in writing whether he is a citizen or national of the United States, and if not, whether he is in a satisfactory immigration status. An individual must produce documents to establish satisfactory immigration status and the State must verify the individual's status through an automated or other system made available by INS, unless the Secretary of HHS grants a waiver. Regulations implementing this section of IRCA wll be published separately. On March 10, 1988, the Department published final regulations implementing IRCA section 204, which appropriates funds for fiscal years 1988 through 1991, to reimburse the States for the costs of providing public assistance, public health assistance, and educational services to certain aliens whose status is adjusted under IRCA (53 FR 7832-7864).

Pursuant to section 245 A(h) of the Immigration and Nationality Act, a disqualified alien who is either a parent or a sibling of an otherwise eligible child, will be excluded from an assistance unit in the same way that ineligible aliens have been excluded prior to the enactment of Pub. L. 99-603. However, IRCA section 201(b) provides that the income of a disqualified parent is considered available to his or her

dependent child by using the stepparent deeming formula at section 402(a)(31) of the Social Security Act and Federal regulations at 45 CFR 233.20(a)(3)(xiv). Accordingly, § 233.20 is revised to reflect this provision for deeming from the disqualified alien to his or her eligible child. Also, IRCA section 201(b) provides that where a disqualified alien is the brother or sister of a dependent child, the needs of the alien shall not be considered in determining the need of the dependent child. Therefore, 45 CFR 206.10 is revised to reflect that the needs and income of disqualified alien siblings are not considered in determining need of an otherwise eligible dependent child.

**Response to Public Comments**

A 60-day comment period was provided in the December 24, 1987, interim final rule. We received a comment from one county agency. Response to this comment follows.

*Treatment of Income of Disqualified Siblings or Parents*

*Coment:* One county agency expressed concern regarding the provision of not considering the needs and income of disqualified alien siblings when determining the eligibility and payment of an otherwise eligible dependent child. The county agency was concerned that the provision would conflict with a State court order indicating that a parent's income must be used first to meet the needs of an "unaided" child before being used to meet the needs of an eligible child or children.

*Response:* We have reviewed the county agency's explanation of the State court order and, based on the general information provided, can find no conflict with the provision that precludes consideration of the needs and income of disqualified alien siblings when determining the eligibility and payment of an otherwise eligible dependent child. We further believe that the Federal regulations at 45 CFR 233.20(a)(3)(vi)(B) with its reference to the deeming formula at 45 CFR 233.20(a)(3)(xiv) are applicable to the issues raised by the county agency. This deeming formula permits the disregard of an amount for the support of other individuals who are living in the home but whose needs are not taken into account in making the AFDC eligibility determination.

**Regulatory Procedures**

*Executive Order 12291*

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major" rule. A "major" rule is defined as any rule that would result in annual effect on the national economy of $100 million or more; result in a major increase in costs or prices; or have significant adverse impacts on competition, employment, or productivity. The Department concludes that implementing the IRCA alien eligibility determination requirements does not constitute a major rule within the meaning of E.O. 12291 because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. The effect of the final rule is to promulgate the statutory provisions and other conforming procedures to effectively implement the requirements of the law. Any impacts on the economy are due to the IRCA statutory requirements and not a result of these final rules. Accordingly, a regulatory impact analysis is not required.

*Paperwork Reduction Act*

Pursuant to the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department has determined that this rulemaking will not impose any new recordkeeping, information collection, or reporting requirement requiring OMB approval.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for each rule with a significant economic impact on a substantial number of small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small government entities. The principal impact of these regulations is on States, which are not "small entities" within the meaning of the Act. We certify that this regulation will not, if promulgated, have a significant impact on a substantial number of small entities because it affects only the transfer of funds between the Federal Government and the States. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 13.780 Assistance Payments Maintenance Assistance)

**List of Subjects**

*45 CFR Part 206*

Grant programs—social programs, Public assistance programs.

*45 CFR Part 233*

Aliens, Grant programs—Social programs, Public assistance programs, Reporting and recordkeeping requirements.

Date: April 8, 1988.

**Wayne A. Stanton,**

*Administrator, Family Support Administration.*

Date: May 20, 1988.

**Otis R. Bowen,**

*Secretary, Health and Human Services.*

## PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

* * * * *

The interim rule published in the Federal Register of December 24, 1987 on pages 53 FR 48627–48629 is adopted as final with the following changes:

1. The authority citation for Part 233 continues to read as follows:

**Authority:** Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and sec. 6 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603.

2. Section 233.50 is amended by revising paragraph (b)(4) to read as follows:

**§ 233.50 Citizenship and alienage.**

* * * * *

(b) * * *

(4) Section 212(d)(5)—Aliens Granted Temporary Parole Status by the Attorney General, or

* * * * *

[FR Doc. 88–17669 Filed 8–11–88; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 2–12; Notice 5]

### Seating Systems; Correction

**AGENCY:** National Highway Traffic Safety Administration (NHTSA); DOT.

**ACTION:** Technical correction.

**SUMMARY:** This document corrects a typographical error in 49 CFR 571.207, *Seating systems.* This Federal Motor Vehicle Safety Standard (FMVSS) concerns the general performance requirements for seating systems in passenger cars, multipurpose passenger vehicles, trucks, and buses.

**DATE:** This correction is effective August 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Marvin L. Shaw, Office of Chief Counsel, National Highway Traffic

Safety Administration, 400 Seventh Street SW., Washington DC 20590 (202–366–2992).

**SUPPLEMENTARY INFORMATION:** It has come to the agency's attention that Section S4.2(a) of Standard No. 207, *Seating systems*, Title 49 of the Code of Federal Regulations (CFR) Part 571, contains a typographical error. This standard establishes requirements for seats, their attachment assemblies, and their installation to minimize the possibility of their failure by forces acting on them as a result of vehicle impact.

Section S4.2(a) should state that "In any position to which it can be adjusted—20 times the weight *of* the seat applied in a forward longitudinal direction." (See 35 FR 15290 at 15291; October 1, 1970.) (Emphasis added.) However, as published in the Code of Federal Regulations, most recently on October 1, 1987 (49 CFR 571.207), S4.2(a) states "In any position to which it can be adjusted—20 times the weight *on* the seat applied in a forward longitudinal direction." (Emphasis added.) This notice corrects that error.

This technical correction to Part 571 imposes no new duties or obligations on any party, nor alters any existing ones. Making this amendment simply ensures that the public will have a correct copy of the requirements in Part 571. For the preceding reasons, NHTSA finds that notice and comment on this correction notice are unnecessary, and that there is good cause for making the amendments effective in less than 30 days.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

Therefore, 49 CFR 571.207 is amended as follows:

**PART 571—[AMENDED]**

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.207 Standard No. 207; Seating Systems. [Amended]**

2. Section S4.2(a) is revised to read as follows:

S4.2 *General performance requirements.*

* * * * *

(a) In any position to which it can be adjusted—20 times the weight of the seat applied in a forward longitudinal direction;

* * * * *

Issued on August 9, 1988.

**Diane K. Steed,**

*Administrator.*

[FR Doc. 88–18305 Filed 8–11–88; 8:45 am]

BILLING CODE 4910-59-M

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## National Highway Traffic Safety Admistration

## 49 CFR Part 585

**[Docket No. 74–14; Notice 59]**

## Automatic Restraint Phase-In Reporting Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Technical amendment.

**SUMMARY:** NHTSA inadvertently omitted a relevant statutory section from the authority citation for the automatic restraint phase-in reporting regulation. This notice corrects that error.

**DATE:** The amendment made by this notice takes effect September 12 1988.

**FOR FURTHER INFORMATION CONTACT:** Stephen R. Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–2992).

**SUPPLEMENTARY INFORMATION:** On March 1, 1986, NHTSA published a final rule establishing a new 49 CFR Part 585, *Automatic Restraint Phase-In Reporting Requirements* (51 FR 9800). In that rule, the agency listed the authority for Part 585 as 15 U.S.C. 1392 and 1407, with the delegation of authority at 49 CFR 1.50.

This authority citation inadvertently omitted the principal statutory source of NHTSA's authority to impose recordkeeping requirements on manufacturers and other persons subject to the National Traffic and Motor Vehicle Safety Act (the Safety Act). That statutory section is 15 U.S.C. 1401, subsection (b) of which specifies that:

> Every manufacturer of motor vehicles * * * shall establish and maintain such records and every manufacturer * * * shall make such reports, as the Secretary may reasonably require to enable him to determine whether such manufacturer * * * has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder * * *

This notice amends the authority citation for Part 585 by adding 15 U.S.C. 1401 to the statutory sections listed in the authority citation. This amendment merely clarifies the source of NHTSA's authority to establish the reporting and recordkeeping requirements in Part 585. This amendment does not alter any manufacturer's existing responsibilities under Part 585, nor does it impose reporting and recordkeeping requirements on manufacturers not currently subject to Part 585. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this amendment are unnecessary.

**List of Subjects in 49 CFR Part 585**

Reporting and recordkeeping requirements.

In consideration of the foregoing the authority citation for 49 CFR Part 585 is revised as follows:

**PART 585—[AMENDED]**

**Authority:** 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

Issued on August 9, 1988.

**Diane K. Steed,**

*Administrator.*

[FR Doc. 88–18304 Filed 8–11–88; 8:45 am]

BILLING CODE 4910-59-M

# Proposed Rules

Federal Register
Vol. 53, No. 156
Friday, August 12, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 1

### Administrative Regulations; Privacy Act Regulations

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** Notice is hereby given that the Department of Agriculture (USDA) proposes to amend 7 CFR 1.123 by adding one system of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k).

**DATE:** Comments must be received on or before September 12, 1988.

**ADDRESS:** Interested persons may submit written comments to: Kenneth E. Cohen, Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447–5565.

**FOR FURTHER INFORMATION CONTACT:** Barbara S. Good, Office of the General Counsel, USDA, (202) 447–3564.

**SUPPLEMENTARY INFORMATION:** These amendments are necessary to provide for exemption of a new Privacy Act system of records entitled "FCIC Compliance Division Review Cases, USDA/FCIC–2." A separate notice regarding USDA/FCIC–2 will be published in the **Federal Register**. This system will contain detailed information pertaining to cases in which the Federal Crop Insurance Corporation (FCIC) Compliance Division is involved. The information is collected during the course of reviews and investigations conducted by the Compliance Division and includes investigative notes, signed statements, affirmations and affidavits, correspondence, case history and status, contractual information, financial data and other related information, and reported findings by the Compliance Division and other entities such as the Office of Inspector General, USDA.

The authority for maintenance of this system is found at 7 U.S.C. 1501–1520. That legislation authorizes FCIC to be responsible for compliance activities pertaining to the provision of crop insurance coverage and the adjustment and payment of claims thereon.

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that these rules will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 1**

Privacy Act.

For the reasons set out in the preamble, it is proposed to amend 7 CFR, Subtitle A, Part 1, Subpart G, as follows:

## PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for Subpart G continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1.123 is amended by adding an entry for Federal Crop Insurance Corporation alphabetically to read as follows:

**§ 1.123 Specific exemptions.**

* * * * *

**Federal Crop Insurance Corporation**

FCIC Compliance Division Review Cases, USDA/FCIC–2

* * * * *

Done this 5th day of August 1988, at Washington, DC.

**Richard E. Lyng,**

*Secretary of Agriculture.*

[FR Doc. 88–18173 Filed 8–11–88; 8:45 am]

BILLING CODE 3410–14–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87–ASW–30]**

### Airworthiness Directives; Sikorsky Model S–76A/B Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend an existing airworthiness directive (AD) which requires removal of electrical door locking actuators to prevent passenger door locks from jamming in the locked position on Sikorsky Model S–76A/B helicopters. This proposed AD would allow those helicopters which have installed an electric door lock manual override retrofit kit to be exempt from further compliance with the AD.

**DATE:** Comments must be recieved on or before September 12, 1988.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, Fort Worth, Texas 76193–0007, or delivered in duplicate to: Office of the Regional Counsel, FAA Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Forth Worth, Texas. Comments must be marked: Docket No. 87–ASW–30. Comments may be inspected at Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between the hours of 8 a.m. and 4 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Fahr, ANE–153, FAA, New England Region, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone number (617) 273–7103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice my be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before or after the closing date for comments.

BEST COPY AVAILABLE

in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 87-ASW-30." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-5754 (52 FR 43054; November 9, 1987), AD 87-23-07, which currently required removal of Part Number (P/N) 22020256 electrical door locking actuators to prevent the passenger door locks from jamming in the locking position on Sikorsky Model S-76A/B helicopters. After issuing Amendment 39-5754, the FAA has determined that Sikorsky has designed a manual override kit, P/N 76070-20097, which allows the door lock to be manually overridden if an electrical door lock jams in the locked position. Therefore, the FAA is proposing to amend Amendment 39-5754 to exempt those helicopters which have installed a manual override kit, P/N 76070-20097, from compliance with the AD.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

This proposed amendment is relieving in nature and imposes no additional burden on any person. Therefore, I certify that this proposed amendment (1) is not a major rule under the provisions of Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Regional Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By amending Amendment 39-5754 (52 FR 43054; November 9, 1987), AD 87-23-07, by revising the applicability paragraph to read as follows:

**Sikorsky Aircraft Division:** Applies to all Sikorsky Model S-76A/B helicopters, certificated in all categories, equipped with electrical door locking actuators installed in accordance with Sikorsky Drawing 76088-20016 using actuator P/N 22020256 in left and right passenger doors, except those helicopters which have installed a manual override kit, P/N 76070-20097. (Docket 87-ASW-30)

* * * * *

Issued in Washington, DC, on August 3, 1988.

**M.C. Beard,**

*Director, Office of Airworthiness.*

[FR Doc. 88-18270 Filed 8-11-88; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[File No. 881 0078]**

**West Point-Pepperell, Inc., et al.; Proposed Consent Agreement With Analysis To Air Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, West Point-Pepperell to acquire J.P. Stevens & Co., Inc. through Magnolia Partners, L.P. The consent agreement would require respondents to divest certain towel and sheet-making assets and may require West Point-Pepperell to add certain additional assets to the divestitures package. The Commission has also entered into an "Agreement to Hold Separate" [1] with respondents. This Agreement to Hold Separate would become a part of the consent order.

**DATE:** Comments must be received on or before October 11, 1988.

**ADDRESS:** Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Ernest Nagata, FTC/S-2105, Washington, DC 20580. (202) 326-2714.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

**List of Subjects in 16 CFR Part 13**

Sheets, Towels, Trade practices.

**Agreement Containing Consent Order to Divest**

The Federal Trade Commission ("the Commission") having initiated an investigation into the proposed acquisition of the voting securities of J.P. Stevens & Co., Inc. ("J.P. Stevens") by Magnolia Partners, L.P. ("Magnolia"), a limited partnership in with STN Holdings, Inc., a subsidiary of West Point-Pepperell, Inc. ("West Point") is a general partner, and Bibb Sub, Inc. ("Bibb Su"), a company controlled by the NTC Group, Inc. ("NTC"), is a limited partner, and it now appearing that Magnolia, West Point and NTC are willing to enter into an agreement containing an Order to divest certain assets;

It is hereby agreed by and between West Point, by its duly authorized officer, NTC, by its duly authorized attorney, Magnolia, by its duly authorized partner, and counsel for the Commission that:

1. J.P. Stevens is a corporation organized under the laws of the State of Delaware with its office and principal

[1] Copies of the Agreement to Hold Separate and its amendments are available from the Commission's Public Reference Branch, H-130, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

place of business located at Stevens Tower, 1185 Avenue of the Americas, New York, New York 10036.

2. Proposed respondent Magnolia is a limited partnership in which STN Holdings, Inc., a Delaware corporation and a subsidiary of West Point, is a general partner, and Bibb Sub, a Delaware corporation controlled by NTC, is a limited partner. Magnolia is organized under the laws of Delaware and its has its principal place of business located at 400 W. 10th Street, West Point, Georgia 31833.

3. Proposed respondent West Point is a corporation organized under the laws of the State of Georgia with its office and principal place of business located at 400 W. 10th Street, P.O. Box 71, West Point, Georgia 31833.

4. Proposed respondent NTC is a corporation organized under the laws of the State of Delaware with its office and principal place of business located at 111 West 40th Street, New York, New York 10018. NTC owns all of the stock of The Bibb Company, which owns all of the stock of Bibb Sub.

5. Proposed respondents admit all jurisdictional facts set forth in the draft to complaint here attached.

6. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents at their addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be sed to vary or contradict the terms of the Order.

10. Magnolia has read the proposed complaint and the Order contemplated hereby. It understands that once the Order becomes final, it will be required to file one or more compliance reports showing that it has fully complied with the Order.

Magnolia further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

11. West Point has read the proposed complaint and the Order contemplated hereby. It understands that once the Order becomes final, it will be required to file one or more compliance reports showing that it has fully complied with the Order.

West Point further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

12. NTC has read the proposed compliant and the Order contemplated hereby. It understands that once the Order becomes final, it will be required to file one or more compliance reports showing that it has fully complied with the Order.

NTC further understands that it may be liable for civil penalties in the amount provided by the law for each violation of the Order after it becomes final.

**Order**

**/**

For purposes of this Order, the following definitions shall apply:

(A) "West Point" means West Point-Pepperell, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by West Point, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(B) "J.P. Stevens" means J.P. Stevens & Co. Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by J.P. Stevens, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(C) "NTC" means The NTC Group, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by NTC, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(D) "Magnolia" means Magnolia Partners, L.P., a limited partnership in which STN Holdings, Inc., a subsidiary of West Point, is a general partner, and Bibb Sub, a company controlled by NTC, is a limited partner Magnolia is organized under the laws of Delaware and it has its principal place of business located at 400 W. 10th Street, West Point, Georgia 31833.

(E) "Bibb Sub" means Bibb Sub, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Bibb Sub, their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(F) "Sheet and Towel Assets" means:

(1)(a) the Roanoke Plants Nos. 1 and 2, Patterson Plant Rosemary Plant and Delta Finishing Plant No. 4, all of which are towel manufacturing facilities located in Roanoke Rapids, North Carolina (the "Roanoke Facilities"); Whitehorse Plants Nos. 1 and 2, which are sheet manufacturing facilities located in Greenville, South Carolina; Brookneal Finishing and Cut and Sew Plant, which is a sheet finishing plant located in Brookneal, Virginia; and (b) the assets described in paragraph (2) of this definition F.

(2) All of J.P. Stevens' assets, properties, business and goodwill, tangible and intangible, (i) located at the facilities described in paragraph (1) of this definition F, (ii) primarily utilized (*i.e.*, more than 50% as determined in good faith by West Point and NTC) in the manufacture and sale of sheets and

towels are intended to be included within the scope of the Sheet and Towel Assets, whether or not reflected on the balance sheet accounts of J.P. Stevens, including, without limitation, the following:

(a) All machinery, fixtures, equipment, vehicles, furniture, tools and all other tangible personal property;

(b) All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research material, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(c) Inventory;

(d) Accounts and notes receivable;

(e) Intellectual property rights, trademarks and trade names, other than trademarks and trade names including the "J.P. Stevens" name;

(f) All right, title and interest in and to owned or leased real property together with appurtenances, licenses and permits;

(g) All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosignors and consignees;

(h) All rights under warranties and guarantees, express or implied;

(i) All books, records and files;

(j) All items of prepaid expense; and

(k) All known and unknown, liquidated or unliquidated, contingent or fixed, rights or causes of action which J.P. Stevens has or may have against any third party and all such rights which J.P. Stevens has or may have in or to any asset or property relating primarily to the Sheet and Towel Assets, excluding, however, all known or unknown, liquidated or unliquidated, contingent or fixed, causes of action which J.P. Stevens has or may have to the extent they arise out of or are related to any liability, obligation or claim not to be assumed by NTC.

With respect to a class of similar assets (such as trucks) a fraction of the use of which has been devoted to the Sheet and Towel Assets, such fraction of such class (or as close an approximation to such fraction as can be separately transferred) shall be included within the Sheet and Towel Assets.

(G) "Eligible Person" means (1) any person or persons approved in advance by the Commission or (2) Bibb Sub or another subsidiary of NTC, *provided*, however, that Bibb Sub or such other NTC subsidiary acquires the Sheet and Towel Assets pursuant to the agreement between West Point and NTC dated March 24, 1988, as amended and restated on March 31, 1988 or any amendment thereof that has the prior approval of the Commission, *Provided* further that such prior Commission approval shall not be required unless the amendment provides for (1) the sale of less than all the Sheet and Towel Assets, (2) any additional conditions of Closing, (3) any additional financing arrangements between West Point and NTC, or (4) deletion or modification of any covenant in paragraph 11 of such agreement.

(H) "Commission" means the Federal Trade Commission.

*II*

It is ordered that:

(A) If respondents, individually or collectively, acquire a majority (more than 50%) of the outstanding voting shares of J.P. Stevens, respondents West Point and Magnolia shall, within nine (9) months from the date this Order becomes final, divest, absolutely and in good faith, the Sheet and Towel Assets to an Eligible Person. The Agreement to Hold Separate shall continue in effect until such time as the Sheet and Towel Assets, and any additional assets ordered to be divested pursuant to Part VII of this Order ("Part VII Assets"), have been divested, and respondents West Point and Magnolia shall comply with all terms of said agreement. The purpose of the divestiture of the Sheet and Towel Assets and the Part VII Assets is to ensure their continuation as ongoing, viable assets and enterprises engaged in the same business in which they are presently employed and to remedy the lessening of competition alleged in the Commission's complaint.

(B) If respondents collectively acquire less than a majority (50% or less) of the outstanding voting shares of J.P. Stevens, respondents shall divest on the New York Stock Exchange absolutely and in good faith all their interest in such shares within six (6) months from the date this Order becomes final. Pending such divestiture, respondents shall not, directly or indirectly, (i) exercise dominion or control over, or otherwise seek to influence, the management, direction, or supervision of the business of J.P. Stevens, (ii) seek or obtain representation on the Board of Directors of J.P. Stevens, (iii) exercise any voting rights attached to the shares, (iv) seek or obtain access to any confidential or proprietary information of J.P. Stevens, or (v) take any action or omit to take any action in a manner that would be incompatible with the status of West Point as a passive investor in J.P. Stevens.

*III*

*It is further ordered that*, pending divestiture, respondents West Point and Magnolia shall not make or permit any deterioration in the value of the Sheet and Towel Assets or any other assets ordered to be divested pursuant to Part VII herein which may impair their present capacity or marketability

*IV*

*It is further ordered that*, the Sheet and Towel Assets shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of West Point or anyone who is not an Eligible Person.

*V*

*It is further ordered that:*

(A) If respondents West Point and Magnolia have not divested the Sheet and Towel Assets within the nine month period, respondents shall consent to the appointment by the Commission of a trustee to divest the Sheet and Towel Assets. In the event that the Commission brings an action pursuant to section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by West Point to comply with Parts II through XII of this Order.

(B) If a trustee is appointed by a court or the Commission pursuant Part V(A) of this Order, respondents shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of West Point, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest the Sheet and Towel Assets that have not been divested by respondents West Point and Magnolia within the time period for divestiture in Part II. The trustee shall have nine (9) months from the date of

appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the nine-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court for a court-appointed trustee; *Provided,* however, that the Commission, or the court for a court-appointed trustee, may only extend the divestiture period two (2) times.

(3) The trustee shall have full and complete access to the personnel, books, records and facilities of Magnolia, West Point, J.P. Stevens, and the Sheet and Towel Assets. Respondents West Point and Magnolia shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(4) The power and authority of the trustee to divest shall be at the most favorable price and terms available, but at no minimum price, consistent with the Order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in Part II.

(5) The trustee shall serve at the cost and expense of respondents West Point and Magnolia on such reasonable and customary terms and conditions as the Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Magnolia and the trustee's power shall be terminated. The trustee's compensation shall based passed at least in significant part on a commission arrangement contingent on the trustee's divesting the Sheet and Towel Assets.

(6) Within sixty (60) days after appointment of the trustee and subject to the approval of the Commission and, if the trustee was appointed by a court, subject also to the prior approval of the court, respondents West Point and Magnolia shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(7) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed.

(8) The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

*VI*

*It is further ordered that,* in the event that the Magnolia partnership agreement requires NTC to consent to any action in order to enable West Point to comply with its obligations under this Order, NTC shall consent to such action.

*VII*

*It is further ordered that,* within ninety (90) days after this Order becomes final, the Commission may order West Point, pursuant to the terms of this Order:

(A) (1) To divest such additional assets, as the Commission determines will ensure the divestiture of the Sheet and Towel Assets as ongoing, viable enterprises, engaged in the businesses in which these Sheet and Towel Assets are presently employed. Such additional J.P. Stevens assets may include textile machinery, finishing equipment, cutting and sewing equipment and product names, designer names, trademarks and licenses therefor; and

(2) To sell yarn needed to balance the production from the Sheet and Towel Assets; to provide on a commission basis finishing and cut and sew services to the extent that the Commission determines the facilities included in the Sheet and Towel Assets are insufficient for that purpose; and to continue the availability of J.P. Stevens' computer programs. All such sales shall be made and all such services shall be provided for such term, not to exceed one (1) year after this divestiture is complete, as the Commission may see fit; *Provided* that if NTC or its subsidiary has purchased the Sheet and Towel Assets, no divestiture of additional assets or provision of services pursuant to Parts VII (A)(1) or VII (A)(2) will be required without the agreement of NTC.

(B) (1) To divest the J.P. Stevens Hanna-Pickett sheeting mill in the Rockingham, North Carolina, and, if the Commission determines it necessary to make the Hanna-Pickett sheeting mill a viable and salable economic unit, the J.P. Stevens Abbeville yarn plant in Abbeville, South Carolina; and

(2) To divest any one (1), two (2) or three (3) of the following trademarks and designer licenses:

(i) Carlin trademark,

(ii) The Ralph Lauren license,

(iii) The Gloria Vanderbilt license,

(iv) The Eillene West license,

(v) The Perry Ellis license, and

(vi) The Collier-Campbell license,

*Provided,* however, that the commercial value of trademarks and licenses ordered to be divested pursuant to this Part VII (B) plus the commercial value or product names, designer names, trademarks and licenses therefor ordered to be divested under Part VII (A) shall not exceed the combined commercial value of the three most valuable trademarks and licenses listed in Part VII (B); for purposes of this provision, relative "commercial value" shall be based on the sales of sheet and towel products under each trademark, product name or designer license during the fiscal year preceding the date on which this Order becomes final.

Divestitures under Part VII shall be made within nine (9) months of the Commission's determination that such divestiture is necessary and shall be made only to an acquirer or acquirers, and only in the manner, that shall receive the prior approval of the Commission. The purpose of the divestiture of the Hanna-Pickett sheeting mill, and if so ordered, the Abbeville yarn plant, is to ensure the continuation of the Hanna-Pickett sheeting mill as an ongoing, viable enterprise engaged in the same business in which it is presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. The purpose of the divestiture of product names, designer names, trademarks and licenses therefor is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

If the Part VII (B) assets have not been divested within the nine-month period, respondents West Point and Magnolia shall consent to the appointment of a trustee pursuant to the provisions contained in Part V. The trustee shall have all of the powers and duties and shall act in all respects in accordance with the terms and conditions contained in Part V.

*VIII*

*It is further ordered that* any assets ordered to be divested pursuant to Part VII shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of West Point or anyone who is not an Eligible Person.

*IX*

*It is further ordered that,* for a period of ten (10) years from the date this Order becomes final, West Point shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, assets, any interest in or any interest of, any concern, corporate or non-corporate, engaged in the United States in the business of manufacturing terry cloth, terry towels, sheets or pillowcases; *Provided,* however, that these prohibitions shall not relate (i) to the construction of new facilities, (ii) to the acquisition of assets outside of the United States, (iii) to the acquisition of any interest in, or the whole or part of the stock or share capital of, any company engaged in the manufacture, distribution or sale of sheets or towels outside of the United States if such company has annual sales in the United States of less than one percent of the then current respective total United States annual sales of sheets or towels, or (iv) to the acquisition of used assets that West Point intends to relocate to existing or new facilities for use in production of sheets and towels if such used assets have production capacity of less than one percent of the United States' then current respective capacity for the production of sheets or towels. Beginning one (1) year from the date this Order becomes final and annually thereafter for nine (9) more years, West Point shall file with the Commission verified written reports of its compliance with this part.

*X*

*It is further ordered that,* within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with Parts II and VII of this Order, respondents West Point and Magnolia shall file reports in writing to the Commission setting forth in detail the manner and form in which they intend to comply, are complying or have complied therewith.

All such reports shall include, in addition to such other information and documentation as may hereafter be requested, (a) a specification of the steps taken by such respondents to make public their desire to divest the Sheet and Towel Assets and the Part VII (B) Assets, (b) a list of all persons or organizations contacted about the Sheet and Towel Assets and the Part VII (B) assets, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and (d) copies of all reports, internal memoranda, offers, counteroffers, communications and correspondence concerning such divestiture.

*XI*

*It is further ordered that,* for the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to West Point made to its principal office, West Point shall permit any duly authorized representative or representatives of the Commission:

(9) Access during the office hours of West Point and J.P. Stevens, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of West Point or J.P. Stevens relating to compliance with this Order;

(10) Upon five (5) days' notice to West Point and without restraint or interference from them, to interview officers or employees of West Point or J.P. Stevens, who may have counsel present, regarding any such matters.

Any information or documents furnished to or obtained by the Commission from West Point or J.P. Stevens shall be accorded such confidential treatment as is available pursuant to sections 6(f) and 21 of the Federal Trade Commission Act, as amended.

*XII*

*It is further ordered that* respondents West Point and Magnolia shall notify the Commission at least thirty (30) days prior to any proposed change in the organization such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

**Concurring Statement of Commissioner Strenio, in Which Commissioner Azcuenaga Joins, in West Point-Pepperell/J.P. Stevens**

My preference in this matter was to seek a preliminary injunction (pending an administrative proceeding at the FTC) in order to secure stronger safeguards for consumers. However, lacking the support of a Commission majority for that approach, I have voted to accept tentatively the proposed consent.

This vote was cast in recognition of two facts. First, the proposed consent offers more relief than would be obtained in its absence. Second, the proposed consent appears to contain relief that is far from trivial.

I will examine closely any submissions received by the agency during the public comment period before deciding what, if any, further action to take.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has provisionally accepted an agreement containing a proposed consent order with Magnolia Partners, L.P. ("Magnolia"), West Point-Pepperell, Inc. ("West Point"), and The NTC Group, Inc. ("NTC"), collectively referred to as "respondents."

On July 29, 1988, the Commission entered into an agreement containing the proposed consent order with Magnolia, West Point, and NTC in settlement of a proposed complaint challenging the acquisition of the voting securities of J.P. Stevens, Inc. ("J.P. Stevens") by Magnolia. Magnolia is a limited partnership controlled by West Point, with a subsidiary of NTC as a limited partner. The proposed complaint states that the Commission has reason to believe that, in the absence of an adequate divestiture of certain J.P. Stevens assets to NTC, the acquisition of J.P. Stevens voting securities by Magnolia (the "Acquisition") would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The proposed complaint specifically alleges that the Acquisition may substantially lessen competition in the manufacture, distribution, and sale of towels, and in the manufacture, distribution, and sale of sheets.

To remedy the alleged anticompetitive results of the Acquisition, the agreement's proposed consent order would (among other things) require Magnolia to sell ("divest") certain of J.P. Stevens' towel-making and sheet-making assets, including: (a) J.P. Stevens' Roanoke Plants Nos. 1 and 2, Patterson Plant, Rosemary Plant and Delta Finishing Plant No. 4, all of which are towel-making facilities located in Roanoke Rapids, North Carolina; (b) J.P. Stevens' Whitehorse Plants Nos. 1 and 2, which are sheeting-manufacturing facilities located in Greenville, South Carolina; and (c) the Brookneal Finishing and Cut and Sew Plant located in Brookneal, Virginia. As described in greater detail below, the Commission may require West Point to add certain additional assets to the divestiture package.

The Commission has placed the proposed complaint and the provisionally accepted consent order on the public record for sixty (60) days so

that interested parties may comment on it. The Commission is particularly interested in the opinions of the public on the appropriateness of divesting the additonal assets described in Part VII of this agreement. Comments received during this period will become part of the public record, unless commenters request confidential treatment. Commenters desiring confidential treatment must do so by printing "Confidential Treatment Requested" across the top of the first page of their comments. After the end of the sixty day comment period, the Commission will review the proposed complaint and consent order and the comments received thereon, and will decide whether it should withdraw from the consent agreement or make final the agreement's proposed consent order.

If the Commission withdraws from the agreement, it may: (1) Determine that no relief is required; (2) attempt to negotiate with respondents and make necessary modifications in the proposed consent order; or (3) initiate litigation to compel West Point to divest certain assets or seek any other relief consistent with section 7b of the Clayton Act or section 5 of the Federal Trade Commission Act.

In additon to provisional acceptance of the proposed consent order, the Commission has entered into an "Agreement to Hold Separate" with respondents. This agreement will maintain the separate identity and individual viability of J.P. Stevens during the public comment period. The proposed consent order expressly makes the Agreement to Hold Separate a part of the consent order.

If, at the end of the comment period, the Commission believes further enforcement action is warranted and withdraws from the proposed consent agreement, the Commission may seek any relief it deems appropriate, including a federal court order under section 13(b) of the Federal Trade Commission Act. In such a court action, the Commission may request (among other things) an extension of the "Hold Separate" provisions in order to prevent any commingling of J.P. Stevens' businesses or assets with West Point's until a final adjudication on the merits of any administrative action the Commission may initiate.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed complaint, consent order, or Agreement to Hold Separate, or to modify in any way their terms.

**The Proposed Consent Order**

*Part I*

The introductory paragraph of the proposed consent order defines the terms used in the order.[1] Subpart (f) describes the J.P. Stevens "Sheet and Towel Assets," and Subpart (G) defines an "Eligible Person" to which the Sheet and Towel Assets may be divested. The term "Eligible Person" includes NTC and its subsidiaries, so long as they acquire the Sheet and Towel Assets pursuant to a specified agreement betweeen West Point and NTC.

*Part II*

Part II of the proposed consent order provides that if respondents acquire a majority of J.P. Stevens' outstanding voting shares, they must, within nine months, fully divest the Sheet and Towel Assets to an Eligible Person. Should respondents not acquire a majority of Stevens' voting shares, Subpart (B) requires respondents to be passive investors in Stevens, and to divest themselves of all Stevens shares within six months from the date the order becomes final.

*Part III*

Part III of the proposed consent order prohibits West Point and Magnolia from causing or permitting deterioration of the value of the Sheet and Towel Assets or any other assets which may be ordered to be divested.

*Parts IV, VIII*

Parts IV and VIII of the proposed consent order prohibit the divestiture of the Sheet and Towel Assets, or other assets ordered to be divested pursuant to Part VII, to anyone under the control, direction, or influence of West Point or anyone who is not an Eligible Person.

*Part V*

Part V of the proposed consent order provides that, if the Sheet and Towel Assets have not been divested within nine months, respondents will consent to the appointment by the Commission of a trustee to divest the assets. The responsibilities of the trustee are also specified in detail.

*Part VI*

Part VI of the proposed consent order requires NTC to consent, whenever such consent is necessary, to any action enabling West Point to comply with its obligations under the Order.

[1] The proposed complaint also contains several definitions of terms.

*Part VII*

Part VII of the proposed consent order provides that, within 90 days after the Order becomes final, the Commission may order West Point to divest certain assets in addition to the Sheet and Towel Assets. Specifically, Subpart (A) of Part VII provides, in order to assure the viability of the Sheet and Towel Assets, that the Commission may require West Point to divest additional Stevens assets, including textile machinery, finishing equipment, cutting and sewing equipment and product names, designer names, trademarks and licenses therefor. In addition, West Point may be required to (a) sell yarn needed to balance production from the Sheet and Towel Assets; (b) provide finishing and cutting and sewing services on a commission basis; and (c) continue the availability of J.P. Stevens' computer programs for a period not to exceed one year. Pursuant to Subpart (B)(1), the Commission also may require the divestiture of J.P. Stevens' Hanna-Pickett sheeting mill in Rockingham, North Carolina, and its Abbeville yarn plant in Abbeville, South Carolina. Subpart (B)(2) provides that the Commission may also require West Point to divest up to three trademarks and designer licenses from those listed in that subpart.

*Part IX*

Paragraph IX of the proposed consent order would require, with certain exceptions, prior Commission approval for ten years of any acquisition by West Point of any interest (above a specified minimum threshold) in any business engaged in the United States in the manufacture of terry cloth, terry towels, sheets or pillowcases.

*Part X*

Paragraph X of the proposed consent order requires West Point and Magnolia to make compliance reports every sixty days until all divestitutes required by the Order and Commission are completed.

*Part XI*

Part XI of the proposed consent order would permit access by Commission representatives to records and documents of West Point and J.P. Stevens to assure compliance with the proposed order.

*Part XII*

Part XII would require West Point and Magnolia to give the Commission 30 days' notice of any change in their organization that may affect their compliance obligations under the order.

**The Agreement to Hold Separate**

The Agreement to Hold Separate, as amended, provides generally that West Point and Magnolia will hold separate those J.P. Stevens assets and businesses ordered to be divested (except such portion as is transferred to NTC or its subsidiary) for a period of 210 days following the purchase of J.P. Stevens' stock, or three business days after the Commission withdraws its acceptance of the consent agreement, whichever comes sooner.

Pursuant to the hold separate agreement, neither West Point nor Magnolia may exercise direction or control over, or influence directly or indirectly the operations of J.P. Stevens during the pendency of the consent order and the hold separate agreement, with nine specific exceptions listed in the hold separate agreement. Further, the hold separate agreement specifically permits West Point and Magnolia to divest all or parts of J.P. Stevens' aircraft maintenance, residential carpets, automotive carpets and fabrics, apparel fabrics, and industrial fabrics businesses, subject to applicable laws, including the Hart-Scott-Rodino Antitrust Improvements Act.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-18237 Filed 8-11-88; 8:45 am]

BILLING CODE 6750-01-M

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**DEPARTMENT OF HOUSING URBAN DEVELOPMENT**

**Office of the Assistant Secretary of Community Planning and Development**

**24 CFR Part 570**

**[Docket No. R-88-1374; FR-2381]**

**Urban Development Action Grant (UDAG); Applications from Consortia of Small Cities**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The rule proposes to permit consortia of geographically proximate cities of less than 50,000 to apply for grants on behalf of a member city that is otherwise eligible for assistance but unable to handle independently the administrative or financial burden of a desired project.

**DATES:** *Comments Due:* October 11, 1988.

**ADDRESSES:** Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Stanley Newman, Director, Office of Urban Development Action Grants, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6290. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Housing and Urban Rural Recovery Act of 1983, Pub. L. 98-181, amended section 119(i) of the Housing and Community Development Act of 1974, 42 U.S.C. 5318, to permit geographically proximate cities of less than 50,000 population to form consortia to apply for grants on behalf of a member city that is otherwise eligible for assistance. Under the revised statute, a consortia may include county governments that are not urban counties, and grants awarded to the consortia shall be administered in compliance with eligibility requirements applicable to individual cities.

This statutory change was made to address a concern that geographically proximate smaller communities may face common economic development problems which are beyond the administrative or financial capacity of any one of the communities to address independently. The revised statute allows such communities to apply jointly for UDAG assistance on behalf of an eligible distressed city and thereby provide the management framework necessary to carry out the project. The involved communities may include a non-urban county, or UDAG eligible or ineligible communities, but must include at least one eligible small city.

The proposed rule would implement the statutory change by setting forth departmental policies and procedures governing applications for, and the awarding of grants to, consortia of communities.

**Findings**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because the number of applications expected would not be substantial. The funding for the UDAG program has been reduced in recent years, and only one-fourth of the funding is allocated to small cities. Applications submitted because of the consortia arrangement will have to compete with individual small cities applications and the Department does not anticipate that there will be very many for consideration.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L 96-511), the reporting or recordkeeping provisions that are included in this regulation have been submitted to the Office of Management and Budget (OMB).

This rule is listed as item number 1026 in the Department's Semiannual Agenda of Regulations published October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance number is 14.221—Urban Development Action Grants.

**List of Subjects in 24 CFR Part 570**

Community development block grants, Grant programs: Housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department proposes to amend 24 CFR Part 570 as follows:

**PART 570—[AMENDED]**

1. The authority citation for Part 570 is revised to read as follows:

**Authority:** Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)).

2. A new § 570.467 is added to read as follows:

**§ 570.467 Specific provisions for consortia of small cities applying for UDAG funds.**

(a) *General.* Beginning with the July, 1988 funding round (represented in the table in § 570.460(a) as the May 1–31 application period, the June 1–July 31 review period, and the July 31 decision date), geographically proximate cities of less than 50,000 population may combine to apply for grants on behalf of a member city that is otherwise eligible for assistance under this subpart. Grants awarded to such consortia shall be administered in compliance with eligibility requirements applicable to individual cities, as set forth in this subpart. For purposes of this section, a consortium may include county governments that are not urban counties. To be eligible, the following general requirements must be met:

(1) Member communities of a consortium must be geographically proximate (i.e. located within normal commuting distance to the project) to the eligible distressed city or cities for which the application is being submitted, as determined by the appropriate HUD field office based on data and analysis supplied by the applicant.

(2) The project site must be located in an area which is within the jurisdiction of a member of the consortium;

(3) At least 51% of the jobs and taxes must go to an eligible distressed city or cities.

(4) All the jobs and taxes to be generated by the project will be counted in the calculation of project selection points.

(b) *Additional requirements.* In addition to the general requirements set forth in paragraph (a) of this section, the following requirements must be met:

(1) The application must include, in addition to the requirements of § 570.458, an executed cooperation agreement signed by all member communities and designating the member unit to government whose chief executive officer will be administratively responsible for the project and the responsible federal official for NEPA, historic preservation and other statutory and regulatory requirements, as set forth in § 570.458(c)(14). The cooperation agreement must also identify the expected project benefits, i.e., jobs, taxes and repayment and how these project benefits will be allocated among the member communities and the distressed city or cities.

(2) The application must include certification as to each member's authority to enter into the cooperation agreement.

(3) Each member of the consortium must meet all the Fair Housing and Equal Opportunity requirements set forth in this subpart.

(4) UDAG repayments either must go to the eligible city or eligible cities receiving project benefits or must be used entirely for the benefit of these eligible cities.

(c) *Other considerations.* If the benefits go to one eligible city, then the impaction and distress rankings of that city will be used. If more than one eligible distressed city is receiving benefits, the impaction and distress scores will be recalculated based on the combined characteristics of the communities receiving benefits.

Date: February 26, 1988.

**Jack R. Stokvis,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 88–18317 Filed 8–11–88; 8:45 am]

BILLING CODE 4210-29-M

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**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 1710**

**[Docket No. R–88–1390; FR–2503]**

## Amendments Relating to Interstate Land Sales Registration

**AGENCY:** Assistant Secretary for Housing—Federal Housing Commissioner Office of Lender Activity and Land Sales Registration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department, under the authority provided by 15 U.S.C. 1702(c), is proposing to amend its regulations to provide a regulatory exemption from the registration requirements of the Interstate Land Sales Full Disclosure Act. The proposed exemption would apply to sales in subdivisions (as that term is defined by the Act) of 100 or more lots that are created by the continual acquisition and disposal of lots in geographically scattered locations which, unless extraordinary steps are taken, are offered under one common promotional plan and are, therefore, subject to registration. However, because of the very nature of these types of operations with a constantly revolving inventory of lots in scattered and diverse parts of the country, registration is impractical from both the registrant's and the registering agency's standpoint.

The proposed exemption will allow developers of these subdivisions to operate without the necessity of taking the steps necessary to avoid operating under one common promotional plan and maintaining a registration. Promulgation of this exemption will not decrease the consumer protections provided by the Act but, rather, will provide information formerly not made available to prospective purchasers by developers of these types of subdivisions.

**DATE:** *Comment Due Date:* October 11, 1988.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Roger G. Henderson, Acting Director, Interstate Land Sales Registration Division, Department of Housing and Urban Development, Room 6278, Washington, DC 2410. Telephone (202) 755–0502. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A segment of the land sales industry conducts its operations by continually acquiring and selling geographically dispersed multiple-lot sites. Individual sites contain fewer than 100 lots but are ineligible for the 100-lot exemption (24 CFR 1710.6) since, when two or more of the sites are offered under a single common promotional plan, the offering exceeds 100 lots and is subject to registration. Likewise, these multiple site offerings are ineligible for the scattered site exemption (24 CFR 1710.8) since, invariably, one or more of the sites will exceed the 20 lot-per-site limitation. Therefore, since these multiple site subdivisions are offered and sold under a single common promotional plan, all such multiple site offerings must either be registered or qualify for one of the available exemptions from registration. Typically, these sites are created from abandoned farms, undeveloped parcels in remote locations and similar vacant land. In an overwhelming majority of cases the

developers of these multiple site subdivisions offer no facilities or amenities but rather, sell the land on an "as is" basis.

To avoid the difficulties of a multiplicity of registrations and the near impossibility of a single registration, these developers must structure their offerings so that eligibility for the 24 CFR 1710.6 exemption is attainable. To accomplish this eligibility, the multiple sites are grouped so that the total number of lots is fewer than 100 and the corresponding promotion and sales activity is limited to that combination of multiple sites, totally isolated from any other site or any other multiple site combination(s) which the developer owns or acquires in the future. In other words, these developers must create and maintain separate subdivisions of fewer than 100 lots each and strictly adhere to the principles of separability; i.e., no common advertising, name, telephone number, address or sales force and, probably the most difficult of all, no cross-referrals. In order to maintain the necessary separability, the only acceptable element of commonality is ownership.

The proposed rule will provide relief from the registration requirements placed upon developers of these types of operations by creating the "Multiple Site Subdivision Exemption". This exemption will permit developers of these numerous sites to promote and sell the revolving inventory of lots under a single common promotional plan without registration by simply meeting certain eligibility requirements which are, for the most part, already characteristic of the offerings, and by providing general information about real estate ownership along with a minimum of information about specific lots.

Under the proposed exemption: The land being offered must be sold "as is" and must meet all local codes and standards; and amenities or facilities used in advertisements or other promotional materials must be completed and in the condition advertised; each lot must be accessible by a road; any exceptions to title must be approved by the purchaser in writing; the purchaser must be contractually provided a seven day cancellation period; a warranty deed (or its equivalent) must be delivered within 180 days of the date of sale; the purchaser, or spouse, must make an on-site inspection; payments must be escrowed until a deed is delivered; and purchasers must be provided a statement which includes warnings about the risks of buying land.

The proposed exemption would not be available to offerings where the developer acquires lots in a subdivision which was established by another developer for the purpose of making sales. This prohibition would exist whether the acquisition was, for example, from an active developer, residual inventory from a previous developer, through tax delinquency sales of from individual lot owners. It is felt that individual purchasers from these "secondary" developers need the intended benefits of disclosure and the protections of the Act, and the offering can be easily registered or qualify for one of the existing exemptions.

Likewise, the proposed exemption would not be applicable to any individual site of 100 or more lots nor to an individual site of fewer than 100 lots where the developer either owns adjacent land or has an option, or other evidence of intent, to acquire adjacent land which, when taken cumulatively, would or could equal 100 or more lots.

Therefore, a developer who is operating under the proposed exemption and acquires a separate site containing or potentially containing 100 or more lots as described in either of the two preceding paragraphs, would necessarily be required to isolate that site from any other eligible multiple site common promotional plan(s). The ineligible site would then have to be registered or qualify for one of the other available exemptions, but the principles of separability would have to be strictly applied.

In addition, subsequent to the effective date of the proposed exemption, OILSR will not recognize artificial barriers established for the sole purpose of segregating lot groupings to give the appearance of qualification for the 100 lot exemption described at 24 CFR 1710.6. To implement this policy, the Department is proposing a closer adherance to the Congressional intent by restricting eligibility for the 24 CFR 1710.6 exemption to the smaller, individual subdivision where the developer owns fewer than 100 lots and where the developer's plan of operation is not to continually acquire and dispose of multiple sites in geographically dispersed locations.

The proposed new exemption is a regulatory exemption and could be listed in 24 CFR 1710.14 but, because of the unique character of this exemption, it is being added as a new § 1710.15, Regulatory Exemption—Multiple Site Subdivision—Determination Required. The termination provisions of 24 CFR 1710.16 are included in the new section and the anti-fraud provisions of 24 CFR 1710.4 (b) and (c) would also apply to this exemption.

Also, a technical change is proposed to add the definition of the term "Site", which is currently included in the exemption guidelines, to the definitions in § 1710.1 of the Regulations.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD Regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 10, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed as item H–47–86 (Sequence Number 924) in the Department's Semiannual Agenda of Regulations published in April 25, 1988 (53 FR 13854, 13872) under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Congress provided several specific exemptions from the Act, and from the registration requirements of the Act, for identified small entities. In 15 U.S.C. 1702(c), Congress also directed the Department to create, by regulation, additional exemptions for small entities whose offerings are of a small amount or limited character. This proposed exemption is being promulgated pursuant to that authority.

The Catalog of Federal Domestic Assistance Program number is 14.801.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, and assigned approval number 2502–0243.

**List of Subjects in 24 CFR Part 1710**

Consumer protection, Land sales, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 1710 is proposed to be amended as follows:

## PART 1710—LAND REGISTRATION

1. The authority citation for 24 CFR Part 1710 would be revised to read as follows:

**Authority:** Sec. 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Section 1710.1 is proposed to be amended by adding a new term in alphabetical order to read as follows:

**§ 1710.1 Definitions.**

* * * * *

"Site" means a group of contiguous lots whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility or any similar object.

* * * * *

3. A new § 1710.15 is proposed to be added to read as follows:

**§ 1710.15 Regulatory Exemption—Multiple Site Subdivision—Determination Required.**

(a) *General.* (1) The sale of lots contained in multiple sites of fewer than 100 lots each, offered pursuant to a single common promotional plan is exempt from the registration requirements.

(2) For purposes of this exemption, the sale of lots in an individual site that exceeds 99 lots is not exempt from registration. Likewise, the sale of lots in a site containing fewer than 100 lots, where the developer either owns adjacent land or holds an option, or other evidence of intent, to acquire adjacent land which, when taken cumulatively, would or could result in one site of 100 or more lots, is not exempt from registration. Furthermore, the sale of lots that are within a subdivision established by a separate developer for the purpose of making lot sales, are not exempt from registration by this provision.

(b) *Eligibility Requirements.* The sale of each lot must meet the following requirements to be eligible for this exemption.

(1) The lot is sold "as is" with all advertised improvements and/or amenities completed and in the condition advertised.

(2) The lot is in conformance with all local codes and standards.

(3) The lot is accessible, both physically and legally, by a road suitable for use by automobile.

(4) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be issued to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title is vested in the seller.

(5) Each contract—

(i) Contains a non-waivable provision giving the purchaser the right to revoke the contract until midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state or local law, that period becomes the Federal revocation period and the contract must reflect the requirement of the longer period;

(ii) Obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law) for the lot which at the time of delivery is free from any monetary liens or encumbrances; and

(ii) Contains a provision giving the purchaser the right to revoke the contract within two years from the date of sale if a "Lot Information Statement" (see below) is not delivered to the purchaser before he or she signs the contract.

(6) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(7) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(8) Prior to the sale the developer discloses in a written statement to the purchaser all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot purchased.

(9) Prior to the sale the developer provides in a written statement the name, address and telephone number of the local governmental agency or agencies from which information on permits or other requirements for water, sewer, electrical, heating fuel and telephone installations can be obtained. The statement will also contain the name, address and telephone number of a company or public utility which would or could provide the foregoing services.

(10) The lot sale must comply with the anti-fraud provisions of 24 CFR 1710.4 (b) and (c) of the sales practices and standards in 24 CFR 1715.10 through 1715.28.

(11) A copy of the "Lot Information Statement" in the form shown below, typed or printed in at leat 10 point font, will be furnished to, and acknowledged by, the purchaser prior to the signing of any contract or purchase agreement. A copy of the acknowledgement will be maintained by the developer for three years and will be made available to OILSR upon request. The Statement will contain the information required by paragraphs (b)(9) and (b)(10) of this section as well as all other information required by the form. If the Statement is not delivered as required, the purchase contract may be revoked and a full refund paid, at the option of the purchaser, within two years of the signing date, and the purchase contract will clearly provide this right.

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LOT INFORMATION STATEMENT

IMPORTANT: READ CAREFULLY BEFORE SIGNING ANYTHING

The developer has obtained a regulatory exemption from registration under the Interstate Land Sales Full Disclosure Act. One requirement of that exemption is that you must receive this Statement prior to the time you sign an agreement (contract) to purchase a lot.

RIGHT TO CANCEL: Your contract gives you the right to cancel your contract and receive a full refund for seven days following the date you sign your contract. (Enter the longer period if required by state or local law.)

RISK OF BUYING LAND: There are certain risks in purchasing real estate that you should be aware of. The following are some of those risks:

The future value of land is uncertain and dependent upon many factors. DO NOT expect all land to automatically increase in value.

Any value which your lot may have will be affected if roads, utilities and/or amenities cannot be completed or maintained.

Any development will likely have some impact on the surrounding environment. Development which adversely affects the environment may cause governmental agencies to impose restriction on the use of the land.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title and that you will be able to use the land for its intended purpose. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

If adequate provisions have not been made for maintenance of the roads or if the land is not served by publicly maintained roads, you may have to maintain the roads at your expense.

If the land is not served by a central sewage system and/or water system, the purchaser should contact the local authorities to determine whether a permit will be given for an on-site sewage disposal system and/or well and whether there is an adequate supply of water. The purchaser should also become familiar with the requirements for, and the cost of, obtaining electrical service to the lot.

DEVELOPER INFORMATION:

Developer's Name : _____

Address : _____

_____

Telephone Number: _____

LOT INFORMATION:

Lot Location: _____

(Enter a statement disclosing all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot. A copy of the restrictions may be attached in lieu of recitation.)

Listed below are contact points for determining permit requirements, if any, and approximate costs and availability for the listed services:

| | NAME, ADDRESS AND TELEPHONE NUMBER OF: | |
|---|---|---|
| | GOVERNMENTAL AGENCY | COMPANY OR PUBLIC UTILITY |
| WATER..... | | |
| SEWER..... | | |
| ELECTRICITY..... | | |
| _____ | _____ | _____ |

If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact:

Interstate Land Sales Registration Division
HUD Building - Room 6278
451 Seventh Street, S.W.
Washington, D.C. 20410

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RECEIPT FOR LOT INFORMATION STATEMENT

Received by: _____ Date: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Name of Salesperson: _____
(Print or Type)

_____
(Signature)

(c) Request for Multiple Site Subdivision Exemption. (1) The developer must file a request for the Multiple Site Subdivision Exemption in the following format. The request must be accompanied by a filing fee of $500 and a sample Lot Information Statement

REQUEST FOR MULTIPLE SITE EXEMPTION

Developer:

Name : _____
Address : _____
_____
Telephone No.: _____

Agent:

Name : _____
Address : _____
_____
Telephone No.: _____

(Insert a description of the type of lots to be sold, the state and counties where intended sales will take place and a general description of the developer's method of operation.)

I affirm that I am, or will be, the developer of the property and/or method of operation described above.

I affirm that the lots in said property will be sold in compliance with all of the requirements of 24 CFR 1710.15.

I further affirm that the statements contained in all documents submitted with this request for an Exemption Order are true and complete.

Date : _____

Signature: _____

Title : _____

WARNING: 18 U.S.C. 1001 Provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

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(2) This exemption will become effective upon issuance of an Exemption Order by the Secretary.

(d) *Annual Report.* (1) By January 31 of each year the developer will send a report to the Secretary listing each site and its location available for sale pursuant to the exemption during the preceding year and indicate the number of lot sales made in each site. The report will describe any changes in the information provided in the Request for the Multiple Site Subdivision Exemption or contain a statement that there are no changes.

(2) The Annual Report must be accompanied by a filing fee of $100.

(3) The Annual Report must be signed and dated by the developer, attesting to its completeness and accuracy.

(4) Failure to submit the Annual Report will automatically terminate eligibility for the exemption as of the Report due date.

(e) *Termination.* If, subsequent to the issuance of an Exemption Order, the Secretary has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Secretary may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Secretary, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed to purchasers. Proceedings will be governed by 24 CFR 1720.238.

(Approved by the Office of Management and Budget under OMB approval number 2502–0243)

Dated: July 6, 1988.

**James E. Schoenberger,**

*General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.*

[FR Doc. 88–18318 Filed 8–11–88; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 925

### Missouri Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of proposed amendments to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to its alternative bonding system, the two-acre exemption repeal, prime farmland grandfather provisions, and the hydrologic balance for underground mining. If approved, the amendments will become part of the State's permanent regulatory program.

This notice sets forth the times and locations that the Missouri program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4:00 p.m. September 12, 1988. If requested, a public hearing on the proposed amendments will be held on September 6, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., on August 29, 1988.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below. Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374–5527.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343–5492

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (314) 751–4041.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Kovacic, Director, Kansas City Field Office at the address or telephone number listed in "**ADDRESSES.**".

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980. Information regarding the general background of the Missouri program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions taken with regard to the program and amendments can be found at 30 CFR 925.15 and 925.16.

#### II. Proposed Amendments

On July 8, 1988, (Administrative Record No. MO–388) Missouri submitted proposed amendments to its permanent regulatory program under SMCRA. Missouri submitted proposed amendments in response to a January 30, 1986, letter that OSMRE sent to Missouri under 30 CFR Part 732 concerning the State's alternative bonding system. The amendment contains revisions that modify sections of the Revised Statutes of Missouri (RSMo) at 444.805 Definitions, 444.830 Bond Required, 444.950 Pit Reclamation, 444.960 Coal Mine Land Reclamation Fund, and 444.965 Fund Assessments.

Missouri submitted proposed amendments in response to Pub. L. 100–34 and a June 4, 1987, **Federal Register** notice (52 FR 21228) by OSMRE that the exemption from regulation of surface mining operations on two acres or less would no longer be allowed. The amendment contains revisions that modify Missouri's statutes at RSMo sections 444.535 subsection 7 and 444.815 subsection 6 to delete its two-acre exemption.

At Missouri's own initiative, the State revises its regulations at 10 CSR 40–2.110(1)(B) Prime Farmland Requirements and 10 CSR 40–6.060 Special Category Permits to reinstate the

grandfather provisions for prime farmland under both the interim and permanent programs. At its own initiative, the State revises its regulations at 10 CSR 40–3.200(2)(B) Underground Hydrologic Balance to delete the variance provisions related to the effluent limitations of surface disturbed areas.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Missouri satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Missouri program.

*Written Comments*

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. August 29, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have been scheduled to comment who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSESS**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

### List of Subjects in 30 CFR Part 925

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

**Richard E. Dawes,**

*Acting Assistant Director, Western Field Operations.*

Date: July 22, 1988.

[FR Doc. 88–18245 Filed 8–11–88; 8:45 am]
BILLING CODE 4310-05-M

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## 30 CFR Part 946

## Reopening of Public Comment Period and Opportunity for Public Hearing of Proposed Amendments to the Virginia Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** By letter dated December 22, 1987, Virginia submitted program amendments to the Virginia permanent regulatory program (herein after referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments, if approved, will establish alternate standards for permitting, bonding, and reclamation on surface coal mining and reclamation operations which remine areas affected before the effective date of SMCRA. OSMRE published a notice announcing receipt of these amendments and opening of the public comment period in the February 19, 1988, **Federal Register** (53 FR 5002–5004). The public comment period ended March 21, 1988.

During the review of Virginia's proposed amendments, OSMRE identified several concerns. These were relayed to the State by letter dated June 13, 1988, (Virginia Administrative Record Number VA 689). By letter dated July 12, 1988, (Virginia Administrative Record Number VA 694), Virginia resubmitted parts of the proposed amendments with corrections and clarifications, and expressed its intent to submit additional information at a late date.

Accordingly, OSMRE is reopening and extending the public comment period of Virginia's December 22, 1987, proposed program amendments as revised July 12, 1988. This action is being taken to provide the public with an opportunity to reconsider the adequacy of the purposed amendments considering the additional information.

**DATES:** Written comments must be received on or before 4:00 p.m. on September 12, 1988. If requested, a public hearing on the proposed amendments will be held on September 6, 1988; requests to present testimony at the hearing must be received on or before 4:00 p.m. August 29, 1988.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. Willian R. Thomas, Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the location listed below during normal business hours Monday through Friday, excluding holidays. Each proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street NW., Washington, DC 20240, Telephone (202) 343–5492.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–2925.

**FOR FURTHER INFORMATION CONTACT:** Mr. William R. Thomas, Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

## II. Discussion of Amendments

A discussion of the originally proposed amendments is contained in the February 19, 1988, **Federal Register** (53 FR 5002–5004). Following receipt of the OSMRE June 13, 1988, letter detailing concerns identified during review of the proposal, Virginia resubmitted the proposal with corrections and clarifications by letter dated July 12, 1988, (Administrative Record No. VA 694). The resubmission is briefly described below.

1. In a meeting on May 12, 1988, Virginia advised OSMRE that the proposal would be resubmitted in phases by four priorities. These priorities were established as:

a. Definitions, permitting requirements for remining (except waste pile reprocessing and remnant remining), special remining performance standards, and policy on implementing no cost Abandoned Mined Land (AML) contracts;

b. Reprocessing of coal waste piles—permitting and performance standards;

c. Bonding alternatives and civil penalty credits; and

d. Remnant remining permitting and performance standards.

This submittal is considered the first phase.

2. The proposed definition for "Reprocessing Coal Mine Waste" has been modified in response to OSMRE's concern that the originally proposed definition appeared to allow redisturbance and reclamation of coal mine waste piles created after the effective date of SMCRA under proposed standards less stringent than those in effect at the time such piles were created. Definitions for "abatement plan", "actual improvement", "baseline pollution load", and "pollution abatement area" were deleted from this amendment as proposed changes to Virginia's regulations section 480–03–19.700.5. These definitions were approved in the June 16, 1988, **Federal Register** (53 FR 22479–22484) as part of an amendment allowing alternative effluent limitations on operations which reaffect previously mined lands with existing pollutional discharges.

3. Proposed section 480–03–19.830.14 has been modified to require bond on permitted spoil disposal areas associated with remining operations to be calculated by the applicant based upon the degree of difficulty of reclamation. The proposal will exempt such disposal sites when no coal is removed from the disposal area and no existing pollutional discharges are present.

4. Proposed section 480–03–19.831.2 has been modified to include the requirement that all program performance standards, including standards for special categories of mining, shall apply to remining operations except as provided by proposed Part 480–03–19.831.

5. Proposed section 480–03–19.831.12 has been modified in response to OSMRE's concerns that the original proposal did not require a demonstration of the stability of any remaining highwall remnants, the use of all reasonably available spoil, and drainage controls to minimize erosion and water pollution both on and off site. Information was also submitted in justification of the proposed limit of backfilled and regraded slopes no greater than 2H:1v on previously mined lands and stability of backfilled and regraded areas.

6. Proposed 480–03–19.831.13 has been modified to clarify that only excess spoil from remining operations may be placed on pre-existing benches approved as disposal areas. This section has also been modified to require design and certification of the plans for disposal, with exception of the standard for lift thickness. Also, it is proposed to reduce the number of inspections by a registered professional engineer during construction of these fills provided certain conditions exist at the construction site and specific requirements are covered by the design.

7. Proposed 480–03–19.831.14 is being revised to clarify that only excees spoil may be used to reclaim areas outside the permit. These areas will include lands under another permit, under contract for reclamation under Virginia's AML program, under contract for reclamation due to bond forfeiture, affected by government financed construction projects, or under a no-cost AML contract with Virginia. Part of the resubmittal concerns detailed policy and procedures for implementation of no-cost AML contracts.

8. Proposed 480–03–19.831.17 has been modified to provide additional requirements pertaining to the continued use, modification, maintenance, and reclamation of existing sumps, depressions, or ponds utilized for drainage and sediment control on remining operations.

9. Proposed 480–03–19.831.18 has been modified to clarify that vegetative ground cover cannot be less than that existing before remining operations occur, on 75 percent, whichever is greater. Additional information to justify 75 percent ground cover as sufficient to control erosion was also submitted.

10. Proposed 480–03–19.831.21 has been modified to remove the provision allowing the release of bond for reclamation bond credits.

11. The following proposals are not being resubmitted at this time. Virginia has requested that OSMRE defer its decision to approve or deny these proposals until revised versions can be submitted at a later date:

a. Section 480–03–19.831.12—Reprocessing Coal Mine Waste Permit Requirements,
b. Section 480–03–19.831.15—Remining Reclamation Bond Credits,
c. Section 480–03–19.831.16—Reprocessing of Coal Mine Waste (performance standards),
d. Part 480–03–19.832—Remining Civil Penalty Options,
e. Part 480–03–19–835—Remnant Remining, and
f. Part 480–03–19.836—Remnant Remining Performance Standards.

12. Virginia is asking approval of the following proposed amendments as originally submitted on December 22, 1987:

a. Section 480–03–19.830.10—Minimum Permit and Environmental Resources Information Requirements (remining operations),
b. Section 480–03–19.830.11—Remining Operation/Reclamation Plan.
c. Section 480–03–19.831.19—Existing Roads, and
d. Parts 480–03–19.833 and 480–03–19.834—Recodification of approved section 480–03–19.785.19 and Part 480–03–19.825 of the Virginia program.

## III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person

listed under "FOR FURTHER INFORMATION CONTACT" by close of business on August 29, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES". A written summary of each public meeting will be made part of the Administrative Record.

**List of Subjects in 30 CFR Part 946**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: July 27, 1988.

**Carl C. Close,**

*Assistant Director, Eastern Field Operations.*

[FR Doc. 88-18244 Filed 8-11-88; 8:45 am]

BILLING CODE 4310-05-M

## POSTAL SERVICE

### 39 CFR Part 111

### Nonmailability of Etiologic Agents; Extension of Time for Comment

**AGENCY:** Postal Service.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On June 24, 1988, the Postal Service published in the Federal Register (53 FR 23775) a proposed rule change intended to prohibit the mailing of etiologic agents, or materials reasonably believed to contain them which are required to bear an Etiologic Agents/Biomedical Material label under Department of Transportation and Department of Health and Human Services rules. The Postal Service requested comments by August 8, 1988. In response to requests for additional time, the Postal Service is extending the comment period to August 22, 1988.

**DATE:** Comments on the proposed rule change must be received on or before August 22, 1988.

**ADDRESS:** Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Rates and Classification Department, Room 8430, 475 L'Enfant Plaza West, SW, Washington, DC 20260-5360. Copies of all written comments will be available for inspectiona nd photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

**FOR FURTHER INFORMATION CONTACT:** F.E. Gardner, (202) 268-5178.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88-18282 Filed 8-11-88; 8:45 am]

BILLING CODE 7710-12-M

### 39 CFR Part 111

### Unauthorized Use of Postage Meters

**AGENCY:** Postal Service.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** On the basis of comments received, which are summarized in the Supplementary Information, and for other reasons, the Postal Service is withdrawing the proposed rule to require mailers preparing metered mail for others to furnish certain additional information with the mailing.

**FOR FURTHER INFORMATION CONTACT:** F.E. Gardner (202) 268-5178.

**SUPPLEMENTARY INFORMATION:** On February 23, 1988, the Postal Service published a proposed rule, which would have required a commercial mailer preparing metered mail for others to provide a list of the meter serial numbers, names of meter holders, number of pieces mailed, and rate per piece for each meter used in the mailing, to help guard against misuse of meters. 53 FR 5282.

Approximately 85 comments were received in response to the proposed rule. Most commenters said they would incur excessive administrative costs if the proposed rule were implemented. Several commenters said it would be impossible to provide the information when pieces are premetered by the owner of the mail and some of the pieces are given to a commercial mailer to presort. They stated that the owners of the mail normally presort and enter most of their own mail, often using several metering runs at different rates during the same day. The residual volume, which does not qualify for presort rates, is then given to a commercial presort mailer to presort it with other mail in order to qualify for the lower presort rates.

In view of these comments, and the fact that other measures were implemented in April, 1988, to help curb unauthorized use of postage meters, the Postal Service has decided to withdraw the proposed rule. The Postal Service will continue to monitor its current procedures, and will consider appropriate adjustments as needed to prevent misuse of postage meters.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88-18283 Filed 8-11-88; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-3420-5]

### National Oil and Hazardous Substances Contingency Plan; the National Priorities List

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent to Delete a Site from the National Priorities List (NPL); Request for Comments.

**SUMMARY:** EPA announces its intent to delete a site from the NPL and requests public comment. The site is the Toftdahl Drums site in Brush Prairie, Washington. EPA has determined that the appropriate remedy has been completed and that the site presents no further hazard to public health or the environment. The site meets the criteria for deletion provided in the National Oil and Hazardous Substances Contingency Plan (NCP) as published in the Federal Register on November 20, 1985 (50 FR 47912), § 300.66(c)(7). The NPL is Appendix B to the NCP, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

**DATE:** Comments concerning the Toftdahl Drums site may be submitted on or before September 12, 1988.

**ADDRESSES:** Comments should be mailed to Judi Schwarz, Superfund Branch, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop HW–113, Seattle, Washington 98101. Information on the site is available in the regional and local public dockets. The regional docket is available for viewing at the U.S. EPA Region 10 Library, 1200 Sixth Avenue, 10th Floor, Seattle, Washington, (206) 442–1289, during business hours. The local docket is available for viewing at the Southwest Washington Health District (Attn: Gary Bickett), 2000 Fort Vancouver Way, Vancouver, Washington, 98663, (206) 695–9215, during business hours.

**FOR FURTHER INFORMATION CONTACT:** Judi Schwarz, Superfund Branch, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop HW–113, Seattle, Washington 98101, (206) 442–2684.

**SUPPLEMENTARY INFORMATION:** EPA announces its intent to delete the Toftdahl Drums site from the NPL and requests comments on this deletion. This site meets the criteria for deletion provided in the NCP as published in the **Federal Register** on November 20, 1985 (50 FR 47912), § 300.66(c)(7).

The Toftdahl Drums site is a rural property about fifteen acres in size located in Clark County about four miles east-southeast of Battleground, Washington. The owner of the property was alleged to have had delivered to the site in the early 1970s one hundred to two hundred drums containing unknown amounts of industrial waste material. His intent was to clean and sell the drums, but about fifty drums with waste residues were buried on site. The drums were rediscovered in the mid-1970s by the new owner of a portion of the property. In 1982, the original property owner removed approximately thirty-eight drums to a local landfill.

The Washington Department of Ecology (Ecology) was first notified about the possible presence of buried drums in 1982. In 1983, an EPA contractor conducted a site investigation in which the remains of six drums were found and sampled. Samples of nearby soil, groundwater, drinking water, and surface water were also taken. Traces of several organic compounds were detected in the groundwater, but no significant contamination which could be attributed to the site was found. In May 1984, Ecology nominated this site for inclusion on the NPL, and in June 1986, this site appeared on the final NPL.

In 1984, Ecology took soil samples from the alleged drum cleaning area. No organic contaminants were detected, and no gross quantities of heavy metals were found. Using state monies, Ecology's contractor conducted an additional investigation in late 1984 to identify other potential drum burial locations. An Initial Remedial Measure was started in June 1985 by a state contractor to remove the remaining drums and soil contamination. The remains of five crushed drums, parts of additional drums, and forty cubic yards of contaminated soils were removed and disposed of at a Resource Conservation and Recovery Act (RCRA) permitted hazardous waste landfill. A Remedial Investigation (RI) was initiated in December 1985 by a state contractor and was completed in July 1986.

The environmental sampling and chemical analysis program undertaken during the RI showed no significant or extensive contamination of surface soil, surface water, or groundwater at the site. Pre-RI chemical data for drum/waste samples and adjacent soil samples showed that the drum cleaning and disposal activities at the Toftdahl site did introduce some contaminants at the site. Priority pollutants which had been detected at least one time in the drum/waste or nearby soil samples were used as indicator constituents in the RI. These included metals, volatile organic compounds, base neutral organic compounds, cyanides, and polychlorinated biphenyls. While several of these priority pollutants were detected in the RI sampling and analysis program, the concentration of such contamination was very small and in most cases could not be reliably differentiated from background values or laboratory-introduced variability. Most of the potentially waste-related indicator constituents that have been detected have not been consistently detected over repeated sampling events at the site. Whether related or not, the magnitude of the contamination is extremely small, does not exceed any applicable or relevant and appropriate federal public health or environmental standard, and does not appear to be a potential source for public health risks. No RCRA hazardous wastes nor Ecology dangerous wastes are present at the site. Federal drinking water standards are met at the downgradient private wells for all waste indicator constituents. No substances regulated by the Toxic Substances Control Act have been found at the site.

There are no longer any access controls at the site. A fence had surrounded the drum storage area. After the drums were removed in 1985, the fence was no longer needed and was removed as requested by nearby residents. Some paint chip-like material is visible at several scattered locations at the site. Samples analyzed during the RI demonstrate that these are not RCRA hazardous wastes nor Ecology dangerous waste.

A local public comment period on the No Action Alternative in the RI report was held from August 19, 1986, through September 19, 1986. Two comments were received. A detailed report of those comments and agency response is available in the Responsiveness Summary of the Record of Decision (ROD) at the EPA docket offices listed above. The ROD was signed by the Regional Administrator on September 30, 1986.

EPA, with concurrence of the state of Washington, has determined that all appropriate fund-financed response under CERCLA at the Toftdahl Drums site has been completed, and has determined that no further cleanup by responsible parties is appropriate.

As a precautionary measure, Ecology agrees to continue performance monitoring by sampling and analyzing nearby private residential and monitoring wells semiannually for five years, and then annually for ten additional years, subject to funding by the legislature of the state of Washington.

Deletion of a site from the NPL does not preclude eligibility for subsequent EPA response actions. Section 300.66(c)(8) of the NCP states that EPA response actions may be taken at sites that have been deleted from the NPL if future conditions warrant such action.

Concurrence:

**Robie G. Russell,**

*Regional Administrator.*

[FR Doc. 88–16889 Filed 8–11–88: 8:45 am]

BILLING CODE 6560-50-M

# Notices

Federal Register
Vol. 53, No. 156
Friday, August 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Meeting

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the regulations of the Advisory Council on Historic Preservation, "Urban Development Action Grant Program: Historic Preservation Requirements" (36 CFR Part 801), that a panel of five members of the Council will meet on August 24, 1988, to consider the proposed demolition of the American Can Company complex in Baltimore, Maryland, and the construction of a new retail center on the site. It has been determined that this undertaking, for which the City of Baltimore has applied for and received an Urban Development Action Grant from the U.S. Department of Housing and Urban Development, will adversely affect the Canton Historic District, a property listed in the National Register of Historic Places.

The panel will meet in Baltimore, Maryland, at St. Casimir's Church meeting hall (Jubilee Room), at O'Donnell and South Lakewood, beginning at 3:30 p.m. Oral statements from the public will be heard from 6:30 to 8:30 p.m.

The panel welcomes written and oral statements from concerned parties. Written statements should be submitted to the Executive Director of the Council by August 17. Persons wishing to make oral statements should contact the Executive Director by August 22, Attention: Anne Weinheimer (202) 786–0505. Oral presentations must be limited to three (3) mintues. Priority will be given to those persons who have indicated prior to the meeting their desire to speak.

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for listing in the National Register of Historic Places.

Note: The meeting of the Council are open to the public. If you need special accommodation due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004 (202–786–0505).

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the meeting schedule and location or the submission of statements is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004, Attention: Don Klima or Anne Weinheimer (202) 786–0505.

Date: August 8, 1988.

**John M. Fowler,**

*Acting Executive Director.*

[FR Doc. 88–18233 Filed 8–11–88; 8:45 am]

BILLING CODE 4310-10-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–588–704]

### Antidumping Duty Order of Sales at Less Than Fair Value; Brass Sheet and Strip From Japan

**ACTION:** Notice.

**SUMMARY:** In separate investigations concerning brass sheet and strip from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have respectively determined that brass sheet and strip from Japan are being sold at less than fair value and that sales of brass sheet and strip from Japan are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of brass sheet and strip for consunption from Japan, made on or after February 1, 1988, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

**EFFECTIVE DATE:** August 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gregory G. Borden (202) 377–3003 or Louis Apple (202) 377–1769, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** The products covered by this order are brass sheet and strip, other than leaded brass and tin brass sheet and strip, as provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 612.3960, 612.3962, and 612.3966. The corresponding Harmonized System (HS) numbers are 7409.21.0050, 7409.21.0075, 7409.29.0050, and 7409.29.0075. The chemical compositions of the products covered by the investigation are currently those of the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are covered by other C.D.A. or U.N.S. series are not covered by this investigation.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on June 15, 1988, the Department made its final determination that brass sheet and strip from Japan are being sold at less than fair value (53 FR 23296, June 21, 1988). On July 29, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of brass sheet and strip from Japan. These antidumping duties will be assessed on all unliquidated entries of brass sheet and strip entered, or

withdrawn from warehouse, for consumption on or after February 1, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (53 FR 2771).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

| Manufacturers/Producers/Exporters | Weighted-average margin percentages |
|---|---|
| Nippon Mining Co., Ltd. | 57.98 |
| Sambo Copper Alloy Co., Ltd. | 13.30 |
| Mitsubishi Shindoh Co., Ltd. | 57.98 |
| Kobe Steel | 57.98 |
| All others | 45.72 |

This determination constitutes an antidumping duty order with respect to brass sheet and strip from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48.)

August 5, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-18306 Filed 8-11-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-421-701]**

## Antidumping Duty Order of Sales at Less Than Fair Value; Brass Sheet and Strip From the Netherlands

**ACTION:** Notice.

**SUMMARY:** In separate investigations concerning brass sheet and strip from the Netherlands, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that brass sheet and strip from the Netherlands are being sold at less than fair value and that sales of brass sheet and strip from the Netherlands are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of brass sheet and strip for consumption from the Netherlands, made on or after February 8, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

**EFFECTIVE DATE:** August 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp (202) 377-1769, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** The product covered by this order are brass sheet and strip, other than leaded brass and tin brass and strip, as provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 612.3960, 612.3982, and 612.3986. The corresponding Harmonized System (HS) numbers are 7409.21.0050, 7409.21.0075, 7409.29.0050, and 7409.29.0075. The chemical compositions of the products covered by the investigation are currently those of the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are covered by other C.D.A. or U.N.S. series are not covered by this investigation.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on June 15, 1988, the Department made its final determination that brass sheet and strip from the Netherlands are being sold at less than fair vaule (53 FR 23431, June 22, 1988). On July 29, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of brass sheet and strip from the Netherlands. These antidumping duties will be assessed on all unliquidated entries of brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after February 8, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (53 FR 3612).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

| Manufacturers/Producers/Exporters | Weighted-average margin percentages |
|---|---|
| Metallverken Nederland, B.V. | 16.99 |
| All others | 16.99 |

This determination constitutes an antidumping duty order with respect to brass sheet and strip from the Netherlands, pursuant to section 736(a) of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48.)

August 5, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-18307 Filed 8-11-88; 8:45 am]

BILLING CODE 3510-DS-M

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Hungarian People's Republic

August 9, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

BEST COPY AVAILABLE

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** August 16, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** During recent consultations between the Governments of the United States and the Hungarian People's Republic, agreement was reached to amend the current bilateral agreement to include specific limits for Categories 313 and 604.

A copy of the bilateral textile agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with the Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

August 9, 1988.

Commissioner of Customs
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner:

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade of Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursunat to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 16, 1988, entry into the United States for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the period which began on March 1, 1988 and extends through December 31, 1988, in excess of the following levels of restraint:

| Category | 10-mo. restraint limit |
|---|---|
| 313 | 11,042,000 square yards. |
| 604 | 1,250,000 pounds. |

Textile products in Categories 313 and 604 which have been exported to the United States prior to March 1, 1988 shall not be subject to this directive.

Textile products in Categories 313 and 604 which have been released from custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The restraint limits for Categories 313 and 604 are subject to adjustment in the future under the provisions of the current bilateral textile agreement between the Governments of the United States and the Hungarian People's Republic.

There are no charges to be made to the limits established in this directive for Categories 313 and 604 for the import period March 1 through 30, 1988. Charges will be made as data become available.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–18288 Filed 8–11–88; 8:45 am]
BILLING CODE 3510-DR-M

## Issuance of a New Certification Stamp for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Northern Mariana Islands (CNMI) From Imported Parts

August 9, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs authorizing the use of a new certification stamp.

**EFFECTIVE DATE:** August 15, 1988.

*Authority:* E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

**SUPPLEMENTARY INFORMATION:** The Government of the United States and the Commonwealth of the Northern Mariana Islands (CNMI) agreed to amend the existing certification arrangement for cotton, wool and man-made fiber sweaters assembled in the CNMI and exported from the CNMI on or after August 15, 1988 to provide for the use of a new certification stamp which will include the standard nine-digit numbering system.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 50 FR 8650, published on March 4, 1985, and 50 FR 36645, published on September 9, 1985.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 9, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 27, 1985, as amended on September 4, 1985. That directive permitted entry of cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, determined by the U.S. Customs Service to be products of a foreign country or foreign territory and certified as assembled in the Commonwealth of the Northern Mariana Islands (CNMI).

Effective on August 15, 1988, you are directed to permit entry of shipments of cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, assembled in the CNMI, but not of CNMI origin, which are certified by authorities of the CNMI, and exported from the CNMI on or after August 15, 1988, using the new stamp and nine-digit numbering system.

The nine-digit numbering system shall begin with one numerical digit for the last digit of the calendar year, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for the Commonwealth of the Northern Mariana Islands is "MP"), followed by six numerical digits.

Enclosed is a facsimile of a new certification stamp, allowing more space to include use of the standard nine-digit numbering system. This stamp replaces the one currently being used by the

Commonwealth of the Northern Mariana Islands.

Goods exported from the CNMI prior to August 15, 1988, that have been certified by the CNMI by using the old certification stamp shall not be denied entry for consumption, or withdrawal from warehouse for consumption, into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico), provided they are in accordance with previous requirements.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Facsimile of New Certification Stamp for Textile Products From the CNMI**

[FR Doc. 88-18289 Filed: 8-11-88; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment to the Export Visa Requirements for Certain Man-Made Fiber Textile Products From Pakistan

August 9, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending visa requirements.

**EFFECTIVE DATE:** August 15, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:** The visa requirements are being amended to include coverage of man-made fiber textile products in merged Categories 226/313, 613/614, 638/639 and 647/648, produced or manufactured in Pakistan and exported from Pakistan on and after January 1, 1988.

A copy of the current bilateral textile agreement is available from the Textiles Division, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 48 FR 25257, published on June 6, 1983; 52 FR 49189, published on December 30, 1987 and 53 FR 54, published on January 4, 1988.

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 9, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, as amended on June 2, 1987, established export visa and exempt certification requirements for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on August 15, 1988, you are directed to permit entry of textile products visaed as merged Categories 226/313, 613/614, 638/639 and 647/648 which are exported from Pakistan on and after January 1, 1988.

Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (i.e., Categories 613/614 may be visaed as 613/614 or if the shipment consists solely of Category 613 merchandise, the shipment may be visaed as Category 613, but not Category 614).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-18290 Filed 8-11-88; 8:45 am]

BILLING CODE 3510-DR-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1988 Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This list adds to Procurement List 1988 commodities, and a military resale commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** September 12, 1988.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** E. R. Alley, Jr. (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On March 18, May 16, June 10, June 17, and June 24, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 8945, 17238, 21885, 22688, and 23783) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities, military resale commodity, and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodity, and services listed.

c. The actions will result in authorizing small entities to produce the commodities, military resale commodity, and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodity, and services is hereby added to Procurement List 1988:

**Commodities**

*Pad, Writing Paper*

7530-00-285-3090
(GSA Regions W, 2, 3, 4, 7, 8, 9 and 10)
7530-01-124-7832
(GSA Regions 4 and 6)

*Pamphlets (3229-S)*

7690-00-NSH-0010

(Requirements of Government Printing Office, Philadelphia, Pennsylvania—DLA Requisitions only)

*Pad, Shoulder Strap*

P.S. Item No. D–1212

**Military Resale Item No. and Name**

650 Dryer, Sweater

**Services**

*Commissary Warehouse Service*

Scott Air Force Base, Illinois

*Janitorial/Custodial*

Federal Building and U.S. Courthouse, 500 Fannin Street, Shreveport, Louisiana

*Janitorial/Custodial*

Building 1400, Hill Air Force Base, Utah

*Janitorial/Custodial*

Building 3504, Naval Amphibious Base, Little Creek, Norfolk, Virginia

*Janitorial/Custodial and Grounds Maintenance*

Naval Aviation Depot, Naval Air Station, Jacksonville, Florida.

E.R. Alley, Jr.,

*Acting Executive Director.*

[FR Doc. 88–18295 Filed 8–11–88; 8:45 am]

BILLING CODE 6820-33-M

## Procurement List 1988 Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to procurement list.

**SUMMARY:** This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** September 12, 1988.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** E.R. Alley, Jr. (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On May 20, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 18117) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

Comments were received from a law firm representing the International Association of Wiping Cloth Manufacturers (IAWCM) regarding the proposed addition of the Warner Robins, Georgia requirements for this wiping rag.

The major issues raised in the comments concerned the impact on the wiping rag industry, the Federal Government, and the environment if the Government's requirements for all wiping rags are added to the Procurement List. In addition, the commenter questioned the workshop's capability to meet surge demands by the Government and suggested the Committee should not use its procedures for determining the fair market price for the rags since the workshop has a free source for the raw materials.

### Impact on Industry, Federal Government, and Environment

The commenter discussed the impact on the industry, Federal Government and the environment if the total requirements of the Federal Government for wiping cloths were to be added to the Procurement List. He indicated that the IAWCM members are gravely concerned that this action is only the first step in an attempt by the workshops to become the dominant or sole supplier of wiping rags to the Government.

The issue considered by the Committee is the addition of only the Warner Robins, Georgia requirements for the wiping rag, NSN 7920–00–205–1711 to the Procurement List. The statements made by the commenter regarding the effect on the wiping cloth industry, the Federal Government, and the environment if all of the Government's requirements for wiping rags were added to the Procurement List is not germane and is, therefore, inappropriate to be addressed by the Committee relative to this action.

The value of the current contractor's contract for the portion considered by the Committee in this action represents about 1.8% of the annual sales of that firm. This is not considered to be serious impact.

The Committee in its regulations (41 CFR 51–2.6 "Suitability") states that in deciding whether or not a proposed addition to the Procurement List would have a serious adverse impact on the current or most recent contractor, the Committee gives particular attention to the possible impact on that contractor's sales, including any cumulative impact as a result of other recent Committee actions.

### Capability of Workshop to Produce

The commenter indicated that wiping cloths are considered by the Government to be "mission essential" and producers must be able to meet surge demands on an expedited basis. He questioned the workshop's capability to find appropriate personnel quickly due to the various operations involved in processing them for sale to the Government.

This addition will create three jobs for severely handicapped persons. If the Government's requirements were doubled, only three additional persons would be required. The Committee does not feel that the workshop will have difficulty in obtaining and training additional personnel to produce these wiping rags to meet the surge requirements of the Government. The procuring activity has indicated as a result of an on-site inspection that the workshop is capable of producing the wiping rags in compliance with commercial item description. In addition, personnel from the National Industries for the Severely Handicapped have inspected the workshop and verified that the workshop is capable of producing the wiping rags. Based on the above, the Committee has determined that the workshop is capable of producing the wiping rags in compliance with the Government's requirements.

### Fair Market Price

The commenter stated that the Committee's fair market price procedure should not be used for these wiping rags since the workshop has a free source for raw materials.

Under the Committee's Act, the Committee is responsible for determining "fair market prices" for commodities and services on the Procurement List (41 U.S.C. 47(b)). The Committee considers that the reasonable bids received by the Government for the item under consideration are the best measure of the market for that item. Under its longstanding policy, the initial fair market prices for items being added to the Procurement List, which have been recently procured by the Government, are based on the median of the reasonable bids which were received on the most recent procurement, or the award price increased by 5%, whichever is greater. Thus, the workshop's cost for the raw materials used in producing the wiping rags for the Government is not an appropriate issue in the Committee determination of the fair market price for those rags.

Based on the preceding, the price established by the Committee is considered to be reflective of the market for the wiping rags and is a fair market price within the policies and procedures of the Committee.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1988:

**Rag, Wiping**

7920-00-205-1711
(Requirements for Warner Robins, Georgia only)

**E.R. Alley, Jr.,**
*Acting Executive Director.*

[FR Doc. 88-18296 Filed 8-11-88; 8:45 am]
BILLING CODE 6820-33-M

## Procurement List 1988 Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 12, 1988.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** E.R. Alley, Jr. (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

*Commodity*

Side Rack, Vehicle
2510-00-860-0523

*Services*

Janitorial/Custodial
U.S. Post Office, Courthouse and Social Security Administration District Office, Hot Springs, Arkansas

Janitorial/Custodial
Domiciliary Buildings 8A, 10A, 14 A&B, 16 A&B, 25 and 34, VA Medical Center, Dublin, Georgia

Janitorial/Custodial
U.S. Courthouse Annex, 1100 East Main Street, Richmond, Virginia

**E. R. Alley, Jr.**
*Acting Executive Director.*

[FR Doc. 88-18297 Filed 8-11-88; 8:45 am]
BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Description of Vessels/Description of Operations; ENG Forms 3931 and 3932; OMB Control Number 0702-0033.

*Type of Request:* Extension.

*Average Burden Hours/Minutes Per Response:* 60 minutes.

*Frequency of Response:* Annual.

*Number of Respondents:* 2,000.

*Annual Burden Hours:* 2,000.

*Annual Responses:* 2,000.

*Needs and Uses:* Statistical general use data is collected as required by 42 STAT 1043 on freight and passenger vessels operating in U.S. Waters, under the American flag. Transportation Lines of the United States (TLUS) contains information of the vessel operators and their American flag vessels operating or available for operation on the inland waterways of the United States in the transportation of freight and passengers.

*Affected Public:* Business or other for-profit.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

**L.M. Bynum,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 9, 1988.

[FR Doc. 88-18284 Filed 8-11-88; 8:45 am]
BILLING CODE 3810-01-M

## Office of the Secretary

### Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 6, 1988; Tuesday, September 13, 1988; Tuesday, September 20, 1988; and Tuesday, September 27, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have

been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D284, The Pentagon, Washington, DC 20301.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 9, 1988.

[FR Doc. 88-18265 Filed 8-11-88; 8:45 am]

BILLING CODE 3810-01-M

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## Defense Logistics Agency

### Privacy Act of 1974; New Continuing Computer Matching Program Between Department of Defense and New York City Human Resources Administration

**AGENCY:** Defense Manpower Data Center (DMDC) of the Defense Logistics Agency (DLA), Department of Defense (DoD).

**ACTION:** Public notice of a Computer Matching Program between the DoD and the New York City Human Resources Administration for any public comment.

**SUMMARY:** The Department of Defense plans to participate in a computer matching program at the request of the New York City Human Resources Administration in it's efforts to detect fraud, waste and abuse in the public assistance programs administered by the City of New York. The computer match will compare the city's master file of public assistance clients with DoD records of active, retired, and reserve military members and DoD civilian employees, active and retired.

**DATES:** This proposed action shall be effective August 12, 1988. Nevertheless, any public comment will be considered provided comments are received on or before September 12, 1988.

**ADDRESS:** Comments may be submitted to Robert J. Brandewie, Deputy Director, Defense Manpower Data Center, 550 Camino El Estero, Suite 200, Monterey, CA 93940-3231. Telephone: (408) 375-4131.

**FOR FURTHER INFORMATION CONTACT:** Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202-2803. Telephone: (202) 694-3027.

**SUPPLEMENTARY INFORMATION:** The computer matching will be performed at the Defense Manpower Data Center (DMDC) in Monterey, CA. The DMDC, Defense Logistics Agency, Department of Defense, will be the matching agency and the New York City Human Resources Administration (NYC HRA) 250 Church Street, New York City, NY 10013, will be the benefitting source agency. The match will be accomplished using the social security number. The purpose of the match is to assist NYC HRA in it's efforts to identify individuals receiving public assistance, food stamps, medicaid or child support benefits from the City of New York to which they are not legally entitled to, or possibly a reduction in benefit entitlements may be in order. There will be some two million active individuals on this file representing active public assistance, food stamps, medicaid and child support. Matching records will be returned to NYC HRA who will be responsible for reviewing the match data and for assuring that each benefit recipient receives proper due process notification of the match results before any adverse action is taken to reduce or eliminate benefits.

Set forth below is the information required by the paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs, issued by the Office of Management and Budget on May 11, 1982 (47 FR 21656, May 19, 1982). A copy of this proposed notice has been provided to the President of the Senate, the Speaker of the House of Representatives and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on July 27, 1988 pursuant to the cited OMB matching guidelines.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 9, 1988.

### Report of a New Continuing Computer Matching Program Between the Department of Defense and the New York City Human Resources Administration

a. *Authority:* The legal authority under which the computer matching program will be conducted is subsection (b)(3) of the Privacy Act of 1974, 5 U.S.C. 552a; 7 U.S.C 2011-2029, Food Stamp Act of 1977, as amended; 10 U.S.C. 136, Assistant Secretaries of Defense; appointment; powers and duties; precedence; 7 CFR Part 273—Certification of Eligible Households (Agriculture); Title IV A (Public Assistance), Title IV D (Child Support), Title XVI (Medicaid) of the Social Security Act, 42 U.S.C 603, 651 through 658, 1302, 1382, 1902, Chapter IV, Subchapter C (Medical Assistance Programs); 45 CFR Part 206—Application, Determination of Eligibility and Furnishing Assistance—Public Assistance Programs (HHS); 45 CFR Chap III—Location of absent parents, actions to establish paternity and obtain and enforce support (Office of Child Support); 45 CFR Part 235—Administration of Financial Assistance Programs; Office of Management and Budget: "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982 (47 FR 21656, May 19, 1982); New York State Rules and Regulations, Book 18—Social Services, Section 351-5.

b. *Program Description:* The matching program, established under a Memorandum of Understanding (MOU), will identify DoD employees and members who are recipients of New York City Human Resources Administration (NYC HRA) assistance benefits.

Upon receipt a computer tape file of all the active benefit accounts from NYC HRA, the Defense Manpower Data Center (DMDC) will perform a computer match using all nine digits of the social security numbers of the individuals concerned. All matching DoD records (hits) will be forwarded to NYC HRA along with the respective submission data consisting of the DoD employee or member's name, service (or agency), category of employee (active or retired), salary or retirement benefit, and current work or home address from DMDC's records. No information will be disclosed by DMDC from non-matching DoD records (non-hits).

The DMDC file for the match will utilize records of DoD active duty, retired and reserve military members and civilian personnel, both active and retired. DMDC, the matching agency, will be performing the computer match and NYC HRA will be the beneficial source agency furnishing a computer tape file on which to match containing some two million active individuals representing active public assistance, food stamps, medicaid and child support cases. Matching records (hits) will be furnished to NYC HRA who will be responsible for reviewing the matching data and assuring that individuals are positively identified as one and the same.

NYC HRA will utilize the hit data and make the initial follow-up determinations to close or reduce the benefits of NYC HRA benefit recipients who are not living in New York City or whose income exceed the allowable

standards. It may be used as a basis for determining continued eligibility and recouping benefit overpayments. It will also serve to identify, locate and report those individuals who may be able to provide child support to NYC HRA recipients to the Department of Child Support. NYC HRA will be responsible for assuring that the benefit recipient receives proper due process notification before any adverse action is taken on the part of NYC HRA. Any benefit recipient against whom a negative action is taken will be given the benefit of appeal.

DMDC will make reasonable efforts, pursuant to subsection (e)(6) of the Privacy Act (5 U.S.C. 55a), to assure that the DoD records are accurate, complete, timely, and relevant for agency purposes before disclosure. Further it will insure that an accounting of the disclosures are maintained pursuant to subsection (c) of the Privacy Act.

c. *Records to be Matched:* The DMDC, Defense Logistics Agency, system of records that is subject to the Privacy Act of 1974, and containing an appropriate routine use permitting the records contained therein to be used for this matching program, is identified as S322.10 DLA–LZ, entitled: "Defense Manpower Data Center Data Base." The notice for this record system was last published in the Federal Register at 53 FR 442 on February 16, 1988. The NYC HRA record system is entitled: "Extract of HR, AFDC, Food Stamps, Medicaid and missing parents file." This is not a Federal record system and is maintained by the New York City Human Resources Administration, Office of Systems Development, IM Programs, 354 Broadway—4th Floor, New York City, NY 10013.

d. *Period of the Match:* The initial match will commence after publication of this notice in the **Federal Register** and will be repeated periodically thereafter.

e. *Security Safeguards:* Automated records are accessible only by password and access to the computer centers is by key or picture identification. Hard copy records are maintained in Federal, State, City office buildings in lockable file cabinets and are accessed only by authorized Federal, State or City employees who have an official need to know.

f. *Retention and Disposition of Records:* Computer tapes received by DMDC will be returned to NYC HRA upon successful completion of each match and shall not be copied or used for any other purposes except as described above. The NYC HRA tape file will be used and accessed only to the matching agreed to; it will not be used to extract information concerning "non-hit" individuals for any purpsoe. Likewise, the DoD data provided to NYC HRA shall not be used for any other purpose other than described purposes above. Hard copy case file records created by NYC HRA as a result of the match will be used by the City of New York to determine continued benefit entitlement levels and to contact the benefit recipient if necessary. These individual case file records are within the exclusive control and jurisdiction of the City of New York.

[FR Doc. 88–18286 Filed 8–11–88; 8:45 am]
BILLING CODE 3810–01–M

## Department of the Navy

### Chief of Naval Operations Executive Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet August 30–31, 1988 from 9 a.m. to 5 p.m. each day, in Norfolk, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: August 8, 1988.

**Jane M. Virga,**

*Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 88–18246 Filed 8–11–88; 8:45 am]
BILLING CODE 3810–AE–M

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Weapons will meet on September 12–13, 1988. The meeting will be held at the Office of the Chief of Naval Research, Room 1020, 800 North Quincy Street, Arlington, VA. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on September 12; and will commence at 9:00 a.m. and terminate at 3:00 p.m. on September 13, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on laser weapons. The agenda will include discussions concerning the draft report and an intelligence update. These discussions and briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 522b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4879.

August 8, 1988.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 88–18248 Filed 8–11–88; 8:45 am]
BILLING CODE 3810–AE–M

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations will meet on September 13–14, 1988. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, VA. The meeting will commence at 9:00 a.m. and terminate at 5:30 p.m. on September 13; and commence at 9:00 a.m. and terminate at 4:00 p.m. on September 14, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/

countermine threat and current capabilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The agenda will include discussions on amphibious warfare, mine warfare, countermine capabilities and limitations, and a threat assessment. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4879.

Date: August 8, 1988.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 88–18249 Filed 8–11–88; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATE:** Interested persons are invited to submit comments on or before September 12, 1988.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster, (202) 732–3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 9, 1988.

**Carlos U. Rice,**

*Director for Information Technology Services.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Reinstatement
*Title:* Report of Vending Facility Program
*Frequency:* Annually
*Affected Public:* State or local governments
*Reporting Burden:*
*Responses:* 51
*Burden Hours:* 423
*Recordkeeping:*
*Recordkeepers:* 0
*Burden Hours:* 0.
*Abstract:* State Vocational Rehabilitation agencies report on services to blind individuals under the Vending Facility Program. The Department will use the information to ensure financial accountability and solvency of the program.

### Office of Postsecondary Education

*Type of Review:* Extension
*Title:* Request for Designation as an Eligible Institution
*Frequency:* Annually
*Affected Public:* Non-profit institutions
*Reporting Burden:*
*Responses:* 1,000
*Burden Hours:* 8,000
*Recordkeeping:*
*Recordkeepers:* 0
*Burden Hours:* 0.
*Abstract:* This form will be used by institutions of higher education to apply for funding under the Strenghtening Institutions Programs and the Endowment Challenge Grant Programs. The Department will use the information to make grant awards.

[FR Doc. 88–18281 Filed 8–11–88; 8:45 am]

BILLING CODE 4000-01-M

[84.116A]

### Preapplications and Applications for New Awards Under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1988

*Purpose:* Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities.

*Deadline for Transmittal of Preapplications:* October 18, 1988.

*Deadline for Transmittal of Applications:* March 1, 1989.

*Application Available:* August 26, 1988.

*Estimated Size of Awards:* $5,000 to $200,000 per year.

*Estimated Number of Awards:* 76.

*Project Period:* 12 to 36 months.

#### Available Funds

The President's Budget for fiscal year 1989 includes $13,500,000 for FIPSE. Of this amount, approximately $5,000,000 would be available for an estimated 76 new awards under the Comprehensive Program. The Congress has not yet completed action on the 1989 appropriation. The estimates above assume passage of the President's budget. These estimates, however, do not bind the Department of Education to a specific number of grants or to the amount of any grant.

#### Priorities

The Secretary supports a broad range of programs that seek to improve postsecondary education. In accordance with 34 CFR 75.105(c)(1), the Secretary invites applications addressing the

following priorities. However, the list is not meant to be exhaustive. Projects that do not meet any of these priorities are also eligible for support if they address other immediate problems or issues in postsecondary education.

Applications are invited that seek to:

(1) Ensure that undergraduate curricula provide the knowledge and skills which an educated citizen needs, including knowledge of our intellectual and cultural heritage;

(2) Ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards;

(3) Improve the quality of undergraduate education by raising academic standards for the bachelors degree, strengthening the liberal arts component of undergraduate professional programs, developing means of assessing and comparing programs and institutions, and recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies;

(4) Reform the education of school teachers by making it easier for able people to qualify as teachers who have earned degrees in fields other than education and who currently lack pedagogical training, increasing current and prospective teachers' mastery of the subjects they teach, ensuring that prospective teachers have a solid grounding in the liberal arts, and attracting more people of commitment and high intellectual ability to the teaching profession;

(5) Reform graduate education by fostering the teaching skills of Ph.D. candidates bound for careers in teaching, and broadening the social and ethical perspectives of students in professional graduate programs generally;

(6) Strengthen postsecondary educational institutions and organizations by providing incentives to develop the abilities of their leaders, administrators, faculty, and staff;

(7) Provide education for a changing economy by offering educational programs and services for workers, unemployed individuals, businesses, and communities;

(8) Develop educational uses of technology, including computers, television, and other electronic media.

**Applicable Regulations**

(a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80, (b) the regulations in 34 CFR Part 630, with the exception noted in 34 CFR 630.4.

For Applications and Information Contact: The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., Room 3100, ROB–3, Washington, DC 20202. Telephone (202) 732–5750 or 732–5766.

**Program Authority:** 20 U.S.C. 1135.

Dated: August 9, 1988.

**Kenneth D. Whitehead,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 88–18364 Filed 8–11–88; 8:45 am]

BILLING CODE 4000–01–M

## Office of Educational Research and Improvement

### Advisory Council on Education Statistics; Meeting

**AGENCY:** Advisory Council on Education Statistics (ACES).

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** September 15–16, 1988.

**ADDRESS:** 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

**FOR FURTHER INFORMATION CONTACT:** Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208. Telephone: (202) 357–6831.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:.

- NCES: Two years After the National Academy of Sciences' Evaluation
- Report on the New Legislation
- Assessment of Student Learning in Postsecondary Education
- Update on the Dropout Program
- School Finance Program
- Council Business.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208.

Dated: August 4, 1988.

**Chester E. Finn, Jr.,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 88–18272 Filed 8–11–88; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Intent to Award a Grant Agreement to International Building Performance Simulation Association (IBPSA)

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** The U.S. DOE announces that pursuant to 10 CFR 600.7(b)(2), it is awarding a noncompetitive financial assistance instrument under grant number DE-FGO1–88CE21028 for a conference entitled "Building Simulation "89."

**SUMMARY:** The U.S. DOE, Office of Building and Community Systems (OBCS) is preparing a request to fund the proposed International Conference. The objectives of the conference are:

(a) To provide a forum for researchers, developers, and users of energy simulation models to come together and exchange ideas and information and encourage the advancement of knowledge; (b) to provide a forum for transferring information and technologies; (c) to foster excellence and professional growth in the field of building simulation; and (d) to publish and distribute the research papers presented at the conference on topics of special interest.

The conference will provide an interdisciplinary forum in which invited speakers will present the latest research results, advances in software development and integration, and other aspects of computerized simulation of building performance simulation, lighting simulation, acoustics simulation, thermal storage simulation, computer-aided design and knowledge-based design methods. It is anticipated that the symposium will attract contributions from architects and engineers, building managers, computer specialists and researchers, energy directors and researchers, DOE laboratories, and others interested in the use and

development of building simulation tools including officials from all levels of government.

The conference will provide DOE a timely opportunity to hear discussed the latest research and developments in the area of building simulation from foreign governments, determine how these developments compare to the developments under consideration by the United States, and determine whether the U.S. program should be modified to take advantage of new developments. The result will provide the basis for reviewing the merits of DOE's current research programs.

**Eligibility**

Award of this effort is restricted to IBPSA.

IBPSA has announced the conference, developed a planning document, established their agenda, established and made arrangements of the time and place, and obtained co-sponsorship from a variety of agencies. IBPSA's personnel are uniquely qualified to support such a conference.

The conference has been determined to be meritorious and relevant to the DOE mission. It is particularly relevant to the OBCS mission of leading a national effort to achieve the maximum, cost-effective energy productivity in the buildings sector. The term of this agreement will be six months.

**FOR FURTHER INFORMATION CONTACT:** Rosemarie H. Marshall, MA–153.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1061.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 88–18308 Filed 8–11–88; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–3428–5]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared July 25 Through 29, 1988

Availability of EPA comments prepared July 25, 1988 through July 29, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 22, 1988 (53 FR 13318).

**Draft EISs**

*ERP No. D–AFS–K61094–CA,* Rating EO2, Sherwin Bowl Ski Area Development, Alpine Skiing, Special Use Permit, Inyo National Forest, Mammoth Ranger District, Mono County, CA. **SUMMARY:** EPA expressed environmental objections because the draft EIS did not analyze the cumulative environmental impacts of the ski areas planned for Inyo National Forest, and because impact analyses and mitigation plans for wetlands, water quality and air quality were inadequate.

*ERP No. D–BLM–L67020–AK,* Rating EO2, Fortymile River Watershed, Multiple Placer Mining Management Plan, Approval, Implementation and 404 Permit, Upper Yukon-Canada Subregion, AK. **SUMMARY:** EPA's concerns with this document relates to the lack of controls and mitigation incorporated into the proposed action and a range of alternatives and questions regarding the data necessary to provide the basis for conclusions which are presented.

*ERA No. D–COE–K25005–CA,* Rating EO2, Ox Mountain Sanitary Landfill Expansion, Apanolio Canyon Site, 404 Permit, Apanolio Creek, San Mateo County, CA. **SUMMARY:** EPA expressed environmental objections because the proposed project does not comply with the Clean Water Act section 404(b)(1) Guidelines, which regulates the discharge of dredged and fill material into waters of the United States, including wetlands. Specifically, this document did not provide enough information about alternative sites that may be less environmentally damaging; did not adequately analyze adverse impacts to wetlands, water quality and anadromous fisheries; and did not contain a mitigation plan that would be acceptable to fish and wildlife agencies.

*ERP No. DS–COE–L36015–00,* Rating EC1, Lower Granite Project, Lower Granite Interim Navigation and Flood Protection Dredging, Implementation, Snake and Clearwater Rivers, Nez Perce County, ID and Asotin, Garfield and Whitman Counties, WA. **SUMMARY:** EPA continues to be concerned with the potential adverse effects associated with the discharge of dredged material into aquatic habitats.

*ERP No. D–DOE–J08023–ND,* Rating LO, Charlie Creek-Belfield 345 kV Transmission Line Project, Construction, Operation and Maintenance, Implementation, Billings, Stark, McKenzie and Dunn Counties, ND. **SUMMARY:** EPA has not identified any potential environmental impacts requiring substantive changes to the draft proposal. However, it was pointed out that additional information on mitigation of impacts to wetlands would improve the documents.

*ERP No. D–FHW–D40234–MD,* Rating **2, I–695/Baltimore Beltway, US 40 West to MD–170 and MD–295/ Baltimore-Washington Expressway, MD–46 to the Baltimore City Line Improvements, Funding and 404 Permit, Baltimore and Anne Arundel Counties, MD. **SUMMARY:** EPA has reviewed this document for I–695 from U.S. 40 (west) to MD 170, including MD 295 from MD 46 to the Baltimore City Line. Alternate 1 (No Build), Alternate 2 (Mainline Widening), Interchange Option 1 and Interchange Option 2 were rated EC–2. This rating is based upon potential adverse noise impacts to residential communities. Interchange Option 3, however, has been given a separate rating of EO–2. This rating reflects EPA's concern regarding potential impacts to parkland and wetlands resulting from I–695/Maryland Route 295 Interchange Option 3.

*ERP No. D–FRC–D05122–00,* Rating EO2, Upper Ohio River Basin Hydroelectric Development, Construction, Operation and Maintenance, Licenses, Belmont, Gallia, Jefferson, Mahoning and Washington Cos., OH; Hancock Co., WV and Butler, Beaver, Allegheny, Armstrong, Fayette, Washington and Westmoreland Cos., PA. **SUMMARY:** EPA expressed concerns over entrainment of fish dissolved oxygen in the water, and pressure of toxics in the water.

*ERP No. DA–UMT–K54014–CA,* Rating LO, Los Angeles Rail Rapid Transit Project, Sunset Boulevard Alternate Alignment, Updated Project Cost, Impacts on MacArthur Park, Vermont Avenue/Sunset Boulevard Station Location and Cumulative Impacts of the Hollywood Bowl Connector, Funding, Los Angeles County, CA. **SUMMARY:** EPA expressed a lack of objections to the proposed action and supplemental draft EIS.

**Final EISs**

*ERP No. F2–BLM–K65040–CA,* Eastern San Diego County Planning Unit, Section 202 WSA's, Wilderness Recommendations, Designation or Nondesignation, San Ysidro Mountain, Sawtooth Mountains, A, Sawtooth Mountains C and Table Mountain, WSAs, El Centro Resource Area, California Desert District, San Diego County, CA. **SUMMARY:** Review of this document was not deemed necessary.

No formal comments were sent to the agency.

*ERP No. F-FHW-D40214-PA*, PA-23/ New Holland Avenue/LR-1124, Section B01 Relocation, US 30 to Walnut and Chestnut Streets, Funding and 404 Permit, Manheim, East Lampeter and Lancaster Townships and the City of Lancaster, Lancaster County, PA. **SUMMARY:** EPA's concerns were satisfactorily addressed in this document.

**Regulations**

*ERP No. R-OSH-A27010-00*, 29 CFR Part 1910—Air Contaminants, Proposed Rule (OSHA Docket No. H-020) (53 FR 20960). **SUMMARY:** While stating that the proposed rule changes represent a substantial and desirable effort, EPA believes that some recent critical studies were not discussed. These studies were provided.

**Amended Notices**

The following is a correction to the summary published in the 8-5-88 FR Notice.

*ERP No. D-SCS-H36100-MO*, Rating LO, East Yellow Creek Watershed, Soil Erosion and Flood Damage Reduction Plan, Funding and Implementation, Sullivan, Linn and Chariton Counties, MO. **SUMMARY:** EPA has no objections to the project as proposed.

Dated: August 9, 1988.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 88-18315 Filed 8-11-88; 8:45 am]

BILLING CODE 6560-50-M

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**[ER-FRL-3428-4]**

**Environmental Impact Statements; Availability of Environmental Impact Statements Filed August 1, 1988 Through 5, 1988**

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

*EIS No. 880246*, FSuppl, AFS, OR, WA, ID, CA, Pacific Northwestern Regional Guide, Northern Spotted Owl Habitat Management Standards and Guidelines, Updated and Additional Research, OR, WA and CA, Due: September 12, 1988, Contact: Larry Fellows (503) 221-4923.

*EIS No. 880247*, DSuppl, AFS, MT, 1987 Deerlodge National Forest, Noxious Weed Control Program, Herbicide Use, Implementation, Deer Lodge, Granite, Jefferson, Madison, Powell and Silver Bow Counties, MT, Due: October 14, 1988, Contact: Dave Ruppert (406) 496-3368.

*EIS No. 880248*, FSuppl, EPA, OH, Columbus Metropolitan Area, Wastewater Treatment Facilities, Construction Grant, Franklin, Delaware, Fairfield, Madison and Pickaway Cos., OH, Due: September 12, 1988, Contact: Harlan D. Hirt (312) 353-2315.

*EIS No. 880249*, FSuppl, EPA, MA, Boston Metropolitan Area WWT/ Disposal Facilities Expansion, Construction Grant, Boston Harbor, Suffolk County, MA, Due: September 12, 1988, Contact: David Tomey (617) 565-4420.

*EIS No. 880250*, Draft, COE, CA, Shell Hercules Project, Oil and Gas Resources Development, Section 10 and 404 Permits, Santa Barbara Channel, Santa Barbara County, CA, Due: October 4, 1988, Contact: David Cranston (213) 894-0245.

**Amended Notices**

*EIS No. 880221*, Draft, FAA, MD, 15L/ 33R Runway Extension, Baltimore/ Washington International Airport, Approval and Funding, Anne Arundel County, MD, Due: August 31, 1988, Contact: Frank Squeglia (718) 917-0902.

Published **Federal Register** July 15, 1988—Review period extended.

Dated: August 9, 1988.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 88-18314 Filed 8-11-88; 8:45 am]

BILLING CODE 6560-50-M

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## FEDERAL COMMUNICATIONS COMMISSION

**Applications for Consolidated Hearing; Boyd Enterprises, Inc., and George S. Flinn, Jr.**

1. The Commission has before it the following mutually exclusive applications for a new FM station.

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. Boyd Enterprises, Inc.; Humboldt, Tn. | BPH-870504MA | 88-353 |
| B. George S. Flinn, Jr.; Humboldt, TN. | BPH-870506KE | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirely under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Environment, A
2. Air Hazard, B
3. Comparative, All
4. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88-18273 Filed 8-11-88; 8:45 am]

BILLING CODE 6712-01-M

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**Applications for Consolidated Hearing; Lawrence L. Bush, Jr. et al.**

1. The Commisstion has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. Lawrence L. Bush, Jr.; Clifton, TX. | BPH-870325KC | 88-359 |
| B. Spanish Aural Services Co.; Clifton, TX. | BPH-870331MY | ..... |
| C. Robert W. Prikryl and John R. Hanna, d/b/a Prikyl-Hanna Partenership; Clifton, TX. | BPH-870331OF | ..... |
| D. Smith Media, Inc.; Clifton, TX. | BPH-870331OI | ..... |
| E. Clifton Communications; Clifton, TX. | BPH-870331MU (Previously Dismissed) | ..... |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify

whether the issue in question applies to that particular applicant.

*Issue heading and applicants*

1. Air Hazard, B
2. Comparative, A–D
3. Ultimate, A–D

3. If there are any non-standard issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 18274 Filed: 8–11–88; 8:45 a.m.]

BILLING CODE 6712-01-M

## Applicants for Consolidated Hearing; Larry Langford, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and State | File No. | Docket No. |
|---|---|---|
| A. Larry Langford; Portage, MI. | BPH–851022MO | 88–346 |
| B. PN Radio Co.; Portage, MI. | BPH–851113MF | ..... |
| C. Horizon Broadcasting Co.; Portage, MI. | BPH–851114MH | ..... |
| D. Radio Associates Inc.; Portage, MI. | BPH–851114MI | ..... |
| E. Walker-Kent Broadcasting Co.; Portage, MI. | BPH–851115MP | ..... |
| F. Steven J. Kuiper; Portage, MI. | BPH–851115MQ | ..... |
| G. William Bryant d/b/a Portage FM Group; Portage, MI. | BPH–851115MR | ..... |
| H. WHW Broadcasting Group, Limited Partnership; Portage, MI. | BPH–851115MS | ..... |
| I. Portage Communications, Inc.; Portage, MI. | BPH–851115MU | ..... |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue heading and applicant*

1. Air Hazard, E, G
2. Comparative, All
3. Ultimate, All

3. If there are any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 18275 Filed: 8–11–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Swan Broadcasting, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station.

| Applicant and city/State | File No. | MM Docket No. |
|---|---|---|
| A. Swan Broadcasting, Ltd.; New Oreleans, LA. | BPCT–870717KQ | 88–357 |
| B. Crescent City Broadcasting Corp.; New Orleans, LA. | BPCT–880419KE | ..... |
| C. Delta Broadcasting of Louisiana, Ltd.; New Orleans, LA. | BPCT–880419KF | ..... |
| D. Tucker Broadcasting Co., Ltd. Partnership; New Orleans, LA. | BPCT–880419KG | ..... |
| E. Tracy Lewis, Ltd. Partnership; New Orleans, LA. | BPCT–880419KH | ..... |
| F. Cajun Broadcasting; New Orleans, LA. | BPCT–880419KI | ..... |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

Comparative, A, B, C, D, E, F
Ultimate, A, B, C, D, E, F

3. If there is any non-standardized issue(s) in this proceeing, the full test of the issue and the applicant(s) to which it applies are set forth in the Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 88–18276 Filed 8–11–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Proceeding; Texas Communications Limited Partnership, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. Texas Communications Limited Partnership; Beaumont, TX. | BPH–870710MJ | 88–358 |
| B. Juan Jose Gonzales; Beaumont, TX. | BPH–870710MW | |
| C. Beaumont Skywave, Inc.; Beaumont, TX. | BPH–870710NA | |
| D. CHM Broadcasting; Beaumont, TX. | BPH–870710NC | |

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| E. Beaumont Radio Limited Partnership; Beaumont, TX. | BPH-870710NR | |
| F. P.K.L. Partnership; Beaumont, TX. | BPH-870709ME (Previously dismissed) | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particualr applicant.

*Isue Heading and Applicant(s)*

1. Environmental, C
2. Air Hazard, A,B,D,E
3. Comparative, All
4. Ultimate, All

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, D.C. 20037 (Telephone No. (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–18277 Filed 8–11–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; WCVQ, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. WCVQ, Inc.; Burlington, VT. | BPCT-871224KG | 88-352 |
| B. Nichols Broadcasting Corp.; Burlington, VT. | BPCT-880301KF | ..... |
| C. Maple Leaf Broadcasting Limited Partnership; Burlington, VT. | BPCT-880301KG | ..... |
| D. Lake Champlain Communications, Inc.; Burlington, VT. | BPCT-880301KH | ..... |
| E. Burlington Channel 44, Inc.; Burlington, VT. | BPCT-880301KI | ..... |
| F. Northeast Kingdom TV, Inc.; Burlington, VT. | BPCT-880301KJ | ..... |
| G. Burlington 44 Co; Burlington, VT. | BPCT-880301KL | ..... |
| H. David McMeekin; Burlington, VT. | BPCT-880301KM | ..... |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, A,B,C,D,E,F,G,H
2. Comparative, A,B,C,D,E,F,G,H
3. Ultimate, A,B,C,D,E,F,G,H

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 88–18278 Filed 8–11–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Proceeding; Whiteaker Communications et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city, and State | File No. | MM Docket No. |
|---|---|---|
| A. Whiteaker Communications; Crossville, TN. | BPH-860612MA | 88-354 |
| B. Mark A. Perry; Crossville, TN. | BPH-860613MW | |
| C. Audio Broadcasters, Inc.; Crossville, TN. | BPH-860613MX | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applicants have been designated for a hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Air Hazard, B
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in the Appendix to this Notice. A copy of the complete HDO in this proceeding is available in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–18279 Filed 8–11–88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL RESERVE SYSTEM

### Credit and Commerce American Holdings, N.V., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 2, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Credit and Commerce American Holdings, N.V.*, Curaco, Netherlands Antilles; Credit and Commerce American Investment, N.V., Amsterdam, Netherlands; First American Corporation, Washington, DC; First American Bankshares, Inc., Washington, DC; Georgia Bankshares, Inc., Atlanta, Georgia; and National Bank of Georgia Corporation, Atlanta, Georgia; to acquire 100 percent of the voting shares of Bank of Escambia, N.A., Pensacola, Florida.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Alabama Bancorp*, Leeds, Alabama; to acquire 50.2 percent of the voting shares of Highland Bank, Birmingham, Alabama, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Banc Services Corp.*, St. Charles, Illinois; to acquire 100 percent of the voting shares of V.B.H. Corporation, Viola, Illinois, and thereby indirectly acquire Bank of Viola, Viola, Illinois.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ford Bank Group, Inc.*, Lubbock, Texas; to acquire 100 percent of the voting shares of Lubbock Bancorporation, Inc., Lubbock, Texas, and thereby indirectly acquire Bank of the West, Lubbock, Texas.

Board of Governors of the Federal Reserve System, August 8, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18239 Filed 8-11-88; 8:45 am]

BILLING CODE 6210-01-M

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## Equimark Corp.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-15424) published at page 26116 of the issue for Monday, July 11, 1988.

Under the Federal Reserve Bank of Cleveland, the first entry, for Equimark Corporation, is revised to include the following individual as an acquiring party:

**Stephen A. Harrison**, Pittsburgh, Pennsylvania.

Comments on this application must be received by August 26, 1988.

Board of Governors of the Federal Reserve System, August 5, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18238 Filed 8-11-88; 8:45 am]

BILLING CODE 6210-01-M

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## National Community Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 2, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Community Banks, Inc.*, Maywood, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of National Community Bank of New Jersey, Rutherford, New Jersey.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted. Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101.

1. *First National Cincinnati Corporation*, Cincinnati, Ohio; to acquire 100 percent of the voting shares of Star Bank, National Association, Cleveland, Cleveland, Ohio, a *de novo* bank.

2. *Hometown Bancshares, Inc.*, Middlebourne, West Virginia; to acquire 100 percent of the voting shares of The Community Bank of Pennsboro, Pennsboro, West Virginia.

3. *Hometown Bancshares, Inc.*, Middlebourne, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Union Bank of Tyler County, Middlebourne, West Viriginia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Western Springs Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Continental Illinois Bank of Western Springs, National Association, Western Springs, Illinois.

Board of Governors of the Federal Reserve System, August 5, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18240 Filed 8-11-88; 8:45 am]

BILLING CODE 6210-01-M

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## Jack Stern; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 26, 1988.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jack Stern,* Denver, Colorado: to acquire 4.42 percent of the voting shares of Equitable Bankshares of Colorado, Inc., Denver, Colorado, and thereby indirectly acquire The Women's Bank, N.A., Denver, Colorado.

Board of Governors of the Federal Reserve System, August 5, 1988

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18241 Filed 8-11-88; 8:45 am]

BILLING CODE 6210-01-M

## United Bankshares, Inc., et al.; Notice of Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for banking holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 1988.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *United Bankshares, Inc.,* Charleston, West Virginia; to engage *de novo* through its subsidiary, United Venture Fund, Inc., Parkersburg, West Virginia, in making and servicing commercial loans and other extensions of credit and making equity investments of 5 percent or less pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 8, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18242 Filed 8-11-88; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072588 AND 080588

| Name of Acquiring person, Name of Acquired person, Name of Acquired entity, | PMN No. | Date terminated |
|---|---|---|
| The Prospect Group, Inc, Best Products Co., Inc., Best Products Co., Inc | 88-1950 | 07/25/88 |
| R.T. Holding S.A., William C. Metz, Metz Baking Company | 88-1957 | 07/25/88 |
| Swire Pacific Ltd., Inland Coca-Cola Bottling Company, Inland Coca-Cola Bottling Company | 88-1988 | 07/25/88 |
| General Motors Corporation, Bennett S. LeBow (LeBow Industries Inc.), Western Union Corporation | 88-1990 | 07/25/88 |
| Steelcase Inc., Ralph Saltzman, Design Tex Fabrics, Inc. & Western States Design, Inc | 88-2004 | 07/25/88 |
| Masco Industries, Inc., PCI Acquisition Corp., PCI Acquisition Corp | 88-2039 | 07/25/88 |
| Masco Corporation, PCI Acquisition Corp., PCI Acquisition Corp | 88-2041 | 07/25/88 |
| Broad Street Investment Fund I, L. P., PCI Acquisition Corp., PCI Acquisition Corp | 88-2042 | 07/25/88 |
| Mr. and Mrs. Bruce G. Meltzer, U.S. Home Corporation, Dee Wood Industries, Inc | 88-2069 | 07/25/88 |
| Trust America Service Corp., The Equitable Life Assurance Society of the U.S., Equitable Mortgage Resources Inc | 88-2072 | 07/25/88 |
| The Henley Group, Inc., The Pullman Company, The Pullman Company | 88-2076 | 07/25/88 |
| Thomas F. Darden, II and Josephine R. Darden, JWC Associates L.P., c/o Kohlberg Kravis Roberts & Co. of North Carolina, Sanford Brick Corp | 88-2079 | 07/26/88 |
| Royal Dutch Petroleum Company, GORCO N.V., Guam Oil & Refining Company, Inc | 88-1972 | 07/27/88 |
| American Information Technologies Corporation, Pacific Telesis Group, Multicom Incorporated | 88-2052 | 07/27/88 |
| Tele-Communications, Inc., Tele-Communications, Inc., St. Louis Cablevision Partners | 88-2061 | 07/27/88 |
| Tele-Communications, Inc., William T. Johnson, St. Louis City Communications, Inc | 88-2066 | 07/27/88 |
| American Capital and Research Corporation, Kaiser Engineers Groups, Inc., Kaiser Engineers Group, Inc | 88-2081 | 07/27/88 |
| American Capital and Research Corporation, Kaiser Engineers Group, Inc., Kaiser Engineers Group, Inc | 88-2082 | 07/27/88 |
| Steven Adams, Ralph Ingersoll, Orange Coast Publishing Company | 88-1934 | 07/28/88 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072588 AND 080588—Continued

| Name of Acquiring person, Name of Acquired person, Name of Acquired entity, | PMN No. | Date terminated |
|---|---|---|
| Steven Adams, Warburg, Pincus Capital Partners, L.P., Orange Coast Publishing Company | 88-1935 | 07/28/88 |
| Michael George DeGroote, John L. May Archbishop of St. Louis, West Lake Landfill, Inc. | 88-1996 | 07/28/88 |
| Koninklijke Wessanen N.V., Arthur Stone, Gourmet Foods, Inc. | 88-2009 | 07/28/88 |
| Ryobi Limited, Bilzerian Partners Limited Partnership 1, The Singer Company (Motor Products Division) | 88-2051 | 07/28/88 |
| The Oklahoma Publishing Company, El Pomar Foundation, Broadmoor Hotel, Inc. | 88-2106 | 07/28/88 |
| Kenneth M. Good, D. Dudley Field, Mortgage First Corporation | 88-2173 | 07/28/88 |
| Kenneth M. Good, D. Porter Spangler, Mortgage First Corporation | 88-2174 | 07/28/88 |
| D. Max Draime, Maverick Management Partnership, ST Acquisition Corporation | 88-2035 | 07/29/88 |
| Arabian Investment Banking Corporation (INVESTCORP) EC, Fred Harvey, Jr., The Harvey Co | 88-2046 | 07/29/88 |
| Air Products and Chemicals, Inc., United Merchants and Manufacturers, Inc., Valchem Division | 88-2063 | 07/29/88 |
| PaineWebber Income Properties Eight Limited Partnership, Marriott Coroporation, Essex House Condominium Corporation | 88-2092 | 07/29/88 |
| Leonard Tow, Don A. Adam, Yuma Cablevision and Imperial Valley Cablevision | 88-2094 | 07/29/88 |
| Allegiance Capital Corporation, American Bankers Insurance Group, Inc., Financial Insurance Group Limited | 88-2095 | 07/29/88 |
| William Collins PLC, The Zondervan Corporation, The Zondervan Corporation | 88-2096 | 07/29/88 |
| The News Corporation Limited, The Zondervan Corporation, The Zondervan Corporation | 88-2099 | 07/29/88 |
| Airlease Ltd., a California Limited Partnership, Douglas Wolf, DC-9T-II, Inc. and DC-9T-III, Inc. | 88-2107 | 07/29/88 |
| Ford Motor Company, Douglas Wolf, DC-9T-II, Inc. and DC-9T-III, Inc. | 88-2110 | 07/29/88 |
| The B.F. Goodrich Company, Ronald D. Crockett, TRAMCO, Inc. and R & B Sales, Inc. | 88-2115 | 07/29/88 |
| The B.F. Goodrich Company, Robert M. and Kathleen B. Trimble, husband and wife, TRAMCO, Inc. and R & B Sales, Inc. | 88-2116 | 07/29/88 |
| William Colins PLC, The Zondervan Corporation, The Zondervan Corporation | 88-2121 | 07/29/88 |
| The News Corporation Limited, The Zondervan Corporation, The Zondervan Corporation | 88-2122 | 07/29/88 |
| Standard Federal Savings Bank, Firstbank of Illinois Co., Firstbank Mortgae Co | 88-2125 | 07/29/88 |
| Baker Hughes Incorporated, Baker Hughes Incorporated, BJ-Titan Services, a partnership | 88-2138 | 07/29/88 |
| Gulf + Western Inc., International Controls Corp., Great Dane Finance Company | 88-2139 | 07/29/88 |
| The Rank Organization Plc, Lieberman Enterprises Incorporated, International Video Entertainment Inc | 88-2087 | 08/01/88 |
| Robert M. Bass, MacAcq Holdings Corp., MacAcq Holdings Corp | 88-2103 | 08/01/88 |
| Arcadia Partners, L.P., MacAcq Holdings Corp., MacAcq Holdings Corp | 88-2104 | 08/01/88 |
| M Texas TW Partners Ltd., MacAcq Holdings Corp., MacAcq Holdings Corp | 88-2105 | 08/01/88 |
| Thorn Apple Valley, Inc., Max A. Miller, Ivan Miller Family Limited Partnership, Tri-Miller Packing Company, Miller's Transport | 88-2054 | 08/02/88 |
| Vishay Intertechnology, Inc., Sfernice S.A., Sfernice S.A | 88-2086 | 08/02/88 |
| Compagnie Financiere Sucres et Denrees, Empress International, Ltd., Empress International, Ltd | 88-2088 | 08/02/88 |
| Stephen Adams, Price Communications Corporation, Old North Broadcasting Corporation | 88-2109 | 08/02/88 |
| Waste Management, Inc., The Brand Companies, Inc., The Brand Companies, Inc | 88-1969 | 08/03/88 |
| Brierley Investments Limited, Durham Corporation, Durham Corporation | 88-2023 | 08/03/88 |
| H.F. Lenfest, Time Incorporated, Time Incorporated | 88-2074 | 08/03/88 |
| Time Incorporated, H.F. Lenfest, H.F. Lenfest | 88-2075 | 08/03/88 |
| The Peninsular and Oriental Steam Navigation Company, The Vlasov Trust, Sitmar International, Inc. | 88-2136 | 08/03/88 |
| Carey Salt Acquisition Company, Canadian Pacific Limited, Carey Salt, Inc. | 88-2069 | 08/04/88 |
| Carlton Communications Plc, Ronald O. Perelman, Technicolor Holdings, Inc. | 88-2097 | 08/04/88 |
| Time Incorporated, Memphis CATV, Inc., Memphis CATV, Inc | 88-2102 | 08/04/88 |
| Myron Kunin (Regis Corp.), Goldome, S&L Acquisition Company, L.P., Seligman & Latz of PR Inc. | 88-2128 | 08/04/88 |
| The Pillsbury Company, Bumble Bee Seafoods, Inc., Bumble Bee Seafoods, Inc | 88-2146 | 08/04/88 |
| W.D. Company, Inc., Maverick Management Partnership, Joseph. Horne Co., Inc | 88-2030 | 08/05/88 |
| Sequa Corporation, PepsiCo, Inc., Allegheny Bottling Company and Pepsi-Cola Bottling Co | 88-2053 | 08/05/88 |
| Noranda, Inc., Generale Occidentale, Certain timberlands of GO | 88-2108 | 08/05/88 |
| Hasbro, Inc., Coleco Industries, Inc., Coleco Industries, Inc | 88-2111 | 08/05/88 |
| George A. Mee, Societe Nationale Elf Acquitaine, Tg Forest Products, Inc | 88-2151 | 08/05/88 |
| Robert Harvey, c/o McGuire-Nicholas Company, Vision Hardware Group, Inc., Vision Hardware Group, Inc | 88-2156 | 08/05/88 |
| Nelson Peltz (Triangle Industries, Inc.), Samuel A. Horvitz Testamentary Trust, Samuel A. Horvitz Testamentary Trust | 88-2166 | 08/05/88 |
| Peter W. May (Triangle Industries, Inc.), Samuel A. Horvitz Testamentary Trust, Samuel A. Horvitz Testamentary Trust | 88-2167 | 08/05/88 |
| Marriott Corporation, Walgreen Co., Walgreen Co | 88-2177 | 08/05/88 |
| Cloud L. Cray, Jr., Midwest Grain Products, Inc., Midwest Grain Products, Inc | 88-2189 | 08/05/88 |
| Russell M. Jedinak, Frank J. Mola, FJM | 88-2225 | 08/05/88 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-18236 Filed 8-11-88; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a

list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 5, 1988.

**Public Health Service**

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

**Food and Drug Administration**

1. Medical Device Standards Activities Report—0910–0219—The Medical Device Standards Activities Report is a comprehensive listing of national and international standards activities. It serves as a basis for the continuing review of existing standards for class II devices and as a guideline for the development of new standards. The report is used by government agencies, hospitals, libraries, industry, small businesses, and private citizens to keep abreast of the development of standards for medical devices. Respondents: Business or other for-profit, Federal agencies or employees, Non-profit institutions, Small business or organizations. Number of Respondents: 37; Frequency of Response: Bi-annually; Estimated Annual Burden: 67 hours.

**Social Security Administration**

(Call Reports Clearance Officer on 301–965–4149) for copies of package)

**Office of Disability**

1. Application for Benefits Under The Federal Mine Safety and Health Act of 1977—0960–0118—The information is needed to identify the deceased miner and to establish the relationship of the claimant for survivors benefits. Respondents: Individuals or households. Number of Respondents: 2,700; Frequency of Respone: 1; Estimated Annual Burden: 495 hours.

2. Medical Report (Individual with Childhood Impairment)—0960–0102—This form is used to collect information to determine if an individual with a childhood impairment is entitled to disability benefits. Respondents: Individuals or households; Number of Response: 75,000; Frequency of Response: 1; Estimated Annual Burden: 37,500 hours.

OMB Desk Officer: Shannah Koss-McCallum.

**Center for Disease Control**

1. Regulation 42 CFR 84, (NPRM)—Respiratory Protection Devices Tests for Permissibility—New—Advances in technology during the past 15 years created a need for revision in tests and requirements for certification of industrial respiratory protective devices. This clearance request places primary responsibility for certification with NIOSH and preserves a consultative role for MSHA in approval of emergency respirators. Manufacturers submit to NIOSH respirator design documentation and applications for approval. In final form, this NPRM replaces 30 CFR 11. Respondents: Business or other for-profit, Small business or organizations. Number of Respondents: 1; Frequency of Response: On occasion; Estimated Annual Burden: 1.

OMB Desk Officer: Shannah Koss-McCallum.

**Health Care Financing Administration**

(Call Reports Clearance Officer on 301–966–2088 for copies of package)

1. Hospice Survey Report Form—0938–0379—This survey form is an instrument used by the State agency to record data collected in order to determine provider compliance with individual conditions of participation and to report it to the Federal government. Respondents: State or local governments; Number of Response: 50; Frequency of Response: 10; Estimated Annual Burden: 1,500 hours.

2. Information Collection Requirements at 42 CFR 405.472, 431.460, 456.654, 466.70, 466.72, 466.74, 466.78 , 466.80 and 466.94—0938–0445—These sections describe review functions to be performed by the PRO's and outlines the relationship among PRO's fiscal intermediaries, carriers, providers, practitioners and beneficiaries. Respondents: Business or other for-profit, Small business or organizations; Number of Response: 54; Frequency of Response: On occasion; Estimated Annual Burden: 70,139 hours.

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–966–2088
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: Shannah Koss-McCallum.

Date: August 8, 1988.

**James V. Oberthaler,**

*Deputy Assistant Secretary, Information Resources Management.*

[FR Doc. 88–18252 Filed 8–11–88; 8:45 am]

BILLING CODE 4150–04–M

## Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 5, 1988.

**Health Care Financing Administration**

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. Survey Report Forms and Instructions for ICF/MR—New—In order to participate in the Medicaid program as an ICF/MR, providers must meet Federal standards. The survey form is used to record provider's compliance with the individual standards and report it to the Federal government. Respondents: State or local governments; Number of Respondents: 4,315; Frequency of Response: 1; Estimated Annual Burden: 12,945 hours.

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: Shannah Koss-McCallum.

Date: August 8, 1988.

**James E. Larson,**

*Acting Deputy Assistant Secretary, Information Resources Management.*

[FR Doc. 88-18253 Filed 8-11-88; 8:45 am]

BILLING CODE 4150-04-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88E-0210]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; the Synchromed ™ Infusion Pump

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for The SynchroMed ™ Infusion Pump and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing the medical device known as The SynchroMed ™ Infusion Pump which is indicated for the chronic intravascular infusion of floxuridine (FUDR) or doxorubicin hydrochloride (Adriamycin) and, when required, bacteriostatic water, physiological saline, and/or heparin. Subsequent to approval, the Patent and Trademark Office received a patent term restoration application for U.S. Patent No. 4,146,029 from Medtronic, Inc. The Patent and Trademark Office requested FDA's assistance in determining the product's eligibility for patent term restoration, and in a letter dated June 14, 1988, FDA advised the Patent and Trademark Office that the medical device had undergone a regulatory review period and that the medical device represented the first permitted commercial marketing or use. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for The SynchroMed ™ Infusion Pump is 2,186 days. Of this time, 1,594 days occurred during the testing phase of the regulatory review period, while 592 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* March 22, 1982. FDA has verified the applicant's claim that the investigational device exemption was effective on March 22, 1982.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* August 1, 1986. The applicant claims that the premarket approval application (PMA) for the device (P860004) was submitted on January 30, 1986. However, FDA records indicate that the PMA was not sufficiently complete to allow the FDA review to begin until August 1, 1986.

3. *The date the application was approved:* March 14, 1988. FDA has verified the applicant's claim that the PMA (P860004) was approved on March 14, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 11, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 9, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 8, 1988.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 88-18292 Filed 8-11-88; 8:45 am]

BILLING CODE 4160-01-M

## National Institutes of Health

### Division of Research Resources; Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research (DRR), November 17-18, 1988, Building 31, Conference Room 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on November 18, from 1:00 p.m. to adjournment to discuss policy matters relating to the Minority Biomedical

Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 17, from 8:30 a.m. to 5 p.m. and November 18, from 8:30 a.m. to 12:00 p.m. for the review, discussion, and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Lawrence J. Alfred, Executive Secretary, (301) 496–4390, will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: August 2, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–18254 Filed 8–11–88; 8:45 am]

BILLING CODE 4140–01–M

## National Arthritis and Musculoskeletal and Skin Diseases Advisory Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on September 14 and 15, 1988, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 14 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on September 14 from 1 p.m. to adjournment on September 15 at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commerical property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concenring the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496–7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: August 2, 1988.

**Betty J. Beveridge,**

*NIH, Committee Management Officer.*

[FR Doc. 88–18256 Filed 8–11–88; 8:45 am]

BILLING CODE 4140–01–M

## National Cancer Institute, Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Development Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, November 17–18, 1988, Bethesda Holiday Inn, Pennsylvania Conference Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

This meeting will be open to the public on November 17 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendence by the public will be limted to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 17 from 8:30 a.m. to recess, and on November 18 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personnal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute Building 31, Room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kendall G. Powers, Executive Secretary, Development Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7575) will provide substantive program information, upon request.

Dated: August 2, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–18255 Filed 8–11–88; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Neurological and Communicative Disorders and Stroke; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters, of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

**Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee**

*Date:* October 5, 1988 (Planning Subcommittee).

*Place:* National Institutes of Health, Building 31, Conference Room 8A28.

9000 Rockville Pike, Bethesda, Maryland 20892.

*Open:* 1 p.m.–3 p.m.

*Agenda:* To discuss program planning, program accomplishments and special reports.

*Closed:* 3 p.m.–5 p.m.

*Closure Reason:* For review of grant applications.

*Dates:* October 6–7, 1988 (Council).

*Place:* National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

*Open:* October 6, 9 a.m.–1 p.m.

*Agenda:* To discuss program planning, program accomplishments and special reports.

*Closed:* October 6, 1 p.m.–recess, October 7, 8:30 a.m.–adjournment.

*Closure Reason:* For review of grant applications.

*Executive Secretary:* John C. Dalton, Ph.D., Associate Director for Extramual Activities, NINCDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248.

**Name of Committee: Neurological Disorders Program Project Review A Committee**

*Dates:* October 13–15, 1988.

*Place:* Ramada Inn, Bethesda, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

*Open:* October 13—1 p.m.–1:30 p.m.

*Agenda:* To discuss program planning, program accomplishments and special reports.

*Closed:* October 13—1:30 p.m.–recess, October 14—7:30 a.m.–recess, October 15—7:30 a.m.–adjournment.

*Closure Reason:* To review grant applications.

*Executive Secretary:* Dr. Herbert Yellin, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.

**Name of Committee: Neurological Disorders Program Project Review B Committee**

*Dates:* October 14–16, 1988.

*Place:* Holiday Inn, Civic Center, 50 Eight Street, San Francisco, California 94103.

*Open:* October 14—7:30 p.m.–8 p.m.

*Agenda:* To discuss program planning, program accomplishments and special reports.

*Closed:* October 14—8 p.m.–recess, October 15—8 a.m.–recess, October 16—8 a.m.—adjournment.

*Closure* Reason: To review grant applications.

*Executive* Secretary: Dr. A. Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.

**Name of Committee: Communicative Disorders Review Committee**

*Date:* October 20–21, 1988.

*Place:* Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

*Open:* October 20—8:30 a.m.–9 a.m.

*Agenda:* To discuss program planning, program accomplishments and special reports.

*Closed:* October 20—9 a.m.–recess, October 21—8:30 a.m.–adjournment.

*Closure* Reason: To review grant applications.

*Executive Secretary:* Dr. Marilyn Semmes, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 2, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–18257 Filed 8–11–88; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[Co–030–08–4212–21]**

### Montrose District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Advisory Council will be held September 13 and 14, 1988 in Delta and Montrose, Colorado.

**DATE:** Meetings are scheduled September 13 and 14, 1988.

**ADDRESS:** For further information contact Debbie Pietrzak, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, CO 81401; Telephone (303) 249–7791.

**SUPPLEMENTARY INFORMATION:** The Council will have a field tour to the proposed National Guard firing range near Delta, Colorado on September 13, 1988, from 1:00 p.m. to 5:00 p.m. Following the field tour, the Council will accept public comments on the proposal at 7:30 p.m. at the Forest Service Supervisor's Office, 2250 Highway 50, Delta, Colorado. The length of the comment period will be determined by the number of individuals who wish to comment. Commentors may be required to limit the length of their oral statements.

The Council will reconvene at 9:00 a.m. September 14, 1988 at the BLM District Office in Montrose.

*Agenda—September 14:*

9:00 a.m. Public comment period.

9:30 a.m. Formulation of Council resolution on National Guard proposal; election of officers.

10:00 a.m. Resource Area updates on: resource management planning, uranium mill tailings disposal, low level radioactive waste disposal, Hovenweep expansion proposal, wild horse management.

11:30 a.m. Slide presentation on archaeology.

12 noon Adjourn.

The field tour and meetings of the Council are open to the public. Individuals wishing to participate in the tour must provide their own transportation. Members of the public may meet the Council at the BLM District Office in Montrose at 1:00 p.m. or at the Forest Service Supervisor's Office in Delta at 1:30 p.m. on the day of the field tour.

Dated: August 5, 1988.

**Robert S. Schmidt,**

*Acting District Manager.*

[FR Doc. 88–18280 Filed 8–11–88; 8:45 am]

BILLING CODE 4310–JB–M

**[NV–930–08–4212–11; N–971]**

### Opening Order, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides for opening of certain lands for direct sale to Douglas County, Nevada.

**EFFECTIVE DATE:** August 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** James W. Elliott, District Manager, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Carson City, Nevada 89701, (702) 882–1631.

**SUPPLEMENTARY INFORMATION:** In 1967, title to 97.05 acres of public land was transferred to Douglas County pursuant to the Recreation and Public Purposes Act (43 CFR Parts 869, 869–1 to 869–4). By quitclaim deed executed April 7, 1988, the following described 40 acres were reconveyed to the United States as Douglas County would now like to acquire unrestricted title to the lands

pursuant to section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713):

**Mount Diablo Meridian, Nevada**

T. 12 N., R. 21 E.,
Sec. 18, W½SW¼NE¼, E½SE¼NW¼.

At 10:00 a.m., on August 12, 1988, the lands described above will be open to disposal pursuant to section 203 of the Federal Land Policy and Management Act, for the purpose of consummating a non-competitive sale to Douglas County, subject to any valid existing rights, the provisions of existing withdrawls, and the requirements of applicable laws, rules, and regulations.

The land will remain closed to all other forms of appropriation including the mining laws.

**Edward F. Spang,**

*State Director.*

[FR Doc. 18321 Filed: 8-11-88; 8:45 am]

BILLING CODE 4310-HC-M

## National Park Service

### Upper Delaware Scenic and Recreational River; Meeting of Upper Delaware Citizens Advisory Council

**AGENCY:** National Park Service; Upper Delaware Citizens Advisory Council.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATE:** August 26, 1988, 7:00 p.m.[1]
*Inclement Weather Reschedule Date:* September 9, 1988.

**ADDRESS:** Town of Tusten Hall, Narrowsburg, New York.

**FOR FURTHER INFORMATION CONTACT:** John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159; 717-729-8251.

**SUPPLEMENTARY INFORMATION:** The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround planning for October 9, 1988, forestry management seminar, Council membership, continued discussion of issues relating to the strand, and Barnes Landfill developments.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

**James W. Coleman, Jr.,**

*Regional Director, Mid-Atlantic Region.*

[FR Doc. 88-18293 Filed 8-11-88; 8:45 am]

BILLING CODE 4310-70-M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

## INTERSTATE COMMERCE COMMISSION

### Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: August 9, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Farmers Union Cooperative Transport, Inc.
(2) P.O. Box 118, Stetsonville, WI 54480
(3) N983 Hwy 13, Stetsonville, WI 54480
(4) Mr. Larry Ray, P.O. Box 118, Stetsonville, WI 54480

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-18260 Filed 8-11-88; 8:45 am]

BILLING CODE 7035-01-M

### Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Medical Energy Generation Associates, Inc., 184 High Street, Boston, MA 02110.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

Medical Energy Generation Associates of Kentucky, Inc. (a Delaware corporation)
Medical Energy Generation Associates of Pennsylvania, Inc. (a Delaware corporation)
Medical Energy Generation Associates of Massachusetts, Inc. (a Delaware corporation)
Medi-Waste, Ltd. (a New York corporation)

B. 1. Parent corporation and address of principal office: Texas Industries, Inc., 8100 Carpenter Freeway, Dallas, Texas 75247.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

Texas Industries, Inc.—Delaware
Aggregates Railway Corporation—Louisiana
Athens Brick Company—Delaware
Brookhollow Corporation—Delaware
Creole Corporation—Delaware
Dolphin Construction Company—Louisiana
East Louisiana Railway Company—Louisiana
Fort Worth Sand & Gravel Company, Inc. (Inactive)—Texas
L I Precast Company—Louisiana
Louisiana Industries, Inc.—Louisiana
Louisiana Industries Prestressed Corp.—Delaware
Mississippi Industries, Inc. (Inactive)—Mississippi
National Concrete Industries, Inc. (Inactive)—Delaware
Poway Development Corporation—Delaware

BEST COPY AVAILABLE

The George Rackle & Sons Company (Inactive)—Ohio
TXI Transportation Company—Texas
Southern States Mining Company—Tennessee
Southwestern Financial Corporation—Delaware
Texas Industries Foundation—Texas (Non-Profit)
Texas Lightweight Aggregate Company (Inactive)—Texas
Thurber Coal Company—Texas
Tri-State Industries, Inc.—Tennessee
TXI Aviation, Inc.—Texas
TXI Cement Company—Delaware
TXI Structural Products, Inc.—Delaware
United Cement Company—Mississippi
Brookhollow of Alexandria, Inc.—Louisiana
Brookhollow/Arlington, Inc.—Texas
Brookhollow Hotel Corporation (formerly The 8100 Corporation)—Texas
Brookhollow of Houston, Inc.—Texas
Brook Hollow Properties, Inc.—Texas
Empire Central Investment Corporation—Texas
Brookhollow of North Carolina, Inc.—North Carolina
Brookhollow of Virginia, Inc.—Virginia
Brookhollow/Arlington Properties, Inc.—Texas
Brookhollow/Arlington P.O.D. I, Inc.—Texas
Brookhollow/Riverside, Inc.—Texas
Brookhollow Two Restaurant Corporation—Texas
Brookhollow of Florida, Inc.—Florida
Brookhollow/Greensboro Properties, Inc.—North Carolina
Brookhollow/Lewisville, Inc.—Texas
Ferrco Dallas, Inc.—Texas
TA Joist, Inc.—Delaware
Brookhollow Plaza, Inc.—Texas

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-18261 Filed 8-11-88; 8:45 am]

BILLING CODE 7035-01-M

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**[No. OP4-MCF-324]**

**Motor Carrier Finance Applications; Decision-Notice**

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certifications. Failure reasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the applicatien later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

*Findings:* The findings for these applications are set forth at 49 CFR 1182.6.

Decided: August 5, 1988.

By the Commission, Motor Carrier Board, Members Thomas, Taylor and Brown. (Member Brown not participating)

**Noreta R. McGee,**

*Secretary.*

*MC-F-19207, filed July 8, 1988.* William H. Shafer and Stephen M. Summerton, 331 Danbury Road, Wilton, CT 06897—Control—Regency Limousine, Inc., and Marquis Leasing, Inc., 331 Danbury Road, Wilton, CT 06897. *Representative:* William F. King, Suite 1018, 4660 Kenmore Ave., Alexandria, VA 22304. William H. Shafer and Stephen M. Summerton, both noncarrier individuals, each own 50 percent of the shares of Regency Limousine, Inc., (RLI) (MC-148906) and are officers and directors of that company. RLI holds passenger carrier authority to conduct special and charter operations between points in the U.S., including AK, but excluding HI. Shafer and Summerton each own 50 percent of the shares of Marquis Leasing, Inc. (MLI), and are officers and directors of that corporation. MLI is now an noncarrier, but by a concurrently filed application seeks passenger carrier authority to conduct special and charter operations identical in territorial scope to RLI's authority. Shafer and Summerton seek authority to control RLI and MLI when the latter also becomes a regulated carrier pursuant to the initial grant of authority it seeks in No. MC-211649.

[FR Doc. 88-18226 Filed 8-11-88; 8:45 am]

BILLING CODE 7035-01-M

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**[No. 40165]**

**Adoption of the Railroad Accounting Principles Board's Recommendation on Its Data Integrity Principle in Reports Prepared Using Agreed-Upon Procedures**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision.

**SUMMARY:** The Commission adopts the recommendation by the Railroad Accounting Principles Board (RAPB) regarding its Data Integrity Principle. A notice of proposed rulemaking in this proceeding was served March 30, 1988, and published in the **Federal Register** on March 31, 1988 (53 FR 10410). Specifically, the Commission would require that independent public accountants (IPA's) comply with Statement on Auditing Standards No. 35 (SAS No. 35) and the American Institute of Certified Public Accountants' (AICPA) *Statement on Standards for Attestation Engagements* (Attestation Standards) [1] when preparing railroad audit reports using agreed-upon procedures.[2]

**DATE:** The adoption of these standards will become effective on September 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** William F. Moss, III, (202) 275-7510. [TDD for hearing impaired: (202) 275-1721]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289-4357. Assistance for the hearing impaired is available through TDD services on (202) 275-1721.

This action will not significantly affect either the quality of the human environment or energy conservation. This decision will not have a significant economic impact on a substantial number of small entities.

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[1] SAS No. 35, *Special Reports—Applying Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement*, was issued by the Auditing Standard Board of the AICPA in April, 1981.

*Statement on Standards for Attestation Engagements* was issued by the Auditing Standards Board and the Accounting and Review Services Committee under the authority of the AICPA in March, 1986.

[2] Ex Parte No. 460, *Certification of Railroad Annual Report R-1 by Independent Accountant*, served on October 11, 1985, established that IPA's shall perform rail audits using agreed-upon procedures.

This revision will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503.

**Authority:** 49 U.S.C. 11142 and 11145; and 5 U.S.C. 553.

Decided: August 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-18259 Filed 8-11-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB-167; Sub-No. 1088X]**

## Consolidated Rail Corp.; Abandonment Exemption

Applicant has refiled a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 23.95-mile line of railroad between milepost 66.05 at Cadiz Junction, Harrison County, OH, and milepost 90.0 in Dennison, Tuscarawas County, OH.[1]

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years, (2) any overhead traffic on the line can be rerouted over other lines, and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 11, 1988, unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues[2] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[3] must be filed by August 22, 1988, and petitions for reconsideration,[4] including environmental, energy, and public use concerns, must be filed by September 1, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Charles E. Mechem, Consolidated Rail Corporation, Room 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environment assessment (EA). SEE will serve the EA on all parties by August 17, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-18262 Filed 8-11-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] Applicant's notice of exemption filed on May 24, 1988, was rejected because it did not meet certain environmental reporting requirements. Applicant's notice of exemption filed June 17, 1988, and published July 7, 1988, in the **Federal Register** was withdrawn because it contained an erroneous statement. All pleadings and correspondence submitted in response to prior notices remains part of the record and need not be refiled.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[3] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** December 22, 1987 (52 FR 48440-48446).

[4] The comments opposing the proposed abandonment that already have been filed as well as any other comments and petitions for reconsideration or stay that may be filed by the August 22, 1988 and September 1, 1988 due dates will be addressed by the Commission in a subsequent decision(s).

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Labor Advisory Committee for Trade Negotiations and Trade Policy

The Secretary of Labor and the United States Trade Representative have taken steps to renew the Labor Advisory Committee for Trade Negotiations and Trade Policy. The Committee and subcommittees will be chartered pursuant to section 135(c) (1-2) of the Trade Act of 1974 (19 U.S.C. 2155(c) (1-2), as amended, and Executive Order No. 11846, March 27, 1975 (19 U.S.C. 2111 nt). The charter of the Committee will be filed 15 days from the date of this notice.

The Labor Advisory Committee for Trade Negotiations and Trade Policy consults with, and makes recommendations to the Secretary of Labor and to the United States Trade Representatives on issues of general policy matters concerning labor and trade negotiations, operations of any trade agreement once entered into, and other matters arising in connection with the administration of the trade policy of the United States.

The Committee will meet at irregular intervals at the call of the Secretary of Labor and the United States Trade Representative. The frequency of committee meetings will be approximately two or three times per year, depending upon the needs of the Secretary of Labor and the United States Trade Representative. The Steering Subcommittee will meet monthly. Other subcommittees may meet on an ad hoc basis.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the committee should contact: Mr. Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Frances Perkins Department of Labor Building, Room S5325, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-6565.

Signed at Washington, DC, this 8th day of August 1988.

**Ann McLaughlin,**

*Secretary of Labor.*

[FR Doc. 88-18227 Filed 8-11-88; 8:45 am]

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**Employment and Training Administration**

**[TA-W-20,596]**

**Haven-Busch Co., Grandville, MI; Negative Determination Regarding Application for Reconsideration**

By an application dated July 5, 1988 the International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO, Local #688 requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on June 6, 1988 and published in the **Federal Register** on June 21, 1988 (53 FR 23317).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at Grandville produced fabricated structural steel mainly for the construction of auto plants.

The union claims that imported steel adversely affected worker separations at Grandville because many of the foreign steel producers have found ways to get around the voluntary and mandatory restrictions on imports. It is also claimed that increased imports of autos contributed to the depressed auto plant construction market.

Findings in the investigation show that the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974 were not met in 1987 or in the first quarter of 1988. The Findings show that U.S. imports of fabricated structural steel declined absolutely and relative to domestic shipments in 1987 compared to 1986. U.S. imports of fabricated structural steel continued to decline absolutely in the first quarter of 1988 compared to the same quarter in 1987. In addition, there were increased sales of fabricated structural steel produced at the Grandville facility in the first quarter of 1988 compared to the same quarter in 1987. A list of major projects not awarded to Haven-Busch or cancelled in 1986 and 1987 was submitted by the company. The findings show that the projects which were not cancelled were awarded to other domestic fabricators. Cancelled projects had a substantial adverse impact on Haven-Busch's sales.

The findings also show that the Grandville plant ceased fabricating operations in February 1988 and went into a new business of marketing European building products. The products are electronic revolving doors and tubular space frames used on roofing for atrium settings in hotels. These products are not like or directly competitive with the fabricated structural steel formerly produced at Gransville. According to company officials, the major reasons for the restructuring was the capacity of the fabricated structural steel industry far exceeded domestic demand and the negative impact of the 1986 Tax Law on depreciation and capital expenditures. As a result of the restructuring decision, the company did not submit any bids for steel fabrication projects in 1988.

With respect to the union's claim concerning imports of autos adversely affecting fabricated structural steel production for auto plant construction, the Trade Act, in determining import injury, allows only increased imports of articles like or directly competitive with those produced by the workers' firm. Imported autos are not like or directly competitive with fabricated structural steel for auto plants. Imports of fabricated structural steel must be considered in determining an import impact on workers producing fabricated structural steel.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 28th day of July 1988.

**Robert O. Desloogchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88–18232 Filed 8–11–88; 8:45 am]

BILLING CODE 4510-30-M

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**[TA-W-20,631 and TA-W-20, 632]**

**White Consolidated Industries; Belding Products Co., Belding, MI; Greenville Products Co., Greenville, MI; Negative Determination Regarding Application for Reconsideration**

By an application dated July 11, 1988 the United Auto Workers Locals #137 and #1554 requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by Locals #137 and #1554 of the United Auto Workers on behalf of workers at Belding Products Company, Belding, Michigan and Greenville Products Company, Greenville, Michigan. The denial notice was signed on June 13, 1988 and published in the **Federal Register** on June 28, 1988 (53 FR 24379).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

In addition to newspaper clippings and a memorandum concerning the export of room air conditioner kits to China, the union submitted production data on room air conditioners at Belding for model years 1972 to 1988. The union stated that corporate sales of room air conditioners decreased in 1988 and customers increased their import purchases of room air conditioners.

Findings in the investigation show that production declines and worker separations in 1988 at Belding were the result of a domestic transfer of production from Belding, Michigan to another corporate plant in Edison, New Jersey. Prior to the shutdown, which occurred as part of a plan developed in January 1987, air conditioner production and worker employment at Belding increased in 1987 compared to 1986. As production at Belding declined in the first quarter of 1988 compared to the same quarter in 1987, production at Edison increased, reflecting the transfer. Corporate production and sales of room air conditioners increased in the first six months of 1988 compared to the same period in 1987. Accordingly, the Department sees no adverse impact on room air conditioners.

Investigation findings also show that the purchase of air conditioning kits by China are for training and any assembled kits are intended only for use in China. Export sales would not form a basis for certification.

Workers at Greenville Products Company, Greenville, Michigan produced refrigerators. Sales of refrigerators increased in 1987 compared to 1986 and in the first quarter of 1988

compared to the same quarter of 1987. Production worker employment at Greenville increased over the same periods. Layoffs at Greenville were attributed to bumping privileges exercised by employees separated from WCI's Belding Products Company because of the domestic transfer of production.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the fact which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of August 1988.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88-18322 Filed 8-11-88; 8:45 am]

BILLING CODE 4510-30-M

## Job Training Partnership Act; Indian and Native American Employment and Training Programs

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of final designation procedures for grantees.

**SUMMARY:** This document contains final procedures by which the Department of Labor (DOL) will designate grantees for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA). The next cycle of such designation actions will cover JTPA Program Years 1989 and 1990 (July 1, 1989 through June 30, 1991). Applicants selected for funding in PY 1989 also will be funded in PY 1990 if applicable regulatory requirements are met, and funds are available. This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

**EFFECTIVE DATE:** August 15, 1988.

**ADDRESS:** Send one original and two copies of the Advance and final Notices of Intent to Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: ANOI/NOI Desk.

**SUPPLEMENTARY INFORMATION:** Proposed designation procedures for Indian and Native American Employment and Training Programs under section 401 of JTPA were published in the **Federal Register** on June 17, 1988 (53 FR 22746) for the purpose of soliciting public comment. Written comments were to be sent to the attention of Paul A. Mayrand, Director, Office of Special Targeted Programs (OSTP) on or before July 18, 1988. No written comments had been received as of that date. Accordingly, the procedures for JTPA, section 401 Indian and Native American grantees proposed at 53 FR 22746 (June 17, 1988) are adopted in final for the Program Year 1989–1990 designation cycle.

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**Introduction: Scope and Purpose of Notice**

Section 401 of JTPA authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in JTPA and in the regulations at 20 CFR Part 632. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under JTPA section 401, and designates such entities as Native American grantees, contingent on all other grant award requirements being met. This notice describes how DOL will make such designation decisions for the period of Program Years (PYs) 1989 and 1990 (July 1, 1989 through June 30, 1991). It provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

The amount of JTPA section 401 funds to be awarded to designated Native American grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The specific organization eligibility and application requirements for designation are contained at 20 CFR 632.10 and 632.11. Any organization interested in being designated as a Native American grantee should be aware of and comply with these requirements.

*I. General Designation Principles*

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) Applicants for designation shall comply with the requirements found at 20 CFR Part 632 regardless of their apparent standing in the preferential hierarchy. The basic eligibility, application and designation requirements are found in Subpart B of Part 632.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to program services, and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State-recognized or federally recognized tribe, band, or group on its reservation is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. A reservation organization which may have its service area given to another qualified organization for reasons specified in the regulations will be given a future opportunity to reestablish itself as the designated grantee, should it so desire.

In the event that such a tribe, band, or group (including an Alaskan Native entity) is not designated to serve such groups, the DOL will consult with the governing body of such entities as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit.

(4) In designating Native American grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in this notice.

(5) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past fourteen years under the authority of JTPA Section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing service areas. Consistent with present regulations and other provisions of this notice, this will include preference for those Native

American organizations with an existing capability to deliver employment and training services within an established service area. Such preference will be identified through input from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

*II. Advance Notice of Intent*

The purpose of the Advance Notice of Intent process is to provide Section 401 applicants, prior to the submission of a final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive requests prior to final submission, the Advance Notice of Intent process also serve to alert those whose differences cannot be resolved of the need to submit a complete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential competitors, to resolve conflicts if possible, and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change service area requests in the final Notice of Intent. Therefore, as noted above, final submissions should be prepared with this possibility in mind.

By October 1 of the year preceding a designation year, all organizations interested in being designated as Section 401 grantees should submit an original and two copies of an Advance Notice of Intent. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. Advance Notices are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: ANOI/NOI Desk.

The Standard Form (SF) 424 is no longer used for the advance notification process. As in the PY 1987–1988 designation cycle, DOL will utilize the Advance Notice of Intent. This allows DOL to expedite the identification of potentially competitive applicants.

Complete instructions will be mailed to all current grantees on or about August 15. Incumbents will also receive a description of their present service area at this time. New applicants may request copies of the Advance Notice instructions by writing to: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

The first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants with copies of all Advance Notices of Intent submitted for their area. The notification will occur on or about November 15. The notification will state that organizations are encouraged to work out any jurisdictional disputes among themselves, and to submit a final Notice of Intent by the required postmark or hand delivered deadlines or withdraw their Advance Notice.

Under the Advance Notice of Intent process, it is DOL policy that to the extent possible within the regulations, service areas and the organizations operating in those areas be determined by the community to be served by the program. In the event the Native American community cannot resolve differences, the notification will inform parties that they should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice.

*III. Notice of Intent*

All applicants will submit an original and two copies of a final Notice of Intent, postmarked no later than January 1, 1989, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. *Exclusive of charts or graphs and letters of support, the Notice of Intent should not exceed 75 pages of double-spaced unreduced type.*

Final Notices of Intent are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Room N–4641, 200 Constitution Ave., NW., Washington, DC 20210. Attention: ANOI/NOI Desk.

The regulations permit current grantees requesting their existing service areas to submit a Standard Form 424 in lieu of a complete application. As noted earlier in this notice, current grantees, other than tribes, bands, or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Notice of Intent even if their service area request has not changed.

Although organizations are encouraged to alter their area requests to minimize or avoid overlap with other organizations, they should not add territory to that identified in the Advance Notice of Intent. Unless currently designated for such areas, any organization applying on January 1 for noncontiguous areas shall prepare a separate, complete Notice of Intent for each such area.

It is the DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand delivered deadlines (see Part V, Use of Panel Review Procedure, below). All information provided before the deadline must be in writing.

*IV. Preferential Hierarchy for Determining Designations*

In cases in which only one organization is applying for a clearly identified geographic area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area In cases in which two or more organizations apply for the same or an overlapping area, DOL will utilize the order of designation preference described in the hierarchy below. The organization which falls into the highest category of preference will be

designated, assuming all other requirements are met. The preferential hierarchy is:

(1) *Indian tribes, bands, or groups on Federal or State reservations for their reservation; Oklahoma Indians (see Part VII, Special Designation Situations, below); and Alaskan Native entities (see Part VII, Special Designation Situations, below).*

(2) *Native American-controlled, community-based organizations with significant support from other Native American-controlled organizations within the community for their existing DOL designated service area and all non-incumbent Native American-controlled, community-based organizations that are challenging such incumbents or seeking to serve areas for which the incumbent is not re-applying.* Non-incumbent organizations must submit evidence of significant support from other Native American-controlled organizations within the community.

Competition shall occur only when a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent. Such potential will be determined by the consideration of such factors as the following: completeness of the application; documentation of past experience and Native American-controlled organizational support; and the capability of the incumbent. In the instance of no incumbent, new applicants qualified for this category would compete against each other.

(3) *Organizations (private nonprofit or units of State or local government) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.*

(4) *Non-Native American-controlled organizations without a Native American advisory process.* In the event such an organization is designated, it must subsequently develop a Native American advisory process.

The Chief, DINAP, may convene a task force to assist in making hierarchal determinations. The task force also may perform such technical and advisory functions as determining which areas have more than one applicant for designation, documenting the eligibility of new applicants, and ascertaining the timeliness of final Notice of Intent submissions. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the hierarchy. Within the regulatory time constraints of the designation process, the Chief, DINAP will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion. As indicated earlier, applicants will not be able to provide any information past the January 1 postmark on hand delivered deadlines, and no information will be solicited by DINAP.

*V. Use of Panel Review Procedure*

Competition may occur under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not re-applied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy.

When competition occurs, the Grant Officer may convene a review panel of Federal officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, based on its application, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the final Notice of Intent. The panel results will be advisory to the Grant Officer, not binding. In reviewing information submitted by the organization, the panel will not accept simple assertions. Any information must be supported by adequate and verifiable documentation.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points (20 CFR 632.10 and 632.11).

(i) Previous experience in successfully operating an employment and training program serving Indians or other Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(ii) Previous experience in operating other human resouces development programs serving Indians or other Native Americans or coordinating employment and training services with such programs—10 points.

(iii) Ability to maintain continuity of services to Indian or other Native American participants with those previously provided under JTPA—10 points.

(2) Applicant's Understanding and Program Approach to Fulfilling the Training and Employment Objectives of JTPA Section 401—20 points. (20 CFR 632.2).

(3) Planning Process—20 points. (20 CFR 632.11).

(i) Private sector involvement—10 points.

(ii) Community support as defined below in Part VIII, *Designation Process Glossary*—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11).

(i) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(ii) Experience of senior management staff to be responsible for DOL grant, if designated—5 points.

*VI. Notification of Designation/ Nondesignation:*

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances in which a panel is convened; input from DINAP, OSTP, the Office of Financial and Administrative Management, and the Office of the Inspector General; and any other available information regarding the organization's responsibility. The Grant Officer's decisions will be provided to all applicants by March 1, as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographic area requested in the final Notice of Intent. The Grant Officer may make the designation applicable to all of the area required, a portion of the area requested, or, if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *Non-designation Letter.* Any organization not designated, in whole or in part, for an area requested will be

notified formally of the non-designation and given the basic reasons for the determination. An applicant for designation that is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13. If an area is not designated for service through the foregoing process, alterantive arrangements for service will be made in accordance with 20 CFR 632.12.

*VII. Special Designation Situations*

(1) Alaskan Native Entities

DOL has established service areas for Alaskan Native employment and training programs based on the following: the boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); the boundaries of major subregional areas where the primary provider of human resource development and related services is an Indian Reorganization Act (IRA)-recognized tribal council; and the boundaries of the Federal reservation in the State. Within these established service areas, DOL has designated the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. These entities have been regional nonprofit corporations, associated corporations established by the regional nonprofit corporation, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 1989–1990.

(2) Oklahoma Indians

DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, service areas have been designated geographically as countrywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information in the most recent Federal Decennial Census of Population. However, in cases in which members of many different tribes reside in a given county, no attempt has been made to apportion those members among all of the respective tribes. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1989 and 1990 to preserve continuity and prevent unnecessary fragmentation.

*VIII. Designation Process Glossary:*

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) Indian or Native American-Controlled Organization

This is defined as any organization with a governing board, more than 50 percent of whose members are Indian or other Native American people. Such an organization can be a tribal government, Native Alaskan or Native Hawaii entity, consortium, or public or private non-profit agency. The governing board must have decision making authority for the section 401 program.

(2) Service Area

This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined finally by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) Established Service Area

This is the area defined by geography or service population which DOL has previously designated as a service area for Indian and other Native American JTPA purposes.

(4) Community Support

This is evidence of active participation and/or endorsement from Indian or other Native American-controlled organizations within the geographic area for which designation is requested. Applicants should provide supporting documentation regarding the nature of such organizations, e.g., evidence of Indian and other Native American control, articles of incorporation or charter, size, membership, etc.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or other Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional critical for community support.

Signed at Washington, DC. this 4th day of August, 1988.

**Paul A. Mayrand,**

*Director, Office of Special Targeted Programs.*

**Herbert Fellman,**

*Chief, Division of Indian and Native American Programs.*

**Robert D. Parker,**

*Grant Officer, Office of Grants and Contracts Management.*

**Roberts T. Jones,**

*Acting Assistant Secretary of Employment and Training.*

[FR Doc. 88–18231 Filed 8–11–88; 8:45 am]

BILLING CODE 4510–30–M

## Review Panel for the Job Training Partnership Act (JTPA) Presidential Awards; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the renewal of the Review Panel for the JTPA Presidential Awards is in public interest in connection with the performance of duties imposed on the Department by section 172 of the Job Training Partnership Act.

The Panel will advise the Secretary of Labor on the selection of the Presiential Awards recipients. The Panel will perform an expert review of the nominations for each of the four award categories and will provide the Secretary with its views and recommendations on the top nominations.

The Panel will consist of training and employment experts representing the private sector, labor, private industry councils, community-based organizations and Federal, State, and local governments. Other than the Federal Government members, the members shall not be compensated and shall not be deemed to be employees of the United States.

The Panel will function solely as an advisory body and in compliance with the provisions on the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the renewal of the Review Panel for the JTPA Presidential Awards. Such comments should be addressed to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, U.S. Department of Labor, ETA, 200 Constitution Avenue NW., Room N–

4469, Washington, DC 20210, Telephone: (202) 535–0577.

Signed at Washington DC, this 8th day of Aug. 1988.

**Ann McLaughlin,**

*Secretary of Labor.*

[FR Doc. 88–18228 Filed 8–11–88; 8:45 am]

BILLING CODE 4510–30–M

## Job Training Partnership Act; Review of Experience

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice; request for comments..

**SUMMARY:** The Employment and Training Administration of the Department of Labor is conducting a review of experience under the Job Training Partnershp Act and is requesting interested parties to submit written comments on issues related to the future quality and effectiveness of the program.

**DATE:** Written comments on the issues discussed in this notice shall be submitted by mail, postmarked no later than September 26, 1988.

**ADDRESS:** Send written comments to: Roberts T. Jones, Acting Assistant Secretary, Employment and Training Administration, Room S2308, 200 Constitution Avene, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lloyd Feldman, Director, Division of Planning, Policy, and Legislation, Office of Strategic Planning and Policy Development, Employment and Training Administration, Room N5636, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535–0664 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Since the enactment of the Manpower Development and Training Act more than a quarter century ago, the United States Government has pursued a policy of active intervention in the labor market through employment and training programs. During the ensuing years, the Nation's employment and training system has evolved through a succession of basic authorizing statutes and amendments e.g., the Comprehensive Employment and Training Act (CETA).

On October 13, 1982, President Reagan signed into law the Job Training Partnership Act (JTPA), the most recent legislative expression of the Nation's job training policy. As in the case of earlier employment and training legislation, the drafters of JTPA sought to build upon past experience, retaining features that had proven effective and modifying or eliminating those that appeared to limit program effectiveness.

The following basic features of JTPA represented major changes in the organization of the program:

- A shift in responsibility for program management from the federal to the State and local governments.
- The assignment of a substantive role to the private sector in the planning and oversight of the program.
- An emphasis on training and related services for participants with a consequent deemphasis on using the program to provide income maintenance or subsidized employment.
- The establishment of performance standards as a key operational component of the program.
- Inclusion of machinery to increase the coordination of employment and training with other human services at the state and local levels.
- Emphasis on services for youth.

With the completion, this year, of five years of operational experience, it was felt that the program had matured sufficiently and patterns of service and performance had been clearly enough established that it would be timely to take stock of the experience to date and to analyze the basic policy issues which must be addressed in charting the future course of JTPA.

Accordingly, DOL has decided to conduct a public review of the JTPA program with an interim report planned for January 1989.

The review will focus primarily on services for economically disadvantaged youth and adults under Titles I and II–A of the Act. However, the scope of the review will include services for dislocated worker (Title III), and disadvantaged youth enrolled in the summer employment program (Title II–B). Activities under Title IV, particularly Indian and Native American programs, will also be considered, where the issues addressed are relevant to these programs.

The ultimate objective of the review will be to enhance the quality of services provided to JTPA enrollees and to explore the potential of the JTPA system to serve as a building block for a comprehensive human resource delivery system. While the results of the review may have implications for the roles of the Federal Government, the States, locally-elected officials and Private Industry Councils (PICs) in Service Delivery Areas (SDAs), the basic relationship of the partners in the delivery system will not be a subject of the review.

The purpose of this notice is to identify the specific issues which will form the core of the agenda for this review. A JTPA Advisory Committee, comprised of representatives of the JTPA system, public interest groups, community organizations, business, labor, education, veterans, and the general public will address and provide advice on these issues. The issues will also form the basis for discussion and comment at meetings held at the State and local levels. The general public will be given an opportunity to react to the issues as a result of publication of this announcement in the **Federal Register**.

### Experience Under The Program

Since the program became operational in 1983, approximately 5 million persons have received services under JTPA, not including youth enrolled in the Summer Youth Employment Program (SYEP). Of these, about 90 percent were served under the two programs administered at the State and local level: Title II–A which provides grants to States and local areas to support locally administered training and employment programs and Title III which provides funds to States to address problems of workers dislocation resulting from plant closings and mass layoffs.

*Title II–A Grants to States and Local Areas*

*Participant Characteristics.* This title was intended primarily to serve the economically disadvantaged and that trust is reflected in the characteristics of the participants. Thus, the Act's requirement that at least 90 percent of Title II–A participants be economically disadvantaged was exceeded (93 percent in Program Year (PY) 1986 (July 1, 1986—June 30, 1987)).

In PY 1986, some 44 percent of the participants in Title II–A were under 22 years of age; the Act requires that at least 40 percent of the funds be used for youth. Approximately 52 percent of the participants were female and 50 to 56 percent were high school graduates, while 27 percent were dropouts and 17 percent were still in school.

On the basis of most characteristics for which data are available, persons, enrolled in the program are representative of the eligible population and these data suggest that the program is targeting those in need. Thus, some 22 percent of the program participants in PY 1986 were Aid to Families with Dependent, Children (AFDC) recipients as compared to 17 percent of the eligible population. Minorities made up half of the enrollment as compared to 39 percent of the eligible population. The percentage of youth enrolled is twice their proportion of the eligible population. However, the education

level of enrollees, while not a perfect measure of competence, does suggest that the program has enrolled those disadvantaged persons with a better prognosis for success than the eligible population. Approximately 58 percent of all participants—and 73 percent of adults—were high school graduates, compared to 49 percent of the eligible population. Also, Hispanics—a group that has sufferd serious labor market problems—constituted ten percent of JTPA enrollment, but 13 percent of those eligible for the program.

*Service Proved.* In PY 1986, 36 percent of the Title II-A participants were in classroom training, 22 percent in on-the-job training (OJT), 19 percent in job search assistance, 9 percent in work experience, and 14 percent in "other" services (*e.g.*, counseling and testing). The distribution of participants among these services tends to vary depending on their characteristics. For example, makes, older enrollees and the better educated tend to be found disproportionately in OJT: youth and minorities tend to be over represented in work experience activities. The median length of stay varies widely among the various kinds of services, from almost 20 weeks for classroom training to 14 weeks for participants in OJT and less than 4 weeks in job search assistance. The average length of stay in the program was 18 weeks.

Under JTPA there appears to have been a marked shift toward activities geared to more immediate and direct placement, such as job search assistance. Together, job search assistance and "other" services account for about one-third of the JTPA enrollment as compared to the less than 10 percent of CETA participants who received direct referral and "other" in services. Approximately 22 percent of JTPA enrollees are in OJT programs—about double the rate under CETA.

*Program Outcomes.* Of those terminationg from Title II–A during PY 1986, 62 percent entered employment. Entered employment rates tended to be higher for males (65 percent), high school graduates (71 percent) and lower for black participants (56 percent) and welfare recipients (54 percent). Among the various program activities, the entered employment rate ranged from 77 percent for job search assistance and OJT to 46 percent for work experience. The rate for classrooms training was 52 percent.

The average hourly wage for those entering employment was $4.72. Wage rates were notably higher for males ($5.04), those with some post high school education ($5.30) and lower for females ($4.49), black participants ($4.55), and welfare recipents ($4.57). By service provided, the highest average hourly rate was achieved by those who were in classroom training ($5.03), followed by terminees from OJT ($4.87), job search assistance ($4.68), and participants in work experience ($4.16). The overall placement rate under JTPA compares very favorably with that achieved under the earlier CETA program; about two-thirds of JTPA terminees placed as compared to one-third under the earlier program. (Data on retention following placement are not available). However, hourly wages for those placed in jobs have increased only marginally over those achieved in the preceding program some eight years earlier; if adjusted for inflation, the average hourly wage is actually lower.

*Role of the Private Sector*—One of the principal changes under JTPA was the substantive role provided for the private sector in planning and administering training and employment programs at the local level through the creation of private industry councils in each designated service delivery area. Currently, there are over 620 PICs, with some 16,000 members, including an estimated 9,000 representatives of the business sector.

### *Title III Dislocated Worker Program*

*Participant Characteristics.* Since Title III focuses on experienced workers, the characteristics of participants in the program are distinctly different from those of Title II–A enrollees. Thus, in PY 1986, only 4 percent of workers enrolled in Title III were under 22 years old (as compared to 44 percent of Title II–A participants), while almost 90 percent were betwen the ages of 22 and 54. Similarly, only one-third of Title III participants were economically disadvantaged compared to over 90 percent of those in the Title II program.

Dislocated worker program participants tend to be relatively well educated with over 80 percent having at least a high school education. Reflecting the eligible population of dislocated workers, enrollment in title III is predominately male (65 percent). Minorities account for 23 percent of the participants as compared to 19 percent of eligible dislocated workers.

*Services Provided.* Under the the dislocated worker program, the primary service provided is job search assistance with half of the participants enrolled in this activity. Classroom training accounts for 26 percent of the enrollees, OJT for 12 percent and "other" services for 12 percent. The characteristic of participants in the various service components are fairly similar. The average length of stay in the title III program is 20 weeks but varies by service provided with the longest duration in classroom training at 23 weeks, followed by about 15 weeks for both OJT and job search assistance.

*Program Outcomes.* Of some 140,000 participants who terminated for Title III dislocated worker programs in PY 1986, 69 percent entered employment. The entered employment rate tended to be higher for males (74 percent) than for females (64 percent), black participants (60 percent) and welfare recipients (45 percent). Entered employment rates were particularly high for those who had been in OJT programs (89 percent).

The average hourly wage rate for terminees from Title III programs entering employment was $8.36. The rate was highest for those terminating from classroom training and job search assistance. Terminees from OJT had the lowest hourly wage rate.

### Issues For The Future

The general objective of this review of JTPA is to determine how the quality and effectiveness of the program can be enhanced and how the program can help in building a coherent local human resource delivery system. In carrying out the review, four general areas of inquiry will be pursued:

- Whom should the program serve?
- What services should be provided and how can the quality of services be improved?
- How can the management tools used in the program be enhanced?
- Should JTPA be coordinated more closely with non-JTPA services and serve other national priorities? Should the public-private partnership under JTPA be broadened?

The key issues in these areas of inquiry, briefly discussed below, will be included in the review process. Public comment is particularly invited on these issues. However, comments on related JTPA subjects, which may not be specifically embraced by these subject areas, may also be submitted.

### Whom Should the Program Serve?

*Eligibility for the Program and Targeting Policy.* Eligibility for Title II–A of JTPA is generally limited to those who are economically disadvantaged, *i.e.*, who meet income criteria issued by DOL. Up to 10 percent of the participants need not meet these income criteria if they have encountered barriers to employment. Title II–A also requires that not less than 40 percent of each SDA's funds be spent on youth, and that school dropouts and AFDC recipients be served on an "equitable basis."

The limited resources available for JTPA programs cannot meet the needs of the entire eligible population. Estimates of the number of disadvantaged youth and adults eligible under the income criteria approach 40 million. Therefore, of necessity, a priority for service must be established among these who are eligible. Within the parameters of the law, eligibility determination is a local decision. JTPA directs SDAs to provide employment and training opportunities to those who can benefit from, and are most in need of, such opportunities and to make efforts to provide equitable services among substantial segments of the eligible population.

Compared to the eligible population, Title II–A programs have served a higher proportion of blacks, youth and AFDC recipients. However, the programs have served a lower proportion of Hispanics and those with less than high school degree. The JTPA system has been criticized for failing to serve those most in need. It has been argued that SDAs tend to focus short-term services on job ready individuals in order to achieve high placement rates with low unit costs and thereby achieve "success." For example, it has been noted that the cost per placement for youth is less than half the national standard. It has been suggested that, with a limited amount of dollars, SDAs may choose to serve the largest possible number of eligible individuals by serving those that can be served at relatively low cost. Performance standards are often cited as the reason for JTPA not serving a more at-risk population. However, national JTPA performance standards allow for local flexibility. They can be adjusted by Governors to reflect client characteristics and local economic conditions. SDAs may also request further adjustment for those with more serious employability problems. Others have taken the position that good management dictates that, within the eligible population, those selected for service should have the best prognosis for success.

The basic policy issue posed is who, within the economically disadvantaged population, should be served under JTPA?

- Should the program serve those disadvantaged individuals who face the most serious barriers to employment because of inadequate basic skills, poor orientation to the demands of the workplace, physical or mental disabilities, and related problems? Or, should the program enroll those individuals who meet the law's income test but are best equipped in terms of education and attitude toward work to succeed in competitive employment?
- What are the best measures of at-risk status or serious barriers to employment? Do they vary from group to group?
- A policy decision on targeting has implications for the services to be provided. Serving those who are most disadvantaged in terms of verbal, quantitative and analytic skills as well as exposure to the discipline of the workplace will require a broader range of services than serving those who are more job ready. What is the optimum range and mix of services which should be provided for these individual subgroups of the disadvantaged population?
- Targeting policy choices will also have cost implications. The broader range of services required to achieve the employability of the most disadvantaged will result in high unit costs—and fewer persons served at a given budget level—than will the lower unit costs associated with serving the least disadvantaged. What are the costs of serving various disadvantaged subgroups? How many individuals should be served at a given budget level?
- What are the benefits and relative return on investment to society in serving various subgroups of the disadvantaged population?
- Policy decisions concerning who is to be served will also have implications for the outcomes which can be anticipated for those participating in the program. A basic issue is the nature of the outcome, itself. Under JTPA, the outcome anticipated for participants is increased employment and earnings and reduced welfare dependency. An alternative—particularly for those subgroups with low basic skill levels—is to establish increased competency levels as an acceptable outcome. In either case, the level of success which can be anticipated will be lower for those with more disadvantaged backgrounds. For example, in PY 1986, of those Title II–A enrollees who were high school graduates, approximately 71% were placed in jobs whereas only 57% of those who were high school dropouts entered employment following the program. High school graduates were placed in jobs paying $4.88 an hour; dropouts' wages at placement were $4.52. What outcome measures should be used for various subgroups of the population and what outcome levels should be anticipated for these subgroups?

What changes should be made in performance standards to assure that these outcomes are adequately reflected?

- In carrying out any changes in policy with respect to who is to be served, what changes—if any—should be made in the law's eligibility requirements and targeting provisions for youth, school dropouts and AFDC recipients?
- Should the Act's provisions allowing up to ten percent of participants to be non-disadvantaged individuals who encounter barriers to employment be revised?
- What non-legislative, administration measures should be taken to implement changes in eligibility/targeting policies?
- Under either current or changed eligibility requirements, what criteria should be used at the operational level to select clients for the program?

*Allocation Formula.* Closely related to the issue of eligibility for the program and targeting policy is the question of the adequacy of the formula used to allocate funds Title II–A. If a change in eligibility/targeting policy is made, consideration should also be given to related changes in the allocation formula. However, even under current policy, questions have been raised about the adequacy of the present formula.

Currently, the formula allocates funds to States using three factors: One-third based on the relative number of individuals residing in areas of substantial unemployment (over 6½ percent unemployed); one-third based on the relative excess number of unemployed (unemployed over 4½ percent); and one-third based on the relative number of economically disadvantaged individuals. The same formula is used to allocate Title II–B (Summer Youth Program) funds, and to distribute State funds under both programs to the local level. The Administration has proposed legislation that would revise the Title II–B allocation formula to better target resources to the population served by that program. The new formula would allocate funds based on the relative number of disadvantaged youth residing in each State and Service Delivery Area.

In recent years, at congressional hearings and elsewhere, concerns have been raised that the JTPA allocation formula does not sufficiently direct resources to where the eligible population is located. The current formula targets resources heavily to areas with high adult unemployment. Unemployment data have been used for allocating employment and training funds because they provide one measure of relative economic hardship and are

available on a current basis. However, since many urban SDAs contain both pockets of extreme poverty an very affluent areas with vigorous economies, employment conditions in these areas may not be the best indicators of their relative need for resources for poor youth and adults. Moreover, cyclical changes in the economy may cause large funding swings under the current formula that may be unrelated to the poverty situation in a local area. Research sponsored by DOL has confirmed that the Title II–A allocation formula does not distribute resources in a fully equitable manner. In particular, it was found that some regions of the country and central cities, where the economically disadvantaged population is heavily concentrated, receive a smaller share of State and local funding than their share of the eligible population would dictate.

A serious information problem complicating this issue is the lack of current data on the relative number of economically disadvantaged individuals in SDAs. Currently, the decennial census is the only available source for these data. With the passage of time, these data become less reflective of the distribution of low income individuals. On the other hand, collection of these data on a more frequent basis would be extremely costly.

The basic issue is whether the Title II–A allocation formula should be changed to more accurately reflect the law's eligibility provisions, either under the current statute or under new, revised eligibility criteria.

- Should any of the current factors—economically disadvantaged, excess unemployment, or unemployment in areas of substantial unemployment—be eliminated?
- Should any of these factors be modified? Should different weights be assigned to these factors?
- Should new factors be added to the formula and, if so, which ones and what data sources should be used?
- If the present factors are retained, should the data currently used to measure the relative number of economically disadvantaged individuals in SDAs be updated? How can this best be achieved and what would be the cost of an alternative to the current use of decennial census data, such as more frequent surveys?
- Should the delivery and funding of services to youth and adults be separated in the legislation with different funding allocation formulas developed for each group?

**What Services Should be Provided and How can the Quality of Services be Improved?**

*Nature and Quality of Services Provided.* The law gives SDAs broad discretion in determining the range and mix of services to be provided to enrollees. A variety of factors enter into SDAs' decisions on the mix and duration of services selected. An important consideration is the nature of the clientele to be served. More disadvantaged individuals generally require more comprehensive services, over a longer period of time, at higher costs, to become employable than do the less disadvantaged.

A second consideration is the occupational objective of a training program; higher level skills usually require longer-term training. More intensive remediation usually requires longer-term training as well. A third factor is the total number of clients to be served. With finite resources available, serving a larger number of enrollees in an SDA will reduce the unit cost—and possibly, the quality—of training provided to individuals. Local decisions on the services to be provided also must rely on the availability of adequate service deliverers. Finally, the existence of the performance standards system has influenced local service strategies although the extent of that influence has been subject to debate.

It has been argued that many SDAs have opted for short duration programs, geared to the least disadvantaged, resulting in maximum enrollment and high placement rates.

The average length of stay in Title II–A in FY 1986 was 16 weeks. It has been contended that programs of 4–5 months duration allow insufficient time to prepare the truly disadvantaged for stable employment at good wage levels.

Others have taken the position that changes under JTPA—emphasis on performance standards, the removal of training allowances; and the influence of the PICs—have all contributed to increased program efficiency under JTPA, thus enabling SDAs to achieve more cost-effective service, during shorter training periods, than was possible under earlier legislation.

In either case, if JTPA is to focus its services on the most disadvantaged members of the eligible population, it can be argued that the program should be limited to basic skills and literacy training. Under this approach, specific occupational skills training would be the responsibility of public and private vocational schools and employers.

Conclusive evidence about the quality of JTPA services is lacking. Duration of training is only a rough proxy for program quality. However, the available data do suggest that there may be some grounds for concern about the services currently being provided. Only one-third of Title II–A enrollees receive classroom training, generally the most substantive service area under JTPA. A larger proportion of enrollees—more than half—receive either on-the-job training or low-cost job search assistance and related services. In general, the low cost per placement under Title II–A suggests that service quality may be less than optimal in many SDAs. The cost per placement has been well below the performance standard level: $2,905 for adults in FY 1986 ($4,374 standard). The cost per positive termination was $2,308 for youth ($4,900 standard).

The central issue to be addressed is whether changes are needed in the nature, mix and quality of services provided under JTPA.

- A key element of this question is whether JTPA should continue to attempt to provide participants with specific occupational skills or should the program focus on remediation, meeting the basic skills deficiencies of enrollees in reading, writing, mathematics and orientation to the workplace. This question particularly arises if a policy of reaching the most disadvantaged is pursued.
- If a policy of remediation is to be pursued, should changes be made in the nature of the outcomes anticipated and the associated performance standards?
- For example, increased levels of basic skills competency, rather than or in addition to placement, may become a more appropriate objective for the program.
- Whether a program emphasis on either remediation or on specific skills training is elected, the policy on eligibility and targeting will have implications for the range and cost of the services to be provided. As noted earlier, a decision to serve the most disadvantaged will require a broader and more costly range of services than will be the case for those in the eligible population who are best equipped for the job market. What primary and supportive services should be provided—and at what cost—to support a policy of serving the most seriously disadvantaged and assuring their eventual placement in stable, well-paid employment?
- What are the best measures of "quality" training—duration, competency-based, individually tailored, self-paced?
- Should the Act's restrictions on the amount of funds which can be used for

supportive services be revised? Should the restriction be relaxed generally or only for specific subgroups in the eligible population? And, if it is to be limited to the latter, how should the eligible subgroup be defined?

• What policy and program approaches should be followed at the Federal, State and local levels to effect changes in the services provided to enrollees: Legislative changes; policy leadership; technical assistance; modification of performance standards and the adjustment models; other courses of action?

*Payment of Stipends, Allowances and Bonuses.* Within the general area of services improvement, concern has been expressed about JTPA's current strict limits on the payment of stipends, allowances or bonuses. The restrictions were included in the law because of a perception that, under previous programs, individuals enrolled in order to receive training allowances and stipends, rather than to increase their employability. It was also felt that participants under JTPA would have other sources of financial support while in the program: Unemployment insurance; AFDC and other welfare benefits; and, in the case of youth, financial assistance from their families.

The law states that not more than 30 percent of each SDA's funds may be spent for the combined costs of administration and supportive services. The latter category includes expenditures for needs-based payments. Because there is a separate limit of 15 percent on administrative costs, this effectively places a limit of 15 percent on the needs-based payment/supportive service cost category. The act allows a waiver of the supportive services cost limitations if specified conditions in a local area are met.

The expenditure rates for supportive services have remained essentially the same since the implementation of JTPA: 11 percent for participant support, including needs-based payments. However, the actual figure may be higher since the cost of some supportive services are charged to "training" under performance-based contracts. While national data are not collected on requests for waivers of the cost limitations, it appears that few requests for such waivers have been filed.

If it is decided to target the program on the hardest-to-serve, there is concern that these "at-risk" individuals will not be able, or willing, to participate in JTPA programs unless stipends and allowances are available to help them with living expenses while they are in training.

Thus, it has been suggested that some liberalization of the restrictions on allowances, stipends and bonus payments is desirable. On the other hand, relaxing these restrictions means that funds may be diverted from training to pay for income support. An indirect consequence could be fewer persons served.

The basic issue is whether JTPA enrollees should receive stipends or allowances while enrolled in the program.

• It had been assumed that individuals enrolled in Title II–A and Title III programs would receive sufficient financial support from non-JTPA sources to allow them to enter and complete the program. Has this been the case? Or are there JTPA-eligible groups which have been discouraged from participating because they lack financial support from non-JTPA sources? Has the lack of financial support for participants forced program planners to shorten the length of training and precipitated higher-than-anticipated dropout rates from the program?

• If a policy decision is made to serve more severely disadvantaged clientele, should the current restrictions on payment of stipends and allowances be revised? If so, should payments be made to all participants or only those who can demonstrate financial need?

• What stipend/allowance levels should be established that would be high enough to provide financial support but not draw individuals into the program in order to receive the allowances?

• If the prohibition against stipends and allowances is retained, should the waiver provisions for supportive services/need-based payments be relaxed?

• Should a system of bonus payments be established which would reward participants for achieving specific levels of competency in the program?

*Performance Standards.* JTPA requires that the Secretary of Labor establish performance standards for each two-year program planning cycle. These performance standards are the centerpiece of JTPA's performance management system and are designed to assure that the Act's objectives are being carried out at the State and SDA levels.

The measures to be used in PY 1988 and 1989 include several that have been used since the beginning of JTPA. Those measures are the entered employment rates for adults, youth and welfare recipients, the average wage at placement, the youth positive termination rate, the cost per entered employment for adults and the cost per positive termination for youth.

For the first time since JTPA's inception, five new performance measures were introduced for PY 1988 and 1989 to reflect prospective labor markets, recent program experience, rising skill requirements and to more closely relate performance standards to the basic objectives of the Act—increased employment and earnings of enrollees and reduced welfare dependency.

Three policy goals guided these performance standards revisions:

• To encourage increased service to individuals at risk of chronic unemployment, especially youth;

• To foster training investments which lead to long-term employability; and

• To increase basic skills and occupational competency-based training for youth.

Since success in the labor market is directly related to basic skills attainment, a new measure of employability enhancement was added to the youth measure. This new youth measure emphasizes helping youth obtain competencies in basic education and job specific skills to meet the requirements of a rapidly changing workplace.

To foster long-term employability development, DOL introduced four new measures of long-term performance focusing on the employment, earnings and job retention of participants 13 weeks after termination.

Governors have the authority to make adjustments to national standards for each SDA to reflect both local economic conditions and special problems addressed by State policy or local programs. The Department provides an adjustment model to assist Governors and, within prescribed parameters, allows Governors to develop their own methods for adjusting standards to meet local conditions. However, few States have made more than minimal adjustments. Most SDAs have also accepted performance standards prescribed by the States and assigned them to service providers with no adjustments for the type of participants served or the services provided.

DOL has increased the Governors' flexibility by allowing the Governors to chose eight of 12 performance standards to be used in judging SDA performance for the period, PY 1988–1989, July 1, 1988–July 30, 1990. Based on past experience, some express concern about whether Governors will take full advantage of this flexibility to align State goals and performance standards

or whether performance standards will continue to be applied on a largely mechanical basis. Others question whether SDAs will take advantage of the flexibility to adjust standards based on the types of people served or special program services provided, or continue across-the-board upward adjustments of SDA-established performance standards for local service providers to ensure that the SDAs exceed standards.

Concern has also been expressed about the Governors' limited use of their incentive grant authority under the Act's "six percent set-aside" provisions that emphasize rewarding SDAs' performance for exceeding standards. In general, the States have not fully used those provisions to achieve State goals in such areas as client targeting. Rewards can be—but are not typically—given to SDAs which serve particularly at-risk participants.

There are two basic issues which should be addressed with respect to performance standards: the standards themselves and the management of the performance standards system. As has been discussed in this notice, major policy changes with respect to the groups to be served under the program have implications for the nature and level of the standards which should measure performance.

On the management side, the general policy issue raised is whether the Federal Government should be more active in assuring that the States and SDAs make more flexible and creative use of performance standards to achieve State and local policy objectives.

- Should States be better informed by the Federal Government about their current flexibility in using incentive funds/additional standards to better achieve State goals in such areas as client targeting or quality training?
- Are the current statutory outcomes—emphasizing placements, retention, and costs—appropriate if JTPA is to serve a more disadvantaged population?
- Would, for example, a measure of employability enhancement be more appropriate for adults? Should there be other employability enhancements beyond current statutory outcomes for youth—for example, learning gains or return to school for recent school dropouts?
- Should there be a Federal definition of youth employment competency?
- Should there be other statutory outcomes for dislocated workers' programs beyond placement and retention in unsubsidized employment?
- Should the States be given greater authority to use six percent set-aisde incentive funds to reward improvements in program quality, performance, and management?
- Should the Federal Government provide more policy direction and technical assistance on how performance standards are to be utilized and how adjustments can be made?
- Should the Federal Government be given greater authority to collect programmatic and performance data to improve national performance measures?
- Should the States be given greater authority to use the technical assistance portion of the six percent set-aside for post-program data collection and program evaluation?

**How Can the Management Tools in the Program Be Enhanced?**

JTPA provided for a basic redeployment of responsibility for the job training program among the Federal, State and local governments and business community. The past five years has been a period of adjustment to these new roles.

This has been an ongoing process. Until 1986, for example, Federal management had been restricted largely to: Publishing regulations; making allotments to the States; establishing a performance-based management system; monitoring compliance with the Act; and preparing an annual report to Congress. In 1986, the Department established a "proactive partnership" with the States. This has included a procedure for DOL to provide policy guidance to the States, a management review process to assist States in identifying problem areas, revisions in the performance management system, and limited technical assistance.

The Governor has continued to retain primary authority for issuing State policy, designating SDAs, making substate allocations, establishing fiscal standards and coordination criteria, reviewing and approving substate plans, selecting performance standards, establishing incentive and sanction policies, monitoring performance, and enforcing the provisions of the Act. The Governor is also responsible for providing technical assistance to enhance performance at the SDA level.

Operational responsibility is lodged at the SDA level. This includes developing plans, establishing groups targeted for service, selecting and funding service deliverers, and ensuring compliance.

Frequently, concerns about specific program weaknesses under JTPA are coupled with criticisms of the management of the program at the Federal, State, and local levels. While Federal policy guidance has been more forthcoming in recent years, it has been argued that further and more timely guidance from the Federal level would be desirable. Others propose that policy guidance from the Federal level should be buttressed by more aggressive monitoring and enforcement activities. The adequacy of the technical assistance and labor market information provided by the Federal Government to the States and by the States to the SDAs have been cited as areas in which improvement is needed.

This review does not envision changes in the basic relationships within the JTPA delivery system. However, within that structure, a central issue to be addressed is whether action is needed to improve the management of the system by the Federal, State and local government and private sector partners and, if action is needed, in which management areas it should take placer.

- How can the communication of Federal policy guidance to the States and from the States to the SDAs be improved, both in terms of precision and timeliness?
- Should technical assistance services in the program be strengthened? In which specific areas of program management would more technical assistance be helpful?
- Is more rigorous Federal financial and program oversight and enforcement needed and in which management areas?
- Is planning and program design carried out effectively at the SDA level? If not, what are the deficiencies and how can they be remedied?
- Do the States and SDAs currently receive labor market information which is adequate, in quality and timeliness to support effective program planning? If better information is needed, what specific initiatives are needed at the Federal, State and local levels to improve the available information?
- Are there problems of excessive staff turnover at the management and staff levels in SDAs? If so, how can these problems be addressed?
- What changes—if any—should be made in the current system of program data collection and analysis?
- In what ways can the program of Federal research and development and pilot and demonstration projects contribute to increasing the effectiveness of program management at the State and local levels?
- In the area of financial management, should the Federal government provide more detailed guidance in such areas as procurement and contracting practices, including

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performance-based contracting, and audit resolution?

**Should JTPA be Coordinated More Closely with Non-JTPA Services and Serve Other National Priorities? Should the Public-Private Partnership under JTPA be Broadened?**

*Coordination.* JTPA stresses coordination at the State level and with public and private agencies at the local level. Two statutory State level coordination mechanisms are: (1) Representation of State educational, rehabilitation and public assistance agencies on the State Job Training Coordinating Council—the advisory board to the Governor charged with oversight of JTPA; and (2) the requirement that the States' planning document establish criteria for local and State coordination with other public agencies or programs. In addition, eight percent of total Title II–A funds that flow to a State must be spent, in part, to increase coordination with educational activities.

A number of public agencies and local organizations sit on local Private Industry Councils, since representation from education agencies, rehabilitation agencies, economic development agencies, and community-based organizations is required by law. SDAs can, potentially, coordinate with vocational education programs at the secondary and post-secondary levels, adult education, vocational rehabilitation, welfare agencies, social service and health agencies in a number of ways to provide supplemental or supportive services to JTPA enrollees. Such arrangements are also possible with other DOL-funded programs, such as Job Corps and the Employment Service.

The decentralized nature of JTPA and other education, social service and health programs potentially allows for considerable flexibility at the State and local levels in coordinating separately-funded and administered services for persons with multiple needs. However, operationally, such coordination has been achieved in only a very few SDAs.

DOL has encouraged the JTPA system at the State and local level to coordinate with education, social, health and other human resource programs and agencies as part of a broader effort to enable the JTPA system to serve disadvantaged clients with multiple needs more effectively. For example, DOL and the Department of Health and Human Services are jointly funding projects to demonstrate how job training, education, social, and health services can be effectively combined to address the needs of several target groups such as at risk youth and families dependent on public assistance. DOL and the Department of Education (DOE) are jointly funding projects designed to link DOE-funded literacy activities with job training for various target groups.

Historically, effort have been made to coordinate employment and training programs with human services funded by other Federal agencies. For a variety of reasons—lack of uniformity in funding cycles, variations in eligibility requirements and other factors such as lack of flexibility, incentives and leadership at all levels—these efforts have not proven successful. However, experience gained in recent demonstration projects and the clear intent of Congress as reflected in the language of JTPA and the Carl D. Perkins Vocational Education Act for example, suggest that renewed efforts should be made in this direction.

The central issue to be addressed is whether, in the future, high priority should be assigned to linking services under JTPA with non-JTPA services in order to provide more comprehensive assistance to JTPA clients.

- Which non-JTPA services—particularly those funded by other Federal agencies—should be linked administratively to employment and training programs under Title II–A and III?
- How can JTPA services be coordinated more effectively with economic development programs?
- Which DOL-funded services can be more effectively linked with the Title II–A and III programs; the Employment Service; Job Corps; unemployment insurance; other?
- What are the best and most flexible administrative devices to achieve linkages: *e.g.*, a case manager system; central intake and referral to all services; cross-referral among service agencies; pooling of funds and establishment of a local human resources "super-agency; a combination of these approaches or other approaches?
- Should further coordination of services be achieved through legislative action of administratively?
- If legislative action is desirable, what modifications are needed in other Federal statues which authorize related non-JTPA services?
- If administrative action is appropriate, what types of action at the Federal and State levels can be most effective in helping SDAs and PICs to achieve linkages at the local level: technical assistance; financial incentives; joint policy guidance to the field from DOL and other Federal agencies; other approaches?
- Should States be encouraged to expand the responsibilities and membership of the State Job Training Coordinating Councils with respect to program coordination?

*Meeting Other National Priorities.* This review assumes that JTPA will retain its basic objectives: Increasing the employment and earnings and reducing welfare dependency among economically disadvantaged and dislocated workers.

However, JTPA—potentially—can serve other national objectives, at the same time. For example, due primarily to demographic factors, the country is beginning to experience labor shortages in specific occupations. These shortages are likely to intensify, at least through the year 2000. Specific U.S. industries will be faced with increasing competitive pressure from abroad. JTPA training could be geared to help address these national problems while also serving JTPA clientele. Training could be targeted to shortage occupations and industries which need trained workers to compete more effectively.

The underlying issue posed here is whether JTPA should continue to be limited to the national objectives currently in the Act or be used to serve other national priorities, particularly in the area of economic policy, as well.

- Are there other national priorities—such as addressing labor shortages and supporting export industries—which can be furthered by the JTPA program and, at the same time, enhance the employment prospects of disadvantaged and disclosed clients? Which additional national goals can best be served by the JTPA program?
- Which approaches should DOL follow to encourage States and SDAs to factor such national objectives into their planning: policy guidance, promotional/education efforts; technical assistance; financial incentives; other approaches?
- Are legislative changes required?

*Broadening the Public/Private Partnership.* In one form or another, the business community has played a role throughout the history of employment and training programs. However, prior to the enactment of JTPA, that role was limited largely to training a small proportion of program participants in OJT programs.

With JTPA, the public-private partnership became a central feature of the job training program. Through the PICs, business was given substantive, partnership responsibilities for planning, providing policy direction and overseeing local JTPA programs.

However, Congress signaled its intent that the PICs carry out a more extensive

role in the community. In amendments to the Wagner-Peyser Act and the Carl D. Perkins Vocational Education Act, the PIC was given responsibility to review the planning for vocational education and the Employment Service at the local level. In addition, by requiring that the PIC be broadly representative of local human service and economic development agencies, the Congress placed the Councils in a position to extend the public-private partnership to areas other than job training.

At present, the PIC is the only Federally-supported entity at the local level that is both funded to provide a wide range of services and, at the same time, structured to represent business, labor, education and other non-Federal human services partners in the community. This unique combination of program resources and broad organizational leverage at the local level opens up the possibility for broadening the local public-private partnership embodied by the PIC. To date, a number of individual PICs have extended their scope of activity beyond JTPA services and have developed active working relationships with local school systems and social service agencies.

The basic issue to be addressed is whether the public-private partnership represented by the PIC should be extended to encompass other human and related services at the local level.

- Which local human and economic services would benefit most from PIC involvement: Public education; social services; economic development; mental health services; others?
- What role should be envisioned for the PIC in these non-JTPA service areas: Link the services to JTPA activities; help assure coordination among the services generally; provide a business/labor market information perspective; review plans to reduce duplication of services; other functions?
- Should the PIC membership be broadened to accommodate this wider role in the community?
- Will widening the partnership role of PIC over-extend the private sector volunteer members of the councils?
- Should PICs be encouraged to pursue a broader role in the community under current legislative authority or are amendments to JTPA and other authorizing statutes necessary?
- How can extension of the local public-private partnership be carried out most effectively, in concert with the locally-elected officials?

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

Date: July 29, 1988.

[FR Doc. 88-18230 Filed 8-11-88; 8:45 am]

BILLING CODE 4510-30-M

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## Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 4 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wage determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefit determined in these dicisions shall, in accordance with the provision of the foregoing statutes, constitute the minimum wages payable of Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I:*

| | |
|---|---|
| District of Columbia: | |
| DC88-1 (Jan. 8, 1988) | pp. 78-81-82. |
| Florida: | |
| FL88-1 (Jan. 8, 1988) | pp. 100-101. |
| New York: | |
| NY88-2 (Jan. 8, 1988) | pp. 687, 697. |
| NY88-3 (Jan. 8, 1988) | pp. 702-708. |
| NY87-7 (Jan. 8, 1988) | p. 739. |
| NY87-13 (Jan. 8, 1988) | p. 803. |

*Volume II:*

| | |
|---|---|
| Ohio: | |
| OH88-29 (Jan. 8, 1988) | pp. 824, 833, 856a. |

*Volume III:*

Alaska:
AK88–1 (Jan. 8, 1988)..... p. 2.
Idaho:
ID88–1 (Jan. 8, 1988)..... pp. 142, 144, 147, pp. 149–150.
Oregon:
OR88–1 (Jan. 8, 1988)..... pp. 302–304, pp. 306–309.
Washington:
WA88–1 (Jan. 8, 1988)..... pp. 360–364
WA88–2 (Jan. 8, 1988)..... pp. 386–388
WA88–6 (Jan. 8, 1988)..... p. 412
WA88–7 (Jan. 8, 1988)..... p. 414

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 5th day of August 1988.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 88–18028 Filed 8–11–88; 8:45 am]

BILLING CODE 4510–27–M

## Mine Safety and Health Administration

**[Docket No. M–88–119–C]**

### Kannan Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kannan Mining Company, Inc., HC 85, Box 2651, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15–15608) locate in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies would result in a diminution of safety to the miners affected because the cabs or canopies would limit the operator's visibility. The cabs or canopies could strike roof supports due to uneven roof and soft or uneven bottom. The cabs or canopies could also cut electrical cables, resulting in electrical shock.

Petitioner further states that if cabs or canopies are used, ventilation would be difficult to maintain. The limited visibility would result in the face curtains being torn down.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (September 12, 1988). Copies of the petition are available for inspection at that address.

Dated: August 8, 1988.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 88–18323 Filed 8–11–88; 8:45 am]

BILLING CODE 4510–43–M

## Occupational Safety and Health Administration

**[V–88–2]**

### Bendix Friction Materials Division of the Automotive Sector of Allied-Signal Inc.; Application

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTIONS:** (1) Notice of application for variance and interim order; and (2) Grant of interim order.

**SUMMARY:** This notice announces the application of the Bendix Friction Materials Division of the Automotive Sector of Allied-Signal Inc. for a temporary variance and an interim order pending a decision on the application for variance from the regulation prescribed in 29 CFR 1910.1001(o)(2)(viii) concerning start-up dates for methods of compliance with the Occupational Standard for Exposure to Asbestos. It also announces the granting of an interim order until a decision is rendered on the application for a variance.

**DATES:** The effective date of the interim order is September 12, 1988. The last date for interested persons to submit comments is September 12, 1988. The interim order shall remain in effect until October 20, 1988 or until a decision is rendered on the application for variance, whichever occurs first.

**ADDRESS:** Send comments or requests for a hearing to:
Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:**
James J. Concannon, Director, Office of Variance Determination, at the above address, Telephone: (202) 523–7193
or the following Regional and Area Offices:
U.S. Department of Labor, 201 Varick Street, Room 670, New York, New York 10014
U.S. Department of Labor, Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, Room 132, Albany, New York 12207

**SUPPLEMENTARY INFORMATION:**

**Notice of Application**

Notice is hereby given that the Bendix Friction Materials Division of the Automotive Sector of Allied-Signal Inc., facility located at Cohoes and Tibbits Avenue, Green Island (Troy), New York 12181 has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance and an interim order pending a decision on the application for a variance from the standard prescribed in 29 CFR 1910.1001(o)(2)(viii) which specifies July 20, 1988 as the start-up date for 29 CFR 1910.1001(f)(1) which requires engineering controls and work practices to reduce and maintain employee exposure to asbestos to or below the exposure limit to the extent feasible.

The applicant is the Bendix Friction Materials Division of Allied-Signal inc., with offices at 20650 Civic Center Drive, P.O. Box 5029, Southfield, Michigan

48086. The facility in New York for which this application is filed is engaged in the manufacture of brake linings, including friction materials containing asbestos.

The applicant certifies that employees who would be affected by the variance have been informed of the application by posting copies at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing. A copy of the application was given to the applicant's authorized employee representative.

Regarding the merits of the application, the applicant contends that it is unable to come into full compliance with the engineering control requirements of § 1910.1001(f)(1) by July 20, 1988 primarily because unanticipated geological conditions have been encountered by the contractor excavating for the underground foundation and storage area within the factory building for a sludge settling tank. The applicant has submitted an affidavit which states that the contractor has encountered rock formations that were not encountered in the test boring program, putting off the Applicant's compliance date to October 20, 1988.

The applicant contends that the engineering and work practice controls selected in its attempt to come into compliance with the requirements of § 1910.1001(f)(1) of the Asbestos Standard will cost an estimated $2,900,000.00. The modifications include conversion of the current dry operation to a wet process which is in an enclosed area and automated so as to reduce employee exposure to the manufacturing process. With the shift to the wet process, a settling tank becomes a necessary component.

The applicant states that the installation of the new system was scheduled to begin during the annual plant shutdown in July, with debugging complete by September. To comply with § 1910.1001(o)(2)(viii) effective date of July 20, 1988, the applicant has also planned an inventory buildup during the Spring of 1988 to carry it through the estimated mid-August completion date so that there would be no operation of the existing dry mix line during the period from July 20, 1988 through the anticipated start-up of the new line by September 1, 1988.

The applicant contends that the replacement of the existing dry-mix production lines with an automated single process wet mix production line is a major component of its compliance program. The replacement requires the excavation for and installation of a sludge tank to accommodate the new wet method of recovering dust from cutting and grinding operations. The dimensions of the tank are 44 feet by 15 feet and 12 feet deep. The actual excavation and foundation are, of course, even larger.

The applicant says that the contractor has further advised that the 14-week schedule cannot be shortened substantially in spite of the applicant's willingness to authorize overtime and scheduling of a second shift, because it is unable to obtain the necessary laborers. The labor shortage is attributable to recent increases in construction work in the region.

The applicant contends that, as a result of customer demand, it now appears that they must resume limited production operations with the existing dry mix line during this period to supply its customers in the auto industry or there is the risk of shutting down automobile production lines at Ford and Chrysler resulting in economic and personal dislocation. To permit continued production, the applicant is therefore requesting an interim order in addition to a temporary variance.

The applicant states that during the period for which the variance and interim order are being sought, it will continue to adhere to the existing comprehensive asbestos control program, which is described in its application as "Methods of Compliance Program," including the required housekeeping, respiratory protection program, medical surveillance, air sampling, employee training and continued designation of regulated areas.

The applicant states that it will make every effort to achieve compliance as quickly as possible, including the addition of a second shift or use of additional overtime in the event its contractor can overcome the labor shortage which have, in part, resulted in this request for variance.

**Grant of Interim Order**

It appears from the application for a temporary variance and interim an order that, as required by section 6(b)(6)(A) of the Act, the Bendix Friction Materials Division of the Automotive Sector of Allied-Signal Inc., Cohoes and Tibbits Avenue, Green Island (Troy), New York 12181 is unable to comply with the requirements of 29 CFR 1910.1001(o)(2)(viii) by the date required by the standard. It appears that the applicant is taking all available steps to safeguard its employees during the time needed to come into compliance with the standard. It further appears that an interim order is necessary to prevent undue hardship to the applicant and its employees pending a decision on the variance. Therefore, it is ordered, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.10(c) and in Secretary of Labor's Order No. 9–83 (48 FR 35736), that the applicant shall continue to enforce the existing comprehensive asbestos control program as described in its application. All other provisions of the Asbestos Standard are unaffected by this order and therefore must be complied with in conjunction with the terms of this order.

As soon as possible, the applicant shall give notice of this interim order to affected employees by the same means required to be used to inform them of the application for a variance.

This interim order shall remain in effect until October 20, 1988, or until a decision is rendered on the application for variance, whichever is the earlier.

Signed at Washington, DC, this 8th day of August, 1988.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

[FR Doc. 88–18229 Filed 8–11–88; 8:45 am]

BILLING CODE 4510-26-M

## Pension and Welfare Benefits Administration

### Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, September 8, 1988, Room N–3437C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. General Business of the Advisory Council.

2. Status report of the Access to Health Work Group.

3. Status report of the Retiree Health Work Group.

4. Status report of the 415 Limit Committee.

5. Reporting and Disclosure Work Group to complete review of remaining items on Financial Reporting.

6. Open Discussion of Special issues:

(a) National Retirement Income Policy.

(b) Other.

7. Statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before September 6, 1988, to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC. 20210. Individuals wishing to address the Advisory Council should forward their request to the Deputy Executive Secretary or telephone (202/523–8753). Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1988.

Signed at Washington, DC, this 9th day of August, 1988.

**David M. Walker,**

*Assistant secretary for Pension and Welfare Benefit Administration.*

[FR Doc. 88–18320 Filed 8–11–88; 8:45 am]

BILLING CODE 4510–29–M

## Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Access to Health Care of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Friday, September 9, 1988, in Room N–3437C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This eight member work group was formed by the Advisory Council to study issues relating to access to health care. The purpose of the September 9 meeting is to obtain further testimony bearing on the potential impact and implications of proposed access to health care legislation—both at the federal and state level—with respect to the Department of Labor's role under ERISA. Of particular interest in this regard are the issues raised by legislative proposals based on an employment relationship as contrasted with non-employment based proposals. On July 13, 1988 the Work Group received testimony concerning the recently enacted Massachusetts access to health care legislation, Senator Kennedy's bill, S–1265, The Minimum Health Benefit For All Workers Act of 1987, alternative approaches endorsed by the Health Insurance Association of America, and areas of interest and concern being explored by the Small Business Administration and Department of Labor's Office of Research & Economic Analysis. At the July 13 meeting testimony was received mainly from public officials. The Work Group now wishes to provide an opportunity to employee representatives, employer representatives, service providers, the medical profession, and other interested individuals and groups with a vital interest in the subject matter, to present their views and or submissions for the Work Group's consideration.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 6, 1988 to William E. Morrow, Deputy Executive Secretary ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1988.

Signed at Washington, DC, this 9th day of August, 1988.

**David M. Walker,**

*Assistant Secretary for Pension and Welfare, Benefits Administration.*

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## NUCLEAR REGULATORY COMMISSION

## Abnormal Occurrences for First Quarter CY 1988; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The abnormal occurrences are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, vol. 11, No. 1 ("Report to Congress on Abnormal Occurrences: January–March 1988"). This report will be available in the NRC's Public Document Room, 1717 H Street, NW., Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

### Nuclear Power Plants

*88–1 Potential for Common Mode Failure of Safety-Related Components Due to a Degraded Instrument Air System at Fort Calhoun*

One of the general AP criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an abnormal occurrence. In addition, one of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abormal occurrence.

*Date and Place*—September 23, 1987; Fort Calhoun, a Combustion Engineering-designed pressurized water reactor, operated by Omaha Public Power District, and located in Washington County, Nebraska.

*Nature and Probable Consequences*—While the licensee was performing a surveillance test of emergency diesel generator (EDG) 2, the EDG tripped off due to high temperatures in the engine cooling water system. Investigation revealed an instrument air problem (water in the system) which could have resulted in a potential for common mode failure of redundant EDG 1 and other safety-related components at the plant.

Many U.S. light water reactors rely upon air systems to activate or control many safety-related, as well as many non-safety related, components. The instrument air system activates pneumatic controls, valves, dampers, and similar devices on the components. Through the years, there have been numerous problems caused by either failures in the air system components, or failures in air-controlled components which have been degraded by contaminated air. Many problems have been caused by air system design, operation, or maintenance deficiencies. The circumstances associated with the Fort Calhoun event are as follows.

During May 1985, the licensee modified its fire-protection sprinkler system in the diesel generator rooms, where extremely cold weather had caused water to freeze and crack the pipes. Rather than keep this piping filled with water all the way to the sprinkler head, the licensee devised a "dry pipe" arrangement by which pressurized air would fill the pipe for several feet upstream from the sprinkler head, keeping water in check that would be released in the event of a fire. To accomplish this, the instrument air system was connected to the sprinkler system, and check valves were installed to keep water from flowing back into the air pipes. However, the licensee failed to establish a test program that would assure that the check valves would perform satisfactorily in service.

On July 6, 1987, these check valves failed to work, and water entered the air system after the licensee had tested its "dry pipe" sprinkler. After this incident, the licensee cleaned and inspected the check valves to see that they operated, then reconnected the two systems. However, the licensee failed to assure that the cause was properly determined and that appropriate corrective actions had been taken. For example, no dew point measurements were taken to verify that the air system complied with the design bases for the dewpoint maximum limit; and no review was performed to determine whether or not other instrument air/pressurized water interfaces existed. In addition, even though a formal program was established to perform blowdowns of the air system, the air accumulators for the EDG air motors were not included in either the piping drawings or procedures; therefore the accumulators were not checked for the presence of water.

On August 25, 1987, the licensee again found water in the instrument air system, discovering this time that the situation resulted from an interconnection with an air-actuated valve in the plant's potable water system.

On September 23, 1987, after EDG 2 tripped on high temperature during a surveillance test, the licensee determined that the most likely cause of the event was the failure of the exhaust damper on the diesel radiator to open. Without the damper open, no radiator cooling air flow was available and the engine cooling water temperatures increased.

The licensee disassembled the air motor used for opening and closing the radiator exhaust damper and found an accumulation of water in the motor air accumulator, apparently from the July 6, 1987 water intrusion event. The licensee found that the pilot valve used to direct air into the motor was coated with a gummy substance. The radiator exhaust damper air motor uses the plant instrument air system as a prime mover. The licensee cleaned up and reassembled the air motor on EDG 2. Subsequent testing on the EDG 2 damper indicated the damper operated satisfactorily.

Subsequently, the air motor on EDG 1 was disassembled and the same problem was found as in EDG 2. It was also cleaned up, reassembled, and tested satisfactorily.

*Cause or Causes*—The root cause of this incident was due to a breakdown in the ability of management to control activities that affect quality at the Fort Calhoun Station. A plant system had been modified without adequate evaluation of the safety implications and improper testing following the modifications. This breakdown resulted in the plant being operated in an unanalyzed condition where a potential for common mode failure condition existed.

Actions Taken To Prevent Recurrence

*Licensee*—An extensive corrective action program has been undertaken to ensure that all water is removed from the air system and to ensure that all safety-related components function normally. The interface between the instrument air system and the diesel generator fire protective system has been removed. A walk down of the entire plant instrument air system was made to assure that any other interconnections to the fire protection system were either isolated or removed.

More frequent inservice testing inspections (ISI) will be performed on various components operated by the instrument air system until there is assurance that they have not been adversely affected. For components that cannot be tested during plant operation, justification is to be provided to continue operation until the next scheduled or forced cold shutdown in excess of 48 hours.

*NRC*—An initial inspection was performed by NRC Region IV during the period of September 23 through October 2, 1987. The inspection findings were formally sent to the licensee on October 23, 1987. On October 29, 1987, an enforcement conference was held with the licensee at the NRC Region IV office to discuss the issues related to the event.

A special review team from NRC Region IV performed a follow-up inspection during the period of November 2–6, 1987. The inspection findings were formally sent to the licensee on December 10, 1987.

During the inspection, several violations of NRC requirements were found. Consequently, on February 22, 1988, the NRC issued to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $175,000.

The licensee was cited for modifying a plant system without adequately evaluating the safety implications, including the possibility that water in air lines could simultaneously disable several safety systems. The licensee was further cited for failing to (1) test the check valves designed to prevent water from backflowing into the air lines; (2) provide appropriate instructions or procedures to personnel involved with the modified systems; (3) recognize the inoperability of the disabled diesel generator or test the second diesel for operability; (4) declare an "unusual event" when the diesel generator was inoperable; (5) notify the NRC promptly of these conditions; and (6) correct the degraded safety conditions promptly and adequately.

Instrument air system problems are being addressed generically by NRC in several ways. A staff task group is continuing to examine the need for further improvements in instrument air systems under Generic Issue 43, "Reliability of Air Systems." Operating experience is being updated and fed back to the industry, such as the updated case study NUREG-1275, Vol. 2, "Operating Experience Feedback Report—Air System Problems," published in December 1987, and NRC Information Notice No. 87-28, Supplement 1, "Air System Problems at U.S. Light Water Reactors." NRC activities focused on improving air systems are continuing.

The licensee has paid the civil penalty. The NRC will assure that the corrective actions proposed are complete and satisfactorily implemented.

**88-2 Common Mode Failures of Main Steam Isolation Valves at Perry Unit 1**

One of the general AO criteria notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, one of the AO examples notes that major degradation of fuel integrity, primary coolant pressure boundary, or primary containment boundary can be considered an abnormal occurrence. Also, another AP example notes that recurring incidents which create major safety concern can be considered an abnormal occurrence.

*Date and Place*—October 29 and November 3, 1987; Perry Unit 1, a General Electric-designed boiling water reactor, operated by Cleveland Electric Illuminating Company, and located in Lake County, Ohio.

*Nature and Probable Consequences*—On both of the above dates, Unit 1 experienced a common mode failure during testing of the "D" steam line main steam isolation valves (MIVs). Both the inboard and outboard "D" MSIVs filed to close within the required time limit.

The MSIVs are part of the primary system and are provided to limit the release of radioactive materials to the environment or to limit reactor vessel inventory loss during a design basis accident. Therefore, the failures of both the inboard and outboard "D" MSIVs to fast close were major degradation of the primary containment boundary and costitute a major degradation of safety-related equipment. The severity of a radioactivity release outside containment depends on the total that radioactive steam escapes to the environment and the activity level in the reactor collant system during that event. The circumstances associated with the events are as follows.

The Perry Unit 1 has four main steam lines which carry steam from the reactor to the plant's turbine-generator. Eadh line hs two automatically operated MSIV valves—oneinside the reactor containment (inboard MSIV) and one outside (outboard MSIV)—which are designed to close quickly in the vent of a steam line rupture. One valve closing would be sufficient to stop the flow of steam, which contains radioactivity and which could be released to the environment through a ruptured pipe, if the other valve did not close.

The valves are periodcially tested to assure that they meet the required test closure time of five seconds in what is called the "fast closure test." The valves are operated by pneumatic pressure and by compressed springs. Closure of the MSIVs is controlled by Automatic Switch Company (ASCO) dual solenoid valves.

On October 29, 1987, as part of the startup test program the licensee test each MSIV valves (two on each steam line). The twovalves on the "D" steam line an done on a second line failed to close in the five second test period. Subsequent testing, however, showed the vlaves to meet the test criteria, and the unit remained in operation.

On Novebmer 3, 1987, the valves were retested at the request of NRC Region III, prior to the licensee performing a full reacator isolation test (which involves simultaneous closure of all MSIVs) in its startup test program. The two "D" MSIVs again failed to close within the time limit—one closed in 18 seconds and the second did not close until the valve switch was cycled again in the control room after about 160 seconds. The licensee commenced an orderly shutdown of the reactor to develop a disassembly and troubleshooting program.

The licensee found that the elastomer discs and O-rings in the ASCO solenoid valves which controlled the failed MSIVs showed significant deterioration and degradation. It was concluded that the most probable cause was prolonged exposure of the ASCO solenoid valves to a high temperature environment, resulting from steam leaks in the vicinity of the valves. These valves were not intended nor designed for use in such conditions. The licensee replaced or rebuilt all of the ASCO solenoid valves associated with operation of the MSIVs. The plant resumed operation November 13, 1987, and successfully completed the full reactor isolation startup test.

On November 29, 1987, the licensee was performing a different test on the MSIVs—a fast closure operability check—when it was determined that the inboard valve on the "B" steam line would not close and stay closed as it should during the test. Again, the licensee commenced an orderly shutdown of the reactor to determine the cause of failure.

Disassembly and inspection of the failed ASCO valve revealed the presence of a sliver, and two smaller particles, of foreign material in the solenoid housing assembly. The foreign material was deteriorated body gasket materials that had remained inside the valve when it was rebuilt in early November. The licensee concluded that the sliver of material caused mechanical binding of the solenoid valve.

The licensee replaced all of the dual solenoid valves (including the ones previously replaced earlier in November). The plant was restarted on December 8, 1987.

The licensee performed an analysis of the radioactivity expected to be released to the environment if a steam line was not isolated for 18 seconds and a steam line break occurred outside containment. Their analysis assumed that other mitigating systems (ECCS) performed as designed. The maximum primary coolant activity permitted by technical specification operating limits was assumed plus any additional activity which may be released as a result of reactor scram and vessel depressurization, but no additional fuel failures as a result of the postulated accident. Calculation results using the mass release used in the FSAR and data used for a GE computer code were about 192 rem and 80 rem, respectively, for thyroid dose at the exclusion boundary. Their calculation predicted that Part 100 limits (300 rem) would have been exceeded if the line remained unisolated for 79 seconds or greater.

NRC staff, using conservative design basis loss of coolant accident source terms, determined that 10 CFR Part 100 limits would be exceeded for such an event with two redundant MSIVs failing to fast close within 18 seconds. This is the limiting case and would exceed the releases for other design basis events such as a steam line break outside containment.

In this case, the root cause of the events (deterioration due to high temperature) may have, over time, caused further deterioration of the valves that failed, as well as deterioration of additional valves. Therefore, there was serious concern regarding the reliability of the MSIVs to perform their safety function to mitigate the consequences of design basis accidents.

The NRC sent fact-finding Augmented Inspection Teams (AITs) to the site after both the November 3 and November 29, 1987 events to determine the cause(s), conditions, and circumstances of the MSIV failures.

*Cause or Causes*—For the October 29 and November 3, 1987 events, the AIT determined that the most probable cause of the testing failures was a malfunction of the ASCO solenoid valves that operate the MSIVs due to deteriorating parts inside the solenoid valves. The deterioration occurred as a result of high temperatures caused by steam leaks in the vicinity of the valves. The deteriorated parts impeded the operation of the solenoid valves.

For the November 29, 1987 event, the AIT concluded that deteriorated materials had remained inside the solenoid valve when it was rebuilt in early November. These materials impeded the valve operation.

Actions Taken To Prevent Recurrence

*Licensee*—The licensee increased its testing frequency for MSIVs with the new solenoid valve actuators and modified its maintenance procedures to require replacement or complete rebuilding rather than repair of any malfunctioning solenoid valves.

The licensee repaired the steam leaks and installed temperature monitors to detect any future steam leaks which could degrade the ASCO solenoid valves.

*NRC*—As previously mentioned, NRC AITs were sent twice to Perry Unit 1.

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While primarily fact finding missions, the AITs also identified a number of issues (which were given to the licensee for its consideration) which may be examined for possible enforcement in subsequent inspections. The AIT report (Inspection Report No. 50–440/87–24) covering the October 29 and November 3, 1987 events was sent to the licensee on January 22, 1988. The AIT report (Inspection Report No. 50–440/87–27) covering the November 29, 1987 event was sent to the licensee on February 10, 1988. NRC issued Information Notice No. 88–43, "Solenoid Valve Problems," on June 23, 1988, addressing the technical details and concerns identified by this event and several others.

*88–3 Craked Pipe Weld in Safety Injection System at Farley Unit 2*

One of the AO examples notes that a major degradation of fuel integrity, primary coolant pressure boundary, or primary containment boundary can be considered an abnormal occurrence. The specific reportability consideration of this pipe weld failure is due to the possible generic implications from a thermal cycle mechanism not previously experienced in the industry.

In addition, the event raised possible generic implications; another AO example notes that incidents with implications for similar facilities (generic incidents), which create major safety concern, can be considered an abnormal occurrence.

*Date and Place*—December 9, 1987; Farley Unit 2, a Westinghouse-designed, 3-loop pressurized water reactor, operated by the Alabama Power Company (the licensee) and located in Houston County, Alabama.

*Nature and Probable Consequences*—An unisolable leak was discovered in a safety injection system (SIS) pipe while Unit 2 was being restarted after a refueling outage. The significance of this event is that a generic safety question may exist in that more than one unisolable emergency core cooling system (ECCS) pipe failure may occur. Subjecting the flawed piping to excessive stresses induced by a seismic event, water hammer or other cause, conceivably could result in simultaneous double-ended failure of more than one ECCS pipe. The circumstances associated with the event are as follows.

The licensee had noted increased moisture and radioactivity (1000 to 2000 counts per second) within containment. The unidentified leak rate for the reactor coolant system (RCS) was determined to be 0.7 gpm. The technical specifications permit leakage up to 1.0 gpm. After entering containment to identify the location of the leak, licensee personnel determined that the leak could not be isolated. The reactor was taken to cold shutdown to facilitate repair.

After failing to detect crack indications by liquid penetrant testing (PT) methods, the licensee located an indication of a through-wall crack using ultrasonic testing (UT) in the 6-inch ECCS piping connected to the cold leg of RCS loop B. The indication was located at a weld connecting an elbow and a horizontal pipe section between the isolation check valve (VO51B) and the reactor coolant piping. The indication was on the bottom of the pipe and extended circumferentially 60 degrees in both directions from the bottom inside of the pipe. The crack, which was confirmed by radiography, extended through the wall for approximately one inch at the center of the indication and extended about six inches on the inside piping surface.

The licensee initiated a progressive UT examination plan for those welds adjacent to the cracked weld and for all similar system welds on all three loops in both Unit 1 and Unit 2. The examination included three welds in Unit 2 loop B cold leg of the SIS, upstream of valve VO51B. The examination did not reveal any relevant UT indications.

A complete system walkdown of all three SIS loops in both Units 1 and 2, performed to determine if any pipe restrictions, leakage, or other problems were evident, identified no additional significant problems.

The faulted piping assembly (containing the vertical pipe, the elbow and the horizontal pipe) was shipped to the Westinghouse Research and Development Laboratory in Pittsburgh, Pennsylvania for evaluation. The metallurgical examinations were performed on a three inch wide ring section containing the weld joint exhibiting the circumferential cracking. The evaluations included surface examinations, metallographic examinations, fractographic examinations and chemistry evaluations.

Based on the results of these evaluations, it was concluded that the observed cracking in the SIS pipe to elbow joint was caused by a high cycle fatigue mechanism. Stress concentration at the knee of the standard counterbore region and normal surface machining grooves contributed to the crack initiation. Neither weld defects nor corrosion attack contributed in any significant way to the joint failure.

The visual and metallographic examinations showed that the weld had failed as a result of fatigue after roughly one million stress cycles. The licensee examined the operating records and determined that the number of stress cycles imposed, by starting up and shutting down the plant and by SIS initiation, was significantly less than the relevant design criteria.

On the basis of this information, the licensee postulated that the weld stress loads were either (1) thermal and created by valve leakage or convective flow cells or (2) mechanical and created by flow-induced vibrations. To test these postulations, the licensee replaced the failed piping and installed sensors for temperature and acceleration near the location of the failed weld and on the other side of the check valve at a location about two feet upstream of the failed weld. The licensee also installed sensors at similar locations on the ECCS pipe connected to RCS loop C.

Following repair, the reactor was restarted and taken to steady state full power operation. Data obtained demonstrated that there was an adverse temperature distribution in the loop B ECCS piping. The maximum circumferential temperature difference at the location of the failed weld was about 215°F. Further the temperature at the bottom of the pipe fluctuated as much as 30°F in 30 seconds. This difference in temperature distribution was caused by failure of a valve in the bypass pipe around the boron injection tank to seat properly. This leading valve is believed to have set up a thermal cycling leading to failure of the weld. Leakage through the valve apparently caused the check valves in the loop B ECCS pipe to partially open, or chatter, admitting relatively cold coolant to the unisolable portion of the pipe between the nozzle and the first check valve. Thus, cold water on the bottom of the pipe created thermal stress which was cyclic in nature causing excessive stresses and a resultant pipe crack.

Data from the temperature sensors for loop C ECCS piping indicated that the check valves in that pipe were not chattering and that the temperature distribution was normal. Further, none of the accelerometers indicated adverse mechanical stress cycling.

The event may have generic safety implications for other plants which have dual purpose pumps used for charging the RCS with coolant during normal operation and for injecting emergency core coolant at high pressure following an accident. During normal operation, with one of the pumps providing charging flow to the RCS via the normal charging piping and with a leaky valve allowing coolant to flow to the ECCS manifold, pressure in the manifold will exceed RCS pressure. This would allow

check valves in the ECCS piping to open admitting relatively cold coolant to the RCS. The flow rate via this additional path or paths would be determined by the amount of leakage through the leaking valve. If the check valves in more than one ECCS pipe open, then more than one unisolable ECCS system leak may occur. Subjecting the weakened piping to excessive stresses induced by a seismic event, water hammer, or some other cause conceivably could result in simultaneous double-ended failure of more than one ECCS pipe.

*Cause or Causes*—As discussed in more detail above, the cause of the pipe cracking was attributed to valve leakage which resulted in thermal cycling of the pipe.

Actions Taken to Prevent Recurrence

*Licensee*—The initial actions were to replace the piping associated with the failed weld. The 90° elbow and straight runs of pipe at each end of the cracked elbow to pipe weld were removed from the SIS cold leg on loop B.

The initial corrective actions taken to prevent recurrence were to provide a means to assure that the pressure upstream of the check valve does not exceed RCS pressure, thereby reducing the possibility of its partially opening or chattering. Possible changes for long-term corrective actions are under review.

*NRC*—The licensee examinations and initial corrective actions were reviewed by NRC Region II personnel during an inspection on Decmeber 12–16, 1987. The inspection identified no violations of NRC requirements. The inspection report was forwarded to the licensee on January 29, 1988. On January 15, 1988, the licensee met with the NRC staff to review their corrective actions and to better define the generic aspects of the issue. As a side issue, the licensee's ECCS analysis required licensee and Westinghouse reevaluation of a postulated double-ended SIS pipe break. The licensee's corrective actions and the ECCS reanalysis remain under review by the NRC staff.

On January 27, 1988, the NRC issued Information Notice No. 88–01, "Safety Injection Pipe Failure," to all holders of operating licenses or construction permits for nuclear power reactors to inform them not only of the Farley event, but also of the potential generic problem concerning the reliability of piping in safety-related systems due to valve leakage which may result in thermal cycling of the piping. On June 22, 1988, the NRC issued Bulletin No. 88–08, "Thermal Streses in Piping Connected to Reactor Coolant Systems," to request that licensees (1) review their reactor coolant systems (RCSs) to identify any connected, unisolable piping that could be subjected to temperature distributions which would result in unacceptable thermal stresses and (2) take action, where such piping is identified, to ensure that the piping will not be subjected to unacceptable thermal stresses.

**Other NRC Licensees**

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

*88–4 Diagnostic Medical Misadministration*

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

*Date and Place*—November 23, 1987; Veteran's Administration Medical Center, Albuquerque, New Mexico.

*Nature and Probable Consequences*—A patient was administered 50 millicuries of technetium-99m (as sodium pertechnetate) instead of 3 millicuries of thallium-201 prescribed by the physician.

The purpose of the administration was for a Myocardial Perfusion Stress Test. The licensee reported that there were no deleterious effects to the patient. The licensee calculated that the patient incurred the following doses: thyroid—6.1 to 10.2 rads; stomach—5.1 to 15.3 rads; colon—5.1 to 15.3 rads; gonads—0.5 to 2.0 rads; and whole body—0.5 rad.

*Cause or Causes*—The misadministration was caused by a student technolgist selecting the wrong syringe from the dosage cart.

Actions Taken To Prevent Recurrence

*Licensee*—The student technologist was reprimanded, new procedures for radiopharmaceutical labeling and handling will be implemented, personnel will be retrained, and the supervision of personnel will be improved.

*NRC*—NRC Region IV telephoned the radiation safety officer reporting this misadministration for additional details on the incident. Those details were subsequently provided by a February 1, 1988 memorandum from the licensee. The incident will be reviewed during a special NRC inspection at the center.

*88–5 Breakdown in Management Controls at Georgia Institute of Technology Research Reactor Facility*

One of the general AO criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an abnormal occurrence.

*Date and Place*—This occurrence addresses licensee performance over a period of time until January 20, 1988, when the NRC Issued an Order Modifying License (effective immediately) to the Georgia Institute of Technology (Georgia Tech) regarding their research reactor (GTRR). The GTRR is a 5 megawatt (thermal) facility, located in Atlanta, Georgia, and utilized for teaching and research including the performance of irradiation experiments.

*Nature and Probable Consequences*—The NRC Order required the licensee to cease utilization of the reactor facility for irradiation experiments until certain conditions are met and the NRC approves the resumption of irradiation experiments.

NRC concerns with regard to the licensee's management control has been the subject of enforcement actions in the past. An inspection conducted February 9–23, 1987, which included a review of the licensee's operations program, identified numerous failures to comply with NRC regulatory requirements. The areas of non-compliance included inadequate procedures, failures to follow procedures, and problems in keeping adequate records documenting compliance with NRC requirements. Based on these inspection findings, the NRC raised concerns about programmatic weaknesses in the licensee's implementation of Technical Specification requirements.

Inspections conducted February 17–23 and April 7–10, 1987, which included a review of the licensee's operations and radiation protection programs, also identified significant failures to comply with NRC regulatory requirements in the same areas described above. The findings of these inspections clearly indicated the licensee's need for improved management control to ensure adherence to NRC requirements and safe performance of licensed activities. On May 4, 1987, an enforcement conference was held at the NRC Region II office in which the licensee outlined steps to be implemented to improve management controls over operations and health physics at the facility to assure safe operation. These actions included a change in the research facility's organizational structure.

The events leading to issuance of the NRC Order were identified during recent inspections which showed that the licensee's actions have not been fully successful and indicated that management control problems continue. On December 16, 1987, while reviewing management reorganization concerns

for the GTRR program, an NRC inspector learned of a contamination event which occurred at the reactor facility during the week of August 17, 1987. The event involved the improper opening of an irradiated material container which resulted in the release of radioactive contamination within the reactor containment building. At the time of the December 1987 NRC inspection, a detailed description and evaluation of the event had not been prepared by licensee staff or management. This inspection was continued on January 4–5, 1988, and a team inspection was conducted from January 14–22, 1988.

The inspection findings revealed that the experiment conditions and manipulation of the experiment materials resulted in unexpected elevated radiation levels from the experiment container and also the unmonitored release of cadmium-115 in the reactor building. The dose rate at one foot from the experiment material was approximately 3 rem per hour on August 18, 1987, and qualitative measurements of radioactive contamination indicated levels on masolin wipes of approximately 20 millirem per hour on August 19, 1987.

The following violations were identified from the inspection findings: failure to have adequate procedures and failure to follow procedures for handling and manipulating experiment material and for surveying and evaluating potential radiological hazards; failure to conduct adequate radiation surveys of the reactor building and GTRR personnel and their personal property for evaluation of exposure to radioactive material; failure to conduct adequate air sampling and bioassay analyses for evaluation of personnel exposure to airborne radio-active material during experiment and decontamination activities; and failure to document and maintain records of radioactive material contamination surveys conducted.

At the time of the inspection the licensee had failed to complete a thorough review of the August 1987 contamination event regarding its cause or causes, nor had any corrective measures been implemented as of January 5, 1988 to prevent recurrence during future experiments.

The issuance of the NRC Order was a direct result of NRC concerns over the licensee's past performance, their unsatisfactory slow rate of improvement, and, most importantly, the licensee's lack of management control needed to assure that continued irradiation experiments would not result in more significant safety problems.

*Cause or Causes*—The root cause was a lack of regard for and adherence to procedures, and a lack of management control over licensed activities.

Actions Taken To Prevent Recurrence

Licensee—The licensee voluntarily shut down the GTRR on February 15, 1988. The enforcement history and recent inspection findings were discussed with the licensee at an enforcement conference held at the NRC Region II office on February 23, 1988. The licensee addressed the violations identified and presented an action plan directed towards upgrading their operations and health physics programs. Also, the licensee committed not to restart the reactor without NRC concurrence.

NRC—The January 20, 1988 NRC Order required the licensee to immediately suspend certain activities under its NRC license until requirements of the Order are satisfied which includes: an assessment of management controls; review whether any other events similar to the August 1987 incident have occurred; assessment of personnel exposures for the August 1987 event, and any other similar events, and associated cleanup activities; review of health physics and operating procedures; identification of corrective actions and schedule for implementation; and development and implementation of necessary training programs.

On March 17, 1988, the NRC issued to the licensee a Confirmatory Order Modifying License (effective immediately) confirming the licensee's commitments made at the February 23, 1988 enforcement conference. The Order did not modify the conditions of the January 20, 1988 Order.

The inspection report forwarded to the licensee on February 10, 1988, identified several apparent violations of NRC requirements. However, no formal Notice of Violation was issued at the time since the apparent violations are under consideration for escalated enforcement action.

*88–6 Release of Polonium-210 From Static Elimination Devices Manufactured by 3M Company*

One of the AO examples notes that a series of events (where individual events are not of major importance), incidents with implications for similar facilities (generic implications), which create a major safety concern, can be considered an abnormal occurrence. In addition, one of the general AO criteria notes that a moderate release of radioactive material licensed by or otherwise regulated by the Commission can be considered an abnormal occurrence.

*Date and Place*—January 21, 1988; Ashland Chemical Company (Ashland) plant in Easton, Pennsylvania, and various other locations.

*Nature and Probable Consequences*—On January 22, 1988, the radiation safety consultant for Ashland reported to NRC Region I that radioactive contamination had been discovered at their plant on the previous day. Subsequent determination of the cause of the contamination led to extensive investigations which showed that similar contamination problems existed at many plants in many states.

The cause of the contamination involved the failure of static elimination devices manufactured by the Minnesota Mining and Manufacturing Company (3M Company), St. Paul, Minnesota, containing polonium-210 (Po-210). Po-210 decays by emission of a 5.3 MeV alpha particle and has a half life of 138 days. The devices in 3M Company's Model 900 series are used to ionize a stream of air in order to remove static electricity. Even-numbered models in the 900 series (Models 902, 902F, 906, and 908) are used in conjunction with compressed air; odd-numbered models (Models 905, 907, and 909) are used with blown air. (The devices used by Ashland were of the even-numbered models and were connected to a source of compressed air.) The 3M Company also manufactures bar-type static elimination devices.

The Po-210 in these devices is contained in microspheres of zirconium pyrophosphate that have been plated with nickel and are held in place with an epoxy adhesive. The microspheres are about 0.001 inch in diameter and are hard, dense, and insoluble. The 3M Company manufactures the devices under NRC License No. 22–00057–06 and distributes them to general licensees (such as Ashland) under NRC License No. 22–00057–32G as permitted by the general license provisions of 10 CFR § 31.5. Because general licensees lack the expertise to leak-test the devices, the 3M Company requires that the devices be leased for a one-year period, returned to the 3M Company, and tested for leakage of radioactivity.

The discovery at Ashland resulted from an investigation occasioned by a complaint from one of Ashland's customers that its product was radioactively contaminated. Subsequent to discovery of contamination at its Easton plant, Ashland conducted surveys at its other plants. On January 23, 1988, its plants at Dallas, Texas, was also found to be contaminated; its other

plants were free of contamination. Surveys were begun at other plants using the 3M devices, and contamination was discovered at a KTI Chemical Corporation plant in Carrollton, Texas, on January 28, 1988. On February 1, 1988, two beverage plants in Dallas, Texas, were found to be contaminated. At this time, the U.S. Food and Drug Administration (FDA) began investigation for possible product contamination at plants using the 3M Models 902, 902F, 906, and 908 devices where device failure had been found in the preceding years. No contaminated product has been found.

Inspectors from the NRC examined 3M Company records of quality assurance on returned devices for the years 1986 and 1987 and discovered a large number of devices that were leaking upon return to the 3M Company. Most of these failures had not been reported to the NRC because the 3M Company believed that the failure was caused by some kind of damage to the device. Inspectors from the NRC and individual states have now (as of late April 1988) surveyed scores of plants using 3M Company static elimination devices and have identified a large number of plants that show contamination levels exceeding 0.005 microcuries. It is expected that the total number of such plants may be several hundred. For each plant in which contamination was found, the contamination was not widespread; rather, it appears to result from discrete Po–210 particles.

Po–210 emits alpha radiation which will not penetrate the outer layers of the skin. The size and density of the Po–210 microspheres indicates that they are not respirable and, if ingested, they are expected to pass through the digestive tract in a short time without significant release to the bloodstream because they are very insoluble. Bioassay of workers at Ashland's plants at Easton, Pennsylvania and Dallas, Texas, demonstrated no uptake of polonium. No adverse health effects are expected because of the defective static elimination devices, and none have been found.

*Cause or Causes*—No cause for failure of the static elimination devices has been ascertained. A postulated cause is moisture or solvents in the environment that affect the epoxy adhesive, which holds the radioactive material in the device.

Actions Taken To Prevent Recurrence

*Licensee (3M Company)*—The licensee's investigation of the cause of the failures and possible corrective actions continues. The licensee is carrying out the requirements of the below described NRC Orders.

*General Licensees*—Plants where contamination has been found have been, or are being, cleaned up and returned to production. All 3M Company devices are being returned to the manufacturer (except as permitted by the February 18, 1988 NRC Order described below). As of mid-April 1988, about half of all static elimination devices have been returned to the 3M Company (this includes 86% of the devices used in food, beverage, pharmaceutical, and cosmetic applications). Of the devices returned, 1.84% had leakages greater than 0.005 microcuries.

*NRC*—On January 25, 1988, the NRC ordered the 3M Company to suspend distribution of Models 902, 902F, 906, and 908 devices; to inform users of these devices of the problem discovered by Ashland; to survey a suitable sample of users to ascertain the extent of the problem; and to determine the cause of the failure of the devices. On February 5, 1988, the NRC issued a confirmatory order, confirming the 3M Company's commitments to remove all devices with the above model numbers from applications related to the packaging of food, beverages, cosmetics, and pharmaceuticals. On February 12, 1988, the NRC ordered the 3M Company to remove all static elimination devices (not just the 900 series) from all applications relating to the production and packaging of food, beverages, cosmetics, and pharmaceuticals. These actions were coordinated with the FDA.

On February 18, 1988, the NRC ordered the 3M Company to suspend transfer of all static elimination devices using Po–210; to instruct users of the devices to return them to the 3M Company; to test returned devices for leakage and report any leakage to the NRC (or Agreement State) and the user; and to report the status of these activities to the NRC every 30 days. The February 18, 1988 NRC letter also ordered all general licensees using the 3M Company static elimination devices to suspend use of the devices and to return them to the 3M Company as soon as feasible but no more than 90 days from the date of the Order. An exception was made for continued use of the devices, under certain conditions, for applications where use of the device is essential for work place safety (e.g., where static electricity may pose a significant fire, explosion or other hazard). On April 13, 1988, the NRC Order of February 18, 1988 was modified to allow the 3M Company to respond to the show cause order by July 18, 1988.

The NRC actions were coordinated with the Agreement States. As of March 25, 1988 (the latest date, as of April 30, 1988, for which an estimate of total Agreement State efforts are available) the Agreement States had applied 8,224 professional staff-hours (equivalent to about 4.5 full-time staff persons) to conduct on-site surveys of facilities identified as possessing these sources. The Agreement States took appropriate enforcement actions when contamination was found and their survey data were incorporated into the NRC data base which served as a basis for NRC enforcement decisions.

Many of the non-Agreement States assisted NRC by surveying NRC generally licensed users of these devices at NRC's request and their survey data were also used by NRC in assessing the scope of the problem.

The International Atomic Energy Agency (IAEA) and regulatory and safety authorities in 44 countries were advised through the Department of State's cable system and directly via airmail of NRC concerns and subsequent actions related to the 3M static elimination devices. The IAEA and the safety contacts in all 44 countries received copies of NRC orders and background material on the defective devices in two separate mailings, dated February 12 and 19, 1988. Subsequent mailings also were sent to update the IAEA and foreign safety contacts on developments in this area. On March 31, 1988, to prevent further exports of the defective devices, NRC issued an order confirming that 3M would not be permitted to export any polonium–210 static elimination devices under the general license for export in 10 CFR Part 110.

*88–7 Therapeutic Medical Misadministration*

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

*Date and Place*—February 4, 1988; Medical X-Ray Center, Sioux Falls, South Dakota.

*Nature and Probable Cosnequences*—A patient was administered 7.5 millicuries of phosphorus-32 (as sodium phosphate) instead of 4.0 millicuries of the same radiopharmaceutical prescribed by the physician.

The purpose of administration was to treat polycythemia vera (excess blood red platelets). As a result of the misadministration, the patient received a dose of about 270 rads and 75 rads (to the bone marrow and whole body.

respectively) instead of about 145 rads and 40 rads, respectively, had the prescribed amount of pharmaceutical been administered. There were no apparent effects to the patient. The licensee reported that blood counts will be followed for several weeks post-therapy and that the last report on February 16, 1988, showed normal blood elements.

*Cause or Causes*—The misadministration was caused by a miscalculation of the dose by the technician.

Actions Taken To Prevent Recurrence

*Licensee*—The technician administering the dose was reinstructed in the proper technique for calculating therapy doses and for reviewing the written physician orders prior to administering the doses.

*NRC*—NRC Region IV telephoned the radiation safety officer reporting this misadministration for additional information and assurance that corrective action had been taken. The incident will be reviewed during the next NRC inspection at the medical center.

*88–8 Therapeutic Medical Misadministration*

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

*Date and Place*—Discovered on February 15, 1988; St. Joseph's Hospital, Milwaukee, Wisconsin.

*Nature and Probable Consequences*—On February 23, 1988, NRC Region III was notified by the licensee that an 88-year-old patient with a 10-year history of bladder cancer received a cobalt-60 therapeutic radiation dose of 2000 rads to the wrong side of his pelvis.

On January 19, 1988, the patient was admitted to the hospital with a severe right rib pain. A CAT scan of his abdomen (January 20), a bone scan (January 25) and mid-spine and pelvic scan (January 28) confirmed the patient had a metastatic cancer. The Radiation Oncologist determined that two local areas should be treated, the spine and the *left* pelvis. Beginning February 3, 1988, the licensee commenced treating the patient with cobalt-60 with a prescribed dose of 5000 rads to the spine (20 treatments of 250 rads each) and 4000 rads to the pelvis (20 treatments of 200 rads each).

On February 15, after 10 treatments totaling 2000 rads, the Dosimetrist became suspicious that an error had been made and that the wrong side of the patient's pelvis (the right side) had been treated. This was confirmed on February 16 by the Radiation Oncologist. The patient and referring physician were notified, and treatment on the left side of the pelvis was begun the following day.

In evaluating the event, the licensee said the patient had "documented bone destuction of the dorsal spine and left pelvis, and therefore, it is most probable there is disease throughout all the pelvic areas. The patient also had reported right side pain prior to the therapeutic treatment. Therefore, the palliative dose given to the right pelvis, rather than having caused him harm, could be considered prophylactic treatment."

In a report to NRC Region III dated March 9, the licensee said it was unclear whether the right-side treatment was "inadvertent or a conscious decision due to a misread of the bone scan." According to the referring physician, the patient exhibited no adverse aftereffects as a result of the misadministration.

*Cause or Causes*—The event is attributed to personnel errors and inadequate procedures. The radiation therapist had prescribed treatment to the dorsal spine and left pelvis. However, a therapy technologist set the patient up and marked the right pelvis. Neither the physicist, who performed the dose calculations, nor the chief technologist, who performed the treatment, noted the discrepancy between the treatment plan and the prescription. In addition, the dosimetrist, while performing a weekly chart check, failed to notice the error. About 10 days later, the dosimetrist again performed a chart check and noticed the discrepancy. She brought this to the attention of the physicist, who then discussed it with the radiation therapist. Treatment to the right pelvis was terminated at 2000 rads.

Actions Taken To Prevent Recurrence

*Licensee*—The licensee agreed to develop and implement procedures which require its staff to thoroughly review all aspects of therapy prescriptions and treatment parameters when the following events occur: (1) during the initial dose calculations, (2) just prior to initial treatment, and (3) during weekly chart checks.

*NRC*—A region-based inspector went to the hospital to review the incident on March 3 and 4, 1988. The NRC also retained an NRC medical consultant to review the misadministration. In the meantime, Region III conferred with the licensee on corrective action, and the licensee agreed to the above procedural changes. In a letter confirming the licensee's course of action dated March 10, 1988, Region III also requested that the procedural changes be formalized as a license amendment.

On April 14, 1988, a Notice of Violation was issued to the licensee; the therapy misadministration had not been reported to the NRC Regional Office until seven days after discovery, contrary to 10 CFR 35.33(a) which requires telephone notification within 24 hours.

*88–9 Significant Widespread Breakdown in Radiation Safety Program at Case Western Reserve University Research Laboratories*

One of the A0 examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence. In addition, one of the general A0 criteria notes that a moderate release of radioactive material licensed by or otherwise regulated by the Commission can be considered an abnormal occurrence.

*Date and Place*—This occurrence addresses licensee performance over a period of time until February 26, 1988, when the NRC proposed imposing a $10,000 fine on Case Western Reserve University, Cleveland, Ohio.

*Nature and Probable Consequences*—The proposed fine was for numerous violations of NRC requirements in the licensee's radiation safety program for its research laboratories, indicating a significant breakdown in its management control program. The violations were in the licensee's research programs, not medical care and treatment of patients. The circumstances associated with the enforcement action are as follows.

On November 8, 1987, the NRC Region III office received a news media inquiry concerning the radioactive contamination of a research laboratory at Rainbow Babies and Children's Hospital in Cleveland, Ohio. The laboratory, although located at the hospital, was under the NRC license of Case Western Reserve University. Telephone discussions on November 9, 1987 with the licensee determined that a licensee consultant had identified tritium and carbon-14 contamination in the laboratory (Diabetes Laboratory) and that it was being decontaminated.

It was learned later, through subsequent telephone conversations with the licensee, that the contamination in the laboratory was more widespread than initially found. On November 17, 1987, the NRC began an inspection to review the circumstances of the contamination and to detemine if the problems associated with the laboratory

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were indicative of additional problems at other licensee laboratories.

The initial and subsequent NRC inspections during November and December 1987 identified about 20 violations of NRC requirements, involving the training of laboratory personnel, radiation safety practices, and control and oversight of the laboratories using radioactive materials. Several of the violations (i.e., failure to calibrate radiation survey instruments, failure to perform a contamination survey, failure to perform leak tests of sealed radiation sources, and evidence of food and beverage consumption in laboratories) were similar to violations identified during a May 1986 NRC inspection at the licensee's facilities. Therefore, the licensee's corrective actions, taken following the 1986 inspection, were insufficient to prevent a recurrence of the violations.

Based on the inspection findings, it appeared that the University was unable to keep track of the number of laboratories engaged in licensed activities, was not controlling the required training of workers handling of radioactive materials, and was unable, through its radiation safety committee, to assure compliance with NRC requirements and license commitments. The latter became evident when the University found it necessary to contract with an outside consultant to perform required radiation surveys and audits which the University radiation staff could not complete in a timely manner. (It was a survey performed by the consultant which initially identified the contamination of the Diabetes Laboratory.)

In regard to the Diabetes Laboratory, the inspection indicated that no single incident appeared to have contributed to the contamination; rather the widespread, low-level contamination in the laboratory was caused by inadequate handling procedures (the technicians had not been adequately trained) and a lack of contamination surveys. There was no evidence that any workers or members of the public received a significant radiation exposure as a result of the contamination incident or of the violations found in the licensee's radiation safety program. Bioassay tests on the two Diabetes Laboratory technicians showed no detectable indication of ingestion or inhalation of radioactive material.

*Cause or Causes*—The failure to adequately correct past violations identified in a May 1986 inspection, as well as the numerous violations identified in the November–December 1987 inspections, demonstrated a serious, widespread breakdown in the management of the licensee's radiation safety program.

Actions Taken To Prevent Recurrence

*Licensee*—The licensee conformed to the various NRC actions described below. Following suspension of all NRC-licensed work (which affected about 350 laboratories), the licensee retained an interim Radiation Safety Officer, provided training to laboratory workers, and expanded the work of its consultant to review all laboratories for compliance with University and NRC requirements.

Extensive programmatic changes were made to the licensee's radiation safety program. Based on these changes, on December 8, 1987 the NRC authorized the gradual lifting of the suspension as each laboratory was checked and found to comply with NRC requirements. By mid-February 1988, work had been permitted to resume in all laboratories, except for the Diabetes Laboratory. The latter laboratory required final decontamination work before its suspension could be lifted.

During March 1988, the licensee hired a new Radiation Safety Officer to oversee NRC-licensed activities.

*NRC*—When the initial inspection revealed violations of NRC requirements, NRC Region III issued a Confirmatory Action Letter on November 20, 1987, documenting the University's agreement to accelerate its radiation survey program and to direct each laboratory supervisor to assure that the requirements were being followed.

Based on further inspection findings, a second Confirmatory Action Letter was issued on November 25, 1987, confirming the suspension of NRC-licensed work.

At the time work was authorized to resume on December 8, 1987, the NRC issued a license amendment to include the modifications and improvements to the radiation safety program adopted by the licensee.

On February 26, 1988, the NRC issued to the licensee a Notice of Violation Proposed Imposition of Civil Penalty in the amount of $10,000 for the numerous violations identified during the inspections. The inspection reports were also enclosed. The violations were categorized as Severity Level II (on a scale in which the most significant and least significant are categorized as Severity Levels I and V, respectively). The base value of a civil penalty for a Severity Level II violation is $4,000. This was increased to $10,000 because of the licensee's poor prior performance in their radiation safety program and the failure to take adequate corrective actions subsequent to the identification of violations during the most recent events. The licensee has paid the civil penalty.

The NRC will continue to monitor the licensee's performance through periodic inspections.

Dated at Rockville, MD, this 9th day of August 1988.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 88–18285 Filed 8–11–88; 8:45 am]

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**[Docket No. 50–312]**

## Sacramento Municipal Utility District; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–54 issued to the Sacramento Municipal Utility District (the Licensee) for operation of the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

The amendment would revise the Technical Specifications (TS) relating to Section 6.0, Administrative Controls, by removing the organization charts from the Technical Specification. The proposed amendment was requested by letter dated July 1, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. These three criteria are discussed in detail below.

(1) The NRC staff finds that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because removal of the organization charts from the Technical

Specifications is administrative in nature and does not affect plant operations or the number of members, composition, or function of the Plant Review Committee. As in the past, the NRC will continue to be informed of organizational changes through other required controls. The Code of Federal Regulations, 10 CFR Part 50.34(b)(5)(i), requires that the applicant's organizational structure be included in the Updated Safety Analysis Report (USAR). As required by 10 CFR 50.71(e), the licensee submits annual revisions to the USAR.

(2) The NRC staff finds that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no physical alteration to any plant system, nor is there a change in the method in which any safety related system performs its function. The proposed changes are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The NRC staff finds that because the proposed revision is administrative in nature, it will not reduce any margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Office of Administration and Resources Managment, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5.00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 12, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to pariticipate as a party in the proceeding must file a written request for hearing or petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Procedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explan the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's proprety, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable speificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to persent evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. If petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, DC 20555, and to David S. Kaplan, Sacramento

Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 1, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Dated at Rockville, Maryland, this 8th day of August, 1988.

For the Nuclear Regulatory Commission.

**George Kalman,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Regulation.*

[FR Doc. 88–18286 Filed 8–11–88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50–397]**

## Washington Public Power Supply System; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 62 to Facility Operating License No. NPF–21, issued to Washington Public Power Supply System (the licensee), which revised the Technical Specifications for operation of the Nuclear Project No. 2, located in Benton County, Washington.

The amendment was effective as of the date of issuance.

The amendment (1) revises limiting conditions for operation and instrumentation setpoints in the technical specifications to allow the operation of WNP–2 up to a power level of 75% power with one recirculation loop operating to the design burnup of the reload fuel of 35,000 MWD/MT bundle outage; (2) makes revisions to related sections of the technical specifications to improve clarity, and (3) adds a new section on power/flow instability and moves the specification addressing flux noise from the section on instrumentation to the section on power distribution limits.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 10, 1988 (53 FR 16605). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 7, 1988 (G02–88–053), as supplemented by letters dated March 7, 1988 (G02–88–054) and May 13, 1988 (G02–88–116), (2) Amendment No. 62 to License No. NPF–21, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 5th day of August, 1988.

For The Nuclear Regulatory Commission.

**Robert B. Samworth,**

*Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–18287 Filed 8–11–88; 8:45 am]

BILLING CODE 7590-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–25960; File No. SR–PHLX–88–12]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Floor Broker Transactions in Their Customer Accounts

On March 24, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change that clarifies that all persons employed on the PHLX trading floor in association with a Member or Participant, other than Registered Options Traders ("ROTs") and Specialists, are prohibited form initiating trades in PHLX options in their personal customer accounts while on the floor. The proposal was subsequently amended on July 22, 1988.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 25564 (April 8, 1988), 53 FR 12740 (April 18, 1988). No comments were received on the proposed rule change.

The purpose of the rule change is to make explicit the applicability of section 11(a) of the Act [4] to PHLX floor brokers and other options floor personnel. Under section 11(a) it is:

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] See SR–PHLX–12, Amendment No. 1, submitted on July 22, 1988. The proposed rule, as amended, reads:

All persons employed on the trading floor in association with a Member or Participant, other than ROTs and Specialists, are prohibited from initiating trades in PHLX options in their customer accounts while on the floor. A Member or Participant firm which accepts an order for the customer account of such a person must process the order through the channels it normally provides for its other customer orders. When such an order is received on the floor, it may not be handled by any person associated or affiliated with such person or any person with a beneficial interest in the account. Once such a person has placed an order for his/her customer account in an option, that person is prohibited from brokering orders in that option until such order has been executed or cancelled. This provision shall not apply to any transaction permissible under section 11(a)(1) of the Securities Exchange Act of 1934.

Violations of the Rule would result in a $100 fine for the first occurrence and sanctions for additional violations thereafter would be within the Business Conduct Committee's discretion

[4] 15 U.S.C. 78k(a) (1982).

unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion.

Sections 11(a)(1)(A)–(H) then provide eight statutory exemptions from the trading restrictions imposed by section 11(a). Notwithstanding the prior and ongoing applicability of section 11(a) to all Exchange Members and Participants, the proposed rule change would impose identical restrictions on Exchange Member personnel. The Rule specifically prohibits persons employed on the trading floor in association with Members or Participants, other than ROTs and Specialists, from trading in their personal accounts while on the floor and it contains exceptions consistent with section 11(a).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[5] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it promotes just and equitable principles of trade and it is designed to prevent fraudulent and manipulative acts and practices by eliminating any trading advantage to those persons employed on the trading floor, other than ROTs and Specialists, due to their proximity to the trading floor. Moreover, because the proposed rule change is identical in operation to section 11(a) of the Act, it is enforcing compliance with a provision of the Act by PHLX members and persons associated with its members, and, therefore, is consistent with section 6(b)(1) of the Act.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PHLX–88–12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: August 8, 1988.

**Jonathan G. Katz,**

*Secretary.*

FR Doc. 88–18299 Filed 8–11–88; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1986).

## SMALL BUSINESS ADMINISTRATION

**[License No. 02/02–0361]**

### Wood River Capital Corp.; Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Wood River Captial Corporation (Wood River), 645 Madison Avenue, New York, New York 10022, a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the SBA Rules and Regulations (the Regulations) governing Small Business Investment Companies (13 CFR 107.903 (1988)) for approval of a conflict of interest transaction falling within the scope of the above sections of the Act and the Regulations.

Subject to such approval Wood River proposes to provide funds to Westland Development Fund, Ltd. (Westland) for the purposes of subdividing land, developing buildings, and rehabilitating properties in the Greater Los Angeles area.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because Mr. John V. Tunney is one of the general partners in Westland and is a director of The Prospect Group, Inc., which owns all of the issued and outstanding capital stock of Wood River. Westland is considered to be an associate of Wood River as defined by § 107.3 of the Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of the Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published, in accordance with § 107.903(e) of the Regulations, in a newspaper of general circulation in Los Angeles, California.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

Dated: August 3, 1988.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

[FR Doc. 88–18309 Filed 8–11–88; 8:45 am]

BILILNG CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Palm Springs Municipal Airport, Palm Springs, CA; Approval of Noise Compatibility Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Palm Springs under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On August 24, 1987, the FAA determined that the noise exposure maps submitted by the city of Palm Springs under Part 150 were in compliance with applicable requirements. On May 23, 1988, the Administrator approved the Palm Springs Municipal Airport noise compatibility program. All but one of the recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Palm Springs Municipal Airport noise compatibility program is May 23, 1988.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Conley, Environmental Protection Specialist, AWP–611.3, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297–1621. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for the Palm Springs Municipal Airport, effective May 23, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, (hereinafter referred to as "The Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed on consultation with interested and affected parties including local

communities government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to standards expressed in Part 150 and the Act and is limited to the following determinations:

A. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

B. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

C. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

D. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5.

Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environment assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Regional Office in Hawthorne, California.

The city of Palm Springs submitted to the FAA on February 2, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1986 through 1991. The Palm Springs Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 24, 1987. Notice of this determination was published in the **Federal Register** on September 30, 1987.

The Palm Springs Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 30, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fifteen proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective May 23, 1988.

Approval was granted for all but one of the specific program elements.

These determinations are set forth in detail in the Record of Approval endorsed by the Administrator on May 23, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Administrative Offices of the Palm Springs Municipal Airport.

Issued in Hawthorne, California, on June 10, 1988.

**Clyde DeHart, Jr.,**

*Acting Director.*

[FR Doc. 88-18271 Filed 8-11-88; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Department Circular—Public Debt Series—No. 20-88]**

### Treasury Notes of August 15, 1991, Series T-1991

Washington, August 4, 1988.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $11,000,000,000 of United States securities, designated Treasury Notes of August 15, 1991, Series T-1991 (CUSIP No. 912827 WM O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated August 15, 1988, and will accrue interest from that date, payable on a semiannual basis on February 15, 1989, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of

$5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the *Treasury Direct* Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, August 9, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 8, 1988, and received no later than Monday, August 15, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement of purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Monday, August 15, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 15, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in *Treasury Direct* are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased.

In any such case, the tender form used to place the Notes allotted in *Treasury Direct* must be completed to show all the information required thereon, or the *Treasury Direct* account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 88-18234 Filed 8-9-88; 10:43 am]

BILLING CODE 4810-40-M

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**[Department Circular—Public Debt Series—No. 21-88]**

## Treasury Notes of August 15, 1988, Series C-1998

Washington, August 4, 1988.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $11,000,000,000 of United States securities, designated Treasury Notes of August 15, 1998, Series C-1998 (CUSIP No. 912827 WN8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated August 15, 1988, and will accrue interest from that date, payable on a semiannual basis on February 15, 1989, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the *Treasury Direct* Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 10, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 9, 1988, and received no later than Monday, August 15, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, non-competitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yeilds, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest acepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, August 15, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 15, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in *Treasury Direct* are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in *Treasury Direct* must be completed to show all the information required thereon, or the *Treasury Direct* account number previously obtained.

**6. Separability of Principal and Interest**

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution

transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

**7. General Provisions.**

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

**CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 1998, Series C–1998, CUSIP No. 912827 WN 8**

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series C–1998 due August 15, 1998, CUSIP No. 912820 AP 2.

INTEREST COMPONENTS

| Designation | CUSIP No. 912833 |
|---|---|
| Treasury Interest (TINT) due: | |
| Feb. 15, 1989 | BD 1 |
| Aug. 15, 1989 | BE 9 |
| Feb. 15, 1990 | BF 6 |
| Aug. 15, 1990 | BG 4 |
| Feb. 15, 1991 | BH 2 |
| Aug. 15, 1991 | BJ 8 |
| Feb. 15, 1992 | BK 5 |
| Aug. 15, 1992 | BL 3 |
| Feb. 15, 1993 | BM 1 |
| Aug. 15, 1993 | BN 9 |
| Feb. 15, 1994 | BP 4 |
| Aug. 15, 1994 | BQ 2 |
| Feb. 15, 1995 | BR 0 |
| Aug. 15, 1995 | BS 8 |
| Feb. 15, 1996 | BT 6 |
| Aug. 15, 1996 | BU 3 |
| Feb. 15, 1997 | BV 1 |
| Aug. 15, 1997 | BW 9 |
| Feb. 15, 1998 | BX 7 |
| Aug. 15, 1998 | BY 5 |

ATTACHMENT B.—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

| Coupon (percent) | Minimum face (dollars) | Interest payment (dollars) | Coupon (percent) | Minimum face (dollars) | Interest payment (dollars) | Coupon (percent) | Minimum face (dollars) | Interest payment (dollars) |
|---|---|---|---|---|---|---|---|---|
| 5.000 | 40,000.00 | 1,000.00 | 10.125 | 1,600,000.00 | 81,000.00 | 15.250 | 800,000.00 | 61,000.00 |
| 5.125 | 1,600,000.00 | 41,000.00 | 10.250 | 800,000.00 | 41,000.00 | 15.375 | 1,600,000.00 | 123,000.00 |
| 5.250 | 800,000.00 | 21,000.00 | 10.375 | 1,600,000.00 | 83,000.00 | 15.500 | 400,000.00 | 31,000.00 |
| 5.375 | 1,600,000.00 | 43,000.00 | 10.500 | 400,000.00 | 21,000.00 | 15.625 | 64,000.00 | 5,000.00 |
| 5.500 | 400,000.00 | 11,000.00 | 10.625 | 320,000.00 | 17,000.00 | 15.750 | 800,000.00 | 63,000.00 |
| 5.625 | 320,000.00 | 9,000.00 | 10.750 | 800,000.00 | 43,000.00 | 15.875 | 1,600,000.00 | 127,000.00 |
| 5.750 | 800,000.00 | 23,000.00 | 10.875 | 1,600,000.00 | 87,000.00 | 16.000 | 25,000.00 | 2,000.00 |
| 5.875 | 1,600,000.00 | 47,000.00 | 11.000 | 200,000.00 | 11,000.00 | 16.125 | 1,600,000.00 | 129,000.00 |
| 6.000 | 100,000.00 | 3,000.00 | 11.125 | 1,600,000.00 | 89,000.00 | 16.250 | 160,000.00 | 13,000.00 |
| 6.125 | 1,600,000.00 | 49,000.00 | 11.250 | 160,000.00 | 9,000.00 | 16.375 | 1,600,000.00 | 131,000.00 |
| 6.250 | 32,000.00 | 1,000.00 | 11.375 | 1,600,000.00 | 91,000.00 | 16.500 | 400,000.00 | 33,000.00 |
| 6.375 | 1,600,000.00 | 51,000.00 | 11.500 | 400,000.00 | 23,000.00 | 16.625 | 1,600,000.00 | 133,000.00 |
| 6.500 | 400,000.00 | 13,000.00 | 11.625 | 1,600,000.00 | 93,000.00 | 16.750 | 800,000.00 | 67,000.00 |
| 6.625 | 1,600,000.00 | 53,000.00 | 11.750 | 800,000.00 | 47,000.00 | 16.875 | 320,000.00 | 27,000.00 |
| 6.750 | 800,000.00 | 27,000.00 | 11.875 | 320,000.00 | 19,000.00 | 17.000 | 200,000.00 | 17,000.00 |
| 6.875 | 320,000.00 | 11,000.00 | 12.000 | 50,000.00 | 3,000.00 | 17.125 | 1,600,000.00 | 137,000.00 |
| 7.000 | 200,000.00 | 7,000.00 | 12.125 | 1,600,000.00 | 97,000.00 | 17.250 | 800,000.00 | 69,000.00 |
| 7.125 | 1,600,000.00 | 57,000.00 | 12.250 | 800,000.00 | 49,000.00 | 17.375 | 1,600,000.00 | 139,000.00 |
| 7.250 | 800,000.00 | 29,000.00 | 12.375 | 1,600,000.00 | 99,000.00 | 17.500 | 80,000.00 | 7,000.00 |
| 7.375 | 1,600,000.00 | 59,000.00 | 12.500 | 16,000.00 | 1,000.00 | 17.625 | 1,600,000.00 | 141,000.00 |
| 7.500 | 80,000.00 | 3,000.00 | 12.625 | 1,600,000.00 | 101,000.00 | 17.750 | 800,000.00 | 71,000.00 |
| 7.625 | 1,600,000.00 | 61,000.00 | 12.750 | 800,000.00 | 51,000.00 | 17.875 | 1,600,000.00 | 143,000.00 |
| 7.750 | 800,000.00 | 31,000.00 | 12.875 | 1,600,000.00 | 103,000.00 | 18.000 | 100,000.00 | 9,000.00 |
| 7.875 | 1,600,000.00 | 63,000.00 | 13.000 | 200,000.00 | 13,000.00 | 18.125 | 320,000.00 | 29,000.00 |
| 8.000 | 25,000.00 | 1,000.00 | 13.125 | 320,000.00 | 21,000.00 | 18.250 | 800,000.00 | 73,000.00 |
| 8.125 | 320,000.00 | 13,000.00 | 13.250 | 800,000.00 | 53,000.00 | 18.375 | 1,600,000.00 | 147,000.00 |
| 8.250 | 800,000.00 | 33,000.00 | 13.375 | 1,600,000.00 | 107,000.00 | 18.500 | 400,000.00 | 37,000.00 |
| 8.375 | 1,600,000.00 | 67,000.00 | 13.500 | 400,000.00 | 27,000.00 | 18.625 | 1,600,000.00 | 149,000.00 |
| 8.500 | 400,000.00 | 17,000.00 | 13.625 | 1,600,000.00 | 109,000.00 | 18.750 | 32,000.00 | 3,000.00 |
| 8.625 | 1,600,000.00 | 69,000.00 | 13.750 | 160,000.00 | 11,000.00 | 18.875 | 1,600,000.00 | 151,000.00 |
| 8.750 | 160,000.00 | 7,000.00 | 13.875 | 1,600,000.00 | 111,000.00 | 19.000 | 200,000.00 | 19,000.00 |
| 8.875 | 1,600,000.00 | 71,000.00 | 14.000 | 100,000.00 | 7,000.00 | 19.125 | 1,600,000.00 | 153,000.00 |
| 9.000 | 200,000.00 | 9,000.00 | 14.125 | 1,600,000.00 | 113,000.00 | 19.250 | 800,000.00 | 77,000.00 |
| 9.125 | 1,600,000.00 | 73,000.00 | 14.250 | 800,000.00 | 57,000.00 | 19.375 | 320,000.00 | 31,000.00 |

ATTACHMENT B.—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

| Coupon (percent) | Minimum face (dollars) | Interest payment (dollars) | Coupon (percent) | Minimum face (dollars) | Interest payment (dollars) | Coupon (percent) | Minimum face (dollars) | Interest payment (dollars) |
|---|---|---|---|---|---|---|---|---|
| 9.250 | 800,000.00 | 37,000.00 | 14.375 | 320,000.00 | 23,000.00 | 19.500 | 400,000.00 | 39,000.00 |
| 9.375 | 64,000.00 | 3,000.00 | 14.500 | 400,000.00 | 29,000.00 | 19.625 | 1,600,000.00 | 157,000.00 |
| 9.500 | 400,000.00 | 19,000.00 | 14.625 | 1,600,000.00 | 117,000.00 | 19.750 | 800,000.00 | 79,000.00 |
| 9.625 | 1,600,000.00 | 77,000.00 | 14.750 | 800,000.00 | 59,000.00 | 19.875 | 1,600,000.00 | 159,000.00 |
| 9.750 | 800,000.00 | 39,000.00 | 14.875 | 1,600,000.00 | 119,000.00 | 20.000 | 10,000.00 | 1,000.00 |
| 9.875 | 1,600,000.00 | 79,000.00 | 15.000 | 40,000.00 | 3,000.00 | 20.125 | 1,600,000.00 | 161,000.00 |
| 10.000 | 20,000.00 | 1,000.00 | 15.125 | 1,600,000.00 | 121,000.00 | 20.250 | 800,000.00 | 81,000.00 |

[FR Doc. 88-18235 Filed 8-9-88; 10:43 am]

BILLING CODE 8010-40-M

VOL 53 ISS 156 AG 12 1988 UMI

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 156
Friday, August 12, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, August 9, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less then seven days' notice to the public, of: (1) Matters relating to the Corporation's assistance agreements with certain insured banks; and (2) a discussion concerning deposit insurance coverage.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 10, 1988.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 88-18349 Filed 8-10-88; 11:18 am]

BILLING CODE 6714-01-M

## POSTAL SERVICE BOARD OF GOVERNORS

### Vote To Close Meeting

At its meeting on August 1, 1988, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for September 12, 1988, in Washington, DC. The members will consider a temporary mail classification change affecting certain second-class mail matter.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, (5 U.S.C. 552b(b)), because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by § 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to §552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with § 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to § 552b(c) (3) and (10) of Title 5 and § 410(c)(4) of Title 39, United States Code; and § 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

**David F. Harris,**

*Secretary.*

**Fred Eggleston,**

*Alternate Certifying Officer for the U.S. Postal Service.*

[FR Doc. 88-18370 Filed 8-10-88; 1:19 pm]

BILLING CODE 7710-12-M

VOL
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# Corrections

Federal Register
Vol. 53, No. 156
Friday, August 12, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910, 1915, 1917, 1918, and 1926

**[Docket H-022D]**

### Hazard Communication

*Correction*

In the proposed rule document beginning on page 29822 in the issue of Monday, August 8, 1988, make the following correction:

On page 29856, in the third column, in the file line at the end of the document, "FR Doc. 88-17716" should read "88-17716(a)".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Part 210

### Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

*Correction*

In proposed rule document 88-16707 beginning on page 28233 in the issue of Wednesday, July 27, 1988, make the following corrections:

1. On page 28233, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the 15th line, "financial" was misspelled; and in the 20th line, "institution" should read "instruction".

2. On page 28234, in the second column, in the first paragraph, in the fifth line "there" should read "their".

**§ 210.2 [Corrected]**

3. On page 28235, in the first column, in § 210.2, in the definition for "Recipient", in the second line "pubic" should read "public".

**§ 210.11 [Corrected]**

4. On the same page, in the third column, in § 210.11(b), in the 11th line, "beneficiary" should read "beneficiary's".

BILLING CODE 1505-01-D

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1988 Addition

*Correction*

In notice document 88-17717 beginning on page 29510 in the issue of Friday, August 5, 1988, make the following correction:

On page 29511, in the first column, before the signature line, insert "Rod, Ground 5975-00-878-3791".

BILLING CODE 1505-01-D

federal register

Friday
August 12, 1988

Part II

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 341**

**Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for Combination Drug Products; Notice of Proposed Rulemaking**

VOL 53 ISS 156 AUG 12 1988 UMI

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 341**

**[Docket No. 76N-052G]**

# Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for Combination Drug Products

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products (drug products that contain more than one active ingredient and are used for the relief of symptoms such as nasal congestion, runny nose, coughing, watery eyes, sore throat, headache, and fever) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal deals with cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products, general comments on the advance notice of proposed rulemaking, and comments on miscellaneous ingredients, as well as the conclusions and recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products on the use of internal analgesic ingredients in cough-cold combination drug products, and is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 12, 1988. Because of the length and complexity of this proposed regulation, the agency is allowing a period of 120 days for comments and objections instead of the normal 60 days. New data by August 14, 1989. Comments on the new data by October 12, 1989. Written comments on the agency's economic impact determination by December 12, 1988.

**ADDRESS:** Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In a notice published in the **Federal Register** of March 21, 1980 (45 FR 18400), the agency advised that it had reopened the administrative record for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products to allow for consideration of data and information that had been filed in the Dockets Management Branch after the date the administrative record previously had officially closed. The agency concluded that any new data and information filed prior to March 21, 1980, should be available to the agency in developing a proposed regulation in the form of a tentative final monograph.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, (address above), after deletion of a small amount of trade secret information. Data and information received after the administrative record was reopened have also been put on display in the Dockets Management Branch.

In response to the advance notice of proposed rulemaking, 13 manufacturers, 2 manufacturers' associations, 41 consumers, 14 health care professionals, and 14 health care professional societies submitted general comments on cold, cough, allergy, bronchodilator, and antiasthmatic drugs. One manufacturer, 2 consumers, and 1 consumer group submitted comments on miscellaneous ingredients. Fifteen manufacturers, 2 manufacturers' associations, 4 consumers, 3 health care professionals, and 3 health care professional societies submitted comments on cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products. Copies of the comments received are on public display in the Dockets Management Branch.

FDA has issued the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products in segments. This document on combination drug products, general issues, and miscellaneous ingredients is the sixth and final segment. The first segment, on anticholinergic drug products and expectorant drug products, was published in the **Federal Register** of July 9, 1982 (47 FR 30002). The second segment, on bronchodilator drug products, was published in the **Federal Register** of October 26, 1982 (47 FR 47520). The third segment, on antitussive drug products, was published in the **Federal Register** of October 19, 1983 (48 FR 48576). The fourth segment, on nasal decongestant drug products, was published in the **Federal Register** of January 15, 1985 (50 FR 2220), and the fifth segment, on antihistamine drug products, was published in the **Federal Register** of January 15, 1985 (50 FR 2200). Additionally, an amendment to the tentative final monograph for OTC antihistamine drug products was published in the **Federal Register** of August 24, 1987 (52 FR 31892).

The advance notice of proposed rulemaking, which was published in the **Federal Register** on September 9, 1976 (41 FR 38312), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. This tentative final monograph would amend Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations in Part 341 (as set forth in the tentative final monograph on OTC anticholinergic drug products and expectorant drug products that was published in the **Federal Register** of July 9, 1982 (47 FR 30002)) in Subpart B, by adding new § 341.40; and in Subpart C, by adding new § 341.85. In this tentative final monograph (proposed rule) the FDA states for the first time its position on the establishment of a monograph for OTC cold, cough, allergy,

bronchodilator, and antiasthmatic combination drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products, as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them. When the tentative final monograph for OTC anticholinergic drug products and expectorant drug products was published on July 9, 1982, no ingredients were classified in Category I; thus no ingredients were included in the active ingredient section under Part 341 of that monograph. Subsequently, data were submitted which support the effectiveness of guaifenesin as an expectorant. Because guaifenesin will be included as a monograph condition in § 341.18 of the final monograph for OTC expectorant drug products, to be published in a future issue of the **Federal Register**, combinations in this proposal containing an expectorant refer to § 341.18.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products (published in the **Federal Register** of September 9, 1976 (41 FR 38312)), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products. All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

## I. The Agency's Tentative Conclusions on the Comments

### *A. General Comments on Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products*

1. One comment expressed concern about the impact of the OTC drug review. The comment felt that the review would remove certain cough-cold products from the OTC market and force consumers to see a physician just to obtain a prescription for cough-cold products, causing a financial drain on persons dependent on social security.

The purpose of the OTC drug review is to assure consumers that OTC drug products are safe and effective. The review will result in the removal of unsafe or ineffective drug products from the OTC market. Also, some products may be reformulated to contain ingredients that are found to be

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generally recognized as safe and effective. Products already on the market which contain ingredients that are generally recognized as safe and effective will remain available to consumers. In addition, a number of drug products that have been available only by prescription are being changed to OTC status and will be more readily available to consumers. Thus, the OTC drug review will not result in a financial drain on persons dependent on a fixed income but will ensure that safe and effective OTC drug products are available for self-treatment of colds, coughs, allergy, and asthma.

2. Several comments questioned the legality of the procedures used to establish OTC drug monographs and contended that FDA does not have the authority to establish substantive rules. The comments requested that monographs be clearly identified as interpretive rather than substantive regulations.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated in those documents. Court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 698–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).

3. One comment objected to the Panel's classification of "official drugs" in Category III. The comment contended that Congress has recognized the United States Pharmacopeia (USP) and the National Formulary (NF) as legal standards under the Federal Food, Drug, and Cosmetic Act (the act) and that the Committees on Scope of the Compendia have stated that their policy is "to select from among substances which possess medicinal power, those, the utility of which is most fully established and best understood. The value of the Compendia depends upon the fidelity with which they conform to the best medicinal knowledge of the day."

Formerly, articles judged to have medical merit were selected for inclusion in the USP and NF. USP XIX (1975) and NF XIV (1975) were the last editions of the compendia in which the articles were selected for inclusion on this basis. The USP and NF have now been combined (USP XX–NF XV, 1980) with the stated goal of setting standards relating to measurements of strength, quality and purity, packaging, etc. for "all" drugs that are in the marketplace (Ref. 1). This goal is also stated in the current edition of the USP XXI–NF XVI (Ref. 2). Thus, the current basis for inclusion of a drug in the combined compendia is whether it is marketed. The OTC Panel's review of drug ingredients is different from the USP and NF standards in that ingredients used in OTC drug products are evaluated for general recognition of safety and effectiveness in accordance with statutory authority set out in the act. A drug in the marketplace that has been labeled as meeting the USP or NF standards does not necessarily meet the FDA requirements relating to general recognition of safety and effectiveness, and to misbranding. Hence, a drug may meet USP or NF standards but still be classified as a Category II or Category III OTC drug.

**References**

(1) "The United States Pharmacopeia XX—National Formulary XV," United States Pharmacopeial Convention, Rockville, MD pp. xxxiv–xlii, 1980.

(2) "The United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Rockville, MD, pp. xliv–xlv, 1985.

4. One comment stated that the agency's objections to various decisions made by the Panel should be based on more than just the referenced "AMA Drug Evaluations." The comment expressed the hope that the agency consulted the same source material that the Panel used, and recommended that the agency mention all of its sources when publishing decisions.

The comment's statements were in reference to the preamble to the Panel's report (41 FR 38312 to 38313), where the agency disagreed with the Panel's recommendations that three drugs (doxylamine succinate, promethazine hydrochloride, and diphenhydramine hydrochloride) that were previously available only by prescription be made available for OTC use.

The three ingredients mentioned above are discussed in the tentative final monograph for OTC antihistamine drug products. (See the **Federal Register** of January 15, 1985 (50 FR 2200) and August 24, 1987 (52 FR 31892).) In these documents, the agency has proposed a Category I classification for diphenhydramine hydrochloride and doxylamine succinate as an OTC antihistamine, and a Category III classification for promethazine hydrochloride. In the tentative final monograph for OTC antitussive drug products, the agency placed diphenhydramine hydrochloride in Category III as an antitussive (see the **Federal Register** of October 19, 1983; 48 FR 48561) and classified it as a nonmonograph ingredient in the final monograph for OTC antitussive drug products (see the **Federal Register** of August 12, 1987; 52 FR 30054). In those documents, references that were used to support decisions have been cited.

Many sources of information are available to and used by the agency in making decisions related to the OTC drug review. Such sources include data submitted to the panels, data submitted as comments to the agency, data in the literature, and data obtained from various computerized information retrieval systems which provide information on published literature, adverse drug reactions, poison control statistics, etc. The agency also uses the medical expertise of its staff in reaching decisions. This expertise includes the review of adverse drug reaction data that are incorporated into agency computerized information retrieval systems. This is especially done when prescription-to-OTC switches are involved, as in the situation discussed by the comment. Such information reviewed is regularly incorporated in the public administrative file for the applicable rulemaking.

5. Three comments stated that inactive chemicals, dyes (coloring), perfumes, flavorings, alcohol, and preservatives should not be in OTC drug products. One of the comments added that many adults and children are allergic to flavorings and colorings and contended that these additives serve no useful function and are added only for cosmetic purposes.

FDA does not agree that the inactive ingredients the comments describe should not be in OTC drug products. The agency recognizes that the use of such ingredients in OTC drug products is often important in securing consumer acceptance. Although they offer no particular therapeutic advantage, the use of these agents can be of considerable importance psychologically (Ref. 1). An OTC drug product that is rejected by consumers because of objectionable taste or appearance may be made acceptable by use of carefully selected coloring, flavoring, and diluting agents. If a safety problem with one of these agents is found to exist, the agency will take appropriate action, as, for example, in the case of the regulations adopted concerning sensitivity to the color

additive FD&C Yellow No. 5. In § 201.20 (21 CFR 201.20), the agency requires that all OTC and prescription drug products containing this agent declare its presence in labeling, using the names FD&C Yellow No. 5 and tartrazine. While not requiring that all inactive ingredients be listed in labeling, the agency urges manufacturers to list these ingredients voluntarily to assist consumers who may have allergies to some of these substances. (See also comment 20 below.)

**Reference**

(1) Gennaro, A.R., editor, "Remington's Pharmaceutical Sciences," 17th Ed., Mack Publishing Co., Easton, PA, p. 1280, 1985.

6. Several comments contended that certain OTC cough-cold drug products should be sold only in pharmacies and that general marketing of these products in places such as grocery stores, newspaper stands, and train stations should not be permitted. Some of the comments recommended that certain OTC drug products be dispensed by pharmacists and designated in a third class, separate from OTC or prescription, to be called "Pharmacy OTC Only." These comments maintained that the public should have the expert advice of pharmacists to make effective choices of OTC drug products.

One comment opposed a "pharmacy only" restriction and referred to the agency's conclusion on this "druggist monopoly concept" that was published in the **Federal Register** of June 4, 1974; 39 FR 19880–19881. This comment agreed with the position stated by the Department of Justice that the restriction of OTC drug product sales to pharmacies would have severe anticompetitive effects and inhibit the efficient distribution of OTC drug products to the consumer.

The issue of "a third class of drugs" (drugs that are available only in a pharmacy) has been considered previously in the OTC drug review, and the agency stated its position on this matter at that time. (See the **Federal Register** of June 4, 1974; 39 FR 19880.) The agency noted that although the Federal Food, Drug, and Cosmetic Act (the act) "permits imposition of whatever limitations or restrictions are necessary to assure the safe use of any drug, including restrictions on the channels of distribution, no controlled studies or other adequate research data have been supplied to support the position that any class of OTC drugs must be dispensed only by pharmacists in order to assure their safe use." Additionally, "restricting the sale of some or all OTC drugs only to pharmacies would decrease the number of outlets where the consumer could purchase OTC products, limit competition, and raise some OTC drug prices, with no attendant public benefit." The agency concluded that "it would be inappropriate to restrict the sale of OTC drugs to pharmacies based on anything less than proof that a significant safety issue was involved" (39 FR 19881) and that, because there was no public health concern at that time to justify the creation of a third class of drugs, the issue was solely an economic one.

More recently, the agency addressed the issue of a third class of drugs in response to two citizen's petitions that requested FDA to issue regulations to establish sale-by-pharmacist only of certain OTC drug ingredients. The agency denied the petitions, stating that a class of drugs for sale-by-pharmacist only is unnecessary because a public health need for such a limitation has not been demonstrated. OTC drug products must be adequately labeled for safe and effective use by laypersons, and if the agency were to find that the labeling for a particular drug product did not provide sufficient information for a layperson to use that product safely, it would take appropriate action. Further, the agency stated that the legal authority to create a sale-by-pharmacist class of drugs is questionable because under the act, there is no provision for an intermediate class of drugs between OTC and prescription products. The statutory requirement that a drug either be limited to prescription dispensing or available OTC with adequate directions for use seems to preclude the agency from establishing a class of drugs whose labeling would need to be supplemented by a pharmacist's instructions (Refs. 1 and 2).

The comments did not provide any controlled studies or other data adequate to demonstrate that a safety issue exists with respect to marketing OTC drug products in general, and certain OTC cough-cold drug products in particular, in places other than pharmacies. The agency is not aware of any such data, and therefore its position on a "third class of drugs," as stated above, is unchanged.

**References**

(1) Letter from F.E. Young, FDA, to D.C. Huffman, American College of Apothecaries, in OTC Volume 04GTFM, Docket No. 76N–052G, Dockets Management Branch.

(2) Letter from F.E. Young, FDA, to C.M. West, The National Association of Retail Druggists, in OTC Volume 04GTFM, Docket No. 76N–052G, Dockets Management Branch.

7. A number of comments objected to the continued marketing of many OTC cough-cold drug products which have not been proven safe and effective. These comments referred to 58 cough-cold active ingredients placed in Category III by the Panel. One comment stated that cough-cold drug products containing such ingredients are legally required to be either generally recognized as safe and effective or the subject of a new drug application and concluded that drugs which do not meet these criteria are not marketable; i.e., they are illegal.

FDA has stated that it is agency policy to take regulatory action prior to a final monograph against products that present a potential health hazard or a significant and substantial question of effectiveness (45 FR 31425 and 46 FR 47737). At this time, the agency is not aware of any information to show that any of the ingredients in question fits either of these criteria. Therefore, the agency will continue to review these ingredients under the standard OTC drug review process. The Panel's "placement" of ingredients in Category III represents only the Panel's recommendations to the agency regarding their safety and effectiveness. The agency's determination whether the ingredients are generally recognized as safe and effective, and not misbranded, will not be completed until the agency has finished its review and a final monograph has been issued. Until then, Category III ingredients may continue to be marketed. As originally promulgated, the OTC drug review procedural regulations permitted continued marketing of Category III ingredients after a final monograph became effective. However, FDA has revised the OTC drug review regulations so that an ingredient that is not included in the appropriate final monograph (nonmonograph condition) will be subject to regulatory action if marketed once that final monograph becomes effective. (See the **Federal Register** of September 29, 1981; 46 FR 47730.)

8. One comment stated that the Panel used an inappropriate standard in categorizing some Category II claims and placed claims such as "used by," "most recommended by doctors," and "improved" in Category II because they are difficult to substantiate. The comment contended that a claim is not false or misleading because it is difficult to substantiate, and that if it is factual, a claim should be permitted regardless of whether it can be demonstrated in controlled studies. The comment questioned whether the Panel was saying that a product cannot be

improved, adding that one would expect that a number of products would be "improved" as a result of the OTC drug review.

The OTC drug review program establishes conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. Two principal conditions examined during the review are allowable ingredients and allowable labeling. The FDA has determined that it is not practical—in terms of time, resources, and other considerations—to set standards for all labeling found in OTC drug products. Accordingly, OTC drug monographs regulate only labeling related in a significant way to the safe and effective use of covered products by lay persons. OTC drug monographs establish allowable labeling for the following items: product statement of identity; names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action.

The agency believes terms such as "used by" and "most recommended by doctors" are unrelated to the characteristics of the drugs in question and, therefore, do not relate in a significant way to the drugs' safe and effective use. Accordingly, the terms "used by" and "most recommended by doctors" are outside the scope of the OTC drug review. The agency emphasizes that even though terms such as "most recommended by doctors" are outside the scope of the OTC drug review, they are subject to the prohibitions in section 502 of the act (21 U.S.C. 352) relating to labeling that is false or misleading. Such terms will be evaluated by the agency in conjunction with normal enforcement activities relating to that section of the act. Moreover, any term that is outside the scope of the review, even though it is truthful and not misleading, may not appear in any portion of the labeling required by the monograph and may not detract from such required information. (See comment 23 below.)

A number of cough-cold drug products will be "improved" as a result of the OTC drug review. Such improvements may include replacement of a Category III ingredient with a Category I ingredient, a change in the dosage of an ingredient to provide a safe and effective product, and new indications, warnings, or directions for use that are clearer to the consumer and protect against misuse.

In May 1977, The Proprietary Association (the trade association of manufacturers of nonprescription drugs) initiated a "Flag the Label" program, partially as a result of the OTC drug review, to alert consumers to significant changes in the ingredients or labeling of an OTC drug product (Ref. 1). This "Flag the Label" program informs consumers of changes in indications, dosages, active ingredients, directions, warnings, contraindications, or any other significant new information by using an attention-getting visual device (a flag) on the label. The agency endorses this program because it directs consumers' attention to important new product information, much of which results from the OTC drug review, without using words such as "improved," which could mislead consumers into thinking that the product is therapeutically superior to other comparable products.

**Reference**

(1) "Flag the Label Guidelines," The Proprietary Association, Washington, DC, in OTC Volume 04GTFM.

9. One comment requested that the following description of coryzal rhinitis be added to the Panel's discussion of rhinitis under the heading *Diseases and Related Symptoms Relieved by OTC Cold, Cough, Bronchodilator and Antiasthmatic Products* at 41 FR 38321: "Coryzal rhinitis results in the symptoms of sneezing, rhinorrhea, and nasal congestion due to edema of the nasal mucosa. The discharge is serous at first and may subsequently become mucoid or mucopurulent. The feeling of nasal congestion may intensify from suppression of the sense of smell."

The agency has reviewed the Panel's discussions of the common cold and the reduction of nasal secretions and believes that the symptoms of coryzal rhinitis as described by the comment and the symptoms of the common cold as described by the Panel are similar. The Panel concluded that the effectiveness of OTC antihistamine cough-cold products in relieving the symptoms of the common cold had not been demonstrated (41 FR 38380). However, based on new data submitted in response to the Panel's report, the agency has proposed a Category I indication for antihistamine drug products for the relief of the symptoms of sneezing and runny nose associated with the common cold. (See the tentative final monograph for OTC antihistamine drug products at 50 FR 2203.) Based on this proposed Category I indication, the agency does not see the need to expand the Panel's discussion of rhinitis, as requested by the comment.

*B. General Comments on the Switch of Prescription Cold, Cough, Allergy, Bronchodilator and Antiasthmatic Drugs to OTC Status*

10. Several comments disagreed with the agency's dissent from the Panel's recommendations to switch several ingredients from prescription to OTC marketing status, arguing that this dissent was based on comparative safety and effectiveness. The comments contended that the agency used criteria that were not mandated by statute or the OTC drug review in determining whether these drugs could be switched to OTC status. The comments concluded that the statutory criterion for prescription status is whether the drug may be safely used without the supervision of a licensed practitioner, and the fact that there are more effective drugs available OTC or even that there are less toxic drugs already available OTC is irrelevant to the determination required by the statute.

The agency agrees that it is not within the scope of the OTC drug review regulations to use comparative safety and comparative effectiveness as criteria for switching a drug from prescription to OTC status. In dissenting from or accepting the recommendations of advisory review panels to switch ingredients from prescription to OTC marketing status, the agency has judged these ingredients individually on whether they can be generally recognized as safe and effective for OTC use. General recognition of safety and effectiveness is not based on comparison.

In 1976, while considering the Panel's recommendations to switch certain prescription drugs to OTC marketing status, the agency considered the safety of these drugs for OTC use and did not believe at that time that they were safe for switching. For example, the agency concluded that the marketing status of diphenhydramine hydrochloride as an antitussive should be resolved by first considering the approvability of the pending supplemental NDA for OTC use of a cough syrup product containing this ingredient (41 FR 38313). The agency also concluded at that time that diphenhydramine hydrochloride as an antihistamine should remain a prescription drug because of its pronounced tendency to produce sedation in a high proportion of those persons using it. The agency pointed out that no diphenhydramine hydrochloride product was being marketed OTC as an antihistamine at any dosage level. Subsequently, the agency determined that the risk of drowsiness presented by

diphenhydramine hydrochloride did not provide sufficient reason to restrict this ingredient to prescription status so long as adequate warnings concerning drowsiness are included in the labeling of the product. (See the tentative final monograph for OTC antihistamine drug products, 50 FR 2206; and the amendment to the tentative final monograph for OTC antihistamine drug products, 52 FR 31913.)

The other ingredients the Panel recommended switching from prescription to OTC drug use have also been judged by the agency in accordance with the standards set forth in the act and the OTC drug review regulations in § 330.10(a)(4). For example, the agency has proposed that promethazine hydrochloride, as a single ingredient, be classified in Category III in the tentative final monograph for OTC antihistamine drug products because of the lack of safety data on long-term use, not because of comparison with other OTC drug ingredients (50 FR 2202). (See also the discussion of promethazine combinations in "Summary of the Agency's Changes in the Panel's Recommendations," in Part II. paragraph B. below.) Thus, the agency is applying the statutory criterion referred to by the comment.

11. One comment objected to FDA's allowing the OTC marketing, immediately following publication of the advance notice of proposed rulemaking, of the ingredients that the Panel recommended be switched from prescription to OTC status. The comment stated that no opportunity was permitted for public objections to this change in marketing status. Further, the comment stated that allowing the immediate OTC sale of these ingredients causes confusion and a dilemma in the drug distribution system because if these ingredients are now considered OTC items by FDA, then all such drug products currently in distribution containing these ingredients and bearing the prescription legend are misbranded and in violation of federal law.

The proposed policy for interim OTC marketing of ingredients previously limited to prescription use immediately following the publication of a panel's report and proposed monograph was published in the **Federal Register** of December 4, 1975 (40 FR 56675), and public comment was invited. Subsequently, a final policy statement regarding the marketing status of prescription ingredients recommended for OTC use was published in the **Federal Register** of August 4, 1976 (41 FR 32580). Briefly, the policy set forth in § 330.13 provides that an OTC drug product containing an active ingredient limited to prescription use on May 11, 1972, or an active ingredient at a dosage level higher than that available in an OTC drug on December 4, 1975, may be marketed OTC after the date of publication of an advance notice of rulemaking proposed in the **Federal Register**, if the Panel has classified the ingredient in Category I and the Commissioner has not dissented. Such marketing is subject to the risk that the Commissioner may not accept the Panel's recommendations and may instead adopt another position that may require relabeling, recall, or other regulatory action.

The agency does not agree with the comment that interested persons did not have ample opportunity to express their points of view prior to the Panel's recommendations affecting the prescription status of cough-cold drug products. During the 3½ years of the Cough-Cold Panel's deliberations, each Panel meeting was announced in the **Federal Register** and, at each session, an opportunity was afforded to any interested person to present his or her views relevant to the Panel's work. Those portions of the Panel's deliberations not open to the public were attended by a consumer and an industry liaison, and summary minutes of each Panel session were put on public display in the Dockets Management Branch (address above). Furthermore, an information copy of the Panel's report was made available to the public prior to publication in the **Federal Register**.

It may happen, as the comment points out, that during the pendency of the rulemaking some manufacturers may choose to market previously prescription ingredients OTC, while others choose to continue marketing the same ingredients with the prescription legend. As noted, these ingredients are marketed OTC subject to the risk that the agency may not accept the Panel's recommendation and may instead adopt a different position at any time prior to the effective date of a final monograph at which time products containing any of these ingredients may be subject to relabeling, recall, or other regulatory action. FDA does not believe that this interim marketing enforcement policy, which affords manufacturers some choice while the rulemaking is ongoing, has been unduly disruptive of the marketplace.

12. One comment requested that the agency permit the continued sale of drugs switched from prescription to OTC status as prescription drugs for a specified period of time.

As discussed in comment 11 above, when an advisory review panel recommends that a prescription ingredient be included in an OTC drug monograph for the same indication, OTC marketing under the terms of 21 CFR 330.13 may occur. However, during the pendency of the rulemaking, manufacturers may choose instead to continue prescription marketing of the ingredient in light of the possibility that the agency may ultimately decide that OTC marketing is not appropriate. However, after the effective date of the final OTC drug monograph (usually 12 months after its publication in the **Federal Register**), if the ingredient and indication are included in the monograph, a drug product containing the ingredient as switched to OTC status may not be marketed as a prescription product. The agency believes that manufacturers will have ample opportunity to prepare for the change in marketing status from prescription to OTC marketing.

13. Several comments were opposed to the OTC sale of certain antihistamine, nasal decongestant, and bronchodilator drugs (which were previously available only by prescription) unless these drugs are packaged in child-resistant containers. One of the comments stated that prescription drugs are subject to the requirements of the safety packaging law and are required to be dispensed in safety packaging. However, once prescription drugs are allowed to be sold OTC, they are not required to be dispensed in safety packaging. The comments stated that children will be exposed to potential poisoning from these drugs without the safety packaging requirements. The comments urged that FDA not allow these drugs to be sold OTC unless they are packaged in child-resistant containers.

FDA agrees that these and all OTC drugs should be safe for consumer use. However, statutory authority to require child-resistant closures rests with the Consumer Product Safety Commission (CPSC) under the Poison Prevention Packaging Act of 1970. That act provides that hazardous or potentially hazardous products must be sold in safety packaging that most children under 5 years of age cannot open. FDA's Division of Epidemiology and Surveillance in the Center for Drugs and Biologics compiles poison control case reports and statistics and forwards them to CPSC for review. If the poison control data indicate that a particular drug or class of drugs presents a poisoning hazard to children due to its packaging,

CPSC may determine if child-resistant closures should be required. Additionally, consumers may petition the CPSC to study hazardous drugs that could be toxic to young children and to determine whether child-resistant closures are warranted.

FDA is aware that CPSC has reviewed the available data on antihistamines to determine if child-resistant closures are warranted for OTC drug products containing these ingredients. CPSC published a final rule requiring that drug products containing more than 75 mg diphenhydramine hydrochloride in a single package and in a dosage form intended for oral administration have child-resistant packaging. (See CPSC Requirements for Child-Resistant Packaging; Diphenhydramine Hydrochloride, published in the **Federal Register** on February 15, 1984; 49 FR 5737.) CPSC found that serious toxic effects can be produced with doses of diphenhydramine hydrochloride as low as 100 mg. In the **Federal Register** of August 15, 1984 (49 FR 32565), CPSC amended the regulation to broaden its scope by requiring child-resistant packaging for preparations containing more than 66 mg diphenhydramine base in any oral dosage form. Although CPSC reviewed the toxicity of other antihistamines, it did not propose that any antihistamine other than diphenhydramine be required to be packaged with child-resistant closures. Because of the lack of significant toxicity data for antihistamines other than diphenhydramine, CPSC concluded that child-resistant closures were not necessary for these drugs, regardless of the amount of drug contained in each package. At this time, CPSC is not reviewing the other drug products mentioned by the comments.

FDA urges that manufacturers voluntarily place child-resistant closures on any OTC drug product that could be toxic to young children.

*C. General Comments on Miscellaneous OTC Ingredients*

14. One comment suggested that an upper limit of menthol as a flavoring agent in syrups, lozenges, sprays, etc., is needed to clearly distinguish between menthol used as an active ingredient and menthol used as an inactive ingredient.

Menthol is generally recognized as safe for use as a flavoring substance in foods. (See 21 CFR 172.515 and 182.20.) Section 172.515 specifies that such flavoring substances be "used in the minimum quantity required to produce their intended effect and otherwise in accordance with all the principles of good manufacturing practice." These regulations do not specify an upper concentration for menthol used as a flavoring agent, and the agency is not proposing such a limit for OTC drug products at this time. However, the agency invites information and comments on: (1) The minimum concentration of menthol needed to achieve a flavoring effect and (2) the minimum concentration of menthol needed to achieve a therapeutic effect. The agency will consider such information in determining how to distinguish between menthol as an active ingredient and menthol as an inactive ingredient and whether to establish minimum levels. In any case, if menthol is present at a therapeutic level in a product, the agency would consider it to be an active ingredient in that product.

15. One comment requested that topical analgesics be included in item 8 of the Panel's table at 41 FR 38320, which listed symptoms and the corresponding pharmacologic groups of drugs for the treatment of these symptoms. The comment suggested that item 8, "Generalized aching," be expanded to include the Category I labeling indications for topical analgesics, counterirritants, and rubefacients recommended by the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Topical Analgesic Panel).

The agency discussed this use of topical analgesics in the notice of proposed rulemaking for OTC external analgesic drug products published in the **Federal Register** of February 8, 1983 (comment 18 at 48 FR 5859).

16. One comment expressed concern about the synergistic effect that occurs when alcohol is combined with ingredients of cough-cold products, such as antihistamines, and that the Panel's report ignored the use of alcohol in marketed cough-cold products that contain antihistamines.

The synergism between alcohol and antihistamine that heightens the drowsiness side effect of most antihistamines has been reported in the literature (Refs. 1 and 2). However, because alcohol is an excellent solvent and stabilizer and may provide palatability to distasteful ingredients, it is used in OTC antihistamine-containing cough-cold products as a pharmaceutical necessity (Ref. 3). The agency finds that the concentrations of alcohol commonly used in antihistamine-containing cough-cold products are sufficiently low that the quantity of alcohol consumed with a single dose of antihistamine does not constitute a hazard (Ref. 4). The agency finds that the benefits of using alcohol in this manner outweigh the minimal risk presented.

The Panel recognized the synergistic effects of the interaction between alcohol and antihistamines and in its recommended warning in § 341.72(b)(4) cautioned adult consumers not to drink alcoholic beverages while taking antihistamines. The agency also recognizes that alcohol potentiates central nervous system depressants and interacts with certain drugs. The agency shares the Panel's concern regarding additional central nervous system effects, such as drowsiness, that can occur if alcoholic beverages are used simultaneously with antihistamine drug products (Ref. 5). However, drowsiness itself is not a sufficient reason to prohibit the OTC use of such products when the labeling provides appropriate warnings and essential information. In the tentative final monograph for OTC antihistamine drug products (50 FR 2209), the agency proposed a stronger warning than the one recommended by the Panel—"May cause marked drowsiness; alcohol may increase the drowsiness effect. Avoid alcoholic beverages while taking this product * * *." (See § 341.72(c)(4) at 50 FR 2216.)

The Panel also recommended in § 341.50(c) that products containing concentrations of alcohol greater than 10 percent (weight/weight) not be given to children under 6 years of age except under the supervision of a doctor. Alcohol depresses the central nervous system over a wide range of doses. Threshold effects are observed at blood levels of 20 to 50 milligrams (mg) per 100 milliliters (mL), and a detectable impairment of vision occurs at a blood level of about 15 mg per 100 mL (Ref. 6). In its report of March 1982, the American Academy of Pediatrics (AAP) recommended limiting the amount of alcohol in a container of an OTC drug product labeled for use in children to an amount that, if entirely consumed accidentally by a 2-year-old child as a single dose or accumulated over a period of time, would not produce a blood ethanol concentration level in excess of 25 mg per 100 mL of blood (Ref. 4). The AAP also recommended that drug products be required to have safety closures if they contain alcohol in concentrations greater than 5 percent (volume/volume).

The AAP's report was published in March 1984 (Ref. 7). In the published report, the AAP reiterated the concerns expressed in its 1982 report and stated that it is desirable that no ethanol be

included in medicinal products intended for use in children. However, if ethanol is required to solubilize the active ingredients the following recommendations should be met: (1) OTC liquid preparations should be limited to a maximum of 5 percent (volume/volume) ethanol, (2) physician supervision is suggested for children less than 6 years using OTC preparations containing alcohol, (3) the amount of ethanol contained in any medicinal preparation should not be able to produce a blood concentration greater than 25 mg per 100 mL after a single recommended dose, (4) appropriate intervals between doses should be prescribed to prevent the accumulation of blood alcohol, (5) the packaged volume of ethanol-containing products should be kept to a reasonable minimum to prevent potential lethal ingestions, and (6) safety closures should be recommended for medications with greater than a 5 percent ethanol content (Ref. 7).

FDA's position regarding safety closures has been discussed in comment 13 above. The agency is considering the adoption of the recommendations made by the AAP regarding limitations in the alcohol content of drug products labeled for use by children and invites specific comment on these recommendations. Pending a final decision, the Panel's recommendation to limit the alcohol content to less than 10 percent in cough-cold drug products labeled for use in children under 6 years of age is not being included in this tentative final monograph. The agency urges manufacturers to use the least possible amount of alcohol to achieve solubility, stability, and palatability for all cough-cold drug products.

**References**

(1) Martin, E., "Hazards of Medication," J.B. Lippincott Co., Philadelphia, pp. 430–439, 1971.

(2) Forney, B.R., and W. Hughes, "Combined Effects of Alcohol and Other Drugs," Charles C. Thomas, Springfield, IL, pp. 101–102, 1968.

(3) Gennaro, A.R., editor, "Remington's Pharmaceutical Sciences," 17th Ed., Mack Publishing Co., Easton, PA, p. 219, 1985.

(4) "Ethanol in Over-the-Counter Drugs for Children," Report to the Food and Drug Administration, Bureau of Drugs, by the Committee on Drugs, American Academy of Pediatrics, March 1982.

(5) Food and Drug Administration, "Alcohol-Drug Interactions," *FDA Drug Bulletin*, Vol. 6, p. 11, Nov. 5, 1979.

(6) Maling, H.M., "Toxicology of Single Doses of Ethyl Alcohol," *in* "International Encyclopedia of Pharmacology and Therapeutics," Pergamon Press, Elmsford, NY 2:277–299, 1970.

(7) Committee on Drugs, American Academy of Pediatrics, "Ethanol in Liquid Preparations Intended for Children," *Pediatrics*, 73:405–407, 1984.

17. One comment objected to the Panel's Category III classification of ascorbic acid (vitamin C), considering that the Panel recommended the switch of more potent drugs from prescription to OTC marketing status. Another comment objected to reports that state there is no scientific justification for the claim that vitamin C is beneficial in preventing the common cold. This comment personally attested to the benefits of vitamin C in preventing the common cold or alleviating its uncomfortable effects, particularly runny nose. The comment added that this vitamin is also beneficial if taken in the "very beginning" stages of a sore throat.

The Panel placed vitamin C in Category III after reviewing a number of studies and concluding that "the published data support a beneficial effect of ascorbic acid on the severity and perhaps frequency of the 'common cold' when given in dosages exceeding the daily requirement," but that "it is not yet clear that this effect is clinically significant." The Panel also stated that "the magnitude of the dosages needed and the optimum schedule for prophylaxis and therapy remain to be determined" (41 FR 38417).

The Advisory Review Panel on OTC Vitamin, Mineral, and Hematinic Drug Products also reviewed vitamin C and stated that the OTC drug use of vitamin C for its protective or therapeutic effect on the course of the common cold is presently not supported by adequate controlled clinical studies. Although claims have been made for the beneficial effects of 500 to 1,000 mg or more of vitamin C daily for the treatment and/or prevention of the common cold, double-blind studies have not adequately demonstrated this effect and are required to evaluate fully the validity of the claim (44 FR 16142).

The Cough-Cold Panel's recommendations to switch several drugs from prescription to OTC status were based on the available safety and effectiveness data, and dosage information. Similar data and information were not available regarding the use of vitamin C to prevent and/or treat the common cold.

In order for vitamin C to be classified as Category I for prevention and/or treatment of the common cold, there must be data demonstrating the ingredient to be safe and effective for these uses. Such data for vitamin C have not yet been submitted, nor did the comment provide such data. Accordingly, vitamin C remains in Category III in this tentative final monograph.

*D. General Comments on Dosages for OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drugs*

18. One comment stated that the Panel's recommended dosage statements are inconsistent with regard to equivalent dosages for different salts of a drug. The comment explained that the dosage for phenylpropanolamine preparations in § 341.20(e) of the Panel's recommended monograph is based on the phenylpropanolamine hydrochloride equivalent; however, the Panel did not differentiate the active moiety content of the salts of other drugs such as codeine, dextromethorphan, and ephedrine. The comment recommended that the agency adopt the format used for phenylpropanolamine, selecting a particular salt as the representative form of that drug and identifying the dosage for that salt with a statement similar to that used for phenylpropanolamine. The comment suggested that the sulfates be used as the representative forms for codeine and ephedrine, and that the hydrobromide salt be the representative form for dextromethorphan.

The Panel recommended that the dosage for phenylpropanolamine preparations be "based on the phenylpropanolamine hydrochloride equivalent" because data were submitted to the Panel to support this dosage (Refs. 1 and 2). In its report, when dosages for drugs were not based on representative forms, the Panel determined that the same doses for various salts of these drugs were generally equivalent based on historical usage and the Panel's experience with the various drugs. Moreover, this approach using the same dose for codeine sulfate and phosphate, and ephedrine hydrochloride and sulfate is consistent with standards established in USP XXI (Ref. 3). At this time, the agency is not aware of any data showing that the dosages recommended by the Panel for codeine and ephedrine and their salts should be stated differently, and the comment did not submit any data demonstrating the need for establishing particular salts of these drugs as representative drug forms. With regard to dextromethorphan and dextromethorphan hydrobromide, the agency has determined that the dosage should be equivalent to dextromethorphan hydrobromide. (See the final monograph for OTC antitussive drug products published in the **Federal**

Register of August 12, 1987; 52 FR 30042.) The agency will consider identifying representative forms of drugs on a case-by-case basis if data are submitted showing that a change is necessary.

**References**

(1) OTC Volume 040273.
(2) OTC Volume 040285.
(3) "The United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Rockville, MD, pp. 243–244, and 372, 1985.

*E. General Comments on Labeling and Advertising for OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drugs*

19. One comment stated that OTC drugs should be proven safe and effective, and have true, clear, understandable, and more detailed labeling.

The agency agrees with the comment. Upon completion of the OTC drug review, OTC drug monograph standards of safety, effectiveness, and labeling will be developed for all OTC active ingredients, assuring safe and effective OTC drug products. Moreover, the agency has given serious consideration to the importance of accurate labeling and the consumer's comprehension of the intended message in the labeling. The expertise of the various panels was directed toward assuring informative, medically accurate OTC labeling. The agency, on its own initiative and in response to public comments, is modifying labeling proposed by the panels, where necessary, to make it clearer and more understandable to consumers.

20. Five comments objected to the Panel's recommendation that all inactive ingredients be listed in the labeling of OTC cough-cold drug products. The comments argued that a list of inactive ingredients in the labeling would be meaningless, confusing, and misleading to most consumers. The comments noted that the Federal Food, Drug, and Cosmetic Act does not require that the inactive ingredients of drug products be included on a label and argued that listing these ingredients would crowd out information that is more meaningful to consumers. Two comments agreed with the Panel's recommendation.

The Federal Food, Drug, and Cosmetic Act specifies the requirements for ingredient labeling of OTC drug products. Section 502(e) of the act (21 U.S.C. 352(e)) requires that all active ingredients and certain other ingredients, whether included as active or inactive, be disclosed in the labeling. The act also limits the requirement for stating quantity of ingredients in OTC drug products to those specifically mentioned in section 502(e). Although the act does not require the disclosure of all inactive ingredients in the labeling of OTC drug products, the agency agrees with the Panel that listing of inactive ingredients in OTC drug product labeling would be useful information for some consumers. Consumers with known allergies or intolerances to certain ingredients would then be able to identify substances that they may wish to avoid.

The Proprietary Association, the trade association that represents approximately 85 OTC drug manufacturers who reportedly market between 90 and 95 percent of the volume of all OTC drug products sold in the United States, has established guidelines (Ref. 1) for its member companies to list voluntarily inactive ingredients in the labeling of OTC drug products. Under another voluntary program begun in 1974, the member companies of The Proprietary Association have been including the quantities of active ingredients on OTC drug labels. The agency is not at this time proposing to require the listing of inactive ingredients in OTC drug product labeling. However, the agency commends these voluntary efforts and urges all other OTC drug manufacturers to similarly label their products.

**Reference**

(1) "Guidelines for Disclosure of Inactive Ingredients in OTC Medicines," The Proprietary Association, Washington, DC, July 12, 1984, in OTC Volume 04GTFM.

21. One comment agreed with the Commissioner's statement in the preamble to the advance notice of proposed rulemaking that manufacturers should include information concerning changes in dosages and reformulation in the labeling of drug products (41 FR 38313), but objected to placing this information on the principal display panel of the label. The comment also requested a time limit on how long a manufacturer would be required to continue providing such information in the labeling, stating that 1 year after reformulation of the product would be an appropriate limit.

Currently, there are no regulations requiring the inclusion of information concerning changes in dosages and reformulation in the labeling of OTC drug products, and the agency is not proposing any at this time. However, The Proprietary Association has instituted a program in which manufacturers of OTC drug products are encouraged to inform consumers voluntarily in the labeling of changes in dosages and formulations. (See comment 8 above.) The agency commends the program and encourages its continuation.

22. Several comments were opposed to the number and type of warnings proposed by the Panel for OTC cough-cold products. One comment stated that terms such as "monoamine oxidase inhibitor," "enlargement of the prostate gland," "glaucoma," "antihypertensive," and "antidepressant" are meaningless to all but a limited number of consumers. The comment further stated that it is redundant to use such terms in addition to "except under the advice and supervision of a physician" when the consumer has already been diagnosed by a physician as having these conditions. Several comments stated that warnings which contain specific contraindications should be based on sound epidemiological data, and that the addition of extensive warnings tends to reduce the impact of the important labeling statements. The comments recommended that FDA accept only those warnings which are necessary and important, and which are applicable to a significant portion of the target population.

The agency agrees that too many warning statements reduce the impact of important statements. The agency also believes that the warnings it has proposed provide important information to consumers. As each segment of the monograph for cough-cold drug products was proposed, many of the Panel's recommended warnings were revised, simplified, combined, or eliminated. For example, the phrase "except under the advice and supervision of a physician" has been shortened to "unless directed by a doctor." Some information recommended by the Panel in *"Warnings,"* such as age restrictions, is now included in the *"Directions"* section. Contraindications for specific populations, e.g., people with hypertension or glaucoma, have been included only when there is evidence to support these contraindications.

With regard to the terms in the Panel's warnings which the comment believed would be meaningless to consumers, the agency stated in the tentative final monograph for OTC nasal decongestant drug products that terms such as "monoamine oxidase inhibitor," "antihypertensive," and "antidepressant" may be confusing to consumers and deleted "monoamine oxidase inhibitor," substituted "high blood pressure" for "antihypertensive," and substituted "depression" for "antidepressant" (50 FR 2231). Similar changes will be made in other monographs as appropriate. Because antihypertensive and antidepressant

drugs are widely prescribed, persons taking these medications should be alerted to drug interactions that can occur if they are taken simultaneously with some OTC drugs. Likewise, although consumers may have been diagnosed by a physician as having enlargement of the prostate gland or glaucoma, they may not be aware that a particular OTC drug product contains ingredients that they should not use.

The agency believes that, with the above changes, the proposed warning statements for OTC cough-cold products will provide important, understandable information to the consumer in a concise manner.

23. Two comments contended that FDA does not have the authority to legislate the exact wording of OTC labeling claims. The comments stated that limiting the indications to the exact terminology of the monograph is overly restrictive because the Panel itself had used alternate terminology throughout the report in discussing the indications for these products. One comment requested that more flexibility in labeling be permitted by adding to the approved indications a statement as follows: "* * * or similar indications statements which are in keeping with the Panel's report."

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either: (1) The specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g., 21 CFR 201.63 or 330.1(g).

In this tentative final monograph, supplemental language relating to indications has been proposed and captioned as *Other Allowable Statements*. Under FDA's revised labeling policy (51 FR 16258), such statements are included at the tentative final stage as examples of other truthful and nonmisleading language that would be allowed elsewhere in the labeling. In accordance with the revised labeling policy, such statements would not be included in a final monograph. However, the agency has decided that, because these additional terms have been reviewed by FDA, they should be incorporated, wherever possible, in final OTC drug monographs under the heading "Indications" as part of the indications developed under the monograph.

24. Two comments objected to limiting the terminology in the indication statements to "temporarily relieves" or "temporary relief of" when the actual duration of action is known in hours. These comments requested that a statement of a definite duration of action (e.g., "12 hours of relief") replace a term such as "temporary relief" in the labeling of drug products with a known duration of action.

Information on duration of action is provided by the dosage intervals given in the directions for use in the cough-cold monograph, e.g., 2 or 3 drops or sprays every 12 hours. The agency believes that it is unnecessary to repeat this information in the indications. A manufacturer may use a term such as "12 hours of relief" elsewhere in the labeling if the term is true and not misleading, but such terms are not being proposed in the tentative final monograph.

25. One comment, noting that the Panel restricted product identification to the terms defined in § 341.3 of its recommended monograph, requested that definitions of the terms "cold (common cold) product" and "sinus congestion product" be included in the monograph, so that these terms could be used to identify products. Other comments objected to the Panel's recommendation that product names or labeling claims that contain the words "cough" or "cold," such as "cough syrup," "common cold," "cold tablets," "cold capsules," "cold formula," and "cold medicine," not be allowed in OTC drug product labeling. These comments contended that such terms are truthful in the context of the total label and are meaningful to consumers. Several comments added that the Panel's recommendations conflict with existing trademark laws and arbitrarily prohibit the use of lawfully registered trademarks.

Although the Panel restricted product identifications to those terms defined in § 341.3 of its recommended monograph, the agency is including in each monograph a "statement of identity" paragraph that sets forth acceptable terms for product identification. As stated in § 201.61 (21 CFR 201.61), the statement of identity of an OTC drug is limited to the established name of the drug, if any, followed by an accurate statement of the general pharmacological category(ies) of the drug or the principal intended action(s) of the drug. The established name of a drug, as defined in section 502(e)(3) of the act (21 U.S.C. 352(e)(3)) is: (1) The official name designated pursuant to section 508 of the act, (2) the official name recognized in an official compendium, if the drug has no designated official name, or (3) the common or usual name of the drug if neither (1) nor (2) apply. Terms employed to describe the general pharmacological category(ies) or principal intended action(s) of the drugs covered by this monograph are "antihistamine," "antitussive," "bronchodilator," "expectorant," and "nasal decongestant." An example of a statement of identity for an antihistamine drug product containing chlorpheniramine maleate to relieve hay fever would be "chlorpheniramine maleate" followed by the term "antihistamine," i.e., the established name of the drug and its pharmacological category. Wherever possible, the agency prefers to use the general pharmacologic category as the statement of identity because information on the principal intended action is provided in the indications. However, in instances where the pharmacologic category is not appropriate as the statement of identity, the principal intended action is used. For example, the statement of identity for an antihistamine used as a nighttime sleep-aid is "nighttime sleep-aid."

The agency believes that, while naming the symptom or condition for which the product is used, terms such as "cold tablets," "cold capsules," "cold formula," "cold medicine," "cold (common cold) product," "cough syrup," or "sinus congestion product" convey a general use but do not convey the drug's principal intended action as well as the terms "antihistamine," "nasal decongestant," etc. The agency does not oppose the inclusion of such terms in the names of products; however, these terms are not required and are not being included in the labeling in the

monograph. Product names, which may include terms such as "cold formula," are considered to be outside the scope of the OTC drug review, but are subject to the prohibitions in section 502 of the act relating to labeling that is false or misleading. Such terms, whether used in product names or in other parts of the labeling that are not covered by the monograph, will be evaluated by the agency in conjunction with normal enforcement activities relating to that section of the act.

In reviewing the terms defined by the Panel in recommended § 341.3, the agency concludes that "antihistamine" in paragraph (e) conveys the pharmacological category, but "allergy product" in paragraph (b) or "hay fever product" in paragraph (k), do not convey the pharmacological category or principal intended action of the product. Thus, the term "antihistamine" has been proposed as the statement of identity in the tentative final monograph for OTC antihistamine drug products (50 FR 2216), but "allergy product" and "hay fever product" have not been included. However, these terms are similar to the terms "cold tablets," "cold formula," "sinus congestion product," etc. in that they name the condition or symptom for which the product is used, and may be used in the names of products as discussed in the preceding paragraph.

26. One comment objected to the Panel's recommendation against the use of the words "works internally" and stated that these words clearly and directly tell the consumer the difference between products which have different routes of administration, such as products for external application or for intranasal use, as opposed to products for systemic absorption by an oral or rectal route.

The agency believes that the term "works internally" provides little useful information to the consumer and, in fact, can be misleading. When self-administering a medication, it is important for the consumer to know how to use the drug, the nature of any side effects that can occur, and any contraindications for its use. This information is contained in the label directions and warnings on the product. Further, the label warnings will inform the consumer of any systemic or internal effects which might occur from using the drug.

The term "works internally" does not provide specific information that facilitates safe and effective use of an OTC drug product or prevents misuse and might well serve to confuse consumers. Many topically applied products have systemic effects. The agency believes that it would be confusing to consumers to have label directions that state that the product is to be used topically, while elsewhere on the label it states that the product "works internally." Therefore, the agency agrees with the Panel that the term "works internally" should be classified in Category II.

27. One comment requested that advertising claims for the effectiveness of OTC drug products containing ingredients that are placed in Category III for lack of data to show effectiveness not be allowed during the testing period of these ingredients. The comment recognized that this request may come under the jurisdiction of the Federal Trade Commission (FTC).

As discussed below, the FTC has the primary responsibility for regulating OTC drug advertising. FDA has forwarded copies of the comments concerning cough-cold advertising to the FTC for its consideration. Manufacturers are responsible for adhering to applicable statutory and regulatory standards with respect to advertising claims regardless of whether there is ongoing testing. FDA notes that, since the comment was submitted, the regulations concerning OTC drug review procedures have been revised to delete the provision that had allowed continued marketing of an OTC drug product with a condition classified in Category III after publication of a final monograph pending further testing (see 46 FR 47730; September 29, 1981). (See comment 28 below.)

28. Several comments asserted that the Panel went beyond its charter by making statements concerning the advertising of the products under its review. The comments stated that FDA did not grant such authority in the procedures established for OTC panels. The comments further argued that the Panel's statements on OTC drug advertising were not only inappropriate for inclusion in the report, but were also based on inadequate information because, according to FDA procedures, data and information pertaining to advertising were not submitted to the Panel.

The OTC drug review procedures do not preclude a panel from expressing its concern about OTC drug advertising. The Panel's statements and recommendations on OTC drug advertising (41 FR 38334) were partly based on a presentation made to the Panel by a representative of the Council on Children, Media and Merchandising in April 1975. The presentation included a film and documentation on the use of the package and labeling of OTC drugs in advertising and the possible effect of advertising on children (Ref. 1). FTC has the primary responsibility for regulating OTC drug advertising, and FDA has forwarded copies of the comments concerning cough-cold advertising to the FTC for its consideration (Ref. 2). FDA does, however, have the authority to regulate OTC drug advertising that constitutes labeling under the Federal Food, Drug, and Cosmetic Act. See, e.g., *United States* v. *Article of Drug * * * B-Complex Cholinos Capsules*, 362 F.2d 923 (3d Cir. 1966); *V.E. Irons, Inc.* v. *United States*, 244 F.2d 34 (10th Cir.), *cert. denied*, 354 U.S. 923 (1957). In addition, for an OTC drug to be generally recognized as safe and effective and not misbranded, the advertising for the drug must satisfy the FDA regulations at § 330.1(d) (21 CFR 330.1(d)), which state that the advertising may prescribe, recommend, or suggest the drug's use only under the conditions stated in the labeling. If advertising for an OTC cough-cold drug product offers the product for conditions not included in the final monograph labeling, the drug product may be subject to regulatory action by FDA.

**References**

(1) Summary Minutes of the 18th Meeting of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, April 3, 4, and 5, 1975, Dockets Management Branch.

(2) Letter from S. Bader, FDA, to W. Snyder, FTC, May 6, 1982, in OTC Volume 04GTFM, Docket No. 76N-052G, Dockets Management Branch.

*F. General Comments on Testing Guidelines*

29. Several comments expressed concerns about the testing guidelines recommended by the Panel for Category III OTC single drug ingredients and combinations. The comments urged the Commissioner not to shorten the period of time within which studies must be completed as recommended by the Panel (41 FR 38312) but instead to expand the period of time where good cause can be shown. Other comments stated that the clinical testing time allotted for drugs in Category III is "excellent" or entirely appropriate because of a lack of specific proven methods for some of the studies being recommended. Some comments expressed concern about the competition for a limited number of investigational facilities and trained research personnel which could result from testing of each type of Category III ingredient and combination.

The agency has not addressed specific testing procedures in this document. In revising the OTC drug review procedures relating to Category III,

published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. The revised procedures also state the time in which test data must be submitted for consideration in developing the final monograph. (See also part II, paragraph A.2. below—*Testing of Category II and Category III conditions.*)

30. Referring to the testing of Category III drugs for effectiveness, one comment stated that government agencies should perform absolutely essential testing on prototype drug products and provide industry with the results. According to the comment, the cost of testing could be prorated to the companies marketing the drugs. The comment objected to the testing of OTC drug products by industry because of duplication of studies of the same drug by many companies and because of the moral, ethical, and economic issues involved in utilizing human subjects in testing Category III drugs for effectiveness.

In the preamble to the final rule revising the procedures relating to Category III conditions, the agency stated that "it is the responsibility of the manufacturer of a drug to have adequate tests that meet the statutory requirements before marketing the drug." (See the **Federal Register** of September 29, 1981; 46 FR 47732.) In this document, the agency also stated that "FDA will require adequate and well-controlled studies except where the agency waives this requirement as unnecessary or inappropriate. The agency advises that § 330.10(a)(4)(ii) does permit reports of significant human experience during marketing to be used as corroborative support for general recognition of effectiveness" (46 FR 47731).

Regarding other considerations mentioned by the comment in connection with Category III testing, as discussed in comment 29 above, the agency emphasizes its intention to meet with manufacturers at their request to discuss protocols and other testing issues involving conditions that industry is interested in upgrading. In many instances, reformulation of products to replace Category III ingredients with Category I ingredients will also eliminate a large portion of the costs of testing products containing Category III drugs.

31. Two comments requested modification of the Panel's recommended guidelines for the evaluation and standardization of cough-cold timed-release formulations (41 FR 38331).

These guidelines were published as the Panel's recommendations, but the agency is not adopting them or commenting on them at present. In the **Federal Register** of October 28, 1977 (42 FR 56756), the agency stated that dosage recommendations in the Panel's monograph apply only to conventional formulations. Timed-release formulations are considered new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)). Timed-release formulations are complex such that the state of the art does not permit adequate standardization of them for inclusion in an OTC drug monograph (42 FR 56756). In order to market a timed-release formulation, an approved NDA containing appropriate bioavailability data is required under section 505 of the act (21 U.S.C. 355) and FDA regulations in 21 CFR Part 314. Persons interested in testing or marketing such products should consult with the Office of Drug Research and Review (formerly the Office of New Drug Evaluation), Center for Drug Evaluation and Research.

*G. General Comments on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Combination Drug Products*

32. One comment contended that the Panel endorsed combination products which did not meet the "normal FDA standards." The comment pointed out that currently marketed cough-cold products may contain as many as 12 or more chemicals (including therapeutic ingredients and cosmetic chemicals such as flavors and dyes) and that the Panel recommended the continued marketing of products containing eight or more "active" chemicals. The comment argued that because most cough-cold drug products are combinations of a number of ingredients, their safety depends not only on the safety of individual ingredients for individual symptoms but also on the safety of the ingredients taken together. These ingredients, the comment stated, may interact with each other to enhance toxicity, inhibit effectiveness, or simply expose the consumer to unwanted side effects without providing an overriding benefit.

The agency disagrees with the comment's claim that the Panel endorsed combination products that did not meet "normal FDA standards." These standards are set forth in § 330.10(a)(4)(iv), which states that "an OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients, * * *" The Panel concurred with the requirements of the regulation that each active ingredient in a combination product must contribute to the claimed effects and must be necessary for the rational therapy of concurrent symptoms. The Panel was also aware of the inclusion of inactive (nontherapeutic) ingredients which are used for various purposes, such as preservatives and flavors, in cough-cold preparations. The Panel also recognized that some inactive ingredients may be necessary for marketing purposes (41 FR 38323). The Panel recommended that marketed products should contain only those active and inactive ingredients that are essential to the product.

The Panel evaluated the submitted data on active ingredients in combination products from the standpoint of safety and effectiveness and, based on its evaluation, recommended specific combinations of ingredients from the same and different pharmacologic groups. The Panel classified a number of combinations as Category II (41 FR 38326) and considered medical rationale and drug interactions in making these recommendations. For example, the Panel stated that combinations containing an anticholinergic and an expectorant are medically irrational because an expectorant promotes the production of secretions whereas the anticholinergic produces an opposite effect, i.e., antisecretory action.

After the Panel's report was published in September 1976, the agency published "General Guidelines for OTC Drug Combination Products" (Ref. 1). The guidelines outline the conditions for combinations of Category I active ingredients from the same and different therapeutic categories where each type of combination meets the OTC drug combination policy in all other respects. The guidelines also outline the conditions for the combination of Category I active ingredients from the same therapeutic category having the same or different mechanisms of action.

The agency believes that the Panel's recommendations and the agency's guidelines have adequately addressed the comment's concern as to the continued marketing of products containing several "active" chemicals and the safety of these ingredients when

taken together in a combination drug product.

**Reference**

(1) Food and Drug Administration "General Guidelines for OTC Drug Combination Products, September 1978," Docket No. 78D-0322, Dockets Management Branch.

33. One comment was opposed to OTC combination drug products because they contain fixed doses of ingredients and do not allow latitude for titrating the dose of the various ingredients. The comment cited one medical expert who stated that "fixed combinations prevent establishing an effective dose of individual constituents without affecting the dose of other ingredients (in the combination) * * * which not only may not be necessary, but which may cause undesirable toxic effects."

The comment also referred to a 1969 opinion of the National Academy of Sciences that "It is a basic principle of medical practice that more than one drug should be administered only for the treatment of a given condition only if the physician is persuaded that there is substantial reason to believe that each drug will make a positive contribution to the effect he seeks * * * each drug should be given at the dose level that may be expected to make its optimal contribution to the total effect, taking into account the status of the individual patient and any synergistic or antagonistic effects that one drug may be known to have on the safety or efficacy of the other."

The OTC combination drug products under consideration in this rulemaking are intended to relieve two or more concurrent symptoms. The convenience of being able to take one combination product instead of two or more single ingredient products appeals to many individuals. In fact, the Panel's report acknowledges that cough-cold combination drug products are widely used by consumers (41 FR 38322). Nevertheless, the agency recognizes that OTC combination drug products contain fixed doses of ingredients which do not allow the consumer to adjust the doses of the individual ingredients.

The agency believes that combinations of the cough-cold ingredients specified in this tentative final monograph provide a convenient and rational approach for relief of concurrent symptoms which so frequently accompany the common cold. The agency also believes that combination products formulated in accordance with the tentative final monograph will be safe and effective in a large percentage of the general population.

For consumers who do not believe that the doses of ingredients in fixed combinations represent the optimal titrations for them, the agency believes that appropriate single ingredient products will remain available.

34. One comment disagreed with what it described as the two ways in which the Panel justified its recommendation of cough-cold combinations: first, the requirement that each active ingredient belong to a different pharmacologic class; and second, the fact that "marketing experience" of cough-cold combination products showed that the incidence of consumer complaints for such products was relatively low. The comment contended that the Panel did not consider drug interactions when approving combinations which contain ingredients from different pharmacologic groups, e.g., nasal decongestant, expectorant, cough suppressant, etc. The comment also asserted that the fact that ingredients are added for different purposes is no assurance that they will not have a detrimental effect when combined. The comment further contended that "marketing experience" is worthless in determining the safety and effectiveness of combination products or any other products, because consumers cannot evaluate the special merits of each separate ingredient in the product and are unlikely to keep records and file complaints with the manufacturer.

The agency believes that the comment overlooks other important considerations in the Panel's evaluation of combinations. The Panel did not base its recommendation for cough-cold combinations on different pharmacological categories for each ingredient and marketing experience alone. The Panel specified that only one ingredient from a pharmacological category could be included in a combination and based its classification of the individual ingredients in combinations on data submitted to it for evaluation. It was not the Panel's intention to permit random combinations of ingredients in single products (a "shotgun" approach); however, because the symptoms of the common cold or hay fever often include nasal congestion, runny nose, and coughing, for example, the Panel believed it would be justifiable to combine active ingredients to treat these separate symptoms if the combination met the Panel's and the agency's requirements (41 FR 38323).

In its "General Guidelines for OTC Drug Combination Products" (cited above), published after publication of the Panel's report, the agency provided that Category I active ingredients from different therapeutic categories may be combined to treat different symptoms concurrently only if each ingredient is present within its established safe and effective dosage range and the combination meets the OTC drug combination policy in all other respects. The OTC drug combination policy, as stated in § 330.10(a)(4)(iv) of the OTC drug regulations, includes the provisions that combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients, and the combination provides rational concurrent therapy for a significant proportion of the target population.

The agency concludes that the Panel's Category I recommendations, as adopted by the agency, the application of the OTC drug regulations (21 CFR 330.10), and the agency's guidelines are adequate to insure that those combinations of ingredients permitted in the monograph would be generally recognized as safe, effective, and not misbranded. Regarding "marketing experience," the Panel considered marketing data submitted to it for review. The Panel indicated, based on the data, that there appeared to be a low incidence of adverse reactions. The Panel concluded, and the agency concurs, that while marketing data are limited and difficult to interpret they tend to support the safety of combinations of active ingredients reviewed by the Panel (41 FR 38325).

*H. Comments on Specific OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Combination Drug Products*

35. One comment requested that the agency not impose a limit on the number of ingredients from a single pharmacological group which may be combined in an OTC drug product. The comment contended that the Panel used purely theoretical reasons in categorizing combinations containing two ingredients from the same pharmacologic group as Category III and combinations containing more than two such ingredients as Category II. The comment stated that products combining multiple ingredients from a single pharmacologic group as well as from several pharmacologic groups have been widely sold for many years. The comment requested that the FDA's combination policy for OTC drug products in § 330.10(a)(4)(iv) be the governing criteria for these products without a limitation on the number of ingredients.

Section 330.10(a)(4)(iv) specifies the criteria for OTC combination drug

products. The agency's "General Guidelines for OTC Drug Combination Products" (cited above) state that ingredients from the same therapeutic category that have different mechanisms of action may be combined to treat the same symptoms or condition if the combination meets the OTC drug combination policy in 21 CFR 330.10(a)(4)(iv) in all respects and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. The guidelines also state that Category I active ingredients from the same therapeutic category that have the same mechanism of action should not ordinarily be combined unless there is some advantage over the single ingredient in terms of enhancing effectiveness, safety, patient acceptance, or quality of formulation. Thus, the agency's combination policy does not set limits on the number of ingredients from the same pharmacologic group that may be combined, provided data are presented to show the combination meets the necessary criteria. Combinations containing ingredients from the same pharmacologic group will be permitted if adequate data are presented to the agency.

36. Several comments favored the Panel's recommendation to limit combination products to ingredients from three pharmacological groups. In addition, the comments stated that single ingredient products should be available to the consumer so that a specific drug can be used to treat a specific symptom without the consumer having to take unnecessary ingredients that may cause undesirable side effects.

Other comments disagreed with the Panel's proposal to limit combination products to ingredients from three pharmacological groups, arguing that this recommendation was an unscientific and arbitrary judgment inconsistent with the FDA guidelines for combination products (21 CFR 330.10(a)(4)(iv)), inconsistent with data submitted to the Panel on combination products containing ingredients from more than three pharmacological groups, and inconsistent with the Panel's allowance of Category I status for products containing ingredients from more than three pharmacological groups provided a suitable target population can be identified. One comment stated that the requirement that additional evidence that a significant target population exists for a combination containing ingredients from four pharmacologic groups is unwarranted, and that the imposition of a limit of a specific number of ingredients may curtail the flexibility of the formulator and frustrate the principle of combination products. Several comments recommended that no fixed limit be placed upon the number of active ingredients in a combination if the combination can be shown to be a rational, safe, and effective combination with a suitable target population.

The agency agrees that no fixed limit need be placed upon the number of active ingredients in a combination product if it can be shown to be a rational, safe, and effective combination with a suitable target population. This position is consistent with the FDA policy for OTC drug combination products in 21 CFR 330.10(a)(4)(iv) and with the "General Guidelines for OTC Drug Combination Products" (cited above). The Panel placed certain two and three ingredient combination products in Category I because data were presented to support their safety and effectiveness. The agency will consider any combination for Category I, regardless of the number of ingredients, provided adequate data are presented in accordance with the regulation and guidelines mentioned above.

The agency also agrees that single ingredient products are desirable and should be available. However, the agency recognizes that a significant target population exists for some OTC cough-cold combination products to treat concurrent symptoms and has proposed that such combinations be classified as Category I. Allowable combinations are listed in § 341.40 of the tentative final monograph.

37. One comment disagreed with the Panel's conclusions on combining active ingredients from the same pharmacological group at less than the minimum effective dose. The comment contended that requiring such combinations to show some special benefit is not in accord with the FDA policy for combination products (21 CFR 330.10(a)(4)(iv)). The comment recommended that such combinations not be required to show some special benefit beyond substantial support of safety and effectiveness.

After the Panel's report was published, the agency developed its "General Guidelines for OTC Drug Combination Products" (cited above). In part, the guidelines pertain to the combination of two or more active ingredients from the same pharmacological (therapeutic) category that have the same or different mechanisms of action. Paragraph 3 of the guidelines provides that "Category I active ingredients from the same therapeutic category that have the same mechanism of action should not ordinarily be combined unless there is some advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. They may be combined in selected circumstances to treat the same symptoms or conditions if the combination meets the OTC combination policy (in § 330.10(a)(4)(iv)) in all respects, the combination offers some advantage over the active ingredients used alone, and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose." Paragraph 2 of the guidelines provides that: "Category I active ingredients from the same therapeutic category that have different mechanisms of action may be combined to treat the same symptoms or condition if the combination meets the OTC combination policy in all respects and the combination is on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. Such combinations may utilize each active ingredient in full therapeutic dosage or sub-therapeutic dosage, as appropriate."

The agency developed these guidelines to clarify the existing regulation in 21 CFR 330.10(a)(4)(iv). Both the guidelines and the regulation will be used in evaluating data regarding combination products. The comment did not present any data that would lead the agency to change its general guidelines for OTC drug combination products described above.

38. One comment pointed out an error at 41 FR 38326 concerning combinations containing an antitussive and a local anesthetic or a local analgesic-antipyretic as a lozenge, and combinations containing a nasal decongestant and a local anesthetic or a local analgesic-antipyretic as a lozenge. The comment stated that the word "antipyretic" should be deleted from these statements because the "compounds" being referred to in these combinations are not antipyretics.

The agency points out that the Panel did not include the word "antipyretic" in § 341.40 (j) and (o) of its recommended monograph, which correspond to the statements at 41 FR 38326 cited by the comment. It appears that the word "antipyretic" was erroneously included at 41 FR 38326 and that the Panel intended the statements on that page to be consistent with its recommended

monograph. The Panel's report at 41 FR 38326 is amended accordingly.

39. One comment suggested that § 341.40 (j) and (o) in the advance notice of proposed rulemaking do not accurately reflect the intent of the Panel. The comment pointed out that § 341.40(j) permits combining any single Category I antitussive active ingredient with any single generally recognized as safe and effective local anesthetic or local analgesic active ingredient and that § 341.40(o) permits combining any single Category I nasal decongestant active ingredient with any single generally recognized as safe and effective local anesthetic or local analgesic active ingredient. The comment argued that not all topical analgesic ingredients that are generally recognized as safe and effective should be used on the oral mucosa and that the Panel actually intended to permit combinations of an antitussive or nasal decongestant ingredient with any ingredient that is generally recognized as safe and effective for the relief of sore throat pain.

The comment also indicated that the monograph for OTC oral cavity drug products [which has been renamed oral health care drug products] will determine which pharmacologic categories and ingredients are generally recognized as safe and effective for the relief of sore throat pain and that ingredients from pharmacologic groups other than analgesics, e.g., demulcents, may be appropriate. The comment therefore recommended that paragraphs (j) and (o) of § 341.40 be revised to provide for combinations of an antitussive or a nasal decongestant ingredient with any single ingredient from any pharmacologic group which is designated in the monograph for OTC oral cavity drug products as being generally recognized as safe and effective for the relief of sore throat pain. In addition, the comment suggested that § 341.40(o) be limited specifically to oral nasal decongestant ingredients because § 341.40(o), as currently written, permits combining a topical nasal decongestant with a local anesthetic active ingredient.

In the first segment of the tentative final monograph for OTC oral health care drug products, published in the **Federal Register** of January 27, 1988 (53 FR 2436), the agency deferred consideration of the following combinations to this tentative final monograph: Expectorants and demulcents; expectorants and oral anesthetic/analgesics; oral nasal decongestants and demulcents, oral anesthetic/analgesics, or antimicrobials; antihistamines and oral anesthetic/analgesics, antimicrobials, astringents, debriding agent/oral wound cleansers, or demulcents; and oral antitussives and oral anesthetic/analgesics, antimicrobials, astringents, debriding agent/oral wound cleansers, or demulcents.

The agency agrees with the comment that combinations containing a single antitussive or nasal decongestant ingredient and a single local anesthetic or local analgesic ingredient should be limited to those anesthetic/analgesic ingredients which are generally recognized as safe and effective for use on the oral mucosa. Such ingredients have been proposed in § 356.10 of the tentative final monograph for OTC oral health care drug products (53 FR 2458). To be consistent with the language used in the oral health care drug products tentative final monograph, the term "oral anesthetic/analgesic" is used in this document rather than the term "local anesthetic or local analgesic."

In addition, the agency concurs with the comment's suggestion that § 341.40(o) be restricted to oral nasal decongestants. The agency believes that such a restriction was originally intended by the Panel because it indicated that such a combination should be used only in lozenge form. Topical nasal decongestants are intended for application directly to the nasal mucosa while oral nasal decongestants act through systemic absorption. Antitussives and bronchodilators may also be used as oral or topical drugs. Therefore, for clarity, the agency is specifying in the monograph in § 341.40 and § 341.85 whether antitussives, bronchodilators, and nasal decongestants are for oral or topical (i.e., inhalant or ointment) use.

The comment requested a Category I classification for combination drug products containing an antitussive or a nasal decongestant ingredient with any generally recognized safe and effective ingredient for sore throat pain. In this tentative final monograph the agency evaluates the comments requested combination drug products and other cough-cold and oral health care combination drug products which were deferred from the oral health care rulemaking to the cough-cold rulemaking.

The combination of a local anesthetic or local analgesic (oral anesthetic/analgesic) with an oral antitussive or an oral nasal decongestant was placed in Category I by the Cough-Cold Panel provided that the product is available in the form of a lozenge (41 FR 38326). The agency agrees with the Panel.

In addition, the agency believes that a demulcent can be combined with an oral antitussive or an oral nasal decongestant in a solid dosage form. In several submissions to the Cough-Cold Panel, the demulcent attributes of the products were mentioned (Ref. 1). The Oral Cavity Panel's definition of a demulcent is that it is a bland, inert agent that soothes and relieves irritation of inflamed or abraded surfaces such as mucous membranes. An anesthetic blocks pain receptors resulting in a sensation of numbness and abolition of response to painful stimuli (47 FR 22927). Dry or sore throat is a generally recognized symptom of the common cold (Refs. 2 and 3). In discussing combination drug products containing local anesthetics or other agents for the relief of sore throat, the Cough-Cold Panel stated that because symptoms of sore throat often accompany cough and the "common cold," combination drug products containing cough-cold ingredients and agents to relieve minor irritations are rational (41 FR 38325).

The Cough-Cold Panel reviewed data relating to combination products containing cough-cold ingredients and oral health care ingredients with claims for relief of sore throat. The majority of these data concerned anesthetic/analgesics combined with cough-cold ingredients. The Panel determined that products containing an antitussive or a nasal decongestant combined with an oral anesthetic/analgesic in a lozenge dosage form are rational, identified a target population that would benefit from such products, and placed such combinations in Category I (41 FR 38325). The Panel did not do an extensive review of all possible oral health care and cough-cold combination drug products; thus, it did not identify any other specific cough-cold and oral health care combination products as meeting its requirements for Category I classification. The Panel established specific criteria for the treatment of symptoms with combination products and based its Category I recommendations on whether the combination product is rational concurrent therapy for a significant and existing target population that can benefit from such use (41 FR 38322). Similarly, justification for classifying a 4-ingredient combination product was based on these principles, i.e., identification of a significant target population that required treatment for concurrent symptoms (see comment 47 below). Because of the similarities in the use of oral anesthetic/analgesics and oral demulcents in relieving pain and irritation, the agency believes that the

target populations for products containing an oral nasal decongestant or an oral antitussive combined with an oral anesthetic/analgesic would be the same as that for combination products containing an oral nasal decongestant or an oral antitussive combined with a demulcent ingredient. In addition, in § 356.20(b) of the tentative final monograph for OTC oral health care drug products (January 27, 1988; 53 FR 2458), the agency proposed that an oral anesthetic/analgesic and an oral demulcent was an acceptable combination. Therefore, the agency is proposing that an oral nasal decongestant and/or an oral antitussive can be combined with an oral anesthetic/analgesic and an oral demulcent. The Cough-Cold Panel recognized that most sore throat remedies are applied topically while other symptoms of the cold are usually treated internally by products ingested orally (41 FR 38325). Thus, the type of epidemiological data considered acceptable by the Panel to place a combination of an oral antitussive or oral nasal decongestant and an oral anesthetic/analgesic in Category I can be extrapolated to allow a demulcent or a demulcent and anesthetic/analgesic combination to be combined with similar cough-cold ingredients. Therefore, the agency is classifying in Category I in this tentative final monograph the following combinations provided the product is in a solid dosage form to be dissolved in the mouth and swallowed: (1) An oral antitussive or an oral nasal decongestant and an oral anesthetic/analgesic, (2) an oral nasal decongestant, an oral antitussive, and an oral anesthetic/analgesic, (3) an oral antitussive or an oral nasal decongestant and an oral demulcent, (4) an oral nasal decongestant, an oral antitussive, and an oral demulcent, (5) an oral antitussive or an oral nasal decongestant, an oral anesthetic/analgesic, and an oral demulcent, and (6) an oral nasal decongestant, an oral antitussive, an oral anesthetic/analgesic, and an oral demulcent.

In its report on OTC oral health care drug products, the Oral Cavity Panel classified the combination of an expectorant with an anesthetic/analgesic in Category II because it believed that an anesthetic would be diluted and removed from the mucous membranes of the mouth and throat by the action of the expectorant (47 FR 22792). However, the final monograph for OTC expectorant drug products, to be published in a future issue of the Federal Register, will provide for expectorants to be taken orally to promote or facilitate the removal of secretions from the respiratory airways. Further, the indications for expectorants are "helps loosen phlegm (sputum) and bronchial secretions and rid the bronchial passageways of bothersome mucus" or "drain bronchial tubes by thinning mucus." Thus, contrary to the Oral Cavity Panel's statements, the expectorant ingredient included in the monograph is not intended to exert an effect in the mouth and throat, but is intended to have a systemic effect. It could be expected that when a combination drug product in a solid dosage form containing an expectorant and an oral anesthetic/analgesic or a combination containing an expectorant and an oral demulcent is dissolved in the mouth and then swallowed, the oral anesthetic/analgesic or the oral demulcent will have exerted its topical therapeutic effect before the expectorant exerts its systemic effect. Therefore, in such combination drug products, the action of the expectorant would not interfere with the sore throat relief provided by the anesthetic/analgesic or the demulcent ingredient; thus, the agency believes that the combination of an expectorant with an oral anesthetic/analgesic in a solid dosage form and the combination of an expectorant and an oral demulcent in a solid dosage form could be rational. A product containing an expectorant and an anesthetic/analgesic was submitted to the Cough-Cold Panel, but the product is no longer marketed (Ref. 4). The agency is not aware of any currently marketed products containing these combinations of ingredients in a solid dosage form. Moreover, no data were submitted to demonstrate a significant target population with concurrent symptoms that would benefit from such combinations. Therefore, the agency is proposing a Category III classification in this tentative final monograph for the combination of an expectorant with an oral anesthetic/analgesic and the combination of an expectorant with an oral demulcent in a solid dosage form.

Likewise, the agency believes that the combination of an antihistamine and an oral anesthetic/analgesic or an oral demulcent could be rational if the combination drug product is in a solid dosage form so that the anesthetic/analgesic ingredient or the demulcent ingredient may exert its topical effect and the antihistamine can be ingested. The symptoms of allergic rhinitis and minor throat irritation that may result from the nasal congestion that often occurs with allergic rhinitis and subsequent breathing through the mouth could be treated concurrently by a combination drug product containing an antihistamine and an oral health care active ingredient. However, the agency is not aware of any currently marketed OTC drug products that contain such a combination of ingredients, and no data were submitted to demonstrate a significant target population with concurrent symptoms that would benefit from such combinations. Therefore, the agency is proposing a Category III classification in this tentative final monograph for the combination of an antihistamine with an oral anesthetic/analgesic and the combination of an antihistamine and an oral demulcent.

The agency has considered the combination of a debriding agent/oral wound cleanser with an antitussive or antihistamine active ingredient. The Oral Cavity Panel classified several combinations containing debriding agents in Category II stating that a debriding agent, because of its mechanical cleansing action, would wash away or dilute the other active ingredients in the combination and thus prevent them from acting as intended or from exerting their therapeutic effects (47 FR 22792). In addition, in the first segment of the tentative final monograph for OTC oral health care drug products, the agency proposed a Category II classification for the combination of a debriding agent/oral wound cleanser and a demulcent (53 FR 2452). The agency notes that a debriding agent/oral wound cleanser is designed to be swished around in the mouth for at least a minute and then spat out; it should not be swallowed. In a combination drug product containing a debriding agent/oral wound cleanser and an antitussive or an antihistamine, the antitussive or antihistamine could not exert its therapeutic effect because it would not be ingested. The agency concludes that the combination of a debriding agent/oral wound cleanser with an oral antitussive or an antihistamine is not rational. Therefore, the agency is proposing a Category II classification for the combination of a debriding agent/oral wound cleanser with an antitussive or an antihistamine.

Regarding the combination of an oral health care astringent with an oral antitussive or an antihistamine, the agency notes that, as is the case for debriding agent/oral wound cleansers, the directions for an astringent require that the ingredient be in the mouth for at least one minute and then spat out. The agency concludes that these directions are incompatible with the effective use of an oral antitussive or an antihistamine active ingredient. Therefore, in this tentative final

monograph the agency is proposing a Category II classification for the combination of an astringent with an oral antitussive or an antihistamine.

Because the Oral Cavity Panel did not propose any Category I indications for oral antimicrobials, the agency will discuss combinations that include oral antimicrobials in the antimicrobial segment of the tentative final monograph for OTC oral health care drug products, to be published in a future issue of the **Federal Register**. If necessary, the cough-cold combinations tentative final monograph will be amended at a later date to include any combinations identified as being Category I.

Accordingly, in this tentative final monograph, proposed § 341.40(j) reads as follows: "Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed," and § 341.40(p) reads as follows: "Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed."

In addition, the agency is adding the following Category I combinations to the designated paragraphs in § 341.40:

(u) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral demulcent active ingredient identified in § 356.18 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

(v) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral demulcent active ingredient identified in § 356.18 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

(w) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single oral demulcent active ingredient identified in § 356.18 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

(x) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 and any single oral demulcent active ingredient identified in § 356.18 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

(y) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 and any single oral demulcent active ingredient identified in § 356.18 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

(z) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single oral anesthetic/analgesic active ingredient identified in § 356.10 and any single oral demulcent active ingredient indentified in § 356.18 provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

**References**

(1) OTC Volumes 040061, 040104, and 040248.

(2) "Handbook of Nonprescription Drugs," 8th Ed., American Pharmaceutical Association, Washington, pp. 127, 130, and 131, 1986.

(3) Berkow, R., editor, "The Merck Manual of Diagnosis and Therapy," 14th Ed., Merck and Co., Rahway, NJ, p. 189, 1982.

(4) OTC Volume 040104.

40. One comment noted a possible oversight in the Panel's classification of Category I combinations. The comment pointed out that the Panel placed in Category I combinations containing an antitussive and a local anesthetic or local analgesicantipyretic in a lozenge dosage form and combinations containing a nasal decongestant and a local anesthetic or local analgesic-antipyretic in a lozenge dosage form. The Panel did not, however, classify combinations of an antitussive, a nasal decongestant, and a local anesthetic or local analgesic-antipyretic. The comment requested Category I classification of such combinations in a lozenge dosage form, stating that there should be no difficulty in recognizing the target population with concurrent symptoms necessitating treatment with the three pharmacologically different Category I ingredients.

The agency has reviewed the Panel's recommended criteria for classifying cough-cold combinations and agrees that there is a target population that has the symptoms of nasal congestion, cough, and sore throat concurrently. As noted in comment 38 above, the term "antipyretic" should not be included for combinations such as these. As noted in comment 39 above, the anesthetic/analgesic ingredients in these combinations are limited to those that are generally recognized as safe and effective for use on the oral mucosa, and the nasal decongestants in these combinations are limited specifically to any oral nasal decongestants that are identified in § 341.20(a) as generally recognized as safe and effective (50 FR 2238). The agency is including in this tentative final monograph combinations containing an oral antitussive, an oral nasal decongestant, and an anesthetic/analgesic provided the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

41. One comment opposed the Panel's Category II classification of a combination product containing an antihistamine for the exclusive purpose of sedation and a second antihistamine for relief of the symptoms of allergic rhinitis. The comment referred to the Panel's discussion regarding nighttime cough-cold products which are promoted for use at bedtime to provide a restful sleep (41 FR 38415, paragraph B.1.a). The Panel stated that the duration of drug effects in nighttime cold products which are recommended to be taken once at bedtime is not fully documented, and it recommended the use of antihistamines in cough-cold products only for the relief of symptoms of allergic rhinitis. The comment contended that the Panel's determination that a combination of two antihistamines is "not rational" is a "conclusionary statement" and that the Panel provided no data to support this conclusion. The comment recommended that such combinations be placed in Category I in the absence of any supporting data to prove irrationality.

The agency agrees with the Panel that it is irrational to add an additional antihistamine primarily for the purpose of sedation when treating the symptoms of allergic rhinitis. When using an antihistamine to relieve the symptoms of allergic rhinitis, the desired therapeutic effect is to alleviate the symptoms of allergy, i.e., runny nose, sneezing, and itchy and watery eyes. Addition of a second antihistamine to the product to promote sleep is unnecessary because if allergic rhinitis symptoms are relieved at night by using an antihistamine, most individuals will sleep normally. Antihistamines as a class produce varying degrees of drowsiness as a side effect. The agency is not convinced that there is a need to compound the drowsiness effect of one antihistamine

by adding a second antihistamine to the product. The comment also implies that there is a target population for which an OTC drug product consisting of two antihistamines would be appropriate. However, the comment did not submit any supporting data. For these reasons, the combination of an antihistamine for the relief of the symptoms of allergic rhinitis and an antihistamine added solely for sedation purposes remains in Category II.

42. One comment expressed concern that adverse reactions have been reported with some antihistamine/decongestant combination products containing central nervous system stimulants or sympathomimetic-like agents. The comment stated that good data are not available concerning adverse reactions caused by such combinations; therefore in-depth review is needed. No additional information was submitted by the comment.

The agency notes that the Panel reviewed the available data to determine the rationale and appropriateness of cough-cold combination drug products and to determine the potential for these combinations to cause side effects and adverse reactions. Based on its review, the Panel recommended that any Category I antihistamine could be combined with any Category I nasal decongestant provided each ingredient in the combination was present in amounts within the effective dosage range and the appropriate Category I labeling was used (41 FR 38326).

The data reviewed by the Panel included the marketing history and adverse reaction reports (Ref. 1) for currently marketed drug products containing antihistamines and nasal decongestants. The Panel found that these data showed a low incidence of adverse effects for these combinations (41 FR 38325) and therefore did not recommend any additional warning statements beyond those recommended for individual antihistamine and oral nasal decongestant active ingredients. The agency has reviewed the adverse reaction reports for the years 1969 to 1988 for various combination drug products containing antihistamines and nasal decongestants. These data show that there is a relatively low incidence of central nervous system stimulant adverse effects caused by these combinations (Ref. 2).

Because the pharmacologic actions of the various Category I antihistamines are similar, and because the pharmacologic actions of the various Category I oral nasal decongestants are similar, the agency agrees with the Panel that any Category I antihistamine and any Category I oral nasal decongestant may be safely combined. All warning statements that are required for individual antihistamine and oral nasal decongestant active ingredients will be required for combination drug products containing those ingredients, and the agency believes that the proposed warnings in §§ 341.72(c) and 341.80(c) are adequate to warn consumers of the possibility of adverse effects of a combination product. Therefore, no further in-depth review is necessary at this time.

**References**

(1) OTC Volumes 040287 and 040287A.

(2) Department of Health and Human Services, Food and Drug Administration, "Annual Adverse Reaction Summary Listing," pertinent pages for the years 1969 to 1988, OTC Volume 04GTFM, Docket No. 76N–052G, Dockets Management Branch.

43. One comment argued that it was inappropriate for the Panel to recommend a Category II classification for a combination containing a drug recognized as both an antitussive and an antihistamine combined with another antitussive and/or antihistamine. The comment argued that the Panel expressed only theoretical concerns regarding the safety of this combination and did not document the incidence of side effects it envisaged as occurring. The comment urged that such a combination be placed in Category III.

The agency believes that the combination drug products described by the comment and classified by the Panel in Category II (41 FR 38326) should be considered to be combinations containing two ingredients from the same pharmacologic group and that a Category II classification is inconsistent with the Panel's recommendation that such combinations containing two ingredients from the same pharmacologic group should be in Category III. The agency's "General Guidelines for OTC Drug Combination Products" (cited above), which were made available after publication of the Panel's report, state that Category I active ingredients from the same therapeutic category that have the same mechanism of action should not ordinarily be combined unless there is some advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. However, these guidelines also state that such ingredients may be combined in selected circumstances to treat the same symptoms or conditions if the combination meets the OTC drug combination policy in all respects, the combination offers some advantage over the active ingredients used alone, and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. Accordingly, based on the Panel's position concerning combinations containing two ingredients from the same pharmacologic group and the agency's general combination guidelines, the agency has placed these types of oral antitussive-antihistamine combinations in Category III.

44. One comment was opposed to the proposed restriction of OTC antitussive-antihistamine combinations to nonproductive cough when the underlying disease stimulating the cough is a cold. The comment stated that it was not aware of any "evidence that the combining of OTC doses of antitussives and antihistamines results in any negative effect on patients with productive cough due to a cold." The comment contended that consumer and clinical experience, including clinical studies reported to the Panel, provided evidence that the use of antitussive-antihistamine combinations for cough due to a cold are both safe and beneficial to the patient.

The agency does not agree with the comment that antitussive-antihistamine combinations should be allowed as a treatment for productive cough, i.e., cough associated with excessive phlegm, when the underlying disease stimulating the cough is a cold. Antitussives, as single ingredient products, have also been restricted to non-productive cough (i.e., cough that is not associated with excessive secretions) because cough suppression in certain diseases with productive cough may impair clearing of the airway (48 FR 48589). Antihistamines have a drying effect and may cause thickening of the secretions in the larynx, pharnyx, and lower respiratory tract. Retention of these secretions may also lead to the potentially harmful effect of airway obstruction (Ref. 1). A productive cough may be associated with a wide variety of diseases, ranging from a mild self-limiting disease to a very serious disease (Ref. 1). The symptoms of the common cold in its early stages are very similar to the early stages of diseases such as pneumonia, tuberculosis, pertussis, or measles, and are not readily distinguishable (Refs. 2, 3, and 4). It is not possible for the consumer to recognize the cause of a productive cough, and the agency believes that, in the interest of safety, a generalized warning against use of antitussives in cough accompanied by excessive phlegm (mucus) is warranted.

The Panel recommended the following warning in § 341.74(b)(2) for all products containing an antitussive: "Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, or emphysema, or where cough is accompanied by excessive secretions except under the advice and supervision of a physician." This warning (redesignated as § 341.74(c)(1)(i) in the antitussive tentative final monograph (48 FR 48594)) has been slightly revised for clarity to read as follows:

Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, or emphysema, or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor.

**References**

(1) Calvert, J.C., "Cough Differential Diagnosis and Treatment," *Drug Intelligence and Clinical Pharmacy*, 10:640–650, 1976.

(2) Keefer, C.S., and R.W. Wilkins, editors, "Medicine-Essentials of Clinical Practice," Little, Brown and Co., Boston, pp. 103, 113, 125, and 127, 1970.

(3) Conn, H.F., and R.B. Conn, Jr., editors, "Current Diagnosis," W.B. Saunders Co., Philadelphia, pp. 116 and 180, 1974.

(4) Talso, P.J., and A.P. Remenchik, editors, "Internal Medicine Based on Mechanisms of Disease," C.V. Mosby Co., St. Louis, pp. 302 and 304, 1980.

45. One comment pointed out a discrepancy between the Panel's report and the Panel's recommended monograph regarding the combination of an oral bronchodilator and an antitussive. The comment stated that the Panel indicated in its report that a combination product containing an oral bronchodilator and an antitussive when labeled only for cough associated with asthma is a Category II combination because the antitussive suppresses cough, and the cough reflex is essential in asthma to maintain an open airway by clearing the respiratory passages of excessive secretions. However, such a combination was included as a Category I combination in § 341.40(f) and § 341.85(b) of the advance notice of proposed rulemaking.

The agency previously recognized this discrepancy and corrected it in the Federal Register of October 28, 1977 (42 FR 56756) by proposing to delete § 341.40(f) and § 341.85(b). Interested persons were invited to comment on this proposed deletion, but no comments were received. Therefore, the combination of an oral bronchodilator and an oral antitussive labeled for cough associated with asthma is classified as Category II and is not included in this tentative final monograph.

46. One comment disagreed with the Panel's recommendation that a combination containing an antitussive and an expectorant that is labeled for a productive cough be placed in Category III and requested that such a combination be classified in Category I. The comment agreed with what it contended was the Panel's concern that chronic bronchitic, asthmatic, and emphysematous patients not drown in their own secretions when taking such a combination, but argued that this is not a problem with OTC use of this combination. The comment claimed that: (1) OTC antitussives at their recommended dosages do not prevent physiological coughing, i.e., coughing to clear the airways of mucus, but merely reduce excessive irritative cough; (2) there is no evidence that increasing the volume of mucus in productive cough due to a cold by the action of an expectorant represents a hazard to a person with a cold; and (3) when the recommended use of the combination is for cough due to a cold, the great majority of the population desiring cough relief do not have bronchitis, asthma, or emphysema. The comment stated that there is a growing body of clinical acceptance that OTC antitussives reduce excessive irritative cough but not physiological coughing and therefore would not present a problem in patients with productive cough. It also stated that clinical studies of cough syrups containing antitussives and expectorants in patients with cough due to a cold have usually involved patients with productive and nonproductive cough indiscriminately, without evidence of lack of safety.

The Panel specifically stated that "additional studies are necessary to assess the combined effects of an antitussive and an expectorant in the presence of excessive or more fluid bronchial secretions" (41 FR 38328). Accordingly, the Panel concluded that an OTC cough-cold combination of an antitussive and an expectorant, when indicated for a productive cough, be classified in Category III. The agency agrees with the Panel's conclusion and does not consider the information contained in the comment sufficient to support a Category I classification for a combination of an oral antitussive and an expectorant. The comment failed to provide specific documentation, in the form of data from well-controlled clinical studies, to justify its claims. Without such data, the agency concludes that a combination containing an oral antitussive and an expectorant labeled for productive cough will not be reclassified to Category I and will remain in Category III.

47. One comment objected to the Panel's decision to place combination drug products containing ingredients from four different pharmacologic groups in Category III until a significant target population requiring such a combination was identified and argued that data were submitted to the Panel concerning the existence of such a population (Ref. 1). Another comment submitted new data from an unpublished epidemiological study (Ref. 2) conducted to comply with the Panel's recommendation that a significant target population be identified for an OTC four-ingredient combination drug product containing an analgesic-antipyretic, an antitussive, an antihistamine, and a nasal decongestant for treatment of concurrent cold symptoms (41 FR 38328). Six comments, noting that the Panel did not categorize a combination consisting of ingredients from three of the four pharmacologic groups, i.e., an analgesic-antipyretic, an antihistamine, and a nasal decongestant, requested that this three-ingredient combination be classified in Category I, based on submissions made for the combination containing ingredients from the four pharmacologic groups (Ref. 3).

The data referred to by the first comment included several literature references, a consumer research study, and a retrospective analysis of four clinical studies, none of which was originally conducted to determine the existence of the applicable target population. The Panel concluded that these data did not support the existence of a significant target population with concurrent cold symptoms of sufficient duration and severity to require a four-ingredient combination drug product.

The new data submitted by the second comment consisted of an epidemiological study conducted by seven investigators who followed a protocol consisting of a physical examination, including a nasal turbinate observation; a characterization of complaints; and a retrospective survey of subjects who had head colds and had been accepted for pharmacological assay experiments. The agency's analysis of the data indicated that the seven investigators identified a total of 695 patients, of whom 308, or 44.32 percent, had symptoms in all four treatment categories, i.e., (1) analgesic-antipyretic for pain, such as muscle ache and headache, and fever; (2) antitussive for wet or dry cough; (3) antihistamine for watery eyes, runny nose, and itchy nose; and (4) nasal decongestant for congestion. The retrospective survey confirmed the epidemiological study by identifying another large population of

individuals with symptoms in all four categories.

The agency accepts the results of the epidemiological study as evidence of the existence of a significant target population with concurrent cold symptoms of sufficient duration and severity to require a combination product containing an analgesic-antipyretic (as a single ingredient identified in § 343.10 or as a combination containing an analgesic-antipyretic identified in § 343.20 (a) or (b)(3), an oral antitussive, an antihistamine, and an oral nasal decongestant. Based on this evidence, the agency proposes to reclassify such a combination from Category III to Category I in this tentative final monograph.

Based on its evaluation of the data submitted for use of a combination product containing ingredients from the four pharmacological groups, the agency proposes to classify the following as Category I in this tentative final monograph: (1) a combination consisting of an analgesic-antipyretic (as a single ingredient or as a combination containing an analgesic-antipyretic as identified above), an oral antitussive, and an oral nasal decongestant and (2) a combination consisting of an oral antitussive and an analgesic-antipyretic (as a single ingredient or as a combination containing an analgesic-antipyretic as identified above). The agency's detailed comments and evaluation on the data are on file in the Dockets Management Branch (Refs. 4 and 5).

The labeling for the analgesic-antipyretic component of combination drug products containing cough-cold ingredients and analgesic-antipyretic ingredients may include indications for the "temporary relief of minor aches, pains, headache, muscular aches, and fever associated with the common cold." (See comment 61 below.) These indications, consistent with the symptoms reported in the epidemiological study (Ref. 2), are commonly found on currently marketed products and are also consistent with the intended use of a combination drug product containing cough-cold and analgesic-antipyretic ingredients.

**References**

(1) Comment No. C0111, Docket No. 76N-0052, Dockets Management Branch.

(2) Comment No. C0180, Docket No. 76N-0052, Dockets Management Branch.

(3) Comment Nos. C0109, C0110, C0134, C0144, C0161, C0188, Docket No. 76N-0052, Dockets Management Branch.

(4) Letter from W.E. Gilbertson, FDA, to G.F. Hoffnagle, Richardson-Vicks, Inc., coded LET077, Docket No. 76N-052G, Dockets Management Branch.

(5) Letter from W.E. Gilbertson, FDA, to B.M. Lanman, Bristol-Myers Products, Division of Bristol-Myers Co., coded LET078, Dockets No. 76N-052G, Dockets Management Branch.

48. One comment suggested that the list of ingredients deferred to the Advisory Review Panel on OTC Oral Cavity Drug Products (Oral Cavity Panel) (41 FR 38319) should be supplemented to include benzocaine. The comment pointed out that there are several currently marketed combination drug products containing benzocaine and an antitussive or a nasal decongestant and that such combinations have been classified as Category I by the Cough-Cold Panel (41 FR 38326).

Benzocaine was reviewed and included in the Oral Cavity Panel's report published in the **Federal Register** of May 25, 1982 (47 FR 22712). Benzocaine should have been listed at 41 FR 38319 with the other ingredients deferred by the Cough-Cold Panel to the Oral Cavity Panel, and the agency now corrects the omission.

49. One comment objected to the Panel's classification of phenobarbital 8 mg in Category III as a stimulant corrective to counteract the adverse central nervous system stimulant effects of drugs such as ephedrine in antiasthmatic preparations and requested Category I classification instead. The comment cited Goodman and Gilman (Ref. 1), as reflecting the experience of clinicians, to support its contention that there are sufficient data to permit final classification of phenobarbital as safe and effective for OTC use as a stimulant corrective. The comment presented the following medical arguments to justify the use of phenobarbital at a low dose to counteract the central nervous system stimulant effects of other drugs: (1) Barbiturates are respiratory depressants, (2) the hypoxic and chemical drives to respiration are decreased as the barbiturate dose increases, and (3) the medical treatment of asthma must provide for maximum breathing capacity and velocity of air movement, especially in the expiratory phase. In addition, the comment noted that the Panel used the term "sedative corrective" instead of "stimulant corrective" in its statement on the effectiveness of phenobarbital (41 FR 38418).

The agency has reviewed the Panel's recommendations on phenobarbital (41 FR 38417) and on combination products containing stimulant and sedative correctives (41 FR 38325), as well as the information provided in the comment. The agency has also reviewed the findings of the Pulmonary-Allergy Drugs Advisory Committee, which stated unanimously that there was no evidence that formulation with a barbiturate reduces the incidence of side effects caused by ephedrine-theophylline combinations (Ref. 2).

Sims, do Pico, and Reed (Ref. 3) reported in a recent double-blind, randomized, placebo-controlled study that phenobarbital 8 mg, in combination with theophylline 130 mg and ephedrine 25 mg, did not reduce the central nervous system stimulant side effects of tremor, nervousness, or nausea induced by theophylline or ephedrine. As the Panel noted, phenobarbital and other barbiturates are subject to abuse (41 FR 38417), phenobarbital is a potent hepatic microsomal enzyme-inducer which alters corticosteroid metabolism (prescription corticosteroid drugs are sometimes used in patients with bronchial asthma), and phenobarbital has a known enzyme-inducing effect with many other commonly used drugs (Refs. 4, 5, and 6).

As indicated in the comment, phenobarbital and the barbiturates have a respiratory depressant effect, which would be a specific hazard to a large segment of the population with diminished pulmonary function as a result of chronic obstructive pulmonary disease, and a possible hazard to individuals with other diseases.

These adverse effects could occur with the proposed adult oral dosage regimen of 8 to 16 mg of phenobarbital every 4 hours (41 FR 38418). The daily (24 hour) dose of phenobarbital could be as high as 96 mg. Lecamwasam et al. (Ref. 5), Landay et al. (Ref. 6), and Brooks et al. (Ref. 7) have reported significant effects of phenobarbital on the metabolism of other drugs when administered at a level of 90 mg daily. Thus, phenobarbital used at this dosage could create the potential for a significant incidence of adverse drug interactions by affecting the metabolism of many other commonly used drugs.

Goodman and Gilman (Ref. 1), whom the comment cited, state that "the central nervous system stimulant action of ephedrine tends to cause wakefulness and irritability, and a barbiturate is commonly given in addition." However, the "reference" in Goodman and Gilman does not provide any indication of a phenobarbital dosage for this purpose, nor does it indicate that phenobarbital should be used in combination with ephedrine or theophylline for self-medication. On the contrary, Goodman and Gilman state that barbiturates in

mixtures offer little advantage and that the physician should prescribe such drugs separately for concurrent use, adjusting doses to specific patient needs (Ref. 8). In fact, data show that phenobarbital 8 mg is not effective as a stimulant corrective in combination with ephedrine and theophylline (Ref. 2).

Based on its review of available data, the agency concludes that phenobarbital is not generally recognized as safe and effective for OTC use as a stimulant corrective in combination products with central nervous system stimulant drugs such as ephedrine or the theophyllines and is reclassifying phenobarbital 8 mg as a stimulant corrective from Category III to Category II.

Regarding the use of the term "sedative corrective" in the Panel's report at 41 FR 38325, the agency agrees with the comment that the term "stimulant corrective" should have been used.

**References**

(1) "The Pharmacological Basis of Therapeutics," 4th Ed., edited by L.S. Goodman and A. Gilman, The Macmillan Co., New York, p. 517, 1970.

(2) Minutes of the Pulmonary-Allergy Drugs Advisory Committee, December 6 and 7, 1979, p. 5, in OTC Volume 04GTFM, Docket No. 76N–052G, Dockets Management Branch.

(3) Sims, J.A., G.A. do Pico, and C.E. Reed, "Bronchodilating Effects of Oral Theophylline-Ephedrine Combination," *Journal of Allergy and Clinical Immunology*, 62:15–21, 1978.

(4) Thorn, G.W., et al., editors, "Harrison's Principles of Internal Medicine," 8th Ed., McGraw-Hill Book Co., New York, pp. 342–343, 1977.

(5) Lecamwasam, D.S., et al., "Effect of Phenobarbitone on Hepatic Drug-Metabolizing Enzymes and Urinary D-Glutaric Acid Excretion in Man," *British Journal of Clinical Pharmacology*, 2:257–262, 1975.

(6) Landay, R.A., et al., "Effect of Phenobarbital on Theophylline Disposition," *The Journal of Allergy and Clinical Immunology*, 62:27–29, 1978.

(7) Brooks, S.M., et al., "Adverse Effects of Phenobarbital on Corticosteroid Metabolism in Patients with Bronchial Asthmas," *New England Journal of Medicine*, 286:1125–1128, 1972.

(8) "The Pharmacological Basis of Therapeutics," 4th Ed., edited by L.S. Goodman and A. Gilman, The Macmillan Co., New York, pp. 112–113, 1970.

50. One comment indicated that "lethargy," a feeling of fatigue or tiredness, should have been included with the cold symptoms listed by the Panel at 41 FR 38320. The comment claimed that caffeine included in a cold preparation not containing an antihistamine would combat the lethargy that affects a significant target population of persons with cold symptoms. The comment recommended that, because of its stimulant action, caffeine at a dosage of 15 to 30 mg should be permitted in cold preparations to overcome symptoms of lethargy.

The agency agrees that lethargy may be a symptom which accompanies a cold. In the final monograph for OTC stimulant drug products, caffeine was included as a monograph drug for the indication "helps restore mental alertness or wakefulness when experiencing fatigue or drowsiness" in a dose of 100 to 200 mg (53 FR 6105). The comment did not submit any data to support its suggested inclusion in a cough-cold combination of 15 to 30 mg (or a higher quantity) of caffeine to combat "lethargy" accompanying the common cold. Therefore, the agency is unable to accept the comment's request at this time.

51. One comment requested Category I classification for a combination product containing phenylephrine hydrochloride (a nasal decongestant) and methapyrilene hydrochloride (an antihistamine) in a nasal spray and submitted two clinical studies in support of its request (Ref. 1).

The Panel classified combination products containing a nasal decongestant and an antihistamine administered topically in a spray or drops in Category III. The Panel specified that additional studies are necessary to assess the contribution of an antihistamine administered by the topical route because there are inadequate studies demonstrating the effectiveness of topically applied antihistamines in such combinations (41 FR 38328). In the studies submitted by the comment, nasal sprays containing 0.125 percent methapyrilene hydrochloride alone, 0.50 percent phenylephrine hydrochloride alone, and 0.125 percent methapyrilene and 0.50 percent phenylephrine in combination were studied on a double-blind, parallel (non-crossover) basis in patients with allergic rhinitis (ragweed hay fever) and acute coryzal rhinitis. The agency's evaluation of the studies indicates that methapyrilene hydrochloride alone had no significant effect on the symptomatology of coryza or allergic rhinitis, and that there were no significant differences between phenylephrine alone and the combination of phenylephrine and methapyrilene in relieving the symptoms of coryza and allergic rhinitis.

In light of the finding by the National Cancer Institute that methapyrilene is a potent carcinogen in rats and therefore a potential carcinogen in man, manufacturers have voluntarily recalled all methapyrilene-containing products from the market, and FDA has withdrawn all NDA's for products containing methapyrilene. (See the preamble to the tentative final monograph for OTC antihistamine drug products published in the **Federal Register** of January 15, 1985; 50 FR 2200.) The agency has placed all OTC methapyrilene-containing drug products in Category II for safety, and the combination of phenylephrine hydrochloride and methapyrilene hydrochloride in a nasal spray or drops for OTC use will not be considered further in this document. However, the combination of a Category I antihistamine and a Category I nasal decongestant in a nasal spray or drops will remain in Category III until substantive data are submitted to demonstrate the effectiveness of such a combination.

**Reference**

(1) Comment COIII, Docket Number 76N–0052, Dockets Management Branch.

52. One comment objected to the reformulation of a specific cough-cold combination drug product, contending that the reformulated product is not "as effective as the one [FDA] forced to be taken off the market."

The combination product referred to in the comment was submitted to the Panel in October 1972 and at that time contained 1 mg chlorpheniramine maleate (an antihistamine), 5 mg phenylephrine hydrochloride (a nasal decongestant), 300 mg acetaminophen (an analgesic-antipyretic), and 30 mg caffeine (a stimulant) per tablet at an adult dosage of two tablets every 4 hours (Ref. 1). The presently marketed combination contains 2 mg chlorpheniramine maleate, 18.75 mg phenylpropanolamine (a nasal decongestant), and 325 mg acetaminophen per tablet at an adult dosage of two tablets every 4 hours. The reformulation of the combination product was probably due in part to the recommendations of the Panel, but was undertaken voluntarily by the manufacturer.

The Panel recommended 4 mg of chlorpheniramine as the minimum effective adult dose (41 FR 38384), and the agency adopted this dose in the tentative final monograph for OTC antihistamine drug products (50 FR 2217). The previous combination product formulation provided an adult dose of 2 mg chlorpheniramine in two tablets, only half the Panel's recommended effective dose. The new combination provides an effective adult dose of 4 mg chlorpheniramine in two tablets.

The previous combination also provided an oral adult dose of 10 mg phenylephrine hydrochloride as a nasal decongestant in two tablets. The new combination provides an adult dose of 37.5 mg phenylpropanolamine as a nasal decongestant in two tablets. Both the dose of phenylephrine in the previous combination and the dose of phenylpropanolamine in the new combination were found by the Panel to be effective as nasal decongestants. Therefore, the change in the nasal decongestant ingredients included in the combination would not appear to be based on the Panel's recommendations. After the Panel's report was published, FDA became aware of studies indicating that certain dosages of phenylpropanolamine may cause elevation of blood pressure. For this reason, the agency has decided to address the safety of phenylpropanolamine for nasal decongestant use in a future **Federal Register** publication. Therefore, phenylpropanolamine is not categorized in the nasal decongestant tentative final monograph. (See the **Federal Register** of January 15, 1985; 50 FR 2220.)

The previous combination provided an adult dose of 60 mg caffeine in two tablets, while the new combination does not contain caffeine. The Panel recognized that caffeine may be included in cough-cold products that contain antihistamines as a "stimulant corrective" (41 FR 38417), but did not find sufficient data to support the effectiveness of caffeine for this use and placed caffeine in Category III. (The agency notes that the Panel used the terms "stimulant corrective" in referring to caffeine; however, the term "sedative corrective" should have been used. The agency hereby makes the correction.) No further data have been submitted to the agency to demonstrate the effectiveness of caffeine as a "sedative corrective." Caffeine will, therefore, remain in Category III for this use.

The previous combination provided an adult dose of 600 mg acetaminophen in two tablets, while the new combination provides an adult dose of 650 mg acetaminophen in two tablets. The Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products recommended an adult dosage range of 325 to 650 mg acetaminophen as safe and effective in the advance notice of proposed rulemaking published in the **Federal Register** of July 8, 1977 (42 FR 35346) at 42 FR 35416. That Panel's recommendations would not require a change in the formulation of the combination.

The agency disagrees with the comment's contention that agency actions have resulted in a less effective cough-cold combination drug product. The key change in the formulation of the combination, based on the recommendations of the Cough-Cold Panel and the Internal Analgesic Panel, was an increase in the dose of chlorpheniramine to an effective dose (from 2 mg to 4 mg). Further changes in dosage or ingredients may be required when the final monograph for OTC cough-cold products is published depending on the outcome of the agency's review of data on the safety of phenylpropanolamine as a nasal decongestant. However, combinations of an antihistamine, an oral nasal decongestant, and an analgesic-antipyretic ingredient have been placed in Category I in this tentative final monograph. The agency believes that its decisions, which are based on the review of data, marketing experience, and the recommendations of experts regarding the safety and effectiveness of cough-cold drug products, will result in the marketing of only those OTC cough-cold drug products that are safe and effective.

**Reference**

(1) OTC Volume 040027.

53. One comment pointed out that a marketed combination drug product containing belladonna alkaloids (an anticholinergic), phenylpropanolamine hydrochloride (a nasal decongestant), and chlorpheniramine maleate (an antihistamine) was similar to a combination drug product that was deemed "irrational" by the AMA Council on Drugs, 1971. The comment expressed its concern about the safety of this combination drug product because of reported cases of urinary retention, dizziness, blurring of vision, etc. The comment stated that in short-term animal studies on this combination drug product the ingredients taken in combination "potentiated" the toxic effects of the individual ingredients. The comment objected to the Panel's report for permitting marketing of this combination drug product pending study and for not recommending study for "long term" effects.

The Panel did not specifically classify the combination product mentioned by the comment, i.e., an anticholinergic, a nasal decongestant, and an antihistamine. It did, however, classify combinations containing atropine, an anticholinergic drug that is a component of belladonna alkaloids, and an oral nasal decongestant as Category III, stating that the available safety data were insufficient to make a final determination and that additional studies were necessary to assess the potential additive central nervous system stimulant side effects (41 FR 38328). Similarly, the Panel classified combinations containing an antihistamine and an anticholinergic as Category III, stating that additional studies are necessary to assess the nature and extent of additive anticholinergic side effects (41 FR 38328).

Based on the Panel's classification of these combinations (atropine with an oral nasal decongestant, and an antihistamine with an anticholinergic), the combination of an anticholinergic, an oral nasal decongestant, and an antihistamine would satisfy the criteria for Category III combination drug products. However, because there are no monograph anticholinergic ingredients at this time, all OTC combination drug products containing an anticholinergic ingredient are considered Category II (nonmonograph) conditions. (See the final rule for OTC anticholinergic drug products published in the **Federal Register** of November 8, 1985; 50 FR 46582.)

The agency has evaluated the safety of this combination drug product by considering the safety of the individual active ingredients. The Panel recognized the problem of urinary retention associated with belladonna alkaloids and recommended that an appropriate warning "Do not take this product if you have * * * difficulty in urination due to enlargement of the prostate gland except under the advice and supervision of a physician" be included in the labeling of products containing this ingredient. The agency concurred at 47 FR 30009 in the tentative final monograph for OTC anticholinergic drug products and expectorant drug products published on July 9, 1982.

Sympathomimetic drugs such as phenylpropanolamine, a nasal decongestant, may also cause urinary retention problems, and the agency has proposed the following warning for nasal decongestant drugs at 50 FR 2227 in the tentative final monograph for OTC nasal decongestant drug products: "Do not take this product if you have heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor." The labeling for combination drug products will include the applicable warning statements for the individual ingredients contained in the product. The warnings may be combined where appropriate to eliminate

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repetition. Therefore, warnings will be adequately provided.

The Panel recognized blurring of vision and other side effects which can occur with the use of belladonna alkaloids and recommended in § 341.70(b)(2) that the labeling for products containing anticholinergics bear a warning that consumers should stop taking this product if any of these side effects occur. However, the Panel did not include dizziness as one of the side effects identified in this section. The agency previously recognized dizziness as a possible side effect of belladonna alkaloids and added "dizziness" to the warning statement in § 341.70(c)(2) in the tentative final monograph for OTC anticholinergic drug products and expectorant drug products (47 FR 30009). Because these specific warning statements will be required in the labeling for the combination drug product should it obtain monograph status, the agency believes that the concern expressed by the comment regarding safety has been adequately addressed.

The agency concludes that animal studies for long-term toxic effects as urged by the comment are not needed based on the Panel's evaluation of belladonna alkaloids (41 FR 38378). The Panel believed that it was not necessary to recommend such studies because belladonna alkaloids have been marketed and widely used for many years.

The Panel stated that, in determining the safety of a drug or combination of drugs, it considered both animal and human studies (41 FR 38335). Although animal studies were of interest, the Panel pointed out that they were seldom very helpful because it would have been unusual for a drug to reach the market without satisfactory animal safety data. The agency is unaware of any data generated by animal studies to support the comment's contention that ingredients such as belladonna alkaloids, phenylpropanolamine hydrochloride, and chlorpheniramine maleate when taken together in a combination product produced a potentiation of toxic effects. No new data were submitted by the comment.

The combination drug product discussed by the comment has been marketed OTC since 1961 with an approved NDA for safety. In 1980, the manufacturer reformulated the product to delete the anticholinergic ingredient. Therefore, there has been no need for regulatory action prior to publication of a final rule.

As mentioned above, the agency believes that the combination of an anticholinergic, an oral nasal decongestant, and an antihistamine satisfies the criteria for Category III combination drug products. However, because at this time, there are no Category I (monograph) anticholinergic ingredients in the final rule for OTC anticholinergic drug products (published in the **Federal Register** of November 8, 1985; 50 FR 46582), all combination drug products containing an anticholinergic ingredient are Category II (nonmonograph) and may not be shipped in interstate commerce after November 10, 1986, the effective date of the final rule for OTC anticholinergic drug products. Thus, in this tentative final monograph, the combination of an anticholinergic, an oral nasal decongestant, and an antihistamine; the combination of an antihistamine and an anticholinergic; and the combination of atropine and an oral nasal decongestant are being classified in Category II because all anticholinergic ingredients are nonmonograph. If, in the future, any ingredient is determined to be generally recognized as safe and effective as an OTC anticholinergic, and if adequate data support the safety and effectiveness of a combination of an anticholinergic, an oral nasal decongestant, and an antihistamine, or any of the other combinations mentioned above, such combinations may be proposed for inclusion in the final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products.

54. Several comments questioned the safety and effectiveness of bronchodilator drug products containing a combination of theophylline and ephedrine, and opposed the OTC availability of such combinations. The comments stated that the addition of ephedrine to theophylline results in synergistic toxicity without significant additive therapeutic effect, and that these combination products contain suboptimal dosages of theophylline. Another comment requested that a combination of a methylxanthine (theophylline) bronchodilator, a sympathomimetic (ephedrine) bronchodilator, and an expectorant be classified as Category I.

In the **Federal Register** of December 10, 1976 (41 FR 54032), the Commissioner disagreed with the Panel's recommendation to allow the use of theophylline as a single ingredient in OTC drug products and limited the use of theophylline as a single ingredient to prescription drug products. The Commissioner also advised that the use of theophylline, both as a single ingredient and in combination, in both prescription and OTC drug products, was undergoing extensive review in FDA.

In the tentative final and final monographs for OTC bronchodilator drug products, published in the **Federal Registers** of October 26, 1982 (47 FR 47520) and October 2, 1986 (51 FR 35338), respectively, the agency confirmed its earlier decision that theophylline as a single ingredient is Category II, i.e., nonmonograph, as an OTC bronchodilator. In this present document, the agency is proposing that combinations containing theophylline also be classified in Category II.

Currently marketed OTC combinations of theophylline and ephedrine usually contain theophylline (100 to 130 mg), ephedrine (24 mg), and either guaifenesin (100 mg), or phenobarbital (8 mg). Questions have been raised whether the low dose of theophylline in these combination products is therapeutically effective, and whether the addition of the ephedrine to theophylline increases the risk of central nervous system side effects without increasing the effectiveness of the product.

The agency has reviewed many studies on theophylline as a single ingredient and in combination with other ingredients. Weinberger and Bronsky (Refs. 1 and 2), Jenne (Ref. 3), and Piafsky and Ogilvie (Ref. 4) recommended dosage titration with serum level control to insure a safe and effective dose because of the wide individual response to orally administered theophylline. Piafsky and Ogilvie commented that effectiveness and toxicity are better correlated with plasma theophylline concentrations than with dosage. Frequently, toxic effects associated with elevated serum levels of theophylline are not preceded by minor adverse effects (Refs. 5, 6, and 7).

Sims et al. (Ref. 8) and Tinkelman and Avner (Ref. 9) reported evidence of an additive effect of the theophylline and ephedrine combination. Sims et al. reported that a single dose of the combination of ephedrine (25 mg) and theophylline (130 mg) produced a bronchodilator effect in patients with mild to moderate asthma, that the combination was more effective than either drug alone, and that the combination tended to cause slightly more side effects (tremor, nervousness, nausea), but found that these differences were not striking. The authors noted that, although a low dose of theophylline and a low dose of ephedrine produced a greater improvement, this result did not preclude the possibility that similar improvement could have been achieved with a larger dose of theophylline alone.

Tinkelman and Avner reported that ephedrine enhanced bronchodilation when added to the treatment of theophylline-titrated children, but noted that the improvement was not overwhelming. In addition, they reported that the prolonged administration of ephedrine did not cause either tolerance or toxicity during an 8-week study. Although no significant increase in adverse effects was observed, it should be noted that in this study, the ephedrine dose was independently administered and 40 percent less than if administered in fixed combination.

Riegelman et al. (Ref. 10) designed a study to determine whether plasma levels of theophylline in the range of 12 to 18 micrograms per milliliter (μ/mL) (i.e, plasma levels comparable to a high dose of theophylline) are necessary to obtain a satisfactory therapeutic effect, or whether a satisfactory therapeutic effect is obtained at a lower plasma theophylline range of 4 to 8 μ/mL (i.e., plasma levels comparable to a low dose of theophylline). The study was also designed to determine whether a beneficial additive effect is demonstrated with a combination of ephedrine, phenobarbital, and theophylline at a low dose (i.e., plasma concentration of theophylline of 4 to 8 μ/mL). In the study, plasma theophylline levels for each patient were calculated, and the exact amount of theophylline required to achieve low and high dose concentrations for each patient was determined. The results indicated that ephedrine has no beneficial additive effect in combination with theophylline, but that theophylline given at a low dose was associated with subjective and objective superiority (over no therapy) in 27 of the 28 patients that were studied. It should be noted that the range of dosage required to achieve the low plasma concentration was extremely wide and associated with only a variable degree of success in attaining the desired level. Accordingly, the study demonstrates the need for individual titration of theophylline.

On July 20 and 21, 1981, the FDA Pulmonary-Allergy Drugs Advisory Committee met to discuss the completed Riegelman study and the status of theophylline and ephedrine combination drug products. The Committee agreed that there is a lack of clinically documented evidence of an additive effect with the theophylline and ephedrine combination drug product (Ref. 11). On November 4, 1982, the Committee continued its discussion of theophylline and ephedrine combination drug products, reporting that there is a lack of adequate evidence of an additive or synergistic effect of theophylline and ephedrine in combination, that the combination of the two ingredients does not permit using a lower dosage of either ingredient to produce bronchodilation, that there is an increase in incidence of side effects from use of the combinations, and that it did not favor the continued OTC or prescription marketing of theophylline and ephedrine fixed combination drug products (Ref. 12).

Disadvantages of theophylline and ephedrine combination products have been reported by Weinberger and Bronsky (Refs. 1 and 2), who stated that there was no significant clinical benefit from using the combination product. They reported that ephedrine in combination with theophylline appeared to add little benefit to that of theophylline when the latter is provided in a dosage titrated for the individual patient. Moreover, the studies indicated that ephedrine increased the frequency of such side effects as insomnia, nervousness, and gastrointestinal complaints, suggesting toxicity. Jenne (Ref. 3) commented that theophylline and ephedrine combinations provide one-fourth to one-half the optimum dose of theophylline and less bronchodilation than the full theophylline regimen. Piafsky and Ogilvie (Ref. 4) reported that the use of the combination is not warranted because the theophylline dose should be individualized. They added that when theophylline therapy is unsatisfactory, other oral medications such as ephedrine may be added, but only small increases in efficacy and some increase in toxicity should be expected. Plummer (Ref. 5) noted the importance of monitoring serum theophylline levels and the inadequacy of the dose of theophylline in these combination drug products. Webb-Johnson and Andrews (Ref. 13) commented that ephedrine often produces side effects, and tolerance to its action develops. Rachelefsky et al. (Ref. 14) studied a sustained-release theophylline preparation (260 mg administered every 12 hours) and ephedrine (30 mg) and found that ephedrine did not add significantly to improvement in pulmonary function, nor did it influence serum theophylline levels.

Other investigators have studied theophylline in combination with other ingredients. Deutsch et al. (Ref. 15), demonstrated that a low dose of oral theophylline (130 mg) failed to produce acute bronchodilatation or to produce additive bronchodilatation when combined with terbutaline (2.5 mg), a potent long-acting beta-2 adrenergic stimulant used in the treatment of asthma. Cohen (Ref. 16) compared terbutaline tablets to a sustained-release combination tablet containing theophylline, ephedrine, and phenobarbital and concluded that, although terbutaline was effective, the combination of theophylline, ephedrine, and phenobarbital produced greater bronchodilation. Lyons et al. (Ref. 17) commented on the Weinberger and Bronsky data (Ref. 1), stating that mild-to-moderate asthmatics (as opposed to severe and chronic asthmatics) may benefit from the conventional doses found in theophylline and ephedrine combinations.

Piafsky and Ogilvie (Ref. 4) reported that phenobarbital added to a theophylline and ephedrine combination in the doses commonly used in these combination products does not effectively counteract the central nervous system effect of theophylline. Webb-Johnson and Andrews (Ref. 13) and Plummer (Ref. 5) reported that theophylline, ephedrine, and phenobarbital combinations should not be used because phenobarbital may cause respiratory depression, particularly if the patient is suffering from hypoxemia (deficient oxygen in the blood) and hypercarbia (excess carbon dioxide in the blood). As discussed in comment 49 above, combinations containing theophylline, ephedrine, and phenobarbital have been classified as Category II.

The agency believes there is insufficient evidence to support the use of theophylline and ephedrine combinations. Although several investigators (Refs. 8, 9, and 16) have found theophylline and ephedrine combinations to be beneficial, in one study ephedrine was added to the treatment of theophylline-titrated children (Ref. 9); in another study, although the theophylline dose was low, it was only a single dose study and, as noted by the investigator, did not preclude the possibility of similar improvement with a higher dose of theophylline given alone (Ref. 8); and in the third study, phenobarbital was included in the combination (Ref. 16).

The data that have been reviewed indicate that ephedrine adds little benefit to the theophylline and ephedrine combination when the theophylline is provided in a dosage that is titrated for the individual patient (Refs. 1 through 5). Additionally, a number of investigators have pointed out the need for individual titration of theophylline (Refs. 1 through 4, and 10). An increase in adverse effects has also

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been associated with the use of theophylline and ephedrine combination drug products (Refs. 1, 2, 5, and 12). For several years, the agency has been reviewing the use of theophylline in both prescription and OTC drugs. In a Drug Efficacy Study Implementation (DESI) notice and Notice of Opportunity for Hearing (see the **Federal Register** of February 29, 1984; 49 FR 7454), the agency discussed the safety and effectiveness of certain combination drug products containing xanthine derivatives. FDA discussed new information in that notice and concluded that there is a lack of substantial evidence that each ingredient of the theophylline and ephedrine combination drug product makes a contribution to the claimed effects of the product. Moreover, as the Commissioner stated in the **Federal Register** of December 10, 1976 (41 FR 54032), careful titration based on measurement of theophylline serum levels is necessary. In the bronchodilator tentative final monograph (47 FR 47520), the agency reaffirmed its position that theophylline should be Category II and should not be available OTC as a single ingredient product because it is essential that a physician titrate theophylline dosage, based on individual patient measurements of theophylline serum levels. The agency believes that dosage titration is necessary whether theophylline is administered as a single ingredient or in combination with another drug. Therefore, the agency concludes that theophylline should be administered under professional supervision and is classifying any combination drug product containing theophylline as Category II in this tentative final monograph.

**References**

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(3) Jenne, J.W., "The Clinical Pharmacology of Bronchodilators," *Basics of RD*, 6:18–23, 1977

(4) Piafsky, K.M., and R.I. Ogilvie "Dosage of Theophylline in Bronchial Asthma," *The New England Journal of Medicine*, 292:1218–1221, 1975.

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(6) Vincent, F.M., "Case Report Fatal Theophylline—Induced Seizures," *Postgraduate Medicine*, 63:76–77, 1978.

(7) Weinberger, M., and L. Hendeles, "Management of Asthma—2. Antiasthmatic Drugs," *Postgraduate Medicine*, 61:95–103, 1977.

(8) Sims, J.A., et al., "Bronchodilating Effect of Oral Theophylline-Ephedrine Combination," *Journal of Allergy and Clinical Immunology*, 62:15–21, 1978.

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(11) Minutes of the FDA Pulmonary-Allergy Advisory Committee Meeting, July 20–21, 1981, in OTC Volume 04GTFM.

(12) Minutes of the FDA Pulmonary-Allergy Advisory Committee Meeting, November 4, 1982, in OTC Volume 04GTFM.

(13) Webb-Johnson, D.C., and J.L. Andrews, "Bronchodilator Therapy (Second of Two Parts)," *The New England Journal of Medicine*, 297:758–764, 1977.

(14) Rachelefsky, G.S., et al., "A Sustained Release Theophylline Preparation," *Annals of Allergy*, 40:252–257, 1978.

(15) Deutsch, R.I., et al., "Bronchodilator Effects of Low Doses of Oral Theophylline and Terbutaline in Asthmatic Subjects," *Annals of Allergy*, 45:137–143, 1980.

(16) Cohen, B.M., "The Cardiorespiratory Effects of Oral Terbutaline and an Ephedrine-Theophylline-Phenobarbital Combination: Comparison in Patients with Chronic Obstructive Ventilatory Disorders," *Annals of Allergy*, 40:233–239, 1978.

(17) Lyons, H.A., et al., "Theophylline and Ephedrine in Asthma," *Current Therapeutic Research*, 18:573–577, 1975.

55. One comment (Ref. 1) submitted new data from three controlled clinical studies on the combination of 1-desoxyephedrine and aromatics (camphor (54 mg), menthol (80 mg), methyl salicylate (11 mg), bornyl acetate (0.2 mg), and lavender oil (4 mg)) used as a topical nasal decongestant (administered by a nasal inhaler) (Refs. 2, 3, and 4). The comment requested Category I status for the combination based on these data, some of the data reviewed by the Panel (Refs. 5 and 6), and the manufacturer's marketing experience.

On the basis of the above data (Refs. 2 through 6) and an additional study (Ref. 7), the agency proposed Category I status for 1-desoxyephedrine as a single-ingredient topical nasal decongestant in the tentative final monograph for OTC nasal decongestant drug products (50 FR 2225). Four of these same studies also support the Category I classification of 1-desoxyephedrine combined with aromatics by showing that the combination of 1-desoxyephedrine and aromatics is superior to placebo, aromatics alone, and 1-desoxyephedrine alone (Refs. 2 through 6). The aromatic mixture when tested alone had little effect. The combination of 1-desoxyephedrine and the aromatic mixture did not cause rebound nasal congestion when inhaled every 2 hours six times daily for a 7-day period (Ref. 4).

Based on the data reviewed, the agency proposes to classify the 150 mg aromatic mixture in combination with 50 mg of 1-desoxyephedrine as a Category I topical nasal decongestant combination to be administered by a nasal inhaler. The agency is unaware of a marketed product containing the aromatic mixture alone and proposes to classify the aromatic mixture alone in Category II. This approach is consistent with paragraph 5 of the agency's "General Guidelines for OTC Drug Combination Products, September 1978" (cited above), which provides that "in some cases an ingredient may be appropriate for use only in a specific combination or data may be available only to support the use of the ingredient in combination but not as a single ingredient. In such cases the ingredient will be placed in Category I for use only in permissible combinations and not as a single ingredient." The studies indicate that the aromatic mixture enhances the effectiveness of the 1-desoxyephedrine.

The proposed adult dosage of the combination is two inhalations in each nostril not more often than every 2 hours from an inhaler that delivers in each 800 mL of air 0.04 to 0.15 mg of 1-desoxyephedrine. In keeping with the guidelines established by the Panel (41 FR 38333), the dosage for children 6 to under 12 years of age is one-half of the adult dosage. (See 41 FR 38328, paragraph C.10.i.). Because the results of one study showed that rebound congestion did not occur in 52 subjects who inhaled the combination of 50 mg of 1-desoxyephedrine and 150 mg of aromatic ingredients from an inhaler every 2 hours six times daily for a 7-day period (Ref. 4), the agency is proposing in this tentative final monograph that the use of the combination of 1-desoxyephedrine and aromatics as a topical nasal decongestant be limited to not more than 7 days instead of the 3-day limit for other topical nasal decongestants that cause rebound congestion.

The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Refs. 8 and 9).

**References**

(1) Comment Nos. COIII, CR0003, and SUP015, Docket No. 76N–0052, Dockets Management Branch.

(2) Connell, J. T., "Inhaler," (Study CRD 74–30), draft of unpublished study in Comment No. CO111, Docket No. 76N–0052, Dockets Management Branch.

(3) Connell, J. T., "Inhaler," (Study CRD 74–58), draft of unpublished study in Comment No. CO111 (Volume 4), Docket No. 76N–0052, Dockets Management Branch.

(4) Connell, J. T., "Nasomucosal Rebound Delta–P," (Study CRD 75–45), draft of unpublished study in Comment No. CO111, Docket No. 76N–0052, Dockets Management Branch.

(5) Turgeon, R. F., "Vick Inhaler," (Study CRD 70–24), draft of unpublished study in OTC Volume 040298.

(6) Memo to W. E. Burke, from E. B. Cohen, "Vick Inhaler: Vick Rhinorheometer Study—Maine Research" (supersedes Study CRD 70–24, dated February 11, 1971), in OTC Volume 040298.

(7) Connell, J. T., "Nasal Decongestant Delta-'P' Method," (Study CRD 74–10A), draft of unpublished study in Comment No. CO111, Docket No. 76N–0052, Dockets Management Branch.

(8) Letter from W. E. Gilbertson, FDA, to G. F. Hoffnagle, Richardson-Vicks Inc., coded LET072, Docket No. 76N–052N, Dockets Management Branch.

(9) Letter from W. E. Gilbertson, FDA, to G. F. Hoffnagle, Richardson-Vicks, Inc., coded LET080, Docket No. 76N–052N, Dockets Management Branch.

56. One comment submitted data to support the reclassification of a combination of volatile substances, i.e, menthol, camphor, eucalyptus oil, thymol, oil of turpentine, cedarleaf oil, and myristica oil, in a petrolatum ointment from Category III to Category I as an antitussive for topical application to the chest. The data included statistical reevaluations of four citric acid aerosol induced cough studies reviewed by the Panel (Refs. 1, 2, and 3) (these statistical reevaluations were not available to the Panel for review), one study in chronic bronchitis that was originally reviewed by the Panel (Ref. 4), and one new study in patients with chronic cough (Ref. 5).

Four of the studies show that the combination of menthol, camphor, eucalyptus oil, thymol, oil of turpentine, cedarleaf oil, and myristica oil applied to the chest as an ointment in a petrolatum base is more effective in reducing coughs than each individual ingredient in the combination when tested separately (Refs. 1, 3, and 4). The antitussive effect lasted for up to 2.5 hours. The data provide no evidence that the individual ingredients thymol, oil of turpentine, cedarleaf oil, or myristica oil have a statistical advantage over the petrolatum control. Study CRD 74–19/B supports the effectiveness of 1.3 percent eucalyptus oil (Ref. 1), and study CRD 74–64 shows that 1.3 percent eucalyptus oil tended to produce a lower cough count than did the petrolatum control (Ref. 4). Study CRD 75–40 provides evidence that the combination of 2.6 percent menthol, 4.7 percent camphor, and 1.2 percent eucalyptus oil in a petrolatum base is more effective in reducing coughs than a combination of 0.38 percent cedarleaf oil, 0.485 percent myristica oil, 0.076 percent thymol, and 4.5 percent oil of turpentine in a petrolatum base (Ref. 2). At various time points, the combination of menthol, camphor, eucalyptus oil, thymol, oil of turpentine, cedarleaf oil, and myristica oil in a petrolatum base was more effective in reducing the number of coughs as compared to the other formulations. All formulations were more effective than the petrolatum alone.

Based on the data, the agency concludes that there is sufficient evidence to place the combination of menthol, camphor, and eucalyptus oil in a suitable ointment vehicle in Category I as an antitussive. Concentrations of 4.7 to 5.3 percent camphor and 2.6 to 2.8 percent menthol, as single antitussive ingredients, have previously been proposed for Category I for use in a suitable ointment vehicle (48 FR 48594). Eucalyptus oil as a single ingredient currently remains in Category III as an antitussive drug (48 FR 48583). While studies CRD 74–19/B and 74–64 are not sufficient to reclassify eucalyptus oil in Category I, the studies do indicate that eucalyptus oil makes a contribution to the effectiveness of the combination product. The Panel concluded that study CRD 74–19/B is supportive but does not provide sufficient evidence of the claimed antitussive effectiveness of eucalyptus oil as a single active ingredient in an ointment.

Thymol (0.1 percent) and oil of turpentine (4 percent) were reviewed by the Panel and placed in Category III as antitussives because additional effectiveness data were needed. The data that have been reviewed thus far by the agency do not show that thymol and oil of turpentine are effective antitussives, nor do the data adequately show the contribution of thymol and oil of turpentine to the effectiveness of the combination product. Based on the concentrations of these ingredients in the product, the agency considers thymol to be an inactive ingredient; however, the oil of turpentine would not be considered an inactive ingredient. Although cedarleaf oil and myristica oil were tested, the agency also considers these ingredients to be inactive ingredients.

Although this combination product contains more than two antitussive active ingredients from the same pharmacologic group (i.e., menthol, camphor, and eucalyptus oil), paragraph 3 of the agency's "General Guidelines for OTC Drug Combination Products" (cited above) permits such a combination " * * * if the combination offers some advantage over the active ingredients used alone, and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose." Eucalyptus oil may be included in the combination based on paragraph 5 of the agency's "General Guidelines," which states that "in some cases an ingredient may be appropriate for use only in a specific combination or data may be available only to support the use of the ingredient in combination but not as a single ingredient. In such cases the ingredient will be placed in Category I for use only in permissible combinations and not as a single ingredient."

Based on the above guidelines, the agency proposes that the combination containing menthol (2.6 to 2.8 percent), camphor (4.7 to 5.3), and eucalyptus oil (1.2 to 1.3 percent) in a suitable ointment vehicle be classified as a Category I topical antitussive combination drug product.

The labeling that is proposed for menthol and camphor in § 341.74 of the final monograph for antitussive drug products will also be proposed for the combination of menthol, camphor, and eucalyptus oil. (See 52 FR 30055.)

The agency's detailed comments on the data are on file in the Dockets Management Branch (Ref. 6).

**References**

(1) Cash, W., and K. Martin, "Recalculation of Significance Levels (P-values) for the VapoRub CAA Studies CRD No. 74–19/A and 74–19/B—Dr. Packman," in Comment No. CR0004, Docket No. 76N–0052, Dockets Management Branch.

(2) Cash, W., and K. Martin, "Recalculation of Significance Levels (P-values) for the VapoRub CAA Study CRD No. 75–40—Dr. Packman," in Comment No. CR0004, Docket No. 76N–0052, Dockets Management Branch.

(3) Cash, W., and K. Martin, "Recalculation of Significance Levels (P-values) for the VapoRub CAA Study CRD No. 74–52–Dr. Packman," in Comment No. CR0004, Docket No. 76N–0052, Dockets Management Branch.

(4) Dennis, S.R.K., et al., "A Study for the Measurement of the Antitussive Effects of Vicks VapoRub Compared to Eucalyptus Oil and Compared to Placebo in Stabilized Patients with Chronic Cough," (Study CRD 74–64), draft of unpublished study in OTC Volume 040080A, Docket No. 76N–0052, Dockets Management Branch.

(5) Dennis, S.R.K., P. Bass, and G. doPico, "VapoRub," (Study CRD 76–41), draft of unpublished study in Comment No. SUP008, Docket No. 76N–0052, Dockets Management Branch.

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(8) Letter from W.E. Gilbertson, FDA, to G.F. Hoffnagle, Richardson-Vicks, Inc., coded LET079, Docket No. 76N-052G, Dockets Management Branch.

57. Two comments requested reclassification of a combination of eucalyptus oil and menthol from Category III to Category I as an antitussive in lozenge form. One comment contended that the written submissions and oral presentations to the Panel included adequate data to support a Category I classification of lozenge products containing this combination for antitussive use. The other comment submitted data from additional studies to show the effectiveness of a combination of not less than 5 mg eucalyptus oil and menthol for topical use as an antitussive in lozenge form.

In the final monograph for OTC antitussive drug products (52 FR 30055), menthol (5 to 10 mg) as a single ingredient has been classified as a monograph condition when used in a lozenge or compressed tablet dosage form, and eucalyptus oil as a single ingredient in a lozenge dosage form has been classified as a nonmonograph condition.

The agency has reviewed the data submitted to the Panel and concurs with its conclusion that a combination of eucalyptus oil and menthol for topical use as an antitussive in lozenge form is appropriately classified in Category III.

The agency has also reviewed the additional data and concludes that they are insufficient to support the reclassification from Category III to Category I of a combination of menthol and not less than 5 mg eucalyptus oil for topical use in lozenge form. In two studies (Refs. 1 and 2), the following were compared to a control lozenge containing only the candy base and to a lactose capsule placebo: A 9.3 mg menthol lozenge (study CRD 77-58) and a combination product containing 5.27 mg menthol and 0.8 mg eucalyptus oil (CRD 76-19). Although the studies indicate the antitussive effectiveness of the lozenges, the data are not supportive of eucalyptus oil because no comparisons to eucalyptus oil as a single ingredient were made.

Study CRD 76-49R, a single-blind crossover study, was conducted in subjects with artificially induced cough to compare the antitussive effectiveness of a combination product containing 8.8 mg menthol and 8 mg eucalyptus oil, with 9.8 mg menthol alone, 5.7 mg eucalyptus oil alone, and a vehicle control, all in a lozenge dosage form. Although this study is supportive of the effectiveness of eucalyptus oil as an antitussive, the agency did not find any evidence that eucalyptus oil contributes to the effectiveness of the combination lozenge. The menthol lozenge produced numerically greater reductions in cough counts at all three challenge times and overall ($P < .05$) than did the combination lozenge (Ref. 3).

Study CRD 75-26, a single-blind crossover study, was conducted in patients with chronic cough due to bronchopulmonary disease to compare the antitussive effectiveness of a combination product containing 7.5 mg menthol and 5.4 mg eucalyptus oil with a 7.5 mg menthol lozenge, a 5.1 mg eucalyptus oil lozenge, and a control lozenge. There were no significant differences among these four treatments in reducing cough counts. Thus, this study does not demonstrate that eucalyptus oil contributes to the antitussive effectiveness of menthol in a combination product (Ref. 4).

Study CRD 76-43, a single-blind parallel study, was conducted in patients with chronic cough due to bronchopulmonary disease to compare the antitussive effectiveness of a combination product containing menthol and eucalyptus oil, a menthol lozenge, a eucalyptus oil lozenge, and a control lozenge (Ref. 5). A significant reduction in overall cough counts was reported for these four treatments ($P < .05$). However, comparisons of pairs of tested lozenges did not show any significance; for example, menthol compared to the combination product or the control compared to the combination product. The agency concludes that, in addition to the lack of difference shown between eucalyptus oil and the control, the results obtained with the combination lozenge were virtually the same as those obtained with the menthol lozenge.

The agency concludes that the data from studies CRD 76-49R, CRD 75-26, and CRD 76-43 do not demonstrate that eucalyptus oil contributed to the antitussive effectiveness of the combination lozenge because the combination lozenge did not reduce cough counts in subjects more significantly than did the menthol lozenge alone. Therefore, the agency proposes to classify the combination of menthol and eucalyptus oil in a lozenge form as Category III in this tentative final monograph.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (Refs. 6 and 7).

**References**

(1) Pinkel, S., and S. Zuckerman, "Victors," (Study CRD 77-56), draft of unpublished study in Comment No. SUP008, Docket No. 76N-0052, Dockets Management Branch.

(2) Pinkel, S., and S. Zuckerman, "Vicks Medicated Cough Drops," (Study CRD 76-19), draft of unpublished study in Comment No. SUP009, Docket No. 76N-0052, Dockets Management Branch.

(3) Packman, E.W., "Victors Cough Drops," (Study CRD 76-49R), draft of unpublished study in Comment No. SUP009, Docket No. 76N-0052, Dockets Management Branch.

(4) Dennis, S.R.K., P. Bass, and G. doPico, "Victors Squares," (Study CRD 75-26), draft of unpublished study in Comment No. SUP009, Docket No. 76N-0052, Dockets Management Branch.

(5) Dennis, S.R.K., P. Bass, and G. doPico, "Victors," (Study CRD 76-43), draft of unpublished study in Comment No. SUP009, Docket No. 76N-0052, Dockets Management Branch.

(6) Letter from W.E. Gilbertson, FDA, to G.F. Hoffnagle, Vicks Health Care Division of Richardson-Merrell, Inc., coded ANS 81/01/29 to SUP009, Docket No. 76N-0052, Dockets Management Branch.

(7) Letter from W.E. Gilbertson, FDA, to G.F. Hoffnagle, Richardson-Vicks Inc., coded LET080, Docket No. 76N-052G, Dockets Management Branch.

58. One comment requested that a combination of menthol, camphor, eucalyptus oil, tincture of benzoin, and polyoxyethylene dodecanol (wetting agent) be classified in Category I for use as an antitussive in a steam vaporizer. The comment stated that the Panel reviewed studies on this combination drug product and indicated that the studies show a statistically significant reduction in cough counts compared to steam alone, even beyond the duration of exposure to the vapors (41 FR 38350). However, because the Panel was concerned only with individual drugs, the comment assumed that the Panel felt it inappropriate to place this combination in Category I. The comment added that the combination of menthol, camphor, eucalyptus oil, tincture of benzoin, and polyoxyethylene dodecanol should be in Category I because the safety of the product is not in question and because the route of administration (inhalation of vapors) and the ratio of ingredients is the same for this combination product as for the antitussive combination of menthol, camphor, and eucalyptus oil in an ointment that the agency has classified in Category I. In support of the effectiveness of this combination drug product, the comment cited and summarized a number of studies that were reviewed by the Panel (Ref. 1).

The agency has reviewed the data and concludes that they are insufficient to support a Category I classification of menthol, camphor, eucalyptus oil, tincture of benzoin, and polyoxyethylene dodecanol as antitussives in a steam vaporizer.

The data consist of three citric acid aerosol induced cough studies and eleven active disease state studies (Refs. 2 through 15).

The citric acid aerosol studies had the same objective and design. Each study involved 24 normal volunteers who were divided equally into three groups and given two treatment regimens (medicated and non-medicated steam) in cross-over fashion. The objective was to evaluate the efficacy of the combination drug product in reducing the frequency of cough induced by citric acid aerosol challenge. The results of the citric acid aerosol induced cough studies (CRD 68–49, CRD 72–26, and CRD 71–32) are equivocal (Refs. 2, 3, and 4). The sponsor's own conclusions indicate that only in study CRD 68–49 (phase two) was there any difference between medicated and unmedicated steam. Additionally, the number of coughs recorded after exposure to unmedicated steam was greater than the number reported at baseline, prompting the sponsor's comment that the differences between treatments "may be attributable to position bias because the 1 hour runs were done first." The results of study CRD 72–26 indicate that both treatments (medicated and unmedicated) were effective, but when compared to each other, the differences (favoring medicated steam) were only apparent at the 30 minute evaluation point. The sponsor's statement that the differences between treatments was only apparent at the 30 minute challenge time needs clarification because only Group I subjects (8 subjects) were challenged at that time. In study CRD 71–37, the sponsor states that there were no differences between regimens at any observation point and both treatments appeared effective. However, the sponsor's statistician notes that the overall values (3 way analysis of variance) favor unmedicated steam primarily due to its superiority at 4½ hours.

The agency does not consider the disease state studies adequate to demonstrate the effectiveness of the combination of ingredients contained in the product (Refs. 5 through 15). Objective cough counting was not employed in any of the studies. Study CRD 71–51 was the only study in which superiority of medicated over nonmedicated steam was reported to exist. There were no accompanying data for analysis to confirm this claim and the study design requires a comparison of values which were not included with the submitted material. In the published Larkin study, it was reported that treatment with medicated steam and polyoxyethylene dodecanol resulted in fewer coughs; however, the study was uncontrolled and subjective (Ref. 6). In the other studies, no differences in cough reduction were observed.

In reference to the Panel's statement on page 38350 of its report that two of the citric acid aerosol challenge studies provided statistically significant reductions in cough counts compared to steam alone, even beyond the duration of exposure to the vapors, the agency has found that the Panel's statement is inconsistent with the results of those studies. The agency also notes that although the combination drug product contains menthol, camphor, eucalyptus oil, tincture of benzoin, and polyoxyethylene dodecanol, and although the combination of menthol, camphor, and eucalyptus oil in an ointment as an antitussive has been proposed for Category I, tincture of benzoin and polyoxyethylene dodecanol have not been individually tested. Thus, the submitted studies cannot be used in support of the effectiveness of the combination of menthol, camphor, eucalyptus oil, tincture of benzoin, and polyoxyethylene dodecanol. The data generated from the studies using menthol, camphor, and eucalyptus oil as antitussives in an ointment also cannot be used as support for the effectiveness of the combination of menthol, camphor, and eucalyptus oil as antitussives in a steam vaporizer because the superiority of steam with aromatics over unmedicated steam has not been established. When aromatics are added to water in a vaporizer which generates steam, the superiority of medicated steam over unmedicated steam requires substantiation.

Camphor and menthol individually are monograph drugs for steam inhalation use for antitussive claims (see the **Federal Register** of August 12, 1987 (52 FR 30042)). Therefore, further effectiveness data are not needed for these ingredients. In order for the combination of camphor and menthol to be placed in Category I, data are needed that establish that the combination has some advantage over the single ingredients (see comment 37 above). If other active ingredients, such as eucalyptus oil, tincture of benzoin, or polyoxyethylene dodecanol are included, any additional ingredient must be tested alone versus placebo (steam) to demonstrate a therapeutic effect, and the entire combination must be tested versus unmedicated steam. The agency recognizes that steam is not a placebo since it has a recognized benefit, but for the proposed type of product formulation, there is no known suitable control; thus, steam appears to be the only viable alternative. The Panel classified tincture of benzoin as a Category III expectorant (as a steam inhalant). If tincture of benzoin is to be considered as an expectorant in the product, the objective measurements of sputum volume and sputum viscosity should be done and correlated with subjective evaluations. Polyoxyethylene dodecanol, a surfactant, is listed as an active ingredient in the labeling of the combination product. If this ingredient is intended as active, its enhancing of the effect of steam in reducing coughs, as claimed in the comment's submission, must be demonstrated. For a combination product containing menthol, camphor, and eucalyptus oil as antitussives, and tincture of benzoin as an expectorant, objective cough counting, sputum volume, and viscosity measurements should be performed. The studies should be conducted in patients with cough due to respiratory disease.

The agency also notes that ingredients that might indirectly relieve cough (and for which there may be no measurable antitussive activity) may actually have other pharmacologic effects such as expectorant or nasal decongestant action. In the Litchfield study (Ref. 14), there was improvement in relief of symptoms of nasal congestion with medicated steam and no differences were found for coughs. The Panel provided for a Category III classification of combination products containing several claimed active ingredients which are mixtures of volatile substances with overlapping pharmacologic activities for which a minimum effective dosage cannot be established for one or more of the ingredients when tested alone. The Panel recommended a testing procedure for such combinations and suggested that the drug effect should demonstrate a 10 percent or greater difference from placebo (41 FR 38328).

In conclusion, the data on the combination of menthol, camphor, eucalyptus oil, tincture of benzoin, and polyoxyethylene dodecanol as antitussives for use in a steam vaporizer remain inadequate and, therefore, this combination is classified in Category III for this use.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (Ref. 16).

**References**

(1) Comment No. LET085, Docket No. 76N–052G, Dockets Management Branch.

(2) Packman, E.W., "Vaposteam," (Study CRD 68–49), draft of unpublished data, OTC Volume 040286, Dockets Management Branch.

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(3) Packman, E.W., "Vaposteam," (Study CRD 72-26), draft of unpublished data, OTC Volume 040266, Dockets Management Branch.
(4) Packman, E.W., "Vaposteam," (Study CRD 71-37), draft of unpublished data, OTC Volume 040266, Dockets Management Branch.
(5) Carter, V.H., "Vaposteam," (Study CRD 71-51), draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(6) Larkin, V.D., "Polyoxyethylene Dodecanol Vaporization in the Treatment of Respiratory Infections of Infants and Children," *New York State Journal of Medicine*, 57:2667-2672, 1957.
(7) Larkin, V.D., "Broad Clinical," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(8) Amler, A.B., "Broad Clinical," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(9) Mund, A., "Broad Clinical," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(10) Goodall, R.E., "Broad Clinical," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(11) Berman, M., "Broad Clinical," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(12) Singer, A., "Broad Clinical," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(13) Williams, H.J., "Broad Clinical," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(14) Litchfield, H.R., "Vaposteam, (Commercial Product)," draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(15) Ghadimi, H., "Vaposteam," (Study CRD 70-34), draft of unpublished data, OTC Volume 040267, Dockets Management Branch.
(16) Letter from W.E. Gilbertson, FDA to G.F. Hoffnagle, Richardson-Vicks, Inc., coded ANS, Docket No. 76N-052G, Dockets Management Branch.

59. One comment stated that a combination of volatile aromatic oils, i.e., menthol, camphor, eucalyptus oil, thymol, cedar leaf oil, and nutmeg oil have been historically combined in a number of products for the relief of symptoms of the common cold and have gained consumer acceptance (Ref. 1). The comment considered this combination of volatile oils as a single active ingredient rather than as a list of aromatics as single drug entities. The comment stated that well-controlled studies supporting the nasal decongestant effectiveness of the mixture of aromatics and a study on the individual aromatics are contained in the OTC volumes that were submitted to the Panel. The comment added that these studies are in keeping with the Panel's criterion that such products are mixtures of volatile substances with overlapping pharmacologic activities for which a minimum effective dosage cannot be established for one or more of the ingredients when tested alone (41 FR 38328). The comment urged FDA to consider such combinations of aromatic oils a special situation with regard to drug combinations.

The agency has reviewed the information cited by the comment and notes that the Panel specifically addressed the studies on combinations of aromatic oils as nasal decongestants referred to by the comment. The Panel pointed out that varying degrees of decongestion were noted with use of the combination product but that there were no well-controlled studies conducted on the individual ingredients to demonstrate their effectiveness as nasal decongestants (41 FR 38406-38414). Therefore, the Panel placed these ingredients in Category III. The Panel also reviewed a draft of an unpublished study by T. C. Grubb, entitled "The Nasal Decongestant Effect of Aromatic Substances" (41 FR 38407-38409). In this study, which was not placebo-controlled or double-blinded, a number of aromatic ingredients were individually tested. The ingredients were inhaled from an apparatus containing a cotton wick that was impregnated with the aromatic substance. The test was not conducted in the same manner that the product would actually be used. The Panel did not, nor does the agency, consider this study adequate to demonstrate the nasal decongestant effect of the individual aromatic ingredients. The comment did not submit any new data to support the nasal decongestant effectiveness of the individual ingredients or the combination product.

The Panel proposed a Category III classification for combination drug products containing several claimed active ingredients which are mixtures of volatile substances with overlapping pharmacologic activities for which a minimum effective dosage cannot be established for one or more of the ingredients when tested alone (41 FR 38328). The agency does not believe that the entire combination of aromatic ingredients in an ointment or steam vaporizer formulation should be considered to be this type of combination. The "antitussive" effectiveness of a combination of menthol, camphor, eucalyptus oil, thymol, oil of turpentine, cedar leaf oil, and myristica (nutmeg) oil is discussed in this document (see comment 56 above). The combination of menthol, camphor, and eucalyptus oil in a suitable ointment vehicle is proposed as a Category I combination for use as a topical antitussive. Thymol, cedarleaf oil, and myristica oil were considered inactive ingredients, based on their concentrations in the combination product; however, oil of turpentine was not considered an inactive ingredient. A final decision on oil of turpentine depends on its status in the final monograph or on any position on inactive ingredients that the agency may take in the future.

The agency points out that the combination of aromatics for antitussive use was not considered as a "single active ingredient." Data on the aromatic ingredients were reviewed and demonstrated the antitussive effectiveness of menthol and camphor individually (as well as in combination with other aromatic ingredients), and the supportive contribution of eucalyptus oil. Likewise, in order to achieve Category I status for the combination of aromatic ingredients as nasal decongestants, the individual ingredients must be tested to show that they do provide a significant nasal decongestant effect when compared to a control. Additionally, in accordance with the agency's "General Guidelines for OTC Drug Combination Products, September 1978" cited above, Category I ingredients from the same therapeutic category that have the same mechanism of action may be combined in selected circumstances to treat the same symptoms or conditions if the combination meets the OTC combination drug policy in all respects, the combination offers some advantage over the active ingredients used alone, and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose.

In conclusion, the agency agrees with the Panel that the data for the combination of menthol, camphor, eucalyptus oil, thymol, cedar leaf oil, and nutmeg oil as nasal decongestants for application as an ointment or for steam inhalation are inadequate and, therefore, the combination is classified as Category III.

The agency's detailed comments and evaluation on the data are on file in the Dockets Management Branch (Ref. 2).

**References**

(1) Comment No. LET083, Docket No. 76N-052G, Dockets Management Branch.
(2) Letter from W.E. Gilbertson, FDA to G.F. Hoffnagle, Richardson-Vicks, Inc., coded LET084, Docket No. 76N-052G, Dockets Management Branch.

*I. Comments on Dosages for OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Combination Drug Products*

60. Two comments pointed out a number of problems in combining an oral nasal decongestant with an analgesic-antipyretic because of what they described as "irreconcilable"

dosage schedules recommended by the Cough-Cold and the Internal Analgesic Panels. The comments stated that this situation existed because the Cough-Cold Panel had recommended fixed single dosages for the nasal decongestants phenylephrine and phenylpropanolamine for children 2 to under 6 years and 6 to under 12 years of age, and the Internal Analgesic Panel (in the draft of its report available at the time the Cough-Cold Panel's report was published) was recommending dosages for children 2 to under 4 years, 4 to under 7 years, 7 to under 9 years, 9 to under 11 years, and 11 to under 12 years of age.

In order to combine an oral nasal decongestant with an analgesic-antipyretic for use in children 2 to under 12 years of age, the Cough-Cold Panel's two fixed single dosages for children 2 to under 6 and 6 to under 12 years of age would have to be expanded to include an intermediate dosage for children 4 to under 6 years of age, or a dosage range would have to be allowed. For this reason, one comment proposed increasing the 12.5 mg-every-4-hour dosage of phenylpropanolamine recommended by the Panel for children 6 to under 12 years of age to 12.5 to 25 mg every 4 hours (or 25 mg every 8 hours), and increasing the dosage of 6.25 mg every 4 hours recommended by the Panel for children 2 to under 6 years of age to 6.25 to 12.5 mg every 4 hours (or 12.5 mg every 8 hours). The second comment recommended a dosage for phenylephrine every 4 hours of 2.5 mg for children 2 to under 4 years of age; 3.75 mg for children 4 to under 7 years of age; and 5 mg for children 7 to 9 years of age. This proposal would increase the 2.5 mg dosage of phenylephrine recommended by the Panel for children 4 and 5 years of age to 3.75 mg, and decrease the 5 mg dosage of phenylephrine recommended by the Panel for children 6 years of age to 3.75 mg.

As for the first comment's suggested dosage for phenylpropanolamine of 25 mg every 8 hours for children 6 to 12 years of age, and 12.5 mg every 8 hours for children 2 to under 6 years of age, the agency published a notice concerning the Panel's recommendation on the dosages of phenylpropanolamine in the **Federal Register** on October 28, 1977 (42 FR 56756). The notice stated that the adult dosage of 50 mg every 8 hours and equivalent children's dosages were provided only for timed-release dosage forms which would not be included in the monograph. Therefore, the Panel's recommended monograph was corrected to include only the dosages for conventional, immediate-release formulations. The reference to a dosage of 50 mg every 8 hours and equivalent children's dosages was deleted from the Panel's recommendations by the October 28, 1977 notice.

Because of studies indicating that certain dosages of phenylpropanolamine can cause elevations in blood pressure, the agency has not categorized phenylpropanolamine as a nasal decongestant in the tentative final monograph for OTC nasal decongestant drug products (50 FR 2220), but will, instead, address the safety of phenylpropanolamine for weight control use and nasal decongestant use in a future **Federal Register** publication. Before there can be any resolution of the "irreconcilable" dosage issue concerning combinations containing phenylpropanolamine preparations, the safety and effectiveness issues that have been raised must be addressed.

The agency recognizes that a problem of irreconcilable dosages would also occur with combinations containing an analgesic-antipyretic with pseudoephedrine, a Category I oral nasal decongestant, if the dosages are not changed. In the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (to be published in a future issue of the **Federal Register**), the agency will propose that the minimal effective dose of 325 mg of aspirin, acetaminophen, and sodium salicylate for children 6 to 9 years of age can also be used as the minimal effective dose for children over 9 years of age (i.e., 9 to under 12). Because of the extension of the 325-mg minimal effective dose of aspirin, acetaminophen, and sodium salicylate to children over 9 years of age, combinations of an analgesic-antipyretic with pseudoephedrine are possible for children 6 to under 12 years of age with no changes in the Cough-Cold Panel's recommended dosages. Combinations are also possible for children 2 to under 4 years of age based on the Cough-Cold Panel's recommended dosages. However, no dosage formulation of the combination product could be used for children 4 to under 6 years of age because, in one case, if the analgesic is given at the recommended dosage, then the pseudoephedrine dosage would be too high for this age group, and in the other case, if pseudoephedrine is given at the recommended dosage, then the analgesic dosage would be too low. A similar situation exists for combination products containing phenylephrine hydrochloride and an analgesic-antipyretic, i.e., the recommended dosages could be used for children 2 to under 4 and 6 to under 12 years of age, but there would be a problem of irreconcilable dosages for children 4 to under 6 years of age.

The agency is not modifying the dosages for oral nasal decongestants at this time, but is inviting comments from interested persons on the problem of currently irreconcilable dosages for these combination products. The agency invites comments and the submission of data on dosage ranges for children for products containing oral phenylephrine, or pseudoephedrine for use in combination with analgesics, or for any other cough-cold ingredients for which there might be a problem concerning irreconcilable dosages when combined with analgesics. Other comments have been received in response to the tentative final monograph for OTC antihistamine (50 FR 2200), antitussive (48 FR 48576), and nasal decongestant (50 FR 2220) drug products, requesting that the agency revise pediatric dosages for combination drug products containing ingredients in these pharmacologic classes including when these ingredients are combined with internal analgesic-antipyretic ingredients. Because several rulemakings are affected by this issue, the agency has published a separate document discussing pediatric dosages for OTC cough-cold drug products and deferred all issues regarding pediatric dosages to that document. (See the **Federal Register** of June 20, 1988; 53 FR 23180.) Any amendments to currently proposed tentative final monographs will be addressed at that time.

*J. Comments on Labeling for OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Combination Drug Products*

61. One comment objected to the Panel's recommendation "that combination products must be labeled to reflect all of the proven pharmacologic activities of each active ingredient in the combination" (41 FR 38325). The comment pointed out that such labeling would conflict with the Panel's recommendation that labeling include only those indications that are for concurrent symptoms. The comment stated that labeling that includes use of the product for a nonconcurrent symptom would confuse consumers and possibly encourage them to use a combination drug product when a single-ingredient product would suffice. The comment also objected to the Internal Analgesic Panel's recommendation that the labeling of

such combination products emphasize use of the product only when all such symptoms are present (42 FR 35370). The comment maintained that such labeling would be confusing and that a product containing an analgesic-antipyretic ingredient should not be avoided because a single symptom of only pain or fever is present rather than both symptoms. To clarify the apparent inconsistency in both the Panels' recommendations, the comment requested that the phrase "consistent with the recommended use of the product" be added to the Cough-Cold Panel's statement concerning the inclusion of all proven pharmacologic activities in the labeling of a drug product and that the phrase in § 343.20(d) (1), (2), (3), and (4) of the advance notice of proposed rulemaking for OTC internal analgesic drug products that states "* * * the product is labeled for the concurrent symptoms involved * * *" be replaced by the following statement: "The product must be labeled to reflect all of the proven pharmacological activities of the active ingredient(s) consistent with the recommended use of the product."

A second comment contended that drug products should be labeled with all the pharmacologic activities of a drug. The comment maintained that knowing all the activities of a drug causes consumers less confusion and is less expensive because there are times when a single drug can be used to relieve several symptoms. Thus, the consumer can avoid spending twice the money for two products when one product would suffice.

The agency notes there is no legal restriction that prevents "multi-use" labeling, i.e., labeling a drug product with some or all of the proven pharmacologic activities of the drug whether or not the conditions to be treated are related. For products that contain an ingredient with multi-use labeling, the labeling for each "different" use of the ingredient would have to be distinct and not confusing and would have to meet the requirements of the applicable OTC drug monographs in Part 330 in addition to the labeling requirements for OTC drugs in Subpart C of 21 CFR Part 201. Because of the labeling requirements and the need to provide information that is not confusing to consumers, the agency invites manufacturers to consult with FDA before labeling their products with multi-use labeling.

In the case of an OTC drug product that contains an ingredient with different pharmacologic actions that can treat related symptoms, those pharmacologic actions that are consistent with the intended use of the product appropriately may appear in the labeling but are not required to appear. Diphenhydramine hydrochloride is an example of such a drug. If diphenhydramine hydrochloride were reclassified as a Category I antitussive in the final monograph, a drug product containing diphenhydramine hydrochloride for the treatment of symptoms associated with the common cold could be labeled both as an antihistamine and an antitussive because these actions are consistent with the intended use of the product. However, if a manufacturer chose to promote only one of the pharmacologic actions of diphenhydramine (e.g., its antitussive action), the product would not be required to be labeled as both an antihistamine and an antitussive. In such a case, because the product is intended only for use as an antitussive, only information on the use of the drug as an antitussive need be included in the labeling.

Diphenhydramine hydrochloride also has another pharmacologic action (i.e., causes drowsiness) that allows it to be marketed OTC as a nighttime sleep-aid. For cough-cold combination drug products, the use of multi-use labeling is limited because it is unlikely that a specific combination of ingredients, e.g., an antihistamine-antitussive-internal analgesic combination (which relieves cold symptoms such as runny nose, sneezing, cough, and fever) could also be used to relieve other symptoms not related to the common cold, e.g., nighttime sleep-aid. Further, if combinations are labeled with multi-use labeling, all of the labeled uses must be indications that are consistent with Category I combinations. There are currently no Category I combinations involving cough-cold ingredients and nighttime sleep-aid ingredients.

The agency believes that the labeling for OTC analgesic-antipyretic and cough-cold ingredient combination drug products should reflect the principal intended use(s) of the product (e.g., pain reliever-fever reducer and nasal decongestant.) Such labeling must be consistent with the approved indications for all of the ingredients but should not necessarily contain all of the indications, particularly those indications that are not consistent with the concurrent use of the ingredients in the combination product.

In adopting an indications statement for an analgesic-antipyretic active ingredient with the indications statement(s) for the possible cough-cold active ingredients it could be combined with (e.g., an antihistamine, an antitussive), the agency has determined that an appropriate indications statement for the analgesic-antipyretic ingredient of a cough-cold product would be "For the temporary relief of minor aches, pains, headache, muscular aches, and fever associated with" (select one of the following: "the common cold" or "a cold") which would then be followed by the appropriate indication(s) for the cough-cold ingredient(s).

The agency recognizes that products containing an analgesic-antipyretic combined with an antihistamine, or a nasal decongestant, or both, may also be marketed for use in a target population that has hay fever/allergic rhinitis or sinusitis symptoms, but not cold symptoms. The agency has determined that an appropriate indications statement for the analgesic-antipyretic ingredient for such products would be "For the temporary relief of minor aches, pains, and headache" (followed by the labeling for antihistamines in § 341.72(b)(1) and/or the labeling for nasal decongestants in § 341.80(b)(1) (ii) or (iii), as appropriate).

Therefore, in § 341.85(b)(1) of this tentative final monograph, the agency is proposing that all permitted combinations of analgesic-antipyretic and cough-cold active ingredients, identified in § 341.40 that are marketed and labeled for relief of cough-cold symptoms must bear the following indications statement: "For the temporary relief of minor aches, pains, headache, muscular aches, and fever associated with the common cold" (followed by the appropriate indication(s) for the cough-cold active ingredient(s)). In addition, permitted combinations containing an analgesic-antipyretic and an antihistamine identified in § 341.40(a); an analgesic-antipyretic, an antihistamine, and an oral nasal decongestant identified in § 341.40(c); and an analgesic-antipyretic and an oral nasal decongestant identified in § 341.40(n) may also bear this indication. However, for products which are promoted for use in individuals with hay fever/allergic rhinitis or sinusitis symptoms, the following indications statement in § 341.85(b)(2) should be used: "For the temporary relief of minor aches, pains, and headache," (followed by the labeling for antihistamines in § 341.72(b)(1) and/or the labeling for nasal decongestants in § 341.80(b)(1) (ii) or (iii), as appropriate). Products which are promoted for relief of cough-cold symptoms in addition to hay fever/allergic rhinitis and/or sinusitis

symptoms must include both labeling statements in § 341.85(b) (1) and (2).

In conclusion, the agency believes that combination drug products may contain only those active ingredients that treat concurrent symptoms consistent with the intended use of the product. The agency finds it unnecessary to adopt the comment's suggestion that product labeling should be "consistent with the recommended use of the product," because the proposed labeling for combination products ensures that each component of the combination product conforms to the intended use of the product. The agency does not agree with the comment that the product must be labeled to reflect *all* of the proven pharmacological activities of the active ingredient(s) consistent with the recommended use of the product. There is no agency requirement that an OTC drug product be labeled with all of the proven pharmacological activities of its active ingredients. On the other hand, there is no regulation that prohibits multi-use labeling, i.e., the labeling of products to reflect all of the proven pharmacologic activities of its active ingredients. However, for combination drug products to be labeled with multi-use labeling, all of the labeled uses must be for Category I combinations. The OTC drug monographs provide the acceptable labeling of the product for OTC use, and the agency believes that the labeling proposed for combination products in this tentative final monograph adequately describes for consumers the appropriate concurrent symptoms for which the product is to be used.

62. One comment stated that warnings for combination products containing ingredients from several different pharmacologic groups should be consolidated in order to decrease the number of different statements that would be required for such products. Another comment requested that provision be made for combining indications for combination products containing ingredients from several different pharmacologic groups so that the resulting statement of indications is clear and understandable.

The agency agrees with the comments. For combination products that contain ingredients from several different pharmacologic groups, manufacturers may combine warnings, indications, and directions, respectively, to eliminate duplicative words or phrases so that the resulting information is clear and understandable. To clarify how this can be done, the agency is proposing a paragraph in the labeling section (§ 341.85) for permitted combinations in this tentative final monograph which states that indications, warnings, and directions, respectively, applicable to each active ingredient in the combination drug product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. For example, the warning for an antihistamine in proposed § 341.72(c)(2) (50 FR 2216) "Do not take this product if you have asthma, glaucoma, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor," and the warning for an oral nasal decongestant in proposed § 341.80(c)(1)(i)(*c*) (50 FR 2239) "Do not take this product if you have heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor" may be combined for an antihistamine-nasal decongestant combination product as follows: "Do not take this product if you have asthma, glaucoma, heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

In reviewing the warnings for different ingredients that could be present in possible combination products, the agency has determined that a conflict exists between the warning proposed for oral nasal decongestants (labeled for adult use) in § 341.80(c)(1)(b) that states: "Do not take this product for more than 7 days. If symptoms do not improve or are accompanied by fever, consult a doctor," and the warning to be proposed in a future issue of the **Federal Register** for internal analgesic ingredients (adult dosages) in § 343.50(c) that will state not to take this product for pain for more than 10 days or for fever for more than 3 days unless directed by a doctor; and if pain or fever persists or gets worse, if new symptoms occur, or if redness or swelling is present, consult a doctor because these could be signs of a serious condition. A similar conflict exists between the warning proposed for oral nasal decongestants (labeled for children under 12 years of age) in § 341.80(d)(ii)(b) and the warning to be proposed for internal analgesic ingredients (children's dosages) in § 343.50(c)(2), which will limit the use of an internal analgesic for pain in children to 5 days. Because of the conflict between the respective warnings, the agency is proposing that the following specific warning be used for combinations containing an analgesic-antipyretic ingredient(s) and an oral nasal decongestant ingredient identified in § 341.40 (c), (f), (k), and (n) when labeled for adult use: "Do not take this product for more than 10 days. If symptoms do not improve or are accompanied by fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

The agency is also proposing the following warning for this combination when labeled for children 2 years to under 12 years of age, "Do not give this product to children for more than 5 days. If symptoms do not improve or are accompanied by fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor." The agency is further proposing a warning for this combination product when labeled for both adults and children 2 years of age to under 12 years of age: "Do not take this product for more than 10 days (for adults) or 5 days (for children). If symptoms do not improve or are accompanied by fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

An incompatibility also exists between the analgesic-antipyretic warnings discussed above and the warning for antitussives in § 341.74(c)(1) "A persistent cough may be a sign of a serious condition. If cough persists for more than 1 week, tends to recur, or is accompanied by fever, rash, or persistent headache, consult a doctor" (52 FR 30056). The agency is proposing that the following warning be used for combination drug products containing an antitussive and an analgesic-antipyretic ingredient(s) identified in § 341.40 (f) and (k) when labeled for adult use: "Do not take this product for more than 10 days. A persistent cough may be a sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor." The combined warning for children reads as follows: "Do not give this product to children for more than 5 days. A persistent cough may be sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that last for more than 3 days, or if new symptoms occur, consult a doctor." For products labeled for both adults and children, the proposed combined warning reads as follows: "Do not take this product for more than 10 days (for adults) or 5 days (for children). A persistent cough may be sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent

headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

The warning proposed for expectorants in § 341.78(c)(3) in the tentative final monograph for OTC expectorant drug products "A persistent cough may be a sign of a serious condition. If cough persists for more than 1 week, tends to recur, or is accompanied by fever, rash, or persistent headache, consult a doctor," also conflicts with the warning for analgesic-antipyretics discussed above. The combined warnings to be used for combinations containing an expectorant and an analgesic-antipyretic ingredient(s) identified in § 341.40(m) when labeled for adults and/or children are the same warnings proposed above for combinations of an antitussive and an analgesic-antipyretic ingredient(s). The warnings for specific cough-cold combination drug products which differ from the warnings required for the individual ingredients are included in § 341.85(d) in this tentative final monograph.

The agency has also identified conflicts in that portion of the directions that deal with the lower age limits of use for children's dosages for some of the combinations identified in § 341.40. For example, the directions for an OTC antihistamine advises that a doctor be consulted for use in children under 6 years of age, while OTC analgesic-antipyretic ingredients may be given to a child as young as 2 years of age without consulting a doctor. The agency is concerned that when a combination product containing analgesic-antipyretic and cough-cold ingredients is labeled for use in children of a particular age group that each individual ingredient be generally recognized as safe for use in that particular age group. Therefore, the agency is proposing that when there is a difference in the directions established for the individual ingredients in a combination drug product, e.g., when the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph. Thus, in the above example, the product can be labeled only for use in children 6 years of age and over.

63. One comment disagreed with the Panel's classification of the word "multiaction" as a claim having no scientific foundation or meaning, or as being meaningless to the consumer as a labeling claim for cough-cold products (41 FR 38337). In the comment's opinion, this term is meaningful in a labeling claim for a combination product recommended for the relief of more than one symptom because such a product would have multiple actions and the term "multiaction" would indicate to the consumer a need to consider these actions. Therefore, the comment contended that it is inconsistent "to prohibit the use of one of the clearest, most direct words available to describe the product's potential" to the consumer. In view of this, the comment recommended that the word "multiaction" not be rejected as a term to be used in labeling claims for combination cough-cold products.

The word "multiaction" is not sufficiently specific to be included in the "statement of identity" or "indications" portions of the labeling required for OTC drug products. However, the agency has no objection to use of this word as a general, descriptive term in the labeling of drug products that combine ingredients from different therapeutic categories. Considering that the specific identity and use(s) of the drug product are spelled out in the statement of identity and indications, the word "multiaction" used elsewhere in the labeling would not be misleading and should be available to manufacturers as a matter of choice. Although this term does not appear in this tentative final monograph, the agency has no objection to its use in other portions of the labeling that are not regulated by the monograph.

64. A number of comments objected to the warning recommended by the Panel in § 341.85(d) for combination products containing aspirin: "This product contains aspirin and should not be taken by individuals who are sensitive to aspirin." Several of the comments stated that the warning was redundant and unnecessary because the listing of the active ingredients on the label suffices to disclose the presence of aspirin. Another comment stated that the labeling for aspirin should be addressed as part of the internal analgesic monograph and not in the cough-cold monograph. Two of the comments suggested that the word "allergic" be used instead of "sensitive" because the latter is misleading and the Panel intended to use the term "allergic."

The agency agrees that the labeling for aspirin should be addressed in the internal analgesic monograph and, therefore, is not addressing the specific requests stated by the comments in this document. The agency's conclusions on aspirin labeling will be stated as part of the rulemaking for OTC internal analgesic drug products. For these reasons, the Panel's recommendation in § 341.85(d) is not being included in this tentative final monograph.

The agency points out, however, that combination products containing cough-cold ingredients plus internal analgesic ingredients would need to conform to both monographs.

In addition, combination products that have aspirin or aspirin-containing drugs as the internal analgesic ingredient must bear the Reye syndrome warning in accord with 21 CFR 201.314(h) (1) through (4). The regulation also states that OTC drug products covered by the regulation and labeled solely for use by children (pediatric products) shall not recommend the product for use in treating flu or chicken pox. In the **Federal Register** of June 9, 1988 (53 FR 21633), the agency published a final rule making this Reye syndrome labeling provision permanent. Therefore, even though this tentative final monograph is only a proposed rule, any currently marketed cough-cold combination product that contains aspirin or an aspirin-containing ingredient must bear the appropriate Reye's syndrome labeling in accord with 21 CFR 201.314(h).

65. One comment expressed concern that products recommended by the Panel in § 341.40 (a), (c), (j), (m), and (o) containing cough-cold ingredients in combination with analgesic-antipyretic ingredients or local anesthetic ingredients might require reformulation and relabeling more than once. The comment explained that this could happen if the a cough-cold monograph became final before the other applicable monograph(s). Thus, cough-cold combinations containing internal analgesic ingredients such as aspirin might have to be reformulated and relabeled to comply with the subsequent internal analgesic final monograph. To avoid this, the comment proposed that the effective date for reformulation and relabeling of combination products containing ingredients from more than one monograph should be the effective date of the last applicable final monograph.

The agency's policy is that an OTC drug product, whether single ingredient or combination, must conform to an applicable monograph on the effective date of the final monograph. Thus, the cough-cold component of a combination product described above would have to meet all of the requirements of the cough-cold monograph upon its effective date. The agency acknowledges that a combination product containing ingredients covered by different monographs might require reformulation

and relabeling more than once. However, the comment's suggested approach could result in the continued marketing of an ingredient of questionable safety or an ingredient not proven effective (nonmonograph condition) past the effective date of an applicable final monograph, or the failure to include required labeling on the product, only because the ingredient was included in a combination product with another ingredient covered by a monograph that had yet to take effect. Therefore, the comment's proposal is not accepted.

66. One comment pointed out "an apparent contradiction in the labeling requirements for a bronchodilator combined with an expectorant." The Panel's recommended warning for bronchodilator-expectorant combinations in § 341.85(c) states "This product should be used only for cough associated with asthma" (41 FR 38423). The comment noted, however, that the following warning is included in the labeling requirements for expectorant drug products in § 341.78(b)(2): "Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, or emphysema or where cough is accompanied by excessive secretions except under the advice and supervision of a physician" (41 FR 38422). The comment requested that the word "asthma" be deleted from the Panel's recommended warning in § 341.78(b)(2) to resolve an apparent inconsistency concerning the use of the combination by asthmatics that would result from placing both label warnings (§§ 341.85(c) and 341.78(b)(2)) on the combination product.

The inclusion of the word "asthma" in the warning in § 341.78(b)(2) does not conflict with the warning for bronchodilator-expectorant combinations in § 341.85(c). The Panel's inclusion of the word "asthma" in its warning in § 341.78(b)(2) only emphasizes that products containing expectorants, even in combination with a bronchodilator, should not be used in patients with asthma "unless directed by a doctor." This is consistent with the Panel's recommended warning for bronchodilators in § 341.76(b)(1) that states "Do not take this product unless a diagnosis of asthma has been made by a physician." In addition, the agency agrees with the Panel that cough-cold drug products which contain an expectorant but do not contain a bronchodilator should not be available OTC for use by consumers with asthma except as directed by a doctor. Therefore, the agency does not agree that the word "asthma" should be deleted from the warning recommended by the Panel in § 341.78(b)(2).

However, after reviewing all of the warnings proposed for bronchodilator drug products (47 FR 47527), the agency concludes that the Panel's recommended warning in § 341.85(c) "This product should be used only for cough associated with asthma," in addition to the agency's proposed warning in § 341.76(b)(1) "Do not take this product unless a diagnosis of asthma has been made by a physician," is unnecessarily repetitious. Therefore, the warning recommended by the Panel in § 341.85(c) is not being proposed in this tentative final monograph.

*K. Comments on Testing Guidelines for OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Combination Drug Products*

67. Several comments disagreed with the Panel's testing procedures for Category III combination products. One comment stated that the Panel had omitted a criterion for the testing of some combinations containing ingredients with overlapping pharmacologic activities, e.g., an antihistamine and an anticholinergic. The comment submitted a proposed criterion and testing procedure for such combinations.

As noted in comment 29 above, tentative final and final monographs will no longer contain recommended testing guidelines. Therefore, comments regarding Category III testing guidelines will not be addressed in this document. However, the agency will meet with industry representatives at their request to develop testing guidelines for those conditions which industry is interested in upgrading, and to advise industry on the adequacy of proposed protocols. (See also part II. paragraph A.2. below—*Testing of Category II and Category III conditions.*)

## II. The Agency's Tentative Adoption of the Panel's Report

*A. Summary of Combinations Categorizations and Testing of Category II and Category III Conditions*

1. *Summary of combinations categorizations.* The agency has reviewed all claimed active ingredients and combinations submitted to the Panel, as well as other data and information available at this time, and is proposing the recategorization of eight combinations, i.e., the combination of an analgesic-antipyretic(s), an oral antitussive, an oral nasal decongestant, and an antihistamine; the combination of an antihistamine (if the antihistamine is also a Category I antitussive) and an oral antitussive; the combination of an oral antitussive (if the antitussive is also a Category I antihistamine) and an antihistamine; the combination of theophylline and a sympathomimetic bronchodilator; combinations containing more than two active ingredients from the same pharmacologic group; combinations containing phenobarbital and any central nervous system stimulant cold, cough, allergy, bronchodilator, or antiasthmatic ingredient(s); the combination of l-desoxyephedrine and aromatics in a inhaler as a topical nasal decongestant; and the combination of menthol, camphor, and eucalyptus oil in an ointment as a topical antitussive. The agency is proposing the classification of seven combinations that were not classified by the Panel, i.e., the combination of an analgesic-antipyretic(s), an oral antitussive, and an oral nasal decongestant; the combination of an oral antitussive and an analgesic-antipyretic(s); the combination of an analgesic-antipyretic(s) and an expectorant; the combination of an oral nasal decongestant, an oral antitussive, and an anesthetic/analgesic in a solid dosage form; the combination of an anticholinergic, an antihistamine, and an oral nasal decongestant; combinations containing caffeine (to combat lethargy) and cough-cold preparations not containing antihistamines; and the combination of phenylpropanolamine, ephedrine, and caffeine. In addition, the agency is proposing the classification of the following fourteen combinations containing cough-cold and oral health care active ingredients that were not classified by either the Cough-Cold or Oral Cavity Panels: a debriding agent/oral wound cleanser and an oral antitussive; a debriding agent/oral wound cleanser and an antihistamine; an astringent and an oral antitussive; an astringent and an antihistamine; an oral antitussive and an oral demulcent; an oral nasal decongestant and an oral demulcent; an oral nasal decongestant, an oral antitussive, and an oral demulcent; an expectorant and an oral anesthetic/analgesic; an expectorant and an oral demulcent; an antihistamine and an oral anesthetic/analgesic; an antihistamine and an oral demulcent; an oral antitussive or an oral nasal decongestant, an oral anesthetic/analgesic, and an oral demulcent; and an oral nasal decongestant, an oral antitussive, an oral anesthetic/analgesic, and an oral demulcent. The last ten of these combinations are for products in a solid dosage form to be dissolved in the mouth and swallowed.

For the convenience of the reader, the following table is included as a summary of the categorizations by the Panel and the proposed classification by the agency.

The combination drug products that are listed below are intended for oral use unless otherwise stated. Because antitussives, bronchodilators, and nasal decongestants may be administered orally or topically, the agency is identifying these drugs as oral or topical for clarity.

| Cough-cold combinations | Panel | Agency |
|---|---|---|
| Analgesic-antipyretic(s) and antihistamine | I | I |
| Analgesic-antipyretic(s) and oral antitussive | [1] N.C. | I |
| Analgesic-antipyretic(s) and expectorant | N.C. | I |
| Analgesic-antipyretic(s) and oral nasal decongestant | I | I |
| Analgesic-antipyretic(s) and oral nasal decongestant and antihistamine | I | I |
| Analgesic-antipyretic(s) and oral antitussive and oral nasal decongestant | N.C. | I |
| Analgesic-antipyretic(s) and oral antitussive and oral nasal decongestant and antihistamine | III | I |
| Antihistamine and oral antitussive (if labeled "May cause market drowsiness") | I | I |
| Antihistamine and oral nasal decongestant | I | I |
| Antihistamine and oral antitussive and oral nasal decongestant | I | I |
| Oral antitussive and expectorant (if labeled for nonproductive cough) | I | I |
| Oral antitussive and oral nasal decongestant | I | I |
| Oral antitussive and expectorant and oral nasal decongestant (if labeled for nonproductive cough) | I | I |
| Oral antitussive and anesthetic/analgesic (if available only in a solid dosage form) | I | I |
| Oral bronchodilator and expectorant (if labeled for cough associated with asthma) | I | I |
| Expectorant and oral nasal decongestant | I | I |
| Oral nasal decongestant and oral anesthetic/analgesic (if available in a solid dosage form) | I | I |
| Oral nasal decongestant and oral antitussive and oral anesthetic/analgesic (if available in a solid dosage form) | N.C. | I |
| Oral antitussive and oral demulcent (if available in a solid dosage form) | N.C. | I |
| Oral nasal decongestant and oral demulcent (if available in a solid dosage form) | N.C. | I |
| Oral nasal decongestant and oral antitussive and oral demulcent (if available in a solid dosage form) | N.C. | I |
| Oral antitussive and oral anesthetic/analgesic and oral demulcent (if available in a solid dosage form) | N.C. | I |
| Oral nasal decongestant and oral anesthetic/analgesic and oral demulcent (if available in a solid dosage form) | N.C. | I |
| Oral nasal decongestant and oral antitussive and oral anesthetic/analgesic and oral demulcent (if available in a solid dosage form) | N.C. | I |
| Oral antitussive and debriding agent/oral wound cleanser | N.C. | II |
| Antihistamine and debriding agent/oral wound cleanser | N.C. | II |
| Oral antitussive and astringent | N.C. | II |
| Antihistamine and astringent | N.C. | II |
| Analgesic-antipyretic(s) and oral bronchodilator | II | II |
| Anticholinergic and expectorant | II | II |
| Antihistamine and expectorant | II | II |
| Antihistamine (if antihistamine is also a Category I antitussive) and oral antitussive | II | III |
| Oral antitussive (if antitussive is also a Category I antihistamine) and antihistamine | II | III |
| Oral bronchodilator and anticholinergic | II | II |
| Oral bronchodilator and antihistamine | II | II |
| Oral bronchodilator and oral antitussive (if labeled for cough associated with asthma) | II | II |
| Theophylline and sympathomimetic bronchodilator (e.g., ephedrine) | I | II |
| Antihistamine and anticholinergic | III | [2] II |
| Antihistamine and oral anesthetic/analgesic | N.C. | III |
| Antihistamine and oral demulcent | N.C. | III |
| Expectorant and oral anesthetic/analgesic | N.C. | III |
| Expectorant and oral demulcent | N.C. | III |
| Antihistamine and nasal decongestant (administered topically as spray or drops) | III | III |
| Oral antitussive and bronchodilator used as an antitussive (if labeled for cough not associated with asthma) | III | III |
| Oral antitussive and expectorant (if labeled for productive cough) | III | III |
| Oral antitussive and expectorant and oral nasal decongestant (if labeled for productive cough) | III | III |
| Analgesic-antipyretic(s) and oral antitussive and expectorant and oral nasal decongestant | III | III |
| Anticholinergic and antihistamine and oral nasal decongestant | N.C. | [2] II |
| Atropine and oral nasal decongestant | III | [2] II |
| Expectorant and oral bronchodilator used as an antitussive (if labeled for cough not associated with asthma) | III | III |
| Combinations containing Category I ingredients from different pharmacologic groups if any ingredient is at less than the minimum effective dosage (unless the ingredient(s) are being used to treat the same symptom). | II | II |
| Combinations containing 2 or more ingredients at less than the minimum effective dosage and used to treat the same symptom (labeling claim) (even if it contains Category I ingredients from different pharmacologic groups). | III | III |
| Combinations containing more than 2 active ingredients from the same pharmacologic group | II | III |
| Combinations containing an antihistamine for the relief of symptoms of allergic rhinitis and an additional antihistamine which is added exclusively for sedation, and the product contains labeling which represents the additional antihistamine as a sleep-aid. | II | II |
| Combinations containing an antihistamine with a sleep-aid claim | III | III |
| Combinations containing a Category III ingredient or labeling and no Category II ingredient or labeling | III | III |
| Combinations containing 2 Category I ingredients from the same pharmacologic group | III | III |
| Combinations containing 2 Category I ingredients from the same pharmacologic group if either or both ingredients are at less than the minimum effective dosage. | III | III |
| Combinations containing a corrective (an active ingredient specifically intended to counteract a side effect of other ingredients in the product), e.g., caffeine, and any cold, cough, allergy, bronchodilator, or antiasthmatic ingredient(s) (except for the combination immediately below). | III | III |
| Combinations containing phenobarbital (8 mg) (as a stimulant corrective) and any central nervous system stimulant cold, cough, allergy, bronchodilator, or antiasthmatic ingredient(s) such as theophylline and ephedrine. | III | II |
| Combinations containing several claimed active ingredients which are mixtures of volatile substances with overlapping pharmacologic activities for which a minimum effective dosage cannot be established for one or more of the ingredients when tested alone (except for the combination immediately below). | III | III |
| 1-Desoxyephedrine and aromatics (camphor, menthol, methyl salicylate, bornyl acetate, and lavender oil) in an inhaler as a topical nasal decongestant. | III | I |
| Combinations containing 4 or more ingredients from different pharmacologic groups (except for the combination of an analgesic-antipyretic and oral antitussive and oral nasal decongestant and antihistamine described above). | III | III |

| Cough-cold combinations | Panel | Agency |
|---|---|---|
| Combinations containing a stimulant, e.g., caffeine (at a fully effective level), and any cold, cough, allergy, bronchodilator, or antiasthmatic ingredient(s). | II | II |
| Combinations containing caffeine (15–30 mg) to combat lethargy (not as a sedative corrective) and cold preparations not containing antihistamines. | N.C. | II |
| Combinations containing vitamin C and cold, cough, allergy, bronchodilator, or antiasthmatic ingredient(s) for prevention or treatment of the common cold. | III | III |
| Combinations containing any vitamins with labeling claims for prevention or treatment of the common cold | II | II |
| Phenylpropanolamine and ephedrine and caffeine | N.C. | II |
| Caffeine and ephedrine or pseudoephedrine | N.C. | II |
| Caffeine and phenylpropanolamine | N.C. | II |
| Menthol and camphor and eucalyptus oil and thymol and cedar leaf oil and nutmeg oil (myristica oil) in a suitable vehicle for steam inhalation or topical use as a nasal decongestant. | III | III |
| Menthol and camphor and eucalyptus oil in a suitable ointment vehicle as a topical antitussive | III | I |
| Menthol and eucalyptus oil in a lozenge as a topical antitussive | III | III |
| Methol and camphor and eucalyptus oil and tincture of benzoin and polyoxyethylene dodecanol for use in a steam vaporizer as an antitussive. | III | III |
| Promethazine hydrochloride (if labeled for relief of symptoms of the common cold) may be used as the antihistamine in the above Category I combinations that contain cough-cold and/or analgesic-antipyretic ingredients. | I | I |

[1] N.C.—Not classified by Panel.
[2] Combination is classified as Category II because of nonmonograph status of anticholinergics (50 FR 46587).

2. *Testing of Category II and Category III conditions.* The Panel recommended testing guidelines for cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products (41 FR 38327 and 38418). The agency is offering these guidelines as the Panel's recommendations without adopting them or making any formal comment on them. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any active ingredient or combination included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). This policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

*B. Summary of the Agency's Changes in the Panel's Recommendations*

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the combinations section of the Panel's report and recommended monograph with the changes described in the summary below. A summary of the changes made by the agency follows.

1. For clarity, the agency is specifying in the tentative final monograph in § 341.40 and § 341.85 whether antitussives, bronchodilators, and nasal decongestants are for oral or topical use. (See comment 39 above.)

2. The agency is amending § 341.40 (j) and (o) to state that any single ingredient in § 356.10 (Category I anesthetic/analgesic active ingredients identified in the monograph for oral health care drug products) may be combined with an oral antitussive or an oral nasal decongestant in a solid dosage form to be dissolved in the mouth and swallowed. Additionally, to be consistent with the language used in the oral health care drug products report, the term "oral anesthetic/analgesic" is used in this document rather than the term "local anesthetic or local analgesic."

Additionally, the agency has examined other combination drug products containing cough-cold and oral health care active ingredients which were not reviewed by the Panel and is proposing to include the following as Category I combinations in new paragraphs u through z in § 341.40: an oral antitussive and an oral demulcent in a solid dosage form; an oral nasal decongestant and an oral demulcent in a solid dosage form; an oral antitussive, an oral nasal decongestant, and an oral demulcent in a solid dosage form; an oral antitussive, an oral anesthetic/analgesic, and an oral demulcent in a solid dosage form; an oral nasal decongestant, an oral anesthetic/analgesic, and an oral demulcent in a solid dosage form; and an oral nasal decongestant, an oral antitussive, an oral anesthetic/analgesic, and an oral demulcent in a solid dosage form. The following combinations are proposed as Category II: an antihistamine and an astringent; an oral antitussive and an astringent; an antihistamine and a debriding agent/oral wound cleanser; and an oral antitussive and a debriding agent/oral wound cleanser. The following combinations in a solid dosage form are proposed as Category III: an antihistamine and an oral anesthetic/analgesic; an antihistamine and an oral demulcent; an expectorant and an oral anesthetic/analgesic; and an expectorant and an oral demulcent. The agency will discuss combinations that include oral antimicrobials in the antimicrobial segment of the tentative final monograph for OTC oral health care drug products, to be published in a future issue of the **Federal Register**. (See comment 39 above.)

3. The agency is proposing a Category I classification of combination drug products containing an oral antitussive, an oral nasal decongestant, and an anesthetic/analgesic, provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed. (See comment 40 above.)

4. The agency is reclassifying from Category II to Category III combination drug products containing an oral antitussive (if the antitussive is also a Category I antihistamine) and an antihistamine and combination drug products containing an antihistamine (if the antihistamine is also a Category I antitussive) and an oral antitussive. (See comment 43 above.)

5. The agency is classifying in Category III combination drug products containing a nasal decongestant and an antihistamine administered topically in a nasal spray or drops. However, the specific combination product containing phenylephrine hydrochloride (a nasal decongestant) and methapyrilene hydrochloride (an antihistamine) in a nasal spray has been placed in Category II because methapyrilene-containing drug products are not generally recognized as safe. (See comment 51 above.)

6. The agency concludes that the combination of an anticholinergic, an oral nasal decongestant, and an antihistamine satisfies the criteria for a Category III combination. However, because at this time, there are no Category I (monograph) anticholinergics

in the final rule for OTC anticholinergic drug products (published in the **Federal Register** of November 8, 1985; 50 FR 46582), all OTC combination drug products containing anticholinergic ingredients (including the above mentioned combination) are classified as Category II (nonmonograph) conditions in this tentative final monograph. (See comment 53 above.)

7. Based on the Internal Analgesic Panel's Category I classification of a combination drug product containing an expectorant and an analgesic-antipyretic (42 FR 35493), the agency is proposing that the combination be classified in Category I in this tentative final monograph. [This combination was not classified by the Cough-Cold Panel.]

8. The Internal Analgesic Panel, stating that there is a small percentage of the population for whom buffered aspirin produces a lower incidence of gastric intolerance and who might therefore derive some benefit from buffered aspirin, classified in Category I buffered aspirin products, i.e., those containing aspirin combined with buffering ingredients (correctives) and those containing aspirin combined with antacids (42 FR 35469). In the tentative final monograph for OTC internal analgesic drug products, to be published in a future issue of the **Federal Register**, the agency will include buffered aspirin and aspirin and antacid combinations in the monograph. This tentative final monograph for cough-cold combination drug products proposes that buffered aspirin and aspirin and antacid combination drug products may be combined with cough-cold active ingredients as identified in § 341.40 "Permitted combinations of active ingredients" provided the product is labeled according to § 341.85.

Additionally, this document proposes that for combination drug products containing an analgesic-antipyretic ingredient(s) and a cough-cold active ingredient(s), that are marketed and labeled for relief of cough-cold symptoms, the indications statement for the analgesic-antipyretic portion of the product is as follows: "For the temporary relief of minor aches, pains, headaches, muscular aches, and fever associated with" (select one of the following: "the common cold" or "a cold") (followed by the appropriate indication(s) for the cough-cold ingredient(s).) However, for drug products containing an analgesic-antipyretic combined with an antihistamine and/or an oral nasal decongestant as identified in § 341.40 (a), (c), and (n) which are promoted for use in individuals with hay fever/allergic rhinitis or sinusitis symptoms, the following indication should be used: "For the temporary relief of minor aches, pains, and headaches" (followed by the labeling for antihistamines in § 341.72(b)(1) and/or the labeling for nasal decongestants in § 341.80(b)(1) (ii) or (iii), as appropriate). Products which are promoted for relief of cough-cold symptoms in addition to hay fever and/or sinusitis symptoms must include both labeling statements. (See comment 61 above.)

9. The agency is reclassifying from Category III to Category I combination drug products containing analgesic-antipyretic(s), an oral antitussive, an antihistamine, and an oral nasal decongestant. Additionally, based on the data on the above combination, the agency is also classifying in Category I combination drug products containing analgesic-antipyretic(s) (as identified above), an oral antitussive, and an oral nasal decongestant and combination drug products containing an oral antitussive and analgesic-antipyretic(s) (as identified above). (See comment 47 above.)

10. The agency is reclassifying from Category III to Category I combination drug products containing menthol (2.6 to 2.8 percent), camphor (4.7 to 5.3 percent), and eucalyptus oil (1.2 to 1.3 percent) in a suitable ointment vehicle as a topical antitussive combination drug product. (See comment 56 above.)

11. The agency is reclassifying from Category III to Category I combination drug products containing 1-desoxyephedrine and aromatics (camphor, menthol, methyl salicylate, bornyl acetate, and lavender oil) as a topical nasal decongestant (administered by a nasal inhaler). (See comment 55 above.)

12. The agency is reclassifying from Category I to Category II combination drug products containing theophylline and ephedrine. Therefore, the Panel's recommendation in § 341.40(k) is not being included in this tentative final monograph. Additionally, the agency is classifying in Category II any combination drug product that contains theophylline. This includes, but is not limited to, combinations of theophylline and ephedrine; combinations of theophylline, ephedrine, and phenobarbital; and combinations of theophylline, ephedrine, and an expectorant. (See comment 54 above.)

13. The agency is classifying the following combination drug products in Category II: phenylpropanolamine, ephedrine, and caffeine; caffeine in combination with ephedrine or pseudoephedrine; and phenylpropanolamine in combination with caffeine. FDA determined that such products are new drugs and are required to be the subject of an approved NDA. (See the **Federal Registers** of August 13, 1982 (47 FR 35344), November 18, 1983 (48 FR 52513), and June 29, 1984 (49 FR 26814).)

14. The agency is reclassifying phenobarbital 8 mg from Category III to Category II as a stimulant corrective. (See comment 49 above.)

15. The agency is classifying caffeine at a dosage of 15 to 30 mg in Category III when included in cough-cold drug preparations to combat lethargy. (See comment 50 above.)

16. The Panel recommended a Category I classification for the prescription drug promethazine hydrochloride as an antihistamine in its advance notice of proposed rulemaking (41 FR 38390). Because of concerns regarding adverse reactions on the central nervous system, the agency dissented from this recommendation in the preamble to the Panel's report (41 FR 38312). Subsequently, data were submitted to the agency to alleviate these concerns, but not sufficient to justify agreeing with the Panel's Category I classification of promethazine hydrochloride as a single ingredient (Ref. 1). Therefore, general recognition of the safety of promethazine hydrochloride as a single ingredient has not been adequately established.

Promethazine hydrochloride has not been used extensively on a long-term basis as a single ingredient for antihistamine/allergic rhinitis/anti-allergy use. The agency believes that consumers who use OTC antihistamines to treat the symptoms of allergic rhinitis use these products on a long-term basis because the symptoms of allergic rhinitis usually occur for extended periods of time. The major use of promethazine hydrochloride as a prescription drug is in combination drug products for relief of acute cough/cold symptoms on a short-term basis. The possibility that the rare, but serious adverse reaction of the central nervous system known as tardive dyskinesia will not occur if promethazine hydrochloride is used on a long-term basis in a single ingredient OTC antihistamine drug product has not been adequately demonstrated. Therefore, the agency proposed a Category III classification for promethazine hydrochloride in the tentative final monograph for OTC antihistamine drug products published in the **Federal Register** on January 15, 1985 (50 FR 2206). The agency will address the comments received in

response to that tentative final monograph on single ingredient use of promethazine in the final monograph for OTC antihistamine drug products in a future issue of the **Federal Register**.

The agency has also reviewed data and information on combination drug products containing promethazine hydrochloride that are used extensively on a prescription basis for treating symptoms of the common cold (Refs. 1 and 2). These data and information indicate that such short-term use of promethazine hydrochloride in these products is safe. Under conditions of short-term use for the relief of cold symptoms, the possibility that tardive dyskinesia might occur is no longer a concern. Therefore, the agency is proposing a Category I classification of promethazine hydrochloride in combination with other cough-cold and/or analgesic-antipyretic ingredients as provided for antihistamine active ingredients in § 341.40 (a) through (f) of this tentative final monograph. (See § 341.40(t) in this document.)

In accordance with the enforcement policy set out in 21 CFR 330.13, and with FDA's Compliance Policy Guide (Ref. 3), promethazine hydrochloride combinations may now be marketed OTC under the conditions set out in this tentative final monograph. Such marketing, pending issuance of the final monograph, is subject to the risk that the Commissioner may adopt a different position in the final monograph that could require relabeling, recall, or other regulatory action. Marketing of such a product with labeling not in accord with the tentative final monograph also may result in regulatory action against the product, the marketer, or both.

As with other combination drug products, the labeling of combination drug products containing promethazine hydrochloride must include those indications and pharmacologic actions that are consistent with the intended use of the product; however, labeling indications related to the antihistamine (promethazine hydrochloride) component of the combination product may indicate use only for the treatment of symptoms of the common cold. Such indications are specified in § 341.72(b)(2) of the tentative final monograph for OTC antihistamine drug products. The agency recognizes that combinations of an antihistamine and a nasal decongestant are often used on a long-term basis to treat symptoms of allergic rhinitis. In the case of a combination drug product containing promethazine hydrochloride and a nasal decongestant, the labeling cannot contain indications for allergic rhinitis specified in § 341.72(b)(1) nor any other labeling in any area of the label or packaging that might imply use in treating symptoms of allergic rhinitis. Such labeling restriction will ensure short-term rather than long-term use on an OTC basis of products containing promethazine.

The Panel recommended the following oral dosage schedule for promethazine hydrochloride: For adults, the dosage is 6.25 to 12.5 mg every 8 to 12 hours, not to exceed 37.5 mg in 24 hours. For children 6 to under 12 years, the dosage is 3.125 to 6.25 mg every 8 to 12 hours, not to exceed 18.75 mg in 24 hours. The Panel recommended that a dosage of 1.56 to 3.125 mg every 8 to 12 hours, not to exceed 9.375 mg in 24 hours be included under professional labeling for children 2 to under 6 years of age. For children under 2 there is no recommended dosage except under the advice and supervision of a physician (41 FR 38390).

The Panel's recommended dosage interval (i.e., 8 to 12 hours) does not allow promethazine hydrochloride in an immediate release dosage form to be combined with other cough-cold active ingredients. However, based on the Panel's conclusion that 6.25 mg is the minimum effective OTC dose for promethazine (41 FR 38390), and past FDA approved labeling for promethazine-containing drug products that recommend a dosage of up to 4 times daily (Ref. 4), and the current approved NDA labeling for the innovator promethazine-containing combination drug product that provides for a dosage of 6.25 mg every 4 to 6 hours (Ref. 4), the agency is proposing an adult dosage for promethazine hydrochloride of 6.25 mg every 4 to 6 hours, not to exceed 37.5 mg in 24 hours (and corresponding children's dosages). This revised dosage schedule will allow promethazine hydrochloride to be combined with other cough-cold active ingredients, as proposed in this tentative final monograph.

In addition to the general labeling required for antihistamine drug products in § 341.72 (a) and (c)(1) (see 50 FR 2216 and 52 FR 31913), the following labeling statements and revisions are required for combination drug products containing promethazine hydrochloride:

(1) Based on approved labeling for prescription drug products containing promethazine hydrochloride, the warning in § 341.72(c)(2) is modified to read "Do not take this product if you have asthma, glaucoma, emphysema, liver disease, seizures, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor," and the warning in § 341.72(c)(6)(i) is modified to read "Do not give this product to children who have asthma, liver disease, seizures, or glaucoma unless directed by a doctor" (Ref. 4).

(2) The warning concerning drowsiness in § 341.72(c)(4) or (6)(iii) is required (see 52 FR 31913).

(3) The directions for use are "Adults: Oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours. Children 6 to under 12 years of age: oral dosage is 3.125 milligrams every 4 to 6 hours, not to exceed 18.75 milligrams in 24 hours. Children under 6 years of age: Consult a doctor."

The modified warnings and directions for drug products containing promethazine hydrochloride appear in this document in § 341.85(d)(4) and § 341.85(e), respectively.

In addition, dosage information for the promethazine hydrochloride component of combination drug products containing promethazine hydrochloride for use in children 2 to under 6 years of age is included under professional labeling in § 341.90(r). Such dosage information is provided to health professionals but not to the general public as follows:

(r) *For combination drug products containing promethazine hydrochloride as identified in § 341.40(s).* Children 2 to under 6 years of age: oral dosage is 1.56 milligrams every 4 to 6 hours, not to exceed 9.36 milligrams in 24 hours.

**References**

(1) Comment Nos. C00188 and CP0002, Docket No. 76N–052H, Dockets Management Branch.

(2) Unpublished data obtained from the National Prescription Audit and the National Disease and Therapeutic Index data systems, OTC Volume 04HTFM, Docket No. 76N–052H, Dockets Management Branch.

(3) Food and Drug Administration Compliance Policy Guide 7132b.16, Docket No. 78D–0322, Dockets Management Branch.

(4) Copies of FDA-approved labeling from NDA 8–306, and 8–306/S–010 and S–011, OTC Volume 04GTFM, Docket No. 76N–052G, Dockets Management Branch.

17. The agency is adding to § 341.85 a "Statement of identity" paragraph (designated as § 341.85(b)), an "Indications" paragraph (designated as § 341.85(c)), a "Warnings" paragraph (designated as § 341.85(d)), and a "Directions" paragraph (designated as § 341.85(e)) to conform with the format of other recently published tentative final monographs. Inclusion of the new paragraphs has necessitated a redesignation of the Panel's warning in § 341.85(a) to 341.85(d)(5). The agency is also redesignating Subpart D as Subpart

C and placing the labeling sections of the monograph in Subpart C.

18. In § 341.85(a) the agency is proposing that indications, warnings, and directions, respectively, applicable to each active ingredient of the combination product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. For combination products for which the labeling (i.e., statement of identity, indications, and warnings) in the individual applicable monographs conflicts or is inappropriate, the agency is proposing specific labeling for such combinations in § 341.85. Further, the agency is also proposing that when there is a difference in the directions established for the individual ingredients in the combination drug product, e.g., when the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph. (See comment 62 above.)

19. The agency is deleting the signal word "Caution" from the Panel's warning in § 341.85(a) (redesignated as § 341.85(d)(5)) for an antihistamine combined with an antitussive, i.e., "Caution: May cause marked drowsiness." In addition, upon petition, the agency will consider deletion of the word "marked" from this warning provided adequate data are submitted to demonstrate that the combination product does not cause a significant increase in drowsiness as compared with each active ingredient when tested alone. The petition and the data it contains will be maintained in a permanent file for public review in the Dockets Management Branch.

20. The agency is deleting the warning for bronchodilator-expectorant combination drug products recommended by the Panel in § 341.85(c), "This product should be used only for cough associated with asthma." (See comment 66 above.)

21. The agency is deleting the warning recommended by the Panel in § 341.85(d), "This product contains aspirin and should not be taken by individuals who are sensitive to aspirin." (See comment 64 above.)

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Interested persons may, on or before December 12, 1988, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 12, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before August 14, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written, comments on the new data may be submitted on or before October 12, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 14, 1989. Data submitted after the closing of

the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

**List of Subjects in 21 CFR Part 341**

Labeling; Over-the-counter drugs; Cold, cough, allergy, bronchodilator, and antiasthmatic combinations.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, and under 21 CFR 5.11, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 341 as follows:

## PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for Part 341 continues to read as follows:

**Authority:** Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. In Subpart B, new § 341.40 is added, to read as follows:

**§ 341.40 Permitted combinations of active ingredients.**

The following combinations are permitted provided each active ingredient is present within the established dosage limits and the product is labeled in accordance with § 341.85:

(a) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or aspirin and antacid combinations.

(b) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a).

(c) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single analgesic-antipyretic active ingredients, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or aspirin and antacid combinations.

(d) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single oral antitussive active ingredient identified in § 341.14(a) provided that the product is labeled according to § 341.85(d)(5).

(e) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single oral antitussive active ingredient identified in § 341.14(a) and any single oral nasal decongestant active ingredient identified in § 341.20(a).

(f) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single oral antitussive active ingredient identified in § 341.14(a) and any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single analgesic-antipyretic active ingredients or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or aspirin and antacid combinations.

(g) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single expectorant active ingredient identified in § 341.18.

(h) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a).

(i) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single expectorant active ingredient identified in § 341.18.

(j) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed.

(k) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single analgesic-antipyretic active ingredients or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or aspirin and antacid combinations.

(l) Any single oral bronchodilator active ingredient identified in § 341.16 (a), (b), (c), and (h) may be combined with any single expectorant active ingredient identified in § 341.18.

(m) Any single expectorant active ingredient identified in § 341.18 may be combined with any single analgesic-antipyretic active ingredients or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or aspirin and antacid combinations.

(n) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single analgesic-antipyretic active ingredients or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or aspirin and antacid combinations.

(o) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single expectorant active ingredient identified in § 341.18.

(p) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed.

(q) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral antitussive active ingredient identified in § 341.14(a) and any single anesthetic/analgesic active ingredient identified in § 356.10 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed.

(r) Camphor identified in § 341.14(b)(1) may be combined with menthol identified in § 341.14(b)(2) and eucalyptus oil (1.2 to 1.3 percent) provided that the product is available only in a suitable ointment vehicle.

(s) 1-desoxyephedrine identified in § 341.20(b)(1) may be combined with aromatics (camphor (54 mg), menthol (80 mg), methyl salicylate (11 mg), bornyl acetate (0.2 mg), and lavender oil (4 mg)) provided that the product is available only as an inhaler.

(t) Promethazine hydrochloride identified as an antihistamine (if labeled for relief of symptoms of the common cold as identified in § 341.72(b)(2)) may be used in combination with other cough-cold and/or analgesic-antipyretic ingredients as provided for antihistamine active ingredients in § 341.40 (a) through (f) of this section.

(u) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is in a solid dosage form to be dissolved in the mouth and swallowed.

(v) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the

product is in a solid dosage form to be dissolved in the mouth and swallowed.

(w) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is in a solid dosage form to be dissolved in the mouth and swallowed.

(x) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 of this chapter and any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

(y) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.10 of this chapter and any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

(z) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single oral anesthetic/analgesic active ingredient identified in § 356.10 of this chapter and any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is available only in a solid dosage form to be dissolved in the mouth and swallowed.

3. In Subpart C, new § 341.85 is added to read as follows:

**§ 341.85 Labeling of permitted combinations of active ingredients.**

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (a).

(1) *For permitted combinations identified in § 341.40 (a), (c), (f), (k), (m), and (n) containing an analgesic-antipyretic active ingredient.* The analgesic-antipyretic component of the product shall be identified as a "pain reliever" or "analgesic (pain reliever)." If the product is also labeled to relieve fever, then the analgesic-antipyretic component is identified as a "pain reliever-fever reducer" or "analgesic (pain reliever)-antipyretic (fever reducer)."

(2) [Reserved]

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in the applicable OTC drug monographs or listed in this paragraph, may also be used, as provided in § 330.1(d)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For permitted combinations containing an analgesic-antipyretic active ingredient identified in § 341.40 (a), (c), (f), (k), (m), and (n) when labeled for relief of cough-cold symptoms.* The following indication for analgesic-antipyretic ingredients should be used. "For the temporary relief of minor aches, pains, headache, muscular aches, and fever associated with" (select one of the following: "the common cold" or "a cold") (followed by the appropriate indication(s) for the cough-cold ingredient(s).)

(2) *For permitted combinations containing an analgesic-antipyretic active ingredient identified in § 341.40 (a), (c), and (n) when labeled for relief of hay fever/allergic rhinitis and/or sinusitis symptoms.* The following indication for analgesic-antipyretic ingredients should be used. "For the temporary relief of minor aches, pains, and headache" (followed by the labeling for antihistamines in § 341.72(b)(1) and/or the labeling for nasal decongestants in § 341.80(b)(1) (ii) or (iii), as appropriate).

(3) *For permitted combinations containing an analgesic-antipyretic active ingredient identified in § 341.40 (a), (c), and (n) when labeled for relief of cough-cold symptoms and for relief of hay fever/allergic rhinitis and/or sinusitis symptoms.* Both indications in § 341.85(b) (1) and (2) must be used.

(4) *For permitted combinations containing an anesthetic-analgesic active ingredient identified in § 341.40 (j), (p), (q).* The indication for anesthetic/analgesics in § 356.55(b)(1) of this chapter should be used.

(5) *For permitted combinations containing the antihistamine promethazine hydrochloride identified in § 341.40(t).* The indication for antihistamines in § 341.72(b)(2) should be used.

(6) *For permitted combinations containing 1-desoxyephedrine and aromatics (camphor, menthol, methyl salicylate, bornyl acetate, and lavender oil) as a topical nasal decongestant administered by a nasal inhaler.* The indications for nasal decongestants in § 341.80(b) should be used.

(7) *For permitted combinations containing menthol, camphor, and eucalyptus oil as topical antitussives in an ointment.* The indication for antitussives in § 341.74(b) should be used.

(8) *Other allowable statements.* In addition to the required information identified in this section (b), the labeling of the combination drug product may contain any of the "other allowable statements" (if any), that are identified in the applicable monographs, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (c). [All citations that refer to § 343.50 of this chapter will be published in a future issue of the **Federal Register**.]

(1) *For permitted combinations containing an antitussive and an analgesic-antipyretic identified in § 341.40 (f) and (k).* The following products are to be labeled, accordingly.

(i) *For products labeled for adults.* The following warning should be used instead of the warnings in § 343.50(c)(1)(i) of this chapter and

§ 341.74(c)(1)(ii). "Do not take this product for more than 10 days. A persistent cough may be a sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(ii) *For products labeled for children under 12 years of age.* The following warning should be used instead of the warnings in § 343.50(c)(2)(i) of this chapter and § 341.74(c)(2)(ii). "Do not give this product to children for more than 5 days. A persistent cough may be a sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(iii) *For products labeled for both adults and for children under 12 years of age.* The following warning should be used instead of the warnings in § 343.50(c)(3) of this chapter and §§ 341.74 (c)(1)(ii) and (c)(2)(ii). "Do not take this product for more than 10 days (for adults) or 5 days (for children). A persistent cough may be a sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(2) *For permitted combinations containing an expectorant and an analgesic-antipyretic identified in § 341.40(m).* The following products are to be labeled, accordingly.

(i) *For products labeled for adults.* The following warning should be used instead of the warnings in § 343.50(c)(1)(i) of this chapter and § 341.78(c)(3). "Do not take this product for more than 10 days. A persistent cough may be a sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(ii) *For products labeled for children under 12 years of age.* The following warning should be used instead of the warnings in § 343.50(c)(2)(i) of this chapter and § 341.78(c)(3). "Do not give this product to children for more than 5 days. A persistent cough may be a sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(iii) *For products labeled for both adults and for children under 12 years of age.* The following warning should be used instead of the warnings in § 343.50(c)(3) of this chapter and § 341.78(c)(3). "Do not take this product for more than 10 days (for adults) or 5 days (for children). A persistent cough may be a sign of a serious condition. If cough persists for more than 7 days, tends to recur, or is accompanied by rash, persistent headache, fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(3) *For permitted combinations containing a nasal decongestant and an analgesic-antipyretic identified in § 341.40 (c), (f), (k), and (n).* The following products are to be labeled, accordingly.

(i) *For products labeled for adults.* The following warning should be used instead of the warnings in § 343.50(c)(1)(i) of this chapter and § 341.80(c)(1)(i)(b). "Do not take this product for more than 10 days. If symptoms do not improve or are accompanied by fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(ii) *For products labeled for children under 12 years of age.* The following warning should be used instead of the warnings in § 343.50(c)(2)(i) of this chapter and § 341.80(c)(1)(ii)(b). "Do not give this product to children for more than 5 days. If symptoms do not improve or are accompanied by fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(iii) *For products labeled for both adults and for children under 12 years of age.* The following warning should be used instead of the warnings in § 343.50(c)(3) of this chapter and § 341.80(c)(iii). "Do not take this product for more than 10 days (for adults) or 5 days (for children). If symptoms do not improve or are accompanied by fever that lasts for more than 3 days, or if new symptoms occur, consult a doctor."

(4) *For permitted combinations containing promethazine hydrochloride identified in § 341.40(t).* The following products are to be labeled, accordingly.

(i) *For products labeled for adults.* The warnings for antihistamines in § 341.72(c) (1) and (4) must be used, in addition to the following: "Do not take this product if you have asthma, glaucoma, emphysema, liver disease, seizures, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

(ii) *For products labeled for children under 12 years of age.* The warnings for antihistamines in § 341.72(c)(1) and (6)(iii) must be used, in addition to the following: "Do not give this product to children who have asthma, liver disease, seizures, or glaucoma unless directed by a doctor."

(5) *For combination drug products containing an antihistamine combined with an oral antitussive.* The warning "May cause marked drowsiness," must be used. The word "marked" may be deleted from the warning upon petition under the provisions of § 10.30 of this chapter provided adequate data are submitted to demonstrate that the combination product does not cause a significant increase in drowsiness as compared with each active ingredient when tested alone. The petition and the data it contains will be maintained in a permanent file for public review by the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

(6) *For combination drug products containing 1-desoxyephedrine and aromatics (camphor, menthol, methyl salicylate, bornyl acetate, and lavender oil) as a topical nasal decongestant administered by a nasal inhaler.* The warnings for topical nasal decongestants in § 341.80(c) must be used.

(7) *For combination drug products containing menthol, camphor, and eucalyptus oil as topical antitussives in an ointment.* The warnings for topical antitussives in § 341.74(c) must be used.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (d). When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

(1) *For permitted combinations containing promethazine hydrochloride identified in 341.40(t).* Adults and children 12 years of age and older: oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours. Children 6 to under 12 years of age: Oral dosage is 3.125 milligrams every 4 to 6 hours, not to exceed 18.75 milligrams in 24 hours. Children under 6 years of age: Consult a doctor.

(2) [Reserved]

(e) *Optional wording.* The word "physician" may be substituted for the

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word "doctor" in any of the labeling statements in this section.

4. In § 341.90, new paragraph (r) is added to read as follows:

**§ 341.90 Professional labeling.**

* * * * *

(r) *For permitted combinations containing promethazine hydrochloride as identified in § 341.40(t).* Children 2 to under 6 years of age: Oral dosage is 1.56 milligrams every 4 to 6 hours, not to exceed 9.36 milligrams in 24 hours.

Dated: May 2, 1988.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88-18066 Filed 8-11-88; 8:45 am]

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Part III

# Environmental Protection Agency

**40 CFR Part 82**

**Protection of Stratospheric Ozone; Final Rule**

VOL 53 ISS 156 AG 12 1988 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[OAR-FRL-3409-7]**

## Protection of Stratospheric Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule limits the production and consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. It requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC–11, –12, –113, –114, and –115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning as early as 1992. Under specified circumstances, limited increases in production (but not consumption) above these levels would be permitted.

Promulgation of this rule is authorized by section 157(b) of the Clean Air Act and constitutes the United States' implementation of the "Montreal Protocol on Substances that Deplete the Ozone Layer" (Montreal Protocol), which the United States ratified on April 21, 1988. The final rule's control measures will take effect when the Protocol enters into force, which could occur as early as January 1, 1989.

The rule implements the Protocol's requirements to control production and consumption of the CFCs and halons specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities. By directly restricting the supply of the regulated chemicals, the United States will meet its obligations under the Montreal Protocol by means of a straightforward, economically efficient, and easily administered regulatory program.

In a separate notice appearing elsewhere in today's **Federal Register**, EPA is seeking public comment on an advance notice of proposed rulemaking (ANPRM) which discusses supplementing this final rule with a regulatory fee and/or engineering controls or bans on specific uses of CFCs and halons or replacing allocated quotas with an auction system.

Ideally, market based systems are preferable. An auction, in particular, would insure compliance with the Protocol, and would shift some windfalls from the producers to the United States Treasury. EPA is not adopting an auction of production and consumption allowances at this time due to remaining legal and economic concerns. After reviewing the public comment, the Agency will decide whether to propose a rule supplementing the allocated quota system or shifting to an auction approach, and depending on its decision, would issue a notice of proposed rulemaking containing a detailed description of any proposed modification.

The ANPRM also discusses scientific information now available in summary form that could not be considered in this rulemaking but which suggests that the risks of ozone depletion may be greater than previously anticipated.

**EFFECTIVE DATE:** This final rule will take effect upon entry into force of the Montreal Protocol. The United States and other Parties to the Protocol will likely have 90 days prior notice of the date on which the Protocol will enter into force. When EPA learns of that date, it will publish a document in the **Federal Register** announcing the effective date of this rule and the dates of each of the rule's control periods. The reporting requirements in § 82.13(f)(1) of the rule takes effect September 12, 1988.

**ADDRESS:** Comments and other information relevant to this rulemaking (Docket No. A–87–20) may be viewed at the Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Stephen Seidel, Senior Analyst, Office of Program Development, Office of Air and Radiation (ANR–445), EPA, 401 M Street, SW., Washington, DC 20460. Telephone (202) 382–2787.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Stratospheric ozone shields the earth's surface from dangerous ultraviolet (UV–B) radiation. In response to growing scientific evidence, a national and international consensus has developed that unabated use of CFCs and halons will result in depletion of stratospheric ozone. To the extent depletion occurs, penetration of UV–B radiation will increase, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune response system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics.

EPA evaluated the risks of ozone depletion and published its findings in "Assessing the Risks of Trace Gases That Can Modify the Stratosphere" (EPA, 1987), which the Agency's Science Advisory Board (SAB) reviewed and approved.

Based on the Agency's risk assessment work, the Administrator concluded that an international approach was necessary to effectively safeguard the ozone layer. As EPA pointed out in its December 14, 1987 proposal (52 FR 47489), theory and available scientific evidence make clear that the problem of stratospheric ozone depletion is global in nature. Over their long atmospheric lifetimes, CFCs and halons become widely dispersed, and the release of these chemicals in one country adversely affects the stratosphere above, and therefore the health and welfare of, other countries. The United States currently contributes about 30 percent of worldwide CFC emissions, and its percentage contribution will probably decrease as developing countries increase their consumption of CFCs and halons, which are used primarily in refrigeration, foam-blowing, electronics production, and fire-fighting. As a result, EPA sought to further negotiation of a protocol requiring all nations to curb their use of these chemicals.

After a series of international workshops on the cause and effects of ozone depletion, negotiations for an international control protocol resumed in December 1986. Last September the United States and 23 other nations signed the Montreal Protocol and since then 13 more have signed. The United States, Mexico, Norway, Sweden, Canada, and New Zealand have ratified the Protocol, and several other nations (e.g., Japan, Western European nations) are close to ratifying the agreement, as well.

#### *A. The Montreal Protocol*

Briefly, the Montreal Protocol requires nations who join to restrict their production and consumption of CFC–11, –12, –113, –114, –115 and Halons 1211, 1301, and 2402 in bulk form (referred to as "controlled substances"). It does not place limits on each of the controlled substances, but instead groups the CFCs together (Group I) and the halons together (Group II) and places separate

limits on the total ozone depletion potential of each group of controlled substances that can be produced and consumed. As a result, within each group the mix of controlled substances a nation produces and consumes may change, so long as the total ozone depletion potential of the mix does not exceed the specified limits. The Protocol uses the phrase "calculated level" to refer to this weighting of controlled substances based on their relative ozone depletion potential.

The Protocol calls for a phased reduction in the production and consumption of Group I controlled substances and a freeze in the production and consumption of Group II controlled substances. Specifically, Group I substances are frozen at 1986 levels beginning on July 1, 1989, assuming the Protocol enters into force on January 1, 1989. (The Protocol will enter into force on that date if 11 nations or regional economic integration organizations have ratified the Protocol. Otherwise, the Protocol will take effect 90 days after these conditions have been met.) Group I substances are then reduced to 80 percent and 50 percent of 1986 levels by July 1, 1993, and July 1, 1998, respectively. Group II controlled substances are frozen at 1986 levels beginning on January 1, 1992, assuming the Protocol enters into force on January 1, 1989.

The Protocol also allows for limited increases in production beyond the reductions described above under prescribed circumstances. In addition, it also bans imports of controlled substances from nations which neither join nor comply with the Protocol one year after the Protocol enters into force. (The text of the Protocol is described in detail and printed in its entirety in the December 14, 1987 notice of proposed rulemaking (NPRM).)

*B. December 14, 1987 Proposal*

In the December 14, 1987 NPRM, the Agency proposed regulations that would ensure United States' compliance with the Montreal Protocol. EPA stated that based on its assessment of the available evidence, the Protocol's requirements are an appropriate response to the potential ozone depletion problem at this time. The Agency estimated that compliance with the Protocol by most developed and developing nations would reduce ozone depletion by the year 2075 to 1.3 percent, and stated that given the many variables and uncertainties involved in predicting ozone depletion far into the future, the Protocol would achieve a reasonable degree of risk reduction. Because of the need for an international solution to the ozone depletion problem, EPA added that it would be unwise to risk undermining the agreement by deviating from its requirements.

EPA proposed to implement fully the Protocol's control requirements and import ban. It proposed to adopt the Protocol's definition of "controlled substances" and its application of limits on CFCs as a group and halons as a group on a ozone depletion potential basis ("calculated level"). It also provided for increases in production of controlled substances over the otherwise applicable limits consistent with the Protocol's allowances for such increases. In addition, the Agency proposed that the regulations take effect when the Protocol enters into force.

The December 14 NPRM set forth a number of control strategies for domestically implementing the terms of the Protocol. EPA stated that its preferred control strategy was an "allocated quota" system. Under this approach, EPA would grant production and consumption "rights" or privileges equal to the quantity of production and consumption allowed under the Protocol. These rights would be apportioned to producers and importers of controlled substances based on their 1986 levels of production and imports, and would be frozen and reduced according to the schedule specified in the Protocol. In effect, this proposal would grandfather in past producers and importers at their 1986 relative market shares. EPA also proposed that rights be transferable, so that firms could buy and sell production and consumption rights and thus respond to changing market conditions.

According to economic theory, an allocated quota system should achieve EPA's regulatory goal at the lowest possible cost to society. By restricting the supply of CFCs and halons, this system should cause the price of these chemicals to be bid up over time by firms seeking to purchase them. The resulting price increases should, in turn, encourage firms to reduce their use of these chemicals and to increase recycling and recovery, and should also create a market incentive for the introduction of chemical substitutes. A declining supply of CFCs and halons would continue to be available, though at a higher price, to the highest value users of these chemicals.

While EPA proposed the allocated quota system, it also identified and sought comment on the potential implications of the "windfall profits" that would accrue primarily to the five domestic CFC producers as a result of the system driving up the price of these chemicals. The Agency also noted for public comment the potential need to augment this system with direct regulation of key user groups to ensure that low-cost reductions were undertaken as soon as they become cost-effective (termed the hybrid option in the December 14 NPRM).

EPA presented and sought comment on several other regulatory approaches. As an alternative to allocating rights to past producers and importers, the NPRM discussed the possibility of auctioning rights to the highest bidder. The price paid at auction for the rights would reflect the expected higher market price for the controlled substances and any such increase would be paid to the United States Treasury instead of the producers. However, EPA raised concerns about the large uncertainties bidders would likely face during the early stages of an auction and the potential impact of participation by large users or speculators.

A third option presented by EPA involved the use of a regulatory fee. Under this option, CFC and halon production would be assessed a fee set at a level sufficient to raise prices that would in turn reduce demand to the requisite level. Like auctions, this approach would result in price increases from controlled substances (i.e., the transfers) going to the United States Treasury. However, because of the uncertainties in determining the level of a fee necessary to achieve a desired reduction, the NPRM pointed out that use of a fee by itself would make it difficult to ensure United States' compliance with the Montreal Protocol.

In contrast to the above options which all rely on economic incentives, EPA also discussed the possibility of employing the Agency's traditional regulatory approach—industry-specific control requirements. Under this approach, EPA would target and require controls on specific uses of CFCs and halons. However, as with regulatory fees, use of this option by itself would not ensure that the United States would meet the Protocol's control requirements (e.g., growth in unregulated uses could offset reductions from required controls).

On January 7 and 8, 1988, EPA held a public hearing in Washington, DC, to receive oral testimony on the NPRM. Approximately 25 witnesses representing producer and user industries, the scientific community, and public interest groups presented testimony at the hearing. A transcript of the hearing is contained in the public docket.

The public comment period on the December proposal closed on February 8, 1988. EPA received almost 500 comments including submissions by the major CFC and halon producers, most of the trade associations and large companies in industries which use these chemicals, interested citizens, other federal agencies, and public interest groups. Because of the volume of these comments, EPA has prepared and placed in the docket a separate document, "Background Information Document: Stratospheric Ozone Protection Rulemaking," which describes and responds to each of the significant issues raised in the public comments. This document is incorporated by reference in this notice. In addition, throughout this preamble, key issues raised in the public comments are identified and EPA's response provided, along with any changes in the final rule which may have resulted.

*C. December 14, 1987 Final Rule*

In addition to its NPRM, EPA also published in the **Federal Register** on December 14, 1987 a final rule (40 CFR 82.20; 52 FR 47486) requiring firms to document and report to EPA the amount of controlled substances they had produced, imported and/or exported in 1986. EPA needed this data to provide the United Nations Environment Program (UNEP) with a preliminary estimate of the United States' 1986 consumption and production of controlled substances and to develop company-specific apportionments of production and consumption rights.

*D. May 24, 1988 Supplementary Proposal*

On May 24, 1988, EPA issued a supplemental proposal which set forth company-specific apportionments of production and consumption rights (53 FR 18800). It also addressed issues raised by responses to the December 14 proposed and final rules relating to the apportionment of rights and implementation of the proposed rule. These issues and EPA's final resolution of them in light of the May supplemental proposal are described in later sections of this preamble.

## II. Statutory Authority and Applicable Legal Test

*A. Statutory Authority*

EPA is promulgating this final rule under section 157(b) of the Clean Air Act, 42 U.S.C. 7457(b). That section authorizes the Administrator to issue "regulations for the control of any substance, practice, process, or activity [or any combination thereof] which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control."

As the Agency pointed out in its December 14 NPRM, two aspects of this regulatory authority are notable. First, the Administrator is not required to prove that a "substance, practice, process or activity" does in fact deplete stratospheric ozone before he may regulate it. Congress recognized the potentially serious health and environmental consequences of ozone depletion if it were occurring, and authorized EPA to act in the face of scientific uncertainty. Second, the Administrator is given broad latitude to choose what and how to regulate. He is not limited to controlling ozone-depleting substances themselves; he may also regulate "any practice, process, activity" that threatens the ozone layer. Nor is he limited to a particular control strategy. He may employ the regulatory options he finds appropriate to control threats to stratospheric ozone that in turn threaten public health and welfare.

*B. Applicable Legal Test*

Commenters on the Agency's proposal agreed that section 157(b) authorizes EPA to promulgate regulations to protect stratospheric ozone as needed to protect public health and welfare. However, several environmental groups disagreed with EPA's judgment that implementation of the Montreal Protocol will satisfy that section. They argued that EPA is obligated to require further, faster reductions in CFCs and halons based on evidence that the Agency expressly found insufficient as a basis for taking regulatory action at this time. They also asserted that EPA is obligated to take unilateral action as needed to protect stratospheric ozone, and cannot make its regulations contingent on an international agreement taking effect.

At the heart of these commenters' argument is an interpretation of section 157(b) that obligates EPA to protect against all "potential" dangers involving stratospheric ozone. They find this obligation in the section's provision for controls of virtually anything "which in [the Administrator's] judgment *may reasonably be anticipated to affect* the stratosphere, * * * if such effect * * * *may reasonably be anticipated to endanger* public health or welfare" (emphasis added). The "reasonably anticipated" language, they contend, requires EPA to act when there is potential danger, not just when danger is certain. Moreover, when a global resource like stratospheric ozone is at stake, they assert that the Act requires EPA to regulate to protect the resource even if there is more uncertainty than is considered tolerable regarding more limited dangers.

EPA agrees that section 157(b) takes a precautionary approach to protecting stratospheric ozone. Both its language and legislative history make clear that EPA is authorized to regulate before harm occurs and, optimally, to prevent harm. However, EPA does not agree that section 157(b) requires the Agency to prevent all potential harm. "Reasonably anticipated" harm connotes a likely harm or a harm whose likelihood and magnitude together are large enough to make preventive measures reasonable. Put another way, section 157(b) authorizes EPA to assess the risks of stratospheric ozone depletion and to regulate as the assessment warrants.

The legislative history of section 157(b) confirms that Congress intended the Agency to assess risks and regulate on that basis. The "reasonably anticipated" language was crafted against the backdrop of recent DC Circuit opinions in *Ethyl Corporation v. EPA* on the Agency's authority under the 1970 Clean Air Act to reduce the lead in gasoline. A three judge panel had held that EPA must prove that lead in gasoline by itself caused significant harm, notwithstanding the likely impossibility of making that case before the harm actually occurred. The panel's decision was later reversed by the court *en banc* (541 F.2d 1 (1976)), which found that the Act authorized EPA to act before harm occurred based on its assessment of risk.

Congress, in revising the Act, sought to codify the *en banc* panel's decision. The House Committee which drafted section 157(b) stated in its report that it had used "a standardized basis for future rulemaking to protect the public health: the Administrator may regulate a pollutant, emissions of 'which in his judgment cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.' " It explained that the purpose of this standardized basis was, among other things, to "authorize the Administrator to weigh risks and make reasonable projections of future trends," and "to reflect awareness of uncertainties and limitations in the data which will be available to the Administrator in the foreseeable future * * *"

The committee also included the words "in [the Administrator's] judgment" in the foregoing phrase "to emphasize the necessarily judgmental element in the task of predicting future health risks of present action and to confer upon the Administrator the requisite authority to exercise such judgment." Specifically in reference to section 157(b), the committee quoted with approval another committee's statement that "the phrase 'may reasonably be anticipated' is intended to give the Administrator discretion in proposing and promulgating regulations."

Congress, however, did not authorize EPA to assess risks based on a "crystal ball" inquiry. The House Committee report indicates that Congress expected EPA's risk assessments to be based on evidence that had been adequately adduced [e.g., measured against any critical comments) and rationally applied. Again in reference to section 157(b), the Committee adopted another committee's explanation that the Administrator should rely on reputable scientific data that, while not immune from challenge, must be reasonably reliable.

EPA therefore reads section 157(b) as authorizing regulation to reduce or eliminate risks that the Agency considers will "endanger" health based on available, reliable evidence. Whether or not a risk warrants a regulatory response depends on the likelihood of the harm occurring and the magnitude of the harm that would occur; for example, the risk of an improbable, but potentially far-reaching harm may still warrant reduction or elimination. Obviously, the characterization of a risk entails the exercise of judgment, and the statute makes clear that the Administrator is authorized to exercise such judgment.

EPA also believes that in deciding whether and how to regulate under section 157(b) it may consider other countries' effect on stratospheric ozone and the effect of United States action on other countries' willingness to take regulatory action. There is no dispute that the cause and effects of ozone depletion are global in nature. Ozone-depleting emissions from all nations mix in the atmosphere and threaten the stratosphere above every nation. Thus, in order to assess the risk of ozone depletion and the need for regulatory action, EPA must consider other nations' actions affecting the stratosphere. A logical next step in this analysis is what effect United States action could have on other nations' actions now and in the future.

Consideration of the international ramifications of United States action is also appropriate in analyzing the cost and feasibility of controls, as required by section 157(b). The legislative history of that section indicates that Congress expected the Agency to use the cost and feasibility analysis to determine the most appropriate means of protecting the stratosphere. Certainly other nations' ozone-depleting emissions or control of emissions affect the cost of United States' controls, and the need for other nations to limit their emissions may make appropriate United States action that encourages, or does not discourage, other nations to agree to such limits.

A recent DC Circuit case confirms that EPA may consider potential international ramifications in making a regulatory decision, where, as here, those ramifications are relevant to achieving the statutory purpose. In *National Coalition Against the Misuse of Pesticides* v. *Thomas*, 815 F. 2d 1579 (DC Cir. 1987), the court upheld the Agency's decision to extend the period of time imported mangoes could be treated with a particular pesticide because a contrary decision could have jeopardized mango-producing nations' willingness to find and use a safer alternative. The relevant statutory purpose was to ensure the safety of the United States food supply, and the court found that the Agency reasonably concluded that loss of other nations' cooperation in that endeavor posed a greater risk to the food supply than short-term use of the pesticide.

## III. Risk Assessment

As noted above, EPA prepared an assessment of the risks of stratospheric ozone depletion to provide a basis both for United States' participation in negotiation of an international control protocol and for a regulatory decision on the need for future domestic control of ozone-depleting substances (EPA, 1987). The risk assessment was reviewed in draft form by an SAB subcommittee made up of independent experts in the disciplines relevant to predicting ozone depletion and its effects. At the same time, the draft assessment was made available for public comment. Based on comments from the subcommittee, its individual members, and the public, EPA revised the risk assessment and submitted the revised version to the SAB subcommittee for further review. In its closure letter of January 29, 1988, the head of the Subcommittee stated that the final assessment "adequately responded to the Subcommittee's advice on all major scientific issues".

EPA used the risk assessment as the basis for its regulatory impact analysis (RIA) and proposed rule. These documents examine in detail: Past and future trends in trace gases that affect ozone levels; measurements of atmospheric levels of ozone; estimates of future changes in ozone levels derived from atmospheric models; and health and environmental effects that would be associated with depletion of the ozone layer.

### *A. Past and Future Changes in Atmospheric Composition*

As the Agency explained in its December 14 NPRM, measurements taken over the past several decades of the chemical composition of the earth's atmosphere have demonstrated that human activities are altering its make-up. In particular, the atmospheric concentrations of CFCs and halons, which destroy stratospheric ozone, have been increasing. For example, the atmospheric concentrations of CFC–11 and –12 have been increasing at an annual rate of 5 percent during the past decade [WMO, 1986). Other gases which act to slow or offset the destruction of ozone have also been increasing. For example, carbon dioxide levels have increased by 25 percent since the beginning of the industrial revolution (WMO, 1986), and methane concentrations have increased at an annual rate of .017 parts per million during the past decade (EPA, 1987).

Future changes in atmospheric concentrations of these gases will determine the net impact on the ozone layer. As part of its risk assessment, EPA developed scenarios for future trends in the growth of these gases. These scenarios were also used in the RIA prepared in support of this rule.

The scenario used in the RIA to characterize what would happen absent controls ("the baseline") assumed the following growth rates:

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TABLE 1.—PROJECTED GLOBAL GROWTH RATES FOR OZONE-MODIFYING COMPOUNDS [1]

| | 1986–1992 | 1992–2000 | 2000–2050 | 2050–2075 |
|---|---|---|---|---|
| CFC–11 | 4.34 | 2.71 | 2.50 | 0.00 |
| CFC–12 | 5.32 | 3.06 | 2.50 | 0.00 |
| CFC–113 | 7.03 | 4.09 | 2.50 | 0.00 |
| CFC 114 | 4.95 | 2.79 | 2.50 | 0.00 |
| CFC–115 | 3.20 | 2.73 | 2.50 | 0.00 |
| Halon 1211 | 9.77 | 4.80 | 2.93 | 0.00 |
| Halon 1301 | 3.46 | 2.20 | 3.16 | 0.00 |
| HCFC–22 | 4.37 | 2.74 | 2.50 | 0.00 |
| Methyl Chloroform | 4.70 | 2.78 | 2.50 | 0.00 |
| Carbon Tetrachloride | 4.90 | 2.91 | 2.50 | 0.00 |
| Carbon dioxide | | | 0.5%/yr | |
| Nitrous oxide | | | 0.2%/yr | |
| Methane | [2] | [2] | [2] | [2] |

[1] Average annual rates computed using data cited in Exhibit 4–5 of the RIA. Rates vary for developed and developing nations and by region.
[2] 0.017 parts per million/year.

See chapter 4 of the RIA for a more detailed breakdown of growth rates.

These growth rates are similar to those contained in the December 14 NPRM, but reflect higher CFC growth for 1987 based on actual data (CFC–11 and –12 grew by 13 percent instead of the less than 3 percent EPA had assumed) and a slightly higher growth rate for CFC–11 and –12 through 1992 in the baseline case to more accurately reflect the recent period of sustained high growth in these chemicals—U.S. production of CFC–11 and CFC–12 has grown by 24 percent since 1985.

Several chemical producers and organizations criticized EPA's baseline trace gas scenario. One stated that the Agency's choice of 0.017 parts per million annual growth rate for methane and 0.2 annual percent growth rate for nitrous oxide concentrations differed from the standard assumptions generally used by atmospheric modelers and that they had not been reviewed by the SAB subcommittee. Others criticized EPA's projection of sustained growth for methyl chloroform and HCFC–22 as being unrealistic. Several public interest groups objected that EPA did not assume future controls on carbon dioxide and methane which slow the rate of ozone depletion but also contribute to global warming. They argued that the potentially catastrophic effects of global warming made EPA's assumption of continued uncontrolled growth of greenhouse gases unreasonable.

EPA believes that its baseline trace gas scenario represents appropriate assumptions based on the best available scientific information. In the case of methane, the Agency's choice of a growth rate for changes in atmospheric concentrations is based on a survey of the research groups involved in methane measurements. Moreover, a methane growth rate almost used identical to that by EPA was recently described as "the best current description of growth in $CH_4$ concentrations" in an article on methane published after the completion of the risk assessment. (Blake, 1988). EPA's choice of a growth rate for nitrous oxide is also fully consistent with the available scientific literature. Contrary to the assertion of one commenter, these baseline trace gas growth rate assumptions were included in the second draft of EPA's risk assessment summary that the SAB subcommittee reviewed and approved, and in any event fall well within the range of assumptions approved by the subcommittee both in the assessment's draft and final forms. Finally, recognizing the uncertainties inherent in making long term projections, EPA included in the RIA sensitivity analyses which examine the impact on predicted ozone depletion of alternative trace gas scenarios. These analyses indicate that none of the RIA's conclusions would be significantly modified by changing these trace gases assumptions along the lines suggested by the commenters.

EPA also believes that the growth rates assumed in its scenarios for HCFC–22 and methyl chloroform are reasonable. These chemicals continue to be widely used in the United States and their use abroad has been expanding and is likely to continue to increase over time. To the extent these chemicals may be substituted for CFCs in the future, the EPA baseline scenarios may actually underestimate future growth in these chemicals.

EPA does not believe it appropriate to assume at this time in its baseline case that controls will be imposed on greenhouse gases. Commenters who argue that EPA must assume controls misconstrue the reason behind the Agency's assumption of continued growth of greenhouse gases. The purpose of the rulemaking is to promulgate controls needed to protect stratospheric ozone. In assessing what controls are needed, the Agency has taken the world as it is; since no action has yet been instituted to limit greenhouse gases, the Agency assumes no controls on these gases in its baseline case. Moreover, until action is instituted, EPA has no reliable basis for predicting the timing or stringency of future controls.

However, because of the Agency's concern about the potential impact of continued growth in greenhouse gas emissions, EPA did examine as part of its sensitivity analysis in the RIA the impact of limiting growth in carbon dioxide and methane. The analysis shows that in the absence of controls on any of the relevant trace gases, the EPA baseline scenario would result in a global equilibrium temperature increase of 6.0 degrees centigrade by 2075. The scenario reflecting the reductions in CFCs and halons required by the Montreal Protocol would reduce the projected global warming equilibrium temperature to 4.3 degrees centigrade by 2075. Because methane and carbon dioxide act to increase ozone, if controls are placed on them to limit global warming to an equilibrium warming of 2.0 degrees centigrade by 2075, the resulting effect would be to increase ozone depletion by the date from under 2 percent (in the case of implementing the Montreal Protocol) to around 6 percent. While a consideration of potential global warming is outside the scope of this rulemaking, EPA recognizes that because the same trace gases govern both climate change and ozone depletion, these issues are closely connected. Should future steps be taken to address global warming, the Agency will consider the need to revise its CFC and halon control requirements to ensure that the stratospheric ozone layer is maintained.

Seven chemical producers and users stated that EPA's baseline and other

scenarios incorrectly assumed that CFC and halon use would grow unabated in the future despite evidence of ozone depletion (i.e., firms would voluntarily reduce CFC and halon use). EPA's assumption concerning baseline growth of CFCs and halons was the product of several years of analysis and review including many different studies undertaken both here and abroad. (For a summary of these studies, see chapter 4 of the RIA). The goal of these studies was to project demand for these chemicals in the absence of regulation. Given the long time period covered by these projections (typically many decades to over a century, the atmospheric lifetimes of CFCs and halons), considerable uncertainty in the estimates is unavoidable. Nonetheless, the studies demonstrate that in the absence of regulation substantial sustained growth in demand for CFCs and halons would be likely.

The notion that firms would shift away from CFCs and halons in the face of evidence of ozone depletion is flawed for two reasons. First, it does not comport with recent history. Despite the fact that over the past two years public concern and scientific evidence about the threat of ozone depletion has grown, use of these chemicals has surged by an annual average of 11.5 percent rather than slackened. Second, it misunderstands the role of the baseline in a regulatory analysis. The baseline serves as the basis for estimating costs of shifting away from harmful chemicals. If EPA decided not to regulate CFCs and halons and the ozone layer thinned, some firms indeed might reduce their use voluntarily or in response to public pressure. However, because section 157(b) requires EPA to consider total costs of protecting the ozone layer, EPA appropriately considered all costs to society, including the cost incurred by firms in shifting away from CFCs and halons either in response to regulation or as a voluntary action.

*B. Past and Future Changes in Ozone Levels*

Measurements of changes in atmospheric concentrations of ozone-modifying gases provide only indirect evidence that human activities may be altering the ozone layer. Two other methods for analyzing the risk of ozone depletion are direct measurement of ozone to detect any trends and use of atmospheric models to project future ozone trends based on assumed changes in atmospheric levels of ozone-modifying gases.

1. Direct Measurements of Ozone Levels

In the preamble to the December 14 proposal, EPA described the extent and significance of available satellite and ground-based measurements of ozone. The Agency cited the 1986 World Meteorological Organization (WMO) assessment which concluded that measurements available at the time revealed no statistically significant change in total column ozone, and noted that the WMO conclusion was consistent with then current atmospheric theories and models.

EPA also noted, however, recently released preliminary evidence that suggested some depletion of stratospheric ozone had already occurred. It described the recently discovered seasonal "hole" in the ozone layer above Antarctica and the recent data that strongly suggested anomalous chlorine chemistry plays a role in the hole's formation. EPA concluded, however, that too many questions remained as to the cause and implications of the hole for the Agency to take it into account in its projections of global ozone depletion and, by extension, its regulatory decision-making.

The Agency also noted a recent article containing data that called into question the conclusion that *global* ozone levels had not decreased. Preliminary assessments of the ground-based and satellite measurements suggested that depletion of up to five percent had occurred over the past one or two decades. However, the data suggesting that ozone had depleted globally had not yet been published in the scientific literature and therefore had not yet been thoroughly reviewed. EPA explained that interpretation of such data was complex because of the need to address issues of calibration and instrument drift, among others. In addition to validating and quantifying the trend itself, EPA also cited the need to distinguish ozone losses related to man-made chlorine from those related to natural causes (e.g., solar cycle, volcanic activity). The Agency noted that a thorough review of both that data and research on the Antarctic ozone hole had been recently initiated by a group of the world's leading atmospheric researchers under the auspices of UNEP, WMO, NASA and NOAA (the Ozone Trends Panel), and decided that until the data had been adequately reviewed and analyzed by the scientific community, it should not be used in its risk assessment or regulatory decision-making.

Environmental groups commenting on EPA's proposal strongly disagreed with the Agency's decision not to factor into its risk assessment and regulatory decision-making the Antarctic hole and global ozone trends data. While apparently acknowledging that at the time of the proposal there was inadequate evidence linking CFCs with the Antarctic hole, they argued that a scientific consensus had since emerged that CFCs are a cause of the hole. They also asserted that the Ozone Trend Panel's review of the ozone trends data was "expected" to conclude that ozone depletion of several percent had already occurred. Many industry commenters, on the other hand, agreed with the Agency's judgment that the Antarctic and global ozone trends data were either too preliminary or inconclusive to provide a basis for regulatory action. But some of these commenters complained that the Agency focused too much on the data, given its judgment that the data were insufficient to support regulatory action.

EPA stands by its conclusion that the Agency should not rely on the preliminary evidence of either the Antarctic hole phenomenon or apparent global ozone depletion in this rulemaking. As discussed earlier, Congress gave EPA broad discretion to weigh the available evidence, but it indicated that the Agency should base regulatory decisions on evidence that "is adequately adduced" and "reasonably reliable." Relatedly, Congress did not intend EPA to protect against any risk of ozone depletion; it instead authorized EPA to regulate in the case of risks it finds "will endanger" public health and welfare.

EPA judged that the preliminary Antarctic ozone hole data was insufficient to conclude that public health and welfare would be "endangered" by the hole's existence. The preliminary data left unanswered important questions like whether the mechanisms causing the hole are unique to Antarctica, whether losses in Antarctica alone influence global ozone levels, and whether the hole will have other direct and indirect effects on the rest of the world. At the time of the December proposal, the preliminary global ozone trends data, in turn, were not adequately adduced or reasonably reliable for purposes of assessing risks or making regulatory decisions. The data was not peer-reviewed for accuracy and significance and the Agency could not rely on "expectations" of what that review would show. In the case of ozone measurements, peer review is particularly important because of the difficult issues of interpretation they pose. EPA thus found it appropriate to await completion of the Ozone

Trends Panel review of the data before basing its risk assessment and regulatory decisions upon it.

Industry concerns that EPA overemphasized the preliminary data are also misplaced. As noted above, EPA carefully described the limitations of the data concerning these phenomenon and expressly rejected relying on the data in this rulemaking. Moreover, the atmospheric models used in its risk assessment and RIA do not account either for the Antarctic ozone hole or for observed losses in ozone during the decade.

2. Ozone Trends Panel Report

In March of this year, the Ozone Trends Panel released the executive summary of its report; release of the body of the report is expected in August. The panel concluded that stratospheric ozone has already been depleted on a global basis more than researchers had previously thought, though not as much as the preliminary satellite data had suggested. The panel also stated that "the observed changes [in global ozone] may be due wholely, or in part, to the increased atmospheric abundance of trace gases, primarily [CFCs]," and that the Antarctic ozone hole is clearly linked to CFCs. An obvious implication of its conclusions is that EPA's risk assessment probably underestimates the risk of ozone depletion.

Notwithstanding the likely significance of the Ozone Trends Panel report, EPA is not in a position to consider it in this rulemaking. As noted above, the full report, including the data and analyses supporting the summary's conclusions, are not yet available for either the Agency or the public to review. Before relying on the summary's conclusions, EPA has the responsibility to review the underlying report; the Agency cannot delegate its duty to make an informed judgment on the adequacy and implications of the new information.

Even if EPA could rely on the report's summary alone, the Clean Air Act would require that the public be given an opportunity to comment on the summary if the Agency intended to base its regulatory decision on it. However, the August 1 court-ordered deadline governing this rulemaking did not leave sufficient time for the Agency to provide the public with a meaningful chance to comment on the summary's significance for the proposed rule. The scientific community will require at least several months to perform the analyses and model revisions needed to assess the significance of the new information. Complicated analysis will be required to determine what aspects of current atmospheric models must be altered to more accurately reflect recent changes in ozone levels both in the Antarctic and globally. EPA will then have to review these model changes and undertake its own assessment of risks. This effort would have left too little time to publish and obtain comment on any revised risk assessment and regulatory response and still meet the August deadline for a final rule.

Moreover, even if no court-ordered deadline pertained to this rulemaking, EPA could not have delayed the rulemaking to the extent analyzing and providing public comment on the summary would have required. The Protocol's freeze may take effect as early as July of next year; if EPA is to provide industry with leadtime to comply with the freeze, it cannot long delay promulgation of the final rule.

The Agency is nonetheless concerned about the implications of the conclusions drawn by the Ozone Trends Panel. Administrator Thomas, in an April 7, 1988 letter, has called on the Executive Director of UNEP to expedite the Protocol's review process to allow parties to determine at the earliest possible date the need for additional restrictions. The United States, along with other countries, is now actively engaged in planning for the review on an expedited schedule following entry into force of the Protocol. Under the revised schedule, the assessments called for in the Protocol are tentatively scheduled to be completed by mid–1989, which would allow the Parties to meet to begin considering the need for additional steps by fall of next year.

EPA is also in the process of updating its risk assessment and will evaluate the Ozone Trends Panel report and all other new scientific information in the updated assessment. Assuming the panel's full report is released in August, EPA expects to complete its update by early 1989. EPA discusses further the summary findings of the Ozone Trends Panel in the ANPRM also published today in the **Federal Register**, and states that it intends to seek public comment on the full report when it becomes available. Based on its revised Risk Assessment, the Agency will determine what further actions, if any, are necessary.

3. Use of Atmospheric Models in Predicting Future Ozone Depletion

Direct measurements indicate past changes in ozone levels, but atmospheric models are the only available tool for predicting future trends in ozone. These models, in more or less detail, attempt to replicate the forces that determine ozone levels. Two basic types of atmospheric models have been developed. One-dimensional (1–D) models predict ozone levels on a globally averaged basis, while two-dimensional (2–D) models also predict ozone levels by latitude and season.

For its risk assessment and RIA, EPA used a simplified version of a 1–D model to analyze different scenarios of ozone-modifying gas growth and control. In the preamble to its December 14 proposal, the Agency explained that while 2–D models provide more information relevant to calculating the impacts of depletion, they are expensive and time-consuming to use and far from uniform in their results. The Agency recognized the relative limitations of 1–D models, but concluded that they were the best available tools for the purposes of risk assessment (e.g., analyzing the impact on depletion of many different control scenarios).

Several commenters raised issues concerning EPA's use of a simplified 1–D model as its primary risk assessment tool. One chemical producer urged that the full 1–D model, as opposed to the simplification, be used for regulatory decision-making, and added that the model the Agency used was outdated. Several environmental groups argued that EPA should have used the more sophisticated 2–D models.

The Agency chose to use the parameterized version of the 1–D model because it provided a relatively low-cost means of analyzing different trace gas scenarios without losing much of the original model's precision. Under the auspices of UNEP, results of the parameterized model EPA used were compared with results from the major 1–D models of the world. The study concluded that "[w]ithin the existing limitation of models to accurately simulate the real stratosphere, all models including the fully parameterized model, predicted, within acceptable limits, similar ozone depletions for given control scenarios."

As noted by one of the commenters, the parameterization EPA used was revised following preparation of the original risk assessment. Minor changes in several coefficients were made. However, the revised and original methods gave essentially the same results, so EPA continued to use for its RIA the original version of the model which had been reviewed and approved by the SAB.

The Agency chose not to use 2–D models because, not only are they substantially more expensive and time-consuming to use, but there is much less agreement between 2–D model results than now exists for 1–D models. While all 2–D models show that ozone

depletion varies with latitude, they differ widely in the size of the latitudinal gradient they project and even in what hemisphere they predict a gradient. These differences reflect the fact that 2–D models are attempting to replicate atmospheric transport mechanisms that are extremely complex and not yet well understood. While 2–D models are potentially powerful in their predictive capacities, they still require substantial development. What can be gleaned from them now is the basic finding that ozone depletion will be greater at higher latitudes and may be greater on a global average than 1–D models predict. In comparing these two types of models, the 1987 WMO assessment concluded that, "[t]here is no indication at present that results from two-dimensional models should invalidate in a gross sense assessment studies with one-dimensional models."

A more fundamental fact in considering the choice of models is that no model now exists that accurately mirrors the complex processes which affect stratospheric ozone; the results of all models are approximate, at best. In summarizing the conclusions of its risk assessment, EPA stated, "while the [atmospheric chemistry] models replicate many of the characteristics of the atmosphere accurately, they are inconsistent with measured values of other constituents, thus lowering our confidence in their ability to predict future ozone changes accurately." In short, while models provide the best available tool for evaluating future ozone trends, they provide rough approximations at best. Regardless of the type of model used, the inherent limits of our current ability to precisely predict future atmospheric changes must not be overlooked.

4. Future Trends in Ozone Levels Assuming No Controls

Using the parameterized 1–D model, EPA examined the potential impact of its trace gases scenarios on ozone depletion. Table 2 shows the results of its analysis. For the baseline scenario, depletion is projected to begin around the turn of the century and increase sharply through the next century.

TABLE 2.—Estimated Ozone Depletion for Baseline Scenario

| Year | Percent depletion |
|---|---|
| 2000 | 1.0 |
| 2025 | 4.6 |
| 2050 | 15.7 |
| 2075 | [1] 50.0 |

[1] Because of limits in the range of accuracy of the model, ozone depletion was arbitrarily constrained at 50 percent. However, the Agency performed a sensitivity analysis that includes no artificial limit on depletion; it projected depletion in 2075 of 52 percent.

*C. Health and Environmental Impacts*

Under current atmospheric conditions, the ozone layer blocks most of the damaging ultraviolet radiation (UV–B) from penetrating to the earth's surface. As part of its risk assessment, EPA examined a wide range of potential health and environmental impacts from increased exposure to UV–B radiation as a result of ozone depletion.

Research to date has identified the following areas of potential harm to human health: increased incidence of melanoma and non-melanoma skin cancers and cataracts, and suppression of the immune system. Because the exact nature of the dose-response relationship between increased exposure to UV–B radiation and the incidence of skin cancers and cataracts is uncertain, a range of values were used in the analysis. These estimates are presented in section V, below. Insufficient information exists to quantify potential effects related to immune suppression.

Limited experiments have also linked increased UV–B exposure to damage to plants and aquatic organisms, accelerated weathering of certain manmade materials, and increased formation of ground-level ozone (smog). While studies completed to date suggest that substantial damage in each of these areas is likely, the limited nature of the studies make it difficult to generalize and quantify the potential effects. For its RIA, EPA drew from the existing studies to provide limited estimates of potential damage, but the Agency recognizes that substantially more research in each of these areas is needed. The results of the analysis contained in the RIA are presented below in section V.

Because the gases that affect ozone also contribute to global warming, the Agency's risk assessment also examines the likely health and environmental impact of the greenhouse effect if emissions of these gases continue to grow. Global warming is likely to lead to changes in temperature and precipitation, increased sea level, and changes in storm patterns and frequency. These changes could affect agriculture, forests, development patterns, water quality and a wide range of other health and environmental factors. Given the limited information available to quantify these potential impacts, EPA only included in its RIA a case study of the impact of sea level rise. This is explained in Chapter 8 of the RIA and below in section V.

*D. Conclusion*

Based on its risk assessment and RIA, the Agency has concluded that continued growth in CFCs and halons will result in substantial ozone-depletion having serious health and environmental consequences. While many uncertainties exist, the current evidence presents a strong case for action to substantially reduce emissions of these most potent ozone depleting chemicals. A comparison of the costs and potential benefits of differing levels of control are discussed below.

## IV. Final Rule

*A. Scope, Stringency and Timing of Reductions*

As noted above, EPA proposed to implement the Montreal Protocol, provided that the Protocol enters into force and the United States ratifies it, which the United States has since done. The Agency explained that United States implementation of the Protocol was an appropriate response to the threat of ozone depletion for two reasons. One, EPA's assessment of available scientific evidence indicated that adherence by the United States along with broad international participation in the Protocol's control requirements would nearly eliminate the projected risk of ozone depletion. Two, EPA judged that the obvious need for broad international adherence to the Protocol counseled against the United States' deviating from the Protocol, because any significant deviation could lessen other countries' motivation to participate. To the extent the Protocol's existing control requirements were later found more or less stringent than necessary to protect stratospheric ozone, EPA noted that key provisions in the agreement afford the Parties the opportunity to review and revise those requirements.

The public comments on the Agency's proposed rule were virtually unanimous in supporting implementation of the Montreal Protocol. Industry and public interest groups alike recognized the need for a global response to this global problem, and embraced the Protocol as a landmark international agreement to address an environmental threat to a critical and irreplaceable resource. These groups and others differed, however, on whether the Protocol's control measures were sufficient to fully protect stratospheric ozone.

In general, CFC producers and users contended that the scientific evidence

on which EPA rested its proposal did not justify the CFC reductions required by the Protocol except as a precautionary measure. They disagreed with EPA's assumptions concerning the future growth rates of several gases affecting ozone (as discussed above) and the likely degree of international compliance with the Protocol, and contended that more realistic assumptions would yield projections of total column ozone remaining stable or actually increasing. They suggested that since the science on which EPA purported to rest its proposal did not justify the required reductions, the Agency must have taken the Antarctic and ozone trends data into account in deciding to seek those reductions.

Industry commenters also generally agreed with EPA's concern that deviating from the Protocol risked undermining it. They recognized that implementation of less stringent controls than the Protocol required would be unacceptable, and shared EPA's concern that implementation of more stringent controls would yield little, if any, additional stratospheric protection, while possibly reducing other countries' incentive to join the Protocol. They added that unilateral action to reduce further ozone-depleting emissions would put United States' industry at a competitive disadvantage in world markets.

In contrast, environmental and other public interest groups claimed that the Montreal Protocol and thus EPA's proposed rule did not go far enough fast enough in requiring reductions in ozone-depleting substances. Several noted EPA's own projections that (1) stratospheric ozone would still be depleted by nearly two percent by the year 2075 under the Protocol's control regime; (2) every one percent decrease in ozone would result in a one to two percent increase in melanoma skin cancer incidence, among other adverse effects; and (3) United States unilateral action to reduce CFC use by an additional 30 percent would further reduce those adverse effects. In light of these projections, they questioned the logic of EPA's proposal to implement the Montreal Protocol's required reductions and no more.

Their chief complaint, however, was that EPA failed to propose the virtual phaseout of CFCs and halons that they claim is needed based on the preliminary Antarctic ozone hole and global ozone trends data. In its comments on the May 24 NPRM proposing company-specific allocations of production and consumption rights, one environmental group noted that the Ozone Trends Panel summary concluded in March that ozone-depletion had already occurred and that CFCs and halons appeared at least partly responsible. The commenter also pointed to data released in May supporting the existence of a smaller Arctic version of the Antarctic ozone hole, and argued that both developments made clear that a phaseout was required to protect stratospheric ozone.

Several commenters also faulted the Agency for essentially relying on continued uncontrolled growth of other greenhouse gases to buffer the ozone-depleting effects of CFCs and halons. They disagreed, moreover, with EPA's judgment that unilateral United States reductions beyond those required by the Protocol ran a significant risk of undermining the efficacy of that agreement. They argued that EPA could and should use its authority under section 157(b) of the Act to leverage further reductions from other countries by immediately imposing restrictions on the import of products containing or made with CFCs from countries that fail to agree to make the same reductions.

Finally, a number of commenters disagreed with EPA's proposal to make the regulations effective upon the Protocol's entry into force. Again, they stated that the severity of the ozone depletion problem warrants faster action than the Protocol requires and that unilateral United States action would not seriously undermine the incentive of other countries to join the Protocol.

*B. Basis for Control Requirements*

After carefully considering the comments received, EPA has concluded that implementation of the Montreal Protocol is the best course the Agency can take at this time to securing adequate protection of stratospheric ozone.

EPA's decision to implement the Protocol has two bases. One, EPA believes that the scientific information and analyses available to the Agency and public in this rulemaking support a finding that the Protocol's control requirements are needed and reasonably adequate to protect stratospheric ozone. For the reasons discussed earlier, EPA considers the preliminary nature of the data on the Antarctic ozone hole and global ozone trends provides an insufficient basis for regulatory action. The Agency recognizes that the summary of the Ozone Trends Panel Report released several months ago assessed that data and raised questions about the adequacy of the Protocol's controls. However, as explained above, adequate evaluation of that report and other recently available information could not be completed before the close of this rulemaking. EPA also believes for reasons mentioned earlier that it reasonably considered the need to control ozone-depleting substances independently of the need to control other greenhouse gases.

Two, EPA believes that the Montreal Protocol's international response represents the most effective means of protecting the ozone layer. Unilateral action by the United States would not significantly add to efforts to protect the ozone layer and could even be counterproductive by undermining other nations' incentive to participate in the Protocol. The Agency believes that the best way to deal with the challenges posed by new information is through the Protocol's review and revision process, and at the Administrator's request, UNEP has agreed to expedite that process so that the Parties may consider at the earliest possible date whether additional international reductions are warranted. EPA's analysis indicates that if further reductions are required, they may be undertaken after the expedited review process is completed and still be effective in achieving stratospheric protection.

1. Scope of Coverage

The final rule governs future production and consumption of CFC–11, –12, –113, –115 and Halon 1211, 1301 and 2402. These chemicals are covered by the Protocol and, as explained in the preamble to the proposed rule, currently pose the greatest threat to stratospheric ozone.

The Agency received one comment that took issue with the scope of chemicals proposed for regulation. The commenter, a halon producer, pointed out that EPA's projections show that freezing the growth of halons will not reduce ozone losses until well into the next century, and that a case could thus be made for not regulating halons at this time. The Agency points out, however, that halons' long atmospheric lifetimes require that action to control their use be taken now to prevent the ozone depletion EPA projects for the future. Halon 1301, for instance, has an estimated lifetime of 110 years; thus, emissions of this chemical today will contribute to ozone depletion far into the next century. In addition, if left unregulated, halons could grow in use. To prevent halons from becoming a greater threat to the ozone layer, EPA must limit their supply in the near term.

2. Stringency and Timing of Controls

The final rule also adopts the stringency and timing of the Protocol's control measures. Taken together with the scope of chemicals covered by the rule, EPA believes based on the information in the record that its rule is an appropriate response to the risk of stratospheric ozone depletion.

Table 3 shows model projections of ozone depletion for different levels of reductions. As explained earlier, EPA has revised its ozone depletion projections to reflect higher CFC growth for 1987 and slightly higher CFC growth rates through 1992. The revised projections indicate that broad international implementation of the Protocol's control measures (case 3) is likely to reduce future ozone depletion from over 50 percent to less than 2 percent in the year 2075, with further reductions in depletion occurring after that date as ozone increases from additional methane and carbon dioxide more than offset losses from CFCs and halons (see chapter 6 of the RIA). The projections also illustrate that unilateral implementation of the Protocol's control measures by the United States, with no other nations reducing their use of CFCs and halons (case 4), would halve projected depletion by 2075, but that substantial depletion would still occur.

Even assuming that the United States unilaterally decreased CFC use by 85 percent by 1998 (case 5), this action would only reduce projections of ozone depletion by 0.3 percent in 2075 compared to the Protocol case (case 3). If the United States unilaterally accelerated its reductions and decreased by 85 percent by 1992 (case 6), projections of ozone depletion in 2075 would only be reduced by another 0.2 percent. These cases also assume that United States unilateral action beyond the Protocol would not reduce participation by the other nations in that agreement. In contrast, should the international community decide in the future that reductions beyond the Protocol are proper, a multilateral reduction of 85 percent by 1998 would result in substantially greater protection than that achieved by unilateral action (case 7).

TABLE 3.—SUMMARY OF OZONE DEPLETION ESTIMATED FOR THE 8 CONTROL CASES [a]

[Ozone depletion reported in percent]

| Case | 2000 | 2025 | 2050 | 2075 |
|---|---|---|---|---|
| 1. No Controls (baseline) [b] | 1.0 | 4.6 | 15.7 | 50.0 |
| 2. CFC Freeze Only—International | .8 | 2.5 | 4.7 | 6.9 |
| 3. CFC 50%/Halon Freeze—International (Protocol Case) | .8 | 1.5 | 1.9 | 1.9 |
| 4. CFC 50%/Halon Freeze—United States only | .9 | 3.5 | 10.3 | 27.4 |
| 5. CFC 50%/Halon Freeze—International; CFCs—85% (1998)—U.S. only | .8 | 1.3 | 1.7 | 1.6 |
| 6. CFC 50%/Halon Freeze—International; CFCs 85% (1992)— U.S. only | .8 | 1.2 | 1.5 | 1.4 |
| 7. CFC 85%/Halon Freeze—International (1998) | .8 | .9 | .8 | .3 |

[a] Cases 2, 3, 5, 6 and 7 assume 94 percent participation for other developed countries, and 65 percent participation for developing countries, based on countries participating in Protocol negotiations.
[b] Global ozone depletion is arbitrarily constrained at 50 percent in this analysis.

EPA disagrees with some industry comments that the Agency's own projections in the risk assessment show that a *freeze* in controlled substances would result in an *increase* in total column ozone and thus that current scientific information does not justify the Protocol's reduction requirements. EPA notes that this particular scenario in the risk assessment assumed a total freeze in HCFC 22, methyl chloroform and carbon tetrachloride, as well as the chemicals covered by the Protocol, along with all nations in the world participating; the projections made here and in the accompanying RIA showing that the Protocol's controls would still result in a small degree of ozone depletion do *not* assume a freeze in chemicals outside the coverage of the Protocol. This difference in assumptions accounts for the difference in projections.

EPA also disagrees with comments suggesting that additional reductions beyond the Protocol are necessary for the Agency to meet its obligations under the Clean Air Act. As Table 3 illustrates, based on the information which could be considered in the course of this rulemaking, EPA's analysis shows that the model's projected ozone depletion would be reduced to a level of less than two percent. EPA believes that, given the scientific and technical limitations of its analysis and the need to obtain international agreement to achieve effective controls, additional unilateral reductions are not warranted at this time.

*a. Limitations in Atmospheric Models.* While atmospheric chemistry models are the best available tools for estimating future changes in ozone depletion, they are far from exact. As discussed above and in both the WMO and EPA assessments, these models accurately reproduce some aspects of the current atmosphere but fall far short of replicating other aspects. As a result of these acknowledged deficiencies, rigidly tying the stringency of controls to the projections of these models is not warranted or appropriate. Moreover, Table 3 illustrates that based on current models, little difference in depletion occurs until the turn of the century. During this period additional measures could be taken through the Protocol process if needed. For example, more stringent reductions on CFCs or the addition of such chemicals as methyl chloroform (which has a shorter atmospheric lifetime) to the Protocol could achieve further reductions in potential ozone depletion.

*b. Limitations in Long-Term Projections.* Results from the atmospheric models are further limited by uncertainties concerning growth in trace gases which affect ozone. While EPA believes that its trace gas growth assumptions accurately reflect current understanding of likely future trends, the Agency recognizes the inherent limits in making projections that cover more than a century. Some of these projections (e.g., CFC growth rates) are based on factors such as long term economic growth and technological development which cannot be predicted with precision. Others (e.g., methane, carbon dioxide and nitrous oxide growth) are based on recent history, which may not prove an accurate indicator of future trends. Still others are based on behavioral assumptions (e.g. participation in the Protocol) which cannot be readily tested.

Given these limits, the reduction in ozone depletion that a specified control limit will provide cannot be foretold with precision. Recognizing this, the Protocol negotiators agreed to a 50 percent reduction in CFCs in part because a reduction of this magnitude would provide an incentive for development of chemical substitutes which in turn would facilitate even greater reductions if such proved necessary. The analysis in the RIA assumes that CFC use is reduced by 50 percent in 1998 as called for in the Protocol. Yet several large producers and users of ozone-depleting substances have recently announced their

intentions to phase down below this level or even phase out of these chemicals. If this occurs, the RIA's analysis could actually overstate the amount of long-term ozone depletion which could result.

As part of its sensitivity analysis contained in the RIA, the Agency considered many of the issues raised by commenters. The analysis examined alternative assumptions in the following areas: higher and lower growth in methane, carbon dioxide and nitrous oxide; different rates of participation by developed and developing nations in the Montreal Protocol; and different baseline growth rates of CFCs. The results of this sensitivity analysis illustrate that projected ozone depletion could increase or decrease (or that ozone could even slightly accrete) under certain scenarios for any of a number of reasons. Given that recognized uncertainties in the analysis are on the same order of magnitude as the projected residual depletion, EPA believes that it would not be reasonable necessarily to require controls to eliminate the residual depletion. Other factors, such as the opportunity to revise the Protocol as new information warrants and the need for broad Protocol participation, are also important in deciding how much control to require now.

*c. International Considerations.* As shown in Table 3, concerted international action represents the only effective means to safeguard the ozone layer. EPA firmly believes that the ratification and implementation of the Montreal Protocol provides the most effective means of achieving that objective. As explained below, the history leading to the Protocol provides ample evidence that unilateral action by the United States would not necessarily ensure adequate protection for the ozone layer.

In 1978 the United States restricted the use of CFCs in aerosols. While several nations adopted similar restrictions (e.g., Sweden, Canada, Norway) and others partially cut back this use (European nations, Japan), there was no widespread movement to follow the United States' lead. Concerns existed then that other nations had failed to act because the United States and a few other nations were making the reductions thought necessary to protect the ozone layer. Similar concerns exist today that unilateral action could result in "free riding" by some other nations.

More recently, negotiations leading to the Montreal Protocol can be traced back to the early 1980s. The initial round of negotiations were concluded in 1985 when the involved nations agreed on the Vienna Convention for the Protection of the Ozone Layer but failed to agree on specific actions to limit ozone-depleting chemicals. This failure resulted, in part, from the fact that some nations had already taken different interim approaches to limiting CFCs and from the lack of a common understanding of the underlying science and risks. During the year following the first round of negotiations and leading up to the second, a major international assessment of atmospheric issues was conducted (WMO assessment) and international workshops on health and environmental effects and on economic and technological issues were convened. These assessments provided the common base of information which led in September 1987 to agreement on the Montreal Protocol.

Thus, in past efforts to obtain international controls, the United States has been most effective not by taking unilateral action but instead by actively participating in international assessments and by aggressively pursuing a strong global agreement.

Recognizing the utility of the international assessment process and the significant scientific, technical, economic and environmental uncertainties that remain, the Protocol explicitly provides for periodic "assessment and review of control measures." EPA believes that this process, as agreed to by nations becoming Party to the Protocol, represents the most effective vehicle for obtaining further reductions, if such prove necessary. But the essential first step is satisfying the conditions for entry into force. EPA's Administrator sent a letter to his counterparts in May of this year urging their ratification of the Protocol. Based on recent information, it appears that the January 1, 1989 target date for entry into force will be met.

Once entry into force has occurred, the next step will be to conduct the assessments called for in the Protocol on an expedited schedule and allow the Parties to decide if additional actions are warranted. As discussed above, EPA has initiated several actions to facilitate that process, and UNEP's schedule for assessment and review has been moved forward in time.

Given that the Protocol process appears likely to be effective in addressing the need for additional controls in a timely manner, EPA believes that unilateral action by the United States would not significantly contribute to protecting the ozone layer and might even make it more difficult to utilize the Protocol process to achieve the necessary international consensus for action. Unilateral United States action could appear to reduce the urgency of reviewing the Protocol's control measures, and unilateral actions accompanied by trade sanctions, such as some commenters suggest, could lead to counteractions well beyond the scope of protecting stratospheric ozone, making future agreement more difficult.

EPA also rejects several commenters' suggestion that EPA's regulation should take effect immediately and not be linked to entry into force of the Protocol. EPA believes that the environmental benefits from delaying implementation for a few months would be small compared to potentially large economic costs to United States industry of acting in advance of other Parties to the Protocol. Entry into force now appears likely by January 1, 1989. With success so near, EPA does not want to take unilateral action that could reduce the impetus for other nations to join the Protocol in a timely manner.

### *C. Selection of Regulatory System*

EPA considered many different strategies for implementing the requirements of the Montreal Protocol including traditional engineering controls and economic based programs. The Agency explained that the latter type of program would utilize free market incentives to achieve cost-effective controls, and suggested three specific options: Auctions, allocated quotas, and regulatory fees. The advantages and disadvantages of each of these options (and possible combinations) were discussed in the December 14 NPRM. While EPA stated that an allocated quota program was its preferred option, it sought and received comment on each of the options. EPA received more comments on its selection of a regulatory strategy than on any other aspect of its December 14 NPRM.

#### 1. Allocated Quota Option

Under this system, producers and importers of CFCs and halons in 1988 would receive production and consumption "rights" or allowances.[1]

[1] In the December 14 NPRM, EPA used the term "rights" to refer to what it proposed to grant producers and importers of CFCs and halons to authorize future production and consumption of these chemicals. The Agency noted, however, that "rights" was used as a matter of convenience, and that what EPA proposed to grant was actually in the nature of a privilege. One commenter suggested that EPA avoid the use of such a shorthand term and therefore the need to explain it. EPA agrees and has in the final rule and this preamble used the term "allowances" instead.

The majority of commenters addressing this point, including chemical manufacturers and most major CFC and halon user groups, supported EPA's preference for the allocated quota system for many of the same reasons discussed in the December NPRM: It would ensure that the control requirements of the Protocol are achieved; would provide for low cost, market-based reductions; and would be administratively straightforward.

While generally supporting the allocated quota approach, a large number of respondents from the foam-blowing industry argued that they would be inadvertently discriminated against under such a system because chemical producers would shift production away from CFC–11 (the primary chemical they use) to other, more profitable CFCs. They also claimed that since CFCs are a large percentage of their final product costs, but only a small percentage of the product costs of other CFC-using industries (e.g., computers, refrigerators, and car air conditioners), future CFC price increases will have a greater effect on their industry. As a result of these concerns, they argued that EPA should provide a set-aside for their industry based on their 1986 use.

EPA considered this request, but at this time believes that the disadvantages of creating such a set-aside substantially outweigh any possible advantages. EPA has no information about whether chemical producers will shift production away from CFC–11 to other CFCs. Several producers have publicly stated that, consistent with anti-trust requirements, they intend to utilize their quotas to minimize disruption in user markets by allocating allowable supplies to past customers. While EPA doubts that producers will make allocations that reduce their ability to earn profits, to the extent producers allocate CFC–11 to foam blowers, their concerns will be obviated. In the longer term, which chemicals will be produced is difficult to discern. It will depend largely on the relative timing of chemical substitutes. For example, to the extent chemical substitutes for CFC–12 and CFC–113 become available before substitutes for CFC–11, within the limits established by the Protocol, even more CFC–11 than is produced today could be produced in the future.

Providing a set-aside for one industry segment would also be economically inefficient. If EPA adopted the system proposed by the foam-blowers, the Agency would be subsidizing that industry at the expense of all other CFC users. Other industries would have access to a reduced supply of CFCs (the allowable level minus the set-aside) and would therefore pay higher market prices. Since foam-blowers would not have to compete against firms from other user industries, they would likely pay lower CFC prices and consequently have less incentive to reduce their use of these chemicals. Moreover, many segments of the foam-blowing industry (e.g., foam packaging and flexible molded foam) have inexpensive alternatives available today and therefore would not need a set-aside.

Finally, the foam-blowers' concerns relate primarily to their alleged inability to pay higher prices for CFCs. The magnitude of future price increases will depend on the speed and rate of reductions taken by all industries particulary in the next few years. (See Section V, below.) As discussed at length in the accompanying ANPRM, EPA intends to closely monitor progress in achieving reductions across all CFC user industries, and may propose to require reductions where they are available but are not being aggressively pursued by a particular user industry. According to the RIA (Chapter 9 and Appendix M), if such reductions are achieved in a timely manner, price increases would be substantially moderated and the concerns raised by the foam-blowing industry would never materialize. This analysis is presented in detail in Section V, below which describes the analysis contained in the RIA accompanying this rule.

Several auto companies, two government agencies, and several environmental groups were concerned that an allocated quota system would provide substantial market power and sizable windfalls to a small number of producers. These commenters feared that producers would have an economic incentive to delay the introduction of chemical substitutes which would thus raise the cost of reducing use of ozone depleting chemicals. They also feared that producers might restrict supply beyond the limits in the regulation, further increasing CFC prices. In addition, one of the commenters was concerned that allocated quotas alone would, in effect, create a system under which polluters would profit from their pollution.

EPA shares these commenter's concerns that windfall profits could induce producers to delay the introduction of chemical substitutes. It also recognizes the irony that regulation by means of an allocated quota system could make money for the regulated industry. Despite these drawbacks, however, EPA is confident that an allocated quota system would still bring about the required reductions in controlled substances, although at a higher cost if substitutes are delayed. Since the quotas would directly limit production and import of controlled substances, they would ensure that the Protocol's limits are met. But should producers delay the introduction of substitutes, the cost to society of meeting those limits would be higher than it would otherwise be; prices of controlled substances and prices of products using controlled substances would be driven higher or remain high for a longer period of time.

Six chemical producers and an industry trade association argued that EPA had incorrectly characterized the nature and magnitude of profits that would result from allocated quotas (e.g., by not taking into account higher production costs and taxes) and that higher prices for controlled substances are necessary to fund the development of new chemical substitutes. EPA believes that it has correctly portrayed the nature of the likely windfalls (i.e., transfers) which would result from the allocated system. EPA agrees that the costs of production of each unit of controlled substances might increase as the quantity of production is cut and that increased prices for controlled substances will also result in increased taxes paid to the U.S. Treasury. But these points do not materially alter the analysis of windfalls presented in the RIA. The unit costs of feedstock materials, which constitute the majority of production costs, are not likely to significantly increase. While the payment of taxes may decrease the actual profits to producers, the amount of this payment to the Treasury will depend on many factors (e.g., corporate income tax rates) outside the scope of this analysis. Moreover, losses due to the shutdown of existing production facilities are also uncertain. Instead of being closed, existing production facilities may be modified, in some cases to produce chemical substitutes (e.g., HCFC–22) or used to produce feedstocks for new chemicals. The ANPRM also published today in the **Federal Register** contains a more detailed discussion of the issue of windfalls and their long-term environmental and economic implications.

2. Regulatory Fees

Regulatory fees were also offered as an option in the December 14 NPRM. In that notice, EPA raised the issue that fees, by themselves, would not ensure that the required control levels were met and therefore that the United States'

obligation under the Montreal Protocol were fulfilled. EPA would not be able to accurately predict how many firms would elect to pay the fee and continue using CFCs and halons and how many would instead elect to reduce their consumption of these chemicals. EPA also questioned and requested comment on its legal authority under the Clean Air Act and Toxic Substances Control Act to impose a regulatory fee.

Many commenters agreed that a fee alone would not be an effective regulatory program since EPA would not be able to set the fee at the correct amount to achieve the required levels of control. Ten commenters supported the use of a fee to reduce the windfall to producers and thus, the incentive the windfall might have created to delay the introduction of substitutes. But others, primarily from the foam-blowing industry, objected to the use of a fee on the grounds that it would unnecessarily increase their costs of doing business.

Implicit in their argument is an assumption that any fee would be added to the price of CFCs and halons above and beyond increases created by market scarcity. Economic theory as described in two analyses sponsored by EPA, however, suggests that fees would not increase the price of controlled substances in such a manner. (Decanio, 1988 and Sobotka, 1988.) As long as the fee is set below the increase in price resulting from the limit on supply of CFCs, user industries would pay the same amount under either a fee system or an allocated quota system. Price increases would be limited by the forces of supply and demand regardless of whether they result from a fee or regulatory mandated scarcity. With fees, however, the windfalls go to the United States Treasury, while under a quota system, the transfers would go to the producers.

Under a system combining fees and allocated quotas, the cost to users would also be the same as either of these systems alone, and the transfers would accrue to the United States Treasury. As a result, adding a regulatory fee to an allocated quota system would not raise the price of CFCs and halons to users but would remove any potential advantage for a producer to delay or reduce the supply of chemical substitutes.

Commenters disagreed about whether EPA has legal authority to impose regulatory fees. Several public interest groups contended that section 157(b) of the Clean Air Act is sufficiently broad to permit EPA to use fees as a regulatory method. On the other hand, some chemical producers and a trade association asserted that EPA could levy fees, if at all, only to recoup the administrative cost of the program; fees sufficiently high to raise prices of controlled substances enough to reduce demand were beyond EPA's authority. These commenters also argued that to comply with the Clean Air Act's notice-and-comment rulemaking requirements, EPA would have to propose a more specific regulatory fee program before it could promulgate such a program. The Agency believes that the issues surrounding institution of a fees program deserve further attention, and in any event agrees that the December 14 NPRM did not provide adequate notice of what fee EPA would impose. The Agency has therefore decided to conduct further rulemaking on fees, as explained in the ANPR also published today.

3. Auctioned Rights

Instead of granting production and consumption allowances to past producers and importers, EPA sought comment on the use of an auction as the means of distributing allowances. Under this system, production and consumption allowances would be sold at auction to the highest bidder. Anyone seeking to produce or import CFCs or halons could purchase allowances directly at auction. To the extent chemical producers or distributors obtained allowances at auction, user industries could rely on their existing channels of supply to provide these chemicals. Alternatively, user firms could also obtain allowances directly through an auction or purchase them through a secondary market.

The December 14 NPRM discussed several key advantages (e.g., economic efficiency, transfers to the U.S. Treasury) and potential disadvantages (e.g., short-term speculation and hoarding) of this approach.

Chemical producers and a wide spectrum of CFC and halon user industries voiced opposition to an auction system. These commenters raised many of the concerns identified in the NPRM. They suggested that auctions would lead to speculation and hoarding, thus unnecessarily driving up the price of CFCs and halons. Others commented that regulation by auction fell outside EPA's legal authority. They also stated that this approach would be unfair to small businesses who would be unable to compete in an auction and would make planning difficult for producers.

In contrast, two automobile companies and three government agencies supported the use of auctions as an efficient and equitable regulatory system. Further, one government agency argued that speculation would increase rather than decrease market stability. One agency and several public interest groups also contended that EPA has the legal authority to use an auction to achieve its regulatory goal.

EPA believes that many of the concerns raised by industry would be short term. As a market price developed for CFCs and halons over time, any problems associated with hoarding and speculation would likely be diminished. However, because the next several years are critical in the transition to reduced reliance on CFCs and halons, EPA is concerned that these problems, if they did occur in the short-term, could significantly hamper a smooth transition away from ozone-depleting substances. EPA also recognizes that, like fees, auctions are a novel regulatory approach and consequently raise issues about the Agency's authority to employ them. EPA is concerned that a successful challenge to this regulatory approach would disrupt United States' compliance with the Montreal Protocol.

In the ANRM also published in today's **Federal Register**, EPA seeks additional public comment on the desirability of shifting to an auction system and a possible design feature to address the concerns raised by commenters.

4. Engineering Controls and Product Bans

EPA also requested public comment on the use of industry-specific engineering controls—the Agency's traditional approach to pollution control—to implement the Protocol. Thirty-two commenters stated that they opposed the use of EPA-mandated engineering controls or bans. These commenters provided many reasons against the use of this approach including: Reduced economic efficiency; increased administrative costs; inequitable treatment of industries (some would be regulated while others would not); failure to provide an across-the-board incentive for the development of chemical substitutes; and lack of assurance that the control requirement's goal would be achieved (e.g., increases in unregulated uses could offset required reductions).

In contrast, several environmental groups and many foam blowers-supported the adoption of EPA-mandated engineering controls for industries with low-cost control options. These commenters argued that requiring such reductions would ensure that low-cost measures would be taken in a timely manner which, in turn, would minimize CFC and halon price increases

for all users. Several foam-blowers specifically supported engineering controls as a means of ensuring that other industries undertake cost-effective reductions available to them instead of deciding to continue to use CFCs and pay the higher prices. Other members of the foam industry suggested that EPA establish a "trigger event" (such as an increase in CFC price beyond an established guideline) after which the Agency would mandate controls.

In short, economic incentives as employed in an allocated quota system may not be enough to ensure the most cost-efficient control of CFCs and halons possible. At the same time, EPA is still mindful of the drawbacks of using industry-specific engineering controls and product bans. It also acknowledges that the December 14 NPRM did not propose any particular control or ban with enough specificity to permit the Agency to promulgate it in this rulemaking.

EPA intends to continually monitor progress made by each user industry to reduce its use of CFCs and halons. If the Agency determines that cost-effective controls exist but are not being adopted in a timely manner, it may require such actions. The ANPRM accompanying this final action discusses the specific circumstances which could lead to EPA-mandated control requirements.

5. Other Systems

Comments were also submitted on other regulatory options which were briefly mentioned in the December 14 NPRM. For example, several representatives of the auto industry supported a user (instead of producer) allocation system. Under this system, EPA would allocate allowances to the approximately 5,000–10,000 customers who purchase CFCs directly from chemical producers. The commenters did not suggest how this mammoth allocation might be accomplished, only that EPA could assess an administrative fee to pay for the costs.

EPA does not believe that a user allocation system would be feasible. Perhaps the simplest approach to making user allocations would be for EPA to obtain 1986 sales list from CFC producers and publish them for comment as the basis for its allocation. However, based on its recent experience in developing allocations for less than 30 producers and importers, the time and resources required to process and verify claims would be much more than the Agency has available and could not be completed before the Protocol's likely effective date (January 1, 1989). Also, user allocations based on sales records would require release of information that would be claimed confidential.

EPA considered allocating production rights to producers and auctioning consumption rights to users. However, because producers would still maintain control over production in this system, their market power would not be substantially diminished. Users could seek to buy controlled substances that are imports instead of domestic production, but since foreign producers must also live within the Protocol's limits (or have their imports banned by the Parties), the availability of imports of controlled substances would be restricted, leaving the market power of the domestic producers largely intact. In any event, EPA does not want to create a system that encourages greater reliance on CFC and halon imports.

6. Selection of the Allocated Quota System

EPA has concluded that the allocated quota system is the appropriate method for implementing the Montreal Protocol for several reasons. One, by directly regulating the supply of CFCs and halons, the allocated quota system is a straightforward method of ensuring that the requirements of the Montreal Protocol are met. Two, it is clearly lawful, in contrast to the auction and regulatory fee systems which raise legal issues. Three, as a market-based approach, the allocated quota system is economically efficient. Four, it is relatively simple to administer, since the producers and importers subject to the allocated quotas are small in number. While EPA recognizes that an allocated quota system has the potential for windfall profits and the concentration of market power in relatively few companies, it does not believe those disadvantages would prevent the system from bringing about the reductions in ozone-depleting substances required by the Protocol.

The Agency did not select regulatory fees as its implementing strategy because fees alone would not ensure compliance with the Montreal Protocol. It is quite possible that more firms would decide to pay the fee and continue using the CFCs and halons than should if the United States is to comply with the Protocol. Moreover, EPA's authority to administer a regulatory fee program is uncertain.

Like fees, engineering controls or bans could not ensure compliance with the Protocol, since uses of CFCs and halons that are left unregulated could continue to grow, thereby offsetting reductions in the regulated uses. Engineering controls or bans are also difficult to administer considering that thousands of firms use CFCs and halons.

The auction approach, like other market-based programs, is economically efficient. However, commenters expressed concern that auctions, at least initially, would create large uncertainties about price and availability and could lead to speculation and short term hoarding of permits during the auction process. Further, legal questions exist about EPA's statutory authority to implement an auction system. However, because auctions are a market-based system which, if, adopted, would ensure compliance with the Montreal Protocol and shift some of the windfalls from the producers to the United States Treasury. EPA is seeking additional public comment in the ANPR on the desirability of shifting to this approach.

EPA has selected the allocated quota system rather than other strategies, given the allocated quota system's capability of implementing the Montreal Protocol in an economically efficient, low cost manner and the legal and other concerns associated with other systems. However, EPA recognizes that the use of an allocated quota system standing alone could result in substantial windfalls to a small number of CFC and halon producers which could create an economic incentive for these firms to delay the introduction of chemical substitutes.

Because of this concern, EPA is continuing to examine several alternatives to the use of an allocated quota system alone. In the advance notice of proposed rulemaking (ANPRM) which is also published in today's **Federal Register**. EPA describes and seeks comment on supplementing allocated quotas with a regulatory fee to reduce windfall profits and/or with engineering controls or bans on specific uses of CFCs and halons to ensure that low cost reductions are made in a timely manner. The ANPRM also describes and seeks comment on placing a time limit on the use of allocated quotas and shifting to an allocation system based on auctions.

*D. Design of Allocated Quota System*

In response to comments on both its December 14 and May 24 NPRMs, EPA has revised several aspects of its allocated quotas system. The following paragraphs explain the operative sections of the rule and highlight any changes from the proposed rule and the rationale for such changes.

1. Effective Date (§ 82.2)

The December 14 NPRM stated that the rule would take effect when the Montreal Protocol entered into force. As noted above, the Protocol will enter into force on January 1, 1989, provided that at least 11 instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by Nations or regional economic integration organizations representing at least two-thirds of estimated global consumption of the controlled substances. If this condition has not been fulfilled by January 1, 1989, the Protocol will enter into force on the 90th day following the date on which the conditions have been fulfilled. (The Protocol also requires that the Vienna Convention first enter into force; the conditions for that agreement to take effect have recently been fulfilled, so that it will enter into force before January 1, 1989.)

Several commenters stated that the rule should not in any way be contingent on the Protocol. Moreover, because firms might increase production and stockpile controlled substances prior to January 1, 1989, the regulations should go into effect immediately upon promulgation.

EPA does not believe that firms will stockpile significant quantities of controlled substances before the rule goes into effect because storage facilities are limited and profit margins in the near term are not likely to make expanding storage economically attractive at this time. In any event, EPA believes that by holding off domestic implementation of the Protocol until it enters into force, the United States will be in a better position to encourage other key nations to ratify the agreement.

There is no question that broad international observance of the Protocol's control requirements is necessary to safeguard the ozone layer. Any reductions the United States could accomplish on its own by implementing the Protocol's requirements before the Protocol enters into force would be small compared to the protection offered by a ratified Protocol. (Although the United States now accounts for about 30 percent of global consumption of controlled substances, if only this nation and a few others limit future consumption, other nations would remain free to *increase* their consumption, making the United States contribution to control increasingly less significant). At the same time, United States' implementation might suggest to more reluctant nations that they need not undertake the required controls right away. EPA thus considers it prudent to stay domestic implementation of the Protocol until it enters into force.

EPA remains optimistic that the conditions for entry into force will be satisfied by the January 1, 1989 target date. Governments throughout Europe, and in Australia, Japan and the Soviet Union are well along in their own process of ratification. Recently, the Administrator of EPA sent a letter to his counterparts in other nations urging their speedy ratification of the Convention and Protocol. EPA intends to continue to closely monitor progress toward ratification. If the Agency at some future date determines that a delay is likely, it will reassess what, if any, action should be taken.

In a change from the December proposal, EPA has made paragraph § 82.13(f)(1) of its rule effective as of September 12, 1988. This requirement relates to the method by which EPA will measure production of CFCs and halons, and requires producers to inform the Agency of their current measurement techniques. EPA needs this information even before the Protocol's target effective date in order to have enough time to prepare compliance monitoring guidelines before the likely date of the first control period, July 1, 1989. If EPA did not obtain this information until after the Protocol entered into force, it could not ensure compliance with the freeze requirement.

2. Definitions (§ 82.3)

EPA received comments on many of its definitions both from respondents to its data collection rule (§ 82.20) and from commenters on its December 14 NPRM. The Agency sought to clarify several of its definitions (e.g., controlled substance, production, importer and exporter) in its May 24 supplementary proposal. This section discusses the key definitions and summarizes comments received on the two NPRMs and the resulting changes in the final rule.

*a. Control Periods.* In its December 14 NPRM, EPA defined control periods as those periods during which the prohibitions under § 82.4 (limits on production and imports) would apply. It reserved the actual dates of the control periods for future determination, because the timing of the first control period depends on the date of the Protocol's entry into force. EPA must therefore wait until that date is known before it can publish in the **Federal Register** the exact dates for every control period.

EPA sought comment on a further complication in determining control periods. The Protocol specifies 12-month control periods for all three steps in the Group I (i.e., CFCs) reduction schedule (i.e., freeze, 20 and 50 percent reductions). While the Protocol provides that the second step will begin on July 1, 1993, it makes timing of the first step contingent on when the Protocol enters into force. If the Protocol enters into force on January 1, 1989, then the freeze will go into effect on July 1, 1989, and each control period thereafter would last for 12 months without any overlap between step 1 (freeze) and step 2 (20 percent reduction). However, if the Protocol enters into force on any date other than January 1, 1989, then there would be overlapping control periods unless the last control period of the freeze is shortened to less than 12-months.

In its December 14 NPRM, EPA stated that it intended to handle this potential overlap, if it arose, by shortening the last control period in the freeze stage so that no overlap occurred and prorating annual allocations for that truncated control period.

EPA received one comment on this issue from a chemical producer which stated that any control period less than a year could prove disruptive because of the seasonal demand for CFCs. The commenter explained that CFC production increases dramatically during summer months because of higher demand for CFC–12 and–11 as a coolant. A shortened control period with a prorated allocation would prove economically disruptive if it coincided with this period of peak demand. It suggested that EPA should define overlapping control periods with the last freeze control period running into the first control period of the 20 percent reduction stage.

EPA proposed to define the control periods so that no overlap would occur in part because it believed that the drafters of the Protocol did not intend control periods to overlaps. Evidence of this intent is the fact that no overlap will occur if the Protocol enters into force on the target date and that the latter two control periods are defined as consecutive. However, EPA recognizes that the Protocol does define all control periods as lasting 12 months, and that a control period of less than a year could disrupt companies' production plans. The Agency has thus decided to define control periods as overlapping between the freeze and 20 percent reduction stages if the Protocol enters into force on a date other than January 1. Should the Protocol parties decide on a different approach to control periods, however, EPA will change its definition accordingly.

*b. Controlled substances.* Consistent with the Montreal Protocol, EPA initially proposed defining this term as "any substance listed in Appendix A to this Part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance listed."

A number of firms that responded to EPA's data collection rule (§ 82.20) found this definition confusing, and as a result, EPA included in its May 24 supplemental proposal further clarification. This clarification attempted to better distinguish "bulk" CFCs or halons from CFCs or halons contained in products; the Protocol drafters and EPA intended that only bulk CFCs and halons be subject to the freeze and reduction requirements. For example, while CFCs contained in a refrigerator are clearly not covered by the definition of controlled substances, it is less clear whether CFCs contained in small cans used to refill a car air conditioner would be considered in bulk form and thus a controlled substance or contained in a product and thus not a controlled substance.

Technical experts called together by UNEP to discuss implementation of the Protocol (Nairobi, January 1988) recommended that the Protocol's definition be clarified as follows: "Any amount of a [listed] substance or a mixture of [listed] substances which is not part of a use system containing the substance is a controlled substance and not a product containing a controlled substance [for the purpose of the Protocol]. If a [listed] substance or mixture must first be transferred from a bulk container to another container, vessel or piece of equipment in order to realize its intended use, the first container is in fact utilized only for storage and/or transport and the [listed] substance is considered [in] bulk [form or a controlled substance] and not a product". Under this modified definition, for example, CFCs in small cans used to refill refrigerators and car air conditioners would clearly be in bulk form and therefore be counted as controlled substances. EPA concluded that this clarification captured the bulk-versus-product distinction the Protocol drafters had sought to make, and proposed in its May 24 supplemental notice to add the clarification to the rule's definition. Comments on that notice supported the proposed clarification, and it has been incorporated into the final rule.

EPA also addressed the need for 'rules of thumb" in determining whether an ozone-depleting substance was in bulk form and thus a controlled substance. In reviewing the data submitted for purposes of calculating company-specific allocations, the Agency found that importers and exporters of CFC–113 in small containers did not always know the use to which the containers were ultimately put. EPA developed a "one gallon rule" to decide whether the reported CFC–113 was a controlled substance or not if the use of the container could not be determined; if the container of CFC–113 was under one gallon in size, the Agency assumed it was used for direct cleaning and thus not a controlled substance. EPA stated that for purposes of implementing the proposed rule, it would use the one gallon rule where the use of a container of CFC–113 was not known, and suggested that it might develop other rules of thumb as circumstances warranted.

Commenters supported EPA's rule of thumb for CFC–113 and suggested that it be extended to metric containers equivalent to one gallon in size and to other chemicals. EPA agrees that its one gallon rule should apply to containers that are approximately 4 liters in size. It also agrees that the rule should be applied to small containers of controlled substances other than CFC–113, but also only when the use to which those containers will be put cannot be determined.

As several commenters recommended, EPA intends to establish a process by which industry could seek further clarification of the definition as new ambiguities arise and by which the Agency would develop any other rules of thumb.

*c. Export/Import.* The December 14 NPRM and final rule (§ 82.20) defined export as "the transport of controlled substances from within the United States or its territories to persons or countries outside the United States." Several respondents raised issues concerning specific applications of that definition. Several questioned whether shipments of controlled substances to United States military bases abroad should be counted as exports. Others questioned whether controlled substances used on-board ships were to be considered exports.

As part of its May 24 NPRM, EPA proposed that in both cases the controlled substances *not* be considered exports. In the case of shipments to United States military bases abroad, the United States is clearly the beneficiary of the controlled substances and should count them toward its consumption limit. In both cases, it is unlikely that any other nation would claim them as imports. As a result, failure to include them as part of United States consumption would likely result in undermining the effectiveness of the Montreal Protocol by allowing some subset of controlled substances to remain unclaimed and unreported by any nation as consumption. Comments on this provision generally supported the clarification proposed on May 24.

For the reasons mentioned above, EPA has revised the definition of exports to specifically exclude shipments to United States military bases and to ships for on-board use.

In its May 24 supplemental proposal, EPA also discussed the potential export and import of recycled or used controlled substances. EPA explained that the Nairobi technical experts group had suggested that production be defined in the Protocol to exclude recycled substances but that export and import be defined to include them. The Agency noted that its definition of production already excluded recycled controlled substances, and described how its consumption allowances would allow import of used controlled substances and export of recycled substances.

Several commenters agreed that recycled and used controlled substances should be included in the definition of export and import. They noted, however, that not all used substances could be recycled, so that consumption allowances expended to import used substances would not be completely replaced by consumption allowances granted upon proof of export of the recycled used substances. They accordingly recommended that consumption allowances be required only for that portion of used substances that could be recycled. Another commenter instead argued that agreements between nations to recycle would be facilitated if the Agency's rule did not cover used or recycled controlled substances at all.

Since preparing the May 24 supplemental proposal, EPA has realized that defining export in its rule to include recycled *and* virgin controlled substances would risk United States noncompliance with the Protocol. Since the Agency's rule defines production to exclude recycled controlled substances, firms could recycle those substances without expending production and consumption allowances. However, if export is defined to include recycled substances, on exporting the recycled substances firms would receive authorization to convert potential production allowances and consumption

allowances in the amount of the recycled substances exported. Thus, as a result of exporting recycled substances for which no production and consumption allowances were expended, firms would realize a net increase in production allowances (up to the 10 or 15 percent limit on potential production allowances) and consumption allowances. They could then use these additional allowances to produce or import and *sell domestically* controlled substances in excess of the amount the initial allocations authorized.

If this occurred, the United States would exceed its limits under the Protocol. EPA's rule allocates consumption allowances equal to United States 1986 consumption and allows firms to obtain additional consumption allowances only upon proof of export, so that total available consumption allowances never exceed the United States consumption limit under the Protocol. If firms could recycle controlled substances without expending production and consumption allowances, but obtain production and consumption allowances upon exporting the recycled substances, total consumption allowances would exceed the United States limit. EPA cannot permit this and still comply with the Protocol, so it has revised the definition of export to make clear that only virgin production is covered by that term. In addition, it has revised the provisions governing the availability of consumption and production allowances to specify that only exports of virgin production will entitle a person to additional allowances. Firms can continue to export recycled or used controlled substances, but will not receive additional consumption or authorization to convert potential production allowances.

At the same time, EPA believes that imports must be defined to include both virgin and recycled or used chemicals. The potential would otherwise exist for virgin controlled substances to be mislabelled as recycled or used chemicals so that they could be imported without consumption allowances. To ensure that the United States does not exceed its consumption limit by inadvertently importing virgin production that has been labelled recycled, the definition of import in EPA's rule must be and has been revised to include both types of production. The Agency realizes that by defining import and export differently in this way, the rule no longer allows producers to recoup consumption allowances expended to import used controlled substances for recycling with allowances granted upon export of the recycled substances. Depending on how this issue is addressed by the Protocol Parties, EPA will consider revising its rule so as to provide consumption allowances for export of recycled substances without risking United States noncompliance with the Protocol.

*d. Exporter.* The December 14 NPRM did not contain a definition of exporter, but simply referred to an exporter as the person who exported the controlled substance (proposed § 82.13(g)). The December 14 final action defined exporter also in terms of the movement of controlled substances from within the United States to outside the country (§ 82.20(a)(3)).

The lack of a specific definition created considerable confusion over who should be considered the exporter. Clearly defining the exporter is important for determining both who must comply with the final rule's reporting requirements (§ 82.13) and who will obtain upon proof of export consumption allowances and authorization to convert potential production allowances to production allowances (§§ 82.10 and 82.11).

In its May 24 supplemental NPRM, the Agency proposed to define exporter as the person or company that enters into a contract to sell controlled substances to a person or company located outside the United States for use outside the United States. EPA believed the persons meeting this definition would likely have knowledge of the Agency's reporting requirements and incentive to seek the additional allowances available upon proof of exports. While commenters generally supported this approach, one chemical company pointed out that this definition fails to cover transactions between subsidiaries of multinational corporations that do not entail contracts of sale. Taking this comment into consideration, the Agency has modified its definition of exporter to "the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country."

*e. Importer.* EPA did not directly define importer in either the December 14 NPRM or the final rule published on December 14. Instead, in the final rule EPA referred to importers as "persons who transported the chemicals listed in § 82.20(b) from outside the United States or its territories to persons within the United States or its territories." The December 14 NPRM also referred to an importer as "any person who imports controlled substances" (§ 82.13(f)).

Public response to both of these notices suggested that it was not clear who EPA considered to be the importer. The definition of importer is important because it determines who receives the initial allocation of consumption rights (§ 82.6), who is required to submit reports to EPA (§ 82.13(f), and who must hold consumption rights to authorize the importation of controlled substances (§ 82.4).

In its May 24 supplementary proposal, EPA proposed to define importer for the purpose of allocating consumption rights as "the first United States owner who is a supplier to or a member of the domestic industry that uses the controlled chemicals." EPA stated that this definition would generally result in consumption rights being allocated to the "importer of record" on United States Customs documents (the party responsible for obtaining a shipment's legal entry in the United States). However, in the few cases where the importer of record was a transfer or shipping agent and not the first United States' owner, the definition would mean that the first United States purchaser of the imports who was a member of the producer or user industry would receive the consumption rights allocation. EPA considered this definition appropriate not only because it would result in consumption rights being allocated in every case to members of the CFC and halon producer or user industries, but because it also provided a reasonable and rational basis for resolving which of two parties claiming 1986 imports should receive the applicable consumption allowances.

During the public comment period for the May 24 proposal, EPA identified another competing claim that was different from those it had considered in developing the proposed definition of importer. This claim involved, on the one hand, the shipments' importer of record which is a member of the domestic user industry and, on the other, the shipments' first United States owner (based on submitted invoices) which is a foreign producer's subsidiary. In the case of the competing claims discussed in the May 24 NPRM, application of the proposed definition always resulted in the claim being awarded to the importer of record, unless the importer of record was not a supplier to or member of the domestic user industry. However, in the case of the recently identified competing claim, the proposed definition would identify the foreign producer's subsidiary even though it was *not* the importer of record

EPA had explained in the May 24 NPRM that it preferred its proposed

definition in part because it would result in the importer of record being awarded the claim except where a mere shipping agent was the importer of record. The Agency thought this result appropriate because the importer of record was legally responsible for obtaining the shipment's entry into the United States, and because in most cases shipments claimed by importers of record were *not* also claimed by anyone else.

On further reflection, EPA has concluded that its proposed definition reasonably resolves competing claims even though in the case described above, its application will result in a claim being awarded to a supplier to the domestic user industry that is *not* an importer of record. Given the many different ways import transactions can be configured, defining importer as the person who paid the foreign producer for the shipment (i.e., "the first United States owner") is both simple and logical. The first United States owner can in every case be considered to have "caused" the import since it paid the foreign producer for the shipment. To define the importer as the United States firm that placed the order with the foreign producer, as some commenters suggest, would extend the chain of causality which could arguably be extended further. For example, the customers of that United States firm could also argue that they "caused" the import by creating the demand. EPA has also come to appreciate that what firm is the importer of record may often be a matter of proximity to ports and thus an accident of convenience, or of a business relationship independent of the sale of the control substances.

Where two firms claimed to be the "first United States owner," EPA resolved the dispute in favor of the firm that paid the foreign producer for the imported chemicals, as indicated by submitted invoices. One commenter argued that payment to the foreign producer was not dispositive of ownership, and that the nature of the relationship between the producer and its United States subsidiary is also relevant. It specifically recommended that if the two firms are principal and agent or consignor and consignee, EPA should not consider the subsidiary an owner even if it paid its parent company for the shipment.

While the commenter's suggested application of the "first United States owner" definition might be plausible, EPA notes that it has discretion in applying terms of its own creation. The Agency chose the "first United States owner" definition in part because of its administrative simplicity. It likewise applied that definition in a straightforward manner—who paid the foreign producer—to preserve the advantage of simplicity. The commenter's suggested application would have required EPA to determine the legal relationship between firms and the significance of that relationship for the concept of "ownership," and undertaking which the Agency has neither the time nor resources to complete. EPA believes its application of its definition is reasonable under the circumstances.

In defining importer for allocation purposes and applying that definition, EPA is faced with assigning valuable allowances based on actions taken in the past with no awareness of their future significance. Any choice the Agency makes will thus seem inequitable to the firms whose claims are rejected in EPA's resolution of competing claims. EPA considered dividing claims between competing firms, but rejected this approach because there was no assurance that this approach would satisfy the firms involved. Moreover, the many firms that could have, but did not, submit competing claims would likely assert that, in light of an Agency decision to divide up competing claims, they should have the opportunity to submit those claims now.

The Agency also rejected one commenter's request that it conduct evidentiary hearings to determine who "most" caused an import to occur. First, EPA already has the information such hearings would be likely to provide. Second, what weight to give what factors (e.g., who placed the order with whom, who supplied what aspects of the transportation) would entail only more linedrawing that could be second-guessed any number of ways. Third, conducting such hearings would be administratively burdensome and, by delaying completion of the rule, could jeopardize the United States' ability to comply with the Protocol.

The Agency regrets that it could not honor all firms' import claims. However, the competing claims left EPA with no practical choice but to define importer in a manner that would identify only one firm. It believes its proposed definition is reasonable for the reasons given above, and has thus adopted that definition for purposes of allocating consumption allowances based on 1986 imports.

In the May 24 NPRM, EPA also indicated that it was considering defining importer differently for purposes of enforcing the rule's prohibition against importing controlled substances without consumption allowances. EPA expressed concern that as an ongoing matter, it may be administratively burdensome to determine who is the first United States owner and who is a supplier. It stated that requiring a shipment's importer of record to hold the consumption allowances authorizing the shipment would be easier to implement, and that purchasers of those shipments would be likely to ensure that the importer of record held the necessary consumption allowances.

Several commenters indicated that they would prefer that the first United States owner definition used for allocating consumption allowances also be used to determine who should hold consumption allowances authorizing an import shipment. However, one of these commenters suggested that the importer of record, where different from the first United States owner, also be required to report the shipment.

Notwithstanding these comments, EPA still favors defining importer as the importer of record for purposes of enforcing the rule's requirements. That definition avoids the potential for EPA becoming entangled in disputes between companies as to who is the first United States owner and who is a supplier to the user industry. It also avoids the need to require both the first United States owner *and* the importer of record to report the shipment. With advance knowledge of this definition, firms can decide wether they should be the importers of record for future shipments or should make arrangements with other companies to ensure that shipments are covered by the necessary consumption allowances.

EPA notes that the final rule defines importer only as the importer of record. Since the rule specifies firms' consumption allocations, there is no need for the definition of importer underlying those allocations (i.e., the first United States owner) to appear in the rule. The importer of record definition is included in the rule because it determines who is subject to the rule's prohibition against importing controlled substances without consumption allowances.

*f. Production.* The December 14 NPRM defined this term as "the *manufacture* of a controlled substance from any raw material or feedstock chemical; however, production does not include the manufacture of controlled substances that are used and entirely consumed in the production of other chemicals."

The public comments on the December 14 NPRM raised several

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issues related to this definition. In addition, at the Nairobi meeting of technical experts, other nations suggested modifying the definition of production in the Montreal Protocol ("the amount of controlled substances produced minus the amount destroyed by technologies to be approved by the parties") so that reprocessed or recycled controlled substances would not be counted as part of a Party's production. The technical experts group agreed to suggest modifying the definition in the Protocol to state that production equals total production, including reprocessed and virgin chemicals, minus purchases of controlled substances for purposes of recycling. This definition would permit recycled controlled substances from one nation to be mixed with virgin production from another nation without the latter nation having to count the recycled portion as part of its production.

EPA explained in its May 24 supplemental NPRM that its definition of production, which is limited to manufacture from raw materials or feedstock chemicals, already excludes the portion of any output that results from reprocessed controlled substances. As a result, EPA proposed not to alter this aspect of its definition of production and commenters agreed that no alteration was necessary. The Agency has thus adopted the definition of production proposed in its December 14 NPRM.

Another issue related to the definition of production concerns the definition's exclusion of "controlled substances that are used and entirely consumed in the production of other chemicals." In its May 24 supplemental NPRM, EPA discussed the need to clarify limits on the use of this exclusion. Specifically, the Agency proposed that, because of potential administrative burdens and problems of verification, this exclusion would be limited to transformation of controlled substances that are produced and transformed by the same company. Thus, one company could not buy a controlled substance from another company and receive credit against its production by transforming that controlled substance. Nor could a company in the United States receive credit for transformation of a controlled substance produced in another country. EPA proposed to modify its definition of production to specifically include this limitation.

Four chemical companies commented that such restrictions would unduly limit the use of controlled substances as chemical feedstocks. They suggested that the producing and transforming firms could report and document any such transformations, and that the feedstock producers should receive credits. One commenter also argued that the proposed limitation would prevent companies that are not producers from entering into a business that uses controlled substances as feedstock.

The Agency notes that the proposed limitation would not prevent companies that do not produce feedstocks from purchasing feedstocks from producers. Also, it is not clear to EPA that small companies would be disadvantaged in competing against fully integrated companies, since their ability to purchase feedstocks will depend on future prices of controlled substances and the availability of product and chemical substitutes.

In any event, EPA believes that granting production credits for feedstock transformation involving two companies raises several difficult issues that require further study. One issue is which company should receive the production credit—the company which produced the feedstock or the company which transformed it. Similarly, the group of technical advisors to the Protocol could not agree on which country should be granted production credits in the case of feedstocks traded between countries.

There are also documentation issues. If the company transforming the feedstock is not the company receiving the credits, the transforming company would seem to have little incentive in maintaining accurate records. More generally, quantifying and verifying the amount of feedstock transformed and tracking the transfer and use of transformation credits would add layers of complexity to the Agency's compliance monitoring task.

These issues are even more difficult to resolve where transformations involve controlled substances produced in another country. Because of these concerns, EPA has decided to initially limit credit to production and transformation of feedstocks by the same company and will evaluate the possibility of expanding this provision in the future.

A third issue related to the definition of production involves EPA's decision in the December NPRM (see footnote 6 on page 47501) not to initially provide production credit for the destruction of controlled substances as the Montreal Protocol permits. (Under the Protocol, CFCs and halons destroyed by technologies to be approved by the Parties would not be counted as production). EPA stated that since no destruction technologies had yet been approved by the Parties it was deferring implementation of this provision, but that "EPA intends to work closely with industry in the future to review existing and new destruction technologies and, if appropriate, submit these technologies to the Parties for their approval."

Six chemical producers and users urged EPA to define production to reflect this destruction credit provision in its final rule as a means of encouraging the rapid development and implementation of destruction technologies. EPA agrees that efforts should be made to further development of destruction technologies. However, regardless of what it now includes in the rule, EPA will have to modify the rule to specify any destruction technologies once they are approved by the Parties, as well as reporting and recordkeeping requirements adequate to monitor their implementation. Thus, the Agency believes that modifying its definition of production when the Parties approve technology will be more efficient. In waiting to do so, the Agency will also benefit from the experience gained under the rule until that time.

Firms with potential destruction technologies are encouraged to expeditiously develop these technologies and to work with EPA to gain their approval by the Parties. EPA fully intends to modify its rule to allow for the grant of production credits as soon as destruction technologies are approved.

3. Prohibitions (§ 82.4)

The prohibitions section of the rule stipulates that no person may produce controlled substances at any time during any control period in excess of the amount of unexpended production allowances held by that person at that time, and that no person may produce or import controlled substances at any time during any control period in excess of the amount of unexpended consumption allowances held by that person at that time. It further specifies that both valid unexpended production and consumption allowances are required for production, while only valid unexpended consumption allowances are necessary for the importation of controlled substances.

The proposed rule specified that a person must "own" or "hold" production and consumption allowances to produce or import controlled substances. The final rule instead requires that allowances "held by that person under the authority of this Part" be sufficient to cover that person's production or import. EPA made this change to clarify its intention to only credit persons with production and consumption allowances

that the Agency's records show they possess or that the person has properly obtained by the means specified in the regulations. The Agency also sought to avoid having to determine who has legal ownership of allowances or becoming entangled in ownership disputes.

As explained in the December 14 NPRM, the use of both consumption and production allowances are required to ensure compliance with the consumption and production limits of the Montreal Protocol. One commenter suggested that EPA limit only production and not consumption, but if EPA does not limit imports as well as production, the United States could exceed the Protocol's limits on consumption, which is defined as production plus imports minus exports. EPA also sought through the use of consumption and production allowances to provide industry with the maximum flexibility available under the terms of the Protocol.

EPA received several comments on its proposed penalty which defined a violation in terms of "every kilogram" of production or importation in excess of unexpended production or consumption allowances. As explained in the December 14 NPRM, under section 113(b) of the Clean Air Act, penalties of up to $25,000 per day per violation can be assessed.

Several chemical producers generally believed that a penalty of $25,000 for each kilogram was excessive and impractical. They stated that given the nature of the process used to produce these chemicals, they cannot control or even measure production output to the level of a kilogram. One commenter stated that production output is measured based on storage in large holding tanks and therefore can only be measured with an accuracy of 1–2 percent. They argued that they should not be accountable for exceedances which they believed they could not accurately measure. In addition, these commenters suggested that EPA modify its rule to allow production overruns in one year to be compensated by a reduction in allocated allowances in the following year. A public interest group, on the other hand, supported EPA's proposed definition of a violation, stating that it would prevent significant "leakages" of controlled substances in excess of production and consumption limits.

In the time since its December NPRM, EPA has conducted several site visits to review the level of accuracy that producers can achieve in their production control and measurement, and the recordkeeping procedures they currently employ

The Agency recognizes that controlling the exact quantity of production is difficult and that measuring large quantities of controlled substances is subject to a small degree of error. However, the Montreal Protocol requires that Parties live within specified limits, and EPA has apportioned allowances that total to those limits. Were the Agency to define violations in units of 1,000 kilograms, for example, it would effectively license firms to exceed their limits by 999 kilograms. Were firms to take advantage of this flexibility, the United States would find itself in violation of the Protocol. Thus, EPA has adopted the provision that every kilogram of production or import in excess of valid unexpended production or consumption allowances is a separate violation of the rule.

Even though EPA has defined violation in terms of one kilogram, the Agency does not intend to necessarily seek the maximum statutory penalty for each violation. EPA intends to develop and administer a penalty policy that will effectively deter noncompliance, while at the same time recognizing that production of controlled substances cannot always be precisely controlled or measured. (The Agency notes that importers typically purchase controlled substances in kilogram units, so that they should be able to more precisely account for their shipments.)

In developing that policy, EPA will review potential price increases of controlled substances and estimate the penalty necessary to deter exceedences. The Agency will also consider the practical degrees of control in current production processes, the accuracy of measurements and industry recordkeeping in general, and the ability of EPA to monitor compliance. In assessing actual penalties, EPA will take into account these factors as well as the magnitude of the exceedence and the types of internal controls used by the firm.

EPA has also decided not to alter its prohibition provisions to allow producers and importers to exceed their allowances in one control period in exchange for a reduction in their allowances the next. The Montreal Protocol defines control periods in terms of 12 months and requires that controls be achieved during the 12-month period. Thus, the Protocol does not provide for the flexibility the producers seek, and EPA may not provide it without risking United States' noncompliance with the Protocol.

Section 82.4(d) implements the provision in the Montreal Protocol prohibiting Parties from importing controlled substances from nations not Party to or not complying with the Protocol beginning one year after the Protocol enters into force. No comments on this provision were submitted, but EPA requested and received comments on other possible trade provisions. Specifically, EPA requested comment on the desirability of moving forward in time implementation of the Protocol's provisions restricting the importation of products containing or produced with controlled substances from non-Parties. Eight commenters (chemical producers, user industries and public interest groups) urged EPA to take such action. However, most commenters generally urged EPA not to take action beyond that required by the Montreal Protocol, arguing that such action would be economically disruptive without improving environmental protection.

EPA does not believe that implementing trade prohibitions in tandem with the Protocol will adversely affect United States industry's ability to compete with companies from countries not Party to the Protocol in the early years following the agreement's entry into force. CFC and halon prices are not likely to increase significantly in the early years of the Protocol if firms act in a timely manner to employ cost-effective reductions. Moreover, most of EPA's major trading partners (e.g., Japan, Canada, Mexico, Western European nations) are likely to become Parties to the Protocol. However, EPA will continue to monitor this situation and may determine in the future that early implementation of trade restrictions against non-Parties is warranted.

4. Apportionment of Baseline Production Allowances (§ 82.5)

This section of the rule sets forth companies' baseline production allowances and the basis for calculating them. To determine these allowances, EPA in its December 14 final rule required producers of controlled substances to submit data documenting their production levels in 1986, the baseline year specified by the Protocol. After reviewing these data submissions for completeness and accuracy, EPA published a supplemental proposal on May 24 containing proposed company-specific allocations and clarifying the definition of relevant terms.

EPA proposed to calculate each producer's baseline allowances in three steps First, consistent with the rule's definition of production, the producer's 1986 production level of each controlled chemical was reduced by the amount of that chemical the producer used in 1986 to make other controlled substances.

Second, the producer's adjusted production of each controlled chemical from raw materials or feedstocks was multiplied by that chemicals' ozone depletion weight as set forth in Appendix A of the December 14 proposal to arrive at a "calculated level" of production. Finally, the resulting calculated levels were added together for Group I chemicals and for Group II chemicals. Firms that produced chemicals in both Group I and Group II were thus apportioned separate production allowances for Group I and Group II chemicals.

EPA received comments from one chemical producer on its December 14 NPRM opposing its proposed basis for calculating baseline production allowances. This producer suggested that, in the case of halons, EPA should use a 1987 base year to more accurately reflect current free market conditions. It also suggested that allocations for halons should be based only on "non-government" business to avoid providing a competitive advantage to past vendors who sold to the federal government, the single largest consumer of these chemicals.

The Agency does not agree with either comment. The Protocol specifies 1986 as the baseline year. EPA could only use a different year as a baseline and ensure compliance with the Protocol if it prorated 1987-based allowances so that they do not total to more than 1986 United States' production. To do this would entail EPA collecting and reviewing data for both 1986 and 1987, and otherwise complicate a process the Agency already found cumbersome. Moreover, use of 1986 as the baseline year is more equitable because firms may have changed their market behavior in 1987 in response to on-going Protocol negotiations. EPA also sees no compelling reason to distinguish past sales to the government (or any other large users) from any other past sales. As EPA defined and proposed it, the allocated quota system simply grandfathers past market shares. Since the rule permits allowances to be transferred, however, market shares may still change in the future.

In comments on the May 24 NPRM, firms generally agreed with their proposed production allowances. EPA reviewed the comments and is including final allocations in the final rule.

5. Apportionment of Baseline Consumption Allowances (§ 82.6)

To implement the Protocol's limits on consumption (defined as production plus imports minus exports), the calculation of baseline consumption allowances requires reducing the sum of production and imports by exports. Complications arise in attributing exports to producers and importers. In all other respects, consumption allowances are calculated in the same manner as production allowances.

In the December NPRM, EPA proposed to simply allocate exports to producers in proportion to their 1986 market share of production, since producers were responsible for most exports presumably in proportion to their share of the production market. In response to public comments questioning the equity of this approach, EPA proposed in its May supplemental NPRM to calculate each firm's consumption allowances by subtracting the amount of controlled substances that firm *directly* exported in 1986. Accordingly, importers as well as producers would have their consumption allowances reduced to reflect their direct exports. Since not all exports could be traced to a producer or importer, EPA also proposed to attribute the remaining exports to producers in proportion to their 1986 market share of production. In addition, EPA stated that because the final rule would contain the company-specific apportionments, it would omit from the final rule the explanation of how they were calculated.

Several firms urged EPA to take additional steps to trace exports back to their original producer. EPA concludes that it would be impractical and in many cases infeasible to undertake such an exercise. To verify claims of consumption allowances, the Agency examined large volumes of supporting documentation and in some cases corrections were made to the claims. EPA believes that a similar verification process requiring supporting documentation would be required to assign the unattributed exports to producers and importers. Further, EPA would have to obtain the exporter's proof of purchase from a producer or importer to assign these unattributed rights appropriately. Although providing the necessary documentation might be relatively easy for some firms, for others it would be difficult and in some cases even impossible. Where exporters bought CFCs from multiple sources, adequate documentation to determine the sources of particular exports simply does not exist. Given how little time remains before the Protocol is due to enter into force and the infeasibility of tracing all exports, EPA has decided against attempting to further attribute currently unattributable exports.

Two commenters complained that use of the proposed correction factor would unfairly penalize producers that had produced little or no controlled substances for direct or indirect export. They suggested that EPA allocate the unattributed exports in proportion to a firm's direct exports rather than production. EPA disagrees with this approach. The Agency does not believe that there is any correspondence between a manufacturer's share in the direct export market and that manufacturer's share of the non-producer exports since exporters could have purchased from any of the producers in the marketplace. The Agency also cannot be certain that exporters did not purchase any controlled substances from the producers who claim not to have contributed even indirectly to the export market. To verify such claims, EPA would have to trace potentially long chains of sales and resales, which the Agency has neither the time nor resources to do. As a result, EPA believes that the apportionment of unallocated exports based on production share is a more equitable approach.

Another commenter noted that it exported a chemical it did not produce and thus argued that it should not have the export of that chemical subtracted from its consumption allowance. It likened its exports to those of exporters who are neither producers nor importers and whose shipments have consequently been placed in the unattributed exports pool for allocation to producers by means of the correction factor.

EPA agrees with this commenter. In calculating consumption allowances, the Agency sought to attribute exported chemicals to those firms that were responsible for the production or import of the chemicals. In the case of this commenter and two other firms that EPA identified based on information submitted in response to the December 14 final rule, the Agency subtracted from their proposed consumption allowances exported chemicals of a type they neither produced nor imported. EPA has thus placed those exports in the unattributed export pool and modified producers' consumption allowances accordingly.

As discussed above, the Agency has decided to require consumption allowances for import of used controlled substances for recycling. EPA thus considers it appropriate to allocate firms' consumption allowances in the amount of any 1986 import of used controlled substances, so that they may continue to engage in recycling without having to purchase consumption allowances that could otherwise be used

to produce or import virgin production. EPA identified one firm that imported used controlled substances in 1986 and has increased that firm's consumption allowance accordingly

6. Grant and Phased Reduction of Baseline Production and Consumption Allowances for Group I Controlled Substances (§ 82.7)

This section of the rule implements the Protocol's phased reduction of CFCs (Group I controlled substances). It grants companies decreasing percentages of their baseline production and consumption allowances in step with the Protocol's three-stage reduction schedule. Following entry into force of the Protocol, companies are granted 100 percent of their baseline allowances for the control periods during which the Protocol requires a freeze in production and consumption of Group I controlled substances. (As stated earlier, once EPA knows the date of entry into force, it will publish a **Federal Register** notice giving the dates of the control periods for the freeze and subsequent stages.) As of July 1, 1993, companies are granted 80 percent of their baseline allowances for each control period and as of July 1, 1998, 50 percent of their baseline allowances.

As described earlier, should the Protocol not enter into force on January 1, 1989, the first control period would not begin on July 1, 1989. In that event, EPA intends to implement the Protocol's 12-month control periods by having overlapping periods during the transition from the freeze stage to the 20 percent reduction stage. EPA has accordingly modified the rule to grant 100 percent of 1986 baseline levels for each of the control periods which "begins" before July 1, 1993, instead of "ends" before July 1, 1993. The only effect of this change will be to allow the last 12 month control period of the freeze to continue beyond July 1, 1993, if necessary. Of course, firms will also have to meet the 20 percent reduction requirement for the 12-month period beginning on July 1, 1993.

One chemical producer raised an additional issue concerning the timing of control periods. While recognizing that EPA's regulation cannot accomplish this goal, it suggested that the Protocol be modified to shift control periods to calendar years. EPA notes, however, that agreement on the timing of the staged reductions was reached only after considerable negotiations and only just before the Protocol was signed. As a result, EPA strongly believes that, notwithstanding the minor inconvenience that may result from the use of 12-month periods which are not coincident with the calendar year, reopening this issue at this time is inappropriate. However, the issue of stringency and timing of controls will be reviewed by the Parties under Article 6 of the Protocol at which time this issue can be further addressed.

7. Grant and Freeze of Baseline Production and Consumption Allowances for Group II Controlled Substances (§ 82.8)

This section implements the Protocol's freeze of the production and consumption of halons (Group II controlled substances). It grants companies 100 percent of their baseline production and consumption allowances for the control periods specified in § 82.3(f)(2). Section 82.3(f)(2) is reserved for future determination by EPA, because the Protocol provides for the halon freeze to begin on the first day of the thirty-seventh month following the Protocol's entry into force. Assuming the conditions required for entry into force are satisfied by January 1, 1989, the restrictions on halons would take effect on January 1, 1992. If entry into force is delayed, the freeze on halons would also be delayed. EPA will publish the dates of control periods for Group II controlled substances soon after the date of entry into force has been determined.

8. Availability of Production Allowances in Addition to Baseline Production Allowances (§ 82.9)

This section implements provisions in the Montreal Protocol which allow for limited production (but not consumption) increases above limits described above. At each stage, the Protocol allows production levels during a control period to exceed the limit by no more than ten percent (or 15 percent when CFCs must be reduced by 50 percent) of the 1986 level. Such increases are permitted "only so as to satisfy the basic domestic needs of the Parties operating under Article 5 [special situation of developing countries] and for the purposes of industrial rationalization between parties." Industrial rationalization is defined by the Protocol as "the transfer of all or a portion of the calculated level of production of one Party to another, for the purposes of achieving economic efficiencies or responding to shortfalls in supply as result of plant closures." The Protocol also allows a Party to exceed its production limit to the extent it reaches a binding agreement with a Party which produced less than 25 kilotonnes of controlled substances in 1986, if the "25-kilotonne Party" will reduce its production allowance by the same amount.

To enable producers to increase their production to the extent permitted by the Protocol, § 82.9 grants to each firm receiving baseline production allowances under §§ 82.5 and 82.6 "potential production allowances" equalling 10 or 15 percent of their baseline allowances depending on the control period and group of controlled substances. Holders of potential production allowances may then obtain EPA authorization to convert them to production allowances under § 82.11 by proving they exported to Parties a calculated level of controlled substances equal to the amount of potential production allowances they want to convert, or under § 82.12 by obtaining such authorization from another firm that obtained the authorization under § 82.11. In addition, § 82.9 permits anyone to produce controlled substances to the extent they receive a transfer of a 25-kilotonne Party's production allowance and they demonstrate to EPA that the transfer is *bona fide*.

One chemical producer suggested EPA should grant potential production allowances based on producers' past export activity. This producer argued that to be equitable, an allocated quota system should rely on past activities as the basis for granting all allowances including any potential production allowances. EPA believes that *past* export activities are properly dealt with in the context of calculating baseline consumption allowances and should not be used as a basis for allocating potential production allowances. To do so would unnecessarily link future export activity to past activity. Since any controlled substance produced could be exported, total production is a more appropriate basis for allocating potential production allowances. As a result, the rule provides that potential production allowances are allocated on the basis of total production allowances and not on the basis of past exports.

Another chemical producer suggested that the 10 percent limit on potential increases in halon production was too low because only a few relatively large production plants exist throughout the world and any industrial rationalization would necessarily have to involve increases greater than 10 percent. The commenter recognized, however, that any changes in the allowable increases would require modification of the Protocol. EPA is concerned that allowing halon production increases of more than 10–15 percent for the purposes of industrial rationalization would further concentrate production in a few

countries and create problems of potential monopoly power.

A public interest group stated that EPA should take action to ensure that any added production exported "to supply the basic domestic needs" of developing countries who qualify under Article 5 of the Protocol is used only for such needs and not reexported either as bulk chemicals or in products produced with or containing these chemicals. EPA believes that ensuring that Article 5 countries use imported CFCs and halons for their "basic domestic needs" is a Protocol enforcement issue within the purview of the Parties and not EPA. Since the Protocol does not define "basic domestic needs," EPA would risk placing inappropriate constraints on developing countries when the purpose of Article 5 is to encourage such countries to join the Protocol. EPA is also not equipped legally or financially to police how controlled substances are used in other countries. Compliance monitoring and enforcement issues are due to be taken up by the Parties at their first meeting within one year of the Protocol's entry into force and at that time implementation of the "basic domestics needs" provision can be addressed.

EPA also received several comments on its implementation of the industrial rationalization provision. A chemical company commented that EPA's was faithful to the intent of the Protocol negotiators that Parties be allowed to increase production somewhat in order to export controlled substances to other Parties. In contrast, a public interest group commented that production increased "for purposes of industrial rationalization" should be allowed only where the Party receiving the increase decreases its production by the same amount and where one of the two specified purposes—achieving economic efficiency or responding to shortfalls in supply as a result of plant closures—is being served.

The industrial rationalization provision of the Protocol is somewhat ambiguous, since at least two of its key terms could be interpreted in different ways. Industrial rationalization is defined in part as "a transfer of a calculated level of production between Parties." "Calculated level of production" could refer to the right to produce controlled substances or the produced controlled substances themselves. Similarly, "transfer" could refer to exchange of rights or simply trade in produced substances.

EPA has interpreted the industrial rationalization provision in light of the United States negotiators' understanding of the purpose of that provision. According to the lead United States negotiators, the industrial rationalization provision was included to permit some future flexibility in world markets for controlled substances. In 1986, the Protocol's baseline year, only a few nations were major exporters of controlled substances; a production cap based on 1986 levels with no allowances for limited growth would thus effectively lock in 1986 export-import relationships until substitute chemicals were available. By allowing some increase in Parties' production levels, the Protocol negotiators hoped to facilitate future competition in the world market.

EPA has thus interpreted the terms of the industrial rationalization provision mentioned above to mean trade in controlled substances between Parties. The Agency notes, moreover, that because the Protocol does *not* allow for any exceedence of Parties' consumption limits, trade in controlled substances effectively results in a transfer of production rights after 1992. Under the Protocol, Parties may not import controlled substances from non-parties beginning one year after the Protocol enters into force, and exports to non-Parties may not be subtracted in calculating a Party's consumption level as of January 1, 1993. Thus, the Protocol in effect creates a Party wide "bubble" of controlled substance production. If one Party increases its production by the 10 or 15 percent allowed, it must export that to a Party or decrease its imports from Parties to stay within its consumption limit. The Party that imports the increased production or loses the export of its own production will, in turn, have to decrease its own production (or export it to another Party) in order to stay within its consumption limit. Thus, a transfer of production rights can be said to have occurred.

EPA finds further support for its interpretation in the contrasting Protocol provision for transfers involving 25-kilotonne Parties (Article 2, paragraph 5). That provision expressly provides that the total combined calculated levels of production of the Parties involved in the transfer concerned cannot exceed production limits imposed by the Protocol and that the Protocol Secretariat be notified of any such transfer. The industrial rationalization provision contains no similar requirement that a production increase by one Party be offset by a production decrease by another

The Agency does not believe it is necessary to require firms engaging in industrial rationalization to prove that they are doing so for the specified purposes. Economic theory suggests that in a free market, agreements to buy and sell are based on what the participants consider to be in their economic self interest. A firm's decision to export its production is thus by definition "economically efficient," one of the two purposes industrial rationalization is to serve.

While EPA believes that it has correctly interpreted the industrial rationalization provision, if the Parties to the Protocol clarify this provision in a manner inconsistent with EPA's interpretation, the Agency intends to modify its rule accordingly.

EPA received three comments from chemical producers that it had unnecessarily limited production transfers with 25-kilotonne Parties to those involving transfers to the United States, whereas the Protocol allows transfers of production both to and from 25-kilotonne Parties. EPA has modified its final rule to allow for this added flexibility. However, in the case of transfers of rights to 25-kilotonne Parties, EPA recognizes that interests beyond the narrow commercial ones of the involved firm may be at stake. For example, transfers may adversely impact domestic industry and may have broader trade implications. As a result, EPA has reserved the right to review and approve any proposed transfers of production rights to entities outside the United States.

Any trades occurring under this transaction are also limited in size because EPA believes that the Protocol negotiators did not intend 25-kilotonne Parties to exceed the 25-kilotonne ceiling as a result of the transfer. The Protocol negotiators were concerned that under the agreement's reduction schedule, it would become uneconomic for low-producing Parties to continue production. They therefore provided that Parties with less than 25-kilotonnes of production in 1986 could transfer their production rights to another Party that could produce controlled substances economically, or receive transfers of rights so that they could maintain economic production levels. They did not intend to allow 25-kilotonne Parties to actually *increase* their production capacity as a result of buying rights, but to make use of other Parties' existing capacity or their own. (This approach is consistent with that taken to developing countries; negotiators allowed Parties to increase their production in order to supply developing country Parties and obviate the need for developing countries to build further production facilities.) Accordingly, EPA will only approve transfers to 25-kilotonne Parties that do not result in the Party's total

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production rights exceeding 25 kilotonnes.

9. Availability of Consumption Allowances in Addition to Baseline Consumption Allowances (§ 82.10)

Under this section, firms may receive additional consumption allowances upon proof of export of controlled substances. This provision is consistent with the Protocol's definition of consumption as production plus imports minus exports. EPA apportioned baseline consumption allowances equal to 1986 production plus 1986 imports minus 1986 exports. As a result, if the United States exported no controlled substances after the Protocol takes effect, it will still be in full compliance with the Protocol. Accordingly, to the extent controlled substances are exported, additional consumption allowances can be authorized without violating the consumption limits established by the Protocol.

In the initial years of the Protocol's operation, additional consumption allowances will be issued for all exports. However, the Protocol provides beginning on January 1, 1993, exports of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party. To reflect this limitation, § 82.10(b) prohibits the grant of additional consumption allowances for exports to non-Parties also beginning on January 1, 1993.

Seven commenters (chemical producers and a trade association) stated that EPA had unnecessarily restricted the issuance of additional consumption allowances until exports had been received in the country of destination. They suggested that EPA instead consider a shipment an export when it departs the United States so that additional allowances for the shipment could be obtained much sooner. Since additional consumption allowances and authorizations to convert potential production allowances to production allowances can only be used during the control period in which they are granted, any significant lapse of time between shipment and the grant of allowances would substantially undermine the ability of firms to obtain and use these rights, particularly during the last quarter of a control period. These commenters argued that granting allowances at the time of export would not create a loophole (e.g., controlled substances not counted by any nation) as long as all nations agree that exports would be counted at the time of departure and imports at the time of arrival. The technical experts at the Nairobi meeting similarly recommended that a shipment should be considered an export at the time it leaves the country of origin. EPA has decided to grant consumption allowances and authorization to convert potential production allowances upon proof that controlled substances have been shipped from the United States, on the assumption that the other Parties will also consider a shipment an export upon its departure and an import upon its arrival. Such a uniform approach, which the technical experts group has recommended, will permit adequate monitoring of Parties' compliance. However, if the Protocol Parties do not adopt the technical experts' recommendations, EPA will reconsider its treatment of this issue.

Three commenters (one chemical producer and two halon users) also requested that EPA specify a time limit in which it will process requests for additional consumption allowances and other administrative reviews. EPA is not now in a position to accurately assess the time it will require to process applications, but will endeavor to minimize any delays in reviewing and acting on such applications. It will consider at some later date, as part of its operating procedures, establishing a goal for timely processing of applications.

Two chemical producers suggested that exporters be allowed to credit themselves with additional consumption allowances and conversion authority upon exporting and that EPA should monitor these exporters' activities by conducting an annual audit of each firm. EPA cannot accept this suggestion because it would create far too much uncertainty as to whether a particular export qualified for additional allowances and thus whether the United States was complying with the Montreal Protocol. EPA also believes that an affirmative decision by EPA on each application for additional allowances would reduce the possibility of fraud and provide greater market certainty for future transactions involving production and consumption allowances.

10. Exports to Parties (§ 82.11)

This section sets forth the process by which any person may export controlled substances to another Party to the Protocol and obtain from EPA authorization to convert potential production allowances to production allowances. The authorization will only be valid during the control period in which it is issued. Requests for authorization to convert will also be considered a request for additional consumption allowances under § 82.10.

Following the export of a controlled substance and receipt of authorization to convert potential production allowances to production allowances, the recipient has two options. If the person holds potential production allowances (issued under § 82.9), he may use his conversion authorization to produce controlled substances consistent with § 82.11 or, if he does not hold potential production allowances, he may transfer his conversion authorization under § 82.12 to a person that does. In keeping with the Protocol, EPA's rule sets a 10 percent limit on potential production allowances for the freeze and 20 percent reduction stages for Group I and Group II controlled substances and a 15 percent limit for the 50 percent reduction stage for Group I chemicals.

As discussed above in the context of the issuance of additional consumption rights (§ 82.10), several commenters requested that EPA consider a shipment an export when it leaves this country, instead of when it arrives in another. EPA has modified the rule to allow for exports to be counted at the time they leave the country. As a result, EPA has dropped that part of § 82.11 which requested, as part of the application for authorization, the date the shipment arrived at the foreign destination.

11. Transfer of Production and Consumption Allowances (§ 82.12)

EPA's proposed § 82.12 permitted the transfer of the allowances granted under this rule subject to certain procedural safeguards. This transfer section is reserved in today's final rule pending further review of the procedural safeguards. Even without the transfer provision, the regulation fully implements the Montreal Protocol. However, EPA recognizes that the transfer provision will make the rule more economically efficient. EPA expects to promulgate a final transfer provision in advance of the effective date of today's regulation.

12. Recordkeeping and Reporting Requirements (§ 82.13)

The December 14 NPRM outlined alternative reporting and recordkeeping requirements for producers, importers and exporters of controlled substances. Generally, EPA proposed that producers and importers maintain daily records of production or imports and submit monthly reports to EPA to monitor compliance. EPA also proposed that producers file and periodically update annual production plans for compliance purposes. Similarly, the Agency proposed that exporters report their

shipments on a monthly basis. In the December 14 preamble, EPA outlined several options of varying detail for reports and recordkeeping (52 FR 47504). In the discussion that followed those options, EPA stated that it was leaning toward requiring more detailed requirements to facilitate its monitoring of compliance.

Since the December 14 proposal, EPA has reviewed the comments on these reporting and recordkeeping requirements. In addition to these comments, EPA has met with the producers of controlled substances to discuss the reporting burdens of the proposed rule, and visited three plants to review current producer recordkeeping practices.

*a. Producers.* (1) Daily Recordkeeping—The December 14 proposed rule requested that producers maintain the following information: Daily records of the quantity of the controlled substances produced at each facility including controlled substances produced and consumed for feedstock purposes; daily records of the quantities of HCFC–22 and CFC–116 that may also be produced at the same facilities; continuous records of the reactive temperatures and pressures within the primary reactor and initial distillation column at each facility during the production operations; daily records of purchases and uses of specified materials consumed in producing the regulated chemicals; and daily records of the quantity and purchaser of controlled substances produced at each plant (Section 82.13(e)). The proposal required that these records be retained for a period of four years.

EPA requested daily records to obtain precise information on production as well as important independent checks for verification. These checks include the quantity of feedstock consumed in production and the volume of chemicals which could be produced within the same production unit (i.e., HCFC–22 and CFC–116), as well as sales of these chemicals. EPA believed that the more precise information would aid in verifying reported production and pinpointing violations.

Seventeen commentors believed that these daily recordkeeping requirements were unnecessary and excessive. Specifically, several commentors believed that such parameters as feedstock materials bought and used, records of sales volumes and customers, and reactor temperatures and pressure were unnecessary and in some cases meaningless as checks on production.

In reviewing the recordkeeping practices of producers, EPA found that much of the information required by the proposal is currently recorded on a daily basis by the industry. Since this information is already being recorded, EPA does not believe that a requirement for daily recordkeeping is excessively burdensome, and therefore maintains with modifications that requirement in the final rule. EPA recognizes that while continuous records of reactive temperature and pressure may provide a check on production, they would also entail detailed analysis for compliance monitoring when other information is available. For this reason, these parameters have been eliminated from the daily recordkeeping requirements. EPA has also eliminated the requirement for sales records which were to be maintained for each plant. In many cases, sales are recorded at the producer level but not at the plant level; based on its review, EPA believes that shipments serve as a better check on production. EPA has also eliminated recordkeeping requirements for the quantities of feedstocks purchased. Since these raw materials may be used in the production of chemicals other than controlled substances, purchase records may not provide a useful check on quantities of raw materials consumed for production of controlled substances.

For the final rule, producers are required to maintain dated records of the quantity of the CFCs and halons produced at each facility including the dated records of the quantity of controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances, any virgin, used or recycled controlled substances introduced into the production process of new controlled substances. They are also required to keep records of the following feedstock materials consumed in producing the regulated chemicals at each plant: Carbon tetrachloride, perchloroethylene, chloroform, hydrofluoric acid, chlorine, bromine, CFC–113; HCFC–22; and CFC–23. EPA requests records of feedstocks consumed since EPA can approximate the quantity of controlled substances produced by monitoring the materials consumed. Producers must also maintain dated records of HCFC–22 and CFC–116 produced within the same facility or production unit of a controlled substance. The production volume of HCFC–22 and CFC–116 will help determine the duration of time in which facilities are dedicated to the production of controlled substances if the plant maintains year round production. The Agency also requires records for the quantity of used or recycled controlled substances, the date received, and the names and addresses of the sources of recyclable or recoverable materials containing controlled substances which are recovered at each plant. EPA is also requesting that records of shipments of controlled substances from plants be maintained. This is a new requirement, recommended in discussion with industry, which is based on current practices and which EPA believes will aid the Agency in verifying production.

Based on a review of producer's methods of monitoring CFC and halon production, EPA believes that current methods of recordkeeping will generally be sufficient to satisfy the recordkeeping requirements. EPA is aware that some producers may not make daily production estimates over weekends, and that production may not be measured directly but determined from records of consumption, shipments, and inventories. EPA believes these accounting procedures are acceptable for purposes of this regulation, but needs to verify that currently maintained records are sufficient to comply with recordkeeping requirements. EPA is requiring producers to submit within 120 days of publication of this rule a report detailing how production is measured on a regular basis and how this data will be used to determine quarterly production figures in kilograms. Any change in accounting and measurement methods must be described and submitted to EPA within 60 days of the change. EPA reserves the right to require alternate measurement techniques if deemed necessary.

EPA has altered the requirement that these records be maintained from a period of four years to a period of three years. EPA believes that it may be necessary to review historical production records during investigations of potential violations and that three years of past activity should prove adequate for such review.

(2) Production Reports. In the December 14 proposal EPA requested monthly reports within 15 days after the reporting period from producers of the controlled substances for each plant and for all plants owned by the same company. EPA requested that the reports include summaries of monthly production of the controlled substances; quantities of HCFC–22 and CFC–116 produced that month at each facility; monthly summaries of the quantity of sales for each of the controlled substances; the quantity and source of material containing recoverable controlled substances and the quantity of controlled substances recovered; summaries of total monthly and control period-to-date production of the

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calculated levels of Group I and Group II controlled substances; and the producer's total consumption allowances, production allowances and authorization to convert potential production allowances to production allowances.

In their comments, industry members argued that quarterly or annual reporting was sufficient, and that a 30- to 45-day filing period at the end of the reporting period was necessary. In addition, commenters believed that the reporting of unregulated chemicals was not required to measure compliance.

After consideration of these comments and based on meetings with producers and site visits, EPA has determined that quarterly reports with a filing period of 45 days after the close of the reporting period are appropriate. Quarterly reporting will provide EPA with periodic review of producer's compliance with the regulation during a control period and help target inspections while minimizing the reporting burden on producers. EPA has extended the filing period to 45 days to allow companies adequate time to review and verify their reports and to allow companies with more than one plant to compile the information into a single report. EPA has considered fiscal quarters rather than actual quarters. However, the Montreal Protocol does not allow EPA the flexibility to shift to fiscal control quarters.

Therefore EPA requires that producers report on a quarterly basis consistent with the applicable control period.

Since one purpose of these reports is to provide EPA with information to verify production, EPA requests that producers submit the following information: Summaries of quarterly production of the controlled substances, specifying the quantity used and consumed as feedstock for controlled and non-controlled substances; the quantity, the date received and source of material containing recoverable controlled substances and the quantity of controlled substances recovered; summaries of total quarterly and control-period-to-date calculated production levels of Group I and Group II controlled substances; and the producer's total expended and unexpended consumption allowances, expended and unexpended production allowances, potential production allowance, and authorization to convert potential production allowances to production allowances, as of the end of the quarter.

One change in the proposed reporting requirements involves reporting of the quantity of shipments from each plant for each of the controlled substances, instead of sales. This change has been made because shipments are a more accurate check than sales on production and records of these are currently maintained by producers. EPA has deleted the requirement that producers report the quantities of HCFC–22 and CFC–116 produced. This information is still required for recordkeeping purposes so that it can be reviewed during site inspections, but need not be included in reports to EPA.

(3) Annual Production Plan. EPA proposed in the December 14 NPRM that producers submit annual production plans for each facility and notify the Agency of any significant shifts in the location or quantity of production. EPA believed that such plans would provide useful information for monitoring compliance.

Industry members commented that the production plans are an unnecessary check on compliance. Furthermore, although firms are likely to develop an annual production plan for internal purposes, these plans rarely agree with actual monthly or quarterly production volumes. They also objected to the requirement that companies would need to notify EPA when production shifts occurred to meet demand shifts. EPA no longer believes that continual justification of production volumes with the production schedules in the production plan will assist it in monitoring compliance. For this reason, EPA has eliminated the annual production plan as a reporting requirement.

*b. Importers.* (1) Daily Recordkeeping—EPA proposed that importers maintain daily records of the quantity of controlled substances imported; the dates and ports of call for imports; the date and port of entry into the country; the dates on which and the country in which the imported controlled substances were produced; and a name of a person from whom additional information can be obtained. Similar to daily recordkeeping by the producers, EPA proposed daily recordkeeping by the importers to provide more precise information on import activities which would aid in evaluating trades and, pinpointing violations and allow comparison with U.S. Custom and Census data.

Comments on proposed daily records from importer's related primarily to the scope of items to be recorded. Because imports are now counted at the time they are received in a country, it is no longer necessary to know the date on which they were produced. For the same reason the Agency will not require the dates and ports of call for imports.

The final rule requires that importers maintain daily records of the following: the quantity of virgin used and recycled controlled substances imported; the date and port of entry into the United States or its territories; the country from which the imported controlled substances were exported and the port of exit. In addition, EPA requires importers to record the commodity code and his importer number for each shipment. Importers must also keep the following documentation to verify imports: the bill of lading, the invoice and U.S. Custom's Entry Summary Form (Form 7501). This information will allow EPA during compliance checks and investigations of potential violations to check U.S. Census reports against shipments. Retention of the bill of lading and the invoice is necessary to provide EPA with an independent check on quantities imported, separate from Census and Customs data.

(2) Monthly Reporting. EPA proposed to require importers to submit a monthly summary of the information recorded on a daily basis. In addition, monthly reports by importers were to include totals for control-period-to-date and the importer's total consumption allowances at the end of the month.

Commenters generally believed that monthly reporting is too frequent and that quarterly reporting would be sufficient. They also argued that a 30-day filing period after the close of the reporting period is needed to provide accurate reports to EPA.

For the final rule EPA requires that importers, like producers, file quarterly reports within 45 days of end of the reporting period. Importers may receive shipments at several ports throughout the country and 45 days are needed to collect this information. EPA believes that these companies need sufficient time to summarize the information and report accurate quantities. Also since several importers are also producers, the reporting period for importers should be consistent with the 45 day reporting period for producers. These reports must include the following: The quantity of controlled substances that are imported in that quarter; the calculated levels of Groups I and II controlled substances imported for the quarter and the total for the control period; the total quantity of expended and unexpended consumption allowances the importer holds at the end of the quarter. The importer must also provide a summary of his import activities which shall include the quantity of each import, the date and port of entry into the United States or its territories; the country from which the imported controlled substances were

imported and the port of exit; and a name and address from whom additional information can be obtained. In addition, the commodity code and his importer number have been included to assist with comparison and verification of importer records with U.S. Census and Customs records.

*c. Exporters.* EPA proposed that exporters who did not report under §§ 82.10 and 82.11 of the rule submit reports within one month of export which would include the name and address of the exporter and recipient of the export; the exporter's Employer Identification Number (EIN); the type and quantity of controlled substances exported; the date on which and port from which the exports were shipped; the date and country to which the exports were shipped; and the date and source from whom the exported controlled substance were purchased. EPA requested the information to provide a basis for independently verifying that exports were shipped.

EPA has modified these reporting requirements for exporters not requesting additional consumption rights under §§ 82.10 and 82.11. Firms not requesting additional consumption rights must report within 45 days of the end of the control period. EPA requires this information to comply with the Montreal Protocol and therefore does not believe that monthly reporting is necessary. Since consumption rights are not requested for these exports, periodic monitoring and independent verification is not needed. Consequently, these exporters need only report at the end of the control period.

From these exporters EPA requires the following: name and address of exporter and recipient of the exports, the exporter's Employer Identification Number (EIN); the type and quantity of controlled substances exported and the percent that is recycled or used; date and port from which the exports were shipped. The commodity code of the shipment is a new requirement which allows EPA to verify these shipments. Also, because exports are now to be counted at the time of their departure from this country instead of their date of receipt in a foreign country, EPA has eliminated the requirement that exporters report the date of a shipment's arrival in the receiving country. EPA has maintained the date and source from whom the exported controlled substance were purchased as a reporting requirement to ensure that in calculating its national consumption limit, only virgin controlled substances that are exported are subtracted from its total consumption.

EPA has added § 82.13(b) regarding the use of reports and records for purposes of compliance determinations to clarify the Agency's original intent that the records and reports required would be used not only for compliance monitoring, but also for compliance determinations. EPA does not intend to limit the use of other evidence admissible under the Federal Rules of Evidence. The Federal Rules of Evidence permit the introduction of all relevant evidence, subject to limited exceptions.

EPA is deferring decision on whether to make public any or all of the above reporting information required under § 82.13. EPA solicited public comment on this issue in its May 24, 1988 supplemental proposal. The reporting requirements will not become operative until after the rule takes effect, which will not occur before January 1, 1989, and the first reports will be submitted after that time. Affected persons must at the time of submission specify what of the submitted data is covered by 40 CFR Part 2, Subpart B, which governs the treatment of business information, or a waiver of any confidentiality claim will have occurred. EPA plans to make a determination as to the releasability of the reporting information at some future date.

### 13. Payment of Fees (§ 82.14)

In the preamble to the December 14 proposal, EPA discussed requiring payment of an administrative fee to cover the costs of operating the program (52 FR at 47505). This fee would be imposed under the Independent Offices Appropriation Act (31 U.S.C. 9701). The preamble described what activities might be covered by the fee, how EPA might determine the costs of these activities, and how the fee might be implemented. While seeking comment on these issues, EPA did not propose specific fee language in its proposed rule (proposed Section 82.14 was simply reserved for this purpose).

Many commenters objected to the imposition of an administrative fee. Fourteen chemical producers and users stated that the fee proposal had not been adequately detailed in the proposal, and that therefore EPA should not take final action without additional comment. Two chemical producers argued that EPA, by streamlining its administrative processes, could avoid any need for a fee to cover administrative costs.

EPA believes that modifications in the reporting and recordkeeping provisions have substantially reduced the administrative burden associated with the operations of the allocated quota system. Moreover, until the program begins, it is difficult to determine the costs of operation. The number of transfers and exports are unknown and will largely determine total program costs. Assuming a limited number of such transactions, EPA does not believe that substantial Agency resources will be required to operate the program and is concerned that the costs of operating the fee program will be a substantial share of the total costs of the allocated quota program.

Because of these concerns, EPA has not included in this notice a final provision requiring payment of an administrative fee. However, the Agency intends to reserve § 82.14 and will determine at some future date if resource costs justify promulgating an administrative fee requirement.

### 14. Appendices to Part 82

As part of the December 14 NPRM, EPA set forth several appendices to the proposed rule. Appendix A contains the ozone depletion weights for each of the controlled substances. These weights are based on the atmospheric lifetimes and the amount of bromine and chlorine in each of the chemicals contained on the list. The weights are used in determining the "calculated levels" of each controlled substance—the quantity of the chemical multiplied by its ozone depletion weight.

Appendix A contains the ozone depletion weights specified by the Montreal Protocol with one exception. EPA has included a weight of 6 for Halon 2402, whereas the Protocol leaves this weight for future determination.

EPA received several comments, questioning the scientific basis for the ozone depletion weights assigned to the halons. EPA clearly stated in the preamble to the December 14 NPRM that the weights assigned to the halons are based on more limited research than those assigned to the CFCs and therefore are substantially less certain. However, the current weights, including that assigned to Halon 2402, represent the best available information from the scientific community. Additional work is underway to review the determination of ozone depletion weights for each of the controlled substances. This analysis will be examined as part of the periodic assessments required by the Protocol and modifications to the weights will be made, if warranted. Moreover, if the Parties adopt a different weight for Halon 2402 than that contained in the final rule, the Agency will consider revising that aspect of the rule.

Two commenters from the refrigeration industry expressed concern that the weights for several of the CFCs

had changed from prior EPA publications and that the change had led to CFC–115 being "unexpectedly" added to the list of substances covered by the Montreal Protocol. EPA notes that the basis of the ozone depletion weights for the CFCs has not changed, but that the context in which the weights are being used has shifted. Early EPA studies reported weights on a per molecule basis which is generally more useful for the purposes of atmospheric modelling. When the context in which these weights were used shifted to regulatory controls, it becomes more appropriate to report weights on a per kilogram basis. Thus, the weight only changed to correspond to a change in the applicable unit of measurement. CFC–115 was appropriately included in the Protocol because it is among the commercially available fully halogenated compounds.

Taking these comments into consideration, EPA has not altered the ozone depletion weights included in Appendix A, but will continue to monitor relevant research and will modify these weights in the future if new information warrants such change.

15. Preemption of State and Local Regulations

Numerous commenters have urged EPA to state that the final rule preempts any state or local law. Section 159(b) of the Clean Air Act provides that if EPA adopts a regulation to protect the stratosphere, "no state or political subdivision thereof may adopt or attempt to enforce any requirement respecting the control of any such substance, practice, process, or activity to prevent or abate such a risk, unless the requirement of the state or political subdivision is identical to the subject of such regulation." EPA does not interpret section 159(b) as meaning that the adoption of any federal regulation of any substance, practice, process, or activity would preempt the entire field of stratospheric ozone regulation. As the Report by the Committee on Interstate and Foreign Commerce (House Report 95–294 (1977) p. 99) explained, "Thus, for example, if the Administrator were to promulgate regulations limiting or prohibiting use of halocarbon compounds as foaming or blowing agents in certain industrial processes, states and localities would be preempted from regulating or prohibiting such use of such compounds, except in accordance with federal regulation. State or local regulation of other uses of such compounds would not be preempted thereby, however." In EPA's view, states and political subdivisions would be prohibited from adopting any production or import limits not identical to those in EPA's regulation. However, since EPA's regulation only covers the production and importation of CFCs and halons, state or locally imposed limits, for example, on specific uses would not be precluded by the preemption provision.

## V. Impact of Proposed Action

As part of its evaluation and response to public comments, EPA has revised its RIA. The results of the final RIA are described in the following sections. Significant comments received on the December RIA and on issues raised in the December 14 NPRM, along with EPA's response to these comments, are also presented.

### *A. Reductions in Ozone Depletion*

Today's final action should substantially reduce the threat of stratospheric ozone depletion and the accompanying risks to human health and the environment. As shown earlier in Table 3, in the absence of regulatory action to limit the growth of CFCs and halons, ozone depletion of greater than 50 percent by the year 2075 would be likely. Implementation of the Protocol by the United States, most of the other developed nations and a large majority of the developing nations are projected to reduce the risks of depletion to under 2 percent in 2075. Because 37 nations have already signed the Montreal Protocol, assumptions concerning widespread participation by both developed and developing countries appear reasonable.

Given the large uncertainties inherent in the current atmospheric models, in projecting long-term growth rates for the relevant trace gases, and in predicting the degree of participation by other nations in the Protocol, EPA believes its action represents a reasonable response to the ozone depletion threat established by the scientific evidence available at the time of this rulemaking. However, as described above, the Ozone Trends Panel Summary suggests that important new evidence will soon be available. EPA intends to seek public comment on the full report when it becomes available and integrate this new evidence into a supplemental risk assessment the Agency is currently preparing. EPA also intends to work toward expediting and actively participating in upcoming assessments and reviews called for by the Montreal Protocol.

### *B. Economic Impact*

As part of the accompanying RIA, EPA examined the potential costs to United States industry of meeting various levels of reductions in CFC and halon production and consumption. It also analyzed and compared these costs to the potential health and environmental benefits of reduced exposure to harmful ultraviolet radiation which would result from measures to protect the ozone layer. The health and environmental benefits assessed are those accruing to the United States alone, but are based on the assumption that most other nations, through their participation in the Montreal Protocol, join in making the same level of reductions undertaken by this country.

As explained in the preamble to the December 14 NPRM and detailed in the final RIA, the cost analysis takes a "bottom up" approach. It examines uses of CFCS and halons within eight major industrial groupings: Refrigeration; air conditioning; flexible foam; rigid foam; solvent cleaning; sterilization; fire extinguishant; and miscellaneous. Within these larger groupings it examined 74 specific use applications (e.g., commercial refrigeration, home refrigeration, etc.). To determine costs, the RIA examined over 900 technologically feasible options for reducing consumption of these chemicals. Since many of these options were eliminated from consideration because of high costs or possible toxicity, the analysis drew from approximately 300 technically feasible responses to controlling the use of CFCs and halons.

The potential benefits examined in the RIA also cover a broad range of health and environmental impacts. Any significant shift in the quantity and make-up of ultraviolet radiation striking the earth's surface would represent a major change in one of the basic environmental parameters, affecting most forms of biological life. While the RIA attempts to quantify some of the likely major impacts (e.g., skin cancers), limited research completed to date prevents the quantification of other potentially significant risks (e.g., immune suppression).

1. Economic Costs of Reductions

The analysis contained in the RIA examines and provides cost estimates for a wide variety of different control options over a long period of time. The types of controls examined include: Engineering controls; chemical substitutes; product substitutes; changes in work practices; and recycling and recovery technologies. The analysis sought to include technologies that were currently available, along with those that were likely to become commercially available over the next decade. It also took into consideration such factors as

changes in energy costs and compliance with other relevant environmental requirements (e.g., water pollution or worker exposure restrictions).

Estimates of the costs of reducing CFC or halon use to specified levels are developed using the Integrated Assessment Model (IAM), which is detailed in Appendix I of the RIA. Essentially, this model operates by prioritizing the potential reductions in CFC and halon use on the basis of least cost and the judgment of EPA contractors and staff based on discussions with industry representatives on how firms are likely to respond to reduction requirements. Several commenters raised concerns with the RIA's cost projections. Two chemical producers stated that EPA had underestimated the costs of reductions. In particular, they claimed that the large number of options that EPA predicted would save money suggested that EPA had left out factors affecting costs. EPA has reviewed its cost documentation and analysis and modified some of the cost estimates based on the additional information provided by commenters. (Specific changes are presented in Part 10 of Volume III of the RIA.) However, EPA's information and analysis still show that many options to reduce CFC and halon use can be implemented at little or no cost, and in some cases can decrease costs. Cost-saving options exist because all firms involved in using CFCs and halons do not possess perfect information as to available controls. Recent attention to this issue has already dramatically reduced the cost of obtaining information on control options. As a result, firms in certain industry segments are beginning to shift away fron these chemicals without incurring production cost increases. In any event, the RIA assumed zero costs (i.e., no cost savings) for those controls which EPA believes in some cases, based on engineering analysis, can save firms money.

Other commenters stated that an industry-supported economic analysis (Putnam, Hayes and Bartlett, 1987), which they argued contained cost projections that were substantially greater than those of the preliminary RIA, presented a more realistic estimate of future costs of compliance. EPA has reviewed both the methodology and the results of the industry's study. Unlike EPA's RIA which linked costs and reductions to specific technologies, the industry's analysis is based on industry's expert opinion on the quantity of reductions it would make if CFC prices increased by a certain amount. Because of this streamlined approach to estimating costs, it is extremely difficult to identify and compare specific differences in the two studies. Nonetheless, the results of the two studies do not differ dramatically. In fact, when differences in scope (e.g., treatment of halons) are taken into account, the industry's analysis generally falls well within the range of estimates presented in the RIA accompanying both the proposed and final rules.

In addition to making corrections and including new information provided in the public comments, EPA has also updated the engineering costs contained in its RIA to reflect rapidly emerging technologies to reduce and replace CFCs and halons. For example, in the time since the December NPRM was published, the food packaging industry reached an agreement to voluntarily eliminate its use of CFC–11 and –12 (generally by shifting to HCFC–22 and blends) by the end of this year. A major chemical producer has announced a blend of CFC–113 which contains 25–30 percent less of this chemical than current formulations at no additional costs and with no loss in cleaning effectiveness. A large electronics firm working with a small chemical company announced a terpene-based solvent substitute for use in some electronics cleaning. Work has also progressed on alternative blowing agents (e.g., HCFC–22, HCFC–141b, and HCFC–123) for many foam applications including insulation. Segments of the car air conditioning and servicing industries and the air conditioning and refrigeration industries have stepped up activities aimed at facilitating increased recycling and recovery at the time of servicing. In addition, further testing has been conducted on a blend containing dimethylether which reduces the use of CFC–12 in existing refrigeration and auto and space air conditioners. These options have now been incorporated into the RIA's cost analysis. Some are already being used by firms and are therefore considered in each scenario examined. Others, though promising, are not yet fully proven and commercially available, and therefore are examined as part of different cases (scenarios) presented in the RIA which compare the costs of compliance based on different assumptions about the timing and market penetration of various control technologies.

To reflect the substantial impact that the timing and degree to which these technologies are adopted by user industries have on cost estimate projections, the analysis in the RIA focuses on two cases. The differences in these cases are the rate at which firms adopt these measures, the percent of the firms in an industry who take this action (e.g. market penetration), and the quantity of emission reductions achieved by the technology. Case 1 assumes that key user industries delay their adoption of reduction technologies, market penetration of these controls is limited, and the magnitude of reductions they achieve is on the low end of the amount that now seems plausible. In contrast, Case 2 assumes that technologically available low-cost reductions are adopted expeditiously by key user industries. Specifically, in Case 2, the RIA assumes the following reduction technologies are employed within the next few years: Shifts to HCFC–22 in specific markets for rigid foam insulation; increases in recovery of CFCs from refrigeration; switches by some percentage of hospitals to disposable instruments and steam cleaning instead of CFC based sterilization; improved housecleaning by solvents users and substantial shifts to CFC–113 blends, terpene or aqueous cleaners; increases in recycling of CFC–12 at large auto shops when servicing car air conditioners; and shifts to water blown foam or modified polyols by molded and slabstock flexible foamers.

Table 4 presents the total social costs of complying with Case 1 and 2 for reductions required by the final rule (i.e., the Montreal Protocol case). It demonstrates that the costs through 2000 of meeting the control requirements could nearly triple depending on the rate at which firms adopt reduction technologies. The cost differential is substantially greater for the near term rather than over the longer term.

Table 4 also shows the potential windfalls or transfer payments which would result from this regulation. The potential amount of windfalls also varies considerably between the Case 1 and 2, particularly in the early years. The analysis suggests that even in Case 2, with its optimistic assumptions about shifts away from CFCs, the allocated quota system would create windfalls of almost $2 billion dollars through the turn of the century.

TABLE 4.—SOCIAL AND TRANSFER COST ESTIMATES FOR CASES 1 AND 2 COST SCENARIOS [a]

[In millions of 1985 dollars]

| | Case 1 | Case 2 |
|---|---|---|
| Social Costs: [b] | | |
| 1989–2000 | 2,730 | 1,012 |
| 1989–2075 | 39,500 | 20,760 |

TABLE 4.—SOCIAL AND TRANSFER COST ESTIMATES FOR CASES 1 AND 2 COST SCENARIOS [a]—Continued

[In millions of 1985 dollars]

| | Case 1 | Case 2 |
|---|---|---|
| Transfer Costs: [c] | | |
| 1989–2000 | 7,300 | 1,900 |
| 1989–2075 | 13,600 | 6,900 |

[a] The assumed stringency and coverage used in this analysis are those of the CFC 50%/Halon Freeze case described in Chapter 5 of the RIA. CFCs are regulated with an initial freeze in 1989 at 1986 levels, 20 percent reduction in 1993, and 50 percent reduction in 1998, and halons are frozen at 1986 levels in 1992. The assumed rate of growth in CFC and halon use is the Middle Growth Scenario described in Chapter 4 of the RIA.
[b] Social costs are discounted at 2 percent.
[c] Transfer costs are discounted at a rate of 6 percent to reflect the opportunity cost of funds in the private sector. Transfer costs are not reduced by the taxes that would be paid on them.

Table 5 shows the CFC price increase for the final rule that would result from the assumptions about cost controls contained in the Cases 1 and 2. The increase in CFC prices will also vary dramatically based on the rate at which CFC user industries employ reduction technologies.

TABLE 5.—PROJECTED CFC AND HALON PRICE INCREASES FOR THE CASES 1 AND 2 COST SCENARIOS [a]

[1985 dollars]

| | Control cost scenarios | |
|---|---|---|
| | Case 1 | Case 2 |
| CFC Price Increases: | | |
| 1989 | 6.69 | 0.00 |
| 1991 | 1.84 | 0.00 |
| 1993 | 3.93 | 1.55 |
| 1995 | 3.77 | 1.59 |
| 2000 | 5.48 | 3.77 |

[a] The stringency and coverage assumptions used are those of CFC 50%/Halon Freeze case described in Chapter 5 of the RIA. CFCs are regulated with an initial freeze in 1989 at 1986 levels, 20 percent reduction in 1993 and 50 percent reduction in 1998, and halons froze at 1986 levels in 1992. The assumed growth in CFC and halon use is the Middle Growth Case described in Chapter 4. Price increases are cited on a standardized "ozone-depleting equivalent" basis per kilogram.

### 2. Health and Environmental Benefits

The preliminary RIA described a wide range of potential health and environmental effects of ozone depletion. This description was based largely on the analysis contained in EPA's risk assessment.

As described in the risk assessment (and the SAB's review of it), varying amounts of research have been completed on different health and environmental effects. For example, while considerable research has led to the identification of a dose-response relationship between UV–B radiation and nonmelanoma skin cancer, only a limited number of case studies exist showing the nature of the impact of increased UV–B radiation on the formation of groundlevel ozone (smog). In fact, the SAB panel's interim report stated that they believed that the potential risk of harm was greater for some of the health and environmental effects where little was known (e.g., immune suppression and damage to plants and aquatics organisms) than for other areas where better information was available (e.g., skin cancers).

Because of these concerns, EPA attempted to develop dose-response relationships for many of the potential health and environmental impacts. This sometimes involved extrapolating from short-term case studies on one or more species or regions. EPA quantified these effects primarily to provide policy-makers with an illustration of the potential magnitude of impacts in these areas. Substantially more research will be necessary before reliable dose-response estimates are possible, particularly in the areas of plant and aquatic effects.

A chemical company and an industry research organization criticized EPA's efforts to quantify one or more of the potential environmental impacts (e.g., plant and aquatic effects, urban ozone formation and polymer degradation). As discussed above, EPA recognizes the limitations inherent in extrapolations from limited case studies, but believes that the analysis contains the appropriate caveats and, on balance, provides useful information for policy-makers. A public interest group criticized EPA for not including experimental results from Antarctica demonstrating dramatic losses in phytoplankton from increased exposure to UV–B radiation. EPA did not include this information in the RIA analysis because it has not yet been peer reviewed and therefore is of a preliminary nature. The Agency intends to more fully explore the potential health and environmental effects of the Antarctica ozone hole as part of its update of its risk assessment.

One chemical producer and a government agency criticized the RIA's estimates of future skin cancer cases and deaths. They suggested that the public would modify its behavior and avoid exposure and/or that improvements in medical technology would reduce damage and deaths from this form of cancer.

EPA knows of no evidence supporting the theory that behavior will be modified to avoid exposure. It also notes that behavioral changes, if they occurred, would themselves be a cost of ozone depletion. Nonetheless, the RIA includes a sensitivity analysis which reduces by 25 percent predicted mortality rates for skin cancers. In another sensitivity analysis, all mortality rates are reduced (e.g., medical advances decrease mortality from all causes not just from skin cancers). These results are presented in Chapter 10 of the final RIA and show the reduced number of projected deaths from skin cancers which occur under these assumptions.

One commenter raised the question of whether a recent report showing that UV–B radiation had decreased in the past decade suggested that the models linking ozone depletion to increased UV–B radiation were inaccurate. Accepted scientific theory suggests, if the ozone layer had depleted over the past decade, UV–B radiation striking the earth should have increased. EPA has reviewed the study cited by the commenter and believes that several aspects of its design may make its results unreliable. While the physical properties of ozone's absorption of UV–B radiation are well established in the scientific community, this particular study is based on a limited network of monitoring stations. Moreover, the monitoring sites are typically located near airports where increases in local pollution could have influenced the results. Nor has the effect of possible changes in local weather conditions (e.g., cloud cover and precipitation) been evaluated. EPA will continue to monitor research related to direct measurements of UV–B radiation, but does not believe that the study mentioned by the commenter provides sufficient grounds for altering its current assessment.

Other commenters stated that the relationship between UV–B and both melanoma and cataracts was so uncertain that it could not be quantified. While EPA recognizes that greater uncertainty exists as to the dose response relationship for these health effects, the RIA applies the methodology developed and reviewed as part of EPA's risk assessment document. In the case of melanoma, EPA conducted an extensive review of the literature and organized a panel of experts to explore its relationship to UV–B radiation. For both melanoma and cataracts, the findings contained in the EPA's risk assessment were extensively reviewed and approved by the SAB.

Table 6 provides a summary of the health and environmental benefits of reducing ozone depletion to the extent that would occur if the Montreal

Protocol were widely implemented. Because of the uncertainties in these estimates, it also provides a range of values based on sensitivity analyses of key variables.

TABLE 6.—SUMMARY OF BENEFITS FROM REDUCED OZONE DEPLETION [a]

| | Reference scenario |
|---|---|
| Skin cancer cases (low and high sensitivity). | 173.9 million (91 million to 306 million). |
| Skin cancer deaths (low and high sensitivity). | 3.7 million (1.9 million to 6.8 million). |
| Cataract cases (low and high sensitivity). | 19.1 million (10.4 million to 26.0 million). |
| Damage to crop yields (low and high sensitivity). | 7 percent (extrapolation of soybean dose-response). |
| Decrease in fish harvests (low and high sensitivity). | 25 percent (extrapolation of anchovy dose-response). |
| Damage to polymers (low and high sensitivity). | 3.6 billion (extrapolation of PVC dose-response). |
| Increase in tropospheric ozone (low and high sensitivity). | 29 percent (based on case studies from three cities). |
| Sea level rise (low and high sensitivity). | 12.6 cm (± 50 percent). |
| Non-quantified Benefits | |
| Increase in actinic keratosis immune suppression | |
| Tropospheric ozone impacts on pulmonary system. | |
| Pain and suffering from skin cancer. | |
| All temperature related effects. | |
| Beach erosion from sea level rise. | |
| Loss of coastal wetlands from sea level rise. | |
| UV effects on aquatic and terrestrial ecosystems. | |
| Tropospheric ozone impacts on non-grain crops, forests, other plant species, and man-made materials. | |
| UV effects on materials currently in use. | |

[a] Benefits are derived by comparing health and environmental impacts in the absence of control (i.e. no controls case) to the Montreal Protocol case (i.e. 50% CFC/halon freeze case).

*Assumptions*

1. Benefits. Benefit estimates are estimated for the United States only.

2. Time horizon. Table shows avoided damages from Montreal Protocol case relative to "no controls" for populations alive today and born before 2075.

3. Dose-response. Health effects (skin cancer cases and deaths and cataract cases) are modelled based on dose-response estimates developed for EPA's risk assessment (EPA, 1987), and are summarized in Chapter 7 of EPA's Regulatory Impact Analysis (EPA, 1988). Damage to crops from UV–B is presented for grain crops only based on dose-response developed for soybeans (EPA, 1987 and 1988). Damage to fish; is estimated for commercial harvest of fin and shell fish based on dose-response models developed for anchovies (EPA, 1987 and 1988). Increase in tropospheric ozone and damage to crops are based on case studies of 3 U.S. cities and national crop loss model (EPA, 1987 and 1988). Polymer estimates are based on dose-response models developed for PVC and extended to include acrylics and polyesters (EPA, 1987 and 1988). Sea level rise estimates based on parameterized radiative-corrective model modified to compute thermal expansion, (EPA, 1987 and 1988).

4. Sensitivity. Range for health effect estimates based on high and low dose-response coefficients.

3. Comparison of Costs and Benefits

Based on the costs and benefits presented above and detailed in the RIA, today's final action should result in a substantial net gain to society.

Comments on the RIA accompanying the December NPRM raised several issues concerning assumptions used in valuing benefits. Two federal agencies questioned the statistical value of life used in the RIA. One argued that it was too low and the other that it was too high. The preliminary RIA used a range of from $2–5 million with a reference case value of $3 million. Following a review of the economic literature, the final RIA maintains the value of $3 million, but a new study (Viscusi, 1988) suggests that this figure may substantially underestimate risks. As a result, a sensitivity analysis using a $12 million dollar value of life is also presented. A value of $2 million has been retained in the RIA to represent the low end of the range. These figures are used for illustrative purposes in performing the analysis in the RIA. Based on its review of the comments, the RIA does not conclude whether the value of reducing risks to human life for involuntary risks can be limited to $3 million dollars or whether it should be higher as suggested by new information contained in the economic's literature (Visusi, 1988).

A government agency also stated that the discount rate used in assessing costs and benefits over time was too low and that the RIA inappropriately increased the future value of life. Another government agency stated that the value of human lives should not be discounted. Appendix G of the RIA presents the justification for the assumptions contained in the final RIA. Where the benefits are long-lived and long lags exist before the benefits accrue, a discount rate toward the lower end of the range commonly understood as representative of the social rate of time preference was selected as an appropriate illustration in conducting the RIA.

The RIA increases the value of life over time to reflect the assumption that as society becomes wealthier, people are willing to pay greater amounts of money to reduce risks. EPA believes that this assumption is true and necessitates increasing the future value of life in the analysis. The RIA contains sensitivity analyses which examine alternative assumptions for both of these factors. These results do not alter the conclusion of the analysis.

## VI. Additional Information

### *A. Executive Order 12291*

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this rule meets the definition of a major rule under E.O. 12291, and has prepared a regulatory impact analysis (RIA). Drafts of that document and this notice of rulemaking were submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. Any comments from OMB and any EPA responses to such comments are available for public inspection at the Central Docket Section, South Conference Room 4, Docket No. A–87–20, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of the RIA has also been placed in the rulemaking docket.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required

if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial regulatory flexibility analysis when the regulation was proposed on December 14, 1987. This initial RFA draft was placed in the public docket for public comment.

The final draft of the RFA has incorporated comments submitted during the public comment period in response to the proposed rule. These comments refined EPA's cost estimates of alternative substitutes available, both product and chemical, to all industries affected by the regulation. The final RFA concludes that of the many industries affected by regulations of CFCs and halons that only some segments of the foam-b1owing industry were potentially at risk. In contrast to almost all other uses of these chemicals, it is only in the foam industry that CFCs are a large percentage of final product cost. Significant price increases of CFCs could potentially affect the current market share of these products.

Different segments of the foam industry are likely to be affected in different ways. Some segments have currently available technologies which are cost competitive with potential product substitutes. For example, as discussed above, the foam food packaging industry has entered into a voluntary agreement to shift out of CFC–11 and –12 blown foam to use HCFC–22 and blends by the end of the year. Thus, the impact on this industry segment will be minimal. Similarly, the industry segment that makes flexible molded foam (used primarily for seat backs of autos) is capable of eliminating the use of CFC–11 as an auxiliary blowing agent with minimal cost impact. A major supplier to the extruded polystyrene boardstock insulation industry also recently announced plans to eliminate the use of CFC–12 in the manufacture of these products consistent with the availability of substitutes. Together, these shifts represent a significant share of total use of CFCs by the foam industry.

However, the situation is less clear for two segments—polyurethane sprayed and foam insulation and boardstock. The insulating board foam industry is experimenting with several alternative blowing agents (HCFC–22, HCFC–123 and HCHC–141b). To the extent these substitutes are determined to be technically and economically viable, the longer term impact on these firms will be minimized. However, the near term impact (before substitutes are commercially available) will be largely determined by the cost of CFCs, which, in turn, rests on the speed at which other industries reduce their demand for these chemicals and the product quality and consumer preference for product substitutes. The RFA estimates that the market for these two foams will not grow as much in the future, and may shrink under pessimistic assumptions about market penetration of product substitutes. However, the expected impact for current market share of these foams manufacturers are minimal.

The foam industry comments on the RFA asserted that EPA's description of the structure of the industry was overly simplistic and its portrayal of the control options available in part inaccurate. The information provided by the commenters has led EPA to modify both of these aspects for the analysis. The revised analysis includes a more detailed breakdown of the industry and revised and updated engineering costs for reduction technologies (e.g., HCFC–22 for food packaging and polyethylene, HCFC–141b as a possibility for polyurethane, etc.). EPA has attempted further to refine energy costs related to product substitutes for insulation and to better understand consumer demand for high quality or established goods when inexpensive product substitutes are available as in the case of rigid foam packaging which will likely maintain their market share despite the availability of low-cost substitutes.

Based on the analysis contained in the revised RFA, EPA does not believe that any foam industry segment will be substantially harmed over the long term. It recognizes, however, that short-term CFC price jumps, if they occur, would have a significant impact on the competitiveness on the rigid foam insulation market. To address this concern, EPA intends to closely monitor the price of CFCs and the progress made by all industries in reducing their use of these chemicals.

### *C. Paperwork Reduction Act*

As required by § 35.04(H) of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, EPA has submitted a copy of these revised information collection requirements to the Office of Management and Budget for its review.

OMB has tentatively approved the paperwork sections other than § 82.12. EPA has reserved § 82.12 and is still reviewing alternative approaches to implement a trading program. OMB expects to complete the approval process of paperwork requirements other than those necessary to implement § 82.12 and will assign an information collection control number after the 30 day comment period.

Public reporting burden for this collection of information is estimated to average 52 hours per response for producers, 48 hours per response for importers, and 4 hours per response for exporters. These estimates include time for reviewing instructions, searching existing data sources, and completing and reviewing the collection of information. All recordkeeping requirements are considered to be "usual and customary" burden as defined under 5 CFR 1320.7 and, as such, are not included in the estimate of respondent burden.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

## VII. References


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EPA (1987), U.S. Environmental Protection Agency, *Assessing the Risks of Trace Gases that Can Modify the Stratosphere*, December 1987.

NASA (1988), National Aeronautics and Space Administration, *Executive Summary of Ozone Trends Panel Report*, March 15, 1988.

Sobotka & Co., Inc. (1988), "Combining a Fee with an Allocated Quota System," Discussion Paper, April 11, 1988.

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World Meteorological Organization (WMO), (1986) *Atmospheric Ozone: 1985 Assessment of Our Understanding of the Processes Controlling Its Present Disruption and Change*. Report No. 16, WMO, Geneva, Switzerland.


## List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Intergovernmental relations, Exports, Imports, Stratospheric ozone, Reporting and recordkeeping requirements.

Date: August 1, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set forth in the preamble, Title 40 CFR Part 82 is amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

**Authority: 42 U.S.C. 7157(b).**

2. Part 82 is amended by adding §§ 82.1–82.14 and Appendices A through D to read as follows:

Sec.

82.1 Purpose and scope.
82.2 Effective date.
82.3 Definitions.
82.4 Prohibitions.
82.5 Apportionment of baseline production allowances.
82.6 Apportionment of baseline consumption allowances.
82.7 Grant and phased reduction of baseline production and consumption allowances for Group I Controlled Substances.
82.8 Grant and freeze of baseline production and consumption allowances for Group II Controlled Substances.
82.9 Availability of production allowances in addition to baseline production allowances.
82.10 Availability of consumption allowances in addition to baseline consumption allowances.
82.11 Exports to parties.
82.12 Transfers of production and consumption allowances [Reserved].
82.13 Recordkeeping and reporting requirements.
82.14 Payment of fees [Reserved].
* * * * *
Appendix A—Controlled substances and ozone depletion weights.
Appendix B—Parties to the Montreal Protocol [Reserved].
Appendix C—Nations complying with, but not party to, the protocol [Reserved].
Appendix D—Twenty-five-kilotonne parties [Reserved].

### § 82.1 Purpose and scope.

(a) The purpose of these regulations is to implement the *Montreal Protocol on Substances that Deplete the Ozone Layer* under authority provided by section 157 of the Clean Air Act. The Montreal Protocol requires each nation that becomes a Party to the Protocol to limit its total production and consumption (defined as production plus imports minus exports) of certain ozone-depleting substances according to a specified schedule. The Protocol also requires Parties to impose certain restrictions on trade in ozone-depleting substances with nonparties.

(b) This rule applies to any individual, corporate, or governmental entity that produces, imports, or exports controlled substances.

### § 82.2 Effective date.

Section 82.13(f)(1) of this part takes effect September 12, 1988. The remainder of the regulations under this part will take effect when the Montreal Protocol enters into force. The Montreal Protocol will enter into force on January 1, 1989, provided that at least 11 instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances. If these conditions have not been fulfilled by January 1, 1989, the Protocol will enter into force on the ninetieth day following the date on which the conditions have been fulfilled.

### § 82.3 Definitions.

As used in this part, the term:

(a) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

(b) "Baseline consumption allowances" means the consumption allowances apportioned under § 82.6.

(c) "Baseline production allowances" means the production allowances apportioned under § 82.5.

(d) "Calculated level" means the level of production, exports or imports of controlled substances determined for each Group of controlled substances by:

(1) Multiplying the amount (in kilograms) of production, exports or imports of each controlled substance by that substance's ozone depletion weight listed in Appendix A to this Part; and

(2) Adding together the resulting products for the controlled substances within each Group.

(e) "Consumption allowances" means the privileges granted by this Part to produce and import calculated levels of controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances are the total of the allowances he obtains under § 82.7 (baseline allowances for Group I controlled substances), § 82.8 (baseline allowances for Group II controlled substances), and § 82.10 (additional consumption allowances upon proof of exports of controlled substances), as may be modified under § 82.12 [1] (transfer of allowances).

[1] **Editorial Note:** Section 82.12 is currently reserved. The Environmental Protection Agency will add regulations in that section at a future date.

(f) "Control periods" means those periods during which the prohibitions under § 82.4 apply. Those periods are:

(1) For Group I controlled substances: [reserved]

(2) For Group II controlled substances: [reserved]

(g) "Controlled substance" means any substance listed in Appendix A to this Part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance. Controlled substances are divided into two groups, Group I and Group II, as set forth in Appendix A.

(h) "Export" means the transport of controlled substances manufactured from raw materials or feedstock chemicals (i.e., virgin production) from within the United States or its territories to persons or countries outside the United States or its territories, excluding United States Military bases and ships for on-board use.

(i) Exporter means the person who contracts to sell controlled substances for export, or transfers controlled substances to his affiliate in another country.

(j) "Facility" means any process equipment (e.g., reactor, distillation column) to convert raw materials or feedstock chemicals into controlled substances.

(k) "Import" means the transport of virgin, used and recycled controlled substances from outside the United States or its territories to persons within the United States or its territories.

(l) "Importer" means the importer of record listed on U.S. Customs Service Form 7501 for imported controlled substances.

(m) "Montreal Protocol" means the *Montreal Protocol on Substances that Deplete the Ozone Layer* which was adopted on September 16, 1987, in Montreal, Canada.

(n) "Nations complying with, but not joining, the Protocol" means any nation listed in Appendix C to this Part.

(o) "Party" means any nation that is a party to the Montreal Protocol and listed in Appendix B to this part.

(p) "Person" means any individual or legal entity, including an individual,

corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(q) "Plant" means one or more facilities at the same location owned by or under common control of the same person.

(r) "Potential production allowances" means the production allowances obtained under § 82.9 (a) and (b).

(s) "Production" means the manufacture of a controlled substance from any raw material or feedstock chemical (i.e., virgin production); however, production does not include the manufacture by one person of controlled substances that are used and entirely consumed in the manufacture by the same person of other chemicals.

(t) "Production allowances" means the privileges granted by this Part to produce calculated levels of controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances he obtains under § 82.7 (baseline allowances for Group I controlled substances), § 82.8 (baseline allowances for Group II controlled substances), and § 82.9 (c) and (d) (additional production allowances), as may be modified under § 82.12 [1] (transfer of allowances).

(u) "Twenty-five-kilotonne Party" means any nation listed in Appendix D to this Part.

(v) "Unexpended consumption allowances" means consumption allowances that have not been used. At any time in any control period, a person's unexpended consumption allowances are the total of the calculated level of consumption allowances he has authorization under this Part to hold at that time for that control period, minus the calculated level of controlled substances that the person has produced and imported in that control period until that time.

(w) "Unexpended production allowances" means production allowances that have not been used. At any time in any control period, a person's unexpended production allowances are the total of the calculated level of production allowances he has authorization under this Part to hold at that time for that control period, minus the calculated level of controlled substances that the person has produced in that control period until that time.

[1] **Editorial note:** Section 82.12 is currently reserved. The Environmental Protection Agency will add regulations in that section at a future date.

### § 82.4 Prohibitions.

(a) No person may produce, at any time in any control period, a calculated level of controlled substances in excess of the amount of unexpended production allowances held by that person under the authority of this Part at that time for that control period. Every kilogram of such excess constitutes a separate violation of this regulation.

(b) No person may produce or import, at any time in any control period, a calculated level of controlled substances in excess of the amount of unexpended consumption allowances held by that person under the authority of this Part at that time for that control period. Every kilogram of such excess constitutes a separate violation of this regulation.

(c) A person may not use his production allowances to produce a quantity of controlled substances unless he holds under the authority of this Part at the same time consumption allowances sufficient to cover that quantity of controlled substances, nor may he use his consumption allowances to produce a quantity of controlled substances unless he holds under authority of this Part at the same time production allowances sufficient to cover that quantity of controlled substances. However, consumption allowances alone are required to import controlled substances.

(d) Beginning one year after the effective date of this Part, no person may import any quantity of controlled substances from any nation not listed in Appendix B to this Part (Parties to the Montreal Protocol), unless that nation is listed in Appendix C to this part (Nations Complying with, But Not Party to, the Protocol). Every kilogram of controlled substances imported in contravention of this regulation constitutes a separate violation of this regulation.

### § 82.5 Apportionment of baseline production allowances.

Persons who produced one or more controlled substances in 1986 are apportioned calculated levels of baseline production allowances as set forth in paragraphs (a) and (b) of this section. Each person's apportionment is equivalent to the calculated levels of that person's production of Group I and Group II controlled substances in 1986.

(a) For Group I controlled substances:

| Person | Calculated level |
|---|---|
| Racon, Inc | 13,765,068 |
| Kaiser Chemicals | 28,887,273 |
| Pennwalt Corp | 39,126,239 |
| Allied-Signal, Inc | 77,701,820 |
| E.I. du Pont de Nemours & Co., Inc | 152,221,000 |

(b) For Group II controlled substances:

| Person | Calculated level |
|---|---|
| E.I. du Pont de Nemours & Co., Inc | 32,200,000 |
| Great Lakes Chemical Corp | 20,147,961 |
| ICI Americas, Inc | 6,406,452 |

### § 82.6 Apportionment of baseline consumption allowances.

Persons who produced, imported, or produced and imported one or more controlled substances in 1986 are apportioned calculated levels of baseline consumption allowances as set forth in paragraphs (a) and (b) of this section.

(a) For Group I controlled substances:

| Person | Calculated level |
|---|---|
| Racon, Inc | 13,466,026 |
| Kaiser Chemicals | 27,616,217 |
| Pennwalt Corp | 38,220,699 |
| Allied-Signal, Inc | 74,043,943 |
| E.I. du Pont de Nemours & Co., Inc | 139,373,464 |
| Atochem, Inc | 2,204,113 |
| Pharmachem, Inc | 28,602 |
| Sumitomo Corporation of America | 229,930 |
| Hoechst Celanese Corp | 329,597 |
| Refricentro, Inc | 420,931 |
| Kali-Chemie Corp | 437,940 |
| National Refrigerants, Inc | 3,069,091 |
| ICI Americas, Inc | 6,310,917 |
| Holchem, Inc | 212,159 |

(b) For Group II controlled substances:

| Person | Calculated level |
|---|---|
| E.I. du Pont Nemours & Co., Inc | 27,731,067 |
| Great Lakes Chemical Corp | 19,855,268 |
| ICI Americas, Inc | 6,347,800 |
| Ausimont USA, Inc | 206,400 |
| Atochem, Inc | 2,126,427 |
| Kali-Chemie Corp | 1,533,800 |

### § 82.7 Grant and phased reduction of baseline production and consumption allowances for Group I controlled substances.

(a) For each of the control periods that begins before July 1, 1993, every person is granted 100 percent of the baseline production and consumption allowances apportioned to him under §§ 82.5(a) and 82.6(a).

(b) For each of the control periods that occurs between July 1, 1993, and June 30, 1998, inclusive, every person is granted 80 percent of the baseline production and consumption allowances apportioned to him under §§ 82.5(a) and 82.6(a).

(c) For each of the control periods that begins after June 30, 1998, every person is granted 50 percent of the baseline production and consumption allowances apportioned to him under §§ 82.5(a) and 82.6(a).

**§ 82.8 Grant and freeze of baseline production and consumption allowances for Group II controlled substances.**

For each of the control periods specified in § 82.3(f)(2), every person is granted 100 percent of the baseline production and consumption allowances apportioned to him under §§ 82.5(b) and 82.6(b).

**§ 82.9 Availability of production allowances in addition to baseline production allowances.**

(a) Every person apportioned baseline production allowances for Group I controlled substances under § 82.5(a) is also granted a calculated level of potential production allowances equivalent to:

(1) 10 percent of his apportionment under § 82.5(a), for each control period ending before July 1, 1998; and

(2) 15 percent of his apportionment under § 82.5(a), for each control period beginning after June 30, 1998.

(b) Every person apportioned baseline production allowances for Group II controlled substances under § 82.5(b) is granted a calculated level of potential production allowances equivalent to 10 percent of his apportionment under § 82.5(b), for each control year specified in § 82.3(f)(2).

(c) A person may convert potential production allowances, either granted to him under paragraphs (a) and (b) of this section or obtained by him under § 82.12 [1] (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 (Exports to Parties). A person may obtain authorization to convert potential production allowances to production allowances either by requesting issuance of a notice under § 82.11 or by completing a transfer of authorization under § 82.12.[1]

(d) Any person may obtain production allowances from, or transfer his production allowances to, a foreign entity in accordance with the provisions of this paragraph.

(1) A nation listed in Appendix D to this part (Twenty-five-kilotonne Parties) must agree to either transfer to the person at a specified time some amount of the calculated level of production that the nation is permitted under the Montreal Protocol or receive from the person at a specified time some amount of the calculated level of production that the person is permitted under this part. The person must obtain from the principal diplomatic representative in that nation's embassy in the United States a document clearly stating that the nation agrees to reduce or increase, as applicable, its allowable calculated level of production by the amount being transferred to or from the recipient for the control period(s) to which the transfer applies and that after the transfer the nation's total allowable production of controlled substances will not exceed 25 kilotonnes.

(2) The person must submit to the Administrator a transfer request that includes a true copy of the document required by paragraph (d)(1) of this section and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Twenty-five-kilotonne Party;

(iii) The names and telephone numbers of Contact persons for the person and for the Twenty-five-kilotonne Party;

(iv) The amount of allowable calculated level of production being transferred;

(v) The control period(s) to which the transfer applies; and

(vi) For transfers to Twenty-five kilotonne Parties, the Twenty-five kilotonne Party's total allowable calculated level of production following the proposed transaction.

(3) After receiving a transfer request that meets the requirements of paragraph (d)(2) of this section, the Administrator will complete the following steps:

(i) Review any proposed transfer of production allowances to a Twenty-five-kilotonne Party and approve the transfer if it is consistent with the Montreal Protocol and domestic policy. The Administrator will consider the following factors in deciding whether to approve such a transfer:

(A) Possible creation of economic hardship;

(B) Possible effects on trade; and

(C) Potential environmental implications.

(ii) Notify the Secretariat of the Montreal Protocol of the transfer to the person or to the Twenty-five-kilotonne Party if approved under paragraph, (d)(3)(i) of this; and

(iii) Issue the person a notice granting or deducting production allowances equivalent to the calculated level of production transferred, and specifying the control periods to which the transfer applies. The change in production allowances will be effective on the date that the notice is issued.

**§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.**

(a) Except as limited by paragraph (b) of this section, any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the calculated level of controlled substances (other than recycled or used controlled substances) that the person has exported from the United States or its territories. The consumption allowances granted under this section will be valid only during the control period in which the exports departed the United States or its territories.

(1) The exporters of the controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity, calculated level, and type of controlled substances exported, and what percentage, if any, of the controlled substances are recycled or used;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser; and

(ix) The commodity code of the controlled substance exported.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section, and will assess the quantity of controlled substances (other than recycled or used controlled substances) that the documentation verifies were exported. The Administrator will issue the exporter consumption allowances equivalent to the calculated level of

[1] **Editorial note:** Section 82.12 is currently reserved. The Environmental Protection Agency will add regulations in that section at a future date.

controlled substances that the Administrator determined were exported. The grant of the consumption allowances will be effective on the date the notice is issued.

(b) No consumption allowances will be granted after January 1, 1993, for exports of controlled substances to any nation not listed in Appendix B to this Part (Parties to the Montreal Protocol).

**§ 82.11 Exports to parties.**

In accordance with the provisions of this section, any person may obtain authorization to convert potential production allowances to production allowances by exporting controlled substances to nations listed in Appendix B to this part (Parties to the Protocol). Authorization obtained under this section will be valid only during the control period in which the controlled substances departed the United States or its territories. A request for authorization under this section will be considered a request for consumption allowances under § 82.10, as well.

(a) The exporter must submit to the Administrator a request for authority to convert potential production allowances to production allowances. That request must set forth the following:

(1) The identities and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The names and telephone numbers of contact persons for the exporter and for the recipient;

(4) The quantity, the calculated level, the type of controlled substances exported, its source and date purchased, and what percentage, if any, of the controlled substances that are recycled or used;

(5) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(6) The country to which the controlled substances were exported;

(7) The bill of lading and invoice indicating the net quantity shipped and documenting the sale of the controlled substances to the purchaser; and

(8) The commodity code of the controlled substance exported.

(b) The Administrator will review the information and documentation submitted under paragraph (a) of this section, and assess the quantity of controlled substances (other than recycled or used control substances) that the documentation verifies were exported to a Party. Based on that assessment, the Administrator will issue the exporter a notice authorizing the conversion of a specified quantity of potential production allowances to production allowances in a specified control year, and granting consumption allowances in the same amount for the same control year. The authorization may be used to convert potential production allowances to production allowances as soon as the date on which the notice is issued.

**§ 82.12 Transfers of production and consumption allowances [Reserved].**

**§ 82.13 Recordkeeping and reporting requirements.**

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect as follows:

(1) For Group I controlled substances, beginning with the first day of the first control period specified in § 82.3(f)(1).

(2) For Group II controlled substances, beginning with the first day of the first control period specified in § 82.3(f)(2).

(b) Reports and records required by this section may be used for purposes of compliance determinations. The requirements of records and reports is not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

(d) Records and copies of reports required by this section must be retained for three years.

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person ("producer") who will produce controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Within 120 days of the date this rule is published in the **Federal Register**, every producer must provide a report to the Administrator describing:

(i) The method by which the producer in practice measures daily quantities of controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g. tank specifications, ambient temperature or pressure, density of the controlled substance, etc.);

(iii) Internal accounting procedures for determining plant-wide production;

(iv) The quantity of any fugitive losses accounted for in the production figures; and

(v) The estimated percent efficiency of the production process for the controlled substance.

Within 60 days of any change in the measurement procedures or the information specified in the above report, the producer must submit the revised data or procedures to the Administrator.

(2) Every producer must maintain the following:

(i) Dated records of the quantity of each of the controlled substances produced at each facility;

(ii) Dated records of the quantity of controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances and any controlled substances introduced into the production process of new controlled substances at each facility;

(iii) Dated records of the quantity of HCFC–22 and CFC–116 produced within each facility also producing controlled substances;

(iv) Dated records of the quantity of the following raw materials and feedstock chemicals used at each plant for the production of controlled substances: carbon tetrachloride, perchloroethylene, chloroform, hydrofluoric acid, chlorine, bromine, CFC–113, HCFC–22, and CFC–23.

(v) Dated records of the shipments of controlled substances produced at each plant;

(vi) The quantity of controlled substances, the date received, and names and addresses of the source of recyclable or recoverable materials containing controlled substances which are recovered at each plant;

(3) For each quarter, each producer must provide the Administrator with a report containing the following information:

(i) The production by plant in that quarter of each controlled substance, specifying the quantity of any controlled substance used for feedstock purposes for controlled and non-controlled substances for each plant and totaled for all plants owned by the producer;

(ii) The calculated levels of production (expended allowances) for Group I and Group II controlled substances for each plant and totaled for all plants for that quarter and totaled for the control period to-date;

(iii) The shipments of each controlled substance from each plant in that quarter;

(iv) The producer's total of expended and unexpended consumption allowances, potential production allowances, expended and unexpended

production allowances and authorization to convert potential production allowances to production allowances, as of the end of that quarter;

(v) The quantity, the date received, and names and addresses of the source of recyclable or recoverable materials containing the controlled substance which are recovered at each plant; and

(4) For any person who fails to maintain the records required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4.

(g) For Group I controlled substances, beginning with the first control period specified under § 82.3(f)(1), and for Group II controlled substances, beginning one year after the Montreal Protocol enters into force, importers of controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Any importer must maintain the following records:

(i) The quantity of each controlled substance imported, either alone or in mixtures;

(ii) The date on which the controlled substances were imported;

(iii) The port of entry through which the controlled substances passed;

(iv) The country from which the imported controlled substances were imported;

(v) The port of exit;

(vi) The commodity code for the controlled substances shipped;

(vii) The importer number for the shipment;

(viii) A copy of the bill of lading for the import;

(ix) The invoice for the import; and

(x) The U.S. Customs Entry Summary Form.

(2) For each quarter, every importer must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraph (g)(1)(i)–(vii) of this section for the previous quarter;

(ii) The total quantity imported in kilograms of each controlled substance for that quarter;

(iii) The calculated levels of import (expended allowances) of Group I and Group II controlled substances for that quarter and totaled for the control-period-to-date; and

(iv) The importer's total sum of expended and unexpended consumption allowances at the end of that quarter.

(h) For any exports of controlled substances not reported under § 82.10 (additional consumption allowances) or § 82.11 (Exports to Parties), the exporter who exported the controlled substances must submit to the Administrator the following information within 45 days of the end of the control period in which the unreported exports left the United States:

(1) The names and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The type and quantity of controlled substances exported and what percentage, if any, of the controlled substances that are recycled or used;

(4) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported; and

(6) The commodity code of the controlled substance shipped.

**§ 82.14 Payment of fees [Reserved].**

APPENDIX A

| Controlled substance | Ozone depletion weight |
|---|---|
| *A. Group I:* | |
| CFC13—Trichlorofluoromethane (CFC–11) | 1.0 |
| CC12F2—Dichlorodifluoromethane (CFC–12) | 1.0 |
| CC12F–CC1F2—Trichlorotrifluoroethane (CFC–113) | 0.8 |
| CF2C1–CC1F2—Dichlorotetrafluoroethane (CFC–114) | 1.0 |
| CC1F2–CF3—(Mono)chloropentafluoroethane (CFC–115) | 0.6 |
| *B. Group II:* | |
| CF2BRC1—Bromochlorodifluoroethane (Halon 1211) | 3.0 |
| CF3BR—Bromotrifluoroethane (Halon 1301) | 10.0 |
| C2F4Br2—Dibromotetrafluoroethane (Halon 2402) | 6.0 |

**Appendix B—Parties to the Montreal Protocol [Reserved]**

**Appendix C—Nations Complying With, But Not Parties to, the Protocol [Reserved]**

**Appendix D—Twenty-Five-Kilotonne Parties [Reserved]**

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Part IV

# Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Advance Notice of Proposed Rulemaking

BEST COPY AVAILABLE

VOL 53 ISS 156 AUG 12 1988 UMI



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[FRL-3426-2]**

## Protection of Stratospheric Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Advance Notice of Proposed Rulemaking (ANPRM).

**SUMMARY:** EPA is considering further rulemaking on several issues related to its efforts to protect stratospheric ozone. In a separate notice published in today's **Federal Register**, the Agency issued final rules implementing the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). In the context of that rulemaking, four issues were raised and action on them deferred pending additional public comment and review.

In the Preamble to its final rule, EPA briefly described new scientific information related to global ozone trends and seasonal losses in Antarctica. This ANPRM explains in greater detail the nature of that information.

EPA's final rule implements the Protocol through a system of allocated production and consumption allowances. EPA adopted this approach because, on balance, it appeared to be the most effective means of limiting ozone-depleting substances consistent with the Montreal Protocol. However, as explained in the preamble to the final rule, EPA is concerned about two unintended adverse consequences that might result from implementation of the rule.

By allocating allowances to the seven domestic producers of CFCs and halons, and by restricting future supply of these chemicals, EPA's regulation could result in sizable windfalls accruing to these producers. The existence of these windfalls could create an economic incentive for producers to delay the introduction of chemical substitutes which could have adverse economic and potential environmental consequences. EPA is seeking comment on the appropriateness and structure of supplementing its allocated quota system with a regulatory fee to remove any unintended incentives. Alternatively, the Agency is also seeking comment on the desirability of shifting from the allocated quota system promulgated today to an auction system.

While the theory behind the allocated quota system is that the marketplace, through price increases, will provide adequate incentive for firms to reduce their use of the regulated chemicals, EPA is concerned that some industries, particularly those in which CFCs and halons are a small part of the price of final goods, may be slow to respond to market-driven price increases and may not shift away from these chemicals as soon as it becomes cost-effective to do so. The effect of any such delays would be to substantially increase CFC and halon prices to all firms, to increase the total costs to society of meeting the Protocol's control requirements, and to increase windfalls to producers. EPA is seeking comment on industry-specific control requirements as a supplement to allocated quotas that, under certain circumstances, it might promulgate to ensure that needed reduction in the use of CFCs and halons are adopted as soon as these reductions are cost-effective.

**DATE:** Written comments on the ANPRM must be submitted by November 1, 1988, to the location listed below.

**ADDRESSES:** Written comments should be sent to Docket A–88–27, Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to Stephen R. Seidel at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Stephen R. Seidel, Senior Analyst, Office of Program Development, Office of Air and Radiation (ANR–445), EPA, 401 M Street SW., Washington, DC 20460. Telephone (202) 382–2787.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The threat of depletion of the ozone layer from chlorofluorocarbons (CFCs) was first raised well over a decade ago by the scientific community (Molina and Rowland, 1974). The initial theory suggested that because CFCs are relatively inert, emissions of these chemicals would not break down in the lower atmosphere, but would instead slowly migrate to the stratosphere where they would then break apart releasing chlorine. Once freed in the stratosphere, the chlorine would catalytically destroy ozone. From a health and environmental perspective, depletion of the earth's ozone layer would allow more harmful ultraviolet radiation to penetrate the atmosphere and strike the earth's surface which would increase the incidence of certain skin cancers and cataracts, suppress the human immune system, damage crops and aquatic organisms, accelerate weathering of certain plastics, and increase formation of ground-level ozone (smog).

In the fourteen years of research since the original theory was proposed considerable scientific evidence has supported the general concern that increased emissions of CFCs (and halons) would lead to ozone depletion. (See, for example, Atmospheric Ozone, 1985 (WMO, 1986)).

In response to the growing scientific consensus, the United Nations Environment Program (UNEP) began negotiations in 1981 in an effort to develop a multilateral response to reducing the threat of ozone depletion. These negotiations resulted in the Vienna Convention for the Protection of the Ozone Layer in March 1985 which provides a framework for international cooperation in research, monitoring, and information exchange. Further negotiations resulted in the Montreal Protocol on Substances that Deplete the Ozone Layer which was signed in September 1987 and which requires Parties to reduce their use of specified ozone-depleting chemicals. The terms of the Montreal Protocol are discussed in detail in an earlier **Federal Register** notice (December 14, 1987; 52 FR 47489).

EPA's final rule implementing the Montreal Protocol is published elsewhere in today's **Federal Register**. The notice accompanying that rule summarizes the scientific, economic, technical, and legal bases for the Agency's action. It also describes the allocated quota system employed by EPA to achieve the Protocol's control refinements.

While EPA believes that its final action meets its obligations under Sec. 157(b) 42 U.S.C. section 7457(b) of the Clean Air Act and the Montreal Protocol, several issues were raised during the rulemaking which EPA believes require additional review.

Specifically, new scientific information became available in summary form during the course of the rulemaking which, in part because of time constraints, could not be fully reviewed and therefore was not considered in the final rule. This ANPRM provides the public with a summary of that information. EPA intends to notify the public of the availability of the full body of the Ozone Trends Panel Report (NASA, 1988) when it becomes available and will at that time request comments on its implications for future action.

Three other issues, which relate to unintended adverse consequences of EPA's use of allocated quotas, were

raised in the public comments on the proposal and warrant additional review. EPA is seeking comment whether it should add a regulatory fee to supplement the allocated quota system. The fee would be designed to capture the windfalls which would otherwise accrue to a small number of CFC and halon producers. EPA is concerned that the existence of such windfalls would create a potential economic incentive for these chemical producers to delay the introduction of chemical substitutes. Any such delay could have adverse economic and potential environmental impacts on EPA's stratospheric protection efforts. Alternatively, EPA is also seeking comment on the desirability of shifting at some future date to an auction-based system in place of allocated quotas.

Finally, EPA is also seeking comment on the desirability of developing industry-specific engineering controls and/or use-specific bans on CFCs. These rules are being considered as an adjunct to the allocated quota system, but would be promulgated only in instances where industries were not making timely progress toward reduced use of these chemicals.

## II. New Scientific Information

### *A. Past Treatment*

As part of its December 14 proposal, EPA discussed the existing evidence concerning possible changes that have already occurred to the ozone layer (52 FR 47492). It essentially stated that, based on the major assessment issued by the World Meteorological Organization in 1986 (WMO, 1986) and EPA's own risk assessment document (EPA, 1987), no statistically significant change had occurred in global estimates of total column ozone (i.e., the amount of ozone from the earth's surface through the stratosphere in any given place).

The preamble to the December proposal went on to discuss preliminary evidence related to areas of potentially critical concern: large seasonal losses in ozone over Antarctica (the so-called Antarctic ozone hole) and preliminary reports of global ozone reductions based on both ground-based and satellite measurements. While the existence of the ozone hole had been well documented by researchers, key questions remained: was it caused by man-made chlorine; are there health and environmental effects from this regional phenomenon; and are there implications for global ozone levels? Data suggesting that ozone had depleted globally had not yet been published in the scientific literature and therefore had not yet been thoroughly reviewed. In addition to validating and quantifying the trend itself, EPA also cited the need to distinguish ozone losses related to man-made chlorine from those related to natural causes (e.g., solar cycle, volcanic activity).

EPA also raised the concern that current atmospheric models which were relied on in the Agency's risk assessment do not account for these occurrences. In both cases, EPA stated that because of insufficient information and time, it was premature to consider these issues in its assessment of risks or as part of the rulemaking. The Agency also referenced an assessment of these issues (the Ozone Trends Panel) that was in progress at the time.

### *B. Summary Report of the Ozone Trends Panel*

Following an 18-month review involving over 100 of the world's leading atmospheric scientists, the executive summary of the Ozone Trends Panel report was released on March 15, 1988. The Panel conducted an extensive review of existing ground-based and satellite measurements and of the results from recent campaigns to Antarctica. They analyzed and sought to isolate changes in ozone levels related to natural phenomenon from those related to chlorine and also compared ozone meausrements to predictions from atmospheric models.

The executive summary contains a listing of key findings. The analysis showed "undisputed observational evidence" of increased atmospheric levels of trace gases (CFCs, carbon dioxide, methane, nitrous oxides, halons) because of human activities. Its review of global ozone trends showed a depletion of 1.7 to 3.0 percent ozone loss between 1969 and 1986 at latitudes between 30 and 64 degrees in the northern hemisphere (where measurements are the most extensive). This decrease occurs after correcting for the effects of natural variation and is more pronounced in the winter than the summer. After comparing these measurements with model calculations, the report states that "The observed changes may be due wholly, or in part, to the increased atmospheric abundance of trace gases, primarily chlorofluorocarbons (CFCs)." The Panel determined that "it was not possible to obtain a sufficiently accurate trend in total ozone using Nimbus–7 satellite data alone because the rate of degradation of the diffuser plate cannot be uniquely determined." This problem in interpreting the raw data from the satellite to correct for instrument error restricted the Panel's ability to rely on this source of information for its conclusions.

In its review of data related to Antarctic ozone, it reconfirmed that "There has been a large, sudden, and unexpected decrease in the abundance of springtime Antarctic ozone over the past decade." The 1987 data showed that the ozone hole had both deepened (i.e, greater loss of ozone) and had lasted longer than previously recorded. It also reported apparent ozone decreases since 1979 of 5 percent or more at all latitudes beyond 60 degrees south throughout the year. It concluded, "The weight of evidence strongly indicates that man-made chlorine species are primarily responsible for the observed decrease in ozone within the polar vortex."

The executive summary of the report has been added to the public docket for this rulemaking. As stated above, EPA will notify the public in a **Federal Register** notice when the full report is completed and at that time will seek public comment. The Agency intends to use this information in the coming months to update its own risk assessment and will also examine any additional scientific information (e.g. papers presented at the ozone trends conference held in May 1988 in Snowmass, Colorado) that has recently became available.

## III. Combining a Regulatory Fee With Allocated Quotas

In proposing to implement the Montreal Protocol (52 FR 47489; December 14, 1987), EPA examined a range of alternative regulatory approaches including the use of traditional engineering control requirements and innovative market-based rules, and stated that "[e]ach of the options has certain advantages, but also raises possible problems" (52 FR 47500). As explained in the notice accompanying the final rule, after reviewing the public comments, EPA concluded that, on balance, the allocated quota approach is the appropriate means of implementing the Montreal Protocol. However, EPA also noted that additional regulatory steps may be required to minimize any unintended adverse impacts resulting from this approach.

One such impact is the potential for current CFC and halon producers to reap a windfall profit from the scarcity created by EPA's regulation. In its December 14 notice of proposed rulemaking (NPRM), EPA asked "whether possible profits from continued production of the restricted chemicals might have the undesired

effect of delaying the introduction of less profitable chemical substitutes" (52 FR 474507). The Agency also asked for comments on the option of combining allocated quotas with a regulatory fee.

*A. Basis for Adding a Fee to Allocated Quotas*

EPA received public comment on both the likelihood of sizable windfalls resulting from its allocated quota system and the potential implications for delaying the introduction of chemical substitutes. The Agency also initiated two studies (DeCanio, 1988 and Sobotka, 1988) examining these issues.

1. Likelihood and Magnitude of Windfall

In the December 14 NPRM, EPA explained why windfall profits (also termed transfer revenues) could result from its proposed allocated quota system. Essentially, the allocated quota system operates by restricting the supply of CFCs and halons. Since demand for these chemicals by user industries is expected to continue to grow (because of continued demand for products which contain them or are made with them), competition for the restricted CFC and halon supplies should result in firms paying higher prices for these chemicals. While higher prices for CFCs and halons will stimulate some firms and industries to shift to alternate materials, institute or increase recycling, or produce other products, if substitutes are not readily available, many firms will have little choice but to continue to use these chemicals while paying a higher price.

The RIA supporting the December 14 NPRM estimated windfall profits of between $2–6 billion through the end of the century depending on the rate at which firms employed low-cost control technologies (i.e. the faster controls are employed the lower the windfalls). The amount of the predicted windfall is based on the market-clearing price paid for CFCs and halons. In turn, this price results from the allowable supply of CFCs and the market demand as determined, in part, by the costs of options available to firms and consumers to reduce their use of these chemicals.

EPA has revised its preliminary RIA to include new information on control technologies and market demand for these chemicals. Its revised estimate suggests that windfalls could range from $1.8 to $7.2 billion through the turn of the century. (See chapter 9 of the RIA.)

2. Potential for Delay of Substitutes

As stated in the December 14 NPRM, EPA is concerned that the existence of large windfalls could create an economic incentive for the CFC and halon producers to delay the introduction of chemical substitutes. Chemical substitutes are likely to be more costly to produce and therefore less profitable than CFCs and halons. In contrast, CFC and halon prices are likely to increase because of the supply restrictions set forth in EPA's regulation which could result in substantial windfall profits for CFC producers. As a result, EPA is concerned that the seven CFC and halon producers may use their market power to increase profits either by restricting the introduction of new chemicals by others or by delaying the introduction of the chemical substitutes they now have under development.

EPA is seeking public comment on whether markets conditions are likely to create an environment where such actions are possible. Factors affecting future market conditions include: who conducts research and development for new chemicals; who conducts research and development for user industry applications; what is the likely cost of chemical substitutes; and whether the CFC/halon producers can deter competition from outside parties.

Based on a review of patents on potential substitutes, it appears that the current producers of CFCs and halons are also the most likely producers of alternatives (Radian, 1987). For example, patents for HFC–134a and HCFC–123, two of the most likely substitutes, are held by several CFC producers in the United States as well as by CFC producers in other countries. Moreover, a large share of the products applications testing for many industries using CFCs is done by the chemical producers. These companies provide a wide range of services to their customers including detailed tests on the applicability and use of new chemicals.

Estimates of the costs of producing chemical substitutes generally range from 2–4 times the costs of the currently available CFCs (Nelson, 1988). This large difference in the costs of production between the current CFCs and their substitutes suggests that CFC producers may have considerable flexibility in pricing CFCs to respond to efforts by non-producers to capture markets with more expensive chemical substitutes.

Whether chemical producers will use this incentive to delay the introduction of chemical substitutes to increase windfall profits will depend on the extent to which they are willing and able to pursue a strategy of profit maximization. One public interest group in their comments on the December proposal contended that firms typically base decisions concerning the timing of new product introductions on such factors as the goal of maximizing profits on existing products. The following discussion indicates that CFC producers may have the *ability* to pursue such a goal; moreover, with the large potential windfall, it is clear that they will have an economic *incentive* to do so.

In most market situations, the company first to introduce a new product has the advantage. In this particular situation, however, 14 major chemical firms from throughout the world are working together as part of a private consortium in conducting joint toxicity tests. This joint effort offers many important advantages. It spreads the multi-million dollar costs of conducting these tests among many participants. It maximizes the use of the limited quantities of the new chemicals available for all purposes (toxicity tests and user application tests) in the near term. However, a public interest group in its comments raised the issue that this joint effort effectively creates a potential mechanism for these firms to delay or slow down the introduction of new chemicals by influencing the pace and extent of toxicity testing. Thus, in the current market situation, the producers of CFCs are the owners of the most likely substitute technologies (e.g., through patents and proprietary process information) and could through the joint toxicity testing program and the high capital costs of production, be able to control the rate of diffusion and adoption of substitutes.

Future increases in CFC prices will also provide an incentive for non-CFC producers to develop and market substitutes. However, these firms will be at a disadvantage for several reasons. As previously suggested, they generally lack the research, technical and marketing foundation to compete against current CFC producers. Moreover, current CFC producers could attempt to counter the introduction of substitutes by others by reducing the market price of CFCs (and thereby reduce but not eliminate their windfalls).

EPA believes that a regulatory fee, by capturing the windfall profits, would remove the economic incentive for delay and thus at least partially address these concerns.

3. Impact of a Two-Year Delay

The revised RIA supporting the final rule examines the potential impact of delaying by two years the introduction of chemical substitutes. This analysis, as shown in Table 1, compares the impact of different schedules for the introduction of chemical substitutes on the costs and feasibility of meeting the

reductions called for in EPA's regulation. It illustrates several critical points. First, it shows that the effect of delaying the marketability of chemical substitutes is closely related to the rate at which firms act to adopt low-cost control options. Not surprisingly, the amount of pre-tax windfall, as well as the cost increases resulting from the delay of chemical substitutes, is substantially greater in Case 1 than in the other two cases. Case 1 represents a scenario in which major user industries (e.g., mobile air conditioning, solvent uses, hospital sterilization, refrigeration and certain foam uses) delay their adoption of technically available, low-cost reduction options. Table 1 shows that windfalls through the end of the century would *increase* by $10 billion through the end of the century under this scenario if the introduction of substitutes were delayed by two years. The potential increase in windfalls for producers from a two-year delay were estimated to be $1.3 billion in the Case 1A+B (where two industry segments aggressively employ reduction technologies) and $100 million in Case 2 which represent a scenario where user industries adopt technologically feasible, low-cost controls in a more timely manner. Table 1 also shows that windfalls in the early years could be quite substantial (case 1) or could be eliminated completely if low cost options are actively adopted (case 2).

TABLE 1.—IMPACTS OF A TWO-YEAR DELAY IN THE AVAILABILITY OF CHEMICAL SUBSTITUTES [a]

| | Case 1 [b] | | Case 1A+B [c] | | Case 2 [d] | |
|---|---|---|---|---|---|---|
| | Without delay | With delay | Without delay | With delay | Without delay | With delay |
| Social Costs: [e] 1989–2000 | 2,730 | 4,252 | 2,122 | 2,215 | 1,012 | 1,033 |
| Transfer Costs: [f] 1989–2000 | 7,282 | 17,390 | 4,983 | 6,329 | 1,886 | 1,985 |
| CFC Price Increases: [g] | | | | | | |
| 1989 | 6.69 | 6.69 | 1.95 | 1.95 | 0.00 | 0.00 |
| 1990 | 5.32 | 5.32 | 1.84 | 1.84 | 0.00 | 0.00 |
| 1991 | 1.84 | 5.88 | 1.59 | 1.85 | 0.00 | 0.00 |
| 1992 | 1.60 | 5.88 | 1.55 | 1.95 | 0.00 | 0.00 |
| 1993 | 3.93 | [h] 50.00 | 3.55 | 10.84 | 1.55 | 1.84 |
| 1995 | 5.48 | 5.00 | 3.55 | 3.77 | 1.59 | 1.59 |
| 1998 | 5.48 | 17.69 | 5.48 | 5.48 | 4.49 | 4.49 |
| 2000 | 5.48 | 5.48 | 5.48 | 5.48 | 3.77 | 4.35 |

[a] The assumed stringency and coverage assumptions used are those of the CFC 50%/Halon Freeze case described in Chapter 5 of the RIA. CFCs are regulated with an initial freeze in 1989 at 1986 levels, 20 percent reduction in 1993, and 50 percent reduction in 1998, and halons are frozen at 1986 levels in 1992. The assumed rate of growth in baseline use is the Middle Growth Scenario described in Chapter 4 of the RIA.

[b] Case 1 assumes that firms do not act expeditiously to employ cost-effective control options. For specific control options that are delayed, see Chapter 9 of the RIA.

[c] Case 1A+B assumes that reductions from recycling of car air conditioners and shifts to alternative solvents are initiated in the initial years of the regulation, but that other sectors delay their adoption of cost-effective reductions. See Chapter 9 of the RIA.

[d] Case 2 assumes control reductions are adopted across several key industries as explained in Chapter 9 of the RIA.

[e] Social costs discounted at a 2 percent discount rate and cited in millions of 1985 dollars. All windfalls are stated before taxes.

[f] Transfer payments discounted at a 6 percent discount rate and cited in millions of 1985 dollars.

[g] Price increases are for all CFC compounds and are stated in dollars per kilogram are weighted by ozone depletion potential and are cited in constant 1985 dollars. CFC prices are currently about $1 per kilogram.

[h] CFC price increases are capped at $50.00 which indicates that insufficient controls or substitutes are contained within the model to achieve the required reduction.

Table 1 also illustrates a second point. It shows that in Case 1, a two year delay renders it significantly more costly and difficult to meet the 20 percent reduction stage in 1993. The $50.00 CFC price increase which occurs in that year is a "backstop" price indicating that, based on current information, no alternative technologies are available to achieve the required reductions. In the absence of technologies or substitutes to reduce CFC use to the required levels, the economic hardship and dislocations in meeting the required reductions would be severe. The dealy in the availability of chemical substitutes would also make it more difficult to obtain greater or further CFC and halon reductions in the future, should new scientific information lead to a change in the Protocol's control requirements.

This analysis likely underestimates the additional costs associated with delays in introducing chemical substitutes by ignoring potential savings that are likely as firms start "learning by doing" earlier rather than later (Decanio, 1988). This potential savings reflects the likely reductions in cost over time that will occur as producers and users gain experience with the chemical substitutes.

A regulatory fee could also indirectly aid in efforts to encourage developing nations to join the Protocol. One goal of the Protocol is to avoid expanded production of CFCs by these nations. To accomplish this end, the Protocol allows limited increases in production of controlled substances in developed nations if they are exported to developing nations. Because of the technological ease of CFC production, developing nations may choose to produce CFCs themselves and not to join the Protocol if CFC substitutes are not readily available. Further, over the longer term, developing nations are more likely to participate in the protocol if they can themselves produce the chemical substitutes required for their domestic industries (e.g., refrigeration, electronics, etc.) which now use CFCs. Thus, the timing of the availability of chemical substitutes will be one key factor in decisions by developing nations to join the Protocol.

4. Summary of Public Comments

Seven commenters (auto companies, federal agency, public interest groups) stated that they opposed the use of allocated quotas alone because it would result in a small number of producers reaping substantial windfalls and allow them to exercise substantial power over user industries through control of CFC supplies. Some of these commenters also raised concerns about the possibility of producers cutting production further than the regulations require (to further increase prices) or delaying the introduction of chemical substitutes.

Ten commenters (public interest groups) stated that they supported the use of a regulatory fee because if would provide an added incentive for firms to reduce their consumption of CFCs and halons and would capture the windfall profits that might otherwise encourage

producers to delay the development of chemical substitutes.

In contrast, six commenters (chemical producers and industry trade association) argued that EPA had overestimated the magnitude of likely windfalls. As stated earlier, EPA's Regulatory Impact Analysis (RIA) supporting the proposed regulation stated that, depending on the rate at which firms shifted away from CFCs and halons, the magnitude of windfalls would range from just under $2 billion to just under $6 billion (pre-tax dollars) over the remainder of this century. The commenters suggested that this estimate failed to consider the higher costs associated with reduced CFC production, the increase in government tax receipts from any windfalls, and the need for capital to fund development of chemical substitutes. Several commenters also stated that because chemical producers are likely to allocate their allowable production to past customers and therefore are not likely to charge full market price for CFCs and halons, windfalls would be lower than EPA's estimate.

The Agency's reexamination of its analysis in light of the public comments has reaffirmed its general conclusions on the magnitude of the potential windfalls. The Agency recognizes that fixed costs may increase slightly as production is cut; however no evidence has been presented demonstrating likely increases in variable costs which represent by far the largest percent of total production costs. As a result, production costs are not likely to increase substantially in future years. While the RIA presents estimates of transfers in pre-tax figures, EPA recognizes that to determine a firm's actual windfall profits, the figures presented would have to be adjusted to reflect each firm's marginal tax rate. EPA's estimate of CFC price increases and transfers were similar to those contained in an industry-sponsored analysis (performed by Putnam, Hayes and Bartlett for the Alliance for Responsible CFC Policy, 1987) of the impact of the proposed rule.

EPA also questions the assertion by some chemical producers that they intend to moderate price increases and allocate their supplies to past customers which would have the effect of reducing windfalls. Although firms can point to past situations of shortages where supplies have been rationed (instead of sold at a market-clearing price), these situations typically involve only minor and temporary shortfalls in supply. In the case of CFCs, shortages are likely to increase over time and, unless regulations change, are permanent. The use of allocations by producers to their customers would substantially reduce the potential profits from these chemicals to the producers. In addition, if a secondary market developed, users for which current CFCs are less important or which can utilize existing substitutes or can recycle ("elastic" users), would have an incentive to sell some of their allocation to users with little flexibility ("inelastic" users) at higher prices than they paid for the CFCs. Thus, these "elastic" CFC users would capture much of the windfall for themselves. Mindful of this, there is a strong incentive for the producers to recoup the windfalls themselves rather than see their customers the beneficiaries of these profits. Moreover, any allocation of these chemicals would likely result in substantial economic inefficiencies unless a secondary market quickly developed. If allocated CFCs or halons, user frims with relatively inexpensive reductions would have less of an incentive to make such reductions, while firms without such options would have a more difficult time in purchasing CFCs or halons. The net effect of an allocation by producers would be a substantially greater cost to society to achieve any given reduction (Decanio, 1988).

EPA also strongly disagrees with some commenters arguments that windfalls are necessary to fund the development of chemical substitutes. This argument suggests that price increases for the current CFCs should be used to subsidize specific firms (i.e., the current CFC and halon producers) to develop alternatives. EPA believes that, at least in the medium and long-term, many firms besides the current CFC and halon producers are capable of developing substitutes, and that all such firms should have equal opportunity to bring substitute chemicals to the marketplace. Investment decisions concerning the development of new chemicals by existing CFC and halon producers should be based on market potential and not indirectly subsidized by EPA regulations.

EPA's analysis contained in the RIA also suggests that the amount of the windfall profits (e.g., several billion dollars) is far in excess of the resources now being spent by the chemical producers for research on chemical substitutes. Morover, there would be no guarantee that producers would channel their windfalls back into the development of alternative chemicals. Finally, given the substantial market for alternatives to CFCs, EPA does not agree that any such subsidy is necessary or warranted.

Many industry commenters (primarily foam-blowers and halon users) opposed the use of a fee system they believed it would increase the cost of the regulated chemicals and thus their costs of doing business, and would also make it difficult to compete against product substitutes particularly in some foam areas.

EPA does not believe that a fee, used in conjunction with allocated quotas, would necessarily alter the price of CFCs and halons to user industries. As discussed above, the price of these chemicals is determined by supply and demand. As a result, the price should increase over time because of the scarcity created by the limits on production contained in the allocated quota regulation; consequently, all user firms will pay somewhat higher prices over time if they want to continue using these chemicals. By setting the fee at or below the market price increase resulting from the reduced availability of these chemicals (i.e., the price increase which results from the scarcity created by allocated quotas), no further increase in the price of CFCs or halons should occur. The fee would, however, reduce or eliminate the amount of windfall profits to the producers and capture that revenue for the United States Treasury, therefore eliminating any potential economic incentive to delay the introduction of less profitable chemical substitutes.

Some users appear to believe that producers will simply pass on the additional costs of the fee to the user industries, in effect charging them both the price increase due to the scarcity created by the allocated quotas and the added costs of the fee. If producers attempted to do so, the forces of the marketplace would operate to reduce demand for CFCs and halons below the level of their allocation. Thus, producers would see the additional profits they would earn on CFCs sold at a higher price offset by the foregone profits from lost sales. However, under a fee system which captured the entire windfall (e.g., a fee based on the difference between observed market price and production costs) producers would never benefit from attempting to pass the fee on to users.

*B. Design of Fee With Allocated Quota System*

Table 1 shows the amount of CFC price increases for different scenarios. These increases would effectively be the same as the rate at which a fee would be assessed if all the windfalls were

captured and production costs remain unchanged. The table shows that the magnitude of the fee (or CFC price increase) depends on the rate at which firms reduce their consumption of CFCs. In fact, in Case 2, where firms in many sectors act quickly to reduce CFC consumption, no fee would be expected in the initial years of the regulation.

The December 14 NPRM briefly described issues related to the design of a regulatory fee. Design parameters mentioned included phasing-in the fee, basing the fee on the relative ozone depletion weights of the different chemicals, and adjusting the fee over time (e.g., to reflect changes in market conditions, regulatory requirements, etc.).

EPA received few comments on specific design issues. A chemical manufacturer and an auto company stated that, because of the limited detail contained in the December NPRM, any fee schedule would require additional public notice and comment including review at a public hearing. The chemical producer also stated that the CFR and Halon price increases contained in EPA's RIA analysis were sufficiently flawed that they should not be used as the basis for setting a fee. EPA agrees with these comments; additional analyses, public review and comment are necessary before a regulatory fee can be adopted.

Although EPA has concerns, discussed below, about whether it has the authority and administrative capacity to design and administer a large fee program, the following sections discuss specific design issues related to implementing a regulatory fee program. The fee system should be narrowly circumscribed to further the regulatory purpose in section 157(b), (or TSCA Section 6, if TSCA is used as the authority for the fee). EPA believes that the following methods of setting a fee further the purpose of that section, but is seeking comments on all issues related to its use of a regulatory fee.

1. Setting a Fee

In evaluating options for setting a fee, EPA has considered a number of issues, relating to the design and administration of the fee.

(i) When does a windfall profit arise? Specifically, producers legitimately expect a "regular" (non-windfall) profit—*i.e.*, a reasonable rate of return. How should the Agency determine when profit margins exceed the reasonable rate of return as a result of the Protocol/EPA restrictions?

(ii) How should the windfall profit be computed? In general, the windfall profit is the difference between (a) market price and (b) costs plus reasonable rate of return. How should the Agency compute each element? For example, should EPA use actual current market price and actual costs, and actual rate of return during the pre-Protocol period (when no restrictions applied and thus no windfall profit situation existed)? Or, should EPA use proxies for some or all of these elements?

(iii) Should EPA's fee try to capture some or all of the windfall? What are the advantages and disadvantages of trying to capture the entire windfall?

(iv) How would EPA administer the fee? For example, what collection procedures would be necessary? What types of appeals could be expected between EPA and the industry, and by what administrative mechanism could those appeals be resolved? Note that these administrative concerns may vary, depending on how the fee is designed.

2. Options for Fee Design

*a. Predetermined Escalating Fee Schedule.* EPA could establish in its rule a set fee schedule which would escalate over time to reflect the expected increasing market price of CFCs and halons (as demand for these chemicals increases over time, but supply is reduced by EPA's regulation). In setting a fee schedule, EPA would also consider the expected costs and timing of the intoduction of new chemical substitutes which would act as a ceiling on potential CFR and halon price increases.

A predetermined fee schedule has the advantage of providing clear market signals for both producers and users. Depending on the level at which the fee was set, it also could remove much but probably not all of the potential for windfalls. It has the important disadvantage of being inflexible to new technological developments that could significantly influence future market conditions.

Based on EPA's existing analysis of control costs and chemical substitutes as explained in the RIA, the regulatory fee could be set at approximately $.25 per kg in the initial stage of the program and increase in a linear manner to approximate the currently anticipated costs of chemical substitutes (about $5.40/kg) in 1993 when they are expected to become available.

*b. Fees Based on Model Predictions.* EPA would initially set the fee based on (i) predicted market price, determined directly from the analysis contained in its RIA (which would be periodically updated); and (ii) estimated production costs (plus a reasonable rate of return), determined by a calculated baseline production cost periodically modified to reflect inflation and changes in the price of raw materials. For predicted market price, the Agency could use the average of its Case 1 and 2 scenarios (see Table 1) ( which spans the likely response by industry) or it could develop a "most likely scenario." For estimated production costs, EPA could determine the production costs in a base year (e.g., a year before the Protocol came into effect) plus the profits earned that year. EPA could then index these numbers (costs plus profits) for inflation and changes in the price of raw materials. The windfall would be the difference between the predicted market price and the estimated production costs.

By estimating the market price *increases* in CFCs and halons, the RIA model theoretically predicts the amount of the windfalls assuming no changes in production costs. However, given the complexity of the analysis, the control cost model used in the RIA could predict increases that are either too high or too low. EPA may want to base the fee on some percentage of its estimated price increase (e.g., 90 or 95 percent) to avoid imposing a fee higher than the windfall that would directly result from the forces of supply and demand. In addition, as new information becomes available, the analysis would have to be periodically updated to reflect actual market responses.

If the analysis contained in the current RIA were used to set the amount of the fee and the fee were based on 100 percent of the average of Case 1 and 2 scenarios and assuming no changes in production costs, (i.e. no indexing of production costs plus a reasonable rate of return), the fee amounts would be the following:

| Year | Projected CFC price increase [1] |
|---|---|
| 1989 | $3.39 |
| 1991 | 0.92 |
| 1993 | 2.56 |
| 1995 | 2.68 |
| 1999 | 4.99 |
| 2000 | 4.52 |

[1] Assumes no change in production costs and no increase in reasonable rate of return.

*c. Adjustable fees based actual market price.* Under this approach EPA would base the fee on (i) actual market prices of CFCs and halons and (ii) either actual or estimated production costs (plus a reasonable rate of return). As in the last option, if production costs were esitmated, a base year prior to the Protocol restrictions would be selected. For example, if production costs were estimated using 1986 as the base year, the difference between the 1986 market

price charged by CFC and halon producers for the controlled substances and the price charged in the marketplace for these chemicals after the allocated quota system were implemented would be used to determine the fee. Future market prices would be used in determining the amount of the fee. Future market prices would be used in determining the amount of the fee to ensure that the net prices (i.e., reflecting any increases in production costs) received by CFC producers were constant. Under this approach, future production cost increases could be calculated based on an inflation index and published prices for feedstocks chemicals. Instead of estimating changes in production costs, EPA could determine actual production costs, plus the reasonable rate of return in the base year, in order to calculate windfalls.

Basing the amount of the fee on observed prices would relieve EPA of the burden of attempting to forecast price changes. This approach would also likely result in a fee that fluctuates, as market prices change to reflect the introduction of new chemical substitutes. One likely outcome is a fee that is first higher and then lower. In the initial years of the phased reduction of CFCs, the price of CFCs is likely to increase up to the price level set by supply and demand as a result of the scarcity created by the allocated quotas. In the years following the introduction of chemical substitutes, the market price is likely to decrease as producers improve the efficiency of making these chemical substitutes and as users make more efficient use of them. Thus, the amount of the fee would be contingent on the amount of the CFC increase in price; only as long as the marginal costs of the chemical substitutes exceed the marginal costs of the CFCs, a fee be charged. This indicates an automatic "sunset" provision in the fee structure; the fee is self-extinguishing as substitutes become cheaper to produce over time.

This approach to setting a fee would effectively eliminate windfalls and thus remove any economic incentive producers may have to increase revenues from sales of existing CFCs or halons by withholding the supply of chemical substitutes. As a result, this approach effectively removes any economic incentive to delaying the introduction of chemical substitutes and thus is the approach most preferred by EPA.

3. Issues Related to Implementation of a Fee

EPA is also seeking public comment on whether the fee should be assessed against production, or against consumption (defined in the Protocol as production plus imports minus exports) of controlled substances. A fee on production alone would entail charging domestic producers for CFCs produced (including those exported), and would not impose charges on CFCs imported. This would increase costs only to domestic producers and would result in imports having a competitive advantage over domestic production and United States exports facing a competitive disadvantage vis-a-vis foreign production. A fee assessed against consumption would amount to a charge on all CFCs produced and imported, with an exemption or credit for CFCs exported. Allowing exports to be exempt from the fee would avoid burdening industry in the United States in its competition abroad without undermining the effectiveness of the fee program. A fee on consumption would be assessed against the limited number of producers and importers and not involve the collection of fees from the thousand of firms who use (but do not produce or import) controlled substances.

4. Uses of Revenue From a Fee

The goal of any regulatory fee under section 157(b) of the Clean Air Act or under Section 6 of the Toxic Substances Control Act would be to remove the incentive for delaying the introduction of chemical substitutes by reducing the size of windfall gains to producers. Under 31 U.S.C. 3302(b), any revenues generated from the assessment of a fee would go directly to the United States Treasury.

Because of this legal limitation, EPA is not considering a program to channel some portion of the estimated potentially multi-billion dollars in windfalls back to those industries developing or employing reduction technologies for CFCs and halons. Any such program could only be authorized directly by Congress. While allowing the CFC and halon producers to maintain the windfall profits themselves would be clearly inequitable, making some portion of the windfalls available to any firm developing or using reduction technologies might be potentially attractive in aiding the transition away from CFCs and halons. Resources might also be made available to groups of firms or associations working toward removing the institutional barriers (e.g., codes and practices, purchasing specifications) to shifting away from CFCs and halons. EPA is seeking public comment on the desirability of providing funding for the development of alternatives to CFCs and halons, how such program might be structured, and what legislative action would be necessary.

## IV. Auctions

In it December 14 NPRM EPA also asked for comment on the use of auctions as the mechanism for allocating production and consumption allowances. In that notice, EPA stated several advantages of auctions. Specifically, an auction system should result in reductions being achieved in an economically efficient manner and any revenues from the auction would to directly to the United States Treasury.

Auctions are attractive, in part, because they provide a direct mechanism to ensure that the available CFCs and halons are awarded to he highest value uses. Through the bidding process, individual firms must determine how much they value the use of these chemicals. By awarding CFCs and halons to the highest bidders, this system ensures that the limited supply of these chemicals are put to their most economical uses. A major advantage of an auction is that it automatically yields a price for production and consumption allowances that reflects the expected windfall. Under an auction system, each bidder has the incentive to bid as close as possible to the expected value of the allowances. Firms that underbid at an auction could obtain fewer allowances than desired; firms that overbid would either pay a price greater than the value it placed on the allowances or would obtain more allowances than desired.

As discussed in the prior section in the context of adding a fee to allocated quotas, auctions would avoid the problems associated with potential billion dollar windfalls which would accrue to a handful of CFC and halon producers under allocated quotas alone. The revenue from higher CFC and halon prices which result from restricting supply of controlled substances as called for by the Montreal Protocol would instead be transferred to the Treasury through the auction system.

Because of these potential advantages, EPA is seeking additional public comment on the possibility of shifting sometime in the future from the allocation scheme contained in its final rule to one in which production and consumption allowances would be auctioned to any interested party. EPA intends to make such a determination within 90 days of the end of the public

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comment period. If the Agency pursued this option, it would issue a notice of proposed rulemaking seeking public comment on a specified deadline for shifting from allocated quotas to auctions and specific changes in its rule to allow for such a shift, and would then issue a final decision on whether to provide for auctions.

*A. Public Comments on December NPRM*

A large number of industry commenters, including both CFC producers and user firms, argued against the use of an auction on the basis that it would result in greater market uncertainty, and encourage speculation and hoarding. CFC producers asserted that auctions would lead to: higher prices due to speculation and hoarding; increased uncertainties concerning production planning by allowing any person to hold production allowances; and a disincentive for the production of chemical substitutes by unnecessarily disrupting user markets. Producers also commented that problems associated with auctions were likely to be worse in the early years following implementation.

With the exception to some firms within the automobile industry, CFC and halon user industries also strongly opposed auctions. These firms were primarily concerned that firms would purchase more of these chemicals than they otherwise needed, thereby driving up prices. They were also concerned that speculators would enter the market, further adding to market uncertainties. Commenters asserted that problems of an auction could harm small firms disproportionately. They argued that such firms could be "shut-out" or outbid by large firms.

In contrast, several commenters supported the use of auctions as economically efficient and as a means of avoiding large transfers to producers which would result from simply allocating quotas based on past activity. One commenter argued that speculators would help stabilize the market by buying up allowances when prices were low and selling when prices are high. The commenter also stated that successful participation in an auction would be based on the value of CFCs to a firm and not on the size of a firm. To the extent that these may be problems, such difficulties are likely to be eliminated overtime through market transactions.

Several commenters stated that EPA had not provided sufficient detail in its description of an auction to permit adequate review and comment and therefore could not issue a final action without seeking additional public input. Several also questioned EPA's legal authority for implementing and auction. These legal issues are discussed below, in section V.

EPA has reviewed the public's response on this issue, and is seeking additional comment on possible ways to structure an auction system which would address the problems raised by commenters.

*B. Structure of an Auction System*

1. *Participation rules.* EPA believes that auctions should be open to all interested parties. Any limits on participation (e.g., only users, producers) would unnecessarily disrupt market forces.

While the auction would be open to all interested parties, EPA does not believe that most of the tens of thousands of firms who use CFCs and halons are likely to directly participate. These firms are more likely to continue using their current channels of supply (e.g., wholesalers and chemical producers) and rely on these firms to ensure that requirements for production and consumption allowances have been satisfied. Because of the limited participation by small users, EPA does not believe that the administrative costs associated with an auction would be excessive.

2. *Defining the commodity.* To implement the Montreal Protocol's limits on both production and consumption, separate auctions could be held for consumption and production allowances. Firms interested only in importing controlled substances would likely bid only on consumption allowances. Producers of controlled substances would likely bid on both production and consumption allowances. Producers could also rely on their customers to supply the consumption allowances also required for production under the Montreal Protocol.

All allowances would be transferable to provide firms maximum flexibility to respond to changes in market conditions. The allowances could also be for a single control period or they could allow the same amount of production or consumption for each of one or more periods (e.g., 100 units for each of the control periods covering 1988 and 1989). To ensure that the United States complies with the terms of the Montreal Protocol (which requires Parties to stay within limits defined in terms of 12-month control periods), allowances could be defined for multiple control periods, as long as they did not allow trade-offs between periods.

Allowances of a shorter duration would also reduce concerns that allowance holders, who are likely to include producers of CFCs and halons, might have an economic incentive to delay the introduction of chemical substitutes in order the maximize their market position.

To be consistent with the Montreal Protocol, all allowances would be defined in terms of Group I (CFCs) and Group II (halon) controlled substances and separate auctions would be held for each.

3. *Frequency of auctions.* The frequency of auctions could be an important factor in minimizing concerns raised about the possibilities of uncertainty and hoarding. Frequent auctions would help establish a market price, which would reduce uncertainties concerning the price or controlled substances. They would also ensure that a supply of CFCs is continuously made available to the public and thereby avoid concerns about hoarding.

4. *Bidding system.* To minimize administrative costs, the auction itself would likely be held through the mail. Firms would base their bids on the value to them of using controlled substances, which would be determined, in part, by the costs of alternative controls and technologies. Sealed bids would also minimize any gaming (e.g., bids based on competitor's actions) which could occur through public bids. Firms could submit as many bids as they want.

5. *Basis for Awards.* Awards would go to the highest bidders until all of the allowances up for auction are distributed. Under different auction systems, the price charged to the winning bidders may vary. Under one system all winning bids pay the amount contained in their bid. Under an alternative approach, each successful bid would pay an amount equal to the highest unsuccessful bid.

*C. Public Comment*

EPA is seeking public comment on the desirability of shifting from the promulgated allocated quota system to a regulatory system based on auctions, and on ways to minimize any disruption associated with such a shift. It is also seeking comment on the specific auction design features presented above.

**V. Legal Issues Related to Fees and Auctions**

In the December 13 NPRM, EPA specifically sought comment on the legality of adopting a regulatory fee or an auction (52 FR 47508). Numerous commenters (chemical producers and industry trade association) stated the

EPA does not possess the authority to use a fee or an auction. They argued that such a charge—a fee or an auction—would in effect constitute a tax and EPA does not possess the power to tax under the Clean Air Act or the Toxic Substances Control Act. In contrast, two commenters (federal agency and public interest group) stated that EPA did have the authority to use fees or auctions.

While EPA believes that CFC charges make good policy sense to eliminate any windfall that may arise, EPA recognizes that imposing CFC charges would be a novel interpretation of the environmental statutes. This action would represent regulatory action by an administrative agency, pursuant to an asserted, but not explicit, grant of authority from Congress, to collect charges. The sections below discuss the extent to which CFC charges would be legally permissible.

Two statutes that EPA administers provide possible legal authority: The Clean Air Act provides for the regulation of substances that may affect the stratosphere. Section 157(b) of the Clean Air Act describes the regulatory authority:

> [T]he Administrator shall propose regulations for the control of any substance, practice, process, or activity (or any combination thereof) which is his judgement may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control.

In addition, the Toxic Substances Control Act ("TSCA") provides for the regulation of toxic substances. Section 6(a) of TSCA provides that, after finding that a substance presents an unreasonable risk of injury to health or the environment—

> [T]he Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements . . . (5) A requirement prohibiting or otherwise regulating any manner of method of commercial use of such substance or mixture.

A third possible source of authority is the Independent Offices Appropriation Act ("IOAA") 31 U.S.C. 9701(a), which authorizes agencies to impose fees when granting benefits to outside parties.

Conscious that it may be breaking new ground, EPA is soliciting comments on the legal rationale for administrative charges in this context. EPA sees two sets of legal issues: The first are Constitutional issues, including (i) whether the administrative charges are "taxes" (i.e., whether the asserted grant of congressional authority represents a delegation of the Congress' authority under the Constitution to impose taxes [1]) or "fees" (i.e., whether the grant of authority represents a delegation of the authority to regulate commerce [2]); and (ii) whether any delegation of authority from Congress to EPA to impose charges under the CAA or TSCA was sufficiently circumscribed to avoid delegation-of-legislative-power questions. The second set of issues involve statutory interpretation, i.e., whether Congress in fact delegated authority to EPA under the CAA or the TSCA to impose these charges.

*A. Constitutional Issues*

1. Summary of Case Law

Three Supreme Court cases, and the series of appellate court cases that follow them, raise the Constitutional issues EPA is considering. In *National Cable Television, Inc.* v. *United States*, 415 U.S. 336 (1974) ("NCTA"), the Supreme Court construed the IOAA, and held that under this statute an agency may not impose a charge in excess of the value of agency services or other action to the recipient because such a fee would be a "tax." The Court defined a tax as a charge that has no necessary relationship to benefits received, may be based solely on ability to pay, and may be designed to serve public policy by, e.g., discouraging certain activities or preventing "entrepreneurs from exploiting a semipublic cause for their own personal aggrandizement." By comparison, according to the Court, a "fee" connotes some benefit, and is incident to a voluntary act such as a request for a permit. *NCTA*, at 341.

In *Head Money Cases (Edye* v. *Robertson)*, 112 U.S. 423 (1884), and a series of appellate court decisions decided under it, the courts have upheld charges as being fees—and not taxes—when the statute under which the charges were imposed was regulatory and the charges were closely tied to the regulatory purpose of the statute. *See, e.g., Brock* v. *Washington Metropolitan Area Transit Authority*, 796 F.2d 481 (D.C. Cir. 1986), *cert. denied*, 95 L.2d. 494, 107 S. Ct. 1887 (1987) and causes cited therein. The tests cited in these cases are discussed more fully below.

In *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U.S. 548 (1976) ("*FEA*"), the Supreme Court upheld a license fee imposed on imported goods under the Trade Expansion Act of 1962. The Court found that although this Act did not by its terms explicitly authorize the imposition of such license fees, it did include a grant of regulatory authority that was broad enough to encompass the charges. The Court further found that the legislative history of the Act contemplated license fees. Although not discussing any distinction between taxes and fees, the Court found that the statute provided sufficient guidance for agency action to avoid any question of "unconsitutional delegation of legislative power." *Id.* at 558–62.

2. Application to CFC Charges

EPA solicits comments on how to reconcile these various strands of the case law, and the extent to which the CFC charges would be permissible under the case law. The following is a brief sketch of some of the important issues.

The case law, particularly *NCTA* and appellate cases decided under it, may be read to indicate that the courts generally have been wary of upholding administrative charges, in particular charges that can be construed as representing "taxes," *i.e.*, of finding that Congress delegated to an agency the legislative authority under the Construction to impose taxes. See *e.g., National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118, 1129 n.28 (D.C. Cir. 1975). *But see* Gillete & Hopkins, *Federal User Fees: A Legal and Economic Analysis*, 67 B.U.L. Rev. 793, 822–24 (1987).

The argument that a CFC charge—either a fee or an auction—may be considered a "tax" under *NCTA* rests on the assertion that it is designed to serve public policy by eliminating the incentive to delay introducing chemical substitutes. If so, a CFC charge may not be authorized. On the other hand, it may be argued that the CFC charge amounts to a fee that is authorized because it is paid in exchange for the privilege granted by the Federal government to continue production of CFCs.

EPA is also soliciting comments on the extent to which the CFC charges meet the criteria in *Head Money Cases* and its progeny. In general, the administrative charges upheld under these cases involved (i) explicit statutory authorization for the charges and (ii) a close connection between the charges and the regulatory purpose of the statute, *e.g.*, in most of these cases, the funds were used by the agency as part of the regulatory scheme. *But see Rodgers* v. *United States*, 136 F.2d 992 (6th Cir. 1943). By contrast, the CFC charges—either a fee or an auction—are not explicitly authorized by statute and

[1] U.S. Constitution, Art. I, Sec. 8, cl. 1.
[2] U.S. Constitution, Art., I Sec. 8, cl. 3.

would not be used to fund the regulatory purpose of the statute.[3]

However, arguments may be made that the CFC charges are regulatory fees within the spirt of *Head Money Cases* and its progeny. The charges are designed to remove the economic incentive to delay the introduction of chemical substitutes that results from the sizable windfall profits that could accrue to the handful of CFC and halon producers by EPA's allocated quota regulation. As described above, if chemical substitutes are delayed, it may prove costly and difficult for industry to achieve the reductions required by the Montreal Protocol and by EPA's regulation. Moreover, any significant delay in the availability of new chemicals would make it more difficult to achieve greater or faster reductions in CFCs and halons if future changes in reduction occur. Seen in this light, according to this argument, the charges implement the regulatory purpose of CAA section 157(b), which is to protect the stratosphere. If chemical substitutes are not made available in a timely manner, the overall costs to society of meeting the regulatory goals would be increased as more expensive controls are used in lieu of chemical substitutes. As a result, it could be argued that the use of a charge as an adjunct to the allocated quotas system may be consistent with the provisions of section 157(b) that require the Agency to take into account the "feasibility and cost of achieving such control."

For much the same reasons, it may be argued that the charges implement the regulatory purposes of the TSCA. The legislative history of Section 6 of TSCA reveals specific congressional concern that certain steps be taken to minimize the chance that regulatory action might generate monopoly profits. *See* Conference Report on Toxic Substances Control Act, H. Rep. No. 94–1679, 94th Cong., 2d Sess. 75 (1976). However, as discussed below, it is uncertain whether this legislative history can be read to contemplate fees or auctions.

The case for CFC charges may also be strengthened by *FEA*, in which the Supreme Court upheld charges that were not explicitly authorized by statute in light of the broad scope of regulatory authority the statute granted. In that case, however, the Court further found that the legislative history of the statutory provision provides "much to suggest" that license fees were authorized. As discussed below, the legislative history of the Clean Air Act and TSCA is not as clearly favorable for CFC charges. Moreover, EPA is examining how to reconcile *FEA*—which did not raise the issue of whether the charges represented a delegation of the taxing power or the power to regulate commerce, and thus did not explicitly discuss whether the charges implement the regulatory purpose of the statute—with *Head Money Cases* and its progeny, which do not undertake that analysis.

EPA solicits comments on the extent to which the CAA or the TSCA, by its terms, provides sufficient guidance for imposing charges—either fees or auctions—to avoid delegation-of-legislative-power questions, under *FEA*.

*B. Statutory Interpretation Issues*

EPA is further examining the extent to which CFC charges fit within the intended scope of the regulatory authority Congress granted EPA under either CAA Sec. 157(b) or TSCA Sec. 6(a)(5). CAA Sec. 157(b), as quoted above, provides a grant of regulatory authority that is written broadly—"regulations for the control of any substance, practice, process, or activity * * * which * * * may reasonably be anticipated to affect the stratosphere * * *." Two commenters (public interest group, federal agency) argued that these terms are broad enough to permit the imposition of CFC charges. Further, the House Commerce Committee verified that Congress intended a broad grant of regulatory authority:

> Stratospheric protection measures are not confined to use of the best control technology or to requiring compliance with technologically feasible emission limitations * * * "[C]ontrols" may include design standards, work practice standards, prohibitions, and/or such other measures as may be necessary to assure protection for health and environment and to protect the stratosphere.

H. Rep. 94–1175, *reprinted in* "A Legislative History of the Clean Air Act Amendments of 1977" Congressional Research Service (1978) at 6630 n.2 ("Legislative History").

On the other hand, other aspects of the Clean Air Act Amendments of 1977 and the legislative history raise questions about the extent to which Congress believed that the concept of economic regulations was sufficiently well developed to be relied on. For example, Congress included in the CAA Amendments (i) section 120, which imposes a delayed compliance penalty on sources, and is computed by reference to the sources' pollution control costs saved as a result of the delayed compliance; and (ii) section 405(a), which directs a study on economic regulatory methods, including emission fees, by EPA and Council of Economic Advisors. Rep. Wirth, the author of this study provision, stated that the study provision has—

> great promise for improving our future efforts to control air pollution * * * [The provision] directs the Councils on Environmental Quality to study the effectiveness of using economic incentives to supplement our regulatory approach to pollution control. * * * [A]fter we look at the effect of [an early House version of the delayed compliance penalty provisions that would have determined the penalty by reference to amounts of emissions], and the results of the study * * * we should have enough evidence to adopt a comprehensive program of economic controls * * *[4]

These aspects of the legislative history may be interpreted to indicate that Congress, in adopting the CAA Amendments of 1977, did not believe that the concept of economic regulations, particularly emission fees, was sufficiently well developed at that time to be adopted.

However, EPA seeks comment on the extent to which Congress's concerns about economic controls primarily focused on using economic controls, in particular, emission fees, as the principal means of regulating pollutants that were already regulated under the 1970 Clean Air Act. Under this interpretation of the legislative history, Congress was primarily concerned about regulating pollution solely through emission fees; *i.e.*, allowing sources to emit as much pollution as they were willing to pay for. Under this interpretation, Congress was concerned that these types of emission fees (i) may not guarantee a particular level of pollution control (because, for example, if the fees were set too low, sources would emit more pollution than anticipated), (ii) could be administratively complex, and (iii) could have unforeseen economic effects on the industry.[5] It could be argued that at least some of these concern may not apply to CFC charges under either the fee system or the auction system described in this notice. For example, it could be argued that the CFC charges described in this notice would not jeopardize attainment of a particular level of pollution control because the amount of CFCs that may be produced

[3] Under 31 U.S.C. 3302(b), the funds collected through the CFC charges would go to the U.S. Treasury.

[4] Legislative History, at 6382.

[5] For example, Senator Muskie, one of the architects of the 1977 Clean Air Act Amendments, raised these concerns during a September 18, 1975 mark-up session held by the Subcommittee on Environmental Pollution, Committe on Public Works, concerning a proposal by Senator Buckley to impose an emission fee on emissions of sulfur dioxide.

and consumed would be limited separately. That is, CFC fees would simply supplement the allocated quota system. Similarly, an auction would simply be a method of distributing the allowable amount of CFC production and consumption rights.

TSCA Sec. 6(a)(5) is also written broadly—"prohibiting or otherwise regulating any manner or method of commercial use of such substance. . . ." EPA solicits comments on the extent to which these provisions may be broad enough by their terms to permit CFC charges. As discussed above, the legislative history of TSCA reveals specific congressional concern over monopoly profits that could result from EPA action to restrict supply of a substance. However, this legislative history seemed to result from earlier proposals to require EPA to impose specific allocations of quotas, under certain circumstances, if EPA limited production or use of a product. This legislative history does not explicitly authorize action, such as fees, to eliminate monopoly profits.

One commenter (federal agency) argued that EPA also had authority under the IOAA to impose CFC charges on the grounds that the IOAA authorizes fees in an amount up to the value of the benefit provided the recipient. This commenter stressed that in *NCTA*, the Supreme Court held that IOAA fees should be computed with reference to "value" granted by the agency to the recipient, and did not expressly limit the amount of fees to the agency costs in providing the benefit. The commenter acknowledged that at least four Federal Courts of Appeals, in at least eight decisions, following *NCTA* have stated that the IOAA limits fees to agency costs (or value provided the recipient, if lesser).[6] However, the commenter indicated that these statements were not relevant to the holdings of those cases. EPA invites further public comment on this issue, including on how clearly the appellate courts have spoken.

On a broader level, EPA seeks comments on whether interpreting the CAA, TSCA or the IOAA to permit EPA to charge CFC fees could result in interpreting these and perhaps other statutes to permit EPA and other agencies to impose other charges that could cumulate in substantial revenues. The potential significance of administrative agencies' collecting substantial revenues may be a factor in interpreting the statutes to allow this action.

*C. Public Comment*

The legal issues outlined above raise questions about the best way to proceed with the proposal for CFC charges. CFC charges will be more effective if imposed in the near future because even one or two years of windfall profits accruing to the current CFC producers could delay the introduction of substitutes, with detrimental results. If EPA imposed a fee in conjunction with allocated quotas, United States compliance with the Montreal Protocol would not be in jeopardy even if the regulatory fee were legally challenged. However, if EPA were to impose fees, a court were to invalide them, and Congress were then to impose them, the loss of time before the fees became effective could reduce their utility. Accordingly, EPA seeks comment on the overall extent of the legal risks noted above with respect to CFC fees, and the best course to follow in light of the risks.

Similarly, if a court invalidates the auction, the United States' compliance with the Montreal Protocol would be jeopardized. Thus, EPA seeks comment on the overall extent of the legal risks concerning an auction, and the best course to follow in light of the risks.

## VI. Direct Controls on Use of CFC and Halons

In the December 14 proposed rule, the Agency described the possible need to develop a program of engineering controls or bans on CFC and halons, either alone or as a supplement to the allocated quotas, if users of these chemicals were postponing the adoption of technologically available, low-cost reductions. The central purpose of direct controls is to ensure that low-cost reductions would be made in a timely manner, thus preventing unwarranted price increases for the uncontrolled substances.

EPA received 48 comments addressing the issue of direct controls. Thirty commenters opposed the adoption of any technology-based controls or bans. Generally, these comments cited as the major disadvantages of direct controls, the elimination of incentives to develop substitutes and innovative practices, the likelihood of high administrative and compliance costs, the uncertain level of environmental protection, and economic inefficiency as a result of inflexibility and unresponsiveness to changing technological innovations and economic conditions.

In contrast, eighteen commenters favored engineering controls and bans for some CFC and halon applications, because they believe that despite CFC price increases, voluntary and timely reductions by industry are unlikely in the near term. Seven commenters preferred that industry-specific engineering controls or bans be imposed in conjunction with allocated quotas. One commenter believed that such a "hybrid" would protect foam-blowing applications, an end use where near-term substitutes may not be readily available, from having to bear excessive CFC price increases.

For many of the reasons outlined in these comments, EPA did not promulgate direct controls in the final rule published elsewhere in today's **Federal Register**. However, the Agency believes that direct controls, when used in conjunction with the allocated quota system, under certain conditions (e.g., to overcome market imperfections) offer a potential cost-saving to allocated quotas.

While the allocated quota system, by itself, requires that the Protocol's mandated reductions in CFCs and halons occur and thus fully implements the requirements of the Montreal Protocol, the addition of a program of direct controls would ensure that low-cost reductions are adopted.

Potential disadvantages of direct regulations, such as high compliance and administrative costs, depend on the type of controls adopted. For example, a ban of CFCs in some end use applications would be simple to administer and enforce. EPA also believes that innovative technologies would develop if prospective bans were imposed in conjunction with allocated quotas and that it is possible to design such regulations for select user groups that would minimize the disadvantages of this traditional regulatory approach. Several other nations (e.g., Canada, Japan, and Sweden) are considering this form of hybrid approach for their implementation of the Montreal Protocol.

*A. Need for Direct Controls*

As part of its revised RIA, EPA examined the potential impact of delayed efforts by user industries to adopt low-cost reduction technologies in a timely manner. This analysis compared two scenarios. The Case 1 scenario assumed key user industries

[6] The commentator cited the following decisions: *Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d 722, 729 (D.C. Cir. 1985); *Nevada Power Co.* v. *Watt*, 711 F.2d 913, 933 (10th Cir. 1983); *Yosemite Park and Curry Co.* v. *United States*, 686 F.2d 925, 931 (Ct. Cl.1982); *Mississippi Power & Light* v. *NRC*, 601 F.2d 223, 230 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); *National Cable Television Ass'n* v. *United States*, 554 F.2d 1094, 1106–07 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *FCC*, 554 F.2d 1109, 1114–15 (D.C. Cir. 1976); *National Ass'n of Broadcasters* v. *FCC*, 554 F.2d 1118, 1128 (D.C. Cir. 1976); *Capital Cities Communications, Inc.* v. *FCC*, 554 F.2d 1135, 1138 (D.C. Cir 1976).

delayed the date at which they began shifting away from CFCs and that a lower percentage of firms in a user industry made the shift over a longer period of time. The Case 2 scenario assumes exactly the opposite; firms aggressively move away from CFCs to alternative technologies and increased recycling and recovery. Tables 2 and 3 show the user industries examined in this analysis and the assumptions used in the Case 1 and 2 scenarios, respectively. These assumptions were entered into the Integrated Assessment Model (IAM) used in the RIA. This model determines likely CFC price effects based on assumptions concerning control options and actions by industries.

TABLE 2.—CASE 1 ASSUMPTIONS ABOUT TECHNICAL FEASIBILITY OF CFC-CONSERVING TECHNOLOGIES

| Sector/technology | Start date [a] | Penetration time [b] | Use-specific reduction potential in 1998 [c] |
|---|---|---|---|
| Mobile Air Conditioning: | | | |
| Recovery at Service-Large Shops | 1989 | 3 | 6.5% |
| Recovery at Service-Medium Shops | (*) | (*) | (*) |
| Recovery at Service-Small Shops | (*) | (*) | (*) |
| DME | (*) | (*) | (*) |
| Solvents: | | | |
| Terpenes and Aqueous Cleaning | 1988 | 5 | 24% |
| CFC-113 Azeotropes | 1989 | 4 | [d] 7% |
| Housekeeping | 1989 | 1 | [f] 5–12% |
| HCFC-123 | (*) | (*) | (*) |
| Hospital Sterilization: | | | |
| Disposables | 1988 | 9 | 22% |
| Alternate Blends | 1988 | 5 | 7% |
| Contracting Out | 1988 | 9 | 4% |
| Steam Cleaning | (*) | (*) | (*) |
| Refrigeration: | | | |
| Recovery at Service | 1988 | 5 | 3–11% |
| Recovery at Rework | 1988 | 3 | 2% |
| FC-134a | 1992 | [f] 10–21 | [f] 5–53% |
| Foam Insulation: | | | |
| Product Substitutes | 1990 | [f] 5–10 | [f] 20–40% |
| HCFC-123 | 1992 | 3 | [f] 27–50% |
| HCFC-141b | 1991 | 3 | [f] 30–50% |
| Flexible Foam-Molded: | | | |
| Water-Blown Processes | 1988 | 3 | 41% |
| HCFC-141b | 1991 | 9 | 18% |
| Flexible Foam-Slabstock: | | | |
| HCFC-123 | 1992 | 9 | 26% |
| HCFC-141b | 1991 | 8 | 18% |
| Foam Packaging: | | | |
| Product Substitutes | 1988 | [f] 3–5 | [f] 10–51% |
| HCFC-22 | 1988 | 2 | [f] 0–90% |
| Aerosols: | | | |
| Carbon Dioxide | 1988 | 4 | 25% |
| HCFC-22 Blends | 1988 | 2 | 25% |

NOTES:
[a] Year in which technology initially becomes available for commercial use.
[b] Years until maximum use of technology is achieved.
[c] Possible reduction in CFC use for the sector in 1998 for this control only. Some technologies can only control a small percentage of an application's use. Thus, a number smaller than 100% may not indicate low penetration but may indicate that the control can only eliminate a small percentage of the application's use.
[d] Case 1 assumes that no CFC reductions are possible through this technology.
[e] Azeotrope consists of 70 percent CFC-113. The reduction shown reflects the 30 percent reduction in CFC-113 achieved when using the azeotrope and the fraction of the solvent sector adopting the azeotropes.
[f] Ranges reflect differences in assumptions about technical feasibility of adopting technology by subsectors within this sector (e.g., in some subsectors the reductions are lower than others). Within particular subsectors, the reductions do not exceed 100 percent.

TABLE 3.—CASE 2 ASSUMPTIONS ABOUT TECHNICAL FEASIBILITY OF CFC-CONSERVING TECHNOLOGIES

| Sector/technology | Start date [a] | Penetration time [b] | Use-specific reduction potential in 1998 [c] |
|---|---|---|---|
| Mobile Air Conditioning: | | | |
| Recovery at Service-Large Shops | 1989 | 3 | 6.5% |
| Recovery at Service-Medium Shops | 1989 | 3 | 19.2% |
| Recovery at Service-Small Shops | 1989 | 3 | 7% |
| DME | 1989 | 3 | 20% |
| Solvents: | | | |
| Terpenes and Aqueous Cleaning | 1988 | 5 | 50% |
| CFC-113 Azeotropes | 1989 | 4 | 12% [d] |
| Housekeeping | 1989 | 1 | 14% |
| HCFC-123 | 1992 | 10 | 3% |
| Hospital Sterilization: | | | |
| Disposables | 1990 | 5 | 35% |
| Alternate Blends | 1988 | 3 | 35% |
| Contracting Out | 1988 | 9 | 5% |
| Steam Cleaning | 1988 | 1 | 10% |
| Refrigeration: | | | |
| Recovery at Service | 1988 | 4–9 [e] | 6–27% [e] |
| Recovery at Rework | 1988 | 2 | 2% |
| FC-134a | 1992 | 10–21 [e] | 50–100% [e] |
| Foam Insulation: | | | |
| Product Substitutes | 1990 | 5 | 10–80% [e] |
| HCFC-123 | 1992 | 3 | 17–50% [e] |
| HCFC-141b | 1991 | 3 | 20–50% [e] |
| HCFC-22 Blends | 1988 | 4 | 50% |

TABLE 3.—CASE 2 ASSUMPTIONS ABOUT TECHNICAL FEASIBILITY OF CFC-CONSERVING TECHNOLOGIES—Continued

| Sector/technology | Start date [a] | Penetration time [b] | Use-specific reduction potential in 1998 [c] |
|---|---|---|---|
| Flexible Form-Molded: | | | |
| Water-Blown Processes | 1988 | 1 | 63% |
| HCFC-14b | 1991 | 0 | 36% |
| Flexible Foam-Slabstock: | | | |
| HCFC-123 | 1992 | 9 | 24% |
| HCFC-141b | 1991 | 9 | 40% |
| Foam Packaging: | | | |
| Product Substitutes | 1988 | 3–5 [e] | 20–60% [e] |
| HCFC-22 | 1988 | 2 | 0–90% |
| Aerosols: | | | |
| Carbon Dioxide | 1988 | 4 | 50% |
| HCFC-22 Blends | 1988 | 4 | 50% |

NOTES: [a] Year in which technology initially becomes available for commercial use.
[b] Years until maximum use of technology is achieved.
[c] Possible reduction potential for response action in 1998 for this control only. Some technologies can only control a small percentage of an applications use. Thus a number smaller than 100% may not indicate low penetration but may indicate that the control can only eliminate a small percentage of the applications use.
[d] Azeotrope consists of 70 percent CFC-113. The reduction shown reflects the 30 percent reduction in CFC-113 achieved when using the azeotrope and the fraction of the solvent sector adopting the azeotropes.
[e] Ranges reflect differences in assumptions about technical feasibility of adopting technology by subsectors within this subsector (e.g., in some subsectors the reductions are lower than others). Within particular subsectors, the reductions do not exceed 100 percent.

Table 1 presented earlier shows the economic impact of delays in implementing low-cost reduction technologies. It shows that substantial increases in total costs (from just over $1 billion in Case 2 to almost $3 billion in Case 1 through the turn of the century) would result. It also shows that windfall profits (pre-tax) through the year 2000 would as much as triple, going from just under $2 billion in Case 2 to over $7 billion in Case 1. CFC prices would shift from no increase in the initial years under the Case 2 scenario to price increases of $5–6.00/kg in the early years under the Case 1 scenario.

Based on this analysis, it appears that control actions in the next few years will have a substantial impact on short-term costs of reducing use of CFCs and halons, but far less impact on longer-term costs. However, short-term price effects are critical to encouraging an orderly transition away from these chemicals with minimum disruption to the nation's economy, and in avoiding adverse environmental consequences discussed above.

The extent to which near-term price increases can be minimized is also

crucial to the ability of potentially vulnerable industrial users of CFCs (e.g., certain foam applications) to maintain their markets prior to the availability of chemical substitutes. If these firms are not confronted with steep near-term price increases, they will be better able to continue manufacturing until chemical substances become available.

*B. Criteria for Selecting Direct Controls*

The December 14 proposal outlined several criteria EPA may use to develop possible controls. First, the Agency would review low-cost reductions currently available within each user group. It is these reductions that EPA believes that industry will or should undertake during the initial years of the allocated quota system. For some end use applications, low-cost options may not currently be available; for others, control options are currently available but may not be implemented due to the small cost of CFCs relative to the total cost of the product or due to the ability to pass higher costs on to consumers. EPA intends to closely monitor the pace at which reductions are being made and if necessary develop control requirements. EPA is requesting comment on the level of reduction in CFC and halon use or rate of progress toward substitutes which EPA should expect within these industries to indicate each industry's commitment to reduction in use of these chemicals.

Second, the Agency will be concerned with the administrative burden associated with monitoring compliance and enforcing its regulations. EPA may target end use applications where volumes of CFCs and halons consumed are easily monitored or where uses can be banned, rather than mandating tecnology-based controls which generally require extensive compliance with monitoring and site inspections by EPA inspectors.

Finally, EPA will avoid, if possible, direct regulations on small businesses. The Agency believes that the small business community should not bear an inordinate burden relative to larger businesses to comply with the stratospheric ozone program. Furthermore, it is much more likely that small business will undertake measures to reduce their use of controlled substances since they will be unable to absorb large increases in the price of CFCs and halons. The large number of small businesses potentially regulated also presents compliance monitoring and enforcement problems.

EPA will closely monitor industry responses to today's final rule and review the development of reductions in CFC and halon uses over the coming years. EPA believes that if reductions do occur then subsequent price increases of controlled substances will be moderate. If available reductions are not adopted, however, and prices increase significantly, this would signal the need for direct controls on user applications. EPA is also seeking public comment on the possible role of voluntary, as opposed to mandatory controls, and the potential to use some form of negotiated rulemaking process with specific user groups.

*C. Potential Near-Term User Regulations*

Based on the analysis contained in its RIA and the criteria described above, EPA has identified several industry sectors where direct regulation in the near term may be appropriate. To understand the impact of controls implemented within individual sectors, EPA estimated, through the IAM model, price increases of controlled chemicals when an individual sector alone adopts low-cost controls. In some instances, sectors which use a relatively small percentage of the total of controlled substances can prevent large price increases if controls can either substantially eliminate CFC use in the sector or can be used by a high percentage of firms in that sector. In contrast, CFC price impacts from controls in a larger CFC user sector may not be as great due to limited market penetration.

1. Automobile Air Conditioning

Approximately 25 percent of all domestically-consumed CFCs are currently used in auto air conditioners, making it the single largest use of these chemicals. Moreover, current servicing practices result in substantial unnecessary emissions of CFC–12. Typically, any CFC–12 remaining in the auto air conditioner is first vented to the air, a new charge of CFC–12 is sometimes used to test the system and to locate the leak, and finally the system is recharged. Additional waste may occur when "do-it-yourselfers" either charge systems repeatedly what repairing the levels, overcharge systems, or discharge unused chemical from the small cans used to recharge systems.

Several groups (automobile manufacturers, servicing trade associations and recycling equipment manufacturers) are not working together to develop a standard for recycling CFC–12 for car air conditioners. If this step alone were taken, the resulting reductions in CFC demand would reduce the price of CFCs in 1989 from $6.69/kg in the Case 1 scenario to $4.49/kg. Because of the importance of this step, EPA intends to closely monitor progress toward recycling by this industry segment and intends to develop mandatory regulations requiring recycling in all service shops by 1992 if near-term progress toward the use of recycling in this industry segment does not occur.

In addition, DME/12 blend, a mixture of CFC–12 and dimethylether, is a potential "drop-in" replacement for CFC–12, and has considerably lower ozone-depleting potential than CFC–12. Assuming the additional tests of this blend that are underway prove that it can safely be used in existing auto air conditioning systems, EPA believes that automobile manufacturers and service repairmen could replace CFC–12 with the DME/12 blend during initial charging and future servicing. EPA estimates that the DME/12 blend could replace 20 to 30 percent of CFC–12 used in these applications if such a practice is accepted under the automobile warranties which currently require pure CFC–12 as the replacement refrigerant. If adopted, DME/12 blend could reduce price increases from $6.69 per kilogram in Case 1 to $2.21 per kilogram.

2. Hospital Sterilization

Hospital sterilization accounts for 4 percent of all CFCs used within the United States. Although this application consumes a small percentage relative to other uses, there are several immediate opportunities to decrease its use of CFC–12. To minimize CFC price increases, hospitals could expand their use of disposable medical items, potentially displacing 45 percent of CFC–12 used for sterilization. Hospitals could also contract to have sterilization done by external facilities which would use less CFC–12 in total than individual hospitals, saving approximately 5 percent of CFC–12 currently used in this application. Finally, alternate blends of chemicals and steam cleaning could together displace an additional 45 percent of CFC–12 used within this application.

There are several obstacles to the adoption of these technologies. Acceptance by hospital administrators, physicians and staff who may be biased toward more traditional means of sterilization is crucial. Further development of off-site sterilization facilities and disposable instruments are also necessary. Finally, any new sterilants must be submitted to and approved by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act. If these alternatives were available and implemented in 1988, price increases could be reduced from $6.69

per kilogram to $2.21 per kilogram in 1989. Due to this potential saving for a relatively small user groups, EPA intends to monitor this user industry and require a ban of CFC–12 use in hospital sterilization if expected reductions do not occur.

3. Aerosols

Current uses of CFCs in aerosols were exempted from the 1978 aerosol ban and account for approximately five percent of the total CFC usage in the United States. Several alternative aerosol propellants and alternative delivery systems have been developed since the original aerosol exemptions were granted. A complete ban of CFCs within aerosols would reduce the price increase in 1989 from $6.69 per kilogram in Case 1 to $2.79 per kilogram. EPA may propose product labeling and further restrictions on aerosol use.

4. Solvents

Approximately 12 percent of all domestically consumed CFCs are used in solvent cleaning of metal and electronic parts. This area also has several potential alternatives or process modifications to minimize the use and thus the demand for CFC–113. The use of terpene and aqueous cleaning as substitutes for CFC–113 based solvents can provide approximately a 50 percent reduction in CFC–113 within this application by 1998. The timely application of CFC–113 azeotropes or mixtures and improved housekeeping practices to minimize vent losses or spills could further reduce CFC demand by an additional 20 percent. If all controls are adopted, the expected price rise is only $1.95 per kilogram, rather than $6.69 under the "Case 1" scenario. EPA recognizes however that solvent applications are difficult to characterize and that not all uses could shift to the suggested alternatives. While several large firms have recently made substantial strides toward reducing their reliance on CFCs, EPA will closely monitor this industry to determine if direct regulations are required and to better define which applications should be controlled.

*D. Potential Long-Term Reductions and Controls*

1. Commercial Air Conditioning

The December 14 proposal described several trends within the commercial air conditioning sector away from the controlled substances. Commercial chillers have already begun to shift to HCFC–22, CFC–502 and CFC–500, which are chemicals and mixes with ozone depletion weights that are significantly lower than CFC–11 and CFC–12. CFC recovery during routine maintenance would further reduce CFC emissions. Recovery of refrigerant during maintenance is not currently standard industry practice. Regulations requiring recovery may be necessary to ensure low cost reductions are made as CFC prices increase. For the future, alternative chemicals such as HCFC–134a, HCFC–123, DME/CFC–12 or HCFC–22/142b may replace CFC–11 and CFC–12 in new equipment.

2. Automobile Air Conditioning

Over the long term, EPA believes that the automobile manufacturers will have several chemical substitutes available. One promising alternative is HFC–134a, a chemical that the major automobile manufacturers, in their comments, pointed to as the most likely substitute, but one that will require several years to develop, test and begin integrating into the automobile fleet. However, other chemicals are also under active consideration worldwide. Finally, as discussed above, a blend of dimethylether and CFC–12 may be another possible alternative to pure CFC–12 refrigerant in existing and new equipment.

Although future automobile air conditioners may contain HFC–134a or some other refrigerant, the existing fleet of automobiles will continue to consume CFC–12. Venting during repair and losses due to refrigerant trapped within discarded containers contribute to large emissions of CFCs when eventually released. As mentioned earlier, EPA is investigating the possibility of requiring recycling at time of servicing and the use of a DME/CFC–12 blend as replacement coolant.

3. Electronics and Metal Cleaning

The electronic industry uses CFC–113 as a solvent; its use has grown substantially over the past years due to health concerns about alternative chlorinated solvents. The December 14 proposal noted that the high cost of CFC–113 and the fact that it is recoverable makes it economically attractive to recover and recycle CFC–113. For the same reason, EPA believes recovery and recycling are possible candidates for mandated controls. Existing equipment frequently does not have automatic covers or hoists (in the case of open top vapor degreasers) to reduce losses. Better operating practices or "housekeeping" could further reduce CFC losses. As mentioned above, alternatives such as aqueous cleaners or terpenes, are likely to play a large role in reducing this user group's dependence on CFC–113 and other chlorinated solvents. EPA expressly does not view shifting from CFC–113 to other chlorinated solvents which are currently under regulatory scrutiny as an acceptable solution to protecting the ozone layer.

Several commenters questioned EPA's previous estimates that aqueous cleaning would replace a large share of CFC–113 use. EPA does estimate that 50 percent of CFC–113 will be replaced by both aqueous and terpene-based solutions. Commenters believed that the diversity of the electronics manufacturing industry makes it necessary to examine the suitability of these substitutes on a case-by-case basis and that across the board recommendations or controls are not possible.

EPA recognizes the diverse nature of the electronics industry and will account for this diversity should direct controls be considered.

4. Flexible Foam

EPA discussed in the December 14 proposal possible controls applicable to the flexible foam industry, including makers of polyurethane foam slabstock. CFC–11 is an auxiliary blowing agent used by slabstock makers who manufacture cushions, mattresses and bedding. At this time, no chemical substitutes are currently available, but EPA believes that flexible foam-blowers may manufacture slabstock without CFCs. The elimination of the auxiliary blowing agent would result in firmer, higher density foam cushions for automobile seats. Over the longer term, modified polyols may be used to decrease foam densitiy to provide a softer foam simlar to CFC–11 blown foam. In addition, foam-blowers may increase water content of the foam to reduce density. In the long term, HCFC–123 or another chemical substitute may become a viable replacement for CFC–11 in many foam applications.

In response to EPA's discussion in the proposal, several automobile manufacturers indicated that efforts to replace CFC–11 in molded flexible foam seats for automobiles have been fairly successful, and that water-blown technologies can create the proper foam densities. Given the success with automobile cushioned seats, a ban of CFC–11 within this application may be appropriate.

5. Commercial and Residential Refrigeration

Like commercial air conditioning, commercial refrigeration is shifting toward other less ozone-depleting chemicals such as HCFC–22, CFC–502

and CFC–500. Manufacturers can also reduce emissions through alternate leak testing and recovery of CFC–12 during rework of the unit during test runs in the factory. Over the long term, HFC–134a or some other chemical substitute may replace CFC–12 in new equipment. A wide range of alternative refrigerants are also being explored for residential refrigerators.

Twenty commenters claimed that there were no currently available alternatives to CFC–11, 12 and 502. Industry also believes that the adoption of HFC–134a as a future alternative chemical will require large capital costs as factories retool to produce new refrigeration units. EPA is currently reviewing the possibility of HCFC–22, dimethylether/CFC–12, and HCFC–22/142b as substitutes for these end use applications. In the near term, increased use of recovery and recycling of refrigerant during servicing and use of DME/12 blend may be the most attractive options. Over the longer term, new refrigerants which reduce dependence on CFCs without sacrificing energy efficiency will represent the most acceptable market solutions.

6. Rigid Insulating Foams

CFC–11 is used as a blowing agent to make various forms of insulating foams such as polyurethane, isocyanurate, and phenolic foams. In the short term, HCFC–22 can be used in polystyrene insulation, and blends may be developed which reduce use of CFC–11, but there are no commonly accepted chemical substitutes for other rigid foams. There are possibilities that product substitutes may attract part of the insulation market from this end use application. Over the long term, HCFC–123 or HCFC–141b may become an attractive means of reducing this use of CFC–11.

7. Rigid Packaging Foams

Polystyrene foam is widely used in the food packaging industry. CFC–12 is primarily used as a blowing agent and currently competes with pentane. In contrast to pentane, which is flammable and contributes to air pollution, HCFC–22 may be a more suitable substitute for CFC–12. The Food and Drug Administration has recently approved the use of HCFC–22 in food service applications. The most comprehensive data on HCFC–22 for polystyrene foam suggests that firms will incur only limited capital costs and that operating costs are not expected to increase with the adoption of HCFC–22. In response to the development of this alternative, the industry has proposed to phase-out voluntarily the use of CFC–12 in food packaging by December 31, 1988.

8. Total Flooding Fire Extinguishant Systems

Halon 1301 is used as the agent in total flooding fire extinguishant systems to protect computer centers, document rooms, libraries, military installation, etc. Due to its unique features (non-toxic, non-residue forming), there are currently no available substitutes.

EPA believes that in the short term voluntary reduction will occur within the industry to reduce unnecessary emissions. Discharge testing of new systems using halons is being reduced or even eliminated as alternative test gases are being developed and employed. EPA's analysis of halon emission patterns indicate that only approximately 25 percent of all halon emissions are emitted to fight an actual fire. All other emissions are a result of accidental discharges, training procedures, and system and discharge testing.

Research efforts must focus on better ways to design systems which require less agent for the required protection, on appropriate methods for determining when halon protection is in fact necessary, and on the development of chemical substitutes.

9. Halon Fire Extinguishers

Halon 1211 is used extensively in portable fire extinguishers in markets where concerns exist about human exposure to and harm from residues from other agents. In addition to this market, portable fire extinguishers have penetrated consumer markets and some percentage are now purchased and used for applications where other fire extinguishing agents would be suitable.

EPA is currently considering restricting the sale of portable halon extinguishers for home use. Small halon extinguishers are relatively inexpensive and are purchased even where other agents might be used. Mandated controls could limit the sale of extinguishers in markets where substitutes are readily available.

10. Sterilization

The December 14 proposal outlined several available ways of reducing the use of CFC–12 to sterilize medical equipment. These options include the use of mixtures of carbon dioxide and ethylene oxide, cobalt radiation, and recovery of CFC–12 with carbon adsorption and refrigerated condensers. Several commenters on the December 14 proposal disagreed that these options are available, stating that no widely available means of reducing CFC–12 use are as safe or effective as the ethylene oxide and CFC–12 mixture.

EPA continues to believe that the options are commercially available and have been successfully demonstrated in the United States. Two of the methods, cobalt and gamma irradiation of equipment, have proven successful and indicate potential for future growth. The carbon dioxide and ethylene oxide mixture may require chamber replacement, and pure ethylene oxide for sterilization will require an explosion proof chamber, but over a long time period it may be cost-effective for commercial sterilizers and large hospitals to switch to these alternatives. For these reasons, EPA believes that sterilization end use application may be a likely candidate for direct controls.

*E. Barriers to Reducing CFC and Halon Use*

EPA is also seeking public comment on specific institutional barriers to reducing the use of CFCs and halons. Several commenters expressed concerns that such factors as energy efficiency standards, purchasing specifications, conflicting environmental laws and regulations, states and local codes, industry warranties, etc., may impede progress in moving away from ozone-depleting chemicals.

EPA has initiated or is participating in studies in several of these areas to determine what steps are necessary to reconcile potentially conflicting goals and to remove needless institutional barriers. EPA welcomes additional comment on relevant aspects of this issue.

*F. Labelling*

In addition to the allocated quota system, auctions, and direct controls for specified user industries, EPA is also considering labelling requirements for products containing or manufactured with CFCs. As discussed in the December 14 proposal, EPA believes labelling provides useful information to consumers, increasing their awareness of the ozone issue and allowing the public to make informed decisions on purchases. In turn, a change in demand will assist the industry in moving toward alternatives. Indeed, EPA believes labelling was an effective impetus in moving industry away from CFC use before the 1978 aerosol ban and has been proposed by several other nations (e.g. Canada and European Economic Community) as part of their plans to implement the Montreal Protocol.

Ten commenters believed that labelling could be an important part of

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the final EPA regulation, providing consumers with information that will allow them to make choices which protect the ozone layer, helping to prevent the misuse of CFC and halon products, and providing a marketplace incentive for manufacturers either to implement promptly a substitute for CFCs or to alter their products to eliminate CFCs.

Seventy-four commenters opposed a labelling requirement, believing that labelling would adversely affect their business. Commenters stated that labelling could cause consumer panic and affect industry's research and development efforts. User groups believe that labelling will drive up the cost of products, and adversely affect firms where chemical substitutes are not available.

Currently, EPA has not fully investigated the potential costs and benefits of labelling in either general or specific applications of the requirement. EPA intends to further investigate the need for and potential role of labelling and requests additional comments on this possible future requirement.

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**Lee M. Thomas,**

*Administrator.*

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Part V

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 20**

**Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations; Supplemental Proposed Rule**

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

## Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Supplemental proposed rule.

**SUMMARY:** This document supplements proposed rulemakings published in the Federal Register on March 9 and June 7, 1988 (53 FR 7702 and 53 FR 20674) and sets forth proposed frameworks (i.e., the outer limits for dates and times when shooting may occur, hunting areas, and the number of birds which may be taken and possessed) for late-season migratory bird hunting regulations for 1988–89. These seasons generally will commence on or about October 1, 1988, and include most of those for waterfowl.

The Service annually prescribes migratory bird hunting regulations frameworks to the States. The effect of this proposed rule is to facilitate the selection of hunting seasons by the States and to further the establishment of the late-season migratory bird hunting regulations for 1988–89. These proposed frameworks differ substantially from last year. The section on Supplementary Information includes a statement by the Director of the U.S. Fish and Wildlife Service and information on the status of ducks which explain the reasons for proposed changes.

**DATE:** The comment period for these proposed late-season frameworks will end on August 25, 1988.

**ADDRESS COMMENTS TO:** Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received on these proposed late-season frameworks will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202–254–3207).

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 9, 1988, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the Federal Register (53 FR 7702) a proposal to amend 50 CFR Part 20, with comment periods ending June 22, 1988, for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; July 18, 1988, for other early-season proposals; and August 29, 1988, for the late-season proposals. The March 9 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 7, 1988, the Service published in the Federal Register (53 FR 20674) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 11, 1988, the Service published for public comment in the Federal Register (53 FR 26198) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. That document also reopened and extended the comment period for the proposed frameworks for Alaska, Puerto Rico and Virgin Islands from June 22, 1988, to July 20, 1988. All three documents, March 9, June 7, and July 11, indicated that special consideration was being given to possible restrictive regulations for all aspects of the 1988–89 hunting season dependent upon the continuing poor status of ducks. On August 9, 1988, the Service published a fourth document (53 FR 29897) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico and the Virgin Islands selected early-season hunting dates, hours, areas and limits for 1988–89. This document is the fifth in the series and deals specifically with proposed frameworks for the 1988–89 late-season migratory bird hunting regulations. Before September 1, 1988, the Service intends to publish in the Federal Register a sixth document consisting of a final rule amending Subpart K of 50 CFR 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, bank-tailed pigeons, rails, woodcock, snipe, common moorhens and purple gallinules; sea duck seasons in certain defined areas of the Atlantic Flyway; experimental September duck seasons in three States; experimental September Canada goose seasons in three States; sandhill cranes; a special Canada goose season in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and extended falconry seasons.

### Statement by Frank Dunkle, Director, U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service is responsible for this Nation's migratory waterfowl resources. Each year, the agency adopts regulations governing the hunting of migratory waterfowl. It sets restrictions on the number of days hunters can hunt, a framework of dates for when the season can open or close, and bag limits on the number and kind of ducks or geese that can be taken.

This has been a terrible year for ducks. The continuing drought in many prime waterfowl breeding areas of Canada and the northcentral United States severely limited their ability to nest. Since last year, more than 1 million small wetlands have dried up. Service biologists are projecting a fall flight index of 66 million ducks—the second lowest on record. This is down from 1987's fall flight of 74 million birds.

During the period 1985–87, restrictions on hunting reduced duck harvest by 25 percent. This year's down-turn in duck numbers indicates the need for further restrictions.

In light of the current situation, I am recommending the following restrictions to further reduce harvest during the 1988 waterfowl hunting season:

- Reducing hunting days in all flyways by 25 percent;
- Shortening duck season opening and closing dates to October 8–January 8 in all flyways;
- Reducing bag limits by one duck in all flyways;
- Suspending special scaup seasons and bonus scaup and teal limits;
- Suspending the point system in determining bag limits for this year in all flyways. This is to be followed by a thorough review of this system prior to setting regulations for the 1989–90 hunting season;
- Closing the season on canvasback ducks in all flyways;
- Severely limiting pintail seasons in all flyways;
- Reducing mallard bag limits; and
- Suspending half-hour before sunrise shooting hours for this year. Sunrise will be the official starting time for shooting in 1988–89, and will be followed by a review of this issue prior to setting regulations for the 1989–90 hunting season. This will further reduce harvest and assist hunters in accurately distinguishing different species of ducks in flight. To achieve the necessary harvest reductions without this suspension would require more severe restrictions in other areas, for example, a further reduced bag, a further reduction in hunting days, and/or other more restrictive measures.

I am confident these restrictions will result in at least a 25 percent reduction in duck harvest from the average achieved during the 1985–87 period. I believe a reduction of this

magnitude is necessary to protect duck broodstocks during this drought.

In addition, the Service will monitor waterfowl migration and wintering areas this season. If the drought results in unusual concentrations of birds, making them vulnerable to hunters, I will not hesitate to utilize my authority to close the season in some areas.

Our current waterfowl situation underscores the importance of the North American Waterfowl Management Plan. This international agreement, signed by representatives of the United States and Canada, is aimed at preservation and enhancement of sufficient wetlands and other habitats on this continent to support fall flights of 100 million ducks. A parallel agreement with Mexico is expanding this important work into that country. Hunting is not the cause of the current decline in duck numbers. It is, however, one influence that must be regulated when populations are low. The long-term health of waterfowl depends on our ability to protect and enhance the wetland habitat which sustain these creatures.

Numerous waterfowlers have told me they plan to cut back voluntarily on the number of ducks they take this season, or even not hunt at all. I support these grass-roots conservation efforts, but urge those who choose not to hunt to at least purchase a Duck Stamp and help provide dollars that are vital to out habitat acquisition efforts.

While these changes in the waterfowl regulations may seem drastic, bold action is called for. I am confident this Nation's waterfowlers will understand the necessity of taking these steps and will make the sacrifices necessary to insure the future integrity of waterfowl populations, wetland habitats, and the sport of waterfowling.

Frank Dunkle,

*Director.*

**Review of 1980–88 Duck Situation**

The decade of the 1980's has not been good for ducks and their habitat across large areas of North America. Continued widespread drought, and agricultural impacts on wetlands in Canada and the north-central United States led to record-low duck breeding populations and the lowest fall flight on record in 1985. Restrictive hunting regulations during 1985–87, in combination with low numbers of ducks, reduced harvest by 25 percent, with nearly equal reductions in each of the four flyways. Harvest rates on mallards were reduced significantly for all sex and age classes. Since then the drought has intensified and habitat destruction has continued, which has slowed recovery of duck breeding populations. The disastrous drought of 1988 has reduced populations again almost to the levels of 1985. The problem is not one of a single year of severe drought in 1988, but the result of several years of repeated poor conditions. Some important breeding areas in Prairie Canada have been extremely dry since 1980, while others have experienced wet and dry cycles, but nearly all are dry in 1988. The period of the 1980's has seen three of the five lowest May pond counts on record in Prairie Canada. This year, severe drought also may adversely affect migration and wintering areas. Low stream flows, grain-crop failures, less natural food, and water shortages likely will tend to concentrate waterfowl, especially at critical migration stopovers and wintering sites. Such concentrations can lead to disease problems and greater vulnerability to hunting in addition to sending birds back to the breeding grounds in poor condition next spring.

Agricultural impact on marshes and surrounding habitats in Prairie Canada has accelerated because of the drought and has seriously reduced the capability of traditional Canadian prairie habitats to produce ducks. Several years of good climatic conditions will be required before many drought-stricken areas can recover, revegetate, and produce ducks again. However, because of the widespread destruction of natural wetlands and the conversion of potential nesting areas of agriculture, many areas once important to breeding ducks have been permanently affected. This factor will influence decisions about waterfowl harvest management for more than a single year. Breeding populations and production are showing the effects of both short and long-term stress on primary habitats.

May surveys indicates that ducks were displaced from their traditional prairie habitats more during 1988 than in any year of record. Extremely high numbers of mallards, pintails, and blue-winged teal were displaced to the far north into habitats which are inherently less productive. Ducks displaced to the north historically do not reproduce well, and those that remained in the prairies in spite of the drought encountered little water or cover for their broods if they attempted to nest. Mallards, blue-winged teal, and pintails have exhibited poor production in the past under conditions not as severe as those in 1988.

The mallards breeding population in surveyed areas was 10 million birds in 1970, 8 million in 1980, and 6.5 million in 1988. Pintail breeding stocks followed a similar pattern, going from 7 million to 5 million to 2.5 million over the same time intervals. For mallards, this year's breeding population was the second lowest on record. The breeding population of pintails in 1988 is the lowest on record. The fall flight index for ducks in 1988 is 66 million, second only to the 62 million record low in 1985.

After multiple years of very poor conditions, and in consideration of the severity of the drought in 1988, maintenance of basic breeding populations is now our primary objective, especially since we know these populations have not produced well this year. Further, we are convinced that the impacts will persist for some time even if weather patterns change. Continued high harvest rates on populations with poor recruitment are not in the best interest of the resource, or the future of waterfowl hunting. For these reasons, the Service is proposing hunting season frameworks significantly different from those in previous years. We are proposing, at a minimum, an additional reduction in harvest of the same magnitude as that reached by changes implemented in 1985 and maintained through 1987. The substantial reductions proposed for duck season lengths, framework dates, and bag limits, as well as delayed shooting hours, are strong measures designed to reduce hunting opportunity in order to reduce harvest. In addition, suspension of some special seasons and reevaluation of harvest systems will provide a better basis for future decisions about employment of the point system, zoning and split seasons, and other regulations. Many of the premises behind special seasons and other mechanisms in place before this year were developed to allow increased harvest opportunity at a time when populations were judged capable of providing it. The Service feels that many of these regulations are not consistent with the current status of the duck resource and should be reviewed.

Because these cited problems are not a single-year phenomenon, but rather indicate some strong trends over many years, we are concerned about next year as well. Habitat conditions may not recover next year and, in fact, some duck populations may deteriorate further. On a long-term basis, we are certain that recovery will take at least several years of good climatic conditions, and probably will require direct habitat management to give populations the best chance of recovery in the future. If current habitat and population trends continue, further restrictions may be necessary in the future, perhaps as early as 1989.

**Review of Comments Received at Public Hearing**

Twenty-four statements were offered at the August 3, 1988, public hearing. Portions of some of these statements were related to matters outside the purpose of the hearing. Each statement

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is summarized by category below and was considered in the development of these proposed late-seasons frameworks. The comments below pertain to the proposals presented at the public hearing. However, the proposals contained herein encompass several regulatory changes not reviewed at the public hearing, namely opening shooting hours, suspension of the point system, modification of bag limits on mallards in the Pacific Flyway, and a limited season on pintails. Therefore, responses to the public hearing comments are deferred and will be incorporated into responses to comments received in reply to this document and published with the final frameworks for late seasons.

**Regulations Process**

Mr. Brian O'Neill, a trial lawyer retained by the Humane Society of the United States, announced that he intends to explore the Service's process for establishing hunting regulations to insure compliance with National Environmental Policy Act, the Migratory Bird Treaty Act, and other applicable laws and regulations. Questions will be posed such as: does the hunting season structure provide adequate protection to species such as black ducks, pintails, canvasbacks, and others, and does the decision process take a hard look at a "no season" alternative to protect ducks? He stated that the Supplemental Environmental Impact Statement (SEIS-88) on migratory bird hunting, completed in 1988, does not do this, and this alternative must be considered. He further stated that annual consideration of a "no season" alternative may relieve some hunting pressure and tells the hunting public that business is not "as usual."

*1. Shooting Hours*

Mr. John Anderson, representing the National Audubon Society, suggested that starting the duck season at noon on opening day and thereafter begin shooting at sunrise, rather than one-half hour before sunrise, would reduce the harvest of ducks.

*2. Frameworks for Ducks in the Conterminous United States—Outside Dates, Season Length and Bag Limits*

a. General Harvest Strategy

Twenty-two of 24 persons making presentations at the public hearing addressed the Service Regulations Committee's recommended frameworks for duck regulations. Of those addressing the recommended strategy for reducing harvests of ducks, 11 offered qualified support, 8 believed that the recommended frameworks should be more restrictive, and 3 believed frameworks proposed for the Atlantic Flyway were inappropriate and too restrictive.

Mr. Eldridge Hunt, representing the Pacific Flyway Council, believed the recommended frameworks for ducks were reasonable for protecting waterfowl wintering in the Pacific Flyway. Mr. Dale Strickland, representing the Central Flyway Council, Mr. Hugh Bateman, representing the Mississippi Flyway Council's Southern Region, and Mr. Ken Babcock, representing the Mississippi Flyway Council's Northern Region, supported restrictive regulations but objected that the Service had not indicated earlier that special strategies should be developed to further reduce harvests of mid-continent mallards. They further indicated that the Councils discussed the need for such further action and would have been willing to try to develop regulations appropriately if the Service had provided such direction. Modifications of Council recommendations by the Service Regulations Committee would result in inequities in harvest opportunities, an erosion of the point system, and potential for increased harvests of several species. Mr. Leon Kirkland, representing the Atlantic Flyway Council, generally supported a strategy of reducing harvests on most duck species, but did not believe that the degree of reduction should be as great for the Atlantic Flyway as for other Flyways since a smaller proportion of Atlantic Flyway ducks are derived from the areas most stressed by drought and poor nesting conditions. Mr. Charles Potter, representing the North American Wildlife Foundation, stated that ducks need protection now more than ever and if major restrictions are not implemented, credibility with hunters will be lost. He suggested that a level protection at least equal to that given during the drought years of 1961 to 1964 would be appropriate this year. Mr. Jack Lorenz, representing the Izaak Walton League, supported the recommendations of the North American Wildlife Foundation. Mr. Jim Phillips, writer and duck hunter, believed that the proposed harvest strategy is not restrictive enough and recommended a general harvest reduction of about 50 percent. Mr. George Reiger, representing *Field & Stream* magazine, voiced concern by his readership over the status of ducks and need for restrictive measures, perhaps even season closures. Mr. Doug Inkley, National Wildlife Federation, generally supported the season reductions proposed by the Service. Mr. Mike Berger, representing Ducks Unlimited, Inc., Mr. Steve Miller, representing the Wisconsin Department of Natural Resources, and Mr. Roger Holmes, representing the Minnesota Department of Natural Resources, all expressed general support for the proposed strategy to reduce duck harvests. On behalf of the National Audubon Society, Mr. John Anderson supported the strategy to reduce hunting opportunity by at least 25 percent, but suggested some alternative measures to accomplish this reduction. Mr. James Yoos and Mr. Stanley Nadler, representing the New Jersey Waterfowler's Association, expressed concern that the proposed strategy unfairly restricted the Atlantic Flyway and suggested that harvest reductions should be focused on the areas where the specific problems are occurring. Mr. John Viser, representing the Berry Brooks Foundation, and citizen Grayson Chesser both suggested that the strategy of reducing duck harvest by 25 percent, while commendable, is not adequate and both suggested a reduction of 50 percent would be more appropriate.

b. Framework Dates

Mr. Steve Miller, representing the Wisconsin Department of Natural Resources, endorsed the proposed October 8-January 8 framework opening and closing dates for duck hunting. Mr. Doug Inkley, representing the National Wildlife Federation, endorsed the January 8 closing date. Mr Leon Kirkland, representing the Atlantic Flyway Council, recommended that the framework closing date be January 15 instead of January 8, stating that the best hunting opportunity in the southern part of the flyway occurs after January 1, and citing previous experience with a January 13 closing date which resulted in reduced harvests.

c. Season Length

Representatives of eight organizations commented on the season lengths proposed by the Service. Mr. Doug Inkley, representing the National Wildlife Federation, Mr. Charles Potter, representing the North American Wildlife Foundation, and Mr. Jack Lorenz, representing the Izaak Walton League, generally supported the Service recommendations for shorter seasons. Mr. Leon Kirkland, representing the Atlantic Flyway Council, while supporting some reduction in season length, disagreed with a 25 percent reduction for the Atlantic Flyway, citing the comparatively small proportion of prairie-nesting mallards, blue-winged teal and pintails (species which are most

affected by the drought) that are harvested in the Atlantic Flyway. Mr. Kirkland stated that only 2.8 percent of the harvest of prairie-nesting mallards occurs in the Atlantic Flyway, and percentages are similar to this for blue-winged teal and pintails. He noted that the predicted fall flight into the Atlantic Flyway is not forecast to be significantly changed from that in 1987. He recommended that the season length in the Atlantic Flyway be 35 days, which would be a 12.5 percent reduction from 1987. Jim Phillips, writer and duck hunter, recommended a 30-day season nationwide, while Mr. John Anderson of the National Audubon Society recommended a 25-day season nationwide. Mr. Roger Holmes, representing the Minnesota Department of Natural Resources, asked that an additional 5-day reduction in season length in the Mississippi and Central Flyways, over and above the 25 percent reduction proposed by the Service, be considered if mallard point values were returned to 35 points. Mr. Richard Bishop, representing the Iowa Department of Natural Resources, suggested that further reductions in season length would be preferable to further reductions in the mallard bag limit.

d. Closed Seasons

Mr. Charles Potter, representing the North American Wildlife Foundation, and Mr. Doug Inkley, representing the National Wildlife Federation, endorsed a season closure on canvasback and pintails. Mr. Bill Nickel, representing the Eastern Shore Waterfowl Trust, called for consideration of planned closures for the purpose of stockpiling breeding ducks. He suggested that targeting a closed season now for some future date would have hunter support. Mr. Lewis Regenstein, representing the Fund for Animals, provided written comment at the public hearing in support of a closed season.

e. Bag Limits

Messrs. Kenneth Babcock and Hugh Bateman, representing the Mississippi Flyway Council, Mr. Dale Strickland, representing the Central Flyway Council, and Mr. Richard Bishop, representing the Iowa Department of Natural Resources, while recognizing the need for harvest reductions in mallards and other species, opposed a decreased bag limit for mallard drakes from 1987. The comments were specifically directed toward the possible change in point value under the point system. They generally believe that such a change is not warranted because other restrictions being proposed, such as reduced season lengths and framework dates, would accomplish the desired reduction in mallard harvest. They further suggest that such a change in point values is an attempt to force elimination of the point system and would actually redirect hunting pressure toward female mallards and other species. Messrs. Bishop and Babcock noted that the point system is more restrictive than the conventional bag limit and the reduced attractiveness of the point system with a 70-point mallard drake will force some states currently selecting the point system to adopt the conventional bag limit which, they believe, will result in a higher kill of mallard hens than under the point system. Mr. John Anderson, representing the National Audubon Society, recommended a simplified 2-duck daily bag limit with no species or sex restrictions. Mr. Anderson noted that, while such a bag limit would seem to be a liberalization on species and sexes for which only 1 is allowed at present, this would be preferable to a complicated point system and would eliminate identification problems. Mr. Anderson cited studies from 1971 that suggested high point birds were discarded by hunters at a greater rate than low point birds. He also referred to a survey he conducted of more than 100 law-enforcement agents in which only two believed that the point system is enforceable. He further cited a recent analysis of the effectiveness of the point system in directing hunting pressure toward drake mallards and away from hens which concluded that the point system regulations have not successfully done this. *Field & Stream* Conservation Editor George Reiger identified a number of problems with enforcement of and compliance with the point system and suggested that the system was not working as intended.

*7. Extra Teal Option*

Mr. Leon Kirkland, representing the Atlantic Flyway Council, recommended that blue-winged teal be suspended as part of the teal bonus but requested that green-winged teal continue to be offered with 2 birds daily for 9 consecutive hunting days. He stated that greenwings have been part of the extra teal bag in the flyway since 1979 without adverse effects and breeding populations are 46 percent above objective levels.

*14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length, and Bag Limits*

Mr. Douglas Inkley, representing the National Wildlife Federation, endorsed the proposed continuation of all goose frameworks, especially the conservative regulations for certain populations of Pacific Flyway geese. Mr. Richard Elden, representing the Michigan Department of Natural Resources, opposed reduction in Canada goose bag limits in the southeastern portion of the State to provide added protection to Tennessee Valley Population (TVP) Canada geese. Recent data suggest that some of these geese migrate to wintering areas in southern portions of the Atlantic Flyway, where populations are declining. Mr. Elden stated that Michigan has previously taken measures to protect TVP geese by selecting shorter hunting seasons than the flyway frameworks permit and establishing a quota zone in one of the principal harvest areas to control harvest. Further, the State is establishing a new quota zone in another important harvest area this year. He requested that the bag limits be the same as last year.

*15. Tundra Swans*

Ms. Jennifer Lewis, representing the Humane Society of the United States, stated that there is no justification for tundra swan seasons in the Atlantic Flyway. She indicated that the overall good population status and depredation on grain fields by tundra swans should not be used as reasons for encouraging hunting seasons on this species.

Mr. Doug Inkley, representing the National Wildlife Federation, expressed support for tundra swan seasons proposed in New Jersey and Virginia and the existing season in North Carolina.

**Written Comments Received**

In the **Federal Register** dated June 7, 1988 (53 FR 20874), the Service reviewed comments on proposed season frameworks received from 48 correspondents as of May 9, 1988. In the **Federal Register** dated July 11, 1988 (53 FR 26198), the Service reviewed additional comments received through June 22, 1988. Since then, further comments have been received. Those received as of August 4 are summarized here by regulatory topics arranged in the same order as in the March 9, 1988, **Federal Register** (53 FR 7702).

*Regulations Process*

One individual requested that the Service reevaluate the process for receiving public comments because some Mississippi waterfowl hunters reported they were denied the opportunity to comment via telephone.

1. Shooting Hours

In order to provide additional protection for ducks in 1988–89, the Illinois Department of Conservation and one individual recommended restriction of daily shooting hours to include sunrise opening and pre-sunset closure. One waterfowl organization and one individual recommended either restricting daily shooting hours or allowing hunting only certain days of the week.

2. Frameworks for Ducks in the Conterminous United States—Outside Dates, Season Length, and Bag Limits

*a. General Harvest Strategy*—Because of concern about the status of ducks and their habitats, Mississippi Department of Wildlife Conservation supported reduction of the 1988 duck harvest by at least 50 percent below those during the period of stabilized regulations. Also, two individuals urged severe restrictions in hunting but urged all interested parties to continue to provide habitat for ducks. Another individual said that regulations should be made simple because he believed that complex regulations contributed to a decline in the number of hunters which in turn would result in reduced support for maintaining waterfowl habitats. Two individuals questioned whether the governments of Mexico and Canada would impose restrictions on duck harvests comparable to those deemed necessary in the U.S.; and, if not, urged the Service to seek their cooperation in doing so.

*b. Framework dates*—The Illinois Department of Conservation recommended that framework dates on both ends be shortened by 7–10 days. The Mississippi Department of Wildlife Conservation, while supporting restrictions on duck harvests, believed that outside framework dates of October 8 and January 1 suggested by the Office of Migratory Bird Management would disproportionately impact southern States. In a subsequent letter, Mississippi supported the adoption of the Mississippi Flyway Council's proposed frameworks of October 8 and January 8, although they believe a later framework closing date is warranted.

Four individuals, while supporting restriction of most regulations, urged that season ending dates be later, generally January 14 to 20, because ducks tended not to arrive in the southern States until later in the year.

c. *Season length.*—The Illinois Department of Conservation, *Sports Afield*, one waterfowl organization, and three individuals recommended reducing the length of the hunting season to help reduce the harvest of ducks. One individual and the Concerned Coastal Sportsman's Association recommended longer seasons in the Atlantic Flyway to compensate for hunting days lost because Sunday hunting is prohibited in many States. One individual and the Concerned Coastal Sportsman's Association recommended longer seasons in 1988–89.

d. *Closed season*—Due to the depressed status of continental duck populations, current drought conditions, and expected low production of young in 1988, 30 individuals, the Wisconsin Waterfowlers Association, the Wildlife Management Institute, and the North American Wildlife Foundation, provided written comment in support of a closed season. Many stated their overall commitment to duck hunting, but out of concern for the resource they urged the Service to cancel the duck season this year. One individual opposed a season closure until comprehensive harvest management plans have been developed with Canada and Mexico. Another opposed closing the duck season for fear that the season would be kept from reopening.

e. *Bag limits*—Eighteen written comments were received specifically regarding bag limits. The Illinois Department of Conservation proposed a number of general hunting restrictions, including elimination of the point system. They also recommended a simplified bag limit of 3 ducks, only 2 of which may be of the same species and only one female of any species. Two individuals recommended a simple 4-duck daily bag limit nationwide, and two others suggested a simple 3-duck bag limit. Six individuals recommended elimination of the point system, due primarily to difficulty with identification of duck species and sexes or to a perception that the point system is more liberal than a fixed bag-limit system. One individual suggested that the point value of pintails be increased to 70 or 100 points, while another suggested lowering the bag limit on pintails and mallards by 1 and eliminating restrictions on sexes due to identification problems with hens. The Minnesota Waterfowl Association suggested raising the point value of mallard drakes to 55 to reduce the harvest. Three individuals called for general reductions in bag limits. The Concerned Coastal Sportsman's Association recommended that the mallard limit be increased, and one individual recommended an increase in duck possession limits to 3 times the daily bag limit due to the long distances travelled and several days spent on hunting trips.

3. Black Ducks

The New Jersey Waterfowler's Association, the Concerned Coastal Sportsman's Association and one individual commented that regulations on black ducks for the 1988–89 season should remain similar to last year or should be liberalized to 2 birds daily with a shortened season. They indicate that black duck numbers have remained stable and have reached population levels that exceed available wintering habitat. One individual called for a closed season on black ducks.

7. Extra Teal Option

The Concerned Coastal Sportsman's Association expressed their support for continuing the 2-bird bonus on green-winged teal during 9 days of the regular season.

9. Special Scaup Season

The Concerned Coastal Sportsman's Association requested a continuation of the 16-day scaup season outside the regular season dates.

13. Duck Zones

The Concerned Coastal Sportsman's Association requested the continuation of zoning in Massachusetts. The Wyoming Game and Fish Department asked that zones be dropped in their State to simplify regulations and that they be allowed to split their season 3 ways. The Kansas Department of Wildlife and Parks expressed their opposition to the Service's position on zoning. They believe that if zoning has been allowed in some States, it should then be available to other States pending an evaluation based on the established criteria. The Louisiana Department of Wildlife and Fisheries and one individual expressed opposition to the Service's action to keep the western zone of Louisiana in the Mississippi Flyway. They stated that this position is not justified based on results of an extensive research study and that final decisions were based arbitrarily on political motives.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

*Atlantic Flyway.* One individual recommended that the brant season be increased to 50 days. The Concerned Coastal Sportsman's Association also recommended this increase and in addition, a longer Canada goose season. One individual recommended that goose hunting be permitted only during the latter part of each week. One individual recommended that the goose bag limit

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be increased to 3 in 1989–90. The Pennsylvania Game Commission recommended that the Canada goose bag limit be increased to 3 in the northwestern part of the State around Pymatuning Reservoir. The Delaware Department of Natural Resources and Environmental Control recommended a special 13-day snow goose season in October on and around Bombay Hook National Wildlife Refuge. The New Jersey Department of Environmental Protection recommended they be permitted to select brant and snow goose seasons separately within their respective duck zones.

*Mississippi Flyway.* One individual supported the special early and late seasons to harvest local giant Canada geese in Michigan. One individual recommended that if longer goose seasons are provided for Illinois, the same season length be made available for the entire State rather than part of the State.

*Central Flyway.* One individual recommended a later framework closing date for Canada goose hunting in Texas.

*Pacific Flyway.* Four individuals and the Oregon Farm Bureau recommended that the Canada goose season framework be extended to February 15 in parts of western Oregon, and the Farm Bureau recommended hunting only on alternate days for geese and shooting hours beginning at 8:00 a.m. instead of 9:00 a.m.

15. Tundra Swans

As of August 4, 1988, the Service has received nearly 2000 postcards and letters, nearly all from individuals urging that swans not be hunted. Most comments requested "* * * not to lift federal restrictions on swan hunting." following the wording in a flyer distributed by the National Humane Education Society (no address, phone number or date given). The New Jersey Waterfowler's Association offered support for a limited season on tundra swans in New Jersey to reduce crop losses.

**Public Comments**

Based on the results of recently-completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, shooting hours, areas, and bag and possession limits for waterfowls and coots.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

The Director intends that finally-adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before late July of specific, reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 25, 1988, is contrary to the public interest.

**Comment Procedure**

Interested persons may participate by submitting written comments on the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536 in the Matomic Building, 1717 H Street NW., Washington, DC.

All relevant comments received on the late season proposals no later than August 25, 1988, will be considered. The Service will attempt to acknowledge all comments received, but substantive response to individual comments may not be provided.

**Nontoxic Shot Regulations**

In the June 28, 1988, **Federal Register** (53 FR 24284), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1988–89 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

**NEPA Consideration**

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–54)" was filed with the Council on Environmental Quality (CEQ) on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the FES, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", was filed with CEQ on June 9, 1988, and Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727).

**Endangered Species Act Consideration**

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" "[and shall] by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat * * *"

Consequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 17, 1988, the Chief, Division of Endangered Species and Habitat Conservation, gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

The Service's biological opinion resulting from its consultation under section 7 of the Endangered Species Act is available for public inspection in or available from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

**Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act**

In the **Federal Register** dated March 9, 1988 (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small

entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

**Memorandum of Law**

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the Federal Register dated August 9, 1988 (53 FR 29897).

**Authorship**

The primary author of this proposed rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739; as amended, 54 Stat. 1103–04)

**Proposed Regulations Frameworks for 1988–89 Late Hunting Seasons on Certain Migratory Game Birds**

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

**General**

Split Season

States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours

From sunrise to sunset daily, for all species and seasons, including falconry seasons.

Deferred Season Selections

States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

*ATLANTIC FLYWAY*

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

*Ducks, Coots and Mergansers*

*Hunting Seasons and Duck Limits:*

*Outside Dates:* Between October 8, 1988, and January 8, 1989.

*Hunting Season:* Not more than 30 days.

*Canvasbacks:* The season on canvasbacks is closed.

*Duck Limits:* The daily bag limit of ducks is 3 and may include no more than 3 mallards (only 1 may be a hen), 2 wood ducks, 2 redheads, 1 black duck and 1 fulvous tree duck. For pintails, the daily bag limit during the first 7 days of the hunting season is 1. During the last 7 days of the season, the daily bag limit is 2 male pintails. During the period between the first 7 days and the last 7 days, the season on pintails is closed. The possession limit is twice the daily bag limit.

*Merganser Limits:* Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

*Coot Limits:* Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

*Early Wood Duck Season Option:* Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 8 and October 16. During this period, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. For other ducks, daily bag and possession limits shall be the same as established for the Flyway.

*Restriction on Mottled Ducks:* The season is closed to the taking of mottled ducks in South Carolina.

*Zoning—New York:* New York may, for the *Long Island Zone*, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. A 2-segment split season may be selected in each zone.

The *West Zone* is that portion of upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. *North Zone*—That portion of the State north of Interstate 95.

b. *South Zone*—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a. *North Zone*—Game Management Zones 1 through 5.

b. *South Zone*—Game Management Zones 6 through 8.

*New Hampshire—Coastal Zone*—That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State

Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

*Inland Zone*—That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

*Zoning Experiments: Vermont* will continue a Lake Champlain Zone in 1988. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. *Massachusetts, New Jersey,* and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow. *Massachusetts* and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply.

*Zone Definitions—Massachusetts—Western Zone*—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

*Central Zone*—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–95, west to Rhode Island line. *EXCEPT* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

*Coastal Zone*—That portion of the State east and south of the Central Zone.

*New Jersey—Coastal Zone*—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

*North Zone*—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

*South Zone*—That portion of New Jersey not within the North Zone or the Coastal Zone.

*Pennsylvania—Lake Erie Zone*—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

*North Zone*—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

*Northwest Zone*—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

*South Zone*—The remaining portion of the State.

*Vermont—Lake Champlain Zone*—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border From the New York border at U.S. Highway 4, along U.S. Highway 4 to Vermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

*Interior Vermont Zone*—The remaining portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season daily bag and possession limits.

*Canada Geese*

*Outside Dates, Season Lengths, and Limits:* Between October 1, 1988, and January 20, 1989, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, and West Virginia may select 70-day seasons for Canada geese with a daily bag and possession limit of 3 and 6 geese, respectively, except in Pennsylvania Counties of Erie, Mercer, Butler, and Crawford, where the daily bag and possession limits are 2 and 4, respectively. In Maryland, Delaware and Virginia (except Back Bay) the Canada goose season may be 70 days with an opening date of October 31, 1988, and a closing date of January 31, 1989, with 2 geese daily and 4 in possession. In New York (including Long Island), New Jersey, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 206 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the opening framework date of October 1, 1988, and the closing framework date extended to January 31, 1989. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag and possession limits within this area will be 1 and 2, respectively through October 15, 1988, and 3 and 6,

respectively thereafter. In Rhode Island, and Connecticut (North Zone) season length will be 90 days between October 1, 1988, and January 31, 1989, with a daily bag and possession limit of 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95), the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1989. The daily bag limit and possession limit will be 3 and 6, respectively, through January 14, and 5 and 10, respectively from January 15 to February 5, 1989. This season in the South Zone of Connecticut is experimental. The Back Bay of Virginia, North Carolina (that portion south of Interstate Highway 95), and South Carolina may select an 11-day season for Canada geese within a January 20–31, 1989, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In the Coastal Zone of Massachusetts, a special resident Canada goose season may be held during January 21, 1989, to February 5, 1989; the daily bag and possession limits are 5 and 10, respectively.

*Closures on Canada geese:* The season for Canada geese is closed in Florida and Georgia.

*Snow Geese*

*Outside Dates, Season Lengths, and Limits:* Between October 1, 1988, and January 31, 1989, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 4 and 8, respectively. Between October 17, 1988, and October 29, 1988, a special snow goose season may be held in Delaware on Bombay Hook National Wildlife Refuge and immediate area (as described in State regulations) at the discretion of the Refuge Manager. Daily bag and possession limits are 4 and 8, respectively. This season is in addition to the 90-day regular season.

*Atlantic Brant*

*Outside Dates, Season Lengths, and Limits:* Between October 1, 1988, and January 20, 1989, States in the Atlantic Flyway may select a 50-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

*Tundra Swans*

In New Jersey, Virginia and North Carolina an experimental season for tundra swans may be selected with 200, 600 and 6,000 permits, respectively, subject to the following conditions: (a) the season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue and obtain harvest and hunter participation data; and (c) each permittee is authorized to take 1 tundra swan per season.

*MISSISSIPPI FLYWAY*

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

*Ducks, Coots, and Mergansers*

*Outside Dates:* Between October 8, 1988, and January 8, 1989, in all States.

*Hunting Season:* Not more than 30 days.

*Canvasbacks:* The season on canvasbacks is closed.

*Limits:* The daily bag limit of ducks is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks, and 1 redhead. For pintails, the daily bag limit during the first 7 days of the hunting season is 1. During the last 7 days of the season, the daily bag limit is 2 male pintails. During the period between the first 7 days and the last 7 days, the season on pintails is closed. The possession limit is twice the daily bag limit.

*Merganser Limits:* The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is twice the daily bag limit.

*Coot Limits:* The daily bag and possession limits are 15 and 30, respectively.

*Early Wood Duck Season Option:* Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 8 and October 16. During this period, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 16.

*Pymatuning Reservoir Area, Ohio:* The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

*Zoning—Alabama, Illinois, Indiana, Iowa, Louisiana, Michigan, Missouri, Ohio, Tennessee,* and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

*Alabama:* South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split into two segments.

*Illinois:* North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. Central Zone—That portion of the State between the North and South Zone boundaries. South Zone—That portion of the State south of a line running east from Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along Highway 12 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 159, north along Illinois Highway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

*Indiana:* North Zone—That portion of the State north of a line extending east from the Illinois border along State Highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington, the southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio River to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone—That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

*Iowa:* North Zone—That portion of Iowa north of a line running west from the Illinois border along I–80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State Highway 175, then west along State Highway 175 to the Nebraska border. South Zone—the remainder of the State.

*Louisiana:* West Zone—That portion of the State west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3, then south along Louisiana Highway 3 to Bossier City, east along Interstate 20 to

Minden, south along Louisiana Highway 7 to Ringgold, east along Louisiana Highway 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. Highway 90 to Houma, south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass. East Zone—The remainder of Louisiana. The season in each zone may be split into two segments.

Note.—No additional days are offered for the West Zone since Louisiana is considered part of the Mississippi Flyway as announced in June 7, 1988, Federal Register (53 FR 10870).

*Michigan:* North Zone—The Upper Peninsula. South Zone—That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to M–20, east on M–20 to U.S.–10B.R. in the city of Midland, east on U.S.–10B.R. to U.S.–10, east on U.S.–10 and M–25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn powerplant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

*Missouri:* North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60 east along U.S. 60 to State Highway 51, south along State Highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I–55, north along I–55 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

*Ohio:* The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

*Tennessee:* Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

*Wisconsin:* North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

*Geese*

*Definition:* For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Note.—The various zones and areas identified in this section are described in the respective State's regulations.

*Outside Dates, Season Lengths and Limits:* Between October 1, 1988, and January 22, 1989 (January 31 in Kentucky, Arkansas, Tennessee, Mississippi, and Alabama), States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

*Outside Dates and Limits on Snow and White-fronted Geese in Louisiana:* Between October 1, 1988, and February 14, 1989, Louisiana may hold 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

*Minnesota.* In the:

(a) Lac Qui Parle Goose Management Block—the season for Canada geese may extend for 30 days. In the Lac Qui Parle Quota Zone the season will close after 30 days or when 4,000 birds have been harvested, whichever occurs first. Throughout the 5-county area the daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. In selected areas of the Metro Goose Management Block and in Olmsted County, experimental 10-day late seasons may be held during December to harvest Giant Canada geese. During these seasons, the daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

*Iowa:* The season may extend for 45 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone may be held at a different time that the season in the remainder of the State.

*Missouri.* In the:

(a) Swan Lake Zone—the season for Canada geese closes after 40 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone—A 50-day season on Canada geese may be selected, with a daily bag limit of 2 Canada geese and a possession limit of 4.

(c) Remainder of the State—the season for Canada geese may extend for 40 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

*Wisconsin:* The total harvest of Canada geese in the State will be limited to 68,200 birds. In the:

(a) Horicon Zone—The framework opening date for Canada geese is September 24, and the harvest of Canada geese is limited to 46,100 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged and the total number of tags issued will be limited so that the quota of 46,100 birds is not exceeded.

(b) Theresa Zone—The harvest of Canada geese is limited to 3,000 birds. The season may not exceed 50 days. The bag limit is 1 Canada goose per permittee per 5-day period, with a season limit of 4.

(c) Pine Island Zone—The harvest of Canada geese is limited to 1,000 birds. The season may not exceed 40 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose per permittee and the season limit is 4. The total number of tags issued will not exceed 1,980.

(d) Collins Zone—The harvest of Canada geese is limited to 2,000 birds. The season may not exceed 40 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit is 4. The total number of tags issued will not exceed 3,900.

(e) Exterior Zone—The harvest of Canada geese is limited to 16,100 birds. The season may not exceed 35 days, except as noted below. Limits are 1 Canada goose daily and 2 in possession, except as noted below. In the Mississippi River subzone, the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 19, and 2 daily and 4 in possession thereafter. In the Brown County subzone, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively. In the Rock Prairie Zone, a special late season to harvest giant Canada geese may be held between November 5 and December 11. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

In Wisconsin, the progress of the Canada goose harvest must be monitored by zone, and the respective zone's season closed, if necessary, to ensure that the harvest does not exceed the quota stated above.

*Illinois:* The total harvest of Canada geese in the State will be limited to 74,000 birds. In the:

(a) Southern Illinois Quota Zone—The season for Canada geese will close after 50 days or when 37,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Rend Lake Quota Zone—The season for Canada geese will close after 50 days or when 11,100 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Tri-County Area—The season for Canada geese may not exceed 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(d) Remainder of State—Seasons for Canada geese up to 50 days may be selected by zones established for duck hunting seasons. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Michigan:* The total harvest of Canada geese in the State will be limited to 79,400 birds. In the:

(a) North Zone—The framework opening date for geese is September 28 and the season for Canada geese may extend for 40 days, except in the Superior Counties Goose Management Area (GMA), where the season will close after 40 days or when 8,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Middle Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) South Zone:

(1) Allegan County GMA—the season for Canada geese will close after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2.

(2) Muskegon Wastewater GMA—the season for Canada geese will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(3) Saginaw County GMA—the season for Canada geese will close after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(4) Fish Point GMA—the season for Canada geese will close after 50 days or when 2,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(5) Remainder of South Zone—the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(d) Southern Michigan GMA—A late Canada goose season of up to 30 days may be held between January 7 and February 5, 1989. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Ohio:* The daily bag limit is 2 Canada geese and the possession limit is 4.

*Indiana:* The total harvest of Canada geese in the State will be limited to 28,400 birds. In:

(a) Posey County—The season for Canada geese will close after 50 days or when 8,300 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1989.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Kentucky:* In the:

(a) West Kentucky Zone—The season for Canada geese may extend for 50 days, and the harvest will be limited to 22,500 birds. Of the 22,500-bird quota, 14,200 birds will be allocated to the Ballard Subzone and 4,500 birds will be allocated to the Henderson-Union Subzone. If the quota in either subzone is reached prior to completion of the 50-day season, the season in that subzone will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Tennessee:* In the:

(a) Northwest Zone—The season for Canada geese may extend for 50 days, and the harvest will be limited to 8,900 birds. Of the 8,900-bird quota, 6,200 birds will be allocated to the Reelfoot Subzone. If the quota in the Reelfoot Subzone is reached prior to completion of the 50-day season, the season in the subzone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an addition 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southwest Zone—The season for Canada geese may extend for 15 days. The daily bag limit is 1 Canada and the possession limit is 2.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

*Arkansas:* The total harvest of Canada geese in the State will be limited to 2,400 birds. The season for Canada geese may extend for 16 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

*Louisiana:* The season for Canada geese is closed.

*Mississippi:* In the:

(a) Sardis Zone—The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1988. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State—The season for Canada geese may be exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

*Alabama:* The daily bag limit is 2 Canada geese and the possession limit is 4.

*Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures:* When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan

Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

*Shipping Restriction:* In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

*CENTRAL FLYWAY*

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

*Ducks (including mergansers) and Coots*

*Outside Dates:* October 8, 1988, through January 8, 1989.

*Canvasbacks:* The season on canvasbacks is closed.

*Hunting Season:* Seasons in the Low Plains Unit may include no more than 39 days. Seasons in the High Plains Mallard Management Unit may include no more than 51 days, provided that the last 12 days may start no earlier than December 10, 1988. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

*Daily Bag and Possession Limits:* The daily bag limit is 3 ducks daily, including no more than 2 mallards, no more than 1 of which may be a female, 1 redhead, 1 hooded merganser, and 2 wood ducks. For pintails, the daily bag limit during the first 7 days of the hunting season is 1. During the last 9 days of the season, the daily bag limit is 2 male pintails. During the period between the first 7 days and the last 9 days, the season on pintails is closed. The possession limit is twice the daily bag limit, except that the possession limit for the female mallard is 1.

Daily bag and possession limits for coots are 15 and 30, respectively.

*Zoning:* Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

*Montana* (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

*Nebraska* (Low Plains portion):

*Zone 1.* Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

*Zone 2.* The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

*Zone 3.* The area, excluding Zone 1, north of Zone 2.

*Zone 4.* The area south of Zone 2.

*New Mexico:*

*Experimental Zone 1.* The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

*Experimental Zone 2.* The remainder of the Central Flyway portion of New Mexico.

*Oklahoma:*

*Zone 1.* That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas State line.

*Zone 2.* The remainder of the Low Plains.

*South Dakota* (Low Plains portions)

*South Zone.* Bon Homme, Yankton and Clay Counties south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 6516 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Union County south and west of S.D. Highway 50 and Interstate Highway 29.

*North Zone.* The remainder of the Low Plains.

*Wyoming* (Central Flyway portion): In lieu of its previous four zones, Wyoming may split their season in the Central Flyway portion of the State into three segments of equal or unequal length.

*Geese*

*Definitions:* In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted and black brant, and "light geese" includes all others.

*Outside Dates:* October 1, 1988, through January 22, 1989, for dark geese and October 1, 1988, through February 14, 1989 (February 28, 1989, in New Mexico), for light geese.

*Possession Limits:* Goose possession limits are twice the daily bag limits (see exception for light geese in the Rio Grande Valley Unit of New Mexico).

*Hunting Season:* Seasons in States, and independently in described goose management units within States, may be as follows:

*Colorado:* No more than 95 days with a daily limit of 5 geese that may include no more than 2 dark geese.

*Kansas:* For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 27 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I–70), no more than 86 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

*Montana:* No more than 95 days with daily limits of 2 dark geese and 3 light geese in Sheridan County and 3 dark geese and 3 light geese in the remainder

of the Central Flyway portion of the State.

*Nebraska:* For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 12 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remander of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 20 and nor more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 20 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

*New Mexico:* For dark geese, no more than 95 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico west of highways starting at the Texas line north of El Paso: U.S. 54 to U.S. 60, U.S. 60 to U.S. 285, and U.S. 285 to the Colorado line), no more than 107 days with a daily limit of 5 and a possession of 20.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 95 days with a daily limit of 5.

*North Dakota:* For dark geese, no more than 72 days with a daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through October 30 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

*Oklahoma:* For dark geese, no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more that 86 days with a daily limit of 5.

*South Dakota:* For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD Highway 65, Dewey, Gregory, Haakon north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman north of Interstate, 90 and east of U.S. Highway 183, Potter, Stanley, Sully, Trip east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 12 and no more than 1 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

*Texas:* West of U.S. 81, no more than 95 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

*Wyoming:* No more than 95 days with a daily limit of 2.

**Tundra Swans**

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

*Montana* (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

*North Dakota:* no more than 1,000 permits with the season dates concurrent with the season for taking light geese.

*South Dakota:* no more than 500 permits with the season dates concurrent with the season for taking light geese.

*PACIFIC FLYWAY*

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

*Ducks, Coots, and Common Moorhens, and Common Snipe*

*Outside Dates:* Between October 8, 1988, and January 8, 1989.

*Hunting Seasons:* Seasons may be split into two segments. Concurrent 59-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

*Canvasback:* The season on canvasbacks is closed.

*Duck Limits:* The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, and 2 redheads. For pintails, the daily bag limit during the first 7 days of the hunting season is 1. During the last 16 days of the season, the daily bag limit is 2 male pintails. During the period between the first 7 days and the last 16 days, the season on pintails is closed. The possession limit is twice the daily bag limit.

*Coot and Common Moorhen (Gallinule) Limits:* The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

*Common Snipe Limits:* The daily bag and possession limit of common snipe is 8 and 16, respectively.

*California—Waterfowl Zones:* Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

*Idaho—Duck Zones:* Duck season dates for Zone 1 and Zone 2 may differ. Zone 1 includes all lands and waters within the Fort Hall Indian Reservation and Bannock County; Bingham County except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

*Nevada—Clark County Waterfowl Zone:* Season dates for Clark County may differ from those in the remainder of Nevada.

*Colorado, Montana, New Mexico and Wyoming—Common Snipe:* For States partially within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1988, and February 28, 1989, and need not be concurrent with the duck season.

*Geese (including Brant)*

*Outside dates, season lengths and limits on geese (including brant):* Seasons may be split into two segments. Between October 1, 1988, and January 22, 1989, a 93-day season on geese (except brant in Washington, Oregon

and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively. Brant seasons may not exceed 16-consecutive days in Washington and Oregon and 30-consecutive days in California.

*Aleutian Canada goose closure:* There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

*California, Oregon, Washington—Cackling Canada goose closure:* There will be no open season on cackling Canada geese in California, Oregon and Washington.

*California—Canada goose and dark goose closures:* Three areas in California, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese. In this area, the season on dark geese must end on or before November 30, 1988.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23, 1988.

*California (Northeastern Zone)—geese:* In the Northeastern Zone of California the season may be from October 8, 1988, to January 8, 1989, except that white-fronted geese may be taken only during October 8 to November 1, 1988. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

*California (Balance of the State Zone)—geese:* In the Balance of the State Zone the season may be from October 30, 1988, through January 22, 1989, except that white-fronted geese may be taken only during October 30, 1988, to January 1, 1989. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

*Western Oregon:* In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon west and north of a line starting at Oregon-Washington State line on the Columbia River; south on Interstate Highway 5 to its junction with State Highway 22 at Salem; east on State Highway 22 to the Stayton cutoff; south on the Stayton cutoff through Stayton and straight south to the Santiam River; west (downstream) on the Santiam River to Interstate Highway 5; south on Interstate Highway 5 to State Highway 126 at Eugene; west on State Highway 126 and ending at the Oregon coast, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the seasons in the designated area must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

*Oregon (Lake and Klamath Counties)—geese:* In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open before November 1.

*Washington and Oregon (Columbia Basin Portions)—geese:* In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be an additional 7 days.

*Western Washington:* In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

*Idaho, Oregon and Montana—Pacific Population of Canada geese:* In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 and 4 Canada geese, respectively; and the season for Canada geese may not extend beyond January 8, 1989.

*Montana and Wyoming—Rocky Mountain Population of Canada Geese:* In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 8, 1989. In Lincoln, Sweetwater and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

*Idaho, Colorado and Utah:* In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and

the season for Canada geese may be no more than 88 days and may not extend beyond January 8, 1989.

*Nevada:* Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

*Arizona, California, Utah and New Mexico:* In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley), where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

*Tundra Swans*

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) between October 1, 1988, and January 22, 1989, a 93-day season may be selected, and seasons may be split into two segments; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton, Cascade, Hill, Liberty, Toole or Pondera Counties.

**Special Falconry Frameworks**

*Extended Seasons*

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season not exceeding 107 days for taking migratory game birds in accordance with the following:

*Framework Dates*

Seasons must fall between September 1, 1988 and March 10, 1989.

*Daily Bag and Possession Limits*

Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

*Regulations Publication*

Each State selecting the special season must inform the Service of the season dates and publish said regulations.

*Regular Seasons*

General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, or falconry season) exceed 107 days for a species in one geographical area. The extension of this framework to include the period September 1, 1988—March 10, 1989, is considered tentative, and will be evaluated in cooperation with States offering such extensions after a period of several years.

Date: August 9, 1988.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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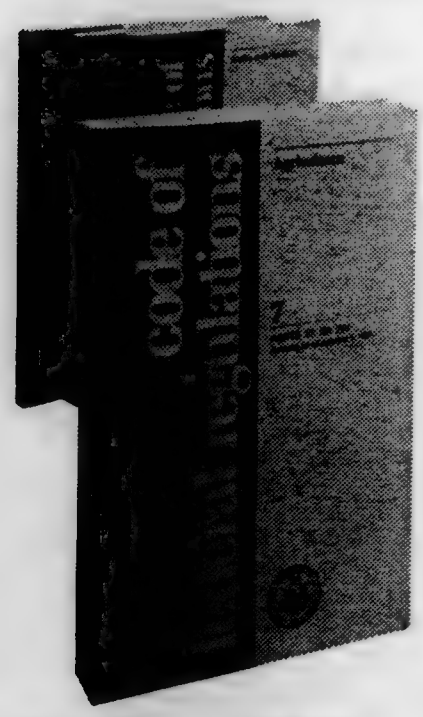


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# Presidential Documents

Title 3—

The President

## Executive Order 12648 of August 11, 1988

## Relating to the Implementation of the Convention on the Civil Aspects of International Child Abduction

The United States of America deposited its instrument of ratification of the Hague Convention on the Civil Aspects of International Child Abduction ("Convention") on April 29, 1988. The Convention entered into force for the United States on July 1, 1988. Article 6 of the Convention imposes upon Contracting States an obligation to designate a "Central Authority" for the purpose of discharging certain specified functions.

In order that the Government of the United States of America may give full and complete effect to the Convention, and pursuant to section 7 of the International Child Abduction Remedies Act, Public Law No. 100–300 (1988), it is expedient and necessary that I designate a Central Authority within the Executive branch of said Government:

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of Title 3 of the United States Code and section 7 of the International Child Abduction Remedies Act, it is ordered as follows:

**Section 1.** *Designation of Central Authority.* The Department of State is hereby designated as the Central Authority of the United States for purposes of the Hague Convention on the Civil Aspects of International Child Abduction. The Secretary of State is hereby authorized and empowered, in accordance with such regulations as he may prescribe, to perform all lawful acts that may be necessary and proper in order to execute the functions of the Central Authority in a timely and efficient manner.

Ronald Reagan

THE WHITE HOUSE,
*August 11, 1988.*

[FR Doc. 88–18555
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**Executive Order 12649 of August 11, 1988**

## Offsets in Military-Related Exports

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and in order to provide for the performance of certain reporting functions with respect to the effect of offsets in international trade, it is hereby ordered that Executive Order No. 10480 of August 18, 1953, as amended, is further amended by deleting the text of Section 602(d)(2) of the Order and inserting in lieu thereof the following:

"(d)(2) In order to ensure that information gathered pursuant to this authority shall be subject to appropriate confidentiality protections, the Bureau of Economic Analysis of the United States Department of Commerce, which previously has been designated a 'central collecting agency' in gathering this information under 44 U.S.C. 3509, is authorized pursuant to Section 705 of the Defense Production Act, as amended, to collect the information required for compilation of the data base to be used in preparation of the reports to Congress required by Section 309 of the Defense Production Act."

Ronald Reagan

THE WHITE HOUSE,
*August 11, 1988.*

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**Memorandum of August 11, 1988**

**Memorandum for the Director of the Office of Management and Budget**

By the authority vested in me as President of the United States by the Constitution and Section 301 of Title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the function of submitting notifications to the Congress required by Section 251(d)(3)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (2 U.S.C. 901 *et seq.*).

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
*Washington, August 11, 1988.*

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# Rules and Regulations

Federal Register
Vol. 53, No. 157
Monday, August 15, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Parts 1948, 1951, 1955

### Intermediary Relending Program

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) is creating a regulation for an Intermediary Relending Program (IRP). This action is needed to implement the provisions of section 407 of the Health and Human Services Act of 1986 which amended section 1323 of the Food Security Act of 1985. The intended effect of this action is to provide regulations for making loans to nonprofit, public, Indian and cooperative entities who will in turn provide financial assistance to rural businesses and community development projects for employment opportunities as well as provide a diversification of the economy in rural areas and for servicing the IRP loans made by FmHA and the Rural Development Loan Fund (RDLF) loans that were transferred from the U.S. Department of Health and Human Services to the U.S. Department of Agriculture.

The Farmers Home Administration (FmHA) is also amending various other existing regulations to add references to these new regulations for making IRP loans and servicing the IRP and RDLF loans.

**EFFECTIVE DATE:** August 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dwight A. Carmon, Director, Business and Industry Division, Farmers Home Administration, USDA, Room 6321, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 475–4100.

**SUPPLEMENTARY INFORMATION:**

### Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major since the annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Intergovernmental Review

The programs covered by this action will be listed in the Catalog of Federal Domestic Assistance under numbers 10.437, Rural Development Loan Fund, and 10.438, Intermediary Relending Program, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR 3105, Subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985)

### Environmental Impact Statement

The proposed action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

### Discussion of Major Provisions of the Rule

#### Part 1948, Subpart C

*Section 1948.101 Introduction.*

This section describes the purpose of the program which provides loans from the Farmers Home Administration (FmHA) to nonprofit organizations, public agencies, Indian and cooperative entities (intermediaries) which will in turn reloan the loan funds to local businesses (ultimate recipients) for business facilities and community development projects in rural areas. It also identifies the Director, Business and Industry Division, as the focal point and the contact person for processing activities.

*Section 1948.103 Eligibility requirements.*

This section prescribes the eligibility criteria for intermediaries under the provisions of this program. It also requires that at least 51 percent of the outstanding interest in any intermediary or ultimate recipient be owned by citizens of the United States and requires that credit is not otherwise available at reasonable rates and terms.

*Section 1948.109 Loan purposes.*

FmHA loan funds must be used for the establishment or expansion of a business or community development facility. This section also provides guidelines on specific eligible uses of FmHA-related loan funds.

The intermediary is to certify that the FmHA-related funds under its control are to be used only for eligible purposes as defined by the guidelines in this section.

*Section 1948.110 Ineligible assistance purposes.*

Specific ineligible assistance purposes are defined in this section including intermediaries' administrative costs, agricultural production, recreation, tourist homes, hotels, motels, charitable and educational institutions. FmHA loan funds will not be used to finance more than 75 percent of the total project cost of any ultimate recipient.

*Section 1948.111 Terms of loans.*

This section provides for the structure of loan repayment terms between FmHA and the intermediary. It limits the maximum repayment term to 30 years.

*Section 1948.112 Interest rates.*

This section identifies the interest rates that can be charged by FmHA to the intermediary and between the intermediary and ultimate recipients.

*Section 1948.113 Security.*

This section describes the type of security required for the loan and indicates that the security for the loan must be adequate. FmHA may require additional security during the term of a loan to an intermediary.

*Section 1948.114 Conflict of interest.*

This section restricts intermediaries from participation in the program if there is a conflict of interest between the intermediary and the ultimate recipient.

*Section 1948.116 Fees and charges.*

This section provides guidelines for fees to be charged by FmHA and intermediary in regard to their financial assistance under the administration and execution of this program.

*Section 1948.117 Other regulatory requirements.*

The section provides regulatory requirements dealing with the following:

(a) Intergovernmental consultation which allows for State and local offices to review proposals to be funded with FmHA funds.

(b) Environmental reviews which are subject to FmHA Instruction 1940–G.

(c) Equal opportunity and nondiscrimination in accordance with Title V of Pub. L. 93–495 and refers to FmHA Instruction 1901, Subpart E, as the applicable regulation for this program.

*Section 1948.118 Loan agreements.*

The loan agreement executed by the intermediary and FmHA contains provisions for the loan. This include: amount, rates, terms, and repayment of the loan, late charges, disbursement procedures, defaults, FmHA reporting requirements. Forms and lending policy of the intermediary are also discussed.

*Sections 1948.122–1948.124 Applications, filing, processing and evaluation.*

Specific information and FmHA forms to be used in the application are identified in this section of the regulations.

Loan applications will be filed with the FmHA National Office, Director, Business and Industry Division, Washington, DC. Intermediaries must file a complete application in one package. Applications will be considered in the order received. However, priority consideration may be given intermediaries who provide more assistance to low-income persons and farm families or involve more funds from other sources.

The FmHA Administrator or designee will evaluate the application and make a determination whether the proposed loan complies with all applicable statutes and regulations. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan. If FmHA determines it is unable to provide the loan, the proposed intermediary will be informed in writing.

*Section 1948.128 Request to make loans to ultimate recipients.*

No commitment of FmHA derived loan funds to an ultimate recipient may be made by the intermediary until an affirmative decision is rendered by FmHA that the intermediary may make a loan to an ultimate recipient. Information to be included in a request for FmHA approval is discussed.

*Section 1948.130 Non-Federal funds.*

When FmHA-derived loan funds (Federal funds) have been utilized by the intermediary to the ultimate recipient and new ultimate recipients are subsequently financed from the revolving loan fund (non-Federal funds) of the intermediary, these regulations will not be imposed upon the ultimate recipient.

*Section 1948.143 Appeals.*

This section provides guidelines on the appeal rights of intermediaries due to an adverse decision by FmHA.

*Section 1948.148 Exception authority.*

The Administrator may in individual cases and under certain circumstances grant exceptions to requirements of this subpart.

*Section 1948.149 Exhibits.*

This section provides for three exhibits to the regulations. These include names and numbers for forms in a loan docket, a suggested Loan Agreement, and a suggested Promissory Note. The exhibits were inadvertently published with the proposed rule but are not being published with the final rule. They are available from the FmHA National Office.

**Part 1951, Subpart F**

The Intermediary Relending Program (IRP) is added to the list of programs that are excepted from FmHA's graduation review requirements.

**Part 1951, Subpart R**

*Section 1951.851 Introduction.*

This section describes the purpose of the regulation, which is to service the IRP loans and those Rural Development Loan Fund (RDLF) loans that were previously approved and serviced by the Secretary of the U.S. Department of Health and Human Services under 45 CFR Part 1076. It also identifies the Director, Business and Industry Division, as the focal point and the contact for loan servicing activities within the U.S. Department of Agriculture.

*Section 1951.854 Ineligible assistance purposes.*

This section provides a listing and discussion of ineligible purposes for which FmHA loan funds may not be used by the intermediary. These include:

(a) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(b) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(c) For any line of credit.

This section also provides ineligible purposes for which loan funds may not be used by ultimate recipients:

(a) Agricultural production.

(b) For financing community antenna television services or facilities.

(c) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(d) For any illegal activity.

(e) For any hotels, motels, tourist homes, or convention centers.

(f) For any tourist, recreation, or amusement centers.

*Section 1951.859 Terms of loans.*

This section provides that no loans shall be extended for a period exceeding 30 years and the terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

*Section 1951.860 Interest on loans, allowable costs.*

This section identifies the interest rates that can be charged by FmHA to the intermediary and between the intermediary and ultimate recipients.

*Section 1951.866 Security.*

This section sets forth FmHA security and appraisal requirements for intermediary loans to ultimate recipients.

*Section 1951.867 Conflict of interest.*

This section restricts intermediaries from participation in the program when FmHA determines there is a conflict of interest between the intermediary and the ultimate recipient.

*Section 1951.872 Other regulatory requirements.*

The section provides regulatory requirements dealing with the following:

(a) Intergovernmental consultation which allows for State and local offices

to review proposals to be funded with FmHA funds.

(b) Environmental reviews which are subject to FmHA Instruction 1940–G.

(c) Equal opportunity and nondiscrimination in accordance with Title V of Pub. L. 93–495 and refers to FmHA Instruction 1901, Subpart E, as the applicable regulation for this program.

*Section 1951.877 Loan agreements.*

The loan agreement executed by the intermediary and FmHA contains loan provisions and servicing activities for the loan. These include: amount, rates, terms, and repayment of the loan, late charges, disbursement procedures, defaults, FmHA reporting requirements. Forms and lending policy of the intermediary are also discussed.

*Section 1951.884 Non-Federal funds.*

This section provides that FmHA will exempt the intermediary from the requirements of the regulation on Federal funds for future loans to ultimate recipients when the intermediary has provided assistance to the ultimate recipients in an amount equal to the financial assistance the borrower has received from FmHA.

*Section 1951.896 Appeals.*

This section provides guidelines on the appeal rights of intermediaries and ultimate recipients due to an adverse appealable decision by FmHA.

*Section 1951.897 Exception authority.*

The Administrator may in individual cases and under certain circumstances grant exceptions to requirements of this subpart.

**Part 1955, Subpart A**

The application of FmHA's regulation on liquidation of loans to the Rural Development Loan Fund, Nonprofit National Corporations, and Intermediary Relending programs is clarified.

**Part 1955, Subpart B**

The application of FmHA's regulation on management of inventory property to the Rural Development Loan Fund, Nonprofit National Corporations, and Intermediary Relending programs is clarified.

**Part 1955, Subpart C**

The application of FmHA's regulation on disposal of inventory property to the Rural Development Loan Fund, Nonprofit National Corporations, and Intermediary Relending programs is clarified

**Comments**

This action was published as a proposed rule for public comment on May 16, 1988, in Volume 53, No. 94, of the **Federal Register**, beginning on page 17201. Ten letters of comments were received. Most of the letters commented on several issues.

One commenter felt that recreation facilities, motels and tourism facilities should be eligible for assistance. FmHA believes these facilities tend to be high risk, seasonal, and capital intensive relative to the number of jobs created. They remain ineligible.

One commenter suggested funds be allocated on a State or regional basis. Due to the small amount of funds available and the short time remaining in the fiscal year, FmHA still believes it is best to operate the program on a National basis from our National Office. The proposed rule will not be changed.

Four commenters asked that the eligibility requirements for intermediaries be clarified or changed. The concern was to ensure that National and regional intermediaries and electric co-ops are eligible for assistance. Section 1948.103(a) has been revised to provide that private nonprofit corporations may be eligible without regard to the area they serve.

Five commenters objected to the requirement that the intermediary have equity available for lending equal to 10 percent of the FmHA loan. FmHA agrees that some nonprofit organizations that should be considered for funding may not able to meet this requirement and the requirement has been removed.

One commenter also objected to the requirements of § 1948.103(b)(3)(iv) regarding capitalization of the intermediary. FmHA believes that capitalization is an important measure of an organization's financial strength and ability to remain in operation and repay a loan. Therefore, it is retained as one factor that will be considered in evaluating an applicant's ability to successfully assist rural businesses.

Two commenters objected to the requirement that an intermediary have recent successful experience in making and servicing loans. No change has been made on this issue. However, the rule states that intermediaries will "normally" have such experience, so FmHA may make exceptions when it is justified.

Three commenters requested that the description of eligible loan purposes be broadened. One suggeted the term "infrastructure" be used and another expressed concern about transportation facilities. Sections 1948.109 and 1951.853 have been revised to include community development projects as eligible and to remove the requirement that transportation services be incidental to business development.

Four commenters objected to the prohibition on loans to churches, charitable institutions, and educational institutions. FmHA believes loans to such organizations tend to be financially weak and difficult to service. This prohibition is consistent with other FmHA programs and is retained. However, this does not prevent loans to all tax-exempt nonprofit organizations.

Three commenters objected to the requirement that FmHA funds not be used for more than 75 percent of the cost of an ultimate recipient's project. Three commenters objected to the $150,000 limit on FmHA funds loaned to any one ultimate recipient. FmHA believes these requirements are needed to ensure that limited funds are shared among more recipients and that loans are leveraged with funds from other sources. The requirement is retained. However, § 1948.100(a)(9) dealing with this subject has been revised for clarity.

Seven commenters objected to FmHA review of each loan from an intermediary to an ultimate recipient. Four commenters where specifically concerned about intergovernmental review procedures and three commenters were specifically concerned about the environmental review process. FmHA shares the concerns about the potential impact of these reviews on processing time. However, we believe part of the concern is based on misunderstanding of the intent of the rule. FmHA does not intend to review the entire project file or to do a financial analysis for each loan to an ultimate recipient. Basic environmental review requirements are set out in the National Environmental Policy Act and in 7 CFR 1940, Subpart G. Intergovernmental consultation requirements are set out in Executive Order 12372, 7 CFR 3015, Subpart V, and FmHA Instruction 1940–J (available in any FmHA office). FmHA is required to make those two reviews. In order to complete the environmental review, FmHA will have to know the exact loan purpose so it will be a simple matter to confirm that the proposed loan is for an eligible purpose. When the intermediary intends to assign its interest in the security offered by the ultimate recipient, as part of the security for the intermediary's loan from FmHA, then FmHA will review the security. That is the extent of the review intended by FmHA. No change from the proposed rule has been made.

Six commenters questioned the procedure for disbursement of funds and

requested that intermediaries be able to draw FmHA loan funds prior to the time they are needed by an ultimate recipient. The disbursement procedure requested by the commenters in contrary to general policy for the operation of Government loan programs and would increase the cost to the Government for operating the program. It also tends to encourage intermediaries to hold the funds for investment purposes rather than relending them to ultimate recipients as intended by the program. For these reasons the disbursement procedure outlines in the proposed rule is being retained.

Four commenters objected to §§ 1948.118(b)(8) and 1951.866(b), which require intermediaries to agree to provide additional security if requested by FmHA during the term of a loan. FmHA believes this requirement is necessary to protect the Government's interest. Many intermediaries will not be able to pledge specific security for the term of the loan, but will be continuously adjusting and substituting security. These paragraphs have been revised for clarity.

Two commenters questioned the need for all intermediaries to be approved by the Governor of each State where they intend to operate. FmHA agrees that this requirement may be an unnecessary burden. The requirement has been removed.

Two commenters wanted the $3 million limit on the amount of loan to one intermediary removed. Due to the limited amount of funds expected for the program, FmHA believes a limit is needed to ensure that several applicants will be able to share in the funds. The requirement, therefore, is retained.

Two commenters requested clarification or removal of the prohibition on using funds for a line of credit. A line of credit is not amortized. The amount of debt may vary from week to week and after any period of time, the principal balance may be as large as it was in the beginning. Sound administration of a line of credit requires close monitoring of borrower operations, inventory and accounts receivable. Using IRP/RDLF funds for a line of credit would complicate loan servicing for both FmHA and the intermediary and the prohibition is retained. IRP/RDLF funds may be used for term working capital loans. No change is made to the proposed rule.

Two commenters objected to the requirement that intermediaries agree to not change their articles of incorporation, charter, or bylaws without FmHA concurrence. FmHA believes this safeguard is essential, as changes in organizational structure could effect an intermediary's eligiblity or legal capacity to function and meet its agreements. The requirement is retained.

Three commenters objected to requirements regarding life insurance on principals and key employees. FmHA believes this requirement for life insurance on key people is essential for a sound program and is a normal commercial lending practice. The requirement is retained.

Two commenters objected to the prohibition on an ultimate recipient receiving funds from more than one intermediary. No change in this requirement has been made. FmHA believes an ultimate recipient should normally deal with only one intermediary for purposes of sound credit and to share the available funds with more recipients. However, the restriction was written so that it may be done with prior FmHA concurrence.

One commenter objected to the prohibition in § 1951.854(a)(10) on investment of loan funds. One commenter also objected to the restriction in § 1951.871(b) on uses of interest earned. Review of these two paragraphs revealed an apparent conflict. Both paragraphs have been rewritten. RDLF loan funds may not be invested for more than 30 days without prior FmHA concurrence. Any RDLF loan funds that have not been used for loans to ultimate recipients within 6 months will be returned to FmHA. This is needed to help ensure that the funds are used for the objectives of the program.

Loan funds that are held temporarily and funds obtained from lending RDLF funds and recollecting them, that are not needed immediately for relending to ultimate recipients, should be placed in an insured interest-bearing deposit. The restriction on the use of the interest earned on such accounts is retained to comply with § 1951.853 and ensure that the loan results in a revolving loan program.

One commenter said FmHA should not require full collateral coverage. The rule states that loans to intermediaries will be adequately secured but leaves considerable flexibility for FmHA to determine what is adequate on a case-by-case basis. Any reduction in this requirement would leave the Government's interest insufficiently protected. Section 1948.118(b)(2) has been revised to clarity security options.

One commenter felt public agencies should not be eligible intermediaries. The authorizing legislation provides for loans to public and private nonprofit organizations or agencies. No change has been made.

One commenter suggested that ability to target benefits to low-income persons should be an eligibility requirement for intermediaries. The rule states that priority will be given to applications from intermediaries that will provide assistance to ultimate recipients that provide the greatest benefit to low-income persons, farm families, and displaced farm families. However, FmHA does not believe this should be a requirement of all intermediaries. No change has been made.

One commenter objected to the requirement that FmHA determine that each ultimate recipient is unable to obtain adequate financing elsewhere. FmHA agrees that this implies a more thorough review of the ultimate recipient by FmHA than intended. Section 1948.103(c)(2) has been revised so that the intermediary may make the determination. The same commenter suggested that the requirement that the intermediary be unable to obtain other credit be removed. This is a statutory requirement and no change has been made.

One commenter requested that recipients of 1983 Rural Development Loan Funds (RDLF) should be excluded from the $3 million cap on loans to intermediaries. FmHA does not see any justification for treating previous RDLF borrowers differently from other potential applicants and wishes to ensure that the limited funds will be shared by several organizations. No change has been made.

One commenter suggested alternative language in § 1948.109(b)(1)(ii) regarding assistance to low-income persons and displaced farm families. FmHA believes the language used accomplishes the intended purpose and no change has been made.

One commenter suggested that intermediaries be allowed to guarantee bank loans. FmHA believes that including loan guarantees would further complicate the program and make servicing more difficult. No change has been made.

One commenter suggested language that apparently would allow intermediaries to make loans to ultimate recipients located in nonrural areas if they would employ or benefit rural people. FmHA believes that requiring ultimate recipients to be located in rural areas will help to ensure maximum benefits to rural residents. No change has been made.

One commenter suggested that RDLF/IRP deposited funds be utilized to guarantee a bank line of credit. FmHA believes that only direct loans would be made with the use of Federal funds from

the program and that lines of credit would complicate loan servicing for both FmHA and the intermediary. Therefore, the prohibition is retained. IRP/RDLF funds may be used for term working capital loans.

One commenter suggested a 5-year deferral of principal payments in order to allow for buildup of reserves. FmHA believes that a deferment of principal payment up to 3 years should provide adequate time for the intermediary to establish a financially viable revolving loan program and that a 5-year deferment is excessive. This requirement is retained.

One commenter suggested that language regarding commitments of financial support from public agencies and private organizations be eliminated. FmHA believes that an important measure of an organization's financial strength and abilities is that it be able to secure other needed funds in implementing a sound loan program. Therefore, it is retained as one factor that will be considered in evaluating an applicant.

One commenter suggested that FmHA target funds to "other low income targeted populations such as AFDC recipients and dislocated workers." FmHA in its instruction targets "low-income persons" which would in most instances include AFDC recipients and dislocated workers. Thus, no change from the proposed rule has been made.

One commenter suggested that the requirement for cash flow projections in applications be rewritten to require more frequent projections of cash flow monthly for 1 year and quarterly for 2 more years. FmHA agrees this would be desirable for analysis. However, such a reporting requirement may be too much of a burden on applicants to make it a minimum requirement. The requirement for 3 years of annual cash flow projections is retained.

One commenter requested that there should be an application deadline to file an IRP loan application. FmHA believes a deadline on the receipt of IRP applications is not necessary. This is to ensure that the application process is open to all qualified applicants and reviewed in the order that the applications were received. The request is denied.

One commenter commented on FmHA procedures in § 1948.123(d) regarding timeframes for processing applications and suggested that FmHA amend this section to apply to projects above $150,000 or 10 percent of the principal loan balance. This section contains instructions on the time limit in processing the IRP application by FmHA and does not apply to the FmHA concurrence required on loans made by the intermediary to an ultimate recipient. The requirement is related.

FmHA has made several minor revisions from the proposed rule to clarify the regulation and adjust internal operating procedures. The definition of a debtor is not needed and has been removed. Sections 1948.101(b), 1948.109(a), 1948.110(a)(1), 1951.853(a), and 1951.854(a)(1) have been revised to clarify that FmHA loan funds must be used by intermediaries to relend to ultimate recipients and may not be used by the intermediaries for their own administrative expenses or for providing guarantees or other technical and financial assistance. This is a revision in language for clarity, and not a change in the intent of the rule. Sections 1948.125 (c), (e), (f), and (g) have been revised regarding the procedures for obligating a loan. This is a change in internal FmHA procedures and has no effect on the public. Sections 1948.113(d) and 1951.866(c) regarding appraisals, §§ 1948.117(a) and 1951.872(a) regarding intergovernmental consultation, §1948.122(b)(9) regarding work plans, § 1948.123(d) regarding processing time, §§ 1948.124(c)(2) and 1948.126(b)(4) regarding adverse changes in intermediaries, and 1951.866(a) regarding security, have all been revised for clarity. Sections 1951.867, 1951.883, 1951.884, 1951.890, 1951.866(c), 1951.871(b), and 1951.877(b) have been revised to make the language in 1951–R conform to the language used in 1948–C on the same subjects. No change in the meaning of the rule is intended. Section 1951.872(b)(2) has been removed. This paragraph contained environmental requirements which are applicable to new loans to intermediaries but not to loans from intermediaries to ultimate recipients. It was included in the proposed rule in error. Revisions have been made in Subparts A, B, and C of Part 1955 to include references to the Nonprofit National Corporations program. These revisions deal with internal agency procedures and do not impact on the public.

**List of Subjects**

*7 CFR Part 1948*

Credit, Business and industry, Economic development.

*7 CFR Part 1951*

Loan programs—Agriculture, Rural areas.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Government property management, Sale of Government acquired property, Surplus Government property.

Accordingly, Title 7, Chapter XVIII, of the Code of Federal Regulations is amended as follows:

## PART 1948—RURAL DEVELOPMENT

1. The authority citation for Part 1948 is added to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Part 1948 is amended by adding Subpart C to read as follows:

### Subpart C—Intermediary Relending Program (IRP)

Sec.

1948.101 Introduction.
1948.102 Definitions and abbreviations.
1948.103 Eligibility requirements.
1948.104–1948.108 [Reserved]
1948.109 Loan purposes.
1948.110 Ineligible loan purposes.
1948.111 Terms of loans to intermediaries.
1948.112 Interest rates.
1948.113 Security.
1948.114 Conflict of interest.
1948.115 Post award requirements.
1948.116 Fees and charges.
1948.117 Other regulatory requirements.
1948.118 Loan agreements between FmHA and the intermediary.
1948.119–1948.121 [Reserved]
1948.122 Application.
1948.123 Filing and processing applications for loans.
1948.124 FmHA evaluation of application.
1948.125 Loan approval and obligating funds.
1948.126 Loan closing.
1948.127 [Reserved]
1948.128 Request to make loans to ultimate recipients.
1948.129 [Reserved]
1948.130 Non-Federal funds.
1948.131–1948.137 [Reserved]
1948.138 Office of Inspector General and Office of General Counsel referrals.
1948.139–1948.142 [Reserved]
1948.143 Appeals.
1948.144–1948.147 [Reserved]
1948.148 Exception authority.
1948.149 Exhibits.
1948.150 OMB Control Number.

### Subpart C—Intermediary Relending Program (IRP)

#### § 1948.101 Introduction.

(a) This subpart contains regulations for loans made by the Farmers Home Administration (FmHA) to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with Subpart R of Part 1951 of this Chapter.

(b) The purpose of the program is to finance business facilities and community development projects in rural areas. This purpose is achieved through loans made by FmHA to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development in a rural area. It is anticipated that businesses assisted through this program will, to the maximum extent practicable, use farm labor and products as well as provide services to the farm community.

(c) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for processing activities unless otherwise delegated by the Administrator.

**§ 1948.102 Definitions and abbreviations.**

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Applicant.* The intermediary applying to FmHA for loan funds for relending to ultimate recipients for business facilities and community development in a rural area.

(2) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients pursuant to FmHA requirements found in § 1948.103.

(3) *Letter of Conditions.* FmHA's letter of proposed terms and conditions to the intermediary which when accepted by the intermediary provides the binding conditions under which FmHA will make a loan to the intermediary.

(4) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(5) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(6) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(7) *Principals of intermediary.* Include members, officers, directors, entities, and other entities directly involved in the operation and management of an intermediary organization.

(8) *Ultimate recipient.* The entity or individual receiving financial assistance from the intermediary.

(9) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(10) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(12) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(13) *Intermediary Relending Program (IRP).* A program operated by an intermediary whereby the intermediary uses loan funds received from FmHA, along with any other available funds, to make loans to ultimate recipients. Relending programs will normally establish revolving funds so that income from loans made to ultimate recipients, in excess of necessary operating expenses and debt payments, will be used to make additional loans to ultimate recipients.

(b) *Abbreviations.* The following abbreviations are applicable to this subpart:

(1) *B&I*—Business and Industry
(2) *FmHA*—Farmers Home Administration
(3) *IRP*—Intermediary Relending Program
(4) *OGC*—Office of the General Counsel
(5) *OIG*—Office of Inspector General
(6) *RDLF*—Rural Development Loan Fund
(7) *USDA*—United States Department of Agriculture

**§ 1948.103 Eligibility requirements.**

(a) The intermediaries which may receive FmHA loan funds for relending to ultimate recipients are:

(1) Private nonprofit corporations.

(2) Public agencies—Any State or local government, or any branch or agency of such government having the authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) Indian groups—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) Cooperatives—Incorporated or unincorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Be fully bonded against losses occurring from theft, fraud, nonperformance, etc.

(2) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(3) Have a proven record of successfully assisting rural business and industry. Such record will normally consist of:

(i) Recent experience in loanmaking and servicing for loans that are similar in nature to this program;

(ii) A delinquency rate acceptable to FmHA on the loans in the intermediary's portfolio;

(iii) A background and expertise of the intermediary's staff that will be making and servicing the portfolio acceptable to FmHA; and

(iv) Capitalization of the intermediary (for making such loans) acceptable to FmHA.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the applicant.

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State or local programs. The intermediary and each ultimate recipient must certify and document that the ultimate recipient is unable to finance the proposed project from their own resources or through commercial credit or other Federal, State or local programs at reasonable rates and terms.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing FmHA loan(s) will not exceed $3,000,000 per intermediary.

(d) At least 51 percent of the outstanding interest in any intermediary and ultimate recipient must have membership or be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

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**§ 1948.104–1948.108 [Reserved]**

**§ 1948.109 Loan purposes.**

(a) *Intermediaries.* FmHA loan funds will be used by the intermediary to provide loans to ultimate recipients in accordance with paragraph (b) of this section. Prior to receiving FmHA's concurrence to make a loan to an ultimate recipient, the intermediary must certify to FmHA that any assistance to the ultimate recipient, involving FmHA-related funds, complies with the criteria in this section and § 1948.110 of this subpart.

(b) *Ultimate recipients.* (1) Financial assistance from the intermediary to the ultimate recipient must be for community development projects, the establishment of new businesses and/or the expansion of existing businesses, creation of employment opportunities and/or saving existing jobs. Additionally, the ultimate recipients must:

(i) Meet the objective and purpose of the program as described in § 1948.101(b) of this subpart,

(ii) To the maximum extent possible use labor of low-income persons, farm families, and displaced farm families needing additional income to supplement their farming operations, and

(iii) To the maximum extent possible be innovative in providing services and/or products for the public.

(2) Financial assistance involving FmHA loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or developent cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of this subpart.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandary of aquatic animals or plants by private industry for commerical purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stocks of fish.

**§ 1948.110 Ineligible loan purposes.**

(a) *Intermediaries.* FmHA loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipient plus the total outstanding balance of any existing FmHA financial assistance consisting of loans and guarantees will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from intermediaries involving FmHA funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, recreation, or amusement centers.

(8) For any tourist, recreation, or amusement centers.

**§ 1948.111 Terms of loans to intermediaries.**

(a) No loans to intermediaries shall be extended for a period exceeding 30 years. Principal payments on these loans will be made at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by FmHA, but not more than 3 years.

(b) The terms of loan repayment to intermediaries will be those stipulated in the loan agreement and/or promissory note, as agreed to and executed by FmHA and intermediaries.

**§ 1948.112 Interest rates.**

(a) Loans made by FmHA pursuant to this subpart shall bear interest at a fixed rate of one percent (1%) per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients shall be negotiated by those parties. Intermediaries are encouraged to make loans at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

(c) Interest income, service fees, and other authorized financing charges received by intermediaries operating relending programs may be used to pay for: The costs of administering the IRP, the provision of technical assistance to borrowers, the absorption of bad debts associated with IRP loans, and repayment of debt. Proposed budgets to cover the administrative costs of intermediaries must be submitted annually to FmHA. All proceeds in excess of those needed to cover authorized expenses, as described above, must revolve back into the IRP and be available for relending to eligible ultimate recipients.

**§ 1948.113 Security.**

(a) *Loans to intermediaries.* Unless otherwise approved by FmHA, security for the FmHA loan will be separate and apart from security for other loans for which the intermediary is either maker or payee. All loans to intermediaries will be adequately secured. Security for such loans may include but is not limited to:

(1) any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of FmHA; and

(2) any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of FmHA.

(b) *Loans from intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA loan.

(c) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security to protect the Government's interest.

(d) *Appraisals for security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries.* Real property serving as security will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals), and this valuation shall be described in the loan file.

**§ 1948.114 Conflict of interest.**

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient, or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA shall determine whether such ownership, influence or financial interest is sufficient to create a potential conflict of interest. In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

**§ 1948.115 Post award requirements.**

(a) Intermediaries receiving loans under this program shall be governed by these regulations, the Loan Agreement, the approved work plan, security interests, and any other conditions which the FmHA may impose in awarding a loan. Prior to making a loan commitment to an ultimate recipient, the intermediary must receive FmHA's concurrence in the proposed use of loan funds outlined in § 1948.128 of this Subpart.

(b) Unless otherwise specifically agreed to in writing by the FmHA, any loan funds held by an intermediary and any funds obtained from loaning FmHA-derived funds and recollecting them, that are not immediately needed by the intermediary for an ultimate recipient, should be deposited in an interest bearing account in a bank or other financial institution which will be covered by a form of federal deposit insurance. Any interest or income earned as a results of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

**§ 1948.116 Fees and charges.**

(a) *Late payment charges.* Unpaid principal or interest on the loan to the intermediary will be handled as specified in the Loan Agreements attached as Exhibit II to these regulations. Late payment charges on a loan to an ultimate recipient may be made when a loan payment has not been received within the customary timeframe allowed as agreed upon by the ultimate recipient and intermediary. The term "payment received" means that the payment in cash or check, money order, or similar medium has been received by the intermediary at its designated place of payment.

(b) *Documentation of fees.* All fees and charges must be specifically documented and justified on Form FmHA 1948–1, "Application for Loan (Intermediary Relending Program)," or on an addendum to the application at the time the loan request is submitted to FmHA for processing. Allowable fees will be those reasonably and customarily charged intermediaries in similar circumstances in the ordinary course of business and are subject to FmHA review and concurrence.

(c) *Eligible packagers and payment of fees.* Packaging fees include services rendered by others in connection with preparation of the application and seeing the transaction through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount. Packaging fees, investment banker fees, and any other fees and charges not specifically provided for in this section are permitted subject to FmHA review and written approval.

**§1948.117 Other regulatory requirements.**

(a) *Intergovernmental consultation.* The Intermediary Relending Program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject to intergovernmental consultation. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate

recipient. Any comments from the State must be included with the intermediary's request to use the FmHA loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's application for a loan, the intermediary must provide a completed Form FmHA 1940–20, "Request for Environmental Information," for each Class I or Class II project specifically identified in its plan submitted with its loan application. FmHA will review the application, supporting materials, and any required Forms FmHA 1940–20, and initiate a Class II environmental assessment for the application. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project, no public notification requirements for a Class II assessment will apply to the application. The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each project to be assessed will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this Chapter prior to FmHA's consent to use loan funds for an ultimate recipient. FmHA will prepare an Environmental Impact Statement for any application for a loan determined to have a significant effect on the quality of the human environment. Both the intermediary and the ultimate recipient will cooperate and furnish such information and assistance as FmHA needs to make any of its environmental determinations.

(3) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940–20, if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this Chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.* (1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime FmHA loan funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this Chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d–2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

### § 1948.118 Loan agreements between FmHA and the intermediary.

A loan agreement must be executed by the intermediary and FmHA at loan closing for each loan. The loan agreement will be prepared by FmHA and reviewed by OGC prior to the loan closing. Part 1948, Subpart C, Exhibit II (available from the FmHA National Office or any FmHA State Office), may be used as a guide. The loan agreement, as a minimum, must contain the following provisions:

(a) The loan agreement will set out:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due of principal and/or interest if payment for either of these is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by FmHA does not constitute a waiver of default.

(5) Disbursement procedure. Disbursement of loan funds by FmHA to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. The intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work program. Advances will be requested by the intermediary in writing. The intermediary may use Form FmHA 440–11, "Estimate of Funds Needed for 30-Day Period Commencing _____," to show the amount of funds needed during the 30-day period." The date of such drawdown shall constitute the date the funds are advanced under the loan agreement for purposes of computing interest payments.

(6) Provisions regarding default. On the occurrence of any event of default, FmHA may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the FmHA:

(i) Failure of the intermediary to carry out or comply with the specific activities in its loan application as approved by FmHA, or loan terms and conditions, or any terms or conditions of the loan agreement, or any applicable Federal or State laws, or with such USDA or FmHA regulations as may become generally applicable at any time.

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to FmHA.

(iii) The occurrence of:

(A) The intermediary's becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors;

(B) Proceedings for the appointment of a receiver, trustee or liquidator of the intermediary, or of a substantial part of

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its assets, being authorized or instituted by or against it.

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or FmHA in connection with the financial assistance awarded hereunder which is false, incomplete or incorrect in any material respect.

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of FmHA's award of assistance hereunder, which condition was an inducement to FmHA's original award.

(7) *Insurance requirements.* (i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime FmHA loan funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2).

(b) The intermediary will agree:

(1) Not to make any changes in the intermediary's articles of incorporation, charter or by-laws without the concurrence of FmHA.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's written concurrence in the proposed use of loan funds.

(3) To maintain a separate ledger and segregated account for IRP funds.

(4) To FmHA reporting requirements on the intermediary by providing:

(i) An annual audit; dates of audit report period need not necessarily coincide with other reports on the IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(ii) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period). FmHA at its option may change this requirement to semiannual reports. These reports shall contain information only on the IRP loan funds, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP loan, from FmHA, a separate report shall be made for each of these IRP loans. The reports will include:

(A) Form FmHA 1951–4, "Report of IRP/RDLF Lending Activity" (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(B) Project Progress Review Narrative

(iii) An annual report on the extent on which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(iv) Proposed budget for the following year.

(v) Other reports as FmHA may require from time to time.

(5) Before the first relending of FmHA funds to the ultimate recipient, to obtain written FmHA approval of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments.

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(6) To obtain approval of FmHA before making any major changes in forms or policy.

(7) To secure the indebtedness by pledging its portfolio of investments derived from the proceeds of the loan award, and/or pledging its real and personal property, and other rights and interests as FmHA may require.

(8) To provide additional security and execute any additional lien instruments as FmHA may require at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security to protect the Government's interest.

**§§ 1948.119–1948.121 [Reserved]**

**§ 1948.122 Application.**

An application will consist of:

(a) Form FmHA 1948–1, "Application For Loan (Intermediary Relending Program)."

(b) A written work plan and other evidence FmHA requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(1) Document the intermediary's ability to administer an Intermediary Relending Program in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for FmHA's review and the terms of the contract and its duration must be sufficient to adequately service the FmHA loan through to its ultimate conclusion. If FmHA determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved.

(2) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of an Intermediary Relending Program. This should include a statement of the source(s) of non-FmHA funds for administration of the intermediary's operations and financial assistance for projects.

(3) Include a proposal for adequately securing the FmHA loan. The proposal

should specifically address those items of security outlined in § 1948.113 of this subpart.

(4) Include a detailed statement of the proposed use of FmHA loan funds. This should include an outline of what will constitute project eligibility for financial assistance the intermediary will make available to ultimate recipients.

(5) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify FmHA funding of its loan request.

(6) Include a list of proposed fees and other charges it will assess the ultimate recipients it funds.

(7) Demonstrate to FmHA's satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to FmHA's satisfaction that the intermediary has a proven record of obtaining private and/or philanthropic funds for the operation of similar programs to the one contained in this subsection.

(9) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide FmHA with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The eligibility criteria, the application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan.

(c) Form FmHA 1940–20, "Request for Environmental Information," for all projects identified in the intermediary's plan that are Class I or Class II actions under Subpart G of Part 1940 of this Chapter.

(d) Comments from the State single point of contact, if the State has elected to review the program under Executive Order 12372, "Intergovernmental Review of Federal Programs."

(e) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections.

(g) A written agreement will be signed by the intermediary to assure that there is no misunderstanding concerning FmHA audit requirements.

(h) Form FmHA 400–1, "Equal Opportunity Agreement."

(i) Form FmHA 400–4, "Assurance Agreement."

(j) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(k) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs.

(l) Latest audit report, if available.

### § 1948.123 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring FmHA assistance in this subpart may file applications with the FmHA National Office, Director, Business and Industry (B&I) Division, Washington, DC 20250. The Director, Business and Industry Division, may be contacted to discuss assembly, preparation, and processing of applications.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be considered in the order received.

(c) *Loan priorities.* Priority consideration will be given to intermediaries whose written plan, as required by § 1948.122, demonstrates that the intermediary:

(1) Will provide financial assistance to ultimate recipients that provide the greatest benefit to low-income persons, farm families, and displaced farm families.

(2) Will involve the most financial assistance from other sources in providing assistance to the ultimate recipients as provided by this program.

(d) *Timeframe for processing applications for loans.* All loan applications must be approved or disapproved, and the intermediary notified in writing, not later than 60 calendar days after receipt of a completed application.

(1) If an application is not complete, the intermediary will be notified, in writing, not later than 20 calendar days after receipt of the application by FmHA, of the reason(s) the application is incomplete.

(2) When an application is disapproved, the written notification to the intermediary will state the reason(s) for disapproval.

(3) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA will notify the intermediary of such action within 15 calendar days after the reversal/revision decision is made.

### § 1948.124 FmHA evaluation of application.

(a) FmHA will prepare Form FmHA 2033–34, "Management System Card—Business and Industry," in accordance with FmHA Instruction 2033–F.

(b) Applications will be organized in a loan file in accordance with FmHA Instruction 2033–A. The intermediary's Internal Revenue Service (IRS) tax number preceded by State and County code numbers will constitute the case number to be used on all FmHA forms.

(c) The FmHA Administrator or designee will evaluate the application and make a determination whether: the intermediary is eligible; the proposed loan is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there is a need for an environmental impact statement or environmental mitigation; there are any unresolved intergovernmental consultation issues; and the proposed loan complies with all applicable statutes and regulations. If FmHA determines it is unable to provide the loan, the intermediary will be informed in writing. Such notification will include the reasons for denial of the loan. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan.

(1) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, terms of loan, description of the use of loan funds, verification requirements, disbursement of funds, security requirements, and audit reports required.

(2) The letter of conditions will contain the following paragraphs:

> This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, project scope, or any other significant changes in the project of intermediary must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.
>
> This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $_____.

The intermediary must certify at loan closing that since FmHA's issuance of the letter of conditions there has been no material adverse change(s) in its financial condition nor any other material adverse change in the intermediary.

The loan will be considered approved on the date a signed copy of Form FmHA 1940–1, "Request for Obligation of Funds," is mailed to you.

Please complete and return the attached Form FmHA 442–46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

If the conditions set forth in this letter are not met within _____ days from the date hereof, the processing of the application is automatically terminated.

(3) The Administrator or designee is the only person authorized to execute the letter of conditions.

(d) Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the Form FmHA 442–46 to the FmHA Administrator. If certain conditions cannot be met, the borrower may propose alternate conditions to FmHA. The Administrator or designee must concur with any changes made to the initially issued or proposed letter of conditions.

(e) If at any time prior to loan approval it is decided that favorable action will not be taken on an application, FmHA will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this Chapter.

### § 1948.125 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of Form FmHA 1940–1 is mailed to the intermediary. The Administrator or designee may request an obligation of funds when available and according to the following:

(a) Form FmHA 1940–1, authorizing funds to be reserved, may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan, and to enter into required agreements and has signed Form FmHA 1940–1.

(b) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA 1940–1.

(c) The Administrator or designee will request an obligation of loan funds by signing Form FmHA 1940–1, contacting the Finance Office Appropriation Accounting Section by telephone, and then mailing a copy of the Form FmHA 1940–1 to the Finance Office.

(d) The obligation date and date the intermediary is notified of loan approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(e) Immediately after verifying by telephone contact with the Finance Office that funds have been reserved, the Administrator or designee will notify the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015–C (available in any FmHA State Office).

(f) The Administrator or designee will record the date of intermediary notification on the original of Form FmHA 1940–1 and include it as a permanent part of the official FmHA file.

(g) If a transfer of obligation of funds is necessary, complete Form FmHA 450–10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and mail a copy to the Finance Office. An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purpose(s) for which FmHA funds will be used remain substantially unchanged.

### § 1948.126 Loan closing.

(a) After the letter of conditions has been issued and proposed closing documents have been prepared, FmHA will forward the loan docket to the Regional OGC in the region in which the borrower is located for review. For the purpose of this paragraph, the District of Columbia is considered to be in Maryland. After an administrative review, FmHA will include with the docket a letter with recommendations and indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review and indexed and tabbed. The OGC will review the docket and furnish advice to FmHA on noted deficiencies. Upon receipt of the OGC's advice, FmHA will correct or cause to be corrected any noted deficiencies. Loans will be closed by FmHA with the assistance of the OGC Regional Attorney who will issue closing instructions detailing the requirements and any actions necessary to proceed with the loan closing.

(b) In all cases, the Administrator or designee will conduct a review before the loan is closed to assure that all requirements of the application, letter of conditions, and Loan Agreement have been met including required certifications, and will provide such verification in the loan file, including arrangements for annual audit reports. The intermediary's certifications will include the following:

(1) No major changes have been made in the intermediary's work plan except those approved in the interim by FmHA.

(2) All requirements of the letter of conditions have been met.

(3) Equity requirements have been met. A reconciliation of the intermediary's assets and net worth from the latest financial statement to the date of loan closing will be provided with this certification.

(4) There has been no material adverse change in the intermediary's financial condition nor any material adverse change in the intermediary since the issuance of the letter of conditions. If there have been adverse changes, they must be explained by the intermediary. They may be waived, at the sole discretion of FmHA. Financial data must not be more than 60 days old at loan closing.

(c) FmHA personnel shall not sign any documents other than those specifically provided for in this subpart.

(d) The National Office will review any requests for changes to the letter of conditions. The National Office will approve only minor changes which do not materially affect the project, its capacity, employment, original projections or credit factors. Changes in legal entities or where tax considerations are the reason for change will not be approved.

(e) At loan closing the intermediary will provide sufficient evidence to enable FmHA to ascertain that no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

### § 1948.127 [Reserved]

### § 1948.128 Requests to make loans to ultimate recipients.

(a) When an intermediary proposes to use funds obtained from FmHA to make a loan to an ultimate recipient, and prior

to final approval of such loan, the intermediary will submit to FmHA a copy of the ultimate recipient's application and provide certification that the ultimate recipient is eligible; the proposed loan is for an eligible purpose; and the proposed loan complies with all applicable statutes and regulations. No commitment of loan funds to the ultimate recipient may be made by the intermediary until an affirmative decision on proceeding with funding to the ultimate recipient is rendered by FmHA.

(b) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the project a properly completed Form FmHA 1940–20 executed by the ultimate recipient. FmHA will review the Form FmHA 1940–20, and complete the environmental review in accordance with § 1948.117 of this Subpart. The results of this review will be used by FmHA in making its decision on the request.

(c) The intermediary will provide, for FmHA review, all comments obtained in accordance with paragraph (a) of § 1948.117 of this Subpart, "Intergovernmental review."

(d) If FmHA determines it is unable to concur with the loan request, the intermediary will be informed in writing the reasons for denial.

**§ 1948.129 [Reserved]**

**§ 1948.130 Non-Federal funds.**

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and loan agreement, new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

**§§ 1948.131–1948.137 [Reserved]**

**§ 1948.138 Office of Inspector General and Office of General Counsel referrals.**

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012–B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the FmHA designee and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

**§§ 1948.139–1948.142 [Reserved]**

**§ 1948.143 Appeals.**

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this Chapter.

**§§ 1948.144–1948.147 [Reserved]**

**§ 1948.148 Exception authority.**

The Administrator may in individual cases grant an exception to any requirement or provision of this Subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

**§ 1948.149 Exhibits.**

The following documents may be used in connection with this program; they are incorporated into this Subpart and made a part hereof. They are not published in the Federal Register but may be obtained in any FmHA State Office or in the National Office.

(a) Exhibit I, "Note (Intermediary Relending Program)."

(b) Exhibit II, "Loan Agreement (Intermediary Relending Program)."

(c) Exhibit III, "Loan Docket."

**§ 1948.150 OMB Control Number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575–0130. In accordance with 5 CFR 1320, summarized below is the annualized public reporting burden for this regulation.

| Sect. of Regulations | Title | Form No. (if any) | Estimated No. of respondents | Reports filed annually | Total annual responses (d) × (e) | Est. No. of man-hrs. per response | Est. total man-hours (f) × (g) |
|---|---|---|---|---|---|---|---|
| (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) |
| Reporting Requirements—No Forms | | | | | | | |
| 1948.103(b)(1) | Evidence of 10% equity | Written | 35 | 1 | 35 | 1.0 | 35.0 |
| 1948.103(b)(2) | Endorsement of the Governor | Written | 35 | 1 | 35 | 1.0 | 35.0 |
| 1948.103(b)(5) | Evidence of ability to administer revolving loan program. | Written | 35 | 1 | 35 | 1.0 | 35.0 |
| 1948.103(c)(2) | Certification of lack of financing | Written | 35 | 1 | 35 | 1.0 | 35.0 |
| 1948.109(a) | Certificate of Compliance | Written | 10 | On occasion | 50 | 2.0 | 100.0 |
| 1948.114 | Conflict of interest | Written | 10 | On occasion | 50 | 1.0 | 50.0 |
| 1948.117(a) | State comments | Written | 10 | On occasion | 50 | 1.5 | 75.0 |
| 1948.122(b) | Intermediary's work plan to demonstrate feasibility of its operation. | Written plan | 35 | 1 | 35 | 120 | 4200.0 |
| 1948.124(c) | Letter of Conditions | Written | 15 | 1 | 15 | 1.5 | 22.5 |
| 1948.126 | Loan Closing Certification | Written | 10 | 1 | 10 | 3.5 | 35.0 |
| 1948.128 | Certification to make loans to ultimate recipients | Written | 10 | On occasion | 50 | 2.0 | 100.0 |
| 1948.143 | Request for Appeal | Letter | 5 | 1 | 5 | 2.0 | 10.0 |

| Sect. of Regulations | Title | Form No. (if any) | Estimated No. of respondents | Reports filed annually | Total annual responses (d) × (e) | Est. No. of man-hrs. per response | Est. total man-hours (f) × (g) |
|---|---|---|---|---|---|---|---|
| (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) |
| Form Approved with this Docket | | | | | | | |
| 1948.122 | Application for Loan (Intermediary Relending Program). | 1948–1 | 35 | 1 | 35 | 50.0 | 1750.0 |
| Reporting Requirements Approved Under Other Numbers | | | | | | | |
| 1948.117(b)(2) | Request for Environmental Information | 1940–20 (0575–0094). | | | | | |
| 1948.1118(b)(4)(ii)(A) | Report of IRP/RDLF Lending Activity | 1951–4 (approval requested with 7 CFR 1951–R). | | | | | |
| 1948.124(d) | Letter of Intent to Meet Conditions | 442–46 (0575–0015). | | | | | |
| Recordkeeping Requirements | | | | | | | |
| Exh. I | Promissory Note | | 10 | | | 1.0 | 10.0 |
| 1948.118 Exh. II | Loan Agreement | | 10 | | | 1.5 | 15.0 |
| | Total Reporting | | | | 440 | | 6,482 |
| | Total Recordkeeping | | | | | | 25 |
| | Docket Total | | | | 440 | | 6,507 |

## PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 is revised to read as follows:

**Authority:** 7 U.S.C. 1989; 7 U.S.C. 1932 note; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart F—Analyzing Credit Needs and Graduation of Borrowers

4. Section 1951.251 is revised to read as follows:

**§ 1951.251 Purpose.**

This subpart prescribes the policies to be followed when analyzing a borrower's needs for continued Farmers Home Administration (FmHA) supervision, further credit and graduation. All borrowers' loan account(s) will be reviewed for graduation in accordance with this subpart, except Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Fund and Intermediary Relending Program loans.

5. Part 1951 is amended by adding Subpart R to read as follows:

### Subpart R—Rural Development Loan Servicing

Sec.


1951.851 Introduction.
1951.852 Definitions and abbreviations.
1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.
1951.854 Ineligible assistance purposes.
1951.855–1951.858 [Reserved]
1951.859 Terms of loans.
1951.860 Interest on loans.
1951.861—1951.865 [Reserved]
1951.866 Security.
1951.867 Conflict of interest.
1951.868—1951.870 [Reserved]
1951.871 Post award requirements.
1951.872 Other regulatory requirements.
1951.873—1951.876 [Reserved]
1951.877 Loan agreements.
1951.878–1951.880 [Reserved]
1951.881 Loan servicing.
1951.882 Field visits.
1951.883 Reporting requirements.
1951.884 Non-Federal funds.
1951.885 Loan classifications.
1951.886–1951.888 ]Reserved]
1951.889 Transfer and assumption.
1951.890 Office of Inspector General and Office of General Counsel referrals.
1951.891 Liquidation; default.
1951.892–1951.893 [Reserved]
1951.894 Debt settlement.
1951.895 [Reserved]
1951.896 Appeals.
1951.897 Exception authority.
1951.898–1951.899 [Reserved]
1951.900 OMB Control Number.


### Subpart R—Rural Development Loan Servicing

**§ 1951.851 Introduction.**

(a) This Subpart contains regulations for servicing or liquidating loans made by the Farmers Home Administration (FmHA) under the Intermediary Relending Program (IRP) to eligible IRP intermediaries and applies to ultimate recipients and other involved parties. The provisions of this Subpart supersede conflicting provisions of any other Subpart.

(b) This Subpart also contains regulations for servicing the existing Rural Development Loan Fund (RDLF) loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR Part 1076. This action is needed to implement the provisions of Section 1323 of the Food Security Act of 1985, Pub. L. 99–198, which provides for the transfer of the loan servicing authority for those loans from the HHS to the U.S. Department of Agriculture (USDA).

(c) The portion of this regulation pertaining to loanmaking applies to RDLF intermediaries cited in § 1951.851(b) which have RDLF funds from HHS and have not fully utilized relending of those funds to ultimate recipients at the date of these regulations. The loanmaking of all other

IRP loans serviced by this regulation is in accordance with Part 1948, Subpart C of this Chapter.

(d) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations.

(e) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for servicing activities unless otherwise delegated by the Administrator.

**§ 1951.852 Definitions and abbreviations.**

(a) *General definitions.* The following definitions are applicable to the terms used in this Subpart.

(1) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients. FmHA becomes an intermediary in the event it takes over loan servicing and/or liquidation.

(2) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(3) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(4) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(5) *Principals of intermediary.* Includes members, officers, directors, and other entities directly involved in the operation and management of an intermediary organization.

(6) *Ultimate recipient.* The entity receiving financial assistance from the intermediary. This may be interchangeable with the term "subrecipient" in some documents previously issued by HHS.

(7) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(8) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(10) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) *Abbreviations.* The following abbreviations are applicable:

(1) *B&I*—Business and Industry
(2) *CSA*—Community Services Administration
(3) *EIS*—Environmental Impact Statement
(4) *FmHA*—Farmers Home Administration
(5) *HHS*—U.S. Department of Health and Human Services
(6) *IRP*—Intermediary Relending Program
(7) *OCS*—Office of Community Services
(8) *OIG*—Office of Inspector General
(9) *OGC*—Office of the General Counsel
(10) *RDLF*—Rural Development Loan Fund
(11) *USDA*—United States Department of Agriculture

**§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.**

(a) *RDLF Intermediaries.* Rural Development Loan funds will be used by the RDLF intermediary to provide loans to ultimate recipients in accordance with paragraph (b) of this section. Interest income, service fees, and other authorized financing charges received by RDLF intermediaries operating relending programs may be used to pay for: The costs of administering the RDLF relending program, the provision of technical assistance to borrowers, the absorption of bad debts associated with RDLF loans, and repayment of debt. All proceeds in excess of those needed to cover authorized expenses, as described above, must be returned to FmHA.

(b) *Ultimate recipients.*

(1) Financial assistance from the intermediary to the ultimate recipient must be for business facilities and community development projects in rural areas.

(2) Financial assistance involving Rural Development Loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of Part 1948, Subpart C.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stock of fish.

**§ 1951.854 Ineligible assistance purposes.**

(a) *RDLF Intermediaries.* RDLF loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or

more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of RDLF loan funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(10) For any investments in securities or certificates of deposit of over 30-day duration without the concurrence of FmHA. If the RDLF funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to FmHA unless FmHA provides an exception to the RDLF intermediary. Any exception would be based on evidence satisfactory to FmHA that every effort is being made by the intermediary to utilize the RDLF funding in conformance with program objectives.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from RDLF intermediaries involving RDLF funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwide eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

**§§ 1951.855–1951.858 [Reserved]**

**§ 1951.859 Term of loans.**

(a) No loans shall be extended for a period exceeding 30 years. Principal payments on loans will be made at least annually. The initial principal payment may be deferred not more than 3 years.

(b) The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

**§ 1951.860 Interest on loans.**

(a) RDLF intermediaries: When the RDLF loan portfolio was transferred from HHS to USDA as required under Pub. L. 99–198, section 1323 of the Food Security Act of 1985, there were provisions that affected the interest rates on those loans.

(1) Those loans made in 1980 and 1981 carried an original note rate of 1 percent interest when they were first issued. The legislation provides for those loans made in 1980 and 1981 to have a permanent interest rate reduction to 1 percent effective December 23, 1985, to maturity. However, the interest rates on the loans made in 1983 and 1984 may remain the same as the original note rate.

(2) Loans made in 1983 and 1984 do not automatically qualify for a lower rate than the level of interest rates when the notes were first issued. Section 407 of Pub. L. 99–425 provides for a weighted average requirement that would affect those loans made in 1983 and 1984 to intermediary borrowers.

(3) In those cases where loans were made in RDLF intermediaries and the weighted average of all loans made by the RDLF intermediary after December 31, 1982, does not exceed the sum of 6 percent plus the interest rate to the intermediary (7 percent), the interest rate to be charged the RDLF intermediary will be the rate charged on such loans made in 1980, or 1 percent. Should the weighted average exceed 7 percent, the note rate will control.

(i) In order for FmHA to determine the weighted average of the loan portfolio, the RDLF intermediary will be required to complete a weighted loan average rate on its outstanding portfolio. The schedule prepared for FmHA's review should include:

(A) Calculations of the interest amount scheduled to accrue on each loan outstanding over a 1-year period based on the current interest rate of each ultimate recipient's loan.

(B) The sum total of interest on each individual loan will be added together to determine the total interest amount scheduled to accrue over a 1-year period.

(C) Divide the total of paragraph (a)(2) of this section by the total principal outstanding to determine the average interest percent yield in the intermediary's loan portfolio.

(D) The loans to be included in determining the weighted interest average will be those made from January 1, 1983, forward.

(E) FmHA will use the anniversary date of October 1 of each year to request the intermediary to complete a weighted interest average to determine the interest rate on its RDLF loan for the coming calendar year, January 1 through December 31. All loans made in 1980 and 1981 have had the interest rate permanently reduced by legislation to 1 percent, effective December 25, 1985.

(F) The weighted loan average interest rate on the outstanding loan portfolio as referenced in this section will be forwarded to FmHA along with sufficient documentation which should include calculations, list of outstanding loans, current interest rate being charged on the loan, etc.

(b) Interest rates charged by intermediaries to the ultimate recipients shall be at rates negotiated by those parties. Intermediaries are encouraged to make loans to ultimate recipients at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

**§§ 1951.861–1951.865 [Reserved]**

**§ 1951.866 Security.**

(a) *Loans from RDLF intermediaries to ultimate recipients.* Security requirements for loans from

intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence in the intermediary's security proposal is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA loan.

(b) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(c) *Appraisals.* Real property serving as security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals), and this valuation shall be described in the loan file.

**§ 1951.867 Conflict of interest.**

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA shall determine whether such ownership, influence or financial interest is sufficient to create potential conflict of interest. In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

**§ 1951.868–1951.870 [Reserved]**

**§ 1951.871 Post award requirements.**

(a) RDLF intermediaries with undisbursed RDLF loan funds shall be governed by these regulations, the loan agreement, the approved work program, security interests, and other conditions which FmHA may require in awarding a loan.

(b) Unless otherwise specifically agreed to in writing by the FmHA, any loan funds held by an intermediary and any funds obtained from loaning FmHA-derived funds and recollecting them that are not immediately needed by the intermediary for an ultimate recipient should be deposited in an interest-bearing account in a bank or other financial institution which will be covered by a form of Federal deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

(c) Intermediaries operating relending programs must maintain separate ledgers and segregated accounts for RDLF funds at all times.

(d) Reporting requirements shall be those delineated in the loan agreement between the United States and the intermediary and such subsequent requirements as FmHA deems appropriate. The intermediaries must document periodically the extent to which increased employment, income and ownership opportunities are provided to rural residents for each loan made by such intermediary.

(e) No intermediary may make a loan to an ultimate recipient who has applied for or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(f) All loan payments that are due on RDLF loans will be made payable to the Farmers Home Administration, using the number assigned, and mailed directly to: Farmers Home Administration, Finance Office, FC 35, 1520 Market Street, St. Louis, Missouri 63103.

**§ 1951.872 Other regulatory requirements.**

(a) *Intergovenmental consultation.* The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. For each ultimate recipient to be assisted with a loan under this Subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this Subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940–20, "Request for Environmental Information," if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this Chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.*

(1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime Federal funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this Chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d–2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

**§§ 1951.873–1951.876 [Reserved]**

**§ 1951.877 Loan agreements.**

(a) A loan agreement will have been executed by the RDLF intermediary and OCS or HHS for each loan. The loan agreement ordinarily would contain the following provisions:

(1) The amount of the loan.
(2) The interest rate.
(3) The term and repayment schedule.
(4) The provisions for late charges.
(5) Provisions regarding default.
(6) Disbursement procedure.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required on every ultimate recipient in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The RDLF intermediary's interest in the insurance ordinarily will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the RDLF intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The RDLF intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime Federal funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(b) The RDLF intermediary will agree:

(i) Not to make any changes in the RDLF intermediary's articles of incorporation, charter or bylaws without the concurrence of FmHA.

(ii) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's written concurrence in the proposed use of loan funds.

**§§ 1951.878–1951.880 [Reserved]**

**§ 1951.881 Loan servicing.**

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations. preexisting documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(b) Each intermediary will be monitored by FmHA based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contract with the intermediary as necessary.

(c) Loan servicing is intended to be preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

(d) Written notices on payments coming due will be prepared and sent to the intermediary by the FmHA Finance Office approximately 15 days in advance of the due date of the payments. A copy of the notice will be sent to the FmHA Administrator or designee.

(e) If the scheduled payment is not made by the intermediary within 30 days after the due date of the payment, the Finance Office will send a past due notice to the intermediary. The notice will show the late charge amount, if applicable, and the interest amount past due. The late charge amount, if applicable, and the interest past due amount will be capitalized as principal due 30 days after the due date of the monthly payment unless existing loan documents prior to this regulation state otherwise. If the loan documents state when late charge amounts or interest accruals are to be capitalized, the loan documents will prevail.

(1) A per diem amount will be shown on the late notice sent to the intermediary. The Finance Office will send this notice to the Administrator or designee 30 days after the past due notice has been sent to the intermediary and the account remains delinquent. Thereafter, further notices by FmHA designee will be sent to the intermediary on the late payments or any further payments until the account is in a current status.

(2) The Finance Office will notify the Administrator or designee on any payments due from the delinquent intermediary. It will be the responsibility of the Administrator or designee to follow up on delinquent payments to bring the account to a current status.

(3) A copy of any correspondence or notice generated by the Administrator or designee on any delinquent loan will be sent to the Finance Office.

(4) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(f) It is the responsibility of the Finance Office to maintain complete accounting records for each intermediary. The Finance Office will:

(1) Coordinate with the Administrator or designee to assure that interest and principal payments received are in accordance with the promissory notes and its companion documents, and the effective amortization schedule. If the payments received appear to be incorrect, the Finance Office will advise the Administrator or designee. The Adminstrator or designee will take the necessary action to clear the issue and promptly advise the Finance Office of the proper accounting procedure.

(2) Send monthly statements to the National Office reflecting all payments received to date on each borrower.

(3) Send to the Administrator or designee a monthly summary of all intermediary loans as follows:

(i) Number and amount of all loans.

(ii) Total advanced on all loans.

(iii) Total interest and principal received on the loans.

(iv) Total outstanding balance on all loans.

(4) Prepare reamortization schedules needed as a reault of restructuring any loans and send to the Administrator or designee.

(5) Furnish in writing to the Administrator or designee a per diem amount on the actual interest amount due when requested by the Administrator.

(g) It is the responsibility of the Administrator or designee to:

(1) Review and analyze the semiannual report of the intermediaries and reconcile same to the annual audits.

(2) Review the annual audits of intermediaries.

(3) Review the semiannual reports of the intermediaries and take appropriate action when necessary.

(4) Follow up on delinquent intermediaries to bring the account current.

(5) Notify the Finance Office in writing when a loan is determined to be uncollectible in order for the Finance Office to make provisions for an appropriate timely entry to the loss account.

(6) Furnish to the Finance Office the necessary information to produce reamortization schedules.

(7) Provide the Finance Office a copy of any correspondence in regard to the restructuring of the loans.

(8) Review reamortization schedules, the schedule will then be forwarded to the intermediary.

(9) Confirm account balances. Payment history of loans and any other related matter will be furnished to the requesting party, (i.e. third party auditing firms) if warranted and proper If there are discrepancies in any loan

balances being confirmed, the Finance Office should be consulted before the Administrator or designee writes the requested parties.

(10) Furnish upon request by the Finance Office, the information necessary to help reconcile account balances, obtain evidence of payments made by the borrower, and any other related data necessary to keep the financial records correct and in balance.

(11) Answer Congressional and other correspondence.

(12) Review intermediary's plans, cash flow projections, balance sheets, and operating statements.

**§ 1951.882 Field visits.**

(a) During or in preparation for field visits to RDLF/IRP intermediaries by FmHA personnel, the following loan servicing activities are to be performed:

(1) Review what is being done to inform eligible applicants of the program's existence.

(2) Obtain current and proper financial information and analyze for trends on all RDLF/IRP intermediaries. Also determine if there is a sufficient interest rate spread between the interest rate charged the intermediary and the interest rate charged the ultimate recipients to cover the administrative costs, including bad debts of operating the program.

(3) Include in the writeups of the field visit any issues or problems not resolved from the last visitation in the agenda.

(4) Review credit elsewhere information (has the ultimate recipient been refused funds by other sources?) to determine if this information is in the files.

(5) Observe collateral and its condition, maintenance, protection and utilization by the intermediary or ultimate recipient.

(6) Review the process for handling loan proceeds to assure they are deposited in an interest-bearing account or time deposit in a bank or other financial institution fully protected by Federal or State insurance.

(7) Review materials to determine if the purpose of the program is being fulfilled; i.e., loan funds are being used in accordance with FmHA policies, procedures, the approved work plan and the Loan Agreement.

(8) A report of the visit will be made on "RDLF/IRP Review Summary Sheet," or otherwise documented and included in the loan file in the format of the "RDLF/IRP Review Summary Sheet." The report should include an opinion on the financial condition of the intermediary based upon the review of the annual audited financial statement, periodic financial statements, and observations made during the visit and other sources.

(9) Determine if the ultimate recipients' files are complete, organized, and current.

(10) Any instructions, directions, or corrective action should be confirmed by letter to the intermediaries.

(b) All intermediaries are required to provide an annual audited financial statement as well as a summary sheet of their lending program on each ultimate recipient receiving Federal funds. The summary sheet of their lending program on each ultimate recipient should include but not be limited to: the borrower's name and address, type of business, use of loan funds, loan amount, date of note, outstanding balance, date of final payment, interest rate, amount and type of collateral, insurance information, loan status, and the date of FmHA approval, if applicable.

(c) The intermediary should perform an analysis on its ultimate recipients and follow up in writing on any servicing action required. A copy of the analysis will be provided to FmHA for those ultimate recipients having Federal funds.

**§ 1951.883 Reporting Requirements:**

(a) Intermediaries are to provide FmHA with reports as required in their respective loan agreements, applicable statutes and as required by FmHA. The report shall include the following:

(1) An annual audit; dates of audit report period need not necessarily coincide with other reports on the RDLF/IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(2) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period). FmHA at its option may change this requirement to semiannual reports. These reports shall contain information only on the RDLF/IRP loan funds, or if other funds are included, the RDLF/IRP loan program portion shall be segregated from the others; and in the casw ehre the intermediary has more than one RDLF/IRP loan, from FmHA, a separate report shall be made for each of these RDLF/IRP loans. The reports will include:

(i) Form FmHA 1951–4, "Report of IRP/RDLF Lending Activity" (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(ii) Project Progress Review Narrative.

(3) An annual report on the extent to which increased employment income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(4) Proposed budget for the following year.

(5) Other reports as FmHA may require from time to time.

(b) Intermediaries shall report to FmHA whenever an ultimate recipient is more than 90 days in arrears in the repayment of principal or interest.

**§ 1951.884 Non-Federal funds.**

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and the loan agreement, assistance to new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

**§ 1951.885 Loan classifications.**

All loans to intermediaries in the FmHA portfolio will be classified by FmHA at loan closing and again whenever there is a change in the loan which would impact on the original classification. No one classification should be viewed as more important than others. The uncollectibility aspect of Doubtful and Loss classifications is of obvious importance. However, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future losses. Substandard, Doubtful

and Loss are adverse classifications. The special mention classification is for loans which are not adversely classified but which require the attention and followup of FmHA. The loans will be classified as follows:

(a) *Seasoned loan classification.* To be classified as a seasoned loan, a loan must:

(1) Have a remaining principal loan balance of two-thirds or less of the original aggregate of all existing loans made to that intermediary.

(2) Be in compliance with all loan conditions and FmHA regulations.

(3) Have been current on the loan(s) payments for 24 consecutive months.

(4) Be secured by collateral which is determined to be adequate to ensure there will be no loss on the loan.

(b) *Current non-problem classification.* This classification includes those loans which have been current for less than 24 consecutive months and are in compliance with the loan conditions and FmHA regulations, and are not considered to pose a credit risk to FmHA. These loans would be classified as seasoned but for the "24 months" and "two-thirds" requirements for seasoned loans.

(c) *Special mention classification.* This classification includes loans which do not presently expose FmHA to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving FmHA's close attention because the failure to correct these deficiencies could result in greater risk in the future. This classification would include loans that may be high quality, but which FmHA is unable to supervise properly because of an inadequate loan agreement, the condition or lack of control over the collateral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the intermediary's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this classification. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(d) *Substandard classification.* This classification includes loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this classification must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that FmHA will sustain some loss.

(e) *Doubtful classification.* This classification includes those loans which have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(f) *Loss classification.* This classification includes those loans which are considered uncollectible and of such little value that their continuance as loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

**§§ 1951.886–1951.888 [Reserved]**

**§ 1951.889 Transfer and assumption.**

(a) All transfers and assumptions must be approved in advance in writing by FmHA. Such transfers and assumptions must be to an eligible intermediary.

(b) Available transfer and assumption options to eligible intermediaries include the following:

(1) The total indebtedness may be transferred to another eligible intermediary on the same terms.

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed those terms for which an initial loan can be made to an organization that would have been eligible originally.

(3) Less than total indebtedness may be transferred to another eligible intermediary on the same terms.

(4) Less than total indebtedness may be transferred to another eligible intermediary on different terms.

(c) The transferor will prepare the transfer document for FmHA's review prior to the transfer and assumption.

(d) The transferee will provide FmHA with a copy of its latest financial statement and a copy of its annual financial statement for the past 3 years if available; its Federal Tax Identification number; organizational charter; minutes from the Board of Directors authorizing the transaction; certification of good standing from the Secretary of State or whatever regulatory agency oversees nonprofit corporations for that State or Commonwealth where the entity is headquartered; and any other information that FmHA deems necessary for its review.

(e) The assumption agreement will contain the FmHA case number of the transferor and transferee.

(f) When the transferee makes a cash downpayment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in inverse order of maturity.

(g) The Administrator or designee will approve or decline all transfers and assumptions.

**§ 1951.890 Office of Inspector General and Office of General Counsel referrals.**

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012–B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG and FmHA and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to the OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

**§ 1951.891 Liquidation; default.**

(a) In the event that FmHA takes over the servicing of the ultimate recipient of an intermediary, those loans will be serviced by this regulation and in accordance with the contractual arrangement between the intermediary and the ultimate recipient. Should the FmHA determine that it is necessary or desirable to take action to protect or further the interests of FmHA in connection with any default or breach of conditions under any loan made hereunder, the FmHA may:

(1) Declare that the loan is immediately due and payable.

(2) Assign or sell at public or private sale, or otherwise dispose of for cash or credit at its discretion and upon such terms and conditions as FmHA shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property or security assigned to or held by the FmHA in connection with financial assistance extended hereunder.

(3) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by FmHA and take such actions in

respect to such loans as are necessary or appropriate, consistent with the purpose of the program and this Subpart. The Administrator will notify the FmHA Finance Office of any change in payment terms, such as reamortizations or interest rate adjustments, and effective dates of any changes resulting from servicing actions.

(b) Failure by an ultimate recipient to comply with the provisions of these regulations and/or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of its loan.

(c) Failure by an intermediary to comply with the provisions of these regulations or to relend funds in accordance with an approved work plan or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.

(d) In the event of default, the intermediary will promptly be informed in writing of the consequences of failing to comply with loan covenant(s).

(e) Protective advances to the intermediary will not be made in lieu of additional loans, in particular working capital loans. Protective advances are advances made by FmHA for the purpose of preserving and protecting the collateral where the intermediary has failed to and will not or cannot meet its obligations. The Administrator or designee must approve in writing all protective advances.

(f) In the event of bankruptcy by the intermediary and/or ultimate recipient, FmHA is responsible for protecting the interests of the Government. All bankruptcy cases should be reported immediately to the Regional Attorney. The Administrator must approve in advance and in writing the estimated liquidation expenses on loans in liquidation backruptcy. These expenses must be considered by FmHA to be reasonable and customary.

(g) Liquidation, management, and disposal of inventory property will be handled in accordance with Subparts A, B, and C of Part 1955 of this Chapter.

**§§ 1951.892–1951.893 [Reserved]**

**§ 1951.894 Debt settlement.**

Debt settlement of all claims will be handled in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105).

**§ 1951.895 [Reserved]**

**§ 1951.896 Appeals.**

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this Chapter.

**§ 1951.897 Exception authority.**

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

**§§ 1951.898–1951.899 [Reserved]**

**§§ 1900 OMB Control Number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575.0131. In accordance with 5 CFR Part 1320, summarized below is the annualized public reporting burden for this regulation.

| Sect. of regulations (A) | Title (B) | Form No. (if any) (C) | Estimated No. of respondents (D) | Report filed annually (E) | Total annual responses (d) × (e) (F) | Est. No. of man-hrs. per response (G) | Est. total manhours (f) × (g) (H) |
|---|---|---|---|---|---|---|---|
| Reporting Requirements—No Forms | | | | | | | |
| 1951.860(a)(3)(i) | Weighted average interest calculation | Written | 12 | 1 | 12 | 3.0 | 36 |
| 1951.877(a)(7)(i) | Insurance | Assignment | 36 | On occasion | 100 | 1.0 | 100 |
| 1951.882(a) | Intermediary visitations | Meeting | 36 | 1 | 36 | 4.5 | 162 |
| 1951.882(b) | Audited financial statement | Written | 36 | 1 | 36 | .5 | 18 |
| 1951.883(a)(2)(ii) | Program narrative | Written | | | | | |
| | IRP borrower | | 10 | 4 | 40 | 4.0 | 160 |
| | RDLF borrower | | 26 | 2 | 52 | 4.0 | 208 |
| 1951.833(a)(2)(iii) | Employment/income narrative | Written | 36 | 1 | 36 | 1.5 | 54 |
| 1951.883(a)(2)(iv) | Proposed budget | Written | 36 | 1 | 36 | 2.5 | 90 |
| 1951.883(c) | Intermediary's report of loans 90 days in arrears | Written | 36 | On occasion | 50 | 1.0 | 50 |
| 1951.889(c) | Assumption Agreement | Written | 2 | 1 | 2 | 3.5 | 7 |
| 1951.889(d) | Transferee financial statement | Written | 2 | 1 | 2 | .5 | 1 |
| Form Approved with this Docket | | | | | | | |
| 1951.883(a)(2) | IRP Lending Activity Report | 1951–4 | | | | | |
| | IRP borrower | | 10 | 4 | 40 | 20 | 800 |
| | RDLF borrower | | 26 | 2 | 52 | 20 | 1040 |
| Reporting Requirements Under Other Numbers | | | | | | | |
| 1951.872(b) | Request for Environmental Information | 1940–20 (0575–0094). | | | [1]494 | | [2]2,726 |

[1] Docket totals. [2] Total hours.

## PART 1955—PROPERTY MANAGEMENT

6. The authority citation for Part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. Section 1955.3 is amended by revising paragraphs (b), (e), and (k) to read as follows:

**§ 1955.3 Definitions.**

* * * * *

(b) CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

* * * * *

(e) *Loans to organizations.* Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); insured Business and Industrial (B&I) both to individuals and groups; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); loans to associations for Irrigation and Drainage (I&D) and other Soil and Water conservation measures; loans to Indian Tribes and Tribal Corporations; Shift-In-Land Use (Grazing Association); Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this subpart collectively as Multiple-family Housing (MFH) loans.

* * * * *

(k) *Servicing official.* For loans to individuals as defined in paragraph (d) of this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For RDLF and IRP, the servicing official is the Director, Business and Industry Division. For NNC, the servicing official is the Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

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### Subpart B—Management of Property

8. Section 1955.53 is amended by revising paragraphs (a), (h), and (1) to read as follows:

**§ 1955.53 Definitions.**

* * * * *

(a) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes given agricultural lending authority to FmHA.

* * * * *

(h) *Loans to organizations.* Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-In-Land Use (Grazing Associations); Business and Industrial (B&I) both to individuals and groups, Rural Development Loan Fund (RDLF), Intermediary Relending Program (IRP), Nonprofit National Corporations (NNC), Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

* * * * *

(1) *Servicing official.* For loans to individuals as defined in paragraph (f) of this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For Rural Development Loan Fund and Intermediary Relending Program loans, the servicing official is the Director, Business and Industry Division. For Nonprofit National Corporations loans, the servicing official is the Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

* * * * *

### Subpart C—Disposal of Inventory Property

9. Section 1955.103 is amended by revising paragraphs (d) and (1) to read as follows:

**§ 1955.103 Definitions.**

* * * * *

(d) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

* * * * *

(1) *Organization property.* Property for which the following loans were made is considered organization property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Developemnt (RC&D); loans to associations for Shift-In-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

* * * * *

10. Section 1955.105 is amended by revising paragraph (a) to read as follows:

**§ 1955.105 Real property affected (CONACT).**

(a) *Loan types* Sections 1955.106–1955.109 of this subpart prescribed procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity

(EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Resource Conservation and Development (RC&D); Watershed (WD); Association Recreation; EOC; Rural Renewal; Water Facility; Business and Industrial (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Before property can be sold, § 1955.73 of Subpart B of this part concerning dwelling retention must be followed, if applicable.

* * * * *

Date: July 20, 1988.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 88-18395 Filed 8-12-88; 8:45 am]

BILLING CODE 3410-07-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 569c

**[Docket No. 88-681]**

### Conservators and Receivers; Priority of Claims; Depositor Priority

Date: August 9, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final Rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is promulgating as a final rule a revision to its receivership regulations at 12 CFR 569a.11(a)(6) to establish a priority for withdrawable deposits and accounts, including those of the FSLIC as subrogee or transferee, over unsecured claims of general creditors in receiverships of federally chartered associations or savings banks in States that provide such a priority for depositors in State-chartered savings and loan associations.

**EFFECTIVE DATE:** August 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; Ronald A. Brown, Associate General Counsel for FSLIC, (202) 377-7044; or Michael B. Phillips, Attorney, Office of General Counsel, (202) 377-6755; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction—The Establishment of a Depositor Priority for Purposes of the Administration of FSLIC Receiverships

In a final rule published in the **Federal Register** of July 5, 1988 (53 FR 25129), the Board promulgated certain portions of the Proposed Receivership and Conservatorship Regulations that were published in the **Federal Register** of November 27, 1985 (50 FR 48970, 48995). The final rule established a priority structure for unsecured claims applicable to all FSLIC receiverships under a new Part 569c of Title 12 of the *Code of Federal Regulations*. Section 569c.11(a)(6) of that rule recognized State law priorities with respect to depositors for State-chartered institutions, including a provision in that section for depositor priority over claims of unsecured general creditors for FSLIC—insured institutions chartered by those States with depositor preference legislation.

The rule being promulgated today, published for comment on July 5, 1988 (53 FR 25169), amends § 569.11 to recognize a depositor priority for deposits registered at offices of federally chartered institutions located in States with depositor preference legislation.

The Board has determined that a primary benefit of the expansion of the depositor priority coverage in § 569c.11(a)(6) would be the enhancement of FSLIC's claims as subrogee to the claims of insured depositors up to the statutory maximum. Under the National Housing Act ("NHA") and the common law doctrine of equitable subrogation, the FSLIC is entitled to exercise the rights of depositors with respect to their insured accounts after making available transferred accounts. (For an explanation of the common law doctrine of equitable subrogation, see the introduction to the proposed rule that was published in the **Federal Register** of July 5, 1988 (53 FR 25169, 25170.)

Through its status as subrogee to the claims of insured depositors, under the depositor priority coverage of § 569c.11(a)(6), the FSLIC is placed in a stronger position to be compensated for its payment to insured depositors in the event of the Board's appointment of the FSLIC as receiver for an insolvent institution. Under the procedures of § 569c.11(d), all priority categories in paragraph (a) of § 569c.11 must be paid in full in their order of priority until the assets of the receivership are exhausted. As a result of the final rule now adopted, for purposes of the administration of a FSLIC receivership in a State with depositor preference legislation, FSLIC as subrogee of insured depositors will be entitled to a paid on a pro rate basis with uninsured depositors before any recovery by unsecured general creditors from the assets of the receivership.

Eight States have enacted legislation to recognize full depositor preference for their savings and loan associations. These States are: Georgia, Indiana, Nebraska, North Carolina, Oklahoma, Texas, Utah, and West Virginia.[1] (South Dakota, Tennessee, Washington State have enacted statutes providing an extremely limited and minimal depositor priority.)

The Board has received four public comments on the proposed rule that was published in the **Federal Register** of July 5, 1988. These comments are summarized in Part II of this preamble.

### II. Statutory Authority for the Scope of this Rulemaking

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(d)(11), the Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) of the NHA, 12 U.S.C. 1729(c)(3)(A), the provisions of section 5(d)(11) of the HOLA are applicable to a State-chartered insured institution for which the Board has appointed the FSLIC as conservator or receiver "in the same manner and to the same extent as if such [State-chartered] institution were a Federal association . . ."

For a discussion of the Board's broad authority to regulate conservatorships and receiverships under section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA, see the introduction to the Proposed Receivership and Conservatorship Regulations (50 FR 48970). Concerning the Board's authority to promulgate extensive rules for the receivership and liquidation of State-chartered associations for which the

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[1] The following list presents citations for the eight State statutory sections recognizing full depositor preference for receivership involving FSLIC-insured institutions.

(1) *Georgia:* GA. CODE ANN. 7-1-202(a)(2);

(2) *Indiana:* IND. CODE 28-1-3.1-10(3);

(3) *Nebraska:* NEB. REV. STAT. 8-1, 110;

(4) *North Carolina:* N.C. GEN. STAT. 54B-70(m)(2), (3);

(5) *Oklahoma:* OKLA. STAT. ANN. tit. 18, 381.76(K)(1)(b);

(6) *Texas:* TEX. REV. CIV. STAT. ANN. art. 852a, 8.09(g)(3);

(7) *Utah:* UTAH CODE ANN. 7-2-15(d); and

(8) *West Virginia:* W. VA. CODE 31A-7-12(a)(3).

Board has appointed the FSLIC as receiver, see section 6 of the Bank Protection Act of 1968, Pub. L. No. 90–389, 82 Stat. 294. Congress based this extension of regulatory powers on the FSLIC's "vital interest in seeing that the liquidation of the [State-chartered] association proceeds in an orderly manner". S. Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News 2530, 2531.

Concerning the FSLIC's statutory obligations to insured depositors, section 405(b) of the NHA, 12 U.S.C. 1728(b), directs the FSLIC, in the event of a default by any insured institution, to pay each insured account in such insured institution that is "surrounded and transferred" to the FSLIC. Pursuant to section 406(b)(2) of the NHA, 12 U.S.C. 1729(b)(2), the FSLIC as receiver of a Federal association is directed to pay insurance in accordance with section 405 of the NHA. Section 406(b)(2) of the NHA also provides that the FSLIC, upon "surrender and transfer" of an insured account in any Federal association which is in default, shall become subrogated with respect to such account. The provisions of section 406(b)(2) of the NHA are applicable to the FSLIC as receiver of a State-chartered institution under appointment by the Board pursuant to section 406(c)(1)(B) of the NHA.

### III. Summary of and Agency Response to Public Comments on the Proposed Revisions to Section 569c.11(a)(6)

The following discussion summarizes the four public comments on these proposed revisions to § 569c.11(a)(6) and presents the Board's response to these comments.

1. *Comments from a thrift industry trade association.* The focus of this organization's comments was on the final rule establishing § 569c.11 (priority of claims regulations), which was adopted by the Board on June 23, 1988 and published in the **Federal Register** of July 5, 1988. The trade association criticized the revisions to the specific regulatory language in proposed § 569c.11 as published in the **Federal Register** of November 27, 1985 (50 FR 48970, 48995), as substantially modifying the proposed rule and not in accordance with procedural due process considerations. It recommended that the effective date of the final rule of July 5, 1988, and the effective date of this rule be held in abeyance until either Congress or the United States Supreme Court addresses the appropriate scope of the statutory authority of the FSLIC as receiver. The organization was interested particularly in a stay of the effective date of § 569c.11 until the decision of the U.S. Supreme Court in *Coit Independence Joint Venure v. Firstsouth, F.A.*, 829 F.2d 563 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1105 (1988).

The Board continues to hold that: (1) § 569.c11 of the final rule of July 5, 1988, did not modify substantially proposed § 569c.11 as published in the **Federal Register** of November 27, 1985, and (2) the Board has sufficiently broad statutory authority to support the promulgation of § 569c.11 (*see* 53 FR 25129, 25130–25132).

2. *Comments from a savings and loan association headquartered in California.* This association recognized the potential benefit of the proposed rule to the FSLIC as subrogee to the claims of insured depositors, but cited certain effects arising from the rule that could be detrimental to the financial condition of affected savings and loan associations.

The association argued that the effect of this rule would be the lowering of the debt ratings of healthy thrift institutions. The comment asserted: "This would drive up the cost of public debt to those institutions and could reverse the trend of moving away from dependence upon Federal Home Loan Bank Borrowings." In addition, the association asserted that the effect of the rule would be detrimental to holders of existing public debt of thrift institutions.

The Board has determined that as a result of the expansion of depositor preference coverage under this rule, the benefit to the FSLIC as subrogee to the claims of insured depositors will be significant. The Board will monitor the impact of depositor preference coverage for the administration of FSLIC receiverships in States with depositor preference legislation, to determine its effect on the debt ratings of insured thrift institutions in those States.

3. *Comments from a securities firm headquartered in Connecticut.* This comment focused on the impact of depositor preference on transactions between thrift institutions and securities firms, stating:

> In the short run, the current and proposed rules are intended to reduce costs to FSLIC by improving the creditor position of depositors for whom the FSLIC is ultimately responsible. In the longer run, these rules will increase costs to FSLIC as securities firms and others withdraw their support from the thrift industry in the face of their dimished status as creditors of weak institutions. This reduced level of support will exacerbate liquidity problems and hurt the Board's efforts to find time to deal with these problems in an orderly manner.

According to this comment, securities firms will be more reluctant to deal with thrifts if the Board and the FSLIC exercise their authority to reject selectively certain executory securities contracts with thrifts in receivership. This comment stated that such selectivity (referred to in this comment as "cherry picking") would upset certain well established "netting and set off practices" by the securities industry and would increase the credit exposure of securities firms to thrifts.

This comment recommended that certain procedures be implemented by the FSLIC to protect broker/dealers' rights in the event of a FSLIC receivership in a State with depositor preference legislation. According to this comment, claims of unsecured general creditors should be placed on a par with depositors, and securities transactions with thrifts should be netted for credit purposes subject to the following protections: (1) The types of securities transactions for which a dealer claims rights of offset should be approved by the thrift in a Board of Directors resolution; (2) rights of offset should be permitted specifically in the written agreements supporting the transactions; and (3) rights of offset should be limited to netting between and among "trading type transactions" (forward sales, options, futures, interest rate swaps, or repurchase agreements).

The Board has determined that the FSLIC's financial interest as subrogee for insured depositors should be optimized where feasible, particularly where State legislatures have recognized depositor priority coverage for purposes of receiverships of State-chartered thrift institutions. The expansion of depositor priority coverage in this rule to include Federal associations is limited to the administration of FSLIC receiverships of thrift institutions in States with depositor priority legislation.

Under § 569c.11(d), unsecured claims under the priority categories in paragraphs (a)(1)–(10) of § 569c.11 must be paid in full (on a pro rata basis within the respective priority categories) in their order of priority until the assets of the receivership are exhausted. Hence, any FSLIC decision on the priority of certain unsecured claims of securities firms (including rights of offset) must be treated within the appropriate priority category under § 569c.11, *i.e.*, paragraph (a)(6).

With respect to concerns as to the effect of depositor priority on unsecured claims of securities firms (including on the right of offset by securities firms), the Bank Board will consider these concerns within the context of future rulemaking activities.

4. *Comments from a securities firm headquartered in New York.* This comment also focused on the potential negative effect of depositor priority coverage on the securities industry's willingness to enter into contracts with thrift institutions. This could, the comment argued, result in a reduction of an important liquidity source for the securitization of the assets of thrift institutions, and a demand by the securities industry for increased collateralization. This firm urged the following revisions to § 569c.11: (a) a receiver would not attempt to impair the exercise of "netting and set-off rights" in connection with covered transactions; and (b) a receiver would administer a liquidating receivership or would consummate a purchase and assumption transaction or other transaction only in a manner that such covered transaction is, immediately following the appointment of a receiver by the Board, either rejected or assumed. In conclusion, this firm stated:

> The Board's failure to provide such explicit comfort will likely result in increased collaterization requirements (thus further impairing the efforts of all Thrifts (and in particular weaker Thrifts) to liquefy their securities and mortgage portfolios) and may result in reduced access to the types of contracts that provide liquidity for Thrifts' portfolios and hedge their interest rate risk.

With respect to the limited scope of the proposed rule, this firm recommended that depositor preference coverage under the Board's receivership regulations only should apply to protect the FSLIC or the FDIC as subrogee to the claims of insured depositors, not to protect uninsured depositors. This firm advocated that uninsured depositors should be placed in the same priority category in § 569c.11(a) as unsecured general creditors.

The Board believes that the depositor priority coverage under this rule should be limited to the scope of the protected depositor category under the respective State depositor priority statutes. The Board has covered this firm's other concerns in the aforementioned response to the comments of the Connecticut firm.

## IV. "Good Cause" Exception under Section 553(d)(3) of the Administrative Procedure Act (APA)

Section 553(d)(3) of the APA, 5 U.S.C. 553(d)(3), states that the publication of a final rule "shall be made not less than 30 days before its effective date", *except* as "provided by the agency *for good cause found* and *published with the rule*" (emphasis added). The Board has determined that such "good cause" exists to support this rule.

The implementation of the expanded deposit priority coverage in this rule is important for the consummation of certain FSLIC-assisted transactions pursuant to the Board's "Southwest Plan". The Board's Southwest Plan was initiated in February 1988 to resolve the financial and operational problems of more than one hundred forty financially impaired FSLIC-insured institutions in the Southwestern United States (particularly in Texas, which has depositor preference legislation).[2] Given the current efforts of the Board to resolve the financial condition of the FSLIC Insurance Fund and the significant opportunity costs for the FSLIC Insurance Fund in any delay in the consummation of transactions for the implementation of the Southwest Plan, it is important that where feasible, the FSLIC should benefit from its status as subrogee for the claims of insured depositors in Southwest Plan transactions.

According to the Deputy Executive Director of the FSLIC for the Southwest Plan, but for the waiver of the 30-day waiting period, there are at least three probable transactions under the Bank Board's Southwest Plan that would be significantly jeopardized or delayed. (These transactions include Federal associations that have been an important part of the respective Southwest Plan packages under review.)

These three probable transactions under the Southwest Plan would involve significant savings to the FSLIC Insurance Fund through its status as subrogee with respect to the claims of insured depositors up to the statutory maximum. Given the continuing financial deterioration of those insolvent Texas institutions that are included in these probable transactions, through the consummation of these transactions during the 30-day period following publication of the rule, FSLIC could avoid the significant costs to the Insurance Fund that otherwise would be incurred through a delay (or a resulting failure) in these transactions.

The Board has determined that the effect of this waiver of the 30-day waiting period on affected parties would be minimal. The Board only received four public comments on the proposed rule. No comments were received from entities headquartered in States with depositor priority legislation.

Another factor concerning the effect on affected parties of the waiver of the 30-day waiting period is that the final rule is identical to the proposed rule. Hence, those parties already have received substantial guidance on the probable content of the final rule. The legislative history to section 553(d)(3) of the APA indicates that the primary purpose of the "good cause" exception is to facilitate an adjustment by the affected parties of their business decisions to reflect the requirements of the final rule.

[2] *See* Board Resolution No. 88-68 (February 3, 1988).

## V. Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION" regarding this final rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION".

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) (1988). This final rule treats all institutions in the same manner, and this rule will not have a substantial impact on small entities.

### List of Subjects in 12 CFR Part 569c

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 569c, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

## SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

## PART 569c—RECEIVERSHIP RULES

1. The authority citation for Part 569c continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Section 569c.11 is amended by revising paragraph (a)(6) to read as follows:

### § 569c.11 Priorities.

(a) * * *

(6) Claims for withdrawable accounts, including those of the Corporation as subrogee or transferee, and all other claims which have accrued and become unconditionally fixed on or before the

date of default, whether liquidated or unliquidated, except as provided in paragraphs (a)(1) through (a)(5) of this section, provided, however, that if the association is chartered and was operated under the laws of a state that provided a priority for holders of withdrawable accounts over such other claims or general creditors, such priority within this paragraph (a)(6) shall be observed by the receiver; and provided further, that if deposits of a Federal association are booked or registered at an office of such association that is located in a State that provides such priority with respect to State-chartered associations, such deposits in a Federal association shall have priority over such other claims or general creditors, which shall be observed by the receiver;

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 88-18404 Filed 8-12-88; 8:45 am]

BILLING CODE 6720-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

### Definition of Small Business for Dredging

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** The SBA is amending its size standard for the Dredging Industry from the present $9.5 million in annual gross receipts to $13.5 million. This is the size standard which was utilized over the December 9, 1985, to November 3, 1986 period. The $9.5 million size standard which has been utilized since November 3, 1986, resulted from an order from the District Court for the District of Columbia dated November 3, 1986, setting aside the then current dredging size standard of $13.5 million, but restoring the previous size standard of $9.5 million pending SBA's completion of a review of the remanded rulemaking effort. SBA has now completed its review as directed by the Court order and is restoring the size standard of $13.5 million which SBA has determined to be the appropriate size standard for the dredging industry.

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Economist, Size Standards Staff, (202) 653-6373.

**SUPPLEMENTARY INFORMATION:** On November 3, 1986, the United States District Court for the District of Columbia declared invalid the SBA's size standard for the dredging industry and remanded the administrative record of the rulemaking to the Agency for further consideration. The Court recognized that the previous size standard for the dredging industry of $9.5 million was not challenged and remained in effect pending SBA's completion of its review of the issues raised in the remanded rulemaking record. The Court cited SBA's failure to consider regional size standards, after first recognizing the presence of regional differences in structure and in procurement patterns, as sufficient cause in itself to invalidate the size standard.

In addition, on October 15, 1986 Congress passed the National Defense Authorization Act of 1987 (Pub. L. 99-661). Section 921 of this Act contained a mandate that SBA review the size standards of certain industries including dredging. The purpose of the review was to ensure that small business set-asides accounted for no more than approximately 30 percent of the total Federal contract dollar value for those industries. If SBA were to find as a result of its review that the 30 percent threshold was exceeded for any industry under review, the Agency was required to reduce the size standard for that industry accordingly.

The Act also authorized SBA to further divide industry categories when it received evidence that such division is warranted due to special capital needs, or special labor, or geographic requirements, or to recognize a new industry. New size standards would then be established for these new industry categories.

The Act, moreover, provided three prerequisites which Congress considered must all be present in order for segmentation on a regional basis to occur in an industry. These three prerequisites are: (1) The Government must typically designate the area where work for such contracts is to be performed; (2) Government purchases comprise the major portion of the entire domestic market for such goods and services; and (3) due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located.

Using these three prerequisites, SBA examined the question as to whether the dredging industry merited segmentation of its size standard in an Advanced Notice of Proposed Rulemaking which was published on March 17, 1987 (52 FR 8261). This notice explored the possibility of segmenting the industry for light and heavy projects for the Northeast, Southeast, Gulf Coast, West Coast, and Great Lakes regions.

A majority of those commenting on this notice did not support segmented size standards for dredging. The comments included one dredging firm and one association that favored the concept of a regional standard, while four firms, two associations, and the U.S. Corps of Engineers were opposed. The respondents raised several concerns regarding the proposed segmentation. The most important comment from the standpoint of complying with the legislation, however, opposed the idea of segmented size standards based on the nature of competition within the industry. In particular, several respondents argued that dredges are mobile, and therefore, the statutory prerequisite that competition could not be expected from outside the region was not met.

As a result of these comments, SBA examined the question further. Specifically, it requested the views of the Army Corps of Engineers, the agency responsible for the great majority of Federal procurement activities in this industry. The Corps responded by stating its view that this third requirement for segmentation was not present and that therefore, the concept of segmentation should not be applied to the dredging industry. SBA also reviewed available data sources to determine whether there is a pattern of dredging firms operating in more than one region of the nation. It discovered in Table 3 of its publication "Profile of the Dredging Industry for the Purpose of Setting a Size Standard" (June 4, 1984), a pattern in which both large and small firms in the industry often operate in more than one region of the nation. Of the 40 most active firms in the industry, for example, 17 firms operated to a significant degree in more than one region of the nation over the 1980-83 period. These 17 firms include both large and small firms. As a whole they were responsible for almost 55 percent of all Federal dredging contracts. Accordingly, there is strong statistical evidence for the view that competition does occur across regions and that firms in the activity of dredging are not inherently immobile.

After careful review of this issue SBA concluded that the third congressional requirement was not present in the dredging industry. Accordingly, it did not propose segmented size standards for this industry in its Proposed Rule of December 17, 1987 (52 FR 47937).

This process in which SBA in an advance notice of proposed rulemaking first solicited public response to the concept of regional size standards, and then rejected the idea after appropriate review in a proposed rule fulfills the Court's statutory requirement that the SBA seriously consider the viability of regional size standards in the dredging industry prior to making a decision on the proper size standard(s). SBA in this Final Rule is, therefore, focusing its attention on a nationally structured size standard. Specifically, it is reinstituting the $13.5 million size standard in preference to the present size standard of $9.5 million which was restored by Court Order.

The decision to move to a size standard of $13.5 million which was made during 1985 was based on a number of factors relating to the industry structure of the dredging industry. Some of these factors cannot be updated because the data at that time were obtained through a special survey of dredging firms which was costly and time consuming. However, some information is presently available from the Corps of Engineers, and therefore, SBA has evaluated whether the industry has changed significantly since the 1985 decision.

In the final dredging size standard rule of November 8, 1985, (50 FR 46418), SBA based its recommendation to raise the size standard in dredging on six factors. These are: concentration ratio (percent of Federal procurement dollars received by the four largest firms in the industry), average firm size, cost increases over time, the proportion of firms defined as small, the average size of Federal contracts, and the proportion of Federal contract dollars received by small firms. Of the six variables in question, four supported a higher size standard than the present $9.5 million. These four were average firm size, cost increases over time, the proportion of firms defined as small, and the average size of contracts. The remaining two factors—the concentration ratio and the proportion of contract dollars received by large firms—provided ambiguous results.

In reviewing more recent data, SBA was only able to gather information on the concentration ratio (proportion of sales in the industry generated by the four largest firms in the industry), the average size of Federal contract, and the proportion of contract dollars received by small firms. In general, SBA views high indexes for both the concentration ratio and average size of contract as indicators that an industry's size standard should be relatively high. Conversely, it views a relatively low proportion of contract dollars awarded to small firms as an indicator that an industry's size standard might be too low. In this case, SBA wanted to compare the situation in the dredging industry during 1987 with the situation in the earlier period to assure itself that a need continued for a higher size standard. Data for FY 1987 are compared with the 1984 study in the following table:

| Factor | Dredging data from earlier study | FY 1987 |
|---|---|---|
| Concentration ratio (percent of Federal contracts awarded the 4 largest firms in industry) | [1] 26 | 53 |
| Average size of total Federal contracts (millions) | [2] 1.60 | [2] $1.69 |
| Proportion of Federal dollars awarded small firms (percent) | [2] 35.3 | 15.8 |

[1] Average over 1980–83 period. ($9.5 million size standard in effect.)
[2] 1983 data. ($9.5 million size standard in effect.)

These statistics indicate that the situation in the dredging industry involves a greater concentration of economic activity among a few large firms in the dredging industry than occurred in 1983. There is a need to restore the previous size standard of $13.5 million based on the fact that four very large firms received almost two-thirds of Federal contract dollars, while firms defined as small (less than $9.5 million in gross annual receipts) received only 16 percent of all Federal contract dollars. These low percentages for small firms in the industry also indicate that there is little likelihood that the 30 percent set-aside threshold incorporated in Section 921 of Pub. L. 99–661 would be exceeded by a restoration of the $13.5 million size standard.

Based on these considerations and the fact that SBA has extensively considered regional size standards in the dredging industry as directed by Court Order, SBA is restoring the national size standard of $13.5 million for dredging as appropriate for the reasons described in the published rule change in 1985 (50 FR 46418) and due to the results of the analysis of more current data.

This regulation is promulgated as a final rule without prior notice and opportunity to comment in accordance with 5 U.S.C. 553(b). Because SBA has already received and considered public comment on both the issue of geographical distribution (see 52 FR 8261 and 52 FR 47937), and the size standard increase (see 50 FR 46418 and 49 FR 47412), it is not in the public interest to delay the rule further in order to receive further public comment.

**Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act**

SBA certifies that this regulation is a major rule as defined by Executive Order 12291. Over the fiscal year 1987 period, annual Federal outlays for dredging activities exceeded $340 million. Thus the annual economic effect criteria of $100 million used to measure a major rule change could be exceeded as a result of this rule. Potentially, any firm in the industry could be affected in the future by a higher size standard, since the eligibility of a firm could impact on its competitive situation for any set-aside contract and on the decision whether or not to set-aside a contract. This regulation, however, is not likely to result in a major increase in costs, or prices, or in significant adverse effects on the United States economy.

This regulation is unlikely, however, to have a significant economic impact on a substantial number of small entities. (There are no known firms currently active in the dredging industry in the $9.5 to $13.5 million range and only five firms are estimated to be in the $7.0 to $9.5 million range.) Therefore, in compliance with Executive Order 12291, SBA offers this final regulatory impact analysis. SBA has considered regulatory action in this instance in response to intense public comment on the size standard in this particular industry. The purpose of this final rule is to update the size standard for the dredging industry, which has remained at the same level as 1974, to reflect both inflation and changes in industry structure over a 14-year time period. This final rule change is authorized by section 3(a) of the Small Business Act (15 U.S.C. 623(a)), which mandates that SBA define small business concerns on an industry-by-industry basis.

The dredging industry is comprised of approximately 250 companies of which 70 participated in the Federal procurement process during fiscal year 1987. Of these firms, however, only five would likely be significantly affected by a higher size standard. These are firms whose annual receipts usually fall in the $7.0 to $9.5 million range. Clearly, a higher size standard would remove a major constraining factor on expansion for these five firms.

Assuming these five firms are capable of and choose to expand into the $9.5 to $13.5 million range, other firms could be affected by the new higher size

standard. There could be some additional competition for contracts, since these five firms could bid for more contracts without exceeding the new size standard limitation of $13.5 million. Similarly, the competition for unrestricted contracts could be expected to be enhanced, since small firms would be less concerned that winning a contract would push them over the size standard. In addition, Federal contracting officials would be able to set aside some additional contracts, and thus a slightly higher proportion of contract dollars would probably be set aside. Although more contracts will probably be set aside, SBA considers it highly unlikely that the set-aside percentage would exceed 30 percent given the low incidence of set-asides in this industry during 1987 (10 percent), and the fact that only five firms are estimated to be in the $7.0 to $9.5 million range.

Overall, any one of the 250 firms active in the dredging industry might be affected by the increased size standard if it were to bid on a dredging procurement that was set aside for small business, or if the higher size standard freed small firms to bid on unrestricted contracts. The net benefits of this rule change, therefore, are a closer relationship between the size standard and the industry structure and an easing of constraints on expansion for firms within the industry.

In deciding that a size standard of $13.5 million most accurately reflects the current dredging industry, SBA also considered the alternatives of raising the size standard above $13.5 million, lowering it below $9.5 million, or maintaining it at $9.5 million. SBA rejected raising the standard above the $13.5 million level because of the concern that a higher size standard than $13.5 million would more likely result in a set-aside plus 8(a) percentage of Federal contracting in the industry which exceeds the 30 percent level prohibited by Public Law 99–661. Lowering the size standard was rejected because of the industry's dominance by large firms, the relatively large size of contracts in the industry, and the inflationary trends since 1974 when the $9.5 million size standard was established. Thus there are no significant alternatives which would accomplish the stated objectives of minimizing the economic impact on small firms.

SBA certifies that there are no relevant Federal rules which would duplicate, overlap, or conflict with this Final Rule. SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA is amending Part 121 of 13 CFR as follows:

**PART 121—[AMENDED]**

1. The authority citation of Part 121 of 13 CFR is revised to read as follows:

**Authority:** Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), and Public Laws 99–591 and 99–661.

**§ 121.1 (Amended)**

2. In table 2 in § 121.2(d)(2), for Major Group 16—Construction, Other Than Building Construction—General Contractors, the last item in the table, Item 1629—Dredging and Surface Cleanup Activities is revised to read as follows: (Item 1629 Heavy Construction, Except Dredging, N.E.C., is set forth for the convenience of the reader and is not changed).

Dated: May 24, 1988.

| SIC | Description (N.E.C.=Not Elsewhere Classified) | Size standards in number of employees or millions of dollars—Final rule |
|---|---|---|
| 1629 | Heavy Construction, Except Dredging, N.E.C. | $17.0 |
| 1629 | Dredging and Surface Cleanup Activities [1]. | 13.5 |

[1] To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

**James Abdnor,**

*Administrator, U.S. Small Business Administration.*

[FR Doc. 88–18312 Filed 8–12–88; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 88–ASO–11]**

### Amendment to Control Zone, Augusta, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment changes the Augusta, Georgia, control zone from full-time to part-time due to a reduction in hours of operation of the local National Weather Service Office. Since June 23, 1988, no weather reports have been available for the Bush Field Airport, Augusta, Georgia, during the hours 1 a.m. until 6 a.m. local time. This action will allow the control zone hours to conform with the hours when aviation weather reporting service is available.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations is to amend the Augusta, Georgia, control zone by changing the time of designation from full-time to part time. This action is necessary since weather reporting service is no longer available at the Bush Field Airport between 1 a.m. and 6 a.m. local time due to a reduction in operating hours by the local office of the National Weather Service, which is subject to further change by that agency. Current hours of operation will be published for user information.

I find that notice and public procedure under 5 U.S.C. 553(b) are unecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of the technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12991; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zone.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended 52 FR 46740, is further amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Augusta, Georgia [Amended]**

By adding the following statement at the end of the present description:

This zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in East Point, Georgia, on August 4, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 88-18371 Filed 8-12-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-ASO-2]**

## Designation of Transition Area; Keystone Heights, FL; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects the description of the transition area Keystone Heights, Florida. The final rule action mistakenly contained a reference to Restricted Area R-2903B. The reference should have been R-2903A.

**EFFECTIVE DATE:** 0901 u.t.c., September 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**History**

Federal Register Document 88-ASO-2 was published on June 23, 1988. This rule action was to establish the Keystone Heights, Florida, transition area (53FR23606). Inadvertently, reference was made to Restricted Area, R-2903B. The reference should have been R-2903A.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, transition area.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Federal Register Document 88-ASO-2, on page 23606 of the Federal Register on June 23, 1988, is corrected to read as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended to read as follows:

**Keystone Heights, Florida [Amend]**

By eliminating the phase, "* * * excluding that airspace that coincides with Restricted Area R-2903B," and substituting the following, "* * * excluding that airspace that coincides with Restricted Area R-2903A."

Issued in East Point, Georgia, on August 2, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 88-18372 Filed 8-12-88; 8:45 am]

BILLING CODE 4910-13-M

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## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 5**

## Review of Contract Market Designation Applications; Adoption of Internal Processing Procedure

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** As a matter of administrative practice, the Commodity Futures Trading Commission ("Commission") publishes in the Federal Register notice of the availability of the terms and conditions of applications for contract market designation to obtain comment from the public on proposed applications. The Commission has determined that routine publication of designation applications is in the public interest. As a matter of informal practice, the Commission generally has published applications for designation of futures contract markets for a period of sixty days, designation of options on physicals for forty-five days and for options on futures for a period of thirty days. The Commission is hereby formalizing its internal processing procedure and establishing a uniform comment period for futures and both types of option designation applications. In order to provide more ready reference to this internal procedure, the Commission is including it as Appendix D to Part 5 of its regulations.

**EFFECTIVE DATE:** August 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** J. Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-3201, 254-6990, respectively.

**SUPPLEMENTARY INFORMATION:**

**I. The Internal Processing Procedure**

Since its formative period, the Commission has determined that obtaining public comment with respect to pending applications for contract market designation is in the public interest and therefore has provided the public with an opportunity to comment on such applications. Over time, an

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informal practice evolved of providing a public comment period of sixty days for applications for designation of futures contract markets, forty-five days for options on physicals and thirty days for options on futures contract markets. On occasion, however, where an application was identical to an existing contract, or for other reasons, a shorter comment period was provided.

The Commission periodically reviews its procedures relating to the designation of new contract markets to make them as efficient as possible. For example, as part of its ongoing efforts to streamline and expedite the review process, the Commission in 1987 adopted an internal processing procedure under which applications for contract market designation are deemed to be withdrawn where no timely, written response or supplementation on the merits is received by the Commission. The procedure provides specifically that an application which is materially incomplete is deemed to be withdrawn where a response to a Commission letter or voluntary stay tolling the review period is not received by the Commission within a year. 52 FR 1444 (January 14, 1987). This internal processing procedure limits increases in the Commission's backlog of applications for designation which are no longer of interest to exchanges. As a result of this, and other Commission initiatives, the review of applications for contract market designation on average has been reduced to five and one-half months for futures and five months for options, well under the statutory period of one-year.[1]

The Commission's experience with its review of applications for contract market designation indicates that a uniform thirty-day period for comment generally will be sufficient to permit interested parties to submit their views concerning such applications. Moreover, a thirty-day comment period will aid the Commission in the expeditious processing of applications. Finally, such a period is consistent with the customary notice period for applications for designation of contract markets for options on futures and for most exchange rules submitted for Commission approval under section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12), which have been determined by the Commission to be of major economic significance.

Of course, where an application for designation raises particularly complex or novel issues, a longer comment period may be appropriate. In addition, a longer comment period may be appropriate where the Commission must consider the merits of a petition for confidential treatment filed by an applicant exchange which covers significant, material portions of an application. Accordingly, in those instances, the Commission, in its discretion, may determine on a case-by-case basis to provide for a longer comment period.

In addition, the Commission has determined to formalize its practice with respect to publication in the **Federal Register** of notice of contract terms and conditions by memorializing this procedure and including it in the Code of Federal Regulations. Accordingly, the Commission is adopting this internal procedure as Appendix D to Part 5 of its rules.

## II. Related Matters

### *A. Regulatory Flexibility Act*

The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). The requirements of the Regulatory Flexibilty Act, therefore, do not apply to contract markets. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted this rule and its associated information collection requirements to the Office of Management and Budget. The Commission has determined that because the proposed rule merely codifies and modifies existing Commission practice, and does not require the submission of information or reports to the Commission, the rule being adopted will not cause an increase in the paperwork burden.

Persons wishing to comment on the paperwork implications of the rule should contact Robert Neal, Office of Management and Budget (OMB), Room 3228, NEOB, Washington, DC 20503 (202) 395-7340. Copies of the information collection submission to the OMB are available from Joseph G. Sallazar, C.F.T.C. Clearance Officer, 2033 K St. NW.; Washington, DC 20581 (202) 254-9735.

### *C. Administrative Procedure Act*

The Administrative Procedure Act requires that notice and an opportunity to comment be provided to the public before agencies adopt final regulations, except where interpretative rules, general statements of policy or rules relating to agency organization, procedure or practice are involved, or where the agency finds for good cause that such notice and comment is impractical, unnecessary or contrary to the public interest. 5 U.S.C. 553(b). The Commission is adopting a general statement of policy relating to internal agency procedure with respect to the processing of designation applications. The Commission believes that it is in the public interest to make this statement effective upon publication.

### List of Subjects in 17 CFR Part 5

Contract markets, Designation application.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 4c, 5, 5a, 6, and 8a, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by amending Part 5 as follows:

## PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for Part 5 continues to read as follows:

**Authority:** 7 U.S.C. 6c, 7, 7a, 8, and 12a.

2. Appendix D is added to Part 5 to read as follows:

### Appendix D—Internal Procedure Regarding Period for Public Comment

The Commission will seek public comment on applications for designation of futures and option contract markets by publishing a notice of availability of the terms and conditions of the proposed contract. Generally, the Commission will provide for a public comment period of thirty days on such applications for designation. The Commission, or its delegatee under § 140.96 of this chapter, in its discretion, may publish for comment the notice of availability for such longer period as appropriate.

[1] These periods are based upon the review of applications for designation during fiscal year 1987, and exclude the time during which the review periods were tolled either by the Commission or voluntarily by the exchanges because the applications were materially incomplete as filed.

Issued in Washington, DC this 9th day of August, 1988, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88-18345 Filed 8-12-88; 8:45 am]

BILLING CODE 6351-01-orm

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**17 CFR Part 30**

**Foreign Option Transactions**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the Three-Year Australian Treasury Bond futures contracts traded on the Sydney Futures Exchange to be offered and sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States, and the Commission's order dated July 20, 1988, 53 FR 28832 (July 29, 1988), promulgated thereunder.

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

United States of America before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts on the Three-Year Australian Treasury Bond Futures Contract Traded on the Sydney Futures Exchange to be Offered and Sold in the United States Thirty Days after Notice to the Commission and Publication in the Federal Register

By order dated July 20, 1988 ("Initial Order"), the Commission authorized, pursuant to Commission Rule 30.3(a),[1] certain option products traded on the Sydney Futures Exchange ("Exchange") to be offered and sold in the United States. 53 FR 28832 (July 29, 1988). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States shall be made until thirty days after publication in the Federal Register of notice specifying the particular option(s) to be offered and sold pursuant to this Order.

By letter dated August 1, 1988, the Exchange requested that the Commission supplement its initial Order authorizing options on 90-Day Bank Accepted Bill, Ten-Year Treasury Bond and Australian Dollar Futures by also authorizing the Exchange's option contract on Three-Year Australian Treasury Bond futures to be offered and sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, 53 FR 28832, the Commission believes that such authorization should be granted.

Accordingly, pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998, the Commission's Initial Order dated July 20, 1988, 53 FR 28832, and subject to the terms and conditions specified therein, the Commission hereby authorizes the Sydney Futures Exchange's option on the Three-Year Australian Treasury Bond futures contract to be offered and sold to persons located in the United States, thirty days after publication in the Federal Register:

Contract Specifications—Options on the Three-Year Australian Treasury Bond Futures Contract

Contract Unit: One Australian Three-Year Treasury Bond futures contract with a face value of $100,000.

Exercise Prices: Set at intervals of 0.25% per annum. New exercise prices are created automatically as the underlying futures contract price moves.

Premiums: Quoted in multiples of 0.005% per annum. The minimum fluctuation in the premium represents a change in the option value of approximately $10.00 to $13.00, varying with the exercise price.

Contract Months: The initial contract month will be September 1988.

Expiry: The last day of trading in the underlying Australian Three-Year Bond futures contract month. Trading ceases at 12:00 noon.

Exercise: Options may be exercised on any business day up to and including the day of expiry. In-the-money options are automatically exercised at expiry.

Trading Hours: 8:30 a.m. to 12:30 p.m.; 2:00 p.m. to 4:30 p.m.

**List of Subjects in 17 CFR Part 30**

Commodity futures, Commodity options, Foreign commodity options.

**Amendment of Appendix B**

In consideration of the foregoing, 17 CFR Part 30 is amended to read as follows:

**PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS**

1. The authority citation for Part 30 continues to read as follows:

**Authority:** Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix B is amended by adding the following entry alphabetically:

**Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. Pursuant to § 30.3(a)**

| Exchange | Type of contract | FR date and citation |
|---|---|---|
| • • | • • | • • |
| Sydney Futures Exchange. | Options on Three-Year Australian Treasury Bond Futures Contracts. | 53 FR ____ |
| • • | • • | • • |

Issued in Washington, DC, on August 9, 1988, by the Commission.

**Jean A. Webb,**

*Secretary to the Commission.*

[FR Doc. 88-18344 Filed 8-12-88; 8:45 am]

BILLING CODE 6351-01-M

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Ch. I, Appendix**

**Extension of the Trust or Restricted Status of Certain Indian Lands**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Extension of Trust or Other Restrictions on Indian Land; Amendment to Appendix, Chapter I.

**SUMMARY:** Notice is hereby given that on February 23, 1988, the Secretary of the Interior issued an order extending the period of trust or other restrictions against alienation of certain Indian lands which would otherwise expire during the calendar years 1989 through 1993.

**EFFECTIVE DATE:** February 23, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lee E. Maytubby, Realty Specialist, Bureau of Indian Affairs, Room 4521, Main Interior, 18th & C Streets, NW., Washington, DC 20240, telephone (202) 343-3637.

**SUPPLEMENTARY INFORMATION:** Various Executive Orders and orders of the Secretary of the Interior extended the trust periods on Indian lands expiring during the calendar years 1949 through 1988. Orders of the Secretary of the Interior issued pursuant to authority delegated by Executive Order No. 10250 of June 5, 1951, as amended by Executive Order No. 10732 of October 10, 1957, have in recent years been issued at five year intervals. On

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[1] Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.

February 23, 1988, the Secretary issued the following order:

Trust Periods Expiring During Calendar years 1989 through 1993, Inclusive.

By virtue of and pursuant to the authority delegated by Executive Order No. 10250 of June 5, 1951, as amended by Executive Order 10732 of October 10, 1957, and pursuant to section 5 of the Act of February 8, 1887 (24 Stat. 388, 389), the Act of June 21, 1906 (34 Stat. 325, 326), and the Act of March 2, 1917 (39 Stat. 969, 976), and other applicable provisions of law, it is hereby ordered that the periods of trust or other restrictions against alienation contained in any patent applying to Indian lands, whether of a tribal or individual status, which, unless extended, would expire during the calendar years 1989 through 1993 inclusive, be, and the same are hereby extended until January 1, 1994.

This order is not intended to apply to any case in which Congress has specifically reserved to itself authority to extend that period of trust on tribal or individual Indian lands.

**Ross O. Swimmer,**

*Assistant Secretary—Indian Affairs.*

Chapter I—Notice is hereby given to extend the period of trust or other restrictions against alienation of Certain Indian lands.

**Appendix to Chapter I—Extension of Trust or Restricted Status of certain Indian Lands [Amended]**

The Appendix to 25 CFR Chapter I is amended as follows:

1. The following entry is added as the last entry in the last "General Orders" table:

GENERAL ORDERS

| Order | Date | Per. of exten. | FR citation |
|---|---|---|---|
| • • • • • • • | | | |
| Sec. Int. | Aug. 15, 1988 | 5 yrs | [Insert FR citation to this document] |

2. The Note following the last "General Orders" table is amended by adding "; [Insert FR page citation and date of publication]" following "July 27, 1983" and by adding ", 1989—1993" following "1984—1988".

[FR Doc. 88-15055 Filed 8-12-88; 8:45 am]

BILLING CODE 4310-02-M

## PENSION BENEFIT GUARANTY CORPORATION

**29 CFR Part 2619**

### Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning September 1, 1988. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after September 1, 1988, and will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8824 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1988 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since June 1, 1988 (53 FR 17025 (May 13, 1988)). Changes in the financial and annuity markets now require an increase in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after September 1, 1988, which set reflects an increase of ¼ percent in the immediate interest rate to 8¼ percent.

Generally, the interest rates and factors will be in effect for at least one

month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after September 1, 1988, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

**List of Subjects in 29 CFR Part 2619**

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

**PART 2619—[AMENDED]**

1. The authority citation for Part 2619 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11009, 11016(c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 253–257 and by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

2. Rate Set 74 of Appendix B is revised and Rate Set 75 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities**

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, $k_1$, $k_2$, $k_3$, $n_1$, and $n_2$, are defined in § 2619.45.

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $k_1$ | $k_2$ | $k_3$ | $n_1$ | $n_2$ |
| • | • | • | • | • | | • | | |
| 74 | June 1, 1988 | Sept. 1, 1988 | 8.00 | 1.0725 | 1.0600 | 1.0400 | 7 | 8 |
| 75 | Sept. 1, 1988 | | 8.25 | 1.0750 | 1.0625 | 1.0400 | 7 | 8 |

Kathleen P. Utgoff,
*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 88–18348 Filed 8–12–88; 8:45 am]
BILLING CODE 7708–01–M

**29 CFR Part 2676**

**Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1988.

**EFFECTIVE DATE:** September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

**PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL**

1. The authority citation for Part 2676 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

| For valuation dates occuring in the month: | The values of $i_n$ are: | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_n$ |
| • | | | • | | | • | | | • | | | • | | | | |
| September 1988 | .10125 | .0975 | .0925 | .0875 | .0825 | .07625 | .07625 | .07625 | .07625 | .07625 | .07 | .07 | .07 | .07 | .07 | .06 |

Kathleen P. Utgoff,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 88-18347 Filed 8-12-88; 8:45 am]

BILLING CODE 7708-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 239a

[DoD Directive 5100.60]

### Department of Defense Housing Referral Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule removes Part 239a in its entirety. The part is has served the purpose for which it was intended and is no longer required.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Bynum, Directives Division, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone (202) 697-4111.

**SUPPLEMENTARY INFORMATION:**

**List of Subject in 32 CFR Part 239a**

Housing; Military personnel.

**PART 239a-[REMOVED]**

Accordingly, Title 32, Chapter I is amended to remove Part 239a.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 10, 1988.

[FR Doc. 88-18360 Filed 8-12-88; 8:45 am]

BILLING CODE 3810-01-M

### 32 CFR Part 239b

[DoD Instruction 4165.51]

### Housing Referral Offices and Services

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule removes Part 239b in its entirety. The part has served the purpose for which it was intended and is no longer required.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Bynum, Directives Division, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone (202) 697-4111.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 239b**

Housing; Military personnel.

**PART 239b-[REMOVED]**

Accordingly, Title 32, Chapter I is amended to remove Part 239b

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 10, 1988.

[FR Doc. 88-18361 Filed 8-12-88; 8:45 am]

BILLING CODE 3810-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[PP 6F3453/R978; FRL-3429-9]

### Pesticide Tolerances For Bifenthrin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for the residues of the synthetic pyrethroid bifenthrin in or on the raw agricultural commodities (RACs) cottonseed; meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep; and milk. This regulation to establish the maximum permissible levels for residues of the chemical was requested pursuant to a petition by the FMC Corp. This regulation expires on October 31, 1992.

**EFFECTIVE DATE:** August 15, 1988.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 2706, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of November 19, 1986 (51 FR 41828), which announced that FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, had submitted pesticide petition (PP) 6F3453 proposing to establish tolerances in or on the RACs cottonseed at 0.5 part per million (ppm); meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and milk at 0.02 ppm for residues of the pesticide bifenthrin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate).

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a 12-month feeding study in dogs with a no-observed-effect level (NOEL) of 1.5 milligrams (mg)/per kilogram (kg)/per day; a 24-month rat feeding/oncogenicity study with dietary levels of 0, 12, 50, 100, and 200 ppm with a systemic NOEL of 50 ppm (2.5 mg/kg/day) and a lowest effect level (LEL) of 100 ppm (5.0 mg/kg/day) with no evidence of oncogenicity at 200 ppm (10 mg/kg/day), which was the highest dose tested (HDT); a mouse feeding oncogenicity study (87 weeks for males, 92 weeks for females) with dose levels of 0, 50, 200, 500, and 800 ppm in which there was a significantly elevated incidence of leiomyosarcoma of the urinary bladder of males at 800 ppm (30 mg/kg/day); a two-generation rat

reproduction study with a maternal toxicity NOEL of 30 ppm and reproduction toxicity and developmental toxicity NOELs greater than 100 ppm (HDT); a rat teratology study with maternal and developmental toxicity NOELs of 1 mg/kg/day; a rabbit teratology study with a maternal toxicity NOEL of 2.67 mg/kg/day and developmental toxicity NOEL greater than 8 mg/kg/day (HDT). Several of the genotoxicity studies submitted were negative, including a reverse mutation (Ames) assay in *Salmonella typhimurium;* a chromosome aberration study with Chinese Hamster ovary (CHO) cells; and an unscheduled DNA synthesis study with rat hepatocytes. A forward mutation study involving the thymidine kinase (TK) locus in mouse lymphoma cells showed dose-dependent increases in mutation frequency both with and without S–9 activation; bifenthrin is therefore mutagenic with and without S–9 activation in this assay.

On the basis of a statistically highly significant (P=0.00053) dose related trend of increased tumor incidence (as well as a significantly elevated increased incidence at the highest dose level) of leiomyosarcoma of the urinary bladder in male mice, the Agency has classified bifenthrin as a Class C (possible human) oncogen.

The decision supporting a Category C classification (rather than a Category B classification) was based primarily on the fact that only one sex was affected (male), only one species was affected (mouse), mutagenicity assays did not support upgrading to a B classification, and the structure-activity relationship of bifenthrin to other pyrethroids supported a C classification. In classifying bifenthin as a Category C oncogen, the Agency concluded that a quantitative estimation of the oncogenic potential for humans should be calculated because of the uncommon nature of the urinary bladder tumors. Thus, $Q_1^*$ of $5.4 \times 10^{-2}$ $(mg/kg/day)^{-1}$ in human equivalents has been calculated. If we assume that 100% of all cotton is treated with bifenthrin and tolerance level residues are present on foods as eaten (meat, milk), the estimated dietary oncogenic risk to the general population would be $10^{-5}$.

Although this estimate of potential oncogenic risk provided above may appear high, the Agency believes that actual exposure and risk would be lower. The basis for this is that the risk of $10^{-5}$ reflects a worst case dietary exposure because it assumes that 100% of the United States cotton crop is treated with bifenthrin and that all quantities of the food consumed will bear residue levels as high as the proposed tolerance. In reality the Agency knows that all cotton would not be treated with this pesticide. Based upon an analysis of the market penetration of currently registered pyrethroids and acaricides, the Agency expects the percent of crop treated with bifenthrin in a typical year to range from 1 to 26 percent, but would most likely be about 10 percent. Likewise the Agency believes that actual residues on meat and milk will be lower than tolerance levels since cottonseed (a feed item necessitating the establishment of the meat and milk tolerances) is a relatively minor component of most animal diets. Thus, if we assume that 10 percent of the cottom crop will have residues at the tolerance level (0.5 ppm), the estimated dietary oncogenic risk to the general population would be $10^{-6}$.

In addition to assessing risk the Agency has determined that the use of bifenthrin is likely to result in smaller amounts of pesticide being applied to cotton to control spider mites, of tank mixing an insecticide and an acaricide to achieve the same result. Bifenthrin is the first pyrethroid with acaricidal properties and will be a valuable tool for growers in managing spider mite resistance, a major problem in many cotton-growing areas. The Agency's review of comparative yield data also demonstrate increased yields of cotton in bifenthrin-treated plots relative to test plots treated with currently used pyrethroids and acaricides. An Agency analysis determined that the observed yield increases could result in significant economic benefits even though the application costs of bifenthrin may be considerably higher than alternative pesticides.

The Agency has reviewed and evaluated the data submitted by the manufacturer in support of the tolerance for bifenthrin on cotton and considered information on the risks associated with the proposed use of bifenthrin. The Agency has also considered information on the social, economic, and environmental benefits of the proposed use of bifenthrin, including benefits information submitted by the manufacturer and comparative efficacy and yield data gleaned from the open literature.

Based on an assessment of the risk and benefits of the proposed use of bifenthrin, the Agency believes that the proposed use of bifenthrin on cotton will pose extremely small risks to humans and that the proposed tolerance levels are acceptable and should be established.

The acceptable daily intake (ADI), based on a NOEL of 1.5 mg/kg/day from a 1-year dog feeding study and a safety factor of 100 is 0.015 mg/kg body weight/day. The theoretical maximum residue contribution from the proposed tolerances is 0.000445 mg/kg body weight/day. This is equivalent to about 3 percent of the ADI.

The metabolism of the chemical in plants for this cotton use is adequately understood. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the *Pesticide Analytical Manual,* Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail: Information Service Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–3262.

The tolerances established by amending 40 CFR Part 180 are adequate to cover residues in or on cottonseed; milk; fat, meat, and meat by-products of cattle, goats, hogs, horses, and sheep.

There are currently no actions pending against the registration of this product. This pesticide is considered useful for the purpose for which the tolerances are sought.

On August 5, 1988, the Agency issued a condition registration for use of bifenthrin on cotton with a final expiration date of October 31, 1991. In order to evaluate the effects of bifenthrin on fish and aquatic organisms and its fate in the environment, several data requirements must be fulfilled during the period of the conditional registration. Such requirements include a fish life-cycle study (§ 72–5), which must be submitted by August 1988; a simulated or actual aquatic field test study (§ 72–7), which must be submitted by January 1989; a volatility (lab) study (§ 163–2), which must be submitted by August 1989; an aquatic invertebrate life cycle (fresh water) test (§ 72–4) and an aquatic invertebrate life cycle (estuarine) test (§ 72–4), which must be submitted by October 1989; a repeat soil dissipation study (§ 164–1), which must be submitted to the Agency by November 1990; and a repeat confined crop rotation study in wheat only (§ 165–1), which must be submitted to the Agency by October 1991. Because of the lack of these studies, the Agency is establishing the tolerances for this

pesticide on cottonseed at 0.5 ppm; meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and milk at 0.02 ppm with an expiration date of October 31, 1992, to cover residues expected to be present during the period of conditional registration.

Based on the above information and data considered, the agency concludes that the tolerances would protect the public health. Therefore, the tolerances are established as set forth below with an expiration date of October 31, 1992. After receipt and evaluation of the data required to support the conditional registration of bifenthrin, the Agency will consider establishing a permanent tolerance.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from the tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950). (Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(C)).)

**List of Subjects In 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 5, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. New § 180.442 is added, to read as follows:

**§ 180.442 Bifenthrin; tolerances for residues.**

Tolerances, to expire October 31, 1992, are established for residues of the pyrethroid bifenthrin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifeuoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the following commodities:

| Commodities | Part per million |
|---|---|
| Cottonseed | 0.5 |
| Meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep | 0.1 |
| Milk | 0.02 |

[FR Doc. 88-18375 Filed 8-12-88; 8:45 am]

BILLING CODE 6560-50-M

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1607

### Governing Bodies

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises § 1607.6 of 45 CFR Part 1607 of the Legal Services Corporation's regulations on recipient governing bodies. Section 1607.6 implements section 1007(c) of the Legal Services Corporation Act, which prohibits LSC program attorney board members from receiving compensation from "a recipient." 42 U.S.C. 2996f. Part 1607 as originally promulgated in 1976 substituted the definite article, "the recipient," for the indefinite article used in the Act, causing uncertainty as to the scope of the restriction. This revision, which makes the language in the regulation more closely comport with the letter and the meaning of the Act, is intended to reinforce the independence of recipient board members. The revision also more clearly defines what is included in the term "compensation."

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy B. Shea, General Counsel, Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1823.

**SUPPLEMENTARY INFORMATION:** Notice of proposed changes to 45 CFR Part 1607, LSC's regulations on recipient governing bodies, published at 52 FR 38900 (Oct. 19, 1987), was amended at 52 FR 42480 (Nov. 5, 1987) to extend the comment period to December 10, 1987, and, as a matter of discretion, until December 17, 1987, the day of the LSC Board's Operations and Regulations Committee meeting. The notice proposed several changes to Part 1607, including § 1607.6. A total of 567 comments from state and local bar associations, Members of Congress, LSC programs, and other interested individuals and groups has been received. Approximately 145 comments addressed the proposed changes to § 1607.6. In addition, the LSC Board's Operations and Regulations Committee met in Philadelphia, Pennsylvania, on November 20, 1987, in Charleston, South Carolina, on December 17 and 18, 1987, and in Washington, DC, on January 28 and 29, 1988, to hear public comment and consider the proposed changes. On January 29, 1988, the Board, at the recommendation of the Operations and Regulations Committee, adopted revisions to § 1607.6 as final.

Approximately 143 comments opposed and 2 favored the proposed revision of section 1607.6 to prohibit receipt of compensation from "any recipient," rather than the current prohibition on "the recipient." The comments urged that Congress did not mean "any" when it used the indefinite article "a" in section 1007(c). Comments also asserted that the revision would prevent recipient attorneys from serving on national support centers where their first-hand knowledge and experience are valuable.

Section 1007(c) of the LSC Act prohibits LSC program attorney board members from receiving compensation from "a recipient." 42 U.S.C. 2996f. When the implementing regulation, 45 CFR Part 1607, was promulgated in 1976, the definite article was substituted for the indefinite article without any accompanying explanation. *See* 41 FR 18526 (May 5, 1976) (proposed rule); 41 FR 25699 (June 23, 1976) (final rule). As evidenced by comments to the proposed changes to Part 1607, some commenters insisted that Congress meant "the" even though it used the indefinite article "a" to modify "recipient" in the Act.

If the provision is construed to mean "a" recipient, then attorney board members may not be compensated by any LSC-funded recipient program. If it is construed to mean "the" recipient, then attorney board members may receive compensation from any LSC program except the recipient on whose board the attorneys serve.

The prohibition is intended to assure that recipient board members are independent, dispassionate, and free from institutional or individual conflicts that detract from the primacy of the provision of effective and efficient client service. The potential for conflict for a staff member who holds a director

position for the same recipient is indisputable. These same concerns apply, though more remotely, in the case of a recipient staff member who sits on other recipient boards. More specifically, many state and national support centers have directors who receive salaries from the same recipient programs to which the support centers provide services. The governing bodies of support centers regularly make decisions on how and where to allocate training, technical assistance, co-counseling, and other substantial resources to the legal services community. Support center directors who are staff members at other programs have a potential conflict with regard to resource allocation decisions insofar as they may have the opportunity to influence decisions to benefit their own programs. Expanding the rule's prohibition from "the" recipient to "a" recipient will reinforce the strong interest in independent governance.

The use of the indefinite article "a" in the LSC Act is not ambiguous and should be given its plain meaning, *United States v. Public Utilities Commission of California*, 345 U.S. 295, 315 (1953), as Congress expresses its intent through the ordinary meaning of the words it uses. *Rubin v. United States*, 449 U.S. 424, 430 (1981). No facial ambiguity in the tenor of section 1007(c) itself has been urged. Conspicuously, use of the definite article in the rule adopted in 1976 is not accompanied by any explanation of the departure from the terms of the statute. Nevertheless, review of the legislative history persuasively demonstrates that the indefinite article was deliberately chosen.

S. Rep. No. 495, 93rd Cong., 1st Sess. 17 (1973), addressing a bill leading to the 1974 LSC Act, S. 2686, 93rd Cong., 1st Sess. (1973), constitutes the main authority for the proposition that "a" should be deemed to mean "the," according to the commenters. The proposed Senate language prohibited compensation from "such" recipient, meaning "the" recipient. It is clear from both the proposed Senate language and the accompanying explanation that the Senate originally contemplated restricting compensation of attorney board members from only those programs on whose boards the attorneys served. S. Rep. No. 495, 93rd Cong., 1st Sess. 17 (1973). The House bill, H.R. 7824, 93rd Cong., 1st Sess. (1973), included a similar prohibition on receipt of compensation by attorneys from recipients. The proposed House language, however, used the indefinite article and was clearly intended to prevent compensation from any LSC recipient. H.R. Rep. No. 247, 93rd Cong., 1st Sess. 12, 20 (1973).

The House version prevailed in conference. The Senate dropped its use of the word "such" in deference to the House use of "a." H.R. Conf. Rep. No. 1039, 93rd Cong., 2d Sess. 10, 28 (1974) and S. Conf. Rep. No. 84, 93rd Cong., 2d Sess. 10, 28 (1974). Though no explanation is given, the change was certainly deliberate.

Subsequent legislative deliberations, H. Rep. No. 201, 98th Cong., 1st Sess. 34 (1983) and H. Rep. No. 448, 99th Cong., 1st Sess. 38 (1985), some nine years after the LSC Act, on amendments that were never adopted, assumed that the prohibition against compensation from "a" recipient ran to "that" recipient. These suggestions, which were unaccompanied by any textual or legislative analysis, apparently were influenced by the regulation, § 1607.6, promulgated by the Corporation in 1976, which, of course, limited the prohibition to "the" recipient. The Supreme Court has consistently warned that the views of a subsequent Congress from a hazardous basis for inferring the intent of an earlier one. *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 117–18 (1980). Subsequent legislative history will rarely override a reasonable interpretation of a statute that is gleaned from its language and contemporaneous legislative history. *Id.* at 118 n. 13.

In short, review of the legislative history supports the conclusion that the indefinite article "a" was intended when Congress used it in section 1007(c) of the LSC Act.

Concern was expressed to the LSC Board that the revision would preclude healthy exchanges between support centers and their principal clients, the field programs. Certainly, the staffs of support centers and field officers have frequent contact. Nevertheless, to the degree that board level exchanges are deemed necessary, local program board members may still serve on the support center boards, as no restriction exists in this regard.

Section 1607.6 is also revised to clarify that "compensation" includes salary, per diem, or other like payments that constitute remuneration for services rendered, whether in salary, fees, commissions, or per diem. Payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of board membership is excluded. The commenter registered no opposition to this change.

Language in the most recent LSC appropriations act, the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–202, 101 Stat. 1329 (1987), imposes certain constraints on the regulation by LSC of recipient governing bodies. The proposed change to § 1607.6, however, does not fall within the constraints of the appropriations act's language. The appropriations act prohibits the Corporation from imposing any requirements on governing bodies that are additional to, or more restrictive than, the provisions of Pub. L. 99–180 and section 1007(c) of the LSC Act. As set out above, the purpose of the change is to revise the language in section 1607.6 to comport more closely with the letter and the meaning of the Act. The change will thus not impose any requirement on governing bodies that goes beyond requirements already delineated in the Act.

Pursuant to Pub. L. 100–201, 101 Stat. 1329–39 (1987), the Corporation is required to give 15 days notice to the appropriations committees of both Houses of Congress prior to publishing revisions to its regulations as final. Reprogramming letters were duly sent to the appropriate committees, and a response expressing disapproval of the proposed revisions based on subsequent legislative deliberations was received from the Senate committee. After careful analysis, set out above, the Corporation concluded that the subsequent deliberations were far outweighed by the express language of the LSC Act and the contemporaneous legislative history. An expression of disapproval, while respectfully considered, does not affect the authority of LSC to publish its revisions as final, as only notice, and not approval, is statutorily required. *See* Pub. L. 99–180, 99 Stat. 1165 (1985), incorporated by reference in Pub. L. 100–202, 101 Stat. 1329 (1987); 130 CONG. REC. S8588–8589 (daily ed. June 28, 1984); and *Principles of Federal Appropriations Law* 2–29 (GAO ed. 1982).

**List of Subjects in 45 CFR Part 1607**

Legal services.

For reasons set out above, 45 CFR Part 1607 is amended as follows:

1. The authority citation for Part 1607 is revised to read as follows:

**Authority:** Sec. 1007(c); 42 U.S.C. 2996f(c); Pub. L. 97–377; 96 Stat. 1830; Pub. L. 100–202; 101 Stat. 1329.

2. Section 1607.6 is revised to read as follows:

**§ 1607.6 Compensation.**

While serving on the governing body of a recipient, no board member shall

receive compensation from any recipient of the Corporation, whether such compensation is termed salary, per diem, or otherwise. A board member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of board membership.

**Timothy B. Shea,**

*General Counsel.*

Date: August 9, 1988.

[FR Doc. 88-18351 Filed 8-12-88; 8:45 am]

BILLING CODE 7650-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 88-05, Notice 2]**
**RIN 2127-AC47**

### Federal Motor Vehicle Safety Standards Air Brake Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** Standard No. 121, *Air Brake Systems*, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. Some vehicles which fall within one of those vehicle classes are excluded from the standard because their attributes, typically those relating to configuration, speed or weight, result in restricted highway operation. This notice amends Standard No. 121 by eliminating the exclusion of vehicles based on width, except for trailers that have a width of more than 102.36 inches with extendable equipment in the fully retracted position and are equipped with two short track axles in a line across the width of trailer.

**DATES:** The amendment is effective September 14, 1988. Petitions for reconsideration must be received on or before September 14, 1988.

**ADDRESSES:** Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-5892).

**SUPPLEMENTARY INFORMATION:** Standard No. 121, *Air Brake Systems*, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. Certain vehicles are excluded by section S3 from the standard's applicability because they have unusual physical or operational characteristics that result in restricted highway operation (e.g., low speed, permit requirements, daytime operation) which limits hazards and the possibility of accidents. Also, the unusual configurations and low production volumes of these vehicles sharply increase compliance costs.

On January 21, 1988, NHTSA published in the **Federal Register** (53 FR 1643) a notice of proposed rulemaking (NPRM) to eliminate from Standard No. 121 a provision which excludes vehicles that have an overall vehicle width of more than 102 inches. The notice was issued in response to a petition for rulemaking submitted by Corpac Industries, Inc.

Corpac stated in its petition that the Surface Transportation Assistance Act of 1982 prevents states from establishing a maximum width of more than or less than 102 inches for commercial motor vehicles operating on the National Network and that this was subsequently interpreted by the Federal Highway Administration as including its approximate metric equivalent, i.e., 2.6 meters (102.36 inches). The petitioner submitted information showing that thousands of trailers are now being produced which are 102.36 inches wide. Corpac argued that Standard No. 121 does not technically apply to these vehicles and urged that the 102-inch exclusion be eliminated to prevent the production of vehicles with possibly markedly inferior braking performance.

NHTSA noted in the January 1988 NPRM that one issue raised by Corpac's petition was whether new 102.36-inch trailers are excluded from Standard No. 121 by virtue of the provision, set forth in section S3(a), that excludes vehicles that have "an overall vehicle width of more than 102 inches with extendable equipment in the fully retracted position." The agency concluded that these vehicles are not excluded from Standard No. 121.

Section 416(a) of the Surface Transportation Assistance Act of 1982 states that "(n)o state, other than the State of Hawaii, shall establish, maintain, or enforce any regulation of commerce which imposes a width limitation of *more or less than 102 inches* on any segment of the National System of Interstate and Defense Highways, or any other qualifying Federal-aid highway as designated by the Secretary of Transportation, with traffic lanes designed to be a width of twelve feet or more * * * " (Emphasis added.) Thus, a state may not prohibit vehicles with a width of 102 inches or less, or permit vehicles with a width greater than 102 inches, on these highways. (States are permitted under section 416(b) to grant special use permits to vehicles that exceed 102 inches in width.)

In proposing regulations under the statute, the Federal Highway Administration (FHWA) stated the following:

> The American National Metric Council and the Truck Trailer Manufacturers Association have called attention to the practices of some Canadian trailer manufacturers to construct their trailers 2.6 meters wide. This dimension is equivalent to 102.36 inches. The FHWA is interested in knowing the advantages and disadvantages of allowing trailers of 102.36-inch widths on the roads as perceived by the State and the public, in general. The FHWA solicits comments on the question of allowing 102.36-inch wide trailers on the National Network. 48 FR 41280, September 14, 1983.

In issuing a final rule, the FHWA stated;

> Commenters on the subject of recognizing the approximate metric width equivalent of 2.6 meters (102.36 inches), on trailers were strongly in favor of such a position. Standardization of truck width on an international basis is seen as an important objective, which will serve to enhance international trade. The FHWA concurs in that assessment. The final rule as contained in Section 658.15 establishes the maximum width as 102 inches or its approximate metric equivalent of 2.6 meters. The FHWA believes the States can accommodate the rule without changing laws or violating congressional intent. 49 FR 23312, June 5, 1984.

The FHWA regulation, set forth at 23 CFR § 685.15, states:

> No State shall impose a width limitation of more or less than 102 inches, or its approximate metric equivalent, 2.6 meters (102.36 inches) on a vehicle operating on the National Network, except for the State of Hawaii * * *

Thus, 102.36 inches is defined in the FHWA regulation as the "approximate metric equivalent" of 102 inches, and was determined by FHWA as being consistent with Congressional intent as not being "more or less" than 102 inches. Particularly given this background, it is NHTSA's opinion that the 102.36 inch trailers being produced in light of the FHWA regulation are not considered to have a width of "more than 102 inches" within the meaning of Standard No. 121's applicability section. Also, previous **Federal Register** notices make it clear that NHTSA did not intend the criteria in section S3 to exclude typical configuration vehicles from Standard

No. 121. For example, in establishing the 102-inch width exclusion, the agency stated that, in all states other than Hawaii, vehicles exceeding this width were allowed to operate on the highway only by permit. See 42 FR 42208, August 22, 1977.

NHTSA stated in the January 1988 NPRM that while it is the agency's opinion that the 102.36-inch vehicles are not excluded from Standard No. 121, it agreed that it should clarify the applicability of the standard to those vehicles. The agency stated that while such clarification could be achieved through amending S3(a) to expressly refer to the 102.36-inch trailers, it believed that a better approach would be to eliminate the exclusion altogether. The agency tentatively concluded that it was not necessary to retain the width exlcusion. NHTSA stated that it was unaware of any vehicles wider than 102 inches or 102.36 inches that do not come within one of the section S3's other exclusions, and that it believed that those exclusions are sufficiently comprehensive to continue to exclude all vehicles whose function or construction result in restricted highway operation and for which compliance would be very difficult. The agency accordingly proposed to delete section S3's width exclusion.

NHTSA received four comments on the January 1988 NPRM. General Motors stated that it supports the proposed amendment to eliminate the exclusion based on vehicle width on the basis that the other criteria stated in section S3 are sufficiently comprehensive to exclude the vehicles that should be excluded from the applicability of Standard No. 121. The Insurance Institute for Highway Safety also supported the proposal, stating that any exclusion from a Federal motor vehicle safety standard should be limited to specific and unusual circumstances. A comment supporting the proposal was also submitted by Corpac.

The Truck Trailer Manufacturers Association (TTMA) commented that if the width exclusion is eliminated from Standard No. 121, a new exclusion should be added. That commenter stated that the elimination of the width exclusion would make some trailers with trunnion or dual oscillating suspension/axle assemblies subject to the standard. According to TTMA, these trailers have a unique undercarriage in that there are two short track axles across the trailer's width instead of one, and do not have sufficient space for brakes that can meet Standard No. 121. That commenter stated that this construction results in a trailer which is typically 120 inches wide, but that some trailers may expand to 120 inches in width when loaded but are less than 102 inches wide when empty. According to TTMA, these trailers often travel at highway speeds when used on the road, but under permit due to their width. That commenter stated that while most of these trailers are excluded from Standard No. 121 by having a gross axle weight rating greater than 29,000 pounds, some of the trailers are excluded only because they have a width greater than 2.6 meters (102.36 inches). TTMA recommended that a new exclusion be added for any trailer equipped with two short track axles in a line across the width of the trailer.

After considering the comments, NHTSA has declined to eliminate Standard No. 121's width exclusion, except for trailers that have a width of more than 102.36 inches with extendable equipment in the fully retracted position and are equipped with two short track axles in a line across the width of trailer. NHTSA has concluded that the trailers with trunnion or dual oscillating suspension/axle assemblies identified by TTMA are vehicles whose function or construction result in restricted highway operation and for which compliance would be very difficult. The agency indicated in the NPRM that it did not intend to extend the applicability of Standard No. 121 to such vehicles. NHTSA is retaining a width provision in the revised exclusion to make it clear that it does not exclude any vehicles not previously excluded by the old width exclusion.

The effective date is 30 days after publication of a final rule in the **Federal Register**. NHTSA has determined that there is a good cause for an effective date within that time period since the amendment clarifies the standard's applicability and is not believed to affect the applicability of the standard to any vehicles currently being produced.

The agency has analyzed the economic and other effects of this amendment and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. As indicated above, the amendment clarifies Standard No. 121's applicability to vehicles of 102.36 inches and is not believed to affect the applicability of the standard to any vehicles currently being produced. The agency has also determined that the effects of the amendment are so minimal that a full regulatory evaluation is not required.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. I certify that the amendment will not have a significant economic impact on a substantial number of small entities. For the reasons stated in the preceding paragraph, neither small businesses, small organizations, nor small governmental units will be affected by the amendment.

The agency has analyzed this rule for the purposes of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

**PART 571—[AMENDED]**

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.121 [Amended]**

2. S3 is revised to read as follows:

S3. *Application.* This standard applies to trucks, buses, and trailers equipped with air brake systems. However, it does not apply to:

(a) Any trailer that has a width of more than 102.36 inches with extendable equipment in the fully retracted position and is equipped with two short track axles in a line across the width of the trailer.

(b) Any vehicle equipped with an axle that has a GAWR of 29,000 pounds or more;

(c) Any truck or bus that has a speed attainable in 2 miles of not more than 33 mph;

(d) Any truck that has a speed attainable in 2 miles of not more than 45 mph, an unloaded vehicle weight that is not less than 95 percent of its GVWR, and no capacity to carry occupants other than the driver and operating crew;

(e) Any trailer that has a GVWR of more than 120,000 pounds and whose body conforms to that described in the definition of "Heavy hauler trailer" set forth in S4;

(f) Any trailer that has an unloaded vehicle weight which is not less than 95 percent of its GVWR; and

(g) Any load divider dolly.

Notwithstanding any language to the contrary, sections S5.3.1, S5.3.1.1, S5.3.2, S5.3.2.1, S5.3.2.2, S5.7.1, S5.7.3(a) and S5.7.3(b) of this standard are not applicable to trucks and trailers, and section S5.3.1 of this standard is not applicable to buses.

Issued on August 10, 1988.

**Diane K. Steed,**

*Administrator.*

[FR Doc. 88-18367 Filed 8-12-88; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 23

## Export of American Alligators Harvested in 1988

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed on Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws enacted for their protection.

This rule by the U.S. Scientific Authority and Management Authority approves the export of alligators harvested in Florida, Georgia, and South Carolina in 1988. These final findings also stipulate that monitoring procedures previously established for other States including Florida, be extended to include Georgia, and South Carolina.

**EFFECTIVE DATE:** August 15, 1988.

**ADDRESSES:** Please send correspondence concerning this rule to the Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and Wildlife Service; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 537, 1717 H Street NW., Washington, DC or at the Office of Management Authority, Room 400, 1375 K Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653-5948

Management Authority Findings—Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4968

Export Permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4955

State Export Programs—Mr. S. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4963.

**SUPPLEMENTARY INFORMATION:** On September 2, 1986, **Federal Register** (51 FR 31130), the U.S. Fish and Wildlife Service (Service) published a rule granting export approval for American alligator (*Alligator mississipiensis*) from specified States for the 1986-88 harvest seasons. The purpose of this rule now being published is to add Georgia and South Carolina to the list of States for which alligator export would be approved, and to issue Service findings on a revised harvest program in Florida to enable continued export of alligators from that State.

### Scientific Authority Findings

Article IV of the Convention requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted by the Management Authority.

The American alligator is listed in Appendix II to respond both to problems of potential threat to the survival of American alligators [Convention Article II.2(a)] and its similarity in appearance to other crocodilians that are threatened with possible extinction [Convention Article II.2(b)].

The marking of hides, meat, and parts with specified tags and documentation of shipments, as well as the issuance of export permits, is considered sufficient to address the issue of identification due to the similarity in appearance between American alligators and other listed species (see Management Authority findings for export program and tag specifications).

Inasmuch as the alligator is also listed because of a potential threat to its survival, the Service must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for Scientific Authority advice on exports of American alligators under the provisions of Convention Article II.2(a), are summarized as follows:

*A. Minimum requirements for biological information*

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available;

(2) Information on total harvest of the species;

(3) Information on distribution of harvest; and

(4) Habitat evaluation.

*B. Minimum requirements for a management program*

(1) There should be a controlled harvest, methods and seasons to be a matter of State choice;

(2) All hides should be registered and marked; and

(3) Harvest level objectives should be determined annually by the State.

The Service's Office of Scientific Authority finds that current information on population status, management, and harvest submitted by the States of Florida, Georgia, and South Carolina, as well as information collected by the Service fully support a finding that the export of alligators taken in accordance with State regulations in these States during the 1988 harvest season will not be detrimental to the survival of the species in the listed States. Tagging of hides by the States and documentation of shipments by the U.S. Management Authority provide assurance that export will not reduce the effectiveness of the Convention in controlling trade in other species of crocodilians. Documents containing information that provided the basis for the Service's findings are available for public inspection at the

Office of Scientific Authority (address given above).

**Management Authority Findings**

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws enacted for the protection of the involved species. The Service, therefore, must be satisfied that alligator hides, meat or products were not obtained in violation of State or Federal law in order to allow export. Evidence of legal taking for American alligator is provided by Service-approved State tagging programs. The Service annually contracts for the manufacture and delivery of special Convention animal-hide tags for export-qualified States. In a **Federal Register** notice, published on April 24, 1986 (52 FR 15548), the Service announced the introduction, use, and protection of a US-CITIES tag symbol. This symbol appers on every Service-approved export tag to provide legal evidence of export approval for certain Convention Appendix II listed species.

Guidelines developed for Management Authority findings on State American alligator export programs, slightly modified from the 1986–1988 rule, under provisions of Convention Article IV.2(b), are summarized as follows:

(1) Current State alligator trapping and tagging, meat, and parts processing regulations must be on file with the Office of Management Authority;

(2) Sample reporting forms, export tag, meat packing seal, and parts tag must be on file with the Office of Management Authority;

(3) The export tag must be durable and permanently locking, and must show U.S.-CITIES logo, State of origin, year of take, species, and be serially unique;

(4) The export tag, meat seal, and parts tag must be applied to all hides, meat or parts, within a minimum time after take or processing, as specified by State law, and such time should be as short as possible to minimize movement of untagged hides, meat, or parts;

(5) The tags or seals must be permanently attached, as mandated by the State;

(6) All alligator harvesters and processors must be State registered;

(7) All hide, meat, and parts dealers are to be State registered;

(8) All State-registered alligator harvesters, processors, and dealers must make available their alligator harvest and commerce data to the State on at least an annual basis, as specified by the State;

(9) State-registered alligator dealers and licensed harvesters allowed to attach export tags to the hides must account for all tags received and must return unused tags to the State within a specified time after the harvest period closes; and

(10) Fully manufactured alligator hide products may be exported from the United States when the State-hide Covention export tags, removed from hides contained in manufactured products, are surrendered to the Service prior to export.

The Service's Office of Management Authority has reviewed the alligator export tagging programs of Florida, Georgia, and South Carolina and has found that they fully meet the guidelines listed above. Documents containing information that provide the basis for the Service's findings are available for public inspection at the Office of Management Authority (address given above).

The Service approves exports of 1988 alligators harvested in Florida, Georgia, and South Carolina on the grounds that both Scientific Authority and Management Authority export requirements are satisfied.

*Public Comment*

No comment was received concerning the proposed rule published on July 15, 1988 (53 FR 26799).

This final rule is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C.1531 *et seq.*). The authors are S Ronald Singer, Office of Management of Authority, and Dr. Charles W. Dane, Office of Scientific Authority.

**Note.**—The Department had previously determined that the export of alligators of various States taken in the 1986–1988 harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(1)(c) of the National Environmental Policy Act, therefore, the preparation of an Environmental Impact Statement was not required (48 FR 37494). Because these findings do not significantly differ from the previous export findings, the previous determination not to prepare and Environmental Impact Statement on export of alligators taken during the 1986–1988 harvest seasons in certain States (51 FR 31130) remains appropriate. The Department had also previously determined that such harvest was not a major rule under Executive Order 12291 and did not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the existing rule treats exports on a State-by-State basis and approves export in accordance with a State management/export program, the rule will have little effect on small entities in and of itself. This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This rule adds Georgia and South Carolina to those States already permitted to export this species and authorizes the expansion of the already existing program in Florida. The export of American alligator is a necessary portion of a State's alligator management program as the foreign markets for this species are dependent upon this final rule. The buying season is now underway in the already permitted States. The rule announced in this notice is to become effective upon publication so that export can begin in these additional States as soon as possible. This will enable these new States their share of the export market, enable the alligator farmers and trappers to realize a monetary return for their product, and infuse the resulting State share of export monies into State alligator programs.

**List of Subjects in 50 CFR Part 23**

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

## PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service amends Part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

**Authority:** Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43 *et. seq.*

**Subpart F—Export of Certain Species**

2. In § 23.57 American alligator (*Alligator mississippiensis*), paragraphs (a) and (b) are revised, and paragraphs (c) through (g) are removed, to read as follows:

**§ 23.57 [Amended]**

* * * * *

(a) 1979–1988 harvests (wild and captive bred for each year unless otherwise noted).

| | Florida | Georgia | Louisiana | South Carolina | Texas |
|---|---|---|---|---|---|
| 1979(*) | + | – | + | – | – |
| 1980 | + | – | + | – | – |
| 1981 | + | – | + | – | – |
| 1982 | + | – | + | – | – |
| 1983 | + | – | + | – | – |
| 1984 | + | – | + | – | + |
| 1985 | + | – | + | – | + |

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| | Florida | Georgia | Louisiana | South Carolina | Texas |
|---|---|---|---|---|---|
| 1986 | + | – | + | – | + |
| 1987 | + | – | + | – | + |
| 1988 | + | + | + | + | + |

LEGEND
+ export approved.
– export not approved.
* and prior years.

(b) Conditions on export:

(1) Each hide must be clearly identified as to species, Country and State of origin, and season of taking, and must be marked by a permanently attached, serially numbered tag of a type approved by the Service that is attached under conditions established by the Service. Fully manufactured hide products may be exported from the United States when State hide export tags, removed from hides contained in the products, are surrendered to the Service prior to export.

(2) Meat from legally harvested and tagged alligators shall be packed in uniform containers, permanently sealed and labeled as required by State law. Bulk meat containers shall be marked with a State "parts tag" or "bulk meat tag" permanently attached indicating, at a minimum, State and country of origin, year of take, species, original hide export tag number, weight of container, and identification of State-licensed processor or packer.

(3) Large individual parts shall have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the package. "Parts tags" shall supply the same information as described for such tags used to mark alligator meat. Alligator skulls shall carry a "parts tag" and also be marked with the number of the original U.S.-CITES export tag used for the hide of that individual, and other markings, as required by State law.

**Susan Recce,**

*Assistant Secretary for Fish and Wildlife and Parks.*

Dated: August 3, 1988

[FR Doc. 88-18407 Filed 8-12-88; 8:45 a.m.]

BILLING CODE 4310-55-M

# Proposed Rules

Federal Register
Vol. 53, No. 157
Monday, August 15, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 68

### United States Standards for Whole Dry Peas

**AGENCY:** Federal Grain Inspection Service, USDA.[1]

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS or Service) is proposing to revise the United States Standards for Whole Dry Peas to make the current rounding procedures for percentages consistent with rounding performed by calculators, computer applications and other standards.

**DATE:** Comments must be submitted on or before September 14, 1988.

**ADDRESSES:** Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail. Telex users may respond as follows: To: Lewis Lebakken Jr., TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

**Regulatory Flexibility Act Certification**

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory FlexibilityAct (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

**Proposed Action**

The current rounding procedures for percentages provides that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g. 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.54 is reported as 0.5; when figures that are even are followed by the figure 5, the even figure is retained; and when a figure is odd and followed by the figure 5 the figure is rounded to the next higher even figure, e.g., 0.45 is reported as 0.4, 0.35 is reported as 0.4.

The proposed rounding rules simply stated provide that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next higher figure, e.g., report 0.35 as 0.4, 6.46 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.34 as 8.3. This procedure is consistent with rounding performed by calculators and in computer applications. It is also a more generally accepted mathematical rounding procedure and would facilitate the understanding and usage of the standards.

**List of Subjects in 7 CFR Part 68**

Administrative practice and procedure, Agricultural commodities, Whole dry peas.

For reasons set forth in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

**Subpart F—United States Standards for Whole Dry Peas**

1. The authority citation for Part 68 continues to read as follows:

**Authority:** Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. The heading for Part 68 is revised to read as follows:

**PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS**

3. Section 68.405 Percentages, is revised to read as follows:

**§ 68.405 Percentages.**

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g. report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3, and 1.22 as 1.2.

(b) *Recording.* All percentages shall be stated in whole and tenth percent to the nearest tenth percent.

Date: July 28, 1988.

**W. Kirk Miller,**

*Administrator.*

[FR Doc. 88–18368 Filed 8–12–88; 8:45 am]

BILLING CODE 3410-EN-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 210a

**[INS Number: 1119–88]**

### Admission or Adjustment of Status of Replenishment Agricultural Workers

**AGENCY:** Immigation and Naturalization Service, Justice.

**ACTION:** Notice of availability.

**SUMMARY:** Section 210A of the Immigration Reform and Control Act of 1986 (IRCA) provides for the admission or adjustment of replenishment agricultural workers (RAWs) to

temporary residence. This notice announces the availability to the public of a preliminary working draft of the proposed regulations for the admission or adjustment of a RAW to temporary resident status. This action is taken to communicate the availability of the preliminary working draft to interested parties and ensures that the public has an opportunity to provide comments at the preliminary working draft step in the formulation process for the Service's proposed regulations. Interested parties may call (202) 786–5723 to request a copy of the preliminary working draft.

**DATES:** Written comments on the preliminary working draft must be received by close of the business day (5:00 p.m.) on or before September 14, 1988.

**ADDRESSES:** Written comments should be mailed in triplicate to Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers, Office of Legalization, Immigration and Naturalization Service, 452 "I" Street, NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

**FOR FURTHER INFORMATION CONTACT:** Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers, at the above address, (202) 786–5723.

**SUPPLEMENTARY INFORMATION:** The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, was enacted on November 6, 1986. On January 20, 1987, the Service took the unprecedented step of publishing in the **Federal Register** a notice making available to the public the preliminary working draft regulations to implement the Special Agricultural Worker (SAW), Legalization, and Employer Sanctions provisions of IRCA. More than 6,800 copies were requested and responses were received from 164 organizations and individuals relative to the SAW program. The Service was pleased with the amount of constructive comments received. The comments were reviewed and contributed to the proposed regulations published in the **Federal Register** on March 19, 1987 (52 FR 8745).

The Service feels that it would be beneficial to repeat the preliminary working draft step in the formulation process for the regulations for the admission or adjustment of a replenishment agricultural worker to temporary residence. Therefore, the Service invites interested parties to request a copy of preliminary working draft and provide applicable comments.

Date: August 9, 1988.

Alan C. Nelson,

*Commissioner.*

[FR Doc. 88–18303 Filed 8–12–88; 8:45 am]

BILLING CODE 4410–01–M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 523

[No. 88–571]

### Readmission of Federal Home Loan Bank Members Terminating Their Status as Insured Institutions

Date: August 5, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Home Loan Bank Board (the "Board") is proposing to amend its regulations governing applications for membership in the Federal Home Loan Bank ("FHLBank") System by institutions that have been removed from membership under section 407(i) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1730(i), by virtue of the termination of Federal Savings and Loan Insurance Corporation ("FSLIC") insurance of their accounts. Specifically, the proposal would amend Part 523 of the Board's Rules and Regulations for the Federal Home Loan Bank System ("FHLBank Regulations"), 12 CFR Part 523, to provide that an FHLBank member that terminates its status as an FSLIC-insured institution and is thereby removed from FHLBank membership (as well as any other member whose membership is terminated pursuant to section 6(i) of the Federal Home Loan Bank Act ("FHLBank Act")) may be readmitted as a member only after the expiration of a five-year period following its departure from the FHLBank System.

**DATE:** Comments must be received by October 14, 1988.

**ADDRESSES:** Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office, 801—17th Street NW., Washington, D.C. 20006.

**FOR FURTHER INFORMATION CONTACT:** John A. Buchman, Deputy Director for Industry Structure, (202) 377–6983; V. Gerard Comizio, Director, (202) 377–6411; Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6459; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### Background

During the past five years, various FSLIC-insured institutions that had been members of the FHLBank System have converted to state-chartered savings banks, the accounts of which are insured by the Federal Deposit Insurance Corporation ("FDIC"). In connection with this type of conversion the FSLIC-insured status of the institution is necessarily terminated, a consequence of which is the automatic removal of the institution from membership in the FHLBank System pursuant to section 407(i) of the NHA.[1] However, § 523.3–1 of the FHLBank Regulations provides that a member institution that has been removed from FHLBank membership as a result of its conversion to a state-chartered savings bank and termination of FSLIC-insured status—

> shall be deemed, as of the effective date of [its] conversion, to be automatically approved by the Board as a member, provided that such institution, acting by its board of directors or board of trustees, has made written requests to the [FHL]Bank of the district in which it is located for such membership and such Bank has approved such request.

12 CFR 523.3–1 (1988).[2] Accordingly, under the Board's FHLBank Regulations, FSLIC-insured institutions that have converted to savings banks insured by the FDIC have been able to gain readmission to their FHLBanks immediately upon conversion.

In the context of recent applications involving the conversions of Federally-chartered, FSLIC-insured thrifts to state-chartered, FDIC-insured savings banks, the Board was advised by the staff that serious questions exist as to the continuing validity of § 523.3–1 of the FHLBank Regulations as well as the Board's legal authority to readmit as FHLBank members such converting institutions. The bases for these

[1] Section 407(i) provides, in pertinent part, that "termination under (section 407) or otherwise of the status of an institution as an insured institution shall automatically constitute a removal under (section 6(i)) of the Federal Home Loan Bank Act of the institution from [FHLBank] membership, if at the time of such termination such institution is a member of (an FHLBank) * * *." 12 U.S.C. 1730(i).

[2] The regulation also provides that, in the case of an automatically approved application, all loan, deposit, stock and other relationships existing between the converting member and the FHLBank shall continue in effect without interruption. *Id.*

concerns are discussed below. The Board did not act at that time to prevent the readmission to FHLBank membership of the savings bank applicants;[3] however, the Board did make known these concerns to the public in a January 22, 1988, release and, in order to elicit public comment on this issue, directed the staff to draft a proposed amendment to the FHLBank Regulations that would revoke § 523.3–1. As a result of these concerns, on July 11, 1988, the Board also issued an order to the FHLBanks [4] pursuant to section 17(a) of the FHLBank Act directing them (1) to treat any FSLIC-insured institution that henceforth terminates its FSLIC insurance of accounts as having been removed from FHLBank membership, (2) to refrain from approving any application by such an institution for admission to Federal Home Loan Bank membership pursuant to §§ 523.3–1 or 523.3–3 of the Board's FHLBank Regulations, and (3) to submit all such applications to the Board for its determination until such time as the Board makes a final decision regarding § 523.3–1.[5]

**Discussion of the Proposal**

In section 102 of the Financial Institutions Supervisory Act of 1966 ("FISA"), Pub. L. No. 89–695, section 102, 80 Stat. 1028, 1036–45, Congress amended section 407 of the NHA by adding a new subsection (i). As noted above, section 407(i) provides in part that an institution's termination of FSLIC insurance of accounts shall constitute an automatic removal of the institution from FHLBank membership under section 6(i) of the FHLBank Act, 12 U.S.C. 1426(i).[6] The legislative history of FISA seems to indicate that the membership removal provisions of section 407(i) were aimed primarily at those institutions whose FSLIC insurance was terminated involuntarily pursuant to section 407(b) of the NHA.[7] However, in view of the broad language in the statute referring to all instances in which an institution's FSLIC-insured status was terminated, it became evident that under section 407(i), an association insured by the FSLIC that converted to an FDIC-insured savings bank would automatically lose its FHLBank membership.

In apparent recognition of this fact, the Board in 1970 amended its FHLBank Regulations by adding § 523.3–1.[8] The new provision has not only enabled an institution that had been removed pursuant to section 407(i) s a result of its conversion to a state-chartered savings bank to regain FHLBank membership upon the approval of the FHLBank in whose district the institution was located, but has also made it clear that where such an institution is readmitted as a FHLBank member, all of its preexisting loan and other relationships with the FHLBank would continue without interruption, as if the thrift had never left the FHLBank System.

In the Board's view, the continuing legal validity of § 523.3–1 is called into question by the enactment of section 6(m) of the FHLBank Act, 12 U.S.C. 1426(m), in § 355 of the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), Pub. L. No. 97–320, section 355, 96 Stat. 1469, 1508. Section 6(m) generally prohibits "an institution which withdraws from [FHLBank] membership" from being readmitted to the FHLBank System until the expiration of a five-year period after its withdrawal.[9] To the extent that this provision applies to institutions that are removed from FHLBank membership pursuant to section 407(i) of the NHA, the Board's regulation—which permits immediate readmission of institutions that have converted to FDIC-insured savings banks—would appear to be preempted by the statute.

The Board is aware that one possible arguments against preemption could hinge on the use of the term "withdraws" in section 6(m) and a distinction being made between "withdrawals" and "removals" from FHLBank membership, with the result that the five-year bar on FHLBank readmissions contained in section 6(m) would only be imposed in the case of a voluntary "withdrawal" from FHLBank membership and not in a situation in which the institution is involuntarily "removed" from membership pursuant to section 407(i) of the NHA or otherwise.[10] However, the Board is not convinced that Congress, by drafting section 6(m) in this manner, intended to restrict its application to a limited type of voluntary departure from the FHLBank System.

As an initial matter, the Board notes that the types of transactions at issue, where an institution terminates FSLIC insurance and in so doing causes its removal from FHLBank membership pursuant to section 407(i) of the NHA, are voluntarily undertaken. Arguably, it would be semantic hair splitting, contrary to the statutory purpose, to say that termination of FHLBank membership under a linked, two-step sequence voluntarily begun by the affected institution should be treated differently from situations where the instituion simply takes the second step without the first. Accordingly, the Board believes that terminations of FHLBank membership in the context of conversions to FDIC insurance are most properly viewed as voluntary withdrawals well within the scope of section 6(m).

Moreover, the Board is of the view that a termination of FHLBank membership need not be independently volitional at each step in order to be subject to the statute. In this vein, the Board first notes that, whereas the prepayment penalty provision of section 6(i) of the FHLBank Act—which were also adopted in section 355 of the Garn-St Germain Act—make reference to "voluntary withdrawals" from FHLBank membership, section 6(m) applies to all membership withdrawals. In order to give independent meaning to the use of the term "voluntary" in section 6(i), it would seem to the Board that the "withdraws" language of section 6(m) must be read to include not only terminations of FHLBank membership that are voluntarily effected by an institution but also cessations of membership that are less directly the

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[3] This decision was based in part on the fact that the converting institutions in question had received prior approval from their FHL Banks to be readmitted as members upon conversion.

[4] Board Resolution No. 88–575, dated July 11, 1988.

[5] Section 523.3–3 authorizes the Principal Supervisory Agent ("PSA") of an FHLBank to approve unprotested applications for FHLBank membership by entities that satisfy the criteria for membership. 12 CFR 523.3–3.

[6] Section 6(i) also provides that an institution may withdraw from membership in an FHLBank six months after notifying the bank of its intent to do so and that an institution may be removed by the Board if, after a hearing, the Board determines that the institution either (i) has failed to comply with the FHLBank Act or any Board regulation thereunder, or (ii) is insolvent.

[7] *See, e.g.*, S. Rep. No. 1482, 89th Cong., 2d Sess. 18–19 (1966).

[8] Board Resolution No. 70–47, dated July 14, 1970, 35 FR 11616 (July 21, 1970).

[9] In section 355 of the Garn-St Germain Act, Congress also amended section 6(i) of the FHLBank Act to provide that in the case of a "voluntary withdrawal" from district bank membership, the withdrawing institution must pay prepayment penalties in connection with liquidating any indeptedness owed to its district bank if its advances agreement with such FHLBank so provides. 12 U.S.C. 1426(i).

[10] This interpretation of the "withdraws" language in section 6(m) is also supported by the view that the Congressional intend in adopting section 355 of the Garn-St Germain Act was merely to prevent an FHLBank member with substantial high-interest advances outstanding from avoiding prepayment penalties on those advances by terminating its FHLBank membership, liquidating its indebtedness to its FHLBank (without penalty), and thereafter being readmitted as an FHLBank member. However, the Board is aware of no legislative history supporting such a narrow reading of section 355.

result of the member institution's own international act.

The Board also notes that section 6(m) contains exceptions from its disqualification provisions for withdrawals that are either as a consequence of a transfer of membership on a non-interrupted basis between FHLBanks or in connection with a member's obtaining a charter from the Federal Home Loan Bank Board. The inclusion of exceptions in the statute for withdrawals under these circumstances constitutes evidence that Congress thought that, in the absence of the exceptions, such withdrawls would be subject to section 6(m), and provides further support for the view that Congress intended that the disqualification provisions of the statute would apply to cessations of FHLBank membership that are not themselves intended but are incidental to or a consequence of other voluntarily undertaken actions by a member.

In addition to the language of the statute, the legislative history of section 6(m) is also consistent with a broad interpretation of this provision. As the Senate Committee on Banking, Housing, and Urban Affairs stated in its Report on S. 2879 (the Senate version of the Garn-St Germain Act), "[new § 6(m)] would prevent institutions leaving the FHLBank System from reentering for five years thereafter except in connection with receiving a federal charter."[11] Both the express language as well as the legislative history of section 6(m) would therefore appear to support the view that terminations of FHLBank membership that occur in connection with voluntary departures from the FSLIC insurance system are covered by the statute.

In sum, the Board has serious concerns as to whether the provisions of § 523.3–1 of the Board's FHLBank Regulations have been overridden by section 6(m) of the FHLBank Act, whether the Board and the FHLBanks are empowered to readmit institutions removed from membership under section 407(i) of the NHA upon their conversions to FDIC-insured savings banks, and whether the readmissions pursuant to § 523.3–1 that have taken place since the Garn-St Germain Act was enacted on October 15, 1982, are legally valid.

In view of these concerns, the Board is today proposing to remove current § 523.3–1 and to adopt a new provision that would generally prohibit readmission of any institution whose FHLBank membership is terminated pursuant to the provisions of section 6(i) of the FHLBank Act for a period of five years following the date of such institution's departure from the FHLBank system. In connection with the issuance of this proposal, the Board is also soliciting the views of the public with respect to the issues discussed above. Specifically, the Board requests comment on whether the adoption of section 6(m) of the FHLBank Act in 1982 precludes the Board and the FHLBanks from readmitting as members for a five-year period those FSLIC-insured institutions that convert to state-chartered savings banks insured by the FDIC. Noting that a number of the institutions that have effected such conversions since October 15, 1982, have been readmitted as FHLBank members pursuant to § 523.3–1, the Board also requests the public's views as to whether the Board could allow such institutions to continue to be treated as FHLBank members in the event that it is ultimately determined that § 523.3–1 has been preempted by section 6(m), and under what legal theory it could do so.

[11] S. Rep. No. 536, 97th Cong., 2d Sess. 59 (1982).

## Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the SUPPLEMENTARY INFORMATION regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) (1988). Accordingly, the small entities to which the proposed rule would apply are all institutions insured by the FSLIC that had assets totalling $100 million or less as of December 31, 1987.

3. *Impact of the proposed rules on small institutions.* The proposed rule would not have a disproportionate effect on small institutions, nor is it expected that the rule will have a significant economic impact on a substantial number of small institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules that duplicate, overlap or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* No alternative to the proposed would better attain the objectives of the proposal.

## List of Subjects in 12 CFR Part 523

Federal home loan banks, Flood insurance, Mortgages, Reporting and recordkeeping requirements.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend part 523, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

## SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

## PART 523—MEMBERS OF BANKS

1. The authority citation for Part 523 continues to read as follows:

**Authority:** Sec. 5, 47 Stat. 727, as amended (12 U.S.C. 1425); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 503, 88 Stat. 1521, as amended (12 U.S.C. 1691, 1691a); sec. 202(b), 87 Stat. 982, as amended (42 U.S.C. 4106(b)); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp., 1943–48 Comp., p. 1071.

**§ 523.3–1 [Removed]**

**§§ 523–3–2 and 523.3–3 [Redesignated as §§ 523.3–1 and 523.3–2]**

2. Amend part 523 by removing § 523.3–1; by redesignating existing §§ 523.3–2 and 523.3–3 as new §§ 523.3–1 and 523.3–2, and by adding a new § 523.32, to read as follows:

**§ 523–32 Restrictions on readmission of members.**

A member whose membership in a Bank ceases pursuant to section 6(i) of the Federal Home Loan Bank Act may not acquire membership in any Bank for a period of five years thereafter, except where such termination of membership is a consequence of a transfer of membership on a non-interrupted basis between Banks or in connection with obtaining a charter from the Federal Home Loan Bank Board.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88–18405 Filed 8–12–88; 8:45 am]

BILLING CODE 6720–01–M

**SMALL BUSINESS ADMINISTRATION**

**13 CFR PART 121**

**Small Business Size Standards for Surveying and Mapping Services**

**AGENCY:** Small Business Administration.

**ACTION:** Supplementary Notice of Proposed Rulemaking.

**SUMMARY:** On October 15, 1986, Congress passed the National Defense Authorization Act of 1987 (Pub. L. 99–661). Section 921 of that Act contained a mandate that SBA review the size standards of certain industries including Surveying and Mapping Services. The purpose of this review was to ensure that small business set-aside plus 8(a) contracts together account for no more than approximately 30 percent of the total value of Federal contracts for each industry covered by the legislation. To implement this statutory requirement and to correct an earlier proposed adjustment to the size standard for surveying and mapping services, SBA is now proposing that the size standard for both services in Standard Industrial Classification (SIC) code 8713 be $.75 million in gross annual receipts.

**DATE:** Comments to be submitted September 14, 1988.

**ADDRESS COMMENTS TO:** Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 'L' Street, NW.—Room 601, Washington, DC 20416.

Data utilized in this notice can be reviewed at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Economist, Size Standards Staff, (202) 653–6373.

**SUPPLEMENTARY INFORMATION:** On October 15, 1986, Congress passed the National Defense Authorization Act of 1987 (Pub. L. 99–661) which required SBA to complete a review of its size standards in four industry groups: Construction (all codes in Major Groups 15, 16, and 17 of the SIC system); Architecture and Engineering Services, including Surveying and Mapping Services (SIC codes 8711, 8712, and 8713); Shipbuilding and Ship Repair (SIC code 3731); and Refuse Systems and Related Services (SIC code 4953 and a component of SIC code 4212). The SIC code designations in parentheses above were SBA's interpretations of the industries to which the statutory language applied.

The purpose of the review is to ensure that small business set-aside plus 8(a) awards together account for no more than approximately 30 percent of the total Federal contract dollars awarded in those industries. If SBA finds as a result of its review that the 30 percent threshold is exceeded for any industry under review, the Agency is required to adjust the size standard for that industry accordingly.

In response to this directive, SBA published a proposed rule (52 FR 47937) on December 17, 1987 in which the size standards of a number of construction industries were lowered. In that notice, SBA also proposed lowering the size standard in the surveying services industry (SIC code 8713) from $2.5 million to $.25 million. Due to data limitations, however, SBA did not adjust the size standard for mapping services, a component of which is classified in SIC code 8713 and another component in Business Services, Not Elsewhere Classified (SIC code 7389).

The SIC code system defines mapping activities primarily in SIC code 8713 (surveying). This industry is defined to include land, water and aerial surveying, and photogrammetric engineering and services.

The activity of land surveying—cadastral services, for example, is a combination of both surveying and mapping activities and it would be categorized entirely in SIC code 8713, Surveying Services. Thus in setting a size standard for SIC code 8713—surveying services—using the 30 percent guidelines, SBA would also be setting a size standard for those mapping services which are closely related to surveying. However, a significant proportion of all mapping activities is also included in SIC code 7389, Business Services, Not Elsewhere Classified. These include aerial mapping, mapping drafting services and photogrammetric mapping services (not professional engineers). SBA now believes that the activities in this industry must be considered separately from SIC code 8713, because the legislation has been interpreted to prohibit combining SIC codes.

Contract award data for surveying and mapping services were obtained form the Federal Procurement Data Center (FPDC). Contracts for surveying and mapping services are categorized in six FPDC service codes; Aerial Photographic Services (code T009); Land Surveys, Cadastral Services (code R404); Cartography Services (code T002); Charting Services (code T004); Photogrammetry Services (code T008); and Topography Services (code T014). the FPDC also classified individual contracts into SIC code 8713 (Surveying Services) or SIC code 7389 (Business Services, Not Elsewhere Classified) according to the SIC classification of the firm receiving the contract (prior to 1987, SIC codes 8911 and 7389, respectively). From the contract data, surveying mapping contracts from the six FPDC product and service codes were separated into either SIC code 8713 or SIC code 7389. Contract data in each SIC industry were independently analyzed to determine the percentage of surveying and mapping contracts that were awarded as set-aside or 8(a) contracts and to develop a size standard if the set-aside and 8(a) percentage exceeded 30 percent.

The classification of surveying and mapping contracts by FPDC product and service codes and SIC industries resulted in some data being unusable for analysis since any contract which did not contain both codes was discarded. As a result, data reported for SIC code 8713 for this study is composed of fewer records than included in the analysis of surveying and mapping contracts for the December 17, 1987 proposed rule. In the previous rule, all contracts included in FPDC product and service code R404 were used in the analysis since the SIC classification of the winning firm was not needed.

In determining whether mapping activities within SIC code 7389 needed to be addressed with a different size standard from the present size standard of $3.5 million covering all activities in the industry, SBA calculated the percent of Federal mapmaking contracts in that industry which was identified as set-aside or 8(a). During 1984 and 1986, this percentage totaled 23.5 percent (see table below). This is considerably below the threshold of 30 percent required by Pub. L. 99–661. As a result, SBA is not recommending a separate size standard revision for mapping services in SIC code 7389.

| SIC | Present size standard | Set-aside plus 8(a) procurement dollars | Total Federal procurement dollars | Percent set-aside and 8(a) awards | Percent in excess of 30 percent | Dollars targeted to be shifted to unrestricted category by lowering the size standard |
|---|---|---|---|---|---|---|
| 7389 | $3.5M | $1.7M | $7.4M | 23.5 | 0.0 | $0.0M |

For SIC code 8713 (surveying services), however, SBA evaluated the entire industry as covered by the 30 percent requirement associated with Pub. L. 99–661. In general, virtually all contract actions within this industry generally involve either surveying and/or mapping activities. Moreover, the activities of surveying and mapping are often so interrelated as to be indistinguishable. Therefore, SBA believes that it can simply evaluate the size standard for all of SIC code 8713, surveying services (including most mapping activities), while excluding mapping activities in SIC code 7389 (in which the set-aside plus 8(a) share is less than 30 percent) in fulfilling the statutory mandate to review surveying and mapping.

This approach resulted in SBA not having to break the surveying industry into a surveying component and a mapping component for size standards purposes.

SBA's previous calculation of the set-aside and 8(a) levels for surveying services was based only on contract award data in the FPDC category of Land Surveys, Cadastral Services (code R404). A recalculation was made which includes all set-aside and 8(a) contracts in six FPDC surveying and mapping product and service codes that were awarded to firms in the architectural, engineering and surveying SIC code (1972 SIC code 8911) in which the data were tabulated. SBA recalculated the percentages in the following tabulation:

| SIC | Present size standard | Set-aside plus 8(a) procurement dollars | Total Federal procurement dollars | Percent set-aside and 8(a) awards | Percent in excess of 30 percent | Dollars targeted to be shifted to unrestricted category by lowering the size standard |
|---|---|---|---|---|---|---|
| 8713 | $2.5M | $11.1M | $13.7M | 80.6 | 50.6 | $7.0M |

The last two columns of this table provide information relating to the targets which the statute requires SBA to consider when lowering its size standards. The goal in revising the standard is to reduce the present size standard of $2.5 million (first column) to a level that is likely to reduce set-asides to 30 percent. This would be achieved by shifting 50.6 percent (fifth column) of Federal revenues in the industry from the set-aside to unrestricted category. Based on contract data over the 1984–86 period, $7.0 million dollars a year in Federal contracts (sixth column) would have to move from the set-aside to unrestricted category for this industry to meet the 30 percent level.

The method utilized to set the size standard assumes that by eliminating from eligibility the larger small firms winning 8(a) or set-aside contracts it will be more difficult to set aside contracts. Consequently, the proportion of set-asides as a percent of total Federal procurement dollars would become lower. A size standard was calculated which will eliminate from eligibility those larger small firms which have cumulatively been awarded in set-aside and/or 8(a) contracts which sum to the targeted amount.

TABLE 1.—HYPOTHETICAL EXAMPLE

[Firms receiving set-aside and/or 8(a) contracts ranked by size of firm (M=million of dollars)]

| Firm | Firm size | Total amount of receipts awarded as firm's set-aside and/or 8(a) contracts over the year | Cumulative receipts |
|---|---|---|---|
| A | $6.9M | $4M | $4M |
| B | 6.7M | 1M | 5M |
| C | 6.5M | 5M | 10M |
| D | 6.3M | 3M | 13M |
| E | 6.1M | 3M | 16M |
| F | 5.9M | 4M | [1] 20M |
| G | 5.7M | 3M | 23M |

[1] Set the size standard to eliminate firms generating the targeted level of $20.0M in set-aside or 8(a) contracts by lowering the size standard from $7.0 to $5.8 million.

Table 1 illustrates this approach. All firms which received a set-aside or 8(a) contract in a hypothetical industry are ranked by firm size (receipts from all sources). In the example, the largest small firm in the distribution had $6.9 million in sales with $4 million of its sales from set-aside and/or 8(a) contracts. In order to achieve the desired 30 percent, $20 million in set-aside and/or 8(a) contracts in the example would have to become unrestricted contracts. This is achieved by lowering the size standard to $5.8 million. This eliminates the largest small firms which have cumulatively been awarded set-aside and/or 8(a) contracts totaling $20 million.

In order to calculate size standards using this method, SBA obtained microdata information from SBA's United States Establishment and Enterprise Data Base in which each contract awarded for surveying and mapping services in SIC code 8713 was identified with the size of firm winning the contract. SBA ranked firms participating in the set-aside market by size of firm and these firms were cross-tabulated with awarded set-aside and 8(a) contracts to develop a table, similar to Table 1 for SIC code 8713. In the case of SIC code 8713, the dollar value counted down to achieve a 30 percent set-aside and 8(a) contract level was $7.0 million.

Using this approach, SBA calculated that the size standard to achieve a 30 percent share in SIC code 8713, Surveying Services, was $.75 million. This is significantly higher than the $.25 million proposed on December 17, 1987, which was based on incomplete data and did not incorporate mapping information. As a result SBA believes that the proposed size standard of $.75 million is a significant improvement over the previously proposed size standard of $.25 million in attempting to

satisfy the statutory requirement of Pub. L. 99–661.

**Compliance With Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act**

SBA certifies that this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* SBA estimates that a size standard of $.75 million compared to the present one of $2.5 million would result in 752 firms out of 6,226 in the industry losing small business status. While these firms would lose small business status, the actual number of firms impacted by the size standard change would be less than the 752 firms, because not all of these firms participate in Federal procurement or SBA's financial assistance programs. Under a size standard of $.75 million, 80 percent of the firms in the industry would be considered eligible as small firms.

SBA also certifies that this regulation is a nonmajor rule as defined by Executive Order 12291, in that it is not expected to have an impact of over $100 million per year. A total of $7.0 million of Federal procurement expenditures is targeted to shift from the set-aside to unrestricted category under this size standard. In addition, this regulation is not likely to result in a major increase in cost or prices, or have a significant adverse impact on the economy. It contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. There are no Federal rules which duplicate, overlap, or conflict with this rule.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small business.

Accordingly, the SBA proposes to amend Part 12 of 13 CFR as follows:

**PART 121—[AMENDED]**

**§ 121.2 [Amended]**

1. The authority citation for Part 121 of 13 CFR is revised to read as follows:

**Authority:** Section 921 of Pub. L. 99–591 and Pub. L. 99–661, Secs. 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

**§ 121.2 [Amended]**

2. In §121.2(d)(2), table 2, Division I—Services is proposed to be amended by changing SIC code 8713 to read as follows:

DIVISION I.—SERVICES

[Major group 87—miscellaneous services]

| SIC | Description (* * * * = New SIC Code in 1987, not used in 1972) | Size standards * * * |
|---|---|---|
| 8713 | Surveying services | $.75 million. |

**James Abdnor,**

*Administrator.*

Date: June 15, 1988.

[FR Doc. 88–18311 Filed 8–12–88; 8:45 am]

BILLING CODE 8025–01–M

**13 CFR Part 121**

**Size Standard for Refuse and Garbage Collection Services**

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) is proposing to establish a size standard of $1.5 million for "Refuse and Garbage Collection Services" within Standard Industrial Classification (SIC) code 4212 (Local Trucking, Without Storage) and SIC code 4953 (Refuse Systems). A size standard revision for this category of services is proposed in compliance with section 921(f) of Pub. L. 99–591 and Pub. L. 99–661, which directs the SBA to revise its size standards for Refuse Systems and Related Services if the total dollar value of small business set-aside and SBA's Minority Small Business and Capital Ownership Development Assistance (Section 8(a)) Program awards for these activities exceed 30 percent of the dollar value of overall Federal procurements for these activities.

**DATE:** Comments must be submitted on or before September 14, 1988.

**ADDRESS:** Send comments to: Monika Edwards Harrison, Chairperson, Size Policy Board, U.S. Small Business Administration, 1441 'L' Street NW.—Room 600, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray (202) 653–6373.

**SUPPLEMENTARY INFORMATION:** Section 921(f) of Pub. L. 99–591 (an Act making continuing appropriations for fiscal year 1987) and an identical provision of Pub. L. 99–661 (National Defense Authorization Act for Fiscal Year 1987) requires the SBA to complete a review of its size standards in four industry groups: Construction (all Standard Industrial Classification (SIC) codes in Major Groups 15, 16, and 17 of the SIC system); Architecture and Engineering Services, including Surveying and Mapping Services (SIC codes 8711, 8712, and 8713); Shipbuilding and Ship Repair (SIC code 3731); and Refuse Systems and Related Services (SIC code 4953 and a component of SIC code 4212). If SBA finds that the total dollar value of small business set-aside and SBA's 8(a) awards in any industries in these categories exceed 30 percent of the value of overall Federal procurement awards, the laws require SBA to lower the relevant industry size standard to a level that will likely reduce the total of small business set-aside and 8(a) awards to approximately 30 percent of total Federal procurements.

In the proposed rule published on December 17, 1987, SBA did not disaggregate the activities of refuse systems and related services beyond the four-digit Standard Industrial Classification (SIC) code level. This was due to SBA's interpretation of refuse systems and related services in Section 921 to mean SIC code 4953. As a result, the response to the directive in Pub. L. 99–591 and Pub. L. 99–661 for refuse systems and related services was a decision not to lower the size standard in SIC code 4953 (Refuse Systems) because the set-aside and 8(a) share of that entire industry was less than 30 percent, and not to include the refuse and garbage collection component of SIC code 4212, Local Trucking, Without Storage in the calculations.

Concerned parties involved in the collection of refuse and garbage (a component of refuse and related services) submitted public comments to the proposed rule of December 17, 1987. The respondents argued that refuse and garbage collection activities within SIC code 4953 (refuse systems) and SIC code 4212 (local trucking, without storage) should be evaluated separately from the remainder of their respective SIC codes to determine whether set-aside and 8(a) contracts together exceed 30 percent of total procurement dollars for that category. The Conference Report to Accompany H.R. 1748 provides support for combining refuse and garbage collection data in SIC code 4212 with similar data in SIC code 4953 when adjusting the size standard to accommodate Pub. L. 99–591 and Pub. L. 99–661. Moreover, Subsection 921(a) of the laws also permits SBA to limit industry categories to a greater extent than that provided for by the four-digit SIC classification system "if the Administration [SBA] receives evidence indicating that further segmentation is warranted due to special capital

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equipment needs, or special labor or geographic requirements."

A review of the activities in SIC codes 4212 and 4953 supports the need to segment certain activities within these two SIC codes, especially the common activity of garbarge and refuse collection. The special segmentation criteria in Pub. L. 99-591 are met for this activity, since it has different labor and equipment (truck) needs than the other activities in SIC codes 4212 and 4953. Specifically, refuse and garbage collection activities employ different labor and equipment than other activities in the refuse systems industry such as the operation of dumps, landfills, sledge disposal sites, and the collection and disposal of acid waste, and radioactive and hazardous waste. These other activities involve special treatment and handling operations; whereas, refuse and garbage collection require intensive use of labor and specially designed trucks. Similarly, refuse and garbage collection activities in the industry of trucking without disposal require specially designed trucks, with unique requirements tailored to accomplish that task. Thus the special segmentation criteria addressed in Pub. L. 99-591 are met for this activity, and SBA is justified in seeking more than one size standard for activities within these SIC codes.

Procurement data needed to evaluate the dollar value of set-aside and 8(a) contracts as a percentage of total dollar value of Federal prime contracts for refuse and garbage collection activities within SIC codes 4212 and 4953 were not analyzed below the four-digit SIC industry level in prior rulemaking. Secondary data sources do exist, however, which allow refuse and garbage collection activities to be evaluated separately from the SIC codes of which they are a component. The Federal Procurement Data Center (FPDC) collects procurement data on a product and service code basis, including the activity of refuse and garbage collection, service code S205. These data allow the garbage and refuse component of refuse related activities in SIC codes 4212 and 4953 to be analyzed independently as discussed in the following section.

**Setting a Size Standard for the Activity of Refuse and Garbage Collection**

In order to accommodate the need to set a size standard for refuse services while conforming with Section 921's requirement that SIC codes not be combined, the SBA calculated date relating to refuse and garbage collection activities within SIC code 4212 separately from those activities within SIC code 4953. The following table illustrates the relevant percentages:

TABLE 1

(In million of dollars)

| SIC | Present size standard | Set-aside plus 8(A) procurement dollars involved in refuse and garbage collection (annual average, 1984 and 1986 figures) | Total Federal procurment dollars involved in refuse and garbage collection (annual average, 1984 and 1986 figures) | Percent set-aside and 8(A) awards | Percent in excess of 30 percent | Dollars targeted to be shifted to unrestricted category by lowering the size standard |
|---|---|---|---|---|---|---|
| 4212 | $6.0M | $16.810M | $19.831M | 84.8 | 54.8 | $10.867M |
| 4953 | 8.0M | 11.367M | 15.920M | 71.4 | 41.4 | 6.591M |
| Both Industries Combined | 6.0M | 28.177M | 35.751M | 78.8 | 48.8 | 17.458M |

Based on this table, SBA gathered the necessary microdata to calculate the appropriate size standard to achieve a 30 percent level for the refuse and garbage collection component of each industry using the same countdown procedure used in its December 17, 1987 proposed rule. This methodology for adjusting size standard was developed by considering how set-aside contracts are selected. The method assumes that by reducing the size standard, thereby, eliminating from eligibility the larger small firms winning 8(a) or set-aside contracts, it will be more difficult to set aside contracts, since there will be fewer firms capable of satisfying contract obligations. Consequently, the proportion of set-asides as a percent of total Federal procurment dollars would decline.

A size standard was calculated within each industry which eliminated from eligibility a sufficient number of larger small firms such that the percentage level in the activity of refuse and garbage collection would decrease to 30 percent. Table 2 illustrates this approach for refuse and garbage collection activities within the two industries using tabulations in which data for five firms are grouped together. The table applies to acutal firm and contract data for refuse collection in SIC code 4212 for 1984.

TABLE 2.—FIRMS RECEIVING SET-ASIDE AND/OR 8(A) Contracts in Refuse Collection in SIC Code 4212 Ranked by Size of Firm—Targeted Level $10.9 MILLION

| Firm size classification (in employees) | Number of firms in class | Total amount of receipts awarded as firms' set-aside and/or 8(A) contracts over the year (1984) (in thousands of dollars) | Cumulative receipts |
|---|---|---|---|
| 65-180 | 5 | $1,077 | $1,077 |
| 40-64 | 5 | 2,227 | 3,304 |
| 35-39 | 5 | 1,977 | 5,281 |
| 30-34 | 5 | 990 | 6,271 |
| 23-29 | 5 | 3,487 | 9,758 |
| 20-22 | 5 | 757 | 10,515 |
| 17-19 | 5 | 227 | 10,742 |
| 16 | 1 | 1,792 | 12,534 |
| 0-15 | 47 | 3,616 | 16,150 |
| Total | 83 | $16,150 | $16,150 |

The above table ranks firms participating in the set-aside and/or 8(a) activity of the industry by size of firm in employees (annual receipts for size of firms were not used due to unavailable data). Each firm's receipts awarded as set-aside or 8(a) contracts were also calculated (column 3). The far right column summed all set-aside or 8(a) receipts received by firms of a given size or higher during 1984 on a cumulative basis. Counting down by the targeted amount of $10.9 million calculated in Table 1 resulted in a size standard of 16 employees in this case.

An identical exercise for the same activity during 1986 resulted in a size standard of 25 employees. Averaging the 2 years together (1985 data were not available) resulted in a size standard of 20.5 employees. This figure was then multiplied by $54,000 (representing receipts per employee in SIC code 4212 during 1984), and an inflationary adjustment factor of 1.13 to produce a dollar based size standard of $1.25 million.

A similar process was applied to the activity of refuse collection in SIC code 4953. The targeted dollars for this industry were $6.6 million (see Table 1). Applying this figure using the countdown procedure represented in Table 2 to the ranked lists of firms winning refuse contracts in this industry during 1984 and 1986 produced desired size standards of 25 and 30 employees, respectively. Averaging these two figures together produced a desired size standard in employees of 27.5 employees. This figure was then multiplied by $55,000 (representing receipts per employee in SIC code 4953 during 1984) and an inflationary adjustment factor of 1.13 to produce a dollar based size standard of $1.75 million.

By calculating the size standards for refuse and garbage collection activities separately within each industry, the SBA is satisfying the statutory requirement that size standards be established by four-digit SIC industry codes, while utilizing the segmentation provision to limit an industry to a greater extent when warranted by selected criteria. Since section 921 of Pub. L. 99–591 and 99–661 does not permit the combining of the SIC codes, SBA did not combine all refuse and garbage collection activities in one table, count down the necessary dollars to achieve a 30 percent 8(a) and set-aside share, and set a common size standard for all refuse collection activities within the two industries based on the 30 percent provision. Instead it calculated separate size standards for refuse and garbage collection activities within each industry using the 30 percent directive. This resulted in a size standard of $1.25 million for refuse and garbage collection services within SIC code 4212 and $1.75 million for refuse and garbage collection services in SIC code 4953.

Having estimated these separate size standards, however, SBA was concerned that contracting officers are indifferent in designating refuse and garbage collection contracts between the two industries for size standard purposes. A contracting officer would not likely be concerned with the method of disposal of refuse products that separates refuse and garbage collection into one of the two SICs. Instead, a contracting officer would likely focus entirely on the price and quality of service at the point of collection only, while usually assigning the relevant SIC code to the activity with the higher size standard. SBA viewed such a situation in which a contracting officer faces different size standards for an identical activity as having a potential for disputes over classification. It views the distinctions between the two SIC codes to be artificial, since refuse haulers in both industries tend to compete with each other regardless of method of disposal, or SIC code to which they belong. Rarely is there a practical difference between activities in the two SIC codes from a Federal procurement outlook. Therefore, it has adopted a common size standard for all refuse and garbage collection services in the two industries.

In calculating a common size standard, SBA averaged the two size standards in question—$1.25 million for SIC 4212 and $1.75 million for SIC code 4953—to produce a common size standard of $1.50 million for refuse and garbage collection activities within each SIC industry. Averaging the two size standards together is considered appropriate, since refuse and garbage collection activities are incorporated in approximately equal amounts in the two industries (see Table 1). (Moreover, this figure would be identical to the size standards which would result from aggregating all refuse collection activities into one table and setting a single size standard for all refuse and garbage collection activities regardless of primary SIC). This averaging procedure satisfied SBA's desire to have a common size standard for all refuse collection activities regardless of method of disposal, while still maintaining the integrity of the SIC system as well as adhering to the 30 percent directives of Pub. L. 99–591 and 99–661.

In separating out the category of refuse and garbage collection activities from other activities in SIC codes 4212 and 4953 as outlined above, it then become necessary to determine the set-aside and 8(a) share of the residual activities in SIC code 4953, Refuse Systems. This is because Pub. L. 99–591 and 99–661 require an adjustment of the size standard if the set-aside and 8(a) dollar value exceeds 30 percent of the value of overall Federal procurement for refuse systems and related services. SBA was concerned that removing a component of SIC code 4953 as proposed might result in the residual activities in the industry exceeding the 30 percent threshold required by law. (SBA is not concerned with the residual activities in SIC code 4212 after the component of refuse and garbage collection activities is removed since SIC code 4212, local trucking, without storage, is not covered by the legislation).

Table 3 illustrates the situation in the residual activities of SIC code 4953 after the refuse and garbage disposal activities (S205) are removed. This table indicates that the set-aside and 8(a) share of the residual activities of SIC code 4953 declines to 9 percent after refuse and garbage collection activities are analyzed separately. Thus the size standard for those activities in SIC code 4953 would not be affected by a separate treatment of refuse and garbage collection services in conjunction with the 30 percent requirement.

TABLE 3.—PROCUREMENT STATISTICS FOR REFUSE SYSTEMS AND RELATED SERVICES

| Activity | Total procurement dollars (average of 1984 and 1986 figures) | Set-aside plus 8(a) dollars (average of 1984 and 1986 figures) | Percent |
|---|---|---|---|
| SIC–4953 | $74.1M | $16.8M | 22.6 |
| S205 in SIC–4953 | 15.9M | 11.4M | 71.7 |
| Residual in SIC–4953 after subtracting S205 | 58.2M | 5.4M | 9.2 |

Source: Federal Procurement Data Center.

**Compliance With Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act.**

This proposed rule if made final would have a significant effect on a substantial number of small firms as described in the Regulatory Flexibility Act. It would not, however, constitute a

major rule under Executive Order 12291. The preceeding information describes the reasons for this proposed rule, why it is being made, its objectives, and how it is to be implemented. The legal basis for this proposed rule is section 3 and 5(b) of the Small Business Act, 15 U.S.C. 632 and 634(b) and section 921 of Pub. L. 99–591 and 99–661. There are no significant alternatives to the proposed rule which would accomplish the stated objective.

In analyzing the effect of this proposed rule, SBA is heavily dependent on its procurement statistics. All available national data are structured on an industry-wide-basis only, and the smaller national activity of refuse and garbage collection is simply a component of the larger SIC industries. Thus data relating to firms in refuse and garbage collection activities are hidden in the larger SIC codes of 4212 and 4953, and SBA is limited, when appraising the relative importance of firms involved in refuse and garbage collection activities in these two industries, to inferences drawn from the procurement statistics relating to garbage collection activities in these SICs.

The procurement data available to SBA indicates that out of 140 firms in SIC code 4953 which were awarded contracts in the activity of refuse and garbage collection over the 1984–86 period, 46 firms or 33 percent would be removed from eligibility under a $1.5 million size standard. Out of 158 firms in SIC code 4212 winning 8(a) or set-aside contracts over the same period, 61 firms or 39 percent would be excluded from eligibility if a $1.5 million size standard were established. Summing refuse and garbage collection activities in both industries, about $17 million in Federal purchases on a yearly basis would move from the set-aside to unrestricted categoreis under a $1.5 million standard. This figure is much less than the $100 million threshold figure required for a major rule for purposes of Executive Order 12291.

Table 4 below provides estiamtes of the numbers of firms in the two industries which could be impacted by the proposed rule change. Estimates were derived from the relative importance of refuse and garbage collection activities in Federal procurement in the two industries and the relative importance of firms losing status that have been active in the past in Federal procurement. SBA is aware, for example, that in SIC code 4212, 43.3 percent of Federal procurement dollars during the 1984–86 period were awarded for refuse collection activity. Its estiamte of 14,447 firms engaged in refuse and garbage collection activities, therefore, was derived by mutiplying the known number of 34,047 firms in the entire industry by .433. Moreover, if all of SIC code 4212 were affected by the proposed revision, 1,663 firms would lose eligibility. The index of .433 was applied to these 1,663 firms to produce an estimate of 720 refuse firms losing eligibility. A similar calculation was incorporated for SIC code 4953 using the same procedure but different indexes.

TABLE 4.—INDUSTRIES AND FIRMS AFFECTED BY PROPOSED SIZE STANDARDS

| SIC | Description | Number of firms in industry | Number of firms engaged in refuse and garbage collection activities (estimated) | Number of firms losing small business status (estimated) |
|---|---|---|---|---|
| 4212 | Local Trucking, Without Storage. | 34,057 | 14,747 | 720 |
| 4953 | Refuse Systems. | 2,794 | 801 | 70 |

While almost 800 firms would lose small business status in both industries, the actual number of firms directly impacted is estimated at less than 100. This stems from the fact that most firms do not participate in Federal procurment or SBA's financial assistance programs in any one year.

SBA certifies that this proposed regulation contains no change, or special reporting, or recordkeeping requirement which are subject to the Paperework Reduction Act, 44 U.S.C. Chapter 35. There are no Federal rules which duplicate, overlap or conflict with the proposed rule.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA proposes to amend Part 121 of 13 CFR as follows:

**PART 121—[AMENDED]**

1. The authority citation of Part 121 of 13 CFR continues to read as follows:

**Authority:** Sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6) and Pub. L. 99–591 and Pub. L. 99–661.

**§ 121.2 [Amended]**

2. In § 121.2(d)(2) table 2, "Division E—Transportation, Communication, Electric, Gas, and Sanitary Services" is proposed to be amended by removing Footnote 7 from SIC code 4212, "Local Trucking, Without Storage", and by adding the "Refuse and Garbage Collection Activities, Without Disposal" component to SIC code 4212, with a proposed standard of $1.5 million in annual receipts to read as follows: (Item 4212 Local Trucking, Without Storage is set forth for the convenience of the reader, however, the size standard is not changed).

| SIC | Description * * * | Size standards * * * |
|---|---|---|
| Major Group 42 — Motor Freight Transportation and Warehousing | | |
| 4212 | Local Trucking Without Storage | $12.5 |
| 4212 | Refuse and Garbage Collection Activities Without Disposal. | $1.5 |

3. Also, in § 121.2(d)(2) Table 2, "Division E—Transportation, Communication, Electric, Gas, and Sanitary Services" is amended by removing Footnote 11 from SIC code 4953, Refuse Systems, and by adding the "Refuse and Garbage Collection Activities, With Disposal", component to SIC code 4953, with a size standard of $1.5 million in annual receipts to read as follows: (Item 4953, Refuse Systems, is set forth for the convenience of the reader—the size standard is not changed).

| SIC | Description * * * | Size standards * * * |
|---|---|---|
| Major Group 49—Electric, Gas, and Sanitary Services | | |
| 4953 | Refuse Systems | $5.0 |
| 4953 | Refuse and Garbage Collection Activities Without Disposal. | $1.5 |

**James Abdnor,**

*Administrator, U.S. Small Business Administration.*

Dated: May 24, 1988.

[FR Doc. 88–18310 Filed 8–12–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ANM-2]

## Proposed Alteration of VOR Federal Airway V-220—CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the description of Federal Airway V-220 located in the vicinity of Meeker, CO. The C-220 extension from Meeker to Grand Junction, CO, would improve the flow of traffic in Aspen, CO, area and other snow belt area airports. This action would improve flight planning and provide controlled airspace in mountainous territory.

**DATE:** Comments must be received on or before September 29, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 88-ANM-2, Fedral Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written date, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, econmic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to ackonwledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-2." The postcard will be date/time stamped and returned to the commenter. Alll communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Ruelmaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application prodecure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-220, located in the vicinity of Meeker, CO. We propose to extend V-220 from Meeker to Grand Junction, CO, via a south dogleg. This action would improve traffic flow in snow country airports located in the vicinity of Aspen, CO. These changes also support terminal procedures by providing missed approach routes to holding on en route fixes. This action improves flight planning and increases airport capacity during instrument weather conditions. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 71.123 [Amended]

2. Section 71.123 is amended as follows:

**V-220 [Amended]**

By removing the words "From Meeker, CO;" and substituting the words "From Grand Junction, CO, 25 miles, 90 MSL, 28 miles, 120 MSL, INT Grand Junction 075°T(060°M) and Meeker, CO, 167°T(152°M) radials; Meeker;"

Issued in Washington, DC, on August 8, 1988.

**Shelomo Wugalter,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 88-18394 Filed 8-12-88; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 4**

## Electronic Release Notification to Certain Vessel and Air Carriers and Bonded Facilities that Are Not Part of the Automated Manifest System (AMS)

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule; solicitation of comments.

**SUMMARY:** This document proposes to amend the Customs Regulations to reflect a change in the procedure by which certain vessel and air carrier and bonded facilities are notified of Customs decision to release certain shipments of their cargo. At present, carriers which are participants in the Automated Manifest System (AMS) receive this notification electronically for their shipments entered in the system. Such electronic release notification is not available to vessel carriers which are not participants in AMS or to air carriers and bonded facilities. These parties have been notified of release of their shipments by receipt of paper copies of the documents authorizing release of each shipment.

No changes are contemplated in the release notification procedure to AMS participants. As to non–AMS carriers and bonded facility operators, Customs intends to discontinue the practice of providing separate copies of release documents with respect to transactions which meet certain Customs criteria. Instead, each Customs district will post at the start of each business day, a computer generated list of the shipments which have been authorized for release from Customs custody.

This new procedure wil reduce the administrative burden on Customs of notifying carriers or bonded facility operators of the release of merchandise in their custody.

**DATE:** Comments must be received on or before October 14, 1988.

**ADDRESS:** Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2324, Washington, DC 20229 (202–566–8237).

**FOR FURTHER INFORMATION CONTACT:** Steven Knox, Office of Cargo Enforcement and Facilitation, (202) 566–8151.

**SUPPLEMENTARY INFORMATION:**

**Background**

For nearly four years, Customs has had under development a system known as the Automated Commercial System (ACS). The ultimate goal of the ACS is to automate all phases of the Customs entry processing of imported merchandise into a single automated system.

Customs has developed an Automated Manifest System as an integral module of the ACS. The manifest module is, in essence, both an imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the manifest with automated Customs entry data, Customs is able to make more informed decisions with respect to the allocation of resources for the inspection of merchandise. The AMS module is operational and contains approximately 35% of the bills of lading filed nationwide.

Customs is formulating an Air Manifest module which will perform the same functions and extend the same benefits for air cargo shipments. It is planned that testing of the Air Module will commence in two months.

One of the advantages AMS provides to participating carriers is the providing of electronic notification of Customs action authorizing the release of the cargo and its delivery to the consignee. Electronic release notification will also be available to those air carriers which participate in the Air Module. At present, carriers which are not participating in AMS and bonded facility operators receive notification of the release from a hard copy of a Customs document (usually the Customs form 3461) for each shipment which has been authorized for release.

Another module of the ACS is the Automated Broker Interface (ABI). The ABI is a system which allows customhouse brokers and importers to interface directly with Customs computer and transmit entry and entry summary data on imported merchandise. When Customs makes its determination to release a shipment, a message identical to that which is sent to the carrier is electronically transmitted to the entry filer through ABI.

The determination as to the type of examination, whether general or intensive, is performed by Customs through the Cargo Selectivity Module of the ACS. This determination is based on both national and local criteria as to the risk of the importer, the nature of the commodity, the country of origin, etc.

Customs has decided to change the procedure by which carriers and bonded facility operators which are not interfaced with Customs are notified of the release of certain of their shipments. This change in procedure is limited to those shipments for which entry data is furnished via ABI and which based on Customs analysis represent the most minimal risk to violation of the Customs laws. To accomplish this goal, Customs proposes to amend the Customs Regulations to provide for the daily posting of a report of all such transactions to all non-AMS carriers and bonded facility operators.

The report will contain the following information or data elements:

*Vessel Cargo*

1. Vessel Name or Code;
2. Voyage Number;
3. Bill of Lading Number;
4. Quantity Released; and
5. Entry Number (including filer code).

*Air Cargo*

1. Air Waybill Number;
2. Quantity Released; and
3. Entry Number (including filer code).

*Cargo Moving in Bond*

1. Immediate Transportation Bond Number;
2. Bill of Lading Number or Air Waybill Number;
3. Quantity Released; and
4. Entry Number (including filer code).

These reports will be posted in a public area of each U.S. Customs District office at the beginning of each business day.

**Comments**

Consideration will be given to any written comments timely submitted to Customs. Commenters are invited to address any business-related concerns and specifically indicate whether they believe that disclosure of the above-described data elements would cause competitive harm to their business. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

**Regulatory Flexibility Act**

The proposal will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory analysis has been prepared.

**Drafting Information**

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 4**

Carriers, Vessels, Release of merchandise.

**Amendments to the Regulations**

It is proposed to amend Part 4, Customs Regulations (19 CFR Part 4), as set forth below.

**PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The authority citation for Part 4, Customs Regulations (19 CFR Part 4), continues to read as follows:

Authority: 19 U.S.C 66, 1624, 46 U.S.C. 2, 3, General Hdnote. 11, Tariff Schedules of the U.S.

2. It is proposed to revise § 4.38(a) to read as follows:

**§ 4.38 Release of cargo.**

(a) No imported merchandise shall be released from Customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the district director only after the merchandise has been entered and, except as provided for in § 141.102(d) or Part 142 of this chapter, the duties thereon, if any, have been estimated and paid. Generally, the permit shall consist of a document authorizing delivery of a particular shipment or an electronic equivalent. Alternatively, the permit may consist of a report which lists those shipments which have been authorized for release. This alternative cargo release notice may be used when the manifest is not filed by the carrier through the Automated Manifest System, the entry has been filed by a designated electronic importer, and the cargo qualifies for electronic processing. The report shall be posted in an area to which the public has access.

(1) Where the cargo arrives by vessel, the report shall consist of the following data elements:

(i) Vessel Name or Code;

(ii) Voyage Number;

(iii) Bill of Lading Number (at the lowest level of detail—Master, House, Subhouse);

(iv) Quantity Relesed; and

(v) Entry Number (including filer code).

(2) Where the cargo arrives by air, the report shall consist of the following data elements:

(i) Air Waybill Number;

(ii) Quantity Released; and

(iii) Entry Number (including filer code).

(3) In the case of merchandise traveling via in-bond movement, the report will contain the following data elements:

(i) Immediate Transportation Bond Number;

(ii) Bill of Lading Number or Air Waybill Number;

(iii) Quantity Released; and

(iv) Entry Number (including filer code).

When merchandise is released without proper permit before entry has been made, the district director shall issue a written demand for redelivery. The carrier or facility operator shall redeliver the merchandise to Customs within 30 days after the demand is made. The district director may authorize unentered merchandise brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the latter carrier assumes liability for the merchandise to the same extent as though the merchandise had arrived on its own vessel.

* * * * *

Michael H. Lane,

*Acting Commissioner of Customs.*

Approved: July 25, 1988.

Salvatore R. Martoche,

*Assistant Secretary of the Treasury.*

[FR Doc. 88-18302 Filed 8-12-88; 8:45 am]

BILLING CODE 4820-02-M

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 201**

**[Docket No. R-88-1397; FR-2370]**

**Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans; Miscellaneous Amendments**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department proposes to amend various provisions in the regulations governing its property improvement loan and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act. Some amendments would make substantive changes; others would clarify existing provisions, correct typographical errors, and/or make editorial changes.

The substantive changes that would be made are:

- Title I manufactured home loan proceeds would be prohibited from being used for the purchase of furniture.
- The number of years of hazard insurance coverage that may be financed with Title I manufactured home loan proceeds would be reduced and the amount of hazard insurance coverage required for manufactured homes financed with loans insured under Title I would be changed.
- The manner in which the Department assesses and collects insurance preimum charges in connection with manufactured home loans would be changed.
- The maximum amount of an unsecured property improvement loan would be increased from $2,500 to $5,000.
- Manufactured home site certification requirements would be simplified.

Other changes that are proposed in this rule would clarify that—

- Late charges prescribed in the Title I regulations may be assessed by the lender unless applicable State law prescribes standards more beneficial to the borrower; also, late charges may not be assessed if interest on the loan is charged on a daily basis.
- Appurtenances to the manufactured home may be financed with the proceeds of a manufactured home purchase loan only with the approval of the Secretary, and subject to the lender obtaining a first lien on such appurtenances as well as on the manufactured home, its furnishings, equipment, and accessories.
- Certain fees and charges that cannot be financed would be permitted to be paid by the lender.
- A proof of claim would not have to be filed by the lender in certain bankruptcy or probate proceedings; also, the lender would be required to take all steps necessary to protect the interest of the note holder in any such

proceeding until a Title I insurance claim is paid by the Department.

- Appraisals of repossessed manufactured homes would be required to reflect the retail value of comparable homes in the geographic area where the repossession occurred.
- Premiums for hazard insurance on a foreclosed or repossessed manufactured home financed with a combination home and lot loan would be eligible for inclusion as part of the lender's Title I insurance claim.

**DATE:** Comments must be received by September 29, 1988.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Coyle, Director, Title I Insurance Division, Room 9160, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–6880. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The current Title I regulations were published as a final rule in the **Federal Register** on October 25, 1985 (50 FR 43516) and became effective on January 15, 1986 (51 FR 1495). The regulations have been amended several times subsequent to January 15, 1986 to rectify problems encountered by HUD and/or lenders. Experience by both HUD and lenders in operating under the current regulations has led the Department to conclude that additional substantive changes in the regulations are necessary. Some of the changes being proposed concern basic policy, while others would merely clarify ambiguities in current provisions. Editorial changes would also be made in several other provisions.

### Financing of Furniture

Prior to the effective date of the current regulations, there was no specific limit on the amount of loan proceeds that could be used to finance furniture in connection with the purchase of a manufactured home. The current regulations, in § 201.10, placed a cap on the financing of furniture with the proceeds of a manufactured home loan, as follows: Loan proceeds may include an amount equal to the *wholesale (base) price* of any furniture package supplied by the manufacturer, subject to a maximum amount not to exceed the lesser of $2,000 or 10 percent of the wholesale (base) price of the home.

The Department estimates that furniture adds 7 to 13 percent ($1,500 to $2,500) to the *retail price* of the average manufactured home financed with a loan insured under Title I. In most instances of borrower default, the furniture is in poor condition or has been removed before the lender repossesses the home. In such cases, the furniture, which is part of the loan security, has little or no value and both lenders and the Department lose a great deal of money. Faced with these losses, the Department has concluded that the proceeds of manufactured home loans should no longer be used for the purchase of furniture.

Accordingly, the Department proposes to amend §§ 201.2(p), (kk)(2), and (ll), 201.10(b)(1), and 201.26(b)(4)(iii)(C), (b)(6)(i) and (b)(7)(ii) by deleting all references to furniture as part of the loan transaction. In addition, § 201.21(b)(3) would be amended to specifically state that the proceeds of a manufactured home loan shall not be used to purchase furniture. The definition of "furniture" in § 201.2(k) would be retained so as to enable program participants to know what is eligible and what is not eligible for inclusion in the loan.

### Hazard Insurance and Single-Interest Insurance

Section 201.25(b)(2)(ii) allows Title I manufactured home purchase loans and combination loans to include the cost of premiums paid by the borrower for comprehensive and extended hazard insurance and vendor's single-interest insurance coverage for three years. The Department proposes to change this provision with regard to both types of insurance.

First, the Department proposes to reduce the number of years of hazard insurance coverage that may be financed with the proceeds of a Title I manufactured home loan from three years to one year. Premiums for this type of insurance coverage are extremely costly—frequently adding $900 to $2,400 to the loan, without adding to the value of the property. The typical manufactured home loan is for 15 years, and very little of the premium is amortized for several years. If a default occurs during the early years of the loan, the unpaid loan balance attributable to the premium is usually not recovered from the proceeds of the sale of the home. Both the lender and HUD share in this loss.

The regulations in effect prior to January 15, 1986 permitted a manufactured home loan to include the costs of hazard insurance for up to five years. The proposed rule published in July 5, 1984 provided for a reduction in the maximum term of a hazard insurance policy financed with the proceeds of a manufactured home loan to three years. In adopting the three-year limitation in the final rule that was published on October 25, 1985, the Department announced that it was contemplating a further reduction to one year in the term of hazard insurance premiums that may be financed. The Department concluded at that time that financing multiple years of hazard insurance coverage was, in the long run, more expensive to borrowers and increased the amount of insurance claims paid by the Department. However, since the 1984 proposed rule had not addressed the possibility of less than three years' coverage, any further reduction would require proposed rulemaking and an opportunity for public comment.

Accordingly, the Department now proposes to amend § 201.25(b)(2)(ii) to provide that hazard insurance premiums financed with Title I loan proceeds be limited to one year. For subsequent years of coverage, the borrower would be expected to pay for insurance either directly out-of-pocket or through monthly payments into an escrow account established by the lender for that purpose.

Secondly, we believe that 201.25(b)(2)(ii), as it relates to vendor's single-interest insurance premiums, is based upon a misconception as to how such insurance works and how premiums for such insurance are charged. Vendor's single-interest coverage protects the secured creditor, although the premium is usually paid by the borrower. Coverage is conditioned on default on the loan and repossession of the collateral by the lender, with payment being the lesser of the cost of repair, the remaining amount of the unpaid loan, or actual cash value. The premium is a one-time premium, unlike the premium for hazard insurance. Therefore, a limitation on the number of years' premiums for vendor's single-interest insurance that can be financed has no meaning.

Accordingly, the Department proposes to further amend § 201.25(b)(2)(ii) to change the term "vendor's single-interest insurance" to "single-interest insurance" in recognition of the fact that this insurance protects the secured creditor, which is usually not the vendor. In addition, the Department would clarify that the premium for single-interest insurance is a one-time premium and therefore it is not subject to the one-year limitation on other financed insurance premiums.

Because single-interest insurance is not subject to subrogation, benefits paid under such insurance coverage result in lenders obtaining double recoveries for such amounts if they are not accounted for in Title I insurance claims as post-default payments. Permitting lenders to retain single-interest insurance benefits without deducting them from the unpaid loan balance would result in lenders bearing less than their statutorily-required 10 percent coinsurance risk. Another result of exclusion of single-interest insurance benefits from Title I claims is that borrowers are liable to the Secretary for these amounts, even though they would not be liable to the lender or the lender's single-interest insurance carrier. The Department does not believe that this is legally permissible, and therefore proposes to amend § 201.55(b)(1)(ii) to include single-interest insurance benefits in the enumerated post-default receipts to be deducted from the unpaid loan balance in calculating the Title I insurance claim.

Section 201.28(b) of the Title I regulations now requires the borrower to obtain and maintain hazard insurance on a manufactured home financed with a Title I insured loan "in an amount at least equal to the unpaid balance of the loan or the actual cash value of the home, or home and lot in combination, whichever is lesser." Lenders and borrowers have pointed out that the requirement for insurance coverage in connection with a combination loan reflects the value of the lot, which should not be insured because neither the lender nor the borrower would be able to recover more than the home's value in the event of a total loss. The Department agrees with that position. In addition, the Department is concerned that requiring insurance coverage equal to the lesser of the unpaid balance of the loan or the actual cash value of the home does not adequately protect the lender's interest when the value of the home has depreciated to a level below the unpaid balance of the loan.

Accordingly, the Department proposes to amend § 201.28(b) to require that hazard insurance coverage on a manufactured home be maintained in an amount at least equal to the unpaid loan balance. This amendment will assure that there is sufficient coverage to pay off the loan in the event that the home is a total loss. Where the manufactured home is appreciating in value, lenders would be well-advised to require additional coverage to assure that both the borrower and the lender are adequately protected in instances of either full or partial loss on the home.

**Loan Insurance Charges**

In recent years, the Title I manufactured home loan program has sustained major underwriting losses. During the period 1984–1986, manufactured home claims exceeded loan insurance charges by more than $104 million. The Department has concluded that this shortfall has been caused in part by the manner in which the loan insurance charges have been assessed and collected.

To determine whether the present system of collecting loan insurance charges is actuarially sound, the Department conducted a study of 15-year manufactured home loans made under the Title I program, including a detailed analysis of loan survivorship, claims, and non-claim terminations. The study methodology was then evaluated by a private consultant who confirmed its validity. As a result of the study, which took into account the more-stringent underwriting criteria for loans made in 1986 and 1987, the Department concluded that the present system should be modified so that a higher percentage of the total loan insurance charge is collected in the early years of the loan, when the risks of default are greatest. Conversely, loan insurance charges in the later years of the loan term, when risks of default are minimal, would be eliminated.

The loan insurance charge for each Title I loan is set when the loan is registered for insurance, in the following manner: The loan amount is multiplied by the applicable rate, and that result is multiplied by the number of years of the loan term. The loan insurance charge is payable in advance, *i.e.*, when the loan is registered, but may be paid at such time and in such manner as may be prescribed by the Secretary. It has been the Department's policy that the insurance charge be paid in equal annual installments for the term of the loan. The present rates are 0.50 percent for a property improvement loan and 0.54 percent for a manufactured home loan.

The Department proposes to amend § 201.31 to (a) reduce the insurance charge rate for a manufactured home loan from 0.54 percent to 0.50 percent of the loan amount for the term of the loan, (b) change the system of collecting the loan insurance charge for a manufactured home loan, and (c) clarify that the late charges that can be assessed are in fact penalty charges and interest due from the lender when loan insurance charges are not paid in a timely manner.

The manner in which the insurance charge for a manufactured home loan would be collected is as follows:

1. For a loan with a term in excess of two years but not more than 12 years, the loan insurance charge would be 1.00 percent of the loan amount for each of the first three years, 0.75 percent for each of the next two years, and 0.50 percent for each succeeding year until the total loan insurance charge, calculated in the manner described above, is paid.

2. For a loan with a term in excess of 12 years but not more than 16 years, the loan insurance charge would be 1.00 percent of the loan amount for each of the first four years, 0.75 percent for each of the next three years, and 0.50 percent for each succeeding year until the total loan insurance charge is paid.

3. For a loan with a term in excess of 16 years, the loan insurance charge would be 1.00 percent of the loan amount for each of the first five years, 0.75 percent for each of the next four years, and 0.50 percent for each succeeding year until the total loan insurance charge is paid.

This change in the method of collecting the loan insurance charge will result in a slightly lower total income charge in the case of a manufactured home loan that is amortized over the full term of the loan, since the insurance charge rate would be reduced from 0.54 percent to 0.50 percent of the loan amount. However, since a higher percentage of the total insurance charge would be collected in the early years of the loan, and since manufactured home loans are typically paid out in an average of 7 to 8 years, the overall impact of this change would be to increase the amount of loan insurance charges collected on most manufactured home loans.

It is important for property improvement lenders to note that the insurance charge rate for a property improvement loan would remain at 0.50 percent and the loan insurance charge would continue to be collected in the present manner.

All loan insurance charges are considered earned when paid; therefore, if a loan is terminated by default or prepayment, all loan insurance charges

already paid would be retained by the Department, except in the circumstances described in § 201.31(e).

**Maximum Amount of an Unsecured Property Improvement Loan**

On December 30, 1982, the Department published in the Federal Register at 47 FR 58240 a final rule requiring that all Title I property improvement loans in excess of $2,500 be secured by a recorded lien upon the improved property. By notice published in the Federal Register on March 10, 1983 at 48 FR 10058, the final rule was given on effective date of April 1, 1983. Prior to April 1, 1983, the requirement that a property improvement loan be secured by a recorded lien applied only to loans in excess of $7,500. The change was deemed to be necessary "because of the significant increase in personal bankruptcy filings and the adverse treatment afforded unsecured property improvement loans in such proceedings", and because "[l]ien security will also enhance the collectibility of loans and reduce credit insurance claims by insured lenders."

The $2,500 ceiling for unsecured property improvement loans has been in effect for approximately five years, and the Department has concluded that the desired results of a lower threshold for secured loans, as enunciated above, have not been achieved. The Department's security interest in a Title I loan is usually in second or even lower position, so that foreclosure on the secured property after default is often not practical because it involves buying out the senior lienholder(s), and property values have not usually supported such action, whether or not the debtor is in bankruptcy. Also, because of the expenses connected with a foreclosure, it has not been cost-effective in most cases involving loans under $5,000.

Criticisms in 1982 by public commenters with regard to the reduced amount for unsecured loans were that (a) there would be increased costs, in time and expenses, associated with having to file liens for a greater number of loans; (b) because the expense of recording a lien is essentially fixed, the required recordation may render smaller loans not cost-effective and may disqualify moderate- and low-income borrowers; and (c) $2,500 is too low a threshold, and any reduction should allow loans of less than $5,000 to remain unsecured. Experience now shows that there was merit to these comments and, coupled with increased costs to improve property as a result of inflation, the Department now is of the opinion that the limit for unsecured loans should be increased to $5,000.

This change in the maximum amount of an unsecured loan would be made by amending § 201.24(a)(1) and (2).

**Manufactured Home Site Certification Requirements**

Section 201.21(e)(3) of the Title I regulations implements the site suitability requirements in section 2(a) of the National Housing Act by requiring that, for leased home sites in manufactured home parks, lenders obtain certifications of site compliance with standards for such parks. The certifications are required to be from the State or local authority which licenses such parks. Many States do not license manufactured home parks, and therefore lenders have had to obtain the certifications from registered civil engineers, often at great expense. The Department if proposing to simplify the certification process by amending § 201.21(e)(3) to require certifications of site suitability from the appropriate State or local government officials, such as a local planning or building official or public health official. This provision would also be amended to eliminate the requirement that the park comply with minimum standards on site location, storm drainage and landscaping, since most local jurisdictions do not establish or enforce minimum standards for these aspects of park development.

Section 201.21(e)(4) of the regulations requires similar certifications of site suitability and compliance with applicable standards for manufactured homes that are placed on individual lots or other sites owned or leased by borrowers. One of the currently required certifications is that the site is zoned to permit the placement of the manufactured home. Lenders have advised the Department that there are cases where either the land is not affirmatively zoned for manufactured homes, but the zoning does not prohibit their placement, or there are no local zoning requirements. Accordingly, the Department proposes to amend § 201.21(e)(4)(i) to change the required certification, from one stating that the site is zoned to permit the placement of a manufactured home, to a more general statement that the site complies with local zoning ordinances and regulations, if any. In addition, the Department proposes to eliminate the requirement that minimum storm drainage standards be met, in recognition of the lack of such standards in most local jurisdictions, and substitute a more general certification that any other minimum local standards and requirements for site suitability are met. A certification from a registered civil engineer would be required only when local standards for water supply and sewage disposal are not established or enforced.

Clarifying and editorial changes that would be made by this rule relate to the following matters:

*Late Charges*

Section 201.15 states that, subject to State law, the note may provide for certain late charges. The phrase "subject to State law" was intended to assure that borrowers would be assessed late charges in accordance with the Title I regulations or applicable State law, in the following manner: If State law provides for assessment of late charges after 10 days in arrears, the Title I regulations (providing for assessment of late charges after 15 days in arrears) would apply; if State law provides for assessment of late charges after 20 days in arrears, it would apply. Similarly, if the maximum amount of a late charge authorized by State law is less than that authorized by the Title I regulations, the former would apply; if the maximum amount authorized by State law is more than that authorized by the Title I regulations, the latter would apply. The Department proposes to amend § 201.15 to clarify the application of State law in regard to late charges.

Another requirement of § 201.15 with regard to late charges is that the borrower must be billed for any late charges imposed, and evidence of such billing must be in the loan file if an insurance claim is made. The Department's concern with late charges is not so much whether or not a late charge is imposed upon a delinquent borrower by a separate billing—many lenders provide payment coupons to their borrowers which state how much of a late charge is to be added to a late payment, so that separate billing is not needed—but how the late charge is paid. Late charges should not be collected by deducting them from borrowers' monthly payments for principal and interest, and therefore the Department proposes to amend § 201.15 by (a) clarifying the requirement for billings for late charges, and (b) adding a requirement that late charges, if imposed, must be paid by the borrower and may not be deducted from the borrower's monthly payment for principal and interest.

Section 201.15 also states that the note may provide for daily interest charges based on the interest rate in the note in lieu of late charges. This was not intended to permit an additional charge based upon the note rate, but to mean that interest would accrue daily on the

outstanding balance of the loan. The Department proposes to clarify this by further amending § 201.15 to provide that if interest is charged on a daily basis, late charges may not be assessed by the lender.

*Appurtenances to Manufactured Homes*

Section 201.2(u) defines a manufactured home purchase loan as "a loan for the purchase of a manufactured home exclusive of any lot or site, and may also include a garage, patio, carport or other comparable appurtenance." However, in prescribing the various items that may be included in the maximum loan amount for such a loan in § 201.10(b), no provision was made for appurtenances. The Department has nevertheless permitted the financing of such items, but only with the approval of the Secretary and at their actual cost to the borrower (see Notice published at 51 FR 9785, 9786, March 21, 1986).

The Department proposes to amend §§ 201.10(b), 201.21(b)(4), and 201.24(b) to provide, respectively, that (a) the cost of appurtenances may be included in the maximum amount of a manufactured home purchase loan under the conditions set forth in the above-cited Notice, (b) manufactured home purchase loan proceeds may be used for the purchase, construction or installation of appurtenances, and (c) any appurtenance that is financed with the proceeds of a manufactured home purchase loan must be secured by a first lien.

*Fee and Charges Which Cannot Be Financed*

Section 201.25(c) specifies fees and charges which cannot be financed with the loan proceeds. The first sentence of § 201.25(c) states, in relevant part, that these fees ". . . may be collected in the initial payment by the borrower prior to loan disbursement, but may not be included in the loan amount or otherwise financed or advanced" by other parties to the loan transaction. The Department's intention in promulgating this provision was to prevent the financing of these fees, but not to prevent the lender from paying these fees as a cost of doing business. The Department proposes to clarify that lenders can pay such fees by revising the first sentence of § 201.25(c) accordingly.

*Proofs of claim in bankruptcy and probate*

Section 201.42 requires a lender to file a proof of claim with the court having jurisdiction in cases where the lender has timely information that a borrower is involved in bankruptcy or insolvency proceedings, or is deceased, and the loan is in default and subject to acceleration. The Department has experienced cases in which borrowers have gone into bankruptcy or have died without being in default on their Title I obligations. Lenders should be required to file proofs of claim in such cases, and the Department proposes to amend this section accordingly.

In addition, lenders have frequently questioned the Department as to the necessity of filing a proof of claim in a bankruptcy proceeding when the court has identified it as a "no asset" case and has stated that proofs of claim should not be filed. The Department's policy is that a proof of claim need not be filed in such situations, and the Department proposes to amend § 201.42 to clarify the policy. This would be the only exception to the requirement in § 201.42 for filing a proof of claim in a bankruptcy proceeding.

Many Title I insurance claims have been submitted following deaths or bankruptcies of borrowers. Frequently in such a case, the lender has filed a proof of claim and then notified the court that the loan obligation has been assigned to HUD; the lender has then considered itself to have no further involvement after such notification. The Department, on the other hand, has taken the position that the assignment of a loan obligation is not accepted until payment is made on the insurance claim, and the lender must continue to exercise its rights as a creditor until the claim is paid. The Department proposes to further amend § 201.42 to clarify this position by requiring lenders to take all steps necessary to protect the interests of the creditor, until the Secretary has paid the claims. Following payment, the Secretary will notify the appropriate court of the assignment of the obligation and request that the United States be substituted as the creditor.

*Appraisals of repossessed manufactured homes*

The first sentence of § 201.51(b)(3) of the regulations requires lenders to obtain a HUD-approved appraisal for each repossessed manufactured home. The second sentence states that the appraisal "should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area . . . ." The Department's view is that "same geographic area" clearly refers to the area where the home is repossessed. However, some lenders have argued that this provision permits the manufactured home to be appraised on the basis of comparables in the area where the home is located for purposes of resale, which may be different from the area where the home was repossessed.

The Department recognizes that it is sometimes necessary for the home to be moved to another geographic area to obtain a better resale price, but we are concerned about the potential for abuses that can occur when the home is moved from the area where it was repossessed without first obtaining an appraisal. We have found instances where homes have been moved mainly for the purposes of obtaining lower appraisals, with the result that the Department's claim exposure is increased. One means of minimizing this type of program abuse is to require that an appraisal be obtained in the same area where the home was repossessed before moving it to another geographic area. Accordingly, the Department proposes to amend the second sentence of § 201.51(b)(3) to explicitly state that the appraisal must be based upon comparables in the same geographic area where the repossession occurred.

*Hazard Insurance in Combination Loan Claims*

Section 201.55(b)(3) of the regulations allows a lender to include the cost of premiums for hazard insurance on a repossessed manufactured home in its insurance claim for a manufactured home purchase loan. In § 201.55(b)(5) of the regulations, relating to insurance claims for manufactured home lot loans and combination loans where both the foreclosed manufactured home and the lot are classified as realty, the lender's cost of premiums for hazard insurance on the home was inadvertently omitted from the final rule as an eligible item for inclusion in the insurance claim, although the proposed rule published at 49 FR 27533 on July 5, 1984 did provide for inclusion of hazard insurance premiums in a combination loan claim. The Department proposes to amend § 201.55(b) by redesignating § 201.55(b)(5)(iii) as § 201.55(b)(5)(iv) and adding a new §201.55(b)(iii) to allow an insurance claim on a combination home and lot loan to include the cost of hazard insurance on the home, prorated to the date of disposition of the property.

**Corrections**

In the third sentence of § 201.13, the second "of" should have been "for". The Department proposes to make this change by revising the sentence accordingly.

Section 201.51(a)(2) provides that "if a lender holds one or more mortgages or other security instruments senior to a

secured property improvement loan, and if the borrower defaults on any such instrument or on the property improvement loan, the lender may both proceed against the secured property under such senior security instrument and later submit a claim under its Title I contract of insurance" if the lender follows certain procedures. The quoted revision contains a typographical error; it should have stated that the lender may proceed against the property under the senior security instrument and file a Title I claim only if the borrower defaults on *both* instruments. The Department proposes to make the appropriate correction.

A further correction is required in § 201.51(a)(2)(iv), which contains a reference to § 201.55(b). This reference should have been to § 201.55(a), and the Department proposes to amend § 201.51(a)(2)(iv) accordingly.

**Applicability of Proposed Amendments**

In accordance with § 201.3 of the Title I regulations, which provides that some provisions of the current regulations are applicable to all Title I loans, and others are only applicable for those loans for which loan applications were approved on or after the January 15, 1986 effective date, some of these proposed amendments would apply to all loans reported before, on, or after the effective date of the final rule; others would only apply to loans for which loan applications are approved on or after the effective date of the rule.

The amendments that would apply to all loans, whether reported for insurance before, on, or after the effective date of the final rule, would be the changes to §§ 201.10 (item #3), 201.13 (item #4) 201.15 (item #5), 201.21(b)(4) (item #6), 201.24(b) (item #7), 201.25(c) (item #8), 201.31(c) (item #11), 201.42 (item #12), 201.51 (item #13), and 201.55 (items #14 and #15). Amendments that would only apply to loans for which loan applications are approved on or after the effective date of the final rule would be the changes to §§ 201.2 (item #1), 201.10 (item #2), 201.21 (b)(3) and (e)(3) and (4) (item #6), 201.24(a) (item #7), 201.25(b) (item #8), 201.26 (item #9), 201.28 (item #10), and 201.31 (a) and (b) (item #11).

**Environmental Impact**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

**Regulatory Impact**

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because the majority of financial institutions participating in the Title I program are large depository institutions and none of the proposed changes pose undue burdens for small entities seeking to conduct title I loan transactions.

**Regulatory Agenda**

This rule was listed as item number 902 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13868) under Executive Order 12291 and the Regulatory Flexibility Act.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;
14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and
14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

**List of Subjects in 24 CFR Part 201**

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR Part 201 as follows:

## PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR Part 201 continues to read as follows:

**Authority:** Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

2. Section 201.2 would be amended by revising paragraphs (p), (kk)(2), and (ll) to read as follows:

**§ 201.2 Definitions.**

* * * * *

(p) "Manufacturer's invoice" means a document issued by a manufacturer and provided with a manufactured home to a retail dealer which separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes, itemized options (large appliances, built-in items and equipment), and specific specialty items, plus actual itemized charges for freight (including any rental of wheels and axles) from the factory to the dealer's lot or the homesite and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category. The manufacturer shall certify in the invoice as follows:

The undersigned certifies under applicable criminal and civil penalties for fraud and misrepresentation that: (1) The wholesale (base) prices for the manufactured home, itemized options, and specialty items as detailed, the charges for freight and dealer-paid sales taxes, and all other statements in this invoice are true and accurate; (2) all such prices reflect the actual dealer costs at the factory, as quoted in the applicable current manufacturer's wholesale (base) price list; and (3) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of—and the manufacturer will make no payments to or for the benefit of the dealer and/or home purchaser concerning—trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of the dealer and/or home purchaser at any date.

* * * * *

(kk) * * *

(2) Whether or not available on an optional basis do not increase or decrease the wholesale (base) prices for the sale of a specific home, itemized

options, or specialty items, or the charges for freight and dealer-paid sales taxes as detailed in the manufacturer's invoice for a specific sale to a retail dealer;

* * * * *

(ll) "Wholesale (base) price list" means the price list(s), as periodically amended, which are published and distributed by a home manufacturer to all retail dealers in a given maketing area, quoting the actual wholesale (base) prices at the factory for specific models or series of manufactured homes, itemized options, and specialty items offered for sale to such dealers during a specified period of time. The wholesale (base) prices may include the manufacturer's projected costs of providing volume incentives and special benefits related to sales to dealers during the period. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of a dealer and/or home purchaser at any date. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication so as to be available to HUD and other Federal agencies upon request.

* * * * *

**§ 201.10 [Amended]**

3. Section 201.10 would be amended by removing paragraph (b)(1)(ii) and redesignating paragraphs (b)(1)(iii) through (vi) as paragraphs (b)(1)(ii) through (v).

4. Section 201.10 would be amended further by adding a new paragraph (b)(1)(vi) to read as follows:

**§ 201.10 Loan amounts.**

* * * * *

(b) * * *

(1) * * *

(vi) The actual cost to the borrower of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary;

* * * * *

5. Section 201.13 would be amended by revising the third sentence to read as follows

**§ 201.13 Interest and discount points.**

* * * The lender also may negotiate with the dealer the amount of discount points, if any, to be paid by the dealer from its own resources for the benefit of the borrower before or at the time of the borrower's initial payment to the lender.

* * *

6. Section 201.15 would be revised to read as follows:

**§ 201.15 Late charges to borrowers.**

(a) *Imposition of late charge.* The note may provide for imposition of a late charge unless precluded by State law. The late charge may be imposed only for installments of principal and interest which are in arrears for the greater of 15 calendar days or the number of days required by applicable State law before such a charge may be imposed. Late charges must be billed to the borrower or reflected in the payment coupon, and evidence that they have been paid must be in the loan file if an insurance claim is made.

(b) *Amount of late charge.* The late charge shall not exceed the lesser of (1) five percent of each installment of principal and interest, up to a maximum of $10 per installment for any property improvement loan and $15 per installment for any manufactured home loan, or (2) the maximum amount permitted by applicable State law.

(c) *Method of payment.* Payment of any late charge connot be deducted from the monthly payment for principal and interest, but must be an additional charge to the borrower.

(d) *Daily interest in lieu of late charges.* In lieu of late charges, the note may provide for interest to accrue on installments in arrears on a daily basis at the interest rate in the note.

7. Section 201.21 would be amended by revising paragraphs (b)(3) and (4) and paragraphs (e)(3) and (4) to read as follows:

**§ 201.21 Manufactured home loan eligibility.**

* * * * *

(b) * * *

(3) The proceeds of a manufactured home loan shall not be used to purchase furniture.

(4) The proceeds of a manufactured home purchase loan may be used for the purchase, construction or installation of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary. The proceeds of a combination loan may be used for the purchase, construction or installation of a permanent foundation, garage, carport, patio or other comparable appurtenance to the manufactured home.

* * * * *

(e) * * *

(3) Where the manufactured home is to be placed on a leased site in a manufactured home park, the lender shall obtain certifications from the appropriate State or local government officials that the park complies with minimum standards relating to vehicular access, water supply, sewage disposal, utility connections, and other aspects of park development. Where minimum State or local standards for park development are not established or enforced, the lender shall obtain a certification from a registered civil engineer tht the park meets minimum standards for park development prescribed by the Secretary.

(4) When the manufactured home is to be placed on an individual manufactured home lot or other site owned or leased by the borrower (or on an Indian land site under paragraph (e)(1) of this section), the lender shall obtain certifications from the appropriate local government officials that:

(i) The site complies with local zoning ordinances and regulations, if any;

(ii) Adequate vehicular access from a public right-of-way is available to the site;

(iii) Adequate water supply and sewage disposal facilities are available to or on the site; and

(iv) Any other minimum local standards and requirements for site suitability are met. Where minimum local standards for water supply and sewage disposal are not established or enforced, the lender shall obtain a certification from a registered civil engineer that the site meets minimum standards for water supply and sewage disposal prescribed by the Secretary.

8. Section 201.24 would be amended by revising the first sentence of paragraph (a)(1), paragraph (a)(2), and the first sentence of paragraph (b) to read as follows:

**§ 201.24 Security requirements.**

(a) *Property improvement loans.* (1) Any property improvement loan in excess of $5,000 shall be secured by a recorded lien on the improved property.* * *

(2) Any property improvement loan for $5,000 or less (other than a manufactured home improvement loan) shall be similarly secured if, including such loan, the total amount of all Title I property improvement loans obtained by the borrower is more than $5,000.

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the home (or lot or home and lot, as appropriate), its furnishings, equipment, accessories, and appurtenances.* * *

* * * * *

9. Section 201.25 would be amended by revising paragraph (b)(2)(ii)— and the introductory text of paragraph (c) to read as follows:

**§ 201.25 Charges to borrower to obtain loan.**

* * * * *

(b) * * *

(2) * * *

(ii) Premiums paid by the borrower for the first year of comprehensive and extended hazard insurance coverage, including premiums for flood insurance where applicable, and premiums for single-interest insurance;

* * * * *

(c) *Fees and charges which may not be financed.* Except for any discount points to be paid by a dealer to a lender under § 201.13, the following fees and charges incurred in connection with a loan insured under this part may be collected in the initial payment made by the borrower or may be paid by the lender, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, if any, or any other party to the loan transaction:

* * * * *

10. Section 201.26 would be amended by revising paragraph (b)(4)(iii)(C), the first sentence of paragraph (b)(6)(i), and paragraph (b)(7)(ii) to read as follows:

**§ 201.26 Conditions for loan disbursement.**

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(C) The dealer has performed the inspection and tests required under § 201.21(c)(3) and, as installed or erected on the homesite, the manufactured home has sustained no structural damage or other defects, and all plumbing, mechanical and electrical systems are fully operational; and

* * * * *

(6) * * *

(i) In the absence of information to the contrary, the lender may accept and rely upon a certification by the dealer or seller under applicable criminal and civil penalties for fraud and misrepresentation that the manufactured home, any options (large appliances, built-in items and equipment), and any specialty items included in the purchase price of the home or to be financed with loan proceeds have been delivered to and properly installed or erected on the site, and any other work to be accomplished at the site and financed with loan proceeds has been completed.* * *

(7) * * *

(ii) The manufactured home, any options, and any specialty items included in the purchase price of the home or to be financed with loan proceeds have been delivered and completed;

* * * * *

11. Section 201.28 would be amended by revising the second sentence of paragraph (b) to read as follows:

**§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.**

* * * * *

(b) *Hazard insurance.* * * * Such insurance shall be maintained by the borrower for the full term of the loan or until the property is repossessed or foreclosed by the lender, and in an amount at least equal to the unpaid balance of the loan. * * *

* * * * *

12. Section 201.31 would be amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 201.31 Insurance charge.**

(a) *Insurance charge.* For each eligible property improvement loan and manufactured home loan reported and acknowledged for insurance, the lender shall pay to the Secretary an insurance charge equal to the loan amount multiplied by 0.50 percent, multiplied by the number of years of the loan term. The insurance charge shall be paid in the manner prescribed in paragraph (b); however, no charge shall be made for a period of 14 days or less, and a charge for a full month shall be made for a period of more than 14 days. There shall be no abatement or refund of an insurance charge except as provided in paragraph (e).

(b) *Payment of insurance charge.* (1) For any loan having a maturity of 25 months or less, payment of the entire insurance charge prescribed in paragraph (a) is due on the 25th calendar day after the date the Secretary acknowledges the loan report.

(2) For any loan having a maturity in excess of 25 months, payment of the insurance charge shall be made in annual installments, with the first installment due on the 25th calendar day after the date the Secretary acknowledges the loan report, and the second and succeeding installments due on the 25th calendar day after the date of billing by the Secretary. Annual installments shall be paid according to the following schedule:

(i) For any property improvement loan having a maturity in excess of 25 months, payment shall be made in annual installments of 0.50 percent of the loan amount until the insurance charge is paid.

(ii) For any manufactured home loan having a maturity in excess of 25 months but not more than 144 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first three years of the loan term, 0.75 percent of the loan amount for the next two years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(iii) For any manufactured home loan having a maturity in excess of 144 months but not more than 192 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first four years of the loan term, 0.75 percent of the loan amount for the next three years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(iv) For any manufactured home loan having a maturity in excess of 192 months, payment shall be made in annual installments of 1.00 percent of the loan amount for the first five years of the loan term, 0.75 percent of the loan amount for the next four years, and 0.50 percent of the loan amount for all succeeding years until the insurance charge is paid.

(3) All insurance charges are considered earned when paid.

(c) *Penalty charge and interest.* Insurance charges not received from the lender by the due date specified in paragraph (b) shall be assessed a penalty charge of four percent of the amount of the payment. Insurance charges received from the lender more than 30 days after the due date specified in paragraph (b) shall also be assessed daily interest at the current United States Treasury value of funds rate, as published periodically in the **Federal Register**. However, no penalty charge or daily interest shall be assessed if the Secretary fails to acknowledge receipt of the loan report or fails to issue a proper billing to the lender for the insurance charges.

* * * * *

13. Section 201.42 would be revised to read as follows:

**§ 201.42 Bankruptcy, insolvency or death of borrowers.**

(a) *Bankruptcy, insolvency.* The lender shall file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is involved in bankruptcy or insolvency proceedings, except that a proof of claim need not be filed if the court notifies the lender that the borrower has no assets and a proof of claim should not be filed. The notice of bankruptcy and a copy of the proof of

claim (or the notice from the court that a proof of claim is not required) shall be retained in the loan file.

(b) *Death of a borrower.* The lender shal file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is deceased, unless the lender determines that there will not be a probate proceeding. A copy of the proof of claim (or documentation as to why a proof of claim was not filed) shall be retained in the loan file.

(c) *Responsibility of the lender after insurance claim is filed.* After the Secretary pays an insurance claim, the Secretary will notify the bankruptcy or probate court, as appropriate, that the loan has been assigned to the United States and will request substitution as the party to whom the claim is owed. Until the insurance claim is paid, the lender shall take all steps necessary to protect the interests of the holder of the note in any bankruptcy or probate proceeding.

14. Section 201.51 would be amended by revising paragraphs (a)(2) introductory text and (a)(2)(iv) and the second sentence of paragraph (b)(3) to read as follows:

**§201.51 Proceeding against the loan security.**

(a) * * *

(2) If a lender holds one or more mortgages or other security instruments senior to a secured property improvement loan, and the borrower defaults on both the senior security instrument and the property improvement loan, the lender may proceed against the secured property under the senior security instrument and later submit a claim under the Title I contract of insurance only if:

* * * * *

(iv) The lender calculates its claim for loss on the property imnprovement loan in accordance with §201.55(a).

* * * * *

(b) * * *

(3) * * * The appraisal should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred, as listed in a current value rating publication acceptable to the Secretary.

* * *

**§201.55 [Amended]**

15. Section 201.55 would be amended by removing "and" from paragraph (b)(5)(ii) and by redesignating paragraph (b)(5)(iii) as paragraph (b)(5)(iv).

16. Section 201.55 would be further amendd by revising paragraph (b)(1)(ii) and by adding a new paragraph (b)(5)(iii) to read as follows:

**§201.55 Calculation of insurance claim payment.**

* * * * *

(b) * * *

(1) * * *

(ii) All amounts to which the lender is entitled after the date of default from any source relating to the property, including but not limited to such items as rent, other income, recourse recovery against the dealer, hazard insurance benefits, single-interest insurance benefits, and rebates on prepaid insurance premiums; and

* * * * *

(5) * * *

(iii) Premiums for hazard insurance on the manufactured home, prorated to the date of disposition of the property; and

* * * * *

Dated: July 7, 1988.

**James E. Schoenberger,**

*General Deputy, Assistant Secretary for Housing - Federal Housing Commissioner.*

[FR Doc. 88-18316 Filed 8-12-88; 8:45 am]

BILLING CODE 4210-27-M

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 250

### Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Safety and Pollution-Prevention Equipment

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Reopening of comment period.

**SUMMARY:** Current rules governing offshore oil and gas operations require that safety and pollution-prevention equipment (i.e., surface safety valves, underwater safety valves, and subsurface safety valves) be manufactured in accordance with a quality assurance program specified in the rule. On July 6, 1988, the Minerals Management Service (MMS) issued a Notice of Proposed Rulemaking which would amend existing rules to update the American National Standard Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE-1 quality assurance standard from the 1985 edition to the 1988 edition and to provide for the recognition of the Amerian Petroleum Institute's (API) quality assurance program, API Spec Q1 in combination with API Spec 14A and Spec 14D, as an acceptable alternate or optional quality assurance program for the manufacture of safety and pollution-prevention equipment. This Notice reopens the comment period for an additional 45 days to allow additional time for the public to review applicable documents and to prepare and submit comments.

**DATES:** Comments must be received or postmarked by September 29, 1988.

**ADDRESSES:** Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 646, Room 6A110; 12205 Sunrise Valley Drive; Reston, Virgina 22091; Attention: Gerald D. Rhodes.

**FOR FURTHER INFORMATION CONTACT:** M.L. Courtois; Chief, Offshore Inspection and Enforcement Division; Minerals Management Service; Mail Stop 647, Room 6A200; 12203 Sunrise Valley Drive; Reston, Virgina 22091; (703) 648-7750.

**SUPPLEMENTARY INFORMATION:** The current relations requires that safety and pollution-prevention equipment be manufactured under the 1985 edition of the ANSI/ASME SPPE-1 quality assurance program. On July 6, 1988, MMS issued a Notice of Proposed Rulemaking (53 FR 25349) to amend the regulations to recognize the API quality assurance program using API Spec Q1 in combination with API Spec 14A and Spec 14D as an acceptable alternative to the ANSI/ASME quality assurance program using ANSI/ASME SPPE-1. The proposed rule also would incorporate by reference the 1988 edition of ANSI/ASME SPPE-1 in place of the 1985 edition of ANSI/ASME SPPE-1.

Comments received in response to the proposed rule have noted that response to the proposed rule requires that interested parties obtain copies of and review referenced documents prior to commenting and that the 30-day comment period included in the Notice of Proposed Rulemaking was insufficient. The MMS recognizes the importance of these documents and the complexities of determining the implications of not only the new documents but also of a new quality assurance program. Accordingly, MMS is reopening the comment period for an additional 45 days. This will provide interested parties with an additional 45 days to complete any analyses started during the original 30-day comment period and to prepare and submit comments.

Comments submitted during the original comment period need not be resubmitted. The MMS will consider all written comments received between July 6, the date of publication of the Notice of Proposed Rulemaking, and the close of

this new comment period. Persons wishing to comment on the proposed rule should send written comments to the address identified above by September 29, 1988.

Date: August 8, 1988.

**Thomas A. Readinger,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 88-18355 Filed 8-12-88; 8:45 am]

BILLING CODE 4310-MR-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 201-1, 201-2, 201-23, 201-24

### Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Pub. L. 99-500 Regarding Automatic Data Processing Equipment

**AGENCY:** Information Resources Management Service, GSA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed final rule implements certain selected portions of the Paperwork Reduction Reauthorization Act of 1986 in the Federal Information Resources Management Regulations (FIRMR). Among other changes, the amendment clarifies the applicability of the FIRMR in FIRMR Part 201-1 to the management, acquisition, and use of various information resources by Federal agencies. In this regard, key phrases in the statute such as "making significant use" and "incidental to the performance" have been clarified.

FIRMR Part 201-2 is revised to establish an umbrella term for ADP and telecommunications resouces—Federal information processing (FIP) resources. The term and related definitions, is an efficient means for prescribing uniform programs, policies, and procedures for ADP and telecommunications resources. The term "commercial items" is defined and used in place of "general purpose, commercially available, mass-produced" to indicate which FIP resources should be managed and acquire under FIRMR provisions.

The amendment also prescribes policies and procedures in FIRMR Part 201-24 for use in determining whether any particular procurement must be conducted under GSA's exclusive procurement authority.

In addition, the amendment streamlines the Delegations Program by establishing uniform procedures, uniform blanket delegations of procurement authority, and uniform agency procurement requests (APRs) for all FIP resources. The effect of these changes to FIRMR Part 201-23 is to set a single competitive regulatory blanket delegation of procurement authority of $2.5 million for most ADP and telecommunications resources. The change allows GSA to focus review activities on agencies' overall IRM programs under the Procurement Management Review Program and on the most significant agency acquisitions under the Delegations Program.

The amendment also adopts continuing relevant portions of FIRMR Temporary Regulation 13 (51 FR 45887) that immediately addressed the impact of the same statute, and consolidates or eliminates certain portions of that rule. This amendment supersedes and cancels FIRMR Part 201-39, Major Changes and New Installations of Telecommunication Resources. (Note.—It also supersedes Subpart 201-38.2 of a proposed FIRMR rule, Revisions of FIRMR Telecommunications Policies, (Project No. 86.75) that was announced in a notice of proposed rulemaking appearing in the **Federal Register** on September 23, 1987 (52 FR 35736).)

**DATE:** Comments are due September 14, 1988.

**ADDRESS:** Comments should be submitted to the General Services Administration (Project KMP-87-7), Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Phillip R. Patton, Regulations Branch, (KMPR), Office of Information Resources Management Policy, (202) 566-0194, or FTS 566-0194. The full text of the proposed rule is available upon telephone request.

**SUPPLEMENTARY INFORMATION:** (1) On December 23, 1986, FIRMR Temporary Regulation 13 was published in the **Federal Register** and was effective that day. It implemented applicable portions of the Paperwork Reduction Reauthorization Act of 1986 by incorporating the statutory definition of ADPE in the FIRMR. It further provided blanket regulatory delegations of procurement authority for those cases where the amended Brooks Act became applicable to the acquisition. This amendment codifies relevant portions of FIRMR Temporary Regulation 13 and incorporates additional changes from the aforementioned statute as described in the succeeding paragraphs.

(2) Explanation of the changes being made by this issuance are shown below:

(a) In Part 201-1, the following changes will be made.

(i) Section 201-1.000-1 will be amended by revising paragraph (c) by removing language from the Paperwork Reduction Act of 1980 identifying "information management activities" and substituting the definition of "information resources management" that was provided in Pub. L. 99-500 (the Paperwork Reduction Reauthorization Act of 1986).

(ii) Section 201-1.102-2 will be amended by removing outdated language that reflected the prior review function of the Office of Management and Budget under Pub. L. 89-306.

(iii) Section 201-1.102-3 will be amended by removing the language included in that section. Exclusions from the Paperwork Reduction Reauthorization Act of 1986 that reflected the exclusions set forth in Pub. L. 97-86 (10 U.S.C. 2315) will now be more appropriately addressed in § 201-1.103, Applicability.

(iv) Section 201-1.103 will be amended by revising the section completely. This section will set forth in much greater detail the extent of FIRMR's applicability to Federal agencies. It will address management and use of records by Federal agencies, management, acquisition, and use of Federal information processing (FIP) resources by Federal agencies, and management, acquisition, and use of radio equipment. The inapplicability of the FIRMR will be set forth including those instances when the use of FIP resources is incidental to the acquisition. The statutory exceptions to Pub. L. 99-500 will be stated as well as the exclusions for telecommunications resources that were set forth in § 201-1.103(c)(4). A note will be added that provides a regulatory blanket delegation of GSA's exclusive procurement authority and a waiver of FIRMR provisions for non-commercial FIP resources.

(b) In Part 201-2, the folloiwng changes will be made.

(i) A new definition of "Federal information processing resources" will be added.

(ii) A new definition of "Federal information processing equipment" will be added.

(iii) A new definition of "Federal information processing software" will be added.

(iv) A new definition of "Federal information processing services" will be added.

(v) A new definition of "Federal information processing support services" will be added.

(vi) A new definition of "Federal information processing related supplies" will be added.

(vii) A new definition of "Federal information processing system" will be added.

(viii) A new definition of "Telecommunications resources" will be added.

(ix) A new definition of "Commercial items" will be added.

(x) A new definition of "Radio equipment" will be added.

(xi) A new definition of "Information" will be added.

(xii) A new definition of "Data" will be added.

(xiii) A new definition of "Television equipment" will be added.

(xiv) A new definition of "Radar equipment" will be added.

(xv) A new definition of "Sonar equipment" will be added.

(xvi) A new separate definition of "Executive agency" will be added.

(c) Part 201–23 will be amended and revised.

(i) Section 201–23.000 will be amended and revised to more fully describe the scope of the part.

(ii) Subpart 201–23.1 will be amended and revised to address delegations of GSA's exclusive procurement authority for FIP resources.

(iii) Section 201–23.100 will be amended and revised to more accurately describe the scope of the subpart.

(iv) Section 201–23.101 will be amended and revised to prescribe newly established policies regarding GSA's exclusive procurement authority for FIP resources.

(v) Section 201–23.102 will be amended and revised to set forth the policies and procedures regarding accountability for acquisition of FIP resources delegated under GSA's exclusive procurement authority.

(vi) Section 201–23.103 will be amended and revised to describe the methods of obtaining delegations of GSA's exclusive procurement authority for FIP resources.

(vii) Section 201–23.103–1 will be amended and revised to describe the policies and procedures regarding regulatory blanket delegations of GSA's exclusive procurement authority for FIP resources. It will provide a regulatory blanket delegation of GSA's exclusive procurement authority for non-commercial FIP resources and waive FIRMR provisions for such resources.

(viii) Section 201–23.103–2 will be amended and revised to provide policies and procedures regarding the establishment of agency blanket delegations of GSA's exclusive procurement authority for FIP resources.

(ix) Section 201–23.103–3 will be amended and revised to provide a single method for submitting an agency procurement request and obtainig a delegation of procurement authority for acquiring FIP resources.

(x) Subpart 201–23.2 will be amended and revised to address delegations of GSA's multi-year contracting authority for telecommunications resources.

(xi) Section 201–23.200 will be amended and revised to more accurately describe the scope of the subpart.

(xii) Section 201–23.201 will be amended and revised to describe GSA's authority to enter into multi-year contracts for telecommunications resources.

(xiii) Section 201–23.202 will be amended and revised to set forth more accurately the agency's accountability for acquisitions made under delegation of GSA's multi-year contracting authority for telecommunications.

(xiv) Section 201–23.203 will be amended and revised to more accurately prescribe policies and procedures relating to GSA's blanket multi-year contracting authority for telecommunications resources delegated to Executive agencies.

(d) In Part 201–24, the following changes will be made.

(i) Section 201–24.107 will be added to prescribe new policies and procedures regarding FIP resources that are included within general procurement requirements. It is designed to ensure that FIP resources are acquired under GSA's exclusive procurement authority unless such resources are incidental to the performance of general procurement requirements. It further provides a procedure so that Federal agencies may request a deviation to conduct procurements outside the provisions of the FIRMR even though the requirement meets the definition of incidental as set forth in § 201–1.103(c)(2)(ii)(A).

(ii) Section 201–24.202 will be retitled and modified to incorporate the policy that was in § 201–1.103(b)(2). This addition rquires Federal agencies to include in solicitations and resultant contracts terms, conditions, and clauses which apply the full and open competition objective to the procurement of ADP resources by Federal contractors in certain situations.

(b) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA actions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. It is therefore certified that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**List of Subjects in 41 CFR Part 201–1, 201–2, 201–23, and 201–24**

Computer technology, Government procurement, Government property management, Telecommunications, Information resources activities, Government records management, Hearing and appeal procedures, Competition.

(4) This amendment supersedes and cancels FIRMR Temporary Regulation 13 upon its effective date.

Dated: February 10, 1988.

**Francis A. McDonough,**

*Deputy Commissioner for Federal Information Resources Management.*

[FR Doc. 88–16341 Filed 8–12–88; 8:45 am]

BILLING CODE 6820–25–M

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# Notices

Federal Register
Vol. 53, No. 157
Monday, August 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### National Technical Information Service

### Intent To Grant Exclusive Patent License; Qualimetrics Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Qualimetrics Inc., having a place of business in Sacramento, California, an exclusive license in the United States and certain foreign countries under the rights of the United States of America to manufacture, use, and sell products embodying the invention entitled "Quad Disk Static Pressure Probe," United States Patent Application Serial Number 7–210,546. The patent rights in this inventiion have been assigned to the United States of America, as represented by the Secretary of Commerce, and to The University of Colorado Foundation, Inc. NTIS has been authorized to license all of the patents rights in this invention.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 88–18343 Filed 8–12–88; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1988; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1988 commodities to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** September 14, 1988.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** E.R. Alley, Jr. (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On June 3, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 20359) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926). The intent of the notice was to add the GSA Zone 1 requirements for NSN 8540–00–530–3770 to the Procurement List. The state of Rhode Island, which is in Zone 1, was inadvertently omitted from the states listed. The current contractor, the only commenter, addressed the addition of the GSA Zone 1 requirements. Accordingly, the entire GSA Zone 1 requirements for this commodity, including Rhode Island, are being added to the Procurement List by this final rule. However, comments relative to the inclusion of Rhode Island in this addition action will be considered if received prior to the effective date of this notice.

Comments were received from the current contractor for one of the items of toilet paper proposed for addition to the Procurement List. The issues raised in the comments concerned the continuation of competitive bidding for these items in order for the Government to obtain the lowest price, the ability of the workshop to effectively comply with GSA contracting procedures, the impact on subcontractors who are small and small disadvantaged businesses, and the cumulative effect of future additions of additional portions of the Government's requirements for these items.

### Best Price for Government

The commenter stated that the market for paper and paper tissue is very competitive which results in the prices submitted to the Government being very low. He indicated that the items should continue to be purchased on a competitive basis in order to obtain the best price for the Government.

Under the Committee's Act, the Committee is responsible for determining "fair market prices" for commodities and services on the Procurement List (41 U.S.C. 47(b)). The Committee considers that the reasonable bids received by the Government for the item under consideration are the best measure of the market for that item. Under its longstanding pricing policy, the initial fair market prices for items being added to the Procurement List, which have been recently procured by the Government, are based on the median of the reasonable bids which were received on the most recent procurement, or the award price increased by 5%, whichever is greater. Thus, the workshop is not required to produce this toilet paper at the award prices.

The fair market prices established by the Committee for these items are considered to be reflective of the market for the toilet paper and are fair market prices within the policies and procedures of the Committee.

### Compliance with GSA Contracting Procedures

The commenter questioned the ability of the workshop to effectively comply with GSA contracting procedures. He indicated that his firm has refined the necessary procedures and organized the essential administrative support for servicing Government contracts efficiently.

The workshop proposed to produce this toilet paper received the most recent contract to produce NSN 8540–01–055–6094. That item is identical to the other item NSN 8540–00–530–3770 except for packaging. The workshop was inspected by the procuring activity and determined capable of producing the items involved in compliance with the Government's requirements. The National Industries for the Blind has performed an on-site inspection of the workshop and has indicated that it is

capable of complying with the Government's commercial item description and delivery requirements for the items involved. Based on the preceding, the Committee has determined that the workshop is capable of producing the toilet paper in compliance with the commercial item description and within the time frames required by the Government.

**Impact on Small Business Subcontractors**

The commenter stated that the addition of the toilet paper to the Procurement List will not only affect the prime contractor, but also small and small disadvantaged businesses with which such suppliers conduct business in relation to GSA contracts. The workshop is the most recent contractor for one of the two items included in the proposal. These items are procured twice each year and cover the requirements of the Government for a six-month period. In determining impact, the Committee considered awards made for the items for the annual period. The value of the commenting firm's contract for one of these items represents 1/10 of one percent of its annual sales and about 1.6% of the annual sales of the other competitive contractor for the item. This is not considered to be serious impact. Regarding the effect of the addition on small and small disadvantaged businesses, the workshop is required by Committee regulations (41 CFR 51–4.4(b)) to accomplish the maximum subcontracting to small business concerns that it finds consistent with efficient performance in producing commodities on the Procurement List. Thus, the addition of the items to the Procurement List should have little, if any, effect on the small business subcontractors since the workshop will be utilizing those firms when possible and necessary for the efficient production of these items.

**Cumulative Effect of Future Additions**

The commenter expressed a concern with the cumulative effect of future additional which would expand the workshop's production of these items under the Committee's program.

The paramount issue is whether or not the addition of this toilet paper severely impacts the current contractors. In deciding whether or not a proposed addition to the Procurement List would have a serious adverse impact on the current or most recent contractor, the Committee is required by regulation (41 CFR 51–2.6(d) to give particular attention to the possible impact on that contractor's sales, including any cumulative impact as a result of other recent Committee actions. This regulation would also apply to a future decision to add another portion of the Government's requirements for this toilet paper to its Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1988:

**Paper, Toilet Tissue**

8540–00–530–3770

(Requirements for GSA Zone 1 only)

8540–01–055–6094

**E.R. Alley, Jr.,**

*Acting Executive Director.*

[FR Doc. 88–18294 Filed 8–12–88; 8:45 am]

BILLING CODE 6820–33–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DIA Scientific Advisory Committee; Meeting

**AGENCY:** Defense Intelligence Scientific Advisory Committee, DOD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Committee has been scheduled as follows:

**DATES:** Wednesday and Thursday, September 7–8, 1988, 9:00 a.m. to 5:00 p.m. each day.

**ADDRESS:** The DIAC, Bolling AFB, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340 (202/373–4930).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Office, Department of Defense.*

August 10, 1988.

[FR Doc. 88–18363 Filed 8–12–88; 8:45 am]

BILLING CODE 3810–01–M

### Performance Review Board; Membership Appointments

**AGENCY:** Defense Mobilization Systems Planning Activity, DOD.

**ACTION:** Announce membership of Performance Review Board.

**SUMMARY:** This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Mobilization Systems Planning Activity (DMSPA). The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorna J. D. Jons, Resource Management and Support Services, Defense Mobilization Systems Planning Activity, c/o OASD(FM&P), Correspondence & Control Division, The Pentagon, Room 3E–759, Washington, DC 20301, (703) 756–7913.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the following register constitutes members of the Defense Mobilization Systems Planning Activity PRB who will serve one-year renewable terms effective August 22, 1988.

Mr. John W. Beach

Mr. Bruce J. Campbell

Dr. Michael L. Ioffredo

Dr. David T. Signori, Jr.

Mr. Thomas M. Stanners

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

August 10, 1988.

[FR Doc. 88-18362 Filed 8-12-88; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[ERA Docket No. 88-11-NG]

### Northeast Gas, Inc.; Order Extending Blanket Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Order extending blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Northeast Gas, Inc. (NGI), an extension of its existing blanket authorization to import up to 100 Bcf of Canadian natural gas over a two-year term which expired March 31, 1988. The order authorizes NGI to import up to 100 BCF of natural gas over a two-year term beginning on date of first delivery after expiration of NGI's existing import authorization. The gas is for resale to 20 local distribution companies in the U.S. Northeast.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 8, 1988.

Constance L. Buckley,

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-18397 Filed 8-12-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-43-NG]

### Tennessee Gas Pipeline Co.; Application To Extend an Authorization To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application to extend authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on July 20, 1988, of an application from Tennessee Gas Pipeline Company (Tennessee) to amend its existing blanket authority to import up to 75,000 Mcf per day of "special purchase gas" from its Canadian supplier, ProGas Ltd. (ProGas) by extending such authority through October 31, 2000.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are due to be filed no later than September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Ave, SW., Washington, DC 20585, (202) 586-8162.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:**

Tennessee is currently authorized under DOE/ERA Opinion and Order No. 131 (Order 131), issued June 19, 1986, to import up to 75,000 Mcf per day of Canadian natural gas through October 31, 2000, in accordance with the provisions of its November 25, 1985, gas purchase agreement, as amended, with ProGas. Order 131 also permitted Tennessee to assign its rights and obligations with respect to the purchase, receipt and payment for any and all of the gas designated as "special purchase gas" to third parties through spot sales for a period of two years from the date of the first such sale. Special purchase gas is Canadian natural gas that ProGas may offer for sale to Tennessee from time to time under their gas purchase contract at a commodity charge less than the commodity charge otherwise in effect. Tennessee can buy that gas for its system supply or assign its right to purchase that gas to a third party without forfeiting its rights to credit such volumes toward its take-or-pay obligation. Tennessee asserts that this arrangement provides a more expeditious mechanism for adjusting prices to meet changing market conditions than provided for by the quarterly adjustment provisions of the contract authorized in Order 131. Tennessee's first take of special purchase gas was in August 1986, according to its first quarterly report to the ERA covering its third quarter activity under Order 131. To date, Tennessee has reported three takes of special purchase gas totaling 2,088,750 Mcf.

Tennessee requests the ERA to amend its import authorization under Order 131 by extending its authority to import special purchase gas from August 1988, through October 31, 2000, without amending any other terms and conditions of Order 131. In support of its request for a long-term extension of its blanket authorization, Tennessee asserts that ERA's justification for denial of its original request for a concurrent term with its regular supply arrangement on the basis of the experimental nature of the blanket authorization concept is no longer valid. Tennessee claims that the short-term blanket import authorization program is not as experimental as when Order 131 was issued and that it has worked well since its inception. In support of this claim, Tennessee cites an instance in 1986 when it purchased gas under its special purchase contract provision at a commodity charge of $1.30 per MMBtu that enabled Tennessee to liquidate a sizable take-or-pay obligation resulting in an actual cost of its special purchase gas of less than the $.94 per MMBtu paid for its regular purchase gas during the same period. Tennessee also claims that in March of 1988, it released up to 5,000 Mcf per day of gas to ProGas for sale to others which resulted in a $.06 per Mcf credit to Tennessee by ProGas for gas sold under that release. Tennessee further states that the availability of its special purchase gas enhances competition in the market it serves and notes that two Federal Courts of Appeals have upheld the ERA's blanket import authorization program.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. Tennessee has asserted that the volumes are needed over the requested term and that its contract provision for special gas

purchases is competitive. Parties opposing the amended arrangement bear the burden of overcoming this assertion.

All parties should be aware that, in accordance with its present policy and past practice, if the ERA approves the requested extension of the blanket authorization, it may limit the term to two years.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of interventions, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestall Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., September 14, 1988.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Tennessee's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 8, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs Economic Regulatory Administration.*

[FR Doc. 88-18398 Filed 8-12-88; 8:45 am]

BILLING CODE 6450-01-M

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**[ERA Docket No. 88-22-NG]**

## Western Gas Marketing U.S.A. Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Order Granting blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Western Gas Marketing U.S.A. Ltd. (Western) blanket authorization to import natural gas from Canada and to export natural gas to Canada. The order issued in ERA Docket No. 88-24-NG authorizes Western to import up to 300 Bcf of natural gas and to export up to 100 Bcf over a two-year period for sale in the North American spot markets.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 8, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-18399 Filed 8-12-88; 8:45 am]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

**[Docket No. G-11587-002, et al.]**

## ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

August 9, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to seel natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 31, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

BEST COPY AVAILABLE

[Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession]

| Docket No. and Date Filed | Applicant | Purchaser and Location | Description |
|---|---|---|---|
| G-11587-002, D, July 18, 1988 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221. | Natural Gas Pipeline Company of America, Twin Field, Hansford County, Texas. | (1) |
| G-19544-000, B, July 18, 1988 | Phillips 66 Natural Gas Company, 990-G Plaza Office Building, Bartlesville, OK 74004. | Panhandle Eastern Pipe Line Company, South Guyman and Hugoton Fields, Sherman and Hansford Counties, Texas, and Texas County, Oklahoma. | (2) |
| CI63-1491-001, D, July 25, 1988 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Panhandle Eastern Pipe Line Company, Putnam (N.E. Trail) Field, Dewey County, Oklahoma. | (3) |
| CI66-701-001, CF, July 13, 1988 | Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252. | Tennesee Gas Pipeline Company, Urschel Field, Starr County, Texas. | (4) |
| CI75-227-002, D, July 20, 1988 | OXY USA Inc. (formerly: Cities Service Oil and Gas Corporation), P.O. Box 300, Tulsa, OK 74102. | KN Energy, Inc., Bradshaw Field, Hamilton County, Kansas. | (5) |
| CI76-761-001, D, June 24, 1988 | Amoco Production Company, P.O. Box 3092, Houston, TX 77253. | El Paso Natural Gas Company, Spraberry Field, Midland County, Texas. | (6) |
| CI78-654-001, E, July 15, 1988 | Conoco Inc., P.O. Box 2197, Houston, TX 77252 | Transcontinental Gas Pipe Line Corporation, East Cameron Block 57, Offshore Louisiana. | (7) |
| CI80-138-002, E, July 13, 1988 | Conoco Inc | United Gas Pipe Line Company, High Island Block A-490, Offshore Texas. | (7) |
| CI88-512-000, B, June 27, 1988 | TXO Production Corp., First City Center, 1700 Pacific Ave., Dallas, TX 75201. | Transcontinental Gas Pipe Line Corporation, Dunn Field, Live Oak County, Texas. | (8) |
| CI88-519-000 (CI66-808), B, July 7, 1988. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | El Paso Natural Gas Company, West Waha Field, Reeves County, Texas. | (9 10) |
| CI88-520-000 (CI66-639), D, July 8, 1988. | Tenneco Oil Company | Williams Natural Gas Company, Waynoka NE Field, Woods and Woodward Counties, Oklahoma. | (11) |
| CI88-521-000 (CI61-1429) B, July 8, 1988. | Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880. | El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico. | (12) |
| CI88-522-000 (CI71-679), D, July 8, 1988. | Mobil Exploration and Producing North America Inc., Nine Greenway Plaza—Suite 2700, Houston, TX 77046-0957. | Trunkline Gas Company, OCS-G-1043, Ship Shoals 274, Field, Offshore Louisiana. | (13) |
| CI88-523-000 (CI69-321), D, July 11, 1988. | Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210. | Phillips Petroleum Company, West Panhandle Field, Hutchinson County, Texas. | (14) |
| CI88-524-000 (CI65-665), D, July 11, 1988. | ....do | Panhandle Producing Company, West Panhandle Field, Hutchinson County, Texas. | (14) |
| CI88-525-000 (CI65-662), D, July 11, 1988. | ....do | Colorado Interstate Gas Company, West Panhandle Field, Hutchinson County, Texas. | (14) |
| CI88-526-000 (CI65-664), D, July 11, 1988. | ....do | Colorado Interstate Gas Company, West Panhandle Field, Hutchinson, Moore & Potter Counties, Texas. | (14) |
| CI88-527-000 (CI65-667), D, July 11, 1988. | ....do | Panhandle Producing Company, *et al.*, West Panhandle Field, Hutchinson County, Texas. | (14) |
| CI88-528-000 (CI65-666), D, July 11, 1988. | ....do | Phillips Petroleum Company, Hugoton Field, Sherman County, Texas. | (14) |
| CI88-529-000 (CI68-1428), D, July 11, 1988. | ....do | Phillips Petroleum Company, West Pandhandle Field, Hutchinson County, Texas. | (14) |
| CI88-530-000 (CI69-333), D, July 11, 1988. | Sohio Petroleum Company | Phillips Petroleum Company, West Panhandle Field, Hutchinson County, Texas. | (14) |
| CI88-531-000 (CI69-307), D, July 11, 1988. | ....do | ....do | (14) |
| CI88-532-000 (CI69-308), D, July 11, 1988. | ....do | ....do | (14) |
| CI88-533-000 (CI78-955), B, July 14, 1988. | Tenneco Oil Company | El Paso Natural Gas Company, Reydon Field, Roger Mills County, Oklahoma. | (15) |
| CI88-534-000 (CI79-436), D, July 14, 1988. | Tenneco Oil Company | Lone Star Gas Company, a Division of Enserch Corporation, Golden Trend, Garvin County, Oklahoma. | (16) |
| CI88-536-000 (CI80-84-000), D, July 18, 1988. | GEO Oil & Gas Company of Houston, P.O. Box 2511, Houston, TX 77252. | Williston Basin Interstate Pipeline Company, Pavillion Field, Fremont County, Wyoming. | (17) |
| CI88-537-000 (CI80-86-000), D, July 18, 1988. | ....do | KN Energy, Inc., Alkali Butte Field, Fremont County, Wyoming. | (18) |
| CI88-538-000 (CI80-85-000), D, July 18, 1988. | GEO Oil & Gas Company of Houston | Williston Basin Interstate Pipeline Company, Pavillion Field, Fremont County, Wyoming. | (19) |
| CI88-539-000 (CI76-357), B, July 18, 1988. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Tennessee Gas Pipeline Company, Grand Isle Block 45, Offshore Louisiana. | (20) |
| CI88-540-000 (CI62-1234), B, July 18, 1988. | Sun Exploration and Production Company | Phillips Petroleum Company, Amacker-Tippett Field, Upton County, Texas. | (21) |
| CI88-542-000 (CI68-495), D, July 26, 1988. | Tenneco Oil Company | Arkla Energy Resources, a division of Arkla, Inc., James Worth Unit and Midwest-Quick #1 well, Mansfield Field, Logan & Scott Counties, Kansas. | (22) |
| CI88-544-000 (CI76-331), D, July 20, 1988. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | El Paso Natural Gas Company, Parkway West Unit, Eddy County, New Mexico. | (9) |
| CI88-547-000 (G-19728), D, July 22, 1988. | Tenneco Oil Company | El Paso Natural Gas Company, Andrews (Wolfcamp) South Field, Andews County, Texas. | (23 24) |
| CI88-548-000 (CI66-101), D, July 22, 1988. | ....do | ....do | (24) |

[1] ARCO assigned undeveloped acreage to Walker Exploration Company, effective December 1, 1987.
[2] The Mayers No. 1 well located in section 3-2N-17ECM, Texas County, Oklahoma, has been plugged and abandoned.
[3] ARCO assigned its interest in certain acreage under the April 18, 1963, contract comprising its FERC Gas Rate Schedule No. 274 to Meadowbrook Oil Corporation, effective October 26, 1987.
[4] Tenneco is filing to amend its certificate to add acreage acquired from Conoco Inc., effective November 1, 1986, by assignment dated January 19, 1988.
[5] Cities Service Oil and Gas Corporation, predecessor to OXY, assigned all of its remaining interest except the W/2 of section 32-22S-41W, Hamilton County, Kansas, to Ladd Petroleum Company, effective June 1, 1986.

[6] Amoco assigned its interest in the Neta Crawford lease, being all of section 43, Block A, G.G. Gray Survey, Midland County, Texas, from the surface of the earth to the base of the Wolfcamp Formation, to Five States Limited-1987, effective August 1, 1987, by assignment executed December 18, 1987.
[7] Conoco acquired certain interests from Shell Offshore, Inc., effective January 1, 1988.
[8] Dunn "B" #1 well was plugged on November 24, 1987.
[9] ARCO assigned certain acreage to Hondo Oil & Gas Company, by assignment executed February 27, 1987.
[10] The remaining leases have expired.
[11] Tenneco sold certain interests, effective December 1, 1986, to Vanguard Oil & Gas, Inc., and effective April 1, 1986, to Redgate Petroleum, Inc.
[12] All wells in this area have been plugged and abandoned. No active wells remain.
[13] Mobil assigned its interest in OCS–G–1043, covering all of Block 293, Ship Shoal Area, South Addition, Offshore Louisiana, to Shell Offshore Inc. effective September 1, 1987, by assignment executed October 5, 1987.
[14] Sohio Petroleum Company assigned certain acreage to Kim Petroleum Company, by assignment executed June 24, 1988.
[15] The only producing well was plugged and abandoned on June 9, 1983. The lease expired under its own terms.
[16] Tenneco Oil Company assigned certain acreage to Exxon Company, USA, effective December 1, 1987.
[17] GEO assigned its interest in acreage attributable to the Blankenship 4–8 well, being the E/2 Section 4–T3N–R2E, W.R.M., to Quinoco Oil and Gas Income Program 1983–2, Quinoco Oil and Gas Income Program 1983–3 and Quinoco Oil and Gas Income Program 1983–4, effective January 1, 1984, by assignment executed March 2, 1984.
[18] GEO assigned its interest in acreage attributable to the Federal #1 well, being the S/2 S/2 section 23–T34N–R95W, to Quinoco Oil and Gas Income Program 1983–2, Quinoco Oil and Gas Income Program 1983–3 and Quinoco Oil and Gas Income Program 1983–4, effective January 1, 1984, by assignment executed March 2, 1984.
[19] GEO assigned its interest in acreage attributable to the Tribal #1–22 well, being all of section 22–T3N–R2E, W.R.M., to Quinoco Oil and Gas Income Program 1983–2, Quinoco Oil and Gas Income Program 1983–3 and Quinoco Oil and Gas Income Program 1983–4, effective January 1, 1984, by assignment executed March 2, 1984.
[20] The subject lease expired April 30, 1988.
[21] All leases expired in 1963.
[22] Tenneco sold the James Worth Unit to B. J. Brown effective April 8, 1970. Tenneco surrendered the Midwest-Quick No. 1 lease to the landowners in July 1976.
[23] The W/2 of Section 30, Block 1, University Lands, Andrews County, Texas, reverted to the landowners.
[24] Tenneco assigned certain acreage to Prudential-Bache Energy Income Production Partnership IIIP–12, IIIP–13, IIIP–14, IIIP–15, VP–18, VP–19, IVP–16 and IVP–17, and Prudential-Bache Energy Production Inc., effective January 29, 1987.

[FR Doc. 88–18391 Filed 8–12–88; 8:45 am]
BILLING CODE 6717–01–M

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[Docket No. CP88–623–000]

## North Penn Gas Co. v. Tennessee Gas Pipeline Co.; Complaint

August 9, 1988.

Take notice that on July 18, 1988, North Penn Gas Company (North Penn), 76–80 Mill Street, Port Allegany, Pennsylvania 16643, filed a complaint and request for summary disposition in Docket No. CP88–623–000 pursuant to Rules 206 and 217 of the Commission's Rules of Practice and Procedure (18 CFR 385.206 and 18 CFR 385.217, respectively), alleging that Tennessee Gas Pipeline Company (Tennessee) has refused to implement North Penn's request for CD reduction under § 284.10 of the Commission's Regulations.

North Penn states that on December 10, 1986, Tennessee initiated transportation under section 311 of the Natural Gas Policy Act of 1978. North Penn further states that as a result of such transportation and pursuant to then existing § 284.10 of the Commission's Regulations, North Penn formally requested Tennessee to reduce by 15 percent North Penn's sales (or CD) entitlements on the Tennessee system as of June 23, 1987.

North Penn maintains that under then existing § 284.10 of the Commission's Regulations, Tennessee was required to implement North Penn's CD reduction as of June 23, 1987, as North Penn requested. Instead, North Penn states, Tennessee notified North Penn by letter, dated July 13, 1987, of its refusal to implement the reduction request because of Tennessee's stated belief that the D.C. Circuit decision in *Associated Gas Distribution* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987) rendered ineffective North Penn's CD reduction request.

North Penn maintains that in *Interstate Pipeline Co.* v. *Natural Gas Pipeline Co.*, 41 FERC ¶61,096 (1987) and 42 FERC ¶61,049 (1988), the Commission rejected the very justification proffered by Tennessee for refusing to implement North Penn's CD reduction request. North Penn states that by letter to Tennessee, dated December 4, 1987, North Penn cited the *Interstate* decision, repeated its request for a CD reduction and asked that Tennessee refund the overcharges associated with Tennessee's failure to provide the requested reduction. North Penn states that it has on several occasions repeated its request for a CD reduction with appropriate refunds, but, to date, Tennessee has refused to comply with North Penn's request.

North Penn states that on January 29, 1988, Tennessee filed in Docket No. CP88–172, a request inter alia to abandon 15,000 Dth per day of existing firm sales service to North Penn. It is stated that Tennessee sought to condition that request on North Penn's relinquishing its right to the 15 percent reduction effective as of June 23, 1987. North Penn states that it has never agreed to give up its rights to a 15 percent reduction as of June 23, 1987; rather, it has an immediate need for substantial reductions in its Tennessee contract obligations.

In addition, North Penn states that Tennessee may soon be filing a general rate case to allow for a 5-month suspension that terminates February 1, 1989, which is the end of the 36-month period by which Tennessee must have new rates in effect pursuant to the Commission's regulations. North Penn states that it is important that Tennessee is on formal notice that North Penn's billing determinants should reflect the 15-percent CD reduction.

North Penn stresses that despite ample opportunity, Tennessee has never argued that North Penn did not qualify under Section 284.10 of the Commission's Regulations as that section existed when Tennessee became an open-access transporter and when North Penn requested a 15-percent CD reduction.

It is stated that North Penn's existing CD corresponds to its D–1 and D–2 billing determinants of 37,139 Dth and 13,555,910 Dth, respectively on the Tennessee system. It is further stated that a 15 percent reduction would reduce North Penn's D–1 and D–2 determinants to 31,568 Dth and 11,522,524 Dth, respectively. North Penn maintains that the Commission should require Tennessee to reduce North Penn's entitlement by 15 percent, effective June 23, 1987, and refund, with interest, the money Tennessee has collected since June 23, 1987, for D–1 and D–2 charges set at billing determinants in excess of 31,568 Dth and 11,522,524 Dth.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before September 8, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the

proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18392 Filed 8-12-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3428-7]**

### Proposed Administrative Penalty Assessment and Opportunity to Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed administrative penalty assessment and opportunity to comment.

**SUMMARY:** EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment or Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of the County of Kauai, Department of Public Works, Wailua Sewage Treatment Plant, Wailua, Kauai, Hawaii; EPA Docket No. IX-FY88-38; filed on August 5, 1988, with James Casuscelli, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-0718; proposed penalty up to $120,000 for discharging to Waters of the United States in violation of an NPDES permit.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days after the date of publication of this notice.

Dated: August 5, 1988.

**Harry Seraydarian,**

*Director, Water Managment Division.*

[FR Doc. 88-18377 Filed 8-12-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL HOME LOAN BANK BOARD

**[No. 88-655]**

### FSLIC Statement of Policy and Criteria on Assistance to Insured Institutions Absent a Requirement for an Immediate Merge Acquisition by a Third Party

Date: August 4, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting a Policy Statement setting forth the criteria that will be used in providing assistance to certain insured institutions under circumstances where an immediate merger with or acquisition by a third party is not required. This Policy Statement is intended to provide guidance regarding the Board's policy in this area, the eligibility requirements for this type of assistance, and the administration of this policy.

**EFFECTIVE DATE:** August 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** James A. Meyer, Financial Assistance Division, (202) 254-2427, Federal Savings and Loan Insurance Corporation, 801 17th Street, NW., Washington, DC 20006; or Richard B. Foley, Attorney, Office of General Counsel, (202) 377-7393, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The Board as the operating head of the FSLIC is authorized, pursuant to section 406(f) of the National Housing Act ("NHA"), 12 U.S.C. 1729(f), including but not limited to the amendments to NHA Section 406(f) made by section 405 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552, 613-614 (1987), to provide various types of assistance to FSLIC-insured institutions under certain conditions. Assistance may be provided directly to the institution to prevent its default or to facilitate the merger/acquisition of an association by another entity financially able to acquire the failing institution. In order for the FSLIC to provide assistance, either the amount of the assistance must be less than the cost of liquidating, including paying the insured accounts of the institution, or the FSLIC must determine that the continued operation of the institution is essential to provide adequate savings or home financing services in its community. The Board is publishing the following Statement of Policy and Criteria to provide guidance regarding this type of assistance under certain conditions.

Statement of policy and criteria: This Statement of Policy and Criteria is issued to set out the general terms and conditions the Board believes are appropriate if the FSLIC is to provide assistance to an operating FSLIC-insured institution to prevent its default or to minimize the risk to the FSLIC, absent an immediate merger/acquisition by a third party. The objectives of providing assistance to an operating institution are as follows:

A. For an institution near insolvency, where FSLIC financial assistance will be necessary to prevent a default and the problems of the institution have been identified and are containable, to facilitate earlier resolution of the problem to lessen the cost to FSLIC; and

B. For an already insolvent institution, where a determination has been made that FSLIC assistance is necessary to resolve the case and an immediate acquisition by a third party is not feasible, to provide assistance to stabilize the institution pending a subsequent resolution action or to facilitate the rehabilitation of the institution. The rehabilitation option will include appropriate ownership incentives for approved management that will be undertaking the recovery effort in conjunction with the FSLIC. The Board anticipates approval of assistance to insolvent institutions will often be

accompanied by consolidations in order to take advantage of economies of scale.

Assistance intended for near insolvent institutions should meet the following guidelines unless the Board determines that there are compelling reasons justifying the contrary:

(1) The estimated cost to the FSLIC clearly must be less than other readily available options. The cost analyses should reflect the future risk each available case resolution option represents for the FSLIC.

(2) Adequate managerial resources, sufficient projected capitalization, and a reasonable assurance of the future profitability of the institution must be provided for. A key determinant of sufficient projected capitalization should be compliance with the Board's capital regulations at a specified future date.

(3) Assistance must be accompanied by significant capital infusions from the stockholders and/or other non-FSLIC sources.

(4) Assistance must benefit the institution and the FSLIC and not be diverted to other purposes.

(5) The review, renegotiation, or termination of management contracts should be expected prior to the granting of assistance. Continued service of all directors, officers serving in a policy-making role, and other officers of the assisted institution, as may be designated by the FSLIC, will be subject to approval by the FSLIC. Further, the FSLIC will review and must approve any or all parts of any new compensation packages or termination agreements covering these individuals throughout the period assistance is outstanding.

(6) Common shareholders and holders of subordinated debt and/or preferred stock of the failing institution must agree to subordinate to the interests of the FSLIC represented by its direct financial assistance until it has been repaid. Until the assistance has been repaid, no dividends or payments on subordinated debt/preferred stock will be permitted absent FSLIC approval. FSLIC approval for dividends in advance of total repayment of assistance would generally be limited to new capital and equity positions taken by the FSLIC.

(7) If acceptance of an equity position (such as preferred stock) is necessary, the FSLIC will receive a return on equity satisfactory to the FSLIC. The FSLIC is not permitted to own voting or common stock of an insured institution.

(8) Any direct FSLIC assistance should be repaid with interest. As additional compensation or repayment for the assistance and risk, the FSLIC will expect to receive warrants to purchase common stock or some other appropriate form of compensation.

(9) If the assisted institution is a subsidiary of a holding company, dividends, interest payments, compensation, etc., would not be permitted to flow from the insured institution to the holding company without prior FSLIC approval until all assistance has been repaid in full. The holding company should make a significant contribution toward minimizing the financial exposure of the FSLIC.

(10) The FSLIC and the Office of Regulatory Activities ("ORA"), or their designee, have the right to approve/disapprove the institution's business plans and budgets.

(11) The institution would agree to accept FSLIC notes and/or other assets of the FSLIC for the payment of assistance.

(12) The institution must execute a "pre-nuptial" or net worth maintenance agreement with the FSLIC consenting to a merger/acquisition or the appointment of a receiver/conservator should the assistance efforts fail to restore the institution to viability.

(13) The institution would be expected to pursue claims against individuals or entities associated with or performing services for the institution to the satisfaction of the FSLIC and with the guidance of the Board's Office of General Counsel, including, without limitation, claims against directors, officers, employees, agents, stockholders, controlling persons, bonding and insurance companies, accountants, appraisers, attorneys, investment bankers or brokers, and securities dealers. However, the association must provide the FSLIC with the option of assuming and pursuing at any time, on its own initiative, such claims of the institution. Recoveries by the FSLIC would be used to offset assistance paid to the institution and other costs, including costs incurred in pursuing such claims.

(14) Fee arrangements for attorneys, investment bankers, consultants, and other advisors incident to requests for FSLIC assistance pursuant to this statement of policy must be disclosed to the FSLIC and will be evaluated in determining the cost of assistance to the FSLIC. Excessive fees must be avoided, and in no instance should the payment of any fee be contingent upon the level of financial assistance approved by the FSLIC.

Assistance necessary to stabilize the institution pending a subsequent resolution action or to facilitate the rehabilitation of insolvent institutions when an immediate merger/acquisition by a third party is not feasible should meet the following guidelines unless the Board determines that there are compelling reasons justifying the contrary:

(1) The estimated cost to the FSLIC clearly must be less than other readily available options. The cost analyses should reflect the future risk each available case resolution option represents for the FSLIC.

(2) The FSLIC would be appointed as receiver and substantially all of the institution's assets and liabilities would be transferred by the receiver to a *de novo* institution. The receiver would transfer to the FSLIC in its corporate capacity claims against individuals or entities associated with or performing services for the institution, including, without limitation, claims against directors, officers, employees, agents, stockholders, controlling persons, bonding and insurance companies, accountants, appraisers, attorneys, investment bankers or brokers, and securities dealers.

(3) Adequate managerial resources, sufficient projected capitalization, and a reasonable assurance of the future profitability of the institution once the assistance effort is complete must be provided for. The key determinant of sufficient projected capitalization should be that the rehabilitated institution meet the Board's regulatory capital requirements at the conclusion of the rehabilitation assistance program.

(4) The resulting *de novo* institution would be operated under safeguards designed for the protection of the FSLIC. Incentives should be structured for management undertaking the recovery effort in conjunction with the FSLIC that mirror the interests of the FSLIC. For example, management could be rewarded by an ownership interest in the institution that grows as the rehabilitation program progresses. Additionally, management would be encouraged to invest a nominal amount of their own funds in the institution.

(5) If the resulting *de novo* is a stock institution, the FSLIC would retain an substantial equity position in the institution via warrants and/or convertible preferred stock (the FSLIC cannot own voting or common stock). The FSLIC would be able to sell its ownership position to third parties at a later date. The rehabilitation should encourage the infusion of new private capital through private or public offerings of common stock and/or the sale of the FSLIC's equity interests as a way to expedite the rehabilitation of the institution with private capital.

(6) The FSLIC and the ORA, or their designee, have the right to approve/disapprove officers, directors, compensation, business plans, and budgets of the institution during the term of the rehabilitation assistance agreement.

(7) The institution would accept FSLIC notes and/or other assets of the FSLIC for the payment of assistance.

(8) The rehabilitation effort should involve the consolidation of other insolvent institutions to achieve the benefits of economies of scale.

(9) Management responsible for the institution's insolvency shall be replaced with new management approved by the FSLIC.

(10) The institution must execute a "pre-nuptial" agreement with the FSLIC consenting to a merger/acquisition or the appointment of a receiver/conservator should the assistance efforts fail to restore the institution to viability.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88-18408 Filed 8-12-88; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 86P-0510]

### Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to Truitt Bros., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder's petition to amend the standard of identity for canned green beans.

**DATE:** The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HHF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0121.

**SUPPLEMENTARY INFORMATION:** A temporary permit was issued under the provisions of 21 CFR 130.17 to Truitt Bros., Inc., P.O. Box 309, Salem, OR 97308, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Truitt Bros., Inc., was published in the **Federal Register** of January 21, 1987 (52 FR 2297).

Truitt Bros., Inc., has requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned green beans proceeds. The permit holder also requested that their existing temporary permit be amended to provide for market testing on an annual basis of 50,000 cases containing six No. 10 (603 X 700) cans each of the test product. These quantities are in addition to the 50,000 cases of No. 10 cans of the test product provided for by the existing permit, but which have not been distributed.

Truitt Bros., Inc., in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to Truitt Bros., Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any person who wishes to participate in the extended market test must notify, in writing, the Acting Director, Division of Food Chemistry and Technology (HHF-410), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: July 29, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88-18328 Filed 8-12-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P-0359]

### Canned Pacific Salmon Deviating From Identity Standard; Extension of Temporary Marketing Permit

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the expiration date of a temporary permit to market test canned skinless and boneless chunk salmon packed in water is being extended. This extension will allow the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder's petition to amend the standard of identity for canned Pacific salmon.

**DATE:** The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned Pacific salmon which may result from the petition, or 30 days after termination of such proposal.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

**SUPPLEMENTARY INFORMATION:** A temporary permit was issued under the provisions of 21 CFR 130.17 to Bumble Bee Seafoods, Inc., San Diego, CA 92123, to market test canned skinless and boneless chunk salmon packed in water to test consumer acceptance of the new style pack. The permit was issued to facilitate market testing of foods that deviate from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Bumble Bee Seafoods, Inc., was published in the **Federal Register** of September 16, 1986 (51 FR 32844).

Bumble Bee Seafoods, Inc., has requested that the temporary permit be extended so the market test period can continue while agency action on a

petition submitted by the National Food Processors Association (NFPA) to amend the canned Pacific salmon standard proceeds. The petition was submitted by NFPA on behalf of Bumble Bee Seafoods, Inc., and the other salmon packers holding temporary permits. FDA has concluded that it is in the interest of consumers to issue the extension. FDA is inviting interested persons to participate in the market test under the conditions that apply to Bumble Bee Seafoods, Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply. Any interested person who wishes to participate in the market test must notify, in writing, the Acting Director, Division of Food Chemistry and Technology (HFF–410), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the areas of distribution, and labeling that will be used for the test product.

Therefore, FDA is extending the expiration date of the permit such that the permit expires either in the effective date of a final rule for any proposal to amend the standard of identity for canned Pacific salmon which may result from the petition, or 30 days after termination of such proposal. All other conditions and terms of this permit remain the same.

Dated: July 29, 1988.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88–18330 Filed 8–12–88; 8:45 am]

BILLING CODE 4160–01–M

## Salmonella Enteritidis in Shell Eggs; Open Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting to exchange information on the problem of egg-associated *Salmonella enteritidis* infections in the United States.

**DATE:** Thursday, September 15, 1988, 1 p.m. to 5 p.m.

**ADDRESS:** Auditorium, Hubert H. Humphrey Bldg., 200 Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Schwarz, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–485–0140.

**SUPPLEMENTARY INFORMATION:** FDA is announcing a public meeting to provide a forum for exchanging information on the problem of egg-associated *Samonella enteritidis* infections in the United States. This meeting will primarily focus on public health issues. Consideration will be given to domestic and worldwide epidemiologic data, scientific knowledge about the *Salmonella enteritidis* organism, analytical methodology, safe food handling and cooking recommendations, and related topics.

*Salmonella enteritidis* outbreaks have been concentrated in the Northeastern United States, but now appear to be spreading to other areas. FDA needs to learn more about this geographic change. FDA also needs information about affected groups or individuals in order to consider appropriate intervention programs in the future. Additionally, the agency is seeking data relative to the producing hens, such as information on the transmission of *Salmonella enteritidis* between birds, serological testing of laying hens, and various sampling protocols.

FDA is inviting representatives of the egg industry and other interested parties to participate. FDA anticipates that the information presented at this meeting will enable the agency to more full understand all of the public health issues associated with *Salmonella enteritidis* in shell eggs.

Dated August 8, 1988.

**Ronald G. Chesemore,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88–18329 Filed 8–12–88; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

## Program Announcement and Proposed Funding Priorities for Grants for Graduate Training in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Grants for Graduate Training in Family Medicine are being accepted under the authority of section 786(a) of the Public Health Service Act, as amended by Pub. L. 99–129 and invites comments on the proposed funding priorities stated below.

Section 786(a) authorizes the Secretary to make grants to public or nonprofit private hospitals, accredited schools of medicine or osteopathy, and other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating or participation in approved graduate trraining programs in the fields of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine.

Legislative authorization for this program expires September 30, 1988. For FY 1989 the Administration is proposing to consolidate the various health professions categorical programs into a single, flexible authority. This announcement is being made in the event that the Graduate Training in Family Medicine Program is reauthorized and funds are made available in FY 1989. Publication of this notice is a contingency measure that will assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

### Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project provides for the project requirements;

(2) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(3) The potential of the project to continue on a self-sustaining basis.

### Proposed Funding Priorities

In determining the order of funding of approved applications it is proposed to give a funding priority to the following:

(1) Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstration net increase of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainee.

These population groups continue to be underrepresented in the medical profession and have insufficient access to primary medical care. Their representation should be increased to

ensure equitable opportunities to a career in medicine and equal access to health care services. Studies show that minority physicians provide a greater proportion of health care for medically underserved populations than other United States physicians. Therefore, this funding priority is designed to increase the number of underrepresented minority physicians.

(2) Projects in which the substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 of the Public Health Service Act is the authority which supports community health centers providing primary health services to persons located in rural and urban areas with financial and/or geographic barriers to care. Section 781 authorizes a national program to support area health education centers and projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system. There are estimated 1,931 health manpower shortage areas with an estimated underserved population of 12,847,023. An estimated 4,139 primary medical practitioners are needed to remove these areas from the shortage designation.

These designations include geographic areas, population groups and facilities. The proposed funding priority is designed to provide trainees with substantial training in health manpower shortage areas, community health centers, migrant health centers, and State facilities serving underserved population. An applicant applying for this priority through a State or local designation must have written documentation from the appropriate State or local authority responsible for designating health personnel shortages for geographic areas, population groups and/or facilities. This documentation must indicate that the designated geographic areas, population groups, and/or facilities are part of a State or local plan to increase service access to underserved populations. These experiences are expected to have a positive influence on the selection of practice locations of such trainees. The application of this funding priority is also to provide a more integrated federal strategy to the implementation of health professions assistance and primary health service programs.

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of HIV/AIDS patients.

Health professionals are increasingly required to provide a wide range of services to HIV-infected persons. However, widespread organized curricula offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards. Assuring quality in the health care system is increasingly becoming the responsibility of health care providers. The proposed funding priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance and risk management in the continuum of the health professions educational process.

(5) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

The population 65 years of age and over will increase about 2 percent a year between now and 2020 (compared to an increase of less than 1 percent for younger persons). The oldest old (85-plus) segment of the population will experience the most rapid growth before 200. The youngest old (65–74) segment will increase fastest between 2000 and 2020. The older population will require expansion of a wide range of health services, including preventive, primary, long-term, hospice, and rehabilitation care. However, health providers lack adequate training needed to care for this aging population.

The proposed funding priority is designed to provide increased emphasis on geriatrics training for all health professions trainees in the continuum of their training.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 14, 1988 will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6960.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–04, Rockville, Maryland 20857, Telephone (301) 443–5820.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is September 30, 1988. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.379 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: August 9, 1988.
John H. Kelso,
*Acting Administrator.*
[FR Doc. 88-18332 Filed 8-12-88; 8:45 am]
BILLING CODE 4160-15-M

## Program Announcement and Proposed Funding Priority for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a) of the Public Health Service Act, as amended by Pub. L. 99-129 and invites comments on the proposed funding priority stated below.

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support both the program and the trainees.

Legislative authorization for this program expires September 30, 1988. For FY 1989 the Administration is proposing to consolidate the various health professions categorical programs into a single, flexible authority. This announcement is being made in the event that the Predoctoral Training in Family Medicine Program is reauthorized and funds are made available in FY 1989. Publication of this notice is a contingency measure that will assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

### Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;

(2) The degree to which the proposed project adequately provides for the project requirements;

(3) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis after the period of grant support.

### Proposed Funding Priority

In determining the order of funding of approved applications, it is proposed to give a funding priority to:

Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 of the Public Health Service Act is the authority which supports community health centers providing primary health services to persons located in rural and urban areas with financial and/or geographic barriers to care. Section 781 authorizes a national program to support area health education centers and projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system.

There are an estimated 1,931 health manpower shortage areas with an estimated underserved population of 12,847,023. An estimated 4,139 primary medical practitioners are needed to remove these areas from the shortage designation. These designations include geographic areas, population groups and facilities. The proposed funding priority is designed to provide trainees substantial training in health manpower shortage areas, community health centers, migrant health centers, and State facilities serving underserved populations. An applicant applying for this priority through a State or local designation must have written documentation from the appropriate State or local authority responsible for designating health personnel shortages for geographic areas, population groups and/or facilities. This documentation must indicate that the designated geographic areas, population groups, and/or facilities are part of a State or local plan to increase service access to underserved populations.

These experiences are expected to have a positive influence on the selection of practice locations of such trainees. The application of this funding priority is also to provide a more integrated federal strategy to the implementation of health professions assistance and primary health service programs.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 14, 1988, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-5820.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The deadline date for receipt of applications is October 14, 1988. Applications should be considered as meeting the deadline date if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a

commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to applicant.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: August 9, 1988.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 88-18331 Filed 8-12-88; 8:45 am]

BILLING CODE 4160-15-M

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**Public Health Service**

**Privacy Act of 1974; New System of Records**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notification of a New System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to establish a new system of records: 09-19-0001, "Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/OHA." The purposes of this system of records are to determine the public health impact of exposure or potential exposure to toxic and hazardous substances, and to establish and maintain registries of such exposed persons and the serious diseases associated with these exposures. We are also proposing routine uses for this system of records.

**DATES:** PHS invites interested parties to submit comments on the proposed internal and routine uses on or before September 14, 1988. PHS has sent a Report of a New System to the Congress and to the Ofice of Management and Budget (OMB) on August 8, 1988. PHS has requested that OMB grant a waiver of the usual requirement that the system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, PHS will publish a notice to that effect in the **Federal Register**. The routine uses will be effective September 14, 1988, unless PHS receives comments which would result in a contrary determination.

**ADDRESS:** Comments should be addressed to the Centers for Disease Control (CDC)/Agency for Toxic Substances and Disease Registry (ATSDR) Privacy Act Coordinator at the address listed below. Because CDC provides administrative support to ATSDR, the CDC Privacy Act Coordinator also serves as the ATSDR Privacy Act Coordinator. Comments received will be available for inspection Monday through Friday, between 9 a.m. and 3 p.m. in the Buckhead Facility, Room 500, at that address.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Salter, Alternate Privacy Act Coordinator, Centers for Disease Control/Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Buckhead, Room 500, Mailstop E11, Atlanta, Georgia 30333, (404) 842-6720. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** ATSDR proposes to establish a new system of records: 09-19-0001 "Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/OHA."

Records in this system will assist ATSDR in fulfilling its legislated public health functions by:

(1) Employing pilot studies [1] (including exposure studies, symptom and disease prevalence studies, cluster investigations), epidemiologic studies, and other public health investigations to identify the possible deleterious effects on humans of exposure to toxic and hazardous substances; and

(2) Establishing and maintaining national registries [2] of persons exposed to toxic substances and persons with serious diseases associated or potentially associated with exposure to toxic substances, informing them of pertinent health information, and serving as a focal point for toxic exposure research data.

Death certificate information will be used to evaluate the possible relationship of cause of death to exposure to hazardous substances. The data may also be examined to validate reported causes of death. If it is determined that excess mortality is occurring among individuals exposed to toxic or hazardous substances, similarly exposed persons will be notified. State or local health departments may provide physician records or private physicians themselves may seek consultation with ATSDR. This information would be used to evaluate the morbidity or mortality experience of persons exposed to hazardous substances, validate self-reported cases of disease, or to determine numbers of cases of a disease occurrence. Other previously collected medical information may also be provided by State or local health departments, the Environmental Protection Agency (EPA), and other Federal agencies. This information may have been collected as part of a health study or investigation for which ATSDR is being requested to provide assistance.

Approximately 8,000 individuals will probably take part in pilot studies each year. Of these, 2,000 will be involved in exposure studies, 5,000 in symptom and disease prevalence studies, and 1,000 in cluster investigations. There will be approximately 5,000 persons in epidemiologic studies. A portion of individuals involved in pilot studies or epidemiologic studies along with other cohorts [3] identified by other Federal and State investigations will participate in ATSDR registries.

At present, the National Exposure Registry is planned with data collection to begin at two sites (approximately 500 persons per site) in 1988. In 1989, six sites and updating of previous sites are planned. The sites likely to be considered for the establishment of a subregistry include all sites listed on EPA's National Priorities List (NPL), non-NPL sites on which epidemiologic/pilot studies may have been conducted, landfills, sites with contaminated drinking water or soil, and sites of emergency activities.

ATSDR, and its contractors, working with State and local health professionals, will identify eligible participants for the subregistry on the basis of documented environmental exposure to the toxicants of interest. Potentially exposed persons (current and past) will be identified using tax rolls, city directories, telephone books, school enrollment, rental and employment records, and self-reporting. Individuals with documented exposures will be contacted and asked to voluntarily participate in the subregistry and to agree to routine releases of data.

The records will include, at a minimum, core demographic information (i.e., name, sex, length of time at current address, current and past occupations, life style factors such as smoking history), the level and length of exposure for each substance, the pathway of

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[1] Pilot studies are limited evaluations of a defined population to determine if the extent of exposure to hazardous substances and possible adverse health effects warrant a comprehensive epidemiologic investigation or establishment of a subregistry.

[2] A registry is defined as a system for collecting and maintaining in a structured record, information on specific persons from a defined population.

[3] A *cohort* is defined as a group of individuals having a statistical factor in common in a demographic study, i.e., exposure to a specific substance, geographic area of residence, etc.

exposure (i.e., air, water, soil, etc.), the route of exposure (i.e., inhalation, ingestion, etc.), and additional existing data or medical records that may be available. The specific study or subregistry will determine the specific types of records collected and maintained.

Pilot studies and registry establishment will involve scientists on the staff of ATSDR, the Centers for Disease Control (CDC), and other researchers working under contracts awarded by ATSDR. These contracts may include: (1) Locating exposed or potentially exposed individuals; (2) conducting interviews; and (3) collecting blood and urine specimens, or performing medical examinations. In addition, Registry contracts will entail providing for annual followup of registrant participants to update information on file and to possible advise of new scientific information regarding health effects, preventive measures, or breakthroughs in treatment of environmentally caused illnesses unavailable at the time the registry was originally established. CDC staff will participate in collaborative efforts and may perform statistical analysis.

ATSDR will collect and manage all data in a manner to safeguard any identifying information. Stringent safeguards will be developed to prevent inadvertent disclosure of any data, as described in the system notice.

ATSDR will require that Privacy Act provisions appear in any contracts which involve the collection of identifying information. Such contracts will specify the appropriate safeguards to be employed in the performance of the contract, and the disposition of records when the contract is completed.

ATSDR has examined a number of alternative means of accomplishing the program requirements, including the option to maintain no Privacy Act system of records. Considering the potentially large number of individual records that may be involved in carrying out the environmental mandates of ATSDR, it was concluded that it would be impossible to carry out the required activities without collecting individual identifiers. Name and Social Security number (supplied voluntarily) will be some of the indices used to retrieve records from the system. Other retrieval methods (such as by toxic substance) may be used as individual survey or subregistry dictates.

ATSDR is proposing seven routine uses which will support ATSDR's efforts to carry out its legislative mandate efficiently and effectively. Proposed routine use #1 which permits disclosure of information to contractors to enable them to locate, interview, collect biological samples from or perform medical examinations on individuals will be necessary to gather information about the potential exposure of persons to toxic and hazardous substances. This routine use will also be necessary to enable ATSDR to establish and maintain national registries of persons exposed to toxic substances and of persons with diseases associated with such exposures.

Proposed routine use #2 which permits disclosures of records to other Federal agencies and State or local health officials for collaborative efforts is intended to enable ATSDR to more effectively conduct its studies, to avoid duplication of study efforts and to facilitate the location of individuals for followup surveys and any necessary treatment. This routine use will also satisfy mandatory reporting requirements when applicable. These disclosures are compatible with the system's purposes to identify the extent of the health threat posed by exposure to hazardous substances.

Proposed routine use #3 permitting disclosure of records to other Federal agencies is intended to aid in locating individuals exposed to hazardous substances. The frequent relocation of families mandates that all sources of information be utilized to ensure an adequate assessment of initially exposed individuals who may no longer be residing near the contaminated site.

Proposed routine use #4 permits data sharing for research purposes. It is anticipated that data from pilot studies, epidemiologic studies, and establishment of subregistries will be of significant interest to members of the research community interested in the possible connection between health problems and exposure to hazardous substances. While ATSDR wishes to share data and avoid duplication of study efforts, the agency is also committed to protecting the integrity of the data collected.

Proposed routine use #5 permits disclosure to members of Congress for the purpose of allowing subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure will be made only at the explicit request of the individual.

Proposed routine use #6 permits ATSDR to disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department of Justice to effectively represent the agency. This disclosure would be necessary in the event of litigation initiated at the request of EPA in collaboration with ATSDR to recover costs of cleanup operations associated with Superfund or Resource Conservation and Recovery Act enforcement.

Proposed routine use #7 which permits disclosure of records to the Department of Justice for litigation defense purposes will enable the Department of Justice to represent ATSDR in litigation arising from program activities/operations related to investigations of the health effects of exposure to hazardous substances.

The following notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: August 9, 1988.

**Wilford J. Forbush,**

*Deputy Assistant Secretary for Health Operations and Director, Office of Management.*

**09-19-0001**

**SYSTEM NAME:**

Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/OHA.

**SYSTEM CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of Health Assessment (OHA), Agency for Toxic Substances and Disease Registry, Chamblee Building 28N, 1600 Clifton Road, Atlanta, GA 30333;

Office of External Affairs (OEA) Agency for Toxic Substances and Disease Registry, Chamblee Building 2 S, 1600 Clifton Road, Atlanta, GA 30333; and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Data are also located at contractor sites. A list of contractor sites where individually identified data are currently located is available upon request to the System Manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals exposed or potentially exposed to toxic or hazardous substances may include the following: (1) Selected persons living or having lived near a hazardous waste site; (2) Persons exposed or potentially exposed to environmental hazards resulting from ingestion of contaminated drinking water, persons exposed to contaminated soil, persons living on mining wastes, persons inhaling toxic substances (all of which may or may not be the result of

contamination by a specified waste site); (3) Participants in pilot studies (including exposure studies, symptom and disease prevalence studies, cluster investigations), and epidemiologic studies to determine the public health threat of exposure to hazardous or toxic substances; (4) Registry participants with exposures associated with sites listed on the Environmental Protection Agency's (EPA) National Priorities List (NPL), non-NPL sites on which epidemiologic or pilot studies may have been conducted, sites of emergency activities, and other toxic waste sites proposed by concerned citizens; (5) Registry participants with diseases associated or potentially associated with exposure to toxic or hazardous substances; (6) Persons working or having worked in response actions at hazardous waste sites or other occupational settings where exposure to hazardous substances occurred. The first five categories of persons above may include children as well as adults.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, address, (including length of time at current address), telephone number, date of birth, Social Security number, sex, current and past occupations, dates, pathways and routes of toxic or hazardous substance exposure or potential exposure, smoking history, results of medical and laboratory tests, records on biological specimens (e.g. blood, urine, etc.), and related documents such as questionnaire responses. The specific type of records collected and maintained is determined by the needs of the individual registry or study.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

"Comprehensive Environmental Response, Compensation, and Liability Act of 1980" as amended by "Superfund Amendments and Reauthorization Act of 1986" (42 U.S.C. 9601, 9604); and the "Resource Conservation and Recovery Act of 1976" as amended in 1984 (42 U.S.C. 6901).

**PURPOSES:**

Records in this system are used to carry out the legislated environmental public health mandates of the Agency for Toxic Substances and Disease Registry (ATSDR). Specifically this information is used to: (1) Identify the public health threat caused by exposure to toxic and hazardous substances utilizing pilot studies, epidemiologic studies, and other health effects studies; and (2) establish and maintain national registries of persons exposed to toxic substances and persons with serious diseases and illnesses associated or potentially associated with exposure to toxic substances. Registries will have the additional purposes of tracking exposed individuals, keeping them informed of health effects of exposure, preventive measures and possible breakthroughs in treatment, along with serving as a centralized location for research data on these exposed individuals.

Records may be disclosed to the Center for Environmental Health and Injury Control, Centers for Disease Control, for laboratory analysis of samples and for collaborative efforts (i.e., providing staff, performing statistical analysis, etc.) in coordinating investigations. Records (i.e., name, Social Security number, date of birth) may be disclosed to the National Center for Health Statistics to obtain a determination of vital status. Death certificates with the cause of death will then be obtained from Federal, State, or local agencies to enable ATSDR (1) to determine whether excess mortality is occurring among individuals exposed to toxic or hazardous substances, and (2) to notify similarly exposed persons. Records may also be disclosed to the Social Security Administration for additional sources of locating information.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Records may be disclosed to Department of Health and Human Services contractors to locate individuals exposed or potentially exposed to toxic or hazardous substances (e.g., in the establishment of the National Exposure Registry), conduct interviews, perform medical examinations, collect and analyze biological specimens, evaluate and interpret data, and perform followup health investigations so that the research purposes for which the records are collected may be accomplished. The contractor must comply with the requirements of the Privacy Act with respect to such records.

2. Records may be disclosed to Federal agencies such as the Environmental Protection Agency (EPA), State and local health departments, and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with exposures to hazardous or toxic substances, and to satisfy mandatory reporting requirements when applicable.

3. Records (i.e., name, Social Security number) may be disclosed to other Federal agencies and to missing person location agencies to obtain information to aid in locating individuals involved in these studies.

4. Records may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identified form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

5. Disclosures may be made to a congressional office from the records of an individual, in response to a verified inquiry from the congressional office made at the written request of that individual.

6. In the event of litigation initiated by EPA in collaboration with ATSDR, ATSDR may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent ATSDR. The types of litigative proceedings that ATSDR may request include the recovery of expenses incurred in cleanup operations at Superfund or Resource Conservation and Recovery Act sites, including program and staff costs.

7. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders, computer tapes and disks (hard and floppy).

**RETRIEVABILITY:**

By name or Social Security number.

**SAFEGUARDS:**

The following special safeguards are provided to protect the records from inadvertent disclosure:

1. Authorized Users: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of ATSDR or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected. A list of authorized users will be maintained by the system manager.

2. Physical Safeguards. Questionnaires, log books, and other source data are maintained in locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC), fire extinguishers, overhead sprinkler system, and card-access control equipment in the mainframe computer room (Clifton Road facility), computer terminals, lockable personal computers, and automated records located in secured areas.

3. Procedural Safeguards: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, computer software to control access, frequently changed passwords, and Fault Management System.

Knowledge of individual tape passwords is required to access tapes, and acces to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. When possible, a backup copy of data is stored at an offsite location and a log kept of all changes to each file and all persons reviewing the file. Selected safeguards will be applicable to specific elements of the system, as appropriate. Additional safeguards may also be built into the program by the system analyst as warranted by the sensitivity of the specific data set.

ATSDR and contractor employees who maintain records are instructed in specific procedures to protect the security of records, and are to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either ATSDR or contractor sites is restricted to specifically authorized personnel.

Appropriate Privacy Act provisions are included in contracts and the ATSDR Project Director, contract officers, and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to ATSDR or destroyed, as specified by the contract.

4. Implementation Guidelines: The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 66, "Automated Information Systems Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B-Archives and Records.

**RETENTION AND DISPOSAL:**

ATSDR retains records in accordance with the CDC Records Control Schedule Item 37, which allows the system manager to keep the records for 20 years unless needed for further study. Registry records will be actively maintained as long as funding is provided for by legislation. Contractors will retain the records only as long as necessary to complete data collection and verify ATSDR's receipt of the data in usable form. Record copy of study reports is maintained in the agency from two to three years in accordance with retention schedules. Source documents for computer tapes or disks are disposed of when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate.

Records may be transferred to a Federal Records Center for storage when no longer needed for evaluation or analysis. Disposal methods include the paper recycling process, burning or shredding hard copy records, and erasing computer tapes and disks.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Health Assessment, Agency for Toxic Substances and Disease Registry, Chamblee Building 28N, 1600 Clifton Road, Atlanta, GA 30333;

Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee Building 28S, 1600 Clifton Road, Atlanta, GA 30333;

Policy coordination is provided by: Deputy Associate Administrator, Agency for Toxic Substances and Disease Registry, Chamblee Building 29, 1600 Clifton Road, Atlanta, GA 30333.

**NOTIFICATION PROCEDURES:**

An individual may learn if a record exists about himself/herself by contacting the appropriate system manager at the address above. Persons who knowingly and willfully request or acquire a record pertaining to an individual under false pretenses are subject to criminal prosecution. Requesters in person must provide photo identification (such as driver's license) or other positive identification that would authenticate the identity of the individual making the request. Individuals who do not appear in person must submit a request which has been notarized to verify their identity. A parent or guardian who requests notification of, or access to, a minor's medical record must provide a birth certificate (or notarized copy), court order, or other competent evidence of guardianship. An individual who requests notification of, or access to, a medical record shall at the time the request is made, designate in writing a responsible representative (who may be a physician, other health profcssional, or other responsible individual) who will be willing to review the record and inform the subject individual of its

contents at the representative's discretion.

In addition, the following information should be provided when requesting notification: (1) Full name and Social Security number; (2) nature of the study, or probable exposure or disease subregistry which might include the requester.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may also be requested.

**CONTESTING RECORD PROCEDURES:**

Contact the system manager at the address specified above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Subject individuals, families of deceased individuals, concerned citizens associated with a particular site, State and local health departments, physican records, hospital records, Social Security Administration, Environmental Protection Agency and other agencies responsible for environmental public health.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 88-18326 Filed 8-12-88; 8:45 am]

BILLING CODE 4160-76-M

## Privacy Act Of 1974; New System of Records

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notification of a new system or records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to create a new system or records, 09-17-0003, "Indian Health Service Medical Staff Credentials and Privileges Records; HHS/IHS/OHP." We are also proposing routine uses for this new system.

**DATES:** PHS invites interested persons to submit comments on the proposed new system of records on or before September 14, 1988. PHS has sent a Report of A New System of Records to the Congress and to the Office of Management and Budget (OMB) on August 8, 1988. The new system of records will be effective 60 days from the date submitted to OMB, unless PHS receives comments which result in a contrary determination.

**ADDRESS:** Address comments to the IHA Privacy Act Coordinator, Department of Health and Human Services, Room 6A-30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m.-5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Olson, Office of Health Programs, Indian Health Service, Room 6A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-4644. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Indian Health Service (IHS) proposes to establish a new system of records. Records will be maintained in this system to ensure that members of IHS medical staffs are qualified, competent and capable of delivering quality health services consistent with those of the medical community at large. A medical staff includes physicians (M.D. and D.O.) and dentists and may include other health care practitioners such as psychologists, optometrists, podiatrists, audiologists, and in some states, certified nurse midwives. Personnel included are those who have applied for active, provisional, temporary or courtesy membership on an IHS medical staff as IHS employees or under contract to IHS. Records of current and former members of the IHS medical staff will be included in this system of records. Included in the proposed system will be records of personnel who have applied for specific IHS medical staff privileges and the recommendations of specific IHS medical staff members concerning these applications.

These records will be used by IHS staff (i.e., Clinical Directors and Credentials and Privilege Committee at each Service Unit, Governing Body and Physician and other Health Professions Recruiters at IHS Area Offices) to make recommendations with regard to retention, promotion, transfer, reassignment and release of IHS medical staff. Through use of these records the credentials and privileges of IHS medical staff will be evaluated, re-evaluated and re-certified on a recurring and standardized basis.

The confidentiality of all records contained in this system of records will be strictly maintained. The following safeguards will be introduced into the operation of this system of records. Access will be limited to authorized personnel for use in the performance of their official duties. (Authorized personnel include: Physician and other Health Professions Recruitment Branch staff and Area Governing Board Members at IHS Area Offices, Service Unit Directors, Clinical Directors and members of the Credentials and Privileges Committees of each IHS Service Unit). At each location where records in this system will be maintained, a list of personnel or catetories of personnel having a demonstrable need for access to the records in the performance of their official duties will be developed and maintained. In addition, physical and procedural safeguards (as specified in the proposed system notice) will be in place to maintain the confidentiality of records contained in this system. Thus, only those IHS employees who have assigned responsibilities for carrying out the system's purpose of ensuring that IHS medical staff are qualified, competent, and capable of delivering quality health services to the population served will be granted access to these records.

The Privacy Act of 1974 permits disclosure of information without the consent of the subject individual for "routine uses," that is, disclosure for purposes which are compatible with the purposes for which the data are collected. Accordingly, we are establishing seven routine uses for information in this system. The relationship between each of these seven routine uses to the purpose of the system follows.

The first routine use provides for disclosure to organizations authorized to conduct evaluation studies concerning the delivery of health care services by the Indian Health Service. Thus, disclosure may be made to organizations such as the Joint Commission on the Accreditation of Healthcare Organizations to evaluate the adequacy or effectiveness of the IHS health care delivery program.

The second routine use provides for disclosure to an entity which maintains records relating to the issuance, retention or revocation of licenses or registrations necessary to practice a health prefessional occupation or specialty. The purpose of this disclosure is to inform health profession licensing boards or other appropriate entities about the health care practices of a current, terminated, resigned, or retired IHS medical staff member whose professional health care activity so

significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of members of the general public. This will be done within the guidelines for notice, hearing, and review as delineated in the medical staff bylaws of the IHS facility.

The third routine use provides for disclosure to references provided by IHS medical staff applicants for the purpose of evaluating the applicants' professional qualifications, experience, and suitability, and disclosure to an entity for the purpose of verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing.

The fourth routine use provides for disclosure to other Federal agencies, to State and local governmental agencies and to organizations in the private sector to which the subject individual has applied for clinical privileges, membership or licensure for the purpose of documenting the qualifications and competency of the subject individual to provide health services in his/her health profession based on the individual's professional performance while employed by the IHS.

The fifth routine use provides for disclosure to the Department of Justice for litigation purposes when HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

The sixth routine use provides for disclosure to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event that a system of records maintained by the IHS to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the seventh routine use provides for the disclosure of the relevant records to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

For the reasons stated above, IHS believes that the routine uses of this system of records are compatible with the purpose of this system of records. The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the notice becomes effective.

Dated: August 9, 1988.

**Wilford J. Forbush,**

*Deputy Assistant Secretary for Health Operations and Director, Office of Management.*

**09-17-0003**

**SYSTEM NAME:**

Indian Health Service Medical Staff Credentials and Privileges Records, HHS/IHS/OHP.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Each Indian Health Service (IHS) Area Office and each IHS Service Unit (Appendix 1).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Prospective, current and former Indian Health Service (IHS) medical staff members. The term IHS medical staff includes fully licensed individuals permitted by law to provide patient care services independently and without concurrent professional direction or supervision, within the scope of his/her license and in accordance with individually granted clinical privileges. The IHS medical staff includes physicians (M.D. and D.O.) and dentists and may include other health care practitioners such as psychologists, optometrists, podiatrists, audiologists, and, in some states, certified nurse midwives.

Types of assignment categories of current and former IHS medical staff members include the following:

Provisional—Those new members of the medical staff who are serving a required initial probationary period, as specified in the local medical staff bylaws. During this time, their qualifications for membership on the active or courtesy IHS medical staff are assessed.

Active—Those members who are either IHS employees or employees of P.L. 93-638 Tribal Contractors who spend at least 50 percent of their professional time within the IHS facility and/or IHS Service Unit. They have served their probationary period and have been found to be fully qualified for membership on the IHS medical staff.

Temporary—Those members who provide services on a short-term basis.

Courtesy or Associate—Those members who generally provide services on a periodic or episodic basis (e.g., specialty clinics) and are usually not IHS employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains name, Social Security Number, IHS medical staff membership and privileges applications and associated forms, employment data, liability insurance coverage, credentialing history of licensed health professionals, personal, educational, and demographic background information, professional performance information consisting of continuing education, performance awards, and adverse or disciplinary actions, and evaluations and approvals completed by IHS medical staff reviewers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Indian Self Determination and Education and Assistance Act (25 U.S.C. 450), Snyder Act (25 U.S.C. 13), Indian Health Care Improvement Act (25 U.S.C. 1601 et. seq.), Indian Health Service Transfer Act (42 U.S.C. 2001-2004).

**PURPOSE(S):**

The purposes of this system are:

1. To ensure that IHS medical staff members are qualified, competent and capable of delivering quality health services consistent with those of the medical community at large and that they are granted privileges commensurate with their training and competence and with the ability of the facility to provide adequate support equipment, services, and staff.

2. To inform health care practitioner(s) and staff of health care facilities, state or county health professional societies or licensing boards to whom the subject individual may apply for clinical privileges, membership or licensure, of the subject individual's professional competence, character and ethical qualifications. This may include information regarding drug or alcohol abuse or dependency. Within the Department such releases may be made to personnel staffs of DHHS Regional Offices.

3. To provide adverse health care practice information to the data bank established under Title IV of Pub. L. 99-660, the Health Care Quality Improvement Act of 1986. The purpose of such a release is to provide information concerning a current or former IHS medical staff member whose professional health care activity failed to conform to generally accepted

standards of professional medical practice.

4. To provide health care practice information concerning current or former members of the IHS medical staff with Commissioned Corps status to the Division of Commissioned Personnel, U.S. Public Health Service, so that an informed decision may be made concerning the promotion, retention, or reassignment of the subject individual.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Records may be disclosed to organizations authorized to conduct evaluation studies concerning the delivery of health care services by the Indian Health Service (e.g., Joint Commission on the Accreditation of Healthcare Organizations).

2. IHS may disclose records consisting of name, Social Security Number, employment history and any professional qualification information concerning medical staff membership and privileges, professional competence, clinical judgment and personal character to a State or local government health profession licensing board, to the Federation of State Medical Boards, to the data bank established under Title IV of Pub. L. 99–660 and/or to a similar entity which has the authority to maintain records concerning the issuance, retention or revocation of licenses or registrations necessary to practice a health professional occupation or specialty. The purpose of this disclosure is to inform medical profession licensing boards and appropriate entities about the health care practices of a current, terminated, resigned, or retired IHS medical staff member whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of members of the general public. This will be done within the guidelines for notice, hearing, and review as delineated in the medical staff bylaws for the IHS facility and/or within other HHS or IHS regulations or policies.

3. IHS may disclose biographic data and information supplied by potential applicants to (a) references listed on the IHS medical staff and/or privileges application and associated forms for the purpose of evaluating the applicant's professional qualifications, experience, and suitability, and (b) a State or local government health profession licensing board, to a health-related professional organization, to the Federation of State Medical Boards, and to the data bank established under Title IV of Pub. L. 99–660 or a similar entity for the purpose of verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing.

4. Records may be disclosed to other Federal agencies (including the Office of Personnel Management for subject individuals applying for or maintaining Civil Service appointments), to State and local governmental agencies, and to organizations in the private sector to which the subject individual applies for clinical privileges, membership or licensure for the purpose of documenting the qualifications and competency of the subject individual to provide health services in his/her health professional based on the individual's professional performance while employed by the IHS.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof, or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. Records may disclosed to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

7. In the event that a system of records maintained by the IHS to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders.

**RETRIEVABILITY:**

Indexed and retrieved by name, Social Security Number, and any other identifying numbers necessary to establish the identity of an individual whose record is maintained in the system of records.

**SAFEGUARDS:**

1. Authorized Users:

Access is limited to authorized personnel for use in the performance of their official duties. Authorized personnel include: Physician Recruitment and other Health Professions Branch Staff and Area Governing Board Members at IHS Area Offices, and Service Unit Directors, Clinical Directors and members of the Credentials and Privilege Committee of each IHS Service Unit. At each location where records in this system will be maintained, a list of personnel or categories of personnel having an official need-to-know has been developed and is maintained.

2. Physical Safeguards:

Records are kept in locked metal filing cabinets or in locked desk drawers in secured rooms at all times when not actually in use during working hours and at all times during non-working hours. Record storage areas, including file cabinets and desks, are not left unattended or unlocked during office hours, including lunch hours.

3. Procedural Safeguards:

Persons who have an official need-to-know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records and to destroy all copies or to return such records when the need to know has expired. Instructions include the statutory penalties for noncompliance. Proper charge-out procedures are followed for the removal of records from the area in which they are maintained. Before an employee who will control disclosure of records can work with the records (i.e., employees who report to the system manager) the system manager or designee ensures that the employee has received training in the safeguards applicable to the records and is aware of the actions to take to restrict disclosure. When copying records for authorized purposes, care is taken to ensure that any imperfect pages are not left in the reproduction room where they

can be read but are destroyed or obliterated.

4. Implementation Guidelines:

DHHS Chapter 45–13 and supplementary Chapter PHS.hf:45–13 of the General Administration Manual.

**RETENTION AND DISPOSAL:**

Records are maintained by IHS for at least five years after the individual's termination of employment or association with IHS. Records of unsuccessful applicants for medical staff membership will be retained for three years after his/her rejection. After these periods of retention expire, records are destroyed by shredding or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

See Appendix 1.

Policy Coordinating Official: Director, Patient Care Professional Affairs and Support IHS, 5600 Fishers Lane, Room 6A–55, Rockville, Maryland 20857.

The IHS Clinical Directors at all IHS Service Units listed in Appendix 1 are System Managers. The original IHS medical staff credentials and privileges files are stored at these locations. Other addresses listed in Appendix 1 are locations at which copies of all or parts of these records may be stored (Physician Recruiter at IHS Area Offices). Post Office Box designations appearing in Appendix 1 should be specified when making requests by mail.

**NOTIFICATION PROCEDURE:**

Requests must be made to the appropriate System Manager (Clinical Director for the appropriate Service Unit) listed in Appendix 1.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain, at a minimum, the name, signature, Social Security Number, and address of the requester, and for unsuccessful applicants the date when the application was submitted, and for current or former IHS health care providers the dates and locations of service.

We may request additional identification when we hold records for different persons with the same name or where an apparent discrepancy exists between information contained in the record and that provided by the individual requesting access to the record.

Other names used: Where an individual is seeking to obtain information about himself/herself which may be retrieved by a different name than his/her current name, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks.

Requests in person: A subject individual who appears in person at a specific location (where he or she currently works or formerly worked) seeking access or disclosure of records contained in this system of records relating to him/her shall provide the information described in "Requests by mail" (above) and at least one piece of tangible identification such as a driver's license or passport.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

**RECORD ACCESS PROCEDURES:**

Same as Notification Procedure. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their records, if any.

**CONTESTING RECORD PROCEDURES:**

Write to the appropriate Service Unit Clinical Director at the address specified in Appendix 1 and reasonably identify the record, specify the information being contested, and state the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Subject individual, IHS health care personnel, references supplied by the subject individual, professional societies or associations, specialty boards, colleges and universities attended by the subject individual, former employers, health facilities or health providers with which the subject individual was associated, liability insurance carriers, organizations providing cardiopulmonary resuscitation (CPR) training to the subject individual, State and local health and health care licensing or certifying organizations, and organizations which serve as repositories of information on health care professionals.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**Appendix 1—System Managers**

Director, Aberdeen Area Indian Health Service, Federal Building, 115 Fourth Avenue, SE. Aberdeen, South Dakota 57401
Clinical Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57701
Clinical Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625
Clinical Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763
Clinical Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335
Clinical Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770
Clinical Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570
Clinical Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262
Clinical Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538
Clinical Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316
Clinical Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071
Clinical Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner, South Dakota 57380
Clinical Director, Pierre Service Unit, Ft. Thompson Indian Health Center, Ft. Thompson, South Dakota 57339
Director, Bemidji Area Office, Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601
Clinical Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788
Clinical Director, Greater Leach Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633
Clinical Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671
Clinical Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591
Director, Alaska Area Native Health Service, 250 Gambell Street, Anchorage, Alaska 99510
Clinical Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, P.O. Box 7–741, Anchorage, Alaska 99510
Clinical Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723
Clinical Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752
Clinical Director Annette Island Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926
Clinical Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Service, Bethel, Alaska 99559
Director, Albuquerque Area Indian Health Service, 505 Marquette N.W. Suite 1502, Albuquerque, New Mexico 87102–0087
Clinical Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106

Clinical Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340
Clinical Director, Southern Colorado-Ute Service Unit P O. Box 778, Ignacio, Colorado 81137
Clinical Director, Zuni-Ramah Service unit, Zuni Indian Hospital, Zuni, New Mexico 87327
Clinical Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P O. Box 130, San Fidel, New Mexico 87049
Director, Billings Area Indian Health Service, P.O. Box 2143, Billings, Montana 59103
Clinical Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417
Clinical Director Crow Service Unit, Crow Indian Hospital Crow Agency, Montana 59022
Clinical Director Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865
Clinical Director Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526
Clinical Director Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255
Clinical Director Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514
Clinical Director, Northern Cheyenne Service Unit, Lame Deer Indian Health Center, Lame Deer, Montana 59043
Clinical Director, Rocky Boy's Service Unit, Rocky Boy's Indian Health Center, Box Elder, Montana 59521
Clinical Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515
Clinical Director, Chinle Service Unit, Chinle, Comprehensive Health Facility, P.O. Box P.H., Chinle, Arizona 86503
Clinical Director, Crownpoint Service Unit, Crownpoint Indian Hospital Crownpoint, New Mexico 87313
Clinical Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, Fort Defiance, Arizona 86504
Clinical Director, Gallup Service Unit, Gallup Indian Medical Center, Gallup, New Mexico 87301
Clinical Director, Kayenta Service Unit, Kayenta Indian Health Center, Kayenta, Arizona 86033
Clinical Director, Shiprock Service Unit, Shiprock Indian Hospital, Shiprock, New Mexico 87420
Clinical Director, Tuba City Service Unit, Tuba City Indian Hospital, Tuba City, Arizona 86045
Clinical Director, Winslow Service Unit, Winslow Indian Health Center, P.O. Box 40, Winslow, Arizona 86047
Director, Oklahoma City Area Indian Health Service, 215 Dean A. McGee Street NW., Oklahoma City, Oklahoma 73102–3477
Clinical Director, Ada Service Unit, Carl Albert Comprehensive Indian Health Facility, 1001 North Country Club Drive, Box 1564, Ada, Oklahoma 74820
Clinical Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, Claremore, Oklahoma 74017
Clinical Director, Clinton Service Unit, Clinton Indian Hospital, Clinton, Oklahoma 73601
Clinical Director, Kansas Service Unit, Holton Indian Health Center, Holton, Kansas 66436
Clinical Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501
Clinical Director, Pawnee Service Unit, Pawnee Indian Health Center, Pawnee, Oklahoma 74058
Clinical Director, Shawnee Service Unit, Shawnee Indian Health Center, Shawnee, Oklahoma 74801
Clinical Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981
Clinical Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12, Parker, Arizona 85344
Clinical Director, Fort Yuma Service Unit, Winterhaven Indian Hospital, P.O. Box 1368, Yuma, Arizona 85364
Clinical Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034
Clinical Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832
Clinical Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016
Clinical Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247
Clinical Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos, Arizona 85550
Clinical Director, Schurz Service Unit, Schurz Indian Hospital, Schurz, Nevada 89427
Clinical Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Fort Duchesne, Utah 84026
Clinical Director, Whiteriver Service Unit, Whiteriver Indian Hospital, Whiteriver, Arizona 85941
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2892
Clinical Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington 99155
Clinical Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203
Clinical Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapawai, Idaho 83540
Clinical Director, Warm Springs Service Unit, Warm Springs Indian Health Center, Warm Springs, Oregon 97761
Clinical Director, Puget Sound Service Unit, Kitsap Indian Health Center, 1212 South Judkins, Seattle, Washington 98144
Clinical Director, Yakima Service Unit, Yakima Indian Health Center, Route 1, Box 1104, Toppenish, Washington 98948
Clinical Director, Umatilla Service Unit, Yellowhawk Indian Health Center, P.O. Box 159, Pendleton, Oregon 97801
Clinical Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Clinical Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 418, Neah Bay, Washington 98357
Clinical Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225
Clinical Director, Wellpinit Service Unit, Wellpinit Indian Health Center, P.O. Box 391, Wellpinit, Washington 99040
Director, Tucson Area Office, Indian Health Serevice, P.O. Box 11340, Tucson, Arizona 85734
Clinical Director, Sells Service Unit, Sells Indian Hospital, Sells, Arizona 85634
Director, Nashville Area Office, Indian Health Service, Oak Towers Building, 1101 Kermit Drive, Suite 810, Nashville, Tennessee 37217–2191
Clinical Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719
Director, California Area Office, Indian Health Service, 2999 Fulton Avenue, Sacramento, California 95821

[FR Doc. 88–18327 Filed 8–12–88; 8:45 am]
BILLING CODE 4165–70–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. N–88–1843]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.
**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal

for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 8, 1988.

**David S. Cristy,**

*Deputy Director, Information Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Interim Rule Amending 24 CFR Part 970: Demolition/Disposition of Public Housing Projects (FR-2463).

*Office:* Public and Indian Housing.

*Description of the Need for the Information and its Proposed Use:* The interim rule amending 24 CFR Part 970 requires additional replacement housing plan requirements for Public Housing Agencies' (PHAs') applications for HUD approval of demolition/disposition of public housing units. This information will be used by HUD in application reviews.

*Form Number:* None.

*Respondents:* Individuals or Households, State or Local Governments, and Federal Agencies or Employees.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of Respondents | × | Frequency of Response | × | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| Application | 70 | | 1 | | 4 | | 280 |

*Total Estimated Burden Hours:* 280

*Status:* Revision.

*Contact:*

Wayne Hunter, HUD, (202) 755-6713
John Allison, OMB, (202) 395-6880

Dated: August 8, 1988.

[FR Doc. 88-18380 Filed 8-12-88; 8:45 am]

BILLING CODE 4210-01-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

**[Billing No. 6116-01]**

### Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to Guatemala as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Guatemala. Central Park of Guatemala has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

**Government of Guatemala**

Project: 520-HG-004—$10,000,000

Attention: Lic. Fernando Figueroa Amado, General Manager, Banco de Guatemala, 7a Avenida 22-01, Zona 1, Guatemala City, Guatemala, Telex No.: 5231 (answer back GUABAN-DU), Telefax No.: 202/22-85-09. Telephone No.: 502/28-16-35.

Interested investors should submit their bids to the Borrower's representative on August 24, 1988 no later than 5:00 p.m. New York Time. Bids should remain open for 48 hours. Copies of all bids should be simultaneously sent to the following:

Mr. Mario Pita, Assistant Director, Central America, RHUDO/Tegucigalpa, USAID/Tegucigalpa, APO Miami 34022, (street address: Edificio Castillo Poujol, Colonia Palmira, 4 Calle, #2401, Tegucigalpa, DC Honduras). Telephone No.: 504/32-2120. Telefax No.: 9-001-504-32027.

USAID/Guatemala, c/o American Embassy, Guatemala City, Guatemala, (street address: 7-01 Avenida de la Reforma, Zone 10). Telephone No.: 502/(2)31-15-41.

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N.S., Washington, DC 20523. Telex No.: 892703 AID WSA. Telefax No.: 202/647-4958 (preferred communication).

Each proposal should consider the following terms:

(a) *Amount:* U.S. $10 million.

(b) *Term:* Up to 30 years

(c) *Grace Period on Principal:* 10 years

(d) *Amortization:* 40 equal semi-annual principal payments.

(e) *Interest Rate:* Variable rate based on six-months U.S. Treasury Bills, with options of interest rate cap and options to convert to fixed rate.'

(f) *Draw Down:* Full disbursement expected by September 30, 1988.

(g) *Prepayment:* Proposals should include the option of prepayment of the loan by Borrower.

(h) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign

Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315, SA–18C, Washington, DC 20523. Telephone: 703/875–4808.

**William Gelman,**

*Acting Director, Agency for International Development, Office of Housing and Urban Programs.*

Date: August 11, 1988.

[FR Doc. 88–18524 Filed 8–12–88; 9:28 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AA–330–08–4211–02]**

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone number 202–395–7340.

*Title:* Right-of-Way Cost Recovery Procedures, 43 CFR 2808.

*Abstract:* Respondents supply identifying information and data on monetary value of the rights and privileges sought by the applicant, costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, and public services provided which are necessary to determine who may be entitled to a set-off against reimbursement of costs to the government.

*Bureau Form Number:* None Required.

*Frequency:* Once from about 17 applicants per year.

*Description of Respondents:* Right-of-way applicants for which the authorized officer determines that the Bureau's application processing activities will require gathering of original data to comply with the National Environmental Policy Act and other statutes, and three or more field examinations.

*Annual Responses:* 17.

*Annual Burden Hours:* 850.

*Estimated Average Completion Time:* 50 hours.

*Bureau Clearance Officer:* Rick Iovaine 202–653–8853.

Dated: August 2, 1988.

**Dean E. Stepanek,**

*Assistant Director, Land and Renewable Resources.*

[FR Doc. 88–18336 Filed 8–12–88; 8:45 am]

BILLING CODE 4310–84–M

**[AAA220–08–4322–02]**

### Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone (202) 395–7340.

*Title:* Actual Grazing Use Report, 43 CFR 4130.1–2.

*OMB Approval Number:* 1004–0051.

*Abstract:* This form is used by permittees to provide information on the actual amount of livestock grazing use made on the public lands within a specified time to the Bureau of Land Management for billing purposes and resource monitoring.

*Bureau Form Number:* 4130–5.

*Frequency:* Annually.

*Description of Respondents:* Grazing permittees required to report actual livestock use on the public lands.

*Estimated Completion Time:* 24 minutes.

*Annual Responses:* 15,000.

*Annual Burden Hours:* 6,000.

*Bureau Clearance Officer (alternate):* Rick Iovaine (202) 653–8853.

Dated: August 4, 1988.

**Dean Stepanek,**

*Assistant Director, Renewable Resources.*

[FR Doc. 88–18337 Filed 8–12–88; 8:45 am]

BILLING CODE 4310–84–M

**[AA220–08–4322–02]**

### Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management (BLM) Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone (202) 395–7340.

*Title:* Grazing Application—Grazing Schedule, 43 CFR 4130.1.

*OMB Approval Number:* 1004–0005.

*Abstract:* This form is used by permittees to apply for annual authorization to graze livestock on the public lands.

*Bureau Form Number:* 4130–1.

*Frequency:* Annually.

*Description of Respondents:* Applicants requesting authorization to graze livestock on the public lands.

*Estimated Completion Time:* 20 minutes.

*Annual Responses:* 6,000.

*Annual Burden Houres:* 2,000.

*BLM Clearance Officer (alternate):* Rick Iovaine (202) 653–8853.

Dated: August 4, 1988.

**Dean Stepanek,**

*Assistant Director, Renewable Resources.*

[FR Doc. 88–18338 Filed 8–12–88; 8:45 am]

BILLING CODE 4310–84–M

[AA220-08-4322-02]

## Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau's clearance officer and and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

*Title:* Cooperative Agreements for Range Improvements, 43 CFR 4120.3-2.

*OMB Approval Number:* 1004-0068.

*Abstract:* Respondents supply information to obtain authority to construct and/or maintain range improvements on the public lands in cooperation with Bureau programs.

*Bureau Form Number:* 4120-6.

*Frequency:* Occasionally.

*Description of Respondents:* Permittees or lessees authorized to graze livestock on the public lands.

*Estimated Completion Time:* 10 minutes.

*Annual Responses:* 600.

*Annual Burden Hours:* 102.

*Bureau Clearance Officer (alternate):* Rick Iovaine (202) 653-8853.

Dated: August 4, 1988.

**Dean Stepanek,**

*Assistant Director, Renewable Resources.*

[FR Doc. 88-18339 Filed 8-12-88; 8:45 am]

BILLING CODE 4310-84-M

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## Fish and Wildlife Service

### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-720930

*Applicant:* Gibbon and Gallinaceous Bird Center, Saugus, CA

The applicant requests an amendment to a previously-issued permit to import one newborn dark-handed gibbon (*Hylobates agilis*) from the Perth Zoo, Australia. This animal is the offspring of a pair of gibbons that were previously authorized for import.

PRT-730152

*Applicant:* National Wildlife Health Research Cntr, U.S. Fish & Wildlife Service, Madison, WI

The applicant requests a permit to import serum, blood smears, cloacal and tracheal swabs, fecal samples and ectoparasites collected from captive live cranes and fixed or frozen tissues samples from cranes that died. The speciemens will be imported from the Moscow Zoo and Okisky Preserve, USSR. Cranes from which the samples will be obtained are the following: Manchurian crane (*Grus japonensis*), Siberian crane (*G. leucogeranus*), hooded crane (*G. monacha*), black-necked crane (*G.nigricollis*) and white-naped crane (*G. vipio*). the specimens will be tested for evidence of exposure to or presence of avian disease agents. Fixed tissues will be used for histopathology to determine cause of death.

PRT-730276

*Applicant:* Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to import one captive born female tiger (*Panthera tigris*) from Parc Safari, Quebec, Canada, for breeding and exhibition purposes. This tiger is the result of a breeding loan agreement between applicant and Parc Safari. It will be used in applicant's own breeding program and will be exported/re-imported for exhibition purposes.

PRT-730153

*Applicant:* Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import one pair of captive born cheetahs (*Acinoyx jubatus*) from the De Wildt Cheetah Research Centre, De Wildt, South Africa, for purposes of scientific research, propagation, exhibition, and education.

PRT-730325

*Applicant:* Dr. Neil Carey, San Diego, CA

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. E.L. Pringle, Huntley Glen, Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-730327

*Applicant:* International Animal Exchange, Inc., Ferndale, MI

The applicant requests a permit to export one male and two female captive-born Andean condors (*Vultur gryphus*) to the Nagasaki Biopark, Nagasaki, Japan, for purposes of public display and possible captive breeding.

PRT-730329

*Applicant:* International Wildlife Veterinary Services, Orangevale, CA

The applicant requests a permit to import serum samples taken from black rhinos (*Diceros bicornis*) captured for relocation in Zimbabwe. The samples are to be imported for purposes of scientific research.

PRT-730352

*Applicant:* Philadelphia Zoological Garden, Philadelphia, PA

The applicant requests a permit to purchase in foreign commerce and import on male captive-born drill *(Papio leucophaeus)* held Hannover Zoo, Hannover, West Germany for enhancement of propagation and survival of the species.

PRT-730381

*Applicant:* New York Zoological Society, Bronx, NY

The applicant requests a permit to import frozen plasma samples taken from giant pandas (*Ailuropoda melanoleuca*) held in captivity at Calgary Zoo, Calgary, Canada for analyses of nutritional deficiencies and development of optimal diet, thereby enhancing the propagation and survival of the species.

PRT-730364

*Applicant:* Zoo Atlanta, Atlanta, GA

The applicant requests a permit to import 2 male and 2 female captive white collared (sooty) mangabeys (*Cercocebus torquatus torquatus*) from Zoologischer Garten Hannover, Hannover, West Germany for the purposes of propagation and exhibit. One male and one female are of unkonwn origin and one male and one female were born at Hannover Zoo.

PRT-730447

*Applicant:* U.S. Fish & Wildlife Service, Patuxent Wildlife Research Center, Laurel, MD

The applicant requests a permit to sacrifice 10 wild-caught masked bobwhites (*Colinus virginianus ridgwayi*) that were imported from Mexico in 1986. The applicant proposes to sacrifice the birds for genetic studies that will be carried out at the University of Texas System Cancer Center, Smithville, Texas, by Dr. Donald Morizot.

PRT-730473

*Applicant:* Alfred Cito, Staten Island, NY

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. Frank Bowker,

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Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-730471

*Applicant:* Edmond Wolf Sancturary, Edmond, OK

The applicant requests a permit to purchase three captive born male wolf (*Canis lupus*) cubs from Mr. Jim Rieder, Timber Wolf Preservation Society, Inc., of Greendale, Wisconsin, for the purpose of educational display.

PRT-730378

*Applicant:* Martin Rigoletti, Jr., Denville, NJ

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive-herd maintained by F.W.M. Bowker Jr. Thornkloof, Grahamstown, Rupblic of South Africa, for the purpose of enhancement of survival of the species.

PRT-703575

*Applicant:* Moscow Circus (Soyuzgoscirk), c/o Circus Productions, inc., New York, NY

The applicant requests a permit to import and reexport 21 captive-born tigers (*Panthera tigris*) from the Soviet Union via Canada for the purpose of exhibition and conservation education. The circus proposes to tour the United States then return to the Soviet Union early in 1989.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375, K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: August 11, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 88-18408 Filed 8-12-88; 8:45 am]

BILLING CODE 4310-AN-M

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## Minerals Management Service

### Outer Continental Shelf Advisory Board; South Atlantic Regional Technical Working Group

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of Meeting of South Atlantic Regional Technical Working Group Committee.

**SUMMARY:** The Atlantic Outer Continental Shelf (OCS) Region has scheduled a meeting of its South Atlantic Regional Technical Working Group (SARTWG) Committee. The meeting agenda includes the following topics:

**September 7, 1988**

Election of State Cochair
Summary of State OCS-Related Programs and Activities
Status of Proposed Exploratory Well
Sale 108 (South Atlantic) Area Identification
MMS Environmental Studies Program
MMS Participation on the Oil Spill Response Team
State Environmental Studies Programs Impacting on the Federal Offshore Leasing Program

**September 8, 1988**

Recent Developments in Nonenergy Minerals Activities in the South Atlantic
The Role of the RTWG in the Federal Nonenergy Minerals Program
Public Comment

**DATES:** September 7-8, 1988.

**ADDRESSES:** The meeting will begin at 9 a.m. at the following: Radisson Plaza Hotel Raleigh, 420 Fayetteville Street Mall, Raleigh, North Carolina 27601

The Atlantic OCS Region is at the following location: Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

**FOR FURTHER INFORMATION CONTACT:** Marsha Polk, RTWG Coordinator, Atlantic OCS Region, at the Virginia address above; telephone (703) 285-2165, (FTS) 285-2165.

**SUPPLEMENTARY INFORMATION:** The SARTWG is part of the OCS Advisory Board and was established to advise the Minerals Management Service (MMS) Director on technical matters of regional concern regarding offshore prelease and postlease sale activities in the South Atlantic. The SARTWG membership consists of representatives from Federal Agencies, the Coastal States of Virginia through Florida, the petroleum industry, and other private interests.

(Federal Advisory Committee Act (Pub. L. No. 92-463))

Date: August 5, 1988.

**Bruce G. Weetman,**

*Regional Director, Atlantic OCS Region.*

[FR Doc. 88-18335 Filed 8-12-88; 8:45 am]

BILLING CODE 4310-MR-M

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## National Park Service

### Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, Telephone 202-395-7313.

*Title:* Special Use Permit.

*Abstract:* The National Park Service uses the Special Use Permit to document and authorize special uses of public land that are otherwise restricted. Permits are necessary to determine whether a proposed activity is authorized by law and to evaluate the potential effects on park resources.

*Bureau Form Number:* 10-114.

*Frequency:* On occasion.

*Description of Respondents:* Individuals or households, businesses, or organizations.

*Annual Responses:* 496,975.

*Annual Burden Hours:* 138,933.

*Bureau Clearance Officer:* Russell K. Olsen, 202-523-5133.

**Russell K. Olsen,**

*Information Collection Clearance Officer.*

[FR Doc. 88-18379 Filed 8-12-88; 8:45 am]

BILLING CODE 4310-70-M

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## Bureau of Reclamation

## Department of Agriculture

## Soil Conservation Service

### Colorado River Water Quality Improvement Program, Price-San Rafael Rivers Salinity Control Unit, UT

**AGENCY:** Bureau of Reclamation, Interior, Soil Conservation Service USDA.

**ACTION:** Notice of intent to prepare a joint Draft Enviromental Impact Statement.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Department of the Interior and the Department of Agriculture intend to prepare a joint

Draft Environmental Impact Statement (DEIS) for the Price-San Rafael River Unit of the Colorado River Water Quality Improvement Program. Reclamation will also integrate the DEIS with a planning report for the salinity control unit. The DEIS will address the environmental impacts of and the alternatives to reducing salt loading to the Colorado River through irrigation systems improvements.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Reclamation contact for this DEIS is Larry W. Fluharty, Chief, Planning Division, Bureau of Reclamation, Utah Projects Office, P.O. Box 1338, Provo, Utah 84603, telephone (801) 379–1155.

The Soil Conservation Service contact for the DEIS is Gary R. Gross, Assistant State Conservationist, Soil Conservation Service, Utah State Office, P.O. Box 11350, Salt Lake City, Utah 84147, telephone (801) 524–5054.

**SUPPLEMENTARY INFORMATION:**

The Price-San Rafael River Unit is located in east-central Utah, 120 miles southeast of Salt Lake City, encompassing Carbon and Emery counties. The Price and San Rafael Rivers and their tributaries deliver approximately 425,000 tons of salt annually to the Colorado River. Of this amount approximately 60 percent is the result of deep percolation or irrigation water into salt-bearing ground formations. This salt causes economic problems for municipal, industrial, and agricultural water users downstream. The purpose of the Price-San Rafael Rivers Unit is to decrease this salt loading in a cost-efficient manner.

Numerous alternatives have been evaluated for the unit including irrigation systems improvements, using irrigation return flows for powerplant cooling, treatment of disposal of return flows, using return flows for other industrial purposes, selective withdrawal and treatment or disposal of return flows, retiring farmland, using fresh water for other beneficial purposes, and no Federal action. Of these alternatives, all but the Irrigation Systems Improvements and No Federal Action Alternatives were determined to be nonviable and have been eliminated from further consideration.

Prior to 1986 the Bureau of Reclamation and the Soil Conservation Service were independently investigating methods of reducing salt loading within the study area. However, in March 1986, it was determined that greater effectiveness and economic efficiency could be achieved by both agencies jointly developing a salinity control project.

The Irrigation Systems Improvement Alternative would reduce deep percolation of irrigation water through development of more efficient irrigation systems. Under the alternative, pressurized sprinkler irrigation systems would be developed to serve approximately 26,600 acres of presently irrigated farmland. Additionally, surface irrigation improvements would be developed for 10,000 acres of existing farmland. Canal seepage due to winter water practices could be eliminated by providing winter for livestock through existing culinary systems, enlarging and lining existing stockponds in remote areas, making improvements to the existing Cottonwood Creek livestock watering system to improve its reliability, and constructing a pipeline to deliver raw water to the Orangeville and Castledale water treatment plants. Implementation of these measures would reduce salt loading by about 100,000 tons per year.

Measures to replace lost wildlife habitat caused by off-farm developments would be provided by Reclamation by development of new habitat in the vicinity of Three Forks on the San Rafael Rivers. Measures to replace lost wildlife habitat onfarm would be provided voluntarily by individual farmers in accordance with the Colorado River Salinity Control Act of 1974 (Pub. L. 93–320) and as amended (Pub. L. 98–569) in 1984.

The Bureau of Reclamation and the Soil Conservation Service have each conducted their own separate scoping activities for the DEIS. No further formal scoping activities are planned.

The DEIS is scheduled to be circulated for public review during the summer of 1989.

Dated: August 5, 1988.

**Joe D. Hill,**

*Deputy Commissioner of Reclamation.*

Dated: August 1, 1988.

**Norman W. Priest,**

*Deputy State Conservationist, Soil Conservation Service.*

[FR Doc. 88–18346 Filed 8–12–88; 8:45 am]

BILLING CODE 4310–09–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–290 (Sub-NO. 13X)]**

### Southern Railway Co.; Exemption for Abandonment Between Troutman and Statesville, NC

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.43-mile line of railroad between milepost 0–39.07 at Troutman, NC and milepost 0–42.5 at Statesville, NC.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 14, 1988 (unless stayed pending reconsideration). Petitions to say regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c) [2] must be filed by August 25, 1988, and petitions for reconsideration, including environmental energy, and public use concerns, must be filed by September 4, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: F. Blair Wimbush, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contain false or misleading information, use of the exemption is void *ab initio.*

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by party or by the Section of Energy and Environment in its indepent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Abandonments of Discontinuance—Offers of Financial Assistance,* 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 48440–48446).

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 20, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 8, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88–18263 Filed 8–12–88; 8:45 am]

BILLING CODE 7035-01-M

## NATIONAL SCIENCE FOUNDATION

### Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 14, 1988. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers at the above address or (202) 357–7934.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the Federal Register on June 21, 1988.

The application received is as follows:

1. *Applicant:* Gerald L. Kooyman, Physiological Research Laboratory, University of California, San Diego, La Jolla, California 92093.

*Activity for Which Permit Requested*

Taking; Import into the U.S.A. The applicant is conducting a study of diving physiology in vertebrates. The applicant proposes to collect Emperor penguins and Weddell seals, attach blood and muscle electrodes, temperature thermistors, ECG electrodes, and microprocessor/recorders. After the experiments the instrumentation will be removed and the animals will be released.

In a second set of experiments, the applicant proposes to collect four live Emperor penguin chicks and return the specimens to the Sea World laboratories in San Diego. The birds will be used in studies of the energetics, hydrodynamics and physiology of graded swimming exercises. The birds will be held at the Sea World penguin facility after the experiments.

*Location:* McMurdo Sound, Antarctica.

*Dates:* October 1988—February 1989.

Charles E. Myers,

*Permit Office.*

[FR Doc. 88–18334 Filed 8–12–88; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on September 1, 1988, Room P–110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, September 1, 1988—8:30 a.m. Until the Conclusion of Business*

The Subcommittee will discuss the Staff's proposed implementation plan for the Safety Goal Policy Statement.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 8, 1988.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 88–18385 Filed 8–12–88; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 30–08463; License No. 29–15035–01; EA 88–97**

### Bridgeton Hospital; Order Imposing Civil Monetary Penalties

I

Bridgeton Hospital, Bridgeton, New Jersey 08302 (the "licensee") is the holder of License No. 29–15035–01 (the "license") issued by the Nuclear

Regulatory Commission (the "Commission" or "NRC") which authorizes the medical use of byproduct material by the licensee. The license was issued on March 29, 1972, was most recently renewed on February 18, 1988, and is due to expire on March 31, 1993.

II

An NRC safety inspection of the licensee's activities under the license was conducted on March 25 and 28, 1988. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated May 13, 1988. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the civil penalty amount of each of the violations. Two responses, both dated June 7, 1988, to the Notice of Violation and Proposed Imposition of Civil Penalty, were received from the licensee.

III

Upon consideration of the answers received, the statements of facts, explanations, and arguments for remission or mitigation of the proposed civil penalty contained therein, and as set forth in the Appendix to this Order, the Deputy Executive Director for Regional Operations has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of One Thousand Two Hundred and Fifty Dollars ($1,250) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this order, request a hearing. A request for a hearing shall be clearly marked as a "Request for Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region I.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 29th day of July 1988.

**James M. Taylor,**

*Deputy Executive Director for Regional Operations.*

**Appendix—Evaluation and Conclusion**

On May 13, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty was issued for violations of a license issued to Bridgeton Hospital. The licensee responded to the Notice by two letters, dated June 7, 1988, and admits the violations, but requested a complete waiver of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's responses are as follows:

*I. Restatement of Violations*

A. 10 CFR 71.5(a) requires that each licensee who delivers any licensed material to a carrier for transport to comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170–189.

49 CFR 172.403 and 49 CFR 172.200, respectively require, that (1) unless excepted from labelling by §§ 173.421 through 173.425, each package of radioactive material shall be labelled with a Radioactive White-I, Radioactive Yellow-II, or Radioactive Yellow-III label as appropriate; and (2) the material offered for transport shall be described on the shipping paper.

Contrary to the above, from January 1986 to March 25, 1988, packages containing approximately 225 millicuries of molybdenum-99 in used molybdenum-99/technetium-99m generators were shipped on a weekly basis to the manufacturer (E.I. Dupont—NEN Products), and these packages, which were not excepted from labelling in accordance with §§ 173.421–173.425 of 49 CFR:

1. Did not have affixed an appropirate label indicating the radiation level at the surface of the package and transport index in accordance with 49 CFR 172.403; and

2. Were incorrectly described on the shipping paper as "Empty".

B. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the regulations of Part 20, and are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, on March 25, 1988, and for an indeterminate period prior to that date, a survey was not made to assure compliance with 10 CFR 20.301, which describes authorized means of disposing of licensed material contained in waste. Specifically, during that time, such material located in the Nuclear Medicine Department was surveyed at the end of each day, but the waste material was routinely not picked up until the following day. As a result, the waste materials added subsequent to the survey but prior to the pickup were not surveyed to assure that licensed material was disposed of in a manner authorized by 10 CFR 20.301.

C. 10 CFR 35.51(c) requires that each survey instrument be checked for proper operations with a dedicated check source each day of use.

Contrary to the above, on March 25, 1988, technologists in the Nuclear Medicine Department did not properly check their Ludlum Model 14C and Victoreen survey instruments for proper operation prior to use in that the checks were made to ensure that the instrument needle moved, but did not ensure that the needle indicated the appropriate check reading. Further, the checks of the Ludlum instrument were performed with the wrong source.

D. 10 CFR 35.204(b) requires that the molybdenum-99 concentration in each eluate or extract be measured by a licensee who uses molybdenum-99/technetium-99m generator for preparing a technetium-99m radiopharmaceutical.

Contrary to the above, from February 1985 to March 25, 1988, the molybdenum-99 concentration in each eluate from the molybdenum-99/technetium-99m generator was not properly measured in that the dose calibrator was set incorrectly during the assay. Specifically, the dose calibrator should have been set for "030" and the

results multiplied by 3.5, as specified by the manufacturer; however, the instrument was being operated at a setting of "180" with no correction factor applied.

E. 10 CFR 19.12 requires, in part, that all individuals working in any part of a restricted area by instructed in the purposes and functions of protective devices employed, and be instructed in the applicable provisions of the Commissions regulations and license conditions.

Contrary to the above, as of March 25, 1988, two individuals working in the Nuclear Medicine Department (a restricted area) were not instructed in the proper use of the dose calibrator, a protective device, for making molybdenum breakthrough tests, were not instructed in the proper technique for performing operational checks on survey instruments, a protective device, and were not instructed in the Commission's regulations pertaining to the preparation of packages for shipment.

These violations are categorized in the aggregate as a Severity Level III problem. (Supplement IV, V and VI)

Civil Penalty—$1,250—assessed equally among the violations.

*II. Summary of License Response*

The licensee, in its responses, admits the occurrence of the violations. However, the licensee requests that the NRC waive the $1,250 civil penalty in light of their immediate response to the violations, their aggressive and ongoing plan to remain in full compliance with applicable regulations, and their past enforcement history.

*III. NRC Evaluation of Licensee Response*

The NRC recognizes that the licensee's enforcement history prior to the inspection was good, and on that basis, the civil penalty amount of $2,500 was mitigated by 50%. However, full mitigation based on enforcement history was unwarranted in light of the duration of the violations, which indicated a significant lack of management control and oversight since the prior inspection. Furthermore, the licensee's response to the violations and their plans to remain in full compliance, although acceptable, were not considered unusually prompt and extensive. Although the corrective actions for individual violations were taken immediately, action to correct the underlying cause of the violations, in particular, the lack of management's attention to and oversight of the radiation safety program was not in place at the time of the enforcement conference. In addition, management issues described in the licensee's response to the Notice of Violation and Proposed Imposition of Civil Penalty are not so extensive to warrant mitigation as they appear to be those actions that one would reasonably expect to assure management oversight.

*IV. NRC Conclusion*

The licensee did not provide a sufficient basis for further mitigation of the amount of the civil penalty. Therefore, the NRC concludes that a civil penalty of $1,250 should be imposed.

[FR Doc. 88-18387 Filed 8-12-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-182**

## Renewal of Facility Operating License No. R-87; Purdue University

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Facility Operating License No. R-87 for Purdue University (the licensee), which renews the license for operation of the training and research reactor located on the campus in West Lafayette, Indiana.

The facility is a non-power reactor that has been operating at a power level not in excess of one kilowatt (thermal). The renewed Operating License No. R-87 will expire twenty years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the Federal Register on August 26, 1986 at 51 FR 30454. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require a alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

The Commission has prepared a Safety Evaluation Report (NUREG-1283) for the renewal of Facility Operating License No. R-87 and has, based on that report, concluded that the facilty can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also prepared an Environmental Assessment which was published in the Federal Register on August 5, 1988 (53 FR 29534), for the renewal of Facility Operating License No. R-87 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The application for amendment dated June 30, 1986, as supplemented; (2) Amendment No. 9 to Operating License R-87; (3) the related Safety Evaluation Report (NUREG-1283) and (4) the Environmental Assessment dated July 29, 1988. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Copies of NUREG-1283 may be purchased by calling (202) 275-2060 or (202) 275-2171 or write the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7982.

Dated at Rockville, Maryland, this 8th day of August 1988.

For the Nuclear Regulatory Commission.

**Charles L. Miller,**

*Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-18386 Filed 8-12-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 30-09472; License No. 15-15618-01; EA 87-125]**

## Veterans Administration Medical Center; Order Imposing Civil Monetary Penalty

I

Veterans Administration Medical Center, Wichita, Kansas (licensee) is the holder of Materials License No. 15-15618-01 issued by the Nuclear Regulatory Commission on August 14, 1973, and last amended on July 10, 1987. The license authorizes the licensee to possess and use radiopharmaceuticals as set forth in 10 CFR 35.100, 10 CFR 35.200, and 10 CFR 31.11, and to possess and use phosphorus-32, calcium-45,

tritium, and carbon-14 in accordance with the conditions of the license.

II

A routine inspection of the licensee's activities on June 8, 1987, disclosed that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 13, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee reponded to the Notice of Violation and Proposed Imposition of Civil Penalty in two letters, both dated June 3, 1988. In its response, the licensee admitted each violation and requested full mitigation of the civil monetary penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and request for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regualtory Commission, Region IV.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee request a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations, this Order should be sustained.

Dated at Rockville, Maryland, this 2nd day of August 1988.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Deputy Executive Director for Regional Operations.*

**Appendix—Evaluations and Conclusions**

On April 13, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violations identified during an NRC inspection. Veterans Administration Medical Center responded to the Notice on June 3, 1988. The licensee admitted the violations, described corrective steps taken to ensure compliance now and in the future, and requested that the civil penalty be mitigated to zero. The following includes a restatement of the violations, a summary of the licensee's response and the NRC's evaluation and conclusion regarding the licensee's request.

*I. Restatement of Violations*

A. License Condition 11 of byproduct material license 15–15618–01, as amended on June 18, 1986, authorized three specified physicians to use or supervise the use of licensed materials.

Contrary to the above, between December 1986 and June 8, 1987, one unauthorized physician used licensed material without being supervised by any of the designated individuals. This physician was later determined by the NRC to have no clinical experience with diagnostic imaging radiopharmaceuticals authorized by 10 CFR 35.200 and therefore was not technically qualified to use these licensed materials.

B. License Condition 15 of the byproduct material license 15–15618–01 requires, in part, that the licensee conduct its program in accordance with the statements, representation, and procedures contained in the licensee's application and letters dated December 16, 1983, August 6, 1984, and June 3, 1986.

1. Item 5 of the license application, as amended on August 6, 1984, designated certain specified individuals to be the Radiation Safety Officer (RSO) and an Alternate Radiation Safety Officer.

Contrary to the above, between December 1986 and June 8, 1987, the designated RSO and Alternate RSO were no longer present at the facility and replacements to provide oversight responsibilities had not been approved.

2. Item 10 of the license application requires the dose calibrator be calibrated in accordance with NRC Regulatory Guide 10.8. Regulatory Guide 10.8 requires for the dose calibrator daily constancy tests, quarterly linearity tests, and annual instrument accuracy tests.

Contrary to the above, the Licensees records indicated that between July 26, 1984 and June 8, 1987, constancy tests were performed weekly rather than daily, linearity tests had not been performed on a quarterly frequency, and annual accuracy tests had not been performed.

3. Item 12 of the license application requires that ancillary personnel whose duties may require them to work in the vicinity of radioactive materials be trained on a quarterly basis.

Contrary to the above, as of June 8, 1987, the required training of housekeeping and maintenance personnel had not been accomplished.

4. Item 17 of the license application requires area radiation surveys to be performed in accordance with NRC Regulatory Guide 10.8. Appendix I of NRC Regulatory Guide 10.8 requires that radiation surveys of elution, preparation and injection areas shall be done daily. Furthermore, laboratory and other radioactive material usage and storage areas shall have weekly contamination surveys performed.

Contrary to the above, as of June 8, 1987, neither daily radiation surveys nor weekly contamination surveys were being performed.

Collectively the above violations have been categorized as a Severity Level III problem (Supplement VI).

Cumulative Civil Penalty—$2,500 assessed equally among the violations.

*II. Summary of Licensee's Response/ Request for Mitigation*

The licensee argued: (1) That prior to this inspection only one violation had been cited, failure to conduct quarterly meetings of the Medical Isotope Committee in 1984, and therefore, they have a good past compliance record, (2) that the licensee took prompt corrective actions and full compliance was achieved quickly, (3) that there is no evidence that any of the violations have caused any injury to any patient, user, or other employee at the Medical

Center, (4) that dose calibrator testing, surveys, and training were performed even though they were not performed at the required frequencies for full compliance and there was never a willful disregard of the regulations, (5) that the fine would come from congressional appropriation designated for patient care, and (6) that the use of licensed material by an unauthorized user would not have occurred if the NRC had acted promptly on a license amendment request that was mailed to NRC on December 29, 1986, and received by NRC on January 20, 1987.

*III. NRC Evaluation of Licensee's Request for Mitigation*

In regard to the unauthorized and unauthorized/unqualified users, had the Radiation Safety Committee (Medical Isotopes Committee) adequately performed its duties to review the training and experience of Dr. Gay to determine that his qualifications were sufficient to perform his duties safely in accordance with the NRC regulations and conditions of the license, and to ensure that the license was amended prior to change in personnel as specified in the license, the violation may have been precluded. Additionally, the licensee did not obtain the services of a visiting physician authorized by Condition 12, Amendment 12, of License No. 15–15618–01 to supervise the use of licensed material by Drs. Gay and Huycke during the time period allowed by this license condition, which would have precluded the violation. It is true that the application for approval of Drs. Huycke and Gay was received by NRC on January 20, 1987. It should be understood, however, that the application indicated no sense of urgency and, therefore, was assigned no special priority. It also is true that the licensee's letter of March 6, 1987, requesting that the application be expedited. However, the licensee had not yet informed NRC that there were no authorized physicians at the hospital. On April 24, 1987, NRC wrote to the licensee regarding deficiencies in the application. On May 12, 1987, the licensee requested and received an extension to the 30-day response time specified in the deficiency letter. The licensee's response to the deficiency letter was not received until July 1, 1987, further indicating no urgency on the licensee's part.

Meanwhile, NRC did not learn until its June 8, 1987, inspection that the licensee had no physicians authorized to use licensed material. This problem still being unresolved, on June 24, 1987, NRC issued a Confirmation of Action Letter confirming discontinuance of nuclear medicine activities pending appropriate license amendment. On June 26, 1987, the licensee requested and was granted an emergency amendment adding Dr. Huycke as an authorized user. The licensee clearly was delinquent in not notifying NRC of the lack of authorized users, in not making it clear in its license amendment request that this was the case, and in not precluding the violation by employing a visiting physician to supervise the use of materials until the physicians were authorized by the NRC.

The staff acknowledges that licensee has had a good compliance record. This was considered in arriving at the proposed monetary civil penalty amount. However, any credit that might have been given for this factor was balanced by the duration of the violations, the multiple examples of the violations and the fact that the licensee knew that none of its physicians were authorized users of licensed materials.

The NRC finds that the corrective actions taken to bring the licensee's radiation safety program back into compliance are essentially those as submitted to the NRC in its renewal application enclosed in licensee's letter dated December 16, 1983. The corrective actions were neither unusually prompt nor extensive enough to warrant mitigation of the civil penalty.

The staff acknowledges that there is no evidence of injury to patients, users, or employees as a result of these violations. However, actual injury as a result of violations of the NRC's regulations is not necessary under the Enforcement Policy to warrant a civil penalty. The violations in the aggregate indicated a breakdown of management oversight and control which created a potential for safety problems, thus increasing their safety significance.

The NRC recognizes that some surveys, training, and testing of the dose calibrator were performed, but not at required frequencies. The licensee has established these required frequencies in procedures submitted in its letter dated December 16, 1983, and approved by the NRC on June 4, 1984. Testing of the dose calibrator daily for constancy, quarterly for linearity, and annually for accuracy is necessary to asure that the dose delivered to the patient does not differ from the prescribed dose by more than 10 percent.

Daily radiation level surveys and weekly wipe test surveys in the injection, preparation, and storage area are necessary to assure that no contamination or radiation levels exist to which individuals would be unnecessarily exposed. Refresher training is necessary for all personnel to re-emphasize procedures to protect their health and safety. The licensee chose to provide this training quarterly and unilaterally chose to decrease the frequency without approval from the NRC.

It is not enough for a licensee to do some testing, surveying, and training; it is necessary to perform these procedures at some established frequency to assure that health and safety of the public is protected. The licensee established the frequencies at which it would perform these procedures. Failure to perform the procedures at the required frequency is an indication of management's lack of oversight of its program.

The NRC recognizes that the licensee is a federal agency. However, this does not exempt the licensee from enforcement actions such as civil penalties that apply to all NRC licensee. Congress in enacting Section 234 of the Atomic Energy Act did not elect to execute federal agencies from the NRC's enforcement authority. Civil penalties are intended to emphasize the need for a licensee to make lasting improvement in its radiation safety program. Moreover, the amount of the civil penalty in this case is relatively small and should not significantly impact on patient care.

*IV. NRC Conclusion*

The NRC staff concludes that the licensee's request for full mitigation of the proposed civil penalty is not supported by the licensee's arguments made in its June 3, 1988, response. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 88–18388 Filed 8–12–88; 8:45 am]
BILLING CODE 7590–01–M

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**[Docket No. 50–482; License No. NPF–42; EA 87–213]**

**Wolf Creek Nuclear Operating Corp., Wolf Creek Generating Station; Order Imposing Civil Montetary Penalty**

I

Wolf Creek Nuclear Operating Corporation (licensee) is the holder of Operating License No. NPF–42 (license) issued by the Nuclear Regulatory Commission (NRC/Commission) on June 4, 1985. The license authorizes the licensee to operate the Wolf Creek Generating Station in accordance with the conditions specified therein.

II

Three safety inspections of the licensee's activities were conducted during the period from October 1 through November 18, 1987. The results

of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated March 17, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated April 14, 1988. In the licensee's response, the violations were admitted, but the licensee considered escalation of the base civil penalty to be inappropriate.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that an inadequate basis was provided for mitigation of the proposed penalty and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of One Hundred Thousand Dollars ($100,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and the NRC resident inspector at Wolf Creek Generating Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, this Order should be sustained.

Dated at Rockville, Maryland, this 28th day of July 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

*Deputy Executive Director for Regional Operations.*

## Appendix—Evaluations and Conclusions

On March 17, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Wolf Creek Nuclear Operating Corporation (WCNOC), the licensee. On April 14, 1988, the licensee responded to the Notice. In its response, the licensee did not deny any of the violations, which were classified in the aggregate as a Severity Level III problem, but did request a reduction in the amount of the civil penalty. The NRC's evaluation and conclusions regarding the licensee's response are as follows:

*I. Restatement of Violation*

A. Failure To Follow Procedures

10 CFR Part 50, Appendix B, Criterion V, requires, in part, that activities affecting quality be prescribed by documented instructions, procedures, or drawings. The activities shall be accomplished in accordance with these instructions, procedures, or drawings.

1. Procedure MPE E 009Q–01, Revision 0, "13.8KV and 4.16KV Switchgear Inspection and Testing" establishes the requirements for accomplishing maintenance work in the NB02 switchgear when terminals in the NB02 switchgear are energized.

Step 6.1 of Procedure MPE E 009Q–01, Revision 0 states, "Check the electrical drawings and identify any area(s) which will have high voltage potential present even when the bus is grounded. List the areas on the Attachment "A" sign-off sheet."

Step 6.3.9.5 of Procedure MPE E–009Q–01, Revision 0 states, "Clean the insulator and high voltage connection in each tube. Check the insulators for cracks and the rosettes for damaged fingers."

Step 6.4.3. of Procedure MPE E–009Q–01, Revision 0 states "Using the high voltage gloves and tester, check the stationary disconnects for high voltage potential. If no potential is found, check that the high voltage connections are dischared."

Contrary to the above, on October 14, 1987, Procedure MPE E 009Q–01 was not followed in that: (1) Cubicle NB0209 feeder from Cubicle XNB02 was not identified as an area that had a high voltage potential present and therefore was not listed in Attachment "A" sign-off sheet as required by Step 6.1 of Procedure MPE Q 009Q–01, Revision 0; (2) Step 6.3.9.5 of the Procedure MPE E 009Q–01, Revision 0, had been signed off for cleaning the insulators and checking the insulators for cracks and the rosettes for damaged fingers as completed; however, had the insulator been actually cleaned, the person performing this step would have encountered it energized and would have been unable to perform the required cleaning, and (3) the electrician failed to check the stationary disconnects for high voltage potential to ensure that the high voltage connections were discharged as required by Step 6.4.3. of Procedure MPE E 009Q–01, Revision 0.

2. Procedure 10–3, Revision 2, "Sluicing Media from Duratek EVR System" describes the methods to sluice resin from the Durateck System to a disposal container.

Contrary to the above, on October 10, 1987, two contract workers failed to follow the methods described in Procedure 10–3, Revision 2, when they physically "opened" a clogged pipe resulting in the contamination of the individuals themselves and the surrounding area.

3. Procedure ADM 03–101, Revision 9, "Radiation Work Permit Program," requires that a radiation work permit (RWP) be issued for all entries into the radiological controlled area (RCA). For work activities to be performed in the RCA, Radiation Work Permit (RWP) 870017 required that a continuous air sample be drawn during the work.

Contrary to the above, on October 10, 1987, a continuous air sample was not drawn as required by Procedure ADM 03–101, Revision 9 while work activities were being performed in the RCA, so that any potential airborne contamination that may have existed in the area would not have been detected.

4. Procedure ADM 03–202, Revision 4, "Radiological Control and Unconditional Release of Tools and Equipment," in Step 4.1.1 states, "All items prior to leaving the RCA, will be surveyed for loose contamination and for fixed contamination * * *" and "will be verified to have no * * * contamination."

Contrary to the above, the licensee failed to comply with Procedure ADM 03–202, Revision 4, on November 9, 1987, in that it released radioactive material to the Coffey County Landfill that was neither surveyed for loose and fixed contamination, nor was the material verified to have no contamination.

5. Procedure ADM 01–057, Revision 12, "Work Request" establishes the use of the Work Request to document and control work activities involving Safety Related items.

a. Work Request (WR) 05013–86 required the documentation of the hydrostatic test manifold relief valve setting for the hydrostatic test of Spool Piece EF05–S050.

Contrary to the above, as of November 13, 1987, the hydrostatic test manifold relief valve setting for the hydrostatic test of Spool Piece EF05–S050 (pursuant to WR 05013–86) had not been documented.

b. WR 02827–87, Step 5.0, required the quality control verification of the installation of an air dam bag downstream of Valve EF V–058 on pipe 080–UBC–24.

Contrary to the above, as of November 2, 1987, the quality control verification of the installation of an air dam bag downstream of Valve EF V–058 on pipe 080–UBC–24 (pursuant to WR 02827–87) had not been performed.

6. 10 CFR Part 50, Appendix B, Criterion IX, requires, in part, that measures be established to assure that special processes, including welding, be controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards specifications, criteria, and other special requirements.

a. Procedure ADM 08–302, Revision 4, "Wolf Creek Generating Station Control of Welding Filler Material," Step 6.2.4, requires that each welder have in his possession only that type and classification of weld filler material authorized on the Field Welding Material Requisition.

Contrary to the above, twice on November 5 and once on November 6, 1987, welders were issued and used material different from what was authorized on the Field Welding Material Requisition.

b. Quality Control Procedure QCI 12.1–601, Revision 2, "Inspection of ASME/ANSI Welds," requires that the quality control inspector verify that the weld filler material is as specified.

Contrary to the above, on November 5, 1987, a quality control inspector mistakenly verified the wrong material as being the correct material, thereby resulting in the use of improper weld filler metal in three instances for Field Welding Material Requisitions 9443, 9446, and 9448.

c. Procedure ADM 08–302, Revision 4, Step 6.2.1, requires that shielded metal arc welds be performed by welders who are qualified to perform shielded metal arc welds.

Contrary to the above, on November 12, 1987, during the performance of Plant Modification Request PMR–2116, a welder performed a shielded metal arc weld thta he was not qualified to perform.

B. Failure To Have Appropriate Procedures

10 CFR Part 50, Appendix B, Criterion V, requires, in part, that activities affecting quality be prescribed by documented instruction procedures, or drawings of a type appropriate to the circumstances.

1. Procedure GEN 00–007, Revision 8, "RCS Draindown," used to purge hydrogen form the Reactor Coolant System (RCS) and pressurizer, in Step 4.3.4, states, in part, "Commence raising pressurizer level towards 100 percent on BB LI–462, pressurizer level cold calibration, carefully observing reactor coolant system pressure."

Contrary to the above, on October 14, 1987, the licensee experienced an inadvertent ignition of hydrogen in the pressurizer because Procedure GEN 00–007, Revision 8 was not appropriate to ensure that all the hydrogen was purged out of the pressurizer. The upper taps for the level instrumentation are approximately 3 feet below the top of the pressurizer. Therefore, even though the instruments (BB LI–462) indicated 100 percent as required by the procedure, the pressurizer still had a vapor space with enough hydrogen present to support a burn.

2. Procedure ADM 13–101, Revision 4, "Control of Ignition Sources," requires verification that the pressurizer be purged of flammable material.

Contrary to the above, on October 14, 1987, the licensee experienced an inadvertent ignition of hydrogen in the pressurizer because Procedure ADM 13–101, Revision 4 was not appropriate in that it failed to require that a sample be taken to confirm that the pressurizer had been purged of flammable material.

3. Procedure SYS NG–331, Revision 5. "Deenergization of 480 Volt (Class 1E) Bus(es)" provides instructions necessary to deenergize the 480 Volt (Class 1E) load centers and/or transformers.

Contrary to the above, on October 15, 1987, when the 4.16KV Bus NB02 was taken out of service for routine maintenance, the normal power supplied to the 125 V DC Buses NK01 and NK04 was deenergized and the loads were then transferred and placed upon Battery Banks NK12 and NK14, respectively. While Procedure SYS N6–331 provided instructions to deenergize the 480 Volt (Class 1F) load centers, the procedure was inadequate in that no instructions existed to guide personnel in calculating the length of time the batteries could carry the electrical loads and in determining the battery attributes which should have been periodically checked.

4. Procedure STS IC–725B, Revision 1, "7300 Process and N.I. Response Time Test (2/4 Logic) Protection Set II," establishes the requirements for testing of response times of the Analog Channels that generate certain Reactor Trip and Engineered Safeguard Feature functions. Licensee Technical Specification (TS) 3.9.2 requires, in part, "As a minimum, two source range neutron flux monitors shall be operable * * *" and "With one of the above required monitors inoperable or not operating, immediately suspend all operations involving core alterations* * *."

Contrary to the above, on November 7, 1987, while making core alterations, the licensee performed Procedure STC IC–725B. Procedure STS IC–725B specified that both source ranges be deenergized; however, the TS required that both source range neutron flux monitors were to be operable. Thus, the procedure was not adequate to ensure TS requirements were satisfied during all modes of plant operation.

Collectively, these violations have been categorized in the aggregate as a Severity Level III problem (Supplement I).

Cumulative Civil Penalty—$100,000 (assessed equally between the violations).

*II. Summary of Licensee Response*

The licensee, in its response, does not deny any of the violations. However, the licensee does request a reduction in the civil penalty amount and states that escalation of the base civil penalty is considered inappropriate based on the following reasons.

A. WCNOC believes the NRC statement relative to the lack of

corrective actions prior to October 21, 1987, is not supported by the record in that a self-initiated work stoppage was imposed and several actions were immediately initiated. Therefore, it is inappropriate to increase the base civil penalty amount.

B. WCNOC believes that it was inappropriate to use the number of violations as a reason for both the escalation of the severity level classification and as justification for increasing the amount of the base civil penalty.

C. WCNOC believes that it is important to note that the incidents all occurred while the plant was in a cold shutdown status and none of the incidents posed a threat to the health and safety of the public. In addition, essentially all of the problems were self-identified and the corrective actions taken by WCNOC were self-initiated and reported.

WCNOC requests that the NRC reduce the proposed civil penalty to the base amount of $50,000.

*III. NRC Evaluation of Licensee Response*

The NRC staff has carefully reviewed the licensee's response and has concluded that the licensee has not provided any information that was not previously considered in determining the amount of the proposed civil penalty. With respect to the corrective actions taken by WCNOC prior to October 21, 1987, the NRC does not consider the self-initiated work stoppage and associated actions sufficient to satisfy all of the elements expected in a good corrective action program. The immediate actions taken by the licensee were viewed to be that expected of a licensee in response to significant outage problems. However, the NRC was concerned that management's oversight of the evaluation of the root cause of problems had not been investigated fully and therefore on balance neither escalation nor mitigation was deemed appropriate for corrective actions.

The licensee, in its response, implies that these various procedural violations were individually characterized at a lower severity level, aggregated into a Severity Level III problem, and then the number of violations used to increase the civil penalty amount. These violations were evaluated in the aggregate and found to represent a significant weakness in the licensee's management controls and oversight of safety-related activities. In accordance with the Enforcement Policy, they were characterized as one Severity Level III problem. Contrary to the licensee's assertion, multiple examples may appropriately be considered in both aggregating violations for purposes of determining the severity level of a problem and in determining whether a civil penalty should be increased. This is especially true in this case where aggregation of the violations to a Severity Level III problem would have been appropriate based on far fewer examples than set forth in the Notice. In addition, there were multiple examples of significant procedural deficiencies in areas including electrical equipment operations and maintenance, radiation safety/health physics, disposal of contaminated materials, and control of welding processes, several of which might, in themselves, be argued to be Severity Level III violations. Increasing the base civil penalty was warranted based on the added significance of the management issue with the numerous examples of the failure to adhere to or have appropriate procedures.

Although the NRC recognizes that these violations occurred during the refueling outage, the violations represented significant weaknesses in the licensee's procedures for administrative and management controls and were cause for significant regulatory concern. The nature and extent of the enforcement action proposed was intended to reflect the seriousness of the violations involved.

The licensee also asserts in its response that essentially all of the problems were self-identified. The NRC staff notes that these violations were the results of events which occurred during the 1987 outage and that in many of these events (i.e., maintenance of electrical switchgear, while being inadvertently energized, contamination of contract technicians, hydrogen burn in the pressurizer, and lake water entry into the steam generators) there was minimal involvement of the licensee in identifying the violations. The NRC staff considers the ease of discovery among other factors when evaluating this factor. These were not cases identified as a result of the licensee's initiatives. Therefore, the NRC staff considers it inappropriate to mitigate the base civil penalty on the basis of identification of such clear and easily discovered violations.

*IV. NRC Conclusion*

An adequate basis for mitigation of the proposed civil penalty has not been provided. Therefore, the NRC concludes that a $100,000 civil penalty should be imposed.

[FR Doc. 88-18369 Filed 8-12-88; 8:45 am]
BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Information Collection for OMB Review

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of information collection from the public submitted to OMB for clearance.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), this notice announces a proposed extension of four forms that collect information from the public. Executive Order 10450 requires that investigations be conducted on all persons entering the Federal service. OFI Form 41 is a voucher form sent to former employers and/or supervisors for employment data and supervisory information. The OFI Form 42 is a voucher form sent to references for personal information. The OFI Form 43 is a voucher sent to educational institutions for student record information, and the OFI 44 is a voucher sent to local law enforcement agencies in conducting OPM investigations as prescribed in section 3(a) of Executive Order 10450. These checks are a part of the investigation conducted for determining suitability for Federal employment/security clearances. Each form takes approximately 5 minutes to complete. When fully implemented there will be 1,898,400 forms completed annually for a total public burden of 158,200 hours. For copies of this proposal call C. Ronald Trueworthy, Agency Clearance Office, on (202) 632-0261.

**DATE:** Comments on this proposal should be received on or before August 25, 1988.

**ADDRESSES:** Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Rm. 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Rm. 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** C. Ronald Trueworthy (202) 632-0261.

Office of Personnel Management.
**Constance Horner,**
*Director.*
FR Doc. 88-18324 Filed 8-12-88; 8:45 am]
BILLING CODE 6325-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. 34-25984; File No. SR-MCC-88-8]**

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corp. Relating to a Revised Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1988, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change**

In an effort to recover its costs, MCC finds it necessary to increase the following fees: (1) The fee for shipping insured packages of securities (*i.e.*, insured deliveries) to its participants, from $6.40 to $9.40 per package; and (2) the fee for delivering securities to transfer agents for re-registration or other purposes, by $1.00 per delivery.

**II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The MCC Revised Fee Schedule, effective July 1, 1988, more accurately reflects the cost of providing securities and Participant Package shipments for MCC Participants.

The Revised Fee Schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
**Jonathan G. Katz,**
*Secretary.*
Dated: August 9, 1988.
[FR Doc. 88-18357 Filed 8-12-88; 8:45 am]
BILLING CODE 8010-01-M

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**[Rel. No. 34-25985; File No. SR-MSTC-88-4]**

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Co. Relating to a Revised Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1988, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change**

In an effort to recover its costs, MSTC finds it necessary to increase the following fees: (1) The fee for shipping insured packages of securities (*i.e.*, insured deliveries) to its participants, from $6.40 to $9.40 per package; and (2) the fee for delivering securities to transfer agents for re-registration or other purposes, by $1.00 per delivery.

**II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The MSTC Revised Fee Sechedule, effective July 1, 1988, more accurately reflects the cost of providing securities and Participant Package shipments for MSTC participants.

The Revised Fee Schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were either solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: August 9, 1988.

[FR Doc. 88–18356 Filed 8–12–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 34–25983; File No. SR–NASD–88–33]**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to NASDAQ Companies Providing the NASD with Notice of Material News Releases

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed amendments to Part II of Schedule D to the NASD By-Laws would require NASDAQ issuers to provide notice to the NASD of material news releases prior to the release of such information to the press and to respond to information requests by the NASD. The proposed amendment to the "Notification to NASD of News Releases," also contained in Part II of Schedule D, would recommend that issuers notify the NASD of such material information at least ten minutes prior to its release to the press. In Release No. 34–25792, dated June 9, 1988, the Commission approved substantially similar amendments for a period of 60 days (proposed rule change SR–NASD–88–16). Those amendments required issuers to notify the NASD "at least simultaneously" with the release of news releases to the press. In Release No. 34–25874, dated July 1, 1988 (53 FR 25716, July 8, 1988), the Commission requested comment on permanent approval of the amendments (proposed rule change SR–NASD–88–24). In view of the Commission's grant of accelerated approval to the present proposed rule change, the NASD, by letter dated August 5, 1988, has withdrawn SR–NASD–88–24.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change would require that NASDAQ companies provide notice to NASD Market Surveillance prior to the release of such information to the news media. The current provisions of Schedule D to the NASD By-Laws require the public disclosure of material information but only recommend that notification to the NASD take place simultaneously with such release. It is the belief of the NASD Board of Governors that in view of recent market events and of proposals by the NASD to mandate the use of the NASD's Small Order Execution System for transactions in NASDAQ National Market System securities, it will be of critical importance for the NASD to be notified in a timely fashion of material news. This will be necessary in order to make appropriate determinations with respect to trading halts.

In addition, the proposed rule change would delete the current requirement in section 5(b)(2) of Part II to Schedule D that information released after 5:00 p.m. Eastern Time be reported by 9:00 a.m. of the following trading day and add a footnote to the Notification Provision indicating that notification can be provided directly to the NASD Market Surveillance Department, a 24-hour telephone number, and clarifying that oral notification must be confirmed promptly in writing. These proposed rule changes reflect the fact that NASD Market Surveillance now has the

capacity to receive information 24 hours a day.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(11) of the Act which mandates that the rules of the Association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, and that such rules shall be designed to produce fair and informative quotations, to prevent fictitious and misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. The NASD believes that requiring issuers to provide the NASD with material information prior to its release to the public will substantially assist the NASD in carrying out its obligations under this provision of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed amendments impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. As noted in Part I above, the Commission approved the proposed rule change in substantially similar form on June 9, 1988 for a period of 60 days. On July 8, 1988, the Commission published for comment the proposed rule change requesting permanent approval of the amendments approved on June 9. No comments were received by the Commission. Subsequent to the filing of that proposed rule change, the NASD's Board of Governors approved a further amendment that would require NASDAQ issuers to notify the NASD of news releases "prior to," rather that "at least simultaneously with," the release of such news to the press. Because the Commission received no comments on the prior published proposed rule change, and in view of the imminent expiration of the temporary approval granted on June 9, the NASD requests accelerated approval of the present proposed rule change. Such accelerated approval would allow the NASD to put the language of the current proposed rule change into effect immediately, rather than waiting for the normal comment period to expire.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in its present form in view of the fact that no comments were received on the previously published language. In addition, accelerated approval of the proposed rule change will aid the NASD in facilitating the recent changes to its Small Order Execution System. By requiring issuers to notify the NASD of material news releases prior to notification of the press, the NASD will be able to communicate the news to market makers immediately. Furthermore, in the event that a trading halt would be an appropriate response to the news, such notice will given the NASD an opportunity to make such a judgment and order a trading halt before the news becomes public. This should assist the NASD in its duty to maintain fair and orderly markets.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–33 and should be submitted by September 6, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

*Secretary.*

Dated: August 8, 1988.

[FR Doc. 88–18368 Filed 8–12–88; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC–16517; 812–6926]**

## ML Venture Partners II, L.P., et al.; Application

August 8, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* ML Venture Partners II, L.P. ("MLVP II" or "Partnership"), Merrill Lynch Venture Capital Inc. ("Venture Capital"), Merrill Lynch KECALP L.P. 1986 ("KECALP 1986"), Merrill Lynch KECALP L.P. 1987 ("KECALP 1987"), KECALP Inc., Merrill Lynch Interfunding Inc. ("MLIF"), Merrill Lynch Capital Appreciation Partnership No. VIII, L.P. ("ML Capital VIII"), ML Offshore LBO Partnership No. VIII ("ML Offshore VIII"), ML Employees LBO Partnership No. I, L.P. ("ML Employees I") and Merrill Lynch & Co., Inc. ("ML & Co.") (collectively, "Applicants").

*Relevant 1940 Act Sections:* Exemption requested under sections 17(b) and 57(c) from the provisions of sections 17(a) and 57(a)(1), and pursuant to sections 57(i) and 17(d) and Rule 17d–1 thereunder, approving certain transactions.

*Summary of Application:* Applicants seek an order permitting the acquisition of certain securities (i) deemed "joint transactions" under the 1940 Act or (ii) from "affiliated persons," as defined in the 1940 Act.

*Filing Dates:* The application was filed on November 27, 1987, and amended on July 22, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 31, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for

lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20459. MLVP II and Venture Capital, 717 Fifth Avenue, New York, New York 10022; KECALP 1986, KECALP 1987, KECALP Inc., ML Capital VIII, ML Offshore VIII and ML Employees I, World Financial Center, North Tower, 27th Floor, New York, New York 10281; MLIF, World Financial Center, North Tower, 18th Floor, New York, New York 10281; and ML & Co., World Financial Center, North Tower, 32nd Floor, New York, New York 10281.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Regina Hamilton (202) 272–2856, or Branch Chief Karen L. Skidmore (202) 272–3023 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier: (800) 231–3282 (in Maryland (301) 258–4300).

**Applicants' Representations**

1. The Partnership, a limited partnership organized under the laws of Delaware, is a business development company under the 1940 Act. The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments. The Partnership has five general partners, four of whom are individuals (the "Individual General Partners"). In accordance with section 56(a) of the 1940 Act, a majority of the Individual General Partners are persons who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act (the "Independent General Partners").

2. The managing general partner of the Partnership, MLVPII Co., L.P. (the "Managing General Partner"), a New York limited partnership, is responsible for its venture capital investments. The general partner of the Managing General Partner is Venture Capital, a Delaware corporation, which is also the management company for the Partnership. Venture Capital is an indirect subsidiary of ML & Co., holding company, which, through its subsidiaries, provides investment, financing, insurance, real estate and related services. MLIF, a Delaware corporation and indirect wholly-owned subsidiary of ML & Co., specializes in leveraged buyouts, bridge loans and other short-term financings.

3. KECALP 1986 and KECALP 1987 (the "KECALP Partnerships"), limited partnerships organized under the laws of Delaware, are employees' securities companies as defined in section 2(a)(13) of the 1940 Act, and registered as non-diversified, closed-end management companies. Each of KECALP Partnerships operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the Act in Investment Company Act Release No. 12363 (April 8, 1982) (the "KECALP Exemptive Order"). The general partner for each of the KECALP Partnerships is KECALP Inc., a Delaware corporation and indirect wholly-owned subsidiary of ML & Co. KECALP Inc. is responsible for managing and making investment decisions for the KECALP Partnerships. All investments by KECALP 1986 and KECALP 1987 are approved by the Board of Directors of KECALP Inc.

4. ML Capital VIII, a Delaware limited partnership, and ML Offshore VIII, a Cayman Islands limited partnership, were formed in connection with the acquisition of Borg-Warner Corporation. They engage solely in the business of owning shares of Borg-Warner Holding Corporation. Merrill Lynch LBO Partners No. II, L.P., a Delaware limited partnership, is the general partner of ML Capital VIII and ML Offshore VIII.

5. ML Employees I, a Delaware limited partnership, specializes in making equity and equity related investments in leveraged buyouts of established companies or divisions thereof. Merrill Lynch Employees LBO Managers, Inc., a Delaware corporation and indirect wholly-owned subsidiary of ML & Co, is the general partner of ML Employees I.

6. Merrill Lynch Capital Partners, Inc. ("MLCP"), a Delaware corporation and wholly-owned subsidiary of ML & Co., controls the general partner of ML Capital VIII, ML Offshore VIII and ML Employees I. MLCP initiates and structures leveraged or management buyouts and manages a fund of equity capital committed by institutional investors for investment in the equity portion of leveraged buyout transactions.

7. Borg-Warner Corporation ("Borg-Warner"), a Delaware corporation, is engaged in the chemical and plastics, automotive, protective services and information services industries. During 1987, MLCP structured a leveraged buyout of Borg-Warner, such that Borg-Warner's equity securities are owned by Borg-Warner Holdings Corporation ("Borg-Warner Holdings"). Borg-Warner Holdings is a newly formed Delaware corporation which was organized solely for the purpose of effecting the leveraged buyout of Borg-Warner Corporation. Borg-Warner Holdings' equity securities are owned by certain members of Borg-Warner's managment, ML & Co., ML Capital VIII, ML Offshore VIII, ML Employees I, MLIF, Venture Capital and KECALP Inc.

8. Because ML & Co. and its affiliates purchased 10.2 million shares of Borg-Warner Holdings Common Stock at $10.00 per share on the effective date of the merger, July 30, 1987, the investments by the Partnership and the KECALP Partnerships could not be made concurrently with the other ML & Co. affiliated entities without the relief requested. Accordingly, Venture Capital agreed to purchase and hold 500,000 shares of Borg-Warner Holdings Common Stock, and to sell such shares to the Partnership at the price determined as described below following the granting of the relief requested. Similarly, KECALP Inc. agreed to purchase and hold 40,000 and 200,000 shares of Borg-Warner Holdings Common Stock, and to sell such shares to KECALP 1986 and KECALP 1987, respectively, at the price determined as described below following the granting of the relief requested. The 500,000, 40,000 and 200,000 shares of Borg-Warner Holdings Common Stock represent 2.5%, 0.2% and 1% of the shares presently outstanding. No dividends have been declared on the Borg-Warner Holdings Common Stock. The Partnership and the KECALP Partnerships incurred no obligation to purchase such shares prior to approval of such investments by the Independent General Partners of the Partnership or the Board of Directors of KECALP Inc., as applicable.

9. The purchase price to be paid by the Partnership and the KECALP Partnerships to Venture Capital and KECALP Inc. will be the lower of (i) the value of the investments (as determined by the Independent General Partners of the Partnership and the Board of Directors of KECALP Inc.) on the dates the Partnership and the KECALP Partnerships acquire the Common Stock, or (ii) the cost to Venture Capital and KECALP Inc., respectively, of purchasing and holding the respective investments. With respect to clause (ii), such cost shall be the original purchase price of $10.00 per share paid by Venture Capital and KECALP Inc. for the Borg-Warner Holdings Common Stock on July 30, 1987, plus carrying costs related to such investments as separately determined for the Partnership and the KECALP Partnerships. The KECALP Partnerships and the Partnership will not pay any carrying costs in respect of the period

prior to the later of (i) the date of acquisition of the Borg-Warner Holdings Common Stock by KECALP Inc. and Venture Capital, respectively, or (ii) the date the Board of Directors of KECALP Inc. approved and the Independent General Partners of the Partnership authorized the proposed investments. For purposes of these transactions, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are being paid or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

10. Supermarkets General Corporation ("Supermarkets General"), a Delaware corporation, is a diversified retailer primarily engaged in the operation of large supermarket-drug stores, located principally in the Middle Atlantic and New England states. During 1987, MLCP structured a leveraged buyout of Supermarkets General, such that Supermarket General's equity securities are owned by Supermarket General Holdings Corporation ("SG Holdings"), a newly formed Delaware corporation organized solely for the purpose of effecting the acquisition of Supermarkets General. SG Holding's equity securities are owned by certain members of Supermarket General's Management, MLIF, certain partnerships affiliated with ML & Co., Manufacturers Hanover Venture Capital Corporation and The Equitable Life Assurance Society of the United States and certain of its affiliates (the "Equitable Investors").

11. Because affiliates of ML & Co. purchased 550,000 shares of SG Holdings Common Stock at $100.00 per share on the effective date of the merger, October 5, 1987, the investment by KECALP 1987 could not be made concurrently with MLIF without the relief requested herein. Acordingly, MLIF agreed to purchase and sell up to 12,118 shares of its SG Holdings Common Stock to KECALP 1987 at the price determined as described below following the granting of the relief requested. The 12,118 shares of SG Holdings Common Stock represent 1.8% of such shares presently outstanding. KECALP 1987 incurred no obligation to purchase such shares prior to the approval of such investment by the Board of Directors of KECALP Inc. No dividends have been declared on the SG Holdings Common Stock.

12. The purchase price to be paid by KECALP 1987 to MLIF for the SG Holdings Common Stock will be the lower of (i) the value of the investment (as determined by the Board of Directors of KECALP Inc.) on the date KECALP 1987 acquires the SG Holdings Common Stock or (ii) the cost to MLIF of purchasing and holding the investment. With respect to clause (ii), such cost shall be the original purchase of $100.00 per share paid by MLIF for the SG Holdings Common Stock on October 5, 1987, plus carrying costs related to such investment. KECALP 1987 will not pay carrying costs in respect of the period prior to the later of (i) the date of acquisition of the SG Holdings Common Stock by MLIF, or (ii) the date the Board of Directors of KECALP Inc. approved the proposed investment. For purposes of these transactions, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the priod for which carrying costs are being paid or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

13. Applicants seek relief: (a) Under Sections 17(b) and 57(c) of the 1940 Act to permit the sale of (i) 500,000 shares of Borg-Warner Holdings Common Stock by Venture Capital to the Partnership; (ii) 200,000 shares of Borg-Warner Holdings Common Stock by KECALP Inc. to KECALP 1987, (iii) 40,000 shares of Borg-Warner Holdings Common Stock by KECALP Inc. to KECALP 1986; and (iv) of up to 12,118 shares of SG Holdings Common Stock by MLIF to KECALP 1987 on the terms described in the application; and (b) under sections 57(i) and 17(d) of the 1940 Act and Rule 17d-1 thereunder approving the investment by the Partnership and the KECALP Partnerships in securities of Borg-Warner Holdings and by KECALP 1987 in securities of SG Holdings on the terms described in the application.

**Applicants' Legal Conclusions**

1. Relief under sections 17(b) and 57(c) of the Act is justified by both the terms of the transactions and the fact that the proposed investments are not otherwise available to the Partnership and the KECALP Partnerships. With respect to the terms of the transactions, KECALP Inc. (on behalf of the KECALP Partnerships) and the Managing General Partner (on behalf of the Partnership) have reviewed the proposed investments in detail. The members of the Board of Directors of KECALP Inc. and the Managing General Partnership of the Partnership are sophisticated and experienced in valuing securities and evaluating financial transactions generally. The members of the Board of Directors of KECALP Inc. and the Managing General Partner of the Partnership considered all information deemed relevant, including the nature of the investments, the nature of the investments by ML & Co. and affiliates of ML & Co. and the fairness of the purchase prices proposed to be paid by the Partnership and the KECALP Partnerships. The Managing General Partner and KECALP Inc. determined that the proposed investments by the Partnership and the KECALP Partnerships will not directly or indirectly benefit ML & Co. or the entities affiliated with ML & Co. Moreover, at a meeting of the Board of Directors of KECALP Inc. held on July 24, 1987, the investment in Borg-Warner Holdings by each of the KECALP Partnerships was approved after consideration of each of the factors set forth in section 17(b) of the 1940 Act. At a meeting of the Independent General Partners of the Partnership held on July 28, 1987, the Partnership's investment in Borg-Warner Holdings was approved after consideration of each of the factors set forth in section 57(c) of the 1940 Act. At a meeting of the Board of Directors of KECALP Inc. on June 17, 1987, the investment in SG Holdings by KECALP 1987 was approved after consideration of each of the factors listed in section 17(b) of the 1940 Act.

2. In evaluating the terms of the transactions, the Board of Directors of KECALP Inc. and the Partnership's Independent General Partners considered the fact that the proposed purchase prices to be paid by the Partnership and the KECALP Partnerships will include carrying costs incurred by an affiliated person (*i.e.*, Venture Capital, KECALP Inc. and MLIF) if the value of each investment at the time of acquisition by the Partnership and the KECALP Partnerships is more than the sum of the purchase price plus the affiliate's carrying costs. In approving purchase prices which may include carrying costs, the Board of Directors of KECALP Inc. recognized that it receives no compensation for serving as general partner of the KECALP Partnerships and that ML & Co. has incurred considerable expenses in organizing the KECALP Partnerships. The KECALP Partnerships

and the Partnership believe that it is entirely appropriate to reimburse affiliates for carrying costs in a situation in which an affiliate purchased an investment as, in effect, their nominee and the KECALP Partnerships and the Partnership would have purchased such investments directly if it had not been deemed necessary to obtain the relief requested in the application. In light of these factors, the Managing General Partner of the Partnership and the Board of Directors of KECALP Inc. believe it is wholly appropriate for the purchase price paid for portfolio investments to reflect carrying costs provided the value of the investment at the time of acquisition exceeds the amount of the purchase price plus carrying costs. Applicants submit that to deny reimbursement for carrying costs would result in a further and unwarranted loss to Venture Capital, KECALP Inc. or MLIF and provide a disincentive to act on behalf of the Partnership and the KECALP Partnerships in future transactions of this type.

3. Issuance of the order requested is appropriate and necessary because the described investments are not otherwise available for purchase by the Partnership or the KECALP Partnerships. The Managing General Partner of the Partnership and the Board of Directors of KECALP Inc. have approved such investments after review of a considerable number of possible investments for the Partnership and the KECALP Partnerships. The Partnership and the KECALP Partnerships submit that their investment program will be prejudiced if they are not permitted to make the investments referred to in the application. The Board of Directors of KECALP Inc. believes that the proposed investments are consistent with the rationale underlying the establishment of each of the KECALP Partnerships as an "employees' securities company." Similarly the proposed transactions are consistent with the purposes of the Partnership and the KECALP Partnerships and their respective stated policies.

4. With respect to the relief requested pursuant to sections 57(i) and 17(d) of the Act and Rule 17d–1 thereunder, the Managing General Partner of the Partnership and the Board of Directors of KECALP Inc. reviewed the proposed investments, and determined that such investments were consistent with the Partnership's and the KECALP Partnerships' investment objectives of seeking long-term capital appreciation, and that the investments would not disadvantage the Partnership or either of the KECALP Partnerships in making such investments, maintaining their investment positions or disposing of such positions. The Independent General Partners of the Partnership also made such determinations with respect to the purchase of Borg-Warner Holdings Common Stock.

5. In reaching such determinations, the Managing General Partner, the Independent General Partners and the Board of Directors of KECALP Inc. considered several factors, including the difference in the amount proposed to be invested by the Partnership, each of the KECALP Partnerships, ML & Co. and the other entities affiliated with ML & Co. It was recognized that the terms of purchase by such participants would be the same in terms of the price paid per share of stock. Applicants submit that the transactions would be consistent with the provisions, policies and purposes of the Act.

6. Both the KECALP Exemptive Order and the prospectus of each of the KECALP Partnerships indicated that affiliates of ML & Co. would be involved in identifying and investing in many of KECALP's protfolio investments. The prospectus of the Partnership indicated that the Partnership may be co-investor in protfolio companies with affiliates of management. The Partnership and the KECALP Partnerships thus submit that the relief requested is consistent with the purposes of the Partnership and the KECALP Partnerships, their stated policies and the disclosure made to prospective investors.

### Applicants' Condition

The investments in Borg-Warner Holdings and SG Holdings will be acquired by the Partnership and the KECALP Partnerships in the manner and on the terms described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–18359 Filed 8–12–88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Region IV Advisory Council Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Kentucky, will hold a public meeting at 10:00 a.m. to 3:00 p.m., Wednesday, September 14, 1988 at the Louisville District Office, 600 Federal Place, Room 188, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information; write or call William Federhofer, District Director, U.S. Small Business Administration, P.O. Box 3527, Louisville, KY 40201 (502) 582–5971.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

July 28, 1988

[FR Doc. 88–18400 Filed 8–12–88; 8:45 am]

BILLING CODE 8025-01-M

### Region IV Advisory Council Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis, will hold a public meeting at 8:30 a.m. on Thursday, September 22, 1988, at Peat Marwick Main & Co., 1010 Market Street, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information; write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive St., Room 242, St. Louis, Missouri, 63101—(314) 539–6600.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

August 9, 1988

[FR Doc. 88–18403 Filed 8–12–88; 8:45 am]

BILLING CODE 8025-01-M

### Region IV Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lower Rio Grande Valley of Texas, will hold a public meeting at 1:30 p.m. on Thursday, September 15, 1988, at the Board Room of Pan American University Edinburg, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas—(512) 427–8625.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

July 26, 1988.

[FR Doc. 88–18401 Filed 8–12–88; 8:45 am]

BILLING CODE 8025-01-M

### Region IV Advisory Council Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 9:00 a.m. on Tuesday, September 27, 1988, at the Radisson Hotel, 937 Assembly Street, Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John C. Patrick, Jr., District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina—803/765–5339.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

August 9, 1988.

[FR Doc. 88–18402 Filed 8–12–88; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

**[Public Notice CM–8/1207]**

### The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), National Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 8, 1988 in room 1205, and for two days October 19 (Room 1205) and October 20, 1988 (Room 1912), Department of State, 2201 C Street, NW., Washington, DC. The meetings will begin each day at 9:30 a.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U. S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U. S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of these meetings is to:

1. Continue preparatory activities for IXth CCITT Plenary Assembly, Melbourne, Australia, November 14–25, 1988 and in particular receive reports of the ad-Hoc groups assigned to review U. S. positions on the proposed texts of study questions for the next Plenary Period (1989–92) as well as candidates for leadership positions. The membership may be requested to convene separate meetings to resolve issues concerning Study Group questions, or strategy for supporting candidates.

2. Receive reports on preparatory activities for World Administrative Telegraph and Telephone Conference (WATTC), Melbourne, Australia, November 28–December 9, 1988.

3. Continuing preparatory activities for the ITU Plenipotentiary Conference, 23 May–29 June, 1989, Nice, France.

The October 19 and 20 meetings will be the final preparatory meetings prior to the convening of the IXth CCITT Plenary Assembly. All accredited members of the U.S. Delegation will be required to attend this meeting.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653–6102 or (202) 647–5832. All attendees must use the C Street entrance to the building.

Date: July 29, 1988.

**Earl S. Barbely,**

*Director, Office of Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.*

[FR Doc. 88–18333 Filed 8–12–88; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 5, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

**Docket No. 45741**

*Date Filed:* August 2, 1988.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 30, 1988.

*Description:* Application of Air Espana, S.A. t/a Air Europa, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between any point or points in Spain and any point or points in the United States.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 88–18366 Filed 8–12–88; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

### Informal Airspace Meetings; Alabama and Georgia

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of informal airspace meetings.

**SUMMARY:** This notice announces informal airspace meetings to discuss the following: 1. Establishment of an Airport Radar Service Area (ARSA) at Montgomery, AL; and 2. Establishment of an ARSA at Macon, GA.

**DATES:** The informal airspace meetings will be held on October 13, 1988, for the Montogomery, AL, ARSA and October 18, 1988, for the Macon, GA, ARSA.

**ADDRESSES:** The informal airspace meeting locations are as follows:.

**Montgomery, AL, ARSA**

*Date:* October 13, 1988

*Time:* 7:00 p.m.

*Location:* State Highway Department, 1409 Coliseum Boulevard, Montgomery, AL

**Macon, GA, ARSA**

Date: October 18, 1988

*Time:* 7:30 p.m.

*Location:* Fire Rescue Building, Lewis B. Wilson Airport, Macon, GA

**FOR FURTHER INFORMATION CONTACT:** Joe Gill, Airspace Brach (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9252.

Issued in Washington, DC, on August 9, 1988.

**Shelomo Wugalter,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 88-18378 Filed 8-12-88; 8:45 am]

BILLING CODE 4910-13-M

## Informal Airspace Meetings; Tennessee

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of informal airspace meetings.

**SUMMARY:** This notice announces informal airspace meetings to discuss the establishment of a Terminal Control Area (TCA) at Memphis, TN.

**DATE:** The informal airspace meetings will be held on October 4, 1988.

**ADDRESSES:** The informal airspace meeting locations is as follows:.

**Memphis: TN, TCA**

*Date:* October 4, 1988
*Time:* 7:00 p.m.
*Location:* Memphis Air Route Traffic Control Center, Conference Room, 3929 Democrat Road, Memphis, TN

**FOR FURTHER INFORMATION CONTACT:** Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

Issued in Washington, DC, on August 9, 1988.

**Shelomo Wugalter,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 88-18383 Filed 8-12-88; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 9, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New
*Form Number:* IRS Form 8801
*Type of Review:* New collection
*Title:* Credit for Prior Year Minimum Tax
*Description:* Form 8801 is used by individuals, estates, trusts, and corporations to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year to be carried forward for use in a future year.
*Respondents:* Individual or households, Businesses or other forprofit, Small businesses or organizations
*Estimated Number of Respondents:* 100,000
*Estimated Burden Hours Per Response:* 30 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 50,000 hours

*OMB Number:* 1545-0188
*Form Number:* IRS Form 4361
*Type of Review:* Extension
*Title:* Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners
*Description:* Form 4361 is used by ministers, members of religious orders, or Christian Science Practitioners to file for an exemption from self-employment on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.
*Respondents:* Individuals or households
*Estimated Number of Respondents:* 10,270
*Estimated Burden Hours Per Response:* 31 minutes
*Frequency of Response:* One time only
*Estimated Total Reporting Burden:* 5,242 hours

*OMB Number:* 1545-0191
*Form Number:* IRS Form 4952
*Type of Review:* Revision
*Title:* Investment Interest Expense Deduction
*Description:* Form 4952 is used by taxpayers who paid or accrued interest or money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indeptedness and the information obtained is necessary to verify the amount actually deducted.
*Respondents:* Individuals or households, Businesses or other forprofit, Small businesses or organizations
*Estimated Number of Respondents:* 800,000
*Estimated Burden Hours Per Response:* 42 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 562,133

*OMB Number:* 1545-0308
*Form Number:* IRS Form 5329
*Type of Review:* Revision
*Title:* Return for Individual Retirement Arrangement and Qualified Retirement Plans Taxes
*Description:* This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are excess contributions to an IRA, premature distributions from and IRA, and other qualified retirement plans excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.
*Respondents:* Individuals or households
*Estimated Number of Respondents:* 250,000
*Estimated Burden Hours Per Response:* 28 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 116,971

*OMB Number:* 1545-0976
*Form Number:* IRS Form 990-W
*Tye of Review:* Revision
*Title:* Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Trust
*Description:* Form 990-W is used by tax-exempt trust to figure estimated unrelated business income tax liability and the amount of each installment payment. Form 990-W is a worksheet only. It is not required to be filed.
*Respondents:* Businesses or other for-profit, Non-profit institutions
*Estimated Number of Respondents:* 13,265
*Estimated Burden Hours Per Response:* 39 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 8,633

*OMB Number:* 1545-1024
*Form Numbers:* IRS Form 8656
*Type of Review:* Revision
*Title:* Alternative Minimum Tax—Fiduciaries
*Description:* This form was developed to assist fiduciaries in computing the alternative minimum tax under new Code sections 55 through 59. The

minimum tax is determined by recomputing the distributable net income of the fiduciary on a minimum tax basis. The distributable net alternative minimum taxable income is then allocated to the beneficiaries.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents:* 1,200,000
*Estimated Burden Hours Per Response:* 1 hour and 42 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 2,047,492 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitition Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhaul (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 88–18352 Filed 8–12–88; 8:45 am]
BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Date: August 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**U.S. Customs Service**

*OMB Number:* 1515–0047
*Form Number:* CF 5523
*Type of Review:* Extension
*Title:* Invoice Details for Footwear
*Description:* The information is needed to provide Customs personnel with the necessary details on imported footwear not normally provided on commercial invoices for the purposes of proper classification.
*Respondents:* Business or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 137,500
*Estimated Burden Hours Per Response:* 2 hours and 2 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 561,454 hours

*OMB Number:* 1515–0109
*Form Number:* None
*Type of Review:* Extension
*Title:* Proof of Use for Rates of Duty Dependent on Actual Use
*Description:* The declaration is needed to ensure Customs control over merchandise which is duty free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 700
*Estimated Burden Hours Per Response:* 20 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 4,025 hours
*Clearance Officer:* B. J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 88–18353 Filed 8–12–88; 8:45 am]
BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Date: August 5, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0092
*Form Number:* 1041 and related Schedules D, J, and K–1
*Type of Review:* Revision
*Title:* U.S. Fiduciary Income Tax Return; Capital Gains and Losses; Trust Allocation of an Accumulation Distribution; Beneficiary's Share of Income, Deductions, Credits, etc.
*Description:* Internal Revenue Code section 6012 requires that an annual income tax return be filed for estates and trusts. Data used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.
*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents:* 2,250,000
*Estimated Burden Hours Per Response:* Form 1041: 2 hours and 2 minutes Schedule D: 1 hour and 13 minutes Schedule J: 4 hours and 24 minutes Schedule K–1: 24 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 6,635,560 hours

*OMB Number:* 1545–0099
*Form Number:* 1065 and Schedules D and K–1
*Type of Review:* Revision
*Title:* U.S. Partnership Return of Income, Capital Gains and Losses, Partner's Share of Income, Credits, Deductions, etc.
*Description:* Internal Revenue Code section 6031 requires partnerships to file returns that show income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 1,900,026
*Estimated Burden Hours Per Response:* Form 1065: 5 hours and 27 minutes Schedule D: 56 minutes Schedule K–1: 55 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 20,453,280 hours

*OMB Number:* 1545–0228
*Form Number:* 6252
*Type of Review:* Revision
*Title:* Computation of Installment Sale Income
*Description:* Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and sale of real property by someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit included in income on the taxpayer's return.

*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
*Estimated Number of Respondents:* 782,648
*Estimated Burden Hours Per Response:* 1 hour and 32 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 1,196,609 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88–18354 Filed 8–12–88; 8:45 am]

BILLING CODE 4810-25-M

## Senior Executive Service; Performance Review Board

**AGENCY:** Treasury Department.

**ACTION:** Notice of members of Performance Review Board (PRB).

**SUMMARY:** This notice announces the appointment of members of the composite PRB for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Serlin, Assistant Commissioner, Field Operations, Financial Management Service, 401 14th Street, SW., Washington, DC; Telephone (202) 287–0311.

**SUPPLEMENTARY INFORMATION:** Pursuant to 5 U.S.C. 4313(c)(4) and the Civil Service Reform Act of 1978, the members of the Senior Executive Service Performance Review Board for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service are listed below. This Board reviews the performance of career senior executives below the level of bureau head and principal deputy in the five bureaus. At least three voting members constitute a quorum.

| Bureau | Primary | Alternate |
|---|---|---|
| SB | Jerrold B. Speers, Executive Director | Lorn Harvey, Deputy Executive Director for Savings Bond Division. |
| PD | Kenneth W. Rath, Assistant Commissioner (Administration) | Eleanor J. Holsopple, Assistant Commissioner (Securities and Accounting Services). |
| E&P | L. Paul Blackmer, Jr., Assistant Director (Administration) | Carl D'Alessandro, Acting Assistant Director (Operations). |
| Mint | Eugene H. Essner, Deputy Director | Michael F. Hill, Associate Director for Policy and Management |
| FMS | Michael D. Serlin, Assistant Commissioner, Field Operations | Bland Brockenborough, Assistant Commissioner, Headquarters Operations. |

This notice does not meet the Department's criteria for significant regulation.

**Michael D. Serlin,**

*Assistant Commissioner, Field Operations, Financial Management Service PRB Chairman, 1988.*

[FR Doc. 88–18384 Filed 8–12–88; 8:45 am]

BILLING CODE 4810-25-M

## Internal Revenue Service

## Art Advisory Panel; Closed Meeting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of closed meeting of Art Advisory Panel.

**SUMMARY:** Closed meeting of the Art Advisory Panel will be held in Washington, DC.

**DATES:** The meeting will be held September 15 and 16, 1988.

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, CC:AP:V, 1111 Constitution Avenue NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566–9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on September 15 and 16 in Room 2004 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Lawrence B. Gibbs,**

*Commissioner.*

[FR Doc. 88–18381 Filed 8–12–88; 8:45 am]

BILLING CODE 4830-01-M

## UNITED STATES INFORMATION AGENCY

## Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces a program of limited grant support for non-profit U.S. institutions and organizations in the private sector which as described below promotes the long-term foreign policy objective of the United States by promoting mutual understanding between its people and the people of other countries. The primary purpose of the program is to enhance the achievement of the United States' international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources.

Projects must include an international people-to-people component, have an educational or cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and other countries. Subjects must be consistent with USIA themes, priorities, and USIS post requirements.

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The Office of Private Sector Programs works with U.S. not-for-profit organizations on cooperative international group projects which introduce American and foreign participants to one another's traditions, arts, social and political structures, and international interests. The Office will accord priority status to worldwide projects involving leaders or potential leaders in their fields such as parliamentarians, jurists, journalists, development officials, public policy experts, artistic practitioners. Proposals are welcome involving any area of the world, with special attention given to otherwise excellent projects involving regions and countries—such as Africa, the Near East and South and Southeast Asia—which have participated less frequently in exchanges. Each private sector activity must meet the highest professional standards, be non-partisan, and address substantive areas of mutual interest. Priority consideration is given to projects that involve United States Information Agency posts in the development of the program and the selection of the participants.

USIA grant assistance constitutes only a portion of total project funding. Proposals should list other anticipated sources of support—both financial and in-kind. Actual programs range from one to six weeks; the duration of the entire grant period does not normally exceed one year. Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs. Grants are not ordinarily given to support performing arts tours, plastic arts exhibitions, reserch projects or professional training, youths or youth-related activities, or to fund publications. Student exchanges or projects which are scholarly or academic in purpose should be directed to USIA's Office of Academic Programs.

The Office of Private Sector Programs is now considering projects whose activities will begin after December 1, 1988, since final proposals must be received at least four months in advance of the activity date and will be accepted only when the final submission is in accord with Project Proposal Information Requirements (OMB #3116–0175). Inquiries are welcome prior to submission of applications.

For further information, organizations should contact Dr. Raymond H. Harvey, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, or call (202) 485–7348.

Dated: August 10, 1988.

**Robert Francis Smith,**

*Director, Office of Private Sector Programs.*

[FR Doc. 88–18378 Filed 8–12–88; 8:45 am]

BILLING CODE 8230–01–M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 157
Monday, August 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

August 10, 1988.

**TIME AND DATE:** 10:00 a.m., Wednesday, August 17, 1988.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. *Rushton Mining Company*, Docket No. PENN 85-253-R, etc. (Issues include whether the Secretary of Labor should be assessed attorney's fees and costs pursuant to Fed. R. Civ. P. 11)

Any person attending this meeting who requires special accessiblity features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(d).

**TIME AND DATE:** Immediately following oral argument.

**STATUS:** Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the above listed case.

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5629 / (202) 566-2673 for TDD Relay.

**Jean H. Ellen,**
*Agenda Clerk.*
[FR Doc. 88-18439 Filed 8-11-88; 1:49 pm]
BILLING CODE 6735-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Notice forwarded to Federal Register on August 5, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 12:00 noon, Monday, August 15, 1988.

**CHANGES IN THE MEETING:** Addition of the following closed item(s) to the meeting:

Report of the operations review of the Office of the Secretary.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3024.

Date: August 11, 1988.
**William W. Wiles,**
*Secretary of the Board.*
FR Doc. 88-18463 Filed 8-11-88; 1:50 pm]
BILLING CODE 6210-01-M

**PAROLE COMMISSION**

**DATE AND TIME:** Friday August 19, 1988, 11:30 a.m., eastern daylight time.

**PLACE:** 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

**STATUS:** Open—Meeting to be conducted by conference telephone call.

**MATTERS TO BE CONSIDERED:** The following matter has been placed on the agenda for the open Parole Commission meeting:

Whether the Commission should extend its special parole procedures for YCA inmates in the *Watts* v. *Hadden* class action for all youth offenders sentenced under 18 U.S.C. § 5010(b) or (c).

**AGENCY CONTACT:** Rockne Chickinell, Office of General Counsel, United States Parole Commission (301) 492-5959.

Date: August 11, 1988.
**Patrick J. Glynn,**
*General Counsel, U.S. Parole Commission.*
[FR Doc. 88-18438 Filed 8-11-88; 1:48 pm]
BILLING CODE 4410-1-M

# Corrections

Federal Register
Vol. 53, No. 157
Monday, August 15, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

**1 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, and 22**

**Updates and Changes to Publication Procedures; Proposed Rule**

*Correction*

In proposed rule document 88-17820 beginning on page 29990 in the issue of Tuesday, August 9, 1988, make the following corrections:

1. On page 29990, in the second column, in the first complete paragraph, in the fifth line, "or" should read "of".

2. On page 29991, in the first column, in the second complete paragraph, in the third line insert a period between "17.2" and "Section".

3. On the same page, in the second column, in the third line from the bottom "received" should read "revived". Also in the last line, "5 U.S.C. et seq." should read "5 U.S.C. 551 et seq.".

4. On page 29993, in the first column, in the last paragraph, in the third line "on" should read "of".

**§ 8.3 [Corrected]**

5.On page 29995, in the first column, in the second line of item 3 "regulations" should read "regulation".

**§ 8.10 [Corrected]**

6. On the same page, in the second column, in § 8.10(b), in the sixth line "details that" should read "details the".

**§ 11.5 [Corrected]**

7. On page 29996, in the first column, in § 11.5, in the first line of the section heading, "Paper" should read "Papers".

**§ 19.1 [Corrected]**

8. On page 29999, in the second column, in § 19.1, footnote 2 at the bottom of the second column should be transferred to the end of paragraph 2.

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

**Office of the Secretary**

**32 CFR Part 385**

**[DoD Directive 5111.1]**

**Under Secretary of Defense for Policy**

*Correction*

In rule document 88-17553 beginning on page 29329 in the issue of Thursday, August 4, 1988, make the following correction:

On page 29329, in the first column, the subject heading was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

**Office of the Secretary**

**32 CFR Part 387**

**[DoD Directive 5132.2]**

**Assistant Secretary of Defense (International Security Affairs)**

*Correction*

In rule document 88-17552 beginning on page 29330 in the issue of Thursday, August 4, 1988, make the following correction:

On page 29330, in the second column, the subject heading was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

## FEDERAL TRADE COMMISSION

**16 CFR Part 600**

**Fair Credit Reporting Act; Statements of General Policy or Interpretation; Proposed Official Commentary**

*Correction*

In proposed rule document 88-17655 beginning on page 29696 in the issue of Monday, August 8, 1988, make the following correction:

On page 29696, in the first column, in the heading, the CFR line should appear as set forth above.

BILLING CODE 1505-01-D

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Federal Register

Monday
August 15, 1988

Part II

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Parts 310, 346, and 369**

**Anorectal Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking**

VOL 53 ISS 157 AUG 15 1988 UMI

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 310, 346, and 369**

**[Docket No. 80N-0050]**

## Anorectal Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) anorectal drug products for the relief of symptoms associated with hemorrhoids and other anorectal disorders are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 13, 1988. Because of the length and complexity of this proposed regulation, the agency is allowing a period of 120 days for comments and objections instead of the normal 60 days. New data by August 15, 1989. Comments on the new data by October 15, 1989. Written comments on the agency's economic impact determination by December 13, 1988.

**ADDRESSES:** Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products, together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (Hemorrhoidal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by August 25, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by September 24, 1980.

In a notice published in the **Federal Register** of September 26, 1980 (45 FR 63876), the agency advised that it had reopened the administrative record for OTC anorectal drug products to allow for consideration of recommendations on camphor-containing drug products that had been received from the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel) after the date the administrative record previously had officially closed. The agency concluded that the Miscellaneous External Panel's recommendations should be available to the agency in developing a proposed regulation on anorectal drug products in the form of a tentative final monograph. (See comment 21 below.)

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. Data and information received after the administrative record was reopened have also been put on display in the Dockets Management Branch.

In response to the advance notice of proposed rulemaking, nine drug manufacturers, one drug manufacturers' association, six health professionals, and one consumer submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

The advance notice of proposed rulemaking, which was published in the **Federal Register** on May 27, 1980 (45 FR 35576), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 346 (21 CFR Part 346), FDA states for the first time its position on the establishment of a monograph for OTC anorectal drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC anorectal drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC anorectal drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summaries of the comments and FDA's responses to them.

In the **Federal Register** of February 8, 1983, the agency published a tentative final monograph for OTC external analgesic drug products which included a labeling claim "for external anal itching" for hydrocortisone-containing products. After reviewing and evaluating that tentative final monograph and in response to a comment submitted to the anorectal rulemaking, the agency has decided to retain the above labeling claim and hydrocortisone in the external analgesic rulemaking rather than include them in the anorectal rulemaking. In this way, the various conditions for which hydrocortisone is effective will be listed in one monograph. In a future issue of the **Federal Register**, the agency will amend the tentative final monograph for OTC external analgesic drug products to include a requirement that hydrocortisone-containing products labeled for "anal itching" also be labeled with appropriate general warnings and directions consistent with other OTC anorectal drug products. (See comment 25 below.)

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required)

at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC anorectal drug products (published in the **Federal Register** of May 27, 1980; 45 FR 35576), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of April 26, 1973 (38 FR 10307) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

## I. The Agency's Tentative Conclusions on the Comments

### *A. General Comments on Anorectal Drug Products*

1. Two comments expressed their continuing position that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comments referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).

2. Several comments pointed out that a number of the Panel's recommendations do not represent the unanimous opinion of the Panel members because the Panel was divided four to three on many issues. Some of the comments argued that the minority view often demonstrated a greater clinical understanding than the majority view. The comments urged FDA, when evaluating the Panel's recommendations, to consider the minority view and the fact that there was not a clear consensus of the Panel.

Other comments contended that the Panel did not apply the same standards in classifying the various active ingredients, arguing that pramoxine was placed in Category I on the basis of old and questionable data, while live yeast cell derivative was placed in Category III despite objective data that were endorsed by experts. The comments requested that the agency carefully review all of the Panel's recommendations to determine if the Panel took an equitable approach in its evaluation of all ingredients contained in hemorrhoidal drug products.

In evaluating the Panel's recommendations, the agency has considered the comments' criticisms, reviewed the data submitted to the Panel, considered the minority's views, reviewed the current scientific literature, and evaluated new data submitted since the Panel's report was published. The agency's proposals in this tentative final monograph are based on consideration of all of these factors. (See comments 14 and 23 below for specific discussions of pramoxine and live yeast cell derivative.)

3. One comment requested that the agency include all available transcripts of the Panel's meetings in the administrative record.

The agency does not ordinarily include transcripts of panel meetings in the administrative record. The reasons for this are stated in the preamble to the "Proposal to Designate the Contents and the Time of Closing of the

Administrative Record," published in the **Federal Register** of June 4, 1974 (39 FR 19878). (The final rule was published in the **Federal Register** of November 8, 1974 (39 FR 39556).) Any comments relating to transcripts of panel meetings should state the reasons that would warrant the agency's consideration of the transcripts or particular portions of the transcripts, notwithstanding the reasons given by the agency for not ordinarily considering them. The comment did not state any reasons; therefore, the agency is not including the transcripts of the Panel's meetings in the administrative record.

4. Murray Berdick, Ph. D., commented that his name was omitted from the list of individuals who appeared before the Panel (45 FR 35577). He stated that his presentation is included in the transcript of the Panel's April 29, 1977 meeting and is cited as reference 12 at 45 FR 35627. He also indicated that his name was incorrectly spelled at 45 FR 35635, column 2, reference 6.

The agency regrets that Dr. Berdick's name was omitted from the list of persons who appeared before the Panel and was incorrectly spelled in the cited reference at 45 FR 35635.

5. One comment stated that the Thornton and Minor Clinic and Hospital and the McCleary Hospital of Kansas City, Missouri, were not mentioned in the Panel's overview of the history of anorectal diseases and their treatment (45 FR 35581). The comment added that the Clinic specializes in the research and treatment of anorectal disorders and included an account of its history.

The agency appreciates the comment's pointing out these omissions from the Panel's report. However, the historical discussion of anorectal diseases and their treatment was included as background in the Panel's report and was not intended to be all-inclusive.

6. One comment pointed out that the correct citation at 45 FR 35627 for data submitted in support of the barrier effect of protectants should have been Reference 9, OTC Volume 120052, not Reference 6, which is "Remington's Practice of Pharmacy." Another comment stated that a protocol for a product containing dibucaine apparently was erroneously attributed to Ciba-Geigy in the administrative record and that this firm did not submit this protocol.

The agency acknowledges that Reference 6 at 45 FR 35627 should have been identified as OTC Volume 120052. The protocol erroneously attributed to Ciba-Geigy should have been attributed to Myer Laboratories.

7. One comment argued that publication of a call-for-data notice in the **Federal Register** amounted to inadequate notice to manufacturers of hemorrhoidal drug products and discriminated against the smaller manufacturer or packager who, with only a small support staff, may not have the resources to employ an individual to read the **Federal Register** every day. The comment stated that its marketed hemorrhoidal preparation containing ephedrine alkaloid and 8-hydroxyquinoline was not submitted to the Panel for review because of this lack of notice. Consequently, these ingredients were not reviewed by the Panel and would become Category II in a final rule. The comment objected to such a Category II classification for these ingredients, adding that the rectal preparation in which they are combined has been used successfully for over 20 years.

In addition to the call-for-data notice (38 FR 10307), the agency regularly published notices in the **Federal Register** announcing the dates of the Panel's meetings and the part of each meeting that was open to the public. The minutes of each meeting were made publicly available, and the industry liaisons, who served on the Hemorrhoidal Panel as nonvoting members, were nominated by The Proprietary Association, the national trade association of OTC drug manufacturers. In addition, the OTC drug review has been highly publicized, and the Panel's review of anorectal drug products covered a period of over 4 years.

For these reasons, the agency believes that adequate opportunity was provided for all parties to present their positions to the Panel. Ample opportunities have existed and continue to exist for all interested persons to express their opinions before publication of the final rule. For example, interested persons could have submitted comments and data during the comment period following publication of the Panel's report and may do so again following publication of the tentative final monograph. (See § 330.10(a) (6) and (7).)

The comment did not submit any data to support the safety and effectiveness of ephedrine alkaloid or 8-hydroxyquinoline used in anorectal drug products. Therefore, the agency has no basis for classifying these ingredients in this tentative final monograph. As stated above, additional data may be submitted for 12 months following publication of this tentative final monograph.

8. One comment contended that the Panel failed to evaluate or discuss two clinical studies submitted to show that its proposed product (an aerosol medicated anal wipe foam) was significantly effective for relief of pain and itching in persons with anorectal disease (Refs. 1 and 2). Referring to the statement at 45 FR 35590 that "the need to produce a foam for delivering the active ingredient is not clear to the Panel," the comment contended that the Panel failed to perceive that all foams are not "shaving lather-type" foams. The comment stated that its anhydrous foam is a "quick-breaking" type of foam and serves only as a delivery vehicle. As the foam is applied to the toilet tissue it breaks and leaves a local anesthetic suspension, while the emollients and other ingredients are left in solution for skin application.

Although not referred to in the Panel's general statement on foams, the data submitted by the comment were reviewed by the Panel and referred to in the discussion of testing guidelines at 43 FR 35595. The Panel also discussed the use of foam products for delivering an active ingredient externally in the anal canal and in the lower rectum below the dentate line (43 FR 35589 and 35590). Because the agency is not proposing the Panel's requirement for final formulation testing in this tentative final monograph, Category I anorectal ingredients can be formulated in any dosage form for external use, including foams, provided the product meets each condition of the final monograph. (See comment 55 below.)

However, the proposed product to which the comment referred would have anesthetic, counterirritant, emollient, and/or antipruritic properties (Ref. 1). The Panel concluded that it is not rational to combine a local anesthetic and a counterirritant and placed such combinations in Category II.

The agency concurs. Thus, the comment's proposed product would be considered a Category II combination. (See comment 34 below.)

**References**

(1) OTC Volume 120035.
(2) OTC Volume 120037.

*B. Comments on Local Anesthetics*

9. One comment supported the opinion of the Panel minority that local anesthetics in anorectal drug products should be Category I for intrarectal use instead of Category III, as recommended by the Panel majority. The comment cited the minority's reasoning that, even without double-blind studies, the effectiveness of local anesthetic-containing anorectal drug products that are used intrarectally is supported by marketing records of repeat sales, use

experience, and Panel members' clinical experience with patients who claimed relief of discomfort after intrarectal use of these products.

The agency has thoroughly considered the issue of intrarectal (internal) use of local anesthetics and finds that, at present, there is insufficient evidence of general recognition of the safety and effectiveness of this use of local anesthetics. The lack of general recognition is demonstrated by the fact that the Panel was not unanimous in its recommendations.

The Panel majority pointed out that there are no known sensory pain fibers above the dentate line (45 FR 35607). Hence, the majority concluded that there is insufficient evidence to prove that local anesthetics used intrarectally are effective. In addition, the Panel majority felt that local anesthetics can easily diffuse through mucous membranes and, when applied intrarectally can be absorbed directly into the systemic, central, and portal blood circulations almost as rapidly, under certain conditions, as intravenous administration. Thus, these drugs raise potential safety questions and could cause severe reactions in certain individuals.

After reviewing the available scientific evidence, the Panel concluded that certain local anesthetics, i.e., benzocaine, benzyl alcohol, dyclonine, and pramoxine, could be used safely intrarectally but that data were still needed to establish effectiveness. (See 45 FR 35613 to 35619.)

The Panel minority believed that the majority based its conclusion on the fact that there are no anatomically identifiable sensory nerve endings or nerve fibers in the rectal mucosa or submucosa. However, the minority argued that there are known and identifiable nerve fibers and plexuses between the muscular layers that are associated with peristaltic muscular contraction of the rectum. The minority concluded that these nerve fibers, which are known to innervate the smooth musculature of the rectum, have synapses with cells in the myenteric and submucosal plexuses. In addition, the fibers have or are in adjacent association with sensory conducting nerve fibers, which transmit impulses to the central nervous system.

The minority argued that, although electrical stimulation or application of a mustard suspension to the rectal mucosa has not been shown to evoke a pain response in healthy mucosa, pain perception may result when blood vessels supplied with sensory pain fibers become diseased with hemorrhoids. However, evidence based on well-controlled clinical studies is lacking to support this argument. In addition, both the majority and minority of the Panel discussed the fact that some sensation of pressure can be produced in the rectum by distention due to feces or gas (45 FR 35607 to 35608). The agency is not aware of evidence that the source or sources of this sensation are also capable of transmitting the sensations of pain or itching.

Finally, in support of intrarectal use of local anesthetics, both the comment and the Panel minority cited marketing records of repeat sales of products containing local anesthetics for intrarectal use. They also cited use experience, particularly that of Panel members' patients who claimed relief of anorectal discomfort after use of these products. The agency recognizes that proof of effectiveness may not always consist of controlled clinical investigations. In fact, the OTC drug review regulations in 21 CFR 330.10(a)(4)(ii) provide that investigations may be corroborated by partially controlled or uncontrolled studies, documented clinical studies by qualified experts, and reports of significant human experience during marketing. However, after carefully reviewing all the available literature, the agency agrees with the Panel majority (45 FR 35607) that the intrarectal effectiveness of all local anesthetics remains unsubstantiated and requires further study. (See also comment 11 below.) However, the agency emphasizes that this decision does not affect the external use of these ingredients. OTC anorectal anesthetics are being included in the tentative final monograph with appropriate labeling for external use only.

The agency invites public comment and submission of data on the safety and effectiveness of OTC anorectal anesthetic drugs for intrarectal use. Pending receipt and review of such data and information, the agency proposes that the intrarectal use of OTC anorectal anesthetic ingredients be considered a Category III condition except for those ingredients or conditions that are proposed as Category II.

10. One comment stated that the Panel's recommended monograph refers to dibucaine base and dibucaine hydrochloride, but that only dibucaine base is presently available in formulations intended for anorectal use.

In addition to the data submitted on dibucaine base, the Panel chose to review the hydrochloride salt, noting that the base is slightly water soluble and moderately lipid soluble, whereas the hydrochloride salt is soluble in water and in organic solvents (45 FR 35614). The Panel considered dibucaine base and dibucaine hydrochloride as pharmacologically equivalent, and the agency concurs. Dibucaine base and dibucaine hydrochloride were classified by the Panel as Category III for external and intrarectal use (45 FR 35614) and therefore were not included in the Panel's recommended monograph. However, as discussed in comment 12 below, the agency is proposing Category I status in this tentative final monograph for dibucaine base and dibucaine hydrochloride for external use. Intrarectal use of these ingredients is Category III. (See comment 9 above and comment 11 below.)

11. One comment submitted summaries of six studies (Ref. 1) and requested that dibucaine be classified Category I as a local anesthetic for intrarectal use. Noting that these same summaries had been submitted to the Panel (Ref. 2), the comment stated that the Panel apparently found the results presented in these summaries to be insufficient to demonstrate the effectiveness of dibucaine for intrarectal use. The comment added that, although the data generated by these studies do not demonstrate statistical significance in all parameters, it believes that dibucaine has been shown in the clinical practice setting to be effective in the relief of hemorrhoidal symptoms. The comment pointed out that the studies had been reviewed by other authorities who found that the studies, as a whole, demonstrate the effectiveness of dibucaine used intrarectally (Refs. 3 and 4). The comment subsequently submitted additional effectiveness data (Ref. 5).

In addition, the comment disputed the Panel's conclusion that dibucaine had not been shown to be safe for intrarectal use because of possible systemic toxicity when administered intrarectally. Contending that further safety data are not needed, the comment stated that studies in which dogs and monkeys were administered high doses of dibucaine intrarectally did not show serum levels as high as those of dibucaine administered intravenously. The comment added that lipid vehicles retard the rate and extent of absorption of local anesthetics, that marketing history and submitted studies attest to dibucaine's safety when used intrarectally, and that further testing of humans using high doses of dibucaine would be unethical.

The agency has evaluated the summaries submitted by the comment (Ref. 2) and the additional effectiveness data (Ref. 5). The same summaries were submitted to the Panel on April 27, 1977

(Ref. 2). Other data and information on these studies including the opinions of the other authorities mentioned by the comment had also been submitted to the Panel on June 22, 1973 (Ref. 4) and on July 29, 1974 (Ref. 3). The Panel reviewed all of these data, plus other data, and concluded that the effectiveness of local anesthetics, including dibucaine, for intrarectal use is unproven (45 FR 35616). The agency concurs with that determination.

The additional effectiveness data involved a randomized, double-blind comparison in 143 patients of an ointment containing dibucaine base and the ointment base minus dibucaine for relief of pain, burning, and/or itching associated with internal, external, or mixed hemorrhoids (Ref. 5). (The summary of this study had been reviewed by the Panel (Ref. 2).) Only 127 cases were suitable for analysis; 65 patients received the ointment containing dibucaine base while 62 patients received the ointment base without dibucaine. Despite several problems in evaluation, including heterogeneous disease processes of external hemorrhoids, internal hemorrhoids, and mixed hemorrhoids, and variable patient medication compliance, and despite probable contribution from the ointment vehicle base, the ointment containing dibucaine base was shown in this study to be superior to the ointment base in seven of the measurements for which there was significance at the 5-percent level or greater; this leaves two measurements where the ointment base was judged superior at the same level of significance.

Only 15 patients who received the ointment containing dibucaine base and 14 patients who received the vehicle alone had internal hemorrhoids. The rest of the patients had either external hemorrhoids or mixed hemorrhoids (50 patients who received the ointment containing dibucaine base and 48 patients who received the vehicle control).

In about 75 percent of the cases there were external complaints (external to the dentate line) and in about 25 percent of the cases complaints were judged to be as a result of internal hemorrhoids. However, the data are analyzed only for the entire group, with no analysis exclusively for those patients with internal hemorrhoids. Further, the agency believes such an analysis would not be meaningful because it would involve 29 patients derived from 9 investigators or about 3 cases per investigator.

There are insufficient data to establish that the ointment containing dibucaine base is effective for the relief of pain, burning, discomfort, and itching associated with internal hemorrhoids. The safety of internal application also has to be established for dibucaine base. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 6).

**References**

(1) Comment No. C00006, Docket No. 80N-0050, Dockets Management Branch.
(2) OTC Volume 120064.
(3) OTC Volume 120023.
(4) OTC Volume 120010.
(5) Comment No. SUP002, Docket No. 80N-0050, Dockets Management Branch.
(6) Letter from W. E. Gilbertson, FDA, to R. Gauch, Ciba-Geigy Corp., coded LET011, Dockets Management Branch.

12. Disputing the Panel's statement at 45 FR 35616 that "there are no studies using dibucaine in the perianal area," one comment cited data on a controlled study that had been submitted to the Panel. The study involved approximately 45 patients with external hemorrhoids and 65 patients with both internal and external hemorrhoids (Ref. 1). The comment argued that the Panel placed pramoxine in Category I for external use based on data from two uncontrolled studies and placed benzocaine in Category I for external use based on one unblinded, nonrandomized study that used only 13 patients. The comment stated that the Panel either used different standards in determining the effectiveness of dibucaine than it used for pramoxine and benzocaine or discounted or ignored the "superior" data submitted for dibucaine.

Contending that proof of dibucaine's effectiveness as a local anesthetic need not relate solely to its use in the perianal area, the comment pointed out that the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) classified dibucaine in Category I for external use for "the temporary relief of pain and itching due to * * * minor cuts, abrasions * * *, and minor skin irritations." The comment added that the Hemorrhoidal Panel stated that dibucaine is probably effective on abraded skin of the perianal area, and that the Topical Analgesic Panel found dibucaine to be effective on abraded skin generally. The comment further contended that abraded skin is abraded skin regardless of its location and that there is no justification for categorizing dibucaine as anything less than Category I for use on perianal skin. The comment urged the agency to consider the fact that many patients over the years have obtained relief using dibucaine and that, for all of the above reasons, a Category I classification of dibucaine as a local anesthetic for external use in anorectal disease is warranted.

Although the comment requested Category I status specifically for dibucaine, the agency notes that the Panel considered dibucaine (base) and dibucaine hydrochloride to be pharmacologically equivalent (see comment 10 above); therefore, this discussion on external use applies to both ingredients. (The intrarectal use of local anesthetics is discussed in comment 9 above.)

The Panel reviewed the data referred to by the comment and applied the same standards in reaching its conclusions on benzocaine, dibucaine, dibucaine hydrochloride, and pramoxine hydrochloride (45 FR 35609 to 35610 and 35614 to 35617), namely that the effectiveness of an OTC anorectal active ingredient should be demonstrated in the vehicle in which it would be marketed and that the final formulation should be tested in the anorectal area. The Panel concluded that adequate data were submitted to permit classification of benzocaine and pramoxine hydrochloride in specific vehicles in Category I for external use. However, although the data submitted to the Panel contained studies using final formulations of dibucaine, the Panel concluded that because of the lack of studies on perianal skin the data were not sufficient to establish the effectiveness of dibucaine for external use for relieving anorectal conditions (45 FR 35616).

In the tentative final monograph for OTC external analgesic drug products, published in the **Federal Register** of February 8, 1983 (48 FR 5852), the agency tentatively adopted the recommendations of the Topical Analgesic Panel and proposed that dibucaine and dibucaine hydrochloride in concentrations of 0.25 to 1 percent be generally recognized as safe and effective for external use. Having reviewed both Panels' recommendations, the agency believes that the data on dibucaine and dibucaine hydrochloride show that these ingredients when applied to the skin of the perianal area and anal canal are as safe and effective as when used on the skin of other areas of the body. Therefore, in this tentative final monograph the agency is proposing dibucaine and dibucaine hydrochloride as Category I for external use.

The agency notes that the Hemorrhoidal Panel's recommended

dosage range for dibucaine and dibucaine hydrochloride was 2.5 milligrams (mg) to 20 mg per dosage unit. The minimum effective dose of 2.5 mg per dosage unit was based on the amount of dibucaine in a marketed suppository for intrarectal use, for which data were submitted to the Panel. The maximum safe dose of 20 mg per dosage unit was based on the amount of the ingredient contained in a 2-gram (g) dose of a 1-percent ointment for external and intrarectal use, for which data were also submitted to the Panel. The agency notes that the 2.5-mg suppository dosage form is no longer marketed and is unaware of any other currently marketed product that contains 2.5 mg dibucaine per dosage unit. The 1-percent ointment is still marketed. Therefore, the agency is proposing that the dosage of dibucaine and dibucaine hydrochloride for external use be expressed in a concentration range of 0.25 to 1 percent for use up to 3 or 4 times daily, which is consistent with the tentative final monograph for OTC external analgesic drug products (48 FR 5852). In addition, because the agency did not propose any limitation on the maximum safe daily dose of this ingredient for topical use in the external analgesic tentative final monograph, and because the Panel's recommended limitation on the maximum daily dose of dibucaine was based on the potential safety concerns resulting from intrarectal application, the agency is not proposing the 80-mg maximum daily dose limitation recommended by the Hemorrhoidal Panel for dibucaine and dibucaine hydrochloride.

**Reference**

(1) OTC Volume 120064, pp. 6, 7, 10, 19–21, 31–33, and 50–57.

13. One comment supported the Panel's interim decision, made at its 7th and 16th meetings, to place diperodon (0.5 to 1 percent) in Category I for external use. The comment contended that the Panel's decision during its 28th meeting to place diperodon in Category III was based largely on double-blind studies showing that diperodon was only slighty more effective than placebo. The comment disputed the Panel's final recommendation to place diperodon in Category II for external use and cited a study to support the effectiveness of diperodon (Ref. 1). The comment also cited the **Federal Register** of June 18, 1971, in which the comment stated that FDA published the findings of the National Academy of Sciences-National Research Council's (NAS–NRC) Drug Efficacy Study Group that diperodon was possibly effective for the temporary relief of anorectal pain and itching, as well as for anesthetic and mild antiseptic action. The comment stated that safety is not at issue and contended that the difference in scientific opinion as to diperodon's effectiveness should not result in its placement in Category II.

During the course of the Panel's deliberations the classification of diperodon was tentative; however, with the publication of its recommendations in the **Federal Register**, the Panel's final classification of diperodon was as follows: Category II for external use and Category III for intrarectal use. Only the external use of diperodon is discussed in this response. The intrarectal use of local anesthetic ingredients is discussed elsewhere in this document. (See comment 9 above.)

After reviewing the data submitted to the Panel and the references cited by the comment, the agency concludes that diperodon can be reclassified from Category II to Category III for external anorectal use but that the data remain inadequate to reclassify it into Category I.

The published study (Ref. 1) and the June 18, 1971 **Federal Register** notice describing the NAS–NRC report, which were referenced by the comment, and an unpublished study in humans (Ref. 2) were evaluated and cited by the Panel in its discussion of the effectiveness of diperodon for external use (45 FR 35612). The Panel concluded that diperodon was not effective for OTC external anorectal use because the predominant results of the studies show no statistical difference between diperodon and placebo.

With respect to the published study (Ref. 1), although the investigators concluded that diperodon was effective as a topical anesthetic in this dermal abrasion study in the guinea pig, there is a lack of evidence that diperodon produces clinically significant topical anesthetic action in humans.

In the unpublished study, 43 patients were randomized to receive an ointment containing diperodon or placebo in double-blind fashion on the day following anorectal surgery (Ref. 2). The patients evaluated the degree of pain (none, mild, moderate, severe) on the morning of the first post-operative day just prior to application of the test product (baseline) and again at 10, 20, 40, and 60 minutes following ointment application. The agency has analyzed the pain score data and concludes that the response at 40 and 60 minutes favored the diperodon-containing ointment, although differences did not achieve statistical significance at the conventional 0.05 level.

Results of four other controlled studies of the ointment containing diperodon that were submitted to the Panel (Ref. 3) failed to confirm the positive results of the above unpublished study (Ref. 2). Two of these studies were similar in design to the unpublished study discussed above and involved more patients; however, all of these studies failed to show a significant drug effect. Without independent replication of the findings in the unpublished study (Ref. 2), it is difficult to draw definitive conclusions concerning the effectiveness of diperodon as a topical anesthetic.

Although the evidence of the effectiveness of diperodon as a local anesthetic is conflicting, some of the data are suggestive of effectiveness. Therefore, the agency is upgrading diperodon as a local anesthetic for external anorectal use from Category II to Category III. Additional data are needed before the effectiveness of diperodon for external anorectal use can be established. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 4).

**References**

(1) Campbell, A.H. et al., "In Vivo Evaluation of Local Anesthetics Applied Topically," *Journal of Pharmaceutical Sciences*, 57:2045–2048, 1968.

(2) Lieberman, W., Protocol 039–WL–001, OTC Volume 120075.

(3) OTC Volume 120075.

(4) Letter from W.E. Gilbertson, FDA, to J.P. Tierney, Counsel for Thornton-Minor McCleary Ointment Co., coded LET009, Docket No. 80N–0050, Dockets Management Branch.

14. One comment requested that the Panel's recommendations in § 346.10(b) for a cream or jelly formulation for pramoxine hydrochloride be expanded to include ointments and aqueous vehicles. The comment stated that the rate-limiting step in drug absorption in the anorectal area is the rate of release of the dissolved drug from the melted base. With a salt such as pramoxine hydrochloride, the rate of release would be increased by using a lipid base because the salt would be released rapidly from lipid to water and be available for treating the affected area. This comment also stated that if the intrarectal use of local anesthetics is classified in Category III, the suppository dosage form of pramoxine hydrochloride should also be included in Category III.

Two comments requested that the monograph include an aerosol foam dosage form of pramoxine hydrochloride. Noting that the Panel

stated that the need for a foam anorectal dosage form was unclear, one of the comments argued that the agency established the need and rationale for this dosage form by approving as safe and effective two prescription anorectal drug products containing a steroid in an aerosol foam. The comment submitted data to show that the mucoadhesive properties of the aerosol foam product, discussed by the Panel at 45 FR 35590, provide a rapid and complete coverage of the rectal mucosa compared with the slow and incomplete coverage provided by a conventional suppository (Ref. 1).

The submissions on pramoxine hydrochloride presented to the Panel included information on various dosage forms (45 FR 35590, 35610, and 35611); however, only one submission for jelly and cream dosage forms contained complete information as to the content of the final formulation, i.e., inactive ingredients (Ref. 2). Because the Panel concluded that the final formulation of anorectal products must be tested for safety and effectiveness (45 FR 35588) and because the only data submitted which identified the complete final formulation were for a cream and a jelly (Ref. 2), it placed only those dosage forms and the specific ingredients contained in the marketed formulations in its recommended monograph. Nevertheless, after reviewing the submitted data for all dosage forms, including those which did not specifically identify the inactive ingredients in the final formulations, the Panel stated that no toxic effects were noted in the clinical use of pramoxine hydrochloride as an aerosol foam, in suppositories, and in other vehicles including ointments and solutions (45 FR 35610 and Ref. 3).

Regarding the use of an aerosol foam, the Panel stated that the need to produce a foam for delivering the active ingredient was not clear (45 FR 35590) and that a properly designed ointment applicator should serve the same purpose as a foam delivery system. However, the Panel also stated that it did not intend to restrict ingenuity in product design as long as the product accomplishes the claimed effect and met the same final formulation requirements of safety and effectiveness as any other dosage form. The agency is aware that topical aerosol foam products containing pramoxine hydrochloride 1 percent labeled for anorectal use have been marketed OTC for a number of years (Refs. 4 and 5). Accordingly, based on the safety of this ingredient for external anorectal use and the knowledge that an aerosol foam is an effective delivery system for external anorectal use, the agency finds a topical aerosol foam dosage form of pramoxine hydrochloride acceptable for OTC use. Likewise, based on the history of many anorectal drug products being marketed in ointment dosage forms and the data submitted to the Panel (Ref. 2), the agency believes that an ointment vehicle would be acceptable for pramoxine hydrochloride when used externally.

Suppositories containing pramoxine hydrochloride, however, would not be acceptable dosage forms at this time because of insufficient data to establish the effectiveness of local anesthetics when used intrarectally. (See comment 9 above.) There is a lack of experience with formulations of this drug and similar anorectal drugs in aqueous vehicles. The Panel stated that an aqueous solution of pramoxine hydrochloride is not useful in anorectal products because the ingredient will not remain at the site of action (45 FR 35611).

As discussed in comment 55 below, specific dosage forms or specific formulations for anorectal active ingredients are not identified in this tentative final monograph. Thus, in formulating anorectal drug products containing pramoxine hydrochloride, manufacturers should assure that the vehicle is safe and suitable for anorectal use and that the active ingredient will be properly released from the formulation.

**References**

(1) Comment No. C00015, Docket No. 80N–0050, Dockets Management Branch.
(2) OTC Volume 120064.
(3) OTC Volume 120015.
(4) OTC Volume 120039.
(5) OTC Volume 120050.

*C. Comments on Vasoconstrictors*

15. One comment questioned whether the Panel's Category I recommendation for ephedrine sulfate and phenylephrine hydrochloride "in aqueous solution" for external and intrarectal use could be interpreted to mean that the ingredients could be dissolved in the aqueous phase of either an oil-in-water or water-in-oil emulsion vehicle.

The data reviewed by the Panel primarily focused on aqueous solutions of ephedrine sulfate and phenylephrine hydrochloride (45 FR 35622 and 35624). Because of the Panel's concerns about the need for final formulation testing to support safety and effectiveness, the agency believes that the Panel felt that these ingredients had only been determined to be effective when present in an aqueous solution. The agency is not proposing the Panel's recommendation for final formulation testing, and therefore specific vehicles (e.g., oil-in-water or water-in-oil emulsions) for anorectal active ingredients are not being identified in this tentative final monograph. (See comment 55 below.) Thus, in formulating anorectal drug products containing ephedrine sulfate or phenylephrine hydrochloride, manufacturers should assure that the vehicle is appropriate for anorectal use and that the active ingredient will be properly released from the formulation. Manufacturers should be aware that the newness of a dosage, or method * * * of administration or application, or other condition of use * * * may affect the "newness" of a drug. (See 21 CFR 310.3(h)(5).)

16. One comment maintained that statements made by the Panel concerning formulations containing ephedrine sulfate are contradictory. The comment noted that the Panel stated at 45 FR 35587 that water-soluble, oil-insoluble salts, such as ephedrine sulfate, are preferred for rapid absorption from a fat-type base, such as cocoa butter, but that the Panel stated at 45 FR 35622 that ephedrine sulfate is Category I only in an aqueous solution.

In discussing the effectiveness of ephedrine sulfate, the Panel stated that incorporation of ephedrine sulfate in an ointment appears reasonable to provide better surface contact and greater effectiveness. However, the Panel noted that neither a literature survey nor a review of the submitted data provided effectiveness studies on the formulation of ephedrine sulfate in an ointment (45 FR 35623). The Panel recommended that ephedrine sulfate be formulated only in an aqueous solution, as this formulation was the only one containing ephedrine sulfate of which the Panel was aware (45 FR 35622). However, because the agency is not proposing the Panel's recommendation for final formulation testing, specific vehicles for anorectal active ingredients, including ephedrine sulfate, are not identified in this tentative final monograph. Thus, anorectal active ingredients may be formulated in any safe and suitable vehicle. (See comment 55 below.)

*D. Comments on Protectants*

17. One comment requested that hydrogenated vegetable oils and waxes be included as Category I anorectal protectants. Another comment requested that semisynthetic bases, such as those derived from coconut oil or mixtures of triglycerides of fatty acids, be recognized as Category I anorectal protectants.

The Panel did not review these substances because no data on them were submitted. The comments did not submit any data to support their requests, nor is the agency aware of any data on these substances when used as anorectal protectant active ingredients. The agency therefore lacks sufficient data for Category I status for these substances at this time.

18. One comment stated that the Panel did not discuss palm kernel oil as a protectant and suppository base, nor did it evaluate two submissions that it received on this ingredient (Refs. 1 and 2). The comment added that the Panel failed to use its expertise to evaluate and designate palm kernel oil as a "protectant vehicle" when the only use of this ingredient that it mentioned was as an inactive ingredient (45 FR 35580). The comment stated that palm kernel oil is combined with other nonirritating oils, such as coconut oil, for use as an ointment base or a suppository base and has been used as a "protectant vehicle" in a therapeutic formulation for the treatment of psoriasis and eczema. The comment referred to published studies on the safety of hydrogenated palm kernel oil as a suppository base and on the rate of release of pharmacologically active ingredients from palm kernel oil ointment bases. The comment stated that the wide use of this protectant ingredient, in addition to the data, attests to its safety for human use topically and internally. The comment provided a bibliographical listing of 17 references to support its statements and copies of 9 of these references (Ref. 3).

The agency has reviewed the submissions cited by the comment and the nine references provided and concludes that the data are inadequate to support the classification of palm kernel oil as a Category I protectant for anorectal use. However, it should be noted that this nonmonograph classification and the Panel's classification of palm kernel oil is an inactive ingredient do not prevent its use in an ointment or suppository base.

One of the submissions referred to by the comment was a letter to the Panel describing a marketed suppository containing a combination of two suppository bases in approximately equal amounts (Ref. 1). The letter also stated that the bases were synthetic triglycerides derived from coconut or palm kernel oil and requested that the Panel include coconut oil and palm kernel oil in its list of pharmaceutical necessities (inactive ingredients). Accordingly, the Panel added these ingredients to its list of pharmaceutical necessities as "coconut oil (palm kernel oil)" (45 FR 35580). The letter did not mention the use of coconut oil or palm kernel oil as protectants.

Subsequently, on May 14, 1975, another submission was made to the Panel by the same manufacturer on its ointment and suppository products (Ref. 2). The submission lists the ingredients of an anorectal ointment and suppository, including the suppository bases described in the letter above. The submission did not make a specific request that these ingredients be considered as protectants nor was any information provided in the submission on the safety and effectiveness of coconut oil or palm kernel oil as protectants.

As mentioned above, the comment provided copies of 9 of the 17 references that it cited. The other 8 references appear to have been published in foreign languages, and the agency has been able to obtain a complete translation for only one of these references (Ref. 4). The data contained in the available references provide general information as to the fatty acid content of the oil, manufacturing processes, chemical and physical properties, and use of the oil in soaps (Refs. 5 through 12).Golucki (Ref. 4) studied the liberation rate of citric acid and salicylic acid from palm kernel oil ointments. These references relate to safety, but do not support the effectiveness of palm kernel oil as a protectant. Interested persons may submit additional data to establish the effectiveness of palm kernel oil as a protectant during the comment period following the publication of this tentative final monograph. Any data received will be evaluated and addressed in the final rule.

The agency's detailed comments and evaluation of the submissions and the references cited by the comment are on file in the Dockets Management Branch (Ref. 13).

**References**

(1) Letter submitted by Bristol-Myers Products, dated June 17, 1974, to T. DeCillis, FDA, in OTC Volume 12APA3, Docket No. 80N–0050, Dockets Management Branch.

(2) OTC Volume 120031.

(3) Comment No. C00014 and Report No. RPT, Docket No. 80N–0050, Dockets Management Branch.

(4) Golucki, Z. "The Relationship Between the Concentration of a Pharmacologically Active Substance and the Rate of Its Liberation From Ointment Base," *Dissertationes Pharmaceuticae et Pharmacologicae*, 23:83–87, 1971.

(5) Myddleton, W.W., "Cosmetic Materials. Their Origin, Characteristics, Uses and Dermatological Action," Vol. II, "The Principles and Practice of Modern Cosmetics," Chemical Publishing Co., Inc., New York, p. 315, 1963.

(6) Balsam, M.S., and E. Sagarin, "Cosmetics. Science and Technology," 2d Ed., Wiley-Interscience, New York, p. 8, 1972.

(7) Dreger, E. E., and J. Ross, United States Patent No. 2,462,831 (abstract), assigned to Colgate-Palmolive-Peet Co., March 1, 1949.

(8) Wade, A., editor, "Martindale. The Extra Pharmacopoeia," 27th Ed., The Pharmaceutical Press, London, pp. 1049–1050, 1977.

(9) "British Pharmacopoeia—1973," 10th Ed., Medicines Commission, London, pp. 339–340, 1973.

(10) Allen, A., G.H. Padley, and G.R. Whalley, "The Fatty Acid Composition of Some Soapmaking Fats and Oils, Part 2. Coconut and Palm Kernel Oils," *Soap, Perfume, Cosmetics*, 42:372, 374, 376, 378, and 380, 1969.

(11) Cornelius, J.A., "Palm Oil and Palm Kernel Oil," *Progress in the Chemistry of Fats and Other Lipids*, 15:5–27, 1977.

(12) Szczepanska, H., H. Grynberg, and Z. Elsner, "Some Interdependence of Physicochemical and Pharmaceutical Properties of Fats," *Fette-Seifen-Anstrichmittel*, 22:68–71, 1970.

(13) Letter from W.E. Gilbertson, FDA, to W.B. Elvers, Bristol Myers Products, coded LET007, Docket No. 80N–0050, Dockets Management Branch.

19. One comment requested that the advance notice of proposed rulemaking be amended to include cocoa butter substitutes derived from natural food grade coconut and/or palm kernel oils as Category I protectants. Stating that cocoa butter substitutes are currently marketed in OTC anorectal drug products and are more readily available and less costly than cocoa butter, the comment submitted excerpts from pharmaceutical compendia in support of this statement (Refs. 1, 2, and 3). The comment added that cocoa butter substitutes, sometimes referred to in labeling as bland hydrogenated vegetable oil base ("Adeps Solidus"), are contained in suppository products submitted to the Hemorrhoidal Panel, but did not specify any submitted products as containing these ingredients. The comment subsequently submitted copies of an unpublished clinical study (Ref. 4), a published clinical study (Ref. 5), and results of a Draize eye test (Ref. 6).

The agency considered the comment's request as a petition to reopen the administrative record and included the new data and information on cocoa butter substitutes. Subsequently, the agency evaluated these data and information and determined that they relate only to safety and do not address effectiveness. In addition, the composition of cocoa butter substitutes was not defined, nor was a use concentration established. Lacking

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specific data to show composition and use concentration of cocoa butter substitutes, the agency cannot evaluate the safety and effectiveness of these ingredients and thus cannot consider them as Category I anorectal protectants.

The compendial references provide general information that describes cocoa butter substitutes as suppository bases (Refs. 1 and 2) or describes physical characteristics of these ingredients, such as melting points, compatibility, etc. (Ref. 3). While these data relate to the safety of cocoa butter substitutes, they do not address the effectiveness of these ingredients as anorectal protectants or adequately define their composition or the optimum concentration for anorectal protectant use. The unpublished clinical study states that 100 cases were studied, but does not mention the ingredient content of the suppositories that were used (Ref. 4). The published study discusses the use of "Adeps solidus" and "oleum cacao" as "suppository compositions" in young dogs and reports no inflammatory reactions (Ref. 5). The results of the Draize eye test showed that a formulation described as "WITEPSOL S58017" can be safely used as a medium for vaginal application of medications, but did not disclose the ingredient content of this formulation. The data are inadequate to establish general recognition of the safety and effectiveness of these ingredients as anorectal protectants.

The agency's detailed comments and evaluations of the above data are on file in the Dockets Management Branch (Ref. 7). In response to the agency's comments, the firm submitted two additional studies on WITEPSOL (Refs. 8 and 9) and a protocol to evaluate cocoa butter substitutes as anorectal protectants (Ref. 10). One study (Ref. 8) compared WITEPSOL to several substances to determine skin irritancy while the other study (Ref. 9) discussed the use of WITEPSOL as a suppository vehicle for the delivery of preanesthetic medication in young children. These data are also inadequate to support the effectiveness of WITEPSOL as an anorectal protectant. The agency's detailed comments and evaluations of these data (Ref. 11) and of the protocol (Ref. 12) are also on file in the Dockets Management Branch. In response to the agency's comments, the firm has submitted additional information (Refs. 13 through 16). This information is currently being evaluated and will be addressed in the final rule.

As noted in comment 18 above, the Panel classified palm kernel oil as an inactive ingredient, but this classification does not prevent use of palm kernel oil as an anorectal suppository base because this is not considered an active ingredient use. Similarly, a cocoa butter substitute derived from food grade coconut oil could be used as a suppository base without being classified as a Category I anorectal active ingredient.

**References**


(1) "United States Pharmacopeia XX—National Formulary XV," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1029, 1980.

(2) Wade, A., editor, "The Extra Pharmacopeia," 27th Ed., Council of the Pharmaceutical Society of Great Britain, London, p. 1047, 1977.

(3) "European Pharmacopoeia," Vol. III, The Council of Europe, Sainte-Ruffine, France, pp. 139–140, 1975.

(4) Neumann, H., "Clinical Test of the Suppository Composition Imhausen H.," English translation of an unpublished study, included in CP (Citizen Petition), Docket No. 80N–0050, Dockets Management Branch.

(5) Neuwald, F., and J. Meyer-Lohman, "Comparative Test of Compatibility of Adeps Solidus and Oleum Cacao," (English translation), *Arzneimittelforschung*, 8:620–622, 1958.

(6) "A Report Prepared for Dynamit Nobel, A. G., Draize Eye Test," Consultox Laboratories LTD, London, 1970.

(7) Letter from W. E. Gilbertson, FDA, to B. Pagliocca, Kay-Fries, Inc., coded LET008, Docket No. 80N–0050, Dockets Management Branch.

(8) Motoyoshi, K., et al., "Comparative Studies on the Irritancy of Oils and Synthetic Perfumes to the Skin of Rabbit, Guinea Pig, Rat, Miniature Swine and Man," *Cosmetics & Toiletries*, 94:41–48, 1979.

(9) Sbochat, S. J., J. Lewin-Epstein, and E. Superstine, "Preanesthetic Suppository for Ambulatory Children: Importance of the Base," *Anesthesia and Analgesia: Current Researches*, 48:427–436, 1969.

(10) Reply Comment coded RC002, Docket No. 80N–0050, Dockets Management Branch.

(11) Letter from W. E. Gilbertson, FDA, to V. Piermattie, Kay-Fries, Inc., coded LET012, Docket No. 80N–0050, Dockets Management Branch.

(12) Letter from W. E. Gilbertson, FDA, to B. Pagliocca, Kay-Fries, Inc., coded LET013, Docket No. 80N–0050, Dockets Management Branch.

(13) Letters from B. Pagliocca, Kay-Fries, Inc., to FDA, coded LET014, LET015, and LET016, Docket No. 80N–0050, Dockets Management Branch.

(14) Letter from J. (Whelan) Nikitakis, CTFA, to Dr. Hulsmann, Dynamit Nobel Aktiengesellschaft, coded LET017, Docket No. 80N–0050, Dockets Management Branch.

(15) Letter from B. Pagliocca, Kay-Fries, Inc., to Dr. Hulsmann, Dynamit Nobel Aktiengesellschaft, coded LET018, Docket No. 80N–0050, Dockets Management Branch.

(16) Letter from Dr. Hulsmann and Mr. Heers, Dynamit Nobel Aktiengesellschaft, to J. Whelan, CTFA, coded LET019, Docket No. 80N–0050, Dockets Management Branch.


20. One comment recommended that the concentration of shark liver oil be lowered to 2 to 10 percent in combination with other protectants instead of the Panel's recommended concentration of at least 50 percent per 2-g dosage unit. The comment argued that the lower concentration would allow the combination of shark liver oil with other protectants so that the total amount of protectants in the product would be at least 50 percent (the Panel's required concentration for making protectant claims), and the amount of vitamin A provided by daily use of the product would not exceed the Panel's recommended daily limit for anorectal use of 10,000 International Units (IU) of vitamin A. The comment referred to a presentation to the Panel showing that a particular marketed product, if labeled according to the Panel's recommended dosage schedule of up to six applications per 24 hours, would provide 150,000 to 210,000 IU of vitamin A, or 15 to 21 times the Panel's recommended maximum daily allowance of 10,000 IU (Ref. 1). The comment stated that, based on the transcript of the Panel's last meeting, the Panel intended that the percentage of shark liver oil should be reduced appropriately so that it could be formulated in combination with other protectants, providing a total protectant combination of at least 50 percent without exceeding 10,000 IU of vitamin A in daily use (Ref. 2).

The Panel noted that in the past, shark liver oil was required to contain not less than 16,500 IU of vitamin A and 40 IU of vitamin D per g of oil, but there is no current standard, and the concentration of vitamin A and vitamin D in shark liver oil may vary (45 FR 35634). According to the transcript of the Panel's last meeting, each g of the shark liver oil used in the product described above contains 25,000 to 35,000 IU of vitamin A (Ref. 2). The Panel also noted at this meeting that 16,500 IU of vitamin A is about the lowest concentration that might be expected to occur in each g of shark liver oil. In either case, one application of a product containing the Panel's recommended shark liver oil concentration of at least 50 percent per 2-g dosage unit would exceed the Panel's maximum daily allowance of 10,000 IU of Vitamin A. Therefore, the agency concurs that shark liver oil should be used in a concentration of less than 50 percent in anorectal drug products.

The Panel concluded that a reasonable maximum allowable concentration for safe OTC topical use is 10,000 IU of Vitamin A and 400 IU of Vitamin D per 24 hours (45 FR 35634).

Because of this safety limitation, the agency is not proposing a dosage as with other protectants, i.e., a contribution of at least 12.5 percent by weight. Instead, the agency is proposing in this tentative final monograph that when shark liver oil is used in anorectal drug products, each product is to be formulated and labeled for use up to six times daily so that the total amount of the product to be applied over a 24-hour period contains 10,000 U.S.P. units of vitamin A and 400 U.S.P. units of vitamin D (now named cholecalciferol). (One U.S.P. unit is equivalent to 1 international unit.) Thus, a single application could contain one-sixth of the 10,000-U.S.P. units maximum daily allowance of vitamin A (1,666⅔ U.S.P. units) and one-sixth of the 400-U.S.P. units maximum daily allowance of cholecalciferol (66⅔ U.S.P. units).

Based on the above safety discussion, the agency is proposing in this tentative final monograph that shark liver oil for protectant use be formulated only in combination with other protectants. This use is consistent with the marketing history of shark liver oil in OTC anorectal drug products and allows a reasonable latitude in the formulation of such products to permit a total protectant content of at least 50 percent without exposing the user to excessive amounts of vitamin A.

Likewise, the agency is proposing the same conditions for cod liver oil for protectant use. Therefore, the Panel's recommended dosage for cod liver oil has been revised to be consistent with the dosage being proposed for shark liver oil, as discussed above.

As discussed in comment 30 below, calamine and zinc oxide, which are limited to concentrations of less than 50 percent, may be used only in combination with other protectants (not to exceed four) in order to assure that the protectant content of the final formulation is at least 50 percent.

**References**

(1) Transcript of the 29th Meeting of the Advisory Review Panel on OTC Hemorrhoidal Drug Products, January 22–24, 1978, p. 53.

(2) Ibid., pp. 143–148.

*E. Comment on Counterirritants*

21. One comment, submitted in response to the reopening of the anorectal administrative record to include the Miscellaneous External Panel's statement on camphor-containing drug products (45 FR 63876), objected to that Panel's recommendation that camphor be limited to 360 mg per package, preferably in a child-proof container. The comment maintained that this would be a burdensome restriction for all OTC drug products containing low concentrations of camphor and is not justified in view of these products' long history of safe household use. Another comment stated that the risk exceeds the benefit in many drug uses of camphor and that consumers should no longer be exposed to these uses.

These comments were also submitted to the rulemaking for external analgesic drug products, and the agency adddressed the general issue of the safety of camphor in the tentative final monograph on OTC external analgesic drug products. (See the **Federal Register** of February 8, 1983; 48 FR 5854–5855.) The Hemorrhoidal Panel found camphor not safe and not effective for use in OTC anorectal drug products (45 FR 35642) and placed it in Category II. The agency is retaining the Category II classification in this proposed rule.

*F. Comment on Astringents*

22. One comment asked whether zinc sulfate can be assumed to be classified in the same category (astringent) as zinc oxide because both are zinc salts and display similar properties.

Zinc sulfate cannot be classified as an astringent at this time because no data have been submitted to show its safety and effectiveness for this use.

*G. Comment on Wound-Healing Agents*

23. Several comments agreed with the Panel's minority report that supports the OTC use of live yeast cell derivative as a wound-healing agent. The comments stated that adequate data had been provided to the Panel to support the safety and effectiveness of live yeast cell derivative as a wound-healing agent. One comment added that a number of world-renowned wound-healing experts from the United States and Europe met with the Panel in January 1977 and concluded that evidence from the available studies of live yeast cell derivative as a wound-healing agent can be used to support the use of live yeast cell derivative in the anorectal area, and that live yeast cell derivative is an appropriate ingredient in an OTC anorectal drug product. Another comment argued that the claims placed in Category III by the Panel (45 FR 35657) for wound-healing agents are valid Category I claims which should be included in the tentative final monograph. Referring to the Panel's Category III labeling for wound-healing agents, one comment stated that personal experiences in testing a product containing a Category III wound-healing agent had demonstrated that the product accelerated repair and that "with injury comes swelling, with repair, inevitably comes 'shrinkage'."

The agency concurs with the majority of the Panel that the submitted studies on rabbits and white rats, excised human tissue, human fibroblasts, experimental abrasions to human skin, and paired skin grafts of burn wounds suggest a positive influence of live yeast cell derivative on wound healing and that live yeast cell derivative has the characteristics of a wound-healing agent, i.e., increased oxygen uptake, hydroxyproline formation which is associated with collagen biosynthesis, tissue growth, and epithelization. Regarding safety, the Panel noted that no studies of the safety of live yeast cell derivative have been specifically carried out, although no toxicity has been noted when the compound was used in experimental animals and no reports of clinical toxicity have been made or noted in the various clinical studies of the commercial product containing live yeast cell derivative (45 FR 35651). The Panel therefore assumed that the compound is safe for limited use (1 week or less).

Although the agency agrees with the Panel that live yeast cell derivative is safe for use as a wound-healing agent for limited use (1 week or less), there remains a lack of sufficient data on its effectiveness. Data to support the effects of live yeast cell derivative on wound healing of the type proposed for OTC use in human subjects are currently not included in this rulemaking. Since the time the comment period closed following publication of the advance notice of proposed rulemaking, new information, including clinical studies, has been submitted to the rulemaking for OTC skin protectant drug products and will be addressed in that rulemaking. These new data are now under review. With publication of this proposed rule for OTC anorectal drug products, the new information will also be included as part of the administrative record in this rulemaking and will be addressed in the final rule. Therefore, at this time, live yeast cell derivative remains in Category III for effectiveness for use as an OTC wound-healing agent in the anorectal area.

The agency's detailed comments and evaluation of the data currently in the administrative record are on file in the Dockets Management Branch (Ref. 1).

Because the data are insufficient to reclassify wound healing ingredients in Category I, the agency finds that there is insufficient basis at this time to reclassify the labeling claims for these ingredients in Category I, as the comment argued. Should any Category

III wound-healing ingredients be upgraded to Category I, the agency will upgrade the Category III claims recommended by the Panel or develop appropriate label claims based on the data available at that time.

**Reference**

(1) Letter from W.E. Gilbertson, FDA, to S.F. Barshay, Whitehall Laboratories, coded LET 010, Docket No. 80N–0050, Dockets Management Branch.

*H. Comment on Antiseptics.*

24. One comment disagreed with the Panel's conclusion that antiseptics should not be included in OTC anorectal drug products because no data had been submitted showing that antiseptics in these products are more effective than soap and water. The comment asserted also that data had not been submitted showing that antiseptics may be harmful when used in these products and pointed out that resorcinol and 8-hydroxyquinoline have both been used safely for many years as antiseptics in its OTC anorectal drug products. The comment maintained that anorectal drug products are often used when soap and water for cleansing the anorectal area are not available and that including antiseptics in these products may help prevent infection or itching.

The Panel concluded that the inclusion of antiseptics in OTC anorectal drug products "is useful in concept," but "that proof of any significant clinical benefit of claimed antiseptic ingredients must be demonstrated in clinical trials" (45 FR 35659). The Panel believed that, because of the large numbers of microorganisms present in feces, there is little likelihood that effective antisepsis could be obtained in the anorectal area with antiseptics any more than with soap and water. The Panel was also concerned about possible toxicity from the absorption of ingredients such as resorcinol through mucous membranes (45 FR 35661) and therefore classified resorcinol in Category III for external use and Category II for intrarectal use. As discussed in comment 7 above, the ingredient 8-hydroxyquinoline was not submitted to the Panel for review. The comment did not submit any data to support the use of these ingredients in particular, or the use of antiseptics in general, in anorectal drug products. Therefore, the agency has no basis for including these ingredients in the tentative final monograph.

*I. Comment on Hydrocortisone*

25. One comment pointed out that the Panel did not consider the status of hydrocortisone for use in OTC anorectal drug products and requested that this use be clarified because another Panel's recommended labeling for OTC external analgesic drug products containing hydrocortisone included a claim "for itchy genital and anal areas." (See 44 FR 69885.)

Although the Hemorrhoidal Panel did not review and classify hydrocortisone for use as an anorectal active ingredient, in the tentative final monograph for OTC external analgesic drug products (46 FR 5852) the agency proposed the use of hydrocortisone and hydrocortisone acetate in concentrations of 0.25 to 0.5 percent for various types of itching including "anal itching." The agency's proposed indication is similar to the various phrases regarding relief of itching that the Hemorrhoidal Panel recommended as portions of the indications for OTC anorectal drug products. Because a claim for hydrocortisone and hydrocortisone acetate for the temporary relief of anal itching is already included in the OTC external analgesic tentative final monograph, the agency sees no reason to repeat that claim in this tentative final monograph. Further, the agency believes that, whenever possible, various related conditions for which an ingredient is considered generally recognized as safe and effective for OTC use should be listed in a single appropriate monograph, which, in this case, is the monograph for OTC external analgesic drug products.

The agency does, however, note that the Hemorrhoidal Panel recommended specific warnings and directions for products labeled to relieve itching in the anal area. These include specific warnings to consult a physician promptly in case of bleeding and to cleanse the anorectal area, when practical, before applying the product. The agency is adopting these warnings and directions in this tentative final monograph. The agency believes that any hydrocortisone-containing (or any other) drug product labeled for the relief of anal itching should bear appropriate warnings and directions information. Therefore, in a future issue of the **Federal Register**, the agency will amend the tentative final monograph for OTC external analgesic drug products so that products containing ingredients subject to that monograph that bear claims for the relief of "anal itching" also bear the appropriate warnings and directions contained in § 346.50 (c)(2), (3), and (4) and (d)(1) of this tentative final monograph for anorectal drug products.

*J. Comment on Inactive Ingredients*

26. One comment stated that bismuth subgallate, classified by the Panel as a protectant when present in a product in at least 50 percent of a 2-g dosage unit, should also be classified as an inactive ingredient (or pharmaceutical necessity) when included in an anorectal drug product in small quantities. The comment stated that a marketed suppository contains a small quantity of bismuth subgallate as a stiffening agent and that no protectant labeling claim is made for this product.

Bismuth subgallate was classified by the Panel as a Category III protectant active ingredient for external and intrarectal use in a concentration of 17.5 to 106 mg per dosage unit, not to exceed 1 g per 24 hours (45 FR 35639). The Category III classification of bismuth subgallate would not preclude its use as a pharmaceutical necessity so long as the labeling of the product does not refer to bismuth subgallate as an active ingredient or associate it with any protectant activity. The agency concurs with the comment that bismuth subgallate could be an inactive ingredient when used as a stiffening agent in a suppository dosage form.

*K. Comments on Dosage*

27. One comment expressed concern that the Panel implied that a 2-g dosage unit is the size of choice for delivery to the anorectal area. The comment emphasized that, although studies may have shown that an average of 2 g of a product is used, a 2-g dosage unit should not be mandated as the standard.

The Panel stated at 45 FR 35591 that "a 2-gram dosage unit is reasonable, but this does not imply that other dosage sizes are not acceptable". The Panel also cited an official compendium as stating that the average adult suppository weighs 2 g (Ref. 1) and added that in studies reviewed by the Panel, patients used an average of 2 g of ointment per application (Ref. 2). The Panel recognized that exceptions to dosage unit size do occur, and its recommended monograph did not specify that dosage units be limited to 2 g. The agency agrees with the Panel and is not proposing a standard dosage unit in this tentative final monogaph.

**References**

(1) "The United States Pharmacopeia," 19th Revision, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 704, 1975.

(2) OTC Volume 120022.

28. One comment contended that there is no basis in the Panel's report, or in any of the references cited, for limiting the dosage of petrolatum in

§ 346.56(d)(11), which reads: "* * * not to exceed six applications per 24 hours or after each bowel movement." Arguing that the proposed dosage limitation is misleading because petrolatum poses a very low risk to health from overuse, the comment requested that the dosage for petrolatum be "use as needed."

The agency agrees with the comment that there is no basis in the Panel's report, or on record, for limiting the dosage of petrolatum and that the ingredient is safe when applied liberally as needed. Petrolatum is relatively inert and is not absorbed through intact or broken skin or mucous membranes. Its safety has been established by decades of use as a base for anorectal and other medications and as a skin protectant. The agency believes that the directions for use for petrolatum in this tentative final monograph should be the same as those in the skin protectant tentative final monograph (published in the Federal Register of February 15, 1983; 48 FR 6820) and therefore is proposing that § 346.56(d)(6) of this tentative final monograph read: "Apply liberally as often as necessary."

29. One comment disagreed with the Panel's recommended dosage in § 346.14(k) of "50 percent or greater per dosage unit" to justify a protectant claim for petrolatum. The comment stated that the Panel incorrectly interpreted the studies cited on transepidermal water loss (45 FR 35627) and that protection can be obtained at a much lower film thickness than calculated by the Panel. The comment cited an oral presentation made to the Panel in which it was explained that only by specifying a dose could a concentration figure have meaning (Ref. 1). The comment provided an example to show that protection can be obtained from as little as a 25-percent concentration in a dosage unit.

The agency has reviewed the Panel's discussion of protectants (45 FR 35627), the Panel's discussion of petrolatum (45 FR 35634), and the presentation made by Dr. M. Berdick (Ref. 1). The agency concludes that the Panel's recommendation for a 50-percent or greater concentration of protectants per 2 g dosage unit provides a reasonable basis for establishing the minimum quantity of a protectant that is necessary to provide relief. The Panel also discussed the possibility that testing might establish that a protectant could achieve the same effect at a lower concentration (45 FR 35628). However, the comment did not submit any clinical data to support a 25-percent concentration. Therefore, the agency proposes to adopt the Panel's recommendation of a 50-percent or greater concentration for most anorectal protectants, including petrolatum. (See comments 20 above and 30 below.)

**Reference**

(1) Summary Minutes of the 27th Meeting of the Advisory Review Panel on OTC Hemorrhoidal Drug Products, April 29 and 30, 1977, OTC Volume 12APA2.

30. Several comments noted that there appeared to be an inconsistency in the Panel's recommended monograph between the concentration of protectants when used as single ingredients and when used in combination. The comment believed that the Panel intended "that to justify a claim for protectant effect a combination of two but not more than four protectants must be present for a combined concentration of at least 50 percent." The comments requested that recommended §§ 346.14 and 346.22 be clarified and made consistent with the Panel's intent that the combined concentration of protectants be at least 50 percent.

The Panel concluded that to justify a claim for protectant effect, either of the following criteria must be met: (1) At least one protectant must be present to provide at least 50 percent by weight (1 g of a 2-g dosage unit); or (2) a combination of two but not more than four protectants must be present to provide at least 50 percent by weight (1 g of a 2-g dosage unit). (See 45 FR 35627.) The Panel believed that a minimum of 50 percent by weight (1 g of a 2-g dosage unit) would still permit the addition of other active ingredients as well as any inactive ingredients that may be necessary to formulate a pharmaceutically acceptable preparation (45 FR 35628).

The Panel determined that for certain protectant ingredients limited to concentrations of less than 50 percent the data submitted to the Panel indicated that these ingredients are usually present in combination with other protectant ingredients (45 FR 35592). Therefore, the agency concludes that the intent of the Panel was that these ingredients, because of their physical characteristics, cannot be used as single ingredients but may be used only in combination with other protectants in order to meet the Panel's recommended minimum protectant content per dosage unit, i.e., 50 percent concentration by weight (1 g of a 2-g dosage unit). Accordingly, the agency is clarifying the Panel's recommendation and is proposing in § 346.14(b) of this tentative final monograph that calamine, cod liver oil, shark liver oil, and zinc oxide be used only in combination with other protectants.

The Panel believed that limiting combinations of protectants to two but not more than four protectants would provide reasonable latitude in the formulation of anorectal products because only four products submitted to the Panel had four or more protectant ingredients. However, because the Panel did not establish a concentration range for all protectant ingredients, the agency believes it is reasonable to propose that certain protectant ingredients (aluminum hydroxide gel, cocoa butter, glycerin (20 to 45 percent aqueous solution), kaolin, lanolin, mineral oil, petrolatum, starch, and white petrolatum) be limited to a minimum concentration that contributes at least 12.5 percent by weight of the final dosage unit (0.25 g of a 2-g dosage unit). This will enable the formulation of combinations of up to 4 protectants without permitting inactive levels of ingredients to be included and will meet the Panel's recommended minimum combined protectant concentration of 50 percent per dosage unit.

Consistent with this determination, the agency is proposing that the minimum allowable amount of calamine or zinc oxide in a combination also be 12.5 percent by weight. In addition, because the dosage for calamine is calculated on its zinc oxide content and because both calamine and zinc oxide are classified as Category I anorectal astringents as well as anorectal protectants, the agency concludes that the combined weight of zinc oxide in any anorectal combination product should not exceed the maximum safe concentration of zinc oxide recommended by the Panel, i.e., 25 percent by weight per dosage unit. Cod liver oil and shark liver oil should be present in a combination drug product in accord with the dosage discussed in comment 20 above.

Accordingly, recommended § 346.22 (redesignated as § 346.22(a) in this tentative final monograph) is revised to read as follows: "Any two, three, or four protectants identified in § 346.14 may be combined, provided that the combined percentage by weight of all protectants in the combination is at least 50 percent of the final product (1 gram of a 2-gram dosage unit). Any protectant ingredient included in the combination must be present at a level that contributes at least 12.5 percent by weight (0.25 gram of a 2-gram dosage unit). If an ingredient in § 346.14(b) is included in the combination, it must not exceed the concentration limit specified in § 346.14(b)." In addition, new § 346.22(c) has been added to this tentative final monograph as follows: "Any product

containing calamine for use as a protectant and/or as an astringent and/or containing zinc oxide for use as a protectant and/or as an astringent may not have a total weight of zinc oxide exceeding 25 percent by weight per dosage unit."

*L. Comments on Combinations.*

31. Several comments objected to the Panel's recommended requirement that a combination of Category I anorectal active ingredients be shown safe and effective in final formulation testing. The comments particularly objected to the Panel's recommendation that final formulation testing for effectiveness of a combination "should demonstrate in clinical trials that there is a statistically significant difference in effectiveness of the combination for relief of a symptom as compared to the combination without each of the active ingredients, excluding protectants" (45 FR 35594). The comments argued that such testing of combinations is unprecedented and arbitrary and is neither called for in the agency's combination policy as set forth in § 330.10(a)(4)(iv), nor consistent with the FDA general guidelines for OTC combination drug products (Ref. 1).

The comments asserted that the combination policy for anorectal active ingredients could be made meaningful by deleting final formulation testing and basing decisions regarding safety and effectiveness of combinations on the evaluation of their active ingredients. The comments noted that the Panel placed in Category III a number of combinations of Category I ingredients from different therapeutic categories and that these combinations would have been considered Category I were it not for the requirement of final formulation testing. (See 45 FR 35593, part II. paragraphs K.10.a. (1), (2), and (3).) The comments requested that these combinations be placed in Category I.

As discussed in comment 55 below, the agency is not requiring final formulation testing of either single-ingredient or combination anorectal drug products. As a result, the agency is not requiring clinical trials to demonstrate a statistically significant difference in effectiveness between the combination in final formulation and the combination without each active ingredient.

The regulations at § 330.10(a)(4)(iv) state that an OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population. In addition, paragraph (1) of the agency's general guidelines (Ref. 1), which were not available at the time of the Panel's deliberations, provides for the combination of Category I active ingredients from different therapeutic categories to treat different symptoms concurrently if each ingredient is present within its established safe and effective dosage range and the combination meets the OTC combination policy in § 330.10(a)(4)(iv) in all other respects. Therefore, the agency is proposing that the combinations of Category I ingredients from up to three different therapeutic categories (except protectants) that the Panel placed in Category III pending final formulation testing be reclassified in Category I consistent with § 330.10(a)(4)(iv) and the agency's supplementary guidelines for OTC combination drug products (Ref. 1).

The combination of up to four protectants identified in § 346.22 of the Panel's recommended monograph is redesignated § 346.22(a) in this tentative final monograph. As discussed above, the agency is proposing that the following combinations be included in the designated paragraphs of § 346.24 of this tentative final monograph:

(b) Any single anorectal ingredient identified in § 346.10, § 346.12, § 346.16, § 346.18, or § 346.20 may be combined with up to four protectants in accordance with paragraph (a) of this section.

(c) Any single local anesthetic identified in § 346.10 may be combined with any single vasoconstrictor identified in § 346.12.

(d) Any single local anesthetic identified in § 346.10 may be combined with any single astringent identified in § 346.18.

(e) Any single local anesthetic identified in § 346.10 may be combined with any single keratolytic identified in § 346.20.

(f) Any single vasoconstrictor identified in § 346.12 may be combined with any single astringent identified in § 346.18.

(g) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single astringent identified in § 346.18.

(h) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single keratolytic identified in § 346.20.

(i) Any single astringent identified in § 346.18 may be combined with any single keratolytic identified in § 346.20.

(j) Any single local anesthetic identified in § 346.10 may be combined with any single vasoconstrictor identified in § 346.12 and with any single astringent identified in § 346.18.

(k) Any single local anesthetic identified in § 346.10 may be combined with any single astringent identified in § 346.18 and with any single keratolytic identified in § 346.20.

(l) Any single vasoconstrictor identified in § 346.12 may be combined with any single analgesic, anesthetic, and antipruritic identified in § 346.16 and with any single astringent identified in § 346.18.

(m) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single astringent identified in § 346.18 and with any single keratolytic identified in § 346.20.

(n) Any combination of ingredients listed in paragraphs (c) through (m) of this section may be combined with up to four protectants in accordance with paragraph (a) of this section.

The redesignation of the term "counterirritant" to "analgesic, anesthetic, and antipruritic" is discussed in Part II.B.6 below—*Summary of the Agency's Changes in the Panel's Recommendations.* The Panel's classification of combinations of more than three Category I ingredients from different pharmacologic groups, except protectants, is discussed in comment 32 below.

**Reference**

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.

32. Two comments objected to the Panel's recommendation to limit the number of ingredients included in hemorrhoidal preparations. The comments stated that limiting ingredients to only three pharmacological groups is unscientific, uncorroborated, and arbitrary. One comment maintained that limiting hemorrhoidal preparations to four or fewer nonprotectant active ingredients would tend to make them "fungible" and would discourage ingenuity in the development of combination products. The comment argued that these recommendations contradict FDA guidelines for combination drug products in § 330.10(a)(4)(iv). The comments recommended that a fixed limit not be arbitrarily placed upon the

number of active ingredients in a combination of hemorrhoidal ingredients when there is evidence that the combination is rational, safe, and effective with a suitable target population. One comment stated, as an example, that a product containing a vasoconstrictor to shrink hemorrhoids, a local anesthetic to deaden pain, a protectant to soothe the irritated area, a counterirritant to cool the irritated area until the local anesthetic can take effect, and an antiseptic to help prevent infection and help relieve itching would be beneficial to many hemorrhoid sufferers.

The agency agrees with the comments that a fixed limit need not be placed upon the number of active ingredients in a combination product if it can be shown to be a rational, safe, and effective combination with a suitable target population. This position is consistent with FDA policy for OTC combination drug products in § 330.10(a)(4)(iv) and with the guidelines for combinations (Ref. 1). However, the agency believes that the interest of consumers is best served if the desired therapeutic effect is achieved safely and effectively by the smallest number of active ingredients.

The Panel placed certain two-ingredient and three-ingredient combination products in Category III pending final formulation testing (45 FR 35593). Because the agency is not adopting the Panel's requirements for final formulation testing, the agency is proposing that these combinations be Category I in this tentative final monograph. (See comment 31 above.) The agency will consider any other combinations for Category I, regardless of the number of ingredients and the formulation, provided adequate data are presented in accordance with the combination policy and the guidelines mentioned above. The specific combination of five ingredients cited by one comment has not been included in this tentative final monograph because the comment submitted no data for the agency to evaluate.

**Reference**

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.

33. One comment suggested revising the Panel's language in Part II. paragraph K.8.d.—Criteria for Category I combination products for external and/or intrarectal use, which reads as follows: "Products that do not claim protectant activity and contain one Category I active ingredient from each pharmacologic group in the combinations identified below are classified as Category I combination products, provided that (1) the active ingredients and their labeling are generally recognized as safe and effective, (2) such ingredients are present in amounts within the effective dosage range, and (3) the final formulation has been shown to be safe and effective."

The comment suggested revising the first part of this paragraph to read "Combinations of Category I active ingredients each from a different pharmacologic group identified below, combined with or without one or more protectants, are classified as Category I combination products * * * *" In addition, the comment recommended that paragraph K.10.a.(1), which reads "Combinations containing any single Category I active ingredient and one or more protectants," be moved to paragraph K.8.d., and a new paragraph K.8.e. be added to read as follows: "Any single Category I active ingredient and one or more protectants."

The combinations referred to in paragraphs K.8.d. and K.10.a. of the Panel's report are the same combinations of Category I ingredients from different therapeutic categories that the agency is proposing as Category I in § 348.22 (b) through (n) of this tentative final monograph. Therefore, the comment's suggested revisions of the Panel's report are not necessary. (See comment 31 above.)

34. One comment objected to the Panel's conclusion that the combination of a local anesthetic and a counterirritant in a hemorrhoidal drug product is irrational (45 FR 35593). The comment argued that, although the Panel acknowledged that the onset of action of the local anesthetic may be briefly preceded by the action of the counterirritant, it ignored the importance of "fast, cooling relief, even if superseded by another ingredient's soothing effect later." The comment stated that a counterirritant and a local anesthetic should be combined in a hemorrhoidal product if the inclusion of both ingredients results in any extra relief and satisfaction for the user. The comment stated that it was not aware of any adverse reactions to menthol when used as a counterirritant in the strength used in its rectal ointments.

The Panel concluded that the simultaneous use of a counterirritant (such as menthol) and a local anesthetic is irrational. The mechanism of action of a counterirritant is dependent upon an intact nerve function, but nerve function is specifically blocked by an effective local anesthetic. The action of a counterirritant that may briefly precede the action of a local anesthetic is not sufficient justification for the combination.

The agency concurs with the Panel and notes that the Topical Analgesic Panel in its report on external analgesic drug products also classified the combination of a local anesthetic and a counterirritant in Category II. The Topical Analgesic Panel concluded that it is irrational to combine pharmacologic groups that act in opposition to each other and that such a combination may be unsafe (44 FR 69790). No comments objecting to that Panel's conclusions were submitted during the comment period following the publication of the Panel's report. In the tentative final monograph on OTC external analgesic drug products (48 FR 5852), the agency reaffirmed that Panel's Category II classification for this combination.

The Hemorrhoidal Panel concluded that menthol is safe and effective for external use as a counterirritant (45 FR 35641). The Panel also concluded that menthol is safe but not effective for intrarectal use (45 FR 35643); the agency concurs.

The deciding factor for the Category II classification of the combination of a local anesthetic and a counterirritant was not the safety of menthol as a counterirritant, but rather the lack of medical rationale for combining these two pharmacologic groups.

35. One comment recommended that the tentative final monograph for anorectal drug products include the combination of live yeast cell derivative and protectants, including shark liver oil.

The Panel classified live yeast cell derivative in Category III as a wound-healing agent in anorectal drug products and recommended that if a Category III ingredient is present in a combination product containing no Category II ingredient, the combination is classified as Category III (45 FR 35593 and 35594). On the basis of the Panel's combination policy, the combination of live yeast cell derivative and any Category I protectant, such as shark liver oil, is a Category III combination. The Panel's recommendation is consistent with the agency's policy for combination drug products in § 330.10(a)(4)(iv) and the combination guidelines (Ref. 1). Live yeast cell derivative remains in Category III in this tentative final monograph; therefore the agency considers the combination of live yeast cell derivative and any Category I protectant to be a Category III combination product at this time. (See comment 23 above.)

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**References**

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D–0322, Dockets Management Branch.

*M. Comments on Labeling of Anorectal Drug Products*

36. Two comments stated that existing statutory provisions (15 U.S.C. 1453(a), 21 CFR 201.61, and sections 506 and 502(e) of the Federal Food, Drug, and Cosmetic Act) do not show a congressional intent to authorize FDA to legislate the exact wording of OTC drug claims to the exclusion of other equally accurate and truthful claims for these products, and that section 502(c) of the act demonstrates a congressional intent to the contrary. The comments maintained that there are truthful phrases, other than those recommended by the Panel, that would be in keeping with the conclusions of the Panel.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the labeling provisions in § 330.1(c)(2).

37. Several comments objected to the Panel's recommendation that all inactive ingredients be listed in the labeling of OTC anorectal drug products. The comments argued that a list of inactive ingredients in the labeling would be meaningless, confusing, and misleading to most consumers. The comments noted that the act does not require that inactive ingredients of drug products be included in labeling and argued that listing these ingredients would obscure information that is more meaningful to consumers.

Two of the comments also cited the warning recommended by the Panel in § 346.50(c)(5) for anorectal drug products containing perfume as an example of labeling related to inactive ingredients that should not be required. This warning states, "If redness, burning, itching, swelling, pain, or other symptoms develop or increase, discontinue use and consult a physician." One comment stated that the warning would be confusing to consumers because the symptoms identified in the warning are the same as those that the product is intended to treat and that such symptoms obviously will already be present. Two of the comments pointed out that neither cosmetic products nor soaps are required to contain a warning statement to indicate their perfume content.

The agency agrees that the Federal Food, Drug, and Cosmetic Act does not require the identification of all inactive ingredients in the labeling of OTC drug products. Section 502(e) (21 U.S.C. 352(e)) does require disclosure of active ingredients and of certain ingredients, whether included as active or inactive components in a product. Although the act does not require the disclosure of all inactive ingredients in the labeling of OTC drug products, the agency agrees with the Panel that listing of inactive ingredients in OTC drug product labeling would be useful information for some consumers. Consumers with known allergies or intolerances to certain ingredients would then be able to identify substances that they may wish to avoid.

The Proprietary Association, the trade association that represents approximately 85 OTC drug manufacturers who reportedly market between 90 and 95 percent of volume of all OTC drug products sold in the United States, has established guidelines (Ref. 1) for its member companies to list voluntarily inactive ingredients in the labeling of OTC drug products. Under another voluntary program begun in 1974, the member companies of The Proprietary Association have been including the quantities of active ingredients on OTC drug labels. The agency is not at this time proposing to require the listing of inactive ingredients in OTC drug product labeling. However, the agency commends these voluntary efforts and urges all other OTC drug manufacturers to similarly label their products.

If a safety problem has been demonstrated for an inactive ingredient, the agency will take appropriate action. (See 21 CFR 201.20.) Because perfumes are considered to be inactive ingredients and because the Panel did not establish that a safety problem exists for specific perfumes, the agency is not proposing the Panel's recommended warning in this tentative final monograph.

**References**

(1) "Guidelines for Disclosure of Inactive Ingredients in OTC Medicines," The Proprietary Association, Washington, DC, July 12, 1984, copy included in OTC Volume 12ATFM.

38. Four comments objected to the Panel's recommendation that the term "anorectal" be used in the statement of identity (§ 346.50(a)) and urged the agency to use instead the more familiar term "hemorrhoidal." To support this position, two comments submitted the results of a survey of 144 consumers aged 18 and older to determine what percentage of consumers understand the word "anorectal." According to one comment, the survey results indicated that 70 percent of the consumers did not understand the term "anorectal." The comments further argued that using the term "hemorrhoidal" would eliminate confusion and aid consumers in purchasing a product to help treat specific symptomology. One comment stated that the term "hemorrhoid" has come to mean more than clinically defined hemorrhoids and that consumers understand this term as encompassing various kinds of anorectal discomforts and disorders. Another comment disliked the popular use of the terms "piles" and "hemorrhoids" and commended the Panel for educating the public by properly defining terms used to describe anorectal disorders.

The agency could not evaluate the merits of the survey because only the results were submitted, and no details were included. However, the agency agrees with the comments in principle that the term "hemorrhoidal" is more familiar and understandable to consumers than the term "anorectal." The agency further believes it is important to educate the consumer as to the proper use of these products. The Panel recommended that anorectal products be labeled for the relief of symptoms associated with hemorrhoids, piles, and other anorectal disorders and stated that consumers must be able to understand the information presented in labeling in order to use these products safely and effectively. Therefore, the agency is proposing that the term "hemorrhoidal" may appear alone or in

parentheses next to the term "anorectal" in the statement of identity for all OTC anorectal drug products in § 346.50(a). In addition, the dosage form, e.g., cream, lotion, or ointment, may be included in the statement of identity.

39. One comment pointed out that several statements of identity could be required for petrolatum because the review of this multipurpose ingredient by several OTC advisory review panels has resulted in multiple labeling requirements. The comment noted that statements of identity of "skin protectant" and "anorectal agent" or "anorectal product" have already been recommended and that additional statements of identity are yet to come in other monographs. The comment recognized the need for a statement of identity in the labeling of every OTC drug product, but argued that the agency should allow a single statement of identity for a multipurpose ingredient such as petrolatum. The comment contended that a statement such as "topical protectant and lubricant" would adequately cover every OTC drug use of petrolatum and would also satisfy the requirements of § 201.61(b) (21 CFR 201.61(b)).

Petrolatum has been placed in Category I by advisory review panels for the following OTC uses: Ophthalmic emollient, anorectal agent, and skin protectant. Ophthalmic drug products containing petrolatum are sterile to avoid the risk of contamination and usually are marketed with indications for ophthalmic use only, but other OTC drug products containing petrolatum could be labeled for both anorectal and skin protectant use. The comment's recommended statement of identity, "topical protectant and lubricant," does not make clear that such a product could be used anorectally and therefore does not fully satisfy the requirements of § 201.61(b). Concerning the comment's suggestion to use "lubricant" in a statement of identity for petrolatum, the agency stated in the tentative final monograph for OTC skin protectant drug products that the term "lubrication" is a cosmetic claim. (See the **Federal Register** of February 15, 1983; 48 FR 6828.) Likewise, the agency believes that "lubricant" is inappropriate in a statement of identity for OTC anorectal drug products.

To make it clear to consumers that the product could be used both as an anorectal agent and as a skin protectant, its labeling should contain the statement of identity, indications, warnings, and directions for use from both rulemakings. As an alternative, manufacturers may choose to label the product for only one of its intended uses.

In this tentative final monograph, the agency is proposing that the statement of identity for petrolatum be "anorectal (hemorrhoidal)," "hemorrhoidal," "anorectal (hemorrhoidal) (insert dosage form, e. g., cream, lotion, or ointment)," or "hemorrhoidal (insert dosage form, e.g., cream, lotion, or ointment)." (See comment 38 above.) A combined statement of identity recognizing the uses established in both monographs, e.g., "anorectal (hemorrhoidal)/skin protectant," would not be burdensome and would meet the requirements of § 201.61(b).

40. One comment suggested that, to eliminate duplication of words or phrases, § 346.50(b) be revised to permit combining the many indications recommended by the Panel, provided that the combined statement is clear and understandable with no change in meaning or emphasis.

The agency agrees with the comment and, consistent with the format and style used in other recently published tentative final monographs, proposes to revise the general indication for all anorectal drug products in § 346.50(b) as follows: ("For the temporary relief of," "Gives temporary relief of," or "Helps relieve the") (as an option, select neither, one, or both of the following: "local" or "anorectal") [select one or more of the following: "discomfort," "itching," or "itching and discomfort," followed by: "associated with" (select one or more of the following: "hemorrhoids," "anorectal disorders," "inflamed hemorrhoidal tissues," "hemorrhoidal tissues," "anorectal inflammation," or "piles (hemorrhoids).")] (See part II. paragraph B.9. below.)

In addition the agency has also revised the indications statements recommended by the Panel for specific therapeutic groups for clarity and to eliminate duplicative words and phases as appropriate.

41. One comment questioned why the Panel did not include the claim "shrinks hemorrhoids" for anorectal drug products containing zinc oxide and other astringents. The comment cited the following statement from a medical reference (Ref. 1): "This 'astringent' (drawing together) action is characterized by visible contraction of the tissue, blanching and wrinkling of mucous membranes * * *. The principal astringents are: metallic salts * * *." The comment stated that zinc salts, particularly zinc oxide, are considered typical and effective astringents, and requested that the labeling claim "shrinks hemorrhoids" be allowed for anorectal preparations containing such astringents.

The Panel did not specifically address the claim "shrinks hemorrhoids" in relation to anorectal astringents. However, in its general discussion of astringents, the Panel concluded that an effect of astringents is a "decrease in cell volume (implying a reduction in swelling)," but that this effect is not sufficient to warrant a labeling claim for the reduction of swelling (45 FR 35645 and 35649).

In its discussion of Category II labeling for vasoconstrictors, the Panel stated that the applicability of claims such as "shrinks hemorrhoids" for certain combinations of ingredients rested primarily on a definition of the word "shrink" (45 FR 35626). Although the Panel generally agreed that the word "shrink" refers to a reduction in size, there were differing opinions on whether this signifies a temporary phenomenon or implies a permanent change. The Panel stated that consumers would probably consider that a permanent change is to be expected. However, data submitted to the Panel indicated that vasoconstrictors produce a temporary reduction in swelling, and rebound swelling may occur in the long run. Thus, the Panel found that an anorectal vasoconstrictor can "temporarily reduce swelling" or "temporarily shrinks" and that these words sufficiently conveyed the usefulness of vasoconstrictors in the short-term treatment of anorectal symptoms (45 FR 35626). The agency concurs. (See the indications for vasoconstrictors in § 346.50(b)(2)(ii) of the tentative final monograph.)

The comment did not submit any data to show that astringents effectively shrink hemorrhoids even temporarily. Therefore, the agency has no basis for including the requested claim for anorectal astringents in this tentative final monograph.

**Reference**

(1) Sollman, T., "Local Irritants, Corrosives and Astringents," in "A Manual of Pharmacology," W.B. Saunders Co., Philadelphia, p. 139, 1957.

42. Three comments objected to the Panel's recommendation in § 346.50(c) that warning statements be placed in a "box border" and printed in black ink or the most prominent color of the label. The comments argued that a "box border" is not only inappropriate but also counterproductive because indiscriminately highlighting multiple minor warnings, such as those recommended by the Panel, would increase the probability that serious

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hazards will be ignored in other situations. Two of the comments argued that there are no warnings regarding the use of anorectal preparations that justify a "box border" requirement. The comments stated that FDA specifies only two uses for "box borders": To convey important information to physicians regarding indications for drugs found to be less than effective in the Drug Efficacy Study (21 CFR 201.200), and to warn against serious or even life-threatening toxic effects of prescription drugs (21 CFR 201.316).

The agency agrees with the comments that a "box border" should be reserved for special information that should be highlighted to prevent potential serious hazards. This requirement is not justified for any of the OTC anorectal drug product warnings, and in fact there have been only two instances so far in the OTC drug review in which the agency believed a "box border" was justified. The first instance was in the tentative final monograph for OTC emetic drug products, published in the Federal Register of September 5, 1978 (43 FR 39544), in which the agency proposed that the warning "Call a physician, Poison Control Center, or emergency room for advice before using, and call immediately if vomiting does not occur within 20 minutes after a second dose has been given" be printed in red and conspicuously boxed. The second instance was in the Federal Register of May 1, 1986 (51 FR 16258) in which the agency published a final rule that amended the exclusivity policy and established new labeling requirements for OTC drug products. The final rule provides manufacturers three alternatives for the labeling of OTC drug products. One of those alternatives provides that the label and labeling contain in a prominent and conspicuous location indications for use that have been established under a final OTC drug monograph. At the option of the manufacturer, this labeling may be designated "APPROVED USES," or be given a similar permitted designation, each time it appears in the labeling. If the "APPROVED USES" or a similar designation is used, the labeling involved shall appear within a boxed area. Other applicable labeling, e.g., warnings and directions, may be included in the boxed area, in which case the boxed area shall be designated "APPROVED INFORMATION" rather than "APPROVED USES."

As the comment noted, the Panel also recommended that warnings on anorectal drug products be printed in a special type, size, or color or be illustrated to aid consumers. The agency does not believe that these recommendations are necessary to ensure proper labeling of these products and is not including them in this tentative final monograph.

43. Two comments requested deletion of the pregnancy warning recommended by the Panel in § 346.50(c)(7)(i) for all intrarectal products except protectants. The warning states, "The safety of this product has not been established for use by pregnant women or by nursing mothers." The comments stated that the Panel had no evidence to show any risk to pregnant or nursing women from the use of intrarectal products. One comment contended that the Panel was "merely expressing its belief that it is a good policy for pregnant or nursing women to take no more drugs than are essential." The comment stated that warnings based on a speculative hypothesis would only serve to dilute the importance of other warnings and that if the Panel's warning were heeded, pregnant women would be deprived of the use of products that could relieve some of the major discomforts of pregnancy.

A final rule requiring a warning concerning the use of OTC drugs by pregnant or nursing women was published in the Federal Register of December 3, 1982 (47 FR 54750). This warning (21 CFR 201.63) is specific to OTC drugs that are intended for systemic absorption and therefore is not required for OTC anorectal drug products that are intended for local effect.

44. Three comments objected to the Panel's recommended 7-day use limitation in § 346.50(c)(1), "If symptoms do not improve, do not use this product for more than 7 days and consult a physician." Two of the comments contended that this limitation is arbitrary and unsupported by documentation. The third comment contended that minor anorectal conditions normally are amenable to a 2-week treatment period before a doctor should be consulted.

The purpose of a limitation-of-use statement on a product is to inform the consumer of the period of time that is reasonable to allow for symptoms to begin to show improvement or to clear. The Panel concluded that symptoms of minor anorectal disorders that can be self-treated should be significantly relieved, if not completely cleared, in 7 days. The Panel was concerned that the continued self-treatment of the symptoms associated with hemorrhoids and other anorectal conditions may mask more serious medical problems, such as anal fissures, fistulae, abscesses, anal warts, or fecal impactions. The Panel believed that if symptoms do not respond to self-treatment in 7 days, the condition could be a serious one, requiring professional diagnosis and treatment.

The comments did not submit any data to show that more than 7 days may be required to obtain benefits from OTC anorectal drug products. Therefore, the agency proposes that the 7-day limitation be retained, but is revising this warning to advise consumers that a doctor should also be consulted if the condition worsens. The revised warning is proposed as follows: "If condition worsens or does not improve within 7 days, consult a doctor."

45. Two comments suggested revising the Panel's recommended warning statement in § 346.50(c)(7)(ii) that is specific to intrarectal products to be used with special applicators, such as pile pipes or other mechanical devices. The warning states, "Do not use this product if the introduction into the rectum causes additional pain. Consult a physician promptly." One of the comments contended that less trauma would result by applying the product intrarectally with the fingers and suggested that the warning state, "If use of (device) is painful, apply with fingers." The other comment noted that no comparable warning was proposed for suppositories, which usually cause some initial discomfort upon insertion, and suggested that the warning be deleted or altered to reflect common use conditions for products used with applicators.

The Panel stated that special applicators, such as pile pipes, are used to allow the introduction of a preparation above the anal sphincter so that it may remain in contact with the rectal mucosa where attempted insertion of an ointment by the finger is not apt to be successful (45 FR 35589). However, the Panel was concerned that there is some danger that the rectal mucosa can be perforated if a special applicator, such as a pile pipe, is not inserted into the rectum correctly. Accordingly, the Panel believed that the warning it recommended was necessary to alert consumers that there should not be any additional pain (caused by further injury) with the use of a pile pipe. The warning was not intended, as suggested by the comment, to alert consumers about any discomfort that may occur from the insertion of a pile pipe or a suppository. The agency agrees with the Panel that the warning is beneficial but is revising it for clarity as follows: "Do not use this product with an applicator if the introduction of the

applicator into the rectum causes additional pain. Consult a doctor promptly."

46. One comment stated that the Panel did not adequately define the terms "internal" and "external" for the purpose of describing "locus and necessary sites of treatment of anal/rectal irritation." The comment contended that many of the Panel's statements "imply that the entire anal canal is a portion of the anal/rectal 'interior,' " but that this "interior" area is not a proper location for application of certain hemorrhoidal ingredients. The comment objected to the Panel's recommended warnings in § 346.52(c)(2) for hemorrhoidal products containing local anesthetics for external use only, "*Caution:* This product is for external use only. Do not apply inside the rectum in any way," and in § 346.50(c)(6) for products for external use only, "Do not put this product into the rectum by using fingers or any mechanical device or applicator."

The comment argued that these warnings can be construed by the general public as prohibiting insertion of certain hemorrhoidal drug preparations into the anal canal, but that this apparently was not the Panel's intended meaning. The comment added that if these warnings go uncorrected, misinterpretation by the general public "will result in a great deal of unalleviated consumer 'hemorrhoidal' discomfort." The comment stated that pain stemming from irritation in the anal canal below the mucocutaneous junction can be effectively treated only by "internal" application (insertion through the anal canal and into the rectum) of a hemorrhoidal drug preparation. The comment described certain suppositories and ointments that liquefy when inserted and then work their way down, through, and over the cutaneous area below the mucocutaneous junction. The comment contended that the Panel's conclusions concerning the use of an anesthetic in a hemorrhoidal drug product do not make allowance for the internal use of suppositories and ointments for the treatment of skin in the anal canal below the mucocutaneous junction. The comment urged that the Panel's definitions of "external" and "internal" and its recommended labeling be clarified to promote correct consumer use of these products.

The Panel used the term "external," but not the word "internal," preferring "intrarectal" instead. The Panel consistently referred to the skin of the perianal area and the skin of the anal canal up to the mucocutaneous junction as external, and to the mucous membranes above the mucocutaneous junction, i.e., in the rectum, as intrarectal. It is apparent that, in the Panel's view, the point of distinction between "external" and "internal" use was the mucocutaneous junction. The agency believes that the Panel's definition of external use and intrarectal use are appropriate. Therefore, the agency is proposing those definitions in this tentative final monograph.

The comment is correct in stating that the Panel did not recommend labeling for the intrarectal application of suppositories and ointments containing a local anesthetic to relieve pain stemming from irritation outside the rectum (i.e., in the anal canal below the mucocutaneous junction and perianal area). Although the comment contends that such an intrarectal application would be effective because of liquefaction of the product and subsequent seepage through the anal canal, the Panel considered seepage only within the context of an incontinent anal sphincter and not within the context that an incontinent anal sphincter would provide a means to relieve external symptoms on the skin of the perianal area and the anal canal. Rather, the Panel considered intrarectal application only for local effect inside the rectum. The comment provided no data to alter the Panel's recommendations, and the agency believes that the intrarectal application of a suppository or ointment is not an appropriate means to alleviate external symptoms through liquefaction and seepage. Further, the agency disagrees with the comment's argument that the Panel's recommended warnings will result in a great deal of unalleviated consumer "hemorrhoidal discomfort." Most of the ingredients included in the tentative final monograph, but not local anesthetics, may be used intrarectally to alleviate discomfort. The Panel's recommended warnings would only apply to the small number of OTC anorectal drug products to be used externally only. Accordingly, the general warning for any anorectal ingredient intended for external use, as recommended by the Panel in § 346.50(c)(6), is being included in this tentative final monograph, but has been redesignated as § 346.50(c)(4). However, the warning recommended by the Panel in § 346.52(c)(2) for products containing local anesthetics for external use is not being proposed in this tentative final monograph because it is repetitive of the warning proposed § 346.50(c)(4).

47. One comment disagreed with the warning recommended by the Panel in § 346.54(c), "Do not use this product if you have heart disease, high blood pressure, hyperthyroidism, diabetes, difficulty in urination, or are taking tranquilizers or nerve pills." The comment stated that this warning would virtually eliminate the use of OTC anorectal drug products containing vasoconstrictor active ingredients by a large number of persons over 35 years of age who self-treat hemorrhoidal disorders. The comment recommended substituting a cautionary statement in place of the phrase "do not use."

The agency has reviewed the Panel's general discussion of vasoconstrictors (45 FR 35620) and the warning recommended in § 346.54(c) and has compared this warning with the warnings proposed for vasoconstrictor active ingredients in the final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 2, 1986 (51 FR 35326), and in the tentative final monograph for OTC nasal decongestant drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2220). The Panel stated that a concomitant effect occurs on receptors in the heart and lungs when vasoconstrictors are applied to receptors in the anorectal area (45 FR 35620). Because of these potentially serious side effects and because useful effects are achieved with minimum quantities of vasoconstrictors, the Panel recommended that the safe OTC anorectal dosages of vasoconstrictors be equivalent to safe intravenous dosages. The Panel stated that when vasoconstrictors are used in these doses for local effect, undesirable systemic effects can be avoided (45 FR 35621).

However, the Panel recommended the warning in § 346.54(c) to alert consumers to undesirable side effects that can occur if systemic absorption occurs from either external or intrarectal application. These side effects can include elevated blood pressure, cardiac arrhythmia or irregular heart rate, central nervous system disturbance or nervousness, tremor, sleeplessness, and aggravation of symptoms of hyperthyroidism. Prolonged use of excessive dosage can also lead to anxiety or paranoia (45 FR 35621).

The agency concludes that vasoconstrictors used in the anorectal area, if absorbed, could cause the same undesirable systemic effects as vasoconstrictors used as bronchodilators and nasal decongestants, but that significant absorption is unlikely to occur when vasoconstrictors are used externally on intact skin for a short time. However, because the skin of the anorectal area is

usually abraded, and swollen hemorrhoids may be present, there is an increased potential for systemic absorption of vasoconstrictors used externally.

Therefore, the agency agrees with the Panel that a warning for anorectal vasoconstrictors is appropriate for both external and intrarectal use; however, the agency is proposing an expanded warning in this tentative final monograph to be consistent with the warnings required for these drugs when used as bronchodilators and nasal decongestants. The revised warning reads as follows for externally applied anorectal vasoconstrictors: "Do not use this product if you have heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor." In addition, the phrase "* * * or are taking tranquilizers or nerve pills" recommended by the Panel in § 346.54(c) is changed to the following standard drug interaction precaution that appears in the bronchodilator final monograph for drug products containing ephedrine and epinephrine and in the nasal decongestant tentative final monograph for drug products containing phenylephrine hydrochloride for oral use: "Do not use this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor."

Because of the seriousness of the side effects that may occur if vasoconstrictors are systemically absorbed, cautionary language, as suggested by the comment, would not be adequate to alert consumers. However, the agency has added to the warnings the qualifying phrases "unless directed by a doctor," "consult your doctor," and "without first consulting your doctor" to make it clear that consumers to whom the warnings are directed may not need to completely forgo the use of these products, but may be able to use them under the advice or supervision of a doctor. Based on the bronchodilator final monograph, the agency is proposing the following additional warning for anorectal drug products containing ephedrine: "Some users of this product may experience nervousness, tremor, sleeplessness, nausea, and loss of appetite. If these symptoms persist or become worse, consult your doctor."

48. One comment stated that the warnings recommended for all anorectal drug products in § 346.50(c) (1), (2), and (3) should not apply to petrolatum. Concerning the warning in § 346.50(c)(1), "If symptoms do not improve, do not use this product for more than seven days and consult a physician," the comment argued that the use of this ingredient for more than 7 days would not be hazardous per se because petrolatum is remarkably safe and does not cause any allergic reaction or skin irritation.

The comment stated that the warning in § 346.50(c)(2), "Do not exceed the recommended daily dosage except under the advice and supervision of a physician," would clutter the label without benefit to the consumer because petrolatum can be applied liberally to the affected anorectal area without hazard to the patient.

Concerning the warning in § 346.50(c)(3), "If itching persists for more than 7 days, consult a physician," the comment argued that 7 days is an arbitrary limitation because the dividing line between acute and chronic conditions has not been shown to be 7 days. The comment added that including the warnings in § 346.50(c) (1) and (3) would be redundant. The comment stated that the following warning is appropriate for petrolatum: "If symptoms continue to occur or increase, consult physician."

The warning recommended by the Panel in § 346.50(c)(1) is a general warning for all anorectal drug products and is intended to inform the consumer of the period of time that is reasonable to allow for symptoms of anorectal disorders to begin to show improvement or to clear. As discussed in comment 44 above, the agency is proposing that § 346.50(c)(1) be revised in this tentative final monograph to read as follows: "If condition worsens or does not improve within 7 days, consult a doctor." The agency concludes that this warning should be required for all anorectal drugs, including petrolatum, in order to provide the consumer with appropriate limitation-of-use information for OTC anorectal drug products. The warning suggested by the comment did not include this information.

The warning in § 346.50(c)(2) is also a general warning for all anorectal drug products. In the tentative final monograph for OTC skin protectant drug products, published in the **Federal Register** of February 15, 1983 (48 FR 6820), the agency proposed that the directions for use for petrolatum state, "Apply liberally as often as necessary." Because a warning such as in § 346.50(c)(2) is not required for petrolatum in the skin protectant tentative final monograph, the agency is proposing that petrolatum be exempt from this warning in this tentative final monograph.

The general warning recommended by the Panel in § 346.50(c)(3) for all anorectal drug products specifically addresses the condition of itching. As revised, the warning in § 346.50(c)(1), which addresses all conditions, makes the warning in § 346.50(c)(3) repetitive and unnecessary and it is not included in this tentative final monograph.

49. One comment stated that the directions for anorectal drug products recommended by the Panel in § 346.50(d) should not be listed separately for external and intrarectal use. The comment contended that the directions would be understood without putting them under separate headings, and that repeating each set of directions "for all products" is redundant and contributes to label clutter.

The agency agrees with the comment. As the Panel noted, many anorectal products may be used externally as well as intrarectally. The agency acknowledges this fact and has developed directions for use in this tentative final monograph that take into account the dual use of many of these products. However, there is certain additional directions information that applies to intrarectal use only, e.g., use of a special applicator to apply the product into the rectum. In those cases, the agency believes that a special heading indicating that these directions apply to intrarectal use is appropriate.

50. Four comments opposed, and one comment favored, the following directions recommended by the Panel in § 346.50(d)(2) for all anorectal drug products: "When practical wash the anorectal area with mild soap and warm water and rinse off all soap before application of this product." The comments contended that the statement is impractical and inappropriate and that it is not always convenient or even possible for the consumer to wash the anorectal area, especially after each bowel movement or when away from home. The comments argued that the Panel did not present evidence that washing is safe and effective and that washing might not serve a useful purpose, but instead might aggravate painful burning and itching disorders. Two comments further stated that cleansing pads are a more comfortable alternative if soap and water irritate sensitive or broken skin. The comment in favor of these directions commended the Panel for emphasizing good anal hygiene when treating anorectal disorders.

The Panel was concerned about the importance of anal hygiene and stated that washing the anorectal area daily and after each bowel movement with

soap and water and then carefully removing the soap greatly aids in the relief of anorectal symptoms and may prevent recurrence of perianal itching (45 FR 35584). The Panel also emphasized that, to avoid further irritation, the skin of the perianal area should be patted or blotted rather than rubbed dry.

The agency agrees with the comments' suggestion that cleansing pads are a suitable alternative to washing with soap and water, but recognizes that cleansing pads may not always be available. Accordingly, the directions proposed in this tentative final monograph, which appear in § 346.50(d)(1), have been revised for clarity. In addition, the directions have also been revised because the agency is not including the Panel's recommended warning in § 346.50(c)(7)(iii) for certain products for intrarectal use, "Do not use this product in children under 12 years of age except under the advice and supervision of a physician." Rather, the directions in § 346.50(d)(i) of this tentative final monograph have been revised to state clearly that a doctor should be consulted before using any anorectal drug product in children under 12 years of age to be more consistent with the Panel's general discussion on pediatric dosages in which the Panel stated that most anorectal disorders in children are brought to a physician for evaluation and treatment (45 FR 35579). In light of the revised directions, the agency believes that the warning recommended by the Panel is repetitious and unnecessary. The revised directions are as follows: "*Adults:* "When practical, cleanse the affected area" (select one or both of the following: "with mild soap and warm water and rinse thoroughly" or "by patting or blotting with an appropriate cleansing pad"). "Gently dry by patting or blotting with toilet tissue or a soft cloth before application of this product." [Other appropriate directions may be inserted here.] "Children under 12 years of age: consult a doctor."

51. One comment urged deletion of the phrase "or as directed by a physician" from the directions for petrolatum recommended by the Panel in § 346.56(d). The comment contended that the phrase is unnecessary and irrelevant for petrolatum because petrolatum is not usually prescribed by physicians, and therefore its use is rarely directed or supervised by a physician. The comment further contended that in the unusual case when a physician does direct the use of petrolatum, the physician's directions to the patient would take precedence over the label directions without the need for a statement to that effect on the label.

The agency agrees with the comment that the phrase "or as directed by a physician" is unnecessary in the directions for petrolatum. In addition, the agency believes that this phrase is unnecessary for any OTC anorectal drug product and is not including it in this tentative final monograph. Deleting this phrase makes the directions for all anorectal drug products consistent with the directions for other OTC topically applied ingredients contained in other tentative final monographs, i.e., skin protectants and external analgesics. (See comment 28 above.)

52. One comment objected to several of the Panel's Category II labeling recommendations as being excessive and unnecessary. The comment disagreed with the Panel's conclusion at 45 FR 35602 that the labeling claims "simple anorectal irritation," "anorectal disorders," and "simple inflammatory rectal conditions" are too general and contended that these terms are intended to encourage OTC hemorrhoidal drug use only in cases in which medical supervision is unnecessary. The comment added that labeling a hemorrhoidal product for a "simple anorectal condition" may be the best method of encouraging consumers to obtain medical advice if the condition persists or becomes a "complicated" anorectal condition.

The agency agrees with the Panel that labeling claims such as "simple anorectal irritation," "anorectal disorders," and "simple inflammatory rectal conditions" are too general or unclear if used alone (45 FR 35602). Further, the agency finds that such labeling claims, when used alone, could imply that OTC anorectal drug products treat diseases or conditions rather than relieve symptoms and, therefore, should remain in Category II. However, when these terms or similar terms are used with additional language describing the relief of associated symptoms, e.g., itching, discomfort, etc., the resulting labeling claims clearly describe that OTC anorectal drugs are primarily for the relief of symptoms and not the treatment of disease. Therefore, the agency is not proposing that the terms recommended by the comment be used alone as labeling for anorectal drug products. However, these terms or similar terms when used with additional language are included in the labeling proposed in § 346.50(b). (See comment 40 above.)

53. One comment objected to the Panel's criticism of labeling claims that may cause the consumer to believe that certain hemorrhoidal drug products are superior to other available products for any of a number of reasons (45 FR 35602) and what the comment described as the Panel's impression that one hemorrhoidal drug product is as good as another.

The Panel gave the following examples of labeling that may cause the consumer to believe that certain products are superior to other available products: "Contains no narcotic, anesthetic, or habit forming ingredients," "nonnarcotic," "without the use of narcotics," or "contains no stinging, smarting astringents" (45 FR 35602). The Panel stated that these claims clearly imply a stronger or more effective product, greater safety, and that other products are narcotics, anesthetics, or astringents and are harmful without any evidence that this is so. The agency has reviewed currently marketed products and finds no known marketed OTC anorectal drug products that contain narcotics. Therefore, the agency believes it would be inappropriate for manufacturers to state in the labeling of these products that the product "contains no narcotic." However, because anesthetics are present in some OTC anorectal products, manufacturers could state in their labeling, if they wish, that the product "contains no anesthetic." The agency is not aware of any data that show that astringents incorporated into an ointment or suppository base cause stinging and smarting in the anorectal area and, thus, believes that the statement "contains no stinging, smarting astringents" would be inappropriate for anorectal drug products.

*N. Comments on Testing Guidelines.*

54. A number of comments disagreed with parts of the Panel's testing guideline requirements, e.g., that the pharmacologic action of ingredients must always be demonstrated in the anorectal area, that clinical relief of symptoms must be correlated with pharmacologic activity, and that testing must be accomplished within 7 days. The comments also criticized the criteria for selection of patients with anorectal disease, the use of a product's vehicle as the control, double-blind studies, and the dose and frequency limitations. Two comments suggested that the Panel's testing requirements for anorectal drug products at 45 FR 35594 are more rigorous than for other drug entities, while another comment stated that the proposed requirements would limit manufacturers and independent testing organizations to inappropriate and

impossible testing methods. Several comments supported the Panel's minority opinion that extrapolation of data from tests performed in other areas of the body to the anorectal area is allowable (45 FR 35608 and 35652).

The agency has not addressed specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III, published in the Federal Register of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. The revised procedures also state the time in which test data must be submitted for consideration in developing the final monograph. (See also part II. paragraph A.2. below—*Testing of Category II and Category III conditions.*)

55. A number of comments objected to the Panel's recommendation of final formulation testing (bioavailability) for moving Category III anorectal drug products to Category I. There were no comments supporting the Panel's views. Some comments stated that adopting this requirement as part of the final rule would violate the Panel's charter, which was to review data on OTC ingredients and combinations, to make recommendations on their safety and efficacy, and to avoid a product-by-product review. Several comments cited 21 CFR 320.22(b)(2) as providing for a waiver of in vivo bioavailability requirements for topically applied preparations intended for local therapeutic effect. The comments also stated that none of the anorectal ingredients reviewed by the Panel has been cited as having bioavailability problems.

Two of the comments contended that consideration of the bioavailability of anorectal drug products is irrelevant, and that the Panel had not supported the final formulation testing recommendation with any documentation. One comment from a biopharmaceutics expert who had written a letter in 1975 (Ref. 1) that was reviewed and quoted by the Panel to support its conclusion to require final formulation testing for anorectal drug products (45 FR 35586 to 35588) contended that the Panel misconstrued the content of the letter. The comment stated that final formulation testing is not necessary for safety because there would be no significant risk to the user even if any of the Category I and III anorectal active ingredients were 100 percent bioavailable systemically. Another comment agreed with the Panel's minority report regarding final formulation testing (45 FR 35608, 35609, and 35652) and stated that "final formulation testing would be wasteful, a threat to * * * viability as a hemorrhoidal drug marketer, and, ultimately, a financial detriment to consumers."

FDA does not agree with the comment concerning the 1975 letter cited in the Panel's report. After reviewing the Panel's discussion of its reasons for recommending final formulation testing (45 FR 35586 to 35588), it is evident that the Panel did not quote from the letter discussed in the summary above, nor does it appear that the letter was cited for the proposition mentioned in the comment.

Although the Panel stated that final formulation testing of all ingredients and combinations could not be avoided in its testing guidelines for placing Category III ingredients and labeling in Category I (45 FR 35594 to 35598), the Panel also stated, and the agency concurs, that the use of a questionnaire, photography, and physician evaluation would be adequate to demonstrate statistically significant symptomatic improvement and would be acceptable for proof of effectiveness for claims of symptomatic relief of burning, pain, itch, swelling (as in hemorrhoids and/or hemorrhoidal tissue) and discomfort due to these symptoms.

While it is not clear whether the Panel intended testing of all products, including formulations containing Category I ingredients, FDA agrees with the comments that final formulation testing should not be required for anorectal drug products because the products are topically applied and because, to date, there has been no demonstrated bioavailability problem with any of the products at issue. The in vivo waiver provision of § 320.22(b)(2) for topically applied products reflects the fact that certain topically applied products, that are applied directly to the site of drug action, are less prone to bioavailability problems than are some other drugs and, accordingly, their bioavailability may, in some instances, be determined by means other than in vivo product testing. With regard to the products subject to this monograph, FDA will not require in vivo bioavailability testing, but will address product bioavailability in the context of the monograph requirements of (1) appropriate vehicles and other inactive ingredients and (2) compliance with appropriate good manufacturing practices.

Accordingly, the agency will not require final formulation testing of anorectal drug products covered by a final monograph. Category I anorectal active ingredients may be formulated in appropriate vehicles without additional testing, provided the product is manufactured according to the regulations for the Current Good Manufacturing Practice for Finished Pharmaceuticals (21 CFR Part 211). Manufacturers should be aware that the newness of a dosage, or method * * * of administration or application, or other condition of use * * * may affect the "newness" of a drug. (See 21 CFR 310.(h)(5).)

**Reference**

(1) Letter to J. K. Jones from S. Riegelman, March 13, 1975, OTC Volume 120051.

## II. The Agency's Tentative Adoption of the Panel's Report

### *A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions.*

1. Summary of ingredient categories.

The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made the following changes in the categorization of anorectal active ingredients recommended by the Panel.

Because final formulation testing is not being proposed in this tentative final monograph, benzyl alcohol, dibucaine, dibucaine hydrochloride, dyclonine hydrochloride, epinephrine, lidocaine, tetracaine, and tetracaine hydrochloride have been reclassified from Category III to Category I for external use. (See comment 55 above.) However, these ingredients remain in Category III for intrarectal use because of insufficient data to establish safety and/or effectiveness for this use. Diperodon has been reclassified from Category II to Category III for external use while remaining in Category III for intrarectal use. (See comment 13 above.)

For the convenience of the reader, the following tables are included as a summary of the categorization of anorectal active ingredients by the Panel and the proposed classification by the agency:

| Anorectal active ingredients | Panel | Agency [(e) = external use; (i) = intrarectal use] |
|---|---|---|
| *Local anesthetics* | | |
| Benzocaine | I(e),III(i) | I(e),III(i) |
| Benzyl alcohol | III(e,i) | I(e),III(i) |
| Dibucaine | III(e,i) | I(e),III(i) |
| Dibucaine hydrochloride | III(e,i) | I(e),III(i) |
| Diperodon | II(e),III(i) | III(e,i) |
| Dyclonine hydrochloride | III(e,i) | I(e),III(i) |
| Lidocaine | III(e,i) | I(e),III(i) |
| Phenacaine hydrochloride | III(e,i) | III(e,i) |
| Pramoxine hydrochloride | I(e),III(i) | I(e),III(i) |
| Tetracaine | III(e,i) | I(e),III(i) |
| Tetracaine hydrochloride | III(e,i) | I(e),III(i) |
| *Vasoconstrictors* | | |
| Ephedrine sulfate | II(e,i) | I(e,i) |
| Epinephrine | III(e,i) | I(e),III(i) |
| Epinephrine hydrochloride | I(e),II(i) | I(e),II(i) |
| Epinephrine undecylenate | III(e),II(i) | III(e),II(i) |
| Phenylephrine hydrochloride | I(e,i) | I(e,i) |
| *Protectants* | | |
| Aluminum hydroxide gel | I(e,i) | I(e,i) |
| Bismuth oxide | III(e,i) | III(e,i) |
| Bismuth subcarbonate | III(e,i) | III(e,i) |
| Bismuth subgallate | III(e,i) | III(e,i) |
| Bismuth subnitrate | II(e,i) | II(e,i) |
| Calamine [1] | I(e,i) | I(e,i) |
| Cocoa butter | I(e,i) | I(e,i) |
| Cod liver oil [1] | I(e,i) | I(e,i) |
| Glycerin [2] | I(e) | I(e) |
| Kaolin | I(e,i) | I(e,i) |
| Lanolin | I(e,i) | I(e,i) |
| Lanolin alcohols [3] | I(e,i) | III(e,i) |
| Mineral oil | I(e,i) | I(e,i) |
| Petrolatum | Not reviewed | I(e,i) |
| Shark liver oil [1] | I(e,i) | I(e,i) |
| Topical starch [4] | I(e,i) | I(e,i) |
| White petrolatum | I(e,i) | I(e,i) |
| Zinc oxide [1] | I(e,i) | I(e,i) |
| *Counterirritants* | | |
| Camphor (greater than 3 to 11 percent) | II(e,i) | II(e,i) |
| Hydrastis | II(e,i) | II(e,i) |
| Juniper tar (1 to 5 percent) | III(e,i) | N/A [5] |
| Menthol (1.25 to 16 percent) | II(e,i) | II(e,i) |
| Turpentine oil (rectified) (6 to 50 percent) | II(e,i) | II(e,i) |
| *Astringents* | | |
| Calamine | I(e,i) | I(e,i) |
| Tannic acid | II(e,i) | II(e,i) |
| Hamamelis water, NF XI [2, 6] | I(e) | I(e) |
| Zinc oxide | I(e,i) | I(e,i) |
| *Wound-healing agents* | | |
| Cholecalciferol [1] | III(e,i) | III(e,i) |
| Cod liver oil | III(e,i) | III(e,i) |
| Live yeast cell derivative | III(e,i) | III(e,i) |
| Peruvian balsam | III(e,i) | III(e,i) |
| Shark liver oil | III(e,i) | III(e,i) |
| Vitamin A | III(e,i) | III(e,i) |
| *Antiseptics* | | |
| Boric acid | II(e,i) | II(e,i) |
| Boroglycerin | II(e,i) | II(e,i) |
| Hydrastis | II(e,i) | II(e,i) |
| Phenol | II(e,i) | II(e,i) |
| Resorcinol | II(e),III(i) | III(e),II(i) |
| Sodium salicylic acid phenolate | II(e,i) | II(e,i) |
| *Keratolytics* | | |
| Alcloxa [2] | I(e) | I(e) |
| Resorcinol | I(e),II(i) | I(e),II(i) |
| Precipitated sulfur | III(e),II(i) | III(e),II(i) |
| Sublimed sulfur | III(e),II(i) | III(e),II(i) |
| *Anticholinergics* | | |
| Atropine | II(e,i) | II(e,i) |
| Belladonna extract | II(e,i) | II(e,i) |
| *Analgesics, anesthetics, and antipruritics* | | |
| Camphor (0.1 to 3 percent) | N/A | I(e) |
| Juniper tar (1 to 5 percent) | N/A | I(e) |
| Menthol (0.1 to 1 percent) | N/A | I(e) |
| *Miscellaneous* | | |
| Collinsonia extract | II(e,i) | II(e,i) |
| *E.coli* vaccines | II(e,i) | III(e,i) |
| Hydrocortisone | N/A | Ext. Anal. [6] |
| Hydrocortisone acetate | N/A | Ext. Anal. [6] |

| Anorectal active ingredients | Panel | Agency [(e) = external use; (i) = intrarectal use] |
|---|---|---|
| Lappa extract | II(e,i) | II(e,i) |
| Leptandra extract | II(e,i) | II(e,i) |
| Mullein | II(e,i) | II(e,i) |

[1] For use only in combination and not as single ingredients. (See comment 30 above.)
[2] Not categorized for intrarectal use.
[3] "Wool alcohols" was the name designated by the Panel for this ingredient. "Lanolin alcohols" is the official title of this ingredient in the "United States Pharmacopeia XXI—National Formulary XVI."
[4] "Starch" was the name designated by the Panel for this ingredient. "Topical starch" is the official title of this ingredient in the "United States Pharmacopeia XXI—National Formulary XVI."
[5] Juniper tar was redesigned an "analgesic, anesthetic, and antipruritic" ingredient. (See Part II.B.6 below—*Summary of the Agency's Changes in the Panel's Recommendations.*)
[6] "Witch hazel water" was the name designated by the Panel for this ingredient. "Hamamelis Water" was last recognized as the official title of this ingredient in National Formulary XI, and the agency has determined that this is the appropriate name for this ingredient.
[7] "Vitamin D" was the name designated by the Panel for this ingredient. "Cholecalciferol" is the official title of this ingredient in the "United States Pharmacopeia XXI—National Formulary XVI."
[8] Hydrocortisone and hydrocortisone acetate were not reviewed by the Panel. These ingredients are being addressed in the rulemaking for OTC external analgesic drug products. (See comment 25 above.)

2. Testing of Category II and Category III conditions.

The Panel recommended testing guidelines for anorectal drug products (45 FR 35594 to 35598). The agency's position regarding these testing guidelines and regarding final formulation testing is discussed in comments 54 and 55 above. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any anorectal ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). This policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

*B. Summary of the Agency's Changes in the Panel's Recommendations*

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The agency is proposing dibucaine and dibucaine hydrochloride as Category I anorectal local anesthetics for external use in a concentration range of 0.25 to 1 percent for use up to 3 or 4 times daily. (See comment 12 above.)

The agency is also proposing the following anorectal ingredients as Category I for external use. (See part II. paragraph A. 1. above—*Summary of ingredient categories.*) The concentrations in this tentative final monograph are the equivalent of the dosages recommended by the Panel for a 2-g or a 2-mL dosage unit.

(a) Benzyl alcohol 1 to 4 percent.

(b) Dyclonine hydrochloride 0.5 to 1 percent.

(c) Lidocaine 2 to 5 percent.

(d) Tetracaine and tetracaine hydrochloride 0.5 to 1 percent.

(e) Epinephrine 0.005 to 0.01 percent.

2. In its recommended monograph, the Panel stated the amounts of the vasoconstrictor active ingredients identified in § 346.12 in terms of a given weight per 2-g or 2-mL dosage unit. The agency proposes that the ingredients be expressed in terms of percentage concentration to be consistent with the manner of stating other ingredients in this tentative final monograph. Accordingly, the vasoconstrictor active ingredients in § 346.12 of this tentative final monograph are expressed as follows:

(a) Ephedrine sulfate 0.1 to 1.25 percent.

(b) Epinephrine 0.005 to 0.01 percent.

(c) Epinephrine hydrochloride 0.005 to 0.01 percent

(d) Phenylephrine hydrochloride 0.25 percent.

The agency is aware that in the Panel's report (45 FR 35625) the statement is made that "a 0.5 mg dose of phenylephrine hydrochloride in a 2 mL dosage unit is equal to the amount of phenylephrine used safely and effectively in producing nasal decongestion, as discussed in the September 9, 1976 document at page 38399." The statement is incorrect and should have read "a 5-mg dose." Such a dose represents a concentration of 0.25 percent phenylephrine.

3. The agency is reclassifing lanolin alcohols from Category I to Category III as protectants in OTC anorectal drug products. Lanolin alcohols were not contained in any products submitted to the Panel for review, and the agency has no information on currently marketed anorectal drug products that contain these ingredients or on their appropriate concentration for anorectal protectant use. Such information is needed before lanolin alcohols can be considered generally recognized as safe and effective as anorectal protectants, and the agency invites public comment and the submission of data.

4. The agency is not requiring the final formulation testing of combination drug products recommended by the Panel. Accordingly, combinations of Category I ingredients from up to three different therapeutic categories that were placed in Category III by the Panel are reclassified in Category I. (See comment 31 above.)

5. The agency is proposing in § 346.14(b) in this tentative final monograph that calamine, cod liver oil, shark liver oil, and zinc oxide not be used alone but only in combination with other protectants to provide at least 50 percent by weight of the final product. Section 346.22 of the Panel's recommended monograph has been redesignated as § 346.22(a) and has been expanded to clarify that any two, three, or four protectants identified in § 346.14 may be combined, provided that any ingredient identified in § 346.14 is included at a level that contributes at least 12.5 percent by weight (e.g., 0.25 g of a 2-g dosage unit) and provided that if any ingredient identified in § 346.14(b) is present in the combination, it must not exceed the concentration limit specified in § 346.14(b). In addition, the combined percentage by weight of all protectants in the combination must be at least 50 percent of the final product (e.g., 1-g of a 2-g dosage unit). New § 346.22(o) provides that the amount of zinc oxide in a combination may not exceed 25 percent by weight per dosage unit. (See

comment 30 above.) In addition, on its own initiative, the agency is expanding the list of protectant active ingredients in § 346.14 to include petrolatum as well as white petrolatum. Although the use of white petrolatum in lieu of petrolatum results in a more aesthetically pleasing anorectal ointment, the use of white petrolatum is not medically necessary.

6. The agency is redesignating several ingredients that the Panel classified as "counterirritants" to be "analgesic, anesthetic, and antipruritic" ingredients in this rulemaking. The Panel classified the ingredients camphor (1.6 to 7 percent), hydrastis (no concentration given), juniper tar (1 to 5 percent), menthol (0.25 to 1 percent), and turpentine oil (no concentration given) as counterirritants (45 FR 35640 to 35645). The Topical Analgesic Panel also reviewed and classified camphor (0.1 to 3 percent), juniper tar (1 to 5 percent), and menthol (0.1 to 1 percent) as analgesic, anesthetic, and antipruritic active ingredients (44 FR 69865) and camphor (3 to 11 percent), menthol (1.25 to 16 percent), and turpentine oil (6 to 50 percent) as counterirritant ingredients (44 FR 69864 to 69865). The agency agreed with that Panel's classifications in the tentative final monograph for OTC external analgesic drug products (48 FR 5852; February 8, 1983), and further clarified that menthol at a concentration of 0.1 to 1 percent was an analgesic, anesthetic, or antipruritic and at a concentration of 1.25 to 16 percent was a counterirritant. (See comment 6 at 48 FR 5855.)

The Anorectal Panel classified menthol at a concentration of 0.25 to 1 percent in aqueous solution as a counterirritant for the temporary relief of itching in the anorectal area.

Based on the agency's findings in the tentative final monograph for OTC external analgesic drug products and to promote consistency between the rulemakings for anorectal and external analgesic drug products, the agency is proposing to redesignate menthol below 1 percent as an analgesic, anesthetic, and antipruritic ingredient rather than as a counterirritant in the anorectal rulemaking and to revise its Category I concentration from 0.25 to 1 percent to 0.1 to 1 percent. Likewise, camphor 0.1 to 3 percent and juniper tar 1 to 5 percent will be redesignated as analgesic, anesthetic, and antipruritic ingredients in the anorectal rulemaking. The Anorectal Panel did not classify these ingredients for these uses. However, because these ingredients are indicated for pain and itching of minor skin irritations when labeled as an external analgesic and for itching and discomfort when labeled for anorectal/hemorrhoidal use, the agency has determined that menthol, camphor, and juniper tar at the above concentrations should be listed as Category I analgesic, anesthetic, and antipruritic ingredients in the anorectal tentative final monograph.

Camphor exceeding 3 percent to 11 percent, menthol 1.25 to 16 percent, and turpentine oil 6 to 50 percent are designated as counterirritants in the anorectal rulemaking. Because the Anorectal Panel classified camphor and turpentine oil in Category II as counterirritants for anorectal use, they are not being included in this tentative final monograph. Likewise, the Panel did not propose Category I status for menthol above 1 percent as a counterirritant; therefore, it also is not being included in this tentative final monograph as a counterirritant. This approach is consistent with the labeling of counterirritants in the external analgesic tentative final monograph because those products are used to relieve aches and pains of muscles and joints associated with backaches, arthritis, etc., and not to relieve itching and discomfort of minor skin irritations. Hydrastis also remains in Category II as a counterirritant in OTC anorectal drug products.

The agency is adding the definitions of "analgesic, anesthetic" and "antipruritic" to this tentative final monograph to be consistent with those definitions as proposed in the tentative final monograph for OTC external analgesic drug products. (See the **Federal Register** of February 8, 1983; 48 FR 5852.) In addition, the agency is not including the definition of counterirritant in this tentative final monograph.

7. The agency is redesignating Subpart D as Subpart C and is placing the labeling sections of the tentative final monograph in Subpart C. To improve clarity and to eliminate duplicative words and phrases, the agency has shortened and simplified the general indications and the indications recommended by the Panel for different therapeutic categories. (See comment 40 above.) In some cases, the agency has eliminated indications from the different therapeutic categories when the same or very similar indications were already part of the general indications.

8. The agency is proposing that the term "hemorrhoidal" be allowed to appear alone or in parentheses next to the term "anorectal" as the statement of identity for all OTC anorectal drug products. (See comment 38 above.)

9. The agency is proposing in § 346.50(b) that certain labeling statements may be combined in the labeling of anorectal combination drug products. The agency is proposing in § 346.54 that indications, warnings, and directions applicable to each active ingredient of the combination product may be combined, respectively, to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

10. Cosmetic-related terms, such as "bland," "soothing," "lubrication," "lubricates," "* * * soften and lubricate dry * * *" are not included in the labeling for protectants in § 346.50(b)(iii) of this tentative final monograph. The agency's policy on such labeling was stated in the tentative final monograph for OTC skin protectant drug products. (See 48 FR 6827, comment 22.)

11. In § 346.52(c)(1), § 346.56(c)(2), § 346.58(c), and § 346.62(c)(1)(i), the Panel recommended the use of the signal word "Caution" in labeling for which the heading "Warnings" was also recommended. The agency notes that historically there has not been a consistent usage of the signal words "warning" and "caution" in OTC drug labeling. For example, in § 369.20 and § 369.21 (21 CFR 369.20 and 369.21), which list "warning" and "caution" statements for drugs, the signal words "warning" and "caution" are both used. In some instances, either of these signal words is used to convey the same or similar precautionary information.

FDA has considered which of these signal words would be most likely to attract consumers' attention to that information describing conditions under which the drug product should not be used or its use should be discontinued. The agency concludes that the signal word "warning" is more likely to flag potential dangers so that consumers will read the information being conveyed. Therefore, FDA has determined that the signal word "warning," rather than the word "caution," will be used routinely in OTC drug labeling that is intended to alert consumers to potential safety problems.

12. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the

word "doctor." This tentative final monograph includes that option.

13. The Panel's recommendations concerning a "box border" and various graphic effects for highlighting warnings on anorectal drug products are not included in § 348.50(e). (See comment 42 above.)

14. The agency is revising the general warning in § 348.50(c)(2) to read as follows: "If condition worsens or does not improve within 7 days, consult a doctor."

The agency is not including the general warning recommended by the Panel in § 346.50(c)(3), "If itching persists for more than 7 days, consult a physician," because the revised warning in proposed § 348.50(c)(2) addresses all conditions, not just itching. (See comment 48 above.)

The agency is proposing in § 348.50(c)(3) that petrolatum be exempt from the warning in § 348.50(c)(2), "Do not exceed the recommended daily dosage unless directed by a doctor."

15. The agency is revising the warning recommended by the Panel in § 346.50(c)(7)(ii) for clarity, to read as follows: "Do not use this product with an applicator if the introduction of the applicator into the rectum causes additional pain. Consult a doctor promptly." (See comment 45 above.)

16. The agency is not including the Panel's recommended warning in § 346.52(c)(2) for products containing local anesthetics for external use because it would be repetitive of the general warning proposed in § 346.50(c)(4). (See comment 46 above.)

17. The agency is proposing that anorectal vasoconstrictors bear the same warnings for anorectal use as for bronchodilator and nasal decongestant use. These warnings include the following: "Do not use this product if you have heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor"; and the drug interaction precaution "Do not use this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." The agency is proposing the following additional warning for ephedrine sulfate: "Some users of this product may experience nervousness, tremor, sleeplessness, nausea, and loss of appetite. If these symptoms persist or become worse, consult your doctor." (See comment 47 above.)

18. The Panel's recommended warning and directions for use for lanolin (wool) alcohols (§ 346.56 (c)(2) and (d)(12)) are not included in this tentative monograph because lanolin alcohols are being reclassified from Category I to Category III as anorectal protectants. (See part E, paragraph B.5. above.)

19. The agency is not accepting the Panel's recommendation to have complete and separate directions for products labeled for both external and intrarectal use. Rather, the agency has developed directions for use that take into account the dual use of these products. (See comment 49 above.)

20. The Panel's recommended directions in § 346.50(d)(2) (redesignated as § 346.50(d)(1)) has been revised for clarity as follows: "*Adults*: "When practical, cleanse the affected area" (select one or both of the following: "with mild soap and warm water and rinse thoroughly" or "by patting or blotting with an appropriate cleansing pad"), "Gently dry by patting or blotting with toilet tissue or a soft cloth before application of this product." [Other appropriate directions may be inserted here.] "Children under 12 years of age: consult a doctor." (See comment 50 above.)

21. The agency is not proposing the phrase "or as directed by a physician" in the directions for any anorectal product in this tentative final monograph. The directions for use of petrolatum have been revised to be consistent with the directions in the skin protectant tentative final monograph, so that proposed § 348.50(*d*)(6) reads "Apply liberally as often as necessary." (See comments 28 and 51 above.)

22. A claim for hydrocortisone and hydrocortisone acetate for the temporary relief of anal itching is already included in the tentative final monograph for OTC external analgesic drug products. In a future issue of the Federal Register, the agency will amend that tentative final monograph so that external analgesic drug products containing hydrocortisone or hydrocortisone acetate and bearing claims for the relief of "anal itching" would also bear the appropriate warnings and directions for anorectal drug products. (See comment 25 above.)

The agency is proposing to remove the existing labeling requirements of § 310.201(a)(23)(v)(b) (21 CFR 310.201(a)(23)(v)(*b*)) relating to dyclonine hydrochloride at the time that a final monograph for OTC anorectal drug products becomes effective. In addition, the agency is proposing to revise § 369.20 to remove the reference to rectal preparations from the entry for "BELLADONNA PREPARATIONS * * *" and to remove the entry for "RECTAL PREPARATIONS FOR EXTERNAL USE" because these entries will be superseded by a final monograph for OTC anorectal drug products.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC anorectal drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC anorectal drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC anorectal drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC anorectal drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on anorectal drug products, a period of 120 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of that action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not

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required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Interested persons may, on or before December 13, 1988 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 13, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before August 15, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before October 15, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 15, 1989. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

### List of Subjects in 21 CFR

*21 CFR Part 310*

Administrative practice and procedure, Drugs, New drugs, Prescription exemption, Reporting and recordkeeping requirements.

*21 CFR Part 346*

Anorectal drug products, Labeling, Over-the-counter drugs.

*21 CFR Part 369*

Labeling, Over-the-counter drugs, Warning and caution statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

## PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 is revised to read as follows:

**Authority:** Secs. 502, 503, 505, 701, 52 Stat. 1051, 1052, 1053, 1055 as amended (21 U.S.C. 352, 353, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

### § 310.201 [Amended]

2. Section 310.201 *Exemption for certain drugs limited by new-drug applications to prescription sale* is amended by removing paragraph (a)(23)(v)(*b*) and reserving it.

## PART 346—ANORECTAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. Part 346 is added to read as follows:

### Subpart A—General Provisions.

Sec.
346.1 Scope.
346.3 Definitions.

Subpart B—Active Ingredients

346.10 Local anesthetic active ingredients.
346.12 Vasoconstrictor active ingredients.
346.14 Protectant active ingredients.
346.16 Analgesic, anesthetic, and antipruritic active ingredients.
346.18 Astringent active ingredients.
346.20 Keratolytic active ingredients.
346.22 Permitted combinations of anorectal active ingredients.

Subpart C—Labeling

346.50 Labeling of anorectal drug products.
346.52 Labeling of permitted combinations of anorectal active ingredients.

**Authority:** Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

### Subpart A—General Provisions

#### § 346.1 Scope.

(a) An over-the-counter anorectal drug product in a form suitable for external (topical) or intrarectal (rectal) administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

#### § 346.3 Definitions.

As used in this part:

(a) *Analgesic, anesthetic drug.* A topically (externally) applied drug that relieves pain by depressing cutaneous sensory receptors.

(b) *Anorectal drug.* A drug that is used to relieve symptoms caused by anorectal disorders in the anal canal, perianal area, and/or the lower rectal areas.

(c) *Antipruritic drug.* A topically (externally) applied drug that relieves itching by depressing cutaneous sensory receptors.

(d) *Astringent drug.* A drug that is applied to the skin or mucous membranes for a local and limited protein coagulant effect.

(e) *External use.* Topical application of an anorectal drug product to the skin of the perianal area and/or the skin of the anal canal.

(f) *Intrarectal use.* Topical application of an anorectal drug product to the mucous membrane of the rectum.

(g) *Keratolytic drug.* A drug that causes desquamation (loosening) and debridement or sloughing of the surface cells of the epidermis.

(h) *Local anesthetic drug.* A drug that produces local disappearance of pain, burning, itching, irritation, and/or discomfort by reversibly blocking nerve conduction when applied to nerve tissue in appropriate concentrations.

(i) *Protectant drug.* A drug that provides a physical barrier, forming a protective coating over skin or mucous membranes.

(j) *Vasoconstrictor drug.* A drug that causes temporary constriction of blood vessels.

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**Subpart B—Active Ingredients**

**§ 346.10 Local anesthetic active ingredients.**

The active ingredient of the product consists of any of the following when used within the concentrations established for each ingredient:

(a) Benzocaine 5 to 20 percent.

(b) Benzyl alcohol 1 to 4 percent.

(c) Dibucaine 0.25 to 1 percent.

(d) Dibucaine hydrochloride 0.25 to 1 percent.

(e) Dyclonine hydrochloride 0.5 to 1 percent.

(f) Lidocaine 2 to 5 percent.

(g) Pramoxine hydrochloride 1 percent.

(h) Tetracaine 0.5 to 1 percent.

(i) Tetracaine hydrochloride 0.5 to 1 percent.

**§ 346.12 Vasoconstrictor active ingredients.**

The active ingredient of the product consists of any of the following when used within the concentrations established for each ingredient:

(a) Ephedrine sulfate 0.1 to 1.25 percent.

(b) Epinephrine 0.005 to 0.01 percent.

(c) Epinephrine hydrochloride 0.005 to 0.01 percent.

(d) Phenylephrine hydrochloride 0.25 percent.

**§ 346.14 Protectant active ingredients.**

(a) The following active ingredients may be used as the sole protectant active ingredient in a product if the ingredient as identified constitutes 50 percent or more by weight of the final product. In addition, the following active ingredients may be used in combinations in accordance with § 346.22 (a), (b), or (n).

(1) Aluminum hydroxide gel.

(2) Cocoa butter.

(3) Glycerin in a 20- to 45-percent (weight/weight) aqueous solution.

(4) Kaolin.

(5) Lanolin.

(6) Mineral oil.

(7) Petrolatum.

(8) Topical starch.

(9) White petrolatum.

(b) The following active ingredients may not be used as a sole protectant ingredient but may be used in combination with one, two, or three other protectant active ingredients in accordance with § 346.22 (a), (b), (n), and (o) and with the following limitations:

(1) Calamine not to exceed 25 percent by weight per dosage unit (based on the zinc oxide content of calamine).

(2) Cod liver oil, provided that the product is labeled so that the amount of the product that is used in a 24-hour period represents a quantity that provides 10,000 U.S.P. units of vitamin A and 400 U.S.P. units of cholecalciferol.

(3) Shark liver oil, provided that the product is labeled so that the amount of the product that is used in a 24-hour period represents a quantity that provides 10,000 U.S.P. units of vitamin A and 400 U.S.P. units of cholecalciferol.

(4) Zinc oxide not to exceed 25 percent by weight per dosage unit.

**§ 346.16 Analgesic, anesthetic, and antipruritic active ingredients.**

The active ingredient of the product consists of any of the following when used within the concentrations established for each ingredient:

(a) Camphor 0.1 to 3 percent.

(b) Juniper tar 1 to 5 percent.

(c) Menthol 0.1 to 1 percent.

**§ 346.18 Astringent active ingredients.**

The active ingredient of the product consists of any of the following when used within the concentrations established for each ingredient:

(a) Calamine, within a concentration of 5 to 25 percent by weight per dosage unit (based on the zinc oxide content of calamine).

(b) Hamamelis water, NF XI, 10 to 50 percent.

(c) Zinc oxide, within a concentration of 5 to 25 percent by weight per dosage unit.

**§ 346.20 Keratolytic active ingredients.**

The active ingredient of the product consists of any of the following when used within the concentrations established for each ingredient:

(a) Alcloxa 0.2 to 2 percent.

(b) Resorcinol 1 to 3 percent.

**§ 346.22 Permitted combinations of anorectal active ingredients.**

(a) Any two, three, or four protectants identified in § 346.14 may be combined, provided that the combined percentage by weight of all protectants in the combination is at least 50 percent of the final product (e.g., 1 gram of a 2-gram dosage unit). Any protectant ingredient included in the combination must be present at a level that contributes at least 12.5 percent by weight (e.g., 0.25 gram of a 2-gram dosage unit), except cod liver oil and shark liver oil. If an ingredient in § 346.14(b) is included in the combination, it must not exceed the concentration limit specified in § 346.14(b).

(b) Any single anorectal ingredient identified in § 346.10, § 346.12, § 346.16, § 346.18, or § 346.20 may be combined with up to four protectants in accordance with paragraph (a) of this section.

(c) Any single local anesthetic identified in § 346.10 may be combined with any single vasoconstrictor identified in § 346.12.

(d) Any single local anesthetic identified in § 346.10 may be combined with any single astringent identified in § 346.18.

(e) Any single local anesthetic identified in § 346.10 may be combined with any single keratolytic identified in § 346.20.

(f) Any single vasoconstrictor identified in § 346.12 may be combined with any single astringent identified in § 346.18.

(g) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single astringent identified in § 346.18.

(h) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single keratolytic identified in § 346.20.

(i) Any single astringent identified in § 346.18 may be combined with any single keratolytic identified in § 346.20.

(j) Any single local anesthetic identified in § 346.10 may be combined with any single vasoconstrictor identified in § 346.12 and with any single astringent identified in § 346.18.

(k) Any single local anesthetic identified in § 346.10 may be combined with any single astringent identified in § 346.18 and with any single keratolytic identified in § 346.20.

(l) Any single vasoconstrictor identified in § 346.12 may be combined with any single analgesic, anesthetic, and antipruritic identified in § 346.16 and with any single astringent identified in § 346.18.

(m) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single astringent identified in § 346.18 and with any single keratolytic identified in § 346.20.

(n) Any combination of ingredients listed in paragraphs (c) through (m) of this section may be combined with up to four protectants in accordance with paragraph (a) of this section.

(o) Any product containing calamine for use as a protectant and/or as an astringent and/or containing zinc oxide for use as a protectant and/or as an astringent may not have a total weight of zinc oxide exceeding 25 percent by weight per dosage unit.

**Subpart C—Labeling**

**§ 346.50 Labeling of anorectal drug products.**

The labeling of the product contains the following information for anorectal

ingredients identified in §§ 346.10, 346.12, 346.14, 346.16, 346.18, and 346.20, and for combinations of anorectal ingredients identified in § 346.22. Unless otherwise specified, the labeling in this subpart is applicable to anorectal drug products for both external and intrarectal use.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as "anorectal (hemorrhoidal)," "hemorrhoidal," "hemorrhoidal (anorectal) (insert dosage form, e.g., cream, lotion, or ointment)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) ("For the temporary relief of," "Gives temporary relief of," or "Helps relieve the") (As an option, select one or both of the following: "local" or "anorectal") [select one or more of the following: "discomfort," "itching," or "itching and discomfort," followed by: "in the perianal area" or "associated with" (select one or more of the following: "hemorrhoids," "anorectal disorders," "inflamed hemorrhoidal tissues," "anorectal inflammation," "hemorrhoidal tissues," or "piles (hemorrhoids).")]

(2) *Additional indications.* Indications applicable to each active ingredient of the product may be combined to eliminate duplicative words or phrases so that the resulting indication is clear and understandable. In addition to the indication identified in paragraph (b)(1) of this section, the labeling of the product intended for external or intrarectal use may also contain the following indications, as appropriate.

(i) *For products for external use only containing any ingredient identified in § 346.10.* "For the temporary relief of" (select one or more of the following: "pain," "soreness," or "burning").

(ii) *For products containing epinephrine or epinephrine hydrochloride identified in § 346.12 (b) and (c) for external use only, and for products containing ephedrine sulfate or phenylephrine hydrochloride identified in § 346.12 (a) and (d).*

(A) "Temporarily reduces the swelling associated with" (select one of the following: "irritated hemorrhoidal tissue and other anorectal disorders" or "irritation in hemorrhoids and other anorectal disorders").

(B) "Temporarily shrinks hemorrhoidal tissue."

(iii) *For products for external use only containing glycerin identified in § 346.14(a)(3) and for products for external and/or intrarectal use containing any protectant identified in § 346.14(a) (2), (5) through (9), and (b) (1) through (4).*

(A) "Temporarily forms a protective coating over inflamed tissues to help prevent drying of tissues."

(B) "Temporarily protects irritated areas."

(C) "Temporarily relieves burning."

(D) "Provides temporary relief from skin irritations."

(E) "Temporarily provides a coating for relief of anorectal discomforts."

(F) "Temporarily protects the inflamed, irritated anorectal surface" (select one of the following: "to help make bowel movements less painful" or "from irritation and abrasion during bowel movement").

(G) "Temporarily protects inflamed perianal skin."

(H) "Temporarily relieves the symptoms of perianal skin irritation."

(iv) *For products containing aluminum hydroxide gel identified in § 346.14(a)(1) and for products containing kaolin identified in § 346.14(a)(4).* "For the temporary relief of itching associated with moist anorectal conditions."

(v) *For products for external use only containing any analgesic, anesthetic, and antipruritic identified in § 346.16.*

(A) "For the temporary relief of" (select one or both of the following: "pain" or "burning").

(B) "Can help distract from pain."

(C) "May provide a cooling sensation."

(vi) *For products for external use only containing hamamelis water identified in § 346.18(b), and for products for external use and/or intrarectal use containing calamine or zinc oxide identified in 346.18 (a) and (c).*

(A) "Aids in protecting irritated anorectal areas."

(B) "Temporary relief of" (select one or both of the following' "irritation" or "burning").

(vii) *For products for external use only containing any ingredient identified in § 346.20.* The indication in paragraph (b)(1) of this section applies.

(c) *Warnings.* Warnings applicable to each active ingredient of the product may be combined to eliminate duplicative words or phrases so that the resulting warning is clear and understandable. The labeling of the product contains the following warnings under the heading "Warnings":

(1) "If condition worsens or does not improve within 7 days, consult a doctor."

(2) "Do not exceed the recommended daily dosage unless directed by a doctor."

(3) "In case of bleeding, consult a doctor promptly."

(4) *For products for external use only.* "Do not put this product into the rectum by using fingers or any mechanical device or applicator."

(5) *For products for intrarectal use to be used with a special applicator such as a pile pipe or other mechanical device.* "Do not use this product with an applicator if the introduction of the applicator into the rectum causes additional pain. Consult a doctor promptly."

(6) *For products for external use only containing any local anesthetic identified in 346.10, menthol identified in § 346.16(c), or resorcinol identified in § 346.20(b).* "Certain persons can develop allergic reactions to ingredients in this product. If the symptom being treated does not subside or if redness, irritation, swelling, pain, or other symptoms develop or increase, discontinue use and consult a doctor."

(7) *For products containing any vasoconstrictor identified in § 346.12.*

(i) "Do not use this product if you have heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

(ii) *"Drug interaction precaution.* Do not use this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor."

(iii) For products containing ephedrine sulfate identified in § 346.12(a). "Some users of this product may experience nervousness, tremor, sleeplessness, nausea, and loss of appetite. If these symptoms persist or become worse, consult your doctor."

(8) *For products containing aluminum hydroxide gel identified in § 346.14(a)(1) and for products containing kaolin identified in § 346.14(a)(4).* "Remove petrolatum or greasy ointment before using this product because they interfere with the ability of this product to adhere properly to the skin area."

(9) *For products for external use only containing resorcinol identified in § 346.20(b).* "Do not use on open wounds near the anus."

(d) *Directions.* Directions applicable to each active ingredient of the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. The labeling of the product contains the following information under the heading "Directions":

(1) *"Adults:* When practical, cleanse the affected area" (select one or both of the following: "with mild soap and warm water and rinse thoroughly" or "by patting or blotting with an appropriate cleansing pad"). "Gently dry by patting or blotting with toilet tissue or a soft cloth before application of this product." [Other appropriate directions in this section may be inserted here.] "Children under 12 years of age: consult a doctor."

(2) *For products for external use only.* "Apply externally to the affected area" (insert appropriate time interval of administration as identified in paragraphs (d)(6), (7), (8), or (9) of this section).

(3) *For products for external use that are pads containing anorectal ingredients.* "Gently apply to the affected area by patting and then discard."

(4) *For products for intrarectal use that are wrapped suppositories.* "Remove wrapper before inserting into the rectum."

(5) *For products for intrarectal use that are to be used with a special applicator such as a pile pipe or other mechanical device.* "FOR INTRARECTAL USE: Attach applicator to tube. Lubricate applicator well, then gently insert applicator into the rectum."

(6) *For products for external use only containing any of the local anesthetics identified in § 346.10; analgesics, anesthetics, and antipruritics identified in § 346.16; or alcloxa or resorcinol identified in § 346.20.* Apply to the affected area up to 6 times daily.

(i) *For products for external use only containing dibucaine or dibucaine hydrochloride identified in § 346.10 (c) and (d).* Apply to the affected area up to 3 or 4 times daily.

(ii) *For products for external use only containing pramoxine hydrochloride identified in § 346.10(g).* Apply to the affected area up to 5 times daily.

(7) *For products containing vasoconstrictors identified in § 346.12.* Apply to the affected area up to 4 times daily.

(8) *For products for external use only containing glycerin identified in § 346.14(a)(3) or hamamelis water identified in § 346.18(b), and for products for external and/or intrarectal use containing any protectant identified in § 346.14(a) (1), (2), (4), (5), (6), and (8), and (b) (1), (2), (3), and (4), or any astringent identified in § 346.18 (a) and (c).* Apply to the affected area up to 6 times daily or after each bowel movement.

(9) *For products containing petrolatum or white petrolatum identified in § 346.14(a) (7) and (9).* Apply liberally to the affected area as often as necessary.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

**§ 346.52 Labeling of permitted combinations of anorectal active ingredients.**

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of this part. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of this subpart.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of this subpart.

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of this subpart.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of this subpart. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

## PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

4. The authority citation for 21 CFR Part 369 continues to read as follows:

**Authority:** Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

**§ 369.20 [Amended]**

5. In Subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the statement, "See also Rectal Preparations for additional warnings," from the entry for "BELLADONNA PREPARATIONS AND PREPARATIONS OF ITS ALKALOIDS (ATROPINE, HYOSCYAMINE, AND SCOPOLAMINE (HYOSCINE)); HYOSCYAMUS, STRAMONIUM, THEIR DERIVATIVES, AND RELATED DRUG PREPARATIONS."

**§ 369.20 [Amended]**

6. In Subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entry "RECTAL PREPARATIONS FOR EXTERNAL USE."

Dated: May 2, 1988

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88–18200 Filed 8–12–88; 8:45 am]

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Monday
August 15, 1988

Part III

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 357**

**Cholecystokinetic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph; Proposed Rule**

VOL 53 ISS 157 AG 15 1988 UMI

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**21 CFR Part 357**

**[Docket No. 87N-0161]**

## Cholecystokinetic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph

**AGENCY:** Food and Drug Administration.
**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the final monograph for over-the-counter (OTC) cholecystokinetic drug products to include the ingredient hydrogenated soybean oil. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

**DATE:** Written comments or objections by October 14, 1988.

**ADDRESS:** Written comments or objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 10, 1983 (48 FR 27004), FDA issued a final monograph for OTC cholecystokinetic drug products (21 CFR Part 357, Subpart C). The only active ingredient included in the monograph was a 50-percent aqueous emulsion of corn oil.

On March 16, 1984, FDA received a citizen petition (Docket No. 79N-0368/CP) requesting that the final monograph for OTC cholecystokinetic drug products be amended to include a powder dosage form containing hydrogenated soybean oil and lecithin. The citizen petition was supplemented by data contained in letters dated January 14, 1985, November 14, 1985, June 1, 1987, and January 13, 1988. These letters are on file in Docket No. 79N-0368 as LET004, LET006, LET009, and LET011, respectively.

After reviewing the citizen petition and the supplemental data, the agency concludes that there is sufficient evidence to generally recognize hydrogenated soybean oil as safe and effective and not misbranded for use as an OTC cholecystokinetic drug product. The citizen petition contained the results of a study designed to compare the effectiveness of two contrast agents at two different dosage levels both without and with a fatty meal (consisting of 12.4 grams (g) of hydrogenated soybean oil) prior to ingestion of the contrast agent. Although specific data on gallbladder contraction were not provided, the study results did indicate that of the subjects who received the hydrogenated soybean oil product, 40 percent (134 visualizations recorded in a total of 330 examinations) had the cystic duct visualized upon radiographic examination. The agency concludes that the submitted data are adequate to demonstrate the effectiveness of hydrogenated soybean oil in producing gallbladder contraction.

Information provided in the supplemental data indicates that the role of lecithin in the product is as an inactive ingredient. The information also indicates that lecithin and the other inactive ingredients would not contribute significantly to the cholecystokinetic effect of the product. Additionally, FDA was informed by the petitioner that the hydrogenated soybean oil contained in the product was food-grade, partially-hydrolyzed soybean oil with a melting point of 41 to 43.5 °C, an iodine value of 65 to 69, and a fatty acid composition as follows (Ref. 1):

| Fatty acid | Percent composition |
|---|---|
| Myristic acid | 0.1 |
| Palmitic acid | 10.0 |
| Palmitoleic acid | .1 |
| Stearic acid | 13.5 |
| Oleic acid | 72.0 |
| Linoleic acid | 3.8 |
| Linolenic acid | .1 |
| Arachidic acid | .5 |
| Behenic acid | .2 |

Hydrogenation of vegetable oils is a chemical reaction consisting of addition of hydrogen at double bonds of unsaturated acyl groups. This process results in a decreased susceptibility of oils to oxidative deterioration (Ref. 2). Corn oil and hydrogenated soybean oil have a similar high content of long chain triglycerides of fatty acids, e.g., oleic acid, linoleic acid, palmitic acid, and stearic acid (Refs. 2, 3, and 4). Although it has long been generally known that gallbladder contraction occurs in response to a fatty meal (Refs. 5, 6, and 7), recent data suggest that the ingestion of long-chain triglycerides of fatty acids initiates gallbladder contraction. Two studies, in which the effect of medium-chain triglycerides and long-chain triglycerides of fatty acids on gallbladder contraction were compared, demonstrated that patients responded with normal and vigorous gallbladder contraction after ingesting a meal of long-chain triglycerides of fatty acids whereas no significant response was observed after ingestion of medium-chain triglycerides of fatty acids (Refs. 8 and 9). Because the long-chain triglyceride content of corn oil and soybean oil as described above is similar, the effect on gallbladder contraction is also similar.

Accordingly, the agency is proposing to amend the final monograph on OTC cholecystokinetic drug products to include hydrogenated soybean oil as described above as an active ingredient. The agency proposes that the statement of identity and indications for products containing this ingredient follow § 357.250 (a) and (b) of the cholecystokinetic final monograph. The agency is also proposing that the directions section of the monograph (21 CFR 357.250(d)(3)) be modified to include the following: Oral dosage is 12.4 grams hydrogenated soybean oil in a suitable, water-dispersible powder in 2 to 3 ounces of water. Stir briskly to prepare a suspension before using. Drink 20 minutes before diagnostic gallbladder x-ray or as directed by a doctor.

The agency is aware that the hydrogenated soybean oil product covered by the petition is currently being marketed as a prescription drug. Although the agency is proposing in this notice to switch hydrogenated soybean oil to OTC use from its present status as a prescription drug, OTC marketing may not begin at this time. In the **Federal Register** of June 3, 1983 (48 FR 24925), FDA explained the enforcement policy for drugs that were originally on prescription status but which were being proposed for OTC marketing under the OTC drug review. As noted there, 21 CFR 330.13 permits OTC marketing of a drug previously limited to prescription use prior to publication of a final monograph provided that certain conditions are met. To qualify for such status, the drug must, at a minimum, have been considered by an OTC drug advisory review panel and either been recommended for OTC marketing by the panel or subsequently determined by FDA to be suitable for OTC marketing. Hydrogenated soybean oil was not considered by a panel and, therefore, does not qualify for early OTC marketing under the terms of the enforcement policy set out in § 330.13. FDA believes that public comments submitted in response to the proposed switch in status should be evaluated before a final agency decision on OTC status is made and before OTC marketing begins. Accordingly, until such comments are reviewed,

hydrogenated soybean oil will remain a prescription drug.

**References**

(1) Letter from Richard A. Sosin, Summit Medical Products, Inc., to Dr. William E. Gilbertson, January 13, 1988, coded LET011, Docket No. 79N-0388, Dockets Management Branch.

(2) DeMan, J.M., "Principles of Food Chemistry," AVI Publishing Company, Inc., Westport, CT, pp. 35–85, 1976.

(3) Windholz, M., editor, "The Merck Index," 10th Ed., Merck and Co., Rahway, NJ, p. 361 and 1249, 1983.

(4) Tyler, V.E., L.R. Brady, and J.E. Robbers, "Pharmacognosy," 8th Ed., Lea and Febiger, Philadelphia, 1981.

(5) Wiener, I., et al., "Release of Cholecystokinin in Man. Correlation of Blood Levels With Gallbladder Contraction," *Annals of Surgery*, 194:321–325, 1981.

(6) Bobba, V.R., et al., "Gallbladder Dynamics Induced by a Fatty Meal in Normal Subjects and Patients With Gallstones; Concise Communication," *Journal of Nuclear Medicine*, 25:21–24, 1984.

(7) Upp, J.R., Jr., et al., "Correlation of Cholecystokinin Receptors With Gallbladder Contractility in Patients With Gallstones," *Annals of Surgery*, 205:641–648, 1987.

(8) Ladas, S.D., et al., "Comparison of the Effects of Medium and Long Chain Triglyceride Containing Liquid Meals on Gallbladder and Small Intestinal Function in Normal Man," *Gut*, 25:405–411, 1984.

(9) Isaacs, P.E.T., et al., "Comparison of Effects of Ingested Medium- and Long-Chain Triglyceride on Gallbladder Volume and Release of Cholecystokinin and Other Gut Peptides," *Digestive Diseases and Sciences*, 32:481–486, 1987.

The agency advises that any final rule resulting from this proposed rule will be effective 12 months after its date of publication in the **Federal Register**. On or after that date, any OTC drug product that is not in compliance may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date that the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC cholecystokinetic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC cholecystokinetic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have or OTC cholecystokinetic drug products. Comments regarding the impact of this rulemaking on OTC cholecystokinetic drug products should be accompanied by appropriate documentation.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Interested persons may, on or before October 14, 1988, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments or objections. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 357**

Cholecystokinetic drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 357 as follows:

## PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 357 is revised to read as follows:

**Authority:** Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 357.210 is revised to read as follows:

**§ 357.210 Cholecystokinetic active ingredients.**

The active ingredient of the product consists of any of the following when used within the specified concentration and dosage form established for each ingredient:

(a) 50-percent aqueous emulsion of corn oil.

(b) Hydrogenated soybean oil in a suitable, water-dispersible powder. The hydrogenated soybean oil is food-grade, partially hydrolyzed with a melting point of 41 to 43.5 °C, an iodine value of 65 to 69, and a fatty acid composition as follows:

| Fatty acid | Percent composition |
|---|---|
| Myristic acid | 0.1 |
| Palmitic acid | 10.0 |
| Palmitoleic acid | .1 |
| Stearic acid | 13.5 |
| Oleic acid | 72.0 |
| Linoleic acid | 3.8 |
| Linolenic acid | .1 |
| Arachidic acid | .5 |
| Behenic acid | .2 |

3. In § 357.250, paragraphs (d) (2) and (3) are revised to read as follows:

**§ 357.250 Labeling of cholecystokinetic drug products.**

* * * * *

(d) * * *

(2) *For products containing 50-percent aqueous emulsion of corn oil.*

(i) "Shake well before using."

(ii) Oral dosage is 60 milliliters 20 minutes before diagnostic gallbladder x-ray or as directed by a doctor.

(3) *For products containing hydrogenated soybean oil.* Oral dosage is 12.4 grams in a suitable, water-dispersible powder in 2 to 3 ounces of water. Stir briskly to prepare a suspension before using. Drink 20 minutes before diagnostic gallbladder x-ray or as directed by a doctor.

* * * * *

4. Section 357.280 is revised to read as follows:

**§ 357.280 Professional labeling.**

The labeling provided to health professionals (but not to the general public) may contain the following information for ingredients identified in § 357.210: *Indication.* "For visualization of biliary ducts during cholecystography."

Dated: June 6, 1988.

Frank E. Young,

*Commissioner of Food and Drugs.*

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Part IV

# Department of Education

**34 CFR Parts 706, 707 and 708**
**Regional Educational Laboratories and Research and Development Centers Programs; Final Regulations**

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 706, 707, and 708**

**Regional Educational Laboratories and Research and Development Centers Programs**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Regional Educational Laboratories and Research and Development Centers Programs. These amendments are needed to implement certain provisions of the General Education Provisions Act (GEPA), as amended by Title XIV of the Higher Education Amendments of 1986, and to improve the operation of the programs.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lawrence Bussey, Jr., Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Suite 610, Washington, DC, 20208–1633. Telephone number: (202) 357–6249.

**SUPPLEMENTARY INFORMATION:** On March 22, 1988, the Secretary published in the Federal Register (52 FR 9408) a Notice of Proposed Rulemaking for the Regional Educational Laboratories and Research and Development Centers Programs.

The Regional Educational Laboratories Program makes financial assistance available to regional educational laboratories established by public agencies or private nonprofit institutions. Each laboratory, under the sole guidance of a regionally representative governing board, serves the education needs of a specific geographic region of the Nation. The Research and Development Centers Program provides financial assistance, to conduct educational research and development, to institutions of higher education, institutions of higher education in consort with public agencies or nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies to conduct postsecondary educational research and development.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, three organizations submitted comments on the proposed regulations. The Secretary has made a technical change in these regulations to clarify the intent under the selection criteria for planning awards and has added a research priority under the list of funding priorities. An analysis of the comments and of the changes in the regulations is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 706*

Colleges and universities, Education, Educational research, Grants programs—education, Local educational agencies, Nonprofit organizations, Reporting and recordkeeping requirements, State educational agencies.

*34 CFR Part 707*

Colleges and universities, Education, Educational research, Grants programs—education, Local educational agencies, Nonprofit organizations, Reporting and recordkeeping requirements, State educational agencies.

*34 CFR Part 708*

Colleges and universities, Education, Educational research, Grants programs—education, Local educational agencies, Nonprofit organizations, Reporting and recordkeeping requirements, State educational agencies.

**Dated:** July 25, 1988.

**William J. Bennett,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.117: Regional Educational Laboratories and Research and Development Centers Programs)

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 706, 707 and 708 to read as follows:

## PART 706—REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS PROGRAMS: GENERAL PROVISIONS

**Subpart A—General**

Sec.

706.1 What are the Regional Educational Laboratories and Research and Development Centers Programs?
706.2 Who is eligible for an award?
706.3 What priorities may the Secretary establish?
706.4 What regulations apply?
706.5 What definitions apply?

**Subpart B—How Does One Apply for an Award?**

706.10 What assurances must an applicant make?
706.11 What information is needed for a multi-year project for institutional operations?

**Subpart C—How Does the Secretary Make an Award?**

706.20 How does the Secretary evaluate an application?
706.21 What additional procedures may the Secretary use to determine which applications will be selected for funding?
706.22 What additional factors may the Secretary consider in selecting an application for a planning award?
706.23 What additional factors may the Secretary use to select an application for an institutional operations award?

**Authority:** 20 U.S.C. 1221e, unless otherwise noted.

### Subpart A—General

#### § 706.1 What are the Regional Educational Laboratories and Research and Development Centers Programs?

Under the Regional Laboratories and Research and Development Centers Programs, the Secretary provides support for planning, institutional operations, and special activities of regional educational laboratories and research and development centers.

(Authority: 20 U.S.C. 1221e)

**§ 706.2 Who is eligible for an award?**

(a) The following parties are eligible to apply for awards for the planning of a laboratory or center:

(1) Public or private organizations, institutions or agencies.

(2) Individuals.

(b) The following parties are eligible to apply for awards for institutional operations:

(1) For regional educational laboratories, public agencies or private nonprofit organizations.

(2) For research and development centers, institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations or interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

(c) In any fiscal year, the Secretary may make grants for special activities to regional educational laboratories or research and development centers that receive institutional operations awards in the same fiscal year.

(Authority: 20 U.S.C. 1221e)

**§ 706.3 What priorities may the Secretary establish?**

(a) The Secretary may select funding priorities from a list of biennial research priorities published in the **Federal Register** for public comment pursuant to section 405(b)(4) of the Act, and published in final form in the **Federal Register**. These biennial research priorities may include one or more priorities from paragraph (b) of this section.

(b) The Secretary may also select one or more funding priorities by choosing from the following list of individual priorities or a combination of these priorities:

(1) Learning.

(2) Teaching.

(3) Technology in education.

(4) Instructional processes and materials, including textbooks and computer software for instruction.

(5) Education and staff development for teachers, administrators and other education staff.

(6) Organization and management of schools, including effective education leadership.

(7) Evaluation and indicator measures, including testing, measurement, and standards of performance.

(8) Governance of education, including school board policies and practices.

(9) Educational finance and productivity.

(10) Education and the law.

(11) Dissemination and knowledge utilization in education.

(12) Improvement in education, including State and local reform initiatives.

(13) Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.

(14) Home, family, cultural, and community influences on education, including parental choice and involvement in schooling.

(15) Education, work, and careers.

(16) Equity and excellence, including the effects of ability grouping.

(17) Guidance and counseling.

(18) International education.

(19) English literacy, including reading, writing, and language skills.

(20) Mathematics.

(21) Science.

(22) Foreign languages.

(23) Early childhood education.

(24) History and social sciences, including economics, geography, political science, sociology, anthropology, and psychology.

(25) Physical and health education.

(26) Humanities, including music, art, literature and dance.

(27) Citizenship and character education.

(28) Elementary education.

(29) Secondary education.

(30) Early adolescent education.

(31) Adolescent education.

(32) Postsecondary education.

(33) Adult and continuing education.

(34) Teachers.

(35) School professionals and personnel.

(36) Public and private educational institutions.

(37) School discipline and crime in the schools.

(38) Education of special populations, including the educationally disadvantaged or students-at-risk, those with limited English proficiency, the handicapped, immigrants, and the academically gifted and talented.

(39) Implementation and effects of educational policies.

(Authority: 20 U.S.C. 1221e)

**§ 706.4 What regulations apply?**

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(2) The regulations in this Part 706 and in 34 CFR Parts 707 and 708.

(b) *Contracts.* (1) The following regulations apply to contracts under this program:

(i) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1.

(ii) The Education Department Acquisition Regulation (EDAR) in 48 CFR Chapter 34.

(2) Requirements substantially similar to the following sections of the regulations in this Part 706 and 34 CFR Parts 707 and 708 will be incorporated into the solicitation for a laboratory or center contract, to the extent that these sections are consistent with applicable regulations in the FAR and EDAR:

(i) *Part 706.* Sections 706.1, 706.5, 706.10, 706.11, 706.22 and 706.23.

(ii) *Part 707.* Sections 707.1, 707.2, 707.10, 707.11, 707.12, and 707.20.

(iii) *Part 708.* Sections 708.1, 708.10, 708.11, 708.12, and 708.20.

(Authority: 20 U.S.C. 1221e)

**§ 706.5 What definitions apply?**

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Grant
Nonprofit
Private
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the General Education Provisions Act, as amended.

"Center" means an educational research and development center authorized under section 405(d)(4)(A)(ii) of the Act.

"Contract" means a procurement contract entered into by the Federal government to purchase, rent, lease or otherwise obtain supplies or services from nonfederal sources.

"Educational research" means basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and related fields.

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965, as amended.

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"Institutional operations" means the activities of a laboratory or center conducted under a long-term plan approved by the Secretary.

"Laboratory" means a regional educational laboratory authorized under section 405(d)(4)(A)(i) of the Act.

"Mission" means the priority or priorities for a center established by the Department in accordance with § 706.3.

"Planning" means activities related to preparing an application for institutional operations of a laboratory or center.

"Special activities" means activities carried out by a Regional Educational Laboratory or a Research and Development Center in addition to those included in its institutional operations award.

(Authority: 20 U.S.C. 1141; 1221e)

## Subpart B—How Does One Apply for an Award?

### § 706.10 What assurances must an applicant make?

In its application for an award for institutional operations, an applicant shall make assurances that the laboratory or center involved will—

(a) Be responsible for the conduct of the research and development activities in its approved application;

(b) Prepare a long-range plan relating to the conduct of those research and development activities;

(c) Ensure that information developed as a result of those research and development activities, including new educational methods, practices, techniques, and products, are appropriately disseminated;

(d) Provide technical assistance to appropriate educational agencies and institutions; and

(e) To the extent practicable, provide training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques and products developed in connection with those activities.

(Authority: 20 U.S.C. 1221e)

### § 706.11 What information is needed for a multi-year project for institutional operations?

In addition to the information required in 34 CFR 75.117, an application for a multi-year project for institutional operations must contain a mission statement for the proposed center as a whole or a proposed long range plan for the proposed laboratory. The mission statement or proposed long range plan must describe goals and objectives for each year of the proposed project and discuss how they relate to the specific activities described in the application.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850-0602)

## Subpart C—How Does the Secretary Make an Award?

### § 706.20 How does the Secretary evaluate an application?

(a) For each competition the Secretary uses the applicable selection criteria in 34 CFR 707.10, 707.11, 707.12, 708.10, 708.11 or 708.12 to evaluate applications for new awards under this program.

(b) The maximum score for all the criteria in each section is 100 points, including any reserved points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For any competition for center awards, the Secretary assigns 10 additional points to one or more of the criteria described in the applicable section (34 CFR 708.10, 708.11, or 708.12).

(Authority: 20 U.S.C. 1221e)

### § 706.21 What additional procedures may the Secretary use to determine which applications will be selected for funding?

In addition to the review procedures in 34 CFR 75.217, the Secretary may use the following procedures to determine which applications will be selected for funding:

(a) After review of applications and preparation of a rank order of the applications in accordance with 34 CFR 75.217 (b) and (c) and § 706.20, the Secretary may select applications for further consideration on the basis of the rank order and the factors in 34 CFR 75.217(d). The Secretary informs each applicant whether its application has been chosen for further consideration.

(b) (1) Each applicant chosen for further consideration shall submit any additional information requested by the Secretary.

(2) In requesting additional information of applicants chosen for further consideration, the Secretary—

(i) Provides applicants with a reasonable opportunity to revise and resubmit their applications; and

(ii) Does not provide information to any applicant about the contents of other applications chosen for further consideration, or otherwise provide any information that could give an applicant a competitive advantage over other applicants.

(c) The Secretary may conduct site visits to all or some of the applicants to obtain further information on the activities described in an application and an applicant's capability to perform those activities.

(Authority: 20 U.S.C. 1221e)

### § 706.22 What additional factors may the Secretary consider in selecting an application for a planning award?

In addition to the selection criteria in 34 CFR 707.10 or 708.10 and the additional information in accordance with § 706.21, the Secretary considers the following in making awards for planning of a laboratory or center:

(a) The relationship between the technical merit of the proposed educational research and development program and its cost in comparison to other proposed programs.

(b) The extent to which funding an application would contribute to a collection of laboratory and center activities that are both diverse and balanced.

(Authority: 20 U.S.C. 1221e)

### § 706.23 What additional factors does the Secretary use to select an application for an institutional operations award?

In addition to the criteria in 34 CFR 707.11 and 708.11 and the additional information obtained in accordance with § 706.21, the Secretary considers the following in making awards for institutional operations of a laboratory or center:

(a) The extent to which funding an application would contribute to a collection of laboratory and center activities that are both diverse and balanced; and

(b) The relationship between the technical merit of the proposed program and its cost in comparison to other proposed programs.

(Authority: 20 U.S.C. 1221e)

# PART 707—REGIONAL EDUCATIONAL LABORATORIES

## Subpart A—General

Sec.

707.1 What regulations apply?
707.2 What geographic regions do the laboratories serve?

## Subpart B—How Does the Secretary Make an Award?

707.10 What are the selection criteria for laboratory awards for planning?
707.11 What are the selection criteria for laboratory awards for institutional operations?
707.12 What are the selection criteria for laboratory awards for special activities?

## Subpart C—What Conditions Must Be Met by a Grantee?

707.20 What requirements must be met by a grantee?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

## Subpart A—General

### § 707.1 What regulations apply?

The regulations in this part and the regulations cited in 34 CFR 706.5 apply to awards for regional educational laboratories.

(Authority: 20 U.S.C. 1221e)

### § 707.2 What geographic regions do the laboratories serve?

(a) A laboratory established under this program serves one of the following geographic regions:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania.

(3) Kentucky, Tennessee, Virginia, West Virginia.

(4) Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina.

(5) Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, Wisconsin.

(6) Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

(7) Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming.

(8) Arizona, California, Nevada, Utah.

(9) Alaska, Idaho, Montana, Oregon, Washington.

(10) American Samoa, Guam, Hawaii, Palau (to the extent authorized by Pub. L. 99–658 and until the effective date of the Compact of Free Association with the Government of Palau), and to the extent approved by the Secretary, the Marshall Islands and the Federated States of Micronesia (in accordance with section 226 of the compact of Free Association as set forth in section 201 of Pub. L. 99–239), and Palau (after the effective date of the compact of Free Association with the Government of Palau), in accordance with section 222 of that Compact as set forth in section 201 of Pub. L. 99–658.

(b) For each competition for a laboratory award, the Secretary announces which one or more of the geographic regions designated in § 707.2(a) will be served.

(c) In the event that funding of a particular laboratory serving a region under this program is discontinued, the Secretary may provide additional funds to another laboratory for continuation of laboratory services to States in that region.

(Authority: 20 U.S.C. 1221e)

## Subpart B—How Does the Secretary Make an Award?

### § 707.10 What are the selection criteria for laboratory awards for planning?

The Secretary uses the following criteria to evaluate applications for laboratory awards for planning:

(a) *Understanding of the educational settings and issues in the region* (25 points). The Secretary reviews each application to determine the extent to which the applicant—

(1) Understands the educational settings and issues in the region;

(2) Demonstrates knowledge of the strengths and needs of the educational systems—public and private, elementary, secondary, and postsecondary—in the region;

(3) Understands significant trends expected to influence education in the region over the next five years;

(4) Demonstrates knowledge of the capabilities of existing organizations that provide research, dissemination, training, and assistance to educational agencies in the region and how a laboratory can complement their work; and

(5) Understands the barriers and challenges facing a laboratory in the region and ways of overcoming them.

(b) *Organizational ability to conduct planning and design tasks* (20 points). The Secretary reviews each application to determine the organizational ability of the applicant to conduct the required planning and design tasks, including—

(1) The extent to which the applicant has successful experience in planning or conducting multi-State activities related to educational research and development; and

(2) Whether the existing relationships in the region give the applicant access to important groups of clients in the region and contribute to cooperative planning activities.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) The degree to which the objectives of the project relate to the purpose of the program; and

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives and activities of the project.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources to be devoted to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850–0602)

### § 707.11 What are the selection criteria for laboratory awards for institutional operations?

The Secretary uses the following criteria to evaluate applications for laboratory awards for institutional operations:

(a) *Understanding of and responsiveness to regional needs* (10 points). The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including—

(1) The degree to which the applicant demonstrates an understanding of current and projected educational conditions and needs in the region;

(2) The extent to which the applicant proposes adequate mechanisms and procedures for assessing the educational research and development needs and capabilities of the region and for determining laboratory priorities; and

(3) The quality of the applicant's analysis of strategic options and a plan for responding to regional needs.

(b) *Strength of relationships with the region* (15 points). The Secretary reviews each application to determine the strength of the applicant's relationship with the region to be served, including—

(1) The extent to which the proposed governing board's membership reflects regional interests and constituencies;

(i) The quality of the applicant's plans for a governing board designed to take an active role in setting policy and determining the regional agenda of the laboratory;

(ii) The extent to which the applicant's plans for a governance structure provide the organizational autonomy necessary for neutrality, balance, and equity in the selection of clients and the delivery of services;

(2) The quality, extent, and feasibility of proposed collaborative relationships with appropriate organizations, such as—

(i) Public education agencies at State, intermediate, and local levels;

(ii) Educational research and development agencies;

(iii) Organizations providing assistance in the use of research outcomes;

(iv) Clearinghouses, including those compromising the Education Resources Information Clearinghouse system;

(v) Professional associations;

(vi) Institutions of higher education;

(vii) Community-based organizations;

(viii) Business and industry; and

(ix) National Diffusion Network: State and Private School Facilitators; and

(3) Evidence of successful work in the past with organizations listed in paragraph (b)(2) of this section.

(c) *Institutional capability* (15 points). The Secretary reviews each application to determine the qualifications of the applicant to sustain a long-term, high-quality, and coherent program of research and services, including—

(1) The extent to which adequate organizational mechanisms and procedures exist for managing work internally and in collaboration with other institutions;

(2) The degree to which there are adequate procedures for quality control and self-evaluation; and

(3) The degree to which there are adequate plans for effecting improvement in organizational performance and staff development during the project period.

(d) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project; including—

(1) Quality in the design of the project;

(2) The degree to which the management plan ensures proper and efficient administration of the project;

(3) The degree to which the objectives of the project relate to the mission of the laboratory;

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective;

(5) The quality of the applicant's plan to provide equitable services to students and teachers in elementary and secondary public and private schools;

(6) The extent to which proposed activities relate logically to statements of regional needs and priorities;

(7) The degree of coherence of work within and among program activities;

(8) The extent to which the proposed activities complement related efforts inside and outside the region;

(9) The extent of the anticipated contribution of the work to educational improvement; and

(10) The appropriateness of provisions for sequencing and pacing work activities.

(e) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the adequacy of the budget and cost effectiveness, including the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the adequacy of—

(1) A peer review process for evaluating laboratory products, research instruments, and self-evaluation designs;

(2) The participation of the governing board in setting requirements and examining results of laboratory self-evaluation of activities and outcomes;

(3) The methods which document the laboratory's progress in relation to its objectives; and

(4) The methods which document the impact of the laboratory's program on the needs of those served in the designated region.

(h) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850-0602)

### § 707.12 What are the selection criteria for laboratory awards for special activities?

The Secretary uses the following criteria to evaluate applications for laboratory awards for special projects:

(a) *Strength of relationships with appropriate organizations and agencies in the region* (15 points). The Secretary reviews each application to determine the quality, extent and feasibility of proposed collaborative relationships of the laboratory with organizations listed in § 707.11(b)(2) to the focus and purpose of the special activity.

(b) *Institutional capability* (15 points). The Secretary reviews each application to determine the adequacy of the laboratory's organizational capacity for implementing the special activity.

(c) *Plan of operation* (30 points). The Secretary reviews each application to determine the quality of the plan for implementing the special activity.

(d) *Quality of key personnel* (25 points). The Secretary reviews each application to determine the

qualifications of the key personnel, including experience and training related to the objectives of the activity.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the adequacy and cost effectiveness of the budget for the special activity.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan to document accomplishment of the activity's objectives.

(g) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the activity, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850–0602)

### Subpart C—What Conditions Must Be Met by a Grantee?

#### § 707.20 What requirements must be met by a grantee?

An applicant receiving a laboratory award for institutional operations shall meet the following post-award requirements:

(a) Establish a governing board that—

(1) Is the sole entity that—

(i) Guides and directs the laboratory in satisfying the terms and conditions of the award; and

(ii) Determines the regional agenda of the laboratory, consistent with the priority research and development needs established by the Secretary; and

(2) Reflects a balanced representation of the States in the region, as well as the interests and concerns of regional constituencies.

(b) Facilitate communication among educational agencies and individuals in the region.

(c) Identify concerns and priorities through regionally representative governing and advisory structures and activities that help regional clients define their needs.

(d) Conduct applied research, development, and related activities to address regional needs.

(e) Promote the use in the region of research and development results from all sources inside and outside the region, including the laboratory.

(f) Collaborate with centers, other laboratories, the Education Resources Information Clearinghouses, and the National Diffusion Network: State and Private School Facilitators.

(g) Establish a peer review process for evaluating laboratory products, research instruments, and self-evaluation designs.

(Authority: 20 U.S.C. 1221e)

## PART 708—RESEARCH AND DEVELOPMENT CENTERS

### Subpart A—General

Sec.

708.1 What regulations apply?

### Subpart B—How Does the Secretary Make an Award?

708.10 What are the selection criteria for awards for center planning?

708.11 What are the selection criteria for center awards for institutional operations?

708.12 What are the selection criteria for center awards for special activities?

### Subparts C–D [Reserved]

### Subpart E—What Conditions Must Be Met by a Grantee?

708.20 What requirements must be met by a grantee?

708.21 What additional factors does the Secretary consider in making continuation awards?

**Authority:** 20 U.S.C. 1221e, unless otherwise noted.

### Subpart A—General

#### § 708.1 What regulations apply?

The regulations in this part and the regulations cited in 34 CFR 706.4 apply to awards for research and development centers.

(Authority: 20 U.S.C. 1221e)

### Subpart B—How Does the Secretary Make an Award?

#### § 708.10 What are the selection criteria for awards for center planning?

The Secretary uses the following criteria to evaluate applications for awards for center planning:

(a) *Mission and strategy* (40 points). The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice with respect to the problem area and priorities of the center for which the applicant is applying, including the extent to which the applicant shows—

(1) An understanding of the mission of the proposed center;

(2) Knowledge of relevant research and theory;

(3) Knowledge of relevant problems in educational practice;

(4) Familiarity with relevant strategies of research, development, and dissemination; and

(5) Familiarity with strategies for relating to other organizations in educational research, development, and practice.

(b) *Potential to influence practice or policy* (20 points). The Secretary reviews each application to determine if the planning process will address strategies for influencing educational practice or policy, including—

(1) The extent to which the project will address practitioners' or policymaker's needs as identified; and

(2) The extent to which the planning process will result in a design that will yield knowledge that can be used in an educational or policymaking setting.

(c) *Plan of operation (10 points).* The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality in the design of the project;

(2) The effectiveness of the management plan; and

(3) The degree to which the research needs of both public and private elementary and secondary schools or institutions of higher education will be addressed.

(d) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the center's key personnel to be involved in the center's planning;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, under paragraphs (d)(1) (i) and (ii) of this section the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850–0602)

#### § 708.11 What are the selection criteria for center awards for institutional operations?

The Secretary uses the following criteria to evaluate applications for center awards for institutional operations:

(a) *Mission and strategy* (15 points). The Secretary reviews each application to determine the extent to which the

applicant understands the state of knowledge and practice related to the priorities established by the Secretary for the center's mission, including—

(1) The extent of the applicant's understanding of the mission of the proposed center;

(2) How the activities of the proposed center will contribute to the advancement of relevant theory and practice;

(3) The quality of plans to establish effective working relations with other organizations in educational research, development, and practice;

(4) The quality of the plans to address the problems of special populations and of both public and private institutions in terms of the mission of the proposed center; and

(5) The quality of long-range plans for developing an appropriate, coherent, and effective program of educational research, development, and dissemination.

(b) *Institutional capability* (15 points). The Secretary reviews each application to determine the capabilities of the host institution to sustain a long-term, high-quality, and coherent program of research, development, and dissemination, in the mission area, including the extent to which the application shows evidence of—

(1) An appropriate organizational structure and commitment to provide the services of appropriate faculty or staff members from the applicant's organization;

(2) An appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant;

(3) Past successes of the applicant in collaborating with individuals and organizations to conduct educational research and development;

(4) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost effective management; and

(5) Availability of appropriate resources for the effective implementation of research and development activities.

(c) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The degree to which the plan for center management ensures proper and efficient administration of the project;

(2) The effectiveness of proposed strategies for providing national leadership within the center's mission;

(3) The extent to which the applicant proposes strategies for disseminating center products, including the identification of intended audiences and reasonable timelines for dissemination; and

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective.

(d) *Technical soundness* (20 points). The Secretary reviews each application to determine the technical soundness of the proposed research, including—

(1) The extent to which the applicant demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activities and the mission of the center;

(2) The adequacy of the research design and methodologies to address the research questions posed; and

(3) Evidence that, where appropriate, the perspectives of a variety of disciplines are used.

(e) *Quality of key personnel* (15 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective, including the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) The equipment and supplies that the applicant plans to use are adequate; and

(3) Costs are reasonable in relation to the objectives and activities of the project.

(g) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the adequacy of—

(1) The peer review process for evaluating research instruments and products;

(2) The plan for advisory board evaluation of center research activities and resources;

(3) The methods which will be used to document the center's progress in relation to its objectives; and

(4) The methods which will be used to document the impact of the center's program on its target audiences.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850-0602)

### § 708.12 What are the selection criteria for center awards for special activities?

The Secretary uses the following criteria to evaluate applications for awards for special activities:

(a) *Mission and strategy* (15 points). The Secretary reviews each application to determine the extent to which the special activity contributes to the current mission of the center, including the extent to which—

(1) The program of work will contribute to the advancement of relevant theory and practice;

(2) The plans to establish working relations, as appropriate, with other organizations in educational research, development, and practice will be effective;

(3) The proposed activities will advance the center's mission; and

(4) The proposed activities incorporate plans to address the problems of special populations and of both public and private elementary and secondary schools and institutions of higher education in terms of the mission of the proposed center.

(b) *Capacity of center* (10 points). The Secretary reviews each application to determine whether the institution has the appropriate organization and fiscal resources to complete the special activity, including—

(1) Strong evidence of an effective organizational structure and a commitment to provide the services of appropriate faculty or staff members from the applicant's organization;

(2) Inclusion of an appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant;

(3) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost effective management; and

(4) Adequate allotment of resources and facilities.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the adequacy of the plan of

operation for the activities and how they complement the center's current plans, including—

(1) The extent to which an effective plan of project management ensures proper and efficient administration of the activities;

(2) The extent to which the applicant plans to use its resources and personnel to achieve each objective; and

(3) The degree to which the research needs of both public and private elementary and secondary schools and institutions of higher education are addressed by the proposed research, if appropriate.

(d) *Technical soundness* (25 points). The Secretary reviews each application to determine the technical soundness of the proposed activities, including—

(1) The extent to which the application demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates this knowledge to the proposed activity and the mission of the center;

(2) The adequacy, as appropriate, of the research design and methodologies to address the research questions posed; and

(3) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(e) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the qualifications of the key personnel assigned to the special activities project, including the adequacy of—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) The applicant's policy, as part of its nondiscriminatory employment practices will ensure that its personnel are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) To determine personnel qualifications under paragraphs (e) (1) and (2) of this section, the Secretary considers—

(i) Experiences and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the appropriateness of the budget in relation to the proposed activities, including the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) The facilities' equipment and supplies that the applicant plans to use are adequate; and

(3) Costs are reasonable in relation to the objectives and activities of the project.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850–0602)

**Subparts C–D [Reserved]**

**Subpart E—What Conditions Must Be Met by a Grantee?**

**§ 706.20 What requirements must be met by a grantee?**

A grantee receiving an award for institutional operations shall—

(a) Provide national research leadership with respect to the mission of its center;

(b) Establish and maintain a nationally representative advisory panel; and

(c) Collaborate with laboratories, other centers, appropriate Education Resources Information Clearinghouses, and National Diffusion Network: State and Private School Facilitators.

(Authority: 20 U.S.C. 1221e)

**§ 706.21 What additional factors does the Secretary consider in making continuation awards?**

In making continuation awards under 34 CFR 75.253, the Secretary considers, among other factors, whether—

(a) All products and reports that were due during the budget period that is about to end have been received by the Department;

(b) The project's activities have been carried out in a manner consistent with the previously approved application;

(c) The products and reports are of adequate technical quality; and

(d) The project plans for the subsequent budget period are likely to advance the mission of the center, including the extent to which—

(1) The potential of any new or redirected research project or other center activity within the scope of the project plan will advance the mission of the center;

(2) The center's plan of operation for managing these activities is adequate;

(3) Any new research projects or other activities are technically sound;

(4) The center's personnel are qualified to accomplish the proposed activities; and

(5) The budget is appropriate in relation to the scope of the proposed activities.

(Authority: 20 U.S.C. 1221e)

**Editorial Note.**—The following appendix will not appear in the Code of Federal Regulations.

**Appendix—Analysis of Comments and Responses**

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the notice to which they pertain. Technical and other minor changes are not addressed.

**General**

*Comment:* One commenter asked whether these regulations will govern the competition of the regional educational laboratories in fiscal year 1990.

*Discussion:* Unless these regulations are amended, they will govern subsequent competitions, including the fiscal year 1990 competition. At this time, the Secretary does not anticipate amending these regulations prior to the fiscal year 1990 competition.

*Change:* None.

**Part 706—Regional Educational Laboratories and Research and Development Centers Programs: General Provisions**

*What are the Regional Educational Laboratories and Research and Development Centers Programs? (Section 706.1)*

*Comment:* Three commenters suggested changes to the provisions on special activities awards. The commenters were concerned that special activities awards would be used to fund small grant competitions, create unnecessary competitions among laboratories or centers, and reduce the amount of funding available for institutional operations awards.

*Discussion:* The Secretary has proposed special activities awards to allow needed flexibility to provide supplemental funding to existing laboratories or centers to carry out additional research and related activities that are consistent with the mission of a center or the long range plan of a regional laboratory approved by the Secretary. Special activities awards provide the Secretary with flexibility in supporting additional research and related activities not addressed by currently funded centers or laboratories. Special activities awards may be supported from funds set aside for laboratories and centers pursuant to section 405(g)(1) (A) and (B) of the General Education Provisions Act, as amended (GEPA). Funds for special activities may reduce the amount of

funding available for institutional operations awards. However, the Secretary intends only to use a minimum amount of funds to support special activities awards.

*Change:* None.

*Who is eligible for an award? (Section 706.2)*

*Comment:* Two commenters questioned the proposed changes to the eligibility provisions for regional educational laboratories. One commenter suggested that the proposed changes were beyond the scope of the authorizing statute because they included public agencies as eligible applicants for a laboratory award.

*Discussion:* The Secretary has not changed the eligible parties for this program. Section 405(d)(4) of GEPA specifically provides that the Secretary supports regional educational laboratories established by public agencies or private nonprofit organizations. Under these regulations, these entities are eligible to apply for an institutional operations award. The revised language makes clear that an eligible party may apply for a laboratory institutional operations award without first establishing a laboratory.

*Change:* None.

*What priorities may the Secretary establish? (Section 706.3)*

*Comment:* One commenter recommended two additional priorities: the implementation and effects of educational policies, and the relationship between education and the economy.

*Discussion:* The regulations include a priority that addresses the commenter's concern about the relationship between education and the economy: Education, work and careers. However, the Secretary agrees with the commenter's recommendation to add a priority concerning the implementation and effects of educational policy.

*Change:* The list of research priorities has been amended to add a priority on the implementation and effects of educational policies.

*What regulations apply? (Section 706.4)*

*Comment:* Two commenters expressed concern that technical changes proposed concerning the applicability of the regulations to contracts suggested the Department's intent to support only grants.

*Discussion:* The technical changes do not affect the Department's authority to award contracts. The Secretary may make awards under contracts, as well as grants. These changes have been made to be consistent with the Department's policy that contracts not be governed by program regulations. While these regulations no longer govern contracts, requirements substantially similar to pertinent provisions of the program regulations will be incorporated into any solicitation for a laboratory or center contract, to the extent that the requirements are consistent with applicable contract regulations.

*Change:* None.

*What definitions apply? (Section 706.5)*

*Comment:* One commenter objected to the change in the definition for "mission" to mean the priority or priorities for the laboratory or center established by the Secretary. The commenter felt that under this definition the Secretary rather than the regionally representative governing board would establish the laboratory's regional agenda. Another commenter asked why the definition of "educational research" had been changed to eliminate dissemination, policy studies and technical assistance, and whether the elimination of these terms meant that regional educational laboratories were no longer authorized to carry out these activities.

*Discussion:* The Secretary did not intend to limit the role of the regionally representative governing board to set the regional agenda of the laboratory.

The definition of educational research has been changed to be consistent with the definition in section 405(a)(3)(C) of GEPA. Regional laboratories are authorized under § 707.20(d) to carry out research, development and related activities.

*Change:* The definition of "mission" has been changed to clarify that the Secretary does not determine the agenda of a laboratory.

**Part 707—Regional Educational Laboratories**

*What geographic regions do the laboratories serve? (Section 707.2)*

*Comment:* One commenter asked for clarification about how services would be provided to the Pacific Trust Territories. The commenter also requested clarification of the role of the regional educational laboratories in providing services to the Pacific Trust Territories.

*Discussion:* Until the effective date of its Compact of Free Association, the current Pacific Trust Territory, Palau, will continue to receive technical assistance. After the effective date of its Compact of Free Association, Palau will be situated similarly to the Marshall Islands and the Federated States of Micronesia. These entities may receive technical assistance from a laboratory, to the extent approved by the Secretary. Assistance would be provided pursuant to the Compacts of Free Association with these entities, and the role of the laboratory in providing this assistance would be determined by the Department and the regional governing board of the laboratory.

*Change:* A technical change has been made to clarify that after the effective date of its Compact of Free Association, Palau may continue to receive technical assistance, to the extent approved by the Secretary.

*What are the selection criteria for laboratory awards for planning? (Section 707.10(d)—Plan of operation and Section 707.10(e)—Quality of key personnel)*

*What are the selection criteria for laboratory awards for institutional operations? (Section 707.11(d)—Plan of operation and Section 707.11(e)—Quality of key personnel)*

*Comment:* One commenter objected to the removal of provisions in the selection criteria for laboratory planning and institutional operation awards related to an applicant's commitment to ensure that "traditionally underrepresented groups" are served and employed by the project. The commenter believes that the removal of these provisions may be interpreted as an abandonment of the principle that an important goal of the Regional Educational Laboratories Program to provide equality of educational opportunity for poor and minority children.

*Discussion:* The removal of the provisions in the selection criteria concerning traditionally underrepresented groups does not mean that the Secretary intends to support laboratories which ignore the needs of underrepresented groups. The selection criteria in §§ 707.10(a) and 707.11(a) concerning the extent to which the applicant understands and is responsive to the needs of the region to be served, would include the needs of underrepresented groups. In addition, these regulations require applicants to provide assurances that they will provide training for individuals, emphasizing training opportunities for women and members of minority groups. The Secretary has replaced the language in the selection criteria concerning the employment of underrepresented groups with selection criteria addressing the extent to which the applicant uses nondiscriminatory

employment practices. The Secretary believes that these changes are consistent with efforts to provide equal access for special populations to participate in the projects and with ensuring nondiscriminatory employment practices.

*Changes:* None.

*What are the selection criteria for laboratory awards for institutional operations? (Section 707.11(g)—Evaluation plan)*

*Comment:* One commenter requested clarification of the term "evaluation." The commenter also asked whether the provision concerning the adequacy of an applicant's "peer review process" means external review and if it does, how the peer review will affect the prerogatives of a laboratory governing board to make adjustments in laboratory programs. The commenter asked whether the provision addressing methods of documenting the laboratory's impact on the needs of "those served" in the region referred to direct or indirect audiences.

*Discussion:* The evaluation plan is a description of how the applicant would assess the degree to which the objectives of the application are being achieved and how the applicant would use the results of the self evaluation. The laboratory's governing board is expected to participate in the evaluation process and the examination of the results of the self evaluation. Peer review refers to the process that the applicant proposes to use to judge the adequacy of laboratory products, research instruments, and self evaluation designs. Peer reviewers are generally investigators or scholars external to an organization in the same or comparable fields or disciplines.

The term "those served" refers to those audiences proposed in the laboratory's plans as the recipients of service. Those served may include audiences that participate directly in the laboratory's activities, such as classroom teachers participating in an inservice training program, or those students who receive laboratory services indirectly as a result of the training received by their teachers.

*Change:* None.

**Part 708—Research and Development Centers**

*What are the selection criteria for awards for center planning? (Section 708.10(b)—Potential to influence practice)*

*Comment:* One commenter suggested expanding this criterion to include potential to influence policy. The commenter recommended that proposed research should address critical issues of relevance to policy as well as practice.

*Discussion:* The Secretary agrees with the recommendation of the commenter because the purpose of planning awards is to support center activities that have the potential to influence both policy and practice.

*Change:* The criterion has been expanded to include the potential to influence policymaking.

*What are the selection criteria for center awards for institutional operations? (Section 708.11(d)—Technical soundness)*

*Comment:* One commenter recommended incorporating technical soundness as a subcriterion under the selection criteria for mission and strategy and plan of operation (§ 708.11 (a) and (c)). The commenter suggests that technical soundness is a relevant and significant factor that should apply to the proposed mission and plan of operation.

*Discussion:* The criterion, technical soundness, is intended to be a separate criterion used to judge whether appropriate and adequate methodologies are employed in the research of the center. The mission and strategies criterion addresses an applicant's understanding of a center's mission but does not address the actual means by which the research and related activities of the proposed project may be carried out. The criterion for the plan of operation is intended to assess the adequacy of the overall management plan for the center and the institutional roles and responsibilities. These criteria are independent factors to be considered in judging the overall merit of an application for a center award.

*Change:* None.

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Part V

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 23**

**Small Airplane Airworthiness Review Program, Amendment No. 1; Final Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

**[Docket No. 25147; Amdt. No. 23-36]**

# Small Airplane Airworthiness Review Program, Amendment No. 1

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment to Part 23 of the Federal Aviation Regulations upgrades the standards for cabin safety and occupant protection during emergency landing conditions for airplanes type certificated to the airworthiness standards of Part 23. This action is based on the results of research testing, service experience, and a number of issues discussed at the Small Airplane Airworthiness Review Conference, held October 22–26, 1984. This amendment is intended to increase small airplane occupant protection during emergency landing conditions.

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ronald K. Rathgeber, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

**SUPPLEMENTARY INFORMATION:**

## Regulatory History

This amendment is based on Notice of Proposed Rulemaking, Notice No. 86-19, published in the **Federal Register** on December 12, 1986 (51 FR 44878). All comments received in response to Notice No. 86-19 were considered in adopting this amendment.

## Background

The FAA announced its Small Airplane Airworthiness Review Program in Notice No. CE-83-1 in the **Federal Register** on January 31, 1983 (48 FR 4290), and invited all interested persons to submit proposals for consideration. The review program goal is to provide an opportunity for the public to participate in improving, updating, and developing the airworthiness standards applicable to small airplanes, as set forth in Part 23. When applicable, the review program is extended to the new commuter category requirements because the commuter category incorporated existing small airplane requirements as set forth in Amendment No. 23-34 (52 FR 1806; January 15, 1987) of Part 23.

In Notice No. CE-83-1A, published in the **Federal Register** on June 9, 1983 (48 FR 26823), the FAA extended the period for submission of proposals, invited by Notice No. CE-83-1, to May 3, 1984.

Prior to the FAA's announcement of the Part 23 Review Program, the General Aviation Safety Panel (GASP), representing a broad constituency from the general aviation community, was formed at the request of the FAA for the purpose of recommending regulatory and nonregulatory means by which the FAA could improve general aviation safety. As a result of numerous GASP technical working sessions, the panel submitted proposals for enhanced cabin safety and occupant protection in small airplanes. These proposals were supported by data from FAA and National Aeronautics and Space Administration (NASA) Research programs. The GASP proposals were included in the approximately 560 proposals received in response to Notice Nos. CE-83-1 and CE-83-1A.

Following receipt of the proposals, the FAA published Notice No. CE-84-1 on July 25, 1984 (49 FR 30053), containing the availability of agenda, compilation of proposals, and announcement of the Small Airplane Airworthiness Review Program Conference. The conference was held on October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in FAA Regulatory Docket No. 23494.

After reviewing the proposals and public comments received at the conference, the FAAs first related rulemaking action concentrated on updating safety standards related to cabin safety and improved crashworthiness. On December 12, 1986, the FAA published Notice No. 86-19, titled "Small Airplane Airworthiness Review Program Notice No. 1" in the **Federal Register** (51 FR 44878). Notice No. 86-19 proposed changes to §§ 23.561, 23.783, 23.785, 23.787, and 23.807, and included a new § 23.562, which proposed dynamic testing and evaluation requirements for the seat/restraint systems of small airplanes.

At the time Notice No. 86-19 was developed, the FAA was also considering the adoption of an additional category of airplane within Part 23. On November 15, 1983, the FAA published Notice No. 83-17 in the **Federal Register** (48 FR 52010), which proposed certification procedures, airworthiness and noise standards, and operating rules for a commuter category airplane. Notice No. 83-17 proposed to include additional airworthiness standards for airplanes with a maximum seating capacity, excluding pilot seats, of 19 or less and a maximum certificated takeoff weight of 19,000 pounds or less. Final action for the adoption of standards for the commuter category airplane was not complete when Notice No. 86-19 was published and, as a result, the commuter category airplane was not specifically addressed in the proposals made in Notice No. 86-19. With the exception of dynamic testing of seats and shoulder harness requirements, the proposals in Notice No. 86-19 were formulated to be compatible with the requirements in the proposed commuter category. The background information of Notice No. 86-19 noted the pending rulemaking activity of Notice No. 83-17 and the FAA plans for considering additional requirements for the commuter category airplane. The FAA has initiated a rulemaking project to address dynamic testing of seats and occupant protection for commuter category airplanes.

Part of the outcome of Notice No. 83-17 was adoption of Amendment No. 23-34, published in the **Federal Register** on January 15, 1987 (52 FR 1806). That rulemaking action, in part, added the airworthiness standards for commuter category airplanes to Part 23, and added new requirements to certain sections of Part 23 which were proposed to be changed by Notice No. 86-19. Therefore, the final rulemaking action resulting from Notice No. 86-19 has been prepared with consideration for both public comments to Notice No. 86-19 and the changes to Part 23 resulting from Amendment No. 23-34.

## Discussion of Comments

### *General*

Interested persons were invited to participate in the development of this final rule by submitting written data, views, or arguments to the regulatory docket on or before June 12, 1987. In response to Notice No. 86-19, the FAA received nine sets of comments. Substantive changes and changes of an editorial nature have been made to the proposed rules based on both relevant comments received and further review by the FAA. One commenter supports these rules and refers to this set of regulatory changes as a significant safety consideration. Another commenter is concerned that, if these proposed rules are not incorporated, extended periods of research will follow before any improved seat standards are incorporated. The FAA recognizes the significance of this project and has prepared this final action as a result of the issues in the notice. A number of editorial changes have been made to

this final rule for compatibility with the text of recently adopted Amendment No. 23–34. The proposals, comments, and substantive changes are discussed below.

*Discussion of Comments to Specific Sections of Part 23*

The following comments and discussions are keyed to like-numbered proposals in Notice No. 86–19:

*Proposal 1–1.* This proposal contains the authority citation for Part 23.

*Proposal 1–2.* This proposal would reorganize § 23.561, make reference to a new § 23.562, add strength requirements for the retention of items of mass in normal, utility, and acrobatic category airplanes, and state turnover requirements in objective terms which include the variables to be considered in determining the likelihood of a turnover during emergency landing conditions. This proposal was made as a result of proposals 218, 219, 220, 221, 222, and 518 presented at the Small Airplane Airworthiness Review Conference.

One commenter states the need to provide emergency landing static load factors for commuter category airplanes. Amendment No. 23–34 adopted certification requirements for the commuter category airplane in Part 23, which include emergency landing static load factors for commuter category airplanes.

One commenter proposes replacing the term "minor crash landing" in proposed § 23.561(b) with the term "emergency landing conditions" to add consistency. The same commenter suggests replacing the words "escape serious injury" with the words "designed to protect each occupant". The FAA agrees, and the wording proposed by the commenter is used in § 23.561(b). Also, as a result of the previous comment, emergency landing static load factors for all categories of Part 23 airplanes are set forth in § 23.561(b) of this final rule.

One commenter proposes that the ultimate static load factors of proposed § 23.561(d) be changed so that the upward load factor is 4.5g, the sideward load factor is 4.5g, and a rearward load factor of 1.5g is added, and suggests these load factors apply to all Part 23 airplanes. The commenter offers no technical basis for support of these load factors. Since the commenter's proposals go beyond the scope of the notice and are unsupported, they are not incorporated in this final rule.

Several comments address proposed § 23.561(b)(3), which stated restraint requirements for items of mass in the cabin. Some of these comments also address the specific load factors for items of mass shown in proposed § 23.561(d). One commenter recommends that the load factors referenced by proposed § 23.561(b)(3) be changed to match those proposed for transport airplanes in Notice No. 86–11, which was published in the **Federal Register** on July 17, 1986 (51 FR 25982). The development of the proposed static load requirements for items of mass, as proposed in § 23.561(b)(3), was a part of the development of the seat/restraint system dynamic tests proposal of the GASP. Although the GASP originally recommended that items of mass be dynamically tested, the FAA and the GASP subsequently concluded that, for evaluating the retention of items of mass in the cabin, a static test, to the proposed ultimate static load factors, achieves the intent of the original dynamic test conditions at a significant decrease in certification cost to the applicant and achieves the increase in cabin safety intended by the GASP recommendations.

Another commenter agrees with the 4.5g sideward load factor for items of mass, but disagrees with the proposed 18g forward load factor. The commenter states that experience indicates that the existing 9g forward load requirement has resulted in adequate static strength. The FAA does not consider the 9g load factor sufficient for the level of cabin safety proposed in Notice No. 86–19. Actual crash demonstration tests conducted in a joint FAA/NASA project provided data which showed that impact loads during simulated survivable crashes could exceed 9g in the longitudinal axis. NASA Technical Paper 2083, dated November 1982, titled, "Correlation and Assessment of Structural Airplane Crash Data With Flight Parameters at Impact" is one of several reports which evaluate the results of the FAA/NASA small airplane crash test project. As proposed by the GASP, the purpose of the proposed static load factors is to ensure that the attachments of items of mass in the cabin are adequately restrained considering the enhanced cabin safety provided by other sections of this final rule, including the new requirements in § 23.562 for dynamic tests of seat/restraint systems. This commenter proposes changing § 23.561(b)(3) to require that equipment and other large mass items be positioned so that, if they break loose, they are unlikely to cause injury to the occupants, penetrate fuel lines, or block exits after an emergency landing. The FAA disagrees. For many small airplane designs, the concept of locating all items of significant mass, particularly cargo, at a location in the cabin which will ensure no occupant injury or fuel system penetration during impact is impractical. The higher load factors for items of mass are necessary in this final rule to ensure that the attachment strength for mass items in the cabin is adequate with the set/restraint system dynamic load conditions of § 23.562(b). The higher static load factors are expected to prevent injuries which could result from mass items coming loose during an emergency landing ground impact.

One commenter suggests that a rearward load factor of 1.5g be added to the proposed ultimate static load factors to ensure that items, such as rear-facing compartments, do not fail due to rebound loads resulting in the contents falling on occupants below the compartment. The FAA understands the commenter's concern and will evaluate the need for such requirements for future rulemaking action. Since the suggestion goes beyond the scope of the notice, it has not been adopted in this final rule.

One commenter concludes that the addition of the table of static load factors for items of mass will lead to inconsistencies when another section of Part 23 refers to the emergency landing conditions of § 23.561. In consideration of this comment and the rule changes made with Amendment No. 23–34, several editorial changes have been made to § 23.561. The emergency landing ultimate static load factors, which apply in general to all categories of Part 23 airplanes, have been put in § 23.561(b)(2). The reference to § 23.562 in proposed § 23.561(b) is removed.

Several comments were received regarding the proposed § 23.561(c) which stated requirements for occupant protection from turnover. One commenter asks for clarification of this proposal and concludes that the intent of this requirement is to evaluate the turnover case as a static rather than a dynamic condition. The FAA agrees with this interpretation, and it is not the intent of the FAA for turnover protection to be evaluated as a dynamic condition such as the seat/restraint system dynamic tests requirements of § 23.562. This commenter also concludes that, using the proposed criteria for establishing the likelihood of a turnover in proposed § 23.561(c), almost all tricycle landing gear airplanes will show a likelihood to turn over. The commenter neither provides any technical data to support this concern, nor proposes any alternate criteria. As noted in the explanation to this proposed rule in the notice, although airplanes configured with tricycle landing gear are inherently resistant to turnover during normal

operations. FAA accident/incident data showed that tricycle gear small airplanes have turned over during emergency landing conditions (including incidents of undershoot, overshoot, loss of directional control, etc.). These data revealed that the frequency of turnover of high-wing, tricycle gear airplanes is higher than for low-wing, tricycle gear airplanes; however, the data showed that low-wing tricycle gear small airplanes also turn over during emergency landing conditions with sufficient frequency that the likelihood of turnover should be investigated for these airplanes also. Some recent designs of low-wing tricycle gear small airplanes feature a sliding transparent canopy which provides very little occupant protection in a turnover. The proposed conditions for evaluating turnover are compatible with the level of safety provided by the other requirements of § 23.561, and the FAA considers the requirements of proposed § 23.561(c) to be rational criteria for evaluating the likelihood of turnover during emergency landing conditions.

One commenter suggests that the wording of proposed § 23.561(c) (1) and (2) be changed to require turnover evaluation in the most adverse combination of all-up-weight and center-of-gravity position. The FAA disagrees since all-up-weight is not a defined term used in Part 23. The forward center-of-gravity position is usually the most critical for turnover evaluation. Another commenter suggests that proposed § 23.561(c)(6) be designated as § 23.561(d) and that proposed § 23.561(d) be designated § 23.561(e). The FAA agrees that, while paragraphs (1) through (5) of proposed § 23.561(c) provide criteria for determining the likelihood of a turnover, paragraph (6) defines requirements for the loads to be applied to the inverted airplane after a turnover, for evaluating the occupant protection provided by the airframe. In response to this comment and other editorial changes made to § 23.561, proposed § 23.561(c) is designated § 23.561(d) and reformatted for clarity in this final rule and present § 23.561(c) is retained.

*Proposal 1–3.* Proposed § 23.562, Emergency landing dynamic conditions, would add dynamic test requirements to be applied to seat/restraint systems used in normal, utility, and acrobatic category airplanes, and contain specific test parameter values and pass/fail criteria. For the purpose of these requirements, the seat/restraint system includes the seat and its immediate attachments to seat rails or the airframe, the safety belt and shoulder harness, and any fittings or assemblies used to attach them to the seat or airframe. The proposal was the result of a GASP submittal to the Small Airplane Airworthiness Review Conference (proposal 518), was based on state-of-the-art technology, and was supported by the consensus of the general aviation community represented at the conference.

The specific dynamic test conditions in § 23.562 are supported by several research studies including: (1) A series of full-scale crash impact "drop tests" conducted by the National Aeronautics and Space Administration (NASA), (2) accident evaluation information from the National Transportation Safety Board (NTSB), (3) dynamic tests conducted by the FAA Civil Aeromedical Institute (CAMI), and (4) generally accepted human impact injury criteria developed by the military and other sources.

Several technical issues discussed at the conference with regard to this proposal were addressed in Notice No. 86–19. With regard to the variations in impact deceleration amplitude and duration between the first row of seats and the seats behind the first row, it was noted in the notice that crash test data indicated that these parameters vary with the seat location in small airplanes due to load attenuation by the airframe structure. Since the initial impact velocity is a constant at any point in the airframe, the test velocities proposed in the notice do not vary depending on seat location. This ensures that all seats will be evaluated for the same level of kinetic energy. Full scale impact tests at NASA have provided data to validate these concepts. Tests of full-scale hardware, using anthropomorphic test dummies (ATD's) create the most accurate simulation of actual emergency landing conditions. The ATD weight of 170 pounds is considered a nominal weight for the occupants of small airplanes. Higher weights were not proposed because a nominal weight results in the most acceptable evaluation of the energy absorbing and load limiting capabilities of the seat/restraint system. The 50th percentile male ATD, defined in National Highway Traffic Safety Administration Regulation, 49 CFR Part 572, Subpart B, was cited because the specifications for this ATD were readily available to the public. Military and automotive testing, which used the Part 572 ATD, provided a data base for evaluating the results of dynamic testing using this dummy.

The test conditions of proposed § 23.562(b)(1) required a 60-degree pitched orientation of the seat relative to the velocity vector and were intended to create a predominantly vertical decelaration input to assess the occupant spinal protection provided by the seat/restraint system. This test condition has a longitudinal component of deceleration to simulate a more realistic impact environment where the restraint system is loaded by the initial impact.

The test conditions of proposed § 23.562(b)(2) required a 10-degree yaw of the seat relative to the velocity vector, and were intended to create a predominantly longitudinal deceleration input to assess the occupant restraining capability of the seat/restraint system. The 10-degree yaw was intended to provide a test condition which would ensure that the seat/restraint system would provide the capability to restrain the occupant during impact conditions with a side load component. Floor warpage requirements were included in the proposal to assess the ability of the seat/restraint system to function and maintain structural integrity after floor deformation has occurred.

A number of comments were received concerning the overall concept of dynamic testing of seat/restraint systems. Three commenters state their support of the basic concepts of this program, and one of these commenters states concern that if the requirements proposed in the notice are not incorporated, an extended period of additional research will follow before any improved seat standards are incorporated. The dynamic seat test requirements proposed in Notice No. 86–19 and incorporated in this final rule are supported by extensive research and testing done in support of the FAA Crash Dynamics Program and the GASP proposal.

One commenter suggests changing the term "upper torso restraint system" used in proposed § 23.562(b)(2) and proposed § 23.562(c)(6) to the words "shoulder harness". As a result of this comment, the FAA reviewed the terms used throughout the proposed rules of Notice No. 86–19. In this amendment, terms related to occupant seats or belt restraints, are used to improve clarity and standardization. These terms include the *Shoulder Harness*, also known as the upper torso restraint, which refers to that portion of the torso restraint system which includes one or more straps that pass over the shoulders and restrains the upper torso of the occupant and the *Torso Restraint System*, which refers to that system used for providing torso restraint which includes the safety belt, the shoulder

harness if provided, and the associated hardware used to attach the system to the seat or airframe structure. Therefore, the change proposed by this commenter is not adopted.

One commenter considers the design criteria of proposed § 23.562 to be arbitrary since each crash situation is different. The FAA disagrees. The occupant protection in this section are based on extensive research data. These criteria were intended to provide conservative, but reasonable, standards for the occupant protection provided by seat/restraint systems developed for use in small airplanes. This commenter proposes the use of a simplified dynamic test which would not require the use of an ATD and other associated test equipment. The test procedure proposed by the commenter would require instrumenting the seat to ensure that the test pulse meets the requirements and would require performance criteria based on seat deformation without failure. The FAA does not agree with the simplified approach because it does not provide for the evaluation of all the occupant injury protection features required in proposed § 23.562(c). The FAA knows of no simple dynamic test procedure which will provide human-like load distributions on the seat/restraint system without using an ATD. Since the comment does not provide for occupant injury protection evaluation and does not provide technical data to show that the simplified procedure would provide an equivalent level of safety to that proposed in Notice No. 86-19, the simplified procedure is not adopted.

One commenter suggests that a static test be required, in lieu of the proposed dynamic tests, which would require that first a minimum static load be reached before allowing any deformation of the seat, followed by an ultimate load test for which a determined amount of yielding must be evident. This commenter suggests that minimum load factors in the longitudinal axis be 8g prior to any permanent deformation and 12g for failure or excessive deformation which would impede rapid evacuation. The FAA does not agree because this procedure would not provide data for evaluating the occupant motion or loading criteria which would be required by the proposed rule. Experience has shown that static deformation requirements may conflict with the seat/restraint system performance under dynamic conditions. The FAA agrees with the concept of developing seat assemblies which will limit occupant loads by yielding at one predefined load while maintaining structural integrity up to another higher load; however, available static test methods alone cannot provide the data necessary to evaluate the occupant protection provisions of these seat/restraint systems.

One commenter suggests that improved safety would be achieved by requiring upper torso restraints in all airplanes produced after a certain date. Requirements to this effect were added to Part 23 with Amendment No. 23-32. Part 23 now requires that each normal, utility, or acrobatic category airplane manufactured after December 12, 1986, must protect each occupant from serious head injury by a safety belt and shoulder harness for forward- and aft-facing seats, and a restraint means for other seat orientations that provides an equivalent level of occupant protection.

One commenter suggests that measurements be made during dynamic testing to ensure that the attachment loads are no greater than those for a 9g acceleration, since a 9g forward load factor is the current structural requirement. The FAA agrees that evaluating the reaction loads at the floor attachments during the dynamic seat test can provide useful data for structural design; however, the airframe support structure was not included in the dynamic tests of the seat/restraint system. This comment goes beyond the scope of the notice. It is unrealistic to apply loads, measured on a rigid test fixture during dynamic tests, as static loads to less rigid airframe structure. During an emergency landing impact, the airplane floor structure will typically yield under severe local loads, and this will tend to alter the attachment loads at the seat/restraint system interface to the airframe structure. Incorporating procedures to include airframe structure in the dynamic tests of proposed § 23.562 would greatly increase the complexity and costs of these tests. Airframe structure supporting the seat/restraint system must meet the static strength requirements of § 23.561 and other sections of Part 23. Therefore, this final rule does not require measurement of attachment loads, although such measurements may provide useful design information.

One commenter is concerned that the proposed rule would restrict, if not eliminate, refurbishing older airplanes with new seats or shoulder harnesses. The FAA disagrees. These requirements are intended to apply to airplanes which will include this amendment to Part 23 as part of their type certification basis. For modifications of previously certificated airplanes, the applicant is required to comply with the original type certification basis for the airplane; however, the FAA considers it in the best interest of the modifier to demonstrate the highest level of occupant protection possible. The dynamic test procedures in § 23.562 provide a method for demonstrating that new seat/restraint system designs offer a significant increase in occupant protection.

One commenter suggests that the proposed dynamic test requirements should not apply to seats installed in single-engine airplanes weighing less than 3,000 pounds. The commenter argues that, for this size airplane, the impact energy is low, in some designs the seats are integrated to the airframe, and dynamic seat tests are too expensive. The FAA has no unique category or certification rules for airplanes of less than 3,000 pounds. Although these smaller airplanes typically have emergency landings at lower velocities than heavier airplanes with higher stall speeds, the airframe structure of these smaller airplanes provides less energy attenuation capabilities. Since the FAA cannot quantify the trade-offs of airplane velocity to airframe size with regard to impact severity, one set of tests was proposed for all normal, utility, and acrobatic category airplanes. Therefore, only one set of criteria is adopted in this final rule.

Several comments address specific technical aspects of the proposed § 23.562. One commenter supports the test parameters of both the vertical and longitudinal tests as proposed and agrees that these proposed requirements will result in a substantial improvement in the dynamic strength capabilities of small airplane seats. This commenter also supports the performance criteria which limit the impact loads for the occupant's head and lumbar spine.

One commenter suggests that floor misalignment in the roll axis be added to the floor warpage requirements of proposed § 23.562(b)(2) and that these floor warpage provisions be added to the requirements of § 23.562(b)(1). The FAA agrees with adding floor deformation preload in the roll axis to the longitudinal test conditions prescribed in proposed § 23.562(b)(2). This paragraph provides for a test of the occupant retention strength of the seat/restraint system. Floor deformation preloading is an important aspect of this test, and floor warp in both the pitch and roll axes is possible during an emergency landing. The FAA disagrees with adding floor deformation preload requirements to the test conditions of proposed § 23.562(b)(1). This paragraph

provides for test parameters intended to evaluate the energy absorbing capability of the seat under repeatable conditions to demonstrate a minimum level of occupant protection. Floor warp preloads will add complexities to this test which may adversely affect the evaluation of the energy absorbing capability of the seat/restraint system. To add clarity and ensure that floor warpage is understood to be a preload condition, to be set prior to conducting the dynamic test, the floor deformation requirements in proposed § 23.562(b)(2) are removed, and the expanded requirements are set forth in § 23.562(b)(3) of this final rule.

One commenter questions the rationale for lesser test loads for the rear seats, and suggests that all occupants should be equally protected to 26g. This issue was discussed at the Small Airplane Airworthiness Review Conference and was addressed in Notice No. 86-19. Full-scale impact tests of small airplanes, conducted as part of a joint FAA/NASA project, resulted in data which indicate that impact deceleration levels reduce the farther aft an occupant is sitting in a small airplane. This is a result of local structural yielding of the airframe. Consequently, the closer the occupant is to the initial impact point, the higher the deceleration rate, even though the velocity change is the same for all occupants. This is the result of additional airframe yielding between the front and aft seats. These full scale impact test data also showed that the period of the impact pulse was, in general, greater for aft-seat occupants than for front-seat occupants as a result of the effects of structural yielding during the impact. For seats aft of the front row, the proposed dynamic test criteria would require test parameters which have lower peak deceleration rates and longer impact times than the front seats. These test conditions are justified by the FAA/NASA full scale drop test data. Since the commenter offers no technical data to support the position that the same impact parameters should be applied to all seats, the criteria for the test paramaters are adopted as proposed in the notice.

One commenter suggests that these new regulations should consider the loads imposed on a seat by the occupant seated behind the system being evaluated, or these rules should provide appropriate limitations for seat pitch (spacing). The FAA disagrees with this concept for small airplane seat evaluations for several reasons. Part 23 currently requires that normal, utility, and acrobatic category airplanes, manufactured after December 12, 1986, must be equipped with a safety belt and shoulder harness. These restraint systems are intended to limit occupant motion during impact. The limited occupant motion will reduce the severity of any contact the occupant will have with the adjacent seat or structure. The addition of multiple row dynamic testing would significantly increase the cost and complexity of these tests. Multiple row testing goes beyond the scope of Notice No. 86-19.

Two commenters suggest that the requirements in § 23.562(b) should allow the use of a properly validated analysis. Proposed § 23.562(d) would allow the applicant to use an alternate means of compliance to this rule, provided that the alternate method results in a level of safety as great as, or greater than, that established by the rule. Proposed § 23.562(d) has been retained in this final rule except the words "paragraph (c) of" have been removed for clarity. Therefore, the FAA considers the intent of the comments to be achieved by § 23.562(d).

One commenter is concerned that the specific ATD defined by 49 CFR Part 572, Subpart B, will not always be available. The specified ATD has been the standard used by the automotive industry for many years. Because the results of dynamic tests can be significantly affected by the specific ATD used, the FAA considers it necessary to specify a standard ATD for showing compliance to the requirements of § 23.562. However, several other ATD designs have been manufactured, and the FAA is monitoring the development of new ATD designs. If an applicant desires to use a different ATD configuration for showing compliance with § 23.562, the applicant must show that use of the substitute ATD will not significantly affect the test results and obtain FAA approval to use an alternate ATD design prior to conducting certification tests.

One commenter is not sure if the term "level landing attitude" used in proposed paragraphs (1) and (2) of § 23.562(b) is intended to have the same meaning as used in § 23.479(a). The intent is substantially the same as the meaning of "level landing attitude" in § 23.479(a); however, this does imply the need to do dynamic tests of the airframe structure. The intent is to apply these tests to the seat, restraint system, and immediate attachments. Therefore, in this final rule, the seat orientation is described relative to the test impact vector, and the term "level landing attitude" is removed.

Several editorial comments were received. One commenter suggests the rule require the test dummy to be seated in the normal upright position. This commenter also suggests that units of time and acceleration be added to the equation in proposed § 23.562(c)(5). These comments are incorporated in this final rule for clarity. One commenter suggests that the words "seats or" be added between the words "the" and "seating devices" in the last sentence of proposed § 23.562(b)(2). In consideration of this comment and for more consistency with other rules regarding the occupant seating systems, the words "seat, or other seating device" in proposed paragraphs (1) and (2) of § 23.562 are replaced with the words "seat/restraint system" in this final rule. In addition, the term "seat/restraint system" is used throughout this final rule to refer to any system used to provide the primary means to support a seated occupant and restrain the occupant during emergency landing conditions. One commenter suggests replacing the phrase "if the shape of the input pulse deviates significantly from a symmetric triangle" in proposed § 23.562(b)(3), with the phrase "in order to approximate a symmetric triangle." The commenter considers the words "deviates significantly" to be too nebulous to define the outer limits of compliance. The specific criteria of the impact pulse condition is based on the concept that in the ideal case, the shape of this pulse would approach that of a symmetric triangle, which was supported by NASA analysis of the full-scale small airplane crash test data; however, most impact test facilities will have difficulty producing a symmetric triangular pulse. Although the FAA considers the symmetric triangular pulse to be the optimum, the objective of the required dynamic tests can be met by impact pulses producible in many available test facilities, provided the impact pulse has the necessary test velocity, and reaches the necessary minimum deceleration level within a specified time limit. Therefore, this final rule does not specify a triangular pulse. The proposed paragraph (3) of § 23.562(b) is omitted and, as previously noted, is replaced by a new paragraph (3) which contains clarified floor warpage requirements.

Several commenters express concern about the costs of conducting dynamic tests on seat/restraint systems. One commenter bases cost estimates on the assumption that airframes would have to be provided and that test rigs would have to be developed and built. The FAA disagrees. In most cases, only the

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attachment devices for the seat and restraint system need be provided and test facilities are available to conduct the tests at a reasonable fee. Dynamic testing of seats presently costs from $2,000 to $5,000 and these costs are expected to decrease as a result of increased testing of seat/restraint systems to be used in Part 23 and Part 25 airplanes. This commenter further suggests that the FAA conduct the dynamic testing of seat/restraint systems. The FAA disagrees. Conducting the tests and showing compliance by the FAA would be contrary to U.S. certification processes whereby any FAA tests are only to validate previous tests conducted by the applicant. The FAA concludes that this testing should be left to private industry and that there are adequate test facilities available in the United States.

Three commenters from outside of the United States are concerned about the lack of dynamic test facilities in their countries and the costs involved in building such facilities. The FAA concludes that more facilities will become available as a result of foreign nations requiring dynamic testing for transport category airplane seats and the concern about crashworthiness in automobiles. In addition, foreign manufacturers can make use of U.S. facilities.

*Proposal 1–4.* This proposal would add several new requirements for external doors to § 23.783 and was the result of proposals 281 and 282 of the Small Airplane Airworthiness Review Conference. Proposed § 23.783(c) would add requirements for a locking means for external passenger doors. This paragraph would require that: (1) Each external passenger door provide a means to lock and safeguard against inadvertent opening in flight; (2) these doors be openable from the inside and outside when the internal locking mechanism is in the locked position; (3) the opening means be simple, easily located, and operated in darkness; and (4) each of these doors meet particular marking requirements. Proposed § 23.783(d) would require that each external passenger door be free of jamming as a result of fuselage deformation during a minor crash or emergency landing. Proposed § 23.783(e) would add several requirements applicable to external doors forward of any engine or propeller and to all doors of the pressure vessel of a pressurized airplane. Proposed § 23.783(e)(1) would require that these doors be provided with a means to be locked and safeguarded against inadvertent opening or mechanical failure. Proposed § 23.783(e)(2) would require provisions for direct visual inspections of the locking mechanisms of each external door for which the initial opening movement is not inward. The proposed paragraph would also require that these provisions be discernible in operating lighting conditions by a crewmember using a flashlight or equivalent. Proposed § 23.783(e)(3) would provide requirements for a visual warning to signal if any external door is not fully closed and locked.

A concern was expressed at the Small Airplane Airworthiness Review Conference that conference proposal 281, relative to jamming of doors, addressed each external door in contrast to the current requirements which address passenger doors only. As noted in Notice No. 86–19, the FAA concluded that only external passenger doors need be addressed since there is no need to require that cargo or similar doors of normal, utility, or acrobatic category airplanes be free of jamming as a result of fuselage deformation in an emergency landing. The FAA has further examined t' . concern and has concluded that the word "passenger" must be expanded to "passenger or crew" for clarification.

The requirement of proposed § 23.783(c) that each external passenger door must be openable from either the inside or the outside when the internal locks are in the locked position was proposed as a result of recorded accidents in which fatalities have occurred because persons attempting to rescue the airplane occupants were unable to open the door.

The requirements of proposed § 23.783(e), addressing minimum standards for ensuring the integrity of external doors in pressurized airplanes, are similar to requirements which have already been adopted as special conditions for the type certification of Part 23 airplanes. Proposed § 23.783(e) also applies to doors forward of any engine or propeller to ensure that external doors forward of any engine do not inadvertently open in flight and thereby allow the compartment contents to be ingested into an engine or propeller.

One commenter suggests that proposed § 23.783(c) should not be required on airplanes with maximum certificated weight of less than 3,000 pounds. This commenter contends that the wording used in proposed paragraph (c) "clearly shows that it is applicable for commuters or light twins." This commenter also contends that, for single-engine airplanes with a maximum certificated weight of less than 3,000 pounds, the doors can be adequately protected from inadvertent opening by providing: (1) A convenient location for the handle that allows monitoring and direct action by the pilot, (2) a convenient motion of the handle such as an opening motion in which the handle moves down in front of the arm rest, or (3) design precautions against mechanical failure. The FAA does not consider unique rules for airplanes with maximum certificated weights of less than 3,000 pounds to be justified by the technical issues. The methods proposed by the commenter to protect against inadvertent door opening may be applied to the door design as part of the compliance to the rules in proposed § 23.783(c). At present, Part 23 does not make a distinction on cabin safety issues based on maximum certificated weight.

One commenter suggests that the requirements of proposed § 23.783(d) are undefinable as to degree of compliance and the method of compliance. The FAA disagrees. Similar requirements already exist for transport and commuter category airplanes. Advisory Circular No. 25.783–1 contains guidance material for complying with a substantively equivalent requirement for transport airplanes. According to the information in this advisory circular, this Part 25 rule may be complied with by designs which provide sufficient clearance between the door and the surrounding fuselage support structure to accommodate likely distortions. Also, the possibility of distortion in the door cutout can be minimized by designing the door cutout frame with more strength than that of the surrounding structure. Equivalent means of compliance may be used for complying with these Part 23 requirements.

Several comments are editorial in nature. One of the commenters suggests changing the term "minor crash" to "emergency landing" in proposed § 23.783(d). This final rule does refer to the emergency landing condition for consistency with other sections of Part 23. One commenter suggests adding the words "inside and outside" between the words "marked" and "so" in § 23.783(c). Similar words are used in the rules for commuter category airplanes. These words have been added to this final rule for consistency with the new commuter category requirements. Several commenters suggest changes to the proposal in Notice No. 86–19 to provide compatibility with the rules applicable to commuter airplanes which were added to Part 23 with Amendment No. 23–34. The FAA has compared the proposed § 23.783 with the same section

in Part 23 after Amendment No. 23–34 and has reformatted § 23.783 in this final rule action to include the commuter category rule requirements and the applicable sections from this proposal. Section 23.783(c) in this final rule includes those requirements which are common to normal, utility, acrobatic, and commuter category airplanes. Since the external marking requirements of proposed § 23.807(c) are moved to a new § 23.811 in this final rule, § 23.783(c)(4) references § 23.811 in this final rule.

Since § 23.807(d) of Amendment No. 23–34, which was issued after Notice No. 86–19, included requirements for doors as well as emergency exits, the requirements added by Amendment No. 23–34 are integrated with the proposed requirements adopted in this final rule. The requirements that auxiliary locking devices used to secure the airplane must be designed to be overridden by the normal internal opening means were included in proposed § 23.807(b) for emergency exits. Since the passenger and crew doors generally serve as the primary means of emergency exit in Part 23 airplanes, the requirements for overriding the external locking devices are also stated for external doors in § 23.783(b) of this final rule.

To provide background information about this final rule format of § 23.783, the following table lists a cross reference of the requirements in this final rule, the proposed rule (Notice No. 86–19), and the final rule published at 52 FR 1806, Jan. 15, 1987 (Amendment No. 23–34):

*Cross Reference for Section 23.783*

| Final Rule | Notice | Amend. 23–34 |
|---|---|---|
| §23.783(c)(1) | §23.783(c) | §23.783(c)(1) |
| §23.783(c)(2) | §23.783(c) | §23.783(c)(1) |
| §23.783(c)(3) | §23.783(c) | §23.783(c)(1) |
| §23.783(c)(4) | §23.783(c) | §23.807(d)(3) |
| §23.783(c)(5) | §23.783(d) | §23.783(c)(2) |
| §23.783(c)(6) | §23.807(b) | §23.807(d)(1) |
| §23.783(d)(1) | N/A | §23.783(c)(1) |
| §23.783(d)(2) | N/A | §23.783(c)(1) |
| §23.783(d)(3) | N/A | §23.783(c)(1) |
| §23.783(e)(1) | §23.783(e)(1) | §23.783(c)(1) |
| §23.783(e)(2) | §23.783(e)(2) | §23.783(c)(3) |
| §23.783(e)(3) | §23.783(e)(3) | §23.783(c)(3) |

*Proposal 1–5.* The FAA proposed a substantial revision of the requirements for seats, berths, litters, safety belts, and shoulder harnesses in § 23.785. The new requirements proposed in the notice were based on proposals 283, 284, 285, 285a, 286, 287, and 518 submitted at the Small Airplane Airworthiness Review Conference. These proposals were based, in large measure, on FAA, NASA, and NTSB research studies and impact analyses.

Proposed § 23.785(a) cited requirements for protecting seated occupants from injurious objects when the occupant is subjected to the emergency landing dynamic conditions of proposed § 23.562. Proposed § 23.785(b) would add reference to the head injury protection specified in proposed § 23.562(c)(5). Proposed § 23.785(c) would require a combined shoulder harness and safety belt restraint system with a single point release. Proposed § 23.785(d) was a redesignation of the rules stated in § 23.785(c) in effect at the time of the notice. Proposed § 23.785(e) was redesignation of the rules stated in § 23.785(d) in effect at the time of the notice. Proposed § 23.785(f) would require that the seat/restraint system withstand the loads imposed by a 215-pound occupant when subjected to the design load conditions in the approved flight/ground operating envelope of the airplane. The 215-pound occupant size relates to a 95 percentile male. The heavier occupant is recommended so that the strength of the seat/restraint system will be adequate for the loads expected in normal operations. This requirement was considered necessary because of concern that evaluating a seat/restraint system for only the emergency landing conditions would not require that it function properly during normal operations. Proposed § 23.785(g) would provide a specific definition of what comprises a "seating device system," and this section was included so that all necessary components are included in a system being evaluated to the emergency landing dynamic test requirements of § 23.562. Proposed § 23.785(h) would state that crushing or separation of certain parts of the seat would be allowed to show compliance with § 23.562. Proposed § 23.785(i) would add requirements for seat stops to prevent the seat from sliding off the track. Proposed § 23.785(j) would contain the requirements for protecting occupants in a berth or litter that is installed parallel to the airplane longitudinal axis.

One commenter suggests replacing the term "shoulder harness" in proposed § 23.785(b) by the term "seat belt and shoulder harness," and two other commenters suggest removing the reference to § 23.561 for this section. After reviewing proposed § 23.785(b) the FAA concludes that these requirements are redundant with other requirements of §§ 23.785 and 23.562 of this final rule; therefore, proposed § 23.785(b) is not adopted.

One commenter suggests changes to proposed § 23.785(c) so that seat orientations other than forward-facing or aft-facing seats are addressed. Proposed § 23.785(c), for clarity in this final rule, is separated into four paragraphs—paragraphs (b), (d), (e), and (g). The new paragraph (b) references requirements of § 23.562 for normal, utility, and acrobatic category airplane seat/restraint systems and includes the existing requirements for § 23.785(g)(1) relative to seat orientations other than side-facing and aft-facing seats. As no other comments were received relative to proposed § 23.785(c), the requirements proposed for a single-point release, the need for a crewmember to perform all functions necessary to flight operations with the restraint system fastened, and the means to secure the safety belt and shoulder harness when not in use, are in paragraphs (d), (e), and (g) of this final rule, respectively.

One commenter questions why § 23.785(g) of Amendment No. 23–34 was removed, and if the intent was to replace that section with proposed § 23.785(c). Notice No. 86–19 was issued prior to the incorporation of the provisions of Amendment No. 23–34 into Part 23. Because § 23.785 was changed by Amendment No. 23–34 after Notice No. 86–19 was released for public comment, this final rule action combines the requirements of both. For clarity and conciseness, § 23.785 is reformatted in this final rule. This final rule does not specify emergency landing dynamic conditions for commuter category airplanes since this issue is beyond the scope of Notice No. 86–19, and this issue will be addressed in future rulemaking actions.

No comments were received in response to proposed § 23.785(f). It is designated as § 23.785(a) and adopted as proposed.

The requirements relative to emergency landing conditions in § 23.785(a) and the requirements in § 23.785(g)(2) remain applicable to the commuter category airplanes. In this final rule, these requirements have been combined into § 23.785(c).

No comments were received relative to § 23.785(j). The FAA now considers the last sentence of proposed § 23.785(j) to be a policy statement, and it is not included in this final rule. For the purpose of the requirements in § 23.785, the FAA considers a litter to be a device for carrying a person, primarily in a prone position, into an airplane. As the FAA is not aware of any differences between the various categories of Part 23 airplanes, the proposed rule is therefore adopted as § 23.785(m), to be applicable to all categories of Part 23 airplanes.

To provide background information about this final rule format of § 23.785, the following table lists a cross reference of the requirements in this final rule, the proposed rule Notice No. 86–19), and the final rule published at 52 FR 1806, Jan. 15, 1987 Amendment No. 23–34):

*Cross Reference for Section 23.785.*

| Final Rule | Notice No. 86–19 | Amendment 23–34 |
|---|---|---|
| § 23.785(a) | § 23.785(f) | § 23.785(a) |
| § 23.785(b) | § 23.785(c) | § 23.785(g)(1) |
| § 23.785(c) | N/A | § 23.785(a) and (g)(2) |
| § 23.785(d) | § 23.785(c) | N/A |
| § 23.785(e) | § 23.785(c) | § 23.785(h) |
| § 23.785(f) | § 23.785(d) | § 23.785(c) |
| § 23.785(g) | § 23.785(c) | § 23.785(i) |
| § 23.785(h) | § 23.785(e) | § 23.785(d) |
| § 23.785(i) | § 23.785(a) | § 23.785(j) |
| § 23.785(j) | § 23.785(i) | § 23.785(l) |
| § 23 785(k) | § 23.785(h) | N/A |
| § 23.785(l) | N/A | § 23.785(k) |
| § 23 785(m) | § 23.785(j) | § 23.785(e) |
| § 23.785(n) | N/A | § 23.785(f) |

*Proposal 1–6.* Notice No. 86–19 proposed to amend § 23.787 to increase the static strength requirements for cargo compartments and resulted from conference proposals 288, 289, 518, and 524 of the Small Airplane Airworthiness Review Conference. It was a consensus at the conference that cargo restraints should be designed to the ultimate static load factors of § 23.561 to protect occupants forward of the cargo during emergency landing conditions. For designs that carry cargo in the same compartment with occupants, the GASP proposed that these compartments have adequate strength to retain cargo in conditions which could result in occupant exposure to the dynamic conditions of proposed § 23.562(b)(2). Since dynamic testing of seats evaluates specific occupant injury criteria, the FAA considers dynamic testing of items of mass to be unnecessary because only retention of these items is a safety concern. Therefore, the ultimate static load factors of § 23.561(b)(3) are referenced in § 23.787(e).

One commenter suggests that proposed § 23.787 require that the strength of the structure forming the partition between the occupants and cargo be substantiated for a cargo load of maximum weight weight when considering the ultimate static load factors of § 23.561. The FAA agrees that adding a reference to the maximum cargo weight adds clarity to the intent of the rule, and paragraphs (c) and (e) of the final rule include requirements for evaluation at the maximum allowed cargo weight for the compartment.

Several editorial comments were received with regard to references to the paragraphs of 23.561 in proposed changes to § 23.787. They have been considered in this final rule.

Section 23.787(g), added with Amendment No. 23–34, contains specific requirements for commuter category airplanes. Paragraph (1) of § 23.787(g) requires that the cargo or baggage compartments of commuter category airplanes be evaluated for a 9g ultimate forward static load factor. Since proposed § 23.787(c) of the notice states substantively equivalent requirements for normal, utility, and acrobatic category airplanes § 23.787(c) of this final rule is applicable to all Part 23 airplanes; and § 23.787(g)(1), added by Amendment No. 23–34, is removed.

Paragraph (2) of § 23.787(g) states the specific requirements for baggage compartments of commuter category airplanes. These requirements are retained in § 23.787(g) of this final rule. A reference to § 23.787(c) and (e) is added to § 23.787(g) so that the baggage compartments in commuter category airplanes will be designed to protect occupants from injury during an emergency landing. The title of § 23.787 is amended in this final rule to include a reference to baggage compartments since certain requirements of this section are applicable to baggage compartments.

*Proposal 1–7.* In Notice No. 86–19, the FAA proposed changes to § 23.807 based on a number of issues raised by proposals 290, 297, and 517 at the Small Airplane Airworthiness Review Conference. One issue discussed at the conference concerned the number and locations of emergency exists required for normal, utility, or acrobatic category airplanes. One conference proposal suggested that all airplanes with a seating capacity of two or more, excluding airplanes with canopies, have at least one emergency exit on the opposite side of the cabin from the main external passenger door specified in §23.783(a). A second conference proposal recommended one emergency exist adjacent to the pilot on the pilot's side of the airplane. The consensus at the conference was that § 23.807(a)(1) should be revised substantively as stated in the first proposal, and that the current rules adequately address the issue of the second proposal. Notice No. 86–19 proposed changes to §23.807(a)(1) which were substantially the same as the first conference proposal.

A second issue, concerning type and operation of emergency exits, was addressed by three conference proposals. The first proposal recommended that § 23.807(b) require an exit area of 388 square inches in place of the current requirement that a 19-by-26-inch ellipse pass through the emergency exit opening. The proposal stated that the most critical dimension, width or height, must be no less than 19 inches. As a result of discussion at the conference, the word "critical" was changed to "minimum" in the notice. The second proposal recommended that emergency exits be openable from outside the airplane. The problem of providing security for airplanes with emergency exits, openable from the outside, was discussed at the conference, and conference attendees discussed ways to provide both security and emergency egress provisions. The third proposal addressed the use of canopies as an acceptable emergency exit. This proposal would clarify that a canopy may be used as an emergency exit and is subject to the rules applicable to an emergency exit. As a result of these suggestions, changes to paragraphs (a) and (b) of § 23.807 were proposed in Notice No. 86–19.

The third emergency exit issue addressed at the conference concerned marking and identification of these exits. Notice No. 86–19 proposed a new § 23.807(c) which stated external marking requirements for emergency

exits. The proposed requirements were stated in objective terms as discussed at the conference.

One commenter to Notice No. 86-19 agrees with the requirements in proposed § 23.807(b) that emergency exits be openable from both the inside and outside and supports the use of auxiliary locking devices that must be designed to be overridden by the operation of the internal opening means. However, the commenter is concerned that the proposed exit area requirement of 388 square inches allows an emergency exit size which does not comply with the current 19-by-26-inch ellipse requirement. The commenter requests that the FAA provide test evidence that such an exit provides an equivalent evacuation rate. As a result of this comment, the FAA reviewed the regulatory history and human factors data concerning emergency exit size and the associated effects on evacuation from small airplanes. In the past, emergency exits with total open area equal to or greater than the area of a 19-by-26-inch ellipse, but not providing unobstructed passage of the ellipse, have been approved by equivalent level of safety findings. In regard to this issue, published test data indicate that reducing the maximum (26-inch) dimension of the emergency exit while maintaining the same minimum (19-inch) dimension may significantly reduce the emergency flow rate through the exit. Since these data indicate that the proposed rule change may reduce the level of safety with regard to egress from emergency exits, the FAA is retaining the emergency exit size requirements of § 23.807.

One commenter agrees with the proposal but wants the FAA to explain what is meant by a "conspicuous visual identification scheme" in proposed § 23.807(c). In Notice No. 86-19, the FAA proposed requirements to allow the maximum compatibility between the desire for an aesthetic appearance and the need for maximizing the efforts of rescue personnel to locate emergency exits quickly. Advisory Circular 23.807(c), dated January 20, 1984, has provided guidance for marking emergency exits on a voluntary basis. Since this guidance material already exists, the FAA concludes that the proposed requirements are adequately detailed.

Several commenters suggest editorial changes to proposed § 23.807, and the FAA has considered these comments in this final rule. In addition, the FAA recognizes that the Part 25 counterparts of several of the rules, which Notice No. 86-19 proposed to locate in § 23.807, are in other sections of Part 25. In accordance with FAA policy of placing similar requirements in like numbered sections of Parts 23 and 25 of the Federal Aviation Regulations (FAR), the requirements in proposed § 23.807(c) are moved to a new § 23.811, titled "Emergency exit marking." Also, the emergency exist marking requirements of § 23.807(c)(3) which are unique to commuter category airplanes are moved to § 23.811(b) is this final rule. In addition, the requirements of § 23.807(d)(4) are moved to a new § 23.813, titled "Emergency exit access", is this final rule.

One commenter suggests that the regulatory references in the notice should be crosschecked with the latest revisions of Part 23. As a result of reviewing the FAR, the FAA identified several sections of Part 23 which need to be changed for compatibility with the new requirements for dynamic testing of set/restraint systems. The regulatory changes identified by this review are not substantive but provide consistency with the other changes made by this amendment. This review resulted in several additions to this final rule. Section 23.2 is revised to delete the reference to § 23.785(g) and (h) and, instead, states these previously incorporated-by-reference occupant protection requirements for restraint systems. Section 3.967 is revised so that paragraph (e)(1) refers to § 23.561(b)(2). Section 23.1411 is revised so that paragraph (b)(2) refers to § 23.561(b)(3). Section 23.1413 is revised to include only the requirement that each safety belt and shoulder harness be equipped with a metal-to-metal latching device since the requirements of paragraph (a) of existing § 23.1413 are redundant to the requirements in paragraphs (a) and (b) § 23.785 of this final rule, and the requirements of paragraph (b) of existing § 23.1413 are not compatible with the requirements of § 23.785(m)(2).

**Economic Impact**

This amendment upgrades airworthiness standards to enhance the crashworthiness of airplanes certificated to Part 23. These upgraded standards, which are based on proposals submitted to the Small Airplane Airworthiness Review Conference apply only to airplanes for which an application for a type certificate under Part 23 is made after the effective date of this amendment.

Two of the revisions contained in this amendment impose dynamic testing standards to determine the adequacy of energy absorbing seats and torso restrain systems on occupant movement resulting from sudden deceleration forces on normal, utility, and acrobatic category airplanes which are likely to be experienced in accidents. Two other revisions pertain to doors and emergency exits will facilitate emergency egress from airplanes sustaining heavy ground impact damage. Another three revisions are of an organizational rather than substantive nature and will not have any economic impacts. The economic impact of this amendment was estimated by the FAA with the assistance of a research firm, which relied heavily on General Aviation Manufacturers Association (GAMA) information pertaining to expected costs and National Transportation Safety Board (NTSB) data pertaining to expected benefits. The estimation procedure quantified the costs and benefits expected to result from this amendment based upon the official FAA forecast of airplane production and a more conservative forecast that projects a continuation of the depressed condition of this industry. The effect of using the more conservative forecast is to reduce substantially the magnitude of both the expected total costs and benefits of this amendment for which quantification of these impacts was possible, reflecting the considerably smaller number of affected airplanes. The use of the more conservative forecast does not alter the general results of the analysis with regard to the overall combined economic impact of this amendment, although the effects on the cost-effectiveness of the individual proposals differed.

Using the FAA production forecast, the total expected quantified benefits for the two revisions aimed at occupant energy-absorbing seats and torso restraint systems (benefits cannot be quantified for the others) are estimated to be approximately $30.5 million on a discounted basis over a 20-year period, considerably higher than the expected associated costs, which are estimated at about $17.1 million. The use of the more conservative production forecast results in an estimate of about $4.3 million for the discounted benefits of this amendment and expected costs of about $4.0 million. Benefits cannot be quantified for the other substantive revisions because of insufficient accident data.

One of the two revisions directed at occupant restraint, which will require a shoulder harness capable of satisfying a dynamic test at all seats in new type certificated normal, utility, and acrobatic category airplanes, is similar to an airworthiness standard recently adopted by the FAA in Amendment 23-

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32. That recently adopted rule imposes a shoulder harness requirement at all seats of normal, utility, and acrobatic category airplanes manufactured after December 12, 1986, and requires the shoulder harness to satisfy static strength requirements. Because the requirements in Amendment 23–32 apply to all normal, utility, and acrobatic category airplanes with a seating configuration of nine or less excluding pilot seats, regardless of the date of type certification and type certification basis, its implementation has the effect of minimizing any costs pertaining to should harnesses that can be attributed to this amendment. The dynamic test is a more stringent one because the basic seat structure and its attachment to the cabin floor must be designed so as to afford greater occupant protection through energy absorption, a requirement whose incremental costs have been attributed to a separate revision contained in this amendment that pertains only to seat strength.

The benefits of the shoulder harness requirements in this amendment are not totally eliminated, however, because it requires that these harnesses pass a dynamic test with seat systems as a whole to protect occupants, as noted above. In contrast, the recently adopted rule only required static strength evaluation of the shoulder harness which less accurately represents the loads on occupants resulting from survivable airplane accidents. The full extent of those incremental benefits cannot be quantified, however, because the benefits for the two revisions pertaining to seat systems are interdependent. The benefits estimated for the seat revisions were found to be directly proportional to the rate of shoulder harness usage. These benefits are estimated over a 20-year period, compared with the 10-year period used for estimating costs, in order to capture all of the benefits that can be attributed to seats installed near the end of the initial 10-year period.

For the purpose of this analysis, the quantified benefits for the seat system improvements are attributed solely to the revision requiring energy-absorbing seats, recognizing that the shoulder harness amendment is likely to produce additional benefits that appear difficult if not impossible to quantify. The cost-effectiveness of the seat amendment (based on the FAA production forecast) is contingent upon the assumption that over 56 percent of the occupants would use shoulder harnesses. The required rate of shoulder harness usage increases to 93 percent based on the more conservative forecast.

The benefits of this amendment pertaining to door and emergency exit requirements, as well as cargo restraint, cannot be precisely quantified because of a lack of detail in the historical accident data although an expected range of benefits in terms of fatalities prevented was estimated. Accidents involving post-crash fires were regarded as being the most relevant for assessing the benefits because fatalities caused by this type of accident are more likely to have resulted from evacuation problems than impact forces. A "breakeven" analysis of the number of fatalities that would have to be prevented to offset the costs of these proposals ($1.6 million for cargo restraint requirements, $10.2 million for the door requirements and $17.1 million for the emergency exit requirements based on the FAA forecast) was performed to provide an indication of the expected relationship between the costs and benefits that were estimated in this amendment. This comparison revealed a strong probability that this amendment would prevent a substantially greater number of fatalities than would be required to offset their costs based on the most realistic assumptions regarding the effectiveness of the revised requirements. More specifically, the benefits estimated for this amendment ranged from about 17 to 50 fatalities prevented on an annual basis based on an intermediate assumption pertaining to effectiveness (see Table 1), far in excess of the "breakeven point" of 5.5 fatalities prevented (see Regulatory Evaluation). The "breakeven point" declines to only one fatality prevented when the more conservative production forecast is used.

TABLE 1

[Number of Fatalities Expected to be Prevented by Door and Emergency Exit Requirements Under Various Assumptions [1]]

| | Percent of Fatalities in Accidents Involving Post-Crash Fires Attributable Solely to Egress Problems | | |
|---|---|---|---|
| | 25 percent | 50 percent | 75 percent |
| Effectiveness of Door and Emergency Exit Requirements in Preventing Fatalities: | | | |
| 25 percent | 8 | 17 | 25 |
| 50 percent | 17 | 33 | 50 |
| 75 percent | 25 | 50 | 75 |

[1] The numbers in this table are based on an expected annual average of 133 fatalities (derived from the FAA's Accident/Incident Data System).
Source: Office of Aviation Policy and Plans, FAA.

**Trade Impact**

This amendment will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. In the United States, foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by Part 23 requirements and would not be compelled to implement these requirements.

**Final Regulatory Determination**

The FAA has also determined that this amendment will not have a significant economic impact on a substantial number of small entities. The FAA's criteria for a Part 23 airplane manufacturer is one employing less than 75 employees, a substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to this amendment, and a significant impact is one having an annual cost of more than $14,258 per manufacturer.

A review of domestic Part 23 airplane manufacturing companies indicates that only six companies meet the size threshold of 75 employees or less. This amendment to 14 CFR Part 23 will, therefore, not affect a substantial number of small entities.

**Federalism Implications**

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to

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preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

**Conclusion**

For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a regulation that is not major under the provisions of Executive Order 12291, and (2) is not significant under the provisions of DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Air transportation, Safety.

**Adoption of the Amendment**

Accordingly, 14 CFR Part 23 is amended as follows:

**PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES**

1. The authority citation for Part 23 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 23.2 is revised to read as follows:

**§ 23.2 Special retroactive requirements.**

(a) Notwithstanding §§ 21.17 and 21.183 of this chapter and irrespective of the type certification basis, each normal, utility, and acrobatic category airplane having a passenger seating configuration, excluding pilot seats, of nine or less, manufactured after December 12, 1986, or any such foreign airplane for entry into the United States must provide a safety belt and shoulder harness for each forward- or aft-facing seat which will protect the occupant from serious head injury when subjected to the inertia loads resulting from the ultimate static load factors prescribed in § 23.561(b)(2) of this part, or which will provide the occupant protection specified in § 23.562 of this part when that section is applicable to the airplane. For other seat orientations, the seat/restraint system must be designed to provide a level of occupant protection equivalent to that provided for forward- or aft-facing seats with a safety belt and shoulder harness installed.

(b) Each shoulder harness installed at a flight crewmember station, as required by this section, must allow the crewmember, when seated with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operations.

(c) For the purpose of this section, the date of manufacture is:

(1) The date the inspection acceptance records, or equivalent, reflect that the airplane is complete and meets the FAA approved type design data; or

(2) In the case of a foreign manufactured airplane, the date the foreign civil airworthiness authority certifies the airplane is complete and issues an original standard airworthiness certificate, or the equivalent in that country.

3. Section 23.561 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 23.561 General.**

* * * * *

(b) The structure must be designed to protect each occupant during emergency landing conditions when—

(1) Proper use is made of the seats, safety belts, and shoulder harnesses provided for in the design;

(2) The occupant experiences the static inertia loads corresponding to the following ultimate load factors—

(i) Upward, 3.0g for normal, utility, and commuter category airplanes, or 4.5g for acrobatic category airplanes;

(ii) Forward, 9.0g;

(iii) Sideward, 1.5g; and

(3) The items of mass within the cabin, that could injure an occupant, experience the static inertia loads corresponding to the following ultimate load factors—

(i) Upward, 3.0g;

(ii) Forward, 18.0g; and

(iii) Sideward, 4.5g.

* * * * *

(d) If it is not established that a turnover is unlikely during an emergency landing, the structure must be designed to protect the occupants in a complete turnover as follows:

(1) The likelihood of a turnover may be shown by an analysis assuming the following conditions—

(i) Maximum weight;

(ii) Most forward center of gravity position;

(iii) Longitudinal load factor of 9.0g;

(iv) Vertical load factor of 1.0g; and

(v) For airplanes with tricycle landing gear, the nose wheel strut failed with the nose contacting the ground.

(2) For determining the loads to be applied to the inverted airplane after a turnover, an upward ultimate inertia load factor of 3.0g and a coefficient of friction with the ground of 0.5 must be used.

* * * * *

4. New § 23.562 is added to read as follows:

**§ 23.562 Emergency landing dynamic conditions.**

(a) Each seat/restraint system for use in a normal, utility, or acrobatic category airplane must be designed to protect each occupant during an emergency landing when—

(1) Proper use is made of seats, safety belts, and shoulder harnesses provided for in the design; and

(2) The occupant is exposed to the loads resulting from the conditions prescribed in this section.

(b) Each seat/restraint system, for crew or passenger occupancy in a normal, utility, or acrobatic category airplane, must successfully complete dynamic tests or be demonstrated by rational analysis supported by dynamic tests, in accordance with each of the following conditions. These tests must be conducted with an occupant simulated by an anthropomorphic test dummy (ATD) defined by 49 CFR Part 572, Subpart B, or an FAA-approved equivalent, with a nominal weight of 170 pounds and seated in the normal upright position.

(1) For the first test, the change in velocity may not be less than 31 feet per second. The seat/restraint system must be oriented in its nominal position with respect to the airplane and with the horizontal plane of the airplane pitched up 60 degrees, with no yaw, relative to the impact vector. For seat/restraint systems to be installed in the first row of the airplane, peak deceleration must occur in not more than 0.05 seconds after impact and must reach a minimum of 19g. For all other seat/restraint systems, peak deceleration must occur in not more than 0.06 seconds after impact and must reach a minimum of 15g.

(2) For the second test, the change in velocity may not be less than 42 feet per second. The seat/restraint system must be oriented in its nominal position with respect to the airplane and with the vertical plane of the airplane yawed 10 degrees, with no pitch, relative to the impact vector in a direction that results in the greatest load on the shoulder harness. For seat/restraint systems to be

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installed in the first row of the airplane, peak deceleration must occur in not more than 0.05 seconds after impact and must reach a minimum of 26g. For all other seat/restraint systems, peak deceleration must occur in not more than 0.06 seconds after impact and must reach a minimum of 21g.

(3) To account for floor warpage, the floor rails or attachment devices used to attach the seat/restraint system to the airframe structure must be preloaded to misalign with respect to each other by at least 10 degrees vertically (i.e., pitch out of parallel) and one of the rails or attachment devices must be preloaded to misalign by 10 degrees in roll prior to conducting the test defined by paragraph (b)(2) of this section.

(c) Compliance with the following requirements must be shown during the dynamic tests conducted in accordance with paragraph (b) of this section:

(1) The seat/restraint system must restrain the ATD although seat/restraint system components may experience deformation, elongation, displacement, or crushing intended as part of the design.

(2) The attachment between the seat/restraint system and the test fixture must remain intact, although the seat structure may have deformed.

(3) Each shoulder harness strap must remain on the ATD's shoulder during the impact.

(4) The safety belt must remain on the ATD's pelvis during the impact.

(5) The results of the dynamic tests must show that the occupant is protected from serious head injury.

(i) When contact with adjacent seats, structure, or other items in the cabin can occur, protection must be provided so that the head impact does not exceed a head injury criteria (HIC) of 1,000.

(ii) The value of HIC is defined as—

$$HIC = \left\{ (t_2 - t_1) \left[ \frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a(t)\,dt \right]^{2.5} \right\}_{Max}$$

Where: $t_1$ is the initial integration time, expressed in seconds, $t_2$ is the final integration time, expressed in seconds, $(t_2-t_1)$ is the time duration of the major head impact, expressed in seconds, and $a(t)$ is the resultant deceleration at the center of gravity of the head form expressed as a multiple of g (units of gravity).

(iii) Compliance with the HIC limit must be demonstrated by measuring the head impact during dynamic testing as prescribed in paragraphs (b)(1) and (b)(2) of this section or by a separate showing of compliance with the head injury criteria using test or analysis procedures.

(6) Loads in individual shoulder harness straps may not exceed 1,750 pounds. If dual straps are used for retaining the upper torso, the total strap loads may not exceed 2,000 pounds.

(7) The compression load measured between the pelvis and the lumbar spine of the ATD may not exceed 1,500 pounds.

(d) An alternate approach that achieves an equivalent, or greater, level of occupant protection to that required by this section may be used if substantiated on a rational basis.

5. Section 23.783 is amended by revising paragraph (c) and adding new paragraphs (d) and (e) to read as follows:

**§ 23.783 Doors.**

* * * * *

(c) Each external passenger or crew door must comply with the following requirements:

(1) There must be a means to lock and safeguard the door against inadvertent opening during flight by persons, by cargo, or as a result of mechanical failure.

(2) The door must be openable from the inside and the outside when the internal locking mechanism is in the locked position.

(3) There must be a means of opening which is simple and obvious and is arranged and marked inside and outside so that the door can be readily located, unlocked, and opened, even in darkness.

(4) The door must meet the marking requirements of § 23.811 of this part.

(5) The door must be reasonably free from jamming as a result of fuselage deformation in an emergency landing.

(6) Auxiliary locking devices that are actuated externally to the airplane may be used but such devices must be overridden by the normal internal opening means.

(d) In addition, each external passenger or crew door, for a commuter category airplane, must comply with the following requirements:

(1) Each door must be openable from both the inside and outside, even though persons may be crowded against the door on the inside of the airplane.

(2) If inward opening doors are used, there must be a means to prevent occupants from crowding against the door to the extent that would interfere with opening the door.

(3) Auxiliary locking devices may be used.

(e) Each external door on a commuter category airplane, each external door forward of any engine or propeller on a normal, utility, or acrobatic category airplane, and each door of the pressure vessel on a pressurized airplane must comply with the following requirements:

(1) There must be a means to lock and safeguard each external door, including cargo and service type doors, against inadvertent opening in flight, by persons, by cargo, or as a result of mechanical failure or failure of a single structural element, either during or after closure.

(2) There must be a provision for direct visual inspection of the locking mechanism to determine if the external door, for which the initial opening movement is not inward, is fully closed and locked. The provisions must be discernible, under operating lighting conditions, by a crewmember using a flashlight or an equivalent lighting source.

(3) There must be a visual warning means to signal a flight crewmember if the external door is not fully closed and locked. The means must be designed so that any failure, or combination of failures, that would result in an erroneous closed and locked indication is improbable for doors for which the initial opening movement is not inward.

6. Section 23.785 is revised to read as follows:

**§ 23.785 Seats, berths, litters, safety belts, and shoulder harnesses.**

(a) Each seat/restraint system and the supporting structure must be designed to support occupants weighing at least 215 pounds when subjected to the maximum load factors corresponding to the specified flight and ground load conditions, as defined in the approved operating envelope of the airplane. In addition, these loads must be multiplied by a factor of 1.33 in determining the strength of all fittings and the attachment of—

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(1) Each seat to the structure; and
(2) Each safety belt and shoulder harness to the seat or structure.

(b) Each forward-facing or aft-facing seat/restraint system in normal, utility, or acrobatic category airplanes must consist of a seat, safety belt, and shoulder harness that are designed to provide the occupant protection provisions required in § 23.562 of this part. Other seat orientations must provide the same level of occupant protection as a forward-facing or aft-facing seat with a safety belt and shoulder harness, and provide the protection provisions of § 23.562 of this part.

(c) For commuter category airplanes, each seat and the supporting structure must be designed for occupants weighing at least 170 pounds when subjected to the inertia loads resulting from the ultimate static load factors prescribed in § 23.561(b)(2) of this part, and each occupant must be protected from serious head injury when subjected to the inertia loads resulting from these load factors by a safety belt and shoulder harness for the front seats; and a safety belt, or a safety belt and shoulder harness, for each seat other than the front seats.

(d) Each restraint system must have a single-point release for occupant evacuation.

(e) The restraint system for each crewmember must allow the crewmember, when seated with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operations.

(f) Each pilot seat must be designed for the reactions resulting from the application of pilot forces to the primary flight controls as prescribed in § 23.395 of this part.

(g) There must be a means to secure each safety belt and shoulder harness, when not in use, to prevent interference with the operation of the airplane and with rapid occupant egress in an emergency.

(h) Unless otherwise placarded, each seat in a utility or acrobatic category airplane must be designed to accommodate an occupant wearing a parachute.

(i) The cabin area surrounding each seat, including the structure, interior walls, instrument panel, control wheel, pedals, and seats within striking distance of the occupant's head or torso (with the restraint system fastened) must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces. If energy absorbing designs or devices are used to meet this requirement, they must protect the occupant from serious injury when the occupant is subjected to the inertia loads resulting from the ultimate static load factors prescribed in § 23.561(b)(2) of this part, or they must comply with the occupant protection provisions of § 23.562 of this part, as required in paragraphs (b) and (c) of this section.

(j) Each seat track must be fitted with stops to prevent the seat from sliding off the track.

(k) Each seat/restraint system may use design features, such as crushing or separation of certain components, to reduce occupant loads when showing compliance with the requirements of § 23.562 of this part; otherwise, the system must remain intact.

(l) For the purposes of this section, a front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

(m) Each berth, or provisions for a litter, installed parallel to the longitudinal axis of the airplane, must be designed so that the forward part has a padded end-board, canvas diaphragm, or equivalent means that can withstand the load reactions from a 215-pound occupant when subjected to the inertia loads resulting from the ultimate static load factors of § 23.561(b)(3) of this part. In addition—

(1) Each berth or litter must have an occupant restraint system and may not have corners or other parts likely to cause serious injury to a person occupying it during emergency landing conditions; and

(2) Occupant restraint system attachments for the berth or litter must withstand the inertia loads resulting from the ultimate static load factors of § 23.561(b)(3) of this part.

(n) Proof of compliance with the static strength requirements of this section for seats and berths approved as part of the type design and for seat and berth installations may be shown by—

(1) Structural analysis, if the structure conforms to conventional airplane types for which existing methods of analysis are known to be reliable;

(2) A combination of structural analysis and static load tests to limit load; or

(3) Static load tests to ultimate loads.

7. Section 23.787 is amended by revising the section heading and by revising paragraphs (c), (e), and (g) to read as follows:

**§ 23.787 Baggage and cargo compartments.**

* * * * *

(c) There must be a means to protect occupants from injury by the contents of any baggage or cargo compartment, located aft of the occupants and separated by structure, when the ultimate forward inertia load factor is 9% and assuming the maximun allowed baggage or cargo weight for the compartment.

* * * * *

(e) Designs which provide for baggage or cargo to be carried in the same compartment as passengers must have a means to protect the occupants from injury when the cargo is subjected to the inertia loads resulting from the ultimate static load factors of § 23.561(b)(3) of this part, assuming the maximum allowed baggage or cargo weight for the compartment.

* * * * *

(g) Baggage compartments used in commuter category airplanes must also meet the requirements of paragraphs (a), (b), (d), and (f) of this section.

8. Section 23.807 is amended by removing paragraphs (d)(3) andm (d)(4) and revising paragraphs (a)(1) and (b) introductory text, to read as follows:

**§ 23.807 Emergency exits.**

(a) * * *

(1) For all airplanes with a seating capacity of two or more, excluding airplanes with canopies, at least one emergency exit on the opposite side of the cabin from the main door specified in § 23.783 of this part.

* * * * *

(b) *Type and operation.* Emergency exits must be movable windows, panels, canopies, or external doors, openable from both inside and outside the airplanes, that provide a clear and unobstructed opening large enough to admit a 19-by-26-inch ellipse. Auxiliary locking devices used to secure the airplane must be designed to be overridden by the normal internal opening means. In addition, each emergency exit must—

* * * * *

9. New § 23.811 is added to read as follows:

**§ 23.811 Emergency exit marking.**

(a) Each emergency exit and external door in them passenger compartment must be externally marked and readily identifiable from outside the airplane by—

(1) A conspicuous visual identification scheme; and

(2) A permanent decal or placard on or adjacent to the emergency exit which shows the means of opening the emergency exit, including any special instructions, if applicable.

(b) In addition, for commuter category airplanes, these exits and doors must be internally marked with the word "exit" by a sign which has white letters 1 inch

high on a red background 2 inches high, be self-illuminated or independently, internally electrically illuminated, and have a minimum brightness of at least 160 microlamberts. The color may be reversed if the passenger compartment illumination is essentially the same.

10. New § 23.813 is added to read as follows:

**§ 23.813 Emergency exit access.**

For commuter category airplanes, access to window-type emergency exits may not be obstructed by seats or seat backs.

11. Section 23.967 is amended by revising paragraph (e)(1) to read as follows:

**§ 23.967 Fuel tank installation.**

* * * * *

(e) * * *

(1) When subjected to the inertia loads resulting from the ultimate static load factors prescribed in § 23.561(b)(2) of this part; and

* * * * *

12. Section 23.1411 is amended by revising paragraph (b)(2) to read as follows:

**§ 23.1411 General**

* * * * *

(b) * * *

(2) Protect the safety equipment from damage caused by being subjected to the inertia loads resulting from the ultimate static load factors specified in § 23.561(b)(3) of this part.

13. Section 23.1413 is revised to read as follows:

**§ 23.1413 Safety belts and harnesses.**

Each safety belt and shoulder harness must be equipped with a metal-to-metal latching device.

Issued in Washington, DC, on August 8, 1988.

**T. Allan McArtor,**

*Administrator.*

[FR Doc. 88-18267 Filed 8-12-88; 8:45 am]

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Part VI

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Parts 2, 14, 15, and 52

**Federal Acquisition Regulation; Late Bids and Proposals—Composite Case; Proposed Rule**

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 14, 15, and 52**

**Federal Acquisition Regulation (FAR); Late Bids and Proposals—Composite Case**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) Parts 2, 14, and 52 to (1) correct language in the current 5-day late bid rule concerning acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by registered or certified mail; (2) provide a 2-day late bid rule for bids mailed by U.S. Postal Service Express Mail Next Day Service; (3) provide separate late bid rules for bids outside the U.S. and Canada; and (4) allow contracting officers the option of permitting the use of facsimile equipment for the submission of bids, acknowledgements of amendments to solicitations, and modifications or withdrawals of bids. Corresponding changes pertinent to contracting by negotiation are also proposed in Parts 15 and 52.

**DATE:** Comments should be submitted to the FAR Secretariat at the address shown below on or before October 14, 1988 to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 85–16 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The proposed revisions to correct language in the current 5-day late bid rule concerning acceptable evidence to establish the day of mailing of a late bid, modification, or withdrawal sent by registered or certified mail were published in the **Federal Register** as a proposed rule on March 23, 1985 (50 FR 11522). Comments received in response to the referenced proposed rule have been considered in the formulation of the language set forth in this proposed rule.

The provision of a 2-day late bid rule for bids mailed by U.S. Postal Service Express Mail Next Day Service is based on recommendations made by the Office of Federal Procurement Policy (OFPP) and the General Accounting Office (GAO) that consideration be given to include express mail in the late bids/offers provisions, along with registered and certified mail. The OFPP and GAO recommendations were not adopted at the time they were made, in view of the then limited availability of U.S. Postal Service Express Mail Next Day Service. Subsequent expansion of such services, however, has resulted in a favorable reconsideration of the recommendations.

The provision of separate late bid rules for bids outside the United States and Canada is based on a comment received in response to the publication of the proposed rule in the **Federal Register** on March 23, 1985. The recommendation pointed out that the 5-day late bid rule is inappropriate with respect to bids mailed to contracting offices outside the United States and Canada. Consequently, FAR revisions are proposed to (1) limit applicability of the 5-day late bid rule to bids submitted to contracting offices in the United States and Canada, and (2) establish, for bids submitted to contracting offices outside the United States and Canada, a rule that limits acceptance of late bids to those whose late receipt is due solely to mishandling by the Government at the Government installation.

The provision of an option that permits contracting officers to authorize the use of facsimile equipment for the submission of bids, acknowledgements of amendments to solicitations, and modifications or withdrawals of bids, is based on a 4-month test in response to an inquiry from a member of the public. The 4-month test was conducted to determine the practicality of prospective contractors submitting certain contractual documents by facsimile in addition to telegram. Comments from interested parties indicated that facsimile transmission of the documents is highly acceptable because of its convenience, accuracy, and low cost.

The corresponding changes proposed with respect to FAR Parts 15 and 52 are intended to adjust coverage pertaining to contracting by negotiation to the extent feasible to be consistent with the changes proposed with respect to sealed bidding.

### B. Regulatory Flexibility Act

Public comments are not necessary because this proposed rule does not have a significant cost or administrative impact on contractors and does not have a significant effect beyond the internal operating procedures of the Government. However, any public comments received will be considered in the formulation of a final rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

### List of Subjects in 48 CFR Parts 2, 14, 15, and 52

Government procurement.

Dated: August 5, 1988.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, it is proposed that 48 CFR Parts 2, 14, 15, and 52 be amended as set forth below:

1. The authority citation for Parts 2, 14, 15, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by alphabetically adding a definition "Facsimile" to read as follows:

**2.101 Definitions**

* * * * *

"Facsimile" means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document, e.g., facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

* * * * *

## PART 14—SEALED BIDDING

3. Section 14.201–6 is amended by revising paragraphs (c)(3) and (r); by reserving paragraph (u); and by adding

paragraphs (c)(4), (v), and (w) to read as follows:

**14.201–6 Solicitation provisions.**

* * * * *

(c) * * *

(3) 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids, for solicitations issued in the United States and Canada for submission of bids to a contracting office in the United States or Canada.

(4) 52.214–32, Late Submissions, Modifications, and Withdrawals of Bids (Overseas), for solicitations under which bids are to be submitted to a contracting office outside the United States or Canada.

* * * * *

(r) The contracting officer shall insert the provision at 52.214–23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding issued in the United States and Canada for submission of technical proposals to a contracting office in the United States or Canada.

* * * * *

(u) [Reserved]

(v) The contracting officer shall insert the provision at 52.214–33, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas), in solicitations for technical proposals in step one of two-step sealed bidding under which technical proposals are to be submitted to a contracting office outside the United States or Canada.

(w) The contracting officer shall insert the provision at 52.214–31, Facsimile Bids, in solicitations if facsimile bids are authorized (see 14.202–7).

4. Section 14.202–7 is added to read as follows:

**14.202–7 Facsimile bids.**

Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile bids (see 14.201–6(w)). In determining whether or not to authorize facsimile bids, the contracting officer shall consider factors such as—

(a) Anticipated bid size and volume;

(b) Urgency of the requirement;

(c) Frequency of price changes;

(d) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and

(e) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile bids, and ensuring their timely delivery to the bids opening location.

5. Section 14.301 is amended by revising paragraph (a); by redesignating existing paragraph (c) as (d); and by adding new paragraph (c) to read as follows:

**14.301 Responsiveness of bids.**

(a) To be considered for award, a bid (including, if authorized by the solicitation, facsimile bids) (see 14.301(c)) must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintains the integrity of sealed bidding system.

* * * * *

(c) Facsimile bids shall not be considered unless permitted by the invitation (see 14.202–7).

* * * * *

6. Section 14.303 is amended by revising paragraph (a) to read as follows:

**14.303 Modifications or withdrawal of bids.**

(a) Bids may be modified or withdrawal by written or telegraphic notice received in the office designated in the invitation for bids not later than the exact time set for opening of bids. Unless proscribed by agency regulations, a telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office shall be considered. However, the message shall be confirmed by the telegraph company by sending a copy of the written telegram that formed the basis for the telephone call. If the solicitation authorizes facsimile bids, bids may be modified or withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision prescribed in 14.201–6(w). Modifications received by telephone (including a record of those telephoned by the telegraph company) or facsimile shall be sealed in an envelope by a proper official. The official shall write on the envelope (1) the date and time of receipt and by whom and (2) the number of the invitation for bids, and shall sign the envelope. No information contained in the envelope shall be disclosed before the time set for bid opening.

* * * * *

7. Section 14.304–1 is amended by revising paragraphs (a)(1), (a)(2), and (b); by redesignating existing paragraph (d) as (e); and by adding new paragraphs (a)(3) and (d) to read as follows:

**14.304–1 General.**

* * * * *

(a) * * *

(1) It was sent to a contracting office in the United States or Canada by registered or certified mail not later than 5 calendar days before the bid receipt date specified;

(2) It was sent by mail (or, if authorized by the solicitation, was sent by telegram or via facsimile) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It was sent to a contracting office in the United States or Canada by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee not later than 5:00 PM at the place of mailing 2 U.S. Federal working days prior to the date specified for receipt of bids. The term "U.S. Federal Working Days" excludes weekends and U.S. Federal holidays.

(b) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent to a contracting office in the United States or Canada either by registered or certified mail is a U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. If both postmarks do not show a legible date, the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.)

* * * * *

(d) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (b) of the subsection, excluding postmarks of the Canadian Postal Service. Therefore, bidders would request the postal clerks to place a legible and hand cancellation

bull's-eye postmark on both the receipt and the envelope or wrapper.

* * * * *

8. Section 14.304–2 is revised to read as follows:

**14.304–2 Notification to late bidders.**

When a bid, modification of bid, or withdrawal of bid is received late and it is clear from available information that it cannot be considered, the contracting officer shall promptly notify the bidder accordingly. However, when a late bid, modification of bid, or withdrawal of bid is transmitted to a contracting office in the United States or Canada by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee and is received before award, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids Number ____ dated ____ for ____ [insert subject matter or short title] was received after the time for opening specified in the Invitation. Accordingly, you bid will not be opened or considered for award unless there is received from you by ____ [insert date] the original post office receipt for (insert one of the following, as appropriate):

(i) Registered or certified mail showing a date of mailing not later than the fifth calendar day before the date specified for opening (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(ii) U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee showing a date of mailing not later than 5:00 PM 2 Federal working days prior to the date specified for opening.

## PART 15—CONTRACTING BY NEGOTIATION

9. Section 15.402 is amended by adding paragraph (i) to read as follows:

**15.402 General.**

* * * * *

(i) Unless prohibited or otherwise restricted by agency procedures, contracting offices may authorize facsimile proposals (see 15.407 (i)). In determining whether or not to authorize facsimile proposals, the contracting officer shall consider such factors as—

(1) Anticipated proposal size and volume;

(2) Urgency of the requirement;

(3) Frequency of price changes;

(4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and

(5) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the proposal opening location.

10. Section 15.407 is amended by revising paragraphs (c)(6) and (c)(8); by adding and reserving paragraph (i); and by adding paragraphs (c)(9) and (j) to read as follows:

**15.407 Solicitation provisions.**

* * * * *

(c) * * *

(6) 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, for solicitations issued in the United States and Canada for submission of offers to a contracting office in the United States or Canada;

* * * * *

(8) 52.215–12, Restriction on Disclosure and Use of Data; and

(9) 52.215–36, Late Submissions, Modifications, and Withdrawals of Proposals (Overseas), for solicitations under which offers are to be submitted to a contracting office outside the United States or Canada.

* * * * *

(i) [Reserved]

(j) The contracting officer shall insert the provisions at 52.215–18, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.402(i)).

11. Section 15.412 is amended by revising paragraph (e) to read as follows:

**15.412 Late proposals and modifications.**

* * * * *

(e) When a late proposal or modification is transmitted to a contracting office in the United States or Canada by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee and is received before award, the offeror shall be promptly notified substantially in accordance with the notice in 14.304–2, appropriately modified to relate to proposals.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.214–5 is revised to read as follows:

**52.214–5 Submission of Bids.**

As prescribed in 14.201–6(c)(1), insert the following provision:

SUBMISSION OF BIDS (AUG 1988)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation number, and name and address of the bidder.

(b) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice, if such notice is received by the time specified for receipt of bids.

(c) Facsimile bids will not be considered unless authorized by the solicitation.

(End of provision)

13. Section 52.214–7 is revised to read as follows:

**52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.**

As prescribed in 14.201–6(c)(3), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (AUG 1988)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation required receipt of bids by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 P.M. at the place of mailing 2 U.S. Federal working days prior to the date specified for receipt of bids. The term "U.S. Federal working days" excludes weekends and U.S. Federal holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. If both postmarks do not show a legible date, the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerks to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the

Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerks to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipts of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

14. Section 52.214–23 is revised to read as follows:

**52.214–23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.**

As prescribed in 14.201–6(r), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (AUG 1988)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of technical proposals (e.g., technical proposal submitted in response to a solicitation requiring receipt of technical proposals by the 20th of the month must have been mailed by the 15th);

(2) Was sent (i) by mail, or (ii) if authorized, by telegram (including mailgram) or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office To Addressee, not later than 5:00 P.M. at the place of mailing 2 U.S. Federal working days prior to the date specified for receipt of technical proposals. The term "U.S. Federal working days" excludes weekends and U.S. Federal holidays; or

(4) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision except that (i) the use of a telegram (or mailgram) is authorized, and (ii) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids."

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids." Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal of technical proposal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. If both postmarks do not show a legible date, the technical proposal, modification, or withdrawal of technical proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, submitters of technical proposals should request the postal clerks to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, submitters of technical proposals should request the postal clerks to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(End of provision)

15. Sections 52.214–31, 52.214–32, and 52.214–33 are added to read as follows:

**52.214–31 Facsimile Bids.**

As prescribed in 14.201–6(w), insert the following provision:

FACSIMILE BIDS (AUG 1988)

(a) Definition. "Facsimile bid," as used in this solicitation, means a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The bidder must promptly submit the complete signed bid in confirmation of the facsimile bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

_____

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

_____

_____

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

(1) Receipt of garbled or incomplete bid.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of bid.

(5) Failure of the bidder to properly identify the bid.

(6) Illegibility of bid.

(7) Security of bid data.

(End of provision)

**52.214–32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).**

As prescribed in 14.201–6(c)(4), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (AUG 1988)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(e) Bids may be withdrawn by written notice or telephone (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(End of provision)

**52.214–33 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas).**

As prescribed in 14.201–6(v), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP BIDDING (OVERSEAS) (AUG 1988)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent: (i) By mail, or (ii) if authorized by the solicitation, was sent by telegram (including mailgram) or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government at the Government installation; or

(2) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (i) the use of a telegram (or mailgram) is authorized, and (ii) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids."

(c) Technical proposals may be withdrawn by written notice (including facsimile) or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids." Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

16. Section 52.215–9 is revised to read as follows:

**52.215–9 Submission of Offers.**

As prescribed in 15.407(c)(5), insert the following provision in requests for proposals:

SUBMISSION OF OFFERS (AUG 1988)

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice, if that notice is received by the time specified for receipt of offers.

(c) Facsimile offers will not be considered unless authorized by the solicitation.

(d) Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be: (1) Submitted at no expense to the Government and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

(End of provision)

17. Section 52.215–10 is revised to read as follows:

**52.215–10 Late Submissions, Modifications, and Withdrawals of Proposals.**

As prescribed in 15.407(c)(6), insert the following provision in requests for proposals:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (AUG 1988)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing 2 U.S. Federal working days prior to the date specified for receipt of proposals. The term "U.S. Federal working days" excludes weekends and U.S. Federal holidays; or

(4) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a) (1), (2), and (3) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. on Canadian Postal Service. If both postmarks do not show a legible date, the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerks to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the

same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoters should request the postal clerks to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(h) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

18. Section 52.215–18 is added to read as follows:

**52.215–18 Facsimile Proposals.**

As prescribed in 15.407(i), insert the following provision:

FACSIMILE PROPOSALS (AUG 1988)

(a) Definition. "Facsimile proposal," as used in this solicitation, means a proposal that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Offerors may submit facsimile proposals as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile proposals that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile proposals must contain the required signatures.

(e) The Offeror must promptly submit the complete signed proposal in confirmation of the facsimile proposal.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

---

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

---

(g) If the Offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile proposal including, but not limited to the following:

(1) Receipt of garbled or incomplete proposal.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of proposal.

(5) Failure of the Offeror to properly identify the proposal.

(6) Illegibility of proposal.

(7) Security of proposal data.

(End of provision)

19. Section 52.215–36 is added to read as follows:

**52.215–36 Late Submission, Modifications, and Withdrawals of Proposal (Overseas).**

As prescribed in 15.407(c)(9), insert the following provision in request for proposals:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSAL (OVERSEAS) (AUG 1988)

(a) Any proposal received at the Office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

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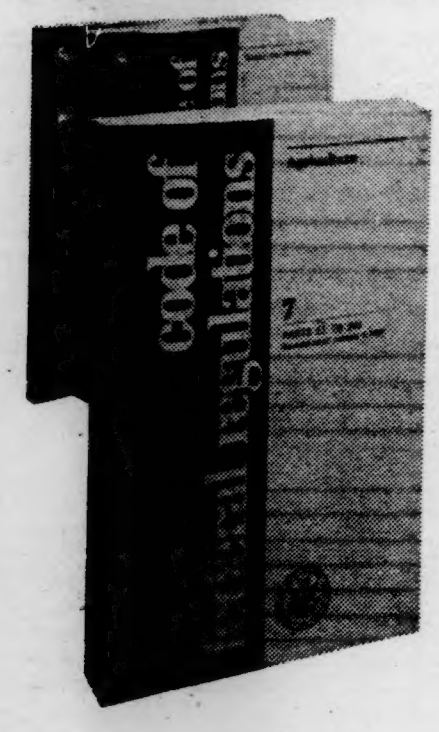


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